TITLE 26—INTERNAL REVENUE CODE

ACT AUG. 16, 1954, CH. 736, 68A STAT. 3

The following tables have been prepared as aids in comparing provisions of the Internal Revenue Code of 1954 (redesignated the Internal Revenue Code of 1986 by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095) with provisions of the Internal Revenue Code of 1939. No inferences, implications, or presumptions of legislative construction or intent are to be drawn or made by reason of such tables.

Citations to "R.A." refer to the sections of earlier Revenue Acts.

TABLE I

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6044(b)	148(f)
6044(c)	148(f)
6045	149
6046(a)	3604(a)
6046(b)	3604(b)
6046(c)	3604(b)
6046(d)	
6051(a)	1403, 1633(a), (b)
6051(b)	1633(a)
6051(c)	1633(b)
6051(d)	1633(b)
6061	3809(b)
6062	52(a)
6063	187
6064	58(g), 3809(b)
6065(a)	142(a), (b), 148(a), (d), (e); 149, 169(f), 187, 233, 821(a), 864(a), 1006(a), 1604(a), 1716(a), 1852(a), 1902(a)(1), 2403(a), 2471, 2555(a), (c); 2701, 3233(a), 3272(a), 3330, 3448(a), 3461, 3467(b), 3469(d), 3475(c), 3604(b), 3611(a), (c), 3779(b), 3780(a), 3809(c)
6065(b)	51(a), 54(f), 58(b), 215(a), 3780(a)
6071	141(b), 147(a), 148(a), (b), (c), (e); 149, 150, 153(a), (b), 821(b), 864(b), 874(b)(3), 1253(a), 1420(c), 1530(b), 1604(a), 1716(b), 1852(a), 1902(a)(1),

	2403(a), 2451(a), 2471, 2555(b), (c), 2701, 2734(e), 3233(a), 3272(a), 3310(a), (f)(1); 3448(a), 3461, 3467(b), 3469(d), 3475(c), 3491(a), 3604(a), 3611(b), (c); 3779(b), 3780(a), 3791(a)
6072(a)	53(a)(1), 143(c)
6072(b)	53(a)
6072(c)	217(a), 235(a)
6072(d)	
6072(e)	3805
6073(a)	58(d)(1)
6073(b)	60(a)
6073(c)	58(d)(2)
6073(d)	60(b)
6073(e)	60(c)
6074(a)	
6074(b)	
6074(c)	
6075(a)	821(b), 864(b)
6075(b)	1006(b)
6081(a)	53(a)(2), 58(e), 141(b), 147(a), 148(a), (b), (c), (e); 149, 150, 153(a), (b); 821(b), 864(b), 874(b)(3), 1253(a), 1420(c), 1530(b), 1604(b), 1625(c), 1633(c), 1716(b), 2403(a), 2451(a), 2471, 2555(c)(1), 2701, 3233(a), 3272(a), 3310(f)(1), 3448(a), 3461, 3467(b), 3469(e), 3475(d), 3611(a)(1), 3634, 3779(b), 3791(a)
6081(b)	
6081(c)	
6091(a)	147(a), 148(b), (c), (d), 149, 150, 153(a), (b), 820, 874(b)(3), 1253(a), 1420(c), 1530(b), 2555(c)(1), 2734(e), 3233(a), 3604(a), 3611(a)(1), (c); 3779(a), 3780(a), 3791(a)
6091(b)(1)	53(b)(1), 58(d)(2), 60(b), 143(c), 821(c), 864(c), 1006(b), 1604(a), 1716(c), 1852(b), 1902(a)(2), 2403(a), 2451(a), 2471, 2701, 3272(a), 3291(a), 3448(a), 3461, 3467(b), 3469(d), 3475(c), 3491(c), 3611(a)(1), (c); 3791(a)
6091(b)(2)	53(b)(2), 141(b), 143(c), 1604(a), 1716(c), 1852(b), 1902(a)(2), 2403(a), 2451(a), 2471, 2701, 3272(a), 3291(a), 3448(a), 3461, 3467(b), 3469(d), 3475(c), 3491(c), 3611(a)(1), (c); 3791(a)
6091(b)(3)	821(c), 864(c)
6091(b)(4)	
6101	3630

6102	
6103(a)	55(a)
6103(b)	55(b)
6103(c)	55(c)
6103(d)	55(d)
6103(e)	58(h)
6103(f)	55(e)
6104	153(c)
6105	722(g)
6106	1604(c)
6107	3275, 3292
6108	63
6109	
6151(a)	56(a), 143(c), (h); 144, 218(a), 236(a), 822(a)(1), 1008(a), 1253(a), 1530(b), 1715(b), (c); 1853(a), (b); 1902(a)(3), (b); 2403(b), 2451(a), (b); 2472, 2702(a), 3220, 3230, 3271(b), 3272(a), 3448(a), (b); 3461, 3467(b), 3469(b), 3470, 3475(c), 3491(a), (c)
6151(b)	51(f)(2), 56(i)
6151(c)	322(b)(4), (e)
6152(a)(1)	56(b)(2)(A)
6152(a)(1)(A)	56(b)(2)(A)
6152(a)(1)(B)	56(b)(2)(B)
6152(a)(2)	56(b)(1)
6152(a)(3)	1605(c)
6152(b)(1)	56(b)(3)(A), 1605(c)
6152(b)(2)	56(b)(3)(B)
6152(c)	272(i)
6152(d)	56(b)(4)
6153(a)	59(a)
6153(b)	60(a)
6153(c)	59(b)
6153(d)	60(b)
6153(e)	60(c)
6153(f)	59(c)
6154	
6155(a)	22(d)(6)(F), 51(f)(2), 131(c), 146(a), 272(b), (c); 273(a), (g), (i); 274(b), 292(a), 871(b), (c), (i); 872(a), (g), (i); 874(b)(3), 891, 1012(b), (c); 1013(a), (g), (i); 1015(b), 1021, 1117(g), 1605(c), 3310(d), 3311, 3660(a), 3779(h)
6155(b)	
6156	
6161(a)(1)	56(c), 58(e), 1008(b), 1605(d), 3467(b), 3469(e), 3475(d)
6161(a)(2)	822(a)(2)

6161(b)(1)	272(j), 1012(i)
6161(b)(2)	871(h)
6161(c)	274(b), 1015(b)
6161(d)	
6162(a)	56(c)(2)
6162(b)	
6163(a)	925, 926
6163(b)	
6164(a)	3779(a)
6164(b)	3779(b)
6164(c)	3779(c)
6164(d)	3779(d)
6164(e)	3779(e)
6164(f)	3779(f)
6164(g)	3779(g)
6164(h)	3779(h)
6164(i)	3781
6165	56(c)(2), 272(j), 822(a)(2), 871(h), 1012(i)
6201(a)	3640, 3647
6201(a)(1)	3612(f)
6201(a)(2)(A)	1809(b)(2), 2351(c)(2), 2651(c)(2), 3311
6201(a)(2)(B)	
6201(a)(3)	
6201(b)	59(d)
6201(c)	22(m)(4)
6201(d)	
6202	3644
6203	3641
6204	3642
6205(a)(1)	1401(c), 1411, 1501(c), 1521
6205(a)(2)	1411
6205(b)	1421, 1502, 1522
6206	
6211(a)	271(a), 870, 1011
6211(b)(1)	271(b)(1)
6211(b)(2)	271(b)(2)
6211(b)(3)	271(b)(3)
6212(a)	272(a), 871(a), 1012(a)
6212(b)(1)	272(k), 1012(j)
6212(b)(2)	272(a)
6212(b)(3)	901(d)
6212(c)(1)	272(f), 871(f), 1012(f)
6212(c)(2)	
6213(a)	272(a), 871(a), 1012(a)
6213(b)(1)	272(f), 871(f), 1012(f)
6213(b)(2)	3780(c)
6213(b)(3)	
6213(c)	272(c), 871(c), 1012(c)

6213(d)	272(d), 871(d), 1012(d)
6213(e)	
6214(a)	272(e), 871(e), 1012(e)
6214(b)	272(g), 1012(g)
6214(c)	272(h), 871(g), 1012(h)
6215(a)	272(b), 871(b), 1012(b)
6215(b)	
6216	
6301	3651(a)(1)
6302(a)	3652
6302(b)	1420(c), 1719, 2550(c), 2708, 3281, 3282
6302(c)	3310(f)(2)
6303(a)	3655(a)
6303(b)	
6304	
6311(a)	3656(a)(1), (b)(1)
6311(b)(1)	3656(a)(2)(A), (b)(2)
6311(b)(2)	3656(a)(2)(B)
6312(a)	3657
6312(b)	
6313	56(g), 1008(d), 1420(d), 1530(d), 1605(e), 3658
6314(a)	1008(e), 3659(a)
6314(b)	823
6314(c)	
6315	59(d)
6316	
6321	3670
6322	3671
6323(a)	3672(a)
6323(a)(1)	3672(a)(1)
6323(a)(2)	3672(a)(2)
6323(a)(3)	3672(a)(3)
6323(b)	
6323(c)	
6323(d)(1)	3672(b)(1)
6323(d)(2)	3672(b)(2)
6323(e)	
6324(a)(1)	827(a)
6324(a)(2)	827(b)
6324(a)(3)	827(c)
6324(b)	1009
6324(c)	
6325(a)(1)	827(a), 1009, 3673(a)
6325(a)(2)	3673(b)
6325(b)(1)	3674(a)
6325(b)(2)	3674(b)
6325(c)	3675

6325(d)	
6326	
6331(a)	3310, 3660, 3690, 3692, 3700
6331(b)	3690, 3692, 3700
6331(c)	3715
6331(d)	
6332(a)	3710(a)
6332(b)	3710(b)
6332(c)	3710(c)
6333	3711
6334(a)	3691(a)
6334(b)	3691(b)
6334(c)	3692
6335(a)	3693(a), 3701(a)
6335(b)	3693(b), 3701(b)
6335(c)	3712
6335(d)	3693(c), 3701(c)
6335(e)(1)	3695(a), 3701(d), (e)
6335(e)(2)	3695(b)
6335(e)(2)(A)	3695(a), 3701(d)
6335(e)(2)(B)	3701(d)
6335(e)(2)(C)	
6335(e)(2)(D)	3701(f)
6335(e)(2)(E)	3693, 3701
6335(e)(2)(F)	3693(d), 3701(f)
6335(e)(3)	3701(f)
6336	
6337(a)	3696, 3702
6337(b)(1)	3702(b)(1)
6337(b)(2)	3702(b)(2)
6337(c)	3702(c)
6338(a)	3703(b)
6338(b)	3704(b)
6338(c)	3703(a), 3704(a)
6339(a)(1)	3697(a)(1)
6339(a)(2)	3697(b)
6339(a)(3)	3697(c)
6339(a)(4)	3697(d)
6339(a)(5)	
6339(b)(1)	3704(c)(1)
6339(b)(2)	3704(c)(2)
6340(a)	3706(a), (b)
6340(b)	3706(f)
6341	3716
6342(a)	3694
6342(b)	3712
6343	
6344	

6401(a)	3770(a)(2)
6401(b)	322(a)(2)
6401(c)	3770(c)
6402(a)	1027(a), 3770(a)(1), (4), (5)
6402(b)	322(a)(3)
6403	321
6404(a)	3770(a)(1), (5)
6404(b)	273(j), 873, 1014
6404(c)	
6405(a)	3777(a)
6405(b)	3777(b)
6405(c)	3777(c)
6406	3790
6407	3770(a)(3)
6411(a)	3780(a)
6411(b)	3780(b)
6411(c)	3781
6412(a)	
6412(b)(1)	3412(g)(1)
6412(b)(2)	3412(g)(2)
6412(c)	
6412(d)	3508
6412(e)	
6413(a)(1)	1401(c), 1411, 1501(c), 1521
6413(a)(2)	1411
6413(b)	1421, 1502, 1522
6413(c)(1)	1401(d)(3)
6413(c)(2)	1401(d)(4)
6413(d)	1601(d)
6414	143(f), 1622(f)(1)
6415(a)	1854(a), 3471(a)
6415(b)	1715(d)(1), (2); 1854(b), (c); 3471(b), (c)
6415(c)	1715(d)(2)
6415(d)	1715(d)(1), 1854(c), 3471(c)
6416(a)	1715(d), 2407(b), 2452(b), 3443(a)(3)(B), (b), (d)
6416(b)(1)	2407(a), 3443(a)(2)
6416(b)(2)(A)	3443(a)(3)(A)(i)
6416(b)(2)(B)	3443(a)(3)(A)(ii)
6416(b)(2)(C)	3443(a)(3)(A)(iii)
6416(b)(2)(D)	2452(a)
6416(b)(2)(E)	3443(a)(3)(A)(iv)
6416(b)(2)(F)	3443(a)(3)(A)(v)
6416(b)(2)(G)	3443(a)(3)(A)(vi)
6416(b)(2)(H)	3443(a)(3)(A)(vii)
6416(b)(3)	3443(a)(1)
6416(c)	3403(e)
6416(d)	3408(b)

6416(e)	2705
6416(f)	2703(a), 3471(b)
6417(a)	2473
6417(b)	2474
6418(a)	3494(a)
6418(b)	3493(a)
6419	3286
6420	
6501(a)	275(a), 874(a), 1016(a), 1635(a), 3312(a)
6501(b)(1)	275(f)
6501(b)(2)	1635(e)
6501(b)(3)	
6501(c)(1)	276(a), 874(b)(1), 1016(b)(1), 1635(b), 3312(b)
6501(c)(2)	1635(c), 3312(c)
6501(c)(3)	276(a), 874(b)(1), 1016(b)(1), 1635(b), 3312(b)
6501(c)(4)	276(b)
6501(c)(5)	
6501(d)	275(b)
6501(e)(1)(A)	275(c)
6501(e)(1)(B)	275(d)(1)
6501(e)(2)	
6501(f)	
6501(g)	
6502(a)	276(c), 874(b)(2), 1016(b)(2), 1635(d), 3312(d)
6502(b)	3714(b)
6503(a)(1)	277, 875, 1017
6503(a)(2)	141(h)
6503(b)	274(b), 1015(b)
6503(c)	
6503(d)	822(a)(2), 871(h)
6503(e)	
6504	
6511(a)	322(b)(1), 910, 1027(b)(1), 1636(a)(1), 3313
6511(b)(1)	322(b)(1), 910, 1027(b)(1), 1636(a)(1), 3313
6511(b)(2)	322(b)(2), 910, 1027(b)(2), 1636(a)(2), 3313
6511(c)	322(b)(3)
6511(d)(1)	322(b)(5)
6511(d)(2)(A)	322(b)(6)
6511(d)(2)(B)	322(g)
6511(d)(3)	
6511(e)(1)	3494(b)
6511(e)(2)	3493(b)
6511(f)	
6512(a)	322(c), 911, 1027(c)
6512(b)	322(d), 912, 1027(d)

6513(a)	322(b)(4)
6513(b)	322(e)
6513(c)	1636(c)
6513(d)	
6514(a)	3774
6514(b)	3775
6515	
6521	3812
6531	3748(a)
6532(a)(1)	3772(a)(2)
6532(a)(2)	3774(b)
6532(a)(3)	
6532(a)(4)	3772(a)(3)
6532(b)	3746(a), (b), (c)
6533	
6601(a)	146(f), 292(a), (c), (d); 294(a)(1), (2), (b), (c); 295, 296, 297, 298, 890(a), (b), 891, 892, 893(a)(1), (2); (b)(1), (2), (3), (4); 925, 1020(a), (b), 1021, 1022, 1023(a)(1), (2); (b)(1), (2), (3), (4), (5), 1420(b), 1530(c), 1605(b), 1717, 1853(c), 2403(b), 2451(b), 2475, 2706, 3310(c), 3448(b), 3470, 3495, 3655(b), 3779(i), 3794
6601(b)	890(a), 925
6601(c)(1)	294(a)(2), 296, 893(a)(2), (b)(3); 1023(a)(2), (b)(3)
6601(c)(2)	56(b), 272(i), 1605(c)
6601(c)(3)	297, 892, 1022
6601(c)(4)	3310(a), (b), 3311
6601(d)	292(a), 891, 1021
6601(e)	292(c), 3779(i)
6601(f)(1)	292(a), 294(b), 295, 296, 298, 890(a), (b), 891, 893(a), (b), 1020(a), (b), 1021, 1023(a), (b), 1420(b), 1530(c), 1605(b), 1717, 1853(c), 2403(b), 2451(b), 2475, 2706, 3310(c), (d), 3448(b), 3470, 3495, 3655(b), 3779(i)
6601(f)(2)	
6601(f)(3)	
6601(g)	59(d)
6601(h)	
6602	3746(d)
6611(a)	3443(c), 3771(a)
6611(b)(1)	3771(b)(1)
6611(b)(2)	3771(b)(2)
6611(c)	3771(c)
6611(d)	322(b)(4), (e); 1636
6611(e)	3771(b)(2)
6611(f)	3771(e)

6611(g)	3790
6612	
6651(a)	291, 894(a), 1631, 3612(d)(1)
6651(b)	
6651(c)	294(d)(1)(A)
6652	
6653(a)	51(g)(6)(A), 293(a), 894(a) 1019(a)
6653(b)	51(g)(6)(B), 293(b), 871(i), 1019(b), 3612(d)(2)
6653(c)(1)	271, 870, 1011
6653(c)(2)	
6653(d)	
6653(e)	1821(a)(3)
6654	294(d)(1)(B)
6655	
6656	
6657	
6658	146(f)
6659	51(g)(6), 291, 293, 871(i), 1019, 1117(g), 1634(b), 1718(c), 1821(a)(3), 3310(a)–(e), 3311, 3655(a)(b)
6671(a)	1718(c), 1821(a)(3), 2557(b)(4), 2707(a)
6671(b)	1718(d), 1821(a)(4), 2557(b)(8), 2707(d)
6672	1718(c), 1821(a)(3), 2557(b)(4), 2707(a)
6673	1117(g)
6674	1634(b)
6801(a)	1809(b)(1), 2652(a), 3273(a), 3300(a), 3901(a)(2)
6801(b)	1809(b)(1), 3301(a)
6802(1)	1423(a), 1817(a)
6802(2)	1817(b)
6802(3)	1817(c)
6803(a)(1)	1423(b)
6803(a)(2)	1423(c)
6803(b)(1)	1818(a)
6803(b)(2)	1818(b)
6804	1815, 1920(c), 3301(a)
6805(a)	3304(a)
6805(b)	3304(b)
6805(c)	3304(c)
6805(d)	3304(d)
6806(a)	3273(b)
6806(b)	
6806(c)	3293
6807	3725
6808	
6851(a)(1)	146(a)(1)
6851(a)(2)	146(a)(2)

6851(b)	
6851(c)	146(d)
6851(d)	146(e)
6851(e)	146(b)
6861(a)	273(a), 872(a), 1013(a)
6861(b)	273(b), 872(b), 1013(b)
6861(c)	273(c), 872(c), 1013(c)
6861(d)	273(d), 872(d), 1013(d)
6861(e)	273(e), 872(e), 1013(e)
6861(f)	273(i), 872(i), 1013(i)
6861(g)	273(k), 872(j), 1013(j)
6861(h)	
6862(a)	3660(a)
6862(b)	
6863(a)	273(f), (h); 872(f), (h); 1013(f), (h); 3660(b)
6863(b)(1)	273(g), 872(g), 1013(g)
6863(b)(2)	273(f), (h); 872(f), (h); 1013(f), (h)
6864	
6871(a)	274(a), 1015(a)
6871(b)	274(a), 1015(a)
6872	274(a)
6873(a)	274(b), 1015(b)
6873(b)	
6901(a)	311(a), 900(a), 1025(a)
6901(b)	311(a), 900(a), 1025(a)
6901(c)	311(b), 900(b), 1025(b)
6901(d)	311(b)(4)
6901(e)	311(c), 1025(c)
6901(f)	311(d), 900(c), 1025(d)
6901(g)	311(e), 1025(g)
6901(h)	311(f), 900(e), 1025(f)
6901(i)	
6902(a)	1119(a)
6902(b)	1119(b)
6903(a)	312(a), 901(a), 1026(a)
6903(b)	312(c), 901(c), 1026(c)
6904	
7001(a)	150
7001(b)	
7011(a)	3270(a)
7011(b)	3280(a)
7012	
7101	44(d), 56(c)(2), 112(b)(6)(D), 131(c), 146(b), 272(j), 273(f), 822(a)(2), 871(h), 872(f), 926, 1012(i), 1013(f), 1145, 1818(a), 2302(e), 2322(e), 2352(e), 2474, 2569(b), 2653(d), 3360(d)(2)(B), 3412(d), 3413, 3660(b), 3722(c), 3724(c), 3943, 3992, 4010, and 6 U.S.C. 15

7102	3676
7103	
7121(a)	3760
7121(b)	3760
7122(a)	3761
7122(b)	3761
7123	
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An Act to revise the internal revenue laws of the United States

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That

(a) Citation

(1) The provisions of this Act set forth under the heading "Internal Revenue Title" may be cited as the "Internal Revenue Code of 1986 [formerly I.R.C. 1954]".

(2) The Internal Revenue Code enacted on February 10, 1939, as amended, may be cited as the "Internal Revenue Code of 1939".

(b) Publication

This Act shall be published as volume 68A of the United States Statutes at Large, with a comprehensive table of contents and an appendix; but without an index or marginal references. The date of enactment, bill number, public law number, and chapter number, shall be printed as a headnote.

(c) Cross reference

For saving provisions, effective date provisions, and other related provisions, see chapter 80 (sec. 7801 and following) of the Internal Revenue Code of 1986.

(d) Enactment of Internal Revenue Title into law

The Internal Revenue Title referred to in subsection (a)(1) is as follows: * * *.

(Aug. 16, 1954, ch. 736, 68A Stat. 3; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095.)

AMENDMENTS

1986—Subsecs. (a)(1), (c). Pub. L. 99–514 substituted "Internal Revenue Code of 1986" for "Internal

Revenue Code of 1954".

REDESIGNATION OF INTERNAL REVENUE CODE OF 1954; REFERENCES

Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) REDESIGNATION OF 1954 CODE.—The Internal Revenue Title enacted August 16, 1954, as heretofore, hereby, or hereafter amended, may be cited as the 'Internal Revenue Code of 1986'.

"(b) REFERENCES IN LAWS, ETC.—Except when inappropriate, any reference in any law, Executive order, or other document—

"(1) to the Internal Revenue Code of 1954 shall include a reference to the Internal Revenue Code of 1986, and

"(2) to the Internal Revenue Code of 1986 shall include a reference to the provisions of law formerly known as the Internal Revenue Code of 1954."

INTERNAL REVENUE TITLE

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A.	Income taxes.
B.	Estate and gift taxes.
C.	Employment taxes.
D.	Miscellaneous excise taxes.
E.	Alcohol, tobacco, and certain other excise taxes.
F.	Procedure and administration.
G.	The Joint Committee on Taxation.
H.	Financing of Presidential election campaigns.
I.	Trust Fund Code.
J.	Coal industry health benefits.[1]
K.	Group health plan requirements.

AMENDMENTS

1997—Pub. L. 105–34, title XV, §1531(b)(3), Aug. 5, 1997, 111 Stat. 1085, added subtitle K heading "Group health plan requirements" and struck out former subtitle K heading "Group health plan portability, access, and renewability requirements".

1996—Pub. L. 104–191, title IV, §401(b), Aug. 21, 1996, 110 Stat. 2082, added subtitle K heading "Group health plan portability, access, and renewability requirements".

1982—Pub. L. 97–248, title III, §§307(b)(2), 308(a), Sept. 3, 1982, 96 Stat. 590, 591, provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, subtitle C heading is amended to read "Employment taxes and collection of income tax at source". Section 102(a), (b) of Pub. L. 98–67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§301–308) of title III of Pub. L. 97–248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 [now 1986] [this title] shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

1981—Pub. L. 97–119, title I, §103(c)(2), Dec. 29, 1981, 95 Stat. 1638, added subtitle I heading "Trust Fund Code".

1976—Pub. L. 94–455, title XIX, §1907(b)(2), Oct. 4, 1976, 90 Stat. 1836, substituted in subtitle G heading "The Joint Committee on Taxation" for "The Joint Committee on Internal Revenue Taxation".

1974—Pub. L. 93–443, title IV, §408(a), Oct. 15, 1974, 88 Stat. 1297, added subtitle H heading "Financing of Presidential election campaigns".

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[1] Editorially supplied. Subtitle J added by Pub. L. 102–486 without corresponding amendment of title analysis.

Subtitle A—Income Taxes

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4. Taxes to enforce reporting on certain foreign accounts.
[5. Repealed.]
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AMENDMENTS

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

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

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

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

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

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AMENDMENTS

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

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

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

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

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

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

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

1982—Pub. L. 97–354, §5(b), Oct. 19, 1982, 96 Stat. 1697, substituted in subchapter S "Tax treatment of S

corporations and their shareholders" for "Election of certain small business corporations as to taxable status".

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

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

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

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

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

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

[1] Section numbers editorially supplied.

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

Subchapter A—Determination of Tax Liability

Part

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

AMENDMENTS

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

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

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

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

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

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

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

PART I—TAX ON INDIVIDUALS

Sec.

1. Tax imposed.
2. Definitions and special rules.
3. Tax tables for individuals having taxable income of less than $20,000.[1]
[4. Repealed.]
5. Cross references relating to tax on individuals.

AMENDMENTS

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

1969—Pub. L. 91–172, title VIII, §803(d)(9), Dec. 30, 1969, 83 Stat. 685, substituted "Definitions and

special rules" and "Optional tax tables for individuals" for "Tax in case of joint return or return of surviving spouse" and "Optional tax if adjusted gross income is less than $5,000" in items 2 and 3, respectively.

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

§1. Tax imposed

(a) Married individuals filing joint returns and surviving spouses

There is hereby imposed on the taxable income of—

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

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

a tax determined in accordance with the following table:

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

(b) Heads of households

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

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

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

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

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

(d) Married individuals filing separate returns

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

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

(e) Estates and trusts

There is hereby imposed on the taxable income of—

(1) every estate, and

(2) every trust,

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

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

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

(1) In general

Not later than December 15 of 1993, and each subsequent calendar year, the Secretary shall prescribe tables which shall apply in lieu of the tables contained in subsections (a), (b), (c), (d),

and (e) with respect to taxable years beginning in the succeeding calendar year.

(2) Method of prescribing tables

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

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

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

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

(3) Cost-of-living adjustment

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

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

(B) the CPI for the calendar year 1992.

(4) CPI for any calendar year

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

(5) Consumer Price Index

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

(6) Rounding

(A) In general

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

(B) Table for married individuals filing separately

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

(7) Special rule for certain brackets

(A) Calendar year 1994

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

(B) Later calendar years

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

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

With respect to taxable years beginning after December 31, 2003, in prescribing the tables

under paragraph (1)—

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

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

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

(1) In general

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

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

(B) the sum of—

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

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

(2) Child to whom subsection applies

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

(A) such child—

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

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

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

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

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

(3) Allocable parental tax

For purposes of this subsection—

(A) In general

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

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

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

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

(B) Child's share

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

(C) Special rule where parent has different taxable year

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

ending in the child's taxable year.

(4) Net unearned income

For purposes of this subsection—

(A) In general

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

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

(ii) the sum of—

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

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

(B) Limitation based on taxable income

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

(C) Treatment of distributions from qualified disability trusts

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

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

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

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

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

(6) Providing of parent's TIN

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

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

(A) In general

If—

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

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

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

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

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

(B) Income included on parent's return

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

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

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

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

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

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

(C) Regulations

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

(h) Maximum capital gains rate

(1) In general

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

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

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

(ii) the lesser of—

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

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

(B) 0 percent of so much of the adjusted net capital gain (or, if less, taxable income) as does not exceed the excess (if any) of—

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

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

(C) 15 percent of the lesser of—

(i) so much of the adjusted net capital gain (or, if less, taxable income) as exceeds the amount on which a tax is determined under subparagraph (B), or

(ii) the excess of—

(I) the amount of taxable income which would (without regard to this paragraph) be taxed at a rate below 39.6 percent, over

(II) the sum of the amounts on which a tax is determined under subparagraphs (A) and (B),

(D) 20 percent of the adjusted net capital gain (or, if less, taxable income) in excess of the sum of the amounts on which tax is determined under subparagraphs (B) and (C),

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

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

(ii) the excess (if any) of—

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

(II) taxable income; and

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

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

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

(3) Adjusted net capital gain

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

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

(i) unrecaptured section 1250 gain, and

(ii) 28-percent rate gain, plus

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

(4) 28-percent rate gain

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

(A) the sum of—

(i) collectibles gain; and

(ii) section 1202 gain, over

(B) the sum of—

(i) collectibles loss;

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

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

(5) Collectibles gain and loss

For purposes of this subsection—

(A) In general

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

(B) Partnerships, etc.

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

(6) Unrecaptured section 1250 gain

For purposes of this subsection—

(A) In general

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

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

(ii) the excess (if any) of—

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

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

(B) Limitation with respect to section 1231 property

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

(7) Section 1202 gain

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

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

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

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

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

(9) Regulations

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

(10) Pass-thru entity defined

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

(A) a regulated investment company;

(B) a real estate investment trust;

(C) an S corporation;

(D) a partnership;

(E) an estate or trust;

(F) a common trust fund; and

(G) a qualified electing fund (as defined in section 1295).

(11) Dividends taxed as net capital gain

(A) In general

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

(B) Qualified dividend income

For purposes of this paragraph—

(i) In general

The term "qualified dividend income" means dividends received during the taxable year from—

(I) domestic corporations, and

(II) qualified foreign corporations.

(ii) Certain dividends excluded

Such term shall not include—

(I) any dividend from a corporation which for the taxable year of the corporation in which the distribution is made, or the preceding taxable year, is a corporation exempt from tax under section 501 or 521,

(II) any amount allowed as a deduction under section 591 (relating to deduction for dividends paid by mutual savings banks, etc.), and

(III) any dividend described in section 404(k).

(iii) Coordination with section 246(c)

Such term shall not include any dividend on any share of stock—

(I) with respect to which the holding period requirements of section 246(c) are not met (determined by substituting in section 246(c) "60 days" for "45 days" each place it appears and by substituting "121-day period" for "91-day period"), or

(II) to the extent that the taxpayer is under an obligation (whether pursuant to a short sale or otherwise) to make related payments with respect to positions in substantially similar or related property.

(C) Qualified foreign corporations

(i) In general

Except as otherwise provided in this paragraph, the term "qualified foreign corporation" means any foreign corporation if—

(I) such corporation is incorporated in a possession of the United States, or

(II) such corporation is eligible for benefits of a comprehensive income tax treaty with the United States which the Secretary determines is satisfactory for purposes of this paragraph and which includes an exchange of information program.

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

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

(iii) Exclusion of dividends of certain foreign corporations

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

(iv) Coordination with foreign tax credit limitation

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

(D) Special rules

(i) Amounts taken into account as investment income

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

(ii) Extraordinary dividends

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

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

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

(i) Rate reductions after 2000

(1) 10-percent rate bracket

(A) In general

In the case of taxable years beginning after December 31, 2000—

(i) the rate of tax under subsections (a), (b), (c), and (d) on taxable income not over the initial bracket amount shall be 10 percent, and

(ii) the 15 percent rate of tax shall apply only to taxable income over the initial bracket amount but not over the maximum dollar amount for the 15-percent rate bracket.

(B) Initial bracket amount

For purposes of this paragraph, the initial bracket amount is—

(i) $14,000 in the case of subsection (a),

(ii) $10,000 in the case of subsection (b), and

(iii) ½ the amount applicable under clause (i) (after adjustment, if any, under subparagraph (C)) in the case of subsections (c) and (d).

(C) Inflation adjustment

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

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

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

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

(2) 25-, 28-, and 33-percent rate brackets

The tables under subsections (a), (b), (c), (d), and (e) shall be applied—

(A) by substituting "25%" for "28%" each place it appears (before the application of subparagraph (B)),

(B) by substituting "28%" for "31%" each place it appears, and

(C) by substituting "33%" for "36%" each place it appears.

(3) Modifications to income tax brackets for high-income taxpayers

(A) 35-percent rate bracket

In the case of taxable years beginning after December 31, 2012—

(i) the rate of tax under subsections (a), (b), (c), and (d) on a taxpayer's taxable income in the highest rate bracket shall be 35 percent to the extent such income does not exceed an amount equal to the excess of—

(I) the applicable threshold, over

(II) the dollar amount at which such bracket begins, and

(ii) the 39.6 percent rate of tax under such subsections shall apply only to the taxpayer's taxable income in such bracket in excess of the amount to which clause (i) applies.

(B) Applicable threshold

For purposes of this paragraph, the term "applicable threshold" means—

(i) $450,000 in the case of subsection (a),

(ii) $425,000 in the case of subsection (b),

(iii) $400,000 in the case of subsection (c), and

(iv) ½ the amount applicable under clause (i) (after adjustment, if any, under subparagraph (C)) in the case of subsection (d).

(C) Inflation adjustment

For purposes of this paragraph, with respect to taxable years beginning in calendar years after 2013, each of the dollar amounts under clauses (i), (ii), and (iii) of subparagraph (B) shall be adjusted in the same manner as under paragraph (1)(C)(i), except that subsection (f)(3)(B) shall be applied by substituting "2012" for "1992".

(4) Adjustment of tables

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

(Aug. 16, 1954, ch. 736, 68A Stat. 5; Pub. L. 88–272, title I, §111, Feb. 26, 1964, 78 Stat. 19; Pub. L. 89–809, title I, §103(a)(2), Nov. 13, 1966, 80 Stat. 1550; Pub. L. 91–172, title VIII, §803(a), Dec.

30, 1969, 83 Stat. 678; Pub. L. 95–30, title I, §101(a), May 23, 1977, 91 Stat. 127; Pub. L. 95–600, title I, §101(a), Nov. 6, 1978, 92 Stat. 2767; Pub. L. 97–34, title I, §§101(a), 104(a), Aug. 13, 1981, 95 Stat. 176, 188; Pub. L. 97–448, title I, §101(a)(3), Jan. 12, 1983, 96 Stat. 2366; Pub. L. 99–514, title I, §101(a), title III, §302(a), title XIV, §1411(a), Oct. 22, 1986, 100 Stat. 2096, 2218, 2714; Pub. L. 100–647, title I, §§1001(a)(3), 1014(e)(1)–(3), (6), (7), title VI, §6006(a), Nov. 10, 1988, 102 Stat. 3349, 3561, 3562, 3686; Pub. L. 101–239, title VII, §§7811(j)(1), 7816(b), 7831(a), Dec. 19, 1989, 103 Stat. 2411, 2420, 2425; Pub. L. 101–508, title XI, §§11101(a)–(c), (d)(1)(A), (2), 11103(c), 11104(b), Nov. 5, 1990, 104 Stat. 1388–403 to 1388–406, 1388–408; Pub. L. 103–66, title XIII, §§13201(a), (b)(3)(A), (B), 13202(a), 13206(d)(2), Aug. 10, 1993, 107 Stat. 457, 459, 461, 467; Pub. L. 104–188, title I, §1704(m)(1), (2), Aug. 20, 1996, 110 Stat. 1882, 1883; Pub. L. 105–34, title III, §311(a), Aug. 5, 1997, 111 Stat. 831; Pub. L. 105–206, title V, §5001(a)(1)–(4), title VI, §§6005(d)(1), 6007(f)(1), July 22, 1998, 112 Stat. 787, 788, 800, 810; Pub. L. 105–277, div. J, title IV, §4002(i)(1), (3), Oct. 21, 1998, 112 Stat. 2681–907, 2681–908; Pub. L. 106–554, §1(a)(7) [title I, §117(b)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–604; Pub. L. 107–16, title I, §101(a), (c)(1), (2), title III, §§301(c)(1), 302(a), (b), June 7, 2001, 115 Stat. 41, 43, 54; Pub. L. 108–27, title I, §§102(a), (b)(1), 104(a), (b), 105(a), title III, §§301(a)(1), (2)(A), (b)(1), 302(a), (e)(1), May 28, 2003, 117 Stat. 754, 755, 758, 760, 763; Pub. L. 108–311, title I, §101(c), (d), title IV, §§402(a)(1)–(3), 408(a)(1), (2), Oct. 4, 2004, 118 Stat. 1167, 1168, 1184, 1190; Pub. L. 108–357, title IV, §413(c)(1), Oct. 22, 2004, 118 Stat. 1506; Pub. L. 109–222, title V, §510(a)—(c), May 17, 2006, 120 Stat. 364; Pub. L. 110–28, title VIII, §8241(a), (b), May 25, 2007, 121 Stat. 199; Pub. L. 110–185, title I, §101(f)(2), Feb. 13, 2008, 122 Stat. 617; Pub. L. 112–240, title I, §§101(b)(1), 102(b)(1), (c)(2), Jan. 2, 2013, 126 Stat. 2316, 2318, 2319.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

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

AMENDMENTS

2013—Subsec. (h)(1)(B). Pub. L. 112–240, §102(c)(2), substituted "0 percent" for "5 percent (0 percent in the case of taxable years beginning after 2007)" in introductory provisions.

Subsec. (h)(1)(C) to (F). Pub. L. 112–240, §102(b)(1), added subpars. (C) and (D), redesignated former subpars. (D) and (E) as (E) and (F), respectively, and struck out former subpar. (C) which read as follows: "15 percent of the adjusted net capital gain (or, if less, taxable income) in excess of the amount on which a tax is determined under subparagraph (B);".

Subsec. (i)(2). Pub. L. 112–240, §101(b)(1)(A), amended par. (2) generally. Prior to amendment, par. (2) related to reductions in rates after June 30, 2001.

Subsec. (i)(3), (4). Pub. L. 112–240, §101(b)(1)(B), added par. (3) and redesignated former par. (3) as (4).

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

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

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

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

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

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

2004—Subsec. (f)(8). Pub. L. 108–311, §101(c), amended par. (8) generally, substituting provisions relating to elimination of marriage penalty in 15-percent bracket for provisions relating to phaseout of marriage penalty in 15-percent bracket.

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

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

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

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

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

section 1247; and".

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

Subsec. (h)(11)(C)(iii). Pub. L. 108–357, §413(c)(1)(B), struck out "a foreign personal holding company (as defined in section 552), a foreign investment company (as defined in section 1246(b)), or" before "a passive foreign investment".

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

Subsec. (i)(1)(B)(i). Pub. L. 108–311, §101(d)(1), struck out "($12,000 in the case of taxable years beginning after December 31, 2004, and before January 1, 2008)" after "$14,000".

Subsec. (i)(1)(C). Pub. L. 108–311, §101(d)(2), reenacted heading without change and amended text generally, substituting provisions relating to inflation adjustment in calendar years after 2003 for such provisions in calendar years after 2000.

2003—Subsec. (f)(8)(A). Pub. L. 108–27, §102(b)(1), substituted "2002" for "2004".

Subsec. (f)(8)(B). Pub. L. 108–27, §102(a), inserted table item relating to years 2003 and 2004.

Subsec. (h)(1)(B). Pub. L. 108–27, §301(a)(1), substituted "5 percent (0 percent in the case of taxable years beginning after 2007)" for "10 percent".

Subsec. (h)(1)(C). Pub. L. 108–27, §301(a)(2)(A), substituted "15 percent" for "20 percent".

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

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

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

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

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

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

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

"(A) unrecaptured section 1250 gain; and

"(B) 28-percent rate gain."

Pub. L. 108–27, §301(b)(1)(B), redesignated par. (4) as (3). Former par. (3) redesignated (2).

Subsec. (h)(4) to (7). Pub. L. 108–27, §301(b)(1)(B), redesignated pars. (5) to (8) as (4) to (7), respectively. Former par. (4) redesignated (3).

Subsec. (h)(8). Pub. L. 108–27, §301(b)(1)(C), redesignated par. (10) as (8). Former par. (8) redesignated (7).

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

Subsec. (h)(10). Pub. L. 108–27, §301(b)(1)(C), redesignated par. (12) as (10). Former par. (10) redesignated (8).

Subsec. (h)(11). Pub. L. 108–27, §302(a), added par. (11).

Pub. L. 108–27, §301(b)(1)(C), redesignated par. (11) as (9).

Subsec. (h)(12). Pub. L. 108–27, §301(b)(1)(C), redesignated par. (12) as (10).

Subsec. (i)(1)(B)(i). Pub. L. 108–27, §104(a), substituted "($12,000 in the case of taxable years beginning after December 31, 2004, and before January 1, 2008)" for "($12,000 in the case of taxable years beginning

before January 1, 2008)".

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

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

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

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

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

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

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

2001—Subsec. (f). Pub. L. 107–16, §302(b)(2), substituted "Phaseout of marriage penalty in 15-percent bracket; adjustments" for "Adjustments" in heading.

Subsec. (f)(2)(A). Pub. L. 107–16, §302(b)(1), inserted "except as provided in paragraph (8)," before "by increasing".

Subsec. (f)(6)(B). Pub. L. 107–16, §301(c)(1), substituted "(other than with respect to sections 63(c)(4) and 151(d)(4)(A)) shall be applied" for "(other than with respect to subsection (c)(4) of section 63 (as it applies to subsections (c)(5)(A) and (f) of such section) and section 151(d)(4)(A)) shall be applied".

Subsec. (f)(8). Pub. L. 107–16, §302(a), added par. (8).

Subsec. (g)(7)(B)(ii)(II). Pub. L. 107–16, §101(c)(1), substituted "10 percent." for "15 percent".

Subsec. (h)(1)(A)(ii)(I), (B)(i). Pub. L. 107–16, §101(c)(2)(A), substituted "25 percent" for "28 percent".

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

Subsec. (i). Pub. L. 107–16, §101(a), added subsec. (i).

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

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

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

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

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

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

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

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

"(i) the sum of—

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

"(II) collectibles gain; and

"(III) section 1202 gain, over

"(ii) the sum of—

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

"(II) collectibles loss;

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

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

"(B) SPECIAL RULES.—

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

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

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

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

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

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

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

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

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

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

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

"(ii) the excess (if any) of—

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

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

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

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

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

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

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

"(B) OTHER SPECIAL RULES.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"(B) a tax of 28 percent of the amount of taxable income in excess of the amount determined under

subparagraph (A), plus

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"(A) by increasing—

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

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

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

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

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

and struck out concluding provisions which read as follows: "If any increase determined under subparagraph (A) is not a multiple of $10, such increase shall be rounded to the nearest multiple of $10 (or if such increase is a multiple of $5, such increase shall be increased to the next highest multiple of $10).", in par. (3)(B) substituted "1987" for "1983", in par. (4) substituted "August 31" for "September 30", in par. (5) inserted requirement that the Consumer Price Index most consistent with such Index for calendar year 1986 be used, and added par. (6).

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

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

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

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

1981—Subsecs. (a) to (e). Pub. L. 97–34, §101(a), generally revised tax tables downward providing for cumulative across-the-board reductions of 23 percent on a three phase schedule under which different new

rates were set for taxable years beginning in 1982, for taxable years beginning in 1983, and for taxable years beginning after 1983.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

averaging about 20 percent and effectuated these cuts in two steps, one in 1964, and one in 1965.

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title I, §101(b)(3), Jan. 2, 2013, 126 Stat. 2317, provided that: "The amendments made by this subsection [amending this section and sections 68 and 151 of this title] shall apply to taxable years beginning after December 31, 2012."

Pub. L. 112–240, title I, §102(d), Jan. 2, 2013, 126 Stat. 2319, provided that:

"(1) IN GENERAL.—Except as otherwise provided, the amendments made by subsections (b) and (c) [amending this section, sections 55, 531, 541, 1445, and 7518 of this title, and section 53511 of Title 46, Shipping] shall apply to taxable years beginning after December 31, 2012.

"(2) WITHHOLDING.—The amendments made by paragraphs (1)(C) and (3) of subsection (c) [amending section 1445 of this title] shall apply to amounts paid on or after January 1, 2013."

EFFECTIVE AND TERMINATION DATES OF 2010 AMENDMENT

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

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

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–28, title VIII, §8241(c), May 25, 2007, 121 Stat. 199, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [May 25, 2007]."

EFFECTIVE DATE OF 2006 AMENDMENT

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

EFFECTIVE AND TERMINATION DATES OF 2004 AMENDMENT

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

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

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

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

Pub. L. 108–311, title I, §105, Oct. 4, 2004, 118 Stat. 1169, provided that: "Each amendment made by this title [amending this section and sections 24, 32, 55, and 63 of this title] shall be subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 [Pub. L. 107–16, §901, which was repealed by Pub. L. 112–240, title I, §101(a)(1), Jan. 2, 2013, 126 Stat. 2315, was formerly set out as an Effective and Termination Dates of 2001 Amendment note below] to the same extent and in the same manner as the provision of such Act to which such amendment relates."

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

Reconciliation Act of 2003 [Pub. L. 108–27]."

EFFECTIVE AND TERMINATION DATES OF 2003 AMENDMENT

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

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

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

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

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

Pub. L. 108–27, title I, §107, May 28, 2003, 117 Stat. 755, provided that: "Each amendment made by this title [enacting section 6429 of this title, amending this section and sections 24, 55, and 63 of this title, and amending provisions set out as notes under this section] shall be subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 [Pub. L. 107–16, §901, which was repealed by Pub. L. 112–240, title I, §101(a)(1), Jan. 2, 2013, 126 Stat. 2315, was formerly set out as an Effective and Termination Dates of 2001 Amendment note below] to the same extent and in the same manner as the provision of such Act to which such amendment relates."

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

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

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

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

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

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

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

Pub. L. 108–27, title III, §303, May 28, 2003, 117 Stat. 764, as amended by Pub. L. 109–222, title I, §102, May 17, 2006, 120 Stat. 346; Pub. L. 111–312, title I, §102(a), Dec. 17, 2010, 124 Stat. 3298, which provided that all provisions of, and amendments made by, title III of Pub. L. 108–27 would not apply to taxable years beginning after Dec. 31, 2012, and that the Internal Revenue Code of 1986 would be applied and administered to such years as if such provisions and amendments had never been enacted, was repealed by Pub. L. 112–240, title I, §102(a), Jan. 2, 2013, 126 Stat. 2318.

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

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

Pub. L. 109–280, title VIII, §811, Aug. 17, 2006, 120 Stat. 996, provided that: "Title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 [Pub. L. 107–16, §901, formerly set out below] shall not apply to the provisions of, and amendments made by, subtitles A through F of title VI of such Act [subtitles A to F [§§601–666] of title VI of Pub. L. 107–16, enacting sections 25B, 45E, 402A, and 4980F of this title, amending sections 24, 25, 25B, 26, 38, 39, 72, 132, 196, 219, 401, 402, 403, 404, 408, 408A, 409, 411, 412, 414 to 416, 457, 501, 505, 664, 861, 904, 1400C, 3401, 3405, 4972, 4973, 4975, 4979A, 6047, and 6051 of

this title and sections 1003, 1053, 1054, 1082, 1104, and 1108 of Title 29, Labor, enacting provisions set out as notes under sections 24, 38, 72, 132, 219, 401, 402, 403, 404, 408, 409, 411, 412, 414 to 416, 457, 861, 4972, 4975, 4980F, and 7801 of this title and section 1107 of Title 29, and amending provisions set out as notes under section 414 of this title and section 1107 of Title 29] (relating to pension and individual retirement arrangement provisions)."

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

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

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

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

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

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

Pub. L. 107–16, title IX, §901, June 7, 2001, 115 Stat. 150, as amended by Pub. L. 107–358, §2, Dec. 17, 2002, 116 Stat. 3015; Pub. L. 111–312, title I, §101(a)(1), Dec. 17, 2010, 124 Stat. 3298, which provided that all provisions of, and amendments made by, Pub. L. 107–16 (except for section 803 thereof (26 U.S.C. note prec. 101)) would not apply to taxable, plan, or limitation years beginning after Dec. 31, 2012, or, in the case of title V of Pub. L. 107–16, to estates of decedents dying, gifts made, or generation skipping transfers, after Dec. 31, 2012, and that the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.) would be applied and administered to such years, estates, gifts, and transfers as if such provisions and amendments had never been enacted, was repealed by Pub. L. 112–240, title I, §101(a)(1), Jan. 2, 2013, 126 Stat. 2315.

[Pub. L. 112–240, title I, §101(a)(3), Jan. 2, 2013, 126 Stat. 2316, provided that: "The amendments made by this subsection [repealing section 901 of Pub. L. 107–16, formerly set out above, and provisions set out as an Effective and Termination Dates of 2010 Amendment note under section 121 of this title] shall apply to taxable, plan, or limitation years beginning after December 31, 2012, and estates of decedents dying, gifts made, or generation skipping transfers after December 31, 2012."]

EFFECTIVE DATE OF 2000 AMENDMENT

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

EFFECTIVE DATE OF 1998 AMENDMENT

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

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

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

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

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

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title III, §311(d), Aug. 5, 1997, 111 Stat. 835, provided that:

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

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

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, §1704(m)(4), Aug. 20, 1996, 110 Stat. 1883, provided that: "The amendments made by this subsection [amending this section and section 59 of this title] shall apply to taxable years beginning after December 31, 1995."

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13201(c), Aug. 10, 1993, 107 Stat. 459, provided that: "The amendments made by this section [amending this section and sections 41, 63, 68, 132, 151, 453A, 513, 531, and 541 of this title] shall apply to taxable years beginning after December 31, 1992."

Pub. L. 103–66, title XIII, §13202(c), Aug. 10, 1993, 107 Stat. 461, provided that: "The amendments made by this section [amending this section and sections 531 and 541 of this title] shall apply to taxable years beginning after December 31, 1992."

Pub. L. 103–66, title XIII, §13206(d)(3), Aug. 10, 1993, 107 Stat. 467, provided that: "The amendments made by this subsection [amending this section and section 163 of this title] shall apply to taxable years beginning after December 31, 1992."

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, §11101(e), Nov. 5, 1990, 104 Stat. 1388–405, provided that: "The amendments made by this section [amending this section, sections 32, 41, 59, 63, 135, 151, 513, 691, 904, 6103, and 7518 of this title, and section 1177 of Title 46, Appendix, Shipping] shall apply to taxable years beginning after December 31, 1990."

Pub. L. 101–508, title XI, §11103(e), Nov. 5, 1990, 104 Stat. 1388–407, provided that: "The amendments made by this section [enacting section 68 of this title and amending this section and section 56 of this title] shall apply to taxable years beginning after December 31, 1990."

Pub. L. 101–508, title XI, §11104(c), Nov. 5, 1990, 104 Stat. 1388–408, provided that: "The amendments made by this section [amending this section and section 151 of this title] shall apply to taxable years beginning after December 31, 1990."

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7817, Dec. 19, 1989, 103 Stat. 2423, provided that: "Except as otherwise provided in this part [part I (§§7811–7817) of subtitle H of title VII of Pub. L. 101–239, see Tables for classification], any amendment made by this part shall take effect as if included in the provision of the 1988 Act [Pub. L. 100–647] to which such amendment relates."

Pub. L. 101–239, title VII, §7831(g), Dec. 19, 1989, 103 Stat. 2427, provided that: "Any amendment made by this section [amending this section and sections 42, 406, 407, and 1250 of this title and provisions set out as notes under sections 141 and 263A of this title] shall take effect as if included in the provision of the Tax Reform Act of 1986 [Pub. L. 99–514] to which such amendment relates."

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1019, Nov. 10, 1988, 102 Stat. 3593, provided that:

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

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

Pub. L. 100–647, title VI, §6006(b), Nov. 10, 1988, 102 Stat. 3687, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1988."

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title I, §151, Oct. 22, 1986, 100 Stat. 2121, provided that:

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

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

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

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

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

Pub. L. 99–514, title III, §302(b), Oct. 22, 1986, 100 Stat. 2218, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1986."

Pub. L. 99–514, title XIV, §1411(c), Oct. 22, 1986, 100 Stat. 2716, provided that: "The amendments made by this section [amending this section and section 6103 of this title] shall apply to taxable years beginning after December 31, 1986."

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 97–448, title I, §109, Jan. 12, 1983, 96 Stat. 2391, provided that: "Except as otherwise provided in this title, any amendment made by this title [see Tables for classification] shall take effect as if it had been included in the provision of the Economic Recovery Tax Act of 1981 [Pub. L. 97–34, Aug. 13, 1981, 95 Stat. 172] to which such amendment relates."

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title I, §101(f)(1), Aug. 13, 1981, 95 Stat. 185, as amended by Pub. L. 97–448, title I, §101(a)(1), Jan. 12, 1983, 96 Stat. 2365, provided that: "The amendments made by subsections (a), (c), and (d) [amending this section and sections 3, 21, 55, 541, and 1304 of this title and repealing section 1348 of this title] shall apply to taxable years beginning after December 31, 1981; except that the amendment made by paragraph (3) of subsection (d) [amending section 21 of this title] shall apply to taxable years ending after December 31, 1981."

Pub. L. 97–34, title I, §104(e), Aug. 13, 1981, 95 Stat. 190, provided that: "The amendments made by this section [amending this section and sections 63, 151, 6012, and 6013 of this title] shall apply to taxable years beginning after December 31, 1984."

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title I, §101(f)(1), Nov. 6, 1978, 92 Stat. 2770, provided that: "The amendments made by subsections (a), (b), (c), and (d) [amending sections 63, 402, 1302, and 6012 of this title] shall apply to taxable years beginning after December 31, 1978."

EFFECTIVE DATE OF 1977 AMENDMENT

Pub. L. 95–30, title I, §106(a), May 23, 1977, 91 Stat. 141, provided that: "The amendments made by sections 101, 102, and 104 [amending this section and sections 3, 21, 42, 57, 63, 143, 161, 172, 211, 402, 441, 443, 511, 584, 613A, 641, 642, 667, 703, 861, 862, 873, 904, 911, 931, 1034, 1211, 1302, 6012, 6014, 6212, 6504, and 6654 of this title and repealing sections 36, 141, 142, 144, and 145 of this title] shall apply to taxable years beginning after December 31, 1976."

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title VIII, §803(f), Dec. 30, 1969, 83 Stat. 685, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by subsections (a) [amending this section], (b)

[amending section 2 of this title], and (d) (other than paragraphs (1) and (8)) [amending sections 5, 511, 632, 641, 1347, and 6015 of this title] shall apply to taxable years beginning after December 31, 1970, except that section 2(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [section 2(c) of this title], as amended by subsection (b), shall also apply to taxable years beginning after December 31, 1969. The amendments made by subsections (c) [amending section 3 of this title], (d)(1) [amending section 6014 of this title], and (d)(8) [amending section 1304 of this title] shall apply to taxable years beginning after December 31, 1969".

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89–809, title I, §103(n), Nov. 13, 1966, 80 Stat. 1555, provided that:

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

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

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

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

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88–272, title I, §131, Feb. 26, 1964, 78 Stat. 30, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Except for purposes of section 21 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to effect of changes in rates during a taxable year), the amendments made by parts I and II of this title [amending this section and sections 2, 11, 37, 141, 144, 242, 821, 871, 963, 6016, 6074, 6154, 6212, 6504, and 6655 of this title] shall apply with respect to taxable years beginning after December 31, 1963."

SHORT TITLE OF 2014 AMENDMENT

Pub. L. 113–168, §1, Sept. 26, 2014, 128 Stat. 1883, provided that: "This Act [enacting section 139E of this title and provisions set out as notes under section 139E of this title] may be cited as the 'Tribal General Welfare Exclusion Act of 2014'."

Pub. L. 113–94, §1, Apr. 3, 2014, 128 Stat. 1085, provided that: "This Act [amending sections 9006, 9008, 9009, 9012, and 9037 of this title and sections 282 and 282a of Title 42, The Public Health and Welfare, and enacting provisions set out as a note under section 282a of Title 42] may be cited as the 'Gabriella Miller Kids First Research Act'."

SHORT TITLE OF 2013 AMENDMENT

Pub. L. 112–240, §1(a), Jan. 2, 2013, 126 Stat. 2313, provided that: "This Act [see Tables for classification] may be cited as the 'American Taxpayer Relief Act of 2012'."

SHORT TITLE OF 2012 AMENDMENT

Pub. L. 112–141, div. D, §40001, July 6, 2012, 126 Stat. 844, provided that: "This division [see Tables for classification] may be cited as the 'Highway Investment, Job Creation, and Economic Growth Act of 2012'."

Pub. L. 112–96, §1(a), Feb. 22, 2012, 126 Stat. 156, provided that: "This Act [see Tables for classification] may be cited as the 'Middle Class Tax Relief and Job Creation Act of 2012'."

Pub. L. 112–96, title II, §2001, Feb. 22, 2012, 126 Stat. 159, provided that: "This title [enacting sections 505 and 1111 of Title 42, The Public Health and Welfare, amending sections 3304 and 3306 of this title, section 503 of Title 42, and section 352 of Title 45, Railroads, enacting provisions set out as notes under this section, sections 3304 and 3306 of this title, and sections 503 and 1111 of Title 42, amending provisions set out as notes under section 3304 of this title, and repealing provisions set out as a note under section 3304 of this title] may be cited as the 'Extended Benefits, Reemployment, and Program Integrity Improvement Act'."

Pub. L. 112–96, title II, §2121, Feb. 22, 2012, 126 Stat. 163, provided that: "This subtitle [subtitle B (§§2121–2124) of title II of Pub. L. 112–96, amending section 352 of Title 45, Railroads, and enacting and amending provisions set out as notes under section 3304 of this title] may be cited as the 'Unemployment Benefits Extension Act of 2012'."

Pub. L. 112–96, title II, §2160, Feb. 22, 2012, 126 Stat. 171, provided that: "This subtitle [subtitle D (§§2160–2166) of title II of Pub. L. 112–96, amending sections 3304 and 3306 of this title and section 503 of

Title 42, The Public Health and Welfare, enacting provisions set out as notes under sections 3304 and 3306 of this title, and repealing provisions set out as a note under section 3304 of this title] may be cited as the 'Layoff Prevention Act of 2012'."

Pub. L. 112–91, §1, Jan. 31, 2012, 126 Stat. 3, provided that: "This Act [amending sections 4081, 4261, 4271, and 9502 of this title and sections 106, 40117, 41742, 41743, 44302, 44303, 47104, 47107, 47115, 47141, 48101 to 48103, and 49108 of Title 49, Transportation, enacting provisions set out as notes under sections 4081 and 9502 of this title, and amending provisions set out as notes under sections 41731 and 47109 of Title 49] may be cited as the 'Airport and Airway Extension Act of 2012'."

SHORT TITLE OF 2011 AMENDMENT

Pub. L. 112–78, §1(a), Dec. 23, 2011, 125 Stat. 1280, provided that: "This Act [enacting section 4547 of Title 12, Banks and Banking, amending section 645 of Title 2, The Congress, section 1709 of Title 12, sections 1395l, 1395m, 1395w–4, 1396a, 1396r–6, and 1396u–3 of Title 42, The Public Health and Welfare, and section 352 of Title 45, Railroads, enacting provisions set out as notes under sections 1401 and 3304 of this title, section 1709 of Title 12, and section 1395ww of Title 42, and amending provisions set out as notes under sections 1401 and 3304 of this title and sections 1395m, 1395w–4, and 1395ww of Title 42] may be cited as the 'Temporary Payroll Tax Cut Continuation Act of 2011'."

Pub. L. 112–56, title I, §101, Nov. 21, 2011, 125 Stat. 712, provided that: "This title [amending section 3402 of this title and enacting provisions set out as a note under section 3402 of this title] may be cited as the '3% Withholding Repeal and Job Creation Act'."

Pub. L. 112–30, title II, §201, Sept. 16, 2011, 125 Stat. 357, provided that: "This title [amending sections 4081, 4261, 4271 and 9502 of this title and sections 106, 40117, 41742, 41743, 44302, 44303, 47104, 47107, 47115, 47141, 48101 to 48103, and 49108 of Title 49, Transportation, enacting provisions set out as notes under sections 4081 and 9502 of this title, and amending provisions set out as notes under section 41731 and 47109 of Title 49] may be cited as the 'Airport and Airway Extension Act of 2011, Part V'."

Pub. L. 112–27, §1, Aug. 5, 2011, 125 Stat. 270, provided that: "This Act [amending sections 4081, 4261, 4271 and 9502 of this title and sections 40117, 41731, 44302, 44303, 47104, 47107, 47115, 47141, 48103, and 49108 of Title 49, Transportation, enacting provisions set out as notes under sections 4081 and 9502 of this title and section 40117 of Title 49, and amending provisions set out as a note under section 47109 of Title 49] may be cited as the 'Airport and Airway Extension Act of 2011, Part IV'."

Pub. L. 112–21, §1, June 29, 2011, 125 Stat. 233, provided that: "This Act [amending sections 4081, 4261, 4271 and 9502 of this title and sections 40117, 44302, 44303, 47104, 47107, 47115, 47141, 48103, and 49108 of Title 49, Transportation, enacting provisions set out as notes under sections 4081 and 9502 of this title and section 40117 of Title 49, and amending provisions set out as a note under section 47109 of Title 49] may be cited as the 'Airport and Airway Extension Act of 2011, Part III'."

Pub. L. 112–16, §1, May 31, 2011, 125 Stat. 218, provided that: "This Act [amending sections 4081, 4261, 4271, and 9502 of this title and sections 40117, 44302, 44303, 47104, 47107, 47115, 47141, 48103, and 49108 of Title 49, Transportation, enacting provisions set out as notes under sections 4081 and 9502 of this title and section 40117 of Title 49, and amending provisions set out as a note under section 47109 of Title 49] may be cited as the 'Airport and Airway Extension Act of 2011, Part II'."

Pub. L. 112–9, §1, Apr. 14, 2011, 125 Stat. 36, provided that: "This Act [amending sections 36B and 6041 of this title and enacting provisions set out as notes under sections 36B and 6041 of this title] may be cited as the 'Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011'."

Pub. L. 112–7, §1, Mar. 31, 2011, 125 Stat. 31, provided that: "This Act [amending sections 4081, 4261, 4271 and 9502 of this title and sections 40117, 44302, 44303, 47104, 47107, 47115, 47141, 48103, and 49108 of Title 49, Transportation, enacting provisions set out as notes under sections 4081 and 9502 of this title and section 40117 of Title 49, and amending provisions set out as a note under section 47109 of Title 49] may be cited as the 'Airport and Airway Extension Act of 2011'."

SHORT TITLE OF 2010 AMENDMENT

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

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

and 4982 of this title] may be cited as the 'Regulated Investment Company Modernization Act of 2010'."

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

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

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

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

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

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

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

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

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

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

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

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

Pub. L. 111–147, §1(a), Mar. 18, 2010, 124 Stat. 71, provided that: "This Act [enacting chapter 4 and section 6038D of this title, amending sections 51, 54F, 149, 163, 165, 179, 643, 679, 864, 871, 881, 1287, 1291, 1298, 3111, 3221, 4701, 6011, 6048, 6229, 6414, 6431, 6501, 6513, 6611, 6662, 6677, 6724, and 9502 to 9504 of this title, section 777c of Title 16, Conservation, sections 405 and 410 of Title 23, Highways,

section 3121 of Title 31, Money and Finance, and sections 5305, 5307, 5309, 5311, 5337, 5338, 31104, and 31144 of Title 49, Transportation, enacting provisions set out as notes under sections 38, 51, 54F, 149, 179, 643, 679, 864, 871, 1291, 6011, 6038D, 6048, 6229, 6431, 6655, 6662, 6677, 9502, and 9503 of this title and section 101 of Title 23, and amending provisions set out as notes under section 901 of Title 2, The Congress, sections 402, 403, and 405 of Title 23, and sections 5309, 5310, 5338, 14710, 31100, 31301, and 31309 of Title 49] may be cited as the 'Hiring Incentives to Restore Employment Act'."

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

SHORT TITLE OF 2009 AMENDMENT

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

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

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

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

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

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

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

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

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

SHORT TITLE OF 2008 AMENDMENT

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

Pub. L. 110–428, §1, Oct. 15, 2008, 122 Stat. 4839, provided that: "This Act [amending sections 6103 and 7803 of this title and section 376 of Title 28, Judiciary and Judicial Procedure, and enacting provisions set out

as notes under sections 6103 and 7207 of this title and section 376 of Title 28] may be cited as the 'Inmate Tax Fraud Prevention Act of 2008'."

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

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

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

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

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

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

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

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

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

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

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

SHORT TITLE OF 2007 AMENDMENT

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

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

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

Pub. L. 110–28, title VIII, §8201(a), May 25, 2007, 121 Stat. 190, provided that: "This subtitle [subtitle B (§§8201–8248) of title VIII of Pub. L. 110–28, enacting section 6676 of this title, amending this section, sections 38, 45B, 51, 179, 641, 761, 1361, 1362, 1368, 1400N, 1402, 6060, 6103, 6107, 6l09, 6330, 6404,

6503, 6657, 6694 to 6696, 7407, 7427, 7528, and 7701 of this title, and section 411 of Title 42, The Public Health and Welfare, enacting provisions set out as notes under this section and sections 38, 45B, 51, 179, 641, 761, 1361, 1362, 6060, 6330, 6404, 6657, and 6676 of this title, and amending provisions set out as a note under section 6655 of this title] may be cited as the 'Small Business and Work Opportunity Tax Act of 2007'."

SHORT TITLE OF 2006 AMENDMENT

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

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

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

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

SHORT TITLE OF 2005 AMENDMENT

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

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

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

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

SHORT TITLE OF 2004 AMENDMENT

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

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

SHORT TITLE OF 2003 AMENDMENT

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

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

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

SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107–358, §1, Dec. 17, 2002, 116 Stat. 3015, provided that: "This Act [amending provisions set out

as a note under this section] may be cited as the 'Holocaust Restitution Tax Fairness Act of 2002'."

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

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

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

SHORT TITLE OF 2001 AMENDMENT

Pub. L. 107–16, §1(a), June 7, 2001, 115 Stat. 38, provided that: "This Act [see Tables for classification] may be cited as the 'Economic Growth and Tax Relief Reconciliation Act of 2001'."

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

SHORT TITLE OF 2000 AMENDMENT

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

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

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

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

SHORT TITLE OF 1999 AMENDMENT

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

SHORT TITLE OF 1998 AMENDMENT

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

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

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

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

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

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

SHORT TITLE OF 1997 AMENDMENT

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

Pub. L. 105–34, §1(a), Aug. 5, 1997, 111 Stat. 788, provided that: "This Act [see Tables for classification] may be cited as the 'Taxpayer Relief Act of 1997'."

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

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104–188, §1(a), Aug. 20, 1996, 110 Stat. 1755, provided that: "This Act [see Tables for classification] may be cited as the 'Small Business Job Protection Act of 1996'."

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

SHORT TITLE OF 1994 AMENDMENT

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

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

SHORT TITLE OF 1993 AMENDMENT

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

Pub. L. 103–66, title XIII, §13001(a), Aug. 10, 1993, 107 Stat. 416, provided that: "This chapter [chapter 1 (§§13001–13444) of title XIII of Pub. L. 103–66, see Tables for classification] may be cited as the 'Revenue Reconciliation Act of 1993'."

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

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102–486, title XIX, §19141, Oct. 24, 1992, 106 Stat. 3036, provided that: "This subtitle [subtitle C (§§19141–19143) of title XIX of Pub. L. 102–486, enacting sections 9701 to 9722 of this title, amending sections 1231 and 1232 of Title 30, Mineral Lands and Mining, and enacting provisions set out as a note under section 9701 of this title] may be cited as the 'Coal Industry Retiree Health Benefit Act of 1992'."

Pub. L. 102–318, §1, July 3, 1992, 106 Stat. 290, provided that: "This Act [enacting section 1110 of Title 42, The Public Health and Welfare, amending sections 55, 62, 72, 151, 219, 401 to 404, 406 to 408, 411, 414, 415, 457, 691, 871, 877, 1441, 3121, 3304, 3306, 3402, 3405, 4973, 4980A, 6047, 6652, 6655, and 7701 of

this title, section 8509 of Title 5, Government Organization and Employees, section 2291 of Title 19, Customs Duties, and sections 502, 503, 1101, 1102, 1104, and 1105 of Title 42, enacting provisions set out as notes under sections 401, 402, 3302, 3304, and 6655 of this title, section 8509 of Title 5, section 2291 of Title 19, and sections 502, 666, 1102, and 1108 of Title 42, and amending provisions set out as notes under section 3304 of this title, sections 502 and 666 of Title 42, and section 352 of Title 45, Railroads] may be cited as the 'Unemployment Compensation Amendments of 1992'."

SHORT TITLE OF 1991 AMENDMENT

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

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

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, §11001(a), Nov. 5, 1990, 104 Stat. 1388–400, provided that: "This title [see Tables for classification] may be cited as the 'Revenue Reconciliation Act of 1990'."

SHORT TITLE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7001(a), Dec. 19, 1989, 103 Stat. 2301, provided that: "This title [see Tables for classification] may be cited as the 'Revenue Reconciliation Act of 1989'."

Pub. L. 101–239, title VII, §7701, Dec. 19, 1989, 103 Stat. 2388, provided that: "This subtitle [subtitle G (§§7701–7743) of title VII of Pub. L. 101–239, see Tables for classification] may be cited as the 'Improved Penalty Administration and Compliance Tax Act'."

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–647, §1(a), Nov. 10, 1988, 102 Stat. 3342, provided that: "This Act [see Tables for classification] may be cited as the 'Technical and Miscellaneous Revenue Act of 1988'."

Pub. L. 100–647, title VI, §6226, Nov. 10, 1988, 102 Stat. 3730, provided that: "This subtitle [subtitle J (§§6226–6247) of title VI of Pub. L. 100–647, enacting sections 6159, 6326, 6712, 7430, 7432, 7433, 7520, 7521, and 7811 of this title, amending sections 6213, 6214, 6331, 6332, 6334, 6335, 6343, 6404, 6512, 6601, 6673, 6863, 7216, 7429, 7481, 7482, 7802, and 7805 of this title and section 504 of Title 5, Government Organization and Employees, renumbering section 6326 as 6327, 7432 as 7433, and 7433 as 7434 of this title, and enacting provisions set out as notes under this section and sections 6159, 6213, 6214, 6326, 6331, 6404, 6512, 6673, 6712, 6863, 7429, 7430, 7432, 7520, 7521, 7605, 7801 to 7803, 7805, and 7811 of this title] may be cited as the 'Omnibus Taxpayer Bill of Rights'."

SHORT TITLE OF 1987 AMENDMENT

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

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

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

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

and 4481 of this title] may be cited as the 'Highway Revenue Act of 1987'."

SHORT TITLE OF 1986 AMENDMENT

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

Pub. L. 99–514, §1(a), Oct. 22, 1986, 100 Stat. 2085, provided that: "This Act [see Tables for classification] may be cited as the 'Tax Reform Act of 1986'."

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

SHORT TITLE OF 1984 AMENDMENT

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

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

SHORT TITLE OF 1983 AMENDMENT

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

Pub. L. 98–76, title II, §201, Aug. 12, 1983, 97 Stat. 419, provided that: "This title [enacting sections 3321 to 3323 and 6050G of this title, amending sections 72, 86, 105, 3201, 3202, 3211, 3221, 3231, 6157, 6201, 6317, 6513, and 6601 of this title and section 430 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under sections 72, 105, 3201, 3321, and 6302 of this title and section 231n of Title 45, Railroads] may be cited as the 'Railroad Retirement Revenue Act of 1983'."

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

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

Pub. L. 97–448, §1(a), Jan. 12, 1983, 96 Stat. 2365, provided that: "This Act [see Tables for classification] may be cited as the 'Technical Corrections Act of 1982'."

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

SHORT TITLE OF 1982 AMENDMENT

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

Pub. L. 97–354, §1(a), Oct. 19, 1982, 96 Stat. 1669, provided that: "This Act [enacting sections 1361 to 1363, 1366 to 1368, 1371 to 1375, 1377 to 1379, and 6241 to 6245 of this title, amending sections 29, 31, 40,

41, 46, 48, 50A, 50B, 52, 53, 55, 57, 58, 62, 108, 163, 168, 170, 172, 179, 183, 189, 194, 267, 280, 280A, 291, 447, 464, 465, 613A, 992, 1016, 1101, 1212, 1251, 1254, 1256, 3453, 3454, 4992, 4996, 6037, 6042, 6362, and 6661 of this title and section 1108 of Title 29, Labor, omitting section 1376 of this title, and enacting provisions set out as a note under section 1361 of this title] may be cited as the 'Subchapter S Revision Act of 1982'."

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

Pub. L. 97–248, title IV, §401, Sept. 3, 1982, 96 Stat. 648, provided that: "This title [enacting sections 6046A and 6221 to 6232 of this title and section 1508 of Title 28, Judiciary and Judicial Procedure, amending sections 702, 6031, 6213, 6216, 6422, 6501, 6504, 6511, 6512, 6515, 6679, 7422, 7451, 7456, 7459, 7482, and 7485 of this title and section 1346 of Title 28, and enacting provisions set out as notes under sections 6031, 6046A, 6221, and 6231 of this title] may be cited as the 'Tax Treatment of Partnership Items Act of 1982'."

SHORT TITLE OF 1981 AMENDMENT

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

Pub. L. 97–34, §1(a), Aug. 13, 1981, 95 Stat. 172, provided that: "This Act [see Tables for classification] may be cited as the 'Economic Recovery Tax Act of 1981'."

SHORT TITLE OF 1980 AMENDMENT

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

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

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

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

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

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

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

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

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

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

SHORT TITLE OF 1979 AMENDMENT

Pub. L. 96–39, title VIII, §801(a), July 26, 1979, 93 Stat. 273, provided that: "This subtitle [subtitle A (§§801–810) of title VIII of Pub. L. 96–39, amending sections 5001, 5002 to 5008, 5043, 5061, 5064, 5066, 5116, 5171 to 5173, 5175 to 5178, 5180, 5181, 5201 to 5205, 5207, 5211 to 5215, 5221 to 5223, 5231, 5232, 5235, 5241, 5273, 5291, 5301, 5352, 5361 to 5363, 5365, 5381, 5391, 5551, 5601, 5604, 5610, 5612, 5615, 5663, 5681, 5682, and 5691 of this title, repealing sections 5009, 5021 to 5026, 5081 to 5084, 5174, 5233, 5234, 5251, 5252, 5364, and 5521 to 5523 of this title, and enacting provisions set out as notes under sections 5001, 5061, 5171, and 5173 of this title] may be cited as the 'Distilled Spirits Tax Revision Act of 1979'."

SHORT TITLE OF 1978 AMENDMENT

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

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

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

Pub. L. 95–600, §1(a), Nov. 6, 1978, 92 Stat. 2763, provided that: "This Act [see Tables for classification] may be cited as the 'Revenue Act of 1978'."

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

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

SHORT TITLE OF 1977 AMENDMENT

Pub. L. 95–30, §1(a), May 23, 1977, 91 Stat. 126, provided that: "This Act [see Tables for classification] may be cited as the 'Tax Reduction and Simplification Act of 1977'."

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

SHORT TITLE OF 1976 AMENDMENT

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

Pub. L. 94–452, §1, Oct. 2, 1976, 90 Stat. 1503, provided that: "This Act [enacting section 6158 of this title, amending sections 311, 1101, 1102, 1103, 6151, 6503, and 6601 of this title, and enacting provisions set out as notes under sections 311, 1101, and 6158 of this title] may be cited as the 'Bank Holding Company Tax Act of 1976'."

SHORT TITLE OF 1975 AMENDMENT

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

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

SHORT TITLE OF 1973 AMENDMENT

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

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

SHORT TITLE OF 1972 AMENDMENT

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

SHORT TITLE OF 1971 AMENDMENT

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

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

SHORT TITLE OF 1970 AMENDMENT

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

SHORT TITLE OF 1969 AMENDMENT

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

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

SHORT TITLE OF 1968 AMENDMENT

Pub. L. 90–364, §1(a), June 28, 1968, 82 Stat. 251, provided that: "This Act [enacting sections 51 and 6425 of this title, amending sections 103, 243, 276, 501, 963, 3402, 4061, 4251, 6020, 6154, 6412, 6651, 6655, 7203, 7502, and 7701 of this title and sections 603, 607, and 1396b of Title 42, The Public Health and Welfare, repealing sections 6016, 6074, and 4251 to 4254 of this title, enacting provisions set out as notes under sections 51, 103, 276, 501, 4061, 6154, and 7502 of this title, section 3101 of Title 5, Government Organization and Employees, sections 11 and 757b of former Title 31, Money and Finance, and section 1396b of Title 42, and amending notes under section 1396b of Title 42,] may be cited as the 'Revenue and Expenditure Control Act of 1968'."

SHORT TITLE OF 1967 AMENDMENT

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

SHORT TITLE OF 1966 AMENDMENT

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

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

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

SHORT TITLE OF 1965 AMENDMENT

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

SHORT TITLE OF 1964 AMENDMENT

Pub. L. 88–348, §1, June 30, 1964, 78 Stat. 237, provided: "That this Act [amending sections 165, 4061, 4251, 4261, 5001, 5022, 5041, 5051, 5063, 5701, 5707, and 6412 of this title, and provisions set out as notes under sections 165, 4261, and 5701 of this title] may be cited as the 'Excise-Tax Rate Extension Act of 1964'."

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

SHORT TITLE OF 1963 AMENDMENT

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

SHORT TITLE OF 1962 AMENDMENT

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

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

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

SHORT TITLE OF 1961 AMENDMENT

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

SHORT TITLE OF 1959 AMENDMENT

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

Pub. L. 86–69, §1, June 25, 1959, 73 Stat. 112, provided that: "This Act [amending former part I of subchapter L of this chapter and sections 116, 381, 841, 842, 891, 1016, 1201, 1232, 1504, 4371, and 6501 of this title and enacting provisions set out as notes under sections 801, 6072, and 6655 of this title] may be cited as the 'Life Insurance Company Income Tax Act of 1959'."

SHORT TITLE OF 1958 AMENDMENT

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

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

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

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

SHORT TITLE OF 1957 AMENDMENT

Pub. L. 85–12, §1, Mar. 29, 1957, 71 Stat. 9, provided: "That this Act [amending sections 11, 821, 4061, 5001, 5022, 5041, 5051, 5063, 5134, 5701, 5707, and 6412 of this title] may be cited as the 'Tax Rate

Extension Act of 1957'."

SHORT TITLE OF 1956 AMENDMENT

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

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

Act Mar. 13, 1956, ch. 83, §1, 70 Stat. 36, provided: "That this Act [enacting section 843 of this title and amending sections 316, 501, 594, 801 to 805, 811 to 813, 816 to 818, 821, 822, 832, 841, 842, 891, 1201, 1504, and 4371 of this title] be cited as the 'Life Insurance Company Tax Act for 1955'."

SHORT TITLE OF 1955 AMENDMENT

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

PURPOSES AND PRINCIPLES

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

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

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

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

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

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

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

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

TRANSITIONAL RULES FOR TAXABLE YEARS WHICH INCLUDE MAY 6, 2003

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

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

"(A) 5 percent of the lesser of—

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

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

"(B) 8 percent of the lesser of—

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

"(ii) the excess (if any) of—

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

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

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

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

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

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

"(A) 15 percent of the lesser of—

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

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

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

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

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

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

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

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

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

COORDINATION OF PROVISIONS IN AMENDATORY ACTS

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

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

Pub. L. 105–34, title XVI, §1600, Aug. 5, 1997, 111 Stat. 1086, provided that: "For purposes of applying the amendments made by any title of this Act other than this title, the provisions of this title [see Tables for classification] shall be treated as having been enacted immediately before the provisions of such other titles."

Pub. L. 104–188, title I, §1701, Aug. 20, 1996, 110 Stat. 1868, provided that: "For purposes of applying the amendments made by any subtitle [subtitle A to F (§§1111–1621) and H to J (§§1801–1954) of title I of Pub. L. 104–188, see Tables for classification] of this title other than this subtitle [subtitle G (§§1701–1704) of title I of Pub. L. 104–188, see Tables for classification], the provisions of this subtitle shall be treated as having been enacted immediately before the provisions of such other subtitles."

Pub. L. 101–508, title XI, §11700, Nov. 5, 1990, 104 Stat. 1388–505, provided that: "For purposes of applying the amendments made by any subtitle [subtitles A to F (§§11101–11622) and H and I (§§11801–11901) of title XI of Pub. L. 101–508, see Tables for classification] of this title other than this subtitle [subtitle G (§§11700–11704) of title XI of Pub. L. 101–508, see Tables for classification], the provisions of this subtitle shall be treated as having been enacted immediately before the provisions of such other subtitles."

Pub. L. 101–239, title VII, §7801(b), Dec. 19, 1989, 103 Stat. 2406, provided that: "For purposes of applying the amendments made by any subtitle [subtitles A to G (§§7101–7743) of title VII of Pub. L. 101–239, see Tables for classification] of this title other than this subtitle [subtitle H (§§7801–7894) of title VII of Pub. L. 101–239, see Tables for classification], the provisions of this subtitle shall be treated as having been enacted immediately before the provisions of such other subtitles."

Pub. L. 99–514, title XVIII, §1800, Oct. 22, 1986, 100 Stat. 2784, provided that: "For purposes of applying the amendments made by any title of this Act other than this title, the provisions of this title [see Tables for classification] shall be treated as having been enacted immediately before the provisions of such other titles."

ADJUSTMENTS FOR CONSUMER PRICE INDEX ERROR

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

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

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

"(2) compensate for the shortfall.

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

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

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

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

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

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

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

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

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

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

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

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

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

APPLICATION OF SPECIAL RULES FOR MAXIMUM CAPITAL GAINS RATE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CAPITAL GAIN DISTRIBUTION BY TRUST

Pub. L. 105–277, div. J, title IV, §4003(b), Oct. 21, 1998, 112 Stat. 2681–909, as amended by Pub. L. 106–554, §1(a)(7) [title III, §312(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–640, provided that: "In the case of any capital gain distribution made after 1997 by a trust to which section 664 of the 1986 Code applies with respect to amounts properly taken into account by such trust during 1997, paragraphs (5)(A)(i)(I), (5)(A)(ii)(I), (7)(A)(i)(II), and (13)(A) of section 1(h) of the 1986 Code (as in effect for taxable years ending on December 31, 1997) shall not apply."

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

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

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

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

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

"(2) TREATMENT OF GAIN OR LOSS.—

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

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

"(3) ELECTION.—An election under paragraph (1) shall be made in such manner as the Secretary of the Treasury or his delegate may prescribe and shall specify the assets for which such election is made. Such an election, once made with respect to any asset, shall be irrevocable. Such an election shall not apply

to any asset which is disposed of (in a transaction in which gain or loss is recognized in whole or in part) before the close of the 1-year period beginning on the date that the asset would have been treated as sold under such election.

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

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

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

ELECTION TO PAY ADDITIONAL 1993 TAXES IN INSTALLMENTS

Pub. L. 103–66, title XIII, §13201(d), Aug. 10, 1993, 107 Stat. 459, provided that:

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

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

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

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

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

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

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

"(4) ADDITIONAL 1993 TAXES.—

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

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

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

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

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

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

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

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

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

TRANSITIONAL RULE FOR MAXIMUM CAPITAL GAINS RATE

Pub. L. 99–514, title III, §302(c), Oct. 22, 1986, 100 Stat. 2218, which related to long-term capital gain on rights to royalties paid under particular leases and assignments, was repealed by Pub. L. 100–647, title I,

§1003(b)(1), Nov. 10, 1988, 102 Stat. 3382.

COORDINATION WITH OTHER PROVISIONS

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

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

"(2) establishing any trust fund, or

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

[S.Con.Res. 174, agreed to Oct. 18, 1986, provided: "That, in the enrollment of the bill (H.R. 5300) to provide for reconciliation pursuant to section 2 of the concurrent resolution on the budget for fiscal year 1987, the Clerk of the House of Representatives shall insert at the end of section 8081 of the bill the following: Paragraph (3) shall not apply to any authorization made by title IX of this Act." As a result of clerical error, the sentence was inserted at the end of section 8101 of the bill, and appears at the end of section 8101 of Pub. L. 99–509, 100 Stat. 1967.]

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

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

"(2) establishes any trust fund, or

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

shall have no force or effect."

ELIMINATION OF 50-CENT ROUNDING ERRORS

Pub. L. 97–448, title I, §101(a)(3), Jan. 12, 1983, 96 Stat. 2366, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "If any figure in any table—

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

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

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

POLICY WITH RESPECT TO ADDITIONAL TAX REDUCTIONS

Pub. L. 95–600, §3, Nov. 6, 1978, 92 Stat. 2767, provided that: "As a matter of national policy the rate of growth in Federal outlays, adjusted for inflation, should not exceed 1 percent per year between fiscal year 1979 and fiscal year 1983; Federal outlays as a percentage of gross national product should decline to below 21 percent in fiscal year 1980, 20.5 percent in fiscal year 1981, 20 percent in fiscal year 1982 and 19.5 percent in fiscal year 1983; and the Federal budget should be balanced in fiscal years 1982 and 1983. If these conditions are met, it is the intention that the tax-writing committees of Congress will report legislation providing significant tax reductions for individuals to the extent that these tax reductions are justified in the light of prevailing and expected economic conditions."

EFFECTIVE DATE OF CERTAIN DEFINITIONS AND DESIGNATIONS

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

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

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

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

CONGRESSIONAL DECLARATION RELATING TO 1975 AMENDMENT

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

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

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

"(c) Congress reaffirms its commitments to the procedures established by the Congressional Budget and Impoundment Control Act of 1974 [see Tables for classification of Pub. L. 93–344, July 12, 1974, 88 Stat.

297] under which it has already established a binding spending ceiling for the fiscal year 1976.

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

CONGRESSIONAL DECLARATION RELATING TO 1964 AMENDMENT

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

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

Provisions relating to inflation adjustment of items in sections 1, 23, 24, 25A, 25B, 32, 42, 45R, 55, 59, 63, 68, 125, 132, 135, 137, 146, 147, 151, 179, 213, 219, 220, 221, 223, 408A, 512, 513, 685, 877, 877A, 911, 2010, 2032A, 2503, 2523, 2631, 4001, 4003, 4161, 4261, 6012, 6013, 6033, 6039F, 6323, 6334, 6601, 7430, and 7702B of this title for certain years were contained in the following:

2014—Revenue Procedure 2013–35.
2013—Revenue Procedures 2012–41 and 2013–15.
2012—Revenue Procedure 2011–52, as modified by Revenue Procedure 2013–15.
2011—Revenue Procedures 2010–40 and 2011–12.
2010—Revenue Procedures 2009–50, 2010–24, and 2010–35.
2009—Revenue Procedure 2008–66.
2008—Revenue Procedure 2007–66.
2007—Revenue Procedures 2006–53 and 2007–36.
2006—Revenue Procedure 2005–70.
2005—Revenue Procedure 2004–71.
2004—Revenue Procedure 2003–85.
2003—Revenue Procedure 2002–70.
2002—Revenue Procedure 2001–59.
2001—Revenue Procedure 2001–13.
2000—Revenue Procedure 99–42.
1999—Revenue Procedure 98–61.
1998—Revenue Procedure 97–57.
1997—Revenue Procedure 96–59.
1996—Revenue Procedure 95–53.
1995—Revenue Procedure 94–72.
1994—Revenue Procedure 93–49.
1993—Revenue Procedure 92–102.
1992—Revenue Procedure 91–65.
1991—Revenue Procedure 90–64.
1990—Revenue Procedure 90–7.
1989—Revenue Procedure 88–56.
1986—Revenue Procedure 85–55.
1985—Revenue Procedure 84–79.

DEFINITIONS

Pub. L. 105–277, div. J, title IV, §4001(a), Oct. 21, 1998, 112 Stat. 2681–906, provided that: "For purposes of this title [amending this section, sections 51, 56, 67, 68, 86, 135, 137, 163, 172, 219, 221, 264, 351, 368, 408A, 469, 873, 954, 2001, 2031, 6015, 6103, 6159, 6311, 6404, 6693, 7421, 7443A, 7491, 9503, and 9510 of

this title, and sections 401 and 407 of Title 42, The Public Health and Welfare, enacting provisions set out as notes under this section, sections 51, 67, 68, 86, 172, 833, 6103, and 9503 of this title, and section 401 of Title 42, and amending provisions set out as notes under sections 6601 and 7508A of this title]—

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

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

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

§2. Definitions and special rules

(a) Definition of surviving spouse

(1) In general

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

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

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

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

(2) Limitations

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

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

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

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

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

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

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

(b) Definition of head of household

(1) In general

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

(A) maintains as his home a household which constitutes for more than one-half of such

taxable year the principal place of abode, as a member of such household, of—

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

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

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

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

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

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

(2) Determination of status

For purposes of this subsection—

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

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

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

(3) Limitations

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

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

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

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

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

(c) Certain married individuals living apart

For purposes of this part, an individual shall be treated as not married at the close of the taxable year if such individual is so treated under the provisions of section 7703(b).

(d) Nonresident aliens

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

(e) Cross reference

For definition of taxable income, see section 63.

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

AMENDMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EFFECTIVE DATE OF 2004 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

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

Pub. L. 99–514, title XVII, §1708(b), Oct. 22, 1986, 100 Stat. 2783, provided that: "The amendments made by this section [amending this section and sections 692, 6013, and 7508 of this title] shall apply to taxable years beginning after December 31, 1982."

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title IV, §423(d), July 18, 1984, 98 Stat. 801, provided that: "The amendments made by this section [amending this section and sections 43, 44A, 105, 143, 152, and 213 of this title] shall apply to taxable years beginning after December 31, 1984."

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XIX, §1901(d), Oct. 4, 1976, 90 Stat. 1803, provided that: "Except as otherwise expressly provided in this section, the amendments made by this section [see Tables for classification] shall apply with respect to taxable years beginning after December 31, 1976. The amendments made by subsections (a)(29) and (b)(10) shall apply with respect to taxable years ending after the date of the enactment of this Act [Oct. 4, 1976]."

EFFECTIVE DATE OF 1975 AMENDMENT

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

EFFECTIVE DATE OF 1969 AMENDMENT

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

EFFECTIVE DATE OF 1964 AMENDMENT

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

§3. Tax tables for individuals

(a) Imposition of tax table tax

(1) In general

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

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

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

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

(2) Ceiling amount defined

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

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

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

(b) Section inapplicable to certain individuals

This section shall not apply to—

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

(2) an estate or trust.

(c) Tax treated as imposed by section 1

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

(d) Taxable income

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

(e) Cross reference

For computation of tax by Secretary, see section 6014.

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

AMENDMENTS

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

"(1) IN GENERAL.—In lieu of the tax imposed by section 1, there is hereby imposed for each taxable year on the tax table income of every individual whose tax table income for such year does not exceed the ceiling amount, a tax determined under tables, applicable to such taxable year, which shall be prescribed by the Secretary and which shall be in such form as he determines appropriate. In the tables so prescribed, the amounts of tax shall be computed on the basis of the rates prescribed by section 1.

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

"(3) CERTAIN TAXPAYERS WITH LARGE NUMBER OF EXEMPTIONS.—The Secretary may exclude from the application of this section taxpayers in any tax rate category having more than the number of exemptions for that category determined by the Secretary.

"(4) TAX TABLE INCOME DEFINED.—For purposes of this section, the term 'tax table income' means adjusted gross income—

"(A) reduced by the sum of—

"(i) the excess itemized deductions, and

"(ii) the direct charitable deduction, and

"(B) increased (in the case of an individual to whom section 63(e) applies) by the unused zero bracket amount.

"(5) SECTION MAY BE APPLIED ON THE BASIS OF TAXABLE INCOME.—The Secretary may provide that this section shall be applied for any taxable year on the basis of taxable income in lieu of tax table income."

Subsec. (b). Pub. L. 99–514, §141(b)(1), struck out par. (1) which read: "an individual to whom section 1301 (relating to income averaging) applies for the taxable year," and redesignated pars. (2) and (3) as (1) and (2), respectively.

1981—Subsec. (a)(1). Pub. L. 97–34, §101(b)(2)(B), inserted "and which shall be in such form as he determines appropriate" after "Secretary".

Subsec. (a)(4)(A). Pub. L. 97–34, §121(c)(3), substituted "reduced by the sum of (i) the excess itemized deductions, and (ii) the direct charitable deduction" for "reduced by the excess itemized deductions".

Subsec. (a)(5). Pub. L. 97–34, §101(b)(2)(C), added par. (5).

Subsec. (b)(1). Pub. L. 97–34, §101(c)(2)(A), substituted "an individual to whom section 1301 (relating to income averaging) applies for the taxable year" for "an individual to whom (A) section 1301 (relating to income averaging), or (B) section 1348 (relating to maximum rate on personal service income), applies for the taxable year".

1980—Subsec. (b)(1). Pub. L. 96–222 redesignated subpars. (B) and (C) as (A) and (B), respectively, and struck out former subpar. (A) which made reference to section 911 (relating to earned income from sources without the United States).

1978—Subsec. (b)(1). Pub. L. 95–600 struck out subpar. (B) which related to the alternative capital gains tax under section 1201 of this title, and redesignated subpars. (C) and (D) as (B) and (C), respectively.

1977—Pub. L. 95–30 struck out "having taxable income of less than $20,000" after "individuals" in section catchline.

Subsec. (a). Pub. L. 95–30 designated existing provisions as par. (1), substituted "tax table income" for "taxable income" and "does not exceed the ceiling amount" for "does not exceed $20,000", and added pars. (2) to (4).

Subsecs. (b) to (e). Pub. L. 95–30 added subsec. (b), redesignated former subsec. (b) as (c), and added subsecs. (d) and (e).

1976—Pub. L. 94–455 designated existing provisions as subsec. (a), substituted provision relating to taxable income for such year does not exceed $20,000 for provision relating to adjusted gross income for such year is less than $15,000 and who has elected for such year to pay the tax imposed by this section, struck out "or his delegate" after "Secretary", "beginning after Dec. 31, 1969" after "each taxable year", struck out provision requiring computation of taxable income by using standard deduction, and added subsec. (b).

1975—Pub. L. 94–12 substituted "$15,000" for "$10,000".

1969—Pub. L. 91–172 raised the individual gross income limit of $5,000 to $10,000 for exercising the option and substituted provision that the tax has to be determined under tables to be prescribed by the Secretary or his delegate for tables of tax rates for single persons, heads of household, married persons filing joint returns, married persons filing separate returns with 10 per cent standard deduction and married persons filing separate returns with minimum standard deduction.

1964—Pub. L. 88–272 substituted optional tax tables covering five categories for taxable years beginning on or after Jan. 1, 1964, and before Jan. 1, 1965, and for years beginning after Dec. 31, 1964, for a single general table.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 101(c)(2)(A) of Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 101(f)(1) of Pub. L. 97–34, set out as a note under section 1 of this title.

Amendment by section 121(c)(3) of Pub. L. 97–34 applicable to contributions made after Dec. 31, 1981, in taxable years beginning after such date, see section 121(d) of Pub. L. 97–34, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–222, title I, §108(a)(2), Apr. 1, 1980, 94 Stat. 225, provided that:

"(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by paragraph (1) [amending this section and sections 119, 911, and 913 of this title] shall take effect as if included in the Foreign Earned Income Act of 1978 [Pub. L. 95–615].

"(B) PARAGRAPH (1)(E).—The amendment made by paragraph (1)(E) [amending this section] shall apply to taxable years beginning after December 31, 1978."

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 401(b)(1) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 401(c) of Pub. L. 95–600, set out as a note under section 1201 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title V, §508, Oct. 4, 1976, 90 Stat. 1569, provided that: "Except as otherwise provided, the amendments made by this title [enacting section 44A, amending this section and sections 36, 37, 41, 42, 46, 50A, 104, 144, 213, 217, 904, 1211, 1304, 3402, 6014, and 6096, enacting provisions set out as notes under sections 105, 8022, and repealing sections 4 and 214 of this title] shall apply to taxable years beginning after December 31, 1975."

EFFECTIVE AND TERMINATION DATES OF 1975 AMENDMENT

Pub. L. 94–12, title II, §209(a), Mar. 29, 1975, 89 Stat. 35, as amended by Pub. L. 94–164, §2(e), Dec. 23, 1975, 89 Stat. 972, provided that: "The amendments made by sections 201, 202(a), and 203 [enacting section 42 of this title and amending this section and sections 56, 141, 6012, and 6096 of this title] shall apply to taxable years ending after December 31, 1974. The amendments made by sections 201(a) and 202(a) [amending section 141 of this title] shall cease to apply to taxable years ending after December 31, 1975; those made by sections 201(b), 201(c), and 203 [enacting section 42 of this title and amending this section and sections 56, 6012, and 6096 of this title] shall cease to apply to taxable years ending after December 31, 1976."

EFFECTIVE DATE OF 1969 AMENDMENT

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

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88–272, title III, §301(c), Feb. 26, 1964, 78 Stat. 140, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Except for purposes of section 21 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to effect of changes in rates during a taxable year), the amendments made by this section [amending this section and sections 4 and 6014 of this title] shall apply to taxable years beginning after December 31, 1963."

[§4. Repealed. Pub. L. 94–455, title V, §501(b)(1), Oct. 4, 1976, 90 Stat. 1558]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 10; Feb. 26, 1964, Pub. L. 88–272, title II, §232(f)(1), title III, §301(b)(1), (3), 78 Stat. 111, 140; Dec. 30, 1969, Pub. L. 91–172, title VIII, §802(c)(1)–(3), 83 Stat. 677, 678; Dec. 10, 1971, Pub. L. 92–178, title III, §301(b), 85 Stat. 520, related to rules for optional tax.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 1975, see section 508 of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 3 of this title.

§5. Cross references relating to tax on individuals

(a) Other rates of tax on individuals, etc.

(1) For rates of tax on nonresident aliens, see section 871.

(2) For doubling of tax on citizens of certain foreign countries, see section 891.

(3) For rate of withholding in the case of nonresident aliens, see section 1441.

(4) For alternative minimum tax, see section 55.

(b) Special limitations on tax

(1) For limitation on tax in case of income of members of Armed Forces, astronauts, and victims of certain terrorist attacks on death, see section 692.

(2) For computation of tax where taxpayer restores substantial amount held under claim of right, see section 1341.

(Aug. 16, 1954, ch. 736, 68A Stat. 10; Pub. L. 88–272, title II, §232(f)(2), Feb. 26, 1964, 78 Stat. 111; Pub. L. 91–172, title III, §301(b)(2), title VIII, §803(d)(6), Dec. 30, 1969, 83 Stat. 585, 684; Pub. L. 94–455, title XIX, §§1901(b)(22)(B), 1951(c)(3)(A), Oct. 4, 1976, 90 Stat. 1798, 1841; Pub. L. 95–600, title IV, §§401(b)(2), 421(e)(1), Nov. 6, 1978, 92 Stat. 2867, 2875; Pub. L. 96–222, title I, §104(a)(4)(H)(vii), Apr. 1, 1980, 94 Stat. 218; Pub. L. 97–248, title II, §201(d)(4), formerly §201(c)(4), Sept. 3, 1982, 96 Stat. 419, renumbered §201(d)(4), Pub. L. 97–448, title III,

§306(a)(1)(A)(i), Jan. 12, 1983, 96 Stat. 2400; Pub. L. 99–514, title I, §141(b)(2), title VII, §701(e)(4)(A), Oct. 22, 1986, 100 Stat. 2117, 2343; Pub. L. 107–134, title I, §101(b)(1), Jan. 23, 2002, 115 Stat. 2428; Pub. L. 108–121, title I, §110(a)(2)(A), Nov. 11, 2003, 117 Stat. 1342.)

AMENDMENTS

2003—Subsec. (b)(1). Pub. L. 108–121 inserted ", astronauts," after "Forces".

2002—Subsec. (b)(1). Pub. L. 107–134 inserted "and victims of certain terrorist attacks" before "on death".

1986—Subsec. (a)(4). Pub. L. 99–514, §701(e)(4)(A), amended par. (4) generally, substituting "alternative minimum tax" for "minimum tax for taxpayers other than corporations".

Subsec. (b)(2), (3). Pub. L. 99–514, §141(b)(2), struck out par. (2) which read: "For limitation on tax where an individual chooses the benefits of income averaging, see section 1301." and redesignated former par. (3) as (2).

1982—Subsec. (a)(4). Pub. L. 97–248, §201(d)(4), formerly §201(c)(4), substituted "section 55" for "sections 55 and 56".

1980—Subsec. (a)(4). Pub. L. 96–222 substituted "sections 55 and 56" for "section 55".

1978—Subsec. (a)(3). Pub. L. 95–600, §401(b)(2), redesignated par. (4) as (3). Former par. (3), relating to the alternative tax in the case of capital gains, was struck out.

Subsec. (a)(4), (5). Pub. L. 95–600, §§401(b)(2), 421(e)(1), redesignated par. (5) as (4) and substituted "taxpayers other than corporations, see section 55" for "preferences, see section 56". Former par. (4) redesignated (3).

1976—Subsec. (b). Pub. L. 94–455 redesignated pars. (2), (3), and (4), as (1), (2), (3), respectively, and struck out former par. (1) which referred to section 632 for limitation on tax attributable to sales of oil or gas properties and par. (5) which referred to section 1347 for limitation on tax attributable to claims against the U.S. involving acquisition of property.

1969—Subsec. (a)(5). Pub. L. 91–172, §301(b)(2), added par. (5).

Subsec. (b). Pub. L. 91–172, §803(d)(6), substituted "tax" for "surtax" in pars. (1) and (5).

1964—Subsec. (b). Pub. L. 88–272 redesignated pars. (2), (3), (4), (7) and (8) as pars. (1) to (5), respectively, substituted "where an individual chooses the benefits of income averaging" for "with respect to compensation for longterm services" in par. (3), and struck out former pars. (1), (5) and (6) which referred to tax attributable to receipt of lump sum under annuity, endowment, or life insurance contract, to income from artistic work or inventions, and to back pay, respectively.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–121, title I, §110(a)(4), Nov. 11, 2003, 117 Stat. 1342, provided that: "The amendments made by this subsection [amending this section and sections 692 and 6013 of this title] shall apply with respect to any astronaut whose death occurs after December 31, 2002."

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–134 applicable to taxable years ending before, on, or after Sept. 11, 2001, with provisions relating to waiver of limitations, see section 101(d) of Pub. L. 107–134, set out as a note under section 692 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 141(b)(2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 701(e)(4)(A) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date note under section 55 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title II, §201(e)(1), Sept. 3, 1982, 96 Stat. 421, provided that: "The amendments made by this section [amending this section and sections 46, 53, 55, 56, 57, 58, 173, 174, 511, 616, 617, 897, 901, 936, 1016, 6015, 6362, 6654, and 7701 of this title] shall apply to taxable years beginning after December 31, 1982."

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 401(b)(2) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 401(c) of Pub. L. 95–600, set out as a note under section 1201 of this title.

Pub. L. 95–600, title IV, §421(g), Nov. 6, 1978, 92 Stat. 2877, provided that: "The amendments made by this section [enacting section 55 of this title and amending this section and sections 57, 58, 443, 511, 666, 871, 877, 904, 6015, 6362, and 6654 of this title] shall apply to taxable years beginning after December 31, 1978, except that the amendment made by paragraph (1) of subsection (b) [amending section 57 of this title] shall apply to sales and exchanges made after July 26, 1978, in taxable years ending after such date."

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title III, §301(c), Dec. 30, 1969, 83 Stat. 586, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by this section [enacting sections 56 to 58 of this title and amending this section and sections 12, 46, 51, 443, 453, 511, 901, 1373, 1375, 6015, and 6654 of this title] shall apply to taxable years ending after December 31, 1969. In the case of a taxable year beginning in 1969 and ending in 1970, the tax imposed by section 56 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)) shall be an amount equal to the tax imposed by such section (determined without regard to this sentence) multiplied by a fraction—

"(1) the numerator of which is the number of days in the taxable year occurring after December 31, 1969, and

"(2) the denominator of which is the number of days in the entire taxable year."

Amendment by section 803(d)(6) of Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1970, see section 803(f) of Pub. L. 91–172, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88–272, title II, §232(g), Feb. 26, 1964, 78 Stat. 112, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) GENERAL RULE.—Except as provided in paragraph (2), the amendments made by this section [enacting sections 1301 to 1305, amending this section and sections 4, 72, 144, 402, 403, 6511, and omitting former sections 1301 to 1307 of this title] shall apply with respect to taxable years beginning after December 31, 1963.

"(2) INCOME FROM AN EMPLOYMENT.—If, in a taxable year beginning after December 31, 1963, an individual or partnership receives or accrues compensation from an employment (as defined by section 1301(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] as in effect immediately before the enactment of this Act [Feb. 26, 1964] and the employment began before February 6, 1963, the tax attributable to such compensation may, at the election of the taxpayer, be computed under the provisions of sections 1301 and 1307 of such Code as in effect immediately before the enactment of this Act. If a taxpayer so elects (at such time and in such manner as the Secretary of the Treasury or his delegate by regulations prescribes), he may not choose for such taxable year the benefits provided by part I of subchapter Q of chapter 1 of such Code (relating to income averaging) as amended by this Act and (if he elects to have subsection (e) of such section 1307 apply) section 170(b)(5) of such Code as amended by this Act shall not apply to charitable contributions paid in such taxable year."

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(e)(4)(A) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, see section 1012(aa)(2) of Pub. L. 100–647, set out as a note under section 861 of this title.

PART II—TAX ON CORPORATIONS

Sec.
11. Tax imposed.
12. Cross references relating to tax on corporations.

§11. Tax imposed

(a) Corporations in general

A tax is hereby imposed for each taxable year on the taxable income of every corporation.

(b) Amount of tax

(1) In general

The amount of the tax imposed by subsection (a) shall be the sum of—

(A) 15 percent of so much of the taxable income as does not exceed $50,000,

(B) 25 percent of so much of the taxable income as exceeds $50,000 but does not exceed $75,000,

(C) 34 percent of so much of the taxable income as exceeds $75,000 but does not exceed $10,000,000, and

(D) 35 percent of so much of the taxable income as exceeds $10,000,000.

In the case of a corporation which has taxable income in excess of $100,000 for any taxable year, the amount of tax determined under the preceding sentence for such taxable year shall be increased by the lesser of (i) 5 percent of such excess, or (ii) $11,750. In the case of a corporation which has taxable income in excess of $15,000,000, the amount of the tax determined under the foregoing provisions of this paragraph shall be increased by an additional amount equal to the lesser of (i) 3 percent of such excess, or (ii) $100,000.

(2) Certain personal service corporations not eligible for graduated rates

Notwithstanding paragraph (1), the amount of the tax imposed by subsection (a) on the taxable income of a qualified personal service corporation (as defined in section 448(d)(2)) shall be equal to 35 percent of the taxable income.

(c) Exceptions

Subsection (a) shall not apply to a corporation subject to a tax imposed by—

(1) section 594 (relating to mutual savings banks conducting life insurance business),

(2) subchapter L (sec. 801 and following, relating to insurance companies), or

(3) subchapter M (sec. 851 and following, relating to regulated investment companies and real estate investment trusts).

(d) Foreign corporations

In the case of a foreign corporation, the taxes imposed by subsection (a) and section 55 shall apply only as provided by section 882.

(Aug. 16, 1954, ch. 736, 68A Stat. 11; Mar. 30, 1955, ch. 18, §2, 69 Stat. 14; Mar. 29, 1956, ch. 115, §2, 70 Stat. 66; Pub. L. 85–12, §2, Mar. 29, 1957, 71 Stat. 9; Pub. L. 85–475, §2, June 30, 1958, 72 Stat. 259; Pub. L. 86–75, §2, June 30, 1959, 73 Stat. 157; Pub. L. 86–564, title II, §201, June 30, 1960, 74 Stat. 290; Pub. L. 86–779, §10(d), Sept. 14, 1960, 74 Stat. 1009; Pub. L. 87–72, §2, June 30, 1961, 75 Stat. 193; Pub. L. 87–508, §2, June 28, 1962, 76 Stat. 114; Pub. L. 88–52, §2, June 29, 1963, 77 Stat. 72; Pub. L. 88–272, title I, §121, Feb. 26, 1964, 78 Stat. 25; Pub. L. 89–809, title I, §104(b)(2), Nov. 13, 1966, 80 Stat. 1557; Pub. L. 91–172, title IV, §401(b)(2)(B), Dec. 30, 1969, 83 Stat. 602; Pub. L. 94–12, title III, §303(a), (b), Mar. 29, 1975, 89 Stat. 44; Pub. L. 94–164, §4(a)–(c), Dec. 23, 1975, 89 Stat. 973, 974; Pub. L. 94–455, title IX, §901(a), Oct. 4, 1976, 90 Stat. 1606; Pub. L. 95–30, title II, §201(1), (2), May 23, 1977, 91 Stat. 141; Pub. L. 95–600, title III, §301(a), Nov. 6, 1978, 92 Stat. 2820; Pub. L. 97–34, title II, §231(a), Aug. 13, 1981, 95 Stat. 249; Pub. L. 98–369, div. A, title I, §66(a), July 18, 1984, 98 Stat. 585; Pub. L. 99–514, title VI, §601(a), Oct. 22, 1986, 100 Stat. 2249; Pub. L. 100–203, title X, §10224(a), Dec. 22, 1987, 101 Stat. 1330–412; Pub. L. 100–647, title I, §1007(g)(13)(B), Nov. 10, 1988, 102 Stat. 3436; Pub. L. 103–66, title XIII, §13221(a), (b), Aug. 10, 1993, 107 Stat. 477.)

AMENDMENTS

1993—Subsec. (b)(1). Pub. L. 103–66, §13221(a)(3), inserted at end of closing provisions "In the case of a corporation which has taxable income in excess of $15,000,000, the amount of the tax determined under the foregoing provisions of this paragraph shall be increased by an additional amount equal to the lesser of (i) 3

percent of such excess, or (ii) $100,000."

Subsec. (b)(1)(C), (D). Pub. L. 103–66, §13221(a)(1), (2), added subpars. (C) and (D) and struck out former subpar. (C) which read as follows: "34 percent of so much of the taxable income as exceeds $75,000."

Subsec. (b)(2). Pub. L. 103–66, §13221(b), substituted "35 percent" for "34 percent".

1988—Subsec. (d). Pub. L. 100–647 substituted "the taxes imposed by subsection (a) and section 55" for "the tax imposed by subsection (a)".

1987—Subsec. (b). Pub. L. 100–203 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "The amount of the tax imposed by subsection (a) shall be the sum of—

"(1) 15 percent of so much of the taxable income as does not exceed $50,000,

"(2) 25 percent of so much of the taxable income as exceeds $50,000 but does not exceed $75,000, and

"(3) 34 percent of so much of the taxable income as exceeds $75,000.

In the case of a corporation which has taxable income in excess of $100,000 for any taxable year, the amount of tax determined under the preceding sentence for such taxable year shall be increased by the lesser of (A) 5 percent of such excess, or (B) $11,750."

1986—Subsec. (b). Pub. L. 99–514 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "The amount of the tax imposed by subsection (a) shall be the sum of—

"(1) 15 percent (16 percent for taxable years beginning in 1982) of so much of the taxable income as does not exceed $25,000;

"(2) 18 percent (19 percent for taxable years beginning in 1982) of so much of the taxable income as exceeds $25,000 but does not exceed $50,000;

"(3) 30 percent of so much of the taxable income as exceeds $50,000 but does not exceed $75,000;

"(4) 40 percent of so much of the taxable income as exceeds $75,000 but does not exceed $100,000; plus

"(5) 46 percent of so much of the taxable income as exceeds $100,000.

In the case of a corporation with taxable income in excess of $1,000,000 for any taxable year, the amount of tax determined under the preceding sentence for such taxable year shall be increased by the lesser of (A) 5 percent of such excess, or (B) $20,250."

1984—Subsec. (b). Pub. L. 98–369 inserted "In the case of a corporation with taxable income in excess of $1,000,000 for any taxable year, the amount of tax determined under the preceding sentence for such taxable year shall be increased by the lesser of (A) 5 percent of such excess, or (B) $20,250."

1981—Subsec. (b)(1). Pub. L. 97–34, §231(a)(1), substituted "15 percent (16 percent for taxable years beginning in 1982)" for "17 percent".

Subsec. (b)(2). Pub. L. 97–34, §231(a)(2), substituted "18 percent (19 percent for taxable years beginning in 1982)" for "20 percent".

1978—Pub. L. 95–600 reduced corporate tax rates by substituting provisions imposing a five-step tax rate structure on corporate taxable income for provisions using a normal tax and surtax approach to the taxation of corporate taxable income.

1977—Subsec. (b)(1). Pub. L. 95–30, §201(1), substituted "December 31, 1978" for "December 31, 1977".

Subsec. (b)(2). Pub. L. 95–30, §201(1), substituted "January 1, 1979" for "January 1, 1978" in provisions preceding subpar. (A).

Subsec. (d)(1). Pub. L. 95–30, §201(2), substituted "December 31, 1978" for "December 31, 1977".

Subsec. (d)(2). Pub. L. 95–30, §201(2), substituted "January 1, 1979" for "January 1, 1978".

1976—Subsec. (a). Pub. L. 94–455 reenacted subsec. (a) without change.

Subsec. (b). Pub. L. 94–455, among other changes, substituted "December 31, 1977, 22 percent" for "December 31, 1976, 22 percent" and "after December 31, 1974 and before January 1, 1978" for "after December 31, 1974 and before January 1, 1977" and struck out provisions relating to the six-month application of the general rule.

Subsec. (c). Pub. L. 94–455 struck out provisions relating to the special rule for 1976 for calendar year taxpayers.

Subsec. (d). Pub. L. 94–455, among other changes, substituted provisions relating to surtax exemption of $25,000 for a taxable year ending Dec. 31, 1977, or $50,000 for a taxable year ending after Dec. 31, 1974, and before Jan. 1, 1978, for provisions relating to surtax exemption of $50,000 for any taxable year and struck out provisions relating to six-month application of the general rule.

1975—Subsec. (b). Pub. L. 94–164 redesignated existing pars. (1) and (2) as pars. (1)(A) and (1)(B), and in par. (1)(A) as so redesignated substituted "after December 31, 1976" for "before January 1, 1975 or after December 31, 1975", and in par. (1)(B) as so redesignated substituted "January 1, 1977" for "January 1, 1976", and added par. (2).

Pub. L. 94–12, §303(a), reduced the normal tax for a taxable year ending after Dec. 31, 1974, and before

Jan. 1, 1976, to 20 percent of so much of the taxable income as does not exceed $25,000 plus 22 percent of so much of the taxable income as exceeds $25,000.

Subsec. (c). Pub. L. 94–164 designated existing provisions as par. (1), struck out special percentages for taxable years beginning before Jan. 1, 1964, and after Dec. 31, 1963 and before Jan. 1, 1965, and added par. (2).

Subsec. (d). Pub. L. 94–164 designated existing provisions as par. (1), substituted "$50,000" for "$25,000", inserted reference to section 1564 of this title, and added par. (2).

Pub. L. 94–12, §303(b), substituted "$50,000" for "$25,000".

1969—Subsec. (d). Pub. L. 91–172 substituted "section 1561 or 1564" for "section 1561".

1966—Subsec. (e)(4). Pub. L. 89–809, §104(b)(2)(A), struck out par. (4) which made reference to section 881(a) (relating to foreign corporations not engaged in business in United States).

Subsec. (f). Pub. L. 89–809, §104(b)(2)(B), added subsec. (f).

1964—Subsec. (b). Pub. L. 88–272 applied the 30 percent tax to years beginning before Jan. 1, 1964 instead of July 1, 1964 in par. (1), and in par. (2), reduced the rate from 25 percent to 22 percent, and applied it to years beginning after Dec. 31, 1963, instead of June 30, 1964.

Subsec. (c). Pub. L. 88–272 increased the percentage from 22 to 28 for taxable years beginning after Dec. 31, 1963, and before Jan. 1, 1965, and to 26 percent for taxable years beginning after Dec. 31, 1964. The surtax exemption previously carried in subsec. (c), is now stated in subsec. (d).

Subsecs. (d), (e). Pub. L. 88–272 added subsec. (d) and redesignated former subsec. (d) as (e).

1963—Subsec. (b). Pub. L. 88–52 substituted "July 1, 1964" for "July 1, 1963" and "June 30, 1964" for "June 30, 1963" wherever appearing.

1962—Subsec. (b). Pub. L. 87–508 substituted "July 1, 1963" for "July 1, 1962" and "June 30, 1963" for "June 30, 1962" wherever appearing.

1961—Subsec. (b). Pub. L. 87–72 substituted "July 1, 1962" for "July 1, 1961" and "June 30, 1962" for "June 30, 1961" wherever appearing.

1960—Subsec. (b). Pub. L. 86–564 substituted "July 1, 1961" for "July 1, 1960" and "June 30, 1961" for "June 30, 1960" wherever appearing.

Subsec. (d)(3). Pub. L. 86–779 inserted "and real estate investment trusts" after "regulated investment companies".

1959—Subsec. (b). Pub. L. 86–75 substituted "July 1, 1960" for "July 1, 1959" and "June 30, 1960" for "June 30, 1959" wherever appearing.

1958—Subsec. (b). Pub. L. 85–475 substituted "July 1, 1959" for "July 1, 1958" and "June 30, 1959" for "June 30, 1958" wherever appearing.

1957—Subsec. (b). Pub. L. 85–12 substituted "July 1, 1958" for "April 1, 1957" and "June 30, 1958" for "March 31, 1957" wherever appearing.

1956—Subsec. (b). Act Mar. 29, 1956, substituted "April 1, 1957" for "April 1, 1956" and "March 31, 1957" for "March 31, 1956" wherever appearing.

1955—Subsec. (b). Act Mar. 30, 1955, substituted "April 1, 1956" for "April 1, 1955" and "March 31, 1956" for "March 31, 1955" wherever appearing.

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13221(d), Aug. 10, 1993, 107 Stat. 477, provided that: "The amendments made by this section [amending this section and sections 852, 1201, and 1445 of this title] shall apply to taxable years beginning on or after January 1, 1993; except that the amendment made by subsection (c)(3) [amending section 1445 of this title] shall take effect on the date of the enactment of this Act [Aug. 10, 1993]."

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title X, §10224(b), Dec. 22, 1987, 101 Stat. 1330–413, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1987."

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title VI, §601(b), Oct. 22, 1986, 100 Stat. 2249, provided that:

"(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning on or after July 1, 1987.

"(2) CROSS REFERENCE.—

"For treatment of taxable years which include July 1, 1987, see section 15 of the Internal Revenue Code of 1986."

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §66(c), July 18, 1984, 98 Stat. 585, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and section 1561 of this title] shall apply to taxable years beginning after December 31, 1983.

"(2) AMENDMENTS NOT TREATED AS CHANGED IN RATE OF TAX.—The amendments made by this subsection [probably should be "section"] shall not be treated as a change in a rate of tax for purposes of section 21 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]."

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title II, §231(c), Aug. 13, 1981, 95 Stat. 250, provided that: "The amendments made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1981."

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title III, §301(c), Nov. 6, 1978, 92 Stat. 2824, provided that: "The amendments made by this section [amending this section and sections 12, 57, 244, 247, 511, 527, 528, 802, 821, 826, 852, 857, 882, 907, 922, 962, 1351, 1551, 1561, 6154, and 6655 of this title] shall apply to taxable years beginning after December 31, 1978."

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title IX, §901(d), Oct. 4, 1976, 90 Stat. 1607, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on December 23, 1975. The amendments made by subsection (b) [amending section 821 of this title] shall apply to taxable years ending after December 31, 1974. The amendments made by subsection (c) [amending sections 21, 1561, and 6154 of this title] shall apply to taxable years ending after December 31, 1975."

EFFECTIVE AND TERMINATION DATES OF 1975 AMENDMENT

Pub. L. 94–164, §4(e), Dec. 23, 1975, 89 Stat. 975, provided that: "The amendments made by subsections (b), (c), and (d) [amending this section and sections 21, 962, and 1561 of this title] apply to taxable years beginning after December 31, 1975. The amendment made by subsection (c) [amending this section] ceases to apply for taxable years beginning after December 31, 1976."

Pub. L. 94–12, title III, §305(b)(1), Mar. 29, 1975, 89 Stat. 45, provided that: "The amendments made by section 303 [amending this section and sections 12, 962, and 1561 of this title and enacting provisions set out as a note under this section] shall apply to taxable years ending after December 31, 1974. The amendments made by subsections (b) and (c) of such section [amending this section and sections 12, 962, and 1561 of this title and enacting provisions set out as a note under this section] shall cease to apply for taxable years ending after December 31, 1975."

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable with respect to taxable years beginning after Dec. 31, 1969, see section 401(h)(2) of Pub. L. 91–172, set out as a note under section 1561 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89–809, title I, §104(n), Nov. 13, 1966, 80 Stat. 1563, provided that: "The amendments made by this section (other than subsection (k)) [enacting section 6683 to this title and amending this section and sections 245, 301, 512, 542, 543, 545, 819, 821, 822, 831, 832, 841, 842, 881, 882, 884, 952, 953, 1249, 1442, and 6016 of this title] shall apply with respect to taxable years beginning after December 31, 1966. The amendment made by subsection (k) [amending section 1248(d)(4) of this title] shall apply with respect to sales or exchanges occurring after December 31, 1966."

EFFECTIVE DATE OF 1964 AMENDMENT

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

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–779 applicable with respect to taxable years of real estate investment trusts beginning after Dec. 31, 1960, see section 10(k) of Pub. L. 86–779, set out as an Effective Date note under section 856 of this title.

ALLOCATION OF 1975 TAXABLE INCOME AMONG COMPONENT MEMBERS OF CONTROLLED GROUP OF CORPORATIONS

Pub. L. 94–12, title III, §303(c)(1), Mar. 29, 1975, 89 Stat. 44, provided in part that: "In applying subsection (b)(2) of section 11 [subsec. (b)(2) of this section], the first $25,000 of taxable income and the second $25,000 of taxable income shall each be allocated among the component members of a controlled group of corporations in the same manner as the surtax exemption is allocated."

§12. Cross references relating to tax on corporations

(1) For tax on the unrelated business income of certain charitable and other corporations exempt from tax under this chapter, see section 511.

(2) For accumulated earnings tax and personal holding company tax, see parts I and II of subchapter G (sec. 531 and following).

(3) For doubling of tax on corporations of certain foreign countries, see section 891.

(4) For alternative tax in case of capital gains, see section 1201(a).

(5) For rate of withholding in case of foreign corporations, see section 1442.

(6) For limitation on benefits of graduated rate schedule provided in section 11(b), see section 1551.

(7) For alternative minimum tax, see section 55.

(Aug. 16, 1954, ch. 736, 68A Stat. 11; Pub. L. 88–272, title II, §234(b)(4), Feb. 26, 1964, 78 Stat. 115; Pub. L. 91–172, title III, §301(b)(3), Dec. 30, 1969, 83 Stat. 585; Pub. L. 94–12, title III, §303(c)(2), Mar. 29, 1975, 89 Stat. 44; Pub. L. 95–600, title III, §301(b)(1), Nov. 6, 1978, 92 Stat. 2820; Pub. L. 98–369, div. A, title IV, §474(r)(29)(E), July 18, 1984, 98 Stat. 844; Pub. L. 99–514, title VII, §701(e)(4)(B), Oct. 22, 1986, 100 Stat. 2343.)

AMENDMENTS

1986—Par. (7). Pub. L. 99–514 amended par. (7) generally, substituting "alternative minimum tax" and "55" for "minimum tax for tax preferences" and "56", respectively.

1984—Pars. (6) to (8). Pub. L. 98–369 redesignated pars. (7) and (8) as (6) and (7), respectively. Former par. (6), which referred to section 1451 for withholding of tax on tax-free covenant bonds, was struck out.

1978—Par. (7). Pub. L. 95–600 substituted "benefits of graduated rate schedule provided in section 11(b)" for "the $25,000 exemption from surtax provided in section 11(c)".

1975—Par. (7). Pub. L. 94–12 substituted "$50,000" for "$25,000" for a limited period. See Effective and Termination Dates of 1975 Amendment note set out below.

1969—Par. (8). Pub. L. 91–172 added par. (8).

1964—Par. (8). Pub. L. 88–272 struck out par. (8) which referred to section 1503 for additional tax for corporations filing consolidated returns.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date note under section 55 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

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

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95–600, set out as a note under section 11 of this title.

EFFECTIVE AND TERMINATION DATES OF 1975 AMENDMENT

Amendment by Pub. L. 94–12 applicable to taxable years ending after Dec. 31, 1974, but to cease to apply for taxable years ending after Dec. 31, 1975, see section 305(b)(1) of Pub. L. 94–12, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years ending after Dec. 31, 1969, see section 301(c) of Pub. L. 91–172, set out as a note under section 5 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

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

APPLICABILITY OF CERTAIN AMENDMENTS BY PUBLIC LAW 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, see section 1012(aa)(2) of Pub. L. 100–647, set out as a note under section 861 of this title.

PART III—CHANGES IN RATES DURING A TAXABLE YEAR

Sec.
15. Effect of changes.

AMENDMENTS

1984—Pub. L. 98–369, div. A, title IV, §474(b)(3), July 18, 1984, 98 Stat. 830, substituted "15. Effect of changes" for "21. Effect of changes".

§15. Effect of changes

(a) General rule

If any rate of tax imposed by this chapter changes, and if the taxable year includes the effective date of the change (unless that date is the first day of the taxable year), then—

(1) tentative taxes shall be computed by applying the rate for the period before the effective date of the change, and the rate for the period on and after such date, to the taxable income for the entire taxable year; and

(2) the tax for such taxable year shall be the sum of that proportion of each tentative tax which the number of days in each period bears to the number of days in the entire taxable year.

(b) Repeal of tax

For purposes of subsection (a)—

(1) if a tax is repealed, the repeal shall be considered a change of rate; and

(2) the rate for the period after the repeal shall be zero.

(c) Effective date of change

For purposes of subsections (a) and (b)—

(1) if the rate changes for taxable years "beginning after" or "ending after" a certain date, the following day shall be considered the effective date of the change; and

(2) if a rate changes for taxable years "beginning on or after" a certain date, that date shall be considered the effective date of the change.

(d) Section not to apply to inflation adjustments

This section shall not apply to any change in rates under subsection (f) of section 1 (relating to adjustments in tax tables so that inflation will not result in tax increases).

(e) References to highest rate

If the change referred to in subsection (a) involves a change in the highest rate of tax imposed by section 1 or 11(b), any reference in this chapter to such highest rate (other than in a provision imposing a tax by reference to such rate) shall be treated as a reference to the weighted average of the highest rates before and after the change determined on the basis of the respective portions of the taxable year before the date of the change and on or after the date of the change.

(f) Rate reductions enacted by Economic Growth and Tax Relief Reconciliation Act of 2001

This section shall not apply to any change in rates under subsection (i) of section 1 (relating to rate reductions after 2000).

(Aug. 16, 1954, ch. 736, 68A Stat. 12, §21; Pub. L. 88–272, title I, §132, Feb. 26, 1964, 78 Stat. 30; Pub. L. 91–172, title VIII, §803(e), Dec. 30, 1969, 83 Stat. 685; Pub. L. 92–178, title II, §205, Dec. 10, 1971, 85 Stat. 511; Pub. L. 94–12, title III, §305(b)(2), Mar. 29, 1975, 89 Stat. 45; Pub. L. 94–164, §4(d)(2), Dec. 23, 1975, 89 Stat. 975; Pub. L. 94–455, title IX, §901(c)(2), Oct. 4, 1976, 90 Stat. 1607; Pub. L. 95–30, title I, §101(d)(2), May 23, 1977, 91 Stat. 133; Pub. L. 95–600, title I, §106, Nov. 6, 1978, 92 Stat. 2776; Pub. L. 97–34, title I, §101(d)(3), Aug. 13, 1981, 95 Stat. 184; renumbered §15, Pub. L. 98–369, div. A, title IV, §474(b)(1), July 18, 1984, 98 Stat. 830; Pub. L. 99–514, title I, §101(b), Oct. 22, 1986, 100 Stat. 2099; Pub. L. 100–647, title I, §1006(a), Nov. 10, 1988, 102 Stat. 3393; Pub. L. 107–16, title I, §101(c)(3), June 7, 2001, 115 Stat. 43.)

AMENDMENTS

2001—Subsec. (f). Pub. L. 107–16, §101(c)(3), added subsec. (f).

1988—Subsec. (e). Pub. L. 100–647 added subsec. (e).

1986—Subsec. (d). Pub. L. 99–514 amended subsec. (d) generally, substituting "apply to inflation adjustments" for "apply to section 1 rate changes made by Economic Recovery Tax Act of 1981" in heading and struck out "section 1 attributable to the amendments made by section 101 of the Economic Tax Act of 1981 or" before "subsection (f)" in text.

1984—Pub. L. 98–369 renumbered section 21 of this title as this section.

1981—Subsec. (d). Pub. L. 97–34 substituted provisions that this section shall not apply to any change in rates under section 1 attributable to the amendments made by section 101 of the Economic Recovery Tax Act of 1981 or subsec. (f) of section 1 for provisions that had related to the changes made by section 303(b) of the Tax Reduction Act of 1975 in the surtax exemption.

Subsecs. (e), (f). Pub. L. 97–34 struck out subsecs. (e) and (f) which had related, respectively, to changes made by the Tax Reduction and Simplification Act of 1977 and to changes made by Revenue Act of 1978.

1978—Subsec. (f). Pub. L. 95–600 added subsec. (f).

1977—Subsec. (d). Pub. L. 95–30, §101(d)(2)(A), (B), redesignated subsec. (f) as (d). Former subsec. (d), which directed that, in applying subsec. (a) to a taxable year of an individual which was not a calendar year, each change made by the Tax Reform Act of 1969 in part I or in the application of part IV or V of subchapter B for purposes of the determination of taxable income should be treated as a change in a rate of tax, was struck out.

Subsec. (e). Pub. L. 95–30, §101(d)(2)(A), (C), added subsec. (e). Former subsec. (e), which directed that, in applying subsec. (a) to a taxable year of an individual which was not a calendar year, each change made by the Revenue Act of 1971 in section 141 (relating to the standard deduction) and section 151 (relating to personal exemptions) should be treated as a change in a rate of tax, was struck out.

Subsec. (f). Pub. L. 95–30, §101(d)(2)(B), redesignated subsec. (f) as (d).

1976—Subsec. (f). Pub. L. 94–455 substituted "in the surtax exemption and any change under section 11(d) in the surtax exemption" for "and the change made by section 3(c) of the Revenue Adjustment Act of 1975 in section 11(d) (relating to corporate surtax exemption)".

1975—Subsec. (f). Pub. L. 94–164 inserted reference to change made by section 3(c) of the Revenue Adjustment Act of 1975.

Pub. L. 94–12 added subsec. (f).

1971—Subsec. (e). Pub. L. 92–178 added subsec. (e).

1969—Subsec. (d). Pub. L. 91–172 substituted provisions covering changes made by the Tax Reform Act of 1969 in case of individuals for provisions covering changes made by Revenue Act of 1964.

1964—Subsec. (d). Pub. L. 88–272 amended subsection generally by substituting provisions relating to changes made by the Revenue Act of 1964, for provisions relating to taxable years beginning before Jan. 1, 1954, and ending after Dec. 31, 1953.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2000, see section 101(d)(1) of Pub. L. 107–16, set out as an Effective and Termination Dates of 2001 Amendment note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 101(f)(1) of Pub. L. 97–34, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable with respect to taxable years ending after Dec. 31, 1975, see section 901(d) of Pub. L. 94–455, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–164 applicable to taxable years beginning after Dec. 31, 1975, see section 4(e) of Pub. L. 94–164, set out as an Effective and Termination Dates of 1975 Amendments note under section 11 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88–272, title I, §132, Feb. 26, 1964, 78 Stat. 30, provided that the amendment made by that section is effective with respect to taxable years ending after Dec. 31, 1963.

COORDINATION OF 1997 AMENDMENT WITH SECTION 15

Pub. L. 105–34, title I, §1(c), Aug. 5, 1997, 111 Stat. 788, provided that: "No amendment made by this Act [see Tables for classification] shall be treated as a change in a rate of tax for purposes of section 15 of the Internal Revenue Code of 1986."

COORDINATION OF 1993 AMENDMENT WITH SECTION 15

Pub. L. 103–66, title XIII, §13001(c), Aug. 10, 1993, 107 Stat. 416, provided that: "Except in the case of the amendments made by section 13221 [amending sections 11, 852, 1201, and 1445 of this title] (relating to corporate rate increase), no amendment made by this chapter [chapter 1 (§§13001–13444) of title XIII of Pub. L. 103–66, see Tables for classification] shall be treated as a change in a rate of tax for purposes of section 15 of the Internal Revenue Code of 1986."

COORDINATION OF 1990 AMENDMENT WITH SECTION 15

Pub. L. 101–508, title XI, §11001(c), Nov. 5, 1990, 104 Stat. 1388–400, provided that: "Except as otherwise expressly provided in this title, no amendment made by this title [see Tables for classification] shall be treated as a change in a rate of tax for purposes of section 15 of the Internal Revenue Code of 1986."

COORDINATION OF 1987 AMENDMENT WITH SECTION 15

Pub. L. 100–203, title X, §10000(c), Dec. 22, 1987, 101 Stat. 1330–382, provided that: "No amendment made by this title [see Tables for classification] shall be treated as a change in a rate of tax for purposes [of] section 15 of the Internal Revenue Code of 1986."

COORDINATION OF 1986 AMENDMENT WITH SECTION 15

Pub. L. 99–514, §3(b), Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), for purposes of section 15 of the Internal

Revenue Code of 1986, no amendment or repeal made by this Act [see Tables for classification] shall be treated as a change in the rate of a tax imposed by chapter 1 of such Code.

"(2) EXCEPTION.—Paragraph (1) shall not apply to the amendment made by section 601 [amending section 11 of this title] (relating to corporate rate reductions)."

PART IV—CREDITS AGAINST TAX

Subpart

A. Nonrefundable personal credits.
B. Other credits.
C. Refundable credits.
D. Business-related credits.
E. Rules for computing investment credit.
F. Rules for computing work opportunity credit.
G. Credit against regular tax for prior year minimum tax liability.[1]
H. Nonrefundable credit to holders of clean renewable energy bonds.
I. Qualified tax credit bonds.
J. Build America bonds.

AMENDMENTS

2009—Pub. L. 111–5, div. B, title I, §1531(c)(6), Feb. 17, 2009, 123 Stat. 360, added item for subpart J.

2008—Pub. L. 110–234, title XV, §15316(c)(5), May 22, 2008, 122 Stat. 1511, and Pub. L. 110–246, title XV, §15316(c)(5), June 18, 2008, 122 Stat. 2273, made identical amendments, adding items for subparts H and I and striking out item for former subpart H "Nonrefundable credit to holders of certain bonds". The amendment by Pub. L. 110–234 was repealed by Pub. L. 110–246, §4(a), June 18, 2008, 122 Stat. 1664.

2005—Pub. L. 109–58, title XIII, §1303(c)(1), Aug. 8, 2005, 119 Stat. 996, added item for subpart H.

1996—Pub. L. 104–188, title I, §§1201(e)(3), 1601(b)(2)(F)(ii), Aug. 20, 1996, 110 Stat. 1772, 1833, substituted "Other credits" for "Foreign tax credit, etc." in item for subpart B and "work opportunity credit" for "targeted jobs credit" in item for subpart F.

1990—Pub. L. 101–508, title XI, §11813(b)(26), Nov. 5, 1990, 104 Stat. 1388–555, substituted "Rules for computing investment credit" for "Rules for computing credit for investment in certain depreciable property" in item for subpart E.

1984—Pub. L. 98–369, div. A, title IV, §§471(a), 474(n)(3), July 18, 1984, 98 Stat. 825, 834, substituted "Nonrefundable personal credits" for "Credits allowable" in item for subpart A, "Foreign tax credit, etc" for "Rules for computing credit for investment in certain depreciable property" in item for subpart B, "Refundable credits" for "Rules for computing credit for expense of work incentive programs" in item for subpart C, and "Business-related credits" for "Rules for computing credit for employment of certain new employees" in item for subpart D, and added items for subparts E and F.

1977—Pub. L. 95–30, title II, §202(d)(1)(B), May 23, 1977, 91 Stat. 147, added subpart D.

1971—Pub. L. 92–178, title VI, §601(c)(1), Dec. 10, 1971, 85 Stat. 557, added subpart C.

[1] *Editorially supplied. Subpart G of part IV added by Pub. L. 99–514 without corresponding amendment of part analysis.*

SUBPART A—NONREFUNDABLE PERSONAL CREDITS

Sec.

21. Expenses for household and dependent care services necessary for gainful employment.
22. Credit for the elderly and the permanently and totally disabled.
23. Adoption expenses.
24. Child tax credit.
25. Interest on certain home mortgages.
25A. Hope and Lifetime Learning credits.
25B. Elective deferrals and IRA contributions by certain individuals.

25C. Nonbusiness energy property.
25D. Residential energy efficient property.
26. Limitation based on tax liability; definition of tax liability.

AMENDMENTS

2010—Pub. L. 111–148, title X, §10909(b)(2)(O), (c), Mar. 23, 2010, 124 Stat. 1023, as amended by Pub. L. 111–312, title I, §101(b)(1), Dec. 17, 2010, 124 Stat. 3298, temporarily struck out item 23 "Adoption expenses". See Effective and Termination Dates of 2010 Amendment note set out under section 1 of this title.

2005—Pub. L. 109–58, title XIII, §§1333(b)(2), 1335(b)(5), Aug. 8, 2005, 119 Stat. 1030, 1036, added items 25C and 25D.

2001—Pub. L. 107–16, title VI, §618(c), June 7, 2001, 115 Stat. 108, added item 25B.

1998—Pub. L. 105–206, title VI, §6004(a)(1), July 22, 1998, 112 Stat. 792, substituted "Hope and Lifetime Learning credits" for "Higher education tuition and related expenses" in item 25A.

1997—Pub. L. 105–34, title I, §101(d)(3), title II, §201(e), Aug. 5, 1997, 111 Stat. 799, 806, added items 24 and 25A.

1996—Pub. L. 104–188, title I, §1807(c)(6), Aug. 20, 1996, 110 Stat. 1902, added item 23.

1990—Pub. L. 101–508, title XI, §11801(b)(1), Nov. 5, 1990, 104 Stat. 1388–522, struck out item 23 "Residential energy credit".

1986—Pub. L. 99–514, title I, §112(b)(5), Oct. 22, 1986, 100 Stat. 2109, struck out item 24 "Contributions to candidates for public office".

1984—Pub. L. 98–369, div. A, title IV, §§471(b), 612(f), July 18, 1984, 98 Stat. 826, 913, substituted "Nonrefundable Personal Credits" for "Credits Allowable" as subpart A heading, struck out analysis of sections 31 through 45 formerly comprising subpart A, and inserted a new analysis of sections consisting of items 21 (formerly 44A), 22 (formerly 37), 23 (formerly 44C), 24 (formerly 41), and 25 and 26 (newly enacted).

1983—Pub. L. 98–67 repealed amendments made by Pub. L. 97–248. See 1982 Amendment note below.

Pub. L. 98–21, title I, §122(c)(7), Apr. 20, 1983, 97 Stat. 87, inserted "and the permanently and totally disabled" to item 37.

Pub. L. 97–424, title V, §515(b)(6)(D), Jan. 6, 1983, 96 Stat. 2181, substituted "and special fuels" for ", special fuels, and lubricating oil" after "gasoline" in item 39.

Pub. L. 97–414, §4(c)(1), Jan. 4, 1983, 96 Stat. 2056, added item 44H.

1982—Pub. L. 97–248, title III, §§307(b)(3), 308(a), Sept. 3, 1982, 96 Stat. 590, 591, provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, item 31 is amended to read "Tax withheld on wages, interest, dividends, and patronage dividends". Section 102(a), (b) of Pub. L. 98–67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§301–308) of title III of Pub. L. 97–248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 [now 1986] [this title] shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

1981—Pub. L. 97–34, title II, §221(c)(2), title III, §331(e)(2), Aug. 13, 1981, 95 Stat. 247, 295, added items 44F and 44G.

1980—Pub. L. 96–223, title II, §§231(b)(1), 232(b)(3)(B), Apr. 2, 1980, 94 Stat. 272, 276, added items 44D and 44E.

1978—Pub. L. 95–618, title I, §101(b)(1), Nov. 9, 1978, 92 Stat. 3179, added item 44C.

1977—Pub. L. 95–30, title I, §101(e)(1), title II, §202(d)(1)(A), May 23, 1977, 91 Stat. 134, 147, added item 44B and struck out item 36 "Credit not allowed to individuals taking standard deduction".

1976—Pub. L. 94–455, title IV, §401(a)(2)(D), title V, §§501(c)(2), 503(b)(5), 504(a)(2), title XIX, §1901(b)(1)(Z), Oct. 4, 1976, 90 Stat. 1555, 1559, 1562, 1565, 1792, substituted in item 42 "General tax credit" for "Taxable income credit", struck out in item 36 "pay optional tax or", inserted in item 33 "possession tax credit", substituted in item 37 "Credit of the elderly" for "Retirement income", added item 44A, and struck out item 35 "Partially tax-exempt interest received by individuals".

1975—Pub. L. 94–164, §3(a)(2), Dec. 23, 1975, 89 Stat. 973, substituted "Taxable income credit" for "Credit for personal exemptions" in item 42.

Pub. L. 94–12, title II, §§203(b)(1), 204(c), 208(d)(1), Mar. 29, 1975, 89 Stat. 30, 32, 35, renumbered item 42 as 45 and added item 42 applicable to taxable years ending after Dec. 31, 1974, but to cease to apply to taxable years ending after Dec. 31, 1975, item 43 applicable to taxable years beginning after Dec. 31, 1974, but before Jan. 1, 1976, and item 44.

1971—Pub. L. 92–178, title VI, §601(c)(2), Dec. 10, 1971, 85 Stat. 557, added items 40 and 41, and redesignated former item 40 as 42.

1970—Pub. L. 91–258, title II, §207(d)(10), May 21, 1970, 84 Stat. 249, inserted ", special fuels," after "gasoline" in item 39.

1965—Pub. L. 89–44, title VIII, §809(d)(1), June 21, 1965, 79 Stat. 167, added item 39 and redesignated former item 39 as 40.

1964—Pub. L. 88–272, title II, §201(d)(1), Feb. 26, 1964, 78 Stat. 32, struck out item 34.

1962—Pub. L. 87–834, §2(g)(1), (2), Oct. 16, 1962, 76 Stat. 972, 973, added headings of subparts A and B and item 38, and redesignated former item 38 as 39.

§21. Expenses for household and dependent care services necessary for gainful employment

(a) Allowance of credit

(1) In general

In the case of an individual for which there are 1 or more qualifying individuals (as defined in subsection (b)(1)) with respect to such individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the applicable percentage of the employment-related expenses (as defined in subsection (b)(2)) paid by such individual during the taxable year.

(2) Applicable percentage defined

For purposes of paragraph (1), the term "applicable percentage" means 35 percent reduced (but not below 20 percent) by 1 percentage point for each $2,000 (or fraction thereof) by which the taxpayer's adjusted gross income for the taxable year exceeds $15,000.

(b) Definitions of qualifying individual and employment-related expenses

For purposes of this section—

(1) Qualifying individual

The term "qualifying individual" means—

(A) a dependent of the taxpayer (as defined in section 152(a)(1)) who has not attained age 13,

(B) a dependent of the taxpayer (as defined in section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B)) who is physically or mentally incapable of caring for himself or herself and who has the same principal place of abode as the taxpayer for more than one-half of such taxable year, or

(C) the spouse of the taxpayer, if the spouse is physically or mentally incapable of caring for himself or herself and who has the same principal place of abode as the taxpayer for more than one-half of such taxable year.

(2) Employment-related expenses

(A) In general

The term "employment-related expenses" means amounts paid for the following expenses, but only if such expenses are incurred to enable the taxpayer to be gainfully employed for any period for which there are 1 or more qualifying individuals with respect to the taxpayer:

(i) expenses for household services, and

(ii) expenses for the care of a qualifying individual.

Such term shall not include any amount paid for services outside the taxpayer's household at a camp where the qualifying individual stays overnight.

(B) Exception

Employment-related expenses described in subparagraph (A) which are incurred for services outside the taxpayer's household shall be taken into account only if incurred for the care of—

(i) a qualifying individual described in paragraph (1)(A), or

(ii) a qualifying individual (not described in paragraph (1)(A)) who regularly spends at

least 8 hours each day in the taxpayer's household.

(C) Dependent care centers

Employment-related expenses described in subparagraph (A) which are incurred for services provided outside the taxpayer's household by a dependent care center (as defined in subparagraph (D)) shall be taken into account only if—

(i) such center complies with all applicable laws and regulations of a State or unit of local government, and

(ii) the requirements of subparagraph (B) are met.

(D) Dependent care center defined

For purposes of this paragraph, the term "dependent care center" means any facility which—

(i) provides care for more than six individuals (other than individuals who reside at the facility), and

(ii) receives a fee, payment, or grant for providing services for any of the individuals (regardless of whether such facility is operated for profit).

(c) Dollar limit on amount creditable

The amount of the employment-related expenses incurred during any taxable year which may be taken into account under subsection (a) shall not exceed—

(1) $3,000 if there is 1 qualifying individual with respect to the taxpayer for such taxable year, or

(2) $6,000 if there are 2 or more qualifying individuals with respect to the taxpayer for such taxable year.

The amount determined under paragraph (1) or (2) (whichever is applicable) shall be reduced by the aggregate amount excludable from gross income under section 129 for the taxable year.

(d) Earned income limitation

(1) In general

Except as otherwise provided in this subsection, the amount of the employment-related expenses incurred during any taxable year which may be taken into account under subsection (a) shall not exceed—

(A) in the case of an individual who is not married at the close of such year, such individual's earned income for such year, or

(B) in the case of an individual who is married at the close of such year, the lesser of such individual's earned income or the earned income of his spouse for such year.

(2) Special rule for spouse who is a student or incapable of caring for himself

In the case of a spouse who is a student or a qualifying individual described in subsection (b)(1)(C), for purposes of paragraph (1), such spouse shall be deemed for each month during which such spouse is a full-time student at an educational institution, or is such a qualifying individual, to be gainfully employed and to have earned income of not less than—

(A) $250 if subsection (c)(1) applies for the taxable year, or

(B) $500 if subsection (c)(2) applies for the taxable year.

In the case of any husband and wife, this paragraph shall apply with respect to only one spouse for any one month.

(e) Special rules

For purposes of this section—

(1) Place of abode

An individual shall not be treated as having the same principal place of abode of the taxpayer if at any time during the taxable year of the taxpayer the relationship between the individual and the taxpayer is in violation of local law.

(2) Married couples must file joint return

If the taxpayer is married at the close of the taxable year, the credit shall be allowed under subsection (a) only if the taxpayer and his spouse file a joint return for the taxable year.

(3) Marital status

An individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married.

(4) Certain married individuals living apart

If—

(A) an individual who is married and who files a separate return—

(i) maintains as his home a household which constitutes for more than one-half of the taxable year the principal place of abode of a qualifying individual, and

(ii) furnishes over half of the cost of maintaining such household during the taxable year, and

(B) during the last 6 months of such taxable year such individual's spouse is not a member of such household,

such individual shall not be considered as married.

(5) Special dependency test in case of divorced parents, etc.

If—

(A) section 152(e) applies to any child with respect to any calendar year, and

(B) such child is under the age of 13 or is physically or mentally incapable of caring for himself,

in the case of any taxable year beginning in such calendar year, such child shall be treated as a qualifying individual described in subparagraph (A) or (B) of subsection (b)(1) (whichever is appropriate) with respect to the custodial parent (as defined in section 152(e)(4)(A)), and shall not be treated as a qualifying individual with respect to the noncustodial parent.

(6) Payments to related individuals

No credit shall be allowed under subsection (a) for any amount paid by the taxpayer to an individual—

(A) with respect to whom, for the taxable year, a deduction under section 151(c) (relating to deduction for personal exemptions for dependents) is allowable either to the taxpayer or his spouse, or

(B) who is a child of the taxpayer (within the meaning of section 152(f)(1)) who has not attained the age of 19 at the close of the taxable year.

For purposes of this paragraph, the term "taxable year" means the taxable year of the taxpayer in which the service is performed.

(7) Student

The term "student" means an individual who during each of 5 calendar months during the taxable year is a full-time student at an educational organization.

(8) Educational organization

The term "educational organization" means an educational organization described in section 170(b)(1)(A)(ii).

(9) Identifying information required with respect to service provider

No credit shall be allowed under subsection (a) for any amount paid to any person unless—

(A) the name, address, and taxpayer identification number of such person are included on the return claiming the credit, or

(B) if such person is an organization described in section 501(c)(3) and exempt from tax under section 501(a), the name and address of such person are included on the return claiming the credit.

In the case of a failure to provide the information required under the preceding sentence, the preceding sentence shall not apply if it is shown that the taxpayer exercised due diligence in attempting to provide the information so required.

(10) Identifying information required with respect to qualifying individuals

No credit shall be allowed under this section with respect to any qualifying individual unless the TIN of such individual is included on the return claiming the credit.

(f) Regulations

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

(Added Pub. L. 94–455, title V, §504(a)(1), Oct. 4, 1976, 90 Stat. 1563, §44A; amended Pub. L. 95–600, title I, §121(a), Nov. 6, 1978, 92 Stat. 2779; Pub. L. 97–34, title I §124 (a)–(d), Aug. 13, 1981, 95 Stat. 197, 198; Pub. L. 98–21, title I, §122(c)(1), Apr. 20, 1983, 97 Stat. 87; renumbered §21 and amended Pub. L. 98–369, div. A, title IV, §§423(c)(4), 471(c), 474(c), July 18, 1984, 98 Stat. 801, 826, 830; Pub. L. 99–514, title I, §104(b)(1), Oct. 22, 1986, 100 Stat. 2104; Pub. L. 100–203, title X, §10101(a), Dec. 22, 1987, 101 Stat. 1330–384; Pub. L. 100–485, title VII, §703(a)–(c)(1), Oct. 13, 1988, 102 Stat. 2426, 2427; Pub. L. 104–188, title I, §1615(b), Aug. 20, 1996, 110 Stat. 1853; Pub. L. 107–16, title II, §204(a), (b), June 7, 2001, 115 Stat. 49; Pub. L. 107–147, title IV, §418(b), Mar. 9, 2002, 116 Stat. 57; Pub. L. 108–311, title II, §§203, 207(2), (3), Oct. 4, 2004, 118 Stat. 1175, 1177; Pub. L. 109–135, title IV, §404(b), Dec. 21, 2005, 119 Stat. 2634; Pub. L. 110–172, §11(a)(1), Dec. 29, 2007, 121 Stat. 2484.)

PRIOR PROVISIONS

A prior section 21 was renumbered section 15 of this title.

AMENDMENTS

2007—Subsec. (e)(5). Pub. L. 110–172 substituted "section 152(e)(4)(A)" for "section 152(e)(3)(A)" in concluding provisions.

2005—Subsec. (b)(1)(B). Pub. L. 109–135 inserted "(as defined in section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B))" after "dependent of the taxpayer".

2004—Subsec. (a)(1). Pub. L. 108–311, §203(a), substituted "In the case of an individual for which there are 1 or more qualifying individuals (as defined in subsection (b)(1)) with respect to such individual" for "In the case of an individual who maintains a household which includes as a member one or more qualifying individuals (as defined in subsection (b)(1))".

Subsec. (b)(1). Pub. L. 108–311, §203(b), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "The term 'qualifying individual' means—

"(A) a dependent of the taxpayer who is under the age of 13 and with respect to whom the taxpayer is entitled to a deduction under section 151(c),

"(B) a dependent of the taxpayer who is physically or mentally incapable of caring for himself, or

"(C) the spouse of the taxpayer, if he is physically or mentally incapable of caring for himself."

Subsec. (e)(1). Pub. L. 108–311, §203(c), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: "An individual shall be treated as maintaining a household for any period only if over half the cost of maintaining the household for such period is furnished by such individual (or, if such individual is married during such period, is furnished by such individual and his spouse)."

Subsec. (e)(5). Pub. L. 108–311, §207(2), struck out "paragraph (2) or (4) of" before "section 152(e)" in subpar. (A) and substituted "as defined in section 152(e)(3)(A)" for "within the meaning of section 152(e)(1)" in concluding provisions.

Subsec. (e)(6)(B). Pub. L. 108–311, §207(3), substituted "section 152(f)(1)" for "section 151(c)(3)".

2002—Subsec. (d)(2)(A). Pub. L. 107–147, §418(b)(1), substituted "$250" for "$200".

Subsec. (d)(2)(B). Pub. L. 107–147, §418(b)(2), substituted "$500" for "$400".

2001—Subsec. (a)(2). Pub. L. 107–16, §204(b), substituted "35 percent" for "30 percent" and "$15,000" for "$10,000".

Subsec. (c)(1). Pub. L. 107–16, §204(a)(1), substituted "$3,000" for "$2,400".

Subsec. (c)(2). Pub. L. 107–16, §204(a)(2), substituted "$6,000" for "$4,800".

1996—Subsec. (e)(10). Pub. L. 104–188 added par. (10).

1988—Subsec. (b)(1)(A). Pub. L. 100–485, §703(a), substituted "age of 13" for "age of 15".

Subsec. (c). Pub. L. 100–485, §703(b), inserted at end: "The amount determined under paragraph (1) or (2) (whichever is applicable) shall be reduced by the aggregate amount excludable from gross income under section 129 for the taxable year."

Subsec. (e)(5)(B). Pub. L. 100–485, §703(a), substituted "age of 13" for "age of 15".

Subsec. (e)(9). Pub. L. 100–485, §703(c)(1), added par. (9).

1987—Subsec. (b)(2)(A). Pub. L. 100–203 inserted at end "Such term shall not include any amount paid for services outside the taxpayer's household at a camp where the qualifying individual stays overnight."

1986—Subsecs. (b)(1)(A), (e)(6)(A). Pub. L. 99–514, §104(b)(1)(A), substituted "section 151(c)" for "section 151(e)".

Subsec. (e)(6)(B). Pub. L. 99–514, §104(b)(1)(B), substituted "section 151(c)(3)" for "section 151(e)(3)".

1984—Pub. L. 98–369, §471(c), renumbered section 44A of this title as this section.

Subsec. (a)(1). Pub. L. 98–369, §474(c)(2), (3), substituted "subsection (b)(1)" for "subsection (c)(1)" and "subsection (b)(2)" for "subsection (c)(2)".

Subsec. (b). Pub. L. 98–369, §474(c)(1), redesignated subsec. (c) as (b). Former subsec. (b), which provided that the credit allowed by subsec. (a) could not exceed the amount of the tax imposed by this chapter for the taxable year reduced by the sum of the credits allowable under sections 33, 37, 38, 40, 41, 42, and 44, was struck out.

Subsec. (c). Pub. L. 98–369, §474(c)(1), redesignated subsec. (d) as (c). Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 98–369, §474(c)(1), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (d)(2). Pub. L. 98–369, §474(c)(4), substituted "subsection (b)(1)(C)" for "subsection (c)(1)(C)" in introductory provisions.

Subsec. (d)(2)(A). Pub. L. 98–369, §474(c)(5), substituted "subsection (c)(1)" for "subsection (d)(1)".

Subsec. (d)(2)(B). Pub. L. 98–369, §474(c)(6), substituted "subsection (c)(2)" for "subsection (d)(2).

Subsec. (e). Pub. L. 98–369, §474(c)(1), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

Subsec. (e)(5). Pub. L. 98–369, §474(c)(7), substituted "subsection (b)(1)" for "subsection (c)(1)" in provisions following subpar. (B).

Pub. L. 98–369, §423(c)(4), amended par. (5) generally, substituting subpars. (A) and (B) reading:

"(A) paragraph (2) or (4) of section 152(e) applies to any child with respect to any calendar year, and

"(B) such child is under the age of 15 or is physically or mentally incapable of caring for himself,"

for former provisions:

"(A) a child (as defined in section 151(e)(3)) who is under the age of 15 or who is physically or mentally incapable of caring for himself receives over half of his support during the calendar year from his parents who are divorced or legally separated under a decree of divorce or separate maintenance or who are separated under a written separation agreement, and

"(B) such child is in the custody of one or both of his parents for more than one-half of the calendar year."

and substituted in concluding text "(whichever is appropriate) with respect to the custodial parent (within the meaning of section 152(e)(1)), and shall not be treated as a qualifying individual with respect to the noncustodial parent" for ", as the case may be, with respect to that parent who has custody for a longer period during such calendar year than the other parent, and shall not be treated as being a qualifying individual with respect to such other parent."

Subsecs. (f), (g). Pub. L. 98–369, §474(c)(1), redesignated subsecs. (f) and (g) as (e) and (f), respectively.

1983—Subsec. (b)(2). Pub. L. 98–21 substituted "relating to credit for the elderly and the permanently and totally disabled" for "relating to credit for the elderly".

1981—Subsec. (a). Pub. L. 97–34, §124(a), designated existing provisions as par. (1), substituted "the applicable percentage" for "20 percent" in par. (1) as so designated, and added par. (2).

Subsec. (c)(2)(B). Pub. L. 97–34, §124(c), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (c)(2)(C), (D). Pub. L. 97–34, §124(d), added subpars. (C) and (D).

Subsec. (d)(1). Pub. L. 97–34, §124(b)(1)(A), substituted "$2,400" for "$2,000".

Subsec. (d)(2). Pub. L. 97–34, §124(b)(1)(B), substituted "$4,800" for "$4,000".

Subsec. (e)(2)(A). Pub. L. 97–34, §124(b)(2)(A), substituted "$200" for "$166".

Subsec. (e)(2)(B). Pub. L. 97–34, §124(b)(2)(B), substituted "$400" for "$333".

1978—Subsec. (f)(6). Pub. L. 95–600 substituted provision disallowing a credit for any amount paid by a taxpayer to an individual with respect to whom, for the taxable year, a deduction under section 151(e) is allowable either to the taxpayer or his spouse or who is a child of the taxpayer who has not attained the age of 19 at the close of the taxpayer year and defining "taxpayer year" for provision disallowing a credit for any amount paid by the taxpayer to an individual bearing a relationship described in section 152(a)(1) through (8), or a dependent described in section 152(a)(9), except that a credit was allowed for an amount paid by a taxpayer to an individual with respect to whom, for the taxable year of the taxpayer in which the service was performed, neither the taxpayer nor his spouse was entitled to a deduction under section 151(e), provided the service constituted employment within the meaning of section 3121(b).

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–135, title IV, §404(d), Dec. 21, 2005, 119 Stat. 2634, provided that: "The amendments made by this section [amending this section and sections 152 and 223 of this title] shall take effect as if included in the provisions of the Working Families Tax Relief Act of 2004 [Pub. L. 108–311] to which they relate."

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title IV, §418(c), Mar. 9, 2002, 116 Stat. 58, provided that: "The amendments made by this section [amending this section and sections 23 and 137 of this title] shall take effect as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 [Pub. L. 107–16] to which they relate."

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–16, title II, §204(c), June 7, 2001, 115 Stat. 50, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2002."

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, §1615(d), Aug. 20, 1996, 110 Stat. 1853, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and sections 151, 6109, 6213, and 6724 of this title] shall apply with respect to returns the due date for which (without regard to extensions) is on or after the 30th day after the date of the enactment of this Act [Aug. 20, 1996].

"(2) SPECIAL RULE FOR 1995 AND 1996.—In the case of returns for taxable years beginning in 1995 or 1996, a taxpayer shall not be required by the amendments made by this section to provide a taxpayer identification number for a child who is born after October 31, 1995, in the case of a taxable year beginning in 1995 or November 30, 1996, in the case of a taxable year beginning in 1996."

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–485, title VII, §703(d), Oct. 13, 1988, 102 Stat. 2427, provided that: "The amendments made by this section [amending this section and sections 129 and 6109 of this title] shall apply to taxable years beginning after December 31, 1988."

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title X, §10101(b), Dec. 22, 1987, 101 Stat. 1330–384, as amended by Pub. L. 100–647, title II, §2004(a), Nov. 10, 1988, 102 Stat. 3598, provided that:

"(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to expenses paid in taxable years beginning after December 31, 1987.

"(2) SPECIAL RULE FOR CAFETERIA PLANS.—For purposes of section 125 of the Internal Revenue Code of 1986, a plan shall not be treated as failing to be a cafeteria plan solely because under the plan a participant elected before January 1, 1988, to receive reimbursement under the plan for dependent care assistance for periods after December 31, 1987, and such assistance included reimbursement for expenses at a camp where the dependent stays overnight."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 423(c)(4) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1984, see section 423(d) of Pub. L. 98–369, set out as a note under section 2 of this title.

Pub. L. 98–369, title IV, §475(a), July 18, 1984, 98 Stat. 847, provided that: "The amendments made by this title [probably means subtitle F (§§471–475) of title IV of Pub. L. 98–369, which enacted sections 25, 38, and 39 of this title, amended this section and sections 12, 15, 22 to 24, 27 to 35, 37, 39 to 41, 44A, 44C to 44H, 45 to 48, 51, 52, 55, 56, 86, 87, 103, 108, 129, 168, 196, 213, 280C, 381, 383, 401, 404, 409, 441, 527, 642, 691, 874, 882, 901, 904, 936, 1016, 1033, 1351, 1366, 1374, 1375, 1441, 1442, 1451, 3507, 6013, 6096, 6201, 6211, 6213, 6362, 6401, 6411, 6420, 6421, 6427, 6501, 6511, 7701, 7871, 9502, and 9503 of this title, repealed sections 38, 40, 44, 44B, 50A, 50B, and 53 of this title, and enacted provisions set out as notes under sections 30, 33, 46, and 48 of this title] shall apply to taxable years beginning after December 31, 1983, and to carrybacks from such years."

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable to taxable years beginning after Dec. 31, 1983, except that if an individual's annuity starting date was deferred under section 105(d)(6) of this title as in effect on the day before Apr. 20, 1983, such deferral shall end on the first day of such individual's first taxable year beginning after Dec. 31, 1983, see section 122(d) of Pub. L. 98–21, set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title I, §124(f), Aug. 13, 1981, 95 Stat. 201, provided that:

"(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and enacting section 129 of this title] shall apply to taxable years beginning after December 31, 1981.

"(2) The amendments made by subsection (e)(2) [amending sections 3121, 3306, and 3401 of this title and section 409 of Title 42, The Public Health and Welfare] shall apply to remuneration paid after December 31, 1981."

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title I, §121(b), Nov. 6, 1978, 92 Stat. 2779, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1978."

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1975, see section 508 of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 3 of this title.

PROGRAM TO INCREASE PUBLIC AWARENESS

Pub. L. 101–508, title XI, §11114, Nov. 5, 1990, 104 Stat. 1388–414, provided that: "Not later than the first calendar year following the date of the enactment of this subtitle [Nov. 5, 1990], the Secretary of the Treasury, or the Secretary's delegate, shall establish a taxpayer awareness program to inform the taxpaying public of the availability of the credit for dependent care allowed under section 21 of the Internal Revenue Code of 1986 and the earned income credit and child health insurance under section 32 of such Code. Such public awareness program shall be designed to assure that individuals who may be eligible are informed of the availability of such credit and filing procedures. The Secretary shall use appropriate means of communication to carry out the provisions of this section."

§22. Credit for the elderly and the permanently and totally disabled

(a) General rule

In the case of a qualified individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 15 percent of such individual's section 22 amount for such taxable year.

(b) Qualified individual

For purposes of this section, the term "qualified individual" means any individual—

(1) who has attained age 65 before the close of the taxable year, or

(2) who retired on disability before the close of the taxable year and who, when he retired, was permanently and totally disabled.

(c) Section 22 amount

For purposes of subsection (a)—

(1) In general

An individual's section 22 amount for the taxable year shall be the applicable initial amount determined under paragraph (2), reduced as provided in paragraph (3) and in subsection (d).

(2) Initial amount

(A) In general

Except as provided in subparagraph (B), the initial amount shall be—

(i) $5,000 in the case of a single individual, or a joint return where only one spouse is a qualified individual,

(ii) $7,500 in the case of a joint return where both spouses are qualified individuals, or

(iii) $3,750 in the case of a married individual filing a separate return.

(B) Limitation in case of individuals who have not attained age 65

(i) In general

In the case of a qualified individual who has not attained age 65 before the close of the taxable year, except as provided in clause (ii), the initial amount shall not exceed the disability income for the taxable year.

(ii) Special rules in case of joint return

In the case of a joint return where both spouses are qualified individuals and at least one spouse has not attained age 65 before the close of the taxable year—

(I) if both spouses have not attained age 65 before the close of the taxable year, the initial amount shall not exceed the sum of such spouses' disability income, or

(II) if one spouse has attained age 65 before the close of the taxable year, the initial amount shall not exceed the sum of $5,000 plus the disability income for the taxable year of the spouse who has not attained age 65 before the close of the taxable year.

(iii) Disability income

For purposes of this subparagraph, the term "disability income" means the aggregate amount includable in the gross income of the individual for the taxable year under section 72 or 105(a) to the extent such amount constitutes wages (or payments in lieu of wages) for the period during which the individual is absent from work on account of permanent and total disability.

(3) Reduction

(A) In general

The reduction under this paragraph is an amount equal to the sum of the amounts received by the individual (or, in the case of a joint return, by either spouse) as a pension or annuity or as a disability benefit—

(i) which is excluded from gross income and payable under—

(I) title II of the Social Security Act,

(II) the Railroad Retirement Act of 1974, or

(III) a law administered by the Veterans' Administration, or

(ii) which is excluded from gross income under any provision of law not contained in this title.

No reduction shall be made under clause (i)(III) for any amount described in section 104(a)(4).

(B) Treatment of certain workmen's compensation benefits

For purposes of subparagraph (A), any amount treated as a social security benefit under section 86(d)(3) shall be treated as a disability benefit received under title II of the Social Security Act.

(d) Adjusted gross income limitation

If the adjusted gross income of the taxpayer exceeds—

(1) $7,500 in the case of a single individual,

(2) $10,000 in the case of a joint return, or

(3) $5,000 in the case of a married individual filing a separate return,

the section 22 amount shall be reduced by one-half of the excess of the adjusted gross income over $7,500, $10,000, or $5,000, as the case may be.

(e) Definitions and special rules

For purposes of this section—

(1) Married couple must file joint return

Except in the case of a husband and wife who live apart at all times during the taxable year, if the taxpayer is married at the close of the taxable year, the credit provided by this section shall be allowed only if the taxpayer and his spouse file a joint return for the taxable year.

(2) Marital status

Marital status shall be determined under section 7703.

(3) Permanent and total disability defined

An individual is permanently and totally disabled if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. An individual shall not be considered to be permanently and totally disabled unless he furnishes proof of the existence thereof in such form and manner, and at such times, as the Secretary may require.

(f) Nonresident alien ineligible for credit

No credit shall be allowed under this section to any nonresident alien.

(Aug. 16, 1954, ch. 736, 68A Stat. 15, §37; Aug. 9, 1955, ch. 659, §1, 69 Stat. 591; Jan. 28, 1956, ch. 17, §1, 70 Stat. 8; Pub. L. 87–792, §7(a), Oct. 10, 1962, 76 Stat. 828; Pub. L. 87–876, §1, Oct. 24, 1962, 76 Stat. 1199; Pub. L. 88–272, title I, §113(a), title II, §§201(d)(3), 202(a), Feb. 26, 1964, 78 Stat. 24, 32, 33; Pub. L. 93–406, title II, §2002(g)(1), Sept. 2, 1974, 88 Stat. 968; Pub. L. 94–455, title V, §503(a), title XIX, §1901(c)(1), Oct. 4, 1976, 90 Stat. 1559, 1803; Pub. L. 95–600, title VII, §§701(a)(1)–(3), 703(j)(11), Nov. 6, 1978, 92 Stat. 2897, 2942; Pub. L. 96–222, title I, §107(a)(1)(E)(i), Apr. 1, 1980, 94 Stat. 222; Pub. L. 97–34, title I, §111(b)(4), Aug. 13, 1981, 95 Stat. 194; Pub. L. 98–21, title I, §122(a), Apr. 20, 1983, 97 Stat. 85; renumbered §22 and amended Pub. L. 98–369, div. A, title IV, §§471(c), 474(d), July 18, 1984, 98 Stat. 826, 830; Pub. L. 99–514, title XIII, §1301(j)(8), Oct. 22, 1986, 100 Stat. 2658.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (c)(3)(A)(i)(I), (B), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Railroad Retirement Act of 1974, referred to in subsec. (c)(3)(A)(i)(II), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, §101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§231 et seq.) of chapter 9 of Title 45, Railroads. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

AMENDMENTS

1986—Subsec. (e)(2). Pub. L. 99–514 substituted "section 7703" for "section 143".

1984—Pub. L. 98–369, §471(c), renumbered section 37 of this title as this section.

Subsec. (a). Pub. L. 98–369, §474(d)(1), substituted "section 22 amount" for "section 37 amount".

Subsec. (c). Pub. L. 98–369, §474(d)(2), substituted "Section 22 amount" for "Section 37 amount" in heading.

Subsec. (c)(1). Pub. L. 98–369, §474(d)(1), substituted "section 22 amount" for "section 37 amount".

Subsec. (d). Pub. L. 98–369, §474(d)(3), amended subsec. (d) generally, striking out heading "Limitations" and designation "(1)" before "Adjusted gross income limitation" thereby making existing par. (1) the entire subsec. (d), redesignating existing subpars. (A), (B), and (C) as pars. (1), (2), and (3), respectively, and striking out provisions, formerly comprising par. (2), which had limited the amount of the credit allowed by this section for the taxable year to the amount of the tax imposed by this chapter for such taxable year.

1983—Pub. L. 98–21 inserted reference to permanently and totally disabled in section catchline.

Subsec. (a). Pub. L. 98–21 amended subsec. (a) generally, substituting reference to a qualified individual for reference to an individual who has attained the age of 65 before the close of the taxable year.

Subsec. (b). Pub. L. 98–21 in amending section generally added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 98–21 in amending section generally, redesignated former subsec. (b) as (c) and, in (c) as so redesignated, added par. (2) and struck out former (2), which had provided that the initial amount was $2,500 in the case of a single individual, $2,500 in the case of a joint return where only one spouse was eligible for the credit under subsection (a), $3,750 in the case of a joint return where both spouses were eligible for the credit under subsection (a), or $1,875 in the case of a married individual filing a separate return, redesignated existing provisions as par. (3)(A), inserted "benefit" after "disability" therein, struck out former subpars. (A) to (C), which had specified sources of amounts received under title II of the Social Security Act, under the Railroad Retirement Act of 1935 or 1937, or otherwise excluded from gross income, added cls. (i) and (ii), substituted provision that no reduction would be made under cl. (i)(III) for any amount described in section 104(a)(4) for provision that no reduction would be made under former par. (3) for any amount excluded from gross income under section 72 (relating to annuities), 101 (relating to life insurance proceeds), 104 (relating to compensation for injuries or sickness), 105 (relating to amounts received under accident and health plans), 120 (relating to amounts received under qualified group legal services plans), 402 (relating to taxability of beneficiary of employees' trust), 403 (relating to taxation of employee annuities), or 405 (relating to qualified bond purchase plans), and added subpar. (B). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 98–21 in amending section generally redesignated former subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 98–21 in amending section generally, redesignated former subsec. (d) as (e) and struck out provision that "joint return" meant the joint return of a husband and wife made under section 6013 and inserted provisions defining permanent and total disability. Former subsec. (e), which provided for an election of prior law with respect to public retirement system income, was struck out.

Subsec. (f). Pub. L. 98–21 reenacted subsec. (f) without change.

1981—Subsec. (e)(9)(B). Pub. L. 97–34 substituted "section 911(d)(2)" for "section 911(b)".

1978—Subsec. (e)(2). Pub. L. 95–600, §701(a)(1), inserted "(and whose gross income includes income described in paragraph (4)(B))" after "who has not attained age 65 before the close of the taxable year".

Subsec. (e)(4)(B). Pub. L. 95–600, §701(a)(2), (3)(B), as amended by Pub. L. 96–222, §107(a)(1)(E)(i), inserted "and who performed the services giving rise to the pension or annuity (or is the spouse of the individual who performed the services)" after "before the close of the taxable year" and substituted reference to paragraph (9)(A) for reference to paragraph (8)(A).

Subsec. (e)(5)(B). Pub. L. 95–600, §701(a)(3)(C), as amended by Pub. L. 96–222, §107(a)(1)(E)(i), substituted reference to paragraph (9)(A) for reference to paragraph (8)(A).

Subsec. (e)(8), (9). Pub. L. 95–600, §701(a)(3)(A), as amended by Pub. L. 96–222, §107(a)(1)(E)(i), added par. (8) and redesignated former par. (8) as (9).

1976—Pub. L. 94–455, §503(a), among other changes, substituted "Credits for the elderly" for "Retirement income" in section catchline and in text substituted provisions permitting taxpayers who have all types of income to be eligible for the tax credit for provisions permitting taxpayers who have only retirement income to be eligible for the tax credit, eliminated provisions requiring taxpayers to earn $600 for the previous ten years for tax credit eligibility and provisions relating variations in treatment of married couples, and inserted provisions broadening coverage of the tax credit relief to low and middle income taxpayers.

Pub. L. 94–455, §1901(c)(1), purported to amend subsec. (f) of this section by striking out "a Territory". The amendment could not be executed in view of the prior general amendment of this section by section 503(a) of Pub. L. 94–455. Section 1901(c)(1) was repealed by section 703(j)(11) of Pub. L. 95–600.

1974—Subsec. (c)(1)(E), (F). Pub. L. 93–406 inserted reference in subpar. (E) to retirement bonds described in section 409 and added subpar. (F).

1964—Subsec. (a). Pub. L. 88–272, §§113(a), 201(d)(3), substituted "an amount equal to 17 percent, in the

case of a taxable year beginning in 1964, or 15 percent, in the case of a taxable year beginning after December 31, 1964, of the amount received by such individual as retirement income (as defined in subsection (c) and as limited by subsection (d));" for "an amount equal to the amount received by such individual as retirement income (as defined in subsection (c) and as limited by subsection (d)), multiplied by the rate provided in section 1 for the first $2,000 of taxable income;", and struck out "section 34 (relating to credit for dividends received by individuals)", before "and section 35".

Subsecs. (i), (j). Pub. L. 88–272, §202(a), added subsec. (i) and redesignated former subsec. (i) as (j).

1962—Subsec. (c)(1). Pub. L. 87–792 inserted provisions in subpar. (A) requiring inclusion, in the case of an individual who is, or has been, an employee within the meaning of section 401(c)(1), distributions by a trust described in section 401(a) which is exempt from tax under section 501(a), and added subpar. (E).

Subsec. (d). Pub. L. 87–876 increased the limit on retirement income from $1,200 to $1,524, lowered the age requirement in par. (2)(A) from 65 to 62, and substituted provisions in par. (2)(B) which reduce the amount of retirement income for individuals who reach age 62, by one-half the amount of earned income in excess of $1,200 but not in excess of $1,700, and by the amount received over $1,700, for provisions which reduced such income by the amount earned over $1,200 by persons having reached age 65, and which defined income as in subsec. (g) of this section.

1956—Subsec. (d)(2). Act Jan. 28, 1956, reduced from 75 to 72 the age at which there will be no limitation on earned income and increased from $900 to $1,200 the amount that an individual over 65 can earn without reducing the $1,200 on which the retirement credit is computed.

1955—Subsec. (f). Act Aug. 9, 1955, extended the retirement income tax credit to members of the Armed Forces.

EFFECTIVE DATE OF 1986 AMENDMENT

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

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(d) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 98–21, title I, §122(d), Apr. 20, 1983, 97 Stat. 87, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending sections 37 [now 22], 41 [now 24], 44A [now 21], 46, 53, 85, 105, 128, 403, 415, 904, and 7871 of this title] shall apply to taxable years beginning after December 31, 1983.

"(2) TRANSITIONAL RULE.—If an individual's annuity starting date was deferred under section 105(d)(6) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect on the day before the date of the enactment of this section [Apr. 20, 1983]), such deferral shall end on the first day of such individual's first taxable year beginning after December 31, 1983."

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable with respect to taxable years beginning after Dec. 31, 1981, see section 115 of Pub. L. 97–34, set out as a note under section 911 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title VII, §701(a)(4), Nov. 6, 1978, 92 Stat. 2898, provided that:

"(A) The amendments made by paragraphs (1) and (2) [amending this section] shall apply to taxable years beginning after December 31, 1975.

"(B) The amendments made by paragraph (3) [amending this section] shall apply to taxable years beginning after December 31, 1977."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1975, see section 508 of Pub. L. 94–455, set out as a note under section 3 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–406 effective Jan. 1, 1974, see section 2002(i)(2) of Pub. L. 93–406, set out as an Effective Date note under section 4973 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by section 113(a) of Pub. L. 88–272, except for purposes of section 21 [now 15] of this title, effective with respect to taxable years beginning after Dec. 31, 1963, see section 131 of Pub. L. 88–272, set out as a note under section 1 of this title.

Pub. L. 88–272, title II, §201(e), Feb. 26, 1964, 78 Stat. 32, provided that: "The amendments made by subsection (a) [amending section 34 of this title] shall apply with respect to taxable years ending after December 31, 1963. The amendment made by subsection (b) [repealing section 34 of this title] shall apply with respect to taxable years ending after December 31, 1964. The amendment made by subsection (c) [amending section 116 of this title] shall apply with respect to taxable years beginning after December 31, 1963. The amendments made by subsection (d) [amending sections 35, 37 [now 22], 46, 116, 584, 642, 702, 854, 857, 871, 1375, and 6014 of this title] shall apply with respect to dividends received after December 31, 1964, in taxable years ending after such date".

Pub. L. 88–272, title II, §202(b), Feb. 26, 1964, 78 Stat. 33, provided that: "The amendments made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1963."

EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87–876, §2, Oct. 24, 1962, 76 Stat. 1199, provided that: "The amendment made by the first section of this Act [amending this section] shall apply only to taxable years ending after the date of the enactment of this Act [Oct. 24, 1962]."

Pub. L. 87–792, §8, Oct. 10, 1962, 76 Stat. 831, provided that: "The amendments made by this Act [enacting sections 405 and 6047 of this title and amending sections 37 [now 22], 62, 72, 101, 104, 105, 172, 401 to 404, 503, 805, 1361, 2039, 2517, 3306, 3401 and 7207 of this title] shall apply to taxable years beginning after December 31, 1962."

EFFECTIVE DATE OF 1956 AMENDMENT

Act Jan. 28, 1956, ch. 18, §2, 70 Stat. 9, provided that: "The amendment made by the first section of this Act [amending this section] shall apply only with respect to taxable years beginning after December 31, 1955."

EFFECTIVE DATE OF 1955 AMENDMENT

Act Aug. 9, 1955, ch. 659, §2, 69 Stat. 591, provided that: "The amendment made by this Act [amending this section] shall be applicable to taxable years beginning after December 31, 1954."

DETERMINATION OF RETIREMENT INCOME CREDIT UNDER PROVISIONS AS THEY EXISTED PRIOR TO AMENDMENT BY PUB. L. 94–455 ELECTION

Pub. L. 95–30, title IV, §403, May 23, 1977, 91 Stat. 155, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "A taxpayer may elect (at such time and in such manner as the Secretary of the Treasury or his delegate shall prescribe) to determine the amount of his credit under section 37 [now 22] of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for his first taxable year beginning in 1976 under the provisions of such section as they existed before the amendment made by section 503 of the Tax Reform Act of 1976 [Pub. L. 94–455]."

§23. Adoption expenses

(a) Allowance of credit

(1) In general

In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter the amount of the qualified adoption expenses paid or incurred by the taxpayer.

(2) Year credit allowed

The credit under paragraph (1) with respect to any expense shall be allowed—

(A) in the case of any expense paid or incurred before the taxable year in which such adoption becomes final, for the taxable year following the taxable year during which such expense is paid or incurred, and

(B) in the case of an expense paid or incurred during or after the taxable year in which such adoption becomes final, for the taxable year in which such expense is paid or incurred.

(3) $10,000 credit for adoption of child with special needs regardless of expenses

In the case of an adoption of a child with special needs which becomes final during a taxable year, the taxpayer shall be treated as having paid during such year qualified adoption expenses with respect to such adoption in an amount equal to the excess (if any) of $10,000 over the aggregate qualified adoption expenses actually paid or incurred by the taxpayer with respect to such adoption during such taxable year and all prior taxable years.

(b) Limitations

(1) Dollar limitation

The aggregate amount of qualified adoption expenses which may be taken into account under subsection (a) for all taxable years with respect to the adoption of a child by the taxpayer shall not exceed $10,000.

(2) Income limitation

(A) In general

The amount allowable as a credit under subsection (a) for any taxable year (determined without regard to subsection (c)) shall be reduced (but not below zero) by an amount which bears the same ratio to the amount so allowable (determined without regard to this paragraph but with regard to paragraph (1)) as—

(i) the amount (if any) by which the taxpayer's adjusted gross income exceeds $150,000, bears to

(ii) $40,000.

(B) Determination of adjusted gross income

For purposes of subparagraph (A), adjusted gross income shall be determined without regard to sections 911, 931, and 933.

(3) Denial of double benefit

(A) In general

No credit shall be allowed under subsection (a) for any expense for which a deduction or credit is allowed under any other provision of this chapter.

(B) Grants

No credit shall be allowed under subsection (a) for any expense to the extent that funds for such expense are received under any Federal, State, or local program.

(c) Carryforwards of unused credit

(1) In general

If the credit allowable under subsection (a) for any taxable year exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section and sections 25D and 1400C), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year.

(2) Limitation

No credit may be carried forward under this subsection to any taxable year following the fifth taxable year after the taxable year in which the credit arose. For purposes of the preceding sentence, credits shall be treated as used on a first-in first-out basis.

(d) Definitions

For purposes of this section—

(1) Qualified adoption expenses

The term "qualified adoption expenses" means reasonable and necessary adoption fees, court costs, attorney fees, and other expenses—

(A) which are directly related to, and the principal purpose of which is for, the legal adoption of an eligible child by the taxpayer,

(B) which are not incurred in violation of State or Federal law or in carrying out any surrogate parenting arrangement,

(C) which are not expenses in connection with the adoption by an individual of a child who is the child of such individual's spouse, and

(D) which are not reimbursed under an employer program or otherwise.

(2) Eligible child

The term "eligible child" means any individual who—

(A) has not attained age 18, or

(B) is physically or mentally incapable of caring for himself.

(3) Child with special needs

The term "child with special needs" means any child if—

(A) a State has determined that the child cannot or should not be returned to the home of his parents,

(B) such State has determined that there exists with respect to the child a specific factor or condition (such as his ethnic background, age, or membership in a minority or sibling group, or the presence of factors such as medical conditions or physical, mental, or emotional handicaps) because of which it is reasonable to conclude that such child cannot be placed with adoptive parents without providing adoption assistance, and

(C) such child is a citizen or resident of the United States (as defined in section 217(h)(3)).

(e) Special rules for foreign adoptions

In the case of an adoption of a child who is not a citizen or resident of the United States (as defined in section 217(h)(3))—

(1) subsection (a) shall not apply to any qualified adoption expense with respect to such adoption unless such adoption becomes final, and

(2) any such expense which is paid or incurred before the taxable year in which such adoption becomes final shall be taken into account under this section as if such expense were paid or incurred during such year.

(f) Filing requirements

(1) Married couples must file joint returns

Rules similar to the rules of paragraphs (2), (3), and (4) of section 21(e) shall apply for purposes of this section.

(2) Taxpayer must include TIN

(A) In general

No credit shall be allowed under this section with respect to any eligible child unless the taxpayer includes (if known) the name, age, and TIN of such child on the return of tax for the taxable year.

(B) Other methods

The Secretary may, in lieu of the information referred to in subparagraph (A), require other information meeting the purposes of subparagraph (A), including identification of an agent assisting with the adoption.

(g) Basis adjustments

For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

(h) Adjustments for inflation

In the case of a taxable year beginning after December 31, 2002, each of the dollar amounts in subsection (a)(3) and paragraphs (1) and (2)(A)(i) of subsection (b) shall be increased by an amount equal to—

(1) such dollar amount, multiplied by

(2) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting "calendar year 2001" for "calendar year 1992" in subparagraph (B) thereof.

If any amount as increased under the preceding sentence is not a multiple of $10, such amount shall be rounded to the nearest multiple of $10.

(i) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out this section and section 137, including regulations which treat unmarried individuals who pay or incur qualified adoption expenses with respect to the same child as 1 taxpayer for purposes of applying the dollar amounts in subsections (a)(3) and (b)(1) of this section and in section 137(b)(1).

(Added Pub. L. 104–188, title I, §1807(a), Aug. 20, 1996, 110 Stat. 1899, §23; amended Pub. L. 105–34, title XVI, §1601(h)(2)(A), (B), Aug. 5, 1997, 111 Stat. 1092; Pub. L. 105–206, title VI, §§6008(d)(6), 6018(f)(1), July 22, 1998, 112 Stat. 812, 823; Pub. L. 107–16, title II, §§201(b)(2)(E), 202(a)(1), (b)(1)(A), (2)(A), (c), (d)(1), (e)(1), (f)(1), (2)(A), June 7, 2001, 115 Stat. 46–49; Pub. L. 107–147, title IV, §§411(c)(1)(A)–(E), 418(a)(1), Mar. 9, 2002, 116 Stat. 45, 57; Pub. L. 109–58, title XIII, §1335(b)(1), Aug. 8, 2005, 119 Stat. 1036; Pub. L. 109–135, title IV, §402(i)(3)(A), (4), Dec. 21, 2005, 119 Stat. 2612, 2615; Pub. L. 110–343, div. B, title I, §106(e)(2)(A), Oct. 3, 2008, 122 Stat. 3817; renumbered §36C, amended, and renumbered §23, Pub. L. 111–148, title X, §10909(a)(1), (b)(1), (2)(I), (c), Mar. 23, 2010, 124 Stat. 1021, 1022, 1023; Pub. L. 111–312, title I, §101(b)(1), Dec. 17, 2010, 124 Stat. 3298; Pub. L. 112–240, title I, §104(c)(2)(A), Jan. 2, 2013, 126 Stat. 2321.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

PRIOR PROVISIONS

A prior section 23, added Pub. L. 95–618, title I, §101(a), Nov. 9, 1978, 92 Stat. 3175, §44C; amended Pub. L. 96–223, title II, §§201, 202(a)–(d), 203(a), Apr. 2, 1980, 94 Stat. 256, 258; renumbered §23 and amended Pub. L. 98–369, div. A, title IV, §§471(c), 474(e), title VI, §612(e)(2), July 18, 1984, 98 Stat. 826, 831, 912, related to residential energy credit, prior to repeal by Pub. L. 101–508, title XI, §11801(a)(1), Nov. 5, 1990, 104 Stat. 1388–520.

AMENDMENTS

2013—Subsec. (b)(4). Pub. L. 112–240, §104(c)(2)(A)(i), struck out par. (4). Prior to amendment, text read as follows: "In the case of a taxable year to which section 26(a)(2) does not apply, the credit allowed under subsection (a) for any taxable year shall not exceed the excess of—

"(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

"(B) the sum of the credits allowable under this subpart (other than this section and section 25D) and section 27 for the taxable year."

Subsec. (c). Pub. L. 112–240, §104(c)(2)(A)(ii), (iii), added par. (1), redesignated par. (3) as (2), and struck out former pars. (1) and (2) which related to rule for years in which all personal credits allowed against regular and alternative minimum tax and rule for other years, respectively.

2010—Subsec. (a)(3). Pub. L. 111–148, §10909(a)(1)(B), (c), as amended by Pub. L. 111–312, temporarily substituted "$13,170" for "$10,000" in heading and text. See Effective and Termination Dates of 2010 Amendment note below.

Subsec. (b)(1). Pub. L. 111–148, §10909(a)(1)(A), (c), as amended by Pub. L. 111–312, temporarily substituted "$13,170" for "$10,000". See Effective and Termination Dates of 2010 Amendment note below.

Subsec. (b)(4). Pub. L. 111–148, §10909(b)(2)(I)(i), (c), as amended by Pub. L. 111–312, temporarily struck out par. (4). Text read as follows: "In the case of a taxable year to which section 26(a)(2) does not apply, the credit allowed under subsection (a) for any taxable year shall not exceed the excess of—

"(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

"(B) the sum of the credits allowable under this subpart (other than this section and section 25D) and section 27 for the taxable year."

See Effective and Termination Dates of 2010 Amendment note below.

Subsec. (c). Pub. L. 111–148, §10909(b)(2)(I)(ii), (c), as amended by Pub. L. 111–312, temporarily struck out subsec. (c) which related to carryforwards of unused credit. See Effective and Termination Dates of 2010 Amendment note below.

Subsec. (h). Pub. L. 111–148, §10909(a)(1)(C), (c), as amended by Pub. L. 111–312, temporarily amended subsec. (h) generally. Prior to amendment, subsec. (h) related to adjustments for inflation. See Effective and Termination Dates of 2010 Amendment note below.

2008—Subsec. (b)(4)(B). Pub. L. 110–343 inserted "and section 25D" after "this section".

2005—Subsec. (b)(4). Pub. L. 109–135, §402(i)(3)(A)(i), substituted "In the case of a taxable year to which section 26(a)(2) does not apply, the credit" for "The credit" in introductory provisions.

Subsec. (c). Pub. L. 109–135, §402(i)(3)(A)(ii), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "If the credit allowable under subsection (a) for any taxable year exceeds the limitation imposed by subsection (b)(4) for such taxable year, such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year. No credit may be carried forward under this subsection to any taxable year following the fifth taxable year after the taxable year in which the credit arose. For purposes of the preceding sentence, credits shall be treated as used on a first-in first-out basis."

Pub. L. 109–58, §1335(b)(1), which directed amendment of subsec. (c) by substituting "this section, section 25D, and section 1400C" for "this section and section 1400C", was repealed by Pub. L. 109–135, §402(i)(4). See Effective and Termination Dates of 2005 Amendment notes below.

2002—Subsec. (a)(1). Pub. L. 107–147, §411(c)(1)(A), reenacted heading without change and amended text of par. (1) generally. Prior to amendment, text read as follows: "In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter—

"(A) in the case of an adoption of a child other than a child with special needs, the amount of the qualified adoption expenses paid or incurred by the taxpayer, and

"(B) in the case of an adoption of a child with special needs, $10,000."

Subsec. (a)(2). Pub. L. 107–147, §411(c)(1)(C), struck out concluding provisions which read as follows: "In the case of the adoption of a child with special needs, the credit allowed under paragraph (1) shall be allowed for the taxable year in which the adoption becomes final."

Subsec. (a)(3). Pub. L. 107–147, §411(c)(1)(B), added par. (3).

Subsec. (b)(1). Pub. L. 107–147, §411(c)(1)(D), substituted "subsection (a)" for "subsection (a)(1)(A)".

Subsec. (h). Pub. L. 107–147, §418(a)(1), substituted "subsection (a)(3)" for "subsection (a)(1)(B)" in introductory provisions and inserted concluding provisions.

Subsec. (i). Pub. L. 107–147, §411(c)(1)(E), substituted "the dollar amounts in subsections (a)(3) and (b)(1)" for "the dollar limitation in subsection (b)(1)".

2001—Subsec. (a)(1). Pub. L. 107–16, §202(a)(1), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: "In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter the amount of the qualified adoption expenses paid or incurred by the taxpayer."

Subsec. (a)(2). Pub. L. 107–16, §202(c), inserted concluding provisions.

Subsec. (b)(1). Pub. L. 107–16, §202(b)(1)(A), substituted "subsection (a)(1)(A)" for "subsection (a)" and "$10,000" for "$5,000" and struck out "($6,000, in the case of a child with special needs)" before period at end.

Subsec. (b)(2)(A)(i). Pub. L. 107–16, §202(b)(2)(A), substituted "$150,000" for "$75,000".

Subsec. (b)(4). Pub. L. 107–16, §202(f)(1), added par. (4).

Subsec. (c). Pub. L. 107–16, §202(f)(2)(A), substituted "subsection (b)(4)" for "section 26(a)" and struck out "reduced by the sum of the credits allowable under this subpart (other than this section and sections 24 and 1400C)" before ", such excess".

Pub. L. 107–16, §201(b)(2)(E), substituted "and sections 24 and 1400C" for "and section 1400C".

Subsec. (d)(2). Pub. L. 107–16, §202(d)(1), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: "The term 'eligible child' means any individual—

"(A) who—

"(i) has not attained age 18, or

"(ii) is physically or mentally incapable of caring for himself, and

"(B) in the case of qualified adoption expenses paid or incurred after December 31, 2001, who is a child with special needs."

Subsecs. (h), (i). Pub. L. 107–16, §202(e)(1), added subsec. (h) and redesignated former subsec. (h) as (i).

1998—Subsec. (b)(2)(A). Pub. L. 105–206, §6018(f)(1), inserted "(determined without regard to subsection (c))" after "for any taxable year" in introductory provisions.

Subsec. (c). Pub. L. 105–206, §6008(d)(6), inserted "and section 1400C" after "other than this section".

1997—Subsec. (a)(2). Pub. L. 105–34, §1601(h)(2)(A), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: "The credit under paragraph (1) with respect to any expense shall be allowed—

"(A) for the taxable year following the taxable year during which such expense is paid or incurred, or

"(B) in the case of an expense which is paid or incurred during the taxable year in which the adoption becomes final, for such taxable year."

Subsec. (b)(2)(B). Pub. L. 105–34, §1601(h)(2)(B), substituted "determined without regard to sections 911, 931, and 933." for "determined—

"(i) without regard to sections 911, 931, and 933, and

"(ii) after the application of sections 86, 135, 137, 219, and 469."

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title I, §104(d), Jan. 2, 2013, 126 Stat. 2323, provided that: "The amendments made by this section [amending this section and sections 24, 25, 25A, 25B, 25D, 26, 30, 30B, 30D, 55, 904, and 1400C of this title] shall apply to taxable years beginning after December 31, 2011."

EFFECTIVE AND TERMINATION DATES OF 2010 AMENDMENT

Amendment by Pub. L. 111–148 terminated applicable to taxable years beginning after Dec. 31, 2011, and section is amended to read as if such amendment had never been enacted, see section 10909(c) of Pub. L. 111–148, set out as a note under section 1 of this title.

Amendment by Pub. L. 111–148 applicable to taxable years beginning after Dec. 31, 2009, see section 10909(d) of Pub. L. 111–148, set out as a note under section 1 of this title.

EFFECTIVE AND TERMINATION DATES OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title I, §106(f), Oct. 3, 2008, 122 Stat. 3817, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 24, 25B, 25D, 26, and 45 of this title] shall apply to taxable years beginning after December 31, 2007.

"(2) SOLAR ELECTRIC PROPERTY LIMITATION.—The amendments made by subsection (b) [amending section 25D of this title] shall apply to taxable years beginning after December 31, 2008.

"(3) APPLICATION OF EGTRRA SUNSET.—The amendments made by subparagraphs (A) and (B) of subsection (e)(2) [amending this section and section 24 of this title] shall be subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 [Pub. L. 107–16, §901, which was repealed by Pub. L. 112–240, title I, §101(a)(1), Jan. 2, 2013, 126 Stat. 2315, was formerly set out as an Effective and Termination Dates of 2001 Amendment note under section 1 of this title] in the same manner as the provisions of such Act to which such amendments relate."

EFFECTIVE AND TERMINATION DATES OF 2005 AMENDMENT

Pub. L. 109–135, title IV, §402(i)(3)(H), Dec. 21, 2005, 119 Stat. 2615, provided that: "The amendments made by this paragraph [amending this section and sections 24, 25, 25B, 25D, 904, and 1400C of this title] (and each part thereof) shall be subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 [Pub. L. 107–16, §901, which was repealed by Pub. L. 112–240, title I, §101(a)(1), Jan. 2, 2013, 126 Stat. 2315, was formerly set out as an Effective and Termination Dates of 2001 Amendment note under section 1 of this title] in the same manner as the provisions of such Act to which such amendment (or part thereof) relates."

Pub. L. 109–135, title IV, §402(i)(4), Dec. 21, 2005, 119 Stat. 2615, struck out Pub. L. 109–58, §1335(b)(1)–(3), and provided in part that: "The Internal Revenue Code of 1986 shall be applied and administered as if the amendments made [by] such paragraphs [amending this section and sections 25 and 1400C of this title] had never been enacted."

Pub. L. 109–135, title IV, §402(m), Dec. 21, 2005, 119 Stat. 2615, provided that:

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section

[see Tables for classification] shall take effect as if included in the provisions of the Energy Policy Act of 2005 [Pub. L. 109–58] to which they relate.

"(2) REPEAL OF PUBLIC UTILITY HOLDING COMPANY ACT OF 1935.—The amendments made by subsection (a) [amending sections 121, 246, 247, 1223, 1245, and 1250 of this title and repealing sections 1081 to 1083 of this title] shall not apply with respect to any transaction ordered in compliance with the Public Utility Holding Company Act of 1935 [15 U.S.C. 79 et seq.] before its repeal.

"(3) COORDINATION OF PERSONAL CREDITS.—The amendments made by subsection (i)(3) [amending this section and sections 24, 25, 25B, 25D, 904, and 1400C of this title] shall apply to taxable years beginning after December 31, 2005."

Pub. L. 109–58, title XIII, §1335(c), Aug. 8, 2005, 119 Stat. 1036, provided that: "The amendments made by this section [enacting section 25D of this title and amending this section and sections 25, 1016, and 1400C of this title] shall apply to property placed in service after December 31, 2005, in taxable years ending after such date."

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title IV, §411(c)(3), Mar. 9, 2002, 116 Stat. 46, provided that: "The amendments made by this subsection [amending this section and section 137 of this title] shall apply to taxable years beginning after December 31, 2002; except that the amendments made by paragraphs (1)(C), (1)(D) [amending this section], and (2)(B) [amending section 137 of this title] shall apply to taxable years beginning after December 31, 2001."

Amendment by section 418(a)(1) of Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 418(c) of Pub. L. 107–147, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 108–311, title III, §312(b)(2), Oct. 4, 2004, 118 Stat. 1181, provided that: "The amendments made by sections 201(b), 202(f), and 618(b) of the Economic Growth and Tax Relief Reconciliation Act of 2001 [Pub. L. 107–16, amending this section and sections 24, 25, 25B, 26, 904, and 1400C of this title] shall not apply to taxable years beginning during 2004 or 2005."

Pub. L. 107–147, title VI, §601(b)(2), Mar. 9, 2002, 116 Stat. 59, provided that: "The amendments made by sections 201(b), 202(f), and 618(b) of the Economic Growth and Tax Relief Reconciliation Act of 2001 [Pub. L. 107–16, amending this section and sections 24, 25, 25B, 26, 904, and 1400C of this title] shall not apply to taxable years beginning during 2002 and 2003."

Amendment by section 201(b)(2)(E) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 201(e)(2) of Pub. L. 107–16, set out as a note under section 24 of this title.

Pub. L. 107–16, title II, §202(g), June 7, 2001, 115 Stat. 49, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 24, 26, 137, 904, and 1400C of this title] shall apply to taxable years beginning after December 31, 2001.

"(2) SUBSECTION (a).—The amendments made by subsection (a) [amending this section and section 137 of this title] shall apply to taxable years beginning after December 31, 2002."

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–206, title VI, §6018(h), July 22, 1998, 112 Stat. 823, provided that: "The amendments made by this section [amending this section and sections 219, 408, 414, and 679 of this title and amending provisions set out as notes under sections 167 and 4091 of this title] shall take effect as if included in the provisions of the Small Business Job Protection Act of 1996 [Pub. L. 104–188] to which they relate."

Amendment by section 6008(d)(6) of Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XVI, §1601(j), Aug. 5, 1997, 111 Stat. 1093, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section, sections 30A, 52, 55, 137, 401, 403, 404, 408, 414, 512, 529, 593, 641, 679, 860L, 956, 1361, 1374, 4001, 4041, 4092, 4261, 6039D, 6048, 6050R, 6501, 6693, 7701, and 9503 of this title, section 1055 of Title 29, Labor, and provisions set out as notes under sections 529 and 4091 of this title] shall take effect as if included in the provisions of the Small Business Job Protection Act of 1996 [Pub. L. 104–188] to which they relate.

"(2) CERTAIN ADMINISTRATIVE REQUIREMENTS WITH RESPECT TO CERTAIN PENSION PLANS.—The amendment made by subsection (d)(2)(D) [amending section 401 of this title] shall apply to calendar years beginning after the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE

Pub. L. 104–188, title I, §1807(e), Aug. 20, 1996, 110 Stat. 1903, provided that: "The amendments made by this section [enacting this section and section 137 of this title, renumbering former section 137 of this title as section 138, and amending sections 25, 86, 135, 219, 469, and 1016 of this title] shall apply to taxable years beginning after December 31, 1996."

EXPENSES PAID OR INCURRED BEFORE 2002

Pub. L. 107–147, title IV, §411(c)(1)(F), Mar. 9, 2002, 116 Stat. 45, provided that: "Expenses paid or incurred during any taxable year beginning before January 1, 2002, may be taken into account in determining the credit under section 23 of the Internal Revenue Code of 1986 only to the extent the aggregate of such expenses does not exceed the applicable limitation under section 23(b)(1) of such Code as in effect on the day before the date of the enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001 [June 7, 2001]."

TAX CREDIT AND GROSS INCOME EXCLUSION STUDY AND REPORT

Pub. L. 104–188, title I, §1807(d), Aug. 20, 1996, 110 Stat. 1903, provided that: "The Secretary of the Treasury shall study the effect on adoptions of the tax credit and gross income exclusion established by the amendments made by this section [enacting this section and section 137 of this title, renumbering former section 137 of this title as section 138, and amending sections 25, 86, 135, 219, 469, and 1016 of this title] and shall submit a report regarding the study to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives not later than January 1, 2000."

§24. Child tax credit

(a) Allowance of credit

There shall be allowed as a credit against the tax imposed by this chapter for the taxable year with respect to each qualifying child of the taxpayer for which the taxpayer is allowed a deduction under section 151 an amount equal to $1,000.

(b) Limitations

(1) Limitation based on adjusted gross income

The amount of the credit allowable under subsection (a) shall be reduced (but not below zero) by $50 for each $1,000 (or fraction thereof) by which the taxpayer's modified adjusted gross income exceeds the threshold amount. For purposes of the preceding sentence, the term "modified adjusted gross income" means adjusted gross income increased by any amount excluded from gross income under section 911, 931, or 933.

(2) Threshold amount

For purposes of paragraph (1), the term "threshold amount" means—

(A) $110,000 in the case of a joint return,

(B) $75,000 in the case of an individual who is not married, and

(C) $55,000 in the case of a married individual filing a separate return.

For purposes of this paragraph, marital status shall be determined under section 7703.

(c) Qualifying child

For purposes of this section—

(1) In general

The term "qualifying child" means a qualifying child of the taxpayer (as defined in section 152(c)) who has not attained age 17.

(2) Exception for certain noncitizens

The term "qualifying child" shall not include any individual who would not be a dependent if subparagraph (A) of section 152(b)(3) were applied without regard to all that follows "resident of the United States".

(d) Portion of credit refundable

(1) In general

The aggregate credits allowed to a taxpayer under subpart C shall be increased by the lesser of—

(A) the credit which would be allowed under this section without regard to this subsection and the limitation under section 26(a) or

(B) the amount by which the aggregate amount of credits allowed by this subpart (determined without regard to this subsection) would increase if the limitation imposed by section 26(a) were increased by the greater of—

(i) 15 percent of so much of the taxpayer's earned income (within the meaning of section 32) which is taken into account in computing taxable income for the taxable year as exceeds $10,000, or

(ii) in the case of a taxpayer with 3 or more qualifying children, the excess (if any) of—

(I) the taxpayer's social security taxes for the taxable year, over

(II) the credit allowed under section 32 for the taxable year.

The amount of the credit allowed under this subsection shall not be treated as a credit allowed under this subpart and shall reduce the amount of credit otherwise allowable under subsection (a) without regard to section 26(a). For purposes of subparagraph (B), any amount excluded from gross income by reason of section 112 shall be treated as earned income which is taken into account in computing taxable income for the taxable year.

(2) Social security taxes

For purposes of paragraph (1)—

(A) In general

The term "social security taxes" means, with respect to any taxpayer for any taxable year—

(i) the amount of the taxes imposed by sections 3101 and 3201(a) on amounts received by the taxpayer during the calendar year in which the taxable year begins,

(ii) 50 percent of the taxes imposed by section 1401 on the self-employment income of the taxpayer for the taxable year, and

(iii) 50 percent of the taxes imposed by section 3211(a) on amounts received by the taxpayer during the calendar year in which the taxable year begins.

(B) Coordination with special refund of social security taxes

The term "social security taxes" shall not include any taxes to the extent the taxpayer is entitled to a special refund of such taxes under section 6413(c).

(C) Special rule

Any amounts paid pursuant to an agreement under section 3121(l) (relating to agreements entered into by American employers with respect to foreign affiliates) which are equivalent to the taxes referred to in subparagraph (A)(i) shall be treated as taxes referred to in such subparagraph.

(3) Inflation adjustment

In the case of any taxable year beginning in a calendar year after 2001, the $10,000 amount contained in paragraph (1)(B) shall be increased by an amount equal to—

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting "calendar year 2000" for "calendar year 1992" in subparagraph (B) thereof.

Any increase determined under the preceding sentence shall be rounded to the nearest multiple of $50.

(4) Special rule for for [1] certain years

Notwithstanding paragraph (3), in the case of any taxable year beginning after 2008 and before 2018, the dollar amount in effect for such taxable year under paragraph (1)(B)(i) shall be $3,000.

(e) Identification requirement

No credit shall be allowed under this section to a taxpayer with respect to any qualifying child unless the taxpayer includes the name and taxpayer identification number of such qualifying child on the return of tax for the taxable year.

(f) Taxable year must be full taxable year

Except in the case of a taxable year closed by reason of the death of the taxpayer, no credit shall be allowable under this section in the case of a taxable year covering a period of less than 12 months.

(Added Pub. L. 105–34, title I, §101(a), Aug. 5, 1997, 111 Stat. 796; amended Pub. L. 105–206, title VI, §6003(a), July 22, 1998, 112 Stat. 790; Pub. L. 105–277, div. J, title II, §2001(b), Oct. 21, 1998, 112 Stat. 2681–901; Pub. L. 106–170, title V, §501(b)(1), Dec. 17, 1999, 113 Stat. 1919; Pub. L. 107–16, title II, §§201(a)–(b)(2)(C), (c)(1), (2), (d), 202(f)(2)(B), title VI, §618(b)(2)(A), June 7, 2001, 115 Stat. 45–47, 49, 108; Pub. L. 107–90, title II, §204(e)(1), Dec. 21, 2001, 115 Stat. 893; Pub. L. 107–147, title IV, §§411(b), 417(23)(A), Mar. 9, 2002, 116 Stat. 45, 57; Pub. L. 108–27, title I, §101(a), May 28, 2003, 117 Stat. 753; Pub. L. 108–311, title I, §§101(a), 102(a), 104(a), title II, §204, title IV, §408(b)(4), Oct. 4, 2004, 118 Stat. 1167, 1168, 1176, 1192; Pub. L. 109–135, title IV, §402(i)(3)(B), Dec. 21, 2005, 119 Stat. 2613; Pub. L. 110–172, §11(c)(1), Dec. 29, 2007, 121 Stat. 2488; Pub. L. 110–343, div. B, title I, §106(e)(2)(B), title II, §205(d)(1)(A), div. C, title V, §501(a), Oct. 3, 2008, 122 Stat. 3817, 3838, 3876; Pub. L. 110–351, title V, §501(c)(1), Oct. 7, 2008, 122 Stat. 3979; Pub. L. 111–5, div. B, title I, §§1003(a), 1004(b)(1), 1142(b)(1)(A), 1144(b)(1)(A), Feb. 17, 2009, 123 Stat. 313, 314, 330, 332; Pub. L. 111–148, title X, §10909(b)(2)(A), (c), Mar. 23, 2010, 124 Stat. 1023; Pub. L. 111–312, title I, §§101(b)(1), 103(b), Dec. 17, 2010, 124 Stat. 3298, 3299; Pub. L. 112–240, title I, §§103(b), 104(c)(2)(B), Jan. 2, 2013, 126 Stat. 2319, 2321.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

PRIOR PROVISIONS

A prior section 24, added Pub. L. 92–178, title VII, §701(a), Dec. 10, 1971, 85 Stat. 560, §41; amended Pub. L. 93–625, §§11(a)–(c), (e), 12(a), Jan. 3, 1975, 88 Stat. 2119, 2120; Pub. L. 94–455, title V, §503(b)(4), title XIX, §§1901(b)(1)(B), (H)(ii), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1562, 1790, 1791, 1834; Pub. L. 95–600, title I, §113(c), Nov. 6, 1978, 92 Stat. 2778; Pub. L. 97–473, title II, §202(b)(1), Jan. 14, 1983, 96 Stat. 2609; Pub. L. 98–21, title I, §122(c)(1), Apr. 20, 1983, 97 Stat. 87; renumbered §24 and amended Pub. L. 98–369, div. A, title IV, §§471(c), 474(f), July 18, 1984, 98 Stat. 826, 831, related to contributions to candidates for public office, prior to repeal by Pub. L. 99–514, title I, §§112(a), 151(a), Oct. 22, 1986, 100 Stat. 2108, 2121, applicable to taxable years beginning after Dec. 31, 1986.

AMENDMENTS

2013—Subsec. (b)(3). Pub. L. 112–240, §104(c)(2)(B)(i), struck out par. (3). Prior to amendment, text read as follows: "In the case of a taxable year to which section 26(a)(2) does not apply, the credit allowed under subsection (a) for any taxable year shall not exceed the excess of—

"(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

"(B) the sum of the credits allowable under this subpart (other than this section and sections 23, 25A(i), 25B, 25D, 30, 30B, and 30D) and section 27 for the taxable year."

Subsec. (d)(1). Pub. L. 112–240, §104(c)(2)(B)(ii)(II), substituted "section 26(a)" for "section 26(a)(2) or subsection (b)(3), as the case may be" in concluding provisions.

Subsec. (d)(1)(A), (B). Pub. L. 112–240, §104(c)(2)(B)(ii)(I), substituted "section 26(a)" for "section 26(a)(2) or subsection (b)(3), as the case may be," in subpar. (A) and in introductory provisions in subpar. (B).

Subsec. (d)(4). Pub. L. 112–240, §103(b), substituted "for certain years" for "2009, 2010, 2011, and 2012" in heading and "after 2008 and before 2018" for "in 2009, 2010, 2011, or 2012" in text.

2010—Subsec. (b)(3)(B). Pub. L. 111–148, §10909(b)(2)(A), (c), as amended by Pub. L. 111–312, §101(b)(1), temporarily struck out "23," before "25A(i),". See Effective and Termination Dates of 2010 Amendment note below.

Subsec. (d)(4). Pub. L. 111–312, §103(b), substituted "2009, 2010, 2011, and 2012" for "2009 and 2010" in heading and ", 2010, 2011, or 2012" for "or 2010" in text.

2009—Subsec. (b)(3)(B). Pub. L. 111–5, §1144(b)(1)(A), inserted "30B," after "30,".

Pub. L. 111–5, §1142(b)(1)(A), inserted "30," after "25D,".

Pub. L. 111–5, §1004(b)(1), inserted "25A(i)," after "23,".

Subsec. (d)(4). Pub. L. 111–5, §1003(a), amended par. (4) generally. Prior to amendment, text read as follows: "Notwithstanding paragraph (3), in the case of any taxable year beginning in 2008, the dollar amount in effect for such taxable year under paragraph (1)(B)(i) shall be $8,500."

2008—Subsec. (a). Pub. L. 110–351 inserted "for which the taxpayer is allowed a deduction under section 151" after "of the taxpayer".

Subsec. (b)(3)(B). Pub. L. 110–343, §205(d)(1)(A), substituted "25D, and 30D" for "and 25D".

Pub. L. 110–343, §106(e)(2)(B), substituted ", 25B, and 25D" for "and 25B".

Subsec. (d)(4). Pub. L. 110–343, §501(a), added par. (4).

2007—Subsec. (d)(1)(B). Pub. L. 110–172, §11(c)(1)(A), substituted "the greater of" for "the excess (if any) of" in introductory provisions.

Subsec. (d)(1)(B)(ii)(II). Pub. L. 110–172, §11(c)(1)(B), substituted "section 32" for "section".

2005—Subsec. (b)(3). Pub. L. 109–135, §402(i)(3)(B)(i), substituted "In the case of a taxable year to which section 26(a)(2) does not apply, the credit" for "The credit" in introductory provisions.

Subsec. (d)(1). Pub. L. 109–135, §402(i)(3)(B)(ii), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "The aggregate credits allowed to a taxpayer under subpart C shall be increased by the lesser of—

"(A) the credit which would be allowed under this section without regard to this subsection and the limitation under subsection (b)(3), or

"(B) the amount by which the amount of credit allowed by this section (determined without regard to this subsection) would increase if the limitation imposed by subsection (b)(3) were increased by the greater of—

"(i) 15 percent of so much of the taxpayer's earned income (within the meaning of section 32) which is taken into account in computing taxable income for the taxable year as exceeds $10,000, or

"(ii) in the case of a taxpayer with 3 or more qualifying children, the excess (if any) of—

"(I) the taxpayer's social security taxes for the taxable year, over

"(II) the credit allowed under section 32 for the taxable year.

The amount of the credit allowed under this subsection shall not be treated as a credit allowed under this subpart and shall reduce the amount of credit otherwise allowable under subsection (a) without regard to subsection (b)(3). For purposes of subparagraph (B), any amount excluded from gross income by reason of section 112 shall be treated as earned income which is taken into account in computing taxable income for the taxable year."

2004—Subsec. (a). Pub. L. 108–311, §101(a), reenacted heading without change and amended text generally, substituting provisions relating to $1,000 per year credit per qualifying child for provisions relating to different credit amounts for calendar years 2003 through 2010 or thereafter.

Subsec. (c)(1). Pub. L. 108–311, §204(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "The term 'qualifying child' means any individual if—

"(A) the taxpayer is allowed a deduction under section 151 with respect to such individual for the taxable year,

"(B) such individual has not attained the age of 17 as of the close of the calendar year in which the taxable year of the taxpayer begins, and

"(C) such individual bears a relationship to the taxpayer described in section 32(c)(3)(B)."

Subsec. (c)(2). Pub. L. 108–311, §204(b), substituted "subparagraph (A) of section 152(b)(3)" for "the first sentence of section 152(b)(3)".

Subsec. (d)(1). Pub. L. 108–311, §104(a), inserted at end of concluding provisions "For purposes of subparagraph (B), any amount excluded from gross income by reason of section 112 shall be treated as earned income which is taken into account in computing taxable income for the taxable year."

Subsec. (d)(1)(B)(i). Pub. L. 108–311, §102(a), struck out "(10 percent in the case of taxable years beginning before January 1, 2005)" after "15 percent".

Subsec. (d)(2)(A)(iii). Pub. L. 108–311, §408(b)(4), amended directory language of Pub. L. 107–90. See 2001 Amendment note below.

2003—Subsec. (a)(2). Pub. L. 108–27 amended table by deleting items relating to calendar years 2001 and 2002 and increasing per child amount from $600 to $1,000 for calendar years 2003 or 2004.

2002—Subsec. (b)(3)(B). Pub. L. 107–147, §417(23)(A), amended directory language of Pub. L. 107–16, §618(b)(2)(A). See 2001 Amendment note below.

Subsec. (d)(1)(B). Pub. L. 107–147, §411(b), substituted "aggregate amount of credits allowed by this subpart" for "amount of credit allowed by this section" in introductory provisions.

2001—Subsec. (a). Pub. L. 107–16, §201(a), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: "There shall be allowed as a credit against the tax imposed by this chapter for the taxable year with respect to each qualifying child of the taxpayer an amount equal to $500 ($400 in the case of taxable years beginning in 1998)."

Subsec. (b). Pub. L. 107–16, §201(b)(2)(A), amended heading generally, substituting "Limitations" for "Limitation based on adjusted gross income".

Subsec. (b)(1). Pub. L. 107–16, §201(b)(2)(B), amended heading generally, substituting "Limitation based on adjusted gross income" for "In general".

Subsec. (b)(3). Pub. L. 107–16, §201(b)(1), added par. (3).

Subsec. (b)(3)(B). Pub. L. 107–16, §618(b)(2)(A), as amended by Pub. L. 107–147, §417(23)(A), substituted "sections 23 and 25B" for "section 23".

Pub. L. 107–16, §202(f)(2)(B), substituted "this section and section 23" for "this section".

Subsec. (d). Pub. L. 107–16, §201(c)(1), amended subsec. heading and heading and text of par. (1) generally. Prior to amendment, text read as follows: "In the case of a taxpayer with three or more qualifying children for any taxable year, the aggregate credits allowed under subpart C shall be increased by the lesser of—

"(A) the credit which would be allowed under this section without regard to this subsection and the limitation under section 26(a); or

"(B) the amount by which the aggregate amount of credits allowed by this subpart (without regard to this subsection) would increase if the limitation imposed by section 26(a) were increased by the excess (if any) of—

"(i) the taxpayer's Social Security taxes for the taxable year, over

"(ii) the credit allowed under section 32 (determined without regard to subsection (n)) for the taxable year.

The amount of the credit allowed under this subsection shall not be treated as a credit allowed under this subpart and shall reduce the amount of credit otherwise allowable under subsection (a) without regard to section 26(a)."

Subsec. (d)(1). Pub. L. 107–16, §201(b)(2)(C)(i), substituted "subsection (b)(3)" for "section 26(a)" wherever appearing in subsec. (d), as amended by Pub. L. 107–16, §201(c).

Subsec. (d)(1)(B). Pub. L. 107–16, §201(b)(2)(C)(ii), substituted "amount of credit allowed by this section" for "aggregate amount of credits allowed by this subpart" in subpar. (B) as amended by Pub. L. 107–16, §201(c).

Subsec. (d)(2). Pub. L. 107–16, §201(d), redesignated par. (3) as (2) and struck out heading and text of former par. (2). Text read as follows: "For taxable years beginning after December 31, 2001, the credit determined under this subsection for the taxable year shall be reduced by the excess (if any) of—

"(A) the amount of tax imposed by section 55 (relating to alternative minimum tax) with respect to such taxpayer for such taxable year, over

"(B) the amount of the reduction under section 32(h) with respect to such taxpayer for such taxable year."

Subsec. (d)(2)(A)(iii). Pub. L. 107–90, as amended by Pub. L. 108–311, §408(b)(4), substituted "section 3211(a)" for "section 3211(a)(1)".

Subsec. (d)(3). Pub. L. 107–16, §201(d)(2), redesignated par. (4) as (3). Former par. (3) redesignated (2).

Subsec. (d)(4). Pub. L. 107–16, §201(c)(2), added par. (4). Former par. (4) redesignated (3).

1999—Subsec. (d)(2). Pub. L. 106–170 substituted "2001" for "1998" in introductory provisions.

1998—Subsec. (d)(1). Pub. L. 105–206, §6003(a)(1)(C), added par. (1) and struck out heading and text of former par. (1). Text read as follows: "In the case of a taxpayer with 3 or more qualifying children for any taxable year, the amount of the credit allowed under this section shall be equal to the greater of—

"(A) the amount of the credit allowed under this section (without regard to this subsection and after

application of the limitation under section 26), or

"(B) the alternative credit amount determined under paragraph (2)."

Subsec. (d)(2). Pub. L. 105–277 substituted "For taxable years beginning after December 31, 1998, the credit" for "The credit".

Pub. L. 105–206, §6003(a)(1)(C), added par. (2) and struck out heading and text of former par. (2). Text read as follows: "For purposes of this subsection, the alternative credit amount is the amount of the credit which would be allowed under this section if the limitation under paragraph (3) were applied in lieu of the limitation under section 26."

Subsec. (d)(3). Pub. L. 105–206, §6003(a)(1)(A), (B), (2), redesignated par. (5) as (3), substituted "paragraph (1)" for "paragraph (3)" in introductory provisions, and struck out heading and text of former par. (3). Text read as follows: "The limitation under this paragraph for any taxable year is the limitation under section 26 (without regard to this subsection)—

"(A) increased by the taxpayer's social security taxes for such taxable year, and

"(B) reduced by the sum of—

"(i) the credits allowed under this part other than under subpart C or this section, and

"(ii) the credit allowed under section 32 without regard to subsection (m) thereof."

Subsec. (d)(4). Pub. L. 105–206, §6003(a)(1)(A), struck out heading and text of par. (4). Text read as follows: "If the amount of the credit under paragraph (1)(B) exceeds the amount of the credit under paragraph (1)(A), such excess shall be treated as a credit to which subpart C applies. The rule of section 32(h) shall apply to such excess."

Subsec. (d)(5). Pub. L. 105–206, §6003(a)(1)(B), redesignated par. (5) as (3).

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title I, §103(e), Jan. 2, 2013, 126 Stat. 2320, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 25A, 32, and 6409 of this title and amending provisions set out as a note under section 25A of this title] shall apply to taxable years beginning after December 31, 2012.

"(2) RULE REGARDING DISREGARD OF REFUNDS.—The amendment made by subsection (d) [amending section 6409 of this title] shall apply to amounts received after December 31, 2012."

Amendment by section 104(c)(2)(B) of Pub. L. 112–240 applicable to taxable years beginning after Dec. 31, 2011, see section 104(d) of Pub. L. 112–240, set out as a note under section 23 of this title.

EFFECTIVE AND TERMINATION DATES OF 2010 AMENDMENT

Pub. L. 111–312, title I, §103(d), Dec. 17, 2010, 124 Stat. 3299, provided that: "The amendments made by this section [amending this section and sections 25A and 32 of this title and amending provisions set out as a note under section 25A of this title] shall apply to taxable years beginning after December 31, 2010."

Amendment by Pub. L. 111–148 terminated applicable to taxable years beginning after Dec. 31, 2011, and section is amended to read as if such amendment had never been enacted, see section 10909(c) of Pub. L. 111–148, set out as a note under section 1 of this title.

Amendment by Pub. L. 111–148 applicable to taxable years beginning after Dec. 31, 2009, see section 10909(d) of Pub. L. 111–148, set out as a note under section 1 of this title.

EFFECTIVE AND TERMINATION DATES OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, §1003(b), Feb. 17, 2009, 123 Stat. 313, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2008."

Pub. L. 111–5, div. B, title I, §1004(d), Feb. 17, 2009, 123 Stat. 315, provided that: "The amendments made by this section [amending this section, sections 25 to 25B, 26, 904, 1400C, and 6211 of this title, and section 1324 of Title 31, Money and Finance] shall apply to taxable years beginning after December 31, 2008."

Pub. L. 111–5, div. B, title I, §1004(e), Feb. 17, 2009, 123 Stat. 315, provided that: "The amendment made by subsection (b)(1) [amending this section] shall be subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 [Pub. L. 107–16, §901, which was repealed by Pub. L. 112–240, title I, §101(a)(1), Jan. 2, 2013, 126 Stat. 2315, was formerly set out as an Effective and Termination Dates of 2001 Amendment note under section 1 of this title] in the same manner as the provision of such Act to which such amendment relates."

Pub. L. 111–5, div. B, title I, §1142(c), Feb. 17, 2009, 123 Stat. 331, provided that: "The amendments made by this section [amending this section and sections 25, 25B, 26, 30, 30B, 30C, 53, 55, 904, 1016, 1400C, and 6501 of this title] shall apply to vehicles acquired after the date of the enactment of this Act [Feb. 17, 2009]."

Pub. L. 111–5, div. B, title I, §1142(e), Feb. 17, 2009, 123 Stat. 331, provided that: "The amendment made by subsection (b)(1)(A) [amending this section] shall be subject to title IX of the Economic Growth and Tax

Relief Reconciliation Act of 2001 [Pub. L. 107–16, §901, which was repealed by Pub. L. 112–240, title I, §101(a)(1), Jan. 2, 2013, 126 Stat. 2315, was formerly set out as an Effective and Termination Dates of 2001 Amendment note under section 1 of this title] in the same manner as the provision of such Act to which such amendment relates."

Pub. L. 111–5, div. B, title I, §1144(c), Feb. 17, 2009, 123 Stat. 333, provided that: "The amendments made by this section [amending this section and sections 25, 25B, 26, 30B, 30C, 55, 904, and 1400C of this title] shall apply to taxable years beginning after December 31, 2008."

Pub. L. 111–5, div. B, title I, §1144(d), Feb. 17, 2009, 123 Stat. 333, provided that: "The amendment made by subsection (b)(1)(A) [amending this section] shall be subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 [Pub. L. 107–16, §901, which was repealed by Pub. L. 112–240, title I, §101(a)(1), Jan. 2, 2013, 126 Stat. 2315, was formerly set out as an Effective and Termination Dates of 2001 Amendment note under section 1 of this title] in the same manner as the provision of such Act to which such amendment relates."

EFFECTIVE AND TERMINATION DATES OF 2008 AMENDMENT

Pub. L. 110–351, title V, §501(d), Oct. 7, 2008, 122 Stat. 3980, provided that: "The amendments made by this section [amending this section and section 152 of this title] shall apply to taxable years beginning after December 31, 2008."

Amendment by section 106(e)(2)(B) of title I of div. B of Pub. L. 110–343 applicable to taxable years beginning after Dec. 31, 2007, and subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, §901, in the same manner as the provisions of such Act to which such amendment relates, see section 106(f)(1), (3) of Pub. L. 110–343, set out as a note under section 23 of this title. Title IX of Pub. L. 107–16 was repealed by Pub. L. 112–240, title I, §101(a)(1), Jan. 2, 2013, 126 Stat. 2315.

Pub. L. 110–343, div. B, title II, §205(e), (f), Oct. 3, 2008, 122 Stat. 3839, provided that:

"(e) EFFECTIVE DATE.—The amendments made by this section [enacting section 30D of this title and amending this section and sections 25, 25B, 26, 30B, 38, 1016, 1400C, and 6501 of this title] shall apply to taxable years beginning after December 31, 2008.

"(f) APPLICATION OF EGTRRA SUNSET.—The amendment made by subsection (d)(1)(A) [amending this section] shall be subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 [Pub. L. 107–16, §901, which was repealed by Pub. L. 112–240, title I, §101(a)(1), Jan. 2, 2013, 126 Stat. 2315, was formerly set out as an Effective and Termination Dates of 2001 Amendment note under section 1 of this title] in the same manner as the provision of such Act to which such amendment relates."

Pub. L. 110–343, div. C, title V, §501(b), Oct. 3, 2008, 122 Stat. 3876, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2007."

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–172, §11(c)(2), Dec. 29, 2007, 121 Stat. 2489, provided that: "The amendments made by this subsection [amending this section] shall take effect as if included in the provisions of the Gulf Opportunity Zone Act of 2005 [Pub. L. 109–135] to which they relate."

EFFECTIVE AND TERMINATION DATES OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, §901, in the same manner as the provisions of such Act to which such amendment relates, see section 402(i)(3)(H) of Pub. L. 109–135, set out as a note under section 23 of this title. Title IX of Pub. L. 107–16 was repealed by Pub. L. 112–240, title I, §101(a)(1), Jan. 2, 2013, 126 Stat. 2315.

Amendment by Pub. L. 109–135 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109–58, to which it relates and applicable to taxable years beginning after Dec. 31, 2005, see section 402(m) of Pub. L. 109–135, set out as a note under section 23 of this title.

EFFECTIVE AND TERMINATION DATES OF 2004 AMENDMENT

Amendment by section 101(a) of Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2003, see section 101(e) of Pub. L. 108–311, set out as a note under section 1 of this title.

Pub. L. 108–311, title I, §102(b), Oct. 4, 2004, 118 Stat. 1168, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2003."

Pub. L. 108–311, title I, §104(c)(1), Oct. 4, 2004, 118 Stat. 1169, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 2003."

Amendment by title I of Pub. L. 108–311 subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, §901, to the same extent and in the same manner as the

provisions of such Act to which such amendments relate, see section 105 of Pub. L. 108–311, set out as a note under section 1 of this title. Title IX of Pub. L. 107–16 was repealed by Pub. L. 112–240, title I, §101(a)(1), Jan. 2, 2013, 126 Stat. 2315.

Amendment by section 204 of Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

EFFECTIVE AND TERMINATION DATES OF 2003 AMENDMENT

Pub. L. 108–27, title I, §101(c), May 28, 2003, 117 Stat. 754, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting section 6429 of this title and amending this section] shall apply to taxable years beginning after December 31, 2002.

"(2) SUBSECTION (b).—The amendments made by subsection (b) [enacting section 6429 of this title] shall take effect on the date of the enactment of this Act [May 28, 2003]."

Amendments by title I of Pub. L. 108–27 subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, §901, to the same extent and in the same manner as the provisions of such Act to which such amendments relate, see section 107 of Pub. L. 108–27, set out as a note under section 1 of this title. Title IX of Pub. L. 107–16 was repealed by Pub. L. 112–240, title I, §101(a)(1), Jan. 2, 2013, 126 Stat. 2315.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by section 411(b) of Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by sections 201(b), 202(f), and 618(b) of Pub. L. 107–16 inapplicable to taxable years beginning during 2004 or 2005, see section 312(b)(2) of Pub. L. 108–311, set out as a note under section 23 of this title.

Amendment by sections 201(b), 202(f), and 618(b) of Pub. L. 107–16 inapplicable to taxable years beginning during 2002 and 2003, see section 601(b)(2) of Pub. L. 107–147, set out as a note under section 23 of this title.

Pub. L. 107–90, title II, §204(f), Dec. 21, 2001, 115 Stat. 893, provided that: "The amendments made by this section [enacting subchapter E of chapter 22 of this title and amending this section and sections 72, 3201, 3211, 3221, and 3231 of this title] shall apply to calendar years beginning after December 31, 2001."

Pub. L. 107–16, title II, §201(e), June 7, 2001, 115 Stat. 47, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 23, 25, 26, 32, 904, and 1400C of this title] shall apply to taxable years beginning after December 31, 2000.

"(2) SUBSECTION (b).—The amendments made by subsection (b) [amending this section and sections 23, 25, 26, 904, and 1400C of this title] shall apply to taxable years beginning after December 31, 2001."

Amendment by section 202(f)(2)(B) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 202(g)(1) of Pub. L. 107–16, set out as a note under section 23 of this title.

Pub. L. 107–16, title VI, §618(d), June 7, 2001, 115 Stat. 108, provided that: "The amendments made by this section [enacting section 25B of this title and amending this section and sections 25, 25B, 26, 904, and 1400C of this title] shall apply to taxable years beginning after December 31, 2001."

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title V, §501(c), Dec. 17, 1999, 113 Stat. 1919, provided that: "The amendments made by this section [amending this section and sections 26 and 904 of this title] shall apply to taxable years beginning after December 31, 1998."

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–277, div. J, title II, §2001(c), Oct. 21, 1998, 112 Stat. 2681–901, provided that: "The amendments made by this section [amending this section and section 26 of this title] shall apply to taxable years beginning after December 31, 1997."

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE

Pub. L. 105–34, title I, §101(e), Aug. 5, 1997, 111 Stat. 799, provided that: "The amendments made by this section [enacting this section and amending sections 32, 501, and 6213 of this title and section 1324 of Title 31, Money and Finance] shall apply to taxable years beginning after December 31, 1997."

REFUNDS DISREGARDED IN ADMINISTRATION OF FEDERAL AND FEDERALLY ASSISTED PROGRAMS

Pub. L. 107–16, title II, §203, June 7, 2001, 115 Stat. 49, provided that: "Any payment considered to have been made to any individual by reason of section 24 of the Internal Revenue Code of 1986, as amended by section 201, shall not be taken into account as income and shall not be taken into account as resources for the month of receipt and the following month, for purposes of determining the eligibility of such individual or any other individual for benefits or assistance, or the amount or extent of benefits or assistance, under any Federal program or under any State or local program financed in whole or in part with Federal funds."

[1] *So in original.*

§25. Interest on certain home mortgages

(a) Allowance of credit

(1) In general

There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the product of—

(A) the certificate credit rate, and

(B) the interest paid or accrued by the taxpayer during the taxable year on the remaining principal of the certified indebtedness amount.

(2) Limitation where credit rate exceeds 20 percent

(A) In general

If the certificate credit rate exceeds 20 percent, the amount of the credit allowed to the taxpayer under paragraph (1) for any taxable year shall not exceed $2,000.

(B) Special rule where 2 or more persons hold interests in residence

If 2 or more persons hold interests in any residence, the limitation of subparagraph (A) shall be allocated among such persons in proportion to their respective interests in the residence.

(b) Certificate credit rate; certified indebtedness amount

For purposes of this section—

(1) Certificate credit rate

The term "certificate credit rate" means the rate of the credit allowable by this section which is specified in the mortgage credit certificate.

(2) Certified indebtedness amount

The term "certified indebtedness amount" means the amount of indebtedness which is—

(A) incurred by the taxpayer—

(i) to acquire the principal residence of the taxpayer,

(ii) as a qualified home improvement loan (as defined in section 143(k)(4)) with respect to such residence, or

(iii) as a qualified rehabilitation loan (as defined in section 143(k)(5)) with respect to such residence, and

(B) specified in the mortgage credit certificate.

(c) Mortgage credit certificate; qualified mortgage credit certificate program

For purposes of this section—

(1) Mortgage credit certificate

The term "mortgage credit certificate" means any certificate which—

(A) is issued under a qualified mortgage credit certificate program by the State or political subdivision having the authority to issue a qualified mortgage bond to provide financing on the principal residence of the taxpayer,

(B) is issued to the taxpayer in connection with the acquisition, qualified rehabilitation, or qualified home improvement of the taxpayer's principal residence,

(C) specifies—

(i) the certificate credit rate, and

(ii) the certified indebtedness amount, and

(D) is in such form as the Secretary may prescribe.

(2) Qualified mortgage credit certificate program

(A) In general

The term "qualified mortgage credit certificate program" means any program—

(i) which is established by a State or political subdivision thereof for any calendar year for which it is authorized to issue qualified mortgage bonds,

(ii) under which the issuing authority elects (in such manner and form as the Secretary may prescribe) not to issue an amount of private activity bonds which it may otherwise issue during such calendar year under section 146,

(iii) under which the indebtedness certified by mortgage credit certificates meets the requirements of the following subsections of section 143 (as modified by subparagraph (B) of this paragraph):

(I) subsection (c) (relating to residence requirements),

(II) subsection (d) (relating to 3-year requirement),

(III) subsection (e) (relating to purchase price requirement),

(IV) subsection (f) (relating to income requirements),

(V) subsection (h) (relating to portion of loans required to be placed in targeted areas), and

(VI) paragraph (1) of subsection (i) (relating to other requirements),

(iv) under which no mortgage credit certificate may be issued with respect to any residence any of the financing of which is provided from the proceeds of a qualified mortgage bond or a qualified veterans' mortgage bond,

(v) except to the extent provided in regulations, which is not limited to indebtedness incurred from particular lenders,

(vi) except to the extent provided in regulations, which provides that a mortgage credit certificate is not transferrable, and

(vii) if the issuing authority allocates a block of mortgage credit certificates for use in connection with a particular development, which requires the developer to furnish to the issuing authority and the homebuyer a certificate that the price for the residence is no higher than it would be without the use of a mortgage credit certificate.

Under regulations, rules similar to the rules of subparagraphs (B) and (C) of section 143(a)(2) shall apply to the requirements of this subparagraph.

(B) Modifications of section 143

Under regulations prescribed by the Secretary, in applying section 143 for purposes of subclauses (II), (IV), and (V) of subparagraph (A)(iii)—

(i) each qualified mortgage certificate credit program shall be treated as a separate issue,

(ii) the product determined by multiplying—

(I) the certified indebtedness amount of each mortgage credit certificate issued under

such program, by

(II) the certificate credit rate specified in such certificate,

shall be treated as proceeds of such issue and the sum of such products shall be treated as the total proceeds of such issue, and

(iii) paragraph (1) of section 143(d) shall be applied by substituting "100 percent" for "95 percent or more".

Clause (iii) shall not apply if the issuing authority submits a plan to the Secretary for administering the 95-percent requirement of section 143(d)(1) and the Secretary is satisfied that such requirement will be met under such plan.

(d) Determination of certificate credit rate

For purposes of this section—

(1) In general

The certificate credit rate specified in any mortgage credit certificate shall not be less than 10 percent or more than 50 percent.

(2) Aggregate limit on certificate credit rates

(A) In general

In the case of each qualified mortgage credit certificate program, the sum of the products determined by multiplying—

(i) the certified indebtedness amount of each mortgage credit certificate issued under such program, by

(ii) the certificate credit rate with respect to such certificate,

shall not exceed 25 percent of the nonissued bond amount.

(B) Nonissued bond amount

For purposes of subparagraph (A), the term "nonissued bond amount" means, with respect to any qualified mortgage credit certificate program, the amount of qualified mortgage bonds which the issuing authority is otherwise authorized to issue and elects not to issue under subsection (c)(2)(A)(ii).

(e) Special rules and definitions

For purposes of this section—

(1) Carryforward of unused credit

(A) In general

If the credit allowable under subsection (a) for any taxable year exceeds the applicable tax limit for such taxable year, such excess shall be a carryover to each of the 3 succeeding taxable years and, subject to the limitations of subparagraph (B), shall be added to the credit allowable by subsection (a) for such succeeding taxable year.

(B) Limitation

The amount of the unused credit which may be taken into account under subparagraph (A) for any taxable year shall not exceed the amount (if any) by which the applicable tax limit for such taxable year exceeds the sum of—

(i) the credit allowable under subsection (a) for such taxable year determined without regard to this paragraph, and

(ii) the amounts which, by reason of this paragraph, are carried to such taxable year and are attributable to taxable years before the unused credit year.

(C) Applicable tax limit

For purposes of this paragraph, the term "applicable tax limit" means the limitation imposed

by section 26(a) for the taxable year reduced by the sum of the credits allowable under this subpart (other than this section and sections 23, 25D, and 1400C).

(2) Indebtedness not treated as certified where certain requirements not in fact met

Subsection (a) shall not apply to any indebtedness if all the requirements of subsection (c)(1), (d), (e), (f), and (i) of section 143 and clauses (iv), (v), and (vii) of subsection (c)(2)(A), were not in fact met with respect to such indebtedness. Except to the extent provided in regulations, the requirements described in the preceding sentence shall be treated as met if there is a certification, under penalty of perjury, that such requirements are met.

(3) Period for which certificate in effect

(A) In general

Except as provided in subparagraph (B), a mortgage credit certificate shall be treated as in effect with respect to interest attributable to the period—

(i) beginning on the date such certificate is issued, and

(ii) ending on the earlier of the date on which—

(I) the certificate is revoked by the issuing authority, or

(II) the residence to which such certificate relates ceases to be the principal residence of the individual to whom the certificate relates.

(B) Certificate invalid unless indebtedness incurred within certain period

A certificate shall not apply to any indebtedness which is incurred after the close of the second calendar year following the calendar year for which the issuing authority made the applicable election under subsection (c)(2)(A)(ii).

(C) Notice to Secretary when certificate revoked

Any issuing authority which revokes any mortgage credit certificate shall notify the Secretary of such revocation at such time and in such manner as the Secretary shall prescribe by regulations.

(4) Reissuance of mortgage credit certificates

The Secretary may prescribe regulations which allow the administrator of a mortgage credit certificate program to reissue a mortgage credit certificate specifying a certified mortgage indebtedness that replaces the outstanding balance of the certified mortgage indebtedness specified on the original certificate to any taxpayer to whom the original certificate was issued, under such terms and conditions as the Secretary determines are necessary to ensure that the amount of the credit allowable under subsection (a) with respect to such reissued certificate is equal to or less than the amount of credit which would be allowable under subsection (a) with respect to the original certificate for any taxable year ending after such reissuance.

(5) Public notice that certificates will be issued

At least 90 days before any mortgage credit certificate is to be issued after a qualified mortgage credit certificate program, the issuing authority shall provide reasonable public notice of—

(A) the eligibility requirements for such certificate,

(B) the methods by which such certificates are to be issued, and

(C) such other information as the Secretary may require.

(6) Interest paid or accrued to related persons

No credit shall be allowed under subsection (a) for any interest paid or accrued to a person who is a related person to the taxpayer (within the meaning of section 144(a)(3)(A)).

(7) Principal residence

The term "principal residence" has the same meaning as when used in section 121.

(8) Qualified rehabilitation and home improvement

(A) Qualified rehabilitation

The term "qualified rehabilitation" has the meaning given such term by section 143(k)(5)(B).

(B) Qualified home improvement

The term "qualified home improvement" means an alteration, repair, or improvement described in section 143(k)(4).

(9) Qualified mortgage bond

The term "qualified mortgage bond" has the meaning given such term by section 143(a)(1).

(10) Manufactured housing

For purposes of this section, the term "single family residence" includes any manufactured home which has a minimum of 400 square feet of living space and a minimum width in excess of 102 inches and which is of a kind customarily used at a fixed location. Nothing in the preceding sentence shall be construed as providing that such a home will be taken into account in making determinations under section 143.

(f) Reduction in aggregate amount of qualified mortgage bonds which may be issued where certain requirements not met

(1) In general

If for any calendar year any mortgage credit certificate program which satisfies procedural requirements with respect to volume limitations prescribed by the Secretary fails to meet the requirements of paragraph (2) of subsection (d), such requirements shall be treated as satisfied with respect to any certified indebtedness of such program, but the applicable State ceiling under subsection (d) of section 146 for the State in which such program operates shall be reduced by 1.25 times the correction amount with respect to such failure. Such reduction shall be applied to such State ceiling for the calendar year following the calendar year in which the Secretary determines the correction amount with respect to such failure.

(2) Correction amount

(A) In general

For purposes of paragraph (1), the term "correction amount" means an amount equal to the excess credit amount divided by 0.25.

(B) Excess credit amount

(i) In general

For purposes of subparagraph (A)(ii), the term "excess credit amount" means the excess of—

(I) the credit amount for any mortgage credit certificate program, over

(II) the amount which would have been the credit amount for such program had such program met the requirements of paragraph (2) of subsection (d).

(ii) Credit amount

For purposes of clause (i), the term "credit amount" means the sum of the products determined under clauses (i) and (ii) of subsection (d)(2)(A).

(3) Special rule for States having constitutional home rule cities

In the case of a State having one or more constitutional home rule cities (within the meaning of section 146(d)(3)(C)), the reduction in the State ceiling by reason of paragraph (1) shall be allocated to the constitutional home rule city, or to the portion of the State not within such city, whichever caused the reduction.

(4) Exception where certification program

The provisions of this subsection shall not apply in any case in which there is a certification program which is designed to ensure that the requirements of this section are met and which meets such requirements as the Secretary may by regulations prescribe.

(5) Waiver

The Secretary may waive the application of paragraph (1) in any case in which he determines that the failure is due to reasonable cause.

(g) Reporting requirements

Each person who makes a loan which is a certified indebtedness amount under any mortgage credit certificate shall file a report with the Secretary containing—

(1) the name, address, and social security account number of the individual to which the certificate was issued,

(2) the certificate's issuer, date of issue, certified indebtedness amount, and certificate credit rate, and

(3) such other information as the Secretary may require by regulations.

Each person who issues a mortgage credit certificate shall file a report showing such information as the Secretary shall by regulations prescribe. Any such report shall be filed at such time and in such manner as the Secretary may require by regulations.

(h) Regulations; contracts

(1) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section, including regulations which may require recipients of mortgage credit certificates to pay a reasonable processing fee to defray the expenses incurred in administering the program.

(2) Contracts

The Secretary is authorized to enter into contracts with any person to provide services in connection with the administration of this section.

(i) Recapture of portion of Federal subsidy from use of mortgage credit certificates

For provisions increasing the tax imposed by this chapter to recapture a portion of the Federal subsidy from the use of mortgage credit certificates, see section 143(m).

(Added Pub. L. 98–369, div. A, title VI, §612(a), July 18, 1984, 98 Stat. 905; amended Pub. L. 99–514, title XIII, §1301(f), title XVIII, §§1862(a)–(d)(1), 1899A(1), Oct. 22, 1986, 100 Stat. 2655, 2883, 2884, 2958; Pub. L. 100–647, title I, §1013(a)(25), (26), title IV, §4005(a)(2), (g)(7), Nov. 10, 1988, 102 Stat. 3543, 3645, 3651; Pub. L. 101–239, title VII, §7104(b), Dec. 19, 1989, 103 Stat. 2305; Pub. L. 101–508, title XI, §11408(b), Nov. 5, 1990, 104 Stat. 1388–477; Pub. L. 102–227, title I, §108(b), Dec. 11, 1991, 105 Stat. 1688; Pub. L. 103–66, title XIII, §13141(b), Aug. 10, 1993, 107 Stat. 436; Pub. L. 104–188, title I, §1807(c)(1), Aug. 20, 1996, 110 Stat. 1902; Pub. L. 105–34, title III, §312(d)(1), Aug. 5, 1997, 111 Stat. 839; Pub. L. 105–206, title VI, §6008(d)(7), July 22, 1998, 112 Stat. 812; Pub. L. 107–16, title II, §201(b)(2)(F), title VI, §618(b)(2)(B), June 7, 2001, 115 Stat. 46, 108; Pub. L. 109–58, title XIII, §1335(b)(2), Aug. 8, 2005, 119 Stat. 1036; Pub. L. 109–135, title IV, §402(i)(3)(C), (4), Dec. 21, 2005, 119 Stat. 2613, 2615; Pub. L. 110–343, div. B, title II, §205(d)(1)(B), Oct. 3, 2008, 122 Stat. 3838; Pub. L. 111–5, div. B, title I, §§1004(b)(2), 1142(b)(1)(B), 1144(b)(1)(B), Feb. 17, 2009, 123 Stat. 314, 330, 332; Pub. L. 111–148, title X, §10909(b)(2)(B), (c), Mar. 23, 2010, 124 Stat. 1023; Pub. L. 111–312, title I, §101(b)(1), Dec. 17, 2010, 124 Stat. 3298; Pub. L. 112–240, title I, §104(c)(2)(C), Jan. 2, 2013, 126 Stat. 2322.)

PRIOR PROVISIONS

A prior section 25 was renumbered section 26 of this title.

AMENDMENTS

2013—Subsec. (e)(1)(C). Pub. L. 112–240 amended subpar. (C) generally. Prior to amendment, text read as follows: "For purposes of this paragraph, the term 'applicable tax limit' means—

"(i) in the case of a taxable year to which section 26(a)(2) applies, the limitation imposed by section 26(a)(2) for the taxable year reduced by the sum of the credits allowable under this subpart (other than this section and sections 23, 25D, and 1400C), and

"(ii) in the case of a taxable year to which section 26(a)(2) does not apply, the limitation imposed by section 26(a)(1) for the taxable year reduced by the sum of the credits allowable under this subpart (other than this section and sections 23, 24, 25A(i), 25B, 25D, 30, 30B, 30D, and 1400C)."

2010—Subsec. (e)(1)(C). Pub. L. 111–148, §10909(b)(2)(B), (c), as amended by Pub. L. 111–312, temporarily struck out "23," after "and sections" in cls. (i) and (ii). See Effective and Termination Dates of 2010 Amendment note below.

2009—Subsec. (e)(1)(C)(ii). Pub. L. 111–5, §1144(b)(1)(B), inserted "30B," after "30,".

Pub. L. 111–5, §1142(b)(1)(B), inserted "30," after "25D,".

Pub. L. 111–5, §1004(b)(2), inserted "25A(i)," after "24,".

2008—Subsec. (e)(1)(C)(ii). Pub. L. 110–343 inserted "30D," after "25D,".

2005—Subsec. (e)(1)(C). Pub. L. 109–135, §402(i)(3)(C), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "For purposes of this paragraph, the term 'applicable tax limit' means the limitation imposed by section 26(a) for the taxable year reduced by the sum of the credits allowable under this subpart (other than this section and sections 23, 24, 25B, and 1400C)."

Pub. L. 109–58, §1335(b)(2), which directed amendment of subpar. (C) by substituting "other than this section, section 23, section 25D, and section 1400C" for "this section and sections 23 and 1400C", was repealed by Pub. L. 109–135, §402(i)(4). See Effective and Termination Dates of 2005 Amendments notes below.

2001—Subsec. (e)(1)(C). Pub. L. 107–16, §618(b)(2)(B), inserted "25B," after "24,".

Pub. L. 107–16, §201(b)(2)(F), inserted ", 24," after "sections 23".

1998—Subsec. (e)(1)(C). Pub. L. 105–206 substituted "sections 23 and 1400C" for "section 23".

1997—Subsec. (e)(7). Pub. L. 105–34 substituted "section 121" for "section 1034".

1996—Subsec. (e)(1)(C). Pub. L. 104–188 inserted "and section 23" after "other than this section".

1993—Subsecs. (h) to (j). Pub. L. 103–66 redesignated subsecs. (i) and (j) as (h) and (i), respectively, and struck out heading and text of former subsec. (h). Text read as follows: "No election may be made under subsection (c)(2)(A)(ii) for any period after June 30, 1992."

1991—Subsec. (h). Pub. L. 102–227 substituted "June 30, 1992" for "December 31, 1991".

1990—Subsec. (h). Pub. L. 101–508 substituted "December 31, 1991" for "September 30, 1990".

1989—Subsec. (h). Pub. L. 101–239 substituted "for any period after September 30, 1990" for "for any calendar year after 1989".

1988—Subsec. (c)(2)(A)(ii). Pub. L. 100–647, §1013(a)(25), amended Pub. L. 99–514, §1301(f)(2)(C)(ii), see 1986 Amendment note below.

Subsec. (h). Pub. L. 100–647, §4005(a)(2), substituted "1989" for "1988".

Pub. L. 100–647, §1013(a)(26), substituted "1988" for "1987".

Subsec. (j). Pub. L. 100–647, §4005(g)(7), added subsec. (j).

1986—Subsec. (a)(1)(B). Pub. L. 99–514, §1862(d)(1), substituted "paid or accrued" for "paid or incurred".

Subsec. (b)(2)(A)(ii). Pub. L. 99–514, §1301(f)(2)(A), substituted "section 143(k)(4)" for "section 103A(l)(6)".

Subsec. (b)(2)(A)(iii). Pub. L. 99–514, §1301(f)(2)(B), substituted "section 143(k)(5)" for "section 103A(l)(7)".

Subsec. (c)(2)(A). Pub. L. 99–514, §1301(f)(2)(E), substituted "section 143(a)(2)" for "section 103A(c)(2)" in provision following cl. (vii).

Pub. L. 99–514, §1862(b), inserted "Under regulations, rules similar to the rules of subparagraphs (B) and (C) of section 103A(c)(2) shall apply to the requirements of this subparagraph."

Subsec. (c)(2)(A)(ii). Pub. L. 99–514, §1301(f)(2)(C)(ii), as amended by Pub. L. 100–647, §1013(a)(25), substituted "private activity bonds which it may otherwise issue during such calendar year under section 146" for "qualified mortgage bonds which it may otherwise issue during such calendar year under section 103A".

Subsec. (c)(2)(A)(iii). Pub. L. 99–514, §1301(f)(2)(C)(i), substituted "section 143" for "section 103A" in introductory provisions, added subcls. (I) to (VI), and struck out former subcls. (I) to (V) which read as follows:

"(I) subsection (d) (relating to residence requirements),

"(II) subsection (e) (relating to 3-year requirement),

"(III) subsection (f) (relating to purchase price requirement),

"(IV) subsection (h) (relating to portion of loans required to be placed in targeted areas), and

"(V) subsection (j), other than paragraph (2) thereof (relating to other requirements),".

Subsec. (c)(2)(A)(iii)(V). Pub. L. 99–514, §1862(a), substituted "subsection (j), other than paragraph (2) thereof" for "paragraph (1) of subsection (j)".

Subsec. (c)(2)(B). Pub. L. 99–514, §1301(f)(2)(C)(i), substituted in heading and introductory provisions

"section 143" for "section 103A".

Pub. L. 99–514, §1301(f)(2)(F), inserted in introductory provisions reference to subcl. (V), added cl. (iii) and closing provisions, and struck out former cl. (iii) and closing provisions which read as follows:

"(iii) paragraph (1) of section 103A(e) shall be applied by substituting '100 percent' for '90 percent or more'.

Clause (iii) shall not apply if the issuing authority submits a plan to the Secretary for administering the 90-percent requirement of section 103A(e)(1) and the Secretary is satisfied that such requirement will be met under such plan."

Subsec. (d)(2)(A). Pub. L. 99–514, §1301(f)(1)(A), substituted "25 percent" for "20 percent" in concluding provisions.

Subsec. (d)(3). Pub. L. 99–514, §1301(f)(2)(G), struck out par. (3) "Additional limit in certain cases" which read as follows: "In the case of a qualified mortgage credit certificate program in a State which—

"(A) has a State ceiling (as defined in section 103A(g)(4)) for the year an election is made that exceeds 20 percent of the average annual aggregate principal amount of mortgages executed during the immediately preceding 3 calendar years for single family owner-occupied residences located within the jurisdiction of such State, or

"(B) issued qualified mortgage bonds in an aggregate amount less than $150,000,000 for calendar year 1983,

the certificate credit rate for any mortgage credit certificate shall not exceed 20 percent unless the issuing authority submits a plan to the Secretary to ensure that the weighted average of the certificate credit rates in such mortgage credit certificate program does not exceed 20 percent and the Secretary approves such plan."

Subsec. (e)(1)(B). Pub. L. 99–514, §1862(c), amended subpar. (B) generally. Prior to amendment, subpar. (B) "Limitations" read as follows: "The amount of the unused credit which may be taken into account under subparagraph (A) for any taxable year shall not exceed the amount by which the applicable tax limit for such taxable year exceeds the sum of the amounts which, by reason of this paragraph, are carried to such taxable year and are attributable to taxable years before the unused credit year."

Subsec. (e)(2). Pub. L. 99–514, §1301(f)(2)(H), substituted "subsections (c)(1), (d), (e), (f), and (i) of section 143" for "subsection (d)(1), (e), (f), and (j) of section 103A".

Subsec. (e)(6). Pub. L. 99–514, §1301(f)(2)(I), substituted "section 144(a)(3)(A)" for "section 103(b)(6)(C)(i)".

Subsec. (e)(8)(A). Pub. L. 99–514, §1301(f)(2)(J), substituted "section 143(k)(5)(B)" for "section 103A(l)(7)(B)".

Subsec. (e)(8)(B). Pub. L. 99–514, §1301(f)(2)(K), substituted "section 143(k)(4)" for "section 103A(l)(6)".

Subsec. (e)(9). Pub. L. 99–514, §1301(f)(2)(L), substituted "section 143(a)(1)" for "section 103A(c)(1)".

Subsec. (e)(10). Pub. L. 99–514, §1301(f)(2)(M), substituted "section 143" for "section 103A".

Subsec. (f)(1). Pub. L. 99–514, §1301(f)(2)(N), substituted "subsection (d) of section 146" for "paragraph (4) of section 103A(g)".

Subsec. (f)(2)(A). Pub. L. 99–514, §1301(f)(1)(B), substituted "0.25" for "0.20".

Subsec. (f)(3). Pub. L. 99–514, §1301(f)(2)(O), substituted "section 146(d)(3)(C)" for "section 103A(g)(5)(C)".

Subsec. (f)(4). Pub. L. 99–514, §1899A(1), substituted "ensure" for "insure".

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112–240 applicable to taxable years beginning after Dec. 31, 2011, see section 104(d) of Pub. L. 112–240, set out as a note under section 23 of this title.

EFFECTIVE AND TERMINATION DATES OF 2010 AMENDMENT

Amendment by Pub. L. 111–148 terminated applicable to taxable years beginning after Dec. 31, 2011, and section is amended to read as if such amendment had never been enacted, see section 10909(c) of Pub. L. 111–148, set out as a note under section 1 of this title.

Amendment by Pub. L. 111–148 applicable to taxable years beginning after Dec. 31, 2009, see section 10909(d) of Pub. L. 111–148, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by section 1004(b)(2) of Pub. L. 111–5 applicable to taxable years beginning after Dec. 31, 2008, see section 1004(d) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

Amendment by section 1142(b)(1)(B) of Pub. L. 111–5 applicable to vehicles acquired after Feb. 17, 2009, see section 1142(c) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note

under section 24 of this title.

Amendment by section 1144(b)(1)(B) of Pub. L. 111–5 applicable to taxable years beginning after Dec. 31, 2008, see section 1144(c) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–343 applicable to taxable years beginning after Dec. 31, 2008, see section 205(e) of Pub. L. 110–343, set out as an Effective and Termination Dates of 2008 Amendment note under section 24 of this title.

EFFECTIVE AND TERMINATION DATES OF 2005 AMENDMENT

Amendment by section 402(i)(3)(C) of Pub. L. 109–135 subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, §901, in the same manner as the provisions of such Act to which such amendment relates, see section 402(i)(3)(H) of Pub. L. 109–135, set out as a note under section 23 of this title. Title IX of Pub. L. 107–16 was repealed by Pub. L. 112–240, title I, §101(a)(1), Jan. 2, 2013, 126 Stat. 2315.

The Internal Revenue Code of 1986 to be applied and administered as if the amendments made by section 1335(b)(1)–(3) of Pub. L. 109–58 had never been enacted, see section 402(i)(4) of Pub. L. 109–135, set out as a note under section 23 of this title.

Amendments by Pub. L. 109–135 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109–58, to which they relate, except that amendment by section 402(i)(3)(C) of Pub. L. 109–135 is applicable to taxable years beginning after Dec. 31, 2005, see section 402(m) of Pub. L. 109–135, set out as a note under section 23 of this title.

Amendment by Pub. L. 109–58 applicable to property placed in service after Dec. 31, 2005, in taxable years ending after such date, see section 1335(c) of Pub. L. 109–58, set out as a note under section 23 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 inapplicable to taxable years beginning during 2004 or 2005, see section 312(b)(2) of Pub. L. 108–311, set out as a note under section 23 of this title.

Amendment by Pub. L. 107–16 inapplicable to taxable years beginning during 2002 and 2003, see section 601(b)(2) of Pub. L. 107–147, set out as a note under section 23 of this title.

Amendment by section 201(b)(2)(F) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 201(e)(2) of Pub. L. 107–16, set out as a note under section 24 of this title.

Amendment by section 618(b)(2)(B) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 618(d) of Pub. L. 107–16, set out as a note under section 24 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d) of Pub. L. 105–34, set out as a note under section 121 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1807(e) of Pub. L. 104–188, set out as an Effective Date note under section 23 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13141(f)(2), Aug. 10, 1993, 107 Stat. 437, provided that: "The amendment made by subsection (b) [amending this section] shall apply to elections for periods after June 30, 1992."

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102–227, title I, §108(c)(2), Dec. 11, 1991, 105 Stat. 1688, provided that: "The amendment made by subsection (b) [amending this section] shall apply to elections for periods after December 31, 1991."

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to elections for periods after Sept. 30, 1990, see section 11408(d)(2) of Pub. L. 101–508, set out as a note under section 143 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1013(a)(25), (26) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 4005(a)(2) of Pub. L. 100–647 applicable to bonds issued, and nonissued bond amounts elected, after Dec. 31, 1988, see section 4005(h)(1) of Pub. L. 100–647, set out as a note under section 143 of this title.

Amendment by section 4005(g)(7) of Pub. L. 100–647 applicable to financing provided, and mortgage credit certificates issued, after Dec. 31, 1990, with certain exceptions, see section 4005(h)(3) of Pub. L. 100–647, set out as a note under section 143 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1301(f)(1) of Pub. L. 99–514 applicable to nonissued bond amounts elected after Aug. 15, 1986, and amendment by section 1301(f)(2) of Pub. L. 99–514 applicable to certificates issued with respect to nonissued bond amounts elected after Aug. 15, 1986, see section 1311(b) of Pub. L. 99–514, as amended, set out as an Effective Date; Transitional Rules note under section 141 of this title.

Amendment by section 1862(a)–(d)(1) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Pub. L. 98–369, div. A, title VI, §612(g), July 18, 1984, 98 Stat. 913, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting this section and section 6708 of this title, redesignating former section 25 as 26, and amending sections 23, 28 to 30, 38, 55, 103A, 163, 168, and 901 of this title] shall apply to interest paid or accrued after December 31, 1984, on indebtedness incurred after December 31, 1984.

"(2) ELECTIONS.—The amendments made by this section shall apply to elections under section 25(c)(2)(A)(ii) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this section) for calendar years after 1983."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§25A. Hope and Lifetime Learning credits

(a) Allowance of credit

In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year the amount equal to the sum of—

(1) the Hope Scholarship Credit, plus

(2) the Lifetime Learning Credit.

(b) Hope Scholarship Credit

(1) Per student credit

In the case of any eligible student for whom an election is in effect under this section for any taxable year, the Hope Scholarship Credit is an amount equal to the sum of—

(A) 100 percent of so much of the qualified tuition and related expenses paid by the taxpayer during the taxable year (for education furnished to the eligible student during any academic period beginning in such taxable year) as does not exceed $1,000, plus

(B) 50 percent of such expenses so paid as exceeds $1,000 but does not exceed the applicable limit.

(2) Limitations applicable to Hope Scholarship Credit

(A) Credit allowed only for 2 taxable years

An election to have this section apply with respect to any eligible student for purposes of the Hope Scholarship Credit under subsection (a)(1) may not be made for any taxable year if such an election (by the taxpayer or any other individual) is in effect with respect to such student for any 2 prior taxable years.

(B) Credit allowed for year only if individual is at least ½ time student for portion of year

The Hope Scholarship Credit under subsection (a)(1) shall not be allowed for a taxable year with respect to the qualified tuition and related expenses of an individual unless such individual is an eligible student for at least one academic period which begins during such year.

(C) Credit allowed only for first 2 years of postsecondary education

The Hope Scholarship Credit under subsection (a)(1) shall not be allowed for a taxable year with respect to the qualified tuition and related expenses of an eligible student if the student has completed (before the beginning of such taxable year) the first 2 years of postsecondary education at an eligible educational institution.

(D) Denial of credit if student convicted of a felony drug offense

The Hope Scholarship Credit under subsection (a)(1) shall not be allowed for qualified tuition and related expenses for the enrollment or attendance of a student for any academic period if such student has been convicted of a Federal or State felony offense consisting of the possession or distribution of a controlled substance before the end of the taxable year with or within which such period ends.

(3) Eligible student

For purposes of this subsection, the term "eligible student" means, with respect to any academic period, a student who—

(A) meets the requirements of section 484(a)(1) of the Higher Education Act of 1965 (20 U.S.C. 1091(a)(1)), as in effect on the date of the enactment of this section, and

(B) is carrying at least ½ the normal full-time work load for the course of study the student is pursuing.

(4) Applicable limit

For purposes of paragraph (1)(B), the applicable limit for any taxable year is an amount equal to 2 times the dollar amount in effect under paragraph (1)(A) for such taxable year.

(c) Lifetime Learning Credit

(1) Per taxpayer credit

The Lifetime Learning Credit for any taxpayer for any taxable year is an amount equal to 20 percent of so much of the qualified tuition and related expenses paid by the taxpayer during the taxable year (for education furnished during any academic period beginning in such taxable year) as does not exceed $10,000 ($5,000 in the case of taxable years beginning before January 1, 2003).

(2) Special rules for determining expenses

(A) Coordination with Hope Scholarship

The qualified tuition and related expenses with respect to an individual who is an eligible student for whom a Hope Scholarship Credit under subsection (a)(1) is allowed for the taxable year shall not be taken into account under this subsection.

(B) Expenses eligible for Lifetime Learning Credit

For purposes of paragraph (1), qualified tuition and related expenses shall include expenses described in subsection (f)(1) with respect to any course of instruction at an eligible educational institution to acquire or improve job skills of the individual.

(d) Limitation based on modified adjusted gross income

(1) In general

The amount which would (but for this subsection) be taken into account under subsection (a) for the taxable year shall be reduced (but not below zero) by the amount determined under paragraph (2).

(2) Amount of reduction

The amount determined under this paragraph is the amount which bears the same ratio to the amount which would be so taken into account as—

(A) the excess of—

(i) the taxpayer's modified adjusted gross income for such taxable year, over

(ii) $40,000 ($80,000 in the case of a joint return), bears to

(B) $10,000 ($20,000 in the case of a joint return).

(3) Modified adjusted gross income

The term "modified adjusted gross income" means the adjusted gross income of the taxpayer for the taxable year increased by any amount excluded from gross income under section 911, 931, or 933.

(e) Election not to have section apply

A taxpayer may elect not to have this section apply with respect to the qualified tuition and related expenses of an individual for any taxable year.

(f) Definitions

For purposes of this section—

(1) Qualified tuition and related expenses

(A) In general

The term "qualified tuition and related expenses" means tuition and fees required for the enrollment or attendance of—

(i) the taxpayer,

(ii) the taxpayer's spouse, or

(iii) any dependent of the taxpayer with respect to whom the taxpayer is allowed a deduction under section 151,

at an eligible educational institution for courses of instruction of such individual at such institution.

(B) Exception for education involving sports, etc.

Such term does not include expenses with respect to any course or other education involving sports, games, or hobbies, unless such course or other education is part of the individual's degree program.

(C) Exception for nonacademic fees

Such term does not include student activity fees, athletic fees, insurance expenses, or other expenses unrelated to an individual's academic course of instruction.

(2) Eligible educational institution

The term "eligible educational institution" means an institution—

(A) which is described in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088), as in effect on the date of the enactment of this section, and

(B) which is eligible to participate in a program under title IV of such Act.

(g) Special rules

(1) Identification requirement

No credit shall be allowed under subsection (a) to a taxpayer with respect to the qualified tuition and related expenses of an individual unless the taxpayer includes the name and taxpayer

identification number of such individual on the return of tax for the taxable year.

(2) Adjustment for certain scholarships, etc.

The amount of qualified tuition and related expenses otherwise taken into account under subsection (a) with respect to an individual for an academic period shall be reduced (before the application of subsections (b), (c), and (d)) by the sum of any amounts paid for the benefit of such individual which are allocable to such period as—

(A) a qualified scholarship which is excludable from gross income under section 117,

(B) an educational assistance allowance under chapter 30, 31, 32, 34, or 35 of title 38, United States Code, or under chapter 1606 of title 10, United States Code, and

(C) a payment (other than a gift, bequest, devise, or inheritance within the meaning of section 102(a)) for such individual's educational expenses, or attributable to such individual's enrollment at an eligible educational institution, which is excludable from gross income under any law of the United States.

(3) Treatment of expenses paid by dependent

If a deduction under section 151 with respect to an individual is allowed to another taxpayer for a taxable year beginning in the calendar year in which such individual's taxable year begins—

(A) no credit shall be allowed under subsection (a) to such individual for such individual's taxable year, and

(B) qualified tuition and related expenses paid by such individual during such individual's taxable year shall be treated for purposes of this section as paid by such other taxpayer.

(4) Treatment of certain prepayments

If qualified tuition and related expenses are paid by the taxpayer during a taxable year for an academic period which begins during the first 3 months following such taxable year, such academic period shall be treated for purposes of this section as beginning during such taxable year.

(5) Denial of double benefit

No credit shall be allowed under this section for any expense for which a deduction is allowed under any other provision of this chapter.

(6) No credit for married individuals filing separate returns

If the taxpayer is a married individual (within the meaning of section 7703), this section shall apply only if the taxpayer and the taxpayer's spouse file a joint return for the taxable year.

(7) Nonresident aliens

If the taxpayer is a nonresident alien individual for any portion of the taxable year, this section shall apply only if such individual is treated as a resident alien of the United States for purposes of this chapter by reason of an election under subsection (g) or (h) of section 6013.

(h) Inflation adjustments

(1) Dollar limitation on amount of credit

(A) In general

In the case of a taxable year beginning after 2001, each of the $1,000 amounts under subsection (b)(1) shall be increased by an amount equal to—

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting "calendar year 2000" for "calendar year 1992" in subparagraph (B) thereof.

(B) Rounding

If any amount as adjusted under subparagraph (A) is not a multiple of $100, such amount shall be rounded to the next lowest multiple of $100.

(2) Income limits

(A) In general

In the case of a taxable year beginning after 2001, the $40,000 and $80,000 amounts in subsection (d)(2) shall each be increased by an amount equal to—

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting "calendar year 2000" for "calendar year 1992" in subparagraph (B) thereof.

(B) Rounding

If any amount as adjusted under subparagraph (A) is not a multiple of $1,000, such amount shall be rounded to the next lowest multiple of $1,000.

(i) American opportunity tax credit

In the case of any taxable year beginning after 2008 and before 2018—

(1) Increase in credit

The Hope Scholarship Credit shall be an amount equal to the sum of—

(A) 100 percent of so much of the qualified tuition and related expenses paid by the taxpayer during the taxable year (for education furnished to the eligible student during any academic period beginning in such taxable year) as does not exceed $2,000, plus

(B) 25 percent of such expenses so paid as exceeds $2,000 but does not exceed $4,000.

(2) Credit allowed for first 4 years of post-secondary education

Subparagraphs (A) and (C) of subsection (b)(2) shall be applied by substituting "4" for "2".

(3) Qualified tuition and related expenses to include required course materials

Subsection (f)(1)(A) shall be applied by substituting "tuition, fees, and course materials" for "tuition and fees".

(4) Increase in AGI limits for Hope Scholarship Credit

In lieu of applying subsection (d) with respect to the Hope Scholarship Credit, such credit (determined without regard to this paragraph) shall be reduced (but not below zero) by the amount which bears the same ratio to such credit (as so determined) as—

(A) the excess of—

(i) the taxpayer's modified adjusted gross income (as defined in subsection (d)(3)) for such taxable year, over

(ii) $80,000 ($160,000 in the case of a joint return), bears to

(B) $10,000 ($20,000 in the case of a joint return).

(5) Portion of credit made refundable

40 percent of so much of the credit allowed under subsection (a) as is attributable to the Hope Scholarship Credit (determined after application of paragraph (4) and without regard to this paragraph and section 26(a)) shall be treated as a credit allowable under subpart C (and not allowed under subsection (a)). The preceding sentence shall not apply to any taxpayer for any taxable year if such taxpayer is a child to whom subsection (g) of section 1 applies for such taxable year.

(6) Coordination with midwestern disaster area benefits

In the case of a taxpayer with respect to whom section 702(a)(1)(B) of the Heartland Disaster Tax Relief Act of 2008 applies for any taxable year, such taxpayer may elect to waive the application of this subsection to such taxpayer for such taxable year.

(j) Regulations

The Secretary may prescribe such regulations as may be necessary or appropriate to carry out this

section, including regulations providing for a recapture of the credit allowed under this section in cases where there is a refund in a subsequent taxable year of any amount which was taken into account in determining the amount of such credit.

(Added Pub. L. 105–34, title II, §201(a), Aug. 5, 1997, 111 Stat. 799; amended Pub. L. 107–16, title IV, §401(g)(2)(A), June 7, 2001, 115 Stat. 59; Pub. L. 111–5, div. B, title I, §1004(a), Feb. 17, 2009, 123 Stat. 313; Pub. L. 111–148, title X, §10909(b)(2)(C), (c), Mar. 23, 2010, 124 Stat. 1023; Pub. L. 111–312, title I, §§101(b)(1), 103(a)(1), Dec. 17, 2010, 124 Stat. 3298, 3299; Pub. L. 112–240, title I, §§103(a)(1), 104(c)(2)(D), Jan. 2, 2013, 126 Stat. 2319, 2322.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsecs. (b)(3)(A) and (f)(2)(A), is the date of enactment of Pub. L. 105–34 which was approved Aug. 5, 1997.

The Higher Education Act of 1965, referred to in subsec. (f)(2)(B), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, as amended. Title IV of the Act is classified generally to subchapter IV (§1070 et seq.) of chapter 28 of Title 20, Education, and part C (§2751 et seq.) of subchapter I of chapter 34 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

Section 702(a)(1)(B) of the Heartland Disaster Tax Relief Act of 2008, referred to in subsec. (i)(6), is section 702(a)(1)(B) of Pub. L. 110–343, div. C, title VII, Oct. 3, 2008, 122 Stat. 3912, which is not classified to the Code.

AMENDMENTS

2013—Subsec. (i). Pub. L. 112–240, §103(a)(1), substituted "after 2008 and before 2018" for "in 2009, 2010, 2011, or 2012" in introductory provisions.

Subsec. (i)(5) to (7). Pub. L. 112–240, §104(c)(2)(D), redesignated pars. (6) and (7) as (5) and (6), respectively, substituted "section 26(a)" for "section 26(a)(2) or paragraph (5), as the case may be" in par. (5), and struck out former par. (5) which related to credit allowed against alternative minimum tax.

2010—Subsec. (i). Pub. L. 111–312, §103(a)(1), substituted ", 2010, 2011, or 2012" for "or 2010" in introductory provisions.

Subsec. (i)(5)(B). Pub. L. 111–148, §10909(b)(2)(C), (c), as amended by Pub. L. 111–312, §101(b)(1), temporarily substituted "25D" for "23, 25D,". See Effective and Termination Dates of 2010 Amendment note below.

2009—Subsecs. (i), (j). Pub. L. 111–5 added subsec. (i) and redesignated former subsec. (i) as (j).

2001—Subsec. (e). Pub. L. 107–16, §401(g)(2)(A), amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows:

"(1) IN GENERAL.—No credit shall be allowed under subsection (a) for a taxable year with respect to the qualified tuition and related expenses of an individual unless the taxpayer elects to have this section apply with respect to such individual for such year.

"(2) COORDINATION WITH EXCLUSIONS.—An election under this subsection shall not take effect with respect to an individual for any taxable year if any portion of any distribution during such taxable year from an education individual retirement account is excluded from gross income under section 530(d)(2)."

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by section 103(a)(1) of Pub. L. 112–240 applicable to taxable years beginning after Dec. 31, 2012, see section 103(e)(1) of Pub. L. 112–240, set out as a note under section 24 of this title.

Amendment by section 104(c)(2)(D) of Pub. L. 112–240 applicable to taxable years beginning after Dec. 31, 2011, see section 104(d) of Pub. L. 112–240, set out as a note under section 23 of this title.

EFFECTIVE AND TERMINATION DATES OF 2010 AMENDMENT

Amendment by section 103(a)(1) of Pub. L. 111–312 applicable to taxable years beginning after Dec. 31, 2010, see section 103(d) of Pub. L. 111–312, set out as a note under section 24 of this title.

Amendment by Pub. L. 111–148 terminated applicable to taxable years beginning after Dec. 31, 2011, and section is amended to read as if such amendment had never been enacted, see section 10909(c) of Pub. L. 111–148, set out as a note under section 1 of this title.

Amendment by Pub. L. 111–148 applicable to taxable years beginning after Dec. 31, 2009, see section 10909(d) of Pub. L. 111–148, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–5 applicable to taxable years beginning after Dec. 31, 2008, see section 1004(d) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–16, title IV, §401(h), June 7, 2001, 115 Stat. 60, provided that: "The amendments made by this section [amending this section and sections 135, 530, and 4973 of this title] shall apply to taxable years beginning after December 31, 2001."

EFFECTIVE DATE

Pub. L. 105–34, title II, §201(f), Aug. 5, 1997, 111 Stat. 806, provided that:

"(1) IN GENERAL.—The amendments made by this section [enacting this section and section 6050S of this title and amending sections 135, 6213, and 6724 of this title] shall apply to expenses paid after December 31, 1997 (in taxable years ending after such date), for education furnished in academic periods beginning after such date.

"(2) LIFETIME LEARNING CREDIT.—Section 25A(a)(2) of the Internal Revenue Code of 1986 shall apply to expenses paid after June 30, 1998 (in taxable years ending after such date), for education furnished in academic periods beginning after such dates."

TREATMENT OF POSSESSIONS

Pub. L. 111–5, div. B, title I, §1004(c), Feb. 17, 2009, 123 Stat. 314, as amended by Pub. L. 111–312, title I, §103(a)(2), Dec. 17, 2010, 124 Stat. 3299; Pub. L. 112–240, title I, §103(a)(2), Jan. 2, 2013, 126 Stat. 2319, provided that:

"(1) PAYMENTS TO POSSESSIONS.—

"(A) MIRROR CODE POSSESSION.—The Secretary of the Treasury shall pay to each possession of the United States with a mirror code tax system amounts equal to the loss to that possession by reason of the application of section 25A(i)(6) [now 25A(i)(5)] of the Internal Revenue Code of 1986 (as added by this section) with respect to taxable years beginning after 2008 and before 2018. Such amounts shall be determined by the Secretary of the Treasury based on information provided by the government of the respective possession.

"(B) OTHER POSSESSIONS.—The Secretary of the Treasury shall pay to each possession of the United States which does not have a mirror code tax system amounts estimated by the Secretary of the Treasury as being equal to the aggregate benefits that would have been provided to residents of such possession by reason of the application of section 25A(i)(6) [now 25A(i)(5)] of such Code (as so added) for taxable years beginning after 2008 and before 2018 if a mirror code tax system had been in effect in such possession. The preceding sentence shall not apply with respect to any possession of the United States unless such possession has a plan, which has been approved by the Secretary of the Treasury, under which such possession will promptly distribute such payments to the residents of such possession.

"(2) COORDINATION WITH CREDIT ALLOWED AGAINST UNITED STATES INCOME TAXES .—Section 25A(i)(6) [now 25A(i)(5)] of such Code (as added by this section) shall not apply to a bona fide resident of any possession of the United States.

"(3) DEFINITIONS AND SPECIAL RULES.—

"(A) POSSESSION OF THE UNITED STATES.—For purposes of this subsection, the term 'possession of the United States' includes the Commonwealth of Puerto Rico and the Commonwealth of the Northern Mariana Islands.

"(B) MIRROR CODE TAX SYSTEM.—For purposes of this subsection, the term 'mirror code tax system' means, with respect to any possession of the United States, the income tax system of such possession if the income tax liability of the residents of such possession under such system is determined by reference to the income tax laws of the United States as if such possession were the United States.

"(C) TREATMENT OF PAYMENTS.—For purposes of section 1324(b)(2) of title 31, United States Code, the payments under this subsection shall be treated in the same manner as a refund due from the credit allowed under section 25A of the Internal Revenue Code of 1986 by reason of subsection (i)(6) [now (i)(5)] of such section (as added by this section)."

§25B. Elective deferrals and IRA contributions by certain individuals

(a) Allowance of credit

In the case of an eligible individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the applicable percentage of so much of the qualified retirement savings contributions of the eligible individual for the taxable year as do not exceed $2,000.

(b) Applicable percentage

For purposes of this section—

(1) Joint returns

In the case of a joint return, the applicable percentage is—

(A) if the adjusted gross income of the taxpayer is not over $30,000, 50 percent,

(B) if the adjusted gross income of the taxpayer is over $30,000 but not over $32,500, 20 percent,

(C) if the adjusted gross income of the taxpayer is over $32,500 but not over $50,000, 10 percent, and

(D) if the adjusted gross income of the taxpayer is over $50,000, zero percent.

(2) Other returns

In the case of—

(A) a head of household, the applicable percentage shall be determined under paragraph (1) except that such paragraph shall be applied by substituting for each dollar amount therein (as adjusted under paragraph (3)) a dollar amount equal to 75 percent of such dollar amount, and

(B) any taxpayer not described in paragraph (1) or subparagraph (A), the applicable percentage shall be determined under paragraph (1) except that such paragraph shall be applied by substituting for each dollar amount therein (as adjusted under paragraph (3)) a dollar amount equal to 50 percent of such dollar amount.

(3) Inflation adjustment

In the case of any taxable year beginning in a calendar year after 2006, each of the dollar amounts in paragraph (1) shall be increased by an amount equal to—

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting "calendar year 2005" for "calendar year 1992" in subparagraph (B) thereof.

Any increase determined under the preceding sentence shall be rounded to the nearest multiple of $500.

(c) Eligible individual

For purposes of this section—

(1) In general

The term "eligible individual" means any individual if such individual has attained the age of 18 as of the close of the taxable year.

(2) Dependents and full-time students not eligible

The term "eligible individual" shall not include—

(A) any individual with respect to whom a deduction under section 151 is allowed to another taxpayer for a taxable year beginning in the calendar year in which such individual's taxable year begins, and

(B) any individual who is a student (as defined in section 152(f)(2)).

(d) Qualified retirement savings contributions

For purposes of this section—

(1) In general

The term "qualified retirement savings contributions" means, with respect to any taxable year, the sum of—

(A) the amount of the qualified retirement contributions (as defined in section 219(e)) made by the eligible individual,

(B) the amount of—

(i) any elective deferrals (as defined in section 402(g)(3)) of such individual, and

(ii) any elective deferral of compensation by such individual under an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A), and

(C) the amount of voluntary employee contributions by such individual to any qualified retirement plan (as defined in section 4974(c)).

(2) Reduction for certain distributions

(A) In general

The qualified retirement savings contributions determined under paragraph (1) shall be reduced (but not below zero) by the aggregate distributions received by the individual during the testing period from any entity of a type to which contributions under paragraph (1) may be made. The preceding sentence shall not apply to the portion of any distribution which is not includible in gross income by reason of a trustee-to-trustee transfer or a rollover distribution.

(B) Testing period

For purposes of subparagraph (A), the testing period, with respect to a taxable year, is the period which includes—

(i) such taxable year,

(ii) the 2 preceding taxable years, and

(iii) the period after such taxable year and before the due date (including extensions) for filing the return of tax for such taxable year.

(C) Excepted distributions

There shall not be taken into account under subparagraph (A)—

(i) any distribution referred to in section 72(p), 401(k)(8), 401(m)(6), 402(g)(2), 404(k), or 408(d)(4), and

(ii) any distribution to which section 408A(d)(3) applies.

(D) Treatment of distributions received by spouse of individual

For purposes of determining distributions received by an individual under subparagraph (A) for any taxable year, any distribution received by the spouse of such individual shall be treated as received by such individual if such individual and spouse file a joint return for such taxable year and for the taxable year during which the spouse receives the distribution.

(e) Adjusted gross income

For purposes of this section, adjusted gross income shall be determined without regard to sections 911, 931, and 933.

(f) Investment in the contract

Notwithstanding any other provision of law, a qualified retirement savings contribution shall not fail to be included in determining the investment in the contract for purposes of section 72 by reason of the credit under this section.

(Added and amended Pub. L. 107–16, title VI, §618(a), (b)(1), June 7, 2001, 115 Stat. 106, 108; Pub. L. 107–147, title IV, §§411(m), 417(1), Mar. 9, 2002, 116 Stat. 48, 56; Pub. L. 108–311, title II, §207(4), Oct. 4, 2004, 118 Stat. 1177; Pub. L. 109–135, title IV, §402(i)(3)(D), Dec. 21, 2005, 119 Stat. 2614; Pub. L. 109–280, title VIII, §§812, 833(a), Aug. 17, 2006, 120 Stat. 997, 1003; Pub. L. 110–343, div. B, title I, §106(e)(2)(C), title II, §205(d)(1)(C), Oct. 3, 2008, 122 Stat. 3817, 3838;

Pub. L. 111–5, div. B, title I, §§1004(b)(4), 1142(b)(1)(C), 1144(b)(1)(C), Feb. 17, 2009, 123 Stat. 314, 330, 332; Pub. L. 111–148, title X, §10909(b)(2)(D), (c), Mar. 23, 2010, 124 Stat. 1023; Pub. L. 111–312, title I, §101(b)(1), Dec. 17, 2010, 124 Stat. 3298; Pub. L. 112–240, title I, §104(c)(2)(E), Jan. 2, 2013, 126 Stat. 2322.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title and Revenue Notices listed in a table under section 401 of this title.

AMENDMENTS

2013—Subsec. (g). Pub. L. 112–240 struck out subsec. (g). Text read as follows: "In the case of a taxable year to which section 26(a)(2) does not apply, the credit allowed under subsection (a) for the taxable year shall not exceed the excess of—

"(1) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

"(2) the sum of the credits allowable under this subpart (other than this section and sections 23, 25A(i), 25D, 30, 30B, and 30D) and section 27 for the taxable year."

2010—Subsec. (g)(2). Pub. L. 111–148, §10909(b)(2)(D), (c), as amended by Pub. L. 111–312, temporarily struck out "23," before "25A(i),". See Effective and Termination Dates of 2010 Amendment note below.

2009—Subsec. (g)(2). Pub. L. 111–5, §1144(b)(1)(C), inserted "30B," after "30,".

Pub. L. 111–5, §1142(b)(1)(C), inserted "30," after "25D,".

Pub. L. 111–5, §1004(b)(4), inserted "25A(i)," after "23,".

2008—Subsec. (g)(2). Pub. L. 110–343, §205(d)(1)(C), substituted ", 25D, and 30D" for "and 25D".

Pub. L. 110–343, §106(e)(2)(C), substituted "sections 23 and 25D" for "section 23".

2006—Subsec. (b). Pub. L. 109–280, §833(a), reenacted heading without change and amended text of subsec. (b) generally, substituting provisions consisting of introductory provisions and pars. (1) to (3) for former provisions consisting of introductory provisions and a table of applicable percentages for amounts of adjusted gross income for a joint return, a head of household, and all other cases.

Subsec. (h). Pub. L. 109–280, §812, struck out heading and text of subsec. (h). Text read as follows: "This section shall not apply to taxable years beginning after December 31, 2006."

2005—Subsec. (g). Pub. L. 109–135 substituted "In the case of a taxable year to which section 26(a)(2) does not apply, the credit" for "The credit" in introductory provisions.

2004—Subsec. (c)(2)(B). Pub. L. 108–311 substituted "152(f)(2)" for "151(c)(4)".

2002—Subsec. (d)(2)(A). Pub. L. 107–147, §411(m), reenacted heading without change and amended text of subpar. (A) generally. Prior to amendment, text read as follows: "The qualified retirement savings contributions determined under paragraph (1) shall be reduced (but not below zero) by the sum of—

"(i) any distribution from a qualified retirement plan (as defined in section 4974(c)), or from an eligible deferred compensation plan (as defined in section 457(b)), received by the individual during the testing period which is includible in gross income, and

"(ii) any distribution from a Roth IRA or a Roth account received by the individual during the testing period which is not a qualified rollover contribution (as defined in section 408A(e)) to a Roth IRA or a rollover under section 402(c)(8)(B) to a Roth account."

Subsecs. (g), (h). Pub. L. 107–147, §417(1), redesignated subsec. (g), relating to termination, as (h).

2001—Subsec. (g). Pub. L. 107–16, §618(b)(1), added subsec. (g) relating to limitation based on amount of tax.

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112–240 applicable to taxable years beginning after Dec. 31, 2011, see section 104(d) of Pub. L. 112–240, set out as a note under section 23 of this title.

EFFECTIVE AND TERMINATION DATES OF 2010 AMENDMENT

Amendment by Pub. L. 111–148 terminated applicable to taxable years beginning after Dec. 31, 2011, and section is amended to read as if such amendment had never been enacted, see section 10909(c) of Pub. L. 111–148, set out as a note under section 1 of this title.

Amendment by Pub. L. 111–148 applicable to taxable years beginning after Dec. 31, 2009, see section 10909(d) of Pub. L. 111–148, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by section 1004(b)(4) of Pub. L. 111–5 applicable to taxable years beginning after Dec. 31, 2008, see section 1004(d) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

Amendment by section 1142(b)(1)(C) of Pub. L. 111–5 applicable to vehicles acquired after Feb. 17, 2009, see section 1142(c) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

Amendment by section 1144(b)(1)(C) of Pub. L. 111–5 applicable to taxable years beginning after Dec. 31, 2008, see section 1144(c) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by section 106(e)(2)(C) of Pub. L. 110–343 applicable to taxable years beginning after Dec. 31, 2007, see section 106(f)(1) of Pub. L. 110–343, set out as an Effective and Termination Dates of 2008 Amendment note under section 23 of this title.

Amendment by section 205(d)(1)(C) of Pub. L. 110–343 applicable to taxable years beginning after Dec. 31, 2008, see section 205(e) of Pub. L. 110–343, set out as an Effective and Termination Dates of 2008 Amendment note under section 24 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title VIII, §833(d), Aug. 17, 2006, 120 Stat. 1004, provided that: "The amendments made by this section [amending this section and sections 219 and 408A of this title] shall apply to taxable years beginning after 2006."

EFFECTIVE AND TERMINATION DATES OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, §901, in the same manner as the provisions of such Act to which such amendment relates, see section 402(i)(3)(H) of Pub. L. 109–135, set out as a note under section 23 of this title. Title IX of Pub. L. 107–16 was repealed by Pub. L. 112–240, title I, §101(a)(1), Jan. 2, 2013, 126 Stat. 2315.

Amendment by Pub. L. 109–135 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109–58, to which it relates and applicable to taxable years beginning after Dec. 31, 2005, see section 402(m) of Pub. L. 109–135, set out as a note under section 23 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title IV, §411(x), Mar. 9, 2002, 116 Stat. 53, provided that: "Except as provided in subsection (c) [amending sections 23 and 137 of this title and enacting provisions set out as a note under section 23 of this title], the amendments made by this section [amending this section, sections 23, 24, 38, 45E, 45F, 63, 137, 401 to 404, 408, 409, 412, 414 to 417, 457, 530, 2016, 2101, 2511, 4980F, and 6428 of this title, sections 1003, 1054, 1055, 1082, and 1104 of Title 29, Labor, and provisions set out as notes under sections 38, 415, and 4980F of this title] shall take effect as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 [Pub. L. 107–16] to which they relate."

EFFECTIVE DATE

Amendment by section 618(b)(1) of Pub. L. 107–16 inapplicable to taxable years beginning during 2004 or 2005, see section 312(b)(2) of Pub. L. 108–311, set out as an Effective Date of 2001 Amendment note under section 23 of this title.

Amendment by section 618(b)(1) of Pub. L. 107–16 inapplicable to taxable years beginning during 2002 and 2003, see section 601(b)(2) of Pub. L. 107–147, set out as an Effective Date of 2001 Amendment note under section 23 of this title.

Amendment by section 618(b)(1) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 618(d) of Pub. L. 107–16, set out as an Effective Date of 2001 Amendment note under section 24 of this title.

§25C. Nonbusiness energy property

(a) Allowance of credit

In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of—

(1) 10 percent of the amount paid or incurred by the taxpayer for qualified energy efficiency improvements installed during such taxable year, and

(2) the amount of the residential energy property expenditures paid or incurred by the taxpayer during such taxable year.

(b) Limitations

(1) Lifetime limitation

The credit allowed under this section with respect to any taxpayer for any taxable year shall not exceed the excess (if any) of $500 over the aggregate credits allowed under this section with respect to such taxpayer for all prior taxable years ending after December 31, 2005.

(2) Windows

In the case of amounts paid or incurred for components described in subsection (c)(2)(B) by any taxpayer for any taxable year, the credit allowed under this section with respect to such amounts for such year shall not exceed the excess (if any) of $200 over the aggregate credits allowed under this section with respect to such amounts for all prior taxable years ending after December 31, 2005.

(3) Limitation on residential energy property expenditures

The amount of the credit allowed under this section by reason of subsection (a)(2) shall not exceed—

(A) $50 for any advanced main air circulating fan,

(B) $150 for any qualified natural gas, propane, or oil furnace or hot water boiler, and

(C) $300 for any item of energy-efficient building property.

(c) Qualified energy efficiency improvements

For purposes of this section—

(1) In general

The term "qualified energy efficiency improvements" means any energy efficient building envelope component which meets the prescriptive criteria for such component established by the 2009 International Energy Conservation Code, as such Code (including supplements) is in effect on the date of the enactment of the American Recovery and Reinvestment Tax Act of 2009 (or, in the case of an exterior window, a skylight, an exterior door, a metal roof with appropriate pigmented coatings, or an asphalt roof with appropriate cooling granules, which meet the Energy Star program requirements), if—

(A) such component is installed in or on a dwelling unit located in the United States and owned and used by the taxpayer as the taxpayer's principal residence (within the meaning of section 121),

(B) the original use of such component commences with the taxpayer, and

(C) such component reasonably can be expected to remain in use for at least 5 years.

(2) Building envelope component

The term "building envelope component" means—

(A) any insulation material or system which is specifically and primarily designed to reduce the heat loss or gain of a dwelling unit when installed in or on such dwelling unit,

(B) exterior windows (including skylights),

(C) exterior doors, and

(D) any metal roof or asphalt roof installed on a dwelling unit, but only if such roof has appropriate pigmented coatings or cooling granules which are specifically and primarily designed to reduce the heat gain of such dwelling unit.

(3) Manufactured homes included

The term "dwelling unit" includes a manufactured home which conforms to Federal Manufactured Home Construction and Safety Standards (part 3280 of title 24, Code of Federal Regulations).

(d) Residential energy property expenditures

For purposes of this section—

(1) In general

The term "residential energy property expenditures" means expenditures made by the taxpayer for qualified energy property which is—

(A) installed on or in connection with a dwelling unit located in the United States and owned and used by the taxpayer as the taxpayer's principal residence (within the meaning of section 121), and

(B) originally placed in service by the taxpayer.

Such term includes expenditures for labor costs properly allocable to the onsite preparation, assembly, or original installation of the property.

(2) Qualified energy property

(A) In general

The term "qualified energy property" means—

(i) energy-efficient building property,

(ii) a qualified natural gas, propane, or oil furnace or hot water boiler, or

(iii) an advanced main air circulating fan.

(B) Performance and quality standards

Property described under subparagraph (A) shall meet the performance and quality standards, and the certification requirements (if any), which—

(i) have been prescribed by the Secretary by regulations (after consultation with the Secretary of Energy or the Administrator of the Environmental Protection Agency, as appropriate), and

(ii) are in effect at the time of the acquisition of the property, or at the time of the completion of the construction, reconstruction, or erection of the property, as the case may be.

(C) Requirements and standards for air conditioners and heat pumps

The standards and requirements prescribed by the Secretary under subparagraph (B) with respect to the energy efficiency ratio (EER) for central air conditioners and electric heat pumps—

(i) shall require measurements to be based on published data which is tested by manufacturers at 95 degrees Fahrenheit, and

(ii) may be based on the certified data of the Air Conditioning and Refrigeration Institute that are prepared in partnership with the Consortium for Energy Efficiency.

(3) Energy-efficient building property

The term "energy-efficient building property" means—

(A) an electric heat pump water heater which yields an energy factor of at least 2.0 in the standard Department of Energy test procedure,

(B) an electric heat pump which achieves the highest efficiency tier established by the Consortium for Energy Efficiency, as in effect on January 1, 2009.[1]

(C) a central air conditioner which achieves the highest efficiency tier established by the Consortium for Energy Efficiency, as in effect on January 1, 2009,

(D) a natural gas, propane, or oil water heater which has either an energy factor of at least 0.82 or a thermal efficiency of at least 90 percent.[2]

(E) a stove which uses the burning of biomass fuel to heat a dwelling unit located in the

United States and used as a residence by the taxpayer, or to heat water for use in such a dwelling unit, and which has a thermal efficiency rating of at least 75 percent.

(4) Qualified natural gas, propane, or oil furnace or hot water boiler

The term "qualified natural gas, propane, or oil furnace or hot water boiler" means a natural gas, propane, or oil furnace or hot water boiler which achieves an annual fuel utilization efficiency rate of not less than 95.

(5) Advanced main air circulating fan

The term "advanced main air circulating fan" means a fan used in a natural gas, propane, or oil furnace and which has an annual electricity use of no more than 2 percent of the total annual energy use of the furnace (as determined in the standard Department of Energy test procedures).

(6) Biomass fuel

The term "biomass fuel" means any plant-derived fuel available on a renewable or recurring basis, including agricultural crops and trees, wood and wood waste and residues (including wood pellets), plants (including aquatic plants), grasses, residues, and fibers.

(e) Special rules

For purposes of this section—

(1) Application of rules

Rules similar to the rules under paragraphs (4), (5), (6), (7), and (8) of section 25D(e) shall apply.

(2) Joint ownership of energy items

(A) In general

Any expenditure otherwise qualifying as an expenditure under this section shall not be treated as failing to so qualify merely because such expenditure was made with respect to two or more dwelling units.

(B) Limits applied separately

In the case of any expenditure described in subparagraph (A), the amount of the credit allowable under subsection (a) shall (subject to paragraph (1)) be computed separately with respect to the amount of the expenditure made for each dwelling unit.

(3) Property financed by subsidized energy financing

For purposes of determining the amount of expenditures made by any individual with respect to any property, there shall not be taken into account expenditures which are made from subsidized energy financing (as defined in section 48(a)(4)(C)).

(f) Basis adjustments

For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

(g) Termination

This section shall not apply with respect to any property placed in service—

(1) after December 31, 2007, and before January 1, 2009, or

(2) after December 31, 2013..[3]

(Added Pub. L. 109–58, title XIII, §1333(a), Aug. 8, 2005, 119 Stat. 1026; amended Pub. L. 109–135, title IV, §412(b), Dec. 21, 2005, 119 Stat. 2636; Pub. L. 110–172, §11(a)(2), Dec. 29, 2007, 121 Stat. 2484; Pub. L. 110–343, div. B, title III, §302(a)–(e), Oct. 3, 2008, 122 Stat. 3844, 3845; Pub. L. 111–5, div. B, title I, §§1103(b)(2)(A), 1121(a)–(e), Feb. 17, 2009, 123 Stat. 320, 322–324; Pub. L. 111–312, title VII, §710(a), (b), Dec. 17, 2010, 124 Stat. 3314; Pub. L. 112–240, title IV, §401(a), Jan. 2, 2013, 126 Stat. 2337.)

REFERENCES IN TEXT

The date of the enactment of the American Recovery and Reinvestment Tax Act of 2009, referred to in subsec. (c)(1), is the date of the enactment of div. B of Pub. L. 111–5, which was approved Feb. 17, 2009.

AMENDMENTS

2013—Subsec. (g)(2). Pub. L. 112–240 substituted "December 31, 2013" for "December 31, 2011".

2010—Subsecs. (a), (b). Pub. L. 111–312, §710(b)(1), amended subsecs. (a) and (b) generally. Prior to amendment, subsecs. (a) and (b) read as follows:

"(a) ALLOWANCE OF CREDIT.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 30 percent of the sum of—

"(1) the amount paid or incurred by the taxpayer during such taxable year for qualified energy efficiency improvements, and

"(2) the amount of the residential energy property expenditures paid or incurred by the taxpayer during such taxable year.

"(b) LIMITATION.—The aggregate amount of the credits allowed under this section for taxable years beginning in 2009 and 2010 with respect to any taxpayer shall not exceed $1,500."

Subsec. (c)(1). Pub. L. 111–312, §710(b)(2)(D)(ii), inserted "an exterior window, a skylight, an exterior door," after "in the case of" in introductory provisions.

Pub. L. 111–312, §710(b)(2)(A), in introductory provisions, substituted "2009 International Energy Conservation Code, as such Code (including supplements) is in effect on the date of the enactment of the American Recovery and Reinvestment Tax Act of 2009" for "2000 International Energy Conservation Code, as such Code (including supplements) is in effect on the date of the enactment of this section".

Subsec. (c)(2)(A). Pub. L. 111–312, §710(b)(2)(E), struck out "and meets the prescriptive criteria for such material or system established by the 2009 International Energy Conservation Code, as such Code (including supplements) is in effect on the date of the enactment of the American Recovery and Reinvestment Tax Act of 2009" after "on such dwelling unit".

Subsec. (c)(4). Pub. L. 111–312, §710(b)(2)(D)(i), struck out par. (4). Text read as follows: "Such term shall not include any component described in subparagraph (B) or (C) of paragraph (2) unless such component is equal to or below a U factor of 0.30 and SHGC of 0.30."

Subsec. (d)(2)(A)(ii). Pub. L. 111–312, §710(b)(2)(C)(ii), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: "any qualified natural gas furnace, qualified propane furnace, qualified oil furnace, qualified natural gas hot water boiler, qualified propane hot water boiler, or qualified oil hot water boiler, or".

Subsec. (d)(3)(E). Pub. L. 111–312, §710(b)(2)(B), struck out ", as measured using a lower heating value" after "75 percent".

Subsec. (d)(4). Pub. L. 111–312, §710(b)(2)(C)(i), amended par. (4) generally. Prior to amendment, par. (4) defined the terms "qualified natural gas furnace", "qualified natural gas hot water boiler", "qualified propane furnace", "qualified propane hot water boiler", "qualified oil furnace", and "qualified oil hot water boiler".

Subsec. (e)(3). Pub. L. 111–312, §710(b)(3), added par. (3).

Subsec. (g)(2). Pub. L. 111–312, §710(a), substituted "2011" for "2010".

2009—Subsecs. (a), (b). Pub. L. 111–5, §1121(a), added subsecs. (a) and (b) and struck out former subsecs. (a) and (b) which related to credit equal to the sum of 10 percent of the amount paid for qualified energy efficiency improvements and the amount of energy property expenditures and provided limits on credits and expenditures.

Subsec. (c)(2)(A). Pub. L. 111–5, §1121(d)(2), inserted "and meets the prescriptive criteria for such material or system established by the 2009 International Energy Conservation Code, as such Code (including supplements) is in effect on the date of the enactment of the American Recovery and Reinvestment Tax Act of 2009" after "such dwelling unit".

Subsec. (c)(4). Pub. L. 111–5, §1121(d)(1), added par. (4).

Subsec. (d)(2)(A)(ii). Pub. L. 111–5, §1121(c)(2), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: "a qualified natural gas, propane, or oil furnace or hot water boiler, or".

Subsec. (d)(3)(B). Pub. L. 111–5, §1121(b)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "an electric heat pump which has a heating seasonal performance factor (HSPF) of at least 9, a seasonal energy efficiency ratio (SEER) of at least 15, and an energy efficiency ratio (EER) of at least 13,".

Subsec. (d)(3)(C). Pub. L. 111–5, §1121(b)(2), substituted "2009" for "2006".

Subsec. (d)(3)(D). Pub. L. 111–5, §1121(b)(3), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: "a natural gas, propane, or oil water heater which has an energy factor of at least 0.80 or a thermal efficiency of at least 90 percent, and".

Subsec. (d)(3)(E). Pub. L. 111–5, §1121(b)(4), inserted ", as measured using a lower heating value" after "75 percent".

Subsec. (d)(4). Pub. L. 111–5, §1121(c)(1), amended par. (4) generally. Prior to amendment, text read as follows: "The term 'qualified natural gas, propane, or oil furnace or hot water boiler' means a natural gas, propane, or oil furnace or hot water boiler which achieves an annual fuel utilization efficiency rate of not less than 95."

Subsec. (e)(1). Pub. L. 111–5, §1103(b)(2)(A), substituted "and (8)" for "(8), and (9)".

Subsec. (g)(2). Pub. L. 111–5, §1121(e), substituted "December 31, 2010" for "December 31, 2009".

2008—Subsec. (c)(1). Pub. L. 110–343, §302(e)(1), in introductory provisions, inserted ", or an asphalt roof with appropriate cooling granules," before "which meet the Energy Star program requirements".

Subsec. (c)(2)(D). Pub. L. 110–343, §302(e)(2), inserted "or asphalt roof" after "metal roof" and "or cooling granules" after "pigmented coatings".

Subsec. (d)(2)(C). Pub. L. 110–343, §302(d)(2), amended heading and text of subpar. (C) generally. Prior to amendment, subpar. (C) related to requirements for standards for central air conditioners, electric heat pumps, and geothermal heat pumps.

Subsec. (d)(3)(C), (D). Pub. L. 110–343, §302(d)(1), redesignated subpars. (D) and (E) as (C) and (D), respectively, and struck out former subpar. (C) which read as follows: "a geothermal heat pump which—

"(i) in the case of a closed loop product, has an energy efficiency ratio (EER) of at least 14.1 and a heating coefficient of performance (COP) of at least 3.3,

"(ii) in the case of an open loop product, has an energy efficiency ratio (EER) of at least 16.2 and a heating coefficient of performance (COP) of at least 3.6, and

"(iii) in the case of a direct expansion (DX) product, has an energy efficiency ratio (EER) of at least 15 and a heating coefficient of performance (COP) of at least 3.5,".

Subsec. (d)(3)(E). Pub. L. 110–343, §302(d)(1), redesignated subpar. (F) as (E). Former subpar. (E) redesignated (D).

Pub. L. 110–343, §302(c), inserted "or a thermal efficiency of at least 90 percent" after "0.80".

Subsec. (d)(3)(F). Pub. L. 110–343, §302(d)(1), redesignated subpar. (F) as (E).

Pub. L. 110–343, §302(b)(1), added subpar. (F).

Subsec. (d)(6). Pub. L. 110–343, §302(b)(2), added par. (6).

Subsec. (g). Pub. L. 110–343, §302(a), substituted "placed in service—" for "placed in service after December 31, 2007" and added pars. (1) and (2).

2007—Subsec. (c)(3). Pub. L. 110–172 substituted "part 3280" for "section 3280".

2005—Subsec. (b)(2). Pub. L. 109–135 substituted "subsection (c)(2)(B)" for "subsection (c)(3)(B)".

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title IV, §401(b), Jan. 2, 2013, 126 Stat. 2337, provided that: "The amendment made by this section [amending this section] shall apply to property placed in service after December 31, 2011."

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §710(c), Dec. 17, 2010, 124 Stat. 3315, provided that: "The amendments made by this section [amending this section] shall apply to property placed in service after December 31, 2010."

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, §1103(c), Feb. 17, 2009, 123 Stat. 321, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by this section [amending this section and sections 25D and 48 to 48B of this title] shall apply to periods after December 31, 2008, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990 [Nov. 5, 1990]).

"(2) CONFORMING AMENDMENTS.—The amendments made by subparagraphs (A) and (B) of subsection (b)(2) [amending this section and section 25D of this title] shall apply to taxable years beginning after December 31, 2008."

Pub. L. 111–5, div. B, title I, §1121(f), Feb. 17, 2009, 123 Stat. 324, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2008.

"(2) EFFICIENCY STANDARDS.—The amendments made by paragraphs (1), (2), and (3) of subsection (b) and subsections (c) and (d) shall apply to property placed in service after the date of the enactment of this Act [Feb. 17, 2009]."

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title III, §302(f), Oct. 3, 2008, 122 Stat. 3845, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made [by] this section [amending this section] shall apply to expenditures made after December 31, 2008.

"(2) MODIFICATION OF QUALIFIED ENERGY EFFICIENCY IMPROVEMENTS.—The amendments made by subsection (e) [amending this section] shall apply to property placed in service after the date of the enactment of this Act [Oct. 3, 2008]."

EFFECTIVE DATE

Pub. L. 109–58, title XIII, §1333(c), Aug. 8, 2005, 119 Stat. 1030, provided that: "The amendments made by this section [enacting this section and amending section 1016 of this title] shall apply to property placed in service after December 31, 2005."

[1] *So in original. The period probably should be a comma.*

[2] *So in original. The period probably should be ", and".*

[3] *So in original.*

§25D. Residential energy efficient property

(a) Allowance of credit

In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of—

(1) 30 percent of the qualified solar electric property expenditures made by the taxpayer during such year,

(2) 30 percent of the qualified solar water heating property expenditures made by the taxpayer during such year,

(3) 30 percent of the qualified fuel cell property expenditures made by the taxpayer during such year,

(4) 30 percent of the qualified small wind energy property expenditures made by the taxpayer during such year, and

(5) 30 percent of the qualified geothermal heat pump property expenditures made by the taxpayer during such year.

(b) Limitations

(1) Maximum credit for fuel cells

In the case of any qualified fuel cell property expenditure, the credit allowed under subsection (a) (determined without regard to subsection (c)) for any taxable year shall not exceed $500 with respect to each half kilowatt of capacity of the qualified fuel cell property (as defined in section 48(c)(1)) to which such expenditure relates.

(2) Certification of solar water heating property

No credit shall be allowed under this section for an item of property described in subsection (d)(1) unless such property is certified for performance by the non-profit Solar Rating Certification Corporation or a comparable entity endorsed by the government of the State in which such property is installed.

(c) Carryforward of unused credit

If the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.

(d) Definitions

For purposes of this section—

(1) Qualified solar water heating property expenditure

The term "qualified solar water heating property expenditure" means an expenditure for property to heat water for use in a dwelling unit located in the United States and used as a residence by the taxpayer if at least half of the energy used by such property for such purpose is derived from the sun.

(2) Qualified solar electric property expenditure

The term "qualified solar electric property expenditure" means an expenditure for property which uses solar energy to generate electricity for use in a dwelling unit located in the United States and used as a residence by the taxpayer.

(3) Qualified fuel cell property expenditure

The term "qualified fuel cell property expenditure" means an expenditure for qualified fuel cell property (as defined in section 48(c)(1)) installed on or in connection with a dwelling unit located in the United States and used as a principal residence (within the meaning of section 121) by the taxpayer.

(4) Qualified small wind energy property expenditure

The term "qualified small wind energy property expenditure" means an expenditure for property which uses a wind turbine to generate electricity for use in connection with a dwelling unit located in the United States and used as a residence by the taxpayer.

(5) Qualified geothermal heat pump property expenditure

(A) In general

The term "qualified geothermal heat pump property expenditure" means an expenditure for qualified geothermal heat pump property installed on or in connection with a dwelling unit located in the United States and used as a residence by the taxpayer.

(B) Qualified geothermal heat pump property

The term "qualified geothermal heat pump property" means any equipment which—

(i) uses the ground or ground water as a thermal energy source to heat the dwelling unit referred to in subparagraph (A) or as a thermal energy sink to cool such dwelling unit, and

(ii) meets the requirements of the Energy Star program which are in effect at the time that the expenditure for such equipment is made.

(e) Special rules

For purposes of this section—

(1) Labor costs

Expenditures for labor costs properly allocable to the onsite preparation, assembly, or original installation of the property described in subsection (d) and for piping or wiring to interconnect such property to the dwelling unit shall be taken into account for purposes of this section.

(2) Solar panels

No expenditure relating to a solar panel or other property installed as a roof (or portion thereof) shall fail to be treated as property described in paragraph (1) or (2) of subsection (d) solely because it constitutes a structural component of the structure on which it is installed.

(3) Swimming pools, etc., used as storage medium

Expenditures which are properly allocable to a swimming pool, hot tub, or any other energy storage medium which has a function other than the function of such storage shall not be taken into account for purposes of this section.

(4) Fuel cell expenditure limitations in case of joint occupancy

In the case of any dwelling unit with respect to which qualified fuel cell property expenditures

are made and which is jointly occupied and used during any calendar year as a residence by two or more individuals, the following rules shall apply:

(A) Maximum expenditures for fuel cells

The maximum amount of such expenditures which may be taken into account under subsection (a) by all such individuals with respect to such dwelling unit during such calendar year shall be $1,667 in the case of each half kilowatt of capacity of qualified fuel cell property (as defined in section 48(c)(1)) with respect to which such expenditures relate.

(B) Allocation of expenditures

The expenditures allocated to any individual for the taxable year in which such calendar year ends shall be an amount equal to the lesser of—

(i) the amount of expenditures made by such individual with respect to such dwelling during such calendar year, or

(ii) the maximum amount of such expenditures set forth in subparagraph (A) multiplied by a fraction—

(I) the numerator of which is the amount of such expenditures with respect to such dwelling made by such individual during such calendar year, and

(II) the denominator of which is the total expenditures made by all such individuals with respect to such dwelling during such calendar year.

(5) Tenant-stockholder in cooperative housing corporation

In the case of an individual who is a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as defined in such section), such individual shall be treated as having made his tenant-stockholder's proportionate share (as defined in section 216(b)(3)) of any expenditures of such corporation.

(6) Condominiums

(A) In general

In the case of an individual who is a member of a condominium management association with respect to a condominium which the individual owns, such individual shall be treated as having made the individual's proportionate share of any expenditures of such association.

(B) Condominium management association

For purposes of this paragraph, the term "condominium management association" means an organization which meets the requirements of paragraph (1) of section 528(c) (other than subparagraph (E) thereof) with respect to a condominium project substantially all of the units of which are used as residences.

(7) Allocation in certain cases

If less than 80 percent of the use of an item is for nonbusiness purposes, only that portion of the expenditures for such item which is properly allocable to use for nonbusiness purposes shall be taken into account.

(8) When expenditure made; amount of expenditure

(A) In general

Except as provided in subparagraph (B), an expenditure with respect to an item shall be treated as made when the original installation of the item is completed.

(B) Expenditures part of building construction

In the case of an expenditure in connection with the construction or reconstruction of a structure, such expenditure shall be treated as made when the original use of the constructed or reconstructed structure by the taxpayer begins.

(f) Basis adjustments

For purposes of this subtitle, if a credit is allowed under this section for any expenditure with

respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

(g) Termination

The credit allowed under this section shall not apply to property placed in service after December 31, 2016.

(Added Pub. L. 109–58, title XIII, §1335(a), Aug. 8, 2005, 119 Stat. 1033; amended Pub. L. 109–135, title IV, §402(i)(1), (2), (3)(E), Dec. 21, 2005, 119 Stat. 2612, 2614; Pub. L. 109–432, div. A, title II, §206, Dec. 20, 2006, 120 Stat. 2945; Pub. L. 110–343, div. B, title I, §106(a)–(c)(3)(A), (c)(4)–(e)(1), Oct. 3, 2008, 122 Stat. 3814–3816; Pub. L. 111–5, div. B, title I, §§1103(b)(2)(B), 1122(a), Feb. 17, 2009, 123 Stat. 320, 324; Pub. L. 112–240, title I, §104(c)(2)(F), Jan. 2, 2013, 126 Stat. 2322.)

AMENDMENTS

2013—Subsec. (c). Pub. L. 112–240 amended subsec. (c) generally. Prior to amendment, subsec. (c) related to limitation based on amount of tax and carryforward of unused credit.

2009—Subsec. (b)(1). Pub. L. 111–5, §1122(a)(1), amended par. (1) generally. Prior to amendment, par. (1) related to maximum credit with respect to qualified solar water heating property expenditures, qualified fuel cell property, qualified small wind energy property expenditures, and qualified geothermal heat pump property expenditures.

Subsec. (e)(4). Pub. L. 111–5, §1122(a)(2)(A), added par. heading and introductory provisions and struck out former heading and introductory provisions. Former introductory provisions read as follows: "In the case of any dwelling unit which is jointly occupied and used during any calendar year as a residence by two or more individuals the following rules shall apply:".

Subsec. (e)(4)(A). Pub. L. 111–5, §1122(a)(2)(A), added subpar. (A) and struck out former subpar. (A) which related to maximum amount of expenditures allowed for credit in jointly occupied dwelling units with respect to qualified solar water heating property expenditures, qualified fuel cell property, qualified small wind energy property expenditures, and qualified geothermal heat pump property expenditures.

Subsec. (e)(4)(C). Pub. L. 111–5, §1122(a)(2)(B), struck out subpar. (C) which read as follows: "Subparagraphs (A) and (B) shall be applied separately with respect to expenditures described in paragraphs (1), (2), and (3) of subsection (d)."

Subsec. (e)(9). Pub. L. 111–5, §1103(b)(2)(B), struck out par. (9). Text read as follows: "For purposes of determining the amount of expenditures made by any individual with respect to any dwelling unit, there shall not be taken into account expenditures which are made from subsidized energy financing (as defined in section 48(a)(4)(C))."

2008—Subsec. (a)(4). Pub. L. 110–343, §106(c)(1), added par. (4).

Subsec. (a)(5). Pub. L. 110–343, §106(d)(1), added par. (5).

Subsec. (b)(1). Pub. L. 110–343, §106(b)(1), amended par. (1) as amended by Pub. L. 110–343, §106(c)(2) and (d)(2), by redesignating subpars. (B) to (E) as (A) to (D), respectively, and striking out former subpar. (A) which read as follows: "$2,000 with respect to any qualified solar electric property expenditures,".

Subsec. (b)(1)(D). Pub. L. 110–343, §106(c)(2), added subpar. (D).

Subsec. (b)(1)(E). Pub. L. 110–343, §106(d)(2), added subpar. (E).

Subsec. (c). Pub. L. 110–343, §106(e)(1), amended heading and text of subsec. (c) generally. Prior to amendment, subsec. (c) related to carryforward of unused credit.

Subsec. (d)(4). Pub. L. 110–343, §106(c)(3)(A), added par. (4).

Subsec. (d)(5). Pub. L. 110–343, §106(d)(3), added par. (5).

Subsec. (e)(4)(A). Pub. L. 110–343, §106(b)(2), amended subpar. (A) as amended by Pub. L. 110–343, §106(c)(4) and (d)(4), by redesignating cls. (ii) to (v) as (i) to (iv), respectively, and striking out former cl. (i) which read as follows: "$6,667 in the case of any qualified solar electric property expenditures,".

Subsec. (e)(4)(A)(iv). Pub. L. 110–343, §106(c)(4), added cl. (iv).

Subsec. (e)(4)(A)(v). Pub. L. 110–343, §106(d)(4), added cl. (v).

Subsec. (g). Pub. L. 110–343, §106(a), substituted "December 31, 2016" for "December 31, 2008".

2006—Subsecs. (a)(1), (b)(1)(A). Pub. L. 109–432, §206(b)(1), substituted "solar electric property expenditures" for "photovoltaic property expenditures".

Subsec. (d)(2). Pub. L. 109–432, §206(b)(2), substituted "solar electric property expenditure" for "photovoltaic property expenditure" in heading and text.

Subsec. (e)(4)(A)(i). Pub. L. 109–432, §206(b)(1), substituted "solar electric property expenditures" for

"photovoltaic property expenditures".

Subsec. (g). Pub. L. 109–432, §206(a), substituted "2008" for "2007".

2005—Subsec. (b)(1). Pub. L. 109–135, §402(i)(1), inserted "(determined without regard to subsection (c))" after "subsection (a)" in introductory provisions.

Subsec. (c). Pub. L. 109–135, §402(i)(3)(E), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "If the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year."

Subsec. (e)(4)(A), (B). Pub. L. 109–135, §402(i)(2), amended subpars. (A) and (B) generally. Prior to amendment, subpars. (A) and (B) read as follows:

"(A) The amount of the credit allowable, under subsection (a) by reason of expenditures (as the case may be) made during such calendar year by any of such individuals with respect to such dwelling unit shall be determined by treating all of such individuals as 1 taxpayer whose taxable year is such calendar year.

"(B) There shall be allowable, with respect to such expenditures to each of such individuals, a credit under subsection (a) for the taxable year in which such calendar year ends in an amount which bears the same ratio to the amount determined under subparagraph (A) as the amount of such expenditures made by such individual during such calendar year bears to the aggregate of such expenditures made by all of such individuals during such calendar year."

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112–240 applicable to taxable years beginning after Dec. 31, 2011, see section 104(d) of Pub. L. 112–240, set out as a note under section 23 of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by section 1103(b)(2)(B) of Pub. L. 111–5 applicable to taxable years beginning after Dec. 31, 2008, see section 1103(c)(2) of Pub. L. 111–5, set out as a note under section 25C of this title.

Pub. L. 111–5, div. B, title I, §1122(b), Feb. 17, 2009, 123 Stat. 324, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2008."

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–343 applicable to taxable years beginning after Dec. 31, 2007, except that amendment by section 106(b) of Pub. L. 110–343 applicable to taxable years beginning after Dec. 31, 2008, see section 106(f)(1), (2) of Pub. L. 110–343, set out as an Effective and Termination Dates of 2008 Amendment note under section 23 of this title.

EFFECTIVE AND TERMINATION DATES OF 2005 AMENDMENT

Amendment by section 402(i)(3)(E) of Pub. L. 109–135 subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, §901, in the same manner as the provisions of such Act to which such amendment relates, see section 402(i)(3)(H) of Pub. L. 109–135, set out as a note under section 23 of this title. Title IX of Pub. L. 107–16 was repealed by Pub. L. 112–240, title I, §101(a)(1), Jan. 2, 2013, 126 Stat. 2315.

Amendments by Pub. L. 109–135 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109–58, to which they relate, except that amendment by section 402(i)(3)(E) of Pub. L. 109–135 is applicable to taxable years beginning after Dec. 31, 2005, see section 402(m) of Pub. L. 109–135, set out as a note under section 23 of this title.

EFFECTIVE DATE

Section applicable to property placed in service after Dec. 31, 2005, in taxable years ending after such date, see section 1335(c) of Pub. L. 109–58, set out as an Effective and Termination Dates of 2005 Amendments note under section 23 of this title.

§26. Limitation based on tax liability; definition of tax liability

(a) Limitation based on amount of tax

The aggregate amount of credits allowed by this subpart for the taxable year shall not exceed the sum of—

(1) the taxpayer's regular tax liability for the taxable year reduced by the foreign tax credit allowable under section 27(a), and

(2) the tax imposed by section 55(a) for the taxable year.

(b) Regular tax liability

For purposes of this part—

(1) In general

The term "regular tax liability" means the tax imposed by this chapter for the taxable year.

(2) Exception for certain taxes

For purposes of paragraph (1), any tax imposed by any of the following provisions shall not be treated as tax imposed by this chapter:

(A) section 55 (relating to minimum tax),

(B) section 59A (relating to environmental tax),

(C) subsection (m)(5)(B), (q), (t), or (v) of section 72 (relating to additional taxes on certain distributions),

(D) section 143(m) (relating to recapture of proration of Federal subsidy from use of mortgage bonds and mortgage credit certificates),

(E) section 530(d)(4) (relating to additional tax on certain distributions from Coverdell education savings accounts),

(F) section 531 (relating to accumulated earnings tax),

(G) section 541 (relating to personal holding company tax),

(H) section 1351(d)(1) (relating to recoveries of foreign expropriation losses),

(I) section 1374 (relating to tax on certain built-in gains of S corporations),

(J) section 1375 (relating to tax imposed when passive investment income of corporation having subchapter C earnings and profits exceeds 25 percent of gross receipts),

(K) subparagraph (A) of section 7518(g)(6) (relating to nonqualified withdrawals from capital construction funds taxed at highest marginal rate),

(L) sections 871(a) and 881 (relating to certain income of nonresident aliens and foreign corporations),

(M) section 860E(e) (relating to taxes with respect to certain residual interests),

(N) section 884 (relating to branch profits tax),

(O) sections 453(l)(3) and 453A(c) (relating to interest on certain deferred tax liabilities),

(P) section 860K [1] (relating to treatment of transfers of high-yield interests to disqualified holders),

(Q) section 220(f)(4) (relating to additional tax on Archer MSA distributions not used for qualified medical expenses),

(R) section 138(c)(2) (relating to penalty for distributions from Medicare Advantage MSA not used for qualified medical expenses if minimum balance not maintained),

(S) sections 106(e)(3)(A)(ii), 223(b)(8)(B)(i)(II), and 408(d)(9)(D)(i)(II) (relating to certain failures to maintain high deductible health plan coverage),

(T) section 170(o)(3)(B) (relating to recapture of certain deductions for fractional gifts),

(U) section 223(f)(4) (relating to additional tax on health savings account distributions not used for qualified medical expenses),

(V) subsections (a)(1)(B)(i) and (b)(4)(A) of section 409A (relating to interest and additional tax with respect to certain deferred compensation),

(W) section 36(f) (relating to recapture of homebuyer credit), and

(X) section 457A(c)(1)(B) (relating to determinability of amounts of compensation).

(c) Tentative minimum tax

For purposes of this part, the term "tentative minimum tax" means the amount determined under section 55(b)(1).

(Added §25, renumbered §26, Pub. L. 98–369, div. A, title IV, §472, title VI, §612(a), July 18, 1984,

98 Stat. 827, 905; amended Pub. L. 99–499, title V, §516(b)(1)(A), Oct. 17, 1986, 100 Stat. 1770; Pub. L. 99–514, title II, §261(c), title VI, §632(c)(1), title VII, §701(c)(1), Oct. 22, 1986, 100 Stat. 2214, 2277, 2340; Pub. L. 100–647, title I, §§1006(t)(16)(C), 1007(g)(1), 1011A(c)(10), 1012(q)(8), title IV, §4005(g)(4), title V, §5012(b)(2), Nov. 10, 1988, 102 Stat. 3425, 3434, 3476, 3524, 3650, 3662; Pub. L. 101–239, title VII, §§7811(c)(1), (2), 7821(a)(4)(A), Dec. 19, 1989, 103 Stat. 2406, 2407, 2424; Pub. L. 104–188, title I, §1621(b)(1), Aug. 20, 1996, 110 Stat. 1866; Pub. L. 105–34, title II, §213(e)(1), title XVI, §1602(a)(1), Aug. 5, 1997, 111 Stat. 817, 1093; Pub. L. 105–277, div. J, title II, §2001(a), Oct. 21, 1998, 112 Stat. 2681–901; Pub. L. 106–170, title V, §501(a), Dec. 17, 1999, 113 Stat. 1918; Pub. L. 106–554, §1(a)(7) [title II, §202(a)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–628; Pub. L. 107–16, title II, §§201(b)(2)(D), 202(f)(2)(C), title VI, §618(b)(2)(C), June 7, 2001, 115 Stat. 46, 49, 108; Pub. L. 107–22, §1(b)(2)(A), July 26, 2001, 115 Stat. 197; Pub. L. 107–147, title IV, §§415(a), 417(23)(B), title VI, §601(a), Mar. 9, 2002, 116 Stat. 54, 57, 59; Pub. L. 108–311, title III, §312(a), title IV, §§401(a)(1), 408(a)(5)(A), Oct. 4, 2004, 118 Stat. 1181, 1183, 1191; Pub. L. 109–135, title IV, §§403(hh)(1), 412(c), Dec. 21, 2005, 119 Stat. 2631, 2636; Pub. L. 109–222, title III, §302(a), May 17, 2006, 120 Stat. 353; Pub. L. 110–166, §3(a), Dec. 26, 2007, 121 Stat. 2461; Pub. L. 110–172, §11(a)(3), Dec. 29, 2007, 121 Stat. 2484; Pub. L. 110–289, div. C, title I, §3011(b)(1), July 30, 2008, 122 Stat. 2891; Pub. L. 110–343, div. B, title I, §106(e)(2)(D), title II, §205(d)(1)(D), div. C, title I, §101(a), title VIII, §801(b), Oct. 3, 2008, 122 Stat. 3817, 3839, 3863, 3931; Pub. L. 111–5, div. B, title I, §§1004(b)(3), 1011(a), 1142(b)(1)(D), 1144(b)(1)(D), Feb. 17, 2009, 123 Stat. 314, 319, 330, 332; Pub. L. 111–148, title X, §10909(b)(2)(E), (c), Mar. 23, 2010, 124 Stat. 1023; Pub. L. 111–312, title I, §101(b)(1), title II, §202(a), Dec. 17, 2010, 124 Stat. 3298, 3299; Pub. L. 112–240, title I, §104(c)(1), Jan. 2, 2013, 126 Stat. 2321.)

REFERENCES IN TEXT

Section 860K, referred to in subsec. (b)(2)(P), was repealed by Pub. L. 108–357, title VIII, §835(a), Oct. 22, 2004, 118 Stat. 1593.

AMENDMENTS

2013—Subsec. (a). Pub. L. 112–240 amended subsec. (a) generally. Prior to amendment, subsec. (a) related to limitation based on amount of tax with a special rule for taxable years 2000 through 2011.

2010—Subsec. (a)(1). Pub. L. 111–148, §10909(b)(2)(E), (c), as amended by Pub. L. 111–312, §101(b)(1), temporarily struck out "23," before "24," in introductory provisions. See Effective and Termination Dates of 2010 Amendment note below.

Subsec. (a)(2). Pub. L. 111–312, §202(a), substituted "2011" for "2009" in heading and "2009, 2010, or 2011" for "or 2009" in introductory provisions.

2009—Subsec. (a)(1). Pub. L. 111–5, §1144(b)(1)(D), inserted "30B," after "30," in introductory provisions.

Pub. L. 111–5, §1142(b)(1)(D), inserted "30," after "25D," in introductory provisions.

Pub. L. 111–5, §1004(b)(3), inserted "25A(i)," after "24," in introductory provisions.

Subsec. (a)(2). Pub. L. 111–5, §1011(a), substituted "2009" for "2008" in heading and "2008, or 2009" for "or 2008" in introductory provisions.

2008—Subsec. (a)(1). Pub. L. 110–343, §205(d)(1)(D), substituted "25D, and 30D" for "and 25D" in introductory provisions.

Pub. L. 110–343, §106(e)(2)(D), substituted "25B, and 25D" for "and 25B" in introductory provisions.

Subsec. (a)(2). Pub. L. 110–343, §101(a), substituted "2008" for "2007" in heading and "2007, or 2008" for "or 2007" in introductory provisions.

Subsec. (b)(2)(W). Pub. L. 110–289 added subpar. (W).

Subsec. (b)(2)(X). Pub. L. 110–343, §801(b), added subpar. (X).

2007—Subsec. (a)(2). Pub. L. 110–166 substituted "2007" for "2006" in heading and "2006, or 2007" for "or 2006" in introductory provisions.

Subsec. (b)(2)(S) to (V). Pub. L. 110–172 added subpars. (S) and (T) and redesignated former subpars. (S) and (T) as (U) and (V), respectively.

2006—Subsec. (a)(2). Pub. L. 109–222 substituted "2006" for "2005" in heading and "2005, or 2006" for "or 2005" in introductory provisions.

2005—Subsec. (b)(2)(E). Pub. L. 109–135, §412(c), substituted "section 530(d)(4)" for "section 530(d)(3)".

Subsec. (b)(2)(T). Pub. L. 109–135, §403(hh)(1), added subpar. (T).

2004—Subsec. (a)(2). Pub. L. 108–311, §312(a), substituted "rule for taxable years 2000 through 2005" for "rule for 2000, 2001, 2002, and 2003" in heading and "2003, 2004, or 2005" for "or 2003" in text.

Subsec. (b)(2)(R). Pub. L. 108–311, §408(a)(5)(A), substituted "Medicare Advantage MSA" for "Medicare+Choice MSA".

Subsec. (b)(2)(S). Pub. L. 108–311, §401(a)(1), added subpar. (S).

2002—Subsec. (a)(1). Pub. L. 107–147, §417(23)(B), amended directory language of Pub. L. 107–16, §618(b)(2)(C). See 2001 Amendment note below.

Subsec. (a)(2). Pub. L. 107–147, §601(a), substituted "rule for 2000, 2001, 2002, and 2003" for "rule for 2000 and 2001" in heading and "during 2000, 2001, 2002, or 2003," for "during 2000 or 2001," in introductory provisions.

Subsec. (b)(2)(P), (Q). Pub. L. 107–147, §415(a), which directed striking "and" at end of subpar. (P) and substituting ", and" for the period at the end of subpar. (Q), was executed to subpars. (P) and (Q) as redesignated by Pub. L. 105–34, §213(e)(1), to reflect the probable intent of Congress. See 1997 Amendment notes below.

Subsec. (b)(2)(R). Pub. L. 107–147, §415(a), added subpar. (R).

2001—Subsec. (a)(1). Pub. L. 107–16, §618(b)(2)(C), as amended by Pub. L. 107–147, §417(23)(B), substituted ", 24, and 25B" for "and 24" in introductory provisions.

Pub. L. 107–16, §202(f)(2)(C), substituted "sections 23 and 24" for "section 24" in introductory provisions.

Pub. L. 107–16, §201(b)(2)(D), inserted "(other than section 24)" after "this subpart" in introductory provisions.

Subsec. (b)(2)(E). Pub. L. 107–22 substituted "Coverdell education savings" for "education individual retirement".

2000—Subsec. (b)(2)(Q). Pub. L. 106–554 substituted "Archer MSA" for "medical savings account".

1999—Subsec. (a). Pub. L. 106–170 reenacted subsec. heading without change and amended text generally. Prior to amendment, text read as follows: "The aggregate amount of credits allowed by this subpart for the taxable year shall not exceed the excess (if any) of—

"(1) the taxpayer's regular tax liability for the taxable year, over

"(2) the tentative minimum tax for the taxable year (determined without regard to the alternative minimum tax foreign tax credit).

For purposes of paragraph (2), the taxpayer's tentative minimum tax for any taxable year beginning during 1998 shall be treated as being zero."

1998—Subsec. (a). Pub. L. 105–277 inserted concluding provisions.

1997—Subsec. (b)(2)(E) to (O). Pub. L. 105–34, §213(e)(1), added subpar. (E) and redesignated former subpars. (E) to (N) as (F) to (O), respectively. Former subpar. (O) redesignated (P).

Subsec. (b)(2)(P). Pub. L. 105–34, §213(e)(1), redesignated subpar. (P) as (Q).

Pub. L. 105–34, §1602(a)(1), added subpar. (P).

Subsec. (b)(2)(Q). Pub. L. 105–34, §213(e)(1), redesignated subpar. (P) as (Q).

1996—Subsec. (b)(2)(O). Pub. L. 104–188 added subpar. (O).

1989—Subsec. (b)(2)(C), (D). Pub. L. 101–239, §7811(c)(1), amended subpars. (C) and (D) generally. Prior to amendment, subpars. (C) and (D) read as follows:

"(C) subsection (m)(5)(B) (q), or (v) of section 72 (relating to additional tax on certain distributions),

"(D) section 72(t) (relating to 10-percent additional tax on early distributions from qualified retirement plans),".

Subsec. (b)(2)(K). Pub. L. 101–239, §7811(c)(2), added subpar. (K) and struck out former subpar. (K) which was identical.

Subsec. (b)(2)(L), (M). Pub. L. 101–239, §7811(c)(2), added subpars. (L) and (M) and struck out former subpars. (L) and (M) which read as follows:

"(L) section 860E(e) (relating to taxes with respect to certain residual interests), and

"(L) section 884 (relating to branch profits tax), and

"(M) section 143(m) (relating to recapture of portion of federal subsidy from use of mortgage bonds and mortgage credit certificates)."

Subsec. (b)(2)(N). Pub. L. 101–239, §7821(a)(4)(A), which directed amendment of subsec. (b)(2) of this section "as amended by section 11811" by adding subpar. (N), was executed as if it directed amendment of subsec. (b)(2) of this section "as amended by section 7811", to reflect the probable intent of Congress and the renumbering of section 11811 of H.R. 3299 as section 7811 prior to the enactment of H.R. 3299 into law as Pub. L. 101–239.

1988—Subsec. (b)(2)(C). Pub. L. 100–647, §1011A(c)(10)(A), struck out ", (o)(2)," after "subsection (m)(5)(B)".

Pub. L. 100–647, §5012(b)(2), substituted "(q), or (v)" for "or (q)".

Subsec. (b)(2)(D). Pub. L. 100–647, §1011A(c)(10)(B), substituted "72(t) (relating to 10-percent additional tax on early distributions from qualified retirement plans)" for "408(f) (relating to additional tax on income from certain retirement accounts)".

Subsec. (b)(2)(K). Pub. L. 100–647, §1007(g)(1), substituted "corporations)." for "corporations,".

Subsec. (b)(2)(L). Pub. L. 100–647, §1012(q)(8), added subpar. (L) relating to branch profits tax.

Pub. L. 100–647, §1006(t)(16)(C), added subpar. (L) relating to taxes with respect to certain residual interests.

Subsec. (b)(2)(M). Pub. L. 100–647, §4005(g)(4), added subpar. (M).

1986—Subsec. (a). Pub. L. 99–514, §701(c)(1)(A), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "The aggregate amount of credits allowed by this subpart for the taxable year shall not exceed the taxpayer's tax liability for such taxable year."

Subsec. (b). Pub. L. 99–514, §701(c)(1)(B)(i), (v), substituted "Regular tax liability" for "Tax liability" in heading and "this part" for "this section" in introductory provisions.

Subsec. (b)(1). Pub. L. 99–514, §701(c)(1)(B)(ii), substituted "regular tax liability" for "tax liability".

Subsec. (b)(2). Pub. L. 99–499 added subpar. (B) and redesignated former subpars. (B) to (J) as (C) to (K), respectively.

Pub. L. 99–514, §701(c)(1)(B)(iii), substituted "section 55 (relating to minimum tax)" for "section 56 (relating to corporate minimum tax)" in subpar. (A).

Pub. L. 99–514, §632(c)(1), substituted "certain built-in gains" for "certain capital gains" in subpar. (G).

Pub. L. 99–514, §261(c), added subpar. (I).

Pub. L. 99–514, §701(c)(1)(B)(iv), added subpar. (J).

Subsec. (c). Pub. L. 99–514, §701(c)(1)(C), amended subsec. (c) generally, substituting provisions relating to tentative minimum tax for provisions referring to section 55(c) of this title for similar rule for alternative minimum tax for taxpayers other than corporations.

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112–240 applicable to taxable years beginning after Dec. 31, 2011, see section 104(d) of Pub. L. 112–240, set out as a note under section 23 of this title.

EFFECTIVE AND TERMINATION DATES OF 2010 AMENDMENT

Pub. L. 111–312, title II, §202(b), Dec. 17, 2010, 124 Stat. 3299, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2009."

Amendment by Pub. L. 111–148 terminated applicable to taxable years beginning after Dec. 31, 2011, and section is amended to read as if such amendment had never been enacted, see section 10909(c) of Pub. L. 111–148, set out as a note under section 1 of this title.

Amendment by Pub. L. 111–148 applicable to taxable years beginning after Dec. 31, 2009, see section 10909(d) of Pub. L. 111–148, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by section 1004(b)(3) of Pub. L. 111–5 applicable to taxable years beginning after Dec. 31, 2008, see section 1004(d) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

Pub. L. 111–5, div. B, title I, §1011(b), Feb. 17, 2009, 123 Stat. 319, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2008."

Amendment by section 1142(b)(1)(D) of Pub. L. 111–5 applicable to vehicles acquired after Feb. 17, 2009, see section 1142(c) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

Amendment by section 1144(b)(1)(D) of Pub. L. 111–5 applicable to taxable years beginning after Dec. 31, 2008, see section 1144(c) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by section 106(e)(2)(D) of Pub. L. 110–343 applicable to taxable years beginning after Dec. 31, 2007, see section 106(f)(1) of div. B of Pub. L. 110–343, set out as an Effective and Termination Dates of 2008 Amendment note under section 23 of this title.

Amendment by section 205(d)(1)(D) of Pub. L. 110–343 applicable to taxable years beginning after Dec. 31, 2008, see section 205(e) of div. B of Pub. L. 110–343, set out as an Effective and Termination Dates of 2008 Amendment note under section 24 of this title.

Pub. L. 110–343, div. C, title I, §101(b), Oct. 3, 2008, 122 Stat. 3863, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2007."

Amendment by section 801(b) of Pub. L. 110–343 applicable to amounts deferred which are attributable to services performed after Dec. 31, 2008, with certain exceptions, see section 801(d) of div. C of Pub. L. 110–343, set out as an Effective Date note under section 457A of this title.

Pub. L. 110–289, div. C, title I, §3011(c), July 30, 2008, 122 Stat. 2891, provided that: "The amendments made by this section [enacting section 36 of this title, amending this section and section 6211 of this title and section 1324 of Title 31, Money and Finance, and renumbering former section 36 of this title as section 37 of this title] shall apply to residences purchased on or after April 9, 2008, in taxable years ending on or after such date."

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–166, §3(b), Dec. 26, 2007, 121 Stat. 2461, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2006."

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–222, title III, §302(b), May 17, 2006, 120 Stat. 353, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2005."

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–135, title IV, §403(nn), Dec. 21, 2005, 119 Stat. 2632, provided that: "The amendments made by this section [see Tables for classification] shall take effect as if included in the provisions of the American Jobs Creation Act of 2004 [Pub. L. 108–357] to which they relate."

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–311, title III, §312(c), Oct. 4, 2004, 118 Stat. 1181, provided that: "The amendments made by this section [amending this section and section 904 of this title] shall apply to taxable years beginning after December 31, 2003."

Pub. L. 108–311, title IV, §401(b), Oct. 4, 2004, 118 Stat. 1183, provided that: "The amendments made by subsection (a) [amending this section and section 35 of this title] shall take effect as if included in section 1201 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 [Pub. L. 108–173]."

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title IV, §415(b), Mar. 9, 2002, 116 Stat. 54, provided that: "The amendment made by this section [amending this section] shall take effect as if included in section 4006 of the Balanced Budget Act of 1997 [Pub. L. 105–33]."

Pub. L. 107–147, title VI, §601(c), Mar. 9, 2002, 116 Stat. 59, provided that: "The amendments made by this section [amending this section and section 904 of this title] shall apply to taxable years beginning after December 31, 2001."

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 inapplicable to taxable years beginning during 2004 or 2005, see section 312(b)(2) of Pub. L. 108–311, set out as a note under section 23 of this title.

Amendment by Pub. L. 107–16 inapplicable to taxable years beginning during 2002 and 2003, see section 601(b)(2) of Pub. L. 107–147, set out as a note under section 23 of this title.

Pub. L. 107–22, §1(c), July 26, 2001, 115 Stat. 197, provided that: "The amendments made by this section [amending this section and sections 72, 135, 529, 530, 4973, 4975, and 6693 of this title] shall take effect on the date of the enactment of this Act [July 26, 2001]."

Amendment by section 201(b)(2)(D) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 201(e)(2) of Pub. L. 107–16, set out as a note under section 24 of this title.

Amendment by section 202(f)(2)(C) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 202(g)(1) of Pub. L. 107–16, set out as a note under section 23 of this title.

Amendment by section 618(b)(2)(C) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 618(d) of Pub. L. 107–16, set out as a note under section 24 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to taxable years beginning after Dec. 31, 1998, see section 501(c) of Pub. L. 106–170, set out as a note under section 24 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–277 applicable to taxable years beginning after Dec. 31, 1997, see section 2001(c) of Pub. L. 105–277, set out as a note under section 24 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title II, §213(f), Aug. 5, 1997, 111 Stat. 817, provided that: "The amendments made by this section [enacting section 530 of this title and amending this section and sections 135, 4973, 4975, and 6693 of this title] shall apply to taxable years beginning after December 31, 1997."

Pub. L. 105–34, title XVI, §1602(i), Aug. 5, 1997, 111 Stat. 1096, provided that: "The amendments made by this section [amending this section and sections 162, 220, 264, 877, 2107, 2501, 4975, 6050Q, 6652, 6693, 6724, and 7702B of this title, renumbering section 6039F of this title as section 6039G of this title, and amending provisions set out as a note under section 264 of this title] shall take effect as if included in the provisions of the Health Insurance Portability and Accountability Act of 1996 [Pub. L. 104–191] to which such amendments relate."

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, §1621(d), Aug. 20, 1996, 110 Stat. 1867, provided that: "The amendments made by this section [enacting sections 860H to 860L of this title and amending this section and sections 56, 382, 582, 856, 860G, 1202, and 7701 of this title] shall take effect on September 1, 1997."

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7811(c)(1), (2) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

Pub. L. 101–239, title VII, §7823, Dec. 19, 1989, 103 Stat. 2425, provided that: "Except as otherwise provided in this part [part II (§§7821–7823) of subtitle H of title VII of Pub. L. 101–239, amending this section and sections 453A, 842, 1503, 6427, 6655, 6863, 7519, 7611, 9502, 9503, and 9508 of this title and enacting provisions set out as notes under sections 56 and 7519 of this title], any amendment made by this part shall take effect as if included in the provision of the 1987 Act [Pub. L. 100–203, title X] to which such amendment relates."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1006(t)(16)(C) of Pub. L. 100–647 applicable, with certain exceptions, to transfers after Mar. 31, 1988, and to excess inclusions for periods after Mar. 31, 1988, see section 1006(t)(16)(D)(ii)–(iv) of Pub. L. 100–647, set out as a note under section 860E of this title.

Amendment by sections 1007(g)(1), 1011A(c)(10), and 1012(q)(8) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 4005(g)(4) of Pub. L. 100–647 applicable, with certain exceptions, to financing provided, and mortgage credit certificates issued, after Dec. 31, 1990, see section 4005(h)(3) of Pub. L. 100–647, set out as a note under section 143 of this title.

Amendment by section 5012(b)(2) of Pub. L. 100–647 applicable to contracts entered into on or after June 21, 1988, with special rule where death benefit increases by more than $150,000, certain other material changes taken into account, and certain exchanges permitted, see section 5012(e) of Pub. L. 100–647, set out as an Effective Date note under section 7702A of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 261(c) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 261(g) of Pub. L. 99–514, set out as an Effective Date note under section 7518 of this title.

Amendment by section 632(c)(1) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, but only in cases where the return for the taxable year is filed pursuant to an S election made after Dec. 31, 1986, see section 633(b) of Pub. L. 99–514, as amended, set out as an Effective Date note under section 336 of this title.

Amendment by section 632(c)(1) of Pub. L. 99–514 not applicable in the case of certain transactions, see section 54(d)(3)(D) of Pub. L. 98–369, as amended, set out as an Effective Date of 1984 Amendment note under section 311 of this title.

Amendment by section 701(c)(1) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date note under section 55 of this title.

Pub. L. 99–499, title V, §516(c), Oct. 17, 1986, 100 Stat. 1772, provided that: "The amendments made by this section [enacting section 59A of this title and amending this section and sections 164, 275, 936, 1561, 6154, 6425, and 6655 of this title] shall apply to taxable years beginning after December 31, 1986."

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as an Effective Date of 1984 Amendment note under section 21 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUBLIC LAW 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(c)(1) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

TREATMENT OF TAX IMPOSED UNDER FORMER SECTION 409(C)

Pub. L. 98–369, div. A, title IV, §491(f)(5), July 18, 1984, 98 Stat. 853, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "For purposes of section 26(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by this Act), any tax imposed by section 409(c) of such Code (as in effect before its repeal by this section) shall be treated as a tax imposed by section 408(f) of such Code."

[1] *See References in Text note below.*

SUBPART B—OTHER CREDITS

Sec.

27. Taxes of foreign countries and possessions of the United States; possession tax credit.

[28, 29. Renumbered.]

30. Certain plug-in electric vehicles.

30A. Puerto Rico economic activity credit.

30B. Alternative motor vehicle credit.

30C. Alternative fuel vehicle refueling property credit.

30D. New qualified plug-in electric drive motor vehicles.

AMENDMENTS

2009—Pub. L. 111–5, div. B, title I, §1142(b)(8), Feb. 17, 2009, 123 Stat. 331, substituted "Certain plug-in electric vehicles" for "Credit for qualified electric vehicles" in item 30.

2008—Pub. L. 110–343, div. B, title II, §205(d)(4), Oct. 3, 2008, 122 Stat. 3839, added item 30D.

2005—Pub. L. 109–135, title IV, §412(e), Dec. 21, 2005, 119 Stat. 2637, substituted "Alternative fuel vehicle refueling property credit" for "Clean-fuel vehicle refueling property credit" in item 30C.

Pub. L. 109–58, title XIII, §§1322(a)(3)(K), 1341(b)(5), 1342(b)(5), Aug. 8, 2005, 119 Stat. 1012, 1049, 1051, struck out item 29 "Credit for producing fuel from a nonconventional source" and added items 30B and 30C.

1997—Pub. L. 105–34, title XVI, §1601(f)(1)(B), Aug. 5, 1997, 111 Stat. 1090, substituted "Puerto Rico" for "Puerto Rican" in item 30A.

1996—Pub. L. 104–188, title I, §§1205(a)(3)(A), 1601(b)(2)(E), (F)(i), Aug. 20, 1996, 110 Stat. 1775, 1833, substituted "Other Credits" for "Foreign Tax Credits, Etc." in subpart heading, struck out item 28 "Clinical testing expenses for certain drugs for rare diseases or conditions", and added item 30A.

1992—Pub. L. 102–486, title XIX, §1913(b)(2)(A), Oct. 24, 1992, 106 Stat. 3020, added item 30.

1986—Pub. L. 99–514, title II, §231(d)(3)(J), Oct. 22, 1986, 100 Stat. 2180, struck out item 30 "Credit for increasing research activities".

1984—Pub. L. 98–369, div. A, title IV, §471(b), July 18, 1984, 98 Stat. 826, added subpart B heading and analysis of sections for subpart B consisting of items 27 (formerly 33), 28 (formerly 44H), 29 (formerly 44D), and 30 (formerly 44F). Former subpart B was redesignated E.

§27. Taxes of foreign countries and possessions of the United States; possession tax credit

(a) Foreign tax credit

The amount of taxes imposed by foreign countries and possessions of the United States shall be allowed as a credit against the tax imposed by this chapter to the extent provided in section 901.

(b) Section 936 credit

In the case of a domestic corporation, the amount provided by section 936 (relating to Puerto Rico and possession tax credit) shall be allowed as a credit against the tax imposed by this chapter.

(Aug. 16, 1954, ch. 736, 68A Stat. 13, §33; Pub. L. 94–455, title X, §1051(a), Oct. 4, 1976, 90 Stat. 1643; renumbered §27, Pub. L. 98–369, div. A, title IV, §471(c), July 18, 1984, 98 Stat. 826.)

AMENDMENTS

1984—Pub. L. 98–369, §471(c), renumbered section 33 of this title as this section.

1976—Pub. L. 94–455 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title X, §1051(i), Oct. 4, 1976, 90 Stat. 1647, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) Except as provided by paragraph (2), the amendments made by this section [enacting section 936 of this title and amending sections 33 [now 27], 48, 116, 243, 246, 861, 901, 904, 931, 1504, and 6091 of this title] shall apply to taxable years beginning after December 31, 1975, except that 'qualified possession source investment income' as defined in section 936(d)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall include income from any source outside the United States if the taxpayer establishes to the satisfaction of the Secretary of the Treasury or his delegate that the income from such sources was earned before October 1, 1976.

"(2) The amendment made by subsection (d)(2) [amending section 901 of this title] shall not apply to any tax imposed by a possession of the United States with respect to the complete liquidation occurring before January 1, 1979, of a corporation to the extent that such tax is attributable to earnings and profits accumulated by such corporation during periods ending before January 1, 1976."

[§28. Renumbered §45C]

[§29. Renumbered §45K]

§30. Certain plug-in electric vehicles

(a) Allowance of credit

There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 10 percent of the cost of any qualified plug-in electric vehicle placed in service by the taxpayer during the taxable year.

(b) Per vehicle dollar limitation

The amount of the credit allowed under subsection (a) with respect to any vehicle shall not exceed $2,500.

(c) Application with other credits

(1) Business credit treated as part of general business credit

So much of the credit which would be allowed under subsection (a) for any taxable year (determined without regard to this subsection) that is attributable to property of a character subject

to an allowance for depreciation shall be treated as a credit listed in section 38(b) for such taxable year (and not allowed under subsection (a)).

(2) Personal credit

For purposes of this title, the credit allowed under subsection (a) for any taxable year (determined after application of paragraph (1)) shall be treated as a credit allowable under subpart A for such taxable year.

(d) Qualified plug-in electric vehicle

For purposes of this section—

(1) In general

The term "qualified plug-in electric vehicle" means a specified vehicle—

(A) the original use of which commences with the taxpayer,

(B) which is acquired for use or lease by the taxpayer and not for resale,

(C) which is made by a manufacturer,

(D) which is manufactured primarily for use on public streets, roads, and highways,

(E) which has a gross vehicle weight rating of less than 14,000 pounds, and

(F) which is propelled to a significant extent by an electric motor which draws electricity from a battery which—

(i) has a capacity of not less than 4 kilowatt hours (2.5 kilowatt hours in the case of a vehicle with 2 or 3 wheels), and

(ii) is capable of being recharged from an external source of electricity.

(2) Specified vehicle

The term "specified vehicle" means any vehicle which—

(A) is a low speed vehicle within the meaning of section 571.3 of title 49, Code of Federal Regulations (as in effect on the date of the enactment of the American Recovery and Reinvestment Tax Act of 2009), or

(B) has 2 or 3 wheels.

(3) Manufacturer

The term "manufacturer" has the meaning given such term in regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.).

(4) Battery capacity

The term "capacity" means, with respect to any battery, the quantity of electricity which the battery is capable of storing, expressed in kilowatt hours, as measured from a 100 percent state of charge to a 0 percent state of charge.

(e) Special rules

(1) Basis reduction

For purposes of this subtitle, the basis of any property for which a credit is allowable under subsection (a) shall be reduced by the amount of such credit so allowed.

(2) No double benefit

The amount of any deduction or other credit allowable under this chapter for a new qualified plug-in electric drive motor vehicle shall be reduced by the amount of credit allowable under subsection (a) for such vehicle.

(3) Property used by tax-exempt entity

In the case of a vehicle the use of which is described in paragraph (3) or (4) of section 50(b) and which is not subject to a lease, the person who sold such vehicle to the person or entity using such vehicle shall be treated as the taxpayer that placed such vehicle in service, but only if such person clearly discloses to such person or entity in a document the amount of any credit allowable under subsection (a) with respect to such vehicle (determined without regard to subsection (c)).

(4) Property used outside United States not qualified

No credit shall be allowable under subsection (a) with respect to any property referred to in section 50(b)(1).

(5) Recapture

The Secretary shall, by regulations, provide for recapturing the benefit of any credit allowable under subsection (a) with respect to any property which ceases to be property eligible for such credit.

(6) Election not to take credit

No credit shall be allowed under subsection (a) for any vehicle if the taxpayer elects to not have this section apply to such vehicle.

(f) Termination

This section shall not apply to any vehicle acquired after December 31, 2011.

(Added Pub. L. 102–486, title XIX, §1913(b)(1), Oct. 24, 1992, 106 Stat. 3019; amended Pub. L. 104–188, title I, §§1205(d)(4), 1704(j)(4)(A), Aug. 20, 1996, 110 Stat. 1776, 1881; Pub. L. 107–147, title VI, §602(a), Mar. 9, 2002, 116 Stat. 59; Pub. L. 108–311, title III, §318(a), Oct. 4, 2004, 118 Stat. 1182; Pub. L. 109–58, title XIII, §1322(a)(3)(A), Aug. 8, 2005, 119 Stat. 1011; Pub. L. 111–5, div. B, title I, §1142(a), Feb. 17, 2009, 123 Stat. 328; Pub. L. 111–148, title X, §10909(b)(2)(F), (c), Mar. 23, 2010, 124 Stat. 1023; Pub. L. 111–312, title I, §101(b)(1), Dec. 17, 2010, 124 Stat. 3298; Pub. L. 112–240, title I, §104(c)(2)(G), Jan. 2, 2013, 126 Stat. 2322.)

REFERENCES IN TEXT

The date of the enactment of the American Recovery and Reinvestment Tax Act of 2009, referred to in subsec. (d)(2)(A), is the date of the enactment of div. B of Pub. L. 111–5, which was approved Feb. 17, 2009.

The Clean Air Act, referred to in subsec. (d)(3), is act July 14, 1955, ch. 360, 69 Stat. 322. Title II of the Act, known as the National Emission Standards Act, is classified generally to subchapter II (§7521 et seq.) of chapter 85 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 30 was renumbered section 41 of this title.

AMENDMENTS

2013—Subsec. (c)(2). Pub. L. 112–240 amended par. (2) generally. Prior to amendment, par. (2) related to personal credit with a limitation based on amount of tax.

2010—Subsec. (c)(2)(B)(ii). Pub. L. 111–148, §10909(b)(2)(F), (c), as amended by Pub. L. 111–312, temporarily substituted "25D" for "23, 25D,". See Effective and Termination Dates of 2010 Amendment note below.

2009—Pub. L. 111–5 amended section generally. Prior to amendment, section provided for credit of 10 percent of the cost of any qualified electric vehicle, subject to a $4,000 per vehicle limitation, a 75 percent reduction for any vehicle placed in service after Dec. 31, 2005, and a Dec. 31, 2006, termination date.

2005—Subsec. (b)(3)(A). Pub. L. 109–58 substituted "section 27" for "sections 27 and 29" in introductory provisions.

2004—Subsec. (b)(2). Pub. L. 108–311 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "In the case of any qualified electric vehicle placed in service after December 31, 2003, the credit otherwise allowable under subsection (a) (determined after the application of paragraph (1)) shall be reduced by—

"(A) 25 percent in the case of property placed in service in calendar year 2004,

"(B) 50 percent in the case of property placed in service in calendar year 2005, and

"(C) 75 percent in the case of property placed in service in calendar year 2006."

2002—Subsec. (b)(2). Pub. L. 107–147, §602(a)(1)(A), substituted "December 31, 2003," for "December 31, 2001," in introductory provisions.

Subsec. (b)(2)(A). Pub. L. 107–147, §602(a)(1)(B), substituted "2004" for "2002".

Subsec. (b)(2)(B). Pub. L. 107–147, §602(a)(1)(B), substituted "2005" for "2003".

Subsec. (b)(2)(C). Pub. L. 107–147, §602(a)(1)(B), substituted "2006" for "2004".

Subsec. (e). Pub. L. 107–147, §602(a)(2), substituted "December 31, 2006" for "December 31, 2004".

1996—Subsec. (b)(3)(A). Pub. L. 104–188, §1205(d)(4), substituted "sections 27 and 29" for "sections 27, 28, and 29".

Subsec. (d)(1). Pub. L. 104–188, §1704(j)(4)(A)(i), inserted "(determined without regard to subsection (b)(3))" before period at end.

Subsec. (d)(4). Pub. L. 104–188, §1704(j)(4)(A)(ii), added par. (4).

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112–240 applicable to taxable years beginning after Dec. 31, 2011, see section 104(d) of Pub. L. 112–240, set out as a note under section 23 of this title.

EFFECTIVE AND TERMINATION DATES OF 2010 AMENDMENT

Amendment by Pub. L. 111–148 terminated applicable to taxable years beginning after Dec. 31, 2011, and section is amended to read as if such amendment had never been enacted, see section 10909(c) of Pub. L. 111–148, set out as a note under section 1 of this title.

Amendment by Pub. L. 111–148 applicable to taxable years beginning after Dec. 31, 2009, see section 10909(d) of Pub. L. 111–148, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–5 applicable to vehicles acquired after Feb. 17, 2009, see section 1142(c) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–58 applicable to credits determined under the Internal Revenue Code of 1986 for taxable years ending after Dec. 31, 2005, see section 1322(c)(1) of Pub. L. 109–58, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–311, title III, §318(b), Oct. 4, 2004, 118 Stat. 1182, provided that: "The amendments made by this section [amending this section] shall apply to property placed in service after December 31, 2003."

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title VI, §602(c), Mar. 9, 2002, 116 Stat. 59, provided that: "The amendments made by this section [amending this section, section 280F of this title, and provisions set out as a note under section 280F of this title] shall apply to property placed in service after December 31, 2001."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1205(d)(4) of Pub. L. 104–188 applicable to amounts paid or incurred in taxable years ending after June 30, 1996, see section 1205(e) of Pub. L. 104–188, set out as a note under section 45K of this title.

EFFECTIVE DATE

Pub. L. 102–486, title XIX, §1913(c), Oct. 24, 1992, 106 Stat. 3020, provided that: "The amendments made by this section [enacting this section and 179A of this title and amending sections 53, 55, 62, and 1016 of this title] shall apply to property placed in service after June 30, 1993."

TRANSITIONAL RULE

Pub. L. 111–5, div. B, title I, §1142(d), Feb. 17, 2009, 123 Stat. 331, provided that: "In the case of a vehicle acquired after the date of the enactment of this Act [Feb. 17, 2009] and before January 1, 2010, no credit shall be allowed under section 30 of the Internal Revenue Code of 1986, as added by this section, if credit is allowable under section 30D of such Code with respect to such vehicle."

§30A. Puerto Rico economic activity credit

(a) Allowance of credit

(1) In general

Except as otherwise provided in this section, if the conditions of both paragraph (1) and

paragraph (2) of subsection (b) are satisfied with respect to a qualified domestic corporation, there shall be allowed as a credit against the tax imposed by this chapter an amount equal to the portion of the tax which is attributable to the taxable income, from sources without the United States, from—

(A) the active conduct of a trade or business within Puerto Rico, or

(B) the sale or exchange of substantially all of the assets used by the taxpayer in the active conduct of such trade or business.

In the case of any taxable year beginning after December 31, 2001, the aggregate amount of taxable income taken into account under the preceding sentence (and in applying subsection (d)) shall not exceed the adjusted base period income of such corporation, as determined in the same manner as under section 936(j).

(2) Qualified domestic corporation

For purposes of paragraph (1), the term "qualified domestic corporation" means a domestic corporation—

(A) which is an existing credit claimant with respect to Puerto Rico, and

(B) with respect to which section 936(a)(4)(B) does not apply for the taxable year.

(3) Separate application

For purposes of determining—

(A) whether a taxpayer is an existing credit claimant with respect to Puerto Rico, and

(B) the amount of the credit allowed under this section,

this section (and so much of section 936 as relates to this section) shall be applied separately with respect to Puerto Rico.

(b) Conditions which must be satisfied

The conditions referred to in subsection (a) are—

(1) 3-year period

If 80 percent or more of the gross income of the qualified domestic corporation for the 3-year period immediately preceding the close of the taxable year (or for such part of such period immediately preceding the close of such taxable year as may be applicable) was derived from sources within a possession (determined without regard to section 904(f)).

(2) Trade or business

If 75 percent or more of the gross income of the qualified domestic corporation for such period or such part thereof was derived from the active conduct of a trade or business within a possession.

(c) Credit not allowed against certain taxes

The credit provided by subsection (a) shall not be allowed against the tax imposed by—

(1) section 59A (relating to environmental tax),

(2) section 531 (relating to the tax on accumulated earnings),

(3) section 541 (relating to personal holding company tax), or

(4) section 1351 (relating to recoveries of foreign expropriation losses).

(d) Limitations on credit for active business income

The amount of the credit determined under subsection (a) for any taxable year shall not exceed the sum of the following amounts:

(1) 60 percent of the sum of—

(A) the aggregate amount of the qualified domestic corporation's qualified possession wages for such taxable year, plus

(B) the allocable employee fringe benefit expenses of the qualified domestic corporation for such taxable year.

(2) The sum of—

(A) 15 percent of the depreciation allowances for the taxable year with respect to short-life qualified tangible property,

(B) 40 percent of the depreciation allowances for the taxable year with respect to medium-life qualified tangible property, and

(C) 65 percent of the depreciation allowances for the taxable year with respect to long-life qualified tangible property.

(3) If the qualified domestic corporation does not have an election to use the method described in section 936(h)(5)(C)(ii) (relating to profit split) in effect for the taxable year, the amount of the qualified possession income taxes for the taxable year allocable to nonsheltered income.

(e) Administrative provisions

For purposes of this title—

(1) the provisions of section 936 (including any applicable election thereunder) shall apply in the same manner as if the credit under this section were a credit under section 936(a)(1)(A) for a domestic corporation to which section 936(a)(4)(A) applies,

(2) the credit under this section shall be treated in the same manner as the credit under section 936, and

(3) a corporation to which this section applies shall be treated in the same manner as if it were a corporation electing the application of section 936.

(f) Denial of double benefit

Any wages or other expenses taken into account in determining the credit under this section may not be taken into account in determining the credit under section 41.

(g) Definitions

For purposes of this section, any term used in this section which is also used in section 936 shall have the same meaning given such term by section 936.

(h) Application of section

This section shall apply to taxable years beginning after December 31, 1995, and before January 1, 2006.

(Added Pub. L. 104–188, title I, §1601(b)(1), Aug. 20, 1996, 110 Stat. 1830; amended Pub. L. 105–34, title XVI, §1601(f)(1)(A), Aug. 5, 1997, 111 Stat. 1090; Pub. L. 106–554, §1(a)(7) [title III, §311(a)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–640.)

AMENDMENTS

2000—Subsecs. (f) to (h). Pub. L. 106–554 added subsec. (f) and redesignated former subsecs. (f) and (g) as (g) and (h), respectively.

1997—Pub. L. 105–34 substituted "Puerto Rico" for "Puerto Rican" in section catchline.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(7) [title III, §311(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–640, provided that: "Subsection (c) [not classified to the Code] and the amendments made by this section [amending this section and sections 280C and 857 of this title] shall take effect as if included in the provisions of the Ticket to Work and Work Incentives Improvement Act of 1999 [Pub. L. 106–170, see Tables for classification] to which they relate."

EFFECTIVE DATE OF 1997 AMENDMENT

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

EFFECTIVE DATE

Pub. L. 104–188, title I, §1601(c), Aug. 20, 1996, 110 Stat. 1833, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this section and amending sections 55, 56, 59, and 936 of this title] shall apply to taxable years beginning after December 31, 1995.

"(2) SPECIAL RULE FOR QUALIFIED POSSESSION SOURCE INVESTMENT INCOME.—The amendments made by this section shall not apply to qualified possession source investment income received or accrued before July 1, 1996, without regard to the taxable year in which received or accrued.

"(3) SPECIAL TRANSITION RULE FOR PAYMENT OF ESTIMATED TAX INSTALLMENT.—In determining the amount of any installment due under section 6655 of the Internal Revenue Code of 1986 after the date of the enactment of this Act [Aug. 20, 1996] and before October 1, 1996, only ½ of any increase in tax (for the taxable year for which such installment is made) by reason of the amendments made by subsections (a) and (b) [enacting this section and amending sections 55, 56, 59, and 936 of this title] shall be taken into account. Any reduction in such installment by reason of the preceding sentence shall be recaptured by increasing the next required installment for such year by the amount of such reduction."

AMERICAN SAMOA ECONOMIC DEVELOPMENT CREDIT

Pub. L. 109–432, div. A, title I, §119, Dec. 20, 2006, 120 Stat. 2942, as amended by Pub. L. 110–343, div. C, title III, §309(a), Oct. 3, 2008, 122 Stat. 3869; Pub. L. 111–312, title VII, §756(a), Dec. 17, 2010, 124 Stat. 3322; Pub. L. 112–240, title III, §330(a), (b), Jan. 2, 2013, 126 Stat. 2335, provided that:

"(a) IN GENERAL.—For purposes of section 30A of the Internal Revenue Code of 1986, a domestic corporation shall be treated as a qualified domestic corporation to which such section applies if—

"(1) in the case of a taxable year beginning before January 1, 2012, such corporation—

"(A) is an existing credit claimant with respect to American Samoa, and

"(B) elected the application of section 936 of the Internal Revenue Code of 1986 for its last taxable year beginning before January 1, 2006, and

"(2) in the case of a taxable year beginning after December 31, 2011, such corporation meets the requirements of subsection (e).

"(b) SPECIAL RULES FOR APPLICATION OF SECTION.—The following rules shall apply in applying section 30A of the Internal Revenue Code of 1986 for purposes of this section:

"(1) AMOUNT OF CREDIT.—Notwithstanding section 30A(a)(1) of such Code, the amount of the credit determined under section 30A(a)(1) of such Code for any taxable year shall be the amount determined under section 30A(d) of such Code, except that section 30A(d) shall be applied without regard to paragraph (3) thereof.

"(2) SEPARATE APPLICATION.—In applying section 30A(a)(3) of such Code in the case of a corporation treated as a qualified domestic corporation by reason of this section, section 30A of such Code (and so much of section 936 of such Code as relates to such section 30A) shall be applied separately with respect to American Samoa.

"(3) FOREIGN TAX CREDIT ALLOWED.—Notwithstanding section 30A(e) of such Code, the provisions of section 936(c) of such Code shall not apply with respect to the credit allowed by reason of this section.

"(c) DEFINITIONS.—For purposes of this section, any term which is used in this section which is also used in section 30A or 936 of such Code shall have the same meaning given such term by such section 30A or 936.

"(d) APPLICATION OF SECTION.—Notwithstanding section 30A(h) or section 936(j) of such Code, this section (and so much of section 30A and section 936 of such Code as relates to this section) shall apply—

"(1) in the case of a corporation that meets the requirements of subparagraphs (A) and (B) of subsection (a)(1), to the first 8 taxable years of such corporation which begin after December 31, 2006, and before January 1, 2014, and

"(2) in the case of a corporation that does not meet the requirements of subparagraphs (A) and (B) of subsection (a)(1), to the first 2 taxable years of such corporation which begin after December 31, 2011, and before January 1, 2014.

"(e) QUALIFIED PRODUCTION ACTIVITIES INCOME REQUIREMENT.—A corporation meets the requirement of this subsection if such corporation has qualified production activities income, as defined in subsection (c) of section 199 of the Internal Revenue Code of 1986, determined by substituting 'American Samoa' for 'the United States' each place it appears in paragraphs (3), (4), and (6) of such subsection (c), for the taxable year."

[Pub. L. 112–240, title III, §330(c), Jan. 2, 2013, 126 Stat. 2335, provided that: "The amendments made by this section [amending section 119 of Pub. L. 109–432, set out above] shall apply to taxable years beginning after December 31, 2011."]

[Pub. L. 111–312, title VII, §756(b), Dec. 17, 2010, 124 Stat. 3322, provided that: "The amendments made by this section [amending section 119 of Pub. L. 109–432, set out above] shall apply to taxable years beginning after December 31, 2009."]

[Pub. L. 110–343, div. C, title III, §309(b), Oct. 3, 2008, 122 Stat. 3869, provided that: "The amendments made by this section [amending section 119 of Pub. L. 109–432, set out above] shall apply to taxable years beginning after December 31, 2007."]

§30B. Alternative motor vehicle credit

(a) Allowance of credit

There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of—

(1) the new qualified fuel cell motor vehicle credit determined under subsection (b),

(2) the new advanced lean burn technology motor vehicle credit determined under subsection (c),

(3) the new qualified hybrid motor vehicle credit determined under subsection (d),

(4) the new qualified alternative fuel motor vehicle credit determined under subsection (e), and

(5) the plug-in conversion credit determined under subsection (i).

(b) New qualified fuel cell motor vehicle credit

(1) In general

For purposes of subsection (a), the new qualified fuel cell motor vehicle credit determined under this subsection with respect to a new qualified fuel cell motor vehicle placed in service by the taxpayer during the taxable year is—

(A) $8,000 ($4,000 in the case of a vehicle placed in service after December 31, 2009), if such vehicle has a gross vehicle weight rating of not more than 8,500 pounds,

(B) $10,000, if such vehicle has a gross vehicle weight rating of more than 8,500 pounds but not more than 14,000 pounds,

(C) $20,000, if such vehicle has a gross vehicle weight rating of more than 14,000 pounds but not more than 26,000 pounds, and

(D) $40,000, if such vehicle has a gross vehicle weight rating of more than 26,000 pounds.

(2) Increase for fuel efficiency

(A) In general

The amount determined under paragraph (1)(A) with respect to a new qualified fuel cell motor vehicle which is a passenger automobile or light truck shall be increased by—

(i) $1,000, if such vehicle achieves at least 150 percent but less than 175 percent of the 2002 model year city fuel economy,

(ii) $1,500, if such vehicle achieves at least 175 percent but less than 200 percent of the 2002 model year city fuel economy,

(iii) $2,000, if such vehicle achieves at least 200 percent but less than 225 percent of the 2002 model year city fuel economy,

(iv) $2,500, if such vehicle achieves at least 225 percent but less than 250 percent of the 2002 model year city fuel economy,

(v) $3,000, if such vehicle achieves at least 250 percent but less than 275 percent of the 2002 model year city fuel economy,

(vi) $3,500, if such vehicle achieves at least 275 percent but less than 300 percent of the 2002 model year city fuel economy, and

(vii) $4,000, if such vehicle achieves at least 300 percent of the 2002 model year city fuel economy.

(B) 2002 model year city fuel economy

For purposes of subparagraph (A), the 2002 model year city fuel economy with respect to a

vehicle shall be determined in accordance with the following tables:

(i) In the case of a passenger automobile:

If vehicle inertia weight class is:	**The 2002 model year city fuel economy is:**
1,500 or 1,750 lbs	45.2 mpg
2,000 lbs	39.6 mpg
2,250 lbs	35.2 mpg
2,500 lbs	31.7 mpg
2,750 lbs	28.8 mpg
3,000 lbs	26.4 mpg
3,500 lbs	22.6 mpg
4,000 lbs	19.8 mpg
4,500 lbs	17.6 mpg
5,000 lbs	15.9 mpg
5,500 lbs	14.4 mpg
6,000 lbs	13.2 mpg
6,500 lbs	12.2 mpg
7,000 to 8,500 lbs	11.3 mpg.

(ii) In the case of a light truck:

If vehicle inertia weight class is:	**The 2002 model year city fuel economy is:**
1,500 or 1,750 lbs	39.4 mpg
2,000 lbs	35.2 mpg
2,250 lbs	31.8 mpg
2,500 lbs	29.0 mpg
2,750 lbs	26.8 mpg
3,000 lbs	24.9 mpg
3,500 lbs	21.8 mpg
4,000 lbs	19.4 mpg
4,500 lbs	17.6 mpg
5,000 lbs	16.1 mpg
5,500 lbs	14.8 mpg
6,000 lbs	13.7 mpg
6,500 lbs	12.8 mpg
7,000 to 8,500 lbs	12.1 mpg.

(C) Vehicle inertia weight class

For purposes of subparagraph (B), the term "vehicle inertia weight class" has the same meaning as when defined in regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.).

(3) New qualified fuel cell motor vehicle

For purposes of this subsection, the term "new qualified fuel cell motor vehicle" means a motor vehicle—

(A) which is propelled by power derived from 1 or more cells which convert chemical energy directly into electricity by combining oxygen with hydrogen fuel which is stored on board the vehicle in any form and may or may not require reformation prior to use,

(B) which, in the case of a passenger automobile or light truck, has received on or after the date of the enactment of this section a certificate that such vehicle meets or exceeds the Bin 5 Tier II emission level established in regulations prescribed by the Administrator of the Environmental Protection Agency under section 202(i) of the Clean Air Act for that make and model year vehicle,

(C) the original use of which commences with the taxpayer,

(D) which is acquired for use or lease by the taxpayer and not for resale, and

(E) which is made by a manufacturer.

(c) New advanced lean burn technology motor vehicle credit

(1) In general

For purposes of subsection (a), the new advanced lean burn technology motor vehicle credit determined under this subsection for the taxable year is the credit amount determined under paragraph (2) with respect to a new advanced lean burn technology motor vehicle placed in service by the taxpayer during the taxable year.

(2) Credit amount

(A) Fuel economy

(i) In general

The credit amount determined under this paragraph shall be determined in accordance with the following table:

In the case of a vehicle which achieves a fuel economy (expressed as a percentage of the 2002 model year city fuel economy) of—	**The credit amount is—**
At least 125 percent but less than 150 percent	$400
At least 150 percent but less than 175 percent	$800
At least 175 percent but less than 200 percent	$1,200
At least 200 percent but less than 225 percent	$1,600
At least 225 percent but less than 250 percent	$2,000
At least 250 percent	$2,400.

(ii) 2002 model year city fuel economy

For purposes of clause (i), the 2002 model year city fuel economy with respect to a vehicle shall be determined on a gasoline gallon equivalent basis as determined by the Administrator of the Environmental Protection Agency using the tables provided in subsection (b)(2)(B) with respect to such vehicle.

(B) Conservation credit

The amount determined under subparagraph (A) with respect to a new advanced lean burn technology motor vehicle shall be increased by the conservation credit amount determined in accordance with the following table:

In the case of a vehicle which achieves a lifetime fuel savings (expressed in	**The conservation credit amount is—**

gallons of gasoline) of—	
At least 1,200 but less than 1,800	$250
At least 1,800 but less than 2,400	$500
At least 2,400 but less than 3,000	$750
At least 3,000	$1,000.

(3) New advanced lean burn technology motor vehicle

For purposes of this subsection, the term "new advanced lean burn technology motor vehicle" means a passenger automobile or a light truck—

(A) with an internal combustion engine which—

(i) is designed to operate primarily using more air than is necessary for complete combustion of the fuel,

(ii) incorporates direct injection,

(iii) achieves at least 125 percent of the 2002 model year city fuel economy,

(iv) for 2004 and later model vehicles, has received a certificate that such vehicle meets or exceeds—

(I) in the case of a vehicle having a gross vehicle weight rating of 6,000 pounds or less, the Bin 5 Tier II emission standard established in regulations prescribed by the Administrator of the Environmental Protection Agency under section 202(i) of the Clean Air Act for that make and model year vehicle, and

(II) in the case of a vehicle having a gross vehicle weight rating of more than 6,000 pounds but not more than 8,500 pounds, the Bin 8 Tier II emission standard which is so established,

(B) the original use of which commences with the taxpayer,

(C) which is acquired for use or lease by the taxpayer and not for resale, and

(D) which is made by a manufacturer.

(4) Lifetime fuel savings

For purposes of this subsection, the term "lifetime fuel savings" means, in the case of any new advanced lean burn technology motor vehicle, an amount equal to the excess (if any) of—

(A) 120,000 divided by the 2002 model year city fuel economy for the vehicle inertia weight class, over

(B) 120,000 divided by the city fuel economy for such vehicle.

(d) New qualified hybrid motor vehicle credit

(1) In general

For purposes of subsection (a), the new qualified hybrid motor vehicle credit determined under this subsection for the taxable year is the credit amount determined under paragraph (2) with respect to a new qualified hybrid motor vehicle placed in service by the taxpayer during the taxable year.

(2) Credit amount

(A) Credit amount for passenger automobiles and light trucks

In the case of a new qualified hybrid motor vehicle which is a passenger automobile or light truck and which has a gross vehicle weight rating of not more than 8,500 pounds, the amount determined under this paragraph is the sum of the amounts determined under clauses (i) and (ii).

(i) Fuel economy

The amount determined under this clause is the amount which would be determined under subsection (c)(2)(A) if such vehicle were a vehicle referred to in such subsection.

(ii) Conservation credit

The amount determined under this clause is the amount which would be determined under subsection (c)(2)(B) if such vehicle were a vehicle referred to in such subsection.

(B) Credit amount for other motor vehicles

(i) In general

In the case of any new qualified hybrid motor vehicle to which subparagraph (A) does not apply, the amount determined under this paragraph is the amount equal to the applicable percentage of the qualified incremental hybrid cost of the vehicle as certified under clause (v).

(ii) Applicable percentage

For purposes of clause (i), the applicable percentage is—

(I) 20 percent if the vehicle achieves an increase in city fuel economy relative to a comparable vehicle of at least 30 percent but less than 40 percent,

(II) 30 percent if the vehicle achieves such an increase of at least 40 percent but less than 50 percent, and

(III) 40 percent if the vehicle achieves such an increase of at least 50 percent.

(iii) Qualified incremental hybrid cost

For purposes of this subparagraph, the qualified incremental hybrid cost of any vehicle is equal to the amount of the excess of the manufacturer's suggested retail price for such vehicle over such price for a comparable vehicle, to the extent such amount does not exceed—

(I) $7,500, if such vehicle has a gross vehicle weight rating of not more than 14,000 pounds,

(II) $15,000, if such vehicle has a gross vehicle weight rating of more than 14,000 pounds but not more than 26,000 pounds, and

(III) $30,000, if such vehicle has a gross vehicle weight rating of more than 26,000 pounds.

(iv) Comparable vehicle

For purposes of this subparagraph, the term "comparable vehicle" means, with respect to any new qualified hybrid motor vehicle, any vehicle which is powered solely by a gasoline or diesel internal combustion engine and which is comparable in weight, size, and use to such vehicle.

(v) Certification

A certification described in clause (i) shall be made by the manufacturer and shall be determined in accordance with guidance prescribed by the Secretary. Such guidance shall specify procedures and methods for calculating fuel economy savings and incremental hybrid costs.

(3) New qualified hybrid motor vehicle

For purposes of this subsection—

(A) In general

The term "new qualified hybrid motor vehicle" means a motor vehicle—

(i) which draws propulsion energy from onboard sources of stored energy which are both—

(I) an internal combustion or heat engine using consumable fuel, and

(II) a rechargeable energy storage system,

(ii) which, in the case of a vehicle to which paragraph (2)(A) applies, has received a certificate of conformity under the Clean Air Act and meets or exceeds the equivalent qualifying California low emission vehicle standard under section 243(e)(2) of the Clean Air Act for that make and model year, and

(I) in the case of a vehicle having a gross vehicle weight rating of 6,000 pounds or less,

the Bin 5 Tier II emission standard established in regulations prescribed by the Administrator of the Environmental Protection Agency under section 202(i) of the Clean Air Act for that make and model year vehicle, and

(II) in the case of a vehicle having a gross vehicle weight rating of more than 6,000 pounds but not more than 8,500 pounds, the Bin 8 Tier II emission standard which is so established,

(iii) which has a maximum available power of at least—

(I) 4 percent in the case of a vehicle to which paragraph (2)(A) applies,

(II) 10 percent in the case of a vehicle which has a gross vehicle weight rating of more than 8,500 pounds and not more than 14,000 pounds, and

(III) 15 percent in the case of a vehicle in excess of 14,000 pounds,

(iv) which, in the case of a vehicle to which paragraph (2)(B) applies, has an internal combustion or heat engine which has received a certificate of conformity under the Clean Air Act as meeting the emission standards set in the regulations prescribed by the Administrator of the Environmental Protection Agency for 2004 through 2007 model year diesel heavy duty engines or ottocycle heavy duty engines, as applicable,

(v) the original use of which commences with the taxpayer,

(vi) which is acquired for use or lease by the taxpayer and not for resale, and

(vii) which is made by a manufacturer.

Such term shall not include any vehicle which is not a passenger automobile or light truck if such vehicle has a gross vehicle weight rating of less than 8,500 pounds.

(B) Consumable fuel

For purposes of subparagraph (A)(i)(I), the term "consumable fuel" means any solid, liquid, or gaseous matter which releases energy when consumed by an auxiliary power unit.

(C) Maximum available power

(i) Certain passenger automobiles and light trucks

In the case of a vehicle to which paragraph (2)(A) applies, the term "maximum available power" means the maximum power available from the rechargeable energy storage system, during a standard 10 second pulse power or equivalent test, divided by such maximum power and the SAE net power of the heat engine.

(ii) Other motor vehicles

In the case of a vehicle to which paragraph (2)(B) applies, the term "maximum available power" means the maximum power available from the rechargeable energy storage system, during a standard 10 second pulse power or equivalent test, divided by the vehicle's total traction power. For purposes of the preceding sentence, the term "total traction power" means the sum of the peak power from the rechargeable energy storage system and the heat engine peak power of the vehicle, except that if such storage system is the sole means by which the vehicle can be driven, the total traction power is the peak power of such storage system.

(D) Exclusion of plug-in vehicles

Any vehicle with respect to which a credit is allowable under section 30D (determined without regard to subsection (c) thereof) shall not be taken into account under this section.

(e) New qualified alternative fuel motor vehicle credit

(1) Allowance of credit

Except as provided in paragraph (5), the new qualified alternative fuel motor vehicle credit determined under this subsection is an amount equal to the applicable percentage of the incremental cost of any new qualified alternative fuel motor vehicle placed in service by the

taxpayer during the taxable year.

(2) Applicable percentage

For purposes of paragraph (1), the applicable percentage with respect to any new qualified alternative fuel motor vehicle is—

(A) 50 percent, plus

(B) 30 percent, if such vehicle—

(i) has received a certificate of conformity under the Clean Air Act and meets or exceeds the most stringent standard available for certification under the Clean Air Act for that make and model year vehicle (other than a zero emission standard), or

(ii) has received an order certifying the vehicle as meeting the same requirements as vehicles which may be sold or leased in California and meets or exceeds the most stringent standard available for certification under the State laws of California (enacted in accordance with a waiver granted under section 209(b) of the Clean Air Act) for that make and model year vehicle (other than a zero emission standard).

For purposes of the preceding sentence, in the case of any new qualified alternative fuel motor vehicle which weighs more than 14,000 pounds gross vehicle weight rating, the most stringent standard available shall be such standard available for certification on the date of the enactment of the Energy Tax Incentives Act of 2005.

(3) Incremental cost

For purposes of this subsection, the incremental cost of any new qualified alternative fuel motor vehicle is equal to the amount of the excess of the manufacturer's suggested retail price for such vehicle over such price for a gasoline or diesel fuel motor vehicle of the same model, to the extent such amount does not exceed—

(A) $5,000, if such vehicle has a gross vehicle weight rating of not more than 8,500 pounds,

(B) $10,000, if such vehicle has a gross vehicle weight rating of more than 8,500 pounds but not more than 14,000 pounds,

(C) $25,000, if such vehicle has a gross vehicle weight rating of more than 14,000 pounds but not more than 26,000 pounds, and

(D) $40,000, if such vehicle has a gross vehicle weight rating of more than 26,000 pounds.

(4) New qualified alternative fuel motor vehicle

For purposes of this subsection—

(A) In general

The term "new qualified alternative fuel motor vehicle" means any motor vehicle—

(i) which is only capable of operating on an alternative fuel,

(ii) the original use of which commences with the taxpayer,

(iii) which is acquired by the taxpayer for use or lease, but not for resale, and

(iv) which is made by a manufacturer.

(B) Alternative fuel

The term "alternative fuel" means compressed natural gas, liquefied natural gas, liquefied petroleum gas, hydrogen, and any liquid at least 85 percent of the volume of which consists of methanol.

(5) Credit for mixed-fuel vehicles

(A) In general

In the case of a mixed-fuel vehicle placed in service by the taxpayer during the taxable year, the credit determined under this subsection is an amount equal to—

(i) in the case of a 75/25 mixed-fuel vehicle, 70 percent of the credit which would have been allowed under this subsection if such vehicle was a qualified alternative fuel motor vehicle, and

(ii) in the case of a 90/10 mixed-fuel vehicle, 90 percent of the credit which would have been allowed under this subsection if such vehicle was a qualified alternative fuel motor vehicle.

(B) Mixed-fuel vehicle

For purposes of this subsection, the term "mixed-fuel vehicle" means any motor vehicle described in subparagraph (C) or (D) of paragraph (3), which—

(i) is certified by the manufacturer as being able to perform efficiently in normal operation on a combination of an alternative fuel and a petroleum-based fuel,

(ii) either—

(I) has received a certificate of conformity under the Clean Air Act, or

(II) has received an order certifying the vehicle as meeting the same requirements as vehicles which may be sold or leased in California and meets or exceeds the low emission vehicle standard under section 88.105–94 of title 40, Code of Federal Regulations, for that make and model year vehicle,

(iii) the original use of which commences with the taxpayer,

(iv) which is acquired by the taxpayer for use or lease, but not for resale, and

(v) which is made by a manufacturer.

(C) 75/25 mixed-fuel vehicle

For purposes of this subsection, the term "75/25 mixed-fuel vehicle" means a mixed-fuel vehicle which operates using at least 75 percent alternative fuel and not more than 25 percent petroleum-based fuel.

(D) 90/10 mixed-fuel vehicle

For purposes of this subsection, the term "90/10 mixed-fuel vehicle" means a mixed-fuel vehicle which operates using at least 90 percent alternative fuel and not more than 10 percent petroleum-based fuel.

(f) Limitation on number of new qualified hybrid and advanced lean-burn technology vehicles eligible for credit

(1) In general

In the case of a qualified vehicle sold during the phaseout period, only the applicable percentage of the credit otherwise allowable under subsection (c) or (d) shall be allowed.

(2) Phaseout period

For purposes of this subsection, the phaseout period is the period beginning with the second calendar quarter following the calendar quarter which includes the first date on which the number of qualified vehicles manufactured by the manufacturer of the vehicle referred to in paragraph (1) sold for use in the United States after December 31, 2005, is at least 60,000.

(3) Applicable percentage

For purposes of paragraph (1), the applicable percentage is—

(A) 50 percent for the first 2 calendar quarters of the phaseout period,

(B) 25 percent for the 3d and 4th calendar quarters of the phaseout period, and

(C) 0 percent for each calendar quarter thereafter.

(4) Controlled groups

(A) In general

For purposes of this subsection, all persons treated as a single employer under subsection (a) or (b) of section 52 or subsection (m) or (o) of section 414 shall be treated as a single manufacturer.

(B) Inclusion of foreign corporations

For purposes of subparagraph (A), in applying subsections (a) and (b) of section 52 to this

section, section 1563 shall be applied without regard to subsection (b)(2)(C) thereof.

(5) Qualified vehicle

For purposes of this subsection, the term "qualified vehicle" means any new qualified hybrid motor vehicle (described in subsection (d)(2)(A)) and any new advanced lean burn technology motor vehicle.

(g) Application with other credits

(1) Business credit treated as part of general business credit

So much of the credit which would be allowed under subsection (a) for any taxable year (determined without regard to this subsection) that is attributable to property of a character subject to an allowance for depreciation shall be treated as a credit listed in section 38(b) for such taxable year (and not allowed under subsection (a)).

(2) Personal credit

For purposes of this title, the credit allowed under subsection (a) for any taxable year (determined after application of paragraph (1)) shall be treated as a credit allowable under subpart A for such taxable year.

(h) Other definitions and special rules

For purposes of this section—

(1) Motor vehicle

The term "motor vehicle" means any vehicle which is manufactured primarily for use on public streets, roads, and highways (not including a vehicle operated exclusively on a rail or rails) and which has at least 4 wheels.

(2) City fuel economy

The city fuel economy with respect to any vehicle shall be measured in a manner which is substantially similar to the manner city fuel economy is measured in accordance with procedures under part 600 of subchapter Q of chapter I of title 40, Code of Federal Regulations, as in effect on the date of the enactment of this section.

(3) Other terms

The terms "automobile", "passenger automobile", "medium duty passenger vehicle", "light truck", and "manufacturer" have the meanings given such terms in regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.).

(4) Reduction in basis

For purposes of this subtitle, the basis of any property for which a credit is allowable under subsection (a) shall be reduced by the amount of such credit so allowed (determined without regard to subsection (g)).

(5) No double benefit

The amount of any deduction or other credit allowable under this chapter—

(A) for any incremental cost taken into account in computing the amount of the credit determined under subsection (e) shall be reduced by the amount of such credit attributable to such cost, and

(B) with respect to a vehicle described under subsection (b) or (c), shall be reduced by the amount of credit allowed under subsection (a) for such vehicle for the taxable year.

(6) Property used by tax-exempt entity

In the case of a vehicle whose use is described in paragraph (3) or (4) of section 50(b) and which is not subject to a lease, the person who sold such vehicle to the person or entity using such vehicle shall be treated as the taxpayer that placed such vehicle in service, but only if such person clearly discloses to such person or entity in a document the amount of any credit allowable under

subsection (a) with respect to such vehicle (determined without regard to subsection (g)). For purposes of subsection (g), property to which this paragraph applies shall be treated as of a character subject to an allowance for depreciation.

(7) Property used outside United States, etc., not qualified

No credit shall be allowable under subsection (a) with respect to any property referred to in section 50(b)(1) or with respect to the portion of the cost of any property taken into account under section 179.

(8) Recapture

The Secretary shall, by regulations, provide for recapturing the benefit of any credit allowable under subsection (a) with respect to any property which ceases to be property eligible for such credit (including recapture in the case of a lease period of less than the economic life of a vehicle).,[1] except that no benefit shall be recaptured if such property ceases to be eligible for such credit by reason of conversion to a qualified plug-in electric drive motor vehicle.

(9) Election to not take credit

No credit shall be allowed under subsection (a) for any vehicle if the taxpayer elects to not have this section apply to such vehicle.

(10) Interaction with air quality and motor vehicle safety standards

Unless otherwise provided in this section, a motor vehicle shall not be considered eligible for a credit under this section unless such vehicle is in compliance with—

(A) the applicable provisions of the Clean Air Act for the applicable make and model year of the vehicle (or applicable air quality provisions of State law in the case of a State which has adopted such provision under a waiver under section 209(b) of the Clean Air Act), and

(B) the motor vehicle safety provisions of sections 30101 through 30169 of title 49, United States Code.

(i) Plug-in conversion credit

(1) In general

For purposes of subsection (a), the plug-in conversion credit determined under this subsection with respect to any motor vehicle which is converted to a qualified plug-in electric drive motor vehicle is 10 percent of so much of the cost of the converting such vehicle as does not exceed $40,000.

(2) Qualified plug-in electric drive motor vehicle

For purposes of this subsection, the term "qualified plug-in electric drive motor vehicle" means any new qualified plug-in electric drive motor vehicle (as defined in section 30D, determined without regard to whether such vehicle is made by a manufacturer or whether the original use of such vehicle commences with the taxpayer).

(3) Credit allowed in addition to other credits

The credit allowed under this subsection shall be allowed with respect to a motor vehicle notwithstanding whether a credit has been allowed with respect to such motor vehicle under this section (other than this subsection) in any preceding taxable year.

(4) Termination

This subsection shall not apply to conversions made after December 31, 2011.

(j) Regulations

(1) In general

Except as provided in paragraph (2), the Secretary shall promulgate such regulations as necessary to carry out the provisions of this section.

(2) Coordination in prescription of certain regulations

The Secretary of the Treasury, in coordination with the Secretary of Transportation and the Administrator of the Environmental Protection Agency, shall prescribe such regulations as necessary to determine whether a motor vehicle meets the requirements to be eligible for a credit under this section.

(k) Termination

This section shall not apply to any property purchased after—

(1) in the case of a new qualified fuel cell motor vehicle (as described in subsection (b)), December 31, 2014,

(2) in the case of a new advanced lean burn technology motor vehicle (as described in subsection (c)) or a new qualified hybrid motor vehicle (as described in subsection (d)(2)(A)), December 31, 2010,

(3) in the case of a new qualified hybrid motor vehicle (as described in subsection (d)(2)(B)), December 31, 2009, and

(4) in the case of a new qualified alternative fuel vehicle (as described in subsection (e)), December 31, 2010.

(Added Pub. L. 109–58, title XIII, §1341(a), Aug. 8, 2005, 119 Stat. 1038; amended Pub. L. 109–135, title IV, §§402(j), 412(d), Dec. 21, 2005, 119 Stat. 2615, 2636; Pub. L. 110–343, div. B, title II, §205(b), Oct. 3, 2008, 122 Stat. 3838; Pub. L. 111–5, div. B, title I, §§1141(b)(1), 1142(b)(2), 1143(a)–(c), 1144(a), Feb. 17, 2009, 123 Stat. 328, 330–332; Pub. L. 111–148, title X, §10909(b)(2)(G), (c), Mar. 23, 2010, 124 Stat. 1023; Pub. L. 111–312, title I, §101(b)(1), Dec. 17, 2010, 124 Stat. 3298; Pub. L. 112–240, title I, §104(c)(2)(H), Jan. 2, 2013, 126 Stat. 2322.)

REFERENCES IN TEXT

The Clean Air Act, referred to in text, is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§7401 et seq.) of Title 42, The Public Health and Welfare. Title II of the Act, known as the National Emissions Standards Act, is classified generally to subchapter II (§7521 et seq.) of chapter 85 of Title 42. Sections 202(i), 209(b), and 243(e)(2) of the Act are classified to sections 7521(i), 7543(b), and 7583(e)(2), respectively, of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

The date of the enactment of this section, referred to in subsecs. (b)(3)(B) and (h)(2), is the date of enactment of Pub. L. 109–58, which was approved Aug. 8, 2005.

The date of the enactment of the Energy Tax Incentives Act of 2005, referred to in subsec. (e)(2), is the date of enactment of title XIII of Pub. L. 109–58, which was approved Aug. 8, 2005.

AMENDMENTS

2013—Subsec. (g)(2). Pub. L. 112–240 amended par. (2) generally. Prior to amendment, par. (2) related to personal credit with a limitation based on amount of tax.

2010—Subsec. (g)(2)(B)(ii). Pub. L. 111–148, §10909(b)(2)(G), (c), as amended by Pub. L. 111–312, temporarily struck out "23," before "25D,". See Effective and Termination Dates of 2010 Amendment note below.

2009—Subsec. (a)(5). Pub. L. 111–5, §1143(b), added par. (5).

Subsec. (d)(3)(D). Pub. L. 111–5, §1141(b)(1), substituted "subsection (c) thereof" for "subsection (d) thereof".

Subsec. (g)(2). Pub. L. 111–5, §1144(a), amended par. (2) generally. Prior to amendment, text read as follows: "The credit allowed under subsection (a) (after the application of paragraph (1)) for any taxable year shall not exceed the excess (if any) of—

"(A) the regular tax liability (as defined in section 26(b)) reduced by the sum of the credits allowable under subpart A and sections 27 and 30, over

"(B) the tentative minimum tax for the taxable year."

Subsec. (h)(1). Pub. L. 111–5, §1142(b)(2), amended par. (1) generally. Prior to amendment, text read as follows: "The term 'motor vehicle' has the meaning given such term by section 30(c)(2)."

Subsec. (h)(8). Pub. L. 111–5, §1143(c), inserted at end ", except that no benefit shall be recaptured if such property ceases to be eligible for such credit by reason of conversion to a qualified plug-in electric drive motor vehicle."

Subsecs. (i) to (k). Pub. L. 111–5, §1143(a), added subsec. (i) and redesignated former subsecs. (i) and (j) as (j) and (k), respectively.

2008—Subsec. (d)(3)(D). Pub. L. 110–343 added subpar. (D).

2005—Subsec. (g)(2)(A). Pub. L. 109–135, §412(d), substituted "regular tax liability (as defined in section 26(b))" for "regular tax".

Subsec. (h)(6). Pub. L. 109–135, §402(j), inserted at end "For purposes of subsection (g), property to which this paragraph applies shall be treated as of a character subject to an allowance for depreciation."

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112–240 applicable to taxable years beginning after Dec. 31, 2011, see section 104(d) of Pub. L. 112–240, set out as a note under section 23 of this title.

EFFECTIVE AND TERMINATION DATES OF 2010 AMENDMENT

Amendment by Pub. L. 111–148 terminated applicable to taxable years beginning after Dec. 31, 2011, and section is amended to read as if such amendment had never been enacted, see section 10909(c) of Pub. L. 111–148, set out as a note under section 1 of this title.

Amendment by Pub. L. 111–148 applicable to taxable years beginning after Dec. 31, 2009, see section 10909(d) of Pub. L. 111–148, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, §1141(c), Feb. 17, 2009, 123 Stat. 328, provided that: "The amendments made by this section [amending this section and sections 30D, 38, 1016, and 6501 of this title] shall apply to vehicles acquired after December 31, 2009."

Amendment by section 1142(b)(2) of Pub. L. 111–5 applicable to vehicles acquired after Feb. 17, 2009, see section 1142(c) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

Pub. L. 111–5, div. B, title I, §1143(d), Feb. 17, 2009, 123 Stat. 332, provided that: "The amendments made by this section [amending this section] shall apply to property placed in service after the date of the enactment of this Act [Feb. 17, 2009]."

Amendment by section 1144(a) of Pub. L. 111–5 applicable to taxable years beginning after Dec. 31, 2008, see section 1144(c) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–343 applicable to taxable years beginning after Dec. 31, 2008, see section 205(e) of Pub. L. 110–343, set out as an Effective and Termination Dates of 2008 Amendment note under section 24 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 402(j) of Pub. L. 109–135 effective as if included in the provision of the Energy Policy Act of 2005, Pub. L. 109–58, to which such amendment relates, see section 402(m)(1) of Pub. L. 109–135, set out as an Effective and Termination Dates of 2005 Amendments note under section 23 of this title.

EFFECTIVE DATE

Pub. L. 109–58, title XIII, §1341(c), Aug. 8, 2005, 119 Stat. 1049, provided that: "The amendments made by this section [enacting this section and amending sections 38, 55, 1016, and 6501 of this title] shall apply to property placed in service after December 31, 2005, in taxable years ending after such date."

[1] *So in original.*

§30C. Alternative fuel vehicle refueling property credit

(a) Credit allowed

There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 30 percent of the cost of any qualified alternative fuel vehicle refueling property placed in service by the taxpayer during the taxable year.

(b) Limitation

The credit allowed under subsection (a) with respect to all qualified alternative fuel vehicle refueling property placed in service by the taxpayer during the taxable year at a location shall not exceed—

(1) $30,000 in the case of a property of a character subject to an allowance for depreciation, and

(2) $1,000 in any other case.

(c) Qualified alternative fuel vehicle refueling property

For purposes of this section, the term "qualified alternative fuel vehicle refueling property" has the same meaning as the term "qualified clean-fuel vehicle refueling property" would have under section 179A if—

(1) paragraph (1) of section 179A(d) did not apply to property installed on property which is used as the principal residence (within the meaning of section 121) of the taxpayer, and

(2) only the following were treated as clean-burning fuels for purposes of section 179A(d):

(A) Any fuel at least 85 percent of the volume of which consists of one or more of the following: ethanol, natural gas, compressed natural gas, liquified natural gas, liquefied petroleum gas, or hydrogen.

(B) Any mixture—

(i) which consists of two or more of the following: biodiesel (as defined in section 40A(d)(1)), diesel fuel (as defined in section 4083(a)(3)), or kerosene, and

(ii) at least 20 percent of the volume of which consists of biodiesel (as so defined) determined without regard to any kerosene in such mixture.

(C) Electricity.

(d) Application with other credits

(1) Business credit treated as part of general business credit

So much of the credit which would be allowed under subsection (a) for any taxable year (determined without regard to this subsection) that is attributable to property of a character subject to an allowance for depreciation shall be treated as a credit listed in section 38(b) for such taxable year (and not allowed under subsection (a)).

(2) Personal credit

The credit allowed under subsection (a) (after the application of paragraph (1)) for any taxable year shall not exceed the excess (if any) of—

(A) the regular tax liability (as defined in section 26(b)) reduced by the sum of the credits allowable under subpart A and section 27, over

(B) the tentative minimum tax for the taxable year.

(e) Special rules

For purposes of this section—

(1) Basis reduction

The basis of any property shall be reduced by the portion of the cost of such property taken into account under subsection (a).

(2) Property used by tax-exempt entity

In the case of any qualified alternative fuel vehicle refueling property the use of which is described in paragraph (3) or (4) of section 50(b) and which is not subject to a lease, the person who sold such property to the person or entity using such property shall be treated as the taxpayer that placed such property in service, but only if such person clearly discloses to such person or entity in a document the amount of any credit allowable under subsection (a) with respect to such property (determined without regard to subsection (d)). For purposes of subsection (d), property to which this paragraph applies shall be treated as of a character subject to an allowance for depreciation.

(3) Property used outside United States not qualified

No credit shall be allowable under subsection (a) with respect to any property referred to in section 50(b)(1) or with respect to the portion of the cost of any property taken into account under section 179.

(4) Election not to take credit

No credit shall be allowed under subsection (a) for any property if the taxpayer elects not to have this section apply to such property.

(5) Recapture rules

Rules similar to the rules of section 179A(e)(4) shall apply.

(6) Special rule for property placed in service during 2009 and 2010

In the case of property placed in service in taxable years beginning after December 31, 2008, and before January 1, 2011—

(A) in the case of any such property which does not relate to hydrogen—

(i) subsection (a) shall be applied by substituting "50 percent" for "30 percent",

(ii) subsection (b)(1) shall be applied by substituting "$50,000" for "$30,000", and

(iii) subsection (b)(2) shall be applied by substituting "$2,000" for "$1,000", and

(B) in the case of any such property which relates to hydrogen, subsection (b)(1) shall be applied by substituting "$200,000" for "$30,000".

(f) Regulations

The Secretary shall prescribe such regulations as necessary to carry out the provisions of this section.

(g) Termination

This section shall not apply to any property placed in service—

(1) in the case of property relating to hydrogen, after December 31, 2014, and

(2) in the case of any other property, after December 31, 2013.

(Added Pub. L. 109–58, title XIII, §1342(a), Aug. 8, 2005, 119 Stat. 1049; amended Pub. L. 109–135, title IV, §§402(k), 412(d), Dec. 21, 2005, 119 Stat. 2615, 2636; Pub. L. 110–172, §6(b), Dec. 29, 2007, 121 Stat. 2479; Pub. L. 110–343, div. B, title II, §207(a), (b), Oct. 3, 2008, 122 Stat. 3839; Pub. L. 111–5, div. B, title I, §§1123(a), 1142(b)(3), 1144(b)(2), Feb. 17, 2009, 123 Stat. 325, 331, 332; Pub. L. 111–312, title VII, §711(a), Dec. 17, 2010, 124 Stat. 3315; Pub. L. 112–240, title IV, §402(a), Jan. 2, 2013, 126 Stat. 2337.)

AMENDMENTS

2013—Subsec. (g)(2). Pub. L. 112–240 substituted "December 31, 2013" for "December 31, 2011.".

2010—Subsec. (g)(2). Pub. L. 111–312 substituted "December 31, 2011." for "December 31, 2010".

2009—Subsec. (d)(2)(A). Pub. L. 111–5, §1144(b)(2), substituted "section 27" for "sections 27 and 30B".

Pub. L. 111–5, §1142(b)(3), struck out ", 30," before "and 30B".

Subsec. (e)(6). Pub. L. 111–5, §1123(a), added par. (6).

2008—Subsec. (c)(2)(C). Pub. L. 110–343, §207(b), added subpar. (C).

Subsec. (g)(2). Pub. L. 110–343, §207(a), substituted "December 31, 2010" for "December 31, 2009".

2007—Subsec. (b). Pub. L. 110–172, §6(b)(1), reenacted heading without change and amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: "The credit allowed under subsection (a) with respect to any alternative fuel vehicle refueling property shall not exceed—".

Subsec. (c). Pub. L. 110–172, §6(b)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows:

"(1) IN GENERAL.—Except as provided in paragraph (2), the term 'qualified alternative fuel vehicle refueling property' has the meaning given to such term by section 179A(d), but only with respect to any fuel—

"(A) at least 85 percent of the volume of which consists of one or more of the following: ethanol, natural gas, compressed natural gas, liquefied natural gas, liquefied petroleum gas, or hydrogen, or

"(B) any mixture of biodiesel (as defined in section 40A(d)(1)) and diesel fuel (as defined in section 4083(a)(3)), determined without regard to any use of kerosene and containing at least 20 percent biodiesel.

"(2) RESIDENTIAL PROPERTY.—In the case of any property installed on property which is used as the principal residence (within the meaning of section 121) of the taxpayer, paragraph (1) of section 179A(d) shall not apply."

2005—Subsec. (d)(2)(A). Pub. L. 109–135, §412(d), substituted "regular tax liability (as defined in section 26(b))" for "regular tax".

Subsec. (e)(2). Pub. L. 109–135, §402(k), inserted at end "For purposes of subsection (d), property to which this paragraph applies shall be treated as of a character subject to an allowance for depreciation."

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title IV, §402(b), Jan. 2, 2013, 126 Stat. 2337, provided that: "The amendment made by this section [amending this section] shall apply to property placed in service after December 31, 2011."

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §711(b), Dec. 17, 2010, 124 Stat. 3315, provided that: "The amendment made by this section [amending this section] shall apply to property placed in service after December 31, 2010."

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, §1123(b), Feb. 17, 2009, 123 Stat. 325, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2008."

Amendment by section 1142(b)(3) of Pub. L. 111–5 applicable to vehicles acquired after Feb. 17, 2009, see section 1142(c) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

Amendment by section 1144(b)(2) of Pub. L. 111–5 applicable to taxable years beginning after Dec. 31, 2008, see section 1144(c) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title II, §207(c), Oct. 3, 2008, 122 Stat. 3840, provided that: "The amendments made by this section [amending this section] shall apply to property placed in service after the date of the enactment of this Act [Oct. 3, 2008], in taxable years ending after such date."

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–172, §6(e), Dec. 29, 2007, 121 Stat. 2481, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 41, 45J, 4041, 4042, 4082, and 6430 of this title, and enacting provisions set out as a note under section 6430 of this title] shall take effect as if included in the provisions of the Energy Policy Act of 2005 [Pub. L. 109–58] to which they relate.

"(2) NONAPPLICATION OF EXEMPTION FOR OFF-HIGHWAY BUSINESS USE.—The amendment made by subsection (d)(3) [amending section 4041 of this title] shall apply to fuel sold for use or used after the date of the enactment of this Act [Dec. 29, 2007].

"(3) AMENDMENT MADE BY THE SAFETEA–LU.—The amendment made by subsection (d)(2)(C)(ii) [amending section 4082 of this title] shall take effect as if included in section 11161 of the SAFETEA–LU [Pub. L. 109–59]."

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 402(k) of Pub. L. 109–135 effective as if included in the provision of the Energy Policy Act of 2005, Pub. L. 109–58, to which such amendment relates, see section 402(m)(1) of Pub. L. 109–135, set out as an Effective and Termination Dates of 2005 Amendments note under section 23 of this title.

EFFECTIVE DATE

Pub. L. 109–58, title XIII, §1342(c), Aug. 8, 2005, 119 Stat. 1051, provided that: "The amendments made by this section [enacting this section and amending sections 38, 55, 1016, and 6501 of this title] shall apply to property placed in service after December 31, 2005, in taxable years ending after such date."

§30D. New qualified plug-in electric drive motor vehicles

(a) Allowance of credit

There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of the credit amounts determined under subsection (b) with respect to each new qualified plug-in electric drive motor vehicle placed in service by the taxpayer during the taxable year.

(b) Per vehicle dollar limitation

(1) In general

The amount determined under this subsection with respect to any new qualified plug-in electric drive motor vehicle is the sum of the amounts determined under paragraphs (2) and (3) with respect to such vehicle.

(2) Base amount

The amount determined under this paragraph is $2,500.

(3) Battery capacity

In the case of a vehicle which draws propulsion energy from a battery with not less than 5 kilowatt hours of capacity, the amount determined under this paragraph is $417, plus $417 for each kilowatt hour of capacity in excess of 5 kilowatt hours. The amount determined under this paragraph shall not exceed $5,000.

(c) Application with other credits

(1) Business credit treated as part of general business credit

So much of the credit which would be allowed under subsection (a) for any taxable year (determined without regard to this subsection) that is attributable to property of a character subject to an allowance for depreciation shall be treated as a credit listed in section 38(b) for such taxable year (and not allowed under subsection (a)).

(2) Personal credit

For purposes of this title, the credit allowed under subsection (a) for any taxable year (determined after application of paragraph (1)) shall be treated as a credit allowable under subpart A for such taxable year.

(d) New qualified plug-in electric drive motor vehicle

For purposes of this section—

(1) In general

The term "new qualified plug-in electric drive motor vehicle" means a motor vehicle—

(A) the original use of which commences with the taxpayer,

(B) which is acquired for use or lease by the taxpayer and not for resale,

(C) which is made by a manufacturer,

(D) which is treated as a motor vehicle for purposes of title II of the Clean Air Act,

(E) which has a gross vehicle weight rating of less than 14,000 pounds, and

(F) which is propelled to a significant extent by an electric motor which draws electricity from a battery which—

(i) has a capacity of not less than 4 kilowatt hours, and

(ii) is capable of being recharged from an external source of electricity.

(2) Motor vehicle

The term "motor vehicle" means any vehicle which is manufactured primarily for use on public streets, roads, and highways (not including a vehicle operated exclusively on a rail or rails) and which has at least 4 wheels.

(3) Manufacturer

The term "manufacturer" has the meaning given such term in regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.).

(4) Battery capacity

The term "capacity" means, with respect to any battery, the quantity of electricity which the battery is capable of storing, expressed in kilowatt hours, as measured from a 100 percent state of charge to a 0 percent state of charge.

(e) Limitation on number of new qualified plug-in electric drive motor vehicles eligible for credit

(1) In general

In the case of a new qualified plug-in electric drive motor vehicle sold during the phaseout period, only the applicable percentage of the credit otherwise allowable under subsection (a) shall be allowed.

(2) Phaseout period

For purposes of this subsection, the phaseout period is the period beginning with the second calendar quarter following the calendar quarter which includes the first date on which the number of new qualified plug-in electric drive motor vehicles manufactured by the manufacturer of the vehicle referred to in paragraph (1) sold for use in the United States after December 31, 2009, is at least 200,000.

(3) Applicable percentage

For purposes of paragraph (1), the applicable percentage is—

(A) 50 percent for the first 2 calendar quarters of the phaseout period,

(B) 25 percent for the 3d and 4th calendar quarters of the phaseout period, and

(C) 0 percent for each calendar quarter thereafter.

(4) Controlled groups

Rules similar to the rules of section 30B(f)(4) shall apply for purposes of this subsection.

(f) Special rules

(1) Basis reduction

For purposes of this subtitle, the basis of any property for which a credit is allowable under subsection (a) shall be reduced by the amount of such credit so allowed.

(2) No double benefit

The amount of any deduction or other credit allowable under this chapter for a vehicle for which a credit is allowable under subsection (a) shall be reduced by the amount of credit allowed under such subsection for such vehicle.

(3) Property used by tax-exempt entity

In the case of a vehicle the use of which is described in paragraph (3) or (4) of section 50(b) and which is not subject to a lease, the person who sold such vehicle to the person or entity using such vehicle shall be treated as the taxpayer that placed such vehicle in service, but only if such person clearly discloses to such person or entity in a document the amount of any credit allowable under subsection (a) with respect to such vehicle (determined without regard to subsection (c)).

(4) Property used outside United States not qualified

No credit shall be allowable under subsection (a) with respect to any property referred to in section 50(b)(1).

(5) Recapture

The Secretary shall, by regulations, provide for recapturing the benefit of any credit allowable under subsection (a) with respect to any property which ceases to be property eligible for such credit.

(6) Election not to take credit

No credit shall be allowed under subsection (a) for any vehicle if the taxpayer elects to not have

this section apply to such vehicle.

(7) Interaction with air quality and motor vehicle safety standards

A vehicle shall not be considered eligible for a credit under this section unless such vehicle is in compliance with—

(A) the applicable provisions of the Clean Air Act for the applicable make and model year of the vehicle (or applicable air quality provisions of State law in the case of a State which has adopted such provision under a waiver under section 209(b) of the Clean Air Act), and

(B) the motor vehicle safety provisions of sections 30101 through 30169 of title 49, United States Code.

(g) Credit allowed for 2- and 3-wheeled plug-in electric vehicles

(1) In general

In the case of a qualified 2- or 3-wheeled plug-in electric vehicle—

(A) there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of the applicable amount with respect to each such qualified 2- or 3-wheeled plug-in electric vehicle placed in service by the taxpayer during the taxable year, and

(B) the amount of the credit allowed under subparagraph (A) shall be treated as a credit allowed under subsection (a).

(2) Applicable amount

For purposes of paragraph (1), the applicable amount is an amount equal to the lesser of—

(A) 10 percent of the cost of the qualified 2- or 3-wheeled plug-in electric vehicle, or

(B) $2,500.

(3) Qualified 2- or 3-wheeled plug-in electric vehicle

The term "qualified 2- or 3-wheeled plug-in electric vehicle" means any vehicle which—

(A) has 2 or 3 wheels,

(B) meets the requirements of subparagraphs (A), (B), (C), (E), and (F) of subsection (d)(1) (determined by substituting "2.5 kilowatt hours" for "4 kilowatt hours" in subparagraph (F)(i)),

(C) is manufactured primarily for use on public streets, roads, and highways,

(D) is capable of achieving a speed of 45 miles per hour or greater, and

(E) is acquired after December 31, 2011, and before January 1, 2014.

(Added Pub. L. 110–343, div. B, title II, §205(a), Oct. 3, 2008, 122 Stat. 3835; amended Pub. L. 111–5, div. B, title I, §1141(a), Feb. 17, 2009, 123 Stat. 326; Pub. L. 111–148, title X, §10909(b)(2)(H), (c), Mar. 23, 2010, 124 Stat. 1023; Pub. L. 111–312, title I, §101(b)(1), Dec. 17, 2010, 124 Stat. 3298; Pub. L. 112–240, title I, §104(c)(2)(I), title IV, §403(a), (b), Jan. 2, 2013, 126 Stat. 2322, 2337, 2338.)

REFERENCES IN TEXT

The Clean Air Act, referred to in subsecs. (d)(1)(D), (3), (f)(7)(A), is act July 14, 1955, ch. 360, 69 Stat. 322, which is classified generally to chapter 85 (§7401 et seq.) of Title 42, The Public Health and Welfare. Title II of the Act, known as the National Emissions Standards Act, is classified generally to subchapter II (§7521 et seq.) of chapter 85 of Title 42. Section 209(b) of the Act is classified to section 7543(b) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

AMENDMENTS

2013—Subsec. (c)(2). Pub. L. 112–240, §104(c)(2)(I), amended par. (2) generally. Prior to amendment, par. (2) related to personal credit with a limitation based on amount of tax.

Subsec. (f)(2). Pub. L. 112–240, §403(b)(1), substituted "vehicle for which a credit is allowable under subsection (a)" for "new qualified plug-in electric drive motor vehicle" and "allowed under such subsection" for "allowed under subsection (a)".

Subsec. (f)(7). Pub. L. 112–240, §403(b)(2), substituted "A vehicle" for "A motor vehicle" in introductory provisions.

Subsec. (g). Pub. L. 112–240, §403(a), added subsec. (g).

2010—Subsec. (c)(2)(B)(ii). Pub. L. 111–148, §10909(b)(2)(H), (c), as amended by Pub. L. 111–312, temporarily substituted "section 25D" for "sections 23 and 25D". See Effective and Termination Dates of 2010 Amendment note below.

2009—Pub. L. 111–5 amended section generally. Prior to amendment, section provided credit with respect to each new qualified plug-in electric drive motor vehicle placed in service and set forth provisions defining "applicable amount" and "new qualified plug-in electric drive motor vehicle" and stating limitations based on vehicle weight, the number of vehicles eligible for credit, and amount of tax liability.

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by section 104(c)(2)(I) of Pub. L. 112–240 applicable to taxable years beginning after Dec. 31, 2011, see section 104(d) of Pub. L. 112–240, set out as a note under section 23 of this title.

Pub. L. 112–240, title IV, §403(c), Jan. 2, 2013, 126 Stat. 2338, provided that: "The amendments made by this section [amending this section] shall apply to vehicles acquired after December 31, 2011."

EFFECTIVE AND TERMINATION DATES OF 2010 AMENDMENT

Amendment by Pub. L. 111–148 terminated applicable to taxable years beginning after Dec. 31, 2011, and section is amended to read as if such amendment had never been enacted, see section 10909(c) of Pub. L. 111–148, set out as a note under section 1 of this title.

Amendment by Pub. L. 111–148 applicable to taxable years beginning after Dec. 31, 2009, see section 10909(d) of Pub. L. 111–148, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–5 applicable to vehicles acquired after Dec. 31, 2009, see section 1141(c) of Pub. L. 111–5, set out as a note under section 30B of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 2008, see section 205(e) of Pub. L. 110–343, set out as an Effective and Termination Dates of 2008 Amendment note under section 24 of this title.

SUBPART C—REFUNDABLE CREDITS

Sec.

31. Tax withheld on wages.
32. Earned income.
33. Tax withheld at source on nonresident aliens and foreign corporations.
34. Certain uses of gasoline and special fuels.
35. Health insurance costs of eligible individuals.
36. First-time homebuyer credit.
36A. Making work pay credit.
36B. Refundable credit for coverage under a qualified health plan.
[36C. Renumbered.]
37. Overpayments of tax.

AMENDMENTS

2010—Pub. L. 111–148, title X, §10909(b)(2)(Q), (c), Mar. 23, 2010, 124 Stat. 1023, as amended by Pub. L. 111–312, title I, §101(b)(1), Dec. 17, 2010, 124 Stat. 3298, temporarily added item 36C "Adoption expenses". See Effective and Termination Dates of 2010 Amendment note set out under section 1 of this title.

Pub. L. 111–148, title I, §1401(d)(2), Mar. 23, 2010, 124 Stat. 220, added item 36B.

2009—Pub. L. 111–5, div. B, title I, §1001(e)(3), Feb. 17, 2009, 123 Stat. 312, added item 36A.

2008—Pub. L. 110–289, div. C, title I, §3011(b)(4), July 30, 2008, 122 Stat. 2891, added item 36 and redesignated former item 36 as 37.

2002—Pub. L. 107–210, div. A, title II, §201(c)(2), Aug. 6, 2002, 116 Stat. 960, which directed amendment of the table of sections for subpart C of part IV of this chapter by adding items 35 and 36 and striking out the last item, was executed to the table of sections for this subpart which is in part IV of subchapter A of this chapter by adding those items and striking out former item 35 "Overpayments of tax" to reflect the probable intent of Congress.

1984—Pub. L. 98–369, div. A, title IV, §471(b), July 18, 1984, 98 Stat. 826, added subpart C heading and analysis of sections for subpart C consisting of items 31, 32 (formerly 43), 33 (formerly 32), 34 (formerly 39), and 35 (formerly 45). Former subpart C, setting out the rules for computing credit for expenses of work incentive programs, was repealed.

§31. Tax withheld on wages

(a) Wage withholding for income tax purposes

(1) In general

The amount withheld as tax under chapter 24 shall be allowed to the recipient of the income as a credit against the tax imposed by this subtitle.

(2) Year of credit

The amount so withheld during any calendar year shall be allowed as a credit for the taxable year beginning in such calendar year. If more than one taxable year begins in a calendar year, such amount shall be allowed as a credit for the last taxable year so beginning.

(b) Credit for special refunds of social security tax

(1) In general

The Secretary may prescribe regulations providing for the crediting against the tax imposed by this subtitle of the amount determined by the taxpayer or the Secretary to be allowable under section 6413(c) as a special refund of tax imposed on wages. The amount allowed as a credit under such regulations shall, for purposes of this subtitle, be considered an amount withheld at source as tax under section 3402.

(2) Year of credit

Any amount to which paragraph (1) applies shall be allowed as a credit for the taxable year beginning in the calendar year during which the wages were received. If more than one taxable year begins in the calendar year, such amount shall be allowed as a credit for the last taxable year so beginning.

(c) Special rule for backup withholding

Any credit allowed by subsection (a) for any amount withheld under section 3406 shall be allowed for the taxable year of the recipient of the income in which the income is received.

(Aug. 16, 1954, ch. 736, 68A Stat. 12; Pub. L. 94–455, title XIX, §1906(b)(13)(D), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–248, title III, §§302(a), 308(a), Sept. 3, 1982, 96 Stat. 585, 591; Pub. L. 97–354, §3(i)(4), Oct. 19, 1982, 96 Stat. 1691; Pub. L. 97–448, title III, §306(b)(1), Jan. 12, 1983, 96 Stat. 2405; Pub. L. 98–67, title I, §§102(a), 104(d)(2), Aug. 5, 1983, 97 Stat. 369, 379; Pub. L. 98–369, div. A, title IV, §471(c), title VII, §714(j)(2), July 18, 1984, 98 Stat. 826, 962.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98–369, §714(j)(2), substituted "as tax under chapter 24" for "under section 3402 as tax on the wages of any individual".

1983—Pub. L. 98–67 added subsec. (c) and repealed amendments made by Pub. L. 97–248. See 1982 Amendment note below.

Pub. L. 97–448 amended subsec. (d) generally. See 1982 Amendment note below.

1982—Pub. L. 97–248, as amended by Pub. L. 97–354 and Pub. L. 97–448, amended section generally, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983. Section 102(a), (b) of Pub. L. 98–67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§301–308) of title III of Pub. L. 97–248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 [now 1986] [this title] shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

1976—Subsec. (b)(1). Pub. L. 94–455 struck out "or his delegate" after "The Secretary" and "(or his delegate)" after "taxpayer or the Secretary".

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title VII, §715, July 18, 1984, 98 Stat. 966, provided that: "Any amendment made by this subtitle [subtitle A (§§711–715) of title VII of Pub. L. 98–369, see Tables for classification] shall take effect as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97–248] to which such amendment relates."

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 98–67, title I, §110, Aug. 5, 1983, 97 Stat. 384, provided that:

"(a) GENERAL RULE.—Except as otherwise provided in this section, the amendments made by this title [enacting sections 3406 and 6705 of this title, amending this section and sections 274, 275, 643, 661, 3402, 3403, 3502, 3507, 6011, 6013, 6015, 6042, 6044, 6049, 6051, 6365, 6401, 6413, 6652, 6653, 6654, 6676, 6678, 6682, 7205, 7215, 7431, 7654, and 7701 of this title, repealing sections 3451 to 3456 of this title, enacting provisions set out as notes under sections 1, 3451, and 6011 of this title, and repealing provisions set out as a note under section 3451 of this title] shall apply with respect to payments made after December 31, 1983.

"(b) SECTION 102.—The amendments made by section 102 [amending this section and sections 274, 275, 643, 661, 3403, 3502, 3507, 6013, 6015, 6042, 6044, 6049, 6051, 6365, 6401, 6413, 6654, 6682, 7205, 7215, 7654, and 7701 of this title, repealing sections 3451 to 3456 of this title, enacting provisions set out as a note under section 3451 of this title, and repealing provisions set out as a note under section 3451 of this title] shall take effect as of the close of June 30, 1983.

"(c) SECTIONS 104(b) AND 107.—The amendments made by sections 104(b) and 107 [amending sections 6682, 7205, and 7431 of this title] shall take effect on the date of the enactment of this Act [Aug. 5, 1983]."

Pub. L. 97–448, title III, §311(d), Jan. 12, 1983, 96 Stat. 2412, provided that: "The amendments made by section 306 [amending this section and sections 48, 55, 263, 291, 312, 338, 401, 501, 1232, 6038A, 6226, 6228, 6679, and 7701 of this title, enacting provisions set out as notes under sections 338 and 1232 of this title, and amending provisions set out as notes under sections 56, 72, 101, 103, 168, 302, 311, 338, 415, 907, and 5701 of this title] shall take effect as if included in the provisions of the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97–248] to which such amendments relate."

CONSTRUCTION OF AMENDMENT BY TITLE VII OF DIVISION A OF PUB. L. 98–369

Pub. L. 98–369, div. A, title VII, §701, July 18, 1984, 98 Stat. 942, provided that: "For purposes of applying the amendments made by any title of this Act [see Tables for classification] other than this title, the provisions of this title shall be treated as having been enacted immediately before the provisions of such other titles."

§32. Earned income

(a) Allowance of credit

(1) In general

In the case of an eligible individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the credit percentage of so much of the taxpayer's earned income for the taxable year as does not exceed the earned income amount.

(2) Limitation

The amount of the credit allowable to a taxpayer under paragraph (1) for any taxable year shall not exceed the excess (if any) of—

(A) the credit percentage of the earned income amount, over

(B) the phaseout percentage of so much of the adjusted gross income (or, if greater, the earned income) of the taxpayer for the taxable year as exceeds the phaseout amount.

(b) Percentages and amounts

For purposes of subsection (a)—

(1) Percentages

The credit percentage and the phaseout percentage shall be determined as follows:

(A) In general

In the case of taxable years beginning after 1995:

In the case of an eligible individual with:	The credit percentage is:	The phaseout percentage is:
1 qualifying child	34	15.98
2 or more qualifying children	40	21.06
No qualifying children	7.65	7.65

(B) Transitional percentages for 1995

In the case of taxable years beginning in 1995:

In the case of an eligible individual with:	The credit percentage is:	The phaseout percentage is:
1 qualifying child	34	15.98
2 or more qualifying children	36	20.22
No qualifying children	7.65	7.65

(C) Transitional percentages for 1994

In the case of a taxable year beginning in 1994:

In the case of an eligible individual with:	The credit percentage is:	The phaseout percentage is:
1 qualifying child	26.3	15.98
2 or more qualifying children	30	17.68
No qualifying children	7.65	7.65

(2) Amounts

(A) In general

Subject to subparagraph (B), the earned income amount and the phaseout amount shall be determined as follows:

In the case of an eligible individual with:	The earned income amount is:	The phaseout

		amount is:
1 qualifying child	$6,330	$11,610
2 or more qualifying children	$8,890	$11,610
No qualifying children	$4,220	$5,280

(B) Joint returns

In the case of a joint return filed by an eligible individual and such individual's spouse, the phaseout amount determined under subparagraph (A) shall be increased by—

(i) $1,000 in the case of taxable years beginning in 2002, 2003, and 2004,

(ii) $2,000 in the case of taxable years beginning in 2005, 2006, and 2007, and

(iii) $3,000 in the case of taxable years beginning after 2007.

(3) Special rules for for [1] certain years

In the case of any taxable year beginning after 2008 and before 2018—

(A) Increased credit percentage for 3 or more qualifying children

In the case of a taxpayer with 3 or more qualifying children, the credit percentage is 45 percent.

(B) Reduction of marriage penalty

(i) In general

The dollar amount in effect under paragraph (2)(B) shall be $5,000.

(ii) Inflation adjustment

In the case of any taxable year beginning in 2010, the $5,000 amount in clause (i) shall be increased by an amount equal to—

(I) such dollar amount, multiplied by

(II) the cost of living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins determined by substituting "calendar year 2008" for "calendar year 1992" in subparagraph (B) thereof.

(iii) Rounding

Subparagraph (A) of subsection (j)(2) shall apply after taking into account any increase under clause (ii).

(c) Definitions and special rules

For purposes of this section—

(1) Eligible individual

(A) In general

The term "eligible individual" means—

(i) any individual who has a qualifying child for the taxable year, or

(ii) any other individual who does not have a qualifying child for the taxable year, if—

(I) such individual's principal place of abode is in the United States for more than one-half of such taxable year,

(II) such individual (or, if the individual is married, either the individual or the individual's spouse) has attained age 25 but not attained age 65 before the close of the taxable year, and

(III) such individual is not a dependent for whom a deduction is allowable under section 151 to another taxpayer for any taxable year beginning in the same calendar year as such taxable year.

For purposes of the preceding sentence, marital status shall be determined under section 7703.

(B) Qualifying child ineligible

If an individual is the qualifying child of a taxpayer for any taxable year of such taxpayer beginning in a calendar year, such individual shall not be treated as an eligible individual for any taxable year of such individual beginning in such calendar year.

(C) Exception for individual claiming benefits under section 911

The term "eligible individual" does not include any individual who claims the benefits of section 911 (relating to citizens or residents living abroad) for the taxable year.

(D) Limitation on eligibility of nonresident aliens

The term "eligible individual" shall not include any individual who is a nonresident alien individual for any portion of the taxable year unless such individual is treated for such taxable year as a resident of the United States for purposes of this chapter by reason of an election under subsection (g) or (h) of section 6013.

(E) Identification number requirement

No credit shall be allowed under this section to an eligible individual who does not include on the return of tax for the taxable year—

(i) such individual's taxpayer identification number, and

(ii) if the individual is married (within the meaning of section 7703), the taxpayer identification number of such individual's spouse.

(F) Individuals who do not include TIN, etc., of any qualifying child

No credit shall be allowed under this section to any eligible individual who has one or more qualifying children if no qualifying child of such individual is taken into account under subsection (b) by reason of paragraph (3)(D).

(2) Earned income

(A) The term "earned income" means—

(i) wages, salaries, tips, and other employee compensation, but only if such amounts are includible in gross income for the taxable year, plus

(ii) the amount of the taxpayer's net earnings from self-employment for the taxable year (within the meaning of section 1402(a)), but such net earnings shall be determined with regard to the deduction allowed to the taxpayer by section 164(f).

(B) For purposes of subparagraph (A)—

(i) the earned income of an individual shall be computed without regard to any community property laws,

(ii) no amount received as a pension or annuity shall be taken into account,

(iii) no amount to which section 871(a) applies (relating to income of nonresident alien individuals not connected with United States business) shall be taken into account,

(iv) no amount received for services provided by an individual while the individual is an inmate at a penal institution shall be taken into account,

(v) no amount described in subparagraph (A) received for service performed in work activities as defined in paragraph (4) or (7) of section 407(d) of the Social Security Act to which the taxpayer is assigned under any State program under part A of title IV of such Act shall be taken into account, but only to the extent such amount is subsidized under such State program, and

(vi) a taxpayer may elect to treat amounts excluded from gross income by reason of section 112 as earned income.

(3) Qualifying child

(A) In general

The term "qualifying child" means a qualifying child of the taxpayer (as defined in section 152(c), determined without regard to paragraph (1)(D) thereof and section 152(e)).

(B) Married individual

The term "qualifying child" shall not include an individual who is married as of the close of the taxpayer's taxable year unless the taxpayer is entitled to a deduction under section 151 for such taxable year with respect to such individual (or would be so entitled but for section 152(e)).

(C) Place of abode

For purposes of subparagraph (A), the requirements of section 152(c)(1)(B) shall be met only if the principal place of abode is in the United States.

(D) Identification requirements

(i) In general

A qualifying child shall not be taken into account under subsection (b) unless the taxpayer includes the name, age, and TIN of the qualifying child on the return of tax for the taxable year.

(ii) Other methods

The Secretary may prescribe other methods for providing the information described in clause (i).

(4) Treatment of military personnel stationed outside the United States

For purposes of paragraphs (1)(A)(ii)(I) and (3)(C), the principal place of abode of a member of the Armed Forces of the United States shall be treated as in the United States during any period during which such member is stationed outside the United States while serving on extended active duty with the Armed Forces of the United States. For purposes of the preceding sentence, the term "extended active duty" means any period of active duty pursuant to a call or order to such duty for a period in excess of 90 days or for an indefinite period.

(d) Married individuals

In the case of an individual who is married (within the meaning of section 7703), this section shall apply only if a joint return is filed for the taxable year under section 6013.

(e) Taxable year must be full taxable year

Except in the case of a taxable year closed by reason of the death of the taxpayer, no credit shall be allowable under this section in the case of a taxable year covering a period of less than 12 months.

(f) Amount of credit to be determined under tables

(1) In general

The amount of the credit allowed by this section shall be determined under tables prescribed by the Secretary.

(2) Requirements for tables

The tables prescribed under paragraph (1) shall reflect the provisions of subsections (a) and (b) and shall have income brackets of not greater than $50 each—

(A) for earned income between $0 and the amount of earned income at which the credit is phased out under subsection (b), and

(B) for adjusted gross income between the dollar amount at which the phaseout begins under subsection (b) and the amount of adjusted gross income at which the credit is phased out under subsection (b).

[(g) Repealed. Pub. L. 111–226, title II, §219(a)(2), Aug. 10, 2010, 124 Stat. 2403]

[(h) Repealed. Pub. L. 107–16, title III, §303(c), June 7, 2001, 115 Stat. 55]

(i) Denial of credit for individuals having excessive investment income

(1) In general

No credit shall be allowed under subsection (a) for the taxable year if the aggregate amount of

disqualified income of the taxpayer for the taxable year exceeds $2,200.

(2) Disqualified income

For purposes of paragraph (1), the term "disqualified income" means—

(A) interest or dividends to the extent includible in gross income for the taxable year,

(B) interest received or accrued during the taxable year which is exempt from tax imposed by this chapter,

(C) the excess (if any) of—

(i) gross income from rents or royalties not derived in the ordinary course of a trade or business, over

(ii) the sum of—

(I) the deductions (other than interest) which are clearly and directly allocable to such gross income, plus

(II) interest deductions properly allocable to such gross income,

(D) the capital gain net income (as defined in section 1222) of the taxpayer for such taxable year, and

(E) the excess (if any) of—

(i) the aggregate income from all passive activities for the taxable year (determined without regard to any amount included in earned income under subsection (c)(2) or described in a preceding subparagraph), over

(ii) the aggregate losses from all passive activities for the taxable year (as so determined).

For purposes of subparagraph (E), the term "passive activity" has the meaning given such term by section 469.

(j) Inflation adjustments

(1) In general

In the case of any taxable year beginning after 1996, each of the dollar amounts in subsections (b)(2) and (i)(1) shall be increased by an amount equal to—

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined—

(i) in the case of amounts in subsections (b)(2)(A) and (i)(1), by substituting "calendar year 1995" for "calendar year 1992" in subparagraph (B) thereof, and

(ii) in the case of the $3,000 amount in subsection (b)(2)(B)(iii), by substituting "calendar year 2007" for "calendar year 1992" in subparagraph (B) of such section 1.

(2) Rounding

(A) In general

If any dollar amount in subsection (b)(2)(A) (after being increased under subparagraph (B) thereof), after being increased under paragraph (1), is not a multiple of $10, such dollar amount shall be rounded to the nearest multiple of $10.

(B) Disqualified income threshold amount

If the dollar amount in subsection (i)(1), after being increased under paragraph (1), is not a multiple of $50, such amount shall be rounded to the next lowest multiple of $50.

(k) Restrictions on taxpayers who improperly claimed credit in prior year

(1) Taxpayers making prior fraudulent or reckless claims

(A) In general

No credit shall be allowed under this section for any taxable year in the disallowance period.

(B) Disallowance period

For purposes of paragraph (1), the disallowance period is—

(i) the period of 10 taxable years after the most recent taxable year for which there was a final determination that the taxpayer's claim of credit under this section was due to fraud, and

(ii) the period of 2 taxable years after the most recent taxable year for which there was a final determination that the taxpayer's claim of credit under this section was due to reckless or intentional disregard of rules and regulations (but not due to fraud).

(2) Taxpayers making improper prior claims

In the case of a taxpayer who is denied credit under this section for any taxable year as a result of the deficiency procedures under subchapter B of chapter 63, no credit shall be allowed under this section for any subsequent taxable year unless the taxpayer provides such information as the Secretary may require to demonstrate eligibility for such credit.

(l) Coordination with certain means-tested programs

For purposes of—

(1) the United States Housing Act of 1937,
(2) title V of the Housing Act of 1949,
(3) section 101 of the Housing and Urban Development Act of 1965,
(4) sections 221(d)(3), 235, and 236 of the National Housing Act, and
(5) the Food and Nutrition Act of 2008,

any refund made to an individual (or the spouse of an individual) by reason of this section, and any payment made to such individual (or such spouse) by an employer under section 3507,[2] shall not be treated as income (and shall not be taken into account in determining resources for the month of its receipt and the following month).

(m) Identification numbers

Solely for purposes of subsections (c)(1)(E) and (c)(3)(D), a taxpayer identification number means a social security number issued to an individual by the Social Security Administration (other than a social security number issued pursuant to clause (II) (or that portion of clause (III) that relates to clause (II)) of section 205(c)(2)(B)(i) of the Social Security Act).

(Added Pub. L. 94–12, title II, §204(a), Mar. 29, 1975, 89 Stat. 30, §43; amended Pub. L. 94–164, §2(c), Dec. 23, 1975, 89 Stat. 971; Pub. L. 94–455, title IV, §401(c)(1)(B), (2), Oct. 4, 1976, 90 Stat. 1557; Pub. L. 95–600, title I, §§104(a)–(e), 105(a), Nov. 6, 1978, 92 Stat. 2772, 2773; Pub. L. 95–615, §202(g)(5), formerly §202(f)(5), Nov. 8, 1978, 92 Stat. 3100, renumbered §202(g)(5) and amended Pub. L. 96–222, title I, §§101(a)(1), (2)(E), 108(a)(1)(A), Apr. 1, 1980, 94 Stat. 194, 195, 223; Pub. L. 97–34, title I, §§111(b)(2), 112(b)(3), Aug. 13, 1981, 95 Stat. 194, 195; Pub. L. 98–21, title I, §124(c)(4)(B), Apr. 20, 1983, 97 Stat. 91; renumbered §32 and amended Pub. L. 98–369, div. A, title IV, §§423(c)(3), 471(c), title X, §1042(a)–(d)(2), July 18, 1984, 98 Stat. 801, 826, 1043; Pub. L. 99–514, title I, §§104(b)(1)(B), 111(a)–(d)(1), title XII, §1272(d)(4), title XIII, §1301(j)(8), Oct. 22, 1986, 100 Stat. 2104, 2107, 2594, 2658; Pub. L. 100–647, title I, §§1001(c), 1007(g)(12), Nov. 10, 1988, 102 Stat. 3350, 3436; Pub. L. 101–508, title XI, §§11101(d)(1)(B), 11111(a), (b), (e), Nov. 5, 1990, 104 Stat. 1388–405, 1388–408, 1388–412, 1388–413; Pub. L. 103–66, title XIII, §13131(a)–(d)(1), Aug. 10, 1993, 107 Stat. 433–435; Pub. L. 103–465, title VII, §§721(a), 722(a), 723(a), 742(a), Dec. 8, 1994, 108 Stat. 5002, 5003, 5010; Pub. L. 104–7, §4(a), Apr. 11, 1995, 109 Stat. 95; Pub. L. 104–193, title IV, §451(a), (b), title IX, §§909(a), (b), 910(a), (b), Aug. 22, 1996, 110 Stat. 2276, 2277, 2351, 2352; Pub. L. 105–34, title I, §101(b), title III, §312(d)(2), title X, §1085(a)(1), (b)–(d), Aug. 5, 1997, 111 Stat. 798, 840, 955, 956; Pub. L. 105–206, title VI, §§6003(b), 6010(p)(1), (2), 6021(a), (b), July 22, 1998, 112 Stat. 791, 816, 817, 823, 824; Pub. L. 106–170, title IV, §412(a), Dec. 17, 1999, 113 Stat. 1917; Pub. L. 107–16, title II, §201(c)(3), title III, §303(a)–(f), (h), June 7, 2001, 115 Stat. 47, 55–57; Pub. L. 107–147, title IV, §416(a)(1), Mar. 9, 2002, 116 Stat. 55; Pub. L. 108–311, title I, §104(b), title II, §205, Oct. 4, 2004, 118 Stat. 1169, 1176; Pub. L. 109–135, title III, §302(a), Dec. 21, 2005, 119 Stat. 2608; Pub. L. 109–432, div. A, title I, §106(a), Dec. 20, 2006, 120 Stat. 2938; Pub. L. 110–234, title IV, §4002(b)(1)(B), (2)(O),

May 22, 2008, 122 Stat. 1096, 1097; Pub. L. 110–245, title I, §102(a), June 17, 2008, 122 Stat. 1625; Pub. L. 110–246, §4(a), title IV, §4002(b)(1)(B), (2)(O), June 18, 2008, 122 Stat. 1664, 1857, 1858; Pub. L. 111–5, div. B, title I, §1002(a), Feb. 17, 2009, 123 Stat. 312; Pub. L. 111–226, title II, §219(a)(2), Aug. 10, 2010, 124 Stat. 2403; Pub. L. 111–312, title I, §103(c), Dec. 17, 2010, 124 Stat. 3299; Pub. L. 112–240, title I, §103(c), Jan. 2, 2013, 126 Stat. 2319.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (c)(2)(B)(v) and (m), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title IV of the Act is classified generally to part A (§601 et seq.) of subchapter IV of chapter 7 of Title 42, The Public Health and Welfare. Sections 205(c)(2)(B)(i) and 407(d)(4), (7) of the Act are classified to sections 405(c)(2)(B)(i) and 607(d)(4), (7), respectively, of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 3507, referred to in subsec. (l), was repealed by Pub. L. 111–226, title II, §219(a)(1), Aug. 10, 2010, 124 Stat. 2403.

The United States Housing Act of 1937, referred to in subsec. (l)(1), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, §201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§1437 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note under section 1437 of Title 42 and Tables.

The Housing Act of 1949, referred to in subsec. (l)(2), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended. Title V of the Act is classified generally to subchapter III (§1471 et seq.) of chapter 8A of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of Title 42 and Tables.

Section 101 of the Housing and Urban Development Act of 1965, referred to in subsec. (l)(3), is section 101 of Pub. L. 89–117, title I, Aug. 10, 1965, 79 Stat. 451, which enacted section 1701s of Title 12, Banks and Banking, and amended sections 1451 and 1465 of Title 42.

Sections 221(d)(3), 235, and 236 of the National Housing Act, referred to in subsec. (l)(4), are classified to sections 1715l(d)(3), 1715z, and 1715z–1, respectively, of Title 12.

The Food and Nutrition Act of 2008, referred to in subsec. (l)(5), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, which is classified generally to chapter 51 (§2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

PRIOR PROVISIONS

A prior section 32 was renumbered section 33 of this title.

AMENDMENTS

2013—Subsec. (b)(3). Pub. L. 112–240 substituted "for certain years" for "2009, 2010, 2011, and 2012" in heading and "after 2008 and before 2018" for "in 2009, 2010, 2011, or 2012" in introductory provisions.

2010—Subsec. (b)(3). Pub. L. 111–312 substituted "2009, 2010, 2011, and 2012" for "2009 and 2010" in heading and ", 2010, 2011, or 2012" for "or 2010" in introductory provisions.

Subsec. (g). Pub. L. 111–226 struck out subsec. (g). Text read as follows:

"(1) RECAPTURE OF EXCESS ADVANCE PAYMENTS.—If any payment is made to the individual by an employer under section 3507 during any calendar year, then the tax imposed by this chapter for the individual's last taxable year beginning in such calendar year shall be increased by the aggregate amount of such payments.

"(2) RECONCILIATION OF PAYMENTS ADVANCED AND CREDIT ALLOWED.—Any increase in tax under paragraph (1) shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit (other than the credit allowed by subsection (a)) allowable under this part."

2009—Subsec. (b)(3). Pub. L. 111–5 added par. (3).

2008—Subsec. (c)(2)(B)(vi). Pub. L. 110–245 amended cl. (vi) generally. Prior to amendment, cl. (vi) read as follows: "in the case of any taxable year ending—

"(I) after the date of the enactment of this clause, and

"(II) before January 1, 2008,

a taxpayer may elect to treat amounts excluded from gross income by reason of section 112 as earned income."

Subsec. (l)(5). Pub. L. 110–246, §4002(b)(1)(B), (2)(O), substituted "Food and Nutrition Act of 2008" for "Food Stamp Act of 1977".

2006—Subsec. (c)(2)(B)(vi)(II). Pub. L. 109–432 substituted "2008" for "2007".

2005—Subsec. (c)(2)(B)(vi)(II). Pub. L. 109–135 substituted "2007" for "2006".

2004—Subsec. (c)(1)(C) to (G). Pub. L. 108–311, §205(b)(1), redesignated subpars. (D) to (G) as (C) to (F), respectively, and struck out former subpar. (C) which related to 2 or more claiming qualifying child.

Subsec. (c)(2)(B)(vi). Pub. L. 108–311, §104(b), added cl. (vi).

Subsec. (c)(3). Pub. L. 108–311, §205(a), amended par. (3) generally, substituting subpars. (A) to (D) for former subpars. (A) to (E), relating to qualifying child in general, relationship test, age requirements, identification requirements, and place of abode requirements.

Subsec. (c)(4). Pub. L. 108–311, §205(b)(2), substituted "(3)(C)" for "(3)(E)".

Subsec. (m). Pub. L. 108–311, §205(b)(3), substituted "(c)(1)(E)" for "(c)(1)(F)".

2002—Subsec. (g)(2). Pub. L. 107–147 substituted "part" for "subpart".

2001—Subsec. (a)(2)(B). Pub. L. 107–16, §303(d)(1), struck out "modified" before "adjusted gross income".

Subsec. (b)(2). Pub. L. 107–16, §303(a)(1), reenacted par. heading without change, designated existing provisions as subpar. (A), inserted subpar. heading, substituted "Subject to subparagraph (B), the earned" for "The earned", and added subpar. (B).

Subsec. (c)(1)(C). Pub. L. 107–16, §303(f), amended heading and text of subpar. (C) generally. Prior to amendment, text read as follows: "If 2 or more individuals would (but for this subparagraph and after application of subparagraph (B)) be treated as eligible individuals with respect to the same qualifying child for taxable years beginning in the same calendar year, only the individual with the highest modified adjusted gross income for such taxable years shall be treated as an eligible individual with respect to such qualifying child."

Subsec. (c)(2)(A)(i). Pub. L. 107–16, §303(b), inserted ", but only if such amounts are includible in gross income for the taxable year" after "other employee compensation".

Subsec. (c)(3)(A)(ii). Pub. L. 107–16, §303(e)(2)(B), struck out "except as provided in subparagraph (B)(iii)," before "who has".

Subsec. (c)(3)(B)(i). Pub. L. 107–16, §303(e)(1), reenacted heading, introductory provisions, and subcl. (III) of cl. (i) without change and amended subcls. (I) and (II) generally. Prior to amendment, subcls. (I) and (II) read as follows:

"(I) a son or daughter of the taxpayer, or a descendant of either,

"(II) a stepson or stepdaughter of the taxpayer, or."

Subsec. (c)(3)(B)(iii). Pub. L. 107–16, §303(e)(2)(A), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "For purposes of clause (i)(III), the term 'eligible foster child' means an individual not described in clause (i)(I) or (II) who—

"(I) is a brother, sister, stepbrother, or stepsister of the taxpayer (or a descendant of any such relative) or is placed with the taxpayer by an authorized placement agency,

"(II) the taxpayer cares for as the taxpayer's own child, and

"(III) has the same principal place of abode as the taxpayer for the taxpayer's entire taxable year."

Subsec. (c)(3)(E). Pub. L. 107–16, §303(h), substituted "subparagraph (A)(ii)" for "subparagraphs (A)(ii) and (B)(iii)(II)".

Subsec. (c)(5). Pub. L. 107–16, §303(d)(2)(A), struck out heading and text of par. (5), which defined "modified adjusted gross income" as meaning adjusted gross income without regard to certain described amounts and increased by certain described amounts.

Subsec. (f)(2)(B). Pub. L. 107–16, §303(d)(2)(B), struck out "modified" before "adjusted gross income" in two places.

Subsec. (h). Pub. L. 107–16, §303(c), struck out heading and text of subsec. (h). Text read as follows: "The credit allowed under this section for the taxable year shall be reduced by the amount of tax imposed by section 55 (relating to alternative minimum tax) with respect to such taxpayer for such taxable year."

Subsec. (j)(1)(B). Pub. L. 107–16, §303(a)(2), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 1995' for 'calendar year 1992' in subparagraph (B) thereof."

Subsec. (j)(2)(A). Pub. L. 107–16, §303(a)(3), substituted "subsection (b)(2)(A) (after being increased under subparagraph (B) thereof)" for "subsection (b)(2)".

Subsec. (n). Pub. L. 107–16, §201(c)(3), struck out heading and text of subsec. (n), which had increased credit allowable under this section in the case of a taxpayer with respect to whom a child tax credit is allowed under section 24(a), described amount of increase, and set forth provisions relating to coordination with other credits allowable under this part.

1999—Subsec. (c)(3)(B)(iii). Pub. L. 106–170 added subcl. (I) and redesignated former subcls. (I) and (II) as (II) and (III), respectively.

1998—Subsec. (c)(1)(F). Pub. L. 105–206, §6021(a), added introductory provisions and struck out former introductory provisions which read as follows: "The term 'eligible individual' does not include any individual who does not include on the return of tax for the taxable year—".

Subsec. (c)(1)(G). Pub. L. 105–206, §6021(b)(2), added subpar. (G).

Subsec. (c)(2)(B)(v). Pub. L. 105–206, §6010(p)(2), inserted "shall be taken into account" before ", but only".

Subsec. (c)(3)(A)(ii) to (iv). Pub. L. 105–206, §6021(b)(3), inserted "and" at end of cl. (ii), substituted a period for ", and" at end of cl. (iii), and struck out cl. (iv) which read as follows: "with respect to whom the taxpayer meets the identification requirements of subparagraph (D)".

Subsec. (c)(3)(D)(i). Pub. L. 105–206, §6021(b)(1), reenacted heading without change and amended text of cl. (i) generally. Prior to amendment, text read as follows: "The requirements of this subparagraph are met if the taxpayer includes the name, age, and TIN of each qualifying child (without regard to this subparagraph) on the return of tax for the taxable year."

Subsec. (c)(5)(A). Pub. L. 105–206, §6010(p)(1)(A), inserted "and increased by the amounts described in subparagraph (C)" before period at end.

Subsec. (c)(5)(B). Pub. L. 105–206, §6010(p)(1)(B), (C), inserted "or" at end of cl. (iii) and substituted cl. (iv)(III) and concluding provisions for former cls. (iv)(III), (v), (vi), and concluding provisions which read as follows:

"(III) other trades or businesses

"(v) interest received or accrued during the taxable year which is exempt from tax imposed by this chapter, and

"(vi) amounts received as a pension or annuity, and any distributions or payments received from an individual retirement plan, by the taxpayer during the taxable year to the extent not included in gross income.

For purposes of clause (iv), there shall not be taken into account items which are attributable to a trade or business which consists of the performance of services by the taxpayer as an employee. Clause (vi) shall not include any amount which is not includible in gross income by reason of section 402(c), 403(a)(4), 403(b), 408(d)(3), (4), or (5), or 457(e)(10)."

Subsec. (c)(5)(C). Pub. L. 105–206, §6010(p)(1)(C), added subpar. (C).

Subsecs. (m), (n). Pub. L. 105–206, §6003(b), redesignated subsec. (m), relating to supplemental child credit, as (n) and amended text generally. Prior to amendment, text read as follows:

"(1) IN GENERAL.—In the case of a taxpayer with respect to whom a credit is allowed under section 24 for the taxable year, there shall be allowed as a credit under this section an amount equal to the supplemental child credit (if any) determined for such taxpayer for such taxable year under paragraph (2). Such credit shall be in addition to the credit allowed under subsection (a).

"(2) SUPPLEMENTAL CHILD CREDIT.—For purposes of this subsection, the supplemental child credit is an amount equal to the excess (if any) of—

"(A) the amount determined under section 24(d)(1)(A), over

"(B) the amount determined under section 24(d)(1)(B).

The amounts referred to in subparagraphs (A) and (B) shall be determined as if section 24(d) applied to all taxpayers.

"(3) COORDINATION WITH SECTION 24.—The amount of the credit under section 24 shall be reduced by the amount of the credit allowed under this subsection."

1997—Subsec. (c)(2)(B)(v). Pub. L. 105–34, §1085(c), added cl. (v).

Subsec. (c)(4). Pub. L. 105–34, §312(d)(2), struck out "(as defined in section 1034(h)(3)" after "serving on extended active duty" and inserted at end "For purposes of the preceding sentence, the term 'extended active duty' means any period of active duty pursuant to a call or order to such duty for a period in excess of 90 days or for an indefinite period."

Subsec. (c)(5)(B). Pub. L. 105–34, §1085(d)(4), inserted at end of concluding provisions "Clause (vi) shall not include any amount which is not includible in gross income by reason of section 402(c), 403(a)(4), 403(b),

408(d)(3), (4), or (5), or 457(e)(10)."

Subsec. (c)(5)(B)(iv). Pub. L. 105–34, §1085(b), substituted "75 percent" for "50 percent" in introductory provisions.

Subsec. (c)(5)(B)(v), (vi). Pub. L. 105–34, §1085(d)(1)–(3), added cls. (v) and (vi).

Subsec. (k). Pub. L. 105–34, §1085(a)(1), added subsec. (k). Former subsec. (k) redesignated (l).

Subsec. (l). Pub. L. 105–34, §1085(a)(1), redesignated subsec. (k) as (l). Former subsec. (l) redesignated (m).

Subsec. (m). Pub. L. 105–34, §1085(a)(1), redesignated subsec. (l) as (m) relating to identification numbers.

Pub. L. 105–34, §101(b), added subsec. (m) relating to supplemental child credit.

1996—Subsec. (a)(2)(B). Pub. L. 104–193, §910(a), inserted "modified" before "adjusted gross income".

Subsec. (b)(2). Pub. L. 104–193, §909(a)(3), reenacted heading without change and amended text generally. Prior to amendment, text consisted of subpars. (A) and (B) setting out tables for determining the earned income amount for taxable years beginning after 1994 and for taxable years beginning in 1994.

Subsec. (c)(1)(C). Pub. L. 104–193, §910(a), inserted "modified" before "adjusted gross income".

Subsec. (c)(1)(F). Pub. L. 104–193, §451(a), added subpar. (F).

Subsec. (c)(5). Pub. L. 104–193, §910(b), added par. (5).

Subsec. (f)(2)(B). Pub. L. 104–193, §910(a), inserted "modified" before "adjusted gross income" in two places.

Subsec. (i)(1). Pub. L. 104–193, §909(a)(1), substituted "$2,200" for "$2,350".

Subsec. (i)(2). Pub. L. 104–193, §909(b), added subpars. (D) and (E) and concluding provisions.

Subsec. (j). Pub. L. 104–193, §909(a)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows:

"(1) IN GENERAL.—In the case of any taxable year beginning after 1994, each dollar amount contained in subsection (b)(2)(A) shall be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3), for the calendar year in which the taxable year begins, by substituting 'calendar year 1993' for 'calendar year 1992'.

"(2) ROUNDING.—If any dollar amount after being increased under paragraph (1) is not a multiple of $10, such dollar amount shall be rounded to the nearest multiple of $10 (or, if such dollar amount is a multiple of $5, such dollar amount shall be increased to the next higher multiple of $10)."

Subsec. (l). Pub. L. 104–193, §451(b), added subsec. (l).

1995—Subsecs. (i) to (k). Pub. L. 104–7 added subsec. (i) and redesignated former subsecs. (i) and (j) as (j) and (k), respectively.

1994—Subsec. (c)(1)(E). Pub. L. 103–465, §722(a), added subpar. (E).

Subsec. (c)(2)(B)(iv). Pub. L. 103–465, §723(a), added cl. (iv).

Subsec. (c)(3)(D)(i). Pub. L. 103–465, §742(a), amended heading and text of cl. (i) generally. Prior to amendment, text read as follows: "The requirements of this subparagraph are met if—

"(I) the taxpayer includes the name and age of each qualifying child (without regard to this subparagraph) on the return of tax for the taxable year, and

"(II) in the case of an individual who has attained the age of 1 year before the close of the taxpayer's taxable year, the taxpayer includes the taxpayer identification number of such individual on such return of tax for such taxable year."

Subsec. (c)(4). Pub. L. 103–465, §721(a), added par. (4).

1993—Subsec. (a). Pub. L. 103–66, §13131(a), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: "In the case of an eligible individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the sum of—

"(1) the basic earned income credit, and

"(2) the health insurance credit."

Subsec. (b). Pub. L. 103–66, §13131(a), substituted "Percentages and amounts" for "Computation of credit" in heading and amended text generally. Prior to amendment, text related to method of computation of both earned income credit and health insurance credit.

Subsec. (c)(1)(A). Pub. L. 103–66, §13131(b), amended heading and text of subpar. (A) generally. Prior to amendment, text read as follows: "The term 'eligible individual' means any individual who has a qualifying child for the taxable year."

Subsec. (c)(3)(D)(ii). Pub. L. 103–66, §13131(d)(1), redesignated cl. (iii) as (ii), substituted "clause (i)" for "clause (i) or (ii)", and struck out heading and text of former cl. (ii). Text read as follows: "In the case of any

taxpayer with respect to which the health insurance credit is allowed under subsection (a)(2), the Secretary may require a taxpayer to include an insurance policy number or other adequate evidence of insurance in addition to any information required to be included in clause (i)."

Subsec. (i)(1). Pub. L. 103–66, §13131(c)(1), added par. (1) and struck out text and heading of former par. (1). Text read as follows: "In the case of any taxable year beginning after the applicable calendar year, each dollar amount referred to in paragraph (2)(B) shall be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3), for the calendar year in which the taxable year begins, by substituting 'calendar year 1984' for 'calendar year 1989' in subparagraph (B) thereof."

Subsec. (i)(2), (3). Pub. L. 103–66, §13131(c), redesignated par. (3) as (2) and struck out former par. (2) which defined terms for purposes of the inflation adjustment in par. (1).

1990—Subsec. (a). Pub. L. 101–508, §11111(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "In the case of an eligible individual, there is allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to 14 percent of so much of the earned income for the taxable year as does not exceed $5,714."

Subsec. (b). Pub. L. 101–508, §11111(a), substituted heading for one which read "Limitation" and amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "The amount of the credit allowable to a taxpayer under subsection (a) for any taxable year shall not exceed the excess (if any) of—

"(1) the maximum credit allowable under subsection (a) to any taxpayer, over

"(2) 10 percent of so much of the adjusted gross income (or, if greater, the earned income) of the taxpayer for the taxable year as exceeds $9,000.

In the case of any taxable year beginning in 1987, paragraph (2) shall be applied by substituting '$6,500' for '$9,000'."

Subsec. (c). Pub. L. 101–508, §11111(a), amended subsec. (c) generally, inserting "and special rules" in heading and substituting present provisions for provisions defining "eligible individual" and "earned income".

Subsec. (i)(1)(B). Pub. L. 101–508, §11101(d)(1)(B), substituted "1989" for "1987".

Subsec. (i)(2)(A). Pub. L. 101–508, §11111(e)(1), (2), substituted "clause (i) of subparagraph (B)" for "clause (i) or (ii) of subparagraph (B)" in cl. (i) and "clause (ii)" for "clause (iii)" in cl. (ii).

Subsec. (i)(2)(B). Pub. L. 101–508, §11111(e)(3), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "The dollar amounts referred to in this subparagraph are—

"(i) the $5,714 amount contained in subsection (a),

"(ii) the $6,500 amount contained in the last sentence of subsection (b), and

"(iii) the $9,000 amount contained in subsection (b)(2)."

Subsec. (j). Pub. L. 101–508, §11111(b), added subsec. (j).

1988—Subsec. (h). Pub. L. 100–647, §1007(g)(12), struck out "for taxpayers other than corporations" after "alternative minimum tax".

Subsec. (i)(3). Pub. L. 100–647, §1001(c), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "If any increase determined under paragraph (1) is not a multiple of $10, such increase shall be rounded to the nearest multiple of $10 (or, if such increase is a multiple of $5, such increase shall be increased to the next higher multiple of $10)."

1986—Subsec. (a). Pub. L. 99–514, §111(a), substituted "14 percent" for "11 percent" and "$5,714" for "$5,000".

Subsec. (b). Pub. L. 99–514, §111(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "The amount of the credit allowable to a taxpayer under subsection (a) for any taxable year shall not exceed the excess (if any) of—

"(1) $550, over

"(2) 122/9 percent of so much of the adjusted gross income (or, if greater, the earned income) of the taxpayer for the taxable year as exceeds $6,500."

Subsec. (c)(1)(A)(i). Pub. L. 99–514, §1301(j)(8), substituted "section 7703" for "section 143".

Pub. L. 99–514, §104(b)(1)(B), substituted "section 151(c)(3)" for "section 151(e)(3)".

Subsec. (c)(1)(C). Pub. L. 99–514, §1272(d)(4), struck out "or 931" after "911" in heading, and amended text generally. Prior to amendment, text read as follows: "The term 'eligible individual' does not include an individual who, for the taxable year, claims the benefits of—

"(i) section 911 (relating to citizens or residents of the United States living abroad),

"(ii) section 931 (relating to income from sources within possessions of the United States)."

Subsec. (d). Pub. L. 99–514, §1301(j)(8), substituted "section 7703" for "section 143".

Subsec. (f)(2)(A), (B). Pub. L. 99–514, §111(d)(1), added subpars. (A) and (B) and struck out former

subpars. (A) and (B) which read as follows:

"(A) for earned income between $0 and $11,000, and

"(B) for adjusted gross income between $6,500 and $11,000."

Subsec. (i). Pub. L. 99–514, §111(c), added subsec. (i).

1984—Pub. L. 98–369, §471(c), renumbered section 43 of this title as this section.

Subsec. (a). Pub. L. 98–369, §1042(a), substituted "11 percent" for "10 percent".

Subsec. (b)(1). Pub. L. 98–369, §1042(d)(1), substituted "$550" for "$500".

Subsec. (b)(2). Pub. L. 98–369, §1042(b), substituted "122/9 percent" for "12.5 percent" and "$6,500" for "$6,000".

Subsec. (c)(1)(A)(i). Pub. L. 98–369, §423(c)(3)(A), inserted "or would be so entitled but for paragraph (2) or (4) of section 152(e)".

Subsec. (c)(1)(B). Pub. L. 98–369, §423(c)(3)(B), substituted "as the individual for more than one-half of the taxable year" for "as the individual".

Subsec. (f)(2)(A). Pub. L. 98–369, §1042(d)(2), substituted "between $0 and $11,000" for "between $0 and $10,000".

Subsec. (f)(2)(B). Pub. L. 98–369, §1042(d)(2), substituted "between $6,500 and $11,000" for "between $6,000 and $10,000".

Subsec. (h). Pub. L. 98–369, §1042(c), added subsec. (h).

1983—Subsec. (c)(2)(A)(ii). Pub. L. 98–21 inserted before period at end ", but such net earnings shall be determined with regard to the deduction allowed to the taxpayer by section 164(f)".

1981—Subsec. (c)(1)(C). Pub. L. 97–34 struck out reference to section 913 in heading, substituted "relating to citizens or residents of the United States living abroad" for "relating to income earned by individuals in certain camps outside the United States" in cl. (i), struck out cl. (ii) which made reference to section 913, and redesignated cl. (iii) as (ii).

1980—Subsec. (c)(1)(C). Pub. L. 96–222, §101(a)(1), in heading substituted "who claims benefit of section 911, 913, or 931" for "entitled to exclude income under section 911" and in text substituted "claims the benefits of" for "is entitled to exclude any amounts from gross income under" and inserted reference to section 913 (relating to deduction for certain expenses of living abroad).

Subsecs. (g), (h). Pub. L. 96–222, §101(a)(2)(E), redesignated subsec. (h) as (g).

1978—Subsec. (a). Pub. L. 95–600, §104(a), substituted "subtitle" for "chapter" and "$5,000" for "$4,000".

Subsec. (b). Pub. L. 95–600, §104(b), substituted provision limiting the allowable credit to an amount not to exceed the excess of $500 over 12.5 percent of so much of the adjusted gross income for the taxable year as exceeds $6,000 for provision limiting the allowable credit to an amount reduced by 10 percent of so much of the adjusted gross income for the taxable year as exceeds $4,000.

Subsec. (c)(1). Pub. L. 95–600, §104(e), amended par. (1) generally, substituting in definition of eligible individual one who is married and is entitled to a deduction under section 151 for a child, provided the child has the same principal abode as the individual and the abode is in the United States, is a surviving spouse, or is a head of household, provided the household is in the United States for one who maintains a household in the United States which is the principal abode of that individual and a child of that individual who meets the requirements of section 151(e)(1)(B) or a child of that individual who is disabled within the meaning of section 72(m)(7) and to whom the individual is entitled to claim a deduction under section 151.

Subsec. (c)(1)(C). Pub. L. 95–615, §202(f)(5), which directed the amendment of subsec. (c)(1)(B) by substituting "(relating to income earned by employees in certain camps)" for "(relating to earned income from sources without the United States)", was executed to subsec. (c)(1)(C) to reflect the probable intent of Congress and the general amendment of subsec. (c)(1) by Pub. L. 95–600 which enacted provisions formerly contained in subsec. (c)(1)(B) in subsec. (c)(1)(C).

Subsec. (c)(2)(B). Pub. L. 95–600, §104(d), redesignated cls. (ii) to (iv) as (i) to (iii), respectively. Former cl. (i), which provided that amounts be taken into account only if includible in the gross income of the taxpayer for the taxable year, was struck out.

Subsec. (f). Pub. L. 95–600, §104(c), added subsec. (f).

Subsec. (h). Pub. L. 95–600, §105(a), added subsec. (h).

1976—Subsec. (a). Pub. L. 94–455, §401(c)(1)(B), substituted "is allowed" for "shall be allowed" and struck out provisions relating to the application of the six-month rule.

Subsec. (b). Pub. L. 94–455, §401(c)(1)(B), struck out provisions relating to the application of the six-month rule.

Subsec. (c)(1)(A). Pub. L. 94–455, §401(c)(2), among other changes, substituted "section 44A(f)(1)" for "section 214(b)(3)" and "if such child meets the requirements of section 151(e)(1)(B)" for "with respect to whom he is entitled to claim a deduction under section 151(e)(1)(B)" and inserted reference to a child of that

individual who is disabled (within the meaning of section 72(m)(7)) and with respect to whom that individual is entitled to claim a deduction under section 151.

1975—Subsec. (a). Pub. L. 94–164 designated existing provisions as par. (1) and added par. (2).

Subsec. (b). Pub. L. 94–164 designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112–240 applicable to taxable years beginning after Dec. 31, 2012, see section 103(e)(1) of Pub. L. 112–240, set out as a note under section 24 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–312 applicable to taxable years beginning after Dec. 31, 2010, see section 103(d) of Pub. L. 111–312, set out as an Effective and Termination Dates of 2010 Amendment note under section 24 of this title.

Pub. L. 111–226, title II, §219(c), Aug. 10, 2010, 124 Stat. 2403, provided that: "The repeals and amendments made by this section [amending this section and sections 6012, 6051, and 6302 of this title and repealing section 3507 of this title] shall apply to taxable years beginning after December 31, 2010."

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, §1002(b), Feb. 17, 2009, 123 Stat. 312, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2008."

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by section 4002(b)(1)(B), (2)(O) of Pub. L. 110–246 effective Oct. 1, 2008, see section 4407 of Pub. L. 110–246, set out as a note under section 1161 of Title 2, The Congress.

Pub. L. 110–245, title I, §102(d), June 17, 2008, 122 Stat. 1625, provided that: "The amendments made by this section [amending this section and section 6428 of this title] shall apply to taxable years ending after December 31, 2007."

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title I, §106(b), Dec. 20, 2006, 120 Stat. 2938, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2006."

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–135, title III, §302(b), Dec. 21, 2005, 119 Stat. 2608, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 2005."

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 110–245, title I, §102(c), June 17, 2008, 122 Stat. 1625, provided that: "Section 105 of the Working Families Tax Relief Act of 2004 [section 105 of Pub. L. 108–311, set out as a note under section 1 of this title] (relating to application of EGTRRA sunset to this title [probably means title I of Pub. L. 108–311, see Tables for classification]) shall not apply to section 104(b) of such Act [amending this section]."

Pub. L. 108–311, title I, §104(c)(2), Oct. 4, 2004, 118 Stat. 1169, provided that: "The amendments made by subsection (b) [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Oct. 4, 2004]."

Amendment by section 205 of Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title IV, §416(a)(2), Mar. 9, 2002, 116 Stat. 55, provided that: "The amendment made by this subsection [amending this section] shall take effect as if included in section 474 of the Tax Reform Act of 1984 [Pub. L. 98–369]."

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 201(c)(3) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2000, see section 201(e)(1) of Pub. L. 107–16, set out as a note under section 24 of this title.

Pub. L. 107–16, title III, §303(i), June 7, 2001, 115 Stat. 57, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section

[amending this section and section 6213 of this title] shall apply to taxable years beginning after December 31, 2001.

"(2) SUBSECTION (g).—The amendment made by subsection (g) [amending section 6213 of this title] shall take effect on January 1, 2004."

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title IV, §412(b), Dec. 17, 1999, 113 Stat. 1917, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1999."

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–206, title VI, §6021(c), July 22, 1998, 112 Stat. 824, provided that:

"(1) ELIGIBLE INDIVIDUALS.—The amendment made by subsection (a) [amending this section] shall take effect as if included in the amendments made by section 451 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [Pub. L. 104–193].

"(2) QUALIFYING CHILDREN.—The amendments made by subsection (b) [amending this section] shall take effect as if included in the amendments made by section 11111 of Revenue Reconciliation Act of 1990 [Pub. L. 101–508]."

Amendment by sections 6003(b) and 6010(p)(1), (2) of Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 101(b) of Pub. L. 105–34 applicable to taxable years beginning after Dec. 31, 1997, see section 101(e) of Pub. L. 105–34, set out as an Effective Date note under section 24 of this title.

Amendment by section 312(d)(2) of Pub. L. 105–34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d) of Pub. L. 105–34, set out as a note under section 121 of this title.

Pub. L. 105–34, title X, §1085(e), Aug. 5, 1997, 111 Stat. 957, provided that:

"(1) The amendments made by subsection (a) [amending this section and sections 6213 and 6695 of this title] shall apply to taxable years beginning after December 31, 1996.

"(2) The amendments made by subsections (b), (c), and (d) [amending this section] shall apply to taxable years beginning after December 31, 1997."

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–193, title IV, §451(d), Aug. 22, 1996, 110 Stat. 2277, provided that: "The amendments made by this section [amending this section and section 6213 of this title] shall apply with respect to returns the due date for which (without regard to extensions) is more than 30 days after the date of the enactment of this Act [Aug. 22, 1996]."

Pub. L. 104–193, title IX, §909(c), Aug. 22, 1996, 110 Stat. 2352, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1995.

"(2) ADVANCE PAYMENT INDIVIDUALS.—In the case of any individual who on or before June 26, 1996, has in effect an earned income eligibility certificate for the individual's taxable year beginning in 1996, the amendments made by this section shall apply to taxable years beginning after December 31, 1996."

Pub. L. 104–193, title IX, §910(c), Aug. 22, 1996, 110 Stat. 2353, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1995.

"(2) ADVANCE PAYMENT INDIVIDUALS.—In the case of any individual who on or before June 26, 1996, has in effect an earned income eligibility certificate for the individual's taxable year beginning in 1996, the amendments made by this section shall apply to taxable years beginning after December 31, 1996."

EFFECTIVE DATE OF 1995 AMENDMENT

Pub. L. 104–7, §4(b), Apr. 11, 1995, 109 Stat. 96, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1995."

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103–465, title VII, §721(d)(1), Dec. 8, 1994, 108 Stat. 5002, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1994."

Pub. L. 103–465, title VII, §722(b), Dec. 8, 1994, 108 Stat. 5003, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1994."

Pub. L. 103–465, title VII, §723(b), Dec. 8, 1994, 108 Stat. 5003, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1993."

Pub. L. 103–465, title VII, §742(c), Dec. 8, 1994, 108 Stat. 5010, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 6109 of this title] shall apply to returns for taxable years beginning after December 31, 1994.

"(2) EXCEPTION.—The amendments made by this section shall not apply to—

"(A) returns for taxable years beginning in 1995 with respect to individuals who are born after October 31, 1995, and

"(B) returns for taxable years beginning in 1996 with respect to individuals who are born after November 30, 1996."

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13131(e), Aug. 10, 1993, 107 Stat. 435, provided that: "The amendments made by this section [amending this section and sections 162, 213, and 3507 of this title] shall apply to taxable years beginning after December 31, 1993."

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11101(d)(1)(B) of Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, see section 11101(e) of Pub. L. 101–508, set out as a note under section 1 of this title.

Pub. L. 101–508, title XI, §11111(f), Nov. 5, 1990, 104 Stat. 1388–413, provided that: "The amendments made by this section [amending this section and sections 162, 213, and 3507 of this title] shall apply to taxable years beginning after December 31, 1990."

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by sections 104(b)(1)(B) and 111(a)–(d)(1) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 1272(d)(4) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99–514, set out as a note under section 931 of this title.

Amendment by section 1301(j)(8) of Pub. L. 99–514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99–514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 423(c)(3) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1984, see section 423(d) of Pub. L. 98–369, set out as a note under section 2 of this title.

Pub. L. 98–369, div. A, title X, §1042(e), July 18, 1984, 98 Stat. 1044, provided that: "The amendments made by this section [amending sections 32 and 3507 of this title] shall apply to taxable years beginning after December 31, 1984."

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable to taxable years beginning after Dec. 31, 1989, see section 124(d)(2) of Pub. L. 98–21, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable with respect to taxable years beginning after Dec. 31, 1981, see section 115 of Pub. L. 97–34, set out as a note under section 911 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–222, title I, §101(b)(1)(A), Apr. 1, 1980, 94 Stat. 205, provided that: "The amendment made by subsection (a)(1) [amending this section] shall apply to taxable years beginning after December 31, 1977."

Pub. L. 96–222, title II, §201, Apr. 1, 1980, 94 Stat. 228, provided that: "Except as otherwise provided in title I, any amendment made by title I [see Tables for classification] shall take effect as if it had been included

in the provision of the Revenue Act of 1978 [Pub. L. 95–600, see Tables for classification] to which such amendment relates."

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title I, §104(f), Nov. 6, 1978, 92 Stat. 2773, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1978."

Pub. L. 95–600, title I, §105(g)(1), Nov. 6, 1978, 92 Stat. 2776, provided that: "The amendments made by subsections (a) and (d) [amending this section and section 6012 of this title] shall apply to taxable years beginning after December 31, 1978."

EFFECTIVE DATE OF 1978 AMENDMENT; ELECTION OF PRIOR LAW

Amendment by Pub. L. 95–615 applicable to taxable years beginning after Dec. 31, 1977, with provision for election of prior law, see section 209 of Pub. L. 95–615, set out as a note under section 911 of this title.

EFFECTIVE AND TERMINATION DATES OF 1976 AMENDMENT

Pub. L. 94–455, title IV, §401(e), Oct. 4, 1976, 90 Stat. 1558, as amended by Pub. L. 95–30, title I, §103(c), May 23, 1977, 91 Stat. 139; Pub. L. 95–600, title I, §103(b), Nov. 6, 1978, 92 Stat. 2771, provided that: "The amendments made by subsection (a) [amending sections 43 [now 32] and 6096 of this title] shall apply to taxable years ending after December 31, 1975, and shall cease to apply to taxable years ending after December 31, 1978. The amendments made by subsection (c) [amending this section] shall apply to taxable years ending after December 31, 1975. The amendments made by subsection (b) [amending sections 141 and 6012 of this title] shall apply to taxable years ending after December 31, 1975. The amendments made by subsection (d) [amending section 3402 of this title] shall apply to wages paid after September 14, 1976."

EFFECTIVE AND TERMINATION DATES OF 1975 AMENDMENT

Pub. L. 94–164, §2(g), Dec. 23, 1975, 89 Stat. 972, as amended by Pub. L. 94–455, §402(b), provided that: "The amendments made by this section [amending sections 43 [now 32], 141, 3402, and 6012 of this title and provisions set out as notes under sections 42 and 43 [now 32] of this title] (other than by subsection (d) [enacting provisions set out as a note under this section]) apply to taxable years ending after December 31, 1975, and before January 1, 1978. Subsection (d) applies to taxable years ending after December 31, 1975."

Pub. L. 94–12, title II, §209(b), Mar. 29, 1975, 89 Stat. 35, as amended by Pub. L. 94–164, §2(f), Dec. 23, 1975, 89 Stat. 972; Pub. L. 94–455, title IV, §401(c)(1)(A), Oct. 4, 1976, 90 Stat. 1557; Pub. L. 95–30, title I, §103(b), May 23, 1977, 91 Stat. 139; Pub. L. 95–600, title I, §103(a), Nov. 6, 1978, 92 Stat. 2771, provided that: "The amendments made by section 204 [enacting this section and amending sections 6201 and 6401 of this title] shall apply to taxable years beginning after December 31, 1974."

STUDY ON EARNED INCOME TAX CREDIT CERTIFICATION PROGRAM

Pub. L. 108–199, div. F, title II, §206, Jan. 23, 2004, 118 Stat. 319, provided that:

"(a) STUDY.—The Internal Revenue Service shall conduct a study, as a part of any program that requires certification (including pre-certification) in order to claim the earned income tax credit under section 32 of the Internal Revenue Code of 1986, on the following matters:

"(1) The costs (in time and money) incurred by the participants in the program.

"(2) The administrative costs incurred by the Internal Revenue Service in operating the program.

"(3) The percentage of individuals included in the program who were not certified for the credit, including the percentage of individuals who were not certified due to—

"(A) ineligibility for the credit; and

"(B) failure to complete the requirements for certification.

"(4) The percentage of individuals to whom paragraph (3)(B) applies who were—

"(A) otherwise eligible for the credit; and

"(B) otherwise ineligible for the credit.

"(5) The percentage of individuals to whom paragraph (3)(B) applies who—

"(A) did not respond to the request for certification; and

"(B) responded to such request but otherwise failed to complete the requirements for certification.

"(6) The reasons—

"(A) for which individuals described in paragraph (5)(A) did not respond to requests for certification; and

"(B) for which individuals described in paragraph (5)(B) had difficulty in completing the requirements for certification.

"(7) The characteristics of those individuals who were denied the credit due to—

"(A) failure to complete the requirements for certification; and

"(B) ineligibility for the credit.

"(8) The impact of the program on non-English speaking participants.

"(9) The impact of the program on homeless and other highly transient individuals.

"(b) REPORT.—

"(1) PRELIMINARY REPORT.—Not later than July 30, 2004, the Commissioner of the Internal Revenue Service shall submit to Congress a preliminary report on the study conducted under subsection (a).

"(2) FINAL REPORT.—Not later than June 30, 2005, the Commissioner of the Internal Revenue Service shall submit to Congress a final report detailing the findings of the study conducted under subsection (a)."

PROGRAM TO INCREASE PUBLIC AWARENESS

Secretary of the Treasury, or Secretary's delegate, to establish taxpayer awareness program to inform taxpaying public of availability of earned income credit and child health insurance under this section, see section 11114 of Pub. L. 101–508, set out as a note under section 21 of this title.

EMPLOYEE NOTIFICATION

Pub. L. 99–514, title I, §111(e), Oct. 22, 1986, 100 Stat. 2108, provided that: "The Secretary of the Treasury is directed to require, under regulations, employers to notify any employee who has not had any tax withheld from wages (other than an employee whose wages are exempt from withholding pursuant to section 3402(n) of the Internal Revenue Code of 1986) that such employee may be eligible for a refund because of the earned income credit."

DISREGARD OF REFUND FOR DETERMINATION OF ELIGIBILITY FOR FEDERAL BENEFITS OR ASSISTANCE

Pub. L. 94–164, §2(d), Dec. 23, 1975, 89 Stat. 972, as amended by Pub. L. 94–455, title IV, §402(a), Oct. 4, 1976, 90 Stat. 1558; Pub. L. 95–600, title I, §105(f), Nov. 6, 1978, 92 Stat. 2776; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Any refund of Federal income taxes made to any individual by reason of section 43 [now 32] of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to earned income credit), and any payment made by an employer under [former] section 3507 of such Code (relating to advance payment of earned income credit) shall not be taken into account in any year ending before 1980 as income or receipts for purposes of determining the eligibility, for the month in which such refund is made or any month thereafter of such individual or any other individual for benefits or assistance, or the amount or extent of benefits or assistance, under any Federal program or under any State or local program financed in whole or in part with Federal funds, but only if such individual (or the family unit of which he is a member) is a recipient of benefits or assistance under such a program for the month before the month in which such refund is made."

[Pub. L. 95–600, title I, §105(g)(3), Nov. 6, 1978, 92 Stat. 2776, provided that: "Subsection (f) [amending section 2(d) of Pub. L. 94–164, set out above] shall take effect on the date of enactment of this Act [Nov. 6, 1978]."]

[1] *So in original.*

[2] *See References in Text note below.*

§33. Tax withheld at source on nonresident aliens and foreign corporations

There shall be allowed as a credit against the tax imposed by this subtitle the amount of tax withheld at source under subchapter A of chapter 3 (relating to withholding of tax on nonresident aliens and on foreign corporations).

(Aug. 16, 1954, ch. 736, 68A Stat. 13, §32; renumbered §33 and amended Pub. L. 98–369, div. A, title IV, §§471(c), 474(j), July 18, 1984, 98 Stat. 826, 832.)

PRIOR PROVISIONS

A prior section 33 was renumbered section 27 of this title.

AMENDMENTS

1984—Pub. L. 98–369, §471(c), renumbered section 32 of this title as this section.

Pub. L. 98–369, §474(j), amended section generally, striking out "and on tax-free covenant bonds" after "foreign corporations" in section catchline, and, in text, substituting "as a credit against the tax imposed by this subtitle" for "as credits against the tax imposed by this chapter", and striking out designation "(1)" before "the amount of tax withheld", and ", and (2) the amount of tax withheld at source under subchapter B of chapter 3 (relating to interest on tax-free covenant bonds)" after "on foreign corporations)".

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title IV, §475(b), July 18, 1984, 98 Stat. 847, provided that: "The amendments made by subsections (j) and (r)(29) [amending this section and sections 12, 164, 1441, 1442, 6049, and 7701 of this title and repealing section 1451 of this title] shall not apply with respect to obligations issued before January 1, 1984."

§34. Certain uses of gasoline and special fuels

(a) General rule

There shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the sum of the amounts payable to the taxpayer—

(1) under section 6420 (determined without regard to section 6420(g)),

(2) under section 6421 (determined without regard to section 6421(i)),[1] and

(3) under section 6427 (determined without regard to section 6427(k)).

(b) Exception

Credit shall not be allowed under subsection (a) for any amount payable under section 6421 or 6427, if a claim for such amount is timely filed and, under section 6421(i) or 6427(k), is payable under such section.

(Added Pub. L. 89–44, title VIII, 809(c), June 21, 1965, 79 Stat. 167, §39; amended Pub. L. 91–258, title II, §207(c), May 21, 1970, 84 Stat. 248; Pub. L. 94–455, title XIX, §§1901(a)(3), 1906(b)(8), (9), Oct. 4, 1976, 90 Stat. 1764, 1834; Pub. L. 94–530, §1(c)(1), Oct. 17, 1976, 90 Stat. 2487; Pub. L. 95–599, title V, §505(c)(1), Nov. 6, 1978, 92 Stat. 2760; Pub. L. 95–618, title II, §233(b)(2)(C), Nov. 9, 1978, 92 Stat. 3191; Pub. L. 96–223, title II, §232(d)(4)(A), Apr. 2, 1980, 94 Stat. 278; Pub. L. 97–424, title V, §515(b)(6)(A)–(C), Jan. 6, 1983, 96 Stat. 2181; renumbered §34 and amended Pub. L. 98–369, div. A, title IV, §471(c), title IX, §911(d)(2)(A), July 18, 1984, 98 Stat. 826, 1006; Pub. L. 99–514, title XVII, §1703(e)(2)(F), title XVIII, §1877(a), Oct. 22, 1986, 100 Stat. 2778, 2902; Pub. L. 100–647, title I, §1017(c)(2), Nov. 10, 1988, 102 Stat. 3576; Pub. L. 104–188, title I, §1606(b)(1), Aug. 20, 1996, 110 Stat. 1839; Pub. L. 105–206, title VI, §6023(24)(B), July 22, 1998, 112 Stat. 826; Pub. L. 110–172, §11(a)(4), Dec. 29, 2007, 121 Stat. 2484.)

REFERENCES IN TEXT

Section 6421(i), referred to in subsec. (a)(2), was repealed by Pub. L. 103–66, title XIII, §13241(f)(7), Aug. 10, 1993, 107 Stat. 512.

PRIOR PROVISIONS

A prior section 34, acts Aug. 16, 1954, ch. 736, 68A Stat. 13; June 25, 1959, Pub. L. 86–69, §3(a)(1), 73 Stat. 139; Sept. 14, 1960, Pub. L. 86–779, §10(e), 74 Stat. 1009; Feb. 26, 1964, Pub. L. 88–272, title II, §201(a), 78 Stat. 31, related to dividends received by individuals, prior to repeal by Pub. L. 88–272, title II, §201(b), Feb. 26, 1964, 78 Stat. 31, effective with respect to dividends received after Dec. 31, 1964.

AMENDMENTS

2007—Subsec. (a)(1). Pub. L. 110–172, §11(a)(4)(A), struck out "with respect to gasoline used during the taxable year on a farm for farming purposes" before "(determined without regard to section 6420(g))".

Subsec. (a)(2). Pub. L. 110–172, §11(a)(4)(B), which directed striking out "with respect to gasoline used during the taxable year: (A) otherwise than as a fuel in a highway vehicle; or (B) in vehicles while engaged in furnishing certain public passenger land transportation service", was executed by striking out "with respect to

gasoline used during the taxable year (A) otherwise than as a fuel in a highway vehicle or (B) in vehicles while engaged in furnishing certain public passenger land transportation service" before "(determined without regard to section 6421(i))", to reflect the probable intent of Congress.

Subsec. (a)(3). Pub. L. 110–172, §11(a)(4)(C), struck out "with respect to fuels used for nontaxable purposes or resold during the taxable year" before "(determined without regard to section 6427(k))".

1998—Subsec. (b). Pub. L. 105–206 substituted "section 6421(i)" for "section 6421(j)".

1996—Subsec. (a)(3). Pub. L. 104–188 amended par. (3) generally. Prior to amendment, par. (3) read as follows: "under section 6427—

"(A) with respect to fuels used for nontaxable purposes or resold, or

"(B) with respect to any qualified diesel-powered highway vehicle purchased (or deemed purchased under section 6427(g)(6)),

during the taxable year (determined without regard to section 6427(k))."

1988—Subsec. (b). Pub. L. 100–647 substituted "section 6421(j) or 6427(k)" for "section 6421(i) or 6427(j)".

1986—Subsec. (a)(3). Pub. L. 99–514, §1877(a), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "under section 6427 with respect to fuels used for nontaxable purposes or resold during the taxable year (determined without regard to section 6427(j))."

Pub. L. 99–514, §1703(e)(2)(F), substituted "6427(k)" for "6427(j)".

1984—Pub. L. 98–369, §471(c), renumbered section 39 of this title as this section.

Subsec. (a)(3). Pub. L. 98–369, §911(d)(2)(A), which directed the amendment of par. (4) by substituting "6427(j)" for "6427(i)" was executed to par. (3) to reflect the probable intent of Congress and the redesignation of par. (4) as (3) by Pub. L. 97–424.

Subsec. (b). Pub. L. 98–369, §911(d)(2)(A), substituted "6427(j)" for "6427(i)".

1983—Pub. L. 97–424, §515(b)(6)(C), substituted "and special fuels" for ", special fuels, and lubricating oil" after "gasoline" in section catchline.

Subsec. (a)(2) to (4). Pub. L. 97–424, §515(b)(6)(A), inserted "and" at end of par. (2), redesignated par. (4) as (3), and struck out former (3) which referred to amounts payable to the taxpayer under section 6424 with respect to lubricating oil used during the taxable year for certain nontaxable purposes (determined without regard to section 6424(f)).

Subsec. (b). Pub. L. 97–424, §515(b)(6)(B)(i), substituted "6421 or 6427" for "6421, 6424, or 6427" after "amount payable under".

Pub. L. 97–424, §515(b)(6)(B)(ii), substituted "6421(i) or 6427(i)" for "6421(i), 6424(f), or 6427(i)" after "and, under".

1980—Subsec. (a)(4). Pub. L. 96–223 substituted "6427(i)" for "6427(h)".

Subsec. (b). Pub. L. 96–223 substituted "6427(i)" for "6427(h)".

1978—Subsec. (a)(3). Pub. L. 95–618 substituted "for certain nontaxable purposes" for "otherwise than in a highway motor vehicle".

Subsec. (a)(4). Pub. L. 95–599 substituted "6427(h)" for "6427(g)".

Subsec. (b). Pub. L. 95–599 substituted "6427(h)" for "6427(g)".

1976—Subsec. (a)(1). Pub. L. 94–455, §1906(b)(8), substituted "6420(g)" for "6420(h)".

Subsec. (a)(3). Pub. L. 94–455, §1906(b)(9), substituted "6424(f)" for "6424(g)".

Subsec. (a)(4). Pub. L. 94–530 substituted "6427(g)" for "6427(f)".

Subsec. (b). Pub. L. 94–530, which directed the amendment of subsec. (c) by substituting "6427(g)" for "6427(f)", was executed to subsec. (b) to reflect the probable intent of Congress and the redesignation of subsec. (c) as (b) by Pub. L. 94–455.

Pub. L. 94–455, §1901(a)(3), redesignated subsec. (c) as (b) and substituted "section 6421(i), 6424(f), or 6427(f), is payable" for "section 6421(i), 6424(g) or 6427(f) is payable". Former subsec. (b), relating to determination of taxpayers first taxable year with respect to tax credit for certain uses of gasoline and lubricating oil, was struck out.

Subsec. (c). Pub. L. 94–455, §1901(a)(3), redesignated subsec. (c) as (b).

1970—Pub. L. 91–258, §207(c)(1), inserted reference to special fuels in section catchline.

Subsec. (a)(4). Pub. L. 91–258, §207(c)(2), added par. (4).

Subsec. (c). Pub. L. 91–258, §207(c)(3), (4), inserted references to sections 6427 and 6427(f), respectively.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–206, title VI, §6023(32), July 22, 1998, 112 Stat. 826, provided that: "The amendments made by this section [amending this section and sections 45A, 59, 72, 142, 501, 512, 543, 871, 1017, 1250, 3121, 3401, 4092, 4221, 4222, 4973, 4975, 6039, 6050R, 6103, 6416, 6421, 6427, 6501, 7434, 7702B, 7872, and

9502 of this title] shall take effect on the date of the enactment of this Act [July 22, 1998]."

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, §1606(c), Aug. 20, 1996, 110 Stat. 1839, provided that: "The amendments made by this section [amending this section and section 6427 of this title] shall apply to vehicles purchased after the date of the enactment of this Act [Aug. 20, 1996]."

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1703(e)(2)(F) of Pub. L. 99–514 applicable to gasoline removed (as defined in section 4082 of this title as amended by section 1703 of Pub. L. 99–514) after Dec. 31, 1987, see section 1703(h) of Pub. L. 99–514 set out as a note under section 4081 of this title.

Amendment by section 1877(a) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 911(d)(2)(A) of Pub. L. 98–369 effective Aug. 1, 1984, see section 911(e) of Pub. L. 98–369, set out as a note under section 6427 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 97–424, title V, §515(c), Jan. 6, 1983, 96 Stat. 2182, provided that: "The amendments made by this section [amending sections 39 [now 34], 874, 882, 4101, 4102, 4221, 4222, 6201, 6206, 6416, 6421, 6504, 6675, 7210, 7603 to 7605, 7609, and 7610 of this title and repealing sections 4091 to 4094 and 6424 of this title] shall apply with respect to articles sold after the date of the enactment of this Act [Jan. 6, 1983]."

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–223 effective on Jan. 1, 1979, see section 232(h)(2) of Pub. L. 96–223, set out as a note under section 6427 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–618, title II, §233(d), Nov. 9, 1978, 92 Stat. 3192, provided that: "The amendments made by this section [amending sections 39 [now 34], 4041, 4221, 4483, 6416, 6421, 6424, 6427, 6504, and 6675 of this title and amending a provision set out as a note under section 120 of Title 23, Highways] shall take effect on the first day of the first calendar month which begins more than 10 days after the date of the enactment of this Act [Nov. 9, 1978]."

Amendment by Pub. L. 95–599 effective Jan. 1, 1979, see section 505(d) of Pub. L. 95–599, set out as a note under section 6427 of this title.

EFFECTIVE DATE OF 1976 AMENDMENTS

Amendment by Pub. L. 94–530 effective on Oct. 1, 1976, see section 1(d) of Pub. L. 94–530, set out as a note under section 4041 of this title.

Amendment by section 1901(a)(3) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by section 1906(b)(8), (9) of Pub. L. 94–455, to take effect on Feb. 1, 1977, see section 1906(d) of Pub. L. 94–455, set out as a note under section 6013 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–258 applicable with respect to taxable years ending after June 30, 1970, see section 211(b) of Pub. L. 91–258, set out as a note under section 4041 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning on or after July 1, 1965, see section 809(f) of Pub. L. 89–44, set out as an Effective Date of 1965 Amendment note under section 6420 of this title.

[1] *See References in Text note below.*

§35. Health insurance costs of eligible individuals

(a) In general

In the case of an individual, there shall be allowed as a credit against the tax imposed by subtitle A an amount equal to 72.5 percent of the amount paid by the taxpayer for coverage of the taxpayer and qualifying family members under qualified health insurance for eligible coverage months beginning in the taxable year.

(b) Eligible coverage month

For purposes of this section—

(1) In general

The term "eligible coverage month" means any month if—

(A) as of the first day of such month, the taxpayer—

(i) is an eligible individual,

(ii) is covered by qualified health insurance, the premium for which is paid by the taxpayer,

(iii) does not have other specified coverage, and

(iv) is not imprisoned under Federal, State, or local authority, and

(B) such month begins more than 90 days after the date of the enactment of the Trade Act of 2002, and before January 1, 2014.

(2) Joint returns

In the case of a joint return, the requirements of paragraph (1)(A) shall be treated as met with respect to any month if at least 1 spouse satisfies such requirements.

(c) Eligible individual

For purposes of this section—

(1) In general

The term "eligible individual" means—

(A) an eligible TAA recipient,

(B) an eligible alternative TAA recipient, and

(C) an eligible PBGC pension recipient.

(2) Eligible TAA recipient

(A) In general

Except as provided in subparagraph (B), the term "eligible TAA recipient" means, with respect to any month, any individual who is receiving for any day of such month a trade readjustment allowance under chapter 2 of title II of the Trade Act of 1974 or who would be eligible to receive such allowance if section 231 of such Act were applied without regard to subsection (a)(3)(B) of such section. An individual shall continue to be treated as an eligible TAA recipient during the first month that such individual would otherwise cease to be an eligible TAA recipient by reason of the preceding sentence.

(B) Special rule

In the case of any eligible coverage month beginning after the date of the enactment of this paragraph, the term "eligible TAA recipient" means, with respect to any month, any individual who—

(i) is receiving for any day of such month a trade readjustment allowance under chapter 2 of title II of the Trade Act of 1974,

(ii) would be eligible to receive such allowance except that such individual is in a break in training provided under a training program approved under section 236 of such Act that

exceeds the period specified in section 233(e) of such Act, but is within the period for receiving such allowances provided under section 233(a) of such Act, or

(iii) is receiving unemployment compensation (as defined in section 85(b)) for any day of such month and who would be eligible to receive such allowance for such month if section 231 of such Act were applied without regard to subsections (a)(3)(B) and (a)(5) thereof.

An individual shall continue to be treated as an eligible TAA recipient during the first month that such individual would otherwise cease to be an eligible TAA recipient by reason of the preceding sentence.

(3) Eligible alternative TAA recipient

The term "eligible alternative TAA recipient" means, with respect to any month, any individual who—

(A) is a worker described in section 246(a)(3)(B) of the Trade Act of 1974 who is participating in the program established under section 246(a)(1) of such Act, and

(B) is receiving a benefit for such month under section 246(a)(2) of such Act.

An individual shall continue to be treated as an eligible alternative TAA recipient during the first month that such individual would otherwise cease to be an eligible alternative TAA recipient by reason of the preceding sentence.

(4) Eligible PBGC pension recipient

The term "eligible PBGC pension recipient" means, with respect to any month, any individual who—

(A) has attained age 55 as of the first day of such month, and

(B) is receiving a benefit for such month any portion of which is paid by the Pension Benefit Guaranty Corporation under title IV of the Employee Retirement Income Security Act of 1974.

(d) Qualifying family member

For purposes of this section—

(1) In general

The term "qualifying family member" means—

(A) the taxpayer's spouse, and

(B) any dependent of the taxpayer with respect to whom the taxpayer is entitled to a deduction under section 151(c).

Such term does not include any individual who has other specified coverage.

(2) Special dependency test in case of divorced parents, etc.

If section 152(e) applies to any child with respect to any calendar year, in the case of any taxable year beginning in such calendar year, such child shall be treated as described in paragraph (1)(B) with respect to the custodial parent (as defined in section 152(e)(4)(A)) and not with respect to the noncustodial parent.

(e) Qualified health insurance

For purposes of this section—

(1) In general

The term "qualified health insurance" means any of the following:

(A) Coverage under a COBRA continuation provision (as defined in section 9832(d)(1)).

(B) State-based continuation coverage provided by the State under a State law that requires such coverage.

(C) Coverage offered through a qualified State high risk pool (as defined in section 2744(c)(2) of the Public Health Service Act).

(D) Coverage under a health insurance program offered for State employees.

(E) Coverage under a State-based health insurance program that is comparable to the health insurance program offered for State employees.

(F) Coverage through an arrangement entered into by a State and—

(i) a group health plan (including such a plan which is a multiemployer plan as defined in section 3(37) of the Employee Retirement Income Security Act of 1974),

(ii) an issuer of health insurance coverage,

(iii) an administrator, or

(iv) an employer.

(G) Coverage offered through a State arrangement with a private sector health care coverage purchasing pool.

(H) Coverage under a State-operated health plan that does not receive any Federal financial participation.

(I) Coverage under a group health plan that is available through the employment of the eligible individual's spouse.

(J) In the case of any eligible individual and such individual's qualifying family members, coverage under individual health insurance if the eligible individual was covered under individual health insurance during the entire 30-day period that ends on the date that such individual became separated from the employment which qualified such individual for—

(i) in the case of an eligible TAA recipient, the allowance described in subsection (c)(2),

(ii) in the case of an eligible alternative TAA recipient, the benefit described in subsection (c)(3)(B), or

(iii) in the case of any eligible PBGC pension recipient, the benefit described in subsection (c)(4)(B).

For purposes of this subparagraph, the term "individual health insurance" means any insurance which constitutes medical care offered to individuals other than in connection with a group health plan and does not include Federal- or State-based health insurance coverage.

(K) Coverage under an employee benefit plan funded by a voluntary employees' beneficiary association (as defined in section 501(c)(9)) established pursuant to an order of a bankruptcy court, or by agreement with an authorized representative, as provided in section 1114 of title 11, United States Code.

(2) Requirements for state-based coverage

(A) In general

The term "qualified health insurance" does not include any coverage described in subparagraphs (B) through (H) of paragraph (1) unless the State involved has elected to have such coverage treated as qualified health insurance under this section and such coverage meets the following requirements:

(i) Guaranteed issue

Each qualifying individual is guaranteed enrollment if the individual pays the premium for enrollment or provides a qualified health insurance costs credit eligibility certificate described in section 7527 and pays the remainder of such premium.

(ii) No imposition of preexisting condition exclusion

No pre-existing condition limitations are imposed with respect to any qualifying individual.

(iii) Nondiscriminatory premium

The total premium (as determined without regard to any subsidies) with respect to a qualifying individual may not be greater than the total premium (as so determined) for a similarly situated individual who is not a qualifying individual.

(iv) Same benefits

Benefits under the coverage are the same as (or substantially similar to) the benefits provided to similarly situated individuals who are not qualifying individuals.

(B) Qualifying individual

For purposes of this paragraph, the term "qualifying individual" means—

(i) an eligible individual for whom, as of the date on which the individual seeks to enroll in the coverage described in subparagraphs (B) through (H) of paragraph (1), the aggregate of the periods of creditable coverage (as defined in section 9801(c)) is 3 months or longer and who, with respect to any month, meets the requirements of clauses (iii) and (iv) of subsection (b)(1)(A); and

(ii) the qualifying family members of such eligible individual.

(3) Exception

The term "qualified health insurance" shall not include—

(A) a flexible spending or similar arrangement, and

(B) any insurance if substantially all of its coverage is of excepted benefits described in section 9832(c).

(f) Other specified coverage

For purposes of this section, an individual has other specified coverage for any month if, as of the first day of such month—

(1) Subsidized coverage

(A) In general

Such individual is covered under any insurance which constitutes medical care (except insurance substantially all of the coverage of which is of excepted benefits described in section 9832(c)) under any health plan maintained by any employer (or former employer) of the taxpayer or the taxpayer's spouse and at least 50 percent of the cost of such coverage (determined under section 4980B) is paid or incurred by the employer.

(B) Eligible alternative TAA recipients

In the case of an eligible alternative TAA recipient, such individual is either—

(i) eligible for coverage under any qualified health insurance (other than insurance described in subparagraph (A), (B), or (F) of subsection (e)(1)) under which at least 50 percent of the cost of coverage (determined under section 4980B(f)(4)) is paid or incurred by an employer (or former employer) of the taxpayer or the taxpayer's spouse, or

(ii) covered under any such qualified health insurance under which any portion of the cost of coverage (as so determined) is paid or incurred by an employer (or former employer) of the taxpayer or the taxpayer's spouse.

(C) Treatment of cafeteria plans

For purposes of subparagraphs (A) and (B), the cost of coverage shall be treated as paid or incurred by an employer to the extent the coverage is in lieu of a right to receive cash or other qualified benefits under a cafeteria plan (as defined in section 125(d)).

(2) Coverage under Medicare, Medicaid, or SCHIP

Such individual—

(A) is entitled to benefits under part A of title XVIII of the Social Security Act or is enrolled under part B of such title, or

(B) is enrolled in the program under title XIX or XXI of such Act (other than under section 1928 of such Act).

(3) Certain other coverage

Such individual—

(A) is enrolled in a health benefits plan under chapter 89 of title 5, United States Code, or

(B) is entitled to receive benefits under chapter 55 of title 10, United States Code.

(g) Special rules

(1) Coordination with advance payments of credit

With respect to any taxable year, the amount which would (but for this subsection) be allowed as a credit to the taxpayer under subsection (a) shall be reduced (but not below zero) by the aggregate amount paid on behalf of such taxpayer under section 7527 for months beginning in such taxable year.

(2) Coordination with other deductions

Amounts taken into account under subsection (a) shall not be taken into account in determining any deduction allowed under section 162(l) or 213.

(3) Medical and health savings accounts

Amounts distributed from an Archer MSA (as defined in section 220(d)) or from a health savings account (as defined in section 223(d)) shall not be taken into account under subsection (a).

(4) Denial of credit to dependents

No credit shall be allowed under this section to any individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which such individual's taxable year begins.

(5) Both spouses eligible individuals

The spouse of the taxpayer shall not be treated as a qualifying family member for purposes of subsection (a), if—

(A) the taxpayer is married at the close of the taxable year,

(B) the taxpayer and the taxpayer's spouse are both eligible individuals during the taxable year, and

(C) the taxpayer files a separate return for the taxable year.

(6) Marital status; certain married individuals living apart

Rules similar to the rules of paragraphs (3) and (4) of section 21(e) shall apply for purposes of this section.

(7) Insurance which covers other individuals

For purposes of this section, rules similar to the rules of section 213(d)(6) shall apply with respect to any contract for qualified health insurance under which amounts are payable for coverage of an individual other than the taxpayer and qualifying family members.

(8) Treatment of payments

For purposes of this section—

(A) Payments by Secretary

Payments made by the Secretary on behalf of any individual under section 7527 (relating to advance payment of credit for health insurance costs of eligible individuals) shall be treated as having been made by the taxpayer on the first day of the month for which such payment was made.

(B) Payments by taxpayer

Payments made by the taxpayer for eligible coverage months shall be treated as having been made by the taxpayer on the first day of the month for which such payment was made.

(9) [1] Continued qualification of family members after certain events

(A) Medicare eligibility

In the case of any month which would be an eligible coverage month with respect to an eligible individual but for subsection (f)(2)(A), such month shall be treated as an eligible coverage month with respect to such eligible individual solely for purposes of determining the amount of the credit under this section with respect to any qualifying family members of such

individual (and any advance payment of such credit under section 7527). This subparagraph shall only apply with respect to the first 24 months after such eligible individual is first entitled to the benefits described in subsection (f)(2)(A).

(B) Divorce

In the case of the finalization of a divorce between an eligible individual and such individual's spouse, such spouse shall be treated as an eligible individual for purposes of this section and section 7527 for a period of 24 months beginning with the date of such finalization, except that the only qualifying family members who may be taken into account with respect to such spouse are those individuals who were qualifying family members immediately before such finalization.

(C) Death

In the case of the death of an eligible individual—

(i) any spouse of such individual (determined at the time of such death) shall be treated as an eligible individual for purposes of this section and section 7527 for a period of 24 months beginning with the date of such death, except that the only qualifying family members who may be taken into account with respect to such spouse are those individuals who were qualifying family members immediately before such death, and

(ii) any individual who was a qualifying family member of the decedent immediately before such death (or, in the case of an individual to whom paragraph (4) applies, the taxpayer to whom the deduction under section 151 is allowable) shall be treated as an eligible individual for purposes of this section and section 7527 for a period of 24 months beginning with the date of such death, except that in determining the amount of such credit only such qualifying family member may be taken into account.

(9) [1] COBRA premium assistance

In the case of an assistance eligible individual who receives premium reduction for COBRA continuation coverage under section 3001(a) of title III of division B of the American Recovery and Reinvestment Act of 2009 for any month during the taxable year, such individual shall not be treated as an eligible individual, a certified individual, or a qualifying family member for purposes of this section or section 7527 with respect to such month.

(10) Regulations

The Secretary may prescribe such regulations and other guidance as may be necessary or appropriate to carry out this section, section 6050T, and section 7527.

(Added Pub. L. 107–210, div. A, title II, §201(a), Aug. 6, 2002, 116 Stat. 954; amended Pub. L. 108–311, title IV, §401(a)(2), Oct. 4, 2004, 118 Stat. 1183; Pub. L. 110–172, §11(a)(5), Dec. 29, 2007, 121 Stat. 2485; Pub. L. 111–5, div. B, title I, §§1899A(a)(1), 1899C(a), 1899E(a), 1899G(a), title III, §3001(a)(14)(A), Feb. 17, 2009, 123 Stat. 423, 424, 426, 430, 465; Pub. L. 111–144, §3(b)(5)(A), Mar. 2, 2010, 124 Stat. 44; Pub. L. 111–344, title I, §§111(a), 113(a), 115(a), 117(a), Dec. 29, 2010, 124 Stat. 3614–3616; Pub. L. 112–40, title II, §241(a), (b)(1), (3)(A)–(C), Oct. 21, 2011, 125 Stat. 418, 419.)

REFERENCES IN TEXT

The date of the enactment of the Trade Act of 2002, referred to in subsec. (b)(1)(B), is the date of enactment of Pub. L. 107–210, which was approved Aug. 6, 2002.

The Trade Act of 1974, referred to in subsec. (c)(2), (3), is Pub. L. 93–618, Jan. 3, 1975, 88 Stat. 1978. Chapter 2 of title II of the Act is classified generally to part 2 (§2271 et seq.) of subchapter II of chapter 12 of Title 19, Customs Duties. Sections 231, 233, 236, and 246 of the Act are classified to sections 2291, 2293, 2296, and 2318 of Title 19, respectively. For complete classification of this Act to the Code, see section 2101 of Title 19 and Tables.

The date of the enactment of this paragraph, referred to in subsec. (c)(2)(B), probably means the date of enactment of Pub. L. 111–5, which amended par. (2) generally and which was approved Feb. 17, 2009.

The Employee Retirement Income Security Act of 1974, referred to in subsecs. (c)(4)(B) and (e)(1)(F)(i), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829. Title IV of the Act is classified principally to subchapter III

(§1301 et seq.) of chapter 18 of Title 29, Labor. Section 3(37) of the Act is classified to section 1002(37) of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

Section 2744(c)(2) of the Public Health Service Act, referred to in subsec. (e)(1)(C), is classified to section 300gg–44(c)(2) of Title 42, The Public Health and Welfare.

The Social Security Act, referred to in subsec. (f)(2), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Parts A and B of title XVIII of the Act are classified generally to parts A (§1395c et seq.) and B (§1395j et seq.), respectively, of subchapter XVIII of chapter 7 of Title 42, The Public Health and Welfare. Titles XIX and XXI of the Act are classified generally to subchapters XIX (§1396 et seq.) and XXI (§1397aa et seq.), respectively, of chapter 7 of Title 42. Section 1928 of the Act is classified to section 1396s of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 3001(a) of title III of division B of the American Recovery and Reinvestment Act of 2009, referred to in subsec. (g)(9) related to COBRA premium assistance, is section 3001(a) of Pub. L. 111–5, div. B, title III, Feb. 17, 2009, 123 Stat. 455, which enacted sections 139C, 6432, and 6720C of this title, amended this section, and enacted provisions set out as a note under section 6432 of this title.

PRIOR PROVISIONS

A prior section 35 was renumbered section 37 of this title.

Another prior section 35, acts Aug. 16, 1954, ch. 736, 68A Stat. 14; Sept. 2, 1958, Pub. L. 85–866, title I, §41(b), 72 Stat. 1639; Feb. 26, 1964, Pub. L. 88–272, title II, §201(d)(2), 78 Stat. 32, related to partially tax-exempt interest received by individuals, prior to repeal by Pub. L. 94–455, title XIX, §1901(a)(2), Oct. 4, 1976, 90 Stat. 1764, effective with respect to taxable years beginning after Dec. 31, 1976.

AMENDMENTS

2011—Subsec. (a). Pub. L. 112–40, §241(b)(1), substituted "72.5 percent" for "65 percent (80 percent in the case of eligible coverage months beginning before February 13, 2011)".

Subsec. (b)(1)(B). Pub. L. 112–40, §241(a), inserted ", and before January 1, 2014" after "2002".

Subsec. (c)(2)(B). Pub. L. 112–40, §241(b)(3)(A), struck out "and before February 13, 2011" after "paragraph" in introductory provisions.

Subsec. (e)(1)(K). Pub. L. 112–40, §241(b)(3)(B), substituted "Coverage" for "In the case of eligible coverage months beginning before February 13, 2012, coverage".

Subsec. (g)(9). Pub. L. 112–40, §241(b)(3)(C), in par. (9) relating to continued qualification of family members after certain events, struck out introductory provisions which read as follows: "In the case of eligible coverage months beginning before February 13, 2011—".

2010—Subsec. (a). Pub. L. 111–344, §111(a), substituted "February 13, 2011" for "January 1, 2011".

Subsec. (c)(2)(B). Pub. L. 111–344, §113(a), substituted "February 13, 2011" for "January 1, 2011" in introductory provisions.

Subsec. (e)(1)(K). Pub. L. 111–344, §117(a), substituted "February 13, 2012" for "January 1, 2011".

Subsec. (g)(9). Pub. L. 111–344, §115(a), substituted "February 13, 2011" for "January 1, 2011", in par. (9) relating to continued qualification of family members after certain events.

Pub. L. 111–144, which directed amendment of par. (9) by substituting "section 3001(a) of title III of division B of the American Recovery and Reinvestment Act of 2009" for "section 3002(a) of the Health Insurance Assistance for the Unemployed Act of 2009", was executed by making the substitution in par. (9) relating to COBRA premium assistance, to reflect the probable intent of Congress.

2009—Subsec. (a). Pub. L. 111–5, §1899A(a)(1), inserted "(80 percent in the case of eligible coverage months beginning before January 1, 2011)" after "65 percent".

Subsec. (c)(2). Pub. L. 111–5, §1899C(a), amended par. (2) generally. Prior to amendment, text read as follows: "The term 'eligible TAA recipient' means, with respect to any month, any individual who is receiving for any day of such month a trade readjustment allowance under chapter 2 of title II of the Trade Act of 1974 or who would be eligible to receive such allowance if section 231 of such Act were applied without regard to subsection (a)(3)(B) of such section. An individual shall continue to be treated as an eligible TAA recipient during the first month that such individual would otherwise cease to be an eligible TAA recipient by reason of the preceding sentence."

Subsec. (e)(1)(K). Pub. L. 111–5, §1899G(a), added subpar. (K).

Subsec. (g)(9), (10). Pub. L. 111–5, §3001(a)(14)(A), added par. (9) relating to COBRA premium assistance and redesignated former par. (9) as (10).

Pub. L. 111–5, §1899E(a), which directed addition of par. (9) and redesignation of par. (9) as (10), was executed by only adding par. (9) relating to continued qualification of family members after certain events.

2007—Subsec. (d)(2). Pub. L. 110–172 struck out "paragraph (2) or (4) of" before "section 152(e)" and substituted "(as defined in section 152(e)(4)(A))" for "(within the meaning of section 152(e)(1))".

2004—Subsec. (g)(3). Pub. L. 108–311 amended heading and text of par. (3) generally. Prior to amendment, text read as follows: "Amounts distributed from an Archer MSA (as defined in section 220(d)) shall not be taken into account under subsection (a)."

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112–40, title II, §241(c), Oct. 21, 2011, 125 Stat. 419, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section, section 7527 of this title, and section 2918 of Title 29, Labor] shall apply to coverage months beginning after February 12, 2011.

"(2) ADVANCE PAYMENT PROVISIONS.—

"(A) The amendment made by subsection (b)(2)(B) [amending section 7527 of this title] shall apply to certificates issued after the date which is 30 days after the date of the enactment of this Act [Oct. 21, 2011].

"(B) The amendment made by subsection (b)(2)(D) [amending section 7527 of this title] shall apply to coverage months beginning after the date which is 30 days after the date of the enactment of this Act."

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–344, title I, §111(c), Dec. 29, 2010, 124 Stat. 3615, provided that: "The amendments made by this section [amending this section and section 7527 of this title] shall apply to coverage months beginning after December 31, 2010."

Pub. L. 111–344, title I, §113(b), Dec. 29, 2010, 124 Stat. 3615, provided that: "The amendment made by this section [amending this section] shall apply to coverage months beginning after December 31, 2010."

Pub. L. 111–344, title I, §115(c), Dec. 29, 2010, 124 Stat. 3615, provided that: "The amendments made by this section [amending this section and section 2918 of Title 29, Labor] shall apply to months beginning after December 31, 2010."

Pub. L. 111–344, title I, §117(b), Dec. 29, 2010, 124 Stat. 3616, provided that: "The amendment made by this section [amending this section] shall apply to coverage months beginning after December 31, 2010."

Amendment by Pub. L. 111–144 effective as if included in the provisions of section 3001 of Pub. L. 111–5 to which it relates, see section 3(c) of Pub. L. 111–144, set out as a note under section 6432 of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Except as otherwise provided and subject to certain applicability provisions, amendment by sections 1899A(a)(1), 1899C(a), 1899E(a), and 1899G(a) of Pub. L. 111–5 effective upon the expiration of the 90-day period beginning on Feb. 17, 2009, see section 1891 of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 2271 of Title 19, Customs Duties.

Pub. L. 111–5, div. B, title I, §1899A(b), Feb. 17, 2009, 123 Stat. 424, provided that: "The amendments made by this section [amending this section and section 7527 of this title] shall apply to coverage months beginning on or after the first day of the first month beginning 60 days after the date of the enactment of this Act [Feb. 17, 2009]."

Pub. L. 111–5, div. B, title I, §1899C(b), Feb. 17, 2009, 123 Stat. 425, provided that: "The amendment made by this section [amending this section] shall apply to coverage months beginning after the date of the enactment of this Act [Feb. 17, 2009]."

Pub. L. 111–5, div. B, title I, §1899E(c), Feb. 17, 2009, 123 Stat. 428, provided that: "The amendments made by this section [amending this section and section 2918 of Title 29, Labor] shall apply to months beginning after December 31, 2009."

Pub. L. 111–5, div. B, title I, §1899G(b), Feb. 17, 2009, 123 Stat. 430, provided that: "The amendments made by this section [amending this section] shall apply to coverage months beginning after the date of the enactment of this Act [Feb. 17, 2009]."

Amendment by section 3001(a)(14)(A) of Pub. L. 111–5 applicable to taxable years ending after Feb. 17, 2009, see section 3001(a)(14)(B) of Pub. L. 111–5, set out as a Premium Assistance for COBRA Benefits note under section 6432 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 effective as if included in section 1201 of Pub. L. 108–173, see section 401(b) of Pub. L. 108–311, set out as a note under section 26 of this title.

EFFECTIVE DATE

Pub. L. 107–210, div. A, title II, §201(d), Aug. 6, 2002, 116 Stat. 960, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this section and section 300gg–45 of Title 42, The Public Health and Welfare, amending section 1324 of Title 31, Money and Finance, and renumbering former section 35 of this title as section 36 of this title] shall apply to taxable years beginning after December 31, 2001.

"(2) STATE HIGH RISK POOLS.—The amendment made by subsection (b) [enacting section 300gg–45 of Title 42] shall take effect on the date of the enactment of this Act [Aug. 6, 2002]."

CONSTRUCTION

Nothing in title II of Pub. L. 107–210 or the amendments by that title, other than provisions relating to COBRA continuation coverage and reporting requirements, to be construed as creating a new mandate on any party regarding health insurance coverage, see section 203(f) of Pub. L. 107–210, set out as a Construction of 2002 Amendment note under section 2918 of Title 29, Labor.

SURVEY AND REPORT ON ENHANCED HEALTH COVERAGE TAX CREDIT PROGRAM

Pub. L. 111–5, div. B, title I, §1899I, Feb. 17, 2009, 123 Stat. 431, provided that:

"(a) SURVEY.—

"(1) IN GENERAL.—The Secretary of the Treasury shall conduct a biennial survey of eligible individuals (as defined in section 35(c) of the Internal Revenue Code of 1986) relating to the health coverage tax credit under section 35 of the Internal Revenue Code of 1986 (hereinafter in this section referred to as the 'health coverage tax credit').

"(2) INFORMATION OBTAINED.—The survey conducted under subsection (a) shall obtain the following information:

"(A) HCTC PARTICIPANTS.—In the case of eligible individuals receiving the health coverage tax credit (including individuals participating in the health coverage tax credit program under section 7527 of such Code, hereinafter in this section referred to as the 'HCTC program')—

"(i) demographic information of such individuals, including income and education levels,

"(ii) satisfaction of such individuals with the enrollment process in the HCTC program,

"(iii) satisfaction of such individuals with available health coverage options under the credit, including level of premiums, benefits, deductibles, cost-sharing requirements, and the adequacy of provider networks, and

"(iv) any other information that the Secretary determines is appropriate.

"(B) NON-HCTC PARTICIPANTS.—In the case of eligible individuals not receiving the health coverage tax credit—

"(i) demographic information of each individual, including income and education levels,

"(ii) whether the individual was aware of the health coverage tax credit or the HCTC program,

"(iii) the reasons the individual has not enrolled in the HCTC program, including whether such reasons include the burden of the process of enrollment and the affordability of coverage,

"(iv) whether the individual has health insurance coverage, and, if so, the source of such coverage, and

"(v) any other information that the Secretary determines is appropriate.

"(3) REPORT.—Not later than December 31 of each year in which a survey is conducted under paragraph (1) (beginning in 2010), the Secretary of the Treasury shall report to the Committee on Finance and the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Ways and Means, the Committee on Education and Labor [now Committee on Education and the Workforce], and the Committee on Energy and Commerce of the House of Representatives the findings of the most recent survey conducted under paragraph (1).

"(b) REPORT.—Not later than October 1 of each year (beginning in 2010), the Secretary of the Treasury (after consultation with the Secretary of Health and Human Services, and, in the case of the information required under paragraph (7), the Secretary of Labor) shall report to the Committee on Finance and the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Ways and Means, the Committee on Education and Labor [now Committee on Education and the Workforce], and the Committee on Energy and Commerce of the House of Representatives the following information with respect to the most recent taxable year ending before such date:

"(1) In each State and nationally—

"(A) the total number of eligible individuals (as defined in section 35(c) of the Internal Revenue Code of 1986) and the number of eligible individuals receiving the health coverage tax credit,

"(B) the total number of such eligible individuals who receive an advance payment of the health coverage tax credit through the HCTC program,

"(C) the average length of the time period of the participation of eligible individuals in the HCTC program, and

"(D) the total number of participating eligible individuals in the HCTC program who are enrolled in each category of coverage as described in section 35(e)(1) of such Code,

with respect to each category of eligible individuals described in section 35(c)(1) of such Code.

"(2) In each State and nationally, an analysis of—

"(A) the range of monthly health insurance premiums, for self-only coverage and for family coverage, for individuals receiving the health coverage tax credit, and

"(B) the average and median monthly health insurance premiums, for self-only coverage and for family coverage, for individuals receiving the health coverage tax credit,

with respect to each category of coverage as described in section 35(e)(1) of such Code.

"(3) In each State and nationally, an analysis of the following information with respect to the health insurance coverage of individuals receiving the health coverage tax credit who are enrolled in coverage described in subparagraphs (B) through (H) of section 35(e)(1) of such Code:

"(A) Deductible amounts.

"(B) Other out-of-pocket cost-sharing amounts.

"(C) A description of any annual or lifetime limits on coverage or any other significant limits on coverage services, or benefits.

The information required under this paragraph shall be reported with respect to each category of coverage described in such subparagraphs.

"(4) In each State and nationally, the gender and average age of eligible individuals (as defined in section 35(c) of such Code) who receive the health coverage tax credit, in each category of coverage described in section 35(e)(1) of such Code, with respect to each category of eligible individuals described in such section.

"(5) The steps taken by the Secretary of the Treasury to increase the participation rates in the HCTC program among eligible individuals, including outreach and enrollment activities.

"(6) The cost of administering the HCTC program by function, including the cost of subcontractors, and recommendations on ways to reduce administrative costs, including recommended statutory changes.

"(7) The number of States applying for and receiving national emergency grants under section 173(f) of the Workforce Investment Act of 1998 (29 U.S.C. 2918(f)), the activities funded by such grants on a State-by-State basis, and the time necessary for application approval of such grants."

[1] *So in original. There are two pars. designated "(9)".*

§36. First-time homebuyer credit

(a) Allowance of credit

In the case of an individual who is a first-time homebuyer of a principal residence in the United States during a taxable year, there shall be allowed as a credit against the tax imposed by this subtitle for such taxable year an amount equal to 10 percent of the purchase price of the residence.

(b) Limitations

(1) Dollar limitation

(A) In general

Except as otherwise provided in this paragraph, the credit allowed under subsection (a) shall not exceed $8,000.

(B) Married individuals filing separately

In the case of a married individual filing a separate return, subparagraph (A) shall be applied by substituting "$4,000" for "$8,000".

(C) Other individuals

If two or more individuals who are not married purchase a principal residence, the amount of the credit allowed under subsection (a) shall be allocated among such individuals in such manner as the Secretary may prescribe, except that the total amount of the credits allowed to all

such individuals shall not exceed $8,000.

(D) Special rule for long-time residents of same principal residence

In the case of a taxpayer to whom a credit under subsection (a) is allowed by reason of subsection (c)(6), subparagraphs (A), (B), and (C) shall be applied by substituting "$6,500" for "$8,000" and "$3,250" for "$4,000".

(2) Limitation based on modified adjusted gross income

(A) In general

The amount allowable as a credit under subsection (a) (determined without regard to this paragraph) for the taxable year shall be reduced (but not below zero) by the amount which bears the same ratio to the amount which is so allowable as—

(i) the excess (if any) of—

(I) the taxpayer's modified adjusted gross income for such taxable year, over

(II) $125,000 ($225,000 in the case of a joint return), bears to

(ii) $20,000.

(B) Modified adjusted gross income

For purposes of subparagraph (A), the term "modified adjusted gross income" means the adjusted gross income of the taxpayer for the taxable year increased by any amount excluded from gross income under section 911, 931, or 933.

(3) Limitation based on purchase price

No credit shall be allowed under subsection (a) for the purchase of any residence if the purchase price of such residence exceeds $800,000.

(4) Age limitation

No credit shall be allowed under subsection (a) with respect to the purchase of any residence unless the taxpayer has attained age 18 as of the date of such purchase. In the case of any taxpayer who is married (within the meaning of section 7703), the taxpayer shall be treated as meeting the age requirement of the preceding sentence if the taxpayer or the taxpayer's spouse meets such age requirement.

(c) Definitions

For purposes of this section—

(1) First-time homebuyer

The term "first-time homebuyer" means any individual if such individual (and if married, such individual's spouse) had no present ownership interest in a principal residence during the 3-year period ending on the date of the purchase of the principal residence to which this section applies.

(2) Principal residence

The term "principal residence" has the same meaning as when used in section 121.

(3) Purchase

(A) In general

The term "purchase" means any acquisition, but only if—

(i) the property is not acquired from a person related to the person acquiring such property (or, if married, such individual's spouse), and

(ii) the basis of the property in the hands of the person acquiring such property is not determined—

(I) in whole or in part by reference to the adjusted basis of such property in the hands of the person from whom acquired, or

(II) under section 1014(a) (relating to property acquired from a decedent).

(B) Construction

A residence which is constructed by the taxpayer shall be treated as purchased by the taxpayer on the date the taxpayer first occupies such residence.

(4) Purchase price

The term "purchase price" means the adjusted basis of the principal residence on the date such residence is purchased.

(5) Related persons

A person shall be treated as related to another person if the relationship between such persons would result in the disallowance of losses under section 267 or 707(b) (but, in applying section 267(b) and (c) for purposes of this section, paragraph (4) of section 267(c) shall be treated as providing that the family of an individual shall include only his spouse, ancestors, and lineal descendants).

(6) Exception for long-time residents of same principal residence

In the case of an individual (and, if married, such individual's spouse) who has owned and used the same residence as such individual's principal residence for any 5-consecutive-year period during the 8-year period ending on the date of the purchase of a subsequent principal residence, such individual shall be treated as a first-time homebuyer for purposes of this section with respect to the purchase of such subsequent residence.

(d) Exceptions

No credit under subsection (a) shall be allowed to any taxpayer for any taxable year with respect to the purchase of a residence if—

(1) the taxpayer is a nonresident alien,

(2) the taxpayer disposes of such residence (or such residence ceases to be the principal residence of the taxpayer (and, if married, the taxpayer's spouse)) before the close of such taxable year,

(3) a deduction under section 151 with respect to such taxpayer is allowable to another taxpayer for such taxable year, or

(4) the taxpayer fails to attach to the return of tax for such taxable year a properly executed copy of the settlement statement used to complete such purchase.

(e) Reporting

If the Secretary requires information reporting under section 6045 by a person described in subsection (e)(2) thereof to verify the eligibility of taxpayers for the credit allowable by this section, the exception provided by section 6045(e) shall not apply.

(f) Recapture of credit

(1) In general

Except as otherwise provided in this subsection, if a credit under subsection (a) is allowed to a taxpayer, the tax imposed by this chapter shall be increased by 62/3 percent of the amount of such credit for each taxable year in the recapture period.

(2) Acceleration of recapture

If a taxpayer disposes of the principal residence with respect to which a credit was allowed under subsection (a) (or such residence ceases to be the principal residence of the taxpayer (and, if married, the taxpayer's spouse)) before the end of the recapture period—

(A) the tax imposed by this chapter for the taxable year of such disposition or cessation shall be increased by the excess of the amount of the credit allowed over the amounts of tax imposed by paragraph (1) for preceding taxable years, and

(B) paragraph (1) shall not apply with respect to such credit for such taxable year or any subsequent taxable year.

(3) Limitation based on gain

In the case of the sale of the principal residence to a person who is not related to the taxpayer,

the increase in tax determined under paragraph (2) shall not exceed the amount of gain (if any) on such sale. Solely for purposes of the preceding sentence, the adjusted basis of such residence shall be reduced by the amount of the credit allowed under subsection (a) to the extent not previously recaptured under paragraph (1).

(4) Exceptions

(A) Death of taxpayer

Paragraphs (1) and (2) shall not apply to any taxable year ending after the date of the taxpayer's death.

(B) Involuntary conversion

Paragraph (2) shall not apply in the case of a residence which is compulsorily or involuntarily converted (within the meaning of section 1033(a)) if the taxpayer acquires a new principal residence during the 2-year period beginning on the date of the disposition or cessation referred to in paragraph (2). Paragraph (2) shall apply to such new principal residence during the recapture period in the same manner as if such new principal residence were the converted residence.

(C) Transfers between spouses or incident to divorce

In the case of a transfer of a residence to which section 1041(a) applies—

(i) paragraph (2) shall not apply to such transfer, and

(ii) in the case of taxable years ending after such transfer, paragraphs (1) and (2) shall apply to the transferee in the same manner as if such transferee were the transferor (and shall not apply to the transferor).

(D) Waiver of recapture for purchases in 2009 and 2010

In the case of any credit allowed with respect to the purchase of a principal residence after December 31, 2008—

(i) paragraph (1) shall not apply, and

(ii) paragraph (2) shall apply only if the disposition or cessation described in paragraph (2) with respect to such residence occurs during the 36-month period beginning on the date of the purchase of such residence by the taxpayer.

(E) Special rule for members of the armed forces, etc.

(i) In general

In the case of the disposition of a principal residence by an individual (or a cessation referred to in paragraph (2)) after December 31, 2008, in connection with Government orders received by such individual, or such individual's spouse, for qualified official extended duty service—

(I) paragraph (2) and subsection (d)(2) shall not apply to such disposition (or cessation), and

(II) if such residence was acquired before January 1, 2009, paragraph (1) shall not apply to the taxable year in which such disposition (or cessation) occurs or any subsequent taxable year.

(ii) Qualified official extended duty service

For purposes of this section, the term "qualified official extended duty service" means service on qualified official extended duty as—

(I) a member of the uniformed services,

(II) a member of the Foreign Service of the United States, or

(III) an employee of the intelligence community.

(iii) Definitions

Any term used in this subparagraph which is also used in paragraph (9) of section 121(d) shall have the same meaning as when used in such paragraph.

(5) Joint returns

In the case of a credit allowed under subsection (a) with respect to a joint return, half of such credit shall be treated as having been allowed to each individual filing such return for purposes of this subsection.

(6) Return requirement

If the tax imposed by this chapter for the taxable year is increased under this subsection, the taxpayer shall, notwithstanding section 6012, be required to file a return with respect to the taxes imposed under this subtitle.

(7) Recapture period

For purposes of this subsection, the term "recapture period" means the 15 taxable years beginning with the second taxable year following the taxable year in which the purchase of the principal residence for which a credit is allowed under subsection (a) was made.

(g) Election to treat purchase in prior year

In the case of a purchase of a principal residence after December 31, 2008, a taxpayer may elect to treat such purchase as made on December 31 of the calendar year preceding such purchase for purposes of this section (other than subsections (b)(4), (c), (f)(4)(D), and (h)).

(h) Application of section

(1) In general

This section shall only apply to a principal residence purchased by the taxpayer on or after April 9, 2008, and before May 1, 2010.

(2) Exception in case of binding contract

In the case of any taxpayer who enters into a written binding contract before May 1, 2010, to close on the purchase of a principal residence before July 1, 2010, and who purchases such residence before October 1, 2010, paragraph (1) shall be applied by substituting "October 1, 2010" for "May 1, 2010".

(3) Special rule for individuals on qualified official extended duty outside the United States

In the case of any individual who serves on qualified official extended duty service (as defined in section 121(d)(9)(C)(i)) outside the United States for at least 90 days during the period beginning after December 31, 2008, and ending before May 1, 2010, and, if married, such individual's spouse—

(A) paragraphs (1) and (2) shall each be applied by substituting "May 1, 2011" for "May 1, 2010", and

(B) paragraph (2) shall be applied by substituting "July 1, 2011" for "July 1, 2010", and for "October 1, 2010".

(Added Pub. L. 110–289, div. C, title I, §3011(a), July 30, 2008, 122 Stat. 2888; amended Pub. L. 111–5, div. B, title I, §1006(a)–(c), (d)(2), (e), Feb. 17, 2009, 123 Stat. 316, 317; Pub. L. 111–92, §§11(a)–(g), 12(a)–(c), Nov. 6, 2009, 123 Stat. 2989–2992; Pub. L. 111–198, §2(a), (b), July 2, 2010, 124 Stat. 1356.)

PRIOR PROVISIONS

A prior section 36 was renumbered section 37 of this title.

Another prior section 36, acts Aug. 16, 1954, ch. 736, 68A Stat. 15; Oct. 4, 1976, Pub. L. 94–455, title V, §501(b)(2), title X, §1011(c), title XIX, §1901(b)(1)(A), 90 Stat. 1558, 1611, 1790, directed that credits provided by section 32 not be allowed if an individual elects under section 144 to take standard deduction, prior to repeal by Pub. L. 95–30, title I, §§101(d)(3), 106(a), May 23, 1977, 91 Stat. 133, 141, applicable to taxable years beginning after Dec. 31, 1976.

AMENDMENTS

2010—Subsec. (h)(2). Pub. L. 111–198, §2(a), substituted "and who purchases such residence before October 1, 2010, paragraph (1) shall be applied by substituting 'October 1, 2010' " for "paragraph (1) shall be

applied by substituting 'July 1, 2010' ".

Subsec. (h)(3)(B). Pub. L. 111–198, §2(b), inserted ", and for 'October 1, 2010' " after "for 'July 1, 2010' ".

2009—Subsec. (b)(1)(A). Pub. L. 111–5, §1006(b)(1), substituted "$8,000" for "$7,500".

Subsec. (b)(1)(B). Pub. L. 111–5, §1006(b), substituted "$4,000" for "$3,750" and "$8,000" for "$7,500".

Subsec. (b)(1)(C). Pub. L. 111–5, §1006(b)(1), substituted "$8,000" for "$7,500".

Subsec. (b)(1)(D). Pub. L. 111–92, §11(c)(1), added subpar. (D).

Subsec. (b)(2)(A)(i)(II). Pub. L. 111–92, §11(c)(2), substituted "$125,000 ($225,000" for "$75,000 ($150,000".

Subsec. (b)(3). Pub. L. 111–92, §11(d), added par. (3).

Subsec. (b)(4). Pub. L. 111–92, §12(a)(1), added par. (4).

Subsec. (c)(3)(A)(i). Pub. L. 111–92, §12(c), inserted "(or, if married, such individual's spouse)" after "person acquiring such property".

Subsec. (c)(6). Pub. L. 111–92, §11(b), added par. (6).

Subsec. (d). Pub. L. 111–5, §1006(d)(2), (e), redesignated pars. (3) and (4) as (1) and (2), respectively, and struck out former pars. (1) and (2) which read as follows:

"(1) a credit under section 1400C (relating to first-time homebuyer in the District of Columbia) is allowable to the taxpayer (or the taxpayer's spouse) for such taxable year or any prior taxable year,

"(2) the residence is financed by the proceeds of a qualified mortgage issue the interest on which is exempt from tax under section 103,".

Subsec. (d)(3). Pub. L. 111–92, §11(g), added par. (3).

Subsec. (d)(4). Pub. L. 111–92, §12(b), added par. (4).

Subsec. (f)(4)(D). Pub. L. 111–92, §11(a)(2), inserted "and 2010" after "2009" in heading and struck out ", and before December 1, 2009" after "December 31, 2008" in introductory provisions.

Pub. L. 111–5, §1006(c)(1), added subpar. (D).

Subsec. (f)(4)(E). Pub. L. 111–92, §11(e), added subpar. (E).

Subsec. (g). Pub. L. 111–92, §12(a)(2), inserted "(b)(4)," before "(c)".

Pub. L. 111–92, §11(a)(3), amended subsec. (g) generally. Prior to amendment, text read as follows: "In the case of a purchase of a principal residence after December 31, 2008, and before December 1, 2009, a taxpayer may elect to treat such purchase as made on December 31, 2008, for purposes of this section (other than subsections (c) and (f)(4)(D))."

Pub. L. 111–5, §1006(a)(2), (c)(2), substituted "December 1, 2009" for "July 1, 2009" and "subsections (c) and (f)(4)(D)" for "subsection (c)".

Subsec. (h). Pub. L. 111–92, §11(a)(1), substituted "May 1, 2010" for "December 1, 2009", designated existing provisions as par. (1), inserted heading, and added par. (2).

Pub. L. 111–5, §1006(a)(1), substituted "December 1, 2009" for "July 1, 2009".

Subsec. (h)(3). Pub. L. 111–92, §11(f), added par. (3).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–198, §2(c), July 2, 2010, 124 Stat. 1356, provided that: "The amendments made by this section [amending this section] shall apply to residences purchased after June 30, 2010."

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–92, §11(j)(1)–(3), Nov. 6, 2009, 123 Stat. 2991, provided that:

"(1) IN GENERAL.—The amendments made by subsections (b), (c), (d), and (g) [amending this section] shall apply to residences purchased after the date of the enactment of this Act [Nov. 6, 2009].

"(2) EXTENSIONS.—The amendments made by subsections (a) [amending this section], (f) [amending this section], and (i) [amending section 1400C of this title] shall apply to residences purchased after November 30, 2009.

"(3) WAIVER OF RECAPTURE.—The amendment made by subsection (e) [amending this section] shall apply to dispositions and cessations after December 31, 2008."

Pub. L. 111–92, §12(e), Nov. 6, 2009, 123 Stat. 2992, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and section 6213 of this title] shall apply to purchases after the date of the enactment of this Act [Nov. 6, 2009].

"(2) DOCUMENTATION REQUIREMENT.—The amendments made by subsection (b) [amending this section] shall apply to returns for taxable years ending after the date of the enactment of this Act [Nov. 6, 2009].

"(3) TREATMENT AS MATHEMATICAL AND CLERICAL ERRORS.—The amendments made by subsection (d) [amending section 6213 of this title] shall apply to returns for taxable years ending on or after

April 9, 2008."

Pub. L. 111–5, div. B, title I, §1006(f), Feb. 17, 2009, 123 Stat. 317, provided that: "The amendments made by this section [amending this section and section 1400C of this title] shall apply to residences purchased after December 31, 2008."

EFFECTIVE DATE

Section applicable to residences purchased on or after Apr. 9, 2008, in taxable years ending on or after such date, see section 3011(c) of Pub. L. 110–289, set out as an Effective Date of 2008 Amendment note under section 26 of this title.

§36A. Making work pay credit

(a) Allowance of credit

In the case of an eligible individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the lesser of—

(1) 6.2 percent of earned income of the taxpayer, or

(2) $400 ($800 in the case of a joint return).

(b) Limitation based on modified adjusted gross income

(1) In general

The amount allowable as a credit under subsection (a) (determined without regard to this paragraph and subsection (c)) for the taxable year shall be reduced (but not below zero) by 2 percent of so much of the taxpayer's modified adjusted gross income as exceeds $75,000 ($150,000 in the case of a joint return).

(2) Modified adjusted gross income

For purposes of subparagraph (A),[1] the term "modified adjusted gross income" means the adjusted gross income of the taxpayer for the taxable year increased by any amount excluded from gross income under section 911, 931, or 933.

(c) Reduction for certain other payments

The credit allowed under subsection (a) for any taxable year shall be reduced by the amount of any payments received by the taxpayer during such taxable year under section 2201, and any credit allowed to the taxpayer under section 2202, of the American Recovery and Reinvestment Tax Act of 2009.

(d) Definitions and special rules

For purposes of this section—

(1) Eligible individual

(A) In general

The term "eligible individual" means any individual other than—

(i) any nonresident alien individual,

(ii) any individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins, and

(iii) an estate or trust.

(B) Identification number requirement

Such term shall not include any individual who does not include on the return of tax for the taxable year—

(i) such individual's social security account number, and

(ii) in the case of a joint return, the social security account number of one of the taxpayers on such return.

For purposes of the preceding sentence, the social security account number shall not include a TIN issued by the Internal Revenue Service.

(2) Earned income

The term "earned income" has the meaning given such term by section 32(c)(2), except that such term shall not include net earnings from self-employment which are not taken into account in computing taxable income. For purposes of the preceding sentence, any amount excluded from gross income by reason of section 112 shall be treated as earned income which is taken into account in computing taxable income for the taxable year.

(e) Termination

This section shall not apply to taxable years beginning after December 31, 2010.

(Added Pub. L. 111–5, div. B, title I, §1001(a), Feb. 17, 2009, 123 Stat. 309.)

REFERENCES IN TEXT

Sections 2201 and 2202 of the American Recovery and Reinvestment Tax Act of 2009, referred to in subsec. (c), are sections 2201 and 2202 of Pub. L. 111–5, which are set out as notes under section 6428 of this title.

EFFECTIVE DATE

Pub. L. 111–5, div. B, title I, §1001(f), Feb. 17, 2009, 123 Stat. 312, provided that: "This section [enacting this section, amending sections 6211 and 6213 of this title and section 1324 of Title 31, Money and Finance, and enacting provisions set out as notes under this section], and the amendments made by this section, shall apply to taxable years beginning after December 31, 2008."

TREATMENT OF POSSESSIONS

Pub. L. 111–5, div. B, title I, §1001(b), Feb. 17, 2009, 123 Stat. 310, provided that:

"(1) PAYMENTS TO POSSESSIONS.—

"(A) MIRROR CODE POSSESSION.—The Secretary of the Treasury shall pay to each possession of the United States with a mirror code tax system amounts equal to the loss to that possession by reason of the amendments made by this section [enacting this section and amending sections 6211 and 6213 of this title and section 1324 of Title 31, Money and Finance] with respect to taxable years beginning in 2009 and 2010. Such amounts shall be determined by the Secretary of the Treasury based on information provided by the government of the respective possession.

"(B) OTHER POSSESSIONS.—The Secretary of the Treasury shall pay to each possession of the United States which does not have a mirror code tax system amounts estimated by the Secretary of the Treasury as being equal to the aggregate benefits that would have been provided to residents of such possession by reason of the amendments made by this section for taxable years beginning in 2009 and 2010 if a mirror code tax system had been in effect in such possession. The preceding sentence shall not apply with respect to any possession of the United States unless such possession has a plan, which has been approved by the Secretary of the Treasury, under which such possession will promptly distribute such payments to the residents of such possession.

"(2) COORDINATION WITH CREDIT ALLOWED AGAINST UNITED STATES INCOME TAXES .—No credit shall be allowed against United States income taxes for any taxable year under section 36A of the Internal Revenue Code of 1986 (as added by this section) to any person—

"(A) to whom a credit is allowed against taxes imposed by the possession by reason of the amendments made by this section for such taxable year, or

"(B) who is eligible for a payment under a plan described in paragraph (1)(B) with respect to such taxable year.

"(3) DEFINITIONS AND SPECIAL RULES.—

"(A) POSSESSION OF THE UNITED STATES.—For purposes of this subsection, the term 'possession of the United States' includes the Commonwealth of Puerto Rico and the Commonwealth of the Northern Mariana Islands.

"(B) MIRROR CODE TAX SYSTEM.—For purposes of this subsection, the term 'mirror code tax system' means, with respect to any possession of the United States, the income tax system of such possession if the income tax liability of the residents of such possession under such system is determined by reference to the income tax laws of the United States as if such possession were the United States.

"(C) TREATMENT OF PAYMENTS.—For purposes of section 1324(b)(2) of title 31, United States

Code, the payments under this subsection shall be treated in the same manner as a refund due from the credit allowed under section 36A of the Internal Revenue Code of 1986 (as added by this section)."

REFUNDS DISREGARDED IN THE ADMINISTRATION OF FEDERAL PROGRAMS AND FEDERALLY ASSISTED PROGRAMS

Pub. L. 111–5, div. B, title I, §1001(c), Feb. 17, 2009, 123 Stat. 311, provided that: "Any credit or refund allowed or made to any individual by reason of section 36A of the Internal Revenue Code of 1986 (as added by this section) or by reason of subsection (b) of this section [set out as a note above] shall not be taken into account as income and shall not be taken into account as resources for the month of receipt and the following 2 months, for purposes of determining the eligibility of such individual or any other individual for benefits or assistance, or the amount or extent of benefits or assistance, under any Federal program or under any State or local program financed in whole or in part with Federal funds."

[1] So in original. Probably should be "paragraph (1),".

§36B. Refundable credit for coverage under a qualified health plan

(a) In general

In the case of an applicable taxpayer, there shall be allowed as a credit against the tax imposed by this subtitle for any taxable year an amount equal to the premium assistance credit amount of the taxpayer for the taxable year.

(b) Premium assistance credit amount

For purposes of this section—

(1) In general

The term "premium assistance credit amount" means, with respect to any taxable year, the sum of the premium assistance amounts determined under paragraph (2) with respect to all coverage months of the taxpayer occurring during the taxable year.

(2) Premium assistance amount

The premium assistance amount determined under this subsection with respect to any coverage month is the amount equal to the lesser of—

(A) the monthly premiums for such month for 1 or more qualified health plans offered in the individual market within a State which cover the taxpayer, the taxpayer's spouse, or any dependent (as defined in section 152) of the taxpayer and which were enrolled in through an Exchange established by the State under 1311 [1] of the Patient Protection and Affordable Care Act, or

(B) the excess (if any) of—

(i) the adjusted monthly premium for such month for the applicable second lowest cost silver plan with respect to the taxpayer, over

(ii) an amount equal to 1/12 of the product of the applicable percentage and the taxpayer's household income for the taxable year.

(3) Other terms and rules relating to premium assistance amounts

For purposes of paragraph (2)—

(A) Applicable percentage

(i) In general

Except as provided in clause (ii), the applicable percentage for any taxable year shall be the percentage such that the applicable percentage for any taxpayer whose household income is within an income tier specified in the following table shall increase, on a sliding scale in a linear manner, from the initial premium percentage to the final premium percentage specified in such table for such income tier:

In the case of household income (expressed as a percent of poverty line) within the following income tier:	The initial premium percentage is—	The final premium percentage is—
Up to 133%	2.0%	2.0%
133% up to 150%	3.0%	4.0%
150% up to 200%	4.0%	6.3%
200% up to 250%	6.3%	8.05%
250% up to 300%	8.05%	9.5%
300% up to 400%	9.5%	9.5%.

(ii) Indexing

(I) In general

Subject to subclause (II), in the case of taxable years beginning in any calendar year after 2014, the initial and final applicable percentages under clause (i) (as in effect for the preceding calendar year after application of this clause) shall be adjusted to reflect the excess of the rate of premium growth for the preceding calendar year over the rate of income growth for the preceding calendar year.

(II) Additional adjustment

Except as provided in subclause (III), in the case of any calendar year after 2018, the percentages described in subclause (I) shall, in addition to the adjustment under subclause (I), be adjusted to reflect the excess (if any) of the rate of premium growth estimated under subclause (I) for the preceding calendar year over the rate of growth in the consumer price index for the preceding calendar year.

(III) Failsafe

Subclause (II) shall apply for any calendar year only if the aggregate amount of premium tax credits under this section and cost-sharing reductions under section 1402 of the Patient Protection and Affordable Care Act for the preceding calendar year exceeds an amount equal to 0.504 percent of the gross domestic product for the preceding calendar year.

(B) Applicable second lowest cost silver plan

The applicable second lowest cost silver plan with respect to any applicable taxpayer is the second lowest cost silver plan of the individual market in the rating area in which the taxpayer resides which—

(i) is offered through the same Exchange through which the qualified health plans taken into account under paragraph (2)(A) were offered, and

(ii) provides—

(I) self-only coverage in the case of an applicable taxpayer—

(aa) whose tax for the taxable year is determined under section 1(c) (relating to unmarried individuals other than surviving spouses and heads of households) and who is not allowed a deduction under section 151 for the taxable year with respect to a dependent, or

(bb) who is not described in item (aa) but who purchases only self-only coverage, and

(II) family coverage in the case of any other applicable taxpayer.

If a taxpayer files a joint return and no credit is allowed under this section with respect to 1 of the spouses by reason of subsection (e), the taxpayer shall be treated as described in clause (ii)(I) unless a deduction is allowed under section 151 for the taxable year with respect to a dependent other than either spouse and subsection (e) does not apply to the dependent.

(C) Adjusted monthly premium

The adjusted monthly premium for an applicable second lowest cost silver plan is the monthly premium which would have been charged (for the rating area with respect to which the premiums under paragraph (2)(A) were determined) for the plan if each individual covered under a qualified health plan taken into account under paragraph (2)(A) were covered by such silver plan and the premium was adjusted only for the age of each such individual in the manner allowed under section 2701 of the Public Health Service Act. In the case of a State participating in the wellness discount demonstration project under section 2705(d) of the Public Health Service Act, the adjusted monthly premium shall be determined without regard to any premium discount or rebate under such project.

(D) Additional benefits

If—

(i) a qualified health plan under section 1302(b)(5) of the Patient Protection and Affordable Care Act offers benefits in addition to the essential health benefits required to be provided by the plan, or

(ii) a State requires a qualified health plan under section 1311(d)(3)(B) of such Act to cover benefits in addition to the essential health benefits required to be provided by the plan,

the portion of the premium for the plan properly allocable (under rules prescribed by the Secretary of Health and Human Services) to such additional benefits shall not be taken into account in determining either the monthly premium or the adjusted monthly premium under paragraph (2).

(E) Special rule for pediatric dental coverage

For purposes of determining the amount of any monthly premium, if an individual enrolls in both a qualified health plan and a plan described in section 1311(d)(2)(B)(ii)(I) [2] of the Patient Protection and Affordable Care Act for any plan year, the portion of the premium for the plan described in such section that (under regulations prescribed by the Secretary) is properly allocable to pediatric dental benefits which are included in the essential health benefits required to be provided by a qualified health plan under section 1302(b)(1)(J) of such Act shall be treated as a premium payable for a qualified health plan.

(c) Definition and rules relating to applicable taxpayers, coverage months, and qualified health plan

For purposes of this section—

(1) Applicable taxpayer

(A) In general

The term "applicable taxpayer" means, with respect to any taxable year, a taxpayer whose household income for the taxable year equals or exceeds 100 percent but does not exceed 400 percent of an amount equal to the poverty line for a family of the size involved.

(B) Special rule for certain individuals lawfully present in the United States

If—

(i) a taxpayer has a household income which is not greater than 100 percent of an amount equal to the poverty line for a family of the size involved, and

(ii) the taxpayer is an alien lawfully present in the United States, but is not eligible for the medicaid program under title XIX of the Social Security Act by reason of such alien status,

the taxpayer shall, for purposes of the credit under this section, be treated as an applicable taxpayer with a household income which is equal to 100 percent of the poverty line for a family of the size involved.

(C) Married couples must file joint return

If the taxpayer is married (within the meaning of section 7703) at the close of the taxable year, the taxpayer shall be treated as an applicable taxpayer only if the taxpayer and the taxpayer's spouse file a joint return for the taxable year.

(D) Denial of credit to dependents

No credit shall be allowed under this section to any individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which such individual's taxable year begins.

(2) Coverage month

For purposes of this subsection—

(A) In general

The term "coverage month" means, with respect to an applicable taxpayer, any month if—

(i) as of the first day of such month the taxpayer, the taxpayer's spouse, or any dependent of the taxpayer is covered by a qualified health plan described in subsection (b)(2)(A) that was enrolled in through an Exchange established by the State under section 1311 of the Patient Protection and Affordable Care Act, and

(ii) the premium for coverage under such plan for such month is paid by the taxpayer (or through advance payment of the credit under subsection (a) under section 1412 of the Patient Protection and Affordable Care Act).

(B) Exception for minimum essential coverage

(i) In general

The term "coverage month" shall not include any month with respect to an individual if for such month the individual is eligible for minimum essential coverage other than eligibility for coverage described in section 5000A(f)(1)(C) (relating to coverage in the individual market).

(ii) Minimum essential coverage

The term "minimum essential coverage" has the meaning given such term by section 5000A(f).

(C) Special rule for employer-sponsored minimum essential coverage

For purposes of subparagraph (B)—

(i) Coverage must be affordable

Except as provided in clause (iii), an employee shall not be treated as eligible for minimum essential coverage if such coverage—

(I) consists of an eligible employer-sponsored plan (as defined in section 5000A(f)(2)), and

(II) the employee's required contribution (within the meaning of section 5000A(e)(1)(B)) with respect to the plan exceeds 9.5 percent of the applicable taxpayer's household income.

This clause shall also apply to an individual who is eligible to enroll in the plan by reason of a relationship the individual bears to the employee.

(ii) Coverage must provide minimum value

Except as provided in clause (iii), an employee shall not be treated as eligible for minimum essential coverage if such coverage consists of an eligible employer-sponsored plan (as defined in section 5000A(f)(2)) and the plan's share of the total allowed costs of benefits provided under the plan is less than 60 percent of such costs.

(iii) Employee or family must not be covered under employer plan

Clauses (i) and (ii) shall not apply if the employee (or any individual described in the last sentence of clause (i)) is covered under the eligible employer-sponsored plan or the grandfathered health plan.

(iv) Indexing

In the case of plan years beginning in any calendar year after 2014, the Secretary shall adjust the 9.5 percent under clause (i)(II) in the same manner as the percentages are adjusted under subsection (b)(3)(A)(ii).

(3) Definitions and other rules

(A) Qualified health plan

The term "qualified health plan" has the meaning given such term by section 1301(a) of the Patient Protection and Affordable Care Act, except that such term shall not include a qualified health plan which is a catastrophic plan described in section 1302(e) of such Act.

(B) Grandfathered health plan

The term "grandfathered health plan" has the meaning given such term by section 1251 of the Patient Protection and Affordable Care Act.

(d) Terms relating to income and families

For purposes of this section—

(1) Family size

The family size involved with respect to any taxpayer shall be equal to the number of individuals for whom the taxpayer is allowed a deduction under section 151 (relating to allowance of deduction for personal exemptions) for the taxable year.

(2) Household income

(A) Household income

The term "household income" means, with respect to any taxpayer, an amount equal to the sum of—

(i) the modified adjusted gross income of the taxpayer, plus

(ii) the aggregate modified adjusted gross incomes of all other individuals who—

(I) were taken into account in determining the taxpayer's family size under paragraph (1), and

(II) were required to file a return of tax imposed by section 1 for the taxable year.

(B) Modified adjusted gross income

The term "modified adjusted gross income" means adjusted gross income increased by—

(i) any amount excluded from gross income under section 911,

(ii) any amount of interest received or accrued by the taxpayer during the taxable year which is exempt from tax, and

(iii) an amount equal to the portion of the taxpayer's social security benefits (as defined in section 86(d)) which is not included in gross income under section 86 for the taxable year.

(3) Poverty line

(A) In general

The term "poverty line" has the meaning given that term in section 2110(c)(5) of the Social Security Act (42 U.S.C. 1397jj(c)(5)).

(B) Poverty line used

In the case of any qualified health plan offered through an Exchange for coverage during a taxable year beginning in a calendar year, the poverty line used shall be the most recently published poverty line as of the 1st day of the regular enrollment period for coverage during such calendar year.

(e) Rules for individuals not lawfully present

(1) In general

If 1 or more individuals for whom a taxpayer is allowed a deduction under section 151 (relating

to allowance of deduction for personal exemptions) for the taxable year (including the taxpayer or his spouse) are individuals who are not lawfully present—

(A) the aggregate amount of premiums otherwise taken into account under clauses (i) and (ii) of subsection (b)(2)(A) shall be reduced by the portion (if any) of such premiums which is attributable to such individuals, and

(B) for purposes of applying this section, the determination as to what percentage a taxpayer's household income bears to the poverty level for a family of the size involved shall be made under one of the following methods:

(i) A method under which—

(I) the taxpayer's family size is determined by not taking such individuals into account, and

(II) the taxpayer's household income is equal to the product of the taxpayer's household income (determined without regard to this subsection) and a fraction—

(aa) the numerator of which is the poverty line for the taxpayer's family size determined after application of subclause (I), and

(bb) the denominator of which is the poverty line for the taxpayer's family size determined without regard to subclause (I).

(ii) A comparable method reaching the same result as the method under clause (i).

(2) Lawfully present

For purposes of this section, an individual shall be treated as lawfully present only if the individual is, and is reasonably expected to be for the entire period of enrollment for which the credit under this section is being claimed, a citizen or national of the United States or an alien lawfully present in the United States.

(3) Secretarial authority

The Secretary of Health and Human Services, in consultation with the Secretary, shall prescribe rules setting forth the methods by which calculations of family size and household income are made for purposes of this subsection. Such rules shall be designed to ensure that the least burden is placed on individuals enrolling in qualified health plans through an Exchange and taxpayers eligible for the credit allowable under this section.

(f) Reconciliation of credit and advance credit

(1) In general

The amount of the credit allowed under this section for any taxable year shall be reduced (but not below zero) by the amount of any advance payment of such credit under section 1412 of the Patient Protection and Affordable Care Act.

(2) Excess advance payments

(A) In general

If the advance payments to a taxpayer under section 1412 of the Patient Protection and Affordable Care Act for a taxable year exceed the credit allowed by this section (determined without regard to paragraph (1)), the tax imposed by this chapter for the taxable year shall be increased by the amount of such excess.

(B) Limitation on increase

(i) In general

In the case of a taxpayer whose household income is less than 400 percent of the poverty line for the size of the family involved for the taxable year, the amount of the increase under subparagraph (A) shall in no event exceed the applicable dollar amount determined in accordance with the following table (one-half of such amount in the case of a taxpayer whose tax is determined under section 1(c) for the taxable year):

If the household income (expressed as a percent of poverty line) is:	The applicable dollar amount is:
Less than 200%	$600
At least 200% but less than 300%	$1,500
At least 300% but less than 400%	$2,500.

(ii) Indexing of amount

In the case of any calendar year beginning after 2014, each of the dollar amounts in the table contained under clause (i) shall be increased by an amount equal to—

(I) such dollar amount, multiplied by

(II) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year, determined by substituting "calendar year 2013" for "calendar year 1992" in subparagraph (B) thereof.

If the amount of any increase under clause (i) is not a multiple of $50, such increase shall be rounded to the next lowest multiple of $50.

(3) Information requirement

Each Exchange (or any person carrying out 1 or more responsibilities of an Exchange under section 1311(f)(3) or 1321(c) of the Patient Protection and Affordable Care Act) shall provide the following information to the Secretary and to the taxpayer with respect to any health plan provided through the Exchange:

(A) The level of coverage described in section 1302(d) of the Patient Protection and Affordable Care Act and the period such coverage was in effect.

(B) The total premium for the coverage without regard to the credit under this section or cost-sharing reductions under section 1402 of such Act.

(C) The aggregate amount of any advance payment of such credit or reductions under section 1412 of such Act.

(D) The name, address, and TIN of the primary insured and the name and TIN of each other individual obtaining coverage under the policy.

(E) Any information provided to the Exchange, including any change of circumstances, necessary to determine eligibility for, and the amount of, such credit.

(F) Information necessary to determine whether a taxpayer has received excess advance payments.

(g) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section, including regulations which provide for—

(1) the coordination of the credit allowed under this section with the program for advance payment of the credit under section 1412 of the Patient Protection and Affordable Care Act, and

(2) the application of subsection (f) where the filing status of the taxpayer for a taxable year is different from such status used for determining the advance payment of the credit.

(Added and amended Pub. L. 111–148, title I, §1401(a), title X, §§10105(a)–(c), 10108(h)(1), Mar. 23, 2010, 124 Stat. 213, 906, 914; Pub. L. 111–152, title I, §§1001(a), 1004(a)(1)(A), (2)(A), (c), Mar. 30, 2010, 124 Stat. 1030, 1034, 1035; Pub. L. 111–309, title II, §208(a), (b), Dec. 15, 2010, 124 Stat. 3291, 3292; Pub. L. 112–9, §4(a), Apr. 14, 2011, 125 Stat. 36; Pub. L. 112–10, div. B, title VIII, §1858(b)(1), Apr. 15, 2011, 125 Stat. 168; Pub. L. 112–56, title IV, §401(a), Nov. 21, 2011, 125 Stat. 734.)

REFERENCES IN TEXT

Sections 1251, 1301, 1302, 1311, 1321, 1402, and 1412 of the Patient Protection and Affordable Care Act, referred to in text, are classified to sections 18011, 18021, 18022, 18031, 18041, 18071, and 18082, respectively, of Title 42, The Public Health and Welfare.

Sections 2701 and 2705(d) of the Public Health Service Act, referred to in subsec. (b)(3)(C), are classified

to sections 300gg and 300gg–4(d), respectively, of Title 42, The Public Health and Welfare. The reference to section 2705(d) probably should be a reference to section 2705(l), which relates to wellness program demonstration project and is classified to section 300gg–4(l) of Title 42.

Section 1311(d)(2)(B)(ii)(I) of the Patient Protection and Affordable Care Act, referred to in subsec. (b)(3)(E), probably means section 1311(d)(2)(B)(ii) of Pub. L. 111–148, which is classified to section 18031(d)(2)(B)(ii) of Title 42, The Public Health and Welfare, and which does not contain subclauses.

The Social Security Act, referred to in subsec. (c)(1)(B)(ii), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Title XIX of the Act is classified generally to subchapter XIX (§1396 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2011—Subsec. (c)(2)(D). Pub. L. 112–10 struck out subpar. (D). Prior to amendment, text read as follows: "The term 'coverage month' shall not include any month in which such individual has a free choice voucher provided under section 10108 of the Patient Protection and Affordable Care Act."

Subsec. (d)(2)(B)(iii). Pub. L. 112–56 added cl. (iii).

Subsec. (f)(2)(B)(i). Pub. L. 112–9 amended cl. (i) generally. Prior to amendment, cl. (i) consisted of text and a table limiting increase in amount recovered on reconciliation of health insurance tax credit and advance of that credit for households with income below 500 percent of Federal poverty line.

2010—Subsec. (b)(3)(A)(i). Pub. L. 111–152, §1001(a)(1)(A), substituted "for any taxable year shall be the percentage such that the applicable percentage for any taxpayer whose household income is within an income tier specified in the following table shall increase, on a sliding scale in a linear manner, from the initial premium percentage to the final premium percentage specified in such table for such income tier:" for "with respect to any taxpayer for any taxable year is equal to 2.8 percent, increased by the number of percentage points (not greater than 7) which bears the same ratio to 7 percentage points as—" in introductory provisions, inserted table, and struck out subcls. (I) and (II) which read as follows:

"(I) the taxpayer's household income for the taxable year in excess of 100 percent of the poverty line for a family of the size involved, bears to

"(II) an amount equal to 200 percent of the poverty line for a family of the size involved."

Subsec. (b)(3)(A)(ii). Pub. L. 111–152, §1001(a)(1)(B), added cl. (ii) and struck out former cl. (ii). Text read as follows: "If a taxpayer's household income for the taxable year equals or exceeds 100 percent, but not more than 133 percent, of the poverty line for a family of the size involved, the taxpayer's applicable percentage shall be 2 percent."

Pub. L. 111–148, §10105(a), substituted "equals or exceeds" for "is in excess of".

Subsec. (b)(3)(A)(iii). Pub. L. 111–152, §1001(a)(1)(B), struck out cl. (iii). Text read as follows: "In the case of taxable years beginning in any calendar year after 2014, the Secretary shall adjust the initial and final applicable percentages under clause (i), and the 2 percent under clause (ii), for the calendar year to reflect the excess of the rate of premium growth between the preceding calendar year and 2013 over the rate of income growth for such period."

Subsec. (c)(1)(A). Pub. L. 111–148, §10105(b), inserted "equals or" before "exceeds".

Subsec. (c)(2)(C)(i)(II). Pub. L. 111–152, §1001(a)(2)(A), substituted "9.5 percent" for "9.8 percent".

Subsec. (c)(2)(C)(iv). Pub. L. 111–152, §1001(a)(2), substituted "9.5 percent" for "9.8 percent" and "(b)(3)(A)(ii)" for "(b)(3)(A)(iii)".

Pub. L. 111–148, §10105(c), substituted "subsection (b)(3)(A)(iii)" for "subsection (b)(3)(A)(ii)".

Subsec. (c)(2)(D). Pub. L. 111–148, §10108(h)(1), added subpar. (D).

Subsec. (d)(2)(A)(i), (ii). Pub. L. 111–152, §1004(a)(1)(A), substituted "modified adjusted gross" for "modified gross".

Subsec. (d)(2)(B). Pub. L. 111–152, §1004(a)(2)(A), amended subpar. (B) generally. Prior to amendment, text read as follows: "The term 'modified gross income' means gross income—

"(i) decreased by the amount of any deduction allowable under paragraph (1), (3), (4), or (10) of section 62(a),

"(ii) increased by the amount of interest received or accrued during the taxable year which is exempt from tax imposed by this chapter, and

"(iii) determined without regard to sections 911, 931, and 933."

Subsec. (f)(2)(B). Pub. L. 111–309, §208(a), amended generally subpar. heading and cl. (i). Prior to amendment, text of cl. (i) read as follows: "In the case of an applicable taxpayer whose household income is

less than 400 percent of the poverty line for the size of the family involved for the taxable year, the amount of the increase under subparagraph (A) shall in no event exceed $400 ($250 in the case of a taxpayer whose tax is determined under section 1(c) for the taxable year)."

Subsec. (f)(2)(B)(ii). Pub. L. 111–309, §208(b), inserted "in the table contained" after "each of the dollar amounts" in introductory provisions.

Subsec. (f)(3). Pub. L. 111–152, §1004(c), added par. (3).

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112–56, title IV, §401(b), Nov. 21, 2011, 125 Stat. 734, provided that: "The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Nov. 21, 2011]."

Pub. L. 112–10, div. B, title VIII, §1858(d), Apr. 15, 2011, 125 Stat. 169, provided that: "The amendments made by this section [amending this section, sections 162, 4980H, and 6056 of this title, and section 218b of Title 29, Labor, and repealing section 139D of this title and section 18101 of Title 42, The Public Health and Welfare] shall take effect as if included in the provisions of, and the amendments made by, the provisions of the Patient Protection and Affordable Care Act [Pub. L. 111–148] to which they relate."

Pub. L. 112–9, §4(b), Apr. 14, 2011, 125 Stat. 37, provided that: "The amendment made by this section [amending this section] shall apply to taxable years ending after December 31, 2013."

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–309, title II, §208(c), Dec. 15, 2010, 124 Stat. 3292, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2013."

Pub. L. 111–148, title X, §10108(h)(2), Mar. 23, 2010, 124 Stat. 914, provided that: "The amendment made by this subsection [amending this section] shall apply to taxable years beginning after December 31, 2013."

EFFECTIVE DATE

Pub. L. 111–148, title I, §1401(e), Mar. 23, 2010, 124 Stat. 220, provided that: "The amendments made by this section [enacting this section and amending sections 280C and 6211 of this title and section 1324 of Title 31, Money and Finance] shall apply to taxable years ending after December 31, 2013."

NO IMPACT ON SOCIAL SECURITY TRUST FUNDS

Pub. L. 112–56, title IV, §401(c), Nov. 21, 2011, 125 Stat. 734, provided that:

"(1) ESTIMATE OF SECRETARY.—The Secretary of the Treasury, or the Secretary's delegate, shall annually estimate the impact that the amendments made by subsection (a) [amending this section] have on the income and balances of the trust funds established under section 201 of the Social Security Act (42 U.S.C. 401).

"(2) TRANSFER OF FUNDS.—If, under paragraph (1), the Secretary of the Treasury or the Secretary's delegate estimates that such amendments have a negative impact on the income and balances of such trust funds, the Secretary shall transfer, not less frequently than quarterly, from the general fund an amount sufficient so as to ensure that the income and balances of such trust funds are not reduced as a result of such amendments."

[1] So in original. Probably should be preceded by "section".

[2] See References in Text note below.

[§36C. Renumbered §23]

§37. Overpayments of tax

For credit against the tax imposed by this subtitle for overpayments of tax, see section 6401.

(Aug. 16, 1954, ch. 736, 68A Stat. 16, §38; renumbered §39, Pub. L. 87–834, §2(a), Oct. 16, 1962, 76 Stat. 962; renumbered §40, Pub. L. 89–44, title VIII, §809(c), June 21, 1965, 79 Stat. 167; renumbered §42, Pub. L. 92–178, title VI, §601(a), Dec. 10, 1971, 85 Stat. 553; renumbered §43, Pub. L. 94–12, title II, §203(a), Mar. 29, 1975, 89 Stat. 29; renumbered §44, Pub. L. 94–12, title II, §204(a), Mar. 29, 1975, 89 Stat. 30; renumbered §45, Pub. L. 94–12, title II, §208(a), Mar. 29, 1975,

89 Stat. 32; renumbered §35, Pub. L. 98–369, div. A, title IV, §471(c), July 18, 1984, 98 Stat. 826; renumbered §36, Pub. L. 107–210, div. A, title II, §201(a), Aug. 6, 2002, 116 Stat. 954; renumbered §37, Pub. L. 110–289, div. C, title I, §3011(a), July 30, 2008, 122 Stat. 2888.)

PRIOR PROVISIONS

A prior section 37 was renumbered section 22 of this title.

SUBPART D—BUSINESS RELATED CREDITS

Sec.

38. General business credit.
39. Carryback and carryforward of unused credits.
40. Alcohol, etc., used as fuel.
40A. Biodiesel and renewable diesel used as fuel.
41. Credit for increasing research activities.
41.[1] Employee stock ownership credit.
42. Low-income housing credit.
43. Enhanced oil recovery credit.
44. Expenditures to provide access to disabled individuals.
[44A–H. Renumbered, Repealed.]
45. Electricity produced from certain renewable resources, etc.
45A. Indian employment credit.
45B. Credit for portion of employer social security taxes paid with respect to employee cash tips.
45C. Clinical testing expenses for certain drugs for rare diseases or conditions.
45D. New markets tax credit.
45E. Small employer pension plan startup costs.
45F. Employer-provided child care credit.
45G. Railroad track maintenance credit.
45H. Credit for production of low sulfur diesel fuel.
45I. Credit for producing oil and gas from marginal wells.
45K.[2] Credit for producing fuel from a nonconventional source.
45J. Credit for production from advanced nuclear power facilities.
45L. New energy efficient home credit.
45M. Energy efficient appliance credit.
45N. Mine rescue team training credit.
45O. Agricultural chemicals security credit.
45P. Employer wage credit for employees who are active duty members of the uniformed services.
45Q. Credit for carbon dioxide sequestration.
45R. Employee health insurance expenses of small employers.

AMENDMENTS

2010—Pub. L. 111–148, title I, §1421(e), Mar. 23, 2010, 124 Stat. 242, added item 45R.

2008—Pub. L. 110–343, div. B, title I, §115(c), Oct. 3, 2008, 122 Stat. 3831, which directed amendment of table of sections for subpart B by adding item 45Q at end, was executed by adding item 45Q at end of table of sections for this subpart to reflect the probable intent of Congress.

Pub. L. 110–245, title I, §111(d), June 17, 2008, 122 Stat. 1635, added item 45P.

Pub. L. 110–234, title XV, §§15321(b)(3)(B), 15343(d), May 22, 2008, 122 Stat. 1513, 1520, and Pub. L. 110–246, title XV, §§15321(b)(3)(B), 15343(d), June 18, 2008, 122 Stat. 2275, 2282, made identical amendments, inserting ", etc.," after "Alcohol" in item 40 and adding item 45O. The amendments by Pub. L. 110–234 were repealed by Pub. L. 110–246, §4(a), June 18, 2008, 122 Stat. 1664.

2006—Pub. L. 109–432, div. A, title IV, §405(d), Dec. 20, 2006, 120 Stat. 2958, added item 45N.

2005—Pub. L. 109–58, title XIII, §§1306(c), 1322(a)(3)(L), 1332(e), 1334(c), 1346(b)(2), Aug. 8, 2005,

119 Stat. 999, 1012, 1026, 1033, 1055, inserted "and renewable diesel" after "Biodiesel" in item 40A and added items 45J to 45M.

2004—Pub. L. 108–357, title II, §245(d), title III, §§302(c)(3), 339(e), 341(d), title VII, §710(b)(3)(B), Oct. 22, 2004, 118 Stat. 1448, 1466, 1484, 1487, 1556, added items 40A and 45G to 45I and inserted ", etc" after "resources" in item 45.

Pub. L. 108–311, title IV, §408(b)(7), Oct. 4, 2004, 118 Stat. 1193, amended directory language of Pub. L. 107–16, §619(c)(3). See 2001 Amendment note below.

2001—Pub. L. 107–16, title VI, §619(c)(3), June 7, 2001, 115 Stat. 110, as amended by Pub. L. 108–311, title IV, §408(b)(7), Oct. 4, 2004, 118 Stat. 1193, added item 45E.

Pub. L. 107–16, title II, §205(b)(2), June 7, 2001, 115 Stat. 53, added item 45F.

2000—Pub. L. 106–554, §1(a)(7) [title I, §121(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–610, added item 45D.

1996—Pub. L. 104–188, title I, §1205(a)(3)(B), Aug. 20, 1996, 110 Stat. 1775, added item 45C.

1993—Pub. L. 103–66, title XIII, §§13322(e), 13443(c), Aug. 10, 1993, 107 Stat. 563, 569, added items 45A and 45B.

1992—Pub. L. 102–486, title XIX, §1914(d), Oct. 24, 1992, 106 Stat. 3023, added item 45.

1990—Pub. L. 101–508, title XI, §§11511(c)(1), 11611(d), Nov. 5, 1990, 104 Stat. 1388–485, 1388–503, added items 43 and 44.

1986—Pub. L. 99–514, title II, §§231(d)(3)(K), 252(d), Oct. 22, 1986, 100 Stat. 2180, 2205, added item 41 relating to credit for increasing research activities and item 42.

1984—Pub. L. 98–369, div. A, title IV, §471(b), July 18, 1984, 98 Stat. 826, added subpart D heading and analysis of sections for subpart D, consisting of items 38 (new), 39 (new), 40 (formerly 44E), and 41 (formerly 44G). Former subpart D was redesignated F.

[1] Section 41 repealed by Pub. L. 99–514 without corresponding amendment of subpart analysis.

[2] So in original. Probably should follow item 45J.

§38. General business credit

(a) Allowance of credit

There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of—

(1) the business credit carryforwards carried to such taxable year,

(2) the amount of the current year business credit, plus

(3) the business credit carrybacks carried to such taxable year.

(b) Current year business credit

For purposes of this subpart, the amount of the current year business credit is the sum of the following credits determined for the taxable year:

(1) the investment credit determined under section 46,

(2) the work opportunity credit determined under section 51(a),

(3) the alcohol fuels credit determined under section 40(a),

(4) the research credit determined under section 41(a),

(5) the low-income housing credit determined under section 42(a),

(6) the enhanced oil recovery credit under section 43(a),

(7) in the case of an eligible small business (as defined in section 44(b)), the disabled access credit determined under section 44(a),

(8) the renewable electricity production credit under section 45(a),

(9) the empowerment zone employment credit determined under section 1396(a),

(10) the Indian employment credit as determined under section 45A(a),

(11) the employer social security credit determined under section 45B(a),

(12) the orphan drug credit determined under section 45C(a),

(13) the new markets tax credit determined under section 45D(a),
(14) in the case of an eligible employer (as defined in section 45E(c)), the small employer pension plan startup cost credit determined under section 45E(a),
(15) the employer-provided child care credit determined under section 45F(a),
(16) the railroad track maintenance credit determined under section 45G(a),
(17) the biodiesel fuels credit determined under section 40A(a),
(18) the low sulfur diesel fuel production credit determined under section 45H(a),
(19) the marginal oil and gas well production credit determined under section 45I(a),
(20) the distilled spirits credit determined under section 5011(a),
(21) the advanced nuclear power facility production credit determined under section 45J(a),
(22) the nonconventional source production credit determined under section 45K(a),
(23) the new energy efficient home credit determined under section 45L(a),
(24) the energy efficient appliance credit determined under section 45M(a),
(25) the portion of the alternative motor vehicle credit to which section 30B(g)(1) applies,
(26) the portion of the alternative fuel vehicle refueling property credit to which section 30C(d)(1) applies,
(27) the Hurricane Katrina housing credit determined under section 1400P(b),
(28) the Hurricane Katrina employee retention credit determined under section 1400R(a),
(29) the Hurricane Rita employee retention credit determined under section 1400R(b),
(30) the Hurricane Wilma employee retention credit determined under section 1400R(c),
(31) the mine rescue team training credit determined under section 45N(a),
(32) in the case of an eligible agricultural business (as defined in section 45O(e)), the agricultural chemicals security credit determined under section 45O(a),
(33) the differential wage payment credit determined under section 45P(a),
(34) the carbon dioxide sequestration credit determined under section 45Q(a) [1]
(35) the portion of the new qualified plug-in electric drive motor vehicle credit to which section 30D(c)(1) applies, plus
(36) the small employer health insurance credit determined under section 45R.

(c) Limitation based on amount of tax

(1) In general

The credit allowed under subsection (a) for any taxable year shall not exceed the excess (if any) of the taxpayer's net income tax over the greater of—
(A) the tentative minimum tax for the taxable year, or
(B) 25 percent of so much of the taxpayer's net regular tax liability as exceeds $25,000.

For purposes of the preceding sentence, the term "net income tax" means the sum of the regular tax liability and the tax imposed by section 55, reduced by the credits allowable under subparts A and B of this part, and the term "net regular tax liability" means the regular tax liability reduced by the sum of the credits allowable under subparts A and B of this part.

(2) Empowerment zone employment credit may offset 25 percent of minimum tax

(A) In general

In the case of the empowerment zone employment credit credit—
(i) this section and section 39 shall be applied separately with respect to such credit, and
(ii) for purposes of applying paragraph (1) to such credit—
(I) 75 percent of the tentative minimum tax shall be substituted for the tentative minimum tax under subparagraph (A) thereof, and
(II) the limitation under paragraph (1) (as modified by subclause (I)) shall be reduced by the credit allowed under subsection (a) for the taxable year (other than the empowerment zone employment credit, the New York Liberty Zone business employee credit, the eligible small business credits, and the specified credits).

(B) Empowerment zone employment credit

For purposes of this paragraph, the term "empowerment zone employment credit" means the portion of the credit under subsection (a) which is attributable to the credit determined under section 1396 (relating to empowerment zone employment credit).

(3) Special rules for New York Liberty Zone business employee credit

(A) In general

In the case of the New York Liberty Zone business employee credit—

(i) this section and section 39 shall be applied separately with respect to such credit, and

(ii) in applying paragraph (1) to such credit—

(I) the tentative minimum tax shall be treated as being zero, and

(II) the limitation under paragraph (1) (as modified by subclause (I)) shall be reduced by the credit allowed under subsection (a) for the taxable year (other than the New York Liberty Zone business employee credit, the eligible small business credits, and the specified credits).

(B) New York Liberty Zone business employee credit

For purposes of this subsection, the term "New York Liberty Zone business employee credit" means the portion of work opportunity credit under section 51 determined under section 1400L(a).

(4) Special rules for specified credits

(A) In general

In the case of specified credits—

(i) this section and section 39 shall be applied separately with respect to such credits, and

(ii) in applying paragraph (1) to such credits—

(I) the tentative minimum tax shall be treated as being zero, and

(II) the limitation under paragraph (1) (as modified by subclause (I)) shall be reduced by the credit allowed under subsection (a) for the taxable year (other than the eligible small business credits and the specified credits).

(B) Specified credits

For purposes of this subsection, the term "specified credits" means—

(i) for taxable years beginning after December 31, 2004, the credit determined under section 40,

(ii) the credit determined under section 42 to the extent attributable to buildings placed in service after December 31, 2007,

(iii) the credit determined under section 45 to the extent that such credit is attributable to electricity or refined coal produced—

(I) at a facility which is originally placed in service after the date of the enactment of this paragraph, and

(II) during the 4-year period beginning on the date that such facility was originally placed in service,

(iv) the credit determined under section 45B,

(v) the credit determined under section 45G,

(vi) the credit determined under section 45R,

(vii) the credit determined under section 46 to the extent that such credit is attributable to the energy credit determined under section 48,

(viii) the credit determined under section 46 to the extent that such credit is attributable to the rehabilitation credit under section 47, but only with respect to qualified rehabilitation expenditures properly taken into account for periods after December 31, 2007, and

(ix) the credit determined under section 51.

(5) Special rules for eligible small business credits in 2010

(A) In general

In the case of eligible small business credits determined in taxable years beginning in 2010—

(i) this section and section 39 shall be applied separately with respect to such credits, and

(ii) in applying paragraph (1) to such credits—

(I) the tentative minimum tax shall be treated as being zero, and

(II) the limitation under paragraph (1) (as modified by subclause (I)) shall be reduced by the credit allowed under subsection (a) for the taxable year (other than the eligible small business credits).

(B) Eligible small business credits

For purposes of this subsection, the term "eligible small business credits" means the sum of the credits listed in subsection (b) which are determined for the taxable year with respect to an eligible small business. Such credits shall not be taken into account under paragraph (2), (3), or (4).

(C) Eligible small business

For purposes of this subsection, the term "eligible small business" means, with respect to any taxable year—

(i) a corporation the stock of which is not publicly traded,

(ii) a partnership, or

(iii) a sole proprietorship,

if the average annual gross receipts of such corporation, partnership, or sole proprietorship for the 3-taxable-year period preceding such taxable year does not exceed $50,000,000. For purposes of applying the test under the preceding sentence, rules similar to the rules of paragraphs (2) and (3) of section 448(c) shall apply.

(D) Treatment of partners and S corporation shareholders

Credits determined with respect to a partnership or S corporation shall not be treated as eligible small business credits by any partner or shareholder unless such partner or shareholder meets the gross receipts test under subparagraph (C) for the taxable year in which such credits are treated as current year business credits.

(6) Special rules

(A) Married individuals

In the case of a husband or wife who files a separate return, the amount specified under subparagraph (B) of paragraph (1) shall be $12,500 in lieu of $25,000. This subparagraph shall not apply if the spouse of the taxpayer has no business credit carryforward or carryback to, and has no current year business credit for, the taxable year of such spouse which ends within or with the taxpayer's taxable year.

(B) Controlled groups

In the case of a controlled group, the $25,000 amount specified under subparagraph (B) of paragraph (1) shall be reduced for each component member of such group by apportioning $25,000 among the component members of such group in such manner as the Secretary shall by regulations prescribe. For purposes of the preceding sentence, the term "controlled group" has the meaning given to such term by section 1563(a).

(C) Limitations with respect to certain persons

In the case of a person described in subparagraph (A) or (B) of section 46(e)(1) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990), the $25,000 amount specified under subparagraph (B) of paragraph (1) shall equal such person's ratable share (as determined under section 46(e)(2) (as so in effect) of such amount.

(D) Estates and trusts

In the case of an estate or trust, the $25,000 amount specified under subparagraph (B) of paragraph (1) shall be reduced to an amount which bears the same ratio to $25,000 as the portion of the income of the estate or trust which is not allocated to beneficiaries bears to the total income of the estate or trust.

(d) Ordering rules

For purposes of any provision of this title where it is necessary to ascertain the extent to which the credits determined under any section referred to in subsection (b) are used in a taxable year or as a carryback or carryforward—

(1) In general

The order in which such credits are used shall be determined on the basis of the order in which they are listed in subsection (b) as of the close of the taxable year in which the credit is used.

(2) Components of investment credit

The order in which the credits listed in section 46 are used shall be determined on the basis of the order in which such credits are listed in section 46 as of the close of the taxable year in which the credit is used.

(3) Credits no longer listed

For purposes of this subsection—

(A) the credit allowable by section 40, as in effect on the day before the date of the enactment of the Tax Reform Act of 1984, (relating to expenses of work incentive programs) and the credit allowable by section 41(a), as in effect on the day before the date of the enactment of the Tax Reform Act of 1986, (relating to employee stock ownership credit) shall be treated as referred to in that order after the last paragraph of subsection (b), and

(B) the credit determined under section 46—

(i) to the extent attributable to the employee plan percentage (as defined in section 46(a)(2)(E) as in effect on the day before the date of the enactment of the Tax Reform Act of 1984) shall be treated as a credit listed after paragraph (1) of section 46, and

(ii) to the extent attributable to the regular percentage (as defined in section 46(b)(1) as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall be treated as the first credit listed in section 46.

(Added and amended Pub. L. 98–369, div. A, title IV, §473, title VI, §612(e)(1), July 18, 1984, 98 Stat. 827, 912; Pub. L. 99–514, title II, §§221(a), 231(d)(1), (3)(B), 252(b), title VII, §701(c)(4), title XI, §1171(b)(1), (2), Oct. 22, 1986, 100 Stat. 2173, 2178, 2179, 2205, 2341, 2513; Pub. L. 100–647, title I, §§1002(e)(8)(A), 1007(g)(2), (8), Nov. 10, 1988, 102 Stat. 3368, 3434, 3435; Pub. L. 101–508, title XI, §§11511(b)(1), 11611(b)(1), 11813(b)(2), Nov. 5, 1990, 104 Stat. 1388–485, 1388–503, 1388–551; Pub. L. 102–486, title XIX, §1914(b), Oct. 24, 1992, 106 Stat. 3023; Pub. L. 103–66, title XIII, §§13302(a)(1), (c)(1), 13322(a), 13443(b)(1), Aug. 10, 1993, 107 Stat. 555, 559, 569; Pub. L. 104–188, title I, §§1201(e)(1), 1205(a)(2), 1702(e)(4), Aug. 20, 1996, 110 Stat. 1772, 1775, 1870; Pub. L. 106–554, §1(a)(7) [title I, §121(b)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–609; Pub. L. 107–16, title II, §205(b)(1), title VI, §619(b), June 7, 2001, 115 Stat. 53, 110; Pub. L. 107–147, title III, §301(b)(1), (2), title IV, §411(d)(2), Mar. 9, 2002, 116 Stat. 39, 46; Pub. L. 108–357, title II, §245(c)(1), title III, §§302(b), 339(b), 341(b), title VII, §711(a), (b), Oct. 22, 2004, 118 Stat. 1448, 1465, 1484, 1487, 1557, 1558; Pub. L. 109–58, title XIII, §§1306(b), 1322(a)(2), 1332(b), 1334(b), 1341(b)(1), 1342(b)(1), Aug. 8, 2005, 119 Stat. 999, 1011, 1026, 1033, 1049, 1051; Pub. L. 109–59, title XI, §§11126(b), 11151(d)(1), Aug. 10, 2005, 119 Stat. 1958, 1968; Pub. L. 109–135, title I, §103(b)(1), title II, §201(b)(1), title IV, §412(f), Dec. 21, 2005, 119 Stat. 2595, 2607, 2637; Pub. L. 109–432, div. A, title IV, §405(b), Dec. 20, 2006, 120 Stat. 2957; Pub. L. 110–28, title VIII, §8214(a), May 25, 2007, 121 Stat. 193; Pub. L. 110–172, §11(a)(6), Dec. 29, 2007, 121 Stat. 2485; Pub. L. 110–234, title XV, §15343(b), May 22, 2008, 122 Stat. 1519; Pub. L. 110–245, title I, §111(b), June 17, 2008, 122 Stat. 1635; Pub. L. 110–246, §4(a), title XV, §15343(b), June 18, 2008, 122 Stat. 1664, 2281; Pub. L. 110–289, div. C, title I, §3022(b), (c), July 30, 2008, 122 Stat. 2894; Pub. L. 110–343, div. B, title I, §§103(b), 115(b), title II, §205(c), div. C,

title III, §316(b), Oct. 3, 2008, 122 Stat. 3811, 3831, 3838, 3872; Pub. L. 111–5, div. B, title I, §1141(b)(2), Feb. 17, 2009, 123 Stat. 328; Pub. L. 111–148, title I, §1421(b), (c), Mar. 23, 2010, 124 Stat. 241, 242; Pub. L. 111–240, title II, §2013(a), (c), Sept. 27, 2010, 124 Stat. 2555.)

REFERENCES IN TEXT

The date of the enactment of this paragraph, referred to in subsec. (c)(4)(B)(iii)(I), is the date of enactment of Pub. L. 108–357, which was approved Oct. 22, 2004.

The date of the enactment of the Revenue Reconciliation Act of 1990, referred to in subsecs. (c)(6)(C) and (d)(3)(B)(ii), is the date of enactment of Pub. L. 101–508, which was approved Nov. 5, 1990.

The date of the enactment of the Tax Reform Act of 1984, referred to in subsec. (d)(3)(A), (B)(i), is the date of enactment of Pub. L. 98–369, which was approved July 18, 1984.

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (d)(3)(A), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

PRIOR PROVISIONS

A prior section 38, added Pub. L. 87–834, §2(a), Oct. 16, 1962, 76 Stat. 962; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, related to investment in certain depreciable property, prior to repeal by Pub. L. 98–369, div. A, title IV, §474(m)(1), July 18, 1984, 98 Stat. 833.

Another prior section 38 was renumbered section 37 of this title.

AMENDMENTS

2010—Subsec. (b)(36). Pub. L. 111–148, §1421(b), added par. (36).

Subsec. (c)(2)(A)(ii)(II). Pub. L. 111–240, §2013(c)(1), inserted "the eligible small business credits," after "the New York Liberty Zone business employee credit,".

Subsec. (c)(3)(A)(ii)(II). Pub. L. 111–240, §2013(c)(2), inserted ", the eligible small business credits," after "the New York Liberty Zone business employee credit".

Subsec. (c)(4)(A)(ii)(II). Pub. L. 111–240, §2013(c)(3), inserted "the eligible small business credits and" before "the specified credits".

Subsec. (c)(4)(B)(vi) to (ix). Pub. L. 111–148, §1421(c), added cl. (vi) and redesignated former cls. (vi) to (viii) as (vii) to (ix), respectively.

Subsec. (c)(5), (6). Pub. L. 111–240, §2013(a), added par. (5) and redesignated former par. (5) as (6).

2009—Subsec. (b)(35). Pub. L. 111–5 substituted "30D(c)(1)" for "30D(d)(1)".

2008—Subsec. (b)(32). Pub. L. 110–246, §15343(b), added par. (32).

Subsec. (b)(33). Pub. L. 110–245 added par. (33).

Subsec. (b)(34). Pub. L. 110–343, §115(b), added par. (34).

Subsec. (b)(35). Pub. L. 110–343, §205(c), added par. (35).

Subsec. (c)(4)(B)(ii) to (iv). Pub. L. 110–289, §3022(b), added cl. (ii) and redesignated former cls. (ii) and (iii) as (iii) and (iv), respectively. Former cl. (iv) redesignated (v).

Subsec. (c)(4)(B)(v). Pub. L. 110–343, §316(b)(2), added cl. (v). Former cl. (v) redesignated (vi).

Pub. L. 110–343, §103(b)(1), added cl. (v). Former cl. (v) redesignated (vi).

Pub. L. 110–289, §3022(c), added cl. (v). Former cl. (v) redesignated (vi).

Pub. L. 110–289, §3022(b), redesignated cl. (iv) as (v).

Subsec. (c)(4)(B)(vi). Pub. L. 110–343, §316(b)(1), redesignated cl. (v) as (vi). Former cl. (vi) redesignated (vii).

Pub. L. 110–343, §103(b)(2), substituted "section 46 to the extent that such credit is attributable to the rehabilitation credit under section 47, but only with respect to" for "section 47 to the extent attributable to".

Pub. L. 110–343, §103(b)(1), which directed amendment of subpar. (B) by "redesignating clause (vi) as clause (vi) and (vii), respectively", was executed by redesignating cls. (v) and (vi) as (vi) and (vii), respectively, to reflect the probable intent of Congress.

Pub. L. 110–289, §3022(c), redesignated cl. (v) as (vi).

Subsec. (c)(4)(B)(vii). Pub. L. 110–343, §316(b)(1), redesignated cl. (vi) as (vii). Former cl. (vii) redesignated (viii).

Pub. L. 110–343, §103(b)(1), which directed amendment of subpar. (B) by "redesignating clause (vi) as clause (vi) and (vii), respectively", was executed by redesignating cls. (v) and (vi) as (vi) and (vii), respectively, to reflect the probable intent of Congress.

Subsec. (c)(4)(B)(viii). Pub. L. 110–343, §316(b)(1), redesignated cl. (vii) as (viii).

2007—Subsec. (b)(8), (24). Pub. L. 110–172, §11(a)(6)(A), struck out "and" at end.

Subsec. (b)(30). Pub. L. 110–172, §11(a)(6)(C), inserted "plus" at end.

Pub. L. 110–172, §11(a)(6)(B), struck out "plus" at end.

Subsec. (c)(4)(B)(iii), (iv). Pub. L. 110–28 added cls. (iii) and (iv).

2006—Subsec. (b)(29) to (31). Pub. L. 109–432 struck out "and" at end of par. (29), substituted ", plus" for period at end of par. (30), and added par. (31).

2005—Subsec. (b)(20). Pub. L. 109–59, §11126(b), added par. (20).

Subsec. (b)(21). Pub. L. 109–58, §1306(b), as amended by Pub. L. 109–59, §11151(d)(1), added par. (21).

Subsec. (b)(22). Pub. L. 109–58, §1322(a)(2), added par. (22).

Subsec. (b)(23). Pub. L. 109–58, §1332(b), added par. (23).

Subsec. (b)(24). Pub. L. 109–58, §1342(b)(1), which directed the striking out of "plus" at end, could not be executed because "plus" did not appear at end.

Pub. L. 109–58, §1334(b), added par. (24).

Subsec. (b)(25). Pub. L. 109–58, §1341(b)(1), added par. (25).

Subsec. (b)(26). Pub. L. 109–58, §1342(b)(1), added par. (26).

Subsec. (b)(27). Pub. L. 109–135, §103(b)(1), added par. (27).

Subsec. (b)(28) to (30). Pub. L. 109–135, §201(b)(1), added pars. (28) to (30).

Subsec. (c)(2)(A)(ii)(II). Pub. L. 109–135, §412(f)(1), substituted ", the New York Liberty Zone business employee credit, and the specified credits" for "or the New York Liberty Zone business employee credit or the specified credits".

Subsec. (c)(3)(A)(ii)(II). Pub. L. 109–135, §412(f)(2), substituted "and the specified credits" for "or the specified credits".

Subsec. (c)(4)(B). Pub. L. 109–135, §412(f)(3), substituted "means" for "includes" in introductory provisions and inserted "and" at end of cl. (i).

2004—Subsec. (b)(16). Pub. L. 108–357, §245(c)(1), added par. (16).

Subsec. (b)(17). Pub. L. 108–357, §302(b), added par. (17).

Subsec. (b)(18). Pub. L. 108–357, §339(b), added par. (18).

Subsec. (b)(19). Pub. L. 108–357, §341(b), added par. (19).

Subsec. (c)(2)(A)(ii)(II), (3)(A)(ii)(II). Pub. L. 108–357, §711(b), inserted "or the specified credits" after "employee credit".

Subsec. (c)(4), (5). Pub. L. 108–357, §711(a), added par. (4) and redesignated former par. (4) as (5).

2002—Subsec. (b)(15). Pub. L. 107–147, §411(d)(2), substituted "45F(a)" for "45F".

Subsec. (c)(2)(A)(ii)(II). Pub. L. 107–147, §301(b)(2), inserted "or the New York Liberty Zone business employee credit" after "employment credit".

Subsec. (c)(3), (4). Pub. L. 107–147, §301(b)(1), added par. (3) and redesignated former par. (3) as (4).

2001—Subsec. (b)(12). Pub. L. 107–16, §619(b), struck out "plus" at end.

Subsec. (b)(13). Pub. L. 107–16, §619(b), substituted ", plus" for period at end.

Pub. L. 107–16, §205(b)(1), struck out "plus" at end.

Subsec. (b)(14). Pub. L. 107–16, §619(b), added par. (14).

Pub. L. 107–16, §205(b)(1), substituted ", plus" for period at end.

Subsec. (b)(15). Pub. L. 107–16, §205(b)(1), added par. (15).

2000—Subsec. (b)(13). Pub. L. 106–554 added par. (13).

1996—Subsec. (b)(2). Pub. L. 104–188, §1201(e)(1), substituted "work opportunity credit" for "targeted jobs credit".

Subsec. (b)(12). Pub. L. 104–188, §1205(a)(2), added par. (12).

Subsec. (c)(2)(C). Pub. L. 104–188, §1702(e)(4), amended subpar. (C), as in effect on day before date of enactment of the Revenue Reconciliation Act of 1990 (title XI of Pub. L. 101–508, approved Nov. 5, 1990), by inserting before period at end of first sentence "and without regard to the deduction under section 56(h)".

1993—Subsec. (b)(7). Pub. L. 103–66, §13302(a)(1), struck out "plus" at end.

Subsec. (b)(8). Pub. L. 103–66, §13322(a), which directed amendment of par. (8) by striking "plus" at end, could not be executed because "plus" did not appear at end.

Pub. L. 103–66, §13302(a)(1), substituted ", and" for period at end.

Subsec. (b)(9). Pub. L. 103–66, §13443(b)(1), struck out "plus" at end.

Pub. L. 103–66, §13322(a), substituted ", plus" for period at end.

Pub. L. 103–66, §13302(a)(1), added par. (9).

Subsec. (b)(10). Pub. L. 103–66, §13443(b)(1), substituted ", plus" for period at end.

Pub. L. 103–66, §13322(a), added par. (10).

Subsec. (b)(11). Pub. L. 103–66, §13443(b)(1), added par. (11).

Subsec. (c)(2), (3). Pub. L. 103–66, §13302(c)(1), added par. (2) and redesignated former par. (2) as (3).

1992—Subsec. (b)(6) to (8). Pub. L. 102–486 struck out "plus" at end of par. (6), substituted "; plus" for period at end of par. (7), and added par. (8).

1990—Subsec. (b)(1). Pub. L. 101–508, §11813(b)(2)(A), substituted "section 46" for "section 46(a)".

Subsec. (b)(4). Pub. L. 101–508, §11511(b)(1), struck out "plus" at end.

Subsec. (b)(5). Pub. L. 101–508, §11611(b)(1), struck out "plus" at end.

Pub. L. 101–508, §11511(b)(1), substituted ", plus" for period at end.

Subsec. (b)(6). Pub. L. 101–508, §11611(b)(1), substituted ", plus" for period at end.

Pub. L. 101–508, §11511(b)(1), added par. (6).

Subsec. (b)(7). Pub. L. 101–508, §11611(b)(1), added par. (7).

Subsec. (c)(2). Pub. L. 101–508, §11813(b)(2)(B), redesignated par. (3) as (2) and struck out former par. (2) which permitted an offset of regular investment tax credit against 25 percent of minimum tax.

Subsec. (c)(2)(C). Pub. L. 101–508, §11813(b)(2)(C), inserted "(as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)" after "46(e)(1)" and "(as so in effect)" after "46(e)(2)".

Subsec. (c)(3). Pub. L. 101–508, §11813(b)(2)(B), redesignated par. (3) as (2).

Subsec. (d). Pub. L. 101–508, §11813(b)(2)(D)(i), substituted "any provision" for "sections 46(f), 47(a), 196(a), and any other provision" in introductory provisions.

Subsec. (d)(2). Pub. L. 101–508, §11813(b)(2)(D)(ii), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "The order in which credits attributable to a percentage referred to in section 46(a) are used shall be determined on the basis of the order in which such percentages are listed in section 46(a) as of the close of the taxable year in which the credit is used."

Subsec. (d)(3)(B). Pub. L. 101–508, §11813(b)(2)(D)(iii), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "the employee plan percentage (as defined in section 46(a)(2)(E), as in effect on the day before the date of the enactment of the Tax Reform Act of 1984) shall be treated as referred to after section 46(a)(2)."

1988—Subsec. (c). Pub. L. 100–647, §1007(g)(2), amended pars. (1) to (3) generally, substituting pars. (1) and (2) for former pars. (1) to (3), redesignating former par. (4) as (3), and substituting "subparagraph (B) of paragraph (1)" for "subparagraphs (A) and (B) of paragraph (1)" in subpars. (A), (B), (C), and (D).

Pub. L. 100–647, §1007(g)(8), made technical correction to directory language of Pub. L. 99–514, §701(c)(4), see 1986 Amendment note below.

Subsec. (d). Pub. L. 100–647, §1002(e)(8)(A), substituted "Ordering rules" for "Special rules for certain regulated companies" in heading and amended text generally. Prior to amendment, text read as follows: "In the case of any taxpayer to which section 46(f) applies, for purposes of sections 46(f), 47(a), and 196(a) and any other provision of this title where it is necessary to ascertain the extent to which the credits determined under section 40(a), 41(a), 42(a), 46(a), or 51(a) are used in a taxable year or as a carryback or carryforward, the order in which such credits are used shall be determined on the basis of the order in which they are listed in subsection (b)."

1986—Subsec. (b)(4). Pub. L. 99–514, §231(d)(1), added par. (4).

Pub. L. 99–514, §1171(b)(1), struck out former par. (4) which read as follows: "the employee stock ownership credit determined under section 41(a)".

Subsec. (b)(5). Pub. L. 99–514, §252(b)(1), added par. (5).

Subsec. (c). Pub. L. 99–514, §701(c)(4), as amended by Pub. L. 100–647, §1007(g)(8), added pars. (1) to (3), redesignated former par. (3) as (4), and struck out former par. (1) "In general" which provided: "The credit allowed under subsection (a) for any taxable year shall not exceed the sum of—

"(A) so much of the taxpayer's net tax liability for the taxable year as does not exceed $25,000, plus

"(B) 75 percent of so much of the taxpayer's net tax liability for the taxable year as exceeds $25,000."

and former par. (2) "Net tax liability", which provided: "For purposes of paragraph (1), the term 'net tax liability' means the tax liability (as defined in section 26(b)), reduced by the sum of the credits allowable under subparts A and B of this part."

Subsec. (c)(1)(B). Pub. L. 99–514, §221(a), substituted "75 percent" for "85 percent".

Subsec. (d). Pub. L. 99–514, §252(b)(2), inserted "42(a),".

Pub. L. 99–514, §1171(b)(2), substituted "and 196(a)" for "196(a), and 404(i)" and struck out "41(a)," after "40(a)".

Pub. L. 99–514, §231(d)(3)(B), inserted "41(a)," after "40(a),".

1984—Subsec. (c)(2). Pub. L. 98–369, §612(e)(1), substituted "section 26(b)" for "section 25(b)".

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–240, title II, §2013(d), Sept. 27, 2010, 124 Stat. 2556, provided that: "The amendments made by subsection (a) [amending this section] shall apply to credits determined in taxable years beginning after December 31, 2009, and to carrybacks of such credits."

Pub. L. 111–148, title I, §1421(f), title X, §10105(e)(4), Mar. 23, 2010, 124 Stat. 242, 907, provided that:

"(1) IN GENERAL.—The amendments made by this section [enacting section 45R of this title and amending this section and sections 196 and 280C of this title] shall apply to amounts paid or incurred in taxable years beginning after December 31, 2009.

"(2) MINIMUM TAX.—The amendments made by subsection (c) [amending this section] shall apply to credits determined under section 45R of the Internal Revenue Code of 1986 in taxable years beginning after December 31, 2009, and to carrybacks of such credits."

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–5 applicable to vehicles acquired after Dec. 31, 2009, see section 1141(c) of Pub. L. 111–5, set out as a note under section 30B of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by section 103(b) of Pub. L. 110–343 applicable to credits determined under section 46 of this title in taxable years beginning after Oct. 3, 2008, and to carrybacks of such credits, see section 103(f)(1), (2) of Pub. L. 110–343, set out as a note under section 48 of this title.

Pub. L. 110–343, div. B, title I, §115(d), Oct. 3, 2008, 122 Stat. 3831, provided that: "The amendments made by this section [enacting section 45Q of this title and amending this section] shall apply to carbon dioxide captured after the date of the enactment of this Act [Oct. 3, 2008]."

Amendment by section 205(c) of Pub. L. 110–343 applicable to taxable years beginning after Dec. 31, 2008, see section 205(e) of Pub. L. 110–343, set out as an Effective and Termination Dates of 2008 Amendment note under section 24 of this title.

Pub. L. 110–343, div. C, title III, §316(c)(2), Oct. 3, 2008, 122 Stat. 3873, provided that: "The amendments made by subsection (b) [amending this section] shall apply to credits determined under section 45G of the Internal Revenue Code of 1986 in taxable years beginning after December 31, 2007, and to carrybacks of such credits."

Pub. L. 110–289, div. C, title I, §3022(d)(2), (3), July 30, 2008, 122 Stat. 2894, provided that:

"(2) LOW INCOME HOUSING CREDIT.—The amendments made by subsection (b) [amending this section] shall apply to credits determined under section 42 of the Internal Revenue Code of 1986 to the extent attributable to buildings placed in service after December 31, 2007.

"(3) REHABILITATION CREDIT.—The amendments made by subsection (c) [amending this section] shall apply to credits determined under section 47 of the Internal Revenue Code of 1986 to the extent attributable to qualified rehabilitation expenditures properly taken into account for periods after December 31, 2007."

Pub. L. 110–245, title I, §111(e), June 17, 2008, 122 Stat. 1635, provided that: "The amendments made by this section [enacting section 45P of this title and amending this section and section 280C of this title] shall apply to amounts paid after the date of the enactment of this Act [June 17, 2008]."

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Pub. L. 110–234, title XV, §15343(e), May 22, 2008, 122 Stat. 1520, and Pub. L. 110–246, §4(a), title XV, §15343(e), June 18, 2008, 122 Stat. 1664, 2282, provided that: "The amendments made by this section [enacting section 45O of this title and amending this section and section 280C of this title] shall apply to amounts paid or incurred after the date of the enactment of this Act [June 18, 2008]."

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

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–28, title VIII, §8214(b), May 25, 2007, 121 Stat. 193, provided that: "The amendments made by this section [amending this section] shall apply to credits determined under sections 45B and 51 of the Internal Revenue Code of 1986 in taxable years beginning after December 31, 2006, and to carrybacks of such credits."

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title IV, §405(e), Dec. 20, 2006, 120 Stat. 2958, provided that: "The amendments

made by this section [enacting section 45N of this title and amending this section and section 280C of this title] shall apply to taxable years beginning after December 31, 2005."

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–59, title XI, §11126(d), Aug. 10, 2005, 119 Stat. 1958, provided that: "The amendments made by this section [enacting section 5011 of this title and amending this section] shall apply to taxable years beginning after September 30, 2005."

Pub. L. 109–59, title XI, §11151(d)(2), Aug. 10, 2005, 119 Stat. 1968, provided that: "If the Energy Policy Act of 2005 [Pub. L. 109–58, see Tables for classification] is enacted before the date of the enactment of this Act [Aug. 10, 2005], for purposes of executing any amendments made by the Energy Policy Act of 2005 to section 38(b) of the Internal Revenue Code of 1986, the amendments made by section 11126(b) of this Act [amending this section] shall be treated as having been executed before such amendments made by the Energy Policy Act of 2005."

Pub. L. 109–59, title XI, §11151(f)(3), Aug. 10, 2005, 119 Stat. 1969, provided that: "The amendments made by subsections (d)(1) and (e)(2) [amending this section and sections 4041 and 6426 of this title] shall take effect as if included in the provision of the Energy Tax Incentives Act of 2005 [Pub. L. 109–58, title XIII] to which they relate."

Pub. L. 109–58, title XIII, §1306(d), Aug. 8, 2005, 119 Stat. 999, provided that: "The amendments made by this section [enacting section 45J of this title and amending this section] shall apply to production in taxable years beginning after the date of the enactment of this Act [Aug. 8, 2005]."

Amendment by section 1322(a)(2) of Pub. L. 109–58 applicable to credits determined under the Internal Revenue Code of 1986 for taxable years ending after Dec. 31, 2005, see section 1322(c)(1) of Pub. L. 109–58, set out as a note under section 45K of this title.

Pub. L. 109–58, title XIII, §1332(f), Aug. 8, 2005, 119 Stat. 1026, provided that: "The amendments made by this section [enacting section 45L of this title and amending this section and sections 196 and 1016 of this title] shall apply to qualified new energy efficient homes acquired after December 31, 2005, in taxable years ending after such date."

Pub. L. 109–58, title XIII, §1334(d), Aug. 8, 2005, 119 Stat. 1033, provided that: "The amendments made by this section [enacting section 45M of this title and amending this section] shall apply to appliances produced after December 31, 2005."

Amendment by section 1341(b)(1) of Pub. L. 109–58 applicable to property placed in service after Dec. 31, 2005, in taxable years ending after such date, see section 1341(c) of Pub. L. 109–58, set out as an Effective Date note under section 30B of this title.

Amendment by section 1342(b)(1) of Pub. L. 109–58 applicable to property placed in service after Dec. 31, 2005, in taxable years ending after such date, see section 1342(c) of Pub. L. 109–58, set out as an Effective Date note under section 30C of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title II, §245(e), Oct. 22, 2004, 118 Stat. 1448, provided that: "The amendments made by this section [enacting section 45G of this title and amending this section and sections 39 and 1016 of this title] shall apply to taxable years beginning after December 31, 2004."

Pub. L. 108–357, title III, §302(d), Oct. 22, 2004, 118 Stat. 1466, provided that: "The amendments made by this section [enacting section 40A of this title and amending this section and sections 87 and 196 of this title] shall apply to fuel produced, and sold or used, after December 31, 2004, in taxable years ending after such date."

Pub. L. 108–357, title III, §339(f), Oct. 22, 2004, 118 Stat. 1485, provided that: "The amendments made by this section [enacting section 45H of this title and amending this section and sections 196, 280C, and 1016 of this title] shall apply to expenses paid or incurred after December 31, 2002, in taxable years ending after such date."

Pub. L. 108–357, title III, §341(e), Oct. 22, 2004, 118 Stat. 1487, provided that: "The amendments made by this section [enacting section 45I of this title and amending this section and section 39 of this title] shall apply to production in taxable years beginning after December 31, 2004."

Pub. L. 108–357, title VII, §711(c), Oct. 22, 2004, 118 Stat. 1558, provided that: "Except as otherwise provided, the amendments made by this section [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Oct. 22, 2004]."

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title III, §301(b)(3), Mar. 9, 2002, 116 Stat. 40, provided that: "The amendments made by this subsection [amending this section] shall apply to taxable years ending after December 31, 2001."

Amendment by section 411(d)(2) of Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–16, title II, §205(c), June 7, 2001, 115 Stat. 53, provided that: "The amendments made by this section [enacting section 45F of this title and amending this section and section 1016 of this title] shall apply to taxable years beginning after December 31, 2001."

Pub. L. 107–16, title VI, §619(d), June 7, 2001, 115 Stat. 110, as amended by Pub. L. 107–147, title IV, §411(n)(2), Mar. 9, 2002, 116 Stat. 48, provided that: "The amendments made by this section [enacting section 45E of this title and amending this section and sections 39 and 196 of this title] shall apply to costs paid or incurred in taxable years beginning after December 31, 2001, with respect to qualified employer plans first effective after such date."

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(7) [title I, §121(e)], Dec. 21, 2000, 114 Stat. 2763, 2763A–610, provided that: "The amendments made by this section [enacting section 45D of this title, amending this section and sections 39 and 196 of this title, and enacting provisions set out as notes under section 45D of this title] shall apply to investments made after December 31, 2000."

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, §1201(g), Aug. 20, 1996, 110 Stat. 1772, provided that: "The amendments made by this section [amending this section and sections 41, 45A, 51, 196, and 1396 of this title] shall apply to individuals who begin work for the employer after September 30, 1996."

Amendment by section 1205(a)(2) of Pub. L. 104–188 applicable to amounts paid or incurred in taxable years ending after June 30, 1996, see section 1205(e) of Pub. L. 104–188, set out as a note under section 45K of this title.

Pub. L. 104–188, title I, §1702(i), Aug. 20, 1996, 110 Stat. 1875, provided that: "Except as otherwise expressly provided, any amendment made by this section [amending this section, sections 50, 56, 59, 143, 151, 168, 172, 179, 243, 280F, 341, 424, 460, 613A, 805, 832, 861, 897, 1248, 1250, 1367, 1504, 2701, 2702, 2704, 4093, 4975, 5041, 5061, 5354, 6038A, 6302, 6416, 6427, 6501, 6503, 6621, 6724, and 7012 of this title, and provisions set out as a note under section 42 of this title] shall take effect as if included in the provision of the Revenue Reconciliation Act of 1990 [Pub. L. 101–508, title XI] to which such amendment relates."

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13303, Aug. 10, 1993, 107 Stat. 556, provided that: "The amendments made by this part [part I (§§13301–13303) of subchapter C of chapter 1 of title XIII of Pub. L. 103–66, enacting sections 1391 to 1394 and 1396 to 1397D of this title and amending this section and sections 39, 51, 196, 280C, and 381 of this title] shall take effect on the date of the enactment of this Act [Aug. 10, 1993]."

Pub. L. 103–66, title XIII, §13322(f), Aug. 10, 1993, 107 Stat. 563, provided that: "The amendments made by this section [enacting section 45A of this title and amending this section and sections 39, 196, and 280C of this title] shall apply to wages paid or incurred after December 31, 1993."

Pub. L. 103–66, title XIII, §13443(d), Aug. 10, 1993, 107 Stat. 569, as amended by Pub. L. 104–188, title I, §1112(a)(2), Aug. 20, 1996, 110 Stat. 1759, provided that: "The amendments made by this section [enacting section 45B of this title and amending this section and section 39 of this title] shall apply with respect to taxes paid after December 31, 1993, with respect to services performed before, on, or after such date."

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–486, title XIX, §1914(e), Oct. 24, 1992, 106 Stat. 3023, provided that: "The amendments made by this section [enacting section 45 of this title and amending this section and section 39 of this title] shall apply to taxable years ending after December 31, 1992."

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11511(b)(1) of Pub. L. 101–508 applicable to costs paid or incurred in taxable years beginning after Dec. 31, 1990, see section 11511(d)(1) of Pub. L. 101–508, set out as an Effective Date note under section 43 of this title.

Pub. L. 101–508, title XI, §11611(e), Nov. 5, 1990, 104 Stat. 1388–503, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting section 44 of this title and amending this section and sections 39 and 190 of this title] shall apply to

expenditures paid or incurred after the date of the enactment of this Act [Nov. 5, 1990].

"(2) SUBSECTION (c).—The amendment made by subsection (c) [amending section 190 of this title] shall apply to taxable years beginning after the date of the enactment of this Act."

Amendment by section 11813(b)(2) of Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1002(e)(8)(C), Nov. 10, 1988, 102 Stat. 3369, provided that: "The amendments made by this paragraph [amending this section and section 49 of this title] shall apply to taxable years beginning after December 31, 1983, and to carrybacks from such years."

Amendment by section 1007(g)(2), (8) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title II, §221(b), Oct. 22, 1986, 100 Stat. 2173, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1985."

Amendment by section 231(d)(1), (3)(B) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1985, see section 231(g) of Pub. L. 99–514, set out as a note under section 41 of this title.

Amendment by section 252(b) of Pub. L. 99–514 applicable to buildings placed in service after Dec. 31, 1986, in taxable years ending after such date, see section 252(e) of Pub. L. 99–514, set out as an Effective Date note under section 42 of this title.

Amendment by section 701(c)(4) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date note under section 55 of this title.

Pub. L. 99–514, title XI, §1171(c), Oct. 22, 1986, 100 Stat. 2513, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 56, 108, 401, and 404 of this title and repealing sections 41 and 6699 of this title] shall apply to compensation paid or accrued after December 31, 1986, in taxable years ending after such date.

"(2) SECTIONS 404(i) AND 6699 TO CONTINUE TO APPLY TO PRE-1987 CREDITS.—The provisions of sections 404(i) and 6699 of the Internal Revenue Code of 1986 shall continue to apply with respect to credits under section 41 of such Code attributable to compensation paid or accrued before January 1, 1987 (or under section 38 of such Code with respect to qualified investment before January 1, 1983)."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to interest paid or accrued after December 31, 1984, on indebtedness incurred after December 31, 1984, see section 612(g) of Pub. L. 98–369, set out as an Effective Date note under section 25 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as an Effective Date of 1984 Amendment note under section 21 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by section 11813(b)(2) of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

BUSINESS CREDIT FOR RETENTION OF CERTAIN NEWLY HIRED INDIVIDUALS IN 2010

Pub. L. 111–147, title I, §102, Mar. 18, 2010, 124 Stat. 75, provided that:

"(a) IN GENERAL.—In the case of any taxable year ending after the date of the enactment of this Act [Mar. 18, 2010], the current year business credit determined under section 38(b) of the Internal Revenue Code of 1986 for such taxable year shall be increased, with respect to each retained worker with respect to which

subsection (b)(2) is first satisfied during such taxable year, by the lesser of—

"(1) $1,000, or

"(2) 6.2 percent of the wages (as defined in section 3401(a) [probably means section 3401(a) of the Internal Revenue Code of 1986]) paid by the taxpayer to such retained worker during the 52 consecutive week period referred to in subsection (b)(2).

"(b) RETAINED WORKER.—For purposes of this section, the term 'retained worker' means any qualified individual (as defined in section 3111(d)(3) or section 3221(c)(3) of the Internal Revenue Code of 1986)—

"(1) who was employed by the taxpayer on any date during the taxable year,

"(2) who was so employed by the taxpayer for a period of not less than 52 consecutive weeks, and

"(3) whose wages (as defined in section 3401(a) [probably means section 3401(a) of the Internal Revenue Code of 1986]) for such employment during the last 26 weeks of such period equaled at least 80 percent of such wages for the first 26 weeks of such period.

"(c) LIMITATION ON CARRYBACKS.—No portion of the unused business credit under section 38 of the Internal Revenue Code of 1986 for any taxable year which is attributable to the increase in the current year business credit under this section may be carried to a taxable year beginning before the date of the enactment of this section [Mar. 18, 2010].

"(d) TREATMENT OF POSSESSIONS.—

"(1) PAYMENTS TO POSSESSIONS.—

"(A) MIRROR CODE POSSESSIONS.—The Secretary of the Treasury shall pay to each possession of the United States with a mirror code tax system amounts equal to the loss to that possession by reason of the application of this section (other than this subsection). Such amounts shall be determined by the Secretary of the Treasury based on information provided by the government of the respective possession.

"(B) OTHER POSSESSIONS.—The Secretary of the Treasury shall pay to each possession of the United States which does not have a mirror code tax system amounts estimated by the Secretary of the Treasury as being equal to the aggregate benefits that would have been provided to residents of such possession by reason of the application of this section (other than this subsection) if a mirror code tax system had been in effect in such possession. The preceding sentence shall not apply with respect to any possession of the United States unless such possession has a plan, which has been approved by the Secretary of the Treasury, under which such possession will promptly distribute such payments to the residents of such possession.

"(2) COORDINATION WITH CREDIT ALLOWED AGAINST UNITED STATES INCOME TAXES.—No increase in the credit determined under section 38(b) of the Internal Revenue Code of 1986 against United States income taxes for any taxable year determined under subsection (a) shall be taken into account with respect to any person—

"(A) to whom a credit is allowed against taxes imposed by the possession by reason of this section for such taxable year, or

"(B) who is eligible for a payment under a plan described in paragraph (1)(B) with respect to such taxable year.

"(3) DEFINITIONS AND SPECIAL RULES.—

"(A) POSSESSION OF THE UNITED STATES.—For purposes of this subsection, the term 'possession of the United States' includes the Commonwealth of Puerto Rico and the Commonwealth of the Northern Mariana Islands.

"(B) MIRROR CODE TAX SYSTEM.—For purposes of this subsection, the term 'mirror code tax system' means, with respect to any possession of the United States, the income tax system of such possession if the income tax liability of the residents of such possession under such system is determined by reference to the income tax laws of the United States as if such possession were the United States.

"(C) TREATMENT OF PAYMENTS.—For purposes of section 1324(b)(2) of title 31, United States Code, rules similar to the rules of section 1001(b)(3)(C) of the American Recovery and Reinvestment Tax Act of 2009 [section 1001(b)(3)(C) of Pub. L. 111–5, set out as a note under section 36A of this title] shall apply."

CREDIT FOR CONTRIBUTIONS TO CERTAIN COMMUNITY DEVELOPMENT CORPORATIONS

Pub. L. 103–66, title XIII, §13311, Aug. 10, 1993, 107 Stat. 556, as amended by Pub. L. 104–188, title I, §1703(n)(13), Aug. 20, 1996, 110 Stat. 1877, provided that:

"(a) IN GENERAL.—For purposes of section 38 of the Internal Revenue Code of 1986, the current year business credit shall include the credit determined under this section.

"(b) DETERMINATION OF CREDIT.—The credit determined under this section for each taxable year in the credit period with respect to any qualified CDC contribution made by the taxpayer is an amount equal to 5 percent of such contribution.

"(c) CREDIT PERIOD.—For purposes of this section, the credit period with respect to any qualified CDC contribution is the period of 10 taxable years beginning with the taxable year during which such contribution was made.

"(d) QUALIFIED CDC CONTRIBUTION.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified CDC contribution' means any transfer of cash—

"(A) which is made to a selected community development corporation during the 5-year period beginning on the date such corporation was selected for purposes of this section,

"(B) the amount of which is available for use by such corporation for at least 10 years,

"(C) which is to be used by such corporation for qualified low-income assistance within its operational area, and

"(D) which is designated by such corporation for purposes of this section.

"(2) LIMITATIONS ON AMOUNT DESIGNATED.—The aggregate amount of contributions to a selected community development corporation which may be designated by such corporation shall not exceed $2,000,000.

"(e) SELECTED COMMUNITY DEVELOPMENT CORPORATIONS.—

"(1) IN GENERAL.—For purposes of this section, the term 'selected community development corporation' means any corporation—

"(A) which is described in section 501(c)(3) of such Code and exempt from tax under section 501(a) of such Code,

"(B) the principal purposes of which include promoting employment of, and business opportunities for, low-income individuals who are residents of the operational area, and

"(C) which is selected by the Secretary of Housing and Urban Development for purposes of this section.

"(2) ONLY 20 CORPORATIONS MAY BE SELECTED.—The Secretary of Housing and Urban Development may select 20 corporations for purposes of this section, subject to the availability of eligible corporations. Such selections may be made only before July 1, 1994. At least 8 of the operational areas of the corporations selected must be rural areas (as defined by section 1393(a)(2) of such Code).

"(3) OPERATIONAL AREAS MUST HAVE CERTAIN CHARACTERISTICS.—A corporation may be selected for purposes of this section only if its operational area meets the following criteria:

"(A) The area meets the size requirements under section 1392(a)(3).

"(B) The unemployment rate (as determined by the appropriate available data) is not less than the national unemployment rate.

"(C) The median family income of residents of such area does not exceed 80 percent of the median gross income of residents of the jurisdiction of the local government which includes such area.

"(f) QUALIFIED LOW-INCOME ASSISTANCE.—For purposes of this section, the term 'qualified low-income assistance' means assistance—

"(1) which is designed to provide employment of, and business opportunities for, low-income individuals who are residents of the operational area of the community development corporation, and

"(2) which is approved by the Secretary of Housing and Urban Development."

APPLICABILITY OF CERTAIN AMENDMENTS BY PUBLIC LAW 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(c)(4) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

EFFECTIVE 15-YEAR CARRYBACK OF EXISTING CARRYFORWARDS OF STEEL COMPANIES

Pub. L. 99–514, title II, §212, Oct. 22, 1986, 100 Stat. 2170, as amended by Pub. L. 100–647, title I, §1002(f), Nov. 10, 1988, 102 Stat. 3369, provided that:

"(a) GENERAL RULE.—If a qualified corporation makes an election under this section for its 1st taxable year beginning after December 31, 1986, with respect to any portion of its existing carryforwards, the amount determined under subsection (b) shall be treated as a payment against the tax imposed by chapter 1 of the

Internal Revenue Code of 1986 made by such corporation on the last day prescribed by law (without regard to extensions) for filing its return of tax under chapter 1 of such Code for such 1st taxable year.

"(b) AMOUNT.—For purposes of subsection (a), the amount determined under this subsection shall be the lesser of—

"(1) 50 percent of the portion of the corporation's existing carryforwards to which the election under subsection (a) applies, or

"(2) the corporation's net tax liability for the carryback period.

"(c) CORPORATION MAKING ELECTION MAY NOT USE SAME AMOUNTS UNDER SECTION 38.—In the case of a qualified corporation which makes an election under subsection (a), the portion of such corporation's existing carryforwards to which such an election applies shall not be taken into account under section 38 of the Internal Revenue Code of 1986 for any taxable year beginning after December 31, 1986.

"(d) NET TAX LIABILITY FOR CARRYBACK PERIOD.—For purposes of this section—

"(1) IN GENERAL.—A corporation's net tax liability for the carryback period is the aggregate of such corporation's net tax liability for taxable years in the carryback period.

"(2) NET TAX LIABILITY.—The term 'net tax liability' means, with respect to any taxable year, the amount of the tax imposed by chapter 1 of the Internal Revenue Code of 1954 [now 1986] for such taxable year, reduced by the sum of the credits allowable under part IV of subchapter A of such chapter 1 (other than section 34 thereof). For purposes of the preceding sentence, any tax treated as not imposed by chapter 1 of such Code under section 26(b)(2) of such Code shall not be treated as tax imposed by such chapter 1.

"(3) CARRYBACK PERIOD.—The term 'carryback period' means the period—

"(A) which begins with the corporation's 15th taxable year preceding the 1st taxable year from which there is an unused credit included in such corporation's existing carryforwards (but in no event shall such period begin before the corporation's 1st taxable year ending after December 31, 1961), and

"(B) which ends with the corporation's last taxable year beginning before January 1, 1986.

"(e) NO RECOMPUTATION OF MINIMUM TAX, ETC.—Nothing in this section shall be construed to affect—

"(1) the amount of the tax imposed by section 56 of the Internal Revenue Code of 1986, or

"(2) the amount of any credit allowable under such Code,

for any taxable year in the carryback period.

"(f) REINVESTMENT REQUIREMENT.—

"(1) IN GENERAL.—Any amount determined under this section must be committed to reinvestment in, and modernization of the steel industry through investment in modern plant and equipment, research and development, and other appropriate projects, such as working capital for steel operations and programs for the retraining of steel workers.

"(2) SPECIAL RULE.—In the case of the LTV Corporation, in lieu of the requirements of paragraph (1)—

"(A) such corporation shall place such refund in a separate account; and

"(B) amounts in such separate account—

"(i) shall only be used by the corporation—

"(I) to purchase an insurance policy which provides that, in the event the corporation becomes involved in a title 11 or similar case (as defined in section 368(a)(3)(A) of the Internal Revenue Code of 1954 [now 1986]), the insurer will provide life and health insurance coverage during the 1-year period beginning on the date when the corporation receives the refund to any individual with respect to whom the corporation would (but for such involvement) have been obligated to provide such coverage the coverage provided by the insurer will be identical to the coverage which the corporation would (but for such involvement) have been obligated to provide, and provides that the payment of insurance premiums will not be required during such 1-year period to keep such policy in force, or

"(II) directly in connection with the trade or business of the corporation in the manufacturer or production of steel; and

"(ii) shall be used (or obligated) for purposes described in clause (i) not later than 3 months after the corporation receives the refund.

"(3) In the case of a qualified corporation, no offset to any refund under this section may be made by reason of any tax imposed by section 4971 of the Internal Revenue Code of 1986 (or any interest or penalty attributable to any such tax), and the date on which any such refund is to be paid shall be determined without regard to such corporation's status under title 11, United States Code.

"(g) DEFINITIONS.—For purposes of this section—

"(1) QUALIFIED CORPORATION.—

"(A) IN GENERAL.—The term 'qualified corporation' means any corporation which is described in section 806(b) of the Steel Import Stabilization Act [19 U.S.C. 2253 note] and a company which was incorporated on February 11, 1983, in Michigan.

"(B) CERTAIN PREDECESSORS INCLUDED.—In the case of any qualified corporation which has carryforward attributable to a predecessor corporation described in such section 806(b), the qualified corporation and the predecessor corporation shall be treated as 1 corporation for purposes of subsections (d) and (e).

"(2) EXISTING CARRYFORWARDS.—The term 'existing carryforward' means the aggregate of the amounts which—

"(A) are unused business credit carryforwards to the taxpayer's 1st taxable year beginning after December 31, 1986 (determined without regard to the limitations of section 38(c) and any reduction under section 49 of the Internal Revenue Code of 1986), and

"(B) are attributable to the amount of the regular investment credit determined for periods before January 1, 1986, under section 46(a)(1) of such Code (relating to regular percentage), or any corresponding provision of prior law, determined on the basis that the regular investment credit was used first.

"(3) SPECIAL RULE FOR RESTRUCTURING.—In the case of any corporation, any restructuring shall not limit, increase, or otherwise affect the benefits which would have been available under this section but for such restructuring.

"(h) TENTATIVE REFUNDS.—Rules similar to the rules of section 6425 of the Internal Revenue Code of 1986 shall apply to any overpayment resulting from the application of this section."

EFFECTIVE 15-YEAR CARRYBACK OF EXISTING CARRYFORWARDS OF QUALIFIED FARMERS

Pub. L. 99–514, title II, §213, Oct. 22, 1986, 100 Stat. 2172, as amended by Pub. L. 100–647, title I, §1002(g), Nov. 10, 1988, 102 Stat. 3369, provided that:

"(a) GENERAL RULE.—If a taxpayer who is a qualified farmer makes an election under this section for its 1st taxable year beginning after December 31, 1986, with respect to any portion of its existing carryforwards, the amount determined under subsection (b) shall be treated as a payment against the tax imposed by chapter 1 of the Internal Revenue Code of 1986 made by such taxpayer on the last day prescribed by law (without regard to extensions) for filing its return of tax under chapter 1 of such Code for such 1st taxable year.

"(b) AMOUNT.—For purposes of subsection (a), the amount determined under this subsection shall be equal to the smallest of—

"(1) 50 percent of the portion of the taxpayer's existing carryforwards to which the election under subsection (a) applies,

"(2) the taxpayer's net tax liability for the carryback period (within the meaning of section 212(d) of this Act [set out as a note above]), or

"(3) $750.

"(c) TAXPAYER MAKING ELECTION MAY NOT USE SAME AMOUNTS UNDER SECTION 38.—In the case of a qualified farmer who makes an election under subsection (a), the portion of such farmer's existing carryforwards to which such an election applies shall not be taken into account under section 38 of the Internal Revenue Code of 1986 for any taxable year beginning after December 31, 1986.

"(d) NO RECOMPUTATION OF MINIMUM TAX, ETC.—Nothing in this section shall be construed to affect—

"(1) the amount of the tax imposed by section 56 of the Internal Revenue Code of 1954 [now 1986], or

"(2) the amount of any credit allowable under such Code,

for any taxable year in the carryback period (within the meaning of section 212(d)(3) of this Act [set out as a note above]).

"(e) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) QUALIFIED FARMER.—The term 'qualified farmer' means any taxpayer who, during the 3-taxable year period preceding the taxable year for which an election is made under subsection (a), derived 50 percent or more of the taxpayer's gross income from the trade or business of farming.

"(2) EXISTING CARRYFORWARD.—The term 'existing carryforward' means the aggregate of the amounts which—

"(A) are unused business credit carryforwards to the taxpayer's 1st taxable year beginning after December 31, 1986 (determined without regard to the limitations of section 38(c) of the Internal Revenue Code of 1986), and

"(B) are attributable to the amount of the investment credit determined for periods before January

1, 1986, under section 46(a) of such Code (or any corresponding provision of prior law) with respect to section 38 property which was used by the taxpayer in the trade or business of farming, determined on the basis that such credit was used first.

"(3) FARMING.—The term 'farming' has the meaning given such term by section 2032A(e)(4) and (5) of such Code."

TREATMENT OF INVESTMENT TAX CREDITS WITH RESPECT TO CERTAIN PUBLIC UTILITIES

For provisions requiring different applications of subsec. (c) of this section to certain public utilities by making substitutions in the percentages of the tentative minimum tax referred to in subsec. (c)(3)(A)(ii), (B), under certain circumstances, see section 701(f)(6) of Pub. L. 99–514, set out as an Effective Date note under section 55 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TRANSITION RULES

Pub. L. 99–514, title XI, §1177, Oct. 22, 1986, 100 Stat. 2520, as amended by Pub. L. 100–647, title I, §1011B(l)(1), (2), Nov. 10, 1988, 102 Stat. 3493, provided that:

"(a) SECTION 1171.—The amendments made by section 1171 [amending this section and sections 56, 108, 401, and 404 of this title and repealing sections 41 and 6699 of this title] shall not apply in the case of a tax credit employee stock ownership plan if—

"(1) such plan was favorably approved on September 23, 1983, by employees, and

"(2) not later than January 11, 1984, the employer of such employees was 100 percent owned by such plan.

"(b) SUBTITLE NOT TO APPLY TO CERTAIN NEWSPAPER.—The amendments made by section 1175 [amending section 401 of this title] shall not apply to any daily newspaper—

"(1) which was first published on December 17, 1855, and which began publication under its current name in 1954, and

"(2) which is published in a constitutional home rule city (within the meaning of section 146(d)(3)(C) of the Internal Revenue Code of 1986) which has a population of less than 2,500,000."

Pub. L. 100–647, title I, §1011B(l)(3), Nov. 10, 1988, 102 Stat. 3493, provided that: "If any newspaper corporation described in section 1177(b) of the Reform Act [section 1177(b) of Pub. L. 99–514, set out above], as amended by this subsection, pays in cash a dividend within 60 days after the date of the enactment of this Act [Nov. 10, 1988] to the corporation's employee stock ownership plans and if a corporate resolution declaring such dividend was adopted before November 30, 1987, and such resolution specifies that such dividend shall be contingent upon passage by the Congress of technical corrections, then such dividend (to the extent the aggregate amount so paid does not exceed $3,500,000) shall be treated as if it had been declared and paid in 1987 for all purposes of the Internal Revenue Code of 1986."

ACCOUNTING FOR INVESTMENT CREDIT IN CERTAIN FINANCIAL REPORTS AND REPORTS TO FEDERAL AGENCIES

Pub. L. 92–178, title I, §101(c), Dec. 10, 1971, 85 Stat. 499, as amended by Pub. L. 98–369, div. A, title IV, §450(a), July 18, 1984, 98 Stat. 818; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—It was the intent of Congress in enacting, in the Revenue Act of 1962 [see Short Title of 1962 Amendment note set out under section 1 of this title], the investment credit allowed by section 38 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], and it is the intent of the Congress in restoring that credit in this Act [section 50 of this title], to provide an incentive for modernization and growth of private industry. Accordingly, notwithstanding any other provision of law, on and after the date of the enactment of this Act [Dec. 10, 1971]—

"(A) no taxpayer shall be required to use, for purposes of financial reports subject to the jurisdiction of any Federal agency or reports made to any Federal agency, any particular method of accounting for the credit allowed by such section 38 [this section], and

"(B) a taxpayer shall disclose, in any such report, the method of accounting for such credit used by him for purposes of such report.

"(2) EXCEPTIONS.—Paragraph (1) shall not apply to taxpayers who are subject to the provisions of

section 46(e) of the Internal Revenue Code of 1986 (as added by section 105(c) of this Act) or to section 203(e) of the Revenue Act of 1964 (as modified by section 105(e) of this Act) [set out as note below]."

[Pub. L. 98–369, div. A, title IV, §450(b), July 18, 1984, 98 Stat. 818, provided that: "The amendments made by this section [amending this note] shall take effect as if included in the Revenue Act of 1971."]

TREATMENT OF INVESTMENT CREDIT BY FEDERAL REGULATORY AGENCIES

Pub. L. 88–272, title II, §203(e), Feb. 26, 1964, 78 Stat. 35, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "It was the intent of the Congress in providing an investment credit under section 38 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] and it is the intent of the Congress in repealing the reduction in basis required by section 48(g) of such Code to provide an incentive for modernization and growth of private industry (including that portion thereof which is regulated). Accordingly, Congress does not intend that any agency or instrumentality of the United States having jurisdiction with respect to a taxpayer shall, without the consent of the taxpayer, use—

"(1) in the case of public utility property (as defined in section 46(c)(3)(B) of the Internal Revenue Code of 1986, more than a proportionate part (determined with reference to the average useful life of the property with respect to which the credit was allowed) of the credit against tax allowed for any taxable year by section 38 of such Code, or

"(2) in the case of any other property, any credit against tax allowed by section 38 of such Code,

to reduce such taxpayer's Federal income taxes for the purpose of establishing the cost of service of the taxpayer or to accomplish a similar result by any other method."

Section 203(e) of Pub. L. 88–272, not applicable to public utility property to which section 46(e) of this title applies, see section 105(e) of Pub. L. 92–178, set out as a note under section 46 of this title.

[1] *So in original. Probably should be followed by a comma.*

§39. Carryback and carryforward of unused credits

(a) In general

(1) 1-year carryback and 20-year carryforward

If the sum of the business credit carryforwards to the taxable year plus the amount of the current year business credit for the taxable year exceeds the amount of the limitation imposed by subsection (c) of section 38 for such taxable year (hereinafter in this section referred to as the "unused credit year"), such excess (to the extent attributable to the amount of the current year business credit) shall be—

(A) a business credit carryback to the taxable year preceding the unused credit year, and

(B) a business credit carryforward to each of the 20 taxable years following the unused credit year,

and, subject to the limitations imposed by subsections (b) and (c), shall be taken into account under the provisions of section 38(a) in the manner provided in section 38(a).

(2) Amount carried to each year

(A) Entire amount carried to first year

The entire amount of the unused credit for an unused credit year shall be carried to the earliest of the 21 taxable years to which (by reason of paragraph (1)) such credit may be carried.

(B) Amount carried to other 20 years

The amount of the unused credit for the unused credit year shall be carried to each of the other 20 taxable years to the extent that such unused credit may not be taken into account under section 38(a) for a prior taxable year because of the limitations of subsections (b) and (c).

(3) 5-year carryback for marginal oil and gas well production credit

Notwithstanding subsection (d), in the case of the marginal oil and gas well production credit—

(A) this section shall be applied separately from the business credit (other than the marginal

oil and gas well production credit) or the eligible small business credits,

(B) paragraph (1) shall be applied by substituting "each of the 5 taxable years" for "the taxable year" in subparagraph (A) thereof, and

(C) paragraph (2) shall be applied—

(i) by substituting "25 taxable years" for "21 taxable years" in subparagraph (A) thereof, and

(ii) by substituting "24 taxable years" for "20 taxable years" in subparagraph (B) thereof.

(4) 5-year carryback for eligible small business credits

(A) In general

Notwithstanding subsection (d), in the case of eligible small business credits determined in the first taxable year of the taxpayer beginning in 2010—

(i) paragraph (1) shall be applied by substituting "each of the 5 taxable years" for "the taxable year" in subparagraph (A) thereof, and

(ii) paragraph (2) shall be applied—

(I) by substituting "25 taxable years" for "21 taxable years" in subparagraph (A) thereof, and

(II) by substituting "24 taxable years" for "20 taxable years" in subparagraph (B) thereof.

(B) Eligible small business credits

For purposes of this subsection, the term "eligible small business credits" has the meaning given such term by section 38(c)(5)(B).

(b) Limitation on carrybacks

The amount of the unused credit which may be taken into account under section 38(a)(3) for any preceding taxable year shall not exceed the amount by which the limitation imposed by section 38(c) for such taxable year exceeds the sum of—

(1) the amounts determined under paragraphs (1) and (2) of section 38(a) for such taxable year, plus

(2) the amounts which (by reason of this section) are carried back to such taxable year and are attributable to taxable years preceding the unused credit year.

(c) Limitation on carryforwards

The amount of the unused credit which may be taken into account under section 38(a)(1) for any succeeding taxable year shall not exceed the amount by which the limitation imposed by section 38(c) for such taxable year exceeds the sum of the amounts which, by reason of this section, are carried to such taxable year and are attributable to taxable years preceding the unused credit year.

(d) Transitional rule

No portion of the unused business credit for any taxable year which is attributable to a credit specified in section 38(b) or any portion thereof may be carried back to any taxable year before the first taxable year for which such specified credit or such portion is allowable (without regard to subsection (a)).

(Added Pub. L. 98–369, div. A, title IV, §473, July 18, 1984, 98 Stat. 828; amended Pub. L. 99–514, title II, §231(d)(3)(C)(i), title XVIII, §1846, Oct. 22, 1986, 100 Stat. 2179, 2856; Pub. L. 100–647, title I, §1002(l)(26), Nov. 10, 1988, 102 Stat. 3381; Pub. L. 101–508, title XI, §§11511(b)(2), 11611(b)(2), 11801(a)(2), Nov. 5, 1990, 104 Stat. 1388–485, 1388–503, 1388–520; Pub. L. 102–486, title XIX, §1914(c), Oct. 24, 1992, 106 Stat. 3023; Pub. L. 103–66, title XIII, §§13302(a)(2), 13322(d), 13443(b)(2), Aug. 10, 1993, 107 Stat. 555, 563, 569; Pub. L. 104–188, title I, §§1205(c), 1703(n)(1), Aug. 20, 1996, 110 Stat. 1775, 1877; Pub. L. 105–34, title VII, §701(b)(1), title X, §1083(a), Aug. 5, 1997, 111 Stat. 869, 951; Pub. L. 105–206, title VI, §6010(n), July 22, 1998, 112 Stat. 816; Pub. L. 106–554, §1(a)(7) [title I, §121(b)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–610; Pub. L. 107–16, title VI, §619(c)(1), June 7, 2001, 115 Stat. 110; Pub. L. 108–357, title II, §245(b)(1), title III, §341(c), Oct. 22, 2004, 118 Stat. 1447, 1487; Pub. L. 109–135, title IV, §412(g),

Dec. 21, 2005, 119 Stat. 2637; Pub. L. 111–240, title II, §2012(a), (b), Sept. 27, 2010, 124 Stat. 2554.)

PRIOR PROVISIONS

A prior section 39 was renumbered section 34 of this title.

Another prior section 39 was renumbered section 37 of this title.

AMENDMENTS

2010—Subsec. (a)(3)(A). Pub. L. 111–240, §2012(b), inserted "or the eligible small business credits" after "credit)".

Subsec. (a)(4). Pub. L. 111–240, §2012(a), added par. (4).

2005—Subsec. (a)(1)(A). Pub. L. 109–135, §412(g)(1), substituted "the taxable year" for "each of the 1 taxable years".

Subsec. (a)(3)(B). Pub. L. 109–135, §412(g)(2), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "paragraph (1) shall be applied by substituting '5 taxable years' for '1 taxable years' in subparagraph (A) thereof, and".

2004—Subsec. (a)(3). Pub. L. 108–357, §341(c), added par. (3).

Subsec. (d). Pub. L. 108–357, §245(b)(1), amended heading and text of subsec. (d) generally, substituting provisions prohibiting carryback of the unused business credit attributable to a credit specified in section 38(b) for provisions prohibiting carryback of the enhanced oil recovery credit before 1991, sections 44, 45A, and 45B credits before their enactments, the renewable electricity production credit before its effective date, the empowerment zone employment credit, section 45C credit before July 1, 1996, DC Zone credits before their effective date, the new markets tax credit before Jan. 1, 2001, and the small employer pension plan startup cost credit before Jan. 1, 2002.

2001—Subsec. (d)(10). Pub. L. 107–16, §619(c)(1), added par. (10).

2000—Subsec. (d)(9). Pub. L. 106–554 added par. (9).

1998—Subsec. (a)(2). Pub. L. 105–206 amended Pub. L. 105–34, §1083(a)(2). See 1997 Amendment note below.

1997—Subsec. (a)(1). Pub. L. 105–34, §1083(a)(1), substituted "1-year" for "3-year" and "20-year" for "15-year" in heading, "1 taxable" for "3 taxable" in subpar. (A), and "20 taxable" for "15 taxable" in subpar. (B).

Subsec. (a)(2). Pub. L. 105–34, §1083(a)(2), as amended by Pub. L. 105–206, §6010(n), in subpar. (A), substituted "21 taxable" for "18 taxable", and in subpar. (B), substituted "20 years" for "17 years" in heading and "20 taxable" for "17 taxable" in text.

Subsec. (d)(8). Pub. L. 105–34, §701(b)(1), added par. (8).

1996—Subsec. (d)(5). Pub. L. 104–188, §1703(n)(1)(A), substituted "45A" for "45" in heading.

Subsec. (d)(6). Pub. L. 104–188, §1703(n)(1)(B), substituted "45B" for "45" in heading.

Subsec. (d)(7). Pub. L. 104–188, §1205(c), added par. (7).

1993—Subsec. (d)(4). Pub. L. 103–66, §13302(a)(2), added par. (4).

Subsec. (d)(5). Pub. L. 103–66, §13322(d), added par. (5).

Subsec. (d)(6). Pub. L. 103–66, §13443(b)(2), added par. (6).

1992—Subsec. (d). Pub. L. 102–486 redesignated par. (5), relating to carryback of enhanced oil recovery credit, as (1), redesignated par. (5), relating to carryback of section 44 credit, as (2), and added par. (3).

1990—Subsec. (d)(1) to (4). Pub. L. 101–508, §11801(a)(2), struck out par. (1) which related to carryforwards from an unused credit year which did not expire before first taxable year beginning after Dec. 31, 1983, par. (2) which related to carrybacks in determining amount allowable as credit including net tax liability, par. (3) which related to similar rules for research credit under section 30, and par. (4) which provided for no carryback of low-income housing credit before 1987.

Subsec. (d)(5). Pub. L. 101–508, §11611(b)(2), added par. (5) relating to carryback of section 44 credit.

Pub. L. 101–508, §11511(b)(2), added par. (5) relating to carryback of enhanced oil recovery credit.

1988—Subsec. (d)(4). Pub. L. 100–647 added par. (4).

1986—Subsec. (d)(1)(A). Pub. L. 99–514, §1846(1), inserted "(as in effect before the enactment of the Tax Reform Act of 1984)".

Subsec. (d)(2)(B). Pub. L. 99–514, §1846(2), substituted "as defined in section 26(b)" for "as so defined in section 25(b)".

Subsec. (d)(3). Pub. L. 99–514, §231(d)(3)(C)(i), added par. (3).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–240, title II, §2012(c), Sept. 27, 2010, 124 Stat. 2554, provided that: "The amendments made by this section [amending this section] shall apply to credits determined in taxable years beginning after December 31, 2009."

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title II, §245(b)(2), Oct. 22, 2004, 118 Stat. 1448, provided that: "The amendment made by paragraph (1) [amending this section] shall apply with respect to taxable years ending after December 31, 2003."

Amendment by section 245(b) of Pub. L. 108–357 applicable to taxable years beginning after Dec. 31, 2004, see section 245(e) of Pub. L. 108–357, set out as a note under section 38 of this title.

Amendment by section 341(c) of Pub. L. 108–357 applicable to production in taxable years beginning after Dec. 31, 2004, see section 341(e) of Pub. L. 108–357, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to costs paid or incurred in taxable years beginning after Dec. 31, 2001, with respect to qualified employer plans first effective after such date, see section 619(d) of Pub. L. 107–16, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 applicable to investments made after Dec. 31, 2000, see §1(a)(7) [title I, §121(e)] of Pub. L. 106–554, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title VII, §701(d), Aug. 5, 1997, 111 Stat. 869, provided that: "Except as provided in subsection (c) [amending table of subchapters for this chapter], the amendments made by this section [enacting subchapter W of this chapter and amending this section and section 1016 of this title] shall take effect on the date of the enactment of this Act [Aug. 5, 1997]."

Pub. L. 105–34, title X, §1083(b), Aug. 5, 1997, 111 Stat. 951, provided that: "The amendments made by this section [amending this section] shall apply to credits arising in taxable years beginning after December 31, 1997."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1205(c) of Pub. L. 104–188 applicable to amounts paid or incurred in taxable years ending after June 30, 1996, see section 1205(e) of Pub. L. 104–188, set out as a note under section 45K of this title.

Pub. L. 104–188, title I, §1703(o), Aug. 20, 1996, 110 Stat. 1878, provided that: "Any amendment made by this section [amending this section and sections 40, 59, 108, 117, 135, 143, 163, 904, 956A, 958, 1017, 1044, 1201, 1245, 1297, 1394, 1397B, 1561, 4001, 6033, 6427, 6501, 6655, and 9502 of this title, renumbering section 6714 of this title as section 6715, and amending provisions set out as notes under sections 38, 42, 197, and 1258 of this title and section 401 of Title 42, The Public Health and Welfare] shall take effect as if included in the provision of the Revenue Reconciliation Act of 1993 [Pub. L. 103–66, title XIII, ch. I, §§13001–13444] to which such amendment relates."

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13322(d) of Pub. L. 103–66 applicable to wages paid or incurred after Dec. 31, 1993, see section 13322(f) of Pub. L. 103–66, set out as a note under section 38 of this title.

Amendment by section 13443(b)(2) of Pub. L. 103–66 applicable with respect to taxes paid after Dec. 31, 1993, with respect to services performed before, on, or after such date, see section 13443(d) of Pub. L. 103–66, as amended, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–486 applicable to taxable years ending after Dec. 31, 1992, see section 1914(e) of Pub. L. 102–486, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11511(b)(2) of Pub. L. 101–508 applicable to costs paid or incurred in taxable years beginning after Dec. 31, 1990, see section 11511(d)(1) of Pub. L. 101–508, set out as an Effective Date note under section 43 of this title.

Amendment by section 11611(b)(2) of Pub. L. 101–508 applicable to expenditures paid or incurred after Nov. 5, 1990, see section 11611(e)(1) of Pub. L. 101–508, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 231(d)(3)(C)(i) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1985, see section 231(g) of Pub. L. 99–514, set out as a note under section 41 of this title.

Amendment by section 1846 of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as an Effective Date of 1984 Amendment note under section 21 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by section 11801(a)(2) of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§40. Alcohol, etc., used as fuel

(a) General rule

For purposes of section 38, the alcohol fuels credit determined under this section for the taxable year is an amount equal to the sum of—

(1) the alcohol mixture credit,

(2) the alcohol credit,

(3) in the case of an eligible small ethanol producer, the small ethanol producer credit, plus

(4) the second generation biofuel producer credit.

(b) Definition of alcohol mixture credit, alcohol credit, and small ethanol producer credit

For purposes of this section, and except as provided in subsection (h)—

(1) Alcohol mixture credit

(A) In general

The alcohol mixture credit of any taxpayer for any taxable year is 60 cents for each gallon of alcohol used by the taxpayer in the production of a qualified mixture.

(B) Qualified mixture

The term "qualified mixture" means a mixture of alcohol and gasoline or of alcohol and a special fuel which—

(i) is sold by the taxpayer producing such mixture to any person for use as a fuel, or

(ii) is used as a fuel by the taxpayer producing such mixture.

(C) Sale or use must be in trade or business, etc.

Alcohol used in the production of a qualified mixture shall be taken into account—

(i) only if the sale or use described in subparagraph (B) is in a trade or business of the taxpayer, and

(ii) for the taxable year in which such sale or use occurs.

(D) Casual off-farm production not eligible

No credit shall be allowed under this section with respect to any casual off-farm production of a qualified mixture.

(2) Alcohol credit

(A) In general

The alcohol credit of any taxpayer for any taxable year is 60 cents for each gallon of alcohol which is not in a mixture with gasoline or a special fuel (other than any denaturant) and which during the taxable year—

(i) is used by the taxpayer as a fuel in a trade or business, or

(ii) is sold by the taxpayer at retail to a person and placed in the fuel tank of such person's vehicle.

(B) User credit not to apply to alcohol sold at retail

No credit shall be allowed under subparagraph (A)(i) with respect to any alcohol which was sold in a retail sale described in subparagraph (A)(ii).

(3) Smaller credit for lower proof alcohol

In the case of any alcohol with a proof which is at least 150 but less than 190, paragraphs (1)(A) and (2)(A) shall be applied by substituting "45 cents" for "60 cents".

(4) Small ethanol producer credit

(A) In general

The small ethanol producer credit of any eligible small ethanol producer for any taxable year is 10 cents for each gallon of qualified ethanol fuel production of such producer.

(B) Qualified ethanol fuel production

For purposes of this paragraph, the term "qualified ethanol fuel production" means any alcohol which is ethanol which is produced by an eligible small ethanol producer, and which during the taxable year—

(i) is sold by such producer to another person—

(I) for use by such other person in the production of a qualified mixture in such other person's trade or business (other than casual off-farm production),

(II) for use by such other person as a fuel in a trade or business, or

(III) who sells such ethanol at retail to another person and places such ethanol in the fuel tank of such other person, or

(ii) is used or sold by such producer for any purpose described in clause (i).

(C) Limitation

The qualified ethanol fuel production of any producer for any taxable year shall not exceed 15,000,000 gallons (determined without regard to any qualified second generation biofuel production).

(D) Additional distillation excluded

The qualified ethanol fuel production of any producer for any taxable year shall not include any alcohol which is purchased by the producer and with respect to which such producer increases the proof of the alcohol by additional distillation.

(5) Adding of denaturants not treated as mixture

The adding of any denaturant to alcohol shall not be treated as the production of a mixture.

(6) Second generation biofuel producer credit

(A) In general

The second generation biofuel producer credit of any taxpayer is an amount equal to the applicable amount for each gallon of qualified second generation biofuel production.

(B) Applicable amount

For purposes of subparagraph (A), the applicable amount means $1.01, except that such amount shall, in the case of second generation biofuel which is alcohol, be reduced by the sum of—

(i) the amount of the credit in effect for such alcohol under subsection (b)(1) (without regard to subsection (b)(3)) at the time of the qualified second generation biofuel production, plus

(ii) in the case of ethanol, the amount of the credit in effect under subsection (b)(4) at the time of such production.

(C) Qualified second generation biofuel production

For purposes of this section, the term "qualified second generation biofuel production" means any second generation biofuel which is produced by the taxpayer, and which during the taxable year—

(i) is sold by the taxpayer to another person—

(I) for use by such other person in the production of a qualified second generation biofuel mixture in such other person's trade or business (other than casual off-farm production),

(II) for use by such other person as a fuel in a trade or business, or

(III) who sells such second generation biofuel at retail to another person and places such second generation biofuel in the fuel tank of such other person, or

(ii) is used or sold by the taxpayer for any purpose described in clause (i).

The qualified second generation biofuel production of any taxpayer for any taxable year shall not include any alcohol which is purchased by the taxpayer and with respect to which such producer increases the proof of the alcohol by additional distillation.

(D) Qualified second generation biofuel mixture

For purposes of this paragraph, the term "qualified second generation biofuel mixture" means a mixture of second generation biofuel and gasoline or of second generation biofuel and a special fuel which—

(i) is sold by the person producing such mixture to any person for use as a fuel, or

(ii) is used as a fuel by the person producing such mixture.

(E) Second generation biofuel

For purposes of this paragraph—

(i) In general

The term "second generation biofuel" means any liquid fuel which—

(I) is derived by, or from, qualified feedstocks, and

(II) meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act (42 U.S.C. 7545).

(ii) Exclusion of low-proof alcohol

The term "second generation biofuel" shall not include any alcohol with a proof of less

than 150. The determination of the proof of any alcohol shall be made without regard to any added denaturants.

(iii) Exclusion of certain fuels

The term "second generation biofuel" shall not include any fuel if—

(I) more than 4 percent of such fuel (determined by weight) is any combination of water and sediment,

(II) the ash content of such fuel is more than 1 percent (determined by weight), or

(III) such fuel has an acid number greater than 25.

(F) Qualified feedstock

For purposes of this paragraph, the term "qualified feedstock" means—

(i) any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis, and

(ii) any cultivated algae, cyanobacteria, or lemna.

(G) Special rules for algae

In the case of fuel which is derived by, or from, feedstock described in subparagraph (F)(ii) and which is sold by the taxpayer to another person for refining by such other person into a fuel which meets the requirements of subparagraph (E)(i)(II) and the refined fuel is not excluded under subparagraph (E)(iii)—

(i) such sale shall be treated as described in subparagraph (C)(i),

(ii) such fuel shall be treated as meeting the requirements of subparagraph (E)(i)(II) and as not being excluded under subparagraph (E)(iii) in the hands of such taxpayer, and

(iii) except as provided in this subparagraph, such fuel (and any fuel derived from such fuel) shall not be taken into account under subparagraph (C) with respect to the taxpayer or any other person.

(H) Allocation of second generation biofuel producer credit to patrons of cooperative

Rules similar to the rules under subsection (g)(6) shall apply for purposes of this paragraph.

(I) Registration requirement

No credit shall be determined under this paragraph with respect to any taxpayer unless such taxpayer is registered with the Secretary as a producer of second generation biofuel under section 4101.

(J) Application of paragraph

(i) In general

This paragraph shall apply with respect to qualified second generation biofuel production after December 31, 2008, and before January 1, 2014.

(ii) No carryover to certain years after expiration

If this paragraph ceases to apply for any period by reason of clause (i), rules similar to the rules of subsection (e)(2) shall apply.

(c) Coordination with exemption from excise tax

The amount of the credit determined under this section with respect to any alcohol shall, under regulations prescribed by the Secretary, be properly reduced to take into account any benefit provided with respect to such alcohol solely by reason of the application of section 4041(b)(2), section 6426, or section 6427(e).

(d) Definitions and special rules

For purposes of this section—

(1) Alcohol defined

(A) In general

The term "alcohol" includes methanol and ethanol but does not include—

(i) alcohol produced from petroleum, natural gas, or coal (including peat), or

(ii) alcohol with a proof of less than 150.

(B) Determination of proof

The determination of the proof of any alcohol shall be made without regard to any added denaturants.

(2) Special fuel defined

The term "special fuel" includes any liquid fuel (other than gasoline) which is suitable for use in an internal combustion engine.

(3) Mixture or alcohol not used as a fuel, etc.

(A) Mixtures

If—

(i) any credit was determined under this section with respect to alcohol used in the production of any qualified mixture, and

(ii) any person—

(I) separates the alcohol from the mixture, or

(II) without separation, uses the mixture other than as a fuel,

then there is hereby imposed on such person a tax equal to 60 cents a gallon (45 cents in the case of alcohol with a proof less than 190) for each gallon of alcohol in such mixture.

(B) Alcohol

If—

(i) any credit was determined under this section with respect to the retail sale of any alcohol, and

(ii) any person mixes such alcohol or uses such alcohol other than as a fuel,

then there is hereby imposed on such person a tax equal to 60 cents a gallon (45 cents in the case of alcohol with a proof less than 190) for each gallon of such alcohol.

(C) Small ethanol producer credit

If—

(i) any credit was determined under subsection (a)(3), and

(ii) any person does not use such fuel for a purpose described in subsection (b)(4)(B),

then there is hereby imposed on such person a tax equal to 10 cents a gallon for each gallon of such alcohol.

(D) Second generation biofuel producer credit

If—

(i) any credit is allowed under subsection (a)(4), and

(ii) any person does not use such fuel for a purpose described in subsection (b)(6)(C),

then there is hereby imposed on such person a tax equal to the applicable amount (as defined in subsection (b)(6)(B)) for each gallon of such second generation biofuel.

(E) Applicable laws

All provisions of law, including penalties, shall, insofar as applicable and not inconsistent with this section, apply in respect of any tax imposed under subparagraph (A), (B), (C), or (D) as if such tax were imposed by section 4081 and not by this chapter.

(4) Volume of alcohol

For purposes of determining under subsection (a) the number of gallons of alcohol with respect

to which a credit is allowable under subsection (a), the volume of alcohol shall include the volume of any denaturant (including gasoline) which is added under any formulas approved by the Secretary to the extent that such denaturants do not exceed 2 percent of the volume of such alcohol (including denaturants).

(5) Pass-thru in the case of estates and trusts

Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

(6) Special rule for second generation biofuel producer credit

No second generation biofuel producer credit shall be determined under subsection (a) with respect to any second generation biofuel unless such second generation biofuel is produced in the United States and used as a fuel in the United States. For purposes of this subsection, the term "United States" includes any possession of the United States.

(7) Limitation to alcohol with connection to the United States

No credit shall be determined under this section with respect to any alcohol which is produced outside the United States for use as a fuel outside the United States. For purposes of this paragraph, the term "United States" includes any possession of the United States.

(e) Termination

(1) In general

This section shall not apply to any sale or use—

(A) for any period after December 31, 2011, or

(B) for any period before January 1, 2012, during which the rates of tax under section 4081(a)(2)(A) are 4.3 cents per gallon.

(2) No carryovers to certain years after expiration

If this section ceases to apply for any period by reason of paragraph (1), no amount attributable to any sale or use before the first day of such period may be carried under section 39 by reason of this section (treating the amount allowed by reason of this section as the first amount allowed by this subpart) to any taxable year beginning after the 3-taxable-year period beginning with the taxable year in which such first day occurs.

(3) Exception for second generation biofuel producer credit

Paragraph (1) shall not apply to the portion of the credit allowed under this section by reason of subsection (a)(4).

(f) Election to have alcohol fuels credit not apply

(1) In general

A taxpayer may elect to have this section not apply for any taxable year.

(2) Time for making election

An election under paragraph (1) for any taxable year may be made (or revoked) at any time before the expiration of the 3-year period beginning on the last date prescribed by law for filing the return for such taxable year (determined without regard to extensions).

(3) Manner of making election

An election under paragraph (1) (or revocation thereof) shall be made in such manner as the Secretary may by regulations prescribe.

(g) Definitions and special rules for eligible small ethanol producer credit

For purposes of this section—

(1) Eligible small ethanol producer

The term "eligible small ethanol producer" means a person who, at all times during the taxable year, has a productive capacity for alcohol (as defined in subsection (d)(1)(A) without regard to

clauses (i) and (ii)) not in excess of 60,000,000 gallons.

(2) Aggregration [1] rule

For purposes of the 15,000,000 gallon limitation under subsection (b)(4)(C) and the 60,000,000 gallon limitation under paragraph (1), all members of the same controlled group of corporations (within the meaning of section 267(f)) and all persons under common control (within the meaning of section 52(b) but determined by treating an interest of more than 50 percent as a controlling interest) shall be treated as 1 person.

(3) Partnership, S corporations, and other pass-thru entities

In the case of a partnership, trust, S corporation, or other pass-thru entity, the limitations contained in subsection (b)(4)(C) and paragraph (1) shall be applied at the entity level and at the partner or similar level.

(4) Allocation

For purposes of this subsection, in the case of a facility in which more than 1 person has an interest, productive capacity shall be allocated among such persons in such manner as the Secretary may prescribe.

(5) Regulations

The Secretary may prescribe such regulations as may be necessary—

(A) to prevent the credit provided for in subsection (a)(3) from directly or indirectly benefiting any person with a direct or indirect productive capacity of more than 60,000,000 gallons of alcohol during the taxable year, or

(B) to prevent any person from directly or indirectly benefiting with respect to more than 15,000,000 gallons during the taxable year.

(6) Allocation of small ethanol producer credit to patrons of cooperative

(A) Election to allocate

(i) In general

In the case of a cooperative organization described in section 1381(a), any portion of the credit determined under subsection (a)(3) for the taxable year may, at the election of the organization, be apportioned pro rata among patrons of the organization on the basis of the quantity or value of business done with or for such patrons for the taxable year.

(ii) Form and effect of election

An election under clause (i) for any taxable year shall be made on a timely filed return for such year. Such election, once made, shall be irrevocable for such taxable year. Such election shall not take effect unless the organization designates the apportionment as such in a written notice mailed to its patrons during the payment period described in section 1382(d).

(B) Treatment of organizations and patrons

(i) Organizations

The amount of the credit not apportioned to patrons pursuant to subparagraph (A) shall be included in the amount determined under subsection (a)(3) for the taxable year of the organization.

(ii) Patrons

The amount of the credit apportioned to patrons pursuant to subparagraph (A) shall be included in the amount determined under such subsection for the first taxable year of each patron ending on or after the last day of the payment period (as defined in section 1382(d)) for the taxable year of the organization or, if earlier, for the taxable year of each patron ending on or after the date on which the patron receives notice from the cooperative of the apportionment.

(iii) Special rules for decrease in credits for taxable year

If the amount of the credit of the organization determined under such subsection for a taxable year is less than the amount of such credit shown on the return of the organization for such year, an amount equal to the excess of—

(I) such reduction, over

(II) the amount not apportioned to such patrons under subparagraph (A) for the taxable year,

shall be treated as an increase in tax imposed by this chapter on the organization. Such increase shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.

(h) Reduced credit for ethanol blenders

(1) In general

In the case of any alcohol mixture credit or alcohol credit with respect to any sale or use of alcohol which is ethanol during calendar years 2001 through 2011—

(A) subsections (b)(1)(A) and (b)(2)(A) shall be applied by substituting "the blender amount" for "60 cents",

(B) subsection (b)(3) shall be applied by substituting "the low-proof blender amount" for "45 cents" and "the blender amount" for "60 cents", and

(C) subparagraphs (A) and (B) of subsection (d)(3) shall be applied by substituting "the blender amount" for "60 cents" and "the low-proof blender amount" for "45 cents".

(2) Amounts

For purposes of paragraph (1), the blender amount and the low-proof blender amount shall be determined in accordance with the following table:

In the case of any sale or use during calendar year:	The blender amount is:	The low-proof blender amount is:
2001 or 2002	53 cents	39.26 cents
2003 or 2004	52 cents	38.52 cents
2005, 2006, 2007, or 2008	51 cents	37.78 cents
2009 through 2011	45 cents	33.33 cents.

(3) Reduction delayed until annual production or importation of 7,500,000,000 gallons

(A) In general

In the case of any calendar year beginning after 2008, if the Secretary makes a determination described in subparagraph (B) with respect to all preceding calendar years beginning after 2007, the last row in the table in paragraph (2) shall be applied by substituting "51 cents" for "45 cents".

(B) Determination

A determination described in this subparagraph with respect to any calendar year is a determination, in consultation with the Administrator of the Environmental Protection Agency, that an amount less than 7,500,000,000 gallons of ethanol (including cellulosic ethanol) has been produced in or imported into the United States in such year.

(Added Pub. L. 96–223, title II, §232(b)(1), Apr. 2, 1980, 94 Stat. 273, §44E; amended Pub. L. 97–34, title II §207(c)(3), Aug. 13, 1981, 95 Stat. 225; Pub. L. 97–354, §5(a)(2), Oct. 19, 1982, 96 Stat. 1692; Pub. L. 97–424, title V, §511(b)(2), (d)(3), Jan. 6, 1983, 96 Stat. 2170, 2171; renumbered §40 and amended Pub. L. 98–369, div. A, title IV, §§471(c), 474(k), title IX, §§912(c), (f), 913(b), July 18, 1984, 98 Stat. 826, 832, 1007, 1008; Pub. L. 100–203, title X, §10502(d)(1), Dec. 22, 1987,

101 Stat. 1330–444; Pub. L. 101–508, title XI, §11502(a)–(f), Nov. 5, 1990, 104 Stat. 1388–480 to 1388–482; Pub. L. 104–188, title I, §1703(j), Aug. 20, 1996, 110 Stat. 1876; Pub. L. 105–178, title IX, §9003(a)(3), (b)(1), June 9, 1998, 112 Stat. 502; Pub. L. 108–357, title III, §§301(c)(1)–(4), 313(a), Oct. 22, 2004, 118 Stat. 1461, 1467; Pub. L. 109–58, title XIII, §1347(a), (b), Aug. 8, 2005, 119 Stat. 1056; Pub. L. 110–234, title XV, §§15321(a)–(b)(2), (3)(B), (c)–(e), 15331(a), 15332(a), May 22, 2008, 122 Stat. 1512–1516; Pub. L. 110–246, §4(a), title XV, §§15321(a)–(b)(2), (3)(B), (c)–(e), 15331(a), 15332(a), June 18, 2008, 122 Stat. 1664, 2274–2278; Pub. L. 110–343, div. B, title II, §203(a), Oct. 3, 2008, 122 Stat. 3833; Pub. L. 111–152, title I, §1408(a), Mar. 30, 2010, 124 Stat. 1067; Pub. L. 111–240, title II, §2121(a), Sept. 27, 2010, 124 Stat. 2567; Pub. L. 111–312, title VII, §708(a)(1), (2), Dec. 17, 2010, 124 Stat. 3312; Pub. L. 112–240, title IV, §404(a)(1), (2), (b)(1)–(3)(B), Jan. 2, 2013, 126 Stat. 2338, 2339.)

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

PRIOR PROVISIONS

A prior section 40, added Pub. L. 92–178, title VI, §601(a), Dec. 10, 1971, 85 Stat. 553; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, related to allowance as a credit of expenses of work incentive programs, prior to repeal by Pub. L. 98–369, div. A, title IV, §474(m)(1), July 18, 1984, 98 Stat. 833.

Another prior section 40 was renumbered section 37 of this title.

AMENDMENTS

2013—Pub. L. 112–240, §404(b)(3)(A)(i), substituted "second generation biofuel" for "cellulosic biofuel" wherever appearing in text in subsecs. (a)(4), (b)(4)(C), (6), and (d)(3)(D), (6).

Subsec. (b)(6). Pub. L. 112–240, §404(b)(3)(A)(ii), substituted "Second generation" for "Cellulosic" in heading.

Subsec. (b)(6)(C), (D). Pub. L. 112–240, §404(b)(3)(A)(iii), substituted "second generation" for "cellulosic" in heading.

Subsec. (b)(6)(E). Pub. L. 112–240, §404(b)(3)(A)(ii), substituted "Second generation" for "Cellulosic" in heading.

Subsec. (b)(6)(E)(i)(I). Pub. L. 112–240, §404(b)(1), amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: "is produced from any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis, and".

Subsec. (b)(6)(E)(ii). Pub. L. 112–240, §404(b)(3)(B), substituted "The term 'second generation biofuel' shall not" for "Such term shall not".

Subsec. (b)(6)(F), (G). Pub. L. 112–240, §404(b)(2), added subpars. (F) and (G). Former subpars. (F) and (G) redesignated as (H) and (I), respectively.

Subsec. (b)(6)(H). Pub. L. 112–240, §404(b)(3)(A)(iii), substituted "second generation" for "cellulosic" in heading.

Pub. L. 112–240, §404(b)(2), redesignated subpar. (F) as (H). Former subpar. (H) redesignated (J).

Pub. L. 112–240, §404(a)(1), amended subpar. (H) generally. Prior to amendment, text read as follows: "This paragraph shall apply with respect to qualified cellulosic biofuel production after December 31, 2008, and before January 1, 2013."

Subsec. (b)(6)(I), (J). Pub. L. 112–240, §404(b)(2), redesignated subpars. (G) and (H) as (I) and (J), respectively.

Subsec. (d)(3)(D). Pub. L. 112–240, §404(b)(3)(A)(ii), substituted "Second generation" for "Cellulosic" in heading.

Subsec. (d)(6). Pub. L. 112–240, §404(b)(3)(A)(iii), substituted "second generation" for "cellulosic" in heading.

Subsec. (e)(2). Pub. L. 112–240, §404(a)(2), struck out "or subsection (b)(6)(H)" after "paragraph (1)".

Subsec. (e)(3). Pub. L. 112–240, §404(b)(3)(A)(iii), substituted "second generation" for "cellulosic" in heading.

2010—Subsec. (b)(6)(E)(iii). Pub. L. 111–240, §2121(a)(4), substituted "certain" for "unprocessed" in heading.

Pub. L. 111–152 added cl. (iii).

Subsec. (b)(6)(E)(iii)(III). Pub. L. 111–240, §2121(a)(1)–(3), added subcl. (III).

Subsec. (e)(1)(A). Pub. L. 111–312, §708(a)(1)(A), substituted "December 31, 2011" for "December 31, 2010".

Subsec. (e)(1)(B). Pub. L. 111–312, §708(a)(1)(B), substituted "January 1, 2012" for "January 1, 2011".

Subsec. (h)(1), (2). Pub. L. 111–312, §708(a)(2), substituted "2011" for "2010".

2008—Pub. L. 110–246, §15321(b)(3)(B), inserted ", etc.," after "Alcohol" in section catchline.

Subsec. (a)(4). Pub. L. 110–246, §15321(a), added par. (4).

Subsec. (b)(4)(C). Pub. L. 110–246, §15321(e), inserted "(determined without regard to any qualified cellulosic biofuel production)" after "15,000,000 gallons".

Subsec. (b)(6). Pub. L. 110–246, §15321(b)(1), added par. (6).

Subsec. (d)(3)(C). Pub. L. 110–246, §15321(c)(2)(A), substituted "Small ethanol producer" for "Producer" in heading.

Subsec. (d)(3)(D). Pub. L. 110–246, §15321(c)(1), added subpar. (D). Former subpar. (D) redesignated (E).

Subsec. (d)(3)(E). Pub. L. 110–246, §15321(c)(2)(B), substituted "(C), or (D)" for "or (C)".

Pub. L. 110–246, §15321(c)(1), redesignated subpar. (D) as (E).

Subsec. (d)(4). Pub. L. 110–246, §15332(a), substituted "2 percent" for "5 percent".

Subsec. (d)(6). Pub. L. 110–246, §15321(d), added par. (6).

Subsec. (d)(7). Pub. L. 110–343 added par. (7).

Subsec. (e)(2). Pub. L. 110–246, §15321(b)(2)(A), inserted "or subsection (b)(6)(H)" after "by reason of paragraph (1)".

Subsec. (e)(3). Pub. L. 110–246, §15321(b)(2)(B), added par. (3).

Subsec. (h)(2). Pub. L. 110–246, §15331(a)(1), in table, substituted "2005, 2006, 2007, or 2008" for "2005 through 2010", struck out period after "37.78 cents", and inserted last row reading "2009 through 2010", "45 cents", and "33.33 cents."

Subsec. (h)(3). Pub. L. 110–246, §15331(a)(2), added par. (3).

2005—Subsec. (g)(1), (2), (5)(A). Pub. L. 109–58, §1347(a), substituted "60,000,000" for "30,000,000".

Subsec. (g)(6)(A)(ii). Pub. L. 109–58, §1347(b), inserted at end "Such election shall not take effect unless the organization designates the apportionment as such in a written notice mailed to its patrons during the payment period described in section 1382(d)."

2004—Subsec. (c). Pub. L. 108–357, §301(c)(1), substituted "section 4041(b)(2), section 6426, or section 6427(e)" for "subsection (b)(2), (k), or (m) of section 4041, section 4081(c), or section 4091(c)".

Subsec. (d)(4). Pub. L. 108–357, §301(c)(2), reenacted heading without change and amended text of par. (4) generally, substituting provisions relating to determination of the number of gallons of alcohol with respect to which a credit is allowable under subsec. (a) for provisions relating to determination of the number of gallons of alcohol with respect to which a credit is allowable under subsec. (a) or the percentage of any mixture which consists of alcohol under section 4041(k) or 4081(c).

Subsec. (e)(1)(A). Pub. L. 108–357, §301(c)(3)(A), substituted "2010" for "2007".

Subsec. (e)(1)(B). Pub. L. 108–357, §301(c)(3)(B), substituted "2011" for "2008".

Subsec. (g)(6). Pub. L. 108–357, §313(a), added par. (6).

Subsec. (h)(1). Pub. L. 108–357, §301(c)(4)(A), substituted "2010" for "2007" in introductory provisions.

Subsec. (h)(2). Pub. L. 108–357, §301(c)(4)(B), substituted "through 2010" for ", 2006, or 2007" in table.

1998—Subsec. (e)(1). Pub. L. 105–178, §9003(a)(3), substituted "December 31, 2007" for "December 31, 2000" in subpar. (A) and "January 1, 2008" for "January 1, 2001" in subpar. (B).

Subsec. (h). Pub. L. 105–178, §9003(b)(1), reenacted heading without change and amended text of subsec. (h) generally. Prior to amendment, text read as follows: "In the case of any alcohol mixture credit or alcohol credit with respect to any alcohol which is ethanol—

"(1) subsections (b)(1)(A) and (b)(2)(A) shall be applied by substituting '54 cents' for '60 cents';

"(2) subsection (b)(3) shall be applied by substituting '40 cents' for '45 cents' and '54 cents' for '60 cents'; and

"(3) subparagraphs (A) and (B) of subsection (d)(3) shall be applied by substituting '54 cents' for '60 cents' and '40 cents' for '45 cents'."

1996—Subsec. (e)(1)(B). Pub. L. 104–188 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "for any period before January 1, 2001, during which the Highway Trust Fund financing rate under section 4081(a)(2) is not in effect."

1990—Subsec. (a)(2). Pub. L. 101–508, §11502(a)(1), substituted ", plus" for period at end.

Subsec. (a)(3). Pub. L. 101–508, §11502(a)(2), added par. (3).

Subsec. (b). Pub. L. 101–508, §11502(e)(2), which directed the insertion of ", and except as provided in subsection (h)" in introductory provisions without specifying the location of such insertion, was executed after "section" to reflect the probable intent of Congress.

Pub. L. 101–508, §11502(b)(3), substituted ", alcohol credit, and small ethanol producer credit" for "and alcohol credit" in heading.

Subsec. (b)(4), (5). Pub. L. 101–508, §11502(b)(1), (2), added par. (4) and redesignated former par. (4) as (5).

Subsec. (d)(3)(C), (D). Pub. L. 101–508, §11502(d)(1), (2), added subpar. (C), redesignated former subpar. (C) as (D), and substituted "subparagraph (A), (B), or (C)" for "subparagraph (A) or (B)".

Subsec. (e). Pub. L. 101–508, §11502(f), amended subsec. (e) generally, substituting present provisions for provisions prohibiting the applicability of this section to any sale or use after Dec. 31, 1992, and prohibiting carryovers to any taxable year beginning after Dec. 31, 1994.

Subsec. (g). Pub. L. 101–508, §11502(c), added subsec. (g).

Subsec. (h). Pub. L. 101–508, §11502(e)(1), added subsec. (h).

1987—Subsec. (c). Pub. L. 100–203 substituted ", section 4081(c), or section 4091(c)" for "or section 4081(c)".

1984—Pub. L. 98–369, §471(c), renumbered section 44E of this title as this section.

Subsec. (a). Pub. L. 98–369, §474(k)(1), substituted "For purposes of section 38, the alcohol fuels credit determined under this section for the taxable year is an amount equal to the sum of" for "There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of" in introductory provisions.

Subsec. (b)(1)(A), (2)(A). Pub. L. 98–369, §912(c)(1), substituted "60 cents" for "50 cents".

Subsec. (b)(3). Pub. L. 98–369, §912(c), substituted "45 cents" for "37.5 cents" and "60 cents" for "50 cents".

Subsec. (c). Pub. L. 98–369, §913(b), substituted "(b)(2), (k), or (m)" for "(b)(2) or (k)".

Pub. L. 98–369, §474(k)(2), substituted "the credit determined under this section" for "the credit allowable under this section".

Subsec. (d)(1)(A)(i). Pub. L. 98–369, §912(f), substituted "coal (including peat)" for "coal".

Subsec. (d)(3)(A). Pub. L. 98–369, §912(c), substituted "60 cents" for "50 cents" and "45 cents" for "37.5 cents".

Subsec. (d)(3)(A)(i). Pub. L. 98–369, §474(k)(3), substituted "credit was determined" for "credit was allowable".

Subsec. (d)(3)(B). Pub. L. 98–369, §912(c), substituted "60 cents" for "50 cents" and "45 cents" for "37.5 cents".

Subsec. (d)(3)(B)(i). Pub. L. 98–369, §474(k)(3), substituted "credit was determined" for "credit was allowable".

Subsec. (e). Pub. L. 98–369, §474(k)(4), redesignated subsec. (f) as (e). Former subsec. (e), which had placed a limitation based on the amount of tax, was struck out.

Subsec. (e)(2). Pub. L. 98–369, §474(k)(5), substituted "section 39 by reason of this section (treating the amount allowed by reason of this section as the first amount allowed by this subpart)" for "subsection (e)(2)".

Subsec. (f). Pub. L. 98–369, §474(k)(6), added subsec. (f). Former subsec. (f) redesignated (e).

1983—Subsec. (b)(1)(A), (2)(A). Pub. L. 97–424, §511(d)(3)(A), substituted "50 cents" for "40 cents".

Subsec. (b)(3). Pub. L. 97–424, §511(d)(3), substituted "50 cents" for "40 cents" and "37.5 cents" for "30 cents".

Subsec. (c). Pub. L. 97–424, §511(b)(2), substituted "subsection (b)(2) or (k) of section 4041 or section 4081(c)" for "section 4041(k) or 4081(c)" after "reason of the application of".

Subsec. (d)(3)(A), (B). Pub. L. 97–424, §511(d)(3), substituted "50 cents" for "40 cents" and "37.5 cents" for "30 cents".

1982—Subsec. (d)(5). Pub. L. 97–354 substituted "Pass-thru in the case of estates and trusts" for "Pass-through in the case of subchapter S corporations, etc." in par. heading, and substituted provisions relating to the applicability of rules similar to rules of subsec. (d) of section 52 for provisions relating to the applicability of rules similar to rules of subsecs. (d) and (e) of section 52.

1981—Subsec. (e)(2)(A). Pub. L. 97–34 substituted "15" for "7" in two places, and "14" for "6" in one place.

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title IV, §404(a)(3), Jan. 2, 2013, 126 Stat. 2338, provided that: "The amendments made by this subsection [amending this section] shall take effect as if included in section 15321(b) of the Heartland, Habitat, and Horticulture Act of 2008 [probably should be Heartland, Habitat, Harvest, and Horticulture Act of 2008, title XV of Pub. L. 110–246]."

Pub. L. 112–240, title IV, §404(b)(4), Jan. 2, 2013, 126 Stat. 2339, provided that: "The amendments made

by this subsection [amending this section and section 4101 of this title] shall apply to fuels sold or used after the date of the enactment of this Act [Jan. 2, 2013]."

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §708(a)(3), Dec. 17, 2010, 124 Stat. 3312, provided that: "The amendments made by this subsection [amending this section] shall apply to periods after December 31, 2010."

Pub. L. 111–240, title II, §2121(b), Sept. 27, 2010, 124 Stat. 2567, provided that: "The amendments made by this section [amending this section] shall apply to fuels sold or used on or after January 1, 2010."

Pub. L. 111–152, title I, §1408(b), Mar. 30, 2010, 124 Stat. 1067, provided that: "The amendment made by this section [amending this section] shall apply to fuels sold or used on or after January 1, 2010."

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title II, §203(d), Oct. 3, 2008, 122 Stat. 3834, provided that: "The amendments made by this section [amending this section and sections 40A, 6426, and 6427 of this title] shall apply to claims for credit or payment made on or after May 15, 2008."

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Pub. L. 110–234, title XV, §15321(g), May 22, 2008, 122 Stat. 1514, and Pub. L. 110–246, §4(a), title XV, §15321(g), June 18, 2008, 122 Stat. 1664, 2276, provided that: "The amendments made by this section [amending this section and sections 40A and 4101 of this title] shall apply to fuel produced after December 31, 2008."

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

Pub. L. 110–234, title XV, §15331(c), May 22, 2008, 122 Stat. 1516, and Pub. L. 110–246, §4(a), title XV, §15331(c), June 18, 2008, 122 Stat. 1664, 2278, provided that: "The amendments made by this section [amending this section and section 6426 of this title] shall take effect on the date of the enactment of this Act [June 18, 2008]."

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

Pub. L. 110–234, title XV, §15332(c), May 22, 2008, 122 Stat. 1516, and Pub. L. 110–246, §4(a), title XV, §15332(c), June 18, 2008, 122 Stat. 1664, 2278, provided that: "The amendments made by this section [amending this section and section 6426 of this title] shall apply to fuel sold or used after December 31, 2008."

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

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–58, title XIII, §1347(c), Aug. 8, 2005, 119 Stat. 1056, provided that: "The amendments made by this section [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Aug. 8, 2005]."

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title III, §301(d), Oct. 22, 2004, 118 Stat. 1463, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting section 6426 of this title and amending this section and sections 4041, 4081, 4083, 4101, 6427, and 9503 of this title] shall apply to fuel sold or used after December 31, 2004.

"(2) REGISTRATION REQUIREMENT.—The amendment made by subsection (b) [amending section 4101 of this title] shall take effect on April 1, 2005.

"(3) EXTENSION OF ALCOHOL FUELS CREDIT.—The amendments made by paragraphs (3), (4), and (14) of subsection (c) [amending this section] shall take effect on the date of the enactment of this Act [Oct. 22, 2004].

"(4) REPEAL OF GENERAL FUND RETENTION OF CERTAIN ALCOHOL FUELS TAXES.—The amendments made by subsection (c)(12) [amending section 9503 of this title] shall apply to fuel sold or used after September 30, 2004."

Pub. L. 108–357, title III, §313(b), Oct. 22, 2004, 118 Stat. 1468, provided that: "The amendment made by this section [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Oct. 22, 2004]."

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–178, title IX, §9003(b)(3), June 9, 1998, 112 Stat. 503, provided that: "The amendments made by this subsection [amending this section and sections 4041, 4081, and 4091 of this title] shall take effect on January 1, 2001."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103–66, §§13001–13444, to which such amendment relates, see section 1703(o) of Pub. L. 104–188, set out as a note under section 39 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, §11502(h), Nov. 5, 1990, 104 Stat. 1388–482, provided that:

"(1) Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to alcohol produced, and sold or used, in taxable years beginning after December 31, 1990.

"(2) The amendments made by subsection (g) [amending provisions not classified to the Code] shall apply to articles entered or withdrawn from warehouse on or after January 1, 1991."

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title X, §10502(e), Dec. 22, 1987, 101 Stat. 1330–445, provided that: "The amendments made by this section [enacting sections 4091 to 4093 of this title, amending this section and sections 4041, 4081, 4101, 4221, 6206, 6416, 6421, 6427, 6652, 9502, 9503, and 9508 of this title, and enacting provisions set out as notes under sections 4091 and 9502 of this title] shall apply to sales after March 31, 1988."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(k) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Pub. L. 98–369, div. A, title IX, §912(g), July 18, 1984, 98 Stat. 1008, provided that: "The amendments made by this section [amending this section and sections 4041, 4081, and 6427 of this title] shall take effect on January 1, 1985."

Amendment by section 913(b) of Pub. L. 98–369 effective Aug. 1, 1984, see section 913(c) of Pub. L. 98–369, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendments by section 511(b)(2), (d)(3) of Pub. L. 97–424 effective Apr. 1, 1983, see section 511(h) of Pub. L. 97–424, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to unused credit years ending after Sept. 30, 1980, see section 209(c)(2)(C) of Pub. L. 97–34, set out as an Effective Date note under section 168 of this title.

EFFECTIVE DATE

Pub. L. 96–223, title II, §232(h)(1), (4), Apr. 2, 1980, 94 Stat. 281, as amended by Pub. L. 97–448, title II, §202(e), Jan. 12, 1983, 96 Stat. 2396, provided that:

"(1) The amendments made by subsections (b) and (c) [enacting sections 44E [now 40] and 86 of this title and amending sections 55, 381, 383, 4081, and 6096 of this title] shall apply to sales or uses after September 30, 1980, in taxable years ending after such date.

"(4) Notwithstanding paragraph (1), the provisions of section 44E(d)(4)(B) [now 40(d)(4)(B)] of such Code, as added by this section, shall take effect on April 2, 1980."

[1] So in original. Probably should be "Aggregation".

§40A. Biodiesel and renewable diesel used as fuel

(a) General rule

For purposes of section 38, the biodiesel fuels credit determined under this section for the taxable year is an amount equal to the sum of—

(1) the biodiesel mixture credit, plus

(2) the biodiesel credit, plus

(3) in the case of an eligible small agri-biodiesel producer, the small agri-biodiesel producer credit.

(b) Definition of biodiesel mixture credit, biodiesel credit, and small agri-biodiesel producer credit

For purposes of this section—

(1) Biodiesel mixture credit

(A) In general

The biodiesel mixture credit of any taxpayer for any taxable year is $1.00 for each gallon of biodiesel used by the taxpayer in the production of a qualified biodiesel mixture.

(B) Qualified biodiesel mixture

The term "qualified biodiesel mixture" means a mixture of biodiesel and diesel fuel (as defined in section 4083(a)(3)), determined without regard to any use of kerosene, which—

(i) is sold by the taxpayer producing such mixture to any person for use as a fuel, or

(ii) is used as a fuel by the taxpayer producing such mixture.

(C) Sale or use must be in trade or business, etc.

Biodiesel used in the production of a qualified biodiesel mixture shall be taken into account—

(i) only if the sale or use described in subparagraph (B) is in a trade or business of the taxpayer, and

(ii) for the taxable year in which such sale or use occurs.

(D) Casual off-farm production not eligible

No credit shall be allowed under this section with respect to any casual off-farm production of a qualified biodiesel mixture.

(2) Biodiesel credit

(A) In general

The biodiesel credit of any taxpayer for any taxable year is $1.00 for each gallon of biodiesel which is not in a mixture with diesel fuel and which during the taxable year—

(i) is used by the taxpayer as a fuel in a trade or business, or

(ii) is sold by the taxpayer at retail to a person and placed in the fuel tank of such person's vehicle.

(B) User credit not to apply to biodiesel sold at retail

No credit shall be allowed under subparagraph (A)(i) with respect to any biodiesel which was sold in a retail sale described in subparagraph (A)(ii).

(3) Certification for biodiesel

No credit shall be allowed under paragraph (1) or (2) of subsection (a) unless the taxpayer obtains a certification (in such form and manner as prescribed by the Secretary) from the producer or importer of the biodiesel which identifies the product produced and the percentage of biodiesel and agri-biodiesel in the product.

(4) Small agri-biodiesel producer credit

(A) In general

The small agri-biodiesel producer credit of any eligible small agri-biodiesel producer for any

taxable year is 10 cents for each gallon of qualified agri-biodiesel production of such producer.

(B) Qualified agri-biodiesel production

For purposes of this paragraph, the term "qualified agri-biodiesel production" means any agri-biodiesel which is produced by an eligible small agri-biodiesel producer, and which during the taxable year—

(i) is sold by such producer to another person—

(I) for use by such other person in the production of a qualified biodiesel mixture in such other person's trade or business (other than casual off-farm production),

(II) for use by such other person as a fuel in a trade or business, or

(III) who sells such agri-biodiesel at retail to another person and places such agri-biodiesel in the fuel tank of such other person, or

(ii) is used or sold by such producer for any purpose described in clause (i).

(C) Limitation

The qualified agri-biodiesel production of any producer for any taxable year shall not exceed 15,000,000 gallons.

(c) Coordination with credit against excise tax

The amount of the credit determined under this section with respect to any biodiesel shall be properly reduced to take into account any benefit provided with respect to such biodiesel solely by reason of the application of section 6426 or 6427(e).

(d) Definitions and special rules

For purposes of this section—

(1) Biodiesel

The term "biodiesel" means the monoalkyl esters of long chain fatty acids derived from plant or animal matter which meet—

(A) the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act (42 U.S.C. 7545), and

(B) the requirements of the American Society of Testing and Materials D6751.

Such term shall not include any liquid with respect to which a credit may be determined under section 40.

(2) Agri-biodiesel

The term "agri-biodiesel" means biodiesel derived solely from virgin oils, including esters derived from virgin vegetable oils from corn, soybeans, sunflower seeds, cottonseeds, canola, crambe, rapeseeds, safflowers, flaxseeds, rice bran, mustard seeds, and camelina, and from animal fats.

(3) Mixture or biodiesel not used as a fuel, etc.

(A) Mixtures

If—

(i) any credit was determined under this section with respect to biodiesel used in the production of any qualified biodiesel mixture, and

(ii) any person—

(I) separates the biodiesel from the mixture, or

(II) without separation, uses the mixture other than as a fuel,

then there is hereby imposed on such person a tax equal to the product of the rate applicable under subsection (b)(1)(A) and the number of gallons of such biodiesel in such mixture.

(B) Biodiesel

If—

(i) any credit was determined under this section with respect to the retail sale of any biodiesel, and

(ii) any person mixes such biodiesel or uses such biodiesel other than as a fuel,

then there is hereby imposed on such person a tax equal to the product of the rate applicable under subsection (b)(2)(A) and the number of gallons of such biodiesel.

(C) Producer credit

If—

(i) any credit was determined under subsection (a)(3), and

(ii) any person does not use such fuel for a purpose described in subsection (b)(4)(B),

then there is hereby imposed on such person a tax equal to 10 cents a gallon for each gallon of such agri-biodiesel.

(D) Applicable laws

All provisions of law, including penalties, shall, insofar as applicable and not inconsistent with this section, apply in respect of any tax imposed under subparagraph (A) or (B) as if such tax were imposed by section 4081 and not by this chapter.

(4) Pass-thru in the case of estates and trusts

Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

(5) Limitation to biodiesel with connection to the United States

No credit shall be determined under this section with respect to any biodiesel which is produced outside the United States for use as a fuel outside the United States. For purposes of this paragraph, the term "United States" includes any possession of the United States.

(e) Definitions and special rules for small agri-biodiesel producer credit

For purposes of this section—

(1) Eligible small agri-biodiesel producer

The term "eligible small agri-biodiesel producer" means a person who, at all times during the taxable year, has a productive capacity for agri-biodiesel not in excess of 60,000,000 gallons.

(2) Aggregation rule

For purposes of the 15,000,000 gallon limitation under subsection (b)(4)(C) and the 60,000,000 gallon limitation under paragraph (1), all members of the same controlled group of corporations (within the meaning of section 267(f)) and all persons under common control (within the meaning of section 52(b) but determined by treating an interest of more than 50 percent as a controlling interest) shall be treated as 1 person.

(3) Partnership, S corporation, and other pass-thru entities

In the case of a partnership, trust, S corporation, or other pass-thru entity, the limitations contained in subsection (b)(4)(C) and paragraph (1) shall be applied at the entity level and at the partner or similar level.

(4) Allocation

For purposes of this subsection, in the case of a facility in which more than 1 person has an interest, productive capacity shall be allocated among such persons in such manner as the Secretary may prescribe.

(5) Regulations

The Secretary may prescribe such regulations as may be necessary—

(A) to prevent the credit provided for in subsection (a)(3) from directly or indirectly

benefiting any person with a direct or indirect productive capacity of more than 60,000,000 gallons of agri-biodiesel during the taxable year, or

(B) to prevent any person from directly or indirectly benefiting with respect to more than 15,000,000 gallons during the taxable year.

(6) Allocation of small agri-biodiesel credit to patrons of cooperative

(A) Election to allocate

(i) In general

In the case of a cooperative organization described in section 1381(a), any portion of the credit determined under subsection (a)(3) for the taxable year may, at the election of the organization, be apportioned pro rata among patrons of the organization on the basis of the quantity or value of business done with or for such patrons for the taxable year.

(ii) Form and effect of election

An election under clause (i) for any taxable year shall be made on a timely filed return for such year. Such election, once made, shall be irrevocable for such taxable year. Such election shall not take effect unless the organization designates the apportionment as such in a written notice mailed to its patrons during the payment period described in section 1382(d).

(B) Treatment of organizations and patrons

(i) Organizations

The amount of the credit not apportioned to patrons pursuant to subparagraph (A) shall be included in the amount determined under subsection (a)(3) for the taxable year of the organization.

(ii) Patrons

The amount of the credit apportioned to patrons pursuant to subparagraph (A) shall be included in the amount determined under such subsection for the first taxable year of each patron ending on or after the last day of the payment period (as defined in section 1382(d)) for the taxable year of the organization or, if earlier, for the taxable year of each patron ending on or after the date on which the patron receives notice from the cooperative of the apportionment.

(iii) Special rules for decrease in credits for taxable year

If the amount of the credit of the organization determined under such subsection for a taxable year is less than the amount of such credit shown on the return of the organization for such year, an amount equal to the excess of—

(I) such reduction, over

(II) the amount not apportioned to such patrons under subparagraph (A) for the taxable year,

shall be treated as an increase in tax imposed by this chapter on the organization. Such increase shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.

(f) Renewable diesel

For purposes of this title—

(1) Treatment in the same manner as biodiesel

Except as provided in paragraph (2), renewable diesel shall be treated in the same manner as biodiesel.

(2) Exception

Subsection (b)(4) shall not apply with respect to renewable diesel.

(3) Renewable diesel defined

The term "renewable diesel" means liquid fuel derived from biomass which meets—

(A) the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act (42 U.S.C. 7545), and

(B) the requirements of the American Society of Testing and Materials D975 or D396, or other equivalent standard approved by the Secretary.

Such term shall not include any liquid with respect to which a credit may be determined under section 40. Such term does not include any fuel derived from coprocessing biomass with a feedstock which is not biomass. For purposes of this paragraph, the term "biomass" has the meaning given such term by section 45K(c)(3).

(4) Certain aviation fuel

(A) In general

Except as provided in the last 3 sentences of paragraph (3), the term "renewable diesel" shall include fuel derived from biomass which meets the requirements of a Department of Defense specification for military jet fuel or an American Society of Testing and Materials specification for aviation turbine fuel.

(B) Application of mixture credits

In the case of fuel which is treated as renewable diesel solely by reason of subparagraph (A), subsection (b)(1) and section 6426(c) shall be applied with respect to such fuel by treating kerosene as though it were diesel fuel.

(g) Termination

This section shall not apply to any sale or use after December 31, 2013.

(Added Pub. L. 108–357, title III, §302(a), Oct. 22, 2004, 118 Stat. 1463; amended Pub. L. 109–58, title XIII, §§1344(a), 1345(a)–(d), 1346(a), (b)(1), Aug. 8, 2005, 119 Stat. 1052–1055; Pub. L. 109–135, title IV, §412(h), Dec. 21, 2005, 119 Stat. 2637; Pub. L. 110–234, title XV, §15321(f), May 22, 2008, 122 Stat. 1514; Pub. L. 110–246, §4(a), title XV, §15321(f), June 18, 2008, 122 Stat. 1664, 2276; Pub. L. 110–343, div. B, title II, §§202(a), (b)(1), (b)(3)–(f), 203(b), Oct. 3, 2008, 122 Stat. 3832, 3833; Pub. L. 111–312, title VII, §701(a), Dec. 17, 2010, 124 Stat. 3310; Pub. L. 112–240, title IV, §405(a), Jan. 2, 2013, 126 Stat. 2340.)

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2013—Subsec. (g). Pub. L. 112–240 substituted "December 31, 2013" for "December 31, 2011".

2010—Subsec. (g). Pub. L. 111–312 substituted "December 31, 2011" for "December 31, 2009".

2008—Subsec. (b)(1)(A), (2)(A). Pub. L. 110–343, §202(b)(1), substituted "$1.00" for "50 cents".

Subsec. (b)(3) to (5). Pub. L. 110–343, §202(b)(3)(A), redesignated pars. (4) and (5) as (3) and (4), respectively, and struck out heading and text of former par. (3). Text read as follows: "In the case of any biodiesel which is agri-biodiesel, paragraphs (1)(A) and (2)(A) shall be applied by substituting '$1.00' for '50 cents'."

Subsec. (d)(1). Pub. L. 110–246, §15321(f)(1), inserted concluding provisions.

Subsec. (d)(2). Pub. L. 110–343, §202(f), substituted "mustard seeds, and camelina" for "and mustard seeds".

Subsec. (d)(3)(C)(ii). Pub. L. 110–343, §202(b)(3)(D), substituted "subsection (b)(4)(B)" for "subsection (b)(5)(B)".

Subsec. (d)(5). Pub. L. 110–343, §203(b), added par. (5).

Subsec. (e)(2), (3). Pub. L. 110–343, §202(b)(3)(C), substituted "subsection (b)(4)(C)" for "subsection (b)(5)(C)".

Subsec. (f)(2). Pub. L. 110–343, §202(b)(3)(B), amended heading and text of par. (2) generally. Prior to amendment, text read as follows:

"(A) RATE OF CREDIT.—Subsections (b)(1)(A) and (b)(2)(A) shall be applied with respect to renewable diesel by substituting '$1.00' for '50 cents'.

"(B) NONAPPLICATION OF CERTAIN CREDITS.—Subsections (b)(3) and (b)(5) shall not apply with respect to renewable diesel."

Subsec. (f)(3). Pub. L. 110–343, §202(d), in introductory provisions, struck out "(as defined in section 45K(c)(3))" after "derived from biomass" and, in concluding provisions, inserted at end "Such term does not include any fuel derived from coprocessing biomass with a feedstock which is not biomass. For purposes of this paragraph, the term 'biomass' has the meaning given such term by section 45K(c)(3)."

Pub. L. 110–343, §202(c)(1), (2), in introductory provisions, substituted "liquid fuel" for "diesel fuel" and struck out "using a thermal depolymerization process" before "which meets—".

Pub. L. 110–246, §15321(f)(2), inserted concluding provisions.

Subsec. (f)(3)(B). Pub. L. 110–343, §202(c)(3), inserted ", or other equivalent standard approved by the Secretary" before period at end.

Subsec. (f)(4). Pub. L. 110–343, §202(e), added par. (4).

Subsec. (g). Pub. L. 110–343, §202(a), substituted "December 31, 2009" for "December 31, 2008".

2005—Pub. L. 109–58, §1346(b)(1), inserted "and renewable diesel" after "Biodiesel" in section catchline.

Subsec. (a). Pub. L. 109–58, §1345(a), reenacted heading without change and amended text of subsec. (a) generally. Prior to amendment, text read as follows: "For purposes of section 38, the biodiesel fuels credit determined under this section for the taxable year is an amount equal to the sum of—

"(1) the biodiesel mixture credit, plus

"(2) the biodiesel credit."

Subsec. (b). Pub. L. 109–58, §1345(d)(2), substituted ", biodiesel credit, and small agri-biodiesel producer credit" for "and biodiesel credit" in heading.

Subsec. (b)(4). Pub. L. 109–58, §1345(d)(1), substituted "paragraph (1) or (2) of subsection (a)" for "this section".

Subsec. (b)(5). Pub. L. 109–58, §1345(b), added par. (5).

Subsec. (b)(5)(B). Pub. L. 109–135 struck out "(determined without regard to the last sentence of subsection (d)(2))" after "any agri-biodiesel" in introductory provisions.

Subsec. (d)(3)(C), (D). Pub. L. 109–58, §1345(d)(3), added subpar. (C) and redesignated former subpar. (C) as (D). The words following "subsection (b)(5)(B)," in subpar. (C) are shown as a flush provision notwithstanding directory language showing them as part of cl. (ii), to reflect the probable intent of Congress.

Subsec. (e). Pub. L. 109–58, §1345(c), added subsec. (e). The words following "subparagraph (A) for the taxable year," in subsec. (e)(6)(B)(iii) are shown as a flush provision notwithstanding directory language showing them as part of subcl. (II), to reflect the probable intent of Congress. Former subsec. (e) redesignated (f).

Pub. L. 109–58, §1344(a), substituted "2008" for "2006".

Subsec. (f). Pub. L. 109–58, §1346(a), added subsec. (f). Former subsec. (f) redesignated (g).

Pub. L. 109–58, §1345(c), redesignated subsec. (e) as (f).

Subsec. (g). Pub. L. 109–58, §1346(a), redesignated subsec. (f) as (g).

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title IV, §405(c), Jan. 2, 2013, 126 Stat. 2340, provided that: "The amendments made by this section [amending this section and sections 6426 and 6427 of this title] shall apply to fuel sold or used after December 31, 2011."

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §701(d), Dec. 17, 2010, 124 Stat. 3310, provided that: "The amendments made by this section [amending this section and sections 6426 and 6427 of this title] shall apply to fuel sold or used after December 31, 2009."

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title II, §202(g), Oct. 3, 2008, 122 Stat. 3833, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 6426 and 6427 of this title] shall apply to fuel produced, and sold or used, after December 31, 2008.

"(2) COPRODUCTION OF RENEWABLE DIESEL WITH PETROLEUM FEEDSTOCK.—The amendment made by subsection (d) [amending this section] shall apply to fuel produced, and sold or used, after the date of the enactment of this Act [Oct. 3, 2008]."

Amendment by section 203(b) of Pub. L. 110–343 applicable to claims for credit or payment made on or after May 15, 2008, see section 203(d) of Pub. L. 110–343, set out as a note under section 40 of this title.

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the

date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by section 15321(f) of Pub. L. 110–246 applicable to fuel produced after Dec. 31, 2008, see section 15321(g) of Pub. L. 110–246, set out as a note under section 40 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–58, title XIII, §1344(b), Aug. 8, 2005, 119 Stat. 1052, provided that: "The amendments made by this section [amending this section and sections 6426 and 6427 of this title] shall take effect on the date of the enactment of this Act [Aug. 8, 2005]."

Pub. L. 109–58, title XIII, §1345(e), Aug. 8, 2005, 119 Stat. 1055, provided that: "The amendments made by this section [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Aug. 8, 2005]."

Pub. L. 109–58, title XIII, §1346(c), Aug. 8, 2005, 119 Stat. 1056, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to fuel sold or used after December 31, 2005."

EFFECTIVE DATE

Section applicable to fuel produced, and sold or used, after Dec. 31, 2004, in taxable years ending after such date, see section 302(d) of Pub. L. 108–357, set out as an Effective Date of 2004 Amendment note under section 38 of this title.

§41. Credit for increasing research activities

(a) General rule

For purposes of section 38, the research credit determined under this section for the taxable year shall be an amount equal to the sum of—

(1) 20 percent of the excess (if any) of—

(A) the qualified research expenses for the taxable year, over

(B) the base amount,

(2) 20 percent of the basic research payments determined under subsection (e)(1)(A), and

(3) 20 percent of the amounts paid or incurred by the taxpayer in carrying on any trade or business of the taxpayer during the taxable year (including as contributions) to an energy research consortium for energy research.

(b) Qualified research expenses

For purposes of this section—

(1) Qualified research expenses

The term "qualified research expenses" means the sum of the following amounts which are paid or incurred by the taxpayer during the taxable year in carrying on any trade or business of the taxpayer—

(A) in-house research expenses, and

(B) contract research expenses.

(2) In-house research expenses

(A) In general

The term "in-house research expenses" means—

(i) any wages paid or incurred to an employee for qualified services performed by such employee,

(ii) any amount paid or incurred for supplies used in the conduct of qualified research, and

(iii) under regulations prescribed by the Secretary, any amount paid or incurred to another person for the right to use computers in the conduct of qualified research.

Clause (iii) shall not apply to any amount to the extent that the taxpayer (or any person with whom the taxpayer must aggregate expenditures under subsection (f)(1)) receives or accrues

any amount from any other person for the right to use substantially identical personal property.

(B) Qualified services

The term "qualified services" means services consisting of—

(i) engaging in qualified research, or

(ii) engaging in the direct supervision or direct support of research activities which constitute qualified research.

If substantially all of the services performed by an individual for the taxpayer during the taxable year consists of services meeting the requirements of clause (i) or (ii), the term "qualified services" means all of the services performed by such individual for the taxpayer during the taxable year.

(C) Supplies

The term "supplies" means any tangible property other than—

(i) land or improvements to land, and

(ii) property of a character subject to the allowance for depreciation.

(D) Wages

(i) In general

The term "wages" has the meaning given such term by section 3401(a).

(ii) Self-employed individuals and owner-employees

In the case of an employee (within the meaning of section 401(c)(1)), the term "wages" includes the earned income (as defined in section 401(c)(2)) of such employee.

(iii) Exclusion for wages to which work opportunity credit applies

The term "wages" shall not include any amount taken into account in determining the work opportunity credit under section 51(a).

(3) Contract research expenses

(A) In general

The term "contract research expenses" means 65 percent of any amount paid or incurred by the taxpayer to any person (other than an employee of the taxpayer) for qualified research.

(B) Prepaid amounts

If any contract research expenses paid or incurred during any taxable year are attributable to qualified research to be conducted after the close of such taxable year, such amount shall be treated as paid or incurred during the period during which the qualified research is conducted.

(C) Amounts paid to certain research consortia

(i) In general

Subparagraph (A) shall be applied by substituting "75 percent" for "65 percent" with respect to amounts paid or incurred by the taxpayer to a qualified research consortium for qualified research on behalf of the taxpayer and 1 or more unrelated taxpayers. For purposes of the preceding sentence, all persons treated as a single employer under subsection (a) or (b) of section 52 shall be treated as related taxpayers.

(ii) Qualified research consortium

The term "qualified research consortium" means any organization which—

(I) is described in section 501(c)(3) or 501(c)(6) and is exempt from tax under section 501(a),

(II) is organized and operated primarily to conduct scientific research, and

(III) is not a private foundation.

(D) Amounts paid to eligible small businesses, universities, and Federal laboratories

(i) In general

In the case of amounts paid by the taxpayer to—

(I) an eligible small business,

(II) an institution of higher education (as defined in section 3304(f)), or

(III) an organization which is a Federal laboratory,

for qualified research which is energy research, subparagraph (A) shall be applied by substituting "100 percent" for "65 percent".

(ii) Eligible small business

For purposes of this subparagraph, the term "eligible small business" means a small business with respect to which the taxpayer does not own (within the meaning of section 318) 50 percent or more of—

(I) in the case of a corporation, the outstanding stock of the corporation (either by vote or value), and

(II) in the case of a small business which is not a corporation, the capital and profits interests of the small business.

(iii) Small business

For purposes of this subparagraph—

(I) In general

The term "small business" means, with respect to any calendar year, any person if the annual average number of employees employed by such person during either of the 2 preceding calendar years was 500 or fewer. For purposes of the preceding sentence, a preceding calendar year may be taken into account only if the person was in existence throughout the year.

(II) Startups, controlled groups, and predecessors

Rules similar to the rules of subparagraphs (B) and (D) of section 220(c)(4) shall apply for purposes of this clause.

(iv) Federal laboratory

For purposes of this subparagraph, the term "Federal laboratory" has the meaning given such term by section 4(6) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3703(6)), as in effect on the date of the enactment of the Energy Tax Incentives Act of 2005.

(4) Trade or business requirement disregarded for in-house research expenses of certain startup ventures

In the case of in-house research expenses, a taxpayer shall be treated as meeting the trade or business requirement of paragraph (1) if, at the time such in-house research expenses are paid or incurred, the principal purpose of the taxpayer in making such expenditures is to use the results of the research in the active conduct of a future trade or business—

(A) of the taxpayer, or

(B) of 1 or more other persons who with the taxpayer are treated as a single taxpayer under subsection (f)(1).

(c) Base amount

(1) In general

The term "base amount" means the product of—

(A) the fixed-base percentage, and

(B) the average annual gross receipts of the taxpayer for the 4 taxable years preceding the taxable year for which the credit is being determined (hereinafter in this subsection referred to as the "credit year").

(2) Minimum base amount

In no event shall the base amount be less than 50 percent of the qualified research expenses for the credit year.

(3) Fixed-base percentage

(A) In general

Except as otherwise provided in this paragraph, the fixed-base percentage is the percentage which the aggregate qualified research expenses of the taxpayer for taxable years beginning after December 31, 1983, and before January 1, 1989, is of the aggregate gross receipts of the taxpayer for such taxable years.

(B) Start-up companies

(i) Taxpayers to which subparagraph applies

The fixed-base percentage shall be determined under this subparagraph if—

(I) the first taxable year in which a taxpayer had both gross receipts and qualified research expenses begins after December 31, 1983, or

(II) there are fewer than 3 taxable years beginning after December 31, 1983, and before January 1, 1989, in which the taxpayer had both gross receipts and qualified research expenses.

(ii) Fixed-base percentage

In a case to which this subparagraph applies, the fixed-base percentage is—

(I) 3 percent for each of the taxpayer's 1st 5 taxable years beginning after December 31, 1993, for which the taxpayer has qualified research expenses,

(II) in the case of the taxpayer's 6th such taxable year, 1/6 of the percentage which the aggregate qualified research expenses of the taxpayer for the 4th and 5th such taxable years is of the aggregate gross receipts of the taxpayer for such years,

(III) in the case of the taxpayer's 7th such taxable year, 1/3 of the percentage which the aggregate qualified research expenses of the taxpayer for the 5th and 6th such taxable years is of the aggregate gross receipts of the taxpayer for such years,

(IV) in the case of the taxpayer's 8th such taxable year, ½ of the percentage which the aggregate qualified research expenses of the taxpayer for the 5th, 6th, and 7th such taxable years is of the aggregate gross receipts of the taxpayer for such years,

(V) in the case of the taxpayer's 9th such taxable year, 2/3 of the percentage which the aggregate qualified research expenses of the taxpayer for the 5th, 6th, 7th, and 8th such taxable years is of the aggregate gross receipts of the taxpayer for such years,

(VI) in the case of the taxpayer's 10th such taxable year, 5/6 of the percentage which the aggregate qualified research expenses of the taxpayer for the 5th, 6th, 7th, 8th, and 9th such taxable years is of the aggregate gross receipts of the taxpayer for such years, and

(VII) for taxable years thereafter, the percentage which the aggregate qualified research expenses for any 5 taxable years selected by the taxpayer from among the 5th through the 10th such taxable years is of the aggregate gross receipts of the taxpayer for such selected years.

(iii) Treatment of de minimis amounts of gross receipts and qualified research expenses

The Secretary may prescribe regulations providing that de minimis amounts of gross receipts and qualified research expenses shall be disregarded under clauses (i) and (ii).

(C) Maximum fixed-base percentage

In no event shall the fixed-base percentage exceed 16 percent.

(D) Rounding

The percentages determined under subparagraphs (A) and (B)(ii) shall be rounded to the nearest 1/100th of 1 percent.

(4) Election of alternative incremental credit

(A) In general

At the election of the taxpayer, the credit determined under subsection (a)(1) shall be equal to the sum of—

(i) 3 percent of so much of the qualified research expenses for the taxable year as exceeds 1 percent of the average described in subsection (c)(1)(B) but does not exceed 1.5 percent of such average,

(ii) 4 percent of so much of such expenses as exceeds 1.5 percent of such average but does not exceed 2 percent of such average, and

(iii) 5 percent of so much of such expenses as exceeds 2 percent of such average.

(B) Election

An election under this paragraph shall apply to the taxable year for which made and all succeeding taxable years unless revoked with the consent of the Secretary.

(5) Election of alternative simplified credit

(A) In general

At the election of the taxpayer, the credit determined under subsection (a)(1) shall be equal to 14 percent (12 percent in the case of taxable years ending before January 1, 2009) of so much of the qualified research expenses for the taxable year as exceeds 50 percent of the average qualified research expenses for the 3 taxable years preceding the taxable year for which the credit is being determined.

(B) Special rule in case of no qualified research expenses in any of 3 preceding taxable years

(i) Taxpayers to which subparagraph applies

The credit under this paragraph shall be determined under this subparagraph if the taxpayer has no qualified research expenses in any one of the 3 taxable years preceding the taxable year for which the credit is being determined.

(ii) Credit rate

The credit determined under this subparagraph shall be equal to 6 percent of the qualified research expenses for the taxable year.

(C) Election

An election under this paragraph shall apply to the taxable year for which made and all succeeding taxable years unless revoked with the consent of the Secretary. An election under this paragraph may not be made for any taxable year to which an election under paragraph (4) applies.

(6) Consistent treatment of expenses required

(A) In general

Notwithstanding whether the period for filing a claim for credit or refund has expired for any taxable year taken into account in determining the fixed-base percentage, the qualified research expenses taken into account in computing such percentage shall be determined on a basis consistent with the determination of qualified research expenses for the credit year.

(B) Prevention of distortions

The Secretary may prescribe regulations to prevent distortions in calculating a taxpayer's qualified research expenses or gross receipts caused by a change in accounting methods used by such taxpayer between the current year and a year taken into account in computing such taxpayer's fixed-base percentage.

(7) Gross receipts

For purposes of this subsection, gross receipts for any taxable year shall be reduced by returns

and allowances made during the taxable year. In the case of a foreign corporation, there shall be taken into account only gross receipts which are effectively connected with the conduct of a trade or business within the United States, the Commonwealth of Puerto Rico, or any possession of the United States.

(d) Qualified research defined

For purposes of this section—

(1) In general

The term "qualified research" means research—

(A) with respect to which expenditures may be treated as expenses under section 174,

(B) which is undertaken for the purpose of discovering information—

(i) which is technological in nature, and

(ii) the application of which is intended to be useful in the development of a new or improved business component of the taxpayer, and

(C) substantially all of the activities of which constitute elements of a process of experimentation for a purpose described in paragraph (3).

Such term does not include any activity described in paragraph (4).

(2) Tests to be applied separately to each business component

For purposes of this subsection—

(A) In general

Paragraph (1) shall be applied separately with respect to each business component of the taxpayer.

(B) Business component defined

The term "business component" means any product, process, computer software, technique, formula, or invention which is to be—

(i) held for sale, lease, or license, or

(ii) used by the taxpayer in a trade or business of the taxpayer.

(C) Special rule for production processes

Any plant process, machinery, or technique for commercial production of a business component shall be treated as a separate business component (and not as part of the business component being produced).

(3) Purposes for which research may qualify for credit

For purposes of paragraph (1)(C)—

(A) In general

Research shall be treated as conducted for a purpose described in this paragraph if it relates to—

(i) a new or improved function,

(ii) performance, or

(iii) reliability or quality.

(B) Certain purposes not qualified

Research shall in no event be treated as conducted for a purpose described in this paragraph if it relates to style, taste, cosmetic, or seasonal design factors.

(4) Activities for which credit not allowed

The term "qualified research" shall not include any of the following:

(A) Research after commercial production

Any research conducted after the beginning of commercial production of the business

component.

(B) Adaptation of existing business components

Any research related to the adaptation of an existing business component to a particular customer's requirement or need.

(C) Duplication of existing business component

Any research related to the reproduction of an existing business component (in whole or in part) from a physical examination of the business component itself or from plans, blueprints, detailed specifications, or publicly available information with respect to such business component.

(D) Surveys, studies, etc.

Any—

(i) efficiency survey,

(ii) activity relating to management function or technique,

(iii) market research, testing, or development (including advertising or promotions),

(iv) routine data collection, or

(v) routine or ordinary testing or inspection for quality control.

(E) Computer software

Except to the extent provided in regulations, any research with respect to computer software which is developed by (or for the benefit of) the taxpayer primarily for internal use by the taxpayer, other than for use in—

(i) an activity which constitutes qualified research (determined with regard to this subparagraph), or

(ii) a production process with respect to which the requirements of paragraph (1) are met.

(F) Foreign research

Any research conducted outside the United States, the Commonwealth of Puerto Rico, or any possession of the United States.

(G) Social sciences, etc.

Any research in the social sciences, arts, or humanities.

(H) Funded research

Any research to the extent funded by any grant, contract, or otherwise by another person (or governmental entity).

(e) Credit allowable with respect to certain payments to qualified organizations for basic research

For purposes of this section—

(1) In general

In the case of any taxpayer who makes basic research payments for any taxable year—

(A) the amount of basic research payments taken into account under subsection (a)(2) shall be equal to the excess of—

(i) such basic research payments, over

(ii) the qualified organization base period amount, and

(B) that portion of such basic research payments which does not exceed the qualified organization base period amount shall be treated as contract research expenses for purposes of subsection (a)(1).

(2) Basic research payments defined

For purposes of this subsection—

(A) In general

The term "basic research payment" means, with respect to any taxable year, any amount paid in cash during such taxable year by a corporation to any qualified organization for basic research but only if—

(i) such payment is pursuant to a written agreement between such corporation and such qualified organization, and

(ii) such basic research is to be performed by such qualified organization.

(B) Exception to requirement that research be performed by the organization

In the case of a qualified organization described in subparagraph (C) or (D) of paragraph (6), clause (ii) of subparagraph (A) shall not apply.

(3) Qualified organization base period amount

For purposes of this subsection, the term "qualified organization base period amount" means an amount equal to the sum of—

(A) the minimum basic research amount, plus

(B) the maintenance-of-effort amount.

(4) Minimum basic research amount

For purposes of this subsection—

(A) In general

The term "minimum basic research amount" means an amount equal to the greater of—

(i) 1 percent of the average of the sum of amounts paid or incurred during the base period for—

(I) any in-house research expenses, and

(II) any contract research expenses, or

(ii) the amounts treated as contract research expenses during the base period by reason of this subsection (as in effect during the base period).

(B) Floor amount

Except in the case of a taxpayer which was in existence during a taxable year (other than a short taxable year) in the base period, the minimum basic research amount for any base period shall not be less than 50 percent of the basic research payments for the taxable year for which a determination is being made under this subsection.

(5) Maintenance-of-effort amount

For purposes of this subsection—

(A) In general

The term "maintenance-of-effort amount" means, with respect to any taxable year, an amount equal to the excess (if any) of—

(i) an amount equal to—

(I) the average of the nondesignated university contributions paid by the taxpayer during the base period, multiplied by

(II) the cost-of-living adjustment for the calendar year in which such taxable year begins, over

(ii) the amount of nondesignated university contributions paid by the taxpayer during such taxable year.

(B) Nondesignated university contributions

For purposes of this paragraph, the term "nondesignated university contribution" means any amount paid by a taxpayer to any qualified organization described in paragraph (6)(A)—

(i) for which a deduction was allowable under section 170, and

(ii) which was not taken into account—

(I) in computing the amount of the credit under this section (as in effect during the base

period) during any taxable year in the base period, or

(II) as a basic research payment for purposes of this section.

(C) Cost-of-living adjustment defined

(i) In general

The cost-of-living adjustment for any calendar year is the cost-of-living adjustment for such calendar year determined under section 1(f)(3), by substituting "calendar year 1987" for "calendar year 1992" in subparagraph (B) thereof.

(ii) Special rule where base period ends in a calendar year other than 1983 or 1984

If the base period of any taxpayer does not end in 1983 or 1984, section 1(f)(3)(B) shall, for purposes of this paragraph, be applied by substituting the calendar year in which such base period ends for 1992. Such substitution shall be in lieu of the substitution under clause (i).

(6) Qualified organization

For purposes of this subsection, the term "qualified organization" means any of the following organizations:

(A) Educational institutions

Any educational organization which—

(i) is an institution of higher education (within the meaning of section 3304(f)), and

(ii) is described in section 170(b)(1)(A)(ii).

(B) Certain scientific research organizations

Any organization not described in subparagraph (A) which—

(i) is described in section 501(c)(3) and is exempt from tax under section 501(a),

(ii) is organized and operated primarily to conduct scientific research, and

(iii) is not a private foundation.

(C) Scientific tax-exempt organizations

Any organization which—

(i) is described in—

(I) section 501(c)(3) (other than a private foundation), or

(II) section 501(c)(6),

(ii) is exempt from tax under section 501(a),

(iii) is organized and operated primarily to promote scientific research by qualified organizations described in subparagraph (A) pursuant to written research agreements, and

(iv) currently expends—

(I) substantially all of its funds, or

(II) substantially all of the basic research payments received by it,

for grants to, or contracts for basic research with, an organization described in subparagraph (A).

(D) Certain grant organizations

Any organization not described in subparagraph (B) or (C) which—

(i) is described in section 501(c)(3) and is exempt from tax under section 501(a) (other than a private foundation),

(ii) is established and maintained by an organization established before July 10, 1981, which meets the requirements of clause (i),

(iii) is organized and operated exclusively for the purpose of making grants to organizations described in subparagraph (A) pursuant to written research agreements for purposes of basic research, and

(iv) makes an election, revocable only with the consent of the Secretary, to be treated as a

private foundation for purposes of this title (other than section 4940, relating to excise tax based on investment income).

(7) Definitions and special rules

For purposes of this subsection—

(A) Basic research

The term "basic research" means any original investigation for the advancement of scientific knowledge not having a specific commercial objective, except that such term shall not include—

(i) basic research conducted outside of the United States, and

(ii) basic research in the social sciences, arts, or humanities.

(B) Base period

The term "base period" means the 3-taxable-year period ending with the taxable year immediately preceding the 1st taxable year of the taxpayer beginning after December 31, 1983.

(C) Exclusion from incremental credit calculation

For purposes of determining the amount of credit allowable under subsection (a)(1) for any taxable year, the amount of the basic research payments taken into account under subsection (a)(2)—

(i) shall not be treated as qualified research expenses under subsection (a)(1)(A), and

(ii) shall not be included in the computation of base amount under subsection (a)(1)(B).

(D) Trade or business qualification

For purposes of applying subsection (b)(1) to this subsection, any basic research payments shall be treated as an amount paid in carrying on a trade or business of the taxpayer in the taxable year in which it is paid (without regard to the provisions of subsection (b)(3)(B)).

(E) Certain corporations not eligible

The term "corporation" shall not include—

(i) an S corporation,

(ii) a personal holding company (as defined in section 542), or

(iii) a service organization (as defined in section 414(m)(3)).

(f) Special rules

For purposes of this section—

(1) Aggregation of expenditures

(A) Controlled group of corporations

In determining the amount of the credit under this section—

(i) all members of the same controlled group of corporations shall be treated as a single taxpayer, and

(ii) the credit (if any) allowable by this section to each such member shall be determined on a proportionate basis to its share of the aggregate of the qualified research expenses, basic research payments, and amounts paid or incurred to energy research consortiums, taken into account by such controlled group for purposes of this section.

(B) Common control

Under regulations prescribed by the Secretary, in determining the amount of the credit under this section—

(i) all trades or businesses (whether or not incorporated) which are under common control shall be treated as a single taxpayer, and

(ii) the credit (if any) allowable by this section to each such person shall be determined on a proportionate basis to its share of the aggregate of the qualified research expenses, basic research payments, and amounts paid or incurred to energy research consortiums, taken into account by all such persons under common control for purposes of this section.

The regulations prescribed under this subparagraph shall be based on principles similar to the principles which apply in the case of subparagraph (A).

(2) Allocations

(A) Pass-thru in the case of estates and trusts

Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

(B) Allocation in the case of partnerships

In the case of partnerships, the credit shall be allocated among partners under regulations prescribed by the Secretary.

(3) Adjustments for certain acquisitions, etc.

Under regulations prescribed by the Secretary—

(A) Acquisitions

(i) In general

If a person acquires the major portion of either a trade or business or a separate unit of a trade or business (hereinafter in this paragraph referred to as the "acquired business") of another person (hereinafter in this paragraph referred to as the "predecessor"), then the amount of qualified research expenses paid or incurred by the acquiring person during the measurement period shall be increased by the amount determined under clause (ii), and the gross receipts of the acquiring person for such period shall be increased by the amount determined under clause (iii).

(ii) Amount determined with respect to qualified research expenses

The amount determined under this clause is—

(I) for purposes of applying this section for the taxable year in which such acquisition is made, the acquisition year amount, and

(II) for purposes of applying this section for any taxable year after the taxable year in which such acquisition is made, the qualified research expenses paid or incurred by the predecessor with respect to the acquired business during the measurement period.

(iii) Amount determined with respect to gross receipts

The amount determined under this clause is the amount which would be determined under clause (ii) if "the gross receipts of" were substituted for "the qualified research expenses paid or incurred by" each place it appears in clauses (ii) and (iv).

(iv) Acquisition year amount

For purposes of clause (ii), the acquisition year amount is the amount equal to the product of—

(I) the qualified research expenses paid or incurred by the predecessor with respect to the acquired business during the measurement period, and

(II) the number of days in the period beginning on the date of the acquisition and ending on the last day of the taxable year in which the acquisition is made,

divided by the number of days in the acquiring person's taxable year.

(v) Special rules for coordinating taxable years

In the case of an acquiring person and a predecessor whose taxable years do not begin on the same date—

(I) each reference to a taxable year in clauses (ii) and (iv) shall refer to the appropriate taxable year of the acquiring person,

(II) the qualified research expenses paid or incurred by the predecessor, and the gross receipts of the predecessor, during each taxable year of the predecessor any portion of

which is part of the measurement period shall be allocated equally among the days of such taxable year,

(III) the amount of such qualified research expenses taken into account under clauses (ii) and (iv) with respect to a taxable year of the acquiring person shall be equal to the total of the expenses attributable under subclause (II) to the days occurring during such taxable year, and

(IV) the amount of such gross receipts taken into account under clause (iii) with respect to a taxable year of the acquiring person shall be equal to the total of the gross receipts attributable under subclause (II) to the days occurring during such taxable year.

(vi) Measurement period

For purposes of this subparagraph, the term "measurement period" means, with respect to the taxable year of the acquiring person for which the credit is determined, any period of the acquiring person preceding such taxable year which is taken into account for purposes of determining the credit for such year.

(B) Dispositions

If the predecessor furnished to the acquiring person such information as is necessary for the application of subparagraph (A), then, for purposes of applying this section for any taxable year ending after such disposition, the amount of qualified research expenses paid or incurred by, and the gross receipts of, the predecessor during the measurement period (as defined in subparagraph (A)(vi), determined by substituting "predecessor" for "acquiring person" each place it appears) shall be reduced by—

(i) in the case of the taxable year in which such disposition is made, an amount equal to the product of—

(I) the qualified research expenses paid or incurred by, or gross receipts of, the predecessor with respect to the acquired business during the measurement period (as so defined and so determined), and

(II) the number of days in the period beginning on the date of acquisition (as determined for purposes of subparagraph (A)(iv)(II)) and ending on the last day of the taxable year of the predecessor in which the disposition is made,

divided by the number of days in the taxable year of the predecessor, and

(ii) in the case of any taxable year ending after the taxable year in which such disposition is made, the amount described in clause (i)(I).

(C) Certain reimbursements taken into account in determining fixed-base percentage

If during any of the 3 taxable years following the taxable year in which a disposition to which subparagraph (B) applies occurs, the disposing taxpayer (or a person with whom the taxpayer is required to aggregate expenditures under paragraph (1)) reimburses the acquiring person (or a person required to so aggregate expenditures with such person) for research on behalf of the taxpayer, then the amount of qualified research expenses of the taxpayer for the taxable years taken into account in computing the fixed-base percentage shall be increased by the lesser of—

(i) the amount of the decrease under subparagraph (B) which is allocable to taxable years so taken into account, or

(ii) the product of the number of taxable years so taken into account, multiplied by the amount of the reimbursement described in this subparagraph.

(4) Short taxable years

In the case of any short taxable year, qualified research expenses and gross receipts shall be annualized in such circumstances and under such methods as the Secretary may prescribe by regulation.

(5) Controlled group of corporations

The term "controlled group of corporations" has the same meaning given to such term by

section 1563(a), except that—

(A) "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears in section 1563(a)(1), and

(B) the determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of section 1563.

(6) Energy research consortium

(A) In general

The term "energy research consortium" means any organization—

(i) which is—

(I) described in section 501(c)(3) and is exempt from tax under section 501(a) and is organized and operated primarily to conduct energy research, or

(II) organized and operated primarily to conduct energy research in the public interest (within the meaning of section 501(c)(3)),

(ii) which is not a private foundation,

(iii) to which at least 5 unrelated persons paid or incurred during the calendar year in which the taxable year of the organization begins amounts (including as contributions) to such organization for energy research, and

(iv) to which no single person paid or incurred (including as contributions) during such calendar year an amount equal to more than 50 percent of the total amounts received by such organization during such calendar year for energy research.

(B) Treatment of persons

All persons treated as a single employer under subsection (a) or (b) of section 52 shall be treated as related persons for purposes of subparagraph (A)(iii) and as a single person for purposes of subparagraph (A)(iv).

(C) Foreign research

For purposes of subsection (a)(3), amounts paid or incurred for any energy research conducted outside the United States, the Commonwealth of Puerto Rico, or any possession of the United States shall not be taken into account.

(D) Denial of double benefit

Any amount taken into account under subsection (a)(3) shall not be taken into account under paragraph (1) or (2) of subsection (a).

(E) Energy research

The term "energy research" does not include any research which is not qualified research.

(g) Special rule for pass-thru of credit

In the case of an individual who—

(1) owns an interest in an unincorporated trade or business,

(2) is a partner in a partnership,

(3) is a beneficiary of an estate or trust, or

(4) is a shareholder in an S corporation,

the amount determined under subsection (a) for any taxable year shall not exceed an amount (separately computed with respect to such person's interest in such trade or business or entity) equal to the amount of tax attributable to that portion of a person's taxable income which is allocable or apportionable to the person's interest in such trade or business or entity. If the amount determined under subsection (a) for any taxable year exceeds the limitation of the preceding sentence, such amount may be carried to other taxable years under the rules of section 39; except that the limitation of the preceding sentence shall be taken into account in lieu of the limitation of section 38(c) in applying section 39.

(h) Termination

(1) In general

This section shall not apply to any amount paid or incurred—

(A) after June 30, 1995, and before July 1, 1996, or

(B) after December 31, 2013.

(2) Termination of alternative incremental credit

No election under subsection (c)(4) shall apply to taxable years beginning after December 31, 2008.

(2) [1] Computation for taxable year in which credit terminates

In the case of any taxable year with respect to which this section applies to a number of days which is less than the total number of days in such taxable year—

(A) the amount determined under subsection (c)(1)(B) with respect to such taxable year shall be the amount which bears the same ratio to such amount (determined without regard to this paragraph) as the number of days in such taxable year to which this section applies bears to the total number of days in such taxable year, and

(B) for purposes of subsection (c)(5), the average qualified research expenses for the preceding 3 taxable years shall be the amount which bears the same ratio to such average qualified research expenses (determined without regard to this paragraph) as the number of days in such taxable year to which this section applies bears to the total number of days in such taxable year.

(Added Pub. L. 97–34, title II, §221(a), Aug. 13, 1981, 95 Stat. 241, §44F; amended Pub. L. 97–354, §5(a)(3), Oct. 19, 1982, 96 Stat. 1692; Pub. L. 97–448, title I, §102(b)(2), Jan. 12, 1983, 96 Stat. 2372; renumbered §30 and amended Pub. L. 98–369, div. A, title IV, §§471(c), 474(i)(1), title VI, §612(e)(1), July 18, 1984, 98 Stat. 826, 831, 912; renumbered §41 and amended Pub. L. 99–514, title II, §231(a)(1), (b), (c), (d)(2), (3)(C)(ii), (e), title XVIII, §1847(b)(1), Oct. 22, 1986, 100 Stat. 2173, 2175, 2178–2180, 2856; Pub. L. 100–647, title I, §1002(h)(1), title IV, §§4007(a), 4008(b)(1), Nov. 10, 1988, 102 Stat. 3370, 3652; Pub. L. 101–239, title VII, §§7110(a)(1), (b), (b)[(c)], 7814(e)(2)(C), Dec. 19, 1989, 103 Stat. 2322, 2323, 2325, 2414; Pub. L. 101–508, title XI, §§11101(d)(1)(C), 11402(a), Nov. 5, 1990, 104 Stat. 1388–405, 1388–473; Pub. L. 102–227, title I, §102(a), Dec. 11, 1991, 105 Stat. 1686; Pub. L. 103–66, title XIII, §§13111(a)(1), 13112(a), (b), 13201(b)(3)(C), Aug. 10, 1993, 107 Stat. 420, 421, 459; Pub. L. 104–188, title I, §§1201(e)(1), (4), 1204(a)–(d), Aug. 20, 1996, 110 Stat. 1772–1774; Pub. L. 105–34, title VI, §601(a), (b)(1), Aug. 5, 1997, 111 Stat. 861; Pub. L. 105–277, div. J, title I, §1001(a), Oct. 21, 1998, 112 Stat. 2681–888; Pub. L. 106–170, title V, §502(a)(1), (b)(1), (c)(1), Dec. 17, 1999, 113 Stat. 1919; Pub. L. 108–311, title III, §301(a)(1), Oct. 4, 2004, 118 Stat. 1178; Pub. L. 109–58, title XIII, §1351(a), (b), Aug. 8, 2005, 119 Stat. 1056, 1057; Pub. L. 109–135, title IV, §402(l), Dec. 21, 2005, 119 Stat. 2615; Pub. L. 109–432, div. A, title I, §104(a)(1), (b)(1), (c)(1), Dec. 20, 2006, 120 Stat. 2934, 2935; Pub. L. 110–172, §§6(c), 11(e)(2), Dec. 29, 2007, 121 Stat. 2479, 2489; Pub. L. 110–343, div. C, title III, §301(a)(1), (b)–(d), Oct. 3, 2008, 122 Stat. 3865, 3866; Pub. L. 111–312, title VII, §731(a), Dec. 17, 2010, 124 Stat. 3317; Pub. L. 112–240, title III, §301(a)(1), (b), (c), Jan. 2, 2013, 126 Stat. 2326, 2328.)

REFERENCES IN TEXT

The date of the enactment of the Energy Tax Incentives Act of 2005, referred to in subsec. (b)(3)(D)(iv), is the date of enactment of title XIII of Pub. L. 109–58, which was approved Aug. 8, 2005.

PRIOR PROVISIONS

A prior section 41, added Pub. L. 97–34, title III, §331(a), Aug. 13, 1981, 95 Stat. 289, §44G; amended Pub. L. 97–448, title I, §103(g)(1), Jan. 12, 1983, 96 Stat. 2379; renumbered §41 and amended Pub. L. 98–369, div. A, title I, §14, title IV, §§471(c), 474(l), 491(e)(2), (3), July 18, 1984, 98 Stat. 505, 826, 833, 852, 853, related to employee stock ownership credit, prior to repeal by Pub. L. 99–514, title XI, §1171(a), Oct. 22, 1986, 100 Stat. 2513, applicable to compensation paid or accrued after Dec. 31, 1986, in taxable years ending after such date, except as otherwise provided, see section 1171(c) of Pub. L. 99–514, set out as an

Effective Date of 1986 Amendment note under section 38 of this title. For transition rules relating to such repeal, see section 1177 of Pub. L. 99–514, set out as a Transition Rules note under section 38 of this title.

Another prior section 41 was renumbered section 24 of this title.

AMENDMENTS

2013—Subsec. (f)(1)(A)(ii). Pub. L. 112–240, §301(c)(1), substituted "shall be determined on a proportionate basis to its share of the aggregate of the qualified research expenses, basic research payments, and amounts paid or incurred to energy research consortiums, taken into account by such controlled group for purposes of this section" for "shall be its proportionate shares of the qualified research expenses, basic research payments, and amounts paid or incurred to energy research consortiums, giving rise to the credit".

Subsec. (f)(1)(B)(ii). Pub. L. 112–240, §301(c)(2), substituted "shall be determined on a proportionate basis to its share of the aggregate of the qualified research expenses, basic research payments, and amounts paid or incurred to energy research consortiums, taken into account by all such persons under common control for purposes of this section" for "shall be its proportionate shares of the qualified research expenses, basic research payments, and amounts paid or incurred to energy research consortiums, giving rise to the credit".

Subsec. (f)(3)(A). Pub. L. 112–240, §301(b)(1), amended subpar. (A) generally. Prior to amendment, text read as follows: "If, after December 31, 1983, a taxpayer acquires the major portion of a trade or business of another person (hereinafter in this paragraph referred to as the 'predecessor') or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section for any taxable year ending after such acquisition, the amount of qualified research expenses paid or incurred by the taxpayer during periods before such acquisition shall be increased by so much of such expenses paid or incurred by the predecessor with respect to the acquired trade or business as is attributable to the portion of such trade or business or separate unit acquired by the taxpayer, and the gross receipts of the taxpayer for such periods shall be increased by so much of the gross receipts of such predecessor with respect to the acquired trade or business as is attributable to such portion."

Subsec. (f)(3)(B). Pub. L. 112–240, §301(b)(2), amended subpar. (B) generally. Prior to amendment, text read as follows: "If, after December 31, 1983—

"(i) a taxpayer disposes of the major portion of any trade or business or the major portion of a separate unit of a trade or business in a transaction to which subparagraph (A) applies, and

"(ii) the taxpayer furnished the acquiring person such information as is necessary for the application of subparagraph (A),

then, for purposes of applying this section for any taxable year ending after such disposition, the amount of qualified research expenses paid or incurred by the taxpayer during periods before such disposition shall be decreased by so much of such expenses as is attributable to the portion of such trade or business or separate unit disposed of by the taxpayer, and the gross receipts of the taxpayer for such periods shall be decreased by so much of the gross receipts as is attributable to such portion."

Subsec. (h)(1)(B). Pub. L. 112–240, §301(a)(1), substituted "December 31, 2013" for "December 31, 2011".

2010—Subsec. (h)(1)(B). Pub. L. 111–312 substituted "December 31, 2011" for "December 31, 2009".

2008—Subsec. (c)(5)(A). Pub. L. 110–343, §301(c), substituted "14 percent (12 percent in the case of taxable years ending before January 1, 2009)" for "12 percent".

Subsec. (h)(1)(B). Pub. L. 110–343, §301(a)(1), substituted "December 31, 2009" for "December 31, 2007".

Subsec. (h)(2). Pub. L. 110–343, §301(d), redesignated par. (3) as (2) related to computation for taxable year in which credit terminates.

Pub. L. 110–343, §301(b), added par. (2). Former par. (2) redesignated (3).

Subsec. (h)(3). Pub. L. 110–343, §301(d), amended par. (3) generally, redesignating it as par. (2) related to computation for taxable year in which credit terminated and amending heading and text generally. Prior to amendment, text read as follows: "In the case of any taxable year with respect to which this section applies to a number of days which is less than the total number of days in such taxable year, the base amount with respect to such taxable year shall be the amount which bears the same ratio to the base amount for such year (determined without regard to this paragraph) as the number of days in such taxable year to which this section applies bears to the total number of days in such taxable year."

Pub. L. 110–343, §301(b), redesignated par. (2) as (3).

2007—Subsec. (a)(3). Pub. L. 110–172, §6(c)(1), inserted "for energy research" before period at end.

Subsec. (f)(1)(A)(ii), (B)(ii). Pub. L. 110–172, §11(e)(2), substituted "qualified research expenses, basic research payments, and amounts paid or incurred to energy research consortiums," for "qualified research expenses and basic research payments".

Subsec. (f)(6)(E). Pub. L. 110–172, §6(c)(2), added subpar. (E).

2006—Subsec. (c)(4)(A)(i). Pub. L. 109–432, §104(b)(1)(A), substituted "3 percent" for "2.65 percent".

Subsec. (c)(4)(A)(ii). Pub. L. 109–432, §104(b)(1)(B), substituted "4 percent" for "3.2 percent".

Subsec. (c)(4)(A)(iii). Pub. L. 109–432, §104(b)(1)(C), substituted "5 percent" for "3.75 percent".

Subsec. (c)(5) to (7). Pub. L. 109–432, §104(c)(1), added par. (5) and redesignated former pars. (5) and (6) as (6) and (7), respectively.

Subsec. (h)(1)(B). Pub. L. 109–432, §104(a)(1), substituted "2007" for "2005".

2005—Subsec. (a)(3). Pub. L. 109–58, §1351(a)(1), added par. (3).

Subsec. (b)(3)(C)(ii). Pub. L. 109–135, §402(l)(2), struck out "(other than an energy research consortium)" after "organization" in introductory provisions.

Pub. L. 109–58, §1351(a)(3), inserted "(other than an energy research consortium)" after "organization" in introductory provisions.

Subsec. (b)(3)(D). Pub. L. 109–58, §1351(b), added subpar. (D).

Subsec. (f)(6). Pub. L. 109–58, §1351(a)(2), added par. (6).

Subsec. (f)(6)(C), (D). Pub. L. 109–135, §402(l)(1), added subpars. (C) and (D).

2004—Subsec. (h)(1)(B). Pub. L. 108–311 substituted "December 31, 2005" for "June 30, 2004".

1999—Subsec. (c)(4)(A)(i). Pub. L. 106–170, §502(b)(1)(A), substituted "2.65 percent" for "1.65 percent".

Subsec. (c)(4)(A)(ii). Pub. L. 106–170, §502(b)(1)(B), substituted "3.2 percent" for "2.2 percent".

Subsec. (c)(4)(A)(iii). Pub. L. 106–170, §502(b)(1)(C), substituted "3.75 percent" for "2.75 percent".

Subsecs. (c)(6), (d)(4)(F). Pub. L. 106–170, §502(c)(1), inserted ", the Commonwealth of Puerto Rico, or any possession of the United States" before period at end.

Subsec. (h)(1). Pub. L. 106–170, §502(a)(1)(B), struck out concluding provisions which read as follows: "Notwithstanding the preceding sentence, in the case of a taxpayer making an election under subsection (c)(4) for its first taxable year beginning after June 30, 1996, and before July 1, 1997, this section shall apply to amounts paid or incurred during the 36-month period beginning with the first month of such year. The 36 months referred to in the preceding sentence shall be reduced by the number of full months after June 1996 (and before the first month of such first taxable year) during which the taxpayer paid or incurred any amount which is taken into account in determining the credit under this section."

Subsec. (h)(1)(B). Pub. L. 106–170, §502(a)(1)(A), substituted "June 30, 2004" for "June 30, 1999".

1998—Subsec. (h)(1). Pub. L. 105–277 substituted "June 30, 1999" for "June 30, 1998" in subpar. (B) and substituted "36-month" for "24-month" and "36 months" for "24 months" in concluding provisions.

1997—Subsec. (c)(4)(B). Pub. L. 105–34, §601(b)(1), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: "An election under this paragraph may be made only for the first taxable year of the taxpayer beginning after June 30, 1996. Such an election shall apply to the taxable year for which made and all succeeding taxable years unless revoked with the consent of the Secretary."

Subsec. (h)(1). Pub. L. 105–34, §601(a), substituted "June 30, 1998" for "May 31, 1997" in subpar. (B) and "during the 24-month period beginning with the first month of such year. The 24 months referred to in the preceding sentence shall be reduced by the number of full months after June 1996 (and before the first month of such first taxable year) during which the taxpayer paid or incurred any amount which is taken into account in determining the credit under this section." for "during the first 11 months of such taxable year." in concluding provisions.

1996—Subsec. (b)(2)(D)(iii). Pub. L. 104–188, §1201(e)(1), (4), substituted "work opportunity credit" for "targeted jobs credit" in heading and text.

Subsec. (b)(3)(C). Pub. L. 104–188, §1204(d), added subpar. (C).

Subsec. (c)(3)(B)(i). Pub. L. 104–188, §1204(b), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "The fixed-base percentage shall be determined under this subparagraph if there are fewer than 3 taxable years beginning after December 31, 1983, and before January 1, 1989, in which the taxpayer had both gross receipts and qualified research expenses."

Subsec. (c)(4) to (6). Pub. L. 104–188, §1204(c), added par. (4) and redesignated former pars. (4) and (5) as (5) and (6), respectively.

Subsec. (h). Pub. L. 104–188, §1204(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows:

"(1) IN GENERAL.—This section shall not apply to any amount paid or incurred after June 30, 1995.

"(2) COMPUTATION OF BASE AMOUNT.—In the case of any taxable year which begins before July 1, 1995, and ends after June 30, 1995, the base amount with respect to such taxable year shall be the amount which bears the same ratio to the base amount for such year (determined without regard to this paragraph) as the number of days in such taxable year before July 1, 1995, bears to the total number of days in such taxable year."

1993—Subsec. (c)(3)(B)(ii). Pub. L. 103–66, §13112(a), amended heading and text of cl. (ii) generally. Prior to amendment, text read as follows: "In a case to which this subparagraph applies, the fixed-base

percentage is 3 percent."

Subsec. (c)(3)(B)(iii). Pub. L. 103–66, §13112(b)(1), substituted "clauses (i) and (ii)" for "clause (i)".

Subsec. (c)(3)(D). Pub. L. 103–66, §13112(b)(2), substituted "subparagraphs (A) and (B)(ii)" for "subparagraph (A)".

Subsec. (e)(5)(C). Pub. L. 103–66, §13201(b)(3)(C), substituted "1992" for "1989" in cls. (i) and (ii).

Subsec. (h). Pub. L. 103–66, §13111(a)(1), substituted "June 30, 1995" for "June 30, 1992" in pars. (1) and (2) and "July 1, 1995" for "July 1, 1992" in two places in par. (2).

1991—Subsec. (h). Pub. L. 102–227 substituted "June 30, 1992" for "December 31, 1991" in pars. (1) and (2), and "July 1, 1992" for "January 1, 1992" in two places in par. (2).

1990—Subsec. (e)(5)(C)(i). Pub. L. 101–508, §11101(d)(1)(C)(i), inserted before period at end ", by substituting 'calendar year 1987' for 'calendar year 1989' in subparagraph (B) thereof".

Subsec. (e)(5)(C)(ii). Pub. L. 101–508, §11101(d)(1)(C)(ii), (iii), substituted "1989" for "1987" and inserted at end "Such substitution shall be in lieu of the substitution under clause (i)."

Subsec. (h). Pub. L. 101–508, §11402(a), substituted "December 31, 1991" for "December 31, 1990" wherever appearing and "January 1, 1992" for "January 1, 1991" wherever appearing.

1989—Subsec. (a)(1)(B). Pub. L. 101–239, §7110(b)(2)(A), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "the base period research expenses, and".

Subsec. (b)(4). Pub. L. 101–239, §7110(b)[(c)], added par. (4).

Subsec. (c). Pub. L. 101–239, §7110(b)(1), substituted "Base amount" for "Base period research expenses" in heading and amended text generally, substituting pars. (1) to (5) for former pars. (1) to (3) which defined "base period research expenses" and "base period" and prescribed minimum base period research expenses.

Subsec. (e)(7)(C)(ii). Pub. L. 101–239, §7110(b)(2)(B), substituted "base amount" for "base period research expenses".

Subsec. (f)(1). Pub. L. 101–239, §7110(b)(2)(C), substituted "proportionate shares of the qualified research expenses and basic research payments" for "proportionate share of the increase in qualified research expenses" in subpars. (A)(ii) and (B)(ii).

Subsec. (f)(3)(A). Pub. L. 101–239, §7110(b)(2)(D), substituted "December 31, 1983" for "June 30, 1980" and inserted before period at end ", and the gross receipts of the taxpayer for such periods shall be increased by so much of the gross receipts of such predecessor with respect to the acquired trade or business as is attributable to such portion".

Subsec. (f)(3)(B). Pub. L. 101–239, §7110(b)(2)(E), substituted "December 31, 1983" for "June 30, 1980" in introductory provisions and inserted before period at end ", and the gross receipts of the taxpayer for such periods shall be decreased by so much of the gross receipts as is attributable to such portion".

Subsec. (f)(3)(C). Pub. L. 101–239, §7110(b)(2)(F), substituted "Certain reimbursements taken into account in determining fixed-base percentage" for "Increase in base period" in heading, "for the taxable years taken into account in computing the fixed-base percentage shall be increased by the lesser of" for "for the base period for such taxable year shall be increased by the lesser of" in introductory provisions, and new cls. (i) and (ii) for former cls. (i) and (ii) which read as follows:

"(i) the amount of the decrease under subparagraph (B) which is allocable to such base period, or

"(ii) the product of the number of years in the base period, multiplied by the amount of the reimbursement described in this subparagraph."

Subsec. (f)(4). Pub. L. 101–239, §7110(b)(2)(G), inserted "and gross receipts" after "qualified research expenses".

Subsec. (h). Pub. L. 101–239, §7814(e)(2)(C), redesignated subsec. (i) as (h) and struck out former subsec. (h) which related to election, time for election, and manner of election by taxpayer to have research credit not apply for a taxable year.

Subsec. (h)(1). Pub. L. 101–239, §7110(a)(1)(A), substituted "December 31, 1990" for "December 31, 1989".

Subsec. (h)(2). Pub. L. 101–239, §7110(a)(1), substituted "January 1, 1991" for "January 1, 1990" in two places and substituted "December 31, 1990" for "December 31, 1989".

Pub. L. 101–239, §7110(b)(2)(H), substituted "base amount" for "base period expenses" in heading and "the base amount with respect to such taxable year shall be the amount which bears the same ratio to the base amount for such year (determined without regard to this paragraph)" for "any amount for any base period with respect to such taxable year shall be the amount which bears the same ratio to such amount for such base period" in text.

Subsec. (i). Pub. L. 101–239, §7814(e)(2)(C), redesignated subsec. (i) as (h).

1988—Subsec. (g). Pub. L. 100–647, §1002(h)(1), inserted at end "If the amount determined under subsection (a) for any taxable year exceeds the limitation of the preceding sentence, such amount may be

carried to other taxable years under the rules of section 39; except that the limitation of the preceding sentence shall be taken into account in lieu of the limitation of section 38(c) in applying section 39."

Subsec. (h). Pub. L. 100–647, §4008(b)(1), added subsec. (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 100–647, §4008(b)(1), redesignated former subsec. (h) as (i).

Pub. L. 100–647, §4007(a), substituted "1989" and "1990" for "1988" and "1989", respectively, wherever appearing in subsec. (h), prior to redesignation as subsec. (i) by Pub. L. 100–647, §4008(b)(1).

1986—Pub. L. 99–514, §231(d)(2), renumbered section 30 of this title as this section.

Subsec. (a). Pub. L. 99–514, §231(c)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 25 percent of the excess (if any) of—

"(1) the qualified research expenses for the taxable year, over

"(2) the base period research expenses."

Subsec. (b)(2)(A)(iii). Pub. L. 99–514, §231(e), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: "any amount paid or incurred to another person for the right to use personal property in the conduct of qualified research."

Subsec. (b)(2)(D)(iii). Pub. L. 99–514, §1847(b)(1), substituted "targeted jobs credit" for "new jobs or WIN credit" in heading.

Subsec. (d). Pub. L. 99–514, §231(b), inserted "defined" in heading and amended text generally. Prior to amendment, text read as follows: "For purposes of this section the term 'qualified research' has the same meaning as the term research or experimental has under section 174, except that such term shall not include—

"(1) qualified research conducted outside the United States,

"(2) qualified research in the social sciences or humanities, and

"(3) qualified research to the extent funded by any grant, contract, or otherwise by another person (or any governmental entity)."

Subsec. (e). Pub. L. 99–514, §231(c)(2), amended subsec. (e) generally, substituting "Credit allowable with respect to certain payments to qualified organizations for basic research" for "Credit available with respect to certain basic research by colleges, universities, and certain research organizations" in heading, and restating and expanding provisions of former pars. (1) to (4) into new pars. (1) to (7).

Subsec. (g). Pub. L. 99–514, §231(d)(3)(C)(ii), amended subsec. (g) generally, substituting provisions relating to special rule for pass-thru of credit for provisions relating to limitation on amount of credit for research based on amount of tax liability.

Subsec. (h). Pub. L. 99–514, §231(a)(1), added subsec. (h).

1984—Pub. L. 98–369, §471(c), renumbered section 44F of this title as this section.

Subsec. (b)(2)(D)(iii). Pub. L. 98–369, §474(i)(1)(A), substituted "in determining the targeted jobs credit under section 51(a)" for "in computing the credit under section 40 or 44B".

Subsec. (g)(1)(A). Pub. L. 98–369, §612(e)(1), substituted "section 26(b)" for "section 25(b)".

Pub. L. 98–369, §474(i)(1)(B), amended subpar. (A) generally, substituting "shall not exceed the taxpayer's tax liability for the taxable year (as defined in section 25(b)), reduced by the sum of the credits allowable under subpart A and sections 27, 28, and 29" for "shall not exceed the amount of the tax imposed by this chapter reduced by the sum of the credits allowable under a section of this part having a lower number or letter designation than this section, other than the credits allowable by sections 31, 39, and 43. For purposes of the preceding sentence, the term 'tax imposed by this chapter' shall not include any tax treated as not imposed by this chapter under the last sentence of section 53(a)".

1983—Subsec. (b)(2)(A). Pub. L. 97–448 inserted provision that cl. (iii) would not apply to any amount to the extent that the taxpayer (or any person with whom the taxpayer must aggregate expenditures under subsection (f)(1)) received or accrued any amount from any other person for the right to use substantially identical personal property.

1982—Subsec. (f)(2)(A). Pub. L. 97–354, §5(a)(3)(A), substituted "Pass-thru in the case of estates and trusts" for "Pass-through in the case of subchapter S corporations, etc." in subpar. heading, and substituted provisions relating to the applicability of rules similar to rules of subsec. (d) of section 52 for provisions relating to the applicability of rules similar to rules of subsecs. (d) and (e) of section 52.

Subsec. (g)(1)(B)(iv). Pub. L. 97–354, §5(a)(3)(B), substituted "an S corporation" for "an electing small business corporation (within the meaning of section 1371(b))".

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title III, §301(d), Jan. 2, 2013, 126 Stat. 2328, provided that:

"(1) EXTENSION.—The amendments made by subsection (a) [amending this section and section 45C of this title] shall apply to amounts paid or incurred after December 31, 2011.

"(2) MODIFICATIONS.—The amendments made by subsections (b) and (c) [amending this section] shall apply to taxable years beginning after December 31, 2011."

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §731(c), Dec. 17, 2010, 124 Stat. 3317, provided that: "The amendments made by this section [amending this section and section 45C of this title] shall apply to amounts paid or incurred after December 31, 2009."

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title III, §301(e), Oct. 3, 2008, 122 Stat. 3866, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 45C of this title] shall apply to taxable years beginning after December 31, 2007.

"(2) EXTENSION.—The amendments made by subsection (a) [amending this section and section 45C of this title] shall apply to amounts paid or incurred after December 31, 2007."

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by section 6(c) of Pub. L. 110–172 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109–58, to which such amendment relates, see section 6(e) of Pub. L. 110–172, set out as a note under section 30C of this title.

Pub. L. 110–172, §11(e)(3), Dec. 29, 2007, 121 Stat. 2489, provided that: "The amendments made by this subsection [amending this section and section 6427 of this title] shall take effect as if included in the provisions of the Energy Policy Act of 2005 [Pub. L. 109–58] to which they relate."

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title I, §104(a)(3), Dec. 20, 2006, 120 Stat. 2934, provided that: "The amendments made by this subsection [amending this section and section 45C of this title] shall apply to amounts paid or incurred after December 31, 2005."

Pub. L. 109–432, div. A, title I, §104(b)(2), (3), Dec. 20, 2006, 120 Stat. 2934, provided that:

"(2) EFFECTIVE DATE.—Except as provided in paragraph (3), the amendments made by this subsection [amending this section] shall apply to taxable years ending after December 31, 2006.

"(3) TRANSITION RULE.—

"(A) IN GENERAL.—In the case of a specified transitional taxable year for which an election under section 41(c)(4) of the Internal Revenue Code of 1986 applies, the credit determined under section 41(a)(1) of such Code shall be equal to the sum of—

"(i) the applicable 2006 percentage multiplied by the amount determined under section 41(c)(4)(A) of such Code (as in effect for taxable years ending on December 31, 2006), plus

"(ii) the applicable 2007 percentage multiplied by the amount determined under section 41(c)(4)(A) of such Code (as in effect for taxable years ending on January 1, 2007).

"(B) DEFINITIONS.—For purposes of subparagraph (A)—

"(i) SPECIFIED TRANSITIONAL TAXABLE YEAR.—The term 'specified transitional taxable year' means any taxable year which ends after December 31, 2006, and which includes such date.

"(ii) APPLICABLE 2006 PERCENTAGE.—The term 'applicable 2006 percentage' means the number of days in the specified transitional taxable year before January 1, 2007, divided by the number of days in such taxable year.

"(iii) APPLICABLE 2007 PERCENTAGE.—The term 'applicable 2007 percentage' means the number of days in the specified transitional taxable year after December 31, 2006, divided by the number of days in such taxable year."

Pub. L. 109–432, div. A, title I, §104(c)(2)–(4), Dec. 20, 2006, 120 Stat. 2935, provided that:

"(2) TRANSITION RULE FOR DEEMED REVOCATION OF ELECTION OF ALTERNATIVE INCREMENTAL CREDIT.—In the case of an election under section 41(c)(4) of the Internal Revenue Code of 1986 which applies to the taxable year which includes January 1, 2007, such election shall be treated as revoked with the consent of the Secretary of the Treasury if the taxpayer makes an election under section 41(c)(5) of such Code (as added by this subsection) for such year.

"(3) EFFECTIVE DATE.—Except as provided in paragraph (4), the amendments made by this subsection [amending this section] shall apply to taxable years ending after December 31, 2006.

"(4) TRANSITION RULE FOR NONCALENDAR TAXABLE YEARS.—

"(A) IN GENERAL.—In the case of a specified transitional taxable year for which an election under section 41(c)(5) of the Internal Revenue Code of 1986 (as added by this subsection) applies, the credit

determined under section 41(a)(1) of such Code shall be equal to the sum of—

"(i) the applicable 2006 percentage multiplied by the amount determined under section 41(a)(1) of such Code (as in effect for taxable years ending on December 31, 2006), plus

"(ii) the applicable 2007 percentage multiplied by the amount determined under section 41(c)(5) of such Code (as in effect for taxable years ending on January 1, 2007).

"(B) DEFINITIONS AND SPECIAL RULES.—For purposes of subparagraph (A)—

"(i) DEFINITIONS.—Terms used in this paragraph which are also used in subsection (b)(3) [set out above] shall have the respective meanings given such terms in such subsection.

"(ii) DUAL ELECTIONS PERMITTED.—Elections under paragraphs (4) and (5) of section 41(c) of such Code may both apply for the specified transitional taxable year.

"(iii) DEFERRAL OF DEEMED ELECTION REVOCATION.—Any election under section 41(c)(4) of the Internal Revenue Code of 1986 treated as revoked under paragraph (2) shall be treated as revoked for the taxable year after the specified transitional taxable year."

EFFECTIVE DATE OF 2005 AMENDMENTS

Amendment by Pub. L. 109–135 effective as if included in the provision of the Energy Policy Act of 2005, Pub. L. 109–58, to which such amendment relates, see section 402(m)(1) of Pub. L. 109–135, set out as an Effective and Termination Dates of 2005 Amendments note under section 23 of this title.

Pub. L. 109–58, title XIII, §1351(c), Aug. 8, 2005, 119 Stat. 1058, provided that: "The amendments made by this section [amending this section] shall apply to amounts paid or incurred after the date of the enactment of this Act [Aug. 8, 2005], in taxable years ending after such date."

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–311, title III, §301(b), Oct. 4, 2004, 118 Stat. 1178, provided that: "The amendments made by this section [amending this section and section 45C of this title] shall apply to amounts paid or incurred after June 30, 2004."

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title V, §502(a)(3), Dec. 17, 1999, 113 Stat. 1919, provided that: "The amendments made by this subsection [amending this section and section 45C of this title] shall apply to amounts paid or incurred after June 30, 1999."

Pub. L. 106–170, title V, §502(b)(2), Dec. 17, 1999, 113 Stat. 1919, provided that: "The amendments made by this subsection [amending this section] shall apply to taxable years beginning after June 30, 1999."

Pub. L. 106–170, title V, §502(c)(3), Dec. 17, 1999, 113 Stat. 1920, provided that: "The amendments made by this subsection [amending this section and section 280C of this title] shall apply to amounts paid or incurred after June 30, 1999."

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–277, div. J, title I, §1001(c), Oct. 21, 1998, 112 Stat. 2681–888, provided that: "The amendments made by this section [amending this section and section 45C of this title] shall apply to amounts paid or incurred after June 30, 1998."

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title VI, §601(c), Aug. 5, 1997, 111 Stat. 862, provided that: "The amendments made by this section [amending this section and section 45C of this title] shall apply to amounts paid or incurred after May 31, 1997."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1201(e)(1), (4) of Pub. L. 104–188 applicable to individuals who begin work for the employer after Sept. 30, 1996, see section 1201(g) of Pub. L. 104–188, set out as a note under section 38 of this title.

Pub. L. 104–188, title I, §1204(f), Aug. 20, 1996, 110 Stat. 1775, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 28 [now 45C] of this title] shall apply to taxable years ending after June 30, 1996.

"(2) SUBSECTIONS (c) AND (d).—The amendments made by subsections (c) and (d) [amending this section] shall apply to taxable years beginning after June 30, 1996.

"(3) ESTIMATED TAX.—The amendments made by this section shall not be taken into account under section 6654 or 6655 of the Internal Revenue Code of 1986 (relating to failure to pay estimated tax) in

determining the amount of any installment required to be paid for a taxable year beginning in 1997."

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13111(a)(1) of Pub. L. 103–66 applicable to taxable years ending after June 30, 1992, see section 13111(c) of Pub. L. 103–66, set out as a note under section 45C of this title.

Pub. L. 103–66, title XIII, §13112(c), Aug. 10, 1993, 107 Stat. 422, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1993."

Amendment by section 13201(b)(3)(C) of Pub. L. 103–66 applicable to taxable years beginning after Dec. 31, 1992, see section 13201(c) of Pub. L. 103–66, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–227 applicable to taxable years ending after Dec. 31, 1991, see section 102(c) of Pub. L. 102–227, set out as a note under section 45C of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11101(d)(1)(C) of Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, see section 11101(e) of Pub. L. 101–508, set out as a note under section 1 of this title.

Amendment by section 11402(a) of Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1989, see section 11402(c) of Pub. L. 101–508, set out as a note under section 45C of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7110(e), Dec. 19, 1989, 103 Stat. 2326, provided that: "The amendments made by this section [amending this section and sections 28, 174, 196, and 280C of this title] (other than subsection (a) [amending this section and section 28 of this title]) shall apply to taxable years beginning after December 31, 1989."

Amendment by section 7814(e)(2)(C) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1002(h)(1) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title IV, §4008(d), Nov. 10, 1988, 102 Stat. 3653, provided that: "The amendments made by this section [amending this section and sections 28, 196, 280C, and 6501 of this title] shall apply to taxable years beginning after December 31, 1988."

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title II, §231(g), Oct. 22, 1986, 100 Stat. 2180, provided that:

"(1) IN GENERAL.—Except as provided in this subsection (2), the amendments made by this section [amending this section and sections 28, 38, 39, 108, 170, 280C, 381, 936, 6411, and 6511 of this title, renumbering former section 30 of this title as this section, and enacting and amending provisions set out as notes under this section] shall apply to taxable years beginning after December 31, 1985.

"(2) SUBSECTION (a).—The amendments made by subsection (a) [amending this section and provisions set out as a note under this section] shall apply to taxable years ending after December 31, 1985.

"(3) BASIC RESEARCH.—Section 41(a)(2) of the Internal Revenue Code of 1986 (as added by this section), and the amendments made by subsection (c)(2) [amending this section], shall apply to taxable years beginning after December 31, 1986."

Amendment by section 1847(b)(1) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(i)(1) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 612(e)(1) of Pub. L. 98–369 applicable to interest paid or accrued after Dec. 31, 1984, on indebtedness incurred after Dec. 31, 1984, see section 612(g) of Pub. L. 98–369, set out as an

Effective Date note under section 25 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 97–448, title I, §102(h)(2), Jan. 12, 1983, 96 Stat. 2372, provided that the amendment made by that section is effective only with respect to amounts paid or incurred after March 31, 1982.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE

Pub. L. 97–34, title II, §221(d), Aug. 13, 1981, 95 Stat. 241, as amended by Pub. L. 99–514, §2, title II, §231(a)(2), Oct. 22, 1986, 100 Stat. 2095, 2173, provided that:

"(1) IN GENERAL.—The amendments made by this section [enacting this section and amending sections 55, 381, 383, 6096, 6411, and 6511 of this title] shall apply to amounts paid or incurred after June 30, 1981.

"(2) TRANSITIONAL RULE.—

"(A) IN GENERAL.—If, with respect to the first taxable year to which the amendments made by this section apply and which ends in 1981 or 1982, the taxpayer may only take into account qualified research expenses paid or incurred during a portion of such taxable year, the amount of the qualified research expenses taken into account for the base period of such taxable year shall be the amount which bears the same ratio to the total qualified research expenses for such base period as the number of months in such portion of such taxable year bears to the total number of months in such taxable year.

"(B) DEFINITIONS.—For purposes of the preceding sentence, the terms 'qualified research expenses' and 'base period' have the meanings given to such terms by section 44F [now 41] of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this section)."

SPECIAL RULE FOR ELECTIONS UNDER EXPIRED PROVISIONS

Pub. L. 109–432, div. A, title I, §123, Dec. 20, 2006, 120 Stat. 2944, provided that:

"(a) RESEARCH CREDIT ELECTIONS.—In the case of any taxable year ending after December 31, 2005, and before the date of the enactment of this Act [Dec. 20, 2006], any election under section 41(c)(4) or section 280C(c)(3)(C) of the Internal Revenue Code of 1986 shall be treated as having been timely made for such taxable year if such election is made not later than the later of April 15, 2007, or such time as the Secretary of the Treasury, or his designee, may specify. Such election shall be made in the manner prescribed by such Secretary or designee.

"(b) OTHER ELECTIONS.—Except as otherwise provided by such Secretary or designee, a rule similar to the rule of subsection (a) shall apply with respect to elections under any other expired provision of the Internal Revenue Code of 1986 the applicability of which is extended by reason of the amendments made by this title [amending this section and sections 32, 45A, 45C, 45D, 51, 54, 62, 164, 168, 170, 198, 220, 222, 613A, 1397E, 1400, 1400A to 1400C, 1400F, 1400N, 6103, 7608, 7652, and 9812 of this title, section 1185a of Title 29, Labor, and section 300gg–5 of Title 42, The Public Health and Welfare, and repealing section 51A of this title]."

SPECIAL RULE FOR CREDIT ATTRIBUTABLE TO SUSPENSION PERIODS

Pub. L. 106–170, title V, §502(d), Dec. 17, 1999, 113 Stat. 1920, provided that:

"(1) IN GENERAL.—For purposes of the Internal Revenue Code of 1986, the credit determined under section 41 of such Code which is otherwise allowable under such Code—

"(A) shall not be taken into account prior to October 1, 2000, to the extent such credit is attributable to the first suspension period; and

"(B) shall not be taken into account prior to October 1, 2001, to the extent such credit is attributable to the second suspension period.

On or after the earliest date that an amount of credit may be taken into account, such amount may be taken into account through the filing of an amended return, an application for expedited refund, an adjustment of estimated taxes, or other means allowed by such Code.

"(2) SUSPENSION PERIODS.—For purposes of this subsection—

"(A) the first suspension period is the period beginning on July 1, 1999, and ending on September 30, 2000; and

"(B) the second suspension period is the period beginning on October 1, 2000, and ending on September 30, 2001.

"(3) EXPEDITED REFUNDS.—

"(A) IN GENERAL.—If there is an overpayment of tax with respect to a taxable year by reason of paragraph (1), the taxpayer may file an application for a tentative refund of such overpayment. Such application shall be in such manner and form, and contain such information, as the Secretary may prescribe.

"(B) DEADLINE FOR APPLICATIONS.—Subparagraph (A) shall apply only to an application filed before the date which is 1 year after the close of the suspension period to which the application relates.

"(C) ALLOWANCE OF ADJUSTMENTS.—Not later than 90 days after the date on which an application is filed under this paragraph, the Secretary shall—

"(i) review the application;

"(ii) determine the amount of the overpayment; and

"(iii) apply, credit, or refund such overpayment,

in a manner similar to the manner provided in section 6411(b) of such Code.

"(D) CONSOLIDATED RETURNS.—The provisions of section 6411(c) of such Code shall apply to an adjustment under this paragraph in such manner as the Secretary may provide.

"(4) CREDIT ATTRIBUTABLE TO SUSPENSION PERIOD.—

"(A) IN GENERAL.—For purposes of this subsection, in the case of a taxable year which includes a portion of the suspension period, the amount of credit determined under section 41 of such Code for such taxable year which is attributable to such period is the amount which bears the same ratio to the amount of credit determined under such section 41 for such taxable year as the number of months in the suspension period which are during such taxable year bears to the number of months in such taxable year.

"(B) WAIVER OF ESTIMATED TAX PENALTIES.—No addition to tax shall be made under section 6654 or 6655 of such Code for any period before July 1, 1999, with respect to any underpayment of tax imposed by such Code to the extent such underpayment was created or increased by reason of subparagraph (A).

"(5) SECRETARY.—For purposes of this subsection, the term 'Secretary' means the Secretary of the Treasury (or such Secretary's delegate)."

SPECIAL RULES FOR TAXABLE YEARS BEGINNING BEFORE OCT. 1, 1990, AND ENDING AFTER SEPT. 30, 1990

Pub. L. 101–239, title VII, §7110(a)(2), Dec. 19, 1989, 103 Stat. 2323, which set forth the method of determining the amount treated as qualified research expenses for taxable years beginning before Oct. 1, 1990, and ending after Sept. 30, 1990, was repealed by Pub. L. 101–508, title XI, §11402(b)(1), Nov. 5, 1990, 104 Stat. 1388–473.

[Pub. L. 104–188, title I, §1702(d)(1), Aug. 20, 1996, 110 Stat. 1870, provided that: "Notwithstanding section 11402(c) of the Revenue Reconciliation Act of 1990 [Pub. L. 101–508, set out as a note under section 45C of this title], the amendment made by section 11402(b)(1) of such Act [repealing section 7110(a)(2) of Pub. L. 101–239, formerly set out as a note above] shall apply to taxable years ending after December 31, 1989."]

STUDY AND REPORT ON CREDIT PROVIDED BY THIS SECTION

Pub. L. 100–647, title IV, §4007(b), Nov. 10, 1988, 102 Stat. 3652, directed Comptroller General of United States to conduct a study of credit provided by 26 U.S.C. 41 and submit a report of the study not later than Dec. 31, 1989, to Committee on Ways and Means of House of Representatives and Committee on Finance of Senate.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

NEW SECTION 41 TREATED AS CONTINUATION OF OLD SECTION 44F

Pub. L. 98–369, div. A, title IV, §474(i)(2), July 18, 1984, 98 Stat. 832, provided that: "For purposes of determining—

"(A) whether any excess credit under old section 44F [now 41] for a taxable year beginning before January 1, 1984, is allowable as a carryover under new section 30 [now 41], and

"(B) the period during which new section 30 [now 41] is in effect,

new section 30 [now 41] shall be treated as a continuation of old section 44F (and shall apply only to the extent old section 44F would have applied)."

[1] *So in original. Probably should be "(3)".*

§42. Low-income housing credit

(a) In general

For purposes of section 38, the amount of the low-income housing credit determined under this section for any taxable year in the credit period shall be an amount equal to—

(1) the applicable percentage of

(2) the qualified basis of each qualified low-income building.

(b) Applicable percentage: 70 percent present value credit for certain new buildings; 30 percent present value credit for certain other buildings

(1) Determination of applicable percentage

For purposes of this section, the term "applicable percentage" means, with respect to any building, the appropriate percentage prescribed by the Secretary for the earlier of—

(i) the month in which such building is placed in service, or

(ii) at the election of the taxpayer—

(I) the month in which the taxpayer and the housing credit agency enter into an agreement with respect to such building (which is binding on such agency, the taxpayer, and all successors in interest) as to the housing credit dollar amount to be allocated to such building, or

(II) in the case of any building to which subsection (h)(4)(B) applies, the month in which the tax-exempt obligations are issued.

A month may be elected under clause (ii) only if the election is made not later than the 5th day after the close of such month. Such an election, once made, shall be irrevocable.

(B) [1] Method of prescribing percentages

The percentages prescribed by the Secretary for any month shall be percentages which will yield over a 10-year period amounts of credit under subsection (a) which have a present value equal to—

(i) 70 percent of the qualified basis of a new building which is not federally subsidized for the taxable year, and

(ii) 30 percent of the qualified basis of a building not described in clause (i).

(C) Method of discounting

The present value under subparagraph (B) shall be determined—

(i) as of the last day of the 1st year of the 10-year period referred to in subparagraph (B),

(ii) by using a discount rate equal to 72 percent of the average of the annual Federal mid-term rate and the annual Federal long-term rate applicable under section 1274(d)(1) to the month applicable under clause (i) or (ii) of subparagraph (A) [1] and compounded annually, and

(iii) by assuming that the credit allowable under this section for any year is received on the last day of such year.

(2) Temporary minimum credit rate for non-federally subsidized new buildings

In the case of any new building—

(A) which is placed in service by the taxpayer after the date of the enactment of this paragraph with respect to housing credit dollar amount allocations made before January 1, 2014, and

(B) which is not federally subsidized for the taxable year,

the applicable percentage shall not be less than 9 percent.

(3) Cross references

(A) For treatment of certain rehabilitation expenditures as separate new buildings, see subsection (e).

(B) For determination of applicable percentage for increases in qualified basis after the 1st year of the credit period, see subsection (f)(3).

(C) For authority of housing credit agency to limit applicable percentage and qualified basis which may be taken into account under this section with respect to any building, see subsection (h)(7).

(c) Qualified basis; qualified low-income building

For purposes of this section—

(1) Qualified basis

(A) Determination

The qualified basis of any qualified low-income building for any taxable year is an amount equal to—

(i) the applicable fraction (determined as of the close of such taxable year) of

(ii) the eligible basis of such building (determined under subsection (d)(5)).

(B) Applicable fraction

For purposes of subparagraph (A), the term "applicable fraction" means the smaller of the unit fraction or the floor space fraction.

(C) Unit fraction

For purposes of subparagraph (B), the term "unit fraction" means the fraction—

(i) the numerator of which is the number of low-income units in the building, and

(ii) the denominator of which is the number of residential rental units (whether or not occupied) in such building.

(D) Floor space fraction

For purposes of subparagraph (B), the term "floor space fraction" means the fraction—

(i) the numerator of which is the total floor space of the low-income units in such building, and

(ii) the denominator of which is the total floor space of the residential rental units (whether or not occupied) in such building.

(E) Qualified basis to include portion of building used to provide supportive services for homeless

In the case of a qualified low-income building described in subsection (i)(3)(B)(iii), the qualified basis of such building for any taxable year shall be increased by the lesser of—

(i) so much of the eligible basis of such building as is used throughout the year to provide supportive services designed to assist tenants in locating and retaining permanent housing, or

(ii) 20 percent of the qualified basis of such building (determined without regard to this subparagraph).

(2) Qualified low-income building

The term "qualified low-income building" means any building—

(A) which is part of a qualified low-income housing project at all times during the period—

(i) beginning on the 1st day in the compliance period on which such building is part of such a project, and

(ii) ending on the last day of the compliance period with respect to such building, and

(B) to which the amendments made by section 201(a) of the Tax Reform Act of 1986 apply.

(d) Eligible basis

For purposes of this section—

(1) New buildings

The eligible basis of a new building is its adjusted basis as of the close of the 1st taxable year of the credit period.

(2) Existing buildings

(A) In general

The eligible basis of an existing building is—

(i) in the case of a building which meets the requirements of subparagraph (B), its adjusted basis as of the close of the 1st taxable year of the credit period, and

(ii) zero in any other case.

(B) Requirements

A building meets the requirements of this subparagraph if—

(i) the building is acquired by purchase (as defined in section 179(d)(2)),

(ii) there is a period of at least 10 years between the date of its acquisition by the taxpayer and the date the building was last placed in service,

(iii) the building was not previously placed in service by the taxpayer or by any person who was a related person with respect to the taxpayer as of the time previously placed in service, and

(iv) except as provided in subsection (f)(5), a credit is allowable under subsection (a) by reason of subsection (e) with respect to the building.

(C) Adjusted basis

For purposes of subparagraph (A), the adjusted basis of any building shall not include so much of the basis of such building as is determined by reference to the basis of other property held at any time by the person acquiring the building.

(D) Special rules for subparagraph (B)

(i) Special rules for certain transfers

For purposes of determining under subparagraph (B)(ii) when a building was last placed in service, there shall not be taken into account any placement in service—

(I) in connection with the acquisition of the building in a transaction in which the basis of the building in the hands of the person acquiring it is determined in whole or in part by reference to the adjusted basis of such building in the hands of the person from whom acquired,

(II) by a person whose basis in such building is determined under section 1014(a) (relating to property acquired from a decedent),

(III) by any governmental unit or qualified nonprofit organization (as defined in subsection (h)(5)) if the requirements of subparagraph (B)(ii) are met with respect to the placement in service by such unit or organization and all the income from such property is exempt from Federal income taxation,

(IV) by any person who acquired such building by foreclosure (or by instrument in lieu of foreclosure) of any purchase-money security interest held by such person if the requirements of subparagraph (B)(ii) are met with respect to the placement in service by such person and such building is resold within 12 months after the date such building is placed in service by such person after such foreclosure, or

(V) of a single-family residence by any individual who owned and used such residence for no other purpose than as his principal residence.

(ii) Related person

For purposes of subparagraph (B)(iii), a person (hereinafter in this subclause referred to as the "related person") is related to any person if the related person bears a relationship to such

person specified in section 267(b) or 707(b)(1), or the related person and such person are engaged in trades or businesses under common control (within the meaning of subsections (a) and (b) of section 52).

(3) Eligible basis reduced where disproportionate standards for units

(A) In general

Except as provided in subparagraph (B), the eligible basis of any building shall be reduced by an amount equal to the portion of the adjusted basis of the building which is attributable to residential rental units in the building which are not low-income units and which are above the average quality standard of the low-income units in the building.

(B) Exception where taxpayer elects to exclude excess costs

(i) In general

Subparagraph (A) shall not apply with respect to a residential rental unit in a building which is not a low-income unit if—

(I) the excess described in clause (ii) with respect to such unit is not greater than 15 percent of the cost described in clause (ii)(II), and

(II) the taxpayer elects to exclude from the eligible basis of such building the excess described in clause (ii) with respect to such unit.

(ii) Excess

The excess described in this clause with respect to any unit is the excess of—

(I) the cost of such unit, over

(II) the amount which would be the cost of such unit if the average cost per square foot of low-income units in the building were substituted for the cost per square foot of such unit.

The Secretary may by regulation provide for the determination of the excess under this clause on a basis other than square foot costs.

(4) Special rules relating to determination of adjusted basis

For purposes of this subsection—

(A) In general

Except as provided in subparagraphs (B) and (C), the adjusted basis of any building shall be determined without regard to the adjusted basis of any property which is not residential rental property.

(B) Basis of property in common areas, etc., included

The adjusted basis of any building shall be determined by taking into account the adjusted basis of property (of a character subject to the allowance for depreciation) used in common areas or provided as comparable amenities to all residential rental units in such building.

(C) Inclusion of basis of property used to provide services for certain nontenants

(i) In general

The adjusted basis of any building located in a qualified census tract (as defined in paragraph (5)(C)) shall be determined by taking into account the adjusted basis of property (of a character subject to the allowance for depreciation and not otherwise taken into account) used throughout the taxable year in providing any community service facility.

(ii) Limitation

The increase in the adjusted basis of any building which is taken into account by reason of clause (i) shall not exceed the sum of—

(I) 25 percent of so much of the eligible basis of the qualified low-income housing project of which it is a part as does not exceed $15,000,000, plus

(II) 10 percent of so much of the eligible basis of such project as is not taken into account under subclause (I).

For purposes of the preceding sentence, all community service facilities which are part of the same qualified low-income housing project shall be treated as one facility.

(iii) Community service facility

For purposes of this subparagraph, the term "community service facility" means any facility designed to serve primarily individuals whose income is 60 percent or less of area median income (within the meaning of subsection (g)(1)(B)).

(D) No reduction for depreciation

The adjusted basis of any building shall be determined without regard to paragraphs (2) and (3) of section 1016(a).

(5) Special rules for determining eligible basis

(A) Federal grants not taken into account in determining eligible basis

The eligible basis of a building shall not include any costs financed with the proceeds of a federally funded grant.

(B) Increase in credit for buildings in high cost areas

(i) In general

In the case of any building located in a qualified census tract or difficult development area which is designated for purposes of this subparagraph—

(I) in the case of a new building, the eligible basis of such building shall be 130 percent of such basis determined without regard to this subparagraph, and

(II) in the case of an existing building, the rehabilitation expenditures taken into account under subsection (e) shall be 130 percent of such expenditures determined without regard to this subparagraph.

(ii) Qualified census tract

(I) In general

The term "qualified census tract" means any census tract which is designated by the Secretary of Housing and Urban Development and, for the most recent year for which census data are available on household income in such tract, either in which 50 percent or more of the households have an income which is less than 60 percent of the area median gross income for such year or which has a poverty rate of at least 25 percent. If the Secretary of Housing and Urban Development determines that sufficient data for any period are not available to apply this clause on the basis of census tracts, such Secretary shall apply this clause for such period on the basis of enumeration districts.

(II) Limit on MSA's designated

The portion of a metropolitan statistical area which may be designated for purposes of this subparagraph shall not exceed an area having 20 percent of the population of such metropolitan statistical area.

(III) Determination of areas

For purposes of this clause, each metropolitan statistical area shall be treated as a separate area and all nonmetropolitan areas in a State shall be treated as 1 area.

(iii) Difficult development areas

(I) In general

The term "difficult development areas" means any area designated by the Secretary of Housing and Urban Development as an area which has high construction, land, and utility costs relative to area median gross income.

(II) Limit on areas designated

The portions of metropolitan statistical areas which may be designated for purposes of this subparagraph shall not exceed an aggregate area having 20 percent of the population of such metropolitan statistical areas. A comparable rule shall apply to nonmetropolitan areas.

(iv) Special rules and definitions

For purposes of this subparagraph—

(I) population shall be determined on the basis of the most recent decennial census for which data are available,

(II) area median gross income shall be determined in accordance with subsection (g)(4),

(III) the term "metropolitan statistical area" has the same meaning as when used in section 143(k)(2)(B), and

(IV) the term "nonmetropolitan area" means any county (or portion thereof) which is not within a metropolitan statistical area.

(v) Buildings designated by State housing credit agency

Any building which is designated by the State housing credit agency as requiring the increase in credit under this subparagraph in order for such building to be financially feasible as part of a qualified low-income housing project shall be treated for purposes of this subparagraph as located in a difficult development area which is designated for purposes of this subparagraph. The preceding sentence shall not apply to any building if paragraph (1) of subsection (h) does not apply to any portion of the eligible basis of such building by reason of paragraph (4) of such subsection.

(6) Credit allowable for certain buildings acquired during 10-year period described in paragraph (2)(B)(ii)

(A) In general

Paragraph (2)(B)(ii) shall not apply to any federally- or State-assisted building.

(B) Buildings acquired from insured depository institutions in default

On application by the taxpayer, the Secretary may waive paragraph (2)(B)(ii) with respect to any building acquired from an insured depository institution in default (as defined in section 3 of the Federal Deposit Insurance Act) or from a receiver or conservator of such an institution.

(C) Federally- or State-assisted building

For purposes of this paragraph—

(i) Federally-assisted building

The term "federally-assisted building" means any building which is substantially assisted, financed, or operated under section 8 of the United States Housing Act of 1937, section 221(d)(3), 221(d)(4), or 236 of the National Housing Act, section 515 of the Housing Act of 1949, or any other housing program administered by the Department of Housing and Urban Development or by the Rural Housing Service of the Department of Agriculture.

(ii) State-assisted building

The term "State-assisted building" means any building which is substantially assisted, financed, or operated under any State law similar in purposes to any of the laws referred to in clause (i).

(7) Acquisition of building before end of prior compliance period

(A) In general

Under regulations prescribed by the Secretary, in the case of a building described in subparagraph (B) (or interest therein) which is acquired by the taxpayer—

(i) paragraph (2)(B) shall not apply, but

(ii) the credit allowable by reason of subsection (a) to the taxpayer for any period after

such acquisition shall be equal to the amount of credit which would have been allowable under subsection (a) for such period to the prior owner referred to in subparagraph (B) had such owner not disposed of the building.

(B) Description of building

A building is described in this subparagraph if—

(i) a credit was allowed by reason of subsection (a) to any prior owner of such building, and

(ii) the taxpayer acquired such building before the end of the compliance period for such building with respect to such prior owner (determined without regard to any disposition by such prior owner).

(e) Rehabilitation expenditures treated as separate new building

(1) In general

Rehabilitation expenditures paid or incurred by the taxpayer with respect to any building shall be treated for purposes of this section as a separate new building.

(2) Rehabilitation expenditures

For purposes of paragraph (1)—

(A) In general

The term "rehabilitation expenditures" means amounts chargeable to capital account and incurred for property (or additions or improvements to property) of a character subject to the allowance for depreciation in connection with the rehabilitation of a building.

(B) Cost of acquisition, etc,[2] not included

Such term does not include the cost of acquiring any building (or interest therein) or any amount not permitted to be taken into account under paragraph (3) or (4) of subsection (d).

(3) Minimum expenditures to qualify

(A) In general

Paragraph (1) shall apply to rehabilitation expenditures with respect to any building only if—

(i) the expenditures are allocable to 1 or more low-income units or substantially benefit such units, and

(ii) the amount of such expenditures during any 24-month period meets the requirements of whichever of the following subclauses requires the greater amount of such expenditures:

(I) The requirement of this subclause is met if such amount is not less than 20 percent of the adjusted basis of the building (determined as of the 1st day of such period and without regard to paragraphs (2) and (3) of section 1016(a)).

(II) The requirement of this subclause is met if the qualified basis attributable to such amount, when divided by the number of low-income units in the building, is $6,000 or more.

(B) Exception from 10 percent rehabilitation

In the case of a building acquired by the taxpayer from a governmental unit, at the election of the taxpayer, subparagraph (A)(ii)(I) shall not apply and the credit under this section for such rehabilitation expenditures shall be determined using the percentage applicable under subsection (b)(2)(B)(ii).

(C) Date of determination

The determination under subparagraph (A) shall be made as of the close of the 1st taxable year in the credit period with respect to such expenditures.

(D) Inflation adjustment

In the case of any expenditures which are treated under paragraph (4) as placed in service during any calendar year after 2009, the $6,000 amount in subparagraph (A)(ii)(II) shall be

increased by an amount equal to—

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting "calendar year 2008" for "calendar year 1992" in subparagraph (B) thereof.

Any increase under the preceding sentence which is not a multiple of $100 shall be rounded to the nearest multiple of $100.

(4) Special rules

For purposes of applying this section with respect to expenditures which are treated as a separate building by reason of this subsection—

(A) such expenditures shall be treated as placed in service at the close of the 24-month period referred to in paragraph (3)(A), and

(B) the applicable fraction under subsection (c)(1) shall be the applicable fraction for the building (without regard to paragraph (1)) with respect to which the expenditures were incurred.

Nothing in subsection (d)(2) shall prevent a credit from being allowed by reason of this subsection.

(5) No double counting

Rehabilitation expenditures may, at the election of the taxpayer, be taken into account under this subsection or subsection (d)(2)(A)(i) but not under both such subsections.

(6) Regulations to apply subsection with respect to group of units in building

The Secretary may prescribe regulations, consistent with the purposes of this subsection, treating a group of units with respect to which rehabilitation expenditures are incurred as a separate new building.

(f) Definition and special rules relating to credit period

(1) Credit period defined

For purposes of this section, the term "credit period" means, with respect to any building, the period of 10 taxable years beginning with—

(A) the taxable year in which the building is placed in service, or

(B) at the election of the taxpayer, the succeeding taxable year,

but only if the building is a qualified low-income building as of the close of the 1st year of such period. The election under subparagraph (B), once made, shall be irrevocable.

(2) Special rule for 1st year of credit period

(A) In general

The credit allowable under subsection (a) with respect to any building for the 1st taxable year of the credit period shall be determined by substituting for the applicable fraction under subsection (c)(1) the fraction—

(i) the numerator of which is the sum of the applicable fractions determined under subsection (c)(1) as of the close of each full month of such year during which such building was in service, and

(ii) the denominator of which is 12.

(B) Disallowed 1st year credit allowed in 11th year

Any reduction by reason of subparagraph (A) in the credit allowable (without regard to subparagraph (A)) for the 1st taxable year of the credit period shall be allowable under subsection (a) for the 1st taxable year following the credit period.

(3) Determination of applicable percentage with respect to increases in qualified basis after 1st year of credit period

(A) In general

In the case of any building which was a qualified low-income building as of the close of the 1st year of the credit period, if—

(i) as of the close of any taxable year in the compliance period (after the 1st year of the credit period) the qualified basis of such building exceeds

(ii) the qualified basis of such building as of the close of the 1st year of the credit period,

the applicable percentage which shall apply under subsection (a) for the taxable year to such excess shall be the percentage equal to 2/3 of the applicable percentage which (after the application of subsection (h)) would but for this paragraph apply to such basis.

(B) 1st year computation applies

A rule similar to the rule of paragraph (2)(A) shall apply to any increase in qualified basis to which subparagraph (A) applies for the 1st year of such increase.

(4) Dispositions of property

If a building (or an interest therein) is disposed of during any year for which credit is allowable under subsection (a), such credit shall be allocated between the parties on the basis of the number of days during such year the building (or interest) was held by each. In any such case, proper adjustments shall be made in the application of subsection (j).

(5) Credit period for existing buildings not to begin before rehabilitation credit allowed

(A) In general

The credit period for an existing building shall not begin before the 1st taxable year of the credit period for rehabilitation expenditures with respect to the building.

(B) Acquisition credit allowed for certain buildings not allowed a rehabilitation credit

(i) In general

In the case of a building described in clause (ii)—

(I) subsection (d)(2)(B)(iv) shall not apply, and

(II) the credit period for such building shall not begin before the taxable year which would be the 1st taxable year of the credit period for rehabilitation expenditures with respect to the building under the modifications described in clause (ii)(II).

(ii) Building described

A building is described in this clause if—

(I) a waiver is granted under subsection (d)(6)(C) with respect to the acquisition of the building, and

(II) a credit would be allowed for rehabilitation expenditures with respect to such building if subsection (e)(3)(A)(ii)(I) did not apply and if the dollar amount in effect under subsection (e)(3)(A)(ii)(II) were two-thirds of such amount.

(g) Qualified low-income housing project

For purposes of this section—

(1) In general

The term "qualified low-income housing project" means any project for residential rental property if the project meets the requirements of subparagraph (A) or (B) whichever is elected by the taxpayer:

(A) 20–50 test

The project meets the requirements of this subparagraph if 20 percent or more of the residential units in such project are both rent-restricted and occupied by individuals whose income is 50 percent or less of area median gross income.

(B) 40–60 test

The project meets the requirements of this subparagraph if 40 percent or more of the residential units in such project are both rent-restricted and occupied by individuals whose income is 60 percent or less of area median gross income.

Any election under this paragraph, once made, shall be irrevocable. For purposes of this paragraph, any property shall not be treated as failing to be residential rental property merely because part of the building in which such property is located is used for purposes other than residential rental purposes.

(2) Rent-restricted units

(A) In general

For purposes of paragraph (1), a residential unit is rent-restricted if the gross rent with respect to such unit does not exceed 30 percent of the imputed income limitation applicable to such unit. For purposes of the preceding sentence, the amount of the income limitation under paragraph (1) applicable for any period shall not be less than such limitation applicable for the earliest period the building (which contains the unit) was included in the determination of whether the project is a qualified low-income housing project.

(B) Gross rent

For purposes of subparagraph (A), gross rent—

(i) does not include any payment under section 8 of the United States Housing Act of 1937 or any comparable rental assistance program (with respect to such unit or occupants thereof),

(ii) includes any utility allowance determined by the Secretary after taking into account such determinations under section 8 of the United States Housing Act of 1937,

(iii) does not include any fee for a supportive service which is paid to the owner of the unit (on the basis of the low-income status of the tenant of the unit) by any governmental program of assistance (or by an organization described in section 501(c)(3) and exempt from tax under section 501(a)) if such program (or organization) provides assistance for rent and the amount of assistance provided for rent is not separable from the amount of assistance provided for supportive services, and

(iv) does not include any rental payment to the owner of the unit to the extent such owner pays an equivalent amount to the Farmers' Home Administration under section 515 of the Housing Act of 1949.

For purposes of clause (iii), the term "supportive service" means any service provided under a planned program of services designed to enable residents of a residential rental property to remain independent and avoid placement in a hospital, nursing home, or intermediate care facility for the mentally or physically handicapped. In the case of a single-room occupancy unit or a building described in subsection (i)(3)(B)(iii), such term includes any service provided to assist tenants in locating and retaining permanent housing.

(C) Imputed income limitation applicable to unit

For purposes of this paragraph, the imputed income limitation applicable to a unit is the income limitation which would apply under paragraph (1) to individuals occupying the unit if the number of individuals occupying the unit were as follows:

(i) In the case of a unit which does not have a separate bedroom, 1 individual.

(ii) In the case of a unit which has 1 or more separate bedrooms, 1.5 individuals for each separate bedroom.

In the case of a project with respect to which a credit is allowable by reason of this section and for which financing is provided by a bond described in section 142(a)(7), the imputed income limitation shall apply in lieu of the otherwise applicable income limitation for purposes of applying section 142(d)(4)(B)(ii).

(D) Treatment of units occupied by individuals whose incomes rise above limit

(i) In general

Except as provided in clause (ii), notwithstanding an increase in the income of the occupants of a low-income unit above the income limitation applicable under paragraph (1), such unit shall continue to be treated as a low-income unit if the income of such occupants initially met such income limitation and such unit continues to be rent-restricted.

(ii) Next available unit must be rented to low-income tenant if income rises above 140 percent of income limit

If the income of the occupants of the unit increases above 140 percent of the income limitation applicable under paragraph (1), clause (i) shall cease to apply to such unit if any residential rental unit in the building (of a size comparable to, or smaller than, such unit) is occupied by a new resident whose income exceeds such income limitation. In the case of a project described in section 142(d)(4)(B), the preceding sentence shall be applied by substituting "170 percent" for "140 percent" and by substituting "any low-income unit in the building is occupied by a new resident whose income exceeds 40 percent of area median gross income" for "any residential unit in the building (of a size comparable to, or smaller than, such unit) is occupied by a new resident whose income exceeds such income limitation".

(E) Units where Federal rental assistance is reduced as tenant's income increases

If the gross rent with respect to a residential unit exceeds the limitation under subparagraph (A) by reason of the fact that the income of the occupants thereof exceeds the income limitation applicable under paragraph (1), such unit shall, nevertheless, be treated as a rent-restricted unit for purposes of paragraph (1) if—

(i) a Federal rental assistance payment described in subparagraph (B)(i) is made with respect to such unit or its occupants, and

(ii) the sum of such payment and the gross rent with respect to such unit does not exceed the sum of the amount of such payment which would be made and the gross rent which would be payable with respect to such unit if—

(I) the income of the occupants thereof did not exceed the income limitation applicable under paragraph (1), and

(II) such units were rent-restricted within the meaning of subparagraph (A).

The preceding sentence shall apply to any unit only if the result described in clause (ii) is required by Federal statute as of the date of the enactment of this subparagraph and as of the date the Federal rental assistance payment is made.

(3) Date for meeting requirements

(A) In general

Except as otherwise provided in this paragraph, a building shall be treated as a qualified low-income building only if the project (of which such building is a part) meets the requirements of paragraph (1) not later than the close of the 1st year of the credit period for such building.

(B) Buildings which rely on later buildings for qualification

(i) In general

In determining whether a building (hereinafter in this subparagraph referred to as the "prior building") is a qualified low-income building, the taxpayer may take into account 1 or more additional buildings placed in service during the 12-month period described in subparagraph (A) with respect to the prior building only if the taxpayer elects to apply clause (ii) with respect to each additional building taken into account.

(ii) Treatment of elected buildings

In the case of a building which the taxpayer elects to take into account under clause (i), the

period under subparagraph (A) for such building shall end at the close of the 12-month period applicable to the prior building.

(iii) Date prior building is treated as placed in service

For purposes of determining the credit period and the compliance period for the prior building, the prior building shall be treated for purposes of this section as placed in service on the most recent date any additional building elected by the taxpayer (with respect to such prior building) was placed in service.

(C) Special rule

A building—

(i) other than the 1st building placed in service as part of a project, and

(ii) other than a building which is placed in service during the 12-month period described in subparagraph (A) with respect to a prior building which becomes a qualified low-income building,

shall in no event be treated as a qualified low-income building unless the project is a qualified low-income housing project (without regard to such building) on the date such building is placed in service.

(D) Projects with more than 1 building must be identified

For purposes of this section, a project shall be treated as consisting of only 1 building unless, before the close of the 1st calendar year in the project period (as defined in subsection (h)(1)(F)(ii)), each building which is (or will be) part of such project is identified in such form and manner as the Secretary may provide.

(4) Certain rules made applicable

Paragraphs (2) (other than subparagraph (A) thereof), (3), (4), (5), (6), and (7) of section 142(d), and section 6652(j), shall apply for purposes of determining whether any project is a qualified low-income housing project and whether any unit is a low-income unit; except that, in applying such provisions for such purposes, the term "gross rent" shall have the meaning given such term by paragraph (2)(B) of this subsection.

(5) Election to treat building after compliance period as not part of a project

For purposes of this section, the taxpayer may elect to treat any building as not part of a qualified low-income housing project for any period beginning after the compliance period for such building.

(6) Special rule where de minimis equity contribution

Property shall not be treated as failing to be residential rental property for purposes of this section merely because the occupant of a residential unit in the project pays (on a voluntary basis) to the lessor a de minimis amount to be held toward the purchase by such occupant of a residential unit in such project if—

(A) all amounts so paid are refunded to the occupant on the cessation of his occupancy of a unit in the project, and

(B) the purchase of the unit is not permitted until after the close of the compliance period with respect to the building in which the unit is located.

Any amount paid to the lessor as described in the preceding sentence shall be included in gross rent under paragraph (2) for purposes of determining whether the unit is rent-restricted.

(7) Scattered site projects

Buildings which would (but for their lack of proximity) be treated as a project for purposes of this section shall be so treated if all of the dwelling units in each of the buildings are rent-restricted (within the meaning of paragraph (2)) residential rental units.

(8) Waiver of certain de minimis errors and recertifications

On application by the taxpayer, the Secretary may waive—

(A) any recapture under subsection (j) in the case of any de minimis error in complying with paragraph (1), or

(B) any annual recertification of tenant income for purposes of this subsection, if the entire building is occupied by low-income tenants.

(9) Clarification of general public use requirement

A project does not fail to meet the general public use requirement solely because of occupancy restrictions or preferences that favor tenants—

(A) with special needs,

(B) who are members of a specified group under a Federal program or State program or policy that supports housing for such a specified group, or

(C) who are involved in artistic or literary activities.

(h) Limitation on aggregate credit allowable with respect to projects located in a State

(1) Credit may not exceed credit amount allocated to building

(A) In general

The amount of the credit determined under this section for any taxable year with respect to any building shall not exceed the housing credit dollar amount allocated to such building under this subsection.

(B) Time for making allocation

Except in the case of an allocation which meets the requirements of subparagraph (C), (D), (E), or (F), an allocation shall be taken into account under subparagraph (A) only if it is made not later than the close of the calendar year in which the building is placed in service.

(C) Exception where binding commitment

An allocation meets the requirements of this subparagraph if there is a binding commitment (not later than the close of the calendar year in which the building is placed in service) by the housing credit agency to allocate a specified housing credit dollar amount to such building beginning in a specified later taxable year.

(D) Exception where increase in qualified basis

(i) In general

An allocation meets the requirements of this subparagraph if such allocation is made not later than the close of the calendar year in which ends the taxable year to which it will 1st apply but only to the extent the amount of such allocation does not exceed the limitation under clause (ii).

(ii) Limitation

The limitation under this clause is the amount of credit allowable under this section (without regard to this subsection) for a taxable year with respect to an increase in the qualified basis of the building equal to the excess of—

(I) the qualified basis of such building as of the close of the 1st taxable year to which such allocation will apply, over

(II) the qualified basis of such building as of the close of the 1st taxable year to which the most recent prior housing credit allocation with respect to such building applied.

(iii) Housing credit dollar amount reduced by full allocation

Notwithstanding clause (i), the full amount of the allocation shall be taken into account under paragraph (2).

(E) Exception where 10 percent of cost incurred

(i) In general

An allocation meets the requirements of this subparagraph if such allocation is made with

respect to a qualified building which is placed in service not later than the close of the second calendar year following the calendar year in which the allocation is made.

(ii) Qualified building

For purposes of clause (i), the term "qualified building" means any building which is part of a project if the taxpayer's basis in such project (as of the date which is 1 year after the date that the allocation was made) is more than 10 percent of the taxpayer's reasonably expected basis in such project (as of the close of the second calendar year referred to in clause (i)). Such term does not include any existing building unless a credit is allowable under subsection (e) for rehabilitation expenditures paid or incurred by the taxpayer with respect to such building for a taxable year ending during the second calendar year referred to in clause (i) or the prior taxable year.

(F) Allocation of credit on a project basis

(i) In general

In the case of a project which includes (or will include) more than 1 building, an allocation meets the requirements of this subparagraph if—

(I) the allocation is made to the project for a calendar year during the project period,

(II) the allocation only applies to buildings placed in service during or after the calendar year for which the allocation is made, and

(III) the portion of such allocation which is allocated to any building in such project is specified not later than the close of the calendar year in which the building is placed in service.

(ii) Project period

For purposes of clause (i), the term "project period" means the period—

(I) beginning with the 1st calendar year for which an allocation may be made for the 1st building placed in service as part of such project, and

(II) ending with the calendar year the last building is placed in service as part of such project.

(2) Allocated credit amount to apply to all taxable years ending during or after credit allocation year

Any housing credit dollar amount allocated to any building for any calendar year—

(A) shall apply to such building for all taxable years in the compliance period ending during or after such calendar year, and

(B) shall reduce the aggregate housing credit dollar amount of the allocating agency only for such calendar year.

(3) Housing credit dollar amount for agencies

(A) In general

The aggregate housing credit dollar amount which a housing credit agency may allocate for any calendar year is the portion of the State housing credit ceiling allocated under this paragraph for such calendar year to such agency.

(B) State ceiling initially allocated to State housing credit agencies

Except as provided in subparagraphs (D) and (E), the State housing credit ceiling for each calendar year shall be allocated to the housing credit agency of such State. If there is more than 1 housing credit agency of a State, all such agencies shall be treated as a single agency.

(C) State housing credit ceiling

The State housing credit ceiling applicable to any State for any calendar year shall be an amount equal to the sum of—

(i) the unused State housing credit ceiling (if any) of such State for the preceding calendar year,

(ii) the greater of—
(I) $1.75 ($1.50 for 2001) multiplied by the State population, or
(II) $2,000,000,

(iii) the amount of State housing credit ceiling returned in the calendar year, plus
(iv) the amount (if any) allocated under subparagraph (D) to such State by the Secretary.

For purposes of clause (i), the unused State housing credit ceiling for any calendar year is the excess (if any) of the sum of the amounts described in clauses (ii) through (iv) over the aggregate housing credit dollar amount allocated for such year. For purposes of clause (iii), the amount of State housing credit ceiling returned in the calendar year equals the housing credit dollar amount previously allocated within the State to any project which fails to meet the 10 percent test under paragraph (1)(E)(ii) on a date after the close of the calendar year in which the allocation was made or which does not become a qualified low-income housing project within the period required by this section or the terms of the allocation or to any project with respect to which an allocation is cancelled by mutual consent of the housing credit agency and the allocation recipient.

(D) Unused housing credit carryovers allocated among certain States

(i) In general

The unused housing credit carryover of a State for any calendar year shall be assigned to the Secretary for allocation among qualified States for the succeeding calendar year.

(ii) Unused housing credit carryover

For purposes of this subparagraph, the unused housing credit carryover of a State for any calendar year is the excess (if any) of—
(I) the unused State housing credit ceiling for the year preceding such year, over
(II) the aggregate housing credit dollar amount allocated for such year.

(iii) Formula for allocation of unused housing credit carryovers among qualified States

The amount allocated under this subparagraph to a qualified State for any calendar year shall be the amount determined by the Secretary to bear the same ratio to the aggregate unused housing credit carryovers of all States for the preceding calendar year as such State's population for the calendar year bears to the population of all qualified States for the calendar year. For purposes of the preceding sentence, population shall be determined in accordance with section 146(j).

(iv) Qualified State

For purposes of this subparagraph, the term "qualified State" means, with respect to a calendar year, any State—
(I) which allocated its entire State housing credit ceiling for the preceding calendar year, and
(II) for which a request is made (not later than May 1 of the calendar year) to receive an allocation under clause (iii).

(E) Special rule for States with constitutional home rule cities

For purposes of this subsection—

(i) In general

The aggregate housing credit dollar amount for any constitutional home rule city for any calendar year shall be an amount which bears the same ratio to the State housing credit ceiling for such calendar year as—
(I) the population of such city, bears to
(II) the population of the entire State.

(ii) Coordination with other allocations

In the case of any State which contains 1 or more constitutional home rule cities, for purposes of applying this paragraph with respect to housing credit agencies in such State other than constitutional home rule cities, the State housing credit ceiling for any calendar year shall be reduced by the aggregate housing credit dollar amounts determined for such year for all constitutional home rule cities in such State.

(iii) Constitutional home rule city

For purposes of this paragraph, the term "constitutional home rule city" has the meaning given such term by section 146(d)(3)(C).

(F) State may provide for different allocation

Rules similar to the rules of section 146(e) (other than paragraph (2)(B) thereof) shall apply for purposes of this paragraph.

(G) Population

For purposes of this paragraph, population shall be determined in accordance with section 146(j).

(H) Cost-of-living adjustment

(i) In general

In the case of a calendar year after 2002, the $2,000,000 and $1.75 amounts in subparagraph (C) shall each be increased by an amount equal to—

(I) such dollar amount, multiplied by

(II) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting "calendar year 2001" for "calendar year 1992" in subparagraph (B) thereof.

(ii) Rounding

(I) In the case of the $2,000,000 amount, any increase under clause (i) which is not a multiple of $5,000 shall be rounded to the next lowest multiple of $5,000.

(II) In the case of the $1.75 amount, any increase under clause (i) which is not a multiple of 5 cents shall be rounded to the next lowest multiple of 5 cents.

(I) Increase in State housing credit ceiling for 2008 and 2009

In the case of calendar years 2008 and 2009—

(i) the dollar amount in effect under subparagraph (C)(ii)(I) for such calendar year (after any increase under subparagraph (H)) shall be increased by $0.20, and

(ii) the dollar amount in effect under subparagraph (C)(ii)(II) for such calendar year (after any increase under subparagraph (H)) shall be increased by an amount equal to 10 percent of such dollar amount (rounded to the next lowest multiple of $5,000).

(4) Credit for buildings financed by tax-exempt bonds subject to volume cap not taken into account

(A) In general

Paragraph (1) shall not apply to the portion of any credit allowable under subsection (a) which is attributable to eligible basis financed by any obligation the interest on which is exempt from tax under section 103 if—

(i) such obligation is taken into account under section 146, and

(ii) principal payments on such financing are applied within a reasonable period to redeem obligations the proceeds of which were used to provide such financing or such financing is refunded as described in section 146(i)(6).

(B) Special rule where 50 percent or more of building is financed with tax-exempt bonds subject to volume cap

For purposes of subparagraph (A), if 50 percent or more of the aggregate basis of any building and the land on which the building is located is financed by any obligation described in subparagraph (A), paragraph (1) shall not apply to any portion of the credit allowable under

subsection (a) with respect to such building.

(5) Portion of State ceiling set-aside for certain projects involving qualified nonprofit organizations

(A) In general

Not more than 90 percent of the State housing credit ceiling for any State for any calendar year shall be allocated to projects other than qualified low-income housing projects described in subparagraph (B).

(B) Projects involving qualified nonprofit organizations

For purposes of subparagraph (A), a qualified low-income housing project is described in this subparagraph if a qualified nonprofit organization is to own an interest in the project (directly or through a partnership) and materially participate (within the meaning of section 469(h)) in the development and operation of the project throughout the compliance period.

(C) Qualified nonprofit organization

For purposes of this paragraph, the term "qualified nonprofit organization" means any organization if—

(i) such organization is described in paragraph (3) or (4) of section 501(c) and is exempt from tax under section 501(a),

(ii) such organization is determined by the State housing credit agency not to be affiliated with or controlled by a for-profit organization; [3] and

(iii) 1 of the exempt purposes of such organization includes the fostering of low-income housing.

(D) Treatment of certain subsidiaries

(i) In general

For purposes of this paragraph, a qualified nonprofit organization shall be treated as satisfying the ownership and material participation test of subparagraph (B) if any qualified corporation in which such organization holds stock satisfies such test.

(ii) Qualified corporation

For purposes of clause (i), the term "qualified corporation" means any corporation if 100 percent of the stock of such corporation is held by 1 or more qualified nonprofit organizations at all times during the period such corporation is in existence.

(E) State may not override set-aside

Nothing in subparagraph (F) of paragraph (3) shall be construed to permit a State not to comply with subparagraph (A) of this paragraph.

(6) Buildings eligible for credit only if minimum long-term commitment to low-income housing

(A) In general

No credit shall be allowed by reason of this section with respect to any building for the taxable year unless an extended low-income housing commitment is in effect as of the end of such taxable year.

(B) Extended low-income housing commitment

For purposes of this paragraph, the term "extended low-income housing commitment" means any agreement between the taxpayer and the housing credit agency—

(i) which requires that the applicable fraction (as defined in subsection (c)(1)) for the building for each taxable year in the extended use period will not be less than the applicable fraction specified in such agreement and which prohibits the actions described in subclauses (I) and (II) of subparagraph (E)(ii),

(ii) which allows individuals who meet the income limitation applicable to the building

under subsection (g) (whether prospective, present, or former occupants of the building) the right to enforce in any State court the requirement and prohibitions of clause (i),

(iii) which prohibits the disposition to any person of any portion of the building to which such agreement applies unless all of the building to which such agreement applies is disposed of to such person,

(iv) which prohibits the refusal to lease to a holder of a voucher or certificate of eligibility under section 8 of the United States Housing Act of 1937 because of the status of the prospective tenant as such a holder,

(v) which is binding on all successors of the taxpayer, and

(vi) which, with respect to the property, is recorded pursuant to State law as a restrictive covenant.

(C) Allocation of credit may not exceed amount necessary to support commitment

(i) In general

The housing credit dollar amount allocated to any building may not exceed the amount necessary to support the applicable fraction specified in the extended low-income housing commitment for such building, including any increase in such fraction pursuant to the application of subsection (f)(3) if such increase is reflected in an amended low-income housing commitment.

(ii) Buildings financed by tax-exempt bonds

If paragraph (4) applies to any building the amount of credit allowed in any taxable year may not exceed the amount necessary to support the applicable fraction specified in the extended low-income housing commitment for such building. Such commitment may be amended to increase such fraction.

(D) Extended use period

For purposes of this paragraph, the term "extended use period" means the period—

(i) beginning on the 1st day in the compliance period on which such building is part of a qualified low-income housing project, and

(ii) ending on the later of—

(I) the date specified by such agency in such agreement, or

(II) the date which is 15 years after the close of the compliance period.

(E) Exceptions if foreclosure or if no buyer willing to maintain low-income status

(i) In general

The extended use period for any building shall terminate—

(I) on the date the building is acquired by foreclosure (or instrument in lieu of foreclosure) unless the Secretary determines that such acquisition is part of an arrangement with the taxpayer a purpose of which is to terminate such period, or

(II) on the last day of the period specified in subparagraph (I) if the housing credit agency is unable to present during such period a qualified contract for the acquisition of the low-income portion of the building by any person who will continue to operate such portion as a qualified low-income building.

Subclause (II) shall not apply to the extent more stringent requirements are provided in the agreement or in State law.

(ii) Eviction, etc. of existing low-income tenants not permitted

The termination of an extended use period under clause (i) shall not be construed to permit before the close of the 3-year period following such termination—

(I) the eviction or the termination of tenancy (other than for good cause) of an existing tenant of any low-income unit, or

(II) any increase in the gross rent with respect to such unit not otherwise permitted under

this section.

(F) Qualified contract

For purposes of subparagraph (E), the term "qualified contract" means a bona fide contract to acquire (within a reasonable period after the contract is entered into) the nonlow-income portion of the building for fair market value and the low-income portion of the building for an amount not less than the applicable fraction (specified in the extended low-income housing commitment) of—

(i) the sum of—

(I) the outstanding indebtedness secured by, or with respect to, the building,

(II) the adjusted investor equity in the building, plus

(III) other capital contributions not reflected in the amounts described in subclause (I) or (II), reduced by

(ii) cash distributions from (or available for distribution from) the project.

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this paragraph, including regulations to prevent the manipulation of the amount determined under the preceding sentence.

(G) Adjusted investor equity

(i) In general

For purposes of subparagraph (E), the term "adjusted investor equity" means, with respect to any calendar year, the aggregate amount of cash taxpayers invested with respect to the project increased by the amount equal to—

(I) such amount, multiplied by

(II) the cost-of-living adjustment for such calendar year, determined under section 1(f)(3) by substituting the base calendar year for "calendar year 1987".

An amount shall be taken into account as an investment in the project only to the extent there was an obligation to invest such amount as of the beginning of the credit period and to the extent such amount is reflected in the adjusted basis of the project.

(ii) Cost-of-living increases in excess of 5 percent not taken into account

Under regulations prescribed by the Secretary, if the CPI for any calendar year (as defined in section 1(f)(4)) exceeds the CPI for the preceding calendar year by more than 5 percent, the CPI for the base calendar year shall be increased such that such excess shall never be taken into account under clause (i).

(iii) Base calendar year

For purposes of this subparagraph, the term "base calendar year" means the calendar year with or within which the 1st taxable year of the credit period ends.

(H) Low-income portion

For purposes of this paragraph, the low-income portion of a building is the portion of such building equal to the applicable fraction specified in the extended low-income housing commitment for the building.

(I) Period for finding buyer

The period referred to in this subparagraph is the 1-year period beginning on the date (after the 14th year of the compliance period) the taxpayer submits a written request to the housing credit agency to find a person to acquire the taxpayer's interest in the low-income portion of the building.

(J) Effect of noncompliance

If, during a taxable year, there is a determination that an extended low-income housing

agreement was not in effect as of the beginning of such year, such determination shall not apply to any period before such year and subparagraph (A) shall be applied without regard to such determination if the failure is corrected within 1 year from the date of the determination.

(K) Projects which consist of more than 1 building

The application of this paragraph to projects which consist of more than 1 building shall be made under regulations prescribed by the Secretary.

(7) Special rules

(A) Building must be located within jurisdiction of credit agency

A housing credit agency may allocate its aggregate housing credit dollar amount only to buildings located in the jurisdiction of the governmental unit of which such agency is a part.

(B) Agency allocations in excess of limit

If the aggregate housing credit dollar amounts allocated by a housing credit agency for any calendar year exceed the portion of the State housing credit ceiling allocated to such agency for such calendar year, the housing credit dollar amounts so allocated shall be reduced (to the extent of such excess) for buildings in the reverse of the order in which the allocations of such amounts were made.

(C) Credit reduced if allocated credit dollar amount is less than credit which would be allowable without regard to placed in service convention, etc.

(i) In general

The amount of the credit determined under this section with respect to any building shall not exceed the clause (ii) percentage of the amount of the credit which would (but for this subparagraph) be determined under this section with respect to such building.

(ii) Determination of percentage

For purposes of clause (i), the clause (ii) percentage with respect to any building is the percentage which—

(I) the housing credit dollar amount allocated to such building bears to

(II) the credit amount determined in accordance with clause (iii).

(iii) Determination of credit amount

The credit amount determined in accordance with this clause is the amount of the credit which would (but for this subparagraph) be determined under this section with respect to the building if—

(I) this section were applied without regard to paragraphs (2)(A) and (3)(B) of subsection (f), and

(II) subsection (f)(3)(A) were applied without regard to "the percentage equal to 2/3 of".

(D) Housing credit agency to specify applicable percentage and maximum qualified basis

In allocating a housing credit dollar amount to any building, the housing credit agency shall specify the applicable percentage and the maximum qualified basis which may be taken into account under this section with respect to such building. The applicable percentage and maximum qualified basis so specified shall not exceed the applicable percentage and qualified basis determined under this section without regard to this subsection.

(8) Other definitions

For purposes of this subsection—

(A) Housing credit agency

The term "housing credit agency" means any agency authorized to carry out this subsection.

(B) Possessions treated as States

The term "State" includes a possession of the United States.

(i) Definitions and special rules

For purposes of this section—

(1) Compliance period

The term "compliance period" means, with respect to any building, the period of 15 taxable years beginning with the 1st taxable year of the credit period with respect thereto.

(2) Determination of whether building is federally subsidized

(A) In general

Except as otherwise provided in this paragraph, for purposes of subsection (b)(1), a new building shall be treated as federally subsidized for any taxable year if, at any time during such taxable year or any prior taxable year, there is or was outstanding any obligation the interest on which is exempt from tax under section 103 the proceeds of which [4] are or were used (directly or indirectly) with respect to such building or the operation thereof.

(B) Election to reduce eligible basis by proceeds of obligations

A tax-exempt obligation shall not be taken into account under subparagraph (A) if the taxpayer elects to exclude from the eligible basis of the building for purposes of subsection (d) the proceeds of such obligation.

(C) Special rule for subsidized construction financing

Subparagraph (A) shall not apply to any tax-exempt obligation used to provide construction financing for any building if—

(i) such obligation (when issued) identified the building for which the proceeds of such obligation would be used, and

(ii) such obligation is redeemed before such building is placed in service.

(3) Low-income unit

(A) In general

The term "low-income unit" means any unit in a building if—

(i) such unit is rent-restricted (as defined in subsection (g)(2)), and

(ii) the individuals occupying such unit meet the income limitation applicable under subsection (g)(1) to the project of which such building is a part.

(B) Exceptions

(i) In general

A unit shall not be treated as a low-income unit unless the unit is suitable for occupancy and used other than on a transient basis.

(ii) Suitability for occupancy

For purposes of clause (i), the suitability of a unit for occupancy shall be determined under regulations prescribed by the Secretary taking into account local health, safety, and building codes.

(iii) Transitional housing for homeless

For purposes of clause (i), a unit shall be considered to be used other than on a transient basis if the unit contains sleeping accommodations and kitchen and bathroom facilities and is located in a building—

(I) which is used exclusively to facilitate the transition of homeless individuals (within the meaning of section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302), as in effect on the date of the enactment of this clause) to independent living within 24 months, and

(II) in which a governmental entity or qualified nonprofit organization (as defined in subsection (h)(5)) provides such individuals with temporary housing and supportive services designed to assist such individuals in locating and retaining permanent housing.

(iv) Single-room occupancy units

For purposes of clause (i), a single-room occupancy unit shall not be treated as used on a transient basis merely because it is rented on a month-by-month basis.

(C) Special rule for buildings having 4 or fewer units

In the case of any building which has 4 or fewer residential rental units, no unit in such building shall be treated as a low-income unit if the units in such building are owned by—

(i) any individual who occupies a residential unit in such building, or

(ii) any person who is related (as defined in subsection (d)(2)(D)(iii)) to such individual.

(D) Certain students not to disqualify unit

A unit shall not fail to be treated as a low-income unit merely because it is occupied—

(i) by an individual who is—

(I) a student and receiving assistance under title IV of the Social Security Act,

(II) a student who was previously under the care and placement responsibility of the State agency responsible for administering a plan under part B or part E of title IV of the Social Security Act, or

(III) enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, State, or local laws, or

(ii) entirely by full-time students if such students are—

(I) single parents and their children and such parents are not dependents (as defined in section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) of another individual and such children are not dependents (as so defined) of another individual other than a parent of such children, or.[5]

(II) married and file a joint return.

(E) Owner-occupied buildings having 4 or fewer units eligible for credit where development plan

(i) In general

Subparagraph (C) shall not apply to the acquisition or rehabilitation of a building pursuant to a development plan of action sponsored by a State or local government or a qualified nonprofit organization (as defined in subsection (h)(5)(C)).

(ii) Limitation on credit

In the case of a building to which clause (i) applies, the applicable fraction shall not exceed 80 percent of the unit fraction.

(iii) Certain unrented units treated as owner-occupied

In the case of a building to which clause (i) applies, any unit which is not rented for 90 days or more shall be treated as occupied by the owner of the building as of the 1st day it is not rented.

(4) New building

The term "new building" means a building the original use of which begins with the taxpayer.

(5) Existing building

The term "existing building" means any building which is not a new building.

(6) Application to estates and trusts

In the case of an estate or trust, the amount of the credit determined under subsection (a) and any increase in tax under subsection (j) shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each.

(7) Impact of tenant's right of 1st refusal to acquire property

(A) In general

No Federal income tax benefit shall fail to be allowable to the taxpayer with respect to any qualified low-income building merely by reason of a right of 1st refusal held by the tenants (in cooperative form or otherwise) or resident management corporation of such building or by a qualified nonprofit organization (as defined in subsection (h)(5)(C)) or government agency to purchase the property after the close of the compliance period for a price which is not less than the minimum purchase price determined under subparagraph (B).

(B) Minimum purchase price

For purposes of subparagraph (A), the minimum purchase price under this subparagraph is an amount equal to the sum of—

(i) the principal amount of outstanding indebtedness secured by the building (other than indebtedness incurred within the 5-year period ending on the date of the sale to the tenants), and

(ii) all Federal, State, and local taxes attributable to such sale.

Except in the case of Federal income taxes, there shall not be taken into account under clause (ii) any additional tax attributable to the application of clause (ii).

(8) Treatment of rural projects

For purposes of this section, in the case of any project for residential rental property located in a rural area (as defined in section 520 of the Housing Act of 1949), any income limitation measured by reference to area median gross income shall be measured by reference to the greater of area median gross income or national non-metropolitan median income. The preceding sentence shall not apply with respect to any building if paragraph (1) of section 42(h) does not apply by reason of paragraph (4) thereof to any portion of the credit determined under this section with respect to such building.

(9) Coordination with low-income housing grants

(A) Reduction in State housing credit ceiling for low-income housing grants received in 2009

For purposes of this section, the amounts described in clauses (i) through (iv) of subsection (h)(3)(C) with respect to any State for 2009 shall each be reduced by so much of such amount as is taken into account in determining the amount of any grant to such State under section 1602 of the American Recovery and Reinvestment Tax Act of 2009.

(B) Special rule for basis

Basis of a qualified low-income building shall not be reduced by the amount of any grant described in subparagraph (A).

(j) Recapture of credit

(1) In general

If—

(A) as of the close of any taxable year in the compliance period, the amount of the qualified basis of any building with respect to the taxpayer is less than

(B) the amount of such basis as of the close of the preceding taxable year,

then the taxpayer's tax under this chapter for the taxable year shall be increased by the credit recapture amount.

(2) Credit recapture amount

For purposes of paragraph (1), the credit recapture amount is an amount equal to the sum of—

(A) the aggregate decrease in the credits allowed to the taxpayer under section 38 for all prior taxable years which would have resulted if the accelerated portion of the credit allowable by reason of this section were not allowed for all prior taxable years with respect to the excess of the amount described in paragraph (1)(B) over the amount described in paragraph (1)(A), plus

(B) interest at the overpayment rate established under section 6621 on the amount determined under subparagraph (A) for each prior taxable year for the period beginning on the due date for filing the return for the prior taxable year involved.

No deduction shall be allowed under this chapter for interest described in subparagraph (B).

(3) Accelerated portion of credit

For purposes of paragraph (2), the accelerated portion of the credit for the prior taxable years with respect to any amount of basis is the excess of—

(A) the aggregate credit allowed by reason of this section (without regard to this subsection) for such years with respect to such basis, over

(B) the aggregate credit which would be allowable by reason of this section for such years with respect to such basis if the aggregate credit which would (but for this subsection) have been allowable for the entire compliance period were allowable ratably over 15 years.

(4) Special rules

(A) Tax benefit rule

The tax for the taxable year shall be increased under paragraph (1) only with respect to credits allowed by reason of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards and carrybacks under section 39 shall be appropriately adjusted.

(B) Only basis for which credit allowed taken into account

Qualified basis shall be taken into account under paragraph (1)(B) only to the extent such basis was taken into account in determining the credit under subsection (a) for the preceding taxable year referred to in such paragraph.

(C) No recapture of additional credit allowable by reason of subsection (f)(3)

Paragraph (1) shall apply to a decrease in qualified basis only to the extent such decrease exceeds the amount of qualified basis with respect to which a credit was allowable for the taxable year referred to in paragraph (1)(B) by reason of subsection (f)(3).

(D) No credits against tax

Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for purposes of determining the amount of any credit under this chapter.

(E) No recapture by reason of casualty loss

The increase in tax under this subsection shall not apply to a reduction in qualified basis by reason of a casualty loss to the extent such loss is restored by reconstruction or replacement within a reasonable period established by the Secretary.

(F) No recapture where de minimis changes in floor space

The Secretary may provide that the increase in tax under this subsection shall not apply with respect to any building if—

(i) such increase results from a de minimis change in the floor space fraction under subsection (c)(1), and

(ii) the building is a qualified low-income building after such change.

(5) Certain partnerships treated as the taxpayer

(A) In general

For purposes of applying this subsection to a partnership to which this paragraph applies—

(i) such partnership shall be treated as the taxpayer to which the credit allowable under subsection (a) was allowed,

(ii) the amount of such credit allowed shall be treated as the amount which would have been allowed to the partnership were such credit allowable to such partnership,

(iii) paragraph (4)(A) shall not apply, and

(iv) the amount of the increase in tax under this subsection for any taxable year shall be allocated among the partners of such partnership in the same manner as such partnership's taxable income for such year is allocated among such partners.

(B) Partnerships to which paragraph applies

This paragraph shall apply to any partnership which has 35 or more partners unless the partnership elects not to have this paragraph apply.

(C) Special rules

(i) Husband and wife treated as 1 partner

For purposes of subparagraph (B)(i), a husband and wife (and their estates) shall be treated as 1 partner.

(ii) Election irrevocable

Any election under subparagraph (B), once made, shall be irrevocable.

(6) No recapture on disposition of building which continues in qualified use

(A) In general

The increase in tax under this subsection shall not apply solely by reason of the disposition of a building (or an interest therein) if it is reasonably expected that such building will continue to be operated as a qualified low-income building for the remaining compliance period with respect to such building.

(B) Statute of limitations

If a building (or an interest therein) is disposed of during any taxable year and there is any reduction in the qualified basis of such building which results in an increase in tax under this subsection for such taxable or any subsequent taxable year, then—

(i) the statutory period for the assessment of any deficiency with respect to such increase in tax shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may prescribe) of such reduction in qualified basis, and

(ii) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

(k) Application of at-risk rules

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, rules similar to the rules of section 49(a)(1) (other than subparagraphs (D)(ii)(II) and (D)(iv)(I) thereof), section 49(a)(2), and section 49(b)(1) shall apply in determining the qualified basis of any building in the same manner as such sections apply in determining the credit base of property.

(2) Special rules for determining qualified person

For purposes of paragraph (1)—

(A) In general

If the requirements of subparagraphs (B), (C), and (D) are met with respect to any financing borrowed from a qualified nonprofit organization (as defined in subsection (h)(5)), the determination of whether such financing is qualified commercial financing with respect to any qualified low-income building shall be made without regard to whether such organization—

(i) is actively and regularly engaged in the business of lending money, or

(ii) is a person described in section 49(a)(1)(D)(iv)(II).

(B) Financing secured by property

The requirements of this subparagraph are met with respect to any financing if such financing is secured by the qualified low-income building, except that this subparagraph shall not apply in the case of a federally assisted building described in subsection (d)(6)(B) if—

(i) a security interest in such building is not permitted by a Federal agency holding or insuring the mortgage secured by such building, and

(ii) the proceeds from the financing (if any) are applied to acquire or improve such building..[6]

(C) Portion of building attributable to financing

The requirements of this subparagraph are met with respect to any financing for any taxable year in the compliance period if, as of the close of such taxable year, not more than 60 percent of the eligible basis of the qualified low-income building is attributable to such financing (reduced by the principal and interest of any governmental financing which is part of a wrap-around mortgage involving such financing).

(D) Repayment of principal and interest

The requirements of this subparagraph are met with respect to any financing if such financing is fully repaid on or before the earliest of—

(i) the date on which such financing matures,

(ii) the 90th day after the close of the compliance period with respect to the qualified low-income building, or

(iii) the date of its refinancing or the sale of the building to which such financing relates.

In the case of a qualified nonprofit organization which is not described in section 49(a)(1)(D)(iv)(II) with respect to a building, clause (ii) of this subparagraph shall be applied as if the date described therein were the 90th day after the earlier of the date the building ceases to be a qualified low-income building or the date which is 15 years after the close of a compliance period with respect thereto.

(3) Present value of financing

If the rate of interest on any financing described in paragraph (2)(A) is less than the rate which is 1 percentage point below the applicable Federal rate as of the time such financing is incurred, then the qualified basis (to which such financing relates) of the qualified low-income building shall be the present value of the amount of such financing, using as the discount rate such applicable Federal rate. For purposes of the preceding sentence, the rate of interest on any financing shall be determined by treating interest to the extent of government subsidies as not payable.

(4) Failure to fully repay

(A) In general

To the extent that the requirements of paragraph (2)(D) are not met, then the taxpayer's tax under this chapter for the taxable year in which such failure occurs shall be increased by an amount equal to the applicable portion of the credit under this section with respect to such building, increased by an amount of interest for the period—

(i) beginning with the due date for the filing of the return of tax imposed by chapter 1 for the 1st taxable year for which such credit was allowable, and

(ii) ending with the due date for the taxable year in which such failure occurs,

determined by using the underpayment rate and method under section 6621.

(B) Applicable portion

For purposes of subparagraph (A), the term "applicable portion" means the aggregate decrease in the credits allowed to a taxpayer under section 38 for all prior taxable years which would have resulted if the eligible basis of the building were reduced by the amount of financing which does not meet requirements of paragraph (2)(D).

(C) Certain rules to apply

Rules similar to the rules of subparagraphs (A) and (D) of subsection (j)(4) shall apply for purposes of this subsection.

(l) Certifications and other reports to Secretary

(1) Certification with respect to 1st year of credit period

Following the close of the 1st taxable year in the credit period with respect to any qualified low-income building, the taxpayer shall certify to the Secretary (at such time and in such form and in such manner as the Secretary prescribes)—

(A) the taxable year, and calendar year, in which such building was placed in service,

(B) the adjusted basis and eligible basis of such building as of the close of the 1st year of the credit period,

(C) the maximum applicable percentage and qualified basis permitted to be taken into account by the appropriate housing credit agency under subsection (h),

(D) the election made under subsection (g) with respect to the qualified low-income housing project of which such building is a part, and

(E) such other information as the Secretary may require.

In the case of a failure to make the certification required by the preceding sentence on the date prescribed therefor, unless it is shown that such failure is due to reasonable cause and not to willful neglect, no credit shall be allowable by reason of subsection (a) with respect to such building for any taxable year ending before such certification is made.

(2) Annual reports to the Secretary

The Secretary may require taxpayers to submit an information return (at such time and in such form and manner as the Secretary prescribes) for each taxable year setting forth—

(A) the qualified basis for the taxable year of each qualified low-income building of the taxpayer,

(B) the information described in paragraph (1)(C) for the taxable year, and

(C) such other information as the Secretary may require.

The penalty under section 6652(j) shall apply to any failure to submit the return required by the Secretary under the preceding sentence on the date prescribed therefor.

(3) Annual reports from housing credit agencies

Each agency which allocates any housing credit amount to any building for any calendar year shall submit to the Secretary (at such time and in such manner as the Secretary shall prescribe) an annual report specifying—

(A) the amount of housing credit amount allocated to each building for such year,

(B) sufficient information to identify each such building and the taxpayer with respect thereto, and

(C) such other information as the Secretary may require.

The penalty under section 6652(j) shall apply to any failure to submit the report required by the preceding sentence on the date prescribed therefor.

(m) Responsibilities of housing credit agencies

(1) Plans for allocation of credit among projects

(A) In general

Notwithstanding any other provision of this section, the housing credit dollar amount with respect to any building shall be zero unless—

(i) such amount was allocated pursuant to a qualified allocation plan of the housing credit agency which is approved by the governmental unit (in accordance with rules similar to the

rules of section 147(f)(2) (other than subparagraph (B)(ii) thereof)) of which such agency is a part,

(ii) such agency notifies the chief executive officer (or the equivalent) of the local jurisdiction within which the building is located of such project and provides such individual a reasonable opportunity to comment on the project,

(iii) a comprehensive market study of the housing needs of low-income individuals in the area to be served by the project is conducted before the credit allocation is made and at the developer's expense by a disinterested party who is approved by such agency, and

(iv) a written explanation is available to the general public for any allocation of a housing credit dollar amount which is not made in accordance with established priorities and selection criteria of the housing credit agency.

(B) Qualified allocation plan

For purposes of this paragraph, the term "qualified allocation plan" means any plan—

(i) which sets forth selection criteria to be used to determine housing priorities of the housing credit agency which are appropriate to local conditions,

(ii) which also gives preference in allocating housing credit dollar amounts among selected projects to—

(I) projects serving the lowest income tenants,

(II) projects obligated to serve qualified tenants for the longest periods, and

(III) projects which are located in qualified census tracts (as defined in subsection (d)(5)(C)) and the development of which contributes to a concerted community revitalization plan, and

(iii) which provides a procedure that the agency (or an agent or other private contractor of such agency) will follow in monitoring for noncompliance with the provisions of this section and in notifying the Internal Revenue Service of such noncompliance which such agency becomes aware of and in monitoring for noncompliance with habitability standards through regular site visits.

(C) Certain selection criteria must be used

The selection criteria set forth in a qualified allocation plan must include

(i) project location,

(ii) housing needs characteristics,

(iii) project characteristics, including whether the project includes the use of existing housing as part of a community revitalization plan,

(iv) sponsor characteristics,

(v) tenant populations with special housing needs,

(vi) public housing waiting lists,

(vii) tenant populations of individuals with children,

(viii) projects intended for eventual tenant ownership,

(ix) the energy efficiency of the project, and

(x) the historic nature of the project.

(D) Application to bond financed projects

Subsection (h)(4) shall not apply to any project unless the project satisfies the requirements for allocation of a housing credit dollar amount under the qualified allocation plan applicable to the area in which the project is located.

(2) Credit allocated to building not to exceed amount necessary to assure project feasibility

(A) In general

The housing credit dollar amount allocated to a project shall not exceed the amount the housing credit agency determines is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period.

(B) Agency evaluation

In making the determination under subparagraph (A), the housing credit agency shall consider—

(i) the sources and uses of funds and the total financing planned for the project,

(ii) any proceeds or receipts expected to be generated by reason of tax benefits,

(iii) the percentage of the housing credit dollar amount used for project costs other than the cost of intermediaries, and

(iv) the reasonableness of the developmental and operational costs of the project.

Clause (iii) shall not be applied so as to impede the development of projects in hard-to-develop areas. Such a determination shall not be construed to be a representation or warranty as to the feasibility or viability of the project.

(C) Determination made when credit amount applied for and when building placed in service

(i) In general

A determination under subparagraph (A) shall be made as of each of the following times:

(I) The application for the housing credit dollar amount.

(II) The allocation of the housing credit dollar amount.

(III) The date the building is placed in service.

(ii) Certification as to amount of other subsidies

Prior to each determination under clause (i), the taxpayer shall certify to the housing credit agency the full extent of all Federal, State, and local subsidies which apply (or which the taxpayer expects to apply) with respect to the building.

(D) Application to bond financed projects

Subsection (h)(4) shall not apply to any project unless the governmental unit which issued the bonds (or on behalf of which the bonds were issued) makes a determination under rules similar to the rules of subparagraphs (A) and (B).

(n) Regulations

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

(1) dealing with—

(A) projects which include more than 1 building or only a portion of a building,

(B) buildings which are placed in service in portions,

(2) providing for the application of this section to short taxable years,

(3) preventing the avoidance of the rules of this section, and

(4) providing the opportunity for housing credit agencies to correct administrative errors and omissions with respect to allocations and record keeping within a reasonable period after their discovery, taking into account the availability of regulations and other administrative guidance from the Secretary.

(Added Pub. L. 99–514, title II, §252(a), Oct. 22, 1986, 100 Stat. 2189; amended Pub. L. 99–509, title VIII, §8072(a), Oct. 21, 1986, 100 Stat. 1964; Pub. L. 100–647, title I, §§1002(l)(1)–(25), (32), 1007(g)(3)(B), title IV, §§4003(a), (b)(1), (3), 4004(a), Nov. 10, 1988, 102 Stat. 3373–3381, 3435, 3643, 3644; Pub. L. 101–239, title VII, §§7108(a)(1), (b)–(e)(2), (f)–(m), (n)(2)–(q), 7811(a), 7831(c), 7841(d)(13)–(15), Dec. 19, 1989, 103 Stat. 2306–2321, 2406, 2426, 2429; Pub. L. 101–508, title XI, §§11407(a)(1), (b)(1)–(9), 11701(a)(1)–(3)(A), (4), (5)(A), (6)–(10), 11812(b)(3), 11813(b)(3), Nov. 5, 1990, 104 Stat. 1388–474, 1388–475, 1388–505 to 1388–507, 1388–535, 1388–551; Pub. L. 102–227, title I, §107(a), Dec. 11, 1991, 105 Stat. 1687; Pub. L. 103–66, title XIII, §13142(a)(1), (b)(1)–(5), Aug. 10, 1993, 107 Stat. 437–439; Pub. L. 104–188, title I, §1704(t)(53), (64), Aug. 20, 1996, 110 Stat. 1890; Pub. L. 105–206, title VI, §6004(g)(5), July 22,

1998, 112 Stat. 796; Pub. L. 106–400, §2, Oct. 30, 2000, 114 Stat. 1675; Pub. L. 106–554, §1(a)(7) [title I, §§131(a)–(c), 132–136], Dec. 21, 2000, 114 Stat. 2763, 2763A–610 to 2763A–613; Pub. L. 107–147, title IV, §417(2), (3), Mar. 9, 2002, 116 Stat. 56; Pub. L. 108–311, title II, §207(8), title IV, §408(a)(3), Oct. 4, 2004, 118 Stat. 1177, 1191; Pub. L. 110–142, §6(a), Dec. 20, 2007, 121 Stat. 1806; Pub. L. 110–289, div. C, title I, §§3001–3002(b), 3003(a)–(g), 3004(a)–(g), 3007(b), July 30, 2008, 122 Stat. 2878–2884, 2886; Pub. L. 111–5, div. B, title I, §1404, Feb. 17, 2009, 123 Stat. 352; Pub. L. 112–240, title III, §302(a), Jan. 2, 2013, 126 Stat. 2328.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

REFERENCES IN TEXT

The date of the enactment of this paragraph, referred to in subsec. (b)(2)(A), is the date of enactment of Pub. L. 110–289, which was approved July 30, 2008.

Section 201(a) of the Tax Reform Act of 1986, referred to in subsec. (c)(2)(B), is section 201(a) of Pub. L. 99–514, which amended section 168 of this title generally.

Section 3 of the Federal Deposit Insurance Act, referred to in subsec. (d)(6)(B), is classified to section 1813 of Title 12, Banks and Banking.

Section 8 of the United States Housing Act of 1937, referred to in subsecs. (d)(6)(C)(i), (g)(2)(B), and (h)(6)(B)(iv), is classified to section 1437f of Title 42, The Public Health and Welfare. Section 8(e)(2) of the Act was repealed by Pub. L. 101–625, title II, §289(b)(1), Nov. 28, 1990, 104 Stat. 4128, effective Oct. 1, 1991, but to remain in effect with respect to single room occupancy dwellings as authorized by subchapter IV (§11361 et seq.) of chapter 119 of Title 42. See section 12839(b) of Title 42.

Sections 221(d)(3), (4) and 236 of the National Housing Act, referred to in subsec. (d)(6)(C)(i), are classified to sections 1715l(d)(3), (4) and 1715z–1, respectively, of Title 12, Banks and Banking.

Sections 515, 502(c), and 520 of the Housing Act of 1949, referred to in subsecs. (d)(6)(C)(i), (g)(2)(B)(iv), and (i)(8), are classified to sections 1485, 1472(c), and 1490, respectively, of Title 42, The Public Health and Welfare.

The date of the enactment of this subparagraph, referred to in subsec. (g)(2)(E), is the date of enactment of Pub. L. 100–647, which was approved Nov. 10, 1988.

The date of the enactment of this clause, referred to in subsec. (i)(3)(B)(iii)(I), is date of enactment of Pub. L. 101–239, which was approved Dec. 19, 1989.

The Social Security Act, referred to in subsec. (i)(3)(D)(i)(I), (II), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Title IV of the Act is classified generally to subchapter IV (§601 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. Parts B and E of title IV of the Act are classified generally to parts B (§620 et seq.) and E (§670 et seq.), respectively, of subchapter IV of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Job Training Partnership Act, referred to in subsec. (i)(3)(D)(i)(III), is Pub. L. 97–300, Oct. 13, 1982, 96 Stat. 1322, which was classified generally to chapter 19 (§1501 et seq.) of Title 29, Labor, and was repealed by Pub. L. 105–220, title I, §199(b)(2), (c)(2)(B), Aug. 7, 1998, 112 Stat. 1059, effective July 1, 2000. Pursuant to section 2940(b) of Title 29, references to a provision of the Job Training Partnership Act, effective Aug. 7, 1998, are deemed to refer to that provision or the corresponding provision of the Workforce Investment Act of 1998, Pub. L. 105–220, Aug. 7, 1998, 112 Stat. 936, and effective July 1, 2000, are deemed to refer to the corresponding provision of the Workforce Investment Act of 1998. For complete classification of the Job Training Partnership Act to the Code, see Tables. For complete classification of the Workforce Investment Act of 1998 to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

Section 1602 of the American Recovery and Reinvestment Tax Act of 2009, referred to in subsec. (i)(9)(A), is section 1602 of Pub. L. 111–5, which is set out as a note below.

PRIOR PROVISIONS

A prior section 42, added Pub. L. 94–12, title II, §203(a), Mar. 29, 1975, 89 Stat. 29; amended Pub. L. 94–164, §3(a)(1), Dec. 23, 1975, 89 Stat. 972; Pub. L. 94–455, title IV, §401(a)(2)(A), (B), title V, §503(b)(4), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1555, 1562, 1834; Pub. L. 95–30, title I, §101(c), May 23, 1977, 91 Stat. 132, which related to general tax credit allowed to individuals in an amount equal to the greater of (1) 2% of taxable income not exceeding $9,000 or (2) $35 multiplied by each exemption the taxpayer was entitled to, expired Dec. 31, 1978, pursuant to the terms of: (1) Pub. L. 94–12,

§209(a) as amended by Pub. L. 94–164, §2(e), set out as an Effective and Termination Dates of 1975 Amendment note under section 56 of this title; (2) Pub. L. 94–164, §3(b), as amended by Pub. L. 94–455, §401(a)(1) and Pub. L. 95–30, §103(a); and (3) Pub. L. 94–455, §401(e), as amended by Pub. L. 95–30, §103(c) and Pub. L. 95–600, title I, §103(b), Nov. 6, 1978, 92 Stat. 2771, set out as an Effective and Termination Dates of 1976 Amendment note under section 32 of this title.

Another prior section 42 was renumbered section 37 of this title.

AMENDMENTS

2013—Subsec. (b)(2)(A). Pub. L. 112–240 substituted "with respect to housing credit dollar amount allocations made before January 1, 2014" for "and before December 31, 2013".

2009—Subsec. (i). Pub. L. 111–5 added par. (9).

2008—Subsec. (b). Pub. L. 110–289, §3002(a), redesignated par. (2) as (1), in heading, substituted "Determination of applicable percentage" for "Buildings placed in service after 1987", in text, substituted "For purposes of this section, the term 'applicable percentage' means, with respect to any building, the appropriate percentage" for "(A) IN GENERAL.—In the case of any qualified low-income building placed in service by the taxpayer after 1987, the term 'applicable percentage' means the appropriate percentage", "a new building which is not federally subsidized for the taxable year" for "a building described in paragraph (1)(A)", and "a building not described in clause (i)" for "a building described in paragraph (1)(B)", added par. (2), and struck out "For purposes of this section—" after subsec. heading and former par. (1) which related to buildings placed in service during 1987.

Subsec. (c)(2). Pub. L. 110–289, §3004(a), struck out concluding provisions which read as follows: "Such term does not include any building with respect to which moderate rehabilitation assistance is provided, at any time during the compliance period, under section 8(e)(2) of the United States Housing Act of 1937 (other than assistance under the McKinney-Vento Homeless Assistance Act (as in effect on the date of the enactment of this sentence))."

Subsec. (d)(2)(B)(ii). Pub. L. 110–289, §3003(g)(1), substituted "the date the building was last placed in service," for "the later of—

"(I) the date the building was last placed in service, or

"(II) the date of the most recent nonqualified substantial improvement of the building,".

Subsec. (d)(2)(D). Pub. L. 110–289, §3003(e), (g)(2), redesignated cls. (ii) and (iii)(II) as (i) and (ii), respectively, in cl. (ii) struck out at end "For purposes of the preceding sentence, in applying section 267(b) or 707(b)(1), '10 percent' shall be substituted for '50 percent'.", and struck out former cls. (i) and (iii)(I) which related to the term "nonqualified substantial improvement" and application of section 179 for purposes of subpar. (B)(i).

Subsec. (d)(4)(C)(ii). Pub. L. 110–289, §3003(c), substituted "shall not exceed the sum of—" for "shall not exceed 10 percent of the eligible basis of the qualified low-income housing project of which it is a part." and added subcls. (I) and (II).

Subsec. (d)(5)(A). Pub. L. 110–289, §3003(d), amended heading and text of subpar. (A) generally. Prior to amendment, text read as follows: "If, during any taxable year of the compliance period, a grant is made with respect to any building or the operation thereof and any portion of such grant is funded with Federal funds (whether or not includible in gross income), the eligible basis of such building for such taxable year and all succeeding taxable years shall be reduced by the portion of such grant which is so funded."

Subsec. (d)(5)(B), (C). Pub. L. 110–289, §3003(g)(3), redesignated subpar. (C) as (B) and struck out heading and text of former subpar. (B). Text read as follows: "The eligible basis of any building shall not include any portion of its adjusted basis which is attributable to amounts with respect to which an election is made under section 167(k) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)."

Subsec. (d)(5)(C)(v). Pub. L. 110–289, §3003(a), added cl. (v).

Subsec. (d)(6). Pub. L. 110–289, §3003(f), amended par. (6) generally. Prior to amendment, par. (6) consisted of subpars. (A) to (E) relating to general rule for waiver of par. (2)(B)(ii) with respect to any federally-assisted building, definition of "federally-assisted building", waiver for buildings with low-income occupancy, waiver for buildings acquired from insured depository institutions in default, and definition of "appropriate Federal official".

Subsec. (e)(3)(A)(ii)(I). Pub. L. 110–289, §3003(b)(1)(A), substituted "20 percent" for "10 percent".

Subsec. (e)(3)(A)(ii)(II). Pub. L. 110–289, §3003(b)(1)(B), substituted "$6,000" for "$3,000".

Subsec. (e)(3)(D). Pub. L. 110–289, §3003(b)(2), added subpar. (D).

Subsec. (f)(5)(B)(ii)(II). Pub. L. 110–289, §3003(b)(3), substituted "if the dollar amount in effect under subsection (e)(3)(A)(ii)(II) were two-thirds of such amount." for "if subsection (e)(3)(A)(ii)(II) were applied

by substituting '$2,000' for '$3,000'."

Subsec. (g)(9). Pub. L. 110–289, §3004(g), added par. (9).

Subsec. (h)(1)(E)(ii). Pub. L. 110–289, §3004(b), substituted "(as of the date which is 1 year after the date that the allocation was made)" for "(as of the later of the date which is 6 months after the date that the allocation was made or the close of the calendar year in which the allocation is made)".

Subsec. (h)(3)(I). Pub. L. 110–289, §3001, added subpar. (I).

Subsec. (h)(4)(A)(ii). Pub. L. 110–289, §3007(b), inserted "or such financing is refunded as described in section 146(i)(6)" before period at end.

Subsec. (i)(2)(A). Pub. L. 110–289, §3002(b)(1), struck out ", or any below market Federal loan," before "the proceeds of which".

Subsec. (i)(2)(B). Pub. L. 110–289, §3002(b)(2)(A), in heading, struck out "balance of loan or" before "proceeds" and in text, struck out "loan or" before "tax-exempt obligation" and substituted "for purposes of subsection (d) the proceeds of such obligation." for "for purposes of subsection (d)—

"(i) in the case of a loan, the principal amount of such loan, and

"(ii) in the case of a tax-exempt obligation, the proceeds of such obligation."

Subsec. (i)(2)(C). Pub. L. 110–289, §3002(b)(2)(B)(i), struck out "or below market Federal loan" after "tax-exempt obligation" in introductory provisions.

Subsec. (i)(2)(C)(i). Pub. L. 110–289, §3002(b)(2)(B)(ii), substituted "(when issued)" for "or loan (when issued or made)" and "the proceeds of such obligation" for "the proceeds of such obligation or loan".

Subsec. (i)(2)(C)(ii). Pub. L. 110–289, §3002(b)(2)(B)(iii), struck out ", and such loan is repaid," after "redeemed".

Subsec. (i)(2)(D), (E). Pub. L. 110–289, §3002(b)(2)(C), struck out subpars. (D) and (E) which related to below market Federal loan and buildings receiving HOME assistance or Native American housing assistance, respectively.

Subsec. (i)(3)(D)(i)(II), (III). Pub. L. 110–289, §3004(e), added subcl. (II) and redesignated former subcl. (II) as (III).

Subsec. (i)(8). Pub. L. 110–289, §3004(f), added par. (8).

Subsec. (j)(6). Pub. L. 110–289, §3004(c), amended par. (6) generally. Prior to amendment, text read as follows: "In the case of a disposition of a building or an interest therein, the taxpayer shall be discharged from liability for any additional tax under this subsection by reason of such disposition if—

"(A) the taxpayer furnishes to the Secretary a bond in an amount satisfactory to the Secretary and for the period required by the Secretary, and

"(B) it is reasonably expected that such building will continue to be operated as a qualified low-income building for the remaining compliance period with respect to such building."

Subsec. (m)(1)(C)(ix), (x). Pub. L. 110–289, §3004(d), added cls. (ix) and (x).

2007—Subsec. (i)(3)(D)(ii)(I). Pub. L. 110–142 amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: "single parents and their children and such parents and children are not dependents (as defined in section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) of another individual, or".

2004—Subsec. (d)(2)(D)(iii)(I). Pub. L. 108–311, §408(a)(3), substituted "section 179(d)(7)" for "section 179(b)(7)".

Subsec. (i)(3)(D)(ii)(I). Pub. L. 108–311, §207(8), inserted ", determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof" after "section 152".

2002—Subsec. (h)(3)(C). Pub. L. 107–147, §417(2), substituted "the amounts described in clauses (ii) through (iv) over the aggregate housing credit dollar amount allocated for such year" for "the amounts described in clauses (ii) and (iii) over the aggregate housing credit dollar amount allocated for such year" in concluding provisions.

Subsec. (m)(1)(B)(ii)(II), (III). Pub. L. 107–147, §417(3), struck out second "and" at end of subcl. (II) and inserted "and" at end of subcl. (III).

2000—Subsec. (c)(2). Pub. L. 106–400 substituted "McKinney-Vento Homeless Assistance Act" for "Stewart B. McKinney Homeless Assistance Act" in concluding provisions.

Subsec. (d)(4)(A). Pub. L. 106–554, §1(a)(7) [title I, §134(a)(1)], substituted "subparagraphs (B) and (C)" for "subparagraph (B)".

Subsec. (d)(4)(C), (D). Pub. L. 106–554, §1(a)(7) [title I, §134(a)(2), (3)], added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (d)(5)(C)(ii)(I). Pub. L. 106–554, §1(a)(7) [title I, §135(b)], in first sentence, inserted "either" before "in which 50 percent" and "or which has a poverty rate of at least 25 percent" before period at end.

Subsec. (h)(1)(E)(ii). Pub. L. 106–554, §1(a)(7) [title I, §135(a)(1)], in first sentence, substituted "(as of the

later of the date which is 6 months after the date that the allocation was made or the close of the calendar year in which the allocation" for "(as of the close of the calendar year in which the allocation".

Subsec. (h)(3)(C). Pub. L. 106–554, §1(a)(7) [title I, §136(b)], which directed the substitution of "clauses (i) through (iv)" for "clauses (i) and (iii)" in the first sentence of concluding provisions, could not be executed because the words "clauses (i) and (iii)" did not appear subsequent to the amendment by Pub. L. 106–554, §1(a)(7) [title I, §131(c)(1)(B)]. See below.

Pub. L. 106–554, §1(a)(7) [title I, §135(a)(2)], in last sentence of concluding provisions, substituted "project which fails to meet the 10 percent test under paragraph (1)(E)(ii) on a date after the close of the calendar year in which the allocation was made or which" for "project which".

Pub. L. 106–554, §1(a)(7) [title I, §131(c)(1)], in first sentence of concluding provisions, substituted "clause (i)" for "clause (ii)" and "clauses (ii)" for "clauses (i)".

Subsec. (h)(3)(C)(i), (ii). Pub. L. 106–554, §1(a)(7) [title I, §131(a)], amended cls. (i) and (ii) generally. Prior to amendment, cls. (i) and (ii) read as follows:

"(i) $1.25 multiplied by the State population,

"(ii) the unused State housing credit ceiling (if any) of such State for the preceding calendar year,".

Subsec. (h)(3)(D)(ii). Pub. L. 106–554, §1(a)(7) [title I, §136(a)], substituted "the excess (if any) of—" for "the excess (if any) of the unused State housing credit ceiling for such year (as defined in subparagraph (C)(i)) over the excess (if any) of—" in introductory provisions, added subcls. (I) and (II), and struck out former subcls. (I) and (II) which read as follows:

"(I) the aggregate housing credit dollar amount allocated for such year, over

"(II) the sum of the amounts described in clauses (ii) and (iii) of subparagraph (C)."

Pub. L. 106–554, §1(a)(7) [title I, §131(c)(2)], substituted "subparagraph (C)(i)" for "subparagraph (C)(ii)" in introductory provisions and "clauses (ii)" for "clauses (i)" in subcl. (II).

Subsec. (h)(3)(H). Pub. L. 106–554, §1(a)(7) [title I, §131(b)], added subpar. (H).

Subsec. (i)(2)(E). Pub. L. 106–554, §1(a)(7) [title I, §134(b)(2)], inserted "or Native American housing assistance" after "HOME assistance" in heading.

Subsec. (i)(2)(E)(i). Pub. L. 106–554, §1(a)(7) [title I, §134(b)(1)], inserted "or the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.) (as in effect on October 1, 1997)" after "this subparagraph)".

Subsec. (i)(3)(B)(iii)(I). Pub. L. 106–400 substituted "McKinney-Vento Homeless Assistance Act" for "Stewart B. McKinney Homeless Assistance Act".

Subsec. (m)(1)(A)(iii), (iv). Pub. L. 106–554, §1(a)(7) [title I, §133(a)], added cls. (iii) and (iv).

Subsec. (m)(1)(B)(ii)(III). Pub. L. 106–554, §1(a)(7) [title I, §132(b)], added subcl. (III).

Subsec. (m)(1)(B)(iii). Pub. L. 106–554, §1(a)(7) [title I, §133(b)], inserted "and in monitoring for noncompliance with habitability standards through regular site visits" before period at end.

Subsec. (m)(1)(C)(iii). Pub. L. 106–554, §1(a)(7) [title I, §132(a)(1)], inserted ", including whether the project includes the use of existing housing as part of a community revitalization plan" before comma at end.

Subsec. (m)(1)(C)(v) to (viii). Pub. L. 106–554, §1(a)(7) [title I, §132(a)(2)], added cls. (v) to (viii) and struck out former cls. (v) to (vii) which read as follows:

"(v) participation of local tax-exempt organizations,

"(vi) tenant populations with special housing needs, and

"(vii) public housing waiting lists."

1998—Subsec. (j)(4)(D). Pub. L. 105–206 substituted "this chapter" for "subpart A, B, D, or G of this part".

1996—Subsec. (c)(2). Pub. L. 104–188, §1704(t)(64), struck out "of 1988" after "Homeless Assistance Act".

Subsec. (d)(5)(B). Pub. L. 104–188, §1704(t)(53), provided that section 11812(b)(3) of Pub. L. 101–508 shall be applied by not executing the amendment therein to the heading of subsec. (d)(5)(B) of this section. See 1990 Amendment note below.

1993—Subsec. (g)(8). Pub. L. 103–66, §13142(b)(3), added par. (8).

Subsec. (h)(6)(B)(iv) to (vi). Pub. L. 103–66, §13142(b)(4), added cl. (iv) and redesignated former cls. (iv) and (v) as (v) and (vi), respectively.

Subsec. (i)(2)(E). Pub. L. 103–66, §13142(b)(5), added subpar. (E).

Subsec. (i)(3)(D). Pub. L. 103–66, §13142(b)(2), amended heading and text of subpar. (D) generally. Prior to amendment, text read as follows: "A unit shall not fail to be treated as a low-income unit merely because it is occupied by an individual who is—

"(i) a student and receiving assistance under title IV of the Social Security Act, or

"(ii) enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, State, or local laws."

Subsec. (m)(2)(B)(iv). Pub. L. 103–66, §13142(b)(1), added cl. (iv).

Subsec. (o). Pub. L. 103–66, §13142(a)(1), struck out subsec. (o) which provided that subsec. (h)(3)(C)(i) would not apply to any amount allocated after June 30, 1992, and that subsec. (h)(4) would not apply to any building placed in service after June 30, 1992, with an exception for bond-financed buildings in progress.

1991—Subsec. (o)(1). Pub. L. 102–227, §107(a)(1), struck out ", for any calendar year after 1991" after "paragraph (2)" in introductory provisions, inserted "to any amount allocated after June 30, 1992" before comma at end of subpar. (A), and substituted "June 30, 1992" for "1991" in subpar. (B).

Subsec. (o)(2). Pub. L. 102–227, §107(a)(2), substituted "July 1, 1992" for "1992" in introductory provisions and subpar. (A), "June 30, 1992" for "December 31, 1991" and "June 30, 1994" for "December 31, 1993" in subpar. (B), and "July 1, 1994" for "January 1, 1994" in subpar. (C).

1990—Subsec. (b)(1). Pub. L. 101–508, §11701(a)(1)(B), struck out at end "A building shall not be treated as described in subparagraph (B) if, at any time during the credit period, moderate rehabilitation assistance is provided with respect to such building under section 8(e)(2) of the United States Housing Act of 1937."

Subsec. (c)(2). Pub. L. 101–508, §11701(a)(1)(A), inserted at end "Such term does not include any building with respect to which moderate rehabilitation assistance is provided, at any time during the compliance period, under section 8(e)(2) of the United States Housing Act of 1937."

Pub. L. 101–508, §11407(b)(5)(A), inserted before period at end of last sentence "(other than assistance under the Stewart B. McKinney Homeless Assistance Act of 1988 (as in effect on the date of the enactment of this sentence))".

Subsec. (d)(2)(D)(i)(I). Pub. L. 101–508, §11812(b)(3), inserted "(as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)" after "section 167(k)."

Subsec. (d)(2)(D)(ii)(V). Pub. L. 101–508, §11407(b)(8), added subcl. (V).

Subsec. (d)(5)(B). Pub. L. 101–508, §11812(b)(3), which directed the insertion of "(as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)" after "section 167(k)", was executed to the text, and not the heading, of subpar. (B). See 1996 Amendment note above.

Subsec. (d)(5)(C)(ii)(I). Pub. L. 101–508, §11407(b)(4), inserted at end "If the Secretary of Housing and Urban Development determines that sufficient data for any period are not available to apply this clause on the basis of census tracts, such Secretary shall apply this clause for such period on the basis of enumeration districts."

Pub. L. 101–508, §11701(a)(2)(B), inserted before period at end "for such year".

Pub. L. 101–508, §11701(a)(2)(A), which directed the insertion of "which is designated by the Secretary of Housing and Urban Development and, for the most recent year for which census data are available on household income in such tract," after "census tract", was executed by making the insertion after "any census tract" to reflect the probable intent of Congress.

Subsec. (g)(2)(B)(iv). Pub. L. 101–508, §11407(b)(3), added cl. (iv).

Subsec. (g)(2)(D)(i). Pub. L. 101–508, §11701(a)(3)(A), inserted before period at end "and such unit continues to be rent-restricted".

Subsec. (g)(2)(D)(ii). Pub. L. 101–508, §11701(a)(4), inserted at end "In the case of a project described in section 142(d)(4)(B), the preceding sentence shall be applied by substituting '170 percent' for '140 percent' and by substituting 'any low-income unit in the building is occupied by a new resident whose income exceeds 40 percent of area median gross income' for 'any residential unit in the building (of a size comparable to, or smaller than, such unit) is occupied by a new resident whose income exceeds such income limitation'."

Subsec. (g)(3)(A). Pub. L. 101–508, §11701(a)(5)(A), substituted "the 1st year of the credit period for such building" for "the 12-month period beginning on the date the building is placed in service".

Subsec. (h)(3)(C). Pub. L. 101–508, §11701(a)(6)(A), substituted "the sum of the amounts described in clauses (i) and (iii)" for "the amount described in clause (i)" in second sentence.

Subsec. (h)(3)(D)(ii)(II). Pub. L. 101–508, §11701(a)(6)(B), substituted "the sum of the amounts described in clauses (i) and (iii)" for "the amount described in clause (i)".

Subsec. (h)(5)(B). Pub. L. 101–508, §11407(b)(9)(A), inserted "own an interest in the project (directly or through a partnership) and" after "nonprofit organization is to".

Subsec. (h)(5)(C)(i) to (iii). Pub. L. 101–508, §11407(b)(9)(B), added cl. (ii) and redesignated former cl. (ii) as (iii).

Subsec. (h)(5)(D)(i). Pub. L. 101–508, §11407(b)(9)(C), inserted "ownership and" before "material participation".

Subsec. (h)(6)(B)(i). Pub. L. 101–508, §11701(a)(7)(A), inserted before comma at end "and which prohibits the actions described in subclauses (I) and (II) of subparagraph (E)(ii)".

Subsec. (h)(6)(B)(ii). Pub. L. 101–508, §11701(a)(7)(B), substituted "requirement and prohibitions" for "requirement".

Subsec. (h)(6)(B)(iii) to (v). Pub. L. 101–508, §11701(a)(8)(A), added cl. (iii) and redesignated former cls. (iii) and (iv) as (iv) and (v), respectively.

Subsec. (h)(6)(E)(i)(I). Pub. L. 101–508, §11701(a)(9), inserted before comma "unless the Secretary determines that such acquisition is part of an arrangement with the taxpayer a purpose of which is to terminate such period".

Subsec. (h)(6)(E)(ii)(II). Pub. L. 101–508, §11701(a)(8)(C), inserted before period at end "not otherwise permitted under this section".

Subsec. (h)(6)(F). Pub. L. 101–508, §11701(a)(8)(D), inserted "the nonlow-income portion of the building for fair market value and" before "the low-income portion" in introductory provisions.

Subsec. (h)(6)(J) to (L). Pub. L. 101–508, §11701(a)(8)(B), redesignated subpars. (K) and (L) as (J) and (K), respectively, and struck out former subpar. (J) which related to sales of less than the low-income portions of a building.

Subsec. (i)(3)(D). Pub. L. 101–508, §11407(b)(6), substituted "Certain students" for "Students in government-supported job training programs" in heading and amended text generally. Prior to amendment, text read as follows: "A unit shall not fail to be treated as a low-income unit merely because it is occupied by an individual who is enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, State, or local laws."

Subsec. (i)(7). Pub. L. 101–508, §11701(a)(10), redesignated par. (8) as (7).

Subsec. (i)(7)(A). Pub. L. 101–508, §11407(b)(1), substituted "the tenants (in cooperative form or otherwise) or resident management corporation of such building or by a qualified nonprofit organization (as defined in subsection (h)(5)(C)) or government agency" for "the tenants of such building".

Subsec. (i)(8). Pub. L. 101–508, §11701(a)(10), redesignated par. (8) as (7).

Subsec. (k)(1). Pub. L. 101–508, §11813(b)(3)(A), substituted "49(a)(1)" for "46(c)(8)", "49(a)(2)" for "46(c)(9)", and "49(b)(1)" for "47(d)(1)".

Subsec. (k)(2)(A)(ii), (D). Pub. L. 101–508, §11813(b)(3)(B), substituted "49(a)(1)(D)(iv)(II)" for "46(c)(8)(D)(iv)(II)".

Subsec. (m)(1)(B)(ii) to (iv). Pub. L. 101–508, §11407(b)(7)(B), redesignated cls. (iii) and (iv) as (ii) and (iii), respectively, and struck out former cl. (ii) which read as follows: "which gives the highest priority to those projects as to which the highest percentage of the housing credit dollar amount is to be used for project costs other than the cost of intermediaries unless granting such priority would impede the development of projects in hard-to-develop areas,".

Pub. L. 101–508, §11407(b)(2), amended cl. (iv) generally. Prior to amendment, cl. (iv) read as follows: "which provides a procedure that the agency will follow in notifying the Internal Revenue Service of noncompliance with the provisions of this section which such agency becomes aware of."

Subsec. (m)(2)(B). Pub. L. 101–508, §11407(b)(7)(A), added cl. (iii) and inserted provision that cl. (iii) not be applied so as to impede the development of projects in hard-to-develop areas.

Subsec. (o)(1). Pub. L. 101–508, §11407(a)(1)(A), substituted "1991" for "1990" wherever appearing.

Subsec. (o)(2). Pub. L. 101–508, §11407(a)(1)(B), added par. (2) and struck out former par. (2) which read as follows: "For purposes of paragraph (1)(B), a building shall be treated as placed in service before 1990 if—

"(A) the bonds with respect to such building are issued before 1990,

"(B) such building is constructed, reconstructed, or rehabilitated by the taxpayer,

"(C) more than 10 percent of the reasonably anticipated cost of such construction, reconstruction, or rehabilitation has been incurred as of January 1, 1990, and some of such cost is incurred on or after such date, and

"(D) such building is placed in service before January 1, 1992."

1989—Subsec. (b)(1). Pub. L. 101–239, §7108(h)(5), inserted at end "A building shall not be treated as described in subparagraph (B) if, at any time during the credit period, moderate rehabilitation assistance is provided with respect to such building under section 8(e)(2) of the United States Housing Act of 1937."

Subsec. (b)(3)(C). Pub. L. 101–239, §7108(c)(2), which directed amendment of subpar. (C) by substituting "subsection (h)(7)" for "subsection (h)(6))", was executed by substituting "subsection (h)(7)" for "subsection (h)(6)", as the probable intent of Congress.

Subsec. (c)(1)(E). Pub. L. 101–239, §7108(i)(2), added subpar. (E).

Subsec. (d)(1). Pub. L. 101–239, §7108(l)(1), inserted "as of the close of the 1st taxable year of the credit period" before period at end.

Subsec. (d)(2)(A). Pub. L. 101–239, §7108(l)(2), substituted "subparagraph (B), its adjusted basis as of the close of the 1st taxable year of the credit period, and" for "subparagraph (B), the sum of—

"(I) the portion of its adjusted basis attributable to its acquisition cost, plus

"(II) amounts chargeable to capital account and incurred by the taxpayer (before the close of the 1st

taxable year of the credit period for such building) for property (or additions or improvements to property) of a character subject to the allowance for depreciation, and".

Subsec. (d)(2)(B)(iv). Pub. L. 101–239, §7108(d)(1), added cl. (iv).

Subsec. (d)(2)(C). Pub. L. 101–239, §7108(l)(3)(A), substituted "Adjusted basis" for "Acquisition cost" in heading and "adjusted basis" for "cost" in text.

Subsec. (d)(5). Pub. L. 101–239, §7108(l)(3)(B), substituted "Special rules for determining eligible basis" for "Eligible basis determined when building placed in service" in heading.

Subsec. (d)(5)(A). Pub. L. 101–239, §7108(l)(3)(B), redesignated subpar. (B) as (A) and struck out former subpar. (A) which read as follows: "Except as provided in subparagraphs (B) and (C), the eligible basis of any building for the entire compliance period for such building shall be its eligible basis on the date such building is placed in service (increased, in the case of an existing building which meets the requirements of paragraph (2)(B), by the amounts described in paragraph (2)(A)(i)(II))."

Subsec. (d)(5)(B). Pub. L. 101–239, §7108(l)(3)(B), redesignated subpar. (C) as (B). Former subpar. (B) redesignated (A).

Subsec. (d)(5)(C). Pub. L. 101–239, §7108(l)(3)(B), redesignated subpar. (D) as (C). Former subpar. (C) redesignated (B).

Pub. L. 101–239, §7811(a)(1), inserted "section" before "167(k)" in heading.

Subsec. (d)(5)(D). Pub. L. 101–239, §7108(l)(3)(B), redesignated subpar. (D) as (C).

Pub. L. 101–239, §7108(g), added subpar. (D).

Subsec. (d)(6)(A)(i). Pub. L. 101–239, §7841(d)(13), substituted "Farmers Home Administration" for "Farmers' Home Administration".

Subsec. (d)(6)(C) to (E). Pub. L. 101–239, §7108(f), added subpars. (C) and (D) and redesignated former subpar. (C) as (E).

Subsec. (d)(7)(A). Pub. L. 101–239, §7831(c)(6), inserted "(or interest therein)" after "subparagraph (B)" in introductory provisions.

Subsec. (d)(7)(A)(ii). Pub. L. 101–239, §7841(d)(14), substituted "under subsection (a)" for "under sebsection (a)".

Subsec. (e)(2)(A). Pub. L. 101–239, §7841(d)(15), substituted "to capital account" for "to captial account".

Subsec. (e)(3). Pub. L. 101–239, §7108(d)(3), substituted "Minimum expenditures to qualify" for "Average of rehabilitation expenditures must be $2,000 or more" in heading, added subpars. (A) and (B), redesignated former subpar. (B) as (C), and struck out former subpar. (A) which read as follows: "Paragraph (1) shall apply to rehabilitation expenditures with respect to any building only if the qualified basis attributable to such expenditures incurred during any 24-month period, when divided by the low-income units in the building, is $2,000 or more."

Subsec. (e)(5). Pub. L. 101–239, §7108(l)(3)(C), substituted "subsection (d)(2)(A)(i)" for "subsection (d)(2)(A)(i)(II)".

Subsec. (f)(4). Pub. L. 101–239, §7831(c)(4), added par. (4).

Subsec. (f)(5). Pub. L. 101–239, §7108(d)(2), added par. (5).

Subsec. (g)(2)(A). Pub. L. 101–239, §7108(e)(2), inserted at end "For purposes of the preceding sentence, the amount of the income limitation under paragraph (1) applicable for any period shall not be less than such limitation applicable for the earliest period the building (which contains the unit) was included in the determination of whether the project is a qualified low-income housing project."

Pub. L. 101–239, §7108(e)(1)(B), substituted "the imputed income limitation applicable to such unit" for "the income limitation under paragraph (1) applicable to individuals occupying such unit".

Subsec. (g)(2)(B). Pub. L. 101–239, §7108(h)(2), added cl. (iii) and concluding provisions which defined "supportive service".

Subsec. (g)(2)(C) to (E). Pub. L. 101–239, §7108(e)(1)(A), added subpars. (C) and (D) and redesignated former subpar. (C) as (E).

Subsec. (g)(3)(D). Pub. L. 101–239, §7108(m)(3), added subpar. (D).

Subsec. (g)(4). Pub. L. 101–239, §7108(n)(2), struck out "(other than section 142(d)(4)(B)(iii))" after "in applying such provisions".

Subsec. (g)(7). Pub. L. 101–239, §7108(h)(3), added par. (7).

Subsec. (h)(1)(B). Pub. L. 101–239, §7108(m)(2), substituted "(E), or (F)" for "or (E)".

Subsec. (h)(1)(F). Pub. L. 101–239, §7108(m)(1), added subpar. (F).

Subsec. (h)(3)(C) to (G). Pub. L. 101–239, §7108(b)(1), added subpars. (C) and (D), redesignated former subpars. (D) to (F) as (E) to (G), respectively, and struck out former subpar. (C) which read as follows: "The State housing credit ceiling applicable to any State for any calendar year shall be an amount equal to $1.25 multiplied by the State population."

Subsec. (h)(4)(B). Pub. L. 101–239, §7108(j), substituted "50 percent" for "70 percent" in heading and in text.

Subsec. (h)(5)(D)(ii). Pub. L. 101–239, §7811(a)(2), substituted "clause (i)" for "clause (ii)".

Subsec. (h)(5)(E). Pub. L. 101–239, §7108(b)(2)(A), substituted "subparagraph (F)" for "subparagraph (E)".

Subsec. (h)(6). Pub. L. 101–239, §7108(c)(1), added par. (6). Former par. (6) redesignated (7).

Subsec. (h)(6)(B) to (E). Pub. L. 101–239, §7108(b)(2)(B), redesignated subpars. (C) to (E) as (B) to (D), respectively, and struck out former subpar. (B) which provided that the housing credit dollar amount could not be carried over to any other calendar year.

Subsec. (h)(7), (8). Pub. L. 101–239, §7108(c)(1), redesignated pars. (6) and (7) as (7) and (8), respectively.

Subsec. (i)(2)(D). Pub. L. 101–239, §7108(k), inserted at end "Such term shall not include any loan which would be a below market Federal loan solely by reason of assistance provided under section 106, 107, or 108 of the Housing and Community Development Act of 1974 (as in effect on the date of the enactment of this sentence)."

Subsec. (i)(3)(B). Pub. L. 101–239, §7108(i)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "A unit shall not be treated as a low-income unit unless the unit is suitable for occupancy (as determined under regulations prescribed by the Secretary taking into account local health, safety, and building codes) and used other than on a transient basis. For purposes of the preceding sentence, a single-room occupancy unit shall not be treated as used on a transient basis merely because it is rented on a month-by-month basis."

Pub. L. 101–239, §7831(c)(1), inserted "(as determined under regulations prescribed by the Secretary taking into account local health, safety, and building codes)" after "suitable for occupancy".

Pub. L. 101–239, §7108(h)(1), inserted at end "For purposes of the preceding sentence, a single-room occupancy unit shall not be treated as used on a transient basis merely because it is rented on a month-by-month basis."

Subsec. (i)(3)(D). Pub. L. 101–239, §7831(c)(2), added subpar. (D).

Subsec. (i)(3)(E). Pub. L. 101–239, §7108(h)(4), added subpar. (E).

Subsec. (i)(6). Pub. L. 101–239, §7831(c)(3), added par. (6).

Subsec. (i)(8). Pub. L. 101–239, §7108(q), added par. (8).

Subsec. (k)(2)(D). Pub. L. 101–239, §7108(o), added provision at end relating to the applicability of cl. (ii) to qualified nonprofit organizations not described in section 46(c)(8)(D)(iv)(II) with respect to a building.

Subsec. (l)(1). Pub. L. 101–239, §7108(p), in introductory provisions, substituted "Following" for "Not later than the 90th day following" and inserted "at such time and" before "in such form".

Subsec. (m). Pub. L. 101–239, §7108(o), added subsec. (m). Former subsec. (m) redesignated (n).

Subsec. (m)(4). Pub. L. 101–239, §7831(c)(5), added par. (4).

Subsec. (n). Pub. L. 101–239, §7108(o), redesignated subsec. (m) as (n). Former subsec. (n) redesignated (o).

Pub. L. 101–239, §7108(a)(1), amended subsec. (n) generally. Prior to amendment, subsec. (n) read as follows: "The State housing credit ceiling under subsection (h) shall be zero for any calendar year after 1989 and subsection (h)(4) shall not apply to any building placed in service after 1989."

Subsec. (o). Pub. L. 101–239, §7108(o), redesignated subsec. (n) as (o).

1988—Subsec. (b)(2)(A). Pub. L. 100–647, §1002(l)(1)(A), substituted "for the earlier of—" for "for the month in which such building is placed in service" and added cls. (i) and (ii) and concluding provisions.

Subsec. (b)(2)(C)(ii). Pub. L. 100–647, §1002(l)(1)(B), substituted "the month applicable under clause (i) or (ii) of subparagraph (A)" for "the month in which the building was placed in service".

Subsec. (b)(3). Pub. L. 100–647, §1002(l)(9)(B), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "For treatment of certain rehabilitation expenditures as separate new buildings, see subsection (e)."

Subsec. (c)(2)(A). Pub. L. 100–647, §1002(l)(2)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "which at all times during the compliance period with respect to such building is part of a qualified low-income housing project, and".

Subsec. (d)(2)(D)(ii). Pub. L. 100–647, §1002(l)(3), substituted "Special rules for certain transfers" for "Special rule for nontaxable exchanges" in heading and amended text generally. Prior to amendment, text read as follows: "For purposes of determining under subparagraph (B)(ii) when a building was last placed in service, there shall not be taken into account any placement in service in connection with the acquisition of the building in a transaction in which the basis of the building in the hands of the person acquiring it is determined in whole or in part by reference to the adjusted basis of such building in the hands of the person from whom aquired [sic]."

Subsec. (d)(3). Pub. L. 100–647, §1002(l)(4), amended par. (3) generally. Prior to amendment, par. (3) read

as follows: "The eligible basis of any building shall be reduced by an amount equal to the portion of the adjusted basis of the building which is attributable to residential rental units in the building which are not low-income units and which are above the average quality standard of the low-income units in the building."

Subsec. (d)(5)(A). Pub. L. 100–647, §1002(l)(6)(B), substituted "subparagraphs (B) and (C)" for "subparagraph (B)".

Pub. L. 100–647, §1002(l)(5), inserted "(increased, in the case of an existing building which meets the requirements of paragraph (2)(B), by the amounts described in paragraph (2)(A)(i)(II))" before period at end.

Subsec. (d)(5)(C). Pub. L. 100–647, §1002(l)(6)(A), added subpar. (C).

Subsec. (d)(6)(A)(iii). Pub. L. 100–647, §1002(l)(7), struck out cl. (iii) which related to other circumstances of financial distress.

Subsec. (d)(6)(B)(ii). Pub. L. 100–647, §1002(l)(8), struck out "of 1934" after "Act".

Subsec. (f)(1). Pub. L. 100–647, §1002(l)(2)(B), substituted "beginning with—" for "beginning with" and subpars. (A) and (B) and concluding provisions for "the taxable year in which the building is placed in service or, at the election of the taxpayer, the succeeding taxable year. Such an election, once made, shall be irrevocable."

Subsec. (f)(3). Pub. L. 100–647, §1002(l)(9)(A), amended par. (3) generally. Prior to amendment, par. (3) "Special rule where increase in qualified basis after 1st year of credit period" read as follows:

"(A) CREDIT INCREASED.—If—

"(i) as of the close of any taxable year in the compliance period (after the 1st year of the credit period) the qualified basis of any building exceeds

"(ii) the qualified basis of such building as of the close of the 1st year of the credit period,

the credit allowable under subsection (a) for the taxable year (determined without regard to this paragraph) shall be increased by an amount equal to the product of such excess and the percentage equal to 2/3 of the applicable percentage for such building.

"(B) 1ST YEAR COMPUTATION APPLIES.—A rule similar to the rule of paragraph (2)(A) shall apply to the additional credit allowable by reason of this paragraph for the 1st year in which such additional credit is allowable."

Subsec. (g)(2)(B)(i). Pub. L. 100–647, §1002(l)(10), struck out "Federal" after "comparable".

Subsec. (g)(2)(C). Pub. L. 100–647, §1002(l)(11), added subpar. (C).

Subsec. (g)(3). Pub. L. 100–647, §1002(l)(12), amended par. (3) generally, substituting subpars. (A) to (C) for former subpars. (A) and (B).

Subsec. (g)(4). Pub. L. 100–647, §1002(l)(13), inserted "; except that, in applying such provisions (other than section 142(d)(4)(B)(iii)) for such purposes, the term 'gross rent' shall have the meaning given such term by paragraph (2)(B) of this subsection" before period at end.

Subsec. (g)(6). Pub. L. 100–647, §1002(l)(32), added par. (6).

Subsec. (h)(1). Pub. L. 100–647, §1002(l)(14)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "No credit shall be allowed by reason of this section for any taxable year with respect to any building in excess of the housing credit dollar amount allocated to such building under this subsection. An allocation shall be taken into account under the preceding sentence only if it occurs not later than the earlier of—

"(A) the 60th day after the close of the taxable year, or

"(B) the close of the calendar year in which such taxable year ends."

Subsec. (h)(1)(B). Pub. L. 100–647, §4003(b)(1), substituted "(C), (D), or (E)" for "(C) or (D)".

Subsec. (h)(1)(E). Pub. L. 100–647, §4003(a), added subpar. (E).

Subsec. (h)(4)(A). Pub. L. 100–647, §1002(l)(15), substituted "if—" for "and which is taken into account under section 146" and added cls. (i) and (ii).

Subsec. (h)(5)(D), (E). Pub. L. 100–647, §1002(l)(16), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (h)(6)(B)(ii). Pub. L. 100–647, §1002(l)(14)(B), struck out cl. (ii) which read as follows:

"(ii) ALLOCATION MAY NOT BE EARLIER THAN YEAR IN WHICH BUILDING PLACED IN SERVICE.—A housing credit agency may allocate its housing credit dollar amount for any calendar year only to buildings placed in service before the close of such calendar year."

Subsec. (h)(6)(D). Pub. L. 100–647, §1002(l)(17), amended subpar. (D) generally. Prior to amendment, subpar. (D) "Credit allowable determined without regard to averaging convention, etc." read as follows: "For purposes of this subsection, the credit allowable under subsection (a) with respect to any building shall be determined—

"(i) without regard to paragraphs (2)(A) and (3)(B) of subsection (f), and

"(ii) by applying subsection (f)(3)(A) without regard to 'the percentage equal to 2/3 of'."

Subsec. (h)(6)(E). Pub. L. 100–647, §1002(l)(18), added subpar. (E).

Subsec. (i)(2)(A). Pub. L. 100–647, §1002(l)(19)(A), inserted "or any prior taxable year" after "such taxable year" and substituted "is or was outstanding" for "is outstanding" and "are or were used" for "are used".

Subsec. (i)(2)(B). Pub. L. 100–647, §1002(l)(19)(B), substituted "balance of loan or proceeds of obligations" for "outstanding balance of loan" in heading and amended text generally. Prior to amendment, text read as follows: "A loan shall not be taken into account under subparagraph (A) if the taxpayer elects to exclude an amount equal to the outstanding balance of such loan from the eligible basis of the building for purposes of subsection (d)."

Subsec. (i)(2)(C). Pub. L. 100–647, §1002(l)(19)(C), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (i)(2)(D). Pub. L. 100–647, §1002(l)(19)(C), (D), redesignated former subpar. (C) as (D) and substituted "this paragraph" for "subparagraph (A)".

Subsec. (j)(4)(D). Pub. L. 100–647, §1007(g)(3)(B), substituted "D, or G" for "or D".

Subsec. (j)(4)(F). Pub. L. 100–647, §1002(l)(20), added subpar. (F).

Subsec. (j)(5)(B). Pub. L. 100–647, §4004(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "This paragraph shall apply to any partnership—

"(i) more than ½ the capital interests, and more than ½ the profit interests, in which are owned by a group of 35 or more partners each of whom is a natural person or an estate, and

"(ii) which elects the application of this paragraph."

Subsec. (j)(5)(B)(i). Pub. L. 100–647, §1002(l)(21), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: "which has 35 or more partners each of whom is a natural person or an estate, and".

Subsec. (j)(6). Pub. L. 100–647, §1002(l)(22), inserted "(or interest therein)" after "disposition of building" in heading, and in text inserted "or an interest therein" after "of a building".

Subsec. (k)(2)(B). Pub. L. 100–647, §1002(l)(23), inserted before period at end ", except that this subparagraph shall not apply in the case of a federally assisted building described in subsection (d)(6)(B) if—" and cls. (i) and (ii).

Subsec. (l). Pub. L. 100–647, §1002(l)(24)(B), substituted "Certifications and other reports to Secretary" for "Certifications to Secretary" in heading.

Subsec. (l)(2), (3). Pub. L. 100–647, §1002(l)(24)(A), added par. (2) and redesignated former par. (2) as (3).

Subsec. (n). Pub. L. 100–647, §4003(b)(3), amended subsec. (n) generally, substituting a single par. for former pars. (1) and (2).

Subsec. (n)(1). Pub. L. 100–647, §1002(l)(25), inserted ", and, except for any building described in paragraph (2)(B), subsection (h)(4) shall not apply to any building placed in service after 1989" after "year after 1989".

1986—Subsec. (k)(1). Pub. L. 99–509 substituted "subparagraphs (D)(ii)(II) and (D)(iv)(I)" for "subparagraph (D)(iv)(I)".

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title III, §302(b), Jan. 2, 2013, 126 Stat. 2329, provided that: "The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Jan. 2, 2013]."

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–289, div. C, title I, §3002(c), July 30, 2008, 122 Stat. 2880, provided that: "The amendments made by this subsection [probably means this section, amending this section] shall apply to buildings placed in service after the date of the enactment of this Act [July 30, 2008]."

Pub. L. 110–289, div. C, title I, §3003(h), July 30, 2008, 122 Stat. 2882, provided that:

"(1) IN GENERAL.—Except as otherwise provided in paragraph (2), the amendments made by this subsection [probably means this section, amending this section] shall apply to buildings placed in service after the date of the enactment of this Act [July 30, 2008].

"(2) REHABILITATION REQUIREMENTS.—

"(A) IN GENERAL.—The amendments made by subsection (b) [amending this section] shall apply to buildings with respect to which housing credit dollar amounts are allocated after the date of the enactment of this Act [July 30, 2008].

"(B) BUILDINGS NOT SUBJECT TO ALLOCATION LIMITS.—To the extent paragraph (1) of section 42(h) of the Internal Revenue Code of 1986 does not apply to any building by reason of paragraph (4) thereof, the amendments made by subsection (b) [amending this section] shall apply [to] buildings financed with bonds issued pursuant to allocations made after the date of the enactment of this Act [July 30, 2008]."

Pub. L. 110–289, div. C, title I, §3004(i), July 30, 2008, 122 Stat. 2884, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section] shall apply to buildings placed in service after the date of the enactment of this Act [July 30, 2008].

"(2) REPEAL OF BONDING REQUIREMENT ON DISPOSITION OF BUILDING.—The amendment made by subsection (c) [amending this section] shall apply to—

"(A) interests in buildings disposed [of] after the date of the enactment of this Act [July 30, 2008], and

"(B) interests in buildings disposed of on or before such date if—

"(i) it is reasonably expected that such building will continue to be operated as a qualified low-income building (within the meaning of section 42 of the Internal Revenue Code of 1986) for the remaining compliance period (within the meaning of such section) with respect to such building, and

"(ii) the taxpayer elects the application of this subparagraph with respect to such disposition.

"(3) ENERGY EFFICIENCY AND HISTORIC NATURE TAKEN INTO ACCOUNT IN MAKING ALLOCATIONS.—The amendments made by subsection (d) [amending this section] shall apply to allocations made after December 31, 2008.

"(4) CONTINUED ELIGIBILITY FOR STUDENTS WHO RECEIVED FOSTER CARE ASSISTANCE .—The amendments made by subsection (e) [amending this section] shall apply to determinations made after the date of the enactment of this Act [July 30, 2008].

"(5) TREATMENT OF RURAL PROJECTS.—The amendment made by subsection (f) [amending this section] shall apply to determinations made after the date of the enactment of this Act [July 30, 2008].

"(6) CLARIFICATION OF GENERAL PUBLIC USE REQUIREMENT.—The amendment made by subsection (g) [amending this section] shall apply to buildings placed in service before, on, or after the date of the enactment of this Act [July 30, 2008]."

Pub. L. 110–289, div. C, title I, §3007(c), July 30, 2008, 122 Stat. 2886, provided that: "The amendments made by this section [amending this section and section 146 of this title] shall apply to repayments of loans received after the date of the enactment of this Act [July 30, 2008]."

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–142, §6(b), Dec. 20, 2007, 121 Stat. 1806, provided that: "The amendment made by this section [amending this section] shall apply to—

"(1) housing credit amounts allocated before, on, or after the date of the enactment of this Act [Dec. 20, 2007], and

"(2) buildings placed in service before, on, or after such date to the extent paragraph (1) of section 42(h) of the Internal Revenue Code of 1986 does not apply to any building by reason of paragraph (4) thereof."

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 207(8) of Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(7) [title I, subtitle D, §131(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–611, provided that: "The amendments made by this section [amending this section] shall apply to calendar years after 2000."

Pub. L. 106–554, §1(a)(7) [title I, subtitle D, §137], Dec. 21, 2000, 114 Stat. 2763, 2763A–613, provided that: "Except as otherwise provided in this subtitle [amending this section and enacting provisions set out above], the amendments made by this subtitle shall apply to—

"(1) housing credit dollar amounts allocated after December 31, 2000; and

"(2) buildings placed in service after such date to the extent paragraph (1) of section 42(h) of the Internal Revenue Code of 1986 does not apply to any building by reason of paragraph (4) thereof, but only with respect to bonds issued after such date."

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13142(a)(2), Aug. 10, 1993, 107 Stat. 438, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to periods ending after June 30, 1992."

Pub. L. 103–66, title XIII, §13142(b)(6), Aug. 10, 1993, 107 Stat. 439, as amended by Pub. L. 104–188,

title I, §1703(b), Aug. 20, 1996, 110 Stat. 1875, provided that:

"(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), the amendments made by this subsection [amending this section] shall apply to—

"(i) determinations under section 42 of the Internal Revenue Code of 1986 with respect to housing credit dollar amounts allocated from State housing credit ceilings after June 30, 1992, or

"(ii) buildings placed in service after June 30, 1992, to the extent paragraph (1) of section 42(h) of such Code does not apply to any building by reason of paragraph (4) thereof, but only with respect to bonds issued after such date.

"(B) FULL-TIME STUDENTS, WAIVER AUTHORITY, AND PROHIBITED DISCRIMINATION .—The amendments made by paragraphs (2), (3), and (4) [amending this section] shall take effect on the date of the enactment of this Act [Aug. 10, 1993].

"(C) HOME ASSISTANCE.—The amendment made by paragraph (5) [amending this section] shall apply to periods after the date of the enactment of this Act."

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102–227, title I, §107(b), Dec. 11, 1991, 105 Stat. 1688, provided that: "The amendments made by this section [amending this section] shall apply to calendar years after 1991."

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, §11407(a)(3), Nov. 5, 1990, 104 Stat. 1388–474, provided that: "The amendments made by this subsection [amending this section and repealing provisions set out below] shall apply to calendar years after 1989."

Pub. L. 101–508, title XI, §11407(b)(10), Nov. 5, 1990, 104 Stat. 1388–476, provided that:

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendments made by this subsection [amending this section] shall apply to—

"(i) determinations under section 42 of the Internal Revenue Code of 1986 with respect to housing credit dollar amounts allocated from State housing credit ceilings for calendar years after 1990, or

"(ii) buildings placed in service after December 31, 1990, to the extent paragraph (1) of section 42(h) of such Code does not apply to any building by reason of paragraph (4) thereof, but only with respect to bonds issued after such date.

"(B) TENANT RIGHTS, ETC.—The amendments made by paragraphs (1), (6), (8), and (9) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 5, 1990].

"(C) MONITORING.—The amendment made by paragraph (2) [amending this section] shall take effect on January 1, 1992, and shall apply to buildings placed in service before, on, or after such date.

"(D) STUDY.—The Inspector General of the Department of Housing and Urban Development and the Secretary of the Treasury shall jointly conduct a study of the effectiveness of the amendment made by paragraph (5) [amending this section] in carrying out the purposes of section 42 of the Internal Revenue Code of 1986. The report of such study shall be submitted not later than January 1, 1993, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate."

Pub. L. 101–508, title XI, §11701(a)(3)(B), Nov. 5, 1990, 104 Stat. 1388–506, provided that: "In the case of a building to which (but for this subparagraph) the amendment made by subparagraph (A) [amending this section] does not apply, such amendment shall apply to—

"(i) determinations of qualified basis for taxable years beginning after the date of the enactment of this Act [Nov. 5, 1990], and

"(ii) determinations of qualified basis for taxable years beginning on or before such date except that determinations for such taxable years shall be made without regard to any reduction in gross rent after August 3, 1990, for any period before August 4, 1990."

Pub. L. 101–508, title XI, §11701(n), Nov. 5, 1990, 104 Stat. 1388–513, provided that: "Except as otherwise provided in this section, any amendment made by this section [amending this section and sections 148, 163, 172, 403, 1031, 1253, 2056, 4682, 4975, 4978B and 6038 of this title, and provisions set out as notes under this section and section 2040 of this title] shall take effect as if included in the provision of the Revenue Reconciliation Act of 1989 [Pub. L. 101–239, title VII] to which such amendment relates."

Pub. L. 101–508, title XI, §11812(c), Nov. 5, 1990, 104 Stat. 1388–536, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 56, 167, 168, 312, 381, 404, 460, 642, 1016, 1250, and 7701 of this title] shall apply to property placed in service after the date of the enactment of this Act [Nov. 5, 1990].

"(2) EXCEPTION.—The amendments made by this section shall not apply to any property to which section 168 of the Internal Revenue Code of 1986 does not apply by reason of subsection (f)(5) thereof.

"(3) EXCEPTION FOR PREVIOUSLY GRANDFATHER EXPENDITURES.—The amendments made by

this section shall not apply to rehabilitation expenditures described in section 252(f)(5) of the Tax Reform Act of 1986 [Pub. L. 99–514] (as added by section 1002(l)(31) of the Technical and Miscellaneous Revenue Act of 1988 [see Transitional Rules note below])."

Amendment by section 11813(b)(3) of Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7108(r), Dec. 19, 1989, 103 Stat. 2321, as amended by Pub. L. 101–508, title XI, §11701(a)(11), (12), Nov. 5, 1990, 104 Stat. 1388–507; Pub. L. 104–188, title I, §1702(g)(5)(A), Aug. 20, 1996, 110 Stat. 1873, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and section 142 of this title] shall apply to determinations under section 42 of the Internal Revenue Code of 1986 with respect to housing credit dollar amounts allocated from State housing credit ceilings for calendar years after 1989.

"(2) BUILDINGS NOT SUBJECT TO ALLOCATION LIMITS.—Except as otherwise provided in this subsection, to the extent paragraph (1) of section 42(h) of such Code does not apply to any building by reason of paragraph (4) thereof, the amendments made by this section shall apply to buildings placed in service after December 31, 1989.

"(3) ONE-YEAR CARRYOVER OF UNUSED CREDIT AUTHORITY, ETC.—The amendments made by subsection (b) [amending this section] shall apply to calendar years after 1989, but clauses (ii), (iii), and (iv) of section 42(h)(3)(C) of such Code (as added by this section) shall be applied without regard to allocations for 1989 or any preceding year.

"(4) ADDITIONAL BUILDINGS ELIGIBLE FOR WAIVER OF 10-YEAR RULE.—The amendments made by subsection (f) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 19, 1989].

"(5) CERTIFICATIONS WITH RESPECT TO 1ST YEAR OF CREDIT PERIOD.—The amendment made by subsection (p) [amending this section] shall apply to taxable years ending on or after December 31, 1989.

"(6) CERTAIN RULES WHICH APPLY TO BONDS.—Paragraphs (1)(D) and (2)(D) of section 42(m) of such Code, as added by this section, shall apply to obligations issued after December 31, 1989.

"(7) CLARIFICATIONS.—The amendments made by the following provisions of this section shall apply as if included in the amendments made by section 252 of the Tax Reform Act of 1986 [Pub. L. 99–514, enacting this section and amending sections 38 and 55 of this title]:

"(A) Paragraph (1) of subsection (h) (relating to units rented on a monthly basis) [amending this section].

"(B) Subsection (l) (relating to eligible basis for new buildings to include expenditures before close of 1st year of credit period) [amending this section].

"(8) GUIDANCE ON DIFFICULT DEVELOPMENT AREAS AND POSTING OF BOND TO AVOID RECAPTURE.—Not later than 180 days after the date of the enactment of this Act [Dec. 19, 1989]—

"(A) the Secretary of Housing and Urban Development shall publish initial guidance on the designation of difficult development areas under section 42(d)(5)(C) of such Code, as added by this section, and

"(B) the Secretary of the Treasury shall publish initial guidance under section 42(j)(6) of such Code (relating to no recapture on disposition of building (or interest therein) where bond posted)."

[Pub. L. 104–188, title I, §1702(g)(5), Aug. 20, 1996, 110 Stat. 1873, provided that:

["(A) Paragraph (11) of section 11701(a) of the Revenue Reconciliation Act of 1990 (and the amendment made by such paragraph) [Pub. L. 101–508, which amended section 7108(r)(2) of Pub. L. 101–239, set out above, by inserting "but only with respect to bonds issued after such date" before the period at the end of such section 7108(r)(2)] are hereby repealed, and section 7108(r)(2) of the Revenue Reconciliation Act of 1989 [Pub. L. 101–239] shall be applied as if such paragraph (and amendment) had never been enacted.

["(B) Subparagraph (A) shall not apply to any building if the owner of such building establishes to the satisfaction of the Secretary of the Treasury or his delegate that such owner reasonably relied on the amendment made by such paragraph (11)."]

Amendment by section 7811(a) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

Amendment by section 7831(c) of Pub. L. 101–239 effective as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 7831(g) of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 1002(l)(1)–(25), (32) and 1007(g)(3)(B) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title IV, §4003(c), Nov. 10, 1988, 102 Stat. 3644, provided that: "The amendments made by this section [amending this section and provisions set out as a note under section 469 of this title] shall apply to amounts allocated in calendar years after 1987."

Pub. L. 100–647, title IV, §4004(b), Nov. 10, 1988, 102 Stat. 3644, provided that:

"(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall take effect as if included in the amendments made by section 252 of the Reform Act [section 252 of Pub. L. 99–514, enacting this section and amending sections 38 and 55 of this title].

"(2) PERIOD FOR ELECTION.—The period for electing not to have section 42(j)(5) of the 1986 Code apply to any partnership shall not expire before the date which is 6 months after the date of the enactment of this Act [Nov. 10, 1988]."

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–509, title VIII, §8072(b), Oct. 21, 1986, 100 Stat. 1964, provided that: "The amendment made by subsection (a) [amending this section] shall take effect as if included in the amendment made by section 252(a) of the Tax Reform Act of 1986 [enacting this section]."

EFFECTIVE DATE

Pub. L. 99–514, title II, §252(e), Oct. 22, 1986, 100 Stat. 2205, provided that:

"(1) IN GENERAL.—The amendments made by this section [enacting this section and amending sections 38 and 55 of this title] shall apply to buildings placed in service after December 31, 1986, in taxable years ending after such date.

"(2) SPECIAL RULE FOR REHABILITATION EXPENDITURES.—Subsection (e) of section 42 of the Internal Revenue Code of 1986 (as added by this section) shall apply for purposes of paragraph (1)."

SAVINGS PROVISION

For provisions that nothing in amendment by sections 11812(b)(3) and 11813(b)(3) of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

GRANTS TO STATES FOR LOW-INCOME HOUSING PROJECTS IN LIEU OF LOW-INCOME HOUSING CREDIT ALLOCATIONS FOR 2009

Pub. L. 111–5, div. B, title I, §1602, Feb. 17, 2009, 123 Stat. 362, provided that:

"(a) IN GENERAL.—The Secretary of the Treasury shall make a grant to the housing credit agency of each State in an amount equal to such State's low-income housing grant election amount.

"(b) LOW-INCOME HOUSING GRANT ELECTION AMOUNT.—For purposes of this section, the term 'low-income housing grant election amount' means, with respect to any State, such amount as the State may elect which does not exceed 85 percent of the product of—

"(1) the sum of—

"(A) 100 percent of the State housing credit ceiling for 2009 which is attributable to amounts described in clauses (i) and (iii) of section 42(h)(3)(C) of the Internal Revenue Code of 1986, and

"(B) 40 percent of the State housing credit ceiling for 2009 which is attributable to amounts described in clauses (ii) and (iv) of such section, multiplied by

"(2) 10.

"(c) SUBAWARDS FOR LOW-INCOME BUILDINGS.—

"(1) IN GENERAL.—A State housing credit agency receiving a grant under this section shall use such grant to make subawards to finance the construction or acquisition and rehabilitation of qualified low-income buildings. A subaward under this section may be made to finance a qualified low-income building with or without an allocation under section 42 of the Internal Revenue Code of 1986, except that a State housing credit agency may make subawards to finance qualified low-income buildings without an

allocation only if it makes a determination that such use will increase the total funds available to the State to build and rehabilitate affordable housing. In complying with such determination requirement, a State housing credit agency shall establish a process in which applicants that are allocated credits are required to demonstrate good faith efforts to obtain investment commitments for such credits before the agency makes such subawards.

"(2) SUBAWARDS SUBJECT TO SAME REQUIREMENTS AS LOW-INCOME HOUSING CREDIT ALLOCATIONS.—Any such subaward with respect to any qualified low-income building shall be made in the same manner and shall be subject to the same limitations (including rent, income, and use restrictions on such building) as an allocation of housing credit dollar amount allocated by such State housing credit agency under section 42 of the Internal Revenue Code of 1986, except that such subawards shall not be limited by, or otherwise affect (except as provided in subsection (h)(3)(J) of such section [section 42(h)(3) has no subpar. (J)]), the State housing credit ceiling applicable to such agency.

"(3) COMPLIANCE AND ASSET MANAGEMENT.—The State housing credit agency shall perform asset management functions to ensure compliance with section 42 of the Internal Revenue Code of 1986 and the long-term viability of buildings funded by any subaward under this section. The State housing credit agency may collect reasonable fees from a subaward recipient to cover expenses associated with the performance of its duties under this paragraph. The State housing credit agency may retain an agent or other private contractor to satisfy the requirements of this paragraph.

"(4) RECAPTURE.—The State housing credit agency shall impose conditions or restrictions, including a requirement providing for recapture, on any subaward under this section so as to assure that the building with respect to which such subaward is made remains a qualified low-income building during the compliance period. Any such recapture shall be payable to the Secretary of the Treasury for deposit in the general fund of the Treasury and may be enforced by means of liens or such other methods as the Secretary of the Treasury determines appropriate.

"(d) RETURN OF UNUSED GRANT FUNDS.—Any grant funds not used to make subawards under this section before January 1, 2011, shall be returned to the Secretary of the Treasury on such date. Any subawards returned to the State housing credit agency on or after such date shall be promptly returned to the Secretary of the Treasury. Any amounts returned to the Secretary of the Treasury under this subsection shall be deposited in the general fund of the Treasury.

"(e) DEFINITIONS.—Any term used in this section which is also used in section 42 of the Internal Revenue Code of 1986 shall have the same meaning for purposes of this section as when used in such section 42. Any reference in this section to the Secretary of the Treasury shall be treated as including the Secretary's delegate.

"(f) APPROPRIATIONS.—There is hereby appropriated to the Secretary of the Treasury such sums as may be necessary to carry out this section."

ELECTION TO DETERMINE RENT LIMITATION BASED ON NUMBER OF BEDROOMS AND DEEP RENT SKEWING

Pub. L. 103–66, title XIII, §13142(c), Aug. 10, 1993, 107 Stat. 439, provided that:

"(1) In the case of a building to which the amendments made by subsection (e)(1) or (n)(2) of section 7108 of the Revenue Reconciliation Act of 1989 [Pub. L. 101–239, amending this section] did not apply, the taxpayer may elect to have such amendments apply to such building if the taxpayer has met the requirements of the procedures described in section 42(m)(1)(B)(iii) of the Internal Revenue Code of 1986.

"(2) In the case of the amendment made by such subsection (e)(1), such election shall apply only with respect to tenants first occupying any unit in the building after the date of the election.

"(3) In the case of the amendment made by such subsection (n)(2), such election shall apply only if rents of low-income tenants in such building do not increase as a result of such election.

"(4) An election under this subsection may be made only during the 180-day period beginning on the date of the enactment of this Act [Aug. 10, 1993] and, once made, shall be irrevocable."

ELECTION TO ACCELERATE CREDIT INTO 1990

Pub. L. 101–508, title XI, §11407(c), Nov. 5, 1990, 104 Stat. 1388–476, provided that:

"(1) IN GENERAL.—At the election of an individual, the credit determined under section 42 of the Internal Revenue Code of 1986 for the taxpayer's first taxable year ending on or after October 25, 1990, shall be 150 percent of the amount which would (but for this paragraph) be so allowable with respect to investments held by such individual on or before October 25, 1990.

"(2) REDUCTION IN AGGREGATE CREDIT TO REFLECT INCREASED 1990 CREDIT.—The aggregate credit allowable to any person under section 42 of such Code with respect to any investment for taxable years after the first taxable year referred to in paragraph (1) shall be reduced on a pro rata basis by the

amount of the increased credit allowable by reason of paragraph (1) with respect to such first taxable year. The preceding sentence shall not be construed to affect whether any taxable year is part of the credit, compliance, or extended use periods.

"(3) ELECTION.—The election under paragraph (1) shall be made at the time and in the manner prescribed by the Secretary of the Treasury or his delegate, and, once made, shall be irrevocable. In the case of a partnership, such election shall be made by the partnership."

EXCEPTION TO TIME PERIOD FOR MEETING PROJECT REQUIREMENTS IN ORDER TO QUALIFY AS LOW-INCOME HOUSING

Pub. L. 101–508, title XI, §11701(a)(5)(B), Nov. 5, 1990, 104 Stat. 1388–506, provided that: "In the case of a building to which the amendment made by subparagraph (A) [amending this section] does not apply, the period specified in section 42(g)(3)(A) of the Internal Revenue Code of 1986 (as in effect before the amendment made by subparagraph (A)) shall not expire before the close of the taxable year following the taxable year in which the building is placed in service."

STATE HOUSING CREDIT CEILING FOR CALENDAR YEAR 1990

Pub. L. 101–239, title VII, §7108(a)(2), Dec. 19, 1989, 103 Stat. 2307, provided that in the case of calendar year 1990, section 42(h)(3)(C)(i) of the Internal Revenue Code of 1986 be applied by substituting "$.9375" for "$1.25", prior to repeal by Pub. L. 101–508, title XI, §11407(a)(2), (3), Nov. 5, 1990, 104 Stat. 1388–474, applicable to calendar years after 1989.

TRANSITIONAL RULES

Pub. L. 99–514, title II, §252(f), Oct. 22, 1986, 100 Stat. 2205, as amended by Pub. L. 100–647, title I, §1002(l)(28)–(31), Nov. 10, 1988, 102 Stat. 3381, provided that:

"(1) LIMITATION TO NON-ACRS BUILDINGS NOT TO APPLY TO CERTAIN BUILDINGS, ETC.—

"(A) IN GENERAL.—In the case of a building which is part of a project described in subparagraph (B)—

"(i) section 42(c)(2)(B) of the Internal Revenue Code of 1986 (as added by this section) shall not apply,

"(ii) such building shall be treated as not federally subsidized for purposes of section 42(b)(1)(A) of such Code,

"(iii) the eligible basis of such building shall be treated, for purposes of section 42(h)(4)(A) of such Code, as if it were financed by an obligation the interest on which is exempt from tax under section 103 of such Code and which is taken into account under section 146 of such Code, and

"(iv) the amendments made by section 803 [enacting section 263A of this title, amending sections 48, 267, 312, 447, 464, and 471 of this title, and repealing sections 189, 278, and 280 of this title] shall not apply.

"(B) PROJECT DESCRIBED.—A project is described in this subparagraph if—

"(i) an urban development action grant application with respect to such project was submitted on September 13, 1984,

"(ii) a zoning commission map amendment related to such project was granted on July 17, 1985, and

"(iii) the number assigned to such project by the Federal Housing Administration is 023–36602.

"(C) ADDITIONAL UNITS ELIGIBLE FOR CREDIT.—In the case of a building to which subparagraph (A) applies and which is part of a project which meets the requirements of subparagraph (D), for each low-income unit in such building which is occupied by individuals whose income is 30 percent or less of area median gross income, one additional unit (not otherwise a low-income unit) in such building shall be treated as a low-income unit for purposes of such section 42.

"(D) PROJECT DESCRIBED.—A project is described in this subparagraph if—

"(i) rents charged for units in such project are restricted by State regulations,

"(ii) the annual cash flow of such project is restricted by State law,

"(iii) the project is located on land owned by or ground leased from a public housing authority,

"(iv) construction of such project begins on or before December 31, 1986, and units within such project are placed in service on or before June 1, 1990, and

"(v) for a 20-year period, 20 percent or more of the residential units in such project are occupied by individuals whose income is 50 percent or less of area median gross income.

"(E) MAXIMUM ADDITIONAL CREDIT.—The maximum present value of additional credits allowable under section 42 of such Code by reason of subparagraph (C) shall not exceed 25 percent of the eligible basis of the building.

"(2) ADDITIONAL ALLOCATION OF HOUSING CREDIT CEILING.—

"(A) IN GENERAL.—There is hereby allocated to each housing credit agency described in subparagraph (B) an additional housing credit dollar amount determined in accordance with the following table:

"For calendar year:	The additional allocation is:
1987	$3,900,000
1988	$7,600,000
1989	$1,300,000.

"(B) HOUSING CREDIT AGENCIES DESCRIBED.—The housing credit agencies described in this subparagraph are:

"(i) A corporate governmental agency constituted as a public benefit corporation and established in 1971 under the provisions of Article XII of the Private Housing Finance Law of the State.

"(ii) A city department established on December 20, 1979, pursuant to chapter XVIII of a municipal code of such city for the purpose of supervising and coordinating the formation and execution of projects and programs affecting housing within such city.

"(iii) The State housing finance agency referred to in subparagraph (C), but only with respect to projects described in subparagraph (C).

"(C) PROJECT DESCRIBED.—A project is described in this subparagraph if such project is a qualified low-income housing project which—

"(i) receives financing from a State housing finance agency from the proceeds of bonds issued pursuant to chapter 708 of the Acts of 1966 of such State pursuant to loan commitments from such agency made between May 8, 1984, and July 8, 1986, and

"(ii) is subject to subsidy commitments issued pursuant to a program established under chapter 574 of the Acts of 1983 of such State having award dates from such agency between May 31, 1984, and June 11, 1985.

"(D) SPECIAL RULES.—

"(i) Any building—

"(I) which is allocated any housing credit dollar amount by a housing credit agency described in clause (iii) of subparagraph (B), and

"(II) which is placed in service after June 30, 1986, and before January 1, 1987,

shall be treated for purposes of the amendments made by this section as placed in service on January 1, 1987.

"(ii) Section 42(c)(2)(B) of the Internal Revenue Code of 1986 shall not apply to any building which is allocated any housing credit dollar amount by any agency described in subparagraph (B).

"(E) ALL UNITS TREATED AS LOW INCOME UNITS IN CERTAIN CASES.—In the case of any building—

"(i) which is allocated any housing credit dollar amount by any agency described in subparagraph (B), and

"(ii) which after the application of subparagraph (D)(ii) is a qualified low-income building at all times during any taxable year,

such building shall be treated as described in section 42(b)(1)(B) of such Code and having an applicable fraction for such year of 1. The preceding sentence shall apply to any building only to the extent of the portion of the additional housing credit dollar amount (allocated to such agency under subparagraph (A)) allocated to such building.

"(3) CERTAIN PROJECTS PLACED IN SERVICE BEFORE 1987.—

"(A) IN GENERAL.—In the case of a building which is part of a project described in subparagraph (B)—

"(i) section 42(c)(2)(B) of such Code shall not apply,

"(ii) such building shall be treated as placed in service during the first calendar year after 1986 and before 1990 in which such building is a qualified low-income building (determined after the

application of clause (i)), and

"(iii) for purposes of section 42(h) of such Code, such building shall be treated as having allocated to it a housing credit dollar amount equal to the dollar amount appearing in the clause of subparagraph (B) in which such building is described.

"(B) PROJECT DESCRIBED.—A project is described in this subparagraph if the code number assigned to such project by the Farmers' Home Administration appears in the following table:

"The code number is:	The housing credit dollar amount is:
(i) 49284553664	$16,000
(ii) 4927742022446	$22,000
(iii) 49270742276087	$64,000
(iv) 490270742387293	$48,000
(v) 4927074218234	$32,000
(vi) 49270742274019	$36,000
(vii) 51460742345074	$53,000.

"(C) DETERMINATION OF ADJUSTED BASIS.—The adjusted basis of any building to which this paragraph applies for purposes of section 42 of such Code shall be its adjusted basis as of the close of the taxable year ending before the first taxable year of the credit period for such building.

"(D) CERTAIN RULES TO APPLY.—Rules similar to the rules of subparagraph (E) of paragraph (2) shall apply for purposes of this paragraph.

"(4) DEFINITIONS.—For purposes of this subsection, terms used in such subsection which are also used in section 42 of the Internal Revenue Code of 1986 (as added by this section) shall have the meanings given such terms by such section 42.

"(5) TRANSITIONAL RULE.—In the case of any rehabilitation expenditures incurred with respect to units located in the neighborhood strategy area within the community development block grant program in Ft. Wayne, Indiana—

"(A) the amendments made by this section [enacting this section and amending sections 38 and 55 of this title] shall not apply, and

"(B) paragraph (1) of section 167(k) of the Internal Revenue Code of 1986, shall be applied as if it did not contain the phrase 'and before January 1, 1987'.

The number of units to which the preceding sentence applies shall not exceed 150."

[1] *So in original. No subpar. (A) has been enacted.*

[2] *So in original. Probably should be "etc.,".*

[3] *So in original. The semicolon probably should be a comma.*

[4] *So in original. See 2008 Amendment note below.*

[5] *So in original. The period probably should not appear.*

[6] *So in original.*

§43. Enhanced oil recovery credit

(a) General rule

For purposes of section 38, the enhanced oil recovery credit for any taxable year is an amount equal to 15 percent of the taxpayer's qualified enhanced oil recovery costs for such taxable year.

(b) Phase-out of credit as crude oil prices increase

(1) In general

The amount of the credit determined under subsection (a) for any taxable year shall be reduced by an amount which bears the same ratio to the amount of such credit (determined without regard to this paragraph) as—

(A) the amount by which the reference price for the calendar year preceding the calendar year in which the taxable year begins exceeds $28, bears to

(B) $6.

(2) Reference price

For purposes of this subsection, the term "reference price" means, with respect to any calendar year, the reference price determined for such calendar year under section 45K(d)(2)(C).

(3) Inflation adjustment

(A) In general

In the case of any taxable year beginning in a calendar year after 1991, there shall be substituted for the $28 amount under paragraph (1)(A) an amount equal to the product of—

(i) $28, multiplied by

(ii) the inflation adjustment factor for such calendar year.

(B) Inflation adjustment factor

The term "inflation adjustment factor" means, with respect to any calendar year, a fraction the numerator of which is the GNP implicit price deflator for the preceding calendar year and the denominator of which is the GNP implicit price deflator for 1990. For purposes of the preceding sentence, the term "GNP implicit price deflator" means the first revision of the implicit price deflator for the gross national product as computed and published by the Secretary of Commerce. Not later than April 1 of any calendar year, the Secretary shall publish the inflation adjustment factor for the preceding calendar year.

(c) Qualified enhanced oil recovery costs

For purposes of this section—

(1) In general

The term "qualified enhanced oil recovery costs" means any of the following:

(A) Any amount paid or incurred during the taxable year for tangible property—

(i) which is an integral part of a qualified enhanced oil recovery project, and

(ii) with respect to which depreciation (or amortization in lieu of depreciation) is allowable under this chapter.

(B) Any intangible drilling and development costs—

(i) which are paid or incurred in connection with a qualified enhanced oil recovery project, and

(ii) with respect to which the taxpayer may make an election under section 263(c) for the taxable year.

(C) Any qualified tertiary injectant expenses (as defined in section 193(b)) which are paid or incurred in connection with a qualified enhanced oil recovery project and for which a deduction is allowable for the taxable year.

(D) Any amount which is paid or incurred during the taxable year to construct a gas treatment plant which—

(i) is located in the area of the United States (within the meaning of section 638(1)) lying

north of 64 degrees North latitude,

(ii) prepares Alaska natural gas for transportation through a pipeline with a capacity of at least 2,000,000,000,000 Btu of natural gas per day, and

(iii) produces carbon dioxide which is injected into hydrocarbon-bearing geological formations.

(2) Qualified enhanced oil recovery project

For purposes of this subsection—

(A) In general

The term "qualified enhanced oil recovery project" means any project—

(i) which involves the application (in accordance with sound engineering principles) of 1 or more tertiary recovery methods (as defined in section 193(b)(3)) which can reasonably be expected to result in more than an insignificant increase in the amount of crude oil which will ultimately be recovered,

(ii) which is located within the United States (within the meaning of section 638(1)), and

(iii) with respect to which the first injection of liquids, gases, or other matter commences after December 31, 1990.

(B) Certification

A project shall not be treated as a qualified enhanced oil recovery project unless the operator submits to the Secretary (at such times and in such manner as the Secretary provides) a certification from a petroleum engineer that the project meets (and continues to meet) the requirements of subparagraph (A).

(3) At-risk limitation

For purposes of determining qualified enhanced oil recovery costs, rules similar to the rules of section 49(a)(1), section 49(a)(2), and section 49(b) shall apply.

(4) Special rule for certain gas displacement projects

For purposes of this section, immiscible non-hydrocarbon gas displacement shall be treated as a tertiary recovery method under section 193(b)(3).

(5) Alaska natural gas

For purposes of paragraph (1)(D)—

(A) In general

The term "Alaska natural gas" means natural gas entering the Alaska natural gas pipeline (as defined in section 168(i)(16) (determined without regard to subparagraph (B) thereof)) which is produced from a well—

(i) located in the area of the State of Alaska lying north of 64 degrees North latitude, determined by excluding the area of the Alaska National Wildlife Refuge (including the continental shelf thereof within the meaning of section 638(1)), and

(ii) pursuant to the applicable State and Federal pollution prevention, control, and permit requirements from such area (including the continental shelf thereof within the meaning of section 638(1)).

(B) Natural gas

The term "natural gas" has the meaning given such term by section 613A(e)(2).

(d) Other rules

(1) Disallowance of deduction

Any deduction allowable under this chapter for any costs taken into account in computing the amount of the credit determined under subsection (a) shall be reduced by the amount of such credit attributable to such costs.

(2) Basis adjustments

For purposes of this subtitle, if a credit is determined under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

(e) Election to have credit not apply

(1) In general

A taxpayer may elect to have this section not apply for any taxable year.

(2) Time for making election

An election under paragraph (1) for any taxable year may be made (or revoked) at any time before the expiration of the 3-year period beginning on the last date prescribed by law for filing the return for such taxable year (determined without regard to extensions).

(3) Manner of making election

An election under paragraph (1) (or revocation thereof) shall be made in such manner as the Secretary may by regulations prescribe.

(Added Pub. L. 101–508, title XI, §11511(a), Nov. 5, 1990, 104 Stat. 1388–483; amended Pub. L. 106–554, §1(a)(7) [title III, §317(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–645; Pub. L. 108–357, title VII, §707(a), (b), Oct. 22, 2004, 118 Stat. 1550; Pub. L. 109–58, title XIII, §1322(a)(3)(B), Aug. 8, 2005, 119 Stat. 1011; Pub. L. 109–135, title IV, §412(i), Dec. 21, 2005, 119 Stat. 2637.)

INFLATION ADJUSTED ITEMS FOR CERTAIN TAX YEARS

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

PRIOR PROVISIONS

A prior section 43 was renumbered section 32 of this title.

Another prior section 43 was renumbered section 37 of this title.

AMENDMENTS

2005—Subsec. (b)(2). Pub. L. 109–58 substituted "section 45K(d)(2)(C)" for "section 29(d)(2)(C)".

Subsec. (c)(5). Pub. L. 109–135 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "For purposes of paragraph (1)(D)—

"(1) IN GENERAL.—The term 'Alaska natural gas' means natural gas entering the Alaska natural gas pipeline (as defined in section 168(i)(16) (determined without regard to subparagraph (B) thereof)) which is produced from a well—

"(A) located in the area of the State of Alaska lying north of 64 degrees North latitude, determined by excluding the area of the Alaska National Wildlife Refuge (including the continental shelf thereof within the meaning of section 638(1)), and

"(B) pursuant to the applicable State and Federal pollution prevention, control, and permit requirements from such area (including the continental shelf thereof within the meaning of section 638(1)).

"(2) NATURAL GAS.—The term 'natural gas' has the meaning given such term by section 613A(e)(2)."

2004—Subsec. (c)(1)(D). Pub. L. 108–357, §707(a), added subpar. (D).

Subsec. (c)(5). Pub. L. 108–357, §707(b), added par. (5).

2000—Subsec. (c)(1)(C). Pub. L. 106–554 inserted "(as defined in section 193(b))" after "expenses" and struck out "under section 193" after "allowable".

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–58 applicable to credits determined under the Internal Revenue Code of 1986 for taxable years ending after Dec. 31, 2005, see section 1322(c)(1) of Pub. L. 109–58, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VII, §707(c), Oct. 22, 2004, 118 Stat. 1550, provided that: "The amendment made by this section [amending this section] shall apply to costs paid or incurred in taxable years beginning after

December 31, 2004."

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(7) [title III, §317(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–645, provided that: "The amendment made by this section [amending this section] shall take effect as if included in section 11511 of the Revenue Reconciliation Act of 1990 [Pub. L. 101–508]."

EFFECTIVE DATE

Pub. L. 101–508, title XI, §11511(d), Nov. 5, 1990, 104 Stat. 1388–485, provided that:

"(1) IN GENERAL.—The amendments made by this section [enacting this section and amending sections 38, 39, 196, and 6501 of this title] shall apply to costs paid or incurred in taxable years beginning after December 31, 1990.

"(2) SPECIAL RULE FOR SIGNIFICANT EXPANSION OF PROJECTS.—For purposes of section 43(c)(2)(A)(iii) of the Internal Revenue Code of 1986 (as added by subsection (a)), any significant expansion after December 31, 1990, of a project begun before January 1, 1991, shall be treated as a project with respect to which the first injection commences after December 31, 1990."

INFLATION ADJUSTED ITEMS FOR CERTAIN TAX YEARS

Provisions relating to inflation adjustment of items in this section for certain tax years were contained in the following:

2013—Internal Revenue Notice 2013–50.
2012—Internal Revenue Notice 2012–49.
2011—Internal Revenue Notice 2011–57.
2010—Internal Revenue Notice 2010–72.
2009—Internal Revenue Notice 2009–73.
2008—Internal Revenue Notice 2008–72.
2007—Internal Revenue Notice 2007–64.
2006—Internal Revenue Notice 2006–62.
2005—Internal Revenue Notice 2005–56.
2004—Internal Revenue Notice 2004–49.
2003—Internal Revenue Notice 2003–43.
2002—Internal Revenue Notice 2002–53.
2001—Internal Revenue Notice 2001–54.
2000—Internal Revenue Notice 2000–51.
1999—Internal Revenue Notice 99–45.
1998—Internal Revenue Notice 98–41.
1997—Internal Revenue Notice 97–39.
1996—Internal Revenue Notice 96–41.

§44. Expenditures to provide access to disabled individuals

(a) General rule

For purposes of section 38, in the case of an eligible small business, the amount of the disabled access credit determined under this section for any taxable year shall be an amount equal to 50 percent of so much of the eligible access expenditures for the taxable year as exceed $250 but do not exceed $10,250.

(b) Eligible small business

For purposes of this section, the term "eligible small business" means any person if—

(1) either—

(A) the gross receipts of such person for the preceding taxable year did not exceed $1,000,000, or

(B) in the case of a person to which subparagraph (A) does not apply, such person employed not more than 30 full-time employees during the preceding taxable year, and

(2) such person elects the application of this section for the taxable year.

For purposes of paragraph (1)(B), an employee shall be considered full-time if such employee is employed at least 30 hours per week for 20 or more calendar weeks in the taxable year.

(c) Eligible access expenditures

For purposes of this section—

(1) In general

The term "eligible access expenditures" means amounts paid or incurred by an eligible small business for the purpose of enabling such eligible small business to comply with applicable requirements under the Americans With Disabilities Act of 1990 (as in effect on the date of the enactment of this section).

(2) Certain expenditures included

The term "eligible access expenditures" includes amounts paid or incurred—

(A) for the purpose of removing architectural, communication, physical, or transportation barriers which prevent a business from being accessible to, or usable by, individuals with disabilities,

(B) to provide qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments,

(C) to provide qualified readers, taped texts, and other effective methods of making visually delivered materials available to individuals with visual impairments,

(D) to acquire or modify equipment or devices for individuals with disabilities, or

(E) to provide other similar services, modifications, materials, or equipment.

(3) Expenditures must be reasonable

Amounts paid or incurred for the purposes described in paragraph (2) shall include only expenditures which are reasonable and shall not include expenditures which are unnecessary to accomplish such purposes.

(4) Expenses in connection with new construction are not eligible

The term "eligible access expenditures" shall not include amounts described in paragraph (2)(A) which are paid or incurred in connection with any facility first placed in service after the date of the enactment of this section.

(5) Expenditures must meet standards

The term "eligible access expenditures" shall not include any amount unless the taxpayer establishes, to the satisfaction of the Secretary, that the resulting removal of any barrier (or the provision of any services, modifications, materials, or equipment) meets the standards promulgated by the Secretary with the concurrence of the Architectural and Transportation Barriers Compliance Board and set forth in regulations prescribed by the Secretary.

(d) Definition of disability; special rules

For purposes of this section—

(1) Disability

The term "disability" has the same meaning as when used in the Americans With Disabilities Act of 1990 (as in effect on the date of the enactment of this section).

(2) Controlled groups

(A) In general

All members of the same controlled group of corporations (within the meaning of section 52(a)) and all persons under common control (within the meaning of section 52(b)) shall be treated as 1 person for purposes of this section.

(B) Dollar limitation

The Secretary shall apportion the dollar limitation under subsection (a) among the members

of any group described in subparagraph (A) in such manner as the Secretary shall by regulations prescribe.

(3) Partnerships and S corporations

In the case of a partnership, the limitation under subsection (a) shall apply with respect to the partnership and each partner. A similar rule shall apply in the case of an S corporation and its shareholders.

(4) Short years

The Secretary shall prescribe such adjustments as may be appropriate for purposes of paragraph (1) of subsection (b) if the preceding taxable year is a taxable year of less than 12 months.

(5) Gross receipts

Gross receipts for any taxable year shall be reduced by returns and allowances made during such year.

(6) Treatment of predecessors

The reference to any person in paragraph (1) of subsection (b) shall be treated as including a reference to any predecessor.

(7) Denial of double benefit

In the case of the amount of the credit determined under this section—

(A) no deduction or credit shall be allowed for such amount under any other provision of this chapter, and

(B) no increase in the adjusted basis of any property shall result from such amount.

(e) Regulations

The Secretary shall prescribe regulations necessary to carry out the purposes of this section.

(Added Pub. L. 101–508, title XI, §11611(a), Nov. 5, 1990, 104 Stat. 1388–501.)

REFERENCES IN TEXT

The Americans With Disabilities Act of 1990, referred to in subsecs. (c)(1) and (d)(1) is Pub. L. 101–336, July 26, 1990, 104 Stat. 327, as amended, which is classified principally to chapter 126 (§12101 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of Title 42 and Tables.

The date of the enactment of this section, referred to in subsecs. (c)(1), (4) and (d)(1), is the date of enactment of Pub. L. 101–508, which was approved Nov. 5, 1990.

PRIOR PROVISIONS

A prior section 44, added Pub. L. 94–12, title II, §208(a), Mar. 29, 1975, 89 Stat. 32; amended Pub. L. 94–45, title IV, §401(a), June 30, 1975, 89 Stat. 243; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, related to purchase of new principal residence, prior to repeal by Pub. L. 98–369, div. A, title IV, §474(m)(1), July 18, 1984, 98 Stat. 833, applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years.

Another prior section 44 was renumbered section 37 of this title.

EFFECTIVE DATE

Section applicable to expenditures paid or incurred after Nov. 5, 1990, see section 11611(e)(1) of Pub. L. 101–508, set out as an Effective Date of 1990 Amendment note under section 38 of this title.

[§44A. Renumbered §21]

[§44B. Repealed. Pub. L. 98–369, div. A, title IV, §474(m)(1), July 18, 1984, 98 Stat. 833]

Section, added Pub. L. 95–30, title II, §202(a), May 23, 1977, 91 Stat. 141; amended Pub. L. 95–600, title

III, §321(b)(1), Nov. 6, 1978, 92 Stat. 2834; Pub. L. 96–222, title I, §103(a)(6)(G)(i), (ii), Apr. 1, 1980, 94 Stat. 210, related to credit for employment of certain new employees.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as an Effective Date of 1984 Amendment note under section 21 of this title.

[§44C. Renumbered §23]

[§44D. Renumbered §29]

[§44E. Renumbered §40]

[§44F. Renumbered §30]

[§44G. Renumbered §41]

[§44H. Renumbered §45C]

§45. Electricity produced from certain renewable resources, etc.

(a) General rule

For purposes of section 38, the renewable electricity production credit for any taxable year is an amount equal to the product of—

(1) 1.5 cents, multiplied by

(2) the kilowatt hours of electricity—

(A) produced by the taxpayer—

(i) from qualified energy resources, and

(ii) at a qualified facility during the 10-year period beginning on the date the facility was originally placed in service, and

(B) sold by the taxpayer to an unrelated person during the taxable year.

(b) Limitations and adjustments

(1) Phaseout of credit

The amount of the credit determined under subsection (a) shall be reduced by an amount which bears the same ratio to the amount of the credit (determined without regard to this paragraph) as—

(A) the amount by which the reference price for the calendar year in which the sale occurs exceeds 8 cents, bears to

(B) 3 cents.

(2) Credit and phaseout adjustment based on inflation

The 1.5 cent amount in subsection (a), the 8 cent amount in paragraph (1), the $4.375 amount in subsection (e)(8)(A), the $3 amount in subsection (e)(8)(D)(ii)(I), and in subsection (e)(8)(B)(i)

the reference price of fuel used as a feedstock (within the meaning of subsection (c)(7)(A)) in 2002 shall each be adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the sale occurs. If any amount as increased under the preceding sentence is not a multiple of 0.1 cent, such amount shall be rounded to the nearest multiple of 0.1 cent.

(3) Credit reduced for grants, tax-exempt bonds, subsidized energy financing, and other credits

The amount of the credit determined under subsection (a) with respect to any project for any taxable year (determined after the application of paragraphs (1) and (2)) shall be reduced by the amount which is the product of the amount so determined for such year and the lesser of ½ or a fraction—

(A) the numerator of which is the sum, for the taxable year and all prior taxable years, of—

(i) grants provided by the United States, a State, or a political subdivision of a State for use in connection with the project,

(ii) proceeds of an issue of State or local government obligations used to provide financing for the project the interest on which is exempt from tax under section 103,

(iii) the aggregate amount of subsidized energy financing provided (directly or indirectly) under a Federal, State, or local program provided in connection with the project, and

(iv) the amount of any other credit allowable with respect to any property which is part of the project, and

(B) the denominator of which is the aggregate amount of additions to the capital account for the project for the taxable year and all prior taxable years.

The amounts under the preceding sentence for any taxable year shall be determined as of the close of the taxable year. This paragraph shall not apply with respect to any facility described in subsection (d)(2)(A)(ii).

(4) Credit rate and period for electricity produced and sold from certain facilities

(A) Credit rate

In the case of electricity produced and sold in any calendar year after 2003 at any qualified facility described in paragraph (3), (5), (6), (7), (9), or (11) of subsection (d), the amount in effect under subsection (a)(1) for such calendar year (determined before the application of the last sentence of paragraph (2) of this subsection) shall be reduced by one-half.

(B) Credit period

(i) In general

Except as provided in clause (ii) or clause (iii), in the case of any facility described in paragraph (3), (4), (5), (6), or (7) of subsection (d), the 5-year period beginning on the date the facility was originally placed in service shall be substituted for the 10-year period in subsection (a)(2)(A)(ii).

(ii) Certain open-loop biomass facilities

In the case of any facility described in subsection (d)(3)(A)(ii) placed in service before the date of the enactment of this paragraph, the 5-year period beginning on January 1, 2005, shall be substituted for the 10-year period in subsection (a)(2)(A)(ii).

(iii) Termination

Clause (i) shall not apply to any facility placed in service after the date of the enactment of this clause.

(c) Resources

For purposes of this section:

(1) In general

The term "qualified energy resources" means—

(A) wind,

(B) closed-loop biomass,

(C) open-loop biomass,

(D) geothermal energy,

(E) solar energy,

(F) small irrigation power,

(G) municipal solid waste,

(H) qualified hydropower production, and

(I) marine and hydrokinetic renewable energy.

(2) Closed-loop biomass

The term "closed-loop biomass" means any organic material from a plant which is planted exclusively for purposes of being used at a qualified facility to produce electricity.

(3) Open-loop biomass

(A) In general

The term "open-loop biomass" means—

(i) any agricultural livestock waste nutrients, or

(ii) any solid, nonhazardous, cellulosic waste material or any lignin material which is derived from—

(I) any of the following forest-related resources: mill and harvesting residues, precommercial thinnings, slash, and brush,

(II) solid wood waste materials, including waste pallets, crates, dunnage, manufacturing and construction wood wastes (other than pressure-treated, chemically-treated, or painted wood wastes), and landscape or right-of-way tree trimmings, but not including municipal solid waste, gas derived from the biodegradation of solid waste, or paper which is commonly recycled, or

(III) agriculture sources, including orchard tree crops, vineyard, grain, legumes, sugar, and other crop by-products or residues.

Such term shall not include closed-loop biomass or biomass burned in conjunction with fossil fuel (cofiring) beyond such fossil fuel required for startup and flame stabilization.

(B) Agricultural livestock waste nutrients

(i) In general

The term "agricultural livestock waste nutrients" means agricultural livestock manure and litter, including wood shavings, straw, rice hulls, and other bedding material for the disposition of manure.

(ii) Agricultural livestock

The term "agricultural livestock" includes bovine, swine, poultry, and sheep.

(4) Geothermal energy

The term "geothermal energy" means energy derived from a geothermal deposit (within the meaning of section 613(e)(2)).

(5) Small irrigation power

The term "small irrigation power" means power—

(A) generated without any dam or impoundment of water through an irrigation system canal or ditch, and

(B) the nameplate capacity rating of which is not less than 150 kilowatts but is less than 5 megawatts.

(6) Municipal solid waste

The term "municipal solid waste" has the meaning given the term "solid waste" under section 2(27) [1] of the Solid Waste Disposal Act (42 U.S.C. 6903), except that such term does not include paper which is commonly recycled and which has been segregated from other solid waste (as so defined).

(7) Refined coal

(A) In general

The term "refined coal" means a fuel—

(i) which—

(I) is a liquid, gaseous, or solid fuel produced from coal (including lignite) or high carbon fly ash, including such fuel used as a feedstock,

(II) is sold by the taxpayer with the reasonable expectation that it will be used for purpose [2] of producing steam, and

(III) is certified by the taxpayer as resulting (when used in the production of steam) in a qualified emission reduction.[3]

(ii) which is steel industry fuel.

(B) Qualified emission reduction

The term "qualified emission reduction" means a reduction of at least 20 percent of the emissions of nitrogen oxide and at least 40 percent of the emissions of either sulfur dioxide or mercury released when burning the refined coal (excluding any dilution caused by materials combined or added during the production process), as compared to the emissions released when burning the feedstock coal or comparable coal predominantly available in the marketplace as of January 1, 2003.

(C) Steel industry fuel

(i) In general

The term "steel industry fuel" means a fuel which—

(I) is produced through a process of liquifying coal waste sludge and distributing it on coal, and

(II) is used as a feedstock for the manufacture of coke.

(ii) Coal waste sludge

The term "coal waste sludge" means the tar decanter sludge and related byproducts of the coking process, including such materials that have been stored in ground, in tanks and in lagoons, that have been treated as hazardous wastes under applicable Federal environmental rules absent liquefaction and processing with coal into a feedstock for the manufacture of coke.

(8) Qualified hydropower production

(A) In general

The term "qualified hydropower production" means—

(i) in the case of any hydroelectric dam which was placed in service on or before the date of the enactment of this paragraph, the incremental hydropower production for the taxable year, and

(ii) in the case of any nonhydroelectric dam described in subparagraph (C), the hydropower production from the facility for the taxable year.

(B) Determination of incremental hydropower production

(i) In general

For purposes of subparagraph (A), incremental hydropower production for any taxable year shall be equal to the percentage of average annual hydropower production at the facility

attributable to the efficiency improvements or additions of capacity placed in service after the date of the enactment of this paragraph, determined by using the same water flow information used to determine an historic average annual hydropower production baseline for such facility. Such percentage and baseline shall be certified by the Federal Energy Regulatory Commission.

(ii) Operational changes disregarded

For purposes of clause (i), the determination of incremental hydropower production shall not be based on any operational changes at such facility not directly associated with the efficiency improvements or additions of capacity.

(C) Nonhydroelectric dam

For purposes of subparagraph (A), a facility is described in this subparagraph if—

(i) the hydroelectric project installed on the nonhydroelectric dam is licensed by the Federal Energy Regulatory Commission and meets all other applicable environmental, licensing, and regulatory requirements,

(ii) the nonhydroelectric dam was placed in service before the date of the enactment of this paragraph and operated for flood control, navigation, or water supply purposes and did not produce hydroelectric power on the date of the enactment of this paragraph, and

(iii) the hydroelectric project is operated so that the water surface elevation at any given location and time that would have occurred in the absence of the hydroelectric project is maintained, subject to any license requirements imposed under applicable law that change the water surface elevation for the purpose of improving environmental quality of the affected waterway.

The Secretary, in consultation with the Federal Energy Regulatory Commission, shall certify if a hydroelectric project licensed at a nonhydroelectric dam meets the criteria in clause (iii). Nothing in this section shall affect the standards under which the Federal Energy Regulatory Commission issues licenses for and regulates hydropower projects under part I of the Federal Power Act.

(9) Indian coal

(A) In general

The term "Indian coal" means coal which is produced from coal reserves which, on June 14, 2005—

(i) were owned by an Indian tribe, or

(ii) were held in trust by the United States for the benefit of an Indian tribe or its members.

(B) Indian tribe

For purposes of this paragraph, the term "Indian tribe" has the meaning given such term by section 7871(c)(3)(E)(ii).

(10) Marine and hydrokinetic renewable energy

(A) In general

The term "marine and hydrokinetic renewable energy" means energy derived from—

(i) waves, tides, and currents in oceans, estuaries, and tidal areas,

(ii) free flowing water in rivers, lakes, and streams,

(iii) free flowing water in an irrigation system, canal, or other man-made channel, including projects that utilize nonmechanical structures to accelerate the flow of water for electric power production purposes, or

(iv) differentials in ocean temperature (ocean thermal energy conversion).

(B) Exceptions

Such term shall not include any energy which is derived from any source which utilizes a dam, diversionary structure (except as provided in subparagraph (A)(iii)), or impoundment for

electric power production purposes.

(d) Qualified facilities

For purposes of this section:

(1) Wind facility

In the case of a facility using wind to produce electricity, the term "qualified facility" means any facility owned by the taxpayer which is originally placed in service after December 31, 1993, and the construction of which begins before January 1, 2014. Such term shall not include any facility with respect to which any qualified small wind energy property expenditure (as defined in subsection (d)(4) of section 25D) is taken into account in determining the credit under such section.

(2) Closed-loop biomass facility

(A) In general

In the case of a facility using closed-loop biomass to produce electricity, the term "qualified facility" means any facility—

(i) owned by the taxpayer which is originally placed in service after December 31, 1992, and the construction of which begins before January 1, 2014, or

(ii) owned by the taxpayer which before January 1, 2014, is originally placed in service and modified to use closed-loop biomass to co-fire with coal, with other biomass, or with both, but only if the modification is approved under the Biomass Power for Rural Development Programs or is part of a pilot project of the Commodity Credit Corporation as described in 65 Fed. Reg. 63052.

For purposes of clause (ii), a facility shall be treated as modified before January 1, 2014, if the construction of such modification begins before such date.

(B) Expansion of facility

Such term shall include a new unit placed in service after the date of the enactment of this subparagraph in connection with a facility described in subparagraph (A)(i), but only to the extent of the increased amount of electricity produced at the facility by reason of such new unit.

(C) Special rules

In the case of a qualified facility described in subparagraph (A)(ii)—

(i) the 10-year period referred to in subsection (a) shall be treated as beginning no earlier than the date of the enactment of this clause, and

(ii) if the owner of such facility is not the producer of the electricity, the person eligible for the credit allowable under subsection (a) shall be the lessee or the operator of such facility.

(3) Open-loop biomass facilities

(A) In general

In the case of a facility using open-loop biomass to produce electricity, the term "qualified facility" means any facility owned by the taxpayer which—

(i) in the case of a facility using agricultural livestock waste nutrients—

(I) is originally placed in service after the date of the enactment of this subclause and the construction of which begins before January 1, 2014, and

(II) the nameplate capacity rating of which is not less than 150 kilowatts, and

(ii) in the case of any other facility, the construction of which begins before January 1, 2014.

(B) Expansion of facility

Such term shall include a new unit placed in service after the date of the enactment of this subparagraph in connection with a facility described in subparagraph (A), but only to the extent

of the increased amount of electricity produced at the facility by reason of such new unit.

(C) Credit eligibility

In the case of any facility described in subparagraph (A), if the owner of such facility is not the producer of the electricity, the person eligible for the credit allowable under subsection (a) shall be the lessee or the operator of such facility.

(4) Geothermal or solar energy facility

In the case of a facility using geothermal or solar energy to produce electricity, the term "qualified facility" means any facility owned by the taxpayer which is originally placed in service after the date of the enactment of this paragraph and which—

(A) in the case of a facility using solar energy, is placed in service before January 1, 2006, or

(B) in the case of a facility using geothermal energy, the construction of which begins before January 1, 2014.

Such term shall not include any property described in section 48(a)(3) the basis of which is taken into account by the taxpayer for purposes of determining the energy credit under section 48.

(5) Small irrigation power facility

In the case of a facility using small irrigation power to produce electricity, the term "qualified facility" means any facility owned by the taxpayer which is originally placed in service after the date of the enactment of this paragraph and before October 3, 2008.

(6) Landfill gas facilities

In the case of a facility producing electricity from gas derived from the biodegradation of municipal solid waste, the term "qualified facility" means any facility owned by the taxpayer which is originally placed in service after the date of the enactment of this paragraph and the construction of which begins before January 1, 2014.

(7) Trash facilities

In the case of a facility (other than a facility described in paragraph (6)) which uses municipal solid waste to produce electricity, the term "qualified facility" means any facility owned by the taxpayer which is originally placed in service after the date of the enactment of this paragraph and the construction of which begins before January 1, 2014. Such term shall include a new unit placed in service in connection with a facility placed in service on or before the date of the enactment of this paragraph, but only to the extent of the increased amount of electricity produced at the facility by reason of such new unit.

(8) Refined coal production facility

In the case of a facility that produces refined coal, the term "refined coal production facility" means—

(A) with respect to a facility producing steel industry fuel, any facility (or any modification to a facility) which is placed in service before January 1, 2010, and

(B) with respect to any other facility producing refined coal, any facility placed in service after the date of the enactment of the American Jobs Creation Act of 2004 and before January 1, 2012.

(9) Qualified hydropower facility

(A) In general

In the case of a facility producing qualified hydroelectric production described in subsection (c)(8), the term "qualified facility" means—

(i) in the case of any facility producing incremental hydropower production, such facility but only to the extent of its incremental hydropower production attributable to efficiency improvements or additions to capacity described in subsection (c)(8)(B) placed in service after the date of the enactment of this paragraph and before January 1, 2014, and

(ii) any other facility placed in service after the date of the enactment of this paragraph and

the construction of which begins before January 1, 2014.

(B) Credit period

In the case of a qualified facility described in subparagraph (A), the 10-year period referred to in subsection (a) shall be treated as beginning on the date the efficiency improvements or additions to capacity are placed in service.

(C) Special rule

For purposes of subparagraph (A)(i), an efficiency improvement or addition to capacity shall be treated as placed in service before January 1, 2014, if the construction of such improvement or addition begins before such date.

(10) Indian coal production facility

In the case of a facility that produces Indian coal, the term "Indian coal production facility" means a facility which is placed in service before January 1, 2009.

(11) Marine and hydrokinetic renewable energy facilities

In the case of a facility producing electricity from marine and hydrokinetic renewable energy, the term "qualified facility" means any facility owned by the taxpayer—

(A) which has a nameplate capacity rating of at least 150 kilowatts, and

(B) which is originally placed in service on or after the date of the enactment of this paragraph and the construction of which begins before January 1, 2014.

(e) Definitions and special rules

For purposes of this section—

(1) Only production in the United States taken into account

Sales shall be taken into account under this section only with respect to electricity the production of which is within—

(A) the United States (within the meaning of section 638(1)), or

(B) a possession of the United States (within the meaning of section 638(2)).

(2) Computation of inflation adjustment factor and reference price

(A) In general

The Secretary shall, not later than April 1 of each calendar year, determine and publish in the Federal Register the inflation adjustment factor and the reference price for such calendar year in accordance with this paragraph.

(B) Inflation adjustment factor

The term "inflation adjustment factor" means, with respect to a calendar year, a fraction the numerator of which is the GDP implicit price deflator for the preceding calendar year and the denominator of which is the GDP implicit price deflator for the calendar year 1992. The term "GDP implicit price deflator" means the most recent revision of the implicit price deflator for the gross domestic product as computed and published by the Department of Commerce before March 15 of the calendar year.

(C) Reference price

The term "reference price" means, with respect to a calendar year, the Secretary's determination of the annual average contract price per kilowatt hour of electricity generated from the same qualified energy resource and sold in the previous year in the United States. For purposes of the preceding sentence, only contracts entered into after December 31, 1989, shall be taken into account.

(3) Production attributable to the taxpayer

In the case of a facility in which more than 1 person has an ownership interest, except to the extent provided in regulations prescribed by the Secretary, production from the facility shall be allocated among such persons in proportion to their respective ownership interests in the gross

sales from such facility.

(4) Related persons

Persons shall be treated as related to each other if such persons would be treated as a single employer under the regulations prescribed under section 52(b). In the case of a corporation which is a member of an affiliated group of corporations filing a consolidated return, such corporation shall be treated as selling electricity to an unrelated person if such electricity is sold to such a person by another member of such group.

(5) Pass-thru in the case of estates and trusts

Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

[(6) Repealed. Pub. L. 109–58, title XIII, §1301(f)(3), Aug. 8, 2005, 119 Stat. 990]

(7) Credit not to apply to electricity sold to utilities under certain contracts

(A) In general

The credit determined under subsection (a) shall not apply to electricity—

(i) produced at a qualified facility described in subsection (d)(1) which is originally placed in service after June 30, 1999, and

(ii) sold to a utility pursuant to a contract originally entered into before January 1, 1987 (whether or not amended or restated after that date).

(B) Exception

Subparagraph (A) shall not apply if—

(i) the prices for energy and capacity from such facility are established pursuant to an amendment to the contract referred to in subparagraph (A)(ii),

(ii) such amendment provides that the prices set forth in the contract which exceed avoided cost prices determined at the time of delivery shall apply only to annual quantities of electricity (prorated for partial years) which do not exceed the greater of—

(I) the average annual quantity of electricity sold to the utility under the contract during calendar years 1994, 1995, 1996, 1997, and 1998, or

(II) the estimate of the annual electricity production set forth in the contract, or, if there is no such estimate, the greatest annual quantity of electricity sold to the utility under the contract in any of the calendar years 1996, 1997, or 1998, and

(iii) such amendment provides that energy and capacity in excess of the limitation in clause (ii) may be—

(I) sold to the utility only at prices that do not exceed avoided cost prices determined at the time of delivery, or

(II) sold to a third party subject to a mutually agreed upon advance notice to the utility.

For purposes of this subparagraph, avoided cost prices shall be determined as provided for in 18 CFR 292.304(d)(1) or any successor regulation.

(8) Refined coal production facilities

(A) Determination of credit amount

In the case of a producer of refined coal, the credit determined under this section (without regard to this paragraph) for any taxable year shall be increased by an amount equal to $4.375 per ton of qualified refined coal—

(i) produced by the taxpayer at a refined coal production facility during the 10-year period beginning on the date the facility was originally placed in service, and

(ii) sold by the taxpayer—

(I) to an unrelated person, and

(II) during such 10-year period and such taxable year.

(B) Phaseout of credit

The amount of the increase determined under subparagraph (A) shall be reduced by an amount which bears the same ratio to the amount of the increase (determined without regard to this subparagraph) as—

(i) the amount by which the reference price of fuel used as a feedstock (within the meaning of subsection (c)(7)(A)) for the calendar year in which the sale occurs exceeds an amount equal to 1.7 multiplied by the reference price for such fuel in 2002, bears to

(ii) $8.75.

(C) Application of rules

Rules similar to the rules of the subsection (b)(3) and paragraphs (1) through (5) of this subsection shall apply for purposes of determining the amount of any increase under this paragraph.

(D) Special rule for steel industry fuel

(i) In general

In the case of a taxpayer who produces steel industry fuel—

(I) this paragraph shall be applied separately with respect to steel industry fuel and other refined coal, and

(II) in applying this paragraph to steel industry fuel, the modifications in clause (ii) shall apply.

(ii) Modifications

(I) Credit amount

Subparagraph (A) shall be applied by substituting "$2 per barrel-of-oil equivalent" for "$4.375 per ton".

(II) Credit period

In lieu of the 10-year period referred to in clauses (i) and (ii)(II) of subparagraph (A), the credit period shall be the period beginning on the later of the date such facility was originally placed in service, the date the modifications described in clause (iii) were placed in service, or October 1, 2008, and ending on the later of December 31, 2009, or the date which is 1 year after the date such facility or the modifications described in clause (iii) were placed in service.

(III) No phaseout

Subparagraph (B) shall not apply.

(iii) Modifications

The modifications described in this clause are modifications to an existing facility which allow such facility to produce steel industry fuel.

(iv) Barrel-of-oil equivalent

For purposes of this subparagraph, a barrel-of-oil equivalent is the amount of steel industry fuel that has a Btu content of 5,800,000 Btus.

(9) Coordination with credit for producing fuel from a nonconventional source

(A) In general

The term "qualified facility" shall not include any facility which produces electricity from gas derived from the biodegradation of municipal solid waste if such biodegradation occurred in a facility (within the meaning of section 45K) the production from which is allowed as a credit under section 45K for the taxable year or any prior taxable year.

(B) Refined coal facilities

(i) In general

The term "refined coal production facility" shall not include any facility the production from which is allowed as a credit under section 45K for the taxable year or any prior taxable year (or under section 29,[1] as in effect on the day before the date of enactment of the Energy Tax Incentives Act of 2005, for any prior taxable year).

(ii) Exception for steel industry coal

In the case of a facility producing steel industry fuel, clause (i) shall not apply to so much of the refined coal produced at such facility as is steel industry fuel.

(10) Indian coal production facilities

(A) Determination of credit amount

In the case of a producer of Indian coal, the credit determined under this section (without regard to this paragraph) for any taxable year shall be increased by an amount equal to the applicable dollar amount per ton of Indian coal—

(i) produced by the taxpayer at an Indian coal production facility during the 8-year period beginning on January 1, 2006, and

(ii) sold by the taxpayer—

(I) to an unrelated person, and

(II) during such 8-year period and such taxable year.

(B) Applicable dollar amount

(i) In general

The term "applicable dollar amount" for any taxable year beginning in a calendar year means—

(I) $1.50 in the case of calendar years 2006 through 2009, and

(II) $2.00 in the case of calendar years beginning after 2009.

(ii) Inflation adjustment

In the case of any calendar year after 2006, each of the dollar amounts under clause (i) shall be equal to the product of such dollar amount and the inflation adjustment factor determined under paragraph (2)(B) for the calendar year, except that such paragraph shall be applied by substituting "2005" for "1992".

(C) Application of rules

Rules similar to the rules of the subsection (b)(3) and paragraphs (1), (3), (4), and (5) of this subsection shall apply for purposes of determining the amount of any increase under this paragraph.

(D) Treatment as specified credit

The increase in the credit determined under subsection (a) by reason of this paragraph with respect to any facility shall be treated as a specified credit for purposes of section 38(c)(4)(A) during the 4-year period beginning on the later of January 1, 2006, or the date on which such facility is placed in service by the taxpayer.

(11) Allocation of credit to patrons of agricultural cooperative

(A) Election to allocate

(i) In general

In the case of an eligible cooperative organization, any portion of the credit determined under subsection (a) for the taxable year may, at the election of the organization, be apportioned among patrons of the organization on the basis of the amount of business done by the patrons during the taxable year.

(ii) Form and effect of election

An election under clause (i) for any taxable year shall be made on a timely filed return for such year. Such election, once made, shall be irrevocable for such taxable year. Such election

shall not take effect unless the organization designates the apportionment as such in a written notice mailed to its patrons during the payment period described in section 1382(d).

(B) Treatment of organizations and patrons

The amount of the credit apportioned to any patrons under subparagraph (A)—

(i) shall not be included in the amount determined under subsection (a) with respect to the organization for the taxable year, and

(ii) shall be included in the amount determined under subsection (a) for the first taxable year of each patron ending on or after the last day of the payment period (as defined in section 1382(d)) for the taxable year of the organization or, if earlier, for the taxable year of each patron ending on or after the date on which the patron receives notice from the cooperative of the apportionment.

(C) Special rules for decrease in credits for taxable year

If the amount of the credit of a cooperative organization determined under subsection (a) for a taxable year is less than the amount of such credit shown on the return of the cooperative organization for such year, an amount equal to the excess of—

(i) such reduction, over

(ii) the amount not apportioned to such patrons under subparagraph (A) for the taxable year,

shall be treated as an increase in tax imposed by this chapter on the organization. Such increase shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit under this chapter.

(D) Eligible cooperative defined

For purposes of this section the term "eligible cooperative" means a cooperative organization described in section 1381(a) which is owned more than 50 percent by agricultural producers or by entities owned by agricultural producers. For this purpose an entity owned by an agricultural producer is one that is more than 50 percent owned by agricultural producers.

(Added Pub. L. 102–486, title XIX, §1914(a), Oct. 24, 1992, 106 Stat. 3020; amended Pub. L. 106–170, title V, §507(a)–(c), Dec. 17, 1999, 113 Stat. 1922; Pub. L. 106–554, §1(a)(7) [title III, §319(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–646; Pub. L. 107–147, title VI, §603(a), Mar. 9, 2002, 116 Stat. 59; Pub. L. 108–311, title III, §313(a), Oct. 4, 2004, 118 Stat. 1181; Pub. L. 108–357, title VII, §710(a)–(d), (f), Oct. 22, 2004, 118 Stat. 1552–1557; Pub. L. 109–58, title XIII, §§1301(a)–(f)(4), 1302(a), 1322(a)(3)(C), Aug. 8, 2005, 119 Stat. 986–990, 1011; Pub. L. 109–135, title IV, §§402(b), 403(t), 412(j), Dec. 21, 2005, 119 Stat. 2610, 2628, 2637; Pub. L. 109–432, div. A, title II, §201, Dec. 20, 2006, 120 Stat. 2944; Pub. L. 110–172, §§7(b), 9(a), Dec. 29, 2007, 121 Stat. 2482, 2484; Pub. L. 110–343, div. B, title I, §§101(a)–(e), 102(a)–(e), 106(c)(3)(B), 108(a)–(d)(1), Oct. 3, 2008, 122 Stat. 3808–3810, 3815, 3819–3821; Pub. L. 111–5, div. B, title I, §1101(a), (b), Feb. 17, 2009, 123 Stat. 319; Pub. L. 111–312, title VII, §702(a), Dec. 17, 2010, 124 Stat. 3311; Pub. L. 112–240, title IV, §§406(a), 407(a), Jan. 2, 2013, 126 Stat. 2340.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

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

REFERENCES IN TEXT

The date of the enactment of this paragraph, the date of the enactment of this clause, the date of the enactment of this subclause, and the date of the enactment of the American Jobs Creation Act of 2004, referred to in subsecs. (b)(4)(B)(ii) and (d)(2)(C)(i), (3)(A)(i), (4) to (8), is the date of enactment of Pub. L. 108–357, which was approved Oct. 22, 2004.

The date of the enactment of this clause and the date of the enactment of this paragraph, referred to in subsecs. (b)(4)(B)(iii), (c)(8), and (d)(9)(A), are the date of enactment of Pub. L. 109–58, which was approved Aug. 8, 2005.

Section 2(27) of the Solid Waste Disposal Act, referred to in subsec. (c)(6), probably should be section 1004(27) of such Act which is classified to section 6903(27) of Title 42, The Public Health and Welfare.

The Federal Power Act, referred to in subsec. (c)(8)(C), is act June 10, 1920, ch. 285, 41 Stat. 1063. Part I of the Act is classified generally to subchapter I (§791a et seq.) of chapter 12 of Title 16, Conservation. For complete classification of this Act to the Code, see section 791a of Title 16 and Tables.

The date of the enactment of this subparagraph and the date of the enactment of this paragraph, referred to in subsec. (d)(2)(B), (3)(B), (11), are the date of enactment of Pub. L. 110–343, which was approved Oct. 3, 2008.

Section 29, referred to in subsec. (e)(9)(B)(i), was redesignated section 45K of this title by Pub. L. 109–58, title XIII, §1322(a)(1), Aug. 8, 2005, 119 Stat. 1011.

The date of enactment of the Energy Tax Incentives Act of 2005, referred to in subsec. (e)(9)(B)(i), is the date of enactment of title XIII of Pub. L. 109–58, which was approved Aug. 8, 2005.

PRIOR PROVISIONS

A prior section 45 was renumbered section 37 of this title.

AMENDMENTS

2013—Subsec. (c)(6). Pub. L. 112–240, §407(a)(2), inserted ", except that such term does not include paper which is commonly recycled and which has been segregated from other solid waste (as so defined)" after "(42 U.S.C. 6903)".

Subsec. (d)(1). Pub. L. 112–240, §407(a)(3)(A)(i), substituted "the construction of which begins before January 1, 2014" for "before January 1, 2014".

Pub. L. 112–240, §407(a)(1), substituted "January 1, 2014" for "January 1, 2013".

Subsec. (d)(2)(A). Pub. L. 112–240, §407(a)(3)(B), inserted concluding provisions.

Subsec. (d)(2)(A)(i). Pub. L. 112–240, §407(a)(3)(A)(ii), substituted "the construction of which begins before January 1, 2014" for "before January 1, 2014".

Subsec. (d)(3)(A)(i)(I). Pub. L. 112–240, §407(a)(3)(A)(iii), substituted "the construction of which begins before January 1, 2014" for "before January 1, 2014".

Subsec. (d)(3)(A)(ii). Pub. L. 112–240, §407(a)(3)(C), substituted "the construction of which begins" for "is originally placed in service".

Subsec. (d)(4). Pub. L. 112–240, §407(a)(3)(D)(i), substituted "and which—", subpars. (A) and (B), and concluding provisions for "and before January 1, 2014 (January 1, 2006, in the case of a facility using solar energy). Such term shall not include any property described in section 48(a)(3) the basis of which is taken into account by the taxpayer for purposes of determining the energy credit under section 48."

Subsec. (d)(6). Pub. L. 112–240, §407(a)(3)(A)(iv), substituted "the construction of which begins before January 1, 2014" for "before January 1, 2014".

Subsec. (d)(7). Pub. L. 112–240, §407(a)(3)(A)(v), substituted "the construction of which begins before January 1, 2014" for "before January 1, 2014".

Subsec. (d)(9). Pub. L. 112–240, §407(a)(3)(E), designated introductory provisions as subpar. (A) and inserted heading, redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, of subpar. (A), realigned margins, added subpar. (C), and redesignated former subpar. (C) as (B).

Subsec. (d)(9)(B). Pub. L. 112–240, §407(a)(3)(A)(vi), substituted "the construction of which begins before January 1, 2014" for "before January 1, 2014".

Subsec. (d)(11)(B). Pub. L. 112–240, §407(a)(3)(A)(vii), substituted "the construction of which begins before January 1, 2014" for "before January 1, 2014".

Subsec. (e)(10)(A)(i), (ii)(II). Pub. L. 112–240, §406(a), substituted "8-year period" for "7-year period".

2010—Subsec. (d)(8)(B). Pub. L. 111–312 substituted "January 1, 2012" for "January 1, 2010".

2009—Subsec. (d)(1). Pub. L. 111–5, §1101(a)(1), substituted "2013" for "2010".

Subsec. (d)(2)(A)(i), (ii), (3)(A)(i)(I), (ii), (4). Pub. L. 111–5, §1101(a)(2), substituted "2014" for "2011".

Subsec. (d)(5). Pub. L. 111–5, §1101(b), substituted "and before October 3, 2008." for "and before the date of the enactment of paragraph (11)."

Subsec. (d)(6), (7), (9)(A), (B). Pub. L. 111–5, §1101(a)(2), substituted "2014" for "2011".

Subsec. (d)(11)(B). Pub. L. 111–5, §1101(a)(3), substituted "2014" for "2012".

2008—Subsec. (b)(2). Pub. L. 110–343, §108(b)(2), inserted "the $3 amount in subsection (e)(8)(D)(ii)(I)," after "subsection (e)(8)(A),".

Subsec. (b)(4)(A). Pub. L. 110–343, §102(d), substituted "(9), or (11)" for "or (9)".

Subsec. (c)(1)(I). Pub. L. 110–343, §102(a), added subpar. (I).

Subsec. (c)(7)(A). Pub. L. 110–343, §108(a)(1), reenacted heading without change and amended text

generally. Prior to amendment, subpar. (A) defined "refined coal".

Subsec. (c)(7)(A)(i). Pub. L. 110–343, §101(b)(1), amended subsec. (c)(7)(A)(i) as amended by Pub. L. 110–348, §108(a)(1), by inserting "and" at end of subcl. (II), substituting period for ", and" at end of subcl. (III), and striking out subcl. (IV) which read as follows: "is produced in such a manner as to result in an increase of at least 50 percent in the market value of the refined coal (excluding any increase caused by materials combined or added during the production process), as compared to the value of the feedstock coal, or".

Subsec. (c)(7)(B). Pub. L. 110–343, §101(b)(2), inserted "at least 40 percent of the emissions of" after "nitrogen oxide and".

Subsec. (c)(7)(C). Pub. L. 110–343, §108(a)(2), added subpar. (C).

Subsec. (c)(8)(C). Pub. L. 110–343, §101(e), reenacted heading without change and amended text generally. Prior to amendment, subpar. (C) described a nonhydroelectric dam facility for purposes of subpar. (A).

Subsec. (c)(10). Pub. L. 110–343, §102(b), added par. (10).

Subsec. (d)(1). Pub. L. 110–343, §106(c)(3)(B), inserted at end "Such term shall not include any facility with respect to which any qualified small wind energy property expenditure (as defined in subsection (d)(4) of section 25D) is taken into account in determining the credit under such section."

Pub. L. 110–343, §101(a)(1), substituted "January 1, 2010" for "January 1, 2009".

Subsec. (d)(2)(A). Pub. L. 110–343, §101(a)(2)(A), substituted "January 1, 2011" for "January 1, 2009" in cls. (i) and (ii).

Subsec. (d)(2)(B), (C). Pub. L. 110–343, §101(d)(2), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (d)(3)(A). Pub. L. 110–343, §101(a)(2)(B), substituted "January 1, 2011" for "January 1, 2009" in cls. (i)(I) and (ii).

Subsec. (d)(3)(B), (C). Pub. L. 110–343, §101(d)(1), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (d)(4). Pub. L. 110–343, §101(a)(2)(C), substituted "January 1, 2011" for "January 1, 2009".

Subsec. (d)(5). Pub. L. 110–343, §102(e), which directed amendment of par. (5) by substituting "the date of the enactment of paragraph (11)" for "January 1, 2012", was executed by making the substitution for "January 1, 2011" to reflect the probable intent of Congress. See below.

Pub. L. 110–343, §101(a)(2)(D), substituted "January 1, 2011" for "January 1, 2009".

Subsec. (d)(6). Pub. L. 110–343, §101(a)(2)(E), substituted "January 1, 2011" for "January 1, 2009".

Subsec. (d)(7). Pub. L. 110–343, §101(c), struck out "combustion" before "facilities" in heading and substituted "facility (other than a facility described in paragraph (6)) which uses" for "facility which burns".

Pub. L. 110–343, §101(a)(2)(F), substituted "January 1, 2011" for "January 1, 2009".

Subsec. (d)(8). Pub. L. 110–343, §108(c), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "In the case of a facility that produces refined coal, the term 'refined coal production facility' means a facility which is placed in service after the date of the enactment of this paragraph and before January 1, 2010."

Pub. L. 110–343, §101(a)(1), substituted "January 1, 2010" for "January 1, 2009".

Subsec. (d)(9)(A), (B). Pub. L. 110–343, §101(a)(2)(G), substituted "January 1, 2011" for "January 1, 2009".

Subsec. (d)(11). Pub. L. 110–343, §102(c), added par. (11).

Subsec. (e)(8)(D). Pub. L. 110–343, §108(b)(1), added subpar. (D).

Subsec. (e)(9)(B). Pub. L. 110–343, §108(d)(1), designated existing provisions as cl. (i), inserted heading, and added cl. (ii).

2007—Subsec. (c)(3)(A)(ii). Pub. L. 110–172, §7(b)(1), struck out "which is segregated from other waste materials and" after "lignin material".

Subsec. (d)(2)(B)(i) to (iii). Pub. L. 110–172, §7(b)(2), inserted "and" at the end of cl. (i), redesignated cl. (iii) as (ii), and struck out former cl. (ii) which read as follows: "the amount of the credit determined under subsection (a) with respect to the facility shall be an amount equal to the amount determined without regard to this clause multiplied by the ratio of the thermal content of the closed-loop biomass used in such facility to the thermal content of all fuels used in such facility, and".

Subsec. (e)(7)(A)(i). Pub. L. 110–172, §9(a), substituted "originally placed in service" for "placed in service by the taxpayer".

2006—Subsec. (d)(1) to (7), (9). Pub. L. 109–432 substituted "January 1, 2009" for "January 1, 2008" wherever appearing.

2005—Subsec. (b)(4)(A). Pub. L. 109–58, §1301(c)(2), substituted "(7), or (9)" for "or (7)".

Subsec. (b)(4)(B)(i). Pub. L. 109–58, §1301(b)(1), inserted "or clause (iii)" after "clause (ii)".

Subsec. (b)(4)(B)(ii). Pub. L. 109–58, §1301(f)(1), substituted "January 1, 2005," for "the date of the enactment of this Act".

Subsec. (b)(4)(B)(iii). Pub. L. 109–58, §1301(b)(2), added cl. (iii).

Subsec. (c). Pub. L. 109–58, §1301(d)(4), substituted "Resources" for "Qualified energy resources and refined coal" in heading.

Subsec. (c)(1)(H). Pub. L. 109–58, §1301(c)(1), added subpar. (H).

Subsec. (c)(3)(A)(ii). Pub. L. 109–135, §402(b), substituted "lignin material" for "nonhazardous lignin waste material".

Pub. L. 109–58, §1301(f)(2), inserted "or any nonhazardous lignin waste material" after "cellulosic waste material".

Subsec. (c)(7)(A)(i). Pub. L. 109–135, §403(t), struck out "synthetic" after "solid".

Subsec. (c)(8). Pub. L. 109–58, §1301(c)(3), added par. (8).

Subsec. (c)(9). Pub. L. 109–58, §1301(d)(2), added par. (9).

Subsec. (d)(1) to (3). Pub. L. 109–58, §1301(a)(1), substituted "January 1, 2008" for "January 1, 2006" wherever appearing.

Subsec. (d)(4). Pub. L. 109–58, §1301(a)(2), substituted "January 1, 2008 (January 1, 2006, in the case of a facility using solar energy)" for "January 1, 2006".

Subsec. (d)(5), (6). Pub. L. 109–58, §1301(a)(1), substituted "January 1, 2008" for "January 1, 2006".

Subsec. (d)(7). Pub. L. 109–58, §1301(e), inserted at end "Such term shall include a new unit placed in service in connection with a facility placed in service on or before the date of the enactment of this paragraph, but only to the extent of the increased amount of electricity produced at the facility by reason of such new unit."

Pub. L. 109–58, §1301(a)(1), substituted "January 1, 2008" for "January 1, 2006".

Subsec. (d)(8). Pub. L. 109–135, §412(j)(1), substituted "In the case of a facility that produces refined coal, the term" for "The term".

Subsec. (d)(9). Pub. L. 109–58, §1301(c)(4), added par. (9).

Subsec. (d)(10). Pub. L. 109–135, §412(j)(2), substituted "In the case of a facility that produces Indian coal, the term" for "The term".

Pub. L. 109–58, §1301(d)(3), added par. (10).

Subsec. (e)(6). Pub. L. 109–58, §1301(f)(3), struck out heading and text of par. (6). Text read as follows: "In the case of a facility using poultry waste to produce electricity and owned by a governmental unit, the person eligible for the credit under subsection (a) is the lessee or the operator of such facility."

Subsec. (e)(8)(C). Pub. L. 109–58, §1301(f)(4)(B), struck out "and (9)" after "paragraphs (1) through (5)".

Subsec. (e)(9). Pub. L. 109–58, §1322(a)(3)(C)(i), substituted "section 45K" for "section 29" wherever appearing.

Pub. L. 109–58, §1301(f)(4)(A), reenacted heading without change and amended text of par. (9) generally. Prior to amendment, text read as follows: "The term 'qualified facility' shall not include any facility the production from which is allowed as a credit under section 29 for the taxable year or any prior taxable year."

Subsec. (e)(9)(B). Pub. L. 109–58, §1322(a)(3)(C)(ii), inserted "(or under section 29, as in effect on the day before the date of enactment of the Energy Tax Incentives Act of 2005, for any prior taxable year)" before period at end.

Subsec. (e)(10). Pub. L. 109–58, §1301(d)(1), added par. (10).

Subsec. (e)(11). Pub. L. 109–58, §1302(a), added par. (11).

2004—Pub. L. 108–357, §710(b)(3)(B), inserted ", etc" after "resources" in section catchline.

Subsec. (b)(2). Pub. L. 108–357, §710(b)(3)(C), substituted "The 1.5 cent amount in subsection (a), the 8 cent amount in paragraph (1), the $4.375 amount in subsection (e)(8)(A), and in subsection (e)(8)(B)(i) the reference price of fuel used as a feedstock (within the meaning of subsection (c)(7)(A)) in 2002" for "The 1.5 cent amount in subsection (a) and the 8 cent amount in paragraph (1)".

Subsec. (b)(3). Pub. L. 108–357, §710(f), inserted "the lesser of ½ or" before "a fraction" in introductory provisions and "This paragraph shall not apply with respect to any facility described in subsection (d)(2)(A)(ii)" in concluding provisions.

Subsec. (b)(4). Pub. L. 108–357, §710(c), added par. (4).

Subsec. (c). Pub. L. 108–357, §710(a), amended heading and text of subsec. (c) generally. Prior to amendment, subsec. (c) defined "qualified energy resources", "closed-loop biomass", "qualified facility", and "poultry waste" for purposes of this section.

Subsec. (c)(3). Pub. L. 108–311 substituted "January 1, 2006" for "January 1, 2004" in subpars. (A) to (C).

Subsec. (d). Pub. L. 108–357, §710(b)(1), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 108–357, §710(b)(1), redesignated subsec. (d) as (e).

Subsec. (e)(7)(A)(i). Pub. L. 108–357, §710(b)(3)(A), substituted "subsection (d)(1)" for "subsection (c)(3)(A)".

Subsec. (e)(8). Pub. L. 108–357, §710(b)(2), added par. (8).

Subsec. (e)(9). Pub. L. 108–357, §710(d), added par. (9).

2002—Subsec. (c)(3). Pub. L. 107–147 substituted "2004" for "2002" in subpars. (A) to (C).

2000—Subsec. (d)(7)(A)(i). Pub. L. 106–554 substituted "subsection (c)(3)(A)" for "paragraph (3)(A)".

1999—Subsec. (c)(1)(C). Pub. L. 106–170, §507(b)(1), added subpar. (C).

Subsec. (c)(3). Pub. L. 106–170, §507(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "The term 'qualified facility' means any facility owned by the taxpayer which is originally placed in service after December 31, 1993 (December 31, 1992, in the case of a facility using closed-loop biomass to produce electricity), and before July 1, 1999."

Subsec. (c)(4). Pub. L. 106–170, §507(b)(2), added par. (4).

Subsec. (d)(6), (7). Pub. L. 106–170, §507(c), added pars. (6) and (7).

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title IV, §406(b), Jan. 2, 2013, 126 Stat. 2340, provided that: "The amendment made by this section [amending this section] shall apply to coal produced after December 31, 2012."

Pub. L. 112–240, title IV, §407(d), Jan. 2, 2013, 126 Stat. 2342, provided that:

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section [amending this section, section 48 of this title, and provisions set out as a note under section 48 of this title] shall take effect on the date of the enactment of this Act [Jan. 2, 2013].

"(2) MODIFICATION TO DEFINITION OF MUNICIPAL SOLID WASTE.—The amendments made by subsection (a)(2) [amending this section] shall apply to electricity produced and sold after the date of the enactment of this Act, in taxable years ending after such date.

"(3) TECHNICAL CORRECTIONS.—The amendments made by subsection (c) [amending section 48 of this title and provisions set out as a note under section 48 of this title] shall apply as if included in the enactment of the provisions of the American Recovery and Reinvestment Act of 2009 [Pub. L. 111–5] to which they relate."

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §702(b), Dec. 17, 2010, 124 Stat. 3311, provided that: "The amendment made by this section [amending this section] shall apply to facilities placed in service after December 31, 2009."

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, §1101(c), Feb. 17, 2009, 123 Stat. 319, provided that:

"(1) IN GENERAL.—The amendments made by subsection (a) [amending this section] shall apply to property placed in service after the date of the enactment of this Act [Feb. 17, 2009].

"(2) TECHNICAL AMENDMENT.—The amendment made by subsection (b) [amending this section] shall take effect as if included in section 102 of the Energy Improvement and Extension Act of 2008 [Pub. L. 110–343]."

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title I, §101(f), Oct. 3, 2008, 122 Stat. 3810, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section] shall apply to property originally placed in service after December 31, 2008.

"(2) REFINED COAL.—The amendments made by subsection (b) [amending this section] shall apply to coal produced and sold from facilities placed in service after December 31, 2008.

"(3) TRASH FACILITY CLARIFICATION.—The amendments made by subsection (c) [amending this section] shall apply to electricity produced and sold after the date of the enactment of this Act [Oct. 3, 2008].

"(4) EXPANSION OF BIOMASS FACILITIES.—The amendments made by subsection (d) [amending this section] shall apply to property placed in service after the date of the enactment of this Act."

Pub. L. 110–343, div. B, title I, §102(f), Oct. 3, 2008, 122 Stat. 3811, provided that: "The amendments made by this section [amending this section] shall apply to electricity produced and sold after the date of the enactment of this Act [Oct. 3, 2008], in taxable years ending after such date."

Amendment by section 106(c)(3)(B) of Pub. L. 110–343 applicable to taxable years beginning after Dec. 31, 2007, see section 106(f)(1) of Pub. L. 110–343, set out as an Effective and Termination Dates of 2008 Amendment note under section 23 of this title.

Pub. L. 110–343, div. B, title I, §108(e), Oct. 3, 2008, 122 Stat. 3821, provided that: "The amendments

made by this section [amending this section and section 45K of this title] shall apply to fuel produced and sold after September 30, 2008."

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by section 7(b) of Pub. L. 110–172 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 7(e) of Pub. L. 110–172, set out as a note under section 1092 of this title.

Pub. L. 110–172, §9(c), Dec. 29, 2007, 121 Stat. 2484, provided that: "The amendments made by this section [amending this section and section 856 of this title] shall take effect as if included in the provisions of the Tax Relief Extension Act of 1999 [Pub. L. 106–170] to which they relate."

EFFECTIVE DATE OF 2005 AMENDMENTS

Amendment by section 402(b) of Pub. L. 109–135 effective as if included in the provision of the Energy Policy Act of 2005, Pub. L. 109–58, to which such amendment relates, see section 402(m)(1) of Pub. L. 109–135, set out as an Effective and Termination Dates of 2005 Amendments note under section 23 of this title.

Amendment by section 403(t) of Pub. L. 109–135 effective as if included in the provisions of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

Pub. L. 109–58, title XIII, §1301(g), Aug. 8, 2005, 119 Stat. 990, as amended by Pub. L. 110–172, §11(a)(45), Dec. 29, 2007, 121 Stat. 2488, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 168 of this title and amending provisions set out as a note under this section] shall take effect on the date of the enactment of this Act [Aug. 8, 2005].

"(2) TECHNICAL AMENDMENTS.—The amendments made by subsections (e) and (f) [amending this section and section 168 of this title and amending provisions set out as a note under this section] shall take effect as if included in the amendments made by section 710 of the American Jobs Creation Act of 2004 [Pub. L. 108–357]."

Pub. L. 109–58, title XIII, §1302(c), Aug. 8, 2005, 119 Stat. 991, provided that: "The amendments made by this section [amending this section and section 55 of this title] shall apply to taxable years of cooperative organizations ending after the date of the enactment of this Act [Aug. 8, 2005]."

Amendment by section 1322(a)(3)(C) of Pub. L. 109–58 applicable to credits determined under the Internal Revenue Code of 1986 for taxable years ending after Dec. 31, 2005, see section 1322(c)(1) of Pub. L. 109–58, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 2004 AMENDMENTS

Pub. L. 108–357, title VII, §710(g), Oct. 22, 2004, 118 Stat. 1557, as amended by Pub. L. 109–58, title XIII, §1301(f)(6), Aug. 8, 2005, 119 Stat. 990, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and section 48 of this title] shall apply to electricity produced and sold after the date of the enactment of this Act [Oct. 22, 2004], in taxable years ending after such date.

"(2) CERTAIN BIOMASS FACILITIES.—With respect to any facility described in section 45(d)(3)(A)(ii) of the Internal Revenue Code of 1986, as added by subsection (b)(1), which is placed in service before the date of the enactment of this Act, the amendments made by this section shall apply to electricity produced and sold after December 31, 2004, in taxable years ending after such date.

"(3) CREDIT RATE AND PERIOD FOR NEW FACILITIES.—The amendments made by subsection (c) [amending this section] shall apply to electricity produced and sold after December 31, 2004, in taxable years ending after such date.

"(4) NONAPPLICATION OF AMENDMENTS TO PREEFFECTIVE DATE POULTRY WASTE FACILITIES.—The amendments made by this section shall not apply with respect to any poultry waste facility (within the meaning of section 45(c)(3)(C), as in effect on the day before the date of the enactment of this Act) placed in service before January 1, 2005.

"(5) REFINED COAL PRODUCTION FACILITIES.—Section 45(e)(8) of the Internal Revenue Code of 1986, as added by this section, shall apply to refined coal produced and sold after the date of the enactment of this Act."

Pub. L. 108–311, title III, §313(b), Oct. 4, 2004, 118 Stat. 1181, provided that: "The amendments made by subsection (a) [amending this section] shall apply to facilities placed in service after December 31, 2003."

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title VI, §603(b), Mar. 9, 2002, 116 Stat. 59, provided that: "The amendments made by subsection (a) [amending this section] shall apply to facilities placed in service after December 31, 2001."

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title V, §507(d), Dec. 17, 1999, 113 Stat. 1923, provided that: "The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Dec. 17, 1999]."

EFFECTIVE DATE

Section applicable to taxable years ending after Dec. 31, 1992, see section 1914(e) of Pub. L. 102–486, set out as an Effective Date of 1992 Amendment note under section 38 of this title.

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

Provisions relating to inflation adjustment of items in this section for certain years were contained in the following:

2013—Internal Revenue Notice 2013–33.
2012—Internal Revenue Notice 2012–35.
2011—Internal Revenue Notice 2011–40.
2010—Internal Revenue Notice 2010–37.
2009—Internal Revenue Notice 2009–40.
2008—Internal Revenue Notice 2008–48.
2007—Internal Revenue Notice 2007–40.
2006—Internal Revenue Notice 2006–51.
2005—Internal Revenue Notice 2005–37.
2004—Internal Revenue Notice 2004–29.
2003—Internal Revenue Notice 2003–29.
2002—Internal Revenue Notice 2002–39.
2001—Internal Revenue Notice 2001–33.
2000—Internal Revenue Notice 2000–52.
1999—Internal Revenue Notice 99–26.
1998—Internal Revenue Notice 98–27.
1997—Internal Revenue Notice 97–30.
1996—Internal Revenue Notice 96–25.

[1] *See References in Text note below.*

[2] *So in original. Probably should be preceded by "the".*

[3] *So in original. The period probably should be ", or".*

§45A. Indian employment credit

(a) Amount of credit

For purposes of section 38, the amount of the Indian employment credit determined under this section with respect to any employer for any taxable year is an amount equal to 20 percent of the excess (if any) of—

(1) the sum of—

(A) the qualified wages paid or incurred during such taxable year, plus

(B) qualified employee health insurance costs paid or incurred during such taxable year, over

(2) the sum of the qualified wages and qualified employee health insurance costs (determined as if this section were in effect) which were paid or incurred by the employer (or any predecessor) during calendar year 1993.

(b) Qualified wages; qualified employee health insurance costs

For purposes of this section—

(1) Qualified wages

(A) In general

The term "qualified wages" means any wages paid or incurred by an employer for services performed by an employee while such employee is a qualified employee.

(B) Coordination with work opportunity credit

The term "qualified wages" shall not include wages attributable to service rendered during the 1-year period beginning with the day the individual begins work for the employer if any portion of such wages is taken into account in determining the credit under section 51.

(2) Qualified employee health insurance costs

(A) In general

The term "qualified employee health insurance costs" means any amount paid or incurred by an employer for health insurance to the extent such amount is attributable to coverage provided to any employee while such employee is a qualified employee.

(B) Exception for amounts paid under salary reduction arrangements

No amount paid or incurred for health insurance pursuant to a salary reduction arrangement shall be taken into account under subparagraph (A).

(3) Limitation

The aggregate amount of qualified wages and qualified employee health insurance costs taken into account with respect to any employee for any taxable year (and for the base period under subsection (a)(2)) shall not exceed $20,000.

(c) Qualified employee

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, the term "qualified employee" means, with respect to any period, any employee of an employer if—

(A) the employee is an enrolled member of an Indian tribe or the spouse of an enrolled member of an Indian tribe,

(B) substantially all of the services performed during such period by such employee for such employer are performed within an Indian reservation, and

(C) the principal place of abode of such employee while performing such services is on or near the reservation in which the services are performed.

(2) Individuals receiving wages in excess of $30,000 not eligible

An employee shall not be treated as a qualified employee for any taxable year of the employer if the total amount of the wages paid or incurred by such employer to such employee during such taxable year (whether or not for services within an Indian reservation) exceeds the amount determined at an annual rate of $30,000.

(3) Inflation adjustment

The Secretary shall adjust the $30,000 amount under paragraph (2) for years beginning after 1994 at the same time and in the same manner as under section 415(d), except that the base period taken into account for purposes of such adjustment shall be the calendar quarter beginning October 1, 1993.

(4) Employment must be trade or business employment

An employee shall be treated as a qualified employee for any taxable year of the employer only if more than 50 percent of the wages paid or incurred by the employer to such employee during such taxable year are for services performed in a trade or business of the employer. Any determination as to whether the preceding sentence applies with respect to any employee for any taxable year shall be made without regard to subsection (e)(2).

(5) Certain employees not eligible

The term "qualified employee" shall not include—

(A) any individual described in subparagraph (A), (B), or (C) of section 51(i)(1),

(B) any 5-percent owner (as defined in section 416(i)(1)(B)), and

(C) any individual if the services performed by such individual for the employer involve the conduct of class I, II, or III gaming as defined in section 4 of the Indian Gaming Regulatory Act (25 U.S.C. 2703), or are performed in a building housing such gaming activity.

(6) Indian tribe defined

The term "Indian tribe" means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village, or regional or village corporation, as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(7) Indian reservation defined

The term "Indian reservation" has the meaning given such term by section 168(j)(6).

(d) Early termination of employment by employer

(1) In general

If the employment of any employee is terminated by the taxpayer before the day 1 year after the day on which such employee began work for the employer—

(A) no wages (or qualified employee health insurance costs) with respect to such employee shall be taken into account under subsection (a) for the taxable year in which such employment is terminated, and

(B) the tax under this chapter for the taxable year in which such employment is terminated shall be increased by the aggregate credits (if any) allowed under section 38(a) for prior taxable years by reason of wages (or qualified employee health insurance costs) taken into account with respect to such employee.

(2) Carrybacks and carryovers adjusted

In the case of any termination of employment to which paragraph (1) applies, the carrybacks and carryovers under section 39 shall be properly adjusted.

(3) Subsection not to apply in certain cases

(A) In general

Paragraph (1) shall not apply to—

(i) a termination of employment of an employee who voluntarily leaves the employment of the taxpayer,

(ii) a termination of employment of an individual who before the close of the period referred to in paragraph (1) becomes disabled to perform the services of such employment unless such disability is removed before the close of such period and the taxpayer fails to offer reemployment to such individual, or

(iii) a termination of employment of an individual if it is determined under the applicable State unemployment compensation law that the termination was due to the misconduct of such individual.

(B) Changes in form of business

For purposes of paragraph (1), the employment relationship between the taxpayer and an employee shall not be treated as terminated—

(i) by a transaction to which section 381(a) applies if the employee continues to be employed by the acquiring corporation, or

(ii) by reason of a mere change in the form of conducting the trade or business of the taxpayer if the employee continues to be employed in such trade or business and the taxpayer retains a substantial interest in such trade or business.

(4) Special rule

Any increase in tax under paragraph (1) shall not be treated as a tax imposed by this chapter for purposes of—

(A) determining the amount of any credit allowable under this chapter, and

(B) determining the amount of the tax imposed by section 55.

(e) Other definitions and special rules

For purposes of this section—

(1) Wages

The term "wages" has the same meaning given to such term in section 51.

(2) Controlled groups

(A) All employers treated as a single employer under section (a) or (b) of section 52 shall be treated as a single employer for purposes of this section.

(B) The credit (if any) determined under this section with respect to each such employer shall be its proportionate share of the wages and qualified employee health insurance costs giving rise to such credit.

(3) Certain other rules made applicable

Rules similar to the rules of section 51(k) and subsections (c), (d), and (e) of section 52 shall apply.

(4) Coordination with nonrevenue laws

Any reference in this section to a provision not contained in this title shall be treated for purposes of this section as a reference to such provision as in effect on the date of the enactment of this paragraph.

(5) Special rule for short taxable years

For any taxable year having less than 12 months, the amount determined under subsection (a)(2) shall be multiplied by a fraction, the numerator of which is the number of days in the taxable year and the denominator of which is 365.

(f) Termination

This section shall not apply to taxable years beginning after December 31, 2013.

(Added Pub. L. 103–66, title XIII, §13322(b), Aug. 10, 1993, 107 Stat. 559; amended Pub. L. 104–188, title I, §1201(e)(1), Aug. 20, 1996, 110 Stat. 1772; Pub. L. 105–206, title VI, §6023(1), July 22, 1998, 112 Stat. 824; Pub. L. 107–147, title VI, §613(a), Mar. 9, 2002, 116 Stat. 61; Pub. L. 108–311, title III, §315, title IV, §404(b)(1), Oct. 4, 2004, 118 Stat. 1181, 1188; Pub. L. 109–432, div. A, title I, §111(a), Dec. 20, 2006, 120 Stat. 2940; Pub. L. 110–343, div. C, title III, §314(a), Oct. 3, 2008, 122 Stat. 3872; Pub. L. 111–312, title VII, §732(a), Dec. 17, 2010, 124 Stat. 3317; Pub. L. 112–240, title III, §304(a), Jan. 2, 2013, 126 Stat. 2329.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table under section 401 of this title.

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in subsec. (c)(6), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

The date of the enactment of this paragraph, referred to in subsec. (e)(4), is the date of enactment of Pub. L. 103–66, which was approved Aug. 10, 1993.

AMENDMENTS

2013—Subsec. (f). Pub. L. 112–240 substituted "December 31, 2013" for "December 31, 2011".

2010—Subsec. (f). Pub. L. 111–312 substituted "December 31, 2011" for "December 31, 2009".

2008—Subsec. (f). Pub. L. 110–343 substituted "December 31, 2009" for "December 31, 2007".

2006—Subsec. (f). Pub. L. 109–432 substituted "2007" for "2005".

2004—Subsec. (c)(3). Pub. L. 108–311, §404(b)(1), inserted ", except that the base period taken into account for purposes of such adjustment shall be the calendar quarter beginning October 1, 1993" before period at end.

Subsec. (f). Pub. L. 108–311, §315, substituted "December 31, 2005" for "December 31, 2004".

2002—Subsec. (f). Pub. L. 107–147 substituted "December 31, 2004" for "December 31, 2003".

1998—Subsec. (b)(1)(B). Pub. L. 105–206 substituted "work opportunity credit" for "targeted jobs credit" in heading.

1996—Subsec. (b)(1)(B). Pub. L. 104–188, which directed that subsec. (b)(1)(B) of this section be amended in the text by substituting "work opportunity credit" for "targeted jobs credit", could not be executed because the words "targeted jobs credit" did not appear in the text.

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title III, §304(b), Jan. 2, 2013, 126 Stat. 2329, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2011."

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §732(b), Dec. 17, 2010, 124 Stat. 3317, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2009."

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title III, §314(b), Oct. 3, 2008, 122 Stat. 3872, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2007."

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title I, §111(b), Dec. 20, 2006, 120 Stat. 2940, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2005."

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–311, title IV, §404(f), Oct. 4, 2004, 118 Stat. 1188, provided that: "The amendments made by this section [amending this section and sections 403, 408, 415, 530, and 4972 of this title] shall take effect as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 [Pub. L. 107–16] to which they relate."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to individuals who begin work for the employer after Sept. 30, 1996, see section 1201(g) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE

Section applicable to wages paid or incurred after Dec. 31, 1993, see section 13322(f) of Pub. L. 103–66, set out as an Effective Date of 1993 Amendment note under section 38 of this title.

§45B. Credit for portion of employer social security taxes paid with respect to employee cash tips

(a) General rule

For purposes of section 38, the employer social security credit determined under this section for the taxable year is an amount equal to the excess employer social security tax paid or incurred by the taxpayer during the taxable year.

(b) Excess employer social security tax

For purposes of this section—

(1) In general

The term "excess employer social security tax" means any tax paid by an employer under

section 3111 with respect to tips received by an employee during any month, to the extent such tips—

(A) are deemed to have been paid by the employer to the employee pursuant to section 3121(q) (without regard to whether such tips are reported under section 6053), and

(B) exceed the amount by which the wages (excluding tips) paid by the employer to the employee during such month are less than the total amount which would be payable (with respect to such employment) at the minimum wage rate applicable to such individual under section 6(a)(1) of the Fair Labor Standards Act of 1938 (as in effect on January 1, 2007, and determined without regard to section 3(m) of such Act).

(2) Only tips received for food or beverages taken into account

In applying paragraph (1), there shall be taken into account only tips received from customers in connection with the providing, delivering, or serving of food or beverages for consumption if the tipping of employees delivering or serving food or beverages by customers is customary.

(c) Denial of double benefit

No deduction shall be allowed under this chapter for any amount taken into account in determining the credit under this section.

(d) Election not to claim credit

This section shall not apply to a taxpayer for any taxable year if such taxpayer elects to have this section not apply for such taxable year.

(Added Pub. L. 103–66, title XIII, §13443(a), Aug. 10, 1993, 107 Stat. 568; amended Pub. L. 104–188, title I, §1112(a)(1), (b)(1), Aug. 20, 1996, 110 Stat. 1759; Pub. L. 110–28, title VIII, §8213(a), May 25, 2007, 121 Stat. 193.)

REFERENCES IN TEXT

Sections 3(m) and 6(a)(1) of the Fair Labor Standards Act of 1938, referred to in subsec. (b)(1)(B), are classified to sections 203(m) and 206(a)(1), respectively, of Title 29, Labor.

AMENDMENTS

2007—Subsec. (b)(1)(B). Pub. L. 110–28 inserted "as in effect on January 1, 2007, and" before "determined without regard to".

1996—Subsec. (b)(1)(A). Pub. L. 104–188, §1112(a)(1), inserted "(without regard to whether such tips are reported under section 6053)" after "section 3121(q)".

Subsec. (b)(2). Pub. L. 104–188, §1112(b)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "ONLY TIPS RECEIVED AT FOOD AND BEVERAGE ESTABLISHMENTS TAKEN INTO ACCOUNT.—In applying paragraph (1), there shall be taken into account only tips received from customers in connection with the provision of food or beverages for consumption on the premises of an establishment with respect to which the tipping of employees serving food or beverages by customers is customary."

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–28, title VIII, §8213(b), May 25, 2007, 121 Stat. 193, provided that: "The amendment made by this section [amending this section] shall apply to tips received for services performed after December 31, 2006."

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, §1112(a)(3), Aug. 20, 1996, 110 Stat. 1759, provided that: "The amendments made by this subsection [amending this section and provisions set out as a note under section 38 of this title] shall take effect as if included in the amendments made by, and the provisions of, section 13443 of the Revenue Reconciliation Act of 1993 [Pub. L. 103–66]."

Pub. L. 104–188, title I, §1112(b)(2), Aug. 20, 1996, 110 Stat. 1759, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to tips received for services performed after December 31, 1996."

EFFECTIVE DATE

Section applicable with respect to taxes paid after Dec. 31, 1993, with respect to services performed before, on, or after such date, see section 13443(d) of Pub. L. 103–66, as amended, set out as an Effective Date of

1993 Amendment note under section 38 of this title.

§45C. Clinical testing expenses for certain drugs for rare diseases or conditions

(a) General rule

For purposes of section 38, the credit determined under this section for the taxable year is an amount equal to 50 percent of the qualified clinical testing expenses for the taxable year.

(b) Qualified clinical testing expenses

For purposes of this section—

(1) Qualified clinical testing expenses

(A) In general

Except as otherwise provided in this paragraph, the term "qualified clinical testing expenses" means the amounts which are paid or incurred by the taxpayer during the taxable year which would be described in subsection (b) of section 41 if such subsection were applied with the modifications set forth in subparagraph (B).

(B) Modifications

For purposes of subparagraph (A), subsection (b) of section 41 shall be applied—

(i) by substituting "clinical testing" for "qualified research" each place it appears in paragraphs (2) and (3) of such subsection, and

(ii) by substituting "100 percent" for "65 percent" in paragraph (3)(A) of such subsection.

(C) Exclusion for amounts funded by grants, etc.

The term "qualified clinical testing expenses" shall not include any amount to the extent such amount is funded by any grant, contract, or otherwise by another person (or any governmental entity).

(D) Special rule

For purposes of this paragraph, section 41 shall be deemed to remain in effect for periods after June 30, 1995, and before July 1, 1996, and periods after December 31, 2013.

(2) Clinical testing

(A) In general

The term "clinical testing" means any human clinical testing—

(i) which is carried out under an exemption for a drug being tested for a rare disease or condition under section 505(i) of the Federal Food, Drug, and Cosmetic Act (or regulations issued under such section),

(ii) which occurs—

(I) after the date such drug is designated under section 526 of such Act, and

(II) before the date on which an application with respect to such drug is approved under section 505(b) of such Act or, if the drug is a biological product, before the date on which a license for such drug is issued under section 351 of the Public Health Service Act; [1] and

(iii) which is conducted by or on behalf of the taxpayer to whom the designation under such section 526 applies.

(B) Testing must be related to use for rare disease or condition

Human clinical testing shall be taken into account under subparagraph (A) only to the extent such testing is related to the use of a drug for the rare disease or condition for which it was designated under section 526 of the Federal Food, Drug, and Cosmetic Act.

(c) Coordination with credit for increasing research expenditures

(1) In general

Except as provided in paragraph (2), any qualified clinical testing expenses for a taxable year to which an election under this section applies shall not be taken into account for purposes of determining the credit allowable under section 41 for such taxable year.

(2) Expenses included in determining base period research expenses

Any qualified clinical testing expenses for any taxable year which are qualified research expenses (within the meaning of section 41(b)) shall be taken into account in determining base period research expenses for purposes of applying section 41 to subsequent taxable years.

(d) Definition and special rules

(1) Rare disease or condition

For purposes of this section, the term "rare disease or condition" means any disease or condition which—

(A) affects less than 200,000 persons in the United States, or

(B) affects more than 200,000 persons in the United States but for which there is no reasonable expectation that the cost of developing and making available in the United States a drug for such disease or condition will be recovered from sales in the United States of such drug.

Determinations under the preceding sentence with respect to any drug shall be made on the basis of the facts and circumstances as of the date such drug is designated under section 526 of the Federal Food, Drug, and Cosmetic Act.

(2) Special limitations on foreign testing

(A) In general

No credit shall be allowed under this section with respect to any clinical testing conducted outside the United States unless—

(i) such testing is conducted outside the United States because there is an insufficient testing population in the United States, and

(ii) such testing is conducted by a United States person or by any other person who is not related to the taxpayer to whom the designation under section 526 of the Federal Food, Drug, and Cosmetic Act applies.

(B) Special limitation for corporations to which section 936 applies

No credit shall be allowed under this section with respect to any clinical testing conducted by a corporation to which an election under section 936 applies.

(3) Certain rules made applicable

Rules similar to the rules of paragraphs (1) and (2) of section 41(f) shall apply for purposes of this section.

(4) Election

This section shall apply to any taxpayer for any taxable year only if such taxpayer elects (at such time and in such manner as the Secretary may by regulations prescribe) to have this section apply for such taxable year.

(Added Pub. L. 97–414, §4(a), Jan. 4, 1983, 96 Stat. 2053, §44H; renumbered §28 and amended Pub. L. 98–369, div. A, title IV, §§471(c), 474(g), title VI, §612(e)(1), July 18, 1984, 98 Stat. 826, 831, 912; Pub. L. 99–514, title II, §§231(d)(3)(A), 232, title VII, §701(c)(2), title XII, §1275(c)(4), title XVIII, §1879(b)(1), (2), Oct. 22, 1986, 100 Stat. 2178, 2180, 2340, 2599, 2905; Pub. L. 100–647, title I, §1018(q)(1), title IV, §4008(c)(1), Nov. 10, 1988, 102 Stat. 3585, 3653; Pub. L. 101–239, title VII, §7110(a)(3), Dec. 19, 1989, 103 Stat. 2323; Pub. L. 101–508, title XI, §§11402(b)(2), 11411, Nov. 5, 1990, 104 Stat. 1388–473, 1388–479; Pub. L. 102–227, title I, §§102(b), 111(a), Dec. 11, 1991, 105 Stat. 1686, 1688; Pub. L. 103–66, title XIII, §13111(a)(2), (b), Aug. 10, 1993, 107 Stat.

420; renumbered §45C and amended Pub. L. 104–188, title I, §§1204(e), 1205(a)(1), (b), (d)(1), (2), Aug. 20, 1996, 110 Stat. 1775, 1776; Pub. L. 105–34, title VI, §§601(b)(2), 604(a), Aug. 5, 1997, 111 Stat. 862, 863; Pub. L. 105–115, title I, §125(b)(2)(O), Nov. 21, 1997, 111 Stat. 2326; Pub. L. 105–277, div. J, title I, §1001(b), Oct. 21, 1998, 112 Stat. 2681–888; Pub. L. 106–170, title V, §502(a)(2), Dec. 17, 1999, 113 Stat. 1919; Pub. L. 108–311, title III, §301(a)(2), Oct. 4, 2004, 118 Stat. 1178; Pub. L. 109–432, div. A, title I, §104(a)(2), Dec. 20, 2006, 120 Stat. 2934; Pub. L. 110–343, div. C, title III, §301(a)(2), Oct. 3, 2008, 122 Stat. 3865; Pub. L. 111–312, title VII, §731(b), Dec. 17, 2010, 124 Stat. 3317; Pub. L. 112–240, title III, §301(a)(2), Jan. 2, 2013, 126 Stat. 2326.)

REFERENCES IN TEXT

Sections 505(b), (i) and 526 of the Federal Food, Drug, and Cosmetic Act, referred to in subsecs. (b)(2)(A) and (d)(1), (2)(A)(ii), are classified to sections 355(b), (i) and 360bb, respectively, of Title 21, Food and Drugs.

Section 351 of the Public Health Service Act, referred to in subsec. (b)(2)(A)(ii)(II), is classified to section 262 of Title 42, The Public Health and Welfare.

AMENDMENTS

2013—Subsec. (b)(1)(D). Pub. L. 112–240 substituted "December 31, 2013" for "December 31, 2011".

2010—Subsec. (b)(1)(D). Pub. L. 111–312 substituted "December 31, 2011" for "December 31, 2009".

2008—Subsec. (b)(1)(D). Pub. L. 110–343 substituted "December 31, 2009" for "December 31, 2007".

2006—Subsec. (b)(1)(D). Pub. L. 109–432 substituted "2007" for "2005".

2004—Subsec. (b)(1)(D). Pub. L. 108–311 substituted "December 31, 2005" for "June 30, 2004".

1999—Subsec. (b)(1)(D). Pub. L. 106–170 substituted "June 30, 2004" for "June 30, 1999".

1998—Subsec. (b)(1)(D). Pub. L. 105–277 substituted "June 30, 1999" for "June 30, 1998".

1997—Subsec. (b)(1)(D). Pub. L. 105–34, §601(b)(2), substituted "June 30, 1998" for "May 31, 1997".

Subsec. (b)(2)(A)(ii)(II). Pub. L. 105–115 struck out "or 507" after "505(b)".

Subsec. (e). Pub. L. 105–34, §604(a), struck out subsec. (e) which read as follows:

"(e) TERMINATION.—This section shall not apply to any amount paid or incurred—

"(1) after December 31, 1994, and before July 1, 1996, or

"(2) after May 31, 1997."

1996—Pub. L. 104–188, §1205(a)(1), renumbered section 28 of this title as this section.

Subsec. (a). Pub. L. 104–188, §1205(d)(1), substituted "For purposes of section 38, the credit determined under this section for the taxable year is" for "There shall be allowed as a credit against the tax imposed by this chapter for the taxable year".

Subsec. (b)(1)(D). Pub. L. 104–188, §1204(e), inserted ", and before July 1, 1996, and periods after May 31, 1997" after "June 30, 1995".

Subsec. (d)(2) to (5). Pub. L. 104–188, §1205(d)(2), redesignated pars. (3) to (5) as (2) to (4), respectively, and struck out former par. (2) which read as follows: "LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed by this section for any taxable year shall not exceed the excess (if any) of—

"(A) the regular tax (reduced by the sum of the credits allowable under subpart A and section 27), over

"(B) the tentative minimum tax for the taxable year."

Subsec. (e). Pub. L. 104–188, §1205(b), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: "TERMINATION.—This section shall not apply to any amount paid or incurred after December 31, 1994."

1993—Subsec. (b)(1)(D). Pub. L. 103–66, §13111(a)(2), substituted "June 30, 1995" for "June 30, 1992".

Subsec. (e). Pub. L. 103–66, §13111(b), substituted "December 31, 1994" for "June 30, 1992".

1991—Subsec. (b)(1)(D). Pub. L. 102–227, §102(b), substituted "June 30, 1992" for "December 31, 1991".

Subsec. (e). Pub. L. 102–227, §111(a), substituted "June 30, 1992" for "December 31, 1991".

1990—Subsec. (b)(1)(D). Pub. L. 101–508, §11402(b)(2), substituted "December 31, 1991" for "December 31, 1990".

Subsec. (e). Pub. L. 101–508, §11411, substituted "December 31, 1991" for "December 31, 1990".

1989—Subsec. (b)(1)(D). Pub. L. 101–239 substituted "1990" for "1989".

1988—Subsec. (b)(1)(D). Pub. L. 100–647, §4008(c)(1), substituted "1989" for "1988".

Subsec. (b)(2)(A)(ii)(II). Pub. L. 100–647, §1018(q)(1), amended subcl. (II) generally. Prior to amendment, subcl. (II) read as follows: "before the date on which an application with respect to such drug is approved under section 505(b) of such Act or, if the drug is a biological product, before the date on which a license for

such drug is issued under section 351 of the Public Health Services Act, and".

1986—Subsec. (b)(1). Pub. L. 99–514, §231(d)(3)(A)(i), (iv), substituted "41" for "30" in subpars. (A), (B), and (D), and substituted "1988" for "1985" in subpar. (D).

Subsec. (b)(2)(A)(ii)(I). Pub. L. 99–514, §1879(b)(1)(A), substituted "the date such drug" for "the date of such drug".

Subsec. (b)(2)(A)(ii)(II). Pub. L. 99–514, §1879(b)(1)(B), inserted "or, if the drug is a biological product, before the date on which a license for such drug is issued under section 351 of the Public Health Services Act".

Subsec. (c). Pub. L. 99–514, §231(d)(3)(A)(i), (ii), substituted "41" for "30" in pars. (1) and (2) and "41(b)" for "30(b)" in par. (2).

Subsec. (d)(1). Pub. L. 99–514, §1879(b)(2), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "For purposes of this section, the term 'rare disease or condition' means any disease or condition which occurs so infrequently in the United States that there is no reasonable expectation that the cost of developing and making available in the United States a drug for such disease or condition will be recovered from sales in the United States of such drug. Determinations under the preceding sentence with respect to any drug shall be made on the basis of the facts and circumstances as of the date such drug is designated under section 526 of the Federal Food, Drug, and Cosmetic Act."

Subsec. (d)(2). Pub. L. 99–514, §701(c)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "The credit allowed by this section for any taxable year shall not exceed the taxpayer's tax liability for the taxable year (as defined in section 26(b)), reduced by the sum of the credits allowable under subpart A and section 27."

Subsec. (d)(3)(B). Pub. L. 99–514, §1275(c)(4), struck out "934(b) or" before "936" in heading and amended text generally. Prior to amendment, text read as follows: "No credit shall be allowed under this section with respect to any clinical testing conducted by a corporation to which section 934(b) applies or to which an election under section 936 applies."

Subsec. (d)(4). Pub. L. 99–514, §231(d)(3)(A)(iii), substituted "section 41(f)" for "section 30(f)".

Subsec. (e). Pub. L. 99–514, §232, substituted "1990" for "1987".

1984—Pub. L. 98–369, §471(c), renumbered section 44H of this title as this section.

Subsec. (b)(1)(A), (B), (D). Pub. L. 98–369, §474(g)(1)(A), substituted "section 30" for "section 44F".

Subsec. (c)(1). Pub. L. 98–369, §474(g)(1)(A), substituted "section 30" for "section 44F".

Subsec. (c)(2). Pub. L. 98–369, §474(g)(1)(A), (B), substituted "section 30" for "section 44F" and "section 30(b)" for "section 44F(b)".

Subsec. (d)(2). Pub. L. 98–369, §612(e)(1), substituted "section 26(b)" for "section 25(b)".

Pub. L. 98–369, §474(g)(2), amended par. (2) generally, substituting "shall not exceed the taxpayer's tax liability for the taxable year (as defined in section 25(b), reduced by the sum of the credits allowable under subpart A and section 27" for "shall not exceed the amount of the tax imposed by this chapter for the taxable year reduced by the sum of the credits allowable under a section of this subpart having a lower number or letter designation than this section, other than the credits allowable by sections 31, 39, and 43. For purposes of the preceding sentence, the term 'tax imposed by this chapter' shall not include any tax treated as not imposed by this chapter under the last sentence of section 53(a)".

Subsec. (d)(4). Pub. L. 98–369, §474(g)(1)(C), substituted "section 30(f)" for "section 44F(f)".

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112–240 applicable to amounts paid or incurred after Dec. 31, 2011, see section 301(d)(1) of Pub. L. 112–240, set out as a note under section 41 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–312 applicable to amounts paid or incurred after Dec. 31, 2009, see section 731(c) of Pub. L. 111–312, set out as a note under section 41 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–343 applicable to amounts paid or incurred after Dec. 31, 2007, see section 301(e)(2) of Pub. L. 110–343, set out as a note under section 41 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–432 applicable to amounts paid or incurred after Dec. 31, 2005, see section 104(a)(3) of Pub. L. 109–432, set out as a note under section 41 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 applicable to amounts paid or incurred after June 30, 2004, see section 301(b) of Pub. L. 108–311, set out as a note under section 41 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to amounts paid or incurred after June 30, 1999, see section 502(a)(3) of Pub. L. 106–170, set out as a note under section 41 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–277 applicable to amounts paid or incurred after June 30, 1998, see section 1001(c) of Pub. L. 105–277, set out as a note under section 41 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 601(b)(2) of Pub. L. 105–34 applicable to amounts paid or incurred after May 31, 1997, see section 601(c) of Pub. L. 105–34, set out as a note under section 41 of this title.

Pub. L. 105–34, title VI, §604(b), Aug. 5, 1997, 111 Stat. 863, provided that: "The amendment made by subsection (a) [amending this section] shall apply to amounts paid or incurred after May 31, 1997."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1204(e) of Pub. L. 104–188 applicable to taxable years ending after June 30, 1996, and not to be taken into account under section 6654 or 6655 of this title in determining amount of any installment required to be paid for a taxable year beginning in 1997, see section 1204(f) of Pub. L. 104–188, set out as a note under section 41 of this title.

Amendment by section 1205(a)(1), (b), (d)(1), (2) of Pub. L. 104–188 applicable to amounts paid or incurred in taxable years ending after June 30, 1996, see section 1205(e) of Pub. L. 104–188, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13111(c), Aug. 10, 1993, 107 Stat. 421, provided that: "The amendments made by this section [amending this section and section 41 of this title] shall apply to taxable years ending after June 30, 1992."

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102–227, title I, §102(c), Dec. 11, 1991, 105 Stat. 1686, provided that: "The amendments made by this section [amending this section and section 41 of this title] shall apply to taxable years ending after December 31, 1991."

Pub. L. 102–227, title I, §111(b), Dec. 11, 1991, 105 Stat. 1689, provided that: "The amendment made by this section [amending this section] shall apply to taxable years ending after December 31, 1991."

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, §11402(c), Nov. 5, 1990, 104 Stat. 1388–473, provided that: "The amendments made by this section [amending this section and section 41 of this title and repealing provisions set out as a note under section 41 of this title] shall apply to taxable years beginning after December 31, 1989."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1018(q)(1) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 4008(c)(1) of Pub. L. 100–647 applicable to taxable years beginning after Dec. 31, 1988, see section 4008(d) of Pub. L. 100–647, set out as a note under section 41 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 231(d)(3)(A) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1985, see section 231(g) of Pub. L. 99–514, set out as a note under section 41 of this title.

Amendment by section 701(c)(2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date note under section 55 of this title.

Amendment by section 1275(c)(4) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99–514, set out as a note under section 931 of this title.

Pub. L. 99–514, title XVIII, §1879(b)(3), Oct. 22, 1986, 100 Stat. 2906, provided that: "The amendments

made by this subsection [amending this section] shall apply to amounts paid or incurred after December 31, 1982, in taxable years ending after such date."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(g) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 612(e)(1) of Pub. L. 98–369, applicable to interest paid or accrued after December 31, 1984, on indebtedness incurred after December 31, 1984, see section 612(g) of Pub. L. 98–369, set out as an Effective Date note under section 25 of this title.

EFFECTIVE DATE

Pub. L. 97–414, §4(d), Jan. 4, 1983, 96 Stat. 2056, provided that: "The amendments made by this section [enacting this section and amending sections 280C and 6096 of this title] shall apply to amounts paid or incurred after December 31, 1982, in taxable years ending after such date."

APPLICABILITY OF CERTAIN AMENDMENTS BY PUBLIC LAW 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(c)(2) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[1] *So in original. The semicolon probably should be a comma.*

§45D. New markets tax credit

(a) Allowance of credit

(1) In general

For purposes of section 38, in the case of a taxpayer who holds a qualified equity investment on a credit allowance date of such investment which occurs during the taxable year, the new markets tax credit determined under this section for such taxable year is an amount equal to the applicable percentage of the amount paid to the qualified community development entity for such investment at its original issue.

(2) Applicable percentage

For purposes of paragraph (1), the applicable percentage is—

(A) 5 percent with respect to the first 3 credit allowance dates, and

(B) 6 percent with respect to the remainder of the credit allowance dates.

(3) Credit allowance date

For purposes of paragraph (1), the term "credit allowance date" means, with respect to any qualified equity investment—

(A) the date on which such investment is initially made, and

(B) each of the 6 anniversary dates of such date thereafter.

(b) Qualified equity investment

For purposes of this section—

(1) In general

The term "qualified equity investment" means any equity investment in a qualified community development entity if—

(A) such investment is acquired by the taxpayer at its original issue (directly or through an underwriter) solely in exchange for cash,

(B) substantially all of such cash is used by the qualified community development entity to make qualified low-income community investments, and

(C) such investment is designated for purposes of this section by the qualified community development entity.

Such term shall not include any equity investment issued by a qualified community development entity more than 5 years after the date that such entity receives an allocation under subsection (f). Any allocation not used within such 5-year period may be reallocated by the Secretary under subsection (f).

(2) Limitation

The maximum amount of equity investments issued by a qualified community development entity which may be designated under paragraph (1)(C) by such entity shall not exceed the portion of the limitation amount allocated under subsection (f) to such entity.

(3) Safe harbor for determining use of cash

The requirement of paragraph (1)(B) shall be treated as met if at least 85 percent of the aggregate gross assets of the qualified community development entity are invested in qualified low-income community investments.

(4) Treatment of subsequent purchasers

The term "qualified equity investment" includes any equity investment which would (but for paragraph (1)(A)) be a qualified equity investment in the hands of the taxpayer if such investment was a qualified equity investment in the hands of a prior holder.

(5) Redemptions

A rule similar to the rule of section 1202(c)(3) shall apply for purposes of this subsection.

(6) Equity investment

The term "equity investment" means—

(A) any stock (other than nonqualified preferred stock as defined in section 351(g)(2)) in an entity which is a corporation, and

(B) any capital interest in an entity which is a partnership.

(c) Qualified community development entity

For purposes of this section—

(1) In general

The term "qualified community development entity" means any domestic corporation or partnership if—

(A) the primary mission of the entity is serving, or providing investment capital for, low-income communities or low-income persons,

(B) the entity maintains accountability to residents of low-income communities through their representation on any governing board of the entity or on any advisory board to the entity, and

(C) the entity is certified by the Secretary for purposes of this section as being a qualified community development entity.

(2) Special rules for certain organizations

The requirements of paragraph (1) shall be treated as met by—

(A) any specialized small business investment company (as defined in section 1044(c)(3)), and

(B) any community development financial institution (as defined in section 103 of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4702)).

(d) Qualified low-income community investments

For purposes of this section—

(1) In general

The term "qualified low-income community investment" means—

(A) any capital or equity investment in, or loan to, any qualified active low-income community business,

(B) the purchase from another qualified community development entity of any loan made by such entity which is a qualified low-income community investment,

(C) financial counseling and other services specified in regulations prescribed by the Secretary to businesses located in, and residents of, low-income communities, and

(D) any equity investment in, or loan to, any qualified community development entity.

(2) Qualified active low-income community business

(A) In general

For purposes of paragraph (1), the term "qualified active low-income community business" means, with respect to any taxable year, any corporation (including a nonprofit corporation) or partnership if for such year—

(i) at least 50 percent of the total gross income of such entity is derived from the active conduct of a qualified business within any low-income community,

(ii) a substantial portion of the use of the tangible property of such entity (whether owned or leased) is within any low-income community,

(iii) a substantial portion of the services performed for such entity by its employees are performed in any low-income community,

(iv) less than 5 percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to collectibles (as defined in section 408(m)(2)) other than collectibles that are held primarily for sale to customers in the ordinary course of such business, and

(v) less than 5 percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to nonqualified financial property (as defined in section 1397C(e)).

(B) Proprietorship

Such term shall include any business carried on by an individual as a proprietor if such business would meet the requirements of subparagraph (A) were it incorporated.

(C) Portions of business may be qualified active low-income community business

The term "qualified active low-income community business" includes any trades or businesses which would qualify as a qualified active low-income community business if such trades or businesses were separately incorporated.

(3) Qualified business

For purposes of this subsection, the term "qualified business" has the meaning given to such term by section 1397C(d); except that—

(A) in lieu of applying paragraph (2)(B) thereof, the rental to others of real property located in any low-income community shall be treated as a qualified business if there are substantial improvements located on such property, and

(B) paragraph (3) thereof shall not apply.

(e) Low-income community

For purposes of this section—

(1) In general

The term "low-income community" means any population census tract if—

(A) the poverty rate for such tract is at least 20 percent, or

(B)(i) in the case of a tract not located within a metropolitan area, the median family income for such tract does not exceed 80 percent of statewide median family income, or

(ii) in the case of a tract located within a metropolitan area, the median family income for such tract does not exceed 80 percent of the greater of statewide median family income or the metropolitan area median family income.

Subparagraph (B) shall be applied using possessionwide median family income in the case of census tracts located within a possession of the United States.

(2) Targeted populations

The Secretary shall prescribe regulations under which 1 or more targeted populations (within the meaning of section 103(20) of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4702(20))) may be treated as low-income communities. Such regulations shall include procedures for determining which entities are qualified active low-income community businesses with respect to such populations.

(3) Areas not within census tracts

In the case of an area which is not tracted for population census tracts, the equivalent county divisions (as defined by the Bureau of the Census for purposes of defining poverty areas) shall be used for purposes of determining poverty rates and median family income.

(4) Tracts with low population

A population census tract with a population of less than 2,000 shall be treated as a low-income community for purposes of this section if such tract—

(A) is within an empowerment zone the designation of which is in effect under section 1391, and

(B) is contiguous to 1 or more low-income communities (determined without regard to this paragraph).

(5) Modification of income requirement for census tracts within high migration rural counties

(A) In general

In the case of a population census tract located within a high migration rural county, paragraph (1)(B)(i) shall be applied by substituting "85 percent" for "80 percent".

(B) High migration rural county

For purposes of this paragraph, the term "high migration rural county" means any county which, during the 20-year period ending with the year in which the most recent census was conducted, has a net out-migration of inhabitants from the county of at least 10 percent of the population of the county at the beginning of such period.

(f) National limitation on amount of investments designated

(1) In general

There is a new markets tax credit limitation for each calendar year. Such limitation is—

(A) $1,000,000,000 for 2001,

(B) $1,500,000,000 for 2002 and 2003,

(C) $2,000,000,000 for 2004 and 2005,

(D) $3,500,000,000 for 2006 and 2007,

(E) $5,000,000,000 for 2008,

(F) $5,000,000,000 for 2009 [1]

(G) $3,500,000,000 for 2010, 2011, 2012, and 2013.

(2) Allocation of limitation

The limitation under paragraph (1) shall be allocated by the Secretary among qualified

community development entities selected by the Secretary. In making allocations under the preceding sentence, the Secretary shall give priority to any entity—

(A) with a record of having successfully provided capital or technical assistance to disadvantaged businesses or communities, or

(B) which intends to satisfy the requirement under subsection (b)(1)(B) by making qualified low-income community investments in 1 or more businesses in which persons unrelated to such entity (within the meaning of section 267(b) or 707(b)(1)) hold the majority equity interest.

(3) Carryover of unused limitation

If the new markets tax credit limitation for any calendar year exceeds the aggregate amount allocated under paragraph (2) for such year, such limitation for the succeeding calendar year shall be increased by the amount of such excess. No amount may be carried under the preceding sentence to any calendar year after 2018.

(g) Recapture of credit in certain cases

(1) In general

If, at any time during the 7-year period beginning on the date of the original issue of a qualified equity investment in a qualified community development entity, there is a recapture event with respect to such investment, then the tax imposed by this chapter for the taxable year in which such event occurs shall be increased by the credit recapture amount.

(2) Credit recapture amount

For purposes of paragraph (1), the credit recapture amount is an amount equal to the sum of—

(A) the aggregate decrease in the credits allowed to the taxpayer under section 38 for all prior taxable years which would have resulted if no credit had been determined under this section with respect to such investment, plus

(B) interest at the underpayment rate established under section 6621 on the amount determined under subparagraph (A) for each prior taxable year for the period beginning on the due date for filing the return for the prior taxable year involved.

No deduction shall be allowed under this chapter for interest described in subparagraph (B).

(3) Recapture event

For purposes of paragraph (1), there is a recapture event with respect to an equity investment in a qualified community development entity if—

(A) such entity ceases to be a qualified community development entity,

(B) the proceeds of the investment cease to be used as required of subsection (b)(1)(B), or

(C) such investment is redeemed by such entity.

(4) Special rules

(A) Tax benefit rule

The tax for the taxable year shall be increased under paragraph (1) only with respect to credits allowed by reason of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards and carrybacks under section 39 shall be appropriately adjusted.

(B) No credits against tax

Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.

(h) Basis reduction

The basis of any qualified equity investment shall be reduced by the amount of any credit determined under this section with respect to such investment. This subsection shall not apply for purposes of sections 1202, 1400B, and 1400F.

(i) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out this section, including regulations—

(1) which limit the credit for investments which are directly or indirectly subsidized by other Federal tax benefits (including the credit under section 42 and the exclusion from gross income under section 103),

(2) which prevent the abuse of the purposes of this section,

(3) which provide rules for determining whether the requirement of subsection (b)(1)(B) is treated as met,

(4) which impose appropriate reporting requirements,

(5) which apply the provisions of this section to newly formed entities, and

(6) which ensure that non-metropolitan counties receive a proportional allocation of qualified equity investments.

(Added Pub. L. 106–554, §1(a)(7) [title I, §121(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–605; amended Pub. L. 108–357, title II, §§221(a), (b), 223(a), Oct. 22, 2004, 118 Stat. 1431, 1432; Pub. L. 109–432, div. A, title I, §102(a), (b), Dec. 20, 2006, 120 Stat. 2934; Pub. L. 110–343, div. C, title III, §302, Oct. 3, 2008, 122 Stat. 3866; Pub. L. 111–5, div. B, title I, §1403(a), Feb. 17, 2009, 123 Stat. 352; Pub. L. 111–312, title VII, §733(a), (b), Dec. 17, 2010, 124 Stat. 3317, 3318; Pub. L. 112–240, title III, §305(a), (b), Jan. 2, 2013, 126 Stat. 2329.)

AMENDMENTS

2013—Subsec. (f)(1)(G). Pub. L. 112–240, §305(a), substituted "2010, 2011, 2012, and 2013" for "2010 and 2011".

Subsec. (f)(3). Pub. L. 112–240, §305(b), substituted "2018" for "2016".

2010—Subsec. (f)(1)(G). Pub. L. 111–312, §733(a), added subpar. (G).

Subsec. (f)(3). Pub. L. 111–312, §733(b), substituted "2016" for "2014".

2009—Subsec. (f)(1)(D). Pub. L. 111–5, §1403(a)(2), substituted "and 2007," for ", 2007, 2008, and 2009."

Subsec. (f)(1)(E), (F). Pub. L. 111–5, §1403(a)(1), (3), added subpars. (E) and (F).

2008—Subsec. (f)(1)(D). Pub. L. 110–343 substituted "2008, and 2009" for "and 2008".

2006—Subsec. (f)(1)(D). Pub. L. 109–432, §102(a), substituted ", 2007, and 2008" for "and 2007".

Subsec. (i)(6). Pub. L. 109–432, §102(b), added par. (6).

2004—Subsec. (e)(2). Pub. L. 108–357, §221(a), amended heading and text of par. (2) generally, substituting provisions relating to regulations under which 1 or more targeted populations could be treated as low-income communities for provisions authorizing Secretary to designate any area within any census tract as a low-income community if certain conditions were met.

Subsec. (e)(4). Pub. L. 108–357, §221(b), added par. (4).

Subsec. (e)(5). Pub. L. 108–357, §223(a), added par. (5).

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title III, §305(c), Jan. 2, 2013, 126 Stat. 2329, provided that: "The amendments made by this section [amending this section] shall apply to calendar years beginning after December 31, 2011."

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §733(c), Dec. 17, 2010, 124 Stat. 3318, provided that: "The amendments made by this section [amending this section] shall apply to calendar years beginning after 2009."

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title I, §102(c), Dec. 20, 2006, 120 Stat. 2934, provided that: "The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Dec. 20, 2006]."

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title II, §221(c), Oct. 22, 2004, 118 Stat. 1431, provided that:

"(1) TARGETED AREAS.—The amendment made by subsection (a) [amending this section] shall apply to designations made by the Secretary of the Treasury after the date of the enactment of this Act [Oct. 22, 2004].

"(2) TRACTS WITH LOW POPULATION.—The amendment made by subsection (b) [amending this section] shall apply to investments made after the date of the enactment of this Act [Oct. 22, 2004]."

Pub. L. 108–357, title II, §223(b), Oct. 22, 2004, 118 Stat. 1432, provided that: "The amendment made by this section [amending this section] shall take effect as if included in the amendment made by section 121(a) of the Community Renewal Tax Relief Act of 2000 [Pub. L. 106–554, §1(a)(7) [title I, §121(a)], enacting this section]."

EFFECTIVE DATE

Section applicable to investments made after Dec. 31, 2000, see §1(a)(7) [title I, §121(e)] of Pub. L. 106–554, set out as a Effective Date of 2000 Amendment note under section 38 of this title.

SPECIAL RULE FOR ALLOCATION OF INCREASED 2008 LIMITATION

Pub. L. 111–5, div. B, title I, §1403(b), Feb. 17, 2009, 123 Stat. 352, provided that: "The amount of the increase in the new markets tax credit limitation for calendar year 2008 by reason of the amendments made by subsection (a) [amending this section] shall be allocated in accordance with section 45D(f)(2) of the Internal Revenue Code of 1986 to qualified community development entities (as defined in section 45D(c) of such Code) which—

"(1) submitted an allocation application with respect to calendar year 2008, and

"(2)(A) did not receive an allocation for such calendar year, or

"(B) received an allocation for such calendar year in an amount less than the amount requested in the allocation application."

GUIDANCE ON ALLOCATION OF NATIONAL LIMITATION

Pub. L. 106–554, §1(a)(7) [title I, §121(f)], Dec. 21, 2000, 114 Stat. 2763, 2763A–610, provided that: "Not later than 120 days after the date of the enactment of this Act [Dec. 21, 2000], the Secretary of the Treasury or the Secretary's delegate shall issue guidance which specifies—

"(1) how entities shall apply for an allocation under section 45D(f)(2) of the Internal Revenue Code of 1986, as added by this section;

"(2) the competitive procedure through which such allocations are made; and

"(3) the actions that such Secretary or delegate shall take to ensure that such allocations are properly made to appropriate entities."

AUDIT AND REPORT

Pub. L. 106–554, §1(a)(7) [title I, §121(g)], Dec. 21, 2000, 114 Stat. 2763, 2763A–610, provided that: "Not later than January 31 of 2004, 2007, and 2010, the Comptroller General of the United States shall, pursuant to an audit of the new markets tax credit program established under section 45D of the Internal Revenue Code of 1986 (as added by subsection (a)), report to Congress on such program, including all qualified community development entities that receive an allocation under the new markets credit under such section."

[1] So in original. Probably should be followed by ", and".

§45E. Small employer pension plan startup costs

(a) General rule

For purposes of section 38, in the case of an eligible employer, the small employer pension plan startup cost credit determined under this section for any taxable year is an amount equal to 50 percent of the qualified startup costs paid or incurred by the taxpayer during the taxable year.

(b) Dollar limitation

The amount of the credit determined under this section for any taxable year shall not exceed—

(1) $500 for the first credit year and each of the 2 taxable years immediately following the first credit year, and

(2) zero for any other taxable year.

(c) Eligible employer

For purposes of this section—

(1) In general

The term "eligible employer" has the meaning given such term by section 408(p)(2)(C)(i).

(2) Requirement for new qualified employer plans

Such term shall not include an employer if, during the 3-taxable year period immediately preceding the 1st taxable year for which the credit under this section is otherwise allowable for a qualified employer plan of the employer, the employer or any member of any controlled group including the employer (or any predecessor of either) established or maintained a qualified employer plan with respect to which contributions were made, or benefits were accrued, for substantially the same employees as are in the qualified employer plan.

(d) Other definitions

For purposes of this section—

(1) Qualified startup costs

(A) In general

The term "qualified startup costs" means any ordinary and necessary expenses of an eligible employer which are paid or incurred in connection with—

(i) the establishment or administration of an eligible employer plan, or

(ii) the retirement-related education of employees with respect to such plan.

(B) Plan must have at least 1 participant

Such term shall not include any expense in connection with a plan that does not have at least 1 employee eligible to participate who is not a highly compensated employee.

(2) Eligible employer plan

The term "eligible employer plan" means a qualified employer plan within the meaning of section 4972(d).

(3) First credit year

The term "first credit year" means—

(A) the taxable year which includes the date that the eligible employer plan to which such costs relate becomes effective, or

(B) at the election of the eligible employer, the taxable year preceding the taxable year referred to in subparagraph (A).

(e) Special rules

For purposes of this section—

(1) Aggregation rules

All persons treated as a single employer under subsection (a) or (b) of section 52, or subsection (m) or (o) of section 414, shall be treated as one person. All eligible employer plans shall be treated as 1 eligible employer plan.

(2) Disallowance of deduction

No deduction shall be allowed for that portion of the qualified startup costs paid or incurred for the taxable year which is equal to the credit determined under subsection (a).

(3) Election not to claim credit

This section shall not apply to a taxpayer for any taxable year if such taxpayer elects to have this section not apply for such taxable year.

(Added Pub. L. 107–16, title VI, §619(a), June 7, 2001, 115 Stat. 108; amended Pub. L. 107–147, title IV, §411(n)(1), Mar. 9, 2002, 116 Stat. 48.)

AMENDMENTS

2002—Subsec. (e)(1). Pub. L. 107–147 substituted "subsection (m)" for "subsection (n)".

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of

Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE

Section applicable to costs paid or incurred in taxable years beginning after Dec. 31, 2001, with respect to qualified employer plans first effective after such date, see section 619(d) of Pub. L. 107–16, as amended, set out as an Effective Date of 2001 Amendment note under section 38 of this title.

§45F. Employer-provided child care credit

(a) In general

For purposes of section 38, the employer-provided child care credit determined under this section for the taxable year is an amount equal to the sum of—

(1) 25 percent of the qualified child care expenditures, and

(2) 10 percent of the qualified child care resource and referral expenditures,

of the taxpayer for such taxable year.

(b) Dollar limitation

The credit allowable under subsection (a) for any taxable year shall not exceed $150,000.

(c) Definitions

For purposes of this section—

(1) Qualified child care expenditure

(A) In general

The term "qualified child care expenditure" means any amount paid or incurred—

(i) to acquire, construct, rehabilitate, or expand property—

(I) which is to be used as part of a qualified child care facility of the taxpayer,

(II) with respect to which a deduction for depreciation (or amortization in lieu of depreciation) is allowable, and

(III) which does not constitute part of the principal residence (within the meaning of section 121) of the taxpayer or any employee of the taxpayer,

(ii) for the operating costs of a qualified child care facility of the taxpayer, including costs related to the training of employees, to scholarship programs, and to the providing of increased compensation to employees with higher levels of child care training, or

(iii) under a contract with a qualified child care facility to provide child care services to employees of the taxpayer.

(B) Fair market value

The term "qualified child care expenditures" shall not include expenses in excess of the fair market value of such care.

(2) Qualified child care facility

(A) In general

The term "qualified child care facility" means a facility—

(i) the principal use of which is to provide child care assistance, and

(ii) which meets the requirements of all applicable laws and regulations of the State or local government in which it is located, including the licensing of the facility as a child care facility.

Clause (i) shall not apply to a facility which is the principal residence (within the meaning of section 121) of the operator of the facility.

(B) Special rules with respect to a taxpayer

A facility shall not be treated as a qualified child care facility with respect to a taxpayer unless—

(i) enrollment in the facility is open to employees of the taxpayer during the taxable year,

(ii) if the facility is the principal trade or business of the taxpayer, at least 30 percent of the enrollees of such facility are dependents of employees of the taxpayer, and

(iii) the use of such facility (or the eligibility to use such facility) does not discriminate in favor of employees of the taxpayer who are highly compensated employees (within the meaning of section 414(q)).

(3) Qualified child care resource and referral expenditure

(A) In general

The term "qualified child care resource and referral expenditure" means any amount paid or incurred under a contract to provide child care resource and referral services to an employee of the taxpayer.

(B) Nondiscrimination

The services shall not be treated as qualified unless the provision of such services (or the eligibility to use such services) does not discriminate in favor of employees of the taxpayer who are highly compensated employees (within the meaning of section 414(q)).

(d) Recapture of acquisition and construction credit

(1) In general

If, as of the close of any taxable year, there is a recapture event with respect to any qualified child care facility of the taxpayer, then the tax of the taxpayer under this chapter for such taxable year shall be increased by an amount equal to the product of—

(A) the applicable recapture percentage, and

(B) the aggregate decrease in the credits allowed under section 38 for all prior taxable years which would have resulted if the qualified child care expenditures of the taxpayer described in subsection (c)(1)(A) with respect to such facility had been zero.

(2) Applicable recapture percentage

(A) In general

For purposes of this subsection, the applicable recapture percentage shall be determined from the following table:

If the recapture event occurs in:	**The applicable recapture percentage is:**
Years 1–3	100
Year 4	85
Year 5	70
Year 6	55
Year 7	40
Year 8	25
Years 9 and 10	10
Years 11 and thereafter	0.

(B) Years

For purposes of subparagraph (A), year 1 shall begin on the first day of the taxable year in which the qualified child care facility is placed in service by the taxpayer.

(3) Recapture event defined

For purposes of this subsection, the term "recapture event" means—

(A) Cessation of operation

The cessation of the operation of the facility as a qualified child care facility.

(B) Change in ownership

(i) In general

Except as provided in clause (ii), the disposition of a taxpayer's interest in a qualified child care facility with respect to which the credit described in subsection (a) was allowable.

(ii) Agreement to assume recapture liability

Clause (i) shall not apply if the person acquiring such interest in the facility agrees in writing to assume the recapture liability of the person disposing of such interest in effect immediately before such disposition. In the event of such an assumption, the person acquiring the interest in the facility shall be treated as the taxpayer for purposes of assessing any recapture liability (computed as if there had been no change in ownership).

(4) Special rules

(A) Tax benefit rule

The tax for the taxable year shall be increased under paragraph (1) only with respect to credits allowed by reason of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards and carrybacks under section 39 shall be appropriately adjusted.

(B) No credits against tax

Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.

(C) No recapture by reason of casualty loss

The increase in tax under this subsection shall not apply to a cessation of operation of the facility as a qualified child care facility by reason of a casualty loss to the extent such loss is restored by reconstruction or replacement within a reasonable period established by the Secretary.

(e) Special rules

For purposes of this section—

(1) Aggregation rules

All persons which are treated as a single employer under subsections (a) and (b) of section 52 shall be treated as a single taxpayer.

(2) Pass-thru in the case of estates and trusts

Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

(3) Allocation in the case of partnerships

In the case of partnerships, the credit shall be allocated among partners under regulations prescribed by the Secretary.

(f) No double benefit

(1) Reduction in basis

For purposes of this subtitle—

(A) In general

If a credit is determined under this section with respect to any property by reason of expenditures described in subsection (c)(1)(A), the basis of such property shall be reduced by the amount of the credit so determined.

(B) Certain dispositions

If, during any taxable year, there is a recapture amount determined with respect to any property the basis of which was reduced under subparagraph (A), the basis of such property (immediately before the event resulting in such recapture) shall be increased by an amount equal to such recapture amount. For purposes of the preceding sentence, the term "recapture amount" means any increase in tax (or adjustment in carrybacks or carryovers) determined under subsection (d).

(2) Other deductions and credits

No deduction or credit shall be allowed under any other provision of this chapter with respect to the amount of the credit determined under this section.

(Added Pub. L. 107–16, title II, §205(a), June 7, 2001, 115 Stat. 50; amended Pub. L. 107–147, title IV, §411(d)(1), Mar. 9, 2002, 116 Stat. 46.)

AMENDMENTS

2002—Subsec. (d)(4)(B). Pub. L. 107–147 substituted "this chapter or for purposes of section 55" for "subpart A, B, or D of this part".

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 2001, see section 205(c) of Pub. L. 107–16, set out as an Effective Date of 2001 Amendment note under section 38 of this title.

§45G. Railroad track maintenance credit

(a) General rule

For purposes of section 38, the railroad track maintenance credit determined under this section for the taxable year is an amount equal to 50 percent of the qualified railroad track maintenance expenditures paid or incurred by an eligible taxpayer during the taxable year.

(b) Limitation

(1) In general

The credit allowed under subsection (a) for any taxable year shall not exceed the product of—

(A) $3,500, multiplied by

(B) the sum of—

(i) the number of miles of railroad track owned or leased by the eligible taxpayer as of the close of the taxable year, and

(ii) the number of miles of railroad track assigned for purposes of this subsection to the eligible taxpayer by a Class II or Class III railroad which owns or leases such railroad track as of the close of the taxable year.

(2) Assignments

With respect to any assignment of a mile of railroad track under paragraph (1)(B)(ii)—

(A) such assignment may be made only once per taxable year of the Class II or Class III railroad and shall be treated as made as of the close of such taxable year,

(B) such mile may not be taken into account under this section by such railroad for such taxable year, and

(C) such assignment shall be taken into account for the taxable year of the assignee which includes the date that such assignment is treated as effective.

(c) Eligible taxpayer

For purposes of this section, the term "eligible taxpayer" means—

(1) any Class II or Class III railroad, and

(2) any person who transports property using the rail facilities of a Class II or Class III railroad or who furnishes railroad-related property or services to a Class II or Class III railroad, but only with respect to miles of railroad track assigned to such person by such Class II or Class III railroad for purposes of subsection (b).

(d) Qualified railroad track maintenance expenditures

For purposes of this section, the term "qualified railroad track maintenance expenditures" means gross expenditures (whether or not otherwise chargeable to capital account) for maintaining railroad track (including roadbed, bridges, and related track structures) owned or leased as of January 1, 2005, by a Class II or Class III railroad (determined without regard to any consideration for such expenditures given by the Class II or Class III railroad which made the assignment of such track).

(e) Other definitions and special rules

(1) Class II or Class III railroad

For purposes of this section, the terms "Class II railroad" and "Class III railroad" have the respective meanings given such terms by the Surface Transportation Board.

(2) Controlled groups

Rules similar to the rules of paragraph (1) of section 41(f) shall apply for purposes of this section.

(3) Basis adjustment

For purposes of this subtitle, if a credit is allowed under this section with respect to any railroad track, the basis of such track shall be reduced by the amount of the credit so allowed.

(f) Application of section

This section shall apply to qualified railroad track maintenance expenditures paid or incurred during taxable years beginning after December 31, 2004, and before January 1, 2014.

(Added Pub. L. 108–357, title II, §245(a), Oct. 22, 2004, 118 Stat. 1447; amended Pub. L. 109–135, title IV, §403(f), Dec. 21, 2005, 119 Stat. 2623; Pub. L. 109–432, div. A, title IV, §423(a), Dec. 20, 2006, 120 Stat. 2973; Pub. L. 110–343, div. C, title III, §316(a), Oct. 3, 2008, 122 Stat. 3872; Pub. L. 111–312, title VII, §734(a), Dec. 17, 2010, 124 Stat. 3318; Pub. L. 112–240, title III, §306(a), Jan. 2, 2013, 126 Stat. 2329.)

AMENDMENTS

2013—Subsec. (f). Pub. L. 112–240 substituted "January 1, 2014" for "January 1, 2012".

2010—Subsec. (f). Pub. L. 111–312 substituted "January 1, 2012" for "January 1, 2010".

2008—Subsec. (f). Pub. L. 110–343 substituted "January 1, 2010" for "January 1, 2008".

2006—Subsec. (d). Pub. L. 109–432 inserted "gross" after "means" and "(determined without regard to any consideration for such expenditures given by the Class II or Class III railroad which made the assignment of such track)" before period at end.

2005—Subsec. (b). Pub. L. 109–135, §403(f)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "The credit allowed under subsection (a) for any taxable year shall not exceed the product of—

"(1) $3,500, and

"(2) the number of miles of railroad track owned or leased by the eligible taxpayer as of the close of the taxable year.

A mile of railroad track may be taken into account by a person other than the owner only if such mile is assigned to such person by the owner for purposes of this subsection. Any mile which is so assigned may not be taken into account by the owner for purposes of this subsection."

Subsec. (c)(2). Pub. L. 109–135, §403(f)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "any person who transports property using the rail facilities of a person described in paragraph (1) or who furnishes railroad-related property or services to such a person."

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title III, §306(b), Jan. 2, 2013, 126 Stat. 2329, provided that: "The amendment made by this section [amending this section] shall apply to expenditures paid or incurred in taxable years beginning after December 31, 2011."

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §734(b), Dec. 17, 2010, 124 Stat. 3318, provided that: "The amendment made by this section [amending this section] shall apply to expenditures paid or incurred in taxable years beginning after December 31, 2009."

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title III, §316(c)(1), Oct. 3, 2008, 122 Stat. 3872, provided that: "The amendment made by subsection (a) [amending this section] shall apply to expenditures paid or incurred during taxable years beginning after December 31, 2007."

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title IV, §423(b), Dec. 20, 2006, 120 Stat. 2973, provided that: "The amendment made by this section [amending this section] shall take effect as if included in the amendment made by section 245(a) of the American Jobs Creation Act of 2004 [Pub. L. 108–357]."

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 2004, see section 245(e) of Pub. L. 108–357, set out as an Effective Date of 2004 Amendment note under section 38 of this title.

§45H. Credit for production of low sulfur diesel fuel

(a) In general

For purposes of section 38, the amount of the low sulfur diesel fuel production credit determined under this section with respect to any facility of a small business refiner is an amount equal to 5 cents for each gallon of low sulfur diesel fuel produced during the taxable year by such small business refiner at such facility.

(b) Maximum credit

(1) In general

The aggregate credit determined under subsection (a) for any taxable year with respect to any facility shall not exceed—

(A) 25 percent of the qualified costs incurred by the small business refiner with respect to such facility, reduced by

(B) the aggregate credits determined under this section for all prior taxable years with respect to such facility.

(2) Reduced percentage

In the case of a small business refiner with average daily domestic refinery runs for the 1-year period ending on December 31, 2002, in excess of 155,000 barrels, the number of percentage points described in paragraph (1) shall be reduced (not below zero) by the product of such number (before the application of this paragraph) and the ratio of such excess to 50,000 barrels.

(c) Definitions and special rule

For purposes of this section—

(1) Small business refiner

The term "small business refiner" means, with respect to any taxable year, a refiner of crude oil—

(A) with respect to which not more than 1,500 individuals are engaged in the refinery operations of the business on any day during such taxable year, and

(B) the average daily domestic refinery run or average retained production of which for all facilities of the taxpayer for the 1-year period ending on December 31, 2002, did not exceed 205,000 barrels.

(2) Qualified costs

The term "qualified costs" means, with respect to any facility, those costs paid or incurred during the applicable period for compliance with the applicable EPA regulations with respect to such facility, including expenditures for the construction of new process operation units or the dismantling and reconstruction of existing process units to be used in the production of low sulfur diesel fuel, associated adjacent or offsite equipment (including tankage, catalyst, and power supply), engineering, construction period interest, and sitework.

(3) Applicable EPA regulations

The term "applicable EPA regulations" means the Highway Diesel Fuel Sulfur Control Requirements of the Environmental Protection Agency.

(4) Applicable period

The term "applicable period" means, with respect to any facility, the period beginning on January 1, 2003, and ending on the earlier of the date which is 1 year after the date on which the taxpayer must comply with the applicable EPA regulations with respect to such facility or December 31, 2009.

(5) Low sulfur diesel fuel

The term "low sulfur diesel fuel" means diesel fuel with a sulfur content of 15 parts per million or less.

(d) Special rule for determination of refinery runs

For purposes [1] this section and section 179B(b), in the calculation of average daily domestic refinery run or retained production, only refineries which on April 1, 2003, were refineries of the refiner or a related person (within the meaning of section 613A(d)(3)), shall be taken into account.

(e) Certification

(1) Required

No credit shall be allowed unless, not later than the date which is 30 months after the first day of the first taxable year in which the low sulfur diesel fuel production credit is determined with respect to a facility, the small business refiner obtains certification from the Secretary, after consultation with the Administrator of the Environmental Protection Agency, that the taxpayer's qualified costs with respect to such facility will result in compliance with the applicable EPA regulations.

(2) Contents of application

An application for certification shall include relevant information regarding unit capacities and operating characteristics sufficient for the Secretary, after consultation with the Administrator of the Environmental Protection Agency, to determine that such qualified costs are necessary for compliance with the applicable EPA regulations.

(3) Review period

Any application shall be reviewed and notice of certification, if applicable, shall be made within 60 days of receipt of such application. In the event the Secretary does not notify the taxpayer of the results of such certification within such period, the taxpayer may presume the certification to be issued until so notified.

(4) Statute of limitations

With respect to the credit allowed under this section—

(A) the statutory period for the assessment of any deficiency attributable to such credit shall not expire before the end of the 3-year period ending on the date that the review period described in paragraph (3) ends with respect to the taxpayer, and

(B) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

(f) Cooperative organizations

(1) Apportionment of credit

(A) In general

In the case of a cooperative organization described in section 1381(a), any portion of the credit determined under subsection (a) for the taxable year may, at the election of the organization, be apportioned among patrons eligible to share in patronage dividends on the basis of the quantity or value of business done with or for such patrons for the taxable year.

(B) Form and effect of election

An election under subparagraph (A) for any taxable year shall be made on a timely filed return for such year. Such election, once made, shall be irrevocable for such taxable year.

(2) Treatment of organizations and patrons

(A) Organizations

The amount of the credit not apportioned to patrons pursuant to paragraph (1) shall be included in the amount determined under subsection (a) for the taxable year of the organization.

(B) Patrons

The amount of the credit apportioned to patrons pursuant to paragraph (1) shall be included in the amount determined under subsection (a) for the first taxable year of each patron ending on or after the last day of the payment period (as defined in section 1382(d)) for the taxable year of the organization or, if earlier, for the taxable year of each patron ending on or after the date on which the patron receives notice from the cooperative of the apportionment.

(3) Special rule

If the amount of a credit which has been apportioned to any patron under this subsection is decreased for any reason—

(A) such amount shall not increase the tax imposed on such patron, and

(B) the tax imposed by this chapter on such organization shall be increased by such amount.

The increase under subparagraph (B) shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.

(g) Election to not take credit

No credit shall be determined under subsection (a) for the taxable year if the taxpayer elects not to have subsection (a) apply to such taxable year.

(Added Pub. L. 108–357, title III, §339(a), Oct. 22, 2004, 118 Stat. 1481; amended Pub. L. 110–172, §7(a)(1)(A), (2)(A), (3)(A), (B), Dec. 29, 2007, 121 Stat. 2481, 2482.)

AMENDMENTS

2007—Subsec. (b)(1)(A). Pub. L. 110–172, §7(a)(3)(A), substituted "qualified costs" for "qualified capital costs".

Subsec. (c)(2). Pub. L. 110–172, §7(a)(3)(B), struck out "capital" before "costs" in heading.

Pub. L. 110–172, §7(a)(3)(A), substituted "qualified costs" for "qualified capital costs".

Subsec. (d). Pub. L. 110–172, §7(a)(1)(A), redesignated subsec. (e) as (d) and struck out heading and text of former subsec. (d). Text read as follows: "For purposes of this subtitle, if a credit is determined under this

section for any expenditure with respect to any property, the increase in basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so determined."

Subsec. (e). Pub. L. 110–172, §7(a)(1)(A), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

Subsec. (e)(1), (2). Pub. L. 110–172, §7(a)(3)(A), substituted "qualified costs" for "qualified capital costs".

Subsec. (f). Pub. L. 110–172, §7(a)(1)(A), redesignated subsec. (g) as (f). Former subsec. (f) redesignated (e).

Subsec. (g). Pub. L. 110–172, §7(a)(2)(A), added subsec. (g). Former subsec. (g) redesignated (f).

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–172 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 7(e) of Pub. L. 110–172, set out as a note under section 1092 of this title.

EFFECTIVE DATE

Section applicable to expenses paid or incurred after Dec. 31, 2002, in taxable years ending after such date, see section 339(f) of Pub. L. 108–357, set out as an Effective Date of 2004 Amendment note under section 38 of this title.

[1] So in original. Probably should be followed by "of".

§45I. Credit for producing oil and gas from marginal wells

(a) General rule

For purposes of section 38, the marginal well production credit for any taxable year is an amount equal to the product of—

(1) the credit amount, and

(2) the qualified crude oil production and the qualified natural gas production which is attributable to the taxpayer.

(b) Credit amount

For purposes of this section—

(1) In general

The credit amount is—

(A) $3 per barrel of qualified crude oil production, and

(B) 50 cents per 1,000 cubic feet of qualified natural gas production.

(2) Reduction as oil and gas prices increase

(A) In general

The $3 and 50 cents amounts under paragraph (1) shall each be reduced (but not below zero) by an amount which bears the same ratio to such amount (determined without regard to this paragraph) as—

(i) the excess (if any) of the applicable reference price over $15 ($1.67 for qualified natural gas production), bears to

(ii) $3 ($0.33 for qualified natural gas production).

The applicable reference price for a taxable year is the reference price of the calendar year preceding the calendar year in which the taxable year begins.

(B) Inflation adjustment

In the case of any taxable year beginning in a calendar year after 2005, each of the dollar amounts contained in subparagraph (A) shall be increased to an amount equal to such dollar amount multiplied by the inflation adjustment factor for such calendar year (determined under

section 43(b)(3)(B) by substituting "2004" for "1990").

(C) Reference price

For purposes of this paragraph, the term "reference price" means, with respect to any calendar year—

(i) in the case of qualified crude oil production, the reference price determined under section 45K(d)(2)(C), and

(ii) in the case of qualified natural gas production, the Secretary's estimate of the annual average wellhead price per 1,000 cubic feet for all domestic natural gas.

(c) Qualified crude oil and natural gas production

For purposes of this section—

(1) In general

The terms "qualified crude oil production" and "qualified natural gas production" mean domestic crude oil or natural gas which is produced from a qualified marginal well.

(2) Limitation on amount of production which may qualify

(A) In general

Crude oil or natural gas produced during any taxable year from any well shall not be treated as qualified crude oil production or qualified natural gas production to the extent production from the well during the taxable year exceeds 1,095 barrels or barrel-of-oil equivalents (as defined in section 45K(d)(5)).

(B) Proportionate reductions

(i) Short taxable years

In the case of a short taxable year, the limitations under this paragraph shall be proportionately reduced to reflect the ratio which the number of days in such taxable year bears to 365.

(ii) Wells not in production entire year

In the case of a well which is not capable of production during each day of a taxable year, the limitations under this paragraph applicable to the well shall be proportionately reduced to reflect the ratio which the number of days of production bears to the total number of days in the taxable year.

(3) Definitions

(A) Qualified marginal well

The term "qualified marginal well" means a domestic well—

(i) the production from which during the taxable year is treated as marginal production under section 613A(c)(6), or

(ii) which, during the taxable year—

(I) has average daily production of not more than 25 barrel-of-oil equivalents (as so defined), and

(II) produces water at a rate not less than 95 percent of total well effluent.

(B) Crude oil, etc.

The terms "crude oil", "natural gas", "domestic", and "barrel" have the meanings given such terms by section 613A(e).

(d) Other rules

(1) Production attributable to the taxpayer

In the case of a qualified marginal well in which there is more than one owner of operating interests in the well and the crude oil or natural gas production exceeds the limitation under subsection (c)(2), qualifying crude oil production or qualifying natural gas production attributable

to the taxpayer shall be determined on the basis of the ratio which taxpayer's revenue interest in the production bears to the aggregate of the revenue interests of all operating interest owners in the production.

(2) Operating interest required

Any credit under this section may be claimed only on production which is attributable to the holder of an operating interest.

(3) Production from nonconventional sources excluded

In the case of production from a qualified marginal well which is eligible for the credit allowed under section 45K for the taxable year, no credit shall be allowable under this section unless the taxpayer elects not to claim the credit under section 45K with respect to the well.

(Added Pub. L. 108–357, title III, §341(a), Oct. 22, 2004, 118 Stat. 1485; amended Pub. L. 109–58, title XIII, §1322(a)(3)(B), (D), Aug. 8, 2005, 119 Stat. 1011; Pub. L. 109–135, title IV, §412(k), Dec. 21, 2005, 119 Stat. 2637.)

AMENDMENTS

2005—Subsec. (a)(2). Pub. L. 109–135 substituted "qualified crude oil production" for "qualified credit oil production".

Subsec. (b)(2)(C)(i). Pub. L. 109–58, §1322(a)(3)(B), substituted "section 45K(d)(2)(C)" for "section 29(d)(2)(C)".

Subsec. (c)(2)(A). Pub. L. 109–58, §1322(a)(3)(D)(i), substituted "section 45K(d)(5))" for "section 29(d)(5))".

Subsec. (d)(3). Pub. L. 109–58, §1322(a)(3)(D)(ii), substituted "section 45K" for "section 29" in two places.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–58 applicable to credits determined under the Internal Revenue Code of 1986 for taxable years ending after Dec. 31, 2005, see section 1322(c)(1) of Pub. L. 109–58, set out as a note under section 45K of this title.

EFFECTIVE DATE

Section applicable to production in taxable years beginning after Dec. 31, 2004, see section 341(e) of Pub. L. 108–357, set out as an Effective Date of 2004 Amendment note under section 38 of this title.

§45J. Credit for production from advanced nuclear power facilities

(a) General rule

For purposes of section 38, the advanced nuclear power facility production credit of any taxpayer for any taxable year is equal to the product of—

(1) 1.8 cents, multiplied by

(2) the kilowatt hours of electricity—

(A) produced by the taxpayer at an advanced nuclear power facility during the 8-year period beginning on the date the facility was originally placed in service, and

(B) sold by the taxpayer to an unrelated person during the taxable year.

(b) National limitation

(1) In general

The amount of credit which would (but for this subsection and subsection (c)) be allowed with respect to any facility for any taxable year shall not exceed the amount which bears the same ratio to such amount of credit as—

(A) the national megawatt capacity limitation allocated to the facility, bears to

(B) the total megawatt nameplate capacity of such facility.

(2) Amount of national limitation

The aggregate amount of national megawatt capacity limitation allocated by the Secretary under

paragraph (3) shall not exceed 6,000 megawatts.

(3) Allocation of limitation

The Secretary shall allocate the national megawatt capacity limitation in such manner as the Secretary may prescribe.

(4) Regulations

Not later than 6 months after the date of the enactment of this section, the Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection. Such regulations shall provide a certification process under which the Secretary, after consultation with the Secretary of Energy, shall approve and allocate the national megawatt capacity limitation.

(c) Other limitations

(1) Annual limitation

The amount of the credit allowable under subsection (a) (after the application of subsection (b)) for any taxable year with respect to any facility shall not exceed an amount which bears the same ratio to $125,000,000 as—

(A) the national megawatt capacity limitation allocated under subsection (b) to the facility, bears to

(B) 1,000.

(2) Phaseout of credit

(A) In general

The amount of the credit determined under subsection (a) shall be reduced by an amount which bears the same ratio to the amount of the credit (determined without regard to this paragraph) as—

(i) the amount by which the reference price (as defined in section 45(e)(2)(C)) for the calendar year in which the sale occurs exceeds 8 cents, bears to

(ii) 3 cents.

(B) Phaseout adjustment based on inflation

The 8 cent amount in subparagraph (A) shall be adjusted by multiplying such amount by the inflation adjustment factor (as defined in section 45(e)(2)(B)) for the calendar year in which the sale occurs. If any amount as increased under the preceding sentence is not a multiple of 0.1 cent, such amount shall be rounded to the nearest multiple of 0.1 cent.

(d) Advanced nuclear power facility

For purposes of this section—

(1) In general

The term "advanced nuclear power facility" means any advanced nuclear facility—

(A) which is owned by the taxpayer and which uses nuclear energy to produce electricity, and

(B) which is placed in service after the date of the enactment of this paragraph and before January 1, 2021.

(2) Advanced nuclear facility

For purposes of paragraph (1), the term "advanced nuclear facility" means any nuclear facility the reactor design for which is approved after December 31, 1993, by the Nuclear Regulatory Commission (and such design or a substantially similar design of comparable capacity was not approved on or before such date).

(e) Other rules to apply

Rules similar to the rules of paragraphs (1), (3), (4), and (5) of section 45(e) shall apply for purposes of this section.

(Added Pub. L. 109–58, title XIII, §1306(a), Aug. 8, 2005, 119 Stat. 997; amended Pub. L. 109–135,

title IV, §402(d), Dec. 21, 2005, 119 Stat. 2610; Pub. L. 110–172, §6(a), Dec. 29, 2007, 121 Stat. 2479.)

REFERENCES IN TEXT

The date of the enactment of this section and the date of the enactment of this paragraph, referred to in subsecs. (b)(4) and (d)(1)(B), are the date of enactment of Pub. L. 109–58, which was approved Aug. 8, 2005.

AMENDMENTS

2007—Subsec. (b)(2). Pub. L. 110–172 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "The national megawatt capacity limitation shall be 6,000 megawatts."

2005—Subsec. (c)(2). Pub. L. 109–135, §402(d)(1), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: "Rules similar to the rules of section 45(b)(1) shall apply for purposes of this section."

Subsec. (e). Pub. L. 109–135, §402(d)(2), struck out "(2)," after "(1),".

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–172 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109–58, to which such amendment relates, see section 6(e) of Pub. L. 110–172, set out as a note under section 30C of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the Energy Policy Act of 2005, Pub. L. 109–58, to which such amendment relates, see section 402(m)(1) of Pub. L. 109–135, set out as a note under section 23 of this title.

EFFECTIVE DATE

Section applicable to production in taxable years beginning after Aug. 8, 2005, see section 1306(d) of Pub. L. 109–58, set out as an Effective Date of 2005 Amendment note under section 38 of this title.

§45K. Credit for producing fuel from a nonconventional source

(a) Allowance of credit

For purposes of section 38, the nonconventional source production credit determined under this section for the taxable year is an amount equal to—

(1) $3, multiplied by

(2) the barrel-of-oil equivalent of qualified fuels—

(A) sold by the taxpayer to an unrelated person during the taxable year, and

(B) the production of which is attributable to the taxpayer.

(b) Limitations and adjustments

(1) Phaseout of credit

The amount of the credit allowable under subsection (a) shall be reduced by an amount which bears the same ratio to the amount of the credit (determined without regard to this paragraph) as—

(A) the amount by which the reference price for the calendar year in which the sale occurs exceeds $23.50, bears to

(B) $6.

(2) Credit and phaseout adjustment based on inflation

The $3 amount in subsection (a) and the $23.50 and $6 amounts in paragraph (1) shall each be adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the sale occurs. In the case of gas from a tight formation, the $3 amount in subsection (a) shall not be adjusted.

(3) Credit reduced for grants, tax-exempt bonds, and subsidized energy financing

(A) In general

The amount of the credit allowable under subsection (a) with respect to any project for any taxable year (determined after the application of paragraphs (1) and (2)) shall be reduced by the amount which is the product of the amount so determined for such year and a fraction—

(i) the numerator of which is the sum, for the taxable year and all prior taxable years, of—

(I) grants provided by the United States, a State, or a political subdivision of a State for use in connection with the project,

(II) proceeds of any issue of State or local government obligations used to provide financing for the project the interest on which is exempt from tax under section 103, and

(III) the aggregate amount of subsidized energy financing (within the meaning of section 48(a)(4)(C)) provided in connection with the project, and

(ii) the denominator of which is the aggregate amount of additions to the capital account for the project for the taxable year and all prior taxable years.

(B) Amounts determined at close of year

The amounts under subparagraph (A) for any taxable year shall be determined as of the close of the taxable year.

(4) Credit reduced for energy credit

The amount allowable as a credit under subsection (a) with respect to any project for any taxable year (determined after the application of paragraphs (1), (2), and (3)) shall be reduced by the excess of—

(A) the aggregate amount allowed under section 38 for the taxable year or any prior taxable year by reason of the energy percentage with respect to property used in the project, over

(B) the aggregate amount recaptured with respect to the amount described in subparagraph (A)—

(i) under section 49(b) or 50(a) for the taxable year or any prior taxable year, or

(ii) under this paragraph for any prior taxable year.

The amount recaptured under section 49(b) or 50(a) with respect to any property shall be appropriately reduced to take into account any reduction in the credit allowed by this section by reason of the preceding sentence.

(5) Credit reduced for enhanced oil recovery credit

The amount allowable as a credit under subsection (a) with respect to any project for any taxable year (determined after application of paragraphs (1), (2), (3), and (4)) shall be reduced by the excess (if any) of—

(A) the aggregate amount allowed under section 38 for the taxable year and any prior taxable year by reason of any enhanced oil recovery credit determined under section 43 with respect to such project, over

(B) the aggregate amount recaptured with respect to the amount described in subparagraph (A) under this paragraph for any prior taxable year.

(c) Definition of qualified fuels

For purposes of this section—

(1) In general

The term "qualified fuels" means—

(A) oil produced from shale and tar sands,

(B) gas produced from—

(i) geopressured brine, Devonian shale, coal seams, or a tight formation, or

(ii) biomass, and

(C) liquid, gaseous, or solid synthetic fuels produced from coal (including lignite), including such fuels when used as feedstocks.

(2) Gas from geopressured brine, etc.

(A) In general

Except as provided in subparagraph (B), the determination of whether any gas is produced from geopressured brine, Devonian shale, coal seams, or a tight formation shall be made in accordance with section 503 of the Natural Gas Policy Act of 1978 (as in effect before the repeal of such section).

(B) Special rules for gas from tight formations

The term "gas produced from a tight formation" shall only include gas from a tight formation—

(i) which, as of April 20, 1977, was committed or dedicated to interstate commerce (as defined in section 2(18) of the Natural Gas Policy Act of 1978, as in effect on the date of the enactment of this clause), or

(ii) which is produced from a well drilled after such date of enactment.

(3) Biomass

The term "biomass" means any organic material other than—

(A) oil and natural gas (or any product thereof), and

(B) coal (including lignite) or any product thereof.

(d) Other definitions and special rules

For purposes of this section—

(1) Only production within the United States taken into account

Sales shall be taken into account under this section only with respect to qualified fuels the production of which is within—

(A) the United States (within the meaning of section 638(1)), or

(B) a possession of the United States (within the meaning of section 638(2)).

(2) Computation of inflation adjustment factor and reference price

(A) In general

The Secretary shall, not later than April 1 of each calendar year, determine and publish in the Federal Register the inflation adjustment factor and the reference price for the preceding calendar year in accordance with this paragraph.

(B) Inflation adjustment factor

The term "inflation adjustment factor" means, with respect to a calendar year, a fraction the numerator of which is the GNP implicit price deflator for the calendar year and the denominator of which is the GNP implicit price deflator for calendar year 1979. The term "GNP implicit price deflator" means the first revision of the implicit price deflator for the gross national product as computed and published by the Department of Commerce.

(C) Reference price

The term "reference price" means with respect to a calendar year the Secretary's estimate of the annual average wellhead price per barrel for all domestic crude oil the price of which is not subject to regulation by the United States.

(3) Production attributable to the taxpayer

In the case of a property or facility in which more than 1 person has an interest, except to the extent provided in regulations prescribed by the Secretary, production from the property or facility (as the case may be) shall be allocated among such persons in proportion to their respective interests in the gross sales from such property or facility.

(4) Gas from geopressured brine, Devonian shale, coal seams, or a tight formation

The amount of the credit allowable under subsection (a) shall be determined without regard to any production attributable to a property from which gas from Devonian shale, coal seams,

geopressured brine, or a tight formation was produced in marketable quantities before January 1, 1980.

(5) Barrel-of-oil equivalent

The term "barrel-of-oil equivalent" with respect to any fuel means that amount of such fuel which has a Btu content of 5.8 million; except that in the case of qualified fuels described in subparagraph (C) of subsection (c)(1), the Btu content shall be determined without regard to any material from a source not described in such subparagraph.

(6) Barrel defined

The term "barrel" means 42 United States gallons.

(7) Related persons

Persons shall be treated as related to each other if such persons would be treated as a single employer under the regulations prescribed under section 52(b). In the case of a corporation which is a member of an affiliated group of corporations filing a consolidated return, such corporation shall be treated as selling qualified fuels to an unrelated person if such fuels are sold to such a person by another member of such group.

(8) Pass-thru in the case of estates and trusts

Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

(e) Application of section

This section shall apply with respect to qualified fuels—

(1) which are—

(A) produced from a well drilled after December 31, 1979, and before January 1, 1993, or

(B) produced in a facility placed in service after December 31, 1979, and before January 1, 1993, and

(2) which are sold before January 1, 2003.

(f) Extension for certain facilities

(1) In general

In the case of a facility for producing qualified fuels described in subparagraph (B)(ii) or (C) of subsection (c)(1)—

(A) for purposes of subsection (e)(1)(B), such facility shall be treated as being placed in service before January 1, 1993, if such facility is placed in service before July 1, 1998, pursuant to a binding written contract in effect before January 1, 1997, and

(B) if such facility is originally placed in service after December 31, 1992, paragraph (2) of subsection (e) shall be applied with respect to such facility by substituting "January 1, 2008" for "January 1, 2003".

(2) Special rule

Paragraph (1) shall not apply to any facility which produces coke or coke gas unless the original use of the facility commences with the taxpayer.

(g) Extension for facilities producing coke or coke gas

Notwithstanding subsection (e)—

(1) In general

In the case of a facility for producing coke or coke gas (other than from petroleum based products) which was placed in service before January 1, 1993, or after June 30, 1998, and before January 1, 2010, this section shall apply with respect to coke and coke gas produced in such facility and sold during the period—

(A) beginning on the later of January 1, 2006, or the date that such facility is placed in service, and

(B) ending on the date which is 4 years after the date such period began.

(2) Special rules

In determining the amount of credit allowable under this section solely by reason of this subsection—

(A) Daily limit

The amount of qualified fuels sold during any taxable year which may be taken into account by reason of this subsection with respect to any facility shall not exceed an average barrel-of-oil equivalent of 4,000 barrels per day. Days before the date the facility is placed in service shall not be taken into account in determining such average.

(B) Extension period to commence with unadjusted credit amount

For purposes of applying subsection (b)(2) to the $3 amount in subsection (a), in the case of fuels sold after 2005, subsection (d)(2)(B) shall be applied by substituting "2004" for "1979".

(C) Denial of double benefit

This subsection shall not apply to any facility producing qualified fuels for which a credit was allowed under this section for the taxable year or any preceding taxable year by reason of subsection (f).

(D) Nonapplication of phaseout

Subsection (b)(1) shall not apply.

(E) Coordination with section 45

No credit shall be allowed with respect to any qualified fuel which is steel industry fuel (as defined in section 45(c)(7)) if a credit is allowed to the taxpayer for such fuel under section 45.

(Added Pub. L. 96–223, title II, §231(a), Apr. 2, 1980, 94 Stat. 268, §44D; amended Pub. L. 97–34, title VI §611(a), Aug. 13, 1981, 95 Stat. 339; Pub. L. 97–354, §5(a)(1), Oct. 19, 1982, 96 Stat. 1692; Pub. L. 97–448, title II, §202(a), Jan. 12, 1983, 96 Stat. 2396; renumbered §29 and amended Pub. L. 98–369, div. A, title IV, §§471(c), 474(h), title VI, §612(e)(1), title VII, §722(d)(1), (2), July 18, 1984, 98 Stat. 826, 831, 912, 973; Pub. L. 99–514, title VII, §701(c)(3), title XVIII, §1879(c)(1), Oct. 22, 1986, 100 Stat. 2340, 2906; Pub. L. 100–647, title VI, §6302, Nov. 10, 1988, 102 Stat. 3755; Pub. L. 101–508, title XI, §§11501(a), (b)(1), (c)(1), 11813(b)(1), 11816, Nov. 5, 1990, 104 Stat. 1388–479, 1388–550, 1388–558; Pub. L. 102–486, title XIX, §1918, Oct. 24, 1992, 106 Stat. 3025; Pub. L. 104–188, title I, §§1205(d)(3), 1207(a), Aug. 20, 1996, 110 Stat. 1776; renumbered §45K and amended Pub. L. 109–58, title XIII, §§1321(a), 1322(a)(1), (3)(E), (F), (b), Aug. 8, 2005, 119 Stat. 1010–1012; Pub. L. 109–135, title IV, §§402(g), 412(l), Dec. 21, 2005, 119 Stat. 2611, 2637; Pub. L. 109–432, div. A, title II, §211(a), (b), Dec. 20, 2006, 120 Stat. 2947, 2948; Pub. L. 110–343, div. B, title I, §108(d)(2), Oct. 3, 2008, 122 Stat. 3821.)

INFLATION ADJUSTED ITEMS FOR CERTAIN TAX YEARS

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

REFERENCES IN TEXT

Section 503 of the Natural Gas Policy Act of 1978 (as in effect before the repeal of such section), referred to in subsec. (c)(2)(A), was classified to section 3413 of Title 15, Commerce and Trade, prior to repeal by Pub. L. 101–60, §3(b)(5), July 26, 1989, 103 Stat. 159, effective Jan. 1, 1993.

Section 2(18) of the Natural Gas Policy Act of 1978, referred to in subsec. (c)(2)(B)(i), is classified to section 3301(18) of Title 15, Commerce and Trade.

The date of the enactment of this clause, and such date of enactment, referred to in subsec. (c)(2)(B), probably mean the date of enactment of Pub. L. 101–508, which amended subsec. (c)(2)(B) of this section generally, and which was approved Nov. 5, 1990.

AMENDMENTS

2008—Subsec. (g)(2)(E). Pub. L. 110–343 added subpar. (E).

2006—Subsec. (g)(1). Pub. L. 109–432, §211(b), inserted "(other than from petroleum based products)" after "producing coke or coke gas" in introductory provisions.

Subsec. (g)(2)(D). Pub. L. 109–432, §211(a), added subpar. (D).

2005—Pub. L. 109–58, §1322(a)(1), renumbered section 29 of this title as this section.

Subsec. (a). Pub. L. 109–135, §402(g), struck out "if the taxpayer elects to have this section apply," after "For purposes of section 38," in introductory provisions.

Pub. L. 109–58, §1322(a)(3)(E), substituted "For purposes of section 38, if the taxpayer elects to have this section apply, the nonconventional source production credit determined under this section for the taxable year is" for "There shall be allowed as a credit against the tax imposed by this chapter for the taxable year" in introductory provisions.

Subsec. (b)(6). Pub. L. 109–58, §1322(a)(3)(F), struck out heading and text of par. (6). Text read as follows: "The credit allowed by subsection (a) for any taxable year shall not exceed the excess (if any) of—

"(A) the regular tax for the taxable year reduced by the sum of the credits allowable under subpart A and section 27, over

"(B) the tentative minimum tax for the taxable year."

Subsec. (c)(2)(A). Pub. L. 109–58, §1322(b)(1)(A), inserted "(as in effect before the repeal of such section)" after "1978".

Subsecs. (e), (f). Pub. L. 109–58, §1322(b)(1)(B), redesignated subsecs. (f) and (g) as (e) and (f), respectively, and struck out former subsec. (e), which related to application of section with the Natural Gas Policy Act of 1978.

Subsec. (g). Pub. L. 109–135, §412(l)(1), substituted "subsection (e)" for "subsection (f)" in introductory provisions.

Pub. L. 109–58, §1322(b)(1)(B), redesignated subsec. (h) as (g).

Subsec. (g)(1)(A). Pub. L. 109–58, §1322(b)(2)(A), substituted "subsection (e)(1)(B)" for "subsection (f)(1)(B)".

Subsec. (g)(1)(B). Pub. L. 109–58, §1322(b)(2)(B), substituted "subsection (e)" for "subsection (f)".

Subsec. (g)(2)(C). Pub. L. 109–135, §412(l)(2), substituted "subsection (f)" for "subsection (g)".

Subsec. (h). Pub. L. 109–58, §1322(b)(1)(B), redesignated subsec. (h) as (g).

Pub. L. 109–58, §1321(a), added subsec. (h).

1996—Subsec. (b)(6)(A). Pub. L. 104–188, §1205(d)(3), substituted "section 27" for "sections 27 and 28".

Subsec. (g)(1)(A). Pub. L. 104–188, §1207(a), substituted "July 1, 1998" for "January 1, 1997" and "January 1, 1997" for "January 1, 1996".

1992—Subsec. (g). Pub. L. 102–486 added subsec. (g).

1990—Subsec. (b)(3)(A)(i)(III). Pub. L. 101–508, §11813(b)(1)(A), substituted "section 48(a)(4)(C)" for "section 48(l)(11)(C)".

Subsec. (b)(4). Pub. L. 101–508, §11813(b)(1)(B), substituted "section 49(b) or 50(a)" for "section 47" in two places.

Subsec. (b)(5), (6). Pub. L. 101–508, §11501(c)(1), added par. (5) and redesignated former par. (5) as (6).

Subsec. (c)(1)(B) to (E). Pub. L. 101–508, §11816(a), inserted "and" at end of subpar. (B), substituted a period for a comma at end of subpar. (C), and struck out subpar. (D) which related to qualifying processed wood fuels, and subpar. (E) which related to steam produced from solid agricultural byproducts (not including timber byproducts).

Subsec. (c)(2)(B). Pub. L. 101–508, §11501(b)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "The term 'gas produced from a tight formation' shall only include—

"(i) gas the price of which is regulated by the United States, and

"(ii) gas for which the maximum lawful price applicable under the Natural Gas Policy Act of 1978 is at least 150 percent of the then applicable price under section 103 of such Act."

Subsec. (c)(3). Pub. L. 101–508, §11813(b)(1)(C), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "The term 'biomass' means any organic material which is an alternate substance (as defined in section 48(l)(3)(B)) other than coal (including lignite) or any product of such coal."

Subsec. (c)(4). Pub. L. 101–508, §11816(b)(1), struck out par. (4) "Qualifying processed wood fuel" which read as follows:

"(A) IN GENERAL.—The term 'qualifying processed wood fuel' means any processed solid wood fuel (other than charcoal, fireplace products, or a product used for ornamental or recreational purposes) which has a Btu content per unit of volume or weight, determined without regard to any nonwood elements, which is at least 40 percent greater per unit of volume or weight than the Btu content of the wood from which it is produced (determined immediately before the processing).

"(B) ELECTION.—A taxpayer shall elect, at such time and in such manner as the Secretary by regulations

may prescribe, as to whether Btu content per unit shall be determined for purposes of this paragraph on a volume or weight basis. Any such election—

"(i) shall apply to all production from a facility; and

"(ii) shall be effective for the taxable year with respect to which it is made and for all subsequent taxable years and, once made, may be revoked only with the consent of the Secretary."

Subsec. (c)(5). Pub. L. 101–508, §11816(b)(1), struck out par. (5) "Agricultural byproduct steam" which read as follows: "Steam produced from solid agricultural byproducts which is used by the taxpayer in his trade or business shall be treated as having been sold by the taxpayer to an unrelated person on the date on which it is used."

Subsec. (d)(4). Pub. L. 101–508, §11816(b)(2), amended par. (4) generally, striking out "Special rules applicable to" before "Gas" in heading, redesignating former subpar. (A) as par. (4), striking out subpar. (B) which related to the reference price and application of phaseout for Devonian shale, and making minor changes in phraseology.

Subsec. (d)(5), (6). Pub. L. 101–508, §11816(b)(3), (4), redesignated par. (6) as (5), substituted "subparagraph (C)" for "subparagraph (C), (D), or (E)", and struck out former par. (5) which read as follows: "In the case of a facility for the production of—

"(A) qualifying processed wood fuel,

or

"(B) steam from solid agricultural byproducts,

paragraph (1) of subsection (b) shall not apply with respect to the amount of the credit allowable under subsection (a) for fuels sold during the 3-year period beginning on the date the facility is placed in service."

Subsec. (d)(7) to (9). Pub. L. 101–508, §11816(b)(3), redesignated pars. (7) to (9) as (6) to (8), respectively.

Subsec. (f). Pub. L. 101–508, §11816(b)(5), amended subsec. (f) generally, redesignating former par. (1) as subsec. (f), making minor changes in phraseology, substituting par. (2) for former par. (1)(B) which read as follows: "which are sold after December 31, 1979, and before January 1, 2003.", and striking out former par. (2) which related to special rules applicable to qualified processed wood and solid agricultural byproduct steam.

Subsec. (f)(1)(A)(i), (ii). Pub. L. 101–508, §11501(a)(1), substituted "1993" for "1991".

Subsec. (f)(1)(B). Pub. L. 101–508, §11501(a)(2), substituted "2003" for "2001".

1988—Subsec. (f)(1)(A)(i), (ii). Pub. L. 100–647 substituted "1991" for "1990".

1986—Subsec. (b)(5). Pub. L. 99–514, §701(c)(3), amended par. (5) generally. Prior to amendment, par. (5) read as follows: "The credit allowed by subsection (a) for a taxable year shall not exceed the taxpayer's tax liability for the taxable year (as defined in section 26(b)), reduced by the sum of the credits allowable under subpart A and sections 27 and 28."

Subsec. (d)(8). Pub. L. 99–514, §1879(c)(1), inserted provision directing that a corporation which is a member of an affiliated group of corporations filing a consolidated return shall be treated as selling qualified fuels to an unrelated person if such fuels are sold to such person by another member of such group.

1984—Pub. L. 98–369, §471(c), renumbered section 44D of this title as this section.

Subsec. (b)(1)(A). Pub. L. 98–369, §722(d)(1), substituted "in which the sale occurs" for "in which the taxable year begins".

Subsec. (b)(2). Pub. L. 98–369, §722(d)(2), substituted "in which the sale occurs" for "in which a taxable year begins".

Subsec. (b)(5). Pub. L. 98–369, §612(e)(1), substituted "section 26(b)" for "section 25(b)".

Pub. L. 98–369, §474(h), amended par. (5) generally, substituting "shall not exceed the taxpayer's tax liability for the taxable year (as defined in section 25(b)), reduced by the sum of the credits allowable under subpart A and sections 27 and 28" for "shall not exceed the tax imposed by this chapter for such taxable year, reduced by the sum of the credits allowable under a section of this subpart having a lower number or letter designation than this section, other than the credits allowable by sections 31, 39, and 43. For purposes of the preceding sentence, the term 'tax imposed by this chapter' shall not include any tax treated as not imposed by this chapter under the last sentence of section 53(a)".

1983—Subsec. (f)(1)(B), (2)(A)(i). Pub. L. 97–448 substituted "December 31, 1979" for "December 3, 1979".

1982—Subsec. (d)(9). Pub. L. 97–354 substituted "Pass-thru in the case of estates and trusts" for "Pass-through in the case of subchapter S corporations, etc." in par. heading, and substituted provisions relating to the applicability of rules similar to rules of subsec. (d) of section 52 for provisions relating to the applicability of rules similar to rules of subsecs. (d) and (e) of section 52.

1981—Subsec. (e). Pub. L. 97–34 substituted provisions respecting application with the Natural Gas Policy Act of 1978 for prior provision reading "If the taxpayer makes an election under section 107(d) of the Natural

Gas Policy Act of 1978 to have subsections (a) and (b) of section 107 of that Act, and subtitle B of title I of that Act, apply with respect to gas described in subsection (c)(1)(B)(i) produced from any well on a property, then the credit allowable by subsection (a) shall not be allowed with respect to any gas produced on that property."

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–343 applicable to fuel produced and sold after Sept. 30, 2008, see section 108(e) of Pub. L. 110–343, set out as a note under section 45 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title II, §211(c), Dec. 20, 2006, 120 Stat. 2948, provided that: "The amendments made by this section [amending this section] shall take effect as if included in section 1321 of the Energy Policy Act of 2005 [Pub. L. 109–58]."

EFFECTIVE DATE OF 2005 AMENDMENTS

Amendment by section 402(g) of Pub. L. 109–135 effective as if included in the provision of the Energy Policy Act of 2005, Pub. L. 109–58, to which such amendment relates, see section 402(m)(1) of Pub. L. 109–135, set out as an Effective and Termination Dates of 2005 Amendments note under section 23 of this title.

Pub. L. 109–58, title XIII, §1321(b), Aug. 8, 2005, 119 Stat. 1011, provided that: "The amendment made by this section [amending this section] shall apply to fuel produced and sold after December 31, 2005, in taxable years ending after such date."

Pub. L. 109–58, title XIII, §1322(c), Aug. 8, 2005, 119 Stat. 1012, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 30, 38, 43, 45, 45I, 53, 55, 613A, and 772 of this title and renumbering section 29 of this title as this section] shall apply to credits determined under the Internal Revenue Code of 1986 for taxable years ending after December 31, 2005.

"(2) SUBSECTION (b).—The amendments made by subsection (b) [amending this section] shall take effect on the date of the enactment of this Act [Aug. 8, 2005]."

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, §1205(e), Aug. 20, 1996, 110 Stat. 1776, provided that: "The amendments made by this section [amending this section and sections 30, 38, 39, 45C, 53, 55, and 280C of this title] shall apply to amounts paid or incurred in taxable years ending after June 30, 1996."

Pub. L. 104–188, title I, §1207(b), Aug. 20, 1996, 110 Stat. 1776, provided that: "The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Aug. 20, 1996]."

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, §11501(b)(2), Nov. 5, 1990, 104 Stat. 1388–479, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to gas produced after December 31, 1990."

Pub. L. 101–508, title XI, §11501(c)(2), Nov. 5, 1990, 104 Stat. 1388–480, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after December 31, 1990."

Pub. L. 101–508, title XI, §11813(c), Nov. 5, 1990, 104 Stat. 1388–555, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting section 50 of this title and amending this section and sections 38, 42, 46 to 49, 52, 55, 108, 145, 147, 168, 170, 179, 196, 280F, 312, 465, 469, 861, 865, 1016, 1033, 1245, 1274A, 1371, 1388 and 1503 of this title] shall apply to property placed in service after December 31, 1990.

"(2) EXCEPTIONS.—The amendments made by this section shall not apply to—

"(A) any transition property (as defined in section 49(e) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act [Nov. 5, 1990]),

"(B) any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of such Code (as so in effect), and

"(C) any property described in section 46(b)(2)(C) of such Code (as so in effect)."

Pub. L. 101–508, title XI, §11821(a), Nov. 5, 1990, 104 Stat. 1388–558, provided that: "Except as otherwise provided in this part, the amendments made by this part [part I (§§11801–11821) of subtitle H of title XI of Pub. L. 101–508, see Tables for classification] shall take effect on the date of the enactment of this Act [Nov. 5, 1990]."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 701(c)(3) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date note under section 55 of this title.

Pub. L. 99–514, title XVIII, §1879(c)(2), Oct. 22, 1986, 100 Stat. 2906, provided that: "The amendment made by paragraph (1) [amending this section] shall take effect as if included in the amendments made by section 231 of Public Law 96–223 [see Effective Date note below]."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(h) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 612(e)(1) of Pub. L. 98–369 applicable to interest paid or accrued after Dec. 31, 1984, on indebtedness incurred after Dec. 31, 1984, see section 612(g) of Pub. L. 98–369, set out as an Effective Date note under section 25 of this title.

Pub. L. 98–369, title VII, §722(d)(3), July 18, 1984, 98 Stat. 974, provided that: "The amendments made by this subsection [amending this section] shall apply to taxable years ending after December 31, 1979."

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Crude Oil Windfall Profit Tax Act of 1980, Pub. L. 96–223 to which such amendment relates, see section 203(a) of Pub. L. 97–448, set out as a note under section 6652 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title VI, §611(b), Aug. 13, 1981, 95 Stat. 339, provided that: "The amendment made by this section [amending this section] shall apply to taxable years ending after December 31, 1979."

EFFECTIVE DATE

Pub. L. 96–223, title II, §231(c), Apr. 2, 1980, 94 Stat. 272, provided that: "The amendments made by this section [enacting this section and amending section 6096 of this title] shall apply to taxable years ending after December 31, 1979."

SAVINGS PROVISION

Pub. L. 101–508, title XI, §11821(b), Nov. 5, 1990, 104 Stat. 1388–558, provided that: "If—

"(1) any provision amended or repealed by this part [part I (§§11801–11821) of subtitle H of title XI of Pub. L. 101–508, see Tables for classification] applied to—

"(A) any transaction occurring before the date of the enactment of this Act [Nov. 5, 1990],

"(B) any property acquired before such date of enactment, or

"(C) any item of income, loss, deduction, or credit taken into account before such date of enactment, and

"(2) the treatment of such transaction, property, or item under such provision would (without regard to the amendments made by this part) affect liability for tax for periods ending after such date of enactment, nothing in the amendments made by this part shall be construed to affect the treatment of such transaction, property, or item for purposes of determining liability for tax for periods ending after such date of enactment."

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(c)(3) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147

and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

INFLATION ADJUSTED ITEMS FOR CERTAIN TAX YEARS

Provisions relating to inflation adjustment of items in this section for certain tax years were contained in the following:

2012—Internal Revenue Notice 2013–25.
2011—Internal Revenue Notice 2012–30.
2010—Internal Revenue Notice 2011–30.
2009—Internal Revenue Notice 2010–31.
2008—Internal Revenue Notice 2009–32.
2007—Internal Revenue Notice 2008–44.
2006—Internal Revenue Notice 2007–38.

§45L. New energy efficient home credit

(a) Allowance of credit

(1) In general

For purposes of section 38, in the case of an eligible contractor, the new energy efficient home credit for the taxable year is the applicable amount for each qualified new energy efficient home which is—

(A) constructed by the eligible contractor, and

(B) acquired by a person from such eligible contractor for use as a residence during the taxable year.

(2) Applicable amount

For purposes of paragraph (1), the applicable amount is an amount equal to—

(A) in the case of a dwelling unit described in paragraph (1) or (2) of subsection (c), $2,000, and

(B) in the case of a dwelling unit described in paragraph (3) of subsection (c), $1,000.

(b) Definitions

For purposes of this section—

(1) Eligible contractor

The term "eligible contractor" means—

(A) the person who constructed the qualified new energy efficient home, or

(B) in the case of a qualified new energy efficient home which is a manufactured home, the manufactured home producer of such home.

(2) Qualified new energy efficient home

The term "qualified new energy efficient home" means a dwelling unit—

(A) located in the United States,

(B) the construction of which is substantially completed after the date of the enactment of this section, and

(C) which meets the energy saving requirements of subsection (c).

(3) Construction

The term "construction" includes substantial reconstruction and rehabilitation.

(4) Acquire

The term "acquire" includes purchase.

(c) Energy saving requirements

A dwelling unit meets the energy saving requirements of this subsection if such unit is—

(1) certified—

(A) to have a level of annual heating and cooling energy consumption which is at least 50 percent below the annual level of heating and cooling energy consumption of a comparable dwelling unit—

(i) which is constructed in accordance with the standards of chapter 4 of the 2006 International Energy Conservation Code, as such Code (including supplements) is in effect on January 1, 2006, and

(ii) for which the heating and cooling equipment efficiencies correspond to the minimum allowed under the regulations established by the Department of Energy pursuant to the National Appliance Energy Conservation Act of 1987 and in effect at the time of completion of construction, and

(B) to have building envelope component improvements account for at least 1/5 of such 50 percent,

(2) a manufactured home which conforms to Federal Manufactured Home Construction and Safety Standards (part 3280 of title 24, Code of Federal Regulations) and which meets the requirements of paragraph (1), or

(3) a manufactured home which conforms to Federal Manufactured Home Construction and Safety Standards (part 3280 of title 24, Code of Federal Regulations) and which—

(A) meets the requirements of paragraph (1) applied by substituting "30 percent" for "50 percent" both places it appears therein and by substituting "1/3" for "1/5" in subparagraph (B) thereof, or

(B) meets the requirements established by the Administrator of the Environmental Protection Agency under the Energy Star Labeled Homes program.

(d) Certification

(1) Method of certification

A certification described in subsection (c) shall be made in accordance with guidance prescribed by the Secretary, after consultation with the Secretary of Energy. Such guidance shall specify procedures and methods for calculating energy and cost savings.

(2) Form

Any certification described in subsection (c) shall be made in writing in a manner which specifies in readily verifiable fashion the energy efficient building envelope components and energy efficient heating or cooling equipment installed and their respective rated energy efficiency performance.

(e) Basis adjustment

For purposes of this subtitle, if a credit is allowed under this section in connection with any expenditure for any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so determined.

(f) Coordination with investment credit

For purposes of this section, expenditures taken into account under section 47 or 48(a) shall not be taken into account under this section.

(g) Termination

This section shall not apply to any qualified new energy efficient home acquired after December 31, 2013.

(Added Pub. L. 109–58, title XIII, §1332(a), Aug. 8, 2005, 119 Stat. 1024; amended Pub. L. 109–432, div. A, title II, §205, Dec. 20, 2006, 120 Stat. 2945; Pub. L. 110–172, §11(a)(7), Dec. 29, 2007, 121 Stat. 2485; Pub. L. 110–343, div. B, title III, §304, Oct. 3, 2008, 122 Stat. 3845; Pub. L. 111–312, title VII, §703(a), Dec. 17, 2010, 124 Stat. 3311; Pub. L. 112–240, title IV, §408(a), (b), Jan. 2, 2013, 126 Stat. 2342.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (b)(2)(B), is the date of enactment of Pub. L. 109–58, which was approved Aug. 8, 2005.

The National Appliance Energy Conservation Act of 1987, referred to in subsec. (c)(1)(A)(ii), is Pub. L. 100–12, Mar. 17, 1987, 101 Stat. 103. For complete classification of this Act to the Code, see Short Title of 1987 Amendment note set out under section 6201 of Title 42, The Public Health and Welfare, and Tables.

AMENDMENTS

2013—Subsec. (c)(1)(A)(i). Pub. L. 112–240, §408(b), substituted "2006 International Energy Conservation Code, as such Code (including supplements) is in effect on January 1, 2006" for "2003 International Energy Conservation Code, as such Code (including supplements) is in effect on the date of the enactment of this section".

Subsec. (g). Pub. L. 112–240, §408(a), substituted "December 31, 2013" for "December 31, 2011".

2010—Subsec. (g). Pub. L. 111–312 substituted "December 31, 2011" for "December 31, 2009".

2008—Subsec. (g). Pub. L. 110–343 substituted "December 31, 2009" for "December 31, 2008".

2007—Subsec. (c)(2), (3). Pub. L. 110–172 substituted "part 3280" for "section 3280" in par. (2) and in introductory provisions of par. (3).

2006—Subsec. (g). Pub. L. 109–432 substituted "2008" for "2007".

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title IV, §408(c), Jan. 2, 2013, 126 Stat. 2342, provided that: "The amendments made by this section [amending this section] shall apply to homes acquired after December 31, 2011."

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §703(b), Dec. 17, 2010, 124 Stat. 3311, provided that: "The amendment made by this section [amending this section] shall apply to homes acquired after December 31, 2009."

EFFECTIVE DATE

Section applicable to qualified new energy efficient homes acquired after Dec. 31, 2005, in taxable years ending after such date, see section 1332(f) of Pub. L. 109–58, set out as an Effective Date of 2005 Amendments note under section 38 of this title.

§45M. Energy efficient appliance credit

(a) General rule

(1) In general

For purposes of section 38, the energy efficient appliance credit determined under this section for any taxable year is an amount equal to the sum of the credit amounts determined under paragraph (2) for each type of qualified energy efficient appliance produced by the taxpayer during the calendar year ending with or within the taxable year.

(2) Credit amounts

The credit amount determined for any type of qualified energy efficient appliance is—

(A) the applicable amount determined under subsection (b) with respect to such type, multiplied by

(B) the eligible production for such type.

(b) Applicable amount

For purposes of subsection (a)—

(1) Dishwashers

The applicable amount is—

(A) $45 in the case of a dishwasher which is manufactured in calendar year 2008 or 2009 and which uses no more than 324 kilowatt hours per year and 5.8 gallons per cycle,

(B) $75 in the case of a dishwasher which is manufactured in calendar year 2008, 2009, or 2010 and which uses no more than 307 kilowatt hours per year and 5.0 gallons per cycle (5.5

gallons per cycle for dishwashers designed for greater than 12 place settings),

(C) $25 in the case of a dishwasher which is manufactured in calendar year 2011 and which uses no more than 307 kilowatt hours per year and 5.0 gallons per cycle (5.5 gallons per cycle for dishwashers designed for greater than 12 place settings),

(D) $50 in the case of a dishwasher which is manufactured in calendar year 2011, 2012, or 2013 and which uses no more than 295 kilowatt hours per year and 4.25 gallons per cycle (4.75 gallons per cycle for dishwashers designed for greater than 12 place settings), and

(E) $75 in the case of a dishwasher which is manufactured in calendar year 2011, 2012, or 2013 and which uses no more than 280 kilowatt hours per year and 4 gallons per cycle (4.5 gallons per cycle for dishwashers designed for greater than 12 place settings).

(2) Clothes washers

The applicable amount is—

(A) $75 in the case of a residential top-loading clothes washer manufactured in calendar year 2008 which meets or exceeds a 1.72 modified energy factor and does not exceed a 8.0 water consumption factor,

(B) $125 in the case of a residential top-loading clothes washer manufactured in calendar year 2008 or 2009 which meets or exceeds a 1.8 modified energy factor and does not exceed a 7.5 water consumption factor,

(C) $150 in the case of a residential or commercial clothes washer manufactured in calendar year 2008, 2009, or 2010 which meets or exceeds [1] 2.0 modified energy factor and does not exceed a 6.0 water consumption factor,

(D) $250 in the case of a residential or commercial clothes washer manufactured in calendar year 2008, 2009, or 2010 which meets or exceeds [1] 2.2 modified energy factor and does not exceed a 4.5 water consumption factor,

(E) $175 in the case of a top-loading clothes washer manufactured in calendar year 2011 which meets or exceeds a 2.2 modified energy factor and does not exceed a 4.5 water consumption factor, and

(F) $225 in the case of a clothes washer manufactured in calendar year 2011, 2012, or 2013—

(i) which is a top-loading clothes washer and which meets or exceeds a 2.4 modified energy factor and does not exceed a 4.2 water consumption factor, or

(ii) which is a front-loading clothes washer and which meets or exceeds a 2.8 modified energy factor and does not exceed a 3.5 water consumption factor.

(3) Refrigerators

The applicable amount is—

(A) $50 in the case of a refrigerator which is manufactured in calendar year 2008, and consumes at least 20 percent but not more than 22.9 percent less kilowatt hours per year than the 2001 energy conservation standards,

(B) $75 in the case of a refrigerator which is manufactured in calendar year 2008 or 2009, and consumes at least 23 percent but no more than 24.9 percent less kilowatt hours per year than the 2001 energy conservation standards,

(C) $100 in the case of a refrigerator which is manufactured in calendar year 2008, 2009, or 2010, and consumes at least 25 percent but not more than 29.9 percent less kilowatt hours per year than the 2001 energy conservation standards,

(D) $200 in the case of a refrigerator manufactured in calendar year 2008, 2009, or 2010 and which consumes at least 30 percent less energy than the 2001 energy conservation standards,

(E) $150 in the case of a refrigerator manufactured in calendar year 2011, 2012, or 2013 which consumes at least 30 percent less energy than the 2001 energy conservation standards, and

(F) $200 in the case of a refrigerator manufactured in calendar year 2011, 2012, or 2013 which consumes at least 35 percent less energy than the 2001 energy conservation standards.

(c) Eligible production

The eligible production in a calendar year with respect to each type of energy efficient appliance is the excess of—

(1) the number of appliances of such type which are produced by the taxpayer in the United States during such calendar year, over

(2) the average number of appliances of such type which were produced by the taxpayer (or any predecessor) in the United States during the preceding 2-calendar year period.

(d) Types of energy efficient appliance

For purposes of this section, the types of energy efficient appliances are—

(1) dishwashers described in subsection (b)(1),

(2) clothes washers described in subsection (b)(2), and

(3) refrigerators described in subsection (b)(3).

(e) Limitations

(1) Aggregate credit amount allowed

The aggregate amount of credit allowed under subsection (a) with respect to a taxpayer for any taxable year shall not exceed $25,000,000 reduced by the amount of the credit allowed under subsection (a) to the taxpayer (or any predecessor) for all prior taxable years beginning after December 31, 2010.

(2) Amount allowed for certain refrigerators and clothes washers

Refrigerators described in subsection (b)(3)(F) and clothes washers described in subsection (b)(2)(F) shall not be taken into account under paragraph (1).

(3) Limitation based on gross receipts

The credit allowed under subsection (a) with respect to a taxpayer for the taxable year shall not exceed an amount equal to 4 percent of the average annual gross receipts of the taxpayer for the 3 taxable years preceding the taxable year in which the credit is determined.

(4) Gross receipts

For purposes of this subsection, the rules of paragraphs (2) and (3) of section 448(c) shall apply.

(f) Definitions

For purposes of this section—

(1) Qualified energy efficient appliance

The term "qualified energy efficient appliance" means—

(A) any dishwasher described in subsection (b)(1),

(B) any clothes washer described in subsection (b)(2), and

(C) any refrigerator described in subsection (b)(3).

(2) Dishwasher

The term "dishwasher" means a residential dishwasher subject to the energy conservation standards established by the Department of Energy.

(3) Clothes washer

The term "clothes washer" means a residential model clothes washer, including a commercial residential style coin operated washer.

(4) Top-loading clothes washer

The term "top-loading clothes washer" means a clothes washer which has the clothes container compartment access located on the top of the machine and which operates on a vertical axis.

(5) Refrigerator

The term "refrigerator" means a residential model automatic defrost refrigerator-freezer which has an internal volume of at least 16.5 cubic feet.

(6) Modified energy factor

The term "modified energy factor" means the modified energy factor established by the Department of Energy for compliance with the Federal energy conservation standard.

(7) Produced

The term "produced" includes manufactured.

(8) 2001 energy conservation standard

The term "2001 energy conservation standard" means the energy conservation standards promulgated by the Department of Energy and effective July 1, 2001.

(9) Gallons per cycle

The term "gallons per cycle" means, with respect to a dishwasher, the amount of water, expressed in gallons, required to complete a normal cycle of a dishwasher.

(10) Water consumption factor

The term "water consumption factor" means, with respect to a clothes washer, the quotient of the total weighted per-cycle water consumption divided by the cubic foot (or liter) capacity of the clothes washer.

(g) Special rules

For purposes of this section—

(1) In general

Rules similar to the rules of subsections (c), (d), and (e) of section 52 shall apply.

(2) Controlled group

(A) In general

All persons treated as a single employer under subsection (a) or (b) of section 52 or subsection (m) or (o) of section 414 shall be treated as a single producer.

(B) Inclusion of foreign corporations

For purposes of subparagraph (A), in applying subsections (a) and (b) of section 52 to this section, section 1563 shall be applied without regard to subsection (b)(2)(C) thereof.

(3) Verification

No amount shall be allowed as a credit under subsection (a) with respect to which the taxpayer has not submitted such information or certification as the Secretary, in consultation with the Secretary of Energy, determines necessary.

(Added Pub. L. 109–58, title XIII, §1334(a), Aug. 8, 2005, 119 Stat. 1030; amended Pub. L. 110–343, div. B, title III, §305(a)–(e), Oct. 3, 2008, 122 Stat. 3845–3847; Pub. L. 111–312, title VII, §709(a)–(d), Dec. 17, 2010, 124 Stat. 3312, 3313; Pub. L. 112–240, title IV, §409(a), (b), Jan. 2, 2013, 126 Stat. 2342.)

AMENDMENTS

2013—Subsec. (b). Pub. L. 112–240 substituted "2011, 2012, or 2013" for "2011" wherever appearing except for pars. (1)(C) and (2)(E).

2010—Subsec. (b)(1)(C) to (E). Pub. L. 111–312, §709(a), added subpars. (C) to (E).

Subsec. (b)(2)(E), (F). Pub. L. 111–312, §709(b), added subpars. (E) and (F).

Subsec. (b)(3)(E), (F). Pub. L. 111–312, §709(c), added subpars. (E) and (F).

Subsec. (e)(1). Pub. L. 111–312, §709(d)(1), substituted "$25,000,000" for "$75,000,000" and "December 31, 2010" for "December 31, 2007".

Subsec. (e)(2). Pub. L. 111–312, §709(d)(2), substituted "subsection (b)(3)(F)" for "subsection (b)(3)(D)" and "subsection (b)(2)(F)" for "subsection (b)(2)(D)".

Subsec. (e)(3). Pub. L. 111–312, §709(d)(3), substituted "4 percent" for "2 percent".

2008—Subsec. (b). Pub. L. 110–343, §305(a), reenacted heading without change and amended text generally. Prior to amendment, subsec. (b) provided applicable credit amounts and energy savings amounts for dishwashers, clothes washers, and refrigerators.

Subsec. (c). Pub. L. 110–343, §305(b)(1), struck out par. (1) designation and heading, substituted "The

eligible" for "Except as provided in paragraphs (2), the eligible", redesignated subpars. (A) and (B) of former par. (1) as pars. (1) and (2), respectively, and realigned margins, and struck out former par. (2) which provided a special rule for eligible production of refrigerators.

Subsec. (c)(2). Pub. L. 110–343, §305(b)(2), substituted "2-calendar year" for "3-calendar year".

Subsec. (d). Pub. L. 110–343, §305(c), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "For purposes of this section, the types of energy efficient appliances are—

"(1) dishwashers described in subsection (b)(1)(A),

"(2) clothes washers described in subsection (b)(1)(B),

"(3) refrigerators described in subsection (b)(1)(C)(i),

"(4) refrigerators described in subsection (b)(1)(C)(ii), and

"(5) refrigerators described in subsection (b)(1)(C)(iii)."

Subsec. (e)(1). Pub. L. 110–343, §305(d)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "The aggregate amount of credit allowed under subsection (a) with respect to a taxpayer for any taxable year shall not exceed $75,000,000 reduced by the amount of the credit allowed under subsection (a) to the taxpayer (or any predecessor) for all prior taxable years."

Subsec. (e)(2). Pub. L. 110–343, §305(d)(2), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: "In the case of refrigerators described in subsection (b)(1)(C)(i), the aggregate amount of the credit allowed under subsection (a) with respect to a taxpayer for any taxable year shall not exceed $20,000,000."

Subsec. (f)(1). Pub. L. 110–343, §305(e)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "The term 'qualified energy efficient appliance' means—

"(A) any dishwasher described in subsection (b)(1)(A),

"(B) any clothes washer described in subsection (b)(1)(B), and

"(C) any refrigerator described in subsection (b)(1)(C)."

Subsec. (f)(3). Pub. L. 110–343, §305(e)(2), inserted "commercial" after "including a".

Subsec. (f)(4), (5). Pub. L. 110–343, §305(e)(3), added par. (4) and redesignated former par. (4) as (5). Former par. (5) redesignated (6).

Subsec. (f)(6). Pub. L. 110–343, §305(e)(4), amended heading and text of par. (6) generally. Prior to amendment, text read as follows: "The term 'EF' means the energy factor established by the Department of Energy for compliance with the Federal energy conservation standards."

Pub. L. 110–343, §305(e)(3), redesignated par. (5) as (6). Former par. (6) redesignated (7).

Subsec. (f)(7), (8). Pub. L. 110–343, §305(e)(3), redesignated pars. (6) and (7) as (7) and (8), respectively.

Subsec. (f)(9), (10). Pub. L. 110–343, §305(e)(5), added pars. (9) and (10).

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title IV, §409(c), Jan. 2, 2013, 126 Stat. 2342, provided that: "The amendments made by this section [amending this section] shall apply to appliances produced after December 31, 2011."

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §709(e), Dec. 17, 2010, 124 Stat. 3314, provided that:

"(1) IN GENERAL.—The amendments made by subsections (a), (b), and (c) [amending this section] shall apply to appliances produced after December 31, 2010.

"(2) LIMITATIONS.—The amendments made by subsection (d) [amending this section] shall apply to taxable years beginning after December 31, 2010."

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title III, §305(f), Oct. 3, 2008, 122 Stat. 3848, provided that: "The amendments made by this section [amending this section] shall apply to appliances produced after December 31, 2007."

EFFECTIVE DATE

Section applicable to appliances produced after Dec. 31, 2005, see section 1334(d) of Pub. L. 109–58, set out as an Effective Date of 2005 Amendments note under section 38 of this title.

[1] *So in original. Probably should be followed by "a".*

§45N. Mine rescue team training credit

(a) Amount of credit

For purposes of section 38, the mine rescue team training credit determined under this section with respect to each qualified mine rescue team employee of an eligible employer for any taxable year is an amount equal to the lesser of—

(1) 20 percent of the amount paid or incurred by the taxpayer during the taxable year with respect to the training program costs of such qualified mine rescue team employee (including wages of such employee while attending such program), or

(2) $10,000.

(b) Qualified mine rescue team employee

For purposes of this section, the term "qualified mine rescue team employee" means with respect to any taxable year any full-time employee of the taxpayer who is—

(1) a miner eligible for more than 6 months of such taxable year to serve as a mine rescue team member as a result of completing, at a minimum, an initial 20-hour course of instruction as prescribed by the Mine Safety and Health Administration's Office of Educational Policy and Development, or

(2) a miner eligible for more than 6 months of such taxable year to serve as a mine rescue team member by virtue of receiving at least 40 hours of refresher training in such instruction.

(c) Eligible employer

For purposes of this section, the term "eligible employer" means any taxpayer which employs individuals as miners in underground mines in the United States.

(d) Wages

For purposes of this section, the term "wages" has the meaning given to such term by subsection (b) of section 3306 (determined without regard to any dollar limitation contained in such section).

(e) Termination

This section shall not apply to taxable years beginning after December 31, 2013.

(Added Pub. L. 109–432, div. A, title IV, §405(a), Dec. 20, 2006, 120 Stat. 2957; amended Pub. L. 110–343, div. C, title III, §310, Oct. 3, 2008, 122 Stat. 3869; Pub. L. 111–312, title VII, §735(a), Dec. 17, 2010, 124 Stat. 3318; Pub. L. 112–240, title III, §307(a), Jan. 2, 2013, 126 Stat. 2329.)

AMENDMENTS

2013—Subsec. (e). Pub. L. 112–240 substituted "December 31, 2013" for "December 31, 2011".
2010—Subsec. (e). Pub. L. 111–312 substituted "December 31, 2011" for "December 31, 2009".
2008—Subsec. (e). Pub. L. 110–343 substituted "December 31, 2009" for "December 31, 2008".

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title III, §307(b), Jan. 2, 2013, 126 Stat. 2329, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2011."

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §735(b), Dec. 17, 2010, 124 Stat. 3318, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2009."

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 2005, see section 405(e) of Pub. L. 109–432, set out as an Effective Date of 2006 Amendment note under section 38 of this title.

§45O. Agricultural chemicals security credit

(a) In general

For purposes of section 38, in the case of an eligible agricultural business, the agricultural chemicals security credit determined under this section for the taxable year is 30 percent of the

qualified security expenditures for the taxable year.

(b) Facility limitation

The amount of the credit determined under subsection (a) with respect to any facility for any taxable year shall not exceed—

(1) $100,000, reduced by

(2) the aggregate amount of credits determined under subsection (a) with respect to such facility for the 5 prior taxable years.

(c) Annual limitation

The amount of the credit determined under subsection (a) with respect to any taxpayer for any taxable year shall not exceed $2,000,000.

(d) Qualified chemical security expenditure

For purposes of this section, the term "qualified chemical security expenditure" means, with respect to any eligible agricultural business for any taxable year, any amount paid or incurred by such business during such taxable year for—

(1) employee security training and background checks,

(2) limitation and prevention of access to controls of specified agricultural chemicals stored at the facility,

(3) tagging, locking tank valves, and chemical additives to prevent the theft of specified agricultural chemicals or to render such chemicals unfit for illegal use,

(4) protection of the perimeter of specified agricultural chemicals,

(5) installation of security lighting, cameras, recording equipment, and intrusion detection sensors,

(6) implementation of measures to increase computer or computer network security,

(7) conducting a security vulnerability assessment,

(8) implementing a site security plan, and

(9) such other measures for the protection of specified agricultural chemicals as the Secretary may identify in regulation.

Amounts described in the preceding sentence shall be taken into account only to the extent that such amounts are paid or incurred for the purpose of protecting specified agricultural chemicals.

(e) Eligible agricultural business

For purposes of this section, the term "eligible agricultural business" means any person in the trade or business of—

(1) selling agricultural products, including specified agricultural chemicals, at retail predominantly to farmers and ranchers, or

(2) manufacturing, formulating, distributing, or aerially applying specified agricultural chemicals.

(f) Specified agricultural chemical

For purposes of this section, the term "specified agricultural chemical" means—

(1) any fertilizer commonly used in agricultural operations which is listed under—

(A) section 302(a)(2) of the Emergency Planning and Community Right-to-Know Act of 1986,

(B) section 101 of part 172 of title 49, Code of Federal Regulations, or

(C) part 126, 127, or 154 of title 33, Code of Federal Regulations, and

(2) any pesticide (as defined in section 2(u) of the Federal Insecticide, Fungicide, and Rodenticide Act), including all active and inert ingredients thereof, which is customarily used on crops grown for food, feed, or fiber.

(g) Controlled groups

Rules similar to the rules of paragraphs (1) and (2) of section 41(f) shall apply for purposes of this

section.

(h) Regulations

The Secretary may prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations which—

(1) provide for the proper treatment of amounts which are paid or incurred for purpose of protecting any specified agricultural chemical and for other purposes, and

(2) provide for the treatment of related properties as one facility for purposes of subsection (b).

(i) Termination

This section shall not apply to any amount paid or incurred after December 31, 2012.

(Added Pub. L. 110–234, title XV, §15343(a), May 22, 2008, 122 Stat. 1518, and Pub. L. 110–246, §4(a), title XV, §15343(a), June 18, 2008, 122 Stat. 1664, 2280.)

REFERENCES IN TEXT

Section 302(a)(2) of the Emergency Planning and Community Right-to-Know Act of 1986, referred to in subsec. (f)(1)(A), is classified to section 11002(a)(2) of Title 42, The Public Health and Welfare.

Section 2(u) of the Federal Insecticide, Fungicide, and Rodenticide Act, referred to in subsec. (f)(2), is classified to section 136(u) of Title 7, Agriculture.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 enacted identical sections. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246.

EFFECTIVE DATE

Enactment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.

Section applicable to amounts paid or incurred after June 18, 2008, see section 15343(e) of Pub. L. 110–246, set out as an Effective Date of 2008 Amendment note under section 38 of this title.

§45P. Employer wage credit for employees who are active duty members of the uniformed services

(a) General rule

For purposes of section 38, in the case of an eligible small business employer, the differential wage payment credit for any taxable year is an amount equal to 20 percent of the sum of the eligible differential wage payments for each of the qualified employees of the taxpayer during such taxable year.

(b) Definitions

For purposes of this section—

(1) Eligible differential wage payments

The term "eligible differential wage payments" means, with respect to each qualified employee, so much of the differential wage payments (as defined in section 3401(h)(2)) paid to such employee for the taxable year as does not exceed $20,000.

(2) Qualified employee

The term "qualified employee" means a person who has been an employee of the taxpayer for the 91-day period immediately preceding the period for which any differential wage payment is made.

(3) Eligible small business employer

(A) In general

The term "eligible small business employer" means, with respect to any taxable year, any

employer which—

(i) employed an average of less than 50 employees on business days during such taxable year, and

(ii) under a written plan of the employer, provides eligible differential wage payments to every qualified employee of the employer.

(B) Controlled groups

For purposes of subparagraph (A), all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as a single employer.

(c) Coordination with other credits

The amount of credit otherwise allowable under this chapter with respect to compensation paid to any employee shall be reduced by the credit determined under this section with respect to such employee.

(d) Disallowance for failure to comply with employment or reemployment rights of members of the reserve components of the Armed Forces of the United States

No credit shall be allowed under subsection (a) to a taxpayer for—

(1) any taxable year, beginning after the date of the enactment of this section, in which the taxpayer is under a final order, judgment, or other process issued or required by a district court of the United States under section 4323 of title 38 of the United States Code with respect to a violation of chapter 43 of such title, and

(2) the 2 succeeding taxable years.

(e) Certain rules to apply

For purposes of this section, rules similar to the rules of subsections (c), (d), and (e) of section 52 shall apply.

(f) Termination

This section shall not apply to any payments made after December 31, 2013.

(Added Pub. L. 110–245, title I, §111(a), June 17, 2008, 122 Stat. 1634; amended Pub. L. 111–312, title VII, §736(a), Dec. 17, 2010, 124 Stat. 3318; Pub. L. 112–240, title III, §308(a), Jan. 2, 2013, 126 Stat. 2329.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (d)(1), is the date of the enactment of Pub. L. 110–245, which was approved June 17, 2008.

AMENDMENTS

2013—Subsec. (f). Pub. L. 112–240 substituted "December 31, 2013" for "December 31, 2011".

2010—Subsec. (f). Pub. L. 111–312 substituted "December 31, 2011" for "December 31, 2009".

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title III, §308(b), Jan. 2, 2013, 126 Stat. 2329, provided that: "The amendment made by this section [amending this section] shall apply to payments made after December 31, 2011."

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §736(b), Dec. 17, 2010, 124 Stat. 3318, provided that: "The amendment made by this section [amending this section] shall apply to payments made after December 31, 2009."

EFFECTIVE DATE

Section applicable to amounts paid after June 17, 2008, see section 111(e) of Pub. L. 110–245, set out as an Effective Date of 2008 Amendment note under section 38 of this title.

§45Q. Credit for carbon dioxide sequestration

(a) General rule

For purposes of section 38, the carbon dioxide sequestration credit for any taxable year is an amount equal to the sum of—

(1) $20 per metric ton of qualified carbon dioxide which is—

(A) captured by the taxpayer at a qualified facility, and

(B) disposed of by the taxpayer in secure geological storage and not used by the taxpayer as described in paragraph (2)(B), and

(2) $10 per metric ton of qualified carbon dioxide which is—

(A) captured by the taxpayer at a qualified facility,

(B) used by the taxpayer as a tertiary injectant in a qualified enhanced oil or natural gas recovery project, and

(C) disposed of by the taxpayer in secure geological storage.

(b) Qualified carbon dioxide

For purposes of this section—

(1) In general

The term "qualified carbon dioxide" means carbon dioxide captured from an industrial source which—

(A) would otherwise be released into the atmosphere as industrial emission of greenhouse gas, and

(B) is measured at the source of capture and verified at the point of disposal or injection.

(2) Recycled carbon dioxide

The term "qualified carbon dioxide" includes the initial deposit of captured carbon dioxide used as a tertiary injectant. Such term does not include carbon dioxide that is re-captured, recycled, and re-injected as part of the enhanced oil and natural gas recovery process.

(c) Qualified facility

For purposes of this section, the term "qualified facility" means any industrial facility—

(1) which is owned by the taxpayer,

(2) at which carbon capture equipment is placed in service, and

(3) which captures not less than 500,000 metric tons of carbon dioxide during the taxable year.

(d) Special rules and other definitions

For purposes of this section—

(1) Only carbon dioxide captured and disposed of or used within the United States taken into account

The credit under this section shall apply only with respect to qualified carbon dioxide the capture and disposal or use of which is within—

(A) the United States (within the meaning of section 638(1)), or

(B) a possession of the United States (within the meaning of section 638(2)).

(2) Secure geological storage

The Secretary, in consultation with the Administrator of the Environmental Protection Agency [1] the Secretary of Energy, and the Secretary of the Interior,,[2] shall establish regulations for determining adequate security measures for the geological storage of carbon dioxide under paragraph (1)(B) or (2)(C) of subsection (a) such that the carbon dioxide does not escape into the atmosphere. Such term shall include storage at deep saline formations, oil and gas reservoirs, and unminable coal seams under such conditions as the Secretary may determine under such regulations.

(3) Tertiary injectant

The term "tertiary injectant" has the same meaning as when used within section 193(b)(1).

(4) Qualified enhanced oil or natural gas recovery project

The term "qualified enhanced oil or natural gas recovery project" has the meaning given the term "qualified enhanced oil recovery project" by section 43(c)(2), by substituting "crude oil or natural gas" for "crude oil" in subparagraph (A)(i) thereof.

(5) Credit attributable to taxpayer

Any credit under this section shall be attributable to the person that captures and physically or contractually ensures the disposal of or the use as a tertiary injectant of the qualified carbon dioxide, except to the extent provided in regulations prescribed by the Secretary.

(6) Recapture

The Secretary shall, by regulations, provide for recapturing the benefit of any credit allowable under subsection (a) with respect to any qualified carbon dioxide which ceases to be captured, disposed of, or used as a tertiary injectant in a manner consistent with the requirements of this section.

(7) Inflation adjustment

In the case of any taxable year beginning in a calendar year after 2009, there shall be substituted for each dollar amount contained in subsection (a) an amount equal to the product of—

(A) such dollar amount, multiplied by

(B) the inflation adjustment factor for such calendar year determined under section 43(b)(3)(B) for such calendar year, determined by substituting "2008" for "1990".

(e) Application of section

The credit under this section shall apply with respect to qualified carbon dioxide before the end of the calendar year in which the Secretary, in consultation with the Administrator of the Environmental Protection Agency, certifies that 75,000,000 metric tons of qualified carbon dioxide have been taken into account in accordance with subsection (a).

(Added Pub. L. 110–343, div. B, title I, §115(a), Oct. 3, 2008, 122 Stat. 3829; amended Pub. L. 111–5, div. B, title I, §1131(a), (b), Feb. 17, 2009, 123 Stat. 325.)

INFLATION ADJUSTED ITEMS FOR CERTAIN TAX YEARS

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

AMENDMENTS

2009—Subsec. (a)(1)(B). Pub. L. 111–5, §1131(b)(2), inserted "and not used by the taxpayer as described in paragraph (2)(B)" after "storage".

Subsec. (a)(2)(C). Pub. L. 111–5, §1131(a), added subpar. (C).

Subsec. (d)(2). Pub. L. 111–5, §1131(b)(1), inserted "the Secretary of Energy, and the Secretary of the Interior," after "Environmental Protection Agency" and substituted "paragraph (1)(B) or (2)(C) of subsection (a)" for "subsection (a)(1)(B)" and ", oil and gas reservoirs, and unminable coal seams" for "and unminable coal seems".

Subsec. (e). Pub. L. 111–5, §1131(b)(3), substituted "taken into account in accordance with subsection (a)" for "captured and disposed of or used as a tertiary injectant".

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, §1131(c), Feb. 17, 2009, 123 Stat. 325, provided that: "The amendments made by this section [amending this section] shall apply to carbon dioxide captured after the date of the enactment of this Act [Feb. 17, 2009]."

EFFECTIVE DATE

Section applicable to carbon dioxide captured after Oct. 3, 2008, see section 115(d) of Pub. L. 110–343, set out as an Effective Date of 2008 Amendment note under section 38 of this title.

INFLATION ADJUSTED ITEMS FOR CERTAIN TAX YEARS

Provisions relating to inflation adjustment of items in this section for certain tax years were contained in the following:

2013—Internal Revenue Notice 2013–34.

2012—Internal Revenue Notice 2012—42.
2011—Internal Revenue Notice 2011–50.
2010—Internal Revenue Notice 2010–75.

[1] *So in original. A comma probably should appear.*

[2] *So in original.*

§45R. Employee health insurance expenses of small employers

(a) General rule

For purposes of section 38, in the case of an eligible small employer, the small employer health insurance credit determined under this section for any taxable year in the credit period is the amount determined under subsection (b).

(b) Health insurance credit amount

Subject to subsection (c), the amount determined under this subsection with respect to any eligible small employer is equal to 50 percent (35 percent in the case of a tax-exempt eligible small employer) of the lesser of—

(1) the aggregate amount of nonelective contributions the employer made on behalf of its employees during the taxable year under the arrangement described in subsection (d)(4) for premiums for qualified health plans offered by the employer to its employees through an Exchange, or

(2) the aggregate amount of nonelective contributions which the employer would have made during the taxable year under the arrangement if each employee taken into account under paragraph (1) had enrolled in a qualified health plan which had a premium equal to the average premium (as determined by the Secretary of Health and Human Services) for the small group market in the rating area in which the employee enrolls for coverage.

(c) Phaseout of credit amount based on number of employees and average wages

The amount of the credit determined under subsection (b) without regard to this subsection shall be reduced (but not below zero) by the sum of the following amounts:

(1) Such amount multiplied by a fraction the numerator of which is the total number of full-time equivalent employees of the employer in excess of 10 and the denominator of which is 15.

(2) Such amount multiplied by a fraction the numerator of which is the average annual wages of the employer in excess of the dollar amount in effect under subsection (d)(3)(B) and the denominator of which is such dollar amount.

(d) Eligible small employer

For purposes of this section—

(1) In general

The term "eligible small employer" means, with respect to any taxable year, an employer—

(A) which has no more than 25 full-time equivalent employees for the taxable year,

(B) the average annual wages of which do not exceed an amount equal to twice the dollar amount in effect under paragraph (3)(B) for the taxable year, and

(C) which has in effect an arrangement described in paragraph (4).

(2) Full-time equivalent employees

(A) In general

The term "full-time equivalent employees" means a number of employees equal to the number determined by dividing—

(i) the total number of hours of service for which wages were paid by the employer to employees during the taxable year, by

(ii) 2,080.

Such number shall be rounded to the next lowest whole number if not otherwise a whole number.

(B) Excess hours not counted

If an employee works in excess of 2,080 hours of service during any taxable year, such excess shall not be taken into account under subparagraph (A).

(C) Hours of service

The Secretary, in consultation with the Secretary of Labor, shall prescribe such regulations, rules, and guidance as may be necessary to determine the hours of service of an employee, including rules for the application of this paragraph to employees who are not compensated on an hourly basis.

(3) Average annual wages

(A) In general

The average annual wages of an eligible small employer for any taxable year is the amount determined by dividing—

(i) the aggregate amount of wages which were paid by the employer to employees during the taxable year, by

(ii) the number of full-time equivalent employees of the employee determined under paragraph (2) for the taxable year.

Such amount shall be rounded to the next lowest multiple of $1,000 if not otherwise such a multiple.

(B) Dollar amount

For purposes of paragraph (1)(B) and subsection (c)(2)—

(i) 2010, 2011, 2012, and 2013

The dollar amount in effect under this paragraph for taxable years beginning in 2010, 2011, 2012, or 2013 is $25,000.

(ii) Subsequent years

In the case of a taxable year beginning in a calendar year after 2013, the dollar amount in effect under this paragraph shall be equal to $25,000, multiplied by the cost-of-living adjustment under section 1(f)(3) for the calendar year, determined by substituting "calendar year 2012" for "calendar year 1992" in subparagraph (B) thereof.

(4) Contribution arrangement

An arrangement is described in this paragraph if it requires an eligible small employer to make a nonelective contribution on behalf of each employee who enrolls in a qualified health plan offered to employees by the employer through an exchange in an amount equal to a uniform percentage (not less than 50 percent) of the premium cost of the qualified health plan.

(5) Seasonal worker hours and wages not counted

For purposes of this subsection—

(A) In general

The number of hours of service worked by, and wages paid to, a seasonal worker of an employer shall not be taken into account in determining the full-time equivalent employees and average annual wages of the employer unless the worker works for the employer on more than 120 days during the taxable year.

(B) Definition of seasonal worker

The term "seasonal worker" means a worker who performs labor or services on a seasonal

basis as defined by the Secretary of Labor, including workers covered by section 500.20(s)(1) of title 29, Code of Federal Regulations and retail workers employed exclusively during holiday seasons.

(e) Other rules and definitions

For purposes of this section—

(1) Employee

(A) Certain employees excluded

The term "employee" shall not include—

(i) an employee within the meaning of section 401(c)(1),

(ii) any 2-percent shareholder (as defined in section 1372(b)) of an eligible small business which is an S corporation,

(iii) any 5-percent owner (as defined in section 416(i)(1)(B)(i)) of an eligible small business, or

(iv) any individual who bears any of the relationships described in subparagraphs (A) through (G) of section 152(d)(2) to, or is a dependent described in section 152(d)(2)(H) of, an individual described in clause (i), (ii), or (iii).

(B) Leased employees

The term "employee" shall include a leased employee within the meaning of section 414(n).

(2) Credit period

The term "credit period" means, with respect to any eligible small employer, the 2-consecutive-taxable year period beginning with the 1st taxable year in which the employer (or any predecessor) offers 1 or more qualified health plans to its employees through an Exchange.

(3) Nonelective contribution

The term "nonelective contribution" means an employer contribution other than an employer contribution pursuant to a salary reduction arrangement.

(4) Wages

The term "wages" has the meaning given such term by section 3121(a) (determined without regard to any dollar limitation contained in such section).

(5) Aggregation and other rules made applicable

(A) Aggregation rules

All employers treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as a single employer for purposes of this section.

(B) Other rules

Rules similar to the rules of subsections (c), (d), and (e) of section 52 shall apply.

(f) Credit made available to tax-exempt eligible small employers

(1) In general

In the case of a tax-exempt eligible small employer, there shall be treated as a credit allowable under subpart C (and not allowable under this subpart) the lesser of—

(A) the amount of the credit determined under this section with respect to such employer, or

(B) the amount of the payroll taxes of the employer during the calendar year in which the taxable year begins.

(2) Tax-exempt eligible small employer

For purposes of this section, the term "tax-exempt eligible small employer" means an eligible small employer which is any organization described in section 501(c) which is exempt from taxation under section 501(a).

(3) Payroll taxes

For purposes of this subsection—

(A) In general

The term "payroll taxes" means—

(i) amounts required to be withheld from the employees of the tax-exempt eligible small employer under section 3401(a),

(ii) amounts required to be withheld from such employees under section 3101(b), and

(iii) amounts of the taxes imposed on the tax-exempt eligible small employer under section 3111(b).

(B) Special rule

A rule similar to the rule of section 24(d)(2)(C) shall apply for purposes of subparagraph (A).

(g) Application of section for calendar years 2010, 2011, 2012, and 2013

In the case of any taxable year beginning in 2010, 2011, 2012, or 2013, the following modifications to this section shall apply in determining the amount of the credit under subsection (a):

(1) No credit period required

The credit shall be determined without regard to whether the taxable year is in a credit period and for purposes of applying this section to taxable years beginning after 2013, no credit period shall be treated as beginning with a taxable year beginning before 2014.

(2) Amount of credit

The amount of the credit determined under subsection (b) shall be determined—

(A) by substituting "35 percent (25 percent in the case of a tax-exempt eligible small employer)" for "50 percent (35 percent in the case of a tax-exempt eligible small employer)",

(B) by reference to an eligible small employer's nonelective contributions for premiums paid for health insurance coverage (within the meaning of section 9832(b)(1)) of an employee, and

(C) by substituting for the average premium determined under subsection (b)(2) the amount the Secretary of Health and Human Services determines is the average premium for the small group market in the State in which the employer is offering health insurance coverage (or for such area within the State as is specified by the Secretary).

(3) Contribution arrangement

An arrangement shall not fail to meet the requirements of subsection (d)(4) solely because it provides for the offering of insurance outside of an Exchange.

(h) Insurance definitions

Any term used in this section which is also used in the Public Health Service Act or subtitle A of title I of the Patient Protection and Affordable Care Act shall have the meaning given such term by such Act or subtitle.

(i) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section, including regulations to prevent the avoidance of the 2-year limit on the credit period through the use of successor entities and the avoidance of the limitations under subsection (c) through the use of multiple entities.

(Added and amended Pub. L. 111–148, title I, §1421(a), title X, §10105(e)(1), (2), Mar. 23, 2010, 124 Stat. 237, 906.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

REFERENCES IN TEXT

The Public Health Service Act, referred to in subsec. (h), is act July 1, 1944, ch. 373, 58 Stat. 682, which is classified generally to chapter 6A (§ 201 et seq.) of Title 42, The Public Health and Welfare. For complete

classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

The Patient Protection and Affordable Care Act, referred to in subsec. (h), is Pub. L. 111–148, Mar. 23, 2010, 124 Stat. 119. Subtitle A (§§1001 to 1004) of title I of the Act enacted sections 300gg–11 to 300gg–19, 300gg–93, and 300gg–94 of Title 42, The Public Health and Welfare, redesignated sections 300gg–4 to 300gg–7 of Title 42 as sections 300gg–25 to 300gg–28, respectively, of Title 42, and section 300gg–13 of Title 42 as section 300gg–9 of Title 42, amended former sections 300gg–11 and 300gg–12 and sections 300gg–21 to 300gg–23 of Title 42, and enacted provisions set out as a note under section 300gg–11 of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 18001 of Title 42 and Tables.

AMENDMENTS

2010—Subsec. (d)(3)(B). Pub. L. 111–148, §10105(e)(1), amended subpar. (B) generally, including dollar amount for taxable years beginning in 2010 in addition to dollar amounts for taxable years beginning in 2011, 2012, and 2013, and subsequent years.

Subsec. (g). Pub. L. 111–148, §10105(e)(2), substituted "2010, 2011" for "2011" in heading and in introductory provisions.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–148, title X, §10105(e)(5), Mar. 23, 2010, 124 Stat. 907, provided that: "The amendments made by this subsection [amending this section, section 280C of this title, and provisions set out as a note under section 38 of this title] shall take effect as if included in the enactment of section 1421 of this Act."

EFFECTIVE DATE

Section applicable to amounts paid or incurred in taxable years beginning after Dec. 31, 2009, see section 1421(f)(1) of Pub. L. 111–148, set out as an Effective Date of 2010 Amendment note under section 38 of this title.

SUBPART E—RULES FOR COMPUTING INVESTMENT CREDIT

Sec.

46. Amount of credit.
47. Rehabilitation credit.
48. Energy credit.
48A. Qualifying advanced coal project credit.
48B. Qualifying gasification project credit.
48C. Qualifying advanced energy project credit.
48D. Qualifying therapeutic discovery project credit.
49. At-risk rules.
50. Other special rules.
[50A, 50B. Repealed.]

AMENDMENTS

2010—Pub. L. 111–148, title IX, §9023(d), Mar. 23, 2010, 124 Stat. 881, added item 48D.

2009—Pub. L. 111–5, div. B, title I, §1302(c)(2), Feb. 17, 2009, 123 Stat. 348, added item 48C.

2005—Pub. L. 109–58, title XIII, §1307(c)(2), Aug. 8, 2005, 119 Stat. 1006, added items 48A and 48B.

2004—Pub. L. 108–357, title III, §322(d)(2)(C), Oct. 22, 2004, 118 Stat. 1475, which directed amendment of item 48 by striking out ", reforestation credit", was executed by striking out "; reforestation credit" after "Energy credit" to reflect the probable intent of Congress.

1990—Pub. L. 101–508, title XI, §11813(a), Nov. 5, 1990, 104 Stat. 1388–536, amended heading and analysis generally, substituting in heading "Investment Credit" for "Credit for Investment in Certain Depreciable Property", in item 47 "Rehabilitation Credit" for "Certain dispositions, etc., of section 38 property", in item 48 "Energy credit; reforestation credit" for "Definitions; special rules", in item 49 "At-risk rules" for "Termination of regular percentage", and adding item 50.

1986—Pub. L. 99–514, title II, §211(c), Oct. 22, 1986, 100 Stat. 2168, added item 49.

1984—Pub. L. 98–369, div. A, title IV, §474(n)(1), July 18, 1984, 98 Stat. 833, substituted "E" for "B" as subpart designation.

1978—Pub. L. 95–600, title III, §312(c)(5), Nov. 6, 1978, 92 Stat. 2826, struck out item 49 "Termination

for period beginning April 19, 1969, and ending during 1971" and item 50 "Restoration of credit".

1971—Pub. L. 92–178, title I, §101(b)(5), Dec. 10, 1971, 85 Stat. 499, substituted "Termination for period beginning April 19, 1969, and ending during 1971" for "Termination of credit" in item 49 and added item 50.

1969—Pub. L. 91–172, title VII, §703(d), Dec. 30, 1969, 83 Stat. 667, added item 49.

1962—Pub. L. 87–834, §2(b), Oct. 16, 1962, 76 Stat. 963, added subpart B.

§46. Amount of credit

For purposes of section 38, the amount of the investment credit determined under this section for any taxable year shall be the sum of—

(1) the rehabilitation credit,

(2) the energy credit,

(3) the qualifying advanced coal project credit,

(4) the qualifying gasification project credit [1]

(5) the qualifying advanced energy project credit, and

(6) the qualifying therapeutic discovery project credit.

(Added Pub. L. 87–834, §2(b), Oct. 16, 1962, 76 Stat. 963; amended Pub. L. 88–272, title II, §201(d)(4), Feb. 26, 1964, 78 Stat. 32; Pub. L. 89–384, §1(c)(1), Apr. 8, 1966, 80 Stat. 102; Pub. L. 89–389, §2(b)(5), Apr. 14, 1966, 80 Stat. 114; Pub. L. 89–800, §3, Nov. 8, 1966, 80 Stat. 1514; Pub. L. 90–225, §2(a), Dec. 27, 1967, 81 Stat. 731; Pub. L. 91–172, title III, §301(b)(4), title IV, §401(e)(1), title VII, §703(b), Dec. 30, 1969, 83 Stat. 585, 603, 666; Pub. L. 92–178, title I, §§102(a)(1), (b), 105(a)–(c), 106(a)–(c), 107(a)(1), 108(a), Dec. 10, 1971, 85 Stat. 499, 503, 506, 507; Pub. L. 93–406, title II, §§2001(g)(2)(B), 2002(g)(2), 2005(c)(4), Sept. 2, 1974, 88 Stat. 957, 968, 991; Pub. L. 94–12, title III, §301(a), (b)(1)–(3), 302(a), (b)(1), Mar. 29, 1975, 89 Stat. 36, 37, 40, 43; Pub. L. 94–455, title V, §503(b)(4), title VIII, §§802(a), (b)(1)–(5), 803(a), (b)(1), 805(a), title XVI, §1607(b)(1)(B), title XVII, §§1701(b), 1703, title XIX, §§1901(a)(4), (b)(1)(C), 1906(b)(13)(A), title XXI, §2112(a)(2), Oct. 4, 1976, 90 Stat. 1562, 1580–1583, 1596, 1756, 1759, 1761, 1764, 1790, 1834, 1905; Pub. L. 95–600, title I, §141(e), (f)(2), title III, §§311(a), (c), 312(a), (b), (c)(2), 313(a), 316(a), (b)(1), (2), title VII, §703(a)(1), (2), (j)(9), Nov. 6, 1978, 92 Stat. 2794, 2795, 2824–2826, 2829, 2939, 2941; Pub. L. 95–618, title II, §241(a), title III, §301(a), (c)(1), Nov. 9, 1978, 92 Stat. 3192, 3194, 3199; Pub. L. 96–222, title I, §§101(a)(7)(A), (L)(iii)(I), (v)(I), (M)(i), 103(a)(2)(A), (B)(i)–(iii), (3), (4)(A), 107(a)(3)(A), Apr. 1, 1980, 94 Stat. 197, 200, 201, 208, 209, 223; Pub. L. 96–223, title II, §§221(a), 222(e)(2), 223(b)(1), Apr. 2, 1980, 94 Stat. 260, 263, 266; Pub. L. 97–34, title II, §§207(c)(1), 211(a)(1), (b), (d), (e)(1), (2), (f)(1), 212(a)(1), (2), title III, §§302(c)(3), (d)(1), 332(a), Aug. 13, 1981, 95 Stat. 225, 227–229, 235, 236, 272, 274, 296; Pub. L. 97–248, title II, §201(d)(8)(A), formerly §201(c)(8)(A), §§205(b), 265(b)(2)(A)(i), Sept. 3, 1982, 96 Stat. 420, 430, 547, renumbered §201(d)(8)(A), Pub. L. 97–448, title III, §306(a)(1)(A)(i), Jan. 12, 1983, 96 Stat. 2400; Pub. L. 97–354, §5(a)(4)–(6), Oct. 19, 1982, 96 Stat. 1692; Pub. L. 97–424, title V, §§541(b), 546(b), Jan. 6, 1983, 96 Stat. 2192, 2199; Pub. L. 97–448, title I, §102(e)(1), (f)(5), title II, §202(f), Jan. 12, 1983, 96 Stat. 2370, 2372, 2396; Pub. L. 98–21, title I, §122(c)(1), Apr. 20, 1983, 97 Stat. 87; Pub. L. 98–369, div. A, title I, §§16(a), 31(f), 113(b)(2)(B), title IV, §§431(a), (b)(1), (d)(1)–(3), 474(o)(1)–(7), title VII, §713(c)(1)(C), July 18, 1984, 98 Stat. 505, 521, 637, 805, 807, 810, 834–836, 957; Pub. L. 99–514, title II, §§201(d)(7)(B), 251(a), title IV, §421(a), (b), title XVIII, §§1802(a)(6), (8), 1844(a), (b)(3), (5), 1847(b)(11), 1848(a), Oct. 22, 1986, 100 Stat. 2141, 2183, 2229, 2789, 2855, 2857; Pub. L. 100–647, title I, §§1002(a)(4), (15), (17), (25), 1009(a)(1), 1013(a)(44), title IV, §4006, Nov. 10, 1988, 102 Stat. 3353, 3355, 3356, 3445, 3545, 3652; Pub. L. 101–239, title VII, §§7106, 7814(d), Dec. 19, 1989, 103 Stat. 2306, 2413; Pub. L. 101–508, title XI, §§11406, 11813(a), Nov. 5, 1990, 104 Stat. 1388–474, 1388–536; Pub. L. 108–357, title III, §322(d)(1), Oct. 22, 2004, 118 Stat. 1475; Pub. L. 109–58, title XIII, §1307(a), Aug. 8, 2005, 119 Stat. 999; Pub. L. 111–5, div. B, title I, §1302(a), Feb. 17, 2009, 123 Stat. 345; Pub. L. 111–148, title IX, §9023(b), Mar. 23, 2010, 124 Stat. 880.)

AMENDMENTS

2010—Par. (2). Pub. L. 111–148, §9023(b)(1), inserted a comma at end.

Par. (6). Pub. L. 111–148, §9023(b)(2), (3), added par. (6).

2009—Par. (5). Pub. L. 111–5 added par. (5).

2005—Pub. L. 109–58 struck out "and" at end of par. (1), struck out period at end of par. (2), and added pars. (3) and (4).

2004—Pub. L. 108–357 inserted "and" at end of par. (1), substituted a period for ", and" at end of par. (2), and struck out par. (3) which read as follows: "the reforestation credit."

1990—Pub. L. 101–508, §11813(a), amended section generally, substituting present provisions for provisions relating to amount of investment credit, determination of percentages, qualified investments and qualified progress expenditures, limitations with respect to certain persons, a limitation in the case of certain regulated companies, a 50 percent credit in the case of certain vessels, and special rule for cooperatives.

Subsec. (b)(2)(A). Pub. L. 101–508, §11406, substituted "Dec. 31, 1991" for "Sept. 30, 1990" in table items (viii) C. and (ix) B.

1989—Subsec. (b)(2)(A). Pub. L. 101–239, §7106, substituted "Sept. 30, 1990" for "Dec. 31, 1989" in table items (viii) C., (ix) B., and (x).

Pub. L. 101–239, §7814(d), made technical correction to language of Pub. L. 100–647, §4006, see 1988 Amendment note below.

1988—Subsec. (b)(2)(A). Pub. L. 100–647, §4006, as amended by Pub. L. 101–239, §7814(d), substituted "1989" for "1988" in table items (viii) C., (ix) B., and (x).

Subsec. (c)(5)(B). Pub. L. 100–647, §1013(a)(44), substituted "private activity bonds" for "industrial development bonds" in heading, and in text substituted "a private activity bond (within the meaning of section 141)" for "an industrial development bond (within the meaning of section 103(b)(2))".

Subsec. (c)(7). Pub. L. 100–647, §1002(a)(17), substituted "property to which section 168 applies" for "recovery property" in heading, substituted "property to which section 168 applies" for "recovery property" and "168(e)" for "168(c)" in subpar. (A), substituted "168(e)" for "168(c)" in subpar. (B), and inserted "(as in effect on the day before the date of the enactment of the Tax Reform Act of 1986)" after "section 168(f)(3)(B)" in concluding provisions.

Subsec. (d)(1)(B)(i). Pub. L. 100–647, §1002(a)(25)(A), substituted "property to which section 168 applies" for "recovery property (within the meaning of section 168)".

Subsec. (d)(1)(B)(ii). Pub. L. 100–647, §1002(a)(25)(B), substituted "to which section 168 does not apply" for "which is not recovery property (within the meaning of section 168)".

Subsec. (e)(3). Pub. L. 100–647, §1002(a)(15), substituted "property to which section 168 applies" for "recovery property (within the meaning of section 168)", "class life" for "present class life", and "168(i)(1)" for "168(g)(2)".

Subsec. (e)(4)(B). Pub. L. 100–647, §1002(a)(4)(A), substituted "168(i)(3)" for "168(j)(6)".

Subsec. (e)(4)(C). Pub. L. 100–647, §1009(a)(1), inserted provisions at end which provided that any such election shall terminate effective with respect to the 1st taxable year of the organization making such election which begins after 1986, and which defined "regular investment tax credit property".

Subsec. (e)(4)(D). Pub. L. 100–647, §1002(a)(4)(B), substituted "paragraphs (5) and (6) of section 168(h)" for "paragraphs (8) and (9) of section 168(j)".

Subsec. (e)(4)(E). Pub. L. 100–647, §1002(a)(4)(C), (D), substituted "168(h)" for "168(j)" and "168(h)(2)" for "168(j)(4)".

1986—Subsec. (b)(2)(A). Pub. L. 99–514, §1847(b)(11), substituted "48(l)(3)(A)(viii)" for "48(l)(3)(A)(vii)" in table item (ii).

Pub. L. 99–514, §421(a), inserted table items (viii) to (xi).

Subsec. (b)(2)(E). Pub. L. 99–514, §421(b), added subpar. (E).

Subsec. (b)(4). Pub. L. 99–514, §251(a), in amending par. (4) generally, substituted in subpar. (A) definition of "rehabilitation percentage" for former table specifying specific rehabilitation percentages, reenacted subpar. (B), and struck out subpar. (C) which related to definitions.

Subsec. (c)(8)(D)(v). Pub. L. 99–514, §1844(a), substituted "this subparagraph" for "clause (i)".

Pub. L. 99–514, §201(d)(7)(B), substituted "section 465(b)(3)(C)" for "section 168(e)(4)".

Subsec. (c)(9)(A). Pub. L. 99–514, §1844(b)(3), substituted "an increase in the credit base for" for "additional qualified investment in".

Subsec. (c)(9)(C)(i). Pub. L. 99–514, §1844(b)(5), substituted "any increase in a taxpayer's credit base for any property by reason of this paragraph shall be taken into account as if it were property placed in service by the taxpayer in the taxable year in which the property referred to in subparagraph (A) was first placed in

service" for "any increase in a taxpayer's qualified investment in property by reason of this paragraph shall be deemed to be additional qualified investment made by the taxpayer in the year in which the property referred to in subparagraph (A) was first placed in service".

Subsec. (e)(4)(D), (E). Pub. L. 99–514, §1802(a)(6), (8), added subpars. (D) and (E).

Subsec. (f)(9). Pub. L. 99–514, §1848(a), struck out par. (9) which related to a special rule for additional credit.

1984—Subsec. (a). Pub. L. 98–369, §474(o)(1), amended subsec. (a) generally, so as to contain provisions relating to amount of investment credit, which formerly constituted only par. (2)(A)(i), (ii), and (iv) of subsec. (a).

Subsec. (a)(4). Pub. L. 98–369, §713(c)(1)(C), substituted "premature distributions to key employees" for "premature distributions to owner-employees".

Subsec. (b). Pub. L. 98–369, §474(o)(1), amended subsec. (b) generally, substituting provisions relating to determination of percentages for purposes of subsec. (a), for provisions relating to carryback and carryover of unused credits.

Subsec. (c)(7)(A). Pub. L. 98–369, §13(b)(2)(B), inserted "recovery" before first reference to "property".

Subsec. (c)(8). Pub. L. 98–369, §431(a), substituted "Certain nonrecourse financing excluded from credit base" for "Limitation to amount at risk" in heading.

Subsec. (c)(8)(A). Pub. L. 98–369, §431(a), substituted provisions reducing the credit base of any property to which this paragraph applies by the nonqualified nonrecourse financing with respect to such property for provisions relating to limitation of the basis to the amount at risk in the case of new or used section 38 property placed in service during the taxable year by a taxpayer described in section 465(a)(1) and used in connection with an activity with respect to which any loss was subject to limitation under section 465.

Subsec. (c)(8)(B). Pub. L. 98–369, §431(a), substituted provisions relating to the property to which this paragraph applies for provisions defining "at risk" and stating the circumstances under which a taxpayer would be considered to be at risk for purposes of this paragraph.

Subsec. (c)(8)(C). Pub. L. 98–369, §431(a), substituted provisions defining "credit base" for provisions relating to a special rule for partnerships and subchapter S corporations.

Subsec. (c)(8)(D). Pub. L. 98–369, §431(a), substituted provisions defining "nonqualified nonrecourse financing" for provisions defining "qualified person".

Subsec. (c)(8)(D)(i)(I). Pub. L. 98–369, §16(a), repealed amendments made by Pub. L. 97–34, §302(c). See 1981 Amendment note below.

Subsec. (c)(8)(E). Pub. L. 98–369, §431(a), substituted provisions relating to the application of this paragraph to partnerships and subchapter S corporations for provisions defining "related person".

Subsec. (c)(8)(F)(i). Pub. L. 98–369, §431(d)(1), substituted provisions that subpar. (A) shall not apply with respect to qualified energy property for provisions that subpar. (A) would not apply to amounts borrowed with respect to qualified energy property (other than amounts described in subpar. (B)).

Subsec. (c)(8)(F)(ii)(II). Pub. L. 98–369, §474(o)(2), substituted "subsection (b)(2)" for "section 46(a)(2)(C)".

Subsec. (c)(8)(F)(ii)(III). Pub. L. 98–369, §431(d)(2), substituted provisions that qualified energy property means energy property to which (but for this subpar.) subpar. (A) applies and not more than 75 percent of the basis of which is attributable to nonqualified nonrecourse financing for provisions that qualified energy property meant energy property to which (but for this subpar.) subpar. (A) applied and with respect to which the taxpayer was at risk (within the meaning of section 465(b) without regard to par. (5) thereof) in an amount equal to at least 25 percent of the basis of the property.

Subsec. (c)(8)(F)(ii)(IV). Pub. L. 98–369, §431(d)(3), substituted "nonqualified nonrecourse financing" for "nonrecourse financing (other than financing described in section 46(c)(8)(B)(ii))".

Subsec. (c)(9). Pub. L. 98–369, §431(b)(1), substituted provisions relating to subsequent decreases in nonqualified nonrecourse financing with respect to the property for provisions relating to subsequent increases in the taxpayer's amount at risk with respect to the property.

Subsec. (e)(1). Pub. L. 98–369, §474(o)(3)(A), struck out "and the $25,000 amount specified under subparagraphs (A) and (B) of subsection (a)(3)", and substituted "such qualified investment" for "such items", in provisions following subpar. (B).

Subsec. (e)(2). Pub. L. 98–369, §474(o)(3)(B), substituted "qualified investment" for "the items described therein" in introductory provisions.

Subsec. (e)(4). Pub. L. 98–369, §31(b), added par. (4).

Subsec. (f)(1). Pub. L. 98–369, §474(o)(4)(A), substituted "no credit determined under subsection (a) shall be allowed by section 38" for "no credit shall be allowed by section 38" in introductory provisions.

Subsec. (f)(1)(A), (B). Pub. L. 98–369, §474(o)(4)(B), substituted "the credit determined under subsection

(a) and allowable by section 38" for "the credit allowable by section 38".

Subsec. (f)(2). Pub. L. 98–369, §474(o)(4)(A), substituted "no credit determined under subsection (a) shall be allowed by section 38" for "no credit shall be allowed by section 38" in introductory provisions.

Subsec. (f)(2)(A), (B). Pub. L. 98–369, §474(o)(4)(B), substituted "the credit determined under subsection (a) and allowable by section 38" for "the credit allowable by section 38".

Subsec. (f)(4)(B). Pub. L. 98–369, §474(o)(4)(C), substituted "the credit determined under subsection (a) and allowed by section 38" for "the credit allowed by section 38" in introductory provisions.

Subsec. (f)(8). Pub. L. 98–369, §474(o)(5), substituted "the credit determined under subsection (a) and allowable under section 38" for "the credit allowable under section 38" in two places, and "(within the meaning of the first sentence of subsection (c)(3)(B))" for "(within the meaning of subsection (a)(7)(C))".

Subsec. (g)(2). Pub. L. 98–369, §474(o)(6), substituted "the limitation of section 38(c)" for "the limitation of subsection (a)(3)".

Subsec. (h)(1). Pub. L. 98–369, §474(o)(7), substituted "the credit determined under subsection (a) and allowable to the organization under section 38" for "the credit allowable to the organization under section 38" and "the limitation contained in section 38(c)" for "the limitation contained in subsection (a)(3)".

1983—Subsec. (a)(2)(C)(i). Pub. L. 97–424, §546(b), added section VII to the table.

Subsec. (a)(2)(C)(iii)(I). Pub. L. 97–448, §202(f), substituted "before January 1, 1983, all engineering studies in connection with the commencement of the construction of the project have been completed and all environmental and construction permits required under Federal, State, or local law in connection with the commencement of the construction of the project have been applied for, and" for "before January 1, 1983, the taxpayer has completed all engineering studies in connection with the commencement of the construction of the project, and has applied for all environmental and construction permits required under Federal, State, or local law in connection with the commencement of the construction of the project, and".

Subsec. (a)(2)(F)(iii)(II). Pub. L. 97–448, §102(f)(5)(A), substituted "a qualified rehabilitated building" for "any building".

Subsec. (a)(2)(F)(iii)(III). Pub. L. 97–448, §102(f)(5)(B), substituted "means a qualified rehabilitated building which meets the requirements of section 48(g)(3)" for "has the meaning given to such term by section 48(g)(3)".

Subsec. (a)(4)(B). Pub. L. 98–21 substituted "relating to credit for the elderly and the permanently and totally disabled" for "relating to credit for the elderly".

Subsec. (c)(7). Pub. L. 97–448, §102(e)(1), substituted "in the case of property other than 3-year property (within the meaning of section 168(c))" for "in the case of 15-year public utility, 10-year, or 5-year property (within the meaning of section 168(c))" in subpar. (A) and, in provisions following subpar. (B), substituted "shall be treated as property which is not 3-year property" for "shall be treated as 5-year property".

Subsec. (f)(10). Pub. L. 97–424, §541(b), added par. (10).

1982—Subsec. (a)(3)(B). Pub. L. 97–248, §205(b)(1), substituted "85 percent" for "the following percentage", substituted a period for the colon, and struck out table of percentages at end of subpar. (B).

Subsec. (a)(4). Pub. L. 97–354, §5(a)(4), substituted "section 1374 (relating to tax on certain capital gains of S corporations)" for "section 1378 (relating to tax on certain capital gains of subchapter S corporations)".

Pub. L. 97–248, §§201(d)(8)(A), formerly 201(c)(8)(A), 265(b)(2)(A), substituted "(relating to corporate minimum tax)" for "(relating to minimum tax for tax preferences)" after "section 56", and inserted "section 72(q)(1) (relating to 5-percent tax on premature distributions under annuity contracts)," after "owner-employees)".

Subsec. (a)(7). Pub. L. 97–248, §205(b)(2), redesignated par. (9) as (7), and, in par. (7)(B), as so redesignated, substituted reference to 85 percent for former reference to the percentage determined under subsec. (a)(3)(B) in cl. (i), struck out former cl. (ii), which provided that pars. (7) and (8) would not apply in certain instances, and redesignated former cl. (iii) as (ii). Former par. (7), which provided for alternative limitations in the case of certain utilities, was struck out.

Subsec. (a)(8). Pub. L. 97–248, §205(b)(2)(A), struck out par. (8) which provided for alternative limitations in the case of certain railroads and airlines.

Subsec. (a)(9). Pub. L. 97–248, §205(b)(2)(A), redesignated par. (9) as (7).

Subsec. (c)(8)(C). Pub. L. 97–354, §5(a)(5), substituted "S corporation" for "electing small business corporation (within the meaning of section 1371(b))".

Subsec. (e)(3). Pub. L. 97–354, §5(a)(6), substituted "an S corporation" for "an electing small business corporation (as defined in section 1371)".

1981—Subsec. (a)(2)(A)(iv). Pub. L. 97–34, §212(a)(1), added cl. (iv).

Subsec. (a)(2)(E). Pub. L. 97–34, §332(a), substituted "December 31, 1982" for "December 31, 1983" in cls. (i) and (ii) and added cl. (iii).

Subsec. (a)(2)(F). Pub. L. 97–34, §212(a)(2), added subpar. (F).

Subsec. (b)(1). Pub. L. 97–34, §207(c)(1), inserted provision after subpar. (D) directing that, in the case of an unused credit for an unused credit year ending after Dec. 31, 1973, this paragraph be applied by substituting "15" for "7" in subpar. (B) and by substituting "18" for "10" and "17" for "9" in second sentence.

Subsec. (c)(2). Pub. L. 97–34, §211(e)(1), inserted references in provisions preceding table to exceptions provided in paragraphs (3), (6), and (7).

Subsec. (c)(6)(A). Pub. L. 97–34, §211(e)(2), substituted "Notwithstanding paragraph (2) or (3)" for "Notwithstanding paragraph (2)" and inserted "or which is recovery property (within the meaning of section 168)," after "3 years or more,".

Subsec. (c)(7). Pub. L. 97–34, §211(a)(1), added par. (7).

Subsec. (c)(8). Pub. L. 97–34, §211(f)(1), added par. (8).

Subsec. (c)(8)(D)(i)(I). Pub. L. 97–34, §302(c)(3), (d)(1), provided that, applicable to taxable years beginning after Dec. 31, 1984, subsection (c)(8)(D)(i)(I) of this section (relating to limitation to amount at risk) is amended by striking out "clause (i), (ii), or (iii) of subparagraph (A) or subparagraph (B) of section 128(c)(2)" and inserting in lieu thereof "subparagraph (A) or (B) of section 128(c)(1)". Section 16(a) of Pub. L. 98–369, repealed section 302(c) of Pub. L. 97–34, and provided that this title shall be applied and administered as if section 302(c), and the amendments made by section 302(c), had not been enacted.

Subsec. (c)(9). Pub. L. 97–34, §211(f)(1), added par. (9).

Subsec. (d)(1). Pub. L. 97–34, §211(b)(1), designated existing provisions as subpar. (A), substituted "an amount equal to the aggregate of the applicable percentage of each qualified progress expenditure for the taxable year" for "an amount equal to his aggregate qualified progress expenditures for the taxable year" in subpar. (A) as so designated, and added subpar. (B).

Subsec. (d)(2)(A)(ii). Pub. L. 97–34, §211(b)(2), struck out "having a useful life of 7 years or more" after "it is reasonable to believe will be new section 38 property".

Subsec. (e)(3). Pub. L. 97–34, §211(d), in provisions following subpar. (B), inserted provision that, for purposes of subpar. (B), in the case of any recovery property (within the meaning of section 168), the useful life be the present class life for such property (as defined in section 168(g)(2)).

1980—Subsec. (a)(2)(A). Pub. L. 96–222, §101(a)(7)(L)(iii)(I), substituted "employee plan" for "ESOP".

Subsec. (a)(2)(C). Pub. L. 96–223, §221(a), revised provisions relating to energy percentage by substituting a tabular format embracing separate coverage for solar, wind, or geothermal property, ocean thermal property, qualified hydroelectric generating property, and biomass property using percentages varying between 10 and 15 percent and covering periods from Oct. 1, 1978, to Dec. 31, 1985, with longer periods for certain long-term projects and certain hydroelectric generating property for provisions that had set the energy percentage at 10 percent for the period beginning Oct. 1, 1978, and ending Dec. 31, 1982, and zero with respect to any other period.

Subsec. (a)(2)(D). Pub. L. 96–223, §222(e)(2), inserted provision that in the case of any qualified hydroelectric generating property which is a fish passageway, the special rule for certain energy property embraced in the first sentence would not apply to any period after 1979 for which the energy percentage for such property is greater than zero.

Subsec. (a)(2)(E). Pub. L. 96–222, §101(a)(7)(L)(v)(I), (M)(i), substituted in heading "employee plan" for "ESOP" and in cls. (i) and (ii) inserted "and ending on" before "December 31, 1983".

Subsec. (a)(9). Pub. L. 96–222, §103(a)(2)(B)(i), redesignated par. (10) as (9). A former par. (9) was previously repealed by section 312(b)(2) of Pub. L. 95–600.

Subsec. (a)(9)(A). Pub. L. 96–223, §223(b)(1)(A), inserted "and" at end of cl. (i), substituted a period for "(other than solar wind energy property), and" at end of cl. (ii), and struck out cl. (iii) which had provided for the application of so much of the credit allowed by section 38 as was attributable to the application of the energy percentage to solar or wind energy property.

Subsec. (a)(9)(B). Pub. L. 96–223. §223(b)(1)(B), struck out "other than solar or wind energy property" after "energy property" in heading.

Pub. L. 96–222, §103(a)(2)(B)(ii), (iii), substituted "paragraph (3)(B) shall be applied by substituting '100 percent' for the percentage determined under the table contained in such paragraph" for "paragraph (3)(C) shall be applied by substituting '100 percent' for '50 percent' " in cl. (i) and "(7) and (8)" for "(7), (8), and (9)" in cl. (ii).

Subsec. (a)(9)(C). Pub. L. 96–223, §223(b)(1)(C), struck out subpar. (C) which related to a refundable credit for solar or wind energy property.

Subsec. (a)(10). Pub. L. 96–222, §103(a)(2)(B)(i), redesignated par. (10) as (9).

Subsec. (c)(5)(B). Pub. L. 96–222, §103(a)(3), inserted provisions requiring that this subparagraph not apply for purposes of applying the energy percentage.

Subsec. (e)(3). Pub. L. 96–222, §103(a)(4)(A), inserted provisions requiring that this paragraph not apply with respect to any property which is treated as section 38 property by reason of section 48(a)(1)(E).

Subsec. (f)(1), (2). Pub. L. 95–600, §312(c)(2), as amended by Pub. L. 96–222, §103(a)(2)(A), substituted " 'described in section 50 (as in effect before its repeal by the Revenue Act of 1978)' " for " 'described in section 50' ".

Subsec. (f)(8). Pub. L. 96–222, §107(a)(3)(A), substituted "subsection (a)(7)(C)" for "subsection (a)(7)(D)".

Subsec. (f)(9). Pub. L. 96–222, §101(a)(7)(A), substituted in provisions preceding subpar. (A) "subparagraph (E) of subsection (a)(2)" for "subparagraph (B) of subsection (a)(2)" and in subpar. (A) "a tax credit employee stock ownership plan which meets the requirements of section 409A" for "an employee ownership plan which meets the requirements of section 301(d) of the Tax Reduction Act of 1975".

1978—Subsec. (a)(2). Pub. L. 95–618, §301(a)(1), among other changes, inserted provisions relating to an alternative energy property tax credit which would pay for a certain percentage of the cost of equipment which uses sources of energy other than oil and gas and of associated pollution control, handling, and preparation equipment.

Subsec. (a)(2)(B). Pub. L. 95–600, §311(a), made 10 percent limitation on investment tax credit permanent.

Subsec. (a)(2)(E). Pub. L. 95–600, §141(e), (f)(2), substituted "December 31, 1983" for "and ending on December 31, 1980" wherever appearing, "section 48(n)(1)(B)" for "section 301(e) of the Tax Reduction Act of 1975" and "section 409A" for "section 301(d) of the Tax Reduction Act of 1975".

Subsec. (a)(3). Pub. L. 95–600, §312(a), increased the present 50 percent tax liability limitation to 90 percent, to be phased in at an additional 10 percentage points per year beginning with taxable years which end in 1979.

Subsec. (a)(7). Pub. L. 95–600, §312(b)(1), in subpar. (A) substituted "the taxable year ending in 1979" for "a taxable year ending after calendar year 1974 and before calendar year 1981", "subparagraph (B)" for "subparagraph (C)", and "for '60 percent' the taxpayer's" for "for 50 percent his" and inserted "the application of this paragraph results in a percentage higher than 60 percent," before "then subparagraph (B)"; in subpar. (B) substituted "70 percent" for "50 percent plus the tentative percentage for such year"; struck out former subpar. (C), which related to the determination of the tentative percentage, and redesignated former subpar. (D) as (C).

Subsec. (a)(8). Pub. L. 95–600, §312(b)(2), in subpar. (A) substituted "the taxable year ending in 1979" for "a taxable year ending after calendar year 1976, and before calendar year 1983", "subparagraph (B)" for "subparagraph (C)", and "for '60 percent' ('70 percent' in the case of a taxable year ending in 1980) the taxpayer's" for "for 50 percent his" and inserted reference to airline property and "the application of this paragraph results in a percentage higher than 60 percent (70 percent in the case of a taxable year ending in 1980)," before "then subparagraph (B)"; in subpar. (B) inserted reference to airline property and substituted "90 percent (80 percent in the case of a taxable year ending in 1980)" for "50 percent plus the tentative percentage for such year"; in subpar. (C) table struck out tentative percentage of 50 for 1977 or 1978, 20 for 1981, and 10 for 1982; and added subpar. (E).

Subsec. (a)(9). Pub. L. 95–600, §312(b)(2), struck out par. (9) which related to the alternative limitation in the case of certain airlines.

Subsec. (a)(10). Pub. L. 95–618, §301(c)(1), added par. (10).

Subsec. (c)(3)(A). Pub. L. 95–618, §301(a)(2)(A), substituted "For the period beginning on January 1, 1981, in the case of any property" for "To the extent that subsection (a)(2)(C) applies to property" and inserted provisions that the preceding sentence not apply for purposes of applying the energy percentage.

Pub. L. 95–600, §311(c)(1), substituted "To the extent that the credit allowed by section 38 with respect to any public utility property is determined at the rate of 7 percent" for "For the period beginning on January 1, 1981".

Subsec. (c)(5). Pub. L. 95–600, §313(a), increased the investment credit available to pollution control facilities which a taxpayer has elected to amortize over a five-year period to a full investment credit from a one-half investment credit.

Subsec. (c)(6). Pub. L. 95–618, §241(a), added par. (6).

Subsec. (e)(1)(C). Pub. L. 95–600, §316(b)(1), struck out subpar. (C) which related to a cooperative organization described in section 1381(a).

Subsec. (e)(2)(C). Pub. L. 95–600, §316(b)(2), struck out subpar. (C) which related to a cooperative organization.

Subsec. (f)(1), (2). Pub. L. 95–600, §312(c)(2), struck out "described in section 50" after "with respect to any property". See 1980 Amendment note above.

Subsec. (f)(8). Pub. L. 95–618, §301(a)(2)(B), substituted ", the Tax Reform Act of 1976, and the Energy Tax Act of 1978" for "and the Tax Reform Act of 1976".

Pub. L. 95–600, §§311(c)(2), 703(a)(1), substituted "subsection (a)(7)(D)" for "subsection (a)(6)(D)" and inserted reference to the Revenue Act of 1978.

Subsec. (g)(5). Pub. L. 95–600, §703(a)(2), substituted "Merchant Marine Act, 1936" for "Merchant Marine Act, 1970".

Subsec. (h). Pub. L. 95–600, §316(a), added subsec. (h).

1976—Subsec. (a)(1). Pub. L. 94–455, §802(a)(2), added par. (1) and struck out former par. (1) which related to the percentage of allowable credit under section 38.

Subsec. (a)(2). Pub. L. 94–455, §802(a)(2), added par. (2). Former par. (2) redesignated (3).

Subsec. (a)(3). Pub. L. 94–455, §802(a)(1), redesignated former par. (2) as (3). Former par. (3) redesignated (4).

Subsec. (a)(4). Pub. L. 94–455, §§503(b)(4), 802(a)(1), (b)(1), 1901(a)(4)(A), (b)(1)(C), as amended by Pub. L. 95–600, §703(j)(9), redesignated former par. (3) as (4), and in par. (4) as so redesignated, redesignated former subpar. (C) as (B) and substituted in provisions preceding subpar. (A) "paragraph (3)" for "paragraph (2)", in subpar. (B) as so redesignated "credit for the elderly" for "retirement income", and in provisions following subpar. (B) "section 408(f)" for "section 408(e)". Former par. (4) redesignated (5).

Subsec. (a)(5). Pub. L. 94–455, §802(a)(1), (b)(1), redesignated former par. (4) as (5) and substituted "paragraph (3)" for "paragraph (2)". Former par. (5) redesignated (6).

Subsec. (a)(6). Pub. L. 94–455, §§802(a)(1), (b)(1), 1906(b)(13)(A), redesignated former par. (5) as (6) and substituted "paragraph (3)" for "paragraph (2)" and struck out "or his delegate" after "Secretary". Former par. (6) redesignated (7).

Subsec. (a)(7). Pub. L. 94–455, §802(a)(1), (b)(1), redesignated former par. (6) as (7) and substituted "paragraph (3)" for "paragraph (2)".

Subsec. (a)(8). Pub. L. 94–455, §1701(b), added par. (8).

Subsec. (a)(9). Pub. L. 94–455, §1703, added par. (9).

Subsec. (b). Pub. L. 94–455, §802(b)(2), among other changes, inserted requirement that tax credits carried over are applied first to the tax liability for that year, after which tax credits earned currently are then applied.

Subsec. (c)(3)(A). Pub. L. 94–455, §802(b)(3), substituted "subsection (a)(2)(C)" for "subsection (a)(1)(C)".

Subsec. (c)(3)(B)(iii). Pub. L. 94–455, §1901(a)(4)(B), substituted "47 U.S.C. 222(a)(5)" for "47 U.S.C., sec. 222(a)(5)".

Subsec. (c)(5). Pub. L. 94–455, §2112(a)(2), added par. (5).

Subsec. (d)(4)(D), (6). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (e)(1)(C). Pub. L. 94–455, §802(b)(4), substituted "subsection (a)(3)" for "subsection (a)(2)".

Subsec. (e)(2). Pub. L. 94–455, §1607(b)(1)(B), substituted in subpar. (B) "857(b)(2)(B)" for "857(b)(2)(C)" and inserted in provisions following subpar. (C) reference to determine without regard to any deduction for capital gains dividends (as defined in section 857(b)(3)(C)) and by excluding any net capital gain.

Subsec. (f)(1)(B), (2), (3). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (f)(4)(A). Pub. L. 94–455, §803(b)(1)(A), (B), substituted "paragraphs (1), (2), and (9)" for "paragraphs (1) and (2)" and "paragraph (1), (2), or (9)" for "paragraph (1) or (2)" wherever appearing.

Subsec. (f)(4)(B)(ii). Pub. L. 94–455, §803(b)(1)(C), substituted "paragraph (2) or the election described in paragraph (9)," for "paragraph (2),".

Subsec. (f)(7). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (f)(8). Pub. L. 94–455, §§802(b)(5), 1906(b)(13)(A), inserted reference to the Tax Reform Act of 1976 and struck out "or his delegate" after "Secretary".

Subsec. (f)(9). Pub. L. 94–455, §803(a), added par. (9).

Subsec. (g). Pub. L. 94–455, §805(a), added subsec. (g).

1975—Subsec. (a)(1). Pub. L. 94–12, §301(a), designated existing provisions as subpar. (A), substituted "Except as otherwise provided in this paragraph, in the case of a property described in subparagraph (D), the" for "The", "10 percent" for "7 percent", and "(as determined under subsections (c) and (d))" for "(as defined in subsection (c))" in subpar. (A) as so designated, and added subpars. (B), (C), and (D).

Subsec. (a)(6). Pub. L. 94–12, §301(b)(2), added par. (6).

Subsec. (c)(3)(A). Pub. L. 94–12, §301(b)(1), substituted "To the extent that subsection (a)(1)(C) applies to property which is public utility property, the" for "In the case of section 38 property which is public utility property, the".

Subsec. (c)(4). Pub. L. 94–12, §302(b)(1), added par. (4).

Subsecs. (d), (e). Pub. L. 94–12, §302(a), added subsec. (d) and redesignated former subsec. (d) as (e). Former subsec. (e) redesignated (f) and amended.

Subsec. (f). Pub. L. 94–12, §§301(b)(3), 302(a), redesignated former subsec. (e) as (f) and in subsec. (f) as

so redesignated added par. (8).

1974—Subsec. (a)(3). Pub. L. 93–406 inserted reference to section 402(e) (relating to tax on lump sum distributions), section 72(m)(5)(B) (relating to 10 percent tax on premature distributions to owner-employees), and section 408(e) (relating to additional tax on income from certain retirement accounts).

1971—Subsec. (b)(1). Pub. L. 92–178, §106(b), inserted concluding sentence "In the case of an unused credit for an unused credit year ending before January 1, 1971, which is an investment credit carryover to a taxable year beginning after December 31, 1970 (determined without regard to this sentence), this paragraph shall be applied by substituting '10 taxable years' for '7 taxable years' in subparagraph (B) and by substituting '13 taxable years' for '10 taxable years' and '12 taxable years' for '9 taxable years' in the preceding sentence."

Subsec. (b)(3). Pub. L. 92–178, §106(a), added par. (3).

Subsec. (b)(5). Pub. L. 92–178, §106(c)(1), substituted "Certain taxable years ending in 1969, 1970, or 1971" for "Taxable years beginning after December 31, 1968, and ending after April 18, 1969" in heading; substituted "ending after April 18, 1969, and before January 1, 1972," for "ending after April 18, 1969,"; and provided that "In the case of a taxable year ending after August 15, 1971, and before January 1, 1972, the percentage contained in the preceding sentence shall be increased by 6 percentage points for each month (or portion thereof) in the taxable year after August 15, 1971".

Subsec. (b)(6). Pub. L. 92–178, §106(c)(2), substituted "ending after April 18, 1969, and before January 1, 1971," for "ending after April 18, 1969," and "following the 7th taxable year after the unused credit year" for "following the last taxable year for which such portion may be added under paragraph (1)", respectively.

Subsec. (c)(2). Pub. L. 92–178, §102(a)(1), (b), substituted "3 years", "5 years", and "7 years" for "4 years" (once), "6 years" (twice), and "8 years" (twice), respectively in tables of first sentence and substituted in second sentence "subpart" for "paragraph" and "useful life of any property shall be the useful life used in computing the allowance for depreciation under section 167 for the taxable year in which the property is placed in service" for "useful life of any property shall be determined as of the time such property is placed in service by the taxpayer".

Subsec. (c)(3)(A). Pub. L. 92–178, §105(a), substituted the fraction of "4/7" for "3/7".

Subsec. (c)(3)(B). Pub. L. 92–178, §105(b)(1), (2), struck out cl. (iii) provisions respecting telephone service, redesignated cl. (iv) as (iii), included in cl. (iii) provision of former cl. (iii) respecting telephone service, included other communication services (other than international telegraph service), and defined term "public utility property" to also mean communication property of type used by persons engaged in providing telephone or microwave communication services to which cl. (iii) applies, if such property is used predominantly for communication purposes, respectively.

Subsec. (c)(3)(C). Pub. L. 92–178, §105(b)(3), added subpar. (C).

Subsec. (c)(4). Pub. L. 92–178, §107(a)(1), struck out provisions respecting reduction in basis or cost of certain replacement property.

Subsec. (d)(3). Pub. L. 92–178, §108(a), added par. (3).

Subsec. (e). Pub. L. 92–178, §105(c), added subsec. (e).

1969—Subsec. (a)(3). Pub. L. 91–172, §301(b)(4), inserted "section 56 (relating to minimum tax for tax preference),".

Subsec. (a)(5). Pub. L. 91–172, §401(e)(1), reenacted subsection with minor changes and substituted reference to section 1563(a) for reference to section 1504.

Subsec. (b)(5), (6). Pub. L. 91–172, §703(b), added pars. (5) and (6).

1967—Subsec. (b). Pub. L. 90–225 struck out par. (3) which provided that to the extent that the excess described in par. (1) of this subsection arises by reason of net operating loss carryback, subpar. (A) of par. (1) of this subsection shall not apply.

1966—Subsec. (a)(2). Pub. L. 89–800, §3(a), inserted "for taxable years ending on or before the last day of the suspension period (as defined in section 48(j))," at beginning of subpar. (B), and added subpar. (C) and provisions following subpar. (C) covering the application of subpar. (C) and the reduction of the amount otherwise determined under par. (2) by the credit allowable but for the application of section 48(h)(1).

Subsec. (a)(3). Pub. L. 89–389 inserted reference to tax imposed for the taxable year by section 1378 (relating to tax on certain capital gains of subchapter S corporations) in the list of taxes not to be considered tax imposed by this chapter for purposes of par. (3).

Pub. L. 89–384 added any additional tax imposed for the taxable year by section 1351 (relating to recoveries of foreign expropriation losses) to the list of taxes not to be considered a tax imposed by this chapter for purposes of par. (3).

Subsec. (b)(1). Pub. L. 89–800, §3(b), substituted "7 taxable years" for "5 taxable years" in subpar. (B) and "10 taxable years" and "other 9 taxable years" for "8 taxable years" and "other 7 taxable years" respectively in text following subpar. (B).

1964—Subsec. (a)(3)(B) to (D). Pub. L. 88–272 struck out subpar. (B) relating to section 34, and redesignated subpars. (C) and (D) as (B) and (C), respectively.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–148, title IX, §9023(f), Mar. 23, 2010, 124 Stat. 883, provided that: "The amendments made by subsections (a) through (d) of this section [enacting section 48D of this title and amending this section and sections 49 and 280C of this title] shall apply to amounts paid or incurred after December 31, 2008, in taxable years beginning after such date."

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, §1302(d), Feb. 17, 2009, 123 Stat. 348, provided that: "The amendments made by this section [enacting section 48C of this title and amending this section and section 49 of this title] shall apply to periods after the date of the enactment of this Act [Feb. 17, 2009], under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990 [Nov. 5, 1990])."

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–58, title XIII, §1307(d), Aug. 8, 2005, 119 Stat. 1006, provided that: "The amendments made by this section [enacting sections 48A and 48B of this title and amending this section and section 49 of this title] shall apply to periods after the date of the enactment of this Act [Aug. 8, 2005], under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990 [Nov. 5, 1990])."

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title III, §322(e), Oct. 22, 2004, 118 Stat. 1476, provided that: "The amendments made by this section [amending this section and sections 48, 50, and 194 of this title] shall apply with respect to expenditures paid or incurred after the date of the enactment of this Act [Oct. 22, 2004]."

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11813(a) of Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7814(d) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 1002(a)(4), (15), (17), (25), 1009(a)(1), and 1013(a)(44) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 201(d)(7)(B) of Pub. L. 99–514 applicable to property placed in service after Dec. 31, 1986, in taxable years ending after such date, with exceptions, see sections 203 and 204 of Pub. L. 99–514, set out as a note under section 168 of this title.

Pub. L. 99–514, title II, §251(d), Oct. 22, 1986, 100 Stat. 2186, as amended by Pub. L. 100–647, title I, §1002(k), Nov. 10, 1988, 102 Stat. 3371, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and section 48 of this title] shall apply to property placed in service after December 31, 1986, in taxable years ending after such date.

"(2) GENERAL TRANSITIONAL RULE.—The amendments made by this section and section 201 [amending this section and sections 48, 167, 168, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] shall not apply to any property placed in service before January 1, 1994, if such property is placed in service as part of—

"(A) a rehabilitation which was completed pursuant to a written contract which was binding on March

1, 1986, or

"(B) a rehabilitation incurred in connection with property (including any leasehold interest) acquired before March 2, 1986, or acquired on or after such date pursuant to a written contract that was binding on March 1, 1986, if—

"(i) parts 1 and 2 of the Historic Preservation Certification Application were filed with the Department of the Interior (or its designee) before March 2, 1986, or

"(ii) the lesser of $1,000,000 or 5 percent of the cost of the rehabilitation is incurred before March 2, 1986, or is required to be incurred pursuant to a written contract which was binding on March 1, 1986.

"(3) CERTAIN ADDITIONAL REHABILITATIONS.—The amendments made by this section and section 201 [amending this section and sections 48, 167, 168, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] shall not apply to—

"(A) the rehabilitation of 8 bathhouses within the Hot Springs National Park or of buildings in the Central Avenue Historic District at such Park,

"(B) the rehabilitation of the Upper Pontalba Building in New Orleans, Louisiana,

"(C) the rehabilitation of at least 60 buildings listed on the National Register at the Frankford Arsenal,

"(D) the rehabilitation of De Baliveriere Arcade, St. Louis Centre, and Drake Apartments in Missouri,

"(E) the rehabilitation of The Tides in Bristol, Rhode Island,

"(F) the rehabilitation and renovation of the Outlet Company building and garage in Providence, Rhode Island,

"(G) the rehabilitation of 10 structures in Harrisburg, Pennsylvania, with respect to which the Harristown Development Corporation was designated redeveloper and received an option to acquire title to the entire project site for $1 on June 27, 1984,

"(H) the rehabilitation of a project involving the renovation of 3 historic structures on the Minneapolis riverfront, with respect to which the developer of the project entered into a redevelopment agreement with a municipality dated January 4, 1985, and industrial development bonds were sold in 3 separate issues in May, July, and October 1985,

"(I) the rehabilitation of a bank's main office facilities of approximately 120,000 square feet, in connection with which the bank's board of directors authorized a $3,300,000 expenditure for the renovation and retrofit on March 20, 1984,

"(J) the rehabilitation of 10 warehouse buildings built between 1906 and 1910 and purchased under a contract dated February 17, 1986,

"(K) the rehabilitation of a facility which is customarily used for conventions and sporting events if an analysis of operations and recommendations of utilization of such facility was prepared by a certified public accounting firm pursuant to an engagement authorized on March 6, 1984, and presented on June 11, 1984, to officials of the city in which such facility is located,

"(L) Mount Vernon Mills in Columbia, South Carolina,

"(M) the Barbara Jordan II Apartments,

"(N) the rehabilitation of the Federal Building and Post Office, 120 Hanover Street, Manchester, New Hampshire,

"(O) the rehabilitation of the Charleston Waterfront project in South Carolina,

"(P) the Hayes Mansion in San Jose, California,

"(Q) the renovation of a facility owned by the National Railroad Passenger Corporation ('Amtrak') for which project Amtrak engaged a development team by letter agreement dated August 23, 1985, as modified by letter agreement dated September 9, 1985,

"(R) the rehabilitation of a structure or its components which is listed in the National Register of Historic Places, is located in Allegheny County, Pennsylvania, will be substantially rehabilitated (as defined in section 48(g)(1)(C) prior to amendment by this Act), prior to December 31, 1989; and was previously utilized as a market and an auto dealership,

"(S) The Bellevue Stratford Hotel in Philadelphia, Pennsylvania,

"(T) the Dixon Mill Housing project in Jersey City, New Jersey,

"(U) Motor Square Garden,

"(V) the Blackstone Apartments, and the Shriver-Johnson building, in Sioux Falls, South Dakota,

"(W) the Holy Name Academy in Spokane, Washington,

"(X) the Nike/Clemson Mill in Exeter, New Hampshire,

"(Y) the Central Bank Building in Grand Rapids, Michigan, and

"(Z) the Heritage Hotel, in the City of Marquette, Michigan.

"(4) ADDITIONAL REHABILITATIONS.—The amendments made by this section and section 201 [amending sections 46, 48, 167, 168, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and

7701 of this title] shall not apply to—

"(A) the Fort Worth Town Square Project in Texas,

"(B) the American Youth Hostel in New York, New York,

"(C) The Riverwest Loft Development (including all three phases, two of which do not involve rehabilitations),

"(D) the Gaslamp Quarter Historic District in California,

"(E) the Eberhardt & Ober Brewery, in Pennsylvania,

"(F) the Captain's Walk Limited Partnership-Harris Place Development, in Connecticut,

"(G) the Velvet Mills in Connecticut,

"(H) the Roycroft Inn, in New York,

"(I) Old Main Village, in Mankato, Minnesota,

"(J) the Washburn-Crosby A Mill, in Minneapolis, Minnesota,

"(K) the Marble Arcade office building in Lakeland, Florida,

"(L) the Willard Hotel, in Washington, D.C.,

"(M) the H. P. Lau Building in Lincoln, Nebraska,

"(N) the Starks Building, in Louisville, Kentucky,

"(O) the Bellevue High School, in Bellevue, Kentucky,

"(P) the Major Hampden Smith House, in Owensboro, Kentucky,

"(Q) the Doe Run Inn, in Brandenburg, Kentucky,

"(R) the State National Bank, in Frankfort, Kentucky,

"(S) the Captain Jack House, in Fleming, Kentucky,

"(T) the Elizabeth Arlinghaus House, in Covington, Kentucky,

"(U) Limerick Shamrock, in Louisville, Kentucky,

"(V) the Robert Mills Project, in South Carolina,

"(W) the 620 Project, consisting of 3 buildings, in Kentucky,

"(X) the Warrior Hotel, Ltd., the first two floors of the Martin Hotel, and the 105,000 square foot warehouse constructed in 1910, all in Sioux City, Iowa,

"(Y) the waterpark condominium residential project, to the extent of $2 million of expenditures,

"(Z) the Bigelow-Hartford Carpet Mill in Enfield, Connecticut,

"(AA) properties abutting 125th street in New York County from 7th Avenue west to Morningside and the pier area on the Hudson River at the end of such 125th Street,

"(BB) the City of Los Angeles Central Library project pursuant to an agreement dated December 28, 1983,

"(CC) the Warehouse Row project in Chattanooga, Tennessee,

"(DD) any project described in section 204(a)(1)(F) of this Act [26 U.S.C. 168 note],

"(EE) the Wood Street Commons project in Pittsburgh, Pennsylvania,

"(FF) any project described in section 803(d)(6) of this Act [26 U.S.C. 263A note],

"(GG) Union Station, Indianapolis, Indiana,

"(HH) the Mattress Factory project in Pittsburgh, Pennsylvania,

"(II) Union Station in Providence, Rhode Island,

"(JJ) South Pack Plaza, Asheville, North Carolina,

"(KK) Old Louisville Trust Project, Louisville, Kentucky,

"(LL) Stewarts Rehabilitation Project, Louisville, Kentucky,

"(MM) Bernheim Officenter, Louisville, Kentucky,

"(NN) Springville Mill Project, Rockville, Connecticut, and

"(OO) the D.J. Stewart Company Building, State and Main Streets, Rockford, Illinois.

"(5) REDUCTION IN CREDIT FOR PROPERTY UNDER TRANSITIONAL RULES.—In the case of property placed in service after December 31, 1986, and to which the amendments made by this section [amending this section and sections 47 and 48 of this title] do not apply, subparagraph (A) of section 46(b)(4) of the Internal Revenue Code of 1954 [now 1986] (as in effect before the enactment of this Act) shall be applied—

"(A) by substituting '10 percent' for '15 percent', and

"(B) by substituting '13 percent' for '20 percent'.

"(6) EXPENSING OF REHABILITATION EXPENSES FOR THE FRANKFORD ARSENAL.—In the case of any expenditures paid or incurred in connection with improvements (including repairs and maintenance) of the Frankford Arsenal pursuant to a contract and partnership agreement during the 8-year period specified in the contract or agreement, all such expenditures to be made during the period 1986 through and including 1993 shall—

"(A) be treated as made (and allowable as a deduction) during 1986,

"(B) be treated as qualified rehabilitation expenditures made during 1986, and

"(C) be allocated in accordance with the partnership agreement regardless of when the interest in the partnership was acquired, except that—

"(i) if the taxpayer is not the original holder of such interest, no person (other than the taxpayer) had claimed any benefits by reason of this paragraph,

"(ii) no interest under section 6611 of the 1986 Code on any refund of income taxes which is solely attributable to this paragraph shall be paid for the period—

"(I) beginning on the date which is 45 days after the later of April 15, 1987, or the date on which the return for such taxes was filed, and

"(II) ending on the date the taxpayer acquired the interest in the partnership, and

"(iii) if the expenditures to be made under this provision are not paid or incurred before January 1, 1994, then the tax imposed by chapter 1 of such Code for the taxpayer's last taxable year beginning in 1993 shall be increased by the amount of the tax benefits by reason of this paragraph which are attributable to the expenditures not so paid or incurred.

"(7) SPECIAL RULE.—In the case of the rehabilitation of the Willard Hotel in Washington, D.C., section 205(c)(1)(B)(ii) of the Tax Equity and Fiscal Responsibility Act of 1982 [section 205(c)(1)(B)(ii) of Pub. L. 97–248, set out as a note under section 196 of this title] shall be applied by substituting '1987' for '1986'."

Pub. L. 99–514, title IV, §421(c), Oct. 22, 1986, 100 Stat. 2229, provided that: "The amendments made by this section [amending this section] shall apply to periods beginning after December 31, 1985, under rules similar to rules under section 48(m) of the Internal Revenue Code of 1986."

Amendment by sections 1802(a)(6), (8), 1844(a), (b)(3), (5), 1847(b)(11), 1848(a) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 16 of Pub. L. 98–369 applicable to taxable years ending after Dec. 31, 1983, see section 18(a) of Pub. L. 98–369, set out as a note under section 48 of this title.

Amendment by section 31(f) of Pub. L. 98–369 effective, except as otherwise provided in section 31(g) of Pub. L. 98–369, as to property placed in service by the taxpayer after Nov. 5, 1983, in taxable years ending after such date and to property placed in service by the taxpayer on or before Nov. 5, 1983, if the lease to the organization described in section 593 of this title is entered into after Nov. 5, 1983, see section 31(g)(1), (14) of Pub. L. 98–369, set out as a note under section 168 of this title.

Amendment by section 113(b)(2)(B) of Pub. L. 98–369 applicable as if included in the amendments by sections 201(a), 211(a)(1), and 211(f)(1) of Pub. L. 97–34, which amended this section and enacted section 168 of this title, see section 113(c)(2)(B) of Pub. L. 98–369, set out as a note under section 168 of this title.

Pub. L. 98–369, div. A, title IV, §431(e), July 18, 1984, 98 Stat. 810, provided:

"(1) IN GENERAL.—The amendments made by this section [amending this section and sections 47 and 48 of this title] shall apply to property placed in service after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date; except that such amendments shall not apply to any property to which the amendments made by section 211(f) of the Economic Recovery Tax Act of 1981 [section 211(f) of Pub. L. 97–34, amending sections 46 and 47 of this title] do not apply.

"(2) AMENDMENTS MAY BE ELECTED RETROACTIVELY.—At the election of the taxpayer, the amendments made by this section shall apply as if included in the amendments made by section 211(f) of the Economic Recovery Tax Act of 1981. Any election made under the preceding sentence shall apply to all property of the taxpayer to which the amendments made by such section 211(f) apply and shall be made at such time and in such manner as the Secretary of the Treasury or his delegate may by regulations prescribe."

Amendment by section 474(o)(1)–(7) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 713 of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 122(c)(1) of Pub. L. 98–21 applicable to taxable years beginning after Dec. 31, 1983, except that if an individual's annuity starting date was deferred under section 105(d)(6) of this title as in effect on the day before Apr. 20, 1983, such deferral shall end on the first day of such individual's first taxable

year beginning after Dec. 31, 1983, see section 122(d) of Pub. L. 98–21, set out as a note under section 22 of this title.

Amendment by title I of Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

Amendment by section 202(f) of Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Crude Oil Windfall Profit Tax Act of 1980, Pub. L. 96–223, to which such amendment relates, see section 203(a) of Pub. L. 97–448, set out as a note under section 6652 of this title.

Pub. L. 97–424, title V, §541(c), Jan. 6, 1983, 96 Stat. 2193, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) GENERAL RULE.—The amendments made by subsections (a) and (b) [amending this section and sections 167 and 168 of this title] shall apply to taxable years beginning after December 31, 1979.

"(2) SPECIAL RULE FOR PERIODS BEGINNING BEFORE MARCH 1, 1980.—

"(A) IN GENERAL.—Subject to the provisions of paragraphs (3) and (4), notwithstanding the provisions of sections 167(l) and 46(f) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] and of any regulations prescribed by the Secretary of the Treasury (or his delegate) under such sections, the use for ratemaking purposes or for reflecting operating results in the taxpayer's regulated books of account, for any period before March 1, 1980, of—

"(i) any estimates or projections relating to the amounts of the taxpayer's tax expense, depreciation expense, deferred tax reserve, credit allowable under section 38 of such code, or rate base, or

"(ii) any adjustments to the taxpayer's rate of return,

shall not be treated as inconsistent with the requirements of subparagraph (G) of such section 167(l)(3) nor inconsistent with the requirements of paragraph (1) or (2) of such section 46(f), where such estimates or projections, or such rate of return adjustments, were included in a qualified order.

"(B) QUALIFIED ORDER DEFINED.—For purposes of this subsection, the term "qualified order" means an order—

"(i) by a public utility commission which was entered before March 13, 1980,

"(ii) which used the estimates, projections, or rate of return adjustments referred to in subparagraph (A) to determine the amount of the rates to be collected by the taxpayer or the amount of a refund with respect to rates previously collected, and

"(iii) which ordered such rates to be collected or refunds to be made (whether or not such order actually was implemented or enforced).

"(3) LIMITATIONS ON APPLICATION OF PARAGRAPH (2).—

"(A) PARAGRAPH (2) NOT TO APPLY TO AMOUNTS ACTUALLY FLOWED THROUGH.—Paragraph (2) shall not apply to the amount of any—

"(i) rate reduction, or

"(ii) refund,

which was actually made pursuant to a qualified order.

"(B) TAXPAYER MUST ENTER INTO CLOSING AGREEMENT BEFORE PARAGRAPH (2) APPLIES.—Paragraph (2) shall not apply to any taxpayer unless, before the later of—

"(i) July 1, 1983, or

"(ii) 6 months after the refunds or rate reductions are actually made pursuant to a qualified order.

the taxpayer enters into a closing agreement (within the meaning of section 7121 of the Internal Revenue Code of 1986) which provides for the payment by the taxpayer of the amount of which paragraph (2) does not apply by reason of subparagraph (A).

"(4) SPECIAL RULES RELATING TO PAYMENT OF REFUNDS OR INTEREST BY THE UNITED STATES OR THE TAXPAYER.—

"(A) REFUND DEFINED.—For purposes of this subsection, the term "refund" shall include any credit allowed by the taxpayer under a qualified order but shall not include interest payable with respect to any refund (or credit) under such order.

"(B) NO INTEREST PAYABLE BY UNITED STATES.—No interest shall be payable under section 6611 of the Internal Revenue Code of 1986 on any overpayment of tax which is attributable to the application of paragraph (2).

"(C) PAYMENTS MAY BE MADE IN TWO EQUAL INSTALLMENTS.—

"(i) IN GENERAL.—The taxpayer may make any payment required by reason of paragraph (3) in 2 equal installments, the first installment being due on the last date on which a taxpayer may enter into a closing agreement under paragraph (3)(B), and the second payment being due 1 year after the last date

for the first payment.

"(ii) INTEREST PAYMENTS.—For purposes of section 6601 of such Code, the last date prescribed for payment with respect to any payment required by reason of paragraph (3) shall be the last date on which such payment is due under clause (i).

"(5) NO INFERENCE.—The application of subparagraph (G) of section 167(l)(3) of the Internal Revenue Code of 1986, and the application of paragraphs (1) and (2) of section 46(f) of such Code, to taxable years beginning before January 1, 1980, shall be determined without any inference drawn from the amendments made by subsections (a) and (b) of this section [amending this section and sections 167 and 168 of this title] or from the rules contained in paragraphs (2), (3), and (4). Nothing in the preceding sentence shall be construed to limit the relief provided by paragraphs (2), (3), and (4)."

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

Amendment by section 201(d)(8)(A), formerly section 201(c)(8)(A), of Pub. L. 97–248, applicable to taxable years beginning after Dec. 31, 1982, see section 201(e)(1) of Pub. L. 97–248, set out as a note under section 5 of this title.

Pub. L. 97–248, title II, §205(c)(2), Sept. 3, 1982, 96 Stat. 431, provided that: "The amendments made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 1982."

Amendment by section 265(b)(2)(A)(i) of Pub. L. 97–248 applicable to distributions after Dec. 31, 1982, see section 265(c)(2) of Pub. L. 97–248, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 207(c)(1) of Pub. L. 97–34 applicable to unused credit years ending after Dec. 31, 1973, see section 209(c)(2)(A) of Pub. L. 97–34, set out as an Effective Date note under section 168 of this title.

Pub. L. 97–34, title II, §211(i), Aug. 13, 1981, 95 Stat. 235, provided that:

"(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section and sections 47 and 48 of this title] shall apply to property placed in service after December 31, 1980.

"(2) PROGRESS EXPENDITURES.—The amendments made by subsection (b) [amending this section] shall apply to progress expenditures made after December 31, 1980.

"(3) PETROLEUM STORAGE FACILITIES.—The amendments made by subsection (c) [amending this section] shall apply to periods after December 31, 1980, under rules similar to the rules under section 48(m).

"(4) NONCORPORATE LESSORS.—The amendments made by subsection (d) [amending this section] shall apply to leases entered into after June 25, 1981.

"(5) AT RISK RULES.—

"(A) IN GENERAL.—The amendment made by subsection (f) [amending this section and section 47 of this title] shall not apply to—

"(i) property placed in service by the taxpayer on or before February 18, 1981, and

"(ii) property placed in service by the taxpayer after February 18, 1981, where such property is acquired by the taxpayer pursuant to a binding contract entered into on or before that date.

"(B) BINDING CONTRACT.—For purposes of subparagraph (A)(ii), property acquired pursuant to a binding contract shall, under regulations prescribed by the Secretary, include property acquired in a manner so that it would have qualified as pretermination property under section 49(b) (as in effect before its repeal by the Revenue Act of 1978) [Pub. L. 95–600].

"(6) LEASED ROLLING STOCK.—The amendment made by subsection (h) [amending section 48 of this title] shall apply to taxable years beginning after December 31, 1980."

Pub. L. 97–34, title II, §212(e), Aug. 13, 1981, 95 Stat. 239, as amended by Pub. L. 97–448, title I, §102(f)(1), Jan. 12, 1983, 96 Stat. 2371; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 48, 57, 167, 280B, 642, 1016, 1082, 1245, and 1250 of this title and repealing section 191 of this title] shall apply to expenditures incurred after December 31, 1981, in taxable years ending after such date.

"(2) TRANSITIONAL RULE.—The amendments made by this section shall not apply with respect to any rehabilitation of a building if—

"(A) the physical work on such rehabilitation began before January 1, 1982, and

"(B) such building does not meet the requirements of paragraph (1) of section 48(g) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by this Act [Pub. L. 97–34])."

Pub. L. 97–34, title III, §332(c)(1), Aug. 13, 1981, 95 Stat. 296, provided that: "The amendments made by subsection (a) [amending this section] shall be effective on the date of enactment of this Act [Aug. 13, 1981]."

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 222(e)(2) of Pub. L. 96–223 applicable to periods after Dec. 31, 1979, under rules similar to the rules of section 48(m) of this title, see section 222(j)(1) of Pub. L. 96–223, set out as a note under section 48 of this title.

Pub. L. 96–223, title II, §223(b)(3), Apr. 2, 1980, 94 Stat. 266, provided that: "The amendments made by this subsection [amending this section and section 6401 of this title] shall apply to qualified investment for taxable years beginning after December 31, 1979."

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 141(e), (f)(2) of Pub. L. 95–600 effective with respect to qualified investment for taxable years beginning after Dec. 31, 1978, see section 141(g)(1) of Pub. L. 95–600, set out as an Effective Date note under section 409 of this title.

Pub. L. 95–600, title III, §312(d), Nov. 6, 1978, 92 Stat. 2826, provided that: "The amendments made by this section [amending this section and sections 48 and 167 of this title and repealing sections 49 and 50 of this title] shall apply to taxable years ending after December 31, 1978."

Pub. L. 95–600, title III, §313(b), Nov. 6, 1978, 92 Stat. 2827, provided that:

"The amendment made by subsection (a) [amending this section] shall apply to—

"(1) property acquired by the taxpayer after December 31, 1978, and

"(2) property the construction, reconstruction, or erection of which was completed by the taxpayer after December 31, 1978 (but only to the extent of the basis thereof attributable to construction, reconstruction, or erection after such date)."

Pub. L. 95–600, title III, §316(c), Nov. 6, 1978, 92 Stat. 2830, provided that: "The amendments made by this section [amending this section and section 1388 of this title] shall apply to taxable years ending after October 31, 1978."

Pub. L. 95–600, title VII, §703(r), Nov. 6, 1978, 92 Stat. 2944, provided that: "Except as otherwise provided, the amendments made by this section [amending this section and sections 48, 103, 447, 453, 501, 801, 911, 995, 996, 999, 1033, 1212, 1375, 1402, 1561, 4041, 4911, 6104, 6427, 6501, 6504, 6511, 7609 of this title and sections 402, 405, 410, and 411 of Title 42, The Public Health and Welfare, enacting provisions set out as notes under sections 103, 311, 443, 501, and 4973 of this title, and amending provisions set out as notes under section 120, 311, 907, 995, 2011, 2501, and 4940 of this title] shall take effect on October 4, 1976."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 503(b)(4) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, see section 508 of Pub. L. 94–455, set out as a note under section 3 of this title.

Pub. L. 94–455, title VIII, §802(c), Oct. 4, 1976, 90 Stat. 1583, provided that: "The amendments made by this section [amending this section and section 48 of this title and provisions set out below] shall apply to taxable years beginning after December 31, 1975."

Pub. L. 94–455, title VIII, §803(j), Oct. 4, 1976, 90 Stat. 1591, provided that:

"(1) GENERAL RULE.—Except as provided in paragraph (2), the amendments made by this section [see Tables for classification of section 803 of Pub. L. 94–455] shall apply for taxable years beginning after December 31, 1974.

"(2) EXCEPTIONS.—

"(A) Section 301(e) of the Tax Reduction Act of 1975 [set out below], as added by subsection (d), shall apply for taxable years beginning after December 31, 1976.

"(B) The amendments made by subsections (a) and (b)(1) shall apply for taxable years beginning after December 31, 1975.

"(C) The amendments made by subsections (b)(4) and (f) shall apply for years beginning after December 31, 1975."

Pub. L. 94–455, title VIII, §805(b), Oct. 4, 1976, 90 Stat. 1597, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—Except as provided in subparagraph (B), the amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1975, in the case of property placed in service after such date.

"(2) SECTION 46(g)(4).—Section 46(g)(4) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)) shall apply to taxable years beginning after December 31, 1975."

Amendment by section 1607(b)(1)(B) of Pub. L. 94–455 applicable to taxable years ending after Oct. 4, 1976, with certain exceptions, see section 1608(c) of Pub. L. 94–455, set out as a note under section 857 of this title.

Amendment by section 1901(a)(4)(A), (B), (b)(1)(C) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Pub. L. 94–455, title XXI, §2112(d)(1), Oct. 4, 1976, 90 Stat. 1906, provided that: "The amendments made by subsection (a) [amending this section and section 48 of this title] shall apply to—

"(A) property acquired by the taxpayer after December 31, 1976, and

"(B) property the construction, reconstruction, or erection of which was completed by the taxpayer after December 31, 1976, (but only to the extent of the basis thereof attributable to construction, reconstruction, or erection after such date), in taxable years beginning after such date."

EFFECTIVE DATE OF 1975 AMENDMENT

Pub. L. 94–12, title III, §301(b)(4), Mar. 29, 1975, 89 Stat. 38, provided that: "The amendment made by paragraph (1) of this subsection [amending this section] shall apply to property placed in service after January 21, 1975, in taxable years ending after January 21, 1975. The amendments made by paragraphs (2) and (3) [amending this section] shall apply to taxable years ending after December 31, 1974."

Pub. L. 94–12, title III, §305(a), Mar. 29, 1975, 89 Stat. 45, provided that: "The amendments made by section 302 [amending this section and sections 47, 48, and 50B of this title] shall apply to taxable years ending after December 31, 1974."

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by section 2001(g)(2)(B) of Pub. L. 93–406 applicable to distributions made in taxable years beginning after Dec. 31, 1975, see section 2001(i)(5) of Pub. L. 93–406, set out as a note under section 72 of this title.

Amendment by section 2002(g)(2) of Pub. L. 93–406 effective on Jan. 1, 1975, see section 2002(i)(2) of Pub. L. 93–406, set out as an Effective Date note under section 4973 of this title.

Amendment by section 2005(c)(4) of Pub. L. 93–406 applicable only with respect to distributions or payments made after Dec. 31, 1973, in taxable years beginning after Dec. 31, 1973, see section 2005(d) of Pub. L. 93–406, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Pub. L. 92–178, title I, §102(d)(1), (2), Dec. 10, 1971, 85 Stat. 500, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) The amendments made by subsections (a) and (b) [amending this section and section 48 of this title] shall apply to property described in section 50 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].

"(2) In redetermining qualified investment for purposes of section 47(a) of the Internal Revenue Code of 1986 in the case of any property which ceases to be section 38 property with respect to the taxpayer after August 15, 1971, or which becomes public utility property after such date, section 46(c)(2) of such Code shall be applied as amended by subsection (a)."

Pub. L. 92–178, title I, §105(d), Dec. 10, 1971, 85 Stat. 505, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by this section [amending this section and enacting provisions set out below] shall apply to property described in section 50 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]."

Pub. L. 92–178, title I, §106(d), Dec. 10, 1971, 85 Stat. 506, provided that: "The amendments made by subsections (a), (b), and (c)(2) [amending this section] shall apply to taxable years beginning after December 31, 1970. The amendments made by subsection (c)(1) [amending this section] shall apply to taxable years ending after August 15, 1971."

Pub. L. 92–178, title I, §107(a)(2), Dec. 10, 1971, 85 Stat. 507, provided that: "The repeals made by paragraph (1) [amending this section and section 47 of this title] shall apply to casualties and thefts occurring after August 15, 1971."

Pub. L. 92–178, title I, §108(d), Dec. 10, 1971, 85 Stat. 508, provided that: "The amendments made by subsections (a) and (b) [amending this section and section 48 of this title] shall apply to leases entered into after September 22, 1971. The amendment made by subsection (c) [amending section 48 of this title] shall apply to leases entered into after November 8, 1971."

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 301(b)(4) of Pub. L. 91–172 applicable to taxable years ending after Dec. 31, 1969,

see section 301(c) of Pub. L. 91–172, set out as a note under section 5 of this title.

Amendment by section 401(e)(1) of Pub. L. 91–172 applicable with respect to taxable years ending on or after Dec. 31, 1970, see section 401(h)(3) of Pub. L. 91–172, set out as a note under section 1561 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Pub. L. 90–225, §2(g), Dec. 27, 1967, 81 Stat. 732, provided that: "The amendments made by this section [amending this section and sections 6411, 6501, 6511, 6601, and 6611 of this title] shall apply with respect to investment credit carrybacks attributable to net operating loss carrybacks from taxable years ending after July 31, 1967."

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89–800, §4, Nov. 8, 1966, 80 Stat. 1514, provided that: "The amendments made by this Act [amending this section and sections 48 and 167 of this title] shall apply to taxable years ending after October 9, 1966, except that the amendments made by section 3(b) [amending this section] shall apply only if the fifth taxable year following the unused credit year ends after December 31, 1966."

Pub. L. 89–389, §2(c), Apr. 14, 1966, 80 Stat. 114, provided that: "The amendments made by this section [enacting section 1378 of this title and amending this section and sections 1372, 1373, and 1375 of this title] shall apply with respect to taxable years of electing small business corporations beginning after the date of enactment of this Act [Apr. 14, 1966], but such amendments shall not apply with respect to sales or exchanges occurring before February 24, 1966."

Amendment by Pub. L. 89–384 applicable with respect to amounts received after December 31, 1964, in respect of foreign expropriation losses (as defined in section 1351(b) of this title) sustained after December 31, 1958, see section 2 of Pub. L. 89–384, set out as an Effective Date note under section 1351 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable with respect to dividends received after Dec. 31, 1964, in taxable years ending after such date, see section 201(e) of Pub. L. 88–272, set out as a note under section 22 of this title.

EFFECTIVE DATE

Pub. L. 87–834, §2(h), Oct. 16, 1962, 76 Stat. 973, provided that: "The amendments made by this section [enacting this section and sections 38, 47, 48, and 181 of this title, amending sections 381, 1016, 6501, 6511, 6601, and 6611 of this title, and renumbering former section 38 as section 39 of this title] shall apply with respect to taxable years ending after December 31, 1961."

SAVINGS PROVISION

For provisions that nothing in amendment by section 11813(a) of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

CLARIFICATION OF EFFECT OF 1984 AMENDMENT ON INVESTMENT TAX CREDIT

Pub. L. 98–369, title IV, §475(c), July 18, 1984, 98 Stat. 847, provided that: "Nothing in the amendments made by section 474(o) [amending this section and sections 47 and 48 of this title] shall be construed as reducing the amount of any credit allowable for qualified investment in taxable years beginning before January 1, 1984."

REGULATED PUBLIC UTILITIES; SPECIAL TRANSITIONAL RULE

Pub. L. 97–34, title II, §209(d)(2), Aug. 13, 1981, 95 Stat. 227, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "If, by the terms of the applicable rate order last entered before the date of the enactment of this Act [Aug. 13, 1981] by a regulatory commission having appropriate jurisdiction, a regulated public utility would (but for this provision) fail to meet the requirements of paragraph (1) or (2) of section 46(f) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] with respect to property for an accounting period ending after December 31, 1980, such regulated public utility shall not fail to meet such

requirements if, by the terms of its first rate order determining cost of service with respect to such property which becomes effective after the date of the enactment of this Act and on or before January 1, 1983, such regulated public utility meets such requirements. This provision shall not apply to any rate order which, under the rules in effect before the date of the enactment of this Act was inconsistent with the requirements of paragraph (1) or (2) of section 46(f) of such Code (whichever would have been applicable)."

PLAN REQUIREMENTS FOR TAXPAYERS ELECTING ADDITIONAL CREDITS

Pub. L. 94–12, title III, §301(d)–(f), Mar. 29, 1975, 89 Stat. 38, as amended by Pub. L. 94–455, title VIII, §§802(b)(7), 803(c)–(e), Oct. 4, 1976, 90 Stat. 1583–1588, relating to plan requirements for taxpayers electing additional credit, was repealed by Pub. L. 95–600, title I, §141(f)(1), Nov. 6, 1978, 92 Stat. 2795.

PUBLIC UTILITY PROPERTY SUBJECT TO SUBSEC. (E); PROVISIONS RESPECTING TREATMENT OF INVESTMENT CREDIT BY FEDERAL REGULATORY AGENCIES INAPPLICABLE

Pub. L. 92–178, title I, §105(e), Dec. 10, 1971, 85 Stat. 506, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Section 203(e) of the Revenue Act of 1964 [set out as note under section 38 of this title] shall not apply to public utility property to which section 46(e) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (c)) [subsec. (e) of this section] applies."

[1] So in original. Probably should be followed by a comma.

§47. Rehabilitation credit

(a) General rule

For purposes of section 46, the rehabilitation credit for any taxable year is the sum of—

(1) 10 percent of the qualified rehabilitation expenditures with respect to any qualified rehabilitated building other than a certified historic structure, and

(2) 20 percent of the qualified rehabilitation expenditures with respect to any certified historic structure.

(b) When expenditures taken into account

(1) In general

Qualified rehabilitation expenditures with respect to any qualified rehabilitated building shall be taken into account for the taxable year in which such qualified rehabilitated building is placed in service.

(2) Coordination with subsection (d)

The amount which would (but for this paragraph) be taken into account under paragraph (1) with respect to any qualified rehabilitated building shall be reduced (but not below zero) by any amount of qualified rehabilitation expenditures taken into account under subsection (d) by the taxpayer or a predecessor of the taxpayer (or, in the case of a sale and leaseback described in section 50(a)(2)(C), by the lessee), to the extent any amount so taken into account has not been required to be recaptured under section 50(a).

(c) Definitions

For purposes of this section—

(1) Qualified rehabilitated building

(A) In general

The term "qualified rehabilitated building" means any building (and its structural components) if—

(i) such building has been substantially rehabilitated,

(ii) such building was placed in service before the beginning of the rehabilitation,

(iii) in the case of any building other than a certified historic structure, in the rehabilitation

process—

(I) 50 percent or more of the existing external walls of such building are retained in place as external walls,

(II) 75 percent or more of the existing external walls of such building are retained in place as internal or external walls, and

(III) 75 percent or more of the existing internal structural framework of such building is retained in place, and

(iv) depreciation (or amortization in lieu of depreciation) is allowable with respect to such building.

(B) Building must be first placed in service before 1936

In the case of a building other than a certified historic structure, a building shall not be a qualified rehabilitated building unless the building was first placed in service before 1936.

(C) Substantially rehabilitated defined

(i) In general

For purposes of subparagraph (A)(i), a building shall be treated as having been substantially rehabilitated only if the qualified rehabilitation expenditures during the 24-month period selected by the taxpayer (at the time and in the manner prescribed by regulation) and ending with or within the taxable year exceed the greater of—

(I) the adjusted basis of such building (and its structural components), or

(II) $5,000.

The adjusted basis of the building (and its structural components) shall be determined as of the beginning of the 1st day of such 24-month period, or of the holding period of the building, whichever is later. For purposes of the preceding sentence, the determination of the beginning of the holding period shall be made without regard to any reconstruction by the taxpayer in connection with the rehabilitation.

(ii) Special rule for phased rehabilitation

In the case of any rehabilitation which may reasonably be expected to be completed in phases set forth in architectural plans and specifications completed before the rehabilitation begins, clause (i) shall be applied by substituting "60-month period" for "24-month period".

(iii) Lessees

The Secretary shall prescribe by regulation rules for applying this subparagraph to lessees.

(D) Reconstruction

Rehabilitation includes reconstruction.

(2) Qualified rehabilitation expenditure defined

(A) In general

The term "qualified rehabilitation expenditure" means any amount properly chargeable to capital account—

(i) for property for which depreciation is allowable under section 168 and which is—

(I) nonresidential real property,

(II) residential rental property,

(III) real property which has a class life of more than 12.5 years, or

(IV) an addition or improvement to property described in subclause (I), (II), or (III), and

(ii) in connection with the rehabilitation of a qualified rehabilitated building.

(B) Certain expenditures not included

The term "qualified rehabilitation expenditure" does not include—

(i) Straight line depreciation must be used

Any expenditure with respect to which the taxpayer does not use the straight line method over a recovery period determined under subsection (c) or (g) of section 168. The preceding sentence shall not apply to any expenditure to the extent the alternative depreciation system of section 168(g) applies to such expenditure by reason of subparagraph (B) or (C) of section 168(g)(1).

(ii) Cost of acquisition

The cost of acquiring any building or interest therein.

(iii) Enlargements

Any expenditure attributable to the enlargement of an existing building.

(iv) Certified historic structure, etc.

Any expenditure attributable to the rehabilitation of a certified historic structure or a building in a registered historic district, unless the rehabilitation is a certified rehabilitation (within the meaning of subparagraph (C)). The preceding sentence shall not apply to a building in a registered historic district if—

(I) such building was not a certified historic structure,

(II) the Secretary of the Interior certified to the Secretary that such building is not of historic significance to the district, and

(III) if the certification referred to in subclause (II) occurs after the beginning of the rehabilitation of such building, the taxpayer certifies to the Secretary that, at the beginning of such rehabilitation, he in good faith was not aware of the requirements of subclause (II).

(v) Tax-exempt use property

(I) In general

Any expenditure in connection with the rehabilitation of a building which is allocable to the portion of such property which is (or may reasonably be expected to be) tax-exempt use property (within the meaning of section 168(h), except that "50 percent" shall be substituted for "35 percent" in paragraph (1)(B)(iii) thereof).

(II) Clause not to apply for purposes of paragraph (1)(C)

This clause shall not apply for purposes of determining under paragraph (1)(C) whether a building has been substantially rehabilitated.

(vi) Expenditures of lessee

Any expenditure of a lessee of a building if, on the date the rehabilitation is completed, the remaining term of the lease (determined without regard to any renewal periods) is less than the recovery period determined under section 168(c).

(C) Certified rehabilitation

For purposes of subparagraph (B), the term "certified rehabilitation" means any rehabilitation of a certified historic structure which the Secretary of the Interior has certified to the Secretary as being consistent with the historic character of such property or the district in which such property is located.

(D) Nonresidential real property; residential rental property; class life

For purposes of subparagraph (A), the terms "nonresidential real property," "residential rental property," and "class life" have the respective meanings given such terms by section 168.

(3) Certified historic structure defined

(A) In general

The term "certified historic structure" means any building (and its structural components) which—

(i) is listed in the National Register, or

(ii) is located in a registered historic district and is certified by the Secretary of the Interior to the Secretary as being of historic significance to the district.

(B) Registered historic district

The term "registered historic district" means—

(i) any district listed in the National Register, and

(ii) any district—

(I) which is designated under a statute of the appropriate State or local government, if such statute is certified by the Secretary of the Interior to the Secretary as containing criteria which will substantially achieve the purpose of preserving and rehabilitating buildings of historic significance to the district, and

(II) which is certified by the Secretary of the Interior to the Secretary as meeting substantially all of the requirements for the listing of districts in the National Register.

(d) Progress expenditures

(1) In general

In the case of any building to which this subsection applies, except as provided in paragraph (3)—

(A) if such building is self-rehabilitated property, any qualified rehabilitation expenditure with respect to such building shall be taken into account for the taxable year for which such expenditure is properly chargeable to capital account with respect to such building, and

(B) if such building is not self-rehabilitated property, any qualified rehabilitation expenditure with respect to such building shall be taken into account for the taxable year in which paid.

(2) Property to which subsection applies

(A) In general

This subsection shall apply to any building which is being rehabilitated by or for the taxpayer if—

(i) the normal rehabilitation period for such building is 2 years or more, and

(ii) it is reasonable to expect that such building will be a qualified rehabilitated building in the hands of the taxpayer when it is placed in service.

Clauses (i) and (ii) shall be applied on the basis of facts known as of the close of the taxable year of the taxpayer in which the rehabilitation begins (or, if later, at the close of the first taxable year to which an election under this subsection applies).

(B) Normal rehabilitation period

For purposes of subparagraph (A), the term "normal rehabilitation period" means the period reasonably expected to be required for the rehabilitation of the building—

(i) beginning with the date on which physical work on the rehabilitation begins (or, if later, the first day of the first taxable year to which an election under this subsection applies), and

(ii) ending on the date on which it is expected that the property will be available for placing in service.

(3) Special rules for applying paragraph (1)

For purposes of paragraph (1)—

(A) Component parts, etc.

Property which is to be a component part of, or is otherwise to be included in, any building to which this subsection applies shall be taken into account—

(i) at a time not earlier than the time at which it becomes irrevocably devoted to use in the building, and

(ii) as if (at the time referred to in clause (i)) the taxpayer had expended an amount equal to that portion of the cost to the taxpayer of such component or other property which, for purposes of this subpart, is properly chargeable (during such taxable year) to capital account

with respect to such building.

(B) Certain borrowing disregarded

Any amount borrowed directly or indirectly by the taxpayer from the person rehabilitating the property for him shall not be treated as an amount expended for such rehabilitation.

(C) Limitation for buildings which are not self-rehabilitated

(i) In general

In the case of a building which is not self-rehabilitated, the amount taken into account under paragraph (1)(B) for any taxable year shall not exceed the amount which represents the portion of the overall cost to the taxpayer of the rehabilitation which is properly attributable to the portion of the rehabilitation which is completed during such taxable year.

(ii) Carryover of certain amounts

In the case of a building which is not a self-rehabilitated building, if for the taxable year—

(I) the amount which (but for clause (i)) would have been taken into account under paragraph (1)(B) exceeds the limitation of clause (i), then the amount of such excess shall be taken into account under paragraph (1)(B) for the succeeding taxable year, or

(II) the limitation of clause (i) exceeds the amount taken into account under paragraph (1)(B), then the amount of such excess shall increase the limitation of clause (i) for the succeeding taxable year.

(D) Determination of percentage of completion

The determination under subparagraph (C)(i) of the portion of the overall cost to the taxpayer of the rehabilitation which is properly attributable to rehabilitation completed during any taxable year shall be made, under regulations prescribed by the Secretary, on the basis of engineering or architectural estimates or on the basis of cost accounting records. Unless the taxpayer establishes otherwise by clear and convincing evidence, the rehabilitation shall be deemed to be completed not more rapidly than ratably over the normal rehabilitation period.

(E) No progress expenditures for certain prior periods

No qualified rehabilitation expenditures shall be taken into account under this subsection for any period before the first day of the first taxable year to which an election under this subsection applies.

(F) No progress expenditures for property for year it is placed in service, etc.

In the case of any building, no qualified rehabilitation expenditures shall be taken into account under this subsection for the earlier of—

(i) the taxable year in which the building is placed in service, or

(ii) the first taxable year for which recapture is required under section 50(a)(2) with respect to such property,

or for any taxable year thereafter.

(4) Self-rehabilitated building

For purposes of this subsection, the term "self-rehabilitated building" means any building if it is reasonable to believe that more than half of the qualified rehabilitation expenditures for such building will be made directly by the taxpayer.

(5) Election

This subsection shall apply to any taxpayer only if such taxpayer has made an election under this paragraph. Such an election shall apply to the taxable year for which made and all subsequent taxable years. Such an election, once made, may be revoked only with the consent of the Secretary.

(Added Pub. L. 87–834, §2(b), Oct. 16, 1962, 76 Stat. 966; amended Pub. L. 91–172, title VII, §703(c), Dec. 30, 1969, 83 Stat. 666; Pub. L. 91–676, §1, Jan. 12, 1971, 84 Stat. 2060; Pub. L.

92–178, title I, §§102(c), 107(a)(1), (b)(1), Dec. 10, 1971, 85 Stat. 500, 507; Mar. 29, 1975, Pub. L. 94–12, title III, §302(b)(2)(A), (c)(1), (2), 89 Stat. 43, 44; Pub. L. 94–455, title VIII, §804(b), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1594, 1834; Pub. L. 95–600, title III, §317(a), Nov. 6, 1978, 92 Stat. 2830; Pub. L. 95–618, title II, §241(b), Nov. 9, 1978, 92 Stat. 3193; Pub. L. 97–34, title II, §211(f)(2), (g), Aug. 13, 1981, 95 Stat. 231, 233; Pub. L. 97–248, title II, §208(a)(2)(B), Sept. 3, 1982, 96 Stat. 435; Pub. L. 97–448, title I, §102(e)(3), Jan. 12, 1983, 96 Stat. 2371; Pub. L. 98–369, div. A, title IV, §§421(b)(7), 431(b)(2), (d)(4), (5), 474(o)(8), (9), July 18, 1984, 98 Stat. 794, 807, 810, 836; Pub. L. 98–443, §9(p), Oct. 4, 1984, 98 Stat. 1708; Pub. L. 99–121, title I, §103(b)(6), Oct. 11, 1985, 99 Stat. 510; Pub. L. 99–514, title XV, §1511(c)(2), title XVIII, §§1802(a)(5)(A), 1844(b)(1), (2), (4), Oct. 22, 1986, 100 Stat. 2744, 2788, 2855; Pub. L. 100–647, title I, §§1002(a)(18), (26)–(28), 1007(g)(3)(A), Nov. 10, 1988, 102 Stat. 3356, 3357, 3435; Pub. L. 101–508, title XI, §11801(c)(8)(A), 11813(a), Nov. 5, 1990, 104 Stat. 1388–524, 1388–536; Pub. L. 110–289, div. C, title I, §3025(a), July 30, 2008, 122 Stat. 2897.)

AMENDMENTS

2008—Subsec. (c)(2)(B)(v)(I). Pub. L. 110–289 substituted "section 168(h), except that '50 percent' shall be substituted for '35 percent' in paragraph (1)(B)(iii) thereof" for "section 168(h)".

1990—Pub. L. 101–508, §11813(a), amended section generally, substituting section catchline for one which read: "Certain dispositions, etc., of section 38 property" and in text substituting present provisions for provisions relating to general rules regarding disposition of section 38 property, nonapplicability of section in certain cases, the treatment of any increase in tax under the section, increases in nonqualified nonrecourse financing, and transfers between spouses or incident to divorce.

Subsec. (b)(1) to (3). Pub. L. 101–508, §11801(c)(8)(A), inserted "or" at end of par. (1), substituted a period for ", or" at end of par. (2), and struck out par. (3) which related to nonapplicability of subsec. (a) in the case of a transfer of section 38 property related to exchanges under final system plan for ConRail.

1988—Subsec. (a)(5)(D). Pub. L. 100–647, §1002(a)(26)(B), struck out at end "If, prior to a disposition to which this subsection applies, any portion of any credit is not allowable with respect to any property by reason of section 168(i)(3), such portion shall be treated (for purposes of this subparagraph) as not having been used to reduce tax liability."

Subsec. (a)(5)(E)(iii). Pub. L. 100–647, §1002(a)(26)(C), substituted "168(e)" for "168(c)".

Subsec. (a)(5)(E)(v). Pub. L. 100–647, §1002(a)(26)(A), added cl. (v).

Subsec. (a)(9)(A). Pub. L. 100–647, §1002(a)(27), substituted "section 168(h)(2)" for "section 168(j)(4)(C)".

Subsec. (c). Pub. L. 100–647, §1007(g)(3)(A), substituted "D, or G" for "or D".

Subsec. (d)(1). Pub. L. 100–647, §1002(a)(18), substituted "section 46(c)(8)(C)" for "section 48(c)(8)(C)".

Subsec. (d)(3)(C)(i). Pub. L. 100–647, §1002(a)(28), substituted "class life (as defined in section 168(i)(1))" for "present class life (as defined in section 168(g)(2))" and "no class life" for "no present class life".

1986—Subsec. (a)(9). Pub. L. 99–514, §1802(a)(5)(A), added par. (9).

Subsec. (d)(1). Pub. L. 99–514, §1844(b)(1), substituted "reducing the credit base (as defined in section 48(c)(8)(C))" for "reducing the qualified investment" and inserted "For purposes of determining the amount of credit subject to the early disposition or cessation rules of subsection (a), the net increase in the amount of the nonqualified nonrecourse financing with respect to the property shall be treated as reducing the property's credit base (and correspondingly reducing the qualified investment in the property) in the year in which the property was first placed in service."

Subsec. (d)(3)(E)(i). Pub. L. 99–514, §1844(b)(4), inserted "reduced by the sum of the credit recapture amounts with respect to such property for all preceding years".

Subsec. (d)(3)(F). Pub. L. 99–514, §1844(b)(2), struck out subpar. (F) which read as follows: "The amount of any increase in tax under subsection (a) with respect to any property to which this paragraph applies shall be determined by reducing the qualified investment with respect to such property by the aggregate credit recapture amounts for all taxable years under this paragraph."

Subsec. (d)(3)(G). Pub. L. 99–514, §1511(c)(2), substituted "determined at the underpayment rate established under section 6621" for "determined under section 6621".

1985—Subsec. (a)(5)(B). Pub. L. 99–121 substituted "For property other than 3-year property" for "For 15-year, 10-year, and 5-year property" in table heading.

1984—Subsec. (a)(5)(D), (6). Pub. L. 98–369, §474(o)(8), substituted "under section 39" for "under section 46(b)".

Subsec. (a)(7)(C). Pub. L. 98–443 substituted "Secretary of Transportation" for "Civil Aeronautics Board".

Subsec. (c). Pub. L. 98–369, §474(o)(9), substituted "subpart A, B, or D" for "subpart A".

Subsec. (d). Pub. L. 98–369, §431(b)(2), substituted "Increases in nonqualified nonrecourse financing" for "Property ceasing to be at risk" in heading.

Subsec. (d)(1). Pub. L. 98–369, §431(b)(2), substituted provisions relating to increases in tax liability resulting from increases in nonqualified nonrecourse financing for provisions relating to increases in tax liability resulting from the taxpayer ceasing to be at risk with respect to certain property.

Subsec. (d)(2). Pub. L. 98–369, §431(b)(2), substituted provisions that for purposes of par. (1), transfers of debt, or agreements to transfer, occurring more than one year after the initial borrowing shall not be treated as increasing nonqualified nonrecourse financing with respect to the taxpayer for provisions that for purposes of par. (1), such transfers (or agreements to transfer) by a qualified person to a nonqualified person would not cause the taxpayer to be treated as ceasing to be at risk.

Subsec. (d)(3)(A). Pub. L. 98–369, §431(d)(4), substituted "increasing the amount of nonqualified nonrecourse financing (within the meaning of section 46(c)(8))" for "ceasing to be at risk".

Subsec. (d)(3)(B)(i). Pub. L. 98–369, §431(d)(5), struck out "other than a loan described in section 46(c)(8)(B)(ii)" after "section 46(c)(8)(F)(iv)".

Subsec. (e). Pub. L. 98–369, §421(b)(7), added subsec. (e).

1983—Subsec. (d)(2). Pub. L. 97–448, §102(e)(3)(A), substituted "section 46(c)(8)(D)" and "section 46(c)(8)(B)" for "section 48(c)(8)(D)" and "section 48(c)(8)(B)", respectively.

Subsec. (d)(3)(A). Pub. L. 97–448, §102(e)(3)(B), substituted "section 46(c)(8)(F)" for "section 46(c)(8)(E)".

1982—Subsec. (a)(5)(D). Pub. L. 97–248, §208(a)(2)(B), inserted provision that if, prior to a disposition to which this subsection applies, any portion of any credit is not allowable with respect to any property by reason of section 168(i)(3), such portion shall be treated, for purposes of this subparagraph, as not having been used to reduce tax liability.

1981—Subsec. (a)(3)(D). Pub. L. 97–34, §211(g)(2)(A), inserted provisions relating to disposition, cessation, or change in expected use described in paragraph (5).

Subsec. (a)(5), (6). Pub. L. 97–34, §211(g)(1), (2)(B), added par. (5), redesignated former par. (5) as (6) and substituted "paragraph (1), (3), or (5)" for "paragraph (1) or (3)". Former par. (6) redesignated (7).

Subsec. (a)(7), (8). Pub. L. 97–34, §211(g)(1), (2)(C), redesignated former par. (6) as (7), substituted "paragraph (6)" for "paragraph (5)", and redesignated former par. (7) as (8).

Subsec. (d). Pub. L. 97–34, §211(f)(2), added subsec. (d).

1978—Subsec. (a)(4), (5). Pub. L. 95–618, §241(b)(1), added par. (4), redesignated former par. (4) as (5) and substituted "paragraph (2) or (4)" for "paragraph (2)".

Subsec. (a)(6)(B). Pub. L. 95–618, §241(b)(3), substituted "paragraph (5)" for "paragraph (4)".

Subsec. (b)(3). Pub. L. 95–600, §317(a), added par. (3).

1976—Subsec. (a). Pub. L. 94–455, §1906(b)(13)(A), struck out in introductory provision and in par. (3)(C) "or his delegate" after "Secretary".

Subsec. (a)(7). Pub. L. 94–455, §804(b), added par. (7).

1975—Subsec. (a)(3), (4). Pub. L. 94–12, §302(b)(2)(A), (c)(1), added par. (3), redesignated former par. (3) as (4) and substituted "paragraph (1) or (3)" for "paragraph (1)". A former par. (4), relating to increase or adjustment of tax where property is destroyed by casualty, etc., was repealed by Pub. L. 92–178.

Subsec. (a)(5), (6)(B). Pub. L. 94–12, §302(c)(2), substituted "paragraph (4)" for "paragraph (3)".

1971—Subsec. (a)(4). Pub. L. 92–178, §107(a)(1), struck out par. (4) relating to property destroyed by casualty, etc.

Subsec. (a)(5). Pub. L. 92–178, §107(b)(1), provided for the repeal of par. (5) with the repeal not to apply, however, in the case of certain replacement property. See section 107(b)(2) of Pub. L. 92–178, set out in the Effective Date of 1971 Amendment note below.

Subsec. (a)(6)(A). Pub. L. 92–178, §102(c), substituted "3½ years" for "4 years".

Subsec. (a)(6). Pub. L. 91–676 added par. (6).

1969—Subsec. (a)(5). Pub. L. 91–172, §703(c)(2), added par. (5).

Subsec. (a)(4). Pub. L. 91–172, §703(c)(1), inserted provision making subpars. (B) and (C) inapplicable to any casualty or theft occurring after April 18, 1969.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–289, div. C, title I, §3025(b), July 30, 2008, 122 Stat. 2897, provided that: "The amendments made by this section [amending this section] shall apply to expenditures properly taken into account for periods after December 31, 2007."

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11813(a) of Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XV, §1511(d), Oct. 22, 1986, 100 Stat. 2746, provided that: "The amendments made by this section [amending this section and sections 48, 167, 644, 852, 4497, 6214, 6332, 6343, 6601, 6602, 6611, 6621, 6654, 6655, and 7426 of this title and sections 1961 and 2411 of Title 28, Judiciary and Judicial Procedure, and enacting provisions set out as a note under section 6621 of this title] shall apply for purposes of determining interest for periods after December 31, 1986."

Amendment by sections 1802(a)(5)(A) and 1844(b)(1), (2), (4) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–121 applicable as if included in the amendments made by section 111 of the Tax Reform Act of 1984, Pub. L. 98–369, see section 105(b)(4) of Pub. L. 99–121, set out as a note under section 168 of this title, and section 111(g) of Pub. L. 98–369, set out as an Effective Date of 1984 Amendment note under section 168 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

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

Amendment by section 421(b)(7) of Pub. L. 98–369 applicable to transfers after July 18, 1984, in taxable years ending after such date, subject to election to have amendment apply to transfers after 1983 or to transfers pursuant to existing decrees, see section 421(d) of Pub. L. 98–369, set out as an Effective Date note under section 1041 of this title.

Amendment by section 431(b)(2), (d)(4), (5) of Pub. L. 98–369 applicable to property placed in service after July 18, 1984, in taxable years ending after such date, but not applicable to property to which subsec. (d) of this section and section 46(c)(8), (9) of this title, as enacted by section 211(f) of Pub. L. 97–34, do not apply, with the taxpayer having an option to elect retroactive application of amendment by Pub. L. 98–369, see section 431(e) of Pub. L. 98–369, set out as a note under section 46 of this title.

Amendment by section 474(o)(8), (9) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to agreements entered into after July 1, 1982, or to property placed in service after that date, but not to transitional safe harbor lease property, nor to qualified leased property described in section 168(f)(8)(D)(v) of this title which is placed in service before Jan. 1, 1988, or is placed in service after such date pursuant to a binding contract or commitment entered into before April 1, 1983, and solely because of conditions which, as determined by the Secretary of the Treasury or his delegate, are not within the control of the lessor or lessee, see section 208(d)(1), (2)(A), (5) of Pub. L. 97–248, set out as a note under section 168 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 211(g) of Pub. L. 97–34 applicable to property placed in service after Dec. 31, 1980, see section 211(i)(1) of Pub. L. 97–34, set out in a note under section 46 of this title.

Amendment by section 211(f)(2) of Pub. L. 97–34 not to apply to property placed in service by the taxpayer on or before Feb. 18, 1981, and property placed in service by the taxpayer after Feb. 18, 1981, where such property was acquired by the taxpayer pursuant to a binding contract entered into on or before that date, see section 211(i)(5) of Pub. L. 97–34, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title III, §317(b), Nov. 6, 1978, 92 Stat. 2830, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after March 31, 1976."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 804(b) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1974, see section 804(e) of Pub. L. 94–455, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–12 applicable to taxable years ending after Dec. 31, 1974, see section 305(a) of Pub. L. 94–12, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

In redetermining qualified investment for purposes of subsec. (a) of this section in the case of any property which ceases to be section 38 property with respect to the taxpayer after Aug. 15, 1971, or which becomes public utility property after such date, section 46(c)(2) of this title as amended by section 102(a) of Pub. L. 92–178 as applicable, see section 102(d)(2) of Pub. L. 92–178, set out as a note under section 46 of this title.

Amendment by section 107(a)(1) of Pub. L. 92–178 applicable to casualties and thefts occurring after Aug. 15, 1971, see section 107(a)(2) of Pub. L. 92–178, set out as a note under section 46 of this title.

Pub. L. 92–178, title I, §107(b)(2), Dec. 10, 1971, 85 Stat. 507, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The repeal made by paragraph (1) [repealing subsec. (a)(5) of this section] shall not apply if replacement property described in subparagraph (B) of such section 47(a)(5) is not property described in section 50 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]."

Pub. L. 92–178, title I, §102(d)(3), Dec. 10, 1971, 85 Stat. 500, provided that: "The amendment made by subsection (c) [amending this section] shall apply to leases executed after April 18, 1969."

Pub. L. 91–676, §2, Jan. 12, 1971, 84 Stat. 2060, provided that: "The amendment made by the first section of this Act [amending this section] shall apply to taxable years ending after April 18, 1969."

EFFECTIVE DATE

Section applicable with respect to taxable years ending after Dec. 31, 1961, see section 2(h) of Pub. L. 87–834, set out as a note under section 46 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

CLARIFICATION OF EFFECT OF 1984 AMENDMENT ON INVESTMENT TAX CREDIT

For provision that nothing in the amendments made by section 474(o) of Pub. L. 98–369, which amended this section, be construed as reducing the investment tax credit in taxable years beginning before Jan. 1, 1984, see section 475(c) of Pub. L. 98–369, set out as a note under section 46 of this title.

TRANSFER OF FUNCTIONS

Functions, powers, and duties of Federal Aviation Agency and of Administrator and other offices and officers thereof transferred by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, to Secretary of Transportation,

with functions, powers, and duties of Secretary of Transportation pertaining to aviation safety to be exercised by Federal Aviation Administrator in Department of Transportation, see section 106 of Title 49, Transportation.

§48. Energy credit

(a) Energy credit

(1) In general

For purposes of section 46, except as provided in paragraphs (1)(B), (2)(B), (3)(B), and (4)(B) [1] of subsection (c), the energy credit for any taxable year is the energy percentage of the basis of each energy property placed in service during such taxable year.

(2) Energy percentage

(A) In general

The energy percentage is—

(i) 30 percent in the case of—

(I) qualified fuel cell property,

(II) energy property described in paragraph (3)(A)(i) but only with respect to periods ending before January 1, 2017,

(III) energy property described in paragraph (3)(A)(ii), and

(IV) qualified small wind energy property, and

(ii) in the case of any energy property to which clause (i) does not apply, 10 percent.

(B) Coordination with rehabilitation credit

The energy percentage shall not apply to that portion of the basis of any property which is attributable to qualified rehabilitation expenditures.

(3) Energy property

For purposes of this subpart, the term "energy property" means any property—

(A) which is—

(i) equipment which uses solar energy to generate electricity, to heat or cool (or provide hot water for use in) a structure, or to provide solar process heat, excepting property used to generate energy for the purposes of heating a swimming pool,

(ii) equipment which uses solar energy to illuminate the inside of a structure using fiber-optic distributed sunlight but only with respect to periods ending before January 1, 2017,

(iii) equipment used to produce, distribute, or use energy derived from a geothermal deposit (within the meaning of section 613(e)(2)), but only, in the case of electricity generated by geothermal power, up to (but not including) the electrical transmission stage,

(iv) qualified fuel cell property or qualified microturbine property,

(v) combined heat and power system property,

(vi) qualified small wind energy property, or

(vii) equipment which uses the ground or ground water as a thermal energy source to heat a structure or as a thermal energy sink to cool a structure, but only with respect to periods ending before January 1, 2017,

(B)(i) the construction, reconstruction, or erection of which is completed by the taxpayer, or

(ii) which is acquired by the taxpayer if the original use of such property commences with the taxpayer,

(C) with respect to which depreciation (or amortization in lieu of depreciation) is allowable, and

(D) which meets the performance and quality standards (if any) which—

(i) have been prescribed by the Secretary by regulations (after consultation with the Secretary of Energy), and

(ii) are in effect at the time of the acquisition of the property.

Such term shall not include any property which is part of a facility the production from which is allowed as a credit under section 45 for the taxable year or any prior taxable year.

(4) Special rule for property financed by subsidized energy financing or industrial development bonds

(A) Reduction of basis

For purposes of applying the energy percentage to any property, if such property is financed in whole or in part by—

(i) subsidized energy financing, or

(ii) the proceeds of a private activity bond (within the meaning of section 141) the interest on which is exempt from tax under section 103,

the amount taken into account as the basis of such property shall not exceed the amount which (but for this subparagraph) would be so taken into account multiplied by the fraction determined under subparagraph (B).

(B) Determination of fraction

For purposes of subparagraph (A), the fraction determined under this subparagraph is 1 reduced by a fraction—

(i) the numerator of which is that portion of the basis of the property which is allocable to such financing or proceeds, and

(ii) the denominator of which is the basis of the property.

(C) Subsidized energy financing

For purposes of subparagraph (A), the term "subsidized energy financing" means financing provided under a Federal, State, or local program a principal purpose of which is to provide subsidized financing for projects designed to conserve or produce energy.

(D) Termination

This paragraph shall not apply to periods after December 31, 2008, under rules similar to the rules of section 48(m) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

(5) Election to treat qualified facilities as energy property

(A) In general

In the case of any qualified property which is part of a qualified investment credit facility—

(i) such property shall be treated as energy property for purposes of this section, and

(ii) the energy percentage with respect to such property shall be 30 percent.

(B) Denial of production credit

No credit shall be allowed under section 45 for any taxable year with respect to any qualified investment credit facility.

(C) Qualified investment credit facility

For purposes of this paragraph, the term "qualified investment credit facility" means any facility—

(i) which is a qualified facility (within the meaning of section 45) described in paragraph (1), (2), (3), (4), (6), (7), (9), or (11) of section 45(d),

(ii) which is placed in service after 2008 and the construction of which begins before January 1, 2014, and

(iii) with respect to which—

(I) no credit has been allowed under section 45, and
(II) the taxpayer makes an irrevocable election to have this paragraph apply.

(D) Qualified property

For purposes of this paragraph, the term "qualified property" means property—
(i) which is—
(I) tangible personal property, or
(II) other tangible property (not including a building or its structural components), but only if such property is used as an integral part of the qualified investment credit facility,

(ii) with respect to which depreciation (or amortization in lieu of depreciation) is allowable,
(iii) which is constructed, reconstructed, erected, or acquired by the taxpayer, and
(iv) the original use of which commences with the taxpayer.

(b) Certain progress expenditure rules made applicable

Rules similar to the rules of subsections (c)(4) and (d) of section 46 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of subsection (a).

(c) Definitions

For purposes of this section—

(1) Qualified fuel cell property

(A) In general

The term "qualified fuel cell property" means a fuel cell power plant which—
(i) has a nameplate capacity of at least 0.5 kilowatt of electricity using an electrochemical process, and
(ii) has an electricity-only generation efficiency greater than 30 percent.

(B) Limitation

In the case of qualified fuel cell property placed in service during the taxable year, the credit otherwise determined under subsection (a) for such year with respect to such property shall not exceed an amount equal to $1,500 for each 0.5 kilowatt of capacity of such property.

(C) Fuel cell power plant

The term "fuel cell power plant" means an integrated system comprised of a fuel cell stack assembly and associated balance of plant components which converts a fuel into electricity using electrochemical means.

(D) Termination

The term "qualified fuel cell property" shall not include any property for any period after December 31, 2016.

(2) Qualified microturbine property

(A) In general

The term "qualified microturbine property" means a stationary microturbine power plant which—
(i) has a nameplate capacity of less than 2,000 kilowatts, and
(ii) has an electricity-only generation efficiency of not less than 26 percent at International Standard Organization conditions.

(B) Limitation

In the case of qualified microturbine property placed in service during the taxable year, the credit otherwise determined under subsection (a) for such year with respect to such property shall not exceed an amount equal [2] $200 for each kilowatt of capacity of such property.

(C) Stationary microturbine power plant

The term "stationary microturbine power plant" means an integrated system comprised of a gas turbine engine, a combustor, a recuperator or regenerator, a generator or alternator, and associated balance of plant components which converts a fuel into electricity and thermal energy. Such term also includes all secondary components located between the existing infrastructure for fuel delivery and the existing infrastructure for power distribution, including equipment and controls for meeting relevant power standards, such as voltage, frequency, and power factors.

(D) Termination

The term "qualified microturbine property" shall not include any property for any period after December 31, 2016.

(3) Combined heat and power system property

(A) Combined heat and power system property

The term "combined heat and power system property" means property comprising a system—

(i) which uses the same energy source for the simultaneous or sequential generation of electrical power, mechanical shaft power, or both, in combination with the generation of steam or other forms of useful thermal energy (including heating and cooling applications),

(ii) which produces—

(I) at least 20 percent of its total useful energy in the form of thermal energy which is not used to produce electrical or mechanical power (or combination thereof), and

(II) at least 20 percent of its total useful energy in the form of electrical or mechanical power (or combination thereof),

(iii) the energy efficiency percentage of which exceeds 60 percent, and

(iv) which is placed in service before January 1, 2017.

(B) Limitation

(i) In general

In the case of combined heat and power system property with an electrical capacity in excess of the applicable capacity placed in service during the taxable year, the credit under subsection (a)(1) (determined without regard to this paragraph) for such year shall be equal to the amount which bears the same ratio to such credit as the applicable capacity bears to the capacity of such property.

(ii) Applicable capacity

For purposes of clause (i), the term "applicable capacity" means 15 megawatts or a mechanical energy capacity of more than 20,000 horsepower or an equivalent combination of electrical and mechanical energy capacities.

(iii) Maximum capacity

The term "combined heat and power system property" shall not include any property comprising a system if such system has a capacity in excess of 50 megawatts or a mechanical energy capacity in excess of 67,000 horsepower or an equivalent combination of electrical and mechanical energy capacities.

(C) Special rules

(i) Energy efficiency percentage

For purposes of this paragraph, the energy efficiency percentage of a system is the fraction—

(I) the numerator of which is the total useful electrical, thermal, and mechanical power produced by the system at normal operating rates, and expected to be consumed in its normal application, and

(II) the denominator of which is the lower heating value of the fuel sources for the system.

(ii) Determinations made on Btu basis

The energy efficiency percentage and the percentages under subparagraph (A)(ii) shall be determined on a Btu basis.

(iii) Input and output property not included

The term "combined heat and power system property" does not include property used to transport the energy source to the facility or to distribute energy produced by the facility.

(D) Systems using biomass

If a system is designed to use biomass (within the meaning of paragraphs (2) and (3) of section 45(c) without regard to the last sentence of paragraph (3)(A)) for at least 90 percent of the energy source—

(i) subparagraph (A)(iii) shall not apply, but

(ii) the amount of credit determined under subsection (a) with respect to such system shall not exceed the amount which bears the same ratio to such amount of credit (determined without regard to this subparagraph) as the energy efficiency percentage of such system bears to 60 percent.

(4) Qualified small wind energy property

(A) In general

The term "qualified small wind energy property" means property which uses a qualifying small wind turbine to generate electricity.

(B) Qualifying small wind turbine

The term "qualifying small wind turbine" means a wind turbine which has a nameplate capacity of not more than 100 kilowatts.

(C) Termination

The term "qualified small wind energy property" shall not include any property for any period after December 31, 2016.

(d) Coordination with Department of Treasury grants

In the case of any property with respect to which the Secretary makes a grant under section 1603 of the American Recovery and Reinvestment Tax Act of 2009—

(1) Denial of production and investment credits

No credit shall be determined under this section or section 45 with respect to such property for the taxable year in which such grant is made or any subsequent taxable year.

(2) Recapture of credits for progress expenditures made before grant

If a credit was determined under this section with respect to such property for any taxable year ending before such grant is made—

(A) the tax imposed under subtitle A on the taxpayer for the taxable year in which such grant is made shall be increased by so much of such credit as was allowed under section 38,

(B) the general business carryforwards under section 39 shall be adjusted so as to recapture the portion of such credit which was not so allowed, and

(C) the amount of such grant shall be determined without regard to any reduction in the basis of such property by reason of such credit.

(3) Treatment of grants

Any such grant shall—

(A) not be includible in the gross income of the taxpayer, but

(B) shall [3] be taken into account in determining the basis of the property to which such grant relates, except that the basis of such property shall be reduced under section 50(c) in the same

manner as a credit allowed under subsection (a).

(Added Pub. L. 87–834, §2(b), Oct. 16, 1962, 76 Stat. 967; amended Pub. L. 88–272, title II, §203(a)(1), (3)(A), (b), (c), Feb. 26, 1964, 78 Stat. 33, 34; Pub. L. 89–800, §1 Nov. 8, 1966, 80 Stat. 1508; Pub. L. 89–809, title II, §201(a), Nov. 13, 1966, 80 Stat. 1575; Pub. L. 90–26, §§1, 2(a), 3, June 13, 1967, 81 Stat. 57, 58; Pub. L. 91–172, title I, §121(d)(2)(A), title IV, §401(e)(2)–(4), Dec. 30, 1969, 83 Stat. 547, 603; Pub. L. 92–178, title I, §§102(a)(2), 103, 104(a)(1), (b)–(f)(1), (g), 108(b), (c), Dec. 10, 1971, 85 Stat. 499–502, 507; Pub. L. 94–12, title III, §§301(c)(1), 302(c)(3), title VI, §604(a), Mar. 29, 1975, 89 Stat. 38, 44, 65; Pub. L. 94–455, title VIII, §§802(b)(6), 804(a), title X, §1051(h)(1), title XIX, §§1901(a)(5), (b)(11)(A), 1906(b)(13)(A), title XXI, §2112(a)(1), Oct. 4, 1976, 90 Stat. 1583, 1591, 1647, 1764, 1795, 1834, 1905; Pub. L. 95–473, §2(a)(2)(A), Oct. 17, 1978, 92 Stat. 1464; Pub. L. 95–600, title I, §141(b), title III, §§312(c)(1)–(3), 314(a), (b), 315(a)–(c), title VII, §703(a)(3), (4), Nov. 6, 1978, 92 Stat. 2791, 2826–2829, 2939; Pub. L. 95–618, title III, §301(b), (d)(1), (2), Nov. 9, 1978, 92 Stat. 3195, 3199, 3200; Pub. L. 96–222, title I, §§101(a)(7)(G), (H), (L)(i)(I)–(IV), (ii)(III)–(VI), (iii)(II), (III), (v)(II)–(V), (M)(ii), (iii), 103(a)(2)(A), (4)(B), 108(c)(6), Apr. 1, 1980, 94 Stat. 198–201, 208, 209, 228; Pub. L. 96–223, title II, §§221(b), 222(a)–(e)(1), (f)–(i), 223(a)(1), (c)(1), Apr. 2, 1980, 94 Stat. 261–266; Pub. L. 96–451, title III, §302(a), Oct. 14, 1980, 94 Stat. 1991; Pub. L. 96–605, title I, §109(a), title II, §223(a), Dec. 28, 1980, 94 Stat. 3525, 3528; Pub. L. 97–34, title II, §§211(a)(2), (c), (e)(3), (4), (h), 212(a)(3), (b), (c), (d)(2)(A), 213(a), 214(a), (b), title III, §332(b), Aug. 13, 1981, 95 Stat. 227–229, 235, 236, 239, 240, 296; Pub. L. 97–248, title II, §§205(a)(1), (4), (5)(A), 209(c), Sept. 3, 1982, 96 Stat. 427, 429, 447; Pub. L. 97–354, §§3(d), 5(a)(7), (8), Oct. 19, 1982, 96 Stat. 1689, 1692; Pub. L. 97–362, title I, §104(a), Oct. 25, 1982, 96 Stat. 1729; Pub. L. 97–424, title V, §546(a), Jan. 6, 1983, 96 Stat. 2198; Pub. L. 97–448, title I, §102(e)(2)(A), (f)(2), (3), (6), title II, §202(c), title III, §306(a)(3), Jan. 12, 1983, 96 Stat. 2371, 2372, 2396, 2400; Pub. L. 98–369, div. A, title I, §§11, 31(b), (c), 111(e)(8), 113(a)(1), (b)(3), (4), 114(a), title IV, §§431(c), 474(o)(10)–(18), title VII, §§712(b), 721(x)(1), 735(c)(1), title X, §1043(a), July 18, 1984, 98 Stat. 503, 517, 518, 633, 635, 637, 638, 808, 836, 837, 946, 971, 981, 1044; Pub. L. 99–121, title I, §103(b)(5), Oct. 11, 1985, 99 Stat. 510; Pub. L. 99–514, title II, §251(b), (c), title VII, §701(e)(4)(C), title VIII, §803(b)(2)(B), title XII, §§1272(d)(5), 1275(c)(5), title XV, §1511(c)(3), title XVIII, §§1802(a)(4)(C), (5)(B), (9)(A), (B), 1809(d)(2), (e), 1847(b)(6), 1879(j)(1), Oct. 22, 1986, 100 Stat. 2184, 2186, 2343, 2355, 2594, 2599, 2745, 2788, 2789, 2821, 2856, 2908; Pub. L. 100–647, title I, §§1002(a)(14), (16)(A), (20), (29), (30), 1013(a)(41), Nov. 10, 1988, 102 Stat. 3355–3357, 3544; Pub. L. 101–508, title XI, §§11801(c)(6)(A), 11813(a), Nov. 5, 1990, 104 Stat. 1388–523, 1388–541; Pub. L. 102–227, title I, §106, Dec. 11, 1991, 105 Stat. 1687; Pub. L. 102–486, title XIX, §1916(a), Oct. 24, 1992, 106 Stat. 3024; Pub. L. 108–357, title III, §322(d)(2)(A), (B), title VII, §710(e), Oct. 22, 2004, 118 Stat. 1475, 1557; Pub. L. 109–58, title XIII, §§1336(a)–(d), 1337(a)–(c), Aug. 8, 2005, 119 Stat. 1036–1038; Pub. L. 109–135, title IV, §412(m), (n), Dec. 21, 2005, 119 Stat. 2638; Pub. L. 109–432, div. A, title II, §207, Dec. 20, 2006, 120 Stat. 2945; Pub. L. 110–172, §11(a)(8), (9), Dec. 29, 2007, 121 Stat. 2485; Pub. L. 110–343, div. B, title I, §§103(a), (c)–(e), 104(a)–(d), 105(a), Oct. 3, 2008, 122 Stat. 3811, 3813, 3814; Pub. L. 111–5, div. B, title I, §§1102(a), 1103(a), (b)(1), 1104, Feb. 17, 2009, 123 Stat. 319–321; Pub. L. 112–240, title IV, §407(b), (c)(1), Jan. 2, 2013, 126 Stat. 2341.)

REFERENCES IN TEXT

Paragraph (4)(B) of subsection (c), referred to in subsec. (a)(1), was repealed and par. (4)(C) of subsec. (c) was redesignated as (4)(B) by Pub. L. 111–5, div. B, title I, §1103(a), Feb. 17, 2009, 123 Stat. 320.

The date of the enactment of the Revenue Reconciliation Act of 1990, referred to in subsecs. (a)(4)(D) and (b), is the date of enactment of Pub. L. 101–508, which was approved Nov. 5, 1990.

Section 1603 of the American Recovery and Reinvestment Tax Act of 2009, referred to in subsec. (d), is section 1603 of Pub. L. 111–5, which is set out as a note below.

AMENDMENTS

2013—Subsec. (a)(5)(C). Pub. L. 112–240, §407(b), amended subpar. (C) generally. Prior to amendment, text read as follows: "For purposes of this paragraph, the term 'qualified investment credit facility' means any of the following facilities if no credit has been allowed under section 45 with respect to such facility and the

taxpayer makes an irrevocable election to have this paragraph apply to such facility:

"(i) WIND FACILITIES.—Any qualified facility (within the meaning of section 45) described in paragraph (1) of section 45(d) if such facility is placed in service in 2009, 2010, 2011, or 2012.

"(ii) OTHER FACILITIES.—Any qualified facility (within the meaning of section 45) described in paragraph (2), (3), (4), (6), (7), (9), or (11) of section 45(d) if such facility is placed in service in 2009, 2010, 2011, 2012, or 2013."

Subsec. (a)(5)(D)(iii), (iv). Pub. L. 112–240, §407(c)(1), added cls. (iii) and (iv).

2009—Subsec. (a)(4)(D). Pub. L. 111–5, §1103(b)(1), added subpar. (D).

Subsec. (a)(5). Pub. L. 111–5, §1102(a), added par. (5).

Subsec. (c)(4)(B) to (D). Pub. L. 111–5, §1103(a), redesignated subpars. (C) and (D) as (B) and (C), respectively, and struck out former subpar. (B). Text of former subpar. (B) read as follows: "In the case of qualified small wind energy property placed in service during the taxable year, the credit otherwise determined under subsection (a)(1) for such year with respect to all such property of the taxpayer shall not exceed $4,000."

Subsec. (d). Pub. L. 111–5, §1104, added subsec. (d).

2008—Subsec. (a)(1). Pub. L. 110–343, §104(d), substituted "paragraphs (1)(B), (2)(B), (3)(B), and (4)(B)" for "paragraphs (1)(B), (2)(B), and (3)(B)".

Pub. L. 110–343, §103(c)(3), substituted "paragraphs (1)(B), (2)(B), and (3)(B)" for "paragraphs (1)(B) and (2)(B)".

Subsec. (a)(2)(A)(i)(II). Pub. L. 110–343, §103(a)(1), substituted "January 1, 2017" for "January 1, 2009".

Subsec. (a)(2)(A)(i)(IV). Pub. L. 110–343, §104(b), added subcl. (IV).

Subsec. (a)(3). Pub. L. 110–343, §103(e)(1), in concluding provisions, struck out "The term 'energy property' shall not include any property which is public utility property (as defined in section 46(f)(5) as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)." before "Such term".

Subsec. (a)(3)(A)(ii). Pub. L. 110–343, §103(a)(1), substituted "January 1, 2017" for "January 1, 2009".

Subsec. (a)(3)(A)(v). Pub. L. 110–343, §103(c)(1), added cl. (v).

Subsec. (a)(3)(A)(vi). Pub. L. 110–343, §104(a), added cl. (vi).

Subsec. (a)(3)(A)(vii). Pub. L. 110–343, §105(a), added cl. (vii).

Subsec. (c). Pub. L. 110–343, §103(c)(2)(A), inserted heading and struck out former heading "Qualified fuel cell property; qualified microturbine property".

Subsec. (c)(1)(B). Pub. L. 110–343, §103(d), substituted "$1,500" for "$500".

Subsec. (c)(1)(D). Pub. L. 110–343, §103(e)(2)(A), redesignated subpar. (E) as (D) and struck out heading and text of former subpar. (D). Text read as follows: "The first sentence of the matter in subsection (a)(3) which follows subparagraph (D) thereof shall not apply to qualified fuel cell property which is used predominantly in the trade or business of the furnishing or sale of telephone service, telegraph service by means of domestic telegraph operations, or other telegraph services (other than international telegraph services)."

Subsec. (c)(1)(E). Pub. L. 110–343, §103(e)(2)(A), redesignated subpar. (E) as (D).

Pub. L. 110–343, §103(a)(2), substituted "December 31, 2016" for "December 31, 2008".

Subsec. (c)(2)(D). Pub. L. 110–343, §103(e)(2)(B), redesignated subpar. (E) as (D) and struck out heading and text of former subpar. (D). Text read as follows: "The first sentence of the matter in subsection (a)(3) which follows subparagraph (D) thereof shall not apply to qualified microturbine property which is used predominantly in the trade or business of the furnishing or sale of telephone service, telegraph service by means of domestic telegraph operations, or other telegraph services (other than international telegraph services)."

Subsec. (c)(2)(E). Pub. L. 110–343, §103(e)(2)(B), redesignated subpar. (E) as (D).

Pub. L. 110–343, §103(a)(3), substituted "December 31, 2016" for "December 31, 2008".

Subsec. (c)(3). Pub. L. 110–343, §103(c)(2)(B), added par. (3).

Subsec. (c)(4). Pub. L. 110–343, §104(c), added par. (4).

2007—Subsec. (c). Pub. L. 110–172, §11(a)(8), substituted "section" for "subsection" in introductory provisions.

Subsec. (c)(1)(B), (2)(B). Pub. L. 110–172, §11(a)(9), substituted "subsection (a)" for "paragraph (1)".

2006—Subsec. (a)(2)(A)(i)(II), (3)(A)(ii). Pub. L. 109–432, §207(1), substituted "January 1, 2009" for "January 1, 2008".

Subsec. (c)(1)(E), (2)(E). Pub. L. 109–432, §207(2), substituted "December 31, 2008" for "December 31, 2007".

2005—Subsec. (a)(1). Pub. L. 109–135, §412(m), substituted "paragraphs (1)(B) and (2)(B) of subsection

(c)" for "paragraph (1)(B) or (2)(B) of subsection (d)".

Pub. L. 109–58, §1336(d), inserted "except as provided in paragraph (1)(B) or (2)(B) of subsection (d)," before "the energy credit".

Subsec. (a)(2)(A). Pub. L. 109–58, §1337(a), reenacted heading without change and amended text of subpar. (A) generally. Prior to amendment, text read as follows: "The energy percentage is—

"(i) in the case of qualified fuel cell property, 30 percent, and

"(ii) in the case of any other energy property, 10 percent."

Pub. L. 109–58, §1336(c), reenacted heading without change and amended text of subpar. (A) generally. Prior to amendment, text read as follows: "The energy percentage is 10 percent."

Subsec. (a)(3)(A)(i). Pub. L. 109–58, §1337(c), inserted "excepting property used to generate energy for the purposes of heating a swimming pool," after "solar process heat,".

Subsec. (a)(3)(A)(ii). Pub. L. 109–135, §412(n)(2), struck out "or" at end.

Pub. L. 109–58, §1337(b), added cl. (ii). Former cl. (ii) redesignated (iii) relating to equipment used to produce, distribute, or use energy derived from a geothermal deposit.

Subsec. (a)(3)(A)(iii). Pub. L. 109–58, §1337(b), redesignated cl. (ii) as (iii) relating to equipment used to produce, distribute, or use energy derived from a geothermal deposit.

Pub. L. 109–58, §1336(a), added cl. (iii) relating to qualified fuel cell property or qualified microturbine property.

Subsec. (a)(3)(A)(iv). Pub. L. 109–135, §412(n)(1), redesignated cl. (iii), relating to qualified fuel cell property or qualified microturbine property, as (iv).

Subsec. (c). Pub. L. 109–58, §1336(b), added subsec. (c).

2004—Pub. L. 108–357, §322(d)(2)(B), struck out "; reforestation credit" after "Energy credit" in section catchline.

Subsec. (a)(3). Pub. L. 108–357, §710(e), inserted at end of concluding provisions "Such term shall not include any property which is part of a facility the production from which is allowed as a credit under section 45 for the taxable year or any prior taxable year."

Subsec. (a)(5). Pub. L. 108–357, §322(d)(2)(A)(iii), redesignated subsec. (a)(5) as (b).

Pub. L. 108–357, §322(d)(2)(A)(ii), substituted "subsection (a)" for "this subsection".

Subsec. (b). Pub. L. 108–357, §322(d)(2)(A)(iii), redesignated subsec. (a)(5) as (b).

Pub. L. 108–357, §322(d)(2)(A)(i), struck out heading and text of subsec. (b). Text read as follows:

"(1) IN GENERAL.—For purposes of section 46, the reforestation credit for any taxable year is 10 percent of the portion of the amortizable basis of any qualified timber property which was acquired during such taxable year and which is taken into account under section 194 (after the application of section 194(b)(1)).

"(2) DEFINITIONS.—For purposes of this subpart, the terms 'amortizable basis' and 'qualified timber property' have the respective meanings given to such terms by section 194."

1992—Subsec. (a)(2). Pub. L. 102–486 substituted "The" for "Except as provided in subparagraph (B), the" in subpar. (A), redesignated subpar. (C) as (B), and struck out former subpar. (B) which read as follows: "(B) TERMINATION.—Effective with respect to periods after June 30, 1992, the energy percentage is zero. For purposes of the preceding sentence, rules similar to the rules of section 48(m) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall apply."

1991—Subsec. (a)(2)(B). Pub. L. 102–227 substituted "June 30, 1992" for "December 31, 1991".

1990—Pub. L. 101–508, §11813(a), amended section generally, substituting section catchline for one which read: "Definitions; special rules" and in text substituting present provisions for provisions defining section 38 property, new section 38 property, used section 38 property, provisions relating to certain leased property, estates and trusts, special rules for qualified rehabilitated buildings, credit for movie and television films, treatment of energy property, application of certain transitional rules, definitions of certain credits, definition of single purpose agricultural or horticultural structure, basis adjustment to section 38 property, certain section 501(d) organizations, special rules relating to sound recordings, and a cross reference to section 381 of this title.

Subsec. (a)(8). Pub. L. 101–508, §11801(c)(6)(A), struck out par. (8) "Amortized property" which read as follows: "Any property with respect to which an election under section 167(k), 184, or 188 applies shall not be treated as section 38 property."

1988—Subsec. (a)(1). Pub. L. 100–647, §1002(a)(29), which directed amendment of par. (1) by substituting "property to which section 168 applies" for "recovery property (within the meaning of section 168)" in penultimate sentence, was executed by making the substitution for "recovery property (within the meaning of section 168", which results in retaining remaining parenthetical material and closing parenthesis.

Subsec. (a)(5)(A)(ii). Pub. L. 100–647, §1002(a)(14)(A)–(C), substituted "168(h)(2)(C)" for "168(j)(4)(C)", "168(h)(2)(A)(iii)" for "168(j)(4)(A)(iii)", and "168(h)(2)(B)" for "168(j)(4)(B)".

Subsec. (a)(5)(B)(i). Pub. L. 100–647, §1002(a)(14)(D), substituted "168(i)(3)" for "168(j)(6)".

Subsec. (a)(5)(B)(ii). Pub. L. 100–647, §1002(a)(14)(E), substituted "168(h)(1)(C)(ii)" for "168(j)(3)(C)(ii)".

Subsec. (a)(5)(D). Pub. L. 100–647, §1002(a)(14)(F), substituted "paragraphs (5) and (6) of section 168(h)" for "paragraphs (8) and (9) of section 168(j)".

Subsec. (a)(5)(E). Pub. L. 100–647, §1002(a)(14)(G), amended subpar. (E) generally, substituting "provision" for "provisions" and "168(h)" for "168(j)".

Subsec. (l)(2)(C). Pub. L. 100–647, §1002(a)(30), substituted "to which section 168 applies" for "which is recovery property (within the meaning of section 168)".

Subsec. (l)(11)(A)(ii). Pub. L. 100–647, §1013(a)(41), substituted "a private activity bond (within the meaning of section 141)" for "an industrial development bond (within the meaning of section 103(b)(2))".

Subsec. (s). Pub. L. 100–647, §1002(a)(20), redesignated subsec. (s), relating to cross reference, as (t).

Subsec. (s)(9). Pub. L. 100–647, §1002(a)(16)(A), added par. (9).

Subsec. (t). Pub. L. 100–647, §1002(a)(20), redesignated subsec. (s), relating to cross reference, as (t).

1986—Subsec. (a)(2)(B)(vii). Pub. L. 99–514, §§1272(d)(5), 1275(c)(5), struck out "932," after "931," and "or which is entitled to the benefits of section 934(b)" after "in effect under section 936", and substituted "or 933" for ", 933, or 934(c)".

Subsec. (a)(4). Pub. L. 99–514, §1802(a)(9)(A), substituted "514(b)" for "514(c)" and "514(a)" for "514(b)".

Subsec. (a)(5)(B)(iii). Pub. L. 99–514, §1802(a)(5)(B), struck out cl. (iii) which provided that (I) in the case of any aircraft used under a qualifying lease (as defined in section 47(a)(7)(C)) and which is leased to a foreign person or entity before January 1, 1990, clause (i) shall be applied by substituting "3 years" for "6 months" and that (II) for purposes of applying section 47(a)(1) and (5)(B) there shall not be taken into account any period of a lease to which subclause (I) applies.

Subsec. (a)(5)(D), (E). Pub. L. 99–514, §1802(a)(4)(C), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (b)(1). Pub. L. 99–514, §1809(e)(1), inserted "Such term includes any section 38 property the reconstruction of which is completed by the taxpayer, but only with respect to that portion of the basis which is properly attributable to such reconstruction."

Subsec. (b)(2). Pub. L. 99–514, §1809(e)(2), in introductory provisions substituted "the first sentence of paragraph (1)" for "paragraph (1)", in subpar. (B) substituted "3 months after" for "3 months of", in closing provisions substituted "used under the leaseback (or lease) referred to in subparagraph (B)" for "used under the lease" and inserted "The preceding sentence shall not apply to any property if the lessee and lessor of such property make an election under this sentence. Such an election, once made, may be revoked only with the consent of the Secretary."

Subsec. (d)(4)(D). Pub. L. 99–514, §701(e)(4)(C), inserted "(as in effect on the day before the date of the enactment of the Tax Reform Act of 1986)".

Subsec. (d)(6)(C)(ii). Pub. L. 99–514, §1511(c)(3), substituted "the underpayment rate" for "the rate" in closing provisions.

Subsec. (g)(1). Pub. L. 99–514, §251(b), amended par. (1) generally, restating in subpars. (A) to (D) provisions relating to qualified rehabilitated buildings which had in subpar. (A) provided general definition of qualified rehabilitated building, in subpar. (B) directed that 30 years must have elapsed since construction, in subpar. (C) provided general definition of substantially rehabilitated with special rule for phased rehabilitation and application of provision to lessees, and in subpar. (D) provided that rehabilitation included reconstruction, and striking out former subpar. (E) which had provided an alternative test for definition of qualified rehabilitated building.

Subsec. (g)(2). Pub. L. 99–514, §251(b), amended par. (2) generally, in subpar. (A) striking out reference to amounts "incurred after December 31, 1981" in introductory provision, and in cl. (i) substituting subcls. (I) to (IV) for "for real property (or additions or improvements to real property) which have a recovery period (within the meaning of section 168) of 19 (15 years in the case of low-income housing) years,", in subpar. (B), in cl. (i), substituting provision relating to use of straight line depreciation for provision relating to use of accelerated methods of depreciation, redesignating former cl. (vi) as (v) and substituting "section 168(h)" for "section 168(j)", redesignating former cl. (v) as (vi) and substituting "less than the recovery period determined under section 168(c)" for "less than 19 years (15 years in the case of low-income housing", restating subpar. (C) without change, and in subpar. (D) substituting provisions defining nonresidential real property, residential rental property and class life for provisions defining low-income housing.

Subsec. (g)(2)(B)(vi)(I). Pub. L. 99–514, §1802(a)(9)(B), substituted "section 168(j)" for "section 168(j)(3)".

Subsec. (g)(3). Pub. L. 99–514, §251(b), in amending par. (3) generally, inserted introductory phrase "For purposes of this subsection—".

Subsec. (g)(4). Pub. L. 99–514, §251(b), in amending subsec. (g) generally, reenacted par. (4) without change.

Subsec. (l)(5). Pub. L. 99–514, §1847(b)(6), substituted "section 23(c)" for "section 44C(c)" and "section 23(c)(4)(A)(viii)" for "section 44C(c)(4)(A)(viii)".

Subsec. (q)(3). Pub. L. 99–514, §251(c), struck out "other than a certified historic structure" after "qualified rehabilitated building".

Subsec. (q)(7). Pub. L. 99–514, §1809(d)(2), renumbered par. (6), relating to special rule for qualified films, as (7).

Subsec. (r). Pub. L. 99–514, §1879(j)(1), added subsec. (r). Former subsec. (r) redesignated (s).

Subsec. (s). Pub. L. 99–514, §1879(j)(1), redesignated former subsec. (r) as (s).

Subsec. (s)(5). Pub. L. 99–514, §803(b)(2)(B), which directed the general amendment of par. (5) of subsec. (r), was executed by amending par. (5) of subsec. (s) to reflect the probable intent of Congress and the intervening redesignation of subsec. (r) as (s) by Pub. L. 99–514, §1879(j)(1), see note above. Prior to amendment, par. (5) read as follows: "For purposes of this subsection, the term "sound recording" means any sound recording described in section 280(c)(2)."

1985—Subsec. (g)(2)(A)(i), (B)(v). Pub. L. 99–121 substituted "19" for "18".

1984—Subsec. (a)(5). Pub. L. 98–369, §31(b), amended par. (5) generally, to extend its scope to encompass property used by foreign persons or entities and to create an exception for short-term leases by substituting provisions covered by subpars. (A) to (D) for former provisions which had directed that property used by the United States, any State or political subdivision thereof, any international organization, or any agency or instrumentality of any of the foregoing not be treated as section 38 property, that for purposes of that prohibition the International Telecommunications Satellite Consortium, the International Maritime Satellite Organization, and any successor organization of such Consortium or Organization not be treated as an international organization, and that if any qualified rehabilitated building were used by the governmental unit pursuant to a lease, this paragraph would not apply to that portion of the basis of such building attributable to qualified rehabilitation expenditures.

Subsec. (b). Pub. L. 98–369, §114(a), amended subsec. (b) generally, substituting a general definition of "new section 38 property" for definitions which made reference to property constructed, reconstructed or erected after December 31, 1961, and adding pars. (2) and (3).

Subsec. (c)(2)(A). Pub. L. 98–369, §11(a), substituted "$125,000 ($150,000 for taxable years beginning after 1987)" for "$150,000 ($125,000 for taxable years beginning in 1981, 1982, 1983, or 1984)" in first sentence, and "$125,000 (or $150,000" for "$150,000 (or $125,000" in two places in second sentence.

Subsec. (c)(2)(B). Pub. L. 98–369, §11(b), substituted "$62,500 ($75,000 for taxable years beginning after 1987)" for "$75,000 ($62,500 for taxable years beginning in 1981, 1982, 1983, or 1984)".

Subsec. (c)(3)(B). Pub. L. 98–369, §474(o)(10), substituted "section 39" for "section 46(b)".

Subsec. (d)(1)(B). Pub. L. 98–369, §474(o)(11), substituted "section 38(c)(3)(B)" for "section 46(a)(6)".

Subsec. (d)(6). Pub. L. 98–369, §431(c), added par. (6).

Subsec. (f)(3). Pub. L. 98–369, §474(o)(12), struck out par. (3) which provided that the $25,000 amount specified under subparagraphs (A) and (B) of section 46(a)(3) applicable to an estate or trust be reduced to an amount which bore the same ratio to $25,000 as the amount of the qualified investment allocated to the estate or trust under paragraph (1) to the entire amount of the qualified investment.

Subsec. (g)(1)(E). Pub. L. 98–369, §1043(a), added subpar. (E).

Subsec. (g)(2)(A)(i). Pub. L. 98–369, §111(e)(8)(A), (B), substituted "real property" for "property" in two places, and "18 (15 years in the case of low-income housing)" for "15".

Subsec. (g)(2)(B)(i). Pub. L. 98–369, §31(c)(2), inserted "The preceding sentence shall not apply to any expenditure to the extent subsection (f)(12) or (j) of section 168 applies to such expenditure."

Subsec. (g)(2)(B)(v). Pub. L. 98–369, §111(e)(8)(C), substituted "18 years (15 years in the case of low-income housing)" for "15 years".

Subsec. (g)(2)(B)(vi). Pub. L. 98–369, §31(c)(1), added cl. (vi).

Subsec. (g)(2)(D). Pub. L. 98–369, §111(e)(8)(D), added subpar. (D).

Subsec. (k)(4). Pub. L. 98–369, §113(b)(3)(B), inserted "or at-risk rules" after "test" in heading.

Subsec. (k)(4)(A). Pub. L. 98–369, §113(b)(3)(A), inserted ", section 46(c)(8), or section 46(c)(9)".

Subsec. (k)(4)(B). Pub. L. 98–369, §113(b)(3)(C), substituted "used" for "issued".

Subsec. (k)(5)(D)(i). Pub. L. 98–369, §721(x)(1), substituted "S corporation" for "electing small business corporation".

Subsec. (l)(1). Pub. L. 98–369, §474(o)(13), substituted "section 46(b)(2)" for "section 46(a)(2)(C)".

Subsec. (l)(16)(B)(i). Pub. L. 98–369, §735(c)(1), substituted "the chassis of which is an automobile bus chassis and the body of which is an automobile bus body" for "the chassis and body of which is exempt under section 4063(a)(6) from the tax imposed by section 4061(a)".

Subsec. (m). Pub. L. 98–369, §474(o)(14), substituted "subsection (b)" for "subsection (a)(2)".

Subsec. (n). Pub. L. 98–369, §474(o)(15), repealed subsec. (n). For continuing applicability of par. (4) of subsec. (n), see section 474(o)(15) of Pub. L. 98–369, set out in Effective Date of 1984 Amendment note below.

Subsec. (o)(3) to (8). Pub. L. 98–369, §474(o)(16), redesignated par. (8) as (3) and struck out former pars. (3) to (7) which defined "employee plan credit", "basic employee plan credit", "matching employee plan credit", "basic employee plan percentage", and "matching employee plan percentage", respectively.

Subsec. (q)(1), (3). Pub. L. 98–369, §474(o)(17)(A), substituted "section 46(a)" for "section 46(a)(2)".

Subsec. (q)(4)(A)(i). Pub. L. 98–369, §474(o)(17), substituted "section 46(a)" for "section 46(a)(2)" and "section 46(b)(1)" for "section 46(a)(2)(B)".

Subsec. (q)(4)(B)(ii). Pub. L. 98–369, §474(o)(17)(B), substituted "section 46(b)(1)" for "section 46(a)(2)(B)".

Subsec. (q)(6). Pub. L. 98–369, §712(b), added par. (6) relating to adjustment in basis of interest in partnership or S corporation.

Pub. L. 98–369, §113(b)(4), added par. (6) relating to special rule for qualified films.

Subsec. (r). Pub. L. 98–369, §113(a)(1), added subsec. (r). Former subsec. (r) redesignated (s).

Pub. L. 98–369, §474(o)(18), substituted "section 381(c)(26)" for "section 381(c)(23)".

Subsec. (s). Pub. L. 98–369, §113(a)(1), redesignated former subsec. (r) as (s).

1983—Subsec. (a)(1)(G). Pub. L. 97–448, §102(e)(2)(A), inserted "(not including a building and its structural components) used in connection" after "storage facility".

Subsec. (a)(10). Pub. L. 97–448, §202(c), amended directory language of Pub. L. 96–223, §223(a)(1), to correct an error, and did not involve any change in text. See 1980 Amendment note below.

Subsec. (g)(1)(C)(i). Pub. L. 97–448, §102(f)(2), (6), substituted "the 24-month period selected by the taxpayer (at the time and in the manner prescribed by regulation) and ending with or within the taxable year" for "the 24-month period ending on the last day of the taxable year" in provisions preceding subcl. (I), substituted "adjusted basis of such building (and its structural components)" for "adjusted basis of such property" both in subcl. (I) and in provision following subcl. (II), and, in provisions following subcl. (II), substituted "holding period of the building" for "holding period of the property" and inserted provision that, for purposes of the preceding sentence, the determination of the beginning of the holding period shall be made without regard to any reconstruction by the taxpayer in connection with the rehabilitation.

Subsec. (g)(5)(A). Pub. L. 97–448, §102(f)(3), substituted "a credit is determined under section 46(a)(2)" for "a credit is allowed under this section" and "the credit so determined" for "the credit so allowed". See 1982 Amendment note for subsec. (g)(5) below and see Effective Date of 1982 and 1983 Amendment notes set out under sections 1 and 196 of this title.

Subsec. (l)(5). Pub. L. 97–424, §546(a)(3), substituted reference to subpar. (N) for reference to subpar. (M) in provision following subparagraphs.

Subsec. (l)(5)(M), (N). Pub. L. 97–424, §546(a)(1), (2), added subpar. (M) and redesignated former subpar. (M) as (N).

Subsec. (q)(3). Pub. L. 97–448, §306(a)(3), substituted "paragraphs (1) and (2) of this subsection and paragraph (5) of subsection (d)" for "paragraphs (1) and (2)".

1982—Subsec. (b). Pub. L. 97–248, §209(c), inserted provision that for purposes of determining whether section 38 property subject to a lease is new section 38 property, such property shall be treated as originally placed in service not earlier than the date such property is used under the lease, but only if such property is leased within 3 months after such property is placed in service.

Subsec. (c)(2)(D). Pub. L. 97–354 substituted "Partnerships and S corporations" for "Partnerships" in subpar. heading, and inserted "A similar rule shall apply in the case of an S corporation and its shareholders".

Subsec. (d)(5). Pub. L. 97–248, §205(a)(4), added par. (5).

Subsec. (e). Pub. L. 97–354, §5(a)(7), struck out subsec. (e) relating to apportionment among shareholders of qualified investments by an electing small business corporation.

Subsec. (g)(5). Pub. L. 97–248, §205(a)(5)(A), struck out par. (5) which, as amended by §102(f)(3) of Pub. L. 97–448, had provided that for purposes of this subtitle, if a credit were determined under section 46(a)(2) for any qualified rehabilitation expenditure in connection with a qualified rehabilitated building other than a certified historic structure, the increase in basis of such property which would (but for this paragraph) have resulted from such expenditure had to be reduced by the amount of the credit so determined, that if during any taxable year there was a recapture amount determined with respect to any qualified rehabilitated building the

basis of which was reduced under subpar. (A), the basis of such building (immediately before the event resulting in such recapture), had to be increased by an amount equal to such recapture amount, and that for purposes of this paragraph "recapture amount" was defined as any increase in tax (or adjustment in carrybacks or carryovers) determined under section 47(a)(5). See 1983 Amendment note for subsec. (g)(5) above and see Effective Date of 1982 and 1983 Amendment notes set out under sections 1 and 196 of this title.

Subsec. (k)(5)(D)(i). Pub. L. 97–354, §5(a)(8), substituted "an S corporation" for "an electing small business corporation (within the meaning of section 1371)".

Subsec. (l)(7). Pub. L. 97–362, §104(a), temporarily substituted the qualification that such term does not include equipment for hydrogenation, refining, or other process subsequent to retorting other than hydrogenation or other process which is applied in the vicinity of the property from which the shale was extracted and which is applied to bring the shale oil to a grade and quality suitable for transportation to and processing in a refinery, for the qualification that such equipment did not include equipment for hydrogenation, refining, or other processes subsequent to retorting. See Effective and Termination Dates of 1982 Amendment note below.

Subsecs. (q), (r). Pub. L. 97–248, §205(a)(1), added subsec. (q) and redesignated former subsec. (q) as (r).

1981—Subsec. (a)(1). Pub. L. 97–34, §211(e)(4), in provisions following subpar. (G), substituted "Such term includes only recovery property (within the meaning of section 168 without regard to any useful life) and any other property" for "Such term includes only property".

Subsec. (a)(1)(G). Pub. L. 97–34, §211(c), added subpar. (G).

Subsec. (a)(2)(B)(ii). Pub. L. 97–34, §211(h), designated existing provisions as subcl. (I) and added subcl. (II).

Subsec. (a)(3)(D). Pub. L. 97–34, §212(c), added subpar. (D).

Subsec. (a)(4). Pub. L. 97–34, §214(a), inserted provision that, if any qualified rehabilitated building is used by the tax-exempt organization pursuant to a lease, this paragraph shall not apply to that portion of the basis of such building which is attributable to qualified rehabilitation expenditures.

Subsec. (a)(5). Pub. L. 97–34, §214(b), inserted provision that, if any qualified rehabilitated building is used by the governmental unit pursuant to a lease, this paragraph shall not apply to that portion of the basis of such building which is attributable to qualified rehabilitation expenditures.

Subsec. (a)(8). Pub. L. 97–34, §212(d)(2)(A), substituted "or 188" for "188, or 191".

Subsec. (a)(9). Pub. L. 97–34, §211(a)(2), struck out par. (9) which set out a special rule for the depreciation of railroad track.

Subsec. (c)(2)(A) to (C). Pub. L. 97–34, §213(a), amended subpars. (A) to (C) generally raising in subpar. (A) the existing $100,000 dollar limitation to $125,000 in 1981 and to $150,000 in 1985 and in subpar. (B) the existing $50,000 dollar limitation to $62,500 in 1981 and to $75,000 in 1985.

Subsec. (g). Pub. L. 97–34, §212(b), in amending subsec. (c) generally incorporated the concept of "substantial rehabilitation" into par. (1)(A), substituted "30 years" for "20 years" as the requisite period in par. (1)(B), substituted a definition of "substantially rehabilitated" for former provisions that a major portion could be treated as a separate building in certain cases in par. (1)(C), reenacted par. (1)(D) without change, substituted "December 31, 1981" for "October 31, 1978" in provisions of par. (2)(A) preceding cl. (i), substituted provisions for a recovery period of 15 years for provisions that had provided for a useful life of 5 years or more in cl. (i) of par. (2)(A), reenacted cl. (ii) without change, substituted provisions that accelerated methods of depreciation may not be used for provisions relating to property otherwise section 38 property in cl. (i) of par. (2)(B), reenacted cls. (ii) and (iii) without change, revised the provisions of cl. (iv) relating to certified historic structures, and added cl. (v) relating to expenditures of lessees, added par. (3), redesignated former par. (3) as (4), and added par. (5).

Subsec. (l)(2)(C). Pub. L. 97–34, §211(e)(3), inserted "or which is recovery property (within the meaning of section 168)" after "3 years or more".

Subsec. (n)(1)(A)(i). Pub. L. 97–34, §332(b), substituted "which does not exceed" for "equal to".

Subsec. (o)(8). Pub. L. 97–34, §212(a)(3), added par. (8).

1980—Subsec. (a)(1). Pub. L. 96–451 added subpar. (F) and provision for treatment of the useful life of subpar. (F) property as its normal growing period.

Subsec. (a)(2)(B)(xi). Pub. L. 96–223, §222(i)(2), added cl. (xi).

Subsec. (a)(5). Pub. L. 96–605, §109(a), included the International Maritime Satellite Organization or any successor organization within organizations not to be treated as international organizations.

Subsec. (a)(7)(B). Pub. L. 95–600, §312(c)(2), as amended by Pub. L. 96–222, §103(a)(2)(A), substituted " 'described in section 50 (as in effect before its repeal by the Revenue Act of 1978' " for " 'described in section 50' ".

Subsec. (a)(10)(A). Pub. L. 96–223, §223(a)(1), as amended by Pub. L. 97–448, §202(c), provided that

"petroleum or petroleum products" does not include petroleum coke or petroleum pitch.

Subsec. (a)(10)(B). Pub. L. 96–222, §108(c)(6), substituted "5" for "51".

Subsec. (g)(2)(B)(i). Pub. L. 96–222, §103(a)(4)(B), substituted "subsections (a)(1)(E) and (l)" for "subsection (a)(1)(E)".

Subsec. (l)(1). Pub. L. 96–223, §221(b)(1), substituted "For any period for which the energy percentage determined under section 46(a)(2)(C) for any energy property is greater than zero" for "For the period beginning on October 1, 1978, and ending on December 31, 1982" in provisions preceding subpar. (A) and, in subpars. (A) and (B), substituted "such energy property" and "such property" for "any energy property".

Subsec. (l)(2)(A). Pub. L. 96–223, §222(a), added cls. (vii), (viii), and (ix).

Subsec. (l)(3)(A). Pub. L. 96–223, §222(b), (g)(2), struck out "(other than coke or coke gas)" after "solid fuel" in cl. (iii) and, in cl. (v), substituted provisions relating to equipment which converts coal into a substitute for a petroleum or natural gas derived feedstock for the manufacture of chemicals or other products and equipment which converts coal into methanol, ammonia, or hydroprocessed coal liquid or solid for provisions which had related simply to equipment which used coal as feedstock for the manufacture of chemicals or other products other than coke or coke gas, added cl. (ix), and, following cl. (ix), inserted provision that the equipment described in cl. (vii) includes equipment used for the storage of fuel derived from garbage at the site at which such fuel was produced from garbage.

Subsec. (l)(3)(B). Pub. L. 96–223, §222(i)(1)(A), redesignated subpar. (C) as (B). Former subpar. (B), which excluded public utility property from the terms "alternative energy property", "solar or wind energy property", or "recycling equipment", was struck out.

Subsec. (l)(3)(C), (D). Pub. L. 96–223, §222(i)(1)(A), (3), redesignated subpar. (D) as (C) and inserted following cl. (ii) provision that, for the purposes of the preceding sentence, in the case of property which is alternative energy property solely by reason of the amendments made by section 222(b) of the Crude Oil Windfall Profit Tax Act of 1980, "January 1, 1980" was to be substituted for "October 1, 1978". Former subpar. (C) redesignated (B).

Subsec. (l)(4)(C). Pub. L. 96–223, §222(c), added subpar. (C).

Subsec. (l)(5). Pub. L. 96–223, §222(d), added subpar. (L), redesignated former subpar. (L) as (M), and inserted provision that the Secretary shall not specify any property under subpar. (M) unless he determines that such specification meets the requirements of par. (9) of section 44C(c) for specification of items under section 44C(c)(4)(A)(viii).

Subsec. (l)(11). Pub. L. 96–223, §221(b)(2), substituted "one-half of the energy percentage determined under section 46(a)(2)(C)" for "5 percent".

Pub. L. 96–223, §223(c)(1), completely revised par. (11) to incorporate property financed by subsidized energy financing, effective with regard to periods after Dec. 31, 1982. Prior to the revision par. (11) read as follows: "In the case of property which is financed in whole or in part by the proceeds of an industrial development bond (within the meaning of section 103(b)(2)) the interest on which is exempt from tax under section 103, the energy percentage shall be one-half of the energy percentage determined under section 46(a)(2)(C)."

Subsec. (l)(13). Pub. L. 96–223, §222(e)(1), added par. (13).

Subsec. (l)(14). Pub. L. 96–223, §222(f), added par. (14).

Subsec. (l)(15). Pub. L. 96–223, §222(g)(1), added par. (15).

Subsec. (l)(16). Pub. L. 96–223, §222(h), added par. (16).

Subsec. (l)(17). Pub. L. 96–223, §222(i)(1)(B), added par. (17).

Subsec. (n). Pub. L. 96–222, §101(a)(7)(G), (H), (L)(i)(I)–(IV), (ii)(III)–(VI), (iii)(II), (v)(II)–(IV), (M)(ii), amended subsec. (n) generally to reflect the renaming of an investment tax credit ESOP to a tax credit employee stock ownership plan and a leveraged employee stock ownership plan (commonly referred to as an ESOP) to an employee stock ownership plan.

Subsec. (n)(6)(B)(i). Pub. L. 96–605, §223(a), substituted "the date on which the securities are contributed to the plan" for "the due date for filing the return for the taxable year (determined with regard to extensions)".

Subsec. (o). Pub. L. 96–222, §101(a)(7)(L)(iii)(III), (v)(IV), (V), (M)(iii), substituted "employee plan" for "ESOP" wherever appearing and inserted "percentage" after "attributable to the matching employee plan" in par. (5).

1978—Subsec. (a)(1)(A). Pub. L. 95–618, §301(d)(1), inserted "(other than an air conditioning or heating unit)" after "personal property".

Subsec. (a)(1)(D). Pub. L. 95–600, §314(a), added par. (D).

Subsec. (a)(1)(E). Pub. L. 95–600, §315(a), added par. (E).

Subsec. (a)(2)(B)(ii). Pub. L. 95–473, §2(a)(2)(A), substituted "providing transportation subject to subchapter I of chapter 105 of title 49" for "subject to part I of the Interstate Commerce Act".

Subsec. (a)(7)(A). Pub. L. 95–600, §312(c)(3), struck out "(other than pretermination property)" after "Property".

Subsec. (a)(7)(B). Pub. L. 95–600, §312(c)(2), struck out "described in section 50" after "with respect to property". See 1980 Amendment note above.

Subsec. (a)(8). Pub. L. 95–600, §315(c), substituted "188, or 191" for "or 188".

Subsec. (a)(10). Pub. L. 95–618, §301(d)(2), added par. (10).

Subsec. (d)(1)(B). Pub. L. 95–600, §703(a)(3), substituted "section 46(a)(6)" for "section 46(a)(5)".

Subsec. (d)(4)(D). Pub. L. 95–600, §703(a)(4), substituted "section 57(c)(1)(B)" for "section 57(c)(2)".

Subsec. (g). Pub. L. 95–600, §315(b), added subsec. (g).

Subsec. (h). Pub. L. 95–600, §312(c)(1), struck out subsec. (h) which related to suspension of investment credit.

Subsec. (i). Pub. L. 95–600, §312(c)(1), struck out subsec. (i) which related to an exemption from suspension of $20,000 of investment.

Subsec. (j). Pub. L. 95–600, §312(c)(1), struck out subsec. (j) which defined "suspension period".

Subsecs. (l), (m). Pub. L. 95–618, §301(b), added subsecs. (l) and (m) and redesignated former subsec. (l) as (n).

Subsec. (n). Pub. L. 95–618, §301(b), redesignated former subsec. (l) as (n).

Pub. L. 95–600, §141(b), added subsec. (n). Former subsec. (n) redesignated (p).

Subsec. (o). Pub. L. 95–600, §141(b), added subsec. (o).

Subsecs. (p), (q). Pub. L. 95–600, §§141(b), 314(b), added subsec. (p). Former subsec. (n) redesignated (p) and subsequently as (q).

1976—Subsec. (a)(2)(B)(vi). Pub. L. 94–455, §1901(a)(5)(A), substituted "(43 U.S.C. 1331))" for "; 43 U.S.C., sec. 1331)".

Subsec. (a)(2)(B)(vii). Pub. L. 94–455, §1051(h)(1), substituted "(other than a corporation which has an election in effect under section 936 or which is entitled to the benefits of section 934(b))" for "(other than a corporation entitled to the benefits of section 931 or 934(b))".

Subsec. (a)(2)(B)(viii). Pub. L. 94–455, §1901(a)(5)(B), substituted "47 U.S.C. 702" for "47 U.S.C., sec. 702".

Subsec. (a)(8). Pub. L. 94–455, §§1901(b)(11)(A), 2112(a)(1), struck out "169," after "section 167(k),", "187," before "or 188 applies", and provisions relating to the limitation of the applicability of this paragraph on property to which section 169 applies.

Subsecs. (c)(2)(A), (d)(1), (2)(A). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (f). Pub. L. 94–455, §802(b)(6), substituted "section 46(a)(3)" for "section 46(a)(2)".

Subsec. (i)(2). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsecs. (k), (l). Pub. L. 94–455, §804(a), added subsec. (k) and redesignated former subsec. (k) as subsec. (l).

1975—Subsec. (a)(2)(B). Pub. L. 94–12, §604(a), substituted "territorial waters within the northern portion of the Western Hemisphere" for "territorial waters" in cl. (x) and inserted definition of "northern portion of the Western Hemisphere" following cl. (x).

Subsec. (c)(2)(A). Pub. L. 94–12 §301(c)(1)(A), substituted "$100,000" for "$50,000".

Subsec. (c)(2)(B). Pub. L. 94–12, §301(c)(1)(A), (B), substituted "$50,000" for "$25,000" and "$100,000" for "$50,000".

Subsec. (c)(2)(C). Pub. L. 94–12, §301(c)(1)(A), substituted "$100,000" for "$50,000".

Subsec. (d)(1), (2)(A). Pub. L. 94–12, §302(c)(3), substituted "section 46(e)(1)" for "section 46(d)(1)".

1971—Subsec. (a)(1). Pub. L. 92–178, §102(a)(2), substituted "3 years" for "4 years" in second sentence.

Subsec. (a)(1)(B)(ii), (iii). Pub. L. 92–178, §104(a)(1), substituted "research facility" for "research or storage facility" in cl. (ii) and added cl. (iii).

Subsec. (a)(2)(B). Pub. L. 92–178, §104(c)(2), (3), (d), added cls. (viii) to (x), respectively.

Subsec. (a)(3)(C). Pub. L. 92–178, §104(b), added subpar. (C).

Subsec. (a)(5). Pub. L. 92–178, §104(c)(1), inserted "(other than the International Telecommunications Satellite Consortium or any successor organization)" after "international organization".

Subsec. (a)(6). Pub. L. 92–178, §104(e), substituted provisions for treatment of livestock (other than horses) acquired by the taxpayer as section 38 property, with exception provision for reduction of acquisition cost by amount equal to amount realized on sale or other disposition under certain circumstances, and for nontreatment of horses as section 38 property for former provision that livestock shall not be treated as section 38 property.

Subsec. (a)(7) to (9). Pub. L. 92–178, §§103, 104(f)(1), (g), added pars. (7) to (9), respectively.

Subsec. (d). Pub. L. 92–178, §108(b) and (c), substituted "section 46(d)(1)" for "section 46(d)"; and designated as par. (1) the present first sentence, redesignated as subpars. (A) and (B) provisions formerly designated cls. (1) and (2), again substituted "section 46(d)(1)" for "section 46(d)" in par. (1) and inserted "(other than property described in paragraph (4))" in par. (1), added pars. (2) and (4), incorporated provisions of former second, third, and fourth sentences in provisions designated as par. (3), substituted in par. (3) "the lessee shall be treated for all purposes of this subpart as having acquired a fractional portion of such property equal to the fraction determined under paragraph (2)(B) with respect to such property" for "the lessee shall be treated for all purposes of this subpart as having acquired such property", and struck out former fifth and sixth sentences respecting election regarding treatment of leases of suspension period property and section 38 property. See Effective Date of 1971 Amendment note below.

1969—Subsec. (a)(4). Pub. L. 91–172, §121(d)(2)(A), inserted provision relating to the percentage of the basis or cost of debt-financed property that may be considered in computing qualified investment under section 46(c) of this title.

Subsec. (c)(2)(C). Pub. L. 91–172, §401(e)(2), reenacted subpar. (C) with minor changes and substituted reference to controlled group for reference to affiliated group.

Subsec. (c)(3)(C). Pub. L. 91–172, §401(e)(3), substituted definition of controlled group for definition of affiliated group.

Subsec. (d)(2). Pub. L. 91–172, §401(e)(4), substituted reference to a component member of a controlled group for reference to a member of an affiliated group.

1967—Subsec. (a)(2)(B)(i). Pub. L. 90–26, §3, inserted "or is operated under contract with the United States" after "the United States".

Subsec. (h)(2). Pub. L. 90–26, §2(a), limited definition of suspension period property to section 38 property where the physical construction, reconstruction or erection was begun before May 24, 1967, pursuant to an order placed during the suspension period, subject to the proviso that in applying the definition to property the physical construction, reconstruction or erection of which was begun before May 24, 1967, only that portion of the basis properly attributable to construction, reconstruction or erection before May 24, 1967 be taken into account.

Subsec. (j). Pub. L. 90–26, §1, substituted "March 9, 1967" for "December 31, 1967".

1966—Subsec. (a)(2)(B). Pub. L. 89–809 added cl. (vii).

Subsec. (d). Pub. L. 89–800, §1(b), inserted provisions covering the treatment of suspension period property, and the elections to be deemed made in connection therewith.

Subsecs. (h) to (k). Pub. L. 89–800, §1(a), added subsecs. (h) to (j) and redesignated former subsec. (h) as (k).

1964—Subsec. (a)(1)(C). Pub. L. 88–272, §203(c)(2), added subpar. (C).

Subsec. (d). Pub. L. 88–272, §203(a)(3)(A), (b), substituted "except as provided in paragraph (2)" for "if such property was constructed by the lessor (or by a corporation which controls or is controlled by the lessor within the meaning of section 368(c))" in par. (1), "if such property is leased by a corporation which is a member of an affiliated group (within the meaning of section 46(a)(5) to another corporation which is a member of the same affiliated group" for "if paragraph (1) does not apply" in par. (2), and deleted provisions which stated that if a lessor made an election under this subsection, subsec. (g) would not apply with respect to such property, and deductions otherwise allowable under section 162 to the lessee for amounts paid the lessor would be adjusted consistent with subsec. (g).

Subsec. (g). Pub. L. 88–272, §203(a)(1), repealed subsec. (g) which required that the basis of section 38 property be reduced by 7 percent of the qualified investment.

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112–240 effective on Jan. 2, 2013, and amendment by section 407(c)(1) of Pub. L. 112–240 applicable as if included in the enactment of the provisions of the American Recovery and Reinvestment Act of 2009, Pub. L. 111–5, to which it relates, see section 407(d) of Pub. L. 112–240, set out as a note under section 45 of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, §1102(b), Feb. 17, 2009, 123 Stat. 320, provided that: "The amendments made by this section [amending this section] shall apply to facilities placed in service after December 31, 2008."

Amendment by section 1103(a), (b)(1) of Pub. L. 111–5 applicable to periods after Dec. 31, 2008, under rules similar to the rules of subsec. (m) of this section as in effect on the day before Nov. 5, 1990, see section 1103(c)(1) of Pub. L. 111–5, set out as a note under section 25C of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title I, §103(f), Oct. 3, 2008, 122 Stat. 3813, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and section 38 of this title] shall take effect on the date of the enactment of this Act [Oct. 3, 2008].

"(2) ALLOWANCE AGAINST ALTERNATIVE MINIMUM TAX.—The amendments made by subsection (b) [amending section 38 of this title] shall apply to credits determined under section 46 of the Internal Revenue Code of 1986 in taxable years beginning after the date of the enactment of this Act and to carrybacks of such credits.

"(3) COMBINED HEAT AND POWER AND FUEL CELL PROPERTY.—The amendments made by subsections (c) and (d) [amending this section] shall apply to periods after the date of the enactment of this Act, in taxable years ending after such date, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990 [Nov. 5, 1990]).

"(4) PUBLIC UTILITY PROPERTY.—The amendments made by subsection (e) [amending this section] shall apply to periods after February 13, 2008, in taxable years ending after such date, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)."

Pub. L. 110–343, div. B, title I, §104(e), Oct. 3, 2008, 122 Stat. 3814, provided that: "The amendments made by this section [amending this section] shall apply to periods after the date of the enactment of this Act [Oct. 3, 2008], in taxable years ending after such date, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990 [Nov. 5, 1990])."

Pub. L. 110–343, div. B, title I, §105(b), Oct. 3, 2008, 122 Stat. 3814, provided that: "The amendments made by this section [amending this section] shall apply to periods after the date of the enactment of this Act [Oct. 3, 2008], in taxable years ending after such date, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990 [Nov. 5, 1990])."

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–58, title XIII, §1336(e), Aug. 8, 2005, 119 Stat. 1038, provided that: "The amendments made by this section [amending this section] shall apply to periods after December 31, 2005, in taxable years ending after such date, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990 [Nov. 5, 1990])."

Pub. L. 109–58, title XIII, §1337(d), Aug. 8, 2005, 119 Stat. 1038, provided that: "The amendments made by this section [amending this section] shall apply to periods after December 31, 2005, in taxable years ending after such date, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990 [Nov. 5, 1990])."

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 322(d)(2)(A), (B) of Pub. L. 108–357 applicable with respect to expenditures paid or incurred after Oct. 22, 2004, see section 322(e) of Pub. L. 108–357, set out as a note under section 46 of this title.

Amendment by section 710(e) of Pub. L. 108–357 applicable, except as otherwise provided, to electricity produced and sold after Oct. 22, 2004, in taxable years ending after such date, see section 710(g) of Pub. L. 108–357, as amended, set out as a note under section 45 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–486, title XIX, §1916(b), Oct. 24, 1992, 106 Stat. 3024, provided that: "The amendments made by this section [amending this section] shall take effect on June 30, 1992."

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11813(a) of Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

If any interest costs incurred after Dec. 31, 1986, are attributable to costs incurred before Jan. 1, 1987, the amendment by section 803(b)(2)(B) of Pub. L. 99–514 is applicable to such interest costs only to the extent such interest costs are attributable to costs which were required to be capitalized under section 263 of the Internal Revenue Code of 1954 and which would have been taken into account in applying section 189 of the Internal Revenue Code of 1954 (as in effect before its repeal by section 803 of Pub. L. 99–514) or, if applicable, section 266 of such Code, see section 7831(d)(2) of Pub. L. 101–239, set out as an Effective Date note under section 263A of this title.

Amendment by section 251(b), (c) of Pub. L. 99–514 applicable to property placed in service after Dec. 31, 1986, in taxable years ending after such date, except as otherwise provided for certain rehabilitations, see section 251(d) of Pub. L. 99–514, set out as a note under section 46 of this title.

Amendment by section 701(e)(4)(C) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date note under section 55 of this title.

Amendment by section 803(b)(2)(B) of Pub. L. 99–514 applicable to costs incurred after Dec. 31, 1986, in taxable years ending after such date, except as otherwise provided, see section 803(d) of Pub. L. 99–514, set out as an Effective Date note under section 263A of this title.

Amendment by sections 1272(d)(5) and 1275(c)(5) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99–514, set out as a note under section 931 of this title.

Amendment by section 1511(c)(3) of Pub. L. 99–514 applicable for purposes of determining interest for periods after Dec. 31, 1986, see section 1511(d) of Pub. L. 99–514, set out as a note under section 47 of this title.

Pub. L. 99–514, title XVIII, §1879(j)(2), Oct. 22, 1986, 100 Stat. 2909, provided that: "The amendments made by this subsection [amending this section] shall apply to periods after December 31, 1978 (under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1954 [now 1986]), in taxable years ending after such date."

Pub. L. 99–514, title XVIII, §1881, Oct. 22, 1986, 100 Stat. 2914, provided that: "Except as otherwise provided in this subtitle, any amendment made by this subtitle [subtitle A (§§1801–1881) of title XVIII of Pub. L. 99–514, see Tables for classification] shall take effect as if included in the provision of the Tax Reform Act of 1984 [Pub. L. 98–369, div. A] to which such amendment relates."

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–121 applicable with respect to property placed in service by the taxpayer after May 8, 1985, with specified exceptions, but amendment of subsec. (g)(2)(B)(v) not applicable to leases entered into before May 22, 1985, if the lessee signed the lease before May 17, 1985, see section 105(b)(1), (5) of Pub. L. 99–121, set out as a note under section 168 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §18, July 18, 1984, 98 Stat. 506, provided that:

"(a) GENERAL RULE.—The amendments made by this part [part I (§§11–18) of subtitle A of title I of div. A of Pub. L. 98–369, amending this section and sections 41, 46, 57, 128, 168, 179, 265, 415, 854, 857, and 911 of this title, enacting provisions set out as a note under section 168 of this title, and amending provisions set out as notes under sections 128 and 168 of this title] shall apply to taxable years ending after December 31, 1983.

"(b) SPECIAL RULE FOR SECTION 14.—The amendment made by section 14 [amending section 41 of this title] shall not apply in the case of a tax credit employee stock ownership plan if—

"(1) such plan was favorably approved on September 23, 1983, by employees, and

"(2) not later than January 11, 1984, the employer of such employees was 100 percent owned by such plan."

Amendment by section 31(b), (c)(1) of Pub. L. 98–369 effective, except as otherwise provided in section 31(g) of Pub. L. 98–369, as to property placed in service by the taxpayer after May 23, 1983, in taxable years ending after such date and to property placed in service by the taxpayer on or before May 23, 1983, if the lease to the tax-exempt entity is entered into after May 23, 1983, and amendment by section 31(c)(2) of Pub.

L. 98–369, to the extent it relates to section 168(f)(12) of this title, effective as if it had been included in the amendments to section 168 of this title by section 216(a) of Pub. L. 97–248, see section 31(g)(1), (12) of Pub. L. 98–369, set out as a note under section 168 of this title.

Amendment by section 111(e)(8) of Pub. L. 98–369 applicable with respect to property placed in service by the taxpayer after Mar. 15, 1984, subject to certain exceptions, see section 111(g) of Pub. L. 98–369, set out as a note under section 168 of this title.

Amendment by section 113(b)(3) of Pub. L. 98–369 applicable as if included in the amendments made by sections 201(a), 211(a)(1), and 211(f)(1) of Pub. L. 97–34, which enacted section 168 and amended section 46 of this title, see section 113(c)(2)(B) of Pub. L. 98–369, set out as a note under section 168 of this title.

Amendment by section 113(b)(4) of Pub. L. 98–369 applicable as if included in the amendments made by section 205(a)(1) of Pub. L. 97–248, see section 113(c)(2)(C) of Pub. L. 98–369, set out as a note under section 168 of this title.

Pub. L. 98–369, div. A, title I, §113(c)(1), July 18, 1984, 98 Stat. 637, provided that: "The amendments made by subsection (a) [amending this section and section 168 of this title] shall apply to property placed in service after March 15, 1984, in taxable years ending after such date."

Pub. L. 98–369, div. A, title I, §114(b), July 18, 1984, 98 Stat. 638, provided that: "The amendment made by this section [amending this section] shall apply to property originally placed in service after April 11, 1984 (determined without regard to such amendment)."

Amendment by section 431(c) of Pub. L. 98–369 applicable to property placed in service after July 18, 1984, in taxable years ending after such date, but not applicable to property to which sections 46(c)(8), (9) and 47(d) of this title, as enacted by section 211(f) of Pub. L. 97–34, do not apply, with the taxpayer having an option to elect retroactive application of amendment by Pub. L. 98–369, see section 431(e) of Pub. L. 98–369, set out as a note under section 46 of this title.

Amendment by section 474(o)(10)–(18) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Pub. L. 98–369, div. A, title IV, §474(o)(15), July 18, 1984, 98 Stat. 837, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Subsection (n) of section 48 (relating to requirements for allowance of employee plan percentage) is hereby repealed; except that paragraph (4) of section 48(n) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect before its repeal by this paragraph) shall continue to apply in the case of any recapture under section 47(f) of such Code of a credit allowable for a taxable year beginning before January 1, 1984."

Amendment by section 712(b) of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

Amendment by section 721(x)(1) of Pub. L. 98–369 effective as if included in the Subchapter S Revision Act of 1982, Pub. L. 97–354, see section 721(y)(1) of Pub. L. 98–369, set out as a note under section 1361 of this title.

Amendment by section 735(c)(1) of Pub. L. 98–369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97–424, to which such amendment relates, see section 736 of Pub. L. 98–369, set out as a note under section 4051 of this title.

Pub. L. 98–369, div. A, title X, §1043(b), July 18, 1984, 98 Stat. 1044, provided that: "The amendments made by this section [amending this section] shall apply to expenditures incurred after December 31, 1983, in taxable years ending after such date."

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by title I of Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

Amendment by section 202(c) of Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Crude Oil Windfall Profit Tax Act of 1980, Pub. L. 96–223 to which such amendment relates, see section 203(a) of Pub. L. 97–448, set out as a note under section 6652 of this title.

Amendment by section 306(a)(3) of Pub. L. 97–448 effective as if included in the provisions of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 311(d) of Pub. L. 97–448, set out as a note under section 31 of this title.

EFFECTIVE AND TERMINATION DATES OF 1982 AMENDMENT

Pub. L. 97–362, title I, §104(b), Oct. 25, 1982, 96 Stat. 1729, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendment made by this section [amending this section] shall apply

to periods beginning after December 31, 1980, and before January 1, 1983, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]."

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

Amendment by section 205(a)(1), (4), (5)(A) of Pub. L. 97–248, applicable to periods after Dec. 31, 1982, under rules similar to the rules of subsec. (m) of this section, with certain exceptions and qualifications, see section 205(c)(1) of Pub. L. 97–248, set out as an Effective Date note under section 196 of this title.

Amendment by section 209(c) of Pub. L. 97–248 applicable to property placed in service after Dec. 31, 1983, but not to qualified leased property described in section 168(f)(8)(D)(v) of this title which is placed in service before Jan. 1, 1988, or is placed in service after such date pursuant to a binding contract or commitment entered into before April 1, 1983, and solely because of conditions which, as determined by the Secretary of the Treasury or his delegate, are not within the control of the lessor or lessee, see sections 208(d)(5) and 209(d)(2) of Pub. L. 97–248, set out as notes under section 168 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title II, §213(b), Aug. 13, 1981, 95 Stat. 240, as amended by Pub. L. 97–448, title I, §102(g), Jan. 12, 1983, 96 Stat. 2372, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1980."

Pub. L. 97–34, title II, §214(c), Aug. 13, 1981, 95 Stat. 241, provided that: "The amendments made by this section [amending this section] shall apply to uses after July 29, 1980, in taxable years ending after such date."

Pub. L. 97–34, title III, §332(c)(2), Aug. 13, 1981, 95 Stat. 296, provided that: "The amendment made by subsection (b) [amending this section] shall apply to qualified investments made after December 31, 1981."

Amendment by section 211(a)(2), (e)(3), (4) of Pub. L. 97–34 applicable to property placed in service after Dec. 31, 1980, see section 211(i)(1) of Pub. L. 97–34, set out as a note under section 46 of this title.

Amendment by section 211(c) of Pub. L. 97–34 applicable to periods after Dec. 31, 1980, under rules similar to the rules under subsec. (m) of this section, see section 211(i)(3) of Pub. L. 97–34, set out as a note under section 46 of this title.

Amendment by section 211(h) of Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1980, see section 211(i)(6) of Pub. L. 97–34, set out as a note under section 46 of this title.

Amendment by section 212(a)(3), (b), (c), (d)(2)(A) of Pub. L. 97–34 applicable to expenditures incurred after Dec. 31, 1981, in taxable years ending after such date, see section 212(e) of Pub. L. 97–34, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–605, title I, §109(b), Dec. 28, 1980, 94 Stat. 3525, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1979."

Pub. L. 96–605, title II, §223(b), Dec. 28, 1980, 94 Stat. 3528, provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1980."

Pub. L. 96–451, title III, §302(b), Oct. 14, 1980, 94 Stat. 1991, provided that: "The amendments made by this section [amending this section] shall apply with respect to additions to capital account made after December 31, 1979."

Pub. L. 96–223, title II, §222(j), Apr. 2, 1980, 94 Stat. 266, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 46 of this title] shall apply to periods after December 31, 1979, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].

"(2) ALUMINA ELECTROLYTIC CELLS.—The amendments made by subsection (d)(1) [amending this section] shall apply to periods after September 30, 1978, under rules similar to the rules of section 48(m) of such Code."

Pub. L. 96–223, title II, §223(a)(2), Apr. 2, 1980, 94 Stat. 266, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to periods after December 31, 1979, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]."

Pub. L. 96–223, title II, §223(c)(2), Apr. 2, 1980, 94 Stat. 267, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(A) IN GENERAL.—Except as provided in subparagraph (B), the amendment made by paragraph (1) [amending this section] shall apply to periods after December 31, 1982, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]."

"(B) EARLIER APPLICATION FOR CERTAIN PROPERTY.—In the case of property which is—

"(i) qualified hydroelectric generating property (described in section 48(l)(2)(A)(vii) of such Code),

"(ii) cogeneration equipment (described in section 48(l)(2)(A)(viii) of such Code),

"(iii) qualified intercity buses (described in section 48(l)(2)(A)(ix) of such Code),

"(iv) ocean thermal property (described in section 48(l)(3)(A)(ix) of such Code), or

"(v) expanded energy credit property,

the amendment made by paragraph (1) shall apply to periods after December 31, 1979, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986.

"(C) EXPANDED ENERGY CREDIT PROPERTY.—For purposes of subparagraph (B), the term 'expanded energy credit property' means—

"(i) property to which section 48(l)(3)(A) of such Code applies because of the amendments made by paragraphs (1) and (2) of section 222(b) [amending this section],

"(ii) property described in section 48(l)(4)(C) of such Code (relating to solar process heat),

"(iii) property described in section 48(l)(5)(L) of such Code (relating to alumina electrolytic cells), and

"(iv) property described in the last sentence of section 48(l)(3)(A) of such Code (relating to storage equipment for refuse-derived fuel).

"(D) FINANCING TAKEN INTO ACCOUNT.—For the purpose of applying the provisions of section 48(l)(11) of such Code in the case of property financed in whole or in part by subsidized energy financing (within the meaning of section 48(l)(11)(C) of such Code), no financing made before January 1, 1980, shall be taken into account. The preceding sentence shall not apply to financing provided from the proceeds of any tax exempt industrial development bond (within the meaning of section 103(b)(2) of such Code)."

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

Pub. L. 96–222, title I, §108(c)(7), Apr. 1, 1980, 94 Stat. 228, provided that: "Any amendment made by this subsection [amending sections 4071, 4221, 6416, and 6421 of this title] shall take effect as if included in the provision of the Energy Tax Act of 1978 [See Short Title of 1978 Amendment note set out under section 1 of this title] to which such amendment relates; except that the amendment made by paragraph (6) [amending this section] shall take effect on the first day of the first calendar month which begins more than 10 days after the date of the enactment of this Act [Apr. 1, 1980]."

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–618, title III, §301(d)(4), Nov. 9, 1978, 92 Stat. 3200, provided that:

"(A) IN GENERAL.—The amendments made by this subsection [amending this section and section 167 of this title] shall apply to property which is placed in service after September 30, 1978.

"(B) BINDING CONTRACTS.—The amendments made by this subsection [amending this section and section 167 of this title] shall not apply to property which is constructed, reconstructed, erected, or acquired pursuant to a contract which, on October 1, 1978, and at all times thereafter, was binding on the taxpayer."

Amendment by section 141(b) of Pub. L. 95–600 effective with respect to qualified investment for taxable years beginning after Dec. 31, 1978, see section 141(g)(1) of Pub. L. 95–600, set out as an Effective Date note under section 409 of this title.

Amendment by section 312(c)(1), (2), (3) of Pub. L. 95–600 applicable to taxable years ending after Dec. 31, 1978, see section 312(d) of Pub. L. 95–600, set out as a note under section 46 of this title.

Pub. L. 95–600, title III, §314(c), Nov. 6, 1978, 92 Stat. 2828, provided that: "The amendments made by subsections (a) and (b) [amending this section] shall apply to taxable years ending after August 15, 1971."

Pub. L. 95–600, title III, §315(d), Nov. 6, 1978, 92 Stat. 2829, provided that: "The amendments made by this section [amending this section] shall apply to taxable years ending after October 31, 1978; except that the amendment made by subsection (c) shall only apply with respect to property placed in service after such date."

Amendment by section 703(a)(3), (4) of Pub. L. 95–600 effective on Oct. 4, 1976, see section 703(r) of Pub. L. 95–600, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 802(b)(6) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, see section 802(c) of Pub. L. 94–455, set out as a note under section 46 of this title.

Pub. L. 94–455, title VIII, §804(e), Oct. 4, 1976, 90 Stat. 1596, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—The amendments made by subsections (a) and (b) [amending this section and section 47 of this title] shall apply to taxable years beginning after December 31, 1974.

"(2) ELECTION MAY ALSO APPLY TO PROPERTY DESCRIBED IN SECTION 50(a).—At the

election of the taxpayer, made within 1 year after the date of the enactment of this Act [Oct. 4, 1976] in such manner as the Secretary of the Treasury or his delegate may by regulations prescribe, the amendments made by subsections (a) and (b) shall also apply to property which is property described in section 50(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] and which is placed in service in taxable years beginning before January 1, 1975."

Amendment by section 1051(h)(1) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975 with certain exceptions, see section 1051(i) of Pub. L. 94–455, set out as a note under section 27 of this title.

Amendment by section 1901(a)(5), (b)(11)(A) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by section 2112(a) of Pub. L. 94–455 applicable to property acquired by the taxpayer after Dec. 31, 1976, and property, the construction, reconstruction, or erection of which was completed by the taxpayer after Dec. 31, 1976, (but only to the extent of the basis thereof attributable to construction, reconstruction, or erection after such date), in taxable years beginning after such date, see section 2112(d)(1) of Pub. L. 94–455, set out as a note under section 46 of this title.

EFFECTIVE AND TERMINATION DATES OF 1975 AMENDMENT

Pub. L. 94–12, title III, §301(c)(2), Mar. 29, 1975, 89 Stat. 38, as amended by Pub. L. 94–455, title VIII, §801, Oct. 4, 1976, 90 Stat. 1580; Pub. L. 95–600, title III, §311(b), Nov. 6, 1978, 92 Stat. 2824, provided that: "The amendments made by paragraph (1) [amending this section] shall apply only to taxable years beginning after December 31, 1974."

Amendment by section 302(c)(3) of Pub. L. 94–12 applicable to taxable years ending after Dec. 31, 1974, see section 305(a) of Pub. L. 94–12, set out as an Effective Date of 1975 Amendment note under section 46 of this title.

Pub. L. 94–12, title VI, §604(b), Mar. 29, 1975, 89 Stat. 65, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—The amendments made by subsection (a) [amending this section] shall apply to property, the construction, reconstruction, or erection of which was completed after March 18, 1975, or the acquisition of which by the taxpayer occurred after such date.

"(2) BINDING CONTRACT.—The amendments made by subsection (a) [amending this section] shall not apply to property constructed, reconstructed, erected, or acquired pursuant to a contract which was on April 1, 1974, and at all times thereafter, binding on the taxpayer.

"(3) CERTAIN LEASE-BACK TRANSACTIONS, ETC.—Where a person who is a party to a binding contract described in paragraph (2) transfers rights in such contract (or in the property to which such contract relates) to another person but a party to such contract retains a right to use the property under a lease with such other person, then to the extent of the transferred rights such other person shall, for purposes of paragraph (2), succeed to the position of the transferor with respect to such binding contract and such property. The preceding sentence shall apply, in any case in which the lessor does not make an election under section 48(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], only if a party to such contract retains a right to use the property under a long-term lease."

EFFECTIVE DATE OF 1971 AMENDMENT

Pub. L. 92–178, title I, §104(h), Dec. 10, 1971, 85 Stat. 503, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by this section [amending this section and sections 169 and 1245 of this title] (other than by subsections (c)(1), (c)(2), and (g) [amending this section]) shall apply to property described in section 50 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]. The amendments made by subsections (c)(1), (c)(2), and (g) [amending this section] shall apply to taxable years ending after December 31, 1961."

Amendment by section 108(b), (c) of Pub. L. 92–178, applicable to leases entered into after Sept. 22, 1971, and after Nov. 8, 1971, respectively, see section 108(d) of Pub. L. 92–178, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 121(d)(2)(A) of Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 121(g) of Pub. L. 91–172, set out as a note under section 511 of this title.

Amendment by section 401(e)(2)–(4) of Pub. L. 91–172 applicable with respect to taxable years ending on or after Dec. 31, 1970, see section 401(h)(3) of Pub. L. 91–172, set out as a note under section 1561 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Pub. L. 90–26, §4, June 13, 1967, 81 Stat. 58, provided that: "The amendments made by the first three sections of this Act [amending this section and section 167 of this title] shall apply to taxable years ending after March 9, 1967."

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89–809, title II, §201(b), Nov. 13, 1966, 80 Stat. 1576, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by subsection (a) [amending this section] shall apply to taxable years ending after December 31, 1965, but only with respect to property placed in service after such date. In applying section 46(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to carryback and carryover of unused credits), the amount of any investment credit carryback to any taxable year ending on or before December 31, 1965, shall be determined without regard to the amendments made by this section."

Amendment by Pub. L. 89–800 applicable to taxable years ending after Oct. 9, 1966, see section 4 of Pub. L. 89–800, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88–272, title II, §203(a)(4), Feb. 26, 1964, 78 Stat. 34, provided that: "Paragraphs (1) [amending this section] and (3) [amending this section and section 1016 of this title and repealing section 181 of this title] of this subsection shall apply—

"(A) in the case of property placed in service after December 31, 1963, with respect to taxable years ending after such date, and

"(B) in the case of property placed in service before January 1, 1964, with respect to taxable years beginning after December 31, 1963."

Pub. L. 88–272, title II, §203(f), Feb. 26, 1964, 78 Stat. 35, provided that:

"(1) The amendments made by subsection (b) [amending this section] shall apply with respect to property possession of which is transferred to a lessee on or after the date of enactment of this Act [Feb. 26, 1964].

"(2) The amendments made by subsection (c) [amending this section] shall apply with respect to taxable years ending after June 30, 1963.

"(3) The amendments made by subsection (d) [amending section 1245 of this title] shall apply with respect to dispositions after December 31, 1963, in taxable years ending after such date."

EFFECTIVE DATE

Section applicable with respect to taxable years ending after Dec. 31, 1961, see section 2(h) of Pub. L. 87–834, set out as a note under section 46 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

TRANSFER OF FUNCTIONS

Functions, powers, and duties of Federal Aviation Agency and of Administrator and other offices and officers thereof transferred by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, to Secretary of Transportation, with functions, powers, and duties of Secretary of Transportation pertaining to aviation safety to be exercised by Federal Aviation Administrator in Department of Transportation, see section 106 of Title 49, Transportation.

GRANTS FOR SPECIFIED ENERGY PROPERTY IN LIEU OF TAX CREDITS

Pub. L. 111–5, div. B, title I, §1603, Feb. 17, 2009, 123 Stat. 364, as amended by Pub. L. 111–312, title VII, §707, Dec. 17, 2010, 124 Stat. 3312; Pub. L. 112–81, div. A, title X, §1096(a), Dec. 31, 2011, 125 Stat. 1608; Pub. L. 112–240, title IV, §407(c)(2), Jan. 2, 2013, 126 Stat. 2342, provided that:

"(a) IN GENERAL.—Upon application, the Secretary of the Treasury shall, subject to the requirements of this section, provide a grant to each person who places in service specified energy property to reimburse such person for a portion of the expense of such property as provided in subsection (b). No grant shall be made under this section with respect to any property unless such property—

"(1) is originally placed in service by such person during 2009, 2010, or 2011, or

"(2) is originally placed in service by such person after 2011 and before the credit termination date

with respect to such property, but only if the construction of such property began during 2009, 2010, or 2011.

"(b) GRANT AMOUNT.—

"(1) IN GENERAL.—The amount of the grant under subsection (a) with respect to any specified energy property shall be the applicable percentage of the basis of such property.

"(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the term 'applicable percentage' means—

"(A) 30 percent in the case of any property described in paragraphs (1) through (4) of subsection (d), and

"(B) 10 percent in the case of any other property.

"(3) DOLLAR LIMITATIONS.—In the case of property described in paragraph (2), (6), or (7) of subsection (d), the amount of any grant under this section with respect to such property shall not exceed the limitation described in section 48(c)(1)(B), 48(c)(2)(B), or 48(c)(3)(B) of the Internal Revenue Code of 1986, respectively, with respect to such property.

"(c) TIME FOR PAYMENT OF GRANT.—The Secretary of the Treasury shall make payment of any grant under subsection (a) during the 60-day period beginning on the later of—

"(1) the date of the application for such grant, or

"(2) the date the specified energy property for which the grant is being made is placed in service.

"(d) SPECIFIED ENERGY PROPERTY.—For purposes of this section, the term 'specified energy property' means any of the following:

"(1) QUALIFIED FACILITIES.—Any qualified property (as defined in section 48(a)(5)(D) of the Internal Revenue Code of 1986) which is part of a qualified facility (within the meaning of section 45 of such Code) described in paragraph (1), (2), (3), (4), (6), (7), (9), or (11) of section 45(d) of such Code.

"(2) QUALIFIED FUEL CELL PROPERTY.—Any qualified fuel cell property (as defined in section 48(c)(1) of such Code).

"(3) SOLAR PROPERTY.—Any property described in clause (i) or (ii) of section 48(a)(3)(A) of such Code.

"(4) QUALIFIED SMALL WIND ENERGY PROPERTY.—Any qualified small wind energy property (as defined in section 48(c)(4) of such Code).

"(5) GEOTHERMAL PROPERTY.—Any property described in clause (iii) of section 48(a)(3)(A) of such Code.

"(6) QUALIFIED MICROTURBINE PROPERTY.—Any qualified microturbine property (as defined in section 48(c)(2) of such Code).

"(7) COMBINED HEAT AND POWER SYSTEM PROPERTY.—Any combined heat and power system property (as defined in section 48(c)(3) of such Code).

"(8) GEOTHERMAL HEAT PUMP PROPERTY.—Any property described in clause (vii) of section 48(a)(3)(A) of such Code.

Such term shall not include any property unless depreciation (or amortization in lieu of depreciation) is allowable with respect to such property.

"(e) CREDIT TERMINATION DATE.—For purposes of this section, the term 'credit termination date' means—

"(1) in the case of any specified energy property which is part of a facility described in paragraph (1) of section 45(d) of the Internal Revenue Code of 1986, January 1, 2013,

"(2) in the case of any specified energy property which is part of a facility described in paragraph (2), (3), (4), (6), (7), (9), or (11) of section 45(d) of such Code, January 1, 2014, and

"(3) in the case of any specified energy property described in section 48 of such Code, January 1, 2017.

In the case of any property which is described in paragraph (3) and also in another paragraph of this subsection, paragraph (3) shall apply with respect to such property.

"(f) APPLICATION OF CERTAIN RULES.—In making grants under this section, the Secretary of the Treasury shall apply rules similar to the rules of section 50 of the Internal Revenue Code of 1986 (other than subsection (d)(2) thereof). In applying such rules, if the property is disposed of, or otherwise ceases to be specified energy property, the Secretary of the Treasury shall provide for the recapture of the appropriate percentage of the grant amount in such manner as the Secretary of the Treasury determines appropriate.

"(g) EXCEPTION FOR CERTAIN NON-TAXPAYERS.—The Secretary of the Treasury shall not make any grant under this section to—

"(1) any Federal, State, or local government (or any political subdivision, agency, or instrumentality thereof),

"(2) any organization described in section 501(c) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code,

"(3) any entity referred to in paragraph (4) of section 54(j) of such Code, or

"(4) any partnership or other pass-thru entity any partner (or other holder of an equity or profits interest) of which is described in paragraph (1), (2) or (3).

"(h) DEFINITIONS.—Terms used in this section which are also used in section 45 or 48 of the Internal Revenue Code of 1986 shall have the same meaning for purposes of this section as when used in such section 45 or 48. Any reference in this section to the Secretary of the Treasury shall be treated as including the Secretary's delegate.

"(i) APPROPRIATIONS.—There is hereby appropriated to the Secretary of the Treasury such sums as may be necessary to carry out this section.

"(j) TERMINATION.—The Secretary of the Treasury shall not make any grant to any person under this section unless the application of such person for such grant is received before October 1, 2012."

[Pub. L. 112–81, div. A, title X, §1096(b), Dec. 31, 2011, 125 Stat. 1608, provided that: "The amendment made by this section [amending section 1603 of Pub. L. 111–5, set out above] shall take effect as if included in section 1603 of the American Recovery and Reinvestment Tax Act of 2009 [Pub. L. 111–5]."]

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(e)(4)(C) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

SPECIAL RULE

Pub. L. 99–514, title XVIII, §1879(j)(3), Oct. 22, 1986, 100 Stat. 2909, provided that: "If refund or credit of any overpayment of tax resulting from the application of this subsection [amending this section] is prevented at any time before the close of the date which is 1 year after the date of the enactment of this Act [Oct. 22, 1986] by operation of any law or rule of law (including res judicata), refund or credit of such overpayment (to the extent attributable to the application of the amendments made by this subsection [amending this section]) may, nevertheless, be made or allowed if claim therefor is filed before the close of such 1-year period."

CLARIFICATION OF EFFECT OF 1984 AMENDMENT ON INVESTMENT TAX CREDIT

For provision that nothing in the amendments made by section 474(o) of Pub. L. 98–369, which amended this section, be construed as reducing the investment tax credit in taxable years beginning before Jan. 1, 1984, see section 475(c) of Pub. L. 98–369, set out as a note under section 46 of this title.

ALTERNATIVE METHODS OF COMPUTING CREDIT FOR PAST PERIODS

Pub. L. 94–455, title VIII, §804(c), Oct. 4, 1976, 90 Stat. 1594, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) GENERAL RULE FOR DETERMINING USEFUL LIFE, PREDOMINANT FOREIGN USE, ETC.—In the case of a qualified film (within the meaning of section 48(k)(1)(B) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) placed in service in a taxable year beginning before January 1, 1975, with respect to which neither an election under paragraph (2) of this subsection nor an election under subsection (e)(2) applies—

"(A) the applicable percentage under section 46(c)(2) of such Code shall be determined as if the useful life of the film would have expired at the close of the first taxable year by the close of which the aggregate amount allowable as a deduction under section 167 of such Code would equal or exceed 90 percent of the basis of such property (adjusted for any partial dispositions),

"(B) for purposes of section 46(c)(1) of such Code, the basis of the property shall be determined by taking into account the total production costs (within the meaning of section 48(k)(5)(B) of such Code),

"(C) for purposes of section 48(a)(2) of such Code, such film shall be considered to be used predominantly outside the United States in the first taxable year for which 50 percent or more of the gross revenues received or accrued during the taxable year from showing the film were received or accrued from showing the film outside the United States, and

"(D) Section 47(a)(7) of such Code shall apply.

"(2) ELECTION OF 40-PERCENT METHOD.—

"(A) IN GENERAL.—A taxpayer may elect to have this paragraph apply to all qualified films placed in service during taxable years beginning before January 1, 1975 (other than films to which an election under subsection (e)(2) of this section applies).

"(B) EFFECT OF ELECTION.—If the taxpayer makes an election under this paragraph, then section 48(k) of the Internal Revenue Code of 1986 shall apply to all qualified films described in subparagraph (A) with the following modifications:

"(i) subparagraph (B) of paragraph (4) shall not apply, but in determining qualified investment under section 46(c)(1) of such Code there shall be used (in lieu of the basis of such property) an amount equal to 40 percent of the aggregate production costs (within the meaning of paragraph (5)(B) of such section 48(k)),

"(ii) paragraph (2) shall be applied by substituting '100 percent' for '662/3 percent', and

"(iii) paragraph (3) and paragraph (5) (other than subparagraph (B)) shall not apply.

"(C) RULES RELATING TO ELECTIONS.—An election under this paragraph shall be made not later than the day which is 6 months after the date of the enactment of this Act [Oct. 4, 1976] and shall be made in such manner as the Secretary of the Treasury or his delegate shall by regulations prescribe. Such an election may be revoked only with the consent of the Secretary of the Treasury or his delegate.

"(D) THE TAXPAYER MUST CONSENT TO JOIN IN CERTAIN PROCEEDINGS.—No election may be made under this paragraph or subsection (e)(2) by any taxpayer unless he consents, under regulations prescribed by the Secretary of the Treasury or his delegate, to treat the determination of the investment credit allowable on each film subject to an election as a separate cause of action, and to join in any judicial proceeding for determining the person entitled to, and the amount of, the credit allowable under section 38 of the Internal Revenue Code of 1986 with respect to any film covered by such election.

"(3) ELECTION TO HAVE CREDIT DETERMINED IN ACCORDANCE WITH PREVIOUS LITIGATION.—

"(A) IN GENERAL.—A taxpayer described in subparagraph (B) may elect to have this paragraph apply to all films (whether or not qualified) placed in service in taxable years beginning before January 1, 1975, and with respect to which an election under subsection (e)(2) is not made.

"(B) WHO MAY ELECT.—A taxpayer may make an election under this paragraph if he has filed an action in any court of competent jurisdiction, before January 1, 1976, for a determination of such taxpayer's rights to the allowance of a credit against tax under section 38 of the Internal Revenue Code of 1986 for any taxable year beginning before January 1, 1975, with respect to any film.

"(C) EFFECT OF ELECTION.—If the taxpayer makes an election under this paragraph—

"(i) paragraphs (1) and (2) of this subsection, and subsection (d) shall not apply to any film placed in service by the taxpayer, and

"(ii) subsection 48(k) of the Internal Revenue Code of 1986 shall not apply to any film placed in service by the taxpayer in any taxable year beginning before January 1, 1975, and with respect to which an election under subsection (e)(2) is not made,

and the right of the taxpayer to the allowance of a credit against tax under section 38 of such Code with respect to any film placed in service in any taxable year beginning before January 1, 1975, and as to which an election under subsection (e)(2) is not made, shall be determined as though this section (other than this paragraph) has not been enacted.

"(D) RULES RELATING TO ELECTIONS.—An election under this paragraph shall be made not later than the day which is 90 days after the date of the enactment of this Act [Oct. 4, 1976], by filing a notification of such election with the national office of the Internal Revenue Service. Such an election, once made, shall be irrevocable."

ENTITLEMENT TO CREDIT

Pub. L. 94–455, title VIII, §804(d), Oct. 4, 1976, 90 Stat. 1596, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Paragraph (1) of section 48(k) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to entitlement to credit) shall apply to any motion picture film or video tape placed in service in any taxable year beginning before January 1, 1975."

INCREASE IN BASIS OF PROPERTY PLACED IN SERVICE BEFORE JANUARY 1, 1964

Pub. L. 88–272, title II, §203(a)(2), Feb. 26, 1964, 78 Stat. 33, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(A) The basis of any section 38 property (as defined in section 48(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) placed in service before January 1, 1964, shall be increased, under regulations prescribed by the Secretary of the Treasury or his delegate, by an amount equal to 7 percent of the qualified investment with respect to such property under section 46(c) of the Internal Revenue Code of 1986. If there has been any increase with respect to such property under section 48(g)(2) of such Code, the increase under the preceding sentence shall be appropriately reduced therefor.

"(B) If a lessor made the election provided by section 48(d) of the Internal Revenue Code of 1986 with respect to property placed in service before January 1, 1964—

"(i) subparagraph (A) shall not apply with respect to such property, but

"(ii) under regulations prescribed by the Secretary of the Treasury or his delegate, the deductions otherwise allowable under section 162 of such Code to the lessee for amounts paid to the lessor under the lease (or, if such lessee has purchased such property, the basis of such property) shall be adjusted in a manner consistent with subparagraph (A).

"(C) The adjustments under this paragraph shall be made as of the first day of the taxpayer's first taxable year which begins after December 31, 1963."

[1] *See References in Text note below.*

[2] *So in original. Probably should be followed by "to".*

[3] *So in original. The word "shall" probably should not appear.*

§48A. Qualifying advanced coal project credit

(a) In general

For purposes of section 46, the qualifying advanced coal project credit for any taxable year is an amount equal to—

(1) 20 percent of the qualified investment for such taxable year in the case of projects described in subsection (d)(3)(B)(i),

(2) 15 percent of the qualified investment for such taxable year in the case of projects described in subsection (d)(3)(B)(ii), and

(3) 30 percent of the qualified investment for such taxable year in the case of projects described in clause (iii) of subsection (d)(3)(B).

(b) Qualified investment

(1) In general

For purposes of subsection (a), the qualified investment for any taxable year is the basis of eligible property placed in service by the taxpayer during such taxable year which is part of a qualifying advanced coal project—

(A)(i) the construction, reconstruction, or erection of which is completed by the taxpayer, or

(ii) which is acquired by the taxpayer if the original use of such property commences with the taxpayer, and

(B) with respect to which depreciation (or amortization in lieu of depreciation) is allowable.

(2) Special rule for certain subsidized property

Rules similar to section 48(a)(4) (without regard to subparagraph (D) thereof) shall apply for purposes of this section.

(3) Certain qualified progress expenditures rules made applicable

Rules similar to the rules of subsections (c)(4) and (d) of section 46 (as in effect on the day before the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of this

section.

(c) Definitions

For purposes of this section—

(1) Qualifying advanced coal project

The term "qualifying advanced coal project" means a project which meets the requirements of subsection (e).

(2) Advanced coal-based generation technology

The term "advanced coal-based generation technology" means a technology which meets the requirements of subsection (f).

(3) Eligible property

The term "eligible property" means—

(A) in the case of any qualifying advanced coal project using an integrated gasification combined cycle, any property which is a part of such project and is necessary for the gasification of coal, including any coal handling and gas separation equipment, and

(B) in the case of any other qualifying advanced coal project, any property which is a part of such project.

(4) Coal

The term "coal" means anthracite, bituminous coal, subbituminous coal, lignite, and peat.

(5) Greenhouse gas capture capability

The term "greenhouse gas capture capability" means an integrated gasification combined cycle technology facility capable of adding components which can capture, separate on a long-term basis, isolate, remove, and sequester greenhouse gases which result from the generation of electricity.

(6) Electric generation unit

The term "electric generation unit" means any facility at least 50 percent of the total annual net output of which is electrical power, including an otherwise eligible facility which is used in an industrial application.

(7) Integrated gasification combined cycle

The term "integrated gasification combined cycle" means an electric generation unit which produces electricity by converting coal to synthesis gas which is used to fuel a combined-cycle plant which produces electricity from both a combustion turbine (including a combustion turbine/fuel cell hybrid) and a steam turbine.

(d) Qualifying advanced coal project program

(1) Establishment

Not later than 180 days after the date of enactment of this section, the Secretary, in consultation with the Secretary of Energy, shall establish a qualifying advanced coal project program for the deployment of advanced coal-based generation technologies.

(2) Certification

(A) Application period

Each applicant for certification under this paragraph shall submit an application meeting the requirements of subparagraph (B). An applicant may only submit an application—

(i) for an allocation from the dollar amount specified in clause (i) or (ii) of paragraph (3)(B) during the 3-year period beginning on the date the Secretary establishes the program under paragraph (1), and

(ii) for an allocation from the dollar amount specified in paragraph (3)(B)(iii) during the 3-year period beginning at the earlier of the termination of the period described in clause (i)

or the date prescribed by the Secretary.

(B) Requirements for applications for certification

An application under subparagraph (A) shall contain such information as the Secretary may require in order to make a determination to accept or reject an application for certification as meeting the requirements under subsection (e)(1). Any information contained in the application shall be protected as provided in section 552(b)(4) of title 5, United States Code.

(C) Time to act upon applications for certification

The Secretary shall issue a determination as to whether an applicant has met the requirements under subsection (e)(1) within 60 days following the date of submittal of the application for certification.

(D) Time to meet criteria for certification

Each applicant for certification shall have 2 years from the date of acceptance by the Secretary of the application during which to provide to the Secretary evidence that the criteria set forth in subsection (e)(2) have been met.

(E) Period of issuance

An applicant which receives a certification shall have 5 years from the date of issuance of the certification in order to place the project in service and if such project is not placed in service by that time period then the certification shall no longer be valid.

(3) Aggregate credits

(A) In general

The aggregate credits allowed under subsection (a) for projects certified by the Secretary under paragraph (2) may not exceed $2,550,000,000.

(B) Particular projects

Of the dollar amount in subparagraph (A), the Secretary is authorized to certify—

(i) $800,000,000 for integrated gasification combined cycle projects the application for which is submitted during the period described in paragraph (2)(A)(i),

(ii) $500,000,000 for projects which use other advanced coal-based generation technologies the application for which is submitted during the period described in paragraph (2)(A)(i), and

(iii) $1,250,000,000 for advanced coal-based generation technology projects the application for which is submitted during the period described in paragraph (2)(A)(ii).

(4) Review and redistribution

(A) Review

Not later than 6 years after the date of enactment of this section, the Secretary shall review the credits allocated under this section as of the date which is 6 years after the date of enactment of this section.

(B) Redistribution

The Secretary may reallocate credits available under clauses (i) and (ii) of paragraph (3)(B) if the Secretary determines that—

(i) there is an insufficient quantity of qualifying applications for certification pending at the time of the review, or

(ii) any certification made pursuant to paragraph (2) has been revoked pursuant to paragraph (2)(D) because the project subject to the certification has been delayed as a result of third party opposition or litigation to the proposed project.

(C) Reallocation

If the Secretary determines that credits under clause (i) or (ii) of paragraph (3)(B) are available for reallocation pursuant to the requirements set forth in paragraph (2), the Secretary is

authorized to conduct an additional program for applications for certification.

(5) Disclosure of allocations

The Secretary shall, upon making a certification under this subsection or section 48B(d), publicly disclose the identity of the applicant and the amount of the credit certified with respect to such applicant.

(e) Qualifying advanced coal projects

(1) Requirements

For purposes of subsection (c)(1), a project shall be considered a qualifying advanced coal project that the Secretary may certify under subsection (d)(2) if the Secretary determines that, at a minimum—

(A) the project uses an advanced coal-based generation technology—

(i) to power a new electric generation unit; or

(ii) to retrofit or repower an existing electric generation unit (including an existing natural gas-fired combined cycle unit);

(B) the fuel input for the project, when completed, is at least 75 percent coal;

(C) the project, consisting of one or more electric generation units at one site, will have a total nameplate generating capacity of at least 400 megawatts;

(D) the applicant provides evidence that a majority of the output of the project is reasonably expected to be acquired or utilized;

(E) the applicant provides evidence of ownership or control of a site of sufficient size to allow the proposed project to be constructed and to operate on a long-term basis;

(F) the project will be located in the United States; and

(G) in the case of any project the application for which is submitted during the period described in subsection (d)(2)(A)(ii), the project includes equipment which separates and sequesters at least 65 percent (70 percent in the case of an application for reallocated credits under subsection (d)(4)) of such project's total carbon dioxide emissions.

(2) Requirements for certification

For the purpose of subsection (d)(2)(D), a project shall be eligible for certification only if the Secretary determines that—

(A) the applicant for certification has received all Federal and State environmental authorizations or reviews necessary to commence construction of the project; and

(B) the applicant for certification, except in the case of a retrofit or repower of an existing electric generation unit, has purchased or entered into a binding contract for the purchase of the main steam turbine or turbines for the project, except that such contract may be contingent upon receipt of a certification under subsection (d)(2).

(3) Priority for certain projects

In determining which qualifying advanced coal projects to certify under subsection (d)(2), the Secretary shall—

(A) certify capacity, in accordance with the procedures set forth in subsection (d), in relatively equal amounts to—

(i) projects using bituminous coal as a primary feedstock,

(ii) projects using subbituminous coal as a primary feedstock, and

(iii) projects using lignite as a primary feedstock,

(B) give high priority to projects which include, as determined by the Secretary—

(i) greenhouse gas capture capability,

(ii) increased by-product utilization,

(iii) applicant participants who have a research partnership with an eligible educational institution (as defined in section 529(e)(5)), and

(iv) other benefits, and

(C) give highest priority to projects with the greatest separation and sequestration percentage of total carbon dioxide emissions.

(f) Advanced coal-based generation technology

(1) In general

For the purpose of this section, an electric generation unit uses advanced coal-based generation technology if—

(A) the unit—

(i) uses integrated gasification combined cycle technology, or

(ii) except as provided in paragraph (3), has a design net heat rate of 8530 Btu/kWh (40 percent efficiency), and

(B) the unit is designed to meet the performance requirements in the following table:

Performance characteristic:	Design level for project:
SO_2 (percent removal)	99 percent
NO_x (emissions)	0.07 lbs/MMBTU
PM* (emissions)	0.015 lbs/MMBTU
Hg (percent removal)	90 percent

For purposes of the performance requirement specified for the removal of SO_2 in the table contained in subparagraph (B), the SO_2 removal design level in the case of a unit designed for the use of feedstock substantially all of which is subbituminous coal shall be 99 percent SO_2 removal or the achievement of an emission level of 0.04 pounds or less of SO_2 per million Btu, determined on a 30-day average.

(2) Design net heat rate

For purposes of this subsection, design net heat rate with respect to an electric generation unit shall—

(A) be measured in Btu per kilowatt hour (higher heating value),

(B) be based on the design annual heat input to the unit and the rated net electrical power, fuels, and chemicals output of the unit (determined without regard to the cogeneration of steam by the unit),

(C) be adjusted for the heat content of the design coal to be used by the unit—

(i) if the heat content is less than 13,500 Btu per pound, but greater than 7,000 Btu per pound, according to the following formula: design net heat rate = unit net heat rate x [1–[((13,500-design coal heat content, Btu per pound)/1,000)* 0.013]], and

(ii) if the heat content is less than or equal to 7,000 Btu per pound, according to the following formula: design net heat rate = unit net heat rate x [1–[((13,500-design coal heat content, Btu per pound)/1,000)* 0.018]], and

(D) be corrected for the site reference conditions of—

(i) elevation above sea level of 500 feet,

(ii) air pressure of 14.4 pounds per square inch absolute,

(iii) temperature, dry bulb of 63°F,

(iv) temperature, wet bulb of 54°F, and

(v) relative humidity of 55 percent.

(3) Existing units

In the case of any electric generation unit in existence on the date of the enactment of this section, such unit uses advanced coal-based generation technology if, in lieu of the requirements under paragraph (1)(A)(ii), such unit achieves a minimum efficiency of 35 percent and an overall thermal design efficiency improvement, compared to the efficiency of the unit as operated, of not less than—

(A) 7 percentage points for coal of more than 9,000 Btu,

(B) 6 percentage points for coal of 7,000 to 9,000 Btu, or

(C) 4 percentage points for coal of less than 7,000 Btu.

(g) Applicability

No use of technology (or level of emission reduction solely by reason of the use of the technology), and no achievement of any emission reduction by the demonstration of any technology or performance level, by or at one or more facilities with respect to which a credit is allowed under this section, shall be considered to indicate that the technology or performance level is—

(1) adequately demonstrated for purposes of section 111 of the Clean Air Act (42 U.S.C. 7411);

(2) achievable for purposes of section 169 of that Act (42 U.S.C. 7479); or

(3) achievable in practice for purposes of section 171 of such Act (42 U.S.C. 7501).

(h) Competitive certification awards modification authority

In implementing this section or section 48B, the Secretary is directed to modify the terms of any competitive certification award and any associated closing agreement where such modification—

(1) is consistent with the objectives of such section,

(2) is requested by the recipient of the competitive certification award, and

(3) involves moving the project site to improve the potential to capture and sequester carbon dioxide emissions, reduce costs of transporting feedstock, and serve a broader customer base,

unless the Secretary determines that the dollar amount of tax credits available to the taxpayer under such section would increase as a result of the modification or such modification would result in such project not being originally certified. In considering any such modification, the Secretary shall consult with other relevant Federal agencies, including the Department of Energy.

(i) Recapture of credit for failure to sequester

The Secretary shall provide for recapturing the benefit of any credit allowable under subsection (a) with respect to any project which fails to attain or maintain the separation and sequestration requirements of subsection (e)(1)(G).

(Added Pub. L. 109–58, title XIII, §1307(b), Aug. 8, 2005, 119 Stat. 999; amended Pub. L. 109–432, div. A, title II, §203(a), Dec. 20, 2006, 120 Stat. 2945; Pub. L. 110–172, §11(a)(10), Dec. 29, 2007, 121 Stat. 2485; Pub. L. 110–234, title XV, §15346(a), May 22, 2008, 122 Stat. 1523; Pub. L. 110–246, §4(a), title XV, §15346(a), June 18, 2008, 122 Stat. 1664, 2285; Pub. L. 110–343, div. B, title I, §111(a)–(d), Oct. 3, 2008, 122 Stat. 3822, 3823; Pub. L. 111–5, div. B, title I, §1103(b)(2)(C), Feb. 17, 2009, 123 Stat. 321.)

REFERENCES IN TEXT

The enactment of the Revenue Reconciliation Act of 1990, referred to in subsec. (b)(3), is the date of enactment of title XI of Pub. L. 101–508, which was approved Nov. 5, 1990.

The date of enactment of this section, referred to in subsecs. (d)(1), (4)(A) and (f)(3), is the date of enactment of Pub. L. 109–58, which was approved Aug. 8, 2005.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2009—Subsec. (b)(2). Pub. L. 111–5 inserted "(without regard to subparagraph (D) thereof)" after "section 48(a)(4)".

2008—Subsec. (a)(3). Pub. L. 110–343, §111(a), added par. (3).

Subsec. (d)(2)(A). Pub. L. 110–343, §111(c)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "Each applicant for certification under this paragraph shall submit an application meeting the requirements of subparagraph (B). An applicant may only submit an application during the 3-year period beginning on the date the Secretary establishes the program under paragraph (1)."

Subsec. (d)(3)(A). Pub. L. 110–343, §111(b), substituted "$2,550,000,000" for "$1,300,000,000".

Subsec. (d)(3)(B). Pub. L. 110–343, §111(c)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "Of the dollar amount in subparagraph (A), the Secretary is authorized to certify—

"(i) $800,000,000 for integrated gasification combined cycle projects, and

"(ii) $500,000,000 for projects which use other advanced coal-based generation technologies."

Subsec. (d)(5). Pub. L. 110–343, §111(d), added par. (5).

Subsec. (e)(1)(G). Pub. L. 110–343, §111(c)(3)(A), added subpar. (G).

Subsec. (e)(3). Pub. L. 110–343, §111(c)(5), substituted "certain" for "integrated gasification combined cycle" in heading.

Subsec. (e)(3)(B)(iii), (iv). Pub. L. 110–343, §111(c)(4), added cl. (iii) and redesignated former cl. (iii) as (iv).

Subsec. (e)(3)(C). Pub. L. 110–343, §111(c)(3)(B), added subpar. (C).

Subsec. (h). Pub. L. 110–246, §15346(a), added subsec. (h).

Subsec. (i). Pub. L. 110–343, §111(c)(3)(C), added subsec. (i).

2007—Subsec. (d)(4)(B)(ii). Pub. L. 110–172 struck out "subsection" before "paragraph" in two places.

2006—Subsec. (f)(1). Pub. L. 109–432 inserted concluding provisions.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–5 applicable to periods after Dec. 31, 2008, under rules similar to the rules of section 48(m) of this title as in effect on the day before Nov. 5, 1990, see section 1103(c)(1) of Pub. L. 111–5, set out as a note under section 25C of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title I, §111(e), Oct. 3, 2008, 122 Stat. 3823, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section] shall apply to credits the application for which is submitted during the period described in section 48A(d)(2)(A)(ii) of the Internal Revenue Code of 1986 and which are allocated or reallocated after the date of the enactment of this Act [Oct. 3, 2008].

"(2) DISCLOSURE OF ALLOCATIONS.—The amendment made by subsection (d) [amending this section] shall apply to certifications made after the date of the enactment of this Act.

"(3) CLERICAL AMENDMENT.—The amendment made by subsection (c)(5) [amending this section] shall take effect as if included in the amendment made by section 1307(b) of the Energy Tax Incentives Act of 2005 [Pub. L. 109–58]."

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Pub. L. 110–234, title XV, §15346(b), May 22, 2008, 122 Stat. 1523, and Pub. L. 110–246, §4(a), title XV, §15346(b), June 18, 2008, 122 Stat. 1664, 2285, provided that: "The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [June 18, 2008] and is applicable to all competitive certification awards entered into under section 48A or 48B of the Internal Revenue Code of 1986, whether such awards were issued before, on, or after such date of enactment."

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

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title II, §203(b), Dec. 20, 2006, 120 Stat. 2945, provided that: "The amendment made by this section [amending this section] shall take apply [sic] with respect to applications for certification under section 48A(d)(2) of the Internal Revenue Code of 1986 submitted after October 2, 2006."

EFFECTIVE DATE

Section applicable to periods after Aug. 8, 2005, under rules similar to the rules of section 48(m) of this title, as in effect on the day before Nov. 5, 1990, see section 1307(d) of Pub. L. 109–58, set out as an Effective

Date of 2005 Amendment note under section 46 of this title.

§48B. Qualifying gasification project credit

(a) In general

For purposes of section 46, the qualifying gasification project credit for any taxable year is an amount equal to 20 percent (30 percent in the case of credits allocated under subsection (d)(1)(B)) of the qualified investment for such taxable year.

(b) Qualified investment

(1) In general

For purposes of subsection (a), the qualified investment for any taxable year is the basis of eligible property placed in service by the taxpayer during such taxable year which is part of a qualifying gasification project—

(A)(i) the construction, reconstruction, or erection of which is completed by the taxpayer, or

(ii) which is acquired by the taxpayer if the original use of such property commences with the taxpayer, and

(B) with respect to which depreciation (or amortization in lieu of depreciation) is allowable.

(2) Special rule for certain subsidized property

Rules similar to section 48(a)(4) (without regard to subparagraph (D) thereof) shall apply for purposes of this section.

(3) Certain qualified progress expenditures rules made applicable

Rules similar to the rules of subsections (c)(4) and (d) of section 46 (as in effect on the day before the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of this section.

(c) Definitions

For purposes of this section—

(1) Qualifying gasification project

The term "qualifying gasification project" means any project which—

(A) employs gasification technology,

(B) will be carried out by an eligible entity, and

(C) any portion of the qualified investment of which is certified under the qualifying gasification program as eligible for credit under this section in an amount (not to exceed $650,000,000) determined by the Secretary.

(2) Gasification technology

The term "gasification technology" means any process which converts a solid or liquid product from coal, petroleum residue, biomass, or other materials which are recovered for their energy or feedstock value into a synthesis gas composed primarily of carbon monoxide and hydrogen for direct use or subsequent chemical or physical conversion.

(3) Eligible property

The term "eligible property" means any property which is a part of a qualifying gasification project and is necessary for the gasification technology of such project.

(4) Biomass

(A) In general

The term "biomass" means any—

(i) agricultural or plant waste,

(ii) byproduct of wood or paper mill operations, including lignin in spent pulping liquors, and

(iii) other products of forestry maintenance.

(B) Exclusion

The term "biomass" does not include paper which is commonly recycled.

(5) Carbon capture capability

The term "carbon capture capability" means a gasification plant design which is determined by the Secretary to reflect reasonable consideration for, and be capable of, accommodating the equipment likely to be necessary to capture carbon dioxide from the gaseous stream, for later use or sequestration, which would otherwise be emitted in the flue gas from a project which uses a nonrenewable fuel.

(6) Coal

The term "coal" means anthracite, bituminous coal, subbituminous coal, lignite, and peat.

(7) Eligible entity

The term "eligible entity" means any person whose application for certification is principally intended for use in a domestic project which employs domestic gasification applications related to—

(A) chemicals,
(B) fertilizers,
(C) glass,
(D) steel,
(E) petroleum residues,
(F) forest products,
(G) agriculture, including feedlots and dairy operations, and
(H) transportation grade liquid fuels.

(8) Petroleum residue

The term "petroleum residue" means the carbonized product of high-boiling hydrocarbon fractions obtained in petroleum processing.

(d) Qualifying gasification project program

(1) In general

Not later than 180 days after the date of the enactment of this section, the Secretary, in consultation with the Secretary of Energy, shall establish a qualifying gasification project program to consider and award certifications for qualified investment eligible for credits under this section to qualifying gasification project sponsors under this section. The total amounts of credit that may be allocated under the program shall not exceed—

(A) $350,000,000, plus

(B) $250,000,000 for qualifying gasification projects that include equipment which separates and sequesters at least 75 percent of such project's total carbon dioxide emissions.

(2) Period of issuance

A certificate of eligibility under paragraph (1) may be issued only during the 10-fiscal year period beginning on October 1, 2005.

(3) Selection criteria

The Secretary shall not make a competitive certification award for qualified investment for credit eligibility under this section unless the recipient has documented to the satisfaction of the Secretary that—

(A) the award recipient is financially viable without the receipt of additional Federal funding associated with the proposed project,

(B) the recipient will provide sufficient information to the Secretary for the Secretary to ensure that the qualified investment is spent efficiently and effectively,

(C) a market exists for the products of the proposed project as evidenced by contracts or

written statements of intent from potential customers,

(D) the fuels identified with respect to the gasification technology for such project will comprise at least 90 percent of the fuels required by the project for the production of chemical feedstocks, liquid transportation fuels, or coproduction of electricity,

(E) the award recipient's project team is competent in the construction and operation of the gasification technology proposed, with preference given to those recipients with experience which demonstrates successful and reliable operations of the technology on domestic fuels so identified, and

(F) the award recipient has met other criteria established and published by the Secretary.

(4) Selection priorities

In determining which qualifying gasification projects to certify under this section, the Secretary shall—

(A) give highest priority to projects with the greatest separation and sequestration percentage of total carbon dioxide emissions, and

(B) give high priority to applicant participants who have a research partnership with an eligible educational institution (as defined in section 529(e)(5)).

(e) Denial of double benefit

A credit shall not be allowed under this section for any qualified investment for which a credit is allowed under section 48A.

(f) Recapture of credit for failure to sequester

The Secretary shall provide for recapturing the benefit of any credit allowable under subsection (a) with respect to any project which fails to attain or maintain the separation and sequestration requirements for such project under subsection (d)(1).

(Added Pub. L. 109–58, title XIII, §1307(b), Aug. 8, 2005, 119 Stat. 1004; amended Pub. L. 110–343, div. B, title I, §112(a)–(e), Oct. 3, 2008, 122 Stat. 3824; Pub. L. 111–5, div. B, title I, §1103(b)(2)(D), Feb. 17, 2009, 123 Stat. 321.)

REFERENCES IN TEXT

The enactment of the Revenue Reconciliation Act of 1990, referred to in subsec. (b)(3), is the date of enactment of title XI of Pub. L. 101–508, which was approved Nov. 5, 1990.

The date of the enactment of this section, referred to in subsec. (d)(1), is the date of enactment of Pub. L. 109–58, which was approved Aug. 8, 2005.

AMENDMENTS

2009—Subsec. (b)(2). Pub. L. 111–5 inserted "(without regard to subparagraph (D) thereof)" after "section 48(a)(4)".

2008—Subsec. (a). Pub. L. 110–343, §112(a), inserted "(30 percent in the case of credits allocated under subsection (d)(1)(B))" after "20 percent".

Subsec. (c)(7)(H). Pub. L. 110–343, §112(e), added subpar. (H).

Subsec. (d)(1). Pub. L. 110–343, §112(b), substituted "shall not exceed—" for "shall not exceed $350,000,000 under rules similar to the rules of section 48A(d)(4)." and added subpars. (A) and (B).

Subsec. (d)(4). Pub. L. 110–343, §112(d), added par. (4).

Subsec. (f). Pub. L. 110–343, §112(c), added subsec. (f).

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–5 applicable to periods after Dec. 31, 2008, under rules similar to the rules of section 48(m) of this title as in effect on the day before Nov. 5, 1990, see section 1103(c)(1) of Pub. L. 111–5, set out as a note under section 25C of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title I, §112(f), Oct. 3, 2008, 122 Stat. 3824, provided that: "The amendments made by this section [amending this section] shall apply to credits described in section 48B(d)(1)(B) of the Internal Revenue Code of 1986 which are allocated or reallocated after the date of the enactment of this Act [Oct. 3, 2008]."

EFFECTIVE DATE

Section applicable to periods after Aug. 8, 2005, under rules similar to the rules of section 48(m) of this title, as in effect on the day before Nov. 5, 1990, see section 1307(d) of Pub. L. 109–58, set out as an Effective Date of 2005 Amendment note under section 46 of this title.

§48C. Qualifying advanced energy project credit

(a) In general

For purposes of section 46, the qualifying advanced energy project credit for any taxable year is an amount equal to 30 percent of the qualified investment for such taxable year with respect to any qualifying advanced energy project of the taxpayer.

(b) Qualified investment

(1) In general

For purposes of subsection (a), the qualified investment for any taxable year is the basis of eligible property placed in service by the taxpayer during such taxable year which is part of a qualifying advanced energy project.

(2) Certain qualified progress expenditures rules made applicable

Rules similar to the rules of subsections (c)(4) and (d) of section 46 (as in effect on the day before the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of this section.

(3) Limitation

The amount which is treated for all taxable years with respect to any qualifying advanced energy project shall not exceed the amount designated by the Secretary as eligible for the credit under this section.

(c) Definitions

(1) Qualifying advanced energy project

(A) In general

The term "qualifying advanced energy project" means a project—

(i) which re-equips, expands, or establishes a manufacturing facility for the production of—

(I) property designed to be used to produce energy from the sun, wind, geothermal deposits (within the meaning of section 613(e)(2)), or other renewable resources,

(II) fuel cells, microturbines, or an energy storage system for use with electric or hybrid-electric motor vehicles,

(III) electric grids to support the transmission of intermittent sources of renewable energy, including storage of such energy,

(IV) property designed to capture and sequester carbon dioxide emissions,

(V) property designed to refine or blend renewable fuels or to produce energy conservation technologies (including energy-conserving lighting technologies and smart grid technologies),

(VI) new qualified plug-in electric drive motor vehicles (as defined by section 30D), qualified plug-in electric vehicles (as defined by section 30(d)), or components which are designed specifically for use with such vehicles, including electric motors, generators, and power control units, or

(VII) other advanced energy property designed to reduce greenhouse gas emissions as may be determined by the Secretary, and

(ii) any portion of the qualified investment of which is certified by the Secretary under subsection (d) as eligible for a credit under this section.

(B) Exception

Such term shall not include any portion of a project for the production of any property which is used in the refining or blending of any transportation fuel (other than renewable fuels).

(2) Eligible property

The term "eligible property" means any property—

(A) which is necessary for the production of property described in paragraph (1)(A)(i),

(B) which is—

(i) tangible personal property, or

(ii) other tangible property (not including a building or its structural components), but only if such property is used as an integral part of the qualified investment credit facility, and

(C) with respect to which depreciation (or amortization in lieu of depreciation) is allowable.

(d) Qualifying advanced energy project program

(1) Establishment

(A) In general

Not later than 180 days after the date of enactment of this section, the Secretary, in consultation with the Secretary of Energy, shall establish a qualifying advanced energy project program to consider and award certifications for qualified investments eligible for credits under this section to qualifying advanced energy project sponsors.

(B) Limitation

The total amount of credits that may be allocated under the program shall not exceed $2,300,000,000.

(2) Certification

(A) Application period

Each applicant for certification under this paragraph shall submit an application containing such information as the Secretary may require during the 2-year period beginning on the date the Secretary establishes the program under paragraph (1).

(B) Time to meet criteria for certification

Each applicant for certification shall have 1 year from the date of acceptance by the Secretary of the application during which to provide to the Secretary evidence that the requirements of the certification have been met.

(C) Period of issuance

An applicant which receives a certification shall have 3 years from the date of issuance of the certification in order to place the project in service and if such project is not placed in service by that time period, then the certification shall no longer be valid.

(3) Selection criteria

In determining which qualifying advanced energy projects to certify under this section, the Secretary—

(A) shall take into consideration only those projects where there is a reasonable expectation of commercial viability, and

(B) shall take into consideration which projects—

(i) will provide the greatest domestic job creation (both direct and indirect) during the credit period,

(ii) will provide the greatest net impact in avoiding or reducing air pollutants or anthropogenic emissions of greenhouse gases,

(iii) have the greatest potential for technological innovation and commercial deployment,

(iv) have the lowest levelized cost of generated or stored energy, or of measured reduction in energy consumption or greenhouse gas emission (based on costs of the full supply chain),

and

(v) have the shortest project time from certification to completion.

(4) Review and redistribution

(A) Review

Not later than 4 years after the date of enactment of this section, the Secretary shall review the credits allocated under this section as of such date.

(B) Redistribution

The Secretary may reallocate credits awarded under this section if the Secretary determines that—

(i) there is an insufficient quantity of qualifying applications for certification pending at the time of the review, or

(ii) any certification made pursuant to paragraph (2) has been revoked pursuant to paragraph (2)(B) because the project subject to the certification has been delayed as a result of third party opposition or litigation to the proposed project.

(C) Reallocation

If the Secretary determines that credits under this section are available for reallocation pursuant to the requirements set forth in paragraph (2), the Secretary is authorized to conduct an additional program for applications for certification.

(5) Disclosure of allocations

The Secretary shall, upon making a certification under this subsection, publicly disclose the identity of the applicant and the amount of the credit with respect to such applicant.

(e) Denial of double benefit

A credit shall not be allowed under this section for any qualified investment for which a credit is allowed under section 48, 48A, or 48B.

(Added Pub. L. 111–5, div. B, title I, §1302(b), Feb. 17, 2009, 123 Stat. 345.)

REFERENCES IN TEXT

Subsections (c)(4) and (d) of section 46 (as in effect on the day before the enactment of the Revenue Reconciliation Act of 1990), referred to in subsec. (b)(2), means section 46(c)(4) and (d) as in effect before enactment of Pub. L. 101–508, which amended section 46 generally.

The date of enactment of this section, referred to in subsec. (d)(1)(A), (4)(A), is the date of enactment of Pub. L. 111–5, which was approved Feb. 17, 2009.

EFFECTIVE DATE

Section applicable to periods after Feb. 17, 2009, under rules similar to the rules of section 48(m) of this title as in effect on the day before Nov. 5, 1990, see section 1302(d) of Pub. L. 111–5, set out as an Effective Date of 2009 Amendment note under section 46 of this title.

§48D. Qualifying therapeutic discovery project credit

(a) In general

For purposes of section 46, the qualifying therapeutic discovery project credit for any taxable year is an amount equal to 50 percent of the qualified investment for such taxable year with respect to any qualifying therapeutic discovery project of an eligible taxpayer.

(b) Qualified investment

(1) In general

For purposes of subsection (a), the qualified investment for any taxable year is the aggregate amount of the costs paid or incurred in such taxable year for expenses necessary for and directly related to the conduct of a qualifying therapeutic discovery project.

(2) Limitation

The amount which is treated as qualified investment for all taxable years with respect to any qualifying therapeutic discovery project shall not exceed the amount certified by the Secretary as eligible for the credit under this section.

(3) Exclusions

The qualified investment for any taxable year with respect to any qualifying therapeutic discovery project shall not take into account any cost—

(A) for remuneration for an employee described in section 162(m)(3),

(B) for interest expenses,

(C) for facility maintenance expenses,

(D) which is identified as a service cost under section 1.263A–1(e)(4) of title 26, Code of Federal Regulations, or

(E) for any other expense as determined by the Secretary as appropriate to carry out the purposes of this section.

(4) Certain progress expenditure rules made applicable

In the case of costs described in paragraph (1) that are paid for property of a character subject to an allowance for depreciation, rules similar to the rules of subsections (c)(4) and (d) of section 46 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of this section.

(5) Application of subsection

An investment shall be considered a qualified investment under this subsection only if such investment is made in a taxable year beginning in 2009 or 2010.

(c) Definitions

(1) Qualifying therapeutic discovery project

The term "qualifying therapeutic discovery project" means a project which is designed—

(A) to treat or prevent diseases or conditions by conducting pre-clinical activities, clinical trials, and clinical studies, or carrying out research protocols, for the purpose of securing approval of a product under section 505(b) of the Federal Food, Drug, and Cosmetic Act or section 351(a) of the Public Health Service Act,

(B) to diagnose diseases or conditions or to determine molecular factors related to diseases or conditions by developing molecular diagnostics to guide therapeutic decisions, or

(C) to develop a product, process, or technology to further the delivery or administration of therapeutics.

(2) Eligible taxpayer

(A) In general

The term "eligible taxpayer" means a taxpayer which employs not more than 250 employees in all businesses of the taxpayer at the time of the submission of the application under subsection (d)(2).

(B) Aggregation rules

All persons treated as a single employer under subsection (a) or (b) of section 52, or subsection (m) or (o) of section 414, shall be so treated for purposes of this paragraph.

(3) Facility maintenance expenses

The term "facility maintenance expenses" means costs paid or incurred to maintain a facility, including—

(A) mortgage or rent payments,

(B) insurance payments,

(C) utility and maintenance costs, and

(D) costs of employment of maintenance personnel.

(d) Qualifying therapeutic discovery project program

(1) Establishment

(A) In general

Not later than 60 days after the date of the enactment of this section, the Secretary, in consultation with the Secretary of Health and Human Services, shall establish a qualifying therapeutic discovery project program to consider and award certifications for qualified investments eligible for credits under this section to qualifying therapeutic discovery project sponsors.

(B) Limitation

The total amount of credits that may be allocated under the program shall not exceed $1,000,000,000 for the 2-year period beginning with 2009.

(2) Certification

(A) Application period

Each applicant for certification under this paragraph shall submit an application containing such information as the Secretary may require during the period beginning on the date the Secretary establishes the program under paragraph (1).

(B) Time for review of applications

The Secretary shall take action to approve or deny any application under subparagraph (A) within 30 days of the submission of such application.

(C) Multi-year applications

An application for certification under subparagraph (A) may include a request for an allocation of credits for more than 1 of the years described in paragraph (1)(B).

(3) Selection criteria

In determining the qualifying therapeutic discovery projects with respect to which qualified investments may be certified under this section, the Secretary—

(A) shall take into consideration only those projects that show reasonable potential—

(i) to result in new therapies—

(I) to treat areas of unmet medical need, or

(II) to prevent, detect, or treat chronic or acute diseases and conditions,

(ii) to reduce long-term health care costs in the United States, or

(iii) to significantly advance the goal of curing cancer within the 30-year period beginning on the date the Secretary establishes the program under paragraph (1), and

(B) shall take into consideration which projects have the greatest potential—

(i) to create and sustain (directly or indirectly) high quality, high-paying jobs in the United States, and

(ii) to advance United States competitiveness in the fields of life, biological, and medical sciences.

(4) Disclosure of allocations

The Secretary shall, upon making a certification under this subsection, publicly disclose the identity of the applicant and the amount of the credit with respect to such applicant.

(e) Special rules

(1) Basis adjustment

For purposes of this subtitle, if a credit is allowed under this section for an expenditure related to property of a character subject to an allowance for depreciation, the basis of such property shall be reduced by the amount of such credit.

(2) Denial of double benefit

(A) Bonus depreciation

A credit shall not be allowed under this section for any investment for which bonus depreciation is allowed under section 168(k), 1400L(b)(1), or 1400N(d)(1).

(B) Deductions

No deduction under this subtitle shall be allowed for the portion of the expenses otherwise allowable as a deduction taken into account in determining the credit under this section for the taxable year which is equal to the amount of the credit determined for such taxable year under subsection (a) attributable to such portion. This subparagraph shall not apply to expenses related to property of a character subject to an allowance for depreciation the basis of which is reduced under paragraph (1), or which are described in section 280C(g).

(C) Credit for research activities

(i) In general

Except as provided in clause (ii), any expenses taken into account under this section for a taxable year shall not be taken into account for purposes of determining the credit allowable under section 41 or 45C for such taxable year.

(ii) Expenses included in determining base period research expenses

Any expenses for any taxable year which are qualified research expenses (within the meaning of section 41(b)) shall be taken into account in determining base period research expenses for purposes of applying section 41 to subsequent taxable years.

(f) Coordination with Department of Treasury grants

In the case of any investment with respect to which the Secretary makes a grant under section 9023(e) of the Patient Protection and Affordable Care Act of 2009—

(1) Denial of credit

No credit shall be determined under this section with respect to such investment for the taxable year in which such grant is made or any subsequent taxable year.

(2) Recapture of credits for progress expenditures made before grant

If a credit was determined under this section with respect to such investment for any taxable year ending before such grant is made—

(A) the tax imposed under subtitle A on the taxpayer for the taxable year in which such grant is made shall be increased by so much of such credit as was allowed under section 38,

(B) the general business carryforwards under section 39 shall be adjusted so as to recapture the portion of such credit which was not so allowed, and

(C) the amount of such grant shall be determined without regard to any reduction in the basis of any property of a character subject to an allowance for depreciation by reason of such credit.

(3) Treatment of grants

Any such grant shall not be includible in the gross income of the taxpayer.

(Added Pub. L. 111–148, title IX, §9023(a), Mar. 23, 2010, 124 Stat. 877.)

REFERENCES IN TEXT

The date of the enactment of the Revenue Reconciliation Act of 1990, referred to in subsec. (b)(4), is the date of enactment of Pub. L. 101–508, which was approved Nov. 5, 1990.

Section 505(b) of the Federal Food, Drug, and Cosmetic Act, referred to in subsec. (c)(1)(A), is classified to section 355(b) of Title 21, Food and Drugs.

Section 351(a) of the Public Health Service Act, referred to in subsec. (c)(1)(A), is classified to section 262(a) of Title 42, The Public Health and Welfare.

The date of the enactment of this section, referred to in subsec. (d)(1)(A), is the date of enactment of Pub. L. 111–148, which was approved Mar. 23, 2010.

Section 9023(e) of the Patient Protection and Affordable Care Act of 2009, referred to in subsec. (f), is

section 9023(e) of Pub. L. 111–148, which is set out as a note below.

EFFECTIVE DATE

Section applicable to amounts paid or incurred after Dec. 31, 2008, in taxable years beginning after such date, see section 9023(f) of Pub. L. 111–148, set out as an Effective Date of 2010 Amendment note under section 46 of this title.

GRANTS FOR QUALIFIED INVESTMENTS IN THERAPEUTIC DISCOVERY PROJECTS IN LIEU OF TAX CREDITS

Pub. L. 111–148, title IX, §9023(e), Mar. 23, 2010, 124 Stat. 881, provided that:

"(1) IN GENERAL.—Upon application, the Secretary of the Treasury shall, subject to the requirements of this subsection, provide a grant to each person who makes a qualified investment in a qualifying therapeutic discovery project in the amount of 50 percent of such investment. No grant shall be made under this subsection with respect to any investment unless such investment is made during a taxable year beginning in 2009 or 2010.

"(2) APPLICATION.—

"(A) IN GENERAL.—At the stated election of the applicant, an application for certification under section 48D(d)(2) of the Internal Revenue Code of 1986 for a credit under such section for the taxable year of the applicant which begins in 2009 shall be considered to be an application for a grant under paragraph (1) for such taxable year.

"(B) TAXABLE YEARS BEGINNING IN 2010.—An application for a grant under paragraph (1) for a taxable year beginning in 2010 shall be submitted—

"(i) not earlier than the day after the last day of such taxable year, and

"(ii) not later than the due date (including extensions) for filing the return of tax for such taxable year.

"(C) INFORMATION TO BE SUBMITTED.—An application for a grant under paragraph (1) shall include such information and be in such form as the Secretary may require to state the amount of the credit allowable (but for the receipt of a grant under this subsection) under section 48D for the taxable year for the qualified investment with respect to which such application is made.

"(3) TIME FOR PAYMENT OF GRANT.—

"(A) IN GENERAL.—The Secretary of the Treasury shall make payment of the amount of any grant under paragraph (1) during the 30-day period beginning on the later of—

"(i) the date of the application for such grant, or

"(ii) the date the qualified investment for which the grant is being made is made.

"(B) REGULATIONS.—In the case of investments of an ongoing nature, the Secretary shall issue regulations to determine the date on which a qualified investment shall be deemed to have been made for purposes of this paragraph.

"(4) QUALIFIED INVESTMENT.—For purposes of this subsection, the term 'qualified investment' means a qualified investment that is certified under section 48D(d) of the Internal Revenue Code of 1986 for purposes of the credit under such section 48D.

"(5) APPLICATION OF CERTAIN RULES.—

"(A) IN GENERAL.—In making grants under this subsection, the Secretary of the Treasury shall apply rules similar to the rules of section 50 of the Internal Revenue Code of 1986. In applying such rules, any increase in tax under chapter 1 of such Code by reason of an investment ceasing to be a qualified investment shall be imposed on the person to whom the grant was made.

"(B) SPECIAL RULES.—

"(i) RECAPTURE OF EXCESSIVE GRANT AMOUNTS.—If the amount of a grant made under this subsection exceeds the amount allowable as a grant under this subsection, such excess shall be recaptured under subparagraph (A) as if the investment to which such excess portion of the grant relates had ceased to be a qualified investment immediately after such grant was made.

"(ii) GRANT INFORMATION NOT TREATED AS RETURN INFORMATION.—In no event shall the amount of a grant made under paragraph (1), the identity of the person to whom such grant was made, or a description of the investment with respect to which such grant was made be treated as return information for purposes of section 6103 of the Internal Revenue Code of 1986.

"(6) EXCEPTION FOR CERTAIN NON-TAXPAYERS.—The Secretary of the Treasury shall not make any grant under this subsection to—

"(A) any Federal, State, or local government (or any political subdivision, agency, or instrumentality thereof),

"(B) any organization described in section 501(c) of the Internal Revenue Code of 1986 and exempt

from tax under section 501(a) of such Code,

"(C) any entity referred to in paragraph (4) of section 54(j) of such Code, or

"(D) any partnership or other pass-thru entity any partner (or other holder of an equity or profits interest) of which is described in subparagraph (A), (B) or (C).

In the case of a partnership or other pass-thru entity described in subparagraph (D), partners and other holders of any equity or profits interest shall provide to such partnership or entity such information as the Secretary of the Treasury may require to carry out the purposes of this paragraph.

"(7) SECRETARY.—Any reference in this subsection to the Secretary of the Treasury shall be treated as including the Secretary's delegate.

"(8) OTHER TERMS.—Any term used in this subsection which is also used in section 48D of the Internal Revenue Code of 1986 shall have the same meaning for purposes of this subsection as when used in such section.

"(9) DENIAL OF DOUBLE BENEFIT.—No credit shall be allowed under section 46(6) of the Internal Revenue Code of 1986 by reason of section 48D of such Code for any investment for which a grant is awarded under this subsection.

"(10) APPROPRIATIONS.—There is hereby appropriated to the Secretary of the Treasury such sums as may be necessary to carry out this subsection.

"(11) TERMINATION.—The Secretary of the Treasury shall not make any grant to any person under this subsection unless the application of such person for such grant is received before January 1, 2013.

"(12) PROTECTING MIDDLE CLASS FAMILIES FROM TAX INCREASES.—It is the sense of the Senate that the Senate should reject any procedural maneuver that would raise taxes on middle class families, such as a motion to commit the pending legislation to the Committee on Finance, which is designed to kill legislation that provides tax cuts for American workers and families, including the affordability tax credit and the small business tax credit."

§49. At-risk rules

(a) General rule

(1) Certain nonrecourse financing excluded from credit base

(A) Limitation

The credit base of any property to which this paragraph applies shall be reduced by the nonqualified nonrecourse financing with respect to such credit base (as of the close of the taxable year in which placed in service).

(B) Property to which paragraph applies

This paragraph applies to any property which—

(i) is placed in service during the taxable year by a taxpayer described in section 465(a)(1), and

(ii) is used in connection with an activity with respect to which any loss is subject to limitation under section 465.

(C) Credit base defined

For purposes of this paragraph, the term "credit base" means—

(i) the portion of the basis of any qualified rehabilitated building attributable to qualified rehabilitation expenditures,

(ii) the basis of any energy property,

(iii) the basis of any property which is part of a qualifying advanced coal project under section 48A,

(iv) the basis of any property which is part of a qualifying gasification project under section 48B,

(v) the basis of any property which is part of a qualifying advanced energy project under section 48C, and

(vi) the basis of any property to which paragraph (1) of section 48D(e) applies which is part of a qualifying therapeutic discovery project under such section 48D.

(D) Nonqualified nonrecourse financing

(i) In general

For purposes of this paragraph and paragraph (2), the term "nonqualified nonrecourse financing" means any nonrecourse financing which is not qualified commercial financing.

(ii) Qualified commercial financing

For purposes of this paragraph, the term "qualified commercial financing" means any financing with respect to any property if—

(I) such property is acquired by the taxpayer from a person who is not a related person,

(II) the amount of the nonrecourse financing with respect to such property does not exceed 80 percent of the credit base of such property, and

(III) such financing is borrowed from a qualified person or represents a loan from any Federal, State, or local government or instrumentality thereof, or is guaranteed by any Federal, State, or local government.

Such term shall not include any convertible debt.

(iii) Nonrecourse financing

For purposes of this subparagraph, the term "nonrecourse financing" includes—

(I) any amount with respect to which the taxpayer is protected against loss through guarantees, stop-loss agreements, or other similar arrangements, and

(II) except to the extent provided in regulations, any amount borrowed from a person who has an interest (other than as a creditor) in the activity in which the property is used or from a related person to a person (other than the taxpayer) having such an interest.

In the case of amounts borrowed by a corporation from a shareholder, subclause (II) shall not apply to an interest as a share-holder.[1]

(iv) Qualified person

For purposes of this paragraph, the term "qualified person" means any person which is actively and regularly engaged in the business of lending money and which is not—

(I) a related person with respect to the taxpayer,

(II) a person from which the taxpayer acquired the property (or a related person to such person), or

(III) a person who receives a fee with respect to the taxpayer's investment in the property (or a related person to such person).

(v) Related person

For purposes of this subparagraph, the term "related person" has the meaning given such term by section 465(b)(3)(C). Except as otherwise provided in regulations prescribed by the Secretary, the determination of whether a person is a related person shall be made as of the close of the taxable year in which the property is placed in service.

(E) Application to partnerships and S corporations

For purposes of this paragraph and paragraph (2)—

(i) In general

Except as otherwise provided in this subparagraph, in the case of any partnership or S corporation, the determination of whether a partner's or shareholder's allocable share of any financing is nonqualified nonrecourse financing shall be made at the partner or shareholder level.

(ii) Special rule for certain recourse financing of S corporation

A shareholder of an S corporation shall be treated as liable for his allocable share of any financing provided by a qualified person to such corporation if—

(I) such financing is recourse financing (determined at the corporate level), and

(II) such financing is provided with respect to qualified business property of such corporation.

(iii) Qualified business property

For purposes of clause (ii), the term "qualified business property" means any property if—

(I) such property is used by the corporation in the active conduct of a trade or business,

(II) during the entire 12-month period ending on the last day of the taxable year, such corporation had at least 3 full-time employees who were not owner-employees (as defined in section 465(c)(7)(E)(i)) and substantially all the services of whom were services directly related to such trade or business, and

(III) during the entire 12-month period ending on the last day of such taxable year, such corporation had at least 1 full-time employee substantially all of the services of whom were in the active management of the trade or business.

(iv) Determination of allocable share

The determination of any partner's or shareholder's allocable share of any financing shall be made in the same manner as the credit allowable by section 38 with respect to such property.

(F) Special rules for energy property

Rules similar to the rules of subparagraph (F) of section 46(c)(8) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of this paragraph.

(2) Subsequent decreases in nonqualified nonrecourse financing with respect to the property

(A) In general

If, at the close of a taxable year following the taxable year in which the property was placed in service, there is a net decrease in the amount of nonqualified nonrecourse financing with respect to such property, such net decrease shall be taken into account as an increase in the credit base for such property in accordance with subparagraph (C).

(B) Certain transactions not taken into account

For purposes of this paragraph, nonqualified nonrecourse financing shall not be treated as decreased through the surrender or other use of property financed by nonqualified nonrecourse financing.

(C) Manner in which taken into account

(i) Credit determined by reference to taxable year property placed in service

For purposes of determining the amount of credit allowable under section 38 and the amount of credit subject to the early disposition or cessation rules under section 50(a), any increase in a taxpayer's credit base for any property by reason of this paragraph shall be taken into account as if it were property placed in service by the taxpayer in the taxable year in which the property referred to in subparagraph (A) was first placed in service.

(ii) Credit allowed for year of decrease in nonqualified nonrecourse financing

Any credit allowable under this subpart for any increase in qualified investment by reason of this paragraph shall be treated as earned during the taxable year of the decrease in the amount of nonqualified nonrecourse financing.

(b) Increases in nonqualified nonrecourse financing

(1) In general

If, as of the close of the taxable year, there is a net increase with respect to the taxpayer in the amount of nonqualified nonrecourse financing (within the meaning of subsection (a)(1)) with respect to any property to which subsection (a)(1) applied, then the tax under this chapter for such

taxable year shall be increased by an amount equal to the aggregate decrease in credits allowed under section 38 for all prior taxable years which would have resulted from reducing the credit base (as defined in subsection (a)(1)(C)) taken into account with respect to such property by the amount of such net increase. For purposes of determining the amount of credit subject to the early disposition or cessation rules of section 50(a), the net increase in the amount of the nonqualified nonrecourse financing with respect to the property shall be treated as reducing the property's credit base in the year in which the property was first placed in service.

(2) Transfers of debt more than 1 year after initial borrowing not treated as increasing nonqualified nonrecourse financing

For purposes of paragraph (1), the amount of nonqualified nonrecourse financing (within the meaning of subsection (a)(1)(D)) with respect to the taxpayer shall not be treated as increased by reason of a transfer of (or agreement to transfer) any evidence of any indebtedness if such transfer occurs (or such agreement is entered into) more than 1 year after the date such indebtedness was incurred.

(3) Special rules for certain energy property

Rules similar to the rules of section 47(d)(3) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of this subsection.

(4) Special rule

Any increase in tax under paragraph (1) shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit allowable under this chapter.

(Added Pub. L. 99–514, title II, §211(a), Oct. 22, 1986, 100 Stat. 2166; amended Pub. L. 100–647, title I, §1002(e)(1)–(3), (8)(B), Nov. 10, 1988, 102 Stat. 3367, 3369; Pub. L. 101–508, title XI, §11813(a), Nov. 5, 1990, 104 Stat. 1388–543; Pub. L. 105–206, title VI, §6004(g)(6), July 22, 1998, 112 Stat. 796; Pub. L. 109–58, title XIII, §1307(c)(1), Aug. 8, 2005, 119 Stat. 1006; Pub. L. 111–5, div. B, title I, §1302(c)(1), Feb. 17, 2009, 123 Stat. 347; Pub. L. 111–148, title IX, §9023(c)(1), Mar. 23, 2010, 124 Stat. 880.)

REFERENCES IN TEXT

The date of the enactment of the Revenue Reconciliation Act of 1990, referred to in subsecs. (a)(1)(F) and (b)(3), is the date of enactment of Pub. L. 101–508, which was approved Nov. 5, 1990.

PRIOR PROVISIONS

A prior section 49, Pub. L. 91–172, title VII, §703(a), Dec. 30, 1969, 83 Stat. 660; Pub. L. 92–178, title I, §101(b)(1)–(4), Dec. 10, 1971, 85 Stat. 498, 499, related to termination of rules for computing credit for investment in certain depreciable property for period beginning Apr. 19, 1969, and ending during 1971, prior to repeal by Pub. L. 95–600, title III, §312(c)(1), Nov. 6, 1978, 92 Stat. 2826, applicable to taxable years ending after Dec. 31, 1978.

AMENDMENTS

2010—Subsec. (a)(1)(C)(vi). Pub. L. 111–148 added cl. (vi).

2009—Subsec. (a)(1)(C)(v). Pub. L. 111–5 added cl. (v).

2005—Subsec. (a)(1)(C)(iii), (iv). Pub. L. 109–58 added cls. (iii) and (iv) and struck out former cl. (iii) which read as follows: "the amortizable basis of any qualified timber property."

1998—Subsec. (b)(4). Pub. L. 105–206 substituted "this chapter" for "subpart A, B, D, or G".

1990—Pub. L. 101–508, §11813(a), amended section generally, substituting section catchline for one which read: "Termination of regular percentage" and in text substituting present provisions for provisions relating to the nonapplicability of the regular percentage to any property placed in service after Dec. 31, 1985, for purposes of determining the investment tax credit, exceptions to such rule, the 35 percent reduction in credit for taxable years after 1986, the full basis adjustment in determining investment tax credit, and the definition of transition property and treatment of progress expenditures.

1988—Subsec. (c)(4)(B). Pub. L. 100–647, §1002(e)(2), substituted "years" for "year" in heading and amended text generally. Prior to amendment, text read as follows: "The amount of the reduction of the regular investment credit under paragraph (3)—

"(i) may not be carried back to any taxable year, but

"(ii) shall be added to the carryforwards from the taxable year before applying paragraph (2)."

Subsec. (c)(5)(B)(i). Pub. L. 100–647, §1002(e)(3), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: "The term 'regular investment credit' has the meaning given such term by section 48(o)".

Subsec. (c)(5)(C). Pub. L. 100–647, §1002(e)(8)(B), struck out subpar. (C) which related to portion of credits attributable to regular investment credit.

Subsec. (d)(1). Pub. L. 100–647, §1002(e)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "In the case of periods after December 31, 1985, section 48(q) (relating to basis adjustment to section 38 property) shall be applied with respect to transaction property—

"(A) by substituting '100 percent' for '50 percent' in paragraph (1), and

"(B) without regard to paragraph (4) thereof (relating to election of reduced credit in lieu of basis adjustment)."

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–148 applicable to amounts paid or incurred after Dec. 31, 2008, in taxable years beginning after such date, see section 9023(f) of Pub. L. 111–148, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–5 applicable to periods after Feb. 17, 2009, under rules similar to the rules of section 48(m) of this title as in effect on the day before Nov. 5, 1990, see section 1302(d) of Pub. L. 111–5, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–58 applicable to periods after Aug. 8, 2005, under rules similar to the rules of section 48(m) of this title, as in effect on the day before Nov. 5, 1990, see section 1307(d) of Pub. L. 109–58, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1002(e)(1)–(3) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 1002(e)(8)(B) of Pub. L. 100–647 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 1002(e)(8)(C) of Pub. L. 100–647, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title II, §211(e), Oct. 22, 1986, 100 Stat. 2169, as amended by Pub. L. 100–647, title I, §1002(e)(4)–(7), Nov. 10, 1988, 102 Stat. 3367, 3368, provided that:

"(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [enacting this section and provisions set out below] shall apply to property placed in service after December 31, 1985, in taxable years ending after such date. Section 49(c) of the Internal Revenue Code of 1986 (as added by subsection (a)) shall apply to taxable years ending after June 30, 1987, and to amounts carried to such taxable years.

"(2) EXCEPTIONS FOR CERTAIN FILMS.—For purposes of determining whether any property is transition property within the meaning of section 49(e) of the Internal Revenue Code of 1986—

"(A) in the case of any motion picture or television film, construction shall be treated as including production for purposes of section 203(b)(1) of this Act [enacting provisions set out as a note under section

168 of this title], and written contemporary evidence of an agreement (in accordance with industry practice) shall be treated as a written binding contract for such purposes,

"(B) in the case of any television film, a license agreement or agreement for production services between a television network and a producer shall be treated as a binding contract for purposes of section 203(b)(1)(A) of this Act, and

"(C) a motion picture film shall be treated as described in section 203(b)(1)(A) of this Act if—

"(i) funds were raised pursuant to a public offering before September 26, 1985, for the production of such film,

"(ii) 40 percent of the funds raised pursuant to such public offering are being spent on films the production of which commenced before such date, and

"(iii) all of the films funded by such public offering are required to be distributed pursuant to distribution agreements entered into before September 26, 1985.

"(3) NORMALIZATION RULES.—The provisions of subsection (b) [see Normalization Rules note below] shall apply to any violation of the normalization requirements under paragraph (1) or (2) of section 46(f) of the Internal Revenue Code of 1986 occurring in taxable years ending after December 31, 1985.

"(4) ADDITIONAL EXCEPTIONS.—

"(A) Subsections (c) and (d) of section 49 of the Internal Revenue Code of 1986 shall not apply to any continuous caster facility for slabs and blooms which is subject to a lease and which is part of a project the second phase of which is a continuous slab caster which was placed in service before December 31, 1985.

"(B) For purposes of determining whether an automobile manufacturing facility (including equipment and incidental appurtenances) is transition property within the meaning of section 49(e), property with respect to which the Board of Directors of an automobile manufacturer formally approved the plan for the project on January 7, 1985 shall be treated as transition property and subsections (c) and (d) of section 49 of such Code shall not apply to such property, but only with respect to $70,000,000 of regular investment tax credits.

"(C) Any solid waste disposal facility which will process and incinerate solid waste of one or more public or private entities including Dakota County, Minnesota, and with respect to which a bond carryforward from 1985 was elected in an amount equal to $12,500,000 shall be treated as transition property within the meaning of section 49(e) of the Internal Revenue Code of 1986.

"(D) For purposes of section 49 of such Code, the following property shall be treated as transition property:

"(i) 2 catamarans built by a shipbuilder incorporated in the State of Washington in 1964, the contracts for which were signed on April 22, 1986 and November 12, 1985, and 1 barge built by such shipbuilder the contract for which was signed on August 7, 1985.

"(ii) 2 large passenger ocean-going United States flag cruise ships with a passenger rated capacity of up to 250 which are built by the shipbuilder described in clause (i), which are the first such ships built in the United States since 1952, and which were designed at the request of a Pacific Coast cruise line pursuant to a contract entered into in October 1985. This clause shall apply only to that portion of the cost of each ship which does not exceed $40,000,000.

"(iii) Property placed in service during 1986 by Satellite Industries, Inc., with headquarters in Minneapolis, Minnesota, to the extent that the cost of such property does not exceed $1,950,000.

"(E) Subsections (c) and (d) of section 49 of such Code shall not apply to property described in section 204(a)(4) of this Act [enacting provisions set out as a note under section 168 of this title]."

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

NORMALIZATION RULES

Pub. L. 99–514, title II, §211(b), Oct. 22, 1986, 100 Stat. 2168, provided that: "If, for any taxable year beginning after December 31, 1985, the requirements of paragraph (1) or (2) of section 46(f) of the Internal Revenue Code of 1986 are not met with respect to public utility property to which the regular percentage applied for purposes of determining the amount of the investment tax credit—

"(1) all credits for open taxable years as of the time of the final determination referred to in section 46(f)(4)(A) of such Code shall be recaptured, and

"(2) if the amount of the taxpayer's unamortized credits (or the credits not previously restored to rate base) with respect to such property (whether or not for open years) exceeds the amount referred to in

paragraph (1), the taxpayer's tax for the taxable year shall be increased by the amount of such excess. If any portion of the excess described in paragraph (2) is attributable to a credit which is allowable as a carryover to a taxable year beginning after December 31, 1985, in lieu of applying paragraph (2) with respect to such portion, the amount of such carryover shall be reduced by the amount of such portion. Rules similar to the rules of this subsection shall apply in the case of any property with respect to which the requirements of section 46(f)(9) of such Code are met."

EXCEPTION FOR CERTAIN AIRCRAFT USED IN ALASKA

Pub. L. 99–514, title II, §211(d), Oct. 22, 1986, 100 Stat. 2168, provided that:

"(1) The amendments made by subsection (a) [enacting this section and provisions set out above] shall not apply to property originally placed in service after December 29, 1982, and before August 1, 1985, by a corporation incorporated in Alaska on May 21, 1953, and used by it—

"(A) in part, for the transportation of mail for the United States Postal Service in the State of Alaska, and

"(B) in part, to provide air service in the State of Alaska on routes which had previously been served by an air carrier that received compensation from the Civil Aeronautics Board for providing service.

"(2) In the case of property described in subparagraph (A)—

"(A) such property shall be treated as recovery property described in section 208(d)(5) of the Tax Equity and Fiscal Responsibility Act of 1982 ('TEFRA') [section 208(d)(5) of Pub. L. 97–248, enacting provisions set out as a note under section 168 of this title];

"(B) '48 months' shall be substituted for '3 months' each place it appears in applying—

"(i) section 48(b)(2)(B) of the Code [26 U.S.C. 48(b)(2)(B)], and

"(ii) section 168(f)(8)(D) of the Code [26 U.S.C. 168(f)(8)(D)] (as in effect after the amendments made by the Technical Corrections Act of 1982 [Pub. L. 97–448] but before the amendments made by TEFRA); and

"(C) the limitation of section 168(f)(8)(D)(ii)(III) (as then in effect) shall be read by substituting 'the lessee's original cost basis.', for 'the adjusted basis of the lessee at the time of the lease.'

"(3) The aggregate amount of property to which this paragraph shall apply shall not exceed $60,000,000."

[1] *So in original. Probably should not be hyphenated.*

§50. Other special rules

(a) Recapture in case of dispositions, etc.

Under regulations prescribed by the Secretary—

(1) Early disposition, etc.

(A) General rule

If, during any taxable year, investment credit property is disposed of, or otherwise ceases to be investment credit property with respect to the taxpayer, before the close of the recapture period, then the tax under this chapter for such taxable year shall be increased by the recapture percentage of the aggregate decrease in the credits allowed under section 38 for all prior taxable years which would have resulted solely from reducing to zero any credit determined under this subpart with respect to such property.

(B) Recapture percentage

For purposes of subparagraph (A), the recapture percentage shall be determined in accordance with the following table:

If the property ceases to be investment credit property within—	The recapture percentage is:
(i) One full year after placed in service	100
(ii) One full year after the close of the period described in clause (i)	80

(iii) One full year after the close of the period described in clause (ii)	60
(iv) One full year after the close of the period described in clause (iii)	40
(v) One full year after the close of the period described in clause (iv)	20

(2) Property ceases to qualify for progress expenditures

(A) In general

If during any taxable year any building to which section 47(d) applied ceases (by reason of sale or other disposition, cancellation or abandonment of contract, or otherwise) to be, with respect to the taxpayer, property which, when placed in service, will be a qualified rehabilitated building, then the tax under this chapter for such taxable year shall be increased by an amount equal to the aggregate decrease in the credits allowed under section 38 for all prior taxable years which would have resulted solely from reducing to zero the credit determined under this subpart with respect to such building.

(B) Certain excess credit recaptured

Any amount which would have been applied as a reduction under paragraph (2) of section 47(b) but for the fact that a reduction under such paragraph cannot reduce the amount taken into account under section 47(b)(1) below zero shall be treated as an amount required to be recaptured under subparagraph (A) for the taxable year during which the building is placed in service.

(C) Certain sales and leasebacks

Under regulations prescribed by the Secretary, a sale by, and leaseback to, a taxpayer who, when the property is placed in service, will be a lessee to whom the rules referred to in subsection (d)(5) apply shall not be treated as a cessation described in subparagraph (A) to the extent that the amount which will be passed through to the lessee under such rules with respect to such property is not less than the qualified rehabilitation expenditures properly taken into account by the lessee under section 47(d) with respect to such property.

(D) Coordination with paragraph (1)

If, after property is placed in service, there is a disposition or other cessation described in paragraph (1), then paragraph (1) shall be applied as if any credit which was allowable by reason of section 47(d) and which has not been required to be recaptured before such disposition, cessation, or change in use were allowable for the taxable year the property was placed in service.

(E) Special rules

Rules similar to the rules of this paragraph shall apply in cases where qualified progress expenditures were taken into account under the rules referred to in section 48(b).

(3) Carrybacks and carryovers adjusted

In the case of any cessation described in paragraph (1) or (2), the carrybacks and carryovers under section 39 shall be adjusted by reason of such cessation.

(4) Subsection not to apply in certain cases

Paragraphs (1) and (2) shall not apply to—

(A) a transfer by reason of death, or

(B) a transaction to which section 381(a) applies.

For purposes of this subsection, property shall not be treated as ceasing to be investment credit property with respect to the taxpayer by reason of a mere change in the form of conducting the trade or business so long as the property is retained in such trade or business as investment credit property and the taxpayer retains a substantial interest in such trade or business.

(5) Definitions and special rules

(A) Investment credit property

For purposes of this subsection, the term "investment credit property" means any property eligible for a credit determined under this subpart.

(B) Transfer between spouses or incident to divorce

In the case of any transfer described in subsection (a) of section 1041—

(i) the foregoing provisions of this subsection shall not apply, and

(ii) the same tax treatment under this subsection with respect to the transferred property shall apply to the transferee as would have applied to the transferor.

(C) Special rule

Any increase in tax under paragraph (1) or (2) shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit allowable under this chapter.

(b) Certain property not eligible

No credit shall be determined under this subpart with respect to—

(1) Property used outside United States

(A) In general

Except as provided in subparagraph (B), no credit shall be determined under this subpart with respect to any property which is used predominantly outside the United States.

(B) Exceptions

Subparagraph (A) shall not apply to any property described in section 168(g)(4).

(2) Property used for lodging

No credit shall be determined under this subpart with respect to any property which is used predominantly to furnish lodging or in connection with the furnishing of lodging. The preceding sentence shall not apply to—

(A) nonlodging commercial facilities which are available to persons not using the lodging facilities on the same basis as they are available to persons using the lodging facilities.[1]

(B) property used by a hotel or motel in connection with the trade or business of furnishing lodging where the predominant portion of the accommodations is used by transients;

(C) a certified historic structure to the extent of that portion of the basis which is attributable to qualified rehabilitation expenditures; and

(D) any energy property.

(3) Property used by certain tax-exempt organization

No credit shall be determined under this subpart with respect to any property used by an organization (other than a cooperative described in section 521) which is exempt from the tax imposed by this chapter unless such property is used predominantly in an unrelated trade or business the income of which is subject to tax under section 511. If the property is debt-financed property (as defined in section 514(b)), the amount taken into account for purposes of determining the amount of the credit under this subpart with respect to such property shall be that percentage of the amount (which but for this paragraph would be so taken into account) which is the same percentage as is used under section 514(a), for the year the property is placed in service, in computing the amount of gross income to be taken into account during such taxable year with respect to such property. If any qualified rehabilitated building is used by the tax-exempt organization pursuant to a lease, this paragraph shall not apply for purposes of determining the amount of the rehabilitation credit.

(4) Property used by governmental units or foreign persons or entities

(A) In general

No credit shall be determined under this subpart with respect to any property used—

(i) by the United States, any State or political subdivision thereof, any possession of the United States, or any agency or instrumentality of any of the foregoing, or

(ii) by any foreign person or entity (as defined in section 168(h)(2)(C)), but only with respect to property to which section 168(h)(2)(A)(iii) applies (determined after the application of section 168(h)(2)(B)).

(B) Exception for short-term leases

This paragraph and paragraph (3) shall not apply to any property by reason of use under a lease with a term of less than 6 months (determined under section 168(i)(3)).

(C) Exception for qualified rehabilitated buildings leased to governments, etc.

If any qualified rehabilitated building is leased to a governmental unit (or a foreign person or entity) this paragraph shall not apply for purposes of determining the rehabilitation credit with respect to such building.

(D) Special rules for partnerships, etc.

For purposes of this paragraph and paragraph (3), rules similar to the rules of paragraphs (5) and (6) of section 168(h) shall apply.

(E) Cross reference

For special rules for the application of this paragraph and paragraph (3), see section 168(h).

(c) Basis adjustment to investment credit property

(1) In general

For purposes of this subtitle, if a credit is determined under this subpart with respect to any property, the basis of such property shall be reduced by the amount of the credit so determined.

(2) Certain dispositions

If during any taxable year there is a recapture amount determined with respect to any property the basis of which was reduced under paragraph (1), the basis of such property (immediately before the event resulting in such recapture) shall be increased by an amount equal to such recapture amount. For purposes of the preceding sentence, the term "recapture amount" means any increase in tax (or adjustment in carrybacks or carryovers) determined under subsection (a).

(3) Special rule

In the case of any energy credit—

(A) only 50 percent of such credit shall be taken into account under paragraph (1), and

(B) only 50 percent of any recapture amount attributable to such credit shall be taken into account under paragraph (2).

(4) Recapture of reductions

(A) In general

For purposes of sections 1245 and 1250, any reduction under this subsection shall be treated as a deduction allowed for depreciation.

(B) Special rule for section 1250

For purposes of section 1250(b), the determination of what would have been the depreciation adjustments under the straight line method shall be made as if there had been no reduction under this section.

(5) Adjustment in basis of interest in partnership or S corporation

The adjusted basis of—

(A) a partner's interest in a partnership, and

(B) stock in an S corporation,

shall be appropriately adjusted to take into account adjustments made under this subsection in the basis of property held by the partnership or S corporation (as the case may be).

(d) Certain rules made applicable

For purposes of this subpart, rules similar to the rules of the following provisions (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall apply:

(1) Section 46(e) (relating to limitations with respect to certain persons).
(2) Section 46(f) (relating to limitation in case of certain regulated companies).
(3) Section 46(h) (relating to special rules for cooperatives).
(4) Paragraphs (2) and (3) of section 48(b) (relating to special rule for sale-leasebacks).
(5) Section 48(d) (relating to certain leased property).
(6) Section 48(f) (relating to estates and trusts).
(7) Section 48(r) (relating to certain 501(d) organizations).

Paragraphs (1)(A), (2)(A), and (4) of the section 46(e) referred to in paragraph (1) of this subsection shall not apply to any taxable year beginning after December 31, 1995.

(Added Pub. L. 101–508, title XI, §11813(a), Nov. 5, 1990, 104 Stat. 1388–546; amended Pub. L. 104–188, title I, §§1616(b)(1), 1702(h)(11), 1704(t)(29), Aug. 20, 1996, 110 Stat. 1856, 1874, 1889; Pub. L. 105–206, title VI, §6004(g)(7), July 22, 1998, 112 Stat. 796; Pub. L. 108–357, title III, §322(d)(2)(D), Oct. 22, 2004, 118 Stat. 1475; Pub. L. 109–135, title IV, §412(o), Dec. 21, 2005, 119 Stat. 2638.)

REFERENCES IN TEXT

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

PRIOR PROVISIONS

A prior section 50, Pub. L. 92–178, title I, §101(a), Dec. 10, 1971, 85 Stat. 498, related to restoration of credit for investment in certain depreciable property, prior to repeal by Pub. L. 95–600, title III, §312(c)(1), Nov. 6, 1978, 92 Stat. 2826, applicable to taxable years ending after Dec. 31, 1978.

AMENDMENTS

2005—Subsec. (a)(2)(E). Pub. L. 109–135 substituted "section 48(b)" for "section 48(a)(5)".

2004—Subsec. (c)(3). Pub. L. 108–357 struck out "or reforestation credit" after "energy credit" in introductory provisions.

1998—Subsec. (a)(5)(C). Pub. L. 105–206 substituted "this chapter" for "subpart A, B, D, or G".

1996—Subsec. (a)(2)(C). Pub. L. 104–188, §1704(t)(29), substituted "subsection (d)(5)" for "subsection (c)(4)".

Subsec. (a)(2)(E). Pub. L. 104–188, §1702(h)(11), substituted "48(a)(5)" for "48(a)(5)(A)".

Subsec. (d). Pub. L. 104–188, §1616(b)(1), inserted closing provisions.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable with respect to expenditures paid or incurred after Oct. 22, 2004, see section 322(e) of Pub. L. 108–357, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1616(b)(1) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1995, see section 1616(c) of Pub. L. 104–188, set out as a note under section 593 of this title.

Amendment by section 1702(h)(11) of Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE

Section applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress

expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as an Effective Date of 1990 Amendment note under section 45K of this title.

SAVINGS PROVISION

For provisions that nothing in this section be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

[1] So in original. The period probably should be a semicolon.

[§§50A, 50B. Repealed. Pub. L. 98–369, div. A, title IV, §474(m)(2), July 18, 1984, 98 Stat. 833]

Section 50A, added Pub. L. 92–178, title VI, §601(b), Dec. 10, 1971, 85 Stat. 554; amended Pub. L. 93–406, title II, §§2001(g)(2)(B), 2002(g)(2), 2005(c)(4), Sept. 2, 1974, 88 Stat. 957, 968, 991; Pub. L. 94–12, title IV, §401(a)(1), (2), Mar. 29, 1975, 89 Stat. 45; Pub. L. 94–401, §4(a), Sept. 7, 1976, 90 Stat. 1217; Pub. L. 94–455, title V, §503(b)(4), title XIX, §§1901(a)(6), (b)(1)(D), 1906(b)(13)(A), title XXI, §2107(a)(1)–(3), (b), (c), Oct. 4, 1976, 90 Stat. 1562, 1765, 1790, 1834, 1903, 1904; Pub. L. 95–600, title III, §322(a)–(c), Nov. 6, 1978, 92 Stat. 2836, 2837; Pub. L. 96–178, §6(c)(1), Jan. 2, 1980, 93 Stat. 1298; Pub. L. 96–222, title I, §103(a)(7)(D)(i), Apr. 1, 1980, 94 Stat. 211; Pub. L. 97–34, title II, §207(c)(1), Aug. 13, 1981, 95 Stat. 225; Pub. L. 97–248, title I, §265(b)(2)(A)(ii), Sept. 3, 1982, 96 Stat. 547; Pub. L. 97–354, §5(a)(9), Oct. 19, 1982, 96 Stat. 1693, provided for a credit for expenses of work incentive programs, for the determination of the amount of that credit, and for the carryover and carryback of unused credit.

Section 50B, added Pub. L. 92–178, title VI, §601(b), Dec. 10, 1971, 85 Stat. 556; amended Pub. L. 94–12, title III, §302(c)(4), title IV, §401(a)(3)–(5), Mar. 29, 1975, 89 Stat. 44, 46; Pub. L. 94–401, §4(b), Sept. 7, 1976, 90 Stat. 1218; Pub. L. 94–455, title XIX, §1906(b)(13)(A), title XXI, §2107(a)(4), (d)–(f), Oct. 4, 1976, 90 Stat. 1834, 1903, 1904; Pub. L. 95–171, §1(e), Nov. 12, 1977, 91 Stat. 1353; Pub. L. 95–600, title III, §322(d), Nov. 6, 1978, 92 Stat. 2837; Pub. L. 96–178, §§3(a)(1), (3), 6(c)(2), (3), Jan. 2, 1980, 93 Stat. 1295, 1298; Pub. L. 96–222, title I, §103(a)(5), (7)(C), (D)(ii), (iii), Apr. 1, 1980, 94 Stat. 209, 211; Pub. L. 96–272, title II, §208(b)(1), (2), June 17, 1980, 94 Stat. 526, 527; Pub. L. 97–34, title II, §261(b)(2)(B)(i), Aug. 13, 1981, 95 Stat. 261; Pub. L. 97–354, §5(a)(10), Oct. 19, 1982, 96 Stat. 1693; Pub. L. 101–239, title VII, §7644, Dec. 19, 1989, 103 Stat. 2381, provided for the definition of terms related to the expenses of work incentive programs, limitations on such expenses, and special rules to be applied in connection with the computation of the credit.

Subsequent to repeal, Pub. L. 101–239, title VII, §7644(a), Dec. 19, 1989, 103 Stat. 2381, provided that:

"(a) IN GENERAL.—So much of subparagraph (A) of section 50B(h)(1) of the Internal Revenue Code of 1954 (as in effect for taxable years beginning before January 1, 1982) as precedes clause (i) thereof is amended to read as follows:

" '(A) who has been certified (or for whom a written request for certification has been made) on or before the day the individual began work for the taxpayer by the Secretary of Labor or by the appropriate agency of State or local government as—'.

"(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply for purposes of credits first claimed after March 11, 1987."

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as an Effective Date of 1984 Amendment note under section 21 of this title.

SUBPART F—RULES FOR COMPUTING WORK OPPORTUNITY CREDIT

Sec.

51. Amount of credit.

[51A. Repealed.]
52. Special rules.

AMENDMENTS

2006—Pub. L. 109–432, div. A, title I, §105(e)(4)(B), Dec. 20, 2006, 120 Stat. 2937, struck out item 51A "Temporary incentives for employing long-term family assistance recipients".

1997—Pub. L. 105–34, title VIII, §801(b), Aug. 5, 1997, 111 Stat. 871, added item 51A.

1996—Pub. L. 104–188, title I, §1201(e)(2), Aug. 20, 1996, 110 Stat. 1772, substituted "Work Opportunity Credit" for "Targeted Jobs Credit" in subpart heading.

1984—Pub. L. 98–369, div. A, title IV, §474(n)(1), (2), (p)(9), July 18, 1984, 98 Stat. 833, 838, substituted "F" for "D" as subpart designation, substituted "Rules for Computing Targeted Jobs Credit" for "Rules for Computing Credit for Employment of Certain New Employees" in heading, and struck out item 53 "Limitation based on amount of tax".

§51. Amount of credit

(a) Determination of amount

For purposes of section 38, the amount of the work opportunity credit determined under this section for the taxable year shall be equal to 40 percent of the qualified first-year wages for such year.

(b) Qualified wages defined

For purposes of this subpart—

(1) In general

The term "qualified wages" means the wages paid or incurred by the employer during the taxable year to individuals who are members of a targeted group.

(2) Qualified first-year wages

The term "qualified first-year wages" means, with respect to any individual, qualified wages attributable to service rendered during the 1-year period beginning with the day the individual begins work for the employer.

(3) Limitation on wages per year taken into account

The amount of the qualified first-year wages which may be taken into account with respect to any individual shall not exceed $6,000 per year ($12,000 per year in the case of any individual who is a qualified veteran by reason of subsection (d)(3)(A)(ii)(I), $14,000 per year in the case of any individual who is a qualified veteran by reason of subsection (d)(3)(A)(iv), and $24,000 per year in the case of any individual who is a qualified veteran by reason of subsection (d)(3)(A)(ii)(II)).

(c) Wages defined

For purposes of this subpart—

(1) In general

Except as otherwise provided in this subsection and subsection (h)(2), the term "wages" has the meaning given to such term by subsection (b) of section 3306 (determined without regard to any dollar limitation contained in such section).

(2) On-the-job training and work supplementation payments

(A) Exclusion for employers receiving on-the-job training payments

The term "wages" shall not include any amounts paid or incurred by an employer for any period to any individual for whom the employer receives federally funded payments for on-the-job training of such individual for such period.

(B) Reduction for work supplementation payments to employers

The amount of wages which would (but for this subparagraph) be qualified wages under this

section for an employer with respect to an individual for a taxable year shall be reduced by an amount equal to the amount of the payments made to such employer (however utilized by such employer) with respect to such individual for such taxable year under a program established under section 482(e) [1] of the Social Security Act.

(3) Payments for services during labor disputes

If—

(A) the principal place of employment of an individual with the employer is at a plant or facility, and

(B) there is a strike or lockout involving employees at such plant or facility,

the term "wages" shall not include any amount paid or incurred by the employer to such individual for services which are the same as, or substantially similar to, those services performed by employees participating in, or affected by, the strike or lockout during the period of such strike or lockout.

(4) Termination

The term "wages" shall not include any amount paid or incurred to an individual who begins work for the employer—

(A) after December 31, 1994, and before October 1, 1996, or

(B) after December 31, 2013 [2]

(5) Coordination with payroll tax forgiveness

The term "wages" shall not include any amount paid or incurred to a qualified individual (as defined in section 3111(d)(3)) during the 1-year period beginning on the hiring date of such individual by a qualified employer (as defined in section 3111(d)) unless such qualified employer makes an election not to have section 3111(d) apply.

(d) Members of targeted groups

For purposes of this subpart—

(1) In general

An individual is a member of a targeted group if such individual is—

(A) a qualified IV–A recipient,

(B) a qualified veteran,

(C) a qualified ex-felon,

(D) a designated community resident,

(E) a vocational rehabilitation referral,

(F) a qualified summer youth employee,

(G) a qualified supplemental nutrition assistance program benefits recipient,

(H) a qualified SSI recipient, or

(I) a long-term family assistance recipient.

(2) Qualified IV–A recipient

(A) In general

The term "qualified IV–A recipient" means any individual who is certified by the designated local agency as being a member of a family receiving assistance under a IV–A program for any 9 months during the 18-month period ending on the hiring date.

(B) IV–A program

For purposes of this paragraph, the term "IV–A program" means any program providing assistance under a State program funded under part A of title IV of the Social Security Act and any successor of such program.

(3) Qualified veteran

(A) In general

The term "qualified veteran" means any veteran who is certified by the designated local agency as—

(i) being a member of a family receiving assistance under a supplemental nutrition assistance program under the Food and Nutrition Act of 2008 for at least a 3-month period ending during the 12-month period ending on the hiring date,

(ii) entitled to compensation for a service-connected disability, and—

(I) having a hiring date which is not more that 1 year after having been discharged or released from active duty in the Armed Forces of the United States, or

(II) having aggregate periods of unemployment during the 1-year period ending on the hiring date which equal or exceed 6 months [3]

(iii) having aggregate periods of unemployment during the 1-year period ending on the hiring date which equal or exceed 4 weeks (but less than 6 months), or

(iv) having aggregate periods of unemployment during the 1-year period ending on the hiring date which equal or exceed 6 months.

(B) Veteran

For purposes of subparagraph (A), the term "veteran" means any individual who is certified by the designated local agency as—

(i)(I) having served on active duty (other than active duty for training) in the Armed Forces of the United States for a period of more than 180 days, or

(II) having been discharged or released from active duty in the Armed Forces of the United States for a service-connected disability, and

(ii) not having any day during the 60-day period ending on the hiring date which was a day of extended active duty in the Armed Forces of the United States.

For purposes of clause (ii), the term "extended active duty" means a period of more than 90 days during which the individual was on active duty (other than active duty for training).

(C) Other definitions

For purposes of subparagraph (A), the terms "compensation" and "service-connected" have the meanings given such terms under section 101 of title 38, United States Code.

(4) Qualified ex-felon

The term "qualified ex-felon" means any individual who is certified by the designated local agency—

(A) as having been convicted of a felony under any statute of the United States or any State, and

(B) as having a hiring date which is not more than 1 year after the last date on which such individual was so convicted or was released from prison.

(5) Designated community residents

(A) In general

The term "designated community resident" means any individual who is certified by the designated local agency—

(i) as having attained age 18 but not age 40 on the hiring date, and

(ii) as having his principal place of abode within an empowerment zone, enterprise community, renewal community, or rural renewal county.

(B) Individual must continue to reside in zone, community, or county

In the case of a designated community resident, the term "qualified wages" shall not include wages paid or incurred for services performed while the individual's principal place of abode is outside an empowerment zone, enterprise community, renewal community, or rural renewal

county.

(C) Rural renewal county

For purposes of this paragraph, the term "rural renewal county" means any county which—

(i) is outside a metropolitan statistical area (defined as such by the Office of Management and Budget), and

(ii) during the 5-year periods 1990 through 1994 and 1995 through 1999 had a net population loss.

(6) Vocational rehabilitation referral

The term "vocational rehabilitation referral" means any individual who is certified by the designated local agency as—

(A) having a physical or mental disability which, for such individual, constitutes or results in a substantial handicap to employment, and

(B) having been referred to the employer upon completion of (or while receiving) rehabilitative services pursuant to—

(i) an individualized written plan for employment under a State plan for vocational rehabilitation services approved under the Rehabilitation Act of 1973,

(ii) a program of vocational rehabilitation carried out under chapter 31 of title 38, United States Code, or

(iii) an individual work plan developed and implemented by an employment network pursuant to subsection (g) of section 1148 of the Social Security Act with respect to which the requirements of such subsection are met.

(7) Qualified summer youth employee

(A) In general

The term "qualified summer youth employee" means any individual—

(i) who performs services for the employer between May 1 and September 15,

(ii) who is certified by the designated local agency as having attained age 16 but not 18 on the hiring date (or if later, on May 1 of the calendar year involved),

(iii) who has not been an employee of the employer during any period prior to the 90-day period described in subparagraph (B)(i), and

(iv) who is certified by the designated local agency as having his principal place of abode within an empowerment zone, enterprise community, or renewal community.

(B) Special rules for determining amount of credit

For purposes of applying this subpart to wages paid or incurred to any qualified summer youth employee—

(i) subsection (b)(2) shall be applied by substituting "any 90-day period between May 1 and September 15" for "the 1-year period beginning with the day the individual begins work for the employer", and

(ii) subsection (b)(3) shall be applied by substituting "$3,000" for "$6,000".

The preceding sentence shall not apply to an individual who, with respect to the same employer, is certified as a member of another targeted group after such individual has been a qualified summer youth employee.

(C) Youth must continue to reside in zone or community

Paragraph (5)(B) shall apply for purposes of subparagraph (A)(iv).

(8) Qualified food stamp recipient [4]

(A) In general

The term "qualified supplemental nutrition assistance program benefits recipient" means any individual who is certified by the designated local agency—

(i) as having attained age 18 but not age 40 on the hiring date, and

(ii) as being a member of a family—

(I) receiving assistance under a supplemental nutrition assistance program under the Food and Nutrition Act of 2008 for the 6-month period ending on the hiring date, or

(II) receiving such assistance for at least 3 months of the 5-month period ending on the hiring date, in the case of a member of a family who ceases to be eligible for such assistance under section 6(o) of the Food and Nutrition Act of 2008.

(B) Participation information

Notwithstanding any other provision of law, the Secretary of the Treasury and the Secretary of Agriculture shall enter into an agreement to provide information to designated local agencies with respect to participation in the supplemental nutrition assistance program.

(9) Qualified SSI recipient

The term "qualified SSI recipient" means any individual who is certified by the designated local agency as receiving supplemental security income benefits under title XVI of the Social Security Act (including supplemental security income benefits of the type described in section 1616 of such Act or section 212 of Public Law 93–66) for any month ending within the 60-day period ending on the hiring date.

(10) Long-term family assistance recipient

The term "long-term family assistance recipient" means any individual who is certified by the designated local agency—

(A) as being a member of a family receiving assistance under a IV–A program (as defined in paragraph (2)(B)) for at least the 18-month period ending on the hiring date,

(B)(i) as being a member of a family receiving such assistance for 18 months beginning after August 5, 1997, and

(ii) as having a hiring date which is not more than 2 years after the end of the earliest such 18-month period, or

(C)(i) as being a member of a family which ceased to be eligible for such assistance by reason of any limitation imposed by Federal or State law on the maximum period such assistance is payable to a family, and

(ii) as having a hiring date which is not more than 2 years after the date of such cessation.

(11) Hiring date

The term "hiring date" means the day the individual is hired by the employer.

(12) Designated local agency

The term "designated local agency" means a State employment security agency established in accordance with the Act of June 6, 1933, as amended (29 U.S.C. 49–49n).

(13) Special rules for certifications

(A) In general

An individual shall not be treated as a member of a targeted group unless—

(i) on or before the day on which such individual begins work for the employer, the employer has received a certification from a designated local agency that such individual is a member of a targeted group, or

(ii)(I) on or before the day the individual is offered employment with the employer, a pre-screening notice is completed by the employer with respect to such individual, and

(II) not later than the 28th day after the individual begins work for the employer, the employer submits such notice, signed by the employer and the individual under penalties of perjury, to the designated local agency as part of a written request for such a certification from such agency.

For purposes of this paragraph, the term "pre-screening notice" means a document (in such form as the Secretary shall prescribe) which contains information provided by the individual on the

basis of which the employer believes that the individual is a member of a targeted group.

(B) Incorrect certifications

If—

(i) an individual has been certified by a designated local agency as a member of a targeted group, and

(ii) such certification is incorrect because it was based on false information provided by such individual,

the certification shall be revoked and wages paid by the employer after the date on which notice of revocation is received by the employer shall not be treated as qualified wages.

(C) Explanation of denial of request

If a designated local agency denies a request for certification of membership in a targeted group, such agency shall provide to the person making such request a written explanation of the reasons for such denial.

(D) Credit for unemployed veterans

(i) In general

Notwithstanding subparagraph (A), for purposes of paragraph (3)(A)—

(I) a veteran will be treated as certified by the designated local agency as having aggregate periods of unemployment meeting the requirements of clause (ii)(II) or (iv) of such paragraph (whichever is applicable) if such veteran is certified by such agency as being in receipt of unemployment compensation under State or Federal law for not less than 6 months during the 1-year period ending on the hiring date, and

(II) a veteran will be treated as certified by the designated local agency as having aggregate periods of unemployment meeting the requirements of clause (iii) of such paragraph if such veteran is certified by such agency as being in receipt of unemployment compensation under State or Federal law for not less than 4 weeks (but less than 6 months) during the 1-year period ending on the hiring date.

(ii) Regulatory authority

The Secretary may provide alternative methods for certification of a veteran as a qualified veteran described in clause (ii)(II), (iii), or (iv) of paragraph (3)(A), at the Secretary's discretion.

(14) Credit allowed for unemployed veterans and disconnected youth hired in 2009 or 2010

(A) In general

Any unemployed veteran or disconnected youth who begins work for the employer during 2009 or 2010 shall be treated as a member of a targeted group for purposes of this subpart.

(B) Definitions

For purposes of this paragraph—

(i) Unemployed veteran

The term "unemployed veteran" means any veteran (as defined in paragraph (3)(B), determined without regard to clause (ii) thereof) who is certified by the designated local agency as—

(I) having been discharged or released from active duty in the Armed Forces at any time during the 5-year period ending on the hiring date, and

(II) being in receipt of unemployment compensation under State or Federal law for not less than 4 weeks during the 1-year period ending on the hiring date.

(ii) Disconnected youth

The term "disconnected youth" means any individual who is certified by the designated local agency—

(I) as having attained age 16 but not age 25 on the hiring date,

(II) as not regularly attending any secondary, technical, or post-secondary school during the 6-month period preceding the hiring date,

(III) as not regularly employed during such 6-month period, and

(IV) as not readily employable by reason of lacking a sufficient number of basic skills.

(e) Credit for second-year wages for employment of long-term family assistance recipients

(1) In general

With respect to the employment of a long-term family assistance recipient—

(A) the amount of the work opportunity credit determined under this section for the taxable year shall include 50 percent of the qualified second-year wages for such year, and

(B) in lieu of applying subsection (b)(3), the amount of the qualified first-year wages, and the amount of qualified second-year wages, which may be taken into account with respect to such a recipient shall not exceed $10,000 per year.

(2) Qualified second-year wages

For purposes of this subsection, the term "qualified second-year wages" means qualified wages—

(A) which are paid to a long-term family assistance recipient, and

(B) which are attributable to service rendered during the 1-year period beginning on the day after the last day of the 1-year period with respect to such recipient determined under subsection (b)(2).

(3) Special rules for agricultural and railway labor

If such recipient is an employee to whom subparagraph (A) or (B) of subsection (h)(1) applies, rules similar to the rules of such subparagraphs shall apply except that—

(A) such subparagraph (A) shall be applied by substituting "$10,000" for "$6,000", and

(B) such subparagraph (B) shall be applied by substituting "$833.33" for "$500".

(f) Remuneration must be for trade or business employment

(1) In general

For purposes of this subpart, remuneration paid by an employer to an employee during any taxable year shall be taken into account only if more than one-half of the remuneration so paid is for services performed in a trade or business of the employer.

(2) Special rule for certain determination

Any determination as to whether paragraph (1), or subparagraph (A) or (B) of subsection (h)(1), applies with respect to any employee for any taxable year shall be made without regard to subsections (a) and (b) of section 52.

(g) United States Employment Service to notify employers of availability of credit

The United States Employment Service, in consultation with the Internal Revenue Service, shall take such steps as may be necessary or appropriate to keep employers apprised of the availability of the work opportunity credit determined under this subpart.

(h) Special rules for agricultural labor and railway labor

For purposes of this subpart—

(1) Unemployment insurance wages

(A) Agricultural labor

If the services performed by any employee for an employer during more than one-half of any pay period (within the meaning of section 3306(d)) taken into account with respect to any year constitute agricultural labor (within the meaning of section 3306(k)), the term "unemployment insurance wages" means, with respect to the remuneration paid by the employer to such employee for such year, an amount equal to so much of such remuneration as constitutes

"wages" within the meaning of section 3121(a), except that the contribution and benefit base for each calendar year shall be deemed to be $6,000.

(B) Railway labor

If more than one-half of remuneration paid by an employer to an employee during any year is remuneration for service described in section 3306(c)(9), the term "unemployment insurance wages" means, with respect to such employee for such year, an amount equal to so much of the remuneration paid to such employee during such year which would be subject to contributions under section 8(a) of the Railroad Unemployment Insurance Act (45 U.S.C. 358(a)) if the maximum amount subject to such contributions were $500 per month.

(2) Wages

In any case to which subparagraph (A) or (B) of paragraph (1) applies, the term "wages" means unemployment insurance wages (determined without regard to any dollar limitation).

(i) Certain individuals ineligible

(1) Related individuals

No wages shall be taken into account under subsection (a) with respect to an individual who—

(A) bears any of the relationships described in subparagraphs (A) through (G) of section 152(d)(2) to the taxpayer, or, if the taxpayer is a corporation, to an individual who owns, directly or indirectly, more than 50 percent in value of the outstanding stock of the corporation, or, if the taxpayer is an entity other than a corporation, to any individual who owns, directly or indirectly, more than 50 percent of the capital and profits interests in the entity,[5] (determined with the application of section 267(c)),

(B) if the taxpayer is an estate or trust, is a grantor, beneficiary, or fiduciary of the estate or trust, or is an individual who bears any of the relationships described in subparagraphs (A) through (G) of section 152(d)(2) to a grantor, beneficiary, or fiduciary of the estate or trust, or

(C) is a dependent (described in section 152(d)(2)(H)) of the taxpayer, or, if the taxpayer is a corporation, of an individual described in subparagraph (A), or, if the taxpayer is an estate or trust, of a grantor, beneficiary, or fiduciary of the estate or trust.

(2) Nonqualifying rehires

No wages shall be taken into account under subsection (a) with respect to any individual if, prior to the hiring date of such individual, such individual had been employed by the employer at any time.

(3) Individuals not meeting minimum employment periods

(A) Reduction of credit for individuals performing fewer than 400 hours of service

In the case of an individual who has performed at least 120 hours, but less than 400 hours, of service for the employer, subsection (a) shall be applied by substituting "25 percent" for "40 percent".

(B) Denial of credit for individuals performing fewer than 120 hours of service

No wages shall be taken into account under subsection (a) with respect to any individual unless such individual has performed at least 120 hours of service for the employer.

(j) Election to have work opportunity credit not apply

(1) In general

A taxpayer may elect to have this section not apply for any taxable year.

(2) Time for making election

An election under paragraph (1) for any taxable year may be made (or revoked) at any time before the expiration of the 3-year period beginning on the last date prescribed by law for filing the return for such taxable year (determined without regard to extensions).

(3) Manner of making election

An election under paragraph (1) (or revocation thereof) shall be made in such manner as the Secretary may by regulations prescribe.

(k) Treatment of successor employers; treatment of employees performing services for other persons

(1) Treatment of successor employers

Under regulations prescribed by the Secretary, in the case of a successor employer referred to in section 3306(b)(1), the determination of the amount of the credit under this section with respect to wages paid by such successor employer shall be made in the same manner as if such wages were paid by the predecessor employer referred to in such section.

(2) Treatment of employees performing services for other persons

No credit shall be determined under this section with respect to remuneration paid by an employer to an employee for services performed by such employee for another person unless the amount reasonably expected to be received by the employer for such services from such other person exceeds the remuneration paid by the employer to such employee for such services.

(Added Pub. L. 95–30, title II, §202(b), May 23, 1977, 91 Stat. 141; amended Pub. L. 95–600, title III, §321(a), Nov. 6, 1978, 92 Stat. 2830; Pub. L. 96–222, title I, §103(a)(6)(A), (E), (F), (G)(iii)–(ix), Apr. 1, 1980, 94 Stat. 209, 210; Pub. L. 97–34, title II, §261(a)–(b)(2)(A), (B)(ii)–(f)(1), Aug. 13, 1981, 95 Stat. 260–262; Pub. L. 97–248, title II, §233(a)–(d), (f), Sept. 3, 1982, 96 Stat. 501, 502; Pub. L. 97–448, title I, §102(l)(1), (3), (4), Jan. 12, 1983, 96 Stat. 2374; Pub. L. 98–369, div. A, title IV, §474(p)(1)–(3), title VII, §712(n), title X, §1041(a), (c)(1)–(4), div. B, title VI, §§2638(b), 2663(j)(5)(A), July 18, 1984, 98 Stat. 837, 955, 1042, 1043, 1144, 1171; Pub. L. 99–514, title XVII, §1701(a)–(c), title XVIII, §1878(f)(1), Oct. 22, 1986, 100 Stat. 2772, 2904; Pub. L. 100–203, title X, §10601(a), Dec. 22, 1987, 101 Stat. 1330–451; Pub. L. 100–485, title II, §202(c)(6), Oct. 13, 1988, 102 Stat. 2378; Pub. L. 100–647, title I, §1017(a), title IV, §4010(a), (c)(1), (d)(1), Nov. 10, 1988, 102 Stat. 3575, 3655; Pub. L. 101–239, title VII, §7103(a), (c)(1), Dec. 19, 1989, 103 Stat. 2305; Pub. L. 101–508, title XI, §11405(a), Nov. 5, 1990, 104 Stat. 1388–473; Pub. L. 102–227, title I, §105(a), Dec. 11, 1991, 105 Stat. 1687; Pub. L. 103–66, title XIII, §§13102(a), 13302(d), Aug. 10, 1993, 107 Stat. 420, 556; Pub. L. 104–188, title I, §1201(a)–(e)(1), (5), (f), Aug. 20, 1996, 110 Stat. 1768–1772; Pub. L. 104–193, title I, §110(l)(1), Aug. 22, 1996, 110 Stat. 2173; Pub. L. 105–33, title V, §5514(a)(1), Aug. 5, 1997, 111 Stat. 620; Pub. L. 105–34, title VI, §603(a)–(d), Aug. 5, 1997, 111 Stat. 862; Pub. L. 105–277, div. J, title I, §1002(a), title IV, §4006(c)(1), Oct. 21, 1998, 112 Stat. 2681–888, 2681–912; Pub. L. 106–170, title V, §505(a), (b), Dec. 17, 1999, 113 Stat. 1921; Pub. L. 106–554, §1(a)(7) [title I, §102(a)–(c), title III, §316(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–600, 2763A–644; Pub. L. 107–147, title VI, §604(a), Mar. 9, 2002, 116 Stat. 59; Pub. L. 108–311, title II, §207(5), title III, §303(a)(1), Oct. 4, 2004, 118 Stat. 1177, 1179; Pub. L. 109–432, div. A, title I, §105(a)–(e)(3), Dec. 20, 2006, 120 Stat. 2936, 2937; Pub. L. 110–28, title VIII, §8211(a)–(d), May 25, 2007, 121 Stat. 191; Pub. L. 110–234, title IV, §4002(b)(1)(A), (B), (D), (2)(O), May 22, 2008, 122 Stat. 1095–1097; Pub. L. 110–246, §4(a), title IV, §4002(b)(1)(A), (B), (D), (2)(O), June 18, 2008, 122 Stat. 1664, 1857, 1858; Pub. L. 111–5, div. B, title I, §1221(a), Feb. 17, 2009, 123 Stat. 337; Pub. L. 111–147, title I, §101(b), Mar. 18, 2010, 124 Stat. 74; Pub. L. 111–312, title VII, §757(a), Dec. 17, 2010, 124 Stat. 3322; Pub. L. 112–56, title II, §261(a)–(d), Nov. 21, 2011, 125 Stat. 729, 730; Pub. L. 112–240, title III, §309(a), Jan. 2, 2013, 126 Stat. 2329.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (c)(2)(B) and (d)(2)(B), (6)(B)(iii), (9), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title IV of the Act is classified generally to part A (§601 et seq.) of subchapter IV of chapter 7 of Title 42, The Public Health and Welfare. Title XVI of the Act is classified generally to subchapter XVI (§1381 et seq.) of chapter 7 of Title 42. Section 482 of the Act, which was classified to section 682 of Title 42, was repealed by Pub. L. 104–193, title I, §108(e), Aug. 22, 1996, 110

Stat. 2167. Sections 1148(g) and 1616 of the Act are classified to sections 1320b–19(g) and 1382e, respectively, of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Food and Nutrition Act of 2008, referred to in subsec. (d)(3)(A)(i), (8)(A)(ii), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, which is classified generally to chapter 51 (§2011 et seq.) of Title 7, Agriculture. Section 6(o) of the Act is classified to section 2015(o) of Title 7. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

The Rehabilitation Act of 1973, referred to in subsec. (d)(6)(B)(i), is Pub. L. 93–112, Sept. 26, 1973, 87 Stat. 355, as amended, which is classified generally to chapter 16 (§701 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

Section 212 of Public Law 93–66, referred to in subsec. (d)(9), is set out as a note under section 1382 of Title 42, The Public Health and Welfare.

Act of June 6, 1933, referred to in subsec. (d)(12), is act June 6, 1933, ch. 49, 48 Stat. 113, as amended, popularly known as the Wagner-Peyser Act, which is classified generally to chapter 4B (§49 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 49 of Title 29 and Tables.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

PRIOR PROVISIONS

A prior section 51, added Pub. L. 90–364, title I, §102(a), June 28, 1968, 82 Stat. 252; amended Pub. L. 91–53, §5(a), Aug. 7, 1969, 83 Stat. 93; Pub. L. 91–172, title III, §301(b)(5), title VII, §701(a), Dec. 30, 1969, 83 Stat. 585, 657, related to the imposition of a tax surcharge, prior to repeal by Pub. L. 94–455, title XIX, §1901(a)(7), Oct. 4, 1976, 90 Stat. 1765.

AMENDMENTS

2013—Subsec. (c)(4)(B). Pub. L. 112–240 substituted "after December 31, 2013" for "after—

"(i) December 31, 2012, in the case of a qualified veteran, and

"(ii) December 31, 2011, in the case of any other individual."

2011—Subsec. (b)(3). Pub. L. 112–56, §261(a), substituted "($12,000 per year in the case of any individual who is a qualified veteran by reason of subsection (d)(3)(A)(ii)(I), $14,000 per year in the case of any individual who is a qualified veteran by reason of subsection (d)(3)(A)(iv), and $24,000 per year in the case of any individual who is a qualified veteran by reason of subsection (d)(3)(A)(ii)(II))" for "($12,000 per year in the case of any individual who is a qualified veteran by reason of subsection (d)(3)(A)(ii))".

Subsec. (c)(4)(B). Pub. L. 112–56, §261(d), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "after December 31, 2011."

Subsec. (d)(3)(A)(iii), (iv). Pub. L. 112–56, §261(b), added cls. (iii) and (iv).

Subsec. (d)(13)(D). Pub. L. 112–56, §261(c), added subpar. (D).

2010—Subsec. (c)(4)(B). Pub. L. 111–312 substituted "December 31, 2011" for "August 31, 2011".

Subsec. (c)(5). Pub. L. 111–147 added par. (5).

2009—Subsec. (d)(14). Pub. L. 111–5 added par. (14).

2008—Subsec. (d)(1)(G). Pub. L. 110–246, §4002(b)(1)(D), (2)(O), substituted "supplemental nutrition assistance program benefits" for "food stamp".

Subsec. (d)(3)(A)(i). Pub. L. 110–246, §4002(b)(1)(A), (B), (2)(O), substituted "Food and Nutrition Act of 2008" for "Food Stamp Act of 1977" and "supplemental nutrition assistance program" for "food stamp program".

Subsec. (d)(8)(A). Pub. L. 110–246, §4002(b)(1)(D), (2)(O), substituted "supplemental nutrition assistance program benefits" for "food stamp" in introductory provisions.

Subsec. (d)(8)(A)(ii)(I). Pub. L. 110–246, §4002(b)(1)(A), (B), (2)(O), substituted "Food and Nutrition Act of 2008" for "Food Stamp Act of 1977" and "supplemental nutrition assistance program" for "food stamp program".

Subsec. (d)(8)(A)(ii)(II). Pub. L. 110–246, §4002(b)(1)(B), (2)(O), substituted "Food and Nutrition Act of 2008" for "Food Stamp Act of 1977".

Subsec. (d)(8)(B). Pub. L. 110–246, §4002(b)(1)(A), (2)(O), substituted "supplemental nutrition assistance program" for "food stamp program".

2007—Subsec. (b)(3). Pub. L. 110–28, §8211(d)(2), substituted "Limitation on" for "Only first $6,000 of"

in heading and inserted "($12,000 per year in the case of any individual who is a qualified veteran by reason of subsection (d)(3)(A)(ii))" before period at end.

Subsec. (c)(4)(B). Pub. L. 110–28, §8211(a), substituted "August 31, 2011" for "December 31, 2007".

Subsec. (d)(1)(D). Pub. L. 110–28, §8211(b)(2), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: "a high-risk youth,".

Subsec. (d)(3)(A). Pub. L. 110–28, §8211(d)(1)(A), substituted "agency as—" and cls. (i) and (ii) for "agency as being a member of a family receiving assistance under a food stamp program under the Food Stamp Act of 1977 for at least a 3-month period ending during the 12-month period ending on the hiring date."

Subsec. (d)(3)(C). Pub. L. 110–28, §8211(d)(1)(B), added subpar. (C).

Subsec. (d)(5). Pub. L. 110–28, §8211(b)(1), amended heading and text of par. (5) generally. Prior to amendment, text read as follows:

"(A) IN GENERAL.—The term 'high-risk youth' means any individual who is certified by the designated local agency—

"(i) as having attained age 18 but not age 25 on the hiring date, and

"(ii) as having his principal place of abode within an empowerment zone, enterprise community, or renewal community.

"(B) YOUTH MUST CONTINUE TO RESIDE IN ZONE OR COMMUNITY.—In the case of a high-risk youth, the term 'qualified wages' shall not include wages paid or incurred for services performed while such youth's principal place of abode is outside an empowerment zone, enterprise community, or renewal community."

Subsec. (d)(6)(B)(iii). Pub. L. 110–28, §8211(c), added cl. (iii).

2006—Subsec. (c)(4)(B). Pub. L. 109–432, §105(a), substituted "2007" for "2005".

Subsec. (d)(1)(I). Pub. L. 109–432, §105(e)(1), added subpar. (I).

Subsec. (d)(4). Pub. L. 109–432, §105(b), inserted "and" at end of subpar. (A), substituted a period for ", and" at end of subpar. (B), and struck out subpar. (C) and concluding provisions which read as follows:

"(C) as being a member of a family which had an income during the 6 months immediately preceding the earlier of the month in which such income determination occurs or the month in which the hiring date occurs, which, on an annual basis, would be 70 percent or less of the Bureau of Labor Statistics lower living standard. Any determination under subparagraph (C) shall be valid for the 45-day period beginning on the date such determination is made."

Subsec. (d)(8)(A)(i). Pub. L. 109–432, §105(c), substituted "40" for "25".

Subsec. (d)(10) to (12). Pub. L. 109–432, §105(e)(2), added par. (10) and redesignated former pars. (10) and (11) as (11) and (12), respectively. Former par. (12) redesignated (13).

Subsec. (d)(12)(A)(ii)(II). Pub. L. 109–432, §105(d), substituted "28th day" for "21st day".

Subsec. (d)(13). Pub. L. 109–432, §105(e)(2), redesignated par. (12) as (13).

Subsec. (e). Pub. L. 109–432, §105(e)(3), added subsec. (e).

2004—Subsec. (c)(4)(B). Pub. L. 108–311, §303(a)(1), substituted "2005" for "2003".

Subsec. (i)(1)(A), (B). Pub. L. 108–311, §207(5)(A), substituted "subparagraphs (A) through (G) of section 152(d)(2)" for "paragraphs (1) through (8) of section 152(a)".

Subsec. (i)(1)(C). Pub. L. 108–311, §207(5)(B), substituted "152(d)(2)(H)" for "152(a)(9)".

2002—Subsec. (c)(4)(B). Pub. L. 107–147 substituted "2003" for "2001".

2000—Subsec. (d)(2)(B). Pub. L. 106–554, §1(a)(7) [title III, §316(a)], substituted "program funded" for "plan approved" and struck out "(relating to assistance for needy families with minor children)" after "Social Security Act".

Subsec. (d)(5)(A)(ii). Pub. L. 106–554, §1(a)(7) [title I, §102(a)], substituted "empowerment zone, enterprise community, or renewal community" for "empowerment zone or enterprise community".

Subsec. (d)(5)(B). Pub. L. 106–554, §1(a)(7) [title I, §102(a), (c)], inserted "or community" after "zone" in heading and substituted "empowerment zone, enterprise community, or renewal community" for "empowerment zone or enterprise community" in text.

Subsec. (d)(7)(A)(iv). Pub. L. 106–554, §1(a)(7) [title I, §102(b)], substituted "empowerment zone, enterprise community, or renewal community" for "empowerment zone or enterprise community".

Subsec. (d)(7)(C). Pub. L. 106–554, §1(a)(7) [title I, §102(c)], inserted "or community" after "zone" in heading.

1999—Subsec. (c)(4)(B). Pub. L. 106–170, §505(a), substituted "December 31, 2001" for "June 30, 1999".

Subsec. (i)(2). Pub. L. 106–170, §505(b), struck out "during which he was not a member of a targeted group" before period at end.

1998—Subsec. (c)(4)(B). Pub. L. 105–277, §1002(a), substituted "June 30, 1999" for "June 30, 1998".

Subsec. (d)(6)(B)(i). Pub. L. 105–277, §4006(c)(1), substituted "plan for employment" for "rehabilitation plan".

1997—Subsec. (a). Pub. L. 105–34, §603(d)(1), substituted "40 percent" for "35 percent".

Subsec. (c)(4)(B). Pub. L. 105–34, §603(a), substituted "June 30, 1998" for "September 30, 1997".

Subsec. (d)(1)(H). Pub. L. 105–34, §603(c)(1), added subpar. (H).

Subsec. (d)(2)(A). Pub. L. 105–34, §603(b)(1), substituted "for any 9 months during the 18-month period ending on the hiring date" for "for at least a 9-month period ending during the 9-month period ending on the hiring date".

Subsec. (d)(3)(A). Pub. L. 105–34, §603(b)(2), amended heading and text of subpar. (A) generally. Prior to amendment, text read as follows: "The term 'qualified veteran' means any veteran who is certified by the designated local agency as being—

"(i) a member of a family receiving assistance under a IV–A program (as defined in paragraph (2)(B)) for at least a 9-month period ending during the 12-month period ending on the hiring date, or

"(ii) a member of a family receiving assistance under a food stamp program under the Food Stamp Act of 1977 for at least a 3-month period ending during the 12-month period ending on the hiring date."

Subsec. (d)(9). Pub. L. 105–34, §603(c)(2), added par. (9). Former par. (9) redesignated (10).

Pub. L. 105–33 repealed Pub. L. 104–193, §110(l)(1). See 1996 Amendment note below.

Subsec. (d)(10) to (12). Pub. L. 105–34, §603(c)(2), redesignated pars. (9) to (11) as (10) to (12), respectively.

Subsec. (i)(3). Pub. L. 105–34, §603(d)(2), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: "No wages shall be taken into account under subsection (a) with respect to any individual unless such individual either—

"(A) is employed by the employer at least 180 days (20 days in the case of a qualified summer youth employee), or

"(B) has completed at least 400 hours (120 hours in the case of a qualified summer youth employee) of services performed for the employer."

1996—Subsec. (a). Pub. L. 104–188, §1201(a), (e)(1), substituted "work opportunity credit" for "targeted jobs credit" and "35 percent" for "40 percent".

Subsec. (c)(1). Pub. L. 104–188, §1201(f), struck out ", subsection (d)(8)(D)," after "this subsection".

Subsec. (c)(4). Pub. L. 104–188, §1201(d), amended par. (4) generally. Prior to amendment, par. (4) read as follows: "TERMINATION.—The term 'wages' shall not include any amount paid or incurred to an individual who begins work for the employer after December 31, 1994."

Subsec. (d). Pub. L. 104–188, §1201(b), reenacted heading without change and amended text generally, revising and restating as pars. (1) to (11) provisions formerly contained in pars. (1) to (16).

Subsec. (d)(9). Pub. L. 104–193, §110(l)(1), which directed amendment of par. (9) by striking all that follows "agency as" and inserting "being eligible for financial assistance under part A of title IV of the Social Security Act and as having continually received such financial assistance during the 90-day period which immediately precedes the date on which such individual is hired by the employer.", was repealed by Pub. L. 105–33.

Subsec. (g). Pub. L. 104–188, §1201(e)(1), substituted "work opportunity credit" for "targeted jobs credit".

Subsec. (i)(3). Pub. L. 104–188, §1201(c), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "INDIVIDUALS NOT MEETING MINIMUM EMPLOYMENT PERIOD.—No wages shall be taken into account under subsection (a) with respect to any individual unless such individual either—

"(A) is employed by the employer at least 90 days (14 days in the case of an individual described in subsection (d)(12)), or

"(B) has completed at least 120 hours (20 hours in the case of an individual described in subsection (d)(12)) of services performed for the employer."

Subsec. (j). Pub. L. 104–188, §1201(e)(5), substituted "Work opportunity credit" for "Targeted jobs credit" in heading.

1993—Subsec. (c)(4). Pub. L. 103–66, §13102(a), substituted "December 31, 1994" for "June 30, 1992".

Subsec. (i)(1)(A). Pub. L. 103–66, §13302(d), inserted ", or, if the taxpayer is an entity other than a corporation, to any individual who owns, directly or indirectly, more than 50 percent of the capital and profits interests in the entity," after "of the corporation".

1991—Subsec. (c)(4). Pub. L. 102–227 substituted "June 30, 1992" for "December 31, 1991".

1990—Subsec. (c)(4). Pub. L. 101–508 substituted "December 31, 1991" for "September 30, 1990".

1989—Subsec. (c)(4). Pub. L. 101–239, §7103(a), substituted "September 30, 1990" for "December 31, 1989".

Subsec. (d)(16)(C). Pub. L. 101–239, §7103(c)(1), added subpar. (C).

1988—Subsec. (c)(2)(B). Pub. L. 100–485 substituted "section 482(e)" for "section 414".

Subsec. (c)(4). Pub. L. 100–647, §4010(a), substituted "1989" for "1988".

Subsec. (d)(3)(B). Pub. L. 100–647, §4010(c)(1), substituted "age 23" for "age 25".

Subsec. (d)(12)(B). Pub. L. 100–647, §4010(d)(1), redesignated former cls. (ii) and (iii) as (i) and (ii), respectively, and struck out former cl. (i) which provided that subsection (a) shall be applied by substituting "85 percent" for "40 percent".

Pub. L. 100–647, §1017(a), substituted "subsection (a)" for "subsection (a)(1)" in cl. (i).

1987—Subsec. (c)(3), (4). Pub. L. 100–203 added par. (3) and redesignated former par. (3) as (4).

1986—Subsec. (a). Pub. L. 99–514, §1701(b)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "For purposes of section 38, the amount of the targeted jobs credit determined under this section for the taxable year shall be the sum of—

"(1) 50 percent of the qualified first-year wages for such year, and

"(2) 25 percent of the qualified second-year wages for such year."

Subsec. (b)(3), (4). Pub. L. 99–514, §1701(b)(2)(A), redesignated par. (4) as (3) and struck out ", and the amount of the qualified second-year wages," after "first-year wages" and struck out par. (3) which defined "qualified second-year wages".

Subsec. (c)(3). Pub. L. 99–514, §1701(a), substituted "December 31, 1988" for "December 31, 1985".

Subsec. (d)(12)(B). Pub. L. 99–514, §1701(b)(2)(B), in cl. (i), substituted "40 percent" for "50 percent", struck out cl. (ii) which directed that subsecs. (a)(2) and (b)(3) were not to apply, redesignated cl. (iii) as cl. (ii), redesignated cl. (iv) as cl. (iii), and in cl. (iii) as so redesignated substituted "subsection (b)(3)" for "subsection (b)(4)".

Subsec. (i)(3). Pub. L. 99–514, §1701(c), added par. (3).

Subsec. (k). Pub. L. 99–514, §1878(f)(1), redesignated subsec. (j) added by section 1041(c)(1) of Pub. L. 98–369 and relating to treatment of successor employers, and employees performing services for other persons, as subsec. (k).

1984—Subsec. (a). Pub. L. 98–369, §474(p)(1), substituted "For purposes of section 38, the amount of the targeted jobs credit determined under this section" for "The amount of the credit allowable by section 44B" in introductory provisions.

Subsec. (b)(2). Pub. L. 98–369, §1041(c)(4), struck out "(or, in the case of a vocational rehabilitation referral, the day the individual begins work for the employer on or after the beginning of such individual's rehabilitation plan)" after "begins work for the employer".

Subsec. (c)(2). Pub. L. 98–369, §2638(b), designated existing provisions as subpar. (A), inserted par. (2) heading, and added subpar. (B).

Subsec. (c)(3). Pub. L. 98–369, §1041(a), substituted "December 31, 1985" for "December 31, 1984".

Subsec. (d)(6)(B)(ii). Pub. L. 98–369, §2663(j)(5)(A), substituted "Secretary of Health and Human Services" for "Secretary of Health Education and Welfare".

Subsec. (d)(11). Pub. L. 98–369, §712(n), made determination respecting membership of a qualified summer youth employee or youth participating in a qualified cooperative education program with respect to an employer applicable for purposes of determining whether such individual is a member of another targeted group with respect to such employer.

Subsec. (d)(12)(A)(ii). Pub. L. 98–369, §1041(c)(3), substituted "(or if later, on May 1 of the calendar year involved)" for "(as defined in paragraph (14))".

Subsec. (d)(16)(A). Pub. L. 98–369, §1041(c)(2), inserted "For purposes of the preceding sentence, if on or before the day on which such individual begins work for the employer, such individual has received from a designated local agency (or other agency or organization designated pursuant to a written agreement with such designated local agency) a written preliminary determination that such individual is a member of a targeted group, then 'the fifth day' shall be substituted for 'the day' in such sentence."

Subsec. (g). Pub. L. 98–369, §474(p)(2), substituted "the targeted jobs credit determined under this subpart" for "the credit provided by section 44B".

Subsec. (j). Pub. L. 98–369, §1041(c)(1), added subsec. (j) relating to treatment of successor employers, and employees performing services for other persons.

Pub. L. 98–369, §474(p)(3), added subsec. (j) relating to election to have targeted jobs credit not apply.

1983—Subsec. (d)(8)(D). Pub. L. 97–448, §102(l)(1), substituted "clauses (i), (ii), and (iii) of subparagraph (A)" for "subparagraph (A)".

Subsec. (d)(9)(B). Pub. L. 97–448, §102(l)(3), substituted "section 432(b)(1) or 445" for "section 432(b)(1)".

Subsec. (d)(11). Pub. L. 97–448, §102(l)(4), substituted "the earlier of the month in which such determination occurs or the month in which the hiring date occurs" for "the month in which such

determination occurs".

1982—Subsec. (c)(3). Pub. L. 97–248, §233(a), substituted "1984" for "1982".

Subsec. (d)(1)(J). Pub. L. 97–248, §233(b)(3), added subpar. (J).

Subsec. (d)(6)(B)(i)(II). Pub. L. 97–248, §233(d), substituted "consists of money payments or voucher or scrip, and" for "consists of money payments".

Subsec. (d)(10). Pub. L. 97–248, §233(c), inserted provision respecting nonapplicability of paragraph to individuals who begin work for the employer after December 31, 1982.

Subsec. (d)(12) to (15). Pub. L. 97–248, §233(b)(4), (5), added par. (12) and redesignated former pars. (12) to (15) as (13) to (16), respectively.

Subsec. (d)(16). Pub. L. 97–248, §233(b)(4), redesignated former par. (15) as (16).

Pub. L. 97–248, §233(f), substituted "on or before" for "before" in subpar. (A).

1981—Subsec. (c)(3), (4). Pub. L. 97–34, §261(b)(2)(B)(ii), redesignated par. (4) as (3). Former par. (3), which excluded from term "wages" any amount paid or incurred by the employer to an individual with respect to whom the employer claims credit under section 40 of this title, was struck out.

Pub. L. 97–34, §261(a), extended termination date to Dec. 31, 1982, from Dec. 31, 1981, and inserted "to an individual who begins work for the employer" after "paid or incurred".

Subsec. (d)(1)(H), (I). Pub. L. 97–34, §261(b)(1), added subpars. (H) and (I).

Subsec. (d)(3)(A)(ii). Pub. L. 97–34, §261(b)(2)(B)(iii), substituted "paragraph (11)" for "paragraph (9)".

Subsec. (d)(4). Pub. L. 97–34, §261(b)(2)(B)(iii), (3), in subpar. (B) inserted "and" after "States," in subpar. (C) substituted "paragraph (11)" for "paragraph (9)", and struck out "(D) not having attained the age of 35 on the hiring date."

Subsec. (d)(7)(B). Pub. L. 97–34, §261(b)(2)(B)(iii), substituted "paragraph (11)" for "paragraph (9)".

Subsec. (d)(8)(A)(iv). Pub L. 97–34, §261(b)(4), added cl. (iv).

Subsec. (d)(9), (10). Pub. L. 97–34, §261(b)(2)(A), added pars. (9) and (10) and redesignated former pars. (9) and (10) as (11) and (12), respectively.

Subsec. (d)(11). Pub. L. 97–34, §261(b)(2)(A), (c)(2), redesignated former par. (9) as (11), substituted "70 percent or less" for "less than 70 percent", and provided for validity of any determination for 45-day period beginning on the date the determination is made. Former par. (11) redesignated (13).

Subsec. (d)(12), (13). Pub. L. 97–34, §261(b)(2)(A), redesignated former pars. (10) and (11) as pars. (12) and (13), respectively. Former par. (12) redesignated (14).

Subsec. (d)(14). Pub. L. 97–34, §261(f)(1)(A), substituted as definition for term " 'designated local agency' means a State employment security agency established in accordance with the Act of June 6, 1933, as amended (29 U.S.C. 49–49n)" for " 'designated local agency' means the agency for any locality designated jointly by the Secretary and the Secretary of Labor to perform certification of employees for employers in that locality".

Pub. L. 97–34, §261(b)(2)(A), redesignated former par. (12) as (14).

Subsec. (d)(15). Pub. L. 97–34, §261(c)(1), added par. (15).

Subsec. (e). Pub. L. 97–34, §261(e)(1), struck out subsec. (e) which set forth limitation that qualified first-year wages could not exceed 30 percent of FUTA wages for all employees.

Subsec. (f). Pub. L. 97–34, §261(e)(2), substituted "any taxable year" for "any year" in pars. (1) and (2) and struck out par. (3), defining "year" which is covered in pars. (1) and (2).

Subsec. (g). Pub. L. 97–34, §261(f)(1)(B), substituted "United States Employment Service" for "Secretary of Labor" in heading and text.

Subsec. (i). Pub. L. 97–34, §261(d), added subsec. (i).

1980—Subsec. (c)(1). Pub. L. 96–222, §103(a)(6)(E)(ii), substituted ", subsection (d)(8)(D), and subsection (h)(2)" for "subsection (h)(2)".

Subsec. (c)(2). Pub. L. 96–222, §103(a)(6)(G)(iii), inserted "or incurred" after "amounts paid".

Subsec. (c)(4). Pub. L. 96–222, §103(a)(6)(A), substituted "December 31, 1981" for "December 31, 1980".

Subsec. (d)(1)(E). Pub. L. 96–222, §103(a)(6)(G)(iv), struck out "or" after "recipient,".

Subsec. (d)(4)(A)(i). Pub. L. 96–222, §103(a)(6)(G)(v), substituted "active duty" for "active day".

Subsec. (d)(4)(B). Pub. L. 96–222, §103(a)(6)(G)(vi), substituted "preemployment" for "premployment".

Subsec. (d)(5). Pub. L. 96–222, §103(a)(6)(G)(vii), substituted "preemployment" for "pre-employment".

Subsec. (d)(8)(A). Pub. L. 96–222, §103(a)(6)(F), substituted "age 20" for "age 19".

Subsec. (d)(8)(D). Pub. L. 96–222, §103(a)(6)(E)(i), in heading substituted "Wages" for "Individual must be currently pursuing program" and in text substituted "In the case of remuneration" for "Wages shall be taken into account with respect to a qualified cooperative education program only if the wages are" and inserted ", wages, and unemployment insurance wages, shall be determined without regard to section 3306(c)(10)(C)".

Subsec. (d)(12). Pub. L. 96–222, §103(a)(6)(G)(viii), substituted "employers" for "employer".

Subsec. (e). Pub. L. 96–222, §103(a)(6)(G)(ix), inserted "except as provided in subsection (h)(1)" after "the preceding sentence,".

1978—Pub. L. 95–600 amended section generally and limited allowance of credit to the hiring of seven target groups with high unemployment rates.

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title III, §309(b), Jan. 2, 2013, 126 Stat. 2329, provided that: "The amendment made by this section [amending this section] shall apply to individuals who begin work for the employer after December 31, 2011."

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112–56, title II, §261(g), Nov. 21, 2011, 125 Stat. 732, provided that: "The amendments made by this section [amending this section and sections 52 and 3111 of this title] shall apply to individuals who begin work for the employer after the date of the enactment of this Act [Nov. 21, 2011]."

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §757(b), Dec. 17, 2010, 124 Stat. 3322, provided that: "The amendment made by this section [amending this section] shall apply to individuals who begin work for the employer after the date of the enactment of this Act [Dec. 17, 2010]."

Pub. L. 111–147, title I, §101(e), Mar. 18, 2010, 124 Stat. 75, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this subsection [probably should be "section", amending this section and sections 3111 and 3221 of this title] shall apply to wages paid after the date of the enactment of this Act [Mar. 18, 2010].

"(2) RAILROAD RETIREMENT TAXES.—The amendments made by subsection (d) [amending section 3221 of this title] shall apply to compensation paid after the date of the enactment of this Act."

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, §1221(b), Feb. 17, 2009, 123 Stat. 338, provided that: "The amendments made by this section [amending this section] shall apply to individuals who begin work for the employer after December 31, 2008."

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by section 4002(b)(1)(A), (B), (D), (2)(O) of Pub. L. 110–246 effective Oct. 1, 2008, see section 4407 of Pub. L. 110–246, set out as a note under section 1161 of Title 2, The Congress.

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–28, title VIII, §8211(e), May 25, 2007, 121 Stat. 192, provided that: "The amendments made by this section [amending this section] shall apply to individuals who begin work for the employer after the date of the enactment of this Act [May 25, 2007]."

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title I, §105(f), Dec. 20, 2006, 120 Stat. 2938, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 51A of this title and repealing section 51A of this title] shall apply to individuals who begin work for the employer after December 31, 2005.

"(2) CONSOLIDATION.—The amendments made by subsections (b), (c), (d), and (e) [amending this section and repealing section 51A of this title] shall apply to individuals who begin work for the employer after December 31, 2006."

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 207(5) of Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

Pub. L. 108–311, title III, §303(b), Oct. 4, 2004, 118 Stat. 1179, provided that:"The amendments made by this section [amending this section and section 51A of this title] shall apply to individuals who begin work for the employer after December 31, 2003."

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title VI, §604(b), Mar. 9, 2002, 116 Stat. 59, provided that: "The amendment made by subsection (a) [amending this section] shall apply to individuals who begin work for the employer after December 31, 2001."

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(7) [title I, §102(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–600, provided that: "The amendments made by this section [amending this section] shall apply to individuals who begin work for the employer after December 31, 2001."

Pub. L. 106–554, §1(a)(7) [title III, §316(e)], Dec. 21, 2000, 114 Stat. 2763, 2763A–645, provided that: "The amendments made by this section [amending this section and sections 219, 401 and 1361 of this title] shall take effect as if included in the provisions of the Small Business Job Protection Act of 1996 [Pub. L. 104–188] to which they relate."

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title V, §505(c), Dec. 17, 1999, 113 Stat. 1921, provided that: "The amendments made by this section [amending this section and section 51A of this title] shall apply to individuals who begin work for the employer after June 30, 1999."

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–277, div. J, title I, §1002(b), Oct. 21, 1998, 112 Stat. 2681–888, provided that: "The amendment made by this section [amending this section] shall apply to individuals who begin work for the employer after June 30, 1998."

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title VI, §603(e), Aug. 5, 1997, 111 Stat. 863, provided that: "The amendments made by this section [amending this section] shall apply to individuals who begin work for the employer after September 30, 1997."

Pub. L. 105–33, title V, §5518(c), Aug. 5, 1997, 111 Stat. 621, provided that: "The amendments made by section 5514(a) of this Act [amending this section and sections 3304, 6103, 6334, 6402, and 7523 of this title] shall take effect as if the amendments had been included in section 110 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [Pub. L. 104–193] at the time such section 110 became law."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of Title 42, The Public Health and Welfare.

Amendment by Pub. L. 104–188 applicable to individuals who begin work for the employer after Sept. 30, 1996, see section 1201(g) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13102(b), Aug. 10, 1993, 107 Stat. 420, provided that: "The amendment made by subsection (a) [amending this section] shall apply to individuals who begin work for the employer after June 30, 1992."

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102–227, title I, §105(b), Dec. 11, 1991, 105 Stat. 1687, provided that: "The amendment made by this section [amending this section] shall apply to individuals who begin work for the employer after December 31, 1991."

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, §11405(c), Nov. 5, 1990, 104 Stat. 1388–473, provided that:

"(1) CREDIT.—The amendment made by subsection (a) [amending this section] shall apply to individuals who begin work for the employer after September 30, 1990.

"(2) AUTHORIZATION.—The amendment made by subsection (b) [amending provisions set out below] shall apply to fiscal years beginning after 1990."

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7103(c)(2), Dec. 19, 1989, 103 Stat. 2305, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to individuals who begin work for the employer after December 31, 1989."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1017(a) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title IV, §4010(c)(2), Nov. 10, 1988, 102 Stat. 3655, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to individuals who begin work for the employer after December 31, 1988."

Pub. L. 100–647, title IV, §4010(d)(2), Nov. 10, 1988, 102 Stat. 3655, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to individuals who begin work for the employer after December 31, 1988."

Amendment by Pub. L. 100–485 effective Oct. 1, 1990, with provision for earlier effective dates in case of States making certain changes in their State plans and formally notifying the Secretary of Health and Human Services of their desire to become subject to the amendments made by title II of Pub. L. 100–485 on the earlier effective dates, see section 204 of Pub. L. 100–485, set out as a note under section 671 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title X, §10601(b), Dec. 22, 1987, 101 Stat. 1330–451, provided that: "The amendment made by subsection (a) [amending this section] shall apply to amounts paid or incurred on or after January 1, 1987, for services rendered on or after such date."

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XVII, §1701(e), Oct. 22, 1986, 100 Stat. 2772, provided that: "The amendments made by this section [amending this section and provisions set out below] shall apply with respect to individuals who begin work for the employer after December 31, 1985."

Amendment by section 1878(f)(1) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(p)(1)–(3) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 712 of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

Pub. L. 98–369, div. A, title X, §1041(c)(5), July 18, 1984, 98 Stat. 1043, as amended by Pub. L. 99–514, §2, title XVIII, §1878(f)(2), Oct. 22, 1986, 100 Stat. 2095, 2904, provided that:

"(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this section [amending this section] shall apply to individuals who begin work for the employer after the date of the enactment of this Act [July 18, 1984].

"(B) SPECIAL RULE FOR EMPLOYEES PERFORMING SERVICES FOR OTHER PERSONS .—Paragraph (2) of section 51(k) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this subsection) and the amendment made by paragraph (3) of this subsection [amending this section] shall apply to individuals who begin work for the employer after December 31, 1984."

Pub. L. 98–369, div. B, title VI, §2638(c)(2), July 18, 1984, 98 Stat. 1144, provided that: "The amendments made by subsection (b) [amending this section] shall apply with respect to payments made on or after the date of the enactment of this Act [July 18, 1984]."

Amendment by section 2663 of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 97–448, title I, §102(l)(4), Jan. 12, 1983, 96 Stat. 2374, provided that the amendment made by that

section is effective with respect to certifications made after Jan. 12, 1983, with respect to individuals beginning work for an employer after May 11, 1982.

Amendment by title I of Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title II, §233(f), Sept. 3, 1982, 96 Stat. 502, provided that the amendments made by that section are effective only with respect to individuals who begin work for the taxpayer after May 11, 1982.

Pub. L. 97–248, title II, §233(g), Sept. 3, 1982, 96 Stat. 503, provided that:

"(1) SUBSECTION (b).—The amendments made by subsection (b) [amending this section] shall apply to amounts paid or incurred after April 30, 1983, to individuals beginning work for the employer after such date.

"(2) SUBSECTION (d).—The amendments made by subsection (d) [amending this section] shall apply to amounts paid or incurred after July 1, 1982, to individuals beginning work for the employer after such date."

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title II, §261(g), Aug. 13, 1981, 95 Stat. 263, as amended by Pub. L. 97–448, title I, §102(l)(2), Jan. 12, 1983, 96 Stat. 2374; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) AMENDMENTS RELATING TO MEMBERS OF TARGETED GROUPS.—

"(A) IN GENERAL.—Except as provided in subparagraphs (B), (C), and (D), the amendments made by subsections (b), (c)(2), and (d) [amending this section and section 50B of this title] shall apply to wages paid or incurred with respect to individuals first beginning work for an employer after the date of the enactment of this Act [Aug. 13, 1981] in taxable years ending after such date.

"(B) ELIGIBLE WORK INCENTIVE EMPLOYEES.—The amendments made by subsection (b)(2) [amending this section] to the extent relating to the designation of eligible work incentive employees (within the meaning of section 51(d)(9) [now 51(d)(10)] of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) as members of a targeted group and subsection (b)(2)(B)(ii) [amending this section] shall apply to taxable years beginning after December 31, 1981. In the case of an eligible work incentive employee, subsections (a) and (b) of section 51 of such Code shall be applied for taxable years beginning after December 31, 1981, as if such employees had been members of a targeted group for taxable years beginning before January 1, 1982.

"(C) COOPERATIVE EDUCATION PROGRAM PARTICIPANTS.—The amendments made by subsection (b)(4) [amending this section] shall apply to wages paid or incurred after December 31, 1981, in taxable years ending after such date.

"(D) DESIGNATED LOCAL AGENCY.—The amendments made by subsection (f)(1) [amending this section] shall take effect on the date 60 days after the date of the enactment of this act [Aug. 13, 1981].

"(2) CERTIFICATIONS.—

"(A) IN GENERAL.—The amendment made by subsection (c)(1) [amending this section] shall apply to all individuals whether such individuals began work for their employer before, on, or after the date of the enactment of this Act [Aug. 13, 1981].

"(B) SPECIAL RULE FOR INDIVIDUALS WHO BEGAN WORK FOR THE EMPLOYER BEFORE 45TH DAY BEFORE DATE OF ENACTMENT.—In the case of any individual (other than an individual described in section 51(d)(8) of the Internal Revenue Code of 1986) who began work for the employer before the date 45 days before the date of the enactment of this Act [Aug. 13, 1981], paragraph (15) of section 51(d) of the Internal Revenue Code of 1986 (as added by subsection (c)(1)) shall be applied by substituting "July 23, 1981," for the day on which such individual begins work for the employer.

"(C) INDIVIDUALS WHO BEGIN WORK FOR EMPLOYER WITHIN 45 DAYS BEFORE OR AFTER DATE OF ENACTMENT.—In the case of any individual (other than an individual described in section 51(d)(8) of the Internal Revenue Code of 1986) who begins work for the employer during the 90-day period beginning with the date 45 days before the date of the enactment of this Act [Aug. 13, 1981], and in the case of an individual described in section 51(d)(8) of such Code who begins work before the end of such 90-day period, paragraph (15) of section 51(d) of such Code (as added by subsection (c)(1)) shall be applied by substituting "the last day of the 90-day period beginning with the date 45 days before the date of the enactment of this Act" for the day on which such individual begins work for the employer.

"(3) LIMITATION ON QUALIFIED FIRST-YEAR WAGES.—The amendment made by subsection (e) [amending this section] shall apply to taxable years beginning after December 31, 1981."

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–222, title I, §103(b)(1), Apr. 1, 1980, 94 Stat. 214, provided that: "The amendment made by

subsection (a)(5)(F) [probably means subsec. (a)(6)(F), amending this section] shall apply to wages paid or incurred on or after November 27, 1979, in taxable years ending on or after such date."

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title III, §321(d)(1), Nov. 6, 1978, 92 Stat. 2835, provided that: "Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 44B, 52, 53, and 6501 of this title] shall apply to amounts paid or incurred after December 31, 1978, in taxable years ending after such date."

EFFECTIVE DATE

Pub. L. 95–30, title II, §202(e), May 23, 1977, 91 Stat. 151, provided that: "The amendments made by this section [enacting this section and sections 44B, 52, 53, and 280C of this title and amending sections 56, 381, 383, 6096, 6411, 6501, 6511, 6601, and 6611 of this title] shall apply to taxable years beginning after December 31, 1976, and to credit carrybacks from such years."

RETURNING HEROES AND WOUNDED WARRIORS WORK OPPORTUNITY TAX CREDITS; TREATMENT OF POSSESSIONS OF UNITED STATES

Pub. L. 112–56, title II, §261(f), Nov. 21, 2011, 125 Stat. 731, provided that:

"(1) PAYMENTS TO POSSESSIONS.—

"(A) MIRROR CODE POSSESSIONS.—The Secretary of the Treasury shall pay to each possession of the United States with a mirror code tax system amounts equal to the loss to that possession by reason of the amendments made by this section [amending this section and sections 52 and 3111 of this title]. Such amounts shall be determined by the Secretary of the Treasury based on information provided by the government of the respective possession of the United States.

"(B) OTHER POSSESSIONS.—The Secretary of the Treasury shall pay to each possession of the United States which does not have a mirror code tax system the amount estimated by the Secretary of the Treasury as being equal to the loss to that possession that would have occurred by reason of the amendments made by this section if a mirror code tax system had been in effect in such possession. The preceding sentence shall not apply with respect to any possession of the United States unless such possession establishes to the satisfaction of the Secretary that the possession has implemented (or, at the discretion of the Secretary, will implement) an income tax benefit which is substantially equivalent to the income tax credit in effect after the amendments made by this section.

"(2) COORDINATION WITH CREDIT ALLOWED AGAINST UNITED STATES INCOME TAXES .—The credit allowed against United States income taxes for any taxable year under the amendments made by this section to section 51 of the Internal Revenue Code of 1986 [26 U.S.C. 51] to any person with respect to any qualified veteran shall be reduced by the amount of any credit (or other tax benefit described in paragraph (1)(B)) allowed to such person against income taxes imposed by the possession of the United States by reason of this subsection with respect to such qualified veteran for such taxable year.

"(3) DEFINITIONS AND SPECIAL RULES.—

"(A) POSSESSION OF THE UNITED STATES.—For purposes of this subsection, the term 'possession of the United States' includes American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the United States Virgin Islands.

"(B) MIRROR CODE TAX SYSTEM.—For purposes of this subsection, the term 'mirror code tax system' means, with respect to any possession of the United States, the income tax system of such possession if the income tax liability of the residents of such possession under such system is determined by reference to the income tax laws of the United States as if such possession were the United States.

"(C) TREATMENT OF PAYMENTS.—For purposes of section 1324(b)(2) of title 31, United States Code, the payments under this subsection shall be treated in the same manner as a refund due from credit provisions described in such section."

REFERENCE TO PLAN FOR EMPLOYMENT

Pub. L. 105–277, div. J, title IV, §4006(c)(1), Oct. 21, 1998, 112 Stat. 2681–912, provided that: "The reference to 'plan for employment' in such clause [26 U.S.C. 51(d)(6)(B)(i)] shall be treated as including a reference to the rehabilitation plan referred to in such clause as in effect before the amendment made by the preceding sentence."

AUTHORIZATION OF APPROPRIATIONS

Pub. L. 97–34, title II, §261(f)(2), Aug. 13, 1981, 95 Stat. 263, as amended by Pub. L. 97–248, title II, §233(e), Sept. 3, 1982, 96 Stat. 502; Pub. L. 98–369, div. A, title X, §1041(b), July 18, 1984, 98 Stat. 1042; Pub. L. 99–514, title XVII, §1701(d), Oct. 22, 1986, 100 Stat. 2772; Pub. L. 100–647, title IV, §4010(b), Nov. 10, 1988, 102 Stat. 3655; Pub. L. 101–239, title VII, §7103(b), Dec. 19, 1989, 103 Stat. 2305; Pub. L. 101–508, title XI, §11405(b), Nov. 5, 1990, 104 Stat. 1388–473, provided that: "There is authorized to be appropriated for each fiscal year such sums as may be necessary, to carry out the functions described by the amendments made by paragraph (1) [amending this section], except that, of the amounts appropriated pursuant to this paragraph—

"(A) $5,000,000 shall be used to test whether individuals certified as members of targeted groups under section 51 of such Code are eligible for such certification (including the use of statistical sampling techniques), and

"(B) the remainder shall be distributed under performance standards prescribed by the Secretary of Labor.

The Secretary of Labor shall each calendar year beginning with calendar year 1983 report to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate with respect to the results of the testing conducted under subparagraph (A) during the preceding calendar year."

[For termination, effective May 15, 2000, of reporting provisions in section 261(f)(2) of Pub. L. 97–34, set out above, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 124 of House Document No. 103–7.]

[Amendment by Pub. L. 101–508 applicable to fiscal years beginning after 1990, see section 11405(c)(2) of Pub. L. 101–508, set out as an Effective Date of 1990 Amendment note above.]

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

SPECIAL RULES FOR NEWLY TARGETED GROUPS

Pub. L. 95–600, title III, §321(d)(2), Nov. 6, 1978, 92 Stat. 2835, as amended by Pub. L. 96–222, title I, §103(a)(6)(C), (G)(xi), Apr. 1, 1980, 94 Stat. 209, 211; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(A) INDIVIDUAL MUST BE HIRED AFTER SEPTEMBER 26, 1978.—In the case of a member of a newly targeted group, for purposes of applying the amendments made by this section—

"(i) such individual shall be taken into account for purposes of the credit allowable by section 44B of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] only if such individual is first hired by the employer after September 26, 1978, and

"(ii) such individual shall be treated for purposes of such credit as having first begun work for the employer not earlier than January 1, 1979.

"(B) MEMBER OF NEWLY TARGETED GROUP DEFINED.—For purposes of subparagraph (A), an individual is a member of a newly targeted group if—

"(i) such individual meets the requirements of paragraph (1) of section 51(d) of such Code, and

"(ii) in the case of an individual meeting the requirements of subparagraph (A) of such paragraph (1), a credit was not claimed for such individual by the taxpayer for a taxable year beginning before January 1, 1979."

CREDIT ALLOWABLE BY SECTION 44B IN CASE OF TAXABLE YEAR BEGINNING IN 1978 AND ENDING AFTER DECEMBER 31, 1978

Pub. L. 95–600, title III, §321(d)(3), Nov. 6, 1978, 92 Stat. 2836, as amended by Pub. L. 96–222, title I, §103(a)(6)(D), Apr. 1, 1980, 94 Stat. 209; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "In the case of a taxable year which begins in 1978 and ends after December 31, 1978, the amount of the credit determined under section 51 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall be the sum of—

"(A) the amount of the credit which would be so determined without regard to the amendments made by this section, plus

"(B) the amount of the credit which would be so determined by reason of the amendments made by this section."

[1] *See References in Text note below.*

[2] *So in original. Probably should be followed by a period.*

[3] *So in original. Probably should be followed by a comma.*

[4] *So in original. Probably should be "Qualified supplemental nutrition assistance program benefits recipient".*

[5] *So in original. The comma probably should not appear.*

[§51A. Repealed. Pub. L. 109–432, div. A, title I, §105(e)(4)(A), Dec. 20, 2006, 120 Stat. 2937]

Section, added Pub. L. 105–34, title VIII, §801(a), Aug. 5, 1997, 111 Stat. 869; amended Pub. L. 105–277, div. J, title I, §1003, Oct. 21, 1998, 112 Stat. 2681–888; Pub. L. 106–170, title V, §505(a), Dec. 17, 1999, 113 Stat. 1921; Pub. L. 107–16, title IV, §411(c), June 7, 2001, 115 Stat. 63; Pub. L. 107–147, title IV, §417(4), title VI, §605(a), Mar. 9, 2002, 116 Stat. 56, 60; Pub. L. 108–311, title III, §303(a)(2), Oct. 4, 2004, 118 Stat. 1179; Pub. L. 109–432, div. A, title I, §105(a), Dec. 20, 2006, 120 Stat. 2936, related to temporary incentives for employing long-term family assistance recipients. See section 51(e) of this title.

EFFECTIVE DATE OF REPEAL

Repeal applicable to individuals who begin work for the employer after Dec. 31, 2006, see section 105(f)(2) of Pub. L. 109–432, set out as an Effective Date of 2006 Amendment note under section 51 of this title.

§52. Special rules

(a) Controlled group of corporations

For purposes of this subpart, all employees of all corporations which are members of the same controlled group of corporations shall be treated as employed by a single employer. In any such case, the credit (if any) determined under section 51(a) with respect to each such member shall be its proportionate share of the wages giving rise to such credit. For purposes of this subsection, the term "controlled group of corporations" has the meaning given to such term by section 1563(a), except that—

(1) "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears in section 1563(a)(1), and

(2) the determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of section 1563.

(b) Employees of partnerships, proprietorships, etc., which are under common control

For purposes of this subpart, under regulations prescribed by the Secretary—

(1) all employees of trades or business (whether or not incorporated) which are under common control shall be treated as employed by a single employer, and

(2) the credit (if any) determined under section 51(a) with respect to each trade or business shall be its proportionate share of the wages giving rise to such credit.

The regulations prescribed under this subsection shall be based on principles similar to the principles which apply in the case of subsection (a).

(c) Tax-exempt organizations

(1) In general

No credit shall be allowed under section 38 for any work opportunity credit determined under

this subpart to any organization (other than a cooperative described in section 521) which is exempt from income tax under this chapter.

(2) Credit made available to qualified tax-exempt organizations employing qualified veterans

For credit against payroll taxes for employment of qualified veterans by qualified tax-exempt organizations, see section 3111(e).

(d) Estates and trusts

In the case of an estate or trust—

(1) the amount of the credit determined under this subpart for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each, and

(2) any beneficiary to whom any amount has been apportioned under paragraph (1) shall be allowed, subject to section 38(c), a credit under section 38(a) for such amount.

(e) Limitations with respect to certain persons

Under regulations prescribed by the Secretary, in the case of—

(1) a regulated investment company or a real estate investment trust subject to taxation under subchapter M (section 851 and following), and

(2) a cooperative organization described in section 1381(a),

rules similar to the rules provided in subsections (e) and (h) of section 46 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall apply in determining the amount of the credit under this subpart.

(Added Pub. L. 95–30, title II, §202(b), May 23, 1977, 91 Stat. 143; amended Pub. L. 95–600, title III, §321(c)(1), Nov. 6, 1978, 92 Stat. 2835; Pub. L. 96–222, title I, §103(a)(5), Apr. 1, 1980, 94 Stat. 209; Pub. L. 97–354, §5(a)(11), Oct. 19, 1982, 96 Stat. 1693; Pub. L. 98–369, div. A, title IV, §474(p)(4)–(7), July 18, 1984, 98 Stat. 838; Pub. L. 101–508, title XI, §11813(b)(4), Nov. 5, 1990, 104 Stat. 1388–551; Pub. L. 104–188, title I, §1616(b)(2), Aug. 20, 1996, 110 Stat. 1856; Pub. L. 105–34, title XVI, §1601(b), Aug. 5, 1997, 111 Stat. 1087; Pub. L. 112–56, title II, §261(e)(1), Nov. 21, 2011, 125 Stat. 730.)

REFERENCES IN TEXT

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

AMENDMENTS

2011—Subsec. (c). Pub. L. 112–56 designated existing provisions as par. (1), inserted heading, and added par. (2).

1997—Subsec. (c). Pub. L. 105–34 substituted "work opportunity credit" for "targeted jobs credit".

1996—Subsec. (e)(1) to (3). Pub. L. 104–188 redesignated pars. (2) and (3) as (1) and (2), respectively, and struck out former par. (1) which read as follows: "an organization to which section 593 (relating to reserves for losses on loans) applies,".

1990—Subsec. (e). Pub. L. 101–508 substituted "section 46 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)" for "section 46" in concluding provisions.

1984—Subsec. (a). Pub. L. 98–369, §474(p)(4), substituted "the credit (if any) determined under section 51(a) with respect to each such member" for "the credit (if any) allowable by section 44B to each such member".

Subsec. (b)(2). Pub. L. 98–369, §474(p)(5), substituted "the credit (if any) determined under section 51(a)" for "the credit (if any) allowable by section 44B".

Subsec. (c). Pub. L. 98–369, §474(p)(6), substituted "credit shall be allowed under section 38 for any targeted jobs credit determined under this subpart" for "credit shall be allowed under section 44B".

Subsec. (d)(2). Pub. L. 98–369, §474(p)(7), substituted ", subject to section 38(c), a credit under section 38(a)" for ", subject to section 53 a credit under section 44B".

1982—Subsecs. (d) to (f). Pub. L. 97–354 struck out subsec. (d) relating to apportionment of credit among shareholders, and redesignated subsecs. (e) and (f) as (d) and (e), respectively.

1980—Subsec. (f). Pub. L. 96–222 substituted "subsections (e) and (h) of section 46" for "section 46(e)".

1978—Subsecs. (a), (b). Pub. L. 95–600, §321(c)(1)(B), substituted "proportionate share of the wages" for "proportionate contribution to the increase in unemployment insurance wages".

Subsecs. (c), (d). Pub. L. 95–600, §321(c)(1)(A), struck out subsec. (c) which related to dispositions by an employer, and redesignated subsecs. (d) and (f) as (c) and (d), respectively.

Subsec. (e). Pub. L. 95–600, §321(c)(1)(A), (C), redesignated subsec. (g) as (e) and struck out par. (3) which provided that the $100,000 amount specified in section 51(d) applicable to such estate or trust be reduced to an amount which bears the same ratio to $100,000 as the portion of the credit allocable to the estate or trust under paragraph (1) bears to the entire amount of such credit. Former subsec. (e), which related to a change in status from self-employed to employee, was struck out.

Subsecs. (f) to (h). Pub. L. 95–600, §321(c)(1)(A), redesignated subsecs. (f) to (h) as (d) to (f), respectively.

Subsec. (i). Pub. L. 95–600, §321(c)(1)(A)(i), struck out subsec. (i) which related to a $50,000 limitation in the case of married individuals filing separate returns.

Subsec. (j). Pub. L. 95–600, §321(c)(1)(A)(i), struck out subsec. (j) which related to certain short taxable years.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112–56 applicable to individuals who begin work for the employer after Nov. 21, 2011, see section 261(g) of Pub. L. 112–56, set out as a note under section 51 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

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

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1995, see section 1616(c) of Pub. L. 104–188, set out as a note under section 593 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable to amounts paid or incurred after Dec. 31, 1978, in taxable years ending after such date, see section 321(d)(1) of Pub. L. 95–600, set out as a note under section 51 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1976, and to credit carrybacks from such years, see section 202(e) of Pub. L. 95–30, set out as a note under section 51 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account

prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

SUBPART G—CREDIT AGAINST REGULAR TAX FOR PRIOR YEAR MINIMUM TAX LIABILITY

Sec.
53. Credit for prior year minimum tax liability.

§53. Credit for prior year minimum tax liability

(a) Allowance of credit

There shall be allowed as a credit against the tax imposed by this chapter for any taxable year an amount equal to the minimum tax credit for such taxable year.

(b) Minimum tax credit

For purposes of subsection (a), the minimum tax credit for any taxable year is the excess (if any) of—

(1) the adjusted net minimum tax imposed for all prior taxable years beginning after 1986, over

(2) the amount allowable as a credit under subsection (a) for such prior taxable years.

(c) Limitation

The credit allowable under subsection (a) for any taxable year shall not exceed the excess (if any) of—

(1) the regular tax liability of the taxpayer for such taxable year reduced by the sum of the credits allowable under subparts A, B, D, E, and F of this part, over

(2) the tentative minimum tax for the taxable year.

(d) Definitions

For purposes of this section—

(1) Net minimum tax

(A) In general

The term "net minimum tax" means the tax imposed by section 55.

(B) Credit not allowed for exclusion preferences

(i) Adjusted net minimum tax

The adjusted net minimum tax for any taxable year is—

(I) the amount of the net minimum tax for such taxable year, reduced by

(II) the amount which would be the net minimum tax for such taxable year if the only adjustments and items of tax preference taken into account were those specified in clause (ii).

(ii) Specified items

The following are specified in this clause—

(I) the adjustments provided for in subsection (b)(1) of section 56, and

(II) the items of tax preference described in paragraphs (1), (5), and (7) of section 57(a).

(iii) Credit allowable for exclusion preferences of corporations

In the case of a corporation—

(I) the preceding provisions of this subparagraph shall not apply, and

(II) the adjusted net minimum tax for any taxable year is the amount of the net minimum tax for such year.

(2) Tentative minimum tax

The term "tentative minimum tax" has the meaning given to such term by section 55(b).

(e) Special rule for individuals with long-term unused credits

(1) In general

If an individual has a long-term unused minimum tax credit for any taxable year beginning before January 1, 2013, the amount determined under subsection (c) for such taxable year shall not be less than the AMT refundable credit amount for such taxable year.

(2) AMT refundable credit amount

For purposes of paragraph (1), the term "AMT refundable credit amount" means, with respect to any taxable year, the amount (not in excess of the long-term unused minimum tax credit for such taxable year) equal to the greater of—

(A) 50 percent of the long-term unused minimum tax credit for such taxable year, or

(B) the amount (if any) of the AMT refundable credit amount determined under this paragraph for the taxpayer's preceding taxable year (determined without regard to subsection (f)(2)).

(3) Long-term unused minimum tax credit

(A) In general

For purposes of this subsection, the term "long-term unused minimum tax credit" means, with respect to any taxable year, the portion of the minimum tax credit determined under subsection (b) attributable to the adjusted net minimum tax for taxable years before the 3rd taxable year immediately preceding such taxable year.

(B) First-in, first-out ordering rule

For purposes of subparagraph (A), credits shall be treated as allowed under subsection (a) on a first-in, first-out basis.

(4) Credit refundable

For purposes of this title (other than this section), the credit allowed by reason of this subsection shall be treated as if it were allowed under subpart C.

(f) Treatment of certain underpayments, interest, and penalties attributable to the treatment of incentive stock options

(1) Abatement

Any underpayment of tax outstanding on the date of the enactment of this subsection which is attributable to the application of section 56(b)(3) for any taxable year ending before January 1, 2008, and any interest or penalty with respect to such underpayment which is outstanding on such date of enactment, is hereby abated. The amount determined under subsection (b)(1) shall not include any tax abated under the preceding sentence.

(2) Increase in credit for certain interest and penalties already paid

The AMT refundable credit amount, and the minimum tax credit determined under subsection (b), for the taxpayer's first 2 taxable years beginning after December 31, 2007, shall each be increased by 50 percent of the aggregate amount of the interest and penalties which were paid by the taxpayer before the date of the enactment of this subsection and which would (but for such payment) have been abated under paragraph (1).

(Added Pub. L. 99–514, title VII, §701(b), Oct. 22, 1986, 100 Stat. 2339; amended Pub. L. 100–647, title I, §1007(g)(4), title VI, §6304(a), Nov. 10, 1988, 102 Stat. 3435, 3756; Pub. L. 101–239, title VII, §§7612(a)(1), (2), (b)(1), 7811(d)(2), Dec. 19, 1989, 103 Stat. 2373, 2374, 2408; Pub. L. 102–486, title XIX, §1913(b)(2)(C), Oct. 24, 1992, 106 Stat. 3020; Pub. L. 103–66, title XIII, §§13113(b)(2), 13171(c), Aug. 10, 1993, 107 Stat. 429, 455; Pub. L. 104–188, title I, §§1205(d)(5), 1704(j)(1), Aug. 20, 1996, 110 Stat. 1776, 1881; Pub. L. 108–357, title IV, §421(a)(2), Oct. 22,

2004, 118 Stat. 1514; Pub. L. 109–58, title XIII, §1322(a)(3)(G), Aug. 8, 2005, 119 Stat. 1012; Pub. L. 109–432, div. A, title IV, §402(a), Dec. 20, 2006, 120 Stat. 2953; Pub. L. 110–172, §2(a), Dec. 29, 2007, 121 Stat. 2473; Pub. L. 110–343, div. C, title I, §103(a), (b), Oct. 3, 2008, 122 Stat. 3863; Pub. L. 111–5, div. B, title I, §1142(b)(4), Feb. 17, 2009, 123 Stat. 331.)

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (f), is the date of enactment of Pub. L. 110–343, which was approved Oct. 3, 2008.

PRIOR PROVISIONS

A prior section 53, added Pub. L. 95–30, title II, §202(b), May 23, 1977, 91 Stat. 146; amended Pub. L. 95–600, title III, §321(c)(2), Nov. 6, 1978, 92 Stat. 2835; Pub. L. 97–34, title II, §207(c)(2), Aug. 13, 1981, 95 Stat. 225; Pub. L. 97–248, title II, §201(d)(8)(A), formerly §201(c)(8)(A), and §265(b)(2)(A)(iii), Sept. 3, 1982, 96 Stat. 420, 547, renumbered §201(d)(8)(A), Pub. L. 97–448, title III, §306(a)(1)(A)(i), Jan. 12, 1983, 96 Stat. 2400; 97–354, §5(a)(12), Oct. 19, 1982, 96 Stat. 1693; 97–448, title I, §102(d)(3), Jan. 12, 1983, 96 Stat. 2370; Pub. L. 98–21, title I, §122(c)(1), Apr. 20, 1983, 97 Stat. 87; Pub. L. 98–369, div. A, title VII, §713(c)(1)(C), July 18, 1984, 98 Stat. 957, placed limitations on the amount of credit allowed by former section 44B for employment of certain new employees, prior to repeal by Pub. L. 98–369, div. A, title IV, §474(p)(8), July 18, 1984, 98 Stat. 838, applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years.

AMENDMENTS

2009—Subsec. (d)(1)(B)(iii). Pub. L. 111–5, §1142(b)(4)(A), redesignated cl. (iv) as (iii) and struck out former cl. (iii). Prior to amendment, text read as follows: "The adjusted net minimum tax for the taxable year shall be increased by the amount of the credit not allowed under section 30 solely by reason of the application of section 30(b)(3)(B)."

Subsec. (d)(1)(B)(iii)(II). Pub. L. 111–5, §1142(b)(4)(B), struck out "increased in the manner provided in clause (iii)" before period.

Subsec. (d)(1)(B)(iv). Pub. L. 111–5, §1142(b)(4)(A), redesignated cl. (iv) as (iii).

2008—Subsec. (e)(2). Pub. L. 110–343, §103(a), reenacted heading without change and amended text generally. Prior to amendment, par. (2) defined "AMT refundable credit amount" and provided for phaseout of AMT refundable credit amount based on adjusted gross income.

Subsec. (f). Pub. L. 110–343, §103(b), added subsec. (f).

2007—Subsec. (e)(2)(A). Pub. L. 110–172 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "The term 'AMT refundable credit amount' means, with respect to any taxable year, the amount equal to the greater of—

"(i) the lesser of—

"(I) $5,000, or

"(II) the amount of long-term unused minimum tax credit for such taxable year, or

"(ii) 20 percent of the amount of such credit."

2006—Subsec. (e). Pub. L. 109–432 added subsec. (e).

2005—Subsec. (d)(1)(B)(iii). Pub. L. 109–58 struck out "under section 29 (relating to credit for producing fuel from a nonconventional source) solely by reason of the application of section 29(b)(6)(B), or not allowed" before "under section 30".

2004—Subsec. (d)(1)(B)(i)(II). Pub. L. 108–357 struck out "and if section 59(a)(2) did not apply" before period at end.

1996—Subsec. (d)(1)(B)(iii). Pub. L. 104–188, §1205(d)(5)(A), which directed that cl. (iii) be amended by striking out "or not allowed under section 28 solely by reason of the application of section 28(d)(2)(B)," was executed by striking out "not allowed under section 28 solely by reason of the application of section 28(d)(2)(B)," after "29(b)(6)(B),", to reflect the probable intent of Congress.

Subsec. (d)(1)(B)(iv)(II). Pub. L. 104–188, §1704(j)(1), amended subcl. (II) generally. Prior to amendment, subcl. (II) read as follows: "the adjusted net minimum tax for any taxable year is the amount of the net minimum tax for such year increased by the amount of any credit not allowed under section 29 solely by reason of the application of section 29(b)(5)(B) or not allowed under section 28 solely by reason of the application of section 28(d)(2)(B)."

Pub. L. 104–188, §1205(d)(5)(B), which directed that subcl. (II) be amended by striking out "or not allowed under section 28 solely by reason of the application of section 28(d)(2)(B)", could not be executed because the phrase sought to be struck out did not appear in text subsequent to the general amendment of subcl. (II) by

Pub. L. 104–188, §1704(j)(1), see above, which, pursuant to section 1701 of Pub. L. 104–188, set out as a note under section 1 of this title, is treated as having been enacted before section 1205(d)(5)(B) of Pub. L. 104–188.

1993—Subsec. (d)(1)(B)(ii)(II). Pub. L. 103–66, §13171(c), substituted "(5), and (7)" for "(5), (6), and (8)".

Pub. L. 103–66, §13113(b)(2), substituted "(6), and (8)" for "and (6)".

1992—Subsec. (d)(1)(B)(iii). Pub. L. 102–486, §1913(b)(2)(C)(i), substituted "section 29(b)(6)(B)," for "section 29(b)(5)(B) or".

Pub. L. 102–486, §1913(b)(2)(C)(ii), inserted before period at end ", or not allowed under section 30 solely by reason of the application of section 30(b)(3)(B)".

1989—Subsec. (d)(1)(B)(i)(II). Pub. L. 101–239, §7811(d)(2), inserted before period at end "and if section 59(a)(2) did not apply".

Subsec. (d)(1)(B)(ii). Pub. L. 101–239, §7612(a)(2), substituted "subsection (b)(1)" for "subsections (b)(1) and (c)(3)" in subcl. (I) and struck out at end "In the case of taxable years beginning after 1989, the adjustments provided in section 56(g) shall be treated as specified in this clause to the extent attributable to items which are excluded from gross income for any taxable year for purposes of the regular tax, or are not deductible for any taxable year under the adjusted current earnings method of section 56(g)."

Subsec. (d)(1)(B)(iii). Pub. L. 101–239, §7612(b)(1), which directed amendment of cl. (iii) by inserting "or not allowed under section 28 solely by reason of the application of section 28(d)(2)(B)" after "section 29(d)(5)(B)", was executed by making the insertion after "section 29(b)(5)(B)", as the probable intent of Congress.

Subsec. (d)(1)(B)(iv). Pub. L. 101–239, §7612(b)(1), which directed amendment of cl. (iv) by inserting "or not allowed under section 28 solely by reason of the application of section 28(d)(2)(B)" after "section 29(d)(5)(B)", was executed by making the insertion after "section 29(b)(5)(B)" in subcl. (II), as the probable intent of Congress.

Pub. L. 101–239, §7612(a)(1), added cl. (iv).

1988—Subsec. (d)(1)(B)(ii). Pub. L. 100–647, §1007(g)(4), substituted "current earnings" for "earnings and profits" in last sentence.

Subsec. (d)(1)(B)(iii). Pub. L. 100–647, §6304(a), added cl. (iii).

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–5 applicable to vehicles acquired after Feb. 17, 2009, see section 1142(c) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title I, §103(c), Oct. 3, 2008, 122 Stat. 3864, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2007.

"(2) ABATEMENT.—Section 53(f)(1), as added by subsection (b), shall take effect on the date of the enactment of this Act [Oct. 3, 2008]."

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–172, §2(b), Dec. 29, 2007, 121 Stat. 2474, provided that: "The amendment made by this section [amending this section] shall take effect as if included in the provision of the Tax Relief and Health Care Act of 2006 [Pub. L. 109–432] to which it relates."

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title IV, §402(c), Dec. 20, 2006, 120 Stat. 2954, provided that: "The amendments made by this section [amending this section, section 6211 of this title, and section 1324 of Title 31, Money and Finance] shall apply to taxable years beginning after the date of the enactment of this Act [Dec. 20, 2006]."

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–58 applicable to credits determined under the Internal Revenue Code of 1986 for taxable years ending after Dec. 31, 2005, see section 1322(c)(1) of Pub. L. 109–58, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title IV, §421(b), Oct. 22, 2004, 118 Stat. 1514, provided that: "The amendments made by

this section [amending this section and section 59 of this title] shall apply to taxable years beginning after December 31, 2004."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1205(d)(5) of Pub. L. 104–188 applicable to amounts paid or incurred in taxable years ending after June 30, 1996, see section 1205(e) of Pub. L. 104–188, set out as a note under section 45K of this title.

Pub. L. 104–188, title I, §1704(j)(1), Aug. 20, 1996, 110 Stat. 1881, provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1990.

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13113(e), Aug. 10, 1993, 107 Stat. 430, provided that: "The amendments made by this section [enacting section 1202 of this title and amending this section and sections 57, 172, 642, 643, 691, 871, and 6652 of this title] shall apply to stock issued after the date of the enactment of this Act [Aug. 10, 1993]."

Pub. L. 103–66, title XIII, §13171(d), Aug. 10, 1993, 107 Stat. 455, provided that: "The amendments made by this section [amending this section and sections 56 and 57 of this title] shall apply to contributions made after June 30, 1992, except that in the case of any contribution of capital gain property which is not tangible personal property, such amendments shall apply only if the contribution is made after December 31, 1992."

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 104–188, title I, §1702(e)(5), Aug. 20, 1996, 110 Stat. 1870, provided that: "The amendment made by section 1913(b)(2)(C)(i) of the Energy Policy Act of 1992 [Pub. L. 102–486] shall apply to taxable years beginning after December 31, 1990."

Amendment by section 1913(b)(2)(C)(ii) of Pub. L. 102–486 applicable to property placed in service after June 30, 1993, see section 1913(c) of Pub. L. 102–486, set out as an Effective Date note under section 30 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7612(a)(3), Dec. 19, 1989, 103 Stat. 2373, provided that: "The amendments made by this subsection [amending this section] shall apply for purposes of determining the adjusted net minimum tax for taxable years beginning after December 31, 1989."

Pub. L. 101–239, title VII, §7612(b)(2), Dec. 19, 1989, 103 Stat. 2374, provided that: "The amendment made by paragraph (1) [amending this section] shall apply for purposes of determining the amount of the minimum tax credit for taxable years beginning after December 31, 1989; except that, for such purposes, section 53(b)(1) of the Internal Revenue Code of 1986 shall be applied as if such amendment had been in effect for all prior taxable years."

Amendment by section 7811(d)(2) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1007(g)(4) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title VI, §6304(b), Nov. 10, 1988, 102 Stat. 3756, provided that: "The amendment made by this section [amending this section] shall take effect as if included in the amendments made by section 701 of the Tax Reform Act of 1986 [Pub. L. 99–514]."

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note under section 55 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(b) of Pub. L. 99–514 [enacting this section] notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any

amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

SUBPART H—NONREFUNDABLE CREDIT TO HOLDERS OF CLEAN RENEWABLE ENERGY BONDS

Sec.
54. Credit to holders of clean renewable energy bonds.

AMENDMENTS

2008—Pub. L. 110–234, title XV, §15316(c)(4), May 22, 2008, 122 Stat. 1511, and Pub. L. 110–246, title XV, §15316(c)(4), June 18, 2008, 122 Stat. 2273, made identical amendments, substituting "Clean Renewable Energy Bonds" for "Certain Bonds" in subpart heading. The amendment by Pub. L. 110–234 was repealed by Pub. L. 110–246, §4(a), June 18, 2008, 122 Stat. 1664.

§54. Credit to holders of clean renewable energy bonds

(a) Allowance of credit

If a taxpayer holds a clean renewable energy bond on one or more credit allowance dates of the bond occurring during any taxable year, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of the credits determined under subsection (b) with respect to such dates.

(b) Amount of credit

(1) In general

The amount of the credit determined under this subsection with respect to any credit allowance date for a clean renewable energy bond is 25 percent of the annual credit determined with respect to such bond.

(2) Annual credit

The annual credit determined with respect to any clean renewable energy bond is the product of—

(A) the credit rate determined by the Secretary under paragraph (3) for the day on which such bond was sold, multiplied by

(B) the outstanding face amount of the bond.

(3) Determination

For purposes of paragraph (2), with respect to any clean renewable energy bond, the Secretary shall determine daily or cause to be determined daily a credit rate which shall apply to the first day on which there is a binding, written contract for the sale or exchange of the bond. The credit rate for any day is the credit rate which the Secretary or the Secretary's designee estimates will permit the issuance of clean renewable energy bonds with a specified maturity or redemption date without discount and without interest cost to the qualified issuer.

(4) Credit allowance date

For purposes of this section, the term "credit allowance date" means—

(A) March 15,

(B) June 15,

(C) September 15, and

(D) December 15.

Such term also includes the last day on which the bond is outstanding.

(5) Special rule for issuance and redemption

In the case of a bond which is issued during the 3-month period ending on a credit allowance date, the amount of the credit determined under this subsection with respect to such credit allowance date shall be a ratable portion of the credit otherwise determined based on the portion of the 3-month period during which the bond is outstanding. A similar rule shall apply when the bond is redeemed or matures.

(c) Limitation based on amount of tax

The credit allowed under subsection (a) for any taxable year shall not exceed the excess of—

(1) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

(2) the sum of the credits allowable under this part (other than subparts C, I, and J, section 1400N(l), and this section).

(d) Clean renewable energy bond

For purposes of this section—

(1) In general

The term "clean renewable energy bond" means any bond issued as part of an issue if—

(A) the bond is issued by a qualified issuer pursuant to an allocation by the Secretary to such issuer of a portion of the national clean renewable energy bond limitation under subsection (f)(2),

(B) 95 percent or more of the proceeds of such issue are to be used for capital expenditures incurred by qualified borrowers for one or more qualified projects,

(C) the qualified issuer designates such bond for purposes of this section and the bond is in registered form, and

(D) the issue meets the requirements of subsection (h).

(2) Qualified project; special use rules

(A) In general

The term "qualified project" means any qualified facility (as determined under section 45(d) without regard to paragraph (10) and to any placed in service date) owned by a qualified borrower.

(B) Refinancing rules

For purposes of paragraph (1)(B), a qualified project may be refinanced with proceeds of a clean renewable energy bond only if the indebtedness being refinanced (including any obligation directly or indirectly refinanced by such indebtedness) was originally incurred by a qualified borrower after the date of the enactment of this section.

(C) Reimbursement

For purposes of paragraph (1)(B), a clean renewable energy bond may be issued to reimburse a qualified borrower for amounts paid after the date of the enactment of this section with respect to a qualified project, but only if—

(i) prior to the payment of the original expenditure, the qualified borrower declared its intent to reimburse such expenditure with the proceeds of a clean renewable energy bond,

(ii) not later than 60 days after payment of the original expenditure, the qualified issuer adopts an official intent to reimburse the original expenditure with such proceeds, and

(iii) the reimbursement is made not later than 18 months after the date the original expenditure is paid.

(D) Treatment of changes in use

For purposes of paragraph (1)(B), the proceeds of an issue shall not be treated as used for a qualified project to the extent that a qualified borrower or qualified issuer takes any action within its control which causes such proceeds not to be used for a qualified project. The

Secretary shall prescribe regulations specifying remedial actions that may be taken (including conditions to taking such remedial actions) to prevent an action described in the preceding sentence from causing a bond to fail to be a clean renewable energy bond.

(e) Maturity limitations

(1) Duration of term

A bond shall not be treated as a clean renewable energy bond if the maturity of such bond exceeds the maximum term determined by the Secretary under paragraph (2) with respect to such bond.

(2) Maximum term

During each calendar month, the Secretary shall determine the maximum term permitted under this paragraph for bonds issued during the following calendar month. Such maximum term shall be the term which the Secretary estimates will result in the present value of the obligation to repay the principal on the bond being equal to 50 percent of the face amount of such bond. Such present value shall be determined without regard to the requirements of subsection (l)(6) and using as a discount rate the average annual interest rate of tax-exempt obligations having a term of 10 years or more which are issued during the month. If the term as so determined is not a multiple of a whole year, such term shall be rounded to the next highest whole year.

(f) Limitation on amount of bonds designated

(1) National limitation

There is a national clean renewable energy bond limitation of $1,200,000,000.

(2) Allocation by Secretary

The Secretary shall allocate the amount described in paragraph (1) among qualified projects in such manner as the Secretary determines appropriate, except that the Secretary may not allocate more than $750,000,000 of the national clean renewable energy bond limitation to finance qualified projects of qualified borrowers which are governmental bodies.

(g) Credit included in gross income

Gross income includes the amount of the credit allowed to the taxpayer under this section (determined without regard to subsection (c)) and the amount so included shall be treated as interest income.

(h) Special rules relating to expenditures

(1) In general

An issue shall be treated as meeting the requirements of this subsection if, as of the date of issuance, the qualified issuer reasonably expects—

(A) at least 95 percent of the proceeds of such issue are to be spent for one or more qualified projects within the 5-year period beginning on the date of issuance of the clean energy bond,

(B) a binding commitment with a third party to spend at least 10 percent of the proceeds of such issue will be incurred within the 6-month period beginning on the date of issuance of the clean energy bond or, in the case of a clean energy bond the proceeds of which are to be loaned to two or more qualified borrowers, such binding commitment will be incurred within the 6-month period beginning on the date of the loan of such proceeds to a qualified borrower, and

(C) such projects will be completed with due diligence and the proceeds of such issue will be spent with due diligence.

(2) Extension of period

Upon submission of a request prior to the expiration of the period described in paragraph (1)(A), the Secretary may extend such period if the qualified issuer establishes that the failure to satisfy the 5-year requirement is due to reasonable cause and the related projects will continue to proceed with due diligence.

(3) Failure to spend required amount of bond proceeds within 5 years

To the extent that less than 95 percent of the proceeds of such issue are expended by the close of the 5-year period beginning on the date of issuance (or if an extension has been obtained under paragraph (2), by the close of the extended period), the qualified issuer shall redeem all of the nonqualified bonds within 90 days after the end of such period. For purposes of this paragraph, the amount of the nonqualified bonds required to be redeemed shall be determined in the same manner as under section 142.

(i) Special rules relating to arbitrage

A bond which is part of an issue shall not be treated as a clean renewable energy bond unless, with respect to the issue of which the bond is a part, the qualified issuer satisfies the arbitrage requirements of section 148 with respect to proceeds of the issue.

(j) Cooperative electric company; qualified energy tax credit bond lender; governmental body; qualified borrower

For purposes of this section—

(1) Cooperative electric company

The term "cooperative electric company" means a mutual or cooperative electric company described in section 501(c)(12) or section 1381(a)(2)(C), or a not-for-profit electric utility which has received a loan or loan guarantee under the Rural Electrification Act.

(2) Clean renewable energy bond lender

The term "clean renewable energy bond lender" means a lender which is a cooperative which is owned by, or has outstanding loans to, 100 or more cooperative electric companies and is in existence on February 1, 2002, and shall include any affiliated entity which is controlled by such lender.

(3) Governmental body

The term "governmental body" means any State, territory, possession of the United States, the District of Columbia, Indian tribal government, and any political subdivision thereof.

(4) Qualified issuer

The term "qualified issuer" means—

(A) a clean renewable energy bond lender,

(B) a cooperative electric company, or

(C) a governmental body.

(5) Qualified borrower

The term "qualified borrower" means—

(A) a mutual or cooperative electric company described in section 501(c)(12) or 1381(a)(2)(C), or

(B) a governmental body.

(k) Special rules relating to pool bonds

No portion of a pooled financing bond may be allocable to any loan unless the borrower has entered into a written loan commitment for such portion prior to the issue date of such issue.

(l) Other definitions and special rules

For purposes of this section—

(1) Bond

The term "bond" includes any obligation.

(2) Pooled financing bond

The term "pooled financing bond" shall have the meaning given such term by section 149(f)(6)(A).

(3) Partnership; S corporation; and other pass-thru entities

(A) In general

Under regulations prescribed by the Secretary, in the case of a partnership, trust, S corporation, or other pass-thru entity, rules similar to the rules of section 41(g) shall apply with respect to the credit allowable under subsection (a).

(B) No basis adjustment

In the case of a bond held by a partnership or an S corporation, rules similar to the rules under section 1397E(l) shall apply.

(4) Ratable principal amortization required

A bond shall not be treated as a clean renewable energy bond unless it is part of an issue which provides for an equal amount of principal to be paid by the qualified issuer during each calendar year that the issue is outstanding.

(5) Reporting

Issuers of clean renewable energy bonds shall submit reports similar to the reports required under section 149(e).

(m) Termination

This section shall not apply with respect to any bond issued after December 31, 2009.

(Added Pub. L. 109–58, title XIII, §1303(a), Aug. 8, 2005, 119 Stat. 992; amended Pub. L. 109–135, title I, §101(b)(1), title IV, §402(c)(1), Dec. 21, 2005, 119 Stat. 2593, 2610; Pub. L. 109–222, title V, §508(d)(3), May 17, 2006, 120 Stat. 362; Pub. L. 109–432, div. A, title I, §107(b)(2), title II, §202(a), Dec. 20, 2006, 120 Stat. 2939, 2944; Pub. L. 110–234, title XV, §15316(c)(1), May 22, 2008, 122 Stat. 1511; Pub. L. 110–246, §4(a), title XV, §15316(c)(1), June 18, 2008, 122 Stat. 1664, 2273; Pub. L. 110–343, div. B, title I, §107(c), Oct. 3, 2008, 122 Stat. 3819; Pub. L. 111–5, div. B, title I, §§1531(c)(3), 1541(b)(1), Feb. 17, 2009, 123 Stat. 360, 362.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (d)(2)(B), (C), is the date of enactment of Pub. L. 109–58, which was approved Aug. 8, 2005.

The Rural Electrification Act, referred to in subsec. (j)(1), probably means the Rural Electrification Act of 1936, act May 20, 1936, ch. 432, 49 Stat. 1363, as amended, which is classified generally to chapter 31 (§901 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 901 of Title 7 and Tables.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2009—Subsec. (c)(2). Pub. L. 111–5, §1531(c)(3), substituted ", I, and J" for "and I".

Subsec. (l)(4) to (6). Pub. L. 111–5, §1541(b)(1), redesignated pars. (5) and (6) as (4) and (5), respectively, and struck out former par. (4). Prior to amendment, text read as follows: "If any clean renewable energy bond is held by a regulated investment company, the credit determined under subsection (a) shall be allowed to shareholders of such company under procedures prescribed by the Secretary."

2008—Subsec. (c)(2). Pub. L. 110–246, §15316(c)(1), substituted "subparts C and I" for "subpart C".

Subsec. (m). Pub. L. 110–343 substituted "December 31, 2009" for "December 31, 2008".

2006—Subsec. (f)(1). Pub. L. 109–432, §202(a)(1), substituted "$1,200,000,000" for "$800,000,000".

Subsec. (f)(2). Pub. L. 109–432, §202(a)(2), substituted "$750,000,000" for "$500,000,000".

Subsec. (l)(2). Pub. L. 109–222 substituted "section 149(f)(6)(A)" for "section 149(f)(4)(A)".

Subsec. (l)(3)(B). Pub. L. 109–432, §107(b)(2), substituted "1397E(l)" for "1397E(i)".

Subsec. (m). Pub. L. 109–432, §202(a)(3), substituted "2008" for "2007".

2005—Subsec. (c)(2). Pub. L. 109–135, §101(b)(1), inserted ", section 1400N(l)," after "subpart C".

Subsec. (l)(5) to (7). Pub. L. 109–135, §402(c)(1), redesignated pars. (6) and (7) as (5) and (6), respectively, and struck out heading and text of former par. (5). Text read as follows: "Solely for purposes of sections 6654

and 6655, the credit allowed by this section (determined without regard to subsection (c)) to a taxpayer by reason of holding a clean renewable energy bond on a credit allowance date shall be treated as if it were a payment of estimated tax made by the taxpayer on such date."

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, §1531(e), Feb. 17, 2009, 123 Stat. 360, provided that: "The amendments made by this section [enacting subpart J of this part and section 6431 of this title and amending this section, sections 54A, 1397E, 1400N, 6211, and 6401 of this title, and section 1324 of Title 31, Money and Finance] shall apply to obligations issued after the date of the enactment of this Act [Feb. 17, 2009]."

Pub. L. 111–5, div. B, title I, §1541(c), Feb. 17, 2009, 123 Stat. 362, provided that: "The amendments made by this section [enacting section 853A of this title and amending this section and section 54A of this title] shall apply to taxable years ending after the date of the enactment of this Act [Feb. 17, 2009]."

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title I, §107(d), Oct. 3, 2008, 122 Stat. 3819, provided that: "The amendments made by this section [enacting section 54C of this title and amending this section and section 54A of this title] shall apply to obligations issued after the date of the enactment of this Act [Oct. 3, 2008]."

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Pub. L. 110–234, title XV, §15316(d), May 22, 2008, 122 Stat. 1512, and Pub. L. 110–246, §4(a), title XV, §15316(d), June 18, 2008, 122 Stat. 1664, 2274, provided that: "The amendments made by this section [enacting subpart I (§54A et seq.) of part IV of subchapter A of this chapter and amending this section, sections 1397E, 1400N, 6049, and 6401 of this title, and section 1324 of Title 31, Money and Finance] shall apply to obligations issued after the date of the enactment of this Act [June 18, 2008]."

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

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 107(b)(2) of Pub. L. 109–432 applicable to obligations issued after Dec. 20, 2006, pursuant to allocations of the national zone academy bond limitation for calendar years after 2005, see section 107(c) of Pub. L. 109–432, set out as a note under section 1397E of this title.

Pub. L. 109–432, div. A, title II, §202(b), Dec. 20, 2006, 120 Stat. 2945, provided that:

"(1) IN GENERAL.—The amendments made by paragraphs (1) and (3) of subsection (a) [amending this section] shall apply to bonds issued after December 31, 2006.

"(2) ALLOCATIONS.—The amendment made by subsection (a)(2) [amending this section] shall apply to allocations or reallocations after December 31, 2006."

Pub. L. 109–222, title V, §508(e), May 17, 2006, 120 Stat. 362, provided that: "The amendments made by this section [amending this section and sections 148 and 149 of this title] shall apply to bonds issued after the date of the enactment of this Act [May 17, 2006]."

EFFECTIVE DATE OF 2005 AMENDMENTS

Amendment by section 101(b)(1) of Pub. L. 109–135 applicable to taxable years ending on or after Aug. 28, 2005, see section 101(c)(1) of Pub. L. 109–135, set out as an Effective Date note under section 1400N of this title.

Amendment by section 402(c) of Pub. L. 109–135 effective as if included in the provision of the Energy Policy Act of 2005, Pub. L. 109–58, to which such amendment relates, see section 402(m)(1) of Pub. L. 109–135, set out as an Effective and Termination Dates of 2005 Amendments note under section 23 of this title.

EFFECTIVE DATE

Pub. L. 109–58, title XIII, §1303(e), Aug. 8, 2005, 119 Stat. 997, as amended by Pub. L. 109–135, title IV, §402(c)(2), Dec. 21, 2005, 119 Stat. 2610, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this section and amending sections 1397E, 6049, and 6401 of this title] shall apply to bonds issued after December 31, 2005.

"(2) SUBSECTION (C).—The amendments made by subsection (c) [amending sections 1397E and 6401 of this title] shall apply to taxable years beginning after December 31, 2005."

REGULATIONS

Pub. L. 109–58, title XIII, §1303(d), Aug. 8, 2005, 119 Stat. 997, provided that: "The Secretary of the Treasury shall issue regulations required under section 54 of the Internal Revenue Code of 1986 (as added by this section) not later than 120 days after the date of the enactment of this Act [Aug. 8, 2005]."

SUBPART I—QUALIFIED TAX CREDIT BONDS

Sec.

54A. Credit to holders of qualified tax credit bonds.

54B. Qualified forestry conservation bonds.

54C. Qualified clean renewable energy bonds.[1]

54D. Qualified energy conservation bonds.

54E. Qualified zone academy bonds.

54F. Qualified school construction bonds.

AMENDMENTS

2009—Pub. L. 111–5, div. B, title I, §1521(b)(3), Feb. 17, 2009, 123 Stat. 357, added item 54F.

2008—Pub. L. 110–343, div. B, title I, §107(b)(3), title III, §301(b)(3), div. C, title III, §313(b)(4), Oct. 3, 2008, 122 Stat. 3819, 3844, 3872, added items 54C to 54E.

[1] *So in original. Does not conform to section catchline.*

§54A. Credit to holders of qualified tax credit bonds

(a) Allowance of credit

If a taxpayer holds a qualified tax credit bond on one or more credit allowance dates of the bond during any taxable year, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of the credits determined under subsection (b) with respect to such dates.

(b) Amount of credit

(1) In general

The amount of the credit determined under this subsection with respect to any credit allowance date for a qualified tax credit bond is 25 percent of the annual credit determined with respect to such bond.

(2) Annual credit

The annual credit determined with respect to any qualified tax credit bond is the product of—

(A) the applicable credit rate, multiplied by

(B) the outstanding face amount of the bond.

(3) Applicable credit rate

For purposes of paragraph (2), the applicable credit rate is the rate which the Secretary estimates will permit the issuance of qualified tax credit bonds with a specified maturity or redemption date without discount and without interest cost to the qualified issuer. The applicable credit rate with respect to any qualified tax credit bond shall be determined as of the first day on which there is a binding, written contract for the sale or exchange of the bond.

(4) Special rule for issuance and redemption

In the case of a bond which is issued during the 3-month period ending on a credit allowance date, the amount of the credit determined under this subsection with respect to such credit

allowance date shall be a ratable portion of the credit otherwise determined based on the portion of the 3-month period during which the bond is outstanding. A similar rule shall apply when the bond is redeemed or matures.

(c) Limitation based on amount of tax

(1) In general

The credit allowed under subsection (a) for any taxable year shall not exceed the excess of—

(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

(B) the sum of the credits allowable under this part (other than subparts C and J and this subpart).

(2) Carryover of unused credit

If the credit allowable under subsection (a) exceeds the limitation imposed by paragraph (1) for such taxable year, such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year (determined before the application of paragraph (1) for such succeeding taxable year).

(d) Qualified tax credit bond

For purposes of this section—

(1) Qualified tax credit bond

The term "qualified tax credit bond" means—

(A) a qualified forestry conservation bond,

(B) a new clean renewable energy bond,

(C) a qualified energy conservation bond,

(D) a qualified zone academy bond, or

(E) a qualified school construction bond,

which is part of an issue that meets requirements of paragraphs (2), (3), (4), (5), and (6).

(2) Special rules relating to expenditures

(A) In general

An issue shall be treated as meeting the requirements of this paragraph if, as of the date of issuance, the issuer reasonably expects—

(i) 100 percent or more of the available project proceeds to be spent for 1 or more qualified purposes within the 3-year period beginning on such date of issuance, and

(ii) a binding commitment with a third party to spend at least 10 percent of such available project proceeds will be incurred within the 6-month period beginning on such date of issuance.

(B) Failure to spend required amount of bond proceeds within 3 years

(i) In general

To the extent that less than 100 percent of the available project proceeds of the issue are expended by the close of the expenditure period for 1 or more qualified purposes, the issuer shall redeem all of the nonqualified bonds within 90 days after the end of such period. For purposes of this paragraph, the amount of the nonqualified bonds required to be redeemed shall be determined in the same manner as under section 142.

(ii) Expenditure period

For purposes of this subpart, the term "expenditure period" means, with respect to any issue, the 3-year period beginning on the date of issuance. Such term shall include any extension of such period under clause (iii).

(iii) Extension of period

Upon submission of a request prior to the expiration of the expenditure period (determined without regard to any extension under this clause), the Secretary may extend such period if the issuer establishes that the failure to expend the proceeds within the original expenditure period is due to reasonable cause and the expenditures for qualified purposes will continue to proceed with due diligence.

(C) Qualified purpose

For purposes of this paragraph, the term "qualified purpose" means—

(i) in the case of a qualified forestry conservation bond, a purpose specified in section 54B(e),

(ii) in the case of a new clean renewable energy bond, a purpose specified in section 54C(a)(1),

(iii) in the case of a qualified energy conservation bond, a purpose specified in section 54D(a)(1),

(iv) in the case of a qualified zone academy bond, a purpose specified in section 54E(a)(1), and

(v) in the case of a qualified school construction bond, a purpose specified in section 54F(a)(1).

(D) Reimbursement

For purposes of this subtitle, available project proceeds of an issue shall be treated as spent for a qualified purpose if such proceeds are used to reimburse the issuer for amounts paid for a qualified purpose after the date that the Secretary makes an allocation of bond limitation with respect to such issue, but only if—

(i) prior to the payment of the original expenditure, the issuer declared its intent to reimburse such expenditure with the proceeds of a qualified tax credit bond,

(ii) not later than 60 days after payment of the original expenditure, the issuer adopts an official intent to reimburse the original expenditure with such proceeds, and

(iii) the reimbursement is made not later than 18 months after the date the original expenditure is paid.

(3) Reporting

An issue shall be treated as meeting the requirements of this paragraph if the issuer of qualified tax credit bonds submits reports similar to the reports required under section 149(e).

(4) Special rules relating to arbitrage

(A) In general

An issue shall be treated as meeting the requirements of this paragraph if the issuer satisfies the requirements of section 148 with respect to the proceeds of the issue.

(B) Special rule for investments during expenditure period

An issue shall not be treated as failing to meet the requirements of subparagraph (A) by reason of any investment of available project proceeds during the expenditure period.

(C) Special rule for reserve funds

An issue shall not be treated as failing to meet the requirements of subparagraph (A) by reason of any fund which is expected to be used to repay such issue if—

(i) such fund is funded at a rate not more rapid than equal annual installments,

(ii) such fund is funded in a manner reasonably expected to result in an amount not greater than an amount necessary to repay the issue, and

(iii) the yield on such fund is not greater than the discount rate determined under paragraph (5)(B) with respect to the issue.

(5) Maturity limitation

(A) In general

An issue shall be treated as meeting the requirements of this paragraph if the maturity of any bond which is part of such issue does not exceed the maximum term determined by the Secretary under subparagraph (B).

(B) Maximum term

During each calendar month, the Secretary shall determine the maximum term permitted under this paragraph for bonds issued during the following calendar month. Such maximum term shall be the term which the Secretary estimates will result in the present value of the obligation to repay the principal on the bond being equal to 50 percent of the face amount of such bond. Such present value shall be determined using as a discount rate the average annual interest rate of tax-exempt obligations having a term of 10 years or more which are issued during the month. If the term as so determined is not a multiple of a whole year, such term shall be rounded to the next highest whole year.

(6) Prohibition on financial conflicts of interest

An issue shall be treated as meeting the requirements of this paragraph if the issuer certifies that—

(A) applicable State and local law requirements governing conflicts of interest are satisfied with respect to such issue, and

(B) if the Secretary prescribes additional conflicts of interest rules governing the appropriate Members of Congress, Federal, State, and local officials, and their spouses, such additional rules are satisfied with respect to such issue.

(e) Other definitions

For purposes of this subchapter—

(1) Credit allowance date

The term "credit allowance date" means—

(A) March 15,

(B) June 15,

(C) September 15, and

(D) December 15.

Such term includes the last day on which the bond is outstanding.

(2) Bond

The term "bond" includes any obligation.

(3) State

The term "State" includes the District of Columbia and any possession of the United States.

(4) Available project proceeds

The term "available project proceeds" means—

(A) the excess of—

(i) the proceeds from the sale of an issue, over

(ii) the issuance costs financed by the issue (to the extent that such costs do not exceed 2 percent of such proceeds), and

(B) the proceeds from any investment of the excess described in subparagraph (A).

(f) Credit treated as interest

For purposes of this subtitle, the credit determined under subsection (a) shall be treated as interest which is includible in gross income.

(g) S Corporations and partnerships

In the case of a tax credit bond held by an S corporation or partnership, the allocation of the credit allowed by this section to the shareholders of such corporation or partners of such partnership shall

be treated as a distribution.

(h) Bonds held by real estate investment trusts

If any qualified tax credit bond is held by a real estate investment trust, the credit determined under subsection (a) shall be allowed to beneficiaries of such trust (and any gross income included under subsection (f) with respect to such credit shall be distributed to such beneficiaries) under procedures prescribed by the Secretary.

(i) Credits may be stripped

Under regulations prescribed by the Secretary—

(1) In general

There may be a separation (including at issuance) of the ownership of a qualified tax credit bond and the entitlement to the credit under this section with respect to such bond. In case of any such separation, the credit under this section shall be allowed to the person who on the credit allowance date holds the instrument evidencing the entitlement to the credit and not to the holder of the bond.

(2) Certain rules to apply

In the case of a separation described in paragraph (1), the rules of section 1286 shall apply to the qualified tax credit bond as if it were a stripped bond and to the credit under this section as if it were a stripped coupon.

(Added Pub. L. 110–234, title XV, §15316(a), May 22, 2008, 122 Stat. 1505, and Pub. L. 110–246, §4(a), title XV, §15316(a), June 18, 2008, 122 Stat. 1664, 2267; amended Pub. L. 110–343, div. B, title I, §107(b)(1), (2), title III, §301(b)(1), (2), div. C, title III, §313(b)(1), (2), Oct. 3, 2008, 122 Stat. 3818, 3819, 3843, 3844, 3872; Pub. L. 111–5, div. B, title I, §§1521(b)(1), (2), 1531(c)(2), 1541(b)(2), Feb. 17, 2009, 123 Stat. 357, 360, 362.)

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 enacted identical sections. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2009—Subsec. (c)(1)(B). Pub. L. 111–5, §1531(c)(2), substituted "subparts C and J" for "subpart C".

Subsec. (d)(1)(E). Pub. L. 111–5, §1521(b)(1), added subpar. (E).

Subsec. (d)(2)(C)(v). Pub. L. 111–5, §1521(b)(2), added cl. (v).

Subsec. (h). Pub. L. 111–5, §1541(b)(2), amended subsec. (h) generally. Prior to amendment, text read as follows: "If any qualified tax credit bond is held by a regulated investment company or a real estate investment trust, the credit determined under subsection (a) shall be allowed to shareholders of such company or beneficiaries of such trust (and any gross income included under subsection (f) with respect to such credit shall be treated as distributed to such shareholders or beneficiaries) under procedures prescribed by the Secretary."

2008—Subsec. (d)(1). Pub. L. 110–343, §301(b)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "The term 'qualified tax credit bond' means—

"(A) a qualified forestry conservation bond, or

"(B) a new clean renewable energy bond,

which is part of an issue that meets requirements of paragraphs (2), (3), (4), (5), and (6)."

Pub. L. 110–343, §107(b)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "The term 'qualified tax credit bond' means a qualified forestry conservation bond which is part of an issue that meets the requirements of paragraphs (2), (3), (4), (5), and (6)."

Subsec. (d)(1)(D). Pub. L. 110–343, §313(b)(1), added subpar. (D).

Subsec. (d)(2)(C). Pub. L. 110–343, §301(b)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "For purposes of this paragraph, the term 'qualified purpose' means—

"(i) in the case of a qualified forestry conservation bond, a purpose specified in section 54B(e), and

"(ii) in the case of a new clean renewable energy bond, a purpose specified in section 54C(a)(1)."

Pub. L. 110–343, §107(b)(2), reenacted heading without change and amended text generally. Prior to

amendment, text read as follows: "For purposes of this paragraph, the term 'qualified purpose' means a purpose specified in section 54B(e)."

Subsec. (d)(2)(C)(iv). Pub. L. 110–343, §313(b)(2), added cl. (iv).

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, §1521(c), Feb. 17, 2009, 123 Stat. 357, provided that: "The amendments made by this section [enacting section 54F of this title and amending this section] shall apply to obligations issued after the date of the enactment of this Act [Feb. 17, 2009]."

Amendment by section 1531(c)(2) of Pub. L. 111–5 applicable to obligations issued after Feb. 17, 2009, see section 1531(e) of Pub. L. 111–5, set out as a note under section 54 of this title.

Amendment by section 1541(b)(2) of Pub. L. 111–5 applicable to taxable years ending after Feb. 17, 2009, see section 1541(c) of Pub. L. 111–5, set out as a note under section 54 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by section 107(b)(1), (2) of Pub. L. 110–343 applicable to obligations issued after Oct. 3, 2008, see section 107(d) of title I of div. B of Pub. L. 110–343, set out as a note under section 54 of this title.

Pub. L. 110–343, div. B, title III, §301(c), Oct. 3, 2008, 122 Stat. 3844, provided that: "The amendments made by this section [enacting section 54D of this title and amending this section] shall apply to obligations issued after the date of the enactment of this Act [Oct. 3, 2008]."

Pub. L. 110–343, div. C, title III, §313(c), Oct. 3, 2008, 122 Stat. 3872, provided that: "The amendments made by this section [enacting section 54E of this title and amending this section and section 1397E of this title] shall apply to obligations issued after the date of the enactment of this Act [Oct. 3, 2008]."

EFFECTIVE DATE

Enactment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.

Section applicable to obligations issued after June 18, 2008, see section 15316(d) of Pub. L. 110–246, set out as an Effective Date of 2008 Amendment note under section 54 of this title.

§54B. Qualified forestry conservation bonds

(a) Qualified forestry conservation bond

For purposes of this subchapter, the term "qualified forestry conservation bond" means any bond issued as part of an issue if—

(1) 100 percent of the available project proceeds of such issue are to be used for one or more qualified forestry conservation purposes,

(2) the bond is issued by a qualified issuer, and

(3) the issuer designates such bond for purposes of this section.

(b) Limitation on amount of bonds designated

The maximum aggregate face amount of bonds which may be designated under subsection (a) by any issuer shall not exceed the limitation amount allocated to such issuer under subsection (d).

(c) National limitation on amount of bonds designated

There is a national qualified forestry conservation bond limitation of $500,000,000.

(d) Allocations

(1) In general

The Secretary shall make allocations of the amount of the national qualified forestry conservation bond limitation described in subsection (c) among qualified forestry conservation purposes in such manner as the Secretary determines appropriate so as to ensure that all of such limitation is allocated before the date which is 24 months after the date of the enactment of this section.

(2) Solicitation of applications

The Secretary shall solicit applications for allocations of the national qualified forestry conservation bond limitation described in subsection (c) not later than 90 days after the date of the enactment of this section.

(e) Qualified forestry conservation purpose

For purposes of this section, the term "qualified forestry conservation purpose" means the acquisition by a State or any political subdivision or instrumentality thereof or a 501(c)(3) organization (as defined in section 150(a)(4)) from an unrelated person of forest and forest land that meets the following qualifications:

(1) Some portion of the land acquired must be adjacent to United States Forest Service Land.

(2) At least half of the land acquired must be transferred to the United States Forest Service at no net cost to the United States and not more than half of the land acquired may either remain with or be conveyed to a State.

(3) All of the land must be subject to a native fish habitat conservation plan approved by the United States Fish and Wildlife Service.

(4) The amount of acreage acquired must be at least 40,000 acres.

(f) Qualified issuer

For purposes of this section, the term "qualified issuer" means a State or any political subdivision or instrumentality thereof or a 501(c)(3) organization (as defined in section 150(a)(4)).

(g) Special arbitrage rule

In the case of any qualified forestry conservation bond issued as part of an issue, section 54A(d)(4)(C) shall be applied to such issue without regard to clause (i).

(h) Election to treat 50 percent of bond allocation as payment of tax

(1) In general

If—

(A) a qualified issuer receives an allocation of any portion of the national qualified forestry conservation bond limitation described in subsection (c), and

(B) the qualified issuer elects the application of this subsection with respect to such allocation,

then the qualified issuer (without regard to whether the issuer is subject to tax under this chapter) shall be treated as having made a payment against the tax imposed by this chapter, for the taxable year preceding the taxable year in which the allocation is received, in an amount equal to 50 percent of the amount of such allocation.

(2) Treatment of deemed payment

(A) In general

Notwithstanding any other provision of this title, the Secretary shall not use the payment of tax described in paragraph (1) as an offset or credit against any tax liability of the qualified issuer but shall refund such payment to such issuer.

(B) No interest

Except as provided in paragraph (3)(A), the payment described in paragraph (1) shall not be taken into account in determining any amount of interest under this title.

(3) Requirement for, and effect of, election

(A) Requirement

No election under this subsection shall take effect unless the qualified issuer certifies to the Secretary that any payment of tax refunded to the issuer under this subsection will be used exclusively for 1 or more qualified forestry conservation purposes. If the qualified issuer fails to use any portion of such payment for such purpose, the issuer shall be liable to the United States in an amount equal to such portion, plus interest at the overpayment rate under section 6621 for

the period from the date such portion was refunded to the date such amount is paid. Any such amount shall be assessed and collected in the same manner as tax imposed by this chapter, except that subchapter B of chapter 63 (relating to deficiency procedures) shall not apply in respect of such assessment or collection.

(B) Effect of election on allocation

If a qualified issuer makes the election under this subsection with respect to any allocation—

(i) the issuer may issue no bonds pursuant to the allocation, and

(ii) the Secretary may not reallocate such allocation for any other purpose.

(Added Pub. L. 110–234, title XV, §15316(a), May 22, 2008, 122 Stat. 1509, and Pub. L. 110–246, §4(a), title XV, §15316(a), June 18, 2008, 122 Stat. 1664, 2271.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (d), is the date of enactment of Pub. L. 110–246, which was approved June 18, 2008.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 enacted identical sections. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246.

EFFECTIVE DATE

Enactment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.

Section applicable to obligations issued after June 18, 2008, see section 15316(d) of Pub. L. 110–246, set out as an Effective Date of 2008 Amendment note under section 54 of this title.

§54C. New clean renewable energy bonds

(a) New clean renewable energy bond

For purposes of this subpart, the term "new clean renewable energy bond" means any bond issued as part of an issue if—

(1) 100 percent of the available project proceeds of such issue are to be used for capital expenditures incurred by governmental bodies, public power providers, or cooperative electric companies for one or more qualified renewable energy facilities,

(2) the bond is issued by a qualified issuer, and

(3) the issuer designates such bond for purposes of this section.

(b) Reduced credit amount

The annual credit determined under section 54A(b) with respect to any new clean renewable energy bond shall be 70 percent of the amount so determined without regard to this subsection.

(c) Limitation on amount of bonds designated

(1) In general

The maximum aggregate face amount of bonds which may be designated under subsection (a) by any issuer shall not exceed the limitation amount allocated under this subsection to such issuer.

(2) National limitation on amount of bonds designated

There is a national new clean renewable energy bond limitation of $800,000,000 which shall be allocated by the Secretary as provided in paragraph (3), except that—

(A) not more than 331/3 percent thereof may be allocated to qualified projects of public power providers,

(B) not more than 331/3 percent thereof may be allocated to qualified projects of governmental bodies, and

(C) not more than 331/3 percent thereof may be allocated to qualified projects of cooperative

electric companies.

(3) Method of allocation

(A) Allocation among public power providers

After the Secretary determines the qualified projects of public power providers which are appropriate for receiving an allocation of the national new clean renewable energy bond limitation, the Secretary shall, to the maximum extent practicable, make allocations among such projects in such manner that the amount allocated to each such project bears the same ratio to the cost of such project as the limitation under paragraph (2)(A) bears to the cost of all such projects.

(B) Allocation among governmental bodies and cooperative electric companies

The Secretary shall make allocations of the amount of the national new clean renewable energy bond limitation described in paragraphs (2)(B) and (2)(C) among qualified projects of governmental bodies and cooperative electric companies, respectively, in such manner as the Secretary determines appropriate.

(4) Additional limitation

The national new clean renewable energy bond limitation shall be increased by $1,600,000,000. Such increase shall be allocated by the Secretary consistent with the rules of paragraphs (2) and (3).

(d) Definitions

For purposes of this section—

(1) Qualified renewable energy facility

The term "qualified renewable energy facility" means a qualified facility (as determined under section 45(d) without regard to paragraphs (8) and (10) thereof and to any placed in service date) owned by a public power provider, a governmental body, or a cooperative electric company.

(2) Public power provider

The term "public power provider" means a State utility with a service obligation, as such terms are defined in section 217 of the Federal Power Act (as in effect on the date of the enactment of this paragraph).

(3) Governmental body

The term "governmental body" means any State or Indian tribal government, or any political subdivision thereof.

(4) Cooperative electric company

The term "cooperative electric company" means a mutual or cooperative electric company described in section 501(c)(12) or section 1381(a)(2)(C).

(5) Clean renewable energy bond lender

The term "clean renewable energy bond lender" means a lender which is a cooperative which is owned by, or has outstanding loans to, 100 or more cooperative electric companies and is in existence on February 1, 2002, and shall include any affiliated entity which is controlled by such lender.

(6) Qualified issuer

The term "qualified issuer" means a public power provider, a cooperative electric company, a governmental body, a clean renewable energy bond lender, or a not-for-profit electric utility which has received a loan or loan guarantee under the Rural Electrification Act.

(Added Pub. L. 110–343, div. B, title I, §107(a), Oct. 3, 2008, 122 Stat. 3817; amended Pub. L. 111–5, div. B, title I, §1111, Feb. 17, 2009, 123 Stat. 322.)

REFERENCES IN TEXT

Section 217 of the Federal Power Act, referred to in subsec. (d)(2), is classified to section 824q of Title 16, Conservation.

The date of the enactment of this paragraph, referred to in subsec. (d)(2), is the date of enactment of Pub. L. 110–343, which was approved Oct. 3, 2008.

The Rural Electrification Act, referred to in subsec. (d)(6), probably means the Rural Electrification Act of 1936, act May 20, 1936, ch. 432, 49 Stat. 1363, which is classified generally to chapter 31 (§901 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 901 of Title 7 and Tables.

AMENDMENTS

2009—Subsec. (c)(4). Pub. L. 111–5 added par. (4).

EFFECTIVE DATE

Section applicable to obligations issued after Oct. 3, 2008, see section 107(d) of Pub. L. 110–343, set out as an Effective Date of 2008 Amendment note under section 54 of this title.

APPLICATION OF CERTAIN LABOR STANDARDS TO PROJECTS FINANCED WITH CERTAIN TAX-FAVORED BONDS

Pub. L. 111–5, div. B, title I, §1601, Feb. 17, 2009, 123 Stat. 362, provided that: "Subchapter IV of chapter 31 of the [sic] title 40, United States Code, shall apply to projects financed with the proceeds of—

"(1) any new clean renewable energy bond (as defined in section 54C of the Internal Revenue Code of 1986) issued after the date of the enactment of this Act [Feb. 17, 2009],

"(2) any qualified energy conservation bond (as defined in section 54D of the Internal Revenue Code of 1986) issued after the date of the enactment of this Act,

"(3) any qualified zone academy bond (as defined in section 54E of the Internal Revenue Code of 1986) issued after the date of the enactment of this Act,

"(4) any qualified school construction bond (as defined in section 54F of the Internal Revenue Code of 1986), and

"(5) any recovery zone economic development bond (as defined in section 1400U–2 of the Internal Revenue Code of 1986)."

§54D. Qualified energy conservation bonds

(a) Qualified energy conservation bond

For purposes of this subchapter, the term "qualified energy conservation bond" means any bond issued as part of an issue if—

(1) 100 percent of the available project proceeds of such issue are to be used for one or more qualified conservation purposes,

(2) the bond is issued by a State or local government, and

(3) the issuer designates such bond for purposes of this section.

(b) Reduced credit amount

The annual credit determined under section 54A(b) with respect to any qualified energy conservation bond shall be 70 percent of the amount so determined without regard to this subsection.

(c) Limitation on amount of bonds designated

The maximum aggregate face amount of bonds which may be designated under subsection (a) by any issuer shall not exceed the limitation amount allocated to such issuer under subsection (e).

(d) National limitation on amount of bonds designated

There is a national qualified energy conservation bond limitation of $3,200,000,000.

(e) Allocations

(1) In general

The limitation applicable under subsection (d) shall be allocated by the Secretary among the States in proportion to the population of the States.

(2) Allocations to largest local governments

(A) In general

In the case of any State in which there is a large local government, each such local government shall be allocated a portion of such State's allocation which bears the same ratio to the State's allocation (determined without regard to this subparagraph) as the population of such large local government bears to the population of such State.

(B) Allocation of unused limitation to State

The amount allocated under this subsection to a large local government may be reallocated by such local government to the State in which such local government is located.

(C) Large local government

For purposes of this section, the term "large local government" means any municipality or county if such municipality or county has a population of 100,000 or more.

(3) Allocation to issuers; restriction on private activity bonds

Any allocation under this subsection to a State or large local government shall be allocated by such State or large local government to issuers within the State in a manner that results in not less than 70 percent of the allocation to such State or large local government being used to designate bonds which are not private activity bonds.

(4) Special rules for bonds to implement green community programs

In the case of any bond issued for the purpose of providing loans, grants, or other repayment mechanisms for capital expenditures to implement green community programs, such bond shall not be treated as a private activity bond for purposes of paragraph (3).

(f) Qualified conservation purpose

For purposes of this section—

(1) In general

The term "qualified conservation purpose" means any of the following:

(A) Capital expenditures incurred for purposes of—

(i) reducing energy consumption in publicly-owned buildings by at least 20 percent,

(ii) implementing green community programs (including the use of loans, grants, or other repayment mechanisms to implement such programs),

(iii) rural development involving the production of electricity from renewable energy resources, or

(iv) any qualified facility (as determined under section 45(d) without regard to paragraphs (8) and (10) thereof and without regard to any placed in service date).

(B) Expenditures with respect to research facilities, and research grants, to support research in—

(i) development of cellulosic ethanol or other nonfossil fuels,

(ii) technologies for the capture and sequestration of carbon dioxide produced through the use of fossil fuels,

(iii) increasing the efficiency of existing technologies for producing nonfossil fuels,

(iv) automobile battery technologies and other technologies to reduce fossil fuel consumption in transportation, or

(v) technologies to reduce energy use in buildings.

(C) Mass commuting facilities and related facilities that reduce the consumption of energy, including expenditures to reduce pollution from vehicles used for mass commuting.

(D) Demonstration projects designed to promote the commercialization of—

(i) green building technology,

(ii) conversion of agricultural waste for use in the production of fuel or otherwise,

(iii) advanced battery manufacturing technologies,

(iv) technologies to reduce peak use of electricity, or

(v) technologies for the capture and sequestration of carbon dioxide emitted from combusting fossil fuels in order to produce electricity.

(E) Public education campaigns to promote energy efficiency.

(2) Special rules for private activity bonds

For purposes of this section, in the case of any private activity bond, the term "qualified conservation purposes" shall not include any expenditure which is not a capital expenditure.

(g) Population

(1) In general

The population of any State or local government shall be determined for purposes of this section as provided in section 146(j) for the calendar year which includes the date of the enactment of this section.

(2) Special rule for counties

In determining the population of any county for purposes of this section, any population of such county which is taken into account in determining the population of any municipality which is a large local government shall not be taken into account in determining the population of such county.

(h) Application to Indian tribal governments

An Indian tribal government shall be treated for purposes of this section in the same manner as a large local government, except that—

(1) an Indian tribal government shall be treated for purposes of subsection (e) as located within a State to the extent of so much of the population of such government as resides within such State, and

(2) any bond issued by an Indian tribal government shall be treated as a qualified energy conservation bond only if issued as part of an issue the available project proceeds of which are used for purposes for which such Indian tribal government could issue bonds to which section 103(a) applies.

(Added Pub. L. 110–343, div. B, title III, §301(a), Oct. 3, 2008, 122 Stat. 3841; amended Pub. L. 111–5, div. B, title I, §1112, Feb. 17, 2009, 123 Stat. 322.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (g)(1), is the date of enactment of Pub. L. 110–343, which was approved Oct. 3, 2008.

AMENDMENTS

2009—Subsec. (d). Pub. L. 111–5, §1112(a), substituted "$3,200,000,000" for "$800,000,000".

Subsec. (e)(4). Pub. L. 111–5, §1112(b)(2), added par. (4).

Subsec. (f)(1)(A)(ii). Pub. L. 111–5, §1112(b)(1), inserted "(including the use of loans, grants, or other repayment mechanisms to implement such programs)" after "green community programs".

EFFECTIVE DATE

Section applicable to obligations issued after Oct. 3, 2008, see section 301(c) of title III of div. B of Pub. L. 110–343, set out as an Effective Date of 2008 Amendment note under section 54A of this title.

§54E. Qualified zone academy bonds

(a) Qualified zone academy bonds

For purposes of this subchapter, the term "qualified zone academy bond" means any bond issued as part of an issue if—

(1) 100 percent of the available project proceeds of such issue are to be used for a qualified purpose with respect to a qualified zone academy established by an eligible local education

agency,

(2) the bond is issued by a State or local government within the jurisdiction of which such academy is located, and

(3) the issuer—

(A) designates such bond for purposes of this section,

(B) certifies that it has written assurances that the private business contribution requirement of subsection (b) will be met with respect to such academy, and

(C) certifies that it has the written approval of the eligible local education agency for such bond issuance.

(b) Private business contribution requirement

For purposes of subsection (a), the private business contribution requirement of this subsection is met with respect to any issue if the eligible local education agency that established the qualified zone academy has written commitments from private entities to make qualified contributions having a present value (as of the date of issuance of the issue) of not less than 10 percent of the proceeds of the issue.

(c) Limitation on amount of bonds designated

(1) National limitation

There is a national zone academy bond limitation for each calendar year. Such limitation is $400,000,000 for 2008, $1,400,000,000 for 2009 and 2010, and $400,000,000 for 2011, 2012, and 2013 and, except as provided in paragraph (4), zero thereafter.

(2) Allocation of limitation

The national zone academy bond limitation for a calendar year shall be allocated by the Secretary among the States on the basis of their respective populations of individuals below the poverty line (as defined by the Office of Management and Budget). The limitation amount allocated to a State under the preceding sentence shall be allocated by the State education agency to qualified zone academies within such State.

(3) Designation subject to limitation amount

The maximum aggregate face amount of bonds issued during any calendar year which may be designated under subsection (a) with respect to any qualified zone academy shall not exceed the limitation amount allocated to such academy under paragraph (2) for such calendar year.

(4) Carryover of unused limitation

(A) In general

If for any calendar year—

(i) the limitation amount for any State, exceeds

(ii) the amount of bonds issued during such year which are designated under subsection (a) with respect to qualified zone academies within such State,

the limitation amount for such State for the following calendar year shall be increased by the amount of such excess.

(B) Limitation on carryover

Any carryforward of a limitation amount may be carried only to the first 2 years following the unused limitation year. For purposes of the preceding sentence, a limitation amount shall be treated as used on a first-in first-out basis.

(C) Coordination with section 1397E

Any carryover determined under section 1397E(e)(4) (relating to carryover of unused limitation) with respect to any State to calendar year 2008 or 2009 shall be treated for purposes

of this section as a carryover with respect to such State for such calendar year under subparagraph (A), and the limitation of subparagraph (B) shall apply to such carryover taking into account the calendar years to which such carryover relates.

(d) Definitions

For purposes of this section—

(1) Qualified zone academy

The term "qualified zone academy" means any public school (or academic program within a public school) which is established by and operated under the supervision of an eligible local education agency to provide education or training below the postsecondary level if—

(A) such public school or program (as the case may be) is designed in cooperation with business to enhance the academic curriculum, increase graduation and employment rates, and better prepare students for the rigors of college and the increasingly complex workforce,

(B) students in such public school or program (as the case may be) will be subject to the same academic standards and assessments as other students educated by the eligible local education agency,

(C) the comprehensive education plan of such public school or program is approved by the eligible local education agency, and

(D)(i) such public school is located in an empowerment zone or enterprise community (including any such zone or community designated after the date of the enactment of this section), or

(ii) there is a reasonable expectation (as of the date of issuance of the bonds) that at least 35 percent of the students attending such school or participating in such program (as the case may be) will be eligible for free or reduced-cost lunches under the school lunch program established under the National School Lunch Act.

(2) Eligible local education agency

For purposes of this section, the term "eligible local education agency" means any local educational agency as defined in section 9101 of the Elementary and Secondary Education Act of 1965.

(3) Qualified purpose

The term "qualified purpose" means, with respect to any qualified zone academy—

(A) rehabilitating or repairing the public school facility in which the academy is established,

(B) providing equipment for use at such academy,

(C) developing course materials for education to be provided at such academy, and

(D) training teachers and other school personnel in such academy.

(4) Qualified contributions

The term "qualified contribution" means any contribution (of a type and quality acceptable to the eligible local education agency) of—

(A) equipment for use in the qualified zone academy (including state-of-the-art technology and vocational equipment),

(B) technical assistance in developing curriculum or in training teachers in order to promote appropriate market driven technology in the classroom,

(C) services of employees as volunteer mentors,

(D) internships, field trips, or other educational opportunities outside the academy for students, or

(E) any other property or service specified by the eligible local education agency.

(Added Pub. L. 110–343, div. C, title III, §313(a), Oct. 3, 2008, 122 Stat. 3869; amended Pub. L. 111–5, div. B, title I, §1522(a), Feb. 17, 2009, 123 Stat. 358; Pub. L. 111–312, title VII, §758(a), Dec. 17, 2010, 124 Stat. 3322; Pub. L. 112–240, title III, §310(a), Jan. 2, 2013, 126 Stat. 2330.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (d)(1)(D)(i), is the date of enactment of Pub. L. 110–343, which was approved Oct. 3, 2008.

The National School Lunch Act, referred to in subsec. (d)(1)(D)(ii), probably means the Richard B. Russell National School Lunch Act, act June 4, 1946, ch. 281, 60 Stat. 230, which is classified generally to chapter 13 (§1751 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1751 of Title 42 and Tables.

Section 9101 of the Elementary and Secondary Education Act of 1965, referred to in subsec. (d)(2), is classified to section 7801 of Title 20, Education.

AMENDMENTS

2013—Subsec. (c)(1). Pub. L. 112–240 inserted ", 2012, and 2013" after "for 2011".

2010—Subsec. (c)(1). Pub. L. 111–312 substituted "2008," for "2008 and" and inserted "and $400,000,000 for 2011" after "2010,".

2009—Subsec. (c)(1). Pub. L. 111–5 substituted "and $1,400,000,000 for 2009 and 2010" for "and 2009".

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title III, §310(b), Jan. 2, 2013, 126 Stat. 2330, provided that: "The amendments made by this section [amending this section] shall apply to obligations issued after December 31, 2011."

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §758(c), Dec. 17, 2010, 124 Stat. 3323, provided that: "The amendments made by this section [amending this section and section 6431 of this title] shall apply to obligations issued after December 31, 2010."

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, §1522(b), Feb. 17, 2009, 123 Stat. 358, provided that: "The amendment made by this section [amending this section] shall apply to obligations issued after December 31, 2008."

EFFECTIVE DATE

Section applicable to obligations issued after Oct. 3, 2008, see section 313(c) of title III of div. C of Pub. L. 110–343, set out as an Effective Date of 2008 Amendment note under section 54A of this title.

§54F. Qualified school construction bonds

(a) Qualified school construction bond

For purposes of this subchapter, the term "qualified school construction bond" means any bond issued as part of an issue if—

(1) 100 percent of the available project proceeds of such issue are to be used for the construction, rehabilitation, or repair of a public school facility or for the acquisition of land on which such a facility is to be constructed with part of the proceeds of such issue,

(2) the bond is issued by a State or local government within the jurisdiction of which such school is located, and

(3) the issuer designates such bond for purposes of this section.

(b) Limitation on amount of bonds designated

The maximum aggregate face amount of bonds issued during any calendar year which may be designated under subsection (a) by any issuer shall not exceed the limitation amount allocated under subsection (d) for such calendar year to such issuer.

(c) National limitation on amount of bonds designated

There is a national qualified school construction bond limitation for each calendar year. Such limitation is—

(1) $11,000,000,000 for 2009,

(2) $11,000,000,000 for 2010, and

(3) except as provided in subsection (e), zero after 2010.

(d) Allocation of limitation

(1) Allocation among States

Except as provided in paragraph (2)(C), the limitation applicable under subsection (c) for any calendar year shall be allocated by the Secretary among the States in proportion to the respective amounts each such State is eligible to receive under section 1124 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6333) for the most recent fiscal year ending before such calendar year. The limitation amount allocated to a State under the preceding sentence shall be allocated by the State education agency (or such other agency as is authorized under State law to make such allocation) to issuers within such State.

(2) 40 percent of limitation allocated among largest school districts

(A) In general

40 percent of the limitation applicable under subsection (c) for any calendar year shall be allocated under subparagraph (B) by the Secretary among local educational agencies which are large local educational agencies for such year.

(B) Allocation formula

The amount to be allocated under subparagraph (A) for any calendar year shall be allocated among large local educational agencies in proportion to the respective amounts each such agency received under section 1124 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6333) for the most recent fiscal year ending before such calendar year.

(C) Reduction in State allocation

The allocation to any State under paragraph (1) shall be reduced by the aggregate amount of the allocations under this paragraph to large local educational agencies within such State.

(D) Allocation of unused limitation to State

The amount allocated under this paragraph to a large local educational agency for any calendar year may be reallocated by such agency to the State in which such agency is located for such calendar year. Any amount reallocated to a State under the preceding sentence may be allocated as provided in paragraph (1).

(E) Large local educational agency

For purposes of this paragraph, the term "large local educational agency" means, with respect to a calendar year, any local educational agency if such agency is—

(i) among the 100 local educational agencies with the largest numbers of children aged 5 through 17 from families living below the poverty level, as determined by the Secretary using the most recent data available from the Department of Commerce that are satisfactory to the Secretary, or

(ii) 1 of not more than 25 local educational agencies (other than those described in clause (i)) that the Secretary of Education determines (based on the most recent data available satisfactory to the Secretary) are in particular need of assistance, based on a low level of resources for school construction, a high level of enrollment growth, or such other factors as the Secretary deems appropriate.

(3) Allocations to certain possessions

The amount to be allocated under paragraph (1) to any possession of the United States other than Puerto Rico shall be the amount which would have been allocated if all allocations under paragraph (1) were made on the basis of respective populations of individuals below the poverty line (as defined by the Office of Management and Budget). In making other allocations, the amount to be allocated under paragraph (1) shall be reduced by the aggregate amount allocated under this paragraph to possessions of the United States.

(4) Allocations for Indian schools

In addition to the amounts otherwise allocated under this subsection, $200,000,000 for calendar year 2009, and $200,000,000 for calendar year 2010, shall be allocated by the Secretary of the

Interior for purposes of the construction, rehabilitation, and repair of schools funded by the Bureau of Indian Affairs. In the case of amounts allocated under the preceding sentence, Indian tribal governments (as defined in section 7701(a)(40)) shall be treated as qualified issuers for purposes of this subchapter.

(e) Carryover of unused limitation

If for any calendar year—

(1) the amount allocated under subsection (d) to any State, exceeds

(2) the amount of bonds issued during such year which are designated under subsection (a) pursuant to such allocation,

the limitation amount under such subsection for such State for the following calendar year shall be increased by the amount of such excess. A similar rule shall apply to the amounts allocated under paragraphs (2) and (4) of subsection (d).

(Added Pub. L. 111–5, div. B, title I, §1521(a), Feb. 17, 2009, 123 Stat. 355; amended Pub. L. 111–147, title III, §301(b), Mar. 18, 2010, 124 Stat. 78.)

AMENDMENTS

2010—Subsec. (d)(1). Pub. L. 111–147, §301(b)(1), substituted "by the State education agency (or such other agency as is authorized under State law to make such allocation)" for "by the State".

Subsec. (e). Pub. L. 111–147, §301(b)(2), substituted "paragraphs (2) and (4) of subsection (d)" for "subsection (d)(4)" in concluding provisions.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–147, title III, §301(c)(2), Mar. 18, 2010, 124 Stat. 78, provided that: "The amendments made by subsection (b) [amending this section] shall take effect as if included in section 1521 of the American Recovery and Reinvestment Tax Act of 2009 [Pub. L. 111–5]."

EFFECTIVE DATE

Section applicable to obligations issued after Feb. 17, 2009, see section 1521(c) of Pub. L. 111–5, set out as an Effective Date of 2009 Amendment note under section 54A of this title.

SUBPART J—BUILD AMERICA BONDS

Sec.
54AA. Build America bonds.

§54AA. Build America bonds

(a) In general

If a taxpayer holds a build America bond on one or more interest payment dates of the bond during any taxable year, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of the credits determined under subsection (b) with respect to such dates.

(b) Amount of credit

The amount of the credit determined under this subsection with respect to any interest payment date for a build America bond is 35 percent of the amount of interest payable by the issuer with respect to such date.

(c) Limitation based on amount of tax

(1) In general

The credit allowed under subsection (a) for any taxable year shall not exceed the excess of—

(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by

section 55, over

(B) the sum of the credits allowable under this part (other than subpart C and this subpart).

(2) Carryover of unused credit

If the credit allowable under subsection (a) exceeds the limitation imposed by paragraph (1) for such taxable year, such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year (determined before the application of paragraph (1) for such succeeding taxable year).

(d) Build America bond

(1) In general

For purposes of this section, the term "build America bond" means any obligation (other than a private activity bond) if—

(A) the interest on such obligation would (but for this section) be excludable from gross income under section 103,

(B) such obligation is issued before January 1, 2011, and

(C) the issuer makes an irrevocable election to have this section apply.

(2) Applicable rules

For purposes of applying paragraph (1)—

(A) for purposes of section 149(b), a build America bond shall not be treated as federally guaranteed by reason of the credit allowed under subsection (a) or section 6431,

(B) for purposes of section 148, the yield on a build America bond shall be determined without regard to the credit allowed under subsection (a), and

(C) a bond shall not be treated as a build America bond if the issue price has more than a de minimis amount (determined under rules similar to the rules of section 1273(a)(3)) of premium over the stated principal amount of the bond.

(e) Interest payment date

For purposes of this section, the term "interest payment date" means any date on which the holder of record of the build America bond is entitled to a payment of interest under such bond.

(f) Special rules

(1) Interest on build America bonds includible in gross income for Federal income tax purposes

For purposes of this title, interest on any build America bond shall be includible in gross income.

(2) Application of certain rules

Rules similar to the rules of subsections (f), (g), (h), and (i) of section 54A shall apply for purposes of the credit allowed under subsection (a).

(g) Special rule for qualified bonds issued before 2011

In the case of a qualified bond issued before January 1, 2011—

(1) Issuer allowed refundable credit

In lieu of any credit allowed under this section with respect to such bond, the issuer of such bond shall be allowed a credit as provided in section 6431.

(2) Qualified bond

For purposes of this subsection, the term "qualified bond" means any build America bond issued as part of an issue if—

(A) 100 percent of the excess of—

(i) the available project proceeds (as defined in section 54A) of such issue, over

(ii) the amounts in a reasonably required reserve (within the meaning of section 150(a)(3)) with respect to such issue,

are to be used for capital expenditures, and

(B) the issuer makes an irrevocable election to have this subsection apply.

(h) Regulations

The Secretary may prescribe such regulations and other guidance as may be necessary or appropriate to carry out this section and section 6431.

(Added Pub. L. 111–5, div. B, title I, §1531(a), Feb. 17, 2009, 123 Stat. 358.)

EFFECTIVE DATE

Section applicable to obligations issued after Feb. 17, 2009, see section 1531(e) of Pub. L. 111–5, set out as an Effective Date of 2009 Amendment note under section 54 of this title.

TRANSITIONAL COORDINATION WITH STATE LAW

Pub. L. 111–5, div. B, title I, §1531(d), Feb. 17, 2009, 123 Stat. 360, provided that: "Except as otherwise provided by a State after the date of the enactment of this Act [Feb. 17, 2009], the interest on any build America bond (as defined in section 54AA of the Internal Revenue Code of 1986, as added by this section) and the amount of any credit determined under such section with respect to such bond shall be treated for purposes of the income tax laws of such State as being exempt from Federal income tax."

[PART V—REPEALED]

CODIFICATION

Part V, consisting of a prior section 51, was repealed by Pub. L. 94–455, title XIX, §1901(a)(7), Oct. 4, 1976, 90 Stat. 1765. See Prior Provisions note set out under section 51 of this title.

PART VI—ALTERNATIVE MINIMUM TAX

Sec.

55. Alternative minimum tax imposed.
56. Adjustments in computing alternative minimum taxable income.
57. Items of tax preference.
58. Denial of certain losses.
59. Other definitions and special rules.

§55. Alternative minimum tax imposed

(a) General rule

There is hereby imposed (in addition to any other tax imposed by this subtitle) a tax equal to the excess (if any) of—

(1) the tentative minimum tax for the taxable year, over

(2) the regular tax for the taxable year.

(b) Tentative minimum tax

For purposes of this part—

(1) Amount of tentative tax

(A) Noncorporate taxpayers

(i) In general

In the case of a taxpayer other than a corporation, the tentative minimum tax for the taxable year is the sum of—

(I) 26 percent of so much of the taxable excess as does not exceed $175,000, plus

(II) 28 percent of so much of the taxable excess as exceeds $175,000.

The amount determined under the preceding sentence shall be reduced by the alternative minimum tax foreign tax credit for the taxable year.

(ii) Taxable excess

For purposes of this subsection, the term "taxable excess" means so much of the alternative minimum taxable income for the taxable year as exceeds the exemption amount.

(iii) Married individual filing separate return

In the case of a married individual filing a separate return, clause (i) shall be applied by substituting 50 percent of the dollar amount otherwise applicable under subclause (I) and subclause (II) thereof. For purposes of the preceding sentence, marital status shall be determined under section 7703.

(B) Corporations

In the case of a corporation, the tentative minimum tax for the taxable year is—

(i) 20 percent of so much of the alternative minimum taxable income for the taxable year as exceeds the exemption amount, reduced by

(ii) the alternative minimum tax foreign tax credit for the taxable year.

(2) Alternative minimum taxable income

The term "alternative minimum taxable income" means the taxable income of the taxpayer for the taxable year—

(A) determined with the adjustments provided in section 56 and section 58, and

(B) increased by the amount of the items of tax preference described in section 57.

If a taxpayer is subject to the regular tax, such taxpayer shall be subject to the tax imposed by this section (and, if the regular tax is determined by reference to an amount other than taxable income, such amount shall be treated as the taxable income of such taxpayer for purposes of the preceding sentence).

(3) Maximum rate of tax on net capital gain of noncorporate taxpayers

The amount determined under the first sentence of paragraph (1)(A)(i) shall not exceed the sum of—

(A) the amount determined under such first sentence computed at the rates and in the same manner as if this paragraph had not been enacted on the taxable excess reduced by the lesser of—

(i) the net capital gain; or

(ii) the sum of—

(I) the adjusted net capital gain, plus

(II) the unrecaptured section 1250 gain, plus

(B) 0 percent of so much of the adjusted net capital gain (or, if less, taxable excess) as does not exceed an amount equal to the excess described in section 1(h)(1)(B), plus

(C) 15 percent of the lesser of—

(i) so much of the adjusted net capital gain (or, if less, taxable excess) as exceeds the amount on which tax is determined under subparagraph (B), or

(ii) the excess described in section 1(h)(1)(C)(ii), plus

(D) 20 percent of the adjusted net capital gain (or, if less, taxable excess) in excess of the sum of the amounts on which tax is determined under subparagraphs (B) and (C), plus

(E) 25 percent of the amount of taxable excess in excess of the sum of the amounts on which tax is determined under the preceding subparagraphs of this paragraph.

Terms used in this paragraph which are also used in section 1(h) shall have the respective meanings given such terms by section 1(h) but computed with the adjustments under this part.

(4) Maximum rate of tax on qualified timber gain of corporations

In the case of any taxable year to which section 1201(b) applies, the amount determined under clause (i) [1] of subparagraph (B) shall not exceed the sum of—

(A) 20 percent of so much of the taxable excess (if any) as exceeds the qualified timber gain (or, if less, the net capital gain), plus

(B) 15 percent of the taxable excess in excess of the amount on which a tax is determined under subparagraph (A).

Any term used in this paragraph which is also used in section 1201 shall have the meaning given such term by such section, except to the extent such term is subject to adjustment under this part.

(c) Regular tax

(1) In general

For purposes of this section, the term "regular tax" means the regular tax liability for the taxable year (as defined in section 26(b)) reduced by the foreign tax credit allowable under section 27(a), the section 936 credit allowable under section 27(b), and the Puerto Rico economic activity credit under section 30A. Such term shall not include any increase in tax under section 45(e)(11)(C), 49(b) or 50(a) or subsection (j) or (k) of section 42.

(2) Coordination with income averaging for farmers and fishermen

Solely for purposes of this section, section 1301 (relating to averaging of farm and fishing income) shall not apply in computing the regular tax liability.

(3) Cross references

For provisions providing that certain credits are not allowable against the tax imposed by this section, see sections 30C(d)(2) and 38(c).

(d) Exemption amount

For purposes of this section—

(1) Exemption amount for taxpayers other than corporations

In the case of a taxpayer other than a corporation, the term "exemption amount" means—

(A) $78,750 in the case of—

(i) a joint return, or

(ii) a surviving spouse,

(B) $50,600 in the case of an individual who—

(i) is not a married individual, and

(ii) is not a surviving spouse,

(C) 50 percent of the dollar amount applicable under subparagraph (A) in the case of a married individual who files a separate return, and

(D) $22,500 in the case of an estate or trust.

For purposes of this paragraph, the term "surviving spouse" has the meaning given to such term by section 2(a), and marital status shall be determined under section 7703.

(2) Corporations

In the case of a corporation, the term "exemption amount" means $40,000.

(3) Phase-out of exemption amount

The exemption amount of any taxpayer shall be reduced (but not below zero) by an amount equal to 25 percent of the amount by which the alternative minimum taxable income of the

taxpayer exceeds—

(A) $150,000 in the case of a taxpayer described in paragraph (1)(A),

(B) $112,500 in the case of a taxpayer described in paragraph (1)(B),

(C) 50 percent of the dollar amount applicable under subparagraph (A) in the case of a taxpayer described in subparagraph (C) or (D) of paragraph (1), and

(D) $150,000 in the case of a taxpayer described in paragraph (2).

In the case of a taxpayer described in paragraph (1)(C), alternative minimum taxable income shall be increased by the lesser of (i) 25 percent of the excess of alternative minimum taxable income (determined without regard to this sentence) over the minimum amount of such income (as so determined) for which the exemption amount under paragraph (1)(C) is zero, or (ii) such exemption amount (determined without regard to this paragraph).

(4) Inflation adjustment

(A) In general

In the case of any taxable year beginning in a calendar year after 2012, the amounts described in subparagraph (B) shall each be increased by an amount equal to—

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting "calendar year 2011" for "calendar year 1992" in subparagraph (B) thereof.

(B) Amounts described

The amounts described in this subparagraph are—

(i) each of the dollar amounts contained in subsection (b)(1)(A)(i),

(ii) each of the dollar amounts contained in paragraph (1), and

(iii) each of the dollar amounts in subparagraphs (A) and (B) of paragraph (3).

(C) Rounding

Any increase determined under subparagraph (A) shall be rounded to the nearest multiple of $100.

(e) Exemption for small corporations

(1) In general

(A) $7,500,000 gross receipts test

The tentative minimum tax of a corporation shall be zero for any taxable year if the corporation's average annual gross receipts for all 3-taxable-year periods ending before such taxable year does not exceed $7,500,000. For purposes of the preceding sentence, only taxable years beginning after December 31, 1993, shall be taken into account.

(B) $5,000,000 gross receipts test for first 3-year period

Subparagraph (A) shall be applied by substituting "$5,000,000" for "$7,500,000" for the first 3-taxable-year period (or portion thereof) of the corporation which is taken into account under subparagraph (A).

(C) First taxable year corporation in existence

If such taxable year is the first taxable year that such corporation is in existence, the tentative minimum tax of such corporation for such year shall be zero.

(D) Special rules

For purposes of this paragraph, the rules of paragraphs (2) and (3) of section 448(c) shall apply.

(2) Prospective application of minimum tax if small corporation ceases to be small

In the case of a corporation whose tentative minimum tax is zero for any prior taxable year by

reason of paragraph (1), the application of this part for taxable years beginning with the first taxable year such corporation ceases to be described in paragraph (1) shall be determined with the following modifications:

(A) Section 56(a)(1) (relating to depreciation) and section 56(a)(5) (relating to pollution control facilities) shall apply only to property placed in service on or after the change date.

(B) Section 56(a)(2) (relating to mining exploration and development costs) shall apply only to costs paid or incurred on or after the change date.

(C) Section 56(a)(3) (relating to treatment of long-term contracts) shall apply only to contracts entered into on or after the change date.

(D) Section 56(a)(4) (relating to alternative net operating loss deduction) shall apply in the same manner as if, in section 56(d)(2), the change date were substituted for "January 1, 1987" and the day before the change date were substituted for "December 31, 1986" each place it appears.

(E) Section 56(g)(2)(B) (relating to limitation on allowance of negative adjustments based on adjusted current earnings) shall apply only to prior taxable years beginning on or after the change date.

(F) Section 56(g)(4)(A) (relating to adjustment for depreciation to adjusted current earnings) shall not apply.

(G) Subparagraphs (D) and (F) of section 56(g)(4) (relating to other earnings and profits adjustments and depletion) shall apply in the same manner as if the day before the change date were substituted for "December 31, 1989" each place it appears therein.

(3) Exception

The modifications in paragraph (2) shall not apply to—

(A) any item acquired by the corporation in a transaction to which section 381 applies, and

(B) any property the basis of which in the hands of the corporation is determined by reference to the basis of the property in the hands of the transferor,

if such item or property was subject to any provision referred to in paragraph (2) while held by the transferor.

(4) Change date

For purposes of paragraph (2), the change date is the first day of the first taxable year for which the taxpayer ceases to be described in paragraph (1).

(5) Limitation on use of credit for prior year minimum tax liability

In the case of a taxpayer whose tentative minimum tax for any taxable year is zero by reason of paragraph (1), section 53(c) shall be applied for such year by reducing the amount otherwise taken into account under section 53(c)(1) by 25 percent of so much of such amount as exceeds $25,000. Rules similar to the rules of section 38(c)(6)(B) shall apply for purposes of the preceding sentence.

(Added and amended Pub. L. 99–514, title II, §252(c), title VII, §701(a), Oct. 22, 1986, 100 Stat. 2205, 2321; Pub. L. 100–647, title I, §§1002(l)(27), 1007(a), Nov. 10, 1988, 102 Stat. 3381, 3428; Pub. L. 101–508, title XI, §§11102(a), 11813(b)(5), Nov. 5, 1990, 104 Stat. 1388–406, 1388–551; Pub. L. 102–318, title V, §521(b)(1), July 3, 1992, 106 Stat. 310; Pub. L. 102–486, title XIX, §1913(b)(2)(D), Oct. 24, 1992, 106 Stat. 3020; Pub. L. 103–66, title XIII, §13203(a)–(c)(1), Aug. 10, 1993, 107 Stat. 461, 462; Pub. L. 104–188, title I, §§1205(d)(6), 1401(b)(3), 1601(b)(2)(A), Aug. 20, 1996, 110 Stat. 1776, 1788, 1832; Pub. L. 105–34, title III, §311(b)(1), (2)(A), title IV, §401(a), title XVI, §1601(f)(1)(C), Aug. 5, 1997, 111 Stat. 834, 835, 843, 1090; Pub. L. 105–206, title VI, §§6005(d)(2), 6006(a), July 22, 1998, 112 Stat. 804, 806; Pub. L. 107–16, title VII, §701(a), (b), June 7, 2001, 115 Stat. 148; Pub. L. 108–27, title I, §106(a), title III, §301(a)(1), (2)(B), (b)(2), May 28, 2003, 117 Stat. 755, 758; Pub. L. 108–311, title I, §103(a), title IV, §406(d), Oct. 4, 2004, 118 Stat. 1168, 1189; Pub. L. 108–357, title III, §314(a), Oct. 22, 2004, 118 Stat. 1468; Pub. L. 109–58, title XIII, §§1302(b), 1322(a)(3)(H), 1341(b)(3), 1342(b)(3), Aug. 8, 2005, 119 Stat. 991, 1012, 1049, 1051; Pub. L. 109–135, title IV, §§403(h), 412(p), Dec. 21, 2005, 119 Stat. 2624, 2638; Pub.

L. 109–222, title III, §301(a), May 17, 2006, 120 Stat. 353; Pub. L. 110–166, §2(a), Dec. 26, 2007, 121 Stat. 2461; Pub. L. 110–234, title XV, §15311(b), May 22, 2008, 122 Stat. 1503; Pub. L. 110–246, §4(a), title XV, §15311(b), June 18, 2008, 122 Stat. 1664, 2265; Pub. L. 110–343, div. C, title I, §102(a), Oct. 3, 2008, 122 Stat. 3863; Pub. L. 111–5, div. B, title I, §§1012(a), 1142(b)(5), 1144(b)(3), Feb. 17, 2009, 123 Stat. 319, 331, 332; Pub. L. 111–240, title II, §2013(b), Sept. 27, 2010, 124 Stat. 2555; Pub. L. 111–312, title II, §201(a), Dec. 17, 2010, 124 Stat. 3299; Pub. L. 112–240, title I, §§102(b)(2), (c)(2), 104(a), (b), (c)(2)(J), Jan. 2, 2013, 126 Stat. 2319, 2320, 2322.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

PRIOR PROVISIONS

A prior section 55, Pub. L. 95–600, title IV, §421(a), Nov. 6, 1978, 92 Stat. 2871; amended Pub. L. 96–222, title I, §104(a)(4)(A)–(D), (G), (H)(i), (ii), (viii), Apr. 1, 1980, 94 Stat. 215–218; Pub. L. 96–223, title II, §232(b)(2)(A), (c)(2), Apr. 2, 1980, 94 Stat. 276, 277; Pub. L. 96–603, §4(a), (b), Dec. 28, 1980, 94 Stat. 3513, 3514; Pub. L. 97–34, title I, §101(d)(1), title II, §221(b)(1)(A), title III, §331(d)(1)(A), Aug. 13, 1981, 95 Stat. 183, 246, 294; Pub. L. 97–248, title II, §201(a), Sept. 3, 1982, 96 Stat. 411; Pub. L. 97–354, §5(a)(13), Oct. 19, 1982, 96 Stat. 1693; Pub. L. 97–448, title I, §103(g)(2)(E), title III, §§305(c), 306(a)(1)(B), (C), Jan. 12, 1983, 96 Stat. 2379, 2399, 2400; Pub. L. 98–369, div. A, title IV, §§474(q), 491(d)(1), title VI, §612(e)(3), title VII, §711(a)(1), (4), (5), July 18, 1984, 98 Stat. 838, 849, 912, 942, 943; Pub. L. 99–514, title XVIII, §1847(a), Oct. 22, 1986, 100 Stat. 2856, related to alternative minimum tax for taxpayers other than corporations, prior to the general revision of this part by Pub. L. 99–514, §701(a).

AMENDMENTS

2013—Subsec. (b)(1)(A)(iii). Pub. L. 112–240, §104(b)(2)(A), substituted "by substituting 50 percent of the dollar amount otherwise applicable under subclause (I) and subclause (II) thereof." for "by substituting '$87,500' for '$175,000' each place it appears."

Subsec. (b)(3)(B). Pub. L. 112–240, §102(c)(2), substituted "0 percent" for "5 percent (0 percent in the case of taxable years beginning after 2007)".

Subsec. (b)(3)(C) to (E). Pub. L. 112–240, §102(b)(2), added subpars. (C) and (D), redesignated former subpar. (D) as (E), and struck out former subpar. (C) which read as follows: "15 percent of the adjusted net capital gain (or, if less, taxable excess) in excess of the amount on which tax is determined under subparagraph (B), plus".

Subsec. (c)(3). Pub. L. 112–240, §104(c)(2)(J), substituted "30C(d)(2)" for "26(a), 30C(d)(2),".

Subsec. (d)(1)(A). Pub. L. 112–240, §104(a)(1)(A), in introductory provisions, substituted "$78,750" for "$45,000 ($72,450 in the case of taxable years beginning in 2010 and $74,450 in the case of taxable years beginning in 2011)".

Subsec. (d)(1)(B). Pub. L. 112–240, §104(a)(1)(B), in introductory provisions, substituted "$50,600" for "$33,750 ($47,450 in the case of taxable years beginning in 2010 and $48,450 in the case of taxable years beginning in 2011)".

Subsec. (d)(1)(C). Pub. L. 112–240, §104(a)(1)(C), substituted "subparagraph (A)" for "paragraph (1)(A)".

Subsec. (d)(3)(A). Pub. L. 112–240, §104(b)(2)(B)(i), struck out "or (2)" after "paragraph (1)(A)".

Subsec. (d)(3)(C), (D). Pub. L. 112–240, §104(b)(2)(B)(ii), (iii), added subpars. (C) and (D) and struck out former subpar. (C) which read as follows: "$75,000 in the case of a taxpayer described in subparagraph (C) or (D) of paragraph (1)."

Subsec. (d)(4). Pub. L. 112–240, §104(b)(1), added par. (4).

2010—Subsec. (d)(1)(A). Pub. L. 111–312, §201(a)(1), substituted "$72,450 in the case of taxable years beginning in 2010 and $74,450 in the case of taxable years beginning in 2011" for "$70,950 in the case of taxable years beginning in 2009".

Subsec. (d)(1)(B). Pub. L. 111–312, §201(a)(2), substituted "$47,450 in the case of taxable years beginning in 2010 and $48,450 in the case of taxable years beginning in 2011" for "$46,700 in the case of taxable years beginning in 2009".

Subsec. (e)(5). Pub. L. 111–240 substituted "38(c)(6)(B)" for "38(c)(3)(B)".

2009—Subsec. (c)(3). Pub. L. 111–5, §1144(b)(3), struck out "30B(g)(2)," after "sections 26(a),".

Pub. L. 111–5, §1142(b)(5), struck out "30(b)(3)," after "sections 26(a),".

Subsec. (d)(1)(A). Pub. L. 111–5, §1012(a)(1), substituted "($70,950 in the case of taxable years beginning in 2009)" for "($69,950 in the case of taxable years beginning in 2008)".

Subsec. (d)(1)(B). Pub. L. 111–5, §1012(a)(2), substituted "($46,700 in the case of taxable years beginning in 2009)" for "($46,200 in the case of taxable years beginning in 2008)".

2008—Subsec. (b)(4). Pub. L. 110–246, §15311(b), added par. (4).

Subsec. (d)(1)(A). Pub. L. 110–343, §102(a)(1), substituted "($69,950 in the case of taxable years beginning in 2008)" for "($66,250 in the case of taxable years beginning in 2007)".

Subsec. (d)(1)(B). Pub. L. 110–343, §102(a)(2), substituted "($46,200 in the case of taxable years beginning in 2008)" for "($44,350 in the case of taxable years beginning in 2007)".

2007—Subsec. (d)(1)(A). Pub. L. 110–166, §2(a)(1), substituted "($66,250 in the case of taxable years beginning in 2007)" for "($62,550 in the case of taxable years beginning in 2006)".

Subsec. (d)(1)(B). Pub. L. 110–166, §2(a)(2), substituted "($44,350 in the case of taxable years beginning in 2007)" for "($42,500 in the case of taxable years beginning in 2006)".

2006—Subsec. (d)(1)(A). Pub. L. 109–222, §301(a)(1), substituted "$62,550 in the case of taxable years beginning in 2006" for "$58,000 in the case of taxable years beginning in 2003, 2004, and 2005".

Subsec. (d)(1)(B). Pub. L. 109–222, §301(a)(2), substituted "$42,500 in the case of taxable years beginning in 2006" for "$40,250 in the case of taxable years beginning in 2003, 2004, and 2005".

2005—Subsec. (c)(1). Pub. L. 109–58, §1302(b), which directed amendment of par. (1) by inserting "45(e)(11)(C)," after "section" in last sentence, was executed by making the insertion after "section" the first place it appeared in last sentence, to reflect the probable intent of Congress.

Subsec. (c)(2). Pub. L. 109–135, §403(h), substituted "regular tax liability" for "regular tax".

Pub. L. 109–58, §1342(b)(3), which directed amendment of par. (2) by inserting "30C(d)(2)," after "30B(g)(2),", was repealed by Pub. L. 109–135, §412(p)(3).

Pub. L. 109–58, §1341(b)(3), which directed amendment of par. (2) by inserting "30B(g)(2)," after "30(b)(2),", was repealed by Pub. L. 109–135, §412(p)(2).

Subsec. (c)(3). Pub. L. 109–135, §412(p)(1), inserted "30B(g)(2), 30C(d)(2)," after "30(b)(3),".

Pub. L. 109–58, §1322(a)(3)(H), struck out "29(b)(6)," after "26(a),".

2004—Subsec. (b)(3)(B). Pub. L. 108–311, §406(d), substituted "an amount equal to the excess described in" for "the amount on which a tax is determined under".

Subsec. (c)(2), (3). Pub. L. 108–357 added par. (2) and redesignated former par. (2) as (3).

Subsec. (d)(1)(A), (B). Pub. L. 108–311, §103(a), substituted "2003, 2004, and 2005" for "2003 and 2004".

2003—Subsec. (b)(3). Pub. L. 108–27, §301(b)(2), struck out first sentence of concluding provisions which read as follows: "In the case of taxable years beginning after December 31, 2000, rules similar to the rules of section 1(h)(2) shall apply for purposes of subparagraphs (B) and (C)."

Subsec. (b)(3)(B). Pub. L. 108–27, §301(a)(1), substituted "5 percent (0 percent in the case of taxable years beginning after 2007)" for "10 percent".

Subsec. (b)(3)(C). Pub. L. 108–27, §301(a)(2)(B), substituted "15 percent" for "20 percent".

Subsec. (d)(1)(A). Pub. L. 108–27, §106(a)(1), substituted "$58,000 in the case of taxable years beginning in 2003 and 2004" for "$49,000 in the case of taxable years beginning in 2001, 2002, 2003, and 2004".

Subsec. (d)(1)(B). Pub. L. 108–27, §106(a)(2), substituted "$40,250 in the case of taxable years beginning in 2003 and 2004" for "$35,750 in the case of taxable years beginning in 2001, 2002, 2003, and 2004".

2001—Subsec. (d)(1)(A). Pub. L. 107–16, §701(a)(1), substituted "$45,000 ($49,000 in the case of taxable years beginning in 2001, 2002, 2003, and 2004)" for "$45,000".

Subsec. (d)(1)(B). Pub. L. 107–16, §701(b)(1), struck out "and" at end.

Pub. L. 107–16, §701(a)(2), substituted "$33,750 ($35,750 in the case of taxable years beginning in 2001, 2002, 2003, and 2004)" for "$33,750".

Subsec. (d)(1)(C), (D). Pub. L. 107–16, §701(b)(1), added subpars. (C) and (D) and struck out former subpar. (C) which read as follows: "$22,500 in the case of—

"(i) a married individual who files a separate return, or

"(ii) an estate or trust."

Subsec. (d)(3). Pub. L. 107–16, §701(b)(3), in concluding provisions, substituted "paragraph (1)(C)" for "paragraph (1)(C)(i)" and "the minimum amount of such income (as so determined) for which the exemption amount under paragraph (1)(C) is zero, or (ii) such exemption amount (determined without regard to this paragraph)" for "$165,000 or (ii) $22,500".

Subsec. (d)(3)(C). Pub. L. 107–16, §701(b)(2), substituted "subparagraph (C) or (D) of paragraph (1)" for "paragraph (1)(C)".

1998—Subsec. (b)(3). Pub. L. 105–206, §6005(d)(2), reenacted par. heading without change and amended text of par. (3) generally. Prior to amendment, text read as follows: "The amount determined under the first sentence of paragraph (1)(A)(i) shall not exceed the sum of—

"(A) the amount determined under such first sentence computed at the rates and in the same manner as if this paragraph had not been enacted on the taxable excess reduced by the lesser of—

"(i) the net capital gain, or

"(ii) the sum of—

"(I) the adjusted net capital gain, plus

"(II) the unrecaptured section 1250 gain, plus

"(B) 25 percent of the lesser of—

"(i) the unrecaptured section 1250 gain, or

"(ii) the amount of taxable excess in excess of the sum of—

"(I) the adjusted net capital gain, plus

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

"(C) 10 percent of so much of the taxpayer's adjusted net capital gain (or, if less, taxable excess) as does not exceed the amount on which a tax is determined under section 1(h)(1)(D), plus

"(D) 20 percent of the taxpayer's adjusted net capital gain (or, if less, taxable excess) in excess of the amount on which tax is determined under subparagraph (C).

In the case of taxable years beginning after December 31, 2000, rules similar to the rules of section 1(h)(2) shall apply for purposes of subparagraphs (C) and (D). Terms used in this paragraph which are also used in section 1(h) shall have the respective meanings given such terms by section 1(h)."

Subsec. (e)(1). Pub. L. 105–206, §6006(a), reenacted par. heading without change and amended text of par. (1) generally. Prior to amendment, text read as follows: "The tentative minimum tax of a corporation shall be zero for any taxable year if—

"(A) such corporation met the $5,000,000 gross receipts test of section 448(c) for its first taxable year beginning after December 31, 1996, and

"(B) such corporation would meet such test for the taxable year and all prior taxable years beginning after such first taxable year if such test were applied by substituting '$7,500,000' for '$5,000,000'."

1997—Subsec. (b)(1)(A)(ii). Pub. L. 105–34, §311(b)(2)(A), substituted "this subsection" for "clause (i)".

Subsec. (b)(3). Pub. L. 105–34, §311(b)(1), added par. (3).

Subsec. (c)(1). Pub. L. 105–34, §1601(f)(1)(C), substituted "Puerto Rico" for "Puerto Rican".

Subsec. (e). Pub. L. 105–34, §401(a), added subsec. (e).

1996—Subsec. (c)(1). Pub. L. 104–188, §1601(b)(2)(A), substituted ", the section 936 credit allowable under section 27(b), and the Puerto Rican economic activity credit under section 30A" for "and the section 936 credit allowable under section 27(b)".

Pub. L. 104–188, §1401(b)(3), struck out "shall not include any tax imposed by section 402(d) and" before "shall not include any increase in tax under section 49(b)".

Subsec. (c)(2). Pub. L. 104–188, §1205(d)(6), struck out "28(d)(2)," after "26(a),".

1993—Subsec. (b)(1). Pub. L. 103–66, §13203(a), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: "The tentative minimum tax for the taxable year is—

"(A) 20 percent (24 percent in the case of a taxpayer other than a corporation) of so much of the alternative minimum taxable income for the taxable year as exceeds the exemption amount, reduced by

"(B) the alternative minimum tax foreign tax credit for the taxable year."

Subsec. (d)(1). Pub. L. 103–66, §13203(b), substituted "$45,000" for "$40,000" in subpar. (A), "$33,750" for "$30,000" in subpar. (B), and "$22,500" for "$20,000" in subpar. (C).

Subsec. (d)(3). Pub. L. 103–66, §13203(c)(1), substituted "$165,000 or (ii) $22,500" for "$155,000 or (ii) $20,000" in last sentence.

1992—Subsec. (c)(1). Pub. L. 102–318 substituted "402(d)" for "402(e)".

Subsec. (c)(2). Pub. L. 102–486 substituted "29(b)(6), 30(b)(3)," for "29(b)(5),".

1990—Subsec. (b)(1)(A). Pub. L. 101–508, §11102(a), substituted "24 percent" for "21 percent".

Subsec. (c)(1). Pub. L. 101–508, §11813(b)(5), substituted "section 49(b) or 50(a)" for "section 47".

1988—Subsec. (b)(2). Pub. L. 100–647, §1007(a)(2), inserted at end "If a taxpayer is subject to the regular tax, such taxpayer shall be subject to the tax imposed by this section (and, if the regular tax is determined by reference to an amount other than taxable income, such amount shall be treated as the taxable income of such taxpayer for purposes of the preceding sentence)."

Subsec. (c)(1). Pub. L. 100–647, §1007(a)(1), inserted "and the section 936 credit allowable under section 27(b)" before period at end of first sentence.

Pub. L. 100–647, §1002(l)(27), substituted "subsection (j) or (k) of section 42" for "section 42(j)".

Subsec. (d)(3). Pub. L. 100–647, §1007(a)(3), inserted at end "In the case of a taxpayer described in paragraph (1)(C)(i), alternative minimum taxable income shall be increased by the lesser of (i) 25 percent of the excess of alternative minimum taxable income (determined without regard to this sentence) over $155,000, or (ii) $20,000."

1986—Subsec. (c)(1). Pub. L. 99–514, §252(c), inserted "or section 42(j)".

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by section 102(b)(2), (c)(2) of Pub. L. 112–240 applicable to taxable years beginning after Dec. 31, 2012, see section 102(d)(1) of Pub. L. 112–240, set out as a note under section 1 of this title.

Amendment by section 104(a), (b), (c)(2)(J) of Pub. L. 112–240 applicable to taxable years beginning after Dec. 31, 2011, see section 104(d) of Pub. L. 112–240, set out as a note under section 23 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title II, §201(b), Dec. 17, 2010, 124 Stat. 3299, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2009."

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, §1012(b), Feb. 17, 2009, 123 Stat. 319, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2008."

Amendment by section 1142(b)(5) of Pub. L. 111–5 applicable to vehicles acquired after Feb. 17, 2009, see section 1142(c) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

Amendment by section 1144(b)(3) of Pub. L. 111–5 applicable to taxable years beginning after Dec. 31, 2008, see section 1144(c) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title I, §102(b), Oct. 3, 2008, 122 Stat. 3863, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2007."

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Pub. L. 110–234, title XV, §15311(d), May 22, 2008, 122 Stat. 1503, and Pub. L. 110–246, §4(a), title XV, §15311(d), June 18, 2008, 122 Stat. 1664, 2265, provided that: "The amendments made by this section [amending this section and sections 857 and 1201 of this title] shall apply to taxable years ending after the date of enactment [June 18, 2008]."

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

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–166, §2(b), Dec. 26, 2007, 121 Stat. 2461, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2006."

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–222, title III, §301(b), May 17, 2006, 120 Stat. 353, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2005."

EFFECTIVE DATE OF 2005 AMENDMENTS

Amendment by section 403(h) of Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

Amendment by section 1302(b) of Pub. L. 109–58 applicable to taxable years of cooperative organizations ending after Aug. 8, 2005, see section 1302(c) of Pub. L. 109–58, set out as a note under section 45 of this title.

Amendment by section 1322(a)(3)(H) of Pub. L. 109–58 applicable to credits determined under the Internal Revenue Code of 1986 for taxable years ending after Dec. 31, 2005, see section 1322(c)(1) of Pub. L. 109–58, set out as a note under section 45K of this title.

Amendment by section 1342(b)(3) of Pub. L. 109–58 applicable to property placed in service after Dec. 31, 2005, in taxable years ending after such date, see section 1342(c) of Pub. L. 109–58, set out as an Effective

Date note under section 30C of this title.

Amendment by section 1341(b)(3) of Pub. L. 109–58 applicable to property placed in service after Dec. 31, 2005, in taxable years ending after such date, see section 1341(c) of Pub. L. 109–58, set out as an Effective Date note under section 30B of this title.

EFFECTIVE AND TERMINATION DATES OF 2004 AMENDMENTS

Pub. L. 108–357, title III, §314(c), Oct. 22, 2004, 118 Stat. 1469, provided that: "The amendments made by this section [amending this section and section 1301 of this title] shall apply to taxable years beginning after December 31, 2003."

Pub. L. 108–311, title I, §103(b), Oct. 4, 2004, 118 Stat. 1168, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2004."

Amendment by section 103(a) of Pub. L. 108–311 subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, §901, to the same extent and in the same manner as the provision of such Act to which such amendment relates, see section 105 of Pub. L. 108–311, set out as a note under section 1 of this title. Title IX of Pub. L. 107–16 was repealed by Pub. L. 112–240, title I, §101(a)(1), Jan. 2, 2013, 126 Stat. 2315.

Pub. L. 108–311, title IV, §406(h), Oct. 4, 2004, 118 Stat. 1190, provided that: "The amendments made by this section [amending this section and sections 246, 529, 530, 901, 1259, and 1397E of this title] shall take effect as if included in the provisions of the Taxpayer Relief Act of 1997 [Pub. L. 105–34] to which they relate."

EFFECTIVE AND TERMINATION DATES OF 2003 AMENDMENT

Pub. L. 108–27, title I, §106(b), May 28, 2003, 117 Stat. 755, provided that: "The amendments made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 2002."

Amendment by section 106(a) of Pub. L. 108–27 subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, §901, to the same extent and in the same manner as the provision of such Act to which such amendment relates, see section 107 of Pub. L. 108–27, set out as a note under section 1 of this title. Title IX of Pub. L. 107–16 was repealed by Pub. L. 112–240, title I, §101(a)(1), Jan. 2, 2013, 126 Stat. 2315.

Amendment by section 301(a)(1), (2)(B), (b)(2) of Pub. L. 108–27 applicable to taxable years ending on or after May 6, 2003, see section 301(d) of Pub. L. 108–27, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–16, title VII, §701(c), June 7, 2001, 115 Stat. 148, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2000."

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 311(b)(1), (2)(A) of Pub. L. 105–34 applicable to taxable years ending after May 6, 1997, see section 311(d) of Pub. L. 105–34, set out as a note under section 1 of this title.

Pub. L. 105–34, title IV, §401(b), Aug. 5, 1997, 111 Stat. 844, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1997."

Amendment by section 1601(f)(1)(C) of Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 23 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1205(d)(6) of Pub. L. 104–188 applicable to amounts paid or incurred in taxable years ending after June 30, 1996, see section 1205(e) of Pub. L. 104–188, set out as a note under section 45K of this title.

Amendment by section 1401(b)(3) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1999, with retention of certain transition rules, see section 1401(c) of Pub. L. 104–188, set out as a note under section 402 of this title.

Amendment by section 1601(b)(2)(A) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1995, except as otherwise provided, see section 1601(c) of Pub. L. 104–188, set out as an Effective Date

note under section 30A of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13203(d), Aug. 10, 1993, 107 Stat. 462, provided that: "The amendments made by this section [amending this section and section 897 of this title] shall apply to taxable years beginning after December 31, 1992."

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–486 applicable to property placed in service after June 30, 1993, see section 1913(c) of Pub. L. 102–486, set out as an Effective Date note under section 30 of this title.

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

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, §11102(b), Nov. 5, 1990, 104 Stat. 1388–406, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1990."

Amendment by section 11813(b)(5) of Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1002(l)(27) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title I, §1007(a)(3), Nov. 10, 1988, 102 Stat. 3428, provided that the amendment made by that section is effective with respect to taxable years ending after Nov. 10, 1988.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to buildings placed in service after Dec. 31, 1986, in taxable years ending after such date, see section 252(e) of Pub. L. 99–514, set out as an Effective Date note under section 42 of this title.

EFFECTIVE DATE

Pub. L. 99–514, title VII, §701(f), Oct. 22, 1986, 100 Stat. 2343, as amended by Pub. L. 100–647, title I, §1007(f)(2), (3), Nov. 10, 1988, 102 Stat. 3433, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting this section and sections 53 and 56 to 59 of this title and amending sections 5, 12, 26, 28, 29, 38, 48, 173, 174, 263, 381, 443, 703, 882, 897, 904, 936, 1016, 1363, 1366, 1561, 6154, 6425, and 6655 of this title] shall apply to taxable years beginning after December 31, 1986.

"(2) ADJUSTMENT OF NET OPERATING LOSS.—

"(A) INDIVIDUALS.—In the case of a net operating loss of an individual for a taxable year beginning after December 31, 1982, and before January 1, 1987, for purposes of determining the amount of such loss which may be carried to a taxable year beginning after December 31, 1986, for purposes of the minimum tax, such loss shall be adjusted in the manner provided in section 55(d)(2) of the Internal Revenue Code of 1954 [now 1986] as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986].

"(B) CORPORATIONS.—If the minimum tax of a corporation was deferred under section 56(b) of the Internal Revenue Code of 1954 [now 1986] (as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]) for any taxable year beginning before January 1, 1987, and the amount of such tax has not been paid for any taxable year beginning before January 1, 1987, the amount of the net operating loss carryovers of such corporation which may be carried to taxable years beginning after December 31, 1986, for purposes of the minimum tax shall be reduced by the amount of tax preferences a tax on which was so deferred.

"(3) INSTALLMENT SALES.—Section 56(a)(6) of the Internal Revenue Code of 1986 (as amended by this section) shall not apply to any disposition to which the amendments made by section 811 of this Act

[enacting section 453C of this title] (relating to allocation of dealer's indebtedness to installment obligations) do not apply by reason of section 811(c)(2) of this Act [enacting provisions set out as a note under section 453C of this title].

"(4) EXCEPTION FOR CHARITABLE CONTRIBUTIONS BEFORE AUGUST 16, 1986.—Section 57(a)(6) of the Internal Revenue Code of 1986 (as amended by this section) shall not apply to any deduction attributable to contributions made before August 16, 1986.

"(5) BOOK INCOME.—

"(A) IN GENERAL.—In the case of a corporation to which this paragraph applies, the amount of any increase for any taxable year under section 56(c)(1)(A) of the Internal Revenue Code of 1986 (as added by this section) shall be reduced (but not below zero) by the excess (if any) of—

"(i) 50 percent of the excess of taxable income for the 5-taxable year period ending with the taxable year preceding the 1st taxable year to which such section applies over the adjusted net book income for such period, over

"(ii) the aggregate amounts taken into account under this paragraph for preceding taxable years.

"(B) TAXPAYER TO WHOM PARAGRAPH APPLIES.—This paragraph applies to a taxpayer which was incorporated in Delaware on May 31, 1912.

"(C) TERMS.—Any term used in this paragraph which is used in section 56 of such Code (as so added) shall have the same meaning as when used in such section.

"(6) CERTAIN PUBLIC UTILITY.—

"(A) In the case of investment tax credits described in subparagraph (B) or (C), subsection 38(c)(3)(A)(ii) of the Internal Revenue Code of 1986 shall be applied by substituting '25 percent' for '75 percent', and section 38(c)(3)(B) of the Internal Revenue Code of 1986 shall be applied by substituting '75 percent' for '25 percent'.

"(B) If, on September 25, 1985, a regulated electric utility owned an undivided interest, within the range of 1,111 and 1,149, in the 'maximum dependable capacity, net, megawatts electric' of an electric generating unit located in Illinois or Mississippi for which a binding written contract was in effect on December 31, 1980, then any investment tax credit with respect to such unit shall be described in this subparagraph. The aggregate amount of investment tax credits with respect to the unit in Mississippi allowed solely by reason of being described in this subparagraph shall not exceed $141,000,000.

"(C) If, on September 25, 1985, a regulated electric utility owned an undivided interest, within the range of 1,104 and 1,111, in the 'maximum dependable capacity, net, megawatts electric' of an electric generating unit located in Louisiana for which a binding written contract was in effect on December 31, 1980, then any investment tax credit of such electric utility shall be described in this subparagraph. The aggregate amount of investment tax credits allowed solely by reason of being described by this subparagraph shall not exceed $20,000,000.

"(7) AGREEMENT VESSEL DEPRECIATION ADJUSTMENT.—

"(A) For purposes of part VI of subchapter A of chapter 1 of the Internal Revenue Code of 1986, in the case of a qualified taxpayer, alternative minimum taxable income for the taxable year shall be reduced by an amount equal to the agreement vessel depreciation adjustment.

"(B) For purposes of this paragraph, the agreement vessel depreciation adjustment shall be an amount equal to the depreciation deduction that would have been allowable for such year under section 167 of such Code with respect to agreement vessels placed in service before January 1, 1987, if the basis of such vessels had not been reduced under section 607 of the Merchant Marine Act of 1936 [see 46 U.S.C. 53510], as amended, and if depreciation with respect to such vessel had been computed using the 25-year straight-line method. The aggregate amount by which basis of a qualified taxpayer is treated as not reduced by reason of this subparagraph shall not exceed $100,000,000.

"(C) For purposes of this paragraph, the term 'qualified taxpayer' means a parent corporation incorporated in the State of Delaware on December 1, 1972, and engaged in water transportation, and includes any other corporation which is a member of the affiliated group of which the parent corporation is the common parent. No taxpayer shall be treated as a qualified corporation for any taxable year beginning after December 31, 1991."

SAVINGS PROVISION

For provisions that nothing in amendment by section 11813(b)(5) of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

TRANSITIONAL PROVISIONS

Pub. L. 100–647, title I, §1007(f)(1), Nov. 10, 1988, 102 Stat. 3433, provided that: "In the case of the taxable year of an estate or trust which begins before January 1, 1987, and ends on or after such date, the items of tax preference apportioned to any beneficiary of such estate or trust under section 58(c) of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986 [Oct. 22, 1986]) shall be taken into account for purposes of determining the amount of the tax imposed by section 55 of the Internal Revenue Code of 1986 (as amended by the Tax Reform Act of 1986 [Pub. L. 99–514]) on such beneficiary for such beneficiary's taxable year in which such taxable year of the estate or trust ends."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

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

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(a) of Pub. L. 99–514 [enacting this section] notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

HIGH INCOME TAXPAYER REPORT

Pub. L. 94–455, title XXI, §2123, Oct. 4, 1976, 90 Stat. 1915, as amended by Pub. L. 98–369, div. A, title IV, §441(b)(1), July 18, 1984, 98 Stat. 815, provided that: "The Secretary of the Treasury shall publish annually information on the amount of tax paid by individual taxpayers with high total incomes. Total income for this purpose is to be calculated and set forth by adding to adjusted gross income any items of tax preference excluded from, or deducted in arriving at, adjusted gross income, and by subtracting any investment expenses incurred in the production of such income to the extent of the investment income. These data are to include the number of such individuals with total income over $200,000 who owe no Federal income tax (after credits) and the deductions, exclusions, or credits used by them to avoid tax."

[Pub. L. 98–369, div. A, title IV, §441(b)(2), July 18, 1984, 98 Stat. 815, provided that: "The amendment made by paragraph (1) [amending section 2123 of Pub. L. 94–455, set out above] shall apply to information published after the date of the enactment of this Act [July 18, 1984]."]

[1] *So in original. Subpar. (B) has no cl. (i).*

§56. Adjustments in computing alternative minimum taxable income

(a) Adjustments applicable to all taxpayers

In determining the amount of the alternative minimum taxable income for any taxable year the following treatment shall apply (in lieu of the treatment applicable for purposes of computing the regular tax):

(1) Depreciation

(A) In general

(i) Property other than certain personal property

Except as provided in clause (ii), the depreciation deduction allowable under section 167 with respect to any tangible property placed in service after December 31, 1986, shall be

determined under the alternative system of section 168(g). In the case of property placed in service after December 31, 1998, the preceding sentence shall not apply but clause (ii) shall continue to apply.

(ii) 150-percent declining balance method for certain property

The method of depreciation used shall be—

(I) the 150 percent declining balance method,

(II) switching to the straight line method for the 1st taxable year for which using the straight line method with respect to the adjusted basis as of the beginning of the year will yield a higher allowance.

The preceding sentence shall not apply to any section 1250 property (as defined in section 1250(c)) (and the straight line method shall be used for such section 1250 property) or to any other property if the depreciation deduction determined under section 168 with respect to such other property for purposes of the regular tax is determined by using the straight line method.

(B) Exception for certain property

This paragraph shall not apply to property described in paragraph (1), (2), (3), or (4) of section 168(f), or in section 168(e)(3)(C)(iv).

(C) Coordination with transitional rules

(i) In general

This paragraph shall not apply to property placed in service after December 31, 1986, to which the amendments made by section 201 of the Tax Reform Act of 1986 do not apply by reason of section 203, 204, or 251(d) of such Act.

(ii) Treatment of certain property placed in service before 1987

This paragraph shall apply to any property to which the amendments made by section 201 of the Tax Reform Act of 1986 apply by reason of an election under section 203(a)(1)(B) of such Act without regard to the requirement of subparagraph (A) that the property be placed in service after December 31, 1986.

(D) Normalization rules

With respect to public utility property described in section 168(i)(10), the Secretary shall prescribe the requirements of a normalization method of accounting for this section.

(2) Mining exploration and development costs

(A) In general

With respect to each mine or other natural deposit (other than an oil, gas, or geothermal well) of the taxpayer, the amount allowable as a deduction under section 616(a) or 617(a) (determined without regard to section 291(b)) in computing the regular tax for costs paid or incurred after December 31, 1986, shall be capitalized and amortized ratably over the 10-year period beginning with the taxable year in which the expenditures were made.

(B) Loss allowed

If a loss is sustained with respect to any property described in subparagraph (A), a deduction shall be allowed for the expenditures described in subparagraph (A) for the taxable year in which such loss is sustained in an amount equal to the lesser of—

(i) the amount allowable under section 165(a) for the expenditures if they had remained capitalized, or

(ii) the amount of such expenditures which have not previously been amortized under subparagraph (A).

(3) Treatment of certain long-term contracts

In the case of any long-term contract entered into by the taxpayer on or after March 1, 1986, the

taxable income from such contract shall be determined under the percentage of completion method of accounting (as modified by section 460(b)). For purposes of the preceding sentence, in the case of a contract described in section 460(e)(1), the percentage of the contract completed shall be determined under section 460(b)(1) by using the simplified procedures for allocation of costs prescribed under section 460(b)(3). The first sentence of this paragraph shall not apply to any home construction contract (as defined in section 460(e)(6)).

(4) Alternative tax net operating loss deduction

The alternative tax net operating loss deduction shall be allowed in lieu of the net operating loss deduction allowed under section 172.

(5) Pollution control facilities

In the case of any certified pollution control facility placed in service after December 31, 1986, the deduction allowable under section 169 (without regard to section 291) shall be determined under the alternative system of section 168(g). In the case of such a facility placed in service after December 31, 1998, such deduction shall be determined under section 168 using the straight line method.

(6) Adjusted basis

The adjusted basis of any property to which paragraph (1) or (5) applies (or with respect to which there are any expenditures to which paragraph (2) or subsection (b)(2) applies) shall be determined on the basis of the treatment prescribed in paragraph (1), (2), or (5), or subsection (b)(2), whichever applies.

(7) Section 87 not applicable

Section 87 (relating to alcohol fuel credit) shall not apply.

(b) Adjustments applicable to individuals

In determining the amount of the alternative minimum taxable income of any taxpayer (other than a corporation), the following treatment shall apply (in lieu of the treatment applicable for purposes of computing the regular tax):

(1) Limitation on deductions

(A) In general

No deduction shall be allowed—

(i) for any miscellaneous itemized deduction (as defined in section 67(b)), or

(ii) for any taxes described in paragraph (1), (2), or (3) of section 164(a) or clause (ii) of section 164(b)(5)(A).

Clause (ii) shall not apply to any amount allowable in computing adjusted gross income.

(B) Medical expenses

In determining the amount allowable as a deduction under section 213, subsection (a) of section 213 shall be applied without regard to subsection (f) of such section.

(C) Interest

In determining the amount allowable as a deduction for interest, subsections (d) and (h) of section 163 shall apply, except that—

(i) in lieu of the exception under section 163(h)(2)(D), the term "personal interest" shall not include any qualified housing interest (as defined in subsection (e)),

(ii) sections 163(d)(6) and 163(h)(5) (relating to phase-ins) shall not apply,

(iii) interest on any specified private activity bond (and any amount treated as interest on a specified private activity bond under section 57(a)(5)(B)), and any deduction referred to in section 57(a)(5)(A), shall be treated as includible in gross income (or as deductible) for purposes of applying section 163(d),

(iv) in lieu of the exception under section 163(d)(3)(B)(i), the term "investment interest"

shall not include any qualified housing interest (as defined in subsection (e)), and

(v) the adjustments of this section and sections 57 and 58 shall apply in determining net investment income under section 163(d).

(D) Treatment of certain recoveries

No recovery of any tax to which subparagraph (A)(ii) applied shall be included in gross income for purposes of determining alternative minimum taxable income.

(E) Standard deduction and deduction for personal exemptions not allowed

The standard deduction under section 63(c), the deduction for personal exemptions under section 151, and the deduction under section 642(b) shall not be allowed. The preceding sentence shall not apply to so much of the standard deduction as is determined under subparagraphs (D) and (E) of section 63(c)(1).

(F) Section 68 not applicable

Section 68 shall not apply.

(2) Circulation and research and experimental expenditures

(A) In general

The amount allowable as a deduction under section 173 or 174(a) in computing the regular tax for amounts paid or incurred after December 31, 1986, shall be capitalized and—

(i) in the case of circulation expenditures described in section 173, shall be amortized ratably over the 3-year period beginning with the taxable year in which the expenditures were made, or

(ii) in the case of research and experimental expenditures described in section 174(a), shall be amortized ratably over the 10-year period beginning with the taxable year in which the expenditures were made.

(B) Loss allowed

If a loss is sustained with respect to any property described in subparagraph (A), a deduction shall be allowed for the expenditures described in subparagraph (A) for the taxable year in which such loss is sustained in an amount equal to the lesser of—

(i) the amount allowable under section 165(a) for the expenditures if they had remained capitalized, or

(ii) the amount of such expenditures which have not previously been amortized under subparagraph (A).

(C) Special rule for personal holding companies

In the case of circulation expenditures described in section 173, the adjustments provided in this paragraph shall apply also to a personal holding company (as defined in section 542).

(D) Exception for certain research and experimental expenditures

If the taxpayer materially participates (within the meaning of section 469(h)) in an activity, this paragraph shall not apply to any amount allowable as a deduction under section 174(a) for expenditures paid or incurred in connection with such activity.

(3) Treatment of incentive stock options

Section 421 shall not apply to the transfer of stock acquired pursuant to the exercise of an incentive stock option (as defined in section 422). Section 422(c)(2) shall apply in any case where the disposition and the inclusion for purposes of this part are within the same taxable year and such section shall not apply in any other case. The adjusted basis of any stock so acquired shall be determined on the basis of the treatment prescribed by this paragraph.

(c) Adjustments applicable to corporations

In determining the amount of the alternative minimum taxable income of a corporation, the following treatment shall apply:

(1) Adjustment for adjusted current earnings

Alternative minimum taxable income shall be adjusted as provided in subsection (g).

(2) Merchant marine capital construction funds

In the case of a capital construction fund established under chapter 535 of title 46, United States Code—

(A) subparagraphs (A), (B), and (C) of section 7518(c)(1) (and the corresponding provisions of such chapter 535) shall not apply to—

(i) any amount deposited in such fund after December 31, 1986, or

(ii) any earnings (including gains and losses) after December 31, 1986, on amounts in such fund, and

(B) no reduction in basis shall be made under section 7518(f) (or the corresponding provisions of such chapter 535) with respect to the withdrawal from the fund of any amount to which subparagraph (A) applies.

For purposes of this paragraph, any withdrawal of deposits or earnings from the fund shall be treated as allocable first to deposits made before (and earnings received or accrued before) January 1, 1987.

(3) Special deduction for certain organizations not allowed

The deduction determined under section 833(b) shall not be allowed.

(d) Alternative tax net operating loss deduction defined

(1) In general

For purposes of subsection (a)(4), the term "alternative tax net operating loss deduction" means the net operating loss deduction allowable for the taxable year under section 172, except that—

(A) the amount of such deduction shall not exceed the sum of—

(i) the lesser of—

(I) the amount of such deduction attributable to net operating losses (other than the deduction described in clause (ii)(I)), or

(II) 90 percent of alternative minimum taxable income determined without regard to such deduction and the deduction under section 199, plus

(ii) the lesser of—

(I) the amount of such deduction attributable to an applicable net operating loss with respect to which an election is made under section 172(b)(1)(H), or

(II) alternative minimum taxable income determined without regard to such deduction and the deduction under section 199 reduced by the amount determined under clause (i), and

(B) in determining the amount of such deduction—

(i) the net operating loss (within the meaning of section 172(c)) for any loss year shall be adjusted as provided in paragraph (2), and

(ii) appropriate adjustments in the application of section 172(b)(2) shall be made to take into account the limitation of subparagraph (A).

(2) Adjustments to net operating loss computation

(A) Post-1986 loss years

In the case of a loss year beginning after December 31, 1986, the net operating loss for such year under section 172(c) shall—

(i) be determined with the adjustments provided in this section and section 58, and

(ii) be reduced by the items of tax preference determined under section 57 for such year.

An item of tax preference shall be taken into account under clause (ii) only to the extent such item increased the amount of the net operating loss for the taxable year under section 172(c).

(B) Pre-1987 years

In the case of loss years beginning before January 1, 1987, the amount of the net operating loss which may be carried over to taxable years beginning after December 31, 1986, for purposes of paragraph (2), shall be equal to the amount which may be carried from the loss year to the first taxable year of the taxpayer beginning after December 31, 1986.

(3) Net operating loss attributable to federally declared disasters

In the case of a taxpayer which has a qualified disaster loss (as defined by section 172(b)(1)(J)) for the taxable year, paragraph (1) shall be applied by increasing the amount determined under subparagraph (A)(ii)(I) thereof by the sum of the carrybacks and carryovers of such loss.

(e) Qualified housing interest

For purposes of this part—

(1) In general

The term "qualified housing interest" means interest which is qualified residence interest (as defined in section 163(h)(3)) and is paid or accrued during the taxable year on indebtedness which is incurred in acquiring, constructing, or substantially improving any property which—

(A) is the principal residence (within the meaning of section 121) of the taxpayer at the time such interest accrues, or

(B) is a qualified dwelling which is a qualified residence (within the meaning of section 163(h)(4)).

Such term also includes interest on any indebtedness resulting from the refinancing of indebtedness meeting the requirements of the preceding sentence; but only to the extent that the amount of the indebtedness resulting from such refinancing does not exceed the amount of the refinanced indebtedness immediately before the refinancing.

(2) Qualified dwelling

The term "qualified dwelling" means any—

(A) house,

(B) apartment,

(C) condominium, or

(D) mobile home not used on a transient basis (within the meaning of section 7701(a)(19)(C)(v)),

including all structures or other property appurtenant thereto.

(3) Special rule for indebtedness incurred before July 1, 1982

The term "qualified housing interest" includes interest which is qualified residence interest (as defined in section 163(h)(3)) and is paid or accrued on indebtedness which—

(A) was incurred by the taxpayer before July 1, 1982, and

(B) is secured by property which, at the time such indebtedness was incurred, was—

(i) the principal residence (within the meaning of section 121) of the taxpayer, or

(ii) a qualified dwelling used by the taxpayer (or any member of his family (within the meaning of section 267(c)(4))).

[(f) Repealed. Pub. L. 101–508, title XI, §11801(a)(3), Nov. 5, 1990, 104 Stat. 1388–520]

(g) Adjustments based on adjusted current earnings

(1) In general

The alternative minimum taxable income of any corporation for any taxable year shall be increased by 75 percent of the excess (if any) of—

(A) the adjusted current earnings of the corporation, over

(B) the alternative minimum taxable income (determined without regard to this subsection and the alternative tax net operating loss deduction).

(2) Allowance of negative adjustments

(A) In general

The alternative minimum taxable income for any corporation of any taxable year, shall be reduced by 75 percent of the excess (if any) of—

(i) the amount referred to in subparagraph (B) of paragraph (1), over

(ii) the amount referred to in subparagraph (A) of paragraph (1).

(B) Limitation

The reduction under subparagraph (A) for any taxable year shall not exceed the excess (if any) of—

(i) the aggregate increases in alternative minimum taxable income under paragraph (1) for prior taxable years, over

(ii) the aggregate reductions under subparagraph (A) of this paragraph for prior taxable years.

(3) Adjusted current earnings

For purposes of this subsection, the term "adjusted current earnings" means the alternative minimum taxable income for the taxable year—

(A) determined with the adjustments provided in paragraph (4), and

(B) determined without regard to this subsection and the alternative tax net operating loss deduction.

(4) Adjustments

In determining adjusted current earnings, the following adjustments shall apply:

(A) Depreciation

(i) Property placed in service after 1989

The depreciation deduction with respect to any property placed in service in a taxable year beginning after 1989 shall be determined under the alternative system of section 168(g). The preceding sentence shall not apply to any property placed in service after December 31, 1993, and the depreciation deduction with respect to such property shall be determined under the rules of subsection (a)(1)(A).

(ii) Property to which new ACRS system applies

In the case of any property to which the amendments made by section 201 of the Tax Reform Act of 1986 apply and which is placed in service in a taxable year beginning before 1990, the depreciation deduction shall be determined—

(I) by taking into account the adjusted basis of such property (as determined for purposes of computing alternative minimum taxable income) as of the close of the last taxable year beginning before January 1, 1990, and

(II) by using the straight-line method over the remainder of the recovery period applicable to such property under the alternative system of section 168(g).

(iii) Property to which original ACRS system applies

In the case of any property to which section 168 (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986 and without regard to subsection (d)(1)(A)(ii) thereof) applies and which is placed in service in a taxable year beginning before 1990, the depreciation deduction shall be determined—

(I) by taking into account the adjusted basis of such property (as determined for purposes of computing the regular tax) as of the close of the last taxable year beginning before January 1, 1990, and

(II) by using the straight line method over the remainder of the recovery period which would apply to such property under the alternative system of section 168(g).

(iv) Property placed in service before 1981

In the case of any property not described in clause (i), (ii), or (iii), the amount allowable as depreciation or amortization with respect to such property shall be determined in the same manner as for purposes of computing taxable income.

(v) Special rule for certain property

In the case of any property described in paragraph (1), (2), (3), or (4) of section 168(f), the amount of depreciation allowable for purposes of the regular tax shall be treated as the amount allowable under the alternative system of section 168(g).

(B) Inclusion of items included for purposes of computing earnings and profits

(i) In general

In the case of any amount which is excluded from gross income for purposes of computing alternative minimum taxable income but is taken into account in determining the amount of earnings and profits—

(I) such amount shall be included in income in the same manner as if such amount were includible in gross income for purposes of computing alternative minimum taxable income, and

(II) the amount of such income shall be reduced by any deduction which would have been allowable in computing alternative minimum taxable income if such amount were includible in gross income.

The preceding sentence shall not apply in the case of any amount excluded from gross income under section 108 (or the corresponding provisions of prior law) or under section 139A or 1357. In the case of any insurance company taxable under section 831(b), this clause shall not apply to any amount not described in section 834(b).

(ii) Inclusion of buildup in life insurance contracts

In the case of any life insurance contract—

(I) the income on such contract (as determined under section 7702(g)) for any taxable year shall be treated as includible in gross income for such year, and

(II) there shall be allowed as a deduction that portion of any premium which is attributable to insurance coverage.

(iii) Tax exempt interest on certain housing bonds

Clause (i) shall not apply in the case of any interest on a bond to which section 57(a)(5)(C)(iii) applies.

(iv) Tax exempt interest on bonds issued in 2009 and 2010

(I) In general

Clause (i) shall not apply in the case of any interest on a bond issued after December 31, 2008, and before January 1, 2011.

(II) Treatment of refunding bonds

For purposes of subclause (I), a refunding bond (whether a current or advance refunding) shall be treated as issued on the date of the issuance of the refunded bond (or in the case of a series of refundings, the original bond).

(III) Exception for certain refunding bonds

Subclause (II) shall not apply to any refunding bond which is issued to refund any bond which was issued after December 31, 2003, and before January 1, 2009.

(C) Disallowance of items not deductible in computing earnings and profits

(i) In general

A deduction shall not be allowed for any item if such item would not be deductible for any taxable year for purposes of computing earnings and profits.

(ii) Special rule for certain dividends

(I) In general

Clause (i) shall not apply to any deduction allowable under section 243 or 245 for any dividend which is a 100-percent dividend or which is received from a 20-percent owned corporation (as defined in section 243(c)(2)), but only to the extent such dividend is attributable to income of the paying corporation which is subject to tax under this chapter (determined after the application of sections 30A, 936 (including subsections (a)(4), (i), and (j) thereof) and 921 (as in effect before its repeal by the FSC Repeal and Extraterritorial Income Exclusion Act of 2000)).

(II) 100-percent dividend

For purposes of subclause (I), the term "100 percent dividend" means any dividend if the percentage used for purposes of determining the amount allowable as a deduction under section 243 or 245 with respect to such dividend is 100 percent.

(iii) Treatment of taxes on dividends from 936 corporations

(I) In general

For purposes of determining the alternative minimum foreign tax credit, 75 percent of any withholding or income tax paid to a possession of the United States with respect to dividends received from a corporation eligible for the credit provided by section 936 shall be treated as a tax paid to a foreign country by the corporation receiving the dividend.

(II) Limitation

If the aggregate amount of the dividends referred to in subclause (I) for any taxable year exceeds the excess referred to in paragraph (1), the amount treated as tax paid to a foreign country under subclause (I) shall not exceed the amount which would be so treated without regard to this subclause multiplied by a fraction the numerator of which is the excess referred to in paragraph (1) and the denominator of which is the aggregate amount of such dividends.

(III) Treatment of taxes imposed on 936 corporation

For purposes of this clause, taxes paid by any corporation eligible for the credit provided by section 936 to a possession of the United States shall be treated as a withholding tax paid with respect to any dividend paid by such corporation to the extent such taxes would be treated as paid by the corporation receiving the dividend under rules similar to the rules of section 902 (and the amount of any such dividend shall be increased by the amount so treated).

(IV) Separate application of foreign tax credit limitations

In determining the alternative minimum foreign tax credit, section 904(d) shall be applied as if dividends from a corporation eligible for the credit provided by section 936 were a separate category of income referred to in a subparagraph of section 904(d)(1).

(V) Coordination with limitation on 936 credit

Any reference in this clause to a dividend received from a corporation eligible for the credit provided by section 936 shall be treated as a reference to the portion of any such dividend for which the dividends received deduction is disallowed under clause (i) after the application of clause (ii)(I).

(VI) Application to section 30A corporations

References in this clause to section 936 shall be treated as including references to

section 30A.

(iv) Special rule for certain dividends received by certain cooperatives

In the case of an organization to which part I of subchapter T (relating to tax treatment of cooperatives) applies which is engaged in the marketing of agricultural or horticultural products, clause (i) shall not apply to any amount allowable as a deduction under section 245(c).

(v) Deduction for domestic production

Clause (i) shall not apply to any amount allowable as a deduction under section 199.

(vi) Special rule for certain distributions from controlled foreign corporations

Clause (i) shall not apply to any deduction allowable under section 965.

(D) Certain other earnings and profits adjustments

(i) Intangible drilling costs

The adjustments provided in section 312(n)(2)(A) shall apply in the case of amounts paid or incurred in taxable years beginning after December 31, 1989. In the case of a taxpayer other than an integrated oil company (as defined in section 291(b)(4)), in the case of any oil or gas well, this clause shall not apply in the case of amounts paid or incurred in taxable years beginning after December 31, 1992.

(ii) Certain amortization provisions not to apply

Sections 173 and 248 shall not apply to expenditures paid or incurred in taxable years beginning after December 31, 1989.

(iii) LIFO inventory adjustments

The adjustments provided in section 312(n)(4) shall apply, but only with respect to taxable years beginning after December 31, 1989.

(iv) Installment sales

In the case of any installment sale in a taxable year beginning after December 31, 1989, adjusted current earnings shall be computed as if the corporation did not use the installment method. The preceding sentence shall not apply to the applicable percentage (as determined under section 453A) of the gain from any installment sale with respect to which section 453A(a)(1) applies.

(E) Disallowance of loss on exchange of debt pools

No loss shall be recognized on the exchange of any pool of debt obligations for another pool of debt obligations having substantially the same effective interest rates and maturities.

(F) Depletion

(i) In general

The allowance for depletion with respect to any property placed in service in a taxable year beginning after December 31, 1989, shall be cost depletion determined under section 611.

(ii) Exception for independent oil and gas producers and royalty owners

In the case of any taxable year beginning after December 31, 1992, clause (i) (and subparagraph (C)(i)) shall not apply to any deduction for depletion computed in accordance with section 613A(c).

(G) Treatment of certain ownership changes

If—

(i) there is an ownership change (within the meaning of section 382) in a taxable year beginning after 1989 with respect to any corporation, and

(ii) there is a net unrealized built-in loss (within the meaning of section 382(h)) with respect to such corporation,

then the adjusted basis of each asset of such corporation (immediately after the ownership change) shall be its proportionate share (determined on the basis of respective fair market values) of the fair market value of the assets of such corporation (determined under section 382(h)) immediately before the ownership change.

(H) Adjusted basis

The adjusted basis of any property with respect to which an adjustment under this paragraph applies shall be determined by applying the treatment prescribed in this paragraph.

(I) Treatment of charitable contributions

Notwithstanding subparagraphs (B) and (C), no adjustment related to the earnings and profits effects of any charitable contribution shall be made in computing adjusted current earnings.

(5) Other definitions

For purposes of paragraph (4)—

(A) Earnings and profits

The term "earnings and profits" means earnings and profits computed for purposes of subchapter C.

(B) Treatment of alternative minimum taxable income

The treatment of any item for purposes of computing alternative minimum taxable income shall be determined without regard to this subsection.

(6) Exception for certain corporations

This subsection shall not apply to any S corporation, regulated investment company, real estate investment trust, or REMIC.

(Added Pub. L. 99–514, title VII, §701(a), Oct. 22, 1986, 100 Stat. 2322; amended Pub. L. 100–203, title X, §§10202(d), 10243(a), Dec. 22, 1987, 101 Stat. 1330–392, 1330–423; Pub. L. 100–647, title I, §§1002(a)(12), 1007(b)(1)–(14)(A), (15)–(19), title II, §§2001(c)(3)(A), 2004(b)(2), (3), title V, §5041(b)(4), title VI, §§6079(a)(1), 6303(a), Nov. 10, 1988, 102 Stat. 3355, 3428–3432, 3594, 3599, 3674, 3709, 3755; Pub. L. 101–239, title VII, §§7205(b), 7611(a)–(f)(4), 7612(c)(1), (d)(1), 7811(d)(3), 7815(e)(2), (4), Dec. 19, 1989, 103 Stat. 2335, 2371–2374, 2408, 2419; Pub. L. 101–508, title XI, §§11103(b), 11301(b), 11531(a), (b)(1), 11704(a)(1), 11801(a)(3), (c)(2)(A)–(C), (9)(G), 11812(b)(4), Nov. 5, 1990, 104 Stat. 1388–406, 1388–449, 1388–488, 1388–490, 1388–518, 1388–520, 1388–522, 1388–523, 1388–526, 1388–535; Pub. L. 102–486, title XIX, §1915(a)(2), (b)(2), (c)(1), (2), Oct. 24, 1992, 106 Stat. 3023, 3024; Pub. L. 103–66, title XIII, §§13115(a), 13171(b), 13227(c), Aug. 10, 1993, 107 Stat. 432, 454, 493; Pub. L. 104–188, title I, §§1601(b)(2)(B), (C), 1621(b)(2), 1702(c)(1), (e)(1)(A), (g)(4), (h)(12), 1704(t)(1), (48), Aug. 20, 1996, 110 Stat. 1832, 1833, 1867, 1869, 1870, 1873, 1874, 1887, 1889; Pub. L. 105–34, title III, §312(d)(1), title IV, §§402, 403(a), title XII, §1212(a), Aug. 5, 1997, 111 Stat. 839, 844, 1000; Pub. L. 105–277, div. J, title IV, §4006(c)(2), Oct. 21, 1998, 112 Stat. 2681–912; Pub. L. 106–519, §4(1), Nov. 15, 2000, 114 Stat. 2432; Pub. L. 106–554, §1(a)(7) [title III, §314(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–643; Pub. L. 107–147, title I, §102(c)(1), title IV, §417(5), Mar. 9, 2002, 116 Stat. 26, 56; Pub. L. 108–173, title XII, §1202(b), Dec. 8, 2003, 117 Stat. 2480; Pub. L. 108–311, title IV, §403(b)(4), Oct. 4, 2004, 118 Stat. 1187; Pub. L. 108–357, title I, §§101(b)(4), 102(b), title II, §248(b)(1), title IV, §422(b), title VIII, §835(b)(1), Oct. 22, 2004, 118 Stat. 1423, 1428, 1457, 1519, 1593; Pub. L. 109–58, title XIII, §1326(d), Aug. 8, 2005, 119 Stat. 1017; Pub. L. 109–135, title IV, §403(a)(14), (r)(2), Dec. 21, 2005, 119 Stat. 2619, 2628; Pub. L. 109–304, §17(e)(1), Oct. 6, 2006, 120 Stat. 1707; Pub. L. 110–172, §11(g)(1), (2), Dec. 29, 2007, 121 Stat. 2489, 2490; Pub. L. 110–289, div. C, title I, §3022(a)(2), July 30, 2008, 122 Stat. 2894; Pub. L. 110–343, div. C, title VII, §§706(b)(3), 708(c), Oct. 3, 2008, 122 Stat. 3922, 3925; Pub. L. 111–5, div. B, title I, §§1008(d), 1503(b), Feb. 17, 2009, 123 Stat. 318, 354; Pub. L. 111–92, §13(b), Nov. 6, 2009, 123 Stat. 2993; Pub. L. 111–148, title IX, §9013(c), Mar. 23, 2010, 124 Stat. 868.)

REFERENCES IN TEXT

Section 201 of the Tax Reform Act of 1986, referred to in subsecs. (a)(1)(C) and (g)(4)(A)(ii), is section 201 of Pub. L. 99–514, which amended sections 46, 167, 168, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title.

Sections 203, 204, and 251(d) of such Act, referred to in subsec. (a)(1)(C), are sections 203, 204, and 251(d) of the Tax Reform Act of 1986, Pub. L. 99–514. Sections 203 and 204 are set out as notes under section 168 of this title. Section 251(d) is set out as a note under section 46 of this title.

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (g)(4)(A)(iii), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

The FSC Repeal and Extraterritorial Income Exclusion Act of 2000, referred to in subsec. (g)(4)(C)(ii)(I), is Pub. L. 106–519, Nov. 15, 2000, 114 Stat. 2423. For complete classification of this Act to the Code, see Short Title of 2000 Amendments note set out under section 1 of this title and Tables.

PRIOR PROVISIONS

A prior section 56, added Pub. L. 91–172, title III, §301(a), Dec. 30, 1969, 83 Stat. 580; amended Pub. L. 91–614, title V, §501(a), Dec. 31, 1970, 84 Stat. 1846; Pub. L. 92–178, title VI, §601(c)(4), (5), Dec. 10, 1971, 85 Stat. 558; Pub. L. 93–406, title II, §§2001(g)(2)(D), 2002(g)(4), 2005(c)(7), Sept. 2, 1974, 88 Stat. 957, 968, 991; Pub. L. 94–12, title II, §§203(b)(2), (3), 208(d)(2), (3), Mar. 29, 1975, 89 Stat. 30, 35; Pub. L. 94–455, title III, §301(a), (b), (c)(4)(B), Oct. 4, 1976, 90 Stat. 1549, 1552; Pub. L. 95–30, title II, §202(d)(2), May 23, 1977, 91 Stat. 148; Pub. L. 95–600, title I, §141(d), Nov. 6, 1978, 92 Stat. 2794; Pub. L. 95–618, title I, §101(b)(2), Nov. 9, 1978, 92 Stat. 3179; Pub. L. 96–222, title I, §101(a)(7)(L)(iii)(IV), Apr. 1, 1980, 94 Stat. 200; Pub. L. 97–34, title III, §331(c)(2), Aug. 13, 1981, 95 Stat. 293; Pub. L. 97–248, title II, §201(d)(1), formerly §201(c)(1), Sept. 3, 1982, 96 Stat. 419, renumbered §201(d)(1), Pub. L. 97–448, title III, §306(a)(1)(A)(i), Jan. 12, 1983, 96 Stat. 2400; Pub. L. 98–369, div. A, title IV, §474(r)(1), July 18, 1984, 98 Stat. 839; Pub. L. 99–514, title XI, §1171(b)(3), Oct. 22, 1986, 100 Stat. 2513, related to a corporate minimum tax, prior to the general revision of this part by Pub. L. 99–514, §701(a).

AMENDMENTS

2010—Subsec. (b)(1)(B). Pub. L. 111–148 substituted "without regard to subsection (f) of such section" for "by substituting '10 percent' for '7.5 percent' ".

2009—Subsec. (b)(1)(E). Pub. L. 111–5, §1008(d), substituted "subparagraphs (D) and (E) of section 63(c)(1)" for "section 63(c)(1)(D)".

Subsec. (d)(1)(A)(ii)(I). Pub. L. 111–92 amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: "the amount of such deduction attributable to the sum of carrybacks of net operating losses from taxable years ending during 2001 or 2002 and carryovers of net operating losses to taxable years ending during 2001 and 2002, or".

Subsec. (g)(4)(B)(iv). Pub. L. 111–5, §1503(b), added cl. (iv).

2008—Subsec. (b)(1)(E). Pub. L. 110–343, §706(b)(3), inserted at end "The preceding sentence shall not apply to so much of the standard deduction as is determined under section 63(c)(1)(D)."

Subsec. (d)(3). Pub. L. 110–343, §708(c), added par. (3).

Subsec. (g)(4)(B)(iii). Pub. L. 110–289 added cl. (iii).

2007—Subsec. (g)(4)(C)(ii)(I). Pub. L. 110–172, §11(g)(1), substituted "921 (as in effect before its repeal by the FSC Repeal and Extraterritorial Income Exclusion Act of 2000)" for "921".

Subsec. (g)(4)(C)(iv). Pub. L. 110–172, §11(g)(2), which directed the amendment of section 54(g)(4)(C)(iv) of this title by substituting "an organization to which part I of subchapter T (relating to tax treatment of cooperatives) applies which is engaged in the marketing of agricultural or horticultural products" for "a cooperative described in section 927(a)(4)", was executed to this section, to reflect the probable intent of Congress.

2006—Subsec. (c)(2). Pub. L. 109–304, in introductory provisions, substituted "chapter 535 of title 46, United States Code" for "section 607 of the Merchant Marine Act, 1936 (46 U.S.C. 1177)", and, in subpars. (A) and (B), substituted "such chapter 535" for "such section 607".

2005—Subsec. (a)(1)(B). Pub. L. 109–58 inserted ", or in section 168(e)(3)(C)(iv)" before period at end.

Subsec. (b)(1)(A)(ii). Pub. L. 109–135, §403(r)(2), inserted "or clause (ii) of section 164(b)(5)(A)" before period at end.

Subsec. (d)(1)(A)(i)(II), (ii)(II). Pub. L. 109–135, §403(a)(14), substituted "such deduction and the deduction under section 199" for "such deduction".

2004—Subsec. (d)(1)(A)(i)(I). Pub. L. 108–311, §403(b)(4)(A), struck out "attributable to carryovers" after "other than the deduction".

Subsec. (d)(1)(A)(ii)(I). Pub. L. 108–311, §403(b)(4)(B), substituted "from taxable years" for "for taxable years" and "carryovers" for "carryforwards".

Subsec. (g)(4)(B)(i). Pub. L. 108–357, §248(b)(1), inserted "or 1357" after "section 139A" in concluding provisions.

Pub. L. 108–357, §101(b)(4), struck out "114 or" before "139A" in concluding provisions.

Subsec. (g)(4)(C)(v). Pub. L. 108–357, §102(b), added cl. (v).

Subsec. (g)(4)(C)(vi). Pub. L. 108–357, §422(b), added cl. (vi).

Subsec. (g)(6). Pub. L. 108–357, §835(b)(1), substituted "or REMIC" for "REMIC, or FASIT".

2003—Subsec. (g)(4)(B)(i). Pub. L. 108–173 inserted "or 139A" after "section 114" in concluding provisions.

2002—Subsec. (a)(1)(A)(ii). Pub. L. 107–147, §417(5), substituted "such section 1250" for "such 1250" in concluding provisions.

Subsec. (d)(1)(A). Pub. L. 107–147, §102(c)(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "the amount of such deduction shall not exceed 90 percent of alternate minimum taxable income determined without regard to such deduction, and".

2000—Subsec. (a)(1)(A)(ii). Pub. L. 106–554 inserted "(and the straight line method shall be used for such 1250 property)" before "or to any other property" in concluding provisions.

Subsec. (g)(4)(B)(i). Pub. L. 106–519 inserted "or under section 114" before the period at end of first sentence in concluding provisions.

1998—Subsec. (a)(3). Pub. L. 105–277 substituted "section 460(b)(1)" for "section 460(b)(2)" and "section 460(b)(3)" for "section 460(b)(4)".

1997—Subsec. (a)(1)(A)(i). Pub. L. 105–34, §402(a), inserted at end "In the case of property placed in service after December 31, 1998, the preceding sentence shall not apply but clause (ii) shall continue to apply."

Subsec. (a)(5). Pub. L. 105–34, §402(b), inserted at end "In the case of such a facility placed in service after December 31, 1998, such deduction shall be determined under section 168 using the straight line method."

Subsec. (a)(6) to (8). Pub. L. 105–34, §403(a), redesignated pars. (7) and (8) as (6) and (7), respectively, and struck out former par. (6) which read as follows:

"(6) INSTALLMENT SALES OF CERTAIN PROPERTY.—In the case of any disposition after March 1, 1986, of any property described in section 1221(1), income from such disposition shall be determined without regard to the installment method under section 453. This paragraph shall not apply to any disposition with respect to which an election is in effect under section 453(l)(2)(B)."

Subsec. (e)(1)(A), (3)(B)(i). Pub. L. 105–34, §312(d)(1), substituted "section 121" for "section 1034".

Subsec. (g)(4)(B)(i). Pub. L. 105–34, §1212(a), inserted at end of concluding provisions "In the case of any insurance company taxable under section 831(b), this clause shall not apply to any amount not described in section 834(b)."

1996—Subsec. (b)(3). Pub. L. 104–188, §1702(h)(12), provided that the amendment made by section 11801(c)(9)(G)(ii) of Pub. L. 101–508 shall be applied as if it struck "Section 422A(c)(2)" and inserted "Section 422(c)(2)". See 1990 Amendment note below.

Subsec. (d)(1)(B)(ii). Pub. L. 101–508, §1702(e)(1)(A), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: "in the case of taxable years beginning after December 31, 1986, section 172(b)(2) shall be applied by substituting '90 percent of alternative minimum taxable income determined without regard to the alternative tax net operating loss deduction' for 'taxable income' each place it appears."

Subsec. (g)(1), (2)(A). Pub. L. 104–188, §1704(t)(48), provided that section 11801(c)(2)(B) of Pub. L. 101–508 shall be applied as if "section 56(g)" appeared instead of "section 59(g)". See 1990 Amendment note below.

Subsec. (g)(4)(C)(ii)(I). Pub. L. 104–188, §1601(b)(2)(B), inserted "30A," before "936" and substituted ", (i), and (j)" for "and (i)".

Subsec. (g)(4)(C)(ii)(II). Pub. L. 104–188, §1704(t)(1), substituted "of subclause" for "of the subclause".

Subsec. (g)(4)(C)(iii)(VI). Pub. L. 104–188, §1601(b)(2)(C), added subcl. (VI).

Subsec. (g)(4)(D)(iii). Pub. L. 104–188, §1702(g)(4), inserted ", but only with respect to taxable years beginning after December 31, 1989" before period at end.

Subsec. (g)(4)(H) to (J). Pub. L. 104–188, §1702(c)(1), redesignated subpars. (I) and (J) as (H) and (I), respectively.

Subsec. (g)(6). Pub. L. 104–188, §1621(b)(2), substituted "REMIC, or FASIT" for "or REMIC".

1993—Subsec. (g)(4)(A)(i). Pub. L. 103–66, §13115(a), inserted at end "The preceding sentence shall not apply to any property placed in service after December 31, 1993, and the depreciation deduction with respect to such property shall be determined under the rules of subsection (a)(1)(A)."

Subsec. (g)(4)(C)(ii)(I). Pub. L. 103–66, §13227(c)(1), substituted "sections 936 (including subsections (a)(4) and (i) thereof) and 921" for "sections 936 and 921".

Subsec. (g)(4)(C)(iii)(IV), (V). Pub. L. 103–66, §13227(c)(2), added subcls. (IV) and (V).

Subsec. (g)(4)(J). Pub. L. 103–66, §13171(b), added subpar. (J).

1992—Subsec. (d)(1)(A). Pub. L. 102–486, §1915(c)(2), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "the amount of such deduction shall not exceed the excess (if any) of—

"(i) 90 percent of alternative minimum taxable income determined without regard to such deduction and the deduction under subsection (h), over

"(ii) the deduction under subsection (h), and".

Subsec. (g)(4)(D)(i). Pub. L. 102–486, §1915(b)(2), inserted at end "In the case of a taxpayer other than an integrated oil company (as defined in section 291(b)(4)), in the case of any oil or gas well, this clause shall not apply in the case of amounts paid or incurred in taxable years beginning after December 31, 1992."

Subsec. (g)(4)(F). Pub. L. 102–486, §1915(a)(2), amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: "The allowance for depletion with respect to any property placed in service in a taxable year beginning after 1989 shall be cost depletion determined under section 611."

Subsec. (h). Pub. L. 102–486, §1915(c)(1), struck out subsec. (h) which related to adjustment based on energy preferences.

1990—Subsec. (a)(1)(D). Pub. L. 101–508, §11812(b)(4), substituted "section 168(i)(10)" for "section 167(l)(3)(A)".

Subsec. (b)(1)(F). Pub. L. 101–508, §11103(b), added subpar. (F).

Subsec. (b)(3). Pub. L. 101–508, §11801(c)(9)(G)(i), substituted "section 422" for "section 422A".

Pub. L. 101–508, §11801(c)(9)(G)(ii), which directed the substitution of "section 422(c)(2)" for "section 422A(c)(2)", was executed by substituting "Section 422(c)(2)" for "Section 422A(c)(2)". See 1996 Amendment note above.

Subsec. (c)(1). Pub. L. 101–508, §11801(c)(2)(A), substituted heading for one which read: "Adjustment for book income or adjusted current earnings" and amended text generally. Prior to amendment, text read as follows:

"(A) BOOK INCOME ADJUSTMENT.—For taxable years beginning in 1987, 1988, and 1989, alternative minimum taxable income shall be adjusted as provided under subsection (f).

"(B) ADJUSTED CURRENT EARNINGS.—For taxable years beginning after 1989, alternative minimum taxable income shall be adjusted as provided under subsection (g)."

Subsec. (d)(1)(A). Pub. L. 101–508, §11531(b)(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "the amount of such deduction shall not exceed 90 percent of alternative minimum taxable income determined without regard to such deduction, and".

Subsec. (f). Pub. L. 101–508, §11801(a)(3), struck out subsec. (f) which related to adjustments for book income of corporations with respect to minimum taxable income, adjusted net book income, adjustments for certain taxes, special rules for related corporations for consolidated returns, treatment of dividends, statements covering different periods, special rule for cooperatives, treatment and limitation of taxes on dividends from 936 corporations, rules for Alaska native corporations, special rules for life insurance companies, exclusion of certain income from transfer of stock for debt, secretarial authority to adjust items, applicable financial statements, earnings and profits used, special rules for more than one statement and exception for certain corporations.

Subsec. (g)(1), (2)(A). Pub. L. 101–508, §11801(c)(2)(B), which directed that pars. (1) and (2) "of section 59(g) are each amended by striking 'beginning after 1989' ", was executed to pars. (1) and (2)(A) of subsec. (g) of this section after "any taxable year". See 1996 Amendment note above.

Subsec. (g)(4)(C)(iii). Pub. L. 101–508, §11801(c)(2)(C), substituted heading for one which read: "Special rule for dividends from section 936 companies" and amended text generally. Prior to amendment, text read as follows: "In the case of any dividend received from a corporation eligible for the credit provided by section 936, rules similar to the rules of subparagraph (F) of subsection (f)(1) shall apply, except that '75 percent' shall be substituted for '50 percent' in clause (i) thereof."

Subsec. (g)(4)(D)(ii). Pub. L. 101–508, §11704(a)(1), substituted "years" for "year".

Subsec. (g)(4)(F) to (H). Pub. L. 101–508, §11301(b), redesignated subpars. (G) and (H) as (F) and (G), respectively, and struck out former subpar. (F) which provided that acquisition expenses for life insurance companies be capitalized and amortized in accordance with the treatment generally required under generally accepted accounting principles as if this subparagraph applied to all taxable years.

Subsec. (h). Pub. L. 101–508, §11531(a), added subsec. (h).

1989—Subsec. (a)(3). Pub. L. 101–239, §7815(e)(2)(B), substituted "The first sentence of this paragraph

shall not" for "The preceding sentence shall not".

Pub. L. 101–239, §7815(e)(2)(A), made clarifying amendment to directory language of Pub. L. 100–647, §5041(b)(4), see 1988 Amendment note below.

Pub. L. 101–239, §7612(c)(1), struck out "with respect to which the requirements of clauses (i) and (ii) of section 460(e)(1)(B) are met" after "section 460(e)(6))".

Subsec. (b)(2)(D). Pub. L. 101–239, §7612(d)(1), added subpar. (D).

Subsec. (b)(3). Pub. L. 101–239, §7811(d)(3), inserted after first sentence "Section 422A(c)(2) shall apply in any case where the disposition and the inclusion for purposes of this part are within the same taxable year and such section shall not apply in any other case." and substituted "this paragraph" for "the preceding sentence" in last sentence.

Subsec. (g)(4)(A)(i). Pub. L. 101–239, §7611(a)(1)(A), amended cl. (i) generally. Prior to amendment cl. (i) read as follows: "The depreciation deduction with respect to any property placed in service in a taxable year beginning after 1989 shall be determined under whichever of the following methods yields deductions with a smaller present value:

"(I) The alternative system of section 168(g), or

"(II) The method used for book purposes."

Subsec. (g)(4)(A)(iii). Pub. L. 101–239, §7611(a)(2), inserted "and which is placed in service in a taxable year beginning before 1990" after "thereof) applies".

Subsec. (g)(4)(A)(v) to (vii). Pub. L. 101–239, §7611(a)(1)(B), redesignated cl. (vii) as (v), and struck out former cl. (v), which related to use of slower method if used for book purposes, and cl. (vi), which related to election to have cumulative limitation.

Subsec. (g)(4)(B)(i). Pub. L. 101–239, §7611(f)(2), inserted at end "The preceding sentence shall not apply in the case of any amount excluded from gross income under section 108 (or the corresponding provisions of prior law)."

Subsec. (g)(4)(B)(iii). Pub. L. 101–239, §7611(f)(3), repealed cl. (iii) which read as follows: "In the case of any annuity contract, the income on such contract (as determined under section 72(u)(2)) shall be treated as includible in gross income for such year. The preceding sentence shall not apply to any annuity contract which is held under a plan described in section 403(a) or which is described in section 72(u)(3)(C)."

Subsec. (g)(4)(C)(ii). Pub. L. 101–239, §7611(d), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: "Clause (i) shall not apply to any deduction allowable under section 243 or 245 for a 100-percent dividend—

"(I) if the corporation receiving such dividend and the corporation paying such dividend could not be members of the same affiliated group under section 1504 by reason of section 1504(b),

"(II) but only to the extent such dividend is attributable to income of the paying corporation which is subject to tax under this chapter (determined after the application of sections 936 and 921).

For purposes of the preceding sentence, the term '100 percent dividend' means any dividend if the percentage used for purposes of determining the amount allowable as a deduction under section 243 or 245 with respect to such dividend is 100 percent."

Subsec. (g)(4)(C)(iv). Pub. L. 101–239, §7611(e), added cl. (iv).

Subsec. (g)(4)(D). Pub. L. 101–239, §7611(b), amended subpar. (D) generally, in cl. (i), substituting provisions directing that adjustments in section 312(n)(2)(A) be applied, for provisions directing adjustments in section 312(n) be applied, with certain exceptions, in cl. (ii), substituting provisions directing that sections 173 and 248 not apply to expenditures paid or incurred in taxable years beginning after December 31, 1989, for material relating to special rule for intangible drilling costs and mineral exploration and development costs, and adding cls. (iii) and (iv).

Subsec. (g)(4)(D)(i)(IV), (V). Pub. L. 101–239, §7815(e)(4), added subcl. (IV) relating to inapplicability of pars. (6) to (8) and struck out former subcls. (IV) and (V), which read as follows:

"(IV) paragraph (6) shall apply only to contracts entered into on or after March 1, 1986, and

"(V) paragraphs (7) and (8) shall not apply."

Subsec. (g)(4)(G). Pub. L. 101–239, §7611(c), amended subpar. (G) generally. Prior to amendment, subpar. (G) read as follows: "The allowances for depletion with respect to any property placed in service in a taxable year beginning after 1989, shall be determined under whichever of the following methods yields deductions with a smaller present value:

"(i) cost depletion determined under section 611, or

"(ii) the method used for book purposes."

Subsec. (g)(4)(H). Pub. L. 101–239, §7205(b), added cl. (ii) and concluding provision and struck out former cl. (ii) and concluding provision which read as follows:

"(ii)(I) the aggregate adjusted bases of the assets of such corporation (immediately after the change), exceed

"(II) the value of the stock of such corporation (as determined for purposes of section 382), properly adjusted for liabilities and other relevant items,
then the adjusted basis of each asset of such corporation (as of such time) shall be its proportionate share (determined on the basis of respective fair market values) of the amount referred to in clause (ii)(II)."

Subsec. (g)(4)(H)(i). Pub. L. 101–239, §7611(f)(1), substituted "in a taxable year beginning after 1989" for "after the date of the enactment of the Tax Reform Act of 1986".

Subsec. (g)(5)(A). Pub. L. 101–239, §7611(f)(4), redesignated subpar. (B) as (A) and struck out former subpar. (A) which defined "book purposes".

Subsec. (g)(5)(B). Pub. L. 101–239, §7611(f)(4), redesignated subpar. (D) as (B). Former subpar. (B) redesignated (A).

Subsec. (g)(5)(C). Pub. L. 101–239, §7611(f)(4), struck out subpar. (C) which read as follows: "PRESENT VALUE.—Present value shall be determined as of the time the property is placed in service (or, if later, as of the beginning of the first taxable year beginning after 1989) and under regulations prescribed by the Secretary."

Subsec. (g)(5)(D). Pub. L. 101–239, §7611(f)(4), redesignated subpar. (D) as (B).

1988—Subsec. (a)(1)(A)(i). Pub. L. 100–647, §1007(b)(15), substituted "personal" for "real" in heading.

Subsec. (a)(1)(C)(i). Pub. L. 100–647, §1002(a)(12), inserted "by reason of section 203, 204, or 251(d) of such Act" after "do not apply".

Subsec. (a)(3). Pub. L. 100–647, §5041(b)(4), as amended by Pub. L. 101–239, §7815(e)(2)(A), inserted at end "The preceding sentence shall not apply to any home construction contract (as defined in section 460(e)(6)) with respect to which the requirements of clauses (i) and (ii) of section 460(e)(1)(B) are met."

Pub. L. 100–647, §1007(b)(1), inserted at end "For purposes of the preceding sentence, in the case of a contract described in section 460(e)(1), the percentage of the contract completed shall be determined under section 460(b)(2) by using the simplified procedures for allocation of costs prescribed under section 460(b)(4)."

Subsec. (a)(8). Pub. L. 100–647, §1007(b)(19), added par. (8).

Subsec. (b)(1). Pub. L. 100–647, §1007(b)(16), struck out "itemized" after "Limitation on" in heading.

Subsec. (b)(1)(C)(ii). Pub. L. 100–647, §2004(b)(2), substituted "163(h)(5)" for "163(h)(6)".

Subsec. (b)(1)(C)(iii). Pub. L. 100–647, §1007(b)(4), substituted "specified private activity bond" for "specified activity bond" before "under", and "57(a)(5)(B)" for "56(a)(5)(B)".

Subsec. (b)(1)(C)(iv), (v). Pub. L. 100–647, §1007(b)(3), added cls. (iv) and (v).

Subsec. (b)(1)(E). Pub. L. 100–647, §1007(b)(2), substituted "and deduction for personal exemptions not allowed" for "not allowed" in heading and amended text generally. Prior to amendment, text read as follows: "The standard deduction provided in section 63(c) shall not be allowed."

Subsec. (b)(3). Pub. L. 100–647, §1007(b)(14)(A), added par. (3).

Subsec. (c)(1). Pub. L. 100–647, §1007(b)(13)(A), substituted "adjusted current earnings" for "adjusted earnings and profits" in heading.

Subsec. (c)(1)(B). Pub. L. 100–647, §1007(b)(13)(B), substituted "Adjusted current earnings" for "Adjusted earnings and profits" in heading.

Subsec. (d)(2)(A). Pub. L. 100–647, §1007(b)(5), struck out "(other than subsection (a)(6) thereof)" after "for such year" in cl. (ii) and inserted sentence at end providing that an item of tax preference shall be taken into account under clause (ii).

Subsec. (e)(1). Pub. L. 100–647, §2004(b)(3)(A), substituted "improving" for "rehabilitating" in introductory text.

Pub. L. 100–647, §1007(b)(6)(A)(i), inserted "qualified residence interest (as defined in section 163(h)(3)) and is" after "interest which is" in introductory text.

Subsec. (e)(1)(A). Pub. L. 100–647, §2004(b)(3)(B), struck out "or is paid" after "accrues".

Subsec. (e)(1)(B). Pub. L. 100–647, §1007(b)(6)(A)(ii), substituted "section 163(h)(4)" for "section 163(h)(3)".

Subsec. (e)(3). Pub. L. 100–647, §1007(b)(6)(B), substituted "interest which is qualified residence interest (as defined in section 163(h)(3)) and is paid or accrued" for "interest paid or accrued".

Subsec. (f)(2)(B). Pub. L. 100–647, §2001(c)(3)(A), inserted at end "No adjustment shall be made under this subparagraph for the tax imposed by section 59A."

Pub. L. 100–647, §1007(b)(7), inserted "(otherwise eligible for the credit provided by section 901 without regard to section 901(j))" after "any such taxes".

Subsec. (f)(2)(F). Pub. L. 100–647, §1007(b)(11)(A), substituted "Treatment of taxes on dividends from 936 corporations" for "Treatment of dividends from 936 corporations" in heading and amended text generally, substituting cls. (i) to (iii) for former cls. (i) and (ii).

Subsec. (f)(2)(I), (J). Pub. L. 100–647, §6303(a), added subpar. (I) and redesignated former subpar. (I) as (J).

Subsec. (f)(3)(A)(iii). Pub. L. 100–647, §1007(b)(8), inserted "for a substantial nontax purpose" after "an income statement".

Subsec. (f)(3)(B). Pub. L. 100–647, §1007(b)(9), substituted "this subsection" for "paragraph (3)(A)" in penultimate sentence.

Subsec. (f)(3)(C). Pub. L. 100–647, §1007(b)(10), inserted at end "If the taxpayer has 2 or more statements described in the clause (or subclause) with the lowest number designation, the applicable financial statement shall be the one of such statements specified in regulations."

Subsec. (g)(4)(A)(vi), (vii). Pub. L. 100–647, §1007(b)(17), added cls. (vi) and (vii).

Subsec. (g)(4)(B)(iii). Pub. L. 100–647, §6079(a)(1), amended last sentence generally, inserting "which is" after "any annuity contract" and "or which is described in section 72(u)(3)(C)" after "in section 403(a)".

Pub. L. 100–647, §1007(b)(12), inserted at end "The preceding sentence shall not apply to any annuity contract held under a plan described in section 403(a)."

Subsec. (g)(4)(C)(iii). Pub. L. 100–647, §1007(b)(11)(B), substituted "clause (i)" for "clause (ii)(I)".

Subsec. (g)(4)(I). Pub. L. 100–647, §1007(b)(18), added subpar. (I).

1987—Subsec. (a)(6). Pub. L. 100–203, §10202(d), amended par. (6) generally. Prior to amendment, par. (6) read as follows: "In the case of any—

"(A) disposition after March 1, 1986, of property described in section 1221(1), or

"(B) other disposition if an obligation arising from such disposition would be an applicable installment obligation (as defined in section 453C(e)) to which section 453C applies,

income from such disposition shall be determined without regard to the installment method under section 453 or 453A and all payments to be received for the disposition shall be deemed received in the taxable year of the disposition. This paragraph shall not apply to any disposition with respect to which an election is in effect under section 453C(e)(4)."

Subsec. (f)(2)(H), (I). Pub. L. 100–203, §10243(a), added subpar. (H) and redesignated former subpar. (H) as (I).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–148, title IX, §9013(d), Mar. 23, 2010, 124 Stat. 868, provided that: "The amendments made by this section [amending this section and section 213 of this title] shall apply to taxable years beginning after December 31, 2012."

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–92, §13(e), (f), Nov. 6, 2009, 123 Stat. 2994, 2995, provided that:

"(e) EFFECTIVE DATES.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 172 and 810 of this title] shall apply to net operating losses arising in taxable years ending after December 31, 2007.

"(2) ALTERNATIVE TAX NET OPERATING LOSS DEDUCTION.—The amendment made by subsection (b) [amending this section] shall apply to taxable years ending after December 31, 2002.

"(3) LOSS FROM OPERATIONS OF LIFE INSURANCE COMPANIES.—The amendment made by subsection (d) [probably means subsec. (c), amending section 810 of this title] shall apply to losses from operations arising in taxable years ending after December 31, 2007.

"(4) TRANSITIONAL RULE.—In the case of any net operating loss (or, in the case of a life insurance company, any loss from operations) for a taxable year ending before the date of the enactment of this Act [Nov. 6, 2009]—

"(A) any election made under section 172(b)(3) or 810(b)(3) of the Internal Revenue Code of 1986 with respect to such loss may (notwithstanding such section) be revoked before the due date (including extension of time) for filing the return for the taxpayer's last taxable year beginning in 2009, and

"(B) any application under section 6411(a) of such Code with respect to such loss shall be treated as timely filed if filed before such due date.

"(f) EXCEPTION FOR TARP RECIPIENTS.—The amendments made by this section [amending this section and sections 172 and 810 of this title] shall not apply to—

"(1) any taxpayer if—

"(A) the Federal Government acquired before the date of the enactment of this Act [Nov. 6, 2009] an equity interest in the taxpayer pursuant to the Emergency Economic Stabilization Act of 2008 [div. A of Pub. L. 110–343, see Tables for classification],

"(B) the Federal Government acquired before such date of enactment any warrant (or other right) to acquire any equity interest with respect to the taxpayer pursuant to the Emergency Economic Stabilization Act of 2008, or

"(C) such taxpayer receives after such date of enactment funds from the Federal Government in exchange for an interest described in subparagraph (A) or (B) pursuant to a program established under title I of division A of the Emergency Economic Stabilization Act of 2008 [see Tables for classification] (unless such taxpayer is a financial institution (as defined in section 3 of such Act [12 U.S.C. 5202]) and the funds are received pursuant to a program established by the Secretary of the Treasury for the stated purpose of increasing the availability of credit to small businesses using funding made available under such Act [Pub. L. 110–343, see Tables for classification]), or

"(2) the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, and

"(3) any taxpayer which at any time in 2008 or 2009 was or is a member of the same affiliated group (as defined in section 1504 of the Internal Revenue Code of 1986, determined without regard to subsection (b) thereof) as a taxpayer described in paragraph (1) or (2)."

Pub. L. 111–5, div. B, title I, §1008(e), Feb. 17, 2009, 123 Stat. 318, provided that: "The amendments made by this section [amending this section and sections 63 and 164 of this title] shall apply to purchases on or after the date of the enactment of this Act [Feb. 17, 2009] in taxable years ending after such date."

Pub. L. 111–5, div. B, title I, §1503(c), Feb. 17, 2009, 123 Stat. 355, provided that: "The amendments made by this section [amending this section and section 57 of this title] shall apply to obligations issued after December 31, 2008."

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title VII, §706(d), Oct. 3, 2008, 122 Stat. 3923, provided that:

"(1) IN GENERAL.—Except as provided by paragraph (2), the amendments made by this section [amending this section and sections 63, 139, 165, 172, 1033, and 7508A of this title] shall apply to disasters declared in taxable years beginning after December 31, 2007.

"(2) INCREASE IN LIMITATION ON INDIVIDUAL LOSS PER CASUALTY.—The amendment made by subsection (c) [amending section 165 of this title] shall apply to taxable years beginning after December 31, 2008."

Pub. L. 110–343, div. C, title VII, §708(e), Oct. 3, 2008, 122 Stat. 3925, provided that: "The amendments made by this section [amending this section and section 172 of this title] shall apply to losses arising in taxable years beginning after December 31, 2007, in connection with disasters declared after such date."

Pub. L. 110–289, div. C, title I, §3022(d)(1), July 30, 2008, 122 Stat. 2894, provided that: "The amendments made by subsection (a) [amending this section and section 57 of this title] shall apply to bonds issued after the date of the enactment of this Act [July 30, 2008]."

EFFECTIVE DATE OF 2005 AMENDMENTS

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

Pub. L. 109–58, title XIII, §1326(e), Aug. 8, 2005, 119 Stat. 1017, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and section 168 of this title] shall apply to property placed in service after April 11, 2005.

"(2) EXCEPTION.—The amendments made by this section [amending this section and section 168 of this title] shall not apply to any property with respect to which the taxpayer or a related party has entered into a binding contract for the construction thereof on or before April 11, 2005, or, in the case of self-constructed property, has started construction on or before such date."

EFFECTIVE DATE OF 2004 AMENDMENTS

Pub. L. 108–357, title I, §101(c), Oct. 22, 2004, 118 Stat. 1423, provided that: "The amendments made by this section [amending this section and sections 275, 864, 903, and 999 of this title and repealing sections 114 and 941 to 943 of this title] shall apply to transactions after December 31, 2004."

Pub. L. 108–357, title I, §102(e), Oct. 22, 2004, 118 Stat. 1429, as amended by Pub. L. 109–135, title IV, §403(a)(19), Dec. 21, 2005, 119 Stat. 2619, provided that:

"(1) IN GENERAL.—The amendments made by this section [enacting section 199 of this title and amending this section and sections 86, 135, 137, 219, 221, 222, 246, 469, 613, and 1402 of this title] shall apply to taxable years beginning after December 31, 2004.

"(2) APPLICATION TO PASS-THRU ENTITIES, ETC.—In determining the deduction under section 199

of the Internal Revenue Code of 1986 (as added by this section), items arising from a taxable year of a partnership, S corporation, estate, or trust beginning before January 1, 2005, shall not be taken into account for purposes of subsection (d)(1) of such section."

Pub. L. 108–357, title II, §248(c), Oct. 22, 2004, 118 Stat. 1457, provided that: "The amendments made by this section [enacting subchapter R of this chapter and amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 22, 2004]."

Pub. L. 108–357, title IV, §422(d), Oct. 22, 2004, 118 Stat. 1519, provided that: "The amendments made by this section [enacting section 965 of this title and amending this section] shall apply to taxable years ending on or after the date of the enactment of this Act [Oct. 22, 2004]."

Pub. L. 108–357, title VIII, §835(c), Oct. 22, 2004, 118 Stat. 1594, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 382, 582, 856, 860G, 1202, and 7701 of this title and repealing part V of subchapter M of this chapter] shall take effect on January 1, 2005.

"(2) EXCEPTION FOR EXISTING FASITS.—Paragraph (1) shall not apply to any FASIT in existence on the date of the enactment of this Act [Oct. 22, 2004] to the extent that regular interests issued by the FASIT before such date continue to remain outstanding in accordance with the original terms of issuance."

Pub. L. 108–311, title IV, §403(f), Oct. 4, 2004, 118 Stat. 1188, provided that: "The amendments made by this section [amending this section, sections 137, 168, 172, and 1400L of this title, section 1306 of Title 29, Labor, and provisions set out as a note under this section] shall take effect as if included in the provisions of the Job Creation and Worker Assistance Act of 2002 [Pub. L. 107–147] to which they relate."

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–173, title XII, §1202(d), Dec. 8, 2003, 117 Stat. 2480, provided that: "The amendments made by this section [enacting section 139A of this title and amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Dec. 8, 2003]."

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title I, §102(c)(2), Mar. 9, 2002, 116 Stat. 26, as amended Pub. L. 108–311, title IV, §403(b)(3), Oct. 4, 2004, 118 Stat. 1187, provided that: "The amendment made by this subsection [amending this section] shall apply to taxable years ending after December 31, 1990."

EFFECTIVE DATE OF 2000 AMENDMENTS

Pub. L. 106–554, §1(a)(7) [title III, §314(g)], Dec. 21, 2000, 114 Stat. 2763, 2763A–643, provided that: "The amendments made by this section [amending this section and sections 403, 414, 415, 3405, 6211 and 7436 of this title and provisions set out as a note under section 1 of this title] shall take effect as if included in the provisions of the Taxpayer Relief [Act] of 1997 [Pub. L. 105–34] to which they relate."

Pub. L. 106–519, §5, Nov. 15, 2000, 114 Stat. 2433, as amended by Pub. L. 109–222, title V, §513(a), May 17, 2006, 120 Stat. 366, provided that:

"(a) IN GENERAL.—The amendments made by this Act [enacting sections 114 and 941 to 943 of this title, amending this section and sections 275, 864, 903, and 999 of this title, and repealing sections 921 to 927 of this title] shall apply to transactions after September 30, 2000.

"(b) NO NEW FSCS; TERMINATION OF INACTIVE FSCS.—

"(1) NO NEW FSCS.—No corporation may elect after September 30, 2000, to be a FSC (as defined in section 922 of the Internal Revenue Code of 1986, as in effect before the amendments made by this Act).

"(2) TERMINATION OF INACTIVE FSCS.—If a FSC has no foreign trade income (as defined in section 923(b) of such Code, as so in effect) for any period of 5 consecutive taxable years beginning after December 31, 2001, such FSC shall cease to be treated as a FSC for purposes of such Code for any taxable year beginning after such period.

"(c) TRANSITION PERIOD FOR EXISTING FOREIGN SALES CORPORATIONS.—

"(1) IN GENERAL.—In the case of a FSC (as so defined) in existence on September 30, 2000, and at all times thereafter, the amendments made by this Act shall not apply to any transaction in the ordinary course of trade or business involving a FSC which occurs before January 1, 2002.

"(2) ELECTION TO HAVE AMENDMENTS APPLY EARLIER.—A taxpayer may elect to have the amendments made by this Act apply to any transaction by a FSC or any related person to which such amendments would apply but for the application of paragraph (1). Such election shall be effective for the taxable year for which made and all subsequent taxable years, and, once made, may be revoked only with the consent of the Secretary of the Treasury.

"(3) EXCEPTION FOR OLD EARNINGS AND PROFITS OF CERTAIN CORPORATIONS.—

"(A) IN GENERAL.—In the case of a foreign corporation to which this paragraph applies—

"(i) earnings and profits of such corporation accumulated in taxable years ending before October 1, 2000, shall not be included in the gross income of the persons holding stock in such corporation by reason of section 943(e)(4)(B)(i); and

"(ii) rules similar to the rules of clauses (ii), (iii), and (iv) of section 953(d)(4)(B) shall apply with respect to such earnings and profits.

The preceding sentence shall not apply to earnings and profits acquired in a transaction after September 30, 2000, to which section 381 applies unless the distributor or transferor corporation was immediately before the transaction a foreign corporation to which this paragraph applies.

"(B) EXISTING FSCS.—This paragraph shall apply to any controlled foreign corporation (as defined in section 957) if—

"(i) such corporation is a FSC (as so defined) in existence on September 30, 2000;

"(ii) such corporation is eligible to make the election under section 943(e) by reason of being described in paragraph (2)(B) of such section; and

"(iii) such corporation makes such election not later than for its first taxable year beginning after December 31, 2001.

"(C) OTHER CORPORATIONS.—This paragraph shall apply to any controlled foreign corporation (as defined in section 957), and such corporation shall (notwithstanding any provision of section 943(e)) be treated as an applicable foreign corporation for purposes of section 943(e), if—

"(i) such corporation is in existence on September 30, 2000;

"(ii) as of such date, such corporation is wholly owned (directly or indirectly) by a domestic corporation (determined without regard to any election under section 943(e));

"(iii) for each of the 3 taxable years preceding the first taxable year to which the election under section 943(e) by such controlled foreign corporation applies—

"(I) all of the gross income of such corporation is subpart F income (as defined in section 952), including by reason of section 954(b)(3)(B); and

"(II) in the ordinary course of such corporation's trade or business, such corporation regularly sold (or paid commissions) to a FSC which on September 30, 2000, was a related person to such corporation;

"(iv) such corporation has never made an election under section 922(a)(2) (as in effect before the date of the enactment of this paragraph [Nov. 15, 2000]) to be treated as a FSC; and

"(v) such corporation makes the election under section 943(e) not later than for its first taxable year beginning after December 31, 2001.

The preceding sentence shall cease to apply as of the date that the domestic corporation referred to in clause (ii) ceases to wholly own (directly or indirectly) such controlled foreign corporation.

"(4) RELATED PERSON.—For purposes of this subsection, the term 'related person' has the meaning given to such term by section 943(b)(3).

"(5) SECTION REFERENCES.—Except as otherwise expressly provided, any reference in this subsection to a section or other provision shall be considered to be a reference to a section or other provision of the Internal Revenue Code of 1986, as amended by this Act.

"(d) SPECIAL RULES RELATING TO LEASING TRANSACTIONS.—

"(1) SALES INCOME.—If foreign trade income in connection with the lease or rental of property described in section 927(a)(1)(B) of such Code (as in effect before the amendments made by this Act) is treated as exempt foreign trade income for purposes of section 921(a) of such Code (as so in effect), such property shall be treated as property described in section 941(c)(1)(B) of such Code (as added by this Act) for purposes of applying section 941(c)(2) of such Code (as so added) to any subsequent transaction involving such property to which the amendments made by this Act apply.

"(2) LIMITATION ON USE OF GROSS RECEIPTS METHOD.—If any person computed its foreign trade income from any transaction with respect to any property on the basis of a transfer price determined under the method described in section 925(a)(1) of such Code (as in effect before the amendments made by this Act), then the qualifying foreign trade income (as defined in section 941(a) of such Code, as in effect after such amendment) of such person (or any related person) with respect to any other transaction involving such property (and to which the amendments made by this Act apply) shall be zero."

[Pub. L. 109–222, title V, §513(c), May 17, 2006, 120 Stat. 366, provided that: "The amendments made by this section [amending section 5 of Pub. L. 106–519, set out above, and provisions set out as a note under section 114 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [May 17, 2006]."]

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 312(d)(1) of Pub. L. 105–34 applicable to sales and exchanges after May 6, 1997,

with certain exceptions, see section 312(d) of Pub. L. 105–34, set out as a note under section 121 of this title.

Pub. L. 105–34, title IV, §403(b), Aug. 5, 1997, 111 Stat. 844, provided that:

"(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to dispositions in taxable years beginning after December 31, 1987.

"(2) SPECIAL RULE FOR 1987.—In the case of taxable years beginning in 1987, the last sentence of section 56(a)(6) of the Internal Revenue Code of 1986 (as in effect for such taxable years) shall be applied by inserting 'or in the case of a taxpayer using the cash receipts and disbursements method of accounting, any disposition described in section 453C(e)(1)(B)(ii)' after 'section 453C(e)(4)'."

Pub. L. 105–34, title XII, §1212(b), Aug. 5, 1997, 111 Stat. 1000, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1997."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1601(b)(2)(B), (C) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1995, except as otherwise provided, see section 1601(c) of Pub. L. 104–188, set out as an Effective Date note under section 30A of this title.

Amendment by section 1621(b)(2) of Pub. L. 104–188 effective Sept. 1, 1997, see section 1621(d) of Pub. L. 104–188, set out as a note under section 26 of this title.

Amendment by section 1702(c)(1), (e)(1)(A), (g)(4), and (h)(12) of Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13115(b), Aug. 10, 1993, 107 Stat. 432, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to property placed in service after December 31, 1993.

"(2) COORDINATION WITH TRANSITIONAL RULES.—The amendments made by this section shall not apply to any property to which paragraph (1) of section 56(a) of the Internal Revenue Code of 1986 does not apply by reason of subparagraph (C)(i) thereof."

Amendment by section 13171(b) of Pub. L. 103–66 applicable to contributions made after June 30, 1992, except that in case of any contribution of capital gain property which is not tangible personal property, such amendment applicable only if the contribution is made after Dec. 31, 1992, see section 13171(d) of Pub. L. 103–66, set out as a note under section 53 of this title.

Pub. L. 103–66, title XIII, §13227(f), Aug. 10, 1993, 107 Stat. 494, provided that: "The amendments made by this section [amending this section and sections 904, 936, and 7652 of this title] shall apply to taxable years beginning after December 31, 1993; except that the amendment made by subsection (e) [amending section 7652 of this title] shall take effect on October 1, 1993."

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–486, title XIX, §1915(d), Oct. 24, 1992, 106 Stat. 3024, provided that: "The amendments made by this section [amending this section and sections 57, 59, and 59A of this title] shall apply to taxable years beginning after December 31, 1992."

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11103(b) of Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, see section 11103(e) of Pub. L. 101–508, set out as a note under section 1 of this title.

Pub. L. 101–508, title XI, §11301(d)(2), Nov. 5, 1990, 104 Stat. 1388–449, provided that:

"(A) IN GENERAL.—The amendment made by subsection (b) [amending this section] shall apply to taxable years beginning on or after September 30, 1990, except that, in the case of a small insurance company, such amendment shall apply to taxable years beginning after December 31, 1989. For purposes of this paragraph, the term 'small insurance company' means any insurance company which meets the requirements of section 806(a)(3) of the Internal Revenue Code of 1986; except that paragraph (2) of section 806(c) of such Code shall not apply.

"(B) SPECIAL RULES FOR YEAR WHICH INCLUDES SEPTEMBER 30, 1990.—In the case of any taxable year which includes September 30, 1990, the amount of acquisition expenses which is required to be capitalized under section 56(g)(4)(F) of the Internal Revenue Code of 1986 (as in effect before the amendment made by subsection (b)) by a company which is not a small insurance company shall be the amount which bears the same ratio to the amount which (but for this subparagraph) would be so required to be capitalized as the number of days in such taxable year before September 30, 1990, bears to the total number of days in such

taxable year. A similar reduction shall be made in the amount amortized for such taxable year under such section 56(g)(4)(F)."

Pub. L. 101–508, title XI, §11531(c), Nov. 5, 1990, 104 Stat. 1388–490, provided that: "The amendments made by this section [amending this section and sections 59 and 59A of this title] shall apply to taxable years beginning after December 31, 1990."

Pub. L. 101–508, title XI, §11704(b), Nov. 5, 1990, 104 Stat. 1388–520, provided that: "The amendments made by this section [amending this section, sections 172, 351, 413, 461, 469, 597, 857, 860D, 860G, 892, 927, 936, 1017, 1245, 1441, 2056A, 2642, 3231, 4091, 4093, 5061, 6013, 6038A, 6039D, 6045, 6323, 6332, 6655, 7519, 7522, 7608, and 7701 of this title, and provisions set out as a note under section 231n of Title 45, Railroads] shall take effect on the date of the enactment of this Act."

Amendment by section 11812(b)(4) of Pub. L. 101–508 applicable to property placed in service after Nov. 5, 1990, but not applicable to any property to which section 168 of this title does not apply by reason of subsec. (f)(5) of section 168, and not applicable to rehabilitation expenditures described in section 252(f)(5) of Pub. L. 99–514, see section 11812(c) of Pub. L. 101–508, set out as a note under section 42 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7205(c), Dec. 19, 1989, 103 Stat. 2336, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and section 382 of this title] shall apply to ownership changes and acquisitions after October 2, 1989, in taxable years ending after such date.

"(2) BINDING CONTRACT.—The amendments made by this section shall not apply to any ownership change or acquisition pursuant to a written binding contract in effect on October 2, 1989, and at all times thereafter before such change or acquisition.

"(3) BANKRUPTCY PROCEEDINGS.—In the case of a reorganization described in section 368(a)(1)(G) of the Internal Revenue Code of 1986, or an exchange of debt for stock in a title 11 or similar case (as defined in section 368(a)(3) of such Code), the amendments made by this section shall not apply to any ownership change resulting from such a reorganization or proceeding if a petition in such case was filed with the court before October 3, 1989.

"(4) SUBSIDIARIES OF BANKRUPT PARENT.—The amendments made by this section shall not apply to any built-in loss of a corporation which is a member (on October 2, 1989) of an affiliated group the common parent of which (on such date) was subject to title 11 or similar case (as defined in section 368(a)(3) of such Code). The preceding sentence shall apply only if the ownership change or acquisition is pursuant to the plan approved in such proceeding and is before the date 2 years after the date on which the petition which commenced such proceeding was filed."

Pub. L. 101–239, title VII, §7611(g), Dec. 19, 1989, 103 Stat. 2373, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 59 and 312 of this title] shall apply to taxable years beginning after December 31, 1989.

"(2) INTANGIBLE DRILLING COSTS.—The amendments made by subsection (f)(5) [amending sections 59 and 312 of this title] shall apply to costs paid or incurred in taxable years beginning after December 31, 1989.

"(3) REGULATIONS ON EARNINGS AND PROFITS RULES.—Not later than March 15, 1991, the Secretary of the Treasury or his delegate shall prescribe initial regulations providing guidance as to which items of income are included in adjusted current earnings under section 56(g)(4)(B)(i) of the Internal Revenue Code of 1986 and which items of deduction are disallowed under section 56(g)(4)(C) of such Code."

Pub. L. 101–239, title VII, §7612(c)(2), Dec. 19, 1989, 103 Stat. 2374, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to contracts entered into in taxable years beginning after September 30, 1990."

Pub. L. 101–239, title VII, §7612(d)(2), Dec. 19, 1989, 103 Stat. 2374, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after December 31, 1990."

Amendment by sections 7811(d)(3) and 7815(e)(2), (4) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1007(b)(14)(C), Nov. 10, 1988, 102 Stat. 3430, provided that: "The amendments made by this paragraph [amending this section and section 57 of this title] shall apply with respect to options

exercised after December 31, 1987."

Amendment by sections 1002(a)(12) and 1007(b)(1)–(13), (15)–(19) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title II, §2001(e), Nov. 10, 1988, 102 Stat. 3597, provided that: "Except as otherwise provided in this section, the amendments made by this section [amending this section, sections 59A, 882, 4041, 4081, 4091, 4662, 4672, 6416, 6421, and 6427 of this title, and provisions set out as a note under section 4081 of this title] shall take effect as if included in the provision of the Superfund Revenue Act of 1986 [Pub. L. 99–499, title V] to which it relates."

Pub. L. 100–647, title II, §2004(u), Nov. 10, 1988, 102 Stat. 3610, provided that: "Except as otherwise provided in this section, any amendment made by this section [amending this section, sections 163, 244, 280H, 301, 304, 355, 384, 444, 453, 453A, 469, 514, 811, 812, 816, 842, 904, 1201, 1363, 1503, 1561, 4093, 5113, 5123, 5276, 5881, 6427, 6655, 7519, and 7704 of this title, and provisions set out as notes under sections 21, 219, 243, 301, 304, 444, 453, 1503, and 7704 of this title] shall take effect as if included in the provisions of the Revenue Act of 1987 [Pub. L. 100–203, title X] to which such amendment relates."

Amendment by section 5041(b)(4) of Pub. L. 100–647 applicable to contracts entered into on or after June 21, 1988, but not applicable to any contract resulting from the acceptance of a bid made before June 21, 1988, if the bid could not have been revoked or altered at any time on or after June 21, 1988, and not applicable in the case of a qualified ship contract (as defined in section 10203(b)(2)(B) of Pub. L. 100–203, set out as a note under section 460 of this title), see section 5041(e) of Pub. L. 100–647, set out as a note under section 460 of this title.

Pub. L. 100–647, title VI, §6079(a)(2), Nov. 10, 1988, 102 Stat. 3709, provided that: "The amendment made by paragraph (1) [amending this section] shall take effect as if included in the amendments made by section 701 of the Reform Act [Pub. L. 99–514]."

Pub. L. 100–647, title VI, §6303(b), Nov. 10, 1988, 102 Stat. 3756, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1986."

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 10202(d) of Pub. L. 100–203 applicable to dispositions in taxable years beginning after Dec. 31, 1986, with coordination with Tax Reform Act of 1986, see section 10202(e)(4), (5) of Pub. L. 100–203, set out as a note under section 453 of this title.

Pub. L. 100–203, title X, §10243(b), Dec. 22, 1987, 101 Stat. 1330–424, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1987."

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as a note under section 55 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by sections 11801 and 11812 of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

COORDINATION WITH HEARTLAND DISASTER RELIEF

Pub. L. 110–343, div. C, title VII, §712, Oct. 3, 2008, 122 Stat. 3929, provided that: "The amendments made by this subtitle [subtitle B (§§706–712) of title VII of div. C of Pub. L. 110–343, enacting section 198A of this title and amending this section and sections 63, 139, 143, 165, 168, 172, 179, 1033, and 7508A of this title], other than the amendments made by sections 706(a)(2) [amending sections 139, 165, 172, 1033, and 7508A of this title], 710 [amending section 168 of this title], and 711 [amending section 179 of this title], shall not apply to any disaster described in section 702(c)(1)(A) [section 702(c)(1) has no subpar. (A)], or to any expenditure or loss resulting from such disaster."

APPLICATION OF SUBSECTION (G)(1) AND (3) TO TAXABLE YEARS BEGINNING IN 1991 AND 1992

Pub. L. 104–188, title I, §1702(e)(1)(B), Aug. 20, 1996, 110 Stat. 1870, provided that: "For purposes of applying sections 56(g)(1) and 56(g)(3) of the Internal Revenue Code of 1986 with respect to taxable years

beginning in 1991 and 1992, the reference in such sections to the alternative tax net operating loss deduction shall be treated as including a reference to the deduction under section 56(h) of such Code as in effect before the amendments made by section 1915 of the Energy Policy Act of 1992 [Pub. L. 102–486]."

INSTALLMENT SALES; TAXABLE YEARS BEGINNING IN 1987

Pub. L. 101–239, title VII, §7821(a)(5), Dec. 19, 1989, 103 Stat. 2424, provided that: "In the case of taxable years beginning in 1987, the reference to section 453 contained in section 56(a)(6) of the Internal Revenue Code of 1986 shall be treated as including a reference to section 453A."

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(a) of Pub. L. 99–514 [enacting this section] notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

STUDY OF BOOK AND EARNINGS AND PROFITS ADJUSTMENTS

Pub. L. 99–514, title VII, §702, Oct. 22, 1986, 100 Stat. 2345, required Secretary of the Treasury or his delegate to conduct a study of operation and effect of provisions of sections 56(f) and 56(g) of the Internal Revenue Code of 1986, prior to repeal by Pub. L. 101–508, title XI, §11832(4), Nov. 5, 1990, 104 Stat. 1388–559.

§57. Items of tax preference

(a) General rule

For purposes of this part, the items of tax preference determined under this section are—

(1) Depletion

With respect to each property (as defined in section 614), the excess of the deduction for depletion allowable under section 611 for the taxable year over the adjusted basis of the property at the end of the taxable year (determined without regard to the depletion deduction for the taxable year). Effective with respect to taxable years beginning after December 31, 1992, this paragraph shall not apply to any deduction for depletion computed in accordance with section 613A(c).

(2) Intangible drilling costs

(A) In general

With respect to all oil, gas, and geothermal properties of the taxpayer, the amount (if any) by which the amount of the excess intangible drilling costs arising in the taxable year is greater than 65 percent of the net income of the taxpayer from oil, gas, and geothermal properties for the taxable year.

(B) Excess intangible drilling costs

For purposes of subparagraph (A), the amount of the excess intangible drilling costs arising in the taxable year is the excess of—

(i) the intangible drilling and development costs paid or incurred in connection with oil, gas, and geothermal wells (other than costs incurred in drilling a nonproductive well) allowable under section 263(c) or 291(b) for the taxable year, over

(ii) the amount which would have been allowable for the taxable year if such costs had been capitalized and straight line recovery of intangibles (as defined in subsection (b)) had been used with respect to such costs.

(C) Net income from oil, gas, and geothermal properties

For purposes of subparagraph (A), the amount of the net income of the taxpayer from oil, gas, and geothermal properties for the taxable year is the excess of—

(i) the aggregate amount of gross income (within the meaning of section 613(a)) from all

oil, gas, and geothermal properties of the taxpayer received or accrued by the taxpayer during the taxable year, over

(ii) the amount of any deductions allocable to such properties reduced by the excess described in subparagraph (B) for such taxable year.

(D) Paragraph applied separately with respect to geothermal properties and oil and gas properties

This paragraph shall be applied separately with respect to—

(i) all oil and gas properties which are not described in clause (ii), and

(ii) all properties which are geothermal deposits (as defined in section 613(e)(2)).

(E) Exception for independent producers

In the case of any oil or gas well—

(i) In general

In the case of any taxable year beginning after December 31, 1992, this paragraph shall not apply to any taxpayer which is not an integrated oil company (as defined in section 291(b)(4)).

(ii) Limitation on benefit

The reduction in alternative minimum taxable income by reason of clause (i) for any taxable year shall not exceed 40 percent (30 percent in case of taxable years beginning in 1993) of the alternative minimum taxable income for such year determined without regard to clause (i) and the alternative tax net operating loss deduction under section 56(a)(4).

[(3) Repealed. Pub. L. 100–647, title I, §1007(b)(14)(B), Nov. 10, 1988, 102 Stat. 3430]

[(4) Repealed. Pub. L. 104–188, title I, §1616(b)(3), Aug. 20, 1996, 110 Stat. 1856]

(5) Tax-exempt interest

(A) In general

Interest on specified private activity bonds reduced by any deduction (not allowable in computing the regular tax) which would have been allowable if such interest were includible in gross income.

(B) Treatment of exempt-interest dividends

Under regulations prescribed by the Secretary, any exempt-interest dividend (as defined in section 852(b)(5)(A)) shall be treated as interest on a specified private activity bond to the extent of its proportionate share of the interest on such bonds received by the company paying such dividend.

(C) Specified private activity bonds

(i) In general

For purposes of this part, the term "specified private activity bond" means any private activity bond (as defined in section 141) which is issued after August 7, 1986, and the interest on which is not includible in gross income under section 103.

(ii) Exception for qualified 501(c)(3) bonds

For purposes of clause (i), the term "private activity bond" shall not include any qualified 501(c)(3) bond (as defined in section 145).

(iii) Exception for certain housing bonds

For purposes of clause (i), the term "private activity bond" shall not include any bond issued after the date of the enactment of this clause if such bond is—

(I) an exempt facility bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide qualified residential rental projects (as defined in section 142(d)),

(II) a qualified mortgage bond (as defined in section 143(a)), or
(III) a qualified veterans' mortgage bond (as defined in section 143(b)).

The preceding sentence shall not apply to any refunding bond unless such preceding sentence applied to the refunded bond (or in the case of a series of refundings, the original bond).

(iv) Exception for refundings

For purposes of clause (i), the term "private activity bond" shall not include any refunding bond (whether a current or advance refunding) if the refunded bond (or in the case of a series of refundings, the original bond) was issued before August 8, 1986.

(v) Certain bonds issued before September 1, 1986

For purposes of this subparagraph, a bond issued before September 1, 1986, shall be treated as issued before August 8, 1986, unless such bond would be a private activity bond if—

(I) paragraphs (1) and (2) of section 141(b) were applied by substituting "25 percent" for "10 percent" each place it appears,
(II) paragraphs (3), (4), and (5) of section 141(b) did not apply, and
(III) subparagraph (B) of section 141(c)(1) did not apply.

(vi) Exception for bonds issued in 2009 and 2010

(I) In general

For purposes of clause (i), the term "private activity bond" shall not include any bond issued after December 31, 2008, and before January 1, 2011.

(II) Treatment of refunding bonds

For purposes of subclause (I), a refunding bond (whether a current or advance refunding) shall be treated as issued on the date of the issuance of the refunded bond (or in the case of a series of refundings, the original bond).

(III) Exception for certain refunding bonds

Subclause (II) shall not apply to any refunding bond which is issued to refund any bond which was issued after December 31, 2003, and before January 1, 2009.

(6) Accelerated depreciation or amortization on certain property placed in service before January 1, 1987

The amounts which would be treated as items of tax preference with respect to the taxpayer under paragraphs (2), (3), (4), and (12) of this subsection (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986). The preceding sentence shall not apply to any property to which section 56(a)(1) or (5) applies.

(7) Exclusion for gains on sale of certain small business stock

An amount equal to 7 percent of the amount excluded from gross income for the taxable year under section 1202.

(b) Straight line recovery of intangibles defined

For purposes of paragraph (2) of subsection (a)—

(1) In general

The term "straight line recovery of intangibles", when used with respect to intangible drilling and development costs for any well, means (except in the case of an election under paragraph (2)) ratable amortization of such costs over the 120-month period beginning with the month in which production from such well begins.

(2) Election

If the taxpayer elects with respect to the intangible drilling and development costs for any well, the term "straight line recovery of intangibles" means any method which would be permitted for

purposes of determining cost depletion with respect to such well and which is selected by the taxpayer for purposes of subsection (a)(2).

(Added Pub. L. 99–514, title VII, §701(a), Oct. 22, 1986, 100 Stat. 2333; amended Pub. L. 100–647, title I, §1007(b)(14)(B), (c), Nov. 10, 1988, 102 Stat. 3430, 3432; Pub. L. 101–508, title XI, §§11344, 11801(c)(12)(A), 11815(b)(3), Nov. 5, 1990, 104 Stat. 1388–472, 1388–527, 1388–558; Pub. L. 102–227, title I, §112, Dec. 11, 1991, 105 Stat. 1689; Pub. L. 102–486, title XIX, §1915(a)(1), (b)(1), Oct. 24, 1992, 106 Stat. 3023, 3024; Pub. L. 103–66, title XIII, §§13113(b)(1), 13171(a), Aug. 10, 1993, 107 Stat. 429, 454; Pub. L. 104–188, title I, §1616(b)(3), Aug. 20, 1996, 110 Stat. 1856; Pub. L. 105–34, title III, §311(b)(2)(B), Aug. 5, 1997, 111 Stat. 835; Pub. L. 105–206, title VI, §6005(d)(3), July 22, 1998, 112 Stat. 805; Pub. L. 108–27, title III, §301(b)(3), May 28, 2003, 117 Stat. 759; Pub. L. 110–289, div. C, title I, §3022(a)(1), July 30, 2008, 122 Stat. 2893; Pub. L. 111–5, div. B, title I, §1503(a), Feb. 17, 2009, 123 Stat. 354.)

REFERENCES IN TEXT

The date of the enactment of this clause, referred to in subsec. (a)(5)(C)(iii), is the date of enactment of Pub. L. 110–289, which was approved July 30, 2008.

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (a)(6), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

PRIOR PROVISIONS

A prior section 57, added Pub. L. 91–172, title III, §301(a), Dec. 30, 1969, 83 Stat. 581; amended Pub. L. 92–178, title III, §§303(b), 304(a)(1), (b)(1), (d), Dec. 10, 1971, 85 Stat. 522–524; Pub. L. 94–455, title III, §301(c)(1)–(4)(A), (C), title XIX, §§1901(b)(33)(A), (B), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1550–1552, 1800, 1834; Pub. L. 95–30, title I, §101(d)(5), title III, §308(a), title IV, §402(a)(5), May 23, 1977, 91 Stat. 133, 153, 155; Pub. L. 95–600, title III, §301(b)(2), title IV, §§402(b)(1), 421(b), title VII, §701(b)(1), (3), (4), (f)(3)(D), Nov. 6, 1978, 92 Stat. 2820, 2868, 2874, 2898, 2899, 2901; Pub. L. 95–618, title IV, §402(b), Nov. 9, 1978, 92 Stat. 3202; Pub. L. 96–222, title I, §§104(a)(4)(E), (F), 107(a)(1)(A), Apr. 1, 1980, 94 Stat. 217, 222; Pub. L. 96–596, §3(a), Dec. 24, 1980, 94 Stat. 3475; Pub. L. 97–34, title I, §121(c)(1), title II, §§205, 212(d)(2)(B), Aug. 13, 1981, 95 Stat. 197, 223, 239; Pub. L. 97–248, title II, §§201(b), 204(b), Sept. 3, 1982, 96 Stat. 416, 426; Pub. L. 97–354, §5(a)(14), (15), Oct. 19, 1982, 96 Stat. 1693; Pub. L. 97–448, title I, §102(b)(1)(A), (3), (4), Jan. 12, 1983, 96 Stat. 2369, 2370; Pub. L. 98–369, div. A, title I, §§16(b), 68(c), 111(e)(5)–(7), title V, §555(a)(2), title VII, §§711(a)(3)(A), 722(a)(1), July 18, 1984, 98 Stat. 505, 588, 633, 897, 942, 972; Pub. L. 99–121, title I, §103(b)(1)(B), (7), Oct. 11, 1985, 99 Stat. 509, 510; Pub. L. 99–272, title XIII, §13208(a), Apr. 7, 1986, 100 Stat. 321; Pub. L. 99–514, title XVIII, §§1804(k)(3)(B)–(D), 1809(a)(3), Oct. 22, 1986, 100 Stat. 2809, 2819, related to items of tax preference, prior to the general revision of this part by Pub. L. 99–514, §701(a).

AMENDMENTS

2009—Subsec. (a)(5)(C)(vi). Pub. L. 111–5 added cl. (vi).

2008—Subsec. (a)(5)(C)(iii) to (v). Pub. L. 110–289 added cl. (iii) and redesignated former cls. (iii) and (iv) as (iv) and (v), respectively.

2003—Subsec. (a)(7). Pub. L. 108–27 substituted "7 percent" for "42 percent" after "An amount equal to" and struck out last sentence which read as follows: "In the case of stock the holding period of which begins after December 31, 2000 (determined with the application of the last sentence of section 1(h)(2)(B)), the preceding sentence shall be applied by substituting '28 percent' for '42 percent'."

1998—Subsec. (a)(7). Pub. L. 105–206 inserted at end "In the case of stock the holding period of which begins after December 31, 2000 (determined with the application of the last sentence of section 1(h)(2)(B)), the preceding sentence shall be applied by substituting '28 percent' for '42 percent'."

1997—Subsec. (a)(7). Pub. L. 105–34 substituted "42 percent" for "one-half".

1996—Subsec. (a)(4). Pub. L. 104–188 struck out par. (4) which read as follows: "RESERVES FOR LOSSES ON BAD DEBTS OF FINANCIAL INSTITUTIONS.—In the case of a financial institution to which section 593 applies, the amount by which the deduction allowable for the taxable year for a reasonable addition to a reserve for bad debts exceeds the amount that would have been allowable had the institution maintained its bad debt reserve for all taxable years on the basis of actual experience."

1993—Subsec. (a)(6), (7). Pub. L. 103–66, §13171(a), redesignated pars. (7) and (8) as (6) and (7), respectively, and struck out heading and text of former par. (6). Text read as follows:

"(A) IN GENERAL.—The amount by which the deduction allowable under section 170 or 642(c) would be

reduced if all capital gain property were taken into account at its adjusted basis.

"(B) CAPITAL GAIN PROPERTY.—For purposes of subparagraph (A), the term 'capital gain property' has the meaning given to such term by section 170(b)(1)(C)(iv). Such term shall not include any property to which an election under section 170(b)(1)(C)(iii) applies. In the case of any taxable year beginning in 1991, such term shall not include any tangible personal property. In the case of a contribution made before July 1, 1992, in a taxable year beginning in 1992, such term shall not include any tangible personal property."

Subsec. (a)(8). Pub. L. 103–66, §13171(a), redesignated par. (8) as (7).

Pub. L. 103–66, §13113(b)(1), added par. (8).

1992—Subsec. (a)(1). Pub. L. 102–486, §1915(a)(1), inserted at end "Effective with respect to taxable years beginning after December 31, 1992, this paragraph shall not apply to any deduction for depletion computed in accordance with section 613A(c)."

Subsec. (a)(2)(E). Pub. L. 102–486, §1915(b)(1), added subpar. (E).

1991—Subsec. (a)(6)(B). Pub. L. 102–227 inserted at end "In the case of a contribution made before July 1, 1992, in a taxable year beginning in 1992, such term shall not include any tangible personal property."

1990—Subsec. (a)(2)(D)(ii). Pub. L. 101–508, §11815(b)(3), substituted "section 613(e)(2)" for "section 613(e)(3)".

Subsec. (a)(4). Pub. L. 101–508, §11801(c)(12)(A), struck out "585 or" after "section".

Subsec. (a)(6)(B). Pub. L. 101–508, §11344, inserted at end "In the case of any taxable year beginning in 1991, such term shall not include any tangible personal property."

1988—Subsec. (a)(3). Pub. L. 100–647, §1007(b)(14)(B), struck out par. (3) which related to incentive stock options.

Subsec. (a)(5)(C)(i). Pub. L. 100–647, §1007(c)(2), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: "For purposes of this part, the term 'specified private activity bonds' means any private activity bond (as defined in section 141) issued after August 7, 1986."

Subsec. (a)(5)(C)(iii). Pub. L. 100–647, §1007(c)(1), inserted "(whether a current or advance refunding)" after "any refunding bond".

Subsec. (a)(6)(A). Pub. L. 100–647, §1007(c)(3), inserted "or 642(c)" after "section 170".

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–5 applicable to obligations issued after Dec. 31, 2008, see section 1503(c) of Pub. L. 111–5, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–289 applicable to bonds issued after July 30, 2008, see section 3022(d)(1) of Pub. L. 110–289, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–27 applicable to dispositions on or after May 6, 2003, see section 301(d)(3) of Pub. L. 108–27, set out as an Effective and Termination Dates of 2003 Amendment note under section 1 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to taxable years ending after May 6, 1997, see section 311(d) of Pub. L. 105–34, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1995, see section 1616(c) of Pub. L. 104–188, set out as a note under section 593 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13113(b)(1) of Pub. L. 103–66 applicable to stock issued after Aug. 10, 1993, see section 13113(e) of Pub. L. 103–66, set out as a note under section 53 of this title.

Amendment by section 13171(a) of Pub. L. 103–66 applicable to contributions made after June 30, 1992, except that in case of any contribution of capital gain property which is not tangible personal property, such

amendment applicable only if the contribution is made after Dec. 31, 1992, see section 13171(d) of Pub. L. 103–66, set out as a note under section 53 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–486 applicable to taxable years beginning after Dec. 31, 1992, see section 1915(d) of Pub. L. 102–486, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1007(b)(14)(B) of Pub. L. 100–647 applicable with respect to options exercised after Dec. 31, 1987, see section 1007(b)(14)(C) of Pub. L. 100–647, set out as a note under section 56 of this title.

Amendment by section 1007(c) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, but subsec. (a)(6) not to apply to any deduction attributable to contributions made before Aug. 16, 1986, see section 701(f) of Pub. L. 99–514, set out as a note under section 55 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by sections 11801 and 11815 of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

TRANSITIONAL PROVISIONS

Pub. L. 100–647, title I, §1007(f)(4), Nov. 10, 1988, 102 Stat. 3433, provided that:

"(A) If any property to which this paragraph applies is placed in service in a taxable year which begins before January 1, 1987, and ends on or after August 1, 1986, the item of tax preference determined under section 57(a) of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986 [Oct. 22, 1986]) with respect to such property shall be the excess of—

"(i) the amount allowable as a deduction for depreciation or amortization for such taxable year, over

"(ii) the amount which would be determined for such taxable year under the rules of paragraph (1) or (5) (whichever is appropriate) of section 56(a) of the Internal Revenue Code of 1954 (as amended by the Tax Reform Act of 1986 [Pub. L. 99–514]).

"(B) This paragraph shall apply to any property—

"(i) which is described in paragraph (4) or (12) of section 57(a) of the Internal Revenue Code of 1954 (as so in effect), and

"(ii) to which paragraph (1) or (5) of section 56(a) of the Internal Revenue Code of 1986 would apply if the taxable year referred to in subparagraph (A) began after December 31, 1986."

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(a) of Pub. L. 99–514 [enacting this section] notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

§58. Denial of certain losses

(a) Denial of farm loss

(1) In general

For purposes of computing the amount of the alternative minimum taxable income for any taxable year of a taxpayer other than a corporation—

(A) Disallowance of farm loss

No loss of the taxpayer for such taxable year from any tax shelter farm activity shall be allowed.

(B) Deduction in succeeding taxable year

Any loss from a tax shelter farm activity disallowed under subparagraph (A) shall be treated as a deduction allocable to such activity in the 1st succeeding taxable year.

(2) Tax shelter farm activity

For purposes of this subsection, the term "tax shelter farm activity" means—

(A) any farming syndicate as defined in section 464(c), and

(B) any other activity consisting of farming which is a passive activity (within the meaning of section 469(c)).

(3) Application to personal service corporations

For purposes of paragraph (1), a personal service corporation (within the meaning of section 469(j)(2)) shall be treated as a taxpayer other than a corporation.

(4) Determination of loss

In determining the amount of the loss from any tax shelter farm activity, the adjustments of sections 56 and 57 shall apply.

(b) Disallowance of passive activity loss

In computing the alternative minimum taxable income of the taxpayer for any taxable year, section 469 shall apply, except that in applying section 469—

(1) the adjustments of sections 56 and 57 shall apply,

(2) the provisions of section 469(m) (relating to phase-in of disallowance) shall not apply, and

(3) in lieu of applying section 469(j)(7), the passive activity loss of a taxpayer shall be computed without regard to qualified housing interest (as defined in section 56(e)).

(c) Special rules

For purposes of this section—

(1) Special rule for insolvent taxpayers

(A) In general

The amount of losses to which subsection (a) or (b) applies shall be reduced by the amount (if any) by which the taxpayer is insolvent as of the close of the taxable year.

(B) Insolvent

For purposes of this paragraph, the term "insolvent" means the excess of liabilities over the fair market value of assets.

(2) Loss allowed for year of disposition of farm shelter activity

If the taxpayer disposes of his entire interest in any tax shelter farm activity during any taxable year, the amount of the loss attributable to such activity (determined after carryovers under subsection (a)(1)(B)) shall (to the extent otherwise allowable) be allowed for such taxable year in computing alternative minimum taxable income and not treated as a loss from a tax shelter farm activity.

(Added Pub. L. 99–514, title VII, §701(a), Oct. 22, 1986, 100 Stat. 2335; amended Pub. L. 100–203, title X, §10212(b), Dec. 22, 1987, 101 Stat. 1330–406; Pub. L. 100–647, title I, §1007(d), Nov. 10, 1988, 102 Stat. 3432.)

PRIOR PROVISIONS

A prior section 58, added Pub. L. 91–172, title III, §301(a), Dec. 30, 1969, 83 Stat. 583; amended Pub. L. 92–178, title III, §308(a), Dec. 10, 1971, 85 Stat. 524; Pub. L. 94–455, title III, §301(d), title XIX, §§1901(b)(40), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1553, 1803, 1834; Pub. L. 95–600, title IV, §§421(c), 423(a), title VII, §701(b)(2), Nov. 6, 1978, 92 Stat. 2875, 2877, 2898; Pub. L. 96–222, title I, §107(a)(1)(C), Apr. 1, 1980, 94 Stat. 222; Pub. L. 97–248, title II, §201(c)(1), §201(d)(3), formerly §201(c)(3), Sept. 3, 1982,

96 Stat. 417, 419, renumbered §201(d)(3), Pub. L. 97–448, title III, §306(a)(1)(A)(i), Jan. 12, 1983, 96 Stat. 2400; Pub. L. 97–354, §§3(c), 5(a)(16), Oct. 19, 1982, 96 Stat. 1688, 1693; Pub. L. 97–448, title I, §102(b)(2), Jan. 12, 1983, 96 Stat. 2369; Pub. L. 98–369, div. A, title VII, §711(a)(2), (3)(B), July 18, 1984, 98 Stat. 942; Pub. L. 99–514, title XVIII, §1875(a), Oct. 22, 1986, 100 Stat. 2894, related to rules for application of minimum tax for tax preferences, prior to the general revision of this part by Pub. L. 99–514, §701(a).

AMENDMENTS

1988—Subsec. (a)(2). Pub. L. 100–647, §1007(d)(1), struck out "(as modified by section 461(i)(4)(A))" after "section 464(c)" in subpar. (A) and substituted "section 469(c)" for "section 469(d), without regard to paragraph (1)(B) thereof" in subpar. (B).

Subsec. (a)(3). Pub. L. 100–647, §1007(d)(2), substituted "469(j)(2)" for "469(g)(1)(C)".

Subsec. (a)(4). Pub. L. 100–647, §1007(d)(3), added par. (4).

Subsec. (b). Pub. L. 100–647, §1007(d)(4), added pars. (1) to (3) and struck out former pars. (1) to (3) which read as follows:

"(1) the adjustments of section 56 shall apply,

"(2) any deduction to the extent such deduction is an item of tax preference under section 57(a) shall not be taken into account, and

"(3) the provisions of section 469(m) (relating to phase-in of disallowance) shall not apply."

1987—Subsec. (b)(3). Pub. L. 100–203 substituted "section 469(m)" for "section 469(l)".

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1987 AMENDMENT

Section 10212(c) of Pub. L. 100–203 provided that: "The amendments made by this section [amending this section and sections 163 and 469 of this title] shall take effect as if included in the amendments made by section 501 of the Tax Reform Act of 1986 [section 501 of Pub. L. 99–514, see section 501(c) of Pub. L. 99–514, set out as an Effective Date note under section 469 of this title]."

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as a note under section 55 of this title.

APPLICABILITY OF 1986 REPEAL

Pub. L. 101–239, title VII, §7811(d)(1)(B), Dec. 19, 1989, 103 Stat. 2408, provided that: "The repeal of section 58(h) of the Internal Revenue Code of 1954 by the Tax Reform Act of 1986 [Pub. L. 99–514] shall be effective only with respect to items of tax preference arising in taxable years beginning after December 31, 1986."

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(a) of Pub. L. 99–514 [enacting this section] notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

§59. Other definitions and special rules

(a) Alternative minimum tax foreign tax credit

For purposes of this part—

(1) In general

The alternative minimum tax foreign tax credit for any taxable year shall be the credit which would be determined under section 27(a) for such taxable year if—

(A) the pre-credit tentative minimum tax were the tax against which such credit was taken for

purposes of section 904 for the taxable year and all prior taxable years beginning after December 31, 1986,

(B) section 904 were applied on the basis of alternative minimum taxable income instead of taxable income, and

(C) the determination of whether any income is high-taxed income for purposes of section 904(d)(2) were made on the basis of the applicable rate specified in subparagraph (A)(i) or (B)(i) of section 55(b)(1) (whichever applies) in lieu of the highest rate of tax specified in section 1 or 11 (whichever applies).

(2) Pre-credit tentative minimum tax

For purposes of this subsection, the term "pre-credit tentative minimum tax" means—

(A) in the case of a taxpayer other than a corporation, the amount determined under the first sentence of section 55(b)(1)(A)(i), or

(B) in the case of a corporation, the amount determined under section 55(b)(1)(B)(i).

(3) Election to use simplified section 904 limitation

(A) In general

In determining the alternative minimum tax foreign tax credit for any taxable year to which an election under this paragraph applies—

(i) subparagraph (B) of paragraph (1) shall not apply, and

(ii) the limitation of section 904 shall be based on the proportion which—

(I) the taxpayer's taxable income (as determined for purposes of the regular tax) from sources without the United States (but not in excess of the taxpayer's entire alternative minimum taxable income), bears to

(II) the taxpayer's entire alternative minimum taxable income for the taxable year.

(B) Election

(i) In general

An election under this paragraph may be made only for the taxpayer's first taxable year which begins after December 31, 1997, and for which the taxpayer claims an alternative minimum tax foreign tax credit.

(ii) Election revocable only with consent

An election under this paragraph, once made, shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

(b) Minimum tax not to apply to income eligible for credits under section 30A or 936

In the case of any corporation for which a credit is allowable for the taxable year under section 30A or 936, alternative minimum taxable income shall not include any income with respect to which a credit is determined under section 30A or 936.

(c) Treatment of estates and trusts

In the case of any estate or trust, the alternative minimum taxable income of such estate or trust and any beneficiary thereof shall be determined by applying part I of subchapter J with the adjustments provided in this part.

(d) Apportionment of differently treated items in case of certain entities

(1) In general

The differently treated items for the taxable year shall be apportioned (in accordance with regulations prescribed by the Secretary)—

(A) Regulated investment companies and real estate investment trusts

In the case of a regulated investment company to which part I of subchapter M applies or a real estate investment company to which part II of subchapter M applies, between such company or trust and shareholders and holders of beneficial interest in such company or trust.

(B) Common trust funds

In the case of a common trust fund (as defined in section 584(a)), pro rata among the participants of such fund.

(2) Differently treated items

For purposes of this section, the term "differently treated item" means any item of tax preference or any other item which is treated differently for purposes of this part than for purposes of computing the regular tax.

(e) Optional 10-year writeoff of certain tax preferences

(1) In general

For purposes of this title, any qualified expenditure to which an election under this paragraph applies shall be allowed as a deduction ratably over the 10-year period (3-year period in the case of circulation expenditures described in section 173) beginning with the taxable year in which such expenditure was made (or, in the case of a qualified expenditure described in paragraph (2)(C), over the 60-month period beginning with the month in which such expenditure was paid or incurred).

(2) Qualified expenditure

For purposes of this subsection, the term "qualified expenditure" means any amount which, but for an election under this subsection, would have been allowable as a deduction (determined without regard to section 291) for the taxable year in which paid or incurred under—

(A) section 173 (relating to circulation expenditures),
(B) section 174(a) (relating to research and experimental expenditures),
(C) section 263(c) (relating to intangible drilling and development expenditures),
(D) section 616(a) (relating to development expenditures), or
(E) section 617(a) (relating to mining exploration expenditures).

(3) Other sections not applicable

Except as provided in this subsection, no deduction shall be allowed under any other section for any qualified expenditure to which an election under this subsection applies.

(4) Election

(A) In general

An election may be made under paragraph (1) with respect to any portion of any qualified expenditure.

(B) Revocable only with consent

Any election under this subsection may be revoked only with the consent of the Secretary.

(C) Partners and shareholders of S corporations

In the case of a partnership, any election under paragraph (1) shall be made separately by each partner with respect to the partner's allocable share of any qualified expenditure. A similar rule shall apply in the case of an S corporation and its shareholders.

(5) Dispositions

(A) Application of section 1254

In the case of any disposition of property to which section 1254 applies (determined without regard to this section), any deduction under paragraph (1) with respect to amounts which are allocable to such property shall, for purposes of section 1254, be treated as a deduction allowable under section 263(c), 616(a), or 617(a), whichever is appropriate.

(B) Application of section 617(d)

In the case of any disposition of mining property to which section 617(d) applies (determined without regard to this subsection), any deduction under paragraph (1) with respect to amounts

which are allocable to such property shall, for purposes of section 617(d), be treated as a deduction allowable under section 617(a).

(6) Amounts to which election apply not treated as tax preference

Any portion of any qualified expenditure to which an election under paragraph (1) applies shall not be treated as an item of tax preference under section 57(a) and section 56 shall not apply to such expenditure.

(f) Coordination with section 291

Except as otherwise provided in this part, section 291 (relating to cutback of corporate preferences) shall apply before the application of this part.

(g) Tax benefit rule

The Secretary may prescribe regulations under which differently treated items shall be properly adjusted where the tax treatment giving rise to such items will not result in the reduction of the taxpayer's regular tax for the taxable year for which the item is taken into account or for any other taxable year.

(h) Coordination with certain limitations

The limitations of sections 704(d), 465, and 1366(d) (and such other provisions as may be specified in regulations) shall be applied for purposes of computing the alternative minimum taxable income of the taxpayer for the taxable year with the adjustments of sections 56, 57, and 58.

(i) Special rule for amounts treated as tax preference

For purposes of this subtitle (other than this part), any amount shall not fail to be treated as wholly exempt from tax imposed by this subtitle solely by reason of being included in alternative minimum taxable income.

(j) Treatment of unearned income of minor children

(1) In general

In the case of a child to whom section 1(g) applies, the exemption amount for purposes of section 55 shall not exceed the sum of—

(A) such child's earned income (as defined in section 911(d)(2)) for the taxable year, plus

(B) $5,000.

(2) Inflation adjustment

In the case of any taxable year beginning in a calendar year after 1998, the dollar amount in paragraph (1)(B) shall be increased by an amount equal to the product of—

(A) such dollar amount, and

(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting "1997" for "1992" in subparagraph (B) thereof.

If any increase determined under the preceding sentence is not a multiple of $50, such increase shall be rounded to the nearest multiple of $50.

(Added Pub. L. 99–514, title VII, §701(a), Oct. 22, 1986, 100 Stat. 2336; amended Pub. L. 100–647, title I, §§1007(e), 1014(e)(5)(A), Nov. 10, 1988, 102 Stat. 3432, 3561; Pub. L. 101–239, title VII, §§7611(f)(5)(B), (6), 7612(e)(1), 7811(d)(1)(A), (j)(7), Dec. 19, 1989, 103 Stat. 2373, 2374, 2408, 2412; Pub. L. 101–508, title XI, §§11101(d)(3), 11531(b)(2), 11702(d), 11801(c)(2)(D), Nov. 5, 1990, 104 Stat. 1388–405, 1388–490, 1388–514, 1388–523; Pub. L. 102–486, title XIX, §1915(c)(3), Oct. 24, 1992, 106 Stat. 3024; Pub. L. 104–188, title I, §§1601(b)(2)(D), 1702(a)(1), 1703(e), 1704(m)(3), Aug. 20, 1996, 110 Stat. 1833, 1868, 1875, 1883; Pub. L. 105–34, title X, §1057(a), title XI, §1103(a), title XII, §1201(b)(1), Aug. 5, 1997, 111 Stat. 945, 966, 994; Pub. L. 105–206, title VI, §§6011(a), 6023(2), July 22, 1998, 112 Stat. 817, 824; Pub. L. 108–357, title IV, §421(a)(1), Oct. 22, 2004, 118 Stat. 1514.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

AMENDMENTS

2004—Subsec. (a)(2) to (4). Pub. L. 108–357 redesignated pars. (3) and (4) as (2) and (3), respectively, and struck out former par. (2) which related to limitation on alternative minimum tax foreign tax credit and carryback and carryforward of excess.

1998—Subsec. (a)(3), (4). Pub. L. 105–206, §6011(a), redesignated par. (3), relating to election to use simplified section 904 limitation, as (4).

Subsec. (b). Pub. L. 105–206, §6023(2), substituted "credits under section 30A or 936" for "section 936 credit" in heading.

1997—Subsec. (a)(2)(C). Pub. L. 105–34, §1057(a), struck out subpar. (C) which read as follows:

"(C) EXCEPTION.—Subparagraph (A) shall not apply to any domestic corporation if—

"(i) more than 50 percent of the stock of such domestic corporation (by vote and value) is owned by United States persons who are not members of an affiliated group (as defined in section 1504 of such Code) which includes such corporation,

"(ii) all of the activities of such corporation are conducted in 1 foreign country with which the United States has an income tax treaty in effect and such treaty provides for the exchange of information between such foreign country and the United States,

"(iii) all of the current earnings and profits of such corporation are distributed at least annually (other than current earnings and profits retained for normal maintenance or capital replacements or improvements of an existing business), and

"(iv) all of such distributions by such corporation to United States persons are used by such persons in a trade or business conducted in the United States."

Subsec. (a)(3). Pub. L. 105–34, §1103(a), added par. (3) relating to election to use simplified section 904 limitation.

Subsec. (j). Pub. L. 105–34, §1201(b)(1), amended subsec. (j) generally, restating limitation on exemption amount, adding provisions for inflation adjustment of such amount, and deleting provisions relating to limitation based on parental minimum tax and unused parental minimum tax exemption.

1996—Subsec. (a)(1)(A). Pub. L. 104–188, §1703(e)(1), substituted "the pre-credit tentative minimum tax" for "the amount determined under section 55(b)(1)(A)".

Subsec. (a)(1)(C). Pub. L. 104–188, §1703(e)(2), substituted "specified in subparagraph (A)(i) or (B)(i) of section 55(b)(1) (whichever applies)" for "specified in section 55(b)(1)(A)".

Subsec. (a)(2)(A)(i). Pub. L. 104–188, §1703(e)(1), substituted "the pre-credit tentative minimum tax" for "the amount determined under section 55(b)(1)(A)".

Subsec. (a)(2)(A)(ii). Pub. L. 104–188, §1703(e)(3), substituted "which would be the pre-credit tentative minimum tax" for "which would be determined under section 55(b)(1)(A)".

Subsec. (a)(3). Pub. L. 104–188, §1703(e)(4), added par. (3).

Subsec. (b). Pub. L. 104–188, §1601(b)(2)(D), substituted "section 30A or 936, alternative minimum taxable income shall not include any income with respect to which a credit is determined under section 30A or 936." for "section 936, alternative minimum taxable income shall not include any amount with respect to which the requirements of subparagraph (A) or (B) of section 936(a)(1) are met."

Subsec. (j)(1)(B). Pub. L. 104–188, §1704(m)(3), substituted "twice the amount in effect for the taxable year under section 63(c)(5)(A)" for "$1,000".

Subsec. (j)(3)(B). Pub. L. 104–188, §1702(a)(1), substituted "section 1(g)(3)(B)" for "section 1(i)(3)(B)".

1992—Subsec. (a)(2)(A)(ii). Pub. L. 102–486 substituted "and section 57(a)(2)(E)" for "and the alternative tax energy preference deduction under section 56(h)".

1990—Subsec. (a)(1)(B) to (D). Pub. L. 101–508, §11801(c)(2)(D), inserted "and" at end of subpar. (B), redesignated subpar. (D) as (C), and struck out former subpar. (C) which read as follows: "for purposes of section 904, any increase in alternative minimum taxable income by reason of section 56(c)(1)(A) (relating to adjustment for book income) shall have the same proportionate source (and character) as alternative minimum taxable income determined without regard to such increase, and".

Subsec. (a)(2)(A)(ii). Pub. L. 101–508, §11531(b)(2), inserted before period at end "and the alternative tax energy preference deduction under section 56(h)".

Subsec. (j). Pub. L. 101–508, §11101(d)(3)(A), substituted "section 1(g)" for "section 1(i)" in pars. (1), (2)(A), (B)(i)(I), (II), (D), and (3).

Subsec. (j)(1)(B). Pub. L. 101–508, §11702(d)(1), inserted "(or, if greater, the child's share of the unused

parental minimum tax exemption)" before period at end.

Subsec. (j)(2)(C). Pub. L. 101–508, §11101(d)(3)(B), substituted "section 1(g)(3)(B)" for "section 1(i)(3)(B)".

Subsec. (j)(2)(D). Pub. L. 101–508, §11702(d)(3), substituted "paragraphs (3)(D), (5), and (6)" for "paragraphs (5) and (6)".

Subsec. (j)(3). Pub. L. 101–508, §11702(d)(2), added par. (3).

1989—Subsec. (a)(2)(C). Pub. L. 101–239, §7612(e)(1), added subpar. (C).

Subsec. (e)(1). Pub. L. 101–239, §7611(f)(5)(B), inserted before period at end "(or, in the case of a qualified expenditure described in paragraph (2)(C), over the 60-month period beginning with the month in which such expenditure was paid or incurred)".

Subsec. (g). Pub. L. 101–239, §7811(d)(1)(A), substituted "for the taxable year for which the item is taken into account or for any other taxable year" for "for any taxable year".

Subsec. (i). Pub. L. 101–239, §7611(f)(6), substituted "amounts" for "interest" in heading and "any amount shall" for "interest shall" in text.

Subsec. (j)(2)(D). Pub. L. 101–239, §7811(j)(7), substituted "Other rules" for "Others rules" in heading.

1988—Subsec. (a)(1)(D). Pub. L. 100–647, §1007(e)(3), added subpar. (D).

Subsec. (e)(2). Pub. L. 100–647, §1007(e)(1), inserted "(determined without regard to section 291)" after "as a deduction".

Subsec. (h). Pub. L. 100–647, §1007(e)(2), substituted "taxable year with the adjustments of sections 56, 57, and 58" for "taxable year—

"(1) with the adjustments of section 56, and

"(2) by not taking into account any deduction to the extent such deduction is an item of tax preference under section 57(a)".

Subsec. (i). Pub. L. 100–647, §1007(e)(4), inserted "(other than this part)" after "of this subtitle" and substituted "subtitle" for "title" before "solely".

Subsec. (j). Pub. L. 100–647, §1014(e)(5)(A), added subsec. (j).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years beginning after Dec. 31, 2004, see section 421(b) of Pub. L. 108–357, set out as a note under section 53 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 6023(2) of Pub. L. 105–206 effective July 22, 1998, see section 6023(32) of Pub. L. 105–206, set out as a note under section 34 of this title.

Amendment by section 6011(a) of Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title X, §1057(b), Aug. 5, 1997, 111 Stat. 945, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 5, 1997]."

Pub. L. 105–34, title XI, §1103(b), Aug. 5, 1997, 111 Stat. 966, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1997."

Pub. L. 105–34, title XII, §1201(c), Aug. 5, 1997, 111 Stat. 994, provided that: "The amendments made by this section [amending this section and sections 63 and 6103 of this title] shall apply to taxable years beginning after December 31, 1997."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1601(b)(2)(D) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1995, except as otherwise provided, see section 1601(c) of Pub. L. 104–188, set out as an Effective Date note under section 30A of this title.

Amendment by section 1702(a)(1) of Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

Amendment by section 1703(e) of Pub. L. 104–188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103–66, §§13001–13444, to which such amendment relates, see section 1703(o) of Pub. L. 104–188, set out as a note under section 39 of this title.

Amendment by section 1704(m)(3) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31,

1995, see section 1704(m)(4) of Pub. L. 104–188, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–486 applicable to taxable years beginning after Dec. 31, 1992, see section 1915(d) of Pub. L. 102–486, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11101(d)(3) of Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, see section 11101(e) of Pub. L. 101–508, set out as a note under section 1 of this title.

Amendment by section 11531(b)(2) of Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, see section 11531(c) of Pub. L. 101–508, set out as a note under section 56 of this title.

Pub. L. 101–508, title XI, §11702(j), Nov. 5, 1990, 104 Stat. 1388–516, provided that: "Any amendment made by this section [amending this section and sections 135, 216, 355, 367, 447, 453B, 468B, 2056, 2056A, 2523, 4980B, and 6114 of this title] shall take effect as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988 [Pub. L. 100–647] to which such amendment relates."

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7611(f)(6) of Pub. L. 101–239 applicable to taxable years beginning after Dec. 31, 1989, see section 7611(g)(1) of Pub. L. 101–239, set out as a note under section 56 of this title.

Amendment by section 7611(f)(5)(B) of Pub. L. 101–239 applicable to costs paid or incurred in taxable years beginning after Dec. 31, 1989, see section 7611(g)(2) of Pub. L. 101–239, set out as a note under section 56 of this title.

Pub. L. 101–239, title VII, §7612(e)(2), Dec. 19, 1989, 103 Stat. 2375, provided that:

"(A) IN GENERAL.—The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after March 31, 1990.

"(B) SPECIAL RULE FOR YEAR WHICH INCLUDES MARCH 31, 1990.—In the case of any taxable year (of a corporation described in subparagraph (C) of section 59(a)(2) of the Internal Revenue Code of 1986 (as added by paragraph (1))) which begins after December 31, 1989, and includes March 31, 1990, the amount determined under clause (ii) of section 59(a)(2)(A) of such Code shall be an amount which bears the same ratio to the amount which would have been determined under such clause without regard to this subparagraph as the number of days in such taxable year on or before March 31, 1990, bears to the total number of days in such taxable year."

Amendment by section 7811(d)(1)(A), (j)(7) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1007(e) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title I, §1014(e)(5)(B), Nov. 10, 1988, 102 Stat. 3562, provided that: "The amendment made by subparagraph (A) [amending this section] shall apply to taxable years beginning after December 31, 1988."

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as a note under section 55 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by section 11801 of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

CONSIDERATION OF CERTAIN TAXES TREATED AS PAID OR ACCRUED UNDER SECTION 904(C) IN DETERMINATION OF ALTERNATIVE MINIMUM TAX FOREIGN TAX CREDIT

Pub. L. 100–647, title I, §1007(f)(5), Nov. 10, 1988, 102 Stat. 3434, provided that: "In determining the amount of the alternative minimum tax foreign tax credit under section 59 of the 1986 Code, there shall not be

taken into account any taxes paid or accrued in a taxable year beginning after December 31, 1986, which are treated under section 904(c) of the 1986 Code as paid or accrued in a taxable year beginning on or before December 31, 1986."

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(a) of Pub. L. 99–514 [enacting this section] notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

PART VII—ENVIRONMENTAL TAX

Sec.
59A. Environmental tax.

§59A. Environmental tax

(a) Imposition of tax

In the case of a corporation, there is hereby imposed (in addition to any other tax imposed by this subtitle) a tax equal to 0.12 percent of the excess of—

(1) the modified alternative minimum taxable income of such corporation for the taxable year, over

(2) $2,000,000.

(b) Modified alternative minimum taxable income

For purposes of this section, the term "modified alternative minimum taxable income" means alternative minimum taxable income (as defined in section 55(b)(2)) but determined without regard to—

(1) the alternative tax net operating loss deduction (as defined in section 56(d)), and

(2) the deduction allowed under section 164(a)(5).

(c) Exception for RIC's and REIT's

The tax imposed by subsection (a) shall not apply to—

(1) a regulated investment company to which part I of subchapter M applies, and

(2) a real estate investment trust to which part II of subchapter M applies.

(d) Special rules

(1) Short taxable years

The application of this section to taxable years of less than 12 months shall be in accordance with regulations prescribed by the Secretary.

(2) Section 15 not to apply

Section 15 shall not apply to the tax imposed by this section.

(e) Application of tax

(1) In general

The tax imposed by this section shall apply to taxable years beginning after December 31, 1986, and before January 1, 1996.

(2) Earlier termination

The tax imposed by this section shall not apply to taxable years—

(A) beginning during a calendar year during which no tax is imposed under section 4611(a) by reason of paragraph (2) of section 4611(e), and

(B) beginning after the calendar year which includes the termination date under paragraph (3) of section 4611(e).

(Added Pub. L. 99–499, title V, §516(a), Oct. 17, 1986, 100 Stat. 1770; amended Pub. L. 100–647, title II, §2001(c)(1), (3)(B), Nov. 10, 1988, 102 Stat. 3594; Pub. L. 101–508, title XI, §§11231(a)(1)(A), 11531(b)(3), 11801(c)(2)(E), Nov. 5, 1990, 104 Stat. 1388–444, 1388–490, 1388–523; Pub. L. 102–486, title XIX, §1915(c)(4), Oct. 24, 1992, 106 Stat. 3024.)

AMENDMENTS

1992—Subsec. (b)(1). Pub. L. 102–486 struck out "or the alternative tax energy preference deduction under section 56(h)" after "section 56(d))".

1990—Subsec. (b)(1). Pub. L. 101–508, §11531(b)(3), inserted before comma "or the alternative tax energy preference deduction under section 56(h)".

Subsec. (b)(2). Pub. L. 101–508, §11801(c)(2)(E), struck out "(and the last sentence of section 56(f)(2)(B))" after "section 164(a)(5)".

Subsec. (e)(1). Pub. L. 101–508, §11231(a)(1)(A), substituted "January 1, 1996" for "January 1, 1992".

1988—Subsec. (b)(2). Pub. L. 100–647, §2001(c)(3)(B), inserted "(and the last sentence of section 56(f)(2)(B))" before period at end.

Subsecs. (c) to (e). Pub. L. 100–647, §2001(c)(1), added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–486 applicable to taxable years beginning after Dec. 31, 1992, see section 1915(d) of Pub. L. 102–486, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11531(b)(3) of Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, see section 11531(c) of Pub. L. 101–508, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Superfund Revenue Act of 1986, Pub. L. 99–499, title V, to which it relates, see section 2001(e) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1986, see section 516(c) of Pub. L. 99–499, set out as an Effective Date of 1986 Amendment note under section 26 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by section 11801 of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

[PART VIII—REPEALED]

[§59B. Repealed. Pub. L. 101–234, title I, §102(a), Dec. 13, 1989, 103 Stat. 1980]

Section, added Pub. L. 100–360, title I, §111(a), July 1, 1988, 102 Stat. 690, provided for imposition of a supplemental medicare premium.

EFFECTIVE DATE OF REPEAL

Pub. L. 101–234, title I, §102(d), Dec. 13, 1989, 103 Stat. 1981, provided that:

"(1) IN GENERAL.—Except as provided in this subsection, the provisions of this section [repealing section 1395i–1a of Title 42, The Public Health and Welfare, enacting provisions set out as notes under section 6050F of this title and section 1395t of Title 42, and repealing provisions set out as a note under section 1395i–1a of

Title 42] shall take effect January 1, 1990.

"(2) REPEAL OF SUPPLEMENTAL MEDICARE PREMIUM.—The repeal of section 111 of MCCA [Pub. L. 100–360, which enacted this section, amended section 6050F of this title, and enacted provisions set out as notes below] shall apply to taxable years beginning after December 31, 1988."

EFFECTIVE DATE

Pub. L. 100–360, title I, §111(e), July 1, 1988, 102 Stat. 698, which provided that the enactment of this section and the amendment of section 6050F of this title applied to taxable years beginning after December 31, 1988, and that in case of a taxable year beginning in 1989, the premium imposed by this section should not be treated as a tax for purposes of applying section 6654 of this title, was repealed by Pub. L. 101–234, title I, §102(a), Dec. 13, 1989, 103 Stat. 1980.

ANNOUNCEMENT OF SUPPLEMENTAL PREMIUM RATE

Pub. L. 100–360, title I, §111(d), July 1, 1988, 102 Stat. 697, which provided that in the case of calendar year 1993 or any calendar year thereafter (1) not later than July 1 of such calendar year, the Secretary of the Treasury or his delegate was required to make an announcement of the estimated supplemental premium rate under this section for taxable years beginning in the following calendar year, and (2) not later than October 1 of such calendar year, the Secretary of the Treasury or his delegate was required to make an announcement of the actual supplemental premium rate under this section for such taxable years, was repealed by Pub. L. 101–234, title I, §102(a), Dec. 13, 1989, 103 Stat. 1980.

Subchapter B—Computation of Taxable Income

Part

I. Definition of gross income, adjusted gross income, taxable income, etc.
II. Items specifically included in gross income.
III. Items specifically excluded from gross income.
IV. Determination of marital status.[1]
V. Deductions for personal exemptions.
VI. Itemized deductions for individuals and corporations.
VII. Additional itemized deductions for individuals.
VIII. Special deductions for corporations.
IX. Items not deductible.
X. Terminal railroad corporations and their shareholders.
XI. Special rules relating to corporate preference items.

AMENDMENTS

1982—Pub. L. 97–248, title II, §204(c)(2), Sept. 3, 1982, 96 Stat. 427, added item for part XI.

1977—Pub. L. 95–30, title I, §101(e)(3), May 23, 1977, 91 Stat. 135, substituted "Determination of marital status" for "Standard deduction for individuals" in item for part IV.

1976—Pub. L. 94–455, title XIX, §1901(b)(4)(C), Oct. 4, 1976, 90 Stat. 1793, substituted "taxable income, etc." for "and taxable income." in item for part I.

1962—Pub. L. 87–870, §1(b), Oct. 23, 1962, 76 Stat. 1160, added item for part X.

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

PART I—DEFINITION OF GROSS INCOME, ADJUSTED GROSS INCOME, TAXABLE INCOME, ETC.

Sec.

61. Gross income defined.
62. Adjusted gross income defined.
63. Taxable income defined.
64. Ordinary income defined.

65. Ordinary loss defined.
66. Treatment of community income.
67. 2-percent floor on miscellaneous itemized deductions.
68. Overall limitation on itemized deductions.

AMENDMENTS

1990—Pub. L. 101–508, title XI, §11103(d), Nov. 5, 1990, 104 Stat. 1388–407, added item 68.

1986—Pub. L. 99–514, title I, §132(d), Oct. 22, 1986, 100 Stat. 2116, added item 67.

1984—Pub. L. 98–369, div. A, title IV, §424(b)(2)(C), July 18, 1984, 98 Stat. 803, struck out "where spouses live apart" in item 66.

1980—Pub. L. 96–605, title I, §101(b), Dec. 28, 1980, 94 Stat. 3522, added item 66.

1976—Pub. L. 94–455, title XIX, §1901(b)(4)(A), (B), Oct. 4, 1976, 90 Stat. 1793, substituted "TAXABLE INCOME, ETC." for "AND TAXABLE INCOME" in part heading, and added items 64 and 65.

§61. Gross income defined

(a) General definition

Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items:

(1) Compensation for services, including fees, commissions, fringe benefits, and similar items;
(2) Gross income derived from business;
(3) Gains derived from dealings in property;
(4) Interest;
(5) Rents;
(6) Royalties;
(7) Dividends;
(8) Alimony and separate maintenance payments;
(9) Annuities;
(10) Income from life insurance and endowment contracts;
(11) Pensions;
(12) Income from discharge of indebtedness;
(13) Distributive share of partnership gross income;
(14) Income in respect of a decedent; and
(15) Income from an interest in an estate or trust.

(b) Cross references

For items specifically included in gross income, see part II (sec. 71 and following). For items specifically excluded from gross income, see part III (sec. 101 and following).

(Aug. 16, 1954, ch. 736, 68A Stat. 17; Pub. L. 98–369, div. A, title V, §531(c), July 18, 1984, 98 Stat. 884.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98–369 inserted reference to fringe benefits.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective Jan. 1, 1985, see section 531(h) of Pub. L. 98–369, set out as an Effective Date note under section 132 of this title.

TERMINATION DATE OF 1978 AMENDMENT

Pub. L. 95–615, §210(a), Nov. 8, 1978, 92 Stat. 3109, provided that: "Title I of this Act [probably means sections 1 to 8 of Pub. L. 95–615, see Short Title of 1978 Amendment note under section 1 of this title] (other than sections 4 and 5 thereof) [amending section 167 of this title, enacting provisions set out as notes under this section and sections 61 and 62 of this title, and amending provisions set out as notes under sections 117, 167, and 382 of this title] shall cease to have effect on the day after the date of the enactment of this Act [Nov. 8, 1978]."

REGULATIONS

Pub. L. 95–427, §1, Oct. 7, 1978, 92 Stat. 996, as amended by Pub. L. 96–167, §1, Dec. 29, 1979, 93 Stat. 1275; Pub. L. 97–34, title VIII, §801, Aug. 13, 1981, 95 Stat. 349; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) IN GENERAL.—No fringe benefit regulation shall be issued—

"(1) in final form on or after May 1, 1978, and on or before December 31, 1983, or

"(2) in proposed or final form on or after May 1, 1978, if such regulation has an effective date on or before December 31, 1983.

"(b) DEFINITION OF FRINGE BENEFIT REGULATION.—For purposes of subsection (a), the term 'fringe benefit regulation' means a regulation providing for the inclusion of any fringe benefit in gross income by reason of section 61 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]."

Pub. L. 95–615, §3, Nov. 8, 1978, 92 Stat. 3097, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that no regulations be issued in final form on or after Oct. 1, 1977, and before July 1, 1978, providing for inclusion of any fringe benefit in gross income by reason of section 61 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], ceased to have effect on the day after Nov. 8, 1978, pursuant to section 210(a) of that Act.

NO GAIN RECOGNIZED FROM NET GIFTS MADE BEFORE MARCH 4, 1981

Pub. L. 98–369, div. A, title X, §1026, July 18, 1984, 98 Stat. 1031, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) IN GENERAL.—In the case of any transfer of property subject to gift tax made before March 4, 1981, for purposes of subtitle A of the Internal Revenue Code of 1986 [formerly I.R.C. 1954, 26 U.S.C. 1 et seq.], gross income of the donor shall not include any amount attributable to the donee's payment of (or agreement to pay) any gift tax imposed with respect to such gift.

"(b) GIFT TAX DEFINED.—For purposes of subsection (a), the term 'gift tax' means—

"(1) the tax imposed by chapter 12 of such Code [26 U.S.C. 2501 et seq.], and

"(2) any tax imposed by a State (or the District of Columbia) on transfers by gifts.

"(c) STATUTE OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from subsection (a) is prevented on the date of the enactment of this Act [July 18, 1984] (or at any time within 1 year after such date) by the operation of any law or rule of law (including res judicata), refund or credit of such overpayment (to the extent attributable to subsection (a)) may nevertheless be made or allowed if claim therefor is filed within 1 year after the date of the enactment of this Act."

PAYMENT-IN-KIND TAX TREATMENT ACT OF 1983

Pub. L. 98–4, Mar. 11, 1983, 97 Stat. 7, as amended by Pub. L. 98–369, div. A, title X, §1061(a), July 18, 1984, 98 Stat. 1046; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–647, title VI, §6252(a)(1), Nov. 10, 1988, 102 Stat. 3752, provided that:

"SECTION 1. SHORT TITLE.

"This Act may be cited as the 'Payment-in-Kind Tax Treatment Act of 1983'.

"SEC. 2. INCOME TAX TREATMENT OF AGRICULTURAL COMMODITIES RECEIVED UNDER A 1983 PAYMENT-IN-KIND PROGRAM.

"(a) INCOME TAX DEFERRAL, ETC.—Except as otherwise provided in this Act, for purposes of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]—

"(1) a qualified taxpayer shall not be treated as having realized income when he receives a commodity under a 1983 payment-in-kind program,

"(2) such commodity shall be treated as if it were produced by such taxpayer, and

"(3) the unadjusted basis of such commodity in the hands of such taxpayer shall be zero.

"(b) EFFECTIVE DATE.—This section shall apply to taxable years ending after December 31, 1982, but only with respect to commodities received for the 1983 crop year.

"SEC. 3. LAND DIVERTED UNDER 1983 PAYMENT-IN-KIND PROGRAM TREATED AS USED IN FARMING BUSINESS, ETC.

"(a) GENERAL RULE.—For purposes of the provisions specified in subsection (b), in the case of any land diverted from the production of an agricultural commodity under a 1983 payment-in-kind program—

"(1) such land shall be treated as used during the 1983 crop year by the qualified taxpayer in the active conduct of the trade or business of farming, and

"(2) any qualified taxpayer who materially participates in the diversion and devotion to conservation uses required under a 1983 payment-in-kind program shall be treated as materially participating in the

operation of such land during such crop year.

"(b) PROVISIONS TO WHICH SUBSECTION (a) APPLIES.—The provisions specified in this subsection are—

"(1) section 2032A of the Internal Revenue Code of 1986 (relating to valuation of certain farm, etc., real property),

"(2) section 6166 of such Code (relating to extension of time for payment of estate tax where estate consists largely of interest in closely held business),

"(3) chapter 2 of such Code (relating to tax on self-employment income), and

"(4) title II of the Social Security Act [42 U.S.C. 401 et seq.] (relating to Federal old-age, survivors, and disability insurance benefits).

"SEC. 4. ANTIABUSE RULES.

"(a) GENERAL RULE.—In the case of any person, sections 2 and 3 of this Act shall not apply with respect to any land acquired by such person after February 23, 1983, unless such land was acquired in a qualified acquisition.

"(b) QUALIFIED ACQUISITION.—For purposes of this section, the term 'qualified acquisition' means any acquisition—

"(1) by reason of the death of a qualified transferor,

"(2) by reason of a gift from a qualified transferor, or

"(3) from a qualified transferor who is a member of the family of the person acquiring the land.

"(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) QUALIFIED TRANSFEROR.—The term 'qualified transferor' means any person—

"(A) who held the land on February 23, 1983, or

"(B) who acquired the land after February 23, 1983, in a qualified acquisition.

"(2) MEMBER OF FAMILY.—The term 'member of the family' has the meaning given such term by section 2032A(e)(2) of the Internal Revenue Code of 1986.

"(3) MERE CHANGE IN FORM OF BUSINESS.—Subsection (a) shall not apply to any change in ownership by reason of a mere change in the form of conducting the trade or business so long as the land is retained in such trade or business and the person holding the land before such change retains a direct or indirect 80-percent interest in such land.

"(4) TREATMENT OF CERTAIN ACQUISITIONS OF RIGHT TO THE CROP.—The acquisition of a direct or indirect interest in 80 percent or more of the crop from any land shall be treated as an acquisition of such land.

"SEC. 5. DEFINITIONS AND SPECIAL RULES.

"(a) GENERAL RULE.—For purposes of this Act—

"(1) 1983 PAYMENT-IN-KIND PROGRAM.—The term '1983 payment-in-kind program' means any program for the 1983 crop year—

"(A) under which the Secretary of Agriculture (or his delegate) makes payments in kind of any agricultural commodity to any person in return for—

"(i) the diversion of farm acreage from the production of an agricultural commodity, and

"(ii) the devotion of such acreage to conservation uses, and

"(B) which the Secretary of Agriculture certifies to the Secretary of the Treasury as being described in subparagraph (A).

"(2) CROP YEAR.—The term '1983 crop year' means the crop year for any crop the planting or harvesting period for which occurs during 1983. The term '1984 crop year' means the crop year for wheat the planting and harvesting period for which occurs during 1984.

"(3) QUALIFIED TAXPAYER.—The term 'qualified taxpayer' means any producer of agricultural commodities (within the meaning of the 1983 payment-in-kind programs) who receives any agricultural commodity in return for meeting the requirements of clauses (i) and (ii) of paragraph (1)(A).

"(4) RECEIPT INCLUDES RIGHT TO RECEIVE, ETC.—A right to receive (or other constructive receipt of) a commodity shall be treated the same as actual receipt of such commodity.

"(5) AMOUNTS RECEIVED BY THE TAXPAYER AS REIMBURSEMENT FOR STORAGE.—A qualified taxpayer reporting on the cash receipts and disbursements method of accounting shall not be treated as being entitled to receive any amount as reimbursement for storage of commodities received under a 1983 payment-in-kind program until such amount is actually received by the taxpayer.

"(6) COMMODITY CREDIT LOANS TREATED SEPARATELY.—Subsection (a) of section 2 shall apply to the receipt of any commodity under a 1983 payment-in-kind program separately from, and without taking into account, any related transaction or series of transactions involving the satisfaction of loans from

the Commodity Credit Corporation.

"(b) EXTENSION TO WHEAT PLANTED AND HARVESTED IN 1984.—In the case of wheat—

"(1) any reference in this Act to the 1983 crop year shall include a reference to the 1984 crop year, and

"(2) any reference to the 1983 payment-in-kind program shall include a reference to any program for the 1984 year for wheat which meets the requirements of subparagraphs (A) and (B) of subsection (a)(1).

"(c) REGULATIONS.—The Secretary of the Treasury or his delegate (after consultation with the Secretary of Agriculture) shall prescribe such regulations as may be necessary to carry out the purposes of this Act, including (but not limited to) such regulations as may be necessary to carry out the purposes of this Act where the commodity is received by a cooperative on behalf of the qualified taxpayer."

[Pub. L. 98–369, div. A, title X, §1061(b), July 18, 1984, 98 Stat. 1047, provided that: "The amendments made by this section [amending Pub. L. 98–4 set out above] shall apply with respect to commodities received for the 1984 crop year (as defined in section 5(a)(2) of the Payment-in-Kind Tax Treatment Act of 1983 [Pub. L. 98–4, set out above] as amended by subsection (a))."]

CANCELLATION OF CERTAIN STUDENT LOANS

Pub. L. 94–455, title XXI, §2117, Oct. 4, 1976, 90 Stat. 1911, as amended by Pub. L. 95–600, title I, §162, Nov. 6, 1978, 92 Stat. 2810; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that no amount be included in gross income of an individual for purposes of 26 U.S.C. 61 by reason of the discharge made before Jan. 1, 1983 of the indebtedness of the individual under a student loan if the discharge was pursuant to a provision of the loan under which the indebtedness of the individual would be discharged if the individual worked for a certain period of time in certain geographical areas or for certain classes of employers.

REGULATIONS RELATING TO TAX TREATMENT OF CERTAIN PREPUBLICATION EXPENDITURES OF PUBLISHERS

Pub. L. 94–455, title XXI, §2119, Oct. 4, 1976, 90 Stat. 1912, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) GENERAL RULE.—With respect to taxable years beginning on or before the date on which regulations dealing with prepublication expenditures are issued after the date of the enactment of this Act [Oct. 4, 1976], the application of sections 61 (as it relates to cost of goods sold), 162, 174, 263, and 471 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] to any prepublication expenditure shall be administered—

"(1) without regard to Revenue Ruling 73–395, and

"(2) in the manner in which such sections were applied consistently by the taxpayer to such expenditures before the date of the issuance of such revenue ruling.

"(b) REGULATIONS TO BE PROSPECTIVE ONLY.—Any regulations issued after the date of the enactment of this Act [Oct. 4, 1976] which deal with the application of sections 61 (as it relates to cost of goods sold), 162, 174, 263, and 471 of the Internal Revenue Code of 1986 to prepublication expenditures shall apply only with respect to taxable years beginning after the date on which such regulations are issued.

"(c) PREPUBLICATION EXPENDITURES DEFINED.—For purposes of this section, the term 'prepublication expenditures' means expenditures paid or incurred by the taxpayer (in connection with his trade or business of publishing) for the writing, editing, compiling, illustrating, designing, or other development or improvement of a book, teaching aid, or similar product."

REIMBURSEMENT OF MOVING EXPENSES OF EMPLOYEES OF CERTAIN CORPORATIONS EXCLUDED FROM GROSS INCOME; CLAIM FOR REFUND OR CREDIT; LIMITATIONS; INTEREST

Pub. L. 86–780, §5, Sept. 14, 1960, 74 Stat. 1013, provided for the exclusion from gross income of any amount received after Dec. 31, 1949, and before Oct. 1, 1955, by employees of certain corporations as reimbursement for moving expenses, and the refund or credit of any overpayments.

§62. Adjusted gross income defined

(a) General rule

For purposes of this subtitle, the term "adjusted gross income" means, in the case of an individual, gross income minus the following deductions:

(1) Trade and business deductions

The deductions allowed by this chapter (other than by part VII of this subchapter) which are attributable to a trade or business carried on by the taxpayer, if such trade or business does not consist of the performance of services by the taxpayer as an employee.

(2) Certain trade and business deductions of employees

(A) Reimbursed expenses of employees

The deductions allowed by part VI (section 161 and following) which consist of expenses paid or incurred by the taxpayer, in connection with the performance by him of services as an employee, under a reimbursement or other expense allowance arrangement with his employer. The fact that the reimbursement may be provided by a third party shall not be determinative of whether or not the preceding sentence applies.

(B) Certain expenses of performing artists

The deductions allowed by section 162 which consist of expenses paid or incurred by a qualified performing artist in connection with the performances by him of services in the performing arts as an employee.

(C) Certain expenses of officials

The deductions allowed by section 162 which consist of expenses paid or incurred with respect to services performed by an official as an employee of a State or a political subdivision thereof in a position compensated in whole or in part on a fee basis.

(D) Certain expenses of elementary and secondary school teachers

In the case of taxable years beginning during 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, or 2013, the deductions allowed by section 162 which consist of expenses, not in excess of $250, paid or incurred by an eligible educator in connection with books, supplies (other than nonathletic supplies for courses of instruction in health or physical education), computer equipment (including related software and services) and other equipment, and supplementary materials used by the eligible educator in the classroom.

(E) Certain expenses of members of reserve components of the Armed Forces of the United States

The deductions allowed by section 162 which consist of expenses, determined at a rate not in excess of the rates for travel expenses (including per diem in lieu of subsistence) authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, paid or incurred by the taxpayer in connection with the performance of services by such taxpayer as a member of a reserve component of the Armed Forces of the United States for any period during which such individual is more than 100 miles away from home in connection with such services.

(3) Losses from sale or exchange of property

The deductions allowed by part VI (sec. 161 and following) as losses from the sale or exchange of property.

(4) Deductions attributable to rents and royalties

The deductions allowed by part VI (sec. 161 and following), by section 212 (relating to expenses for production of income), and by section 611 (relating to depletion) which are attributable to property held for the production of rents or royalties.

(5) Certain deductions of life tenants and income beneficiaries of property

In the case of a life tenant of property, or an income beneficiary of property held in trust, or an heir, legatee, or devisee of an estate, the deduction for depreciation allowed by section 167 and the deduction allowed by section 611.

(6) Pension, profit-sharing, and annuity plans of self-employed individuals

In the case of an individual who is an employee within the meaning of section 401(c)(1), the

deduction allowed by section 404.

(7) Retirement savings

The deduction allowed by section 219 (relating to deduction of certain retirement savings).

[(8) Repealed. Pub. L. 104–188, title I, §1401(b)(4), Aug. 20, 1996, 110 Stat. 1788]

(9) Penalties forfeited because of premature withdrawal of funds from time savings accounts or deposits

The deductions allowed by section 165 for losses incurred in any transaction entered into for profit, though not connected with a trade or business, to the extent that such losses include amounts forfeited to a bank, mutual savings bank, savings and loan association, building and loan association, cooperative bank or homestead association as a penalty for premature withdrawal of funds from a time savings account, certificate of deposit, or similar class of deposit.

(10) Alimony

The deduction allowed by section 215.

(11) Reforestation expenses

The deduction allowed by section 194.

(12) Certain required repayments of supplemental unemployment compensation benefits

The deduction allowed by section 165 for the repayment to a trust described in paragraph (9) or (17) of section 501(c) of supplemental unemployment compensation benefits received from such trust if such repayment is required because of the receipt of trade readjustment allowances under section 231 or 232 of the Trade Act of 1974 (19 U.S.C. 2291 and 2292).

(13) Jury duty pay remitted to employer

Any deduction allowable under this chapter by reason of an individual remitting any portion of any jury pay to such individual's employer in exchange for payment by the employer of compensation for the period such individual was performing jury duty. For purposes of the preceding sentence, the term "jury pay" means any payment received by the individual for the discharge of jury duty.

(14) Deduction for clean-fuel vehicles and certain refueling property

The deduction allowed by section 179A.

(15) Moving expenses

The deduction allowed by section 217.

(16) Archer MSAs

The deduction allowed by section 220.

(17) Interest on education loans

The deduction allowed by section 221.

(18) Higher education expenses

The deduction allowed by section 222.

(19) Health savings accounts

The deduction allowed by section 223.

(20) Costs involving discrimination suits, etc.

Any deduction allowable under this chapter for attorney fees and court costs paid by, or on behalf of, the taxpayer in connection with any action involving a claim of unlawful discrimination (as defined in subsection (e)) or a claim of a violation of subchapter III of chapter 37 of title 31, United States Code [1] or a claim made under section 1862(b)(3)(A) of the Social Security Act (42 U.S.C. 1395y(b)(3)(A)). The preceding sentence shall not apply to any deduction in excess of the amount includible in the taxpayer's gross income for the taxable year on account of a judgment or

settlement (whether by suit or agreement and whether as lump sum or periodic payments) resulting from such claim.

(21) Attorneys fees relating to awards to whistleblowers

Any deduction allowable under this chapter for attorney fees and court costs paid by, or on behalf of, the taxpayer in connection with any award under section 7623(b) (relating to awards to whistleblowers). The preceding sentence shall not apply to any deduction in excess of the amount includible in the taxpayer's gross income for the taxable year on account of such award.

Nothing in this section shall permit the same item to be deducted more than once.

(b) Qualified performing artist

(1) In general

For purposes of subsection (a)(2)(B), the term "qualified performing artist" means, with respect to any taxable year, any individual if—

(A) such individual performed services in the performing arts as an employee during the taxable year for at least 2 employers,

(B) the aggregate amount allowable as a deduction under section 162 in connection with the performance of such services exceeds 10 percent of such individual's gross income attributable to the performance of such services, and

(C) the adjusted gross income of such individual for the taxable year (determined without regard to subsection (a)(2)(B)) does not exceed $16,000.

(2) Nominal employer not taken into account

An individual shall not be treated as performing services in the performing arts as an employee for any employer during any taxable year unless the amount received by such individual from such employer for the performance of such services during the taxable year equals or exceeds $200.

(3) Special rules for married couples

(A) In general

Except in the case of a husband and wife who lived apart at all times during the taxable year, if the taxpayer is married at the close of the taxable year, subsection (a)(2)(B) shall apply only if the taxpayer and his spouse file a joint return for the taxable year.

(B) Application of paragraph (1)

In the case of a joint return—

(i) paragraph (1) (other than subparagraph (C) thereof) shall be applied separately with respect to each spouse, but

(ii) paragraph (1)(C) shall be applied with respect to their combined adjusted gross income.

(C) Determination of marital status

For purposes of this subsection, marital status shall be determined under section 7703(a).

(D) Joint return

For purposes of this subsection, the term "joint return" means the joint return of a husband and wife made under section 6013.

(c) Certain arrangements not treated as reimbursement arrangements

For purposes of subsection (a)(2)(A), an arrangement shall in no event be treated as a reimbursement or other expense allowance arrangement if—

(1) such arrangement does not require the employee to substantiate the expenses covered by the arrangement to the person providing the reimbursement, or

(2) such arrangement provides the employee the right to retain any amount in excess of the substantiated expenses covered under the arrangement.

The substantiation requirements of the preceding sentence shall not apply to any expense to the

extent that substantiation is not required under section 274(d) for such expense by reason of the regulations prescribed under the 2nd sentence thereof.

(d) Definition; special rules

(1) Eligible educator

(A) In general

For purposes of subsection (a)(2)(D), the term "eligible educator" means, with respect to any taxable year, an individual who is a kindergarten through grade 12 teacher, instructor, counselor, principal, or aide in a school for at least 900 hours during a school year.

(B) School

The term "school" means any school which provides elementary education or secondary education (kindergarten through grade 12), as determined under State law.

(2) Coordination with exclusions

A deduction shall be allowed under subsection (a)(2)(D) for expenses only to the extent the amount of such expenses exceeds the amount excludable under section 135, 529(c)(1), or 530(d)(2) for the taxable year.

(e) Unlawful discrimination defined

For purposes of subsection (a)(20), the term "unlawful discrimination" means an act that is unlawful under any of the following:

(1) Section 302 of the Civil Rights Act of 1991 (2 U.S.C. 1202).[2]

(2) Section 201, 202, 203, 204, 205, 206, or 207 of the Congressional Accountability Act of 1995 (2 U.S.C. 1311, 1312, 1313, 1314, 1315, 1316, or 1317).

(3) The National Labor Relations Act (29 U.S.C. 151 et seq.).

(4) The Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).

(5) Section 4 or 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623 or 633a).

(6) Section 501 or 504 of the Rehabilitation Act of 1973 (29 U.S.C. 791 or 794).

(7) Section 510 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1140).

(8) Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.).

(9) The Employee Polygraph Protection Act of 1988 (29 U.S.C. 2001 et seq.).

(10) The Worker Adjustment and Retraining Notification Act (29 U.S.C. 2102 et seq.).

(11) Section 105 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2615).

(12) Chapter 43 of title 38, United States Code (relating to employment and reemployment rights of members of the uniformed services).

(13) Section 1977, 1979, or 1980 of the Revised Statutes (42 U.S.C. 1981, 1983, or 1985).

(14) Section 703, 704, or 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–2, 2000e–3, or 2000e–16).

(15) Section 804, 805, 806, 808, or 818 of the Fair Housing Act (42 U.S.C. 3604, 3605, 3606, 3608, or 3617).

(16) Section 102, 202, 302, or 503 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12112, 12132, 12182, or 12203).

(17) Any provision of Federal law (popularly known as whistleblower protection provisions) prohibiting the discharge of an employee, the discrimination against an employee, or any other form of retaliation or reprisal against an employee for asserting rights or taking other actions permitted under Federal law.

(18) Any provision of Federal, State, or local law, or common law claims permitted under Federal, State, or local law—

(i) providing for the enforcement of civil rights, or

(ii) regulating any aspect of the employment relationship, including claims for wages, compensation, or benefits, or prohibiting the discharge of an employee, the discrimination against an employee, or any other form of retaliation or reprisal against an employee for

asserting rights or taking other actions permitted by law.

(Aug. 16, 1954, ch. 736, 68A Stat. 17; Pub. L. 87–792, §7(b), Oct. 10, 1962, 76 Stat. 828; Pub. L. 88–272, title II, §213(b), Feb. 26, 1964, 78 Stat. 52; Pub. L. 91–172, title V, §531(b), Dec. 30, 1969, 83 Stat. 655; Pub. L. 93–406, title II, §§2002(a)(2), 2005(c)(9), Sept. 2, 1974, 88 Stat. 959, 992; Pub. L. 93–483, §6(a), Oct. 26, 1974, 88 Stat. 1458; Pub. L. 94–455, title V, §502(a), title XV, §1501(b)(1), title XIX, §1901(a)(8), (9), Oct. 4, 1976, 90 Stat. 1559, 1735, 1765; Pub. L. 95–615, §203(b), Nov. 8, 1978, 92 Stat. 3106; Pub. L. 96–451, title III, §301(b), Oct. 14, 1980, 94 Stat. 1990; Pub. L. 96–608, §3(a), Dec. 28, 1980, 94 Stat. 3551; Pub. L. 97–34, title I, §§103(b), 112(b)(2), title III, §311(h)(1), Aug. 13, 1981, 95 Stat. 187, 195, 282; Pub. L. 97–354, §5(a)(17), Oct. 19, 1982, 96 Stat. 1693; Pub. L. 98–369, div. A, title IV, §491(d)(2), July 18, 1984, 98 Stat. 849; Pub. L. 99–514, title I, §§131(b)(1), 132(b), (c), title III, §301(b)(1), title XVIII, §1875(c)(3), Oct. 22, 1986, 100 Stat. 2113, 2115, 2116, 2217, 2894; Pub. L. 100–485, title VII, §702(a), Oct. 13, 1988, 102 Stat. 2426; Pub. L. 100–647, title I, §1001(b)(3)(A), title VI, §6007(b), Nov. 10, 1988, 102 Stat. 3349, 3687; Pub. L. 101–508, title XI, §11802(e)(1), Nov. 5, 1990, 104 Stat. 1388–530; Pub. L. 102–318, title V, §521(b)(2), July 3, 1992, 106 Stat. 310; Pub. L. 102–486, title XIX, §1913(a)(2), Oct. 24, 1992, 106 Stat. 3019; Pub. L. 103–66, title XIII, §13213(c)(1), Aug. 10, 1993, 107 Stat. 474; Pub. L. 104–188, title I, §1401(b)(4), Aug. 20, 1996, 110 Stat. 1788; Pub. L. 104–191, title III, §301(b), Aug. 21, 1996, 110 Stat. 2048; Pub. L. 105–34, title II, §202(b), title IX, §975(a), Aug. 5, 1997, 111 Stat. 808, 898; Pub. L. 106–554, §1(a)(7) [title II, §202(b)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–629; Pub. L. 107–16, title IV, §431(b), June 7, 2001, 115 Stat. 68; Pub. L. 107–147, title IV, §406(a), (b), Mar. 9, 2002, 116 Stat. 43; Pub. L. 108–121, title I, §109(b), Nov. 11, 2003, 117 Stat. 1341; Pub. L. 108–173, title XII, §1201(b), Dec. 8, 2003, 117 Stat. 2476; Pub. L. 108–311, title III, §307(a), Oct. 4, 2004, 118 Stat. 1179; Pub. L. 108–357, title VII, §703(a), (b), Oct. 22, 2004, 118 Stat. 1546, 1547; Pub. L. 109–135, title IV, §412(q), Dec. 21, 2005, 119 Stat. 2638; Pub. L. 109–432, div. A, title I, §108(a), title IV, §406(a)(3), Dec. 20, 2006, 120 Stat. 2939, 2959; Pub. L. 110–343, div. C, title II, §203(a), Oct. 3, 2008, 122 Stat. 3864; Pub. L. 111–312, title VII, §721(a), Dec. 17, 2010, 124 Stat. 3316; Pub. L. 112–240, title II, §201(a), Jan. 2, 2013, 126 Stat. 2323.)

REFERENCES IN TEXT

Section 302 of the Civil Rights Act of 1991, referred to in subsec. (e)(1), was formerly classified to section 1202 of Title 2, The Congress, and was transferred to section 2000e–16b of Title 42, The Public Health and Welfare.

The National Labor Relations Act, referred to in subsec. (e)(3), is act July 5, 1935, ch. 372, 49 Stat. 449, as amended, which is classified generally to subchapter II (§151 et seq.) of chapter 7 of Title 29, Labor. For complete classification of this Act to the Code, see section 167 of Title 29 and Tables.

The Fair Labor Standards Act of 1938, referred to in subsec. (e)(4), is act June 25, 1938, ch. 676, 52 Stat. 1060, as amended, which is classified generally to chapter 8 (§201 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see section 201 of Title 29 and Tables.

The Education Amendments of 1972, referred to in subsec. (e)(8), is Pub. L. 92–318, June 23, 1972, 86 Stat. 235, as amended. Title IX of the Act, known as the Patsy Takemoto Mink Equal Opportunity in Education Act, is classified principally to chapter 38 (§1681 et seq.) of Title 20, Education. For complete classification of title IX to the Code, see Short Title note set out under section 1681 of Title 20 and Tables.

The Employee Polygraph Protection Act of 1988, referred to in subsec. (e)(9), is Pub. L. 100–347, June 27, 1988, 102 Stat. 646, as amended, which is classified generally to chapter 22 (§2001 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of Title 29 and Tables.

The Worker Adjustment and Retraining Notification Act, referred to in subsec. (e)(10), is Pub. L. 100–379, Aug. 4, 1988, 102 Stat. 890, as amended, which is classified generally to chapter 23 (§2101 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 2101 of Title 29 and Tables.

AMENDMENTS

2013—Subsec. (a)(2)(D). Pub. L. 112–240 substituted "2011, 2012, or 2013" for "or 2011".

2010—Subsec. (a)(2)(D). Pub. L. 111–312 substituted "2009, 2010, or 2011" for "or 2009".

2008—Subsec. (a)(2)(D). Pub. L. 110–343 substituted "2007, 2008, or 2009" for "or 2007".

2006—Subsec. (a)(2)(D). Pub. L. 109–432, §108(a), substituted "2005, 2006, or 2007" for "or 2005".

Subsec. (a)(21). Pub. L. 109–432, §406(a)(3), added par. (21).

2005—Subsec. (a)(19), (20). Pub. L. 109–135, §412(q)(1), redesignated par. (19) relating to costs involving discrimination suits, etc., as par. (20) and moved to follow par. (19) relating to health savings accounts.

Subsec. (e). Pub. L. 109–135, §412(q)(2), substituted "subsection (a)(20)" for "subsection (a)(19)" in introductory provisions.

2004—Subsec. (a)(2)(D). Pub. L. 108–311 substituted ", 2003, 2004, or 2005" for "or 2003".

Subsec. (a)(19). Pub. L. 108–357, §703(a), added par. (19) relating to costs involving discrimination suits, etc.

Subsec. (e). Pub. L. 108–357, §703(b), added subsec. (e).

2003—Subsec. (a)(2)(E). Pub. L. 108–121 added subpar. (E).

Subsec. (a)(19). Pub. L. 108–173 added par. (19).

2002—Subsec. (a)(2)(D). Pub. L. 107–147, §406(a), added subpar. (D).

Subsec. (d). Pub. L. 107–147, §406(b), added subsec. (d).

2001—Subsec. (a)(18). Pub. L. 107–16 added par. (18).

2000—Subsec. (a)(16). Pub. L. 106–554 amended heading and text of par. (16) generally. Prior to amendment, text read as follows: "The deduction allowed by section 220."

1997—Subsec. (a)(2)(C). Pub. L. 105–34, §975(a), added subpar. (C).

Subsec. (a)(17). Pub. L. 105–34, §202(b), added par. (17).

1996—Subsec. (a)(8). Pub. L. 104–188 struck out par. (8) which read as follows: "CERTAIN PORTION OF LUMP-SUM DISTRIBUTIONS FROM PENSION PLANS TAXED UNDER SECTION 402(D).—The deduction allowed by section 402(d)(3)."

Subsec. (a)(16). Pub. L. 104–191 added par. (16).

1993—Subsec. (a)(15). Pub. L. 103–66 added par. (15).

1992—Subsec. (a)(8). Pub. L. 102–318 substituted "402(d)" for "402(e)" in heading and in text.

Subsec. (a)(14). Pub. L. 102–486 added par. (14).

1990—Subsec. (a)(13). Pub. L. 101–508, §11802(e)(1), amended par. (13) generally. Prior to amendment, par. (13) read as follows: "The deduction allowed by section 220."

1988—Subsec. (a)(2)(A). Pub. L. 100–647, §1001(b)(3)(A), inserted at end "The fact that the reimbursement may be provided by a third party shall not be determinative of whether or not the preceding sentence applies."

Subsec. (a)(13). Pub. L. 100–647, §6007(b), added par. (13).

Subsec. (c). Pub. L. 100–485 added subsec. (c).

1986—Subsec. (a). Pub. L. 99–514, §132(b)(2)(A), designated existing provisions as subsec. (a) and added heading.

Subsec. (a)(2). Pub. L. 99–514, §132(b)(1), amended par. (2) generally, substituting "Certain trade" for "Trade" in heading and inserting "of employees" in subpar. (A) heading, substituting provision relating to deduction of certain expenses of performing artists for provision relating to deduction of expenses for travel away from home in subpar. (B), and striking out subpar. (C) relating to deduction of travel expenses and subpar. (D) relating to deduction of expenses of outside salesmen.

Subsec. (a)(3) to (5). Pub. L. 99–514, §301(b)(1), redesignated pars. (4) to (6) as (3) to (5), respectively, and struck out former par. (3) which related to long-term capital gains and read as follows: "The deduction allowed by section 1202."

Subsec. (a)(6). Pub. L. 99–514, §301(b)(1), redesignated par. (7) as (6). Former par. (6) redesignated (5).

Pub. L. 99–514, §1875(c)(3), struck out "to the extent attributable to contributions made on behalf of such individual" after "section 404".

Subsec. (a)(7). Pub. L. 99–514, §301(b)(1), redesignated par. (10) as (7). Former par. (7) redesignated (6).

Subsec. (a)(8). Pub. L. 99–514, §301(b)(1), redesignated par. (11) as (8). Former par. (8) struck out.

Pub. L. 99–514, §132(c), struck out par. (8) which related to moving expense deduction and read as follows: "The deduction allowed by section 217."

Subsec. (a)(9) to (15). Pub. L. 99–514, §301(b)(1), redesignated pars. (12) to (15) as (9) to (12), respectively. Former pars. (10) and (11) redesignated (7) and (8), respectively.

Subsec. (a)(16). Pub. L. 99–514, §131(b)(1), struck out par. (16) which related to deduction for two-earner married couples and read as follows: "The deduction allowed by section 221."

Subsec. (b). Pub. L. 99–514, §132(b)(2)(B), added subsec. (b).

1984—Par. (7). Pub. L. 98–369, §491(d)(2), substituted "and annuity" for "annuity, and bond purchase" in heading, and substituted "the deduction allowed by section 404" for "the deductions allowed by section 404 and section 405(c)" in text.

1983—Par. (9). Pub. L. 97–354 repealed par. (9) relating to the deduction allowed by section 1379(b)(3).

1981—Par. (10). Pub. L. 97–34, §311(h)(1), struck out "and the deduction allowed by section 220 (relating to retirement savings for certain married individuals)" after "retirement savings".

Par. (14). Pub. L. 97–34, §112(b)(2), redesignated par. (15) as (14). Former par. (14), relating to deduction for certain expenses of living abroad, was struck out.

Par. (15). Pub. L. 97–34, §112(b)(2), redesignated par. (16) as (15). Former par. (15) redesignated (14).

Par. (16). Pub. L. 97–34, §§103(b), 112(b)(2), added par. (16). Former par. (16) redesignated (15).

1980—Par. (15). Pub. L. 96–451 added par. (15).

Par. (16). Pub. L. 96–608 added par. (16).

1978—Par. (14). Pub. L. 95–615 added par. (14).

1976—Par. (10). Pub. L. 94–455, §1501(b)(1), inserted reference to the deduction allowed by section 220 (relating to retirement savings for certain married individuals).

Pars. (11), (12). Pub. L. 94–455, §1901(a)(8), (9), redesignated par. (11) relating to penalties forfeited because of premature withdrawal of funds from time savings accounts or deposits, as par. (12), and substituted "trade or business, to the extent" for "trade or business to the extent".

Par. (13). Pub. L. 94–455, §502(a), added par. (13).

1974—Par. (10). Pub. L. 93–406, §2002(a)(2), added par. (10).

Par. (11). Pub. L. 93–483 added par. (11) relating to penalties forfeited because of premature withdrawal of funds from time savings accounts or deposits. Another par. (11) relating to certain portions of lump-sum distributions from pension plans taxed under section 402(e) of this title, was added by Pub. L. 93–406, §2005(c)(9).

1969—Par. (9). Pub. L. 91–172 added par. (9).

1964—Par. (8). Pub. L. 88–272 added par. (8).

1962—Par. (7). Pub. L. 87–792 added par. (7).

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title II, §201(b), Jan. 2, 2013, 126 Stat. 2323, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2011."

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §721(b), Dec. 17, 2010, 124 Stat. 3316, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2009."

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title II, §203(b), Oct. 3, 2008, 122 Stat. 3864, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 2007."

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title I, §108(b), Dec. 20, 2006, 120 Stat. 2939, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2005."

Pub. L. 109–432, div. A, title IV, §406(d), Dec. 20, 2006, 120 Stat. 2960, provided that: "The amendments made by subsection (a) [amending this section and sections 7443A and 7623 of this title] shall apply to information provided on or after the date of the enactment of this Act [Dec. 20, 2006]."

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VII, §703(c), Oct. 22, 2004, 118 Stat. 1548, provided that: "The amendments made by this section [amending this section] shall apply to fees and costs paid after the date of the enactment of this Act [Oct. 22, 2004] with respect to any judgment or settlement occurring after such date."

Pub. L. 108–311, title III, §307(b), Oct. 4, 2004, 118 Stat. 1179, provided that: "The amendment made by subsection (a) [amending this section] shall apply to expenses paid or incurred in taxable years beginning after December 31, 2003."

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–173, title XII, §1201(k), Dec. 8, 2003, 117 Stat. 2479, provided that: "The amendments made by this section [enacting sections 223 and 4980G of this title, amending this section and sections 106, 125, 220, 848, 3231, 3306, 3401, 4973, 4975, 6051, and 6693 of this title, and renumbering former section 223 of this title as 224] shall apply to taxable years beginning after December 31, 2003."

Pub. L. 108–121, title I, §109(c), Nov. 11, 2003, 117 Stat. 1342, provided that: "The amendments made by this section [amending this section and section 162 of this title] shall apply to amounts paid or incurred in

taxable years beginning after December 31, 2002."

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title IV, §406(c), Mar. 9, 2002, 116 Stat. 44, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2001."

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–16, title IV, §431(d), June 7, 2001, 115 Stat. 69, provided that: "The amendments made by this section [enacting section 222 of this title, amending this section and sections 86, 135, 137, 219, 221, and 469 of this title, and renumbering former section 222 of this title as 223] shall apply to payments made in taxable years beginning after December 31, 2001."

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title II, §202(e), Aug. 5, 1997, 111 Stat. 809, provided that: "The amendments made by this section [enacting section 221 of this title, amending this section and section 6050S of this title, and renumbering former section 221 of this title as section 222 of this title] shall apply to any qualified education loan (as defined in section 221(e)(1) of the Internal Revenue Code of 1986, as added by this section) incurred on, before, or after the date of the enactment of this Act [Aug. 5, 1997], but only with respect to—

"(1) any loan interest payment due and paid after December 31, 1997, and

"(2) the portion of the 60-month period referred to in section 221(d) of the Internal Revenue Code of 1986 (as added by this section) after December 31, 1997."

Pub. L. 105–34, title IX, §975(b), Aug. 5, 1997, 111 Stat. 898, provided that: "The amendment made by this section [amending this section] shall apply to expenses paid or incurred in taxable years beginning after December 31, 1986."

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–191, title III, §301(j), Aug. 21, 1996, 110 Stat. 2052, provided that: "The amendments made by this section [enacting sections 220 and 4980E of this title, amending this section and sections 106, 125, 848, 3231, 3306, 3401, 4973, 4975, 6051, and 6693 of this title, and renumbering section 220 of this title as section 221] shall apply to taxable years beginning after December 31, 1996."

Amendment by Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1999, with retention of certain transition rules, see section 1401(c) of Pub. L. 104–188, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13213(e), Aug. 10, 1993, 107 Stat. 475, provided that: "The amendments made by this section [amending this section and sections 67, 82, 132, 217, 1001, 1016, and 4977 of this title] shall apply to expenses incurred after December 31, 1993; except that the amendments made by subsection (d) [amending sections 82, 132, and 4977 of this title] shall apply to reimbursements or other payments in respect of expenses incurred after such date."

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–486 applicable to property placed in service after June 30, 1993, see section 1913(c) of Pub. L. 102–486, set out as an Effective Date note under section 30 of this title.

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

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1001(b)(3)(A) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title VI, §6007(d), Nov. 10, 1988, 102 Stat. 3687, provided that: "The amendments made by this section [enacting section 220 of this title, amending this section, and renumbering former section 220 of this title as section 221 of this title] shall apply as if included in the amendments made by section 132 of the Tax Reform Act of 1986 [Pub. L. 99–514]."

Pub. L. 100–485, title VII, §702(b), Oct. 13, 1988, 102 Stat. 2426, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1988."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by sections 131(b)(1) and 132(b), (c) of Pub. L. 99–514 applicable to taxable years beginning

after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Pub. L. 99–514, title III, §301(c), Oct. 22, 1986, 100 Stat. 2218, provided that: "The amendments made by this section [amending this section and sections 170, 172, 219, 220, 223, 642, 643, 691, 871, 1211, 1212, and 1402 of this title and repealing section 1202 of this title] shall apply to taxable years beginning after December 31, 1986."

Pub. L. 99–514, title XVIII, §1875(c)(12), Oct. 22, 1986, 100 Stat. 2895, provided that: "The amendments made by paragraphs (3), (4), and (6) [amending this section and sections 219 and 408 of this title] shall take effect as if included in the amendments made by section 238 of the Tax Equity and Fiscal Responsibility Act of 1982 [section 238 of Pub. L. 97–248, see section 241 of Pub. L. 97–248, set out as an Effective Date note under section 416 of this title]."

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title IV, §491(f)(1), July 18, 1984, 98 Stat. 853, provided that: "The amendments and repeals made by subsections (a), (b), and (d) [amending this section, sections 55, 72, 172, 219, 402, 403, 406, 407, 408, 412, 414, 415, 457, 2039, 2517, 3121, 3306, 3401, 4972, 4973, 4975, 6047, 6058, 6104, 6652, 7207, 7476, and 7701 of this title, section 3107 of Title 31, Money and Finance, and section 409 of Title 42, The Public Health and Welfare, and repealing sections 405 and 409 of this title] shall apply to obligations issued after December 31, 1983."

EFFECTIVE DATE OF 1983 AMENDMENT

Par. (9) as in effect before date of repeal by Pub. L. 97–354 to remain in effect for years beginning before Jan. 1, 1984, see section 6(b)(1) of Pub. L. 97–354, set out as an Effective Date note under section 3761 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title I, §103(d), Aug. 13, 1981, 95 Stat. 188, provided that: "The amendments made by this section [enacting section 219 of this title and amending this section and sections 85 and 105 of this title] shall apply to taxable years beginning after December 31, 1981."

Amendment by sections 112(b)(2) and 311(h)(1) of Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see sections 115 and 311(i)(1) of Pub. L. 97–34, set out as notes under sections 911 and 219, respectively, of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–608, §3(b), Dec. 28, 1980, 94 Stat. 3551, provided that: "The amendment made by subsection (a) [amending this section] shall apply to repayments made in taxable years beginning after the date of the enactment of this Act [Dec. 28, 1980]."

Amendment by Pub. L. 96–451 applicable with respect to additions to capital account made after Dec. 31, 1979, see section 301(d) of Pub. L. 96–451, set out as an Effective Date note under section 194 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT; ELECTION OF PRIOR LAW

Amendment by Pub. L. 95–615 applicable to taxable years beginning after Dec. 31, 1977, with provision for election of prior law, see section 209 of Pub. L. 95–615, set out as a note under section 911 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title V, §502(c), Oct. 4, 1976, 90 Stat. 1559, provided that: "The amendments made by this section [amending this section and section 3402 of this title] shall apply to taxable years beginning after December 31, 1976."

Pub. L. 94–455, title XV, §1501(d), Oct. 4, 1976, 90 Stat. 1737, provided that: "The amendments made by this section [enacting section 220 of this title, amending this section and sections 219, 408, 409, 3401, 4973, and 6047 of this title, and renumbering former section 220 as 221 of this title], other than the amendment made by subsection (b)(3), shall apply to taxable years beginning after December 31, 1976. The amendment made by subsection (b)(3) [amending section 415 of this title] shall apply to years beginning after December 31, 1976."

Amendment by section 1901(a)(8), (9) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Pub. L. 93–483, §6(b), Oct. 26, 1974, 88 Stat. 1459, provided that: "The amendment made by this section [amending this section] applies to taxable years beginning after December 31, 1972."

Amendment by section 2002(a)(2) of Pub. L. 93–406 applicable to taxable years beginning after Dec. 31, 1974, see section 2002(i)(1) of Pub. L. 93–406, set out as an Effective Date note under section 219 of this title.

Amendment by section 2005(c)(9) of Pub. L. 93–406 applicable only with respect to distributions or payments made after Dec. 31, 1973, in taxable years beginning after Dec. 31, 1973, see section 2005(d) of Pub. L. 93–406, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable with respect to taxable years of electing small business corporations beginning after Dec. 31, 1970, see section 531(d) of Pub. L. 91–172, set out as an Effective Date note under section 1379 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88–272, title II, §213(d), Feb. 26, 1964, 78 Stat. 52, provided that: "The amendments made by subsections (a) [enacting section 217 and redesignating former section 217 as 218] and (b) [amending this section] shall apply to expenses incurred after December 31, 1963, in taxable years ending after such date. The amendment made by subsection (c) [amending section 3401 of this title] shall apply with respect to remuneration paid after the seventh day following the date of the enactment of this Act [Feb. 26, 1964]."

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87–792, set out as a note under section 22 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

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

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

COMMUTING EXPENSES

Pub. L. 95–427, §2, Oct. 7, 1978, 92 Stat. 996, as amended by Pub. L. 96–167, §2, Dec. 29, 1979, 93 Stat. 1275, provided that with respect to transportation costs paid or incurred after December 31, 1976, and on or before May 31, 1981, the application of sections 62, 162, and 262 and of chapters 21, 23, and 24 of the Internal Revenue Code of 1954 [now 1986] to transportation expenses in traveling between a taxpayer's residence and place of work be determined without regard to Revenue Ruling 76–453 or any other regulation, ruling, or decision reaching the same or similar result, and with full regard to the rules in effect before that Revenue Ruling.

Pub. L. 95–615, §2, Nov. 8, 1978, 92 Stat. 3097, provided that with respect to transportation costs paid or incurred after Dec. 31, 1976, and before Apr. 30, 1978, the application of sections 62, 162, and 262 and chapters 21, 23, and 24 of the Internal Revenue Code of 1954 [now 1986] to transportation expenses in traveling between a taxpayer's residence and place of work be determined without regard to Revenue Ruling 76–453 or any other regulation, ruling or decision reaching the same or similar result, and with full regard to

the rules in effect before that Revenue Ruling, and ceased to have effect on the day after Nov. 8, 1978 pursuant to section 210(a) of that Act.

[1] *So in original. Probably should be followed by a comma.*

[2] *See References in Text note below.*

§63. Taxable income defined

(a) In general

Except as provided in subsection (b), for purposes of this subtitle, the term "taxable income" means gross income minus the deductions allowed by this chapter (other than the standard deduction).

(b) Individuals who do not itemize their deductions

In the case of an individual who does not elect to itemize his deductions for the taxable year, for purposes of this subtitle, the term "taxable income" means adjusted gross income, minus—

(1) the standard deduction, and

(2) the deduction for personal exemptions provided in section 151.

(c) Standard deduction

For purposes of this subtitle—

(1) In general

Except as otherwise provided in this subsection, the term "standard deduction" means the sum of—

(A) the basic standard deduction,

(B) the additional standard deduction,

(C) in the case of any taxable year beginning in 2008 or 2009, the real property tax deduction,

(D) the disaster loss deduction, and

(E) the motor vehicle sales tax deduction.

(2) Basic standard deduction

For purposes of paragraph (1), the basic standard deduction is—

(A) 200 percent of the dollar amount in effect under subparagraph (C) for the taxable year in the case of—

(i) a joint return, or

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

(B) $4,400 in the case of a head of household (as defined in section 2(b)), or

(C) $3,000 in any other case.

(3) Additional standard deduction for aged and blind

For purposes of paragraph (1), the additional standard deduction is the sum of each additional amount to which the taxpayer is entitled under subsection (f).

(4) Adjustments for inflation

In the case of any taxable year beginning in a calendar year after 1988, each dollar amount contained in paragraph (2)(B), (2)(C), or (5) or subsection (f) shall be increased by an amount equal to—

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting for "calendar year 1992" in subparagraph (B) thereof—

(i) "calendar year 1987" in the case of the dollar amounts contained in paragraph (2)(B), (2)(C), or (5)(A) or subsection (f), and

(ii) "calendar year 1997" in the case of the dollar amount contained in paragraph (5)(B).

(5) Limitation on basic standard deduction in the case of certain dependents

In the case of an individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins, the basic standard deduction applicable to such individual for such individual's taxable year shall not exceed the greater of—

(A) $500, or

(B) the sum of $250 and such individual's earned income.

(6) Certain individuals, etc., not eligible for standard deduction

In the case of—

(A) a married individual filing a separate return where either spouse itemizes deductions,

(B) a nonresident alien individual,

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

(D) an estate or trust, common trust fund, or partnership,

the standard deduction shall be zero.

(7) Real property tax deduction

For purposes of paragraph (1), the real property tax deduction is the lesser of—

(A) the amount allowable as a deduction under this chapter for State and local taxes described in section 164(a)(1), or

(B) $500 ($1,000 in the case of a joint return).

Any taxes taken into account under section 62(a) shall not be taken into account under this paragraph.

(8) Disaster loss deduction

For the purposes of paragraph (1), the term "disaster loss deduction" means the net disaster loss (as defined in section 165(h)(3)(B)).

(9) Motor vehicle sales tax deduction

For purposes of paragraph (1), the term "motor vehicle sales tax deduction" means the amount allowable as a deduction under section 164(a)(6). Such term shall not include any amount taken into account under section 62(a).

(d) Itemized deductions

For purposes of this subtitle, the term "itemized deductions" means the deductions allowable under this chapter other than—

(1) the deductions allowable in arriving at adjusted gross income, and

(2) the deduction for personal exemptions provided by section 151.

(e) Election to itemize

(1) In general

Unless an individual makes an election under this subsection for the taxable year, no itemized deduction shall be allowed for the taxable year. For purposes of this subtitle, the determination of whether a deduction is allowable under this chapter shall be made without regard to the preceding sentence.

(2) Time and manner of election

Any election under this subsection shall be made on the taxpayer's return, and the Secretary shall prescribe the manner of signifying such election on the return.

(3) Change of election

Under regulations prescribed by the Secretary, a change of election with respect to itemized deductions for any taxable year may be made after the filing of the return for such year. If the spouse of the taxpayer filed a separate return for any taxable year corresponding to the taxable year of the taxpayer, the change shall not be allowed unless, in accordance with such regulations—

(A) the spouse makes a change of election with respect to itemized deductions, for the taxable year covered in such separate return, consistent with the change of treatment sought by the taxpayer, and

(B) the taxpayer and his spouse consent in writing to the assessment (within such period as may be agreed on with the Secretary) of any deficiency, to the extent attributable to such change of election, even though at the time of the filing of such consent the assessment of such deficiency would otherwise be prevented by the operation of any law or rule of law.

This paragraph shall not apply if the tax liability of the taxpayer's spouse for the taxable year corresponding to the taxable year of the taxpayer has been compromised under section 7122.

(f) Aged or blind additional amounts

(1) Additional amounts for the aged

The taxpayer shall be entitled to an additional amount of $600—

(A) for himself if he has attained age 65 before the close of his taxable year, and

(B) for the spouse of the taxpayer if the spouse has attained age 65 before the close of the taxable year and an additional exemption is allowable to the taxpayer for such spouse under section 151(b).

(2) Additional amount for blind

The taxpayer shall be entitled to an additional amount of $600—

(A) for himself if he is blind at the close of the taxable year, and

(B) for the spouse of the taxpayer if the spouse is blind as of the close of the taxable year and an additional exemption is allowable to the taxpayer for such spouse under section 151(b).

For purposes of subparagraph (B), if the spouse dies during the taxable year the determination of whether such spouse is blind shall be made as of the time of such death.

(3) Higher amount for certain unmarried individuals

In the case of an individual who is not married and is not a surviving spouse, paragraphs (1) and (2) shall be applied by substituting "$750" for "$600".

(4) Blindness defined

For purposes of this subsection, an individual is blind only if his central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or if his visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(g) Marital status

For purposes of this section, marital status shall be determined under section 7703.

(Aug. 16, 1954, ch. 736, 68A Stat. 18; Pub. L. 95–30, title I, §102(a), May 23, 1977, 91 Stat. 135; Pub. L. 95–600, title I, §101(b), Nov. 6, 1978, 92 Stat. 2769; Pub. L. 97–34, title I, §§104(b), 111(b)(4), 121(b), (c)(2), Aug. 13, 1981, 95 Stat. 189, 194, 196, 197; Pub. L. 99–514, title I, §102(a), title XII, §1272(d)(6), Oct. 22, 1986, 100 Stat. 2099, 2594; Pub. L. 100–647, title I, §1001(b)(1), Nov. 10, 1988, 102 Stat. 3349; Pub. L. 101–508, title XI, §§11101(d)(1)(D), 11801(a)(4), Nov. 5, 1990, 104 Stat. 1388–405, 1388–520; Pub. L. 103–66, title XIII, §13201(b)(3)(D), Aug. 10, 1993, 107 Stat. 459; Pub. L. 105–34, title XII, §1201(a), Aug. 5, 1997, 111 Stat. 993; Pub. L. 107–16, title III, §301(a), (b), (c)(2), June 7, 2001, 115 Stat. 53, 54; Pub. L. 107–147, title IV, §411(e), Mar. 9,

2002, 116 Stat. 46; Pub. L. 108–27, title I, §103(a), May 28, 2003, 117 Stat. 754; Pub. L. 108–311, title I, §101(b), Oct. 4, 2004, 118 Stat. 1167; Pub. L. 110–289, div. C, title I, §3012(a), (b), July 30, 2008, 122 Stat. 2891, 2892; Pub. L. 110–343, div. C, title II, §204(a), title VII, §706(b)(1), (2), Oct. 3, 2008, 122 Stat. 3865, 3922; Pub. L. 111–5, div. B, title I, §1008(c), Feb. 17, 2009, 123 Stat. 318.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

AMENDMENTS

2009—Subsec. (c)(1)(E). Pub. L. 111–5, §1008(c)(1), added subpar. (E).

Subsec. (c)(9). Pub. L. 111–5, §1008(c)(2), added par. (9).

2008—Subsec. (c)(1)(C). Pub. L. 110–343, §204(a), inserted "or 2009" after "2008".

Pub. L. 110–289, §3012(a), added subpar. (C).

Subsec. (c)(1)(D). Pub. L. 110–343, §706(b)(1), added subpar. (D).

Subsec. (c)(7). Pub. L. 110–289, §3012(b), added par. (7).

Subsec. (c)(8). Pub. L. 110–343, §706(b)(2), added par. (8).

2004—Subsec. (c)(2). Pub. L. 108–311, §101(b)(1), reenacted heading without change and amended text generally, substituting provisions relating to a specific percentage for provisions relating to applicable percentage in subpar. (A), redesignating subpar. (D) as (C), and deleting former subpar. (C) relating to married individuals filing separately.

Subsec. (c)(4). Pub. L. 108–311, §101(b)(2)(A), substituted "(2)(C)" for "(2)(D)" in introductory provisions and in subpar. (B)(i).

Subsec. (c)(7). Pub. L. 108–311, §101(b)(2)(B), struck out par. (7) which related to applicable percentage for purposes of par. (2).

2003—Subsec. (c)(7). Pub. L. 108–27 inserted table item relating to years 2003 and 2004.

2002—Subsec. (c)(2). Pub. L. 107–147, §411(e)(1)(E), inserted "If any amount determined under subparagraph (A) is not a multiple of $50, such amount shall be rounded to the next lowest multiple of $50." at end.

Subsec. (c)(2)(A). Pub. L. 107–147, §411(e)(1)(A), substituted "subparagraph (D)" for "subparagraph (C)".

Subsec. (c)(2)(B). Pub. L. 107–147, §411(e)(1)(B), struck out "or" at end.

Subsec. (c)(2)(C), (D). Pub. L. 107–147, §411(e)(1)(C), (D), added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (c)(4). Pub. L. 107–147, §411(e)(2)(C), which directed amendment by striking out the flush sentence at the end added by section 301(c)(2) of Public Law 107–17, was executed by striking out "The preceding sentence shall not apply to the amount referred to in paragraph (2)(A).", which was inserted by section 301(c)(2) of Pub. L. 107–16, to reflect the probable intent of Congress. See 2001 Amendment note below.

Pub. L. 107–147, §411(e)(2)(A), substituted "paragraph (2)(B), (2)(D), or (5)" for "paragraph (2) or (5)" in introductory provisions.

Subsec. (c)(4)(B)(i). Pub. L. 107–147, §411(e)(2)(B), substituted "paragraph (2)(B), (2)(D)," for "paragraph (2)".

2001—Subsec. (c)(2)(A). Pub. L. 107–16, §301(a)(1), substituted "the applicable percentage of the dollar amount in effect under subparagraph (C) for the taxable year" for "$5,000".

Subsec. (c)(2)(B). Pub. L. 107–16, §301(a)(2), inserted "or" at end.

Subsec. (c)(2)(C). Pub. L. 107–16, §301(a)(3), substituted "in any other case." for "in the case of an individual who is not married and who is not a surviving spouse or head of household, or".

Subsec. (c)(2)(D). Pub. L. 107–16, §301(a)(4), struck out subpar. (D) which read as follows: "$2,500 in the case of a married individual filing a separate return."

Subsec. (c)(4). Pub. L. 107–16, §301(c)(2), inserted at end "The preceding sentence shall not apply to the amount referred to in paragraph (2)(A)."

Subsec. (c)(7). Pub. L. 107–16, §301(b), added par. (7).

1997—Subsec. (c)(4). Pub. L. 105–34, §1201(a)(2), in introductory provisions, substituted "(5)" for "(5)(A)" and, in subpar. (B), substituted "by substituting for 'calendar year 1992' in subparagraph (B) thereof—" for "by substituting 'calendar year 1987' for 'calendar year 1992' in subparagraph (B) thereof" and added cls. (i) and (ii).

Subsec. (c)(5)(B). Pub. L. 105–34, §1201(a)(1), substituted "the sum of $250 and such individual's earned income" for "such individual's earned income".

1993—Subsec. (c)(4)(B). Pub. L. 103–66 substituted "1992" for "1989".

1990—Subsec. (c)(4)(B). Pub. L. 101–508, §11101(d)(1)(D), inserted before period at end ", by substituting 'calendar year 1987' for 'calendar year 1989' in subparagraph (B) thereof".

Subsec. (h). Pub. L. 101–508, §11801(a)(4), struck out subsec. (h) "Transitional rule for taxable years beginning in 1987" which read as follows: "In the case of any taxable year beginning in 1987, paragraph (2) of subsection (c) shall be applied—

"(1) by substituting '$3,760' for '$5,000',

"(2) by substituting '$2,540' for '$4,400',

"(3) by substituting '$2,540' for '$3,000', and

"(4) by substituting '$1,880' for '$2,500'.

The preceding sentence shall not apply if the taxpayer is entitled to an additional amount determined under subsection (f) (relating to additional amount for aged and blind) for the taxable year."

1988—Subsec. (c)(5). Pub. L. 100–647 substituted "basic standard deduction" for "standard deduction" in heading and text.

1986—Subsec. (a). Pub. L. 99–514, §102(a), substituted "In general" for "Corporations" in heading and amended text generally. Prior to amendment, text read as follows: "For purposes of this subtitle, in the case of a corporation, the term 'taxable income' means gross income minus the deductions allowed by this chapter."

Subsec. (b). Pub. L. 99–514, §102(a), substituted "Individuals who do not itemize their deductions" for "Individuals" in heading and amended text generally. Prior to amendment, text read as follows: "For purposes of this subtitle, in the case of an individual, the term 'taxable income' means adjusted gross income—

"(1) reduced by the sum of—

"(A) the excess itemized deductions,

"(B) the deductions for personal exemptions provided by section 151, and

"(C) the direct charitable deduction, and

"(2) increased (in the case of an individual for whom an unused zero bracket amount computation is provided by subsection (e)) by the unused zero bracket amount (if any)."

Subsec. (c). Pub. L. 99–514, §102(a), substituted "Standard deduction" for "Excess itemized deductions" in heading and amended text generally. Prior to amendment, text read as follows: "For purposes of this subtitle, the term 'excess itemized deductions' means the excess (if any) of—

"(1) the itemized deductions, over

"(2) the zero bracket amount."

Subsec. (c)(6)(C) to (E). Pub. L. 99–514, §1272(d)(6), redesignated subpars. (D) and (E) as (C) and (D), respectively, and struck out former subpar. (C) which read as follows: "a citizen of the United States entitled to the benefits of section 931 (relating to income from sources within possessions of the United States),".

Subsec. (d). Pub. L. 99–514, §102(a), substituted "Itemized deductions" for "Zero bracket amount" in heading and amended text generally. Prior to amendment, subsec. (d) read as follows: "For purposes of this subtitle, the term 'zero bracket amount' means—

"(1) in the case of an individual to whom subsection (a), (b), (c), or (d) of section 1 applies, the maximum amount of taxable income on which no tax is imposed by the applicable subsection of section 1, or

"(2) zero in any other case."

Subsec. (e). Pub. L. 99–514, §102(a), substituted "Election to itemize" for "Unused zero bracket amount" in heading.

Subsec. (e)(1). Pub. L. 99–514, §102(a), substituted "In general" for "Individuals for whom computation must be made" in heading and amended text generally. Prior to amendment, text read as follows: "A computation for the taxable year shall be made under this subsection for the following individuals:

"(A) a married individual filing a separate return where either spouse itemized deductions,

"(B) a nonresident alien individual,

"(C) a citizen of the United States entitled to the benefits of section 931 (relating to income from sources within possessions of the United States), and

"(D) an individual with respect to whom a deduction under section 151(e) is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins."

Subsec. (e)(2). Pub. L. 99–514, §102(a), substituted "Time and manner of election" for "Computation" in heading and amended text generally. Prior to amendment, text read as follows: "For purposes of this subtitle, an individual's unused zero bracket amount for the taxable year is an amount equal to the excess (if any) of—

"(A) the zero bracket amount, over

"(B) the itemized deductions.

In the case of an individual referred to in paragraph (1)(D), if such individual's earned income (as defined in

section 911(d)(2)) exceeds the itemized deductions, such earned income shall be substituted for the itemized deductions in subparagraph (B)."

Subsec. (e)(3). Pub. L. 99–514, §102(a), in amending subsec. (e) generally, added par. (3).

Subsec. (f). Pub. L. 99–514, §102(a), substituted "Aged or blind additional amounts" for "Itemized deductions" in heading and amended text generally. Prior to amendment, text read as follows: "For purposes of this subtitle, the term 'itemized deductions' means the deductions allowable by this chapter other than—

"(1) the deductions allowable in arriving at adjusted gross income,

"(2) the deductions for personal exemptions provided by section 151, and

"(3) the direct charitable deduction."

Subsec. (g). Pub. L. 99–514, §102(a), amended subsec. (g) generally, substituting provision that marital status be determined under section 7703 for provisions relating to election to itemize. See subsec. (e).

Subsec. (h). Pub. L. 99–514, §102(a), substituted "Transitional rule for taxable years beginning in 1987" for "Marital status" in heading and amended text generally. Prior to amendment, text read as follows: "For purposes of this section, marital status shall be determined under section 143."

Subsec. (i). Pub. L. 99–514, §102(a), in amending section generally, struck out subsec. (i), "Direct charitable deduction", which read as follows: "For purposes of this section, the term 'direct charitable deduction' means that portion of the amount allowable under section 170(a) which is taken as a direct charitable deduction for the taxable year under section 170(i)."

1981—Subsec. (b)(1)(C). Pub. L. 97–34, §121(b)(1), added subpar. (C).

Subsec. (d). Pub. L. 97–34, §104(b), substituted a blanket reference to individuals to whom subsection (a), (b), (c), or (d) of section 1 applies and the maximum amount of taxable income on which no tax is imposed by the applicable subsection of section 1 for provisions specifically referring to amounts of $3,400 in the case of (A) a joint return under section 6013, or (B) a surviving spouse (as defined in section 2(a)), $2,300 in the case of an individual who is not married and who is not a surviving spouse (as so defined), and $1,700 in the case of a married individual filing a separate return.

Subsec. (e)(2). Pub. L. 97–34, §111(b)(4), substituted "section 911(d)(2)" for "section 911(b)" in provisions following subpar. (B).

Subsec. (f)(3). Pub. L. 97–34, §121(c)(2), added par. (3).

Subsec. (i). Pub. L. 97–34, §121(b)(2), added subsec. (i).

1978—Pub. L. 95–600 substituted "$3,400" for "$3,200" in par. (1), "$2,300" for "$2,200" in par. (2), and "$1,700" for "$1,600" in par. (3).

1977—Pub. L. 95–30 completely revised definition of taxable income from one using the concept of a standard deduction and consisting of subsecs. (a) and (b) entitled, respectively, "General rule" and "Individuals electing standard deduction" to definition using the concepts of zero bracket amounts and excess itemized deductions and consisting of subsecs. (a) to (h) entitled, respectively, "Corporations", "Individuals", "Excess itemized deductions", "Zero bracket amount", "Unused zero bracket amount", "Itemized deductions", "Election to itemize", and "Marital status".

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–5 applicable to purchases on or after Feb. 17, 2009, in taxable years ending after such date, see section 1008(e) of Pub. L. 111–5, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title II, §204(b), Oct. 3, 2008, 122 Stat. 3865, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2008."

Amendment by section 706(b)(1), (2) of Pub. L. 110–343 applicable to disasters declared in taxable years beginning after Dec. 31, 2007, see section 706(d)(1) of Pub. L. 110–343, set out as a note under section 56 of this title.

Pub. L. 110–289, div. C, title I, §3012(c), July 30, 2008, 122 Stat. 2892, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2007."

EFFECTIVE AND TERMINATION DATES OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2003, see section 101(e) of Pub. L. 108–311, set out as a note under section 1 of this title.

Amendment by Pub. L. 108–311 subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, §901, to the same extent and in the same manner as the provisions of such Act to which such amendments relate, see section 105 of Pub. L. 108–311, set out as a note under section 1 of this title. Title IX of Pub. L. 107–16 was repealed by Pub. L. 112–240, title I, §101(a)(1), Jan. 2, 2013, 126 Stat. 2315.

EFFECTIVE AND TERMINATION DATES OF 2003 AMENDMENT

Pub. L. 108–27, title I, §103(c), May 28, 2003, 117 Stat. 754, provided that: "The amendments made by this section [amending this section and provisions set out as an Effective and Termination Dates of 2001 Amendment note under section 1 of this title] shall apply to taxable years beginning after December 31, 2002."

Amendments by title I of Pub. L. 108–27 subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, §901, to the same extent and in the same manner as the provisions of such Act to which such amendments relate, see section 107 of Pub. L. 108–27, set out as a note under section 1 of this title. Title IX of Pub. L. 107–16 was repealed by Pub. L. 112–240, title I, §101(a)(1), Jan. 2, 2013, 126 Stat. 2315.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2002, see section 301(d) of Pub. L. 107–16, set out as an Effective and Termination Dates of 2001 Amendment note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to taxable years beginning after Dec. 31, 1997, see section 1201(c) of Pub. L. 105–34, set out as a note under section 59 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to taxable years beginning after Dec. 31, 1992, see section 13201(c) of Pub. L. 103–66, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11101(d)(1)(D) of Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, see section 11101(e) of Pub. L. 101–508, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 102(a) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 1272(d)(6) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99–514, set out as a note under section 931 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 104(b) of Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1984, see section 104(e) of Pub. L. 97–34, set out as a note under section 1 of this title.

Amendment by section 111(b)(4) of Pub. L. 97–34 applicable with respect to taxable years beginning after Dec. 31, 1981, see section 115 of Pub. L. 97–34, set out as a note under section 911 of this title.

Amendment by section 121(b), (c)(2) of Pub. L. 97–34 applicable to contributions made after Dec. 31, 1981, in taxable years beginning after such date, see section 121(d) of Pub. L. 97–34, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 effective with respect to taxable years beginning after Dec. 31, 1978, see section 101(f)(1) of Pub. L. 95–600, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by section 11801 of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

§64. Ordinary income defined

For purposes of this subtitle, the term "ordinary income" includes any gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231(b). Any gain from the sale or exchange of property which is treated or considered, under other provisions of this subtitle, as "ordinary income" shall be treated as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231(b).

(Added Pub. L. 94–455, title XIX, §1901(a)(10), Oct. 4, 1976, 90 Stat. 1765.)

§65. Ordinary loss defined

For purposes of this subtitle, the term "ordinary loss" includes any loss from the sale or exchange of property which is not a capital asset. Any loss from the sale or exchange of property which is treated or considered, under other provisions of this subtitle, as "ordinary loss" shall be treated as loss from the sale or exchange of property which is not a capital asset.

(Added Pub. L. 94–455, title XIX, §1901(a)(11), Oct. 4, 1976, 90 Stat. 1765.)

§66. Treatment of community income

(a) Treatment of community income where spouses live apart

If—

(1) 2 individuals are married to each other at any time during a calendar year;

(2) such individuals—

(A) live apart at all times during the calendar year, and

(B) do not file a joint return under section 6013 with each other for a taxable year beginning or ending in the calendar year;

(3) one or both of such individuals have earned income for the calendar year which is community income; and

(4) no portion of such earned income is transferred (directly or indirectly) between such individuals before the close of the calendar year,

then, for purposes of this title, any community income of such individuals for the calendar year shall be treated in accordance with the rules provided by section 879(a).

(b) Secretary may disregard community property laws where spouse not notified of community income

The Secretary may disallow the benefits of any community property law to any taxpayer with respect to any income if such taxpayer acted as if solely entitled to such income and failed to notify the taxpayer's spouse before the due date (including extensions) for filing the return for the taxable year in which the income was derived of the nature and amount of such income.

(c) Spouse relieved of liability in certain other cases

Under regulations prescribed by the Secretary, if—

(1) an individual does not file a joint return for any taxable year,

(2) such individual does not include in gross income for such taxable year an item of community income properly includible therein which, in accordance with the rules contained in section 879(a), would be treated as the income of the other spouse,

(3) the individual establishes that he or she did not know of, and had no reason to know of, such item of community income, and

(4) taking into account all facts and circumstances, it is inequitable to include such item of community income in such individual's gross income,

then, for purposes of this title, such item of community income shall be included in the gross income of the other spouse (and not in the gross income of the individual). Under procedures prescribed by the Secretary, if, taking into account all the facts and circumstances, it is inequitable to hold the individual liable for any unpaid tax or any deficiency (or any portion of either) attributable to any item for which relief is not available under the preceding sentence, the Secretary may relieve such individual of such liability.

(d) Definitions

For purposes of this section—

(1) Earned income

The term "earned income" has the meaning given to such term by section 911(d)(2).

(2) Community income

The term "community income" means income which, under applicable community property laws, is treated as community income.

(3) Community property laws

The term "community property laws" means the community property laws of a State, a foreign country, or a possession of the United States.

(Added Pub. L. 96–605, title I, §101(a), Dec. 28, 1980, 94 Stat. 3521; amended Pub. L. 98–369, div. A, title IV, §424(b)(1)–(2)(B), July 18, 1984, 98 Stat. 802, 803; Pub. L. 101–239, title VII, §7841(d)(8), Dec. 19, 1989, 103 Stat. 2428; Pub. L. 105–206, title III, §3201(b), July 22, 1998, 112 Stat. 739.)

AMENDMENTS

1998—Subsec. (c). Pub. L. 105–206 inserted at end "Under procedures prescribed by the Secretary, if, taking into account all the facts and circumstances, it is inequitable to hold the individual liable for any unpaid tax or any deficiency (or any portion of either) attributable to any item for which relief is not available under the preceding sentence, the Secretary may relieve such individual of such liability."

1989—Subsec. (d)(1). Pub. L. 101–239 substituted "section 911(d)(2)" for "section 911(b)".

1984—Pub. L. 98–369, §424(b)(2)(A), struck out "where spouses live apart" in section catchline.

Subsec. (a). Pub. L. 98–369, §424(b)(2)(B), substituted "Treatment of community income where spouses live apart" for "General rule" in heading.

Subsecs. (b) to (d). Pub. L. 98–369, §424(b)(1), added subsecs. (b) and (c) and redesignated former subsec. (b) as (d).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 applicable to any liability for tax arising after July 22, 1998, and any liability for tax arising on or before such date but remaining unpaid as of such date, see section 3201(g)(1) of Pub. L. 105–206, set out as a note under section 6015 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to all taxable years to which the Internal Revenue Code of 1986 [formerly I.R.C. 1954] applies with corresponding provisions deemed to be included in the Internal Revenue

Code of 1939 and applicable to all taxable years to which such Code applies, except subsection (b) of this section is applicable to taxable years beginning after December 31, 1984, see section 424(c) of Pub. L. 98–369, set out as a note under section 6013 of this title.

EFFECTIVE DATE

Pub. L. 96–605, title I, §101(c), Dec. 28, 1980, 94 Stat. 3522, provided that: "The amendments made by this section [enacting this section] shall apply to calendar years beginning after December 31, 1980."

§67. 2-percent floor on miscellaneous itemized deductions

(a) General rule

In the case of an individual, the miscellaneous itemized deductions for any taxable year shall be allowed only to the extent that the aggregate of such deductions exceeds 2 percent of adjusted gross income.

(b) Miscellaneous itemized deductions

For purposes of this section, the term "miscellaneous itemized deductions" means the itemized deductions other than—

(1) the deduction under section 163 (relating to interest),

(2) the deduction under section 164 (relating to taxes),

(3) the deduction under section 165(a) for casualty or theft losses described in paragraph (2) or (3) of section 165(c) or for losses described in section 165(d),

(4) the deductions under section 170 (relating to charitable, etc., contributions and gifts) and section 642(c) (relating to deduction for amounts paid or permanently set aside for a charitable purpose),

(5) the deduction under section 213 (relating to medical, dental, etc., expenses),

(6) any deduction allowable for impairment-related work expenses,

(7) the deduction under section 691(c) (relating to deduction for estate tax in case of income in respect of the decedent),

(8) any deduction allowable in connection with personal property used in a short sale,

(9) the deduction under section 1341 (relating to computation of tax where taxpayer restores substantial amount held under claim of right),

(10) the deduction under section 72(b)(3) (relating to deduction where annuity payments cease before investment recovered),

(11) the deduction under section 171 (relating to deduction for amortizable bond premium), and

(12) the deduction under section 216 (relating to deductions in connection with cooperative housing corporations).

(c) Disallowance of indirect deduction through pass-thru entity

(1) In general

The Secretary shall prescribe regulations which prohibit the indirect deduction through pass-thru entities of amounts which are not allowable as a deduction if paid or incurred directly by an individual and which contain such reporting requirements as may be necessary to carry out the purposes of this subsection.

(2) Treatment of publicly offered regulated investment companies

(A) In general

Paragraph (1) shall not apply with respect to any publicly offered regulated investment company.

(B) Publicly offered regulated investment companies

For purposes of this subsection—

(i) In general

The term "publicly offered regulated investment company" means a regulated investment company the shares of which are—

(I) continuously offered pursuant to a public offering (within the meaning of section 4 of the Securities Act of 1933, as amended (15 U.S.C. 77a to 77aa)),

(II) regularly traded on an established securities market, or

(III) held by or for no fewer than 500 persons at all times during the taxable year.

(ii) Secretary may reduce 500 person requirement

The Secretary may by regulation decrease the minimum shareholder requirement of clause (i)(III) in the case of regulated investment companies which experience a loss of shareholders through net redemptions of their shares.

(3) Treatment of certain other entities

Paragraph (1) shall not apply—

(A) with respect to cooperatives and real estate investment trusts, and

(B) except as provided in regulations, with respect to estates and trusts.

(d) Impairment-related work expenses

For purposes of this section, the term "impairment-related work expenses" means expenses—

(1) of a handicapped individual (as defined in section 190(b)(3)) for attendant care services at the individual's place of employment and other expenses in connection with such place of employment which are necessary for such individual to be able to work, and

(2) with respect to which a deduction is allowable under section 162 (determined without regard to this section).

(e) Determination of adjusted gross income in case of estates and trusts

For purposes of this section, the adjusted gross income of an estate or trust shall be computed in the same manner as in the case of an individual, except that—

(1) the deductions for costs which are paid or incurred in connection with the administration of the estate or trust and which would not have been incurred if the property were not held in such trust or estate, and

(2) the deductions allowable under sections 642(b), 651, and 661,

shall be treated as allowable in arriving at adjusted gross income. Under regulations, appropriate adjustments shall be made in the application of part I of subchapter J of this chapter to take into account the provisions of this section.

(f) Coordination with other limitation

This section shall be applied before the application of the dollar limitation of the second sentence of section 162(a) (relating to trade or business expenses).

(Added Pub. L. 99–514, title I, §132(a), Oct. 22, 1986, 100 Stat. 2113; amended Pub. L. 100–647, title I, §1001(f), title IV, §4011(a), Nov. 10, 1988, 102 Stat. 3351, 3655; Pub. L. 101–239, title VII, §7814(f), Dec. 19, 1989, 103 Stat. 2414; Pub. L. 103–66, title XIII, §13213(c)(2), Aug. 10, 1993, 107 Stat. 474; Pub. L. 105–277, div. J, title IV, §4004(b)(1), Oct. 21, 1998, 112 Stat. 2681–910; Pub. L. 106–554, §1(a)(7) [title III, §319(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–646.)

REFERENCES IN TEXT

Section 4 of the Securities Act of 1933, referred to in subsec. (c)(2)(B)(i)(I), is classified to section 77d of Title 15, Commerce and Trade.

AMENDMENTS

2000—Subsec. (f). Pub. L. 106–554 substituted "the second sentence" for "the last sentence".

1998—Subsec. (b)(3). Pub. L. 105–277 substituted "for casualty or theft losses described in paragraph (2) or (3) of section 165(c) or for losses described in section 165(d)" for "for losses described in subsection (c)(3) or (d) of section 165".

1993—Subsec. (b)(6) to (13). Pub. L. 103–66 redesignated pars. (7) to (13) as (6) to (12), respectively, and

struck out former par. (6) which read as follows: "the deduction under section 217 (relating to moving expenses),".

1989—Subsec. (c)(4). Pub. L. 101–239 struck out par. (4) which read as follows: "TERMINATION.—This subsection shall not apply to any taxable year beginning after December 31, 1989."

1988—Subsec. (b)(4). Pub. L. 100–647, §1001(f)(2), substituted "deductions" for "deduction" and inserted before comma at end "and section 642(c) (relating to deduction for amounts paid or permanently set aside for a charitable purpose)".

Subsec. (c). Pub. L. 100–647, §4011(a), amended subsec. (c) generally. Prior to amendment subsec. (c) read as follows: "The Secretary shall prescribe regulations which prohibit the indirect deduction through pass-thru entities of amounts which are not allowable as a deduction if paid or incurred directly by an individual and which contain such reporting requirements as may be necessary to carry out the purposes of this subsection. The preceding sentence shall not apply—

"(1) with respect to cooperatives and real estate investment trusts, and

"(2) except as provided in regulations, with respect to estates and trusts."

Pub. L. 100–647, §1001(f)(4), amended last sentence generally. Prior to amendment, last sentence read as follows: "The preceding sentence shall not apply with respect to estates, trusts, cooperatives, and real estate investment trusts."

Subsec. (e). Pub. L. 100–647, §1001(f)(3), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: "For purposes of this section, the adjusted gross income of an estate or trust shall be computed in the same manner as in the case of an individual, except that the deductions for costs which are paid or incurred in connection with the administration of the estate or trust and would not have been incurred if the property were not held in such trust or estate shall be treated as allowable in arriving at adjusted gross income."

Subsec. (f). Pub. L. 100–647, §1001(f)(1), added subsec. (f).

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–277, div. J, title IV, §4004(c)(2), Oct. 21, 1998, 112 Stat. 2681–911, provided that: "The amendment made by subsection (b)(1) [amending this section] shall apply to taxable years beginning after December 31, 1986."

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to expenses incurred after Dec. 31, 1993, see section 13213(e) of Pub. L. 103–66 set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1001(f) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title IV, §4011(b), Nov. 10, 1988, 102 Stat. 3656, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1987."

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note under section 1 of this title.

1-YEAR DELAY IN TREATMENT OF PUBLICLY OFFERED REGULATED INVESTMENT COMPANIES UNDER 2-PERCENT FLOOR

Pub. L. 100–203, title X, §10104(a), Dec. 22, 1987, 101 Stat. 1330–386, provided that:

"(1) GENERAL RULE.—Section 67(c) of the Internal Revenue Code of 1986 to the extent it relates to indirect deductions through a publicly offered regulated investment company shall apply only to taxable years beginning after December 31, 1987.

"(2) PUBLICLY OFFERED REGULATED INVESTMENT COMPANY DEFINED.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'publicly offered regulated investment company' means a regulated

investment company the shares of which are—

"(i) continuously offered pursuant to a public offering (within the meaning of section 4 of the Securities Act of 1933, as amended (15 U.S.C. 77a to 77aa) [15 U.S.C. 77d]),

"(ii) regularly traded on an established securities market, or

"(iii) held by or for no fewer than 500 persons at all times during the taxable year.

"(B) SECRETARY MAY REDUCE 500 PERSON REQUIREMENT.—The Secretary of the Treasury or his delegate may by regulation decrease the minimum shareholder requirement of subparagraph (A)(iii) in the case of regulated investment companies which experience a loss of shareholders through net redemptions of their shares."

§68. Overall limitation on itemized deductions

(a) General rule

In the case of an individual whose adjusted gross income exceeds the applicable amount, the amount of the itemized deductions otherwise allowable for the taxable year shall be reduced by the lesser of—

(1) 3 percent of the excess of adjusted gross income over the applicable amount, or

(2) 80 percent of the amount of the itemized deductions otherwise allowable for such taxable year.

(b) Applicable amount

(1) In general

For purposes of this section, the term "applicable amount" means—

(A) $300,000 in the case of a joint return or a surviving spouse (as defined in section 2(a)),

(B) $275,000 in the case of a head of household (as defined in section 2(b)),

(C) $250,000 in the case of an individual who is not married and who is not a surviving spouse or head of household, and

(D) ½ the amount applicable under subparagraph (A) (after adjustment, if any, under paragraph (2)) in the case of a married individual filing a separate return.

For purposes of this paragraph, marital status shall be determined under section 7703.

(2) Inflation adjustment

In the case of any taxable year beginning in calendar years after 2013, each of the dollar amounts under subparagraphs (A), (B), and (C) of paragraph (1) shall be shall be [1] increased by an amount equal to—

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, except that section 1(f)(3)(B) shall be applied by substituting "2012" for "1992".

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

(c) Exception for certain itemized deductions

For purposes of this section, the term "itemized deductions" does not include—

(1) the deduction under section 213 (relating to medical, etc. expenses),

(2) any deduction for investment interest (as defined in section 163(d)), and

(3) the deduction under section 165(a) for casualty or theft losses described in paragraph (2) or (3) of section 165(c) or for losses described in section 165(d).

(d) Coordination with other limitations

This section shall be applied after the application of any other limitation on the allowance of any itemized deduction.

(e) Exception for estates and trusts

This section shall not apply to any estate or trust.

(Added Pub. L. 101–508, title XI, §11103(a), Nov. 5, 1990, 104 Stat. 1388–406; amended Pub. L. 103–66, title XIII, §§13201(b)(3)(E), 13204, Aug. 10, 1993, 107 Stat. 459, 462; Pub. L. 105–277, div. J, title IV, §4004(b)(2), Oct. 21, 1998, 112 Stat. 2681–911; Pub. L. 107–16, title I, §103(a), June 7, 2001, 115 Stat. 44; Pub. L. 112–240, title I, §101(b)(2)(A), Jan. 2, 2013, 126 Stat. 2316.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

AMENDMENTS

2013—Subsec. (b). Pub. L. 112–240, §101(b)(2)(A)(i), added subsec. (b) and struck out former subsec. (b). Prior to amendment, text read as follows:

"(1) IN GENERAL.—For purposes of this section, the term 'applicable amount' means $100,000 ($50,000 in the case of a separate return by a married individual within the meaning of section 7703).

"(2) INFLATION ADJUSTMENTS.—In the case of any taxable year beginning in a calendar year after 1991, each dollar amount contained in paragraph (1) shall be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting 'calendar year 1990' for 'calendar year 1992' in subparagraph (B) thereof."

Subsecs. (f), (g). Pub. L. 112–240, §101(b)(2)(A)(ii), struck out subsecs. (f) and (g), which related to phaseout of limitation and termination of applicability of section, respectively.

2001—Subsecs. (f), (g). Pub. L. 107—16 added subsecs. (f) and (g).

1998—Subsec. (c)(3). Pub. L. 105–277 substituted "for casualty or theft losses described in paragraph (2) or (3) of section 165(c) or for losses described in section 165(d)" for "for losses described in subsection (c)(3) or (d) of section 165".

1993—Subsec. (b)(2)(B). Pub. L. 103–66, §13201(b)(3)(E), substituted "1992" for "1989".

Subsec. (f). Pub. L. 103–66, §13204, struck out heading and text of subsec. (f). Text read as follows: "This section shall not apply to any taxable year beginning after December 31, 1995."

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112–240 applicable to taxable years beginning after Dec. 31, 2012, see section 101(b)(3) of Pub. L. 112–240, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–16, title I, §103(b), June 7, 2001, 115 Stat. 45, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2005."

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–277, div. J, title IV, §4004(c)(3), Oct. 21, 1998, 112 Stat. 2681–911, provided that: "The amendment made by subsection (b)(2) [amending this section] shall apply to taxable years beginning after December 31, 1990."

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13201(b)(3)(E) of Pub. L. 103–66 applicable to taxable years beginning after Dec. 31, 1992, see section 13201(c) of Pub. L. 103–66, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1990, see section 11103(e) of Pub. L. 101–508, set out as an Effective Date of 1990 Amendment note under section 1 of this title.

[1] *So in original.*

PART II—ITEMS SPECIFICALLY INCLUDED IN GROSS INCOME

Sec.

71. Alimony and separate maintenance payments.
72. Annuities; certain proceeds of endowment and life insurance contracts.
73. Services of child.
74. Prizes and awards.
75. Dealers in tax-exempt securities.
[76. Repealed.]
77. Commodity credit loans.
78. Dividends received from certain foreign corporations by domestic corporations choosing foreign tax credit.
79. Group-term life insurance purchased for employees.
80. Restoration of value of certain securities.
[81. Repealed.]
82. Reimbursement of moving expenses.[1]
83. Property transferred in connection with performance of services.
84. Transfer of appreciated property to political organizations.[1]
85. Unemployment compensation.
86. Social security and tier 1 railroad retirement benefits.
87. Alcohol and biodiesel fuels credits.
88. Certain amounts with respect to nuclear decommissioning costs.
[89. Repealed.]
90. Illegal Federal irrigation subsidies.

AMENDMENTS

2004—Pub. L. 108–357, title III, §302(c)(1)(B), Oct. 22, 2004, 118 Stat. 1465, substituted "and biodiesel fuels credits" for "fuel credit" in item 87.

1989—Pub. L. 101–239, title VII, §7822(c), Dec. 19, 1989, 103 Stat. 2425, substituted "Illegal Federal irrigation" for "Federal irrigation" in item 90.

Pub. L. 101–140, title II, §202(b), Nov. 8, 1989, 103 Stat. 830, struck out item 89 "Benefits provided under certain employee benefit plans".

1987—Pub. L. 100–203, title X, §§10201(b)(6), 10611(b), Dec. 22, 1987, 101 Stat. 1330–387, 1330–452, struck out item 81 "Increase in vacation pay suspense account" and added item 90.

1986—Pub. L. 99–514, title VIII, §805(c)(1)(B), title XI, §1151(j)(1), Oct. 22, 1986, 100 Stat. 2362, 2508, substituted "Increase in vacation pay suspense account" for "Certain increases in suspense accounts" in item 81, and added item 89.

1984—Pub. L. 98–369, div. A, title I, §91(f)(2), July 18, 1984, 98 Stat. 608, added item 88.

1983—Pub. L. 98–21, title I, §121(f)(3), Apr. 20, 1983, 97 Stat. 84, added item 86 and redesignated former item 86 as 87.

1980—Pub. L. 96–223, title II, §232(c)(3), Apr. 2, 1980, 94 Stat. 277, added item 86.

1978—Pub. L. 95–600, title I, §112(c)(1), Nov. 6, 1978, 92 Stat. 2778, added item 85.

1976—Pub. L. 94–455, title XIX, §1901(b)(5), Oct. 4, 1976, 90 Stat. 1793, struck out item 76 "Mortgages made or obligations issued by joint-stock land banks".

1975—Pub. L. 93–625, §§4(c)(2), 13(a)(2), Jan. 3, 1975, 88 Stat. 2111, 2121, substituted "Certain increases in suspense accounts" for "Increases in suspense account under section 166(g)" in item 81, and added item 84.

1969—Pub. L. 91–172, title II, §231(c)(1), title III, §321(c), Dec. 30, 1969, 83 Stat. 579, 591, added items 82, 83.

1966—Pub. L. 89–722, §1(b)(2), Nov. 2, 1966, 80 Stat. 1152, added item 81.

Pub. L. 89–384, §1(b)(2), Apr. 8, 1966, 80 Stat. 102, added item 80.

1964—Pub. L. 88–272, title II, §204(a)(2), Feb. 26, 1964, 78 Stat. 36, added item 79.

1962—Pub. L. 87–834, §9(d)(1), Oct. 16, 1962, 76 Stat. 1001, added item 78.

[1] *So in original. Does not conform to section catchline.*

§71. Alimony and separate maintenance payments

(a) General rule

Gross income includes amounts received as alimony or separate maintenance payments.

(b) Alimony or separate maintenance payments defined

For purposes of this section—

(1) In general

The term "alimony or separate maintenance payment" means any payment in cash if—

(A) such payment is received by (or on behalf of) a spouse under a divorce or separation instrument,

(B) the divorce or separation instrument does not designate such payment as a payment which is not includible in gross income under this section and not allowable as a deduction under section 215,

(C) in the case of an individual legally separated from his spouse under a decree of divorce or of separate maintenance, the payee spouse and the payor spouse are not members of the same household at the time such payment is made, and

(D) there is no liability to make any such payment for any period after the death of the payee spouse and there is no liability to make any payment (in cash or property) as a substitute for such payments after the death of the payee spouse.

(2) Divorce or separation instrument

The term "divorce or separation instrument" means—

(A) a decree of divorce or separate maintenance or a written instrument incident to such a decree,

(B) a written separation agreement, or

(C) a decree (not described in subparagraph (A)) requiring a spouse to make payments for the support or maintenance of the other spouse.

(c) Payments to support children

(1) In general

Subsection (a) shall not apply to that part of any payment which the terms of the divorce or separation instrument fix (in terms of an amount of money or a part of the payment) as a sum which is payable for the support of children of the payor spouse.

(2) Treatment of certain reductions related to contingencies involving child

For purposes of paragraph (1), if any amount specified in the instrument will be reduced—

(A) on the happening of a contingency specified in the instrument relating to a child (such as attaining a specified age, marrying, dying, leaving school, or a similar contingency), or

(B) at a time which can clearly be associated with a contingency of a kind specified in subparagraph (A),

an amount equal to the amount of such reduction will be treated as an amount fixed as payable for the support of children of the payor spouse.

(3) Special rule where payment is less than amount specified in instrument

For purposes of this subsection, if any payment is less than the amount specified in the instrument, then so much of such payment as does not exceed the sum payable for support shall be considered a payment for such support.

(d) Spouse

For purposes of this section, the term "spouse" includes a former spouse.

(e) Exception for joint returns

This section and section 215 shall not apply if the spouses make a joint return with each other.

(f) Recomputation where excess front-loading of alimony payments

(1) In general

If there are excess alimony payments—

(A) the payor spouse shall include the amount of such excess payments in gross income for the payor spouse's taxable year beginning in the 3rd post-separation year, and

(B) the payee spouse shall be allowed a deduction in computing adjusted gross income for the amount of such excess payments for the payee's taxable year beginning in the 3rd post-separation year.

(2) Excess alimony payments

For purposes of this subsection, the term "excess alimony payments" mean the sum of—

(A) the excess payments for the 1st post-separation year, and

(B) the excess payments for the 2nd post-separation year.

(3) Excess payments for 1st post-separation year

For purposes of this subsection, the amount of the excess payments for the 1st post-separation year is the excess (if any) of—

(A) the amount of the alimony or separate maintenance payments paid by the payor spouse during the 1st post-separation year, over

(B) the sum of—

(i) the average of—

(I) the alimony or separate maintenance payments paid by the payor spouse during the 2nd post-separation year, reduced by the excess payments for the 2nd post-separation year, and

(II) the alimony or separate maintenance payments paid by the payor spouse during the 3rd post-separation year, plus

(ii) $15,000.

(4) Excess payments for 2nd post-separation year

For purposes of this subsection, the amount of the excess payments for the 2nd post-separation year is the excess (if any) of—

(A) the amount of the alimony or separate maintenance payments paid by the payor spouse during the 2nd post-separation year, over

(B) the sum of—

(i) the amount of the alimony or separate maintenance payments paid by the payor spouse during the 3rd post-separation year, plus

(ii) $15,000.

(5) Exceptions

(A) Where payment ceases by reason of death or remarriage

Paragraph (1) shall not apply if—

(i) either spouse dies before the close of the 3rd post-separation year, or the payee spouse remarries before the close of the 3rd post-separation year, and

(ii) the alimony or separate maintenance payments cease by reason of such death or remarriage.

(B) Support payments

For purposes of this subsection, the term "alimony or separate maintenance payment" shall not include any payment received under a decree described in subsection (b)(2)(C).

(C) Fluctuating payments not within control of payor spouse

For purposes of this subsection, the term "alimony or separate maintenance payment" shall not include any payment to the extent it is made pursuant to a continuing liability (over a period of not less than 3 years) to pay a fixed portion or portions of the income from a business or

property or from compensation for employment or self-employment.

(6) Post-separation years

For purposes of this subsection, the term "1st post-separation years" means the 1st calendar year in which the payor spouse paid to the payee spouse alimony or separate maintenance payments to which this section applies. The 2nd and 3rd post-separation years shall be the 1st and 2nd succeeding calendar years, respectively.

(g) Cross references

(1) For deduction of alimony or separate maintenance payments, see section 215.

(2) For taxable status of income of an estate or trust in the case of divorce, etc., see section 682.

(Aug. 16, 1954, ch. 736, 68A Stat. 19; Pub. L. 98–369, div. A, title IV, §422(a), July 18, 1984, 98 Stat. 795; Pub. L. 99–514, title XVIII, §1843(a)–(c)(1), (d), Oct. 22, 1986, 100 Stat. 2853, 2855.)

AMENDMENTS

1986—Subsec. (b)(1)(D). Pub. L. 99–514, §1843(b), struck out "(and the divorce or separation instrument states that there is no such liability)" after "for such payments after the death of the payee spouse".

Subsec. (c)(2)(B). Pub. L. 99–514, §1843(d), substituted "specified in subparagraph (A)" for "specified in paragraph (1)".

Subsec. (f). Pub. L. 99–514, §1843(c)(1), amended subsec. (f) generally, substituting provisions for the recomputation of liability where there has been excess front-loading of alimony payments for provisions setting forth special rules to prevent excess front-loading of alimony payments.

Subsec. (g). Pub. L. 99–514, §1843(a), added subsec. (g).

1984—Pub. L. 98–369 amended section generally, substituting present provisions for provisions which had declared in: subsec. (a), a general rule as to decree of divorce or separate maintenance in par. (1), written separation agreement in par. (2), and decree for support in par. (3); subsec. (b), payments to support minor children; subsec. (c), principal sum paid in installments, par. (1) stating a general rule and par. (2) the rule where period for payment is more than 10 years; subsec. (d), the rule for husband in case of transferred property; and subsec. (e), cross references to sections 7701(a)(17), 215, and 682.

EFFECTIVE DATE OF 1986 AMENDMENT; TRANSITIONAL RULE

Pub. L. 99–514, title XVIII, §1843(c)(2), (3), Oct. 22, 1986, 100 Stat. 2854, 2855, provided that:

"(2) EFFECTIVE DATES.—

"(A) IN GENERAL.—The amendment made by paragraph (1) [amending this section] shall apply with respect to divorce or separation instruments (as defined in section 71(b)(2)) of the Internal Revenue Code of 1986 executed after December 31, 1986.

"(B) MODIFICATIONS OF INSTRUMENTS EXECUTED BEFORE JANUARY 1, 1987.—The amendments made by paragraph (1) [amending this section] shall also apply to any divorce or separation instrument (as so defined) executed before January 1, 1987, but modified on or after such date if the modification expressly provides that the amendments made by paragraph (1) shall apply to such modification.

"(3) TRANSITIONAL RULE.—In the case of any instrument to which the amendment made by paragraph (1) [amending this section] does not apply, paragraph (2) of section 71(f) of the Internal Revenue Code of 1954 [now 1986] (as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]) shall apply only with respect to the first 3 post-separation years."

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title IV, §422(e), July 18, 1984, 98 Stat. 798, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 215, 219, 682, 6676, and 7701 of this title] shall apply with respect to divorce or separation instruments (as defined in section 71(b)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as amended by this section) executed after December 31, 1984.

"(2) MODIFICATIONS OF INSTRUMENTS EXECUTED BEFORE JANUARY 1, 1985.—The amendments made by this section shall also apply to any divorce or separation instrument (as so defined) executed before January 1, 1985, but modified on or after such date if the modification expressly provides that the amendments made by this section shall apply to such modification.

"(3) REQUIREMENT OF IDENTIFICATION NUMBER.—Section 215(c) of the Internal Revenue Code of 1986 (as amended by subsection (b)) and the amendments made by subsection (c) [amending section 6676 of this title] shall apply to payments made after December 31, 1984."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§72. Annuities; certain proceeds of endowment and life insurance contracts

(a) General rules for annuities

(1) Income inclusion

Except as otherwise provided in this chapter, gross income includes any amount received as an annuity (whether for a period certain or during one or more lives) under an annuity, endowment, or life insurance contract.

(2) Partial annuitization

If any amount is received as an annuity for a period of 10 years or more or during one or more lives under any portion of an annuity, endowment, or life insurance contract—

(A) such portion shall be treated as a separate contract for purposes of this section,

(B) for purposes of applying subsections (b), (c), and (e), the investment in the contract shall be allocated pro rata between each portion of the contract from which amounts are received as an annuity and the portion of the contract from which amounts are not received as an annuity, and

(C) a separate annuity starting date under subsection (c)(4) shall be determined with respect to each portion of the contract from which amounts are received as an annuity.

(b) Exclusion ratio

(1) In general

Gross income does not include that part of any amount received as an annuity under an annuity, endowment, or life insurance contract which bears the same ratio to such amount as the investment in the contract (as of the annuity starting date) bears to the expected return under the contract (as of such date).

(2) Exclusion limited to investment

The portion of any amount received as an annuity which is excluded from gross income under paragraph (1) shall not exceed the unrecovered investment in the contract immediately before the receipt of such amount.

(3) Deduction where annuity payments cease before entire investment recovered

(A) In general

If—

(i) after the annuity starting date, payments as an annuity under the contract cease by reason of the death of an annuitant, and

(ii) as of the date of such cessation, there is unrecovered investment in the contract,

the amount of such unrecovered investment (in excess of any amount specified in subsection (e)(5) which was not included in gross income) shall be allowed as a deduction to the annuitant for his last taxable year.

(B) Payments to other persons

In the case of any contract which provides for payments meeting the requirements of

subparagraphs (B) and (C) of subsection (c)(2), the deduction under subparagraph (A) shall be allowed to the person entitled to such payments for the taxable year in which such payments are received.

(C) Net operating loss deductions provided

For purposes of section 172, a deduction allowed under this paragraph shall be treated as if it were attributable to a trade or business of the taxpayer.

(4) Unrecovered investment

For purposes of this subsection, the unrecovered investment in the contract as of any date is—

(A) the investment in the contract (determined without regard to subsection (c)(2)) as of the annuity starting date, reduced by

(B) the aggregate amount received under the contract on or after such annuity starting date and before the date as of which the determination is being made, to the extent such amount was excludable from gross income under this subtitle.

(c) Definitions

(1) Investment in the contract

For purposes of subsection (b), the investment in the contract as of the annuity starting date is—

(A) the aggregate amount of premiums or other consideration paid for the contract, minus

(B) the aggregate amount received under the contract before such date, to the extent that such amount was excludable from gross income under this subtitle or prior income tax laws.

(2) Adjustment in investment where there is refund feature

If—

(A) the expected return under the contract depends in whole or in part on the life expectancy of one or more individuals;

(B) the contract provides for payments to be made to a beneficiary (or to the estate of an annuitant) on or after the death of the annuitant or annuitants; and

(C) such payments are in the nature of a refund of the consideration paid,

then the value (computed without discount for interest) of such payments on the annuity starting date shall be subtracted from the amount determined under paragraph (1). Such value shall be computed in accordance with actuarial tables prescribed by the Secretary. For purposes of this paragraph and of subsection (e)(2)(A), the term "refund of the consideration paid" includes amounts payable after the death of an annuitant by reason of a provision in the contract for a life annuity with minimum period of payments certain, but (if part of the consideration was contributed by an employer) does not include that part of any payment to a beneficiary (or to the estate of the annuitant) which is not attributable to the consideration paid by the employee for the contract as determined under paragraph (1)(A).

(3) Expected return

For purposes of subsection (b), the expected return under the contract shall be determined as follows:

(A) Life expectancy

If the expected return under the contract, for the period on and after the annuity starting date, depends in whole or in part on the life expectancy of one or more individuals, the expected return shall be computed with reference to actuarial tables prescribed by the Secretary.

(B) Installment payments

If subparagraph (A) does not apply, the expected return is the aggregate of the amounts receivable under the contract as an annuity.

(4) Annuity starting date

For purposes of this section, the annuity starting date in the case of any contract is the first day

of the first period for which an amount is received as an annuity under the contract; except that if such date was before January 1, 1954, then the annuity starting date is January 1, 1954.

(d) Special rules for qualified employer retirement plans

(1) Simplified method of taxing annuity payments

(A) In general

In the case of any amount received as an annuity under a qualified employer retirement plan—

(i) subsection (b) shall not apply, and

(ii) the investment in the contract shall be recovered as provided in this paragraph.

(B) Method of recovering investment in contract

(i) In general

Gross income shall not include so much of any monthly annuity payment under a qualified employer retirement plan as does not exceed the amount obtained by dividing—

(I) the investment in the contract (as of the annuity starting date), by

(II) the number of anticipated payments determined under the table contained in clause (iii) (or, in the case of a contract to which subsection (c)(3)(B) applies, the number of monthly annuity payments under such contract).

(ii) Certain rules made applicable

Rules similar to the rules of paragraphs (2) and (3) of subsection (b) shall apply for purposes of this paragraph.

(iii) Number of anticipated payments

If the annuity is payable over the life of a single individual, the number of anticipated payments shall be determined as follows:

If the age of the annuitant on the annuity starting date is:	**The number of anticipated payments is:**
Not more than 55	360
More than 55 but not more than 60	310
More than 60 but not more than 65	260
More than 65 but not more than 70	210
More than 70	160.

(iv) Number of anticipated payments where more than one life

If the annuity is payable over the lives of more than 1 individual, the number of anticipated payments shall be determined as follows:

If the combined ages of annuitants are:	**The number is:**
Not more than 110	410
More than 110 but not more than 120	360
More than 120 but not more than 130	310
More than 130 but not more than 140	260
More than 140	210.

(C) Adjustment for refund feature not applicable

For purposes of this paragraph, investment in the contract shall be determined under subsection (c)(1) without regard to subsection (c)(2).

(D) Special rule where lump sum paid in connection with commencement of annuity payments

If, in connection with the commencement of annuity payments under any qualified employer retirement plan, the taxpayer receives a lump-sum payment—

(i) such payment shall be taxable under subsection (e) as if received before the annuity starting date, and

(ii) the investment in the contract for purposes of this paragraph shall be determined as if such payment had been so received.

(E) Exception

This paragraph shall not apply in any case where the primary annuitant has attained age 75 on the annuity starting date unless there are fewer than 5 years of guaranteed payments under the annuity.

(F) Adjustment where annuity payments not on monthly basis

In any case where the annuity payments are not made on a monthly basis, appropriate adjustments in the application of this paragraph shall be made to take into account the period on the basis of which such payments are made.

(G) Qualified employer retirement plan

For purposes of this paragraph, the term "qualified employer retirement plan" means any plan or contract described in paragraph (1), (2), or (3) of section 4974(c).

(2) Treatment of employee contributions under defined contribution plans

For purposes of this section, employee contributions (and any income allocable thereto) under a defined contribution plan may be treated as a separate contract.

(e) Amounts not received as annuities

(1) Application of subsection

(A) In general

This subsection shall apply to any amount which—

(i) is received under an annuity, endowment, or life insurance contract, and

(ii) is not received as an annuity,

if no provision of this subtitle (other than this subsection) applies with respect to such amount.

(B) Dividends

For purposes of this section, any amount received which is in the nature of a dividend or similar distribution shall be treated as an amount not received as an annuity.

(2) General rule

Any amount to which this subsection applies—

(A) if received on or after the annuity starting date, shall be included in gross income, or

(B) if received before the annuity starting date—

(i) shall be included in gross income to the extent allocable to income on the contract, and

(ii) shall not be included in gross income to the extent allocable to the investment in the contract.

(3) Allocation of amounts to income and investment

For purposes of paragraph (2)(B)—

(A) Allocation to income

Any amount to which this subsection applies shall be treated as allocable to income on the contract to the extent that such amount does not exceed the excess (if any) of—

(i) the cash value of the contract (determined without regard to any surrender charge) immediately before the amount is received, over

(ii) the investment in the contract at such time.

(B) Allocation to investment

Any amount to which this subsection applies shall be treated as allocable to investment in the contract to the extent that such amount is not allocated to income under subparagraph (A).

(4) Special rules for application of paragraph (2)(B)

For purposes of paragraph (2)(B)—

(A) Loans treated as distributions

If, during any taxable year, an individual—

(i) receives (directly or indirectly) any amount as a loan under any contract to which this subsection applies, or

(ii) assigns or pledges (or agrees to assign or pledge) any portion of the value of any such contract,

such amount or portion shall be treated as received under the contract as an amount not received as an annuity. The preceding sentence shall not apply for purposes of determining investment in the contract, except that the investment in the contract shall be increased by any amount included in gross income by reason of the amount treated as received under the preceding sentence.

(B) Treatment of policyholder dividends

Any amount described in paragraph (1)(B) shall not be included in gross income under paragraph (2)(B)(i) to the extent such amount is retained by the insurer as a premium or other consideration paid for the contract.

(C) Treatment of transfers without adequate consideration

(i) In general

If an individual who holds an annuity contract transfers it without full and adequate consideration, such individual shall be treated as receiving an amount equal to the excess of—

(I) the cash surrender value of such contract at the time of transfer, over

(II) the investment in such contract at such time,

under the contract as an amount not received as an annuity.

(ii) Exception for certain transfers between spouses or former spouses

Clause (i) shall not apply to any transfer to which section 1041(a) (relating to transfers of property between spouses or incident to divorce) applies.

(iii) Adjustment to investment in contract of transferee

If under clause (i) an amount is included in the gross income of the transferor of an annuity contract, the investment in the contract of the transferee in such contract shall be increased by the amount so included.

(5) Retention of existing rules in certain cases

(A) In general

In any case to which this paragraph applies—

(i) paragraphs (2)(B) and (4)(A) shall not apply, and

(ii) if paragraph (2)(A) does not apply,

the amount shall be included in gross income, but only to the extent it exceeds the investment in the contract.

(B) Existing contracts

This paragraph shall apply to contracts entered into before August 14, 1982. Any amount allocable to investment in the contract after August 13, 1982, shall be treated as from a contract entered into after such date.

(C) Certain life insurance and endowment contracts

Except as provided in paragraph (10) and except to the extent prescribed by the Secretary by regulations, this paragraph shall apply to any amount not received as an annuity which is received under a life insurance or endowment contract.

(D) Contracts under qualified plans

Except as provided in paragraph (8), this paragraph shall apply to any amount received—

(i) from a trust described in section 401(a) which is exempt from tax under section 501(a),

(ii) from a contract—

(I) purchased by a trust described in clause (i),

(II) purchased as part of a plan described in section 403(a),

(III) described in section 403(b), or

(IV) provided for employees of a life insurance company under a plan described in section 818(a)(3), or

(iii) from an individual retirement account or an individual retirement annuity.

Any dividend described in section 404(k) which is received by a participant or beneficiary shall, for purposes of this subparagraph, be treated as paid under a separate contract to which clause (ii)(I) applies.

(E) Full refunds, surrenders, redemptions, and maturities

This paragraph shall apply to—

(i) any amount received, whether in a single sum or otherwise, under a contract in full discharge of the obligation under the contract which is in the nature of a refund of the consideration paid for the contract, and

(ii) any amount received under a contract on its complete surrender, redemption, or maturity.

In the case of any amount to which the preceding sentence applies, the rule of paragraph (2)(A) shall not apply.

(6) Investment in the contract

For purposes of this subsection, the investment in the contract as of any date is—

(A) the aggregate amount of premiums or other consideration paid for the contract before such date, minus

(B) the aggregate amount received under the contract before such date, to the extent that such amount was excludable from gross income under this subtitle or prior income tax laws.

[(7) Repealed. Pub. L. 100–647, title I, §1011A(b)(9)(A), Nov. 10, 1988, 102 Stat. 3474]

(8) Extension of paragraph (2)(b) [1] to qualified plans

(A) In general

Notwithstanding any other provision of this subsection, in the case of any amount received before the annuity starting date from a trust or contract described in paragraph (5)(D), paragraph (2)(B) shall apply to such amounts.

(B) Allocation of amount received

For purposes of paragraph (2)(B), the amount allocated to the investment in the contract shall be the portion of the amount described in subparagraph (A) which bears the same ratio to such amount as the investment in the contract bears to the account balance. The determination under the preceding sentence shall be made as of the time of the distribution or at such other time as the Secretary may prescribe.

(C) Treatment of forfeitable rights

If an employee does not have a nonforfeitable right to any amount under any trust or contract to which subparagraph (A) applies, such amount shall not be treated as part of the account balance.

(D) Investment in the contract before 1987

In the case of a plan which on May 5, 1986, permitted withdrawal of any employee contributions before separation from service, subparagraph (A) shall apply only to the extent that amounts received before the annuity starting date (when increased by amounts previously received under the contract after December 31, 1986) exceed the investment in the contract as of December 31, 1986.

(9) Extension of paragraph (2)(B) to qualified tuition programs and Coverdell education savings accounts

Notwithstanding any other provision of this subsection, paragraph (2)(B) shall apply to amounts received under a qualified tuition program (as defined in section 529(b)) or under a Coverdell education savings account (as defined in section 530(b)). The rule of paragraph (8)(B) shall apply for purposes of this paragraph.

(10) Treatment of modified endowment contracts

(A) In general

Notwithstanding paragraph (5)(C), in the case of any modified endowment contract (as defined in section 7702A)—

(i) paragraphs (2)(B) and (4)(A) shall apply, and

(ii) in applying paragraph (4)(A), "any person" shall be substituted for "an individual".

(B) Treatment of certain burial contracts

Notwithstanding subparagraph (A), paragraph (4)(A) shall not apply to any assignment (or pledge) of a modified endowment contract if such assignment (or pledge) is solely to cover the payment of expenses referred to in section 7702(e)(2)(C)(iii) and if the maximum death benefit under such contract does not exceed $25,000.

(11) Special rules for certain combination contracts providing long-term care insurance

Notwithstanding paragraphs (2), (5)(C), and (10), in the case of any charge against the cash value of an annuity contract or the cash surrender value of a life insurance contract made as payment for coverage under a qualified long-term care insurance contract which is part of or a rider on such annuity or life insurance contract—

(A) the investment in the contract shall be reduced (but not below zero) by such charge, and

(B) such charge shall not be includible in gross income.

(12) Anti-abuse rules

(A) In general

For purposes of determining the amount includible in gross income under this subsection—

(i) all modified endowment contracts issued by the same company to the same policyholder during any calendar year shall be treated as 1 modified endowment contract, and

(ii) all annuity contracts issued by the same company to the same policyholder during any calendar year shall be treated as 1 annuity contract.

The preceding sentence shall not apply to any contract described in paragraph (5)(D).

(B) Regulatory authority

The Secretary may by regulations prescribe such additional rules as may be necessary or appropriate to prevent avoidance of the purposes of this subsection through serial purchases of contracts or otherwise.

(f) Special rules for computing employees' contributions

In computing, for purposes of subsection (c)(1)(A), the aggregate amount of premiums or other consideration paid for the contract, and for purposes of subsection (e)(6), the aggregate premiums or other consideration paid, amounts contributed by the employer shall be included, but only to the extent that—

(1) such amounts were includible in the gross income of the employee under this subtitle or prior income tax laws; or

(2) if such amounts had been paid directly to the employee at the time they were contributed, they would not have been includible in the gross income of the employee under the law applicable at the time of such contribution.

Paragraph (2) shall not apply to amounts which were contributed by the employer after December 31, 1962, and which would not have been includible in the gross income of the employee by reason of the application of section 911 if such amounts had been paid directly to the employee at the time of contribution. The preceding sentence shall not apply to amounts which were contributed by the employer, as determined under regulations prescribed by the Secretary, to provide pension or annuity credits, to the extent such credits are attributable to services performed before January 1, 1963, and are provided pursuant to pension or annuity plan provisions in existence on March 12, 1962, and on that date applicable to such services, or to the extent such credits are attributable to services performed as a foreign missionary (within the meaning of section 403(b)(2)(D)(iii), as in effect before the enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001).

(g) Rules for transferee where transfer was for value

Where any contract (or any interest therein) is transferred (by assignment or otherwise) for a valuable consideration, to the extent that the contract (or interest therein) does not, in the hands of the transferee, have a basis which is determined by reference to the basis in the hands of the transferor, then—

(1) for purposes of this section, only the actual value of such consideration, plus the amount of the premiums and other consideration paid by the transferee after the transfer, shall be taken into account in computing the aggregate amount of the premiums or other consideration paid for the contract;

(2) for purposes of subsection (c)(1)(B), there shall be taken into account only the aggregate amount received under the contract by the transferee before the annuity starting date, to the extent that such amount was excludable from gross income under this subtitle or prior income tax laws; and

(3) the annuity starting date is January 1, 1954, or the first day of the first period for which the transferee received an amount under the contract as an annuity, whichever is the later.

For purposes of this subsection, the term "transferee" includes a beneficiary of, or the estate of, the transferee.

(h) Option to receive annuity in lieu of lump sum

If—

(1) a contract provides for payment of a lump sum in full discharge of an obligation under the contract, subject to an option to receive an annuity in lieu of such lump sum;

(2) the option is exercised within 60 days after the day on which such lump sum first became payable; and

(3) part or all of such lump sum would (but for this subsection) be includible in gross income by

reason of subsection (e)(1),

then, for purposes of this subtitle, no part of such lump sum shall be considered as includible in gross income at the time such lump sum first became payable.

[(i) Repealed. Pub. L. 94–455, title XIX, §1951(b)(1)(A), Oct. 4, 1976, 90 Stat. 1836]

(j) Interest

Notwithstanding any other provision of this section, if any amount is held under an agreement to pay interest thereon, the interest payments shall be included in gross income.

[(k) Repealed. Pub. L. 98–369, div. A, title IV, §421(b)(1), July 18, 1984, 98 Stat. 794]

(l) Face-amount certificates

For purposes of this section, the term "endowment contract" includes a face-amount certificate, as defined in section 2(a)(15) of the Investment Company Act of 1940 (15 U.S.C., sec. 80a–2), issued after December 31, 1954.

(m) Special rules applicable to employee annuities and distributions under employee plans

[(1) Repealed. Pub. L. 93–406, title II, §2001(h)(2), Sept. 2, 1974, 88 Stat. 957]

(2) Computation of consideration paid by the employee

In computing—

(A) the aggregate amount of premiums or other consideration paid for the contract for purposes of subsection (c)(1)(A) (relating to the investment in the contract), and

(B) the aggregate premiums or other consideration paid for purposes of subsection (e)(6) (relating to certain amounts not received as an annuity),

any amount allowed as a deduction with respect to the contract under section 404 which was paid while the employee was an employee within the meaning of section 401(c)(1) shall be treated as consideration contributed by the employer, and there shall not be taken into account any portion of the premiums or other consideration for the contract paid while the employee was an owner-employee which is properly allocable (as determined under regulations prescribed by the Secretary) to the cost of life, accident, health, or other insurance.

(3) Life insurance contracts

(A) This paragraph shall apply to any life insurance contract—

(i) purchased as a part of a plan described in section 403(a), or

(ii) purchased by a trust described in section 401(a) which is exempt from tax under section 501(a) if the proceeds of such contract are payable directly or indirectly to a participant in such trust or to a beneficiary of such participant.

(B) Any contribution to a plan described in subparagraph (A)(i) or a trust described in subparagraph (A)(ii) which is allowed as a deduction under section 404, and any income of a trust described in subparagraph (A)(ii), which is determined in accordance with regulations prescribed by the Secretary to have been applied to purchase the life insurance protection under a contract described in subparagraph (A), is includible in the gross income of the participant for the taxable year when so applied.

(C) In the case of the death of an individual insured under a contract described in subparagraph (A), an amount equal to the cash surrender value of the contract immediately before the death of the insured shall be treated as a payment under such plan or a distribution by such trust, and the excess of the amount payable by reason of the death of the insured over such cash surrender value shall not be includible in gross income under this section and shall be treated as provided in section 101.

[(4) Repealed. Pub. L. 97–248, title II, §236(b)(1), Sept. 3, 1982, 96 Stat. 510]

(5) Penalties applicable to certain amounts received by 5-percent owners

(A) This paragraph applies to amounts which are received from a qualified trust described in section 401(a) or under a plan described in section 403(a) at any time by an individual who is, or has been, a 5-percent owner, or by a successor of such an individual, but only to the extent such amounts are determined, under regulations prescribed by the Secretary, to exceed the benefits provided for such individual under the plan formula.

(B) If a person receives an amount to which this paragraph applies, his tax under this chapter for the taxable year in which such amount is received shall be increased by an amount equal to 10 percent of the portion of the amount so received which is includible in his gross income for such taxable year.

(C) For purposes of this paragraph, the term "5-percent owner" means any individual who, at any time during the 5 plan years preceding the plan year ending in the taxable year in which the amount is received, is a 5-percent owner (as defined in section 416(i)(1)(B)).

(6) Owner-employee defined

For purposes of this subsection, the term "owner-employee" has the meaning assigned to it by section 401(c)(3) and includes an individual for whose benefit an individual retirement account or annuity described in section 408(a) or (b) is maintained. For purposes of the preceding sentence, the term "owner-employee" shall include an employee within the meaning of section 401(c)(1).

(7) Meaning of disabled

For purposes of this section, an individual shall be considered to be disabled if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration. An individual shall not be considered to be disabled unless he furnishes proof of the existence thereof in such form and manner as the Secretary may require.

[(8) Repealed. Pub. L. 97–248, title II, §236(b)(1), Sept. 3, 1982, 96 Stat. 510]

[(9) Repealed. Pub. L. 98–369, div. A, title VII, §713(d)(1), July 18, 1984, 98 Stat. 957]

(10) Determination of investment in the contract in the case of qualified domestic relations orders

Under regulations prescribed by the Secretary, in the case of a distribution or payment made to an alternate payee who is the spouse or former spouse of the participant pursuant to a qualified domestic relations order (as defined in section 414(p)), the investment in the contract as of the date prescribed in such regulations shall be allocated on a pro rata basis between the present value of such distribution or payment and the present value of all other benefits payable with respect to the participant to which such order relates.

(n) Annuities under retired serviceman's family protection plan or survivor benefit plan

Subsection (b) shall not apply in the case of amounts received after December 31, 1965, as an annuity under chapter 73 of title 10 of the United States Code, but all such amounts shall be excluded from gross income until there has been so excluded (under section 122(b)(1) or this section, including amounts excluded before January 1, 1966) an amount equal to the consideration for the contract (as defined by section 122(b)(2)), plus any amount treated pursuant to section 101(b)(2)(D) (as in effect on the day before the date of the enactment of the Small Business Job Protection Act of 1996) as additional consideration paid by the employee. Thereafter all amounts so received shall be included in gross income.

(o) Special rules for distributions from qualified plans to which employee made deductible contributions

(1) Treatment of contributions

For purposes of this section and sections 402 and 403, notwithstanding section 414(h), any deductible employee contribution made to a qualified employer plan or government plan shall be treated as an amount contributed by the employer which is not includible in the gross income of

the employee.

[(2) Repealed. Pub. L. 100–647, title I, §1011A(c)(8), Nov. 10, 1988, 102 Stat. 3476]

(3) Amounts constructively received

(A) In general

For purposes of this subsection, rules similar to the rules provided by subsection (p) (other than the exception contained in paragraph (2) thereof) shall apply.

(B) Purchase of life insurance

To the extent any amount of accumulated deductible employee contributions of an employee are applied to the purchase of life insurance contracts, such amount shall be treated as distributed to the employee in the year so applied.

(4) Special rule for treatment of rollover amounts

For purposes of sections 402(c), 403(a)(4), and 403(b)(8), 408(d)(3), and 457(e)(16), the Secretary shall prescribe regulations providing for such allocations of amounts attributable to accumulated deductible employee contributions, and for such other rules, as may be necessary to insure that such accumulated deductible employee contributions do not become eligible for additional tax benefits (or freed from limitations) through the use of rollovers.

(5) Definitions and special rules

For purposes of this subsection—

(A) Deductible employee contributions

The term "deductible employee contributions" means any qualified voluntary employee contribution (as defined in section 219(e)(2)) made after December 31, 1981, in a taxable year beginning after such date and made for a taxable year beginning before January 1, 1987, and allowable as a deduction under section 219(a) for such taxable year.

(B) Accumulated deductible employee contributions

The term "accumulated deductible employee contributions" means the deductible employee contributions—

(i) increased by the amount of income and gain allocable to such contributions, and

(ii) reduced by the sum of the amount of loss and expense allocable to such contributions and the amounts distributed with respect to the employee which are attributable to such contributions (or income or gain allocable to such contributions).

(C) Qualified employer plan

The term "qualified employer plan" has the meaning given to such term by subsection (p)(3)(A)(i).

(D) Government plan

The term "government plan" has the meaning given such term by subsection (p)(3)(B).

(6) Ordering rules

Unless the plan specifies otherwise, any distribution from such plan shall not be treated as being made from the accumulated deductible employee contributions, until all other amounts to the credit of the employee have been distributed.

(p) Loans treated as distributions

For purposes of this section—

(1) Treatment as distributions

(A) Loans

If during any taxable year a participant or beneficiary receives (directly or indirectly) any amount as a loan from a qualified employer plan, such amount shall be treated as having been

received by such individual as a distribution under such plan.

(B) Assignments or pledges

If during any taxable year a participant or beneficiary assigns (or agrees to assign) or pledges (or agrees to pledge) any portion of his interest in a qualified employer plan, such portion shall be treated as having been received by such individual as a loan from such plan.

(2) Exception for certain loans

(A) General rule

Paragraph (1) shall not apply to any loan to the extent that such loan (when added to the outstanding balance of all other loans from such plan whether made on, before, or after August 13, 1982), does not exceed the lesser of—

(i) $50,000, reduced by the excess (if any) of—

(I) the highest outstanding balance of loans from the plan during the 1-year period ending on the day before the date on which such loan was made, over

(II) the outstanding balance of loans from the plan on the date on which such loan was made, or

(ii) the greater of (I) one-half of the present value of the nonforfeitable accrued benefit of the employee under the plan, or (II) $10,000.

For purposes of clause (ii), the present value of the nonforfeitable accrued benefit shall be determined without regard to any accumulated deductible employee contributions (as defined in subsection (o)(5)(B)).

(B) Requirement that loan be repayable within 5 years

(i) In general

Subparagraph (A) shall not apply to any loan unless such loan, by its terms, is required to be repaid within 5 years.

(ii) Exception for home loans

Clause (i) shall not apply to any loan used to acquire any dwelling unit which within a reasonable time is to be used (determined at the time the loan is made) as the principal residence of the participant.

(C) Requirement of level amortization

Except as provided in regulations, this paragraph shall not apply to any loan unless substantially level amortization of such loan (with payments not less frequently than quarterly) is required over the term of the loan.

(D) Related employers and related plans

For purposes of this paragraph—

(i) the rules of subsections (b), (c), and (m) of section 414 shall apply, and

(ii) all plans of an employer (determined after the application of such subsections) shall be treated as 1 plan.

(3) Denial of interest deductions in certain cases

(A) In general

No deduction otherwise allowable under this chapter shall be allowed under this chapter for any interest paid or accrued on any loan to which paragraph (1) does not apply by reason of paragraph (2) during the period described in subparagraph (B).

(B) Period to which subparagraph (A) applies

For purposes of subparagraph (A), the period described in this subparagraph is the period—

(i) on or after the 1st day on which the individual to whom the loan is made is a key

employee (as defined in section 416(i)), or

(ii) such loan is secured by amounts attributable to elective deferrals described in subparagraph (A) or (C) of section 402(g)(3).

(4) Qualified employer plan, etc.

For purposes of this subsection—

(A) Qualified employer plan

(i) In general

The term "qualified employer plan" means—

(I) a plan described in section 401(a) which includes a trust exempt from tax under section 501(a),

(II) an annuity plan described in section 403(a), and

(III) a plan under which amounts are contributed by an individual's employer for an annuity contract described in section 403(b).

(ii) Special rule

The term "qualified employer plan" shall include any plan which was (or was determined to be) a qualified employer plan or a government plan.

(B) Government plan

The term "government plan" means any plan, whether or not qualified, established and maintained for its employees by the United States, by a State or political subdivision thereof, or by an agency or instrumentality of any of the foregoing.

(5) Special rules for loans, etc., from certain contracts

For purposes of this subsection, any amount received as a loan under a contract purchased under a qualified employer plan (and any assignment or pledge with respect to such a contract) shall be treated as a loan under such employer plan.

(q) 10-percent penalty for premature distributions from annuity contracts

(1) Imposition of penalty

If any taxpayer receives any amount under an annuity contract, the taxpayer's tax under this chapter for the taxable year in which such amount is received shall be increased by an amount equal to 10 percent of the portion of such amount which is includible in gross income.

(2) Subsection not to apply to certain distributions

Paragraph 1 shall not apply to any distribution—

(A) made on or after the date on which the taxpayer attains age 59½,

(B) made on or after the death of the holder (or, where the holder is not an individual, the death of the primary annuitant (as defined in subsection (s)(6)(B))),

(C) attributable to the taxpayer's becoming disabled within the meaning of subsection (m)(7),

(D) which is a part of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the taxpayer or the joint lives (or joint life expectancies) of such taxpayer and his designated beneficiary,

(E) from a plan, contract, account, trust, or annuity described in subsection (e)(5)(D),

(F) allocable to investment in the contract before August 14, 1982, or [2]

(G) under a qualified funding asset (within the meaning of section 130(d), but without regard to whether there is a qualified assignment),

(H) to which subsection (t) applies (without regard to paragraph (2) thereof),

(I) under an immediate annuity contract (within the meaning of section 72(u)(4)), or

(J) which is purchased by an employer upon the termination of a plan described in section 401(a) or 403(a) and which is held by the employer until such time as the employee separates from service.

(3) Change in substantially equal payments

If—

(A) paragraph (1) does not apply to a distribution by reason of paragraph (2)(D), and

(B) the series of payments under such paragraph are subsequently modified (other than by reason of death or disability)—

(i) before the close of the 5-year period beginning on the date of the first payment and after the taxpayer attains age 59½, or

(ii) before the taxpayer attains age 59½,

the taxpayer's tax for the 1st taxable year in which such modification occurs shall be increased by an amount, determined under regulations, equal to the tax which (but for paragraph (2)(D)) would have been imposed, plus interest for the deferral period (within the meaning of subsection (t)(4)(B)).

(r) Certain railroad retirement benefits treated as received under employer plans

(1) In general

Notwithstanding any other provision of law, any benefit provided under the Railroad Retirement Act of 1974 (other than a tier 1 railroad retirement benefit) shall be treated for purposes of this title as a benefit provided under an employer plan which meets the requirements of section 401(a).

(2) Tier 2 taxes treated as contributions

(A) In general

For purposes of paragraph (1)—

(i) the tier 2 portion of the tax imposed by section 3201 (relating to tax on employees) shall be treated as an employee contribution,

(ii) the tier 2 portion of the tax imposed by section 3211 (relating to tax on employee representatives) shall be treated as an employee contribution, and

(iii) the tier 2 portion of the tax imposed by section 3221 (relating to tax on employers) shall be treated as an employer contribution.

(B) Tier 2 portion

For purposes of subparagraph (A)—

(i) After 1984

With respect to compensation paid after 1984, the tier 2 portion shall be the taxes imposed by sections 3201(b), 3211(b), and 3221(b).

(ii) After September 30, 1981, and before 1985

With respect to compensation paid before 1985 for services rendered after September 30, 1981, the tier 2 portion shall be—

(I) so much of the tax imposed by section 3201 as is determined at the 2 percent rate, and

(II) so much of the taxes imposed by sections 3211 and 3221 as is determined at the 11.75 percent rate.

With respect to compensation paid for services rendered after December 31, 1983, and before 1985, subclause (I) shall be applied by substituting "2.75 percent" for "2 percent", and subclause (II) shall be applied by substituting "12.75 percent" for "11.75 percent".

(iii) Before October 1, 1981

With respect to compensation paid for services rendered during any period before October 1, 1981, the tier 2 portion shall be the excess (if any) of—

(I) the tax imposed for such period by section 3201, 3211, or 3221, as the case may be (other than any tax imposed with respect to man-hours), over

(II) the tax which would have been imposed by such section for such period had the

rates of the comparable taxes imposed by chapter 21 for such period applied under such section.

(C) Contributions not allocable to supplemental annuity or windfall benefits

For purposes of paragraph (1), no amount treated as an employee contribution under this paragraph shall be allocated to—

(i) any supplemental annuity paid under section 2(b) of the Railroad Retirement Act of 1974, or

(ii) any benefit paid under section 3(h), 4(e), or 4(h) of such Act.

(3) Tier 1 railroad retirement benefit

For purposes of paragraph (1), the term "tier 1 railroad retirement benefit" has the meaning given such term by section 86(d)(4).

(s) Required distributions where holder dies before entire interest is distributed

(1) In general

A contract shall not be treated as an annuity contract for purposes of this title unless it provides that—

(A) if any holder of such contract dies on or after the annuity starting date and before the entire interest in such contract has been distributed, the remaining portion of such interest will be distributed at least as rapidly as under the method of distributions being used as of the date of his death, and

(B) if any holder of such contract dies before the annuity starting date, the entire interest in such contract will be distributed within 5 years after the death of such holder.

(2) Exception for certain amounts payable over life of beneficiary

If—

(A) any portion of the holder's interest is payable to (or for the benefit of) a designated beneficiary,

(B) such portion will be distributed (in accordance with regulations) over the life of such designated beneficiary (or over a period not extending beyond the life expectancy of such beneficiary), and

(C) such distributions begin not later than 1 year after the date of the holder's death or such later date as the Secretary may by regulations prescribe,

then for purposes of paragraph (1), the portion referred to in subparagraph (A) shall be treated as distributed on the day on which such distributions begin.

(3) Special rule where surviving spouse beneficiary

If the designated beneficiary referred to in paragraph (2)(A) is the surviving spouse of the holder of the contract, paragraphs (1) and (2) shall be applied by treating such spouse as the holder of such contract.

(4) Designated beneficiary

For purposes of this subsection, the term "designated beneficiary" means any individual designated a beneficiary by the holder of the contract.

(5) Exception for certain annuity contracts

This subsection shall not apply to any annuity contract—

(A) which is provided—

(i) under a plan described in section 401(a) which includes a trust exempt from tax under section 501, or

(ii) under a plan described in section 403(a),

(B) which is described in section 403(b),

(C) which is an individual retirement annuity or provided under an individual retirement

account or annuity, or

(D) which is a qualified funding asset (as defined in section 130(d), but without regard to whether there is a qualified assignment).

(6) Special rule where holder is corporation or other non-individual

(A) In general

For purposes of this subsection, if the holder of the contract is not an individual, the primary annuitant shall be treated as the holder of the contract.

(B) Primary annuitant

For purposes of subparagraph (A), the term "primary annuitant" means the individual, the events in the life of whom are of primary importance in affecting the timing or amount of the payout under the contract.

(7) Treatment of changes in primary annuitant where holder of contract is not an individual

For purposes of this subsection, in the case of a holder of an annuity contract which is not an individual, if there is a change in a primary annuitant (as defined in paragraph (6)(B)), such change shall be treated as the death of the holder.

(t) 10-percent additional tax on early distributions from qualified retirement plans

(1) Imposition of additional tax

If any taxpayer receives any amount from a qualified retirement plan (as defined in section 4974(c)), the taxpayer's tax under this chapter for the taxable year in which such amount is received shall be increased by an amount equal to 10 percent of the portion of such amount which is includible in gross income.

(2) Subsection not to apply to certain distributions

Except as provided in paragraphs (3) and (4), paragraph (1) shall not apply to any of the following distributions:

(A) In general

Distributions which are—

(i) made on or after the date on which the employee attains age 59½,

(ii) made to a beneficiary (or to the estate of the employee) on or after the death of the employee,

(iii) attributable to the employee's being disabled within the meaning of subsection (m)(7),

(iv) part of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of such employee and his designated beneficiary,

(v) made to an employee after separation from service after attainment of age 55,

(vi) dividends paid with respect to stock of a corporation which are described in section 404(k),

(vii) made on account of a levy under section 6331 on the qualified retirement plan, or

(viii) payments under a phased retirement annuity under section 8366a(a)(5) [3] or 8412a(a)(5) of title 5, United States Code, or a composite retirement annuity under section 8366a(a)(1) [3] or 8412a(a)(1) of such title.

(B) Medical expenses

Distributions made to the employee (other than distributions described in subparagraph (A), (C), or (D)) to the extent such distributions do not exceed the amount allowable as a deduction under section 213 to the employee for amounts paid during the taxable year for medical care (determined without regard to whether the employee itemizes deductions for such taxable year).

(C) Payments to alternate payees pursuant to qualified domestic relations orders

Any distribution to an alternate payee pursuant to a qualified domestic relations order (within

the meaning of section 414(p)(1)).

(D) Distributions to unemployed individuals for health insurance premiums

(i) In general

Distributions from an individual retirement plan to an individual after separation from employment—

(I) if such individual has received unemployment compensation for 12 consecutive weeks under any Federal or State unemployment compensation law by reason of such separation,

(II) if such distributions are made during any taxable year during which such unemployment compensation is paid or the succeeding taxable year, and

(III) to the extent such distributions do not exceed the amount paid during the taxable year for insurance described in section 213(d)(1)(D) with respect to the individual and the individual's spouse and dependents (as defined in section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof).

(ii) Distributions after reemployment

Clause (i) shall not apply to any distribution made after the individual has been employed for at least 60 days after the separation from employment to which clause (i) applies.

(iii) Self-employed individuals

To the extent provided in regulations, a self-employed individual shall be treated as meeting the requirements of clause (i)(I) if, under Federal or State law, the individual would have received unemployment compensation but for the fact the individual was self-employed.

(E) Distributions from individual retirement plans for higher education expenses

Distributions to an individual from an individual retirement plan to the extent such distributions do not exceed the qualified higher education expenses (as defined in paragraph (7)) of the taxpayer for the taxable year. Distributions shall not be taken into account under the preceding sentence if such distributions are described in subparagraph (A), (C), or (D) or to the extent paragraph (1) does not apply to such distributions by reason of subparagraph (B).

(F) Distributions from certain plans for first home purchases

Distributions to an individual from an individual retirement plan which are qualified first-time homebuyer distributions (as defined in paragraph (8)). Distributions shall not be taken into account under the preceding sentence if such distributions are described in subparagraph (A), (C), (D), or (E) or to the extent paragraph (1) does not apply to such distributions by reason of subparagraph (B).

(G) Distributions from retirement plans to individuals called to active duty

(i) In general

Any qualified reservist distribution.

(ii) Amount distributed may be repaid

Any individual who receives a qualified reservist distribution may, at any time during the 2-year period beginning on the day after the end of the active duty period, make one or more contributions to an individual retirement plan of such individual in an aggregate amount not to exceed the amount of such distribution. The dollar limitations otherwise applicable to contributions to individual retirement plans shall not apply to any contribution made pursuant to the preceding sentence. No deduction shall be allowed for any contribution pursuant to this clause.

(iii) Qualified reservist distribution

For purposes of this subparagraph, the term "qualified reservist distribution" means any distribution to an individual if—

(I) such distribution is from an individual retirement plan, or from amounts attributable

to employer contributions made pursuant to elective deferrals described in subparagraph (A) or (C) of section 402(g)(3) or section 501(c)(18)(D)(iii),

(II) such individual was (by reason of being a member of a reserve component (as defined in section 101 of title 37, United States Code)) ordered or called to active duty for a period in excess of 179 days or for an indefinite period, and

(III) such distribution is made during the period beginning on the date of such order or call and ending at the close of the active duty period.

(iv) Application of subparagraph

This subparagraph applies to individuals ordered or called to active duty after September 11, 2001. In no event shall the 2-year period referred to in clause (ii) end before the date which is 2 years after the date of the enactment of this subparagraph.

(3) Limitations

(A) Certain exceptions not to apply to individual retirement plans

Subparagraphs (A)(v) and (C) of paragraph (2) shall not apply to distributions from an individual retirement plan.

(B) Periodic payments under qualified plans must begin after separation

Paragraph (2)(A)(iv) shall not apply to any amount paid from a trust described in section 401(a) which is exempt from tax under section 501(a) or from a contract described in section 72(e)(5)(D)(ii) unless the series of payments begins after the employee separates from service.

(4) Change in substantially equal payments

(A) In general

If—

(i) paragraph (1) does not apply to a distribution by reason of paragraph (2)(A)(iv), and

(ii) the series of payments under such paragraph are subsequently modified (other than by reason of death or disability)—

(I) before the close of the 5-year period beginning with the date of the first payment and after the employee attains age 59½, or

(II) before the employee attains age 59½,

the taxpayer's tax for the 1st taxable year in which such modification occurs shall be increased by an amount, determined under regulations, equal to the tax which (but for paragraph (2)(A)(iv)) would have been imposed, plus interest for the deferral period.

(B) Deferral period

For purposes of this paragraph, the term "deferral period" means the period beginning with the taxable year in which (without regard to paragraph (2)(A)(iv)) the distribution would have been includible in gross income and ending with the taxable year in which the modification described in subparagraph (A) occurs.

(5) Employee

For purposes of this subsection, the term "employee" includes any participant, and in the case of an individual retirement plan, the individual for whose benefit such plan was established.

(6) Special rules for simple retirement accounts

In the case of any amount received from a simple retirement account (within the meaning of section 408(p)) during the 2-year period beginning on the date such individual first participated in any qualified salary reduction arrangement maintained by the individual's employer under section 408(p)(2), paragraph (1) shall be applied by substituting "25 percent" for "10 percent".

(7) Qualified higher education expenses

For purposes of paragraph (2)(E)—

(A) In general

The term "qualified higher education expenses" means qualified higher education expenses (as defined in section 529(e)(3)) for education furnished to—

(i) the taxpayer,

(ii) the taxpayer's spouse, or

(iii) any child (as defined in section 152(f)(1)) or grandchild of the taxpayer or the taxpayer's spouse,

at an eligible educational institution (as defined in section 529(e)(5)).

(B) Coordination with other benefits

The amount of qualified higher education expenses for any taxable year shall be reduced as provided in section 25A(g)(2).

(8) Qualified first-time homebuyer distributions

For purposes of paragraph (2)(F)—

(A) In general

The term "qualified first-time homebuyer distribution" means any payment or distribution received by an individual to the extent such payment or distribution is used by the individual before the close of the 120th day after the day on which such payment or distribution is received to pay qualified acquisition costs with respect to a principal residence of a first-time homebuyer who is such individual, the spouse of such individual, or any child, grandchild, or ancestor of such individual or the individual's spouse.

(B) Lifetime dollar limitation

The aggregate amount of payments or distributions received by an individual which may be treated as qualified first-time homebuyer distributions for any taxable year shall not exceed the excess (if any) of—

(i) $10,000, over

(ii) the aggregate amounts treated as qualified first-time homebuyer distributions with respect to such individual for all prior taxable years.

(C) Qualified acquisition costs

For purposes of this paragraph, the term "qualified acquisition costs" means the costs of acquiring, constructing, or reconstructing a residence. Such term includes any usual or reasonable settlement, financing, or other closing costs.

(D) First-time homebuyer; other definitions

For purposes of this paragraph—

(i) First-time homebuyer

The term "first-time homebuyer" means any individual if—

(I) such individual (and if married, such individual's spouse) had no present ownership interest in a principal residence during the 2-year period ending on the date of acquisition of the principal residence to which this paragraph applies, and

(II) subsection (h) or (k) of section 1034 [4] (as in effect on the day before the date of the enactment of this paragraph) did not suspend the running of any period of time specified in section 1034 [4] (as so in effect) with respect to such individual on the day before the date the distribution is applied pursuant to subparagraph (A).

(ii) Principal residence

The term "principal residence" has the same meaning as when used in section 121.

(iii) Date of acquisition

The term "date of acquisition" means the date—

(I) on which a binding contract to acquire the principal residence to which subparagraph (A) applies is entered into, or

(II) on which construction or reconstruction of such a principal residence is commenced.

(E) Special rule where delay in acquisition

If any distribution from any individual retirement plan fails to meet the requirements of subparagraph (A) solely by reason of a delay or cancellation of the purchase or construction of the residence, the amount of the distribution may be contributed to an individual retirement plan as provided in section 408(d)(3)(A)(i) (determined by substituting "120th day" for "60th day" in such section), except that—

(i) section 408(d)(3)(B) shall not be applied to such contribution, and

(ii) such amount shall not be taken into account in determining whether section 408(d)(3)(B) applies to any other amount.

(9) Special rule for rollovers to section 457 plans

For purposes of this subsection, a distribution from an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A) shall be treated as a distribution from a qualified retirement plan described in 4974(c)(1) to the extent that such distribution is attributable to an amount transferred to an eligible deferred compensation plan from a qualified retirement plan (as defined in section 4974(c)).

(10) Distributions to qualified public safety employees in governmental plans

(A) In general

In the case of a distribution to a qualified public safety employee from a governmental plan (within the meaning of section 414(d)) which is a defined benefit plan, paragraph (2)(A)(v) shall be applied by substituting "age 50" for "age 55".

(B) Qualified public safety employee

For purposes of this paragraph, the term "qualified public safety employee" means any employee of a State or political subdivision of a State who provides police protection, firefighting services, or emergency medical services for any area within the jurisdiction of such State or political subdivision.

(u) Treatment of annuity contracts not held by natural persons

(1) In general

If any annuity contract is held by a person who is not a natural person—

(A) such contract shall not be treated as an annuity contract for purposes of this subtitle (other than subchapter L), and

(B) the income on the contract for any taxable year of the policyholder shall be treated as ordinary income received or accrued by the owner during such taxable year.

For purposes of this paragraph, holding by a trust or other entity as an agent for a natural person shall not be taken into account.

(2) Income on the contract

(A) In general

For purposes of paragraph (1), the term "income on the contract" means, with respect to any taxable year of the policyholder, the excess of—

(i) the sum of the net surrender value of the contract as of the close of the taxable year plus all distributions under the contract received during the taxable year or any prior taxable year, reduced by

(ii) the sum of the amount of net premiums under the contract for the taxable year and prior taxable years and amounts includible in gross income for prior taxable years with respect to such contract under this subsection.

Where necessary to prevent the avoidance of this subsection, the Secretary may substitute "fair market value of the contract" for "net surrender value of the contract" each place it appears in the preceding sentence.

(B) Net premiums

For purposes of this paragraph, the term "net premiums" means the amount of premiums paid under the contract reduced by any policyholder dividends.

(3) Exceptions

This subsection shall not apply to any annuity contract which—

(A) is acquired by the estate of a decedent by reason of the death of the decedent,

(B) is held under a plan described in section 401(a) or 403(a), under a program described in section 403(b), or under an individual retirement plan,

(C) is a qualified funding asset (as defined in section 130(d), but without regard to whether there is a qualified assignment),

(D) is purchased by an employer upon the termination of a plan described in section 401(a) or 403(a) and is held by the employer until all amounts under such contract are distributed to the employee for whom such contract was purchased or the employee's beneficiary, or

(E) is an immediate annuity.

(4) Immediate annuity

For purposes of this subsection, the term "immediate annuity" means an annuity—

(A) which is purchased with a single premium or annuity consideration,

(B) the annuity starting date (as defined in subsection (c)(4)) of which commences no later than 1 year from the date of the purchase of the annuity, and

(C) which provides for a series of substantially equal periodic payments (to be made not less frequently than annually) during the annuity period.

(v) 10-percent additional tax for taxable distributions from modified endowment contracts

(1) Imposition of additional tax

If any taxpayer receives any amount under a modified endowment contract (as defined in section 7702A), the taxpayer's tax under this chapter for the taxable year in which such amount is received shall be increased by an amount equal to 10 percent of the portion of such amount which is includible in gross income.

(2) Subsection not to apply to certain distributions

Paragraph (1) shall not apply to any distribution—

(A) made on or after the date on which the taxpayer attains age 59½,

(B) which is attributable to the taxpayer's becoming disabled (within the meaning of subsection (m)(7)), or

(C) which is part of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the taxpayer or the joint lives (or joint life expectancies) of such taxpayer and his beneficiary.

(w) Application of basis rules to nonresident aliens

(1) In general

Notwithstanding any other provision of this section, for purposes of determining the portion of any distribution which is includible in gross income of a distributee who is a citizen or resident of the United States, the investment in the contract shall not include any applicable nontaxable contributions or applicable nontaxable earnings.

(2) Applicable nontaxable contribution

For purposes of this subsection, the term "applicable nontaxable contribution" means any employer or employee contribution—

(A) which was made with respect to compensation—

(i) for labor or personal services performed by an employee who, at the time the labor or services were performed, was a nonresident alien for purposes of the laws of the United States in effect at such time, and

(ii) which is treated as from sources without the United States, and

(B) which was not subject to income tax (and would have been subject to income tax if paid as cash compensation when the services were rendered) under the laws of the United States or any foreign country.

(3) Applicable nontaxable earnings

For purposes of this subsection, the term "applicable nontaxable earnings" means earnings—

(A) which are paid or accrued with respect to any employer or employee contribution which was made with respect to compensation for labor or personal services performed by an employee,

(B) with respect to which the employee was at the time the earnings were paid or accrued a nonresident alien for purposes of the laws of the United States, and

(C) which were not subject to income tax under the laws of the United States or any foreign country.

(4) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this subsection, including regulations treating contributions and earnings as not subject to tax under the laws of any foreign country where appropriate to carry out the purposes of this subsection.

(x) Cross reference

For limitation on adjustments to basis of annuity contracts sold, see section 1021.

(Aug. 16, 1954, ch. 736, 68A Stat. 20; Pub. L. 87–792, §4(a), (b), Oct. 10, 1962, 76 Stat. 821; Pub. L. 87–834, §11(b), Oct. 16, 1962, 76 Stat. 1005; Pub. L. 88–272, title II, §232(b), Feb. 26, 1964, 78 Stat. 110; Pub. L. 89–44, title VIII, §809(d)(2), June 21, 1965, 79 Stat. 167; Pub. L. 89–97, title I, §106(d)(2), July 30, 1965, 79 Stat. 337; Pub. L. 89–365, §1(b), Mar. 8, 1966, 80 Stat. 32; Pub. L. 91–172, title V, §515(b), Dec. 30, 1969, 83 Stat. 644; Pub. L. 93–406, title II, §§2001(e)(5), (g)(1), (2)(A), (h)(2), (3), 2002(g)(10), 2005(c)(3), 2007(b)(2), Sept. 2, 1974, 88 Stat. 955, 957, 970, 991, 994; Pub. L. 94–455, title XIX, §§1901(a)(12), (13), 1906(b)(13)(A), 1951(b)(1)(A), Oct. 4, 1976, 90 Stat. 1765, 1834, 1836; Pub. L. 97–34, title III, §§311(b)(1), 312(d), (e)(1), Aug. 13, 1981, 95 Stat. 278, 284; Pub. L. 97–248, title II, §§236(a), (b), 237(d), 265(a), (b)(1), Sept. 3, 1982, 96 Stat. 509–511, 544–546; Pub. L. 97–448, title I, §103(c)(3)(B)(i), (6), Jan. 12, 1983, 96 Stat. 2376; Pub. L. 98–76, title II, §224(a), Aug. 12, 1983, 97 Stat. 421; Pub. L. 98–369, div. A, title II, §§211(b)(1), 222(a), (b), title IV, §§421(b)(1), 491(d)(3), (4), title V, §§521(d), 523(a), (b), title VII, §713(b)(1)–(c)(1)(B), (d)(1), July 18, 1984, 98 Stat. 754, 774, 794, 849, 868, 871, 872, 956, 957; Pub. L. 98–397, title II, §204(c)(2), Aug. 23, 1984, 98 Stat. 1448; Pub. L. 99–514, title XI, §§1101(b)(2)(B), (C), 1122(c), 1123(a), (b), (d)(1), 1134(a)–(d), 1135(a), title XVIII, §§1826(a), (b)(1)–(3), (c), (d), 1852(a)(2), (c)(1)–(4), 1854(b)(1), 1898(c)(1)(B), Oct. 22, 1986, 100 Stat. 2413, 2414, 2467, 2472, 2474, 2475, 2483, 2484, 2848–2850, 2864, 2867, 2878, 2951; Pub. L. 100–647, title I, §§1011A(b)(1)(A), (B), (2), (9), (c)(1)–(8), (h), (i), 1018(k), (t)(1)(A), (B), (u)(8), title V, §5012(a), (b)(1), (d), Nov. 10, 1988, 102 Stat. 3472, 3474–3476, 3482, 3583, 3587, 3590, 3661, 3662, 3664; Pub. L. 101–239, title VII, §§7811(m)(4), 7815(a)(3), (5), Dec. 19, 1989, 103 Stat. 2412, 2414; Pub. L. 101–508, title XI, §11802(a), Nov. 5, 1990, 104 Stat. 1388–529; Pub. L. 102–318, title V, §521(b)(3), July 3, 1992, 106 Stat. 310; Pub. L. 104–188, title I, §§1403(a), 1421(b)(4)(A), 1463(a), 1704(l)(1), (t)(2), (77), Aug. 20, 1996, 110 Stat. 1790, 1796, 1824, 1882, 1887, 1891; Pub. L. 104–191, title III, §361(a)–(c), Aug. 21, 1996, 110 Stat. 2071, 2072; Pub. L. 105–34, title II, §203(a), (b), title III, §303(a), (b), title X, §1075(a), (b), Aug. 5, 1997, 111 Stat. 809, 829, 949; Pub. L. 105–206, title III, §3436(a), title VI, §§6004(d)(3)(B), 6005(c)(1), 6023(3), (4), July 22, 1998, 112

Stat. 761, 794, 800, 824; Pub. L. 107–16, title IV, §402(a)(4)(A), (B), title VI, §§632(a)(3)(A), 641(a)(2)(C), (e)(1), June 7, 2001, 115 Stat. 60, 61, 113, 120; Pub. L. 107–22, §1(b)(1)(A), (3)(A), July 26, 2001, 115 Stat. 196, 197; Pub. L. 107–90, title II, §204(e)(2), Dec. 21, 2001, 115 Stat. 893; Pub. L. 108–311, title II, §207(6), (7), title IV, §408(a)(4), (b)(3), Oct. 4, 2004, 118 Stat. 1177, 1191, 1192; Pub. L. 108–357, title VIII, §906(a), Oct. 22, 2004, 118 Stat. 1653; Pub. L. 109–280, title VIII, §§827(a), 828(a), 844(a), Aug. 17, 2006, 120 Stat. 999, 1001, 1010; Pub. L. 110–245, title I, §107(a), June 17, 2008, 122 Stat. 1631; Pub. L. 110–458, title I, §108(e), Dec. 23, 2008, 122 Stat. 5109; Pub. L. 111–240, title II, §2113(a), Sept. 27, 2010, 124 Stat. 2566; Pub. L. 112–141, div. F, title I, §100121(c), July 6, 2012, 126 Stat. 914.)

REFERENCES IN TEXT

The enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001, referred to in subsec. (f), means the enactment of Pub. L. 107–16, which was approved June 7, 2001.

The date of the enactment of the Small Business Job Protection Act of 1996, referred to in subsec. (n), is the date of enactment of Pub. L. 104–188, which was approved Aug. 20, 1996.

The Railroad Retirement Act of 1974, referred to in subsec. (r)(1), (2)(C)(i), (ii), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, §101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§231 et seq.) of chapter 9 of Title 45, Railroads. Sections 2(b), 3(h), and 4(e) and (h) of the Act are classified to sections 231a(b), 231b(h), and 231c(e) and (h), respectively, of Title 45. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

The date of the enactment of this subparagraph, referred to in subsec. (t)(2)(G)(iv), is the date of enactment of Pub. L. 109–280, which was approved Aug. 17, 2006.

Section 1034 (as in effect on the day before the date of the enactment of this paragraph), referred to in subsec. (t)(8)(D)(i)(II), means section 1034 of this title as in effect on the day before Aug. 5, 1997. Section 1034 was repealed by Pub. L. 105–34, title III, §312(b), Aug. 5, 1997, 111 Stat. 839.

AMENDMENTS

2012—Subsec. (t)(2)(A)(viii). Pub. L. 112–141 added cl. (viii).

2010—Subsec. (a). Pub. L. 111–240 amended subsec. (a) generally. Prior to amendment, text read as follows: "Except as otherwise provided in this chapter, gross income includes any amount received as an annuity (whether for a period certain or during one or more lives) under an annuity, endowment, or life insurance contract."

2008—Subsec. (t)(2)(G)(iv). Pub. L. 110–245, which directed amendment by striking out ", and before December 31, 2007" after "September 11, 2001", was executed by striking out ", and on or before December 31, 2007" after "September 11, 2001", to reflect the probable intent of Congress and the intervening amendment by Pub. L. 110–458. See Amendment note and Effective Date of 2008 Amendment note below.

Pub. L. 110–458 inserted "on or" before "before" in first sentence.

2006—Subsec. (e)(11), (12). Pub. L. 109–280, §844(a), added par. (11) and redesignated former par. (11) as (12).

Subsec. (t)(2)(G). Pub. L. 109–280, §827(a), added subpar. (G).

Subsec. (t)(10). Pub. L. 109–280, §828(a), added par. (10).

2004—Subsec. (e)(9). Pub. L. 108–311, §408(b)(3), amended Pub. L. 107–22, §1(b)(3)(A). See 2001 Amendment note below.

Subsec. (f). Pub. L. 108–311, §408(a)(4), substituted "Economic Growth and Tax Relief Reconciliation Act of 2001)" for "Economic Growth and Tax Relief Reconciliation Act of 2001" in concluding provisions.

Subsec. (t)(2)(D)(i)(III). Pub. L. 108–311, §207(6), inserted ", determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof" after "section 152".

Subsec. (t)(7)(A)(iii). Pub. L. 108–311, §207(7), substituted "152(f)(1)" for "151(c)(3)".

Subsecs. (w), (x). Pub. L. 108–357 added subsec. (w) and redesignated former subsec. (w) as (x).

2001—Subsec. (e)(9). Pub. L. 107–22, §1(b)(3)(A), as amended by Pub. L. 108–311, §408(b)(3), substituted "Coverdell education savings" for "educational individual retirement" in heading.

Pub. L. 107–22, §1(b)(1)(A), substituted "a Coverdell education savings" for "an education individual retirement".

Pub. L. 107–16, §402(a)(4)(A), (B), substituted "qualified tuition" for "qualified State tuition" in heading and text.

Subsec. (f). Pub. L. 107–16, §632(a)(3)(A), substituted "section 403(b)(2)(D)(iii), as in effect before the enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001" for "section

403(b)(2)(D)(iii))" in concluding provisions.

Subsec. (o)(4). Pub. L. 107–16, §641(e)(1), substituted "403(b)(8), 408(d)(3), and 457(e)(16)" for "and 408(d)(3)".

Subsec. (r)(2)(B)(i). Pub. L. 107–90 substituted "3211(b)" for "3211(a)(2)".

Subsec. (t)(9). Pub. L. 107–16, §641(a)(2)(C), added par. (9).

1998—Subsec. (e)(9). Pub. L. 105–206, §6004(d)(3)(B), added par. (9).

Subsec. (n). Pub. L. 105–206, §6023(3), inserted "(as in effect on the day before the date of the enactment of the Small Business Job Protection Act of 1996)" after "section 101(b)(2)(D)".

Subsec. (t)(2)(A)(iv). Pub. L. 105–206, §3436(a), which directed amendment of cl. (iv) by striking out "or" at end, could not be executed because the word "or" did not appear at end.

Subsec. (t)(2)(A)(vii). Pub. L. 105–206, §3436(a), added cl. (vii).

Subsec. (t)(3)(A). Pub. L. 105–206, §6023(4), substituted "(A)(v)" for "(A)(v),".

Subsec. (t)(8)(E). Pub. L. 105–206, §6005(c)(1), in introductory provisions, substituted "120th day" for "120 days" and "60th day" for "60 days".

1997—Subsec. (d)(1)(B)(iii). Pub. L. 105–34, §1075(b), inserted "If the annuity is payable over the life of a single individual, the number of anticipated payments shall be determined as follows:" before table and struck out "primary" after "If the age of the" in table.

Subsec. (d)(1)(B)(iv). Pub. L. 105–34, §1075(a), added cl. (iv).

Subsec. (t)(2)(E). Pub. L. 105–34, §203(a), added subpar. (E).

Subsec. (t)(2)(F). Pub. L. 105–34, §303(a), added subpar. (F).

Subsec. (t)(7). Pub. L. 105–34, §203(b), added par. (7).

Subsec. (t)(8). Pub. L. 105–34, §303(b), added par. (8).

1996—Subsec. (b)(4)(A). Pub. L. 104–188, §1704(l)(1), inserted "(determined without regard to subsection (c)(2))" after "contract".

Subsec. (d). Pub. L. 104–188, §1403(a), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "TREATMENT OF EMPLOYEE CONTRIBUTIONS UNDER DEFINED CONTRIBUTION PLANS AS SEPARATE CONTRACTS.—For purposes of this section, employee contributions (and any income allocable thereto) under a defined contribution plan may be treated as a separate contract."

Subsec. (f). Pub. L. 104–188, §1463(a), in closing provisions, inserted before period at end ", or to the extent such credits are attributable to services performed as a foreign missionary (within the meaning of section 403(b)(2)(D)(iii))".

Subsec. (m)(2)(A) to (C). Pub. L. 104–188, §1704(t)(2), inserted "and" at end of subpar. (A), redesignated subpar. (C) as (B), and struck out former subpar. (B) which read as follows: "the consideration for the contract contributed by the employee for purposes of subsection (d)(1) (relating to employee's contributions recoverable in 3 years) and subsection (e)(7) (relating to plans where substantially all contributions are employee contributions), and".

Subsec. (p)(4)(A)(ii). Pub. L. 104–188, §1704(t)(77), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: "SPECIAL RULES.—The term 'qualified employer plan'—

"(I) shall include any plan which was (or was determined to be) a qualified employer plan or a government plan, but

"(II) shall not include a plan described in subsection (e)(7)."

Subsec. (t)(2)(B). Pub. L. 104–191, §361(c), substituted ", (C), or (D)" for "or (C)".

Subsec. (t)(2)(D). Pub. L. 104–191, §361(b), added subpar. (D).

Subsec. (t)(3)(A). Pub. L. 104–191, §361(a), struck out "(B)," after "Subparagraphs (A)(v),".

Subsec. (t)(6). Pub. L. 104–188, §1421(b)(4)(A), added par. (6).

1992—Subsec. (o)(4). Pub. L. 102–318 substituted "402(c)" for "402(a)(5), 402(a)(7)".

1990—Subsec. (t)(2)(C), (D). Pub. L. 101–508, §11802(a)(1), (2), redesignated subpar. (D) as (C) and struck out former subpar. (C) "Exceptions for distributions from employee stock ownership plans" which read as follows: "Any distribution made before January 1, 1990, to an employee from an employee stock ownership plan (as defined in section 4975(e)(7)) or a tax credit employee stock ownership plan (as defined in section 409) if—

"(i) such distribution is attributable to assets which have been invested in employer securities (within the meaning of section 409(l)) at all times during the 5-plan-year period preceding the plan year in which the distribution is made, and

"(ii) at all times during such period the requirements of sections 401(a)(28) and 409 (as in effect at such times) are met with respect to such employer securities."

Subsec. (t)(3)(A). Pub. L. 101–508, §11802(a)(3), substituted "and (C)" for "(C), and (D)".

1989—Subsec. (e)(11)(A). Pub. L. 101–239, §7815(a)(3), (5), substituted "calendar year" for "12-month period" in cls. (i) and (ii), and inserted at end "The preceding sentence shall not apply to any contract described in paragraph (5)(D)."

Subsec. (q)(2)(B). Pub. L. 101–239, §7811(m)(4), inserted an additional closing parenthesis after "subsection (s)(6)(B))".

1988—Subsec. (d). Pub. L. 100–647, §1011A(b)(2)(A), added subsec. (d).

Subsec. (e)(4)(A). Pub. L. 100–647, §5012(d)(1), inserted at end "The preceding sentence shall not apply for purposes of determining investment in the contract, except that the investment in the contract shall be increased by any amount included in gross income by reason of the amount treated as received under the preceding sentence."

Subsec. (e)(5)(C). Pub. L. 100–647, §5012(a)(2), substituted "Except as provided in paragraph (10) and except to the extent" for "Except to the extent".

Subsec. (e)(5)(D). Pub. L. 100–647, §1011A(b)(9)(B), substituted "paragraph (8)" for "paragraphs (7) and (8)".

Subsec. (e)(7). Pub. L. 100–647, §1011A(b)(9)(A), struck out par. (7) which related to special rules for plans where substantially all contributions are employee contributions.

Subsec. (e)(8)(A). Pub. L. 100–647, §1011A(b)(9)(C), struck out "(other than paragraph (7))" after "this subsection".

Subsec. (e)(9). Pub. L. 100–647, §1011A(b)(2)(B), struck out par. (9) which related to treatment of employee contributions as separate contract.

Subsec. (e)(10). Pub. L. 100–647, §5012(a)(1), added par. (10).

Subsec. (e)(11). Pub. L. 100–647, §5012(d)(2), added par. (11).

Subsec. (f). Pub. L. 100–647, §1011A(b)(1)(A), struck out "for purposes of subsections (d)(1) and (e)(7), the consideration for the contract contributed by the employee," after "contract," in introductory provisions.

Subsec. (n). Pub. L. 100–647, §1011A(b)(1)(B), substituted "Subsection (b)" for "Subsections (b) and (d)".

Subsec. (o)(2). Pub. L. 100–647, §1011A(c)(8), struck out par. (2) which related to additional tax if amount received before age 59½.

Subsec. (p)(3)(A). Pub. L. 100–647, §1011A(h)(1), inserted "to which paragraph (1) does not apply by reason of paragraph (2) during the period" after "loan".

Subsec. (p)(3)(B). Pub. L. 100–647, §1011A(h)(2), substituted "Period" for "Loans" in heading and amended text generally. Prior to amendment, text read as follows: "For purposes of subparagraph (A), a loan is described in this subparagraph—

"(i) if paragraph (1) does not apply to such loan by reason of paragraph (2), and

"(ii) if—

"(I) such loan is made to a key employee (as defined in section 416(i)), or

"(II) such loan is secured by amounts attributable to elective 401(k) or 403(b) deferrals (as defined in section 402(g)(3))."

Subsec. (q)(2)(B). Pub. L. 100–647, §1018(t)(1)(B), substituted "subsection (s)(6)(B))" for "subsection (s)(6)(B)))".

Subsec. (q)(2)(D). Pub. L. 100–647, §1011A(c)(7), inserted "designated" before "beneficiary".

Pub. L. 100–647, §§1011A(c)(4), 1018(u)(8), amended subpar. (D) identically, substituting a comma for period at end.

Subsec. (q)(2)(E). Pub. L. 100–647, §1011A(b)(9)(D), struck out "(determined without regard to subsection (e)(7))" after "subsection (e)(5)(D)".

Subsec. (q)(2)(G). Pub. L. 100–647, §1011A(c)(4), substituted a comma for period at end.

Subsec. (q)(2)(H). Pub. L. 100–647, §1011A(c)(6), added subpar. (H).

Subsec. (q)(3)(B). Pub. L. 100–647, §1011A(c)(5), substituted "taxpayer" for "employee" in cls. (i) and (ii).

Subsec. (s)(5). Pub. L. 100–647, §1018(k)(2), substituted "certain annuity contracts" for "annuity contracts which are part of qualified plans" in heading.

Subsec. (s)(5)(D). Pub. L. 100–647, §1018(k)(1), added subpar. (D).

Subsec. (s)(7). Pub. L. 100–647, §1018(t)(1)(A), substituted "primary annuitant" for "primary annuity".

Subsec. (t)(2)(A)(iv). Pub. L. 100–647, §1011A(c)(7), inserted "designated" before "beneficiary".

Subsec. (t)(2)(A)(v). Pub. L. 100–647, §1011A(c)(1), struck out "on account of early retirement under the plan" after "separation from service".

Subsec. (t)(2)(C). Pub. L. 100–647, §1011A(c)(2), substituted "Exceptions for distributions from employee stock ownership plans" for "Certain plans" in heading and amended text generally. Prior to amendment, text read as follows:

"(i) IN GENERAL.—Except as provided in clause (ii), any distribution made before January 1, 1990, to an

employee from an employee stock ownership plan defined in section 4975(e)(7) to the extent that, on average, a majority of assets in the plan have been invested in employer securities (as defined in section 409(l)) for the 5-plan-year period preceding the plan year in which the distribution is made.

"(ii) BENEFITS DISTRIBUTED MUST BE INVESTED IN EMPLOYER SECURITIES FOR 5 YEARS .—Clause (i) shall not apply to any distribution which is attributable to assets which have not been invested in employer securities at all times during the period referred to in clause (i)."

Subsec. (t)(3)(A). Pub. L. 100–647, §1011A(c)(3), substituted "(C), and (D)" for "and (C)".

Subsec. (u)(1)(A). Pub. L. 100–647, §1011A(i)(1), inserted "(other than subchapter L)" after "subtitle".

Subsec. (u)(3)(D). Pub. L. 100–647, §1011A(i)(3), substituted "is purchased" for "which is purchased" and "is held" for "which is held".

Pub. L. 100–647, §1011A(i)(2), substituted "until all amounts under such contract are distributed to the employee for whom such contract was purchased or the employee's beneficiary" for "until such time as the employee separates from service".

Subsec. (u)(3)(E). Pub. L. 100–647, §1011A(i)(3), substituted "is" for "which is".

Subsec. (u)(4)(C). Pub. L. 100–647, §1011A(i)(4), added subpar. (C).

Subsecs. (v), (w). Pub. L. 100–647, §5012(b)(1), added subsec. (v) and redesignated former subsec. (v) as (w).

1986—Subsec. (b). Pub. L. 99–514, §1122(c)(2), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "Gross income does not include that part of any amount received as an annuity under an annuity, endowment, or life insurance contract which bears the same ratio to such amount as the investment in the contract (as of the annuity starting date) bears to the expected return under the contract (as of such date). This subsection shall not apply to any amount to which subsection (d)(1) (relating to certain employee annuities) applies."

Subsec. (d). Pub. L. 99–514, §1122(c)(1), struck out subsec. (d) which related to employee's annuities where the employee's contributions were recoverable in 3 years.

Subsec. (e)(4)(C). Pub. L. 99–514, §1826(b)(3), added subpar. (C).

Subsec. (e)(5)(D). Pub. L. 99–514, §1122(c)(3)(B), substituted "paragraphs (7) and (8)" for "paragraph (7)" in introductory provisions.

Pub. L. 99–514, §1854(b)(1), inserted closing provisions which read as follows: "Any dividend described in section 404(k) which is received by a participant or beneficiary shall, for purposes of this subparagraph, be treated as paid under a separate contract to which clause (ii)(I) applies."

Subsec. (e)(7)(B). Pub. L. 99–514, §1852(c)(1), in introductory provisions substituted "any plan or contract" for "any trust or contract", in cl. (ii) substituted "85 percent or more of" for "85 percent of", and inserted closing provision: "For purposes of clause (ii), deductible employee contributions (as defined in subsection (o)(5)(A)) shall not be taken into account."

Subsec. (e)(8), (9). Pub. L. 99–514, §1122(c)(3)(A), added pars. (8) and (9).

Subsec. (f). Pub. L. 99–514, §1852(c)(3), in introductory provisions, substituted "subsections (d)(1) and (e)(7)" for "subsection (d)(1)" and "subsection (e)(6)" for "subsection (e)(1)(B)".

Subsec. (m)(2)(B). Pub. L. 99–514, §1852(c)(4)(A), inserted "and subsection (e)(7) (relating to plans where substantially all contributions are employee contributions)".

Subsec. (m)(2)(C). Pub. L. 99–514, §1852(c)(4)(B), substituted "subsection (e)(6)" for "subsection (e)(1)(B)".

Subsec. (m)(5). Pub. L. 99–514, §1852(a)(2)(C), which directed that par. (5) be amended by substituting "5-percent owners" for "owner-employees" in heading, was executed by substituting "5-percent owners" for "key employees", to reflect the probable intent of Congress and intervening amendment by section 713(c)(1)(B) of Pub. L. 98–369.

Subsec. (m)(5)(A). Pub. L. 99–514, §1123(d)(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "This subparagraph shall apply—

"(i) to amounts which—

"(I) are received from a qualified trust described in section 401(a) or under a plan described in section 403(a), and

"(II) are received by a 5-percent owner before such owner attains the age of 59½ years, for any reason other than such owner becoming disabled (within the meaning of paragraph (7) of this section), and

"(ii) to amounts which are received from a qualified trust described in section 401(a) or under a plan described in section 403(a) at any time by a 5-percent owner, or by the successor of such owner, but only to the extent that such amounts are determined (under regulations prescribed by the Secretary) to exceed the benefits provided for such individual under the plan formula.

Clause (i) shall not apply to any amount received by an individual in his capacity as a policyholder of an annuity, endowment, or life insurance contract which is in the nature of a dividend or similar distribution and clause (i) shall not apply to amounts attributable to benefits accrued before January 1, 1985."

Pub. L. 99–514, §1852(a)(2)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "This paragraph shall apply—

"(i) to amounts (other than any amount received by an individual in his capacity as a policyholder of an annuity, endowment, or life insurance contract which is in the nature of a dividend or similar distribution) which are received from a qualified trust described in section 401(a) or under a plan described in section 403(a) and which are received by an individual, who is, or has been, a 5-percent owner, before such individual attains the age of 59½ years, for any reason other than the individual's becoming disabled (within the meaning of paragraph (7) of this subsection), but only to the extent that such amounts are attributable to contributions paid on behalf of such individual (other than contributions made by him as a 5-percent owner) while he was a 5-percent owner, and

"(ii) to amounts which are received from a qualified trust described in section 401(a) or under a plan described in section 403(a) at any time by an individual who is, or has been, a 5-percent owner or by the successor of such individual, but only to the extent that such amounts are determined, under regulations prescribed by the Secretary, to exceed the benefits provided for such individual under the plan formula."

Subsec. (m)(5)(C). Pub. L. 99–514, §1852(a)(2)(B), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: "For purposes of this paragraph, the term '5 percent owner' have the same meanings as when used in section 416."

Subsec. (m)(10). Pub. L. 99–514, §1898(c)(1)(B), inserted "who is the spouse or former spouse of the participant".

Subsec. (o)(5). Pub. L. 99–514, §1101(b)(2)(C), inserted "and made for a taxable year beginning before January 1, 1987," in subpar. (A), substituted "subsection (p)(3)(A)(i)" for "section 219(e)(3)" in subpar. (C), and substituted "subsection (p)(3)(B)" for "section 219(e)(4)" in subpar. (D).

Subsec. (p)(2)(A)(i). Pub. L. 99–514, §1134(a), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: "$50,000, or".

Subsec. (p)(2)(B)(ii). Pub. L. 99–514, §1134(d), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: "Clause (i) shall not apply to any loan used to acquire, construct, reconstruct, or substantially rehabilitate any dwelling unit which within a reasonable time is to be used (determined at the time the loan is made) as a principal residence of the participant or a member of the family (within the meaning of section 267(c)(4)) of the participant."

Subsec. (p)(2)(C), (D). Pub. L. 99–514, §1134(b), added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (p)(3). Pub. L. 99–514, §1134(c), added par. (3) and redesignated former par. (3) as (4).

Pub. L. 99–514, §1101(b)(2)(B), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "For purposes of this subsection, the term 'qualified employer plan' means any plan which was (or was determined to be) a qualified employer plan (as defined in section 219(e)(3) other than a plan described in subsection (e)(7)). For purposes of this subsection, such term includes any government plan (as defined in section 219(e)(4))."

Subsec. (p)(4), (5). Pub. L. 99–514, §1134(c), redesignated former pars. (3) and (4) as (4) and 5, respectively.

Subsec. (q). Pub. L. 99–514, §1123(b)(1)(B), substituted "10-percent" for "5-percent" in heading.

Subsec. (q)(1). Pub. L. 99–514, §1123(b)(1)(A), substituted "10 percent" for "5 percent".

Subsec. (q)(2). Pub. L. 99–514, §1123(b)(3), substituted "Paragraph (1)" for "This subsection" in introductory provisions.

Subsec. (q)(2)(B). Pub. L. 99–514, §1826(c), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "made to a beneficiary (or to the estate of an annuitant) on or after the death of an annuitant,".

Subsec. (q)(2)(D). Pub. L. 99–514, §1123(b)(2), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: "which is one of a series of substantially equal periodic payments made for the life of a taxpayer or over a period extending for at least 60 months after the annuity starting date,".

Subsec. (q)(2)(E). Pub. L. 99–514, §1852(c)(2), inserted "(determined without regard to subsection (e)(7))".

Subsec. (q)(2)(G). Pub. L. 99–514, §1826(d), added subpar. (G).

Subsec. (q)(2)(I), (J). Pub. L. 99–514, §1123(b)(4), which added subpars. (I) and (J) directed the amendment of subpar. (G) by striking out "or" at the end thereof, and of subpar. (H) by striking out the period at the end thereof, could not be executed to subpars. (G) and (H) because subpar. (G) does not contain "or", and no subpar. (H) was enacted.

Subsec. (q)(3). Pub. L. 99–514, §1123(b)(3), added par. (3).

Subsec. (s)(1). Pub. L. 99–514, §1826(b)(2), substituted "any holder of such contract" for "the holder of such contract" in subpars. (A) and (B).

Subsec. (s)(5). Pub. L. 99–514, §1826(a), added par. (5).

Subsec. (s)(6), (7). Pub. L. 99–514, §1826(b)(1), added pars. (6) and (7).

Subsec. (t). Pub. L. 99–514, §1123(a), added subsec. (t) and redesignated former subsec. (t) as (u).

Subsecs. (u), (v). Pub. L. 99–514, §1135(a), added subsec. (u) and redesignated former subsec. (u) as (v).

1984—Subsec. (e)(5)(D). Pub. L. 98–369, §523(b)(1), substituted "Except as provided in paragraph (7), this" for "This".

Subsec. (e)(5)(D)(ii)(IV). Pub. L. 98–369, §211(b)(1), which directed substitution of "section 818(a)(3)" for "805(d)(3)" in subpar. (D)(i)(IV), was executed to subpar. (D)(ii)(IV) to reflect the probable intent of Congress.

Subsec. (e)(7). Pub. L. 98–369, §523(a), added par. (7).

Subsec. (k). Pub. L. 98–369, §421(b)(1), repealed subsec. (k) relating to payments in discharge of alimony.

Subsec. (m)(5). Pub. L. 98–369, §713(c)(1)(B), substituted "key employees" for "owner-employees" in heading.

Subsec. (m)(5)(A). Pub. L. 98–369, §521(d)(1), (2), substituted "5-percent owner" for "key employee" wherever appearing and struck out "in a top-heavy plan" at end of cl. (i).

Pub. L. 98–369, §713(c)(1)(A), substituted "as a key employee" for "as an owner-employee" in cl. (i).

Subsec. (m)(5)(C). Pub. L. 98–369, §521(d)(3), substituted "the term '5 percent owner' " for "the terms 'key employee' and 'top-heavy plan' ".

Subsec. (m)(9). Pub. L. 98–369, §713(d)(1), repealed par. (9) relating to return of excess contributions before due date of return.

Subsec. (m)(10). Pub. L. 98–397 added par. (10).

Subsec. (o)(1). Pub. L. 98–369, §491(d)(3), substituted "402 and 403" for "402, 403, and 405".

Subsec. (o)(3)(A). Pub. L. 98–369, §713(b)(1)(A), inserted "(other than the exception contained in paragraph (2) thereof)".

Subsec. (o)(4). Pub. L. 98–369, §491(d)(4), substituted "and 408(d)(3)" for "408(d)(3), and 409(b)(3)(C)".

Subsec. (p)(2)(A). Pub. L. 98–369, §713(b)(1)(B), inserted at end "For purposes of clause (ii), the present value of the nonforfeitable accrued benefit shall be determined without regard to any accumulated deductible employee contributions (as defined in subsection (o)(5)(B))."

Subsec. (p)(2)(A)(ii). Pub. L. 98–369, §713(b)(4), substituted as cl. (ii) "the greater of (I) one-half of the present value of the nonforfeitable accrued benefit of the employee under the plan, or (II) $10,000" for "½ of the present value of the nonforfeitable accrued benefit of the employee under the plan (but not less than $10,000)".

Subsec. (p)(3). Pub. L. 98–369, §523(b)(2), inserted "other than a plan described in subsection (e)(7)".

Subsec. (q)(1). Pub. L. 98–369, §222(a), amended par. (1) generally, striking out designation "(A) In general.—" preceding text, substituting "which is includible in gross income" for "includible in gross income which is properly allocable to any investment in the annuity contract made during the 10-year period ending on the date such amount was received by the taxpayer", and striking out former subpar. (B), which had provided that for purposes of subpar. (A), the amount includible in gross income would be allocated to the earliest investment in the contract with respect to which amounts had not been previously fully allocated under this par.

Subsecs. (s), (t). Pub. L. 98–369, §222(b), added subsec. (s) and redesignated former subsec. (s) as (t).

1983—Subsec. (o)(2)(A). Pub. L. 97–448, §103(c)(6), struck out "to which the employee made one or more deductible employee contributions" after "from a qualified employer plan or government plan".

Subsec. (p)(3). Pub. L. 97–448, §103(c)(3)(B)(i), struck out "without regard to subparagraph (D) thereof" after "as defined in section 219(e)(3)".

Subsecs. (r), (s). Pub. L. 98–76 added subsec. (r) and redesignated former subsec. (r) as (s).

1982—Subsec. (e). Pub. L. 97–248, §265(a), in par. (1) substituted provisions relating to the application of this subsection to amounts received under annuity, endowment, or life insurance contracts which are not received as annuities and to amounts received as dividends for provisions which stated a general rule relating to the includability as gross income of amounts that were received under annuity, endowment, or life insurance contracts which were not received as annuities and also stated that for the purposes of this section amounts which were received as dividends would be treated as amounts not received as an annuity, in par. (2) substituted provisions stating a general rule as to the includability as gross income of amounts received before or after the annuity starting date for provisions which set out those amounts which would be treated as amounts not received as an annuity, and added pars. (3) to (6).

Subsec. (m)(4). Pub. L. 97–248, §236(b)(1), struck out par. (4) which related to amounts constructively received with respect to assignments or pledges, and loans on contracts.

Subsec. (m)(5). Pub. L. 97–248, §237(d)(1), (2), in subpar. (A) substituted applicability to key employees for applicability to owner-employees and added subpar. (C).

Subsec. (m)(6). Pub. L. 97–248, §237(d)(3), struck out "except in applying paragraph (5)," after "shall".

Subsec. (m)(8). Pub. L. 97–248, §236(b)(1), struck out par. (8) which related to loans to owner-employees.

Subsec. (o)(3)(A). Pub. L. 97–248, §236(b)(2), substituted reference to subsec. (p) of this section for references to subsec. (m)(4) and (8) of this section.

Subsec. (p). Pub. L. 97–248, §236(a), added subsec. (p). Former subsec. (p) redesignated (q).

Subsec. (q). Pub. L. 97–248, §265(b)(1), added subsec. (q). Former subsec. (q) redesignated (r).

Pub. L. 97–248, §236(a), redesignated former subsec. (p) as (q).

Subsec. (r). Pub. L. 97–248, §§236(a), 265(b)(1), redesignated former subsec. (p) as (r).

1981—Subsec. (m)(6). Pub. L. 97–34, §312(d)(1), expanded definition of "owner-employee" to include an employee within the meaning of section 401(c)(1) except in applying paragraph (5).

Subsec. (m)(8). Pub. L. 97–34, §312(d)(2), added par. (8).

Subsec. (m)(9). Pub. L. 97–34, §312(e)(1), added par. (9).

Subsecs. (o), (p). Pub. L. 97–34, §311(b)(1), added subsec. (o) and redesignated former subsec. (o) as (p).

1976—Subsec. (c)(2), (3)(A). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (d)(1). Pub. L. 94–455, §1901(a)(12), struck out in subpar. (B) "(whether or not before January 1, 1954)" after "beginning on the date", and in provisions following subpar. (B) struck out "(under this paragraph and prior income tax laws)" after "until there has been so excluded".

Subsec. (f). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (i). Pub. L. 94–455, §1951(b)(1)(A), struck out subsec. (i) which related to joint annuities where first annuitant died in 1951, 1952, or 1953.

Subsec. (m)(2), (3). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (m)(4)(A). Pub. L. 94–455, §1901(a)(13), substituted "an individual retirement account" for "an individual retirement amount".

Subsec. (m)(5)(A)(ii), (7). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

1974—Subsec. (m)(1). Pub. L. 93–406, §2001(h)(2), struck out par. (1) which related to certain amounts received before annuity starting date.

Subsec. (m)(4)(A). Pub. L. 93–406, §2002(g)(10)(A), inserted references to an individual retirement amount described in section 408(a) and an individual retirement annuity described in section 408(b).

Subsec. (m)(5)(A). Pub. L. 93–406, §2001(e)(5), (h)(3), substituted "(other than contributions made by him as an owner-employee)" for "(whether or not paid by him)" in cl. (i), and struck out cl. (iii) which had made reference to amounts which were received, by an individual who was or had been, an owner-employee, by reason of the distribution under the provisions of section 401(e)(2)(E) of his entire interest in all qualified trusts described in section 401(a) and in all plans described in section 403(a).

Subsec. (m)(5)(B). Pub. L. 93–406, §2001(g)(1), substituted provisions that if a person receives an amount to which subsec. (m)(5) applies, his tax under this chapter for the taxable year in which such amount is received shall be increased by an amount equal to 10 percent of the portion of the amount so received which is includible in his gross income for such taxable year for provisions that if the aggregate amounts to which subsec. (m)(5) applied received by any person in his taxable year equalled or exceeded $2,500, the increase in his tax for the taxable year in which such amounts were received and attributable to such amounts could not be less than 110 percent of the aggregate increase in taxes, for the taxable year and the 4 immediately preceding taxable years, which would have resulted if such amounts had been included in such person's gross income ratably over such taxable years, with provision for alternate computation if deductions had been allowed under section 404 for contributions paid for a number of prior taxable years less than 4.

Subsec. (m)(5)(C) to (E). Pub. L. 93–406, §2001(g)(2)(A), struck out subpars. (C) to (E) which contained special rules for the application of subsec. (m)(5).

Subsec. (m)(6). Pub. L. 93–406, §2002(g)(10)(B), inserted reference to an individual for whose benefit an individual retirement account or annuity described in section 408(a) or (b) is maintained.

Subsec. (n). Pub. L. 93–406, §§2005(c)(3), 2007(b)(2), redesignated former subsec. (o) as (n) and in heading of subsec. (n) as so redesignated inserted reference to survivor benefit plan. Former subsec. (n), which set out provisions covering the treatment to be accorded total distributions, was struck out.

Subsec. (o). Pub. L. 93–406, §2005(c)(3), redesignated former subsec. (p) as (o). Former subsec. (o) redesignated (n) and amended.

Subsec. (p). Pub. L. 93–406, §2005(c)(3), redesignated subsec. (p) as (o).

1969—Subsec. (n)(1). Pub. L. 91–172, §515(b)(1), altered section to accommodate the insertion into sections 402 and 403 of provisions under which employer contributions to qualified pension, profit sharing, stock bonus, and annuity plans for plan years beginning after 1969 are to be treated as ordinary income when received in a lump sum distribution, but with such amounts to be eligible for a special averaging procedure.

Subsec. (n)(4). Pub. L. 91–172, §515(b)(2), added par. (4).

1966—Subsecs. (o), (p). Pub. L. 89–365 added subsec. (o) and redesignated former subsec. (o) as (p).

1965—Subsec. (m)(5)(A)(i). Pub. L. 89–97, §106(d)(2)(A), substituted "paragraph (7) of this subsection" for "section 213(g)(3)".

Subsec. (m)(7). Pub. L. 89–97, §106(d)(2)(B), added par. (7).

Subsec. (n)(1). Pub. L. 89–97, §106(d)(2)(C), substituted in subpars. (A)(iii) and (B)(iii) "subsection (m)(7)" for "section 213(g)(3)".

Subsec. (n)(3). Pub. L. 89–44 substituted "sections 31 and 39" for "section 31" in sentence following subpar. (B).

1964—Subsec. (e)(3). Pub. L. 88–272 struck out par. (3) which provided for a limit on the tax attributable to the receipt of a lump sum.

1962—Subsec. (d)(2). Pub. L. 87–792, §4(a), designated existing provisions as cl. (A) and added cl. (B).

Subsec. (f). Pub. L. 87–834 inserted sentence providing that par. (2) shall not apply to amounts which were contributed by the employer after Dec. 31, 1962, and which would not have been includible in the gross income of the employee by reason of the application of Section 911 if such amounts had been paid directly to the employee at the time of contribution, and making such sentence inapplicable to amounts which were contributed by the employer, as determined under regulations, to provide pension or annuity credits, to the extent such credits are attributable to services performed before Jan. 1, 1963, and are provided pursuant to pension or annuity plan provisions in existence on Mar. 12, 1962, and on that date applicable to such services.

Subsecs. (m) to (o). Pub. L. 87–792, §4(b), added subsecs. (m) and (n) and redesignated former subsec. (m) as (o).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–240, title II, §2113(b), Sept. 27, 2010, 124 Stat. 2567, provided that: "The amendment made by this section [amending this section] shall apply to amounts received in taxable years beginning after December 31, 2010."

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–458, title I, §112, Dec. 23, 2008, 122 Stat. 5113, provided that: "Except as otherwise provided in this subtitle [subtitle A (§§101–112) of title I of Pub. L. 110–458, see Tables for classification], the amendments made by this subtitle shall take effect as if included in the provisions of the 2006 Act [Pub. L. 109–280] to which the amendments relate."

Pub. L. 110–245, title I, §107(b), June 17, 2008, 122 Stat. 1631, provided that: "The amendment made by this section [amending this section] shall apply to individuals ordered or called to active duty on or after December 31, 2007."

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title VIII, §827(c), Aug. 17, 2006, 120 Stat. 1001, provided that:

"(1) EFFECTIVE DATE.—The amendment made by this section [amending this section and sections 401 and 403 of this title] shall apply to distributions after September 11, 2001.

"(2) WAIVER OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from the amendments made by this section is prevented at any time before the close of the 1-year period beginning on the date of the enactment of this Act [Aug. 17, 2006] by the operation of any law or rule of law (including res judicata), such refund or credit may nevertheless be made or allowed if claim therefor is filed before the close of such period."

Pub. L. 109–280, title VIII, §828(b), Aug. 17, 2006, 120 Stat. 1001, provided that: "The amendment made by this section [amending this section] shall apply to distributions after the date of the enactment of this Act [Aug. 17, 2006]."

Pub. L. 109–280, title VIII, §844(g), Aug. 17, 2006, 120 Stat. 1013, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting section 6050U of this title and amending this section and sections 848, 1035, 6724, and 7702B of this title] shall apply to contracts issued after December 31, 1996, but only with respect to taxable years beginning after December 31, 2009.

"(2) TAX-FREE EXCHANGES.—The amendments made by subsection (b) [amending section 1035 of this title] shall apply with respect to exchanges occurring after December 31, 2009.

"(3) INFORMATION REPORTING.—The amendments made by subsection (d) [enacting section 6050U of this title and amending section 6724 of this title] shall apply to charges made after December 31, 2009.

"(4) POLICY ACQUISITION EXPENSES.—The amendment made by subsection (e) [amending section 848 of this title] shall apply to specified policy acquisition expenses determined for taxable years beginning after December 31, 2009.

"(5) TECHNICAL AMENDMENT.—The amendment made by subsection (f) [amending section 7702B of this title] shall take effect as if included in section 321(a) of the Health Insurance Portability and Accountability Act of 1996 [Pub. L. 104–191]."

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §906(c), Oct. 22, 2004, 118 Stat. 1654, provided that: "The amendments made by this section [amending this section and section 83 of this title] shall apply to distributions on or after the date of the enactment of this Act [Oct. 22, 2004]."

Amendment by section 207(6), (7) of Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–90 applicable to calendar years beginning after Dec. 31, 2001, see section 204(f) of Pub. L. 107–90, set out as a note under section 24 of this title.

Amendment by Pub. L. 107–22 effective July 26, 2001, see section 1(c) of Pub. L. 107–22, set out as a note under section 26 of this title.

Pub. L. 107–16, title IV, §402(h), June 7, 2001, 115 Stat. 63, provided that: "The amendments made by this section [amending this section and sections 135, 221, 529, 530, 4973, and 6693 of this title] shall apply to taxable years beginning after December 31, 2001."

Pub. L. 107–16, title VI, §632(a)(4), June 7, 2001, 115 Stat. 115, provided that: "The amendments made by this subsection [amending this section and sections 402, 403, 404, 415, and 664 of this title] shall apply to years beginning after December 31, 2001."

Amendment by section 641(a)(2)(C), (e)(1) of Pub. L. 107–16 applicable to distributions after Dec. 31, 2001, see section 641(f)(1) of Pub. L. 107–16, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–206, title III, §3436(b), July 22, 1998, 112 Stat. 761, provided that: "The amendments made by this section [amending this section] shall apply to distributions after December 31, 1999."

Amendment by section 6023(3), (4) of Pub. L. 105–206 effective July 22, 1998, see section 6023(32) of Pub. L. 105–206, set out as a note under section 34 of this title.

Amendment by sections 6004(d)(3)(B) and 6005(c)(1) of Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title II, §203(c), Aug. 5, 1997, 111 Stat. 809, provided that: "The amendments made by this section [amending this section] shall apply to distributions after December 31, 1997, with respect to expenses paid after such date (in taxable years ending after such date), for education furnished in academic periods beginning after such date."

Pub. L. 105–34, title III, §303(c), Aug. 5, 1997, 111 Stat. 831, provided that: "The amendments made by this section [amending this section] shall apply to payments and distributions in taxable years beginning after December 31, 1997."

Pub. L. 105–34, title X, §1075(c), Aug. 5, 1997, 111 Stat. 949, provided that: "The amendments made by this section [amending this section] shall apply with respect to annuity starting dates beginning after December 31, 1997."

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–191, title III, §361(d), Aug. 21, 1996, 110 Stat. 2072, provided that: "The amendments made by this section [amending this section] shall apply to distributions after December 31, 1996."

Pub. L. 104–188, title I, §1403(b), Aug. 20, 1996, 110 Stat. 1791, provided that: "The amendment made by this section [amending this section] shall apply in cases where the annuity starting date is after the 90th day after the date of the enactment of this Act [Aug. 20, 1996]."

Pub. L. 104–188, title I, §1421(e), Aug. 20, 1996, 110 Stat. 1800, provided that: "The amendments made by this section [amending this section, sections 219, 280G, 402, 404, 408, 414, 416, 457, 3121, 3306, 3401, 4972,

and 6693 of this title, sections 1021 and 1104 of Title 29, Labor, and section 409 of Title 42, The Public Health and Welfare] shall apply to taxable years beginning after December 31, 1996."

Pub. L. 104–188, title I, §1463(b), Aug. 20, 1996, 110 Stat. 1824, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1996."

Pub. L. 104–188, title I, §1704(l)(2), Aug. 20, 1996, 110 Stat. 1882, provided that: "The amendment made by paragraph (1) [amending this section] shall take effect as if included in the amendments made by section 1122(c) of the Tax Reform Act of 1986 [Pub. L. 99–514]."

EFFECTIVE DATE OF 1992 AMENDMENT

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

EFFECTIVE DATE OF 1989 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 1011A(b)(1)(A), (B), (2), (9), (c)(1)–(8), (h), (i), and 1018(k), (t)(1)(A), (B), and (u)(8) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 5012(a), (b)(1), (d) of Pub. L. 100–647 applicable to contracts entered into on or after June 21, 1988, with special rule where death benefit increases by more than $150,000, certain other material changes taken into account, certain exchanges permitted, and special rule in the case of annuity contracts, see section 5012(e) of Pub. L. 100–647, set out as an Effective Date note under section 7702A of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XI, §1101(c), Oct. 22, 1986, 100 Stat. 2414, provided that: "The amendments made by this section [amending this section and section 219 of this title] shall apply to contributions for taxable years beginning after December 31, 1986."

Amendment by section 1122(c)(1) of Pub. L. 99–514 applicable to individuals whose annuity starting date is after July 1, 1986, amendment by section 1122(c)(2) of Pub. L. 99–514 applicable to individuals whose annuity starting date is after Dec. 31, 1986, and amendment by section 1122(c)(3) of Pub. L. 99–514 applicable to amounts received after July 1, 1986, in the case of any plan not described in section 72(e)(8)(D) of this title, see section 1122(h)(2) of Pub. L. 99–514, set out as a note under section 402 of this title.

Pub. L. 99–514, title XI, §1123(e), Oct. 22, 1986, 100 Stat. 2475, as amended by Pub. L. 100–647, title I, §1011A(c)(11), (12), Nov. 10, 1988, 102 Stat. 3476, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 403 and 408 of this title] shall apply to taxable years beginning after December 31, 1986.

"(2) SUBSECTION (c).—The amendments made by subsection (c) [amending section 403 of this title] shall apply to years beginning after December 31, 1988, but only with respect to distributions from contracts described in section 403(b) of the Internal Revenue Code of 1986 which are attributable to assets other than assets held as of the close of the last year beginning before January 1, 1989.

"(3) EXCEPTION WHERE DISTRIBUTION COMMENCES.—The amendments made by this section shall not apply to distributions to any employee from a plan maintained by any employer if—

"(A) as of March 1, 1986, the employee separated from service with the employer,

"(B) as of March 1, 1986, the accrued benefit of the employee was in pay status pursuant to a written election providing a specific schedule for the distribution of the entire accrued benefit of the employee, and

"(C) such distribution is made pursuant to such written election.

"(4) TRANSITION RULE.—The amendments made by this section shall not apply with respect to any benefits with respect to which a designation is in effect under section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act of 1982 [section 242(b)(2) of Pub. L. 97–248, formerly set out as an Effective Date of 1982 Amendment note under section 401 of this title].

"(5) SPECIAL RULE FOR DISTRIBUTIONS UNDER AN ANNUITY CONTRACT.—The amendments made by paragraphs (1), (2), and (3) of subsection (b) [amending this section] shall not apply to any distribution under an annuity contract if—

"(A) as of March 1, 1986, payments were being made under such contract pursuant to a written election providing a specific schedule for the distribution of the taxpayer's interest in such contract, and

"(B) such distribution is made pursuant to such written election."

Pub. L. 99–514, title XI, §1134(e), Oct. 22, 1986, 100 Stat. 2484, provided that: "The amendments made by this section [amending this section] shall apply to loans made, renewed, renegotiated, modified, or extended after December 31, 1986."

Pub. L. 99–514, title XI, §1135(b), Oct. 22, 1986, 100 Stat. 2485, provided that: "The amendment made by subsection (a) [amending this section] shall apply to contributions to annuity contracts after February 28, 1986."

Amendment by sections 1826(a), (d), 1852(a)(2), (c)(1)–(4), and 1854(b)(1) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Pub. L. 99–514, title XVIII, §1826(b)(4), Oct. 22, 1986, 100 Stat. 2850, provided that: "The amendments made by this subsection [amending this section] shall apply to contracts issued after the date which is 6 months after the date of the enactment of this Act [Oct. 22, 1986] in taxable years ending after such date."

Pub. L. 99–514, title XVIII, §1826(c), Oct. 22, 1986, 100 Stat. 2850, as amended by Pub. L. 100–647, title I, §1018(t)(1)(D), Nov. 10, 1988, 102 Stat. 3587, provided that the amendment made by section 1826(c) of Pub. L. 99–514 is effective with respect to distributions commencing after the date 6 months after Oct. 22, 1986.

Pub. L. 99–514, title XVIII, §1854(b)(6), Oct. 22, 1986, 100 Stat. 2878, provided that: "The amendments made by paragraphs (1) and (2) [amending this section and section 404 of this title] shall not apply to dividends paid before January 1, 1986, if the taxpayer treated such dividends in a manner inconsistent with such amendments on a return filed with the Secretary before the date of the enactment of this Act [Oct. 22, 1986]."

Pub. L. 99–514, title XVIII, §1898(c)(1)(C), Oct. 22, 1986, 100 Stat. 2951, provided that: "The amendments made by this paragraph [amending this section and section 402 of this title] shall apply to payments made after the date of the enactment of this Act [Oct. 22, 1986]."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–397 effective Jan. 1, 1985, except as otherwise provided, see section 303(d) of Pub. L. 98–397, set out as a note under section 1001 of Title 29, Labor.

Amendment by section 211(b)(1) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

Pub. L. 98–369, div. A, title II, §222(c), July 18, 1984, 98 Stat. 774, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided:

"(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to contracts issued after the day which is 6 months after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.

"(2) TRANSITIONAL RULES FOR CONTRACTS ISSUED BEFORE EFFECTIVE DATE.—In the case of any contract (other than a single premium contract) which is issued on or before the day which is 6 months after the date of the enactment of this Act, for purposes of section 72(q)(1)(A) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect on the day before the date of the enactment of this Act), any investment in such contract which is made during any calendar year shall be treated as having been made on January 1 of such calendar year."

Amendment by section 421(b)(1) of Pub. L. 98–369 applicable to transfers after July 18, 1984, in taxable years ending after such date, subject to election to have repeal apply to transfers after 1983 or to transfers pursuant to existing decrees, see section 421(d) of Pub. L. 98–369, set out as an Effective Date note under section 1041 of this title.

Amendment by section 491(d)(3), (4) of Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

Amendment by section 521(d) of Pub. L. 98–369 applicable to years beginning after Dec. 31, 1984, see section 521(e) of Pub. L. 98–369, set out as a note under section 401 of this title.

Pub. L. 98–369, div. A, title V, §523(c), July 18, 1984, 98 Stat. 872, provided that: "The amendments made by this section [amending this section] shall apply to any amount received or loan made after the 90th day after the date of enactment of this Act [July 18, 1984]."

Amendment by section 713(b)(1), (4), (c)(1)(A), (B) of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment

relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

Pub. L. 98–369, div. A, title VII, §713(d)(1), July 18, 1984, 98 Stat. 957, as amended by Pub. L. 99–514, title XVIII, §1875(c)(5), Oct. 22, 1986, 100 Stat. 2895, provided that the amendment made by section 713(d)(1) of Pub. L. 98–369 is effective with respect to contributions made in taxable years beginning after Dec. 31, 1983.

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 98–76, title II, §227(b), Aug. 12, 1983, 97 Stat. 426, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by section 224 [enacting section 6050G of this title, amending this section and section 86 of this title, and enacting provisions set out as a note under section 231n of Title 45, Railroads] shall apply to benefits received after December 31, 1983, in taxable years ending after such date.

"(2) TREATMENT OF CERTAIN LUMP-SUM PAYMENTS RECEIVED AFTER DECEMBER 31, 1983 .—The amendments made by section 224 shall not apply to any portion of a lump-sum payment received after December 31, 1983, if the generally applicable payment date for such portion was before January 1, 1984.

"(3) NO FRESH START.—For purposes of determining whether any benefit received after December 31, 1983, is includible in gross income by reason of section 72(r) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as added by this Act, the amendments made by section 224 be treated as having been in effect during all periods before 1984."

Pub. L. 97–448, title I, §103(c)(3)(B)(ii), Jan. 12, 1983, 96 Stat. 2376, provided that: "The amendment made by clause (i) [amending this section] shall take effect as if the matter struck out had never been included in such paragraph."

Amendment by title I of Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title II, §236(c), Sept. 3, 1982, 96 Stat. 510, as amended by Pub. L. 97–448, title III, §306(a)(11), Jan. 12, 1983, 96 Stat. 2404; Pub. L. 98–369, div. A, title V, §554, title VII, §713(b)(2), July 18, 1984, 98 Stat. 897, 957; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to loans, assignments, and pledges made after August 13, 1982. For purposes of the preceding sentence, the outstanding balance of any loan which is renegotiated, extended, renewed, or revised after such date shall be treated as an amount received as a loan on the date of such renegotiation, extension, renewal, or revision.

"(2) EXCEPTION FOR CERTAIN LOANS USED TO REPAY OUTSTANDING OBLIGATIONS.—

"(A) IN GENERAL.—Any qualified refunding loan shall not be treated as a distribution by reason of the amendments made by this section to the extent such loan is repaid before August 14, 1983.

"(B) QUALIFIED REFUNDING LOAN.—For purposes of subparagraph (A), the term 'qualified refunding loan' means any loan made after August 13, 1982, and before August 14, 1983, to the extent such loan is used to make a required principal payment.

"(C) REQUIRED PRINCIPAL PAYMENT.—For purposes of subparagraph (B), the term 'required principal payment' means any principal repayment on a loan made under the plan which was outstanding on August 13, 1982, if such repayment is required to be made after August 13, 1982, and before August 14, 1983 or if such loan was payable on demand.

"(D) SPECIAL RULE FOR NON-KEY EMPLOYEES.—In the case of a non-key employee (within the meaning of section 416(i)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]), this paragraph shall be applied by substituting 'January 1, 1985' for 'August 14, 1983' each place it appears.

"(3) TREATMENT OF CERTAIN RENEGOTIATIONS.—If—

"(A) the taxpayer after August 13, 1982, and before September 4, 1982, borrows money from a government plan (as defined in section 219(e)(4) of the Internal Revenue Code of 1986),

"(B) under the applicable State law, such loan requires the renegotiation of all outstanding prior loans made to the taxpayer under such plan, and

"(C) the renegotiation described in subparagraph (B) does not change the interest rate on, or extend the duration of, any such outstanding prior loan,

then the renegotiation described in subparagraph (B) shall not be treated as a renegotiation, extension, renewal, or revision for purposes of paragraph (1). If the renegotiation described in subparagraph (B) does not

meet the requirements of subparagraph (C) solely because it extends the duration of any such outstanding prior loan, the requirements of subparagraph (C) shall be treated as met with respect to such renegotiation if, before April 1, 1983, such extension is eliminated."

Pub. L. 97–248, title II, §265(c), Sept. 3, 1982, 96 Stat. 547, provided that:

"(1) SUBSECTION (a).—The amendments made by subsection (a) [amending this section] shall take effect on August 13, 1982.

"(2) SUBSECTION (b).—The amendments made by subsection (b) [amending this section and sections 46, 50A, 53, 901, 1302, and 1304 of this title] shall apply to distributions after December 31, 1982."

Amendment by section 237(d) of Pub. L. 97–248 applicable to years beginning after Dec. 31, 1983, see section 241 of Pub. L. 97–248, set out as an Effective Date note under section 416 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title III, §312(f), Aug. 13, 1981, 95 Stat. 285, as amended by Pub. L. 97–448, title I, §103(d)(3), 96 Stat. 2378, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 219, 401, 404, 408, 1379, and 4972 of this title] shall apply to taxable years beginning after December 31, 1981.

"(2) TRANSITIONAL RULE.—The amendments made by subsection (d) [amending this section] shall not apply to any loan from a plan to a self-employed individual who is an employee within the meaning of section 401(c)(1) which is outstanding on December 31, 1981. For purposes of the preceding sentence, any loan which is renegotiated, extended, renewed, or revised after such date shall be treated as a new loan."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(12), (13) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Pub. L. 94–455, title XIX, §1951(d), Oct. 4, 1976, 90 Stat. 1841, provided that: "Except as otherwise expressly provided, the amendments made by this section [see Tables for classification of section 1951 of Pub. L. 94–455] shall apply with respect to taxable years beginning after December 31, 1976."

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by section 2001(e)(5) of Pub. L. 93–406 applicable to contributions made in taxable years beginning after Dec. 31, 1975, see section 2001(i)(4) of Pub. L. 93–406, set out as a note under section 401 of this title.

Pub. L. 93–406, title II, §2001(i)(5), (6), Sept. 2, 1974, 88 Stat. 958, provided that:

"(5) The amendments made by subsection (g) [amending this section and sections 46, 50A, 56, 404, and 901 of this title] apply to distributions made in taxable years beginning after December 31, 1975.

"(6) The amendments made by subsection (h) [amending this section and section 401 of this title] apply to taxable years ending after the date of enactment of this Act [Sept. 2, 1974]."

Amendment by section 2002(g)(10) of Pub. L. 93–406 effective on Jan. 1, 1975, see section 2002(i)(2) of Pub. L. 93–406, set out as an Effective Date note under section 4973 of this title.

Amendment by section 2005(c)(3) of Pub. L. 93–406, applicable only with respect to distributions or payments made after Dec. 31, 1973, in taxable years beginning after Dec. 31, 1973, see section 2005(d) of Pub. L. 93–406, set out as a note under section 402 of this title.

Amendment by section 2007(b)(2) of Pub. L. 93–406 applicable to taxable years ending on or after Sept. 21, 1972, see section 2007(c) of Pub. L. 93–406, set out as a note under section 122 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years ending after Dec. 31, 1969, see section 515(d) of Pub. L. 91–172, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–365 applicable with respect to taxable years ending after Dec. 31, 1965, see section 1(d) of Pub. L. 89–365, set out as an Effective Date note under section 122 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–97 applicable to taxable years beginning after Dec. 31, 1966, see section 106(e) of Pub. L. 89–97, set out as a note under section 213 of this title.

Amendment by Pub. L. 89–44 applicable to taxable years beginning on or after July 1, 1965, see section

809(f) of Pub. L. 89–44, set out as a note under section 6420 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 232(g) of Pub. L. 88–272, set out as a note under section 5 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87–834, §11(c)(2), Oct. 16, 1962, 76 Stat. 1006, provided that: "The amendment made by subsection (b) [amending this section] shall apply to taxable years ending after December 31, 1962."

Amendment by Pub. L. 87–792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87–792, set out as a note under section 22 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

Pub. L. 94–455, title XIX, §1951(b)(1)(B), Oct. 4, 1976, 90 Stat. 1836, provided that: "Notwithstanding subparagraph (A) [repealing subsec. (i) of this section], if the provisions of section 72(i) applied to amounts received in taxable years beginning before January 1, 1977, under an annuity contract, then amounts received under such contract on or after such date shall be treated as if such provisions were not repealed."

APPLICABILITY OF SUBSECTION (T)

Pub. L. 100–647, title I, §1011A(c)(13), Nov. 10, 1988, 102 Stat. 3476, provided that: "Section 72(t) of the 1986 Code shall apply to any distribution without regard to whether such distribution is made without the consent of the participant pursuant to section 411(a)(11) or section 417(e) of the 1986 Code."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

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

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

DEFINITION OF TERMS USED IN TITLE I OF PUB. L. 110–458

Pub. L. 110–458, title I, §100, Dec. 23, 2008, 122 Stat. 5093, provided that: "For purposes of this title [see Tables for classification]:

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

"(2) AMENDMENT OF ERISA.—The term 'ERISA' means the Employee Retirement Income Security Act of 1974 [Pub. L. 93–406; see Short Title note under section 1001 of Title 29, Labor].

"(3) 2006 ACT.—The term '2006 Act' means the Pension Protection Act of 2006 [Pub. L. 109–280; see Short Title of 2006 Amendment note under section 1001 of Title 29, Labor]."

[1] So in original. Probably should be paragraph "(2)(B)".

[2] So in original. The word "or" probably should not appear.

[3] *So in original. Probably should refer to section 8336a.*

[4] *See References in Text note below.*

§73. Services of child

(a) Treatment of amounts received

Amounts received in respect of the services of a child shall be included in his gross income and not in the gross income of the parent, even though such amounts are not received by the child.

(b) Treatment of expenditures

All expenditures by the parent or the child attributable to amounts which are includible in the gross income of the child (and not of the parent) solely by reason of subsection (a) shall be treated as paid or incurred by the child.

(c) Parent defined

For purposes of this section, the term "parent" includes an individual who is entitled to the services of a child by reason of having parental rights and duties in respect of the child.

(d) Cross reference

For assessment of tax against parent in certain cases, see section 6201(c).

(Aug. 16, 1954, ch. 736, 68A Stat. 24.)

§74. Prizes and awards

(a) General rule

Except as otherwise provided in this section or in section 117 (relating to qualified scholarships), gross income includes amounts received as prizes and awards.

(b) Exception for certain prizes and awards transferred to charities

Gross income does not include amounts received as prizes and awards made primarily in recognition of religious, charitable, scientific, educational, artistic, literary, or civic achievement, but only if—

(1) the recipient was selected without any action on his part to enter the contest or proceeding;

(2) the recipient is not required to render substantial future services as a condition to receiving the prize or award; and

(3) the prize or award is transferred by the payor to a governmental unit or organization described in paragraph (1) or (2) of section 170(c) pursuant to a designation made by the recipient.

(c) Exception for certain employee achievement awards

(1) In general

Gross income shall not include the value of an employee achievement award (as defined in section 274(j)) received by the taxpayer if the cost to the employer of the employee achievement award does not exceed the amount allowable as a deduction to the employer for the cost of the employee achievement award.

(2) Excess deduction award

If the cost to the employer of the employee achievement award received by the taxpayer exceeds the amount allowable as a deduction to the employer, then gross income includes the greater of—

(A) an amount equal to the portion of the cost to the employer of the award that is not allowable as a deduction to the employer (but not in excess of the value of the award), or

(B) the amount by which the value of the award exceeds the amount allowable as a deduction

to the employer.

The remaining portion of the value of such award shall not be included in the gross income of the recipient.

(3) Treatment of tax-exempt employers

In the case of an employer exempt from taxation under this subtitle, any reference in this subsection to the amount allowable as a deduction to the employer shall be treated as a reference to the amount which would be allowable as a deduction to the employer if the employer were not exempt from taxation under this subtitle.

(4) Cross reference

For provisions excluding certain de minimis fringes from gross income, see section 132(e).

(Aug. 16, 1954, ch. 736, 68A Stat. 24; Pub. L. 99–514, title I, §§122(a)(1), 123(b)(1), Oct. 22, 1986, 100 Stat. 2109, 2113.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–514, §123(b)(1), which directed that subsec. (a) be amended by substituting "(relating to qualified scholarships)" for "(relating to scholarship and fellowship grants)", was executed by making the substitution for "(relating to scholarships and fellowship grants)" to reflect the probable intent of Congress.

Pub. L. 99–514, §122(a)(1)(A), substituted "Except as otherwise provided in this section or" for "Except as provided in subsection (b) and".

Subsec. (b). Pub. L. 99–514, §122(a)(1)(B), (C), inserted "for certain prizes and awards transferred to charities" in heading and added par. (3).

Subsec. (c). Pub. L. 99–514, §122(a)(1)(D), added subsec. (c).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 122(a)(1) of Pub. L. 99–514 applicable to prizes and awards granted after Dec. 31, 1986, see section 151(c) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 123(b)(1) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, but only in the case of scholarships and fellowships granted after Aug. 16, 1986, see section 151(d) of Pub. L. 99–514, set out as a note under section 1 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUBLIC LAW 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendment by section 123(b)(1) of Pub. L. 99–514 to the extent application of such amendment would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, see section 1012(aa)(3) of Pub. L. 100–647, set out as a note under section 861 of this title.

§75. Dealers in tax-exempt securities

(a) Adjustment for bond premium

In computing the gross income of a taxpayer who holds during the taxable year a short-term municipal bond (as defined in subsection (b)(1) primarily for sale to customers in the ordinary course of his trade or business—

(1) if the gross income of the taxpayer from such trade or business is computed by the use of inventories and his inventories are valued on any basis other than cost, the cost of securities sold (as defined in subsection (b)(2) during such year shall be reduced by an amount equal to the amortizable bond premium which would be disallowed as a deduction for such year by section 171(a)(2) (relating to deduction for amortizable bond premium) if the definition in section 171(d) of the term "bond" did not exclude such municipal bond; or

(2) if the gross income of the taxpayer from such trade or business is computed without the use of inventories, or by use of inventories valued at cost, and the municipal bond is sold or otherwise disposed of during such year, the adjusted basis (computed without regard to this paragraph) of the

municipal bond shall be reduced by the amount of the adjustment which would be required under section 1016(a)(5) (relating to adjustment to basis for amortizable bond premium) if the definition in section 171(d) of the term "bond" did not exclude such municipal bond.

Notwithstanding the provisions of paragraph (1), no reduction to the cost of securities sold during the taxable year shall be made in respect of any obligation described in subsection (b)(1)(A)(ii) which is held by the taxpayer at the close of the taxable year; but in the taxable year in which any such obligation is sold or otherwise disposed of, if such obligation is a municipal bond (as defined in subsection (b)(1)), the cost of securities sold during such year shall be reduced by an amount equal to the adjustment described in paragraph (2), without regard to the fact that the taxpayer values his inventories on any basis other than cost.

(b) Definitions

For purposes of subsection (a)—

(1) The term "municipal bond" means any obligation issued by a government or political subdivision thereof if the interest on such obligation is excludable from gross income; but such term does not include such an obligation if—

(A)(i) it is sold or otherwise disposed of by the taxpayer within 30 days after the date of its acquisition by him, or

(ii) its earliest maturity or call date is a date more than 5 years from the date on which it was acquired by the taxpayer; and

(B) when it is sold or otherwise disposed of by the taxpayer—

(i) in the case of a sale, the amount realized, or

(ii) in the case of any other disposition, its fair market value at the time of such disposition,

is higher than its adjusted basis (computed without regard to this section and section 1016(a)(6)).

Determinations under subparagraph (B) shall be exclusive of interest.

(2) The term "cost of securities sold" means the amount ascertained by subtracting the inventory value of the closing inventory of a taxable year from the sum of—

(A) the inventory value of the opening inventory for such year, and

(B) the cost of securities and other property purchased during such year which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year.

(Aug. 16, 1954, ch. 736, 68A Stat. 25; Pub. L. 85–866, title I, §2(a), Sept. 2, 1958, 72 Stat. 1606.)

AMENDMENTS

1958—Subsec. (a). Pub. L. 85–866, §2(a)(2), (3), struck out "short-term" each place it appeared, and inserted sentence to provide that no reduction to cost of securities sold during taxable year shall be made in respect of subsec. (b)(1)(A)(ii) obligations held at close of year, and to permit reduction in cost of securities sold in taxable year sold if obligation is municipal bond.

Subsec. (b)(1). Pub. L. 85–866, §2(a)(1), substituted "municipal bond" for "short-term municipal bond", designated former subpars. (A) and (B) as (A)(i) and (ii), respectively, and added subpar. (B).

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85–866, §2(c), Sept. 2, 1958, 72 Stat. 1607, provided that: "The amendments made by subsections (a) and (b) [amending this section and section 1016 of this title] shall apply with respect to taxable years ending after December 31, 1957, but only with respect to obligations acquired after such date."

[§76. Repealed. Pub. L. 94–455, title XIX, §1901(a)(14), Oct. 4, 1976, 90 Stat. 1765]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 25, related to inclusion in gross of all income derived from mortgages made, or obligations issued, by a joint-stock land bank.

§77. Commodity credit loans

(a) Election to include loans in income

Amounts received as loans from the Commodity Credit Corporation shall, at the election of the taxpayer, be considered as income and shall be included in gross income for the taxable year in which received.

(b) Effect of election on adjustments for subsequent years

If a taxpayer exercises the election provided for in subsection (a) for any taxable year, then the method of computing income so adopted shall be adhered to with respect to all subsequent taxable years unless with the approval of the Secretary a change to a different method is authorized.

(Aug. 16, 1954, ch. 736, 68A Stat. 25; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsec. (b). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

§78. Dividends received from certain foreign corporations by domestic corporations choosing foreign tax credit

If a domestic corporation chooses to have the benefits of subpart A of part III of subchapter N (relating to foreign tax credit) for any taxable year, an amount equal to the taxes deemed to be paid by such corporation under section 902(a) (relating to credit for corporate stockholder in foreign corporation) or under section 960(a)(1) (relating to taxes paid by foreign corporation) for such taxable year shall be treated for purposes of this title (other than section 245) as a dividend received by such domestic corporation from the foreign corporation.

(Added Pub. L. 87–834, §9(b), Oct. 16, 1962, 76 Stat. 1001; amended Pub. L. 94–455, title X, §1033(b)(1), Oct. 4, 1976, 90 Stat. 1628.)

AMENDMENTS

1976—Pub. L. 94–455 substituted "section 902(a)" for "section 902(a)(1)" and "section 960(a)(1)" for "section 960(a)(1)(C)".

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable on different dates depending on the date the distributions were received, see section 1033(c) of Pub. L. 94–455, set out as a note under section 902 of this title.

EFFECTIVE DATE

Section applicable in respect of any distribution received by a domestic corporation after Dec. 31, 1964, and in respect of any distribution received by a domestic corporation before Jan. 1, 1965, in a taxable year of such corporation beginning after Dec. 31, 1962, but only to the extent that such distribution is made out of the accumulated profits of a foreign corporation for a taxable year (of such foreign corporation) beginning after Dec. 31, 1962, see section 9(e) of Pub. L. 87–834, set out as an Effective Date of 1962 Amendment note under section 902 of this title.

§79. Group-term life insurance purchased for employees

(a) General rule

There shall be included in the gross income of an employee for the taxable year an amount equal to the cost of group-term life insurance on his life provided for part or all of such year under a policy (or policies) carried directly or indirectly by his employer (or employers); but only to the extent that such cost exceeds the sum of—

(1) the cost of $50,000 of such insurance, and
(2) the amount (if any) paid by the employee toward the purchase of such insurance.

(b) Exceptions

Subsection (a) shall not apply to—

(1) the cost of group-term life insurance on the life of an individual which is provided under a policy carried directly or indirectly by an employer after such individual has terminated his employment with such employer and is disabled (within the meaning of section 72(m)(7)),

(2) the cost of any portion of the group-term life insurance on the life of an employee provided during part or all of the taxable year of the employee under which—

(A) the employer is directly or indirectly the beneficiary, or
(B) a person described in section 170(c) is the sole beneficiary,

for the entire period during such taxable year for which the employee receives such insurance, and

(3) the cost of any group-term life insurance which is provided under a contract to which section 72(m)(3) applies.

(c) Determination of cost of insurance

For purposes of this section and section 6052, the cost of group-term insurance on the life of an employee provided during any period shall be determined on the basis of uniform premiums (computed on the basis of 5-year age brackets) prescribed by regulations by the Secretary.

(d) Nondiscrimination requirements

(1) In general

In the case of a discriminatory group-term life insurance plan—

(A) subsection (a)(1) shall not apply with respect to any key employee, and

(B) the cost of group-term life insurance on the life of any key employee shall be the greater of—

(i) such cost determined without regard to subsection (c), or
(ii) such cost determined with regard to subsection (c).

(2) Discriminatory group-term life insurance plan

For purposes of this subsection, the term "discriminatory group-term life insurance plan" means any plan of an employer for providing group-term life insurance unless—

(A) the plan does not discriminate in favor of key employees as to eligibility to participate, and

(B) the type and amount of benefits available under the plan do not discriminate in favor of participants who are key employees.

(3) Nondiscriminatory eligibility classification

(A) In general

A plan does not meet requirements of subparagraph (A) of paragraph (2) unless—

(i) such plan benefits 70 percent or more of all employees of the employer,

(ii) at least 85 percent of all employees who are participants under the plan are not key employees,

(iii) such plan benefits such employees as qualify under a classification set up by the employer and found by the Secretary not to be discriminatory in favor of key employees, or

(iv) in the case of a plan which is part of a cafeteria plan, the requirements of section 125 are met.

(B) Exclusion of certain employees

For purposes of subparagraph (A), there may be excluded from consideration—

(i) employees who have not completed 3 years of service;
(ii) part-time or seasonal employees;
(iii) employees not included in the plan who are included in a unit of employees covered

by an agreement between employee representatives and one or more employers which the Secretary finds to be a collective bargaining agreement, if the benefits provided under the plan were the subject of good faith bargaining between such employee representatives and such employer or employers; and

(iv) employees who are nonresident aliens and who receive no earned income (within the meaning of section 911(d)(2)) from the employer which constitutes income from sources within the United States (within the meaning of section 861(a)(3)).

(4) Nondiscriminatory benefits

A plan does not meet the requirements of paragraph (2)(B) unless all benefits available to participants who are key employees are available to all other participants.

(5) Special rule

A plan shall not fail to meet the requirements of paragraph (2)(B) merely because the amount of life insurance on behalf of the employees under the plan bears a uniform relationship to the total compensation or the basic or regular rate of compensation of such employees.

(6) Key employee defined

For purposes of this subsection, the term "key employee" has the meaning given to such term by paragraph (1) of section 416(i). Such term also includes any former employee if such employee when he retired or separated from service was a key employee.

(7) Exemption for church plans

(A) In general

This subsection shall not apply to a church plan maintained for church employees.

(B) Definitions

For purposes of subparagraph (A), the terms "church plan" and "church employee" have the meaning given such terms by paragraphs (1) and (3)(B) of section 414(e), respectively, except that—

(i) section 414(e) shall be applied by substituting "section 501(c)(3)" for "section 501" each place it appears, and

(ii) the term "church employee" shall not include an employee of—

(I) an organization described in section 170(b)(1)(A)(ii) above the secondary school level (other than a school for religious training),

(II) an organization described in section 170(b)(1)(A)(iii), and

(III) an organization described in section 501(c)(3), the basis of the exemption for which is substantially similar to the basis for exemption of an organization described in subclause (II).

(8) Treatment of former employees

To the extent provided in regulations, this subsection shall be applied separately with respect to former employees.

(e) Employee includes former employee

For purposes of this section, the term "employee" includes a former employee.

(f) Exception for life insurance purchased in connection with qualified transfer of excess pension assets

Subsection (b)(3) and section 72(m)(3) shall not apply in the case of any cost paid (whether directly or indirectly) with assets held in an applicable life insurance account (as defined in section 420(e)(4)) under a defined benefit plan.

(Added Pub. L. 88–272, title II, §204(a)(1), Feb. 26, 1964, 78 Stat. 36; amended Pub. L. 89–97, title I, §106(d)(3), July 30, 1965, 79 Stat. 337; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–248, title II, §244(a), Sept. 3, 1982, 96 Stat. 523; Pub. L. 98–369, div. A, title II, §223(a), (b), July 18, 1984, 98 Stat. 775; Pub. L. 99–514, title XI, §1151(c)(1), title XVIII,

§1827(a)(1), (c), (d), Oct. 22, 1986, 100 Stat. 2503, 2850, 2851; Pub. L. 100–647, title V, §5013(a), Nov. 10, 1988, 102 Stat. 3666; Pub. L. 101–140, title II, §203(a)(1), (b)(1)(A), Nov. 8, 1989, 103 Stat. 830, 831; Pub. L. 101–508, title XI, §11703(e)(1), Nov. 5, 1990, 104 Stat. 1388–517; Pub. L. 112–141, div. D, title II, §40242(d), July 6, 2012, 126 Stat. 861.)

AMENDMENTS

2012—Subsec. (f). Pub. L. 112–141 added subsec. (f).

1990—Subsec. (d)(6). Pub. L. 101–508 substituted "any former employee" for "any retired employee".

1989—Subsec. (d). Pub. L. 101–140, §203(a)(1), amended subsec. (d) to read as if amendments by Pub. L. 99–514, §1151(c)(1), had not been enacted, see 1986 Amendment note below.

Subsec. (d)(7). Pub. L. 101–140, §203(b)(1)(A), amended par. (7) generally. Prior to amendment, par. (7) read as follows: "All employees who are treated as employed by a single employer under subsection (b), (c), or (m) of section 414 shall be treated as employed by a single employer for purposes of this section."

1988—Subsec. (c). Pub. L. 100–647 struck out at end "In the case of an employee who has attained age 64, the cost prescribed shall not exceed the cost with respect to such individual if he were age 63."

1986—Subsec. (d). Pub. L. 99–514, §1151(c)(1), amended subsec. (d) generally, substituting "In the case of a group-term life insurance plan which is a discriminatory employee benefit plan, subsection (a)(1) shall apply only to the extent provided in section 89." for provisions formerly designated as pars. (1)(A) and (B) that in the case of a discriminatory group-term life insurance plan subsec. (a)(1) shall not apply with respect to any key employee and the cost of group-term life insurance on the life of any key employee shall be determined without regard to subsec. (c), and striking out pars. (2) to (7) relating to classifications and eligibility classifications of nondiscriminatory plans.

Subsec. (d)(1)(B). Pub. L. 99–514, §1827(a)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "the cost of group-term life insurance on the life of any key employee shall be determined without regard to subsection (c)."

Subsec. (d)(6). Pub. L. 99–514, §1827(c), struck out ", except that subparagraph (A)(iv) of such paragraph shall be applied by not taking into account employees described in paragraph (3)(B) who are not participants in the plan" from first sentence and inserted provision that such term also includes any retired employee if such employee when he retired or separated from service was a key employee.

Subsec. (d)(8). Pub. L. 99–514, §1827(d), added par. (8).

1984—Subsec. (b)(1). Pub. L. 98–369, §223(a)(2), struck out "either has reached the retirement age with respect to such employer or" before "is disabled".

Subsec. (d)(1). Pub. L. 98–369, §223(b), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (e). Pub. L. 98–369, §223(a)(1), added subsec. (e).

1982—Subsec. (d). Pub. L. 97–248 added subsec. (d).

1976—Subsec. (c). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

1965—Subsec. (b)(1). Pub. L. 89–97 substituted "section 72(m)(7)" for "paragraph (3) of section 213(g), determined without regard to paragraph (4) thereof".

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112–141 applicable to transfers made after July 6, 2012, see section 40242(h) of Pub. L. 112–141, set out as a note under section 420 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, §11703(e)(2), Nov. 5, 1990, 104 Stat. 1388–517, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to employees separating from service after the date of the enactment of this Act [Nov. 5, 1990]."

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–140, title II, §203(c), Nov. 8, 1989, 103 Stat. 832, provided that: "The amendments made by this section [amending this section and sections 105, 117, 120, 125, 127, 129, 132, 162, 401, 414, 505, 3121, 3231, 3306, 3401, 4976, and 6652 of this title, section 409 of title 42, The Public Health and Welfare, and provisions set out as notes under sections 89 and 3121 of this title] shall take effect as if included in section 1151 of the Tax Reform Act of 1986 [Pub. L. 99–514, see section 1151(k) set out below]."

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title V, §5013(b), Nov. 10, 1988, 102 Stat. 3666, provided that: "The amendment made by

subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1988."

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XI, §1151(k), Oct. 22, 1986, 100 Stat. 2508, as amended by Pub. L. 100–647, title I, §1011B(a)(25), (26), Nov. 10, 1988, 102 Stat. 3486, provided that:

"(1) IN GENERAL.—The amendments made by this section [enacting section 89 of this title and amending this section and sections 105, 106, 117, 120, 125, 127, 129, 132, 414, 505, 6039D, and 6652 of this title] shall apply to years beginning after the later of—

"(A) December 31, 1987, or

"(B) the earlier of—

"(i) the date which is 3 months after the date on which the Secretary of the Treasury or his delegate issues such regulations as are necessary to carry out the provisions of section 89 of the Internal Revenue Code of 1986 (as added by this section), or

"(ii) December 31, 1988.

Notwithstanding the preceding sentence, the amendments made by subsections (e)(1) and (i)(3)(C) [amending section 414 of this title] shall, to the extent they relate to sections 106, 162(i)(2), and 162(k) of the Internal Revenue Code of 1986, apply to years beginning after 1986.

"(2) SPECIAL RULE FOR COLLECTIVE BARGAINING PLAN.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this section [enacting section 89 of this title and amending this section and sections 105, 106, 117, 120, 125, 127, 129, 132, 414, 505, 6039D, and 6652 of this title] shall not apply to employees covered by such an agreement in years beginning before the earlier of—

"(A) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986), or

"(B) January 1, 1991.

A plan shall not be required to take into account employees to which the preceding sentence applies for purposes of applying section 89 of the Internal Revenue Code of 1986 (as added by this section) to employees to which the preceding sentence does not apply for any year preceding the year described in the preceding sentence.

"(3) EXCEPTION FOR CERTAIN GROUP-TERM INSURANCE PLANS.—In the case of a plan described in section 223(d)(2) of the Tax Reform Act of 1984 [section 232(d)(2) of Pub. L. 98–369, set out as an Effective Date of 1984 Amendment note below], such plan shall be treated as meeting the requirements of section 89 of the Internal Revenue Code of 1986 (as added by this section) with respect to individuals described in section 223(d)(2) of such Act. An employer may elect to disregard such individuals in applying section 89 of such Code (as so added) to other employees of the employer.

"(4) SPECIAL RULE FOR CHURCH PLANS.—In the case of a church plan (within the meaning of section 414(e)(3) of the Internal Revenue Code of 1986) maintaining an insured accident and health plan, the amendments made by this section [enacting section 89 of this title and amending this section and sections 105, 106, 117, 120, 125, 127, 129, 132, 414, 505, 6039D, and 6652 of this title] shall apply to years beginning after December 31, 1988.

"(5) CAFETERIA PLANS.—The amendments made by subsection (d)(2) [amending sections 3121 and 3306 of this title and section 409 of Title 42, The Public Health and Welfare] shall apply to taxable years beginning after December 31, 1983.

"(6) CERTAIN PLANS MAINTAINED BY EDUCATIONAL INSTITUTIONS.—If an educational organization described in section 170(b)(1)(A)(ii) of the Internal Revenue Code of 1986 makes an election under this paragraph with respect to a plan described in section 125(c)(2)(C) of such Code, the amendments made by this section shall apply with respect to such plan for plan years beginning after the date of the enactment of this Act [Oct. 22, 1986]."

Pub. L. 99–514, title XVIII, §1827(a)(2), Oct. 22, 1986, 100 Stat. 2850, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Oct. 22, 1986]."

Amendment by section 1827(c), (d) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title II, §223(d), July 18, 1984, 98 Stat. 775, as amended by Pub. L. 99–514, §2, title XVIII, §1827(b), Oct. 22, 1986, 100 Stat. 2095, 2850, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 83 of this title] shall apply to taxable years beginning after December 31, 1983.

"(2) INCLUSION OF FORMER EMPLOYEES IN THE CASE OF EXISTING GROUP-TERM INSURANCE PLANS.—

"(A) IN GENERAL.—The amendments made by subsection (a) [amending this section] shall not apply—

"(i) to any group-term life insurance plan of the employer in existence on January 1, 1984, or

"(ii) to any group-term life insurance plan of the employer (or a successor employer) which is a comparable successor to a plan described in clause (i),

but only with respect to an individual who attained age 55 on or before January 1, 1984, and was employed by such employer (or a predecessor employer) at any time during 1983. Such amendments also shall not apply to any employee who retired from employment on or before January 1, 1984, and who, when he retired, was covered by the plan (or a predecessor plan).

"(B) SPECIAL RULE IN THE CASE OF DISCRIMINATORY GROUP-TERM LIFE INSURANCE PLAN.—In the case of any plan which, after December 31, 1986, is a discriminatory group-term life insurance plan (as defined in section 79(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]), subparagraph (A) shall not apply in the case of any individual retiring under such plan after December 31, 1986.

"(C) BENEFITS TO CERTAIN RETIRED INDIVIDUALS NOT TAKEN INTO ACCOUNT FOR PURPOSES OF DETERMINING WHETHER PLAN IS DISCRIMINATORY.—For purposes of determining whether a plan described in subparagraph (A) meets the requirements of section 79(d) of the Internal Revenue Code of 1986 with respect to group-term life insurance for former employees, coverage provided to employees who retired on or before December 31, 1986, may, at the employer's election, be disregarded.

"(D) COMPARABLE SUCCESSOR PLANS.—For purposes of subparagraph (A), a plan shall not fail to be treated as a comparable successor to a plan described in subparagraph (A)(i) with respect to any employee whose benefits do not increase under the successor plan."

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title II, §244(b), Sept. 3, 1982, 96 Stat. 524, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1983."

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–97 applicable to taxable years beginning after Dec. 31, 1966, see section 106(e) of Pub. L. 89–97, set out as a note under section 213 of this title.

EFFECTIVE DATE

Pub. L. 88–272, title II, §204(d), Feb. 26, 1964, 78 Stat. 37, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by subsections (a) [amending this section and section 7701 of this title] and (c) [amending sections 6052 and 6678 of this title] and paragraph (3) of section 6652(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by section 221(b)(2) of this Act), shall apply with respect to group-term life insurance provided after December 31, 1963, in taxable years ending after such date. The amendments made by subsection (b) [amending section 3401 of this title] shall apply with respect to remuneration paid after December 31, 1963, in the form of group-term life insurance provided after such date. In applying section 79(b) of the Internal Revenue Code of 1986 (as added by subsection (a)(1) of this section) to a taxable year beginning before May 1, 1964, if paragraph (2)(B) of such section applies with respect to an employee for the period beginning May 1, 1964, and ending with the close of his first taxable year ending after April 30, 1964, such paragraph (2)(B) shall be treated as applying with respect to such employee for the period beginning January 1, 1964, and ending April 30, 1964."

NONENFORCEMENT OF AMENDMENT MADE BY SECTION 1151 OF PUB. L. 99–514 FOR FISCAL YEAR 1990

No monies appropriated by Pub. L. 101–136 to be used to implement or enforce section 1151 of Pub. L. 99–514 or the amendments made by such section, see section 528 of Pub. L. 101–136, set out as a note under section 89 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147

and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§80. Restoration of value of certain securities

(a) General rule

In the case of a domestic corporation subject to the tax imposed by section 11 or 801, if the value of any security (as defined in section 165(g)(2))—

(1) which became worthless by reason of the expropriation, intervention, seizure, or similar taking by the government of any foreign country, any political subdivision thereof, or any agency or instrumentality of the foregoing of property to which such security was related, and

(2) which was taken into account as a loss from the sale or exchange of a capital asset or with respect to which a deduction for a loss was allowed under section 165,

is restored in whole or in part during any taxable year by reason of any recovery of money or other property in respect of the property to which such security was related, the value so restored (to the extent that, when added to the value so restored during prior taxable years, it does not exceed the amount of the loss described in paragraph (2)) shall, except as provided in subsection (b), be included in gross income for the taxable year in which such restoration occurs.

(b) Reduction for failure to receive tax benefit

The amount otherwise includible in gross income under subsection (a) in respect of any security shall be reduced by an amount equal to the amount (if any) of the loss described in subsection (a)(2) which did not result in a reduction of the taxpayer's tax under this subtitle for any taxable year, determined under regulations prescribed by the Secretary.

(c) Character of income

For purposes of this subtitle—

(1) Except as provided in paragraph (2), the amount included in gross income under this section shall be treated as ordinary income.

(2) If the loss described in subsection (a)(2) was taken into account as a loss from the sale or exchange of a capital asset, the amount included in gross income under this section shall be treated as long-term capital gain.

(d) Treatment under foreign expropriation loss recovery provisions

This section shall not apply to any recovery of a foreign expropriation loss to which section 1351 applies.

(Added Pub. L. 89–384, §1(b)(1), Apr. 8, 1966, 80 Stat. 101; amended Pub. L. 94–455, title XIX, §§1901(b)(3)(K), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1793, 1834; Pub. L. 98–369, div. A, title II, §211(b)(2), July 18, 1984, 98 Stat. 754.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–369 substituted "801" for "802".

1976—Subsec. (b). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (c)(1). Pub. L. 94–455, §1901(b)(3)(K), substituted "ordinary income" for "gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(b)(3)(K) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE

Pub. L. 89–384, §1(b)(3), Apr. 8, 1966, 80 Stat. 102, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by this subsection [enacting this section] shall apply to taxable years beginning after December 31, 1965, but only with respect to losses described in section 80(a)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by paragraph (1) of this subsection) which were sustained after December 31, 1958."

[§81. Repealed. Pub. L. 100–203, title X, §10201(b)(1), Dec. 22, 1987, 101 Stat. 1330–387]

Section, added Pub. L. 89–722, §1(b)(1), Nov. 2, 1966, 80 Stat. 1152; amended Pub. L. 93–625, §4(c)(1), Jan. 3, 1975, 88 Stat. 2111; Pub. L. 94–455, title VI, §605(b), Oct. 4, 1976, 90 Stat. 1575; Pub. L. 99–514, title VIII, §805(c)(1)(A), Oct. 22, 1986, 100 Stat. 2362, included increase in vacation pay suspense account in gross income.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 1987, see section 10201(c)(1) of Pub. L. 100–203, set out as an Effective Date of 1987 Amendment note under section 404 of this title.

§82. Reimbursement for expenses of moving

Except as provided in section 132(a)(6), there shall be included in gross income (as compensation for services) any amount received or accrued, directly or indirectly, by an individual as a payment for or reimbursement of expenses of moving from one residence to another residence which is attributable to employment or self-employment.

(Added Pub. L. 91–172, title II, §231(b), Dec. 30, 1969, 83 Stat. 579; amended Pub. L. 103–66, title XIII, §13213(d)(3)(A), Aug. 10, 1993, 107 Stat. 474.)

AMENDMENTS

1993—Pub. L. 103–66 substituted "Except as provided in section 132(a)(6), there shall" for "There shall".

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to reimbursements or other payments in respect of expenses incurred after Dec. 31, 1993, see section 13213(e) of Pub. L. 103–66, set out as a note under section 62 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after December 31, 1969, except that it does not apply to moving expenses paid or incurred before July 1, 1970, in connection with the commencement of work by the taxpayer as an employee at a new principal place of work of which the taxpayer had been notified by his employer on or before December 19, 1969, see section 231(d) of Pub. L. 91–172, set out as an Effective Date of 1969 Amendment note under section 217 of this title.

MOVING EXPENSES OF MEMBERS OF THE UNIFORMED SERVICES

Withholding, reporting, inclusion within adjusted gross income, and deduction for reimbursement for moving expenses of members of the uniformed services, see section 2 of Pub. L. 93–490, Oct. 26, 1974, 88 Stat. 1466, set out as a note under section 217 of this title.

§83. Property transferred in connection with performance of services

(a) General rule

If, in connection with the performance of services, property is transferred to any person other than the person for whom such services are performed, the excess of—

(1) the fair market value of such property (determined without regard to any restriction other

than a restriction which by its terms will never lapse) at the first time the rights of the person having the beneficial interest in such property are transferable or are not subject to a substantial risk of forfeiture, whichever occurs earlier, over

(2) the amount (if any) paid for such property, shall be included in the gross income of the person who performed such services in the first taxable year in which the rights of the person having the beneficial interest in such property are transferable or are not subject to a substantial risk of forfeiture, whichever is applicable. The preceding sentence shall not apply if such person sells or otherwise disposes of such property in an arm's length transaction before his rights in such property become transferable or not subject to a substantial risk of forfeiture.

(b) Election to include in gross income in year of transfer

(1) In general

Any person who performs services in connection with which property is transferred to any person may elect to include in his gross income for the taxable year in which such property is transferred, the excess of—

(A) the fair market value of such property at the time of transfer (determined without regard to any restriction other than a restriction which by its terms will never lapse), over

(B) the amount (if any) paid for such property.

If such election is made, subsection (a) shall not apply with respect to the transfer of such property, and if such property is subsequently forfeited, no deduction shall be allowed in respect of such forfeiture.

(2) Election

An election under paragraph (1) with respect to any transfer of property shall be made in such manner as the Secretary prescribes and shall be made not later than 30 days after the date of such transfer. Such election may not be revoked except with the consent of the Secretary.

(c) Special rules

For purposes of this section—

(1) Substantial risk of forfeiture

The rights of a person in property are subject to a substantial risk of forfeiture if such person's rights to full enjoyment of such property are conditioned upon the future performance of substantial services by any individual.

(2) Transferability of property

The rights of a person in property are transferable only if the rights in such property of any transferee are not subject to a substantial risk of forfeiture.

(3) Sales which may give rise to suit under section 16(b) of the Securities Exchange Act of 1934

So long as the sale of property at a profit could subject a person to suit under section 16(b) of the Securities Exchange Act of 1934, such person's rights in such property are—

(A) subject to a substantial risk of forfeiture, and

(B) not transferable.

(4) For purposes of determining an individual's basis in property transferred in connection with the performance of services, rules similar to the rules of section 72(w) shall apply.

(d) Certain restrictions which will never lapse

(1) Valuation

In the case of property subject to a restriction which by its terms will never lapse, and which allows the transferee to sell such property only at a price determined under a formula, the price so determined shall be deemed to be the fair market value of the property unless established to the

contrary by the Secretary, and the burden of proof shall be on the Secretary with respect to such value.

(2) Cancellation

If, in the case of property subject to a restriction which by its terms will never lapse, the restriction is canceled, then, unless the taxpayer establishes—

(A) that such cancellation was not compensatory, and

(B) that the person, if any, who would be allowed a deduction if the cancellation were treated as compensatory, will treat the transaction as not compensatory, as evidenced in such manner as the Secretary shall prescribe by regulations,

the excess of the fair market value of the property (computed without regard to the restrictions) at the time of cancellation over the sum of—

(C) the fair market value of such property (computed by taking the restriction into account) immediately before the cancellation, and

(D) the amount, if any, paid for the cancellation,

shall be treated as compensation for the taxable year in which such cancellation occurs.

(e) Applicability of section

This section shall not apply to—

(1) a transaction to which section 421 applies,

(2) a transfer to or from a trust described in section 401(a) or a transfer under an annuity plan which meets the requirements of section 404(a)(2),

(3) the transfer of an option without a readily ascertainable fair market value,

(4) the transfer of property pursuant to the exercise of an option with a readily ascertainable fair market value at the date of grant, or

(5) group-term life insurance to which section 79 applies.

(f) Holding period

In determining the period for which the taxpayer has held property to which subsection (a) applies, there shall be included only the period beginning at the first time his rights in such property are transferable or are not subject to a substantial risk of forfeiture, whichever occurs earlier.

(g) Certain exchanges

If property to which subsection (a) applies is exchanged for property subject to restrictions and conditions substantially similar to those to which the property given in such exchange was subject, and if section 354, 355, 356, or 1036 (or so much of section 1031 as relates to section 1036) applied to such exchange, or if such exchange was pursuant to the exercise of a conversion privilege—

(1) such exchange shall be disregarded for purposes of subsection (a), and

(2) the property received shall be treated as property to which subsection (a) applies.

(h) Deduction by employer

In the case of a transfer of property to which this section applies or a cancellation of a restriction described in subsection (d), there shall be allowed as a deduction under section 162, to the person for whom were performed the services in connection with which such property was transferred, an amount equal to the amount included under subsection (a), (b), or (d)(2) in the gross income of the person who performed such services. Such deduction shall be allowed for the taxable year of such person in which or with which ends the taxable year in which such amount is included in the gross income of the person who performed such services.

(Added Pub. L. 91–172, title III, §321(a), Dec. 30, 1969, 83 Stat. 588; amended Pub. L. 94–455, title XIX, §§1901(a)(15), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1765, 1834; Pub. L. 97–34, title II, §252(a), Aug. 13, 1981, 95 Stat. 260; Pub. L. 97–448, title I, §102(k)(1), Jan. 12, 1983, 96 Stat.

2374; Pub. L. 98–369, div. A, title II, §223(c), July 18, 1984, 98 Stat. 775; Pub. L. 99–514, title XVIII, §1827(e), Oct. 22, 1986, 100 Stat. 2851; Pub. L. 101–508, title XI, §11801(a)(5), Nov. 5, 1990, 104 Stat. 1388–520; Pub. L. 108–357, title VIII, §906(b), Oct. 22, 2004, 118 Stat. 1654.)

REFERENCES IN TEXT

Section 16(b) of the Securities Exchange Act of 1934, referred to in subsec. (c)(3), is classified to section 78p(b) of Title 15, Commerce and Trade.

AMENDMENTS

2004—Subsec. (c)(4). Pub. L. 108–357 added par. (4).

1990—Subsec. (i). Pub. L. 101–508 struck out subsec. (i) "Transition rules" which read as follows: "This section shall apply to property transferred after June 30, 1969, except that this section shall not apply to property transferred—

"(1) pursuant to a binding written contract entered into before April 22, 1969,

"(2) upon the exercise of an option granted before April 22, 1969,

"(3) before May 1, 1970, pursuant to a written plan adopted and approved before July 1, 1969,

"(4) before January 1, 1973, upon the exercise of an option granted pursuant to a binding written contract entered into before April 22, 1969, between a corporation and the transferor requiring the transferor to grant options to employees of such corporation (or a subsidiary of such corporation) to purchase a determinable number of shares of stock of such corporation, but only if the transferee was an employee of such corporation (or a subsidiary of such corporation) on or before April 22, 1969, or

"(5) in exchange for (or pursuant to the exercise of a conversion privilege contained in) property transferred before July 1, 1969, or for property to which this section does not apply (by reason of paragraphs (1), (2), (3), or (4)), if section 354, 355, 356, or 1036 (or so much of section 1031 as relates to section 1036) applies, or if gain or loss is not otherwise required to be recognized upon the exercise of such conversion privilege, and if the property received in such exchange is subject to restrictions and conditions substantially similar to those to which the property given in such exchange was subject."

1986—Subsec. (e)(5). Pub. L. 99–514 struck out "the cost of" before "group-life insurance".

1984—Subsec. (e)(5). Pub. L. 98–369 added par. (5).

1983—Subsec. (c)(3). Pub. L. 97–448 substituted "Securities Exchange Act of 1934" for "Securities and Exchange Act of 1934" in heading and text.

1981—Subsec. (c)(3). Pub. L. 97–34 added par. (3).

1976—Subsec. (b)(2). Pub. L. 94–455, §1901(a)(15), struck out "(or, if later, 30 days after the date of the enactment of the Tax Reform Act of 1969)" after "after the date of such transfer", and §1906(b)(13)(A), "or his delegate" after "Secretary" wherever appearing.

Subsec. (d)(1), (2)(B). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to distributions on or after Oct. 22, 2004, see section 906(c) of Pub. L. 108–357, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 223(d)(1) of Pub. L. 98–369, set out as a note under section 79 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title II, §252(c), Aug. 13, 1981, 95 Stat. 260, as amended by Pub. L. 97–448, title I, §102(k)(2), 96 Stat. 2374, provided that: "The amendment made by subsection (a) [amending this section] and the provisions of subsection (b) [set out below] shall apply to transfers after December 31, 1981."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(15) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE

Pub. L. 91–172, title III, §321(d), Dec. 30, 1969, 83 Stat. 591, provided that: "The amendments made by subsections (a) and (c) [amending sections 402, 403, and 404 of this title] shall apply to taxable years ending after June 30, 1969. The amendments made by subsection (b) [enacting this section] shall apply with respect to contributions made and premiums paid after August 1, 1969."

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

APPLICATION OF AMENDMENTS MADE BY SECTION 252 OF PUB. L. 97–34

Pub. L. 99–514, title XVIII, §1879(p), Oct. 22, 1986, 100 Stat. 2911, as amended by Pub. L. 100–647, title I, §1018(q)(3), Nov. 10, 1988, 102 Stat. 3585, provided that:

"(1) Notwithstanding subsection (c) of section 252 of the Economic Recovery Tax Act of 1981 [section 252(c) of Pub. L. 97–34, set out above], the amendment made by subsection (a) of such section 252 [amending this section] (and the provisions of subsection (b) of such section 252 [set out below]) shall apply to any transfer of stock to any person if—

"(A) such transfer occurred in November or December of 1973 and was pursuant to the exercise of an option granted in November or December of 1971,

"(B) in December 1973 the corporation granting the option was acquired by another corporation in a transaction qualifying as a reorganization under section 368 of the Internal Revenue Code of 1954 [now 1986],

"(C) the fair market value (as of July 1, 1974) of the stock received by such person in the reorganization in exchange for the stock transferred to him pursuant to the exercise of such option was less than 50 percent of the fair market value of the stock so received (as of December 4, 1973),

"(D) in 1975 or 1976 such person sold substantially all of the stock received in such reorganization, and

"(E) such person makes an election under this section at such time and in such manner as the Secretary of the Treasury or his delegate shall prescribe.

"(2) LIMITATION ON AMOUNT OF BENEFIT.—Paragraph (1) shall not apply to transfers with respect to any employee to the extent that the application of paragraph (1) with respect to such employee would (but for this paragraph) result in a reduction in liability for income tax with respect to such employee for all taxable years in excess of $100,000 (determined without regard to any interest).

"(3) STATUTE OF LIMITATIONS.—

"(A) OVERPAYMENTS.—If refund or credit of any overpayment of tax resulting from the application of paragraph (1) is prevented on the date of the enactment of this Act [Oct. 22, 1986] (or at any time within 6 months after such date of enactment) by the operation of any law or rule of law, refund or credit of such overpayment (to the extent attributable to the application of paragraph (1)) may, nevertheless, be made or allowed if claim therefor is filed before the close of such 6-month period.

"(B) DEFICIENCIES.—If the assessment of any deficiency of tax resulting from the application of paragraph (1) is prevented on the date of the enactment of this Act [Oct. 22, 1986] (or at any time within 6 months after such date of enactment) by the operation of any law or rule of law, assessment of such deficiency (to the extent attributable to the application of paragraph (1)) may, nevertheless, be made within such 6-month period."

TIME FOR MAKING CERTAIN SECTION 83(B) ELECTIONS

Pub. L. 98–369, div. A, title V, §556, July 18, 1984, 98 Stat. 898, as amended by Pub. L. 99–514, §2, title

XVIII, §1855(b), Oct. 22, 1986, 100 Stat. 2095, 2882, provided that: "In the case of any transfer of property in connection with the performance of services on or before November 18, 1982, the election permitted by section 83(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] may be made, notwithstanding paragraph (2) of such section 83(b), with the income tax return for any taxable year ending after July 18, 1984, and beginning before the date of the enactment of the Tax Reform Act of 1986 [Oct. 22, 1986 if—

"(1) the amount paid for such property was not less than its fair market value at the time of transfer (determined without regard to any restriction other than a restriction which by its terms will never lapse), and

"(2) the election is consented to by the person transferring such property.

The election shall contain that information required by the Secretary of the Treasury or his delegate for elections permitted by such section 83(b). The period for assessing any tax attributable to a transfer of property which is the subject of an election made pursuant to this section shall not expire before the date which is 3 years after the date such election was made."

PROPERTY SUBJECT TO TRANSFER RESTRICTIONS TO COMPLY WITH "POOLING-OF-INTERESTS ACCOUNTING" RULES

Pub. L. 97–34, title II, §252(b), Aug. 13, 1981, 95 Stat. 260, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided, effective with respect to taxable years ending after Dec. 31, 1981, that: "For purposes of section 83 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], property is subject to substantial risk of forfeiture and is not transferable so long as such property is subject to a restriction on transfer to comply with the "Pooling-of-Interests Accounting" rules set forth in Accounting Series Release Numbered 130 ((10/5/72) 37 FR 20937; 17 CFR 211.130) and Accounting Series Release Numbered 135 ((1/18/73) 38 FR 1734; 17 CFR 211.135)."

§84. Transfer of appreciated property to political organization

(a) General rule

If—

(1) any person transfers property to a political organization, and

(2) the fair market value of such property exceeds its adjusted basis,

then for purposes of this chapter the transferor shall be treated as having sold such property to the political organization on the date of the transfer, and the transferor shall be treated as having realized an amount equal to the fair market value of such property on such date.

(b) Basis of property

In the case of a transfer of property to a political organization to which subsection (a) applies, the basis of such property in the hands of the political organization shall be the same as it would be in the hands of the transferor, increased by the amount of gain recognized to the transferor by reason of such transfer.

(c) Political organization defined

For purposes of this section, the term "political organization" has the meaning given to such term by section 527(e)(1).

(Added Pub. L. 93–625, §13(a)(1), Jan. 3, 1975, 88 Stat. 2120.)

EFFECTIVE DATE

Pub. L. 93–625, §13(b), Jan. 3, 1975, 88 Stat. 2121, provided that: "The amendments made by subsection (a) [enacting this section] shall apply to transfers made after May 7, 1974, in taxable years ending after such date."

NONRECOGNITION OF GAIN OR LOSS WHERE ORGANIZATION SOLD CONTRIBUTED PROPERTY BEFORE AUGUST 2, 1973

Pub. L. 93–625, §13(c), Jan. 3, 1975, 88 Stat. 2121, provided that in the case of the sale or exchange of property before Aug. 2, 1973, which was acquired by the exempt political organization by contribution, no gain or loss shall be recognized by such organization.

§85. Unemployment compensation

(a) General rule

In the case of an individual, gross income includes unemployment compensation.

(b) Unemployment compensation defined

For purposes of this section, the term "unemployment compensation" means any amount received under a law of the United States or of a State which is in the nature of unemployment compensation.

(c) Special rule for 2009

In the case of any taxable year beginning in 2009, gross income shall not include so much of the unemployment compensation received by an individual as does not exceed $2,400.

(Added Pub. L. 95–600, title I, §112(a), Nov. 6, 1978, 92 Stat. 2777; amended Pub. L. 97–34, title I, §103(c)(1), Aug. 13, 1981, 95 Stat. 188; Pub. L. 97–248, title VI, §611(a), Sept. 3, 1982, 96 Stat. 706; Pub. L. 98–21, title I, §§121(f)(1), 122(c)(2), Apr. 20, 1983, 97 Stat. 84, 87; Pub. L. 99–514, title I, §121, Oct. 22, 1986, 100 Stat. 2109; Pub. L. 111–5, div. B, title I, §1007(a), Feb. 17, 2009, 123 Stat. 317.)

AMENDMENTS

2009—Subsec. (c). Pub. L. 111–5 added subsec. (c).

1986—Subsec. (a). Pub. L. 99–514 substituted "General rule" for "In general" in heading and amended text generally. Prior to amendment, text read as follows: "If the sum for the taxable year of the adjusted gross income of the taxpayer (determined without regard to this section, section 86 and section 221) and the unemployment compensation exceeds the base amount, gross income for the taxable year includes unemployment compensation in an amount equal to the lesser of—

"(1) one-half of the amount of the excess of such sum over the base amount, or

"(2) the amount of the unemployment compensation."

Subsecs. (b), (c). Pub. L. 99–514, in amending section generally, redesignated former subsec. (c) as (b) and struck out former subsec. (b), "Base amount defined", which read as follows: "For purposes of this section, the term 'base amount' means—

"(1) except as provided in paragraphs (2) and (3), $12,000,

"(2) $18,000, in the case of a joint return under section 6013, or

"(3) zero, in the case of a taxpayer who—

"(A) is married at the close of the taxable year (within the meaning of section 143) but does not file a joint return for such year, and

"(B) does not live apart from his spouse at all times during the taxable year."

1983—Subsec. (a). Pub. L. 98–21, §122(c)(2), struck out ", section 105(d)," after "section 86".

Pub. L. 98–21, §121(f)(1), inserted "section 86," after "this section,".

1982—Subsec. (b)(1). Pub. L. 97–248, §611(a)(1), substituted "$12,000" for "$20,000".

Subsec. (b)(2). Pub. L. 97–248, §611(a)(2), substituted "$18,000" for "$25,000".

1981—Subsec. (a). Pub. L. 97–34 substituted "this section, section 105(d), and section 221" for "this section and without regard to section 105(d)" in parenthetical provision preceding par. (1).

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, §1007(b), Feb. 17, 2009, 123 Stat. 317, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2008."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to amounts received after Dec. 31, 1986, in taxable years ending after such date, see section 151(b) of Pub. L. 99–514, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 121(f)(1) of Pub. L. 98–21 applicable to benefits received after Dec. 31, 1983, in taxable years ending after such date, except for any portion of a lump-sum payment of social security benefits received after Dec. 31, 1983, if the generally applicable payment date for such portion was before Jan. 1, 1984, see section 121(g) of Pub. L. 98–21, set out as an Effective Date note under section 86 of this title.

Amendment by section 122(c)(2) of Pub. L. 98–21 applicable to taxable years beginning after Dec. 31, 1983, except that if an individual's annuity starting date was deferred under section 105(d)(6) of this title as in effect on the day before Apr. 20, 1983, such deferral shall end on the first day of such individual's first taxable year beginning after Dec. 31, 1983, see section 122(d) of Pub. L. 98–21, set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title VI, §611(b), Sept. 3, 1982, 96 Stat. 706, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) COMPENSATION PAID AFTER 1981.—The amendments made by this section [amending this section] shall apply to payments of unemployment compensation made after December 31, 1981, in taxable years ending after such date.

"(2) NO ADDITION TO TAX FOR UNDERPAYMENT OF ESTIMATED TAX ATTRIBUTABLE TO APPLICATION OF AMENDMENTS TO COMPENSATION PAID IN 1982.—No addition to tax shall be made under section 6654 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] with respect to any underpayment to the extent such underpayment is attributable to unemployment compensation which is received during 1982 and which (but for the amendments made by subsection (a)) would not be includable in gross income.

"(3) SPECIAL RULE FOR FISCAL YEAR TAXPAYERS.—In the case of a taxable year (other than a calendar year) which includes January 1, 1982—

"(A) the amendments made by this section shall be applied by taking into account the entire amount of unemployment compensation received during such taxable year, but

"(B) the increase in gross income for such taxable year as a result of such amendments shall not exceed the amount of unemployment compensation paid after December 31, 1981.

"(4) UNEMPLOYMENT COMPENSATION DEFINED.—For purposes of this subsection, the term 'unemployment compensation' has the meaning given to such term by section 85(c) of the Internal Revenue Code of 1986."

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 103(d) of Pub. L. 97–34, set out as a note under section 62 of this title.

EFFECTIVE DATE

Pub. L. 95–600, title I, §112(d), Nov. 6, 1978, 92 Stat. 2778, as amended by Pub. L. 98–369, div. A, title X, §1075(a), July 18, 1984, 98 Stat. 1053, provided that: "The amendments made by this section [enacting this section and section 6050B of this title] shall apply to payments of unemployment compensation made after December 31, 1978, in taxable years ending after such date, except that such amendments shall not apply to payments made for weeks of unemployment ending before December 1, 1978."

WAIVER OF STATUTE OF LIMITATIONS

Pub. L. 98–369, div. A, title X, §1075(b), July 18, 1984, 98 Stat. 1053, provided that: "If credit or refund of any overpayment of tax resulting from the amendment made by subsection (a) [amending section 112(d) of Pub. L. 95–600, set out as an Effective Date note above] is barred on the date of the enactment of this Act [July 18, 1984] or at any time during the 1-year period beginning on the date of the enactment of this Act by the operation of any law or rule of law (including res judicata), refund or credit of such overpayment (to the extent attributable to the amendment made by subsection (a)) may, nevertheless, be made or allowed if claim therefor is filed before the close of such 1-year period."

§86. Social security and tier 1 railroad retirement benefits

(a) In general

(1) In general

Except as provided in paragraph (2), gross income for the taxable year of any taxpayer described in subsection (b) (notwithstanding section 207 of the Social Security Act) includes social security benefits in an amount equal to the lesser of—

(A) one-half of the social security benefits received during the taxable year, or

(B) one-half of the excess described in subsection (b)(1).

(2) Additional amount

In the case of a taxpayer with respect to whom the amount determined under subsection (b)(1)(A) exceeds the adjusted base amount, the amount included in gross income under this section shall be equal to the lesser of—

(A) the sum of—

(i) 85 percent of such excess, plus

(ii) the lesser of the amount determined under paragraph (1) or an amount equal to one-half of the difference between the adjusted base amount and the base amount of the taxpayer, or

(B) 85 percent of the social security benefits received during the taxable year.

(b) Taxpayers to whom subsection (a) applies

(1) In general

A taxpayer is described in this subsection if—

(A) the sum of—

(i) the modified adjusted gross income of the taxpayer for the taxable year, plus

(ii) one-half of the social security benefits received during the taxable year, exceeds

(B) the base amount.

(2) Modified adjusted gross income

For purposes of this subsection, the term "modified adjusted gross income" means adjusted gross income—

(A) determined without regard to this section and sections 135, 137, 199, 221, 222, 911, 931, and 933, and

(B) increased by the amount of interest received or accrued by the taxpayer during the taxable year which is exempt from tax.

(c) Base amount and adjusted base amount

For purposes of this section—

(1) Base amount

The term "base amount" means—

(A) except as otherwise provided in this paragraph, $25,000,

(B) $32,000 in the case of a joint return, and

(C) zero in the case of a taxpayer who—

(i) is married as of the close of the taxable year (within the meaning of section 7703) but does not file a joint return for such year, and

(ii) does not live apart from his spouse at all times during the taxable year.

(2) Adjusted base amount

The term "adjusted base amount" means—

(A) except as otherwise provided in this paragraph, $34,000,

(B) $44,000 in the case of a joint return, and

(C) zero in the case of a taxpayer described in paragraph (1)(C).

(d) Social security benefit

(1) In general

For purposes of this section, the term "social security benefit" means any amount received by the taxpayer by reason of entitlement to—

(A) a monthly benefit under title II of the Social Security Act, or

(B) a tier 1 railroad retirement benefit.

(2) Adjustment for repayments during year

(A) In general

For purposes of this section, the amount of social security benefits received during any taxable year shall be reduced by any repayment made by the taxpayer during the taxable year of a social security benefit previously received by the taxpayer (whether or not such benefit was received during the taxable year).

(B) Denial of deduction

If (but for this subparagraph) any portion of the repayments referred to in subparagraph (A) would have been allowable as a deduction for the taxable year under section 165, such portion shall be allowable as a deduction only to the extent it exceeds the social security benefits received by the taxpayer during the taxable year (and not repaid during such taxable year).

(3) Workmen's compensation benefits substituted for social security benefits

For purposes of this section, if, by reason of section 224 of the Social Security Act (or by reason of section 3(a)(1) of the Railroad Retirement Act of 1974), any social security benefit is reduced by reason of the receipt of a benefit under a workmen's compensation act, the term "social security benefit" includes that portion of such benefit received under the workmen's compensation act which equals such reduction.

(4) Tier 1 railroad retirement benefit

For purposes of paragraph (1), the term "tier 1 railroad retirement benefit" means—

(A) the amount of the annuity under the Railroad Retirement Act of 1974 equal to the amount of the benefit to which the taxpayer would have been entitled under the Social Security Act if all of the service after December 31, 1936, of the employee (on whose employment record the annuity is being paid) had been included in the term "employment" as defined in the Social Security Act, and

(B) a monthly annuity amount under section 3(f)(3) of the Railroad Retirement Act of 1974.

(5) Effect of early delivery of benefit checks

For purposes of subsection (a), in any case where section 708 of the Social Security Act causes social security benefit checks to be delivered before the end of the calendar month for which they are issued, the benefits involved shall be deemed to have been received in the succeeding calendar month.

(e) Limitation on amount included where taxpayer receives lump-sum payment

(1) Limitation

If—

(A) any portion of a lump-sum payment of social security benefits received during the taxable year is attributable to prior taxable years, and

(B) the taxpayer makes an election under this subsection for the taxable year,

then the amount included in gross income under this section for the taxable year by reason of the receipt of such portion shall not exceed the sum of the increases in gross income under this chapter for prior taxable years which would result solely from taking into account such portion in the taxable years to which it is attributable.

(2) Special rules

(A) Year to which benefit attributable

For purposes of this subsection, a social security benefit is attributable to a taxable year if the generally applicable payment date for such benefit occurred during such taxable year.

(B) Election

An election under this subsection shall be made at such time and in such manner as the Secretary shall by regulations prescribe. Such election, once made, may be revoked only with the consent of the Secretary.

(f) Treatment as pension or annuity for certain purposes

For purposes of—

(1) section 22(c)(3)(A) (relating to reduction for amounts received as pension or annuity),
(2) section 32(c)(2) (defining earned income),
(3) section 219(f)(1) (defining compensation), and
(4) section 911(b)(1) (defining foreign earned income),

any social security benefit shall be treated as an amount received as a pension or annuity.

(Added and amended Pub. L. 98–21, title I, §121(a), title III, §335(b)(2)(A), Apr. 20, 1983, 97 Stat. 80, 130; Pub. L. 98–76, title II, §224(d), Aug. 12, 1983, 97 Stat. 424; Pub. L. 98–369, div. A, title IV, §474(r)(2), div. B, title VI, §2661(o)(1), July 18, 1984, 98 Stat. 839, 1158; Pub. L. 99–272, title XII, §12111(b), title XIII, §13204(a), Apr. 7, 1986, 100 Stat. 287, 313; Pub. L. 99–514, title I, §131(b)(2), title XIII, §1301(j)(8), title XVIII, §1847(b)(2), Oct. 22, 1986, 100 Stat. 2113, 2658, 2856; Pub. L. 100–647, title I, §1001(e), title VI, §6009(c)(1), Nov. 10, 1988, 102 Stat. 3351, 3690; Pub. L. 103–66, title XIII, §13215(a), (b), Aug. 10, 1993, 107 Stat. 475, 476; Pub. L. 103–296, title III, §309(d), Aug. 15, 1994, 108 Stat. 1523; Pub. L. 104–188, title I, §§1704(t)(3), 1807(c)(2), Aug. 20, 1996, 110 Stat. 1887, 1902; Pub. L. 105–277, div. J, title IV, §4003(a)(2)(B), Oct. 21, 1998, 112 Stat. 2681–908; Pub. L. 107–16, title IV, §431(c)(1), June 7, 2001, 115 Stat. 68; Pub. L. 108–357, title I, §102(d)(1), Oct. 22, 2004, 118 Stat. 1428.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a)(1) and (d)(1)(A), (3), (4)(A), (5), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§301 et seq.) of Title 42, The Public Health and Welfare. Title II of the Act is classified generally to subchapter II (§401 et seq.) of Title 42. Sections 207, 224, and 708 of the Act are classified to sections 407, 424a, and 909 of Title 42, respectively. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Railroad Retirement Act of 1974, referred to in subsec. (d)(3), (4), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, §101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§231 et seq.) of chapter 9 of Title 45, Railroads. Section 3(a)(1), (f)(3) of the Act is classified to section 231b(a)(1), (f)(3) of Title 45. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

PRIOR PROVISIONS

A prior section 86 was renumbered section 87 of this title.

AMENDMENTS

2004—Subsec. (b)(2)(A). Pub. L. 108–357 inserted "199," before "221".

2001—Subsec. (b)(2)(A). Pub. L. 107–16 inserted "222," after "221,".

1998—Subsec. (b)(2)(A). Pub. L. 105–277 inserted "221," after "137,".

1996—Subsec. (b)(2). Pub. L. 104–188, §1704(t)(3), substituted "means adjusted" for "means adusted" in introductory provisions.

Subsec. (b)(2)(A). Pub. L. 104–188, §1807(c)(2), inserted "137," before "911".

1994—Subsec. (d)(1). Pub. L. 103–296 struck out at end "For purposes of the preceding sentence, the amount received by any taxpayer shall be determined as if the Social Security Act did not contain section 203(i) thereof."

1993—Subsec. (a). Pub. L. 103–66, §13215(a), designated existing provisions as par. (1), inserted par. (1) heading, substituted "Except as provided in paragraph (2), gross" for "Gross", redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, and added par. (2).

Subsec. (c). Pub. L. 103–66, §13215(b), amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: "For purposes of this section, the term 'base amount' means—

"(1) except as otherwise provided in this subsection, $25,000,

"(2) $32,000, in the case of a joint return, and

"(3) zero, in the case of a taxpayer who—

"(A) is married at the close of the taxable year (within the meaning of section 7703) but does not file a joint return for such year, and

"(B) does not live apart from his spouse at all times during the taxable year."

1988—Subsec. (b)(2)(A). Pub. L. 100–647, §6009(c)(1), inserted "135," before "911".

Subsec. (f)(4), (5). Pub. L. 100–647, §1001(e), redesignated par. (5) as (4) and struck out former par. (4) which read as follows: "section 221(b)(2) (defining earned income), and".

1986—Subsec. (b)(2)(A). Pub. L. 99–514, §131(b)(2), substituted "sections" for "sections 221,".

Subsec. (c)(3)(A). Pub. L. 99–514, §1301(j)(8), substituted "section 7703" for "section 143".

Subsec. (d)(4). Pub. L. 99–272, §13204(a), in amending par. (4) generally, designated existing provisions as introductory clause of par. (4), struck out "a monthly benefit under section 3(a), 3(f)(3), 4(a), or 4(f) of the Railroad Retirement Act of 1974", and added cls. (A) and (B).

Subsec. (d)(5). Pub. L. 99–272, §12111(b), added par. (5).

Subsec. (f)(1). Pub. L. 99–514, §1847(b)(2), substituted "section 22(c)(3)(A)" for "section 37(c)(3)(A)".

1984—Subsec. (f)(1). Pub. L. 98–369, §2661(o)(1), added par. (1). Former par. (1) redesignated par. (2).

Pub. L. 98–369, §474(r)(2), substituted "section 32(c)(2)" for "section 43(c)(2)".

Subsec. (f)(2)–(5). Pub. L. 98–369, §2661(o)(1), redesignated pars. (1) to (4) as (2) to (5), respectively.

1983—Subsec. (a). Pub. L. 98–21, §335(b)(2)(A), inserted "(notwithstanding section 207 of the Social Security Act)".

Subsec. (d)(4). Pub. L. 98–76 inserted "3(f)(3)," after "3(a),".

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years beginning after Dec. 31, 2004, see section 102(e) of Pub. L. 108–357, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to payments made in taxable years beginning after Dec. 31, 2001, see section 431(d) of Pub. L. 107–16, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–277, div. J, title IV, §4003(l), Oct. 21, 1998, 112 Stat. 2681–910, provided that: "The amendments made by this section [amending this section and sections 135, 137, 163, 172, 219, 221, 264, 351, 368, 469, 954, 2001, 6311, 6404, and 9510 of this title and amending provisions set out as a note under section 7508A of this title] shall take effect as if included in the provisions of the 1997 Act [Pub. L. 105–34] to which they relate."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1807(c)(2) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1807(e) of Pub. L. 104–188, set out as an Effective Date note under section 23 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103–296, title III, §309(e)(2), Aug. 15, 1994, 108 Stat. 1524, provided that: "The amendment made by subsection (d) [amending this section] shall apply with respect to benefits received after December 31, 1995, in taxable years ending after such date."

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13215(d), Aug. 10, 1993, 107 Stat. 477, provided that: "The amendments made by subsections (a) and (b) [amending this section] shall apply to taxable years beginning after December 31, 1993."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1001(e) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title VI, §6009(d), Nov. 10, 1988, 102 Stat. 3690, provided that: "The amendments made by this section [enacting section 135 of this title, amending this section and sections 219 and 469 of this title, and renumbering former section 135 as section 136 of this title] shall apply to taxable years beginning after December 31, 1989."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 131(b)(2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 1301(j)(8) of Pub. L. 99–514 applicable to bonds issued after Aug. 15, 1986, except

as otherwise provided, see sections 1311–1318 of Pub. L. 99–514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

Amendment by section 1847(b)(2) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Amendment by section 12111(b) of Pub. L. 99–272 applicable with respect to benefit checks issued for months ending after Apr. 7, 1986, see section 12111(c) of Pub. L. 99–272, set out as a note under section 909 of Title 42, The Public Health and Welfare.

Pub. L. 99–272, title XIII, §13204(b), Apr. 7, 1986, 100 Stat. 313, provided that: "The amendment made by subsection (a) [amending this section] shall apply to any monthly benefit for which the generally applicable payment date is after December 31, 1985."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(2) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 2661 of Pub. L. 98–369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98–21, see section 2664(a) of Pub. L. 98–369, set out as a note under section 401 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–76 applicable to benefits received after Dec. 31, 1983, in taxable years ending after such date, except for portions of lump-sum payments received after Dec. 31, 1983, if the generally applicable payment date for such portion was before Jan. 1, 1984, see section 227(b) of Pub. L. 98–76 set out as a note under section 72 of this title.

EFFECTIVE DATE

Pub. L. 98–21, title I, §121(g), Apr. 20, 1983, 97 Stat. 84, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this section and section 6050F of this title, amending sections 85, 128, 861, 871, 1441, and 6103 of this title and section 3413 of Title 12, Banks and Banking, and enacting provisions set out as a note under section 401 of Title 42, The Public Health and Welfare] shall apply to benefits received after December 31, 1983, in taxable years ending after such date.

"(2) TREATMENT OF CERTAIN LUMP-SUM PAYMENTS RECEIVED AFTER DECEMBER 31, 1983 .—The amendments made by this section shall not apply to any portion of a lump-sum payment of social security benefits (as defined in section 86(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) received after December 31, 1983, if the generally applicable payment date for such portion was before January 1, 1984."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§87. Alcohol and biodiesel fuels credits

Gross income includes—

(1) the amount of the alcohol fuel credit determined with respect to the taxpayer for the taxable year under section 40(a), and

(2) the biodiesel fuels credit determined with respect to the taxpayer for the taxable year under section 40A(a).

(Added Pub. L. 96–223, title II, §232(c)(1), Apr. 2, 1980, 94 Stat. 276, §86; renumbered §87, Pub. L. 98–21, title I, §121(a), Apr. 20, 1983, 97 Stat. 80; amended Pub. L. 98–369, div. A, title IV, §474(r)(3), July 18, 1984, 98 Stat. 839; Pub. L. 108–357, title III, §302(c)(1)(A), Oct. 22, 2004, 118 Stat. 1465.)

AMENDMENTS

2004—Pub. L. 108–357 amended section catchline and text generally. Prior to amendment, text read as follows: "Gross income includes the amount of the alcohol fuel credit determined with respect to the taxpayer for the taxable year under section 40(a)."

1984—Pub. L. 98–369 amended section generally, substituting "the amount of the alcohol fuel credit determined with respect to the taxpayer for the taxable year under section 40(a)" for "an amount equal to the amount of the credit allowable to the taxpayer under section 44E for the taxable year (determined without regard to subsection (e) thereof)".

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to fuel produced, and sold or used, after Dec. 31, 2004, in taxable years ending after such date, see section 302(d) of Pub. L. 108–357, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

EFFECTIVE DATE

Section applicable to sales or uses after Sept. 30, 1980, in taxable years ending after such date, see section 232(h)(1) of Pub. L. 96–223, set out as a note under section 40 of this title.

§88. Certain amounts with respect to nuclear decommissioning costs

In the case of any taxpayer who is required to include the amount of any nuclear decommissioning costs in the taxpayer's cost of service for ratemaking purposes, there shall be includible in the gross income of such taxpayer the amount so included for any taxable year.

(Added Pub. L. 98–369, div. A, title I, §91(f)(1), July 18, 1984, 98 Stat. 607; amended Pub. L. 99–514, title XVIII, §1807(a)(4)(E)(vii), Oct. 22, 1986, 100 Stat. 2813.)

AMENDMENTS

1986—Pub. L. 99–514 substituted "for ratemaking purposes" for "of ratemaking purposes".

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section effective July 18, 1984, with respect to taxable years ending after such date, see section 91(g)(5) of Pub. L. 98–369, as amended, set out as an Effective Date of 1984 Amendment note under section 461 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[§89. Repealed. Pub. L. 101–140, title II, §202(a), Nov. 8, 1989, 103 Stat. 830]

Section, added Pub. L. 99–514, title XI, §1151(a), Oct. 22, 1986, 100 Stat. 2494; amended Pub. L. 100–647, title I, §1011B(a)(1)–(9), (21), (28), (29), (34), title III, §3021(a)(1)(A), (B), (2)(A), (3)–(9), (11)–(13)(A), (b)(2)(B), (3), title VI, §6051(a), Nov. 10, 1988, 102 Stat. 3483–3485, 3487, 3488, 3625–3632, 3695, related to nondiscrimination rules regarding benefits provided under employee benefit plans.

EFFECTIVE DATE OF REPEAL

Pub. L. 101–140, title II, §202(c), Nov. 8, 1989, 103 Stat. 830, provided that: "The amendments made by this section [repealing this section] shall take effect as if included in section 1151 of the Tax Reform Act of 1986 [Pub. L. 99–514, see section 1151(k) set out as a note under section 79 of this title]."

NONENFORCEMENT OF SECTION FOR FISCAL YEAR 1990

Pub. L. 101–136, title V, §528, Nov. 3, 1989, 103 Stat. 816, provided that: "No monies appropriated by this Act [see Tables for classification] may be used to implement or enforce section 1151 of the Tax Reform Act of 1986 or the amendments made by such section [section 1151 of Pub. L. 99–514, which enacted section 89 of this title, amended sections 79, 105, 106, 117, 120, 125, 127, 129, 132, 414, 505, 3121, 3306, 6039D, and 6652 of this title and section 409 of Title 42, The Public Health and Welfare, and enacted provisions set out as a note under section 89 of this title]."

TRANSITIONAL PROVISIONS

Pub. L. 100–647, title III, §3021(c), Nov. 10, 1988, 102 Stat. 3633, provided for the first issue of valuation rules, the interim impact on former employees, the meeting of the written requirement for covered plans in connection with implementation of section 89 of the Code, and the issuance by Nov. 15, 1988, of rules necessary to carry out section 89, prior to repeal by Pub. L. 101–140, title II, §203(a)(7), Nov. 8, 1989, 103 Stat. 831.

PART-TIME EMPLOYEE DEFINED FOR PURPOSES OF SUBSECTION (F)

Pub. L. 100–647, title VI, §6070, Nov. 10, 1988, 102 Stat. 3704, increased the number of employees who would be excluded from consideration under this section during plan years 1989 and 1990, in the case of a plan maintained by an employer which employs fewer than 10 employees on a normal working day during a plan year, prior to repeal by Pub. L. 101–140, title II, §203(a)(7), Nov. 8, 1989, 103 Stat. 831.

§90. Illegal Federal irrigation subsidies

(a) General rule

Gross income shall include an amount equal to any illegal Federal irrigation subsidy received by the taxpayer during the taxable year.

(b) Illegal Federal irrigation subsidy

For purposes of this section—

(1) In general

The term "illegal Federal irrigation subsidy" means the excess (if any) of—

(A) the amount required to be paid for any Federal irrigation water delivered to the taxpayer during the taxpayer year, over

(B) the amount paid for such water.

(2) Federal irrigation water

The term "Federal irrigation water" means any water made available for agricultural purposes from the operation of any reclamation or irrigation project referred to in paragraph (8) of section 202 of the Reclamation Reform Act of 1982.

(c) Denial of deduction

No deduction shall be allowed under this subtitle by reason of any inclusion in gross income under subsection (a).

(Added Pub. L. 100–203, title X, §10611(a), Dec. 22, 1987, 101 Stat. 1330–451.)

REFERENCES IN TEXT

Section 202 of the Reclamation Reform Act of 1982, referred to in subsec. (b)(2), is classified to section 390bb of Title 43, Public Lands.

EFFECTIVE DATE

Pub. L. 100–203, title X, §10611(c), Dec. 22, 1987, 101 Stat. 1330–452, provided that: "The amendments made by this section [enacting this section] shall apply to water delivered to the taxpayer in months beginning

after the date of the enactment of this Act [Dec. 22, 1987]."

PART III—ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

Sec.
101. Certain death payments.[1]
102. Gifts and inheritances.
103. Interest on State and local bonds.
[103A. Repealed.]
104. Compensation for injuries or sickness.
105. Amounts received under accident and health plans.
106. Contributions by employer to accident and health plans.
107. Rental value of parsonages.
108. Income from discharge of indebtedness.
109. Improvements by lessee on lessor's property.
110. Qualified lessee construction allowances for short-term leases.
111. Recovery of tax benefit items.
112. Certain combat zone compensation of members of the Armed Forces.
[113, 114. Repealed.]
115. Income of States, municipalities, etc.
[116. Repealed.]
117. Qualified scholarships.
118. Contributions to the capital of a corporation.
119. Meals or lodging furnished for convenience of employer.[1]
120. Amounts received under qualified group legal services plans.
121. Exclusion of gain from sale of principal residence.
122. Certain reduced uniformed services retirement pay.
123. Amounts received under insurance contracts for certain living expenses.
[124. Repealed.]
125. Cafeteria plans.
126. Certain cost-sharing payments.
127. Educational assistance programs.
[128. Repealed.]
129. Dependent care assistance programs.[2]
130. Certain personal injury liability assignments.
131. Certain foster care payments.
132. Certain fringe benefits.
[133. Repealed.]
134. Certain military benefits.
135. Income from United States savings bonds used to pay higher education tuition and fees.
136. Energy conservation subsidies provided by public utilities.
137. Adoption assistance programs.
138. Medicare Advantage MSA.
139. Disaster relief payments.
139A. Federal subsidies for prescription drug plans.
139B. Benefits provided to volunteer firefighters and emergency medical responders.
139C. COBRA premium assistance.
139D. Indian health care benefits.
139E. Indian general welfare benefits.
140. Cross references to other Acts.

AMENDMENTS

2014—Pub. L. 113–168, §2(b), Sept. 26, 2014, 128 Stat. 1884, added item 139E.

2011—Pub. L. 112–10, div. B, title VIII, §1858(b)(2)(B), Apr. 15, 2011, 125 Stat. 168, struck out item 139D "Free choice vouchers".

2010—Pub. L. 111–148, title X, §10108(f)(2), Mar. 23, 2010, 124 Stat. 913, added item 139D relating to free choice vouchers.

Pub. L. 111–148, title IX, §9021(b), Mar. 23, 2010, 124 Stat. 874, added item 139D relating to Indian health care benefits.

2009—Pub. L. 111–5, div. B, title III, §3001(a)(15)(B), Feb. 17, 2009, 123 Stat. 465, added item 139C.

2007—Pub. L. 110–142, §5(b), Dec. 20, 2007, 121 Stat. 1806, added item 139B.

2004—Pub. L. 108–357, title I, §101(b)(3), Oct. 22, 2004, 118 Stat. 1423, struck out item 114 "Extraterritorial income".

Pub. L. 108–311, title IV, §408(a)(5)(G), Oct. 4, 2004, 118 Stat. 1191, substituted "Medicare Advantage MSA" for "Medicare+Choice MSA" in item 138.

2003—Pub. L. 108–173, title XII, §1202(c), Dec. 8, 2003, 117 Stat. 2480, added item 139A.

2002—Pub. L. 107–134, title I, §111(b), Jan. 23, 2002, 115 Stat. 2433, added item 139 and redesignated former item 139 as 140.

2000—Pub. L. 106–519, §4(6), Nov. 15, 2000, 114 Stat. 2433, added item 114.

1997—Pub. L. 105–34, title III, §312(d)(14), title XII, §1213(d), Aug. 5, 1997, 111 Stat. 841, 1001, added item 110 and substituted "Exclusion of gain from sale of principal residence" for "One-time exclusion of gain from sale of principal residence by individual who has attained age 55" in item 121.

Pub. L. 105–33, title IV, §4006(b)(3), Aug. 5, 1997, 111 Stat. 334, added items 138 and 139 and struck out former item 138 "Cross reference to other Acts".

1996—Pub. L. 104–188, title I, §§1602(b)(8), 1704(t)(4)(B), 1807(c)(7), Aug. 20, 1996, 110 Stat. 1834, 1887, 1902, substituted "combat zone compensation" for "combat pay" in item 112, struck out item 133 "Interest on certain loans used to acquire employer securities", added items 137 and 138, and struck out former item 137 "Cross reference to other Acts".

1992—Pub. L. 102–486, title XIX, §1912(b), Oct. 24, 1992, 106 Stat. 3016, added items 136 and 137 and struck out former item 136 "Cross references to other Acts".

1990—Pub. L. 101–508, title XI, §11801(b)(2), Nov. 5, 1990, 104 Stat. 1388–522, struck out item 110 "Income taxes paid by lessee corporation", item 113 "Mustering-out payments for members of the Armed Forces", item 114 "Sports programs conducted for the American National Red Cross", item 124 "Qualified transportation provided by employer", and item 128 "Interest on certain savings certificates".

1988—Pub. L. 100–647, title I, §1013(a)(37), title VI, §6009(c)(4), Nov. 10, 1988, 102 Stat. 3544, 3690, substituted "Interest on State and local bonds" for "Interest on certain governmental obligations" in item 103, struck out item 103A "Mortgage subsidy bonds", added item 135 and redesignated former item 135 "Cross references to other Acts" as item 136.

1986—Pub. L. 99–514, title I, §123(b)(4), title VI, §612(b)(8), title XI, §1168(b), Oct. 22, 1986, 100 Stat. 2113, 2251, 2512, struck out item 116 "Partial exclusion of dividends received by individuals", substituted in item 117 "Qualified scholarships" for "Scholarships and fellowship grants", added item 134, and redesignated former item 134 as 135.

1984—Pub. L. 98–369, div. A, title I, §171(b), title V, §§531(a)(2), 543(b), July 18, 1984, 98 Stat. 699, 881, 892, substituted "Recovery of tax benefit items" for "Recovery of bad debts, prior taxes, and delinquency amounts" in item 111, added items 132 (relating to certain fringe benefits) and 133 (relating to interest on certain loans used to acquire employer securities), and redesignated former item 132 (relating to cross references to other Acts) as item 134.

Pub. L. 98–369, div. A, title I, §16(a), July 18, 1984, 98 Stat. 505, repealed an amendment made by Pub. L. 97–34, §302(c). See 1981 Amendment note below.

1983—Pub. L. 97–473, title I, §101(b)(2), Jan. 14, 1983, 96 Stat. 2606, purported to strike out the item relating to section 130, and added items 130 (relating to certain personal injury liability assignments) and 131 (relating to cross references to other Acts).

Pub. L. 97–473, title I, §102(b), Jan. 14, 1983, 96 Stat. 2607, struck out item 131 (relating to cross references to other Acts) and added items 131 (relating to certain foster care payments) and 132 (relating to cross references to other Acts).

1981—Pub. L. 97–34, title III, §§301(b)(1), 302(c)(1), (d)(1), Aug. 13, 1981, 95 Stat. 270, 272, 274, effective with regard to taxable years beginning after Sept. 30, 1981, redesignated item 128 "Cross References to other Acts" as 129 and added item 128 "Interest on certain savings certificates" and, section 302(c)(1), with regard to taxable years beginning after Dec. 31, 1984, provided that "Partial exclusion of interest" is

substituted for "Interest on certain savings certificates" in item 128. Section 16(a) of Pub. L. 98–369, repealed section 302(c) of Pub. L. 97–34, and provided that this title shall be applied and administered as if section 302(c), and the amendments made by section 302(c), had not been enacted.

1980—Pub. L. 96–499, title XI, §1102(b), Dec. 5, 1980, 94 Stat. 2669, added item 103A.

Pub. L. 96–223, title IV, §404(b)(1), Apr. 2, 1980, 94 Stat. 306, inserted "and interest" after "dividends" in item 116.

1978—Pub. L. 95–618, title II, §242(b), Nov. 9, 1978, 92 Stat. 3194, redesignated former item 124 as 125 and added item 124.

Pub. L. 95–600, title I, §§134(b), 164(c), title IV, §404(c)(3), title V, §543(b), Nov. 6, 1978, 92 Stat. 2785, 2814, 2870, 2890, in item 121 substituted "One-time exclusion of gain from sale of principal residence by individual who has attained age 55" for "Gain from sale of exchange of residence of individual who has attained age 65", redesignated former item 124 as 128, and added items 125 to 127.

1976—Pub. L. 94–455, title XXI, §2134(c), Oct. 4, 1976, 90 Stat. 1928, added item 120.

1969—Pub. L. 91–172, title IX, §901(b), Dec. 30, 1969, 83 Stat. 709, redesignated former item 123 as 124, and added item 123.

1966—Pub. L. 89–365, §1(a)(2), Mar. 8, 1966, 80 Stat. 32, redesignated former item 122 as 123, and added item 122.

1964—Pub. L. 88–272, title II, §206(b)(2), Feb. 26, 1964, 78 Stat. 40, redesignated former item 121 as 122, and added item 121.

1958—Pub. L. 85–866, title I, §3(b), Sept. 2, 1958, 72 Stat. 1607, struck out item 120 "Statutory subsistence allowance received by police".

NO FEDERAL INCOME TAX ON RESTITUTION RECEIVED BY VICTIMS OF THE NAZI REGIME OR THEIR HEIRS OR ESTATES

Pub. L. 107–16, title VIII, §803, June 7, 2001, 115 Stat. 149, provided that:

"(a) IN GENERAL.—For purposes of the Internal Revenue Code of 1986, any excludable restitution payments received by an eligible individual (or the individual's heirs or estate) and any excludable interest—

"(1) shall not be included in gross income; and

"(2) shall not be taken into account for purposes of applying any provision of such Code which takes into account excludable income in computing adjusted gross income, including section 86 of such Code (relating to taxation of Social Security benefits).

For purposes of such Code, the basis of any property received by an eligible individual (or the individual's heirs or estate) as part of an excludable restitution payment shall be the fair market value of such property as of the time of the receipt.

"(b) ELIGIBLE INDIVIDUAL.—For purposes of this section, the term 'eligible individual' means a person who was persecuted on the basis of race, religion, physical or mental disability, or sexual orientation by Nazi Germany, any other Axis regime, or any other Nazi-controlled or Nazi-allied country.

"(c) EXCLUDABLE RESTITUTION PAYMENT.—For purposes of this section, the term 'excludable restitution payment' means any payment or distribution to an individual (or the individual's heirs or estate) which—

"(1) is payable by reason of the individual's status as an eligible individual, including any amount payable by any foreign country, the United States of America, or any other foreign or domestic entity, or a fund established by any such country or entity, any amount payable as a result of a final resolution of a legal action, and any amount payable under a law providing for payments or restitution of property;

"(2) constitutes the direct or indirect return of, or compensation or reparation for, assets stolen or hidden from, or otherwise lost to, the individual before, during, or immediately after World War II by reason of the individual's status as an eligible individual, including any proceeds of insurance under policies issued on eligible individuals by European insurance companies immediately before and during World War II; or

"(3) consists of interest which is payable as part of any payment or distribution described in paragraph (1) or (2).

"(d) EXCLUDABLE INTEREST.—For purposes of this section, the term 'excludable interest' means any interest earned by—

"(1) escrow accounts or settlement funds established pursuant to the settlement of the action entitled 'In re: Holocaust Victim Assets Litigation,' (E.D.N.Y.) C.A. No. 96–4849,

"(2) funds to benefit eligible individuals or their heirs created by the International Commission on Holocaust Insurance Claims as a result of the Agreement between the Government of the United States of America and the Government of the Federal Republic of Germany concerning the Foundation

'Remembrance, Responsibility, and Future,' dated July 17, 2000, or

"(3) similar funds subject to the administration of the United States courts created to provide excludable restitution payments to eligible individuals (or eligible individuals' heirs or estates).

"(e) EFFECTIVE DATE.—

"(1) IN GENERAL.—This section shall apply to any amount received on or after January 1, 2000.

"(2) NO INFERENCE.—Nothing in this Act [see Tables for classification] shall be construed to create any inference with respect to the proper tax treatment of any amount received before January 1, 2000."

[1] So in original. Does not conform to section catchline.

[2] Editorially supplied. Section 129 added by Pub. L. 97–34 without corresponding amendment of part analysis.

§101. Certain death benefits

(a) Proceeds of life insurance contracts payable by reason of death

(1) General rule

Except as otherwise provided in paragraph (2), subsection (d), subsection (f), and subsection (j), gross income does not include amounts received (whether in a single sum or otherwise) under a life insurance contract, if such amounts are paid by reason of the death of the insured.

(2) Transfer for valuable consideration

In the case of a transfer for a valuable consideration, by assignment or otherwise, of a life insurance contract or any interest therein, the amount excluded from gross income by paragraph (1) shall not exceed an amount equal to the sum of the actual value of such consideration and the premiums and other amounts subsequently paid by the transferee. The preceding sentence shall not apply in the case of such a transfer—

(A) if such contract or interest therein has a basis for determining gain or loss in the hands of a transferee determined in whole or in part by reference to such basis of such contract or interest therein in the hands of the transferor, or

(B) if such transfer is to the insured, to a partner of the insured, to a partnership in which the insured is a partner, or to a corporation in which the insured is a shareholder or officer.

The term "other amounts" in the first sentence of this paragraph includes interest paid or accrued by the transferee on indebtedness with respect to such contract or any interest therein if such interest paid or accrued is not allowable as a deduction by reason of section 264(a)(4).

[(b) Repealed. Pub. L. 104–188, title I, §1402(a), Aug. 20, 1996, 110 Stat. 1789]

(c) Interest

If any amount excluded from gross income by subsection (a) is held under an agreement to pay interest thereon, the interest payments shall be included in gross income.

(d) Payment of life insurance proceeds at a date later than death

(1) General rule

The amounts held by an insurer with respect to any beneficiary shall be prorated (in accordance with such regulations as may be prescribed by the Secretary) over the period or periods with respect to which such payments are to be made. There shall be excluded from the gross income of such beneficiary in the taxable year received any amount determined by such proration. Gross income includes, to the extent not excluded by the preceding sentence, amounts received under agreements to which this subsection applies.

(2) Amount held by an insurer

An amount held by an insurer with respect to any beneficiary shall mean an amount to which

subsection (a) applies which is—

(A) held by any insurer under an agreement provided for in the life insurance contract, whether as an option or otherwise, to pay such amount on a date or dates later than the death of the insured, and

(B) equal to the value of such agreement to such beneficiary

(i) as of the date of death of the insured (as if any option exercised under the life insurance contract were exercised at such time), and

(ii) as discounted on the basis of the interest rate used by the insurer in calculating payments under the agreement and mortality tables prescribed by the Secretary.

(3) Application of subsection

This subsection shall not apply to any amount to which subsection (c) is applicable.

[(e) Repealed. Pub. L. 98–369, div. A, title IV, §421(b)(2), July 18, 1984, 98 Stat. 794]

(f) Proceeds of flexible premium contracts issued before January 1, 1985 payable by reason of death

(1) In general

Any amount paid by reason of the death of the insured under a flexible premium life insurance contract issued before January 1, 1985 shall be excluded from gross income only if—

(A) under such contract—

(i) the sum of the premiums paid under such contract does not at any time exceed the guideline premium limitation as of such time, and

(ii) any amount payable by reason of the death of the insured (determined without regard to any qualified additional benefit) is not at any time less than the applicable percentage of the cash value of such contract at such time, or

(B) by the terms of such contract, the cash value of such contract may not at any time exceed the net single premium with respect to the amount payable by reason of the death of the insured (determined without regard to any qualified additional benefit) at such time.

(2) Guideline premium limitation

For purposes of this subsection—

(A) Guideline premium limitation

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

(i) the guideline single premium, or

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

(B) Guideline single premium

The term "guideline single premium" means the premium at issue with respect to future benefits under the contract (without regard to any qualified additional benefit), and with respect to any charges for qualified additional benefits, at the time of a determination under subparagraph (A) or (E) and which is based on—

(i) the mortality and other charges guaranteed under the contract, and

(ii) interest at the greater of an annual effective rate of 6 percent or the minimum rate or rates guaranteed upon issue of the contract.

(C) Guideline level premium

The term "guideline level premium" means the level annual amount, payable over the longest period permitted under the contract (but ending not less than 20 years from date of issue or not later than age 95, if earlier), computed on the same basis as the guideline single premium, except that subparagraph (B)(ii) shall be applied by substituting "4 percent" for "6 percent".

(D) Computational rules

In computing the guideline single premium or guideline level premium under subparagraph

(B) or (C)—

(i) the excess of the amount payable by reason of the death of the insured (determined without regard to any qualified additional benefit) over the cash value of the contract shall be deemed to be not greater than such excess at the time the contract was issued,

(ii) the maturity date shall be the latest maturity date permitted under the contract, but not less than 20 years after the date of issue or (if earlier) age 95, and

(iii) the amount of any endowment benefit (or sum of endowment benefits) shall be deemed not to exceed the least amount payable by reason of the death of the insured (determined without regard to any qualified additional benefit) at any time under the contract.

(E) Adjustments

The guideline single premium and guideline level premium shall be adjusted in the event of a change in the future benefits or any qualified additional benefit under the contract which was not reflected in any guideline single premiums or guideline level premium previously determined.

(3) Other definitions and special rules

For purposes of this subsection—

(A) Flexible premium life insurance contract

The terms "flexible premium life insurance contract" and "contract" mean a life insurance contract (including any qualified additional benefits) which provides for the payment of one or more premiums which are not fixed by the insurer as to both timing and amount. Such terms do not include that portion of any contract which is treated under State law as providing any annuity benefits other than as a settlement option.

(B) Premiums paid

The term "premiums paid" means the premiums paid under the contract less any amounts (other than amounts includible in gross income) to which section 72(e) applies. If, in order to comply with the requirements of paragraph (1)(A), any portion of any premium paid during any contract year is returned by the insurance company (with interest) within 60 days after the end of a contract year—

(i) the amount so returned (excluding interest) shall be deemed to reduce the sum of the premiums paid under the contract during such year, and

(ii) notwithstanding the provisions of section 72(e), the amount of any interest so returned shall be includible in the gross income of the recipient.

(C) Applicable percentage

The term "applicable percentage" means—

(i) 140 percent in the case of an insured with an attained age at the beginning of the contract year of 40 or less, and

(ii) in the case of an insured with an attained age of more than 40 as of the beginning of the contract year, 140 percent reduced (but not below 105 percent) by one percent for each year in excess of 40.

(D) Cash value

The cash value of any contract shall be determined without regard to any deduction for any surrender charge or policy loan.

(E) Qualified additional benefits

The term "qualified additional benefits" means any—

(i) guaranteed insurability,

(ii) accidental death benefit,

(iii) family term coverage, or

(iv) waiver of premium.

(F) Premium payments not disqualifying contract

The payment of a premium which would result in the sum of the premiums paid exceeding the guideline premium limitation shall be disregarded for purposes of paragraph (1)(A)(i) if the amount of such premium does not exceed the amount necessary to prevent the termination of the contract without cash value on or before the end of the contract year.

(G) Net single premium

In computing the net single premium under paragraph (1)(B)—

(i) the mortality basis shall be that guaranteed under the contract (determined by reference to the most recent mortality table allowed under all State laws on the date of issuance),

(ii) interest shall be based on the greater of—

(I) an annual effective rate of 4 percent (3 percent for contracts issued before July 1, 1983), or

(II) the minimum rate or rates guaranteed upon issue of the contract, and

(iii) the computational rules of paragraph (2)(D) shall apply, except that the maturity date referred to in clause (ii) thereof shall not be earlier than age 95.

(H) Correction of errors

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

(i) the requirements described in paragraph (1) for any contract year was not satisfied due to reasonable error, and

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

the Secretary may waive the failure to satisfy such requirements.

(I) Regulations

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

(g) Treatment of certain accelerated death benefits

(1) In general

For purposes of this section, the following amounts shall be treated as an amount paid by reason of the death of an insured:

(A) Any amount received under a life insurance contract on the life of an insured who is a terminally ill individual.

(B) Any amount received under a life insurance contract on the life of an insured who is a chronically ill individual.

(2) Treatment of viatical settlements

(A) In general

If any portion of the death benefit under a life insurance contract on the life of an insured described in paragraph (1) is sold or assigned to a viatical settlement provider, the amount paid for the sale or assignment of such portion shall be treated as an amount paid under the life insurance contract by reason of the death of such insured.

(B) Viatical settlement provider

(i) In general

The term "viatical settlement provider" means any person regularly engaged in the trade or business of purchasing, or taking assignments of, life insurance contracts on the lives of insureds described in paragraph (1) if—

(I) such person is licensed for such purposes (with respect to insureds described in the same subparagraph of paragraph (1) as the insured) in the State in which the insured resides, or

(II) in the case of an insured who resides in a State not requiring the licensing of such

persons for such purposes with respect to such insured, such person meets the requirements of clause (ii) or (iii), whichever applies to such insured.

(ii) Terminally ill insureds

A person meets the requirements of this clause with respect to an insured who is a terminally ill individual if such person—

(I) meets the requirements of sections 8 and 9 of the Viatical Settlements Model Act of the National Association of Insurance Commissioners, and

(II) meets the requirements of the Model Regulations of the National Association of Insurance Commissioners (relating to standards for evaluation of reasonable payments) in determining amounts paid by such person in connection with such purchases or assignments.

(iii) Chronically ill insureds

A person meets the requirements of this clause with respect to an insured who is a chronically ill individual if such person—

(I) meets requirements similar to the requirements referred to in clause (ii)(I), and

(II) meets the standards (if any) of the National Association of Insurance Commissioners for evaluating the reasonableness of amounts paid by such person in connection with such purchases or assignments with respect to chronically ill individuals.

(3) Special rules for chronically ill insureds

In the case of an insured who is a chronically ill individual—

(A) In general

Paragraphs (1) and (2) shall not apply to any payment received for any period unless—

(i) such payment is for costs incurred by the payee (not compensated for by insurance or otherwise) for qualified long-term care services provided for the insured for such period, and

(ii) the terms of the contract giving rise to such payment satisfy—

(I) the requirements of section 7702B(b)(1)(B), and

(II) the requirements (if any) applicable under subparagraph (B).

For purposes of the preceding sentence, the rule of section 7702B(b)(2)(B) shall apply.

(B) Other requirements

The requirements applicable under this subparagraph are—

(i) those requirements of section 7702B(g) and section 4980C which the Secretary specifies as applying to such a purchase, assignment, or other arrangement,

(ii) standards adopted by the National Association of Insurance Commissioners which specifically apply to chronically ill individuals (and, if such standards are adopted, the analogous requirements specified under clause (i) shall cease to apply), and

(iii) standards adopted by the State in which the policyholder resides (and if such standards are adopted, the analogous requirements specified under clause (i) and (subject to section 4980C(f)) standards under clause (ii), shall cease to apply).

(C) Per diem payments

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

(D) Limitation on exclusion for periodic payments

For limitation on amount of periodic payments which are treated as described in paragraph (1), see section 7702B(d).

(4) Definitions

For purposes of this subsection—

(A) Terminally ill individual

The term "terminally ill individual" means an individual who has been certified by a physician as having an illness or physical condition which can reasonably be expected to result in death in 24 months or less after the date of the certification.

(B) Chronically ill individual

The term "chronically ill individual" has the meaning given such term by section 7702B(c)(2); except that such term shall not include a terminally ill individual.

(C) Qualified long-term care services

The term "qualified long-term care services" has the meaning given such term by section 7702B(c).

(D) Physician

The term "physician" has the meaning given to such term by section 1861(r)(1) of the Social Security Act (42 U.S.C. 1395x(r)(1)).

(5) Exception for business-related policies

This subsection shall not apply in the case of any amount paid to any taxpayer other than the insured if such taxpayer has an insurable interest with respect to the life of the insured by reason of the insured being a director, officer, or employee of the taxpayer or by reason of the insured being financially interested in any trade or business carried on by the taxpayer.

(h) Survivor benefits attributable to service by a public safety officer who is killed in the line of duty

(1) In general

Gross income shall not include any amount paid as a survivor annuity on account of the death of a public safety officer (as such term is defined in section 1204 of the Omnibus Crime Control and Safe Streets Act of 1968, as in effect immediately before the enactment of the National Defense Authorization Act for Fiscal Year 2013) killed in the line of duty—

(A) if such annuity is provided, under a governmental plan which meets the requirements of section 401(a), to the spouse (or a former spouse) of the public safety officer or to a child of such officer; and

(B) to the extent such annuity is attributable to such officer's service as a public safety officer.

(2) Exceptions

Paragraph (1) shall not apply with respect to the death of any public safety officer if, as determined in accordance with the provisions of the Omnibus Crime Control and Safe Streets Act of 1968—

(A) the death was caused by the intentional misconduct of the officer or by such officer's intention to bring about such officer's death;

(B) the officer was voluntarily intoxicated (as defined in section 1204 of such Act) at the time of death;

(C) the officer was performing such officer's duties in a grossly negligent manner at the time of death; or

(D) the payment is to an individual whose actions were a substantial contributing factor to the death of the officer.

(i) Certain employee death benefits payable by reason of death of certain terrorist victims or astronauts

(1) In general

Gross income does not include amounts (whether in a single sum or otherwise) paid by an employer by reason of the death of an employee who is a specified terrorist victim (as defined in section 692(d)(4)).

(2) Limitation

(A) In general

Subject to such rules as the Secretary may prescribe, paragraph (1) shall not apply to amounts which would have been payable after death if the individual had died other than as a specified terrorist victim (as so defined).

(B) Exception

Subparagraph (A) shall not apply to incidental death benefits paid from a plan described in section 401(a) and exempt from tax under section 501(a).

(3) Treatment of self-employed individuals

For purposes of paragraph (1), the term "employee" includes a self-employed individual (as defined in section 401(c)(1)).

(4) Relief with respect to astronauts

The provisions of this subsection shall apply to any astronaut whose death occurs in the line of duty.

(j) Treatment of certain employer-owned life insurance contracts

(1) General rule

In the case of an employer-owned life insurance contract, the amount excluded from gross income of an applicable policyholder by reason of paragraph (1) of subsection (a) shall not exceed an amount equal to the sum of the premiums and other amounts paid by the policyholder for the contract.

(2) Exceptions

In the case of an employer-owned life insurance contract with respect to which the notice and consent requirements of paragraph (4) are met, paragraph (1) shall not apply to any of the following:

(A) Exceptions based on insured's status

Any amount received by reason of the death of an insured who, with respect to an applicable policyholder—

(i) was an employee at any time during the 12-month period before the insured's death, or

(ii) is, at the time the contract is issued—

(I) a director,

(II) a highly compensated employee within the meaning of section 414(q) (without regard to paragraph (1)(B)(ii) thereof), or

(III) a highly compensated individual within the meaning of section 105(h)(5), except that "35 percent" shall be substituted for "25 percent" in subparagraph (C) thereof.

(B) Exception for amounts paid to insured's heirs

Any amount received by reason of the death of an insured to the extent—

(i) the amount is paid to a member of the family (within the meaning of section 267(c)(4)) of the insured, any individual who is the designated beneficiary of the insured under the contract (other than the applicable policyholder), a trust established for the benefit of any such member of the family or designated beneficiary, or the estate of the insured, or

(ii) the amount is used to purchase an equity (or capital or profits) interest in the applicable policyholder from any person described in clause (i).

(3) Employer-owned life insurance contract

(A) In general

For purposes of this subsection, the term "employer-owned life insurance contract" means a life insurance contract which—

(i) is owned by a person engaged in a trade or business and under which such person (or a related person described in subparagraph (B)(ii)) is directly or indirectly a beneficiary under

the contract, and

(ii) covers the life of an insured who is an employee with respect to the trade or business of the applicable policyholder on the date the contract is issued.

For purposes of the preceding sentence, if coverage for each insured under a master contract is treated as a separate contract for purposes of sections 817(h), 7702, and 7702A, coverage for each such insured shall be treated as a separate contract.

(B) Applicable policyholder

For purposes of this subsection—

(i) In general

The term "applicable policyholder" means, with respect to any employer-owned life insurance contract, the person described in subparagraph (A)(i) which owns the contract.

(ii) Related persons

The term "applicable policyholder" includes any person which—

(I) bears a relationship to the person described in clause (i) which is specified in section 267(b) or 707(b)(1), or

(II) is engaged in trades or businesses with such person which are under common control (within the meaning of subsection (a) or (b) of section 52).

(4) Notice and consent requirements

The notice and consent requirements of this paragraph are met if, before the issuance of the contract, the employee—

(A) is notified in writing that the applicable policyholder intends to insure the employee's life and the maximum face amount for which the employee could be insured at the time the contract was issued,

(B) provides written consent to being insured under the contract and that such coverage may continue after the insured terminates employment, and

(C) is informed in writing that an applicable policyholder will be a beneficiary of any proceeds payable upon the death of the employee.

(5) Definitions

For purposes of this subsection—

(A) Employee

The term "employee" includes an officer, director, and highly compensated employee (within the meaning of section 414(q)).

(B) Insured

The term "insured" means, with respect to an employer-owned life insurance contract, an individual covered by the contract who is a United States citizen or resident. In the case of a contract covering the joint lives of 2 individuals, references to an insured include both of the individuals.

(Aug. 16, 1954, ch. 736, 68A Stat. 26; Pub. L. 85–866, title I, §23(d), Sept. 2, 1958, 72 Stat. 1622; Pub. L. 87–792, §7(c), Oct. 10, 1962, 76 Stat. 829; Pub. L. 89–365, §1(c), Mar. 8, 1966, 80 Stat. 32; Pub. L. 91–172, title I, §101(j)(l), Dec. 30, 1969, 83 Stat. 526; Pub. L. 93–406, title II, §§2005(c)(15), 2007(b)(3), Sept. 2, 1974, 88 Stat. 992, 994; Pub. L. 94–455, title XIX, §§1901(a)(16), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1765, 1834; Pub. L. 97–248, title II, §§239, 266(a), (b), Sept. 3, 1982, 96 Stat. 514, 547, 550; Pub. L. 98–369, div. A, title II, §221(b)(2), title IV, §421(b)(2), title VII, §713(e), July 18, 1984, 98 Stat. 772, 794, 958; Pub. L. 99–514, title X, §1001(a)–(c), Oct. 22, 1986, 100 Stat. 2387; Pub. L. 104–188, title I, §1402(a), (b)(1), Aug. 20, 1996, 110 Stat. 1789; Pub. L. 104–191, title III, §331(a), Aug. 21, 1996, 110 Stat. 2067; Pub. L. 105–34, title X, §1084(b)(2), title XV, §1528(a), Aug. 5, 1997, 111 Stat. 952, 1074; Pub. L. 107–134, title I, §102(a), Jan. 23, 2002, 115 Stat. 2429; Pub. L. 108–121, title I, §110(b)(1), (2),

Nov. 11, 2003, 117 Stat. 1342; Pub. L. 109–280, title VIII, §863(a), (c)(1), Aug. 17, 2006, 120 Stat. 1021, 1024; Pub. L. 112–239, div. A, title X, §1086(b)(3)(B), Jan. 2, 2013, 126 Stat. 1968.)

REFERENCES IN TEXT

The Omnibus Crime Control and Safe Streets Act of 1968, referred to in subsec. (h), is Pub. L. 90–351, June 19, 1968, 82 Stat. 197. Section 1204 of the Act is classified to section 3796b of Title 42, The Public Health and Welfare. Section 1204 of the Act, as in effect immediately before the enactment of the National Defense Authorization Act for Fiscal Year 2013, means section 1204 prior to its amendment by Pub. L. 112–239, div. A, title X, §1086(b)(1)(E), Jan. 2, 2013, 126 Stat. 1967. For complete classification of this Act to the Code, see Short Title note set out under section 3711 of Title 42 and Tables.

CODIFICATION

Another section 1084(b) of Pub. L. 105–34 amended sections 805, 807, 812, and 832 of this title.

AMENDMENTS

2013—Subsec. (h)(1). Pub. L. 112–239 inserted ", as in effect immediately before the enactment of the National Defense Authorization Act for Fiscal Year 2013" after "1968" in introductory provisions.

2006—Subsec. (a)(1). Pub. L. 109–280, §863(c)(1), substituted "subsection (f), and subsection (j)" for "and subsection (f)".

Subsec. (j). Pub. L. 109–280, §863(a), added subsec. (j).

2003—Subsec. (i). Pub. L. 108–121, §110(b)(2), inserted "or astronauts" after "victims" in heading.

Subsec. (i)(4). Pub. L. 108–121, §110(b)(1), added par. (4).

2002—Subsec. (i). Pub. L. 107–134 added subsec. (i).

1997—Subsec. (a)(2). Pub. L. 105–34, §1084(b)(2), inserted at end "The term 'other amounts' in the first sentence of this paragraph includes interest paid or accrued by the transferee on indebtedness with respect to such contract or any interest therein if such interest paid or accrued is not allowable as a deduction by reason of section 264(a)(4)."

Subsec. (h). Pub. L. 105–34, §1528(a), added subsec. (h).

1996—Subsec. (b). Pub. L. 104–188, §1402(a), struck out subsec. (b) which related to employees' death benefits.

Subsec. (c). Pub. L. 104–188, §1402(b)(1), substituted "subsection (a)" for "subsection (a) or (b)".

Subsec. (g). Pub. L. 104–191 added subsec. (g).

1986—Subsec. (d)(1). Pub. L. 99–514, §1001(a), amended second sentence generally, which prior to amendment read as follows: "There shall be excluded from the gross income of such beneficiary in the taxable year received—

"(A) any amount determined by such proration, and

"(B) in the case of the surviving spouse of the insured, that portion of the excess of the amounts received under one or more agreements specified in paragraph (2)(A) (whether or not payment of any part of such amounts is guaranteed by the insurer) over the amount determined in subparagraph (A) of this paragraph which is not greater than $1,000 with respect to any insured."

Subsec. (d)(2)(B). Pub. L. 99–514, §1001(c)(2), substituted "equal" for "is equal" in introductory provisions.

Subsec. (d)(2)(B)(ii). Pub. L. 99–514, §1001(b), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: "as discounted on the basis of the interest rate and mortality tables used by the insurer in calculating payments under the agreement."

Subsec. (d)(3), (4). Pub. L. 99–514, §1001(c)(1), redesignated par. (4) as (3), and struck out former par. (3), "Surviving spouse", which read as follows: "For purposes of this subsection, the term 'surviving spouse' means the spouse of the insured as of the date of death, including a spouse legally separated but not under a decree of absolute divorce."

1984—Subsec. (b)(3)(B). Pub. L. 98–369, §713(e), amended subpar. (B) generally, substituting "certain distributions" for "certain lump sum distributions" in heading, substituting "amount paid or distributed" for "lump sum distribution described in the second sentence of paragraph (2)(B)" in introductory text and adding cls. (i) and (ii).

Subsec. (e). Pub. L. 98–369, §421(b)(2), repealed subsec. (e) relating to payments of alimony or of income of an estate or trust in case of divorce, etc.

Subsec. (f). Pub. L. 98–369, §221(b)(2)(B), inserted "issued before January 1, 1985" in heading.

Subsec. (f)(1). Pub. L. 98–369, §221(b)(2)(A), inserted "issued before January 1, 1985" in introductory text.

1982—Subsec. (a)(1). Pub. L. 97–248, §266(b), substituted ", subsection (d), and subsection (f)" for "and in

subsection (d)".

Subsec. (b)(3). Pub. L. 97–248, §239, amended par. (3) generally, substituting "Treatment of self-employed individuals" for "Self-employed individual not considered an employee" in heading, designating existing provisions as subparagraph (A) and, as so designated, adding heading and exception for subpar. (B), and adding subparagraph (B).

Subsec. (f). Pub. L. 97–248, §266(a), added subsec. (f).

1976—Subsec. (d)(1). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (f). Pub. L. 94–455, §1901(a)(16), struck out subsec. (f) relating to effective date of section.

1974—Subsec. (b)(2)(B). Pub. L. 93–406, §2005(c)(15), substituted "a lump sum distribution (as defined in section 402(e)(4)" for "total distributions payable (as defined in section 402(a)(3)) which are paid to a distributee within one taxable year of the distributee by reason of the employee's death".

Subsec. (b)(2)(D). Pub. L. 93–406, §2007(b)(3), substituted "if the member or former member of the uniformed services by reason of whose death such annuity is payable" for "if the individual who made the election under such chapter".

1969—Subsec. (b)(2)(B)(iii). Pub. L. 91–172 substituted references to section 170(b)(1)(A) (ii) and (vi), and to religious organizations, for references to section 503(b)(1), (2), or (3).

1966—Subsec. (b)(2)(D). Pub. L. 89–365 provided that par. (1) shall not apply in the case of an annuity under chapter 73 of title 10 if the individual who made the election under that chapter died after attaining retirement age.

1962—Subsec. (b)(2)(B)(ii). Pub. L. 87–792, §7(c)(1), substituted "described in section 403(a)" for "which meets the requirements of paragraphs (3), (4), (5), and (6) of section 401(a)".

Subsec. (b)(3). Pub. L. 87–792, §7(c)(2), added par. (3).

1958—Subsec. (b)(2)(B). Pub. L. 85–866 substituted "This subparagraph shall not apply to total distributions payable (as defined in section 402(a)(3) which are paid to a distributee within one taxable year of the distributee by reason of the employee's death—" for "(other than total distributions payable, as defined in section 402(a)(3), which are paid to distributee, by a stock bonus, pension, or profit-sharing trust described in section 401(a) which is exempt from tax under section 501(a), or under an annuity contract under a plan which meets the requirements of paragraphs (3), (4), (5), and (6) of section 401(a), within one taxable year of the distributee by reason of the employee's death)", and added cls. (i), (ii), and (iii).

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112–239 effective Jan. 2, 2013, and applicable to matters pending on Jan. 2, 2013, or filed or accruing after that date, with certain exceptions, see section 1086(d) of Pub. L. 112–239, set out as a note under section 3791 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title VIII, §863(d), Aug. 17, 2006, 120 Stat. 1024, provided that: "The amendments made by this section [enacting section 6039I of this title and amending this section] shall apply to life insurance contracts issued after the date of the enactment of this Act [Aug. 17, 2006], except for a contract issued after such date pursuant to an exchange described in section 1035 of the Internal Revenue Code of 1986 for a contract issued on or prior to that date. For purposes of the preceding sentence, any material increase in the death benefit or other material change shall cause the contract to be treated as a new contract except that, in the case of a master contract (within the meaning of section 264(f)(4)(E) of such Code), the addition of covered lives shall be treated as a new contract only with respect to such additional covered lives."

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–121, title I, §110(b)(3), Nov. 11, 2003, 117 Stat. 1342, provided that: "The amendments made by this subsection [amending this section] shall apply to amounts paid after December 31, 2002, with respect to deaths occurring after such date."

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–134, title I, §102(b), Jan. 23, 2002, 115 Stat. 2429, provided that:

"(1) EFFECTIVE DATE.—The amendment made by this section [amending this section] shall apply to taxable years ending before, on, or after September 11, 2001.

"(2) WAIVER OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from the amendments made by this section is prevented at any time before the close of the 1-year period beginning on the date of the enactment of this Act [Jan. 23, 2002] by the operation of any law or rule of law (including res judicata), such refund or credit may nevertheless be made or allowed if claim therefor is filed before the close of such period."

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title X, §1084(d), Aug. 5, 1997, 111 Stat. 955, as amended by Pub. L. 105–206, title VI, §6010(o)(3)(B), July 22, 1998, 112 Stat. 816, provided that: "The amendments made by this section [amending this section and sections 264, 265, 805, 807, 812, and 832 of this title] shall apply to contracts issued after June 8, 1997, in taxable years ending after such date. For purposes of the preceding sentence, any material increase in the death benefit or other material change in the contract shall be treated as a new contract except that, in the case of a master contract (within the meaning of section 264(f)(4)(E) of the Internal Revenue Code of 1986), the addition of covered lives shall be treated as a new contract only with respect to such additional covered lives. For purposes of this subsection, an increase in the death benefit under a policy or contract issued in connection with a lapse described in section 501(d)(2) of the Health Insurance Portability and Accountability Act of 1996 [Pub. L. 104–191, set out as a note under section 264 of this title] shall not be treated as a new contract."

Pub. L. 105–34, title XV, §1528(b), Aug. 5, 1997, 111 Stat. 1075, as amended by Pub. L. 107–15, §2, June 5, 2001, 115 Stat. 37, provided that: "The amendments made by this section [amending this section] shall apply to amounts received in taxable years beginning after December 31, 1996, with respect to individuals dying after such date, and to amounts received in taxable years beginning after December 31, 2001, with respect to individuals dying on or before December 31, 1996."

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–191, title III, §331(b), Aug. 21, 1996, 110 Stat. 2069, provided that: "The amendment made by subsection (a) [amending this section] shall apply to amounts received after December 31, 1996."

Pub. L. 104–188, title I, §1402(c), Aug. 20, 1996, 110 Stat. 1790, provided that: "The amendments made by this section [amending this section and sections 406, 407, and 7701 of this title] shall apply with respect to decedents dying after the date of the enactment of this Act [Aug. 20, 1996]."

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title X, §1001(d), Oct. 22, 1986, 100 Stat. 2387, provided that: "The amendments made by this section [amending this section] shall apply to amounts received with respect to deaths occurring after the date of the enactment of this section [Oct. 22, 1986] in taxable years ending after such date."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 221(b)(2) of Pub. L. 98–369 effective Jan. 1, 1984, see section 221(d)(4) of Pub. L. 98–369, set out as an Effective Date note under section 7702 of this title.

Amendment by section 421(b)(2) of Pub. L. 98–369 applicable to transfers after July 18, 1984, in taxable years ending after such date, subject to election to have repeal apply to transfers after 1983 or to transfers pursuant to existing decrees, see section 421(d) of Pub. L. 98–369, set out as an Effective Date note under section 1041 of this title.

Amendment by section 713 of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title II, §266(c)(1), Sept. 3, 1982, 96 Stat. 550, as amended by Pub. L. 98–369, div. A, title II, §221(b)(1), July 18, 1984, 98 Stat. 772, provided that: "The amendments made by this section [amending this section] shall apply to contracts entered into before January 1, 1985."

Amendment by section 239 of Pub. L. 97–248 applicable to decedents dying after Dec. 31, 1983, see section 241(b) of Pub. L. 97–248, set out as an Effective Date note under section 416 of this title. Such amendment is applicable, in the case of amounts received under the plan of an S corporation, with respect to decedents dying after Dec. 31, 1982, notwithstanding section 241(b) of Pub. L. 97–248, see section 6(b)(2) of Pub. L. 97–354, Oct. 19, 1982, 96 Stat. 1697, set out as a note under section 1361 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(16) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by section 1906(b)(13)(A) of Pub. L. 94–455 effective Feb. 1, 1977, see section 1906(d)(1) of Pub. L. 94–455, set out as a note under section 6013 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by section 2005(c)(15) of Pub. L. 93–406 applicable only with respect to distributions and

payments made after Dec. 31, 1973, in taxable years beginning after Dec. 31, 1973, see section 2005(d) of Pub. L. 93–406, set out as a note under section 402 of this title.

Amendment by section 2007(b)(3) of Pub. L. 93–406 applicable to taxable years ending on or after Sept. 21, 1972, with respect to individuals dying on or after Sept. 21, 1972, see section 2007(c) of Pub. L. 93–406, set out as a note under section 122 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–365 applicable with respect to individuals making an election under chapter 73 of Title 10 who died after Dec. 31, 1965, see section 1(d) of Pub. L. 89–365, set out as an Effective Date note under section 122 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87–792, set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1957, see section 23(g) of Pub. L. 85–866, set out as a note under section 403 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

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

FLEXIBLE PREMIUM CONTRACTS ISSUED DURING 1984 WHICH MEET REQUIREMENTS OF SECTION 7702 TREATED AS MEETING REQUIREMENTS OF SECTION 101(F)

Flexible premium contracts issued during 1984 which meet requirements of section 7702 of this title treated as meeting requirements of subsec. (f) of this section, see section 221(b)(3) of Pub. L. 98–369, as added by Pub. L. 99–514, set out as a note under section 7702 of this title.

SPECIAL RULES FOR CONTRACTS ENTERED INTO BEFORE JANUARY 1, 1983

Pub. L. 97–248, title II, §266(c)(2), (3), Sept. 3, 1982, 96 Stat. 550, as amended by Pub. L. 97–448, title III, §306(a)(13), Jan. 12, 1983, 96 Stat. 2405; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(2) SPECIAL RULE FOR CONTRACTS ENTERED INTO BEFORE JANUARY 1, 1983.—Any contract entered into before January 1, 1983, which meets the requirements of section 101(f) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] on the date which is 1 year after the date of the enactment of this Act [Sept. 3, 1982] shall be treated as meeting the requirements of such section for any period before the date on which such contract meets such requirements. Any death benefits paid under a flexible premium life insurance contract (within the meaning of section 101(f)(3)(A) of such Code) before the date which is 1 year after such date of enactment [Sept. 3, 1982] shall be excluded from gross income.

"(3) SPECIAL RULE FOR CERTAIN CONTRACTS.—Any contract entered into before January 1, 1983, shall be treated as meeting the requirements of subparagraph (A) of section 101(f)(1) of such Code if such contract would meet such requirements if section 101(f)(2)(C) of such Code were applied by substituting '3 percent' for '4 percent'."

§102. Gifts and inheritances

(a) General rule

Gross income does not include the value of property acquired by gift, bequest, devise, or inheritance.

(b) Income

Subsection (a) shall not exclude from gross income—

(1) the income from any property referred to in subsection (a); or

(2) where the gift, bequest, devise, or inheritance is of income from property, the amount of such income.

Where, under the terms of the gift, bequest, devise, or inheritance, the payment, crediting, or distribution thereof is to be made at intervals, then, to the extent that it is paid or credited or to be distributed out of income from property, it shall be treated for purposes of paragraph (2) as a gift, bequest, devise, or inheritance of income from property. Any amount included in the gross income of a beneficiary under subchapter J shall be treated for purposes of paragraph (2) as a gift, bequest, devise, or inheritance of income from property.

(c) Employee gifts

(1) In general

Subsection (a) shall not exclude from gross income any amount transferred by or for an employer to, or for the benefit of, an employee.

(2) Cross references

For provisions excluding certain employee achievement awards from gross income, see section 74(c).

For provisions excluding certain de minimis fringes from gross income, see section 132(e).

(Aug. 16, 1954, ch. 736, 68A Stat. 28; Pub. L. 99–514, title I, §122(b), Oct. 22, 1986, 100 Stat. 2110.)

AMENDMENTS

1986—Subsec. (c). Pub. L. 99–514 added subsec. (c).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to prizes and awards granted after Dec. 31, 1986, see section 151(c) of Pub. L. 99–514, set out as a note under section 1 of this title.

§103. Interest on State and local bonds

(a) Exclusion

Except as provided in subsection (b), gross income does not include interest on any State or local bond.

(b) Exceptions

Subsection (a) shall not apply to—

(1) Private activity bond which is not a qualified bond

Any private activity bond which is not a qualified bond (within the meaning of section 141).

(2) Arbitrage bond

Any arbitrage bond (within the meaning of section 148).

(3) Bond not in registered form, etc.

Any bond unless such bond meets the applicable requirements of section 149.

(c) Definitions

For purposes of this section and part IV—

(1) State or local bond

The term "State or local bond" means an obligation of a State or political subdivision thereof.

(2) State

The term "State" includes the District of Columbia and any possession of the United States.

(Aug. 16, 1954, ch. 736, 68A Stat. 29; Pub. L. 90–364, title I, §107(a), June 28, 1968, 82 Stat. 266; Pub. L. 90–634, title IV, §401(a), Oct. 24, 1968, 82 Stat. 1349; Pub. L. 91–172, title VI, §601(a), Dec. 30, 1969, 83 Stat. 656; Pub. L. 92–178, title III, §315(a), (b), Dec. 10, 1971, 85 Stat. 529; Pub. L. 94–164, §7(a), Dec. 23, 1975, 89 Stat. 976; Pub. L. 94–182, title III, §301(a), Dec. 31, 1975, 89 Stat. 1056; Pub. L. 94–455, title XIX, §§1901(a)(17), (b)(8)(B), 1906(b)(13)(A), title XXI, §§2105(a)–(c), 2137(d), Oct. 4, 1976, 90 Stat. 1765, 1766, 1794, 1834, 1902, 1931; Pub. L. 95–339, title II, §201(a), Aug. 8, 1978, 92 Stat. 467; Pub. L. 95–600, title III, §§331(a), (b), 332(a), 333(a), 334(a), (b), title VII, §703(j)(1), (q)(1), Nov. 6, 1978, 92 Stat. 2839–2841, 2941, 2944; Pub. L. 96–222, title I, §107(a)(3)(C), Apr. 1, 1980, 94 Stat. 223; Pub. L. 96–223, title II, §§241(a), 242(a), 244(a), Apr. 2, 1980, 94 Stat. 281, 283, 286; Pub. L. 96–499, title XI, §1103, Dec. 5, 1980, 94 Stat. 2669; Pub. L. 97–34, title VIII, §§811(a), (b), 812(a), Aug. 13, 1981, 95 Stat. 349, 350; Pub. L. 97–248, title II, §§214(a)–(e), 215(a), (b), 217(a)–(d), 219(a), 221(a), (b), (c)(1), title III, §310(b)(1), (c)(1), (2), Sept. 3, 1982, 96 Stat. 466–469, 472–474, 477, 478, 596, 599; Pub. L. 97–424, title V, §547(a), Jan. 6, 1983, 96 Stat. 2199; Pub. L. 97–473, title II, §202(b)(2), Jan. 14, 1983, 96 Stat. 2609; Pub. L. 98–369, div. A, title IV, §474(r)(4), title VI, §§621–624(a), (b)(2), (3), 626(a), 627, 628(a), (c)–(e), (g), 630, July 18, 1984, 98 Stat. 839, 915–922, 924, 926, 928, 931–933; Pub. L. 99–272, title XIII, §13209(e), Apr. 7, 1986, 100 Stat. 323; Pub. L. 99–514, title XIII, §1301(a), title XVIII, §§1864(a)(1), (b)–(e), 1865(a), 1869(a), (b), 1870, 1871(a)(1), (b), 1899A(2)–(4), Oct. 22, 1986, 100 Stat. 2602, 2885, 2886, 2888, 2890, 2891, 2958; Pub. L. 100–647, title I, §1013(a)(34)(A), (c)(12)(A), Nov. 10, 1988, 102 Stat. 3544, 3547.)

AMENDMENTS

1988—Subsec. (b)(6)(N). Pub. L. 100–647, §1013(c)(12)(A), amended subpar. (N), as in effect on the day before the date of the enactment of Pub. L. 99–514 [Oct. 22, 1986], by redesignating cls. (ii) and (iii) as (iii) and (iv), respectively, and by striking out cl. (i) and inserting in lieu thereof the following new cls.:

"(i) IN GENERAL.—Except as provided in clause (ii), this paragraph shall not apply to any obligation issued after December 31, 1986.

"(ii) CERTAIN REFUNDINGS.—This paragraph shall apply to any obligation (or series of obligations) issued to refund an obligation issued on or before December 31, 1986, if—

"(I) the average maturity date of the issue of which the refunding obligation is a part is not later than the average maturity date of the obligations to be refunded by such issue,

"(II) the amount of the refunding obligation does not exceed the outstanding amount of the refunded obligation, and

"(III) the proceeds of the refunding obligation are used to redeem the refunded obligation not later than 90 days after the date of the issuance of the refunding obligation.

For purposes of subclause (I), average maturity shall be determined in accordance with subsection (b)(14)(B)(i)."

Subsec. (c)(7). Pub. L. 100–647, §1013(a)(34)(A), amended par. (7), as in effect on the day before the date of the enactment of Pub. L. 99–514 [Oct. 22, 1986], by substituting "necessary" for "necessary".

1986—Pub. L. 99–514, §1301(a), in amending section generally, substituted "Interest on State and local bonds" for "Interest on certain governmental obligations" in section catchline.

Subsec. (a). Pub. L. 99–514, §1301(a), substituted "Exclusion" for "General rule" in heading and amended text generally. Prior to amendment, text read as follows: "Gross income does not include interest on—

"(1) the obligations of a State, a Territory, or a possession of the United States, or any political subdivision of any of the foregoing, or of the District of Columbia; and

"(2) qualified scholarship funding bonds."

Subsec. (b). Pub. L. 99–514, §1301(a), in amending section generally, substituted provision relating to exceptions for provision relating to industrial development bonds.

Subsec. (b)(11). Pub. L. 99–272 struck out par. (11) relating to pollution control facilities acquired by regional pollution control authorities.

Subsec. (b)(13), (14)(A). Pub. L. 99–514, §1871(b), substituted "and (6)" for "(6), and (7)".

Subsec. (b)(16)(A). Pub. L. 99–514, §1870, substituted "clause (ii)" for "clause (i)".

Subsec. (b)(17)(A). Pub. L. 99–514, §1871(b), substituted "and (6)" for "(6), and (7)".

Subsec. (c). Pub. L. 99–514, §1301(a), in amending section generally, substituted provision relating to definitions for provision relating to arbitrage.

Subsecs. (d) to (g). Pub. L. 99–514, §1301(a), in amending section generally, struck out subsecs. (d) to (g)

which related to certain irrigation dams, qualified scholarship funding bonds, certain federally guaranteed obligations, and qualified steam-generating or alcohol-producing facilities, respectively.

Subsec. (h). Pub. L. 99–514, §1301(a), in amending section generally, struck out subsec. (h) which provided that obligations must not be guaranteed.

Subsec. (h)(2)(A). Pub. L. 99–514, §1899A(2), substituted "guaranteed" for "guaranted".

Subsec. (h)(5)(A). Pub. L. 99–514, §1865(a), struck out "the United States," after "program of".

Subsecs. (i) to (k). Pub. L. 99–514, §1301(a), in amending section generally, struck out subsecs. (i) to (k) which related to obligations of certain volunteer fire departments, provided that obligations must be in registered form to be tax-exempt, and required public approval for industrial development bonds, respectively.

Subsec. (l). Pub. L. 99–514, §1301(a), in amending section generally, struck out subsec. (l) which related to information reporting requirements for certain bonds.

Subsec. (l)(2)(F). Pub. L. 99–514, §1864(d), added subpar. (F) which read: "if such obligation is a private activity bond (as defined in subsection (n)(7)), such information as the Secretary may require for purposes of determining whether the requirements of subsection (n) are met with respect to such obligation."

Subsec. (m). Pub. L. 99–514, §1301(a), in amending section generally, struck out subsec. (m) which related to obligations exempt other than under this title.

Subsec. (m)(1). Pub. L. 99–514, §1871(a)(1), substituted "(j), (k), (l), (n), and (o)" for "(k), (l), and (n)".

Subsec. (m)(3)(B). Pub. L. 99–514, §1899A(3), substituted "608(a)(6)(A)" for "608(6)(A)".

Subsec. (n). Pub. L. 99–514, §1301(a), in amending section generally, struck out subsec. (n) which related to limitation on aggregate amount of private activity bonds issued during any calendar year.

Subsec. (n)(6)(A), (B)(i). Pub. L. 99–514, §1864(b), substituted "governmental units or other authorities" for "governmental units".

Subsec. (n)(7)(C)(i). Pub. L. 99–514, §1864(c), substituted "all of the property to be financed by the obligation" for "the property described in such paragraph".

Subsec. (n)(10)(B). Pub. L. 99–514, §1864(e), substituted "identify project" for "specify project" in heading and "identify (with reasonable specificity) the project" for "specify the project" in text of subpar. (B)(i).

Subsec. (n)(10)(D). Pub. L. 99–514, §1864(e)(2), substituted "any identification or specification" for "any specification".

Subsec. (n)(13). Pub. L. 99–514, §1864(a)(1), added par. (13).

Subsec. (o). Pub. L. 99–514, §1301(a), in amending section generally, struck out subsec. (o) relating to consumer loan bonds.

Pub. L. 99–514, §1869(a), (b)(1), substituted "Private loan bonds" for "Consumer loan bonds" in subsection and par. (2) headings, "private loan bond" for "consumer loan bond" in text of pars. (1), (2)(A) and (B), and "subsection (c)(6)(H)(i)" for "subsection (c)(6)(G)(i)" in par. (2)(C)(ii).

Pub. L. 99–514, §1869(b)(2), redesignated subsec. (o), relating to cross references, as (p).

Subsec. (p). Pub. L. 99–514, §1301(a), in amending section generally, struck out subsec. (p) which related to cross references.

Pub. L. 99–514, §1869(b)(2), redesignated former subsec. (o), relating to cross references, as (p).

Subsec. (p)(4). Pub. L. 99–514, §1899A(4), substituted "October 27, 1949 (48 U.S.C. 1403)" for "October 27, 1919 (48 U.S.C. 1403)".

1984—Subsec. (b)(4). Pub. L. 98–369, §628(e), inserted "For purposes of subparagraph (A), any property shall not be treated as failing to be residential rental property merely because part of the building in which such property is located is used for purposes other than residential rental purposes."

Subsec. (b)(6)(F)(iv). Pub. L. 98–369, §474(r)(4), substituted "section 30(b)(2)(A)" for "section 44F(b)(2)(A)".

Subsec. (b)(6)(N). Pub. L. 98–369, §630, designated existing provisions as cl. (i) and added cls. (ii) and (iii).

Subsec. (b)(6)(P). Pub. L. 98–369, §628(c), added subpar. (P).

Subsec. (b)(7). Pub. L. 98–369, §628(g), repealed par. (7) which related to advance refunding of qualified public facilities.

Subsec. (b)(13). Pub. L. 98–369, §628(d), inserted "For purposes of this paragraph— (A) a partnership and each of its partners (and their spouses and minor children) shall be treated as related persons, and (B) an S corporation and each of its shareholders (and their spouses and minor children) shall be treated as related persons."

Subsec. (b)(15). Pub. L. 98–369, §623, added par. (15).

Subsec. (b)(16) to (18). Pub. L. 98–369, §627, added pars. (16) to (18).

Subsec. (c). Pub. L. 98–369, §624(b)(2), struck out "bonds" after "Arbitrage" in heading.

Subsec. (c)(1). Pub. L. 98–369, §624(b)(3), inserted "to arbitrage bonds" in heading.

Subsec. (c)(6), (7). Pub. L. 98–369, §624(a), added par. (6) and redesignated former par. (6) as (7).

Subsec. (h). Pub. L. 98–369, §622, amended subsec. (h) generally, in par. (1) substituting provisions that obligations are not included in the section if they are federally guaranteed for provisions which excluded obligations guaranteed, in whole or part, by the U.S. under a program to conserve energy, or under other Federal or State programs, in par. (2) substituting provisions defining "federally guaranteed" for provisions setting forth obligations to which this subsection applies, and adding pars. (3) to (5).

Subsec. (m)(1). Pub. L. 98–369, §628(a)(1), inserted "In the case of an obligation issued after December 31, 1983, such obligation shall not be treated as described in this paragraph unless the appropriate requirements of subsections (b), (c), (h), (k), (l), and (n) of this section and section 103A are met with respect to such obligation. For purposes of applying such requirements, a possession of the United States shall be treated as a State; except that clause (ii) of subsection (n)(4)(A) shall not apply."

Subsec. (m)(2)(B). Pub. L. 98–369, §628(a)(2), substituted "is exempt from tax under this title without regard to any provision of law which is not contained in this title and which is not contained in a revenue Act" for "is exempt from taxation under any provision of this title".

Subsec. (m)(3). Pub. L. 98–369, §628(a)(3), added par. (3).

Subsec. (n). Pub. L. 98–369, §621, added subsec. (n). Former subsec. (n), relating to cross references, redesignated (o).

Subsec. (o). Pub. L. 98–369, §626(a), added subsec. (o) relating to consumer loan bonds.

Pub. L. 98–369, §621, redesignated subsec. (n), relating to cross references, as (o).

1983—Subsec. (m). Pub. L. 97–424, §547(a), added subsec. (m). Former subsec. (m) redesignated (n).

Pub. L. 97–473 amended subsec. (m) generally, adding pars. (1) and (2), redesignating former pars. (1) to (3) as (3) to (5), respectively, and striking out par. (24) which had provided reference regarding exempt-interest dividends to section 852(b)(5)(B.) See section 722(b) of Pub. L. 98–369, set out as a note below.

Subsec. (n). Pub. L. 97–424, §547(a), redesignated former subsec. (m), relating to cross references, as (n).

1982—Subsec. (b)(2). Pub. L. 97–248, §215(b)(2), substituted "For purposes of this section" for "For purposes of this subsection".

Subsec. (b)(4). Pub. L. 97–248, §§217(a)(1), (b), 221(a), (c)(1), 310(c)(1), in subpar. (A) substituted "if at all times during the qualified project period" for "if each obligation issued pursuant to the issue is in registered form and if" after "residential rental property", and struck out "(within the meaning of section 167(k)(3)(B))" after "low or moderate income", added subpar. (J), struck out provision that for purposes of subpar. (A), "targeted area project" meant a project located in a qualified census tract (within the meaning of section 103A(k)(2)) or an area of chronic economic distress (within the meaning of section 103A(k)(3)) and, in last sentence, substituted "electric energy or gas from" for "electric energy from".

Subsec. (b)(6)(C). Pub. L. 97–248, §217(a)(3), substituted "paragraph (13)" for "paragraph (7)".

Subsec. (b)(6)(F)(iv). Pub. L. 97–248, §214(d), added cl. (iv).

Subsec. (b)(6)(K) to (O). Pub. L. 97–248, §214(a)–(c), (e), added subpars. (K) to (O).

Subsec. (b)(9)(A). Pub. L. 97–248, §217(c), inserted "ferry," after "rail car" in provisions preceding cl. (i), and in cl. (ii), inserted "(or, in the case of a ferry, mass transportation services)" after "mass commuting services".

Subsec. (b)(10). Pub. L. 97–248, §217(a)(2), added par. (10). Former par. (10) redesignated (13).

Subsec. (b)(11). Pub. L. 97–248, §217(d), added par. (11).

Subsec. (b)(12). Pub. L. 97–248, §221(b), added par. (12). [Provisions of par. (12)(A) were formerly contained, as undesignated provisions, in par. (4).]

Subsec. (b)(13). Pub. L. 97–248, §217(a)(2), redesignated former par. (10) as (13).

Subsec. (b)(14). Pub. L. 97–248, §219(a), added par. (14).

Subsec. (h). Pub. L. 97–248, §310(c)(2), substituted "must not be guaranteed or subsidized" for "must be in registered form and not guaranteed or subsidized" in heading, and in par. (1) struck out subpar. (A) reading "such obligation is not issued in registered form", and redesignated subpars. (B) and (C) as (A) and (B), respectively.

Subsec. (j). Pub. L. 97–248, §310(b)(1), added subsec. (j). Former subsec. (j), relating to cross references, redesignated (m).

Subsec. (k). Pub. L. 97–248, §215(a), added subsec. (k).

Subsec. (l). Pub. L. 97–248, §215(b)(1), added subsec. (l).

Subsec. (m). Pub. L. 97–248, §§215(a), (b)(1), 310(b)(1), redesignated former subsec. (j), relating to cross references, as (m).

1981—Subsec. (b)(4)(I). Pub. L. 97–34, §811(a), added subpar. (I).

Subsec. (b)(9), (10). Pub. L. 97–34, §811(b), added par. (9) and redesignated former par. (9) as (10).

Subsecs. (i), (j). Pub. L. 97–34, §812(a), added subsec. (i) and redesignated former subsec. (i) as (j).

1980—Subsec. (b)(4). Pub. L. 96–499, §1103(b), inserted before last sentence provisions defining "targeted area project" for purposes of subpar. (A).

Subsec. (b)(4)(A). Pub. L. 96–499, §1103(a), substituted provisions relating to low or moderate income residential rental property for provisions relating to residential real property for family units.

Subsec. (b)(4)(H). Pub. L. 96–223, §242(a)(1), added subpar. (H).

Subsec. (b)(6)(J). Pub. L. 96–499, §1103(c), added subpar. (J).

Subsec. (b)(8), (9). Pub. L. 96–223, §242(a)(2), added par. (8) and redesignated former par. (8) as (9).

Subsec. (c)(5). Pub. L. 96–222, §107(a)(3)(C), amended the directory language of Pub. L. 96–500, §703(q)(1). See 1978 Amendment note below for subsec. (c)(5).

Subsec. (g). Pub. L. 96–223, §241(a), added subsec. (g). Former subsec. (g) redesignated (i).

Subsec. (h). Pub. L. 96–223, §244(a), added subsec. (h).

Subsec. (i). Pub. L. 96–223, §§241(a), 244(a), redesignated former subsec. (g) as (i).

1978—Subsec. (b)(1). Pub. L. 95–600, §703(j)(1)(A), substituted "subsection (a)(1) or (2)" for "subsection (a)(1)" in heading.

Subsec. (b)(4). Pub. L. 95–600, §§332(a), 333(a), in subpar. (G)(i) inserted reference to electric utility, industrial, agricultural, or commercial users and added subpar. (G)(ii) and provision following subpar. (G)(ii) relating to the local furnishing of electric energy.

Subsec. (b)(6)(D). Pub. L. 95–600, §331(a), substituted in heading and cl. (i) "$10,000,000" for "$5,000,000".

Subsec. (b)(6)(I). Pub. L. 95–600, §331(b), added subpar. (I).

Subsec. (b)(7), (8). Pub. L. 95–600, §334(a), (b), added par. (7), redesignated former par. (7) as (8) and, as so redesignated, substituted "(6), and (7)" for "and (6)".

Subsec. (c)(1). Pub. L. 95–600, §703(j)(1)(B), substituted in heading and text "(a)(1) or (2)" for "(a)(1) or (4)".

Subsec. (c)(2)(A). Pub. L. 95–600, §703(j)(1)(C), substituted "subsection (a)(1) or (2)" for "subsection (a)(1) or (2) or (4)".

Subsec. (c)(5). Pub. L. 95–600, §703(j)(1)(D), (q)(1), as amended by Pub. L. 96–222, §107(a)(3)(C), substituted "section 438 of the Higher Education Act of 1965" for "section 2 of the Emergency Insured Student Loan Act of 1969" and "paragraph (2)(A)" for "subsection (d)(2)(A)".

Subsec. (d). Pub. L. 95–600, §703(j)(1)(E), substituted "subsection (b)(4)(G)" for "subsection (c)(4)(G)".

Subsec. (e). Pub. L. 95–339 redesignated second subsec. (e), relating to cross references, as (g).

Subsec. (f). Pub. L. 95–339 added subsec. (f).

Subsec. (g). Pub. L. 95–339 redesignated second subsec. (e), relating to cross references, as (g).

1976—Subsec. (a). Pub. L. 94–455, §§1901(a)(17)(A), 2105(a), added par. (2) relating to qualified scholarship funding bonds. Former pars. (2) and (3), relating to obligations of the United States and to the obligations of corporations organized under an Act of Congress, were struck out.

Subsec. (b). Pub. L. 94–455, §1901(a)(17)(B), (C), redesignated subsec. (c) as (b) and in par. (1) of subsec. (b) as so redesignated substituted "subsection (a)(1) or (2)" for "subsection (a)(1)". Former subsec. (b), which created an exception to the rule that gross income did not include interest on obligations of the United States, by providing that the exception did not apply to obligations of the United States (with specified exceptions) unless under the authorizing Acts such interest is wholly exempt from the taxes imposed by this subtitle, was struck out.

Subsec. (c). Pub. L. 94–455, §§1901(a)(17)(B), (D), (b)(8)(B), 1906(b)(13)(A), 2105(c), redesignated subsec. (d) as (c) and, in subsec. (c) as so redesignated, substituted "(a)(1) or (4)" for "(a)(1)" in par. (1) and "(a)(1) or (2) or (4)" for "(a)(1)" in par. (2)(A), substituted "educational organization described in section 170(b)(1)(A)(ii)" for "educational institution (within the meaning of section 151(e)(4))" in par. (3)(A), added par. (5), redesignated former par. (5) as (6), and in par. (6) as so redesignated substituted "Secretary" for "Secretary or his delegate". Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 94–455, §1901(a)(17)(B), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 94–455, §§1901(a)(17)(B), (E), 2105(b), 2137(d), added subsec. (e) relating to qualified scholarship funding bonds, redesignated former subsec. (f) relating to cross references as a second subsec. (e), reduced the number of cross references in subsec. (e) as so redesignated from twenty-three (which made reference to various obligations of the United States and of corporations organized under Acts of Congress) to three, relating, respectively, to Puerto Rican bonds, Virgin Islands insular and municipal bonds,

and certain obligations issued under title I of the Housing Act of 1949, and inserted a fourth cross reference, designated as par. (24) relating to the treatment of exempt-interest dividends. Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 94–455, §1901(a)(17)(B), redesignated subsec. (f), relating to cross references, as (e).

1975—Subsecs. (e), (f). Pub. L. 94–182 and Pub. L. 94–164 made identical amendments, adding subsec. (e) and redesignating former subsec. (e) as (f).

1971—Subsec. (c)(4)(E). Pub. L. 92–178, §315(a)(1), substituted "energy or gas," for "energy, gas, or water or".

Subsec. (c)(4)(F). Pub. L. 92–178, §315(a)(2), substituted ", or" for a period.

Subsec. (c)(4)(G). Pub. L. 92–178, §315(a)(3), added subpar. (G).

Subsec. (c)(6)(F)(iii). Pub. L. 92–178, §315(b), substituted "$1,000,000" for "$250,000".

1969—Subsecs. (d), (e). Pub. L. 91–172 added subsec. (d) and redesignated former subsec. (d) as (e).

1968—Subsec. (c). Pub. L. 90–364 added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (c)(6)(D) to (H). Pub. L. 90–634 added subpars. (D) to (H).

Subsec. (d). Pub. L. 90–364 redesignated former subsec. (c) as (d).

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1013(a)(34)(B), Nov. 10, 1988, 102 Stat. 3544, provided that: "Subparagraph (A) [amending this section] shall apply to obligations sold after May 2, 1978, and to which Treasury regulation section 1.103–13 (1979) was provided to apply."

EFFECTIVE DATE OF 1986 AMENDMENT

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

Amendment by sections 1864(b)–(e), 1865(a), 1869(a), (b), 1870, and 1871(b) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Pub. L. 99–514, title XVIII, §1864(a)(2), Oct. 22, 1986, 100 Stat. 2885, provided that:

"(A) Except as provided in subparagraph (B), the amendment made by paragraph (1) [amending this section] shall apply to obligations issued after the date of the enactment of this Act [Oct. 22, 1986] in taxable years ending after such date.

"(B) At the election of the issuer (made at such time and in such manner as the Secretary of the Treasury or his delegate shall prescribe), the amendment made by paragraph (1) shall apply to any obligation issued on or before the date of the enactment of this Act."

Pub. L. 99–514, title XVIII, §1871(a)(2), Oct. 22, 1986, 100 Stat. 2891, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to obligations issued after March 28, 1985, in taxable years ending after such date."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(4) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Pub. L. 98–369, div. A, title VI, §624(c), July 18, 1984, 98 Stat. 924, as amended by Pub. L. 99–514, title XVIII, §1867(a), Oct. 22, 1986, 100 Stat. 2888, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and section 103A of this title] shall apply with respect to bonds issued after December 31, 1984.

"(2) EXCEPTION.—The amendments made by this section shall not apply to obligations issued for the Essex County New Jersey Resource Recovery Project authorized by the Port Authority of New York and New Jersey on November 10, 1983, as part of an agreement approved by Essex County, New Jersey, on July 7, 1981, and approved by the State of New Jersey on December 31, 1981. The aggregate face amount of bonds to which this paragraph applies shall not exceed $350,000,000."

Pub. L. 98–369, div. A, title VI, §626(b), July 18, 1984, 98 Stat. 927, as amended by Pub. L. 99–514, §2, title XIII, §1317(22), title XVIII, §1869(c)(5), Oct. 22, 1986, 100 Stat. 2095, 2698, 2890; Pub. L. 100–647, title I, §1013(g)(24), Nov. 10, 1988, 102 Stat. 3554, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection the amendment made by subsection (a) [amending this section] shall apply to obligations issued after the date of enactment of this Act [July 18,

1984].

"(2) EXCEPTIONS FOR CERTAIN STUDENT LOAN PROGRAMS.—

"(A) IN GENERAL.—The amendments made by this section [amending this section] shall not apply to obligations issued by a program described in the following table to the extent the aggregate face amount of such obligations does not exceed the amount of allowable obligations specified in the following table with respect to such program:

Program	Amount of Allowable Obligations
Colorado Student Obligation Bond Authority	$60 million
Connecticut Higher Education Supplementary Loan Authority	$15.5 million
District of Columbia	$50 million
Illinois Higher Education Authority	$70 million
State of Iowa	$16 million
Louisiana Public Facilities Authority	$75 million
Maine Health and Higher Education Facilities Authority	$5 million
Maryland Higher Education Supplemental Loan Program	$24 million
Massachusetts College Student Loan Authority	$90 million
Minnesota Higher Education Coordinating Board	$60 million
New Hampshire Higher Education and Health Facilities Authority	$39 million
New York Dormitory Authority	$120 million
Pennsylvania Higher Education Assistance Agency	$300 million
Georgia Private Colleges and University Authority	$31 million
Wisconsin State Building Commission	$60 million
South Dakota Health and Educational Facilities Authority	$6 million

"(B) PENNSYLVANIA HIGHER EDUCATION ASSISTANCE AGENCY.—Subparagraph (A) shall apply to obligations issued by the Pennsylvania Higher Education Assistance Agency only if such obligations are issued solely for the purpose of refunding student loan bonds outstanding on March 15, 1984.

"(3) CERTAIN TAX-EXEMPT MORTGAGE SUBSIDY BONDS.—For purposes of applying section 103(o) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the term 'consumer loan bond' shall not include any mortgage subsidy bond (within the meaning of section 103A(b) of such Code) to which the amendments made by section 1102 of the Mortgage Subsidy Bond Tax Act of 1980 [enacting section 103A of this title] do not apply.

"(4) REFUNDING EXCEPTION.—The amendments made by this section [amending this section] shall not apply to any obligation or series of obligations the proceeds of which are used exclusively to refund obligations issued before March 15, 1984, except that—

"(A) the amount of the refunding obligations may not exceed 101 percent of the aggregate face amount of the refunded obligations, and

"(B) the maturity date of any refunding obligation may not be later than the date which is 17 years after the date on which the refunded obligation was issued (or, in the case of a series of refundings, the date on which the original obligation was issued).

"(5) EXCEPTION FOR CERTAIN ESTABLISHED PROGRAMS.—The amendments made by this section [amending this section] shall not apply to any obligation substantially all of the proceeds of which are used to carry out a program established under State law which has been in effect in substantially the same form during the 30-year period ending on the date of enactment of this Act [July 18, 1984], but only if such proceeds are used to make loans or to fund similar obligations—

"(A) in the same manner in which,

"(B) in the same (or lesser) amount per participant, and

"(C) for the same purposes for which,

such program was operated on March 15, 1984. This subparagraph shall not apply to obligations issued on or

after March 15, 1987.

"(6) CERTAIN BONDS FOR RENEWABLE ENERGY PROPERTY.—The amendments made by this section [amending this section] shall not apply to any obligations described in section 243 of the Crude Oil Windfall Profit Tax Act of 1980 [Pub. L. 96–223, set out as a note below].

"(7) EXCEPTION FOR CERTAIN DOWNTOWN REDEVELOPMENT PROJECT.—The amendments made by this section [amending this section] shall not apply to any obligation which is issued as part of an issue 95 percent or more of the proceeds of which are to be used to provide a project to acquire and redevelop a downtown area if—

"(A) on August 15, 1985, a downtown redevelopment authority adopted a resolution to issue obligations for such project,

"(B) before September 26, 1985, the city expended, or entered into binding contracts to expend, more than $10,000,000 in connection with such project, and

"(C) the State supreme court issued a ruling regarding the proposed financing structure for such project on December 11, 1985.

The aggregate face amount of obligations to which this paragraph applies shall not exceed $85,000,000 and such obligations must be issued before January 1, 1992."

Pub. L. 98–369, div. A, title VI, §631, July 18, 1984, 98 Stat. 934, as amended by Pub. L. 99–514, §2, title XIII, §§1316(j), 1317(43), title XVIII, §1872(a)–(c)(1), Oct. 22, 1986, 100 Stat. 2095, 2670, 2708, 2891, 2892; Pub. L. 100–647, title I, §1013(f)(8), (g)(40), Nov. 10, 1988, 102 Stat. 3549, 3557, provided that:

"(a) PRIVATE ACTIVITY BOND CAP.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendment made by section 621 [amending this section] shall apply to obligations issued after December 31, 1983.

"(2) INDUCEMENT RESOLUTION BEFORE JUNE 19, 1984.—The amendment made by section 621 shall not apply to any issue of obligations if—

"(A) there was an inducement resolution (or other comparable preliminary approval) for the issue before June 19, 1984, and

"(B) the issue is issued before January 1, 1985.

"(3) CERTAIN PROJECTS PRELIMINARILY APPROVED BEFORE OCTOBER 19, 1983, GIVEN APPROVAL.—If—

"(A) there was an inducement resolution (or other comparable preliminary approval) for a project before October 19, 1983, by any issuing authority,

"(B) a substantial user of such project notifies the issuing authority within 30 days after the date of the enactment of this Act [July 18, 1984] that it intends to claim its rights under this paragraph, and

"(C) construction of such project began before October 19, 1983, or the substantial user was under a binding contract on such date to incur significant expenditures with respect to such project,

such issuing authority shall allocate its share of the limitation under section 103(n) of such Code for the calendar year during which the obligations were to be issued pursuant to such resolution (or other approval) first to such project. If the amount of obligations required by all projects which meet the requirements of the preceding sentence exceeds the issuing authority's share of the limitation under section 103(n) of such Code, priority under the preceding sentence shall be provided first to those projects for which substantial expenditures were incurred before October 19, 1983. If any issuing authority fails to meet the requirements of this paragraph, the limitation under section 103(n) of such Code for the issuing authority for the calendar year following such failure shall be reduced by the amount of obligations with respect to which such failure occurred.

"(3) [(4)] EXCEPTION FOR CERTAIN BONDS FOR A CONVENTION CENTER AND RESOURCE RECOVERY PROJECT.—In the case of any city, if—

"(A) the city council of such city authorized a feasibility study for a convention center on June 10, 1982, and

"(B) on November 4, 1983, a municipal authority acting for such city accepted a proposal for the construction of a facility that is capable of generating steam and electricity through the combustion of municipal waste,

the amendment made by section 621 shall not apply to any issue, issued during 1984, 1985, 1986, or 1987 and substantially all of the proceeds of which are to be used to finance the convention center (or access ramps and parking facilities therefor) described in subparagraph (A) or the facility described in subparagraph (B).

"(b) PROPERTY FINANCED WITH TAX-EXEMPT BONDS REQUIRED TO BE DEPRECIATED ON STRAIGHT-LINE BASIS.—

"(1) IN GENERAL.—Except as otherwise provided in this section, the amendments made by section 628(b) [amending section 168 of this title] shall apply to property placed in service after December 31, 1983, to the extent such property is financed by the proceeds of an obligation (including a refunding obligation) issued after October 18, 1983.

"(2) EXCEPTIONS.—

"(A) CONSTRUCTION OR BINDING AGREEMENT.—The amendments made by section 628(b) shall not apply with respect to facilities—

"(i) the original use of which commences with the taxpayer and the construction, reconstruction, or rehabilitation of which began before October 19, 1983, or

"(ii) with respect to which a binding contract to incur significant expenditures was entered into before October 19, 1983.

"(B) REFUNDING.—

"(i) IN GENERAL.—Except as provided in clause (ii), in the case of property placed in service after December 31, 1983, which is financed by the proceeds of an obligation which is issued solely to refund another obligation which was issued before October 19, 1983, the amendments made by section 628(b) shall apply only with respect to an amount equal to the basis in such property which has not been recovered before the date such refunded obligation is issued.

"(ii) SIGNIFICANT EXPENDITURES.—In the case of facilities the original use of which commences with the taxpayer and with respect to which significant expenditures are made before January 1, 1984, the amendments made by section 628(b) shall not apply with respect to such facilities to the extent such facilities are financed by the proceeds of an obligation issued solely to refund another obligation which was issued before October 19, 1983.

"(C) FACILITIES.—In the case of an inducement resolution or other comparable preliminary approval adopted by an issuing authority before October 19, 1983, for purposes of applying subparagraphs (A)(i) and (B)(ii) with respect to obligations described in such resolution, the term 'facilities' means the facilities described in such resolution.

"(c) OTHER PROVISIONS RELATING TO TAX-EXEMPT BONDS.—

"(1) IN GENERAL.—Except as otherwise provided in this subtitle, the amendments made by sections 622, 623, 627, and 628(c), (d), and (e) (and the provisions of sections 625(c), 628(f), and 629(b)) [amending this section and enacting provisions set out as notes under this section] shall apply to obligations issued after December 31, 1983.

"(2) OBLIGATIONS INVESTED IN FEDERALLY INSURED DEPOSITS.—Notwithstanding any other provision of this section, clause (ii) of section 103(h)(2)(B) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by this subtitle) shall apply to obligations issued after April 14, 1983; except that such clause shall not apply to any obligation issued pursuant to a binding contract in effect on March 4, 1983.

"(3) EXCEPTIONS.—

"(A) CONSTRUCTION OR BINDING AGREEMENT.—The amendments (and provisions) referred to in paragraph (1) shall not apply to obligations with respect to facilities—

"(i) the original use of which commences with the taxpayer and the construction, reconstruction, or rehabilitation of which began before October 19, 1983, and was completed on or after such date,

"(ii) the original use of which commences with the taxpayer and with respect to which a binding contract to incur significant expenditures for construction, reconstruction, or rehabilitation was entered into before October 19, 1983, and some of such expenditures are incurred on or after such date, or

"(iii) acquired after October 19, 1983, pursuant to a binding contract entered into on or before such date.

"(B) FACILITIES.—Subparagraph (C) of subsection (b)(2) shall apply for purposes of subparagraph (A) of this paragraph.

"(C) EXCEPTION.—Subparagraph (A) shall not apply with respect to the amendment made by section 628(e) and the provisions of sections 628(f) and 629(b) [amending this section and enacting provisions set out as notes under this section].

"(4) REPEAL OF ADVANCE REFUNDING OF QUALIFIED PUBLIC FACILITIES.—The amendment made by section 628(g) [amending this section] shall apply to refunding obligations issued after the date of the enactment of this Act [July 18, 1984]; except that if substantially all the proceeds of the refunded issue were used to provide airports or docks, such amendment shall only apply to refunding obligations issued after December 31, 1984. In the case of refunding obligations not to exceed

$100,000,000 issued after October 21, 1986, by Dade County, Florida, for the purpose of advance refunding its Aviation Revenue Bonds (Series J), the first sentence of this paragraph shall be applied by substituting 'the date which is 1 year after the date of the enactment of the Technical and Miscellaneous Revenue Act of 1988 [Nov. 10, 1988]' for 'December 31, 1984' and the amendments made by section 1301 of the Tax Reform Act of 1986 [section 1301 of Pub. L. 99–514, enacting sections 141 to 150 and 7703 of this title, amending this section and sections 2, 22, 25, 32, 86, 105, 152, 153, 163, 194, 269A, 414, 879, 1398, 3402, 4701, 4940, 4942, 4988, 6362, 6652, and 7871 of this title, repealing section 103A of this title, enacting provisions set out as notes under sections 141 and 148 of this title, and amending provisions set out as a note under section 103A of this title] shall not apply. In the case of refunding obligations not exceeding $100,000,000 issued by the Alabama State Docks Department, the first sentence of this paragraph shall be applied by substituting 'December 31, 1987' for 'December 31, 1984' and the Internal Revenue Code of 1986 shall be applied without regard to section 149(d)(2)..[sic]

"(5) SPECIAL RULE FOR HEALTH CLUB FACILITIES.—In the case of any health club facility, with respect to the amendment made by section 627(c) [amending this section]—

"(A) paragraph (1) shall be applied by substituting 'April 12, 1984' for 'December 31, 1983', and

"(B) paragraph (3) shall be applied by substituting 'April 13, 1984' for 'October 19, 1983' each place it appears.

"(d) PROVISIONS OF THIS SUBTITLE NOT TO APPLY TO CERTAIN PROPERTY.—The amendments made by this subtitle [sections 621–632 of Pub. L. 98–369, amending this section and sections 103A and 168 of this title and enacting provisions set out as notes under this section] shall not apply to any property (and shall not apply to obligations issued to finance such property) if such property is described in any of the following paragraphs:

"(1) Any property described in paragraph (5), (6), or (7) of section 31(g) of this Act [set out as an Effective Date of 1984 Amendment note under section 168 of this title].

"(2) Any property described in paragraph (4), (8), or (17) of section 31(g) of this Act [set out as an Effective Date of 1984 Amendment note under section 168 of this title] but only if the obligation is issued before January 1, 1985, and only if before June 19, 1984, the issuer had evidenced an intent to issue obligations exempt from taxation under the Internal Revenue Code of 1986 in connection with such property.

"(3) Any property described in paragraph (3) of section 216(b) of the Tax Equity and Fiscal Responsibility Act of 1982 [set out as an Effective Date of 1982 Amendment note under section 168 of this title].

"(4) Any solid waste disposal facility described in section 103(b)(4)(E) of the Internal Revenue Code of 1986 if—

"(A) a State public authority created pursuant to State legislation which took effect on June 18, 1973, took formal action before October 19, 1983, to commit development funds for such facility.

"(B) such authority issues obligations for any such facility before January 1, 1987, and

"(C) expenditures have been made for the development of any such facility before October 19, 1983.

"(5) Any solid waste disposal facility described in section 103(b)(4)(E) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] if—

"(A) a city government, by resolutions adopted on April 10, 1980, and December 27, 1982, took formal action to authorize the submission of a proposal for a feasibility study for such facility and to authorize the presentation to the Department of the Army (U.S. Army Missile Command) of a proposed agreement to jointly pursue construction and operation of such facility,

"(B) such city government (or a public authority on its behalf) issues obligations for such facility before January 1, 1988, and

"(C) expenditures have been made for the development of such facility before October 19, 1983.

Notwithstanding the foregoing provisions of this subsection, the amendments made by section 624 [amending sections 103 and 103A of this title and enacting provisions set out as a note under this section] (relating to arbitrage) shall apply to obligations issued to finance property described in paragraph (5).

"(e) DETERMINATION OF SIGNIFICANT EXPENDITURE.—

"(1) IN GENERAL.—For purposes of this section, the term 'significant expenditures' means expenditures which equal or exceed the lesser of—

"(A) $15,000,000, or

"(B) 20 percent of the estimated cost of the facilities.

"(2) CERTAIN GRANTS TREATED AS EXPENDITURES.—For purposes of paragraph (1), the amount of any UDAG grant preliminarily approved on May 5, 1981, or April 4, 1983, shall be treated as an

expenditure with respect to the facility for which such grant was so approved.

"(f) EXCEPTIONS FOR CERTAIN OTHER AMENDMENTS.—If—

"(1) there was an inducement resolution (or other comparable preliminary approval) for an issue before June 19, 1984, by any issuing authority, and

"(2) such issue is issued before January 1, 1985, the following amendments shall not apply:

"(A) the amendments made by section 623 [amending this section],

"(B) the amendments made by subsections (a) and (b) of section 627 [amending this section] (except to the extent such amendments relate to farm land),

"(C) in the case of a race track, the amendment made by section 627(c) [amending this section], and

"(D) the amendments made by section 628(c) [amending this section]."

[Section 1872(a)(2)(B) of Pub. L. 99–514 provided that the amendment of section 631(c)(3) of Pub. L. 98–369, set out above, made by section 1872(a)(2)(B) of Pub. L. 99–514 is effective with respect to obligations issued after Mar. 28, 1985.]

EFFECTIVE DATE OF 1983 AMENDMENT

For effective date of amendment by Pub. L. 97–473, see section 204(2) of Pub. L. 97–473, set out as an Effective Date note under section 7871 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title II, §214(f), Sept. 3, 1982, 96 Stat. 468, provided that:

"(1) COMPOSITE ISSUES; SMALL ISSUE EXEMPTION.—The amendments made by subsections (a) and (b) [amending this section] shall apply to obligations issued after the date of the enactment of this Act [Sept. 3, 1982].

"(2) TERMINATION.—The amendment made by subsection (c) [amending this section] shall take effect on the date of the enactment of this Act [Sept. 3, 1982].

"(3) RESEARCH EXPENDITURES.—The amendment made by subsection (d) [amending this section] shall apply with respect to expenditures made after the date of the enactment of this Act [Sept. 3, 1982].

"(4) CERTAIN FACILITIES.—The amendment made by subsection (e) [amending this section] shall apply to obligations issued after December 31, 1982."

Pub. L. 97–248, title II, §215(c), Sept. 3, 1982, 96 Stat. 470, provided that:

"(1) PUBLIC APPROVAL.—The amendment made by subsection (a) [amending this section] shall apply to obligations issued after December 31, 1982, other than obligations issued solely to refund any obligation which—

"(A) was issued before July 1, 1982, and

"(B) has a maturity which does not exceed 3 years.

"(2) INFORMATION REPORTING.—The amendments made by subsection (b) [amending this section] shall apply to obligations issued after December 31, 1982 (including any obligation issued to refund an obligation issued before such date)."

Pub. L. 97–248, title II, §217(e), Sept. 3, 1982, 96 Stat. 474, as amended by Pub. L. 98–369, div. A, title VII, §712(h), July 18, 1984, 98 Stat. 947; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by this section [amending this section] shall apply to obligations issued after the date of the enactment of this Act [Sept. 3, 1982]. For purposes of applying section 168(f)(8)(D)(v) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the amendments made by subsection (c) [amending this section] shall apply to agreements entered into after the date of the enactment of this Act."

Pub. L. 97–248, title II, §219(b), Sept. 3, 1982, 96 Stat. 475, provided that: "The amendment made by subsection (a) [amending this section] shall apply to obligations issued after December 31, 1982."

Pub. L. 97–248, title II, §221(d), Sept. 3, 1982, 96 Stat. 478, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 1104 of Pub. L. 96–499, formerly set out as a note under section 103A of this title] shall apply to obligations issued after the date of the enactment of this Act [Sept. 3, 1982].

"(2) EXCEPTION.—The amendments made by this section shall not apply with respect to any obligation to which the amendments made by section 1103 of the Mortgage Subsidy Bond Tax Act of 1980 [section 1103 of Pub. L. 96–499, amending this section] do not apply by reason of section 1104 of such Act [section 1104 of Pub. L. 96–499, formerly set out as a note under section 103A of this title]."

Pub. L. 97–248, title III, §310(d), Sept. 3, 1982, 96 Stat. 599, as amended by Pub. L. 97–448, title III, §306(b)(2), 96 Stat. 2405; Pub. L. 98–216, §6(b), Feb. 14, 1984, 98 Stat. 8; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this

section [enacting section 4701 of this title and section 757c–5 of former Title 31, Money and Finance, and amending this section and sections 103A, 163, 165, 312, and 1232 of this title] shall apply to obligations issued after December 31, 1982.

"(2) [Repealed. Pub. L. 98–216, §6(b), Feb. 14, 1984, 98 Stat. 8.]

"(3) EXCEPTION FOR CERTAIN WARRANTS, ETC.—The amendments made by subsection (b) [enacting section 4701 of this title and amending this section and sections 163, 165, 312, and 1232 of this title] shall not apply to any obligations issued after December 31, 1982, on the exercise of a warrant or the conversion of a convertible obligation if such warrant or obligation was offered or sold outside the United States without registration under the Securities Act of 1933 [15 U.S.C. 77a et seq.] and was issued before August 10, 1982. A rule similar to the rule of the preceding sentence shall also apply in the case of any regulations issued under section 163(f)(2)(C) [now 163(f)(2)(B)] of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this section) except that the date on which such regulations take effect shall be substituted for 'August 10, 1982'.

"(4) [Repealed. Pub. L. 98–216, §6(b), Feb. 14, 1984, 98 Stat. 8.]"

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title VIII, §811(c), Aug. 13, 1981, 95 Stat. 350, provided that: "The amendments made by this section [amending this section] shall apply to obligations issued after the date of the enactment of this Act [Aug. 13, 1981]."

Pub. L. 97–34, title VIII, §812(b)(1), Aug. 13, 1981, 95 Stat. 350, provided that: "The amendment made by subsection (a) [amending this section] shall apply to obligations issued after December 31, 1980."

EFFECTIVE DATE OF 1980 AMENDMENT

For effective date of amendment by Pub. L. 96–499, see section 1104 of Pub. L. 96–499, set out as an Effective Date note under section 103A of this title.

Pub. L. 96–223, title II, §241(d), Apr. 2, 1980, 94 Stat. 283, provided that: "The amendments made by subsection (a) [amending this section] and the provisions of subsections (b) and (c) [set out as notes under this section] shall apply with respect to obligations issued after October 18, 1979."

Pub. L. 96–223, title II, §242(c), Apr. 2, 1980, 94 Stat. 285, provided that: "The amendments made by subsection (a) [amending this section] and the provisions of subsection (b) [set out as a note under this section] shall apply with respect to obligations issued after October 18, 1979."

Pub. L. 96–223, title II, §244(b), Apr. 2, 1980, 94 Stat. 286, provided that: "The amendments made by subsection (a) [amending this section] shall apply to obligations issued on or after October 18, 1979."

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–339, title II, §201(c), Aug. 8, 1978, 92 Stat. 467, provided that: "The amendments made by subsection (a) [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Aug. 8, 1978]."

Pub. L. 95–600, title III, §331(c), Nov. 6, 1978, 92 Stat. 2840, provided that:

"(1) The amendments made by subsection (a) [amending this section] shall apply to—

"(A) obligations issued after December 31, 1978, in taxable years ending after such date, and

"(B) capital expenditures made after December 31, 1978, with respect to obligations issued before January 1, 1979.

"(2) The amendment made by subsection (b) [amending this section] shall apply to—

"(A) obligations issued after September 30, 1979, in taxable years ending after such date, and

"(B) capital expenditures made after September 30, 1979, with respect to obligations issued after such date."

Pub. L. 95–600, title III, §332(b), Nov. 6, 1978, 92 Stat. 2840, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after April 30, 1968, but only with respect to obligations issued after such date."

Pub. L. 95–600, title III, §333(b), Nov. 6, 1978, 92 Stat. 2840, provided that: "The amendment made by subsection (a) [amending this section] shall apply to obligations issued after the date of the enactment of this Act [Nov. 6, 1978] in taxable years ending after such date."

Pub. L. 95–600, title III, §334(c), Nov. 6, 1978, 92 Stat. 2841, provided that: "The amendments made by this section [amending this section] shall apply to obligations issued after the date of the enactment of this Act [Nov. 6, 1978]."

Pub. L. 95–600, title VII, §703(q)(2), Nov. 6, 1978, 92 Stat. 2944, provided that: "The amendments made by paragraph (1) [amending this section] shall apply with respect to payments made by the Commissioner of Education after December 31, 1976."

Amendment by section 703(j)(1) of Pub. L. 95–600 effective on Oct. 4, 1976, see section 703(r) of Pub. L. 95–600, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(17), (b)(8)(B) of Pub. L. 94–455 applicable with respect to taxable years ending after Oct. 4, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by section 1906(b)(13)(A) of Pub. L. 94–455 effective Feb. 1, 1977, see section 1906(d)(1) of Pub. L. 94–455, set out as a note under section 6013 of this title.

Pub. L. 94–455, title XXI, §2105(d), Oct. 4, 1976, 90 Stat. 1902, provided that: "The amendments made by this section [amending this section] apply to obligations issued on or after the date of the enactment of this Act [Oct. 4, 1976]."

Amendment by section 2137(d) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, see section 2137(e) of Pub. L. 94–455, set out as a note under section 852 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Pub. L. 94–182, title III, §301(b), Dec. 31, 1975, 89 Stat. 1056, provided that: "The amendment made by subsection (a) [amending this section] shall apply to obligations issued after the date of the enactment of this Act [Dec. 31, 1975]."

Pub. L. 94–164, §7(b), Dec. 23, 1975, 89 Stat. 976, provided that: "The amendments made by this section [amending this section] shall apply to obligations issued after the date of enactment of this Act [Dec. 23, 1975]."

EFFECTIVE DATE OF 1971 AMENDMENT

Pub. L. 92–178, title III, §315(c), Dec. 10, 1971, 85 Stat. 529, provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to obligations issued after January 1, 1969. The amendment made by subsection (b) [amending this section] shall apply with respect to expenditures incurred after the date of the enactment of this Act [Dec. 10, 1971]."

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title VI, §601(b), Dec. 30, 1969, 83 Stat. 657, provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to obligations issued after October 9, 1969."

EFFECTIVE DATE OF 1968 AMENDMENT

Pub. L. 90–634, title IV, §401(b), Oct. 24, 1968, 82 Stat. 1351, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to obligations issued after the date of the enactment of this Act [Oct. 24, 1968]."

Pub. L. 90–364, title I, §107(b)(1), June 28, 1968, 82 Stat. 268, provided that: "Except as provided by paragraph (2) [set out as a note below], the amendment made by subsection (a) [amending this section] shall apply to taxable years ending after April 30, 1968, but only with respect to obligations issued after such date."

TRANSFER OF FUNCTIONS

Functions of Commissioner of Education transferred to Secretary of Education by section 3441(a)(1) of Title 20, Education.

COORDINATION OF CERTAIN AMENDMENTS MADE BY PUB. L. 97–424 AND PUB. L. 97–473

Pub. L. 98–369, div. A, title VII, §722(b), July 18, 1984, 98 Stat. 973, provided that: "For purposes of applying the amendments made by section 547 of the Highway Revenue Act of 1982 [Pub. L. 97–424, amending this section] and the amendment made by section 202(b)(2) of Public Law 97–473 [amending this section], Public Law 97–473 shall be deemed to have been enacted immediately before the Highway Revenue Act of 1982."

VALIDATION OF SINKING FUND REGULATIONS

Pub. L. 100–647, title I, §1013(a)(35), Nov. 10, 1988, 102 Stat. 3544, provided that:

"(A) Treasury Regulation section 1.103–13(g) (1979) is hereby enacted into positive law.

"(B)(i) Except as provided in clause (ii), subparagraph (A) shall apply to obligations sold after May 2, 1978, and to which such regulation was provided to apply.

"(ii) Treasury Regulation section 1.103–13(g) (1979) as enacted into positive law by subparagraph (A) shall cease to apply to the extent hereafter modified by the Secretary of the Treasury or his delegate by regulations."

BONDS ISSUED TO REFUND SUBSECTION (O)(3) OBLIGATIONS

Pub. L. 100–647, title I, §1013(c)(15), Nov. 10, 1988, 102 Stat. 3548, provided that: "A bond issued to refund an obligation described in section 103(o)(3) of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986 [Oct. 22, 1986]) shall not be treated as described in section 144(b) of the 1986 Code unless it is described in section 144(b)(1)(A) of the 1986 Code."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TREATMENT OF CERTAIN GUARANTEES BY FARMERS HOME ADMINISTRATION

Pub. L. 99–514, title XVIII, §1865(b), Oct. 22, 1986, 100 Stat. 2886, provided that: "An obligation shall not be treated as federally guaranteed for purposes of section 103(h) of the Internal Revenue Code of 1954 [now 1986] by reason of a guarantee by the Farmers Home Administration if—

"(1) such guarantee is pursuant to a commitment made by the Farmers Home Administration before July 1, 1984, and

"(2) such obligation is issued to finance a convention center project in Carbondale, Illinois."

TREATMENT OF CERTAIN OBLIGATIONS USED TO FINANCE SOLID WASTE DISPOSAL FACILITY

Pub. L. 99–514, title XVIII, §1865(c), Oct. 22, 1986, 100 Stat. 2886, provided that:

"(1) IN GENERAL.—Any obligation which is part of an issue a substantial portion of the proceeds of which is to be used to finance a solid waste disposal facility described in paragraph (2) shall not, for purposes of section 103(h) of the Internal Revenue Code of 1954 [now 1986], be treated as an obligation which is federally guaranteed by reason of the sale of fuel, steam, electricity, or other forms of usable energy to the Federal Government or any agency or instrumentality thereof.

"(2) SOLID WASTE DISPOSAL FACILITY.—A solid waste disposal facility is described in this paragraph if such facility is described in section 103(b)(4)(E) of such Code and—

"(A) if—

"(i) a public State authority created pursuant to State legislation which took effect on July 1, 1980, took formal action before October 19, 1983, to commit development funds for such facility,

"(ii) such authority issues obligations for such facility before January 1, 1988, and

"(iii) expenditures have been made for the development of such facility before October 19, 1983,

"(B) if—

"(i) such facility is operated by the South Eastern Public Service Authority of Virginia, and

"(ii) on December 20, 1984, the Internal Revenue Service issued a ruling concluding that a portion of the obligations with respect to such facility would not be treated as federally guaranteed under section 103(h) of such Code by reason of the transitional rule contained in section 631(c)(3)(A)(i) of the Tax Reform Act of 1984 [section 631(c)(3)(A)(i) of Pub. L. 98–369, set out as a note above],

"(C) if—

"(i) a political subdivision of a State took formal action on April 1, 1980, to commit development funds for such facility,

"(ii) such facility has a contract to sell steam to a naval base,

"(iii) such political subdivision issues obligations for such facility before January 1, 1988, and

"(iv) expenditures have been made for the development of such facility before October 19, 1983, or

"(D) if—

"(i) such facility is a thermal transfer facility,

"(ii) is to be built and operated by the Elk Regional Resource Authority, and

"(iii) is to be on land leased from the United States Air Force at Arnold Engineering Development Center near Tullahoma, Tennessee.

"(3) LIMITATIONS.—

"(A) In the case of a solid waste disposal facility described in paragraph (2)(A), the aggregate face amount of obligations to which paragraph (1) applies shall not exceed $65,000,000.

"(B) In the case of a solid waste disposal facility described in paragraph (2)(B), the aggregate face amount of obligations to which paragraph (1) applies shall not exceed $20,000,000. Such amount shall be in addition to the amount permitted under the Internal Revenue Service ruling referred to in paragraph (2)(B)(ii).

"(C) In the case of a solid waste disposal facility described in paragraph (2)(C), the aggregate face amount of obligations to which paragraph (1) applies shall not exceed $75,000,000.

"(D) In the case of a solid waste disposal facility described in paragraph (2)(D), the aggregate face amount of obligations to which paragraph (1) applies shall not exceed $25,000,000."

TRANSITIONAL RULE FOR LIMIT ON SMALL ISSUE EXCEPTION

Pub. L. 99–514, title XVIII, §1866, Oct. 22, 1986, 100 Stat. 2887, as amended by Pub. L. 100–647, title I, §1018(m)(1)–(4), Nov. 10, 1988, 102 Stat. 3584, provided that: "The amendment made by section 623 of the Tax Reform Act of 1984 [section 623 of Pub. L. 98–369, amending this section] shall not apply to any obligation (or series of obligations) issued to refund another tax-exempt IDB to which the amendment made by such section 623 did not apply if—

"(1) the average maturity of the issue of which the refunding obligation is a part does not exceed the average maturity of the obligations to be refunded by such issue,

"(2) the amount of the refunding obligation does not exceed the amount of the refunded obligation, and

"(3) the proceeds of the refunding obligation are used to redeem the refunded obligation not later than 90 days after the date of the issuance of the refunding obligation.

For purposes of the preceding sentence, the term 'tax-exempt IDB' means any industrial development bond (as defined in section 103(b) of the Internal Revenue Code of 1954 [now 1986]) the interest on which is exempt from tax under section 103(a) of such Code. For purposes of paragraph (1), average maturity shall be determined in accordance with subsection (b)(14)(B)(i) of such Code."

[Pub. L. 100–647, title I, §1018(m)(5), Nov. 10, 1988, 102 Stat. 3584, provided that: "A refunding obligation issued before July 1, 1987, shall be treated as meeting the requirement of paragraph (1) of section 1866 of the Reform Act [Pub. L. 99–514, set out above] if such obligation met the requirement of such paragraph as enacted by the Reform Act [Pub. L. 99–514]."]

EXCEPTION FROM 1984 AMENDMENT FOR DOWNTOWN MUSKOGEE REVITALIZATION PROJECT

Pub. L. 99–514, title XVIII, §1867(b), Oct. 22, 1986, 100 Stat. 2888, provided that: "The amendment made by section 624 of the Tax Reform Act of 1984 [amending sections 103 and 103A of this title and enacting provisions set out as a note under this section] shall not apply to obligations issued with respect to the Downtown Muskogee Revitalization Project for which a UDAG grant was preliminarily approved on May 5, 1981, if—

"(1) such obligation is issued before January 1, 1986, or

"(2) such obligation is issued after such date to provide additional financing for such project except that the aggregate amount of obligations to which this subsection applies shall not exceed $10,000,000."

TRANSITIONAL RULES

Pub. L. 99–514, title XVIII, §1869(c)(1)–(4), Oct. 22, 1986, 100 Stat. 2889, as amended by Pub. L. 100–647, title I, §1018(n), Nov. 10, 1988, 102 Stat. 3584, provided that:

"(1) TREATMENT OF CERTAIN OBLIGATIONS ISSUED BY THE CITY OF BALTIMORE .—Obligations issued by the city of Baltimore, Maryland, after June 30, 1985, shall not be treated as private loan bonds for purposes of section 103(o) of the Internal Revenue Code of 1954 [now 1986] (or as private activity bonds for purposes of section 103 and part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986, as amended by title XIII of this Act [sections 1301 to 1318 of Pub. L. 99–514]) by reason of the use of a portion of the proceeds of such obligations to finance or refinance temporary advances made by the city of Baltimore in connection with loans to persons who are not exempt persons (within the meaning of section 103(b)(3) of such Code) if—

"(A) such obligations are not industrial development bonds (within the meaning of section 103(b)(2) of the Internal Revenue Code of 1954 [now 1986]),

"(B) the portion of the proceeds of such obligations so used is attributable to debt approved by voter referendum on or before November 2, 1982,

"(C) the loans to such nonexempt persons were approved by the Board of Estimates of the city of Baltimore on or before October 19, 1983, and

"(D) the aggregate amount of such temporary advances financed or refinanced by such obligations does not exceed $27,000,000.

"(2) WHITE PINE POWER PROJECT.—The amendment made by section 626(a) of the Tax Reform Act of 1984 [section 626(a) of Pub. L. 98–369, amending this section] shall not apply to any obligation issued during 1984 to provide financing for the White Pine Power Project in Nevada.

"(3) TAX INCREMENT BONDS.—The amendment made by section 626(a) of the Tax Reform Act of

1984 shall not apply to any tax increment financing obligation issued before August 16, 1986, if—

"(A) substantially all of the proceeds of the issue are to be used to finance—

"(i) sewer, street, lighting, or other governmental improvements to real property,

"(ii) the acquisition of any interest in real property (by a governmental unit having the power to exercise eminent domain), the preparation of such property for new use, or the transfer of such interest to a private developer, or

"(iii) payments of reasonable relocation costs of prior users of such real property,

"(B) all of the activities described in subparagraph (A) are pursuant to a redevelopment plan adopted by the issuing authority before the issuance of such issue,

"(C) repayment of such issue is secured exclusively by pledges of that portion of any increase in real property tax revenues (or their equivalent) attributable to the redevelopment resulting from the issue (or similar issues), and

"(D) none of the property described in subparagraph (A) is subject to a real property or other tax based on a rate or valuation method which differs from the rate and valuation method applicable to any other similar property located within the jurisdiction of the issuing authority.

"(4) EASTERN MAINE ELECTRIC COOPERATIVE.—The amendment made by section 626(a) of the Tax Reform Act of 1984 shall not apply to obligations issued by Massachusetts Municipal Wholesale Electric Company Project No. 6 if—

"(A) such obligation is issued before January 1, 1986,

"(B) such obligation is issued after such date to refund a prior obligation for such project, except that the aggregate amount of obligations to which this subparagraph applies shall not exceed $100,000,000, or

"(C) such obligation is issued after such date to provide additional financing for such project except that the aggregate amount of obligations to which this subparagraph applies shall not exceed $45,000,000.

Subparagraph (B) shall not apply to any obligation issued for the advance refunding of any obligation."

TREATMENT OF OBLIGATIONS TO FINANCE ST. JOHNS RIVER POWER PARK

Pub. L. 99–514, title XVIII, §1869(c)(6), Oct. 22, 1986, 100 Stat. 2890, provided that:

"(A) IN GENERAL.—The amendment made by section 626(a) of the Tax Reform Act of 1984 [section 626(a) of Pub. L. 98–369, amending this section] shall not apply to any obligation issued to finance the project described in subparagraph (B) if—

"(i) such obligation is issued before September 27, 1985,

"(ii) such obligation is issued after such date to refund a prior tax exemption obligation for such project, the amount of such obligation does not exceed the outstanding amount of the refunded obligation, and such prior tax exempt obligation is retired not later than the date 30 days after the issuance of the refunding obligation, or

"(iii) such obligation is issued after such date to provide additional financing for such project except that the aggregate amount of obligations to which this clause applies shall not exceed $150,000,000.

Clause (ii) shall not apply to any obligation issued for the advance refunding of any obligation.

"(B) DESCRIPTION OF PROJECT.—The project described in this subparagraph in the St. Johns River Power Park system in Florida which was authorized by legislation enacted by the Florida Legislature in February of 1982."

CERTAIN PUBLIC UTILITIES TREATED AS EXEMPTED PERSONS UNDER SECTION 103(B); SPECIAL RULES FOR CERTAIN RAILROADS

Pub. L. 98–369, div. A, title VI, §629, July 18, 1984, 98 Stat. 932, as amended by Pub. L. 99–514, §2, title XIII, §1316(g)(8)(B), Oct. 22, 1986, 100 Stat. 2095, 2670, provided that:

"(a) CERTAIN PUBLIC UTILITIES.—For purposes of applying section 103(b)(3) of the Internal Revenue Code [of 1986] with respect to—

"(1) any obligations issued after the date of enactment of this Act [July 18, 1984], and

"(2) any obligations issued after December 31, 1969, which were treated as obligations described in section 103(a) of such Code on the day on which such obligations were issued,

the term 'exempt person' shall include a regulated public utility having any customer service area within a State served by a public power authority which was required as a condition of a Federal Power Commission license specified by an Act of Congress enacted prior to the enactment of section 107 of the Revenue and Expenditure Control Act of 1968 (Public Law 90–364) [June 28, 1968] to contract to sell power to one such utility and which is authorized by State law to sell power to other such utilities, but only with respect to the purchase by any such utility and resale to its customers of any output of any electrical generation facility or any portion thereof or any use of any electrical transmission facility or any portion thereof financed by such power authority and owned by it or by such State, and provided that by agreement between such power

authority and any such utility there shall be no markup in the resale price charged by such utility of that component of the resale price which represents the price paid by such utility for such output or use. The preceding sentence shall be applied by inserting 'and a rural electric cooperative utility' after 'regulated public utility' but only if not more than 1 percent of the load of the public power authority is sold to such rural electric cooperative utility.

"(b) CERTAIN RAILROADS.—Section 103(b)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall not apply to any obligation which is described in section 103(b)(6)(A) of such Code if—

"(1) substantially all of the proceeds of such obligation are used to acquire railroad track and right-of-way from a railroad involved in a title 11 or similar proceeding (within the meaning of section 368(a)(3)(A) of such Code), and

"(2) the Federal Railroad Administration provides joint financing for such acquisitions.

"(c) SPECIAL RULES FOR SUBSECTION (a).—

"(1) OBLIGATIONS SUBJECT TO CAP.—Any obligation described in subsection (a) shall be treated as a private activity bond for purposes of section 103(n) of the Internal Revenue Code of 1986.

"(2) LIMITATION ON AMOUNT OF OBLIGATIONS TO WHICH SUBSECTION (a)(1) APPLIES—The aggregate amount of obligations to which subsection (a)(1) applies shall not exceed $911,000,000.

"(3) LIMITATION ON PURPOSES.—Subsection (a)(1) shall only apply to obligations issued as part of an issue substantially all the proceeds of which are used to provide 1 or more of the following:

"(A) Cable facilities.

"(B) Small hydroelectric facilities.

"(C) The acquisition of an interest in an electrical generating facility.

"(D) Improvements to existing generating facilities.

"(E) Transmission lines.

"(F) Electric generating facilities."

TREATMENT OF CERTAIN RESIDENTIAL REAL PROPERTY AS RESIDENTIAL RENTAL PROPERTY

Treatment of Pub. L. 98–369, §631(d)(3), residential real property as residential rental property, see section 1809(a)(4)(C) of Pub. L. 99–514, set out as a note under section 168 of this title.

PUBLIC APPROVAL REQUIREMENT IN THE CASE OF PUBLIC AIRPORT

Pub. L. 98–369, div. A, title VI, §628(f), July 18, 1984, 98 Stat. 932, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "If—

"(1) the proceeds of any issue are to be used to finance a facility or facilities located on a public airport, and

"(2) the governmental unit issuing such obligations is the owner or operator of such airport,

such governmental unit shall be deemed to be the only governmental unit having jurisdiction over such airport for purposes of subsection (k) of section 103 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to public approval for industrial development bonds)."

SMALL ISSUE LIMIT IN CASE OF CERTAIN URBAN DEVELOPMENT ACTION GRANTS

Pub. L. 98–369, div. A, title VI, §628(h), July 18, 1984, 98 Stat. 932, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "In the case of any obligation issued on December 11, 1981, section 103(b)(6)(I) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall be applied by substituting '$15,000,000' for '$10,000,000' if—

"(1) such obligation is part of an issue,

"(2) substantially all of the proceeds of such issue are used to provide facilities with respect to which an urban development action grant under section 119 of the Housing and Community Development Act of 1974 [42 U.S.C. 5318] was preliminarily approved by the Secretary of Housing and Urban Development on January 10, 1980, and

"(3) the Secretary of Housing and Urban Development determines, at the time such grant is approved, that the amount of such grant will equal or exceed 5 percent of the total capital expenditures incurred with respect to such facilities."

STUDENT LOAN BONDS

Pub. L. 98–369, div. A, title VI, §625, July 18, 1984, 98 Stat. 924, as amended by Pub. L. 99–514, §2, title XVIII, §1868, Oct. 22, 1986, 100 Stat. 2095, 2888, provided that:

"(a) ARBITRAGE REGULATIONS.—

"(1) IN GENERAL.—The Secretary shall prescribe regulations which specify the circumstances under

which a qualified student loan bond shall be treated as an arbitrage bond for purposes of section 103 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]. Such regulations may provide that—

"(A) paragraphs (4) and (5) of section 103(c) of such Code shall not apply, and

"(B) rules similar to section 103(c)(6) shall apply,

to qualified student loan bonds.

"(2) DEFINITIONS.—For purposes of this subsection—

"(A) QUALIFIED STUDENT LOAN BOND.—The term 'qualified student loan bond' has the meaning given to such term by section 103(o)(3) of the Internal Revenue Code of 1986 (as amended by this Act).

"(B) ARBITRAGE BOND.—The term 'arbitrage bond' has the meaning given to such term by section 103(c)(2).

"(3) EFFECTIVE DATE.—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, any regulations prescribed by the Secretary under paragraph (1) shall apply to obligations issued after the qualified date.

"(B) QUALIFIED DATE.—

"(i) IN GENERAL.—For purposes of this paragraph, the term 'qualified date' means the earlier of—

"(I) the date on which the Higher Education Act of 1965 [20 U.S.C. 1001 et seq., 42 U.S.C. 2751 et seq.] expires, or

"(II) the date, after the date of enactment of this Act [July 18, 1984], on which the Higher Education Act of 1965 is reauthorized.

"(ii) PUBLICATION OF REGULATIONS.—Notwithstanding clause (i), the qualified date shall not be a date which is prior to the date that is 6 months after the date on which the regulations prescribed under paragraph (1) are published in the Federal Register.

"(C) REFUNDING OBLIGATIONS.—Regulations prescribed by the Secretary under paragraph (1) shall not apply to any obligation (or series of refunding obligations) issued exclusively to refund any qualified student loan bond which was issued before the qualified date, except that the requirements of subparagraphs (A) and (B) of section 626(b)(4) of this Act [set out in Effective Date of 1984 Amendment note above] must be met with respect to such refunding.

"(D) FULFILLMENT OF COMMITMENTS.—Regulations prescribed by the Secretary under paragraph (1) shall not apply to any obligations which are needed to fulfill written commitments to acquire or finance student loans which are originated after June 30, 1984, and before the qualified date, but only if—

"(i) such commitments are binding on the qualified date, and

"(ii) the amount of such commitments is consistent with practices of the issuer which were in effect on March 15, 1984, with respect to establishing secondary markets for student loans.

"(b) ARBITRAGE LIMITATION ON STUDENT LOAN BONDS WHICH ARE NOT QUALIFIED STUDENT LOAN BONDS.—Under regulations prescribed by the Secretary of the Treasury or his delegate, any student loan bond (other than a qualified student loan bond) issued after December 31, 1985, shall be treated as an obligation not described in subsection (a)(1) or (2) of section 103 of the Internal Revenue Code of 1986 unless the issue of which such obligation is a part meets requirements similar to those of sections 103(c)(6) and 103A(i) of such Code.

"(c) ISSUANCE OF STUDENT LOAN BONDS WHICH ARE NOT TAX-EXEMPT.—Any issuer who may issue obligations described in section 103(a) of the Internal Revenue Code of 1986 may elect to issue student loan bonds which are not described in such section 103(a) of such Code without prejudice to—

"(1) the status of any other obligations issued, or to be issued, by such issuer as obligations described in section 103(a) of such Code, or

"(2) the status of the issuer as an organization exempt from taxation under such Code.

"(d) FEDERAL EXECUTIVE BRANCH JURISDICTION OVER TAX-EXEMPT STATUS.—For purposes of Federal law, any determination by the executive branch of the Federal Government of whether interest on any obligation is exempt from taxation under the Internal Revenue Code of 1986 shall be exclusively within the jurisdiction of the Department of the Treasury.

"(e) STUDY ON TAX-EXEMPT STUDENT LOAN BONDS.—

"(1) IN GENERAL.—The Comptroller General of the United States and the Director of the Congressional Budget Office, shall conduct studies of—

"(A) the appropriate role of tax-exempt bonds which are issued in connection with the guaranteed student loan program and the PLUS program established under the Higher Education Act of 1965 [20 U.S.C. 1001 et seq., 42 U.S.C. 2751 et seq.], and

"(B) the appropriate arbitrage rules for such bonds.

"(2) REPORT.—The Comptroller General of the United States and the Director of the Congressional Budget Office, shall submit to the Committee on Finance and the Committee on Labor and Human Resources [now Committee on Health, Education, Labor, and Pensions] of the Senate and the Committee on Ways and Means and the Committee on Education and Labor [now Committee on Education and the Workforce] of the House of Representatives reports on the studies conducted under paragraph (1) by no later than 9 months after the date of enactment of this Act [July 18, 1984]."

OBLIGATIONS ISSUED TO PROVIDE SOLID WASTE-ENERGY PRODUCING FACILITIES

Pub. L. 96–223, title II, §241(b), Apr. 2, 1980, 94 Stat. 282, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) GENERAL RULE.—For purposes of section 103 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], any obligation issued by an authority for 2 or more political subdivisions of a State which is part of an issue substantially all of the proceeds of which are to be used to provide solid waste-energy producing facilities shall be treated as an obligation of a political subdivision of a State which meets the requirements of section 103(b)(4)(E) of such Code (relating to solid waste disposal, etc., facilities). Nothing in the preceding sentence shall be construed to override the limitations of section 103(c) of such Code (relating to arbitrage bonds).

"(2) SOLID WASTE-ENERGY PRODUCING FACILITIES.—For purposes of paragraph (1), the term 'solid waste-energy producing facilities' means any solid waste disposal facility and any facility for the production of steam and electrical energy if—

"(A) substantially all of the fuel for the facility producing steam and electrical energy is derived from solid waste from such solid waste disposal facility,

"(B) both such solid waste disposal facility and the facility producing steam and electrical energy are owned and operated by the authority referred to in paragraph (1), and

"(C) all of the electrical energy and steam produced by the facility for producing steam and electricity which is not used by such facility is sold, for purposes other than resale, to an agency or instrumentality of the United States.

"(3) SOLID WASTE DISPOSAL FACILITY.—For purposes of paragraph (2), the term 'solid waste disposal facility' means any solid waste disposal facility within the meaning of section 103(b)(4)(E) of the Internal Revenue Code of 1986 (determined without regard to section 103(g) of such Code).

"(4) OBLIGATIONS MUST BE IN REGISTERED FORM.—This subsection shall not apply to any obligation which is not issued in registered form."

ALCOHOL-PRODUCING FACILITIES

Pub. L. 96–223, title II, §241(c), Apr. 2, 1980, 94 Stat. 282, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—Subparagraph (C) of section 103(g)(3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)) shall not apply to any facility for the production of alcohol from solid waste if—

"(A) substantially all of the solid waste derived feedstock for such facility is produced at a facility which—

"(i) went into full production in 1977,

"(ii) is located within the limits of a city, and

"(iii) is located in the same metropolitan area as the alcohol-producing facility, and

"(B) before March 1, 1980, there were negotiations between a governmental body and an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 with respect to the utilization of a special process for the production of alcohol at such alcohol-producing facility.

"(2) LIMITATION.—The aggregate amount of obligations which may be issued by reason of paragraph (1) with respect to any project shall not exceed $30,000,000.

"(3) TERMINATION.—This subsection shall not apply to obligations issued after December 31, 1985."

HYDROELECTRIC GENERATING FACILITIES

Pub. L. 96–223, title II, §242(b), Apr. 2, 1980, 94 Stat. 284, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—For purposes of section 103(b)(4)(H) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to qualified hydroelectric generating facilities), in the case of a hydroelectric generating facility described in paragraph (2)—

"(A) the facility shall be treated as a qualified hydroelectric generating facility (as defined in section

103(b)(8)(A) of such Code) without regard to clause (ii) of section 48(l)(13)(B) of such Code (relating to maximum generating capacity), and

"(B) the fraction referred to in subparagraph (C) of section 103(b)(8) of such Code shall be deemed to be 1.

"(2) FACILITIES TO WHICH PARAGRAPH (1) APPLIES.—A facility is described in this paragraph if—

"(A) it would be a qualified hydroelectric generating facility (as defined in section 103(b)(8)(A) of such Code) if clause (ii) of section 48(l)(13)(B) did not apply,

"(B) it constitutes an expansion of generating capacity at an existing hydroelectric generating facility,

"(C) such facility is located at 1 of 2 dams located in the same county where—

"(i) the rated capacity of the hydroelectric generating facilities at each such dam on October 18, 1979, was more than 750 megawatts,

"(ii) the construction of the first such dam began in 1956, power at such first dam was first generated in 1959, and full power production at such first dam began in 1961, and

"(iii) the construction of the second such dam began in 1959, power at such second dam was first generated in 1963, and full power production at such second dam began in 1964,

"(D) acquisition or construction of the existing facility referred to in subparagraph (B) was financed with the proceeds of an obligation described in section 103(a)(1) of such Code,

"(E) the existing facility is owned and operated by a State, political subdivision of a State, or agency or instrumentality of any of the foregoing,

"(F) no more than 60 percent of the electric power and energy produced by such existing facility and of the qualified hydroelectric generating facility is to be sold to anyone other than an exempt person (within the meaning of section 103(b)(3) of such Code), and

"(G) the agency of the State in which the facility is located which has jurisdiction over water rights had granted, before October 18, 1979, a water right under which expanded power and energy generating capacity for the facility was contemplated."

STATE OBLIGATIONS FOR RENEWABLE ENERGY PROPERTY

Pub. L. 96–223, title II, §243, Apr. 2, 1980, 94 Stat. 285, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) CERTAIN STATE OBLIGATIONS FOR RENEWABLE ENERGY PROPERTY.—

"(1) IN GENERAL.—Paragraph (1) of subsection (b) of section 103 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall not apply to any obligation issued as part of an issue substantially all of the proceeds of which are to be used to provide renewable energy property, if—

"(A) the obligations are general obligations of a State,

"(B) the authority for the issuance of the obligations requires that taxes be levied in sufficient amount to provide for the payment of principal and interest on such obligations,

"(C) the amount of such obligations, when added to the sum of the amounts of all such obligations previously issued by the State which are outstanding, does not exceed the smaller of—

"(i) $500,000,000 or

"(ii) one-half of 1 percent of the value of all property in the State,

"(D) such obligations are issued pursuant to a program to provide financing for small scale energy projects which was established by a State the legislature of which, before October 18, 1979, approved a constitutional amendment to provide for such a program, and

"(E) such obligations meet the requirements of paragraph (1) of section 103(h) of the Internal Revenue Code of 1986.

"(2) RENEWABLE ENERGY PROPERTY.—For purposes of this subsection, the term 'renewable energy property' means property used to produce energy (including heat, electricity, and substitute fuels) from renewable energy sources (including wind, solar, and geothermal energy, waste heat, biomass, and water).

"(b) EFFECTIVE DATE.—Subsection (a) shall apply with respect to obligations issued after the date of enactment of this Act [Apr. 2, 1980]."

DISPOSITION OF AMOUNTS GENERATED BY ADVANCE REFUNDING OF CERTAIN GOVERNMENTAL OBLIGATIONS

Pub. L. 95–600, title III, §337, Nov. 6, 1978, 92 Stat. 2842, as amended by Pub. L. 96–222, title I, §103(a)(8), Apr. 1, 1980, 94 Stat. 212; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) GENERAL RULE.—The payment to a charitable organization of a refund profit held in a trust fund or escrow arrangement, or held by an underwriter or other person under a qualified agreement in accordance with that agreement—

"(1) shall not cause the refunding obligations out of which the refund profit arose to be treated as arbitrage bonds (within the meaning of section 103(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) and

"(2) may be paid without penalty imposed on the issuer of such obligations.

"(b) RULE FOR GOVERNMENTS WHICH HAVE ALREADY PAID ARBITRAGE PROFITS TO THE UNITED STATES.—In the case of a State or local government which, before January 1, 1977—

"(1) requested in writing a rule by the Internal Revenue Service with respect to the tax consequences of paying refund profit to charitable organizations,

"(2) failed to receive a favorable ruling and did not pay the refund profit to a charitable organization, and

which accounted to the United States for refund profit by direct payment to the United States, or by the purchase of low-interest United States obligations, the Secretary of the Treasury shall pay, out of any amounts in the Treasury not otherwise appropriated, an amount equal to the refund profit for which the State or local government has accounted to the United States. Amounts paid to a State or local government under this subsection shall be distributed to such charitable organizations within 90 days after the date on which the payment is received by the State or local government in the same manner as if the refund profit had not been paid to the United States and met the requirements of subsection (a).

"(c) DEFINITIONS.—For purposes of this section—

"(1) REFUND PROFIT.—The term 'Refund profit' means interest, profit, or other amounts generated by, or arising out of, the advance refunding, before September 24, 1976, of an obligation of a State or local government described in section 103 of such Code.

"(2) CHARITABLE ORGANIZATION.—The term 'charitable organization' means an organization described in section 501(c)(3) of such Code and exempt from taxation under section 501(a) of such Code other than an organization described in section 509(a) of such Code.

"(3) QUALIFIED AGREEMENT.—The term 'qualified agreement' means an agreement (whether or not enforceable) which provides for, or contemplates, the payment of refund profit to one or more charitable organizations.

"(4) LOW-INTEREST UNITED STATES OBLIGATIONS.—The term 'low-interest United States obligations' means United States obligations which bear an interest rate lower than the highest rate of interest borne by public debt securities generally available for purchase at the time such obligations were purchased."

TRANSITIONAL PROVISIONS FOR INDUSTRIAL DEVELOPMENT BONDS ISSUED BEFORE JANUARY 1, 1969

Pub. L. 90–364, title I, §107(b)(2), June 28, 1968, 82 Stat. 268, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Section 103(c)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as amended by subsection (a) [subsec. (b)(1), formerly subsec. (c)(1) of this section], shall not apply with respect to any obligation issued before January 1, 1969, if before May 1, 1968—

"(A) the issuance of the obligation (or the project in connection with which the proceeds of the obligations are to be used) was authorized or approved by the governing body of the governmental unit issuing the obligation or by the voters of such governmental unit;

"(B) in connection with the issuance of such obligation or with the use of the proceeds to be derived from the sale of such obligation or the property to be acquired or improved with such proceeds, a governmental unit has made a significant financial commitment;

"(C) any person (other than a governmental unit) who will use the proceeds to be derived from the sale of such obligation or the property to be acquired or improved with such proceeds has expended (or has entered into a binding contract to expend) for purposes which are related to the use of such proceeds or property, an amount equal to or in excess of 20 percent of such proceeds; or

"(D) in the case of an obligation issued in conjunction with a project where financial assistance will be provided by a governmental agency concerned with economic development, such agency has approved the project or an application for financial assistance is pending."

[§103A. Repealed. Pub. L. 99–514, title XIII, §1301(j)(1), Oct. 22, 1986, 100 Stat. 2657]

Section, added Pub. L. 96–499, title XI, §1102(a), Dec. 5, 1980, 94 Stat. 2660; amended Pub. L. 96–595, §5(a), (b), Dec. 24, 1980, 94 Stat. 3467; Pub. L. 97–248, title II, §220(a)–(e), title III, §310(c)(3), (4), Sept. 3,

1982, 96 Stat. 475, 476, 599; Pub. L. 98–369, div. A, title I, §42(a)(2), title VI, §§611(a)–(c), 612(b), 624(b)(1), July 18, 1984, 98 Stat. 556, 901–903, 911, 924; Pub. L. 99–514, title XVIII, §1861, Oct. 22, 1986, 100 Stat. 2883, related to mortgage subsidy bonds. See section 143 of this title.

EFFECTIVE DATE OF REPEAL

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

§104. Compensation for injuries or sickness

(a) In general

Except in the case of amounts attributable to (and not in excess of) deductions allowed under section 213 (relating to medical, etc., expenses) for any prior taxable year, gross income does not include—

(1) amounts received under workmen's compensation acts as compensation for personal injuries or sickness;

(2) the amount of any damages (other than punitive damages) received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of personal physical injuries or physical sickness;

(3) amounts received through accident or health insurance (or through an arrangement having the effect of accident or health insurance) for personal injuries or sickness (other than amounts received by an employee, to the extent such amounts (A) are attributable to contributions by the employer which were not includible in the gross income of the employee, or (B) are paid by the employer);

(4) amounts received as a pension, annuity, or similar allowance for personal injuries or sickness resulting from active service in the armed forces of any country or in the Coast and Geodetic Survey or the Public Health Service, or as a disability annuity payable under the provisions of section 808 of the Foreign Service Act of 1980; and

(5) amounts received by an individual as disability income attributable to injuries incurred as a direct result of a terroristic or military action (as defined in section 692(c)(2)).

For purposes of paragraph (3), in the case of an individual who is, or has been, an employee within the meaning of section 401(c)(1) (relating to self-employed individuals), contributions made on behalf of such individual while he was such an employee to a trust described in section 401(a) which is exempt from tax under section 501(a), or under a plan described in section 403(a), shall, to the extent allowed as deductions under section 404, be treated as contributions by the employer which were not includible in the gross income of the employee. For purposes of paragraph (2), emotional distress shall not be treated as a physical injury or physical sickness. The preceding sentence shall not apply to an amount of damages not in excess of the amount paid for medical care (described in subparagraph (A) or (B) of section 213(d)(1)) attributable to emotional distress.

(b) Termination of application of subsection (a)(4) in certain cases

(1) In general

Subsection (a)(4) shall not apply in the case of any individual who is not described in paragraph (2).

(2) Individuals to whom subsection (a)(4) continues to apply

An individual is described in this paragraph if—

(A) on or before September 24, 1975, he was entitled to receive any amount described in subsection (a)(4),

(B) on September 24, 1975, he was a member of any organization (or reserve component thereof) referred to in subsection (a)(4) or under a binding written commitment to become such a member,

(C) he receives an amount described in subsection (a)(4) by reason of a combat-related injury, or

(D) on application therefor, he would be entitled to receive disability compensation from the Veterans' Administration.

(3) Special rules for combat-related injuries

For purposes of this subsection, the term "combat-related injury" means personal injury or sickness—

(A) which is incurred—

(i) as a direct result of armed conflict,

(ii) while engaged in extrahazardous service, or

(iii) under conditions simulating war; or

(B) which is caused by an instrumentality of war.

In the case of an individual who is not described in subparagraph (A) or (B) of paragraph (2), except as provided in paragraph (4), the only amounts taken into account under subsection (a)(4) shall be the amounts which he receives by reason of a combat-related injury.

(4) Amount excluded to be not less than veterans' disability compensation

In the case of any individual described in paragraph (2), the amounts excludable under subsection (a)(4) for any period with respect to any individual shall not be less than the maximum amount which such individual, on application therefor, would be entitled to receive as disability compensation from the Veterans' Administration.

(c) Application of prior law in certain cases

The phrase "(other than punitive damages)" shall not apply to punitive damages awarded in a civil action—

(1) which is a wrongful death action, and

(2) with respect to which applicable State law (as in effect on September 13, 1995 and without regard to any modification after such date) provides, or has been construed to provide by a court of competent jurisdiction pursuant to a decision issued on or before September 13, 1995, that only punitive damages may be awarded in such an action.

This subsection shall cease to apply to any civil action filed on or after the first date on which the applicable State law ceases to provide (or is no longer construed to provide) the treatment described in paragraph (2).

(d) Cross references

(1) For exclusion from employee's gross income of employer contributions to accident and health plans, see section 106.

(2) For exclusion of part of disability retirement pay from the application of subsection (a)(4) of this section, see section 1403 of title 10, United States Code (relating to career compensation laws).

(Aug. 16, 1954, ch. 736, 68A Stat. 30; Pub. L. 86–723, §51, Sept. 8, 1960, 74 Stat. 847; Pub. L. 87–792, §7(d), Oct. 10, 1962, 76 Stat. 829; Pub. L. 94–455, title V, §505(b), (e)(1), title XIX, §1901(a)(18), Oct. 4, 1976, 90 Stat. 1567, 1568, 1766; Pub. L. 96–465, title II, §2206(e)(1), Oct. 17, 1980, 94 Stat. 2162; Pub. L. 97–473, title I, §101(a), Jan. 14, 1983, 96 Stat. 2605; Pub. L. 101–239, title VII, §7641(a), Dec. 19, 1989, 103 Stat. 2379; Pub. L. 104–188, title I, §1605(a)–(c), Aug. 20, 1996, 110 Stat. 1838; Pub. L. 104–191, title III, §311(b), Aug. 21, 1996, 110 Stat. 2053; Pub. L. 107–134, title I, §113(a), Jan. 23, 2002, 115 Stat. 2435.)

REFERENCES IN TEXT

Section 808 of the Foreign Service Act of 1980, referred to in subsec. (a)(4), is Pub. L. 96–465, title I, §808, Oct. 17, 1980, 94 Stat. 2110, which is classified to section 4048 of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

2002—Subsec. (a)(5). Pub. L. 107–134 substituted "a terroristic or military action (as defined in section 692(c)(2))." for "a violent attack which the Secretary of State determines to be a terrorist attack and which occurred while such individual was an employee of the United States engaged in the performance of his official duties outside the United States."

1996—Subsec. (a). Pub. L. 104–188, §1605(b), in closing provisions, substituted "For purposes of paragraph (2), emotional distress shall not be treated as a physical injury or physical sickness. The preceding sentence shall not apply to an amount of damages not in excess of the amount paid for medical care (described in subparagraph (A) or (B) of section 213(d)(1)) attributable to emotional distress." for "Paragraph (2) shall not apply to any punitive damages in connection with a case not involving physical injury or physical sickness."

Subsec. (a)(2). Pub. L. 104–188, §1605(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "the amount of any damages received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of personal injuries or sickness;".

Subsec. (a)(3). Pub. L. 104–191 inserted "(or through an arrangement having the effect of accident or health insurance)" after "accident or health insurance".

Subsecs. (c), (d). Pub. L. 104–188, §1605(c), added subsec. (c) and redesignated former subsec. (c) as (d).

1989—Subsec. (a). Pub. L. 101–239 inserted at end "Paragraph (2) shall not apply to any punitive damages in connection with a case not involving physical injury or physical sickness."

1983—Subsec. (a)(2). Pub. L. 97–473 substituted "whether by suit or agreement and whether as lump sums or as periodic payments" for "whether by suit or agreement".

1980—Subsec. (a)(4). Pub. L. 96–465 substituted reference to section 808 of the Foreign Service Act of 1980 for reference to section 831 of the Foreign Service Act of 1946.

1976—Subsec. (a)(4). Pub. L. 94–455, §1901(a)(18)(A), struck out "; 60 Stat. 1021" after "(22 U.S.C. 1081".

Subsec. (a)(5). Pub. L. 94–455, §505(e)(1), added par. (5).

Subsecs. (b), (c). Pub. L. 94–455, §505(b), added subsec. (b), redesignated former subsec. (b) as (c) and, as so redesignated, §1901(a)(18)(B), substituted "1403 of title 10, United States Code (relating to career compensation laws)" for "402(h) of the Career Compensation Act of 1949 (37 U.S.C. 272(h))".

1962—Subsec. (a). Pub. L. 87–792 inserted sentence requiring contributions made on behalf of an individual who is, or has been, an employee within the meaning of section 401(c)(1), while he was such an employee to a trust which is exempt from tax, or under a plan described in section 403(a), to be treated as contributions by the employer which were not includible in the gross income of the employee.

1960—Subsec. (a)(4). Pub. L. 86–723 provided for exclusion from gross income of amounts received as a disability annuity payable under the provisions of section 831 of the Foreign Service Act of 1946, as amended.

CHANGE OF NAME

Reference to Veterans' Administration deemed to refer to Department of Veterans Affairs pursuant to section 10 of Pub. L. 100–527, set out as a Department of Veterans Affairs Act note under section 301 of Title 38, Veterans' Benefits.

Coast and Geodetic Survey consolidated with National Weather Bureau in 1965 to form Environmental Science Services Administration by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 FR 8819, 79 Stat. 1318. Environmental Science Services Administration abolished in 1970 and its personnel, property, records, etc., transferred to National Oceanic and Atmospheric Administration by Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 FR 15627, 84 Stat. 2090. By order of Acting Associate Administrator of National Oceanic and Atmospheric Administration, 35 FR 19249, Dec. 19, 1970, Coast and Geodetic Survey redesignated National Ocean Survey. See notes under section 311 of Title 15, Commerce and Trade.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–134, title I, §113(c), Jan. 23, 2002, 115 Stat. 2435, provided that: "The amendments made by this section [amending this section and section 692 of this title] shall apply to taxable years ending on or after September 11, 2001."

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–191, title III, §311(c), Aug. 21, 1996, 110 Stat. 2053, provided that: "The amendments made by this section [amending this section and section 162 of this title] shall apply to taxable years beginning after December 31, 1996."

Pub. L. 104–188, title I, §1605(d), Aug. 20, 1996, 110 Stat. 1839, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to amounts received after the date of the enactment of this Act [Aug. 20, 1996], in taxable years ending after such date.

"(2) EXCEPTION.—The amendments made by this section shall not apply to any amount received under a written binding agreement, court decree, or mediation award in effect on (or issued on or before) September 13, 1995."

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7641(b), Dec. 19, 1989, 103 Stat. 2379, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to amounts received after July 10, 1989, in taxable years ending after such date.

"(2) EXCEPTION.—The amendment made by subsection (a) shall not apply to any amount received—

"(A) under any written binding agreement, court decree, or mediation award in effect on (or issued on or before) July 10, 1989, or

"(B) pursuant to any suit filed on or before July 10, 1989."

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–465 effective Feb. 15, 1981, except as otherwise provided, see section 2403 of Pub. L. 96–465, set out as an Effective Date note under section 3901 of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 505(b) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, see section 508 of Pub. L. 94–455, set out as a note under section 3 of this title.

Pub. L. 94–455, title V, §505(e)(2), Oct. 4, 1976, 90 Stat. 1568, provided that: "The amendments made by this subsection [amending this section] shall apply to taxable years beginning after December 31, 1976."

Amendment by section 1901(a)(18)(A) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87–792, set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Pub. L. 86–723, §56(e), Sept. 8, 1960, 74 Stat. 848, provided that: "The amendment made by section 51 of this Act [amending this section] shall be effective with respect to taxable years ending after the date of enactment of this Act [Sept. 8, 1960]."

TRANSFER OF FUNCTIONS

Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 3508 of Title 20, Education.

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by 1966 Reorg. Plan No. 3, 31 F.R. 8855, 80 Stat. 1610, effective June 25, 1966, set out in the Appendix to Title 5, Government Organization and Employees.

§105. Amounts received under accident and health plans

(a) Amounts attributable to employer contributions

Except as otherwise provided in this section, amounts received by an employee through accident or health insurance for personal injuries or sickness shall be included in gross income to the extent such amounts (1) are attributable to contributions by the employer which were not includible in the gross income of the employee, or (2) are paid by the employer.

(b) Amounts expended for medical care

Except in the case of amounts attributable to (and not in excess of) deductions allowed under

section 213 (relating to medical, etc., expenses) for any prior taxable year, gross income does not include amounts referred to in subsection (a) if such amounts are paid, directly or indirectly, to the taxpayer to reimburse the taxpayer for expenses incurred by him for the medical care (as defined in section 213(d)) of the taxpayer, his spouse, his dependents (as defined in section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof), and any child (as defined in section 152(f)(1)) of the taxpayer who as of the end of the taxable year has not attained age 27. Any child to whom section 152(e) applies shall be treated as a dependent of both parents for purposes of this subsection.

(c) Payments unrelated to absence from work

Gross income does not include amounts referred to in subsection (a) to the extent such amounts—

(1) constitute payment for the permanent loss or loss of use of a member or function of the body, or the permanent disfigurement, of the taxpayer, his spouse, or a dependent (as defined in section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof), and

(2) are computed with reference to the nature of the injury without regard to the period the employee is absent from work.

[(d) Repealed. Pub. L. 98–21, title I, §122(b), Apr. 20, 1983, 97 Stat. 87]

(e) Accident and health plans

For purposes of this section and section 104—

(1) amounts received under an accident or health plan for employees, and

(2) amounts received from a sickness and disability fund for employees maintained under the law of a State or the District of Columbia,

shall be treated as amounts received through accident or health insurance.

(f) Rules for application of section 213

For purposes of section 213(a) (relating to medical, dental, etc., expenses) amounts excluded from gross income under subsection (c) or (d) shall not be considered as compensation (by insurance or otherwise) for expenses paid for medical care.

(g) Self-employed individual not considered an employee

For purposes of this section, the term "employee" does not include an individual who is an employee within the meaning of section 401(c)(1) (relating to self-employed individuals).

(h) Amount paid to highly compensated individuals under a discriminatory self-insured medical expense reimbursement plan

(1) In general

In the case of amounts paid to a highly compensated individual under a self-insured medical reimbursement plan which does not satisfy the requirements of paragraph (2) for a plan year, subsection (b) shall not apply to such amounts to the extent they constitute an excess reimbursement of such highly compensated individual.

(2) Prohibition of discrimination

A self-insured medical reimbursement plan satisfies the requirements of this paragraph only if—

(A) the plan does not discriminate in favor of highly compensated individuals as to eligibility to participate; and

(B) the benefits provided under the plan do not discriminate in favor of participants who are highly compensated individuals.

(3) Nondiscriminatory eligibility classifications

(A) In general

A self-insured medical reimbursement plan does not satisfy the requirements of subparagraph (A) of paragraph (2) unless such plan benefits—

(i) 70 percent or more of all employees, or 80 percent or more of all the employees who are eligible to benefit under the plan if 70 percent or more of all employees are eligible to benefit under the plan; or

(ii) such employees as qualify under a classification set up by the employer and found by the Secretary not to be discriminatory in favor of highly compensated individuals.

(B) Exclusion of certain employees

For purposes of subparagraph (A), there may be excluded from consideration—

(i) employees who have not completed 3 years of service;

(ii) employees who have not attained age 25;

(iii) part-time or seasonal employees;

(iv) employees not included in the plan who are included in a unit of employees covered by an agreement between employee representatives and one or more employers which the Secretary finds to be a collective bargaining agreement, if accident and health benefits were the subject of good faith bargaining between such employee representatives and such employer or employers; and

(v) employees who are nonresident aliens and who receive no earned income (within the meaning of section 911(d)(2)) from the employer which constitutes income from sources within the United States (within the meaning of section 861(a)(3)).

(4) Nondiscriminatory benefits

A self-insured medical reimbursement plan does not meet the requirements of subparagraph (B) of paragraph (2) unless all benefits provided for participants who are highly compensated individuals are provided for all other participants.

(5) Highly compensated individual defined

For purposes of this subsection, the term "highly compensated individual" means an individual who is—

(A) one of the 5 highest paid officers,

(B) a shareholder who owns (with the application of section 318) more than 10 percent in value of the stock of the employer, or

(C) among the highest paid 25 percent of all employees (other than employees described in paragraph (3)(B) who are not participants).

(6) Self-insured medical reimbursement plan

The term "self-insured medical reimbursement plan" means a plan of an employer to reimburse employees for expenses referred to in subsection (b) for which reimbursement is not provided under a policy of accident and health insurance.

(7) Excess reimbursement of highly compensated individual

For purposes of this section, the excess reimbursement of a highly compensated individual which is attributable to a self-insured medical reimbursement plan is—

(A) in the case of a benefit available to highly compensated individuals but not to all other participants (or which otherwise fails to satisfy the requirements of paragraph (2)(B)), the amount reimbursed under the plan to the employee with respect to such benefit, and

(B) in the case of benefits (other than benefits described in subparagraph (A) [1] paid to a highly compensated individual by a plan which fails to satisfy the requirements of paragraph (2), the total amount reimbursed to the highly compensated individual for the plan year multiplied by a fraction—

(i) the numerator of which is the total amount reimbursed to all participants who are highly compensated individuals under the plan for the plan year, and

(ii) the denominator of which is the total amount reimbursed to all employees under the plan for such plan year.

In determining the fraction under subparagraph (B), there shall not be taken into account any

reimbursement which is attributable to a benefit described in subparagraph (A).

(8) Certain controlled groups, etc.

All employees who are treated as employed by a single employer under subsection (b), (c), or (m) of section 414 shall be treated as employed by a single employer for purposes of this section.

(9) Regulations

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

(10) Time of inclusion

Any amount paid for a plan year that is included in income by reason of this subsection shall be treated as received or accrued in the taxable year of the participant in which the plan year ends.

(i) Sick pay under Railroad Unemployment Insurance Act

Notwithstanding any other provision of law, gross income includes benefits paid under section 2(a) of the Railroad Unemployment Insurance Act for days of sickness; except to the extent such sickness (as determined in accordance with standards prescribed by the Railroad Retirement Board) is the result of on-the-job injury.

(j) Special rule for certain governmental plans

(1) In general

For purposes of subsection (b), amounts paid (directly or indirectly) to the taxpayer from an accident or health plan described in paragraph (2) shall not fail to be excluded from gross income solely because such plan, on or before January 1, 2008, provides for reimbursements of health care expenses of a deceased plan participant's beneficiary.

(2) Plan described

An accident or health plan is described in this paragraph if such plan is funded by a medical trust that is established in connection with a public retirement system and that—

(A) has been authorized by a State legislature, or

(B) has received a favorable ruling from the Internal Revenue Service that the trust's income is not includible in gross income under section 115.

(Aug. 16, 1954, ch. 736, 68A Stat. 30; Pub. L. 87–792, §7(e), Oct. 10, 1962, 76 Stat. 829; Pub. L. 88–272, title II, §205(a), Feb. 26, 1964, 78 Stat. 38; Pub. L. 94–455, title V, §505(a), title XIX, §1901(c)(2), Oct. 4, 1976, 90 Stat. 1566, 1803; Pub. L. 95–600, title III, §366(a), title VII, §701(c)(1), Nov. 6, 1978, 92 Stat. 2855, 2899; Pub. L. 96–222, title I, §103(a)(13)(B), (C), Apr. 1, 1980, 94 Stat. 213; Pub. L. 96–605, title II, §201(b)(1), Dec. 28, 1980, 94 Stat. 3527; Pub. L. 96–613, §5(b)(1), Dec. 28, 1980, 94 Stat. 3581; Pub. L. 97–34, title I, §§103(c)(2), 111(b)(4), Aug. 13, 1981, 95 Stat. 188, 194; Pub. L. 97–248, title II, §202(b)(3)(C), Sept. 3, 1982, 96 Stat. 421; Pub. L. 98–21, title I, §122(b), Apr. 20, 1983, 97 Stat. 87; Pub. L. 98–76, title II, §241(a), Aug. 12, 1983, 97 Stat. 430; Pub. L. 98–369, div. A, title IV, §423(b)(2), July 18, 1984, 98 Stat. 800; Pub. L. 99–514, title XI, §1151(c)(2), title XIII, §1301(j)(9), Oct. 22, 1986, 100 Stat. 2503, 2658; Pub. L. 101–140, title II, §203(a)(1), Nov. 8, 1989, 103 Stat. 830; Pub. L. 108–311, title II, §207(9), Oct. 4, 2004, 118 Stat. 1177; Pub. L. 110–458, title I, §124(a), Dec. 23, 2008, 122 Stat. 5114; Pub. L. 111–152, title I, §1004(d)(1), Mar. 30, 2010, 124 Stat. 1035.)

REFERENCES IN TEXT

Section 2(a) of the Railroad Unemployment Insurance Act, referred to in subsec. (i), is classified to section 352(a) of Title 45, Railroads.

AMENDMENTS

2010—Subsec. (b). Pub. L. 111–152 substituted "his dependents" for "and his dependents" and inserted ", and any child (as defined in section 152(f)(1)) of the taxpayer who as of the end of the taxable year has not attained age 27" after "thereof)".

2008—Subsec. (j). Pub. L. 110–458 added subsec. (j).

2004—Subsecs. (b), (c)(1). Pub. L. 108–311 inserted ", determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof" after "section 152".

1989—Subsecs. (h), (i). Pub. L. 101–140 amended subsecs. (h) and (i) to read as if amendments by Pub. L. 99–514, §1151(c)(2), had not been enacted, see 1986 Amendment note below.

1986—Subsec. (d)(5)(C). Pub. L. 99–514, §1301(j)(9), which directed that subpar. (C) be amended by substituting "section 7703(a)" for "section 143(a)", could not be executed because subsec. (d) was previously repealed by Pub. L. 98–21. See 1983 Amendment note below.

Subsecs. (h), (i). Pub. L. 99–514, §1151(c)(2), redesignated subsec. (i) as (h) and struck out former subsec. (h) which related to amount paid to highly compensated individuals under a discriminatory self-insured medical expense reimbursement plan.

1984—Subsec. (b). Pub. L. 98–369 inserted "Any child to whom section 152(e) applies shall be treated as a dependent of both parents for purposes of this subsection."

1983—Subsec. (d). Pub. L. 98–21 struck out subsec. (d) which provided that no deduction or credit would be allowed with respect to any expenditure which is properly associated with any amount excluded from gross income under subsec. (a).

Subsec. (i). Pub. L. 98–76 added subsec. (i).

1982—Subsec. (b). Pub. L. 97–248 substituted "section 213(d)" for "section 213(e)".

1981—Subsec. (d)(3). Pub. L. 97–34, §103(c)(2), substituted "this subsection and section 221" for "this subsection" in parenthetical provision.

Subsec. (h)(3)(B)(v). Pub. L. 97–34, §111(b)(4), substituted "section 911(d)(2)" for "section 911(b)".

1980—Subsec. (h)(3)(A). Pub. L. 96–222, §103(a)(13)(B), substituted "highly compensated individuals" for "highly compensated participants".

Subsec. (h)(7)(A). Pub. L. 96–222, §103(a)(13)(C), substituted "highly compensated individuals but not to all other participants (or which otherwise fails to satisfy the requirements of paragraph (2)(B))" for "a highly compensated individual but not to a broad cross-section of employees".

Subsec. (h)(8). Pub. L. 96–613 and Pub. L. 96–605 made identical amendments by substituting in heading "controlled groups, etc." for "controlled groups", and by substituting in text "subsection (b), (c), or (m) of section 414" for "subsection (b) or (c) of section 414".

1978—Subsec. (d)(4). Pub. L. 95–600, §701 (c)(1), redesignated par. (5) as (4). Former par. (4) redesignated (5)(A) and (C).

Subsec. (d)(5). Pub. L. 95–600, §701(c)(1), added heading and subpar. (B), redesignated former par. (4) as subpars. (A) and (C), adding subpar. (C) heading and substituting "section 143(a)" for "section 143"; and redesignated former par. (6) as subpar. (D), inserting "defined" in heading.

Subsec. (d)(6), (7). Pub. L. 95–600, §701(c)(1), redesignated par. (7) as (6). Former par. (6) redesignated (5)(D).

Subsec. (h). Pub. L. 95–600, §366(a), added subsec. (h).

1976—Subsec. (d). Pub. L. 94–455, §505(a), substituted provisions relating to an exclusion of up to $5,200 a year for taxpayers retiring on disability prior to age 65; dollar-for-dollar phase out of exclusion for adjusted annual gross income (including disability income) in excess of $15,000; requirement that married couple must file joint return; defined "permanent and total disability" and "joint return"; and inserted special rule for coordination with section 72 of this title for provisions relating to wage continuation plans.

Subsec. (e)(2). Pub. L. 94–455, §1901(c)(2), struck out "a territory" after "of a State".

1964—Subsec. (d). Pub. L. 88–272 substituted provisions stating that "The preceding sentence shall not apply to amounts attributable to the first 30" days if the amounts exceed 75 percent of regular weekly wages, and if they do not exceed said 75 percent, the first sentence of this subsection shall not apply to the extent the amounts exceed $75 weekly and shall not apply to amounts attributable to the first 7 calendar days unless the employee is hospitalized for injury or sickness for at least 1 day in such period, for provisions stating that said "preceding sentence" did not apply in cases of sickness, to amounts attributable to the first 7 days unless the employee was hospitalized for sickness for at least 1 day during such period.

1962—Subsec. (g). Pub. L. 87–792 added subsec. (g).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–458, title I, §124(b), Dec. 23, 2008, 122 Stat. 5115, provided that: "The amendment made by subsection (a) [amending this section] shall apply to payments before, on, or after the date of the enactment of this Act [Dec. 23, 2008]."

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208

of Pub. L. 108–311, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–140 effective as if included in section 1151 of Pub. L. 99–514, see section 203(c) of Pub. L. 101–140, set out as a note under section 79 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1151(c)(2) of Pub. L. 99–514 applicable, with certain qualifications and exceptions, to years beginning after Dec. 31, 1988, see section 1151(k) of Pub. L. 99–514, as amended, set out as a note under section 79 of this title.

Amendment by section 1301(j)(9) of Pub. L. 99–514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99–514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1984, see section 423(d) of Pub. L. 98–369, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 98–76, title II, §241(b), Aug. 12, 1983, 97 Stat. 430, provided that: "The amendment made by subsection (a) [amending this section] shall apply to amounts received after December 31, 1983, in taxable years ending after such date."

Amendment by Pub. L. 98–21 applicable to taxable years beginning after Dec. 31, 1983, except that if an individual's annuity starting date was deferred under subsec. (d)(6) as in effect the day before Apr. 20, 1983, such deferral shall end on the first day of such individual's first taxable year beginning after Dec. 31, 1983, see section 122(d) of Pub. L. 98–21 set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to taxable years beginning after Dec. 31, 1983, see section 202(c) of Pub. L. 97–248, set out as a note under section 213 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see sections 103(d) and 115 of Pub. L. 97–34, set out as notes under sections 62 and 911, respectively, of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendments by Pub. L. 96–605 and 96–613 applicable to years ending after Nov. 30, 1980, except in the case of a plan in existence on Nov. 30, 1980, where amendments applicable to plan years beginning after Nov. 30, 1980, see section 201(c) of Pub. L. 96–605 and section 5(c) of Pub. L. 96–613, set out as a note under section 414 of this title.

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title III, §366(b), Nov. 6, 1978, 92 Stat. 2857, as amended by Pub. L. 96–222, title I, §103(a)(13)(D), Apr. 1, 1980, 94 Stat. 213, provided that: "The amendment made by this section [amending this section] shall apply to amounts reimbursed after December 31, 1979. For purposes of applying such amendment, there shall not be taken into account any amount reimbursed before January 1, 1980."

Pub. L. 95–600, title VII, §701(c)(3), Nov. 6, 1978, 92 Stat. 2900, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(A) The amendments made by paragraphs (1) and (2)(A) [amending this section and provisions set out as a note under this section] shall take effect as if included in section 105(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] as such section was amended by section 505(a) of the Tax Reform Act of 1976.

"(B) The amendments made by paragraph (2)(B) [amending provisions set out as notes under this section] shall take effect as if included in section 301 of the Tax Reduction and Simplification Act of 1977 [Pub. L. 95–30, title III, §301, May 23, 1977, 91 Stat. 152]."

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title V, §505(f), as added by Pub. L. 95–30, title III, §301(a), May 23, 1977, 91 Stat. 151,

provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1976."

Amendment by section 1901(c)(2) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88–272, title II, §205(b), Feb. 26, 1964, 78 Stat. 38, provided that: "The amendment made by subsection (a) [amending this section] shall apply to amounts attributable to periods of absence commencing after December 31, 1963."

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87–792, set out as a note under section 22 of this title.

NONENFORCEMENT OF AMENDMENT MADE BY SECTION 1151 OF PUB. L. 99–514 FOR FISCAL YEAR 1990

No monies appropriated by Pub. L. 101–136 to be used to implement or enforce section 1151 of Pub. L. 99–514 or the amendments made by such section, see section 528 of Pub. L. 101–136, set out as a note under section 89 of this title.

REVOCATION OF ELECTION

Pub. L. 95–30, title III, §301(c), May 23, 1977, 91 Stat. 151, as amended by Pub. L. 95–600, title VII, §701(c)(2)(B), Nov. 6, 1978, 92 Stat. 2900; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Any election made under section 105(d)(6) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] or under section 505(d) of the Tax Reform Act of 1976 [set out below] for a taxable year beginning in 1976 may be revoked (in such manner as may be prescribed by regulations) at any time before the expiration of the period for assessing a deficiency with respect to such taxable year (determined without regard to subsection (d) of this section) [set out below]."

PERIOD FOR ASSESSING DEFICIENCY

Pub. L. 95–30, title III, §301(d), May 23, 1977, 91 Stat. 152, provided that: "In the case of any revocation made under subsection (c) [set out above], the period for assessing a deficiency with respect to any taxable year affected by the revocation shall not expire before the date which is 1 year after the date of the making of the revocation, and, notwithstanding any law or rule of law, such deficiency, to the extent attributable to such revocation, may be assessed at any time during such 1-year period."

EFFECTIVE DATE OF CHANGES IN EXCLUSION FOR SICK PAY

Pub. L. 95–30, title III, §301(e), May 23, 1977, 91 Stat. 152, as amended by Pub. L. 95–600, title VII, §701(c)(2)(B), Nov. 6, 1978, 92 Stat. 2900; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by this section [enacting and amending provisions set out as notes under this section] shall take effect on October 4, 1976, but shall not apply—

"(1) with respect to any taxpayer who makes or has made an election under section 105(d)(6) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] or under section 505(d) of the Tax Reform Act of 1976 [set out below] (as such sections were in effect before the enactment of this Act [May 23, 1977]) for a taxable year beginning in 1976, if such election is not revoked under subsection (c) of this section [set out above], and

"(2) with respect to any taxpayer (other than a taxpayer described in paragraph (1)) who has an annuity starting date at the beginning of a taxable year beginning in 1976 by reason of the amendments made by section 505 of the Tax Reform Act of 1976 [amending this section and section 104 of this title and enacting provisions set out as notes under this section] (as in effect before the enactment of this Act [May 23, 1977]), unless such person elects (in such manner as the Secretary of the Treasury or his delegate may by regulations prescribe) to have such amendments apply."

SPECIAL RULE FOR EXISTING PERMANENT AND TOTAL DISABILITY CASES

Pub. L. 94–455, title V, §505(c), Oct. 4, 1976, 90 Stat. 1567, as amended by Pub. L. 95–30, title III, §301(b)(1), (2), May 23, 1977, 91 Stat. 151; Pub. L. 95–600, title VII, §701(c)(2)(A), Nov. 6, 1978, 92 Stat. 2900; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "In the case of any individual who—

"(1) retired before January 1, 1977,

"(2) either retired on disability or was entitled to retire on disability, and

"(3) on January 1, 1976, or January 1, 1977, was permanently and totally disabled (within the meaning of section 105(d)(4) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]),

such individual shall be deemed to have met the requirements of section 105(d)(1)(B) of such Code (as amended by subsection (a) of this section)."

SPECIAL RULE FOR COORDINATION WITH SECTION 72 OF THIS TITLE

Pub. L. 94–455, title V, §505(d), Oct. 4, 1976, 90 Stat. 1568, as amended by Pub. L. 95–30, title III, §301(b)(3)–(5), May 23, 1977, 91 Stat. 151; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "In the case of an individual who—

"(1) retired on disability before January 1, 1977, and

"(2) on December 31, 1975, or December 31, 1976, was entitled to exclude any amount with respect to such retirement disability from gross income under section 105(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954],

for purposes of section 72 the annuity starting date shall not be deemed to occur before the beginning of the taxable year in which the taxpayer attains age 65, or before the beginning of an earlier taxable year for which the taxpayer makes an irrevocable election not to seek the benefits of such section 105(d) for such year and all subsequent years."

[1] *So in original. Probably should be followed by a closing parenthesis.*

§106. Contributions by employer to accident and health plans

(a) General rule

Except as otherwise provided in this section, gross income of an employee does not include employer-provided coverage under an accident or health plan.

(b) Contributions to Archer MSAs

(1) In general

In the case of an employee who is an eligible individual, amounts contributed by such employee's employer to any Archer MSA of such employee shall be treated as employer-provided coverage for medical expenses under an accident or health plan to the extent such amounts do not exceed the limitation under section 220(b)(1) (determined without regard to this subsection) which is applicable to such employee for such taxable year.

(2) No constructive receipt

No amount shall be included in the gross income of any employee solely because the employee may choose between the contributions referred to in paragraph (1) and employer contributions to another health plan of the employer.

(3) Special rule for deduction of employer contributions

Any employer contribution to an Archer MSA, if otherwise allowable as a deduction under this chapter, shall be allowed only for the taxable year in which paid.

(4) Employer MSA contributions required to be shown on return

Every individual required to file a return under section 6012 for the taxable year shall include on such return the aggregate amount contributed by employers to the Archer MSAs of such individual or such individual's spouse for such taxable year.

(5) MSA contributions not part of COBRA coverage

Paragraph (1) shall not apply for purposes of section 4980B.

(6) Definitions

For purposes of this subsection, the terms "eligible individual" and "Archer MSA" have the respective meanings given to such terms by section 220.

(7) Cross reference

For penalty on failure by employer to make comparable contributions to the Archer MSAs of comparable employees, see section 4980E.

(c) Inclusion of long-term care benefits provided through flexible spending arrangements

(1) In general

Effective on and after January 1, 1997, gross income of an employee shall include employer-provided coverage for qualified long-term care services (as defined in section 7702B(c)) to the extent that such coverage is provided through a flexible spending or similar arrangement.

(2) Flexible spending arrangement

For purposes of this subsection, a flexible spending arrangement is a benefit program which provides employees with coverage under which—

(A) specified incurred expenses may be reimbursed (subject to reimbursement maximums and other reasonable conditions), and

(B) the maximum amount of reimbursement which is reasonably available to a participant for such coverage is less than 500 percent of the value of such coverage.

In the case of an insured plan, the maximum amount reasonably available shall be determined on the basis of the underlying coverage.

(d) Contributions to health savings accounts

(1) In general

In the case of an employee who is an eligible individual (as defined in section 223(c)(1)), amounts contributed by such employee's employer to any health savings account (as defined in section 223(d)) of such employee shall be treated as employer-provided coverage for medical expenses under an accident or health plan to the extent such amounts do not exceed the limitation under section 223(b) (determined without regard to this subsection) which is applicable to such employee for such taxable year.

(2) Special rules

Rules similar to the rules of paragraphs (2), (3), (4), and (5) of subsection (b) shall apply for purposes of this subsection.

(3) Cross reference

For penalty on failure by employer to make comparable contributions to the health savings accounts of comparable employees, see section 4980G.

(e) FSA and HRA terminations to fund HSAs

(1) In general

A plan shall not fail to be treated as a health flexible spending arrangement or health reimbursement arrangement under this section or section 105 merely because such plan provides for a qualified HSA distribution.

(2) Qualified HSA distribution

The term "qualified HSA distribution" means a distribution from a health flexible spending arrangement or health reimbursement arrangement to the extent that such distribution—

(A) does not exceed the lesser of the balance in such arrangement on September 21, 2006, or as of the date of such distribution, and

(B) is contributed by the employer directly to the health savings account of the employee before January 1, 2012.

Such term shall not include more than 1 distribution with respect to any arrangement.

(3) Additional tax for failure to maintain high deductible health plan coverage

(A) In general

If, at any time during the testing period, the employee is not an eligible individual, then the amount of the qualified HSA distribution—

(i) shall be includible in the gross income of the employee for the taxable year in which occurs the first month in the testing period for which such employee is not an eligible individual, and

(ii) the tax imposed by this chapter for such taxable year on the employee shall be increased by 10 percent of the amount which is so includible.

(B) Exception for disability or death

Clauses (i) and (ii) of subparagraph (A) shall not apply if the employee ceases to be an eligible individual by reason of the death of the employee or the employee becoming disabled (within the meaning of section 72(m)(7)).

(4) Definitions and special rules

For purposes of this subsection—

(A) Testing period

The term "testing period" means the period beginning with the month in which the qualified HSA distribution is contributed to the health savings account and ending on the last day of the 12th month following such month.

(B) Eligible individual

The term "eligible individual" has the meaning given such term by section 223(c)(1).

(C) Treatment as rollover contribution

A qualified HSA distribution shall be treated as a rollover contribution described in section 223(f)(5).

(5) Tax treatment relating to distributions

For purposes of this title—

(A) In general

A qualified HSA distribution shall be treated as a payment described in subsection (d).

(B) Comparability excise tax

(i) In general

Except as provided in clause (ii), section 4980G shall not apply to qualified HSA distributions.

(ii) Failure to offer to all employees

In the case of a qualified HSA distribution to any employee, the failure to offer such distribution to any eligible individual covered under a high deductible health plan of the employer shall (notwithstanding section 4980G(d)) be treated for purposes of section 4980G as a failure to meet the requirements of section 4980G(b).

(f) Reimbursements for medicine restricted to prescribed drugs and insulin

For purposes of this section and section 105, reimbursement for expenses incurred for a medicine or a drug shall be treated as a reimbursement for medical expenses only if such medicine or drug is a prescribed drug (determined without regard to whether such drug is available without a prescription) or is insulin.

(Aug. 16, 1954, ch. 736, 68A Stat. 32; Pub. L. 99–272, title X, §10001(b), Apr. 7, 1986, 100 Stat. 223; Pub. L. 99–514, title XI, §§1114(b)(1), 1151(j)(2), Oct. 22, 1986, 100 Stat. 2450, 2508; Pub. L. 100–647, title I, §1018(t)(7)(A), title III, §3011(b)(1), Nov. 10, 1988, 102 Stat. 3589, 3624; Pub. L. 101–239, title VII, §7862(c)(1)(A), Dec. 19, 1989, 103 Stat. 2432; Pub. L. 104–191, title III, §§301(c)(1), 321(c)(2), Aug. 21, 1996, 110 Stat. 2048, 2058; Pub. L. 106–554, §1(a)(7) [title II, §202(a)(2), (b)(2)(A), (6), (10)], Dec. 21, 2000, 114 Stat. 2763, 2763A–628, 2763A–629; Pub. L. 108–173, title XII, §1201(d)(1), Dec. 8, 2003, 117 Stat. 2476; Pub. L. 109–432, div. A, title III,

§302(a), Dec. 20, 2006, 120 Stat. 2948; Pub. L. 111–148, title IX, §9003(c), Mar. 23, 2010, 124 Stat. 854.)

REFERENCES IN TEXT

COBRA, referred to in the heading for subsec. (b)(5), probably means the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, Apr. 7, 1986, 100 Stat. 82, as amended. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2010—Subsec. (f). Pub. L. 111–148 added subsec. (f).

2006—Subsec. (e). Pub. L. 109–432 added subsec. (e).

2003—Subsec. (d). Pub. L. 108–173 added subsec. (d).

2000—Subsec. (b). Pub. L. 106–554 §1(a)(7) [title II, §202(b)(6)], substituted "Archer MSAs" for "medical savings accounts" in heading.

Subsec. (b)(1). Pub. L. 106–554 §1(a)(7) [title II, §202(a)(2)], substituted "Archer MSA" for "medical savings account".

Subsec. (b)(3). Pub. L. 106–554 §1(a)(7) [title II, §202(b)(10)], substituted "an Archer MSA" for "a Archer MSA".

Pub. L. 106–554 §1(a)(7) [title II, §202(a)(2)], substituted "Archer MSA" for "medical savings account".

Subsec. (b)(4). Pub. L. 106–554, §1(a)(7) [title II, §202(b)(2)(A)], substituted "Archer MSAs" for "medical savings accounts".

Subsec. (b)(6). Pub. L. 106–554 §1(a)(7) [title II, §202(a)(2)], substituted "Archer MSA" for "medical savings account".

Subsec. (b)(7). Pub. L. 106–554, §1(a)(7) [title II, §202(b)(2)(A)], substituted "Archer MSAs" for "medical savings accounts".

1996—Pub. L. 104–191, §301(c)(1), amended text generally. Prior to amendment, text read as follows: "Gross income of an employee does not include employer-provided coverage under an accident or health plan."

Subsec. (c). Pub. L. 104–191, §321(c)(2), added subsec. (c).

1989—Subsec. (b)(2). Pub. L. 101–239 amended subsec. (b)(2) as it existed prior to general amendment by Pub. L. 100–647 by striking out the last sentence which read as follows: "Under regulations, rules similar to the rules of subsections (a) and (b) of section 52 (relating to employers under common control) shall apply for purposes of subparagraph (A)." See Effective Date of 1989 Amendment note below.

1988—Pub. L. 100–647, §3011(b)(1), amended section generally, substituting a single undesignated par. for former subsec. (a) providing that gross income does not include employer-provided coverage under an accident or health plan and subsec. (b) providing for an exception for highly compensated individuals where a plan fails to provide certain continuation coverage.

Subsec. (b)(1). Pub. L. 100–647, §1018(t)(7)(A), substituted "any employer-provided coverage" for "any amount contributed by an employer" and "under a group" for "to a group".

1986—Pub. L. 99–272 designated existing provisions as subsec. (a) and added subsec. (a) heading and subsec. (b).

Subsec. (a). Pub. L. 99–514, §1151(j)(2), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "Gross income does not include contributions by the employer to accident or health plans for compensation (through insurance or otherwise) to his employees for personal injuries or sickness."

Subsec. (b)(1). Pub. L. 99–514, §1114(b)(1), substituted "highly compensated employee (within the meaning of section 414(q))" for "highly compensated individual (within the meaning of section 105(h)(5))".

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–148, title IX, §9003(d)(2), Mar. 23, 2010, 124 Stat. 854, provided that: "The amendment made by subsection (c) [amending this section] shall apply to expenses incurred with respect to taxable years beginning after December 31, 2010."

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title III, §302(c)(1), Dec. 20, 2006, 120 Stat. 2949, provided that: "The amendment made by subsection (a) [amending this section] shall apply to distributions on or after the date of the enactment of this Act [Dec. 20, 2006]."

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–173 applicable to taxable years beginning after Dec. 31, 2003, see section

1201(k) of Pub. L. 108–173, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 301(c)(1) of Pub. L. 104–191 applicable to taxable years beginning after Dec. 31, 1996, see section 301(j) of Pub. L. 104–191, set out as a note under section 62 of this title.

Amendment by section 321(c)(2) of Pub. L. 104–191 applicable to contracts issued after Dec. 31, 1996, see section 321(f) of Pub. L. 104–191, set out as an Effective Date note under section 7702B of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7862(c)(1)(C), Dec. 19, 1989, 103 Stat. 2432, provided that: "The amendments made by this paragraph [amending this section and section 1161 of Title 29, Labor] shall apply to years beginning after December 31, 1986."

Pub. L. 101–239, title VII, §7863, Dec. 19, 1989, 103 Stat. 2434, provided that: "Except as otherwise provided in this subpart any amendment made by this subpart [subpart A (§§7861–7863) of part V of title VII of Pub. L. 101–239, amending this section and sections 162, 411, 417, and 4980B of this title and sections 1052 to 1055, 1161, 1162, 1167, 1398, and 1461 of Title 29, Labor, enacting provisions set out as notes under this section and sections 162, 417, 1167, 4980, and 4980B of this title, and amending provisions set out as notes under sections 401 and 411 of this title and sections 1001 and 1054 of Title 29], shall take effect as if included in the provision of the Reform Act [Pub. L. 99–514] to which such amendment relates."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1018(t)(7)(A) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 3011(b)(1) of Pub. L. 100–647 applicable to taxable years beginning after Dec. 31, 1988, but not applicable to any plan for any plan year to which section 162(k) of this title (as in effect on the day before Nov. 10, 1988) did not apply by reason of section 10001(e)(2) of Pub. L. 99–272, see section 3011(d) of Pub. L. 100–647, set out as a note under section 162 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1114(b)(1) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1986, see section 1114(c)(1) of Pub. L. 99–514, set out as a note under section 414 of this title.

Amendment by section 1151(j)(2) of Pub. L. 99–514 applicable, with certain qualifications and exceptions, to years beginning after Dec. 31, 1988, see section 1151(k) of Pub. L. 99–514, as amended, set out as a note under section 79 of this title.

Pub. L. 99–272, title X, §10001(e), Apr. 7, 1986, 100 Stat. 227, provided that:

"(1) GENERAL RULE.—The amendments made by this section [amending this section and section 162 of this title] shall apply to plan years beginning on or after July 1, 1986.

"(2) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a group health plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before the date of the enactment of this Act [Apr. 7, 1986], the amendments made by this section shall not apply to plan years beginning before the later of—

"(A) the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act), or

"(B) January 1, 1987.

For purposes of subparagraph (A), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section shall not be treated as a termination of such collective bargaining agreement."

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1114 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

NONENFORCEMENT OF AMENDMENT MADE BY SECTION 1151 OF PUB. L. 99–514 FOR FISCAL YEAR 1990

No monies appropriated by Pub. L. 101–136 to be used to implement or enforce section 1151 of Pub. L. 99–514 or the amendments made by such section, see section 528 of Pub. L. 101–136, set out as a note under section 89 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§107. Rental value of parsonages

In the case of a minister of the gospel, gross income does not include—

(1) the rental value of a home furnished to him as part of his compensation; or

(2) the rental allowance paid to him as part of his compensation, to the extent used by him to rent or provide a home and to the extent such allowance does not exceed the fair rental value of the home, including furnishings and appurtenances such as a garage, plus the cost of utilities.

(Aug. 16, 1954, ch. 736, 68A Stat. 32; Pub. L. 107–181, §2(a), May 20, 2002, 116 Stat. 583.)

AMENDMENTS

2002—Par. (2). Pub. L. 107–181 inserted "and to the extent such allowance does not exceed the fair rental value of the home, including furnishings and appurtenances such as a garage, plus the cost of utilities" before period at end.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–181, §2(b), May 20, 2002, 116 Stat. 583, provided that:

"(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2001.

"(2) RETURNS POSITIONS.—The amendment made by this section also shall apply to any taxable year beginning before January 1, 2002, for which the taxpayer—

"(A) on a return filed before April 17, 2002, limited the exclusion under section 107 of the Internal Revenue Code of 1986 as provided in such amendment, or

"(B) filed a return after April 16, 2002.

"(3) OTHER YEARS BEFORE 2002.—Except as provided in paragraph (2), notwithstanding any prior regulation, revenue ruling, or other guidance issued by the Internal Revenue Service, no person shall be subject to the limitations added to section 107 of such Code by this Act for any taxable year beginning before January 1, 2002."

§108. Income from discharge of indebtedness

(a) Exclusion from gross income

(1) In general

Gross income does not include any amount which (but for this subsection) would be includible in gross income by reason of the discharge (in whole or in part) of indebtedness of the taxpayer if—

(A) the discharge occurs in a title 11 case,

(B) the discharge occurs when the taxpayer is insolvent,

(C) the indebtedness discharged is qualified farm indebtedness,

(D) in the case of a taxpayer other than a C corporation, the indebtedness discharged is qualified real property business indebtedness, or

(E) the indebtedness discharged is qualified principal residence indebtedness which is discharged before January 1, 2014.

(2) Coordination of exclusions

(A) Title 11 exclusion takes precedence

Subparagraphs (B), (C), (D), and (E) of paragraph (1) shall not apply to a discharge which occurs in a title 11 case.

(B) Insolvency exclusion takes precedence over qualified farm exclusion and qualified real property business exclusion

Subparagraphs (C) and (D) of paragraph (1) shall not apply to a discharge to the extent the taxpayer is insolvent.

(C) Principal residence exclusion takes precedence over insolvency exclusion unless elected otherwise

Paragraph (1)(B) shall not apply to a discharge to which paragraph (1)(E) applies unless the taxpayer elects to apply paragraph (1)(B) in lieu of paragraph (1)(E).

(3) Insolvency exclusion limited to amount of insolvency

In the case of a discharge to which paragraph (1)(B) applies, the amount excluded under paragraph (1)(B) shall not exceed the amount by which the taxpayer is insolvent.

(b) Reduction of tax attributes

(1) In general

The amount excluded from gross income under subparagraph (A), (B), or (C) of subsection (a)(1) shall be applied to reduce the tax attributes of the taxpayer as provided in paragraph (2).

(2) Tax attributes affected; order of reduction

Except as provided in paragraph (5), the reduction referred to in paragraph (1) shall be made in the following tax attributes in the following order:

(A) NOL

Any net operating loss for the taxable year of the discharge, and any net operating loss carryover to such taxable year.

(B) General business credit

Any carryover to or from the taxable year of a discharge of an amount for purposes for determining the amount allowable as a credit under section 38 (relating to general business credit).

(C) Minimum tax credit

The amount of the minimum tax credit available under section 53(b) as of the beginning of the taxable year immediately following the taxable year of the discharge.

(D) Capital loss carryovers

Any net capital loss for the taxable year of the discharge, and any capital loss carryover to such taxable year under section 1212.

(E) Basis reduction

(i) In general

The basis of the property of the taxpayer.

(ii) Cross reference

For provisions for making the reduction described in clause (i), see section 1017.

(F) Passive activity loss and credit carryovers

Any passive activity loss or credit carryover of the taxpayer under section 469(b) from the taxable year of the discharge.

(G) Foreign tax credit carryovers

Any carryover to or from the taxable year of the discharge for purposes of determining the amount of the credit allowable under section 27.

(3) Amount of reduction

(A) In general

Except as provided in subparagraph (B), the reductions described in paragraph (2) shall be one dollar for each dollar excluded by subsection (a).

(B) Credit carryover reduction

The reductions described in subparagraphs (B), (C), and (G) shall be 331/3 cents for each dollar excluded by subsection (a). The reduction described in subparagraph (F) in any passive activity credit carryover shall be 331/3 cents for each dollar excluded by subsection (a).

(4) Ordering rules

(A) Reductions made after determination of tax for year

The reductions described in paragraph (2) shall be made after the determination of the tax imposed by this chapter for the taxable year of the discharge.

(B) Reductions under subparagraph (A) or (D) of paragraph (2)

The reductions described in subparagraph (A) or (D) of paragraph (2) (as the case may be) shall be made first in the loss for the taxable year of the discharge and then in the carryovers to such taxable year in the order of the taxable years from which each such carryover arose.

(C) Reductions under subparagraphs (B) and (G) of paragraph (2)

The reductions described in subparagraphs (B) and (G) of paragraph (2) shall be made in the order in which carryovers are taken into account under this chapter for the taxable year of the discharge.

(5) Election to apply reduction first against depreciable property

(A) In general

The taxpayer may elect to apply any portion of the reduction referred to in paragraph (1) to the reduction under section 1017 of the basis of the depreciable property of the taxpayer.

(B) Limitation

The amount to which an election under subparagraph (A) applies shall not exceed the aggregate adjusted bases of the depreciable property held by the taxpayer as of the beginning of the taxable year following the taxable year in which the discharge occurs.

(C) Other tax attributes not reduced

Paragraph (2) shall not apply to any amount to which an election under this paragraph applies.

(c) Treatment of discharge of qualified real property business indebtedness

(1) Basis reduction

(A) In general

The amount excluded from gross income under subparagraph (D) of subsection (a)(1) shall be applied to reduce the basis of the depreciable real property of the taxpayer.

(B) Cross reference

For provisions making the reduction described in subparagraph (A), see section 1017.

(2) Limitations

(A) Indebtedness in excess of value

The amount excluded under subparagraph (D) of subsection (a)(1) with respect to any qualified real property business indebtedness shall not exceed the excess (if any) of—

(i) the outstanding principal amount of such indebtedness (immediately before the discharge), over

(ii) the fair market value of the real property described in paragraph (3)(A) (as of such time), reduced by the outstanding principal amount of any other qualified real property business indebtedness secured by such property (as of such time).

(B) Overall limitation

The amount excluded under subparagraph (D) of subsection (a)(1) shall not exceed the aggregate adjusted bases of depreciable real property (determined after any reductions under subsections (b) and (g)) held by the taxpayer immediately before the discharge (other than depreciable real property acquired in contemplation of such discharge).

(3) Qualified real property business indebtedness

The term "qualified real property business indebtedness" means indebtedness which—

(A) was incurred or assumed by the taxpayer in connection with real property used in a trade or business and is secured by such real property,

(B) was incurred or assumed before January 1, 1993, or if incurred or assumed on or after such date, is qualified acquisition indebtedness, and

(C) with respect to which such taxpayer makes an election to have this paragraph apply.

Such term shall not include qualified farm indebtedness. Indebtedness under subparagraph (B) shall include indebtedness resulting from the refinancing of indebtedness under subparagraph (B) (or this sentence), but only to the extent it does not exceed the amount of the indebtedness being refinanced.

(4) Qualified acquisition indebtedness

For purposes of paragraph (3)(B), the term "qualified acquisition indebtedness" means, with respect to any real property described in paragraph (3)(A), indebtedness incurred or assumed to acquire, construct, reconstruct, or substantially improve such property.

(5) Regulations

The Secretary shall issue such regulations as are necessary to carry out this subsection, including regulations preventing the abuse of this subsection through cross-collateralization or other means.

(d) Meaning of terms; special rules relating to certain provisions

(1) Indebtedness of taxpayer

For purposes of this section, the term "indebtedness of the taxpayer" means any indebtedness—

(A) for which the taxpayer is liable, or

(B) subject to which the taxpayer holds property.

(2) Title 11 case

For purposes of this section, the term "title 11 case" means a case under title 11 of the United States Code (relating to bankruptcy), but only if the taxpayer is under the jurisdiction of the court in such case and the discharge of indebtedness is granted by the court or is pursuant to a plan approved by the court.

(3) Insolvent

For purposes of this section, the term "insolvent" means the excess of liabilities over the fair market value of assets. With respect to any discharge, whether or not the taxpayer is insolvent, and the amount by which the taxpayer is insolvent, shall be determined on the basis of the taxpayer's assets and liabilities immediately before the discharge.

[(4) Repealed. Pub. L. 99–514, title VIII, §822(b)(3)(A), Oct. 22, 1986, 100 Stat. 2373]

(5) Depreciable property

The term "depreciable property" has the same meaning as when used in section 1017.

(6) Certain provisions to be applied at partner level

In the case of a partnership, subsections (a), (b), (c), and (g) shall be applied at the partner level.

(7) Special rules for S corporation

(A) Certain provisions to be applied at corporate level

In the case of an S corporation, subsections (a), (b), (c), and (g) shall be applied at the corporate level, including by not taking into account under section 1366(a) any amount excluded under subsection (a) of this section.

(B) Reduction in carryover of disallowed losses and deductions

In the case of an S corporation, for purposes of subparagraph (A) of subsection (b)(2), any loss or deduction which is disallowed for the taxable year of the discharge under section 1366(d)(1) shall be treated as a net operating loss for such taxable year. The preceding sentence shall not apply to any discharge to the extent that subsection (a)(1)(D) applies to such discharge.

(C) Coordination with basis adjustments under section 1367(b)(2)

For purposes of subsection (e)(6), a shareholder's adjusted basis in indebtedness of an S corporation shall be determined without regard to any adjustments made under section 1367(b)(2).

(8) Reductions of tax attributes in title 11 cases of individuals to be made by estate

In any case under chapter 7 or 11 of title 11 of the United States Code to which section 1398 applies, for purposes of paragraphs (1) and (5) of subsection (b) the estate (and not the individual) shall be treated as the taxpayer. The preceding sentence shall not apply for purposes of applying section 1017 to property transferred by the estate to the individual.

(9) Time for making election, etc.

(A) Time

An election under paragraph (5) of subsection (b) or under paragraph (3)(C) of subsection (c) shall be made on the taxpayer's return for the taxable year in which the discharge occurs or at such other time as may be permitted in regulations prescribed by the Secretary.

(B) Revocation only with consent

An election referred to in subparagraph (A), once made, may be revoked only with the consent of the Secretary.

(C) Manner

An election referred to in subparagraph (A) shall be made in such manner as the Secretary may by regulations prescribe.

(10) Cross reference

For provision that no reduction is to be made in the basis of exempt property of an individual debtor, see section 1017(c)(1).

(e) General rules for discharge of indebtedness (including discharges not in title 11 cases or insolvency)

For purposes of this title—

(1) No other insolvency exception

Except as otherwise provided in this section, there shall be no insolvency exception from the general rule that gross income includes income from the discharge of indebtedness.

(2) Income not realized to extent of lost deductions

No income shall be realized from the discharge of indebtedness to the extent that payment of the liability would have given rise to a deduction.

(3) Adjustments for unamortized premium and discount

The amount taken into account with respect to any discharge shall be properly adjusted for unamortized premium and unamortized discount with respect to the indebtedness discharged.

(4) Acquisition of indebtedness by person related to debtor

(A) Treated as acquisition by debtor

For purposes of determining income of the debtor from discharge of indebtedness, to the extent provided in regulations prescribed by the Secretary, the acquisition of outstanding indebtedness by a person bearing a relationship to the debtor specified in section 267(b) or 707(b)(1) from a person who does not bear such a relationship to the debtor shall be treated as the acquisition of such indebtedness by the debtor. Such regulations shall provide for such adjustments in the treatment of any subsequent transactions involving the indebtedness as may be appropriate by reason of the application of the preceding sentence.

(B) Members of family

For purposes of this paragraph, sections 267(b) and 707(b)(1) shall be applied as if section 267(c)(4) provided that the family of an individual consists of the individual's spouse, the individual's children, grandchildren, and parents, and any spouse of the individual's children or grandchildren.

(C) Entities under common control treated as related

For purposes of this paragraph, two entities which are treated as a single employer under subsection (b) or (c) of section 414 shall be treated as bearing a relationship to each other which is described in section 267(b).

(5) Purchase-money debt reduction for solvent debtor treated as price reduction

If—

(A) the debt of a purchaser of property to the seller of such property which arose out of the purchase of such property is reduced,

(B) such reduction does not occur—

(i) in a title 11 case, or

(ii) when the purchaser is insolvent, and

(C) but for this paragraph, such reduction would be treated as income to the purchaser from the discharge of indebtedness,

then such reduction shall be treated as a purchase price adjustment.

(6) Indebtedness contributed to capital

Except as provided in regulations, for purposes of determining income of the debtor from discharge of indebtedness, if a debtor corporation acquires its indebtedness from a shareholder as a contribution to capital—

(A) section 118 shall not apply, but

(B) such corporation shall be treated as having satisfied the indebtedness with an amount of money equal to the shareholder's adjusted basis in the indebtedness.

(7) Recapture of gain on subsequent sale of stock

(A) In general

If a creditor acquires stock of a debtor corporation in satisfaction of such corporation's indebtedness, for purposes of section 1245—

(i) such stock (and any other property the basis of which is determined in whole or in part by reference to the adjusted basis of such stock) shall be treated as section 1245 property,

(ii) the aggregate amount allowed to the creditor—

(I) as deductions under subsection (a) or (b) of section 166 (by reason of the worthlessness or partial worthlessness of the indebtedness), or

(II) as an ordinary loss on the exchange,

shall be treated as an amount allowed as a deduction for depreciation, and

(iii) an exchange of such stock qualifying under section 354(a), 355(a), or 356(a) shall be treated as an exchange to which section 1245(b)(3) applies.

The amount determined under clause (ii) shall be reduced by the amount (if any) included in the creditor's gross income on the exchange.

(B) Special rule for cash basis taxpayers

In the case of any creditor who computes his taxable income under the cash receipts and disbursements method, proper adjustment shall be made in the amount taken into account under clause (ii) of subparagraph (A) for any amount which was not included in the creditor's gross income but which would have been included in such gross income if such indebtedness had been satisfied in full.

(C) Stock of parent corporation

For purposes of this paragraph, stock of a corporation in control (within the meaning of section 368(c)) of the debtor corporation shall be treated as stock of the debtor corporation.

(D) Treatment of successor corporation

For purposes of this paragraph, the term "debtor corporation" includes a successor corporation.

(E) Partnership rule

Under regulations prescribed by the Secretary, rules similar to the rules of the foregoing subparagraphs of this paragraph shall apply with respect to the indebtedness of a partnership.

(8) Indebtedness satisfied by corporate stock or partnership interest

For purposes of determining income of a debtor from discharge of indebtedness, if—

(A) a debtor corporation transfers stock, or

(B) a debtor partnership transfers a capital or profits interest in such partnership,

to a creditor in satisfaction of its recourse or nonrecourse indebtedness, such corporation or partnership shall be treated as having satisfied the indebtedness with an amount of money equal to the fair market value of the stock or interest. In the case of any partnership, any discharge of indebtedness income recognized under this paragraph shall be included in the distributive shares of taxpayers which were the partners in the partnership immediately before such discharge.

(9) Discharge of indebtedness income not taken into account in determining whether entity meets REIT qualifications

Any amount included in gross income by reason of the discharge of indebtedness shall not be taken into account for purposes of paragraphs (2) and (3) of section 856(c).

(10) Indebtedness satisfied by issuance of debt instrument

(A) In general

For purposes of determining income of a debtor from discharge of indebtedness, if a debtor issues a debt instrument in satisfaction of indebtedness, such debtor shall be treated as having satisfied the indebtedness with an amount of money equal to the issue price of such debt instrument.

(B) Issue price

For purposes of subparagraph (A), the issue price of any debt instrument shall be determined under sections 1273 and 1274. For purposes of the preceding sentence, section 1273(b)(4) shall be applied by reducing the stated redemption price of any instrument by the portion of such stated redemption price which is treated as interest for purposes of this chapter.

(f) Student loans

(1) In general

In the case of an individual, gross income does not include any amount which (but for this subsection) would be includible in gross income by reason of the discharge (in whole or in part) of any student loan if such discharge was pursuant to a provision of such loan under which all or part

of the indebtedness of the individual would be discharged if the individual worked for a certain period of time in certain professions for any of a broad class of employers.

(2) Student loan

For purposes of this subsection, the term "student loan" means any loan to an individual to assist the individual in attending an educational organization described in section 170(b)(1)(A)(ii) made by—

(A) the United States, or an instrumentality or agency thereof,

(B) a State, territory, or possession of the United States, or the District of Columbia, or any political subdivision thereof,

(C) a public benefit corporation—

(i) which is exempt from taxation under section 501(c)(3),

(ii) which has assumed control over a State, county, or municipal hospital, and

(iii) whose employees have been deemed to be public employees under State law, or

(D) any educational organization described in section 170(b)(1)(A)(ii) if such loan is made—

(i) pursuant to an agreement with any entity described in subparagraph (A), (B), or (C) under which the funds from which the loan was made were provided to such educational organization, or

(ii) pursuant to a program of such educational organization which is designed to encourage its students to serve in occupations with unmet needs or in areas with unmet needs and under which the services provided by the students (or former students) are for or under the direction of a governmental unit or an organization described in section 501(c)(3) and exempt from tax under section 501(a).

The term "student loan" includes any loan made by an educational organization described in section 170(b)(1)(A)(ii) or by an organization exempt from tax under section 501(a) to refinance a loan to an individual to assist the individual in attending any such educational organization but only if the refinancing loan is pursuant to a program of the refinancing organization which is designed as described in subparagraph (D)(ii).

(3) Exception for discharges on account of services performed for certain lenders

Paragraph (1) shall not apply to the discharge of a loan made by an organization described in paragraph (2)(D) if the discharge is on account of services performed for either such organization.

(4) Payments under national health service corps loan repayment program and certain state loan repayment programs

In the case of an individual, gross income shall not include any amount received under section 338B(g) of the Public Health Service Act, under a State program described in section 338I of such Act, or under any other State loan repayment or loan forgiveness program that is intended to provide for the increased availability of health care services in underserved or health professional shortage areas (as determined by such State).

(g) Special rules for discharge of qualified farm indebtedness

(1) Discharge must be by qualified person

(A) In general

Subparagraph (C) of subsection (a)(1) shall apply only if the discharge is by a qualified person.

(B) Qualified person

For purposes of subparagraph (A), the term "qualified person" has the meaning given to such term by section 49(a)(1)(D)(iv); except that such term shall include any Federal, State, or local government or agency or instrumentality thereof.

(2) Qualified farm indebtedness

For purposes of this section, indebtedness of a taxpayer shall be treated as qualified farm indebtedness if—

(A) such indebtedness was incurred directly in connection with the operation by the taxpayer of the trade or business of farming, and

(B) 50 percent or more of the aggregate gross receipts of the taxpayer for the 3 taxable years preceding the taxable year in which the discharge of such indebtedness occurs is attributable to the trade or business of farming.

(3) Amount excluded cannot exceed sum of tax attributes and business and investment assets

(A) In general

The amount excluded under subparagraph (C) of subsection (a)(1) shall not exceed the sum of—

(i) the adjusted tax attributes of the taxpayer, and

(ii) the aggregate adjusted bases of qualified property held by the taxpayer as of the beginning of the taxable year following the taxable year in which the discharge occurs.

(B) Adjusted tax attributes

For purposes of subparagraph (A), the term "adjusted tax attributes" means the sum of the tax attributes described in subparagraphs (A), (B), (C), (D), (F), and (G) of subsection (b)(2) determined by taking into account $3 for each $1 of the attributes described in subparagraphs (B), (C), and (G) of subsection (b)(2) and the attribute described in subparagraph (F) of subsection (b)(2) to the extent attributable to any passive activity credit carryover.

(C) Qualified property

For purposes of this paragraph, the term "qualified property" means any property which is used or is held for use in a trade or business or for the production of income.

(D) Coordination with insolvency exclusion

For purposes of this paragraph, the adjusted basis of any qualified property and the amount of the adjusted tax attributes shall be determined after any reduction under subsection (b) by reason of amounts excluded from gross income under subsection (a)(1)(B).

(h) Special rules relating to qualified principal residence indebtedness

(1) Basis reduction

The amount excluded from gross income by reason of subsection (a)(1)(E) shall be applied to reduce (but not below zero) the basis of the principal residence of the taxpayer.

(2) Qualified principal residence indebtedness

For purposes of this section, the term "qualified principal residence indebtedness" means acquisition indebtedness (within the meaning of section 163(h)(3)(B), applied by substituting "$2,000,000 ($1,000,000" for "$1,000,000 ($500,000" in clause (ii) thereof) with respect to the principal residence of the taxpayer.

(3) Exception for certain discharges not related to taxpayer's financial condition

Subsection (a)(1)(E) shall not apply to the discharge of a loan if the discharge is on account of services performed for the lender or any other factor not directly related to a decline in the value of the residence or to the financial condition of the taxpayer.

(4) Ordering rule

If any loan is discharged, in whole or in part, and only a portion of such loan is qualified principal residence indebtedness, subsection (a)(1)(E) shall apply only to so much of the amount discharged as exceeds the amount of the loan (as determined immediately before such discharge) which is not qualified principal residence indebtedness.

(5) Principal residence

For purposes of this subsection, the term "principal residence" has the same meaning as when

used in section 121.

(i) Deferral and ratable inclusion of income arising from business indebtedness discharged by the reacquisition of a debt instrument

(1) In general

At the election of the taxpayer, income from the discharge of indebtedness in connection with the reacquisition after December 31, 2008, and before January 1, 2011, of an applicable debt instrument shall be includible in gross income ratably over the 5-taxable-year period beginning with—

(A) in the case of a reacquisition occurring in 2009, the fifth taxable year following the taxable year in which the reacquisition occurs, and

(B) in the case of a reacquisition occurring in 2010, the fourth taxable year following the taxable year in which the reacquisition occurs.

(2) Deferral of deduction for original issue discount in debt for debt exchanges

(A) In general

If, as part of a reacquisition to which paragraph (1) applies, any debt instrument is issued for the applicable debt instrument being reacquired (or is treated as so issued under subsection (e)(4) and the regulations thereunder) and there is any original issue discount determined under subpart A of part V of subchapter P of this chapter with respect to the debt instrument so issued—

(i) except as provided in clause (ii), no deduction otherwise allowable under this chapter shall be allowed to the issuer of such debt instrument with respect to the portion of such original issue discount which—

(I) accrues before the 1st taxable year in the 5-taxable-year period in which income from the discharge of indebtedness attributable to the reacquisition of the debt instrument is includible under paragraph (1), and

(II) does not exceed the income from the discharge of indebtedness with respect to the debt instrument being reacquired, and

(ii) the aggregate amount of deductions disallowed under clause (i) shall be allowed as a deduction ratably over the 5-taxable-year period described in clause (i)(I).

If the amount of the original issue discount accruing before such 1st taxable year exceeds the income from the discharge of indebtedness with respect to the applicable debt instrument being reacquired, the deductions shall be disallowed in the order in which the original issue discount is accrued.

(B) Deemed debt for debt exchanges

For purposes of subparagraph (A), if any debt instrument is issued by an issuer and the proceeds of such debt instrument are used directly or indirectly by the issuer to reacquire an applicable debt instrument of the issuer, the debt instrument so issued shall be treated as issued for the debt instrument being reacquired. If only a portion of the proceeds from a debt instrument are so used, the rules of subparagraph (A) shall apply to the portion of any original issue discount on the newly issued debt instrument which is equal to the portion of the proceeds from such instrument used to reacquire the outstanding instrument.

(3) Applicable debt instrument

For purposes of this subsection—

(A) Applicable debt instrument

The term "applicable debt instrument" means any debt instrument which was issued by—

(i) a C corporation, or

(ii) any other person in connection with the conduct of a trade or business by such person.

(B) Debt instrument

The term "debt instrument" means a bond, debenture, note, certificate, or any other instrument or contractual arrangement constituting indebtedness (within the meaning of section 1275(a)(1)).

(4) Reacquisition

For purposes of this subsection—

(A) In general

The term "reacquisition" means, with respect to any applicable debt instrument, any acquisition of the debt instrument by—

(i) the debtor which issued (or is otherwise the obligor under) the debt instrument, or

(ii) a related person to such debtor.

(B) Acquisition

The term "acquisition" shall, with respect to any applicable debt instrument, include an acquisition of the debt instrument for cash, the exchange of the debt instrument for another debt instrument (including an exchange resulting from a modification of the debt instrument), the exchange of the debt instrument for corporate stock or a partnership interest, and the contribution of the debt instrument to capital. Such term shall also include the complete forgiveness of the indebtedness by the holder of the debt instrument.

(5) Other definitions and rules

For purposes of this subsection—

(A) Related person

The determination of whether a person is related to another person shall be made in the same manner as under subsection (e)(4).

(B) Election

(i) In general

An election under this subsection with respect to any applicable debt instrument shall be made by including with the return of tax imposed by chapter 1 for the taxable year in which the reacquisition of the debt instrument occurs a statement which—

(I) clearly identifies such instrument, and

(II) includes the amount of income to which paragraph (1) applies and such other information as the Secretary may prescribe.

(ii) Election irrevocable

Such election, once made, is irrevocable.

(iii) Pass-thru entities

In the case of a partnership, S corporation, or other pass-thru entity, the election under this subsection shall be made by the partnership, the S corporation, or other entity involved.

(C) Coordination with other exclusions

If a taxpayer elects to have this subsection apply to an applicable debt instrument, subparagraphs (A), (B), (C), and (D) of subsection (a)(1) shall not apply to the income from the discharge of such indebtedness for the taxable year of the election or any subsequent taxable year.

(D) Acceleration of deferred items

(i) In general

In the case of the death of the taxpayer, the liquidation or sale of substantially all the assets of the taxpayer (including in a title 11 or similar case), the cessation of business by the taxpayer, or similar circumstances, any item of income or deduction which is deferred under

this subsection (and has not previously been taken into account) shall be taken into account in the taxable year in which such event occurs (or in the case of a title 11 or similar case, the day before the petition is filed).

(ii) Special rule for pass-thru entities

The rule of clause (i) shall also apply in the case of the sale or exchange or redemption of an interest in a partnership, S corporation, or other pass-thru entity by a partner, shareholder, or other person holding an ownership interest in such entity.

(6) Special rule for partnerships

In the case of a partnership, any income deferred under this subsection shall be allocated to the partners in the partnership immediately before the discharge in the manner such amounts would have been included in the distributive shares of such partners under section 704 if such income were recognized at such time. Any decrease in a partner's share of partnership liabilities as a result of such discharge shall not be taken into account for purposes of section 752 at the time of the discharge to the extent it would cause the partner to recognize gain under section 731. Any decrease in partnership liabilities deferred under the preceding sentence shall be taken into account by such partner at the same time, and to the extent remaining in the same amount, as income deferred under this subsection is recognized.

(7) Secretarial authority

The Secretary may prescribe such regulations, rules, or other guidance as may be necessary or appropriate for purposes of applying this subsection, including—

(A) extending the application of the rules of paragraph (5)(D) to other circumstances where appropriate,

(B) requiring reporting of the election (and such other information as the Secretary may require) on returns of tax for subsequent taxable years, and

(C) rules for the application of this subsection to partnerships, S corporations, and other pass-thru entities, including for the allocation of deferred deductions.

(Aug. 16, 1954, ch. 736, 68A Stat. 32; June 29, 1956, ch. 463, §5, 70 Stat. 403; Pub. L. 88–496, §1(a), June 8, 1960, 74 Stat. 164; Pub. L. 94–455, title XIX, §§1906(b)(13)(A), 1951(b)(2)(A), Oct. 4, 1976, 90 Stat. 1834, 1836; Pub. L. 96–589, §2(a), Dec. 24, 1980, 94 Stat. 3389; Pub. L. 97–354, §3(e), Oct. 19, 1982, 96 Stat. 1689; Pub. L. 97–448, title I, §102(h)(1), title III, §304(d), Jan. 12, 1983, 96 Stat. 2372, 2398; Pub. L. 98–369, div. A, title I, §59(a), (b)(1), title IV, §474(r)(5), title VII, §721(b)(2), title X, §1076(a), July 18, 1984, 98 Stat. 576, 839, 966, 1053; Pub. L. 99–514, title I, §104(b)(2), title II, §231(d)(3)(D), title IV, §405(a), title VI, §621(e)(1), title VIII, §§805(c)(2)–(4), 822(a), (b)(1)–(3), title XI, §1171(b)(4), title XVIII, §1847(b)(7), Oct. 22, 1986, 100 Stat. 2105, 2179, 2224, 2266, 2362, 2373, 2513, 2856; Pub. L. 100–647, title I, §1004(a)(1)–(4), (6), Nov. 10, 1988, 102 Stat. 3385, 3387; Pub. L. 101–508, title XI, §§11325(a)(1), (b), 11813(b)(6), Nov. 5, 1990, 104 Stat. 1388–466, 1388–551; Pub. L. 103–66, title XIII, §§13150(a)–(c)(5), 13226(a)(1), (2)(B), (b)(1)–(3), Aug. 10, 1993, 107 Stat. 446–448, 487, 488; Pub. L. 104–188, title I, §1703(n)(2), Aug. 20, 1996, 110 Stat. 1877; Pub. L. 105–34, title II, §225(a), Aug. 5, 1997, 111 Stat. 820; Pub. L. 105–206, title VI, §6004(f), July 22, 1998, 112 Stat. 795; Pub. L. 107–147, title IV, §402(a), Mar. 9, 2002, 116 Stat. 40; Pub. L. 108–357, title III, §320(a), title VIII, §896(a), Oct. 22, 2004, 118 Stat. 1473, 1648; Pub. L. 110–142, §2(a)–(c), Dec. 20, 2007, 121 Stat. 1803, 1804; Pub. L. 110–343, div. A, title III, §303(a), Oct. 3, 2008, 122 Stat. 3807; Pub. L. 111–5, div. B, title I, §1231(a), Feb. 17, 2009, 123 Stat. 338; Pub. L. 111–148, title X, §10908(a), Mar. 23, 2010, 124 Stat. 1021; Pub. L. 112–240, title II, §202(a), Jan. 2, 2013, 126 Stat. 2323.)

REFERENCES IN TEXT

Sections 338B(g) and 338I of the Public Health Service Act, referred to in subsec. (f)(4), are classified to sections 254l–1(g) and 254q–1, respectively, of Title 42, The Public Health and Welfare.

AMENDMENTS

2013—Subsec. (a)(1)(E). Pub. L. 112–240 substituted "January 1, 2014" for "January 1, 2013".

2010—Subsec. (f)(4). Pub. L. 111–148 amended par. (4) generally. Prior to amendment, text read as follows: "In the case of an individual, gross income shall not include any amount received under section 338B(g) of the Public Health Service Act or under a State program described in section 338I of such Act."

2009—Subsec. (i). Pub. L. 111–5 added subsec. (i).

2008—Subsec. (a)(1)(E). Pub. L. 110–343 substituted "January 1, 2013" for "January 1, 2010".

2007—Subsec. (a)(1)(E). Pub. L. 110–142, §2(a), added subpar. (E).

Subsec. (a)(2)(A). Pub. L. 110–142, §2(c)(1), substituted "(D), and (E)" for "and (D)".

Subsec. (a)(2)(C). Pub. L. 110–142, §2(c)(2), added subpar. (C).

Subsec. (h). Pub. L. 110–142, §2(b), added subsec. (h).

2004—Subsec. (e)(8). Pub. L. 108–357, §896(a), amended heading and text of par. (8) generally. Prior to amendment, text read as follows: "For purposes of determining income of a debtor from discharge of indebtedness, if a debtor corporation transfers stock to a creditor in satisfaction of its indebtedness, such corporation shall be treated as having satisfied the indebtedness with an amount of money equal to the fair market value of the stock."

Subsec. (f)(4). Pub. L. 108–357, §320(a), added par. (4).

2002—Subsec. (d)(7)(A). Pub. L. 107–147 inserted ", including by not taking into account under section 1366(a) any amount excluded under subsection (a) of this section" before period at end.

1998—Subsec. (f)(2). Pub. L. 105–206, §6004(f)(1), amended concluding provisions generally. Prior to amendment, concluding provisions read as follows: "The term 'student loan' includes any loan made by an educational organization so described or by an organization exempt from tax under section 501(a) to refinance a loan meeting the requirements of the preceding sentence."

Subsec. (f)(3). Pub. L. 105–206, §6004(f)(2), struck out "(or by an organization described in paragraph (2)(E) from funds provided by an organization described in paragraph (2)(D))" after "paragraph (2)(D)".

1997—Subsec. (f)(2). Pub. L. 105–34, §225(a)(1), added subpar. (D) and concluding provisions and struck out former subpar. (D) which read as follows: "any educational organization so described pursuant to an agreement with any entity described in subparagraph (A), (B), or (C) under which the funds from which the loan was made were provided to such educational organization."

Subsec. (f)(2)(B). Pub. L. 105–34, §225(a)(1), struck out "or" at end.

Subsec. (f)(3). Pub. L. 105–34, §225(a)(2), added par. (3).

1996—Subsec. (d)(9)(A). Pub. L. 104–188 substituted "paragraph (3)(C)" for "paragraph (3)(B)".

1993—Subsec. (a)(1)(D). Pub. L. 103–66, §13150(a), added subpar. (D).

Subsec. (a)(2)(A). Pub. L. 103–66, §13150(c)(1), substituted ", (C), and (D)" for "and (C)".

Subsec. (a)(2)(B). Pub. L. 103–66, §13150(c)(2), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: "Subparagraph (C) of paragraph (1) shall not apply to a discharge to the extent the taxpayer is insolvent."

Subsec. (b)(2)(C) to (E). Pub. L. 103–66, §13226(b)(1), added subpar. (C) and redesignated former subpars. (C) and (D) as (D) and (E), respectively. Former subpar. (E) redesignated (F).

Subsec. (b)(2)(F). Pub. L. 103–66, §13226(b)(2), added subpar. (F). Former subpar. (F) redesignated (G).

Pub. L. 103–66, §13226(b)(1), redesignated subpar. (E) as (F).

Subsec. (b)(2)(G). Pub. L. 103–66, §13226(b)(2), redesignated subpar. (F) as (G).

Subsec. (b)(3)(B). Pub. L. 103–66, §13226(b)(3)(A), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: "The reductions described in subparagraphs (B) and (E) of paragraph (2) shall be 331/3 cents for each dollar excluded by subsection (a)."

Subsec. (b)(4)(B). Pub. L. 103–66, §13226(b)(3)(B), substituted "(D)" for "(C)" in heading and text.

Subsec. (b)(4)(C). Pub. L. 103–66, §13226(b)(3)(C), substituted "(G)" for "(E)" in heading and text.

Subsec. (c). Pub. L. 103–66, §13150(b), added subsec. (c).

Subsec. (d). Pub. L. 103–66, §13150(c)(3)(B), substituted "certain provisions" for "subsections (a), (b) and (g)" in heading.

Subsec. (d)(6), (7)(A). Pub. L. 103–66, §13150(c)(3)(A), (C), substituted "Certain provisions" for "Subsections (a), (b) and (g)" in heading and "subsections (a), (b), (c), and (g)" for "subsections (a), (b), and (g)" in text.

Subsec. (d)(7)(B). Pub. L. 103–66, §13150(c)(4), inserted at end "The preceding sentence shall not apply to any discharge to the extent that subsection (a)(1)(D) applies to such discharge."

Subsec. (d)(9)(A). Pub. L. 103–66, §13150(c)(5), inserted "or under paragraph (3)(B) of subsection (c)" after "subsection (b)".

Subsec. (e)(6). Pub. L. 103–66, §13226(a)(2)(B), substituted "Except as provided in regulations, for" for "For".

Subsec. (e)(8). Pub. L. 103–66, §13226(a)(1)(B), amended heading and text of par. (8) generally. Prior to

amendment, text read as follows: "For purposes of determining income of the debtor from discharge of indebtedness, the stock for debt exception shall not apply—

"(A) to the issuance of nominal or token shares, or

"(B) with respect to an unsecured creditor, where the ratio of the value of the stock received by such unsecured creditor to the amount of his indebtedness cancelled or exchanged for stock in the workout is less than 50 percent of a similar ratio computed for all unsecured creditors participating in the workout.

Any stock which is disqualified stock (as defined in paragraph (10)(B)(ii)) shall not be treated as stock for purposes of this paragraph."

Subsec. (e)(10), (11). Pub. L. 103–66, §13226(a)(1)(A), redesignated par. (11) as (10) and struck out former par. (10) which related to satisfaction of indebtedness by transfer of corporation's stock.

Subsec. (g)(3)(B). Pub. L. 103–66, §13226(b)(3)(D), substituted "subparagraphs (A), (B), (C), (D), (F), and (G)" for "subparagraphs (A), (B), (C), and (E)" and "subparagraphs (B), (C), and (G)" for "subparagraphs (B) and (E)" and inserted before period at end "and the attribute described in subparagraph (F) of subsection (b)(2) to the extent attributable to any passive activity credit carryover".

1990—Subsec. (e)(8). Pub. L. 101–508, §11325(b)(2), inserted provision at end that any stock which is a disqualified stock, as so defined, not be treated as stock for purposes of this paragraph.

Subsec. (e)(10)(B). Pub. L. 101–508, §11325(b)(1), substituted heading for one which read: "Exception for title 11 cases and insolvent debtors" and amended text generally. Prior to amendment, text read as follows: "Subparagraph (A) shall not apply in the case of a debtor in a title 11 case or to the extent the debtor is insolvent."

Subsec. (e)(11). Pub. L. 101–508, §11325(a)(1), added par. (11).

Subsec. (g)(1)(B). Pub. L. 101–508, §11813(b)(6), substituted "section 49(a)(1)(D)(iv)" for "section 46(c)(8)(D)(iv)".

1988—Subsec. (a)(1)(C). Pub. L. 100–647, §1004(a)(1), added subpar. (C).

Subsec. (a)(2). Pub. L. 100–647, §1004(a)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "Subparagraph (B) of paragraph (1) shall not apply to a discharge which occurs in a title 11 case."

Subsec. (b). Pub. L. 100–647, §1004(a)(3), struck out "in title 11 case or insolvency" after "Reduction of tax attributes" in heading and substituted "subparagraph (A), (B), or (C)" for "subparagraph (A) or (B)" in text of par. (1).

Subsec. (d). Pub. L. 100–647, §1004(a)(6)(B), which directed amendment of subsec. (d) heading by substituting "subsections (a), (b), and (g)" for "subsections (a), and (b)", was executed by making the substitution for "subsections (a) and (b)" as the probable intent of Congress.

Subsec. (d)(6). Pub. L. 100–647, §1004(a)(6)(A), (C), substituted "Subsections (a), (b), and (g)" for "Subsections (a) and (b)" in heading and "subsections (a), (b), and (g)" for "subsections (a) and (b)" in text.

Subsec. (d)(7)(A). Pub. L. 100–647, §1004(a)(6)(A), (C), substituted "Subsections (a), (b), and (g)" for "Subsections (a) and (b)" in heading and "subsections (a), (b), and (g)" for "subsections (a) and (b)" in text.

Subsec. (g). Pub. L. 100–647, §1004(a)(4), substituted "indebtedness" for "indebtedness of solvent farmers" in heading and amended text generally. Prior to amendment, text read as follows:

"(1) IN GENERAL.—For purposes of this section and section 1017, the discharge by a qualified person of qualified farm indebtedness of a taxpayer who is not insolvent at the time of the discharge shall be treated in the same manner as if the discharge had occurred when the taxpayer was insolvent.

"(2) QUALIFIED FARM INDEBTEDNESS.—For purposes of this subsection, indebtedness of a taxpayer shall be treated as qualified farm indebtedness if—

"(A) such indebtedness was incurred directly in connection with the operation by the taxpayer of the trade or business of farming, and

"(B) 50 percent or more of the average annual gross receipts of the taxpayer for the 3 taxable years preceding the taxable year in which the discharge of such indebtedness occurs is attributable to the trade or business of farming.

"(3) QUALIFIED PERSON.—For purposes of this subsection, the term 'qualified person' means a person described in section 46(c)(8)(D)(iv)."

1986—Subsec. (a)(1)(C). Pub. L. 99–514, §822(a), struck out subpar. (C) relating to exclusion from gross income if the indebtedness discharged is qualified business indebtedness.

Subsec. (a)(2). Pub. L. 99–514, §822(b)(1), substituted "Subparagraph (B) of paragraph (1)" for "Subparagraphs (B) and (C) of paragraph (1)" in subpar. (A), struck out subpar. (A) designation and heading, and struck out subpar. (B) providing that insolvency exclusion takes precedence over qualified business exclusion.

Subsec. (b)(2)(B). Pub. L. 99–514, §231(d)(3)(D), substituted "General business credit" for "Research credit and general business credit" in heading and amended text, as amended by this Act (Pub. L. 99–514,

§1171(b)(4) (see below)), generally. Prior to amendment, text read as follows: "Any carryover to or from the taxable year of a discharge of an amount for purposes of determining the amount allowable as a credit under—

"(i) section 30 (relating to credit for increasing research activities), or

"(ii) section 38 (relating to general business credit).

For purposes of this subparagraph, there shall not be taken into account any portion of a carryover which is attributable to the employee stock ownership credit determined under section 41."

Pub. L. 99–514, §1171(b)(4), struck out last sentence which had been eliminated by the general amendment of subpar. (B) by Pub. L. 99–514, §231(d)(3)(D). See above.

Subsec. (b)(2)(E). Pub. L. 99–514, §1847(b)(7), substituted "section 27" for "section 33".

Subsec. (b)(3). Pub. L. 99–514, §104(b)(2), substituted "331/3 cents" for "50 cents".

Subsec. (c). Pub. L. 99–514, §822(b)(2), struck out subsec. (c) relating to tax treatment of discharge of qualified business indebtedness.

Subsec. (d). Pub. L. 99–514, §822(b)(3)(B), struck out reference to subsec. (c) in heading.

Subsec. (d)(4). Pub. L. 99–514, §822(b)(3)(A), struck out par. (4) relating to treatment of indebtedness as qualified business indebtedness.

Subsec. (d)(6), (7)(A). Pub. L. 99–514, §822(b)(3)(B), struck out reference to subsec. (c) in heading and text.

Subsec. (d)(7)(B). Pub. L. 99–514, §822(b)(3)(C), struck out "The preceding sentence shall not apply to any discharge to the extent that subsection (a)(1)(C) applies to such discharge."

Subsec. (d)(9)(A). Pub. L. 99–514, §822(b)(3)(D), struck out "under paragraph (4) of this subsection or" after "An election".

Subsec. (e)(7)(A)(ii)(I). Pub. L. 99–514, §805(c)(2), substituted "subsection (a) or (b) of section 166" for "subsection (a), (b), or (c) of section 166".

Subsec. (e)(7)(B) to (D). Pub. L. 99–514, §805(c)(3), redesignated subpars. (C) to (E) as (B) to (D), respectively, and struck out former subpar. (B) which related to taxpayers on reserve method.

Subsec. (e)(7)(E), (F). Pub. L. 99–514, §805(c)(3), (4), redesignated subpar. (F) as (E) and substituted "the foregoing subparagraphs" for "subparagraphs (A), (B), (C), (D), and (E)". Former subpar. (E) redesignated (D).

Subsec. (e)(10)(C). Pub. L. 99–514, §621(e), repealed the amendment by Pub. L. 98–369, §59(b)(1), which had added subpar. (C) creating an exception for transfers in certain workouts of the satisfaction of indebtedness by corporation's stock. See 1984 Amendment note below.

Subsec. (g). Pub. L. 99–514, §405(a), added subsec. (g).

1984—Subsec. (b)(2)(B). Pub. L. 98–369, §474(r)(5), substituted provisions relating to research credits and general business credits covering carryovers to or from the taxable year of a discharge of an amount for purposes of determining the amount allowable as a credit under section 30 (relating to credit for increasing research activities), or section 38 (relating to general business credit), and directing that there shall not be taken into account any portion of a carryover which is attributable to the employee stock ownership credit determined under section 41 for former provisions covering carryovers to or from the taxable year of the discharge of an amount for purposes of determining the amount of a credit allowable under section 38 (relating to investment in certain depreciable property), section 40 (relating to expenses of work incentive programs), section 44B (relating to credit for employment of certain new employees), section 44E (relating to alcohol used as a fuel), or section 44F (relating to credit for increasing research activities), and directing that, for purposes of clause (i), there could not be taken into account any portion of a carryover which was attributable to the employee plan credit (within the meaning of section 48(o)(3)).

Subsec. (d)(6). Pub. L. 98–369, §721(b)(2), struck out "or S corporation shareholder level" in heading and second sentence which provided that "In the case of an S corporation, subsections (a), (b), and (c) shall apply at the shareholder level.". See par. (7)(A).

Subsec. (d)(7) to (10). Pub. L. 98–369, §721(b)(2), added par. (7) and redesignated former pars. (7) to (9) as (8) to (10), respectively.

Subsec. (e)(10). Pub. L. 98–369, §59(a), added par. (10).

Subsec. (e)(10)(C). Pub. L. 98–369, §59(b)(1), which added subpar. (C), effective as if included in the amendments made by section 806(e) and (f) of Pub. L. 94–455, was repealed by Pub. L. 99–514, §621(e), (f)(2), eff. Jan. 1, 1986, with certain exceptions, see Effective Date of 1986 Amendment note below.

Subsec. (f). Pub. L. 98–369, §1076(a), added subsec. (f).

1983—Subsec. (b)(2)(B)(v). Pub. L. 97–448, §102(h)(1), added cl. (v).

Subsec. (e)(7)(A)(iii). Pub. L. 97–448, §304(d), added cl. (iii).

1982—Subsec. (d)(6). Pub. L. 97–354 inserted "or S corporation shareholder level" in heading and inserted "In the case of an S corporation, subsections (a), (b), and (c) shall be applied at the shareholder level."

1980—Pub. L. 96–589 completely revised and expanded provisions by specifying the types of indebtedness and by setting out priorities among the exclusions, to reflect the revision of Title 11, Bankruptcy, in 1978.

1976—Pub. L. 94–455, §1951(b)(2)(A), struck out "(a) Special rule of exclusion.—" after "Income from discharge of indebtedness" and struck out subsec. (b) which related to discharge, cancellation, or modification of indebtedness of certain railroad corporations.

Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

1960—Subsec. (b). Pub. L. 86–496 provided that if the discharge, cancellation, or modification of any indebtedness is effected pursuant to a court order in a receivership proceeding or in a proceeding under section 77 of the Bankruptcy Act, commenced before Jan. 1, 1960, then no amount is to be included in gross income with respect to it, and struck out provisions which made subsection inapplicable to discharges occurring in a taxable year beginning after Dec. 31, 1957.

1956—Subsec. (b). Act June 29, 1956, substituted "December 31, 1957" for "December 31, 1955".

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title II, §202(b), Jan. 2, 2013, 126 Stat. 2323, provided that: "The amendment made by this section [amending this section] shall apply to indebtedness discharged after December 31, 2012."

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–148, title X, §10908(b), Mar. 23, 2010, 124 Stat. 1021, provided that: "The amendment made by this section [amending this section] shall apply to amounts received by an individual in taxable years beginning after December 31, 2008."

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, §1231(b), Feb. 17, 2009, 123 Stat. 341, provided that: "The amendments made by this section [amending this section] shall apply to discharges in taxable years ending after December 31, 2008."

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. A, title III, §303(b), Oct. 3, 2008, 122 Stat. 3807, provided that: "The amendment made by this section [amending this section] shall apply to discharges of indebtedness occurring on or after January 1, 2010."

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–142, §2(d), Dec. 20, 2007, 121 Stat. 1804, provided that: "The amendments made by this section [amending this section] shall apply to discharges of indebtedness on or after January 1, 2007."

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title III, §320(c), Oct. 22, 2004, 118 Stat. 1473, provided that: "The amendments made by this section [amending this section, sections 3121, 3231, 3306, and 3401 of this title, and section 409 of Title 42, The Public Health and Welfare] shall apply to amounts received by an individual in taxable years beginning after December 31, 2003."

Pub. L. 108–357, title VIII, §896(b), Oct. 22, 2004, 118 Stat. 1649, provided that: "The amendment made by this section [amending this section] shall apply with respect to cancellations of indebtedness occurring on or after the date of the enactment of this Act [Oct. 22, 2004]."

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title IV, §402(b), Mar. 9, 2002, 116 Stat. 40, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by this section [amending this section] shall apply to discharges of indebtedness after October 11, 2001, in taxable years ending after such date.

"(2) EXCEPTION.—The amendment made by this section shall not apply to any discharge of indebtedness before March 1, 2002, pursuant to a plan of reorganization filed with a bankruptcy court on or before October 11, 2001."

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title II, §225(b), Aug. 5, 1997, 111 Stat. 820, provided that: "The amendments made by this section [amending this section] shall apply to discharges of indebtedness after the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103–66, §§13001–13444, to which such amendment relates, see section 1703(o) of Pub. L. 104–188, set out as a note under section 39 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13150(d), Aug. 10, 1993, 107 Stat. 448, provided that: "The amendments made by this section [amending this section and sections 703 and 1017 of this title] shall apply to discharges after December 31, 1992, in taxable years ending after such date."

Pub. L. 103–66, title XIII, §13226(a)(3), Aug. 10, 1993, 107 Stat. 487, provided that:

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendments made by this subsection [amending this section and section 382 of this title] shall apply to stock transferred after December 31, 1994, in satisfaction of any indebtedness.

"(B) EXCEPTION FOR TITLE 11 CASES.—The amendments made by this subsection shall not apply to stock transferred in satisfaction of any indebtedness if such transfer is in a title 11 or similar case (as defined in section 368(a)(3)(A) of the Internal Revenue Code of 1986) which was filed on or before December 31, 1993."

Pub. L. 103–66, title XIII, §13226(b)(4), Aug. 10, 1993, 107 Stat. 488, provided that: "The amendments made by this subsection [amending this section] shall apply to discharges of indebtedness in taxable years beginning after December 31, 1993."

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, §11325(c), Nov. 5, 1990, 104 Stat. 1388–466, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 1275 of this title] shall apply to debt instruments issued, and stock transferred, after October 9, 1990, in satisfaction of any indebtedness.

"(2) EXCEPTIONS.—The amendments made by this section shall not apply to any debt instrument issued, or stock transferred, in satisfaction of any indebtedness if such issuance or transfer (as the case may be)—

"(A) is in a title 11 or similar case (as defined in section 368(a)(3)(A) of the Internal Revenue Code of 1986) which was filed on or before October 9, 1990,

"(B) is pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such issuance or transfer,

"(C) is pursuant to a transaction which was described in documents filed with the Securities and Exchange Commission on or before October 9, 1990, or

"(D) is pursuant to a transaction—

"(i) the material terms of which were described in a written public announcement on or before October 9, 1990,

"(ii) which was the subject of a prior filing with the Securities and Exchange Commission, and

"(iii) which is the subject of a subsequent filing with the Securities and Exchange Commission before January 1, 1991."

Amendment by section 11813(b)(6) of Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 104(b)(2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 231(d)(3)(D) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31,

1985, see section 231(g) of Pub. L. 99–514, set out as a note under section 41 of this title.

Pub. L. 99–514, title IV, §405(c), Oct. 22, 1986, 100 Stat. 2224, provided that: "The amendments made by this section [amending this section and section 1017 of this title] shall apply to discharges of indebtedness occurring after April 9, 1986, in taxable years ending after such date."

Repeal by section 621(e)(1) of Pub. L. 99–514 of amendment by section 59(b)(1) of Pub. L. 99–369, which was effective as if included in the amendments made by section 806(e) and (f) of Pub. L. 94–455, effective Jan. 1, 1986, with certain exceptions, see section 621(f)(2) of Pub. L. 99–514, set out as a note under section 382 of this title.

Amendment by section 805(c)(2), (4) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain changes required in method of accounting, see section 805(d) of Pub. L. 99–514, set out as a note under section 166 of this title.

Pub. L. 99–514, title VIII, §822(c), Oct. 22, 1986, 100 Stat. 2373, provided that: "The amendments made by this section [amending this section and section 1017 of this title] shall apply to discharges after December 31, 1986."

Amendment by section 1171(b)(4) of Pub. L. 99–514 applicable to compensation paid or accrued after Dec. 31, 1986, in taxable years ending after such date, except as otherwise provided, see section 1171(c) of Pub. L. 99–514, set out as a note under section 38 of this title.

Amendment by section 1847(b)(7) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §59(b)(2), July 18, 1984, 98 Stat. 577, provided that: "The amendment made by paragraph (1) [amending this section] shall take effect as if it had been included in the amendments made by subsections (e) and (f) of section 806 of the Tax Reform Act of 1976 [Pub. L. 94–455]." See Effective Date of 1976 Amendment note set out under section 382 of this title.

Pub. L. 98–369, div. A, title I, §59(b)[(c)], July 18, 1984, 98 Stat. 577, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendment made by subsection (a) [amending this section] shall apply to transfers after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.

"(2) TRANSITIONAL RULE.—The amendment made by subsection (a) shall not apply to the transfer by a corporation of its stock in exchange for debt of the corporation after the date of the enactment of this Act if such transfer is—

"(A) pursuant to a written contract requiring such transfer which was binding on the corporation at all times on June 7, 1984, and at all times after such date but only if the transfer takes place before January 1, 1985, and only if the transferee held the debt at all times on June 7, 1984, or

"(B) pursuant to the exercise of an option to exchange debt for stock but only if such option was in effect at all times on June 7, 1984, and at all times after such date and only if at all times on June 7, 1984, the option and the debt were held by the same person.

"(3) CERTAIN TRANSFERS TO CONTROLLING SHAREHOLDER.—The amendment made by subsection (a) shall not apply to any transfer before January 1, 1985, by a corporation of its stock in exchange for debt of such corporation if—

"(A) such transfer is to another corporation which at all times on June 7, 1984, owned 75 percent or more of the total value of the stock of the corporation making such transfer, and

"(B) immediately after such transfer, the transferee corporation owns 80 percent or more of the total value of the stock of the transferor corporation.

"(4) CERTAIN TRANSFERS PURSUANT TO DEBT RESTRUCTURE AGREEMENT.—The amendment made by subsection (a) shall not apply to the transfer by a corporation of its stock in exchange for debt of the corporation after the date of the enactment of this Act and before January 1, 1985, if—

"(A) such transfer is covered by a debt restructure agreement entered into by the corporation during November 1983, and

"(B) such agreement was specified in a registration statement filed with the Securities and Exchange Commission by the corporation on March 7, 1984."

Amendment by section 474(r)(5) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 721(b) of Pub. L. 98–369 applicable to contributions to capital after Dec. 31, 1980, in taxable years ending after such date, see section 721(y)(2) of Pub. L. 98–369, set out as a note under section

1361 of this title.

Pub. L. 98–369, div. A, title X, §1076(b), July 18, 1984, 98 Stat. 1054, provided that: "The amendments made by this section [amending this section] shall apply to discharges of indebtedness made on or after January 1, 1983."

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by title I of Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–589, §7, Dec. 24, 1980, 94 Stat. 3411, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) FOR SECTION 2 (RELATING TO TAX TREATMENT OF DISCHARGE OF INDEBTEDNESS).—

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by section 2 [amending this section and sections 111, 118, 382, 703 and 1017 of this title] shall apply to any transaction which occurs after December 31, 1980, other than a transaction which occurs in a proceeding in a bankruptcy case or similar judicial proceeding (or in a proceeding under the Bankruptcy Act) [Title 11, Bankruptcy] commencing on or before December 31, 1980.

"(2) TRANSITIONAL RULE.—In the case of any discharge of indebtedness to which subparagraph (A) or (B) of section 108(a)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to exclusion from gross income), as amended by section 2, applies and which occurs before January 1, 1982, or which occurs in a proceeding in a bankruptcy case or similar judicial proceedings commencing before January 1, 1982, then—

"(A) section 108(b)(2) of the such Code (relating to reduction of tax attributes), as so amended, shall be applied without regard to subparagraphs (A), (B), (C), and (E) thereof, and

"(B) the basis of any property shall not be reduced under section 1017 of such Code (relating to reduction in basis in connection with discharges of indebtedness), as so amended, below the fair market value of such property on the date the debt is discharged.

"(b) FOR SECTION 3 (RELATING TO RULES RELATING TO TITLE 11 CASES FOR INDIVIDUALS).—The amendments made by section 3 [enacting sections 1398 and 1399 of this title and amending sections 443, 6012 and 6103 of this title] shall apply to any bankruptcy case commencing more than 90 days after the date of the enactment of this Act [Dec. 24, 1980].

"(c) FOR SECTION 4 (RELATING TO CORPORATE REORGANIZATION PROVISIONS).—

"(1) IN GENERAL.—The amendments made by section 4 [enacting section 370 of this title and amending sections 354, 355, 357, 368 and 381 of this title] shall apply to any bankruptcy case or similar judicial proceeding commencing after December 31, 1980.

"(2) EXCHANGES OF PROPERTY FOR ACCRUED INTEREST.—The amendments made by subsection (e) of section 4 [amending sections 354 and 355 of this title] (relating to treatment of property attributable to accrued interest) shall also apply to any exchange—

"(A) which occurs after December 31, 1980, and

"(B) which does not occur in a bankruptcy case or similar judicial proceeding (or in a proceeding under the Bankruptcy Act) commenced on or before December 31, 1980.

"(d) FOR SECTION 5 (RELATING TO MISCELLANEOUS CORPORATE AMENDMENTS).—

"(1) FOR SUBSECTION (a) (RELATING TO EXEMPTION FROM PERSONAL HOLDING COMPANY TAX).—The amendments made by subsection (a) of section 5 [amending section 542 of this title] shall apply to any bankruptcy case or similar judicial proceeding commenced after December 31, 1980.

"(2) FOR SUBSECTION (b) (RELATING TO REPEAL OF SPECIAL TREATMENT FOR CERTAIN RAILROAD REDEMPTIONS).—The amendments made by subsection (b) of section 5 [amending section 302 of this title] shall apply to stock which is issued after December 31, 1980 (other than stock issued pursuant to a plan of reorganization approved on or before that date).

"(3) FOR SUBSECTION (c) (RELATING TO APPLICATION OF 12-MONTH LIQUIDATION RULE).—The amendment made by subsection (c) of section 5 [amending section 337 of this title] shall apply to any bankruptcy case or similar judicial proceeding commenced after December 31, 1980.

"(4) FOR SUBSECTION (d) (RELATING TO PERMITTING BANKRUPTCY ESTATE TO BE SUBCHAPTER S SHAREHOLDER).—The amendment made by subsection (d) of section 5 [amending section 1371 of this title] shall apply to any bankruptcy case commenced on or after October 1, 1979.

"(5) FOR SUBSECTION (e) (RELATING TO CERTAIN TRANSFERS TO CONTROLLED CORPORATIONS).—The amendments made by subsection (e) of section 5 [amending section 351 of this title] shall apply as provided in subsection (a) of this section.

"(6) FOR SUBSECTION (f) (RELATING TO EFFECT OF DEBT DISCHARGE ON EARNINGS AND PROFITS).—The amendment made by subsection (f) of section 5 [amending section 312 of this title] shall apply as provided in subsection (a) of this section.

"(e) FOR SECTION 6 (RELATING TO CHANGES IN TAX PROCEDURES).—The amendments made by section 6 [enacting sections 6658 and 7464 of this title, amending sections 128, 354, 422, 1023, 3302, 6012, 6036, 6155, 6161, 6212, 6213, 6216, 6326 [now 6327], 6404, 6503, 6512, 6532, 6871, 6872, 6873, 7430, and 7508 of this title, repealing section 1018 of this title, and redesignating former section 7464 of this title as 7465] shall take effect on October 1, 1979, but shall not apply to any proceeding under the Bankruptcy Act [Title 11] commenced before October 1, 1979.

"(f) ELECTION TO SUBSTITUTE SEPTEMBER 30, 1979, FOR DECEMBER 31, 1980.—

"(1) IN GENERAL.—The debtor (or debtors) in a bankruptcy case or similar judicial proceeding may (with the approval of the court) elect to apply subsections (a), (c), and (d) by substituting 'September 30, 1979' for 'December 31, 1980' each place it appears in such subsections.

"(2) EFFECT OF ELECTION.—Any election made under paragraph (1) with respect to any proceeding shall apply to all parties to the proceeding.

"(3) REVOCATION ONLY WITH CONSENT.—Any election under this subsection may be revoked only with the consent of the Secretary of the Treasury or his delegate.

"(4) TIME AND MANNER OF ELECTION.—Any election under this subsection shall be made at such time, and in such manner, as the Secretary of the Treasury or his delegate may by regulations prescribe.

"(g) DEFINITIONS.—For purposes of this section—

"(1) BANKRUPTCY CASE.—The term 'bankruptcy case' means any case under title 11 of the United States Code (as recodified by Public Law 95–598).

"(2) SIMILAR JUDICIAL PROCEEDING.—The term 'similar judicial proceeding' means a receivership, foreclosure, or similar proceeding in a Federal or State court (as modified by section 368(a)(3)(D) of the Internal Revenue Code of 1986)."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1951(b)(2)(A) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1951(d) of Pub. L. 94–455, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Pub. L. 86–496, §1(b), June 8, 1960, 74 Stat. 164, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after December 31, 1959, but only with respect to discharges occurring after such date."

SAVINGS PROVISION

For provisions that nothing in amendment by section 11813 of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

Pub. L. 94–455, title XIX, §1951(b)(2)(B), Oct. 4, 1976, 90 Stat. 1837, provided that: "If any discharge, cancellation, or modification of indebtedness of a railroad corporation occurs in a taxable year beginning after December 31, 1976, pursuant to an order of a court in a proceeding referred to in section 108(b)(A) or (B) which commenced before January 1, 1960, then, notwithstanding the amendments made by subparagraph (A) [amending this section] the provisions of subsection (b) of section 108 shall be considered as not repealed with respect to such discharge, cancellation, or modification of indebtedness."

EXCLUSION OF CERTAIN CANCELLATIONS OF INDEBTEDNESS

Pub. L. 107–134, title I, §105, Jan. 23, 2002, 115 Stat. 2432, provided that:

"(a) IN GENERAL.—For purposes of the Internal Revenue Code of 1986—

"(1) gross income shall not include any amount which (but for this section) would be includible in gross income by reason of the discharge (in whole or in part) of indebtedness of any taxpayer if the

discharge is by reason of the death of an individual incurred as the result of the terrorist attacks against the United States on September 11, 2001, or as the result of illness incurred as a result of an attack involving anthrax occurring on or after September 11, 2001, and before January 1, 2002; and

"(2) return requirements under section 6050P of such Code shall not apply to any discharge described in paragraph (1).

"(b) EFFECTIVE DATE.—This section shall apply to discharges made on or after September 11, 2001, and before January 1, 2002."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§109. Improvements by lessee on lessor's property

Gross income does not include income (other than rent) derived by a lessor of real property on the termination of a lease, representing the value of such property attributable to buildings erected or other improvements made by the lessee.

(Aug. 16, 1954, ch. 736, 68A Stat. 33.)

§110. Qualified lessee construction allowances for short-term leases

(a) In general

Gross income of a lessee does not include any amount received in cash (or treated as a rent reduction) by a lessee from a lessor—

(1) under a short-term lease of retail space, and

(2) for the purpose of such lessee's constructing or improving qualified long-term real property for use in such lessee's trade or business at such retail space,

but only to the extent that such amount does not exceed the amount expended by the lessee for such construction or improvement.

(b) Consistent treatment by lessor

Qualified long-term real property constructed or improved in connection with any amount excluded from a lessee's income by reason of subsection (a) shall be treated as nonresidential real property of the lessor (including for purposes of section 168(i)(8)(B)).

(c) Definitions

For purposes of this section—

(1) Qualified long-term real property

The term "qualified long-term real property" means nonresidential real property which is part of, or otherwise present at, the retail space referred to in subsection (a) and which reverts to the lessor at the termination of the lease.

(2) Short-term lease

The term "short-term lease" means a lease (or other agreement for occupancy or use) of retail space for 15 years or less (as determined under the rules of section 168(i)(3)).

(3) Retail space

The term "retail space" means real property leased, occupied, or otherwise used by a lessee in its trade or business of selling tangible personal property or services to the general public.

(d) Information required to be furnished to Secretary

Under regulations, the lessee and lessor described in subsection (a) shall, at such times and in such manner as may be provided in such regulations, furnish to the Secretary—

(1) information concerning the amounts received (or treated as a rent reduction) and expended as described in subsection (a), and

(2) any other information which the Secretary deems necessary to carry out the provisions of this section.

(Added Pub. L. 105–34, title XII, §1213(a), Aug. 5, 1997, 111 Stat. 1000.)

PRIOR PROVISIONS

A prior section 110, act Aug. 16, 1954, ch. 736, 68A Stat. 33, related to income taxes paid by lessee corporations, prior to repeal by Pub. L. 101–508, title XI, §11801(a)(6), Nov. 5, 1990, 104 Stat. 1388–520.

EFFECTIVE DATE

Pub. L. 105–34, title XII, §1213(e), Aug. 5, 1997, 111 Stat. 1001, provided that: "The amendments made by this section [enacting this section and amending sections 168 and 6724 of this title] shall apply to leases entered into after the date of the enactment of this Act [Aug. 5, 1997]."

§111. Recovery of tax benefit items

(a) Deductions

Gross income does not include income attributable to the recovery during the taxable year of any amount deducted in any prior taxable year to the extent such amount did not reduce the amount of tax imposed by this chapter.

(b) Credits

(1) In general

If—

(A) a credit was allowable with respect to any amount for any prior taxable year, and

(B) during the taxable year there is a downward price adjustment or similar adjustment,

the tax imposed by this chapter for the taxable year shall be increased by the amount of the credit attributable to the adjustment.

(2) Exception where credit did not reduce tax

Paragraph (1) shall not apply to the extent that the credit allowable for the recovered amount did not reduce the amount of tax imposed by this chapter.

(3) Exception for investment tax credit and foreign tax credit

This subsection shall not apply with respect to the credit determined under section 46 and the foreign tax credit.

(c) Treatment of carryovers

For purposes of this section, an increase in a carryover which has not expired before the beginning of the taxable year in which the recovery or adjustment takes place shall be treated as reducing tax imposed by this chapter.

(d) Special rules for accumulated earnings tax and for personal holding company tax

In applying subsection (a) for the purpose of determining the accumulated earnings tax under section 531 or the tax under section 541 (relating to personal holding companies)—

(1) any excluded amount under subsection (a) allowed for the purposes of this subtitle (other than section 531 or section 541) shall be allowed whether or not such amount resulted in a reduction of the tax under section 531 or the tax under section 541 for the prior taxable year; and

(2) where any excluded amount under subsection (a) was not allowable as a deduction for the prior taxable year for purposes of this subtitle other than of section 531 or section 541 but was allowable for the same taxable year under section 531 or section 541, then such excluded amount

shall be allowable if it did not result in a reduction of the tax under section 531 or the tax under section 541.

(Aug. 16, 1954, ch. 736, 68A Stat. 33; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–589, §2(c), Dec. 24, 1980, 94 Stat. 3396; Pub. L. 98–369, div. A, title I, §171(a), July 18, 1984, 98 Stat. 698; Pub. L. 99–514, title XVIII, §1812(a)(1), (2), Oct. 22, 1986, 100 Stat. 2833.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–514, §1812(a)(1), substituted "did not reduce the amount of tax imposed by this chapter" for "did not reduce income subject to tax".

Subsec. (c). Pub. L. 99–514, §1812(a)(2), substituted "reducing tax imposed by this chapter" for "reducing income subject to tax or reducing tax imposed by this chapter, as the case may be".

1984—Pub. L. 98–369 amended section generally, substituting provisions relating to recovery of tax benefit items for provisions relating to recovery of bad debts, prior taxes, and delinquency amounts.

1980—Subsec. (d). Pub. L. 96–589 added subsec. (d).

1976—Subsec. (b)(4). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §171(c), July 18, 1984, 98 Stat. 699, provided that: "The amendments made by this section [amending this section] shall apply to amounts recovered after December 31, 1983, in taxable years ending after such date."

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–589 applicable to transactions which occur after Dec. 31, 1980, other than transactions which occur in a proceeding in a bankruptcy case or similar judicial proceeding or in a proceeding under Title 11 commencing on or after Dec. 31, 1980, with an exception permitting the debtor to make the amendment applicable to transactions occurring after Sept. 30, 1979, in a specified manner, see section 7(a)(1), (f) of Pub. L. 96–589, set out as a note under section 108 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§112. Certain combat zone compensation of members of the Armed Forces

(a) Enlisted personnel

Gross income does not include compensation received for active service as a member below the grade of commissioned officer in the Armed Forces of the United States for any month during any part of which such member—

(1) served in a combat zone, or

(2) was hospitalized as a result of wounds, disease, or injury incurred while serving in a combat zone; but this paragraph shall not apply for any month beginning more than 2 years after the date of the termination of combatant activities in such zone.

With respect to service in the combat zone designated for purposes of the Vietnam conflict, paragraph (2) shall not apply to any month after January 1978.

(b) Commissioned officers

Gross income does not include so much of the compensation as does not exceed the maximum

enlisted amount received for active service as a commissioned officer in the Armed Forces of the United States for any month during any part of which such officer—

(1) served in a combat zone, or

(2) was hospitalized as a result of wounds, disease, or injury incurred while serving in a combat zone; but this paragraph shall not apply for any month beginning more than 2 years after the date of the termination of combatant activities in such zone.

With respect to service in the combat zone designated for purposes of the Vietnam conflict, paragraph (2) shall not apply to any month after January 1978.

(c) Definitions

For purposes of this section—

(1) The term "commissioned officer" does not include a commissioned warrant officer.

(2) The term "combat zone" means any area which the President of the United States by Executive Order designates, for purposes of this section or corresponding provisions of prior income tax laws, as an area in which Armed Forces of the United States are or have (after June 24, 1950) engaged in combat.

(3) Service is performed in a combat zone only if performed on or after the date designated by the President by Executive Order as the date of the commencing of combatant activities in such zone, and on or before the date designated by the President by Executive Order as the date of the termination of combatant activities in such zone; except that June 25, 1950, shall be considered the date of the commencing of combatant activities in the combat zone designated in Executive Order 10195.

(4) The term "compensation" does not include pensions and retirement pay.

(5) The term "maximum enlisted amount" means, for any month, the sum of—

(A) the highest rate of basic pay payable for such month to any enlisted member of the Armed Forces of the United States at the highest pay grade applicable to enlisted members, and

(B) in the case of an officer entitled to special pay under section 310 of title 37, United States Code, for such month, the amount of such special pay payable to such officer for such month.

(d) Prisoners of war, etc.

(1) Members of the Armed Forces

Gross income does not include compensation received for active service as a member of the Armed Forces of the United States for any month during any part of which such member is in a missing status (as defined in section 551(2) of title 37, United States Code) during the Vietnam conflict as a result of such conflict, other than a period with respect to which it is officially determined under section 552(c) of such title 37 that he is officially absent from his post of duty without authority.

(2) Civilian employees

Gross income does not include compensation received for active service as an employee for any month during any part of which such employee is in a missing status during the Vietnam conflict as a result of such conflict. For purposes of this paragraph, the terms "active service", "employee", and "missing status" have the respective meanings given to such terms by section 5561 of title 5 of the United States Code.

(3) Period of conflict

For purposes of this subsection, the Vietnam conflict began February 28, 1961, and ends on the date designated by the President by Executive order as the date of the termination of combatant activities in Vietnam. For purposes of this subsection, an individual is in a missing status as a result of the Vietnam conflict if immediately before such status began he was performing service in Vietnam or was performing service in Southeast Asia in direct support of military operations in Vietnam.

(Aug. 16, 1954, ch. 736, 68A Stat. 34; Pub. L. 89–739, §1, Nov. 2, 1966, 80 Stat. 1165; Pub. L.

92–279, §1, Apr. 26, 1972, 86 Stat. 124; Pub. L. 93–597, §2(a), (b), Jan. 2, 1975, 88 Stat. 1950; Pub. L. 94–569, §3(b), Oct. 20, 1976, 90 Stat. 2699; Pub. L. 104–117, §1(d), Mar. 20, 1996, 110 Stat. 828; Pub. L. 104–188, title I, §1704(t)(4)(A), Aug. 20, 1996, 110 Stat. 1887.)

AMENDMENTS

1996—Pub. L. 104–188 substituted "combat zone compensation" for "combat pay" in section catchline.

Subsec. (b). Pub. L. 104–117, §1(d)(1), substituted "the maximum enlisted amount" for "$500" in introductory provisions.

Subsec. (c)(5). Pub. L. 104–117, §1(d)(2), added par. (5).

1976—Subsec. (a). Pub. L. 94–569 substituted "after January 1978" for "beginning more than 2 years after the date of the enactment of this sentence" after "With respect to service in the combat zone designated for purposes of the Vietnam conflict, paragraph (2) shall not apply to any month".

Subsec. (b). Pub. L. 94–569 substituted "after January 1978" for "beginning more than 2 years after the date of enactment of this sentence" after "With respect to service in the combat zone designated for purposes of the Vietnam conflict, paragraph (2) shall not apply to any month".

1975—Subsec. (a). Pub. L. 93–597, §2(a)(3), inserted provision relating to the applicability of par. (2) with respect to service in the combat zone designated for purposes of the Vietnam conflict.

Subsec. (a)(1). Pub. L. 93–597, §2(a)(1), struck out "during an induction period" after "served in a combat zone".

Subsec. (a)(2). Pub. L. 93–597, §2(a)(2), substituted "; but this paragraph shall not apply for any month beginning more than 2 years after the date of the termination of combatant activities in such zone" for "during an induction period; but this paragraph shall not apply for any month during any part of which there are no combatant activities in any combat zone as determined under subsection (c)(3) of this section".

Subsec. (b). Pub. L. 93–597, §2(a)(3), inserted provision relating to applicability of par. (2) with respect to service in the combat zone designated for purposes of the Vietnam conflict.

Subsec. (b)(1). Pub. L. 93–597, §2(a)(1), struck out "during an induction period" after "served in a combat zone".

Subsec. (b)(2). Pub. L. 93–597, §2(a)(2), substituted "; but this paragraph shall not apply for any month beginning more than 2 years after the date of the termination of combatant activities in such zone" for "during an induction period; but this paragraph shall not apply for any month during any part of which there are no combatant activities in any combat zone as determined under subsection (c)(3) of this section".

Subsec. (c)(5). Pub. L. 93–597, §2(b), struck out par. (5) which defined "induction period".

1972—Subsec. (d). Pub. L. 92–279 added subsec. (d).

1966—Subsec. (b). Pub. L. 89–739 substituted "$500" for "$200".

EFFECTIVE DATE OF 1975 AMENDMENT

Pub. L. 93–597, §2(c), Jan. 2, 1975, 88 Stat. 1950, provided that: "The amendments made by this section [amending this section] shall take effect on July 1, 1973."

EFFECTIVE DATE OF 1972 AMENDMENT

Pub. L. 92–279, §3(a)(1), Apr. 26, 1972, 86 Stat. 125, provided that: "The amendment made by the first section of this Act [amending this section] shall apply to taxable years ending on or after February 28, 1961."

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89–739, §2, Nov. 2, 1966, 80 Stat. 1165, provided that: "The amendment made by the first section of this Act [amending this section] shall apply with respect to compensation received in taxable years ending after December 31, 1965, for periods of active service after such date."

SENSE OF CONGRESS REGARDING TAX TREATMENT OF MEMBERS RECEIVING SPECIAL PAY FOR DUTY SUBJECT TO HOSTILE FIRE OR IMMINENT DANGER

Pub. L. 106–398, §1 [[div. A], title X, §1089], Oct. 30, 2000, 114 Stat. 1654, 1654A–294, provided that: "It is the sense of Congress that members of the Armed Forces who receive special pay under section 310 of title 37, United States Code, for duty subject to hostile fire or imminent danger should receive the same treatment under Federal income tax laws as members serving in combat zones."

SENSE OF CONGRESS REGARDING TREATMENT UNDER INTERNAL REVENUE CODE OF MEMBERS RECEIVING HOSTILE FIRE OR IMMINENT DANGER SPECIAL PAY DURING CONTINGENCY OPERATIONS

Pub. L. 106–65, div. A, title VI, §677, Oct. 5, 1999, 113 Stat. 676, provided that: "It is the sense of

Congress that a member of the Armed Forces who is receiving special pay under section 310 of title 37, United States Code, while assigned to duty in support of a contingency operation should be treated under the Internal Revenue Code of 1986 in the same manner as a member of the Armed Forces serving in a combat zone (as defined in section 112 of the Internal Revenue Code of 1986)."

AVAILABILITY OF CERTAIN TAX BENEFITS FOR SERVICES AS PART OF OPERATION ALLIED FORCE

Pub. L. 106–21, §1, Apr. 19, 1999, 113 Stat. 34, provided that:

"(a) GENERAL RULE.—For purposes of the following provisions of the Internal Revenue Code of 1986, a qualified hazardous duty area shall be treated in the same manner as if it were a combat zone (as determined under section 112 of such Code):

"(1) Section 2(a)(3) (relating to special rule where deceased spouse was in missing status).

"(2) Section 112 (relating to the exclusion of certain combat pay of members of the Armed Forces).

"(3) Section 692 (relating to income taxes of members of Armed Forces on death).

"(4) Section 2201 (relating to members of the Armed Forces dying in combat zone or by reason of combat-zone-incurred wounds, etc.).

"(5) Section 3401(a)(1) (defining wages relating to combat pay for members of the Armed Forces).

"(6) Section 4253(d) (relating to the taxation of phone service originating from a combat zone from members of the Armed Forces).

"(7) Section 6013(f)(1) (relating to joint return where individual is in missing status).

"(8) Section 7508 (relating to time for performing certain acts postponed by reason of service in combat zone).

"(b) QUALIFIED HAZARDOUS DUTY AREA.—For purposes of this section, the term 'qualified hazardous duty area' means any area of the Federal Republic of Yugoslavia (Serbia/Montenegro), Albania, the Adriatic Sea, and the northern Ionian Sea (above the 39th parallel) during the period (which includes the date of the enactment of this Act [Apr. 19, 1999]) that any member of the Armed Forces of the United States is entitled to special pay under section 310 of title 37, United States Code (relating to special pay: duty subject to hostile fire or imminent danger) for services performed in such area.

"(c) SPECIAL RULE FOR SECTION 7508.—Solely for purposes of applying section 7508 of the Internal Revenue Code of 1986, in the case of an individual who is performing services as part of Operation Allied Force outside the United States while deployed away from such individual's permanent duty station, the term 'qualified hazardous duty area' includes, during the period for which the entitlement referred to in subsection (b) is in effect, any area in which such services are performed.

"(d) EFFECTIVE DATES.—

"(1) IN GENERAL.—Except as provided in paragraph (2), this section shall take effect on March 24, 1999.

"(2) WITHHOLDING.—Subsection (a)(5) shall apply to remuneration paid after the date of the enactment of this Act [Apr. 19, 1999]."

TREATMENT OF CERTAIN INDIVIDUALS PERFORMING SERVICES IN CERTAIN HAZARDOUS DUTY AREAS; EFFECTIVE DATE

Pub. L. 104–117, §1, Mar. 20, 1996, 110 Stat. 827, provided that:

"(a) GENERAL RULE.—For purposes of the following provisions of the Internal Revenue Code of 1986, a qualified hazardous duty area shall be treated in the same manner as if it were a combat zone (as determined under section 112 of such Code):

"(1) Section 2(a)(3) (relating to special rule where deceased spouse was in missing status).

"(2) Section 112 (relating to the exclusion of certain combat pay of members of the Armed Forces).

"(3) Section 692 (relating to income taxes of members of Armed Forces on death).

"(4) Section 2201 (relating to members of the Armed Forces dying in combat zone or by reason of combat-zone-incurred wounds, etc.).

"(5) Section 3401(a)(1) (defining wages relating to combat pay for members of the Armed Forces).

"(6) Section 4253(d) (relating to the taxation of phone service originating from a combat zone from members of the Armed Forces).

"(7) Section 6013(f)(1) (relating to joint return where individual is in missing status).

"(8) Section 7508 (relating to time for performing certain acts postponed by reason of service in combat zone).

"(b) QUALIFIED HAZARDOUS DUTY AREA.—For purposes of this section, the term 'qualified hazardous duty area' means Bosnia and Herzegovina, Croatia, or Macedonia, if as of the date of the enactment

of this section [Mar. 20, 1996] any member of the Armed Forces of the United States is entitled to special pay under section 310 of title 37, United States Code (relating to special pay; duty subject to hostile fire or imminent danger) for services performed in such country. Such term includes any such country only during the period such entitlement is in effect. Solely for purposes of applying section 7508 of the Internal Revenue Code of 1986, in the case of an individual who is performing services as part of Operation Joint Endeavor outside the United States while deployed away from such individual's permanent duty station, the term 'qualified hazardous duty area' includes, during the period for which such entitlement is in effect, any area in which such services are performed.

"(c) EXCLUSION OF COMBAT PAY FROM WITHHOLDING LIMITED TO AMOUNT EXCLUDABLE FROM GROSS INCOME.—[Amended section 3401 of this title.]

"(d) INCREASE IN COMBAT PAY EXCLUSION FOR OFFICERS TO HIGHEST AMOUNT APPLICABLE TO ENLISTED PERSONNEL.—

"(1) IN GENERAL.—[Amended this section.]

"(2) MAXIMUM ENLISTED AMOUNT.—[Amended this section.]

"(e) EFFECTIVE DATE.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the provisions of and amendments made by this section shall take effect on November 21, 1995.

"(2) WITHHOLDING.—Subsection (a)(5) and the amendment made by subsection (c) shall apply to remuneration paid after the date of the enactment of this Act [Mar. 20, 1996]."

REFUND OR CREDIT OF OVERPAYMENT; APPLICABLE PERIOD

Pub. L. 92–279, §3(a)(2), (3), Apr. 26, 1972, 86 Stat. 125, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(2) If refund or credit of any overpayment for any taxable year resulting from the application of the amendment made by the first section of this Act [amending this section] (including interest, additions to the tax, and additional amounts) is prevented at any time before the expiration of the applicable period specified in paragraph (3) by the operation of any law or rule of law, such refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed before the expiration of such applicable period.

"(3) For purposes of paragraph (2), the applicable period for any individual with respect to any compensation is the period ending on whichever of the following days is the later:

"(A) the day which is one year after the date of the enactment of this Act [Apr. 26, 1972], or

"(B) the day which is 2 years after the date on which it is determined that the individual's missing status (within the meaning of section 112(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) has terminated for purposes of such section 112."

EX. ORD. NO. 10585. TERMINATION OF COMBATANT ACTIVITIES IN KOREA

Ex. Ord. No. 10585, Jan. 1, 1955, 20 F.R. 17, provided:

By virtue of the authority vested in me by section 112(c)(3) of the Internal Revenue Code of 1954 [now I.R.C. 1986], January 31, 1955, as of midnight thereof, is hereby designated as the date of termination of combatant activities in the zone comprised of the area described in Executive Order No. 10195 of December 20, 1950 (15 F.R. 9177).

DWIGHT D. EISENHOWER.

EX. ORD. NO. 11216. DESIGNATION OF VIETNAM AND ADJACENT WATERS AS COMBAT ZONE

Ex. Ord. No. 11216, Apr. 24, 1965, 30 F.R. 5817, provided:

Pursuant to the authority vested in me by section 112 of the Internal Revenue Code of 1954 [now I.R.C. 1986], I hereby designate, for the purposes of that section, as an area in which Armed Forces of the United States are and have been engaged in combat:

Vietnam, including the waters adjacent thereto within the following-described limits: From a point on the East Coast of Vietnam at the juncture of Vietnam with China southeastward to 21° N Lat., 108°15 E Long.; thence southward to 18° N Lat., 108°15 E Long.; thence southeastward to 17°30 N Lat., 111° E Long.; thence southward to 11° N Lat., 111° E Long.; thence southwestward to 7° N Lat., 105° E Long.; thence westward to 7° N Lat., 103° E Long.; thence northward to 9°30 N Lat., 103° E Long.; thence northeastward to 10°15 N Lat., 104°27 E Long.; thence northward to a point on the West Coast of Vietnam at the juncture of Vietnam with Cambodia.

The date of the commencing of combatant activities in such area is hereby designated as January 1, 1964.

LYNDON B. JOHNSON.

EX. ORD. NO. 12744. DESIGNATION OF ARABIAN PENINSULA AREAS, AIRSPACE, AND ADJACENT WATERS AS COMBAT ZONE

Ex. Ord. No. 12744, Jan. 21, 1991, 56 F.R. 2663, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 112 of the Internal Revenue Code of 1986 (26 U.S.C. 112), I hereby designate, for purposes of that section, the following locations, including the airspace above such locations, as an area in which Armed Forces of the United States are and have been engaged in combat:

—the Persian Gulf

—the Red Sea

—the Gulf of Oman

—that portion of the Arabian Sea that lies north of 10 degrees north latitude and west of 68 degrees east longitude

—the Gulf of Aden

—the total land areas of Iraq, Kuwait, Saudi Arabia, Oman, Bahrain, Qatar, and the United Arab Emirates.

For the purposes of this order, the date of the commencing of combatant activities in such zone is hereby designated as January 17, 1991.

GEORGE BUSH.

EX. ORD. NO. 13002. TERMINATION OF COMBAT ZONE DESIGNATION IN VIETNAM AND WATERS ADJACENT THERETO

Ex. Ord. No. 13002, May 13, 1996, 61 F.R. 24665, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 112(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 112(c)(3)), June 30, 1996, as of midnight thereof, is hereby designated as the date of termination of combatant activities in the zone comprised of the area described in Executive Order No. 11216 of April 24, 1965 [set out above].

WILLIAM J. CLINTON.

EX. ORD. NO. 13119. DESIGNATION OF FEDERAL REPUBLIC OF YUGOSLAVIA (SERBIA/MONTENEGRO), ALBANIA, THE AIRSPACE ABOVE, AND ADJACENT WATERS AS A COMBAT ZONE

Ex. Ord. No. 13119, April 13, 1999, 64 F.R. 18797, provided:

Pursuant to the authority vested in me as President by the Constitution and laws of the United States of America, including section 112 of the Internal Revenue Code of 1986 (26 U.S.C. 112), I designate, for the purposes of that section, the following locations, including the airspace above such locations, as an area in which Armed Forces of the United States are and have been engaged in combat:

—The Federal Republic of Yugoslavia (Serbia/Montenegro);

—Albania;

—the Adriatic Sea;

—the Ionian Sea north of the 39th parallel.

For the purposes of this order, I designate March 24, 1999, as the date of the commencement of combatant activities in such zone.

WILLIAM J. CLINTON.

EX. ORD. NO. 13239. DESIGNATION OF AFGHANISTAN AND THE AIRSPACE ABOVE AS A COMBAT ZONE

Ex. Ord. No. 13239, Dec. 12, 2001, 66 F.R. 64907, provided:

Pursuant to the authority vested in me as President by the Constitution and the laws of the United States of America, including section 112 of the Internal Revenue Code of 1986 (26 U.S.C. 112), I designate, for purposes of that section, Afghanistan, including the airspace above, as an area in which Armed Forces of the United States are and have been engaged in combat.

For purposes of this order, I designate September 19, 2001, as the date of the commencement of combatant activities in such zone.

GEORGE W. BUSH.

[§113. Repealed. Pub. L. 101–508, title XI, §11801(a)(7), Nov. 5, 1990, 104 Stat.

1388–520]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 35, related to mustering-out payments for members of Armed Forces.

SAVINGS PROVISION

For provisions that nothing in repeal by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

[§114. Repealed. Pub. L. 108–357, title I, §101(a), Oct. 22, 2004, 118 Stat. 1423]

Section, added Pub. L. 106–519, §3(a), Nov. 15, 2000, 114 Stat. 2423, related to exclusion of extraterritorial income from gross income.

A prior section 114, act Aug. 16, 1954, ch. 736, 68A Stat. 35, related to sports programs conducted for American National Red Cross, prior to repeal by Pub. L. 101–508, title XI, §11801(a)(8), Nov. 5, 1990, 104 Stat. 1388–520.

EFFECTIVE DATE OF REPEAL

Repeal applicable to transactions after Dec. 31, 2004, see section 101(c) of Pub. L. 108–357, set out as an Effective Date of 2004 Amendments note under section 56 of this title.

TRANSITION PROVISIONS

Pub. L. 108–357, title I, §101(d)–(f), Oct. 22, 2004, 118 Stat. 1423, 1424, as amended by Pub. L. 109–222, title V, §513(b), May 17, 2006, 120 Stat. 366, provided that:

"(d) TRANSITIONAL RULE FOR 2005 AND 2006.—

"(1) IN GENERAL.—In the case of transactions during 2005 or 2006, the amount includible in gross income by reason of the amendments made by this section [amending sections 56, 275, 864, 903, and 999 of this title and repealing this section and sections 941 to 943 of this title] shall not exceed the applicable percentage of the amount which would have been so included but for this subsection.

"(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the applicable percentage shall be as follows:

"(A) For 2005, the applicable percentage shall be 20 percent.

"(B) For 2006, the applicable percentage shall be 40 percent.

"(e) REVOCATION OF ELECTION TO BE TREATED AS DOMESTIC CORPORATION.—If, during the 1-year period beginning on the date of the enactment of this Act [Oct. 22, 2004], a corporation for which an election is in effect under section 943(e) of the Internal Revenue Code of 1986 revokes such election, no gain or loss shall be recognized with respect to property treated as transferred under clause (ii) of section 943(e)(4)(B) of such Code to the extent such property—

"(1) was treated as transferred under clause (i) thereof, or

"(2) was acquired during a taxable year to which such election applies and before May 1, 2003, in the ordinary course of its trade or business.

The Secretary of the Treasury (or such Secretary's delegate) may prescribe such regulations as may be necessary to prevent the abuse of the purposes of this subsection.

"[(f) Repealed. Pub. L. 109–222, title V, §513(b), May 17, 2006, 120 Stat. 366.]"

§115. Income of States, municipalities, etc.

Gross income does not include—

(1) income derived from any public utility or the exercise of any essential governmental function and accruing to a State or any political subdivision thereof, or the District of Columbia; or

(2) income accruing to the government of any possession of the United States, or any political subdivision thereof.

(Aug. 16, 1954, ch. 736, 68A Stat. 35; Pub. L. 94–455, title XIX, §1901(a)(19), Oct. 4, 1976, 90 Stat. 1766.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "(a) General rule" before "Gross income does not include", struck out subsecs. (b) and (c) which related to contracts concerning public utilities made before Sept. 8, 1916, and contracts concerning bridge acquisition made before May 29, 1928, respectively, and in par. (1) of former subsec. (a), struck out "or territory" after "accruing to a State".

EFFECTIVE DATE OF 1976 AMENDMENT

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

TAX TREATMENT OF STATE OWNERSHIP OF RAILROAD REAL ESTATE INVESTMENT TRUST

Pub. L. 109–59, title XI, §11146, Aug. 10, 2005, 119 Stat. 1966, provided that:

"(a) IN GENERAL.—If a State owns all of the outstanding stock of a corporation—

"(1) which is a real estate investment trust on the date of the enactment of this Act [Aug. 10, 2005],

"(2) which is a non-operating class III railroad, and

"(3) substantially all of the activities of which consist of the ownership, leasing, and operation by such corporation of facilities, equipment, and other property used by the corporation or other persons for railroad transportation and for economic development purposes for the benefit of the State and its citizens, then, to the extent such activities are of a type which are an essential governmental function within the meaning of section 115 of the Internal Revenue Code of 1986, income derived from such activities by the corporation shall be treated as accruing to the State for purposes of section 115 of such Code.

"(b) GAIN OR LOSS NOT RECOGNIZED ON CONVERSION.—Notwithstanding section 337(d) of the Internal Revenue Code of 1986—

"(1) no gain or loss shall be recognized under section 336 or 337 of such Code, and

"(2) no change in basis of the property of such corporation shall occur, because of any change of status of a corporation to a tax-exempt entity by reason of the application of subsection (a).

"(c) TAX-EXEMPT FINANCING.—

"(1) IN GENERAL.—Any obligation issued by a corporation described in subsection (a) at least 95 percent of the net proceeds (as defined in section 150(a) of the Internal Revenue Code of 1986) of which are to be used to provide for the acquisition, construction, or improvement of railroad transportation infrastructure (including railroad terminal facilities)—

"(A) shall be treated as a State or local bond (within the meaning of section 103(c) of such Code), and

"(B) shall not be treated as a private activity bond (within the meaning of section 103(b)(1) of such Code) solely by reason of the ownership or use of such railroad transportation infrastructure by the corporation.

"(2) NO INFERENCE.—Except as provided in paragraph (1), nothing in this subsection shall be construed to affect the treatment of the private use of proceeds or property financed with obligations issued by the corporation for purposes of section 103 of the Internal Revenue Code of 1986 and part IV of subchapter B [probably means part IV of subchapter B of chapter 1] of such Code.

"(d) DEFINITIONS.—For purposes of this section:

"(1) REAL ESTATE INVESTMENT TRUST.—The term 'real estate investment trust' has the meaning given such term by section 856(a) of the Internal Revenue Code of 1986.

"(2) NON-OPERATING CLASS III RAILROAD.—The term 'non-operating class III railroad' has the meaning given such term by part A of subtitle IV of title 49, United States Code (49 U.S.C. 10101 et seq.), and the regulations thereunder.

"(3) STATE.—The term 'State' includes—

"(A) the District of Columbia and any possession of the United States, and

"(B) any authority, agency, or public corporation of a State.

"(e) APPLICABILITY.—

"(1) IN GENERAL.—Except as provided in paragraph (2), this section shall apply on and after the date on which a State becomes the owner of all of the outstanding stock of a corporation described in subsection (a) through action of such corporation's board of directors.

"(2) EXCEPTION.—This section shall not apply to any State which—

"(A) becomes the owner of all of the voting stock of a corporation described in subsection (a) after December 31, 2003, or

"(B) becomes the owner of all of the outstanding stock of a corporation described in subsection

(a) after December 31, 2006."

[§116. Repealed. Pub. L. 99–514, title VI, §612(a), Oct. 22, 1986, 100 Stat. 2250]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 37; June 25, 1959, Pub. L. 86–69, §3(a)(2), 73 Stat. 139; Sept. 14, 1960, Pub. L. 86–779, §10(f), 74 Stat. 1009; Feb. 26, 1964, Pub. L. 88–272, title II, §201(c), (d)(6)(C), 78 Stat. 32; Nov. 13, 1966, Pub. L. 89–809, title I, §103(g), 80 Stat. 1552; Oct. 4, 1976, Pub. L. 94–455, title X, §§1051(h)(2), 1053(d)(1), title XIX, §1901(a)(20), 90 Stat. 1647, 1649, 1766; Apr. 2, 1980, Pub. L. 96–223, title IV, §404(a), 94 Stat. 305; Aug. 13, 1981, Pub. L. 97–34, title III, §302(b)(2), 95 Stat. 272; July 18, 1984, Pub. L. 98–369, div. A, title V, §542(b), 98 Stat. 891, authorized partial exclusion of dividends received by individuals.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 1986, see section 612(c) of Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note under section 301 of this title.

§117. Qualified scholarships

(a) General rule

Gross income does not include any amount received as a qualified scholarship by an individual who is a candidate for a degree at an educational organization described in section 170(b)(1)(A)(ii).

(b) Qualified scholarship

For purposes of this section—

(1) In general

The term "qualified scholarship" means any amount received by an individual as a scholarship or fellowship grant to the extent the individual establishes that, in accordance with the conditions of the grant, such amount was used for qualified tuition and related expenses.

(2) Qualified tuition and related expenses

For purposes of paragraph (1), the term "qualified tuition and related expenses" means—

(A) tuition and fees required for the enrollment or attendance of a student at an educational organization described in section 170(b)(1)(A)(ii), and

(B) fees, books, supplies, and equipment required for courses of instruction at such an educational organization.

(c) Limitation

(1) In general

Except as provided in paragraph (2), subsections (a) and (d) shall not apply to that portion of any amount received which represents payment for teaching, research, or other services by the student required as a condition for receiving the qualified scholarship or qualified tuition reduction.

(2) Exceptions

Paragraph (1) shall not apply to any amount received by an individual under—

(A) the National Health Service Corps Scholarship Program under section 338A(g)(1)(A) of the Public Health Service Act, or

(B) the Armed Forces Health Professions Scholarship and Financial Assistance program under subchapter I of chapter 105 of title 10, United States Code.

(d) Qualified tuition reduction

(1) In general

Gross income shall not include any qualified tuition reduction.

(2) Qualified tuition reduction

For purposes of this subsection, the term "qualified tuition reduction" means the amount of any reduction in tuition provided to an employee of an organization described in section 170(b)(1)(A)(ii) for the education (below the graduate level) at such organization (or another organization described in section 170(b)(1)(A)(ii)) of—

(A) such employee, or

(B) any person treated as an employee (or whose use is treated as an employee use) under the rules of section 132(h).

(3) Reduction must not discriminate in favor of highly compensated, etc.

Paragraph (1) shall apply with respect to any qualified tuition reduction provided with respect to any highly compensated employee only if such reduction is available on substantially the same terms to each member of a group of employees which is defined under a reasonable classification set up by the employer which does not discriminate in favor of highly compensated employees (within the meaning of section 414(q)). For purposes of this paragraph, the term "highly compensated employee" has the meaning given such term by section 414(q).

[(4) Repealed. Pub. L. 101–140, title II, §203(a)(1), (2), Nov. 8, 1989, 103 Stat. 830]

(5) Special rules for teaching and research assistants

In the case of the education of an individual who is a graduate student at an educational organization described in section 170(b)(1)(A)(ii) and who is engaged in teaching or research activities for such organization, paragraph (2) shall be applied as if it did not contain the phrase "(below the graduate level)".

(Aug. 16, 1954, ch. 736, 68A Stat. 38; Pub. L. 87–256, §110(a), Sept. 21, 1961, 75 Stat. 535; Pub. L. 94–455, title XIX, §1901(b)(8)(A), (c)(3), Oct. 4, 1976, 90 Stat. 1794, 1803; Pub. L. 96–541, §5(a)(1), Dec. 17, 1980, 94 Stat. 3205; Pub. L. 98–369, div. A, title V, §532(a), July 18, 1984, 98 Stat. 887; Pub. L. 99–514, title I, §123(a), title XI, §§1114(b)(2), 1151(g)(2), Oct. 22, 1986, 100 Stat. 2112, 2450, 2506; Pub. L. 100–647, title I, §1011B(a)(31)(B), title IV, §4001(b)(2), Nov. 10, 1988, 102 Stat. 3488, 3643; Pub. L. 101–140, title II, §203(a)(1), (2), Nov. 8, 1989, 103 Stat. 830; Pub. L. 104–188, title I, §1703(n)(14), Aug. 20, 1996, 110 Stat. 1878; Pub. L. 107–16, title IV, §413(a), June 7, 2001, 115 Stat. 64.)

REFERENCES IN TEXT

Section 338A(g)(1)(A) of the Public Health Service Act, referred to in subsec. (c)(2)(A), is classified to section 254l(g)(1)(A) of Title 42, The Public Health and Welfare.

AMENDMENTS

2001—Subsec. (c). Pub. L. 107–16 designated existing provisions as par. (1), inserted par. heading, substituted "Except as provided in paragraph (2), subsections (a)" for "Subsections (a)", and added par. (2).

1996—Subsec. (d)(2)(B). Pub. L. 104–188 substituted "section 132(h)" for "section 132(f)".

1989—Subsec. (d)(4). Pub. L. 101–140, §203(a)(2), amended par. (4) to read as if amendments by Pub. L. 100–647, §1011B(a)(31)(B), had not been enacted, see 1988 Amendment note below.

Pub. L. 101–140, §203(a)(1), amended subsec. (d) to read as if amendments by Pub. L. 99–514, §1151(g)(2), which added par. (4), had not been enacted, see 1986 Amendment note below.

1988—Subsec. (d)(4). Pub. L. 100–647, §1011B(a)(31)(B), substituted "there shall" for "there may" and "who are" for "who may be".

Subsec. (d)(5). Pub. L. 100–647, §4001(b)(2), added par. (5).

1986—Pub. L. 99–514, §123(a), in amending section generally, substituted "Qualified scholarships" for "Scholarships and fellowship grants" in section catchline.

Subsec. (a). Pub. L. 99–514, §123(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "In the case of an individual, gross income does not include—

"(1) any amount received—

"(A) as a scholarship at an educational organization described in section 170(b)(1)(A)(ii), or

"(B) as a fellowship grant, including the value of contributed services and accommodations; and

"(2) any amount received to cover expenses for—

"(A) travel,
"(B) research,
"(C) clerical help, or
"(D) equipment,

which are incident to such a scholarship or to a fellowship grant, but only to the extent that the amount is so expended by the recipient."

Subsec. (b). Pub. L. 99–514, §123(a), in amending subsec. (b) generally, substituted qualified scholarship provision for former limitations provision, which related in par. (1) to individuals who were candidates for degrees, and in par. (2) to individuals who were not candidates for degrees, describing in subpar. (A) conditions for exclusion and in subpar. (B) extent of exclusion, such detailed provision now covered in subsec. (c).

Subsec. (c). Pub. L. 99–514, §123(a), in amending subsec. (c) generally, substituted limitation provision for former provision relating to Federal grants for tuition and related expenses not includable merely because there was requirement of future service as Federal employee.

Subsec. (d). Pub. L. 99–514, §123(a), in amending subsec. (d) generally, substituted "reduction" for "reductions" in heading and inserted "(within the meaning of section 414(q))" after "highly compensated employees" in par. (3).

Subsec. (d)(3). Pub. L. 99–514, §1114(b)(2), struck out "officer, owner, or" after "with respect to any" and "officers, owners, or" after "in favor of" and inserted at end "For purposes of this paragraph, the term 'highly compensated employee' has the meaning given such term by section 414(q)."

Subsec. (d)(4). Pub. L. 99–514, §1151(g)(2), added par. (4).

1984—Subsec. (d). Pub. L. 98–369 added subsec. (d).

1980—Subsec. (c). Pub. L. 96–541 added subsec. (c).

1976—Subsecs. (a)(1)(A), (b)(1), (2). Pub. L. 94–455, §1901(b)(8)(A), substituted "educational organization described in section 170(b)(1)(A)(ii)" for "educational institution (as defined in section 151(e)(4))" after "scholarship at an".

Subsec. (b)(2)(A)(iv). Pub. L. 94–455, §1901(c)(3), struck out "a territory" after "or a State".

Subsec. (b)(2)(B). Pub. L. 94–455, §1901(b)(8)(A), substituted "educational organization described in section 170(b)(1)(A)(ii)" for "educational institution (as defined in section 151(e)(4))" after "degree at an".

1961—Subsec. (b)(2)(A). Pub. L. 87–256 included cases where the grantor of the scholarship or fellowship grant is a foreign government, an international organization, or a binational or multinational educational and cultural foundation or commission created or continued pursuant to the Mutual Educational and Cultural Exchange Act of 1961.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–16, title IV, §413(b), June 7, 2001, 115 Stat. 64, provided that: "The amendments made by subsection (a) [amending this section] shall apply to amounts received in taxable years beginning after December 31, 2001."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103–66, §§13001–13444, to which such amendment relates, see section 1703(o) of Pub. L. 104–188, set out as a note under section 39 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–140 effective as if included in section 1151 of Pub. L. 99–514, see section 203(c) of Pub. L. 101–140, set out as a note under section 79 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011B(a)(31)(B) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title IV, §4001(c), Nov. 10, 1988, 102 Stat. 3643, provided that: "The amendments made by this section [amending this section and section 127 of this title] shall apply to taxable years beginning after December 31, 1987."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 123(a) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, but only in the case of scholarships and fellowships granted after Aug. 16, 1986, see section 151(d) of Pub. L.

99–514, set out as a note under section 1 of this title.

Amendment by section 1114(b)(2) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1987, see section 1114(c)(2) of Pub. L. 99–514, set out as a note under section 414 of this title.

Amendment by section 1151(g)(2) of Pub. L. 99–514 applicable, with certain qualifications and exceptions, to years beginning after Dec. 31, 1988, see section 1151(k) of Pub. L. 99–514, as amended, set out as a note under section 79 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title V, §532(b), July 18, 1984, 98 Stat. 887, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendment made by this section [amending this section] shall apply to qualified tuition reductions (as defined in section 117(d)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) for education furnished after June 30, 1985, in taxable years ending after such date."

Provisions of subsec. (d) treated as in effect on and after Jan. 1, 1984, in case of education described in section 127(c)(8) of this title, see section 1(g)(5) of Pub. L. 98–611, set out as a note under section 127 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–541, §5(a)(2), Dec. 17, 1980, 94 Stat. 3206, provided: "The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after December 31, 1980."

EFFECTIVE DATE OF 1976 AMENDMENT

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

EFFECTIVE DATE OF 1961 AMENDMENT

Pub. L. 87–256, §110(h)(1), Sept. 21, 1961, 75 Stat. 537, provided that: "The amendments made by subsections (a), (b), and (c) of this section [amending this section and sections 871 and 872 of this title] shall apply to taxable years beginning after December 31, 1961."

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1114 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

NONENFORCEMENT OF AMENDMENT MADE BY SECTION 1151 OF PUB. L. 99–514 FOR FISCAL YEAR 1990

No monies appropriated by Pub. L. 101–136 to be used to implement or enforce section 1151 of Pub. L. 99–514 or the amendments made by such section, see section 528 of Pub. L. 101–136, set out as a note under section 89 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUBLIC LAW 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendment by section 123(a) of Pub. L. 99–514 to the extent application of such amendment would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(3), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TRANSITIONAL RULES FOR TREATMENT OF CERTAIN REDUCTIONS IN TUITION

Pub. L. 99–514, title XVIII, §1853(f), Oct. 22, 1986, 100 Stat. 2872, provided that:

"(1) A tuition reduction plan shall be treated as meeting the requirements of section 117(d)(3) of the Internal Revenue Code of 1954 [now 1986] if—

"(A) such plan would have met the requirements of such section (as amended by this section but

without regard to the lack of evidence that benefits under such plan were the subject of good faith bargaining) on the day on which eligibility to participate in the plan was closed,

"(B) at all times thereafter, the tuition reductions available under such plan are available on substantially the same terms to all employees eligible to participate in such plan, and

"(C) the eligibility to participate in such plan closed on June 30, 1972, June 30, 1974, or December 31, 1975.

"(2) For purposes of applying section 117(d)(3) of the Internal Revenue Code of 1954 [now 1986] to all tuition reduction plans of an employer with at least 1 such plan described in paragraph (1) of this subsection, there shall be excluded from consideration employees not included in the plan who are included in a unit of employees covered by an agreement that the Secretary of the Treasury or his delegate finds to be a collective bargaining agreement between employee representatives and 1 or more employers, if, with respect to plans other than plans described in paragraph (1), there is evidence that such benefits were the subject of good faith bargaining.

"(3) Any reduction in tuition provided with respect to a full-time course of education furnished at the graduate level before July 1, 1988, shall not be included in gross income if—

"(A) such reduction would not be included in gross income under the Internal Revenue Service regulations in effect on the date of the enactment of the Tax Reform Act of 1984 [July 18, 1984], and

"(B) such reduction is provided with respect to a student who was accepted for admission to such course of education before July 1, 1984, and began such course of education before June 30, 1985."

NATIONAL RESEARCH SERVICE AWARDS

Pub. L. 95–600, title I, §161(b), Nov. 6, 1978, 92 Stat. 2810, as amended by Pub. L. 96–167, §9(b), Dec. 29, 1979, 93 Stat. 1278; Pub. L. 96–541, §5(b), Dec. 17, 1980, 94 Stat. 3206; Pub. L. 97–248, title II, §285, Sept. 3, 1982, 96 Stat. 569; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that any amount paid to, or on behalf of, an individual as a national research service award under former section 289*l*–1 of title 42 during calendar years 1974 through 1983 was to be treated as a scholarship or fellowship grant under this section.

SCHOLARSHIP PROGRAMS FOR MEMBERS OF THE UNIFORMED SERVICES

Pub. L. 93–483, §4, Oct. 26, 1974, 88 Stat. 1458, as amended Pub. L. 94–455, title XXI, §2130, Oct. 4, 1976, 90 Stat. 1922; Pub. L. 95–171, §5, Nov. 12, 1977, 91 Stat. 1355; Pub. L. 95–600, title I, §161(a), Nov. 6, 1978, 92 Stat. 2810; Pub. L. 95–615, title I, §6, Nov. 8, 1978, 92 Stat. 3098; Pub. L. 96–167, §9(a), Dec. 29, 1979, 93 Stat. 1278; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) IN GENERAL.—Any amount received from appropriated funds as a scholarship, including the value of contributed services and accommodations, by a member of a uniformed service who is receiving training under the Armed Forces Health Professions Scholarship Program (or any other program determined by the Secretary of the Treasury or his delegate to have substantially similar objectives) from an educational institution (as defined in section 151(e)(4) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) [see section 170(b)(1)(A)(ii) of this title] shall be treated as a scholarship under section 117 of such Code [this section], whether that member is receiving training while on active duty or in an off-duty or inactive status, and without regard to whether a period of active duty is required of the member as a condition of receiving those payments.

"(b) DEFINITION OF UNIFORMED SERVICES.—For purposes of this section, the term 'uniformed service' has the meaning given it by section 101(3) of title 37, United States Code.

"(c) EFFECTIVE DATE.—The provisions of this section shall apply with respect to amounts received during calendar years 1973, 1974, and 1975, and, in the case of a member of a uniformed service receiving training after 1975 and before 1981 in programs described in subsection (a), with respect to amounts received after 1975 and before 1985."

[Section 6 of Pub. L. 95–615, which reenacted §4(c) of Pub. L. 93–483 without change, to cease to have effect on the day after Nov. 8, 1978, see section 210(a) of Pub. L. 95–615, set out as a note under section 61 of this title.]

§118. Contributions to the capital of a corporation

(a) General rule

In the case of a corporation, gross income does not include any contribution to the capital of the taxpayer.

(b) Contributions in aid of construction, etc.

For purposes of subsection (a), except as provided in subsection (c), the term "contribution to the capital of the taxpayer" does not include any contribution in aid of construction or any other contribution as a customer or potential customer.

(c) Special rules for water and sewerage disposal utilities

(1) General rule

For purposes of this section, the term "contribution to the capital of the taxpayer" includes any amount of money or other property received from any person (whether or not a shareholder) by a regulated public utility which provides water or sewerage disposal services if—

(A) such amount is a contribution in aid of construction,

(B) in the case of contribution of property other than water or sewerage disposal facilities, such amount meets the requirements of the expenditure rule of paragraph (2), and

(C) such amount (or any property acquired or constructed with such amount) is not included in the taxpayer's rate base for ratemaking purposes.

(2) Expenditure rule

An amount meets the requirements of this paragraph if—

(A) an amount equal to such amount is expended for the acquisition or construction of tangible property described in section 1231(b)—

(i) which is the property for which the contribution was made or is of the same type as such property, and

(ii) which is used predominantly in the trade or business of furnishing water or sewerage disposal services,

(B) the expenditure referred to in subparagraph (A) occurs before the end of the second taxable year after the year in which such amount was received, and

(C) accurate records are kept of the amounts contributed and expenditures made, the expenditures to which contributions are allocated, and the year in which the contributions and expenditures are received and made.

(3) Definitions

For purposes of this subsection—

(A) Contribution in aid of construction

The term "contribution in aid of construction" shall be defined by regulations prescribed by the Secretary, except that such term shall not include amounts paid as service charges for starting or stopping services.

(B) Predominantly

The term "predominantly" means 80 percent or more.

(C) Regulated public utility

The term "regulated public utility" has the meaning given such term by section 7701(a)(33), except that such term shall not include any utility which is not required to provide water or sewerage disposal services to members of the general public in its service area.

(4) Disallowance of deductions and credits; adjusted basis

Notwithstanding any other provision of this subtitle, no deduction or credit shall be allowed for, or by reason of, any expenditure which constitutes a contribution in aid of construction to which this subsection applies. The adjusted basis of any property acquired with contributions in aid of construction to which this subsection applies shall be zero.

(d) Statute of limitations

If the taxpayer for any taxable year treats an amount as a contribution to the capital of the taxpayer described in subsection (c), then—

(1) the statutory period for the assessment of any deficiency attributable to any part of such amount shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may prescribe) of—

(A) the amount of the expenditure referred to in subparagraph (A) of subsection (c)(2),

(B) the taxpayer's intention not to make the expenditures referred to in such subparagraph, or

(C) a failure to make such expenditure within the period described in subparagraph (B) of subsection (c)(2), and

(2) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

(e) Cross references

(1) For basis of property acquired by a corporation through a contribution to its capital, see section 362.

(2) For special rules in the case of contributions of indebtedness, see section 108(e)(6).

(Aug. 16, 1954, ch. 736, 68A Stat. 39; Pub. L. 94–455, title XXI, §2120(a), Oct. 4, 1976, 90 Stat. 1912; Pub. L. 95–600, title III, §364(a), Nov. 6, 1978, 92 Stat. 2854; Pub. L. 96–589, §2(e)(2), Dec. 24, 1980, 94 Stat. 3396; Pub. L. 98–369, div. A, title I, §163(a), July 18, 1984, 98 Stat. 697; Pub. L. 99–514, title VIII, §824(a), Oct. 22, 1986, 100 Stat. 2374; Pub. L. 104–188, title I, §1613(a)(1), (2), Aug. 20, 1996, 110 Stat. 1848–1850.)

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–188, §1613(a)(2), inserted "except as provided in subsection (c)," before "the term".

Subsecs. (c) to (e). Pub. L. 104–188, §1613(a)(1), added subsecs. (c) and (d) and redesignated former subsec. (c) as (e).

1986—Subsec. (b). Pub. L. 99–514, §824(a), added subsec. (b) and struck out former subsec. (b) relating to contributions in aid of construction, containing par. (1) general rule, par. (2) expenditure rule, par. (3) definitions, and par. (4) disallowance of deductions and investment credit; adjusted basis.

Subsecs. (c), (d). Pub. L. 99–514, §824(a), redesignated former subsec. (d) as (c) and struck out former subsec. (c), statute of limitations, which read as follows: "If the taxpayer for any taxable year treats an amount as a contribution to the capital of the taxpayer described in subsection (b), then—

"(1) the statutory period for the assessment of any deficiency attributable to any part of such amount shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may prescribe) of—

"(A) the amount of the expenditure referred to in subparagraph (A) of subsection (b)(2),

"(B) the taxpayer's intention not to make the expenditures referred to in such subparagraph, or

"(C) a failure to make such expenditure within the period described in subparagraph (B) of subsection (b)(2); and

"(2) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment."

1984—Subsecs. (c), (d). Pub. L. 98–369 added subsec. (c) and redesignated former subsec. (c) as (d).

1980—Subsec. (c). Pub. L. 96–589 designated existing provisions as par. (1) and added par. (2).

1978—Subsec. (b)(1). Pub. L. 95–600, §364(a)(1), (2), substituted in provisions preceding subpar. (A) "electric energy, gas (through a local distribution system or transportation by pipeline), water," for "water" and in subpar. (B) "electric energy, gas, steam, water," for "water".

Subsec. (b)(2)(A)(ii). Pub. L. 95–600, §364(a)(3), substituted "electric energy, gas, steam, water," for "water".

Subsec. (b)(3)(A). Pub. L. 95–600, §364(a)(4), substituted "line to an electric line, a gas main, a steam line, or a main water or sewer line" for "property to a main water or sewer line".

Subsec. (b)(3)(C). Pub. L. 95–600, §364(a)(5), substituted "electric energy, gas, water," for "water" and inserted "(including in the case of a gas transmission utility, the provision of gas services by sale for resale to the general public)" after "members of the general public".

1976—Subsecs. (b), (c). Pub. L. 94–455, §2120(a), added subsec. (b) and redesignated former subsec. (b) as (c).

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, §1613(a)(3), Aug. 20, 1996, 110 Stat. 1850, provided that: "The amendments made by this subsection [amending this section] shall apply to amounts received after June 12, 1996."

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title VIII, §824(c), Oct. 22, 1986, 100 Stat. 2374, as amended by Pub. L. 100–647, title I, §1008(j)(2), Nov. 10, 1988, 102 Stat. 3445, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and section 362 of this title] shall apply to amounts received after December 31, 1986, in taxable years ending after such date.

"(2) TREATMENT OF CERTAIN WATER SUPPLY PROJECTS.—The amendments made by this section shall not apply to amounts which are paid by the New Jersey Department of Environmental Protection for construction of alternative water supply projects in zones of drinking water contamination and which are designated by such department as being taken into account under this paragraph. Not more than $4,631,000 of such amounts may be designated under the preceding sentence.

"(3) TREATMENT OF CERTAIN CONTRIBUTIONS BY TRANSPORTATION AUTHORITY.—The amendments made by this section shall not apply to contributions in aid of construction by a qualified transportation authority which were clearly identified in a master plan in existence on September 13, 1984, and which are designated by such authority as being taken into account under this paragraph. Not more than $68,000,000 of such contributions may be designated under the preceding sentence. For purposes of this paragraph, a qualified transportation authority is an entity which was created on February 20, 1967, and which was established by an interstate compact and consented to by Congress in Public Law 89–774, 80 Stat. 1324 (1966).

"(4) TREATMENT OF CERTAIN PARTNERSHIPS.—In the case of a partnership with a taxable year beginning May 1, 1986, if such partnership realized net capital gain during the period beginning on the 1st day of such taxable year and ending on May 29, 1986, pursuant to an underwriting agreement dated May 6, 1986, then such partnership may elect to treat each asset to which such net capital gain relates as having been distributed to the partners of such partnership in proportion to their distributive share of the capital gain or loss realized by the partnership with respect to such asset and to treat each such asset as having been sold by each partner on the date of the sale of the asset by the partnership. If such an election is made, the consideration received by the partnership in connection with the sale of such assets shall be treated as having been received by the partners in connection with the deemed sale of such assets. In the case of a tiered partnership, for purposes of this paragraph each partnership shall be treated as having realized net capital gain equal to its proportionate share of the net capital gain of each partnership in which it is a partner, and the election provided by this paragraph shall apply to each tier."

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §163(c), July 18, 1984, 98 Stat. 698, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by this section [amending this section and sections 6501 and 6511 of this title] shall apply to expenditures with respect to which the second taxable year described in section 118(b)(2)(B) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] ends after December 31, 1984."

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–589 applicable to transactions which occur after Dec. 31, 1980, other than transactions which occur in a proceeding in a bankruptcy case or similar judicial proceeding or in a proceeding under Title 11 commencing on or after Dec. 31, 1980, with an exception permitting the debtor to make the amendment applicable to transactions occurring after Sept. 30, 1979, in a specified manner, see section 7(a)(1), (f) of Pub. L. 96–589, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title III, §364(b), Nov. 6, 1978, 92 Stat. 2854, provided that: "The amendments made by this section [amending this section] shall apply to contributions made after January 31, 1976."

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XXI, §2120(c), Oct. 4, 1976, 90 Stat. 1913, provided that: "The amendments made by this section [amending this section and section 362 of this title] apply to contributions made after January 31, 1976."

§119. Meals or lodging furnished for the convenience of the employer

(a) Meals and lodging furnished to employee, his spouse, and his dependents, pursuant to employment

There shall be excluded from gross income of an employee the value of any meals or lodging furnished to him, his spouse, or any of his dependents by or on behalf of his employer for the convenience of the employer, but only if—

(1) in the case of meals, the meals are furnished on the business premises of the employer, or

(2) in the case of lodging, the employee is required to accept such lodging on the business premises of his employer as a condition of his employment.

(b) Special rules

For purposes of subsection (a)—

(1) Provisions of employment contract or State statute not to be determinative

In determining whether meals or lodging are furnished for the convenience of the employer, the provisions of an employment contract or of a State statute fixing terms of employment shall not be determinative of whether the meals or lodging are intended as compensation.

(2) Certain factors not taken into account with respect to meals

In determining whether meals are furnished for the convenience of the employer, the fact that a charge is made for such meals, and the fact that the employee may accept or decline such meals, shall not be taken into account.

(3) Certain fixed charges for meals

(A) In general

If—

(i) an employee is required to pay on a periodic basis a fixed charge for his meals, and

(ii) such meals are furnished by the employer for the convenience of the employer,

there shall be excluded from the employee's gross income an amount equal to such fixed charge.

(B) Application of subparagraph (A)

Subparagraph (A) shall apply—

(i) whether the employee pays the fixed charge out of his stated compensation or out of his own funds, and

(ii) only if the employee is required to make the payment whether he accepts or declines the meals.

(4) Meals furnished to employees on business premises where meals of most employees are otherwise excludable

All meals furnished on the business premises of an employer to such employer's employees shall be treated as furnished for the convenience of the employer if, without regard to this paragraph, more than half of the employees to whom such meals are furnished on such premises are furnished such meals for the convenience of the employer.

(c) Employees living in certain camps

(1) In general

In the case of an individual who is furnished lodging in a camp located in a foreign country by or on behalf of his employer, such camp shall be considered to be part of the business premises of the employer.

(2) Camp

For purposes of this section, a camp constitutes lodging which is—

(A) provided by or on behalf of the employer for the convenience of the employer because the place at which such individual renders services is in a remote area where satisfactory

housing is not available on the open market,

(B) located, as near as practicable, in the vicinity of the place at which such individual renders services, and

(C) furnished in a common area (or enclave) which is not available to the public and which normally accommodates 10 or more employees.

(d) Lodging furnished by certain educational institutions to employees

(1) In general

In the case of an employee of an educational institution, gross income shall not include the value of qualified campus lodging furnished to such employee during the taxable year.

(2) Exception in cases of inadequate rent

Paragraph (1) shall not apply to the extent of the excess of—

(A) the lesser of—

(i) 5 percent of the appraised value of the qualified campus lodging, or

(ii) the average of the rentals paid by individuals (other than employees or students of the educational institution) during such calendar year for lodging provided by the educational institution which is comparable to the qualified campus lodging provided to the employee, over

(B) the rent paid by the employee for the qualified campus lodging during such calendar year.

The appraised value under subparagraph (A)(i) shall be determined as of the close of the calendar year in which the taxable year begins, or, in the case of a rental period not greater than 1 year, at any time during the calendar year in which such period begins.

(3) Qualified campus lodging

For purposes of this subsection, the term "qualified campus lodging" means lodging to which subsection (a) does not apply and which is—

(A) located on, or in the proximity of, a campus of the educational institution, and

(B) furnished to the employee, his spouse, and any of his dependents by or on behalf of such institution for use as a residence.

(4) Educational institution, etc.

For purposes of this subsection—

(A) In general

The term "educational institution" means—

(i) an institution described in section 170(b)(1)(A)(ii) (or an entity organized under State law and composed of public institutions so described), or

(ii) an academic health center.

(B) Academic health center

For purposes of subparagraph (A), the term "academic health center" means an entity—

(i) which is described in section 170(b)(1)(A)(iii),

(ii) which receives (during the calendar year in which the taxable year of the taxpayer begins) payments under subsection (d)(5)(B) or (h) of section 1886 of the Social Security Act (relating to graduate medical education), and

(iii) which has as one of its principal purposes or functions the providing and teaching of basic and clinical medical science and research with the entity's own faculty.

(Aug. 16, 1954, ch. 736, 68A Stat. 39; Pub. L. 95–427, §4(a), Oct. 7, 1978, 92 Stat. 997; Pub. L. 95–615, title II, §205, Nov. 8, 1978, 92 Stat. 3107; Pub. L. 96–222, title I, §108(a)(1)(G), Apr. 1, 1980, 94 Stat. 225; Pub. L. 97–34, title I, §113, Aug. 13, 1981, 95 Stat. 195; Pub. L. 99–514, title XI,

§1164(a), Oct. 22, 1986, 100 Stat. 2511; Pub. L. 100–647, title I, §1011B(d), Nov. 10, 1988, 102 Stat. 3489; Pub. L. 104–188, title I, §1123(a), Aug. 20, 1996, 110 Stat. 1768; Pub. L. 105–206, title V, §5002(a), July 22, 1998, 112 Stat. 788.)

REFERENCES IN TEXT

Section 1886(d)(5)(B) or (h) of the Social Security Act, referred to in subsec. (d)(4)(B)(ii), is classified to section 1395ww(d)(5)(B) or (h) of Title 42, The Public Health and Welfare.

AMENDMENTS

1998—Subsec. (b)(4). Pub. L. 105–206 added par. (4).

1996—Subsec. (d)(4). Pub. L. 104–188 amended par. (4) generally. Prior to amendment, par. (4) read as follows: "EDUCATIONAL INSTITUTION.—For purposes of this paragraph, the term 'educational institution' means an institution described in section 170(b)(1)(A)(ii)."

1988—Subsec. (d). Pub. L. 100–647 struck out "(as of the close of the calendar year in which the taxable year begins)" after "appraised value" in par. (2)(A)(i) and inserted at end "The appraised value under subparagraph (A)(i) shall be determined as of the close of the calendar year in which the taxable year begins, or, in the case of a rental period not greater than 1 year, at any time during the calendar year in which such period begins." as concluding provision.

1986—Subsec. (d). Pub. L. 99–514 added subsec. (d).

1981—Subsec. (c). Pub. L. 97–34 added subsec. (c).

1980—Subsec. (a). Pub. L. 96–222 struck out "General rule" in subsec. (a) as in effect on the day before the date of enactment of the Foreign Earned Income Act of 1978 to correct a legislative oversight in the amendment of subsec. (a) of this section by section 205 of Pub. L. 95–615. The amendment by Pub. L. 95–615, however, was executed without reference to "General rule" as the probable intent of Congress, thereby requiring no change in text.

1978—Subsec. (a). Pub. L. 95–615 designated existing provisions as subsec. (a), added subsec. (a) heading, and substituted "furnished to him, his spouse, or any of his dependents by or on behalf of his employer for the convenience of the employer" for "furnished to him by his employer for the convenience of the employer".

Pub. L. 95–427 inserted provisions relating to factors not taken into account with respect to meals and certain fixed charges for meals.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–206, title v, §5002(b), July 22, 1998, 112 Stat. 789, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning before, on, or after the date of the enactment of this Act [July 22, 1998]."

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, §1123(b), Aug. 20, 1996, 110 Stat. 1768, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1995."

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XI, §1164(b), Oct. 22, 1986, 100 Stat. 2511, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1985."

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable with respect to taxable years beginning after Dec. 31, 1981, see section 115 of Pub. L. 97–34, set out as a note under section 911 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective as if included in the Foreign Earned Income Act of 1978, Pub. L. 95–615, see section 108(a)(2)(A) of Pub. L. 96–222, set out as a note under section 3 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–427, §4(b), Oct. 7, 1978, 92 Stat. 998, provided that: "The amendment made by subsection (a)

[amending this section] shall apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954."

EFFECTIVE DATE OF 1978 AMENDMENT; ELECTION OF PRIOR LAW

Amendment by Pub. L. 95–615 applicable to taxable years beginning after Dec. 31, 1977, with provision for election of prior law, see section 209 of Pub. L. 95–615, set out as a note under section 911 of this title.

STATUTE OF LIMITATIONS

Pub. L. 96–605, title I, §107(b), Dec. 28, 1980, 94 Stat. 3524, provided that: "In the case of any allowance received during calendar year 1974, 1975, 1976, or 1977, subsections (a)(2) and (e) of such section 3 [section 3 of Pub. L. 95–427, set out below] shall be applied by substituting the date one year after the date of the enactment of this Act [Dec. 28, 1980] for 'April 15, 1979' each place it appears."

TREATMENT OF CERTAIN STATUTORY SUBSISTENCE ALLOWANCES OR SUBSISTENCE ALLOWANCES NEGOTIATED IN ACCORDANCE WITH STATE LAW RECEIVED BY STATE POLICE OFFICERS BEFORE JANUARY 1, 1978

Pub. L. 95–427, §3, Oct. 7, 1978, 92 Stat. 996, as amended by Pub. L. 96–605, title I, §107(a), Dec. 28, 1980, 94 Stat. 3524; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) GENERAL RULE.—If—

"(1) an individual who was employed as a State police officer received a statutory subsistence allowance or a subsistence allowance negotiated in accordance with State law while so employed,

"(2) such individual elects, on or before April 15, 1979, and in such manner and form as the Secretary of the Treasury may prescribe, to have this section apply to such allowance, and

"(3) this section applies to such allowance,

then, for purposes of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], such allowance shall not be included in such individual's gross income.

"(b) ALLOWANCES TO WHICH SECTION APPLIES.—For purposes of this section, this section applies to any statutory subsistence allowance or subsistence allowance negotiated in accordance with State law which was received—

"(1) after December 31, 1969, and before January 1, 1974, to the extent such individual did not include such allowance in gross income on his income tax return for the taxable year in which such allowance was received, or

"(2) during the calendar year 1974, 1975, 1976, or 1977.

"(c) OTHER DEFINITIONS.—For purposes of this section—

"(1) STATE POLICE OFFICER.—The term 'State police officer' means any police officer (including a highway patrolman) employed by a State (or the District of Columbia) on a full-time basis with the power to arrest.

"(2) INCOME TAX RETURN.—The term 'income tax return' means the return of the taxes imposed by subtitle A of the Internal Revenue Code of 1986. If an individual filed before November 29, 1977, an amended return for any taxable year, such amended return shall be treated as the return for such taxable year.

"(d) LIMITATION ON DEDUCTION.—If any individual receives a subsistence allowance which is excluded from gross income under subsection (a), no deduction shall be allowed under any provision of chapter 1 of the Internal Revenue Code of 1986 for expenses in respect of which he has received such allowance, except to the extent that such expenses exceed the amount excludable from gross income under subsection (a) and the excess is otherwise allowed as a deduction under such chapter 1.

"(e) STATUTE OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from the application of this section is prevented at any time on or before April 15, 1979, by the operation of any law or rule of law (including res judicata), refund or credit of such overpayment (to the extent attributable to the application of this section) may, nevertheless, be made or allowed if claim therefor is filed on or before April 15, 1979."

§120. Amounts received under qualified group legal services plans

(a) Exclusion by employee for contributions and legal services provided by employer

Gross income of an employee, his spouse, or his dependents, does not include—

(1) amounts contributed by an employer on behalf of an employee, his spouse, or his

dependents under a qualified group legal services plan (as defined in subsection (b)); or

(2) the value of legal services provided, or amounts paid for legal services, under a qualified group legal services plan (as defined in subsection (b)) to, or with respect to, an employee, his spouse, or his dependents.

No exclusion shall be allowed under this section with respect to an individual for any taxable year to the extent that the value of insurance (whether through an insurer or self-insurance) against legal costs incurred by the individual (or his spouse or dependents) provided under a qualified group legal services plan exceeds $70.

(b) Qualified group legal services plan

For purposes of this section, a qualified group legal services plan is a separate written plan of an employer for the exclusive benefit of his employees or their spouses or dependents to provide such employees, spouses, or dependents with specified benefits consisting of personal legal services through prepayment of, or provision in advance for, legal fees in whole or in part by the employer, if the plan meets the requirements of subsection (c).

(c) Requirements

(1) Discrimination

The contributions or benefits provided under the plan shall not discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q)).

(2) Eligibility

The plan shall benefit employees who qualify under a classification set up by the employer and found by the Secretary not to be discriminatory in favor of employees who are described in paragraph (1). For purposes of this paragraph, there shall be excluded from consideration employees not included in the plan who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, if there is evidence that group legal services plan benefits were the subject of good faith bargaining between such employee representatives and such employer or employers.

(3) Contribution limitation

Not more than 25 percent of the amounts contributed under the plan during the year may be provided for the class of individuals who are shareholders or owners (or their spouses or dependents), each of whom (on any day of the year) owns more than 5 percent of the stock or of the capital or profits interest in the employer.

(4) Notification

The plan shall give notice to the Secretary, in such manner as the Secretary may by regulations prescribe, that it is applying for recognition of the status of a qualified group legal services plan.

(5) Contributions

Amounts contributed under the plan shall be paid only (A) to insurance companies, or to organizations or persons that provide personal legal services, or indemnification against the cost of personal legal services, in exchange for a prepayment or payment of a premium, (B) to organizations or trusts described in section 501(c)(20), (C) to organizations described in section 501(c) which are permitted by that section to receive payments from an employer for support of one or more qualified group legal services plan or plans, except that such organizations shall pay or credit the contribution to an organization or trust described in section 501(c)(20), (D) as prepayments to providers of legal services under the plan, or (E) a combination of the above.

(d) Other definitions and special rules

For purposes of this section—

(1) Employee

The term "employee" includes, for any year, an individual who is an employee within the meaning of section 401(c)(1) (relating to self-employed individuals).

(2) Employer

An individual who owns the entire interest in an unincorporated trade or business shall be treated as his own employer. A partnership shall be treated as the employer of each partner who is an employee within the meaning of paragraph (1).

(3) Allocations

Allocations of amounts contributed under the plan shall be made in accordance with regulations prescribed by the Secretary and shall take into account the expected relative utilization of benefits to be provided from such contributions or plan assets and the manner in which any premium or other charge was developed.

(4) Dependent

The term "dependent" has the meaning given to it by section 152 (determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof).

(5) Exclusive benefit

In the case of a plan to which contributions are made by more than one employer, in determining whether the plan is for the exclusive benefit of an employer's employees or their spouses or dependents, the employees of any employer who maintains the plan shall be considered to be the employees of each employer who maintains the plan.

(6) Attribution rules

For purposes of this section—

(A) ownership of stock in a corporation shall be determined in accordance with the rules provided under subsections (d) and (e) of section 1563 (without regard to section 1563(e)(3)(C)), and

(B) the interest of an employee in a trade or business which is not incorporated shall be determined in accordance with regulations prescribed by the Secretary, which shall be based on principles similar to the principles which apply in the case of subparagraph (A).

(7) Time of notice to Secretary

A plan shall not be a qualified group legal services plan for any period prior to the time notification was provided to the Secretary in accordance with subsection (c)(4), if such notice is given after the time prescribed by the Secretary by regulations for giving such notice.

(e) Termination

This section and section 501(c)(20) shall not apply to taxable years beginning after June 30, 1992.

(f) Cross reference

For reporting and recordkeeping requirements, see section 6039D.

(Added Pub. L. 94–455, title XXI, §2134(a), Oct. 4, 1976, 90 Stat. 1926; amended Pub. L. 97–34, title VIII, §802(a), Aug. 13, 1981, 95 Stat. 349; Pub. L. 97–448, title I, §108(a), Jan. 12, 1983, 96 Stat. 2391; Pub. L. 98–612, §1(a), (b)(3)(A), Oct. 31, 1984, 98 Stat. 3180, 3181; Pub. L. 99–514, title XI, §§1114(b)(3), 1151(c)(3), (g)(1), 1162(b), Oct. 22, 1986, 100 Stat. 2450, 2503, 2506, 2510; Pub. L. 100–647, title I, §1011B(a)(31)(B), title IV, §4002(a), (b)(1), Nov. 10, 1988, 102 Stat. 3488, 3643; Pub. L. 101–140, title II, §203(a)(1), (2), Nov. 8, 1989, 103 Stat. 830; Pub. L. 101–239, title VII, §7102(a)(1), Dec. 19, 1989, 103 Stat. 2305; Pub. L. 101–508, title XI, §11404(a), Nov. 5, 1990, 104 Stat. 1388–473; Pub. L. 102–227, title I, §104(a)(1), Dec. 11, 1991, 105 Stat. 1687; Pub. L. 108–311, title II, §207(10), Oct. 4, 2004, 118 Stat. 1177.)

PRIOR PROVISIONS

A prior section 120, act Aug. 16, 1954, ch. 736, 68A Stat. 39, related to statutory subsistence allowance received by police, prior to repeal by Pub. L. 85–866, title I, §3(a), (c), Sept. 2, 1958, 72 Stat. 1607, effective with respect to taxable years ending after Sept. 30, 1958, but only with respect to amounts received as a

statutory subsistence allowance for any day after Sept. 30, 1958.

AMENDMENTS

2004—Subsec. (d)(4). Pub. L. 108–311 inserted "(determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof)" after "section 152".

1991—Subsec. (e). Pub. L. 102–227 substituted "June 30, 1992" for "December 31, 1991".

1990—Subsec. (e). Pub. L. 101–508 substituted "December 31, 1991" for "September 30, 1990".

1989—Subsec. (b). Pub. L. 101–140, §203(a)(1), amended subsec. (b) to read as if amendments by Pub. L. 99–514, §1151(c)(3), had not been enacted, see 1986 Amendment note below.

Subsec. (c)(2). Pub. L. 101–140, §203(a)(2), amended par. (2) to read as if amendments by Pub. L. 100–647, §1011B(a)(31)(B), had not been enacted, see 1988 Amendment note below.

Pub. L. 101–140, §203(a)(1), amended par. (2) to read as if amendments by Pub. L. 99–514, §1151(g)(1), had not been enacted, see 1986 Amendment note below.

Subsec. (e). Pub. L. 101–239 substituted "taxable years beginning after September 30, 1990" for "taxable years ending after December 31, 1988".

1988—Subsec. (a). Pub. L. 100–647, §4002(b)(1), inserted at end "No exclusion shall be allowed under this section with respect to an individual for any taxable year to the extent that the value of insurance (whether through an insurer or self-insurance) against legal costs incurred by the individual (or his spouse or dependents) provided under a qualified group legal services plan exceeds $70."

Subsec. (c)(2). Pub. L. 100–647, §1011B(a)(31)(B), substituted "there shall" for "there may" and "who are" for "who may be".

Subsec. (e). Pub. L. 100–647, §4002(a), substituted "1988" for "1987".

1986—Subsec. (b). Pub. L. 99–514, §1151(c)(3), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "For purposes of this section, a qualified group legal services plan is a separate written plan of an employer for the exclusive benefit of his employees or their spouses or dependents to provide such employees, spouses, or dependents with specified benefits consisting of personal legal services through prepayment of, or provision in advance for, legal fees in whole or in part by the employer, if the plan meets the requirements of subsection (c)."

Subsec. (c)(1). Pub. L. 99–514, §1114(b)(3)(A), substituted "highly compensated employees (within the meaning of section 414(q))" for "officers, shareholders, self-employed individuals, or highly compensated".

Subsec. (c)(2). Pub. L. 99–514, §1151(g)(1), substituted "For purposes of this paragraph, there may be excluded from consideration employees who may be excluded from consideration under section 89(h)." for "For purposes of this paragraph, there shall be excluded from consideration employees not included in the plan who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, if there is evidence that group legal services plan benefits were the subject of good faith bargaining between such employee representatives and such employer or employers."

Subsec. (d)(1). Pub. L. 99–514, §1114(b)(3)(B), struck out reference to self-employed individuals in heading, and substituted "The" for "The term 'self-employed individual' means, and the" in text.

Subsec. (e). Pub. L. 99–514, §1162(b), substituted "December 31, 1987" for "December 31, 1985".

1984—Subsec. (e). Pub. L. 98–612, §1(a), substituted "December 31, 1985" for "December 31, 1984".

Subsec. (f). Pub. L. 98–612, §1(b)(3)(A), added subsec. (f).

1983—Subsec. (e). Pub. L. 97–448 substituted "This section and section 501(c)(20) shall not apply" for "This section shall not apply".

1981—Subsec. (e). Pub. L. 97–34 added subsec. (e).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102–227, title I, §104(b), Dec. 11, 1991, 105 Stat. 1687, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1991."

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, §11404(c), Nov. 5, 1990, 104 Stat. 1388–473, provided that: "The amendments made by this section [amending this section and repealing provisions set out below] shall apply to taxable years beginning after December 31, 1989."

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7102(b), Dec. 19, 1989, 103 Stat. 2305, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after December 31, 1988."

Amendment by Pub. L. 101–140 effective as if included in section 1151 of Pub. L. 99–514, see section 203(c) of Pub. L. 101–140, set out as a note under section 79 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011B(a)(31)(B) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title IV, §4002(c), Nov. 10, 1988, 102 Stat. 3643, provided that: "The amendments made by this section [amending this section and section 125 of this title] shall apply to taxable years ending after December 31, 1987."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1114(b)(3) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1987, see section 1114(c)(2) of Pub. L. 99–514, set out as a note under section 414 of this title.

Amendment by section 1151(c)(3), (g)(1) of Pub. L. 99–514 applicable, with certain qualifications and exceptions, to years beginning after Dec. 31, 1988, see section 1151(k) of Pub. L. 99–514, as amended, set out as a note under section 79 of this title.

Pub. L. 99–514, title XI, §1162(c), Oct. 22, 1986, 100 Stat. 2510, provided that:

"(1) SUBSECTION (a).—The amendments made by subsection (a) [amending section 127 of this title] shall apply to taxable years beginning after December 31, 1985.

"(2) SUBSECTION (b).—The amendment made by subsection (b) [amending this section] shall apply to years ending after December 31, 1985.

"(3) CAFETERIA PLAN WITH GROUP LEGAL BENEFITS.—If, within 60 days after the date of the enactment of this Act [Oct. 22, 1986], an employee elects under a cafeteria plan under section 125 of the Internal Revenue Code of 1986 coverage for group legal benefits to which section 120 of such Code applies, such election may, at the election of the taxpayer, apply to all legal services provided during 1986. The preceding sentence shall not apply to any plan which on August 16, 1986, offered such group legal benefits under such plan."

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–612, §1(d)(1), Oct. 31, 1984, 98 Stat. 3181, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after December 31, 1984."

Amendment by section 1(b)(3)(A) of Pub. L. 98–612 effective Jan. 1, 1985, see section 1(d)(2) of Pub. L. 98–612.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE

Pub. L. 94–455, title XXI, §2134(e), Oct. 4, 1976, 90 Stat. 1928, as amended by Pub. L. 95–600, title VII, §703(b)(1), Nov. 6, 1978, 92 Stat. 2939; Pub. L. 97–34, title VIII, §802(b), Aug. 13, 1981, 95 Stat. 349; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this section and section 501 of this title] shall apply to taxable years beginning after December 31, 1976.

"(2) NOTICE REQUIREMENT.—For purposes of section 120(d)(7) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] the time prescribed by the Secretary of the Treasury by regulations for giving the notice required by section 120(c)(4) of such Code shall not expire before the 90th day after the day on which regulations prescribed under such section 120(c)(4) first become final.

"(3) EXISTING PLANS.—

"(A) For purposes of section 120 of the Internal Revenue Code of 1986, a written group legal services plan which was in existence on June 4, 1976, shall be considered as satisfying the requirements of subsections (b) and (c) of such section 120 for the period ending with the compliance date (determined under subparagraph (B)).

"(B) COMPLIANCE DATE.—For purposes of this paragraph, the term 'compliance date' means—

"(i) the date occurring 180 days after the date of the enactment of this Act [Oct. 4, 1976], or

"(ii) if later, in the case of a plan which is maintained pursuant to one or more agreements which the Secretary of Labor finds to be collective bargaining agreements, the earlier of December 31, 1981, or the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act [Oct. 4, 1976])."

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1114 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

EXTENSION OF EMPLOYER-PROVIDED GROUP LEGAL SERVICES

Pub. L. 102–227, title I, §104(a)(2), Dec. 11, 1991, 105 Stat. 1687, provided that: "In the case of any taxable year beginning in 1992, only amounts paid before July 1, 1992, by the employer for coverage for the employee, his spouse, or his dependents, under a qualified group legal services plan for periods before July 1, 1992, shall be taken into account in determining the amount excluded under section 120 of the Internal Revenue Code of 1986 with respect to such employee for such taxable year."

SPECIAL RULE FOR TAXABLE YEARS BEGINNING IN 1990

Pub. L. 101–239, title VII, §7102(a)(2), Dec. 19, 1989, 103 Stat. 2305, provided that in the case of any taxable year beginning in 1990, only amounts paid before October 1, 1990, by the employer for coverage for the employee, his spouse, or his dependents under a qualified group legal services plan for periods before October 1, 1990, would be taken into account in determining the amount excluded under this section with respect to such employee for such taxable year, prior to repeal by Pub. L. 101–508, title XI, §11404(b), Nov. 5, 1990, 104 Stat. 1388–473.

NONENFORCEMENT OF AMENDMENT MADE BY SECTION 1151 OF PUB. L. 99–514 FOR FISCAL YEAR 1990

No monies appropriated by Pub. L. 101–136 to be used to implement or enforce section 1151 of Pub. L. 99–514 or the amendments made by such section, see section 528 of Pub. L. 101–136, set out as a note under section 89 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

STUDY AND REPORT

Pub. L. 94–455, title XXI, §2134(d), Oct. 4, 1976, 90 Stat. 1928, provided that a complete study and investigation with respect to the desirability and feasibility of continuing the exclusion from income of certain prepaid group legal services benefits under section 120 of the Internal Revenue Code of 1954 be made by the Secretary of Labor and the Secretary of the Treasury, with a report to the President and the Congress not later than Dec. 31, 1980.

§121. Exclusion of gain from sale of principal residence

(a) Exclusion

Gross income shall not include gain from the sale or exchange of property if, during the 5-year period ending on the date of the sale or exchange, such property has been owned and used by the taxpayer as the taxpayer's principal residence for periods aggregating 2 years or more.

(b) Limitations

(1) In general

The amount of gain excluded from gross income under subsection (a) with respect to any sale or exchange shall not exceed $250,000.

(2) Special rules for joint returns

In the case of a husband and wife who make a joint return for the taxable year of the sale or exchange of the property—

(A) $500,000 Limitation for certain joint returns

Paragraph (1) shall be applied by substituting "$500,000" for "$250,000" if—

(i) either spouse meets the ownership requirements of subsection (a) with respect to such property;

(ii) both spouses meet the use requirements of subsection (a) with respect to such property; and

(iii) neither spouse is ineligible for the benefits of subsection (a) with respect to such property by reason of paragraph (3).

(B) Other joint returns

If such spouses do not meet the requirements of subparagraph (A), the limitation under paragraph (1) shall be the sum of the limitations under paragraph (1) to which each spouse would be entitled if such spouses had not been married. For purposes of the preceding sentence, each spouse shall be treated as owning the property during the period that either spouse owned the property.

(3) Application to only 1 sale or exchange every 2 years

(A) In general

Subsection (a) shall not apply to any sale or exchange by the taxpayer if, during the 2-year period ending on the date of such sale or exchange, there was any other sale or exchange by the taxpayer to which subsection (a) applied.

(B) Pre-May 7, 1997, sales not taken into account

Subparagraph (A) shall be applied without regard to any sale or exchange before May 7, 1997.

(4) [1] Special rule for certain sales by surviving spouses

In the case of a sale or exchange of property by an unmarried individual whose spouse is deceased on the date of such sale, paragraph (1) shall be applied by substituting "$500,000" for "$250,000" if such sale occurs not later than 2 years after the date of death of such spouse and the requirements of paragraph (2)(A) were met immediately before such date of death.

(4) [1] Exclusion of gain allocated to nonqualified use

(A) In general

Subsection (a) shall not apply to so much of the gain from the sale or exchange of property as is allocated to periods of nonqualified use.

(B) Gain allocated to periods of nonqualified use

For purposes of subparagraph (A), gain shall be allocated to periods of nonqualified use based on the ratio which—

(i) the aggregate periods of nonqualified use during the period such property was owned by the taxpayer, bears to

(ii) the period such property was owned by the taxpayer.

(C) Period of nonqualified use

For purposes of this paragraph—

(i) In general

The term "period of nonqualified use" means any period (other than the portion of any

period preceding January 1, 2009) during which the property is not used as the principal residence of the taxpayer or the taxpayer's spouse or former spouse.

(ii) Exceptions

The term "period of nonqualified use" does not include—

(I) any portion of the 5-year period described in subsection (a) which is after the last date that such property is used as the principal residence of the taxpayer or the taxpayer's spouse,

(II) any period (not to exceed an aggregate period of 10 years) during which the taxpayer or the taxpayer's spouse is serving on qualified official extended duty (as defined in subsection (d)(9)(C)) described in clause (i), (ii), or (iii) of subsection (d)(9)(A), and

(III) any other period of temporary absence (not to exceed an aggregate period of 2 years) due to change of employment, health conditions, or such other unforeseen circumstances as may be specified by the Secretary.

(D) Coordination with recognition of gain attributable to depreciation

For purposes of this paragraph—

(i) subparagraph (A) shall be applied after the application of subsection (d)(6), and

(ii) subparagraph (B) shall be applied without regard to any gain to which subsection (d)(6) applies.

(c) Exclusion for taxpayers failing to meet certain requirements

(1) In general

In the case of a sale or exchange to which this subsection applies, the ownership and use requirements of subsection (a), and subsection (b)(3), shall not apply; but the dollar limitation under paragraph (1) or (2) of subsection (b), whichever is applicable, shall be equal to—

(A) the amount which bears the same ratio to such limitation (determined without regard to this paragraph) as

(B)(i) the shorter of—

(I) the aggregate periods, during the 5-year period ending on the date of such sale or exchange, such property has been owned and used by the taxpayer as the taxpayer's principal residence; or

(II) the period after the date of the most recent prior sale or exchange by the taxpayer to which subsection (a) applied and before the date of such sale or exchange, bears to

(ii) 2 years.

(2) Sales and exchanges to which subsection applies

This subsection shall apply to any sale or exchange if—

(A) subsection (a) would not (but for this subsection) apply to such sale or exchange by reason of—

(i) a failure to meet the ownership and use requirements of subsection (a), or

(ii) subsection (b)(3), and

(B) such sale or exchange is by reason of a change in place of employment, health, or, to the extent provided in regulations, unforeseen circumstances.

(d) Special rules

(1) Joint returns

If a husband and wife make a joint return for the taxable year of the sale or exchange of the property, subsections (a) and (c) shall apply if either spouse meets the ownership and use requirements of subsection (a) with respect to such property.

(2) Property of deceased spouse

For purposes of this section, in the case of an unmarried individual whose spouse is deceased on

the date of the sale or exchange of property, the period such unmarried individual owned and used such property shall include the period such deceased spouse owned and used such property before death.

(3) Property owned by spouse or former spouse

For purposes of this section—

(A) Property transferred to individual from spouse or former spouse

In the case of an individual holding property transferred to such individual in a transaction described in section 1041(a), the period such individual owns such property shall include the period the transferor owned the property.

(B) Property used by former spouse pursuant to divorce decree, etc.

Solely for purposes of this section, an individual shall be treated as using property as such individual's principal residence during any period of ownership while such individual's spouse or former spouse is granted use of the property under a divorce or separation instrument (as defined in section 71(b)(2)).

(4) Tenant-stockholder in cooperative housing corporation

For purposes of this section, if the taxpayer holds stock as a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as defined in such section), then—

(A) the holding requirements of subsection (a) shall be applied to the holding of such stock, and

(B) the use requirements of subsection (a) shall be applied to the house or apartment which the taxpayer was entitled to occupy as such stockholder.

(5) Involuntary conversions

(A) In general

For purposes of this section, the destruction, theft, seizure, requisition, or condemnation of property shall be treated as the sale of such property.

(B) Application of section 1033

In applying section 1033 (relating to involuntary conversions), the amount realized from the sale or exchange of property shall be treated as being the amount determined without regard to this section, reduced by the amount of gain not included in gross income pursuant to this section.

(C) Property acquired after involuntary conversion

If the basis of the property sold or exchanged is determined (in whole or in part) under section 1033(b) (relating to basis of property acquired through involuntary conversion), then the holding and use by the taxpayer of the converted property shall be treated as holding and use by the taxpayer of the property sold or exchanged.

(6) Recognition of gain attributable to depreciation

Subsection (a) shall not apply to so much of the gain from the sale of any property as does not exceed the portion of the depreciation adjustments (as defined in section 1250(b)(3)) attributable to periods after May 6, 1997, in respect of such property.

(7) Determination of use during periods of out-of-residence care

In the case of a taxpayer who—

(A) becomes physically or mentally incapable of self-care, and

(B) owns property and uses such property as the taxpayer's principal residence during the 5-year period described in subsection (a) for periods aggregating at least 1 year,

then the taxpayer shall be treated as using such property as the taxpayer's principal residence during any time during such 5-year period in which the taxpayer owns the property and resides in any facility (including a nursing home) licensed by a State or political subdivision to care for an

individual in the taxpayer's condition.

(8) Sales of remainder interests

For purposes of this section—

(A) In general

At the election of the taxpayer, this section shall not fail to apply to the sale or exchange of an interest in a principal residence by reason of such interest being a remainder interest in such residence, but this section shall not apply to any other interest in such residence which is sold or exchanged separately.

(B) Exception for sales to related parties

Subparagraph (A) shall not apply to any sale to, or exchange with, any person who bears a relationship to the taxpayer which is described in section 267(b) or 707(b).

(9) Uniformed services, Foreign Service, and intelligence community

(A) In general

At the election of an individual with respect to a property, the running of the 5-year period described in subsections (a) and (c)(1)(B) and paragraph (7) of this subsection with respect to such property shall be suspended during any period that such individual or such individual's spouse is serving on qualified official extended duty—

(i) as a member of the uniformed services,

(ii) as a member of the Foreign Service of the United States, or

(iii) as an employee of the intelligence community.

(B) Maximum period of suspension

The 5-year period described in subsection (a) shall not be extended more than 10 years by reason of subparagraph (A).

(C) Qualified official extended duty

For purposes of this paragraph—

(i) In general

The term "qualified official extended duty" means any extended duty while serving at a duty station which is at least 50 miles from such property or while residing under Government orders in Government quarters.

(ii) Uniformed services

The term "uniformed services" has the meaning given such term by section 101(a)(5) of title 10, United States Code, as in effect on the date of the enactment of this paragraph.

(iii) Foreign Service of the United States

The term "member of the Foreign Service of the United States" has the meaning given the term "member of the Service" by paragraph (1), (2), (3), (4), or (5) of section 103 of the Foreign Service Act of 1980, as in effect on the date of the enactment of this paragraph.

(iv) Employee of intelligence community

The term "employee of the intelligence community" means an employee (as defined by section 2105 of title 5, United States Code) of—

(I) the Office of the Director of National Intelligence,

(II) the Central Intelligence Agency,

(III) the National Security Agency,

(IV) the Defense Intelligence Agency,

(V) the National Geospatial-Intelligence Agency,

(VI) the National Reconnaissance Office,

(VII) any other office within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs,

(VIII) any of the intelligence elements of the Army, the Navy, the Air Force, the Marine Corps, the Federal Bureau of Investigation, the Department of Treasury, the Department of Energy, and the Coast Guard,

(IX) the Bureau of Intelligence and Research of the Department of State, or

(X) any of the elements of the Department of Homeland Security concerned with the analyses of foreign intelligence information.

(v) Extended duty

The term "extended duty" means any period of active duty pursuant to a call or order to such duty for a period in excess of 90 days or for an indefinite period.

(D) Special rules relating to election

(i) Election limited to 1 property at a time

An election under subparagraph (A) with respect to any property may not be made if such an election is in effect with respect to any other property.

(ii) Revocation of election

An election under subparagraph (A) may be revoked at any time.

(10) Property acquired in like-kind exchange

If a taxpayer acquires property in an exchange with respect to which gain is not recognized (in whole or in part) to the taxpayer under subsection (a) or (b) of section 1031, subsection (a) shall not apply to the sale or exchange of such property by such taxpayer (or by any person whose basis in such property is determined, in whole or in part, by reference to the basis in the hands of such taxpayer) during the 5-year period beginning with the date of such acquisition.

[(11) Repealed. Pub. L. 111–312, title III, §301(a), Dec. 17, 2010, 124 Stat. 3300]

(12) Peace Corps

(A) In general

At the election of an individual with respect to a property, the running of the 5-year period described in subsections (a) and (c)(1)(B) and paragraph (7) of this subsection with respect to such property shall be suspended during any period that such individual or such individual's spouse is serving outside the United States—

(i) on qualified official extended duty (as defined in paragraph (9)(C)) as an employee of the Peace Corps, or

(ii) as an enrolled volunteer or volunteer leader under section 5 or 6 (as the case may be) of the Peace Corps Act (22 U.S.C. 2504, 2505).

(B) Applicable rules

For purposes of subparagraph (A), rules similar to the rules of subparagraphs (B) and (D) [2] shall apply.

(e) Denial of exclusion for expatriates

This section shall not apply to any sale or exchange by an individual if the treatment provided by section 877(a)(1) applies to such individual.

(f) Election to have section not apply

This section shall not apply to any sale or exchange with respect to which the taxpayer elects not to have this section apply.

(g) Residences acquired in rollovers under section 1034

For purposes of this section, in the case of property the acquisition of which by the taxpayer resulted under section 1034 [3] (as in effect on the day before the date of the enactment of this section) in the nonrecognition of any part of the gain realized on the sale or exchange of another residence, in determining the period for which the taxpayer has owned and used such property as the taxpayer's

principal residence, there shall be included the aggregate periods for which such other residence (and each prior residence taken into account under section 1223(6) in determining the holding period of such property) had been so owned and used.

(Added Pub. L. 88–272, title II, §206(a), Feb. 26, 1964, 78 Stat. 38; amended Pub. L. 94–455, title XIV, §1404(a), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1733, 1834; Pub. L. 95–600, title IV, §404(a)–(c)(2), Nov. 6, 1978, 92 Stat. 2869, 2870; Pub. L. 97–34, title I, §123(a), Aug. 13, 1981, 95 Stat. 197; Pub. L. 100–647, title VI, §6011(a), Nov. 10, 1988, 102 Stat. 3691; Pub. L. 105–34, title III, §312(a), Aug. 5, 1997, 111 Stat. 836; Pub. L. 105–206, title VI, §6005(e)(1), (2), July 22, 1998, 112 Stat. 805; Pub. L. 107–16, title V, §542(c), June 7, 2001, 115 Stat. 84; Pub. L. 108–121, title I, §101(a), Nov. 11, 2003, 117 Stat. 1336; Pub. L. 108–357, title VIII, §840(a), Oct. 22, 2004, 118 Stat. 1597; Pub. L. 109–135, title IV, §§402(a)(3), 403(ee), Dec. 21, 2005, 119 Stat. 2610, 2631; Pub. L. 109–432, div. A, title IV, §417(a)–(d), Dec. 20, 2006, 120 Stat. 2965, 2966; Pub. L. 110–142, §7(a), Dec. 20, 2007, 121 Stat. 1806; Pub. L. 110–172, §11(a)(11)(A), Dec. 29, 2007, 121 Stat. 2485; Pub. L. 110–245, title I, §§110(a), 113(a), (b), June 17, 2008, 122 Stat. 1633, 1635; Pub. L. 110–289, div. C, title III, §3092(a), July 30, 2008, 122 Stat. 2911; Pub. L. 111–312, title III, §301(a), Dec. 17, 2010, 124 Stat. 3300.)

REFERENCES IN TEXT

The date of the enactment of this paragraph, referred to in subsec. (d)(9)(C)(ii), (iii), is the date of enactment of Pub. L. 108–121, which was approved Nov. 11, 2003.

Section 103 of the Foreign Service Act of 1980, referred to in subsec. (d)(9)(C)(iii), is classified to section 3903 of Title 22, Foreign Relations and Intercourse.

Section 1034 (as in effect on the day before the date of the enactment of this section), referred to in subsec. (g), probably means section 1034 of this title as in effect on the day before the date of enactment of Pub. L. 105–34 which amended this section generally and was approved Aug. 5, 1997. Section 1034 was repealed by Pub. L. 105–34, title III, §312(b), Aug. 5, 1997, 111 Stat. 839.

CODIFICATION

Pub. L. 109–135, title IV, §403(ee)(1), (nn), Dec. 21, 2005, 119 Stat. 2631, 2632, which directed that subsec. (d) of this section be amended by redesignating the paragraph (10) relating to property acquired from a decedent as paragraph (11), effective as if included in the provisions to which such amendment relates of the American Jobs Creation Act of 2004, Pub. L. 108–357, was executed as the probable intent of Congress by redesignating as paragraph (11) the paragraph (10) directed to be added to subsec. (d) of this section by Pub. L. 107–16, §542(c), (f)(1), applicable to estates of decedents dying after Dec. 31, 2009. See Codification note, 2001, 2003, and 2005 Amendment notes, and Effective Date of 2005 Amendment note below.

Pub. L. 108–121, title I, §101(a), (b)(1), Nov. 11, 2003, 117 Stat. 1336, which directed that subsec. (d) of this section be amended by redesignating paragraph (9) as (10) and adding a new paragraph (9), effective as if included in the amendments made by section 312 of the Taxpayer Relief Act of 1997, Pub. L. 105–34, could not literally be executed insofar as it directed the redesignation because subsec. (d), as amended by Pub. L. 105–34, did not contain a paragraph (9). However, to reflect the probable intent of Congress, the amendment was executed by redesignating as paragraph (10) the paragraph (9) directed to be added to subsec. (d) of this section by Pub. L. 107–16, §542(c), (f)(1), applicable to estates of decedents dying after Dec. 31, 2009. See Codification note above and 2001, 2003, and 2005 Amendment notes and Effective Date of 2003 Amendment note below.

PRIOR PROVISIONS

A prior section 121 was renumbered section 140 of this title.

AMENDMENTS

2010—Subsec. (d)(11). Pub. L. 111–312 amended subsec. (d) to read as if amendment by Pub. L. 107–16, §542(c), which originally added par. (9), had never been enacted. See Codification notes above and 2001 Amendment note and Effective Date of 2010 Amendment note below. Prior to amendment, par. (11) read as follows: "PROPERTY ACQUIRED FROM A DECEDENT.—The exclusion under this section shall apply to property sold by—

"(A) the estate of a decedent,

"(B) any individual who acquired such property from the decedent (within the meaning of section 1022), and

"(C) a trust which, immediately before the death of the decedent, was a qualified revocable trust (as defined in section 645(b)(1)) established by the decedent,

determined by taking into account the ownership and use by the decedent."

2008—Subsec. (b)(4). Pub. L. 110–289 added par. (4) relating to exclusion of gain allocated to nonqualified use.

Subsec. (d)(9)(C)(vi). Pub. L. 110–245, §113(b), struck out heading and text of cl. (vi). Text read as follows: "An employee of the intelligence community shall not be treated as serving on qualified extended duty unless such duty is at a duty station located outside the United States."

Subsec. (d)(9)(E). Pub. L. 110–245, §113(a), struck out heading and text of subpar. (E). Text read as follows: "Clause (iii) of subparagraph (A) shall not apply with respect to any sale or exchange after December 31, 2010."

Subsec. (d)(12). Pub. L. 110–245, §110(a), added par. (12).

2007—Subsec. (b)(4). Pub. L. 110–142 added par. (4) relating to special rule for certain sales by surviving spouses.

Subsec. (d)(9)(E). Pub. L. 110–172 added subpar. (E).

2006—Subsec. (d)(9). Pub. L. 109–432, §417(d), substituted "Uniformed services, Foreign Service, and intelligence community" for "Members of uniformed services and Foreign Service" in heading.

Subsec. (d)(9)(A). Pub. L. 109–432, §417(a), substituted "duty—

"(i) as a member of the uniformed services,

"(ii) as a member of the Foreign Service of the United States, or

"(iii) as an employee of the intelligence community."

for "duty as a member of the uniformed services or of the Foreign Service of the United States."

Subsec. (d)(9)(C)(iv), (v). Pub. L. 109–432, §417(b), added cl. (iv) and redesignated former cl. (iv) as (v).

Subsec. (d)(9)(C)(vi). Pub. L. 109–432, §417(c), added cl. (vi).

2005—Subsec. (d)(10). Pub. L. 109–135, §403(ee)(2), amended heading and text of par. (10) relating to property acquired in like-kind exchange generally. Prior to amendment, text read as follows: "If a taxpayer acquired property in an exchange to which section 1031 applied, subsection (a) shall not apply to the sale or exchange of such property if it occurs during the 5-year period beginning with the date of the acquisition of such property."

Subsec. (d)(11). Pub. L. 109–135, §403(ee)(1), redesignated par. (10), formerly par. (9), as added by Pub. L. 107–16, as (11). See Codification notes above and 2001 and 2003 Amendment notes and Effective Date of 2001 Amendment note below.

Subsec. (g). Pub. L. 109–135, §402(a)(3), substituted "section 1223(6)" for "section 1223(7)".

2004—Subsec. (d)(10). Pub. L. 108–357 added par. (10) relating to property acquired in like-kind exchange.

2003—Subsec. (d)(9), (10). Pub. L. 108–121 added par. (9) and redesignated former par. (9), as added by Pub. L. 107–16, as (10). See Codification notes above and 2001 Amendment note and Effective Date of 2001 Amendment note below.

2001—Subsec. (d)(9). Pub. L. 107–16, §542(c), added par. (9). See Codification notes above and Effective Date of 2001 Amendment note below.

1998—Subsec. (b)(2). Pub. L. 105–206, §6005(e)(1), substituted "Special rules for joint returns" for "$500,000 limitation for certain joint returns" in heading and amended text generally. Prior to amendment, text read as follows: "Paragraph (1) shall be applied by substituting '$500,000' for '$250,000' if—

"(A) a husband and wife make a joint return for the taxable year of the sale or exchange of the property,

"(B) either spouse meets the ownership requirements of subsection (a) with respect to such property,

"(C) both spouses meet the use requirements of subsection (a) with respect to such property, and

"(D) neither spouse is ineligible for the benefits of subsection (a) with respect to such property by reason of paragraph (3)."

Subsec. (c)(1). Pub. L. 105–206, §6005(e)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "In the case of a sale or exchange to which this subsection applies, the ownership and use requirements of subsection (a) shall not apply and subsection (b)(3) shall not apply; but the amount of gain excluded from gross income under subsection (a) with respect to such sale or exchange shall not exceed—

"(A) the amount which bears the same ratio to the amount which would be so excluded under this section if such requirements had been met, as

"(B) the shorter of—

"(i) the aggregate periods, during the 5-year period ending on the date of such sale or exchange,

such property has been owned and used by the taxpayer as the taxpayer's principal residence, or

"(ii) the period after the date of the most recent prior sale or exchange by the taxpayer to which subsection (a) applied and before the date of such sale or exchange,

bears to 2 years."

1997—Pub. L. 105–34 amended section catchline and text generally. Prior to amendment, section related to one-time exclusion of gain from sale of principal residence by individual who had attained age 55.

1988—Subsec. (d)(9). Pub. L. 100–647 added par. (9).

1981—Subsec. (b)(1). Pub. L. 97–34 substituted "$125,000 ($62,500" for "$100,000 ($50,000".

1978—Pub. L. 95–600, §404(a), substituted "One-time exclusion of gain from sale of principal residence by individual who has attained age 55" for "Gain from sale or exchange of residence of individual who has attained age 65" in section catchline.

Subsec. (a). Pub. L. 95–600, §404(a), substituted "55" for "65", "5-year" for "8-year", and "3 years" for "5 years".

Subsec. (b). Pub. L. 95–600, §404(a), in par. (1) substituted provisions respecting dollar limitations for amount of gain for provisions setting forth applicable limitations where the adjusted sales price exceeds $35,000 and added par. (3).

Subsec. (d)(2). Pub. L. 95–600, §404(c)(1), substituted "5-year period" for "8-year period".

Subsec. (d)(5). Pub. L. 95–600, §404(c)(2), substituted "5-year period" for "8-year period" and "3 years" for "5 years".

Subsec. (d)(8). Pub. L. 95–600, §404(b), added par. (8).

1976—Subsec. (b)(1). Pub. L. 94–455, §1404(a), substituted "$35,000" for "$20,000" in three places.

Subsecs. (c), (d)(5). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

EFFECTIVE AND TERMINATION DATES OF 2010 AMENDMENT

Pub. L. 111–312, title III, §301(e), Dec. 17, 2010, 124 Stat. 3301, provided that: "Except as otherwise provided in this section, the amendments made by this section [amending this section and sections 170, 684, 1014, 1040, 1221, 1246, 1291, 1296, 2505, 4947, 6018, 6019, 6075, and 7701 of this title and repealing sections 1022, 2210, 2664, and 6716 of this title] shall apply to estates of decedents dying, and transfers made, after December 31, 2009."

Pub. L. 111–312, title III, §304, Dec. 17, 2010, 124 Stat. 3304, which provided that section 901 of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, would apply to the amendments made by title III of Pub. L. 111–312, was repealed by Pub. L. 112–240, title I, §101(a)(2), Jan. 2, 2013, 126 Stat. 2315.

[Amendment by Pub. L. 112–240 (repealing section 304 of Pub. L. 111–312, formerly set out above) applicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and estates of decedents dying, gifts made, or generation skipping transfers after Dec. 31, 2012, see section 101(a)(3) of Pub. L. 112–240, set out as a note following former section 901 of Pub. L. 107–16 which was set out as an Effective and Termination Dates of 2001 Amendment note under section 1 of this title.]

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–289, div. C, title III, §3092(b), July 30, 2008, 122 Stat. 2912, provided that: "The amendment made by this section [amending this section] shall apply to sales and exchanges after December 31, 2008."

Pub. L. 110–245, title I, §110(b), June 17, 2008, 122 Stat. 1634, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 2007."

Pub. L. 110–245, title I, §113(c), June 17, 2008, 122 Stat. 1635, provided that: "The amendments made by this section [amending this section] shall apply to sales or exchanges after the date of the enactment of this Act [June 17, 2008]."

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–142, §7(b), Dec. 20, 2007, 121 Stat. 1806, provided that: "The amendment made by this section [amending this section] shall apply to sales or exchanges after December 31, 2007."

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title IV, §417(e), Dec. 20, 2006, 120 Stat. 2966, as amended by Pub. L. 110–172, §11(a)(11)(B), Dec. 29, 2007, 121 Stat. 2485, provided that: "The amendments made by this section [amending this section] shall apply to sales or exchanges after the date of the enactment of this Act [Dec. 20, 2006]."

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 402(a)(3) of Pub. L. 109–135 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109–58, to which it relates, but not applicable with respect to any transaction ordered in compliance with the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.) before its repeal, see section 402(m) of Pub. L. 109–135, set out as an Effective and Termination Dates of 2005 Amendments note under section 23 of this title.

Amendment by section 403(ee) of Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §840(b), Oct. 22, 2004, 118 Stat. 1597, provided that: "The amendment made by this section [amending this section] shall apply to sales or exchanges after the date of the enactment of this Act [Oct. 22, 2004]."

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–121, title I, §101(b), Nov. 11, 2003, 117 Stat. 1336, provided that:

"(1) EFFECTIVE DATE.—The amendments made by this section [amending this section] shall take effect as if included in the amendments made by section 312 of the Taxpayer Relief Act of 1997 [Pub. L. 105–34].

"(2) WAIVER OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from the amendments made by this section [amending this section] is prevented at any time before the close of the 1-year period beginning on the date of the enactment of this Act [Nov. 11, 2003] by the operation of any law or rule of law (including res judicata), such refund or credit may nevertheless be made or allowed if claim therefor is filed before the close of such period."

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–16, title V, §542(f), June 7, 2001, 115 Stat. 86, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting sections 1022 and 6716 of this title and amending this section and sections 170, 684, 1040, 1221, 1246, 1291, 1296, 4947, 6018, 6019, 6075, and 7701 of this title] shall apply to estates of decedents dying after December 31, 2009.

"(2) TRANSFERS TO NONRESIDENTS.—The amendments made by subsection (e)(1) [amending section 684 of this title] shall apply to transfers after December 31, 2009.

"(3) SECTION 4947.—The amendment made by subsection (e)(4) [amending section 4947 of this title] shall apply to deductions for taxable years beginning after December 31, 2009."

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title III, §312(d), Aug. 5, 1997, 111 Stat. 841, as amended by Pub. L. 105–206, title VI, §6005(e)(3), July 22, 1998, 112 Stat. 806, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and sections 25, 32, 56, 143, 163, 215, 280A, 464, 512, 1016, 1033, 1038, 1223, 1250, 1274, 6012, 6045, 6212, 6334, 6504, and 7872 of this title and repealing section 1034 of this title] shall apply to sales and exchanges after May 6, 1997.

"(2) SALES ON OR BEFORE DATE OF ENACTMENT.—At the election of the taxpayer, the amendments made by this section shall not apply to any sale or exchange on or before the date of the enactment of this Act [Aug. 5, 1997].

"(3) CERTAIN SALES WITHIN 2 YEARS AFTER DATE OF ENACTMENT.—Section 121 of the Internal Revenue Code of 1986 (as amended by this section) shall be applied without regard to subsection (c)(2)(B) thereof in the case of any sale or exchange of property during the 2-year period beginning on the date of the enactment of this Act if the taxpayer held such property on the date of the enactment of this Act and fails to meet the ownership and use requirements of subsection (a) thereof with respect to such property.

"(4) BINDING CONTRACTS.—At the election of the taxpayer, the amendments made by this section shall not apply to a sale or exchange after the date of the enactment of this Act, if—

"(A) such sale or exchange is pursuant to a contract which was binding on such date, or

"(B) without regard to such amendments, gain would not be recognized under section 1034 of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act) on such

sale or exchange by reason of a new residence acquired on or before such date or with respect to the acquisition of which by the taxpayer a binding contract was in effect on such date.

This paragraph shall not apply to any sale or exchange by an individual if the treatment provided by section 877(a)(1) of the Internal Revenue Code of 1986 applies to such individual."

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title VI, §6011(b), Nov. 10, 1988, 102 Stat. 3691, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to any sale or exchange after September 30, 1988, in taxable years ending after such date."

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title I, §123(b), Aug. 13, 1981, 95 Stat. 197, provided that: "The amendment made by this section [amending this section] shall apply to residences sold or exchanged after July 20, 1981."

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title IV, §404(d)(1), Nov. 6, 1978, 92 Stat. 2870, provided that: "The amendments made by this section [amending this section and sections 1033, 1034, 1038, 1250, and 6012 of this title] shall apply to sales or exchanges after July 26, 1978, in taxable years ending after such date."

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XIV, §1404(b), Oct. 4, 1976, 90 Stat. 1733, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1976."

EFFECTIVE DATE

Pub. L. 88–272, title II, §206(c), Feb. 26, 1964, 78 Stat. 40, provided that: "The amendments made by this section [enacting this section, redesignating former section 121 as 122, and amending sections 1033, 1034, and 6012 of this title] shall apply to dispositions after Dec. 31, 1963, in taxable years ending after such date."

SENSE OF CONGRESS CONCERNING TAX TREATMENT OF PRINCIPAL RESIDENCE OF MEMBERS OF ARMED FORCES WHILE AWAY FROM HOME ON ACTIVE DUTY

Pub. L. 105–261, div. A, title X, §1074, Oct. 17, 1998, 112 Stat. 2138, provided that: "It is the sense of Congress that a member of the Armed Forces should be treated for purposes of section 121 of the Internal Revenue Code of 1986 as using property as a principal residence during any continuous period that the member is serving on active duty for 180 days or more with the Armed Forces, but only if the member used the property as a principal residence for any period during or immediately before that period of active duty."

TRANSITIONAL RULE IN CASE OF SALE OR EXCHANGE OF RESIDENCE BEFORE JULY 26, 1981

Pub. L. 95–600, title IV, §404(d)(2), Nov. 6, 1978, 92 Stat. 2870, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "In the case of a sale or exchange of a residence before July 26, 1981, a taxpayer who has attained age 65 on the date of such sale or exchange may elect to have section 121 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] applied by substituting '8-year period' for '5-year period' and '5 years' for '3 years' in subsections (a), (d)(2), and (d)(5) of such section."

[1] So in original. Two pars. (4) have been enacted.

[2] So in original.

[3] See References in Text note below.

§122. Certain reduced uniformed services retirement pay

(a) General rule

In the case of a member or former member of the uniformed services of the United States, gross income does not include the amount of any reduction in his retired or retainer pay pursuant to the provisions of chapter 73 of title 10, United States Code.

(b) Special rule

(1) Amount excluded from gross income

In the case of any individual referred to in subsection (a), all amounts received after December 31, 1965, as retired or retainer pay shall be excluded from gross income until there has been so excluded an amount equal to the consideration for the contract. The preceding sentence shall apply only to the extent that the amounts received would, but for such sentence, be includible in gross income.

(2) Consideration for the contract

For purposes of paragraph (1) and section 72(n), the term "consideration for the contract" means, in respect of any individual, the sum of—

(A) the total amount of the reductions before January 1, 1966, in his retired or retainer pay by reason of an election under chapter 73 of title 10 of the United States Code, and

(B) any amounts deposited at any time by him pursuant to section 1438 or 1452(d) of such title 10.

(Added Pub. L. 89–365, §1(a)(1), Mar. 8, 1966, 80 Stat. 32; amended Pub. L. 93–406, title II, §§2005(c)(10), 2007(a), (b)(1), Sept. 2, 1974, 88 Stat. 992, 994.)

PRIOR PROVISIONS

A prior section 122 was renumbered section 140 of this title.

AMENDMENTS

1974—Subsec. (a). Pub. L. 93–406, §2007(a), substituted "United States, gross income does not include the amount of any reduction in his retired or retainer pay pursuant to the provisions of chapter 73 of title 10, United States Code" for "United States who has made an election under chapter 73 of title 10 of the United States Code to receive a reduced amount of retired or retainer pay, gross income does not include the amount of any reduction after December 31, 1965, in his retired or retainer pay by reason of such election".

Subsec. (b)(2). Pub. L. 93–406, §2005(c)(10), substituted "72(n)" for "72(o)".

Subsec. (b)(2)(B). Pub. L. 93–406, §2007(b)(1), inserted reference to section 1452(d) of title 10.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by section 2005(c)(10) of Pub. L. 93–406 applicable only with respect to distributions or payments made after Dec. 31, 1973, in taxable years beginning after Dec. 31, 1973, see section 2005(d) of Pub. L. 93–406, set out as a note under section 402 of this title.

Pub. L. 93–406, title II, §2007(c), Sept. 2, 1974, 88 Stat. 993, provided that: "The amendments made by this section [amending this section and sections 72, 101, and 2039 of this title] apply to taxable years ending on or after September 21, 1972. The amendments made by paragraphs (3) and (4) of subsection (b) [amending sections 101 and 2039 of this title] apply with respect to individuals dying on or after such date".

EFFECTIVE DATE

Pub. L. 89–365, §1(d), Mar. 10, 1966, 80 Stat. 33, provided that: "The amendments made by subsections (a) and (b) [enacting this section and amending section 72 of this title] shall apply with respect to taxable years ending after December 31, 1965. The amendment made by subsection (c) [amending section 101 of this title] shall apply with respect to individuals making an election under chapter 73 of title 10 of the United States Code who die after December 31, 1965."

§123. Amounts received under insurance contracts for certain living expenses

(a) General rule

In the case of an individual whose principal residence is damaged or destroyed by fire, storm, or other casualty, or who is denied access to his principal residence by governmental authorities because of the occurrence or threat of occurrence of such a casualty, gross income does not include amounts received by such individual under an insurance contract which are paid to compensate or reimburse such individual for living expenses incurred for himself and members of his household resulting from the loss of use or occupancy of such residence.

(b) Limitation

Subsection (a) shall apply to amounts received by the taxpayer for living expenses incurred during any period only to the extent the amounts received do not exceed the amount by which—

(1) the actual living expenses incurred during such period for himself and members of his household resulting from the loss of use or occupancy of their residence, exceed

(2) the normal living expenses which would have been incurred for himself and members of his household during such period.

(Added Pub. L. 91–172, title IX, §901(a), Dec. 30, 1969, 83 Stat. 709.)

PRIOR PROVISIONS

A prior section 123 was renumbered section 140 of this title.

EFFECTIVE DATE

Pub. L. 91–172, title IX, §901(c), Dec. 30, 1969, 83 Stat. 709, provided that: "The amendments made by this section [enacting this section] shall apply with respect to amounts received on or after January 1, 1969."

[§124. Repealed. Pub. L. 101–508, title XI, §11801(a)(9), Nov. 5, 1990, 104 Stat. 1388–520]

Section, added Pub. L. 95–618, title II, §242(a), Nov. 9, 1978, 92 Stat. 3193, related to qualified transportation provided by employers.

A prior section 124 was renumbered section 140 of this title.

SAVINGS PROVISION

For provisions that nothing in repeal by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

§125. Cafeteria plans

(a) General rule

Except as provided in subsection (b), no amount shall be included in the gross income of a participant in a cafeteria plan solely because, under the plan, the participant may choose among the benefits of the plan.

(b) Exception for highly compensated participants and key employees

(1) Highly compensated participants

In the case of a highly compensated participant, subsection (a) shall not apply to any benefit attributable to a plan year for which the plan discriminates in favor of—

(A) highly compensated individuals as to eligibility to participate, or

(B) highly compensated participants as to contributions and benefits.

(2) Key employees

In the case of a key employee (within the meaning of section 416(i)(1)), subsection (a) shall not apply to any benefit attributable to a plan for which the statutory nontaxable benefits provided to key employees exceed 25 percent of the aggregate of such benefits provided for all employees under the plan. For purposes of the preceding sentence, statutory nontaxable benefits shall be determined without regard to the second sentence of subsection (f).

(3) Year of inclusion

For purposes of determining the taxable year of inclusion, any benefit described in paragraph (1) or (2) shall be treated as received or accrued in the taxable year of the participant or key employee in which the plan year ends.

(c) Discrimination as to benefits or contributions

For purposes of subparagraph (B) of subsection (b)(1), a cafeteria plan does not discriminate where qualified benefits and total benefits (or employer contributions allocable to qualified benefits and employer contributions for total benefits) do not discriminate in favor of highly compensated participants.

(d) Cafeteria plan defined

For purposes of this section—

(1) In general

The term "cafeteria plan" means a written plan under which—

(A) all participants are employees, and

(B) the participants may choose among 2 or more benefits consisting of cash and qualified benefits.

(2) Deferred compensation plans excluded

(A) In general

The term "cafeteria plan" does not include any plan which provides for deferred compensation.

(B) Exception for cash and deferred arrangements

Subparagraph (A) shall not apply to a profit-sharing or stock bonus plan or rural cooperative plan (within the meaning of section 401(k)(7)) which includes a qualified cash or deferred arrangement (as defined in section 401(k)(2)) to the extent of amounts which a covered employee may elect to have the employer pay as contributions to a trust under such plan on behalf of the employee.

(C) Exception for certain plans maintained by educational institutions

Subparagraph (A) shall not apply to a plan maintained by an educational organization described in section 170(b)(1)(A)(ii) to the extent of amounts which a covered employee may elect to have the employer pay as contributions for post-retirement group life insurance if—

(i) all contributions for such insurance must be made before retirement, and

(ii) such life insurance does not have a cash surrender value at any time.

For purposes of section 79, any life insurance described in the preceding sentence shall be treated as group-term life insurance.

(D) Exception for health savings accounts

Subparagraph (A) shall not apply to a plan to the extent of amounts which a covered employee may elect to have the employer pay as contributions to a health savings account established on behalf of the employee.

(e) Highly compensated participant and individual defined

For purposes of this section—

(1) Highly compensated participant

The term "highly compensated participant" means a participant who is—

(A) an officer,

(B) a shareholder owning more than 5 percent of the voting power or value of all classes of stock of the employer,

(C) highly compensated, or

(D) a spouse or dependent (within the meaning of section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) of an individual described in subparagraph (A), (B), or (C).

(2) Highly compensated individual

The term "highly compensated individual" means an individual who is described in subparagraphs [1] (A), (B), (C), or (D) of paragraph (1).

(f) Qualified benefits defined

For purposes of this section—

(1) In general

The term "qualified benefit" means any benefit which, with the application of subsection (a), is not includible in the gross income of the employee by reason of an express provision of this chapter (other than section 106(b), 117, 127, or 132). Such term includes any group term life insurance which is includible in gross income only because it exceeds the dollar limitation of section 79 and such term includes any other benefit permitted under regulations.

(2) Long-term care insurance not qualified

The term "qualified benefit" shall not include any product which is advertised, marketed, or offered as long-term care insurance.

(3) Certain exchange-participating qualified health plans not qualified

(A) In general

The term "qualified benefit" shall not include any qualified health plan (as defined in section 1301(a) of the Patient Protection and Affordable Care Act) offered through an Exchange established under section 1311 of such Act.

(B) Exception for exchange-eligible employers

Subparagraph (A) shall not apply with respect to any employee if such employee's employer is a qualified employer (as defined in section 1312(f)(2) of the Patient Protection and Affordable Care Act) offering the employee the opportunity to enroll through such an Exchange in a qualified health plan in a group market.

(g) Special rules

(1) Collectively bargained plan not considered discriminatory

For purposes of this section, a plan shall not be treated as discriminatory if the plan is maintained under an agreement which the Secretary finds to be a collective bargaining agreement between employee representatives and one or more employers.

(2) Health benefits

For purposes of subparagraph (B) of subsection (b)(1), a cafeteria plan which provides health benefits shall not be treated as discriminatory if—

(A) contributions under the plan on behalf of each participant include an amount which—

(i) equals 100 percent of the cost of the health benefit coverage under the plan of the majority of the highly compensated participants similarly situated, or

(ii) equals or exceeds 75 percent of the cost of the health benefit coverage of the participant (similarly situated) having the highest cost health benefit coverage under the plan, and

(B) contributions or benefits under the plan in excess of those described in subparagraph (A) bear a uniform relationship to compensation.

(3) Certain participation eligibility rules not treated as discriminatory

For purposes of subparagraph (A) of subsection (b)(1), a classification shall not be treated as discriminatory if the plan—

(A) benefits a group of employees described in section 410(b)(2)(A)(i), and

(B) meets the requirements of clauses (i) and (ii):

(i) No employee is required to complete more than 3 years of employment with the employer or employers maintaining the plan as a condition of participation in the plan, and

the employment requirement for each employee is the same.

(ii) Any employee who has satisfied the employment requirement of clause (i) and who is otherwise entitled to participate in the plan commences participation no later than the first day of the first plan year beginning after the date the employment requirement was satisfied unless the employee was separated from service before the first day of that plan year.

(4) Certain controlled groups, etc.

All employees who are treated as employed by a single employer under subsection (b), (c), or (m) of section 414 shall be treated as employed by a single employer for purposes of this section.

(h) Special rule for unused benefits in health flexible spending arrangements of individuals called to active duty

(1) In general

For purposes of this title, a plan or other arrangement shall not fail to be treated as a cafeteria plan or health flexible spending arrangement merely because such arrangement provides for qualified reservist distributions.

(2) Qualified reservist distribution

For purposes of this subsection, the term "qualified reservist distribution" means,[2] any distribution to an individual of all or a portion of the balance in the employee's account under such arrangement if—

(A) such individual was (by reason of being a member of a reserve component (as defined in section 101 of title 37, United States Code)) ordered or called to active duty for a period in excess of 179 days or for an indefinite period, and

(B) such distribution is made during the period beginning on the date of such order or call and ending on the last date that reimbursements could otherwise be made under such arrangement for the plan year which includes the date of such order or call.

(i) Limitation on health flexible spending arrangements

(1) In general

For purposes of this section, if a benefit is provided under a cafeteria plan through employer contributions to a health flexible spending arrangement, such benefit shall not be treated as a qualified benefit unless the cafeteria plan provides that an employee may not elect for any taxable year to have salary reduction contributions in excess of $2,500 made to such arrangement.

(2) Adjustment for inflation

In the case of any taxable year beginning after December 31, 2013, the dollar amount in paragraph (1) shall be increased by an amount equal to—

(A) such amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which such taxable year begins by substituting "calendar year 2012" for "calendar year 1992" in subparagraph (B) thereof.

If any increase determined under this paragraph is not a multiple of $50, such increase shall be rounded to the next lowest multiple of $50.

(j) Simple cafeteria plans for small businesses

(1) In general

An eligible employer maintaining a simple cafeteria plan with respect to which the requirements of this subsection are met for any year shall be treated as meeting any applicable nondiscrimination requirement during such year.

(2) Simple cafeteria plan

For purposes of this subsection, the term "simple cafeteria plan" means a cafeteria plan—

(A) which is established and maintained by an eligible employer, and

(B) with respect to which the contribution requirements of paragraph (3), and the eligibility and participation requirements of paragraph (4), are met.

(3) Contribution requirements

(A) In general

The requirements of this paragraph are met if, under the plan the employer is required, without regard to whether a qualified employee makes any salary reduction contribution, to make a contribution to provide qualified benefits under the plan on behalf of each qualified employee in an amount equal to—

(i) a uniform percentage (not less than 2 percent) of the employee's compensation for the plan year, or

(ii) an amount which is not less than the lesser of—

(I) 6 percent of the employee's compensation for the plan year, or

(II) twice the amount of the salary reduction contributions of each qualified employee.

(B) Matching contributions on behalf of highly compensated and key employees

The requirements of subparagraph (A)(ii) shall not be treated as met if, under the plan, the rate of contributions with respect to any salary reduction contribution of a highly compensated or key employee at any rate of contribution is greater than that with respect to an employee who is not a highly compensated or key employee.

(C) Additional contributions

Subject to subparagraph (B), nothing in this paragraph shall be treated as prohibiting an employer from making contributions to provide qualified benefits under the plan in addition to contributions required under subparagraph (A).

(D) Definitions

For purposes of this paragraph—

(i) Salary reduction contribution

The term "salary reduction contribution" means, with respect to a cafeteria plan, any amount which is contributed to the plan at the election of the employee and which is not includible in gross income by reason of this section.

(ii) Qualified employee

The term "qualified employee" means, with respect to a cafeteria plan, any employee who is not a highly compensated or key employee and who is eligible to participate in the plan.

(iii) Highly compensated employee

The term "highly compensated employee" has the meaning given such term by section 414(q).

(iv) Key employee

The term "key employee" has the meaning given such term by section 416(i).

(4) Minimum eligibility and participation requirements

(A) In general

The requirements of this paragraph shall be treated as met with respect to any year if, under the plan—

(i) all employees who had at least 1,000 hours of service for the preceding plan year are eligible to participate, and

(ii) each employee eligible to participate in the plan may, subject to terms and conditions applicable to all participants, elect any benefit available under the plan.

(B) Certain employees may be excluded

For purposes of subparagraph (A)(i), an employer may elect to exclude under the plan

employees—

(i) who have not attained the age of 21 before the close of a plan year,

(ii) who have less than 1 year of service with the employer as of any day during the plan year,

(iii) who are covered under an agreement which the Secretary of Labor finds to be a collective bargaining agreement if there is evidence that the benefits covered under the cafeteria plan were the subject of good faith bargaining between employee representatives and the employer, or

(iv) who are described in section 410(b)(3)(C) (relating to nonresident aliens working outside the United States).

A plan may provide a shorter period of service or younger age for purposes of clause (i) or (ii).

(5) Eligible employer

For purposes of this subsection—

(A) In general

The term "eligible employer" means, with respect to any year, any employer if such employer employed an average of 100 or fewer employees on business days during either of the 2 preceding years. For purposes of this subparagraph, a year may only be taken into account if the employer was in existence throughout the year.

(B) Employers not in existence during preceding year

If an employer was not in existence throughout the preceding year, the determination under subparagraph (A) shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current year.

(C) Growing employers retain treatment as small employer

(i) In general

If—

(I) an employer was an eligible employer for any year (a "qualified year"), and

(II) such employer establishes a simple cafeteria plan for its employees for such year,

then, notwithstanding the fact the employer fails to meet the requirements of subparagraph (A) for any subsequent year, such employer shall be treated as an eligible employer for such subsequent year with respect to employees (whether or not employees during a qualified year) of any trade or business which was covered by the plan during any qualified year.

(ii) Exception

This subparagraph shall cease to apply if the employer employs an average of 200 or more employees on business days during any year preceding any such subsequent year.

(D) Special rules

(i) Predecessors

Any reference in this paragraph to an employer shall include a reference to any predecessor of such employer.

(ii) Aggregation rules

All persons treated as a single employer under subsection (a) or (b) of section 52, or subsection (n) or (o) of section 414, shall be treated as one person.

(6) Applicable nondiscrimination requirement

For purposes of this subsection, the term "applicable nondiscrimination requirement" means any requirement under subsection (b) of this section, section 79(d), section 105(h), or paragraph (2), (3), (4), or (8) of section 129(d).

(7) Compensation

The term "compensation" has the meaning given such term by section 414(s).

(k) Cross reference

For reporting and recordkeeping requirements, see section 6039D.

(l) Regulations

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

(Added Pub. L. 95–600, title I, §134(a), Nov. 6, 1978, 92 Stat. 2783; amended Pub. L. 96–222, title I, §101(a)(6)(A), Apr. 1, 1980, 94 Stat. 196; Pub. L. 96–605, title II, §§201(b)(2), 226(a), Dec. 28, 1980, 94 Stat. 3527, 3529; Pub. L. 96–613, §5(b)(2), Dec. 28, 1980, 94 Stat. 3581; Pub. L. 98–369, div. A, title V, §531(b)(1)–(4)(A), July 18, 1984, 98 Stat. 881, 882; Pub. L. 98–611, §1(d)(3)(A), Oct. 31, 1984, 98 Stat. 3177; Pub. L. 98–612, §1(b)(3)(B), Oct. 31, 1984, 98 Stat. 3181; Pub. L. 99–514, title XI, §1151(d)(1), title XVIII, §1853(b)(1), Oct. 22, 1986, 100 Stat. 2504, 2870; Pub. L. 100–647, title I, §§1011B(a)(11)–(13), 1018(t)(6), title IV, §4002(b)(2), title VI, §6051(b), Nov. 10, 1988, 102 Stat. 3484, 3485, 3589, 3643, 3696; Pub. L. 101–140, title II, §203(a)(1), (3), (b)(2), Nov. 8, 1989, 103 Stat. 830, 831; Pub. L. 101–239, title VII, §7814(b), Dec. 19, 1989, 103 Stat. 2413; Pub. L. 101–508, title XI, §11801(c)(3), Nov. 5, 1990, 104 Stat. 1388–523; Pub. L. 104–191, title III, §§301(d), 321(c)(1), Aug. 21, 1996, 110 Stat. 2051, 2058; Pub. L. 108–173, title XII, §1201(i), Dec. 8, 2003, 117 Stat. 2479; Pub. L. 108–311, title II, §207(11), Oct. 4, 2004, 118 Stat. 1177; Pub. L. 110–172, §11(a)(12), Dec. 29, 2007, 121 Stat. 2485; Pub. L. 110–245, title I, §114(a), June 17, 2008, 122 Stat. 1636; Pub. L. 111–148, title I, §1515(a), (b), title IX, §§9005(a), 9022(a), title X, §10902(a), Mar. 23, 2010, 124 Stat. 258, 854, 874, 1016; Pub. L. 111–152, title I, §1403(b), Mar. 30, 2010, 124 Stat. 1063.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

REFERENCES IN TEXT

Sections 1301, 1311, and 1312 of the Patient Protection and Affordable Care Act, referred to in subsec. (f)(3), are classified to sections 18021, 18031, and 18032, respectively, of Title 42, The Public Health and Welfare.

CODIFICATION

Pub. L. 101–140, §203(a)(1), amended this section to read as if the amendments made by section 1151(d)(1) of Pub. L. 99–514 (amending this section generally) had not been enacted. Subsequent to amendment by Pub. L. 99–514, this section was amended by Pub. L. 100–647 and Pub. L. 101–239. See 1989 and 1988 Amendment notes below.

PRIOR PROVISIONS

A prior section 125 was renumbered section 140 of this title.

AMENDMENTS

2010—Subsec. (f). Pub. L. 111–148, §1515(a), (b), substituted "For purposes of this section—" for "For purposes of this section,"; designated remainder of first sentence and second sentence as par. (1), inserted heading, and substituted "The term" for "the term"; designated third sentence as par. (2), inserted heading, and substituted "The term 'qualified benefit' shall not include" for "Such term shall not include"; and added par. (3).

Subsec. (i). Pub. L. 111–148, §10902(a), amended subsec. (i) generally. Prior to amendment, text read as follows: "For purposes of this section, if a benefit is provided under a cafeteria plan through employer contributions to a health flexible spending arrangement, such benefit shall not be treated as a qualified benefit unless the cafeteria plan provides that an employee may not elect for any taxable year to have salary reduction contributions in excess of $2,500 made to such arrangement."

Pub. L. 111–148, §9005(a)(2), added subsec. (i). Former subsec. (i) redesignated (j).

Subsec. (i)(2). Pub. L. 111–152, §1403(b)(1), substituted "December 31, 2013" for "December 31, 2011" in

introductory provisions.

Subsec. (i)(2)(B). Pub. L. 111–152, §1403(b)(2), substituted "2012" for "2010".

Subsec. (j). Pub. L. 111–148, §9022(a), added subsec. (j). Former subsec. (j) redesignated (k).

Pub. L. 111–148, §9005(a)(1), redesignated subsec. (j) as (k).

Subsec. (k). Pub. L. 111–148, §9022(a), redesignated subsec. (j) as (k). Former subsec. (k) redesignated (l).

Pub. L. 111–148, §9005(a)(1), redesignated subsec. (j) as (k).

Subsec. (l). Pub. L. 111–148, §9022(a), redesignated subsec. (k) as (l).

2008—Subsecs. (h) to (j). Pub. L. 110–245 added subsec. (h) and redesignated former subsecs. (h) and (i) as (i) and (j), respectively.

2007—Subsec. (b)(2). Pub. L. 110–172 substituted "second sentence" for "last sentence".

2004—Subsec. (e)(1)(D). Pub. L. 108–311 inserted ", determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof" after "section 152".

2003—Subsec. (d)(2)(D). Pub. L. 108–173, which directed the amendment of section 125(d)(2) by adding subpar. (D), was executed to this section, which is section 125(d)(2) of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

1996—Subsec. (f). Pub. L. 104–191, §321(c)(1), inserted at end "Such term shall not include any product which is advertised, marketed, or offered as long-term care insurance."

Pub. L. 104–191, §301(d), inserted "106(b)," before "117".

1990—Subsec. (f). Pub. L. 101–508 substituted "section 117," for "section 117, 124,".

1989—Pub. L. 101–140, §203(a)(1), amended section to read as if amendments by Pub. L. 99–514, §1151(d)(1), had not been enacted, see 1986 Amendment note below.

Subsec. (d)(2). Pub. L. 101–140, §203(b)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "The term 'cafeteria plan' does not include any plan which provides for deferred compensation. The preceding sentence shall not apply in the case of a profit-sharing or stock bonus plan which includes a qualified cash or deferred arrangement (as defined in section 401(k)(2)) to the extent of amounts which a covered employee may elect to have the employer pay as contributions to a trust under such plan on behalf of the employee."

Subsec. (e)(2)(A). Pub. L. 101–239 substituted "includible only because" for "includable only because", see Codification note above.

Subsec. (g)(3)(A). Pub. L. 101–140, §203(a)(3), substituted "section 410(b)(2)(A)(i)" for "subparagraph (B) of section 410(b)(1)".

1988—Subsec. (a). Pub. L. 100–647, §1011B(a)(11)(A), amended subsec. (a) generally, see Codification note above. Prior to amendment, subsec. (a) read as follows: "In the case of a cafeteria plan—

"(1) amounts shall not be included in gross income of a participant in such plan solely because, under the plan, the participant may choose among the benefits of the plan, and

"(2) if the plan fails to meet the requirements of subsection (b) for any plan year—

"(A) paragraph (1) shall not apply, and

"(B) notwithstanding any other provision of part III of this subchapter, any qualified benefits received under such cafeteria plan by a highly compensated employee for such plan year shall be included in the gross income of such employee for the taxable year with or within which such plan year ends."

Subsec. (b)(1). Pub. L. 100–647, §1011B(a)(11)(B), substituted "In the case of a highly compensated employee, subsection (a) shall not apply to any benefit attributable to a plan year" for "A plan shall be treated as failing to meet the requirements of this subsection", see Codification note above.

Subsec. (b)(2). Pub. L. 100–647, §1011B(a)(11)(C), substituted "subsection (a) shall not apply to any plan year" for "a plan shall be treated as failing to meet the requirements of this subsection" in first sentence, see Codification note above.

Pub. L. 100–647, §1011B(a)(13)(B), substituted "shall not include benefits which (without regard to this paragraph) are includible in gross income" for "shall be determined without regard to the last sentence of subsection (e)", see Codification note above.

Subsec. (c)(1)(B). Pub. L. 100–647, §1011B(a)(12), amended subpar. (B) generally, see Codification note above. Prior to amendment, subpar. (B) read as follows: "the participants may choose—

"(i) among 2 or more benefits consisting of cash and qualified benefits, or

"(ii) among 2 or more qualified benefits."

Subsec. (c)(2)(B). Pub. L. 100–647, §1018(t)(6), inserted "or rural electric cooperative plan (within the meaning of section 401(k)(7))" after "stock bonus plan", see Codification note above.

Subsec. (c)(2)(C). Pub. L. 100–647, §6051(b), inserted at end "In applying section 89 to a plan described in this subparagraph, contributions under the plan shall be tested as of the time the contributions were made.",

see Codification note above.

Subsec. (e)(1). Pub. L. 100–647, §1011B(a)(13)(A), inserted "and without regard to section 89(a)" after "subsection (a)", see Codification note above.

Subsec. (e)(2)(A). Pub. L. 100–647, §4002(b)(2), inserted "or any insurance under a qualified group legal services plan the value of which is so includable only because it exceeds the limitation of section 120(a)" after "section 79", see Codification note above.

1986—Pub. L. 99–514, §1151(d)(1), amended section generally, revising and restating as subsecs. (a) to (g) provisions of former subsecs. (a) to (i) so as to coincide with the coming into effect of section 89 of this title.

Subsecs. (c), (d)(1)(B). Pub. L. 99–514, §1853(b)(1)(A), substituted "qualified benefits" for "statutory nontaxable benefits" wherever appearing.

Subsec. (f). Pub. L. 99–514, §1853(b)(1)(B), substituted "Qualified benefits defined" for "Statutory nontaxable benefits defined" in heading and amended text generally. Prior to amendment, text read as follows: "For purposes of this section, the term 'statutory nontaxable benefit' means any benefit which, with the application of subsection (a) is not includible in the gross income of the employee by reason of an express provision of this chapter (other than section 117, 124, 127, or 132). Such term includes any group term life insurance which is includible in gross income only because it exceeds the dollar limitation of section 79."

1984—Subsec. (b). Pub. L. 98–369, §531(b)(3), amended subsec. (b) generally, substituting "and key employees" for "where plan is discriminatory" in heading and "Highly compensated participants" for "In general" in par. (1) heading, adding par. (2), redesignating former par. (2) as (3), and inserting therein references to par. (2) and to taxable year of key employee.

Subsec. (c). Pub. L. 98–369, §531(b)(2)(B), inserted "statutory" before "nontaxable benefits" in two places.

Subsec. (d)(1). Pub. L. 98–369, §531(b)(1), substituted "among 2 or more benefits consisting of cash and statutory nontaxable benefits" for "among two or more benefits" in cl. (B) and struck out "The benefits which may be chosen may be nontaxable benefits, or cash, property, or other taxable benefits."

Subsec. (f). Pub. L. 98–369, §531(b)(2)(A), amended subsec. (f) generally, inserting "Statutory" in heading and "statutory" before "nontaxable benefit" in text, providing that the benefit be excluded by reason of an express provision of this chapter (other than section 117, 124, 127, or 132), and extending the benefit to include group term life insurance.

Subsec. (h). Pub. L. 98–611 and Pub. L. 98–612, made identical amendments, substituting cross reference provision for reporting requirements provisions.

Pub. L. 98–369, §531(b)(4)(A), added subsec. (h) relating to reporting requirements provisions. Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 98–369, §531(b)(4)(A), redesignated subsec. (h) as (i).

1980—Subsec. (d)(2). Pub. L. 96–605, §226(a), inserted provision that the sentence excluding deferred compensation plans not apply in the case of a profit-sharing or stock bonus plan which includes a qualified cash or deferred arrangement, as defined in section 401(k)(2) to the extent of amounts which a covered employee may elect to have the employer pay as contributions to a trust under such plan on behalf of the employee.

Subsec. (g)(3)(B). Pub. L. 96–222 substituted "employment requirement" for "service requirement" in cls. (i) and (ii).

Subsec. (g)(4). Pub. L. 96–613, §5(b)(2), and Pub. L. 96–605, §201(b)(2), made identical amendments by substituting "controlled groups, etc." for "controlled groups" in heading, and by substituting "subsection (b), (c), or (m) of section 414" for "subsection (b) or (c) of section 414" in text.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–148, title I, §1515(c), Mar. 23, 2010, 124 Stat. 258, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2013."

Pub. L. 111–148, title IX, §9005(b), Mar. 23, 2010, 124 Stat. 855, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2010."

Pub. L. 111–148, title IX, §9022(b), Mar. 23, 2010, 124 Stat. 876, provided that: "The amendments made by this section [amending this section] shall apply to years beginning after December 31, 2010."

Pub. L. 111–148, title X, §10902(b), Mar. 23, 2010, 124 Stat. 1016, as amended by Pub. L. 111–152, title I, §1403(a), Mar. 30, 2010, 124 Stat. 1063, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2012."

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–245, title I, §114(b), June 17, 2008, 122 Stat. 1636, provided that: "The amendment made by this section [amending this section] shall apply to distributions made after the date of the enactment of this Act

[June 17, 2008]."

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–173 applicable to taxable years beginning after Dec. 31, 2003, see section 1201(k) of Pub. L. 108–173, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 301(d) of Pub. L. 104–191 applicable to taxable years beginning after Dec. 31, 1996, see section 301(j) of Pub. L. 104–191, set out as a note under section 62 of this title.

Amendment by section 321(c)(1) of Pub. L. 104–191 applicable to contracts issued after Dec. 31, 1996, see section 321(f) of Pub. L. 104–191, set out as an Effective Date note under section 7702B of this title.

EFFECTIVE DATE OF 1989 AMENDMENTS

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

Amendment by Pub. L. 101–140 effective as if included in section 1151 of Pub. L. 99–514, see section 203(c) of Pub. L. 101–140, set out as a note under section 79 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 1011B(a)(11)–(13) and 1018(t)(6) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 4002(b)(2) of Pub. L. 100–647 applicable to taxable years ending after Dec. 31, 1987, see section 4002(c) of Pub. L. 100–647, set out as a note under section 120 of this title.

Pub. L. 100–647, title VI, §6051(c), Nov. 10, 1988, 102 Stat. 3696, provided that: "The amendments made by this section [amending this section and section 89 of this title] shall take effect as if included in the amendments made by section 1151 of the Reform Act [Pub. L. 99–514, see Effective Date of 1986 Amendment note set out under section 79 of this title]."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1151(d)(1) of Pub. L. 99–514 applicable, with certain qualifications and exceptions, to years beginning after Dec. 31, 1988, see section 1151(k) of Pub. L. 99–514, as amended, set out as a note under section 79 of this title.

Amendment by section 1853(b)(1) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–612 effective Jan. 1, 1985, see Pub. L. 98–612, §1(d)(2), Oct. 31, 1984, 98 Stat. 3181.

Amendment by Pub. L. 98–611 effective Jan. 1, 1985, see section 1(g)(2) of Pub. L. 98–611, set out as a note under section 127 of this title.

Amendment by Pub. L. 98–369 effective Jan. 1, 1985, see section 531(h) of Pub. L. 98–369, set out as an Effective Date note under section 132 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendments by section 201(b)(2) of Pub. L. 96–605 and section 5(b)(2) of Pub. L. 96–613 applicable to years ending after Nov. 30, 1980, except in the case of a plan in existence on Nov. 30, 1980 where amendments by section 201(b)(2) of Pub. L. 96–605 and section 5(b)(2) of Pub. L. 96–613 applicable to plan years beginning after Nov. 30, 1980, see section 201(c) of Pub. L. 96–605 and section 5(c) of Pub. L. 96–613, set out as a note under section 414 of this title.

Pub. L. 96–605, title II, §226(b), Dec. 28, 1980, 94 Stat. 3530, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1980."

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the

provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title I, §134(c), Nov. 6, 1978, 92 Stat. 2785, as amended by Pub. L. 96–222, title I, §101(a)(6)(B), Apr. 1, 1980, 94 Stat. 197, provided that: "The amendments made by this section [enacting this section] shall apply to plan years beginning after December 31, 1978."

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

NONENFORCEMENT OF AMENDMENT MADE BY SECTION 1151 OF PUB. L. 99–514 FOR FISCAL YEAR 1990

No monies appropriated by Pub. L. 101–136 to be used to implement or enforce section 1151 of Pub. L. 99–514 or the amendments made by such section, see section 528 of Pub. L. 101–136, set out as a note under section 89 of this title.

TREATMENT OF PRE-1989 ELECTIONS FOR DEPENDENT CARE ASSISTANCE UNDER CAFETERIA PLANS

Pub. L. 100–647, title VI, §6063, Nov. 10, 1988, 102 Stat. 3700, provided that: "For purposes of section 125 of the 1986 Code, a plan shall not be treated as failing to be a cafeteria plan solely because under the plan a participant elected before January 1, 1989, to receive reimbursement under the plan for dependent care assistance for periods after December 31, 1988, and such assistance is includible in gross income under the provisions of the Family Support Act of 1988 [Pub. L. 100–485, see Tables for classification]."

For provision that for purposes of section 125 of the Internal Revenue Code of 1986, a plan shall not be treated as failing to be a cafeteria plan solely because under the plan a participant elected before January 1, 1988, to receive reimbursement under the plan for dependent care assistance for periods after December 31, 1987, and such assistance included reimbursement for expenses at a camp where the dependent stays overnight, see section 10101(b)(2) of Pub. L. 100–203, as added by Pub. L. 100–647, set out as an Effective Date of 1987 Amendment note under section 21 of this title.

EXCEPTION FOR CERTAIN CAFETERIA PLANS AND BENEFITS

Pub. L. 98–369, div. A, title V, §531(b)(5), July 18, 1984, 98 Stat. 883, as amended by Pub. L. 99–514, title XVIII, §1853(b)(2), (3), Oct. 22, 1986, 100 Stat. 2870, 2871, provided that:

"(A) GENERAL TRANSITIONAL RULE.—Any cafeteria plan in existence on February 10, 1984, which failed as of such date and continued to fail thereafter to satisfy the rules relating to section 125 under proposed Treasury regulations, and any benefit offered under such a cafeteria plan which failed as of such date and continued to fail thereafter to satisfy the rules of section 105, 106, 120, or 129 under proposed Treasury regulations, will not fail to be a cafeteria plan under section 125 or a nontaxable benefit under section 105, 106, 120, or 129 solely because of such failures. The preceding sentence shall apply only with respect to cafeteria plans and benefits provided under cafeteria plans before the earlier of—

"(i) January 1, 1985, or

"(ii) the effective date of any modification to provide additional benefits after February 10, 1984.

"(B) SPECIAL TRANSITION RULE FOR ADVANCE ELECTION BENEFIT BANKS.—Any benefit offered under a cafeteria plan in existence on February 10, 1984, which failed as of such date and continued to fail thereafter to satisfy the rules of section 105, 106, 120, or 129 under proposed Treasury regulations because an employee was assured of receiving (in cash or any other benefit) amounts available but unused for covered reimbursement during the year without regard to whether he incurred covered expenses, will not fail to be a nontaxable benefit under such applicable section solely because of such failure. The preceding sentence shall apply only with respect to benefits provided under cafeteria plans before the earlier of—

"(i) July 1, 1985, or

"(ii) the effective date of any modification to provide additional benefits after February 10, 1984.

Except as provided in Treasury regulations, the special transition rule is available only for benefits with respect to which, after December 31, 1984, contributions are fixed before the period of coverage and taxable cash is not available until the end of such period of coverage.

"(C) PLANS FOR WHICH SUBSTANTIAL IMPLEMENTATION COSTS WERE INCURRED.—For

purposes of this paragraph, any plan with respect to which substantial implementation costs had been incurred before February 10, 1984, shall be treated as in existence on February 10, 1984.

"(D) COLLECTIVE BARGAINING AGREEMENTS.—In the case of any cafeteria plan in existence on February 10, 1984, and maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers, the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof agreed to after July 18, 1984) shall be substituted for 'January 1, 1985' in subparagraph (A) and for 'July 1, 1985' in subparagraph (B). For purposes of the preceding sentence, any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section (or any requirement in the regulations under section 125 of the Internal Revenue Code of 1954 [now 1986] proposed on May 6, 1984) shall not be treated as a termination of such collective bargaining agreement.

"(E) SPECIAL RULE WHERE CONTRIBUTIONS OR REIMBURSEMENTS SUSPENDED.—For purposes of subparagraphs (A) and (B), a plan shall not be treated as not continuing to fail to satisfy the rules referred to in such subparagraphs with respect to any benefit provided in the form of a flexible spending arrangement merely because contributions or reimbursements (or both) with respect to such plan were suspended before January 1, 1985."

[1] So in original. Probably should be "subparagraph".

[2] So in original. The comma probably should not appear.

§126. Certain cost-sharing payments

(a) General rule

Gross income does not include the excludable portion of payments received under—

(1) The rural clean water program authorized by section 208(j) of the Federal Water Pollution Control Act (33 U.S.C. 1288(j)).

(2) The rural abandoned mine program authorized by section 406 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1236).

(3) The water bank program authorized by the Water Bank Act (16 U.S.C. 1301 et seq.).

(4) The emergency conservation measures program authorized by title IV of the Agricultural Credit Act of 1978.

(5) The agricultural conservation program authorized by the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590a).

(6) The great plains conservation program authorized by section 16 [1] of the Soil Conservation and Domestic Policy Act (16 U.S.C. 590p(b)).

(7) The resource conservation and development program authorized by the Bankhead-Jones Farm Tenant Act and by the Soil Conservation and Domestic Allotment Act (7 U.S.C. 1010; 16 U.S.C. 590a et seq.).

(8) The forestry incentives program authorized by section 4 [1] of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103).

(9) Any small watershed program administered by the Secretary of Agriculture which is determined by the Secretary of the Treasury or his delegate to be substantially similar to the type of programs described in paragraphs (1) through (8).

(10) Any program of a State, possession of the United States, a political subdivision of any of the foregoing, or the District of Columbia under which payments are made to individuals primarily for the purpose of conserving soil, protecting or restoring the environment, improving forests, or providing a habitat for wildlife.

(b) Excludable portion

For purposes of this section—

(1) In general

The term "excludable portion" means that portion (or all) of a payment made to any person

under any program described in subsection (a) which—

(A) is determined by the Secretary of Agriculture to be made primarily for the purpose of conserving soil and water resources, protecting or restoring the environment, improving forests, or providing a habitat for wildlife, and

(B) is determined by the Secretary of the Treasury or his delegate as not increasing substantially the annual income derived from the property.

(2) Payments not chargeable to capital account

The term "excludable portion" does not include that portion of any payment which is properly associated with an amount which is allowable as a deduction for the taxable year in which such amount is paid or incurred.

(c) Election for section not to apply

(1) In general

The taxpayer may elect not to have this section (and section 1255) apply to any excludable portion (or portion thereof).

(2) Manner and time for making election

Any election under paragraph (1) shall be made in the manner prescribed by the Secretary by regulations and shall be made not later than the due date prescribed by law (including extensions) for filing the return of tax under this chapter for the taxable year in which the payment was received or accrued.

(d) Denial of double benefits

No deduction or credit shall be allowed with respect to any expenditure which is properly associated with any amount excluded from gross income under subsection (a).

(e) Basis of property not increased by reason of excludable payments

Notwithstanding any provision of section 1016 to the contrary, no adjustment to basis shall be made with respect to property acquired or improved through the use of any payment, to the extent that such adjustment would reflect any amount which is excluded from gross income under subsection (a).

(Added Pub. L. 95–600, title V, §543(a), Nov. 6, 1978, 92 Stat. 2888; amended Pub. L. 96–222, title I, §105(a)(7)(A), (C), (E), Apr. 1, 1980, 94 Stat. 220, 221.)

REFERENCES IN TEXT

The Water Bank Act, referred to in subsec. (a)(3), is Pub. L. 91–559, Dec. 19, 1970, 84 Stat. 1468, as amended, which is classified generally to chapter 29 (§1301 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of Title 16 and Tables.

The Agricultural Credit Act of 1978, referred to in subsec. (a)(4), is Pub. L. 95–334, Aug. 4, 1978, 92 Stat. 420, as amended. Title IV of the Agricultural Credit Act of 1978 is classified generally to chapter 42 (§2201 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Tables.

The Soil Conservation and Domestic Allotment Act, referred to in subsec. (a)(5), (7), is act Apr. 27, 1935, ch. 85, 49 Stat. 163, as amended, which is classified generally to chapter 3B (§590a et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see section 590q of Title 16 and Tables.

Section 16 of the Soil Conservation and Domestic Policy Act, referred to in subsec. (a)(6), probably means section 16 of the Soil Conservation and Domestic Allotment Act, which was classified to section 590p of Title 16, Conservation, prior to repeal by Pub. L. 104–127, title III, §336(b)(1), Apr. 4, 1996, 110 Stat. 1006.

The Bankhead-Jones Farm Tenant Act, referred to in subsec. (a)(7), is act July 22, 1937, ch. 517, 50 Stat. 522, as amended, which is classified generally to chapter 33 (§1000 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1000 of Title 7 and Tables.

Section 4 of the Cooperative Forestry Assistance Act of 1978, referred to in subsec. (a)(8), related to a forestry incentives program, was classified to section 2103 of Title 16, Conservation, and was repealed by Pub. L. 107–171, title VIII, §8001(a), May 13, 2002, 116 Stat. 468. A new section 4 of the Act, as enacted by Pub. L. 107–171, was also classified to section 2103 of Title 16, related to a forest land enhancement program, and was repealed by Pub. L. 113–79, title VIII, §8001(a), Feb. 7, 2014, 128 Stat. 913.

PRIOR PROVISIONS

A prior section 126 was renumbered section 140 of this title.

AMENDMENTS

1980—Subsec. (a). Pub. L. 96–222, §105(a)(7)(C), (E), inserted in par. (9) "or his delegate" after "Secretary of the Treasury" and substituted in par. (10) "Any program of a State, possession of the United States, a political subdivision of any of the foregoing, or the District of Columbia" for "Any State program".

Subsec. (b). Pub. L. 96–222, §105(a)(7)(A), inserted provisions relating to payments not chargeable to capital account.

Subsec. (c). Pub. L. 96–222, §105(a)(7)(A), substituted provisions allowing the taxpayer to elect not to have this section apply to any excludable portion for provisions relating to the application of subsec. (a) of this section with other sections.

Subsecs. (d), (e). Pub. L. 96–222, §105(a)(7)(A), added subsecs. (d) and (e).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE

Pub. L. 95–600, title V, §543(d), Nov. 6, 1978, 92 Stat. 2890, provided that: "The amendments made by this section [enacting this section and section 1255 of this title] shall apply with respect to grants made under the programs after September 30, 1979."

[1] *See References in Text note below.*

§127. Educational assistance programs

(a) Exclusion from gross income

(1) In general

Gross income of an employee does not include amounts paid or expenses incurred by the employer for educational assistance to the employee if the assistance is furnished pursuant to a program which is described in subsection (b).

(2) $5,250 maximum exclusion

If, but for this paragraph, this section would exclude from gross income more than $5,250 of educational assistance furnished to an individual during a calendar year, this section shall apply only to the first $5,250 of such assistance so furnished.

(b) Educational assistance program

(1) In general

For purposes of this section an educational assistance program is a separate written plan of an employer for the exclusive benefit of his employees to provide such employees with educational assistance. The program must meet the requirements of paragraphs (2) through (6) of this subsection.

(2) Eligibility

The program shall benefit employees who qualify under a classification set up by the employer and found by the Secretary not to be discriminatory in favor of employees who are highly compensated employees (within the meaning of section 414(q)) or their dependents. For purposes of this paragraph, there shall be excluded from consideration employees not included in the program who are included in a unit of employees covered by an agreement which the Secretary of

Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, if there is evidence that educational assistance benefits were the subject of good faith bargaining between such employee representatives and such employer or employers.

(3) Principal shareholders or owners

Not more than 5 percent of the amounts paid or incurred by the employer for educational assistance during the year may be provided for the class of individuals who are shareholders or owners (or their spouses or dependents), each of whom (on any day of the year) owns more than 5 percent of the stock or of the capital or profits interest in the employer.

(4) Other benefits as an alternative

A program must not provide eligible employees with a choice between educational assistance and other remuneration includible in gross income. For purposes of this section, the business practices of the employer (as well as the written program) will be taken into account.

(5) No funding required

A program referred to in paragraph (1) is not required to be funded.

(6) Notification of employees

Reasonable notification of the availability and terms of the program must be provided to eligible employees.

(c) Definitions; special rules

For purposes of this section—

(1) Educational assistance

The term "educational assistance" means—

(A) the payment, by an employer, of expenses incurred by or on behalf of an employee for education of the employee (including, but not limited to, tuition, fees, and similar payments, books, supplies, and equipment), and

(B) the provision, by an employer, of courses of instruction for such employee (including books, supplies, and equipment),

but does not include payment for, or the provision of, tools or supplies which may be retained by the employee after completion of a course of instruction, or meals, lodging, or transportation. The term "educational assistance" also does not include any payment for, or the provision of any benefits with respect to, any course or other education involving sports, games, or hobbies.

(2) Employee

The term "employee" includes, for any year, an individual who is an employee within the meaning of section 401(c)(1) (relating to self-employed individuals).

(3) Employer

An individual who owns the entire interest in an unincorporated trade or business shall be treated as his own employer. A partnership shall be treated as the employer of each partner who is an employee within the meaning of paragraph (2).

(4) Attribution rules

(A) Ownership of stock

Ownership of stock in a corporation shall be determined in accordance with the rules provided under subsections (d) and (e) of section 1563 (without regard to section 1563(e)(3)(C)).

(B) Interest in unincorporated trade or business

The interest of an employee in a trade or business which is not incorporated shall be determined in accordance with regulations prescribed by the Secretary, which shall be based on principles similar to the principles which apply in the case of subparagraph (A).

(5) Certain tests not applicable

An educational assistance program shall not be held or considered to fail to meet any requirements of subsection (b) merely because—

(A) of utilization rates for the different types of educational assistance made available under the program; or

(B) successful completion, or attaining a particular course grade, is required for or considered in determining reimbursement under the program.

(6) Relationship to current law

This section shall not be construed to affect the deduction or inclusion in income of amounts (not within the exclusion under this section) which are paid or incurred, or received as reimbursement, for educational expenses under section 117, 162 or 212.

(7) Disallowance of excluded amounts as credit or deduction

No deduction or credit shall be allowed to the employee under any other section of this chapter for any amount excluded from income by reason of this section.

(d) Cross reference

For reporting and recordkeeping requirements, see section 6039D.

(Added Pub. L. 95–600, title I, §164(a), Nov. 6, 1978, 92 Stat. 2811; amended Pub. L. 98–611, §1(a)–(c), (d)(3)(B), (e), Oct. 31, 1984, 98 Stat. 3176–3178; Pub. L. 99–514, title XI, §§1114(b)(4), 1151(c)(4), (g)(3), 1162(a), Oct. 22, 1986, 100 Stat. 2450, 2503, 2507, 2510; Pub. L. 100–647, title I, §1011B(a)(31)(B), title IV, §4001(a), (b)(1), Nov. 10, 1988, 102 Stat. 3488, 3643; Pub. L. 101–140, title II, §203(a)(1), (2), Nov. 8, 1989, 103 Stat. 830; Pub. L. 101–239, title VII, §§7101(a)(1), 7814(a), Dec. 19, 1989, 103 Stat. 2304, 2413; Pub. L. 101–508, title XI, §11403(a), (b), Nov. 5, 1990, 104 Stat. 1388–473; Pub. L. 102–227, title I, §103(a)(1), Dec. 11, 1991, 105 Stat. 1687; Pub. L. 103–66, title XIII, §13101(a)(1), Aug. 10, 1993, 107 Stat. 420; Pub. L. 104–188, title I, §1202(a), (b), Aug. 20, 1996, 110 Stat. 1772, 1773; Pub. L. 105–34, title II, §221(a), Aug. 5, 1997, 111 Stat. 818; Pub. L. 106–170, title V, §506(a), Dec. 17, 1999, 113 Stat. 1922; Pub. L. 107–16, title IV, §411(a), (b), June 7, 2001, 115 Stat. 63.)

PRIOR PROVISIONS

A prior section 127 was renumbered section 140 of this title.

AMENDMENTS

2001—Subsec. (c)(1). Pub. L. 107–16, §411(b), struck out before period at end ", and such term also does not include any payment for, or the provision of any benefits with respect to, any graduate level course of a kind normally taken by an individual pursuing a program leading to a law, business, medical, or other advanced academic or professional degree".

Subsecs. (d), (e). Pub. L. 107–16, §411(a), redesignated subsec. (e) as (d) and struck out heading and text of former subsec. (d). Text read as follows: "This section shall not apply to expenses paid with respect to courses beginning after December 31, 2001."

1999—Subsec. (d). Pub. L. 106–170 substituted "December 31, 2001" for "May 31, 2000".

1997—Subsec. (d). Pub. L. 105–34 amended heading and text of subsec. (d) generally. Prior to amendment, text read as follows: "This section shall not apply to taxable years beginning after May 31, 1997. In the case of any taxable year beginning in 1997, only expenses paid with respect to courses beginning before July 1, 1997, shall be taken into account in determining the amount excluded under this section."

1996—Subsec. (c)(1). Pub. L. 104–188, §1202(b), in closing provisions, inserted before period at end ", and such term also does not include any payment for, or the provision of any benefits with respect to, any graduate level course of a kind normally taken by an individual pursuing a program leading to a law, business, medical, or other advanced academic or professional degree".

Subsec. (d). Pub. L. 104–188, §1202(a), substituted "May 31, 1997. In the case of any taxable year beginning in 1997, only expenses paid with respect to courses beginning before July 1, 1997, shall be taken into account in determining the amount excluded under this section." for "December 31, 1994."

1993—Subsec. (d). Pub. L. 103–66 substituted "December 31, 1994" for "June 30, 1992".

1991—Subsec. (d). Pub. L. 102–227 substituted "June 30, 1992" for "December 31, 1991".

1990—Subsec. (c)(1). Pub. L. 101–508, §11403(b), struck out at end "The term 'educational assistance' also does not include any payment for, or the provision of any benefits with respect to, any graduate level course of a kind normally taken by an individual pursuing a program leading to a law, business, medical, or other advanced academic or professional degree."

Subsec. (d). Pub. L. 101–508, §11403(a), substituted "December 31, 1991" for "September 30, 1990".

1989—Subsec. (b)(1). Pub. L. 101–140, §203(a)(1), amended par. (1) to read as if amendments by Pub. L. 99–514, §1151(c)(4)(A), had not been enacted, see 1986 Amendment note below.

Subsec. (b)(2). Pub. L. 101–140, §203(a)(2), amended par. (2) to read as if amendments by Pub. L. 100–647, §1011B(a)(31)(B), had not been enacted, see 1988 Amendment note below.

Pub. L. 101–140, §203(a)(1), amended par. (2) to read as if amendments by Pub. L. 99–514, §1151(g)(3), had not been enacted, see 1986 Amendment note below.

Subsec. (b)(6). Pub. L. 101–140, §203(a)(1), amended par. (6) to read as if amendments by Pub. L. 99–514, §1151(c)(4)(B), had not been enacted, see 1986 Amendment note below.

Subsec. (c)(8). Pub. L. 101–239, §7814(a), struck out par. (8) which read as follows: "COORDINATION WITH SECTION 117(d).—In the case of the education of an individual who is a graduate student at an educational organization described in section 170(b)(1)(A)(ii) and who is engaged in teaching or research activities for such organization, section 117(d)(2) shall be applied as if it did not contain the phrase '(below the graduate level)'."

Subsec. (d). Pub. L. 101–239, §7101(a)(1), substituted "September 30, 1990" for "December 31, 1988".

1988—Subsec. (b)(2). Pub. L. 100–647, §1011B(a)(31)(B), substituted "there shall" for "there may" and "who are" for "who may be" in last sentence.

Subsec. (c)(1). Pub. L. 100–647, §4001(b)(1), inserted at end "The term 'educational assistance' also does not include any payment for, or the provision of any benefits with respect to, any graduate level course of a kind normally taken by an individual pursuing a program leading to a law, business, medical, or other advanced academic or professional degree."

Subsec. (d). Pub. L. 100–647, §4001(a), substituted "1988" for "1987".

1986—Subsec. (a)(2). Pub. L. 99–514, §1162(a)(2), substituted "$5,250" for "$5,000" in heading and twice in text.

Subsec. (b)(1). Pub. L. 99–514, §1151(c)(4)(A), added par. (1) and struck out former par (1) which read as follows: "For purposes of this section an educational assistance program is a separate written plan of an employer for the exclusive benefit of his employees to provide such employees with educational assistance. The program must meet the requirements of paragraphs (2) through (6) of this subsection."

Subsec. (b)(2). Pub. L. 99–514, §1151(g)(3), substituted "For purposes of this paragraph, there may be excluded from consideration employees who may be excluded from consideration under section 89(h)." for "For purposes of this paragraph, there shall be excluded from consideration employees not included in the program who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, if there is evidence that educational assistance benefits were the subject of good faith bargaining between such employee representatives and such employer or employers."

Pub. L. 99–514, §1114(b)(4), substituted "highly compensated employees (within the meaning of section 414(q))" for "officers, owners, or highly compensated,".

Subsec. (b)(6). Pub. L. 99–514, §1151(c)(4)(B), struck out par. (6) which read as follows: " NOTIFICATION OF EMPLOYEES.—Reasonable notification of the availability and terms of the program must be provided to eligible employees."

Subsec. (d). Pub. L. 99–514, §1162(a)(1), substituted "December 31, 1987" for "December 31, 1985".

1984—Subsec. (a). Pub. L. 98–611, §1(b), amended subsec. generally, substituting "Exclusion from gross income" for "General rule" in heading, designating existing provision as par. "(1) In general" and adding par. (2).

Subsec. (c)(7). Pub. L. 98–611, §1(e), substituted "allowed to the employee" for "allowed".

Subsec. (c)(8). Pub. L. 98–611, §1(c), added par. (8).

Subsec. (d). Pub. L. 98–611, §1(a), substituted "December 31, 1985" for "December 31, 1983".

Subsec. (e). Pub. L. 98–611, §1(d)(3)(B), added subsec. (e).

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–16, title IV, §411(d), June 7, 2001, 115 Stat. 63, provided that: "The amendments made by this section [amending this section and former section 51A of this title] shall apply with respect to expenses relating to courses beginning after December 31, 2001."

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title V, §506(b), Dec. 17, 1999, 113 Stat. 1922, provided that: "The amendment made by subsection (a) [amending this section] shall apply to courses beginning after May 31, 2000."

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title II, §221(b), Aug. 5, 1997, 111 Stat. 818, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1996."

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, §1202(c)(1), (2), Aug. 20, 1996, 110 Stat. 1773, provided that:

"(1) EXTENSION.—The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1994.

"(2) GRADUATE EDUCATION.—The amendment made by subsection (b) [amending this section] shall apply with respect to expenses relating to courses beginning after June 30, 1996."

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13101(c)(1), Aug. 10, 1993, 107 Stat. 420, provided that: "The amendments made by subsection (a) [amending this section and repealing provisions set out below] shall apply to taxable years ending after June 30, 1992."

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102–227, title I, §103(b), Dec. 11, 1991, 105 Stat. 1687, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1991."

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, §11403(d), Nov. 5, 1990, 104 Stat. 1388–473, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and repealing provisions set out below] shall apply to taxable years beginning after December 31, 1989.

"(2) SUBSECTION (b).—The amendment made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 1990."

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7101(c), Dec. 19, 1989, 103 Stat. 2305, provided that: "The amendments made by this section [amending this section and section 132 of this title] shall apply to taxable years beginning after December 31, 1988."

Amendment by section 7814(a) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

Amendment by Pub. L. 101–140 effective as if included in section 1151 of Pub. L. 99–514, see section 203(c) of Pub. L. 101–140, set out as a note under section 79 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011B(a)(31)(B) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 4001(a), (b)(1) of Pub. L. 100–647 applicable to taxable years beginning after Dec. 31, 1987, see section 4001(c) of Pub. L. 100–647, set out as a note under section 117 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1114(b)(4) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1987, see section 1114(c)(2) of Pub. L. 99–514, set out as a note under section 414 of this title.

Amendment by section 1151(c)(4), (g)(3) of Pub. L. 99–514 applicable, with certain qualifications and exceptions, to years beginning after Dec. 31, 1988, see section 1151(k) of Pub. L. 99–514, as amended, set out as a note under section 79 of this title.

Amendment by section 1162(a) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1985, see section 1162(c) of Pub. L. 99–514, set out as a note under section 120 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–611, §1(g), Oct. 31, 1984, 98 Stat. 3178, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting section 6039D of this title and amending this section and sections 125, 3231, and 6652 of this title] shall apply to taxable years beginning after December 31, 1983.

"(2) SUBSECTION (d).—The amendments made by subsection (d) [enacting section 6039D and amending this section and sections 125 and 6652 of this title] shall take effect on January 1, 1985.

"(3) SUBSECTION (f).—The amendment made by subsection (f) [amending section 3231 of this title] shall apply to remuneration paid after December 31, 1984.

"(4) NO PENALTIES OR INTEREST ON FAILURE TO WITHHOLD.—No penalty or interest shall be imposed on any failure to withhold under subtitle C of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to employment taxes) with respect to amounts excluded from gross income under section 127 of such Code (as amended by this section and determined without regard to subsection (a)(2) thereof) with respect to periods during 1984.

"(5) COORDINATION WITH SECTION 117(d).—In the case of education described in section 127(c)(8) of the Internal Revenue Code of 1986, as added by this section, section 117(d) of such Code shall be treated as in effect on and after January 1, 1984."

EFFECTIVE DATE

Pub. L. 95–600, title I, §164(d), Nov. 6, 1978, 92 Stat. 2814, provided that: "The amendments made by this section [enacting this section and amending sections 3121, 3306, and 3401 of this title and section 409 of Title 42, The Public Health and Welfare] shall apply with respect to taxable years beginning after December 31, 1978."

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1114 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

EXPEDITED PROCEDURES FOR REFUNDS OF OVERPAYMENTS

Pub. L. 104–188, title I, §1202(c)(3), Aug. 20, 1996, 110 Stat. 1773, provided that: "The Secretary of the Treasury shall establish expedited procedures for the refund of any overpayment of taxes imposed by the Internal Revenue Code of 1986 which is attributable to amounts excluded from gross income during 1995 or 1996 under section 127 of such Code, including procedures waiving the requirement that an employer obtain an employee's signature where the employer demonstrates to the satisfaction of the Secretary that any refund collected by the employer on behalf of the employee will be paid to the employee."

SPECIAL RULE FOR CERTAIN TAXABLE YEARS

Pub. L. 102–227, title I, §103(a)(2), Dec. 11, 1991, 105 Stat. 1687, provided that, in the case of any taxable year beginning in 1992, only amounts paid before July 1, 1992, by employer for educational assistance for employee be taken into account in determining amount excluded under this section with respect to such employee for such taxable year, prior to repeal by Pub. L. 103–66, title XIII, §13101(a)(2), Aug. 10, 1993, 107 Stat. 420.

Pub. L. 101–239, title VII, §7101(a)(2), Dec. 19, 1989, 103 Stat. 2304, provided that, in the case of any taxable year beginning in 1990, only amounts paid before Oct. 1, 1990, by employer for educational assistance for employee be taken into account in determining amount excluded under this section with respect to such employee for such taxable year, prior to repeal by Pub. L. 101–508, title XI, §11403(c), Nov. 5, 1990, 104 Stat. 1388–473.

NONENFORCEMENT OF AMENDMENT MADE BY SECTION 1151 OF PUB. L. 99–514 FOR FISCAL YEAR 1990

No monies appropriated by Pub. L. 101–136 to be used to implement or enforce section 1151 of Pub. L. 99–514 or the amendments made by such section, see section 528 of Pub. L. 101–136, set out as a note under section 89 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[§128. Repealed. Pub. L. 101–508, title XI, §11801(a)(10), Nov. 5, 1990, 104 Stat. 1388–520]

Section, added and amended Pub. L. 97–34, title III, §§301(a), 302(a), (d)(1), Aug. 13, 1981, 95 Stat. 267, 270, 274; Pub. L. 97–448, title I, §§103(a)(1), (5), (b), 109, Jan. 12, 1983, 96 Stat. 2374, 2375, 2391; Pub. L. 98–21, title I, §§121(f)(2), (g), 122(c)(3), (d), Apr. 20, 1983, 97 Stat. 84, 87; Pub. L. 98–369, div. A, title I, §16(a), July 18, 1984, 98 Stat. 505, related to interest on certain savings certificates.

A prior section 128 was renumbered section 140 of this title.

SAVINGS PROVISION

For provisions that nothing in repeal by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

§129. Dependent care assistance programs

(a) Exclusion

(1) In general

Gross income of an employee does not include amounts paid or incurred by the employer for dependent care assistance provided to such employee if the assistance is furnished pursuant to a program which is described in subsection (d).

(2) Limitation of exclusion

(A) In general

The amount which may be excluded under paragraph (1) for dependent care assistance with respect to dependent care services provided during a taxable year shall not exceed $5,000 ($2,500 in the case of a separate return by a married individual).

(B) Year of inclusion

The amount of any excess under subparagraph (A) shall be included in gross income in the taxable year in which the dependent care services were provided (even if payment of dependent care assistance for such services occurs in a subsequent taxable year).

(C) Marital status

For purposes of this paragraph, marital status shall be determined under the rules of paragraphs (3) and (4) of section 21(e).

(b) Earned income limitation

(1) In general

The amount excluded from the income of an employee under subsection (a) for any taxable year shall not exceed—

(A) in the case of an employee who is not married at the close of such taxable year, the earned income of such employee for such taxable year, or

(B) in the case of an employee who is married at the close of such taxable year, the lesser of—

(i) the earned income of such employee for such taxable year, or

(ii) the earned income of the spouse of such employee for such taxable year.

(2) Special rule for certain spouses

For purposes of paragraph (1), the provisions of section 21(d)(2) shall apply in determining the earned income of a spouse who is a student or incapable of caring for himself.

(c) Payments to related individuals

No amount paid or incurred during the taxable year of an employee by an employer in providing dependent care assistance to such employee shall be excluded under subsection (a) if such amount was paid or incurred to an individual—

(1) with respect to whom, for such taxable year, a deduction is allowable under section 151(c) (relating to personal exemptions for dependents) to such employee or the spouse of such employee, or

(2) who is a child of such employee (within the meaning of section 152(f)(1)) under the age of 19 at the close of such taxable year.

(d) Dependent care assistance program

(1) In general

For purposes of this section a dependent care assistance program is a separate written plan of an employer for the exclusive benefit of his employees to provide such employees with dependent care assistance which meets the requirements of paragraphs (2) through (8) of this subsection. If any plan would qualify as a dependent care assistance program but for a failure to meet the requirements of this subsection, then, notwithstanding such failure, such plan shall be treated as a dependent care assistance program in the case of employees who are not highly compensated employees.

(2) Discrimination

The contributions or benefits provided under the plan shall not discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q)) or their dependents.

(3) Eligibility

The program shall benefit employees who qualify under a classification set up by the employer and found by the Secretary not to be discriminatory in favor of employees described in paragraph (2), or their dependents.

(4) Principal shareholders or owners

Not more than 25 percent of the amounts paid or incurred by the employer for dependent care assistance during the year may be provided for the class of individuals who are shareholders or owners (or their spouses or dependents), each of whom (on any day of the year) owns more than 5 percent of the stock or of the capital or profits interest in the employer.

(5) No funding required

A program referred to in paragraph (1) is not required to be funded.

(6) Notification of eligible employees

Reasonable notification of the availability and terms of the program shall be provided to eligible employees.

(7) Statement of expenses

The plan shall furnish to an employee, on or before January 31, a written statement showing the amounts paid or expenses incurred by the employer in providing dependent care assistance to such employee during the previous calendar year.

(8) Benefits

(A) In general

A plan meets the requirements of this paragraph if the average benefits provided to employees who are not highly compensated employees under all plans of the employer is at least 55 percent of the average benefits provided to highly compensated employees under all plans of the employer.

(B) Salary reduction agreements

For purposes of subparagraph (A), in the case of any benefits provided through a salary

reduction agreement, a plan may disregard any employees whose compensation is less than $25,000. For purposes of this subparagraph, the term "compensation" has the meaning given such term by section 414(q)(4), except that, under rules prescribed by the Secretary, an employer may elect to determine compensation on any other basis which does not discriminate in favor of highly compensated employees.

(9) Excluded employees

For purposes of paragraphs (3) and (8), there shall be excluded from consideration—

(A) subject to rules similar to the rules of section 410(b)(4), employees who have not attained the age of 21 and completed 1 year of service (as defined in section 410(a)(3)), and

(B) employees not included in a dependent care assistance program who are included in a unit of employees covered by an agreement which the Secretary finds to be a collective bargaining agreement between employee representatives and 1 or more employees, if there is evidence that dependent care benefits were the subject of good faith bargaining between such employee representatives and such employer or employers.

(e) Definitions and special rules

For purposes of this section—

(1) Dependent care assistance

The term "dependent care assistance" means the payment of, or provision of, those services which if paid for by the employee would be considered employment-related expenses under section 21(b)(2) (relating to expenses for household and dependent care services necessary for gainful employment).

(2) Earned income

The term "earned income" shall have the meaning given such term in section 32(c)(2), but such term shall not include any amounts paid or incurred by an employer for dependent care assistance to an employee.

(3) Employee

The term "employee" includes, for any year, an individual who is an employee within the meaning of section 401(c)(1) (relating to self-employed individuals).

(4) Employer

An individual who owns the entire interest in an unincorporated trade or business shall be treated as his own employer. A partnership shall be treated as the employer of each partner who is an employee within the meaning of paragraph (3).

(5) Attribution rules

(A) Ownership of stock

Ownership of stock in a corporation shall be determined in accordance with the rules provided under subsections (d) and (e) of section 1563 (without regard to section 1563(e)(3)(C)).

(B) Interest in unincorporated trade or business

The interest of an employee in a trade or business which is not incorporated shall be determined in accordance with regulations prescribed by the Secretary, which shall be based on principles similar to the principles which apply in the case of subparagraph (A).

(6) Utilization test not applicable

A dependent care assistance program shall not be held or considered to fail to meet any requirements of subsection (d) (other than paragraphs (4) and (8) thereof) merely because of utilization rates for the different types of assistance made available under the program.

(7) Disallowance of excluded amounts as credit or deduction

No deduction or credit shall be allowed to the employee under any other section of this chapter

for any amount excluded from the gross income of the employee by reason of this section.

(8) Treatment of onsite facilities

In the case of an onsite facility maintained by an employer, except to the extent provided in regulations, the amount of dependent care assistance provided to an employee excluded with respect to any dependent shall be based on—

(A) utilization of the facility by a dependent of the employee, and

(B) the value of the services provided with respect to such dependent.

(9) Identifying information required with respect to service provider

No amount paid or incurred by an employer for dependent care assistance provided to an employee shall be excluded from the gross income of such employee unless—

(A) the name, address, and taxpayer identification number of the person performing the services are included on the return to which the exclusion relates, or

(B) if such person is an organization described in section 501(c)(3) and exempt from tax under section 501(a), the name and address of such person are included on the return to which the exclusion relates.

In the case of a failure to provide the information required under the preceding sentence, the preceding sentence shall not apply if it is shown that the taxpayer exercised due diligence in attempting to provide the information so required.

(Added Pub. L. 97–34, title I, §124(e)(1), Aug. 13, 1981, 95 Stat. 198; amended Pub. L. 97–448, title I, §101(e), Jan. 12, 1983, 96 Stat. 2366; Pub. L. 98–369, div. A, title IV, §474(r)(6), July 18, 1984, 98 Stat. 839; Pub. L. 99–514, title I, §104(b)(1), title XI, §§1114(b)(4), 1151(c)(5), (f), (g)(4), 1163(a), (b), Oct. 22, 1986, 100 Stat. 2104, 2450, 2503, 2506, 2507, 2510; Pub. L. 100–485, title VII, §703(c)(2), Oct. 13, 1988, 102 Stat. 2427; Pub. L. 100–647, title I, §1011B(a)(14), (15), (18), (30), (31)(A), (c)(1), (2)(A), title III, §3021(a)(14), Nov. 10, 1988, 102 Stat. 3485, 3487–3489, 3631; Pub. L. 101–140, title II, §§203(a)(1), (2), 204(a)(1)–(3)(C), Nov. 8, 1989, 103 Stat. 830, 832; Pub. L. 101–239, title VII, §7811(h)(2), Dec. 19, 1989, 103 Stat. 2409; Pub. L. 104–188, title I, §1431(c)(1)(B), Aug. 20, 1996, 110 Stat. 1803; Pub. L. 108–311, title II, §207(12), Oct. 4, 2004, 118 Stat. 1177.)

CODIFICATION

Pub. L. 101–140, §203(a)(1), amended this section to read as if the amendments made by section 1151(c)(5)(A) of Pub. L. 99–514 (amending subsec. (d)(1)) had not been enacted. Subsequent to amendment by Pub. L. 99–514, subsec. (d)(1) was amended by Pub. L. 100–647. See 1988 Amendment note below.

PRIOR PROVISIONS

A prior section 129 was renumbered section 140 of this title.

AMENDMENTS

2004—Subsec. (c)(2). Pub. L. 108–311 substituted "152(f)(1)" for "151(c)(3)".

1996—Subsec. (d)(8)(B). Pub. L. 104–188 substituted "section 414(q)(4)" for "section 414(q)(7)".

1989—Subsec. (a). Pub. L. 101–239 struck out at end "For purposes of the preceding sentence, marital status shall be determined under the rules of paragraphs (3) and (4) of section 21(e)."

Subsec. (d)(1). Pub. L. 101–140, §204(a)(3)(B), substituted "paragraphs (2) through (8)" for "paragraphs (2) through (7)".

Pub. L. 101–140, §204(a)(1), inserted at end "If any plan would qualify as a dependent care assistance program but for a failure to meet the requirements of this subsection, then, notwithstanding such failure, such plan shall be treated as a dependent care assistance program in the case of employees who are not highly compensated employees."

Pub. L. 101–140, §203(a)(1), amended par. (1) to read as if the amendments by Pub. L. 99–514, §1151(c)(5)(A), had not been enacted, see 1986 Amendment note below.

Subsec. (d)(3). Pub. L. 101–140, §204(a)(2)(B), struck out at end "For purposes of this paragraph, there may be excluded from consideration employees who may be excluded from consideration under section 89(h)." for "For purposes of this paragraph, there shall be excluded from consideration employees not

included in the program who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, if there is evidence that dependent care benefits were the subject of good faith bargaining between such employee representatives and such employer or employers."

Pub. L. 101–140, §203(a)(2), amended par. (3) to read as if amendments by Pub. L. 100–647, §1011B(a)(31)(A)(i), had not been enacted, see 1988 Amendment note below.

Pub. L. 101–140, §203(a)(1), amended par. (3) to read as if amendments by Pub. L. 99–514, §1151(g)(4), had not been enacted, see 1986 Amendment note below.

Subsec. (d)(6). Pub. L. 101–140, §203(a)(1), amended par. (6) to read as if amendments by Pub. L. 99–514, §1151(c)(5)(B), had not been enacted, see 1986 Amendment note below.

Subsec. (d)(7). Pub. L. 101–140, §204(a)(3)(A), redesignated par. (7) as (8).

Pub. L. 101–140, §203(a)(1), amended par. (7) to read as if amendments by Pub. L. 99–514, §1151(c)(5)(B), had not been enacted, see 1986 Amendment note below.

Subsec. (d)(8). Pub. L. 101–140, §204(a)(3)(A), redesignated par. (7) as (8).

Pub. L. 101–140, §203(a)(2), amended par. (8) to read as if amendments by Pub. L. 100–647, §1011B(a)(31)(A)(ii), had not been enacted, see 1988 Amendment note below.

Subsec. (d)(9). Pub. L. 101–140, §204(a)(2)(A), added par. (9).

Subsec. (e)(6). Pub. L. 101–140, §204(a)(3)(C), substituted "(8)" for "(7)".

1988—Subsec. (a)(2). Pub. L. 100–647, §1011B(c)(2)(A), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "The aggregate amount excluded from the gross income of the taxpayer under this section for any taxable year shall not exceed $5,000 ($2,500 in the case of a separate return by a married individual)."

Subsec. (d)(1)(B). Pub. L. 100–647, §1011B(a)(30), substituted "(7)" for "(6)", see Codification note above.

Subsec. (d)(3). Pub. L. 100–647, §1011B(a)(31)(A)(i), struck out at end "For purposes of this paragraph, there may be excluded from consideration employees who may be excluded from consideration under section 89(h)."

Subsec. (d)(7). Pub. L. 100–647, §1011B(a)(14), redesignated par. (8) as (7).

Subsec. (d)(7)(A). Pub. L. 100–647, §1011B(a)(15)(A), inserted "under all plans of the employer" after second and third reference to "employees".

Subsec. (d)(7)(B). Pub. L. 100–647, §3021(a)(14), struck out "(within the meaning of section 414(q)(7))" after "whose compensation" and inserted at end "For purposes of this subparagraph, the term 'compensation' has the meaning given such term by section 414(q)(7), except that, under rules prescribed by the Secretary, an employer may elect to determine compensation on any other basis which does not discriminate in favor of highly compensated employees."

Pub. L. 100–647, §1011B(a)(15)(B), (C), substituted "a plan may disregard" for "there shall be disregarded" and "414(q)(7)" for "415(q)(7)".

Subsec. (d)(8). Pub. L. 100–647, §1011B(a)(31)(A)(ii), added par. (8). Former par. (8) redesignated (7).

Subsec. (e)(6). Pub. L. 100–647, §1011B(a)(18), inserted "(other than paragraphs (4) and (7) thereof)" after "subsection (d)".

Subsec. (e)(8). Pub. L. 100–647, §1011B(c)(1), in introductory provisions, inserted "maintained by an employer" after "onsite facility" and "of dependent care assistance provided to an employee" after "the amount", in subpar. (A), inserted "of the facility by a dependent of the employee" after "utilization", and in subpar. (B), inserted "with respect to such dependent" after "provided".

Subsec. (e)(9). Pub. L. 100–485 added par. (9).

1986—Subsec. (a). Pub. L. 99–514, §1163(a), substituted "Exclusion" for "In general" in heading and amended text generally. Prior to amendment, text read as follows: "Gross income of an employee does not include amounts paid or incurred by the employer for dependent care assistance provided to such employee if the assistance is furnished pursuant to a program which is described in subsection (d)."

Subsec. (c)(1). Pub. L. 99–514, §104(b)(1)(A), substituted "section 151(c)" for "section 151(e)".

Subsec. (c)(2). Pub. L. 99–514, §104(b)(1)(B), substituted "section 151(c)(3)" for "section 151(e)(3)".

Subsec. (d)(1). Pub. L. 99–514, §1151(c)(5)(A), added par. (1) and struck out former par. (1) which read as follows: "For purposes of this section a dependent care assistance program is a separate written plan of an employer for the exclusive benefit of his employees to provide such employees with dependent care assistance which meets the requirements of paragraphs (2) through (7) of this subsection."

Subsec. (d)(2). Pub. L. 99–514, §1114(b)(4), substituted "highly compensated employees (within the meaning of section 414(q))" for "officers, owners, or highly compensated,".

Subsec. (d)(3). Pub. L. 99–514, §1151(g)(4), substituted "For purposes of this paragraph, there may be excluded from consideration employees who may be excluded from consideration under section 89(h)." for

"For purposes of this paragraph, there shall be excluded from consideration employees not included in the program who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, if there is evidence that dependent care benefits were the subject of good faith bargaining between such employee representatives and such employer or employers."

Subsec. (d)(6), (7). Pub. L. 99–514, §1151(c)(5)(B), redesignated par. (7) as (6) and struck out former par. (6) which read as follows: "NOTIFICATION OF ELIGIBLE EMPLOYEES.—Reasonable notification of the availability and terms of the program shall be provided to eligible employees."

Subsec. (d)(8). Pub. L. 99–514, §1151(f), added par. (8).

Subsec. (e)(8). Pub. L. 99–514, §1163(b), added par. (8).

1984—Subsec. (b)(2). Pub. L. 98–369, §474(r)(6)(A), substituted "section 21(d)(2)" for "section 44A(e)(2)".

Subsec. (e)(1). Pub. L. 98–369, §474(r)(6)(B), substituted "section 21(b)(2)" for "section 44A(c)(2)".

Subsec. (e)(2). Pub. L. 98–369, §474(r)(6)(C), substituted "section 32(c)(2)" for "section 43(c)(2)".

1983—Subsec. (d)(1). Pub. L. 97–448, §101(e)(1)(C), substituted "paragraphs (2) through (7)" for "paragraphs (2) through (6)".

Subsec. (d)(2). Pub. L. 97–448, §101(e)(1)(A), added par. (2). Former par. (2) redesignated (3).

Subsec. (d)(3). Pub. L. 97–448, §101(e)(1)(A), (B), redesignated former par. (2) as (3) and substituted "employees described in paragraph (2), or their dependents" for "employees who are officers, owners, or highly compensated, or their dependents". Former par. (3) redesignated (4).

Subsec. (d)(4) to (7). Pub. L. 97–448, §101(e)(1)(A), redesignated former pars. (3) to (6) as (4) to (7), respectively.

Subsec. (e)(7). Pub. L. 97–448, §101(e)(2), substituted "shall be allowed to the employee under any other section of this chapter for any amount excluded from the gross income of the employee" for "shall be allowed under any other section of this chapter for any amount excluded from income".

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to years beginning after Dec. 31, 1996, except that in determining whether an employee is a highly compensated employee for years beginning in 1997, such amendment to be treated as having been in effect for years beginning in 1996, see section 1431(d)(1) of Pub. L. 104–188, set out as a note under section 414 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

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

Amendment by section 203(a)(1), (2) of Pub. L. 101–140 effective as if included in section 1151 of Pub. L. 99–514, see section 203(c) of Pub. L. 101–140, set out as a note under section 79 of this title.

Pub. L. 101–140, title II, §204(a)(3)(D), Nov. 8, 1989, 103 Stat. 833, provided that: "Section 129(d)(8) (as redesignated by subparagraph (A)) shall apply to plan years beginning after December 31, 1989."

Pub. L. 101–140, title II, §204(d)(1), (2), Nov. 8, 1989, 103 Stat. 833, provided that:

"(1) The amendments made by subsections (a)(1), (a)(2), and (b)(2) [amending this section and section 414 of this title] shall apply to years beginning after December 31, 1988.

"(2) The amendments made by subsection (a)(3) [amending this section] shall apply to plan years beginning after December 31, 1989."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011B(a)(14), (15), (18), (30), (31)(A), (c)(1) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title I, §1011B(c)(2)(C), Nov. 10, 1988, 102 Stat. 3489, provided that:

"(i) Except as provided in this subparagraph, the amendments made by this paragraph [amending this section and section 6051 of this title] shall apply to taxable years beginning after December 31, 1987.

"(ii) A taxpayer may elect to have the amendment made by subparagraph (A) [amending this section] apply

to taxable years beginning in 1987.

"(iii) In the case of a taxpayer not making an election under clause (ii), any dependent care assistance provided in a taxable year beginning in 1987 with respect to which reimbursement was not received in such taxable year shall be treated as provided in the taxpayer's first taxable year beginning after December 31, 1987."

Pub. L. 100–647, title III, §3021(d), Nov. 10, 1988, 102 Stat. 3634, provided that:

"(1) SUBSECTION (a).—The amendments made by subsection (a) [amending this section and sections 89, 410, 4976, 6039D, and 6652 of this title] shall take effect as if included in the amendments made by section 1151 of the Tax Reform Act of 1986 [Pub. L. 99–514, see Effective Date note below]; except that the amendment made by subsection (a)(8) [amending section 89 of this title] shall apply to testing years beginning after December 31, 1989.

"(2) SUBSECTION (b).—The amendments made by subsection (b) [amending sections 89 and 414 of this title] shall apply to years beginning after December 31, 1986."

Amendment by Pub. L. 100–485 applicable to taxable years beginning after Dec. 31, 1988, see section 703(d) of Pub. L. 100–485, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 104(b)(1) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 1114(b)(4) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1987, see section 1114(c)(2) of Pub. L. 99–514, set out as a note under section 414 of this title.

Amendment by section 1151(c)(5), (f), (g)(4) of Pub. L. 99–514 applicable, with certain qualifications and exceptions, to years beginning after Dec. 31, 1988, see section 1151(k) of Pub. L. 99–514, as amended, set out as a note under section 79 of this title.

Pub. L. 99–514, title XI, §1163(c), Oct. 22, 1986, 100 Stat. 2511, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1986."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1981, see section 124(f) of Pub. L. 97–34, set out as an Effective Date of 1981 Amendment note under section 21 of this title.

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1114 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

NONENFORCEMENT OF AMENDMENT MADE BY SECTION 1151 OF PUB. L. 99–514 FOR FISCAL YEAR 1990

No monies appropriated by Pub. L. 101–136 to be used to implement or enforce section 1151 of Pub. L. 99–514 or the amendments made by such section, see section 528 of Pub. L. 101–136, set out as a note under section 89 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

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

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such

plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§130. Certain personal injury liability assignments

(a) In general

Any amount received for agreeing to a qualified assignment shall not be included in gross income to the extent that such amount does not exceed the aggregate cost of any qualified funding assets.

(b) Treatment of qualified funding asset

In the case of any qualified funding asset—

(1) the basis of such asset shall be reduced by the amount excluded from gross income under subsection (a) by reason of the purchase of such asset, and

(2) any gain recognized on a disposition of such asset shall be treated as ordinary income.

(c) Qualified assignment

For purposes of this section, the term "qualified assignment" means any assignment of a liability to make periodic payments as damages (whether by suit or agreement), or as compensation under any workmen's compensation act, on account of personal injury or sickness (in a case involving physical injury or physical sickness)—

(1) if the assignee assumes such liability from a person who is a party to the suit or agreement, or the workmen's compensation claim, and

(2) if—

(A) such periodic payments are fixed and determinable as to amount and time of payment,

(B) such periodic payments cannot be accelerated, deferred, increased, or decreased by the recipient of such payments,

(C) the assignee's obligation on account of the personal injuries or sickness is no greater than the obligation of the person who assigned the liability, and

(D) such periodic payments are excludable from the gross income of the recipient under paragraph (1) or (2) of section 104(a).

The determination for purposes of this chapter of when the recipient is treated as having received any payment with respect to which there has been a qualified assignment shall be made without regard to any provision of such assignment which grants the recipient rights as a creditor greater than those of a general creditor.

(d) Qualified funding asset

For purposes of this section, the term "qualified funding asset" means any annuity contract issued by a company licensed to do business as an insurance company under the laws of any State, or any obligation of the United States, if—

(1) such annuity contract or obligation is used by the assignee to fund periodic payments under any qualified assignment,

(2) the periods of the payments under the annuity contract or obligation are reasonably related to the periodic payments under the qualified assignment, and the amount of any such payment under the contract or obligation does not exceed the periodic payment to which it relates,

(3) such annuity contract or obligation is designated by the taxpayer (in such manner as the Secretary shall by regulations prescribe) as being taken into account under this section with respect to such qualified assignment, and

(4) such annuity contract or obligation is purchased by the taxpayer not more than 60 days before the date of the qualified assignment and not later than 60 days after the date of such assignment.

(Added Pub. L. 97–473, title I, §101(b)(1), Jan. 14, 1983, 96 Stat. 2605; amended Pub. L. 99–514, title X, §1002(a), Oct. 22, 1986, 100 Stat. 2388; Pub. L. 100–647, title VI, §6079(b)(1), Nov. 10,

1988, 102 Stat. 3709; Pub. L. 105–34, title IX, §962(a), Aug. 5, 1997, 111 Stat. 891.)

PRIOR PROVISIONS

A prior section 130 was renumbered section 140 of this title.

AMENDMENTS

1997—Subsec. (c). Pub. L. 105–34, §962(a)(1), inserted ", or as compensation under any workmen's compensation act," after "(whether by suit or agreement)" in introductory provisions.

Subsec. (c)(1). Pub. L. 105–34, §962(a)(2), inserted "or the workmen's compensation claim," after "agreement,".

Subsec. (c)(2)(D). Pub. L. 105–34, §962(a)(3), substituted "paragraph (1) or (2) of section 104(a)" for "section 104(a)(2)".

1988—Subsec. (c). Pub. L. 100–647, in par. (2), redesignated subpars. (D) and (E) as (C) and (D), respectively, struck out former subpar. (C) which provided that the assignee does not provide to the recipient of such payments rights against the assignee which are greater than those of a general creditor, and as concluding provisions, inserted at end "The determination for purposes of this chapter of when the recipient is treated as having received any payment with respect to which there has been a qualified assignment shall be made without regard to any provision of such assignment which grants the recipient rights as a creditor greater than those of a general creditor."

1986—Subsec. (c). Pub. L. 99–514 inserted "(in a case involving physical injury or physical sickness)".

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title IX, §962(b), Aug. 5, 1997, 111 Stat. 892, provided that: "The amendments made by subsection (a) [amending this section] shall apply to claims under workmen's compensation acts filed after the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title VI, §6079(b)(2), Nov. 10, 1988, 102 Stat. 3710, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to assignments after the date of the enactment of this Act [Nov. 10, 1988]."

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title X, §1002(b), Oct. 22, 1986, 100 Stat. 2388, provided that: "The amendment made by this section [amending this section] shall apply to assignments entered into after December 31, 1986, in taxable years ending after such date."

EFFECTIVE DATE

Pub. L. 97–473, title I, §101(c), Jan. 14, 1983, 96 Stat. 2606, provided that: "The amendments made by this section [enacting this section and amending section 104 of this title] shall apply to taxable years ending after December 31, 1982."

§131. Certain foster care payments

(a) General rule

Gross income shall not include amounts received by a foster care provider during the taxable year as qualified foster care payments.

(b) Qualified foster care payment defined

For purposes of this section—

(1) In general

The term "qualified foster care payment" means any payment made pursuant to a foster care program of a State or political subdivision thereof—

(A) which is paid by—

(i) a State or political subdivision thereof, or

(ii) a qualified foster care placement agency, and

(B) which is—

(i) paid to the foster care provider for caring for a qualified foster individual in the foster care provider's home, or

(ii) a difficulty of care payment.

(2) Qualified foster individual

The term "qualified foster individual" means any individual who is living in a foster family home in which such individual was placed by—

(A) an agency of a State or political subdivision thereof, or

(B) a qualified foster care placement agency.

(3) Qualified foster care placement agency

The term "qualified foster care placement agency" means any placement agency which is licensed or certified by—

(A) a State or political subdivision thereof, or

(B) an entity designated by a State or political subdivision thereof,

for the foster care program of such State or political subdivision to make foster care payments to providers of foster care.

(4) Limitation based on number of individuals over the age of 18

In the case of any foster home in which there is a qualified foster care individual who has attained age 19, foster care payments (other than difficulty of care payments) for any period to which such payments relate shall not be excludable from gross income under subsection (a) to the extent such payments are made for more than 5 such qualified foster individuals.

(c) Difficulty of care payments

For purposes of this section—

(1) Difficulty of care payments

The term "difficulty of care payments" means payments to individuals which are not described in subsection (b)(1)(B)(i), and which—

(A) are compensation for providing the additional care of a qualified foster individual which is—

(i) required by reason of a physical, mental, or emotional handicap of such individual with respect to which the State has determined that there is a need for additional compensation, and

(ii) provided in the home of the foster care provider, and

(B) are designated by the payor as compensation described in subparagraph (A).

(2) Limitation based on number of individuals

In the case of any foster home, difficulty of care payments for any period to which such payments relate shall not be excludable from gross income under subsection (a) to the extent such payments are made for more than—

(A) 10 qualified foster individuals who have not attained age 19, and

(B) 5 qualified foster individuals not described in subparagraph (A).

(Added Pub. L. 97–473, title I, §102(a), Jan. 14, 1983, 96 Stat. 2606; amended Pub. L. 99–514, title XVII, §1707(a), Oct. 22, 1986, 100 Stat. 2781; Pub. L. 107–147, title IV, §404(a)–(c), Mar. 9, 2002, 116 Stat. 41.)

PRIOR PROVISIONS

A prior section 131 was renumbered section 140 of this title.

AMENDMENTS

2002—Subsec. (b)(1). Pub. L. 107–147, §404(a), amended provisions preceding subpar. (B) generally.

Prior to amendment, text of such provisions read as follows: "The term 'qualified foster care payment' means any amount—

"(A) which is paid by a State or political subdivision thereof or by a placement agency which is described in section 501(c)(3) and exempt from tax under section 501(a), and".

Subsec. (b)(2)(B). Pub. L. 107–147, §404(b), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "in the case of an individual who has not attained age 19, an organization which is licensed by a State (or political subdivision thereof) as a placement agency and which is described in section 501(c)(3) and exempt from tax under section 501(a)."

Subsec. (b)(3), (4). Pub. L. 107–147, §404(c), added par. (3) and redesignated former par. (3) as (4).

1986—Subsec. (a). Pub. L. 99–514 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "Gross income shall not include amounts received by a foster parent during the taxable year as qualified foster care payments."

Subsec. (b). Pub. L. 99–514 amended subsec. (b) generally. Prior to amendment, par. (1) "In general" read as follows: "The term 'qualified foster care payment' means any amount—

"(A) which is paid by a State or political subdivision thereof or by a child-placing agency which is described in section 501(c)(3) and exempt from tax under section 501(a), and

"(B) which is—

"(i) paid to reimburse the foster parent for the expenses of caring for a qualified foster child in the foster parent's home, or

"(ii) a difficulty of care payment."

and par. (2) "Qualified foster child" read as follows: "The term 'qualified foster child' means any individual who—

"(A) has not attained age 19, and

"(B) is living in a foster family home in which such individual was placed by—

"(i) an agency of a State or political subdivision thereof, or

"(ii) an organization which is licensed by a State (or political subdivision thereof) as a child-placing agency and which is described in section 501(c)(3) and exempt from tax under section 501(a)."

Subsec. (c). Pub. L. 99–514, in amending subsec. (c) generally, in par. (1)(A), substituted references to "qualified foster individual", "such individual", and "foster care provider" for references to "qualified foster child", "such child", and "foster parent", respectively, and in par. (2) substituted "more than (A) 10 qualified foster individuals who have not attained age 19, and (B) 5 qualified foster individuals not described in subparagraph (A)" for "more than 10 qualified foster children".

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title IV, §404(d), Mar. 9, 2002, 116 Stat. 42, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2001."

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XVII, §1707(b), Oct. 22, 1986, 100 Stat. 2782, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1985."

EFFECTIVE DATE

Pub. L. 97–473, title I, §102(c), Jan. 14, 1983, 96 Stat. 2607, provided that: "The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1978."

§132. Certain fringe benefits

(a) Exclusion from gross income

Gross income shall not include any fringe benefit which qualifies as a—

(1) no-additional-cost service,

(2) qualified employee discount,

(3) working condition fringe,

(4) de minimis fringe,

(5) qualified transportation fringe,

(6) qualified moving expense reimbursement,

(7) qualified retirement planning services, or

(8) qualified military base realignment and closure fringe.

(b) No-additional-cost service defined

For purposes of this section, the term "no-additional-cost service" means any service provided by an employer to an employee for use by such employee if—

(1) such service is offered for sale to customers in the ordinary course of the line of business of the employer in which the employee is performing services, and

(2) the employer incurs no substantial additional cost (including forgone revenue) in providing such service to the employee (determined without regard to any amount paid by the employee for such service).

(c) Qualified employee discount defined

For purposes of this section—

(1) Qualified employee discount

The term "qualified employee discount" means any employee discount with respect to qualified property or services to the extent such discount does not exceed—

(A) in the case of property, the gross profit percentage of the price at which the property is being offered by the employer to customers, or

(B) in the case of services, 20 percent of the price at which the services are being offered by the employer to customers.

(2) Gross profit percentage

(A) In general

The term "gross profit percentage" means the percent which—

(i) the excess of the aggregate sales price of property sold by the employer to customers over the aggregate cost of such property to the employer, is of

(ii) the aggregate sale price of such property.

(B) Determination of gross profit percentage

Gross profit percentage shall be determined on the basis of—

(i) all property offered to customers in the ordinary course of the line of business of the employer in which the employee is performing services (or a reasonable classification of property selected by the employer), and

(ii) the employer's experience during a representative period.

(3) Employee discount defined

The term "employee discount" means the amount by which—

(A) the price at which the property or services are provided by the employer to an employee for use by such employee, is less than

(B) the price at which such property or services are being offered by the employer to customers.

(4) Qualified property or services

The term "qualified property or services" means any property (other than real property and other than personal property of a kind held for investment) or services which are offered for sale to customers in the ordinary course of the line of business of the employer in which the employee is peforming [1] services.

(d) Working condition fringe defined

For purposes of this section, the term "working condition fringe" means any property or services provided to an employee of the employer to the extent that, if the employee paid for such property or services, such payment would be allowable as a deduction under section 162 or 167.

(e) De minimis fringe defined

For purposes of this section—

(1) In general

The term "de minimis fringe" means any property or service the value of which is (after taking into account the frequency with which similar fringes are provided by the employer to the employer's employees) so small as to make accounting for it unreasonable or administratively impracticable.

(2) Treatment of certain eating facilities

The operation by an employer of any eating facility for employees shall be treated as a de minimis fringe if—

(A) such facility is located on or near the business premises of the employer, and

(B) revenue derived from such facility normally equals or exceeds the direct operating costs of such facility.

The preceding sentence shall apply with respect to any highly compensated employee only if access to the facility is available on substantially the same terms to each member of a group of employees which is defined under a reasonable classification set up by the employer which does not discriminate in favor of highly compensated employees. For purposes of subparagraph (B), an employee entitled under section 119 to exclude the value of a meal provided at such facility shall be treated as having paid an amount for such meal equal to the direct operating costs of the facility attributable to such meal.

(f) Qualified transportation fringe

(1) In general

For purposes of this section, the term "qualified transportation fringe" means any of the following provided by an employer to an employee:

(A) Transportation in a commuter highway vehicle if such transportation is in connection with travel between the employee's residence and place of employment.

(B) Any transit pass.

(C) Qualified parking.

(D) Any qualified bicycle commuting reimbursement.

(2) Limitation on exclusion

The amount of the fringe benefits which are provided by an employer to any employee and which may be excluded from gross income under subsection (a)(5) shall not exceed—

(A) $100 per month in the case of the aggregate of the benefits described in subparagraphs (A) and (B) of paragraph (1),

(B) $175 per month in the case of qualified parking, and

(C) the applicable annual limitation in the case of any qualified bicycle commuting reimbursement.

In the case of any month beginning on or after the date of the enactment of this sentence and before January 1, 2014, subparagraph (A) shall be applied as if the dollar amount therein were the same as the dollar amount in effect for such month under subparagraph (B).

(3) Cash reimbursements

For purposes of this subsection, the term "qualified transportation fringe" includes a cash reimbursement by an employer to an employee for a benefit described in paragraph (1). The preceding sentence shall apply to a cash reimbursement for any transit pass only if a voucher or similar item which may be exchanged only for a transit pass is not readily available for direct distribution by the employer to the employee.

(4) No constructive receipt

No amount shall be included in the gross income of an employee solely because the employee may choose between any qualified transportation fringe (other than a qualified bicycle commuting reimbursement) and compensation which would otherwise be includible in gross income of such

employee.

(5) Definitions

For purposes of this subsection—

(A) Transit pass

The term "transit pass" means any pass, token, farecard, voucher, or similar item entitling a person to transportation (or transportation at a reduced price) if such transportation is—

(i) on mass transit facilities (whether or not publicly owned), or

(ii) provided by any person in the business of transporting persons for compensation or hire if such transportation is provided in a vehicle meeting the requirements of subparagraph (B)(i).

(B) Commuter highway vehicle

The term "commuter highway vehicle" means any highway vehicle—

(i) the seating capacity of which is at least 6 adults (not including the driver), and

(ii) at least 80 percent of the mileage use of which can reasonably be expected to be—

(I) for purposes of transporting employees in connection with travel between their residences and their place of employment, and

(II) on trips during which the number of employees transported for such purposes is at least ½ of the adult seating capacity of such vehicle (not including the driver).

(C) Qualified parking

The term "qualified parking" means parking provided to an employee on or near the business premises of the employer or on or near a location from which the employee commutes to work by transportation described in subparagraph (A), in a commuter highway vehicle, or by carpool. Such term shall not include any parking on or near property used by the employee for residential purposes.

(D) Transportation provided by employer

Transportation referred to in paragraph (1)(A) shall be considered to be provided by an employer if such transportation is furnished in a commuter highway vehicle operated by or for the employer.

(E) Employee

For purposes of this subsection, the term "employee" does not include an individual who is an employee within the meaning of section 401(c)(1).

(F) Definitions related to bicycle commuting reimbursement

(i) Qualified bicycle commuting reimbursement

The term "qualified bicycle commuting reimbursement" means, with respect to any calendar year, any employer reimbursement during the 15-month period beginning with the first day of such calendar year for reasonable expenses incurred by the employee during such calendar year for the purchase of a bicycle and bicycle improvements, repair, and storage, if such bicycle is regularly used for travel between the employee's residence and place of employment.

(ii) Applicable annual limitation

The term "applicable annual limitation" means, with respect to any employee for any calendar year, the product of $20 multiplied by the number of qualified bicycle commuting months during such year.

(iii) Qualified bicycle commuting month

The term "qualified bicycle commuting month" means, with respect to any employee, any month during which such employee—

(I) regularly uses the bicycle for a substantial portion of the travel between the employee's residence and place of employment, and

(II) does not receive any benefit described in subparagraph (A), (B), or (C) of paragraph (1).

(6) Inflation adjustment

(A) In general

In the case of any taxable year beginning in a calendar year after 1999, the dollar amounts contained in subparagraphs (A) and (B) of paragraph (2) shall be increased by an amount equal to—

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting "calendar year 1998" for "calendar year 1992".

In the case of any taxable year beginning in a calendar year after 2002, clause (ii) shall be applied by substituting "calendar year 2001" for "calendar year 1998" for purposes of adjusting the dollar amount contained in paragraph (2)(A).

(B) Rounding

If any increase determined under subparagraph (A) is not a multiple of $5, such increase shall be rounded to the next lowest multiple of $5.

(7) Coordination with other provisions

For purposes of this section, the terms "working condition fringe" and "de minimis fringe" shall not include any qualified transportation fringe (determined without regard to paragraph (2)).

(g) Qualified moving expense reimbursement

For purposes of this section, the term "qualified moving expense reimbursement" means any amount received (directly or indirectly) by an individual from an employer as a payment for (or a reimbursement of) expenses which would be deductible as moving expenses under section 217 if directly paid or incurred by the individual. Such term shall not include any payment for (or reimbursement of) an expense actually deducted by the individual in a prior taxable year.

(h) Certain individuals treated as employees for purposes of subsections (a)(1) and (2)

For purposes of paragraphs (1) and (2) of subsection (a)—

(1) Retired and disabled employees and surviving spouse of employee treated as employee

With respect to a line of business of an employer, the term "employee" includes—

(A) any individual who was formerly employed by such employer in such line of business and who separated from service with such employer in such line of business by reason of retirement or disability, and

(B) any widow or widower of any individual who died while employed by such employer in such line of business or while an employee within the meaning of subparagraph (A).

(2) Spouse and dependent children

(A) In general

Any use by the spouse or a dependent child of the employee shall be treated as use by the employee.

(B) Dependent child

For purposes of subparagraph (A), the term "dependent child" means any child (as defined in section 152(f)(1)) of the employee—

(i) who is a dependent of the employee, or

(ii) both of whose parents are deceased and who has not attained age 25.

For purposes of the preceding sentence, any child to whom section 152(e) applies shall be treated as the dependent of both parents.

(3) Special rule for parents in the case of air transportation

Any use of air transportation by a parent of an employee (determined without regard to paragraph (1)(B)) shall be treated as use by the employee.

(i) Reciprocal agreements

For purposes of paragraph (1) of subsection (a), any service provided by an employer to an employee of another employer shall be treated as provided by the employer of such employee if—

(1) such service is provided pursuant to a written agreement between such employers, and

(2) neither of such employers incurs any substantial additional costs (including foregone revenue) in providing such service or pursuant to such agreement.

(j) Special rules

(1) Exclusions under subsection (a)(1) and (2) apply to highly compensated employees only if no discrimination

Paragraphs (1) and (2) of subsection (a) shall apply with respect to any fringe benefit described therein provided with respect to any highly compensated employee only if such fringe benefit is available on substantially the same terms to each member of a group of employees which is defined under a reasonable classification set up by the employer which does not discriminate in favor of highly compensated employees.

(2) Special rule for leased sections of department stores

(A) In general

For purposes of paragraph (2) of subsection (a), in the case of a leased section of a department store—

(i) such section shall be treated as part of the line of business of the person operating the department store, and

(ii) employees in the leased section shall be treated as employees of the person operating the department store.

(B) Leased section of department store

For purposes of subparagraph (A), a leased section of a department store is any part of a department store where over-the-counter sales of property are made under a lease or similar arrangement where it appears to the general public that individuals making such sales are employed by the person operating the department store.

(3) Auto salesmen

(A) In general

For purposes of subsection (a)(3), qualified automobile demonstration use shall be treated as a working condition fringe.

(B) Qualified automobile demonstration use

For purposes of subparagraph (A), the term "qualified automobile demonstration use" means any use of an automobile by a full-time automobile salesman in the sales area in which the automobile dealer's sales office is located if—

(i) such use is provided primarily to facilitate the salesman's performance of services for the employer, and

(ii) there are substantial restrictions on the personal use of such automobile by such salesman.

(4) On-premises gyms and other athletic facilities

(A) In general

Gross income shall not include the value of any on-premises athletic facility provided by an employer to his employees.

(B) On-premises athletic facility

For purposes of this paragraph, the term "on-premises athletic facility" means any gym or other athletic facility—

(i) which is located on the premises of the employer,

(ii) which is operated by the employer, and

(iii) substantially all the use of which is by employees of the employer, their spouses, and their dependent children (within the meaning of subsection (h)).

(5) Special rule for affiliates of airlines

(A) In general

If—

(i) a qualified affiliate is a member of an affiliated group another member of which operates an airline, and

(ii) employees of the qualified affiliate who are directly engaged in providing airline-related services are entitled to no-additional-cost service with respect to air transportation provided by such other member,

then, for purposes of applying paragraph (1) of subsection (a) to such no-additional-cost service provided to such employees, such qualified affiliate shall be treated as engaged in the same line of business as such other member.

(B) Qualified affiliate

For purposes of this paragraph, the term "qualified affiliate" means any corporation which is predominantly engaged in airline-related services.

(C) Airline-related services

For purposes of this paragraph, the term "airline-related services" means any of the following services provided in connection with air transportation:

(i) Catering.

(ii) Baggage handling.

(iii) Ticketing and reservations.

(iv) Flight planning and weather analysis.

(v) Restaurants and gift shops located at an airport.

(vi) Such other similar services provided to the airline as the Secretary may prescribe.

(D) Affiliated group

For purposes of this paragraph, the term "affiliated group" has the meaning given such term by section 1504(a).

(6) Highly compensated employee

For purposes of this section, the term "highly compensated employee" has the meaning given such term by section 414(q).

(7) Air cargo

For purposes of subsection (b), the transportation of cargo by air and the transportation of passengers by air shall be treated as the same service.

(8) Application of section to otherwise taxable educational or training benefits

Amounts paid or expenses incurred by the employer for education or training provided to the employee which are not excludable from gross income under section 127 shall be excluded from gross income under this section if (and only if) such amounts or expenses are a working condition fringe.

(k) Customers not to include employees

For purposes of this section (other than subsection (c)(2)), the term "customers" shall only include customers who are not employees.

(l) Section not to apply to fringe benefits expressly provided for elsewhere

This section (other than subsections (e) and (g)) shall not apply to any fringe benefits of a type the tax treatment of which is expressly provided for in any other section of this chapter.

(m) Qualified retirement planning services

(1) In general

For purposes of this section, the term "qualified retirement planning services" means any retirement planning advice or information provided to an employee and his spouse by an employer maintaining a qualified employer plan.

(2) Nondiscrimination rule

Subsection (a)(7) shall apply in the case of highly compensated employees only if such services are available on substantially the same terms to each member of the group of employees normally provided education and information regarding the employer's qualified employer plan.

(3) Qualified employer plan

For purposes of this subsection, the term "qualified employer plan" means a plan, contract, pension, or account described in section 219(g)(5).

(n) Qualified military base realignment and closure fringe

For purposes of this section—

(1) In general

The term "qualified military base realignment and closure fringe" means 1 or more payments under the authority of section 1013 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3374) (as in effect on the date of the enactment of the American Recovery and Reinvestment Tax Act of 2009).

(2) Limitation

With respect to any property, such term shall not include any payment referred to in paragraph (1) to the extent that the sum of all of such payments related to such property exceeds the maximum amount described in subsection (c) of such section (as in effect on such date).

(o) Regulations

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

(Added Pub. L. 98–369, div. A, title V, §531(a)(1), July 18, 1984, 98 Stat. 877; amended Pub. L. 99–272, title XIII, §13207(a)(1), (b)(1), Apr. 7, 1986, 100 Stat. 319; Pub. L. 99–514, title XI, §§1114(b)(5), 1151(e)(2)(A), (g)(5), title XVIII, §§1853(a), 1899A(5), Oct. 22, 1986, 100 Stat. 2451, 2506, 2507, 2870, 2958; Pub. L. 100–647, title I, §1011B(a)(31)(B), title VI, §6066(a), Nov. 10, 1988, 102 Stat. 3488, 3702; Pub. L. 101–140, title II, §203(a)(1), (2), Nov. 8, 1989, 103 Stat. 830; Pub. L. 101–239, title VII, §§7101(b), 7841(d)(7), (19), Dec. 19, 1989, 103 Stat. 2304, 2428, 2429; Pub. L. 102–486, title XIX, §1911(a)–(c), Oct. 24, 1992, 106 Stat. 3012–3014; Pub. L. 103–66, title XIII, §§13101(b), 13201(b)(3)(F), 13213(d)(1), (2), (3)(B), (C), Aug. 10, 1993, 107 Stat. 420, 459, 474; Pub. L. 105–34, title IX, §970(a), title X, §1072(a), Aug. 5, 1997, 111 Stat. 897, 948; Pub. L. 105–178, title IX, §9010(a)(1), (b)(1), (2), (c)(1), (2), June 9, 1998, 112 Stat. 507, 508; Pub. L. 107–16, title VI, §665(a), (b), June 7, 2001, 115 Stat. 143; Pub. L. 108–121, title I, §103(a), (b), Nov. 11, 2003, 117 Stat. 1337; Pub. L. 108–311, title II, §207(13), Oct. 4, 2004, 118 Stat. 1177; Pub. L. 110–343, div. B, title II, §211(a)–(d), Oct. 3, 2008, 122 Stat. 3840, 3841; Pub. L. 111–5, div. B, title I, §1151(a), Feb. 17, 2009, 123 Stat. 333; Pub. L. 111–92, §14(a), Nov. 6, 2009, 123 Stat. 2995; Pub. L. 111–312, title VII, §727(a), Dec. 17, 2010, 124 Stat. 3317; Pub. L. 112–240, title II, §203(a), Jan. 2, 2013, 126 Stat. 2323.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

REFERENCES IN TEXT

The date of the enactment of this sentence, referred to in subsec. (f)(2), is the date of enactment of Pub. L. 111–5, which was approved Feb. 17, 2009.

The date of the enactment of the American Recovery and Reinvestment Tax Act of 2009, referred to in subsec. (n)(1), is the date of enactment of Pub. L. 111–5, which was approved Feb. 17, 2009.

PRIOR PROVISIONS

A prior section 132 was renumbered section 140 of this title.

AMENDMENTS

2013—Subsec. (f)(2). Pub. L. 112–240 substituted "January 1, 2014" for "January 1, 2012" in concluding provisions.

2010—Subsec. (f)(2). Pub. L. 111–312 substituted "January 1, 2012" for "January 1, 2011" in concluding provisions.

2009—Subsec. (f)(2). Pub. L. 111–5 inserted concluding provisions.

Subsec. (n)(1). Pub. L. 111–92, §14(a)(1), substituted "the American Recovery and Reinvestment Tax Act of 2009)" for "this subsection) to offset the adverse effects on housing values as a result of a military base realignment or closure".

Subsec. (n)(2). Pub. L. 111–92, §14(a)(2), struck out "clause (1) of" before "subsection (c)".

2008—Subsec. (f)(1)(D). Pub. L. 110–343, §211(a), added subpar. (D).

Subsec. (f)(2)(C). Pub. L. 110–343, §211(b), added subpar. (C).

Subsec. (f)(4). Pub. L. 110–343, §211(d), inserted "(other than a qualified bicycle commuting reimbursement)" after "qualified transportation fringe".

Subsec. (f)(5)(F). Pub. L. 110–343, §211(c), added subpar. (F).

2004—Subsec. (h)(2)(B). Pub. L. 108–311 substituted "152(f)(1)" for "151(c)(3)" in introductory provisions.

2003—Subsec. (a)(8). Pub. L. 108–121, §103(a), added par. (8).

Subsecs. (n), (o). Pub. L. 108–121, §103(b), added subsec. (n) and redesignated former subsec. (n) as (o).

2001—Subsec. (a)(7). Pub. L. 107–16, §665(a), added par. (7).

Subsecs. (m), (n). Pub. L. 107–16, §665(b), added subsec. (m) and redesignated former subsec. (m) as (n).

1998—Subsec. (f)(2)(A). Pub. L. 105–178, §9010(c)(1), substituted "$100" for "$65".

Pub. L. 105–178, §9010(b)(2)(A), substituted "$65" for "$60".

Subsec. (f)(2)(B). Pub. L. 105–178, §9010(b)(2)(B), substituted "$175" for "$155".

Subsec. (f)(4). Pub. L. 105–178, §9010(a)(1), amended heading and text of par. (4) generally. Prior to amendment, text read as follows: "Subsection (a)(5) shall not apply to any qualified transportation fringe unless such benefit is provided in addition to (and not in lieu of) any compensation otherwise payable to the employee. This paragraph shall not apply to any qualified parking provided in lieu of compensation which otherwise would have been includible in gross income of the employee, and no amount shall be included in the gross income of the employee solely because the employee may choose between the qualified parking and compensation."

Subsec. (f)(6). Pub. L. 105–178, §9010(b)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "In the case of any taxable year beginning in a calendar year after 1993, the dollar amounts contained in paragraph (2)(A) and (B) shall be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins.

If any increase determined under the preceding sentence is not a multiple of $5, such increase shall be rounded to the next lowest multiple of $5."

Subsec. (f)(6)(A). Pub. L. 105–178, §9010(c)(2), inserted concluding provisions.

1997—Subsec. (e)(2). Pub. L. 105–34, §970(a), inserted at end of concluding provisions "For purposes of subparagraph (B), an employee entitled under section 119 to exclude the value of a meal provided at such facility shall be treated as having paid an amount for such meal equal to the direct operating costs of the facility attributable to such meal."

Subsec. (f)(4). Pub. L. 105–34, §1072(a), inserted at end "This paragraph shall not apply to any qualified parking provided in lieu of compensation which otherwise would have been includible in gross income of the employee, and no amount shall be included in the gross income of the employee solely because the employee may choose between the qualified parking and compensation."

1993—Subsec. (a)(6). Pub. L. 103–66, §13213(d)(1), added par. (6).

Subsec. (f)(6)(B). Pub. L. 103–66, §13201(b)(3)(F), struck out before period at end ", determined by substituting 'calendar year 1992' for 'calendar year 1989' in subparagraph (B) thereof".

Subsecs. (g), (h). Pub. L. 103–66, §13213(d)(2), added subsec. (g) and redesignated former subsec. (g) as (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 103–66, §13213(d)(2), redesignated subsec. (h) as (i). Former subsec. (i) redesignated (j).

Subsec. (i)(8). Pub. L. 103–66, §13101(b), amended heading and text of par. (8) generally. Prior to amendment, text read as follows: "Amounts which would be excludible from gross income under section 127 but for subsection (a)(2) thereof or the last sentence of subsection (c)(1) thereof shall be excluded from gross income under this section if (and only if) such amounts are a working condition fringe."

Subsec. (j). Pub. L. 103–66, §13213(d)(2), redesignated subsec. (i) as (j). Former subsec. (j) redesignated (k).

Subsec. (j)(4)(B)(iii). Pub. L. 103–66, §13213(d)(3)(B), substituted "subsection (h)" for "subsection (f)".

Subsec. (k). Pub. L. 103–66, §13213(d)(2), redesignated subsec. (j) as (k). Former subsec. (k) redesignated (l).

Subsec. (l). Pub. L. 103–66, §13213(d)(2), (3)(C), redesignated subsec. (k) as (l) and substituted "subsections (e) and (g)" for "subsection (e)". Former subsec. (l) redesignated (m).

Subsec. (m). Pub. L. 103–66, §13213(d)(2), redesignated subsec. (l) as (m).

1992—Subsec. (a)(5). Pub. L. 102–486, §1911(a), added par. (5).

Subsecs. (f) to (h). Pub. L. 102–486, §1911(b), added subsec. (f) and redesignated former subsecs. (f) and (g) as (g) and (h), respectively. Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 102–486, §1911(b), (c), redesignated subsec. (h) as (i), redesignated pars. (5) to (9) as (4) to (8), respectively, and struck out former par. (4), "Parking", which read as follows: "The term 'working condition fringe' includes parking provided to an employee on or near the business premises of the employer." Former subsec. (i) redesignated (j).

Subsecs. (j) to (l). Pub. L. 102–486, §1911(b), redesignated subsecs. (i) to (k) as (j) to (l), respectively.

1989—Subsec. (f)(2)(B). Pub. L. 101–239, §7841(d)(19), substituted "section 151(c)(3)" for "section 151(e)(3)" in introductory provisions.

Subsec. (h)(1). Pub. L. 101–239, §7841(d)(7), substituted "to highly compensated employees" for "to officers, etc.," in heading.

Pub. L. 101–140, §203(a)(2), amended par. (1) to read as if amendments by Pub. L. 100–647, §1011B(a)(31)(B), had not been enacted, see 1988 Amendment note below.

Pub. L. 101–140, §203(a)(1), amended par. (1) to read as if amendments by Pub. L. 99–514, §1151(g)(5), had not been enacted, see 1986 Amendment note below.

Subsec. (h)(9). Pub. L. 101–239, §7101(b), added par. (9).

1988—Subsec. (h)(1). Pub. L. 100–647, §1011B(a)(31)(B), substituted "there shall" for "there may be" and "who are" for "who may be" in last sentence.

Subsec. (h)(8). Pub. L. 100–647, §6066(a), added par. (8).

1986—Subsec. (c)(3)(A). Pub. L. 99–514, §1853(a)(2), substituted "are provided by the employer to an employee for use by such employee" for "are provided to the employee by the employer".

Subsec. (e)(2). Pub. L. 99–514, §1114(b)(5)(A), struck out "officer, owner, or" before "highly compensated employee" and "officers, owners, or" before "highly compensated employees" in last sentence.

Subsec. (f)(2)(B)(ii). Pub. L. 99–514, §1853(a)(1), substituted "are deceased and who has not attained age 25" for "are deceased".

Subsec. (f)(3). Pub. L. 99–272, §13207(a)(1), added par. (3).

Subsec. (g). Pub. L. 99–514, §1151(e)(2)(A), in amending subsec. (g) generally, designated par. (2) as the entire subsection, struck out former subsec. heading, "Special rules relating to employer", struck out "For purposes of this section—", and struck out par. (1) which read as follows: "All employees treated as employed by a single employer under subsection (b), (c), or (m) of section 414 shall be treated as employed by a single employer for purposes of this section."

Subsec. (h)(1). Pub. L. 99–514, §1151(g)(5), inserted "For purposes of this paragraph and subsection (e), there may be excluded from consideration employees who may be excluded from consideration under section 89(h)."

Pub. L. 99–514, §1114(b)(5)(A), struck out "officer, owner, or" before "highly compensated employee" and "officers, owners, or" before "highly compensated employees".

Subsec. (h)(3)(B)(i). Pub. L. 99–514, §1899A(5), substituted "such use is" for "such use in".

Subsec. (h)(6). Pub. L. 99–272, §13207(b)(1), added par. (6).

Subsec. (h)(7). Pub. L. 99–514, §1114(b)(5)(B), added par. (7).

Subsec. (i). Pub. L. 99–514, §1853(a)(3), substituted "subsection (c)(2)" for "subsection (c)(2)(B)".

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title II, §203(b), Jan. 2, 2013, 126 Stat. 2323, provided that: "The amendment made by this section [amending this section] shall apply to months after December 31, 2011."

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §727(b), Dec. 17, 2010, 124 Stat. 3317, provided that: "The amendment made by this section [amending this section] shall apply to months after December 31, 2010."

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–92, §14(b), Nov. 6, 2009, 123 Stat. 2996, provided that: "The amendments made by this act [probably should be "this section", amending this section] shall apply to payments made after February 17, 2009."

Pub. L. 111–5, div. B, title I, §1151(b), Feb. 17, 2009, 123 Stat. 333, provided that: "The amendment made by this section [amending this section] shall apply to months beginning on or after the date of the enactment of this section [Feb. 17, 2009]."

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title II, §211(e), Oct. 3, 2008, 122 Stat. 3841, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2008."

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–121, title I, §103(c), Nov. 11, 2003, 117 Stat. 1338, provided that: "The amendments made by this section [amending this section] shall apply to payments made after the date of the enactment of this Act [Nov. 11, 2003]."

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–16, title VI, §665(c), June 7, 2001, 115 Stat. 143, provided that: "The amendments made by this section [amending this section] shall apply to years beginning after December 31, 2001."

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–178, title IX, §9010(a)(2), June 9, 1998, 112 Stat. 507, provided that: "The amendment made by this subsection [amending this section] shall apply to taxable years beginning after December 31, 1997."

Pub. L. 105–178, title IX, §9010(b)(3), June 9, 1998, 112 Stat. 508, provided that: "The amendments made by this subsection [amending this section] shall apply to taxable years beginning after December 31, 1998."

Pub. L. 105–178, title IX, §9010(c)(3), June 9, 1998, 112 Stat. 508, provided that: "The amendments made by this subsection [amending this section] shall apply to taxable years beginning after December 31, 2001."

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title IX, §970(b), Aug. 5, 1997, 111 Stat. 897, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1997."

Pub. L. 105–34, title X, §1072(b), Aug. 5, 1997, 111 Stat. 948, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1997."

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13101(c)(2), Aug. 10, 1993, 107 Stat. 420, provided that: "The amendment made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 1988."

Amendment by section 13201(b)(3)(F) of Pub. L. 103–66 applicable to taxable years beginning after Dec. 31, 1992, see section 13201(c) of Pub. L. 103–66, set out as a note under section 1 of this title.

Amendment by section 13213(d)(1), (2), (3)(B) and (C) of Pub. L. 103–66 applicable to reimbursements or other payments in respect of expenses incurred after Dec. 31, 1993, see section 13213(e) of Pub. L. 103–66, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–486, title XIX, §1911(d), Oct. 24, 1992, 106 Stat. 3014, provided that: "The amendments made by this section [amending this section] shall apply to benefits provided after December 31, 1992."

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7101(b) of Pub. L. 101–239 applicable to taxable years beginning after Dec. 31, 1988, see section 7101(c) of Pub. L. 101–239, set out as a note under section 127 of this title.

Amendment by Pub. L. 101–140 effective as if included in section 1151 of Pub. L. 99–514, see section 203(c) of Pub. L. 101–140, set out as a note under section 79 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011B(a)(31)(B) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title VI, §6066(b), Nov. 10, 1988, 102 Stat. 3703, provided that: "The amendment made by subsection (a) [amending this section] shall apply to transportation furnished after December 31, 1987, in taxable years ending after such date."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1114(b)(5) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1987, see section 1114(c)(2) of Pub. L. 99–514, set out as a note under section 414 of this title.

Amendment by section 1151(e)(2)(A), (g)(5) of Pub. L. 99–514 applicable, with certain qualifications and exceptions, to years beginning after Dec. 31, 1988, see section 1151(k) of Pub. L. 99–514, as amended, set out as a note under section 79 of this title.

Amendment by section 1853(a) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Pub. L. 99–272, title XIII, §13207(a)(2), Apr. 7, 1986, 100 Stat. 319, provided that: "The amendment made by this subsection [amending this section] shall take effect on January 1, 1985."

Pub. L. 99–272, title XIII, §13207(b)(2), Apr. 7, 1986, 100 Stat. 320, provided that: "The amendment made by this subsection [amending this section] shall take effect on January 1, 1985."

EFFECTIVE DATE

Pub. L. 98–369, div. A, title V, §531(i), formerly §531(h), July 18, 1984, 98 Stat. 886, as redesignated by Pub. L. 99–272, title XIII, §13207(d), Apr. 7, 1986, 100 Stat. 320, provided that: "The amendments made by this section [enacting this section and section 4977 of this title, amending sections 61, 125, 3121, 3231, 3306, 3401, 3501, and 6652 of this title and section 409 of Title 42, The Public Health and Welfare, redesignating former section 132 of this title as 133, and enacting provisions set out as notes under this section and section 125 of this title] shall take effect on January 1, 1985."

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1114 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

NONENFORCEMENT OF AMENDMENT MADE BY SECTION 1151 OF PUB. L. 99–514 FOR FISCAL YEAR 1990

No monies appropriated by Pub. L. 101–136 to be used to implement or enforce section 1151 of Pub. L. 99–514 or the amendments made by such section, see section 528 of Pub. L. 101–136, set out as a note under section 89 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

CERTAIN RECORDKEEPING REQUIREMENTS

Pub. L. 99–514, title XV, §1567, Oct. 22, 1986, 100 Stat. 2763, provided that:

"(a) IN GENERAL.—For purposes of sections 132 and 274 of the Internal Revenue Code of 1954 [now 1986], use of an automobile by a special agent of the Internal Revenue Service shall be treated in the same manner as use of an automobile by an officer of any other law enforcement agency.

"(b) EFFECTIVE DATE.—The provisions of this section shall take effect on January 1, 1985."

TREATMENT OF CERTAIN LEASED OPERATIONS OF DEPARTMENT STORES

Pub. L. 99–514, title XVIII, §1853(e), Oct. 22, 1986, 100 Stat. 2872, provided that: "For purposes of section 132(h)(2)(B) [now 132(j)(2)(B)] of the Internal Revenue Code of 1954 [now 1986], a leased section of a department store which, in connection with the offering of beautician services, customarily makes sales of beauty aids in the ordinary course of business shall be treated as engaged in over-the-counter sales of property."

TRANSITIONAL RULE FOR DETERMINATION OF LINE OF BUSINESS IN CASE OF AFFILIATED GROUP OPERATING AIRLINE

Pub. L. 99–272, title XIII, §13207(c), Apr. 7, 1986, 100 Stat. 320, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "If, as of September 12, 1984—

"(1) an individual—

"(A) was an employee (within the meaning of section 132 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], including subsection (f) [now (h)] thereof) of one member of an affiliated group (as defined in section 1504 of such Code), hereinafter referred to as the 'first corporation', and

"(B) was eligible for no-additional-cost service in the form of air transportation provided by another member of such affiliated group, hereinafter referred to as the 'second corporation',

"(2) at least 50 percent of the individuals performing service for the first corporation were or had been employees of, or had previously performed services for, the second corporation, and

"(3) the primary business of the affiliated group was air transportation of passengers,

then, for purposes of applying paragraphs (1) and (2) of section 132(a) of the Internal Revenue Code of 1986, with respect to no-additional-cost services and qualified employee discounts provided after December 31, 1984, for such individual by the second corporation, the first corporation shall be treated as engaged in the same air transportation line of business as the second corporation. For purposes of the preceding sentence, an employee of the second corporation who is performing services for the first corporation shall also be treated as an employee of the first corporation."

SPECIAL RULE FOR SERVICES RELATED TO PROVIDING AIR TRANSPORTATION

Pub. L. 98–369, div. A, title V, §531(g), as added by Pub. L. 99–272, title XIII, §13207(d), Apr. 7, 1986, 100 Stat. 320; amended Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—If—

"(A) an individual performs services for a qualified air transportation organization, and

"(B) such services are performed primarily for persons engaged in providing air transportation and are of the kind which (if performed on September 12, 1984) would qualify such individual for no-additional-cost services in the form of air transportation,

then, with respect to such individual, such qualified air transportation organization shall be treated as engaged in the line of business of providing air transportation.

"(2) QUALIFIED AIR TRANSPORTATION ORGANIZATION.—For purposes of paragraph (1), the term 'qualified air transportation organization' means any organization—

"(A) if such organization (or a predecessor) was in existence on September 12, 1984,

"(B) if—

"(i) such organization is described in section 501(c)(6) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] and the membership of such organization is limited to entities engaged in the transportation by air of individuals or property for compensation or hire, or

"(ii) such organization is a corporation all the stock of which is owned entirely by entities referred to in clause (i), and

"(C) if such organization is operated in furtherance of the activities of its members or owners."

DETERMINATION OF LINE OF BUSINESS IN CASE OF AFFILIATED GROUP OPERATING RETAIL DEPARTMENT STORES

Pub. L. 98–369, div. A, title V, §531(f), July 18, 1984, 98 Stat. 886, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "If—

"(1) as of October 5, 1983, the employees of one member of an affiliated group (as defined in section 1504 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] without regard to subsections (b)(2) and

(b)(4) thereof) were entitled to employee discounts at the retail department stores operated by another member of such affiliated group, and

"(2) the primary business of the affiliated group is the operation of retail department stores,

then, for purpose of applying section 132(a)(2) of the Internal Revenue Code of 1986, with respect to discounts provided for such employees at the retail department stores operated by such other member, the employer shall be treated as engaged in the same line of business as such other member."

[1] *So in original. Probably should be "performing".*

[§133. Repealed. Pub. L. 104–188, title I, §1602(a), Aug. 20, 1996, 110 Stat. 1833]

Section, added Pub. L. 98–369, div. A, title V, §543(a), July 18, 1984, 98 Stat. 891; amended Pub. L. 99–514, title XI, §1173(b)(1)(A), (2), title XVIII, §1854(c)(2)(A), (C), (D), Oct. 22, 1986, 100 Stat. 2515, 2879; Pub. L. 100–647, title I, §1011B(h)(1), (2), Nov. 10, 1988, 102 Stat. 3490; Pub. L. 101–239, title VII, §7301(a)–(c), Dec. 19, 1989, 103 Stat. 2346, 2347, prior to repeal, read as follows:

§133. INTEREST ON CERTAIN LOANS USED TO ACQUIRE EMPLOYER SECURITIES

(a) IN GENERAL

Gross income does not include 50 percent of the interest received by—

(1) a bank (within the meaning of section 581),

(2) an insurance company to which subchapter L applies,

(3) a corporation actively engaged in the business of lending money, or

(4) a regulated investment company (as defined in section 851),

with respect to a securities acquisition loan.

(b) SECURITIES ACQUISITION LOAN

(1) IN GENERAL

For purposes of this section, the term "securities acquisition loan" means—

(A) any loan to a corporation or to an employee stock ownership plan to the extent that the proceeds are used to acquire employer securities for the plan, or

(B) any loan to a corporation to the extent that, within 30 days, employer securities are transferred to the plan in an amount equal to the proceeds of such loan and such securities are allocable to accounts of plan participants within 1 year of the date of such loan.

For purposes of this paragraph, the term "employer securities" has the meaning given such term by section 409(l). The term "securities acquisition loan" shall not include a loan with a term greater than 15 years.

(2) LOANS BETWEEN RELATED PERSONS

The term "securities acquisition loan" shall not include—

(A) any loan made between corporations which are members of the same controlled group of corporations, or

(B) any loan made between an employee stock ownership plan and any person that is—

(i) the employer of any employees who are covered by the plan; or

(ii) a member of a controlled group of corporations which includes such employer.

For purposes of this paragraph, subparagraphs (A) and (B) shall not apply to any loan which, but for such subparagraphs, would be a securities acquisition loan if such loan was not originated by the employer of any employees who are covered by the plan or by any member of the controlled group of corporations which includes such employer, except that this section shall not apply to any interest received on such loan during such time as such loan is held by such employer (or any member of such controlled group).

(3) TERMS APPLICABLE TO CERTAIN SECURITIES ACQUISITION LOANS

A loan to a corporation shall not fail to be treated as a securities acquisition loan merely because the proceeds of such loan are lent to an employee stock ownership plan sponsored by such corporation (or by any member of the controlled group of corporations which includes such corporation) if such loan includes—

(A) repayment terms which are substantially similar to the terms of the loan of such corporation from a lender described in subsection (a), or

(B) repayment terms providing for more rapid repayment of principal or interest on such loan, but

only if allocations under the plan attributable to such repayment do not discriminate in favor of highly compensated employees (within the meaning of section 414(q)).

(4) CONTROLLED GROUP OF CORPORATIONS

For purposes of this paragraph, the term "controlled group of corporations" has the meaning given such term by section 409(l)(4).

(5) TREATMENT OF REFINANCINGS

The term "securities acquisition loan" shall include any loan which—

(A) is (or is part of a series of loans) used to refinance a loan described in subparagraph (A) or (B) of paragraph (1), and

(B) meets the requirements of paragraphs (2) and (3).

(6) PLAN MUST HOLD MORE THAN 50 PERCENT OF STOCK AFTER ACQUISITION OR TRANSFER

(A) IN GENERAL

A loan shall not be treated as a securities acquisition loan for purposes of this section unless, immediately after the acquisition or transfer referred to in subparagraph (A) or (B) of paragraph (1), respectively, the employee stock ownership plan owns more than 50 percent of—

(i) each class of outstanding stock of the corporation issuing the employer securities, or

(ii) the total value of all outstanding stock of the corporation.

(B) FAILURE TO RETAIN MINIMUM STOCK INTEREST

(i) IN GENERAL

Subsection (a) shall not apply to any interest received with respect to a securities acquisition loan which is allocable to any period during which the employee stock ownership plan does not own stock meeting the requirements of subparagraph (A).

(ii) EXCEPTION

To the extent provided by the Secretary, clause (i) shall not apply to any period if, within 90 days of the first date on which the failure occurred (or such longer period not in excess of 180 days as the Secretary may prescribe), the plan acquires stock which results in its meeting the requirements of subparagraph (A).

(C) STOCK

For purposes of subparagraph (A)—

(i) IN GENERAL

The term "stock" means stock other than stock described in section 1504(a)(4).

(ii) TREATMENT OF CERTAIN RIGHTS

The Secretary may provide that warrants, options, contracts to acquire stock, convertible debt interests and other similar interests be treated as stock for 1 or more purposes under subparagraph (A).

(D) AGGREGATION RULE

For purposes of determining whether the requirements of subparagraph (A) are met, an employee stock ownership plan shall be treated as owning stock in the corporation issuing the employer securities which is held by any other employee stock ownership plan which is maintained by—

(i) the employer maintaining the plan, or

(ii) any member of a controlled group of corporations (within the meaning of section 409(l)(4)) of which the employer described in clause (i) is a member.

(7) VOTING RIGHTS OF EMPLOYER SECURITIES

A loan shall not be treated as a securities acquisition loan for purposes of this section unless—

(A) the employee stock ownership plan meets the requirements of section 409(e)(2) with respect to all employer securities acquired by, or transferred to, the plan in connection with such loan (without regard to whether or not the employer has a registration-type class of securities), and

(B) no stock described in section 409(l)(3) is acquired by, or transferred to, the plan in connection with such loan unless—

(i) such stock has voting rights equivalent to the stock to which it may be converted, and

(ii) the requirements of subparagraph (A) are met with respect to such voting rights.

(c) EMPLOYEE STOCK OWNERSHIP PLAN

For purposes of this section, the term "employee stock ownership plan" has the meaning given to such term by section 4975(e)(7).

(d) APPLICATION WITH SECTION 483 AND ORIGINAL ISSUE DISCOUNT RULES

In applying section 483 and subpart A of part V of subchapter P to any obligation to which this section

applies, appropriate adjustments shall be made to the applicable Federal rate to take into account the exclusion under subsection (a).

(e) PERIOD TO WHICH INTEREST EXCLUSION APPLIES

(1) IN GENERAL

In the case of—

(A) an original securities acquisition loan, and

(B) any securities acquisition loan (or series of such loans) used to refinance the original securities acquisition loan,

subsection (a) shall apply only to interest accruing during the excludable period with respect to the original securities acquisition loan.

(2) EXCLUDABLE PERIOD

For purposes of this subsection, the term "excludable period" means, with respect to any original securities acquisition loan—

(A) IN GENERAL

The 7-year period beginning on the date of such loan.

(B) LOANS DESCRIBED IN SUBSECTION (b)(1)(A)

If the term of an original securities acquisition loan described in subsection (b)(1)(A) is greater than 7 years, the term of such loan. This subparagraph shall not apply to a loan described in subsection (b)(3)(B).

(3) ORIGINAL SECURITIES ACQUISITION LOAN

For the purposes of this subsection, the term "original securities acquisition loan" means a securities acquisition loan described in subparagraph (A) or (B) of subsection (b)(1).

PRIOR PROVISIONS

A prior section 133 was renumbered section 140 of this title.

EFFECTIVE DATE OF REPEAL

Pub. L. 104–188, title I, §1602(c), Aug. 20, 1996, 110 Stat. 1834, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending sections 291, 812, 852, 4978, 6047, and 7872 of this title and repealing this section and section 4978B of this title] shall apply to loans made after the date of the enactment of this Act [Aug. 20, 1996].

"(2) REFINANCINGS.—The amendments made by this section shall not apply to loans made after the date of the enactment of this Act to refinance securities acquisition loans (determined without regard to section 133(b)(1)(B) of the Internal Revenue Code of 1986, as in effect on the day before the date of the enactment of this Act) [set out above] made on or before such date or to refinance loans described in this paragraph if—

"(A) the refinancing loans meet the requirements of section 133 of such Code (as so in effect),

"(B) immediately after the refinancing the principal amount of the loan resulting from the refinancing does not exceed the principal amount of the refinanced loan (immediately before the refinancing), and

"(C) the term of such refinancing loan does not extend beyond the last day of the term of the original securities acquisition loan.

For purposes of this paragraph, the term 'securities acquisition loan' includes a loan from a corporation to an employee stock ownership plan described in section 133(b)(3) of such Code (as so in effect).

"(3) EXCEPTION.—Any loan made pursuant to a binding written contract in effect before June 10, 1996, and at all times thereafter before such loan is made, shall be treated for purposes of paragraphs (1) and (2) as a loan made on or before the date of the enactment of this Act."

§134. Certain military benefits

(a) General rule

Gross income shall not include any qualified military benefit.

(b) Qualified military benefit

For purposes of this section—

(1) In general

The term "qualified military benefit" means any allowance or in-kind benefit (other than personal use of a vehicle) which—

(A) is received by any member or former member of the uniformed services of the United States or any dependent of such member by reason of such member's status or service as a member of such uniformed services, and

(B) was excludable from gross income on September 9, 1986, under any provision of law, regulation, or administrative practice which was in effect on such date (other than a provision of this title).

(2) No other benefit to be excludable except as provided by this title

Notwithstanding any other provision of law, no benefit shall be treated as a qualified military benefit unless such benefit—

(A) is a benefit described in paragraph (1), or

(B) is excludable from gross income under this title without regard to any provision of law which is not contained in this title and which is not contained in a revenue Act.

(3) Limitations on modifications

(A) In general

Except as provided in subparagraphs (B) and (C) and paragraphs (4) and (5), no modification or adjustment of any qualified military benefit after September 9, 1986, shall be taken into account.

(B) Exception for certain adjustments to cash benefits

Subparagraph (A) shall not apply to any adjustment to any qualified military benefit payable in cash which—

(i) is pursuant to a provision of law or regulation (as in effect on September 9, 1986), and

(ii) is determined by reference to any fluctuation in cost, price, currency, or other similar index.

(C) Exception for death gratuity adjustments made by law

Subparagraph (A) shall not apply to any adjustment to the amount of death gratuity payable under chapter 75 of title 10, United States Code, which is pursuant to a provision of law enacted after September 9, 1986.

(4) Clarification of certain benefits

For purposes of paragraph (1), such term includes any dependent care assistance program (as in effect on the date of the enactment of this paragraph) for any individual described in paragraph (1)(A).

(5) Travel benefits under operation hero miles

The term "qualified military benefit" includes a travel benefit provided under section 2613 of title 10, United States Code (as in effect on the date of the enactment of this paragraph).

(6) Certain State payments

The term "qualified military benefit" includes any bonus payment by a State or political subdivision thereof to any member or former member of the uniformed services of the United States or any dependent of such member only by reason of such member's service in an [1] combat zone (as defined in section 112(c)(2), determined without regard to the parenthetical).

(Added Pub. L. 99–514, title XI, §1168(a), Oct. 22, 1986, 100 Stat. 2512; amended Pub. L. 100–647, title I, §1011B(f)(1), (2)(A), (3), Nov. 10, 1988, 102 Stat. 3489, 3490; Pub. L. 108–121, title I, §§102(b)(1), (2), 106(a), (b)(1), Nov. 11, 2003, 117 Stat. 1337–1339; Pub. L. 108–375, div. A, title V, §585(b)(1), (2)(A), Oct. 28, 2004, 118 Stat. 1931, 1932; Pub. L. 110–245, title I, §112(a), June 17, 2008, 122 Stat. 1635.)

REFERENCES IN TEXT

The date of the enactment of this paragraph, referred to in subsec. (b)(4), is the date of enactment of Pub. L. 108–121, which was approved Nov. 11, 2003.

The date of the enactment of this paragraph, referred to in subsec. (b)(5), is the date of enactment of Pub. L.

108–375, which was approved Oct. 28, 2004.

PRIOR PROVISIONS

A prior section 134 was renumbered section 140 of this title.

AMENDMENTS

2008—Subsec. (b)(6). Pub. L. 110–245 added par. (6).

2004—Subsec. (b)(3)(A). Pub. L. 108–375, §585(b)(2)(A), substituted "paragraphs (4) and (5)" for "paragraph (4)".

Subsec. (b)(5). Pub. L. 108–375, §585(b)(1), added par. (5).

2003—Subsec. (b)(3)(A). Pub. L. 108–121, §106(b)(1), inserted "and paragraph (4)" after "subparagraphs (B) and (C)".

Pub. L. 108–121, §102(b)(2), substituted "subparagraphs (B) and (C)" for "subparagraph (B)".

Subsec. (b)(3)(C). Pub. L. 108–121, §102(b)(1), added subpar. (C).

Subsec. (b)(4). Pub. L. 108–121, §106(a), added par. (4).

1988—Subsec. (b)(1). Pub. L. 100–647, §1011B(f)(2)(A), inserted "(other than personal use of a vehicle)" after "in-kind benefit" in introductory text.

Subsec. (b)(1)(B). Pub. L. 100–647, §1011B(f)(1), substituted ", regulation, or administrative practice" for "or regulation thereunder".

Subsec. (b)(3)(A). Pub. L. 100–647, §1011B(f)(3), struck out "under any provision of law or regulation described in paragraph (1)" after "September 9, 1986,".

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–245, title I, §112(b), June 17, 2008, 122 Stat. 1635, provided that: "The amendment made by this section [amending this section] shall apply to payments made before, on, or after the date of the enactment of this Act [June 17, 2008]."

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–375, div. A, title V, §585(b)(3), Oct. 28, 2004, 118 Stat. 1932, provided that: "The amendments made by this subsection [amending this section and sections 3121, 3306, and 3401 of this title] shall apply to travel benefits provided after the date of the enactment of this Act [Oct. 28, 2004]."

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–121, title I, §102(b)(3), Nov. 11, 2003, 117 Stat. 1337, provided that: "The amendments made by this subsection [amending this section] shall apply with respect to deaths occurring after September 10, 2001."

Pub. L. 108–121, title I, §106(c), Nov. 11, 2003, 117 Stat. 1339, provided that: "The amendments made by this section [amending this section and sections 3121, 3306, and 3401 of this title] shall apply to taxable years beginning after December 31, 2002."

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1011B(f)(2)(B), Nov. 10, 1988, 102 Stat. 3490, provided that: "The amendment made by subparagraph (A) [amending this section] shall apply to taxable years beginning after December 31, 1986."

Amendment by section 1011B(f)(1), (3) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Pub. L. 99–514, title XI, §1168(c), Oct. 22, 1986, 100 Stat. 2513, as amended by Pub. L. 100–647, title I, §1011B(f)(4), Nov. 10, 1988, 102 Stat. 3490, provided that: "The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1984."

NO INFERENCE TO BE DRAWN FROM AMENDMENT BY PUB. L. 108–121

Pub. L. 108–121, title I, §106(d), Nov. 11, 2003, 117 Stat. 1339, provided that: "No inference may be drawn from the amendments made by this section [amending this section and sections 3121, 3306, and 3401 of this title] with respect to the tax treatment of any amounts under the program described in section 134(b)(4) of the Internal Revenue Code of 1986 (as added by this section) for any taxable year beginning before January 1, 2003."

[1] *So in original. Probably should be "a".*

§135. Income from United States savings bonds used to pay higher education tuition and fees

(a) General rule

In the case of an individual who pays qualified higher education expenses during the taxable year, no amount shall be includible in gross income by reason of the redemption during such year of any qualified United States savings bond.

(b) Limitations

(1) Limitation where redemption proceeds exceed higher education expenses

(A) In general

If—

(i) the aggregate proceeds of qualified United States savings bonds redeemed by the taxpayer during the taxable year exceed

(ii) the qualified higher education expenses paid by the taxpayer during such taxable year,

the amount excludable from gross income under subsection (a) shall not exceed the applicable fraction of the amount excludable from gross income under subsection (a) without regard to this subsection.

(B) Applicable fraction

For purposes of subparagraph (A), the term "applicable fraction" means the fraction the numerator of which is the amount described in subparagraph (A)(ii) and the denominator of which is the amount described in subparagraph (A)(i).

(2) Limitation based on modified adjusted gross income

(A) In general

If the modified adjusted gross income of the taxpayer for the taxable year exceeds $40,000 ($60,000 in the case of a joint return), the amount which would (but for this paragraph) be excludable from gross income under subsection (a) shall be reduced (but not below zero) by the amount which bears the same ratio to the amount which would be so excludable as such excess bears to $15,000 ($30,000 in the case of a joint return).

(B) Inflation adjustment

In the case of any taxable year beginning in a calendar year after 1990, the $40,000 and $60,000 amounts contained in subparagraph (A) shall be increased by an amount equal to—

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting "calendar year 1989" for "calendar year 1992" in subparagraph (B) thereof.

(C) Rounding

If any amount as adjusted under subparagraph (B) is not a multiple of $50, such amount shall be rounded to the nearest multiple of $50 (or if such amount is a multiple of $25, such amount shall be rounded to the next highest multiple of $50).

(c) Definitions

For purposes of this section—

(1) Qualified United States savings bond

The term "qualified United States savings bond" means any United States savings bond

issued—

(A) after December 31, 1989,

(B) to an individual who has attained age 24 before the date of issuance, and

(C) at discount under section 3105 of title 31, United States Code.

(2) Qualified higher education expenses

(A) In general

The term "qualified higher education expenses" means tuition and fees required for the enrollment or attendance of—

(i) the taxpayer,

(ii) the taxpayer's spouse, or

(iii) any dependent of the taxpayer with respect to whom the taxpayer is allowed a deduction under section 151,

at an eligible educational institution.

(B) Exception for education involving sports, etc.

Such term shall not include expenses with respect to any course or other education involving sports, games, or hobbies other than as part of a degree program.

(C) Contributions to qualified tuition program and Coverdell education savings accounts

Such term shall include any contribution to a qualified tuition program (as defined in section 529) on behalf of a designated beneficiary (as defined in such section), or to a Coverdell education savings account (as defined in section 530) on behalf of an account beneficiary, who is an individual described in subparagraph (A); but there shall be no increase in the investment in the contract for purposes of applying section 72 by reason of any portion of such contribution which is not includible in gross income by reason of this subparagraph.

(3) Eligible educational institution

The term "eligible educational institution" has the meaning given such term by section 529(e)(5).

(4) Modified adjusted gross income

The term "modified adjusted gross income" means the adjusted gross income of the taxpayer for the taxable year determined—

(A) without regard to this section and sections 137, 199, 221, 222, 911, 931, and 933, and

(B) after the application of sections 86, 469, and 219.

(d) Special rules

(1) Adjustment for certain scholarships and veterans benefits

The amount of qualified higher education expenses otherwise taken into account under subsection (a) with respect to the education of an individual shall be reduced (before the application of subsection (b)) by the sum of the amounts received with respect to such individual for the taxable year as—

(A) a qualified scholarship which under section 117 is not includable in gross income,

(B) an educational assistance allowance under chapter 30, 31, 32, 34, or 35 of title 38, United States Code,

(C) a payment (other than a gift, bequest, devise, or inheritance within the meaning of section 102(a)) for educational expenses, or attributable to attendance at an eligible educational institution, which is exempt from income taxation by any law of the United States, or

(D) a payment, waiver, or reimbursement of qualified higher education expenses under a qualified tuition program (within the meaning of section 529(b)).

(2) Coordination with other higher education benefits

The amount of the qualified higher education expenses otherwise taken into account under

subsection (a) with respect to the education of an individual shall be reduced (before the application of subsection (b)) by—

(A) the amount of such expenses which are taken into account in determining the credit allowed to the taxpayer or any other person under section 25A with respect to such expenses; and

(B) the amount of such expenses which are taken into account in determining the exclusions under sections 529(c)(3)(B) and 530(d)(2).

(3) No exclusion for married individuals filing separate returns

If the taxpayer is a married individual (within the meaning of section 7703), this section shall apply only if the taxpayer and his spouse file a joint return for the taxable year.

(4) Regulations

The Secretary may prescribe such regulations as may be necessary or appropriate to carry out this section, including regulations requiring record keeping and information reporting.

(Added Pub. L. 100–647, title VI, §6009(a), Nov. 10, 1988, 102 Stat. 3688; amended Pub. L. 101–239, title VII, §7816(c)(2), Dec. 19, 1989, 103 Stat. 2420; Pub. L. 101–508, title XI, §§11101(d)(1)(E), 11702(h), Nov. 5, 1990, 104 Stat. 1388–405, 1388–516; Pub. L. 104–188, title I, §§1703(d), 1806(b)(1), 1807(c)(2), Aug. 20, 1996, 110 Stat. 1875, 1898, 1902; Pub. L. 105–34, title II, §§201(d), 211(c), 213(e)(2), Aug. 5, 1997, 111 Stat. 805, 811, 817; Pub. L. 105–206, title VI, §6004(c)(1), (d)(4), (9), July 22, 1998, 112 Stat. 793–795; Pub. L. 105–277, div. J, title IV, §4003(a)(2)(B), Oct. 21, 1998, 112 Stat. 2681–908; Pub. L. 107–16, title IV, §§401(g)(2)(B), 402(a)(4)(A), (B), (b)(2)(A), 431(c)(1), June 7, 2001, 115 Stat. 59–62, 68; Pub. L. 107–22, §1(b)(1)(B), (3)(B), July 26, 2001, 115 Stat. 197; Pub. L. 108–357, title I, §102(d)(1), Oct. 22, 2004, 118 Stat. 1428.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

PRIOR PROVISIONS

A prior section 135 was renumbered section 140 of this title.

AMENDMENTS

2004—Subsec. (c)(4)(A). Pub. L. 108–357 inserted "199," before "221".

2001—Subsec. (c)(2)(C). Pub. L. 107–22, in heading substituted "Coverdell education savings" for "education individual retirement" and in text substituted "a Coverdell education savings" for "an education individual retirement".

Pub. L. 107–16, §402(a)(4)(A), (B), substituted "qualified tuition" for "qualified State tuition" in heading and text.

Subsec. (c)(4)(A). Pub. L. 107–16, §431(c)(1), inserted "222," after "221,".

Subsec. (d)(1)(D). Pub. L. 107–16, §402(a)(4)(A), substituted "qualified tuition" for "qualified State tuition".

Subsec. (d)(2)(A). Pub. L. 107–16, §401(g)(2)(B), substituted "allowed" for "allowable".

Subsec. (d)(2)(B). Pub. L. 107–16, §402(b)(2)(A), substituted "the exclusions under sections 529(c)(3)(B) and 530(d)(2)" for "the exclusion under section 530(d)(2)".

1998—Subsec. (c)(2)(C). Pub. L. 105–206, §6004(d)(9), inserted "and education individual retirement accounts" after "program" in heading and substituted "section 72" for "section 529(c)(3)(A)" in text.

Subsec. (c)(3). Pub. L. 105–206, §6004(c)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "The term 'eligible educational institution' means—

"(A) an institution described in section 1201(a) or subparagraph (C) or (D) of section 481(a)(1) of the Higher Education Act of 1965 (as in effect on October 21, 1988), and

"(B) an area vocational education school (as defined in subparagraph (C) or (D) of section 521(3) of the Carl D. Perkins Vocational Education Act) which is in any State (as defined in section 521(27) of such Act), as such sections are in effect on October 21, 1988."

Subsec. (c)(4)(A). Pub. L. 105–277 inserted "221," after "137,".

Subsec. (d)(2). Pub. L. 105–206, §6004(d)(4), substituted "other higher education benefits" for "higher

education credit" in heading and amended text of par. (2) generally. Prior to amendment, text read as follows: "The amount of the qualified higher education expenses otherwise taken into account under subsection (a) with respect to the education of an individual shall be reduced (before the application of subsection (b)) by the amount of such expenses which are taken into account in determining the credit allowable to the taxpayer or any other person under section 25A with respect to such expenses."

1997—Subsec. (c)(2)(C). Pub. L. 105–34, §213(e)(2), inserted ", or to an education individual retirement account (as defined in section 530) on behalf of an account beneficiary," after "(as defined in such section)".

Pub. L. 105–34, §211(c), added subpar. (C).

Subsec. (d)(2) to (4). Pub. L. 105–34, §201(d), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

1996—Subsec. (b)(2)(B)(ii). Pub. L. 104–188, §1703(d), inserted ", determined by substituting 'calendar year 1989' for 'calendar year 1992' in subparagraph (B) thereof" before period at end.

Subsec. (c)(4)(A). Pub. L. 104–188, §1807(c)(2), inserted "137," before "911".

Subsec. (d)(1)(D). Pub. L. 104–188, §1806(b)(1), added subpar. (D).

1990—Subsec. (b)(2)(B). Pub. L. 101–508, §11702(h)(1), substituted "the $40,000 and $60,000 amounts" for "each dollar amount" in introductory provisions.

Subsec. (b)(2)(B)(ii). Pub. L. 101–508, §11101(d)(1)(E), struck out before period at end ", determined by substituting 'calendar year 1989' for 'calendar year 1987' in subparagraph (B) thereof".

Subsec. (b)(2)(C). Pub. L. 101–508, §11702(h)(2), struck out "(A) or" after "subparagraph".

1989—Subsec. (d)(1). Pub. L. 101–239 substituted "subsection (a) with respect to" for "subsection (a) respect to".

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years beginning after Dec. 31, 2004, see section 102(e) of Pub. L. 108–357, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–22 effective July 26, 2001, see section 1(c) of Pub. L. 107–22, set out as a note under section 26 of this title.

Amendment by section 401(g)(2)(B) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 401(h) of Pub. L. 107–16, set out as a note under section 25A of this title.

Amendment by section 402(a)(4)(A), (B), (b)(2)(A) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 402(h) of Pub. L. 107–16, set out as a note under section 72 of this title.

Amendment by section 431(c)(1) of Pub. L. 107–16 applicable to payments made in taxable years beginning after Dec. 31, 2001, see section 431(d) of Pub. L. 107–16, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–277 effective as if included in the provision of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 4003(l) of Pub. L. 105–277, set out as a note under section 86 of this title.

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 201(d) of Pub. L. 105–34 applicable to expenses paid after Dec. 31, 1997 (in taxable years ending after such date), for education furnished in academic periods beginning after such date, see section 201(f) of Pub. L. 105–34, set out as an Effective Date note under section 25A of this title.

Amendment by section 211(c) of Pub. L. 105–34 applicable to taxable years beginning after Dec. 31, 1997, see section 211(f) of Pub. L. 105–34, set out as a note under section 529 of this title.

Amendment by section 213(e)(2) of Pub. L. 105–34 applicable to taxable years beginning after Dec. 31, 1997, see section 213(f) of Pub. L. 105–34, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1703(d) of Pub. L. 104–188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103–66, §§13001–13444, to which such amendment relates, see section 1703(o) of Pub. L. 104–188, set out as a note under section 39 of this title.

Amendment by section 1806(b)(1) of Pub. L. 104–188 applicable to taxable years ending after Aug. 20, 1996, with transition rules applicable where States or agencies or instrumentalities thereof maintain on such date programs under which persons may purchase tuition credits or certificates on behalf of, or make contributions for education expenses of, designated beneficiaries, see section 1806(c) of Pub. L. 104–188, set out as an Effective Date note under section 529 of this title.

Amendment by section 1807(c)(2) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1807(e) of Pub. L. 104–188, set out as an Effective Date note under section 23 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11101(d)(1)(E) of Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, see section 11101(e) of Pub. L. 101–508, set out as a note under section 1 of this title.

Amendment by section 11702(h) of Pub. L. 101–508 effective as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 11702(j) of Pub. L. 101–508, set out as a note under section 59 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

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

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1989, see section 6009(d) of Pub. L. 100–647, set out as an Effective Date of 1988 Amendment note under section 86 of this title.

PROMOTION OF PUBLIC AWARENESS OF PROGRAM

Pub. L. 100–647, title VI, §6009(b), Nov. 10, 1988, 102 Stat. 3690, provided that: "The Secretary of the Treasury or his delegate shall take such actions as may be necessary to make the general public aware of the program established by this section [enacting this section, amending sections 86, 219, and 469 of this title, renumbering former section 135 of this title as section 136 of this title, and enacting provisions set out as notes below and under section 86 of this title]."

PARENTAL ASSISTANCE WITH TUITION STAMP STUDY

Pub. L. 100–647, title VI, §6009(e), Nov. 10, 1988, 102 Stat. 3690, directed Secretary of the Treasury or his delegate, after consultation with Secretary of Education or his delegate, to conduct a study of feasibility of using stamps or similar programs to encourage and facilitate savings by parents towards purchase of Series EE bonds eligible for exclusion and to submit, not later than Dec. 31, 1989, results of such study, together with any recommendations deemed appropriate, to Committee on Ways and Means of House of Representatives and Committee on Finance of Senate.

§136. Energy conservation subsidies provided by public utilities

(a) Exclusion

Gross income shall not include the value of any subsidy provided (directly or indirectly) by a public utility to a customer for the purchase or installation of any energy conservation measure.

(b) Denial of double benefit

Notwithstanding any other provision of this subtitle, no deduction or credit shall be allowed for, or by reason of, any expenditure to the extent of the amount excluded under subsection (a) for any subsidy which was provided with respect to such expenditure. The adjusted basis of any property shall be reduced by the amount excluded under subsection (a) which was provided with respect to such property.

(c) Energy conservation measure

(1) In general

For purposes of this section, the term "energy conservation measure" means any installation or modification primarily designed to reduce consumption of electricity or natural gas or to improve the management of energy demand with respect to a dwelling unit.

(2) Other definitions

For purposes of this subsection—

(A) Dwelling unit

The term "dwelling unit" has the meaning given such term by section 280A(f)(1).

(B) Public utility

The term "public utility" means a person engaged in the sale of electricity or natural gas to residential, commercial, or industrial customers for use by such customers. For purposes of the preceding sentence, the term "person" includes the Federal Government, a State or local government or any political subdivision thereof, or any instrumentality of any of the foregoing.

(d) Exception

This section shall not apply to any payment to or from a qualified cogeneration facility or qualifying small power production facility pursuant to section 210 of the Public Utility Regulatory Policy Act of 1978.

(Added Pub. L. 102–486, title XIX, §1912(a), Oct. 24, 1992, 106 Stat. 3014; amended Pub. L. 104–188, title I, §1617(a), (b), Aug. 20, 1996, 110 Stat. 1858.)

REFERENCES IN TEXT

Section 210 of the Public Utility Regulatory Policy Act of 1978, referred to in subsec. (d), probably means section 210 of the Public Utility Regulatory Policies Act of 1978, Pub. L. 95–617, which is classified to section 824a–3 of Title 16, Conservation.

PRIOR PROVISIONS

A prior section 136 was renumbered section 140 of this title.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–188, §1617(b)(1), reenacted heading without change and amended text generally, substituting present provisions for former provisions which consisted of general exclusion in par. (1) and limitation for exclusion on nonresidential property in par. (2).

Subsec. (c)(1). Pub. L. 104–188, §1617(a), substituted "energy demand with respect to a dwelling unit." for "energy demand—

"(A) with respect to a dwelling unit, and

"(B) on or after January 1, 1995, with respect to property other than dwelling units.

The purchase and installation of specially defined energy property shall be treated as an energy conservation measure described in subparagraph (B)."

Subsec. (c)(2). Pub. L. 104–188, §1617(b)(2), struck out "and special rules" after "definitions" in heading, redesignated subpars. (B) and (C) as (A) and (B), respectively, and struck out former subpar. (A) which related to "specially defined energy property".

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, §1617(c), Aug. 20, 1996, 110 Stat. 1858, provided that: "The amendments made by this section [amending this section] shall apply to amounts received after December 31, 1996, unless received pursuant to a written binding contract in effect on September 13, 1995, and at all times thereafter."

EFFECTIVE DATE

Pub. L. 102–486, title XIX, §1912(c), Oct. 24, 1992, 106 Stat. 3016, provided that: "The amendments made by this section [enacting this section and renumbering former section 136 as 137] shall apply to amounts received after December 31, 1992."

§137. Adoption assistance programs

(a) Exclusion

(1) In general

Gross income of an employee does not include amounts paid or expenses incurred by the

employer for qualified adoption expenses in connection with the adoption of a child by an employee if such amounts are furnished pursuant to an adoption assistance program.

(2) $10,000 exclusion for adoption of child with special needs regardless of expenses

In the case of an adoption of a child with special needs which becomes final during a taxable year, the qualified adoption expenses with respect to such adoption for such year shall be increased by an amount equal to the excess (if any) of $10,000 over the actual aggregate qualified adoption expenses with respect to such adoption during such taxable year and all prior taxable years.

(b) Limitations

(1) Dollar limitation

The aggregate of the amounts paid or expenses incurred which may be taken into account under subsection (a) for all taxable years with respect to the adoption of a child by the taxpayer shall not exceed $10,000.

(2) Income limitation

The amount excludable from gross income under subsection (a) for any taxable year shall be reduced (but not below zero) by an amount which bears the same ratio to the amount so excludable (determined without regard to this paragraph but with regard to paragraph (1)) as—

(A) the amount (if any) by which the taxpayer's adjusted gross income exceeds $150,000, bears to

(B) $40,000.

(3) Determination of adjusted gross income

For purposes of paragraph (2), adjusted gross income shall be determined—

(A) without regard to this section and sections 199, 221, 222, 911, 931, and 933, and

(B) after the application of sections 86, 135, 219, and 469.

(c) Adoption assistance program

For purposes of this section, an adoption assistance program is a separate written plan of an employer for the exclusive benefit of such employer's employees—

(1) under which the employer provides such employees with adoption assistance, and

(2) which meets requirements similar to the requirements of paragraphs (2), (3), (5), and (6) of section 127(b).

An adoption reimbursement program operated under section 1052 of title 10, United States Code (relating to armed forces) or section 514 of title 14, United States Code (relating to members of the Coast Guard) shall be treated as an adoption assistance program for purposes of this section.

(d) Qualified adoption expenses

For purposes of this section, the term "qualified adoption expenses" has the meaning given such term by section 23(d) (determined without regard to reimbursements under this section).

(e) Certain rules to apply

Rules similar to the rules of subsections (e), (f), and (g) of section 23 shall apply for purposes of this section.

(f) Adjustments for inflation

In the case of a taxable year beginning after December 31, 2002, each of the dollar amounts in subsection (a)(2) and paragraphs (1) and (2)(A) of subsection (b) shall be increased by an amount equal to—

(1) such dollar amount, multiplied by

(2) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting "calendar year 2001" for "calendar year 1992" in subparagraph (B) thereof.

If any amount as increased under the preceding sentence is not a multiple of $10, such amount shall be rounded to the nearest multiple of $10.

(Added Pub. L. 104–188, title I, §1807(b), Aug. 20, 1996, 110 Stat. 1901; amended Pub. L. 105–34, title XVI, §1601(h)(2)(C), Aug. 5, 1997, 111 Stat. 1092; Pub. L. 105–277, div. J, title IV, §4003(a)(2)(C), Oct. 21, 1998, 112 Stat. 2681–908; Pub. L. 107–16, title II, §202(a)(2), (b)(1)(B), (2)(B), (d)(2), (e)(2), title IV, §431(c)(1), June 7, 2001, 115 Stat. 47, 48, 68; Pub. L. 107–147, title IV, §§411(c)(2), 418(a)(2), Mar. 9, 2002, 116 Stat. 45, 57; Pub. L. 108–311, title IV, §403(e), Oct. 4, 2004, 118 Stat. 1188; Pub. L. 108–357, title I, §102(d)(1), Oct. 22, 2004, 118 Stat. 1428; Pub. L. 111–148, title X, §10909(a)(2), (b)(2)(J), (c), Mar. 23, 2010, 124 Stat. 1022, 1023; Pub. L. 111–312, title I, §101(b)(1), Dec. 17, 2010, 124 Stat. 3298.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

PRIOR PROVISIONS

A prior section 137 was renumbered section 140 of this title.

AMENDMENTS

2010—Subsec. (a)(2). Pub. L. 111–148, §10909(a)(2)(B), (c), as amended by Pub. L. 111–312, temporarily substituted "$13,170" for "$10,000" in heading and text. See Effective and Termination Dates of 2010 Amendment note below.

Subsec. (b)(1). Pub. L. 111–148, §10909(a)(2)(A), (c), as amended by Pub. L. 111–312, temporarily substituted "$13,170" for "$10,000". See Effective and Termination Dates of 2010 Amendment note below.

Subsec. (d). Pub. L. 111–148, §10909(b)(2)(J)(i), (c), as amended by Pub. L. 111–312, temporarily substituted "section 36C(d)" for "section 23(d)". See Effective and Termination Dates of 2010 Amendment note below.

Subsec. (e). Pub. L. 111–148, §10909(b)(2)(J)(ii), (c), as amended by Pub. L. 111–312, temporarily substituted "section 36C" for "section 23". See Effective and Termination Dates of 2010 Amendment note below.

Subsec. (f). Pub. L. 111–148, §10909(a)(2)(C), (c), as amended by Pub. L. 111–312, temporarily amended subsec. (f) generally. See Effective and Termination Dates of 2010 Amendment note below. Prior to amendment subsec. (f) read as follows: "ADJUSTMENTS FOR INFLATION.—In the case of a taxable year beginning after December 31, 2002, each of the dollar amounts in subsection (a)(2) and paragraphs (1) and (2)(A) of subsection (b) shall be increased by an amount equal to—

"(1) such dollar amount, multiplied by

"(2) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 2001' for 'calendar year 1992' in subparagraph (B) thereof.

If any amount as increased under the preceding sentence is not a multiple of $10, such amount shall be rounded to the nearest multiple of $10."

2004—Subsec. (b)(1). Pub. L. 108–311 amended directory language of Pub. L. 107–147, §411(c)(2)(B). See 2002 Amendment note below.

Subsec. (b)(3)(A). Pub. L. 108–357 inserted "199," before "221".

2002—Subsec. (a). Pub. L. 107–147, §411(c)(2)(A), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: "Gross income of an employee does not include amounts paid or expenses incurred by the employer for adoption expenses in connection with the adoption of a child by an employee if such amounts are furnished pursuant to an adoption assistance program. The amount of the exclusion shall be—

"(1) in the case of an adoption of a child other than a child with special needs, the amount of the qualified adoption expenses paid or incurred by the taxpayer, and

"(2) in the case of an adoption of a child with special needs, $10,000."

Subsec. (b)(1). Pub. L. 107–147, §411(c)(2)(B), as amended by Pub. L. 108–311, substituted "subsection (a)" for "subsection (a)(1)".

Subsec. (f). Pub. L. 107–147, §418(a)(2), inserted at end "If any amount as increased under the preceding sentence is not a multiple of $10, such amount shall be rounded to the nearest multiple of $10."

2001—Subsec. (a). Pub. L. 107–16, §202(a)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "Gross income of an employee does not include amounts paid or expenses incurred by the employer for qualified adoption expenses in connection with the adoption of a child by an employee if such amounts are furnished pursuant to an adoption assistance program."

Subsec. (b)(1). Pub. L. 107–16, §202(b)(1)(B), substituted "subsection (a)(1)" for "subsection (a)" and "$10,000" for "$5,000 ($6,000, in the case of a child with special needs)".

Subsec. (b)(2)(A). Pub. L. 107–16, §202(b)(2)(B), substituted "$150,000" for "$75,000".

Subsec. (b)(3)(A). Pub. L. 107–16, §431(c)(1), inserted "222," after "221,".

Subsec. (f). Pub. L. 107–16, §202(d)(2), (e)(2), added subsec. (f) and struck out heading and text of former subsec. (f). Text read as follows: "This section shall not apply to amounts paid or expenses incurred after December 31, 2001."

1998—Subsec. (b)(3)(A). Pub. L. 105–277 inserted "221," after "and sections".

1997—Subsec. (b)(1). Pub. L. 105–34 substituted "of the amounts paid or expenses incurred which may be taken into account" for "amount excludable from gross income".

EFFECTIVE AND TERMINATION DATES OF 2010 AMENDMENT

Amendment by Pub. L. 111–148 terminated applicable to taxable years beginning after Dec. 31, 2011, and section is amended to read as if such amendment had never been enacted, see section 10909(c) of Pub. L. 111–148, set out as a note under section 1 of this title.

Amendment by Pub. L. 111–148 applicable to taxable years beginning after Dec. 31, 2009, see section 10909(d) of Pub. L. 111–148, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2004 AMENDMENTS

Amendment by Pub. L. 108–357 applicable to taxable years beginning after Dec. 31, 2004, see section 102(e) of Pub. L. 108–357, set out as a note under section 56 of this title.

Amendment by Pub. L. 108–311 effective as if included in the provisions of the Job Creation and Worker Assistance Act of 2002, Pub. L. 107–147, to which such amendment relates, see section 403(f) of Pub. L. 108–311, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by section 411(c)(2) of Pub. L. 107–147 applicable to taxable years beginning after Dec. 31, 2002, except that amendment by section 411(c)(2)(B) applicable to taxable years beginning after Dec. 31, 2001, see section 411(c)(3) of Pub. L. 107–147, set out as a note under section 23 of this title.

Amendment by section 418(a)(2) of Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 418(c) of Pub. L. 107–147, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 202(b)(1)(B), (2)(B), (d)(2), (e)(2) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 202(g)(1) of Pub. L. 107–16, set out as a note under section 23 of this title.

Amendment by section 202(a)(2) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2002, see section 202(g)(2) of Pub. L. 107–16, set out as a note under section 23 of this title.

Amendment by section 431(c)(1) of Pub. L. 107–16 applicable to payments made in taxable years beginning after Dec. 31, 2001, see section 431(d) of Pub. L. 107–16, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–277 effective as if included in the provision of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 4003(l) of Pub. L. 105–277, set out as a note under section 86 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

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

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1996, see section 1807(e) of Pub. L. 104–188,

set out as a note under section 23 of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§138. Medicare Advantage MSA

(a) Exclusion

Gross income shall not include any payment to the Medicare Advantage MSA of an individual by the Secretary of Health and Human Services under part C of title XVIII of the Social Security Act.

(b) Medicare Advantage MSA

For purposes of this section, the term "Medicare Advantage MSA" means an Archer MSA (as defined in section 220(d))—

(1) which is designated as a Medicare Advantage MSA,

(2) with respect to which no contribution may be made other than—

(A) a contribution made by the Secretary of Health and Human Services pursuant to part C of title XVIII of the Social Security Act, or

(B) a trustee-to-trustee transfer described in subsection (c)(4),

(3) the governing instrument of which provides that trustee-to-trustee transfers described in subsection (c)(4) may be made to and from such account, and

(4) which is established in connection with an MSA plan described in section 1859(b)(3) of the Social Security Act.

(c) Special rules for distributions

(1) Distributions for qualified medical expenses

In applying section 220 to a Medicare Advantage MSA—

(A) qualified medical expenses shall not include amounts paid for medical care for any individual other than the account holder, and

(B) section 220(d)(2)(C) shall not apply.

(2) Penalty for distributions from Medicare Advantage MSA not used for qualified medical expenses if minimum balance not maintained

(A) In general

The tax imposed by this chapter for any taxable year in which there is a payment or distribution from a Medicare Advantage MSA which is not used exclusively to pay the qualified medical expenses of the account holder shall be increased by 50 percent of the excess (if any) of—

(i) the amount of such payment or distribution, over

(ii) the excess (if any) of—

(I) the fair market value of the assets in such MSA as of the close of the calendar year preceding the calendar year in which the taxable year begins, over

(II) an amount equal to 60 percent of the deductible under the Medicare Advantage MSA plan covering the account holder as of January 1 of the calendar year in which the taxable year begins.

Section 220(f)(4) shall not apply to any payment or distribution from a Medicare Advantage MSA.

(B) Exceptions

Subparagraph (A) shall not apply if the payment or distribution is made on or after the date the account holder—

(i) becomes disabled within the meaning of section 72(m)(7), or

(ii) dies.

(C) Special rules

For purposes of subparagraph (A)—

(i) all Medicare Advantage MSAs of the account holder shall be treated as 1 account,

(ii) all payments and distributions not used exclusively to pay the qualified medical expenses of the account holder during any taxable year shall be treated as 1 distribution, and

(iii) any distribution of property shall be taken into account at its fair market value on the date of the distribution.

(3) Withdrawal of erroneous contributions

Section 220(f)(2) and paragraph (2) of this subsection shall not apply to any payment or distribution from a Medicare Advantage MSA to the Secretary of Health and Human Services of an erroneous contribution to such MSA and of the net income attributable to such contribution.

(4) Trustee-to-trustee transfers

Section 220(f)(2) and paragraph (2) of this subsection shall not apply to any trustee-to-trustee transfer from a Medicare Advantage MSA of an account holder to another Medicare Advantage MSA of such account holder.

(d) Special rules for treatment of account after death of account holder

In applying section 220(f)(8)(A) to an account which was a Medicare Advantage MSA of a decedent, the rules of section 220(f) shall apply in lieu of the rules of subsection (c) of this section with respect to the spouse as the account holder of such Medicare Advantage MSA.

(e) Reports

In the case of a Medicare Advantage MSA, the report under section 220(h)—

(1) shall include the fair market value of the assets in such Medicare Advantage MSA as of the close of each calendar year, and

(2) shall be furnished to the account holder—

(A) not later than January 31 of the calendar year following the calendar year to which such reports relate, and

(B) in such manner as the Secretary prescribes in such regulations.

(f) Coordination with limitation on number of taxpayers having Archer MSAs

Subsection (i) of section 220 shall not apply to an individual with respect to a Medicare Advantage MSA, and Medicare Advantage MSAs shall not be taken into account in determining whether the numerical limitations under section 220(j) are exceeded.

(Added Pub. L. 105–33, title IV, §4006(a), Aug. 5, 1997, 111 Stat. 332; amended Pub. L. 106–554, §1(a)(7) [title II, §202(a)(3), (b)(6), (10)], Dec. 21, 2000, 114 Stat. 2763, 2763A–628, 2763A–629; Pub. L. 108–311, title IV, §408(a)(5)(A)–(F), Oct. 4, 2004, 118 Stat. 1191.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a) and (b)(2)(A), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part C of title XVIII of the Act is classified generally to part C (§1395w–21 et seq.) of subchapter XVIII of chapter 7 of Title 42, The Public Health and Welfare. Section 1859 of the Act is classified to section 1395w–28 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 138 was renumbered section 140 of this title.

AMENDMENTS

2004—Pub. L. 108–311, §408(a)(5)(A)–(D), substituted "Medicare Advantage" for "Medicare+Choice" wherever appearing in section catchline, headings, and text.

Subsec. (c)(2)(C)(i). Pub. L. 108–311, §408(a)(5)(E), substituted "Medicare Advantage MSAs" for "Medicare+Choice MSAs".

Subsec. (f). Pub. L. 108–311, §408(a)(5)(F), substituted "Medicare Advantage MSAs" for "Medicare+Choice MSA's".

2000—Subsec. (b). Pub. L. 106–554, §1(a)(7) [title II, §202(b)(10)], substituted "an Archer MSA" for "a Archer MSA" in introductory provisions.

Pub. L. 106–554, §1(a)(7) [title II, §202(a)(3)], substituted "Archer MSA" for "medical savings account" in introductory provisions.

Subsec. (f). Pub. L. 106–554, §1(a)(7) [title II, §202(b)(6)], substituted "Archer MSAs" for "medical savings accounts" in heading.

EFFECTIVE DATE

Pub. L. 105–33, title IV, §4006(c), Aug. 5, 1997, 111 Stat. 334, provided that: "The amendments made by this section [enacting this section, amending sections 220 and 4973 of this title, and renumbering former section 138 of this title as section 139 of this title] shall apply to taxable years beginning after December 31, 1998."

§139. Disaster relief payments

(a) General rule

Gross income shall not include any amount received by an individual as a qualified disaster relief payment.

(b) Qualified disaster relief payment defined

For purposes of this section, the term "qualified disaster relief payment" means any amount paid to or for the benefit of an individual—

(1) to reimburse or pay reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a qualified disaster,

(2) to reimburse or pay reasonable and necessary expenses incurred for the repair or rehabilitation of a personal residence or repair or replacement of its contents to the extent that the need for such repair, rehabilitation, or replacement is attributable to a qualified disaster,

(3) by a person engaged in the furnishing or sale of transportation as a common carrier by reason of the death or personal physical injuries incurred as a result of a qualified disaster, or

(4) if such amount is paid by a Federal, State, or local government, or agency or instrumentality thereof, in connection with a qualified disaster in order to promote the general welfare,

but only to the extent any expense compensated by such payment is not otherwise compensated for by insurance or otherwise.

(c) Qualified disaster defined

For purposes of this section, the term "qualified disaster" means—

(1) a disaster which results from a terroristic or military action (as defined in section 692(c)(2)),

(2) federally [1] declared disaster (as defined by section 165(h)(3)(C)(i)),

(3) a disaster which results from an accident involving a common carrier, or from any other event, which is determined by the Secretary to be of a catastrophic nature, or

(4) with respect to amounts described in subsection (b)(4), a disaster which is determined by an applicable Federal, State, or local authority (as determined by the Secretary) to warrant assistance from the Federal, State, or local government or agency or instrumentality thereof.

(d) Coordination with employment taxes

For purposes of chapter 2 and subtitle C, qualified disaster relief payments and qualified disaster mitigation payments shall not be treated as net earnings from self-employment, wages, or compensation subject to tax.

(e) No relief for certain individuals

Subsections (a), (f), and (g) shall not apply with respect to any individual identified by the Attorney General to have been a participant or conspirator in a terroristic action (as so defined), or a representative of such individual.

(f) Exclusion of certain additional payments

Gross income shall not include any amount received as payment under section 406 of the Air Transportation Safety and System Stabilization Act.

(g) Qualified disaster mitigation payments

(1) In general

Gross income shall not include any amount received as a qualified disaster mitigation payment.

(2) Qualified disaster mitigation payment defined

For purposes of this section, the term "qualified disaster mitigation payment" means any amount which is paid pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (as in effect on the date of the enactment of this subsection) or the National Flood Insurance Act (as in effect on such date) to or for the benefit of the owner of any property for hazard mitigation with respect to such property. Such term shall not include any amount received for the sale or disposition of any property.

(3) No increase in basis

Notwithstanding any other provision of this subtitle, no increase in the basis or adjusted basis of any property shall result from any amount excluded under this subsection with respect to such property.

(h) Denial of double benefit

Notwithstanding any other provision of this subtitle, no deduction or credit shall be allowed (to the person for whose benefit a qualified disaster relief payment or qualified disaster mitigation payment is made) for, or by reason of, any expenditure to the extent of the amount excluded under this section with respect to such expenditure.

(Added Pub. L. 107–134, title I, §111(a), Jan. 23, 2002, 115 Stat. 2432; amended Pub. L. 109–7, §1(a), Apr. 15, 2005, 119 Stat. 21; Pub. L. 110–343, div. C, title VII, §706(a)(2)(D)(iv), Oct. 3, 2008, 122 Stat. 3922.)

REFERENCES IN TEXT

Section 406 of the Air Transportation Safety and System Stabilization Act, referred to in subsec. (f), is section 406 of Pub. L. 107–42, which is set out as a note under section 40101 of Title 49, Transportation.

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsec. (g)(2), is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, as amended, which is classified principally to chapter 68 (§5121 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of Title 42 and Tables.

The date of the enactment of this subsection, referred to in subsec. (g)(2), is the date of enactment of Pub. L. 109–7, which was approved Apr. 15, 2005.

The National Flood Insurance Act, referred to in subsec. (g)(2), probably means the National Flood Insurance Act of 1968, title XIII of Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 572, as amended, which is classified principally to chapter 50 (§4001 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 139 was renumbered section 140 of this title.

AMENDMENTS

2008—Subsec. (c)(2). Pub. L. 110–343 amended par. (2) generally. Prior to amendment, par. (2) read as follows: "a Presidentially declared disaster (as defined in section 1033(h)(3)),".

2005—Subsec. (d). Pub. L. 109–7, §1(a)(2)(A), substituted "qualified disaster relief payments and qualified disaster mitigation payments" for "a qualified disaster relief payment".

Subsec. (e). Pub. L. 109–7, §1(a)(2)(B), substituted ", (f), and (g)" for "and (f)".
Subsecs. (g), (h). Pub. L. 109–7, §1(a)(1), added subsecs. (g) and (h).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–343 applicable to disasters declared in taxable years beginning after Dec. 31, 2007, see section 706(d)(1) of Pub. L. 110–343, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–7, §1(c)(1), Apr. 15, 2005, 119 Stat. 22, provided that: "The amendments made by subsection (a) [amending this section] shall apply to amounts received before, on, or after the date of the enactment of this Act [Apr. 15, 2005]."

EFFECTIVE DATE

Pub. L. 107–134, title I, §111(c), Jan. 23, 2002, 115 Stat. 2433, provided that: "The amendments made by this section [enacting this section and renumbering former section 139 as section 140 of this title] shall apply to taxable years ending on or after September 11, 2001."

[1] So in original. Probably should be preceded by "a".

§139A. Federal subsidies for prescription drug plans

Gross income shall not include any special subsidy payment received under section 1860D–22 of the Social Security Act.

(Added Pub. L. 108–173, title XII, §1202(a), Dec. 8, 2003, 117 Stat. 2480; amended Pub. L. 111–148, title IX, §9012(a), Mar. 23, 2010, 124 Stat. 868.)

REFERENCES IN TEXT

Section 1860D–22 of the Social Security Act, referred to in text, is classified to section 1395w–132 of Title 42, The Public Health and Welfare.

AMENDMENTS

2010—Pub. L. 111–148 struck out second sentence which read as follows: "This section shall not be taken into account for purposes of determining whether any deduction is allowable with respect to any cost taken into account in determining such payment."

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–148, title IX, §9012(b), Mar. 23, 2010, 124 Stat. 868, as amended by Pub. L. 111–152, title I, §1407, Mar. 30, 2010, 124 Stat. 1067, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2012."

EFFECTIVE DATE

Section applicable to taxable years ending after Dec. 8, 2003, see section 1202(d) of Pub. L. 108–173, set out as an Effective Date of 2003 Amendment note under section 56 of this title.

§139B. Benefits provided to volunteer firefighters and emergency medical responders

(a) In general

In the case of any member of a qualified volunteer emergency response organization, gross income shall not include—

(1) any qualified State and local tax benefit, and
(2) any qualified payment.

(b) Denial of double benefits

In the case of any member of a qualified volunteer emergency response organization—

(1) the deduction under 164 shall be determined with regard to any qualified State and local tax benefit, and

(2) expenses paid or incurred by the taxpayer in connection with the performance of services as such a member shall be taken into account under section 170 only to the extent such expenses exceed the amount of any qualified payment excluded from gross income under subsection (a).

(c) Definitions

For purposes of this section—

(1) Qualified State and local tax benefit

The term "qualified state and local tax benefit" means any reduction or rebate of a tax described in paragraph (1), (2), or (3) of section 164(a) provided by a State or political division thereof on account of services performed as a member of a qualified volunteer emergency response organization.

(2) Qualified payment

(A) In general

The term "qualified payment" means any payment (whether reimbursement or otherwise) provided by a State or political division thereof on account of the performance of services as a member of a qualified volunteer emergency response organization.

(B) Applicable dollar limitation

The amount determined under subparagraph (A) for any taxable year shall not exceed $30 multiplied by the number of months during such year that the taxpayer performs such services.

(3) Qualified volunteer emergency response organization

The term "qualified volunteer emergency response organization" means any volunteer organization—

(A) which is organized and operated to provide firefighting or emergency medical services for persons in the State or political subdivision, as the case may be, and

(B) which is required (by written agreement) by the State or political subdivision to furnish firefighting or emergency medical services in such State or political subdivision.

(d) Termination

This section shall not apply with respect to taxable years beginning after December 31, 2010.

(Added Pub. L. 110–142, §5(a), Dec. 20, 2007, 121 Stat. 1805.)

EFFECTIVE DATE

Pub. L. 110–142, §5(c), Dec. 20, 2007, 121 Stat. 1806, provided that: "The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 2007."

§139C. COBRA premium assistance

In the case of an assistance eligible individual (as defined in section 3001 of title III of division B of the American Recovery and Reinvestment Act of 2009), gross income does not include any premium reduction provided under subsection (a) of such section.

(Added Pub. L. 111–5, div. B, title III, §3001(a)(15)(A), Feb. 17, 2009, 123 Stat. 465; amended Pub. L. 111–144, §3(b)(5)(B), Mar. 2, 2010, 124 Stat. 44.)

REFERENCES IN TEXT

Section 3001 of title III of division B of the American Recovery and Reinvestment Act of 2009, referred to in text, is section 3001 of Pub. L. 111–5, div. B, title III, Feb. 17, 2009, 123 Stat. 455, which is set out as a note under section 6432 of this title.

AMENDMENTS

2010—Pub. L. 111–144 substituted "section 3001 of title III of division B of the American Recovery and

Reinvestment Act of 2009" for "section 3002 of the Health Insurance Assistance for the Unemployed Act of 2009".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–144 effective as if included in the provisions of section 3001 of Pub. L. 111–5 to which it relates, see section 3(c) of Pub. L. 111–144, set out as a note under section 6432 of this title.

EFFECTIVE DATE

Section applicable to taxable years ending after Feb. 17, 2009, see section 3001(a)(15)(C) of Pub. L. 111–5, set out as a Premium Assistance for COBRA Benefits note under section 6432 of this title.

§139D. Indian health care benefits

(a) General rule

Except as otherwise provided in this section, gross income does not include the value of any qualified Indian health care benefit.

(b) Qualified Indian health care benefit

For purposes of this section, the term "qualified Indian health care benefit" means—

(1) any health service or benefit provided or purchased, directly or indirectly, by the Indian Health Service through a grant to or a contract or compact with an Indian tribe or tribal organization, or through a third-party program funded by the Indian Health Service,

(2) medical care provided or purchased by, or amounts to reimburse for such medical care provided by, an Indian tribe or tribal organization for, or to, a member of an Indian tribe, including a spouse or dependent of such a member,

(3) coverage under accident or health insurance (or an arrangement having the effect of accident or health insurance), or an accident or health plan, provided by an Indian tribe or tribal organization for medical care to a member of an Indian tribe, include a spouse or dependent of such a member, and

(4) any other medical care provided by an Indian tribe or tribal organization that supplements, replaces, or substitutes for a program or service relating to medical care provided by the Federal government to Indian tribes or members of such a tribe.

(c) Definitions

For purposes of this section—

(1) Indian tribe

The term "Indian tribe" has the meaning given such term by section 45A(c)(6).

(2) Tribal organization

The term "tribal organization" has the meaning given such term by section 4(l) of the Indian Self-Determination and Education Assistance Act.

(3) Medical care

The term "medical care" has the same meaning as when used in section 213.

(4) Accident or health insurance; accident or health plan

The terms "accident or health insurance" and "accident or health plan" have the same meaning as when used in section 105.

(5) Dependent

The term "dependent" has the meaning given such term by section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof.

(d) Denial of double benefit

Subsection (a) shall not apply to the amount of any qualified Indian health care benefit which is not includible in gross income of the beneficiary of such benefit under any other provision of this

chapter, or to the amount of any such benefit for which a deduction is allowed to such beneficiary under any other provision of this chapter.

(Added Pub. L. 111–148, title IX, §9021(a), Mar. 23, 2010, 124 Stat. 873.)

REFERENCES IN TEXT

Section 4(l) of the Indian Self-Determination and Education Assistance Act, referred to in subsec. (c)(2), is classified to section 450b(l) of Title 25, Indians.

CODIFICATION

Another section 139D, added Pub. L. 111–148, title X, §10108(f)(1), Mar. 23, 2010, 124 Stat. 913, related to free choice vouchers, prior to repeal by Pub. L. 112–10, div. B, title VIII, §1858(b)(2)(A), Apr. 15, 2011, 125 Stat. 168, effective as if included in the provisions of, and the amendments made by, the provisions of Pub. L. 111–148 to which it relates, see section 1858(d) of Pub. L. 112–10, set out as an Effective Date of 2011 Amendment note under section 36B of this title.

EFFECTIVE DATE

Pub. L. 111–148, title IX, §9021(c), Mar. 23, 2010, 124 Stat. 874, provided that: "The amendments made by this section [enacting this section] shall apply to benefits and coverage provided after the date of the enactment of this Act [Mar. 23, 2010]."

NO INFERENCE WITH RESPECT TO EXCLUSION FROM GROSS INCOME OF CERTAIN BENEFITS

Pub. L. 111–148, title IX, §9021(d), Mar. 23, 2010, 124 Stat. 874, provided that: "Nothing in the amendments made by this section [enacting this section] shall be construed to create an inference with respect to the exclusion from gross income of—

"(1) benefits provided by an Indian tribe or tribal organization that are not within the scope of this section, and

"(2) benefits provided prior to the date of the enactment of this Act [Mar. 23, 2010]."

§139E. Indian general welfare benefits

(a) In general

Gross income does not include the value of any Indian general welfare benefit.

(b) Indian general welfare benefit

For purposes of this section, the term "Indian general welfare benefit" includes any payment made or services provided to or on behalf of a member of an Indian tribe (or any spouse or dependent of such a member) pursuant to an Indian tribal government program, but only if—

(1) the program is administered under specified guidelines and does not discriminate in favor of members of the governing body of the tribe, and

(2) the benefits provided under such program—

(A) are available to any tribal member who meets such guidelines,

(B) are for the promotion of general welfare,

(C) are not lavish or extravagant, and

(D) are not compensation for services.

(c) Definitions and special rules

For purposes of this section—

(1) Indian tribal government

For purposes of this section, the term "Indian tribal government" includes any agencies or instrumentalities of an Indian tribal government and any Alaska Native regional or village corporation, as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601,[1] et seq.).

(2) Dependent

The term "dependent" has the meaning given such term by section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B).

(3) Lavish or extravagant

The Secretary shall, in consultation with the Tribal Advisory Committee (as established under section 3(a) of the Tribal General Welfare Exclusion Act of 2013),[2] establish guidelines for what constitutes lavish or extravagant benefits with respect to Indian tribal government programs.

(4) Establishment of tribal government program

A program shall not fail to be treated as an Indian tribal government program solely by reason of the program being established by tribal custom or government practice.

(5) Ceremonial activities

Any items of cultural significance, reimbursement of costs, or cash honorarium for participation in cultural or ceremonial activities for the transmission of tribal culture shall not be treated as compensation for services.

(Added Pub. L. 113–168, §2(a), Sept. 26, 2014, 128 Stat. 1883.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in subsec. (c)(1), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

Section 3(a) of the Tribal General Welfare Exclusion Act of 2013, referred to in subsec. (c)(3), probably should be a reference to section 3(a) of the Tribal General Welfare Exclusion Act of 2014, Pub. L. 113–168, §3(a), Sept. 26, 2014, 128 Stat. 1884, which is set out as a note under this section. There is no Tribal General Welfare Exclusion Act of 2013.

EFFECTIVE DATE

Pub. L. 113–168, §2(d), Sept. 26, 2014, 128 Stat. 1884, provided that:

"(1) IN GENERAL.—The amendments made by this section [enacting this section] shall apply to taxable years for which the period of limitation on refund or credit under section 6511 of the Internal Revenue Code of 1986 has not expired.

"(2) ONE-YEAR WAIVER OF STATUTE OF LIMITATIONS.—If the period of limitation on a credit or refund resulting from the amendments made by subsection (a) [enacting this section] expires before the end of the 1-year period beginning on the date of the enactment of this Act [Sept. 26, 2014], refund or credit of such overpayment (to the extent attributable to such amendments) may, nevertheless, be made or allowed if claim therefor is filed before the close of such 1-year period."

STATUTORY CONSTRUCTION

Pub. L. 113–168, §2(c), Sept. 26, 2014, 128 Stat. 1884, provided that: "Ambiguities in section 139E of such Code [Internal Revenue Code of 1986], as added by this Act, shall be resolved in favor of Indian tribal governments and deference shall be given to Indian tribal governments for the programs administered and authorized by the tribe to benefit the general welfare of the tribal community."

TRIBAL ADVISORY COMMITTEE

Pub. L. 113–168, §3, Sept. 26, 2014, 128 Stat. 1884, provided that:

"(a) ESTABLISHMENT.—The Secretary of the Treasury shall establish a Tribal Advisory Committee (hereinafter in this subsection [probably should be "section"] referred to as the 'Committee').

"(b) DUTIES.—

"(1) IMPLEMENTATION.—The Committee shall advise the Secretary on matters relating to the taxation of Indians.

"(2) EDUCATION AND TRAINING.—The Secretary shall, in consultation with the Committee, establish and require—

"(A) training and education for internal revenue field agents who administer and enforce internal revenue laws with respect to Indian tribes on Federal Indian law and the Federal Government's unique legal treaty and trust relationship with Indian tribal governments, and

"(B) training of such internal revenue field agents, and provision of training and technical

assistance to tribal financial officers, about implementation of this Act [enacting this section and provisions set out as notes under this section] and the amendments made thereby.

"(c) MEMBERSHIP.—

"(1) IN GENERAL.—The Committee shall be composed of 7 members appointed as follows:

"(A) Three members appointed by the Secretary of the Treasury.

"(B) One member appointed by the Chairman, and one member appointed by the Ranking Member, of the Committee on Ways and Means of the House of Representatives.

"(C) One member appointed by the Chairman, and one member appointed by the Ranking Member, of the Committee on Finance of the Senate.

"(2) TERM.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), each member's term shall be 4 years.

"(B) INITIAL STAGGERING.—The first appointments made by the Secretary under paragraph (1)(A) shall be for a term of 2 years."

OTHER RELIEF FOR INDIAN TRIBES

Pub. L. 113–168, §4, Sept. 26, 2014, 128 Stat. 1885, provided that:

"(a) TEMPORARY SUSPENSION OF EXAMINATIONS.—The Secretary of the Treasury shall suspend all audits and examinations of Indian tribal governments and members of Indian tribes (or any spouse or dependent of such a member), to the extent such an audit or examination relates to the exclusion of a payment or benefit from an Indian tribal government under the general welfare exclusion, until the education and training prescribed by section 3(b)(2) of this Act [section 3(b)(2) of Pub. L. 113–168, set out as a note above] is completed. The running of any period of limitations under section 6501 of the Internal Revenue Code of 1986 with respect to Indian tribal governments and members of Indian tribes shall be suspended during the period during which audits and examinations are suspended under the preceding sentence.

"(b) WAIVER OF PENALTIES AND INTEREST.—The Secretary of the Treasury may waive any interest and penalties imposed under such Code on any Indian tribal government or member of an Indian tribe (or any spouse or dependent of such a member) to the extent such interest and penalties relate to excluding a payment or benefit from gross income under the general welfare exclusion.

"(c) DEFINITIONS.—For purposes of this subsection [probably should be "section"]—

"(1) INDIAN TRIBAL GOVERNMENT.—The term 'Indian tribal government' shall have the meaning given such term by section 139E of such Code, as added by this Act.

"(2) INDIAN TRIBE.—The term 'Indian tribe' shall have the meaning given such term by section 45A(c)(6) of such Code."

[1] So in original. The comma probably should not appear.

[2] See References in Text note below.

§140. Cross references to other Acts

(a) For exemption of—

(1) Allowances and expenditures to meet losses sustained by persons serving the United States abroad, due to appreciation of foreign currencies, see section 5943 of title 5, United States Code.

(2) Amounts credited to the Maritime Administration under section 9(b)(6) of the Merchant Ship Sales Act of 1946, see section 9(c)(1) of that Act (50 U.S.C. App. 1742).[1]

(3) Benefits under laws administered by the Veterans' Administration, see section 5301 of title 38, United States Code.

(4) Earnings of ship contractors deposited in special reserve funds, see section 53507 of title 46, United States Code.

(5) Income derived from Federal Reserve banks, including capital stock and surplus, see section 7 of the Federal Reserve Act (12 U.S.C. 531).

(6) Special pensions of persons on Army and Navy medal of honor roll, see 38 U.S.C. 1562(a)–(c).

(b) For extension of military income tax-exemption benefits to commissioned officers of

Public Health Service in certain circumstances, see section 212 of the Public Health Service Act (42 U.S.C. 213).

(Aug. 16, 1954, ch. 736, 68A Stat. 39, §121; Aug. 1, 1956, ch. 837, title V, §501(t), 70 Stat. 885; Pub. L. 85–56, title XXII, §2201(25), June 17, 1957, 71 Stat. 160; Pub. L. 85–857, §13(t), Sept. 2, 1958, 72 Stat. 1266; renumbered §122, Pub. L. 88–272, title II, §206(a), Feb. 26, 1964, 78 Stat. 38; renumbered §123, Pub. L. 89–365, §1(a)(1), Mar. 8, 1966, 80 Stat. 32; renumbered §124, Pub. L. 91–172, title IX, §901(a), Dec. 30, 1969, 83 Stat. 709; amended Pub. L. 94–455, title XIX, §1901(a)(21), Oct. 4, 1976, 90 Stat. 1766; renumbered §125, Pub. L. 95–618, title II, §242(a), Nov. 9, 1978, 92 Stat. 3193; renumbered §126, renumbered §127, renumbered §128, Pub. L. 95–600, title I, §§134(a), 164(a), title V, 543(a), Nov. 6, 1978, 92 Stat. 2783, 2811, 2888; amended Pub. L. 96–222, title I, §101(a)(3), Apr. 1, 1980, 94 Stat. 195; Pub. L. 96–589, §6(i)(1), Dec. 24, 1980, 94 Stat. 3410; renumbered §129, renumbered §130, Pub. L. 97–34, title I, §124(e)(1), title III, §301(a), Aug. 13, 1981, 95 Stat. 198, 267; renumbered §131, renumbered §132, Pub. L. 97–473, title I, §§101(b)(1), 102(a), Jan. 14, 1983, 96 Stat. 2605, 2606; renumbered §133, renumbered §134 and amended Pub. L. 98–369, div. A, title V, §§531(a)(1), 543(a), div. B, title VI, §2661(o)(2), July 18, 1984, 98 Stat. 877, 891, 1159; renumbered §135, Pub. L. 99–514, title XI, §1168(a), Oct. 22, 1986, 100 Stat. 2512; renumbered §136, Pub. L. 100–647, title VI, §6009(a), Nov. 10, 1988, 102 Stat. 3688; Pub. L. 102–40, title IV, §402(d)(2), May 7, 1991, 105 Stat. 239; Pub. L. 102–83, §5(c)(2), Aug. 6, 1991, 105 Stat. 406; renumbered §137, Pub. L. 102–486, title XIX, §1912(a), Oct. 24, 1992, 106 Stat. 3014; renumbered §138, Pub. L. 104–188, title I, §1807(b), Aug. 20, 1996, 110 Stat. 1901; renumbered §139, Pub. L. 105–33, title IV, §4006(a), Aug. 5, 1997, 111 Stat. 331; renumbered §140, Pub. L. 107–134, title I, §111(a), Jan. 23, 2002, 115 Stat. 2432; Pub. L. 109–304, §17(e)(2), Oct. 6, 2006, 120 Stat. 1708.)

REFERENCES IN TEXT

Section 9 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1742), referred to in subsec. (a)(2), was repealed by Pub. L. 94–412, title V, §501(g), Sept. 14, 1976, 90 Stat. 1258.

AMENDMENTS

2006—Subsec. (a)(4). Pub. L. 109–304 substituted "section 53507 of title 46, United States Code" for "section 607(d) of the Merchant Marine Act, 1936 (46 U.S.C. 1177)".

2002—Pub. L. 107–134 renumbered section 139 of this title as this section.

1997—Pub. L. 105–33 renumbered section 138 of this title as this section.

1996—Pub. L. 104–188 renumbered section 137 of this title as this section.

1992—Pub. L. 102–486 renumbered section 136 of this title as this section.

1991—Subsec. (a)(3). Pub. L. 102–40 substituted "5301" for "3101".

Subsec. (a)(6). Pub. L. 102–83 substituted "1562(a)–(c)" for "562(a)–(c)".

1988—Pub. L. 100–647 renumbered section 135 of this title as this section.

1986—Pub. L. 99–514 renumbered section 134 of this title as this section.

1984—Pub. L. 98–369, §§531(a)(1), 543(a), successively renumbered sections 132 and 133 of this title as this section.

Subsec. (a)(6) to (8). Pub. L. 98–369, §2661(o)(2), struck out par. (6) relating to railroad retirement annuities and pensions, struck out par. (7) relating to railroad unemployment benefits, and redesignated par. (8) as (6).

1983—Pub. L. 97–473 successively renumbered sections 130 and 131 of this title as this section.

1981—Pub. L. 97–34 successively renumbered sections 128 and 129 of this title as this section.

1980—Subsec. (a). Pub. L. 96–589 redesignated pars. (2) to (9) as (1) to (8), respectively. Former par. (1), relating to section 1079 of title 11 for adjustments of indebtedness under wage earners' plans, was struck out.

Subsec. (a)(8). Pub. L. 96–222 substituted "benefits which are not includible in gross income under section 85," for "benefits, see".

1978—Pub. L. 95–600 successively renumbered sections 125, 126, and 127 of this title as this section.

Pub. L. 95–618 renumbered section 124 of this title as this section.

1976—Subsec. (a). Pub. L. 94–455, §1901(a)(21), struck out pars. (4), (5), (6), (9), (10), (11), (12), (13), and (17) relating to: benefits under World War Adjustment Compensation Act; benefits under World War Veteran's Act 1924; dividends and interest derived from certain preferred stock by Reconstruction Finance Corporation; income derived from Ogdensburg bridge; income derived from Owensburg bridge and ferries;

income from Saint Clair River bridge and ferries; leave compensation payments under section 6 of Armed Forces Leave Act of 1946; mustering-out payments under Mustering-Out Payment Act of 1944; and gain derived from sale or other disposition of Treasury Bills issued after June 17, 1930, under the Second Liberty Bond Act, respectively, renumbered pars. (7), (8), (14), (15), (16), and (18) as pars. (5), (6), (7), (8), (9), and (4), respectively, struck out references to Statutes at Large, and updated cross references to the United States Code.

Subsec. (b). Pub. L. 94–455, §1901(a)(21), struck out "58 Stat. 689;" after "Health Service Act".

1969—Pub. L. 91–172 renumbered section 123 of this title as this section.

1966—Pub. L. 89–365 renumbered section 122 of this title as this section.

1964—Pub. L. 88–272 renumbered section 121 of this title as this section.

1958—Subsec. (a)(18). Pub. L. 85–857 substituted "section 3101 of title 38, United States Code" for "section 1001 of the Veterans' Benefits Act of 1957".

1957—Subsec. (a)(18). Pub. L. 85–56 substituted provisions relating to benefits under laws administered by Veterans' Administration, for provisions which related to dependency and indemnity compensation.

1956—Subsec. (a). Act Aug. 1, 1956, added par. (18) relating to dependency and indemnity compensation.

CHANGE OF NAME

Reference to Veterans' Administration deemed to refer to Department of Veterans Affairs pursuant to section 10 of Pub. L. 100–527, set out as a Department of Veterans Affairs Act note under section 301 of Title 38, Veterans' Benefits.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2661(o)(2) of Pub. L. 98–369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98–21, see section 2664(a) of Pub. L. 98–369, set out as a note under section 401 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–589 effective Oct. 1, 1979, but not to apply to proceedings under Title 11 commenced before Oct. 1, 1979, see section 7 of Pub. L. 96–589, set out as a note under section 108 of this title.

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

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

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–857 effective Jan. 1, 1959, see section 2 of Pub. L. 85–857, set out as an Effective Date note preceding Part I of Title 38, Veterans' Benefits.

[1] *See References in Text note below.*

PART IV—TAX EXEMPTION REQUIREMENTS FOR STATE AND LOCAL BONDS

Subpart

A. Private activity bonds.

B. Requirements applicable to all State and local bonds.

C. Definitions and special rules.

AMENDMENTS

1986—Pub. L. 99–514, title XIII, §1301(b), Oct. 22, 1986, 100 Stat. 2603, in amending part IV generally, substituted "TAX EXEMPTION REQUIREMENTS FOR STATE AND LOCAL BONDS" for "DETERMINATION OF MARITAL STATUS" as heading for part IV and added part analysis.

1977—Pub. L. 95–30, title I, §101(e)(2), May 23, 1977, 91 Stat. 134, substituted "DETERMINATION OF

MARITAL STATUS" for "STANDARD DEDUCTION FOR INDIVIDUALS" as heading for part IV.

SUBPART A—PRIVATE ACTIVITY BONDS

Sec.
141. Private activity bond; qualified bond.
142. Exempt facility bond.
143. Mortgage revenue bonds: qualified mortgage and qualified veterans' mortgage bond.[1]
144. Qualified small issue bond; qualified student loan bond; qualified redevelopment bond.
145. Qualified 501(c)(3) bond.
146. Volume cap.
147. Other requirements applicable to certain private activity bonds.

AMENDMENTS

1986—Pub. L. 99–514, title XIII, §1301(b), Oct. 22, 1986, 100 Stat. 2603, in amending part IV generally, added subpart heading and analysis and struck out item 143 "Determination of marital status".

1977—Pub. L. 95–30, title I, §101(e)(2), May 23, 1977, 91 Stat. 134, struck out items 141 "Standard deduction", 142 "Individuals not eligible for standard deduction", 144 "Election of standard deduction", and 145 "Cross reference".

[1] *So in original. Does not conform to section catchline.*

§141. Private activity bond; qualified bond

(a) Private activity bond

For purposes of this title, the term "private activity bond" means any bond issued as part of an issue—

(1) which meets—

(A) the private business use test of paragraph (1) of subsection (b), and

(B) the private security or payment test of paragraph (2) of subsection (b), or

(2) which meets the private loan financing test of subsection (c).

(b) Private business tests

(1) Private business use test

Except as otherwise provided in this subsection, an issue meets the test of this paragraph if more than 10 percent of the proceeds of the issue are to be used for any private business use.

(2) Private security or payment test

Except as otherwise provided in this subsection, an issue meets the test of this paragraph if the payment of the principal of, or the interest on, more than 10 percent of the proceeds of such issue is (under the terms of such issue or any underlying arrangement) directly or indirectly—

(A) secured by any interest in—

(i) property used or to be used for a private business use, or

(ii) payments in respect of such property, or

(B) to be derived from payments (whether or not to the issuer) in respect of property, or borrowed money, used or to be used for a private business use.

(3) 5 percent test for private business use not related or disproportionate to government use financed by the issue

(A) In general

An issue shall be treated as meeting the tests of paragraphs (1) and (2) if such tests would be met if such paragraphs were applied—

(i) by substituting "5 percent" for "10 percent" each place it appears, and

(ii) by taking into account only—

(I) the proceeds of the issue which are to be used for any private business use which is not related to any government use of such proceeds,

(II) the disproportionate related business use proceeds of the issue, and

(III) payments, property, and borrowed money with respect to any use of proceeds described in subclause (I) or (II).

(B) Disproportionate related business use proceeds

For purposes of subparagraph (A), the disproportionate related business use proceeds of an issue is an amount equal to the aggregate of the excesses (determined under the following sentence) for each private business use of the proceeds of an issue which is related to a government use of such proceeds. The excess determined under this sentence is the excess of—

(i) the proceeds of the issue which are to be used for the private business use, over

(ii) the proceeds of the issue which are to be used for the government use to which such private business use relates.

(4) Lower limitation for certain output facilities

An issue 5 percent or more of the proceeds of which are to be used with respect to any output facility (other than a facility for the furnishing of water) shall be treated as meeting the tests of paragraphs (1) and (2) if the nonqualified amount with respect to such issue exceeds the excess of—

(A) $15,000,000, over

(B) the aggregate nonqualified amounts with respect to all prior tax-exempt issues 5 percent or more of the proceeds of which are or will be used with respect to such facility (or any other facility which is part of the same project).

There shall not be taken into account under subparagraph (B) any bond which is not outstanding at the time of the later issue or which is to be redeemed (other than in an advance refunding) from the net proceeds of the later issue.

(5) Coordination with volume cap where nonqualified amount exceeds $15,000,000

If the nonqualified amount with respect to an issue—

(A) exceeds $15,000,000, but

(B) does not exceed the amount which would cause a bond which is part of such issue to be treated as a private activity bond without regard to this paragraph,

such bond shall nonetheless be treated as a private activity bond unless the issuer allocates a portion of its volume cap under section 146 to such issue in an amount equal to the excess of such nonqualified amount over $15,000,000.

(6) Private business use defined

(A) In general

For purposes of this subsection, the term "private business use" means use (directly or indirectly) in a trade or business carried on by any person other than a governmental unit. For purposes of the preceding sentence, use as a member of the general public shall not be taken into account.

(B) Clarification of trade or business

For purposes of the 1st sentence of subparagraph (A), any activity carried on by a person other than a natural person shall be treated as a trade or business.

(7) Government use

The term "government use" means any use other than a private business use.

(8) Nonqualified amount

For purposes of this subsection, the term "nonqualified amount" means, with respect to an issue, the lesser of—

(A) the proceeds of such issue which are to be used for any private business use, or

(B) the proceeds of such issue with respect to which there are payments (or property or borrowed money) described in paragraph (2).

(9) Exception for qualified 501(c)(3) bonds

There shall not be taken into account under this subsection or subsection (c) the portion of the proceeds of an issue which (if issued as a separate issue) would be treated as a qualified 501(c)(3) bond if the issuer elects to treat such portion as a qualified 501(c)(3) bond.

(c) Private loan financing test

(1) In general

An issue meets the test of this subsection if the amount of the proceeds of the issue which are to be used (directly or indirectly) to make or finance loans (other than loans described in paragraph (2)) to persons other than governmental units exceeds the lesser of—

(A) 5 percent of such proceeds, or

(B) $5,000,000.

(2) Exception for tax assessment, etc., loans

For purposes of paragraph (1), a loan is described in this paragraph if such loan—

(A) enables the borrower to finance any governmental tax or assessment of general application for a specific essential governmental function,

(B) is a nonpurpose investment (within the meaning of section 148(f)(6)(A)), or

(C) is a qualified natural gas supply contract (as defined in section 148(b)(4)).

(d) Certain issues used to acquire nongovernmental output property treated as private activity bonds

(1) In general

For purposes of this title, the term "private activity bond" includes any bond issued as part of an issue if the amount of the proceeds of the issue which are to be used (directly or indirectly) for the acquisition by a governmental unit of nongovernmental output property exceeds the lesser of—

(A) 5 percent of such proceeds, or

(B) $5,000,000.

(2) Nongovernmental output property

Except as otherwise provided in this subsection, for purposes of paragraph (1), the term "nongovernmental output property" means any property (or interest therein) which before such acquisition was used (or held for use) by a person other than a governmental unit in connection with an output facility (within the meaning of subsection (b)(4)) (other than a facility for the furnishing of water). For purposes of the preceding sentence, use (or the holding for use) before October 14, 1987, shall not be taken into account.

(3) Exception for property acquired to provide output to certain areas

For purposes of paragraph (1)—

(A) In general

The term "nongovernmental output property" shall not include any property which is to be used in connection with an output facility 95 percent or more of the output of which will be consumed in—

(i) a qualified service area of the governmental unit acquiring the property, or

(ii) a qualified annexed area of such unit.

(B) Definitions

For purposes of subparagraph (A)—

(i) Qualified service area

The term "qualified service area" means, with respect to the governmental unit acquiring the property, any area throughout which such unit provided (at all times during the 10-year period ending on the date such property is acquired by such unit) output of the same type as the output to be provided by such property. For purposes of the preceding sentence, the period before October 14, 1987, shall not be taken into account.

(ii) Qualified annexed area

The term "qualified annexed area" means, with respect to the governmental unit acquiring the property, any area if—

(I) such area is contiguous to, and annexed for general governmental purposes into, a qualified service area of such unit,

(II) output from such property is made available to all members of the general public in the annexed area, and

(III) the annexed area is not greater than 10 percent of such qualified service area.

(C) Limitation on size of annexed area not to apply where output capacity does not increase by more than 10 percent

Subclause (III) of subparagraph (B)(ii) shall not apply to an annexation of an area by a governmental unit if the output capacity of the property acquired in connection with the annexation, when added to the output capacity of all other property which is not treated as nongovernmental output property by reason of subparagraph (A)(ii) with respect to such annexed area, does not exceed 10 percent of the output capacity of the property providing output of the same type to the qualified service area into which it is annexed.

(D) Rules for determining relative size, etc.

For purposes of subparagraphs (B)(ii) and (C)—

(i) The size of any qualified service area and the output capacity of property serving such area shall be determined as the close of the calendar year preceding the calendar year in which the acquisition of nongovernmental output property or the annexation occurs.

(ii) A qualified annexed area shall be treated as part of the qualified service area into which it is annexed for purposes of determining whether any other area annexed in a later year is a qualified annexed area.

(4) Exception for property converted to nonoutput use

For purposes of paragraph (1)—

(A) In general

The term "nongovernmental output property" shall not include any property which is to be converted to a use not in connection with an output facility.

(B) Exception

Subparagraph (A) shall not apply to any property which is part of the output function of a nuclear power facility.

(5) Special rules

In the case of a bond which is a private activity bond solely by reason of this subsection—

(A) subsections (c) and (d) of section 147 (relating to limitations on acquisition of land and existing property) shall not apply, and

(B) paragraph (8) of section 142(a) shall be applied as if it did not contain "local".

(6) Treatment of joint action agencies

With respect to nongovernmental output property acquired by a joint action agency the members of which are governmental units, this subsection shall be applied at the member level by

treating each member as acquiring its proportionate share of such property.

(7) Exception for qualified electric and natural gas supply contracts

The term "nongovernmental output property" shall not include any contract for the prepayment of electricity or natural gas which is not investment property under section 148(b)(2).

(e) Qualified bond

For purposes of this part, the term "qualified bond" means any private activity bond if—

(1) In general

Such bond is—

(A) an exempt facility bond,
(B) a qualified mortgage bond,
(C) a qualified veterans' mortgage bond,
(D) a qualified small issue bond,
(E) a qualified student loan bond,
(F) a qualified redevelopment bond, or
(G) a qualified 501(c)(3) bond.

(2) Volume cap

Such bond is issued as part of an issue which meets the applicable requirements of section 146, and [1]

(3) Other requirements

Such bond meets the applicable requirements of each subsection of section 147.

(Added Pub. L. 99–514, title XIII, §1301(b), Oct. 22, 1986, 100 Stat. 2603; amended Pub. L. 100–203, title X, §10631(a), Dec. 22, 1987, 101 Stat. 1330–453; Pub. L. 100–647, title I, §1013(a)(38), Nov. 10, 1988, 102 Stat. 3544; Pub. L. 109–58, title XIII, §1327(b), (c), Aug. 8, 2005, 119 Stat. 1019.)

PRIOR PROVISIONS

A prior section 141, acts Aug. 16, 1954, ch. 736, 68A Stat. 40; Feb. 26, 1964, Pub. L. 88–272, title I, §112(a), 78 Stat. 23; Dec. 30, 1969, Pub. L. 91–172, title VIII, §802(a), (c)(4), (e), 83 Stat. 676, 678; Dec. 10, 1971, Pub. L. 92–178, title II, §§202, 203(a)–(c), title III, §301(a), 85 Stat. 511, 520; Mar. 29, 1975, Pub. L. 94–12, title II, §§201(a), 202(a), 89 Stat. 28, 29; Dec. 23, 1975, Pub. L. 94–164, §2(a)(1), (b)(1), 89 Stat. 970, 971; Oct. 4, 1976, Pub. L. 94–455, title IV, §401(b)(1), (2), title XIX, §1906(b)(13)(A), 90 Stat. 1556, 1834, provided for standard deduction, prior to repeal by Pub. L. 95–30, title I, §101(d)(1), May 23, 1977, 91 Stat. 133, applicable to taxable years beginning after Dec. 31, 1976.

AMENDMENTS

2005—Subsec. (c)(2)(C). Pub. L. 109–58, §1327(b), added subpar. (C).
Subsec. (d)(7). Pub. L. 109–58, §1327(c), added par. (7).
1988—Subsec. (b)(5)(B). Pub. L. 100–647 substituted "cause a bond" for "cause bond".
1987—Subsecs. (d), (e). Pub. L. 100–203 added subsec. (d) and redesignated former subsec. (d) as (e).

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–58, title XIII, §1327(d), Aug. 8, 2005, 119 Stat. 1019, provided that: "The amendments made by this section [amending this section and section 148 of this title] shall apply to obligations issued after the date of the enactment of this Act [Aug. 8, 2005]."

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title X, §10631(c), Dec. 22, 1987, 101 Stat. 1330–455, provided that:
"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this

section [amending this section and sections 142 and 146 of this title] shall apply to bonds issued after October 13, 1987 (other than bonds issued to refund bonds issued on or before such date).

"(2) BINDING AGREEMENTS.—The amendments made by this section shall not apply to bonds (other than advance refunding bonds) with respect to a facility acquired after October 13, 1987, pursuant to a binding contract entered into on or before such date.

"(3) TRANSITIONAL RULE.—The amendments made by this section shall not apply to bonds issued—

"(A) after October 13, 1987, by an authority created by a statute—

"(i) approved by the State Governor on July 24, 1986, and

"(ii) sections 1 through 10 of which became effective on January 15, 1987, and

"(B) to provide facilities serving the area specified in such statute on the date of its enactment."

EFFECTIVE DATE; TRANSITIONAL RULES

Pub. L. 99–514, title XIII, subtitle B, Oct. 22, 1986, 100 Stat. 2659, as amended by Pub. L. 100–647, title I, §1013(b), (c)(1), (2)(A), (3)–(11)(D), (13), (14)(A), (d), (e)(1), (2)(A), (f)(1)(A), (2)–(7)(A), (8), (9), (11), (g), (h), Nov. 10, 1988, 102 Stat. 3545–3550, 3558; Pub. L. 101–239, title VII, §7831(e), Dec. 19, 1989, 103 Stat. 2427, provided that:

"SEC. 1311. GENERAL EFFECTIVE DATES.

"(a) IN GENERAL.—Except as otherwise provided in this subtitle, the amendments made by section 1301 [enacting sections 141 to 150 and 7703 of this title, amending sections 2, 22, 25, 32, 86, 103, 105, 152, 153, 163, 194, 269A, 414, 879, 1398, 3402, 4701, 4940, 4942, 4988, 6362, 6652, and 7871 of this title, repealing section 103A of this title, omitting former section 143 of this title, enacting provisions set out as notes under sections 141 and 148 of this title, and amending provisions set out as a note under section 103A of this title] shall apply to bonds issued after August 15, 1986.

"(b) SECTION 1301(f).—

"(1) INCREASE IN TRADE-IN RATE.—The amendments made by paragraph (1) of section 1301(f) [amending section 25 of this title] shall apply to nonissued bond amounts elected after August 15, 1986.

"(2) CERTIFICATES.—The amendments made by paragraph (2) of section 1301(f) [amending section 25 of this title] shall apply to certificates issued with respect to non-issued bond amounts elected after August 15, 1986.

"(c) CHANGES IN USE, ETC., OF FACILITIES FINANCED WITH PRIVATE ACTIVITY BONDS .—Subsection (b) of section 150 of the 1986 Code shall apply to changes in use (and ownership) after August 15, 1986, but only with respect to financing (including refinancings) provided after such date.

"(d) PUBLIC APPROVAL AND INFORMATION REPORTING.—Sections 147(f) and 149(e) of the 1986 Code shall apply to bonds issued after December 31, 1986.

"(e) REBATE REQUIREMENT FOR QUALIFIED SCHOLARSHIP FUNDING BONDS.—Section 150(d) of the 1986 Code shall apply to payments made after August 15, 1986.

"(f) SECTION 1303.—The amendments made by section 1303 [amending sections 172, 1016, and 3402 of this title and repealing sections 1391 to 1397 and 6039B of this title] shall take effect on the date of the enactment of this Act [Oct. 22, 1986].

"SEC. 1312. TRANSITIONAL RULES FOR CONSTRUCTION OR BINDING AGREEMENTS AND CERTAIN GOVERNMENT BONDS ISSUED AFTER AUGUST 15, 1986.

"(a) EXCEPTION FOR CONSTRUCTION OR BINDING AGREEMENTS.—

"(1) IN GENERAL.—The amendments made by section 1301 [for classification see section 1311(a) of this note] shall not apply to bonds (other than a refunding bond) with respect to a facility—

"(A)(i) the original use of which commences with the taxpayer, and the construction, reconstruction, or rehabilitation of which began before September 26, 1985, and was completed on or after such date,

"(ii) the original use of which begins with the taxpayer and with respect to which a binding contract to incur significant expenditures for construction, reconstruction, or rehabilitation was entered into before September 26, 1985, and some of such expenditures are incurred on or after such date, or

"(iii) acquired on or after September 26, 1985, pursuant to a binding contract entered into before such date, and

"(B) described in an inducement resolution or other comparable preliminary approval adopted by an issuing authority (or by a voter referendum) before September 26, 1985.

"(2) SIGNIFICANT EXPENDITURES.—For purposes of paragraph (1)(A), the term 'significant expenditures' means expenditures greater than 10 percent of the reasonably anticipated cost of the construction, reconstruction, or rehabilitation of the facility involved.

"(b) CERTAIN AMENDMENTS TO APPLY TO BONDS UNDER SUBSECTION (a) TRANSITIONAL RULE.—

"(1) IN GENERAL.—In the case of a bond issued after August 15, 1986, and to which subsection (a) of this section applies, the requirements of the following provisions shall be treated as included in section 103 and section 103A (as appropriate) of the 1954 Code:

"(A) The requirement that 95 percent or more of the net proceeds of an issue are to be used for a purpose described in section 103(b)(4) or (5) of such Code in order for section 103(b)(4) or (5) of such Code to apply, including the application of section 142(b)(2) of the 1986 Code (relating to limitation on office space).

"(B) The requirement that 95 percent or more of the net proceeds of an issue are to be used for a purpose described in section 103(b)(6)(A) of the 1954 Code in order for section 103(b)(6)(A) of such Code to apply.

"(C) The requirements of section 143 of the 1986 Code (relating to qualified mortgage bonds and qualified veterans' mortgage bonds) in order for section 103A(b)(2) of the 1954 Code to apply.

"(D) The requirements of section 144(a)(11) of the 1986 Code (relating to limitation on acquisition of depreciable farm property) in order for section 103(b)(6)(A) of the 1954 Code to apply.

"(E) The requirements of section 147(b) of the 1986 Code (relating to maturity may not exceed 120 percent of economic life).

"(F) The requirements of section 147(f) of the 1986 Code (relating to public approval required for private activity bonds).

"(G) The requirements of section 147(g) of the 1986 Code (relating to restriction on issuance costs financed by issue).

"(H) The requirements of section 148 of the 1986 Code (relating to arbitrage).

"(I) The requirements of section 149(e) of the 1986 Code (relating to information reporting).

"(J) The provisions of section 150(b) of the 1986 Code (relating to changes in use).

"(2) CERTAIN REQUIREMENTS APPLY ONLY TO BONDS ISSUED AFTER DECEMBER 31, 1986.—In the case of subparagraphs (F) and (I) of paragraphs (1), paragraph (1) shall be applied by substituting 'December 31, 1986' for 'August 15, 1986'.

"(3) APPLICATION OF VOLUME CAP.—Except as provided in section 1315, any bond to which this subsection applies shall be treated as a private activity bond for purposes of section 146 of the 1986 Code if such bond would have been taken into account under section 103(n) or 103A(g) of the 1954 Code (determined without regard to any carryforward election) were such bond issued before August 16, 1986.

"(4) APPLICATION OF PROVISIONS.—For purposes of applying the requirements referred to in any subparagraph of paragraph (1) or of subsection (a)(3) or (b)(3) of section 1313 to any bond, such bond shall be treated as described in the subparagraph of section 141(d)(1) of the 1986 Code to which the use of the proceeds of such bond most closely relates.

"(c) SPECIAL RULES FOR CERTAIN GOVERNMENT BONDS ISSUED AFTER AUGUST 15, 1986.—

"(1) IN GENERAL.—In the case of any bond described in paragraph (2)—

"(A) section 1311(a) and (c) and subsection (b) of this section shall be applied by substituting 'August 31, 1986' for 'August 15, 1986' each place it appears,

"(B) subsection (b)(1) shall be applied without regard to subparagraphs (F), (G), and (J), and

"(C) such bond shall not be treated as a private activity bond for purposes of applying the requirements referred to in subparagraphs (H) and (I) of subsection (b)(1).

"(2) BOND DESCRIBED.—A bond is described in this paragraph if such bond is not—

"(A) an industrial development bond, as defined in section 103(b)(2) of the 1954 Code but determined—

"(i) by inserting 'directly or indirectly' after 'is' in the material preceding clause (i) of subparagraph (B) thereof, and

"(ii) without regard to subparagraph (B) of section 103(b)(3) of such Code,

"(B) a mortgage subsidy bond (as defined in section 103A(b)(1) of such Code, without regard to any exception from such definition), or

"(C) a private loan bond (as defined in section 103(o)(2)(A) of such Code, without regard to any exception from such definition other than section 103(o)(2)(C) of such Code).

"(d) ELECTION OUT.—This section shall not apply to any issue with respect to which the issuer elects not to have this section apply.

"SEC. 1313. TRANSITIONAL RULES RELATING TO REFUNDINGS.

"(a) CERTAIN CURRENT REFUNDINGS.—

"(1) IN GENERAL.—Except as provided in paragraph (3), the amendments made by section 1301 [for classification see section 1311(a) of this note] shall not apply to any bond the proceeds of which are used exclusively to refund (other than to advance refund) a qualified bond (or a bond which is part of a series of refundings of a qualified bond) if—

"(A) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and

"(B)(i) the average maturity of the issue of which the refunding bond is a part does not exceed 120 percent of the average reasonably expected economic life of the facilities being financed with the net proceeds of such issue (determined under section 147(b) of the 1986 Code), or

"(ii) the refunding bond has a maturity date not later than the date which is 17 years after the date on which the qualified bond was issued.

In the case of a qualified bond which was (when issued) a qualified mortgage bond or a qualified veterans' mortgage bond, subparagraph (B)(i) shall not apply and subparagraph (B)(ii) shall be applied by substituting '32 years' for '17 years'.

"(2) QUALIFIED BOND.—For purposes of paragraph (1), the term 'qualified bond' means any bond (other than a refunding bond)—

"(A) issued before August 16, 1986, or

"(B) issued after August 15, 1986, if section 1312(a) applies to such bond.

"(3) CERTAIN AMENDMENTS TO APPLY.—The following provisions of the 1986 Code shall be treated as included in section 103 and section 103A (as appropriate) of the 1954 Code and shall apply to refunding bonds described in paragraph (1):

"(A) The requirements of section 147(f) (relating to public approval required for private activity bonds) but only if the maturity date of the refunding bond is later than the maturity date of the refunded bond.

"(B) The requirements of section 147(g) (relating to restriction on issuance costs financed by issue).

"(C) The requirements of sections 143(g) and 148 (relating to arbitrage).

"(D) The requirements of section 149(e) (relating to information reporting).

"(E) The provisions of section 150(b) (relating to changes in use).

Subparagraphs (A) and (D) shall apply only if the refunding bond is issued after December 31, 1986. In the case of a refunding bond described in paragraph (1) with respect to a qualified bond described in paragraph (2)(B), the requirements of section 1312(b)(1) which applied to such qualified bond shall be treated as specified in this paragraph with respect to such refunding bond.

"(4) SPECIAL RULES FOR CERTAIN GOVERNMENT BONDS ISSUED AFTER AUGUST 15, 1986.—In the case of any bond described in section 1312(c)(2)—

"(A) paragraph (2) of this subsection shall be applied by substituting 'August 31, 1986' for 'August 15, 1986' and by substituting 'September 1, 1986' for 'August 16, 1986',

"(B) paragraph (3) shall be applied without regard to subparagraphs (A), (B), and (E), and

"(C) such bond shall not be treated as a private activity bond for purposes of applying the requirements referred to in subparagraphs (C) and (D) of paragraph (3).

"(b) CERTAIN ADVANCE REFUNDINGS.—

"(1) IN GENERAL.—Except as provided in paragraph (3), the amendments made by section 1301 [for classification see section 1311(a) of this note] shall not apply to any bond the proceeds of which are used exclusively to advance refund a bond if—

"(A) the refunded bond is described in paragraph (2), and

"(B) the requirements of subsection (a)(1)(B) are met.

"(2) NON-IDB'S, ETC.—A bond is described in this paragraph if such bond is not described in subsection (b)(2) or (o)(2)(A) of section 103 of the 1954 Code and was issued (or was issued to refund a bond issued) before August 16, 1986. For purposes of the preceding sentence, the determination of whether a bond is described in such subsection (o)(2)(A) shall be made without regard to any exception other than section 103(o)(2)(C) of such Code.

"(3) CERTAIN AMENDMENTS TO APPLY.—The following provisions of the 1986 Code shall be treated as included in section 103 and section 103A (as appropriate) of the 1954 Code and shall apply to refunding bonds described in paragraph (1):

"(A) The requirements of section 147(f) (relating to public approval required for private activity bonds).

"(B) The requirements of section 147(g) (relating to restriction on issuance costs financed by issue).

"(C) The requirements of section 148 (relating to arbitrage), except that section 148(d)(3) shall not apply to proceeds of such bonds to be used to discharge the refunded bonds.

"(D) The requirements of paragraphs (3) and (4) of section 149(d) (relating to advance refundings).

"(E) The requirements of section 149(e) (relating to information reporting).

"(F) The provisions of section 150(b) (relating to changes in use).

"(G) Except as provided in the last sentence of subsection (c)(2) of this section, the requirements of section 145(b) (relating to $150,000,000 limitation on bonds other than hospital bonds).

Subparagraphs (A) and (E) shall apply only if the refunding bond is issued after December 31, 1986.

"(4) SPECIAL RULE FOR CERTAIN GOVERNMENT BONDS ISSUED AFTER AUGUST 15, 1986.—In the case of any bond described in section 1312(c)(2)—

"(A) paragraph (2) of this subsection shall be applied by substituting 'September 1, 1986' for 'August 16, 1986',

"(B) paragraph (3) shall be applied without regard to subparagraphs (A), (B), and (F), and

"(C) such bond shall not be treated as a private activity bond for purposes of applying the requirements referred to in subparagraphs (C) and (E).

"(5) CERTAIN REFUNDING BONDS SUBJECT TO VOLUME CAP.—Any refunding bond described in paragraph (1) the proceeds of which are used to refund a bond issued as part of an issue 5 percent or more of the net proceeds of which are or will be used to provide an output facility (within the meaning of section 141(b)(4) of the 1986 Code) shall be treated as a private activity bond for purposes of section 146 of the 1986 Code (to the extent of the nongovernmental use of such issue, under rules similar to the rules of section 146(m)(2) of such Code). For purposes of the preceding sentence, use by a 501(c)(3) organization with respect to its activities which do not constitute unrelated trades or businesses (determined by applying section 513(a) of the 1986 Code) shall not be taken into account.

"(c) TREATMENT OF CERTAIN REFUNDINGS OF CERTAIN IDB'S AND 501(c)(3) BONDS.—

"(1) $40,000,000 LIMIT FOR CERTAIN SMALL ISSUE BONDS.—Paragraph (10) of section 144(a) of the 1986 Code shall not apply to any bond (or series of bonds) the proceeds of which are used exclusively to refund a tax-exempt bond to which such paragraph and the corresponding provision of prior law did not apply if—

"(A) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue,

"(B) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and

"(C) the net proceeds of the refunding bond are used to redeem the refunded bond not later than 90 days after the date of the issuance of the refunding bond.

For purposes of subparagraph (A), average maturity shall be determined in accordance with section 147(b)(2)(A) of the 1986 Code.

"(2) $150,000,000 LIMITATION FOR CERTAIN 501(c)(3) BONDS.—Subsection (b) of section 145 of the 1986 Code (relating to $150,000,000 limitation for nonhospital bonds) shall not apply to any bond (or series of bonds) the proceeds of which are used exclusively to refund a tax-exempt bond to which such subsection did not apply if—

"(A)(i) the average maturity of the issue of which the refunding bond is a part does not exceed 120 percent of the average reasonably expected economic life of the facilities being financed with the net proceeds of such issue (determined under section 147(b) of the 1986 Code), or

"(ii) the refunding bond has a maturity date not later than the later of the date which is 17 years after the date on which the qualified bond (as defined in subsection (a)(2)) was issued, and

"(B) the requirements of subparagraphs (B) and (C) of paragraph (1) are met with respect to the refunding bond.

Subsection (b) of section 145 of the 1986 Code shall not apply to the 1st advance refunding after March 14, 1986, of a bond issued before January 1, 1986.

"(3) APPLICATION TO LATER ISSUES.—Any bond to which section 144(a)(10) or 145(b) of the 1986 Code does not apply by reason of this section shall be taken into account in determining whether such section applies to any later issue.

"(d) MORTGAGE AND STUDENT LOAN TARGETING RULES TO APPLY TO LOANS MADE MORE THAN 3 YEARS AFTER THE DATE OF THE ORIGINAL ISSUE.—Subsections (a)(3) and (b)(3)

shall be treated as including the requirements of subsections (e) and (f) of section 143 and paragraphs (3) and (4) of section 144(b) of the 1986 Code with respect to bonds the proceeds of which are used to finance loans made more than 3 years after the date of the issuance of the original bond.

"SEC. 1314. SPECIAL RULES WHICH OVERRIDE OTHER RULES IN THIS SUBTITLE.

"(a) ARBITRAGE RESTRICTION ON INVESTMENTS IN ANNUITIES.—In the case of a bond issued after September 25, 1985, section 103(c) of the 1954 Code shall be applied by treating the reference to securities in paragraph (2) thereof as including a reference to an annuity contract. The preceding sentence shall not apply to the first advance refunding after September 25, 1985, if a bond issued before September 26, 1985.

"(b) TEMPORARY PERIOD FOR ADVANCE REFUNDINGS.—In the case of a bond issued after December 31, 1985, to advance refund a bond, the initial temporary period under section 103(c) of the 1954 Code with respect to the proceeds of the refunding bond shall end not later than 30 days after the date of issue of the refunding bond.

"(c) DETERMINATION OF YIELD.—In the case of a bond issued after December 31, 1985, for purposes of section 103(c) of the 1954 Code, the yield on an issue shall be determined on the basis of the issue price (within the meaning of sections 1273 and 1274 of the 1986 Code).

"(d) ARBITRAGE REBATE REQUIREMENT.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, in the case of a bond issued after December 31, 1985, section 103 of the 1954 Code shall be treated as including the requirements of section 148(f) of the 1986 Code in order for section 103(a) of the 1954 Code to apply.

"(2) GOVERNMENT BONDS.—In the case of a bond described in section 1312(c)(2) (and not described in paragraph (3) of this subsection), paragraph (1) shall be applied by substituting 'August 31, 1986' for 'December 31, 1985'.

"(3) CERTAIN POOLS.—

"(A) IN GENERAL.—In the case of a bond described in section 1312(c)(2) and issued as part of an issue described in subparagraph (B), (C), (D), or (E), paragraph (1) shall be applied by substituting '3 p.m. E.D.T., July 17, 1986' for 'December 31, 1985'. Such a bond shall not be treated as a private activity bond for purposes of applying section 148(f) of the 1986 Code.

"(B) LOANS TO UNRELATED GOVERNMENTAL UNITS.—An issue is described in this subparagraph if any portion of the proceeds of the issue is to be used to make or finance loans to any governmental unit other than any governmental unit which is subordinate to the issuer and the jurisdiction of which is within—

"(i) the jurisdiction of the issuer, or

"(ii) the jurisdiction of the governmental unit on behalf of which such issuer issued the issue.

"(C) LESS THAN 75 PERCENT OF PROJECTS IDENTIFIED.—An issue is described in this subparagraph if less than 75 percent of the proceeds of the issue is to be used to make or finance loans to initial borrowers to finance projects identified (with specificity) by the issuer, on or before the date of issuance of the issue, as projects to be financed with the proceeds of the issue.

"(D) LESS THAN 25 PERCENT OF FUNDS COMMITTED TO BE BORROWED.—An issue is described in this subparagraph if, on or before the date of issuance of the issue, commitments have not been entered into by initial borrowers to borrow at least 25 percent of the proceeds of the issue.

"(E) CERTAIN LONG MATURITY ISSUES.—An issue is described in this subparagraph if—

"(i) the maturity date of any bond issued as part of such issue exceeds 30 years, and

"(ii) any principal payment on any loan made or financed by the proceeds of the issue is to be used to make or finance additional loans.

"(F) SPECIAL RULES.—

"(i) EXCEPTION FROM SUBPARAGRAPHS (C) AND (D) WHERE SIMILAR POOLS ISSUED BY ISSUER.—An issue shall not be treated as described in subparagraph (C) or (D) with respect to any issue to make or finance loans to governmental units if—

"(I) the issuer, before 1986, issued 1 or more similar issues to make or finance loans to governmental units, and

"(II) the aggregate face amount of such issues issued during 1986 does not exceed 250 percent of the average of the annual aggregate face amounts of such similar issues issued during 1983, 1984, or 1985.

"(ii) DETERMINATION OF ISSUANCE.—For purposes of subparagraph (A), an issue shall not be treated as issued until—

"(I) the bonds issued as part of such issue are offered to the public (pursuant to final offering materials), and

"(II) at least 25 percent of such bonds is sold to the public.

For purposes of the preceding sentence, the sale of a bond to a securities firm, broker, or other person acting in the capacity of an underwriter or wholesaler shall not be treated as a sale to the public.

"(e) INFORMATION REPORTING.—In the case of a bond issued after December 31, 1986, nothing in section 103(a) of the 1986 Code or any other provision of law shall be construed to provide an exemption from Federal income tax for interest on any bond unless such bond satisfies the requirements of section 149(e) of the 1986 Code. A bond described in section 1312(c)(2) shall not be treated as a private activity bond for purposes of applying such requirements.

"(f) ABUSIVE TRANSACTION LIMITATION ON ADVANCE REFUNDINGS TO APPLY.—In the case of a bond issued after August 31, 1986, nothing in section 103(a) of the 1986 Code or any other provision of law shall be construed to provide an exemption from Federal income tax for interest on any bond if the issue of which such bond is a part is described in paragraph (4) of section 149(d) of the 1986 Code (relating to abusive transactions).

"(g) TERMINATION OF MORTGAGE BOND POLICY STATEMENT REQUIREMENT.—Paragraph (5) of section 103A(j) of the 1954 Code (relating to policy statement) shall not apply to any bond issued after August 15, 1986, and shall not apply to nonissued bond amounts elected under section 25 of the 1986 Code after such date.

"(h) ARBITRAGE RESTRICTION ON INVESTMENTS IN INVESTMENT-TYPE PROPERTY.—In the case of a bond issued before August 16, 1986 (September 1, 1986 in the case of a bond described in section 1312(c)(2)), section 103(c) of the 1954 Code shall be applied by treating the reference to securities in paragraph (2) thereof as including a reference to investment-type property but only for purposes of determining whether any bond issued after October 16, 1987, to advance refund such bond (or a bond which is part of a series of refundings of such bond) is an arbitrage bond (within the meaning of section 148(a) of the 1986 Code).

"(i) SECTION TO OVERRIDE OTHER RULES.—Except as otherwise expressly provided by reference to a provision to which a subsection of this section applies, nothing in any other section of this subtitle shall be construed as exempting any bond from the application of such provision.

"SEC. 1315. TRANSITIONAL RULES RELATING TO VOLUME CAP.

"(a) IN GENERAL.—Except as otherwise provided in this section, section 146(f) of the 1986 Code shall not apply with respect to an issuing authority's volume cap under section 103(n) of the 1954 Code, and no carryforward under such section 103(n) shall be recognized for bonds issued after August 15, 1986.

"(b) CERTAIN BONDS FOR CARRYFORWARD PROJECTS OUTSIDE OF VOLUME CAP.—Bonds issued pursuant to an election under section 103(n)(10) of the 1954 Code (relating to elective carryforward of unused limitation for specified project) made before November 1, 1985, shall not be taken into account under section 146 of the 1986 Code if the carryforward project is a facility to which the amendments made by section 1301 [for classification see section 1311(a) of this note] do not apply by reason of section 1312(a) of this Act.

"(c) VOLUME CAP NOT TO APPLY WITH RESPECT TO CERTAIN FACILITIES AND PURPOSES .—Section 146 of the 1986 Code shall not apply to any bond issued with respect to any facility or purpose described in a paragraph of subsection (d) if—

"(1) such bond would not have been taken into account under section 103(n) of the 1954 Code for calendar year 1986 (determined without regard to any carryforward election) were such bond issued on August 15, 1986, or

"(2) such bond would not have been taken into account under section 103(n) of the 1954 Code for calendar year 1986 (determined with regard to any carryforward election made before January 1, 1986) were such bond issued on August 15, 1986.

The preceding sentence shall not apply to the extent section 1313(b)(5) treats any bond as a private activity bond for purposes of section 146 of the 1986 Code.

"(d) FACILITIES AND PURPOSES DESCRIBED.—

"(1) A facility is described in this paragraph if the amendments made by section 201 of this Act [amending sections 46, 167, 168, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] (relating to depreciation) do not apply to such facility by reason of section 204(a)(8) of this Act [set out as a note under section 168 of this title] (or, in the case of a facility which is governmentally owned, would not apply to such facility were it owned by a nongovernmental person).

"(2) A facility or purpose is described in this paragraph if the facility or purpose is described in a paragraph of section 1317.

"(3) A facility is described in this paragraph if the facility—

"(A) serves Los Osos, California, and

"(B) would be described in paragraph (1) were it a solid waste disposal facility.

The aggregate face amount of bonds to which this paragraph applies shall not exceed $35,000,000.

"(4) A facility is described in this paragraph if it is a sewage disposal facility with respect to which—

"(A) on September 13, 1985, the State public facilities authority took official action authorizing the issuance of bonds for such facility, and

"(B) on December 30, 1985, there was an executive order of the State Governor granting allocation of the State ceiling under section 103(n) of the 1954 Code in the amount of $250,000,000 to the Industrial Development Board of the Parish of East Baton Rouge, Louisiana.

The aggregate face amount of bonds to which this paragraph applies shall not exceed $98,500,000.

"(5) A facility is described in this paragraph if—

"(A) such facility is a solid waste disposal facility in Charleston, South Carolina, and

"(B) a State political subdivision took formal action on April 1, 1980, to commit development funds for such facility.

For purposes of determining whether a bond issued as part of an issue for a facility described in the preceding sentence is an exempt facility bond for purposes of part IV of subchapter B of chapter 1 of the 1986 Code, '90 percent' shall be substituted for '95 percent' in section 142(a) of the 1986 Code.

"The aggregate face amount of bonds to which this paragraph applies shall not exceed $75,000,000.

"(6) A facility is described in this paragraph if—

"(A) such facility is a wastewater treatment facility for which site preparation commenced before September 1985, and

"(B) a parish council approved a service agreement with respect to such facility on December 4, 1985.

The aggregate face amount of bonds to which this paragraph applies shall not exceed $120,000,000.

"(e) TREATMENT OF REDEVELOPMENT BONDS.—Any bond to which section 1317(6) of this Act applies shall be treated for purposes of this section as described in subsection (c)(1). The preceding sentence shall not apply to any bond which (if issued on August 15, 1986) would have been an industrial development bond (as defined in section 103(b)(2) of the 1954 Code).

"SEC. 1316. PROVISIONS RELATING TO CERTAIN ESTABLISHED STATE PROGRAMS.

"(a) CERTAIN LOANS TO VETERANS FOR THE PURCHASE OF LAND.—

"(1) IN GENERAL.—A bond described in paragraph (2) shall be treated as described in section 141(d)(1) of the 1986 Code and as having a carryforward purpose described in section 146(f)(5) of such Code, but subsections (a), (b), (c), and (d) of section 147 of such Code shall not apply to such bond.

"(2) BOND DESCRIBED.—A bond is described in this paragraph if—

"(A) such bond is a private activity bond solely by reason of section 141(c) of such Code, and

"(B) such bond is issued as part of an issue 95 percent or more of the net proceeds of which are to be used to carry out a program established under State law to provide loans to veterans for the purchase of land and which has been in effect in substantially the same form during the 30-year period ending on July 18, 1984, but only if such proceeds are used to make loans or to fund similar obligations—

"(i) in the same manner in which,

"(ii) in the same (or lesser) amount or multiple of acres per participant, and

"(iii) for the same purposes for which,

such program was operated on March 15, 1984.

"(b) RENEWABLE ENERGY PROPERTY.—

"(1) IN GENERAL.—A bond described in paragraph (2) shall be treated as described in section 141(d)(1) of the 1986 Code and as having a carryforward purpose described in section 146(f)(5) of such Code.

"(2) BOND DESCRIBED.—A bond is described in this paragraph if paragraph (1) of section 103(b) of the 1954 Code would not (without regard to the amendments made by this title) have applied to such bond by reason of section 243 of the Crude Oil Windfall Profit Tax Act of 1980 [section 243 of Pub. L. 96–223, set out as a note under section 103 of this title] if—

"(A) such section 243 were applied by substituting '95 percent or more of the net proceeds' for 'substantially all of the proceeds' in subsection (a)(1) thereof, and

"(B) subparagraph (E) of subsection (a)(1) thereof referred to section 149(b) of the 1986 Code.

"(c) CERTAIN STATE PROGRAMS.—

"(1) IN GENERAL.—A bond described in paragraph (2) shall be treated as described in section 141(d)(1) of the 1986 Code and as having a carryforward purpose described in section 146(f)(5) of such Code.

"(2) BOND DESCRIBED.—A bond is described in this paragraph if such bond is issued as part of an issue 95 percent or more of the net proceeds of which are to be used to carry out a program established under sections 280A, 280B, and 280C of the Iowa Code, but only if—

"(A) such program has been in effect in substantially the same form since July 1, 1983, and

"(B) such proceeds are to be used to make loans or fund similar obligations for the same purposes as permitted under such program on July 1, 1986.

"(3) $100,000,000 LIMITATION.—The aggregate face amount of outstanding bonds to which this subsection applies shall not exceed $100,000,000.

"(4) APPLICATION OF SECTION 147(b).—A bond to which this subsection applies (other than a refunding bond) shall be treated as meeting the requirements of section 147(b) of the 1986 Code if the average maturity (determined in accordance with section 147(b)(2)(A) of such Code) of the issue of which such bond is a part does not exceed 20 years. A bond issued to refund (or which is part of a series of bonds issued to refund) a bond described in the preceding sentence shall be treated as meeting the requirements of such section if the refunding bond has a maturity date not later than the date which is 20 years after the date on which the original bond was issued.

"(d) USE BY CERTAIN FEDERAL INSTRUMENTALITIES TREATED AS USE BY GOVERNMENTAL UNITS.—Use by an instrumentality of the United States shall be treated as use by a State or local governmental unit for purposes of section 103, and part IV of subchapter B of chapter 1, of the 1986 Code with respect to a program approved by Congress before August 3, 1972, but only if—

"(1) a portion of such program has been financed by bonds issued before such date, to which section 103(a) of the 1954 Code applied pursuant to a ruling issued by the Commissioner of the Internal Revenue Service, and

"(2) construction of 1 or more facilities comprising a part of such program commenced before such date.

"(e) REFUNDING PERMITTED OF CERTAIN BONDS INVESTED IN FEDERALLY INSURED DEPOSITS.—

"(1) IN GENERAL.—Section 149(b)(2)(B)(ii) of the 1986 Code (and section 103(h)(2)(B)(ii) of the 1954 Code) shall not apply to any bond issued to refund a bond—

"(A) which, when issued, would have been treated as federally guaranteed by reason of being described in clause (ii) of section 103(h)(2)(B) of the 1954 Code if such section had applied to such bond, and

"(B)(i) which was issued before April 15, 1983, or

"(ii) to which such clause did not apply by reason of the except clause in section 631(c)(2) of the Tax Reform Act of 1984 [section 631(c)(2) of Pub. L. 98–369, set out as a note under section 103 of this title].

Section 147(c) of the 1986 Code (and section 103(b)(16) of the 1954 Code) shall not apply to any refunding bond permitted under the preceding sentence if section 103(b)(16) of the 1954 Code did not apply to the refunded bond when issued.

"(2) REQUIREMENTS.—A refunding bond meets the requirements of this paragraph if—

"(A) the refunding bond has a maturity date not later than the maturity date of the refunded bond,

"(B) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond,

"(C) the weighted average interest rate on the refunding bond is lower than the weighted average interest rate on the refunded bond, and

"(D) the net proceeds of the refunding bond are used to redeem the refunded bond not later than 90 days after the date of the issuance of the refunding bond.

"(f) CERTAIN HYDROELECTRIC GENERATING PROPERTY.—

"(1) IN GENERAL.—A bond described in paragraph (2) shall be treated as described in section 141(d)(1) of the 1986 Code and as having a carryforward purpose described in section 146(f)(5) of such Code.

"(2) DESCRIPTION.—A bond is described in this paragraph if such bond is issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide a facility described in section 103(b)(4)(H) of the 1954 Code determined—

"(A) by substituting 'an application for a license' for 'an application' in section 103(b)(8)(E)(ii) of

the 1954 Code, and

"(B) by applying the requirements of section 142(b)(2) of the 1986 Code.

"(g) TREATMENT OF BONDS SUBJECT TO TRANSITIONAL RULES UNDER TAX REFORM ACT OF 1984.—

"(1) Subsections (d)(3) and (f) of section 148 of the 1986 Code shall not apply to any bond described in section 624(c)(2) of the Tax Reform Act of 1984 [section 624(c)(2) of Pub. L. 98–369, set out as a note under section 103 of this title].

"(2)(A) There shall not be taken into account under section 146 of the 1986 Code any bond issued to provide a facility described in paragraph (3) of section 631(a) of the Tax Reform Act of 1984 [section 631(a)(3) of Pub. L. 98–369, set out as a note under section 103 of this title] relating to exception for certain bonds for a convention center and resource recovery project.

"(B) If a bond issued as part of an issue substantially all of the proceeds of which are used to provide the convention center to which such paragraph (3) applies, such bond shall be treated as an exempt facility bond as defined in section 142(a) of the 1986 Code.

"(C) If a bond which is issued as part of an issue substantially all of the proceeds of which are used to provide the resource recovery project to which such paragraph (3) applies, such bond shall be treated as an exempt facility bond as defined in section 142(a) of the 1986 Code and section 149(b) of such Code shall not apply.

"(3) The amendments made by section 1301 [for classification see section 1311(a) of this note] shall not apply to bonds issued to finance any property described in section 631(d)(4) of the Tax Reform Act of 1984 [section 631(d)(4) of Pub. L. 98–369, set out as a note under section 103 of this title].

"(4) The amendments made by section 1301 [for classification see section 1311(a) of this note] shall not apply to—

"(A) any bond issued to finance property described in section 631(d)(5) of the Tax Reform Act of 1984 [section 631(d)(5) of Pub. L. 98–369, set out as a note under section 103 of this title],

"(B) any bond described in paragraph (2), (3), (4), (5), (6), or (7) of section 632(a), or section 632(b), of such Act [Pub. L. 98–369, div. A, title VI, §632, July 18, 1984, 98 Stat. 937], and

"(C) any bond to which section 632(g)(2) of such Act applies.

In the case of bonds to which this paragraph applies, the requirements of sections 148 and 149(d) shall be treated as included in section 103 of the 1954 Code and shall apply to such bonds.

"(5) The preceding provisions of this subsection shall not apply to any bond issued after December 31, 1988.

"(6) The amendments made by section 1301 [for classification see section 1311(a) of this note] (and the provisions of section 1314) shall not apply to any bond issued to finance property described in section 216(b)(3) of the Tax Equity and Fiscal Responsibility Act of 1982 [section 216(b)(3) of Pub. L. 97–248, set out as a note under section 168 of this title].

"(7) In the case of a bond described in section 632(d) of the Tax Reform Act of 1984 [Pub. L. 98–369, div. A, title VI, §632(d), July 18, 1984, 98 Stat. 938]—

"(A) section 141 of the 1986 Code shall be applied without regard to subsection (a)(2) and paragraphs (4) and (5) of subsection (b),

"(B) paragraphs (1) and (2) of section 141(b) of the 1986 Code shall be applied by substituting '25 percent' for '10 percent' each place it appears, and

"(C) section 149(b) of the 1986 Code shall not apply.

This paragraph shall not apply to any bond issued after December 31, 1990.

"(8)(A) The amendments made by section 1301 [for classification see section 1311(a) of this note] shall not apply to any bond to which section 629(a)(1) of the Tax Reform Act of 1984 [section 629(a)(1) of Pub. L. 98–369, set out as a note under section 103 of this title] applies, but such bond shall be treated as a private activity bond for purposes of section 146 of the 1986 Code and as having a carryforward purpose described in section 146(f)(5) of such Code.

"(B) Section 629 of the Tax Reform Act of 1984 [section 629 of Pub. L. 98–369, set out as a note under section 103 of this title] is amended—

"(i) in subsection (c)(2), by striking out '$625,000,000' and inserting in lieu thereof '$911,000,000',

"(ii) in subsection (c)(3), by adding at the end thereof the following new subparagraphs:

" '(D) Improvements to existing generating facilities.

" '(E) Transmission lines.

" '(F) Electric generating facilities.', and

"(iii) in subsection (a), by adding at the end thereof the following new sentence: 'The preceding

sentence shall be applied by inserting "and a rural electric cooperative utility" after "regulated public utility" but only if not more than 1 percent of the load of the public power authority is sold to such rural electric cooperative utility.'

"(h) CERTAIN POLLUTION BONDS.—Any bond which is treated as described in section 103(b)(4)(F) of the 1954 Code by reason of section 13209 of the Consolidated Omnibus Budget Reconciliation Act of 1985 [Pub. L. 99–272, title XIII, §13209, Apr. 7, 1986, 100 Stat. 322] shall be treated as an exempt facility bond for purposes of part IV of subchapter B of chapter 1 of the 1986 Code, and section 147(d) of the 1986 Code shall not apply to such bond.

"(i) TRANSITION RULE FOR AGGREGATE LIMIT PER TAXPAYER.—For purposes of section 144(a)(10) of the 1986 Code, tax increment bonds described in section 1869(c)(3) of this Act [set out as a note under section 103 of this title] which are issued before August 16, 1986, shall not be taken into account under subparagraph (B)(ii) thereof.

"(j) EXTENSION OF ADVANCE REFUNDING EXCEPTION FOR QUALIFIED PUBLIC FACILITY .—Paragraph (4) of section 631(c) of the Tax Reform Act of 1984 [section 631(c)(4) of Pub. L. 98–369, set out as a note under section 103 of this title] is amended—

"(1) by striking out 'or the Dade County, Florida, airport' in the last sentence, and

"(2) by adding at the end thereof the following new sentence: 'In the case of refunding obligations not to exceed $100,000,000 issued after October 21, 1986, by Dade County, Florida, for the purpose of advance refunding its Aviation Revenue Bonds (Series J), the first sentence of this paragraph shall be applied by substituting "the date which is 1 year after the date of the enactment of the Technical and Miscellaneous Revenue Act of 1988" [Nov. 10, 1988] for "December 31, 1984" and the amendments made by section 1301 of the Tax Reform Act of 1986 shall not apply.'

"(k) EXPANSION OF EXCEPTION FOR RIVER PLACE PROJECT.—Section 1104 of the Mortgage Subsidy Bond Tax Act of 1980 [section 1104 of Pub. L. 96–499, formerly set out as a note under section 103A of this title], as added by the Tax Reform Act of 1984, is amended—

"(1) by striking out 'December 31, 1984,' in subsection (p) and inserting in lieu thereof 'December 31, 1984 (other than obligations described in subsection (r)(1)),', and

"(2) by striking out '$55,000,000,' in subsection (r)(1)(B) and inserting in lieu thereof '$110,000,000 of which no more than $55,000,000 shall be outstanding later than November 1, 1987'.

"SEC. 1317. TRANSITIONAL RULES FOR SPECIFIC FACILITIES.

"(1) DOCKS AND WHARVES.—A bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide any dock or wharf (within the meaning of section 103(b)(4)(D) of the 1954 Code) shall be treated as an exempt facility bond (for a facility described in section 142(a)(2) of the 1986 Code) for purposes of part IV of subchapter B of chapter 1 of the 1986 Code if such dock or wharf is described in any of the following subparagraphs:

"(A) A dock or wharf is described in this subparagraph if—

"(i) the issue to finance such dock or wharf was approved by official city action on September 3, 1985, and by voters on November 5, 1985, and

"(ii) such dock or wharf is for a slack water harbor with respect to which a Corps of Engineers grant of approximately $2,000,000 has been made under section 107 of the Rivers and Harbors Act [33 U.S.C. 577].

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $2,500,000.

"(B) A dock or wharf is described in this subparagraph if—

"(i) inducement resolutions were adopted on May 23, 1985, September 18, 1985, and September 24, 1985, for the issuance of the bonds to finance such dock or wharf,

"(ii) a harbor dredging contract with respect thereto was entered into on August 2, 1985, and

"(iii) a construction management and joint venture agreement with respect thereto was entered into on October 1, 1984.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $625,000,000.

"(C) A facility is described in this subparagraph if—

"(i) the legislature first authorized on June 29, 1981, the State agency issuing the bond to issue at least $30,000,000 of bonds,

"(ii) the developer of the facility was selected on April 26, 1985, and

"(iii) an inducement resolution for the issuance of such issue was adopted on October 9, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed

$200,000,000.

"(D) A facility is described in this subparagraph if—

"(i) an inducement resolution was adopted on October 17, 1985, for such issue, and

"(ii) the city council for the city in which the facility is to be located approved on July 30, 1985, an application for an urban development action grant with respect to such facility.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $36,500,000. A facility shall be treated as described in this subparagraph if it would be so described if '90 percent' were substituted for '95 percent' in the material preceding subparagraph (A) of this paragraph.

"(2) POLLUTION CONTROL FACILITIES.—A bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide air or water pollution control facilities (within the meaning of section 103(b)(4)(F) of the 1954 Code) shall be treated as an exempt facility bond for purposes of part IV of subchapter B of chapter 1 of the 1986 Code if such facility is described in any of the following subparagraphs:

"(A) A facility is described in this subparagraph if—

"(i) inducement resolutions with respect to such facility were adopted on September 23, 1974, and on April 5, 1985,

"(ii) a bond resolution for such facility was adopted on September 6, 1985, and

"(iii) the issuance of the bonds to finance such facility was delayed by action of the Securities and Exchange Commission (file number 70–7127).

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $120,000,000.

"(B) A facility is described in this subparagraph if—

"(i) there was an inducement resolution for such facility on November 19, 1985, and

"(ii) design and engineering studies for such facility were completed in March of 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $25,000,000.

"(C) A facility is described in this subparagraph if—

"(i) a resolution was adopted by the county board of supervisors pertaining to an issuance of bonds with respect to such facility on April 10, 1974, and

"(ii) such facility was placed in service on June 12, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $90,000,000. For purposes of this subparagraph, a pollution control facility includes a sewage or solid waste disposal facility (within the meaning of section 103(b)(4)(E) of the 1954 Code).

"(D) A facility is described in this subparagraph if—

"(i) the issuance of the bonds for such facility was approved by a State agency on August 22, 1979, and

"(ii) the authority to issue such bonds was scheduled to expire (under terms of the State approval) on August 22, 1989.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $198,000,000.

"(E) A facility is described in this subparagraph if—

"(i) such facility is 1 of 4 such facilities in 4 States with respect to which the Ball Corporation transmitted a letter of intent to purchase such facilities on February 26, 1986, and

"(ii) inducement resolutions were issued on December 30, 1985, January 15, 1986, January 22, 1986, and March 17, 1986 with respect to bond issuance in the 4 respective States.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $6,000,000.

"(F) A facility is described in this subparagraph if—

"(i) inducement resolutions for bonds with respect to such facility were adopted on September 27, 1977, May 27, 1980, and October 8, 1981, and

"(ii) such facility is located at a geothermal power complex owned and operated by a single investor-owned utility.

For purposes of this subparagraph and section 103 of the 1986 Code, all hydrogen sulfide air and water pollution control equipment, together with functionally related and subordinate equipment and

structures, located or to be located at such power complex shall be treated as a single pollution control facility. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $600,000,000.

"(G) A facility is described in this subparagraph if—

"(i) such facility is an air pollution control facility approved by a State bureau of pollution control on July 10, 1986, and by a State board of economic development on July 17, 1986, and

"(ii) on August 15, 1986, the State bond attorney gave notice to the clerk to initiate validation proceedings with respect to such issue and on August 28, 1986, the validation decree was entered.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $900,000.

"(I) A facility is described in this subparagraph if—

"(i) a private company met with a State air control board on November 14, 1985, to propose construction of a sulften unit, and

"(ii) the sulften unit is being constructed under a letter of intent to construct which was signed on April 8, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $11,000,000.

"(J) A facility is described in this subparagraph if it is part of a 250 megawatt coal-fired electric plant in northeastern Nevada on which the Sierra Pacific Power Company, a subsidiary of Sierra Pacific Resources, began in 1980 work to design, finance, construct, and operate. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $200,000,000.

"(K) A facility is described in this subparagraph if—

"(i) there was an inducement resolution adopted by a State industrial development authority on January 14, 1976, and

"(ii) such facility is named in a resolution of such authority relating to carryforward of the State's unused 1985 private activity bond limit passed by such industrial development authority on December 18, 1985.

This subparagraph shall apply only to obligations issued at the request of the party pursuant to whose request the January 14, 1976, inducement was given. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $75,000,000.

"(L) A facility is described in this subparagraph if a city council passed an ordinance (ordinance number 4626) agreeing to issue bonds for such project, December 16, 1985. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $45,000,000.

"(3) SPORTS FACILITIES.—A bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide sports facilities (within the meaning of section 103(b)(4)(B) of the 1954 Code) shall be treated as an exempt facility bond for purposes of part IV of subchapter B of chapter 1 of the 1986 Code if such facilities are described in any of the following subparagraphs:

"(A) A facility is described in this subparagraph if it is a stadium—

"(i) which was the subject of a city ordinance passed on September 23, 1985,

"(ii) for which a loan of approximately $4,000,000 for land acquisition was approved on October 28, 1985, by the State Controlling Board, and

"(iii) a stadium operating corporation with respect to which was incorporated on March 20, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $200,000,000.

"(B) A facility is described in this subparagraph if—

"(i) it is a stadium with respect to which a lease agreement for the ground on which the stadium is to be built was entered into between a county and the stadium corporation for such stadium on July 3, 1984,

"(ii) there was a resolution approved on November 14, 1984, by an industrial development authority setting forth the terms under which the bonds to be issued to finance such stadium would be issued, and

"(iii) there was an agreement for consultant and engineering services for such stadium entered into on September 28, 1984.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $90,000,000.

"(C) A facility is described in this subparagraph if—

"(i) it is one or more stadiums to be used either by an American League baseball team or a

National Football League team currently using a stadium in a city having a population in excess of 2,500,000 and described in section 146(d)(3) of the 1986 Code,

"(ii) the bonds to be used to provide financing for one or more such stadiums are issued by a political subdivision or a State agency pursuant to a resolution approving an inducement resolution adopted by a State agency on November 20, 1985, as it may be amended (whether or not the beneficiaries of such issue or issues are the beneficiaries (if any) specified in such inducement resolution and whether or not the number of such stadiums and the locations thereof are as specified in such inducement resolution) or pursuant to P.A. 84–1470 of the State in which such city is located (and by an agency created thereby), and

"(iii) such stadium or stadiums are located in the city described in (i).

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $250,000,000. In the case of any carryforward of volume cap for one or more stadiums described in the first sentence of this subparagraph, such carryforward shall be valid with respect to bonds issued for such stadiums notwithstanding any other provision of the 1986 Code or the 1954 Code, and whether or not (i) there is a change in the number of stadiums or the beneficiaries or sites of the stadium or stadiums and (ii) the bonds are issued by either of the state agencies described in the first sentence of this subparagraph.

"(D) A facility is described in this subparagraph if—

"(i) such facility is a stadium or sports arena for Memphis, Tennessee,

"(ii) there was an inducement resolution adopted on November 12, 1985, for the issuance of bonds to expand or renovate an existing stadium and sports arena and/or to construct a new arena, and

"(iii) the city council for such city adopted a resolution on April 19, 1983, to include funds in the capital budget of the city for such facility or facilities.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $35,000,000.

"(E) A facility is described in this subparagraph if such facility is a baseball stadium located in Bergen, Essex, Union, Middlesex, or Hudson County, New Jersey with respect to which governmental action occurred on November 7, 1985. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $150,000,000.

"(F) A facility is described in this subparagraph if—

"(i) it is a facility with respect to which—

"(I) an inducement resolution dated December 24, 1985, was adopted by the county industrial development authority,

"(II) a public hearing of the county industrial development authority was held on February 6, 1986, regarding such facility, and

"(III) a contract was entered into by the county, dated February 19, 1986, for engineering services for a highway improvement in connection with such project, or

"(ii) it is a domed football stadium adjacent to Cervantes Convention Center in St. Louis, Missouri, with respect to which a proposal to evaluate market demand, financial operations, and economic impact was dated May 9, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $175,000,000.

"(G) A project to provide a roof or dome for an existing sports facility is described in this subparagraph if—

"(i) in December 1984 the county sports complex authority filed a carryforward election under section 103(n) of the 1954 Code with respect to such project,

"(ii) in January 1985, the State authorized issuance of $30,000,000 in bonds in the next 3 years for such project, and

"(iii) an 11-member task force was appointed by the county executive in June 1985, to further study the feasibility of the project.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $30,000,000.

"(H) A sports facility renovation or expansion project is described in this subparagraph if—

"(i) an amendment to the sports team's lease agreement for such facility was entered into on May 23, 1985, and

"(ii) the lease agreement had previously been amended in January 1976, on July 6, 1984, on April 1, 1985, and on May 7, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $20,000,000.

"(I) A facility is described in this subparagraph if—

"(i) an appraisal for such facility was completed on March 6, 1985,

"(ii) an inducement resolution was adopted with respect to such facility on June 7, 1985, and

"(iii) a State bond commission granted preliminary approval for such project on September 3, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $3,200,000.

"(J) A sports facility renovation or expansion project is described in this subparagraph if—

"(i) such facility is a domed stadium which commenced operations in 1965,

"(ii) such facility has been the subject of an ongoing construction, expansion, or renovation program of planned improvements,

"(iii) part 1 of such improvements began in 1982 with a preliminary renovation program financed by tax-exempt bonds,

"(iv) part 2 of such program was previously scheduled for a bond election on February 25, 1986, pursuant to a Commissioners Court Order of November 5, 1985, and

"(v) the bond election for improvements to such facility was subsequently postponed on December 10, 1985, in order to provide for more comprehensive construction planning.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $60,000,000.

"(K) A facility is described in this subparagraph if—

"(i) the 1985 State legislature appropriated a maximum sum of $22,500,000 to the State urban development corporation to be made available for such project, and

"(ii) a development and operation agreement was entered into among such corporation, the city, the State budget director, and the county industrial development agency, as of March 1, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $28,000,000.

"(L) A facility is described in this subparagraph if—

"(i) it is to consist of 1 or 2 stadiums appropriate for football games and baseball games with related structures and facilities,

"(ii) governmental action was taken on August 7, 1985, by the county commission, and on December 19, 1985, by the city council, concerning such facility, and

"(iii) such facility is located in a city having a National League baseball team.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $200,000,000.

"(M) A facility is described in this subparagraph if—

"(i) such facility consists of 1 or 2 stadium projects (1 of which may be a stadium renovation or expansion project) with related structures and facilities,

"(ii) a special advisory commission commissioned a study by a national accounting firm with respect to a project for such facility, which study was released in September 1985, and recommended construction of either a new multipurpose or a new baseball-only stadium,

"(iii) a nationally recognized design and architectural firm released a feasibility study with respect to such project in April 1985, and

"(iv) the metropolitan area in which the facility is located is presently the home of an American League baseball team.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $200,000,000.

"(N) A facility is described in this subparagraph if—

"(i) it is to consist of 1 or 2 stadiums appropriate for football games and baseball games with related structures and facilities,

"(ii) the site for such facility was approved by the council of the city in which such facility is to be located on July 9, 1985, and

"(iii) the request for proposals process was authorized by the council of the city in which such facility is to be located on November 5, 1985, and such requests were distributed to potential developers on November 15, 1985, with responses due by February 14, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed

$200,000,000.

"(O) A facility is described in this subparagraph if—

"(i) such facility is described in a feasibility study dated September 1985, and

"(ii) resolutions were adopted or other actions taken on February 21, 1985, July 18, 1985, August 8, 1985, October 17, 1985, and November 7, 1985, by the Board of Supervisors of the county in which such facility will be located with respect to such feasibility study, appropriations to obtain land for such facility, and approving the location of such facility in the county.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $20,000,000.

"(P) A facility is described in this subparagraph if such facility constructed on a site acquired with the sale of revenue bonds authorized by a city council on December 2, 1985, (Ordinances No. 669 and 670, series 1985). The aggregate face amount of bonds to which this subparagraph applies shall not exceed $90,000,000.

"(Q) A facility is described in this subparagraph if—

"(i) resolutions were adopted approving a ground lease dated June 27, 1983, by a sports authority (created by a State legislature) with respect to the land on which the facility will be erected,

"(ii) such facility is described in a market study dated June 13, 1983, and

"(iii) such facility was the subject of an Act of the State legislature which was signed on July 1, 1983.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $81,000,000.

"(R) A facility is described in this subparagraph if such facility is a baseball stadium and adjacent parking facilities with respect to which a city made a carryforward election of $52,514,000 on February 25, 1985. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $50,000,000.

"(S) A facility is described in this subparagraph if—

"(i) such facility is to be used by both a National Hockey League team and a National Basketball Association team,

"(ii) such facility is to be constructed on a platform using air rights over land acquired by a State authority and identified as site B in a report dated May 30, 1984, prepared for a State urban development corporation, and

"(iii) such facility is eligible for real property tax (and power and energy) benefits pursuant to State legislation approved and effective as of July 7, 1982.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $225,000,000.

"(T) A facility is described in this subparagraph if—

"(i) a resolution authorizing the financing of the facility through an issuance of revenue bonds was adopted by the City Commission on August 5, 1986, and

"(ii) the metropolitan area in which the facility is to be located is currently the spring training home of an American league baseball team located during the regular season in a city described in subparagraph (C).

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $10,000,000.

"(U) A facility is described in this subparagraph if it is a football stadium located in Oakland, California, with respect to which a design was completed by a nationally recognized architectural firm for a stadium seating approximately 72,000, to be located on property adjacent to an existing coliseum complex, or is a renovation of an existing stadium located in Oakland, California, and used by an American League baseball team. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $100,000,000.

"(V) A facility is described in this subparagraph if it is a sports arena (and related parking facility) for Grand Rapids, Michigan. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $80,000,000.

"(W) A facility is described in this subparagraph if such facility is located adjacent to the Anacostia River in the District of Columbia. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $25,000,000.

"(X) A facility is described in this subparagraph if it is a spectator sports facility for the City of San Antonio, Texas. The aggregate face amount of bonds to which this subparagraph applies shall not exceed

$125,000,000.

"(Y) A facility is described in this subparagraph if it will be part of, or adjacent to, an existing stadium which has been owned and operated by a State university and if—

"(i) the stadium was the subject of a feasibility report by a certified public accounting firm which is dated December 28, 1984, and

"(ii) a report by an independent research organization was prepared in December 1985 demonstrating support among donors and season ticket holders for the addition of a dome to the stadium.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $50,000,000.

"(Z) A facility is described in this subparagraph if—

"(i) such facility was a redevelopment project that was approved in concept by the city council sitting as the redevelopment agency in October 1984, and

"(ii) $20,000,000 in funds for such facility was identified in a 5-year budget approved by the city redevelopment agency on October 25, 1984.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $80,000,000.

"(4) RESIDENTIAL RENTAL PROPERTY.—A bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to finance a residential rental project within the meaning of section 103(b)(4) of the 1954 Code shall be treated as an exempt facility bond within the meaning of section 142(a)(7) of the 1986 Code if the facility with respect to the bond is issued satisfies all low-income occupancy requirements applicable to such bonds before August 15, 1986, and the bonds are issued pursuant to—

"(A) a contract to purchase such property dated August 12, 1985;

"(B) the county housing authority approved the property and the financing thereof on September 24, 1985, and

"(C) there was an inducement resolution adopted on October 10, 1985, by the county industrial development authority.

The aggregate face amount of bonds to which this paragraph applies shall not exceed $25,400,000.

"(5) AIRPORTS.—A bond issued as a part of an issue 95 percent or more of the net proceeds of which are to be used to provide an airport (within the meaning of section 103(b)(4)(D) of the 1954 Code) shall be treated as an exempt facility bond (for facilities described in section 142(a)(1) of the 1986 Code) for purposes of part IV of subchapter B of chapter 1 of the 1986 Code if the facility is described in any of the following subparagraphs:

"(A) A facility is described in this subparagraph if such facility is a hotel at an airport facility serving a city described in section 631(a)(3) of the Tax Reform Act of 1984 [section 631(a)(3) of Pub. L. 98–369, set out as a note under section 103 of this title] (relating to certain bonds for a convention center and resource recovery project). The aggregate face amount of bonds to which this subparagraph applies shall not exceed $40,000,000.

"(B) A facility is described in this subparagraph if such facility is the primary airport for a city described in paragraph (3)(C). The aggregate face amount of bonds to which this subparagraph applies shall not exceed $500,000,000. Section 148(d)(2) of the 1986 Code shall not apply to any issue to which this subparagraph applies. A facility shall be described in this subparagraph if it would be so described if '90 percent' were substituted for '95 percent' in the material preceding subparagraph (A).

"(C) A facility is described in this subparagraph if such facility is a hotel at Logan airport and such hotel is located on land leased from a State authority under a lease contemplating development of such hotel dated May 1, 1983, or under an amendment, renewal, or extension of such a lease. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $40,000,000.

"(D) A facility is described in this subparagraph if such facility is the airport for the County of Sacramento, California. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $150,000,000.

"(6) REDEVELOPMENT PROJECTS.—A bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to finance redevelopment activities as part of a project within a specific designated area shall be treated as a qualified redevelopment bond for purposes of part IV of subchapter B of chapter 1 of the 1986 Code if such project is described in any of the following subparagraphs:

"(A) A project is described in this subparagraph if it was the subject of a city ordinance numbered 82–115 and adopted on December 2, 1982, or numbered 9590 and adopted on April 6, 1983. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $9,000,000.

"(B) A project is described in this subparagraph if it is a redevelopment project for an area in a city described in paragraph (3)(C) which was designated as commercially blighted on November 14, 1975, by

the city council and the redevelopment plan for which will be approved by the city council before January 31, 1987. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $20,000,000.

"(C) A project is described in this subparagraph if it is a redevelopment project for an area in a city described in paragraph (3)(C) which was designated as commercially blighted on March 28, 1979, by the city council and the redevelopment plan for which was approved by the city council on June 20, 1984. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $100,000,000.

"(D) A project is described in this subparagraph if it is any one of three redevelopment projects in areas in a city described in paragraph (3)(C) designated as blighted by a city council before January 31, 1987 and with respect to which the redevelopment plan is approved by the city council before January 31, 1987. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $20,000,000.

"(E) A project is described in this subparagraph if such project is for public improvements (including street reconstruction and improvement of underground utilities) for Great Falls, Montana, with respect to which engineering estimates are due on October 1, 1986. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $3,000,000.

"(F) A project is described in this subparagraph if—

"(i) such project is located in an area designated as blighted by the governing body of the city on February 15, 1983 (Resolution No. 4573), and

"(ii) such project is developed pursuant to a redevelopment plan adopted by the governing body of the city on March 1, 1983 (Ordinance No. 15073).

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $5,000,000.

"(G) A project is described in this subparagraph if—

"(i) such project is located in an area designated by the governing body of the city in 1983,

"(ii) such project is described in a letter dated August 8, 1985, from the developer's legal counsel to the development agency of the city, and

"(iii) such project consists primarily of retail facilities to be built by the developer named in a resolution of the governing body of the city on August 30, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $75,000,000.

"(H) A project is described in this subparagraph if—

"(i) such project is a project for research and development facilities to be used primarily to benefit a State university and related hospital, with respect to which an urban renewal district was created by the city council effective October 11, 1985, and

"(ii) such project was announced by the university and the city in March 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $40,000,000.

"(I) A project is described in this subparagraph if such project is a downtown redevelopment project with respect to which—

"(i) an urban development action grant was made, but only if such grant was preliminarily approved on November 3, 1983, and received final approval before June 1, 1984, and

"(ii) the issuer of bonds with respect to such facility adopted a resolution indicating the issuer's intent to adopt such redevelopment project on October 6, 1981, and the issuer adopted an ordinance adopting such redevelopment project on December 13, 1983.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $10,000,000.

"(J) A project is described in this subparagraph if—

"(i) with respect to such project the city council adopted on December 16, 1985, an ordinance directing the urban renewal authority to study blight and produce an urban renewal plan,

"(ii) the blight survey was accepted and approved by the urban renewal authority on March 20, 1986, and

"(iii) the city planning board approved the urban renewal plan on May 7, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $60,000,000.

"(K) A project is described in this subparagraph if—

"(i) the city redevelopment agency approved resolutions authorizing issuance of land acquisition

and public improvements bonds with respect to such project on August 8, 1978,

"(ii) such resolutions were later amended in June 1979, and

"(iii) the State Supreme Court upheld a lower court decree validating the bonds on December 11, 1980.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $380,000,000.

"(L) A project is described in this subparagraph if it is a mixed use redevelopment project either—

"(i) in an area (known as the Near South Development Area) with respect to which the planning department of a city described in paragraph 3(C) promulgated a draft development plan dated March 1986, and which was the subject of public hearings held by a subcommittee of the plan commission of such city on May 28, 1986, and June 10, 1986, or

"(ii) in an area located within the boundaries of any 1 or more census tracts which are directly adjacent to a river whose course runs through such city.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $75,000,000.

"(M) A project is described in this subparagraph if it is a redevelopment project for an area in a city described in paragraph 3(C) and such area—

"(i) was the subject of a report released in May 1986, prepared by the National Park Service, and

"(ii) was the subject of a report released January 1986, prepared by a task force appointed by the Mayor of such city.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $75,000,000.

"(N) A project is described in this subparagraph if it is a city-university redevelopment project approved by a city ordinance No. 152–0–84 and the development plan for which was adopted on January 28, 1985. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $23,760,000.

"(O) A project is described in this subparagraph if—

"(i) an inducement resolution was passed on March 9, 1984, for issuance of bonds with respect to such project,

"(ii) such resolution was extended by resolutions passed on August 14, 1984, April 2, 1985, August 13, 1985, and July 8, 1986,

"(iii) an urban development action grant was preliminarily approved for part or all of such project on July 3, 1986, and

"(iv) the project is located in a district designated as the Peabody-Gayoso District.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $140,000,000.

"(P) A project is described in this subparagraph if the project is a 1-block area of a central business district containing a YMCA building with respect to which—

"(i) the city council adopted a resolution expressing an intent to issue bonds for the project on September 27, 1985,

"(ii) the city council approved project guidelines for the project on December 20, 1985, and

"(iii) the city council by resolution (adopted on July 30, 1986) directed completion of a development agreement.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $26,000,000.

"(Q) A project is described in this subparagraph if the project is a 2-block area of a central business district designated as blocks E and F with respect to which—

"(i) the city council adopted guidelines and criteria and authorized a request for development proposals on July 22, 1985,

"(ii) the city council adopted a resolution expressing an intent to issue bonds for the project on September 27, 1985, and

"(iii) the city issued requests for development proposals on March 28, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $47,000,000.

"(R) A project is described in this subparagraph if the project is an urban renewal project covering approximately 5.9 acres of land in the Shaw area of the northwest section of the District of Columbia and the 1st portion of such project was the subject of a District of Columbia public hearing on June 2, 1986. The

aggregate face amount of bonds to which this subparagraph applies shall not exceed $10,000,000.

"(S) A project is described in this subparagraph if such project is a hotel, commercial, and residential project on the east bank of the Grand River in Grand Rapids, Michigan, with respect to which a developer was selected by the city in June 1985 and a planning agreement was executed in August 1985. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $39,000,000.

"(T) A project is described in this subparagraph if such project is the Wurzburg Block Redevelopment Project in Grand Rapids, Michigan. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $60,000,000.

"(U) A project is described in this subparagraph if such project is consistent with an urban renewal plan adopted or ordered prepared before August 28, 1986, by the city council of the most populous city in a state which entered the Union on February 14, 1859. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $83,000,000.

"(V) A project is described in this subparagraph if such project is consistent with an urban renewal plan which was adopted (or ordered prepared) before August 13, 1985, by an appropriate jurisdiction of a state which entered the Union on February 14, 1859. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $135,000,000 and the limitation on the period during which bonds under this section may be issued shall not apply to such bonds.

"(W) A project is described in this subparagraph if such project is—

"(i) a part of the Kenosha Downtown Redevelopment project, and

"(ii) located in an area bounded—

"(I) on the east by the east wall of the Army Corps of Engineers Confined Disposal Facility (extended),

"(II) on the north by 48th Street (extended),

"(III) on the west by the present Chicago & Northwestern Railroad tracks, and

"(IV) on the south by the north line of Eichelman Park (60th Street) (extended).

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $105,000,000.

"(X) A project is described in this subparagraph if a redevelopment plan for such project was approved by the city council of Bell Gardens, California, on June 12, 1979. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $10,000,000.

"(Y) Nothing in this paragraph shall be construed as having the effect of exempting from tax interest on any bond issued after June 10, 1987, if such interest would not have been exempt from tax were such bond issued on August 15, 1986.

"(Z) Any designated area with respect to which a project is described in any subparagraph of this paragraph shall be taken into account in applying section 144(c)(4)(C) of the 1986 Code in determining whether other areas (not so described) may be designated.

"(7) CONVENTION CENTERS.—A bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide any convention or trade show facility (within the meaning of section 103(b)(4)(C) of the 1954 Code) shall be treated as an exempt facility bond for purposes of part IV of subchapter B of chapter 1 of the 1986 Code if such facility is described in any of the following subparagraphs:

"(A) A facility is described in this subparagraph if—

"(i) a feasibility consultant and a design consultant were hired on April 3, 1985, with respect to such facility, and

"(ii) a draft feasibility report with respect to such facility was presented on November 3, 1985, to the Mayor of the city in which such facility is to be located.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $190,000,000. For purposes of this subparagraph, not more than $20,000,000 of bonds issued to advance refund existing convention facility bonds sold on May 12, 1978, shall be treated as bonds described in this subparagraph and section 149(d)(2) of the 1986 Code shall not apply to bonds so treated.

"(B) A facility is described in this subparagraph if—

"(i) an application for a State loan for such facility was approved by the city council on March 4, 1985, and

"(ii) the city council of the city in which such facility is to be located approved on March 25, 1985, an application for an urban development action grant.

The aggregate face amount of bonds which this subparagraph applies shall not exceed $10,000,000.

"(C) A facility is described in this subparagraph if—

"(i) on November 1, 1983, a convention development tax took effect and was dedicated to financing such facility,

"(ii) the State supreme court of the State in which the facility is to be located validated such tax on February 8, 1985, and

"(iii) an agreement was entered into on November 14, 1985, between the city and county in which such facility is to be located on the terms of the bonds to be issued with respect to such facility.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $66,000,000.

"(D) A facility is described in this subparagraph if—

"(i) it is a convention, trade, or spectator facility,

"(ii) a regional convention, trade, and spectator facilities study committee was created before March 19, 1985, with respect to such facility, and

"(iii) feasibility and preliminary design consultants were hired on May 1, 1985, and October 31, 1985, with respect to such facility.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed the excess of $175,000,000 over the amount of bonds to which paragraph (48)(B) applies.

"(E) A facility is described in this subparagraph if—

"(i) such facility is meeting rooms for a convention center, and

"(ii) resolutions and ordinances were adopted with respect to such meeting rooms on January 17, 1983, July 11, 1983, December 17, 1984, and September 23, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $75,000,000.

"(F) A facility is described in this subparagraph if it is an international trade center which is part of the 125th Street redevelopment project in New York, New York. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $165,000,000.

"(G) A facility is described in this subparagraph if—

"(i) such facility is located in a city which was the subject of a convention center market analysis or study dated March 1983, and prepared by a nationally recognized accounting firm,

"(ii) such facility's location was approved in December 1985 by a task force created jointly by the Governor of the State within which such facility will be located and the mayor of the capital city of such State, and

"(iii) the size of such facility is not more than 200,000 square feet.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $70,000,000.

"(H) A facility is described in this subparagraph if an analysis of operations and recommendations of utilization of such facility was prepared by a certified public accounting firm pursuant to an engagement authorized on March 6, 1984, and presented on June 11, 1984, to officials of the city in which such facility is located. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $75,000,000.

"(I) A facility is described in this subparagraph if—

"(i) voters approved a bond issue to finance the acquisition of the site for such facility on May 4, 1985,

"(ii) title of the property was transferred from the Illinois Center Gulf Railroad to the city on September 30, 1985, and

"(iii) a United States judge rendered a decision regarding the fair market value of the site of such facility on December 30, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $131,000,000.

"(J) A facility is described in this subparagraph if—

"(i) such facility is to be used for an annual aquafestival,

"(ii) a referendum was held on April 6, 1985, in which voters permitted the city council to lease 130 acres of dedicated parkland for the purpose of constructing such facility, and

"(iii) the city council passed an inducement resolution on June 19, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $10,000,000.

"(K) A facility is described in this subparagraph if—

"(i) voters approved a bond issued to finance a portion of the cost of such facility on December 1, 1984, and

"(ii) such facility was the subject of a market study and financial projections dated March 21, 1986, prepared by a nationally recognized accounting firm.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $5,000,000.

"(L) A facility is described in this subparagraph if—

"(i) on July 12, 1984, the city council passed a resolution increasing the local hotel and motel tax to 7 percent to assist in paying for such facility,

"(ii) on October 25, 1984, the city council selected a consulting firm for such facility, and

"(iii) with respect to such facility, the city council appropriated funds for additional work on February 7, 1985, October 3, 1985, and June 26, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $120,000,000.

"(M) A facility is described in this subparagraph if—

"(i) a board of county commissioners, in an action dated January 21, 1986, supported an application for official approval of the facility, and

"(ii) the State economic development commission adopted a resolution dated February 25, 1986, determining the facility to be an eligible facility pursuant to State law and the rules adopted by the commission.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $7,500,000.

"(8) SPORTS OR CONVENTION FACILITIES.—A bond issued as a part of an issue 95 percent or more of the net proceeds of which are to be used to provide either a sports facility (within the meaning of section 103(b)(4)(B) of the 1954 Code) or a convention facility (within the meaning of section 103(b)(4)(C) of the 1954 Code) shall be treated as an exempt facility bond for purposes of part IV of subchapter B of chapter 1 of the 1986 Code if such facility is described in any of the following subparagraphs:

"(A) A combined convention and arena facility, or any part thereof (whether on the same or different sites), is described in this subparagraph if—

"(i) bonds for the expansion, acquisition, or construction of such combined facility are payable from a tax and are issued under a plan initially approved by the voters of the taxing authority on April 25, 1978, and

"(ii) such bonds were authorized for expanding a convention center, for acquiring an arena site, and for building an arena or any of the foregoing pursuant to a resolution adopted by the governing body of the bond issuer on March 17, 1986, and superseded by a resolution adopted by such governing body on May 27, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $160,000,000.

"(B) A sports or convention facility is described in this subparagraph if—

"(i) on March 4, 1986, county commissioners held public hearings on creation of a county convention facilities authority, and

"(ii) on March 7, 1986, the county commissioners voted to create a county convention facilities authority and to submit to county voters a ½ cent sales and use tax to finance such facility.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $150,000,000.

"(C) A sports or convention facility is described in this subparagraph if—

"(i) a feasibility consultant and a design consultant were hired prior to October 1980 with respect to such facility,

"(ii) a feasibility report dated October 1980 with respect to such facility was presented to a city or county in which such facility is to be located, and

"(iii) on September 7, 1982, a joint city/county resolution appointed a committee which was charged with the task of independently reviewing the studies and present need for the facility.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $60,000,000.

"(D) A sports or convention facility is described in this subparagraph if—

"(i) such facility is a multipurpose coliseum facility for which, before January 1, 1985, a city, an auditorium district created by the State legislature within which such facility will be located, and a

limited partnership executed an enforceable contract,

"(ii) significant governmental action regarding such facility was taken before May 23, 1983, and

"(iii) inducement resolutions were passed for issuance of bonds with respect to such facility on May 26, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $25,000,000.

"(9) PARKING FACILITIES.—A bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide a parking facility (within the meaning of section 103(b)(4)(D) of the 1954 Code) shall be treated as an exempt facility bond for purposes of part IV of subchapter B of chapter 1 of the 1986 Code if such facility is described in any of the following subparagraphs:

"(A) A facility is described in this subparagraph if—

"(i) there was an inducement resolution on March 9, 1984, for the issuance of bonds with respect to such facility, and

"(ii) such resolution was extended by resolutions passed on August 14, 1984, April 2, 1985, August 13, 1985, and July 8, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $30,000,000.

"(B) A facility is described in this subparagraph if—

"(i) such facility is for a university medical school,

"(ii) the last parcel of land necessary for such facility was purchased on February 4, 1985, and

"(iii) the amount of bonds to be issued with respect to such facility was increased by the State legislature of the State in which the facility is to be located as part of its 1983–1984 general appropriations act.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $9,000,000.

"(C) A facility is described in this subparagraph if—

"(i) the development agreement with respect to the project of which such facility is a part was entered into during May 1984, and

"(ii) an inducement resolution was passed on October 9, 1985, for the issuance of bonds with respect to the facility.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $35,000,000.

"(D) A facility is described in this subparagraph if the city council approved a resolution of intent to issue tax-exempt bonds (Resolution 34083) for such facility on April 30, 1986. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $8,000,000. Solely for purposes of this subparagraph, a heliport constructed as part of such facility shall be deemed to be functionally related and subordinate to such facility.

"(E) A facility is described in this subparagraph if—

"(i) resolutions were adopted by a public joint powers authority relating to such facility on March 6, 1985, May 1, 1985, October 2, 1985, December 4, 1985, and February 5, 1986; and

"(ii) such facility is to be located at an exposition park which includes a coliseum and sports arena.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $150,000,000.

"(F) A facility is described in this subparagraph if—

"(i) it is to be constructed as part of an overall development that is the subject of a development agreement dated October 1, 1983, between a developer and an organization described in section 501(c)(3) of the 1986 Code, and

"(ii) an environmental notification form with respect to the overall development was filed with a State environmental agency on February 28, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $60,000,000.

"(G) A facility is described in this subparagraph if—

"(i) an inducement resolution was passed by the city redevelopment agency on December 3, 1984, and a resolution to carryforward the private activity bond limit was passed by such agency on December 21, 1984, with respect to such facility, and

"(ii) the owner participation agreement with respect to such facility was entered into on July 30,

1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $18,000,000.

"(H) A facility is described in this subparagraph if—

"(i) an application (dated August 28, 1986) for financial assistance was submitted to the county industrial development agency with respect to such facility, and

"(ii) the inducement resolution for such facility was passed by the industrial development agency on September 10, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $8,000,000.

"(I) A facility is described in this subparagraph if—

"(i) it is located in a city the parking needs of which were comprehensively described in a 'Downtown Parking Plan' dated January 1983, and approved by the city's City Plan Commission on June 1, 1983, and

"(ii) obligations with respect to the construction of which are issued on behalf of a State or local governmental unit by a corporation empowered to issue the same which was created by the legislative body of a State by an Act introduced on May 21, 1985, and thereafter passed, which Act became effective without the governor's signature on June 26, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $50,000,000.

"(J) A facility is described in this subparagraph if—

"(i) such facility is located in a city which was the subject of a convention center market analysis or study dated March 1983 and prepared by a nationally recognized accounting firm,

"(ii) such facility is intended for use by, among others, persons attending a convention center located within the same town or city, and

"(iii) such facility's location was approved in December 1985 by a task force created jointly by the governor of the State within which such facility will be located and the mayor of the capital city of such State.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $30,000,000.

"(K) A facility is described in this subparagraph if—

"(i) scale and components for the facility were determined by a city downtown plan adopted October 31, 1984 (resolution number 3882), and

"(ii) the site area for the facility is approximately 51,200 square feet.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $5,000,000.

"(L) A facility is described in this subparagraph if—

"(i) the property for such facility was offered for development by a city renewal agency on March 19, 1986 (resolution number 920), and

"(ii) the site area for the facility is approximately 25,600 square feet.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $5,000,000.

"(M) A facility is described in this subparagraph if such facility was approved by official action of the city council on July 26, 1984 (resolution number 33718), and is for the Moyer Theatre. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $8,000,000.

"(N) A facility is described in this subparagraph if it is part of a renovation project involving the Outlet Company building in Providence, Rhode Island. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $6,000,000.

"(10) CERTAIN ADVANCE REFUNDINGS.—

"(A) Section 149(d)(3) of the 1986 Code shall not apply to a bond issued by a State admitted to the Union on November 16, 1907, for the advance refunding of not more than $186,000,000 State turnpike obligations.

"(B) A refunding of the Charleston, West Virginia Town Center Garage Bonds shall not be treated for purposes of part IV of subchapter A of chapter 1 of the 1986 Code as an advance refunding if it would not be so treated if '100' were substituted for '90' in section 149(d)(5) of such Code.

"(11) PRINCIPAL USER PROVISIONS.—

"(A) In the case of a bond issued as part of an issue the proceeds of which are to be used to provide a

facility described in subparagraph (B) or (C), the determination of whether such bond is an exempt facility bond shall be made by substituting '90 percent' for '95 percent' in section 142(a) of the 1986 Code.

"(B) A facility is described in this subparagraph if—

"(i) it is a waste-to-energy project for which a contract for the sale of electricity was executed in September 1984, and

"(ii) the design, construction, and operation contract for such project was signed in March 1985 and the order to begin construction was issued on March 31, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $29,100,000.

"(C) A facility is described in this subparagraph if it is described in section 1865(c)(2)(C) of this Act [set out as a note under section 103 of this title].

"(12) QUALIFIED SCHOLARSHIP FUNDING BONDS.—Subsections (d)(3) and (f) of section 148 of the 1986 Code shall not apply to any bond or series of bonds the proceeds of which are used exclusively to refund qualified scholarship funding bonds (as defined in section 150 of the 1986 Code) issued before January 1, 1986, if—

"(A) the amount of the refunding bonds does not exceed the aggregate face amount of the refunded bonds,

"(B) the maturity date of such refunding bond is not later than later of—

"(i) the maturity date of the bond to be refunded, or

"(ii) the date which is 15 years after the date on which the refunded bond was issued (or, in the case of a series of refundings, the date on which the original bond was issued),

"(C) the bonds to be refunded were issued by the California Student Loan Finance Corporation, and

"(D) the face amount of the refunding bonds does not exceed $175,000,000.

"(13) RESIDENTIAL RENTAL PROPERTY PROJECTS.—A bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide a project for residential rental property which satisfies the requirements of section 103(b)(4)(A) of the 1954 Code shall be treated as an exempt facility bond (for projects described in section 142(a)(7) of the 1986 Code) for purposes of part IV of subchapter B of chapter 1 of the 1986 Code if the project is described in any of the following subparagraphs:

"(A) A residential rental property project is described in this subparagraph if—

"(i) a public building development corporation was formed on June 6, 1984, with respect to such project,

"(ii) a partnership of which the corporation is a general partner was formed on June 8, 1984, and

"(iii) the partnership entered into a preliminary agreement with the State public facilities authority effective as of May 4, 1984, with respect to the issuance of the bonds for such project.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $6,200,000.

"(B) A residential rental property project is described in this subparagraph if—

"(i) the Board of Commissioners of the city housing authority officially selected such project's developer on December 19, 1985,

"(ii) the Board of the City Redevelopment Commission agreed on February 13, 1986, to conduct a public hearing with respect to the project on March 6, 1986,

"(iii) an official action resolution for such project was adopted on March 6, 1986, and

"(iv) an allocation of a portion of the State ceiling was made with respect to such project on July 29, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $10,000,000.

"(C) A residential rental property project is described in this subparagraph if—

"(i) the issuance of $1,289,882 of bonds for such project was approved by a State agency on September 11, 1985, and

"(ii) the authority to issue such bonds was scheduled to expire (under the terms of the State approval) on September 9, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $1,300,000.

"(D) A residential rental property project is described in this subparagraph if—

"(i) the issuance of $7,020,000 of bonds for such project was approved by a State agency on October 10, 1985, and

"(ii) the authority to issue such bonds was scheduled to expire (under the terms of the State

approval) on October 9, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $7,020,000.

"(E) A residential rental property project is described in this subparagraph if—

"(i) it is to be located in a city urban renewal project area which was established pursuant to an urban renewal plan adopted by the city council on May 17, 1960,

"(ii) the urban renewal plan was revised in 1972 to permit multifamily dwellings in areas of the urban renewal project designated as a central business district,

"(iii) an inducement resolution was adopted for such project on December 14, 1984, and

"(iv) the city council approved on November 6, 1985, an agreement which provides for conveyance to the city of fee title to such project site.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $60,000,000.

"(F) A residential rental property project is described in this subparagraph if—

"(i) such project is to be located in a city urban renewal project area which was established pursuant to an urban renewal plan adopted by the city council on May 17, 1960,

"(ii) the urban renewal plan was revised in 1972 to permit multifamily dwellings in areas of the urban renewal project designated as a central business district,

"(iii) the amended urban renewal plan adopted by the city council on May 19, 1972, also provides for the conversion of any public area site in Block J of the urban renewal project area for the development of residential facilities, and

"(iv) acquisition of all of the parcels comprising the Block J project site was completed by the city on December 28, 1984.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $60,000,000.

"(G) A residential rental property project is described in this subparagraph if—

"(i) such project is to be located on a city-owned site which is to become available for residential development upon the relocation of a bus maintenance facility,

"(ii) preliminary design studies for such project site were completed in December 1985, and

"(iii) such project is located in the same State as the projects described in subparagraphs (E) and (F).

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $100,000,000.

"(H) A residential rental property project is described in this subparagraph if—

"(i) at least 20 percent of the residential units in such project are to be utilized to fulfill the requirements of a unilateral agreement date July 21, 1983, relating to the provision of low- and moderate-income housing,

"(ii) the unilateral agreement was incorporated into ordinance numbers 83–49 and 83–50, adopted by the city council and approved by the mayor on August 24, 1983, and

"(iii) an inducement resolution was adopted for such project on September 25, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $8,000,000.

"(I) A residential rental property project is described in this subparagraph if—

"(i) a letter of understanding was entered into on December 11, 1985, between the city and county housing and community development office and the project developer regarding the conveyance of land for such project, and

"(ii) such project is located in the same State as the projects described in subparagraphs (E), (F), (G), and (H).

The aggregate face amount of bonds to which this subparagraph applies shall not exceed an amount which, together with the amounts allowed under subparagraphs (E), (F), (G), and (H), does not exceed $250,000,000.

"(J) A residential rental property project is described in this subparagraph if it is a multifamily residential development located in Arrowhead Springs, within the county of San Bernardino, California, and a portion of the site of which currently is owned by the Campus Crusade for Christ. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $350,000,000.

"(K) A residential rental property project is described in this subparagraph if—

"(i) it is a new residential development with approximately 309 dwelling units located in census

tract No. 3202, and

"(ii) there was an inducement ordinance for such project adopted by a city council on November 20, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $32,000,000.

"(L) A residential rental property project is described in this subparagraph if—

"(i) it is a new residential development with approximately 70 dwelling units located in census tract No. 3901, and

"(ii) there was an inducement ordinance for such project adopted by a city council on August 14, 1984.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $4,000,000.

"(M) A residential rental property project is described in this subparagraph if—

"(i) it is a new residential development with approximately 98 dwelling units located in census tract No. 4701, and

"(ii) there was an inducement ordinance for such project adopted by a city council on August 14, 1984.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $7,000,000.

"(N) A project or projects are described in this subparagraph if they are part of the Willow Road residential improvement plan in Menlo Park, California. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $9,000,000.

"(O) A residential rental property project is described in this subparagraph if—

"(i) an inducement resolution for such project was approved on July 18, 1985, by the city council,

"(ii) such project was approved by such council on August 11, 1986, and

"(iii) such project consists of approximately 22 duplexes to be used for housing qualified low and moderate income tenants.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $1,500,000.

"(P) A residential rental property project is described in this subparagraph if—

"(i) an inducement resolution for such project was approved on April 22, 1986, by the city council,

"(ii) such project was approved by such council on August 11, 1986, and

"(iii) such project consists of a unit apartment complex (having approximately 60 units) to be used for housing qualified low and moderate income tenants.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $1,625,000.

"(Q) A residential rental property project is described in this subparagraph if—

"(i) a State housing authority granted a notice of official action for the project on May 24, 1985, and

"(ii) a binding agreement was executed for such project with the State housing finance authority on May 14, 1986, and such agreement was accepted by the State housing authority on June 5, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $7,800,000.

"(R) A residential rental property project is described in this subparagraph if such project is either of 2 projects (located in St. Louis, Missouri) which received commitments to provide construction and permanent financing through the issuance of bonds in principal amounts of up to $242,130 and $654,045, on July 16, 1986. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $1,000,000.

"(S) A residential rental property project is described in this subparagraph if—

"(i) a local housing authority approved an inducement resolution for such project on January 28, 1985, and

"(ii) a suit relating to such project was dismissed without right of further appeal on April 4, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $13,200,000.

"(T) A residential rental property project is described in this subparagraph if—

"(i) such project is the renovation of a hotel for residents for senior citizens,

"(ii) an inducement resolution for such project was adopted on November 20, 1985, by the State Development Finance Authority, and

"(iii) such project is to be located in the metropolitan area of the city described in paragraph (3)(C).

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $9,500,000.

"(U) A residential rental property project is described in this subparagraph if—

"(i) such project is the renovation of apartment housing,

"(ii) an inducement resolution for such project was adopted on December 20, 1985, by the State Housing Development Authority, and

"(iii) such project is to be located in the metropolitan area of the city described in paragraph (3)(C).

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $12,000,000.

"(V) A residential rental project is described in this subparagraph if it is a renovation and construction project for low-income housing in central Louisville, Kentucky, and local board approval for such project was granted April 22, 1986. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $500,000.

"(W) A residential rental project is described in this subparagraph if—

"(i) such project is 1 of 6 residential rental projects having in the aggregate approximately 1,010 units,

"(ii) inducement resolutions for such projects were adopted by the county residential finance authority on November 21, 1985, and

"(iii) a public hearing of the county residential finance authority was held by such authority on December 19, 1985, regarding such projects to be constructed by an in-commonwealth developer.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $62,000,000.

"(X) A residential rental project is described in this subparagraph if—

"(i) an inducement resolution with respect to such project was adopted by the State housing development authority on January 25, 1985, and

"(ii) the issuance of bonds for such project was the subject of a law suit filed on October 25, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $64,000,000.

"(Y) A project or projects are described in this subparagraph if they are financed with bonds issued by the Tulare, California, County Housing Authority. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $8,000,000.

"(Z) A residential rental project is described in this subparagraph if such project is a multifamily mixed-use housing project located in a city described in paragraph (3)(C), the zoning for which was changed to residential-business planned development on November 26, 1985, and with respect to which both the city on December 4, 1985, and the state housing finance agency on December 20, 1985, adopted inducement resolutions. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $90,000,000.

"(AA) A residential rental property project is described in this subparagraph if it is the Carriage Trace residential rental project in Clinton, Tennessee. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $10,000,000.

"(BB) A residential rental property project is described in this subparagraph if—

"(i) a contract to purchase such property was dated as of August 9, 1985,

"(ii) there was an inducement resolution adopted on September 27, 1985, for the issuance of obligations to finance such property,

"(iii) there was a State court final validation of such financing on November 15, 1985, and

"(iv) the certificate of nonappeal from such validation was available on December 15, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $27,750,000.

"(14) QUALIFIED STUDENT LOANS.—The amendments made by section 1301 [for classification see section 1311(a) of this note] shall not apply to any qualified student loan bonds (as defined in section 144 of the 1986 Code) issued by the Volunteer State Student Assistance Corporation incorporated on February 20, 1985. The aggregate face amount of bonds to which this paragraph applies shall not exceed $130,000,000. In

the case of bonds to which this paragraph applies, the requirements of sections 148 and 149(d) of the 1986 Code shall be treated as included in section 103 of the 1954 Code and shall apply to such bonds.

"(15) ANNUITY CONTRACTS.—The treatment of annuity contracts as investment property under section 148(b)(2) of the 1986 Code shall not apply to any bond described in any of the following subparagraphs:

"(A) A bond is described in this subparagraph if such bond is issued by a city located in a noncontiguous State if—

"(i) the authority to acquire such a contract was approved on September 24, 1985, by city ordinance A085–176, and

"(ii) formal bid requests for such contracts were mailed to insurance companies on September 6, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $57,000,000.

"(B) A bond is described in this subparagraph if—

"(i) on or before May 12, 1985, the governing board of the city pension fund authorized an agreement with an underwriter to provide planning and financial guidance for a possible bond issue, and

"(ii) the proceeds of the sale of such bond issue are to be used to purchase an annuity to fund the unfunded liability of the City of Berkeley, California's Safety Members Pension Fund.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $40,000,000.

"(C) A bond is described in this subparagraph if such bond is issued by the South Dakota Building Authority if on September 18, 1985, representatives of such authority and its underwriters met with bond counsel and approved financing the purchase of an annuity contract through the sale and leaseback of State properties. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $175,000,000.

"(D) A bond is described in this subparagraph if—

"(i) such bond is issued by Los Angeles County, and

"(ii) such county, before September 25, 1985, paid or incurred at least $50,000 of costs related to the issuance of such bonds.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $500,000,000.

"(16) SOLID WASTE DISPOSAL FACILITY.—The amendments made by section 1301 [for classification see section 1311(a) of this note] shall not apply to any solid waste disposal facility if—

"(A) construction of such facility was approved by State law I.C. 36–9–31,

"(B) there was an inducement resolution on November 19, 1984, for the bonds with respect to such facility, and

"(C) a carryforward election of unused 1984 volume cap was made for such project on February 25, 1985.

The aggregate face amount of bonds to which this paragraph applies shall not exceed $120,000,000.

"(17) REFUNDING OF BOND ANTICIPATION NOTES.—There shall not be taken into account under section 146 of the 1986 Code any refunding of bond anticipation notes—

"(A) issued in December of 1984 by the Rhode Island Housing and Mortgage Finance Corporation,

"(B) which mature in December of 1986,

"(C) which is not an advance refunding within the meaning of section 149(d)(5) of the 1986 Code (determined by substituting '180 days' for '90 days' therein), and

"(D) the aggregate face amount of the refunding bonds does not exceed $25,500,000.

"(18) CERTAIN AIRPORTS.—The amendments made by section 1301 [for classification see section 1311(a) of this note] shall not apply to a bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide any airport (within the meaning of section 103(b)(4)(D) of the 1954 Code) if such airport is a mid-field airport terminal and accompanying facilities at a major air carrier airport which during April 1980 opened a new precision instrument approach runway 10R28L. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $425,000,000.

"(19) MASS COMMUTING FACILITIES.—A bond issued as a part of an issue 95 percent or more of the net proceeds of which are to be used to provide a mass commuting facility (within the meaning of section 103(b)(4)(D) of the 1954 Code) shall be treated as an exempt facility bond (for facilities described in section 142(a)(3) of the 1986 Code) for purposes of part IV of subchapter B of chapter 1 of the 1986 Code if such facility is described in 1 of the following subparagraphs:

"(A) A facility is described in this subparagraph if—

"(i) such facility provides access to an international airport,

"(ii) a corporation was formed in connection with such project in September 1984,

"(iii) the Board of Directors of such corporation authorized the hiring of various firms to conduct a feasibility study with respect to such project in April 1985, and

"(iv) such feasibility study was completed in November 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $150,000,000.

"(B) A facility is described in this subparagraph if—

"(i) enabling legislation with respect to such project was approved by the State legislature in 1979,

"(ii) a 1-percent local sales tax assessment to be dedicated to the financing of such project was approved by the voters on August 13, 1983, and

"(iii) a capital fund with respect to such project was established upon the issuance of $90,000,000 of notes on October 22, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $200,000,000 and such bonds must be issued before January 1, 1996.

"(C) A facility is described in this subparagraph if—

"(i) bonds issued therefor are issued by or on behalf of an authority organized in 1979 pursuant to enabling legislation originally enacted by the State legislature in 1973, and

"(ii) such facility is part of a system connector described in a resolution adopted by the board of directors of the authority on March 27, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $400,000,000. Notwithstanding the last paragraph of this subsection, this subparagraph shall apply to bonds issued before January 1, 1996.

"(D) A facility is described in this subparagraph if—

"(i) the facility is a fixed guideway project,

"(ii) enabling legislation with respect to the issuing authority was approved by the State legislature in May 1973,

"(iii) on October 28, 1985, a board issued a request for consultants to conduct a feasibility study on mass transit corridor analysis in connection with the facility, and

"(iv) on May 12, 1986, a board approved a further binding contract for expenditures of approximately $1,494,963, to be expended on a facility study.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $250,000,000. Notwithstanding the last paragraph of this subsection, this subparagraph shall apply to bonds issued before January 1, 1996.

"(20) PRIVATE COLLEGES.—Subsections (c)(2) and (f) of section 148 of the 1986 Code shall not apply to any bond which is issued as part of an issue if such bond—

"(A) is issued by a political subdivision pursuant to home rule and interlocal cooperation powers conferred by the constitution and laws of a State to provide funds to finance the costs of the purchase and construction of educational facilities for private colleges and universities, and

"(B) was the subject of a resolution of official action by such political subdivision (Resolution No. 86–1039) adopted by the governing body of such political subdivision on March 18, 1986.

The aggregate face amount of bonds to which this paragraph applies shall not exceed $100,000,000.

"(21) POOLED FINANCING PROGRAMS.—

"(A) Section 147(b) of the 1986 Code shall not apply to any hospital pooled financing program with respect to which—

"(i) a formal presentation was made to a city hospital facilities authority on January 14, 1986, and

"(ii) such authority passed a resolution approving the bond issue in principle on February 5, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $95,000,000.

"(B) Subsections (c)(2) and (f) of section 148 of the 1986 Code shall not apply to bonds for which closing occurred on July 16, 1986, and for which a State municipal league served as administrator for use in a State described in section 103A(g)(5)(C) of the Internal Revenue Code of 1954. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $585,000,000.

"(22) DOWNTOWN REDEVELOPMENT PROJECT.—Subsection (b) of section 626 of the Tax Reform Act of 1984 [section 626(b) of Pub. L. 98–369, set out as a note under section 103 of this title] is amended by adding at the end thereof the following new paragraph:

" '(7) EXCEPTION FOR CERTAIN DOWNTOWN REDEVELOPMENT PROJECT.—The amendments

made by this section shall not apply to any obligation which is issued as part of an issue 95 percent or more of the proceeds of which are to be used to provide a project to acquire and redevelop a downtown area if—

" '(A) on August 15, 1985, a downtown redevelopment authority adopted a resolution to issue obligations for such project,

" '(B) before September 26, 1985, the city expended, or entered into binding contracts to expend, more than $10,000,000 in connection with such project, and

" '(C) the State supreme court issued a ruling regarding the proposed financing structure for such project on December 11, 1985.

The aggregate face amount of obligations to which this paragraph applies shall not exceed $85,000,000 and such obligations must be issued before January 1, 1992.'

"(23) MASS COMMUTING AND PARKING FACILITIES.—A bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide any mass commuting facility or parking facility (within the meaning of section 103(b)(4)(D) of the 1954 Code) shall be treated as an exempt facility bond for purposes of part IV of subchapter B of chapter 1 of the 1986 Code if such facility is provided in connection with the rehabilitation, renovation, or other improvement to an existing railroad station owned on the date of the enactment of this Act [Oct. 22, 1986] by the National Railroad Passenger Corporation in the Northeast Corridor and which was placed in partial service in 1934 and was placed in the National Register of Historic Places in 1978. The aggregate face amount of bonds to which this paragraph applies shall not exceed $30,000,000.

"(24) TAX-EXEMPT STATUS OF BONDS OF CERTAIN EDUCATIONAL ORGANIZATIONS.—

"(A) IN GENERAL.—For purposes of section 103 and part IV of subchapter B of chapter 1 of the 1986 Code, a qualified educational organization shall be treated as a governmental unit, but only with respect to a trade or business carried on by such organization which is not an unrelated trade or business (determined by applying section 513(a) of such Code to such organization). The last paragraph of this section shall not apply to the treatment under the preceding sentence.

"(B) QUALIFIED EDUCATIONAL ORGANIZATION.—For purposes of subparagraph (A), the term 'qualified educational organization' means a college or university—

"(i) which was reincorporated and renewed with perpetual existence as a corporation by specific act of the legislature of the State within which such college or university is located on March 19, 1913, or

"(ii) which—

"(I) was initially incorporated or created on February 28, 1787, on April 29, 1854, or on May 14, 1888, and

"(II) as an instrumentality of the State, serves as a 'State-related' university by a specific act of the legislature of the State within which such college or university is located.

"(25) TAX-EXEMPT STATUS OF BONDS OF CERTAIN PUBLIC UTILITIES.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), a bond shall be treated as a qualified bond for purposes of section 103 of the 1986 Code if such bond is issued after the date of the enactment of this Act [Oct. 22, 1986] with respect to a public utility facility if such facility is—

"(i) located at any non-federally owned dam (or on project waters or adjacent lands) located wholly or partially in 1 or more of 3 counties, 2 of which are contiguous to the third, where the rated capacity of the hydroelectric generating facilities at 5 of such dams on October 18, 1979, was more than 650 megawatts each,

"(ii) located at a dam (or on the project waters or adjacent lands) at which hydroelectric generating facilities were financed with the proceeds of tax-exempt obligations before December 31, 1968,

"(iii) owned and operated by a State, political subdivision of a State, or any agency or instrumentality of any of the foregoing, and

"(iv) located at a dam (or on project waters or adjacent lands) where the general public has access for recreational purposes to such dam or to such project waters or adjacent lands.

"(B) SPECIAL RULES FOR SUBPARAGRAPH (A).—

"(i) BONDS SUBJECT TO CAP.—Section 146 of the 1986 Code shall apply to any bond described in subparagraph (A) which (without regard to subparagraph (A)) is a private activity bond. For purposes of applying section 146(k) of the 1986 Code, the public utility facility described in subparagraph (A) shall be treated as described in paragraph (2) of such section and such paragraph shall be applied without regard to the requirement that the issuer establish that a State's share of the use of a facility (or its output) will equal or exceed the State's share of the private activity bonds issued to finance the facility.

"(ii) LIMITATION ON AMOUNT OF BONDS TO WHICH SUBPARAGRAPH (A) APPLIES

.—The aggregate face amount of bonds to which subparagraph (A) applies shall not exceed $750,000,000, not more than $350,000,000 of which may be issued before January 1, 1992.

"(iii) LIMITATION ON PURPOSES.—Subparagraph (A) shall only apply to bonds issued as part of an issue 95 percent or more of the net proceeds of which are used to provide 1 or more of the following:

"(I) A fish by-pass facility or fisheries enhancement facility.

"(II) A recreational facility or other improvement which is required by Federal licensing terms and conditions or other Federal, State, or local law requirements.

"(III) A project of repair, maintenance, renewal, or replacement, and safety improvement.

"(IV) Any reconstruction, replacement, or improvement, including any safety improvement, which increases, or allows an increase in, the capacity, efficiency, or productivity of the existing generating equipment.

"(26) CONVENTION AND PARKING FACILITIES.—A bond shall not be treated as a private activity bond for purposes of section 103 and part IV of subchapter B of chapter 1 of the 1986 Code if—

"(A) such bond is issued to provide a sports or convention facility described in section 103(b)(4)(B) or (C) of the 1954 Code,

"(B) such bond is not described in section 103(b)(2) or (o)(2)(A) of such Code,

"(C) legislation by a State legislature in connection with such facility was enacted on July 19, 1985, and was designated Chapter 375 of the Laws of 1985, and

"(D) legislation by a State legislature in connection with the appropriation of funds to a State public benefit corporation for loans in connection with the construction of such facility was enacted on April 17, 1985, and was designated Chapter 41 of the Laws of 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $35,000,000.

"(27) SMALL ISSUE TERMINATION.—Section 144(a)(12) of the 1986 Code shall not apply to any bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide a facility described in any of the following subparagraphs:

"(A) A facility is described in this subparagraph if—

"(i) the facility is a hotel and office facility located in a State capital,

"(ii) the economic development corporation of the city in which the facility is located adopted an initial inducement resolution on October 30, 1985, and

"(iii) a feasibility consultant was retained on February 21, 1986, with respect to such facility.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $10,000,000.

"(B) A facility is described in this subparagraph if such facility is financed by bonds issued by a State finance authority which was created in April 1985 by Act 1062 of the State General Assembly, and the Bond Guarantee Act (Act 505 of 1985) allowed such authority to pledge the interest from investment of the State's general fund as a guarantee for bonds issued by such authority. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $75,000,000.

"(C) A facility is described in this subparagraph if such facility is a downtown mall and parking project for Holland, Michigan, with respect to which an initial agreement was formulated with the city in May 1985 and a formal memorandum of understanding was executed on July 2, 1986. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $18,200,000.

"(D) A facility is described in this subparagraph if such facility is a downtown mall and parking ramp project for Traverse City, Michigan, with respect to which a final development agreement was signed in June 1986. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $21,500,000.

"(E) A facility is described in this subparagraph if such facility is the rehabilitation of the Heritage Hotel in Marquette, Michigan. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $5,000,000.

"(F) A facility is described in this subparagraph if it is the Lakeland Center Hotel in Lakeland, Florida. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $10,000,000.

"(G) A facility is described in this subparagraph if it is the Marble Arcade office building renovation project in Lakeland, Florida. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $5,900,000.

"(H) A facility is described in this subparagraph if it is a medical office building in Bradenton, Florida, with respect to which—

"(i) a memorandum of agreement was entered into on October 17, 1985, and

"(ii) the city council held a public hearing and approved issuance of the bonds on November 13,

1985.

The aggregate face amount of obligations to which this subparagraph applies shall not exceed $8,500,000.

"(I) A facility is described in this subparagraph if it consists of the rehabilitation of the Andover Town Hall in Andover, Massachusetts. The provisions of section 149(b) of the 1986 Code (relating to federally guaranteed obligations) shall not apply to obligations to finance such project solely as a result of the occupation of a portion of such building by a United States Post Office. For purposes of determining whether any bond to which this subparagraph applies is a qualified small issue bond, there shall not be taken into account under section 144(a) of the 1986 Code capital expenditures with respect to any facility of the United States Government and there shall not be taken into account any bond allocable to the United States Government.

"(J) A facility is described in this subparagraph if it is the Central Bank Building renovation project in Grand Rapids, Michigan. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $1,000,000.

"(28) CERTAIN PRIVATE LOANS NOT TAKEN INTO ACCOUNT.—For purposes of determining whether any bond is a private activity bond, an amount of loans (but not in excess of $75,000,000) provided from the proceeds of 1 or more issues shall not be taken into account if such loans are provided in furtherance of—

"(A) a city Emergency Conservation Plan as set forth in an ordinance adopted by the city council of such city on February 17, 1983, or

"(B) a resolution adopted by the city council of such city on March 10, 1983, committing such city to a goal of reducing the peak load of such city's electric generation and distribution system by 553 megawatts in 15 years.

"(29) CERTAIN PRIVATE BUSINESS USE NOT TAKEN INTO ACCOUNT.—

"(A) The nonqualified amount of the proceeds of an issue shall not be taken into account under section 141(b)(5) of the 1986 Code or in determining whether a bond described in subparagraph (B) (which is part of such issue) is a private activity bond for purposes of section 103 and part IV of subchapter B of chapter 1 of the 1986 Code.

"(B) A bond is described in this subparagraph if—

"(i) such bond is issued before January 1, 1993, by the State of Connecticut, and

"(ii) such bond is issued pursuant to a resolution of the State Bond Commission adopted before September 26, 1985.

"(C) The nonqualified amount to which this paragraph applies shall not exceed $150,000,000.

"(D) For purposes of this paragraph, the term 'nonqualified amount' has the meaning given such term by section 141(b)(8) of the 1986 Code, except that such term shall include the amount of the proceeds of an issue which is to be used (directly or indirectly) to make or finance loans (other than loans described in section 141(c)(2) of the 1986 Code) to persons other than governmental units.

"(30) VOLUME CAP NOT TO APPLY TO CERTAIN FACILITIES.—For purposes of section 146 of the 1986 Code, any exempt facility bond for the following facility shall not be taken into account: The facility is a facility for the furnishing of water which was authorized under Public Law 90–537 [43 U.S.C. 1501 et seq.] of the United States if—

"(A) construction of such facility began on May 6, 1973, and

"(B) forward funding will be provided for the remainder of the project pursuant to a negotiated agreement between State and local water users and the Secretary of the Interior signed April 15, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $391,000,000.

"(31) CERTAIN HYDROELECTRIC GENERATING PROPERTY.—A bond shall be treated as described in paragraph (2) of section 1316(f) of this Act if—

"(A) such bond would be so described but for the substitution specified in such paragraph,

"(B) on January 7, 1983, an application for a preliminary permit was filed for the project for which such bond is issued and received docket no. 6986, and

"(C) on September 20, 1983, the Federal Energy Regulatory Commission issued an order granting the preliminary permit for the project.

The aggregate face amount of bonds to which this paragraph applies shall not exceed $12,000,000.

"(32) VOLUME CAP.—The State ceiling applicable under section 146 of the 1986 Code for calendar year 1987 for the State which ratified the United States Constitution on May 29, 1790, shall be $150,000,000 higher than the State ceiling otherwise applicable under such section for such year.

"(33) APPLICATION OF $150,000,000 LIMITATION FOR CERTAIN QUALIFIED 501(c)(3) BONDS .—Proceeds of an issue described in any of the following subparagraphs shall not be taken into account under

section 145(b) of the 1986 Code.

"(A) Proceeds of an issue are described in this subparagraph if—

"(i) such proceeds are used to provide medical school facilities or medical research and clinical facilities for a university medical center,

"(ii) such proceeds are of—

"(I) a $21,550,000 issue dated August 1, 1980,

"(II) a $84,400,000 issue dated September 1, 1984, and

"(III) a $48,500,000 issue (Series 1985 A and 1985 B) dated on December 1, 1985, and

"(iii) the issuer of all such issues is the same.

"(B) Proceeds of an issue are described in this subparagraph if such proceeds are for use by Yale University and—

"(i) the bonds are issued after August 8, 1986, by the State of Connecticut Health and Educational Facilities Authority, or

"(ii) the bonds are the 1st or 2nd refundings (including advance refundings) of the bonds described in clause (i) or of original bonds issued before August 7, 1986, by such Authority.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $90,000,000.

"(C) Proceeds of an issue are described in this subparagraph if—

"(i) such issue is issued on behalf of a university established by Charter granted by King George II of England on October 31, 1754, to accomplish a refunding (including an advance refunding) of bonds issued to finance 1 or more projects, and

"(ii) the application or other request for the issuance of the issue to the appropriate State issuer was made by or on behalf of such university before February 26, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $250,000,000.

"(D) Proceeds of an issue are described in this subparagraph if—

"(i) such proceeds are to be used for finance construction of a new student recreation center,

"(ii) a contract for the development phase of the project was signed by the university on May 21, 1986, with a private company for 5 percent of the costs of the project, and

"(iii) a committee of the university board of administrators approved the major program elements for the center on August 11, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $25,000,000.

"(E) Proceeds of an issue are described in this subparagraph if—

"(i) such proceeds are to be used in the construction of new life sciences facilities for a university for medical research and education,

"(ii) the president of the university authorized a faculty/administration planning committee for such facilities on September 17, 1982,

"(iii) the trustees of such university authorized site and architect selection on October 30, 1984, and

"(iv) the university negotiated a $2,600,000 contract with the architect on August 9, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $47,500,000.

"(F) Proceeds of an issue are described in this subparagraph if such proceeds are to be used to renovate undergraduate chemistry and engineering laboratories, and to rehabilitate other basic science facilities, for an institution of higher education in Philadelphia, Pennsylvania, chartered by legislative Acts of the Commonwealth of Pennsylvania, including an Act dated September 30, 1791. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $6,500,000.

"(G) Proceeds of an issue are described in this subparagraph if such proceeds are of bonds which are the first advance refunding of bonds issued during 1985 for the development of a computer network, and construction and renovation or rehabilitation of other facilities, for an institution of higher education described in subparagraph (F). The aggregate face amount of bonds to which this subparagraph applies shall not exceed $80,000,000.

"(H) Proceeds of an issue are described in this subparagraph if—

"(i) the issue is issued on behalf of a university founded in 1789, and

"(ii) the proceeds of the issue are to be used to finance projects (to be determined by such university and the issuer) which are similar to those projects intended to be financed by bonds that were

the subject of a request transmitted to Congress on November 7, 1985[.]

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $200,000,000. Bonds to which this subparagraph applies shall be treated as qualified 501(c)(3) bonds if such bonds would not (if issued on August 15, 1986) be industrial development bonds (as defined in section 103(b)(2) of the 1954 Code), and section 147(f) of the 1986 Code shall not apply to the issue of which such bonds are a part. Bonds issued to finance facilities described in this subparagraph shall be treated as issued to finance such facilities notwithstanding the fact that a period in excess of 1 year has expired since the facilities were placed in service.

"(I) Proceeds of an issue are described in this subparagraph if the issue is issued on behalf of a university established on August 6, 1872, for a project approved by the trustees thereof on November 1, 1985. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $100,000,000.

"(J) Proceeds of an issue are described in this subparagraph if—

"(i) the issue is issued on behalf of a university for which the founding grant was signed on November 11, 1885, and

"(ii) such bond is issued for the purpose of providing a Near West Campus Redevelopment Project and a Student Housing Project.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $105,000,000.

"(J) Proceeds of an issue are described in this subparagraph if—

"(i) they are the proceeds of advance refunding obligations issued on behalf of a university established on April 21, 1831, and

"(ii) the application or other request for the issuance of such obligations was made to the appropriate State issuer before July 12, 1986.

The aggregate face amount of obligations to which this subparagraph applies shall not exceed $175,000,000.

"(K) Proceeds of an issue are described in this subparagraph if—

"(i) the issue or issues are for the purpose of financing or refinancing costs associated with university facilities including at least 900 units of housing for students, faculty, and staff in up to two buildings and an office building containing up to 245,000 square feet of space, and

"(ii) a bond act authorizing the issuance of such bonds for such project was adopted on July 8, 1986, and such act under Federal law was required to be transmitted to Congress.

The aggregate face amount of obligations to which this subparagraph applies shall not exceed $112,000,000.

"(L) Proceeds of an issue are described in this subparagraph if such issue is for Cornell University in an aggregate face amount of not more than $150,000,000.

"(M) Proceeds of an issue are described in this subparagraph if such issue is issued on behalf of the Society of the New York Hospital to finance completion of a project commenced by such hospital in 1981 for construction of a diagnostic and treatment center or to refund bonds issued on behalf of such hospital in connection with the construction of such diagnostic and treatment center or to finance construction and renovation projects associated with an inpatient psychiatric care facility. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $150,000,000.

"(N) Any bond to which section 145(b) of the 1986 Code does not apply by reason of this paragraph (other than subparagraph (A) thereof) shall be taken into account in determining whether such section applies to any later issue.

"(O) In the case of any refunding bond—

"(i) to which any subparagraph of this paragraph applies, and

"(ii) to which the last sentence of section 1313(c)(2) applies,

such bond shall be treated as having such subparagraph apply (and the refunding bond shall be treated for purposes of such section as issued before January 1, 1986, and as not being an advance refunding) unless the issuer elects the opposite result.

"(34) ARBITRAGE REBATE.—Section 148(f) of the 1986 Code shall not apply to any period before October 1, 1990, with respect to any bond the proceeds of which are to be used to provide a high-speed rail system for the State of Ohio. The aggregate face amount of bonds to which this paragraph applies shall not exceed $2,000,000,000.

"(35) EXTENSION OF CARRYFORWARD PERIOD.—

"(A) In the case of a carryforward under section 103(n)(10) of the 1954 Code of $170,000,000 of bond

limit for calendar year 1984 for a project described in subparagraph (B), clause (i) of section 103(n)(10)(C) of the 1954 Code shall be applied by substituting '6 calendar years' for '3 calendar years', and such carryforward may be used by any authority designated by the State in which the facility is located.

"(B) A project is described in this subparagraph if—

"(i) such project is a facility for local furnishing of electricity described in section 645 of the Tax Reform Act of 1984 [Pub. L. 98–369, div. A, title VI, §645, July 18, 1984, 98 Stat. 940], and

"(ii) construction of such facility commenced within the 3-year period following the calendar year in which the carryforward arose.

"(36) POWER PURCHASE BONDS.—A bond issued to finance purchase of power from a power facility at a dam being renovated pursuant to P.L. 98–381 [43 U.S.C. 619 et seq.] shall not be treated as a private activity bond if it would not be such under section 141(b)(1) and (2) of the 1986 Code if 25 percent were substituted for 10 percent and the provisions of section 141(b)(3), (4), and (5) of the 1986 Code did not apply. The aggregate face amount of bonds to which this paragraph applies shall not exceed $400,000,000.

"(37) QUALIFIED MORTGAGE BONDS.—A bond issued as part of either of 2 issues no later than September 8, 1986, shall be treated as a qualified mortgage bond within the meaning of section 141(d)(1)(B) of the 1986 Code if it satisfies the requirements of section 103A of the 1954 Code and if the issues are issued by the two most populous cities in the Tar Heel State. The aggregate face amount of bonds to which this paragraph applies shall not exceed $4,000,000.

"(38) EXEMPT FACILITY BONDS.—A bond shall be treated as an exempt facility bond within the meaning of section 142(a) of the 1986 Code if it is issued to fund residential, office, retail, light industrial, recreational and parking development known as Tobacco Row. Such bond shall be subject to section 146 of the 1986 Code. The aggregate face amount of bonds to which this paragraph applies shall not exceed $100,000,000.

"(39) CERTAIN BONDS TREATED AS QUALIFIED 501(c)(3) BONDS.—A bond issued as part of an issue shall be treated for purposes of part IV of subchapter B of chapter 1 of the 1986 Code as a qualified 501(c)(3) bond if—

"(A) such bond would not (if issued on August 15, 1986) be an industrial development bond (as defined in section 103(b)(2) of the 1954 Code), and

"(B) such issue was approved by city voters on January 19, 1985, for construction or renovation of facilities for the cultural and performing arts.

The aggregate face amount of bonds to which this paragraph applies shall not exceed $5,000,000.

"(40) CERTAIN LIBRARY BONDS.—In the case of a bond issued before January 1, 1986, by the City of Los Angeles Community Redevelopment Agency to provide the library and related structures associated with the City of Los Angeles Central Library Project, the ownership and use of the land and facilities associated with such project by persons which are not governmental units (or payments from such persons) shall not adversely affect the exclusion from gross income under section 103 of the 1954 Code of interest on such bonds.

"(41) CERTAIN REFUNDING OBLIGATIONS FOR CERTAIN POWER FACILITIES.—With respect to 2 net billed nuclear power facilities located in the State of Washington on which construction has been suspended, the requirements of section 147(b) of the 1986 Code shall be treated as satisfied with respect to refunding bonds issued before 1992 if—

"(A) each refunding bond has a maturity date not later than the maturity date of the refunded bond, and

"(B) the facilities have not been placed in service as of the date of issuance of the refunding bond.

The aggregate face amount of bonds to which this paragraph applies shall not exceed $2,000,000,000. Section 146 of the 1986 Code and the last paragraph of this section shall not apply to bonds to which this paragraph applies.

"(42) RESIDENTIAL RENTAL PROPERTY.—A bond issued to finance a residential rental project within the meaning of 103(b)(4) of the 1954 Code shall be treated as an exempt facility bond within the meaning of section 142(a)(7) of the 1986 Code if the county housing finance authority adopted an inducement resolution with respect to the project on May 8, 1985, and the project is located in Polk County, Florida. The aggregate face amount of bonds to which this paragraph applies shall not exceed $4,100,000.

"(43) EXTENSION OF ADVANCE REFUNDING FOR CERTAIN FACILITIES.—Paragraph (4) of section 631(c) of the Tax Reform Act of 1984 [section 631(c)(4) of Pub. L. 98–369, set out as a note under section 103 of this title] is amended—

"(A) by striking out the second sentence thereof,

"(B) by adding at the end thereof the following new sentence: 'In the case of refunding obligations not exceeding $100,000,000 issued by the Alabama State Docks Department, the first sentence of this paragraph shall be applied by substituting "December 31, 1987" for "December 31, 1984".'

"(44) POOL BONDS.—The following amounts of pool bonds are exempt from the arbitrage rebate requirement of section 148(f) of the 1986 Code and the temporary period limitation of section 148(c)(2) of the 1986 Code:

Pool	Maximum Bond Amount
Tennessee Utility Districts Pool	$80,000,000
New Mexico Hospital Equipment Loan Council	$35,000,000
Pennsylvania Local Government Investment Trust Pool	$375,000,000
Indiana Bond Bank Pool	$240,000,000
Hernando County, Florida Bond Pool	$300,000,000
Utah Municipal Finance Cooperative Pool	$262,000,000
North Carolina League of Municipalities Pool	$200,000,000
Kentucky Municipal League Bond Pool	$170,000,000
Kentucky Association of Counties Bond Pool	$200,000,000
Homewood Municipal Bond Pool	$50,000,000
Colorado Association of School Boards Pool	$300,000,000
Tennessee Municipal League Pooled Bonds	$75,000,000
Georgia Municipal Association Pool	$130,000,000

"(45) CERTAIN CARRYFORWARD ELECTIONS.—Notwithstanding any other provision of this title [enacting this section and sections 142 to 150 and 7703 of this title, amending sections 2, 22, 25, 32, 86, 103, 105, 152, 153, 163, 172, 194, 269A, 414, 879, 1016, 1398, 3402, 4701, 4940, 4942, 4988, 6362, 6652, and 7871 of this title, repealing sections 103A, 1391 to 1397, and 6039B of this title, omitting former section 143 of this title, enacting provisions set out as notes under this section and sections 148 and 501 of this title, and amending provisions set out as a note under section 103A of this title]—

"(A) In the case of a metropolitan service district created pursuant to State revised statutes, chapter 268, up to $100,000,000 unused 1985 bond authority may be carried forward to any year until 1989 (regardless of the date on which such carryforward election is made).

"(B) If—

"(i) official action was taken by an industrial development board on September 16, 1985, with respect to the issuance of not more than $98,500,000, of waste water treatment revenue bonds, and

"(ii) an executive order of the governor granted a carryforward of State bond authority for such project on December 30, 1985,

such carryforward election shall be valid for any year through 1988. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $98,500,000.

"(46) TREATMENT OF CERTAIN OBLIGATIONS TO FINANCE HYDROELECTRIC GENERATING FACILITY.—If—

"(A) obligations are issued in an amount not exceeding $5,000,000 to finance the construction of a hydroelectric generating facility located on the North Fork of Cache Creek in Lake County, California, which was the subject of a preliminary resolution of the issuer of the obligations on June 29, 1982, or are issued to refund any of such obligations,

"(B) substantially all of the electrical power generated by such facility is to be sold to a nongovernmental person pursuant to a long-term power sales agreement in accordance with the Public Utility Regulatory Policies Act of 1978 [Pub. L. 95–617, see Short Title note set out under 16 U.S.C. 2601], and

"(C) the initially issued obligations are issued on or before December 31, 1986, and any of such refunding obligations are issued on or before December 31, 1996,

then the person referred to in subparagraph (B) shall not be treated as a principal user of such facilities by reason of such sales for purposes of subparagraphs (D) and (E) of section 103(b)(6) of the 1954 Code.

"(47) TREATMENT OF CERTAIN OBLIGATIONS TO FINANCE STEAM AND ELECTRIC COGENERATION FACILITY.—If—

"(A) obligations are issued on or before December 31, 1986, in an amount not exceeding $4,400,000 to

finance a facility for the generation and transmission of steam and electricity having a maximum electrical capacity of approximately 5.3 megawatts and located within the City of San Jose, California, or are issued to refund any of such obligations,

"(B) substantially all of the electrical power generated by such facility that is not sold to an institution of higher education created by statute of the State of California is to be sold to a nongovernmental person pursuant to a long-term power sales agreement in accordance with the Public Utility Regulatory Policies Act of 1978 [Pub. L. 95–617, see Short Title note set out under 16 U.S.C. 2601], and

"(C) the initially issued obligations are issued on or before December 31, 1986, and any of such refunding obligations are issued on or before December 31, 1996,

then the nongovernmental person referred to in subparagraph (B) shall not be treated as a principal user of such facilities by reason of such sales for purposes of subparagraphs (D) and (E) of section 103(b)(6) of the Internal Revenue Code of 1954.

"(48) TREATMENT OF CERTAIN OBLIGATIONS.—A bond which is not an industrial development bond under section 103(b)(2) of the Internal Revenue Code of 1954 shall not be treated as a private activity bond for purposes of part IV of subchapter B of chapter 1 of the 1986 Code if 95 percent or more of the net proceeds of the issue of which such bond is a part are used to provide facilities described in any of the following subparagraphs:

"(A) A facility is described in this subparagraph if it is a governmentally-owned and operated State fair and exposition center with respect to which—

"(i) the 1985 session of the State legislature authorized revenue bonds to be issued in a maximum amount of $10,000,000, and

"(ii) a market feasibility study dated June 30, 1986, relating to a major capital improvemental program at the facility was prepared for the advisory board of the State fair and exposition center by a certified public accounting firm.

The aggregate face amount of obligations to which this subparagraph applies shall not exceed $10,000,000.

"(B) A facility is described in this subparagraph if it is a convention, trade, or spectator facility which is to be located in the State with respect to which paragraph (6)(U) applies and with respect to which feasibility and preliminary design consultants were hired on May 1, 1985 and October 31, 1985. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $175,000,000.

"(C) A facility which is part of a project described in paragraph (6)(O). The aggregate face amount of bonds to which this subparagraph applies shall not exceed $20,000,000.

"(49) TRANSITION RULE FOR REFUNDING CERTAIN HOUSING BONDS.—Sections 146 and 149(d)(2) of the 1986 Code shall not apply to the refunding of any bond issued under section 11(b) of the United States Housing Act of 1937 [42 U.S.C. 1437i(b)] before December 31, 1983, if—

"(A) the bond has an original term to maturity of at least 40 years,

"(B) the maturity date of the refunding bonds does not exceed the maturity date of the refunded bonds,

"(C) the amount of the refunding bonds does not exceed the outstanding amount of the refunded bonds,

"(D) the interest rate on the refunding bonds is lower than the interest rate of the refunded bonds, and

"(E) the refunded bond is required to be redeemed not later than the earliest date on which such bond could be redeemed at par.

"(50) TRANSITIONED BONDS SUBJECT TO CERTAIN RULES.—In the case of any bond to which any provision of this section applies, except as otherwise expressly provided, sections 103 and 103A of the 1954 Code shall be applied as if the requirements of sections 147(g), 148, and 149(d) of the 1986 Code were included in each such section.

"(51) CERTAIN ADDITIONAL PROJECTS.—Section 141(b) of the 1986 Code shall be applied by substituting '25' for '10' each place it appears and by not applying sections 141(b)(3) and 141(c)(1)(B) to bonds substantially all of the proceeds are used for—

"(A) A project is described in this subparagraph if it consists of a capital improvements program for a metropolitan sewer district, with respect to which a proposition was submitted to voters on August 7, 1984. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $60,000,000.

"(B) Facilities described in this subparagraph if it consists of additions, extensions, and improvements to the wastewater system for Lakeland, Florida. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $20,000,000.

"(C) A project is described in this subparagraph if it is the Central Valley Water Reclamation Project in Utah. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $100,000,000.

"(D) A project is described in this subparagraph if it is a project to construct approximately 26 miles of

toll expressways, with respect to which any appeal to validation was filed July 11, 1986. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $450,000,000.

"(52) TERMINATION.—Except as otherwise provided in this section, this section shall not apply to any bond issued after December 31, 1990.

"SEC. 1318. DEFINITIONS, ETC., RELATING TO EFFECTIVE DATES AND TRANSITIONAL RULES.

"(a) DEFINITIONS.—For purposes of this subtitle—

"(1) 1954 CODE.—The term '1954 Code' means the Internal Revenue Code of 1954 as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986].

"(2) 1986 CODE.—The term '1986 Code' means the Internal Revenue Code of 1986 as amended by this Act [see Tables for classification].

"(3) BOND.—The term 'bond' includes any obligation.

"(4) ADVANCE REFUND.—A bond shall be treated as issued to advance refund another bond if it is issued more than 90 days before the redemption of the refunded bond.

"(5) NET PROCEEDS.—The term 'net proceeds' has the meaning given such term by section 150(a) of the 1986 Code.

"(6) CONTINUED APPLICATION OF THE 1954 CODE.—Nothing in this subtitle shall be construed to exempt any bond from any provision of the 1954 Code by reason of a delay in (or exemption from) the application of any amendment made by subtitle A [sections 1301 to 1303 of Pub. L. 99–514, enacting this section and sections 142 to 150 and 7703 of this title, amending sections 2, 22, 25, 32, 86, 103, 105, 152, 153, 163, 172, 194, 269A, 414, 879, 1016, 1398, 3402, 4701, 4940, 4942, 4988, 6362, 6652, and 7871 of this title, repealing sections 103A, 1391 to 1397, and 6039B of this title, omitting former section 143 of this title, enacting provisions set out as notes under this section and sections 148 and 501 of this title, and amending provisions set out as a note under section 103A of this title].

"(7) TREATMENT AS EXEMPT FACILITY.—Any bond which is treated as an exempt facility bond by section 1316 or 1317 shall not fail to be so treated by reason of subsection (b) of section 142 of the 1986 Code.

"(8) APPLICATION OF FUTURE LEGISLATION TO TRANSITIONED BONDS.—In the case of any bond to which the amendments made by section 1301 [for classification see section 1311(a) of this note] do not apply by reason of a provision of this Act [see Tables for classification], any amendment of the 1986 Code (and any other provision applicable to such Code) included in any law enacted after October 22, 1986, shall be treated as included in section 103 and section 103A (as appropriate) of the 1954 Code with respect to such bond unless—

"(A) such law expressly provides that such amendment (or other provision) shall not apply to such bond, or

"(B) such amendment (or other provision) applies to a provision of the 1986 Code—

"(i) for which there is no corresponding provision in section 103 and section 103A (as appropriate) of the 1954 Code, and

"(ii) which is not otherwise treated as included in such sections 103 and 103A with respect to such bond.

"(b) MINIMUM TAX TREATMENT.—

"(1) IN GENERAL.—Any bond described in paragraph (2) shall not be treated as a private activity bond for purposes of section 57 of the 1986 Code unless such bond would (if issued on August 7, 1986) be—

"(A) an industrial development bond (as defined in section 103(b)(2) of the 1954 Code), or

"(B) a private loan bond (as defined in section 103(o)(2)(A) of the 1954 Code, without regard to any exception from such definition other than section 103(o)(2)(C) of such Code).

"(2) BONDS DESCRIBED.—For purposes of paragraph (1), a bond is described in this paragraph if—

"(A) the amendments made by section 1301 [for classification see section 1311(a) of this note] do not apply to such bond by reason of section 1312 or 1316(g),

"(B) any provision of section 1317 applies to such bond, or

"(C) the proceeds of such bond are used to refund any bond referred to in subparagraph (A) or (B) (or any bond which is part of a series of refundings of such a bond) if the requirements of paragraphs (1), (2), and (3) of subsection (c) are met with respect to the refunding bond.

"(c) CURRENT REFUNDINGS NOT TAKEN INTO ACCOUNT IN APPLYING AGGREGATE LIMIT ON BONDS TO WHICH TRANSITIONAL RULES APPLY.—The limitation on the aggregate face amount of bonds to which any provision of section 1316(g) or 1317 applies shall not be reduced by the face amount of any bond the proceeds of which are to be used exclusively to refund any bond to which such provision applies (or any bond which is part of a series of refundings of such bond) if—

"(1) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue,

"(2) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and

"(3) the net proceeds of the refunding bond are used to redeem the refunded bond not later than 90 days after the date of the issuance of the refunding bond.

For purposes of paragraph (1), average maturity shall be determined in accordance with section 147(b)(2)(A) of the 1986 Code. No limitation in section 1316(g) or 1317 on the period during which bonds may be issued under such section shall apply to any refunding bond which meets the requirements of this subsection.

"(d) SPECIAL RULE PERMITTING CARRYFORWARD OF VOLUME CAP FOR CERTAIN TRANSITIONED PROJECTS.—A bond to which section 1312 or 1317 applies shall be treated as having a carryforward purpose described in section 146(f)(5) of the 1986 Code, and the requirement of section 146(f)(2)(A) of the 1986 Code shall be treated as met if such project is identified with reasonable specificity. The preceding sentence shall not apply so as to permit a carryforward with respect to any qualified small issue bond."

[Pub. L. 100–647, title I, §1013(c)(2)(B), Nov. 10, 1988, 102 Stat. 3545, provided that: "The amendment made by subparagraph (A) [amending section 1313(a)(3)(C) of Pub. L. 99–514, set out above] shall apply to bonds issued after June 30, 1987".]

[Pub. L. 100–647, title I, §1013(c)(11)(E), Nov. 10, 1988, 102 Stat. 3547, provided that: "A refunding bond issued before July 1, 1987, shall be treated as meeting the requirement of subparagraph (A) of section 1313(c)(1) of the Reform Act [Pub. L. 99–514, set out above] if such bond met the requirement of such subparagraph as in effect before the amendments made by this paragraph [amending section 1313(c) of Pub. L. 99–514, set out above]."]

[Pub. L. 100–647, title I, §1013(c)(14)(B), Nov. 10, 1988, 102 Stat. 3547, provided that: "The amendment made by subparagraph (A) [amending section 1313 of Pub. L. 99–514, set out above] shall apply with respect to refunding bonds issued after October 16, 1987."]

[Pub. L. 100–647, title I, §1013(e)(2)(B), Nov. 10, 1988, 102 Stat. 3548, provided that: "The amendment made by subparagraph (A) [amending section 1315(e) of Pub. L. 99–514, set out above] shall apply to bonds issued after June 10, 1987."]

[Pub. L. 100–647, title I, §1013(f)(1)(B), Nov. 10, 1988, 102 Stat. 3549, provided that: "The amendment made by subparagraph (A) [amending section 1316 of Pub. L. 99–514, set out above] shall apply only with respect to carryforwards of volume cap for years after 1986."]

[Pub. L. 100–647, title I, §1013(f)(7)(B), Nov. 10, 1988, 102 Stat. 3549, provided that: "The amendment made by subparagraph (A) [amending section 1316(g)(8) of Pub. L. 99–514, set out above] shall apply only with respect to carryforwards of volume cap for years after 1986."]

REGULATIONS

Pub. L. 99–514, title XIII, §1301(i), Oct. 22, 1986, 100 Stat. 2657, provided that: "The Secretary of the Treasury or his delegate shall amend the provision in the Federal income tax regulations relating to when use pursuant to certain output contracts is considered to satisfy the private business tests of paragraphs (1) and (2) of section 141(b) of the Internal Revenue Code of 1986 to eliminate the requirement of a 3 percent guaranteed minimum payment."

APPLICATION OF SECURITY INTEREST TEST TO BOND FINANCING OF HAZARDOUS WASTE CLEAN-UP ACTIVITIES

Pub. L. 100–647, title VI, §6179, Nov. 10, 1988, 102 Stat. 3727, provided that: "Before January 1, 1989, the Secretary of the Treasury or his delegate shall issue guidance concerning the application of the private security or payment test under section 141(b)(2) of the Internal Revenue Code of 1986 to tax-exempt bond financing by State and local governments of hazardous waste clean-up activities conducted by such governments where some of the activities occur on privately owned land."

STATE AND LOCAL GOVERNMENT SERIES MODIFICATIONS

Pub. L. 99–514, title XIII, §1301(d), Oct. 22, 1986, 100 Stat. 2654, provided that: "Notwithstanding any other provision of law or any regulations promulgated thereunder (including the provisions of 31 CFR part 344) the Secretary of the Treasury shall extend by January 1, 1987, the State and Local Government Series program to provide—

"(1) instruments allowing flexible investment of bond proceeds in a manner eliminating the earning of rebatable arbitrage,

"(2) demand deposits under such program by eliminating advance notice and minimum maturity

requirements related to the purchase of bonds,

"(3) operation of such program at no net cost to the Federal Government, and

"(4) deposits for a stated maturity under reasonable advance notice requirements."

MANAGEMENT CONTRACTS

Pub. L. 99–514, title XIII, §1301(e), Oct. 22, 1986, 100 Stat. 2655, provided that: "The Secretary of the Treasury or his delegate shall modify the Secretary's advance ruling guidelines relating to when use of property pursuant to a management contract is not considered a trade or business use by a private person for purposes of section 141(a) of the Internal Revenue Code of 1986 to provide that use pursuant to a management contract generally shall not be treated as trade or business use as long as—

"(1) the term of such contract (including renewal options) does not exceed 5 years,

"(2) the exempt owner has the option to cancel such contract at the end of any 3-year period,

"(3) the manager under the contract is not compensated (in whole or in part) on the basis of a share of net profits, and

"(4) at least 50 percent of the annual compensation of the manager under such contract is based on a periodic fixed fee."

[1] *So in original. Probably should end with a period after "146".*

§142. Exempt facility bond

(a) General rule

For purposes of this part, the term "exempt facility bond" means any bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide—

(1) airports,

(2) docks and wharves,

(3) mass commuting facilities,

(4) facilities for the furnishing of water,

(5) sewage facilities,

(6) solid waste disposal facilities,

(7) qualified residential rental projects,

(8) facilities for the local furnishing of electric energy or gas,

(9) local district heating or cooling facilities,

(10) qualified hazardous waste facilities,

(11) high-speed intercity rail facilities,

(12) environmental enhancements of hydroelectric generating facilities,

(13) qualified public educational facilities,

(14) qualified green building and sustainable design projects, or

(15) qualified highway or surface freight transfer facilities.

(b) Special exempt facility bond rules

For purposes of subsection (a)—

(1) Certain facilities must be governmentally owned

(A) In general

A facility shall be treated as described in paragraph (1), (2), (3), or (12) of subsection (a) only if all of the property to be financed by the net proceeds of the issue is to be owned by a governmental unit.

(B) Safe harbor for leases and management contracts

For purposes of subparagraph (A), property leased by a governmental unit shall be treated as owned by such governmental unit if—

(i) the lessee makes an irrevocable election (binding on the lessee and all successors in interest under the lease) not to claim depreciation or an investment credit with respect to such

property,

(ii) the lease term (as defined in section 168(i)(3)) is not more than 80 percent of the reasonably expected economic life of the property (as determined under section 147(b)), and

(iii) the lessee has no option to purchase the property other than at fair market value (as of the time such option is exercised).

Rules similar to the rules of the preceding sentence shall apply to management contracts and similar types of operating agreements.

(2) Limitation on office space

An office shall not be treated as described in a paragraph of subsection (a) unless—

(A) the office is located on the premises of a facility described in such a paragraph, and

(B) not more than a de minimis amount of the functions to be performed at such office is not directly related to the day-to-day operations at such facility.

(c) Airports, docks and wharves, mass commuting facilities and high-speed intercity rail facilities

For purposes of subsection (a)—

(1) Storage and training facilities

Storage or training facilities directly related to a facility described in paragraph (1), (2), (3) or (11) of subsection (a) shall be treated as described in the paragraph in which such facility is described.

(2) Exception for certain private facilities

Property shall not be treated as described in paragraph (1), (2), (3) or (11) of subsection (a) if such property is described in any of the following subparagraphs and is to be used for any private business use (as defined in section 141(b)(6)).

(A) Any lodging facility.

(B) Any retail facility (including food and beverage facilities) in excess of a size necessary to serve passengers and employees at the exempt facility.

(C) Any retail facility (other than parking) for passengers or the general public located outside the exempt facility terminal.

(D) Any office building for individuals who are not employees of a governmental unit or of the operating authority for the exempt facility.

(E) Any industrial park or manufacturing facility.

(d) Qualified residential rental project

For purposes of this section—

(1) In general

The term "qualified residential rental project" means any project for residential rental property if, at all times during the qualified project period, such project meets the requirements of subparagraph (A) or (B), whichever is elected by the issuer at the time of the issuance of the issue with respect to such project:

(A) 20–50 test

The project meets the requirements of this subparagraph if 20 percent or more of the residential units in such project are occupied by individuals whose income is 50 percent or less of area median gross income.

(B) 40–60 test

The project meets the requirements of this subparagraph if 40 percent or more of the residential units in such project are occupied by individuals whose income is 60 percent or less of area median gross income.

For purposes of this paragraph, any property shall not be treated as failing to be residential rental property merely because part of the building in which such property is located is used for purposes other than residential rental purposes.

(2) Definitions and special rules

For purposes of this subsection—

(A) Qualified project period

The term "qualified project period" means the period beginning on the 1st day on which 10 percent of the residential units in the project are occupied and ending on the latest of—

(i) the date which is 15 years after the date on which 50 percent of the residential units in the project are occupied,

(ii) the 1st day on which no tax-exempt private activity bond issued with respect to the project is outstanding, or

(iii) the date on which any assistance provided with respect to the project under section 8 of the United States Housing Act of 1937 terminates.

(B) Income of individuals; area median gross income

(i) In general

The income of individuals and area median gross income shall be determined by the Secretary in a manner consistent with determinations of lower income families and area median gross income under section 8 of the United States Housing Act of 1937 (or, if such program is terminated, under such program as in effect immediately before such termination). Determinations under the preceding sentence shall include adjustments for family size. Subsections (g) and (h) of section 7872 shall not apply in determining the income of individuals under this subparagraph.

(ii) Special rule relating to basic housing allowances

For purposes of determining income under this subparagraph, payments under section 403 of title 37, United States Code, as a basic pay allowance for housing shall be disregarded with respect to any qualified building.

(iii) Qualified building

For purposes of clause (ii), the term "qualified building" means any building located—

(I) in any county in which is located a qualified military installation to which the number of members of the Armed Forces of the United States assigned to units based out of such qualified military installation, as of June 1, 2008, has increased by not less than 20 percent, as compared to such number on December 31, 2005, or

(II) in any county adjacent to a county described in subclause (I).

(iv) Qualified military installation

For purposes of clause (iii), the term "qualified military installation" means any military installation or facility the number of members of the Armed Forces of the United States assigned to which, as of June 1, 2008, is not less than 1,000.

(C) Students

Rules similar to the rules of 42(i)(3)(D) [1] shall apply for purposes of this subsection.

(D) Single-room occupancy units

A unit shall not fail to be treated as a residential unit merely because such unit is a single-room occupancy unit (within the meaning of section 42).

(E) Hold harmless for reductions in area median gross income

(i) In general

Any determination of area median gross income under subparagraph (B) with respect to any project for any calendar year after 2008 shall not be less than the area median gross

income determined under such subparagraph with respect to such project for the calendar year preceding the calendar year for which such determination is made.

(ii) Special rule for certain census changes

In the case of a HUD hold harmless impacted project, the area median gross income with respect to such project for any calendar year after 2008 (hereafter in this clause referred to as the current calendar year) shall be the greater of the amount determined without regard to this clause or the sum of—

(I) the area median gross income determined under the HUD hold harmless policy with respect to such project for calendar year 2008, plus

(II) any increase in the area median gross income determined under subparagraph (B) (determined without regard to the HUD hold harmless policy and this subparagraph) with respect to such project for the current calendar year over the area median gross income (as so determined) with respect to such project for calendar year 2008.

(iii) HUD hold harmless policy

The term "HUD hold harmless policy" means the regulations under which a policy similar to the rules of clause (i) applied to prevent a change in the method of determining area median gross income from resulting in a reduction in the area median gross income determined with respect to certain projects in calendar years 2007 and 2008.

(iv) HUD hold harmless impacted project

The term "HUD hold harmless impacted project" means any project with respect to which area median gross income was determined under subparagraph (B) for calendar year 2007 or 2008 if such determination would have been less but for the HUD hold harmless policy.

(3) Current income determinations

For purposes of this subsection—

(A) In general

The determination of whether the income of a resident of a unit in a project exceeds the applicable income limit shall be made at least annually on the basis of the current income of the resident. The preceding sentence shall not apply with respect to any project for any year if during such year no residential unit in the project is occupied by a new resident whose income exceeds the applicable income limit.

(B) Continuing resident's income may increase above the applicable limit

If the income of a resident of a unit in a project did not exceed the applicable income limit upon commencement of such resident's occupancy of such unit (or as of any prior determination under subparagraph (A)), the income of such resident shall be treated as continuing to not exceed the applicable income limit. The preceding sentence shall cease to apply to any resident whose income as of the most recent determination under subparagraph (A) exceeds 140 percent of the applicable income limit if after such determination, but before the next determination, any residential unit of comparable or smaller size in the same project is occupied by a new resident whose income exceeds the applicable income limit.

(C) Exception for projects with respect to which affordable housing credit is allowed

In the case of a project with respect to which credit is allowed under section 42, the second sentence of subparagraph (B) shall be applied by substituting "building (within the meaning of section 42)" for "project".

(4) Special rule in case of deep rent skewing

(A) In general

In the case of any project described in subparagraph (B), the 2d sentence of subparagraph (B) of paragraph (3) shall be applied by substituting—

(i) "170 percent" for "140 percent", and

(ii) "any low-income unit in the same project is occupied by a new resident whose income exceeds 40 percent of area median gross income" for "any residential unit of comparable or smaller size in the same project is occupied by a new resident whose income exceeds the applicable income limit".

(B) Deep rent skewed project

A project is described in this subparagraph if the owner of the project elects to have this paragraph apply and, at all times during the qualified project period, such project meets the requirements of clauses (i), (ii), and (iii):

(i) The project meets the requirements of this clause if 15 percent or more of the low-income units in the project are occupied by individuals whose income is 40 percent or less of area median gross income.

(ii) The project meets the requirements of this clause if the gross rent with respect to each low-income unit in the project does not exceed 30 percent of the applicable income limit which applies to individuals occupying the unit.

(iii) The project meets the requirements of this clause if the gross rent with respect to each low-income unit in the project does not exceed ½ of the average gross rent with respect to units of comparable size which are not occupied by individuals who meet the applicable income limit.

(C) Definitions applicable to subparagraph (B)

For purposes of subparagraph (B)—

(i) Low-income unit

The term "low-income unit" means any unit which is required to be occupied by individuals who meet the applicable income limit.

(ii) Gross rent

The term "gross rent" includes—

(I) any payment under section 8 of the United States Housing Act of 1937, and

(II) any utility allowance determined by the Secretary after taking into account such determinations under such section 8.

(5) Applicable income limit

For purposes of paragraphs (3) and (4), the term "applicable income limit" means—

(A) the limitation under subparagraph (A) or (B) of paragraph (1) which applies to the project, or

(B) in the case of a unit to which paragraph (4)(B)(i) applies, the limitation which applies to such unit.

(6) Special rule for certain high cost housing area

In the case of a project located in a city having 5 boroughs and a population in excess of 5,000,000, subparagraph (B) of paragraph (1) shall be applied by substituting "25 percent" for "40 percent".

(7) Certification to Secretary

The operator of any project with respect to which an election was made under this subsection shall submit to the Secretary (at such time and in such manner as the Secretary shall prescribe) an annual certification as to whether such project continues to meet the requirements of this subsection. Any failure to comply with the provisions of the preceding sentence shall not affect the tax-exempt status of any bond but shall subject the operator to penalty, as provided in section 6652(j).

(e) Facilities for the furnishing of water

For purposes of subsection (a)(4), the term "facilities for the furnishing of water" means any facility for the furnishing of water if—

(1) the water is or will be made available to members of the general public (including electric

utility, industrial, agricultural, or commercial users), and

(2) either the facility is operated by a governmental unit or the rates for the furnishing or sale of the water have been established or approved by a State or political subdivision thereof, by an agency or instrumentality of the United States, or by a public service or public utility commission or other similar body of any State or political subdivision thereof.

(f) Local furnishing of electric energy or gas

For purposes of subsection (a)(8)—

(1) In general

The local furnishing of electric energy or gas from a facility shall only include furnishing solely within the area consisting of—

(A) a city and 1 contiguous county, or

(B) 2 contiguous counties.

(2) Treatment of certain electric energy transmitted outside local area

(A) In general

A facility shall not be treated as failing to meet the local furnishing requirement of subsection (a)(8) by reason of electricity transmitted pursuant to an order of the Federal Energy Regulatory Commission under section 211 or 213 of the Federal Power Act (as in effect on the date of the enactment of this paragraph) if the portion of the cost of the facility financed with tax-exempt bonds is not greater than the portion of the cost of the facility which is allocable to the local furnishing of electric energy (determined without regard to this paragraph).

(B) Special rule for existing facilities

In the case of a facility financed with bonds issued before the date of an order referred to in subparagraph (A) which would (but for this subparagraph) cease to be tax-exempt by reason of subparagraph (A), such bonds shall not cease to be tax-exempt bonds (and section 150(b)(4) shall not apply) if, to the extent necessary to comply with subparagraph (A)—

(i) an escrow to pay principal of, premium (if any), and interest on the bonds is established within a reasonable period after the date such order becomes final, and

(ii) bonds are redeemed not later than the earliest date on which such bonds may be redeemed.

(3) Termination of future financing

For purposes of this section, no bond may be issued as part of an issue described in subsection (a)(8) with respect to a facility for the local furnishing of electric energy or gas on or after the date of the enactment of this paragraph unless—

(A) the facility will—

(i) be used by a person who is engaged in the local furnishing of that energy source on January 1, 1997, and

(ii) be used to provide service within the area served by such person on January 1, 1997 (or within a county or city any portion of which is within such area), or

(B) the facility will be used by a successor in interest to such person for the same use and within the same service area as described in subparagraph (A).

(4) Election to terminate tax-exempt bond financing by certain furnishers

(A) In general

In the case of a facility financed with bonds issued before the date of the enactment of this paragraph which would cease to be tax-exempt by reason of the failure to meet the local furnishing requirement of subsection (a)(8) as a result of a service area expansion, such bonds shall not cease to be tax-exempt bonds (and section 150(b)(4) shall not apply) if the person engaged in such local furnishing by such facility makes an election described in subparagraph (B).

(B) Election

An election is described in this subparagraph if it is an election made in such manner as the Secretary prescribes, and such person (or its predecessor in interest) agrees that—

(i) such election is made with respect to all facilities for the local furnishing of electric energy or gas, or both, by such person,

(ii) no bond exempt from tax under section 103 and described in subsection (a)(8) may be issued on or after the date of the enactment of this paragraph with respect to all such facilities of such person,

(iii) any expansion of the service area—

(I) is not financed with the proceeds of any exempt facility bond described in subsection (a)(8), and

(II) is not treated as a nonqualifying use under the rules of paragraph (2), and

(iv) all outstanding bonds used to finance the facilities for such person are redeemed not later than 6 months after the later of—

(I) the earliest date on which such bonds may be redeemed, or

(II) the date of the election.

(C) Related persons

For purposes of this paragraph, the term "person" includes a group of related persons (within the meaning of section 144(a)(3)) which includes such person.

(g) Local district heating or cooling facility

(1) In general

For purposes of subsection (a)(9), the term "local district heating or cooling facility" means property used as an integral part of a local district heating or cooling system.

(2) Local district heating or cooling system

(A) In general

For purposes of paragraph (1), the term "local district heating or cooling system" means any local system consisting of a pipeline or network (which may be connected to a heating or cooling source) providing hot water, chilled water, or steam to 2 or more users for—

(i) residential, commercial, or industrial heating or cooling, or

(ii) process steam.

(B) Local system

For purposes of this paragraph, a local system includes facilities furnishing heating and cooling to an area consisting of a city and 1 contiguous county.

(h) Qualified hazardous waste facilities

For purposes of subsection (a)(10), the term "qualified hazardous waste facility" means any facility for the disposal of hazardous waste by incineration or entombment but only if—

(1) the facility is subject to final permit requirements under subtitle C of title II of the Solid Waste Disposal Act (as in effect on the date of the enactment of the Tax Reform Act of 1986), and

(2) the portion of such facility which is to be provided by the issue does not exceed the portion of the facility which is to be used by persons other than—

(A) the owner or operator of such facility, and

(B) any related person (within the meaning of section 144(a)(3)) to such owner or operator.

(i) High-speed intercity rail facilities

(1) In general

For purposes of subsection (a)(11), the term "high-speed intercity rail facilities" means any facility (not including rolling stock) for the fixed guideway rail transportation of passengers and their baggage between metropolitan statistical areas (within the meaning of section 143(k)(2)(B))

using vehicles that are reasonably expected to be capable of attaining a maximum speed in excess of 150 miles per hour between scheduled stops, but only if such facility will be made available to members of the general public as passengers.

(2) Election by nongovernmental owners

A facility shall be treated as described in subsection (a)(11) only if any owner of such facility which is not a governmental unit irrevocably elects not to claim—

(A) any deduction under section 167 or 168, and

(B) any credit under this subtitle,

with respect to the property to be financed by the net proceeds of the issue.

(3) Use of proceeds

A bond issued as part of an issue described in subsection (a)(11) shall not be considered an exempt facility bond unless any proceeds not used within a 3-year period of the date of the issuance of such bond are used (not later than 6 months after the close of such period) to redeem bonds which are part of such issue.

(j) Environmental enhancements of hydroelectric generating facilities

(1) In general

For purposes of subsection (a)(12), the term "environmental enhancements of hydroelectric generating facilities" means property—

(A) the use of which is related to a federally licensed hydroelectric generating facility owned and operated by a governmental unit, and

(B) which—

(i) protects or promotes fisheries or other wildlife resources, including any fish by-pass facility, fish hatchery, or fisheries enhancement facility, or

(ii) is a recreational facility or other improvement required by the terms and conditions of any Federal licensing permit for the operation of such generating facility.

(2) Use of proceeds

A bond issued as part of an issue described in subsection (a)(12) shall not be considered an exempt facility bond unless at least 80 percent of the net proceeds of the issue of which it is a part are used to finance property described in paragraph (1)(B)(i).

(k) Qualified public educational facilities

(1) In general

For purposes of subsection (a)(13), the term "qualified public educational facility" means any school facility which is—

(A) part of a public elementary school or a public secondary school, and

(B) owned by a private, for-profit corporation pursuant to a public-private partnership agreement with a State or local educational agency described in paragraph (2).

(2) Public-private partnership agreement described

A public-private partnership agreement is described in this paragraph if it is an agreement—

(A) under which the corporation agrees—

(i) to do 1 or more of the following: construct, rehabilitate, refurbish, or equip a school facility, and

(ii) at the end of the term of the agreement, to transfer the school facility to such agency for no additional consideration, and

(B) the term of which does not exceed the term of the issue to be used to provide the school facility.

(3) School facility

For purposes of this subsection, the term "school facility" means—

(A) any school building,

(B) any functionally related and subordinate facility and land with respect to such building, including any stadium or other facility primarily used for school events, and

(C) any property, to which section 168 applies (or would apply but for section 179), for use in a facility described in subparagraph (A) or (B).

(4) Public schools

For purposes of this subsection, the terms "elementary school" and "secondary school" have the meanings given such terms by section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801), as in effect on the date of the enactment of this subsection.

(5) Annual aggregate face amount of tax-exempt financing

(A) In general

An issue shall not be treated as an issue described in subsection (a)(13) if the aggregate face amount of bonds issued by the State pursuant thereto (when added to the aggregate face amount of bonds previously so issued during the calendar year) exceeds an amount equal to the greater of—

(i) $10 multiplied by the State population, or

(ii) $5,000,000.

(B) Allocation rules

(i) In general

Except as otherwise provided in this subparagraph, the State may allocate the amount described in subparagraph (A) for any calendar year in such manner as the State determines appropriate.

(ii) Rules for carryforward of unused limitation

A State may elect to carry forward an unused limitation for any calendar year for 3 calendar years following the calendar year in which the unused limitation arose under rules similar to the rules of section 146(f), except that the only purpose for which the carryforward may be elected is the issuance of exempt facility bonds described in subsection (a)(13).

(l) Qualified green building and sustainable design projects

(1) In general

For purposes of subsection (a)(14), the term "qualified green building and sustainable design project" means any project which is designated by the Secretary, after consultation with the Administrator of the Environmental Protection Agency, as a qualified green building and sustainable design project and which meets the requirements of clauses (i), (ii), (iii), and (iv) of paragraph (4)(A).

(2) Designations

(A) In general

Within 60 days after the end of the application period described in paragraph (3)(A), the Secretary, after consultation with the Administrator of the Environmental Protection Agency, shall designate qualified green building and sustainable design projects. At least one of the projects designated shall be located in, or within a 10-mile radius of, an empowerment zone as designated pursuant to section 1391, and at least one of the projects designated shall be located in a rural State. No more than one project shall be designated in a State. A project shall not be designated if such project includes a stadium or arena for professional sports exhibitions or games.

(B) Minimum conservation and technology innovation objectives

The Secretary, after consultation with the Administrator of the Environmental Protection

Agency, shall ensure that, in the aggregate, the projects designated shall—

(i) reduce electric consumption by more than 150 megawatts annually as compared to conventional generation,

(ii) reduce daily sulfur dioxide emissions by at least 10 tons compared to coal generation power,

(iii) expand by 75 percent the domestic solar photovoltaic market in the United States (measured in megawatts) as compared to the expansion of that market from 2001 to 2002, and

(iv) use at least 25 megawatts of fuel cell energy generation.

(3) Limited designations

A project may not be designated under this subsection unless—

(A) the project is nominated by a State or local government within 180 days of the enactment of this subsection, and

(B) such State or local government provides written assurances that the project will satisfy the eligibility criteria described in paragraph (4).

(4) Application

(A) In general

A project may not be designated under this subsection unless the application for such designation includes a project proposal which describes the energy efficiency, renewable energy, and sustainable design features of the project and demonstrates that the project satisfies the following eligibility criteria:

(i) Green building and sustainable design

At least 75 percent of the square footage of commercial buildings which are part of the project is registered for United States Green Building Council's LEED certification and is reasonably expected (at the time of the designation) to receive such certification. For purposes of determining LEED certification as required under this clause, points shall be credited by using the following:

(I) For wood products, certification under the Sustainable Forestry Initiative Program and the American Tree Farm System.

(II) For renewable wood products, as credited for recycled content otherwise provided under LEED certification.

(III) For composite wood products, certification under standards established by the American National Standards Institute, or such other voluntary standards as published in the Federal Register by the Administrator of the Environmental Protection Agency.

(ii) Brownfield redevelopment

The project includes a brownfield site as defined by section 101(39) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601), including a site described in subparagraph (D)(ii)(II)(aa) thereof.

(iii) State and local support

The project receives specific State or local government resources which will support the project in an amount equal to at least $5,000,000. For purposes of the preceding sentence, the term "resources" includes tax abatement benefits and contributions in kind.

(iv) Size

The project includes at least one of the following:

(I) At least 1,000,000 square feet of building.

(II) At least 20 acres.

(v) Use of tax benefit

The project proposal includes a description of the net benefit of the tax-exempt financing provided under this subsection which will be allocated for financing of one or more of the

following:

(I) The purchase, construction, integration, or other use of energy efficiency, renewable energy, and sustainable design features of the project.

(II) Compliance with certification standards cited under clause (i).

(III) The purchase, remediation, and foundation construction and preparation of the brownfields site.

(vi) Prohibited facilities

An issue shall not be treated as an issue described in subsection (a)(14) if any proceeds of such issue are used to provide any facility the principal business of which is the sale of food or alcoholic beverages for consumption on the premises.

(vii) Employment

The project is projected to provide permanent employment of at least 1,500 full time equivalents (150 full time equivalents in rural States) when completed and construction employment of at least 1,000 full time equivalents (100 full time equivalents in rural States).

The application shall include an independent analysis which describes the project's economic impact, including the amount of projected employment.

(B) Project description

Each application described in subparagraph (A) shall contain for each project a description of—

(i) the amount of electric consumption reduced as compared to conventional construction,

(ii) the amount of sulfur dioxide daily emissions reduced compared to coal generation,

(iii) the amount of the gross installed capacity of the project's solar photovoltaic capacity measured in megawatts, and

(iv) the amount, in megawatts, of the project's fuel cell energy generation.

(5) Certification of use of tax benefit

No later than 30 days after the completion of the project, each project must certify to the Secretary that the net benefit of the tax-exempt financing was used for the purposes described in paragraph (4).

(6) Definitions

For purposes of this subsection—

(A) Rural State

The term "rural State" means any State which has—

(i) a population of less than 4,500,000 according to the 2000 census,

(ii) a population density of less than 150 people per square mile according to the 2000 census, and

(iii) increased in population by less than half the rate of the national increase between the 1990 and 2000 censuses.

(B) Local government

The term "local government" has the meaning given such term by section 1393(a)(5).

(C) Net benefit of tax-exempt financing

The term "net benefit of tax-exempt financing" means the present value of the interest savings (determined by a calculation established by the Secretary) which result from the tax-exempt status of the bonds.

(7) Aggregate face amount of tax-exempt financing

(A) In general

An issue shall not be treated as an issue described in subsection (a)(14) if the aggregate face amount of bonds issued by the State or local government pursuant thereto for a project (when

added to the aggregate face amount of bonds previously so issued for such project) exceeds an amount designated by the Secretary as part of the designation.

(B) Limitation on amount of bonds

The Secretary may not allocate authority to issue qualified green building and sustainable design project bonds in an aggregate face amount exceeding $2,000,000,000.

(8) Termination

Subsection (a)(14) shall not apply with respect to any bond issued after September 30, 2012.

(9) Treatment of current refunding bonds

Paragraphs (7)(B) and (8) shall not apply to any bond (or series of bonds) issued to refund a bond issued under subsection (a)(14) before October 1, 2012, if—

(A) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue,

(B) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and

(C) the net proceeds of the refunding bond are used to redeem the refunded bond not later than 90 days after the date of the issuance of the refunding bond.

For purposes of subparagraph (A), average maturity shall be determined in accordance with section 147(b)(2)(A).

(m) Qualified highway or surface freight transfer facilities

(1) In general

For purposes of subsection (a)(15), the term "qualified highway or surface freight transfer facilities" means—

(A) any surface transportation project which receives Federal assistance under title 23, United States Code (as in effect on the date of the enactment of this subsection),

(B) any project for an international bridge or tunnel for which an international entity authorized under Federal or State law is responsible and which receives Federal assistance under title 23, United States Code (as so in effect), or

(C) any facility for the transfer of freight from truck to rail or rail to truck (including any temporary storage facilities directly related to such transfers) which receives Federal assistance under either title 23 or title 49, United States Code (as so in effect).

(2) National limitation on amount of tax-exempt financing for facilities

(A) National limitation

The aggregate amount allocated by the Secretary of Transportation under subparagraph (C) shall not exceed $15,000,000,000.

(B) Enforcement of national limitation

An issue shall not be treated as an issue described in subsection (a)(15) if the aggregate face amount of bonds issued pursuant to such issue for any qualified highway or surface freight transfer facility (when added to the aggregate face amount of bonds previously so issued for such facility) exceeds the amount allocated to such facility under subparagraph (C).

(C) Allocation by Secretary of Transportation

The Secretary of Transportation shall allocate the amount described in subparagraph (A) among qualified highway or surface freight transfer facilities in such manner as the Secretary determines appropriate.

(3) Expenditure of proceeds

An issue shall not be treated as an issue described in subsection (a)(15) unless at least 95 percent of the net proceeds of the issue is expended for qualified highway or surface freight transfer facilities within the 5-year period beginning on the date of issuance. If at least 95 percent

of such net proceeds is not expended within such 5-year period, an issue shall be treated as continuing to meet the requirements of this paragraph if the issuer uses all unspent proceeds of the issue to redeem bonds of the issue within 90 days after the end of such 5-year period. The Secretary, at the request of the issuer, may extend such 5-year period if the issuer establishes that any failure to meet such period is due to circumstances beyond the control of the issuer.

(4) Exception for current refunding bonds

Paragraph (2) shall not apply to any bond (or series of bonds) issued to refund a bond issued under subsection (a)(15) if—

(A) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue,

(B) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and

(C) the refunded bond is redeemed not later than 90 days after the date of the issuance of the refunding bond.

For purposes of subparagraph (A), average maturity shall be determined in accordance with section 147(b)(2)(A).

(Added Pub. L. 99–514, title XIII, §1301(b), Oct. 22, 1986, 100 Stat. 2606; amended Pub. L. 100–647, title I, §1013(a)(1), (39), title VI, §6180(a)–(b)(2), Nov. 10, 1988, 102 Stat. 3537, 3544, 3727, 3728; Pub. L. 101–239, title VII, §§7108(e)(3), (n)(1), 7816(s)(1), Dec. 19, 1989, 103 Stat. 2313, 2318, 2423; Pub. L. 102–486, title XIX, §§1919(a), 1921(a), (b)(1), (2), Oct. 24, 1992, 106 Stat. 3025, 3027, 3028; Pub. L. 104–188, title I, §§1608(a), 1704(j)(7), Aug. 20, 1996, 110 Stat. 1840, 1882; Pub. L. 105–206, title VI, §6023(5), July 22, 1998, 112 Stat. 825; Pub. L. 107–16, title IV, §422(a), (b), June 7, 2001, 115 Stat. 65; Pub. L. 108–357, title VII, §701(a), (b), Oct. 22, 2004, 118 Stat. 1536; Pub. L. 109–59, title XI, §11143(a), (b), Aug. 10, 2005, 119 Stat. 1963; Pub. L. 109–222, title II, §209(b)(2), May 17, 2006, 120 Stat. 352; Pub. L. 110–289, div. C, title I, §§3005(a), 3008(a)–(c), 3009(a), 3010(a), July 30, 2008, 122 Stat. 2885–2888; Pub. L. 110–343, div. B, title III, §307(a), (b), Oct. 3, 2008, 122 Stat. 3849; Pub. L. 111–5, div. B, title I, §1504(a), Feb. 17, 2009, 123 Stat. 355.)

REFERENCES IN TEXT

Section 8 of the United States Housing Act of 1937, referred to in subsec. (d)(2)(A)(iii), (B)(i), (4)(C)(ii), is classified to section 1437f of Title 42, The Public Health and Welfare.

Sections 211 and 213 of the Federal Power Act, referred to in subsec. (f)(2)(A), are classified to sections 824j and 824l, respectively, of Title 16, Conservation.

The date of the enactment of this paragraph, referred to in subsec. (f)(2)(A), is the date of enactment of Pub. L. 102–486, which was approved Oct. 24, 1992.

The date of the enactment of this paragraph, referred to in subsec. (f)(3), (4)(A), (B)(ii), is the date of enactment of Pub. L. 104–188, which was approved Aug. 20, 1996.

The Solid Waste Disposal Act, referred to in subsec. (h)(1), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2795. Subtitle C of the Solid Waste Disposal Act is classified generally to subchapter III (§6921 et seq.) of chapter 82 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of Title 42 and Tables.

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (h)(1), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

Section 14101 of the Elementary and Secondary Education Act of 1965, referred to in subsec. (k)(4), is section 14101 of Pub. L. 89–10, which was classified to section 8801 of Title 20, Education, prior to repeal by Pub. L. 107–110, title X, §1011(5)(C), Jan. 8, 2002, 115 Stat. 1986.

The date of the enactment of this subsection, referred to in subsec. (k)(4), means the date of enactment of Pub. L. 107–16, which was approved June 7, 2001.

The enactment of this subsection, referred to in subsec. (l)(3)(A), probably means the date of enactment of Pub. L. 108–357, which was approved Oct. 22, 2004.

The date of the enactment of this subsection, referred to in subsec. (m)(1)(A), is the date of enactment of Pub. L. 109–59, which was approved Aug. 10, 2005.

PRIOR PROVISIONS

A prior section 142, act Aug. 16, 1954, ch. 736, 68A Stat. 40, enumerated individuals not eligible for standard deduction, prior to repeal by Pub. L. 95–30, title I, §101(d)(1), May 23, 1977, 91 Stat. 133, applicable to taxable years beginning after Dec. 31, 1976.

AMENDMENTS

2009—Subsec. (i)(1). Pub. L. 111–5 substituted "be capable of attaining a maximum speed in excess of" for "operate at speeds in excess of".

2008—Subsec. (d)(2)(B). Pub. L. 110–289, §3005(a), designated existing provisions as cl. (i), inserted heading, and added cls. (ii) to (iv).

Subsec. (d)(2)(C). Pub. L. 110–289, §3008(b), added subpar. (C).

Subsec. (d)(2)(D). Pub. L. 110–289, §3008(c), added subpar. (D).

Subsec. (d)(2)(E). Pub. L. 110–289, §3009(a), added subpar. (E).

Subsec. (d)(3)(A). Pub. L. 110–289, §3010(a), inserted at end "The preceding sentence shall not apply with respect to any project for any year if during such year no residential unit in the project is occupied by a new resident whose income exceeds the applicable income limit."

Subsec. (d)(3)(C). Pub. L. 110–289, §3008(a), added subpar. (C).

Subsec. (l)(8). Pub. L. 110–343, §307(a), substituted "September 30, 2012" for "September 30, 2009".

Subsec. (l)(9). Pub. L. 110–343, §307(b), substituted "October 1, 2012" for "October 1, 2009".

2006—Subsec. (d)(2)(B). Pub. L. 109–222 substituted "Subsections (g) and (h) of section 7872" for "Section 7872(g)".

2005—Subsec. (a)(15). Pub. L. 109–59, §11143(a), added par. (15).

Subsec. (m). Pub. L. 109–59, §11143(b), added subsec. (m).

2004—Subsec. (a)(14). Pub. L. 108–357, §701(a), added par. (14).

Subsec. (l). Pub. L. 108–357, §701(b), added subsec. (l).

2001—Subsec. (a)(13). Pub. L. 107–16, §422(a), added par. (13).

Subsec. (k). Pub. L. 107–16, §422(b), added subsec. (k).

1998—Subsec. (f)(3)(A)(ii). Pub. L. 105–206 struck out comma after "1997".

1996—Subsec. (b)(1)(A). Pub. L. 104–188, §1704(j)(7), provided that section 1921(b)(2) of Pub. L. 102–486 shall be applied as if a comma appeared after "(2)" in the material proposed to be stricken. See 1992 Amendment note below.

Subsec. (f)(3), (4). Pub. L. 104–188, §1608(a), added pars. (3) and (4).

1992—Subsec. (a)(12). Pub. L. 102–486, §1921(a), added par. (12).

Subsec. (b)(1)(A). Pub. L. 102–486, §1921(b)(2), which directed the substitution of "(2), (3), or (12)" for "(2) or (3)", was executed by making the substitution for "(2), or (3)". See 1996 Amendment note above.

Subsec. (f). Pub. L. 102–486, §1919(a), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: "For purposes of subsection (a)(8), the local furnishing of electric energy or gas from a facility shall only include furnishing solely within the area consisting of—

"(1) a city and 1 contiguous county, or

"(2) 2 contiguous counties."

Subsec. (j). Pub. L. 102–486, §1921(b)(1), added subsec. (j).

1989—Subsec. (d)(2)(B). Pub. L. 101–239, §7108(e)(3), inserted at end "Section 7872(g) shall not apply in determining the income of individuals under this subparagraph."

Subsec. (d)(4)(B)(iii). Pub. L. 101–239, §7108(n)(1), substituted "exceed ½" for "exceed 1/3".

Subsec. (i)(1). Pub. L. 101–239, §7816(s)(1), inserted heading "In general".

1988—Subsec. (a)(11). Pub. L. 100–647, §6180(a), added par. (11).

Subsec. (b)(1)(B)(ii). Pub. L. 100–647, §1013(a)(39), inserted "section" before "168(i)(3)".

Subsec. (c). Pub. L. 100–647, §6180(b)(2), substituted "mass commuting facilities and high-speed intercity rail facilities" for "and mass commuting facilities" in heading and substituted "paragraph (1), (2), (3) or (11) of subsection (a)" for "paragraph (1), (2), or (3) of subsection (a)" in par. (1) and in introductory text of par. (2).

Subsec. (d)(4)(B)(iii). Pub. L. 100–647, §1013(a)(1), substituted "average gross rent" for "average rent".

Subsec. (i). Pub. L. 100–647, §6180(b)(1), added subsec. (i).

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, §1504(b), Feb. 17, 2009, 123 Stat. 355, provided that: "The amendment made by this section [amending this section] shall apply to obligations issued after the date of the enactment of this Act [Feb. 17, 2009]."

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–289, div. C, title I, §3005(b), July 30, 2008, 122 Stat. 2885, as amended by Pub. L. 112–240, title III, §303(a), Jan. 2, 2013, 126 Stat. 2329, provided that: "The amendments made by this section [amending this section] shall apply to—

"(1) determinations made after the date of the enactment of this Act [July 30, 2008] and before January 1, 2014, in the case of any qualified building (as defined in section 142(d)(2)(B)(iii) of the Internal Revenue Code of 1986)—

"(A) with respect to which housing credit dollar amounts have been allocated on or before the date of the enactment of this Act [July 30, 2008], or

"(B) with respect to buildings placed in service before such date of enactment, to the extent paragraph (1) of section 42(h) of such Code does not apply to such building by reason of paragraph (4) thereof, but only with respect to bonds issued before such date of enactment, and

"(2) determinations made after the date of enactment of this Act [July 30, 2008], in the case of qualified buildings (as so defined)—

"(A) with respect to which housing credit dollar amounts are allocated after the date of the enactment of this Act [July 30, 2008] and before January 1, 2014, or

"(B) with respect to which buildings placed in service after the date of enactment of this Act [July 30, 2008] and before January 1, 2014, to the extent paragraph (1) of section 42(h) of such Code does not apply to such building by reason of paragraph (4) thereof, but only with respect to bonds issued after such date of enactment and before January 1, 2014."

[Pub. L. 112–240, title III, §303(b), Jan. 2, 2013, 126 Stat. 2329, provided that: "The amendment made by this section [amending section 3005(b) of Pub. L. 110–289, set out above] shall take effect as if included in the enactment of section 3005 of the Housing Assistance Tax Act of 2008 [div. C of Pub. L. 110–289]."]

Pub. L. 110–289, div. C, title I, §3008(d), July 30, 2008, 122 Stat. 2887, provided that: "The amendments made by this section [amending this section] shall apply to determinations of the status of qualified residential rental projects for periods beginning after the date of the enactment of this Act [July 30, 2008], with respect to bonds issued before, on, or after such date."

Pub. L. 110–289, div. C, title I, §3009(b), July 30, 2008, 122 Stat. 2888, provided that: "The amendment made by this section [amending this section] shall apply to determinations of area median gross income for calendar years after 2008."

Pub. L. 110–289, div. C, title I, §3010(b), July 30, 2008, 122 Stat. 2888, provided that: "The amendment made by this section [amending this section] shall apply to years ending after the date of the enactment of this Act [July 30, 2008]."

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–222, title II, §209(c), May 17, 2006, 120 Stat. 352, provided that: "The amendment made by this section [amending this section and section 7872 of this title] shall apply to calendar years beginning after December 31, 2005, with respect to loans made before, on, or after such date."

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–59, title XI, §11143(d), Aug. 10, 2005, 119 Stat. 1965, provided that: "The amendments made by this section [amending this section and section 146 of this title] apply to bonds issued after the date of the enactment of this Act [Aug. 10, 2005]."

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VII, §701(e), Oct. 22, 2004, 118 Stat. 1540, provided that: "The amendments made by this section [amending this section and section 146 of this title] shall apply to bonds issued after December 31, 2004."

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–16, title IV, §422(f), June 7, 2001, 115 Stat. 66, provided that: "The amendments made by this section [amending this section and sections 146 and 147 of this title] shall apply to bonds issued after December 31, 2001."

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–486, title XIX, §1919(b), Oct. 24, 1992, 106 Stat. 3026, provided that: "The amendment made by subsection (a) [amending this section] shall apply to obligations issued before, on, or after the date of the enactment of this Act [Oct. 24, 1992]."

Pub. L. 102–486, title XIX, §1921(c), Oct. 24, 1992, 106 Stat. 3028, provided that: "The amendments made

by this section [amending this section and section 146 of this title] shall apply to bonds issued after the date of the enactment of this Act [Oct. 24, 1992]."

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7108(e)(3), (n)(1) of Pub. L. 101–239 applicable, except as otherwise provided, to determinations under section 42 of this title with respect to housing credit dollar amounts allocated from State housing credit ceilings for calendar years after 1989, see section 7108(r) of Pub. L. 101–239, set out as a note under section 42 of this title.

Amendment by section 7816(s) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1013(a)(1), (39) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title VI, §6180(c), Nov. 10, 1988, 102 Stat. 3728, provided that: "The amendments made by this section [amending sections 142, 146, and 147 of this title] shall apply to bonds issued after the date of enactment of this Act [Nov. 10, 1988]."

ACCOUNTABILITY

Pub. L. 108–357, title VII, §701(d), Oct. 22, 2004, 118 Stat. 1539, as amended by Pub. L. 110–343, div. B, title III, §307(c), Oct. 3, 2008, 122 Stat. 3849, provided that: "Each issuer shall maintain, on behalf of each project, an interest bearing reserve account equal to 1 percent of the net proceeds of any bond issued under this section for such project. Not later than 5 years after the date of issuance of the last issue with respect to such project, the Secretary of the Treasury, after consultation with the Administrator of the Environmental Protection Agency, shall determine whether the project financed with such bonds has substantially complied with the terms and conditions described in section 142(l)(4) of the Internal Revenue Code of 1986 (as added by this section). If the Secretary, after such consultation, certifies that the project has substantially complied with such terms and conditions and meets the commitments set forth in the application for such project described in section 142(l)(4) of such Code, amounts in the reserve account, including all interest, shall be released to the project. If the Secretary determines that the project has not substantially complied with such terms and conditions, amounts in the reserve account, including all interest, shall be paid to the United States Treasury."

NO INFERENCE WITH RESPECT TO OUTSTANDING BONDS FROM USE OF TERM "PERSON"

Pub. L. 104–188, title I, §1608(b), Aug. 20, 1996, 110 Stat. 1841, provided that: "The use of the term 'person' in section 142(f)(3) of the Internal Revenue Code of 1986, as added by subsection (a), shall not be construed to affect the tax-exempt status of interest on any bonds issued before the date of the enactment of this Act [Aug. 20, 1996]."

TAX-EXEMPT BONDS FOR SALE OF ALASKA POWER ADMINISTRATION FACILITY

Pub. L. 104–188, title I, §1804, Aug. 20, 1996, 110 Stat. 1893, provided that: "Sections 142(f)(3) (as added by section 1608) and 147(d) of the Internal Revenue Code of 1986 shall not apply in determining whether any private activity bond issued after the date of the enactment of this Act [Aug. 20, 1996] and used to finance the acquisition of the Snettisham hydroelectric project from the Alaska Power Administration is a qualified bond for purposes of such Code."

[1] So in original. Probably should be "section 42(i)(3)(D)".

§143. Mortgage revenue bonds: qualified mortgage bond and qualified veterans' mortgage bond

(a) Qualified mortgage bond

(1) Qualified mortgage bond defined

For purposes of this title, the term "qualified mortgage bond" means a bond which is issued as part of a qualified mortgage issue.

(2) Qualified mortgage issue defined

(A) Definition

For purposes of this title, the term "qualified mortgage issue" means an issue by a State or political subdivision thereof of 1 or more bonds, but only if—

(i) all proceeds of such issue (exclusive of issuance costs and a reasonably required reserve) are to be used to finance owner-occupied residences,

(ii) such issue meets the requirements of subsections (c), (d), (e), (f), (g), (h), (i), and (m)(7),

(iii) such issue does not meet the private business tests of paragraphs (1) and (2) of section 141(b), and

(iv) except as provided in subparagraph (D)(ii), repayments of principal on financing provided by the issue are used not later than the close of the 1st semiannual period beginning after the date the prepayment (or complete repayment) is received to redeem bonds which are part of such issue.

Clause (iv) shall not apply to amounts received within 10 years after the date of issuance of the issue (or, in the case of refunding bond, the date of issuance of the original bond).

(B) Good faith effort to comply with mortgage eligibility requirements

An issue which fails to meet 1 or more of the requirements of subsections (c), (d), (e), (f), and (i) shall be treated as meeting such requirements if—

(i) the issuer in good faith attempted to meet all such requirements before the mortgages were executed,

(ii) 95 percent or more of the proceeds devoted to owner-financing was devoted to residences with respect to which (at the time the mortgages were executed) all such requirements were met, and

(iii) any failure to meet the requirements of such subsections is corrected within a reasonable period after such failure is first discovered.

(C) Good faith effort to comply with other requirements

An issue which fails to meet 1 or more of the requirements of subsections (g), (h), and (m)(7) shall be treated as meeting such requirements if—

(i) the issuer in good faith attempted to meet all such requirements, and

(ii) any failure to meet such requirements is due to inadvertent error after taking reasonable steps to comply with such requirements.

(D) Proceeds must be used within 42 months of date of issuance

(i) In general

Except as otherwise provided in this subparagraph, an issue shall not meet the requirement of subparagraph (A)(i) unless—

(I) all proceeds of the issue required to be used to finance owner-occupied residences are so used within the 42-month period beginning on the date of issuance of the issue (or, in the case of a refunding bond, within the 42-month period beginning on the date of issuance of the original bond) or, to the extent not so used within such period, are used within such period to redeem bonds which are part of such issue, and

(II) no portion of the proceeds of the issue are used to make or finance any loan (other than a loan which is a nonpurpose investment within the meaning of section 148(f)(6)(A)) after the close of such period.

(ii) Exception

Clause (i) (and clause (iv) of subparagraph (A)) shall not be construed to require amounts

of less than $250,000 to be used to redeem bonds. The Secretary may by regulation treat related issues as 1 issue for purposes of the preceding sentence.

(b) Qualified veterans' mortgage bond defined

For purposes of this part, the term "qualified veterans' mortgage bond" means any bond—

(1) which is issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide residences for veterans,

(2) the payment of the principal and interest on which is secured by the general obligation of a State,

(3) which is part of an issue which meets the requirements of subsections (c), (g), (i)(1), and (l), and

(4) which is part of an issue which does not meet the private business tests of paragraphs (1) and (2) of section 141(b).

Rules similar to the rules of subparagraphs (B) and (C) of subsection (a)(2) shall apply to the requirements specified in paragraph (3) of this subsection.

(c) Residence requirements

(1) For a residence

A residence meets the requirements of this subsection only if—

(A) it is a single-family residence which can reasonably be expected to become the principal residence of the mortgagor within a reasonable time after the financing is provided, and

(B) it is located within the jurisdiction of the authority issuing the bond.

(2) For an issue

An issue meets the requirements of this subsection only if all of the residences for which owner-financing is provided under the issue meet the requirements of paragraph (1).

(d) 3-year requirement

(1) In general

An issue meets the requirements of this subsection only if 95 percent or more of the net proceeds of such issue are used to finance the residences of mortgagors who had no present ownership interest in their principal residences at any time during the 3-year period ending on the date their mortgage is executed.

(2) Exceptions

For purposes of paragraph (1), the proceeds of an issue which are used to provide—

(A) financing with respect to targeted area residences,

(B) qualified home improvement loans and qualified rehabilitation loans,

(C) financing with respect to land described in subsection (i)(1)(C) and the construction of any residence thereon, and

(D) in the case of bonds issued after the date of the enactment of this subparagraph, financing of any residence for a veteran (as defined in section 101 of title 38, United States Code), if such veteran has not previously qualified for and received such financing by reason of this subparagraph,

shall be treated as used as described in paragraph (1).

(3) Mortgagor's interest in residence being financed

For purposes of paragraph (1), a mortgagor's interest in the residence with respect to which the financing is being provided shall not be taken into account.

(e) Purchase price requirement

(1) In general

An issue meets the requirements of this subsection only if the acquisition cost of each residence

the owner-financing of which is provided under the issue does not exceed 90 percent of the average area purchase price applicable to such residence.

(2) Average area purchase price

For purposes of paragraph (1), the term "average area purchase price" means, with respect to any residence, the average purchase price of single family residences (in the statistical area in which the residence is located) which were purchased during the most recent 12-month period for which sufficient statistical information is available. The determination under the preceding sentence shall be made as of the date on which the commitment to provide the financing is made (or, if earlier, the date of the purchase of the residence).

(3) Separate application to new residences and old residences

For purposes of this subsection, the determination of average area purchase price shall be made separately with respect to—

(A) residences which have not been previously occupied, and

(B) residences which have been previously occupied.

(4) Special rule for 2 to 4 family residences

For purposes of this subsection, to the extent provided in regulations, the determination of average area purchase price shall be made separately with respect to 1 family, 2 family, 3 family, and 4 family residences.

(5) Special rule for targeted area residences

In the case of a targeted area residence, paragraph (1) shall be applied by substituting "110 percent" for "90 percent".

(6) Exception for qualified home improvement loans

Paragraph (1) shall not apply with respect to any qualified home improvement loan.

(f) Income requirements

(1) In general

An issue meets the requirements of this subsection only if all owner-financing provided under the issue is provided for mortgagors whose family income is 115 percent or less of the applicable median family income.

(2) Determination of family income

For purposes of this subsection, the family income of mortgagors, and area median gross income, shall be determined by the Secretary after taking into account the regulations prescribed under section 8 of the United States Housing Act of 1937 (or, if such program is terminated, under such program as in effect immediately before such termination).

(3) Special rule for applying paragraph (1) in the case of targeted area residences

In the case of any financing provided under any issue for targeted area residences—

(A) 1/3 of the amount of such financing may be provided without regard to paragraph (1), and

(B) paragraph (1) shall be treated as satisfied with respect to the remainder of the owner financing if the family income of the mortgagor is 140 percent or less of the applicable median family income.

(4) Applicable median family income

For purposes of this subsection, the term "applicable median family income" means, with respect to a residence, whichever of the following is the greater:

(A) the area median gross income for the area in which such residence is located, or

(B) the statewide median gross income for the State in which such residence is located.

(5) Adjustment of income requirement based on relation of high housing costs to income

(A) In general

If the residence (for which financing is provided under the issue) is located in a high housing cost area and the limitation determined under this paragraph is greater than the limitation otherwise applicable under paragraph (1), there shall be substituted for the income limitation in paragraph (1), a limitation equal to the percentage determined under subparagraph (B) of the area median gross income for such area.

(B) Income requirements for residences in high housing cost area

The percentage determined under this subparagraph for a residence located in a high housing cost area is the percentage (not greater than 140 percent) equal to the product of—

(I) 115 percent, and

(II) the amount by which the housing cost/income ratio for such area exceeds 0.2.

(C) High housing cost areas

For purposes of this paragraph, the term "high housing cost area" means any statistical area for which the housing cost/income ratio is greater than 1.2.

(D) Housing cost/income ratio

For purposes of this paragraph—

(i) In general

The term "housing cost/income ratio" means, with respect to any statistical area, the number determined by dividing—

(I) the applicable housing price ratio for such area, by

(II) the ratio which the area median gross income for such area bears to the median gross income for the United States.

(ii) Applicable housing price ratio

For purposes of clause (i), the applicable housing price ratio for any area is the new housing price ratio or the existing housing price ratio, whichever results in the housing cost/income ratio being closer to 1.

(iii) New housing price ratio

The new housing price ratio for any area is the ratio which—

(I) the average area purchase price (as defined in subsection (e)(2)) for residences described in subsection (e)(3)(A) which are located in such area bears to

(II) the average purchase price (determined in accordance with the principles of subsection (e)(2)) for residences so described which are located in the United States.

(iv) Existing housing price ratio

The existing housing price ratio for any area is the ratio determined in accordance with clause (iii) but with respect to residences described in subsection (e)(3)(B).

(6) Adjustment to income requirements based on family size

In the case of a mortgagor having a family of fewer than 3 individuals, the preceding provisions of this subsection shall be applied by substituting—

(A) "100 percent" for "115 percent" each place it appears, and

(B) "120 percent" for "140 percent" each place it appears.

(g) Requirements related to arbitrage

(1) In general

An issue meets the requirements of this subsection only if such issue meets the requirements of paragraph (2) of this subsection and, in the case of an issue described in subsection (b)(1), such issue also meets the requirements of paragraph (3) of this subsection. Such requirements shall be in addition to the requirements of section 148.

(2) Effective rate of mortgage interest cannot exceed bond yield by more than 1.125 percentage points

(A) In general

An issue shall be treated as meeting the requirements of this paragraph only if the excess of—

(i) the effective rate of interest on the mortgages provided under the issue, over

(ii) the yield on the issue,

is not greater than 1.125 percentage points.

(B) Effective rate of mortgage interest

(i) In general

In determining the effective rate of interest on any mortgage for purposes of this paragraph, there shall be taken into account all fees, charges, and other amounts borne by the mortgagor which are attributable to the mortgage or to the bond issue.

(ii) Specification of some of the amounts to be treated as borne by the mortgagor

For purposes of clause (i), the following items (among others) shall be treated as borne by the mortgagor:

(I) all points or similar charges paid by the seller of the property, and

(II) the excess of the amounts received from any person other than the mortgagor by any person in connection with the acquisition of the mortgagor's interest in the property over the usual and reasonable acquisition costs of a person acquiring like property where owner-financing is not provided through the use of qualified mortgage bonds or qualified veterans' mortgage bonds.

(iii) Specification of some of the amounts to be treated as not borne by the mortgagor

For purposes of clause (i), the following items shall not be taken into account:

(I) any expected rebate of arbitrage profits, and

(II) any application fee, survey fee, credit report fee, insurance charge, or similar amount to the extent such amount does not exceed amounts charged in such area in cases where owner-financing is not provided through the use of qualified mortgage bonds or qualified veterans' mortgage bonds.

Subclause (II) shall not apply to origination fees, points, or similar amounts.

(iv) Prepayment assumptions

In determining the effective rate of interest—

(I) it shall be assumed that the mortgage prepayment rate will be the rate set forth in the most recent applicable mortgage maturity experience table published by the Federal Housing Administration, and

(II) prepayments of principal shall be treated as received on the last day of the month in which the issuer reasonably expects to receive such prepayments.

The Secretary may by regulation adjust the mortgage prepayment rate otherwise used in determining the effective rate of interest to the extent the Secretary determines that such an adjustment is appropriate by reason of the impact of subsection (m).

(C) Yield on the issue

For purposes of this subsection, the yield on an issue shall be determined on the basis of—

(i) the issue price (within the meaning of sections 1273 and 1274), and

(ii) an expected maturity for the bonds which is consistent with the assumptions required under subparagraph (B)(iv).

(3) Arbitrage and investment gains to be used to reduce costs of owner-financing

(A) In general

An issue shall be treated as meeting the requirements of this paragraph only if an amount

equal to the sum of—

(i) the excess of—

(I) the amount earned on all nonpurpose investments (other than investments attributable to an excess described in this clause), over

(II) the amount which would have been earned if such investments were invested at a rate equal to the yield on the issue, plus

(ii) any income attributable to the excess described in clause (i),

is paid or credited to the mortgagors as rapidly as may be practicable.

(B) Investment gains and losses

For purposes of subparagraph (A), in determining the amount earned on all nonpurpose investments, any gain or loss on the disposition of such investments shall be taken into account.

(C) Reduction where issuer does not use full 1.125 percentage points under paragraph (2)

(i) In general

The amount required to be paid or credited to mortgagors under subparagraph (A) (determined under this paragraph without regard to this subparagraph) shall be reduced by the unused paragraph (2) amount.

(ii) Unused paragraph (2) amount

For purposes of clause (i), the unused paragraph (2) amount is the amount which (if it were treated as an interest payment made by mortgagors) would result in the excess referred to in paragraph (2)(A) being equal to 1.125 percentage points. Such amount shall be fixed and determined as of the yield determination date.

(D) Election to pay United States

Subparagraph (A) shall be satisfied with respect to any issue if the issuer elects before issuing the bonds to pay over to the United States—

(i) not less frequently than once each 5 years after the date of issue, an amount equal to 90 percent of the aggregate amount which would be required to be paid or credited to mortgagors under subparagraph (A) (and not theretofore paid to the United States), and

(ii) not later than 60 days after the redemption of the last bond, 100 percent of such aggregate amount not theretofore paid to the United States.

(E) Simplified accounting

The Secretary shall permit any simplified system of accounting for purposes of this paragraph which the issuer establishes to the satisfaction of the Secretary will assure that the purposes of this paragraph are carried out.

(F) Nonpurpose investment

For purposes of this paragraph, the term "nonpurpose investment" has the meaning given such term by section 148(f)(6)(A).

(h) Portion of loans required to be placed in targeted areas

(1) In general

An issue meets the requirements of this subsection only if at least 20 percent of the proceeds of the issue which are devoted to providing owner-financing is made available (with reasonable diligence) for owner-financing of targeted area residences for at least 1 year after the date on which owner-financing is first made available with respect to targeted area residences.

(2) Limitation

Nothing in paragraph (1) shall be treated as requiring the making available of an amount which exceeds 40 percent of the average annual aggregate principal amount of mortgages executed during the immediately preceding 3 calendar years for single-family, owner-occupied residences

located in targeted areas within the jurisdiction of the issuing authority.

(i) Other requirements

(1) Mortgages must be new mortgages

(A) In general

An issue meets the requirements of this subsection only if no part of the proceeds of such issue is used to acquire or replace existing mortgages.

(B) Exceptions

Under regulations prescribed by the Secretary, the replacement of—

(i) construction period loans,

(ii) bridge loans or similar temporary initial financing, and

(iii) in the case of a qualified rehabilitation, an existing mortgage,

shall not be treated as the acquisition or replacement of an existing mortgage for purposes of subparagraph (A).

(C) Exception for certain contract for deed agreements

(i) In general

In the case of land possessed under a contract for deed by a mortgagor—

(I) whose principal residence (within the meaning of section 121) is located on such land, and

(II) whose family income (as defined in subsection (f)(2)) is not more than 50 percent of applicable median family income (as defined in subsection (f)(4)),

the contract for deed shall not be treated as an existing mortgage for purposes of subparagraph (A).

(ii) Contract for deed defined

For purposes of this subparagraph, the term "contract for deed" means a seller-financed contract for the conveyance of land under which—

(I) legal title does not pass to the purchaser until the consideration under the contract is fully paid to the seller, and

(II) the seller's remedy for nonpayment is forfeiture rather than judicial or nonjudicial foreclosure.

(2) Certain requirements must be met where mortgage is assumed

An issue meets the requirements of this subsection only if each mortgage with respect to which owner-financing has been provided under such issue may be assumed only if the requirements of subsections (c), (d), and (e), and the requirements of paragraph (1) or (3)(B) of subsection (f) (whichever applies), are met with respect to such assumption.

(j) Targeted area residences

(1) In general

For purposes of this section, the term "targeted area residence" means a residence in an area which is either—

(A) a qualified census tract, or

(B) an area of chronic economic distress.

(2) Qualified census tract

(A) In general

For purposes of paragraph (1), the term "qualified census tract" means a census tract in which 70 percent or more of the families have income which is 80 percent or less of the statewide median family income.

(B) Data used

The determination under subparagraph (A) shall be made on the basis of the most recent decennial census for which data are available.

(3) Area of chronic economic distress

(A) In general

For purposes of paragraph (1), the term "area of chronic economic distress" means an area of chronic economic distress—

(i) designated by the State as meeting the standards established by the State for purposes of this subsection, and

(ii) the designation of which has been approved by the Secretary and the Secretary of Housing and Urban Development.

(B) Criteria to be used in approving State designations

The criteria used by the Secretary and the Secretary of Housing and Urban Development in evaluating any proposed designation of an area for purposes of this subsection shall be—

(i) the condition of the housing stock, including the age of the housing and the number of abandoned and substandard residential units,

(ii) the need of area residents for owner-financing under this section, as indicated by low per capita income, a high percentage of families in poverty, a high number of welfare recipients, and high unemployment rates,

(iii) the potential for use of owner-financing under this section to improve housing conditions in the area, and

(iv) the existence of a housing assistance plan which provides a displacement program and a public improvements and services program.

(k) Other definitions and special rules

For purposes of this section—

(1) Mortgage

The term "mortgage" means any owner-financing.

(2) Statistical area

(A) In general

The term "statistical area" means—

(i) a metropolitan statistical area, and

(ii) any county (or the portion thereof) which is not within a metropolitan statistical area.

(B) Metropolitan statistical area

The term "metropolitan statistical area" includes the area defined as such by the Secretary of Commerce.

(C) Designation where adequate statistical information not available

For purposes of this paragraph, if there is insufficient recent statistical information with respect to a county (or portion thereof) described in subparagraph (A)(ii), the Secretary may substitute for such county (or portion thereof) another area for which there is sufficient recent statistical information.

(D) Designation where no county

In the case of any portion of a State which is not within a county, subparagraphs (A)(ii) and (C) shall be applied by substituting for "county" an area designated by the Secretary which is the equivalent of a county.

(3) Acquisition cost

(A) In general

The term "acquisition cost" means the cost of acquiring the residence as a completed residential unit.

(B) Exceptions

The term "acquisition cost" does not include—

(i) usual and reasonable settlement or financing costs,

(ii) the value of services performed by the mortgagor or members of his family in completing the residence, and

(iii) the cost of land (other than land described in subsection (i)(1)(C)(i)) which has been owned by the mortgagor for at least 2 years before the date on which construction of the residence begins.

(C) Special rule for qualified rehabilitation loans

In the case of a qualified rehabilitation loan, for purposes of subsection (e), the term "acquisition cost" includes the cost of the rehabilitation.

(4) Qualified home improvement loan

The term "qualified home improvement loan" means the financing (in an amount which does not exceed $15,000)—

(A) of alterations, repairs, and improvements on or in connection with an existing residence by the owner thereof, but

(B) only of such items as substantially protect or improve the basic livability or energy efficiency of the property.

(5) Qualified rehabilitation loan

(A) In general

The term "qualified rehabilitation loan" means any owner-financing provided in connection with—

(i) a qualified rehabilitation, or

(ii) the acquisition of a residence with respect to which there has been a qualified rehabilitation,

but only if the mortgagor to whom such financing is provided is the first resident of the residence after the completion of the rehabilitation.

(B) Qualified rehabilitation

For purposes of subparagraph (A), the term "qualified rehabilitation" means any rehabilitation of a building if—

(i) there is a period of at least 20 years between the date on which the building was first used and the date on which the physical work on such rehabilitation begins,

(ii) in the rehabilitation process—

(I) 50 percent or more of the existing external walls of such building are retained in place as external walls,

(II) 75 percent or more of the existing external walls of such building are retained in place as internal or external walls, and

(III) 75 percent or more of the existing internal structural framework of such building is retained in place, and

(iii) the expenditures for such rehabilitation are 25 percent or more of the mortgagor's adjusted basis in the residence.

For purposes of clause (iii), the mortgagor's adjusted basis shall be determined as of the completion of the rehabilitation or, if later, the date on which the mortgagor acquires the residence.

(6) Determinations on actuarial basis

All determinations of yield, effective interest rates, and amounts required to be paid or credited to mortgagors or paid to the United States under subsection (g) shall be made on an actuarial basis taking into account the present value of money.

(7) Single-family and owner-occupied residences include certain residences with 2 to 4 units

Except for purposes of subsection (h)(2), the terms "single-family" and "owner-occupied", when used with respect to residences, include 2, 3, or 4 family residences—

(A) one unit of which is occupied by the owner of the units, and

(B) which were first occupied at least 5 years before the mortgage is executed.

Subparagraph (B) shall not apply to any 2-family residence if the residence is a targeted area residence and the family income of the mortgagor meets the requirement of subsection (f)(3)(B).

(8) Cooperative housing corporations

(A) In general

In the case of any cooperative housing corporation—

(i) each dwelling unit shall be treated as if it were actually owned by the person entitled to occupy such dwelling unit by reason of his ownership of stock in the corporation, and

(ii) any indebtedness of the corporation allocable to the dwelling unit shall be treated as if it were indebtedness of the shareholder entitled to occupy the dwelling unit.

(B) Adjustment to targeted area requirement

In the case of any issue to provide financing to a cooperative housing corporation with respect to cooperative housing not located in a targeted area, to the extent provided in regulations, such issue may be combined with 1 or more other issues for purposes of determining whether the requirements of subsection (h) are met.

(C) Cooperative housing corporation

The term "cooperative housing corporation" has the meaning given to such term by section 216(b)(1).

(9) Treatment of limited equity cooperative housing

(A) Treatment as residential rental property

Except as provided in subparagraph (B), for purposes of this part—

(i) any limited equity cooperative housing shall be treated as residential rental property and not as owner-occupied housing, and

(ii) bonds issued to provide such housing shall be subject to the same requirements and limitations as bonds the proceeds of which are to be used to provide qualified residential rental projects (as defined in section 142(d)).

(B) Bonds subject to qualified mortgage bond termination date

Subparagraph (A) shall not apply to any bond issued after the date specified in subsection (a)(1)(B).

(C) Limited equity cooperative housing

For purposes of this paragraph, the term "limited equity cooperative housing" means any dwelling unit which a person is entitled to occupy by reason of his ownership of stock in a qualified cooperative housing corporation.

(D) Qualified cooperative housing corporation

For purposes of this paragraph, the term "qualified cooperative housing corporation" means any cooperative housing corporation (as defined in section 216(b)(1)) if—

(i) the consideration paid for stock held by any stockholder entitled to occupy any house or apartment in a building owned or leased by the corporation may not exceed the sum of—

(I) the consideration paid for such stock by the first such stockholder, as adjusted by a cost-of-living adjustment determined by the Secretary,

(II) payments made by any stockholder for improvements to such house or apartment, and

(III) payments (other than amounts taken into account under subclause (I) or (II)) attributable to any stockholder to amortize the principal of the corporation's indebtedness arising from the acquisition or development of real property, including improvements thereof,

(ii) the value of the corporation's assets (reduced by any corporate liabilities), to the extent such value exceeds the combined transfer values of the outstanding corporate stock, shall be used only for public benefit or charitable purposes, or directly to benefit the corporation itself, and shall not be used directly to benefit any stockholder, and

(iii) at the time of issuance of the issue, such corporation makes an election under this paragraph.

(E) Effect of election

If a cooperative housing corporation makes an election under this paragraph, section 216 shall not apply with respect to such corporation (or any successor thereof) during the qualified project period (as defined in section 142(d)(2)).

(F) Corporation must continue to be qualified cooperative

Subparagraph (A)(i) shall not apply to limited equity cooperative housing unless the cooperative housing corporation continues to be a qualified cooperative housing corporation at all times during the qualified project period (as defined in section 142(d)(2)).

(G) Election irrevocable

Any election under this paragraph, once made, shall be irrevocable.

(10) Treatment of resale price control and subsidy lien programs

(A) In general

In the case of a residence which is located in a high housing cost area (as defined in section 143(f)(5)), the interest of a governmental unit in such residence by reason of financing provided under any qualified program shall not be taken into account under this section (other than subsection (m)), and the acquisition cost of the residence which is taken into account under subsection (e) shall be such cost reduced by the amount of such financing.

(B) Qualified program

For purposes of subparagraph (A), the term "qualified program" means any governmental program providing mortgage loans (other than 1st mortgage loans) or grants—

(i) which restricts (throughout the 9-year period beginning on the date the financing is provided) the resale of the residence to a purchaser qualifying under this section and to a price determined by an index that reflects less than the full amount of any appreciation in the residence's value, or

(ii) which provides for deferred or reduced interest payments on such financing and grants the governmental unit a share in the appreciation of the residence,

but only if such financing is not provided directly or indirectly through the use of any tax-exempt private activity bond.

(11) Special rules for residences located in disaster areas

In the case of a residence located in an area determined by the President to warrant assistance from the Federal Government under the Robert T. Stafford Disaster Relief and Emergency

Assistance Act (as in effect on the date of the enactment of the Taxpayer Relief Act of 1997), this section shall be applied with the following modifications to financing provided with respect to such residence within 2 years after the date of the disaster declaration:

(A) Subsection (d) (relating to 3-year requirement) shall not apply.

(B) Subsections (e) and (f) (relating to purchase price requirement and income requirement) shall be applied as if such residence were a targeted area residence.

The preceding sentence shall apply only with respect to bonds issued after May 1, 2008, and before January 1, 2010.

(12) [1] Special rules for subprime refinancings

(A) In general

Notwithstanding the requirements of subsection (i)(1), the proceeds of a qualified mortgage issue may be used to refinance a mortgage on a residence which was originally financed by the mortgagor through a qualified subprime loan.

(B) Special rules

In applying subparagraph (A) to any refinancing—

(i) subsection (a)(2)(D)(i) shall be applied by substituting "12-month period" for "42-month period" each place it appears,

(ii) subsection (d) (relating to 3-year requirement) shall not apply, and

(iii) subsection (e) (relating to purchase price requirement) shall be applied by using the market value of the residence at the time of refinancing in lieu of the acquisition cost.

(C) Qualified subprime loan

The term "qualified subprime loan" means an adjustable rate single-family residential mortgage loan made after December 31, 2001, and before January 1, 2008, that the bond issuer determines would be reasonably likely to cause financial hardship to the borrower if not refinanced.

(D) Termination

This paragraph shall not apply to any bonds issued after December 31, 2010.

(12) [1] Special rules for residences destroyed in federally declared disasters

(A) Principal residence destroyed

At the election of the taxpayer, if the principal residence (within the meaning of section 121) of such taxpayer is—

(i) rendered unsafe for use as a residence by reason of a federally declared disaster occurring before January 1, 2010, or

(ii) demolished or relocated by reason of an order of the government of a State or political subdivision thereof on account of a federally declared disaster occurring before such date,

then, for the 2-year period beginning on the date of the disaster declaration, subsection (d)(1) shall not apply with respect to such taxpayer and subsection (e) shall be applied by substituting "110" for "90" in paragraph (1) thereof.

(B) Principal residence damaged

(i) In general

At the election of the taxpayer, if the principal residence (within the meaning of section 121) of such taxpayer was damaged as the result of a federally declared disaster occurring before January 1, 2010, any owner-financing provided in connection with the repair or reconstruction of such residence shall be treated as a qualified rehabilitation loan.

(ii) Limitation

The aggregate owner-financing to which clause (i) applies shall not exceed the lesser of—

(I) the cost of such repair or reconstruction, or

(II) $150,000.

(C) Federally declared disaster

For purposes of this paragraph, the term "federally declared disaster" has the meaning given such term by section 165(h)(3)(C)(i).

(D) Election; denial of double benefit

(i) Election

An election under this paragraph may not be revoked except with the consent of the Secretary.

(ii) Denial of double benefit

If a taxpayer elects the application of this paragraph, paragraph (11) shall not apply with respect to the purchase or financing of any residence by such taxpayer.

(l) Additional requirements for qualified veterans' mortgage bonds

An issue meets the requirements of this subsection only if it meets the requirements of paragraphs (1), (2), and (3).

(1) Veterans to whom financing may be provided

An issue meets the requirements of this paragraph only if each mortgagor to whom financing is provided under the issue is a qualified veteran.

(2) Requirement that State program be in effect before June 22, 1984

An issue meets the requirements of this paragraph only if it is a general obligation of a State which issued qualified veterans' mortgage bonds before June 22, 1984.

(3) Volume limitation

(A) In general

An issue meets the requirements of this paragraph only if the aggregate amount of bonds issued pursuant thereto (when added to the aggregate amount of qualified veterans' mortgage bonds previously issued by the State during the calendar year) does not exceed the State veterans limit for such calendar year.

(B) State veterans limit

(i) In general

In the case of any State to which clause (ii) does not apply, the State veterans limit for any calendar year is the amount equal to—

(I) the aggregate amount of qualified veterans bonds issued by such State during the period beginning on January 1, 1979, and ending on June 22, 1984 (not including the amount of any qualified veterans bond issued by such State during the calendar year (or portion thereof) in such period for which the amount of such bonds so issued was the lowest), divided by

(II) the number (not to exceed 5) of calendar years after 1979 and before 1985 during which the State issued qualified veterans bonds (determined by only taking into account bonds issued on or before June 22, 1984).

(ii) Alaska, Oregon, and Wisconsin

In the case of the following States, the State veterans limit for any calendar year is the amount equal to—

(I) $100,000,000 for the State of Alaska,

(II) $100,000,000 for the State of Oregon, and

(III) $100,000,000 for the State of Wisconsin.

(iii) Phasein

In the case of calendar years beginning before 2010, clause (ii) shall be applied by substituting for each of the dollar amounts therein an amount equal to the applicable percentage of such dollar amount. For purposes of the preceding sentence, the applicable percentage shall be determined in accordance with the following table:

For Calendar Year:	Applicable percentage is:
2006	20 percent
2007	40 percent
2008	60 percent
2009	80 percent.

(C) Treatment of refunding issues

(i) In general

For purposes of subparagraph (A), the term "qualified veterans' mortgage bond" shall not include any bond issued to refund another bond but only if the maturity date of the refunding bond is not later than the later of—

(I) the maturity date of the bond to be refunded, or

(II) the date 32 years after the date on which the refunded bond was issued (or in the case of a series of refundings, the date on which the original bond was issued).

The preceding sentence shall apply only to the extent that the amount of the refunding bond does not exceed the outstanding amount of the refunded bond.

(ii) Exception for advance refunding

Clause (i) shall not apply to any bond issued to advance refund another bond.

(4) Qualified veteran

For purposes of this subsection, the term "qualified veteran" means any veteran who—

(A) served on active duty, and

(B) applied for the financing before the date 25 years after the last date on which such veteran left active service.

(5) Special rule for certain short-term bonds

In the case of any bond—

(A) which has a term of 1 year or less,

(B) which is authorized to be issued under O.R.S. 407.435 (as in effect on the date of the enactment of this subsection), to provide financing for property taxes, and

(C) which is redeemed at the end of such term,

the amount taken into account under this subsection with respect to such bond shall be 1/15 of its principal amount.

(m) Recapture of portion of Federal subsidy from use of qualified mortgage bonds and mortgage credit certificates

(1) In general

If, during the taxable year, any taxpayer disposes of an interest in a residence with respect to which there is or was any federally-subsidized indebtedness for the payment of which the taxpayer was liable in whole or part, then the taxpayer's tax imposed by this chapter for such taxable year shall be increased by the lesser of—

(A) the recapture amount with respect to such indebtedness, or

(B) 50 percent of the gain (if any) on the disposition of such interest.

(2) Exceptions

Paragraph (1) shall not apply to—

(A) any disposition by reason of death, and

(B) any disposition which is more than 9 years after the testing date.

(3) Federally-subsidized indebtedness

For purposes of this subsection—

(A) In general

The term "federally-subsidized indebtedness" means any indebtedness if—

(i) financing for the indebtedness was provided in whole or part from the proceeds of any tax-exempt qualified mortgage bond, or

(ii) any credit was allowed under section 25 (relating to interest on certain home mortgages) to the taxpayer for interest paid or incurred on such indebtedness.

(B) Exception for home improvement loans

Such term shall not include any indebtedness to the extent such indebtedness is federally-subsidized indebtedness solely by reason of being a qualified home improvement loan (as defined in subsection (k)(4)).

(4) Recapture amount

For purposes of this subsection—

(A) In general

The recapture amount with respect to any indebtedness is the amount equal to the product of—

(i) the federally-subsidized amount with respect to the indebtedness,

(ii) the holding period percentage, and

(iii) the income percentage.

(B) Federally-subsidized amount

The federally-subsidized amount with respect to any indebtedness is the amount equal to 6.25 percent of the highest principal amount of the indebtedness for which the taxpayer was liable.

(C) Holding period percentage

(i) In general

The term "holding period percentage" means the percentage determined in accordance with the following table:

If the disposition occurs during a year after the testing date which is:	The holding period percentage is:
The 1st such year	20
The 2d such year	40
The 3d such year	60
The 4th such year	80
The 5th such year	100
The 6th such year	80
The 7th such year	60
The 8th such year	40
The 9th such year	20.

(ii) Retirements of indebtedness

If the federally-subsidized indebtedness is completely repaid during any year of the 4-year period beginning on the testing date, the holding period percentage for succeeding years shall be determined by reducing ratably to zero over the succeeding 5 years the holding period percentage which would have been determined under this subparagraph had the taxpayer disposed of his interest in the residence on the date of the repayment.

(D) Testing date

The term "testing date" means the earliest date on which all of the following requirements are met:

(i) The indebtedness is federally-subsidized indebtedness.

(ii) The taxpayer is liable in whole or part for payment of the indebtedness.

(E) Income percentage

The term "income percentage" means the percentage (but not greater than 100 percent) which—

(i) the excess of—

(I) the modified adjusted gross income of the taxpayer for the taxable year in which the disposition occurs, over

(II) the adjusted qualifying income for such taxable year, bears to

(ii) $5,000.

The percentage determined under the preceding sentence shall be rounded to the nearest whole percentage point (or, if it includes a half of a percentage point, shall be increased to the nearest whole percentage point).

(5) Adjusted qualifying income; modified adjusted gross income

(A) Adjusted qualifying income

For purposes of paragraph (4), the term "adjusted qualifying income" means the product of—

(i) the highest family income which (as of the date the financing was provided) would have met the requirements of subsection (f) with respect to the residents, and

(ii) 1.05 to the nth power where "n" equals the number of full years during the period beginning on the date the financing was provided and ending on the date of the disposition.

For purposes of clause (i), highest family income shall be determined without regard to subsection (f)(3)(A) and on the basis of the number of members of the taxpayer's family as of the date of the disposition.

(B) Modified adjusted gross income

For purposes of paragraph (4), the term "modified adjusted gross income" means adjusted gross income—

(i) increased by the amount of interest received or accrued by the taxpayer during the taxable year which is excluded from gross income under section 103, and

(ii) decreased by the amount of gain (if any) included in gross income of the taxpayer by reason of the disposition to which this subsection applies.

(6) Special rules relating to limitation on recapture amount based on gain realized

(A) In general

For purposes of paragraph (1), gain shall be taken into account whether or not recognized, and the adjusted basis of the taxpayer's interest in the residence shall be determined without regard to sections 1033(b) and 1034(e) (as in effect on the day before the date of the enactment of the Taxpayer Relief Act of 1997) for purposes of determining gain.

(B) Dispositions other than sales, exchanges, and involuntary conversions

In the case of a disposition other than a sale, exchange, or involuntary conversion, gain shall be determined as if the interest had been sold for its fair market value.

(C) Involuntary conversions resulting from casualties

In the case of property which (as a result of its destruction in whole or in part by fire, storm, or other casualty) is compulsorily or involuntarily converted, paragraph (1) shall not apply to such conversion if the taxpayer purchases (during the period specified in section 1033(a)(2)(B)) property for use as his principal residence on the site of the converted property. For purposes of subparagraph (A), the adjusted basis of the taxpayer in the residence shall not be adjusted for any gain or loss on a conversion to which this subparagraph applies.

(7) Issuer to inform mortgagor of federally-subsidized amount and family income limits

The issuer of the issue which provided the federally-subsidized indebtedness to the mortgagor shall—

(A) at the time of settlement, provide a written statement informing the mortgagor of the potential recapture under this subsection, and

(B) not later than 90 days after the date such indebtedness is provided, provide a written statement to the mortgagor specifying—

(i) the federally-subsidized amount with respect to such indebtedness, and

(ii) the adjusted qualifying income (as defined in paragraph (5)) for each category of family size for each year of the 9-year period beginning on the date the financing was provided.

(8) Special rules

(A) No basis adjustment

No adjustment shall be made to the basis of any property for the increase in tax under this subsection.

(B) Special rule where 2 or more persons hold interests in residence

Except as provided in subparagraph (C) and in regulations prescribed by the Secretary, if 2 or more persons hold interests in any residence and are jointly liable for the federally-subsidized indebtedness, the recapture amount shall be determined separately with respect to their respective interests in the residence.

(C) Transfers to spouses and former spouses

Paragraph (1) shall not apply to any transfer on which no gain or loss is recognized under section 1041. In any such case, the transferee shall be treated under this subsection in the same manner as the transferor would have been treated had such transfer not occurred.

(D) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this subsection, including regulations dealing with dispositions of partial interests in a residence.

(Added Pub. L. 99–514, title XIII, §1301(b), Oct. 22, 1986, 100 Stat. 2610; amended Pub. L. 100–647, title I, §1013(a)(2), (3), title IV, §4005(a)(1), (b)–(d)(1), (e)–(g)(2), (6), Nov. 10, 1988, 102 Stat. 3537, 3645–3651; Pub. L. 101–239, title VII, §7104(a), Dec. 19, 1989, 103 Stat. 2305; Pub. L. 101–508, title XI, §11408(a), (c), Nov. 5, 1990, 104 Stat. 1388–477; Pub. L. 102–227, title I, §108(a), Dec. 11, 1991, 105 Stat. 1688; Pub. L. 103–66, title XIII, §13141(a), (c)–(e), Aug. 10, 1993, 107 Stat. 436, 437; Pub. L. 104–188, title I, §§1702(d)(2), 1703(n)(3), Aug. 20, 1996, 110 Stat. 1870, 1877; Pub. L. 105–34, title III, §312(d)(1), (3), title IX, §914, Aug. 5, 1997, 111 Stat. 839, 840, 878; Pub. L. 109–222, title II, §203(a)(1), (b)(1), May 17, 2006, 120 Stat. 348, 349; Pub. L. 109–432, div. A, title IV, §§411(a), 416(a), Dec. 20, 2006, 120 Stat. 2963, 2965; Pub. L. 110–245, title I, §103(a)–(c), June 17, 2008, 122 Stat. 1625; Pub. L. 110–289, div. C, title I, §§3021(b)(1), 3026(a), July 30, 2008, 122 Stat. 2893, 2897; Pub. L. 110–343, div. C, title VII, §709(a), Oct. 3, 2008, 122 Stat. 3925.)

REFERENCES IN TEXT

The date of the enactment of this subparagraph, referred to in subsec. (d)(2)(D), is the date of enactment of Pub. L. 109–432, which was approved Dec. 20, 2006.

Section 8 of the United States Housing Act of 1937, referred to in subsec. (f)(2), is classified to section 1437f of Title 42, The Public Health and Welfare.

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsec. (k)(11), is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, as in effect on the date of enactment of Pub. L. 105–34, which was approved Aug. 5, 1997. The Act is classified principally to chapter 68 (§5121 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of Title 42 and Tables.

The date of the enactment of this subsection, referred to in subsec. (l)(5)(B), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

Section 1034(e) (as in effect on the day before the date of the enactment of the Taxpayer Relief Act of 1997), referred to in subsec. (m)(6)(A), means section 1034(e) of this title as in effect on the day before the date of enactment of Pub. L. 105–34, which was approved Aug. 5, 1997. Section 1034 was repealed by Pub. L. 105–34, title III, §312(b), Aug. 5, 1997, 111 Stat. 839.

PRIOR PROVISIONS

A prior section 143, acts Aug. 16, 1954, ch. 736, 68A Stat. 41; Dec. 30, 1969, Pub. L. 91–172, title VIII, §802(b), 83 Stat. 677; Oct. 4, 1976, Pub. L. 94–455, title XIX, §1901(a)(22), 90 Stat. 1767; May 23, 1977, Pub. L. 95–30, title I, §101(d)(4), 91 Stat. 133; July 18, 1984, Pub. L. 98–369, div. A, title IV, §423(c)(1), 98 Stat. 800, related to determination of marital status, prior to the general revision of this part by Pub. L. 99–514. See section 7703 of this title.

Provisions similar to this section were contained in section 103A of this title prior to repeal by Pub. L. 99–514.

AMENDMENTS

2008—Subsec. (d)(2)(D). Pub. L. 110–245, §103(a), struck out "and before January 1, 2008" after "enactment of this subparagraph".

Subsec. (k)(11). Pub. L. 110–289, §3026(a), substituted "May 1, 2008" for "December 31, 1996" and "January 1, 2010" for "January 1, 1999" in concluding provisions.

Subsec. (k)(12). Pub. L. 110–343 added par. (12) relating to special rules for residences destroyed in federally declared disasters.

Pub. L. 110–289, §3021(b)(1), added par. (12) relating to special rules for subprime refinancings.

Subsec. (l)(3)(B)(ii). Pub. L. 110–245, §103(b), substituted "$100,000,000" for "$25,000,000" wherever appearing.

Subsec. (l)(4). Pub. L. 110–245, §103(c), reenacted heading without change and amended text generally. Prior to amendment, par. (4) defined "qualified veteran" differently with respect to different States.

2006—Subsec. (d)(2)(D). Pub. L. 109–432, §416(a), added subpar. (D).

Subsec. (l)(3)(B). Pub. L. 109–222, §203(b)(1), reenacted heading without change, substituted introductory provisions of cl. (i) for "A State veterans limit for any calendar year is the amount equal to—" and inserted heading, redesignated former cls. (i) and (ii) as subcls. (I) and (II), respectively, of cl. (i) and adjusted margins, and added cls. (ii) to (iv).

Subsec. (l)(3)(B)(iv). Pub. L. 109–432, §411(a), struck out heading and text of cl. (iv). Text read as follows: "The State veterans limit for the States specified in clause (ii) for any calendar year after 2010 is zero."

Subsec. (l)(4). Pub. L. 109–222, §203(a)(1), amended par. (4) generally. Prior to amendment, par. (4) defined the term "qualified veteran".

1997—Subsec. (i)(1)(C)(i)(I). Pub. L. 105–34, §312(d)(1), substituted "section 121" for "section 1034".

Subsec. (k)(11). Pub. L. 105–34, §914, added par. (11).

Subsec. (m)(6)(A). Pub. L. 105–34, §312(d)(3), inserted "(as in effect on the day before the date of the enactment of the Taxpayer Relief Act of 1997)" after "1034(e)".

1996—Subsec. (d)(2)(C). Pub. L. 104–188, §1703(n)(3), substituted "thereon," for "thereon.".

Subsec. (m)(4)(C)(ii). Pub. L. 104–188, §1702(d)(2), substituted "any year of the 4-year period" for "any month of the 10-year period", "succeeding years" for "succeeding months", and "to zero over the succeeding 5 years" for "over the remainder of such period (or, if lesser, over 5 years)".

1993—Subsec. (a)(1). Pub. L. 103–66, §13141(a), amended heading and text of par. (1) generally. Prior to amendment, text read as follows:

"(A) IN GENERAL.—For purposes of this title, the term 'qualified mortgage bond' means a bond which is

issued as part of a qualified mortgage issue.

"(B) TERMINATION ON JUNE 30, 1992.—No bond issued after June 30, 1992, may be treated as a qualified mortgage bond."

Subsec. (d)(2)(C). Pub. L. 103–66, §13141(d)(1), added subpar. (C).

Subsec. (i)(1)(C). Pub. L. 103–66, §13141(d)(2), added subpar. (C).

Subsec. (k)(3)(B)(iii). Pub. L. 103–66, §13141(d)(3), inserted "(other than land described in subsection (i)(1)(C)(i))" after "cost of land".

Subsec. (k)(7). Pub. L. 103–66, §13141(e), inserted at end "Subparagraph (B) shall not apply to any 2-family residence if the residence is a targeted area residence and the family income of the mortgagor meets the requirement of subsection (f)(3)(B)."

Subsec. (k)(10). Pub. L. 103–66, §13141(c), added par. (10).

1991—Subsec. (a)(1)(B). Pub. L. 102–227 substituted "June 30, 1992" for "December 31, 1991" in heading and text.

1990—Subsec. (a)(1)(B). Pub. L. 101–508, §11408(a), substituted "December 31, 1991" for "September 30, 1990" in heading and text.

Subsec. (m)(1). Pub. L. 101–508, §11408(c)(3)(A), substituted "increased by the lesser of—" and subpars. (A) and (B) for "increased by the recapture amount with respect to such indebtedness."

Subsec. (m)(2)(B). Pub. L. 101–508, §11408(c)(1)(C), substituted "9 years" for "10 years".

Subsec. (m)(4)(A)(iii). Pub. L. 101–508, §11408(c)(2)(A), added cl. (iii).

Subsec. (m)(4)(C)(i). Pub. L. 101–508, §11408(c)(1)(A), substituted heading for one which read: "Dispositions during 1st 5 years" and amended text generally. Prior to amendment, text read as follows: "If the disposition of the taxpayer's interest in the residence occurs during the 5-year period beginning on the testing date, the holding period percentage is the percentage determined by dividing the number of full months during which the requirements of subparagraph (D) were met by 60."

Subsec. (m)(4)(C)(ii), (iii). Pub. L. 101–508, §11408(c)(1)(B), redesignated cl. (iii) as (ii) and struck out former cl. (ii) "Dispositions during 2d 5 years" which read as follows: "If the disposition of the taxpayer's interest in the residence occurs during the 5-year period following the 5-year period described in clause (i), the holding period percentage is the percentage determined by dividing—

"(I) the excess of 120 over the number of full months during which such requirements were met by

"(II) 60."

Subsec. (m)(4)(E). Pub. L. 101–508, §11408(c)(2)(B), added subpar. (E).

Subsec. (m)(5). Pub. L. 101–508, §11408(c)(2)(C)(i), added heading and struck out former heading which read: "Reduction of recapture amount if taxpayer meets certain income limitations".

Subsec. (m)(5)(A). Pub. L. 101–508, §11408(c)(2)(C)(i), added subpar. (A) and struck out former subpar. (A) "In general" which read as follows: "The recapture amount which would (but for this paragraph) apply with respect to any disposition during a taxable year shall be reduced (but not below zero) by 2 percent of such amount for each $100 by which adjusted qualifying income exceeds the modified adjusted gross income of the taxpayer for such year."

Subsec. (m)(5)(B), (C). Pub. L. 101–508, §11408(c)(2)(C), redesignated subpar. (C) as (B), substituted "paragraph (4)" for "this paragraph" in introductory provisions, and struck out former subpar. (B) "Adjusted qualifying income" which read as follows: "For purposes of this paragraph, the term 'adjusted qualifying income' means the amount equal to the sum of—

"(i) $5,000, plus

"(ii) the product of—

"(I) the highest family income which (as of the date the financing was provided) would have met the requirement of subsection (f) with respect to the residence, and

"(II) the percentage equal to the sum of 100 percent plus 5 percent for each full year during the period beginning on such date and ending on the date of the disposition.

For purposes of clause (ii)(I), highest family income shall be determined without regard to subsection (f)(3)(A) and on the basis of the number of members of the taxpayer's family as of the date of the disposition."

Subsec. (m)(6). Pub. L. 101–508, §11408(c)(3)(B)(i), substituted "Special rules relating to limitation" for "Limitation" in heading.

Subsec. (m)(6)(A). Pub. L. 101–508, §11408(c)(3)(B)(ii), (iii), struck out at beginning "In no event shall the recapture amount of the taxpayer with respect to any indebtedness exceed 50 percent of the gain (if any) on the disposition of the taxpayer's interest in the residence." and substituted "paragraph (1)" for "the preceding sentence".

Subsec. (m)(7)(B)(ii). Pub. L. 101–508, §11408(c)(3)(C), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: "the amounts described in paragraph (5)(B)(ii) for each category of family size for each

year of the 10-year period beginning on the date the financing was provided."

1989—Subsec. (a)(1)(B). Pub. L. 101–239 substituted "September 30, 1990" for "December 31, 1989" in heading and in text.

1988—Subsec. (a)(1)(B). Pub. L. 100–647, §4005(a)(1), substituted "1989" for "1988" in heading and in text.

Subsec. (a)(2)(A). Pub. L. 100–647, §4005(f), inserted sentence at end relating to application of cl. (iv).

Subsec. (a)(2)(A)(ii). Pub. L. 100–647, §4005(g)(1), substituted "(i), and (m)(7)" for "and (i)".

Subsec. (a)(2)(A)(iii). Pub. L. 100–647, §1013(a)(2), substituted "such issue does not meet" for "no bond which is part of such issue meets".

Subsec. (a)(2)(A)(iv). Pub. L. 100–647, §4005(f), added cl. (iv).

Subsec. (a)(2)(C). Pub. L. 100–647, §4005(g)(2)(B), substituted ", (h), and (m)(7)" for "and (h)" in introductory text.

Subsec. (a)(2)(D). Pub. L. 100–647, §4005(e), added subpar. (D).

Subsec. (b)(4). Pub. L. 100–647, §1013(a)(3), inserted "is part of an issue which" after "which".

Subsec. (f)(5). Pub. L. 100–647, §4005(b), added par. (5).

Subsec. (f)(6). Pub. L. 100–647, §4005(c), added par. (6).

Subsec. (g)(1). Pub. L. 100–647, §4005(d)(1), substituted "paragraph (2) of this subsection and, in the case of an issue described in subsection (b)(1), such issue also meets the requirements of paragraph (3) of this subsection" for "paragraphs (2) and (3) of this subsection" and struck out "(other than subsection (f) thereof)" before period at end.

Subsec. (g)(2)(B)(iv). Pub. L. 100–647, §4005(g)(6), inserted at end "The Secretary may by regulation adjust the mortgage prepayment rate otherwise used in determining the effective rate of interest to the extent the Secretary determines that such an adjustment is appropriate by reason of the impact of subsection (m)."

Subsec. (m). Pub. L. 100–647, §4005(g)(1), added subsec. (m).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title VII, §709(b), Oct. 3, 2008, 122 Stat. 3926, provided that: "The amendment made by subsection (a) [amending this section] shall apply to disasters occurring after December 31, 2007."

Pub. L. 110–289, div. C, title I, §3021(c), July 30, 2008, 122 Stat. 2893, provided that: "The amendments made by this section [amending this section and section 146 of this title] shall apply to bonds issued after the date of the enactment of this Act [July 30, 2008]."

Pub. L. 110–289, div. C, title I, §3026(b), July 30, 2008, 122 Stat. 2897, provided that: "The amendments made by this section [amending this section] shall apply to bonds issued after May 1, 2008."

Pub. L. 110–245, title I, §103(d), June 17, 2008, 122 Stat. 1626, provided that: "The amendments made by this section [amending this section] shall apply to bonds issued after December 31, 2007."

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title IV, §411(b), Dec. 20, 2006, 120 Stat. 2963, provided that: "The amendment made by this section [amending this section] shall take effect as if included in section 203 [probably means 203(b)] of the Tax Increase Prevention and Reconciliation Act of 2005 [Pub. L. 109–222]."

Pub. L. 109–432, div. A, title IV, §416(b), Dec. 20, 2006, 120 Stat. 2965, provided that: "The amendments made by this section [amending this section] shall apply to bonds issued after the date of the enactment of this Act [Dec. 20, 2006]."

Pub. L. 109–222, title II, §203(a)(2), May 17, 2006, 120 Stat. 349, provided that: "The amendments made by this subsection [amending this section] shall apply to bonds issued on or after the date of the enactment of this Act [May 17, 2006]."

Pub. L. 109–222, title II, §203(b)(2), May 17, 2006, 120 Stat. 350, provided that: "The amendments made by this subsection [amending this section] shall apply to allocations of State volume limit after April 5, 2006."

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 312(d)(1), (3) of Pub. L. 105–34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d) of Pub. L. 105–34, set out as a note under section 121 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1702(d)(2) of Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

Amendment by section 1703(n)(3) of Pub. L. 104–188 effective as if included in the provision of the

Revenue Reconciliation Act of 1993, Pub. L. 103–66, §§13001–13444, to which such amendment relates, see section 1703(o) of Pub. L. 104–188, set out as a note under section 39 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13141(f)(1), Aug. 10, 1993, 107 Stat. 437, provided that: "The amendment made by subsection (a) [amending this section] shall apply to bonds issued after June 30, 1992."

Pub. L. 103–66, title XIII, §13141(f)(3), Aug. 10, 1993, 107 Stat. 437, provided that: "The amendments made by subsections (c) and (e) [amending this section] shall apply to qualified mortgage bonds issued and mortgage credit certificates provided on or after the date of enactment of this Act [Aug. 10, 1993]."

Pub. L. 103–66, title XIII, §13141(f)(4), Aug. 10, 1993, 107 Stat. 437, provided that: "The amendments made by subsection (d) [amending this section] shall apply to loans originated and credit certificates provided after the date of the enactment of this Act [Aug. 10, 1993]."

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102–227, title I, §108(c)(1), Dec. 11, 1991, 105 Stat. 1688, provided that: "The amendment made by subsection (a) [amending this section] shall apply to bonds issued after December 31, 1991."

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, §11408(d), Nov. 5, 1990, 104 Stat. 1388–478, provided that:

"(1) BONDS.—The amendment made by subsection (a) [amending this section] shall apply to bonds issued after September 30, 1990.

"(2) CERTIFICATES.—The amendment made by subsection (b) [amending section 25 of this title] shall apply to elections for periods after September 30, 1990.

"(3) SIMPLIFICATION.—The amendment made by subsection (c) [amending this section] shall take effect as if included in the amendments made by section 4005 of the Technical and Miscellaneous Revenue Act of 1988 [Pub. L. 100–647]."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1013(a)(2), (3) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title IV, §4005(h), Nov. 10, 1988, 102 Stat. 3651, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 25, 26, 148, 6045, and 6654 of this title] shall apply to bonds issued, and nonissued bond amounts elected, after December 31, 1988.

"(2) SPECIAL RULES RELATING TO CERTAIN REQUIREMENTS AND REFUNDING BONDS.—In the case of a bond issued to refund (or which is part of a series of bonds issued to refund) a bond issued before January 1, 1989—

"(A) the amendments made by subsections (b) and (c) [amending this section] shall apply to financing provided after the date of issuance of the refunding issue, and

"(B) the amendment made by subsection (f) [amending this section] shall apply to payments (including on loans made before such date of issuance) received on or after such date of issuance.

"(3) SUBSECTION (g).—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by subsection (g) [amending this section and sections 25, 26, 6045, and 6654 of this title] shall apply to financing provided, and mortgage credit certificates issued, after December 31, 1990.

"(B) EXCEPTION.—The amendments made by subsection (g) shall not apply to financing provided pursuant to a binding contract (entered into before June 23, 1988) with a homebuilder, lender, or mortgagor if the bonds (the proceeds of which are used to provide such financing) are issued—

"(i) before June 23, 1988, or

"(ii) before August 1, 1988, pursuant to a written application (made before July 1, 1988) for State bond volume authority."

TRANSITION RULE

Pub. L. 110–245, title I, §103(e), June 17, 2008, 122 Stat. 1626, provided that: "In the case of any bond issued after December 31, 2007, and before the date of the enactment of this Act [June 17, 2008], subparagraph (B) of section 143(l)(4) of the Internal Revenue Code of 1986, as amended by this section, shall be applied by substituting '30 years' for '25 years'."

TERMINATION DATE FOR OBLIGATIONS TREATED AS QUALIFIED MORTGAGE BONDS UNDER FORMER SECTION 103A

Pub. L. 100–647, title I, §1013(a)(27), Nov. 10, 1988, 102 Stat. 3543, provided that: "The date contained in [former] section 143(a)(1)(B) of the 1986 Code shall be treated as contained in section 103A(c)(1)(B) of the Internal Revenue Code of 1954, as in effect on the day before the date of the enactment of the Reform Act [Oct. 22, 1986], for purposes of any bond issued to refund a bond to which such [section] 103A(c)(1) applies."

STUDY OF RECAPTURE PROVISIONS

Pub. L. 100–647, title IV, §4005(i), Nov. 10, 1988, 102 Stat. 3651, provided that: "The Comptroller General of the United States shall conduct a study of section 143(m) of the 1986 Code (as added by this section) and of alternatives to accomplish the purposes of such section. A report of such study shall be submitted not later than July 1, 1990, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate."

[1] So in original. Two pars. (12) have been enacted.

§144. Qualified small issue bond; qualified student loan bond; qualified redevelopment bond

(a) Qualified small issue bond

(1) In general

For purposes of this part, the term "qualified small issue bond" means any bond issued as part of an issue the aggregate authorized face amount of which is $1,000,000 or less and 95 percent or more of the net proceeds of which are to be used—

(A) for the acquisition, construction, reconstruction, or improvement of land or property of a character subject to the allowance for depreciation, or

(B) to redeem part or all of a prior issue which was issued for purposes described in subparagraph (A) or this subparagraph.

(2) Certain prior issues taken into account

If—

(A) the proceeds of 2 or more issues of bonds (whether or not the issuer of each such issue is the same) are or will be used primarily with respect to facilities located in the same incorporated municipality or located in the same county (but not in any incorporated municipality),

(B) the principal user of such facilities is or will be the same person or 2 or more related persons, and

(C) but for this paragraph, paragraph (1) (or the corresponding provision of prior law) would apply to each such issue,

then, for purposes of paragraph (1), in determining the aggregate face amount of any later issue there shall be taken into account the aggregate face amount of tax-exempt bonds issued under all prior such issues and outstanding at the time of such later issue (not including as outstanding any bond which is to be redeemed (other than in an advance refunding) from the net proceeds of the later issue).

(3) Related persons

For purposes of this subsection, a person is a related person to another person if—

(A) the relationship between such persons would result in a disallowance of losses under section 267 or 707(b), or

(B) such persons are members of the same controlled group of corporations (as defined in section 1563(a), except that "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears therein).

(4) $10,000,000 limit in certain cases

(A) In general

At the election of the issuer with respect to any issue, this subsection shall be applied—

(i) by substituting "$10,000,000" for "$1,000,000" in paragraph (1), and

(ii) in determining the aggregate face amount of such issue, by taking into account not only the amount described in paragraph (2), but also the aggregate amount of capital expenditures with respect to facilities described in subparagraph (B) paid or incurred during the 6-year period beginning 3 years before the date of such issue and ending 3 years after such date (and financed otherwise than out of the proceeds of outstanding tax-exempt issues to which paragraph (1) (or the corresponding provision of prior law) applied), as if the aggregate amount of such capital expenditures constituted the face amount of a prior outstanding issue described in paragraph (2).

(B) Facilities taken into account

For purposes of subparagraph (A)(ii), the facilities described in this subparagraph are facilities—

(i) located in the same incorporated municipality or located in the same county (but not in any incorporated municipality), and

(ii) the principal user of which is or will be the same person or 2 or more related persons.

For purposes of clause (i), the determination of whether or not facilities are located in the same governmental unit shall be made as of the date of issue of the issue in question.

(C) Certain capital expenditures not taken into account

For purposes of subparagraph (A)(ii), any capital expenditure—

(i) to replace property destroyed or damaged by fire, storm, or other casualty, to the extent of the fair market value of the property replaced,

(ii) required by a change made after the date of issue of the issue in question in a Federal or State law or local ordinance of general application or required by a change made after such date in rules and regulations of general application issued under such a law or ordinance,

(iii) required by circumstances which could not be reasonably foreseen on such date of issue or arising out of a mistake of law or fact (but the aggregate amount of expenditures not taken into account under this clause with respect to any issue shall not exceed $1,000,000), or

(iv) described in clause (i) or (ii) of section 41(b)(2)(A) for which a deduction was allowed under section 174(a),

shall not be taken into account.

(D) Limitation on loss of tax exemption

In applying subparagraph (A)(ii) with respect to capital expenditures made after the date of any issue, no bond issued as a part of such issue shall cease to be treated as a qualified small issue bond by reason of any such expenditure for any period before the date on which such expenditure is paid or incurred.

(E) Certain refinancing issues

In the case of any issue described in paragraph (1)(B), an election may be made under subparagraph (A) of this paragraph only if all of the prior issues being redeemed are issues to which paragraph (1) (or the corresponding provision of prior law) applied. In applying subparagraph (A)(ii) with respect to such a refinancing issue, capital expenditures shall be taken into account only for purposes of determining whether the prior issues being redeemed qualified (and would have continued to qualify) under paragraph (1) (or the corresponding provision of prior law).

(F) Aggregate amount of capital expenditures where there is urban development action grant

In the case of any issue 95 percent or more of the net proceeds of which are to be used to

provide facilities with respect to which an urban development action grant has been made under section 119 of the Housing and Community Development Act of 1974, capital expenditures of not to exceed $10,000,000 shall not be taken into account for purposes of applying subparagraph (A)(ii). This subparagraph shall not apply to bonds issued after December 31, 2006.

(G) Additional capital expenditures not taken into account

With respect to bonds issued after December 31, 2006, in addition to any capital expenditure described in subparagraph (C), capital expenditures of not to exceed $10,000,000 shall not be taken into account for purposes of applying subparagraph (A)(ii).

(5) Issues for residential purposes

This subsection shall not apply to any bond issued as part of an issue 5 percent or more of the net proceeds of which are to be used directly or indirectly to provide residential real property for family units.

(6) Limitations on treatment of bonds as part of the same issue

(A) In general

For purposes of this subsection, separate lots of bonds which (but for this subparagraph) would be treated as part of the same issue shall be treated as separate issues unless the proceeds of such lots are to be used with respect to 2 or more facilities—

(i) which are located in more than 1 State, or

(ii) which have, or will have, as the same principal user the same person or related persons.

(B) Franchises

For purposes of subparagraph (A), a person (other than a governmental unit) shall be considered a principal user of a facility if such person (or a group of related persons which includes such person)—

(i) guarantees, arranges, participates in, or assists with the issuance (or pays any portion of the cost of issuance) of any bond the proceeds of which are to be used to finance or refinance such facility, and

(ii) provides any property, or any franchise, trademark, or trade name (within the meaning of section 1253), which is to be used in connection with such facility.

(7) Subsection not to apply if bonds issued with certain other tax-exempt bonds

This subsection shall not apply to any bond issued as part of an issue (other than an issue to which paragraph (4) applies) if the interest on any other bond which is part of such issue is excluded from gross income under any provision of law other than this subsection.

(8) Restrictions on financing certain facilities

This subsection shall not apply to an issue if—

(A) more than 25 percent of the net proceeds of the issue are to be used to provide a facility the primary purpose of which is one of the following: retail food and beverage services, automobile sales or service, or the provision of recreation or entertainment; or

(B) any portion of the proceeds of the issue is to be used to provide the following: any private or commercial golf course, country club, massage parlor, tennis club, skating facility (including roller skating, skateboard, and ice skating), racquet sports facility (including any handball or racquetball court), hot tub facility, suntan facility, or racetrack.

(9) Aggregation of issues with respect to single project

For purposes of this subsection, 2 or more issues part or all of the net proceeds of which are to be used with respect to a single building, an enclosed shopping mall, or a strip of offices, stores, or warehouses using substantial common facilities shall be treated as 1 issue (and any person who is a principal user with respect to any of such issues shall be treated as a principal user with respect to the aggregated issue).

(10) Aggregate limit per taxpayer

(A) In general

This subsection shall not apply to any issue if the aggregate authorized face amount of such issue allocated to any test-period beneficiary (when increased by the outstanding tax-exempt facility-related bonds of such beneficiary) exceeds $40,000,000.

(B) Outstanding tax-exempt facility-related bonds

(i) In general

For purposes of applying subparagraph (A) with respect to any issue, the outstanding tax-exempt facility-related bonds of any person who is a test-period beneficiary with respect to such issue is the aggregate amount of tax-exempt bonds referred to in clause (ii)—

(I) which are allocated to such beneficiary, and

(II) which are outstanding at the time of such later issue (not including as outstanding any bond which is to be redeemed (other than in an advance refunding) from the net proceeds of the later issue).

(ii) Bonds taken into account

For purposes of clause (i), the bonds referred to in this clause are—

(I) exempt facility bonds, qualified small issue bonds, and qualified redevelopment bonds, and

(II) industrial development bonds (as defined in section 103(b)(2), as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) to which section 141(a) does not apply.

(C) Allocation of face amount of issue

(i) In general

Except as otherwise provided in regulations, the portion of the face amount of an issue allocated to any test-period beneficiary of a facility financed by the proceeds of such issue (other than an owner of such facility) is an amount which bears the same relationship to the entire face amount of such issue as the portion of such facility used by such beneficiary bears to the entire facility.

(ii) Owners

Except as otherwise provided in regulations, the portion of the face amount of an issue allocated to any test-period beneficiary who is an owner of a facility financed by the proceeds of such issue is an amount which bears the same relationship to the entire face amount of such issue as the portion of such facility owned by such beneficiary bears to the entire facility.

(D) Test-period beneficiary

For purposes of this paragraph, except as provided in regulations, the term "test-period beneficiary" means any person who is an owner or a principal user of facilities being financed by the issue at any time during the 3-year period beginning on the later of—

(i) the date such facilities were placed in service, or

(ii) the date of issue.

(E) Treatment of related persons

For purposes of this paragraph, all persons who are related (within the meaning of paragraph (3)) to each other shall be treated as 1 person.

(11) Limitation on acquisition of depreciable farm property

(A) In general

This subsection shall not apply to any issue if more than $250,000 of the net proceeds of such issue are to be used to provide depreciable farm property with respect to which the principal

user is or will be the same person or 2 or more related persons.

(B) Depreciable farm property

For purposes of this paragraph, the term "depreciable farm property" means property of a character subject to the allowance for depreciation which is to be used in a trade or business of farming.

(C) Prior issues taken into account

In determining the amount of proceeds of an issue to be used as described in subparagraph (A), there shall be taken into account the aggregate amount of each prior issue to which paragraph (1) (or the corresponding provisions of prior law) applied which were or will be so used.

(12) Termination dates

(A) In general

This subsection shall not apply to—

(i) any bond (other than a bond described in clause (ii)) issued after December 31, 1986, or

(ii) any bond (or series of bonds) issued to refund a bond issued on or before such date unless—

(I) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue,

(II) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and

(III) the net proceeds of the refunding bond are used to redeem the refunded bond not later than 90 days after the date of the issuance of the refunding bond.

For purposes of clause (ii)(I), average maturity shall be determined in accordance with section 147(b)(2)(A).

(B) Bonds issued to finance manufacturing facilities and farm property

Subparagraph (A) shall not apply to any bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide—

(i) any manufacturing facility, or

(ii) any land or property in accordance with section 147(c)(2).

(C) Manufacturing facility

For purposes of this paragraph—

(i) In general

The term "manufacturing facility" means any facility which is used in the manufacturing or production of tangible personal property (including the processing resulting in a change in the condition of such property). A rule similar to the rule of section 142(b)(2) shall apply for purposes of the preceding sentence.

(ii) Certain facilities included

Such term includes facilities which are directly related and ancillary to a manufacturing facility (determined without regard to this clause) if—

(I) such facilities are located on the same site as the manufacturing facility, and

(II) not more than 25 percent of the net proceeds of the issue are used to provide such facilities.

(iii) Special rules for bonds issued in 2009 and 2010

In the case of any issue made after the date of enactment of this clause and before January 1, 2011, clause (ii) shall not apply and the net proceeds from a bond shall be considered to be used to provide a manufacturing facility if such proceeds are used to provide—

(I) a facility which is used in the creation or production of intangible property which is

described in section 197(d)(1)(C)(iii), or

(II) a facility which is functionally related and subordinate to a manufacturing facility (determined without regard to this subclause) if such facility is located on the same site as the manufacturing facility.

(b) Qualified student loan bond

For purposes of this part—

(1) In general

The term "qualified student loan bond" means any bond issued as part of an issue the applicable percentage or more of the net proceeds of which are to be used directly or indirectly to make or finance student loans under—

(A) a program of general application to which the Higher Education Act of 1965 applies if—

(i) limitations are imposed under the program on—

(I) the maximum amount of loans outstanding to any student, and

(II) the maximum rate of interest payable on any loan,

(ii) the loans are directly or indirectly guaranteed by the Federal Government,

(iii) the financing of loans under the program is not limited by Federal law to the proceeds of tax-exempt bonds, and

(iv) special allowance payments under section 438 of the Higher Education Act of 1965—

(I) are authorized to be paid with respect to loans made under the program, or

(II) would be authorized to be made with respect to loans under the program if such loans were not financed with the proceeds of tax-exempt bonds, or

(B) a program of general application approved by the State if no loan under such program exceeds the difference between the total cost of attendance and other forms of student assistance (not including loans pursuant to section 428B(a)(1) of the Higher Education Act of 1965 (relating to parent loans) or subpart I [1] of part C of title VII of the Public Health Service Act (relating to student assistance)) for which the student borrower may be eligible. A program shall not be treated as described in this subparagraph if such program is described in subparagraph (A).

A bond shall not be treated as a qualified student loan bond if the issue of which such bond is a part meets the private business tests of paragraphs (1) and (2) of section 141(b) (determined by treating 501(c)(3) organizations as governmental units with respect to their activities which do not constitute unrelated trades or businesses, determined by applying section 513(a)).

(2) Applicable percentage

For purposes of paragraph (1), the term "applicable percentage" means—

(A) 90 percent in the case of the program described in paragraph (1)(A), and

(B) 95 percent in the case of the program described in paragraph (1)(B).

(3) Student borrowers must be residents of issuing State, etc.

A student loan shall be treated as being made or financed under a program described in paragraph (1) with respect to an issue only if the student is—

(A) a resident of the State from which the volume cap under section 146 for such loan was derived, or

(B) enrolled at an educational institution located in such State.

(4) Discrimination on basis of school location not permitted

A program shall not be treated as described in paragraph (1)(A) if such program discriminates on the basis of the location (in the United States) of the educational institution in which the student is enrolled.

(c) Qualified redevelopment bond

For purposes of this part—

(1) In general

The term "qualified redevelopment bond" means any bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used for 1 or more redevelopment purposes in any designated blighted area.

(2) Additional requirements

A bond shall not be treated as a qualified redevelopment bond unless—

(A) the issue described in paragraph (1) is issued pursuant to—

(i) a State law which authorizes the issuance of such bonds for redevelopment purposes in blighted areas, and

(ii) a redevelopment plan which is adopted before such issuance by the governing body described in paragraph (4)(A) with respect to the designated blighted area,

(B)(i) the payment of the principal and interest on such issue is primarily secured by taxes of general applicability imposed by a general purpose governmental unit, or

(ii) any increase in real property tax revenues (attributable to increases in assessed value) by reason of the carrying out of such purposes in such area is reserved exclusively for debt service on such issue (and similar issues) to the extent such increase does not exceed such debt service,

(C) each interest in real property located in such area—

(i) which is acquired by a governmental unit with the proceeds of the issue, and

(ii) which is transferred to a person other than a governmental unit,

is transferred for fair market value,

(D) the financed area with respect to such issue meets the no additional charge requirements of paragraph (5), and

(E) the use of the proceeds of the issue meets the requirements of paragraph (6).

(3) Redevelopment purposes

For purposes of paragraph (1)—

(A) In general

The term "redevelopment purposes" means, with respect to any designated blighted area—

(i) the acquisition (by a governmental unit having the power to exercise eminent domain) of real property located in such area,

(ii) the clearing and preparation for redevelopment of land in such area which was acquired by such governmental unit,

(iii) the rehabilitation of real property located in such area which was acquired by such governmental unit, and

(iv) the relocation of occupants of such real property.

(B) New construction not permitted

The term "redevelopment purposes" does not include the construction (other than the rehabilitation) of any property or the enlargement of an existing building.

(4) Designated blighted area

For purposes of this subsection—

(A) In general

The term "designated blighted area" means any blighted area designated by the governing body of a local general purpose governmental unit in the jurisdiction of which such area is located.

(B) Blighted area

The term "blighted area" means any area which the governing body described in subparagraph (A) determines to be a blighted area on the basis of the substantial presence of

factors such as excessive vacant land on which structures were previously located, abandoned or vacant buildings, substandard structures, vacancies, and delinquencies in payment of real property taxes.

(C) Designated areas may not exceed 20 percent of total assessed value of real property in government's jurisdiction

(i) In general

An area may be designated by a governmental unit as a blighted area only if the designation percentage with respect to such area, when added to the designation percentages of all other designated blighted areas within the jurisdiction of such governmental unit, does not exceed 20 percent.

(ii) Designation percentage

For purposes of this subparagraph, the term "designation percentage" means, with respect to any area, the percentage (determined at the time such area is designated) which the assessed value of real property located in such area is of the total assessed value of all real property located within the jurisdiction of the governmental unit which designated such area.

(iii) Exception where bonds not outstanding

The designation percentage of a previously designated blighted area shall not be taken into account under clause (i) if no qualified redevelopment bond (or similar bond) is or will be outstanding with respect to such area.

(D) Minimum designated area

(i) In general

Except as provided in clause (ii), an area shall not be treated as a designated blighted area for purposes of this subsection unless such area is contiguous and compact and its area equals or exceeds 100 acres.

(ii) 10-acre minimum in certain cases

Clause (i) shall be applied by substituting "10 acres" for "100 acres" if not more than 25 percent of the financed area is to be provided (pursuant to the issue and all other such issues) to 1 person. For purposes of the preceding sentence, all related persons (as defined in subsection (a)(3)) shall be treated as 1 person. For purposes of this clause, an area provided to a developer on a short-term interim basis shall not be treated as provided to such developer.

(5) No additional charge requirements

The financed area with respect to any issue meets the requirements of this paragraph if, while any bond which is part of such issue is outstanding—

(A) no owner or user of property located in the financed area is subject to a charge or fee which similarly situated owners or users of comparable property located outside such area are not subject, and

(B) the assessment method or rate of real property taxes with respect to property located in the financed area does not differ from the assessment method or rate of real property taxes with respect to comparable property located outside such area.

For purposes of the preceding sentence, the term "comparable property" means property which is of the same type as the property to which it is being compared and which is located within the jurisdiction of the designating governmental unit.

(6) Use of proceeds requirements

The use of the proceeds of an issue meets the requirements of this paragraph if—

(A) not more than 25 percent of the net proceeds of such issue are to be used to provide (including the provision of land for) facilities described in subsection (a)(8) or section 147(e), and

(B) no portion of the proceeds of such issue is to be used to provide (including the provision of land for) any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises.

(7) Financed area

For purposes of this subsection, the term "financed area" means, with respect to any issue, the portion of the designated blighted area with respect to which the proceeds of such issue are to be used.

(8) Restriction on acquisition of land not to apply

Section 147(c) (other than paragraphs (1)(B) and (2) thereof) shall not apply to any qualified redevelopment bond.

(Added Pub. L. 99–514, title XIII, §1301(b), Oct. 22, 1986, 100 Stat. 2621; amended Pub. L. 100–647, title I, §1013(a)(4)(A), (B)(i), (ii), (C), (5), title VI, §6176(a), Nov. 10, 1988, 102 Stat. 3537, 3538, 3726; Pub. L. 101–239, title VII, §7105, Dec. 19, 1989, 103 Stat. 2306; Pub. L. 101–508, title XI, §11409(a), Nov. 5, 1990, 104 Stat. 1388–478; Pub. L. 102–227, title I, §109(a), Dec. 11, 1991, 105 Stat. 1688; Pub. L. 103–66, title XIII, §13122(a), Aug. 10, 1993, 107 Stat. 432; Pub. L. 108–357, title III, §340, Oct. 22, 2004, 118 Stat. 1485; Pub. L. 109–222, title II, §208, May 17, 2006, 120 Stat. 351; Pub. L. 111–5, div. B, title I, §1301(a), Feb. 17, 2009, 123 Stat. 344.)

REFERENCES IN TEXT

Section 119 of the Housing and Community Development Act of 1974, referred to in subsec. (a)(4)(F), is classified to section 5318 of Title 42, The Public Health and Welfare.

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (a)(10)(B)(ii)(II), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

The date of enactment of this clause, referred to in subsec. (a)(12)(C)(iii), is the date of enactment of Pub. L. 111–5, which was approved Feb. 17, 2009.

The Higher Education Act of 1965, referred to in subsec. (b)(1), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, which is classified generally to chapter 28 (§1001 et seq.) of Title 20, Education, and part C (§2751 et seq.) of subchapter I of chapter 34 of Title 42, The Public Health and Welfare. Section 428B(a) of that Act as enacted in the general amendment of part B of title IV of that Act by Pub. L. 99–498, title IV, §402(a), Oct. 17, 1986, 100 Stat. 1386, which is classified to section 1078–2 of Title 20, does not contain a par. (1). Section 438 of that Act is classified to section 1087–1 of Title 20. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

The Public Health Service Act, referred to in subsec. (b)(1)(B), is act July 1, 1944, ch. 373, 58 Stat. 682. Subpart I of part C of title VII of the Act was classified generally to subpart I (§294 et seq.) of part C of subchapter V of chapter 6A of Title 42, The Public Health and Welfare, prior to the general revision of subchapter V of chapter 6A by Pub. L. 102–408, title I, §102, Oct. 13, 1992, 106 Stat. 1994. See subpart I (§292 et seq.) of part A of revised subchapter V of chapter 6A of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 144, acts Aug. 16, 1954, ch. 736, 68A Stat. 41; Feb. 26, 1964, Pub. L. 88–272, title I, §112(c), title II, §232(c), 78 Stat. 24, 110; Dec. 10, 1971, Pub. L. 92–178, title II, §206, title III, §301(c), 85 Stat. 511, 520; Oct. 4, 1976, Pub. L. 94–455, title V, §501(b)(3)–(5), title XIX, §1906(b)(13)(A), 90 Stat. 1558, 1559, 1834, related to method for electing to take standard deduction, prior to repeal by Pub. L. 95–30, title I, §101(d)(1), May 23, 1977, 91 Stat. 133, applicable to taxable years beginning after Dec. 31, 1976.

AMENDMENTS

2009—Subsec. (a)(12)(C). Pub. L. 111–5 substituted dash for comma after "For purposes of this paragraph", designated remainder of first sentence and second sentence of existing provisions as cl. (i) and inserted heading, substituted "The term" for "the term", added cls. (ii) and (iii), and struck out former last sentence which read as follows: "For purposes of the 1st sentence of this subparagraph, the term 'manufacturing facility' includes facilities which are directly related and ancillary to a manufacturing facility (determined without regard to this sentence) if—

"(i) such facilities are located on the same site as the manufacturing facility, and

"(ii) not more than 25 percent of the net proceeds of the issue are used to provide such facilities."

2006—Subsec. (a)(4)(F), (G). Pub. L. 109–222 substituted "December 31, 2006" for "September 30, 2009".

2004—Subsec. (a)(4)(F). Pub. L. 108–357, §340(b), inserted at end "This subparagraph shall not apply to bonds issued after September 30, 2009."

Subsec. (a)(4)(G). Pub. L. 108–357, §340(a), added subpar. (G).

1993—Subsec. (a)(12)(B). Pub. L. 103–66 amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: "In the case of any bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide—

"(i) any manufacturing facility, or

"(ii) any land or property in accordance with section 147(c)(2),

subparagraph (A) shall be applied by substituting 'June 30, 1992' for 'December 31, 1986'."

1991—Subsec. (a)(12)(B). Pub. L. 102–227 substituted "June 30, 1992" for "December 31, 1991".

1990—Subsec. (a)(12)(B). Pub. L. 101–508 substituted "December 31, 1991" for "September 30, 1990".

1989—Subsec. (a)(12)(B). Pub. L. 101–239 substituted "by substituting 'September 30, 1990' for 'December 31, 1986' " for "by substituting '1989' for '1986' ".

1988—Subsec. (a)(12)(A). Pub. L. 100–647, §1013(a)(4)(B)(ii), inserted sentence at end that for purposes of cl. (ii)(I), average maturity be determined in accordance with section 147(b)(2)(A).

Subsec. (a)(12)(A)(ii). Pub. L. 100–647, §1013(a)(4)(A), inserted "(or series of bonds)" before "issued to refund" in introductory text.

Subsec. (a)(12)(A)(ii)(I). Pub. L. 100–647, §1013(a)(4)(B)(i), amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: "the refunding bond has a maturity date not later than the maturity date of the refunded bond,".

Subsec. (a)(12)(A)(ii)(III), (IV). Pub. L. 100–647, §1013(a)(4)(C), redesignated subcl. (IV) as (III) and struck out former subcl. (III) which provided that this subsection apply when the interest rate on the refunding bond is lower than the interest rate on the refunded bond.

Subsec. (a)(12)(C). Pub. L. 100–647, §6176(a), inserted sentence at end defining "manufacturing facility".

Subsec. (b)(1). Pub. L. 100–647, §1013(a)(5), in subpar. (B) struck out "to which part B of title IV of the Higher Education Act of 1965 (relating to guaranteed student loans) does not apply" after "by the State", substituted "of the Higher Education Act of 1965" for "of such Act", amended last sentence generally, and inserted a new flush sentence at end of par. (1). Prior to amendment, last sentence of subpar. (B) read as follows: "A bond issued as part of an issue shall be treated as a qualified student loan bond only if no bond which is part of such issue meets the private business tests of paragraphs (1) and (2) of section 141(b)."

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, §1301(b), Feb. 17, 2009, 123 Stat. 345, provided that: "The amendments made by this section [amending this section] shall apply to obligations issued after the date of the enactment of this Act [Feb. 17, 2009]."

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13122(b), Aug. 10, 1993, 107 Stat. 433, provided that: "The amendment made by subsection (a) [amending this section] shall apply to bonds issued after June 30, 1992."

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102–227, title I, §109(b), Dec. 11, 1991, 105 Stat. 1688, provided that: "The amendment made by this section [amending this section] shall apply to bonds issued after December 31, 1991."

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, §11409(b), Nov. 5, 1990, 104 Stat. 1388–478, provided that: "The amendment made by this section [amending this section] shall apply to bonds issued after September 30, 1990."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1013(a)(4)(A), (B)(i), (ii), (C), (5) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title VI, §6176(b), Nov. 10, 1988, 102 Stat. 3726, provided that:

"(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to bonds issued after the date of the enactment of this Act [Nov. 10, 1988].

"(2) REFUNDINGS.—The amendment made by subsection (a) shall not apply to any bond issued to refund (or which is part of a series of bonds issued to refund) a bond issued on or before the date of the enactment of

this Act if—

"(A) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue, and

"(B) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond. For purposes of subparagraph (A), average maturity shall be determined in accordance with section 147(b) of the 1986 Code."

APPLICATION OF SUBSECTION (A)(12)(A)(II)(I) TO REFUNDING BONDS ISSUED BEFORE JULY 1, 1987

Pub. L. 100–647, title I, §1013(a)(4)(B)(iii), Nov. 10, 1988, 102 Stat. 3538, provided that: "A refunding bond issued before July 1, 1987, shall be treated as meeting the requirement of subclause (I) of section 144(a)(12)(A)(ii) of the 1986 Code if such bond met the requirement of such subclause as in effect before the amendments made by this subparagraph [amending this section]."

TERMINATION DATE FOR EXEMPTION FOR CERTAIN SMALL ISSUES UNDER SECTION 103(B)(6)

Pub. L. 100–647, title I, §1013(c)(12)(B), Nov. 10, 1988, 102 Stat. 3547, provided that: "The date applicable under section 144(a)(12)(B) of the 1986 Code shall be treated as contained in section 103(b)(6)(N)(iii) of the Internal Revenue Code of 1954, as in effect on the day before the date of the enactment of the Reform Act [Oct. 22, 1986], for purposes of any bond issued to refund a bond to which such section 103(b)(6)(N)(iii) applies."

[1] *See References in Text note below.*

§145. Qualified 501(c)(3) bond

(a) In general

For purposes of this part, except as otherwise provided in this section, the term "qualified 501(c)(3) bond" means any private activity bond issued as part of an issue if—

(1) all property which is to be provided by the net proceeds of the issue is to be owned by a 501(c)(3) organization or a governmental unit, and

(2) such bond would not be a private activity bond if—

(A) 501(c)(3) organizations were treated as governmental units with respect to their activities which do not constitute unrelated trades or businesses, determined by applying section 513(a), and

(B) paragraphs (1) and (2) of section 141(b) were applied by substituting "5 percent" for "10 percent" each place it appears and by substituting "net proceeds" for "proceeds" each place it appears.

(b) $150,000,000 limitation on bonds other than hospital bonds

(1) In general

A bond (other than a qualified hospital bond) shall not be treated as a qualified 501(c)(3) bond if the aggregate authorized face amount of the issue (of which such bond is a part) allocated to any 501(c)(3) organization which is a test-period beneficiary (when increased by the outstanding tax-exempt nonhospital bonds of such organization) exceeds $150,000,000.

(2) Outstanding tax-exempt nonhospital bonds

(A) In general

For purposes of applying paragraph (1) with respect to any issue, the outstanding tax-exempt nonhospital bonds of any organization which is a test-period beneficiary with respect to such issue is the aggregate amount of tax-exempt bonds referred to in subparagraph (B)—

(i) which are allocated to such organization, and

(ii) which are outstanding at the time of such later issue (not including as outstanding any bond which is to be redeemed (other than in an advance refunding) from the net proceeds of

the later issue).

(B) Bonds taken into account

For purposes of subparagraph (A), the bonds referred to in this subparagraph are—

(i) any qualified 501(c)(3) bond other than a qualified hospital bond, and

(ii) any bond to which section 141(a) does not apply if—

(I) such bond would have been an industrial development bond (as defined in section 103(b)(2), as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) if 501(c)(3) organizations were not exempt persons, and

(II) such bond was not described in paragraph (4), (5), or (6) of such section 103(b) (as in effect on the date such bond was issued).

(C) Only nonhospital portion of bonds taken into account

(i) In general

A bond shall be taken into account under subparagraph (B) only to the extent that the proceeds of the issue of which such bond is a part are not used with respect to a hospital.

(ii) Special rule

If 90 percent or more of the net proceeds of an issue are used with respect to a hospital, no bond which is part of such issue shall be taken into account under subparagraph (B)(ii).

(3) Aggregation rule

For purposes of this subsection, 2 or more organizations under common management or control shall be treated as 1 organization.

(4) Allocation of face amount of issue; test-period beneficiary

Rules similar to the rules of subparagraphs (C), (D), and (E) of section 144(a)(10) shall apply for purposes of this subsection.

(5) Termination of limitation

This subsection shall not apply with respect to bonds issued after the date of the enactment of this paragraph as part of an issue 95 percent or more of the net proceeds of which are to be used to finance capital expenditures incurred after such date.

(c) Qualified hospital bond

For purposes of this section, the term "qualified hospital bond" means any bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used with respect to a hospital.

(d) Restrictions on bonds used to provide residential rental housing for family units

(1) In general

Except as otherwise provided in this subsection, a bond which is part of an issue shall not be a qualified 501(c)(3) bond if any portion of the net proceeds of the issue are to be used directly or indirectly to provide residential rental property for family units.

(2) Exception for bonds used to provide qualified residential rental projects

Paragraph (1) shall not apply to any bond issued as part of an issue if the portion of such issue which is to be used as described in paragraph (1) is to be used to provide—

(A) a residential rental property for family units if the first use of such property is pursuant to such issue,

(B) qualified residential rental projects (as defined in section 142(d)), or

(C) property which is to be substantially rehabilitated in a rehabilitation beginning within the 2-year period ending 1 year after the date of the acquisition of such property.

(3) Certain property treated as new property

Solely for purposes of determining under paragraph (2)(A) whether the 1st use of property is pursuant to tax-exempt financing—

(A) In general

If—

(i) the 1st use of property is pursuant to taxable financing,

(ii) there was a reasonable expectation (at the time such taxable financing was provided) that such financing would be replaced by tax-exempt financing, and

(iii) the taxable financing is in fact so replaced within a reasonable period after the taxable financing was provided,

then the 1st use of such property shall be treated as being pursuant to the tax-exempt financing.

(B) Special rule where no operating State or local program for tax-exempt financing

If, at the time of the 1st use of property, there was no operating State or local program for tax-exempt financing of the property, the 1st use of the property shall be treated as pursuant to the 1st tax-exempt financing of the property.

(C) Definitions

For purposes of this paragraph—

(i) Tax-exempt financing

The term "tax-exempt financing" means financing provided by tax-exempt bonds.

(ii) Taxable financing

The term "taxable financing" means financing which is not tax-exempt financing.

(4) Substantial rehabilitation

(A) In general

Except as provided in subparagraph (B), rules similar to the rules of section 47(c)(1)(C) shall apply in determining for purposes of paragraph (2)(C) whether property is substantially rehabilitated.

(B) Exception

For purposes of subparagraph (A), clause (ii) of section 47(c)(1)(C) shall not apply, but the Secretary may extend the 24-month period in section 47(c)(1)(C)(i) where appropriate due to circumstances not within the control of the owner.

(e) Election out

This section shall not apply to an issue if—

(1) the issuer elects not to have this section apply to such issue, and

(2) such issue is an issue of exempt facility bonds, or qualified redevelopment bonds, to which section 146 applies.

(Added Pub. L. 99–514, title XIII, §1301(b), Oct. 22, 1986, 100 Stat. 2629; amended Pub. L. 100–647, title I, §1013(a)(6)–(8), title V, §5053(a), Nov. 10, 1988, 102 Stat. 3538, 3677; Pub. L. 101–239, title VII, §7815(f), Dec. 19, 1989, 103 Stat. 2419; Pub. L. 101–508, title XI, §11813(b)(7), Nov. 5, 1990, 104 Stat. 1388–551; Pub. L. 105–34, title II, §222, Aug. 5, 1997, 111 Stat. 818.)

REFERENCES IN TEXT

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (b)(2)(B)(ii)(I), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

The date of the enactment of this paragraph, referred to in subsec. (b)(5), is the date of enactment of Pub. L. 105–34, which was approved Aug. 5, 1997.

PRIOR PROVISIONS

A prior section 145, act Aug. 16, 1954, ch. 736, 68A Stat. 42, made a cross reference to section 36 of this title, prior to repeal by Pub. L. 95–30, title I, §101(d)(1), May 23, 1977, 91 Stat. 133, applicable to taxable years beginning after Dec. 31, 1976.

AMENDMENTS

1997—Subsec. (b)(5). Pub. L. 105–34 added par. (5).

1990—Subsec. (d)(4). Pub. L. 101–508 substituted "section 47(c)(1)(C)" for "section 48(g)(1)(C)" wherever appearing and "section 47(c)(1)(C)(i)" for "section 48(g)(1)(C)(i)".

1989—Subsec. (d)(3), (4). Pub. L. 101–239 added par. (3) and redesignated former par. (3) as (4).

1988—Subsec. (b)(2)(B)(ii)(I). Pub. L. 100–647, §1013(a)(6), substituted "section 103(b)(2)" for "section 103(b)".

Subsec. (b)(2)(C)(i). Pub. L. 100–647, §1013(a)(7), substituted "subparagraph (B)" for "subparagraph (B)(ii)".

Subsec. (b)(4). Pub. L. 100–647, §1013(a)(8), substituted "subparagraphs (C), (D), and (E)" for "subparagraphs (C) and (D)".

Subsecs. (d), (e). Pub. L. 100–647, §5053(a), added subsec. (d) and redesignated former subsec. (d) as (e).

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1013(a)(6)–(8) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title V, §5053(c), Nov. 10, 1988, 102 Stat. 3678, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and section 148 of this title] shall apply to obligations issued after October 21, 1988.

"(2) EXCEPTION FOR CONSTRUCTION OR BINDING AGREEMENT.—

"(A) The amendments made by this section shall not apply to bonds (other than refunding bonds) with respect to a facility—

"(i)(I) the original use of which begins with the taxpayer, and the construction, reconstruction, or rehabilitation of which began before July 14, 1988, and was completed on or after such date, or

"(II) the original use of which begins with the taxpayer and with respect to which a binding contract to incur significant expenditures for construction, reconstruction, or rehabilitation was entered into before July 14, 1988, and some of such expenditures are incurred on or after such date, and

"(ii) described in an inducement resolution or other comparable preliminary approval adopted by an issuing authority (or by a voter referendum) before July 14, 1988.

For purposes of the preceding sentence, the term 'significant expenditures' means expenditures greater than 10 percent of the reasonably anticipated cost of the construction, reconstruction, or rehabilitation of the facility involved.

"(B) Subparagraph (A) shall not apply to any bond issued after December 31, 1989, and shall not apply unless it is reasonably expected (at the time of issuance of the bond) that the facility will be placed in service before January 1, 1990.

"(3) REFUNDINGS.—The amendments made by this section shall not apply to any bond issued to refund (or which is part of a series of bonds issued to refund) a bond issued before July 15, 1988, if—

"(A) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue,

"(B) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and

"(C) the proceeds of the refunding bond are used to redeem the refunded bond not later than 90 days after the date of the issuance of the refunding bond.

For purposes of subparagraph (A), average maturity shall be determined in accordance with section 147(b) of the 1986 Code."

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

§146. Volume cap

(a) General rule

A private activity bond issued as part of an issue meets the requirements of this section if the aggregate face amount of the private activity bonds issued pursuant to such issue, when added to the aggregate face amount of tax-exempt private activity bonds previously issued by the issuing authority during the calendar year, does not exceed such authority's volume cap for such calendar year.

(b) Volume cap for State agencies

For purposes of this section—

(1) In general

The volume cap for any agency of the State authorized to issue tax-exempt private activity bonds for any calendar year shall be 50 percent of the State ceiling for such calendar year.

(2) Special rule where State has more than 1 agency

If more than 1 agency of the State is authorized to issue tax-exempt private activity bonds, all such agencies shall be treated as a single agency.

(c) Volume cap for other issuers

For purposes of this section—

(1) In general

The volume cap for any issuing authority (other than a State agency) for any calendar year shall be an amount which bears the same ratio to 50 percent of the State ceiling for such calendar year as—

(A) the population of the jurisdiction of such issuing authority, bears to

(B) the population of the entire State.

(2) Overlapping jurisdictions

For purposes of paragraph (1)(A), if an area is within the jurisdiction of 2 or more governmental units, such area shall be treated as only within the jurisdiction of the unit having jurisdiction over the smallest geographical area unless such unit agrees to surrender all or part of such jurisdiction for such calendar year to the unit with overlapping jurisdiction which has the next smallest geographical area.

(d) State ceiling

For purposes of this section—

(1) In general

The State ceiling applicable to any State for any calendar year shall be the greater of—

(A) an amount equal to $75 ($62.50 in the case of calendar year 2001) multiplied by the State population, or

(B) $225,000,000 ($187,500,000 in the case of calendar year 2001).

(2) Cost-of-living adjustment

In the case of a calendar year after 2002, each of the dollar amounts contained in paragraph (1) shall be increased by an amount equal to—

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by

substituting "calendar year 2001" for "calendar year 1992" in subparagraph (B) thereof.

If any increase determined under the preceding sentence is not a multiple of $5 ($5,000 in the case of the dollar amount in paragraph (1)(B)), such increase shall be rounded to the nearest multiple thereof.

(3) Special rule for States with constitutional home rule cities

For purposes of this section—

(A) In general

The volume cap for any constitutional home rule city for any calendar year shall be determined under paragraph (1) of subsection (c) by substituting "100 percent" for "50 percent".

(B) Coordination with other allocations

In the case of any State which contains 1 or more constitutional home rule cities, for purposes of applying subsections (b) and (c) with respect to issuing authorities in such State other than constitutional home rule cities, the State ceiling for any calendar year shall be reduced by the aggregate volume caps determined for such year for all constitutional home rule cities in such State.

(C) Constitutional home rule city

For purposes of this section, the term "constitutional home rule city" means, with respect to any calendar year, any political subdivision of a State which, under a State constitution which was adopted in 1970 and effective on July 1, 1971, had home rule powers on the 1st day of the calendar year.

(4) Special rule for possessions with populations of less than the population of the least populous State

(A) In general

If the population of any possession of the United States for any calendar year is less than the population of the least populous State (other than a possession) for such calendar year, the limitation under paragraph (1)(A) shall not be less than the amount determined under subparagraph (B) for such calendar year.

(B) Limitation

The limitation determined under this subparagraph, with respect to a possession, for any calendar year is an amount equal to the product of—

(i) the fraction—

(I) the numerator of which is the amount applicable under paragraph (1)(B) for such calendar year, and

(II) the denominator of which is the State population of the least populous State (other than a possession) for such calendar year, and

(ii) the population of such possession for such calendar year.

(5) Increase and set aside for housing bonds for 2008

(A) Increase for 2008

In the case of calendar year 2008, the State ceiling for each State shall be increased by an amount equal to $11,000,000,000 multiplied by a fraction—

(i) the numerator of which is the State ceiling applicable to the State for calendar year 2008, determined without regard to this paragraph, and

(ii) the denominator of which is the sum of the State ceilings determined under clause (i) for all States.

(B) Set aside

(i) In general

Any amount of the State ceiling for any State which is attributable to an increase under this paragraph shall be allocated solely for one or more qualified housing issues.

(ii) Qualified housing issue

For purposes of this paragraph, the term "qualified housing issue" means—

(I) an issue described in section 142(a)(7) (relating to qualified residential rental projects), or

(II) a qualified mortgage issue (determined by substituting "12-month period" for "42-month period" each place it appears in section 143(a)(2)(D)(i)).

(e) State may provide for different allocation

For purposes of this section—

(1) In general

Except as provided in paragraph (3), a State may, by law provide a different formula for allocating the State ceiling among the governmental units (or other authorities) in such State having authority to issue tax-exempt private activity bonds.

(2) Interim authority for Governor

(A) In general

Except as otherwise provided in paragraph (3), the Governor of any State may proclaim a different formula for allocating the State ceiling among the governmental units (or other authorities) in such State having authority to issue private activity bonds.

(B) Termination of authority

The authority provided in subparagraph (A) shall not apply to bonds issued after the earlier of—

(i) the last day of the 1st calendar year after 1986 during which the legislature of the State met in regular session, or

(ii) the effective date of any State legislation with respect to the allocation of the State ceiling.

(3) State may not alter allocation to constitutional home rule cities

Except as otherwise provided in a State constitutional amendment (or law changing the home rule provision adopted in the manner provided by the State constitution), the authority provided in this subsection shall not apply to that portion of the State ceiling which is allocated to any constitutional home rule city in the State unless such city agrees to such different allocation.

(f) Elective carryforward of unused limitation for specified purpose

(1) In general

If—

(A) an issuing authority's volume cap for any calendar year after 1985, exceeds

(B) the aggregate amount of tax-exempt private activity bonds issued during such calendar year by such authority,

such authority may elect to treat all (or any portion) of such excess as a carryforward for 1 or more carryforward purposes.

(2) Election must identify purpose

In any election under paragraph (1), the issuing authority shall—

(A) identify the purpose for which the carryforward is elected, and

(B) specify the portion of the excess described in paragraph (1) which is to be a carryforward for each such purpose.

(3) Use of carryforward

(A) In general

If any issuing authority elects a carryforward under paragraph (1) with respect to any carryforward purpose, any private activity bonds issued by such authority with respect to such purpose during the 3 calendar years following the calendar year in which the carryforward arose shall not be taken into account under subsection (a) to the extent the amount of such bonds does not exceed the amount of the carryforward elected for such purpose.

(B) Order in which carryforward used

Carryforwards elected with respect to any purpose shall be used in the order of the calendar years in which they arose.

(4) Election

Any election under this paragraph (and any identification or specification contained therein), once made, shall be irrevocable.

(5) Carryforward purpose

The term "carryforward purpose" means—

(A) the purpose of issuing exempt facility bonds described in 1 of the paragraphs of section 142(a),

(B) the purpose of issuing qualified mortgage bonds or mortgage credit certificates,

(C) the purpose of issuing qualified student loan bonds, and

(D) the purpose of issuing qualified redevelopment bonds.

(6) Special rules for increased volume cap under subsection (d)(5)

No amount which is attributable to the increase under subsection (d)(5) may be used—

(A) for any issue other than a qualified housing issue (as defined in subsection (d)(5)), or

(B) to issue any bond after calendar year 2010.

(g) Exception for certain bonds

Only for purposes of this section, the term "private activity bond" shall not include—

(1) any qualified veterans' mortgage bond,

(2) any qualified 501(c)(3) bond,

(3) any exempt facility bond issued as part of an issue described in paragraph (1), (2), (12), (13), (14), or (15) of section 142(a), and

(4) 75 percent of any exempt facility bond issued as part of an issue described in paragraph (11) of section 142(a) (relating to high-speed intercity rail facilities).

Paragraph (4) shall be applied without regard to "75 percent of" if all of the property to be financed by the net proceeds of the issue is to be owned by a governmental unit (within the meaning of section 142(b)(1)).

(h) Exception for government-owned solid waste disposal facilities

(1) In general

Only for purposes of this section, the term "private activity bond" shall not include any exempt facility bond described in section 142(a)(6) which is issued as part of an issue if all of the property to be financed by the net proceeds of such issue is to be owned by a governmental unit.

(2) Safe harbor for determination of government ownership

In determining ownership for purposes of paragraph (1), section 142(b)(1)(B) shall apply, except that a lease term shall be treated as satisfying clause (ii) thereof if it is not more than 20 years.

(i) Treatment of refunding issues

For purposes of the volume cap imposed by this section—

(1) In general

The term "private activity bond" shall not include any bond which is issued to refund another bond to the extent that the amount of such bond does not exceed the outstanding amount of the refunded bond.

(2) Special rules for student loan bonds

In the case of any qualified student loan bond, paragraph (1) shall apply only if the maturity date of the refunding bond is not later than the later of—

(A) the average maturity date of the qualified student loan bonds to be refunded by the issue of which the refunding bond is a part, or

(B) the date 17 years after the date on which the refunded bond was issued (or in the case of a series of refundings, the date on which the original bond was issued).

(3) Special rules for qualified mortgage bonds

In the case of any qualified mortgage bond, paragraph (1) shall apply only if the maturity date of the refunding bond is not later than the later of—

(A) the average maturity date of the qualified mortgage bonds to be refunded by the issue of which the refunding bond is a part, or

(B) the date 32 years after the date on which the refunded bond was issued (or in the case of a series of refundings, the date on which the original bond was issued).

(4) Average maturity

For purposes of paragraphs (2) and (3), average maturity shall be determined in accordance with section 147(b)(2)(A).

(5) Exception for advance refunding

This subsection shall not apply to any bond issued to advance refund another bond.

(6) Treatment of certain residential rental project bonds as refunding bonds irrespective of obligor

(A) In general

If, during the 6-month period beginning on the date of a repayment of a loan financed by an issue 95 percent or more of the net proceeds of which are used to provide projects described in section 142(d), such repayment is used to provide a new loan for any project so described, any bond which is issued to refinance such issue shall be treated as a refunding issue to the extent the principal amount of such refunding issue does not exceed the principal amount of the bonds refunded.

(B) Limitations

Subparagraph (A) shall apply to only one refunding of the original issue and only if—

(i) the refunding issue is issued not later than 4 years after the date on which the original issue was issued,

(ii) the latest maturity date of any bond of the refunding issue is not later than 34 years after the date on which the refunded bond was issued, and

(iii) the refunding issue is approved in accordance with section 147(f) before the issuance of the refunding issue.

(j) Population

For purposes of this section, determinations of the population of any State (or issuing authority) shall be made with respect to any calendar year on the basis of the most recent census estimate of the resident population of such State (or issuing authority) released by the Bureau of Census before the beginning of such calendar year.

(k) Facility must be located within State

(1) In general

Except as provided in paragraphs (2) and (3), no portion of the State ceiling applicable to any State for any calendar year may be used with respect to financing for a facility located outside

such State.

(2) Exception for certain facilities where State will get proportionate share of benefits

Paragraph (1) shall not apply to any exempt facility bond described in paragraph (4), (5), (6), or (10) of section 142(a) if the issuer establishes that the State's share of the use of the facility (or its output) will equal or exceed the State's share of the private activity bonds issued to finance the facility.

(3) Treatment of governmental bonds to which volume cap allocated

Paragraph (1) shall not apply to any bond to which volume cap is allocated under section 141(b)(5)—

(A) for an output facility, or

(B) for a facility of a type described in paragraph (4), (5), (6), or (10) of section 142(a),

if the issuer establishes that the State's share of the private business use (as defined by section 141(b)(6)) of the facility will equal or exceed the State's share of the volume cap allocated with respect to bonds issued to finance the facility.

(l) Issuer of qualified scholarship funding bonds

In the case of a qualified scholarship funding bond, such bond shall be treated for purposes of this section as issued by a State or local issuing authority (whichever is appropriate).

(m) Treatment of amounts allocated to private activity portion of government use bonds

(1) In general

The volume cap of an issuer shall be reduced by the amount allocated by the issuer to an issue under section 141(b)(5).

(2) Advance refundings

Except as otherwise provided by the Secretary, any advance refunding of any part of an issue to which an amount was allocated under section 141(b)(5) (or would have been allocated if such section applied to such issue) shall be taken into account under this section to the extent of the amount of the volume cap which was (or would have been) so allocated.

(n) Reduction for mortgage credit certificates, etc.

The volume cap of any issuing authority for any calendar year shall be reduced by the sum of—

(1) the amount of qualified mortgage bonds which such authority elects not to issue under section 25(c)(2)(A)(ii) during such year, plus

(2) the amount of any reduction in such ceiling under section 25(f) applicable to such authority for such year.

(Added Pub. L. 99–514, title XIII, §1301(b), Oct. 22, 1986, 100 Stat. 2630; amended Pub. L. 100–203, title X, §10631(b), Dec. 22, 1987, 101 Stat. 1330–455; Pub. L. 100–647, title I, §1013(a)(9), (10), (28), (40), title VI, §6180(b)(3), Nov. 10, 1988, 102 Stat. 3538, 3543, 3544, 3728; Pub. L. 101–239, title VII, §7816(s)(2), Dec. 19, 1989, 103 Stat. 2423; Pub. L. 102–486, title XIX, §1921(b)(3), Oct. 24, 1992, 106 Stat. 3028; Pub. L. 103–66, title XIII, §13121(a), Aug. 10, 1993, 107 Stat. 432; Pub. L. 105–277, div. J, title II, §2021(a), Oct. 21, 1998, 112 Stat. 2681–903; Pub. L. 106–554, §1(a)(7) [title I, §161(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–624; Pub. L. 107–16, title IV, §422(c), June 7, 2001, 115 Stat. 66; Pub. L. 108–357, title VII, §701(c), Oct. 22, 2004, 118 Stat. 1539; Pub. L. 109–59, title XI, §11143(c), Aug. 10, 2005, 119 Stat. 1965; Pub. L. 110–289, div. C, title I, §§3007(a), 3021(a), July 30, 2008, 122 Stat. 2886, 2892.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

AMENDMENTS

2008—Subsec. (d)(5). Pub. L. 110–289, §3021(a)(1), added par. (5).

Subsec. (f)(6). Pub. L. 110–289, §3021(a)(2), added par. (6).

Subsec. (i)(6). Pub. L. 110–289, §3007(a), added par. (6).

2005—Subsec. (g)(3). Pub. L. 109–59 substituted "(14), or (15) of section 142(a), and" for "or (14) of section 142(a) (relating to airports, docks and wharves, environmental enhancements of hydroelectric generating facilities, qualified public educational facilities, and qualified green building and sustainable design projects), and".

2004—Subsec. (g)(3). Pub. L. 108–357 substituted "(13), or (14)" for "or (13)" and "qualified public educational facilities, and qualified green building and sustainable design projects" for "and qualified public educational facilities".

2001—Subsec. (g)(3). Pub. L. 107–16 substituted "(12), or (13)" for "or (12)" and "environmental enhancements of hydroelectric generating facilities, and qualified public educational facilities" for "and environmental enhancements of hydroelectric generating facilities"

2000—Subsec. (d)(1), (2). Pub. L. 106–554 amended pars. (1) and (2) generally. Prior to amendment, pars. (1) and (2) provided for State ceilings based on the per capita limits and aggregate limits set out in an included table.

1998—Subsec. (d)(1). Pub. L. 105–277 added par. (1) and struck out heading and text of former par. (1). Text read as follows: "The State ceiling applicable to any State for any calendar year shall be the greater of—

"(A) an amount equal to $75 multiplied by the State population, or

"(B) $250,000,000.

Subparagraph (B) shall not apply to any possession of the United States."

Subsec. (d)(2). Pub. L. 105–277 added par. (2) and struck out heading and text of former par. (2). Text read as follows: "In the case of calendar years after 1987, paragraph (1) shall be applied by substituting—

"(A) '$50' for '$75', and

"(B) '$150,000,000' for '$250,000,000'."

1993—Subsec. (g). Pub. L. 103–66, which directed the amendment of par. (4) by adding at the end thereof the following flush sentence: "Paragraph (4) shall be applied without regard to '75 percent of' if all of the property to be financed by the net proceeds of the issue is to be owned by a governmental unit (within the meaning of section 142(b)(1)).", was executed by inserting the sentence at the end of subsec. (g), to reflect the probable intent of Congress.

1992—Subsec. (g)(3). Pub. L. 102–486 substituted ", (2), or (12)" for "or (2)" and ", docks and wharves, and environmental enhancements of hydroelectric generating facilities" for "and docks and wharves".

1989—Subsec. (g)(3), (4). Pub. L. 101–239 redesignated par. (3), relating to exempt facility bonds issued as part of an issue described in par. (11) of section 142(a), as (4).

1988—Subsec. (d)(4)(B). Pub. L. 100–647, §1013(a)(40), substituted "respect to a" for "respect a".

Subsec. (f)(5)(A). Pub. L. 100–647, §1013(a)(9), amended subpar. (A) generally, as in effect before amendment by Pub. L. 100–203. Before amendment by Pub. L. 100–203, subpar. (A) read as follows: "the purpose of issuing bonds referred to in one of the clauses of section 141(d)(1)(A),".

Subsec. (g)(3). Pub. L. 100–647, §6180(b)(3), added par. (3) relating to exempt facility bonds issued as part of an issue described in par. (11) of section 142(a).

Subsec. (i)(2)(A). Pub. L. 100–647, §1013(a)(28)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "the maturity date of the bond to be refunded, or".

Subsec. (i)(3)(A). Pub. L. 100–647, §1013(a)(28)(B), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "the maturity date of the bond to be refunded, or".

Subsec. (i)(4), (5). Pub. L. 100–647, §1013(a)(28)(C), added par. (4) and redesignated former par. (4) as (5).

Subsec. (k)(1). Pub. L. 100–647, §1013(a)(10)(A), substituted "paragraphs (2) and (3)" for "paragraph (2)".

Subsec. (k)(3). Pub. L. 100–647, §1013(a)(10)(B), added par. (3).

1987—Subsec. (f)(5)(A). Pub. L. 100–203 amended subpar. (A) generally, as amended by Pub. L. 100–647, §1013(a)(9), restating it without change. See 1988 Amendment note above.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by section 3007(a) of Pub. L. 110–289 applicable to repayments of loans received after July 30, 2008, see section 3007(c) of Pub. L. 110–289, set out as a note under section 42 of this title.

Amendment by section 3021(a) of Pub. L. 110–289 applicable to bonds issued after July 30, 2008, see section 3021(c) of Pub. L. 110–289, set out as a note under section 143 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–59 applicable to bonds issued after Aug. 10, 2005, see section 11143(d) of

Pub. L. 109–59, set out as a note under section 142 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to bonds issued after Dec. 31, 2004, see section 701(e) of Pub. L. 108–357, set out as a note under section 142 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to bonds issued after Dec. 31, 2001, see section 422(f) of Pub. L. 107–16, set out as a note under section 142 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(7) [title I, §161(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–624, provided that: "The amendment made by this section [amending this section] shall apply to calendar years after 2000."

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–277, div. J, title II, §2021(b), Oct. 21, 1998, 112 Stat. 2681–903, provided that: "The amendment made by this section [amending this section] shall apply to calendar years after 1998."

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13121(b), Aug. 10, 1993, 107 Stat. 432, provided that: "The amendment made by subsection (a) [amending this section] shall apply to bonds issued after December 31, 1993."

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–486 applicable to bonds issued after Oct. 24, 1992, see section 1921(c) of Pub. L. 102–486, set out as a note under section 142 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1013(a)(9), (10), (28), (40) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 6180(b)(3) of Pub. L. 100–647 applicable to bonds issued after Nov. 10, 1988, see section 6180(c) of Pub. L. 100–647, set out as a note under section 142 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable, with certain exceptions, to bonds issued after Oct. 13, 1987 (other than bonds issued to refund bonds issued on or before such date), see section 10631(c) of Pub. L. 100–203, set out as a note under section 141 of this title.

§147. Other requirements applicable to certain private activity bonds

(a) Substantial user requirement

(1) In general

Except as provided in subsection (h), a private activity bond shall not be a qualified bond for any period during which it is held by a person who is a substantial user of the facilities or by a related person of such a substantial user.

(2) Related person

For purposes of paragraph (1), the following shall be treated as related persons—

(A) 2 or more persons if the relationship between such persons would result in a disallowance of losses under section 267 or 707(b),

(B) 2 or more persons which are members of the same controlled group of corporations (as defined in section 1563(a), except that "more than 50 percent" shall be substituted for "at least

80 percent" each place it appears therein),

(C) a partnership and each of its partners (and their spouses and minor children), and

(D) an S corporation and each of its shareholders (and their spouses and minor children).

(b) Maturity may not exceed 120 percent of economic life

(1) General rule

Except as provided in subsection (h), a private activity bond shall not be a qualified bond if it is issued as part of an issue and—

(A) the average maturity of the bonds issued as part of such issue, exceeds

(B) 120 percent of the average reasonably expected economic life of the facilities being financed with the net proceeds of such issue.

(2) Determination of averages

For purposes of paragraph (1)—

(A) the average maturity of any issue shall be determined by taking into account the respective issue prices of the bonds issued as part of such issue, and

(B) the average reasonably expected economic life of the facilities being financed with any issue shall be determined by taking into account the respective cost of such facilities.

(3) Special rules

(A) Determination of economic life

For purposes of this subsection, the reasonably expected economic life of any facility shall be determined as of the later of—

(i) the date on which the bonds are issued, or

(ii) the date on which the facility is placed in service (or expected to be placed in service).

(B) Treatment of land

(i) Land not taken into account

Except as provided in clause (ii), land shall not be taken into account under paragraph (1)(B).

(ii) Issues where 25 percent or more of proceeds used to finance land

If 25 percent or more of the net proceeds of any issue is to be used to finance land, such land shall be taken into account under paragraph (1)(B) and shall be treated as having an economic life of 30 years.

(4) Special rule for pooled financing of 501(c)(3) organization

(A) In general

At the election of the issuer, a qualified 501(c)(3) bond shall be treated as meeting the requirements of paragraph (1) if such bond meets the requirements of subparagraph (B).

(B) Requirements

A qualified 501(c)(3) bond meets the requirements of this subparagraph if—

(i) 95 percent or more of the net proceeds of the issue of which such bond is a part are to be used to make or finance loans to 2 or more 501(c)(3) organizations or governmental units for acquisition of property to be used by such organizations,

(ii) each loan described in clause (i) satisfies the requirements of paragraph (1) (determined by treating each loan as a separate issue),

(iii) before such bond is issued, a demand survey was conducted which shows a demand for financing greater than an amount equal to 120 percent of the lendable proceeds of such issue, and

(iv) 95 percent or more of the net proceeds of such issue are to be loaned to 501(c)(3) organizations or governmental units within 1 year of issuance and, to the extent there are any unspent proceeds after such 1-year period, bonds issued as part of such issue are to be

redeemed as soon as possible thereafter (and in no event later than 18 months after issuance).

A bond shall not meet the requirements of this subparagraph if the maturity date of any bond issued as part of such issue is more than 30 years after the date on which the bond was issued (or, in the case of a refunding or series of refundings, the date on which the original bond was issued).

(5) Special rule for certain FHA insured loans

Paragraph (1) shall not apply to any bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to finance mortgage loans insured under FHA 242 or under a similar Federal Housing Administration program (as in effect on the date of the enactment of the Tax Reform Act of 1986) where the loan term approved by such Administration plus the maximum maturity of debentures which could be issued by such Administration in satisfaction of its obligations exceeds the term permitted under paragraph (1).

(c) Limitation on use for land acquisition

(1) In general

Except as provided in subsection (h), a private activity bond shall not be a qualified bond if—

(A) it is issued as part of an issue and 25 percent or more of the net proceeds of such issue are to be used (directly or indirectly) for the acquisition of land (or an interest therein), or

(B) any portion of the proceeds of such issue is to be used (directly or indirectly) for the acquisition of land (or an interest therein) to be used for farming purposes.

(2) Exception for first-time farmers

(A) In general

If the requirements of subparagraph (B) are met with respect to any land, paragraph (1) shall not apply to such land, and subsection (d) shall not apply to property to be used thereon for farming purposes, but only to the extent of expenditures (financed with the proceeds of the issue) not in excess of $450,000.

(B) Acquisition by first-time farmers

The requirements of this subparagraph are met with respect to any land if—

(i) such land is to be used for farming purposes, and

(ii) such land is to be acquired by an individual who is a first-time farmer, who will be the principal user of such land, and who will materially and substantially participate on the farm of which such land is a part in the operation of such farm.

(C) First-time farmer

For purposes of this paragraph—

(i) In general

The term "first-time farmer" means any individual if such individual—

(I) has not at any time had any direct or indirect ownership interest in substantial farmland in the operation of which such individual materially participated, and

(II) has not received financing under this paragraph in an amount which, when added to the financing to be provided under this paragraph, exceeds the amount in effect under subparagraph (A).

(ii) Aggregation rules

Any ownership or material participation, or financing received, by an individual's spouse or minor child shall be treated as ownership and material participation, or financing received, by the individual.

(iii) Insolvent farmer

For purposes of clause (i), farmland which was previously owned by the individual and was disposed of while such individual was insolvent shall be disregarded if section 108

applied to indebtedness with respect to such farmland.

(D) Farm

For purposes of this paragraph, the term "farm" has the meaning given such term by section 6420(c)(2).

(E) Substantial farmland

For purposes of this paragraph, the term "substantial farmland" means any parcel of land unless such parcel is smaller than 30 percent of the median size of a farm in the county in which such parcel is located.

(F) Used equipment limitation

For purposes of this paragraph, in no event may the amount of financing provided by reason of this paragraph to a first-time farmer for personal property—

(i) of a character subject to the allowance for depreciation,

(ii) the original use of which does not begin with such farmer, and

(iii) which is to be used for farming purposes,

exceed $62,500. A rule similar to the rule of subparagraph (C)(ii) shall apply for purposes of the preceding sentence.

(G) Acquisition from related person

For purposes of this paragraph and section 144(a), the acquisition by a first-time farmer of land or personal property from a related person (within the meaning of section 144(a)(3)) shall not be treated as an acquisition from a related person, if—

(i) the acquisition price is for the fair market value of such land or property, and

(ii) subsequent to such acquisition, the related person does not have a financial interest in the farming operation with respect to which the bond proceeds are to be used.

(H) Adjustments for inflation

In the case of any calendar year after 2008, the dollar amount in subparagraph (A) shall be increased by an amount equal to—

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year, determined by substituting "calendar year 2007" for "calendar year 1992" in subparagraph (B) thereof.

If any amount as increased under the preceding sentence is not a multiple of $100, such amount shall be rounded to the nearest multiple of $100.

(3) Exception for certain land acquired for environmental purposes, etc.

Any land acquired by a governmental unit (or issuing authority) in connection with an airport, mass commuting facility, high-speed intercity rail facility, dock, or wharf shall not be taken into account under paragraph (1) if—

(A) such land is acquired for noise abatement or wetland preservation, or for future use as an airport, mass commuting facility, high-speed intercity rail facility, dock, or wharf, and

(B) there is not other significant use of such land.

(d) Acquisition of existing property not permitted

(1) In general

Except as provided in subsection (h), a private activity bond shall not be a qualified bond if issued as part of an issue and any portion of the net proceeds of such issue is to be used for the acquisition of any property (or an interest therein) unless the 1st use of such property is pursuant to such acquisition.

(2) Exception for certain rehabilitations

Paragraph (1) shall not apply with respect to any building (and the equipment therefor) if—

(A) the rehabilitation expenditures with respect to such building, equal or exceed

(B) 15 percent of the portion of the cost of acquiring such building (and equipment) financed with the net proceeds of the issue.

A rule similar to the rule of the preceding sentence shall apply in the case of structures other than a building except that subparagraph (B) shall be applied by substituting "100 percent" for "15 percent".

(3) Rehabilitation expenditures

For purposes of this subsection—

(A) In general

Except as provided in this paragraph, the term "rehabilitation expenditures" means any amount properly chargeable to capital account which is incurred by the person acquiring the building for property (or additions or improvements to property) in connection with the rehabilitation of a building. In the case of an integrated operation contained in a building before its acquisition, such term includes rehabilitating existing equipment in such building or replacing it with equipment having substantially the same function. For purposes of this subparagraph, any amount incurred by a successor to the person acquiring the building or by the seller under a sales contract with such person shall be treated as incurred by such person.

(B) Certain expenditures not included

The term "rehabilitation expenditures" does not include any expenditure described in section 47(c)(2)(B).

(C) Period during which expenditures must be incurred

The term "rehabilitation expenditures" shall not include any amount which is incurred after the date 2 years after the later of—

(i) the date on which the building was acquired, or

(ii) the date on which the bond was issued.

(4) Special rule for certain projects

In the case of a project involving 2 or more buildings, this subsection shall be applied on a project basis.

(e) No portion of bonds may be issued for skyboxes, airplanes, gambling establishments, etc.

A private activity bond shall not be a qualified bond if issued as part of an issue and any portion of the proceeds of such issue is to be used to provide any airplane, skybox or other private luxury box, health club facility, facility primarily used for gambling, or store the principal business of which is the sale of alcoholic beverages for consumption off premises. The preceding sentence shall not apply to any fixed-wing aircraft equipped for, and exclusively dedicated to providing, acute care emergency medical services (within the meaning of section 4261(g)(2)).

(f) Public approval required for private activity bonds

(1) In general

A private activity bond shall not be a qualified bond unless such bond satisfies the requirements of paragraph (2).

(2) Public approval requirement

(A) In general

A bond shall satisfy the requirements of this paragraph if such bond is issued as a part of an issue which has been approved by—

(i) the governmental unit—

(I) which issued such bond, or

(II) on behalf of which such bond was issued, and

(ii) each governmental unit having jurisdiction over the area in which any facility, with respect to which financing is to be provided from the net proceeds of such issue, is located (except that if more than 1 governmental unit within a State has jurisdiction over the entire area within such State in which such facility is located, only 1 such unit need approve such issue).

(B) Approval by a governmental unit

For purposes of subparagraph (A), an issue shall be treated as having been approved by any governmental unit if such issue is approved—

(i) by the applicable elected representative of such governmental unit after a public hearing following reasonable public notice, or

(ii) by voter referendum of such governmental unit.

(C) Special rules for approval of facility

If there has been public approval under subparagraph (A) of the plan for financing a facility, such approval shall constitute approval under subparagraph (A) for any issue—

(i) which is issued pursuant to such plan within 3 years after the date of the 1st issue pursuant to the approval, and

(ii) all or substantially all of the proceeds of which are to be used to finance such facility or to refund previous financing under such plan.

(D) Refunding bonds

No approval under subparagraph (A) shall be necessary with respect to any bond which is issued to refund (other than to advance refund) a bond approved under subparagraph (A) (or treated as approved under subparagraph (C)) unless the average maturity date of the issue of which the refunding bond is a part is later than the average maturity date of the bonds to be refunded by such issue. For purposes of the preceding sentence, average maturity shall be determined in accordance with subsection (b)(2)(A).

(E) Applicable elected representative

For purposes of this paragraph—

(i) In general

The term "applicable elected representative" means with respect to any governmental unit—

(I) an elected legislative body of such unit, or

(II) the chief elected executive officer, the chief elected State legal officer of the executive branch, or any other elected official of such unit designated for purposes of this paragraph by such chief elected executive officer or by State law.

If the office of any elected official described in subclause (II) is vacated and an individual is appointed by the chief elected executive officer of the governmental unit and confirmed by the elected legislative body of such unit (if any) to serve the remaining term of the elected official, the individual so appointed shall be treated as the elected official for such remaining term.

(ii) No applicable elected representative

If (but for this clause) a governmental unit has no applicable elected representative, the applicable elected representative for purposes of clause (i) shall be the applicable elected representative of the governmental unit—

(I) which is the next higher governmental unit with such a representative, and

(II) from which the authority of the governmental unit with no such representative is derived.

(3) Special rule for approval of airports or high-speed intercity rail facilities

If—

(A) the proceeds of an issue are to be used to finance a facility or facilities located at an airport or high-speed intercity rail facilities, and

(B) the governmental unit issuing such bonds is the owner or operator of such airport or high-speed intercity rail facilities,

such governmental unit shall be deemed to be the only governmental unit having jurisdiction over such airport or high-speed intercity rail facilities for purposes of this subsection.

(4) Special rules for scholarship funding bond issues and volunteer fire department bond issues

(A) Scholarship funding bonds

In the case of a qualified scholarship funding bond, any governmental unit which made a request described in section 150(d)(2)(B) with respect to the issuer of such bond shall be treated for purposes of paragraph (2) of this subsection as the governmental unit on behalf of which such bond was issued. Where more than one governmental unit within a State has made a request described in section 150(d)(2)(B), the State may also be treated for purposes of paragraph (2) of this subsection as the governmental unit on behalf of which such bond was issued.

(B) Volunteer fire department bonds

In the case of a bond of a volunteer fire department which meets the requirements of section 150(e), the political subdivision described in section 150(e)(2)(B) with respect to such department shall be treated for purposes of paragraph (2) of this subsection as the governmental unit on behalf of which such bond was issued.

(g) Restriction on issuance costs financed by issue

(1) In general

A private activity bond shall not be a qualified bond if the issuance costs financed by the issue (of which such bond is a part) exceed 2 percent of the proceeds of the issue.

(2) Special rule for small mortgage revenue bond issues

In the case of an issue of qualified mortgage bonds or qualified veterans' mortgage bonds, paragraph (1) shall be applied by substituting "3.5 percent" for "2 percent" if the proceeds of the issue do not exceed $20,000,000.

(h) Certain rules not to apply to certain bonds

(1) Mortgage revenue bonds and qualified student loan bonds

Subsections (a), (b), (c), and (d) shall not apply to any qualified mortgage bond, qualified veterans' mortgage bond, or qualified student loan bond.

(2) Qualified 501(c)(3) bonds

Subsections (a), (c), and (d) shall not apply to any qualified 501(c)(3) bond and subsection (e) shall be applied as if it did not contain "health club facility" with respect to such a bond.

(3) Exempt facility bonds for qualified public-private schools

Subsection (c) shall not apply to any exempt facility bond issued as part of an issue described in section 142(a)(13) (relating to qualified public educational facilities).

(Added Pub. L. 99–514, title XIII, §1301(b), Oct. 22, 1986, 100 Stat. 2635; amended Pub. L. 100–647, title I, §1013(a)(11)–(13)(B), (29), (36), title VI, §6180(b)(4), (5), Nov. 10, 1988, 102 Stat. 3539, 3543, 3544, 3728; Pub. L. 101–239, title VII, §7816(s)(3), Dec. 19, 1989, 103 Stat. 2423; Pub. L. 101–508, title XI, §11813(b)(8), Nov. 5, 1990, 104 Stat. 1388–552; Pub. L. 104–188, title I, §1117(a), (b), Aug. 20, 1996, 110 Stat. 1764; Pub. L. 107–16, title IV, §422(d), (e), June 7, 2001,

115 Stat. 66; Pub. L. 110–234, title XV, §15341(a)–(d), May 22, 2008, 122 Stat. 1517; Pub. L. 110–246, §4(a), title XV, §15341(a)–(d), June 18, 2008, 122 Stat. 1664, 2279; Pub. L. 112–95, title XI, §1105(a), Feb. 14, 2012, 126 Stat. 152.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

REFERENCES IN TEXT

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (b)(5), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2012—Subsec. (e). Pub. L. 112–95 inserted at end: "The preceding sentence shall not apply to any fixed-wing aircraft equipped for, and exclusively dedicated to providing, acute care emergency medical services (within the meaning of section 4261(g)(2))."

2008—Subsec. (c)(2)(A). Pub. L. 110–246, §15341(a), substituted "$450,000" for "$250,000".

Subsec. (c)(2)(C)(i)(II). Pub. L. 110–246, §15341(d), substituted "the amount in effect under subparagraph (A)" for "$250,000".

Subsec. (c)(2)(E). Pub. L. 110–246, §15341(c), substituted "unless such parcel is smaller than 30 percent of the median size of a farm in the county in which such parcel is located." for "unless—

"(i) such parcel is smaller than 30 percent of the median size of a farm in the county in which such parcel is located, and

"(ii) the fair market value of the land does not at any time while held by the individual exceed $125,000."

Subsec. (c)(2)(H). Pub. L. 110–246, §15341(b), added subpar. (H).

2001—Subsec. (h). Pub. L. 107–16, §422(e), substituted "certain bonds" for "mortgage revenue bonds, qualified student loan bonds, and qualified 501(c)(3) bonds" in heading.

Subsec. (h)(3). Pub. L. 107–16, §422(d), added par. (3).

1996—Subsec. (c)(2)(E)(i). Pub. L. 104–188, §1117(b), substituted "30 percent" for "15 percent".

Subsec. (c)(2)(G). Pub. L. 104–188, §1117(a), added subpar. (G).

1990—Subsec. (d)(3)(B). Pub. L. 101–508 substituted "section 47(c)(2)(B)" for "section 48(g)(2)(B)".

1989—Subsec. (c)(3). Pub. L. 101–239 inserted a comma after "mass commuting facility" in introductory provisions and in subpar. (A).

1988—Subsec. (c)(3). Pub. L. 100–647, §6180(b)(4), inserted "high-speed intercity rail facility" after "mass commuting facility" in introductory text and in subpar. (A).

Subsec. (e). Pub. L. 100–647, §1013(a)(11), struck out "treated as" after "shall not be".

Subsec. (f)(2)(D). Pub. L. 100–647, §1013(a)(29), substituted "the average maturity date of the issue of which the refunding bond is a part is later than the average maturity date of the bonds to be refunded by such issue. For purposes of the preceding sentence, average maturity shall be determined in accordance with subsection (b)(2)(A)" for "the maturity date of such bond is later than the maturity date of the bond to be refunded".

Subsec. (f)(2)(E)(i). Pub. L. 100–647, §1013(a)(36), inserted sentence at end relating to treatment of an individual appointed to fill a vacancy in the office of an elected official.

Subsec. (f)(3). Pub. L. 100–647, §6180(b)(5), inserted "or high-speed intercity rail facilities" after "airports" in heading and after "airport" in subpars. (A) and (B) and in last sentence.

Subsec. (f)(4). Pub. L. 100–647, §1013(a)(12), added par. (4).

Subsec. (g)(1). Pub. L. 100–647, §1013(a)(13)(A), substituted "proceeds" for "aggregate face amount".

Subsec. (g)(2). Pub. L. 100–647, §1013(a)(13)(B), substituted "proceeds" for "aggregate authorized face amount" and "do" for "does".

EFFECTIVE DATE OF 2012 AMENDMENT

Pub. L. 112–95, title XI, §1105(b), Feb. 14, 2012, 126 Stat. 152, provided that: "The amendment made by this section [amending this section] shall apply to obligations issued after the date of the enactment of this Act

[Feb. 14, 2012]."

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Pub. L. 110–234, title XV, §15341(e), May 22, 2008, 122 Stat. 1517, and Pub. L. 110–246, §4(a), title XV, §15341(e), June 18, 2008, 122 Stat. 1664, 2279, provided that: "The amendments made by this section [amending this section] shall apply to bonds issued after the date of the enactment of this Act [June 18, 2008]."

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

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to bonds issued after Dec. 31, 2001, see section 422(f) of Pub. L. 107–16, set out as a note under section 142 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, §1117(c), Aug. 20, 1996, 110 Stat. 1764, provided that: "The amendments made by this section [amending this section] shall apply to bonds issued after the date of the enactment of this Act [Aug. 20, 1996]."

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1013(a)(13)(C), Nov. 10, 1988, 102 Stat. 3539, provided that: "The amendments made by this paragraph [amending this section] shall apply to bonds issued after June 30, 1987."

Amendment by section 1013(a)(11), (12), (29), (36) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 6180(b)(4), (5) of Pub. L. 100–647 applicable to bonds issued after Nov. 10, 1988, see section 6180(c) of Pub. L. 100–647, set out as a note under section 142 of this title.

EFFECTIVE DATE

Subsec. (f) applicable to bonds issued after Dec. 31, 1986, see section 1311(d) of Pub. L. 99–514, as amended, set out as an Effective Date; Transitional Rules note under section 141 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

SUBPART B—REQUIREMENTS APPLICABLE TO ALL STATE AND LOCAL BONDS

Sec.

148. Arbitrage.

149. Bonds must be registered to be tax exempt; other requirements.

§148. Arbitrage

(a) Arbitrage bond defined

For purposes of section 103, the term "arbitrage bond" means any bond issued as part of an issue any portion of the proceeds of which are reasonably expected (at the time of issuance of the bond) to be used directly or indirectly—

(1) to acquire higher yielding investments, or

(2) to replace funds which were used directly or indirectly to acquire higher yielding investments.

For purposes of this subsection, a bond shall be treated as an arbitrage bond if the issuer intentionally uses any portion of the proceeds of the issue of which such bond is a part in a manner described in paragraph (1) or (2).

(b) Higher yielding investments

For purposes of this section—

(1) In general

The term "higher yielding investments" means any investment property which produces a yield over the term of the issue which is materially higher than the yield on the issue.

(2) Investment property

The term "investment property" means—

(A) any security (within the meaning of section 165(g)(2)(A) or (B)),

(B) any obligation,

(C) any annuity contract,

(D) any investment-type property, or

(E) in the case of a bond other than a private activity bond, any residential rental property for family units which is not located within the jurisdiction of the issuer and which is not acquired to implement a court ordered or approved housing desegregation plan.

(3) Alternative minimum tax bonds treated as investment property in certain cases

(A) In general

Except as provided in subparagraph (B), the term "investment property" does not include any tax-exempt bond.

(B) Exception

With respect to an issue other than an issue a part of which is a specified private activity bond (as defined in section 57(a)(5)(C)), the term "investment property" includes a specified private activity bond (as so defined).

(4) Safe harbor for prepaid natural gas

(A) In general

The term "investment-type property" does not include a prepayment under a qualified natural gas supply contract.

(B) Qualified natural gas supply contract

For purposes of this paragraph, the term "qualified natural gas supply contract" means any contract to acquire natural gas for resale by a utility owned by a governmental unit if the amount of gas permitted to be acquired under the contract by the utility during any year does not exceed the sum of—

(i) the annual average amount during the testing period of natural gas purchased (other than for resale) by customers of such utility who are located within the service area of such

utility, and

(ii) the amount of natural gas to be used to transport the prepaid natural gas to the utility during such year.

(C) Natural gas used to generate electricity

Natural gas used to generate electricity shall be taken into account in determining the average under subparagraph (B)(i)—

(i) only if the electricity is generated by a utility owned by a governmental unit, and

(ii) only to the extent that the electricity is sold (other than for resale) to customers of such utility who are located within the service area of such utility.

(D) Adjustments for changes in customer base

(i) New business customers

If—

(I) after the close of the testing period and before the date of issuance of the issue, the utility owned by a governmental unit enters into a contract to supply natural gas (other than for resale) for a business use at a property within the service area of such utility, and

(II) the utility did not supply natural gas to such property during the testing period or the ratable amount of natural gas to be supplied under the contract is significantly greater than the ratable amount of gas supplied to such property during the testing period,

then a contract shall not fail to be treated as a qualified natural gas supply contract by reason of supplying the additional natural gas under the contract referred to in subclause (I).

(ii) Lost customers

The average under subparagraph (B)(i) shall not exceed the annual amount of natural gas reasonably expected to be purchased (other than for resale) by persons who are located within the service area of such utility and who, as of the date of issuance of the issue, are customers of such utility.

(E) Ruling requests

The Secretary may increase the average under subparagraph (B)(i) for any period if the utility owned by the governmental unit establishes to the satisfaction of the Secretary that, based on objective evidence of growth in natural gas consumption or population, such average would otherwise be insufficient for such period.

(F) Adjustment for natural gas otherwise on hand

(i) In general

The amount otherwise permitted to be acquired under the contract for any period shall be reduced by—

(I) the applicable share of natural gas held by the utility on the date of issuance of the issue, and

(II) the natural gas (not taken into account under subclause (I)) which the utility has a right to acquire during such period (determined as of the date of issuance of the issue).

(ii) Applicable share

For purposes of the clause (i), the term "applicable share" means, with respect to any period, the natural gas allocable to such period if the gas were allocated ratably over the period to which the prepayment relates.

(G) Intentional acts

Subparagraph (A) shall cease to apply to any issue if the utility owned by the governmental unit engages in any intentional act to render the volume of natural gas acquired by such prepayment to be in excess of the sum of—

(i) the amount of natural gas needed (other than for resale) by customers of such utility

who are located within the service area of such utility, and

(ii) the amount of natural gas used to transport such natural gas to the utility.

(H) Testing period

For purposes of this paragraph, the term "testing period" means, with respect to an issue, the most recent 5 calendar years ending before the date of issuance of the issue.

(I) Service area

For purposes of this paragraph, the service area of a utility owned by a governmental unit shall be comprised of—

(i) any area throughout which such utility provided at all times during the testing period—

(I) in the case of a natural gas utility, natural gas transmission or distribution services, and

(II) in the case of an electric utility, electricity distribution services,

(ii) any area within a county contiguous to the area described in clause (i) in which retail customers of such utility are located if such area is not also served by another utility providing natural gas or electricity services, as the case may be, and

(iii) any area recognized as the service area of such utility under State or Federal law.

(c) Temporary period exception

(1) In general

For purposes of subsection (a), a bond shall not be treated as an arbitrage bond solely by reason of the fact that the proceeds of the issue of which such bond is a part may be invested in higher yielding investments for a reasonable temporary period until such proceeds are needed for the purpose for which such issue was issued.

(2) Limitation on temporary period for pooled financings

(A) In general

The temporary period referred to in paragraph (1) shall not exceed 6 months with respect to the proceeds of an issue which are to be used to make or finance loans (other than nonpurpose investments) to 2 or more persons.

(B) Shorter temporary period for loan repayments, etc.

Subparagraph (A) shall be applied by substituting "3 months" for "6 months" with respect to the proceeds from the sale or repayment of any loan which are to be used to make or finance any loan. For purposes of the preceding sentence, a nonpurpose investment shall not be treated as a loan.

(C) Bonds used to provide construction financing

In the case of an issue described in subparagraph (A) any portion of which is used to make or finance loans for construction expenditures (within the meaning of subsection (f)(4)(C)(iv))—

(i) rules similar to the rules of subsection (f)(4)(C)(v) shall apply, and

(ii) subparagraph (A) shall be applied with respect to such portion by substituting "2 years" for "6 months".

(D) Exception for mortgage revenue bonds

This paragraph shall not apply to any qualified mortgage bond or qualified veterans' mortgage bond.

(d) Special rules for reasonably required reserve or replacement fund

(1) In general

For purposes of subsection (a), a bond shall not be treated as an arbitrage bond solely by reason of the fact that an amount of the proceeds of the issue of which such bond is a part may be invested in higher yielding investments which are part of a reasonably required reserve or

replacement fund. The amount referred to in the preceding sentence shall not exceed 10 percent of the proceeds of such issue unless the issuer establishes to the satisfaction of the Secretary that a higher amount is necessary.

(2) Limitation on amount in reserve or replacement fund which may be financed by issue

A bond issued as part of an issue shall be treated as an arbitrage bond if the amount of the proceeds from the sale of such issue which is part of any reserve or replacement fund exceeds 10 percent of the proceeds of the issue (or such higher amount which the issuer establishes is necessary to the satisfaction of the Secretary).

(e) Minor portion may be invested in higher yielding investments

Notwithstanding subsections (a), (c), and (d), a bond issued as part of an issue shall not be treated as an arbitrage bond solely by reason of the fact that an amount of the proceeds of such issue (in addition to the amounts under subsections (c) and (d)) is invested in higher yielding investments if such amount does not exceed the lesser of—

(1) 5 percent of the proceeds of the issue, or

(2) $100,000.

(f) Required rebate to the United States

(1) In general

A bond which is part of an issue shall be treated as an arbitrage bond if the requirements of paragraphs (2) and (3) are not met with respect to such issue. The preceding sentence shall not apply to any qualified veterans' mortgage bond.

(2) Rebate to United States

An issue shall be treated as meeting the requirements of this paragraph only if an amount equal to the sum of—

(A) the excess of—

(i) the amount earned on all nonpurpose investments (other than investments attributable to an excess described in this subparagraph), over

(ii) the amount which would have been earned if such nonpurpose investments were invested at a rate equal to the yield on the issue, plus

(B) any income attributable to the excess described in subparagraph (A),

is paid to the United States by the issuer in accordance with the requirements of paragraph (3).

(3) Due date of payments under paragraph (2)

Except to the extent provided by the Secretary, the amount which is required to be paid to the United States by the issuer shall be paid in installments which are made at least once every 5 years. Each installment shall be in an amount which ensures that 90 percent of the amount described in paragraph (2) with respect to the issue at the time payment of such installment is required will have been paid to the United States. The last installment shall be made no later than 60 days after the day on which the last bond of the issue is redeemed and shall be in an amount sufficient to pay the remaining balance of the amount described in paragraph (2) with respect to such issue. A series of issues which are redeemed during a 6-month period (or such longer period as the Secretary may prescribe) shall be treated (at the election of the issuer) as 1 issue for purposes of the preceding sentence if no bond which is part of any issue in such series has a maturity of more than 270 days or is a private activity bond. In the case of a tax and revenue anticipation bond, the last installment shall not be required to be made before the date 8 months after the date of issuance of the issue of which the bond is a part.

(4) Special rules for applying paragraph (2)

(A) In general

In determining the aggregate amount earned on nonpurpose investments for purposes of

paragraph (2)—

(i) any gain or loss on the disposition of a nonpurpose investment shall be taken into account, and

(ii) any amount earned on a bona fide debt service fund shall not be taken into account if the gross earnings on such fund for the bond year is less than $100,000.

In the case of an issue no bond of which is a private activity bond, clause (ii) shall be applied without regard to the dollar limitation therein if the average maturity of the issue (determined in accordance with section 147(b)(2)(A)) is at least 5 years and the rates of interest on bonds which are part of the issue do not vary during the term of the issue.

(B) Temporary investments

Under regulations prescribed by the Secretary—

(i) In general

An issue shall, for purposes of this subsection, be treated as meeting the requirements of paragraph (2) if—

(I) the gross proceeds of such issue are expended for the governmental purposes for which the issue was issued no later than the day which is 6 months after the date of issuance of the issue, and

(II) the requirements of paragraph (2) are met with respect to amounts not required to be spent as provided in subclause (I) (other than earnings on amounts in any bona fide debt service fund).

Gross proceeds which are held in a bona fide debt service fund or a reasonably required reserve or replacement fund, and gross proceeds which arise after such 6 months and which were not reasonably anticipated as of the date of issuance, shall not be considered gross proceeds for purposes of subclause (I) only.

(ii) Additional period for certain bonds

(I) In general

In the case of an issue described in subclause (II), clause (i) shall be applied by substituting "1 year" for "6 months" each place it appears with respect to the portion of the proceeds of the issue which are not expended in accordance with clause (i) if such portion does not exceed 5 percent of the proceeds of the issue.

(II) Issues to which subclause (I) applies

An issue is described in this subclause if no bond which is part of such issue is a private activity bond (other than a qualified 501(c)(3) bond) or a tax or revenue anticipation bond.

(iii) Safe harbor for determining when proceeds of tax and revenue anticipation bonds are expended

(I) In general

For purposes of clause (i), in the case of an issue of tax or revenue anticipation bonds, the net proceeds of such issue (including earnings thereon) shall be treated as expended for the governmental purpose of the issue on the 1st day after the date of issuance that the cumulative cash flow deficit to be financed by such issue exceeds 90 percent of the proceeds of such issue.

(II) Cumulative cash flow deficit

For purposes of subclause (I), the term "cumulative cash flow deficit" means, as of the date of computation, the excess of the expenses paid during the period described in subclause (III) which would ordinarily be paid out of or financed by anticipated tax or other revenues over the aggregate amount available (other than from the proceeds of the issue) during such period for the payment of such expenses.

(III) Period involved

For purposes of subclause (II), the period described in this subclause is the period beginning on the date of issuance of the issue and ending on the earlier of the date 6 months after such date of issuance or the date of the computation of cumulative cash flow deficit.

(iv) Payments of principal not to affect requirements

For purposes of this subparagraph, payments of principal on the bonds which are part of an issue shall not be treated as expended for the governmental purposes of the issue.

(C) Exception from rebate for certain proceeds to be used to finance construction expenditures

(i) In general

In the case of a construction issue, paragraph (2) shall not apply to the available construction proceeds of such issue if the spending requirements of clause (ii) are met.

(ii) Spending requirements

The spending requirements of this clause are met if at least—

(I) 10 percent of the available construction proceeds of the construction issue are spent for the governmental purposes of the issue within the 6-month period beginning on the date the bonds are issued,

(II) 45 percent of such proceeds are spent for such purposes within the 1-year period beginning on such date,

(III) 75 percent of such proceeds are spent for such purposes within the 18-month period beginning on such date, and

(IV) 100 percent of such proceeds are spent for such purposes within the 2-year period beginning on such date.

(iii) Exception for reasonable retainage

The spending requirement of clause (ii)(IV) shall be treated as met if—

(I) such requirement would be met at the close of such 2-year period but for a reasonable retainage (not exceeding 5 percent of the available construction proceeds of the construction issue), and

(II) 100 percent of the available construction proceeds of the construction issue are spent for the governmental purposes of the issue within the 3-year period beginning on the date the bonds are issued.

(iv) Construction issue

For purposes of this subparagraph, the term "construction issue" means any issue if—

(I) at least 75 percent of the available construction proceeds of such issue are to be used for construction expenditures with respect to property which is to be owned by a governmental unit or a 501(c)(3) organization, and

(II) all of the bonds which are part of such issue are qualified 501(c)(3) bonds, bonds which are not private activity bonds, or private activity bonds issued to finance property to be owned by a governmental unit or a 501(c)(3) organization.

For purposes of this subparagraph, the term "construction" includes reconstruction and rehabilitation, and rules similar to the rules of section 142(b)(1)(B) shall apply.

(v) Portions of issues used for construction

If—

(I) all of the construction expenditures to be financed by an issue are to be financed from a portion thereof, and

(II) the issuer elects to treat such portion as a construction issue for purposes of this subparagraph,

then, for purposes of this subparagraph and subparagraph (B), such portion shall be treated as a separate issue.

(vi) Available construction proceeds

For purposes of this subparagraph—

(I) In general

The term "available construction proceeds" means the amount equal to the issue price (within the meaning of sections 1273 and 1274) of the construction issue, increased by earnings on the issue price, earnings on amounts in any reasonably required reserve or replacement fund not funded from the issue, and earnings on all of the foregoing earnings, and reduced by the amount of the issue price in any reasonably required reserve or replacement fund and the issuance costs financed by the issue.

(II) Earnings on reserve included only for certain periods

The term "available construction proceeds" shall not include amounts earned on any reasonably required reserve or replacement fund after the earlier of the close of the 2-year period described in clause (ii) or the date the construction is substantially completed.

(III) Payments on acquired purpose obligations excluded

The term "available construction proceeds" shall not include payments on any obligation acquired to carry out the governmental purposes of the issue and shall not include earnings on such payments.

(IV) Election to rebate on earnings on reserve

At the election of the issuer, the term "available construction proceeds" shall not include earnings on any reasonably required reserve or replacement fund.

(vii) Election to pay penalty in lieu of rebate

(I) In general

At the election of the issuer, paragraph (2) shall not apply to available construction proceeds which do not meet the spending requirements of clause (ii) if the issuer pays a penalty, with respect to each 6-month period after the date the bonds were issued, equal to 1½ percent of the amount of the available construction proceeds of the issue which, as of the close of such 6-month period, is not spent as required by clause (ii).

(II) Termination

The penalty imposed by this clause shall cease to apply only as provided in clause (viii) or after the latest maturity date of any bond in the issue (including any refunding bond with respect thereto).

(viii) Election to terminate 1½ percent penalty

At the election of the issuer (made not later than 90 days after the earlier of the end of the initial temporary period or the date the construction is substantially completed), the penalty under clause (vii) shall not apply to any 6-month period after the initial temporary period under subsection (c) if the requirements of subclauses (I), (II), and (III) are met.

(I) 3 percent penalty

The requirement of this subclause is met if the issuer pays a penalty equal to 3 percent of the amount of available construction proceeds of the issue which is not spent for the governmental purposes of the issue as of the close of such initial temporary period multiplied by the number of years (including fractions thereof) in the initial temporary period.

(II) Yield restriction at close of temporary period

The requirement of this subclause is met if the amount of the available construction

proceeds of the issue which is not spent for the governmental purposes of the issue as of the close of such initial temporary period is invested at a yield not exceeding the yield on the issue or which is invested in any tax-exempt bond which is not investment property.

(III) Redemption of bonds at earliest call date

The requirement of this subclause is met if the amount of the available construction proceeds of the issue which is not spent for the governmental purposes of the issue as of the earliest date on which bonds may be redeemed is used to redeem bonds on such date.

(ix) Election to terminate 1½ percent penalty before end of temporary period

If—

(I) the construction to be financed by a construction issue is substantially completed before the end of the initial temporary period,

(II) the issuer identifies an amount of available construction proceeds which will not be spent for the governmental purposes of the issue,

(III) the issuer has made the election under clause (viii), and

(IV) the issuer makes an election under this clause before the close of the initial temporary period and not later than 90 days after the date the construction is substantially completed,

then clauses (vii) and (viii) shall be applied to the available construction proceeds so identified as if the initial temporary period ended as of the date the election is made.

(x) Failure to pay penalties

In the case of a failure (which is not due to willful neglect) to pay any penalty required to be paid under clause (vii) or (viii) in the amount or at the time prescribed therefor, the Secretary may treat such failure as not occurring if, in addition to paying such penalty, the issuer pays a penalty equal to the sum of—

(I) 50 percent of the amount which was not paid in accordance with clauses (vii) and (viii), plus

(II) interest (at the underpayment rate established under section 6621) on the portion of the amount which was not paid on the date required for the period beginning on such date.

The Secretary may waive all or any portion of the penalty under this clause. Bonds which are part of an issue with respect to which there is a failure to pay the amount required under this clause (and any refunding bond with respect thereto) shall be treated as not being, and as never having been, tax-exempt bonds.

(xi) Election for pooled financing bonds

At the election of the issuer of an issue the proceeds of which are to be used to make or finance loans (other than nonpurpose investments) to 2 or more persons, the periods described in clauses (ii) and (iii) shall begin on—

(I) the date the loan is made, in the case of loans made within the 1-year period after the date the bonds are issued, and

(II) the date following such 1-year period, in the case of loans made after such 1-year period.

If such an election applies to an issue, the requirements of paragraph (2) shall apply to amounts earned before the beginning of the periods determined under the preceding sentence.

(xii) Payments of principal not to affect requirements

For purposes of this subparagraph, payments of principal on the bonds which are part of the construction issue shall not be treated as an expenditure of the available construction proceeds of the issue.

(xiii) Refunding bonds

(I) In general

Except as provided in this clause, clause (vii)(II), and the last sentence of clause (x), this subparagraph shall not apply to any refunding bond and no proceeds of a refunded bond shall be treated for purposes of this subparagraph as proceeds of a refunding bond.

(II) Determination of construction portion of issue

For purposes of clause (v), any portion of an issue which is used to refund any issue (or portion thereof) shall be treated as a separate issue.

(III) Coordination with rebate requirement on refunding bonds

The requirements of paragraph (2) shall be treated as met with respect to earnings for any period if a penalty is paid under clause (vii) or (viii) with respect to such earnings for such period.

(xiv) Determination of initial temporary period

For purposes of this subpargraph,[1] the end of the initial temporary period shall be determined without regard to section 149(d)(3)(A)(iv).

(xv) Elections

Any election under this subparagraph (other than clauses (viii) and (ix)) shall be made on or before the date the bonds are issued; and, once made, shall be irrevocable.

(xvi) Time for payment of penalties

Any penalty under this subparagraph shall be paid to the United States not later than 90 days after the period to which the penalty relates.

(xvii) Treatment of bona fide debt service funds

If the spending requirements of clause (ii) are met with respect to the available construction proceeds of a construction issue, then paragraph (2) shall not apply to earnings on a bona fide debt service fund for such issue.

(D) Exception for governmental units issuing $5,000,000 or less of bonds

(i) In general

An issue shall, for purposes of this subsection, be treated as meeting the requirements of paragraphs (2) and (3) if—

(I) the issue is issued by a governmental unit with general taxing powers,

(II) no bond which is part of such issue is a private activity bond,

(III) 95 percent or more of the net proceeds of such issue are to be used for local governmental activities of the issuer (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the issuer), and

(IV) the aggregate face amount of all tax-exempt bonds (other than private activity bonds) issued by such unit during the calendar year in which such issue is issued is not reasonably expected to exceed $5,000,000.

(ii) Aggregation of issuers

For purposes of subclause (IV) of clause (i)—

(I) an issuer and all entities which issue bonds on behalf of such issuer shall be treated as 1 issuer,

(II) all bonds issued by a subordinate entity shall, for purposes of applying such subclause to each other entity to which such entity is subordinate, be treated as issued by such other entity, and

(III) an entity formed (or, to the extent provided by the Secretary, availed of) to avoid the purposes of such subclause (IV) and all other entities benefiting thereby shall be treated as 1 issuer.

(iii) Certain refunding bonds not taken into account in determining small issuer status

There shall not be taken into account under subclause (IV) of clause (i) any bond issued to refund (other than to advance refund) any bond to the extent the amount of the refunding bond does not exceed the outstanding amount of the refunded bond.

(iv) Certain issues issued by subordinate governmental units, etc., exempt from rebate requirement

An issue issued by a subordinate entity of a governmental unit with general taxing powers shall be treated as described in clause (i)(I) if the aggregate face amount of such issue does not exceed the lesser of—

(I) $5,000,000, or

(II) the amount which, when added to the aggregate face amount of other issues issued by such entity, does not exceed the portion of the $5,000,000 limitation under clause (i)(IV) which such governmental unit allocates to such entity.

For purposes of the preceding sentence, an entity which issues bonds on behalf of a governmental unit with general taxing powers shall be treated as a subordinate entity of such unit. An allocation shall be taken into account under subclause (II) only if it is irrevocable and made before the issuance date of such issue and only to the extent that the limitation so allocated bears a reasonable relationship to the benefits received by such governmental unit from issues issued by such entity.

(v) Determination of whether refunding bonds eligible for exception from rebate requirement

If any portion of an issue is issued to refund other bonds, such portion shall be treated as a separate issue which does not meet the requirements of paragraphs (2) and (3) by reason of this subparagraph unless—

(I) the aggregate face amount of such issue does not exceed $5,000,000,

(II) each refunded bond was issued as part of an issue which was treated as meeting the requirements of paragraphs (2) and (3) by reason of this subparagraph,

(III) the average maturity date of the refunding bonds issued as part of such issue is not later than the average maturity date of the bonds to be refunded by such issue, and

(IV) no refunding bond has a maturity date which is later than the date which is 30 years after the date the original bond was issued.

Subclause (III) shall not apply if the average maturity of the issue of which the original bond was a part (and of the issue of which the bonds to be refunded are a part) is 3 years or less. For purposes of this clause, average maturity shall be determined in accordance with section 147(b)(2)(A).

(vi) Refundings of bonds issued under law prior to Tax Reform Act of 1986

If section 141(a) did not apply to any refunded bond, the issue of which such refunded bond was a part shall be treated as meeting the requirements of subclause (II) of clause (v) if—

(I) such issue was issued by a governmental unit with general taxing powers,

(II) no bond issued as part of such issue was an industrial development bond (as defined in section 103(b)(2), but without regard to subparagraph (B) of section 103(b)(3)) or a private loan bond (as defined in section 103(o)(2)(A), but without regard to any exception from such definition other than section 103(o)(2)(C)), and

(III) the aggregate face amount of all tax-exempt bonds (other than bonds described in subclause (II)) issued by such unit during the calendar year in which such issue was issued did not exceed $5,000,000.

References in subclause (II) to section 103 shall be to such section as in effect on the day before the date of the enactment of the Tax Reform Act of 1986. Rules similar to the rules of

clauses (ii) and (iii) shall apply for purposes of subclause (III). For purposes of subclause (II) of clause (i), bonds described in subclause (II) of this clause to which section 141(a) does not apply shall not be treated as private activity bonds.

(vii) Increase in exception for bonds financing public school capital expenditures

Each of the $5,000,000 amounts in the preceding provisions of this subparagraph shall be increased by the lesser of $10,000,000 or so much of the aggregate face amount of the bonds as are attributable to financing the construction (within the meaning of subparagraph (C)(iv)) of public school facilities.

(5) Exemption from gross income of sum rebated

Gross income shall not include the sum described in paragraph (2). Notwithstanding any other provision of this title, no deduction shall be allowed for any amount paid to the United States under paragraph (2).

(6) Definitions

For purposes of this subsection and subsections (c) and (d)—

(A) Nonpurpose investment

The term "nonpurpose investment" means any investment property which—

(i) is acquired with the gross proceeds of an issue, and

(ii) is not acquired in order to carry out the governmental purpose of the issue.

(B) Gross proceeds

Except as otherwise provided by the Secretary, the gross proceeds of an issue include—

(i) amounts received (including repayments of principal) as a result of investing the original proceeds of the issue, and

(ii) amounts to be used to pay debt service on the issue.

(7) Penalty in lieu of loss of tax exemption

In the case of an issue which would (but for this paragraph) fail to meet the requirements of paragraph (2) or (3), the Secretary may treat such issue as not failing to meet such requirements if—

(A) no bond which is part of such issue is a private activity bond (other than a qualified 501(c)(3) bond),

(B) the failure to meet such requirements is not due to willful neglect, and

(C) the issuer pays to the United States a penalty in an amount equal to the sum of—

(i) 50 percent of the amount which was not paid in accordance with paragraphs (2) and (3), plus

(ii) interest (at the underpayment rate established under section 6621) on the portion of the amount which was not paid on the date required under paragraph (3) for the period beginning on such date.

The Secretary may waive all or any portion of the penalty under this paragraph.

(g) Student loan incentive payments

Except to the extent otherwise provided in regulations, payments made by the Secretary of Education pursuant to section 438 of the Higher Education Act of 1965 are not to be taken into account, for purposes of subsection (a)(1), in determining yields on student loan notes.

(h) Determinations of yield

For purposes of this section, the yield on an issue shall be determined on the basis of the issue price (within the meaning of sections 1273 and 1274).

(i) Regulations

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

(Added Pub. L. 99–514, title XIII, §1301(b), Oct. 22, 1986, 100 Stat. 2641; amended Pub. L. 100–647, title I, §1013(a)(14)–(16)(A), (17)(A), (B), (18), (19), (43)(A), (B), title IV, §4005(d)(2), title V, §5053(b), title VI, §§6177(a), (b), 6181(a), (b), 6183(a), Nov. 10, 1988, 102 Stat. 3539, 3540, 3542, 3545, 3646, 3678, 3726, 3727, 3729; Pub. L. 101–239, title VII, §§7652(a)–(d), 7814(c)(2), 7816(r), (t), Dec. 19, 1989, 103 Stat. 2385–2387, 2413, 2423; Pub. L. 101–508, title XI, §11701(j)(1)–(6), Nov. 5, 1990, 104 Stat. 1388–508 to 1388–513; Pub. L. 105–34, title II, §223(a), title XIV, §§1441–1444, Aug. 5, 1997, 111 Stat. 818, 1053, 1054; Pub. L. 107–16, title IV, §421(a), June 7, 2001, 115 Stat. 64; Pub. L. 109–58, title XIII, §1327(a), Aug. 8, 2005, 119 Stat. 1017; Pub. L. 109–222, title V, §508(c), May 17, 2006, 120 Stat. 362.)

REFERENCES IN TEXT

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (f)(4)(C)(vi), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

Section 438 of the Higher Education Act of 1965, referred to in subsec. (g), is classified to section 1087–1 of Title 20, Education.

AMENDMENTS

2006—Subsec. (f)(4)(D)(ii)(II) to (IV). Pub. L. 109–222 redesignated subcls. (III) and (IV) as (II) and (III), respectively, and struck out former subcl. (II) which read as follows: "all bonds issued by a governmental unit to make loans to other governmental units with general taxing powers not subordinate to such unit shall, for purposes of applying such subclause to such unit, be treated as not issued by such unit."

2005—Subsec. (b)(4). Pub. L. 109–58 added par. (4).

2001—Subsec. (f)(4)(D)(vii). Pub. L. 107–16 substituted "the lesser of $10,000,000" for "the lesser of $5,000,000".

1997—Subsec. (c)(2)(B) to (E). Pub. L. 105–34, §1444(a), redesignated subpars. (C) to (E) as (B) to (D), respectively, and struck out heading and text of former subpar. (B). Text read as follows: "In the case of the proceeds of an issue to be used to make or finance loans under a program described in section 144(b)(1)(A), subparagraph (A) shall be applied by substituting '18 months' for '6 months'. The preceding sentence shall not apply to any bond issued after December 31, 1988."

Subsec. (d)(3). Pub. L. 105–34, §1443, struck out par. (3) which related to limitations on investment in nonpurpose investments.

Subsec. (f)(4)(B)(ii)(I). Pub. L. 105–34, §1441, substituted "5 percent of the proceeds of the issue" for "the lesser of 5 percent of the proceeds of the issue or $100,000".

Subsec. (f)(4)(C)(xvii). Pub. L. 105–34, §1442, added cl. (xvii).

Subsec. (f)(4)(D)(vii). Pub. L. 105–34, §223(a), added cl. (vii).

Subsec. (f)(4)(E). Pub. L. 105–34, §1444(b), struck out subpar. (E) which related to exception for certain qualified student loan bonds.

1990—Subsec. (c)(2)(D). Pub. L. 101–508, §11701(j)(5), substituted "subsection (f)(4)(C)(iv)" for "subsection (f)(4)(B)(iv)(IV)" in introductory provisions and "subsection (f)(4)(C)(v)" for "subsection (f)(4)(B)(iv)(VIII)" in cl. (i).

Subsec. (c)(2)(D), (E). Pub. L. 101–508, §11701(j)(6), made technical amendment to Pub. L. 101–239, §7652(c). See 1989 Amendment note below.

Subsec. (f)(4)(B)(i). Pub. L. 101–508, §11701(j)(2), substituted in last sentence "replacement fund, and gross proceeds which arise after such 6 months and which were not reasonably anticipated as of the date of issuance, shall not be considered gross proceeds for purposes of subclause (I) only" for "replacement fund shall not be considered gross proceeds for purposes of this subparagraph only" in concluding provisions.

Subsec. (f)(4)(B)(i)(II). Pub. L. 101–508, §11701(j)(1), amended subcl. (II) generally. Prior to amendment, subcl. (II) read as follows: "the requirements of paragraph (2) are met after such 6 months with respect to earnings on amounts in any reasonably required reserve or replacement fund."

Subsec. (f)(4)(B)(iv). Pub. L. 101–508, §11701(j)(4), amended cl. (iv) generally, substituting present provisions for provisions which provided for a special rule to be applied during a 2-year period for certain construction bonds from issues in which at least 75 percent of the net proceeds of the issue were to be used for construction expenditures with respect to property which was owned by a governmental unit or a 501(c)(3) organization.

Subsec. (f)(4)(C) to (E). Pub. L. 101–508, §11701(j)(3)(A), (B), added subpar. (C) and redesignated former subpars. (C) and (D) as (D) and (E), respectively.

1989—Subsec. (c)(2)(D), (E). Pub. L. 101–239, §7652(c), as amended by Pub. L. 101–508, §11701(j)(6), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (d)(3)(E)(ii). Pub. L. 101–239, §7814(c)(2), struck out "a qualified mortgage bond or" after "in the case of".

Subsec. (f)(4)(B)(i). Pub. L. 101–239, §7652(a), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: "An issue shall, for purposes of this subsection, be treated as meeting the requirements of paragraph (2) if the gross proceeds of such issue are expended for the governmental purpose for which the issue was issued by no later than the day which is 6 months after the date of issuance of such issue. Gross proceeds which are held in a bona fide debt service fund shall not be considered gross proceeds for purposes of this subparagraph only."

Subsec. (f)(4)(B)(ii)(I). Pub. L. 101–239, §7652(d), inserted "each place it appears" after " '6 months' ".

Subsec. (f)(4)(B)(iii)(III). Pub. L. 101–239, §7816(r), substituted "such date of issuance or the date" for "such date of issuance. or the date".

Subsec. (f)(4)(B)(iv). Pub. L. 101–239, §7652(b), added cl. (iv).

Subsec. (f)(4)(C)(ii)(II). Pub. L. 101–239, §7816(t), substituted "to make loans to" for "on behalf of".

1988—Subsec. (b)(2). Pub. L. 100–647, §1013(a)(43)(B), struck out at end "Such term shall not include any tax-exempt bond."

Subsec. (b)(2)(E). Pub. L. 100–647, §5053(b), added subpar. (E).

Subsec. (b)(3). Pub. L. 100–647, §1013(a)(43)(A), added par. (3).

Subsec. (d)(2). Pub. L. 100–647, §1013(a)(14), substituted "any reserve or replacement fund" for "any fund described in paragraph (1)".

Subsec. (f)(1). Pub. L. 100–647, §4005(d)(2), struck out "qualified mortgage bond or" after "apply to any".

Subsec. (f)(3). Pub. L. 100–647, §6177(b), inserted at end "In the case of a tax and revenue anticipation bond, the last installment shall not be required to be made before the date 8 months after the date of issuance of the issue of which the bond is a part."

Pub. L. 100–647, §1013(a)(15), inserted "A series of issues which are redeemed during a 6-month period (or such longer period as the Secretary may prescribe) shall be treated (at the election of the issuer) as 1 issue for purposes of the preceding sentence if no bond which is part of any issue in such series has a maturity of more than 270 days or is a private activity bond."

Subsec. (f)(4)(A). Pub. L. 100–647, §6181(a), (b), struck out "unless the issuer otherwise elects," before "any amount earned" in cl. (ii) and inserted at end of subpar. (A) "In the case of an issue no bond of which is a private activity bond, clause (ii) shall be applied without regard to the dollar limitation therein if the average maturity of the issue (determined in accordance with section 147(b)(2)(A)) is at least 5 years and the rates of interest on bonds which are part of the issue do not vary during the term of the issue."

Subsec. (f)(4)(B)(iii)(I). Pub. L. 100–647, §1013(a)(16)(A), substituted "proceeds" for "aggregate face amount".

Subsec. (f)(4)(B)(iii)(III). Pub. L. 100–647, §6177(a), substituted "the earlier of the date 6 months after such date of issuance." for "the earliest of the maturity date of the issue, the date 6 months after such date of issuance,".

Subsec. (f)(4)(C). Pub. L. 100–647, §1013(a)(17)(A), in heading substituted "governmental units issuing $5,000,000 or less of bonds" for "small governmental units", designated existing provision as cl. (i), inserted heading "In general", redesignated existing cls. (i) to (iv) as subcls. (I) to (IV) and realigned their margins, struck out last sentence providing that cl. (iv) not take into account any bond which is not outstanding at the time of a later issue or which is redeemed, other than in an advance refunding, from the net proceeds of the later issue, and added cls. (ii) to (vi).

Subsec. (f)(4)(C)(i)(IV). Pub. L. 100–647, §1013(a)(17)(B), struck out "(and all subordinate entities thereof)" after "such unit".

Subsec. (f)(4)(C)(ii). Pub. L. 100–647, §6183(a), added subcl. (II) and redesignated former subcls. (II) and (III) as (III) and (IV), respectively.

Subsec. (f)(4)(D)(i). Pub. L. 100–647, §1013(a)(18), inserted "for a program" before "described in section 144(b)(1)(A)" in introductory text, substituted "such program" for "such a program" in subcl. (I), and inserted at end "Amounts designated as interest on student loans shall not be taken into account in determining whether the issuer is reimbursed for such costs. Except as otherwise hereafter provided in regulations prescribed by the Secretary, costs described in subclause (I) paid from amounts earned as described in the first sentence of this clause may also be taken into account in determining the yield on the student loans under a program described in section 144(b)(1)(A)."

Subsec. (f)(7)(B). Pub. L. 100–647, §1013(a)(19), substituted "not due" for "due to reasonable cause and not".

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–222 applicable to bonds issued after May 17, 2006, see section 508(e) of Pub. L. 109–222, set out as a note under section 54 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–58 applicable to obligations issued after Aug. 8, 2005, see section 1327(d) of Pub. L. 109–58, set out as a note under section 141 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–16, title IV, §421(b), June 7, 2001, 115 Stat. 65, provided that: "The amendment made by subsection (a) [amending this section] shall apply to obligations issued in calendar years beginning after December 31, 2001."

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title II, §223(b), Aug. 5, 1997, 111 Stat. 818, provided that: "The amendments made by this section [amending this section] shall apply to bonds issued after December 31, 1997."

Pub. L. 105–34, title XIV, §1445, Aug. 5, 1997, 111 Stat. 1054, provided that: "The amendments made by this subtitle [subtitle B (§§1441–1445) of title XIV of Pub. L. 105–34, amending this section] shall apply to bonds issued after the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective, except as otherwise provided, as if included in the provision of the Revenue Reconciliation Act of 1989, Pub. L. 101–239, title VII, to which such amendment relates, see section 11701(n) of Pub. L. 101–508, set out as a note under section 42 of this title.

Pub. L. 101–508, title XI, §11701(j)(8), Nov. 5, 1990, 104 Stat. 1388–513, provided that: "Section 148(f)(4)(C)(xiii)(II) of such Code (as added by this subsection) shall apply only to refunding bonds issued after August 3, 1990."

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7652(e), Dec. 19, 1989, 103 Stat. 2387, provided that: "The amendments made by this section [amending this section] shall apply to bonds issued after the date of the enactment of this Act [Dec. 19, 1989]."

Amendment by sections 7814(c)(2) and 7816(r), (t) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1013(a)(16)(B), Nov. 10, 1988, 102 Stat. 3540, provided that: "The amendment made by subparagraph (A) [amending this section] shall apply to bonds issued after June 30, 1987."

Pub. L. 100–647, title I, §1013(a)(17)(C), Nov. 10, 1988, 102 Stat. 3542, provided that:

"(i) Except as provided in clause (ii), the amendments made by this paragraph [amending this section] shall apply to bonds issued after June 30, 1987.

"(ii) At the election of an issuer (made at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe), the amendments made by this paragraph shall apply to such issuer as if included in the amendments made by section 1301(a) of the Tax Reform Act of 1986 [amending section 103 of this title]."

Pub. L. 100–647, title I, §1013(a)(43)(C), Nov. 10, 1988, 102 Stat. 3545, provided that: "The amendments made by this paragraph [amending this section] shall apply to obligations issued after March 31, 1988."

Amendment by section 1013(a)(14), (15), (18), (19) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 4005(d)(2) of Pub. L. 100–647 applicable to bonds issued, and nonissued bond amounts elected, after Dec. 31, 1988, see section 4005(h)(1) of Pub. L. 100–647, set out as a note under section 143 of this title.

Amendment by section 5053(b) of Pub. L. 100–647 applicable, with certain exceptions, to obligations issued after Oct. 21, 1988, see section 5053(c) of Pub. L. 100–647, set out as a note under section 145 of this title.

Pub. L. 100–647, title VI, §6177(c), Nov. 10, 1988, 102 Stat. 3727, provided that: "The amendments made by this section [amending this section] shall apply to bonds issued after the date of the enactment of this Act

[Nov. 10, 1988]."

Pub. L. 100–647, title VI, §6181(c), Nov. 10, 1988, 102 Stat. 3729, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to bonds issued after the date of the enactment of this Act [Nov. 10, 1988].

"(2) ELECTION FOR OUTSTANDING BONDS.—Any issue of bonds other than private activity bonds outstanding as of the date of the enactment of this Act shall be allowed a 1-time election to apply the amendments made by subsection (b) [amending this section] to amounts deposited after such date in bona fide debt service funds of such bonds.

"(3) DEFINITION OF PRIVATE ACTIVITY BOND.—For purposes of this section and the last sentence of section 148(f)(4)(A) of the 1986 Code (as added by subsection (b)), the term 'private activity bond' shall include any qualified 501(c)(3) bond (as defined under section 145 of the 1986 Code)."

Pub. L. 100–647, title VI, §6183(b), Nov. 10, 1988, 102 Stat. 3730, provided that: "The amendment made by subsection (a) [amending this section] shall apply to bonds issued after December 31, 1988."

EFFECTIVE DATE

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

EXTENSION OF PERIOD TO ELECT TO TERMINATE PERCENT PENALTY FOR BONDS ISSUED BEFORE NOVEMBER 5, 1990

Pub. L. 101–508, title XI, §11701(j)(7), Nov. 5, 1990, 104 Stat. 1388–513, provided that: "In the case of a bond issued before the date of the enactment of this Act [Nov. 5, 1990], the period for making the election under section 148(f)(4)(C)(viii) of the Internal Revenue Code of 1986 (as added by this subsection) shall not expire before the date which is 180 days after such date of enactment."

AMENDMENT TO ARBITRAGE REGULATIONS

Pub. L. 99–514, title XIII, §1301(c), Oct. 22, 1986, 100 Stat. 2654, provided that: "The provision in the Federal income tax regulations relating to the arbitrage requirements which permits a higher yield on acquired obligations if the issuer elects to waive the benefits of the temporary period provisions shall not apply to bonds issued after August 31, 1986."

[1] So in original. Probably should be "subparagraph,".

§149. Bonds must be registered to be tax exempt; other requirements

(a) Bonds must be registered to be tax exempt

(1) General rule

Nothing in section 103(a) or in any other provision of law shall be construed to provide an exemption from Federal income tax for interest on any registration-required bond unless such bond is in registered form.

(2) Registration-required bond

For purposes of paragraph (1), the term "registration-required bond" means any bond other than a bond which—

(A) is not of a type offered to the public, or

(B) has a maturity (at issue) of not more than 1 year.

(3) Special rules

(A) Book entries permitted

For purposes of paragraph (1), a book entry bond shall be treated as in registered form if the right to the principal of, and stated interest on, such bond may be transferred only through a book entry consistent with regulations prescribed by the Secretary.

(B) Nominees

The Secretary shall prescribe such regulations as may be necessary to carry out the purpose

of paragraph (1) where there is a nominee or chain of nominees.

(b) Federally guaranteed bond is not tax exempt

(1) In general

Section 103(a) shall not apply to any State or local bond if such bond is federally guaranteed.

(2) Federally guaranteed defined

For purposes of paragraph (1), a bond is federally guaranteed if—

(A) the payment of principal or interest with respect to such bond is guaranteed (in whole or in part) by the United States (or any agency or instrumentality thereof),

(B) such bond is issued as part of an issue and 5 percent or more of the proceeds of such issue is to be—

(i) used in making loans the payment of principal or interest with respect to which are to be guaranteed (in whole or in part) by the United States (or any agency or instrumentality thereof), or

(ii) invested (directly or indirectly) in federally insured deposits or accounts, or

(C) the payment of principal or interest on such bond is otherwise indirectly guaranteed (in whole or in part) by the United States (or an agency or instrumentality thereof).

(3) Exceptions

(A) Certain insurance programs

A bond shall not be treated as federally guaranteed by reason of—

(i) any guarantee by the Federal Housing Administration, the Veterans' Administration, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association,

(ii) any guarantee of student loans and any guarantee by the Student Loan Marketing Association to finance student loans,

(iii) any guarantee by the Bonneville Power Authority pursuant to the Northwest Power Act (16 U.S.C. 839d) as in effect on the date of the enactment of the Tax Reform Act of 1984, or

(iv) subject to subparagraph (E), any guarantee by a Federal home loan bank made in connection with the original issuance of a bond during the period beginning on the date of the enactment of this clause and ending on December 31, 2010 (or a renewal or extension of a guarantee so made).

(B) Debt service, etc.

Paragraph (1) shall not apply to—

(i) proceeds of the issue invested for an initial temporary period until such proceeds are needed for the purpose for which such issue was issued,

(ii) investments of a bona fide debt service fund,

(iii) investments of a reserve which meet the requirements of section 148(d),

(iv) investments in bonds issued by the United States Treasury, or

(v) other investments permitted under regulations.

(C) Exception for housing programs

(i) In general

Except as provided in clause (ii), paragraph (1) shall not apply to—

(I) a private activity bond for a qualified residential rental project or a housing program obligation under section 11(b) of the United States Housing Act of 1937,

(II) a qualified mortgage bond, or

(III) a qualified veterans' mortgage bond.

(ii) Exception not to apply where bond invested in federally insured deposits or accounts

Clause (i) shall not apply to any bond which is federally guaranteed within the meaning of paragraph (2)(B)(ii).

(D) Loans to, or guarantees by, financial institutions

Except as provided in paragraph (2)(B)(ii), a bond which is issued as part of an issue shall not be treated as federally guaranteed merely by reason of the fact that the proceeds of such issue are used in making loans to a financial institution or there is a guarantee by a financial institution unless such guarantee constitutes a federally insured deposit or account.

(E) Safety and soundness requirements for Federal home loan banks

Clause (iv) of subparagraph (A) shall not apply to any guarantee by a Federal home loan bank unless such bank meets safety and soundness collateral requirements for such guarantees which are at least as stringent as such requirements which apply under regulations applicable to such guarantees by Federal home loan banks as in effect on April 9, 2008.

(4) Definitions

For purposes of this subsection—

(A) Treatment of certain entities with authority to borrow from United States

To the extent provided in regulations prescribed by the Secretary, any entity with statutory authority to borrow from the United States shall be treated as an instrumentality of the United States. Except in the case of an exempt facility bond, a qualified small issue bond, and a qualified student loan bond, nothing in the preceding sentence shall be construed as treating the District of Columbia or any possession of the United States as an instrumentality of the United States.

(B) Federally insured deposit or account

The term "federally insured deposit or account" means any deposit or account in a financial institution to the extent such deposit or account is insured under Federal law by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, the National Credit Union Administration, or any similar federally chartered corporation.

(c) Tax exemption must be derived from this title

(1) General rule

Except as provided in paragraph (2), no interest on any bond shall be exempt from taxation under this title unless such interest is exempt from tax under this title without regard to any provision of law which is not contained in this title and which is not contained in a revenue Act.

(2) Certain prior exemptions

(A) Prior exemptions continued

For purposes of this title, notwithstanding any provision of this part, any bond the interest on which is exempt from taxation under this title by reason of any provision of law (other than a provision of this title) which is in effect on January 6, 1983, shall be treated as a bond described in section 103(a).

(B) Additional requirements for bonds issued after 1983

Subparagraph (A) shall not apply to a bond (not described in subparagraph (C)) issued after 1983 if the appropriate requirements of this part (or the corresponding provisions of prior law) are not met with respect to such bond.

(C) Description of bond

A bond is described in this subparagraph (and treated as described in subparagraph (A)) if—

(i) such bond is issued pursuant to the Northwest Power Act (16 U.S.C. 839d), as in effect on July 18, 1984;

(ii) such bond is issued pursuant to section 608(a)(6)(A) of Public Law 97–468, as in effect on the date of the enactment of the Tax Reform Act of 1986; or

(iii) such bond is issued before June 19, 1984 under section 11(b) of the United States Housing Act of 1937.

(d) Advance refundings

(1) In general

Nothing in section 103(a) or in any other provision of law shall be construed to provide an exemption from Federal income tax for interest on any bond issued as part of an issue described in paragraph (2), (3), or (4).

(2) Certain private activity bonds

An issue is described in this paragraph if any bond (issued as part of such issue) is issued to advance refund a private activity bond (other than a qualified 501(c)(3) bond).

(3) Other bonds

(A) In general

An issue is described in this paragraph if any bond (issued as part of such issue), hereinafter in this paragraph referred to as the "refunding bond", is issued to advance refund a bond unless—

(i) the refunding bond is only—

(I) the 1st advance refunding of the original bond if the original bond is issued after 1985, or

(II) the 1st or 2nd advance refunding of the original bond if the original bond was issued before 1986,

(ii) in the case of refunded bonds issued before 1986, the refunded bond is redeemed not later than the earliest date on which such bond may be redeemed at par or at a premium of 3 percent or less,

(iii) in the case of refunded bonds issued after 1985, the refunded bond is redeemed not later than the earliest date on which such bond may be redeemed,

(iv) the initial temporary period under section 148(c) ends—

(I) with respect to the proceeds of the refunding bond not later than 30 days after the date of issue of such bond, and

(II) with respect to the proceeds of the refunded bond on the date of issue of the refunding bond, and

(v) in the case of refunded bonds to which section 148(e) did not apply, on and after the date of issue of the refunding bond, the amount of proceeds of the refunded bond invested in higher yielding investments (as defined in section 148(b)) which are nonpurpose investments (as defined in section 148(f)(6)(A)) does not exceed—

(I) the amount so invested as part of a reasonably required reserve or replacement fund or during an allowable temporary period, and

(II) the amount which is equal to the lesser of 5 percent of the proceeds of the issue of which the refunded bond is a part or $100,000 (to the extent such amount is allocable to the refunded bond).

(B) Special rules for redemptions

(i) Issuer must redeem only if debt service savings

Clause (ii) and (iii) of subparagraph (A) shall apply only if the issuer may realize present value debt service savings (determined without regard to administrative expenses) in connection with the issue of which the refunding bond is a part.

(ii) Redemptions not required before 90th day

For purposes of clauses (ii) and (iii) of subparagraph (A), the earliest date referred to in such clauses shall not be earlier than the 90th day after the date of issuance of the refunding

bond.

(4) Abusive transactions prohibited

An issue is described in this paragraph if any bond (issued as part of such issue) is issued to advance refund another bond and a device is employed in connection with the issuance of such issue to obtain a material financial advantage (based on arbitrage) apart from savings attributable to lower interest rates.

(5) Advance refunding

For purposes of this part, a bond shall be treated as issued to advance refund another bond if it is issued more than 90 days before the redemption of the refunded bond.

(6) Special rules for purposes of paragraph (3)

For purposes of paragraph (3), bonds issued before the date of the enactment of this subsection shall be taken into account under subparagraph (A)(i) thereof except—

(A) a refunding which occurred before 1986 shall be treated as an advance refunding only if the refunding bond was issued more than 180 days before the redemption of the refunded bond, and

(B) a bond issued before 1986, shall be treated as advance refunded no more than once before March 15, 1986.

(7) Regulations

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

(e) Information reporting

(1) In general

Nothing in section 103(a) or any other provision of law shall be construed to provide an exemption from Federal income tax for interest on any bond unless such bond satisfies the requirements of paragraph (2).

(2) Information reporting requirements

A bond satisfies the requirements of this paragraph if the issuer submits to the Secretary, not later than the 15th day of the 2d calendar month after the close of the calendar quarter in which the bond is issued (or such later time as the Secretary may prescribe with respect to any portion of the statement), a statement concerning the issue of which the bond is a part which contains—

(A) the name and address of the issuer,

(B) the date of issue, the amount of net proceeds of the issue, the stated interest rate, term, and face amount of each bond which is part of the issue, the amount of issuance costs of the issue, and the amount of reserves of the issue,

(C) where required, the name of the applicable elected representative who approved the issue, or a description of the voter referendum by which the issue was approved,

(D) the name, address, and employer identification number of—

(i) each initial principal user of any facility provided with the proceeds of the issue,

(ii) the common parent of any affiliated group of corporations (within the meaning of section 1504(a)) of which such initial principal user is a member, and

(iii) if the issue is treated as a separate issue under section 144(a)(6)(A), any person treated as a principal user under section 144(a)(6)(B),

(E) a description of any property to be financed from the proceeds of the issue,

(F) a certification by a State official designated by State law (or, where there is no such official, the Governor) that the bond meets the requirements of section 146 (relating to cap on private activity bonds), if applicable, and

(G) such other information as the Secretary may require.

Subparagraphs (C) and (D) shall not apply to any bond which is not a private activity bond. The Secretary may provide that certain information specified in the 1st sentence need not be included in the statement with respect to an issue where the inclusion of such information is not necessary to carry out the purposes of this subsection.

(3) Extension of time

The Secretary may grant an extension of time for the filing of any statement required under paragraph (2) if the failure to file in a timely fashion is not due to willful neglect.

(f) Treatment of certain pooled financing bonds

(1) In general

Section 103(a) shall not apply to any pooled financing bond unless, with respect to the issue of which such bond is a part, the requirements of paragraphs (2), (3), (4), and (5) are met.

(2) Reasonable expectation requirement

(A) In general

The requirements of this paragraph are met with respect to an issue if the issuer reasonably expects that—

(i) as of the close of the 1-year period beginning on the date of issuance of the issue, at least 30 percent of the net proceeds of the issue (as of the close of such period) will have been used directly or indirectly to make or finance loans to ultimate borrowers, and

(ii) as of the close of the 3-year period beginning on such date of issuance, at least 95 percent of the net proceeds of the issue (as of the close of such period) will have been so used.

(B) Certain factors may not be taken into account in determining expectations

Expectations as to changes in interest rates or in the provisions of this title (or in the regulations or rulings thereunder) may not be taken into account in determining whether expectations are reasonable for purposes of this paragraph.

(C) Net proceeds

For purposes of subparagraph (A), the term "net proceeds" has the meaning given such term by section 150 but shall not include proceeds used to finance issuance costs and shall not include proceeds necessary to pay interest (during such period) on the bonds which are part of the issue.

(D) Refunding bonds

For purposes of subparagraph (A), in the case of a refunding bond, the date of issuance taken into account is the date of issuance of the original bond.

(3) Cost of issuance payment requirements

The requirements of this paragraph are met with respect to an issue if—

(A) the payment of legal and underwriting costs associated with the issuance of the issue is not contingent, and

(B) at least 95 percent of the reasonably expected legal and underwriting costs associated with the issuance of the issue are paid not later than the 180th day after the date of the issuance of the issue.

(4) Written loan commitment requirement

(A) In general

The requirement of this paragraph is met with respect to an issue if the issuer receives prior to issuance written loan commitments identifying the ultimate potential borrowers of at least 30 percent of the net proceeds of such issue.

(B) Exception

Subparagraph (A) shall not apply with respect to any issuer which—

(i) is a State (or an integral part of a State) issuing pooled financing bonds to make or finance loans to subordinate governmental units of such State, or

(ii) is a State-created entity providing financing for water-infrastructure projects through the federally-sponsored State revolving fund program.

(5) Redemption requirement

The requirement of this paragraph is met if to the extent that less than the percentage of the proceeds of an issue required to be used under clause (i) or (ii) of paragraph (2)(A) is used by the close of the period identified in such clause, the issuer uses an amount of proceeds equal to the excess of—

(A) the amount required to be used under such clause, over

(B) the amount actually used by the close of such period,

to redeem outstanding bonds within 90 days after the end of such period.

(6) Pooled financing bond

For purposes of this subsection—

(A) In general

The term "pooled financing bond" means any bond issued as part of an issue more than $5,000,000 of the proceeds of which are reasonably expected (at the time of the issuance of the bonds) to be used (or are intentionally used) directly or indirectly to make or finance loans to 2 or more ultimate borrowers.

(B) Exceptions

Such term shall not include any bond if—

(i) section 146 applies to the issue of which such bond is a part (other than by reason of section 141(b)(5)) or would apply but for section 146(i), or

(ii) section 143(l)(3) applies to such issue.

(7) Definition of loan; treatment of mixed use issues

(A) Loan

For purposes of this subsection, the term "loan" does not include—

(i) any loan which is a nonpurpose investment (within the meaning of section 148(f)(6)(A), determined without regard to section 148(b)(3)), and

(ii) any use of proceeds by an agency of the issuer unless such agency is a political subdivision or instrumentality of the issuer.

(B) Portion of issue to be used for loans treated as separate issue

If only a portion of the proceeds of an issue is reasonably expected (at the time of issuance of the bond) to be used (or is intentionally used) as described in paragraph (6)(A), such portion and the other portion of such issue shall be treated as separate issues for purposes of determining whether such portion meets the requirements of this subsection.

(g) Treatment of hedge bonds

(1) In general

Section 103(a) shall not apply to any hedge bond unless, with respect to the issue of which such bond is a part—

(A) the requirement of paragraph (2) is met, and

(B) the requirement of subsection (f)(3) is met.

(2) Reasonable expectations as to when proceeds will be spent

An issue meets the requirement of this paragraph if the issuer reasonably expects that—

(A) 10 percent of the spendable proceeds of the issue will be spent for the governmental purposes of the issue within the 1-year period beginning on the date the bonds are issued,

(B) 30 percent of the spendable proceeds of the issue will be spent for such purposes within

the 2-year period beginning on such date,

(C) 60 percent of the spendable proceeds of the issue will be spent for such purposes within the 3-year period beginning on such date, and

(D) 85 percent of the spendable proceeds of the issue will be spent for such purposes within the 5-year period beginning on such date.

(3) Hedge bond

(A) In general

For purposes of this subsection, the term "hedge bond" means any bond issued as part of an issue unless—

(i) the issuer reasonably expects that 85 percent of the spendable proceeds of the issue will be used to carry out the governmental purposes of the issue within the 3-year period beginning on the date the bonds are issued, and

(ii) not more than 50 percent of the proceeds of the issue are invested in nonpurpose investments (as defined in section 148(f)(6)(A)) having a substantially guaranteed yield for 4 years or more.

(B) Exception for investment in tax-exempt bonds not subject to minimum tax

(i) In general

Such term shall not include any bond issued as part of an issue 95 percent of the net proceeds of which are invested in bonds—

(I) the interest on which is not includible in gross income under section 103, and

(II) which are not specified private activity bonds (as defined in section 57(a)(5)(C)).

(ii) Amounts in bona fide debt service fund

Amounts in a bona fide debt service fund shall be treated as invested in bonds described in clause (i).

(iii) Amounts held pending reinvestment or redemption

Amounts held for not more than 30 days pending reinvestment or bond redemption shall be treated as invested in bonds described in clause (i).

(C) Exception for refunding bonds

(i) In general

A refunding bond shall be treated as meeting the requirements of this subsection only if the original bond met such requirements.

(ii) General rule for refunding of pre-effective date bonds

A refunding bond shall be treated as meeting the requirements of this subsection if—

(I) this subsection does not apply to the original bond,

(II) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue, and

(III) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond.

(iii) Refunding of pre-effective date bonds entitled to 5-year temporary period

A refunding bond shall be treated as meeting the requirements of this subsection if—

(I) this subsection does not apply to the original bond,

(II) the issuer reasonably expected that 85 percent of the spendable proceeds of the issue of which the original bond is a part would be used to carry out the governmental purposes of the issue within the 5-year period beginning on the date the original bonds were issued but did not reasonably expect that 85 percent of such proceeds would be so spent within the 3-year period beginning on such date, and

(III) at least 85 percent of the spendable proceeds of the original issue (and all other prior original issues issued to finance the governmental purposes of such issue) were spent

before the date the refunding bonds are issued.

(4) Special rules

For purposes of this subsection—

(A) Construction period in excess of 5 years

The Secretary may, at the request of any issuer, provide that the requirement of paragraph (2) shall be treated as met with respect to the portion of the spendable proceeds of an issue which is to be used for any construction project having a construction period in excess of 5 years if it is reasonably expected that such proceeds will be spent over a reasonable construction schedule specified in such request.

(B) Rules for determining expectations

The rules of subsection (f)(2)(B) shall apply.

(5) Regulations

The Secretary may prescribe regulations to prevent the avoidance of the rules of this subsection, including through the aggregation of projects within a single issue.

(Added Pub. L. 99–514, title XIII, §1301(b), Oct. 22, 1986, 100 Stat. 2646; amended Pub. L. 100–647, title I, §1013(a)(20)–(22), title V, §5051(a), Nov. 10, 1988, 102 Stat. 3542, 3676; Pub. L. 101–239, title VII, §7651(a), Dec. 19, 1989, 103 Stat. 2383; Pub. L. 104–188, title I, §1704(b)(1), Aug. 20, 1996, 110 Stat. 1878; Pub. L. 109–222, title V, §508(a), (b), (d)(1), (2), May 17, 2006, 120 Stat. 361, 362; Pub. L. 110–289, div. C, title I, §3023(a), (b), July 30, 2008, 122 Stat. 2894, 2895; Pub. L. 111–147, title V, §502(a)(2)(A), Mar. 18, 2010, 124 Stat. 107.)

REFERENCES IN TEXT

The Northwest Power Act, referred to in subsecs. (b)(3)(A)(iii) and (c)(2)(C)(i), probably means the Pacific Northwest Electric Power Planning and Conservation Act, Pub. L. 96–501, Dec. 5, 1980, 94 Stat 2697, which is classified principally to chapter 12H (§839 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 839 of Title 16 and Tables.

The date of the enactment of the Tax Reform Act of 1984, referred to in subsec. (b)(3)(A)(iii), is the date of enactment of Pub. L. 98–369, div. A, which was approved July 18, 1984.

The date of the enactment of this clause, referred to in subsec. (b)(3)(A)(iv), is the date of enactment of Pub. L. 110–289, which was approved July 30, 2008.

Section 11(b) of the United States Housing Act of 1937, referred to in subsecs. (b)(3)(C)(i)(I) and (c)(2)(C)(iii), is classified to section 1473i(b) of Title 42, The Public Health and Welfare.

Section 608(a)(6)(A) of Pub. L. 97–468, referred to in subsec. (c)(2)(C)(ii), is classified to section 1207(a)(6)(A) of Title 45, Railroads.

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (c)(2)(C)(ii), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

The date of the enactment of this subsection, referred to in subsec. (d)(6), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

AMENDMENTS

2010—Subsec. (a)(2). Pub. L. 111–147 inserted "or" at end of subpar. (A), substituted period for ", or" in subpar. (B), and struck out subpar. (C) which read as follows: "is described in section 163(f)(2)(B)."

2008—Subsec. (b)(3)(A)(iv). Pub. L. 110–289, §3023(a), added cl. (iv).

Subsec. (b)(3)(E). Pub. L. 110–289, §3023(b), added subpar. (E).

2006—Subsec. (f)(1). Pub. L. 109–222, §508(d)(1), substituted "paragraphs (2), (3), (4), and (5)" for "paragraphs (2) and (3)".

Subsec. (f)(2)(A). Pub. L. 109–222, §508(a), amended subpar. (A) generally. Prior to amendment, text read as follows: "The requirements of this paragraph are met with respect to an issue if the issuer reasonably expects that as of the close of the 3-year period beginning on the date of issuance of the issue, at least 95 percent of the net proceeds of the issue (as of the close of such period) will have been used directly or indirectly to make or finance loans to ultimate borrowers."

Subsec. (f)(4) to (6). Pub. L. 109–222, §508(b), added pars. (4) and (5) and redesignated former par. (4) as (6). Former par. (5) redesignated (7).

Subsec. (f)(7). Pub. L. 109–222, §508(b), redesignated par. (5) as (7).

Subsec. (f)(7)(B). Pub. L. 109–222, §508(d)(2), substituted "paragraph (6)(A)" for "paragraph (4)(A)".

1996—Subsec. (g)(3)(B)(iii). Pub. L. 104–188 amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: "INVESTMENT EARNINGS HELD PENDING REINVESTMENT.—Investment earnings held for not more than 30 days pending reinvestment shall be treated as invested in bonds described in clause (i)."

1989—Subsec. (g). Pub. L. 101–239 added subsec. (g).

1988—Subsec. (b)(3)(A)(iii). Pub. L. 100–647, §1013(a)(20), struck out "with respect to any bond issued before July 1, 1989" after "1984".

Subsec. (b)(4)(A). Pub. L. 100–647, §1013(a)(21), substituted "and a qualified student loan bond" for "a qualified student loan bond, and a qualified redevelopment bond".

Subsec. (e)(3). Pub. L. 100–647, §1013(a)(22), substituted "the failure to file in a timely fashion is not due to willful neglect" for "there is reasonable cause for the failure to file such statement in a timely fashion".

Subsec. (f). Pub. L. 100–647, §5051(a), added subsec. (f).

CHANGE OF NAME

Reference to Veterans' Administration deemed to refer to Department of Veterans Affairs pursuant to section 10 of Pub. L. 100–527, set out as a Department of Veterans Affairs Act note under section 301 of Title 38, Veterans' Benefits.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–147, title V, §502(f), Mar. 18, 2010, 124 Stat. 108, provided that: "The amendments made by this section [amending this section, sections 163, 165, 871, 881, 1287, and 4701 of this title, and section 3121 of Title 31, Money and Finance] shall apply to obligations issued after the date which is 2 years after the date of the enactment of this Act [Mar. 18, 2010]."

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–289, div. C, title I, §3023(c), July 30, 2008, 122 Stat. 2895, provided that: "The amendments made by this section [amending this section] shall apply to guarantees made after the date of the enactment of this Act [July 30, 2008]."

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–222 applicable to bonds issued after May 17, 2006, see section 508(e) of Pub. L. 109–222, set out as a note under section 54 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, §1704(b)(2), Aug. 20, 1996, 110 Stat. 1878, provided that: "The amendment made by paragraph (1) [amending this section] shall take effect as if included in the amendments made by section 7651 of the Omnibus Budget Reconciliation Act of 1989 [Pub. L. 101–239]."

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7651(b), Dec. 19, 1989, 103 Stat. 2385, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendment made by subsection (a) [amending this section] shall apply to bonds issued after September 14, 1989.

"(2) BONDS SOLD BEFORE SEPTEMBER 15, 1989.—The amendment made by subsection (a) shall not apply to any bond sold before September 15, 1989, and issued before October 15, 1989.

"(3) BONDS WITH RESPECT TO WHICH PRELIMINARY OFFERING MATERIALS MAILED.—The amendment made by subsection (a) shall not apply to any issue issued after the date of the enactment of this Act [Dec. 19, 1989] if the preliminary offering materials with respect to such issue were mailed (or otherwise delivered) to members of the underwriting syndicate before September 15, 1989.

"(4) CERTAIN OTHER BONDS.—In the case of a bond issued before January 1, 1991, with respect to which official action was taken (or a series of official actions were taken), or other comparable preliminary approval was given, before November 18, 1989, demonstrating an intent to issue such bonds in a maximum specified amount for such issue or with a maximum specified amount of net proceeds of such issue, the issuer may elect to apply section 149(g)(2) of the Internal Revenue Code of 1986 (as added by this section) by substituting '15 percent' for '10 percent' in subparagraph (A) and '50 percent' for '60 percent' in subparagraph (C).

"(5) BONDS ISSUED TO FINANCE SELF-INSURANCE FUNDS.—The amendment made by subsection (a) shall not apply to any bonds issued before July 1, 1990, to finance a self-insurance fund if official action

was taken (or a series of official actions were taken), or other comparable preliminary approval was given, before September 15, 1989, demonstrating an intent to issue such bonds in a maximum specified amount for such issue or with a maximum specified amount of net proceeds of such issue."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1013(a)(20)–(22) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title V, §5051(b), Nov. 10, 1988, 102 Stat. 3677, provided that:

"(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to bonds issued after October 21, 1988.

"(2) SPECIAL RULE FOR REFUNDING BONDS.—In the case of a bond issued to refund a bond issued before October 22, 1988—

"(A) if the 3-year period described in section 149(f)(2)(A) of the 1986 Code would (but for this paragraph) expire on or before October 22, 1989, such period shall expire on October 21, 1990, and

"(B) if such period expires after October 22, 1989, the portion of the proceeds of the issue of which the refunded bond is a part which is available (on the date of issuance of the refunding issue) to provide loans shall be treated as proceeds of a separate issue (issued after October 21, 1988) for purposes of applying section 149(f) of the 1986 Code."

EFFECTIVE DATE

Subsec. (e) applicable to bonds issued after Dec. 31, 1986, see section 1311(d) of Pub. L. 99–514, as amended, set out as an Effective Date; Transitional Rules note under section 141 of this title.

TRANSFER OF FUNCTIONS

Federal Savings and Loan Insurance Corporation abolished and its functions transferred, see sections 401 to 406 of Pub. L. 101–73 set out as a note under section 1437 of Title 12, Banks and Banking.

SUBPART C—DEFINITIONS AND SPECIAL RULES

Sec.
150. Definitions and special rules.

§150. Definitions and special rules

(a) General rule

For purposes of this part—

(1) Bond

The term "bond" includes any obligation.

(2) Governmental unit not to include Federal Government

The term "governmental unit" does not include the United States or any agency or instrumentality thereof.

(3) Net proceeds

The term "net proceeds" means, with respect to any issue, the proceeds of such issue reduced by amounts in a reasonably required reserve or replacement fund.

(4) 501(c)(3) organization

The term "501(c)(3) organization" means any organization described in section 501(c)(3) and exempt from tax under section 501(a).

(5) Ownership of property

Property shall be treated as owned by a governmental unit if it is owned on behalf of such unit.

(6) Tax-exempt bond

The term "tax-exempt" means, with respect to any bond (or issue), that the interest on such bond (or on the bonds issued as part of such issue) is excluded from gross income.

(b) Change in use of facilities financed with tax-exempt private activity bonds

(1) Mortgage revenue bonds

(A) In general

In the case of any residence with respect to which financing is provided from the proceeds of a tax-exempt qualified mortgage bond or qualified veterans' mortgage bond, if there is a continuous period of at least 1 year during which such residence is not the principal residence of at least 1 of the mortgagors who received such financing, then no deduction shall be allowed under this chapter for interest on such financing which accrues on or after the date such period began and before the date such residence is again the principal residence of at least 1 of the mortgagors who received such financing.

(B) Exception

Subparagraph (A) shall not apply to the extent the Secretary determines that its application would result in undue hardship and that the failure to meet the requirements of subparagraph (A) resulted from circumstances beyond the mortgagor's control.

(2) Qualified residential rental projects

In the case of any project for residential rental property—

(A) with respect to which financing is provided from the proceeds of any private activity bond which, when issued, purported to be a tax-exempt bond described in paragraph (7) of section 142(a), and

(B) which does not meet the requirements of section 142(d),

no deduction shall be allowed under this chapter for interest on such financing which accrues during the period beginning on the 1st day of the taxable year in which such project fails to meet such requirements and ending on the date such project meets such requirements. If the provisions of prior law corresponding to section 142(d) apply to a refunded bond, such provisions shall apply (in lieu of section 142(d)) to the refunding bond.

(3) Qualified 501(c)(3) bonds

(A) In general

In the case of any facility with respect to which financing is provided from the proceeds of any private activity bond which, when issued, purported to be a tax-exempt qualified 501(c)(3) bond, if any portion of such facility—

(i) is used in a trade or business of any person other than a 501(c)(3) organization or a governmental unit, but

(ii) continues to be owned by a 501(c)(3) organization,

then the owner of such portion shall be treated for purposes of this title as engaged in an unrelated trade or business (as defined in section 513) with respect to such portion. The amount of gross income attributable to such portion for any period shall not be less than the fair rental value of such portion for such period.

(B) Denial of deduction for interest

No deduction shall be allowed under this chapter for interest on financing described in subparagraph (A) which accrues during the period beginning on the date such facility is used as described in subparagraph (A)(i) and ending on the date such facility is not so used.

(4) Certain exempt facility bonds and small issue bonds

(A) In general

In the case of any facility with respect to which financing is provided from the proceeds of

any private activity bond to which this paragraph applies, if such facility is not used for a purpose for which a tax-exempt bond could be issued on the date of such issue, no deduction shall be allowed under this chapter for interest on such financing which accrues during the period beginning on the date such facility is not so used and ending on the date such facility is so used.

(B) Bonds to which paragraph applies

This paragraph applies to any private activity bond which, when issued, purported to be a tax-exempt exempt facility bond described in a paragraph (other than paragraph (7)) of section 142(a) or a qualified small issue bond.

(5) Facilities required to be owned by governmental units or 501(c)(3) organizations

If—

(A) financing is provided with respect to any facility from the proceeds of any private activity bond which, when issued, purported to be a tax-exempt bond,

(B) such facility is required to be owned by a governmental unit or a 501(c)(3) organization as a condition of such tax exemption, and

(C) such facility is not so owned,

then no deduction shall be allowed under this chapter for interest on such financing which accrues during the period beginning on the date such facility is not so owned and ending on the date such facility is so owned.

(6) Small issue bonds which exceed capital expenditure limitation

In the case of any financing provided from the proceeds of any bond which, when issued, purported to be a qualified small issue bond, no deduction shall be allowed under this chapter for interest on such financing which accrues during the period such bond is not a qualified small issue bond.

(c) Exception and special rules for purposes of subsection (b)

For purposes of subsection (b)—

(1) Exception

Any use with respect to facilities financed with proceeds of an issue which are not required to be used for the exempt purpose of such issue shall not be taken into account.

(2) Treatment of amounts other than interest

If the amounts payable for the use of a facility are not interest, subsection (b) shall apply to such amounts as if they were interest but only to the extent such amounts for any period do not exceed the amount of interest accrued on the bond financing for such period.

(3) Use of portion of facility

In the case of any person which uses only a portion of the facility, only the interest accruing on the financing allocable to such portion shall be taken into account by such person.

(4) Cessation with respect to portion of facility

In the case of any facility where part but not all of the facility is not used for an exempt purpose, only the interest accruing on the financing allocable to such part shall be taken into account.

(5) Regulations

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

(d) Qualified scholarship funding bond

For purposes of this part and section 103—

(1) Treatment as State or local bond

A qualified scholarship funding bond shall be treated as a State or local bond.

(2) Qualified scholarship funding bond defined

The term "qualified scholarship funding bond" means a bond issued by a corporation which—

(A) is a corporation not for profit established and operated exclusively for the purpose of acquiring student loan notes incurred under the Higher Education Act of 1965, and

(B) is organized at the request of the State or 1 or more political subdivisions thereof or is requested to exercise such power by 1 or more political subdivisions and required by its corporate charter and bylaws, or required by State law, to devote any income (after payment of expenses, debt service, and the creation of reserves for the same) to the purchase of additional student loan notes or to pay over any income to the United States.

(3) Election to cease status as qualified scholarship funding corporation

(A) In general

Any qualified scholarship funding bond, and qualified student loan bond, outstanding on the date of the issuer's election under this paragraph (and any bond (or series of bonds) issued to refund such a bond) shall not fail to be a tax-exempt bond solely because the issuer ceases to be described in subparagraphs (A) and (B) of paragraph (2) if the issuer meets the requirements of subparagraphs (B) and (C) of this paragraph.

(B) Assets and liabilities of issuer transferred to taxable subsidiary

The requirements of this subparagraph are met by an issuer if—

(i) all of the student loan notes of the issuer and other assets pledged to secure the repayment of qualified scholarship funding bond indebtedness of the issuer are transferred to another corporation within a reasonable period after the election is made under this paragraph;

(ii) such transferee corporation assumes or otherwise provides for the payment of all of the qualified scholarship funding bond indebtedness of the issuer within a reasonable period after the election is made under this paragraph;

(iii) to the extent permitted by law, such transferee corporation assumes all of the responsibilities, and succeeds to all of the rights, of the issuer under the issuer's agreements with the Secretary of Education in respect of student loans;

(iv) immediately after such transfer, the issuer, together with any other issuer which has made an election under this paragraph in respect of such transferee, hold all of the senior stock in such transferee corporation; and

(v) such transferee corporation is not exempt from tax under this chapter.

(C) Issuer to operate as independent organization described in section 501(c)(3)

The requirements of this subparagraph are met by an issuer if, within a reasonable period after the transfer referred to in subparagraph (B)—

(i) the issuer is described in section 501(c)(3) and exempt from tax under section 501(a);

(ii) the issuer no longer is described in subparagraphs (A) and (B) of paragraph (2); and

(iii) at least 80 percent of the members of the board of directors of the issuer are independent members.

(D) Senior stock

For purposes of this paragraph, the term "senior stock" means stock—

(i) which participates pro rata and fully in the equity value of the corporation with all other common stock of the corporation but which has the right to payment of liquidation proceeds prior to payment of liquidation proceeds in respect of other common stock of the corporation;

(ii) which has a fixed right upon liquidation and upon redemption to an amount equal to the greater of—

(I) the fair market value of such stock on the date of liquidation or redemption (whichever is applicable); or

(II) the fair market value of all assets transferred in exchange for such stock and reduced by the amount of all liabilities of the corporation which has made an election under this

paragraph assumed by the transferee corporation in such transfer;

(iii) the holder of which has the right to require the transferee corporation to redeem on a date that is not later than 10 years after the date on which an election under this paragraph was made and pursuant to such election such stock was issued; and

(iv) in respect of which, during the time such stock is outstanding, there is not outstanding any equity interest in the corporation having any liquidation, redemption or dividend rights in the corporation which are superior to those of such stock.

(E) Independent member

The term "independent member" means a member of the board of directors of the issuer who (except for services as a member of such board) receives no compensation directly or indirectly—

(i) for services performed in connection with such transferee corporation, or

(ii) for services as a member of the board of directors or as an officer of such transferee corporation.

For purposes of clause (ii), the term "officer" includes any individual having powers or responsibilities similar to those of officers.

(F) Coordination with certain private foundation taxes

For purposes of sections 4942 (relating to the excise tax on a failure to distribute income) and 4943 (relating to the excise tax on excess business holdings), the transferee corporation referred to in subparagraph (B) shall be treated as a functionally related business (within the meaning of section 4942(j)(4)) with respect to the issuer during the period commencing with the date on which an election is made under this paragraph and ending on the date that is the earlier of—

(i) the last day of the last taxable year for which more than 50 percent of the gross income of such transferee corporation is derived from, or more than 50 percent of the assets (by value) of such transferee corporation consists of, student loan notes incurred under the Higher Education Act of 1965; or

(ii) the last day of the taxable year of the issuer during which occurs the date which is 10 years after the date on which the election under this paragraph is made.

(G) Election

An election under this paragraph may be revoked only with the consent of the Secretary.

(e) Bonds of certain volunteer fire departments

For purposes of this part and section 103—

(1) In general

A bond of a volunteer fire department shall be treated as a bond of a political subdivision of a State if—

(A) such department is a qualified volunteer fire department with respect to an area within the jurisdiction of such political subdivision, and

(B) such bond is issued as part of an issue 95 percent or more of the net proceeds of which are to be used for the acquisition, construction, reconstruction, or improvement of a firehouse (including land which is functionally related and subordinate thereto) or firetruck used or to be used by such department.

(2) Qualified volunteer fire department

For purposes of this subsection, the term "qualified volunteer fire department" means, with respect to a political subdivision of a State, any organization—

(A) which is organized and operated to provide firefighting or emergency medical services for persons in an area (within the jurisdiction of such political subdivision) which is not provided with any other firefighting services, and

(B) which is required (by written agreement) by the political subdivision to furnish

firefighting services in such area.

For purposes of subparagraph (A), other firefighting services provided in an area shall be disregarded in determining whether an organization is a qualified volunteer fire department if such other firefighting services are provided by a qualified volunteer fire department (determined with the application of this sentence) and such organization and the provider of such other services have been continuously providing firefighting services to such area since January 1, 1981.

(3) Treatment as private activity bonds only for certain purposes

Bonds which are part of an issue which meets the requirements of paragraph (1) shall not be treated as private activity bonds except for purposes of sections 147(f) and 149(d).

(Added Pub. L. 99–514, title XIII, §1301(b), Oct. 22, 1986, 100 Stat. 2651; amended Pub. L. 100–647, title I, §1013(a)(23), (24)(A), (30)–(33), title VI, §6182(a), (b), Nov. 10, 1988, 102 Stat. 3542, 3543, 3729; Pub. L. 104–188, title I, §1614(a), Aug. 20, 1996, 110 Stat. 1851.)

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in subsec. (d)(2)(A), (3)(F)(i), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, which is classified generally to chapter 28 (§1001 et seq.) of Title 20, Education, and part C (§2751 et seq.) of subchapter I of chapter 34 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

AMENDMENTS

1996—Subsec. (d)(3). Pub. L. 104–188 added par. (3).

1988—Subsec. (b)(1)(A). Pub. L. 100–647, §1013(a)(23)(C), inserted "tax-exempt" before "qualified mortgage bond".

Pub. L. 100–647, §1013(a)(30), inserted before period at end "and before the date such residence is again the principal residence of at least 1 of the mortgagors who received such financing".

Subsec. (b)(2). Pub. L. 100–647, §1013(a)(32), inserted at end "If the provisions of prior law corresponding to section 142(d) apply to a refunded bond, such provisions shall apply (in lieu of section 142(d)) to the refunding bond."

Subsec. (b)(2)(A). Pub. L. 100–647, §1013(a)(31), substituted "described in paragraph" for "described paragraph".

Subsec. (b)(4). Pub. L. 100–647, §1013(a)(23)(A), (B), inserted "and small issue bonds" after "bonds" in heading, and "or a qualified small issue bond" before period at end of subpar. (B).

Subsec. (b)(6). Pub. L. 100–647, §1013(a)(33), added par. (6).

Subsec. (e)(1)(B). Pub. L. 100–647, §6182(b), inserted "(including land which is functionally related and subordinate thereto)" after "a firehouse".

Subsec. (e)(2). Pub. L. 100–647, §6182(a), inserted at end "For purposes of subparagraph (A), other firefighting services provided in an area shall be disregarded in determining whether an organization is a qualified volunteer fire department if such other firefighting services are provided by a qualified volunteer fire department (determined with the application of this sentence) and such organization and the provider of such other services have been continuously providing firefighting services to such area since January 1, 1981."

Subsec. (e)(3). Pub. L. 100–647, §1013(a)(24)(A), added par. (3).

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, §1614(b), Aug. 20, 1996, 110 Stat. 1853, provided that: "The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Aug. 20, 1996]."

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1013(a)(24)(B), Nov. 10, 1988, 102 Stat. 3543, provided that: "The amendment made by subparagraph (A) [amending this section] shall apply to bonds issued after October 21, 1988."

Amendment by section 1013(a)(23), (30)–(33) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title VI, §6182(c), Nov. 10, 1988, 102 Stat. 3729, provided that: "The amendments made by this section [amending this section] shall apply to bonds issued after the date of the enactment of this Act [Nov. 10, 1988]."

EFFECTIVE DATE

Section applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, with subsec. (b) applicable to changes in use (and ownership) after Aug. 15, 1986, but only with respect to financing (including refinancings) provided after such date, and with subsec. (d) applicable to payments made after Aug. 15, 1986, see sections 1311 to 1318 of Pub. L. 99–514, as amended, set out as an Effective Date; Transitional Rules note under section 141 of this title.

PART V—DEDUCTIONS FOR PERSONAL EXEMPTIONS

Sec.
151. Allowance of deductions for personal exemptions.
152. Dependent defined.
153. Cross references.

AMENDMENTS

1976—Pub. L. 94–455, title XIX, §1901(b)(7)(A)(ii), Oct. 4, 1976, 90 Stat. 1794, redesignated item 154 as 153 and struck out former item 153 "Determination of marital status".

§151. Allowance of deductions for personal exemptions

(a) Allowance of deductions

In the case of an individual, the exemptions provided by this section shall be allowed as deductions in computing taxable income.

(b) Taxpayer and spouse

An exemption of the exemption amount for the taxpayer; and an additional exemption of the exemption amount for the spouse of the taxpayer if a joint return is not made by the taxpayer and his spouse, and if the spouse, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(c) Additional exemption for dependents

An exemption of the exemption amount for each individual who is a dependent (as defined in section 152) of the taxpayer for the taxable year.

(d) Exemption amount

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, the term "exemption amount" means $2,000.

(2) Exemption amount disallowed in case of certain dependents

In the case of an individual with respect to whom a deduction under this section is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins, the exemption amount applicable to such individual for such individual's taxable year shall be zero.

(3) Phaseout

(A) In general

In the case of any taxpayer whose adjusted gross income for the taxable year exceeds the applicable amount in effect under section 68(b), the exemption amount shall be reduced by the applicable percentage.

(B) Applicable percentage

For purposes of subparagraph (A), the term "applicable percentage" means 2 percentage points for each $2,500 (or fraction thereof) by which the taxpayer's adjusted gross income for

the taxable year exceeds the applicable amount in effect under section 68(b). In the case of a married individual filing a separate return, the preceding sentence shall be applied by substituting "$1,250" for "$2,500". In no event shall the applicable percentage exceed 100 percent.

(C) Coordination with other provisions

The provisions of this paragraph shall not apply for purposes of determining whether a deduction under this section with respect to any individual is allowable to another taxpayer for any taxable year.

(4) Inflation adjustment

In the case of any taxable year beginning in a calendar year after 1989, the dollar amount contained in paragraph (1) shall be increased by an amount equal to—

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting "calendar year 1988" for "calendar year 1992" in subparagraph (B) thereof.

(e) Identifying information required

No exemption shall be allowed under this section with respect to any individual unless the TIN of such individual is included on the return claiming the exemption.

(Aug. 16, 1954, ch. 736, 68A Stat. 42; Pub. L. 91–172, title VIII, §801(a)(1), (b)(1), (c)(1), (d)(1), title IX, §941(b), Dec. 30, 1969, 83 Stat. 675, 676, 726; Pub. L. 92–178, title II, §201(a)(1), (b)(1), (c), Dec. 10, 1971, 85 Stat. 510, 511; Pub. L. 94–455, title XIX, §1901(a)(23), Oct. 4, 1976, 90 Stat. 1767; Pub. L. 95–600, title I, §102(a), Nov. 6, 1978, 92 Stat. 2771; Pub. L. 97–34, title I, §104(c), Aug. 13, 1981, 95 Stat. 189; Pub. L. 98–369, div. A, title IV, §426(a), July 18, 1984, 98 Stat. 804; Pub. L. 99–514, title I, §103, title XVIII, §1847(b)(3), Oct. 22, 1986, 100 Stat. 2102, 2856; Pub. L. 100–647, title VI, §6010(a), Nov. 10, 1988, 102 Stat. 3691; Pub. L. 101–508, title XI, §§11101(d)(1)(F), 11104(a), Nov. 5, 1990, 104 Stat. 1388–405, 1388–407; Pub. L. 102–318, title V, §511, July 3, 1992, 106 Stat. 300; Pub. L. 103–66, title XIII, §§13201(b)(3)(G), 13205, Aug. 10, 1993, 107 Stat. 459, 462; Pub. L. 104–188, title I, §§1615(a)(1), 1702(a)(2), Aug. 20, 1996, 110 Stat. 1853, 1868; Pub. L. 106–554, §1(a)(7) [title III, §306(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–634; Pub. L. 107–16, title I, §102(a), June 7, 2001, 115 Stat. 44; Pub. L. 107–147, title IV, §§412(b), 417(6), Mar. 9, 2002, 116 Stat. 53, 56; Pub. L. 108–311, title II, §206, Oct. 4, 2004, 118 Stat. 1176; Pub. L. 112–240, title I, §101(b)(2)(B), Jan. 2, 2013, 126 Stat. 2317.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

AMENDMENTS

2013—Subsec. (d)(3)(A), (B). Pub. L. 112–240, §101(b)(2)(B)(i)(I), substituted "the applicable amount in effect under section 68(b)" for "the threshold amount".

Subsec. (d)(3)(C), (D). Pub. L. 112–240, §101(b)(2)(B)(i)(II), redesignated subpar. (D) as (C) and struck out former subpar. (C) which related to threshold amount.

Subsec. (d)(3)(E), (F). Pub. L. 112–240, §101(b)(2)(B)(i)(III), struck out subpars. (E) and (F) which related to reduction of phaseout and termination of applicability of subsec. (d)(3), respectively.

Subsec. (d)(4). Pub. L. 112–240, §101(b)(2)(B)(ii), in par. heading, substituted "Inflation adjustment" for "Inflation adjustments", in subpar. (A), struck out "(A) Adjustment to basic amount of exemption" before "In the case of", redesignated cls. (i) and (ii) as subpars. (A) and (B), respectively, and realigned margins, and struck out former subpar. (B). Prior to amendment, text of former subpar. (B) read as follows: "In the case of any taxable year beginning in a calendar year after 1991, each dollar amount contained in paragraph (3)(C) shall be increased by an amount equal to—

"(i) such dollar amount, multiplied by

"(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting 'calendar year 1990' for 'calendar year 1992' in subparagraph (B)

thereof."

2004—Subsec. (c). Pub. L. 108–311 reenacted heading without change and amended text generally. Prior to amendment, text consisted of pars. (1) to (6) relating to additional exemption for dependents in general, exemption denied in case of certain married dependents, child defined, student defined, certain income of handicapped dependents not taken into account, and treatment of missing children, respectively.

2002—Subsec. (c)(6)(B)(iii). Pub. L. 107–147, §417(6), inserted "as" before "such terms".

Subsec. (c)(6)(C). Pub. L. 107–147, §412(b), substituted "for principal place of abode requirements" for "for earned income credit" in heading, "An" for "For purposes of section 32, an" in introductory provisions, and "principal place of abode requirements of section 2(a)(1)(B), section 2(b)(1)(A), and section 32(c)(3)(A)(ii)" for "requirement of section 32(c)(3)(A)(ii)" in concluding provisions.

2001—Subsec. (d)(3)(E), (F). Pub. L. 107—16 added subpars. (E) and (F).

2000—Subsec. (c)(6). Pub. L. 106–554 added par. (6).

1996—Subsec. (d)(3)(C)(i). Pub. L. 104–188, §1702(a)(2), substituted "joint return" for "joint of a return".

Subsec. (e). Pub. L. 104–188, §1615(a)(1), added subsec. (e).

1993—Subsec. (d)(3)(E). Pub. L. 103–66, §13205, struck out heading and text of subpar. (E). Text read as follows: "This paragraph shall not apply to any taxable year beginning after December 31, 1996."

Subsec. (d)(4)(A)(ii), (B)(ii). Pub. L. 103–66, §13201(b)(3)(G), substituted "1992" for "1989".

1992—Subsec. (d)(3)(E). Pub. L. 102–318 substituted "1996" for "1995".

1990—Subsec. (d). Pub. L. 101–508, §11104(a), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "For purposes of this section—

"(1) IN GENERAL.—Except as provided in paragraph (2), the term 'exemption amount' means—

"(A) $1,900 for taxable years beginning during 1987,

"(B) $1,950 for taxable years beginning during 1988, and

"(C) $2,000 for taxable years beginning after December 31, 1988.

"(2) EXEMPTION AMOUNT DISALLOWED IN THE CASE OF CERTAIN DEPENDENTS.—In the case of an individual with respect to whom a deduction under this section is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins, the exemption amount applicable to such individual for such individual's taxable year shall be zero.

"(3) INFLATION ADJUSTMENT FOR YEARS AFTER 1989.—In the case of any taxable year beginning in a calendar year after 1989, the dollar amount contained in paragraph (1)(C) shall be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3), for the calendar year in which the taxable year begins, by substituting 'calendar year 1988' for 'calendar year 1987' in subparagraph (B) thereof."

Subsec. (d)(3)(B). Pub. L. 101–508, §11101(d)(1)(F), substituted "1989" for "1987".

1988—Subsec. (c)(1)(B)(ii). Pub. L. 100–647 inserted "who has not attained the age of 24 at the close of such calendar year" after "student".

1986—Subsec. (c). Pub. L. 99–514, §103(b), redesignated subsec. (e) as (c) and struck out former subsec. (c) which provided for an additional exemption for taxpayer or spouse aged 65 or more.

Subsec. (d). Pub. L. 99–514, §103(b), redesignated subsec. (f) as (d) and struck out former subsec. (d) which provided for an additional exemption for blindness of taxpayer or spouse.

Subsec. (e). Pub. L. 99–514, §103(b), redesignated subsec. (e) as (c).

Pub. L. 99–514, §1847(b)(3), substituted "section 22(e)" for "section 37(e)" in par. (5)(C).

Subsec. (f). Pub. L. 99–514, §103(b), redesignated subsec. (f) as (d).

Pub. L. 99–514, §103(a), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: "For purposes of this section, the term 'exemption amount' means, with respect to any taxable year, $1,000 increased by an amount equal to $1,000 multiplied by the cost-of-living adjustment (as defined in section 1(f)(3)) for the calendar year in which the taxable year begins. If the amount determined under the preceding sentence is not a multiple of $10, such amount shall be rounded to the nearest multiple of $10 (or if such amount is a multiple of $5, such amount shall be increased to the next highest multiple of $10)."

1984—Subsec. (e)(5). Pub. L. 98–369 added par. (5).

1981—Subsecs. (b), (c), (d)(1), (2), (e)(1). Pub. L. 97–34, §104(c)(1), substituted "the exemption amount" for "$1,000" wherever appearing.

Subsec. (f). Pub. L. 97–34, §104(c)(2), added subsec. (f).

1978—Pub. L. 95–600 increased exemption from $750 to $1,000 with respect to taxable years beginning after Dec. 31, 1978.

1976—Subsec. (e)(4). Pub. L. 94–455 struck out "and educational institution" after "Student" in heading,

substituted in subpars. (A) and (B) "organization described in section 170(b)(1)(A)(ii)" for "institution", and struck out provisions following subpar. (B) defining educational institution.

1971—Pub. L. 92–178 increased exemption from $650 to $675 with respect to taxable years beginning after Dec. 31, 1970, and before Jan. 1, 1972, and from $675 to $750 with respect to taxable years beginning after Dec. 31, 1971.

1969—Pub. L. 91–172, §801(a)(1), (b)(1), (c)(1), (d)(1), increased exemption from $600 to $625 with respect to taxable years beginning after Dec. 31, 1969, and before Jan. 1, 1971, from $625 to $650 for taxable years beginning after Dec. 31, 1970, and before Jan. 1, 1972, from $650 to $700 for taxable years beginning after Dec. 31, 1971, and before Jan. 1, 1973, and from $700 to $750 for taxable years beginning after Dec. 31, 1972.

Subsecs. (b), (c), Pub. L. 91–172, §941(b), substituted "if a joint return is not made by the taxpayer and his spouse" for "if a separate return is made by the taxpayer".

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112–240 applicable to taxable years beginning after Dec. 31, 2012, see section 101(b)(3) of Pub. L. 112–240, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title IV, §412(e), Mar. 9, 2002, 116 Stat. 54, provided that: "The amendments made by this section [amending this section and sections 358, 469, 1091, 1233, 1234A, and 1234B of this title] shall take effect as if included in the provisions of the Community Renewal Tax Relief Act of 2000 [H.R. 5662, as enacted by section 1(a)(7) of Pub. L. 106–554, Dec. 21, 2000, 114 Stat. 2763, 2763A–587] to which they relate."

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–16, title I, §102(b), June 7, 2001, 115 Stat. 44, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2005."

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(7) [title III, §306(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–635, provided that: "The amendment made by this section [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Dec. 21, 2000]."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1615(a)(1) of Pub. L. 104–188 applicable with respect to returns the due date for which, without regard to extensions, is on or after the 30th day after Aug. 20, 1996, with special rule for 1995 and 1996, see section 1615(d) of Pub. L. 104–188, set out as a note under section 21 of this title.

Amendment by section 1702(a)(2) of Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13201(b)(3)(G) of Pub. L. 103–66 applicable to taxable years beginning after Dec. 31, 1992, see section 13201(c) of Pub. L. 103–66, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11101(d)(1)(F) of Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, see section 11101(e) of Pub. L. 101–508, set out as a note under section 1 of this title.

Amendment by section 11104(a) of Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, see section 11104(c) of Pub. L. 101–508, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title VI, §6010(b), Nov. 10, 1988, 102 Stat. 3691, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1988."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 103 of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 1847(b)(3) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title IV, §426(b), July 18, 1984, 98 Stat. 805, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1984."

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1984, see section 104(e) of Pub. L. 97–34, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title I, §102(d)(1), Nov. 6, 1978, 92 Stat. 2771, provided that: "The amendments made by subsections (a) and (b) [amending this section and sections 6012 and 6013 of this title] shall apply to taxable years beginning after December 31, 1978."

EFFECTIVE DATE OF 1976 AMENDMENT

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

EFFECTIVE DATE OF 1971 AMENDMENT

Pub. L. 92–178, title II, §201(a), (b), Dec. 10, 1971, 85 Stat. 510, provided in part that the increase in exemption from $650 to $675 was effective with respect to taxable years beginning after Dec. 31, 1970, and before Jan. 1, 1972, and from $675 to $750 was effective with respect to taxable years beginning after Dec. 31, 1971.

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title VIII, §801(a)(1), Dec. 30, 1969, 83 Stat. 675, provided in part that the increase in exemption from $600 to $625 is effective with respect to taxable years beginning after Dec. 31, 1969, and before Jan. 1, 1971.

Pub. L. 91–172, title VIII, §801(b)(1), Dec. 30, 1969, 83 Stat. 676, provided in part that the increase in the exemption from $625 to $650 is effective with respect to taxable years beginning after Dec. 31, 1970, and before Jan. 1, 1972.

Pub. L. 91–172, title IX, §941(c), Dec. 30, 1969, 83 Stat. 726, provided that: "The amendments made by subsections (a) [amending section 6012 of this title] and (b) [amending this section] shall apply to taxable years beginning after December 31, 1969."

REPEALS

Pub. L. 91–172, title VIII, §801(c)(1), (d)(1), Dec. 30, 1969, 83 Stat. 676, provided for an increase in the personal exemption to $700, effective with respect to taxable years beginning after Dec. 31, 1971, and before Jan. 1, 1973, and to $750, effective with respect to taxable years beginning after Dec. 31, 1972, prior to repeal by section 201(c) of Pub. L. 92–178.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§152. Dependent defined

(a) In general

For purposes of this subtitle, the term "dependent" means—

(1) a qualifying child, or

(2) a qualifying relative.

(b) Exceptions

For purposes of this section—

(1) Dependents ineligible

If an individual is a dependent of a taxpayer for any taxable year of such taxpayer beginning in a calendar year, such individual shall be treated as having no dependents for any taxable year of such individual beginning in such calendar year.

(2) Married dependents

An individual shall not be treated as a dependent of a taxpayer under subsection (a) if such individual has made a joint return with the individual's spouse under section 6013 for the taxable year beginning in the calendar year in which the taxable year of the taxpayer begins.

(3) Citizens or nationals of other countries

(A) In general

The term "dependent" does not include an individual who is not a citizen or national of the United States unless such individual is a resident of the United States or a country contiguous to the United States.

(B) Exception for adopted child

Subparagraph (A) shall not exclude any child of a taxpayer (within the meaning of subsection (f)(1)(B)) from the definition of "dependent" if—

(i) for the taxable year of the taxpayer, the child has the same principal place of abode as the taxpayer and is a member of the taxpayer's household, and

(ii) the taxpayer is a citizen or national of the United States.

(c) Qualifying child

For purposes of this section—

(1) In general

The term "qualifying child" means, with respect to any taxpayer for any taxable year, an individual—

(A) who bears a relationship to the taxpayer described in paragraph (2),

(B) who has the same principal place of abode as the taxpayer for more than one-half of such taxable year,

(C) who meets the age requirements of paragraph (3),

(D) who has not provided over one-half of such individual's own support for the calendar year in which the taxable year of the taxpayer begins, and

(E) who has not filed a joint return (other than only for a claim of refund) with the individual's spouse under section 6013 for the taxable year beginning in the calendar year in which the taxable year of the taxpayer begins.

(2) Relationship

For purposes of paragraph (1)(A), an individual bears a relationship to the taxpayer described in this paragraph if such individual is—

(A) a child of the taxpayer or a descendant of such a child, or

(B) a brother, sister, stepbrother, or stepsister of the taxpayer or a descendant of any such relative.

(3) Age requirements

(A) In general

For purposes of paragraph (1)(C), an individual meets the requirements of this paragraph if such individual is younger than the taxpayer claiming such individual as a qualifying child and—

(i) has not attained the age of 19 as of the close of the calendar year in which the taxable

year of the taxpayer begins, or

(ii) is a student who has not attained the age of 24 as of the close of such calendar year.

(B) Special rule for disabled

In the case of an individual who is permanently and totally disabled (as defined in section 22(e)(3)) at any time during such calendar year, the requirements of subparagraph (A) shall be treated as met with respect to such individual.

(4) Special rule relating to 2 or more who can claim the same qualifying child

(A) In general

Except as provided in subparagraphs (B) and (C), if (but for this paragraph) an individual may be claimed as a qualifying child by 2 or more taxpayers for a taxable year beginning in the same calendar year, such individual shall be treated as the qualifying child of the taxpayer who is—

(i) a parent of the individual, or

(ii) if clause (i) does not apply, the taxpayer with the highest adjusted gross income for such taxable year.

(B) More than 1 parent claiming qualifying child

If the parents claiming any qualifying child do not file a joint return together, such child shall be treated as the qualifying child of—

(i) the parent with whom the child resided for the longest period of time during the taxable year, or

(ii) if the child resides with both parents for the same amount of time during such taxable year, the parent with the highest adjusted gross income.

(C) No parent claiming qualifying child

If the parents of an individual may claim such individual as a qualifying child but no parent so claims the individual, such individual may be claimed as the qualifying child of another taxpayer but only if the adjusted gross income of such taxpayer is higher than the highest adjusted gross income of any parent of the individual.

(d) Qualifying relative

For purposes of this section—

(1) In general

The term "qualifying relative" means, with respect to any taxpayer for any taxable year, an individual—

(A) who bears a relationship to the taxpayer described in paragraph (2),

(B) whose gross income for the calendar year in which such taxable year begins is less than the exemption amount (as defined in section 151(d)),

(C) with respect to whom the taxpayer provides over one-half of the individual's support for the calendar year in which such taxable year begins, and

(D) who is not a qualifying child of such taxpayer or of any other taxpayer for any taxable year beginning in the calendar year in which such taxable year begins.

(2) Relationship

For purposes of paragraph (1)(A), an individual bears a relationship to the taxpayer described in this paragraph if the individual is any of the following with respect to the taxpayer:

(A) A child or a descendant of a child.

(B) A brother, sister, stepbrother, or stepsister.

(C) The father or mother, or an ancestor of either.

(D) A stepfather or stepmother.

(E) A son or daughter of a brother or sister of the taxpayer.

(F) A brother or sister of the father or mother of the taxpayer.

(G) A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or

sister-in-law.

(H) An individual (other than an individual who at any time during the taxable year was the spouse, determined without regard to section 7703, of the taxpayer) who, for the taxable year of the taxpayer, has the same principal place of abode as the taxpayer and is a member of the taxpayer's household.

(3) Special rule relating to multiple support agreements

For purposes of paragraph (1)(C), over one-half of the support of an individual for a calendar year shall be treated as received from the taxpayer if—

(A) no one person contributed over one-half of such support,

(B) over one-half of such support was received from 2 or more persons each of whom, but for the fact that any such person alone did not contribute over one-half of such support, would have been entitled to claim such individual as a dependent for a taxable year beginning in such calendar year,

(C) the taxpayer contributed over 10 percent of such support, and

(D) each person described in subparagraph (B) (other than the taxpayer) who contributed over 10 percent of such support files a written declaration (in such manner and form as the Secretary may by regulations prescribe) that such person will not claim such individual as a dependent for any taxable year beginning in such calendar year.

(4) Special rule relating to income of handicapped dependents

(A) In general

For purposes of paragraph (1)(B), the gross income of an individual who is permanently and totally disabled (as defined in section 22(e)(3)) at any time during the taxable year shall not include income attributable to services performed by the individual at a sheltered workshop if—

(i) the availability of medical care at such workshop is the principal reason for the individual's presence there, and

(ii) the income arises solely from activities at such workshop which are incident to such medical care.

(B) Sheltered workshop defined

For purposes of subparagraph (A), the term "sheltered workshop" means a school—

(i) which provides special instruction or training designed to alleviate the disability of the individual, and

(ii) which is operated by an organization described in section 501(c)(3) and exempt from tax under section 501(a), or by a State, a possession of the United States, any political subdivision of any of the foregoing, the United States, or the District of Columbia.

(5) Special rules for support

For purposes of this subsection—

(A) payments to a spouse which are includible in the gross income of such spouse under section 71 or 682 shall not be treated as a payment by the payor spouse for the support of any dependent, and

(B) in the case of the remarriage of a parent, support of a child received from the parent's spouse shall be treated as received from the parent.

(e) Special rule for divorced parents, etc.

(1) In general

Notwithstanding subsection (c)(1)(B), (c)(4), or (d)(1)(C), if—

(A) a child receives over one-half of the child's support during the calendar year from the child's parents—

(i) who are divorced or legally separated under a decree of divorce or separate maintenance,

(ii) who are separated under a written separation agreement, or

(iii) who live apart at all times during the last 6 months of the calendar year, and—

(B) such child is in the custody of 1 or both of the child's parents for more than one-half of the calendar year, such child shall be treated as being the qualifying child or qualifying relative of the noncustodial parent for a calendar year if the requirements described in paragraph (2) or (3) are met.

(2) Exception where custodial parent releases claim to exemption for the year

For purposes of paragraph (1), the requirements described in this paragraph are met with respect to any calendar year if—

(A) the custodial parent signs a written declaration (in such manner and form as the Secretary may by regulations prescribe) that such custodial parent will not claim such child as a dependent for any taxable year beginning in such calendar year, and

(B) the noncustodial parent attaches such written declaration to the noncustodial parent's return for the taxable year beginning during such calendar year.

(3) Exception for certain pre-1985 instruments

(A) In general

For purposes of paragraph (1), the requirements described in this paragraph are met with respect to any calendar year if—

(i) a qualified pre-1985 instrument between the parents applicable to the taxable year beginning in such calendar year provides that the noncustodial parent shall be entitled to any deduction allowable under section 151 for such child, and

(ii) the noncustodial parent provides at least $600 for the support of such child during such calendar year.

For purposes of this subparagraph, amounts expended for the support of a child or children shall be treated as received from the noncustodial parent to the extent that such parent provided amounts for such support.

(B) Qualified pre-1985 instrument

For purposes of this paragraph, the term "qualified pre-1985 instrument" means any decree of divorce or separate maintenance or written agreement—

(i) which is executed before January 1, 1985,

(ii) which on such date contains the provision described in subparagraph (A)(i), and

(iii) which is not modified on or after such date in a modification which expressly provides that this paragraph shall not apply to such decree or agreement.

(4) Custodial parent and noncustodial parent

For purposes of this subsection—

(A) Custodial parent

The term "custodial parent" means the parent having custody for the greater portion of the calendar year.

(B) Noncustodial parent

The term "noncustodial parent" means the parent who is not the custodial parent.

(5) Exception for multiple-support agreement

This subsection shall not apply in any case where over one-half of the support of the child is treated as having been received from a taxpayer under the provision of subsection (d)(3).

(6) Special rule for support received from new spouse of parent

For purposes of this subsection, in the case of the remarriage of a parent, support of a child received from the parent's spouse shall be treated as received from the parent.

(f) Other definitions and rules

For purposes of this section—

(1) Child defined

(A) In general

The term "child" means an individual who is—

(i) a son, daughter, stepson, or stepdaughter of the taxpayer, or

(ii) an eligible foster child of the taxpayer.

(B) Adopted child

In determining whether any of the relationships specified in subparagraph (A)(i) or paragraph (4) exists, a legally adopted individual of the taxpayer, or an individual who is lawfully placed with the taxpayer for legal adoption by the taxpayer, shall be treated as a child of such individual by blood.

(C) Eligible foster child

For purposes of subparagraph (A)(ii), the term "eligible foster child" means an individual who is placed with the taxpayer by an authorized placement agency or by judgment, decree, or other order of any court of competent jurisdiction.

(2) Student defined

The term "student" means an individual who during each of 5 calendar months during the calendar year in which the taxable year of the taxpayer begins—

(A) is a full-time student at an educational organization described in section 170(b)(1)(A)(ii), or

(B) is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational organization described in section 170(b)(1)(A)(ii) or of a State or political subdivision of a State.

(3) Determination of household status

An individual shall not be treated as a member of the taxpayer's household if at any time during the taxable year of the taxpayer the relationship between such individual and the taxpayer is in violation of local law.

(4) Brother and sister

The terms "brother" and "sister" include a brother or sister by the half blood.

(5) Special support test in case of students

For purposes of subsections (c)(1)(D) and (d)(1)(C), in the case of an individual who is—

(A) a child of the taxpayer, and

(B) a student,

amounts received as scholarships for study at an educational organization described in section 170(b)(1)(A)(ii) shall not be taken into account.

(6) Treatment of missing children

(A) In general

Solely for the purposes referred to in subparagraph (B), a child of the taxpayer—

(i) who is presumed by law enforcement authorities to have been kidnapped by someone who is not a member of the family of such child or the taxpayer, and

(ii) who had, for the taxable year in which the kidnapping occurred, the same principal place of abode as the taxpayer for more than one-half of the portion of such year before the date of the kidnapping,

shall be treated as meeting the requirement of subsection (c)(1)(B) with respect to a taxpayer for all taxable years ending during the period that the child is kidnapped.

(B) Purposes

Subparagraph (A) shall apply solely for purposes of determining—

(i) the deduction under section 151(c),

(ii) the credit under section 24 (relating to child tax credit),

(iii) whether an individual is a surviving spouse or a head of a household (as such terms are defined in section 2), and

(iv) the earned income credit under section 32.

(C) Comparable treatment of certain qualifying relatives

For purposes of this section, a child of the taxpayer—

(i) who is presumed by law enforcement authorities to have been kidnapped by someone who is not a member of the family of such child or the taxpayer, and

(ii) who was (without regard to this paragraph) a qualifying relative of the taxpayer for the portion of the taxable year before the date of the kidnapping,

shall be treated as a qualifying relative of the taxpayer for all taxable years ending during the period that the child is kidnapped.

(D) Termination of treatment

Subparagraphs (A) and (C) shall cease to apply as of the first taxable year of the taxpayer beginning after the calendar year in which there is a determination that the child is dead (or, if earlier, in which the child would have attained age 18).

(7) Cross references

For provision treating child as dependent of both parents for purposes of certain provisions, see sections 105(b), 132(h)(2)(B), and 213(d)(5).

(Aug. 16, 1954, ch. 736, 68A Stat. 43; Aug. 9, 1955, ch. 693, §2, 69 Stat. 626; Pub. L. 85–866, title I, §4(a)–(c), Sept. 2, 1958, 72 Stat. 1607; Pub. L. 86–376, §1(a), Sept. 23, 1959, 73 Stat. 699; Pub. L. 90–78, §1, Aug. 31, 1967, 81 Stat. 191; Pub. L. 91–172, title IX, §912(a), Dec. 30, 1969, 83 Stat. 722; Pub. L. 92–580, §1(a), Oct. 27, 1972, 86 Stat. 1276; Pub. L. 94–455, title XIX, §§1901(a)(24), (b)(7)(B), (8)(A), 1906(b)(13)(A), title XXI, §2139(a), Oct. 4, 1976, 90 Stat. 1767, 1794, 1834, 1932; Pub. L. 98–369, div. A, title IV, §§423(a), 482(b)(2), July 18, 1984, 98 Stat. 799, 848; Pub. L. 99–514, title I, §104(b)(1)(B), (3), title XIII, §1301(j)(8), Oct. 22, 1986, 100 Stat. 2104, 2105, 2658; Pub. L. 108–311, title II, §201, Oct. 4, 2004, 118 Stat. 1169; Pub. L. 109–135, title IV, §404(a), Dec. 21, 2005, 119 Stat. 2632; Pub. L. 110–351, title V, §501(a), (b), (c)(2), Oct. 7, 2008, 122 Stat. 3979, 3980.)

AMENDMENTS

2008—Subsec. (c)(1)(E). Pub. L. 110–351, §501(b), added subpar. (E).

Subsec. (c)(3)(A). Pub. L. 110–351, §501(a), inserted "is younger than the taxpayer claiming such individual as a qualifying child and" after "such individual" in introductory provisions.

Subsec. (c)(4). Pub. L. 110–351, §501(c)(2)(B)(ii), substituted "who can claim the same" for "claiming" in heading.

Subsec. (c)(4)(A). Pub. L. 110–351, §501(c)(2)(B)(i), substituted "Except as provided in subparagraphs (B) and (C), if (but for this paragraph) an individual may be claimed as a qualifying child by 2 or more taxpayers" for "Except as provided in subparagraph (B), if (but for this paragraph) an individual may be and is claimed as a qualifying child by 2 or more taxpayers" in introductory provisions.

Subsec. (c)(4)(C). Pub. L. 110–351, §501(c)(2)(A), added subpar. (C).

2005—Subsec. (e). Pub. L. 109–135 amended heading and text of subsec. (e) generally. Prior to amendment, text consisted of pars. (1) to (4) relating to special rule for divorced parents, requirements for divorced parents, definitions of custodial and noncustodial parent, and exception for multiple-support agreements.

2004—Pub. L. 108–311 reenacted section catchline without change and amended text generally. Prior to amendment, section consisted of subsecs. (a) to (e) relating to general definition of dependent, rules relating to general definition, multiple support agreements, special support test in case of students, and support test in case of child of divorced parents, etc., respectively.

1986—Subsec. (a)(9). Pub. L. 99–514, §1301(j)(8), substituted "section 7703" for "section 143".

Subsec. (d)(2). Pub. L. 99–514, §104(b)(3), substituted "section 151(c)(4)" for "section 151(e)(4)".

Subsec. (e)(1)(A). Pub. L. 99–514, §104(b)(1)(B), substituted "section 151(c)(3)" for "section 151(e)(3)".

1984—Subsec. (e). Pub. L. 98–369, §423(a), amended subsec. (e) generally, and in substantially revising support test provisions, enacted par. (1) custodial parent exemption, former par. (1) declaring the general rule that where a child received over one-half of his calendar year support from parents who were divorced or legally separated under a decree of divorce or separate maintenance, or were separated under a written separation agreement and the child was in the custody of one or both parents for more than one-half of the calendar year, the child would be treated as receiving over half of his support from the parent having custody for a greater portion of the calendar year unless treated under special rule provision as having received over half of his support from the parent not having custody; enacted par. (2) release of custodial parent exemption for the year, former par. (2) declaring the special rule that parent without custody would be deemed as furnishing over half of the support where the decree of divorce or separate maintenance, or written agreement, covering the taxable year, provided that parent without custody should be entitled to the section 151 deduction for the child and such parent provided at least $600 calendar year support, or alternatively, such parent without custody provided $1,200 or more calendar year support and the parent with custody did not establish more support of the child than the parent without custody; redesignated as par. (3) former par. (4) provision respecting exception for multiple-support agreement, deleting former par. (3) respecting requirement of an itemized statement of expenditures to resolve more support claims; added par. (4) respecting exception for certain pre-1985 instruments; added par. (5) enunciating special rule for support received from new spouse of parent, deleting former par. (5) regulations prescription provision; and added par. (6) cross reference provision.

Subsec. (e)(6). Pub. L. 98–369, §482(b)(2), substituted "section 213(d)(5)" for "section 213(d)(4)".

1976—Subsec. (a)(9). Pub. L. 94–455, §1901(b)(7)(B), substituted "section 143" for "section 153".

Subsec. (a)(10). Pub. L. 94–455, §1901(a)(24)(A), struck out par. (10) relating to descendents of a taxpayer, who were members of taxpayer's household, before receiving institutional care.

Subsec. (b)(3). Pub. L. 94–455, §1901(a)(24)(B), among other changes struck out "of the Canal Zone, or of the Republic of Panama" after "country contiguous to the United States," and provisions relating to children born or adopted in Philippines.

Subsec. (c)(4). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (d). Pub. L. 94–455, §1901(b)(8)(A), substituted "organization described in section 170(b)(1)(A)(ii)" for "institution (as defined in section 151(e)(4))".

Subsec. (e)(2)(B)(i). Pub. L. 94–455, §2139(a), substituted "each" for "all".

Subsec. (e)(3), (5). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

1972—Subsec. (b)(3). Pub. L. 92–580 substituted "citizen or national of the United States" for "citizen of the United States" in two places.

1969—Subsec. (b)(2). Pub. L. 91–172 inserted reference to foster children who satisfy requirements of subsec. (a)(9) of this section.

1967—Subsec. (a). Pub. L. 90–78, §1(b), inserted "or (e)" after "subsection (c)".

Subsec. (e). Pub. L. 90–78, §1(a), added subsec. (e).

1959—Subsec. (b)(2). Pub. L. 86–376 provided that a child who is a member of an individual's household if placed with such individual by an authorized placement agency for legal adoption by such individual shall be treated as a child by blood.

1958—Subsec. (a)(9). Pub. L. 85–866, §4(a), inserted "(other than an individual who at any time during the taxable year was the spouse, determined without regard to section 153, of the taxpayer)".

Subsec. (b)(3). Pub. L. 85–866, §4(b), among other changes, struck out provision that "dependent" does not include any individual who is not a United States citizen unless such individual is a resident of United States or of a contiguous country, or of Canal Zone or Panama, and inserted provision barring exclusion from definition of "dependent" any child of taxpayer, legally adopted by him, if, for taxable year of taxpayer, child's principal place of abode is taxpayer's home and child is member of taxpayer's household, if taxpayer is United States citizen.

Subsec. (b)(5). Pub. L. 85–866, §4(c), added par. (5).

1955—Subsec. (b)(3). Act Aug. 9, 1955, substituted "January 1, 1956" for "July 5, 1946".

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–351 applicable to taxable years beginning after Dec. 31, 2008, see section 501(d) of Pub. L. 110–351, set out as an Effective and Termination Dates of 2008 Amendment note under section 24 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provisions of the Working Families Tax Relief Act of 2004, Pub. L. 108–311, to which such amendment relates, see section 404(d) of Pub. L. 109–135, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 104(b)(1)(B), (3) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 1301(j)(8) of Pub. L. 99–514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99–514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 423(a) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1984, see section 423(d) of Pub. L. 98–369, set out as a note under section 2 of this title.

Amendment by section 482(b)(2) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 482(c) of Pub. L. 98–369, set out as a note under section 213 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(24), (b)(7)(B), (8)(A) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Pub. L. 94–455, title XXI, §2139(b), Oct. 4, 1976, 90 Stat. 1932, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 4, 1976]."

EFFECTIVE DATE OF 1972 AMENDMENT

Pub. L. 92–580, §1(c), Oct. 27, 1972, 86 Stat. 1276, provided that: "The amendments made by subsections (a) [amending this section] and (b) [amending section 873 of this title] shall apply to taxable years beginning after December 31, 1971."

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title IX, §912(b), Dec. 30, 1969, 83 Stat. 722, provided that: "The amendment made by subsection (a) of this section [amending this section] shall apply to taxable years beginning after December 31, 1969."

EFFECTIVE DATE OF 1967 AMENDMENT

Pub. L. 90–78, §2, Aug. 31, 1967, 81 Stat. 192, provided that: "The amendments made by the first section of this Act [amending this section] shall apply with respect to taxable years beginning after December 31, 1966."

EFFECTIVE DATE OF 1959 AMENDMENT

Pub. L. 86–376, §1(b), Sept. 23, 1959, 73 Stat. 699, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1958."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 4(a), (c) of Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

Pub. L. 85–866, §4(d), Sept. 2, 1958, 72 Stat. 1607, provided that: "The amendment made by subsection (b) [amending this section] shall apply with respect to taxable years beginning after December 31, 1957."

EFFECTIVE DATE OF 1955 AMENDMENT

Act Aug. 9, 1955, ch. 693, §3(b), 69 Stat. 626, provided that: "The amendment made by section 2 of this Act [amending this section] shall apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954."

§153. Cross references

(1) For deductions of estates and trusts, in lieu of the exemptions under section 151, see section 642(b).

(2) For exemptions of nonresident aliens, see section 873(b)(3).

(3) For determination of marital status, see section 7703.

(Aug. 16, 1954, ch. 736, 68A Stat. 45, §154; Pub. L. 89–809, title I, §103(c)(2), Nov. 13, 1966, 80 Stat. 1551; renumbered §153 and amended Pub. L. 94–455, title XIX, §1901(b)(7)(A)(i), (C), Oct. 4, 1976, 90 Stat. 1794; Pub. L. 99–514, title XII, §1272(d)(7), title XIII, §1301(j)(8), Oct. 22, 1986, 100 Stat. 2594, 2658; Pub. L. 108–311, title II, §207(14), Oct. 4, 2004, 118 Stat. 1177.)

PRIOR PROVISIONS

A prior section 153, act Aug. 16, 1954, ch. 736, 68A Stat. 45, related to determination of marital status, prior to repeal by Pub. L. 94–455, title XIX, §1901(b)(7)(A)(i), (d), Oct. 4, 1976, 90 Stat. 1794, 1803, applicable with respect to taxable years beginning after Dec. 31, 1976. See section 143 of this title.

AMENDMENTS

2004—Pars. (1) to (4). Pub. L. 108–311 redesignated pars. (2) to (4) as (1) to (3), respectively, and struck out former par. (1) which read as follows: "For definitions of 'husband' and 'wife', as used in section 152(b)(4), see section 7701(a)(17)."

1986—Par. (4). Pub. L. 99–514, §1272(d)(7), redesignated par. (5) as (4) and struck out former par. (4) which read as follows: "For exemptions of citizens deriving income mainly from sources within possessions of the United States, see section 931(e)."

Par. (5). Pub. L. 99–514, §1272(d)(7), redesignated par. (5) as (4).

Pub. L. 99–514, §1301(j)(8), substituted "section 7703" for "section 143".

1976—Par. (5). Pub. L. 94–455, §1901(b)(7)(C), added par. (5).

1966—Par. (3). Pub. L. 89–809 substituted "873(b)(3)" for "873(d)".

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1272(d)(7) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99–514, set out as a note under section 931 of this title.

Amendment by section 1301(j)(8) of Pub. L. 99–514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99–514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

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

EFFECTIVE DATE OF 1966 AMENDMENT

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

PART VI—ITEMIZED DEDUCTIONS FOR INDIVIDUALS AND CORPORATIONS

Sec.

161. Allowance of deductions.

162. Trade or business expenses.

163. Interest.

164. Taxes.
165. Losses.
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171. Amortizable bond premium.
172. Net operating loss deduction.
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175. Soil and water conservation expenditures; endangered species recovery expenditures.
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[177. Repealed.]
178. Amortization of cost of acquiring a lease.
179. Election to expense certain depreciable business assets.
179A. Deduction for clean-fuel vehicles and certain refueling property.
179B. Deduction for capital costs incurred in complying with Environmental Protection Agency sulfur regulations.
179C. Election to expense certain refineries.
179D. Energy efficient commercial buildings deduction.
179E. Election to expense advanced mine safety equipment.
180. Expenditures by farmers for fertilizer, etc.
181. Treatment of certain qualified film and television productions.
[182. Repealed.]
183. Activities not engaged in for profit.
[184, 185. Repealed.]
186. Recoveries of damages for antitrust violations, etc.
[187 to 189. Repealed.]
190. Expenditures to remove architectural and transportation barriers to the handicapped and elderly.
191. Amortization of certain rehabilitation expenditures for certified historic structures.[1]
192. Contributions to black lung benefit trust.
193. Tertiary injectants.
194. Treatment of reforestation expenditures.
194A. Contributions to employer liability trusts.
195. Start-up expenditures.
196. Deduction for certain unused business credits.
197. Amortization of goodwill and certain other intangibles.
198. Expensing of environmental remediation costs.
198A. Expensing of Qualified Disaster Expenses.[2]
199. Income attributable to domestic production activities.

AMENDMENTS

2008—Pub. L. 110–343, div. C, title VII, §707(b), Oct. 3, 2008, 122 Stat. 3924, added item 198A.

Pub. L. 110–234, title XV, §15303(a)(2)(C), May 22, 2008, 122 Stat. 1501, and Pub. L. 110–246, title XV, §15303(a)(2)(C), June 18, 2008, 122 Stat. 2263, made identical amendments, inserting "; endangered species recovery expenditures" after "conservation expenditures" in item 175. The amendment by Pub. L. 110–234 was repealed by Pub. L. 110–246, §4(a), June 18, 2008, 122 Stat. 1664.

2006—Pub. L. 109–432, div. A, title IV, §404(b)(4), Dec. 20, 2006, 120 Stat. 2956, added item 179E.

2005—Pub. L. 109–58, title XIII, §§1323(b)(4), 1331(c), Aug. 8, 2005, 119 Stat. 1015, 1024, added items 179C and 179D.

2004—Pub. L. 108–357, title I, §102(d)(8), title II, §244(b), title III, §§322(c)(5), 338(b)(6), Oct. 22, 2004, 118 Stat. 1429, 1446, 1475, 1481, added items 179B, 181, and 199, and substituted "Treatment" for "Amortization" in item 194.

1997—Pub. L. 105–34, title IX, §941(b), Aug. 5, 1997, 111 Stat. 885, added item 198.

1993—Pub. L. 103–66, title XIII, §13261(f)(6), Aug. 10, 1993, 107 Stat. 539, added item 197.

1992—Pub. L. 102–486, title XIX, §1913(a)(3)(B), Oct. 24, 1992, 106 Stat. 3019, added item 179A.

1990—Pub. L. 101–508, title XI, §11801(b)(3), Nov. 5, 1990, 104 Stat. 1388–522, struck out item 184 "Amortization of certain railroad rolling stock" and item 188 "Amortization of certain expenditures for child care facilities".

1986—Pub. L. 99–514, title II, §§201(d)(2)(B), 241(b)(3), 242(b)(3), title IV, §402(b)(3), title VIII, §803(c)(2), Oct. 22, 1986, 100 Stat. 2139, 2181, 2221, 2356, substituted "Amortization of cost of acquiring a lease" for "Depreciation or amortization of improvements made by lessee on lessor's property" in item 178, and struck out items 177 "Trademark and trade name expenditures", 182 "Expenditures by farmers for clearing land", 185 "Amortization of railroad grading and tunnel bores", and 189 "Amortization of real property construction period interest and taxes".

1984—Pub. L. 98–369, div. A, title I, §94(b), title IV, §474(r)(8)(B), July 18, 1984, 98 Stat. 615, 841, reenacted item 195 without change, and substituted "business credits" for "investment credits" in item 196.

1983—Pub. L. 97–448, title III, §305(b)(2), Jan. 12, 1983, 96 Stat. 2399, redesignated item 194 (relating to contributions to employer liability trusts) as 194A.

1982—Pub. L. 97–248, title II, §205(a)(5)(C), Sept. 3, 1982, 96 Stat. 430, added item 196.

1981—Pub. L. 97–34, title II, §§201(d), 202(d)(3), Aug. 13, 1981, 95 Stat. 219, 221, added item 168 and substituted "Election to expense certain depreciable business assets" for "Additional first-year depreciation allowance for small business" in item 179.

1980—Pub. L. 96–605, title I, §102(b), Dec. 28, 1980, 94 Stat. 3522, added item 195.

Pub. L. 96–451, title III, §301(c)(2), Oct. 14, 1980, 94 Stat. 1991, added item 194 relating to amortization of reforestation expenditures.

Pub. L. 96–364, title II, §209(c)(2), Sept. 26, 1980, 94 Stat. 1291, added item 194 relating to contributions to employer liability trusts.

Pub. L. 96–223, title II, §251(a)(2)(A), Apr. 2, 1980, 94 Stat. 287, added item 193.

1978—Pub. L. 95–227, §4(b)(2), Feb. 10, 1978, 95 Stat. 17, added item 192.

1977—Pub. L. 95–30, title IV, §402(a)(4), May 23, 1977, 91 Stat. 155, struck out "on-the-job training and" after "certain expenditures for" in item 188.

1976—Pub. L. 94–455, title II, §201(b), title XIX, §§1901(b)(11)(B), 1951(c)(2)(D), title XXI, §§2122(b)(1), 2124(a)(3)(A), Oct. 4, 1976, 90 Stat. 1527, 1795, 1841, 1915, 1917, struck out item 168 "Amortization of emergency facilities" and item 187 "Amortization of certain coal mine safety equipment" and added items 189, 190, and 191.

1971—Pub. L. 92–178, title III, §303(c)(6), Dec. 10, 1971, 85 Stat. 522, added item 188.

1969—Pub. L. 91–172, title II, §213(c)(1), title VII, §§704(b)(1), 705(b), 707(b), title IX, §904(b), Dec. 30, 1969, 83 Stat. 572, 669, 674, 675, 712, substituted reference to pollution control facilities for reference to grain storage facilities in item 169, and added items 183 to 187.

1964—Pub. L. 88–272, title II, §203(a)(3)(D). Feb. 26, 1964, 78 Stat. 34, struck out item 181 "Deduction for certain unused investment credit".

1962—Pub. L. 87–834, §§2(g)(3), 21(c), Oct. 16, 1962, 76 Stat. 973, 1064, added items 181, 182.

1960—Pub. L. 86–779, §6(b), Sept. 14, 1960, 74 Stat. 1001, added item 180.

1958—Pub. L. 85–866, title I, §15(b), title II, §204(b), Sept. 2, 1958, 72 Stat. 1613, 1680, added items 178 and 179.

1956—Act June 29, 1956, ch. 464, §4(b), 70 Stat. 406, added item 177.

1954—Act Sept. 1, 1954, ch. 1206, title II, §210(b), 68 Stat. 1097, added item 176.

[1] Section 191 was repealed by Pub. L. 97–34 without corresponding amendment of part analysis.

[2] So in original. The words "Qualified Disaster Expenses" probably should not be capitalized.

§161. Allowance of deductions

In computing taxable income under section 63, there shall be allowed as deductions the items

specified in this part, subject to the exceptions provided in part IX (sec. 261 and following, relating to items not deductible).

(Aug. 16, 1954, ch. 736, 68A Stat. 45; Pub. L. 95–30, title I, §102(b)(1), May 23, 1977, 91 Stat. 137.)

AMENDMENTS

1977—Pub. L. 95–30 substituted "section 63" for "section 63(a)".

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

§162. Trade or business expenses

(a) In general

There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including—

(1) a reasonable allowance for salaries or other compensation for personal services actually rendered;

(2) traveling expenses (including amounts expended for meals and lodging other than amounts which are lavish or extravagant under the circumstances) while away from home in the pursuit of a trade or business; and

(3) rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity.

For purposes of the preceding sentence, the place of residence of a Member of Congress (including any Delegate and Resident Commissioner) within the State, congressional district, or possession which he represents in Congress shall be considered his home, but amounts expended by such Members within each taxable year for living expenses shall not be deductible for income tax purposes in excess of $3,000. For purposes of paragraph (2), the taxpayer shall not be treated as being temporarily away from home during any period of employment if such period exceeds 1 year. The preceding sentence shall not apply to any Federal employee during any period for which such employee is certified by the Attorney General (or the designee thereof) as traveling on behalf of the United States in temporary duty status to investigate or prosecute, or provide support services for the investigation or prosecution of, a Federal crime.

(b) Charitable contributions and gifts excepted

No deduction shall be allowed under subsection (a) for any contribution or gift which would be allowable as a deduction under section 170 were it not for the percentage limitations, the dollar limitations, or the requirements as to the time of payment, set forth in such section.

(c) Illegal bribes, kickbacks, and other payments

(1) Illegal payments to government officials or employees

No deduction shall be allowed under subsection (a) for any payment made, directly or indirectly, to an official or employee of any government, or of any agency or instrumentality of any government, if the payment constitutes an illegal bribe or kickback or, if the payment is to an official or employee of a foreign government, the payment is unlawful under the Foreign Corrupt Practices Act of 1977. The burden of proof in respect of the issue, for the purposes of this paragraph, as to whether a payment constitutes an illegal bribe or kickback (or is unlawful under the Foreign Corrupt Practices Act of 1977) shall be upon the Secretary to the same extent as he bears the burden of proof under section 7454 (concerning the burden of proof when the issue relates to fraud).

(2) Other illegal payments

No deduction shall be allowed under subsection (a) for any payment (other than a payment described in paragraph (1)) made, directly or indirectly, to any person, if the payment constitutes an illegal bribe, illegal kickback, or other illegal payment under any law of the United States, or under any law of a State (but only if such State law is generally enforced), which subjects the payor to a criminal penalty or the loss of license or privilege to engage in a trade or business. For purposes of this paragraph, a kickback includes a payment in consideration of the referral of a client, patient, or customer. The burden of proof in respect of the issue, for purposes of this paragraph, as to whether a payment constitutes an illegal bribe, illegal kickback, or other illegal payment shall be upon the Secretary to the same extent as he bears the burden of proof under section 7454 (concerning the burden of proof when the issue relates to fraud).

(3) Kickbacks, rebates, and bribes under medicare and medicaid

No deduction shall be allowed under subsection (a) for any kickback, rebate, or bribe made by any provider of services, supplier, physician, or other person who furnishes items or services for which payment is or may be made under the Social Security Act, or in whole or in part out of Federal funds under a State plan approved under such Act, if such kickback, rebate, or bribe is made in connection with the furnishing of such items or services or the making or receipt of such payments. For purposes of this paragraph, a kickback includes a payment in consideration of the referral of a client, patient, or customer.

(d) Capital contributions to Federal National Mortgage Association

For purposes of this subtitle, whenever the amount of capital contributions evidenced by a share of stock issued pursuant to section 303(c) of the Federal National Mortgage Association Charter Act (12 U.S.C., sec. 1718) exceeds the fair market value of the stock as of the issue date of such stock, the initial holder of the stock shall treat the excess as ordinary and necessary expenses paid or incurred during the taxable year in carrying on a trade or business.

(e) Denial of deduction for certain lobbying and political expenditures

(1) In general

No deduction shall be allowed under subsection (a) for any amount paid or incurred in connection with—

(A) influencing legislation,

(B) participation in, or intervention in, any political campaign on behalf of (or in opposition to) any candidate for public office,

(C) any attempt to influence the general public, or segments thereof, with respect to elections, legislative matters, or referendums, or

(D) any direct communication with a covered executive branch official in an attempt to influence the official actions or positions of such official.

(2) Exception for local legislation

In the case of any legislation of any local council or similar governing body—

(A) paragraph (1)(A) shall not apply, and

(B) the deduction allowed by subsection (a) shall include all ordinary and necessary expenses (including, but not limited to, traveling expenses described in subsection (a)(2) and the cost of preparing testimony) paid or incurred during the taxable year in carrying on any trade or business—

(i) in direct connection with appearances before, submission of statements to, or sending communications to the committees, or individual members, of such council or body with respect to legislation or proposed legislation of direct interest to the taxpayer, or

(ii) in direct connection with communication of information between the taxpayer and an organization of which the taxpayer is a member with respect to any such legislation or proposed legislation which is of direct interest to the taxpayer and to such organization,

and that portion of the dues so paid or incurred with respect to any organization of which the taxpayer is a member which is attributable to the expenses of the activities described in clauses (i) and (ii) carried on by such organization.

(3) Application to dues of tax-exempt organizations

No deduction shall be allowed under subsection (a) for the portion of dues or other similar amounts paid by the taxpayer to an organization which is exempt from tax under this subtitle which the organization notifies the taxpayer under section 6033(e)(1)(A)(ii) is allocable to expenditures to which paragraph (1) applies.

(4) Influencing legislation

For purposes of this subsection—

(A) In general

The term "influencing legislation" means any attempt to influence any legislation through communication with any member or employee of a legislative body, or with any government official or employee who may participate in the formulation of legislation.

(B) Legislation

The term "legislation" has the meaning given such term by section 4911(e)(2).

(5) Other special rules

(A) Exception for certain taxpayers

In the case of any taxpayer engaged in the trade or business of conducting activities described in paragraph (1), paragraph (1) shall not apply to expenditures of the taxpayer in conducting such activities directly on behalf of another person (but shall apply to payments by such other person to the taxpayer for conducting such activities).

(B) De minimis exception

(i) In general

Paragraph (1) shall not apply to any in-house expenditures for any taxable year if such expenditures do not exceed $2,000. In determining whether a taxpayer exceeds the $2,000 limit under this clause, there shall not be taken into account overhead costs otherwise allocable to activities described in paragraphs (1)(A) and (D).

(ii) In-house expenditures

For purposes of clause (i), the term "in-house expenditures" means expenditures described in paragraphs (1)(A) and (D) other than—

(I) payments by the taxpayer to a person engaged in the trade or business of conducting activities described in paragraph (1) for the conduct of such activities on behalf of the taxpayer, or

(II) dues or other similar amounts paid or incurred by the taxpayer which are allocable to activities described in paragraph (1).

(C) Expenses incurred in connection with lobbying and political activities

Any amount paid or incurred for research for, or preparation, planning, or coordination of, any activity described in paragraph (1) shall be treated as paid or incurred in connection with such activity.

(6) Covered executive branch official

For purposes of this subsection, the term "covered executive branch official" means—

(A) the President,

(B) the Vice President,

(C) any officer or employee of the White House Office of the Executive Office of the President, and the 2 most senior level officers of each of the other agencies in such Executive Office, and

(D)(i) any individual serving in a position in level I of the Executive Schedule under section 5312 of title 5, United States Code, (ii) any other individual designated by the President as having Cabinet level status, and (iii) any immediate deputy of an individual described in clause (i) or (ii).

(7) Special rule for Indian tribal governments

For purposes of this subsection, an Indian tribal government shall be treated in the same manner as a local council or similar governing body.

(8) Cross reference

For reporting requirements and alternative taxes related to this subsection, see section 6033(e).

(f) Fines and penalties

No deduction shall be allowed under subsection (a) for any fine or similar penalty paid to a government for the violation of any law.

(g) Treble damage payments under the antitrust laws

If in a criminal proceeding a taxpayer is convicted of a violation of the antitrust laws, or his plea of guilty or nolo contendere to an indictment or information charging such a violation is entered or accepted in such a proceeding, no deduction shall be allowed under subsection (a) for two-thirds of any amount paid or incurred—

(1) on any judgment for damages entered against the taxpayer under section 4 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914 (commonly known as the Clayton Act), on account of such violation or any related violation of the antitrust laws which occurred prior to the date of the final judgment of such conviction, or

(2) in settlement of any action brought under such section 4 on account of such violation or related violation.

The preceding sentence shall not apply with respect to any conviction or plea before January 1, 1970, or to any conviction or plea on or after such date in a new trial following an appeal of a conviction before such date.

(h) State legislators' travel expenses away from home

(1) In general

For purposes of subsection (a), in the case of any individual who is a State legislator at any time during the taxable year and who makes an election under this subsection for the taxable year—

(A) the place of residence of such individual within the legislative district which he represented shall be considered his home,

(B) he shall be deemed to have expended for living expenses (in connection with his trade or business as a legislator) an amount equal to the sum of the amounts determined by multiplying each legislative day of such individual during the taxable year by the greater of—

(i) the amount generally allowable with respect to such day to employees of the State of which he is a legislator for per diem while away from home, to the extent such amount does not exceed 110 percent of the amount described in clause (ii) with respect to such day, or

(ii) the amount generally allowable with respect to such day to employees of the executive branch of the Federal Government for per diem while away from home but serving in the United States, and

(C) he shall be deemed to be away from home in the pursuit of a trade or business on each legislative day.

(2) Legislative days

For purposes of paragraph (1), a legislative day during any taxable year for any individual shall

be any day during such year on which—

(A) the legislature was in session (including any day in which the legislature was not in session for a period of 4 consecutive days or less), or

(B) the legislature was not in session but the physical presence of the individual was formally recorded at a meeting of a committee of such legislature.

(3) Election

An election under this subsection for any taxable year shall be made at such time and in such manner as the Secretary shall by regulations prescribe.

(4) Section not to apply to legislators who reside near capitol

For taxable years beginning after December 31, 1980, this subsection shall not apply to any legislator whose place of residence within the legislative district which he represents is 50 or fewer miles from the capitol building of the State.

[(i) Repealed. Pub. L. 101–239, title VI, §6202(b)(3)(A), Dec. 19, 1989, 103 Stat. 2233]

(j) Certain foreign advertising expenses

(1) In general

No deduction shall be allowed under subsection (a) for any expenses of an advertisement carried by a foreign broadcast undertaking and directed primarily to a market in the United States. This paragraph shall apply only to foreign broadcast undertakings located in a country which denies a similar deduction for the cost of advertising directed primarily to a market in the foreign country when placed with a United States broadcast undertaking.

(2) Broadcast undertaking

For purposes of paragraph (1), the term "broadcast undertaking" includes (but is not limited to) radio and television stations.

(k) Stock reacquisition expenses

(1) In general

Except as provided in paragraph (2), no deduction otherwise allowable shall be allowed under this chapter for any amount paid or incurred by a corporation in connection with the reacquisition of its stock or of the stock of any related person (as defined in section 465(b)(3)(C)).

(2) Exceptions

Paragraph (1) shall not apply to—

(A) Certain specific deductions

Any—

(i) deduction allowable under section 163 (relating to interest),

(ii) deduction for amounts which are properly allocable to indebtedness and amortized over the term of such indebtedness, or

(iii) deduction for dividends paid (within the meaning of section 561).

(B) Stock of certain regulated investment companies

Any amount paid or incurred in connection with the redemption of any stock in a regulated investment company which issues only stock which is redeemable upon the demand of the shareholder.

(l) Special rules for health insurance costs of self-employed individuals

(1) Allowance of deduction

In the case of a taxpayer who is an employee within the meaning of section 401(c)(1), there shall be allowed as a deduction under this section an amount equal to the amount paid during the taxable year for insurance which constitutes medical care for—

(A) the taxpayer,

(B) the taxpayer's spouse,

(C) the taxpayer's dependents, and

(D) any child (as defined in section 152(f)(1)) of the taxpayer who as of the end of the taxable year has not attained age 27.

(2) Limitations

(A) Dollar amount

No deduction shall be allowed under paragraph (1) to the extent that the amount of such deduction exceeds the taxpayer's earned income (within the meaning of section 401(c)) derived by the taxpayer from the trade or business with respect to which the plan providing the medical care coverage is established.

(B) Other coverage

Paragraph (1) shall not apply to any taxpayer for any calendar month for which the taxpayer is eligible to participate in any subsidized health plan maintained by any employer of the taxpayer or of the spouse of, or any dependent, or individual described in subparagraph (D) of paragraph (1) with respect to, the taxpayer. The preceding sentence shall be applied separately with respect to—

(i) plans which include coverage for qualified long-term care services (as defined in section 7702B(c)) or are qualified long-term care insurance contracts (as defined in section 7702B(b)), and

(ii) plans which do not include such coverage and are not such contracts.

(C) Long-term care premiums

In the case of a qualified long-term care insurance contract (as defined in section 7702B(b)), only eligible long-term care premiums (as defined in section 213(d)(10)) shall be taken into account under paragraph (1).

(3) Coordination with medical deduction

Any amount paid by a taxpayer for insurance to which paragraph (1) applies shall not be taken into account in computing the amount allowable to the taxpayer as a deduction under section 213(a).

(4) Deduction not allowed for self-employment tax purposes

The deduction allowable by reason of this subsection shall not be taken into account in determining an individual's net earnings from self-employment (within the meaning of section 1402(a)) for purposes of chapter 2 for taxable years beginning before January 1, 2010, or after December 31, 2010.

(5) Treatment of certain S corporation shareholders

This subsection shall apply in the case of any individual treated as a partner under section 1372(a), except that—

(A) for purposes of this subsection, such individual's wages (as defined in section 3121) from the S corporation shall be treated as such individual's earned income (within the meaning of section 401(c)(1)), and

(B) there shall be such adjustments in the application of this subsection as the Secretary may by regulations prescribe.

(m) Certain excessive employee remuneration

(1) In general

In the case of any publicly held corporation, no deduction shall be allowed under this chapter for applicable employee remuneration with respect to any covered employee to the extent that the amount of such remuneration for the taxable year with respect to such employee exceeds $1,000,000.

(2) Publicly held corporation

For purposes of this subsection, the term "publicly held corporation" means any corporation issuing any class of common equity securities required to be registered under section 12 of the Securities Exchange Act of 1934.

(3) Covered employee

For purposes of this subsection, the term "covered employee" means any employee of the taxpayer if—

(A) as of the close of the taxable year, such employee is the chief executive officer of the taxpayer or is an individual acting in such a capacity, or

(B) the total compensation of such employee for the taxable year is required to be reported to shareholders under the Securities Exchange Act of 1934 by reason of such employee being among the 4 highest compensated officers for the taxable year (other than the chief executive officer).

(4) Applicable employee remuneration

For purposes of this subsection—

(A) In general

Except as otherwise provided in this paragraph, the term "applicable employee remuneration" means, with respect to any covered employee for any taxable year, the aggregate amount allowable as a deduction under this chapter for such taxable year (determined without regard to this subsection) for remuneration for services performed by such employee (whether or not during the taxable year).

(B) Exception for remuneration payable on commission basis

The term "applicable employee remuneration" shall not include any remuneration payable on a commission basis solely on account of income generated directly by the individual performance of the individual to whom such remuneration is payable.

(C) Other performance-based compensation

The term "applicable employee remuneration" shall not include any remuneration payable solely on account of the attainment of one or more performance goals, but only if—

(i) the performance goals are determined by a compensation committee of the board of directors of the taxpayer which is comprised solely of 2 or more outside directors,

(ii) the material terms under which the remuneration is to be paid, including the performance goals, are disclosed to shareholders and approved by a majority of the vote in a separate shareholder vote before the payment of such remuneration, and

(iii) before any payment of such remuneration, the compensation committee referred to in clause (i) certifies that the performance goals and any other material terms were in fact satisfied.

(D) Exception for existing binding contracts

The term "applicable employee remuneration" shall not include any remuneration payable under a written binding contract which was in effect on February 17, 1993, and which was not modified thereafter in any material respect before such remuneration is paid.

(E) Remuneration

For purposes of this paragraph, the term "remuneration" includes any remuneration (including benefits) in any medium other than cash, but shall not include—

(i) any payment referred to in so much of section 3121(a)(5) as precedes subparagraph (E) thereof, and

(ii) any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from gross income under this chapter.

For purposes of clause (i), section 3121(a)(5) shall be applied without regard to section

3121(v)(1).

(F) Coordination with disallowed golden parachute payments

The dollar limitation contained in paragraph (1) shall be reduced (but not below zero) by the amount (if any) which would have been included in the applicable employee remuneration of the covered employee for the taxable year but for being disallowed under section 280G.

(G) Coordination with excise tax on specified stock compensation

The dollar limitation contained in paragraph (1) with respect to any covered employee shall be reduced (but not below zero) by the amount of any payment (with respect to such employee) of the tax imposed by section 4985 directly or indirectly by the expatriated corporation (as defined in such section) or by any member of the expanded affiliated group (as defined in such section) which includes such corporation.

(5) Special rule for application to employers participating in the Troubled Assets Relief Program

(A) In general

In the case of an applicable employer, no deduction shall be allowed under this chapter—

(i) in the case of executive remuneration for any applicable taxable year which is attributable to services performed by a covered executive during such applicable taxable year, to the extent that the amount of such remuneration exceeds $500,000, or

(ii) in the case of deferred deduction executive remuneration for any taxable year for services performed during any applicable taxable year by a covered executive, to the extent that the amount of such remuneration exceeds $500,000 reduced (but not below zero) by the sum of—

(I) the executive remuneration for such applicable taxable year, plus

(II) the portion of the deferred deduction executive remuneration for such services which was taken into account under this clause in a preceding taxable year.

(B) Applicable employer

For purposes of this paragraph—

(i) In general

Except as provided in clause (ii), the term "applicable employer" means any employer from whom 1 or more troubled assets are acquired under a program established by the Secretary under section 101(a) of the Emergency Economic Stabilization Act of 2008 if the aggregate amount of the assets so acquired for all taxable years exceeds $300,000,000.

(ii) Disregard of certain assets sold through direct purchase

If the only sales of troubled assets by an employer under the program described in clause (i) are through 1 or more direct purchases (within the meaning of section 113(c) of the Emergency Economic Stabilization Act of 2008), such assets shall not be taken into account under clause (i) in determining whether the employer is an applicable employer for purposes of this paragraph.

(iii) Aggregation rules

Two or more persons who are treated as a single employer under subsection (b) or (c) of section 414 shall be treated as a single employer, except that in applying section 1563(a) for purposes of either such subsection, paragraphs (2) and (3) thereof shall be disregarded.

(C) Applicable taxable year

For purposes of this paragraph, the term "applicable taxable year" means, with respect to any employer—

(i) the first taxable year of the employer—

(I) which includes any portion of the period during which the authorities under section 101(a) of the Emergency Economic Stabilization Act of 2008 are in effect (determined

under section 120 thereof), and

(II) in which the aggregate amount of troubled assets acquired from the employer during the taxable year pursuant to such authorities (other than assets to which subparagraph (B)(ii) applies), when added to the aggregate amount so acquired for all preceding taxable years, exceeds $300,000,000, and

(ii) any subsequent taxable year which includes any portion of such period.

(D) Covered executive

For purposes of this paragraph—

(i) In general

The term "covered executive" means, with respect to any applicable taxable year, any employee—

(I) who, at any time during the portion of the taxable year during which the authorities under section 101(a) of the Emergency Economic Stabilization Act of 2008 are in effect (determined under section 120 thereof), is the chief executive officer of the applicable employer or the chief financial officer of the applicable employer, or an individual acting in either such capacity, or

(II) who is described in clause (ii).

(ii) Highest compensated employees

An employee is described in this clause if the employee is 1 of the 3 highest compensated officers of the applicable employer for the taxable year (other than an individual described in clause (i)(I)), determined—

(I) on the basis of the shareholder disclosure rules for compensation under the Securities Exchange Act of 1934 (without regard to whether those rules apply to the employer), and

(II) by only taking into account employees employed during the portion of the taxable year described in clause (i)(I).

(iii) Employee remains covered executive

If an employee is a covered executive with respect to an applicable employer for any applicable taxable year, such employee shall be treated as a covered executive with respect to such employer for all subsequent applicable taxable years and for all subsequent taxable years in which deferred deduction executive remuneration with respect to services performed in all such applicable taxable years would (but for this paragraph) be deductible.

(E) Executive remuneration

For purposes of this paragraph, the term "executive remuneration" means the applicable employee remuneration of the covered executive, as determined under paragraph (4) without regard to subparagraphs (B), (C), and (D) thereof. Such term shall not include any deferred deduction executive remuneration with respect to services performed in a prior applicable taxable year.

(F) Deferred deduction executive remuneration

For purposes of this paragraph, the term "deferred deduction executive remuneration" means remuneration which would be executive remuneration for services performed in an applicable taxable year but for the fact that the deduction under this chapter (determined without regard to this paragraph) for such remuneration is allowable in a subsequent taxable year.

(G) Coordination

Rules similar to the rules of subparagraphs (F) and (G) of paragraph (4) shall apply for purposes of this paragraph.

(H) Regulatory authority

The Secretary may prescribe such guidance, rules, or regulations as are necessary to carry out the purposes of this paragraph and the Emergency Economic Stabilization Act of 2008,

including the extent to which this paragraph applies in the case of any acquisition, merger, or reorganization of an applicable employer.

(6) Special rule for application to certain health insurance providers

(A) In general

No deduction shall be allowed under this chapter—

(i) in the case of applicable individual remuneration which is for any disqualified taxable year beginning after December 31, 2012, and which is attributable to services performed by an applicable individual during such taxable year, to the extent that the amount of such remuneration exceeds $500,000, or

(ii) in the case of deferred deduction remuneration for any taxable year beginning after December 31, 2012, which is attributable to services performed by an applicable individual during any disqualified taxable year beginning after December 31, 2009, to the extent that the amount of such remuneration exceeds $500,000 reduced (but not below zero) by the sum of—

(I) the applicable individual remuneration for such disqualified taxable year, plus

(II) the portion of the deferred deduction remuneration for such services which was taken into account under this clause in a preceding taxable year (or which would have been taken into account under this clause in a preceding taxable year if this clause were applied by substituting "December 31, 2009" for "December 31, 2012" in the matter preceding subclause (I)).

(B) Disqualified taxable year

For purposes of this paragraph, the term "disqualified taxable year" means, with respect to any employer, any taxable year for which such employer is a covered health insurance provider.

(C) Covered health insurance provider

For purposes of this paragraph—

(i) In general

The term "covered health insurance provider" means—

(I) with respect to taxable years beginning after December 31, 2009, and before January 1, 2013, any employer which is a health insurance issuer (as defined in section 9832(b)(2)) and which receives premiums from providing health insurance coverage (as defined in section 9832(b)(1)), and

(II) with respect to taxable years beginning after December 31, 2012, any employer which is a health insurance issuer (as defined in section 9832(b)(2)) and with respect to which not less than 25 percent of the gross premiums received from providing health insurance coverage (as defined in section 9832(b)(1)) is from minimum essential coverage (as defined in section 5000A(f)).

(ii) Aggregation rules

Two or more persons who are treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as a single employer, except that in applying section 1563(a) for purposes of any such subsection, paragraphs (2) and (3) thereof shall be disregarded.

(D) Applicable individual remuneration

For purposes of this paragraph, the term "applicable individual remuneration" means, with respect to any applicable individual for any disqualified taxable year, the aggregate amount allowable as a deduction under this chapter for such taxable year (determined without regard to this subsection) for remuneration (as defined in paragraph (4) without regard to subparagraphs (B), (C), and (D) thereof) for services performed by such individual (whether or not during the taxable year). Such term shall not include any deferred deduction remuneration with respect to services performed during the disqualified taxable year.

(E) Deferred deduction remuneration

For purposes of this paragraph, the term "deferred deduction remuneration" means remuneration which would be applicable individual remuneration for services performed in a disqualified taxable year but for the fact that the deduction under this chapter (determined without regard to this paragraph) for such remuneration is allowable in a subsequent taxable year.

(F) Applicable individual

For purposes of this paragraph, the term "applicable individual" means, with respect to any covered health insurance provider for any disqualified taxable year, any individual—

(i) who is an officer, director, or employee in such taxable year, or

(ii) who provides services for or on behalf of such covered health insurance provider during such taxable year.

(G) Coordination

Rules similar to the rules of subparagraphs (F) and (G) of paragraph (4) shall apply for purposes of this paragraph.

(H) Regulatory authority

The Secretary may prescribe such guidance, rules, or regulations as are necessary to carry out the purposes of this paragraph.

(n) Special rule for certain group health plans

(1) In general

No deduction shall be allowed under this chapter to an employer for any amount paid or incurred in connection with a group health plan if the plan does not reimburse for inpatient hospital care services provided in the State of New York—

(A) except as provided in subparagraphs (B) and (C), at the same rate as licensed commercial insurers are required to reimburse hospitals for such services when such reimbursement is not through such a plan,

(B) in the case of any reimbursement through a health maintenance organization, at the same rate as health maintenance organizations are required to reimburse hospitals for such services for individuals not covered by such a plan (determined without regard to any government-supported individuals exempt from such rate), or

(C) in the case of any reimbursement through any corporation organized under Article 43 of the New York State Insurance Law, at the same rate as any such corporation is required to reimburse hospitals for such services for individuals not covered by such a plan.

(2) State law exception

Paragraph (1) shall not apply to any group health plan which is not required under the laws of the State of New York (determined without regard to this subsection or other provisions of Federal law) to reimburse at the rates provided in paragraph (1).

(3) Group health plan

For purposes of this subsection, the term "group health plan" means a plan of, or contributed to by, an employer or employee organization (including a self-insured plan) to provide health care (directly or otherwise) to any employee, any former employee, the employer, or any other individual associated or formerly associated with the employer in a business relationship, or any member of their family.

(o) Treatment of certain expenses of rural mail carriers

(1) General rule

In the case of any employee of the United States Postal Service who performs services involving the collection and delivery of mail on a rural route and who receives qualified reimbursements for the expenses incurred by such employee for the use of a vehicle in performing

such services—

(A) the amount allowable as a deduction under this chapter for the use of a vehicle in performing such services shall be equal to the amount of such qualified reimbursements; and

(B) such qualified reimbursements shall be treated as paid under a reimbursement or other expense allowance arrangement for purposes of section 62(a)(2)(A) (and section 62(c) shall not apply to such qualified reimbursements).

(2) Special rule where expenses exceed reimbursements

Notwithstanding paragraph (1)(A), if the expenses incurred by an employee for the use of a vehicle in performing services described in paragraph (1) exceed the qualified reimbursements for such expenses, such excess shall be taken into account in computing the miscellaneous itemized deductions of the employee under section 67.

(3) Definition of qualified reimbursements

For purposes of this subsection, the term "qualified reimbursements" means the amounts paid by the United States Postal Service to employees as an equipment maintenance allowance under the 1991 collective bargaining agreement between the United States Postal Service and the National Rural Letter Carriers' Association. Amounts paid as an equipment maintenance allowance by such Postal Service under later collective bargaining agreements that supersede the 1991 agreement shall be considered qualified reimbursements if such amounts do not exceed the amounts that would have been paid under the 1991 agreement, adjusted for changes in the Consumer Price Index (as defined in section 1(f)(5)) since 1991.

(p) Treatment of expenses of members of reserve component of Armed Forces of the United States

For purposes of subsection (a)(2), in the case of an individual who performs services as a member of a reserve component of the Armed Forces of the United States at any time during the taxable year, such individual shall be deemed to be away from home in the pursuit of a trade or business for any period during which such individual is away from home in connection with such service.

(q) Cross reference

(1) For special rule relating to expenses in connection with subdividing real property for sale, see section 1237.

(2) For special rule relating to the treatment of payments by a transferee of a franchise, trademark, or trade name, see section 1253.

(3) For special rules relating to—

(A) funded welfare benefit plans, see section 419, and

(B) deferred compensation and other deferred benefits, see section 404.

(Aug. 16, 1954, ch. 736, 68A Stat. 45; Pub. L. 85–866, title I, §5(a), Sept. 2, 1958, 72 Stat. 1608; Pub. L. 86–779, §§7(b), 8(a), Sept. 14, 1960, 74 Stat. 1002, 1003; Pub. L. 87–834, §§3(a), 4(b), Oct. 16, 1962, 76 Stat. 973, 976; Pub. L. 91–172, title V, §516(c)(2)(A), title IX, §902(a), (b), Dec. 30, 1969, 83 Stat. 648, 710; Pub. L. 92–178, title III, §310(a), Dec. 10, 1971, 85 Stat. 525; Pub. L. 94–455, title XIX, §§1901(c)(4), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1803, 1834; Pub. L. 97–34, title I, §127(a), Aug. 13, 1981, 95 Stat. 202; Pub. L. 97–35, title XXI, §2146(b), Aug. 13, 1981, 95 Stat. 801; Pub. L. 97–51, §139(b)(1), Oct. 1, 1981, 95 Stat. 967; Pub. L. 97–216, title II, §215(a), July 18, 1982, 96 Stat. 194; Pub. L. 97–248, title I, §128(b), title II, §288(a), Sept. 3, 1982, 96 Stat. 366, 571; Pub. L. 98–369, div. A, title V, §512(b), div. B, title III, §2354(d), July 18, 1984, 98 Stat. 863, 1102; Pub. L. 98–573, title II, §232(a), Oct. 30, 1984, 98 Stat. 2991; Pub. L. 99–272, title X, §10001(a), (c), (d), Apr. 7, 1986, 100 Stat. 222, 223, 227; Pub. L. 99–509, title IX, §§9307(c)(2)(B), 9501(a)(1), (b)(1)(A), (2)(A), (c)(1), (d)(1), Oct. 21, 1986, 100 Stat. 1995, 2075–2077; Pub. L. 99–514, title VI, §613(a), title XI, §1161(a), title XVIII, §1895(d)(1)(A), (2)(A), (3)(A), (4)(A), (5)(A), (6)(A), (7), Oct. 22, 1986, 100 Stat. 2251, 2509, 2936–2940; Pub. L. 100–647, title I, §§1011B(b)(1)–(3), 1018(t)(7)(B), title III, §3011(b)(2), (3), Nov. 10, 1988, 102 Stat. 3488, 3589, 3624, 3625; Pub. L. 101–140, title II, §203(a)(4), Nov. 8, 1989, 103 Stat. 830; Pub. L. 101–239, title VI, §6202(b)(3)(A), title VII, §§7107(a)(1), (b), 7862(c)(3)(A), Dec. 19, 1989, 103 Stat. 2233, 2306,

2432; Pub. L. 101–508, title XI, §§11111(d)(2), 11410(a), Nov. 5, 1990, 104 Stat. 1388–413, 1388–479; Pub. L. 102–227, title I, §110(a)(1), Dec. 11, 1991, 105 Stat. 1688; Pub. L. 102–486, title XIX, §1938(a), Oct. 24, 1992, 106 Stat. 3033; Pub. L. 103–66, title XIII, §§13131(d)(2), 13174(a)(1), (b)(1), 13211(a), 13222(a), 13442(a), Aug. 10, 1993, 107 Stat. 435, 457, 469, 477, 568; Pub. L. 104–7, §1(a), (b), Apr. 11, 1995, 109 Stat. 93; Pub. L. 104–188, title I, §1704(p)(1)–(3), Aug. 20, 1996, 110 Stat. 1886; Pub. L. 104–191, title III, §§311(a), 322(b)(2)(B), Aug. 21, 1996, 110 Stat. 2053, 2060; Pub. L. 105–34, title IX, §934(a), title XII, §§1203(a), 1204(a), title XVI, §1602(c), Aug. 5, 1997, 111 Stat. 882, 994, 995, 1094; Pub. L. 105–206, title VI, §6012(a), July 22, 1998, 112 Stat. 818; Pub. L. 105–277, div. J, title II, §2002(a), Oct. 21, 1998, 112 Stat. 2681–901; Pub. L. 108–121, title I, §109(a), Nov. 11, 2003, 117 Stat. 1341; Pub. L. 108–357, title III, §318(a), (b), title VIII, §802(b)(2), Oct. 22, 2004, 118 Stat. 1470, 1568; Pub. L. 110–343, div. A, title III, §302(a), Oct. 3, 2008, 122 Stat. 3803; Pub. L. 111–148, title IX, §9014(a), title X, §10108(g)(1), Mar. 23, 2010, 124 Stat. 868, 913; Pub. L. 111–152, title I, §1004(d)(2), (3), Mar. 30, 2010, 124 Stat. 1035; Pub. L. 111–240, title II, §2042(a), Sept. 27, 2010, 124 Stat. 2560; Pub. L. 112–10, div. B, title VIII, §1858(b)(3), Apr. 15, 2011, 125 Stat. 169.)

REFERENCES IN TEXT

The Foreign Corrupt Practices Act of 1977, referred to in subsec. (c)(1), is title I of Pub. L. 95–213, Dec. 19, 1977, 91 Stat. 1494, which enacted sections 78dd–1 to 78dd–3 of Title 15, Commerce and Trade, and amended sections 78m and 78ff of Title 15. For complete classification of this Act to the Code, see Short Title of 1977 Amendment note set out under section 78a of Title 15 and Tables.

The Social Security Act, referred to in subsec. (c)(3), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, which is classified generally to chapter 7 (§301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 4 of the Clayton Act, referred to in subsec. (g)(1), is classified to section 15 of Title 15, Commerce and Trade.

The Securities Exchange Act of 1934, referred to in subsec. (m)(2), (3)(B), (5)(D)(ii)(I), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of Title 15, Commerce and Trade. Section 12 of the Act is classified to section 78l of Title 15. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

The Emergency Economic Stabilization Act of 2008, referred to in subsec. (m)(5), is div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, which is classified principally to chapter 52 (§5201 et seq.) of Title 12, Banks and Banking. Section 101(a) of the Act enacted section 5211(a) of Title 12 and amended section 5315 of Title 5, Government Organization and Employees, and section 301 of Title 31, Money and Finance. Section 113(c) of the Act is classified to section 5223(c) of Title 12. Section 120 of the Act is classified to section 5230 of Title 12. For complete classification of this Act to the Code, see Short Title note set out under section 5201 of Title 12 and Tables.

AMENDMENTS

2011—Subsec. (a). Pub. L. 112–10 struck out last sentence in concluding provisions which read as follows: "For purposes of paragraph (1), the amount of a free choice voucher provided under section 10108 of the Patient Protection and Affordable Care Act shall be treated as an amount for compensation for personal services actually rendered."

2010—Subsec. (a). Pub. L. 111–148, §10108(g)(1), inserted at end of concluding provisions "For purposes of paragraph (1), the amount of a free choice voucher provided under section 10108 of the Patient Protection and Affordable Care Act shall be treated as an amount for compensation for personal services actually rendered."

Subsec. (l)(1). Pub. L. 111–152, §1004(d)(2), amended par. (1) generally. Prior to amendment, par. (1) authorized a deduction in an amount equal to the applicable percentage of the amount paid during the taxable year for insurance which constitutes medical care for the taxpayer, his spouse, and dependents.

Subsec. (l)(2)(B). Pub. L. 111–152, §1004(d)(3), inserted ", or any dependent, or individual described in subparagraph (D) of paragraph (1) with respect to," after "spouse of" in introductory provisions.

Subsec. (l)(4). Pub. L. 111–240 inserted "for taxable years beginning before January 1, 2010, or after December 31, 2010" before period at end.

Subsec. (m)(6). Pub. L. 111–148, §9014(a), added par. (6).

2008—Subsec. (m)(5). Pub. L. 110–343 added par. (5).

2004—Subsec. (m)(4)(G). Pub. L. 108–357, §802(b)(2), added subpar. (G).

Subsec. (o). Pub. L. 108–357, §318(b), struck out "reimbursed" before "expenses" in heading.

Subsec. (o)(2), (3). Pub. L. 108–357, §318(a), added par. (2) and redesignated former par. (2) as (3).

2003—Subsecs. (p), (q). Pub. L. 108–121 added subsec. (p) and redesignated former subsec. (p) as (q).

1998—Subsec. (a). Pub. L. 105–206, in last sentence, substituted "investigate or prosecute, or provide support services for the investigation or prosecution of, a Federal crime." for "investigate, or provide support services for the investigation of, a Federal crime."

Subsec. (l)(1)(B). Pub. L. 105–277 amended table in subpar. (B) generally. Prior to amendment, table read as follows:

"For taxable years beginning in calendar year—	**The applicable** percentage is—
1997	40
1998 and 1999	45
2000 and 2001	50
2002	60
2003 through 2005	80
2006	90
2007 and thereafter	100."

1997—Subsec. (a). Pub. L. 105–34, §1204(a), inserted at end of concluding provisions "The preceding sentence shall not apply to any Federal employee during any period for which such employee is certified by the Attorney General (or the designee thereof) as traveling on behalf of the United States in temporary duty status to investigate, or provide support services for the investigation of, a Federal crime."

Subsec. (l)(1)(B). Pub. L. 105–34, §934(a), amended table generally. Prior to amendment, table read as follows:

"For taxable years beginning in calendar year—	**The applicable percentage is—**
1997	40 percent
1998 through 2002	45 percent
2003	50 percent
2004	60 percent
2005	70 percent
2006 or thereafter	80 percent."

Subsec. (l)(2)(B). Pub. L. 105–34, §1602(c), inserted "The preceding sentence shall be applied separately with respect to—" at end and added cls. (i) and (ii).

Subsecs. (o), (p). Pub. L. 105–34, §1203(a), added subsec. (o) and redesignated former subsec. (o) as (p).

1996—Subsec. (k). Pub. L. 104–188, §1704(p)(3), substituted "reaquisition" for "redemption" in heading.

Subsec. (k)(1). Pub. L. 104–188, §1704(p)(1), substituted "the reacquisition of its stock or of the stock of any related person (as defined in section 465(b)(3)(C))" for "the redemption of its stock".

Subsec. (k)(2)(A). Pub. L. 104–188, §1704(p)(2), struck out "or" at end of cl. (i), added cl. (ii), and redesignated former cl. (ii) as (iii).

Subsec. (l)(1). Pub. L. 104–191, §311(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows:

"(1) IN GENERAL.—In the case of an individual who is an employee within the meaning of section 401(c)(1), there shall be allowed as a deduction under this section an amount equal to 30 percent of the amount paid during the taxable year for insurance which constitutes medical care for the taxpayer, his spouse, and dependents."

Subsec. (l)(2)(C). Pub. L. 104–191, §322(b)(2)(B), added subpar. (C).

1995—Subsec. (l)(1). Pub. L. 104–7, §1(b), substituted "30 percent" for "25 percent".

Subsec. (l)(6). Pub. L. 104–7, §1(a), struck out par. (6) "Termination" which read as follows: "This subsection shall not apply to any taxable year beginning after December 31, 1993."

1993—Subsec. (e). Pub. L. 103–66, §13222(a), amended heading and text generally. Prior to amendment, text consisted of pars. (1) and (2) relating to deduction of ordinary and necessary expenses paid or incurred in connection with certain activities relating to congressional, State, and local legislation.

Subsec. (l)(2)(B). Pub. L. 103–66, §13174(b)(1), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: "Paragraph (1) shall not apply to any taxpayer who is eligible to participate in any subsidized health plan maintained by any employer of the taxpayer or of the spouse of the taxpayer."

Subsec. (l)(3). Pub. L. 103–66, §13131(d)(2), amended heading and text of par. (3) generally. Prior to amendment, text read as follows:

"(A) MEDICAL DEDUCTION.—Any amount paid by a taxpayer for insurance to which paragraph (1) applies shall not be taken into account in computing the amount allowable to the taxpayer as a deduction under section 213(a).

"(B) HEALTH INSURANCE CREDIT.—The amount otherwise taken into account under paragraph (1) as paid for insurance which constitutes medical care shall be reduced by the amount (if any) of the health insurance credit allowable to the taxpayer for the taxable year under section 32."

Subsec. (l)(6). Pub. L. 103–66, §13174(a)(1), substituted "December 31, 1993" for "June 30, 1992".

Subsec. (m). Pub. L. 103–66, §13211(a), added subsec. (m). Former subsec. (m) redesignated (n).

Subsec. (n). Pub. L. 103–66, §13442(a), added subsec. (n). Former subsec. (n) redesignated (o).

Pub. L. 103–66, §13211(a), redesignated subsec. (m) as (n).

Subsec. (o). Pub. L. 103–66, §13442(a), redesignated subsec. (n) as (o).

1992—Subsec. (a). Pub. L. 102–486 inserted at end "For purposes of paragraph (2), the taxpayer shall not be treated as being temporarily away from home during any period of employment if such period exceeds 1 year."

1991—Subsec. (l)(6). Pub. L. 102–227 substituted "June 30, 1992" for "December 31, 1991".

1990—Subsec. (l)(3). Pub. L. 101–508, §11111(d)(2), substituted heading for one which read: "Coordination with medical deduction" and amended text generally. Prior to amendment, text read as follows: "Any amount paid by a taxpayer for insurance to which paragraph (1) applies shall not be taken into account in computing the amount allowable to the taxpayer as a deduction under section 213(a)."

Subsec. (l)(6). Pub. L. 101–508, §11410(a), substituted "December 31, 1991" for "September 30, 1990".

1989—Subsec. (i). Pub. L. 101–239, §6202(b)(3)(A), struck out subsec. (i) which read as follows:

"(1) COVERAGE RELATING TO END STAGE RENAL DISEASE.—The expenses paid or incurred by an employer for a group health plan shall not be allowed as a deduction under this section if the plan differentiates in the benefits it provides between individuals having end stage renal disease and other individuals covered by such plan on the basis of the existence of end stage renal disease, the need for renal dialysis, or in any other manner.

"(2) GROUP HEALTH PLAN.—For purposes of this subsection the term 'group health plan' means any plan of, or contributed to by, an employer to provide medical care (as defined in section 213(d) to his employees, former employees, or the families of such employees or former employees, directly or through insurance, reimbursement, or otherwise."

Subsec. (k)(2)(B)(iv). Pub. L. 101–239, §7862(c)(3)(A), amended cl. (iv) as it existed prior to repeal of subsec. (k) by Pub. L. 100–647, by substituting "entitlement" for "eligibility" in heading and inserting "which does not contain any exclusion or limitation with respect to any preexisting condition of such beneficiary" after "or otherwise)" in subclause (I).

Subsec. (l)(2). Pub. L. 101–140 redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: "REQUIRED COVERAGE.—Paragraph (1) shall not apply to any taxpayer for any taxable year unless coverage is provided under 1 or more plans meeting the requirements of section 89, treating such coverage as an employer-provided benefit."

Subsec. (l)(5). Pub. L. 101–239, §7107(b), added par. (5). Former par. (5) redesignated (6).

Pub. L. 101–239, §7107(a)(1), substituted "September 30, 1990" for "December 31, 1989".

Subsec. (l)(6). Pub. L. 101–239, §7107(b), redesignated former par. (5) as (6).

1988—Subsec. (i)(2), (3). Pub. L. 100–647, §3011(b)(2), redesignated par. (3) as (2) and struck out former par. (2) which required plans to provide continuation coverage to certain individuals.

Subsec. (k). Pub. L. 100–647, §3011(b)(3), redesignated subsec. (l), relating to stock redemption expenses, as (k) and struck out former subsec. (k) which related to continuation coverage requirements of group health

plans.

Subsec. (k)(5)(B). Pub. L. 100–647, §1018(t)(7)(B), made amendment identical to Pub. L. 99–509, §9307(c)(2)(B), which amended directory language of Pub. L. 99–514, §1895(d)(5)(A), by substituting "section 162(k)(5)" for "section 162(k)(2)". See 1986 Amendment note below.

Subsec . (l). Pub. L. 100–647, §3011(b)(3)(A), (B), redesignated subsec. (m), relating to special rules for health insurance costs of self-employed individuals, as (l). Former subsec. (l), relating to stock redemption expenses, redesignated (k).

Subsec. (m). Pub. L. 100–647, §3011(b)(3)(B), (C), redesignated subsec. (n), relating to cross references, as (m). Former subsec. (m), relating to special rules for health insurance costs of self-employed individuals, redesignated (l).

Pub. L. 100–647, §1011B(b)(2), redesignated subsec. (m), relating to cross references, as (n).

Subsec. (m)(2)(A). Pub. L. 100–647, §1011B(b)(3), inserted "derived by the taxpayer from the trade or business with respect to which the plan providing the medical care coverage is established" after "401(c))".

Subsec. (m)(4), (5). Pub. L. 100–647, §1011B(b)(1), added par. (4) and redesignated former par. (4) as (5).

Subsec. (n). Pub. L. 100–647, §3011(b)(3)(C), redesignated subsec. (n) as (m).

Pub. L. 100–647, §1011B(b)(2), redesignated subsec. (m), relating to cross references, as (n).

1986—Subsec. (i)(1). Pub. L. 99–272, §10001(d), substituted "Coverage relating to end stage renal disease" for "General rule" in heading.

Subsec. (i)(2), (3). Pub. L. 99–272, §10001(a), added par. (2) and redesignated former par. (2) as (3).

Subsec. (k). Pub. L. 99–272, §10001(c), added subsec. (k). Former subsec. (k) redesignated (l).

Subsec. (k)(2)(A). Pub. L. 99–514, §1895(d)(1)(A), inserted "If coverage under the plan is modified for any group of similarly situated beneficiaries, the coverage shall also be modified in the same manner for all individuals who are qualified beneficiaries under the plan pursuant to this subsection in connection with such group."

Subsec. (k)(2)(B)(i). Pub. L. 99–514, §1895(d)(2)(A), substituted "Maximum required period" for "Maximum period" in heading and amended text generally. Prior to amendment, text read as follows: "In the case of—

"(I) a qualifying event described in paragraph (3)(B) (relating to terminations and reduced hours), the date which is 18 months after the date of the qualifying event, and

"(II) any qualifying event not described in subclause (I), the date which is 36 months after the date of the qualifying event."

Subsec. (k)(2)(B)(i)(II). Pub. L. 99–509, §9501(b)(1)(A)(i), inserted "(other than a qualifying event described in paragraph (3)(F))".

Subsec. (k)(2)(B)(i)(III), (IV). Pub. L. 99–509, §9501(b)(1)(A)(ii)–(iv), added subcl. (III), redesignated former subcl. (III) as (IV), and inserted "or (3)(F)".

Subsec. (k)(2)(B)(iii). Pub. L. 99–514, §1895(d)(3)(A), inserted "The payment of any premium (other than any payment referred to in the last sentence of subparagraph (C)) shall be considered to be timely if made within 30 days after the date due or within such longer period as applies to or under the plan."

Subsec. (k)(2)(B)(iv). Pub. L. 99–514, §1895(d)(4)(A)(iii), substituted "Group health plan coverage" for "Reemployment" in heading.

Subsec. (k)(2)(B)(iv)(I). Pub. L. 99–514, §1895(d)(4)(A)(ii), substituted "covered under any other group health plan (as an employee or otherwise)" for "a covered employee under any other group health plan".

Subsec. (k)(2)(B)(iv)(II). Pub. L. 99–509, §9501(b)(2)(A), inserted "in the case of a qualified beneficiary other than a qualified beneficiary described in paragraph (7)(B)(iv),".

Subsec. (k)(2)(B)(v). Pub. L. 99–514, §1895(d)(4)(A)(i), struck out cl. (v), remarriage of spouse, which read as follows: "In the case of an individual who is a qualified beneficiary by reason of being the spouse of a covered employee, the date on which the beneficiary remarries and becomes covered under a group health plan."

Subsec. (k)(3). Pub. L. 99–509, §9501(a)(1), added subpar. (F) and concluding provisions.

Subsec. (k)(5)(B). Pub. L. 99–514, §1895(d)(5)(A), as amended by Pub. L. 99–509, §9307(c)(2)(B), and Pub. L. 100–647, §1018(t)(7)(B), inserted "of continuation coverage" and "If there is a choice among types of coverage under the plan, each qualified beneficiary is entitled to make a separate selection among such types of coverage." See 1988 Amendment note above.

Subsec. (k)(6)(B). Pub. L. 99–509, §9501(d)(1), substituted "(D), or (F)" for "or (D)".

Subsec. (k)(6)(C). Pub. L. 99–514, §1895(d)(6)(A), inserted "within 60 days after the date of the qualifying event".

Subsec. (k)(6)(D)(i). Pub. L. 99–509, §9501(d)(1), substituted "(D), or (F)" for "or (D)".

Subsec. (k)(7)(B)(iii). Pub. L. 99–514, §1895(d)(7), added cl. (iii).

Subsec. (k)(7)(B)(iv). Pub. L. 99–509, §9501(c)(1), added cl. (iv).

Subsec. (l). Pub. L. 99–514, §613(a), added subsec. (l). Former subsec. (l) redesignated (m).

Pub. L. 99–272, §10001(c), redesignated former subsec. (k), relating to cross references, as (l).

Subsec. (m). Pub. L. 99–514, §1161(a), added subsec. (m) relating to special rules for health insurance costs of self-employed individuals, and further directed that this section be amended "by redesignating subsection (n) as subsection (m)", which directory language could not be executed because this section does not contain a subsec. (n).

Pub. L. 99–514, §613(a), redesignated subsec. (l), relating to cross references, as (m).

1984—Subsec. (i)(2). Pub. L. 98–369, §2354(d), substituted "section 213(d)" for "section 213(e)".

Subsec. (j). Pub. L. 98–573 added subsec. (j). Former subsec. (j) redesignated (k).

Subsec. (j)(3). Pub. L. 98–369, §512(b), added par. (3).

Subsec. (k). Pub. L. 98–573 redesignated former subsec. (j) as (k).

1982—Subsec. (a). Pub. L. 97–216 inserted provisions under which amounts expended by Members of Congress within each taxable year for living expenses shall not be deductible for income tax purposes in excess of $3,000.

Subsec. (c)(1). Pub. L. 97–248, §288(a), substituted "is unlawful under the Foreign Corrupt Practices Act of 1977" for "would be unlawful under the laws of the United States if such laws were applicable to such payment and to such official or employee" after "government, the payment", and "(or is unlawful under the Foreign Corrupt Practices Act of 1977)" for "(or would be unlawful under the laws of the United States)" before "shall be upon the Secretary".

Subsec. (h). Pub. L. 97–248, §128(b)(2), redesignated subsec. (i), relating to State legislators' travel expenses away from home, as (h). Former subsec. (h), relating to group health plans, redesignated (i).

Subsec. (i). Pub. L. 97–248, §128(b)(2), redesignated former subsec. (h), relating to group health plans, as (i). Former subsec. (i), relating to State legislators' travel expenses away from home, redesignated (h). Former subsec. (i), relating to cross references, redesignated (j).

Subsec. (j). Pub. L. 97–248, §128(b)(1), redesignated former subsec. (i), relating to cross references, as (j).

1981—Subsec. (a). Pub L. 97–51 struck out provisions under which amounts expended by Members of Congress within each taxable year for living expenses could not be deductible for income tax purposes in excess of $3,000.

Subsec. (h). Pub. L. 97–35 added subsec. (h) relating to group health plans. Former subsec. (h), as added by Pub. L. 97–34 and relating to State legislators' travel expenses away from home, redesignated (i). See 1982 Amendment note above.

Pub. L. 97–34 added subsec. (h) relating to State legislators' travel expenses away from home. Former subsec. (h), relating to cross references, redesignated (i). See 1982 Amendment note above.

Subsec. (i). Pub. L. 97–35 redesignated former subsec. (h), as added by Pub. L. 97–34 and relating to State legislators' travel expenses away from home, as (i). See 1982 Amendment note above.

Pub. L. 97–34 redesignated former subsec. (h), relating to cross references, as (i). See 1982 Amendment note above.

1976—Subsec. (a). Pub. L. 94–455, §1901(c)(4), struck out reference to Territory in provisions following par. (3).

Subsec. (c). Pub. L. 94–455, §1906(b)(13)(A), struck out in pars. (1) and (2) "or his delegate" after "Secretary".

1971—Subsec. (c). Pub. L. 92–178, §310(a)(2), substituted "Illegal bribes, kickbacks, and other payments" for "Bribes and illegal kickbacks" in heading.

Subsec. (c)(2). Pub. L. 92–178, §310(a)(1), substituted provisions respecting "Other illegal payments" for former provisions on "Other bribes or kickbacks" reading "If in a criminal proceeding a taxpayer is convicted of making a payment (other than a payment described in paragraph (1) which is an illegal bribe or kickback, or his plea of guilty or nolo contendere to an indictment or information charging the making of such a payment is entered or accepted in such a proceeding, no deduction shall be allowed under subsection (a) on account of such payment or any related payment made prior to the date of the final judgment in such proceeding."

Subsec. (c)(3). Pub. L. 92–178, §310(a)(1), substituted provisions respecting kickbacks, rebates, and bribes under medicare and medicaid for former statute of limitations provisions.

1969—Subsec. (c). Pub. L. 91–172, §902(b), designated existing provisions as par. (1), extended the applicability of nondeductible expenses for payments to any official or employee of any government, or of any agency or instrumentality of any government, and added pars. (2) and (3).

Subsecs. (f), (g). Pub. L. 91–172, §902(a), added subsecs. (f) and (g). Former subsec. (f) redesignated (h).

Subsec. (h). Pub. L. 91–172, §§516(c)(2)(A), 902(a), redesignated former subsec. (f) as (h), substituted "(1)

For" for "For", and inserted reference to section 1253 for special rule relating to the treatment of payments by a transferee of a franchise, trademark, or trade name.

1962—Subsec. (a)(2). Pub. L. 87–834, §4(b), substituted "(including amounts expended for meals and lodging other than amounts which are lavish or extravagant under the circumstances)" for "including the entire amount expended for meals and lodging)".

Subsecs. (e), (f). Pub. L. 87–834, §3(a), added subsec. (e) and redesignated former subsec. (e) as (f).

1960—Subsec. (b). Pub. L. 86–779, §7(b), inserted "the dollar limitations," after "the percentage limitations,".

Subsecs. (d), (e). Pub. L. 86–779, §8(a), added subsec. (d) and redesignated former subsec. (d) as (e).

1958—Subsecs. (c), (d). Pub. L. 85–866, §5(a), added subsec. (c) and redesignated former subsec. (c) as (d).

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112–10 effective as if included in the provisions of, and the amendments made by, the provisions of Pub. L. 111–148 to which it relates, see section 1858(d) of Pub. L. 112–10, set out as a note under section 36B of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–240, title II, §2042(b), Sept. 27, 2010, 124 Stat. 2560, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2009."

Pub. L. 111–148, title IX, §9014(b), Mar. 23, 2010, 124 Stat. 870, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2009, with respect to services performed after such date."

Pub. L. 111–148, title X, §10108(g)(2), Mar. 23, 2010, 124 Stat. 914, provided that: "The amendments made by this subsection [amending this section] shall apply to vouchers provided after December 31, 2013."

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. A, title III, §302(c)(1), Oct. 3, 2008, 122 Stat. 3806, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years ending on or after the date of the enactment of this Act [Oct. 3, 2008]."

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title III, §318(c), Oct. 22, 2004, 118 Stat. 1470, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2003."

Amendment by section 802(b)(2) of Pub. L. 108–357 effective Mar. 4, 2003, see section 802(d) of Pub. L. 108–357, set out as an Effective Date note under section 4985 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–121 applicable to amounts paid or incurred in taxable years beginning after Dec. 31, 2002, see section 109(c) of Pub. L. 108–121, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1998 AMENDMENTS

Pub. L. 105–277, div. J, title II, §2002(b), Oct. 21, 1998, 112 Stat. 2681–901, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1998."

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title IX, §934(b), Aug. 5, 1997, 111 Stat. 882, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1996."

Pub. L. 105–34, title XII, §1203(c), Aug. 5, 1997, 111 Stat. 995, provided that: "The amendments made by this section [amending this section and repealing provisions set out as a note below] shall apply to taxable years beginning after December 31, 1997."

Pub. L. 105–34, title XII, §1204(b), Aug. 5, 1997, 111 Stat. 995, provided that: "The amendment made by subsection (a) [amending this section] shall apply to amounts paid or incurred with respect to taxable years ending after the date of the enactment of this Act [Aug. 5, 1997]."

Amendment by section 1602(c) of Pub. L. 105–34 effective as if included in the provisions of the Health

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

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 311(a) of Pub. L. 104–191 applicable to taxable years beginning after Dec. 31, 1996, see section 311(c) of Pub. L. 104–191, set out as a note under section 104 of this title.

Pub. L. 104–191, title III, §322(c), Aug. 21, 1996, 110 Stat. 2062, provided that: "The amendments made by this section [amending this section and section 213 of this title] shall apply to taxable years beginning after December 31, 1996."

Pub. L. 104–188, title I, §1704(p)(4), Aug. 20, 1996, 110 Stat. 1886, provided that:

"(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection [amending this section] shall apply to amounts paid or incurred after September 13, 1995, in taxable years ending after such date.

"(B) PARAGRAPH (2).—The amendment made by paragraph (2) [amending this section] shall take effect as if included in the amendment made by section 613 of the Tax Reform Act of 1986 [Pub. L. 99–514]."

EFFECTIVE DATE OF 1995 AMENDMENT

Pub. L. 104–7, §1(c), Apr. 11, 1995, 109 Stat. 93, provided that:

"(1) EXTENSION.—The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1993.

"(2) INCREASE.—The amendment made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 1994."

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13131(d)(2) of Pub. L. 103–66 applicable to taxable years beginning after Dec. 31, 1993, see section 13131(e) of Pub. L. 103–66, set out as a note under section 32 of this title.

Pub. L. 103–66, title XIII, §13174(a)(3), Aug. 10, 1993, 107 Stat. 457, provided that: "The amendments made by this subsection [amending this section and repealing provisions set out below] shall apply to taxable years ending after June 30, 1992."

Pub. L. 103–66, title XIII, §13174(b)(2), Aug. 10, 1993, 107 Stat. 457, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after December 31, 1992."

Pub. L. 103–66, title XIII, §13211(b), Aug. 10, 1993, 107 Stat. 471, provided that: "The amendment made by subsection (a) [amending this section] shall apply to amounts which would otherwise be deductible for taxable years beginning on or after January 1, 1994."

Pub. L. 103–66, title XIII, §13222(e), Aug. 10, 1993, 107 Stat. 481, provided that: "The amendments made by this section [amending this section and sections 170, 6033, and 7871 of this title] shall apply to amounts paid or incurred after December 31, 1993."

Pub. L. 103–66, title XIII, §13442(b), Aug. 10, 1993, 107 Stat. 568, as amended by Pub. L. 104–7, §5, Apr. 11, 1995, 109 Stat. 96, provided that: "The provisions of this section [amending this section] shall apply to services provided after February 2, 1993, and on or before December 31, 1995."

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–486, title XIX, §1938(b), Oct. 24, 1992, 106 Stat. 3033, provided that: "The amendment made by subsection (a) [amending this section] shall apply to costs paid or incurred after December 31, 1992."

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102–227, title I, §110(b), Dec. 11, 1991, 105 Stat. 1688, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1991."

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11111(d)(2) of Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, see section 11111(f) of Pub. L. 101–508, set out as a note under section 32 of this title.

Pub. L. 101–508, title XI, §11410(c), Nov. 5, 1990, 104 Stat. 1388–479, provided that: "The amendments made by this section [amending this section and repealing provisions set out below] shall apply to taxable years beginning after December 31, 1989."

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VI, §6202(b)(5), Dec. 19, 1989, 103 Stat. 2233, provided that: "The amendments

made by this subsection [amending this section, sections 4980B and 5000 of this title, sections 623 and 631 of Title 29, Labor, and sections 1395p, 1395r, and 1395y of Title 42, The Public Health and Welfare] shall apply to items and services furnished after the date of the enactment of this Act [Dec. 19, 1989]."

Pub. L. 101–239, title VII, §7107(c), Dec. 19, 1989, 103 Stat. 2306, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1989."

Pub. L. 101–239, title VII, §7862(c)(3)(D), Dec. 19, 1989, 103 Stat. 2432, provided that: "The amendments made by this paragraph [amending this section, section 4980B of this title, and section 1162 of Title 29, Labor] shall apply to—

"(i) qualifying events occurring after December 31, 1989, and

"(ii) in the case of qualified beneficiaries who elected continuation coverage after December 31, 1988, the period for which the required premium was paid (or was attempted to be paid but was rejected as such)."

Amendment by Pub. L. 101–140 effective as if included in section 1151 of Pub. L. 99–514, see section 203(c) of Pub. L. 101–140, set out as a note under section 79 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 1011B(b)(1)–(3) and 1018(t)(7)(B) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title III, §3011(d), Nov. 10, 1988, 102 Stat. 3625, provided that: "The amendments made by this section [enacting section 4980B of this title, and amending this section, sections 106 and 414 of this title, section 1167 of Title 29, Labor, and section 300bb–8 of Title 42, The Public Health and Welfare] shall apply to taxable years beginning after December 31, 1988, but shall not apply to any plan for any plan year to which section 162(k) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act [Nov. 10, 1988]) did not apply by reason of section 10001(e)(2) of the Consolidated Omnibus Budget Reconciliation Act of 1985 [section 10001(e)(2) of Pub. L. 99–272, set out as an Effective Date of 1986 Amendment note under section 106 of this title]."

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title VI, §613(b), Oct. 22, 1986, 100 Stat. 2251, provided that: "The amendments made by subsection (a) [amending this section] shall apply to any amount paid or incurred after February 28, 1986, in taxable years ending after such date."

Pub. L. 99–514, title XI, §1161(b), Oct. 22, 1986, 100 Stat. 2509, provided that:

"(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1986.

"(2) TRANSITIONAL RULE.—In the case of any year to which section 89 of the Internal Revenue Code of 1986 does not apply, [former] section 162(m)(2)(B) of such Code shall be applied by substituting any nondiscrimination requirements otherwise applicable for the requirements of section 89 of such Code.

"(3) ASSISTANCE.—The Secretary of the Treasury or his delegate shall provide guidance to self-employed individuals to assist them in meeting the requirements of section 89 of the Internal Revenue Code of 1986 with respect to coverage required by the amendments made by this section [amending this section]."

Pub. L. 99–514, title XVIII, §1895(d)(6)(D), Oct. 22, 1986, 100 Stat. 2939, provided that: "The amendments made by this paragraph [amending this section, section 1166 of Title 29, Labor, and section 300bb–6 of Title 42, The Public Health and Welfare] shall only apply with respect to qualifying events occurring after the date of the enactment of this Act [Oct. 22, 1986]."

Pub. L. 99–514, title XVIII, §1895(e), Oct. 22, 1986, 100 Stat. 2940, provided that: "Except as otherwise provided in this section, the amendments made by this section [amending this section, section 3121 of this title, sections 1162 and 1165 to 1167 of Title 29, sections 300bb–2, 300bb–5, 300bb–6, 410, 1301, 1320c–13, 1395p, 1395u, 1395cc, 1395dd, 1395mm, 1395ww, 1395yy, 1396a, 1396b, 1396d, and 1396s of Title 42, enacting provisions set out as notes under this section, section 3121 of this title, section 1167 of Title 29, and sections 1395u, 1395y, 1395ww, and 1395yy of Title 42, and amending provisions set out as notes under sections 403, 1395u, 1395cc, 1395mm, 1395ww, 1395yy, and 1396b of Title 42] shall be effective as if included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985 [Pub. L. 99–272]."

Amendment by section 9307(c)(2)(B) of Pub. L. 99–509 effective as if included in the enactment of Tax Reform Act of 1986, Pub. L. 99–514, see section 9307(c)(2) of Pub. L. 99–509, set out as a note under section 1395u of Title 42.

Pub. L. 99–509, title IX, §9501(e), Oct. 21, 1986, 100 Stat. 2078, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and sections 1162, 1163, 1166, and 1167 of Title 29, Labor] shall take effect as if included in title X of the Consolidated

Omnibus Budget Reconciliation Act of 1985 [sections 10001 to 10003 of Pub. L. 99–272].

"(2) TREATMENT OF CERTAIN BANKRUPTCY PROCEEDINGS.—Notwithstanding paragraph (1), section 10001(e) of the Consolidated Omnibus Budget Reconciliation Act of 1985 [set out as a note under section 106 of this title], and section 10002(d) of such Act [set out as a note under section 1161 of Title 29], the amendments made by this section [amending this section and sections 1162, 1163, 1166, and 1167 of Title 29] and by sections 10001 and 10002 of such Act [enacting sections 1161 to 1168 of Title 29, amending this section, section 106 of this title, and section 1132 of Title 29, and enacting provisions set out as notes under section 106 of this title and sections 1161 and 1166 of Title 29] shall apply in the case of plan years ending during the 12-month period beginning July 1, 1986, but only with respect to—

"(A) a qualifying event described in section 162(k)(3)(F) of the Internal Revenue Code of 1986 or section 603(6) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1163(6)], and

"(B) a qualifying event described in section 162(k)(3)(A) of the Internal Revenue Code of 1986 or section 603(1) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1163(1)] relating to the death of a retired employee occurring after the date of the qualifying event described in subparagraph (A).

"(3) TREATMENT OF CURRENT RETIREES.—Section 162(k)(3)(F) of the Internal Revenue Code of 1986 and section 603(6) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1163(6)] apply to covered employees who retired before, on, or after the date of the enactment of this Act [Oct. 21, 1986].

"(4) NOTICE.—In the case of a qualifying event described in section 603(6) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1163(6)] that occurred before the date of the enactment of this Act [Oct. 21, 1986], the notice required under section 606(2) of such Act [29 U.S.C. 1166(2)] (and under section 162(k)(6)(B) of the Internal Revenue Code of 1986) with respect to such event shall be provided no later than 30 days after the date of the enactment of this Act [Oct. 21, 1986]."

Amendment by Pub. L. 99–272 applicable to plan years beginning on or after July 1, 1986, with special rule for collective bargaining agreements, see section 10001(e) of Pub. L. 99–272, set out as a note under section 106 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–573, title II, §232(b), Oct. 30, 1984, 98 Stat. 2991, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 30, 1984]."

Amendment by section 512(b) of Pub. L. 98–369 applicable to amounts paid or incurred after July 18, 1984, in taxable years ending after such date, subject to an exception for certain extended vacation pay plans, see section 512(c) of Pub. L. 98–369, set out as a note under section 404 of this title.

Amendment by section 2354(d) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e) of Pub. L. 98–369, set out as a note under section 1320a–1 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title II, §288(c), Sept. 3, 1982, 96 Stat. 571, provided that: "The amendments made by this section [amending this section and sections 952 and 964 of this title] shall apply to payments made after the date of the enactment of this Act [Sept. 3, 1982]."

Amendment by section 128(b) of Pub. L. 97–248 effective as if such amendment had been originally included as part of this section as this section was amended by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, see section 128(e)(2) of Pub. L. 97–248, set out as a note under section 1395x of Title 42, The Public Health and Welfare.

Pub. L. 97–216, title II, §215(d), July 18, 1982, 96 Stat. 194, provided that: "The amendments made by this section [amending this section and section 280A of this title and repealing provisions set out as a note under this section] shall apply to taxable years beginning after December 31, 1981."

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–51, §139(b)(3), Oct. 1, 1981, 95 Stat. 967, as amended by Pub. L. 97–92, §133a, Dec. 15, 1981, 95 Stat. 1199, provided that: "The amendments made by this subsection [amending this section and repealing section 31c of Title 2, The Congress] shall apply to taxable years beginning after December 31, 1980."

Pub. L. 97–35, title XXI, §2146(c)(2), Aug. 13, 1981, 95 Stat. 801, provided that: "The amendments made by subsection (b) [amending this section] shall be effective with respect to taxable years beginning on or after January 1, 1982."

Pub. L. 97–34, title I, §127(b), Aug. 13, 1981, 95 Stat. 203, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning on or after January 1, 1976."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(c)(4) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Pub. L. 92–178, title III, §310(b), Dec. 10, 1971, 85 Stat. 525, provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to payments after December 30, 1969, except that section 162(c)(3) of the Internal Revenue Act of 1954 (as added by subsection (a)) shall apply only with respect to kickbacks, rebates, and bribes payment of which is made on or after the date of the enactment of this Act [Dec. 10, 1971]."

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title IX, §902(c), Dec. 30, 1969, 83 Stat. 711, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Section 162(f) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)) shall apply to all taxable years to which such Code applies. Section 162(g) of such Code (as added by subsection (a)) shall apply with respect to amounts paid or incurred after December 31, 1969. Section 162(c)(1) of such Code (as amended by subsection (b)) shall apply to all taxable years to which such Code applies. Sections 162(c)(2) and (3) of such Code (as amended by subsection (b)) shall apply with respect to payments made after the date of the enactment of this Act [Dec. 30, 1969]."

Amendment by section 516(c)(2)(A) of Pub. L. 91–172 applicable to transfers after Dec. 31, 1969, see section 516(d)(3) of Pub. L. 91–172, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87–834, §4(c), Oct. 16, 1962, 76 Stat. 977, provided that: "The amendments made by this section [amending this section and enacting section 274 of this title] shall apply with respect to taxable years ending after December 31, 1962, but only in respect of periods after such date."

Pub. L. 87–834, §3(b), Oct. 16, 1962, 76 Stat. 973, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1962."

EFFECTIVE DATE OF 1960 AMENDMENT

Pub. L. 86–779, §7(c), Sept. 14, 1960, 74 Stat. 1002, provided that: "The amendments made by subsections (a) and (b) [amending this section and section 170 of this title] shall apply with respect to taxable years beginning after December 31, 1959."

Pub. L. 86–779, §8(d), Sept. 14, 1960, 74 Stat. 1003, provided that: "The amendments made by subsections (a), (b), and (c) [amending this section and section 1054 of this title and amending table of sections for Part IV by adding item 1054 and numbering former item 1054 as 1055] shall apply with respect to taxable years beginning after December 31, 1959."

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85–866, title I, §5(b), Sept. 2, 1958, 72 Stat. 1608, provided that: "The amendment made by subsection (a) [amending this section] shall apply only with respect to expenses paid or incurred after the date of the enactment of this Act [Sept. 2, 1958]. The determination as to whether any expense paid or incurred on or before the date of the enactment of this Act shall be allowed as a deduction shall be made as if this section had not been enacted and without inference drawn from the fact that this section is not made applicable with respect to expenses paid or incurred on or before the date of the enactment of this Act."

DEDUCTION FOR SPECIAL ASSESSMENTS

Pub. L. 104–208, div. A, title II, §2711, Sept. 30, 1996, 110 Stat. 3009–498, provided that, for purposes of subtitle A of this title, the amount allowed as a deduction under this section for a taxable year would include any amount paid during that year by reason of an assessment under section 2702 of Pub. L. 104–208, formerly set out as a note under section 1817 of Title 12, Banks and Banking, and that section 172(f) of this title would not apply to that deduction.

SPECIAL RULE FOR DEDUCTIONS UNDER SUBSECTION (L) FOR CERTAIN TAXABLE YEARS

Pub. L. 102–227, title I, §110(a)(2), Dec. 11, 1991, 105 Stat. 1688, provided that, in the case of any taxable year beginning in 1992 only amounts paid before July 1, 1992, by the individual for insurance coverage for periods before July 1, 1992, would be taken into account in determining the amount deductible under subsec. (l) of this section with respect to such individual for such taxable year, and that for purposes of subparagraph

(A) of subsec. (l)(2) of this section, the amount of the earned income described in such subparagraph taken into account for such taxable year would be the amount which bears the same ratio to the total amount of such earned income as the number of months in such taxable year ending before July 1, 1992, bears to the number of months in such taxable year, prior to repeal by Pub. L. 103–66, title XIII, §13174(a)(2), Aug. 10, 1993, 107 Stat. 457.

Pub. L. 101–239, title VII, §7107(a)(2), Dec. 19, 1989, 103 Stat. 2306, provided that, in the case of any taxable year beginning in 1990 only amounts paid before Oct. 1, 1990, by the individual for insurance coverage for periods before Oct. 1, 1990, would be taken into account in determining the amount deductible under subsec. (l) of this section with respect to such individual for such taxable year, and that for purposes of subsec. (l)(2)(A) of this section, the amount of the earned income described in such paragraph taken into account for such taxable year would be the amount which bears the same ratio to the total amount of such earned income as the number of months in such taxable year ending before Oct. 1, 1990, bears to the number of months in such taxable year, prior to repeal by Pub. L. 101–508, title XI, §11410(b), Nov. 5, 1990, 104 Stat. 1388–479.

BUSINESS USE OF AUTOMOBILES BY RURAL MAIL CARRIERS

Pub. L. 100–647, title VI, §6008, Nov. 10, 1988, 102 Stat. 3687, provided that in the case of any employee of the United States Postal Service who performed services involving the collection and delivery of mail on a rural route, such employee was permitted to compute the amount allowable as a deduction under this chapter for the use of an automobile in performing such services by using a standard mileage rate for all miles of such use equal to 150 percent of the basic standard rate, prior to repeal by Pub. L. 105–34, title XII, §1203(b), Aug. 5, 1997, 111 Stat. 995. See subsec. (o) of this section.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

LIVING EXPENSES OF MEMBERS OF CONGRESS WHILE AWAY FROM HOME; SENSE OF CONGRESS

Pub. L. 97–51, §139(a), Oct. 1, 1981, 95 Stat. 967, which expressed the sense of Congress that the dollar limits on tax deductions for living expenses of Members of Congress while away from home be the same as such limits for businessmen and other private citizens, was repealed by Pub. L. 97–216, title II, §215(c), July 18, 1982, 96 Stat. 194.

STATE LEGISLATORS' TRAVEL EXPENSES AWAY FROM HOME

Pub. L. 94–455, title VI, §604, Oct. 4, 1976, 90 Stat. 1575, as amended by Pub. L. 95–30, title III, §307, May 23, 1977, 91 Stat. 153; Pub. L. 95–258, §2, Apr. 7, 1978, 92 Stat. 195; Pub. L. 96–167, §3, Dec. 29, 1979, 93 Stat. 1275; Pub. L. 96–178, §1, Jan. 2, 1980, 93 Stat. 1295; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) In GENERAL.—For purposes of section 162(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], in the case of any individual who was a State legislator at any time during any taxable year beginning before January 1, 1981, and who, for the taxable year, elects the application of this section, for any period during such a taxable year in which he was a State legislator—

"(1) the place of residence of such individual within the legislative district which he represented shall be considered his home, and

"(2) he shall be deemed to have expended for living expenses (in connection with his trade or business as a legislator) an amount equal to the sum of the amounts determined by multiplying each legislative day of such individual during the taxable year by the amount generally allowable with respect to such day to employees of the executive branch of the Federal Government for per diem while away from home but serving in the United States.

"(b) LEGISLATIVE DAYS.—For purposes of subsection (a), a legislative day during any taxable year for any individual shall be any day during such year on which (1) the legislature was in session (including any day in which the legislature was not in session for a period of 4 consecutive days or less), or (2) the legislature was not in session but the physical presence of the individual was formally recorded at a meeting of a committee of such legislature.

"(c) LIMITATION.—The amount taken into account as living expenses attributable to a trade or business as a State legislator for any taxable year beginning before January 1, 1976, under an election made under this

section shall not exceed the amount claimed for such purpose under a return (or amended return) filed before May 21, 1976.

"(d) MAKING AND EFFECT OF ELECTION.—An election under this section shall be made at such time and in such manner as the Secretary of the Treasury or his delegate shall by regulations prescribe."

[Amendment of section 604 of Pub. L. 94–455 by section 1 of Pub. L. 96–178, which purported to substitute "January 1, 1979" for "January 1, 1978", was not executed because of the prior amendment by section 3(a)(2), (b) of Pub. L. 96–167 which substituted "January 1, 1981" for "January 1, 1978" in subsec. (a) and which struck out the last sentence of subsec. (d).]

DENIAL OF DEDUCTION FOR AMOUNTS PAID OR INCURRED ON JUDGMENTS IN SUITS BROUGHT TO RECOVER PRICE INCREASES IN PURCHASE OF NEW PRINCIPAL RESIDENCE

No deductions to be allowed in computing taxable income for two-thirds of any amount paid or incurred on a judgment entered against any person in a suit brought under section 208(b) of Pub. L. 94–12, see section 208(c) of Pub. L. 94–12, title II, Mar. 29, 1975, 89 Stat. 35, set out as a note under section 44 of this title.

DEDUCTIBILITY OF ACCRUED VACATION PAY

Pub. L. 85–866, title I, §97, Sept. 2, 1958, 72 Stat. 1672, as amended by Pub. L. 86–496, §2, June 8, 1960, 74 Stat. 164; Pub. L. 88–153, Oct. 17, 1963, 77 Stat. 272; Pub. L. 88–554, §1, Aug. 31, 1964, 78 Stat. 761; Pub. L. 89–692, Oct. 15, 1966, 80 Stat. 1025; Pub. L. 91–172, title IX, §903, Dec. 30, 1969, 83 Stat. 711; Pub. L. 92–580, §3, Oct. 27, 1972, 86 Stat. 1276, provided that deductions for accrued vacation pay under this section would not be denied for any taxable year ending before Jan. 1, 1973, so long as the employee at the time of accrual of pay has performed the necessary qualifying service under an appropriate plan.

INVESTIGATION OF, AND REPORTS ON, TREATMENT OF ENTERTAINMENT AND CERTAIN OTHER EXPENSES

Pub. L. 86–564, title III, §301, June 30, 1960, 74 Stat. 291, authorized the Joint Committee on Internal Revenue Taxation to investigate and report on the use of entertainment and certain other expense deductions to the 87th Congress and authorized the Secretary of the Treasury to report to the 87th Congress on the enforcement program of the Internal Revenue Service relating to such deductions.

FILING OF CLAIMS FOR REFUNDS OF OVERPAYMENTS

Extension of time for filing of claims for refunds or credit of overpayments of income tax resulting from application of this section, see section 96 of Pub. L. 85–866, set out as a note under section 6511 of this title.

§163. Interest

(a) General rule

There shall be allowed as a deduction all interest paid or accrued within the taxable year on indebtedness.

(b) Installment purchases where interest charge is not separately stated

(1) General rule

If personal property or educational services are purchased under a contract—

(A) which provides that payment of part or all of the purchase price is to be made in installments, and

(B) in which carrying charges are separately stated but the interest charge cannot be ascertained,

then the payments made during the taxable year under the contract shall be treated for purposes of this section as if they included interest equal to 6 percent of the average unpaid balance under the contract during the taxable year. For purposes of the preceding sentence, the average unpaid balance is the sum of the unpaid balance outstanding on the first day of each month beginning during the taxable year, divided by 12. For purposes of this paragraph, the term "educational

services" means any service (including lodging) which is purchased from an educational organization described in section 170(b)(1)(A)(ii) and which is provided for a student of such organization.

(2) Limitation

In the case of any contract to which paragraph (1) applies, the amount treated as interest for any taxable year shall not exceed the aggregate carrying charges which are properly attributable to such taxable year.

(c) Redeemable ground rents

For purposes of this subtitle, any annual or periodic rental under a redeemable ground rent (excluding amounts in redemption thereof) shall be treated as interest on an indebtedness secured by a mortgage.

(d) Limitation on investment interest

(1) In general

In the case of a taxpayer other than a corporation, the amount allowed as a deduction under this chapter for investment interest for any taxable year shall not exceed the net investment income of the taxpayer for the taxable year.

(2) Carryforward of disallowed interest

The amount not allowed as a deduction for any taxable year by reason of paragraph (1) shall be treated as investment interest paid or accrued by the taxpayer in the succeeding taxable year.

(3) Investment interest

For purposes of this subsection—

(A) In general

The term "investment interest" means any interest allowable as a deduction under this chapter (determined without regard to paragraph (1)) which is paid or accrued on indebtedness properly allocable to property held for investment.

(B) Exceptions

The term "investment interest" shall not include—

(i) any qualified residence interest (as defined in subsection (h)(3)), or

(ii) any interest which is taken into account under section 469 in computing income or loss from a passive activity of the taxpayer.

(C) Personal property used in short sale

For purposes of this paragraph, the term "interest" includes any amount allowable as a deduction in connection with personal property used in a short sale.

(4) Net investment income

For purposes of this subsection—

(A) In general

The term "net investment income" means the excess of—

(i) investment income, over

(ii) investment expenses.

(B) Investment income

The term "investment income" means the sum of—

(i) gross income from property held for investment (other than any gain taken into account under clause (ii)(I)),

(ii) the excess (if any) of—

(I) the net gain attributable to the disposition of property held for investment, over

(II) the net capital gain determined by only taking into account gains and losses from

dispositions of property held for investment, plus

(iii) so much of the net capital gain referred to in clause (ii)(II) (or, if lesser, the net gain referred to in clause (ii)(I)) as the taxpayer elects to take into account under this clause.

Such term shall include qualified dividend income (as defined in section 1(h)(11)(B)) only to the extent the taxpayer elects to treat such income as investment income for purposes of this subsection.

(C) Investment expenses

The term "investment expenses" means the deductions allowed under this chapter (other than for interest) which are directly connected with the production of investment income.

(D) Income and expenses from passive activities

Investment income and investment expenses shall not include any income or expenses taken into account under section 469 in computing income or loss from a passive activity.

(E) Reduction in investment income during phase-in of passive loss rules

Investment income of the taxpayer for any taxable year shall be reduced by the amount of the passive activity loss to which section 469(a) does not apply for such taxable year by reason of section 469(m). The preceding sentence shall not apply to any portion of such passive activity loss which is attributable to a rental real estate activity with respect to which the taxpayer actively participates (within the meaning of section 469(i)(6)) during such taxable year.

(5) Property held for investment

For purposes of this subsection—

(A) In general

The term "property held for investment" shall include—

(i) any property which produces income of a type described in section 469(e)(1), and

(ii) any interest held by a taxpayer in an activity involving the conduct of a trade or business—

(I) which is not a passive activity, and

(II) with respect to which the taxpayer does not materially participate.

(B) Investment expenses

In the case of property described in subparagraph (A)(i), expenses shall be allocated to such property in the same manner as under section 469.

(C) Terms

For purposes of this paragraph, the terms "activity", "passive activity", and "materially participate" have the meanings given such terms by section 469.

(6) Phase-in of disallowance

In the case of any taxable year beginning in calendar years 1987 through 1990—

(A) In general

The amount of interest paid or accrued during any such taxable year which is disallowed under this subsection shall not exceed the sum of—

(i) the amount which would be disallowed under this subsection if—

(I) paragraph (1) were applied by substituting "the sum of the ceiling amount and the net investment income" for "the net investment income", and

(II) paragraphs (4)(E) and (5)(A)(ii) did not apply, and

(ii) the applicable percentage of the excess of—

(I) the amount which (without regard to this paragraph) is not allowable as a deduction under this subsection for the taxable year, over

(II) the amount described in clause (i).

The preceding sentence shall not apply to any interest treated as paid or accrued during the taxable year under paragraph (2).

(B) Applicable percentage

For purposes of this paragraph, the applicable percentage shall be determined in accordance with the following table:

In the case of taxable years beginning in:	The applicable percentage is:
1987	35
1988	60
1989	80
1990	90.

(C) Ceiling amount

For purposes of this paragraph, the term "ceiling amount" means—

(i) $10,000 in the case of a taxpayer not described in clause (ii) or (iii),

(ii) $5,000 in the case of a married individual filing a separate return, and

(iii) zero in the case of a trust.

(e) Original issue discount

(1) In general

In the case of any debt instrument issued after July 1, 1982, the portion of the original issue discount with respect to such debt instrument which is allowable as a deduction to the issuer for any taxable year shall be equal to the aggregate daily portions of the original issue discount for days during such taxable year.

(2) Definitions and special rules

For purposes of this subsection—

(A) Debt instrument

The term "debt instrument" has the meaning given such term by section 1275(a)(1).

(B) Daily portions

The daily portion of the original issue discount for any day shall be determined under section 1272(a) (without regard to paragraph (7) thereof and without regard to section 1273(a)(3)).

(C) Short-term obligations

In the case of an obligor of a short-term obligation (as defined in section 1283(a)(1)(A)) who uses the cash receipts and disbursements method of accounting, the original issue discount (and any other interest payable) on such obligation shall be deductible only when paid.

(3) Special rule for original issue discount on obligation held by related foreign person

(A) In general

If any debt instrument having original issue discount is held by a related foreign person, any portion of such original issue discount shall not be allowable as a deduction to the issuer until paid. The preceding sentence shall not apply to the extent that the original issue discount is effectively connected with the conduct by such foreign related person of a trade or business within the United States unless such original issue discount is exempt from taxation (or is subject to a reduced rate of tax) pursuant to a treaty obligation of the United States.

(B) Special rule for certain foreign entities

(i) In general

In the case of any debt instrument having original issue discount which is held by a related foreign person which is a controlled foreign corporation (as defined in section 957) or a passive foreign investment company (as defined in section 1297), a deduction shall be allowable to the issuer with respect to such original issue discount for any taxable year before the taxable year in which paid only to the extent such original issue discount is includible (determined without regard to properly allocable deductions and qualified deficits under section 952(c)(1)(B)) during such prior taxable year in the gross income of a United States person who owns (within the meaning of section 958(a)) stock in such corporation.

(ii) Secretarial authority

The Secretary may by regulation exempt transactions from the application of clause (i), including any transaction which is entered into by a payor in the ordinary course of a trade or business in which the payor is predominantly engaged.

(C) Related foreign person

For purposes of subparagraph (A), the term "related foreign person" means any person—

(i) who is not a United States person, and

(ii) who is related (within the meaning of section 267(b)) to the issuer.

(4) Exceptions

This subsection shall not apply to any debt instrument described in—

(A) subparagraph (D) of section 1272(a)(2) (relating to obligations issued by natural persons before March 2, 1984), and

(B) subparagraph (E) of section 1272(a)(2) (relating to loans between natural persons).

(5) Special rules for original issue discount on certain high yield obligations

(A) In general

In the case of an applicable high yield discount obligation issued by a corporation—

(i) no deduction shall be allowed under this chapter for the disqualified portion of the original issue discount on such obligation, and

(ii) the remainder of such original issue discount shall not be allowable as a deduction until paid.

For purposes of this paragraph, rules similar to the rules of subsection (i)(3)(B) shall apply in determining the amount of the original issue discount and when the original issue discount is paid.

(B) Disqualified portion treated as stock distribution for purposes of dividend received deduction

(i) In general

Solely for purposes of sections 243, 245, 246, and 246A, the dividend equivalent portion of any amount includible in gross income of a corporation under section 1272(a) in respect of an applicable high yield discount obligation shall be treated as a dividend received by such corporation from the corporation issuing such obligation.

(ii) Dividend equivalent portion

For purposes of clause (i), the dividend equivalent portion of any amount includible in gross income under section 1272(a) in respect of an applicable high yield discount obligation is the portion of the amount so includible—

(I) which is attributable to the disqualified portion of the original issue discount on such obligation, and

(II) which would have been treated as a dividend if it had been a distribution made by

the issuing corporation with respect to stock in such corporation.

(C) Disqualified portion

(i) In general

For purposes of this paragraph, the disqualified portion of the original issue discount on any applicable high yield discount obligation is the lesser of—

(I) the amount of such original issue discount, or

(II) the portion of the total return on such obligation which bears the same ratio to such total return as the disqualified yield on such obligation bears to the yield to maturity on such obligation.

(ii) Definitions

For purposes of clause (i), the term "disqualified yield" means the excess of the yield to maturity on the obligation over the sum referred to [1] subsection (i)(1)(B) plus 1 percentage point, and the term "total return" is the amount which would have been the original issue discount on the obligation if interest described in the parenthetical in section 1273(a)(2) were included in the stated redemption price at maturity.

(D) Exception for S corporations

This paragraph shall not apply to any obligation issued by any corporation for any period for which such corporation is an S corporation.

(E) Effect on earnings and profits

This paragraph shall not apply for purposes of determining earnings and profits; except that, for purposes of determining the dividend equivalent portion of any amount includible in gross income under section 1272(a) in respect of an applicable high yield discount obligation, no reduction shall be made for any amount attributable to the disqualified portion of any original issue discount on such obligation.

(F) Suspension of application of paragraph

(i) Temporary suspension

This paragraph shall not apply to any applicable high yield discount obligation issued during the period beginning on September 1, 2008, and ending on December 31, 2009, in exchange (including an exchange resulting from a modification of the debt instrument) for an obligation which is not an applicable high yield discount obligation and the issuer (or obligor) of which is the same as the issuer (or obligor) of such applicable high yield discount obligation. The preceding sentence shall not apply to any obligation the interest on which is interest described in section 871(h)(4) (without regard to subparagraph (D) thereof) or to any obligation issued to a related person (within the meaning of section 108(e)(4)).

(ii) Successive application

Any obligation to which clause (i) applies shall not be treated as an applicable high yield discount obligation for purposes of applying this subparagraph to any other obligation issued in exchange for such obligation.

(iii) Secretarial authority to suspend application

The Secretary may apply this paragraph with respect to debt instruments issued in periods following the period described in clause (i) if the Secretary determines that such application is appropriate in light of distressed conditions in the debt capital markets.

(G) Cross reference

For definition of applicable high yield discount obligation, see subsection (i).

(6) Cross references

For provision relating to deduction of original issue discount on tax-exempt obligation, see section 1288.

For special rules in the case of the borrower under certain loans for personal use, see section 1275(b).

(f) Denial of deduction for interest on certain obligations not in registered form

(1) In general

Nothing in subsection (a) or in any other provision of law shall be construed to provide a deduction for interest on any registration-required obligation unless such obligation is in registered form.

(2) Registration-required obligation

For purposes of this section—

(A) In general

The term "registration-required obligation" means any obligation (including any obligation issued by a governmental entity) other than an obligation which—

(i) is issued by a natural person,

(ii) is not of a type offered to the public, or

(iii) has a maturity (at issue) of not more than 1 year.

(B) Authority to include other obligations

Clauses (ii) and (iii) of subparagraph (A) shall not apply to any obligation if—

(i) such obligation is of a type which the Secretary has determined by regulations to be used frequently in avoiding Federal taxes, and

(ii) such obligation is issued after the date on which the regulations referred to in clause (i) take effect.

(3) Book entries permitted, etc.

For purposes of this subsection, rules similar to the rules of section 149(a)(3) shall apply, except that a dematerialized book entry system or other book entry system specified by the Secretary shall be treated as a book entry system described in such section.

(g) Reduction of deduction where section 25 credit taken

The amount of the deduction under this section for interest paid or accrued during any taxable year on indebtedness with respect to which a mortgage credit certificate has been issued under section 25 shall be reduced by the amount of the credit allowable with respect to such interest under section 25 (determined without regard to section 26).

(h) Disallowance of deduction for personal interest

(1) In general

In the case of a taxpayer other than a corporation, no deduction shall be allowed under this chapter for personal interest paid or accrued during the taxable year.

(2) Personal interest

For purposes of this subsection, the term "personal interest" means any interest allowable as a deduction under this chapter other than—

(A) interest paid or accrued on indebtedness properly allocable to a trade or business (other than the trade or business of performing services as an employee),

(B) any investment interest (within the meaning of subsection (d)),

(C) any interest which is taken into account under section 469 in computing income or loss from a passive activity of the taxpayer,

(D) any qualified residence interest (within the meaning of paragraph (3)),

(E) any interest payable under section 6601 on any unpaid portion of the tax imposed by section 2001 for the period during which an extension of time for payment of such tax is in effect under section 6163, and

(F) any interest allowable as a deduction under section 221 (relating to interest on educational loans).

(3) Qualified residence interest

For purposes of this subsection—

(A) In general

The term "qualified residence interest" means any interest which is paid or accrued during the taxable year on—

(i) acquisition indebtedness with respect to any qualified residence of the taxpayer, or

(ii) home equity indebtedness with respect to any qualified residence of the taxpayer.

For purposes of the preceding sentence, the determination of whether any property is a qualified residence of the taxpayer shall be made as of the time the interest is accrued.

(B) Acquisition indebtedness

(i) In general

The term "acquisition indebtedness" means any indebtedness which—

(I) is incurred in acquiring, constructing, or substantially improving any qualified residence of the taxpayer, and

(II) is secured by such residence.

Such term also includes any indebtedness secured by such residence resulting from the refinancing of indebtedness meeting the requirements of the preceding sentence (or this sentence); but only to the extent the amount of the indebtedness resulting from such refinancing does not exceed the amount of the refinanced indebtedness.

(ii) $1,000,000 limitation

The aggregate amount treated as acquisition indebtedness for any period shall not exceed $1,000,000 ($500,000 in the case of a married individual filing a separate return).

(C) Home equity indebtedness

(i) In general

The term "home equity indebtedness" means any indebtedness (other than acquisition indebtedness) secured by a qualified residence to the extent the aggregate amount of such indebtedness does not exceed—

(I) the fair market value of such qualified residence, reduced by

(II) the amount of acquisition indebtedness with respect to such residence.

(ii) Limitation

The aggregate amount treated as home equity indebtedness for any period shall not exceed $100,000 ($50,000 in the case of a separate return by a married individual).

(D) Treatment of indebtedness incurred on or before October 13, 1987

(i) In general

In the case of any pre-October 13, 1987, indebtedness—

(I) such indebtedness shall be treated as acquisition indebtedness, and

(II) the limitation of subparagraph (B)(ii) shall not apply.

(ii) Reduction in $1,000,000 limitation

The limitation of subparagraph (B)(ii) shall be reduced (but not below zero) by the aggregate amount of outstanding pre-October 13, 1987, indebtedness.

(iii) Pre-October 13, 1987, indebtedness

The term "pre-October 13, 1987, indebtedness" means—

(I) any indebtedness which was incurred on or before October 13, 1987, and which was secured by a qualified residence on October 13, 1987, and at all times thereafter before the interest is paid or accrued, or

(II) any indebtedness which is secured by the qualified residence and was incurred after October 13, 1987, to refinance indebtedness described in subclause (I) (or refinanced indebtedness meeting the requirements of this subclause) to the extent (immediately after the refinancing) the principal amount of the indebtedness resulting from the refinancing does not exceed the principal amount of the refinanced indebtedness (immediately before the refinancing).

(iv) Limitation on period of refinancing

Subclause (II) of clause (iii) shall not apply to any indebtedness after—

(I) the expiration of the term of the indebtedness described in clause (iii)(I), or

(II) if the principal of the indebtedness described in clause (iii)(I) is not amortized over its term, the expiration of the term of the 1st refinancing of such indebtedness (or if earlier, the date which is 30 years after the date of such 1st refinancing).

(E) Mortgage insurance premiums treated as interest

(i) In general

Premiums paid or accrued for qualified mortgage insurance by a taxpayer during the taxable year in connection with acquisition indebtedness with respect to a qualified residence of the taxpayer shall be treated for purposes of this section as interest which is qualified residence interest.

(ii) Phaseout

The amount otherwise treated as interest under clause (i) shall be reduced (but not below zero) by 10 percent of such amount for each $1,000 ($500 in the case of a married individual filing a separate return) (or fraction thereof) that the taxpayer's adjusted gross income for the taxable year exceeds $100,000 ($50,000 in the case of a married individual filing a separate return).

(iii) Limitation

Clause (i) shall not apply with respect to any mortgage insurance contracts issued before January 1, 2007.

(iv) Termination

Clause (i) shall not apply to amounts—

(I) paid or accrued after December 31, 2013, or

(II) properly allocable to any period after such date.

(4) Other definitions and special rules

For purposes of this subsection—

(A) Qualified residence

(i) In general

The term "qualified residence" means—

(I) the principal residence (within the meaning of section 121) of the taxpayer, and

(II) 1 other residence of the taxpayer which is selected by the taxpayer for purposes of this subsection for the taxable year and which is used by the taxpayer as a residence (within the meaning of section 280A(d)(1)).

(ii) Married individuals filing separate returns

If a married couple does not file a joint return for the taxable year—

(I) such couple shall be treated as 1 taxpayer for purposes of clause (i), and

(II) each individual shall be entitled to take into account 1 residence unless both individuals consent in writing to 1 individual taking into account the principal residence and 1 other residence.

(iii) Residence not rented

For purposes of clause (i)(II), notwithstanding section 280A(d)(1), if the taxpayer does not rent a dwelling unit at any time during a taxable year, such unit may be treated as a residence for such taxable year.

(B) Special rule for cooperative housing corporations

Any indebtedness secured by stock held by the taxpayer as a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as so defined) shall be treated as secured by the house or apartment which the taxpayer is entitled to occupy as such a tenant-stockholder. If stock described in the preceding sentence may not be used to secure indebtedness, indebtedness shall be treated as so secured if the taxpayer establishes to the satisfaction of the Secretary that such indebtedness was incurred to acquire such stock.

(C) Unenforceable security interests

Indebtedness shall not fail to be treated as secured by any property solely because, under any applicable State or local homestead or other debtor protection law in effect on August 16, 1986, the security interest is ineffective or the enforceability of the security interest is restricted.

(D) Special rules for estates and trusts

For purposes of determining whether any interest paid or accrued by an estate or trust is qualified residence interest, any residence held by such estate or trust shall be treated as a qualified residence of such estate or trust if such estate or trust establishes that such residence is a qualified residence of a beneficiary who has a present interest in such estate or trust or an interest in the residuary of such estate or trust.

(E) Qualified mortgage insurance

The term "qualified mortgage insurance" means—

(i) mortgage insurance provided by the Department of Veterans Affairs, the Federal Housing Administration, or the Rural Housing Service, and

(ii) private mortgage insurance (as defined by section 2 of the Homeowners Protection Act of 1998 (12 U.S.C. 4901), as in effect on the date of the enactment of this subparagraph).

(F) Special rules for prepaid qualified mortgage insurance

Any amount paid by the taxpayer for qualified mortgage insurance that is properly allocable to any mortgage the payment of which extends to periods that are after the close of the taxable year in which such amount is paid shall be chargeable to capital account and shall be treated as paid in such periods to which so allocated. No deduction shall be allowed for the unamortized balance of such account if such mortgage is satisfied before the end of its term. The preceding sentences shall not apply to amounts paid for qualified mortgage insurance provided by the Veterans Administration or the Rural Housing Administration.

(5) Phase-in of limitation

In the case of any taxable year beginning in calendar years 1987 through 1990, the amount of interest with respect to which a deduction is disallowed under this subsection shall be equal to the applicable percentage (within the meaning of subsection (d)(6)(B)) of the amount which (but for this paragraph) would have been so disallowed.

(i) Applicable high yield discount obligation

(1) In general

For purposes of this section, the term "applicable high yield discount obligation" means any debt instrument if—

(A) the maturity date of such instrument is more than 5 years from the date of issue,

(B) the yield to maturity on such instrument equals or exceeds the sum of—

(i) the applicable Federal rate in effect under section 1274(d) for the calendar month in which the obligation is issued, plus

(ii) 5 percentage points, and

(C) such instrument has significant original issue discount.

For purposes of subparagraph (B)(i), the Secretary may by regulation (i) permit a rate to be used with respect to any debt instrument which is higher than the applicable Federal rate if the taxpayer establishes to the satisfaction of the Secretary that such higher rate is based on the same principles as the applicable Federal rate and is appropriate for the term of the instrument, or (ii) permit, on a temporary basis, a rate to be used with respect to any debt instrument which is higher than the applicable Federal rate if the Secretary determines that such rate is appropriate in light of distressed conditions in the debt capital markets.

(2) Significant original issue discount

For purposes of paragraph (1)(C), a debt instrument shall be treated as having significant original issue discount if—

(A) the aggregate amount which would be includible in gross income with respect to such instrument for periods before the close of any accrual period (as defined in section 1272(a)(5)) ending after the date 5 years after the date of issue, exceeds—

(B) the sum of—

(i) the aggregate amount of interest to be paid under the instrument before the close of such accrual period, and

(ii) the product of the issue price of such instrument (as defined in sections 1273(b) and 1274(a)) and its yield to maturity.

(3) Special rules

For purposes of determining whether a debt instrument is an applicable high yield discount obligation—

(A) any payment under the instrument shall be assumed to be made on the last day permitted under the instrument, and

(B) any payment to be made in the form of another obligation of the issuer (or a related person within the meaning of section 453(f)(1)) shall be assumed to be made when such obligation is required to be paid in cash or in property other than such obligation.

Except for purposes of paragraph (1)(B), any reference to an obligation in subparagraph (B) of this paragraph shall be treated as including a reference to stock.

(4) Debt instrument

For purposes of this subsection, the term "debt instrument" means any instrument which is a debt instrument as defined in section 1275(a).

(5) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this subsection and subsection (e)(5), including—

(A) regulations providing for modifications to the provisions of this subsection and subsection (e)(5) in the case of varying rates of interest, put or call options, indefinite maturities, contingent payments, assumptions of debt instruments, conversion rights, or other circumstances where such modifications are appropriate to carry out the purposes of this subsection and subsection (e)(5), and

(B) regulations to prevent avoidance of the purposes of this subsection and subsection (e)(5) through the use of issuers other than C corporations, agreements to borrow amounts due under the debt instrument, or other arrangements.

(j) Limitation on deduction for interest on certain indebtedness

(1) Limitation

(A) In general

If this subsection applies to any corporation for any taxable year, no deduction shall be

allowed under this chapter for disqualified interest paid or accrued by such corporation during such taxable year. The amount disallowed under the preceding sentence shall not exceed the corporation's excess interest expense for the taxable year.

(B) Disallowed amount carried to succeeding taxable year

Any amount disallowed under subparagraph (A) for any taxable year shall be treated as disqualified interest paid or accrued in the succeeding taxable year (and clause (ii) of paragraph (2)(A) shall not apply for purposes of applying this subsection to the amount so treated).

(2) Corporations to which subsection applies

(A) In general

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

(i) such corporation has excess interest expense for such taxable year, and

(ii) the ratio of debt to equity of such corporation as of the close of such taxable year (or on any other day during the taxable year as the Secretary may by regulations prescribe) exceeds 1.5 to 1.

(B) Excess interest expense

(i) In general

For purposes of this subsection, the term "excess interest expense" means the excess (if any) of—

(I) the corporation's net interest expense, over

(II) the sum of 50 percent of the adjusted taxable income of the corporation plus any excess limitation carryforward under clause (ii).

(ii) Excess limitation carryforward

If a corporation has an excess limitation for any taxable year, the amount of such excess limitation shall be an excess limitation carryforward to the 1st succeeding taxable year and to the 2nd and 3rd succeeding taxable years to the extent not previously taken into account under this clause. The amount of such a carryforward taken into account for any such succeeding taxable year shall not exceed the excess interest expense for such succeeding taxable year (determined without regard to the carryforward from the taxable year of such excess limitation).

(iii) Excess limitation

For purposes of clause (ii), the term "excess limitation" means the excess (if any) of—

(I) 50 percent of the adjusted taxable income of the corporation, over

(II) the corporation's net interest expense.

(C) Ratio of debt to equity

For purposes of this paragraph, the term "ratio of debt to equity" means the ratio which the total indebtedness of the corporation bears to the sum of its money and all other assets reduced (but not below zero) by such total indebtedness. For purposes of the preceding sentence—

(i) the amount taken into account with respect to any asset shall be the adjusted basis thereof for purposes of determining gain,

(ii) the amount taken into account with respect to any indebtedness with original issue discount shall be its issue price plus the portion of the original issue discount previously accrued as determined under the rules of section 1272 (determined without regard to subsection (a)(7) or (b)(4) thereof), and

(iii) there shall be such other adjustments as the Secretary may by regulations prescribe.

(3) Disqualified interest

For purposes of this subsection, the term "disqualified interest" means—

(A) any interest paid or accrued by the taxpayer (directly or indirectly) to a related person if no tax is imposed by this subtitle with respect to such interest,

(B) any interest paid or accrued by the taxpayer with respect to any indebtedness to a person who is not a related person if—

(i) there is a disqualified guarantee of such indebtedness, and

(ii) no gross basis tax is imposed by this subtitle with respect to such interest, and

(C) any interest paid or accrued (directly or indirectly) by a taxable REIT subsidiary (as defined in section 856(l)) of a real estate investment trust to such trust.

(4) Related person

For purposes of this subsection—

(A) In general

Except as provided in subparagraph (B), the term "related person" means any person who is related (within the meaning of section 267(b) or 707(b)(1)) to the taxpayer.

(B) Special rule for certain partnerships

(i) In general

Any interest paid or accrued to a partnership which (without regard to this subparagraph) is a related person shall not be treated as paid or accrued to a related person if less than 10 percent of the profits and capital interests in such partnership are held by persons with respect to whom no tax is imposed by this subtitle on such interest. The preceding sentence shall not apply to any interest allocable to any partner in such partnership who is a related person to the taxpayer.

(ii) Special rule where treaty reduction

If any treaty between the United States and any foreign country reduces the rate of tax imposed by this subtitle on a partner's share of any interest paid or accrued to a partnership, such partner's interests in such partnership shall, for purposes of clause (i), be treated as held in part by a tax-exempt person and in part by a taxable person under rules similar to the rules of paragraph (5)(B).

(5) Special rules for determining whether interest is subject to tax

(A) Treatment of pass-thru entities

In the case of any interest paid or accrued to a partnership, the determination of whether any tax is imposed by this subtitle on such interest shall be made at the partner level. Rules similar to the rules of the preceding sentence shall apply in the case of any pass-thru entity other than a partnership and in the case of tiered partnerships and other entities.

(B) Interest treated as tax-exempt to extent of treaty reduction

If any treaty between the United States and any foreign country reduces the rate of tax imposed by this subtitle on any interest paid or accrued by the taxpayer, such interest shall be treated as interest on which no tax is imposed by this subtitle to the extent of the same proportion of such interest as—

(i) the rate of tax imposed without regard to such treaty, reduced by the rate of tax imposed under the treaty, bears to

(ii) the rate of tax imposed without regard to the treaty.

(6) Other definitions and special rules

For purposes of this subsection—

(A) Adjusted taxable income

The term "adjusted taxable income" means the taxable income of the taxpayer—

(i) computed without regard to—

(I) any deduction allowable under this chapter for the net interest expense,

(II) the amount of any net operating loss deduction under section 172,

(III) any deduction allowable under section 199, and

(IV) any deduction allowable for depreciation, amortization, or depletion, and

(ii) computed with such other adjustments as the Secretary may by regulations prescribe.

(B) Net interest expense

The term "net interest expense" means the excess (if any) of—

(i) the interest paid or accrued by the taxpayer during the taxable year, over

(ii) the amount of interest includible in the gross income of such taxpayer for such taxable year.

The Secretary may by regulations provide for adjustments in determining the amount of net interest expense.

(C) Treatment of affiliated group

All members of the same affiliated group (within the meaning of section 1504(a)) shall be treated as 1 taxpayer.

(D) Disqualified guarantee

(i) In general

Except as provided in clause (ii), the term "disqualified guarantee" means any guarantee by a related person which is—

(I) an organization exempt from taxation under this subtitle, or

(II) a foreign person.

(ii) Exceptions

The term "disqualified guarantee" shall not include a guarantee—

(I) in any circumstances identified by the Secretary by regulation, where the interest on the indebtedness would have been subject to a net basis tax if the interest had been paid to the guarantor, or

(II) if the taxpayer owns a controlling interest in the guarantor.

For purposes of subclause (II), except as provided in regulations, the term "a controlling interest" means direct or indirect ownership of at least 80 percent of the total voting power and value of all classes of stock of a corporation, or 80 percent of the profit and capital interests in any other entity. For purposes of the preceding sentence, the rules of paragraphs (1) and (5) of section 267(c) shall apply; except that such rules shall also apply to interest in entities other than corporations.

(iii) Guarantee

Except as provided in regulations, the term "guarantee" includes any arrangement under which a person (directly or indirectly through an entity or otherwise) assures, on a conditional or unconditional basis, the payment of another person's obligation under any indebtedness.

(E) Gross basis and net basis taxation

(i) Gross basis tax

The term "gross basis tax" means any tax imposed by this subtitle which is determined by reference to the gross amount of any item of income without any reduction for any deduction allowed by this subtitle.

(ii) Net basis tax

The term "net basis tax" means any tax imposed by this subtitle which is not a gross basis tax.

(7) Coordination with passive loss rules, etc.

This subsection shall be applied before sections 465 and 469.

(8) Treatment of corporate partners

Except to the extent provided by regulations, in applying this subsection to a corporation which owns (directly or indirectly) an interest in a partnership—

(A) such corporation's distributive share of interest income paid or accrued to such partnership shall be treated as interest income paid or accrued to such corporation,

(B) such corporation's distributive share of interest paid or accrued by such partnership shall be treated as interest paid or accrued by such corporation, and

(C) such corporation's share of the liabilities of such partnership shall be treated as liabilities of such corporation.

(9) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this subsection, including—

(A) such regulations as may be appropriate to prevent the avoidance of the purposes of this subsection,

(B) regulations providing such adjustments in the case of corporations which are members of an affiliated group as may be appropriate to carry out the purposes of this subsection,

(C) regulations for the coordination of this subsection with section 884, and

(D) regulations providing for the reallocation of shares of partnership indebtedness, or distributive shares of the partnership's interest income or interest expense.

(k) Section 6166 interest

No deduction shall be allowed under this section for any interest payable under section 6601 on any unpaid portion of the tax imposed by section 2001 for the period during which an extension of time for payment of such tax is in effect under section 6166.

(l) Disallowance of deduction on certain debt instruments of corporations

(1) In general

No deduction shall be allowed under this chapter for any interest paid or accrued on a disqualified debt instrument.

(2) Disqualified debt instrument

For purposes of this subsection, the term "disqualified debt instrument" means any indebtedness of a corporation which is payable in equity of the issuer or a related party or equity held by the issuer (or any related party) in any other person.

(3) Special rules for amounts payable in equity

For purposes of paragraph (2), indebtedness shall be treated as payable in equity of the issuer or any other person only if—

(A) a substantial amount of the principal or interest is required to be paid or converted, or at the option of the issuer or a related party is payable in, or convertible into, such equity,

(B) a substantial amount of the principal or interest is required to be determined, or at the option of the issuer or a related party is determined, by reference to the value of such equity, or

(C) the indebtedness is part of an arrangement which is reasonably expected to result in a transaction described in subparagraph (A) or (B).

For purposes of this paragraph, principal or interest shall be treated as required to be so paid, converted, or determined if it may be required at the option of the holder or a related party and there is a substantial certainty the option will be exercised.

(4) Capitalization allowed with respect to equity of persons other than issuer and related parties

If the disqualified debt instrument of a corporation is payable in equity held by the issuer (or any related party) in any other person (other than a related party), the basis of such equity shall be increased by the amount not allowed as a deduction by reason of paragraph (1) with respect to the

instrument.

(5) Exception for certain instruments issued by dealers in securities

For purposes of this subsection, the term "disqualified debt instrument" does not include indebtedness issued by a dealer in securities (or a related party) which is payable in, or by reference to, equity (other than equity of the issuer or a related party) held by such dealer in its capacity as a dealer in securities. For purposes of this paragraph, the term "dealer in securities" has the meaning given such term by section 475.

(6) Related party

For purposes of this subsection, a person is a related party with respect to another person if such person bears a relationship to such other person described in section 267(b) or 707(b).

(7) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection, including regulations preventing avoidance of this subsection through the use of an issuer other than a corporation.

(m) Interest on unpaid taxes attributable to nondisclosed reportable transactions

No deduction shall be allowed under this chapter for any interest paid or accrued under section 6601 on any underpayment of tax which is attributable to the portion of any reportable transaction understatement (as defined in section 6662A(b)) with respect to which the requirement of section 6664(d)(2)(A) [2] is not met.

(n) Cross references

(1) For disallowance of certain amounts paid in connection with insurance, endowment, or annuity contracts, see section 264.

(2) For disallowance of deduction for interest relating to tax-exempt income, see section 265(a)(2).

(3) For disallowance of deduction for carrying charges chargeable to capital account, see section 266.

(4) For disallowance of interest with respect to transactions between related taxpayers, see section 267.

(5) For treatment of redeemable ground rents and real property held subject to liabilities under redeemable ground rents, see section 1055.

(Aug. 16, 1954, ch. 736, 68A Stat. 46; Pub. L. 88–9, §1(a), (c), Apr. 10, 1963, 77 Stat. 6, 7; Pub. L. 88–272, title II, §224(c), Feb. 26, 1964, 78 Stat. 79; Pub. L. 91–172, title II, §221(a), Dec. 30, 1969, 83 Stat. 574; Pub. L. 92–178, title III, §304(a)(2), (b)(2), (d), Dec. 10, 1971, 85 Stat. 523, 524; Pub. L. 94–455, title II, §§205(c)(3), 209(a), title XIX, §§1901(b)(3)(K), (8)(C), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1535, 1542, 1793, 1794, 1834; Pub. L. 97–248, title II, §231(b), title III, §310(b)(2), Sept. 3, 1982, 96 Stat. 498, 596; Pub. L. 97–354, §5(a)(18), Oct. 19, 1982, 96 Stat. 1693; Pub. L. 98–369, div. A, title I, §§42(a)(3), 56(b), 127(f), 128(c), title VI, §612(c), July 18, 1984, 98 Stat. 556, 574, 652, 654, 911; Pub. L. 99–514, title V, §511(a), (b), title IX, §902(e)(1), title XIII, §1301(j)(3), title XVIII, §§1803(a)(4), 1810(e)(1), Oct. 22, 1986, 100 Stat. 2244, 2246, 2382, 2657, 2793, 2825; Pub. L. 100–203, title X, §§10102(a), (b), 10212(b), Dec. 22, 1987, 101 Stat. 1330–384, 1330–386, 1330–406; Pub. L. 100–647, title I, §§1005(c)(1)–(9), (12), 1006(u)(1), 1009(b)(6), title II, §2004(b)(1), Nov. 10, 1988, 102 Stat. 3390–3392, 3427, 3449, 3598; Pub. L. 101–239, title VII, §§7202(a), (b), 7210(a), Dec. 19, 1989, 103 Stat. 2330, 2331, 2339; Pub. L. 101–508, title XI, §11701(b), (c), Nov. 5, 1990, 104 Stat. 1388–507; Pub. L. 103–66, title XIII, §§13206(d)(1), 13228(a)–(c), Aug. 10, 1993, 107 Stat. 467, 494, 495; Pub. L. 104–188, title I, §§1703(n)(4), 1704(f)(2)(A), (B), Aug. 20, 1996, 110 Stat. 1877, 1879; Pub. L. 105–34, title III, §312(d)(1), title V, §503(b)(2), title X, §1005(a), title XVI, §1604(g)(1), Aug. 5, 1997, 111 Stat. 839, 853, 911, 1099; Pub. L. 105–277, div. J, title IV, §4003(a)(1), Oct. 21, 1998, 112 Stat. 2681–908; Pub. L. 106–170, title V, §544, Dec. 17, 1999, 113 Stat. 1944; Pub. L. 108–27, title III, §302(b), May 28, 2003, 117 Stat. 762; Pub. L. 108–357, title VIII, §§838(a), 841(a), 845(a)–(d), Oct. 22, 2004, 118 Stat. 1596,

1597, 1600, 1601; Pub. L. 109–135, title IV, §403(a)(15), Dec. 21, 2005, 119 Stat. 2619; Pub. L. 109–222, title V, §501(a), (b), May 17, 2006, 120 Stat. 354; Pub. L. 109–432, div. A, title IV, §419(a), (b), Dec. 20, 2006, 120 Stat. 2967; Pub. L. 110–142, §3(a), Dec. 20, 2007, 121 Stat. 1804; Pub. L. 111–5, div. B, title I, §1232(a), (b), Feb. 17, 2009, 123 Stat. 341; Pub. L. 111–147, title V, §502(a)(1), (2)(B), (C), (c), Mar. 18, 2010, 124 Stat. 107, 108; Pub. L. 111–312, title VII, §759(a), Dec. 17, 2010, 124 Stat. 3323; Pub. L. 112–240, title II, §204(a), (b), Jan. 2, 2013, 126 Stat. 2323.)

REFERENCES IN TEXT

The date of the enactment of this subparagraph, referred to in subsec. (h)(4)(E)(ii), is the date of enactment of Pub. L. 109–432, which was approved Dec. 20, 2006.

Section 6664(d)(2)(A), referred to in subsec. (m), was redesignated as section 6664(d)(3)(A) by Pub. L. 111–152, title I, §1409(c)(2)(A), Mar. 30, 2010, 124 Stat. 1069.

AMENDMENTS

2013—Subsec. (h)(3)(E)(iv)(I). Pub. L. 112–240, §204(a), substituted "December 31, 2013" for "December 31, 2011".

Subsec. (h)(4)(E)(i). Pub. L. 112–240, §204(b), substituted "Department of Veterans Affairs" for "Veterans Administration" and "Rural Housing Service" for "Rural Housing Administration".

2010—Subsec. (f)(2)(A)(ii) to (iv). Pub. L. 111–147, §502(a)(2)(B), inserted "or" at end of cl. (ii), substituted period for ", or" in cl. (iii), and struck out cl. (iv), which read as follows: "is described in subparagraph (B)."

Subsec. (f)(2)(B). Pub. L. 111–147, §502(a)(1), (2)(C)(i), redesignated subpar. (C) as (B), struck out ", and subparagraph (B)," after "subparagraph (A)" in introductory provisions, and struck out former subpar. (B) which related to certain obligations not included as registration-required obligations.

Subsec. (f)(2)(B)(i). Pub. L. 111–147, §502(a)(2)(C)(ii), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: "in the case of—

"(I) subparagraph (A), such obligation is of a type which the Secretary has determined by regulations to be used frequently in avoiding Federal taxes, or

"(II) subparagraph (B), such obligation is of a type specified by the Secretary in regulations, and".

Subsec. (f)(2)(C). Pub. L. 111–147, §502(a)(1), redesignated subpar. (C) as (B).

Subsec. (f)(3). Pub. L. 111–147, §502(c), inserted before period at end ", except that a dematerialized book entry system or other book entry system specified by the Secretary shall be treated as a book entry system described in such section".

Subsec. (h)(3)(E)(iv)(I). Pub. L. 111–312 substituted "December 31, 2011" for "December 31, 2010".

2009—Subsec. (e)(5)(F), (G). Pub. L. 111–5, §1232(a), added subpar. (F) and redesignated former subpar. (F) as (G).

Subsec. (i)(1). Pub. L. 111–5, §1232(b), in concluding provisions, inserted "(i)" before "permit a rate" and ", or (ii) permit, on a temporary basis, a rate to be used with respect to any debt instrument which is higher than the applicable Federal rate if the Secretary determines that such rate is appropriate in light of distressed conditions in the debt capital markets" before period at end.

2007—Subsec. (h)(3)(E)(iv)(I). Pub. L. 110–142 substituted "December 31, 2010" for "December 31, 2007".

2006—Subsec. (h)(3)(E). Pub. L. 109–432, §419(a), added subpar. (E).

Subsec. (h)(4)(E), (F). Pub. L. 109–432, §419(b), added subpars. (E) and (F).

Subsec. (j)(8). Pub. L. 109–222, §501(a), added par. (8). Former par. (8) redesignated (9).

Subsec. (j)(9). Pub. L. 109–222 redesignated par. (8) as (9) and added subpar. (D).

2005—Subsec. (j)(6)(A)(i)(III), (IV). Pub. L. 109–135 added subcl. (III) and redesignated former subcl. (III) as (IV).

2004—Subsec. (e)(3)(B), (C). Pub. L. 108–357, §841(a), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (l)(2). Pub. L. 108–357, §845(a), inserted "or equity held by the issuer (or any related party) in any other person" after "or a related party".

Subsec. (l)(3). Pub. L. 108–357, §845(d), substituted "or any other person" for "or a related party" in introductory provisions.

Subsec. (l)(4) to (7). Pub. L. 108–357, §845(b), (c), added pars. (4) and (5) and redesignated former pars. (4) and (5) as (6) and (7), respectively.

Subsecs. (m), (n). Pub. L. 108–357, §838(a), added subsec. (m) and redesignated former subsec. (m) as (n).

2003—Subsec. (d)(4)(B). Pub. L. 108–27 inserted at end "Such term shall include qualified dividend

income (as defined in section 1(h)(11)(B)) only to the extent the taxpayer elects to treat such income as investment income for purposes of this subsection."

1999—Subsec. (j)(3)(C). Pub. L. 106–170 added subpar. (C).

1998—Subsec. (h)(2)(F). Pub. L. 105–277 added subpar. (F).

1997—Subsec. (h)(2)(E). Pub. L. 105–34, §503(b)(2)(B), struck out "or 6166 or under section 6166A (as in effect before its repeal by the Economic Recovery Tax Act of 1981)" after "section 6163".

Subsec. (h)(4)(A)(i)(I). Pub. L. 105–34, §312(d)(1), substituted "section 121" for "section 1034".

Subsec. (j)(2)(B)(iii). Pub. L. 105–34, §1604(g)(1), substituted "clause (ii)" for "clause (i)" in introductory provisions.

Subsec. (k). Pub. L. 105–34, §503(b)(2)(A), added subsec. (k). Former subsec. (k) redesignated (l).

Subsec. (l). Pub. L. 105–34, §1005(a), added subsec. (l). Former subsec. (l) redesignated (m).

Pub. L. 105–34, §503(b)(2)(A), redesignated subsec. (k) as (l).

Subsec. (m). Pub. L. 105–34, §1005(a), redesignated subsec. (l) as (m).

1996—Subsec. (j)(1)(B). Pub. L. 104–188, §1704(f)(2)(A), inserted before period at end "(and clause (ii) of paragraph (2)(A) shall not apply for purposes of applying this subsection to the amount so treated)".

Subsec. (j)(6)(E)(ii). Pub. L. 104–188, §1703(n)(4), which directed that cl. (ii) be amended by substituting "which is" for "which is a", could not be executed, because "which is a" does not appear.

Subsec. (j)(7), (8). Pub. L. 104–188, §1704(f)(2)(B), added par. (7) and redesignated former par. (7) as (8).

1993—Subsec. (d)(4)(B). Pub. L. 103–66, §13206(d)(1), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: "The term 'investment income' means the sum of—

"(i) gross income (other than gain taken into account under clause (ii)) from property held for investment, and

"(ii) any net gain attributable to the disposition of property held for investment."

Subsec. (j). Pub. L. 103–66, §13228(c)(2), substituted "for interest on certain indebtedness" for "for certain interest paid by corporation to related person" in heading.

Subsec. (j)(3). Pub. L. 103–66, §13228(a), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: "For purposes of this subsection—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'disqualified interest' means any interest paid or accrued by the taxpayer (directly or indirectly) to a related person if no tax is imposed by this subtitle with respect to such interest.

"(B) EXCEPTION FOR CERTAIN EXISTING INDEBTEDNESS.—The term 'disqualified interest' does not include any interest paid or accrued under indebtedness with a fixed term—

"(i) which was issued on or before July 10, 1989, or

"(ii) which was issued after such date pursuant to a written binding contract in effect on such date and all times thereafter before such indebtedness was issued."

Subsec. (j)(5)(B). Pub. L. 103–66, §13228(c)(1), struck out "to a related person" after "by the taxpayer" in introductory provisions.

Subsec. (j)(6)(D), (E). Pub. L. 103–66, §13228(b), added subpars. (D) and (E).

1990—Subsec. (e)(5)(A). Pub. L. 101–508, §11701(b)(1), amended last sentence generally. Prior to amendment, last sentence read as follows: "For purposes of clause (ii), rules similar to the rules of subsection (i)(3)(B) shall apply in determining the time when the original issue discount is paid."

Subsec. (i)(3). Pub. L. 101–508, §11701(b)(2)(B), inserted sentence at end.

Subsec. (i)(3)(B). Pub. L. 101–508, §11701(b)(2)(A), struck out "(or stock)" after "obligation" wherever appearing.

Subsec. (j)(2)(A)(ii). Pub. L. 101–508, §11701(c)(2), substituted "or on any other day" for "and on such other days".

Subsec. (j)(2)(C). Pub. L. 101–508, §11701(c)(1), substituted "reduced (but not below zero) by such" for "less such" in introductory provisions.

1989—Subsec. (e)(5), (6). Pub. L. 101–239, §7202(a), added par. (5) and redesignated former par. (5) as (6).

Subsec. (i). Pub. L. 101–239, §7202(b), added subsec. (i). Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 101–239, §7210(a), added subsec. (j). Former subsec. (j) redesignated (k).

Pub. L. 101–239, §7202(b), redesignated subsec. (i) as (j).

Subsec. (k). Pub. L. 101–239, §7210(a), redesignated subsec. (j) as (k).

1988—Subsec. (d)(3)(A). Pub. L. 100–647, §1005(c)(1), substituted "properly allocable to" for "incurred or continued to purchase or carry".

Subsec. (d)(4)(B). Pub. L. 100–647, §1005(c)(2), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "The term 'investment income' means the sum of—

"(i) gross income (other than gain described in clause (ii)) from property held for investment, and

"(ii) any net gain attributable to the disposition of property held for investment,

but only to the extent such amounts are not derived from the conduct of a trade or business."

Subsec. (d)(6)(A). Pub. L. 100–647, §1005(c)(3), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "The amount of interest disallowed under this subsection for any such taxable year shall be equal to the sum of—

"(i) the applicable percentage of the amount which (without regard to this paragraph) is not allowed as a deduction under this subsection for the taxable year to the extent such amount does not exceed the ceiling amount,

"(ii) the amount which (without regard to this paragraph) is not allowed as a deduction under this subsection in excess of the ceiling amount, plus

"(iii) the amount of any carryforward to such taxable year under paragraph (2) with respect to which a deduction was disallowed under this subsection for a preceding taxable year.

For purposes of this subparagraph, the amount under clause (i) or (ii) shall be computed without regard to the amount described in clause (iii)."

Subsec. (e)(2)(B). Pub. L. 100–647, §1006(u)(1), substituted "paragraph (7)" for "paragraph (6)".

Subsec. (h)(2)(A). Pub. L. 100–647, §1005(c)(4), substituted "properly allocable to" for "incurred or continued in connection with the conduct of".

Subsec. (h)(2)(E). Pub. L. 100–647, §1005(c)(12), inserted "or under section 6166A (as in effect before its repeal by the Economic Recovery Tax Act of 1981)" before period at end.

Subsec. (h)(3)(C). Pub. L. 100–647, §1005(c)(5), effective as if enacted immediately before enactment of Pub. L. 100–203 (see 1987 Amendment note below), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: "The amount under subparagraph (B)(ii)(I) at any time after August 16, 1986, shall not be less than the outstanding aggregate principal amount (as of such time) of indebtedness which was incurred on or before August 16, 1986, and which was secured by the qualified residence on August 16, 1986."

Subsec. (h)(4). Pub. L. 100–647, §1005(c)(6)(A), effective as if enacted immediately before enactment of Pub. L. 100–203 (redesignating par. (5) as (4), see 1987 Amendment note below), amended heading by substituting "Other definitions and special rules—For purposes of this subsection—" for "Other definitions and special rules".

Subsec. (h)(4)(A). Pub. L. 100–647, §1005(c)(6)(B)(i), (7), effective as if enacted immediately before enactment of Pub. L. 100–203 (redesignating par. (5) as (4), see 1987 Amendment note below), amended subpar. (A) by striking out "For purposes of this subsection—" after "Qualified residence" in introductory provisions, "used or" after "Residence not" in cl. (iii) heading, and "or use" after "does not rent" in cl. (iii) text.

Subsec. (h)(4)(B). Pub. L. 100–647, §1005(c)(6)(B)(ii), effective as if enacted immediately before enactment of Pub. L. 100–203 (redesignating par. (5) as (4), see 1987 Amendment note below), amended subpar. (B) by substituting "Any" for "For purposes of this paragraph, any".

Subsec. (h)(4)(C), (D). Pub. L. 100–647, §1005(c)(8), effective as if enacted immediately before enactment of Pub. L. 100–203 (redesignating par. (5) as (4), see 1987 Amendment note below), par. (4) added subpars. (C) and (D).

Subsec. (h)(5). Pub. L. 100–647, §2004(b)(1), redesignated par. (6) as (5).

Subsec. (h)(6). Pub. L. 100–647, §2004(b)(1), redesignated par. (6) as (5).

Pub. L. 100–647, §1005(c)(9), substituted "but for this paragraph" for "but for this subsection".

Subsec. (i)(2). Pub. L. 100–647, §1009(b)(6), made technical correction to directory language of Pub. L. 99–514, §902(e)(1), see 1986 Amendment note below.

1987—Subsec. (d)(4)(E). Pub. L. 100–203, §10212(b), substituted "section 469(m)" for "section 469(l)".

Subsec. (h)(3). Pub. L. 100–203, §10102(a), amended par. (3) generally. Prior to amendment (see 1988 Amendment note above), par. (3) read as follows: "For purposes of this subsection—

"(A) IN GENERAL.—The term 'qualified residence interest' means interest which is paid or accrued during the taxable year on indebtedness which is secured by any property which (at the time such interest is paid or accrued) is a qualified residence of the taxpayer.

"(B) LIMITATION ON AMOUNT OF INTEREST.—The term 'qualified residence interest' shall not include any interest paid or accrued on indebtedness secured by any qualified residence which is allocable to that portion of the principal amount of such indebtedness which, when added to the outstanding aggregate principal amount of all other indebtedness previously incurred and secured by such qualified residence, exceeds the lesser of—

"(i) the fair market value of such qualified residence, or

"(ii) the sum of—

"(I) the taxpayer's basis in such qualified residence (adjusted only by the cost of any improvements to such residence), plus

"(II) the aggregate amount of qualified indebtedness of the taxpayer with respect to such qualified residence.

"(C) COST NOT LESS THAN BALANCE OF INDEBTEDNESS INCURRED ON OR BEFORE AUGUST 16, 1986.—

"(i) IN GENERAL.—The amount under subparagraph (B)(ii)(I) at any time after August 16, 1986, shall not be less than the outstanding principal amount (as of such time) of indebtedness—

"(I) which was incurred on or before August 16, 1986, and which was secured by the qualified residence on August 16, 1986, or

"(II) which is secured by the qualified residence and was incurred after August 16, 1986, to refinance indebtedness described in subclause (I) (or refinanced indebtedness meeting the requirements of this subclause) to the extent (immediately after the refinancing) the principal amount of the indebtedness resulting from the refinancing does not exceed the principal amount of the refinanced indebtedness (immediately before the refinancing).

"(ii) LIMITATION ON PERIOD OF REFINANCING.—Subclause (II) of clause (i) shall not apply to any indebtedness after—

"(I) the expiration of the term of the indebtedness described in clause (i)(I), or

"(II) if the principal of the indebtedness described in clause (i)(I) is not amortized over its term, the expiration of the term of the 1st refinancing of such indebtedness (or if earlier, the date which is 30 years after the date of such refinancing).

"(D) TIME FOR DETERMINATION.—Except as provided in regulations, any determination under subparagraph (B) shall be made as of the time the indebtedness is incurred."

Subsec. (h)(4), (5). Pub. L. 100–203, §10102(b), redesignated par. (5) as (4) and struck out former par. (4) which defined "qualified indebtedness" for purposes of this subsection.

1986—Subsec. (d). Pub. L. 99–514, §511(a), substituted "Limitation on investment interest" for "Limitation on interest on investment indebtedness" in heading, and amended text generally, revising and restating as pars. (1) to (6) provisions of former pars. (1) to (7).

Subsec. (e)(2)(C). Pub. L. 99–514, §1803(a)(4), added subpar. (C).

Subsec. (e)(3)(A). Pub. L. 99–514, §1810(e)(1)(A), inserted "The preceding sentence shall not apply to the extent that the original issue discount is effectively connected with the conduct by such foreign related person of a trade or business within the United States unless such original issue discount is exempt from taxation (or is subject to a reduced rate of tax) pursuant to a treaty obligation of the United States."

Subsec. (e)(5). Pub. L. 99–514, §1810(e)(1)(B), redesignated par. (4), relating to cross references, as (5).

Subsec. (f)(3). Pub. L. 99–514, §1301(j)(3), substituted "section 149(a)(3)" for "section 103(j)(3)".

Subsec. (h). Pub. L. 99–514, §511(b), added subsec. (h). Former subsec. (h) redesignated (i).

Subsec. (i)(2). Pub. L. 99–514, §902(e)(1), as amended by Pub. L. 100–647, §1009(b)(6), substituted "section 265(a)(2)" for "section 265(2)".

Pub. L. 99–514, §511(b), redesignated former subsec. (h) as (i).

1984—Subsec. (d)(3)(D). Pub. L. 98–369, §56(b), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (e)(1). Pub. L. 98–369, §42(a)(3), substituted "debt instrument" for "bond" in two places and struck out "by an issuer (other than a natural person)" before ", the portion of the original issue".

Subsec. (e)(2). Pub. L. 98–369, §42(a)(3), substituted provisions relating to debt instruments for provisions relating to bonds.

Subsec. (e)(3). Pub. L. 98–369, §128(c), added par. (3) relating to special rule for original issue discount on obligation held by related foreign person. Former par. (3), relating to exceptions, redesignated (4).

Pub. L. 98–369, §42(a)(3), added par. (3) relating to exceptions.

Subsec. (e)(4). Pub. L. 98–369, §128(c), redesignated par. (3), relating to exceptions, as (4).

Pub. L. 98–369, §42(a)(3), added par. (4) relating to cross references.

Subsec. (f)(2)(C)(i). Pub. L. 98–369, §127(f), redesignated existing provision as subcl. (I), and in subcl. (I) as so redesignated, inserted reference to subpar. (A) and substituted "or" for "and", and added subcl. (II).

Subsecs. (g), (h). Pub. L. 98–369, §612(c), added subsec. (g) and redesignated former subsec. (g) as (h).

1982—Subsec. (d)(4). Pub. L. 97–354 redesignated subpar. (D) as (B). Former subpars. (B) and (C), relating to partnerships and shareholders of electing small business corporations, respectively, were struck out.

Subsec. (e). Pub. L. 97–248, §231(b), added subsec. (e) relating to original issue discount. Former subsec. (e), setting forth cross references, redesignated (f).

Pub. L. 97–248, §231(b), redesignated former subsec. (e), setting forth cross references, as (f).

Subsec. (f). Pub. L. 97–248, §310(b)(2), added subsec. (f) relating to the requirement that obligations be in registered form to be tax-exempt. Former subsec. (f), setting forth cross references, redesignated (g).

Subsec. (g). Pub. L. 97–248, §310(b)(2), redesignated former subsec. (f), setting forth cross references, as (g).

1976—Subsec. (b)(1). Pub. L. 94–455, §1901(b)(8)(C), substituted "organization described in section 170(b)(1)(A)(ii) and which is provided for a student of such organization" for "institution (as defined in section 151(e)(4)) and which is provided for a student of such institution".

Subsec. (d)(1). Pub. L. 94–455, §209(a)(1), among other changes, substituted in subpar. (A) "$10,000" for "$25,000" and "$5,000" for "$12,500", struck out subpar. (C) relating to the excess of net long-term capital gain over short-term capital loss and subpar. (D) relating to the excess of investment interest over amounts in subpar. (A), and in provisions following lettered paragraphs substituted "$10,000" for "$25,000" and struck out provisions relating to the determination of the amount referred to in subpar. (C).

Subsec. (d)(2). Pub. L. 94–455, §209(a)(1), among other changes, struck out provisions relating to the limitation on the amount of interest allowable by this par. and to reduction of disallowed investment interest for capital gain deduction purposes.

Subsec. (d)(3)(A). Pub. L. 94–455, §209(a)(2), inserted provision relating to determination of the amount of net investment income where taxpayer has investment interest for taxable year to which this subsection applies.

Subsec. (d)(3)(B)(iii). Pub. L. 94–455, §§205(c)(3), 1901(b)(3)(K), substituted "1250, and 1254" for "and 1250", and "ordinary income" for "gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231". Section 205(c)(3) of Pub. L. 94–455, which directed the amendment of subsec. (d)(3)(A)(iii), was executed by amending subsec. (d)(3)(B)(iii) to reflect the probable intent of Congress.

Subsec. (d)(3)(E). Pub. L. 94–455, §209(a)(3), substituted "limitation in paragraph (1)" for "limitations in paragraphs (1) and (2)(A)".

Subsec. (d)(4)(B), (C). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (d)(5). Pub. L. 94–455, §209(a)(4), (5), redesignated par. (6) as (5) and inserted provision relating to the application of this paragraph after Dec. 31, 1975, on an allocation basis rather than a specific item basis. Former par. (5), relating to capital gains treatment of investment interest, was struck out.

Pub. L. 94–455, §1901(b)(3)(K), directed the amendment of par. (5) by substituting "ordinary income" for "gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231", such par. (5) having been struck out by Pub. L. 94–455, §209(a)(4).

Subsec. (d)(6). Pub. L. 94–455, §§209(a)(4), 1906(b)(13)(A), redesignated par. (7) as (6) and struck out in provision following subpar. (B) "or his delegate" after "Secretary". Former par. (6) redesignated (5).

Subsec. (d)(7). Pub. L. 94–455, §209(a)(6), added par. (7). Former par. (7) redesignated (6).

1971—Subsec. (d)(1)(B). Pub. L. 92–178, §304(b)(2), inserted "the amount (if any) by which the deductions allowable under this section (determined without regard to this subsection) and sections 162, 164(a)(1) or (2), or 212 attributable to property of the taxpayer subject to a net lease exceeds the rental income produced by such property for the property year, plus" after "plus".

Subsec. (d)(3)(C). Pub. L. 92–178, §304(d), inserted reference to section 162.

Subsec. (d)(4)(A)(i). Pub. L. 92–178, §304(a)(2)(A), inserted "of the lessor" after "deductions" and "(other than rents and reimbursed amounts with respect to such property)" after "section 162".

Subsec. (d)(7). Pub. L. 92–178, §304(a)(2)(B), added par. (7).

1969—Subsecs. (d), (e). Pub. L. 91–172 added subsec. (d). Former subsec. (d) redesignated (e).

1964—Subsec. (b)(1). Pub. L. 88–272 included the purchase of educational services, and defined "educational services".

1963—Subsecs. (c), (d). Pub. L. 88–9, §1(a), (c), added subsec. (c), redesignated former subsec. (c) as (d) and added par. (5).

CHANGE OF NAME

The Veterans' Administration was redesignated the Department of Veterans Affairs by Pub. L. 100–527 which also provided that references to the Veterans' Administration were deemed to refer to the Department of Veterans Affairs. See sections 2 and 10 of Pub. L. 100–527, set out in a Department of Veterans Affairs Act note under section 301 of Title 38, Veterans' Benefits.

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title II, §204(c), Jan. 2, 2013, 126 Stat. 2323, provided that: "The amendments made by this section [amending this section] shall apply to amounts paid or accrued after December 31, 2011."

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §759(b), Dec. 17, 2010, 124 Stat. 3323, provided that: "The amendment made by this section [amending this section] shall apply to amounts paid or accrued after December 31, 2010."

Amendment by Pub. L. 111–147 applicable to obligations issued after the date which is 2 years after Mar. 18, 2010, see section 502(f) of Pub. L. 111–147, set out as a note under section 149 of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, §1232(c), Feb. 17, 2009, 123 Stat. 341, provided that:

"(1) SUSPENSION.—The amendments made by subsection (a) [amending this section] shall apply to obligations issued after August 31, 2008, in taxable years ending after such date.

"(2) INTEREST RATE AUTHORITY.—The amendments made by subsection (b) [amending this section] shall apply to obligations issued after December 31, 2009, in taxable years ending after such date."

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–142, §3(b), Dec. 20, 2007, 121 Stat. 1804, provided that: "The amendment made by this section [amending this section] shall apply to amounts paid or accrued after December 31, 2007."

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title IV, §419(d), Dec. 20, 2006, 120 Stat. 2968, provided that: "The amendments made by this section [amending this section and section 6050H of this title] shall apply to amounts paid or accrued after December 31, 2006."

Pub. L. 109–222, title V, §501(c), May 17, 2006, 120 Stat. 354, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning on or after the date of the enactment of this Act [May 17, 2006]."

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §838(b), Oct. 22, 2004, 118 Stat. 1597, provided that: "The amendments made by this section [amending this section] shall apply to transactions in taxable years beginning after the date of the enactment of this Act [Oct. 22, 2004]."

Pub. L. 108–357, title VIII, §841(c), Oct. 22, 2004, 118 Stat. 1598, provided that: "The amendments made by this section [amending this section and section 267 of this title] shall apply to payments accrued on or after the date of the enactment of this Act [Oct. 22, 2004]."

Pub. L. 108–357, title VIII, §845(e), Oct. 22, 2004, 118 Stat. 1601, provided that: "The amendments made by this section [amending this section] shall apply to debt instruments issued after October 3, 2004."

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–27 applicable, except as otherwise provided, to taxable years beginning after Dec. 31, 2002, see section 302(f) of Pub. L. 108–27, set out as an Effective and Termination Dates of 2003 Amendment note under section 1 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to taxable years beginning after Dec. 31, 2000, see section 546(a) of Pub. L. 106–170, set out as a note under section 856 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–277 effective as if included in the provision of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 4003(l) of Pub. L. 105–277, set out as a note under section 86 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 312(d)(1) of Pub. L. 105–34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d) of Pub. L. 105–34, set out as a note under section 121 of this title.

Pub. L. 105–34, title V, §503(d), Aug. 5, 1997, 111 Stat. 853, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and sections 2053, 6166, and 6601 of this title] shall apply to estates of decedents dying after December 31, 1997.

"(2) ELECTION.—In the case of the estate of any decedent dying before January 1, 1998, with respect to which there is an election under section 6166 of the Internal Revenue Code of 1986, the executor of the estate may elect to have the amendments made by this section apply with respect to installments due after the effective date of the election; except that the 2-percent portion of such installments shall be equal to the amount which would be the 4-percent portion of such installments without regard to such election. Such an election shall be made before January 1, 1999 in the manner prescribed by the Secretary of the Treasury and, once made, is irrevocable."

Pub. L. 105–34, title X, §1005(b), Aug. 5, 1997, 111 Stat. 912, provided that:

"(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to disqualified debt instruments issued after June 8, 1997.

"(2) TRANSITION RULE.—The amendment made by this section shall not apply to any instrument issued after June 8, 1997, if such instrument is—

"(A) issued pursuant to a written agreement which was binding on such date and at all times thereafter,

"(B) described in a ruling request submitted to the Internal Revenue Service on or before such date, or

"(C) described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission required solely by reason of the issuance."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1703(n)(4) of Pub. L. 104–188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103–66, §§13001–13444, to which such amendment relates, see section 1703(o) of Pub. L. 104–188, set out as a note under section 39 of this title.

Pub. L. 104–188, title I, §1704(f)(2)(C), Aug. 20, 1996, 110 Stat. 1879, provided that: "The amendments made by this paragraph [amending this section] shall apply as if included in the amendments made by section 7210(a) of the Revenue Reconciliation Act of 1989 [Pub. L. 101–239]."

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13206(d)(1) of Pub. L. 103–66 applicable to taxable years beginning after Dec. 31, 1992, see section 13206(d)(3) of Pub. L. 103–66 set out as a note under section 1 of this title.

Pub. L. 103–66, title XIII, §13228(d), Aug. 10, 1993, 107 Stat. 495, provided that: "The amendments made by this section [amending this section] shall apply to interest paid or accrued in taxable years beginning after December 31, 1993."

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective, except as otherwise provided, as if included in the provision of the Revenue Reconciliation Act of 1989, Pub. L. 101–239, title VII, to which such amendment relates, see section 11701(n) of Pub. L. 101–508, set out as a note under section 42 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7202(c), Dec. 19, 1989, 103 Stat. 2332, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to instruments issued after July 10, 1989.

"(2) EXCEPTIONS.—

"(A) The amendments made by this section shall not apply to any instrument if—

"(i) such instrument is issued in connection with an acquisition—

"(I) which is made on or before July 10, 1989,

"(II) for which there was a written binding contract in effect on July 10, 1989, and at all times thereafter before such acquisition, or

"(III) for which a tender offer was filed with the Securities and Exchange Commission on or before July 10, 1989,

"(ii) the term of such instrument is not greater than—

"(I) the term specified in the written documents described in clause (iii), or

"(II) if no term is determined under subclause (I), 10 years, and

"(iii) the use of such instrument in connection with such acquisition (and the maximum amount of proceeds from such instrument) was determined on or before July 10, 1989, and such determination is evidenced by written documents—

"(I) which were transmitted on or before July 10, 1989, between the issuer and any governmental regulatory bodies or prospective parties to the issuance or acquisition, and

"(II) which are customarily used for the type of acquisition or financing involved.

"(B) The amendments made by this section shall not apply to any instrument issued pursuant to the

terms of a debt instrument issued on or before July 10, 1989, or described in subparagraph (A) or (D).

"(C) The amendments made by this section shall not apply to any instrument issued to refinance an original issue discount debt instrument to which the amendments made by this section do not apply if—

"(i) the maturity date of the refinancing instrument is not later than the maturity date of the refinanced instrument,

"(ii) the issue price of the refinancing instrument does not exceed the adjusted issue price of the refinanced instrument,

"(iii) the stated redemption price at maturity of the refinancing instrument is not greater than the stated redemption price at maturity of the refinanced instrument, and

"(iv) the interest payments required under the refinancing instrument before maturity are not less than (and are paid not later than) the interest payments required under the refinanced instrument.

"(D) The amendments made by this section shall not apply to instruments issued after July 10, 1989, pursuant to a reorganization plan in a title 11 or similar case (as defined in section 368(a)(3) of the Internal Revenue Code of 1986) if the amount of proceeds of such instruments, and the maturities of such instruments, do not exceed the amount or maturities specified in the last reorganization plan filed in such case on or before July 10, 1989."

Pub. L. 101–239, title VII, §7210(b), Dec. 19, 1989, 103 Stat. 2342, provided that:

"(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to interest paid or accrued in taxable years beginning after July 10, 1989.

"(2) SPECIAL RULE FOR DEMAND LOANS, ETC.—In the case of any demand loan (or other loan without a fixed term) which was outstanding on July 10, 1989, interest on such loan to the extent attributable to periods before September 1, 1989, shall not be treated as disqualified interest for purposes of section 163(j) of the Internal Revenue Code of 1986 (as added by subsection (a))."

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1005(c)(13), Nov. 10, 1988, 102 Stat. 3392, provided that: "For purposes of applying the amendments made by this subsection [amending this section and sections 467, 1255, and 7872 of this title] and the amendments made by section 10102 of the Revenue Act of 1987 [section 10102 of Pub. L. 100–203, amending this section], the provisions of this subsection shall be treated as having been enacted immediately before the enactment of the Revenue Act of 1987."

Amendment by sections 1006(u)(1) and 1009(b)(6) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 2004(b)(1) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title X, §10102(c), Dec. 22, 1987, 101 Stat. 1330–386, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1987."

Amendment by section 10212(b) of Pub. L. 100–203 effective as if included in the amendments made by section 501 of the Tax Reform Act of 1986, Pub. L. 99–514, see section 10212(c) of Pub. L. 100–203, set out as a note under section 58 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title V, §511(e), Oct. 22, 1986, 100 Stat. 2249, provided that: "The amendments made by this section [amending this section and sections 467, 703, 1255, 1363, and 7872 of this title] shall apply to taxable years beginning after December 31, 1986."

Amendment by section 902(e)(1) of Pub. L. 99–514 applicable to taxable years ending after Dec. 31, 1986, with certain exceptions and qualifications, see section 902(f) of Pub. L. 99–514, set out as a note under section 265 of this title.

Amendment by section 1301(j)(3) of Pub. L. 99–514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99–514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

Amendment by sections 1803(a)(4) and 1810(e)(1) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 42(a)(3) of Pub. L. 98–369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98–369, set out as an Effective Date note under section 1271 of this title.

Pub. L. 98–369, div. A, title I, §56(d), July 18, 1984, 98 Stat. 574, provided that: "The amendments made by this section [amending this section and sections 263 and 265 of this title] shall apply to short sales after the date of enactment of this Act [July 18, 1984] in taxable years ending after such date."

Amendment by section 127(f) of Pub. L. 98–369 applicable to interest received after July 18, 1984, with respect to obligations issued after such date, in taxable years ending after such date, see section 127(g)(1) of Pub. L. 98–369, set out as a note under section 871 of this title.

Amendment by section 128(c) of Pub. L. 98–369 applicable to obligations issued after June 9, 1984, see section 128(d)(2) of Pub. L. 98–369, set out as a note under section 871 of this title.

Amendment by section 612(c) of Pub. L. 98–369 applicable to interest paid or accrued after Dec. 31, 1984, on indebtedness incurred after Dec. 31, 1984, see section 612(g) of Pub. L. 98–369, set out as an Effective Date note under section 25 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

Amendment by Pub. L. 97–248 applicable to obligations issued after Dec. 31, 1982, with exceptions for certain warrants, see section 310(d) of Pub. L. 97–248, set out as a note under section 103 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 205(c)(3) of Pub. L. 94–455 applicable with respect to taxable years ending after Dec. 31, 1975, see section 205(e) of Pub. L. 94–455, set out as an Effective Date note under section 1254 of this title.

Pub. L. 94–455, title II, §209(b), Oct. 4, 1976, 90 Stat. 1543, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1975.

"(2) INDEBTEDNESS INCURRED BEFORE SEPTEMBER 11, 1975.—In the case of indebtedness attributable to a specific item of property which—

"(A) is for a specified term, and

"(B) was incurred before September 11, 1975, or is incurred after September 10, 1975, pursuant to a written contract or commitment which on September 11, 1975, and at all times thereafter before the incurring of such indebtedness, is binding on the taxpayer,

the amendments made by this section shall not apply, but section 163(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect before the enactment of this Act [Oct. 4, 1976]) shall apply. For purposes of the preceding sentence, so much of the net investment income (as defined in section 163(d)(3)(A) of such Code) for any taxable year as is not taken into account under section 163(d) of such Code, as amended by this Act, by reason of the last sentence of section 163(d)(3)(A) of such Code, shall be taken into account for purposes of applying such section as in effect before the date of enactment of this Act [Oct. 4, 1976] with respect to interest on indebtedness referred to in the preceding sentence."

Amendment by section 1901(b)(8)(C), (3)(K) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Pub. L. 92–178, title III, §304(e), Dec. 10, 1971, 85 Stat. 524, provided that: "The amendments made by this section to section 57 of the Internal Revenue Code of 1954 shall apply to taxable years beginning after December 31, 1969. The amendments made by this section to section 163 of such Code shall apply to taxable years beginning after December 31, 1971."

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title II, §221(b), Dec. 30, 1969, 83 Stat. 576, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1971."

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88–272, title II, §224(d), Feb. 26, 1964, 78 Stat. 79, provided that: "The amendments made by subsections (a) [enacting section 483 of this title] and (b) [amending the analysis preceding section 481 of this title] shall apply to payments made after December 31, 1963, on account of sales or exchanges of property

occurring after June 30, 1963, other than any sale or exchange made pursuant to a binding written contract (including an irrevocable written option) entered into before July 1, 1963. The amendments made by subsection (c) [amending this section] shall apply to payments made during taxable years beginning after December 31, 1963."

EFFECTIVE DATE OF 1963 AMENDMENT

Subsec. (c) effective as of Jan. 1, 1962, and applicable with respect to taxable years ending on or after such date, see section 2 of Pub. L. 88–9, set out as an Effective Date note under section 1055 of this title.

APPLICATION OF SUBSECTION (H) TO TAXABLE YEARS BEGINNING IN 1987

Pub. L. 100–647, title I, §1005(c)(14), Nov. 10, 1988, 102 Stat. 3392, provided that:

"(A) For purposes of applying section 163(h) of the 1986 Code to any taxable year beginning during 1987, if, incident to a divorce or legal separation—

"(i) an individual acquires the interest of a spouse or former spouse in a qualified residence in a transfer to which section 1041 of the 1986 Code applies, and

"(ii) such individual incurs indebtedness which is secured by such qualified residence,

the amount determined under paragraph (3)(B)(ii)(I) of section 163(h) of the 1986 Code (as in effect before the amendments made by the Revenue Act of 1987 [Pub. L. 100–203, title X]) with respect to such qualified residence shall be increased by the amount determined under subparagraph (B).

"(B) The amount determined under this subparagraph shall be equal to the excess (if any) of—

"(i) the lesser of the amount of the indebtedness described in subparagraph (A)(ii), or the fair market value of the spouse's or former spouse's interest in the qualified residence as of the time of the transfer, over

"(ii) the basis of the spouse or former spouse in such interest in such residence (adjusted only by the cost of any improvements to such residence)."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TRANSITIONAL RULE FOR TREATMENT OF CERTAIN INCOME FROM S CORPORATIONS

Pub. L. 98–369, div. A, title X, §1066, July 18, 1984, 98 Stat. 1048, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) IN GENERAL.—If—

"(1) a corporation had an election in effect under subchapter S of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for the taxable years of such corporation beginning in 1982, 1983, and 1984, and

"(2) a shareholder of such corporation makes an election to have this section apply,

then any qualified income which such shareholder takes into account by reason of holding stock in such corporation for any taxable year of such corporation beginning in 1983 or 1984 shall be treated for purposes of section 163(d) of the Internal Revenue Code of 1986 as such income would have been treated but for the enactment of the Subchapter S Revision Act of 1982 [Pub. L. 97–354, see Tables for classification].

"(b) QUALIFIED INCOME.—For purposes of subsection (a), the term 'qualified income' means any income other than income which is attributable to personal services performed by the shareholder for the corporation.

"(c) ELECTION.—The election under subsection (a)(2) shall be made at such time and in such manner as the Secretary of the Treasury or his delegate may by regulations prescribe."

TRANSITIONAL RULE

For provision that, for purposes of amendments by section 231(b) of Pub. L. 97–248, any evidence of indebtedness issued pursuant to a written commitment which was binding on July 1, 1982, and at all times thereafter be treated as issued on July 1, 1982, see section 231(e) of Pub. L. 97–248, set out as a note under section 1232A of this title.

[1] *So in original. Probably should be followed by "in".*

[2] *See References in Text note below.*

§164. Taxes

(a) General rule

Except as otherwise provided in this section, the following taxes shall be allowed as a deduction for the taxable year within which paid or accrued:

(1) State and local, and foreign, real property taxes.
(2) State and local personal property taxes.
(3) State and local, and foreign, income, war profits, and excess profits taxes.
(4) The GST tax imposed on income distributions.
(5) The environmental tax imposed by section 59A.
(6) Qualified motor vehicle taxes.

In addition, there shall be allowed as a deduction State and local, and foreign, taxes not described in the preceding sentence which are paid or accrued within the taxable year in carrying on a trade or business or an activity described in section 212 (relating to expenses for production of income). Notwithstanding the preceding sentence, any tax (not described in the first sentence of this subsection) which is paid or accrued by the taxpayer in connection with an acquisition or disposition of property shall be treated as part of the cost of the acquired property or, in the case of a disposition, as a reduction in the amount realized on the disposition.

(b) Definitions and special rules

For purposes of this section—

(1) Personal property taxes

The term "personal property tax" means an ad valorem tax which is imposed on an annual basis in respect of personal property.

(2) State or local taxes

A State or local tax includes only a tax imposed by a State, a possession of the United States, or a political subdivision of any of the foregoing, or by the District of Columbia.

(3) Foreign taxes

A foreign tax includes only a tax imposed by the authority of a foreign country.

(4) Special rules for GST tax

(A) In general

The GST tax imposed on income distributions is—

(i) the tax imposed by section 2601, and
(ii) any State tax described in section 2604,

but only to the extent such tax is imposed on a transfer which is included in the gross income of the distributee and to which section 666 does not apply.

(B) Special rule for tax paid before due date

Any tax referred to in subparagraph (A) imposed with respect to a transfer occurring during the taxable year of the distributee (or, in the case of a taxable termination, the trust) which is paid not later than the time prescribed by law (including extensions) for filing the return with respect to such transfer shall be treated as having been paid on the last day of the taxable year in which the transfer was made.

(5) General sales taxes

For purposes of subsection (a)—

(A) Election to deduct State and local sales taxes in lieu of State and local income taxes

At the election of the taxpayer for the taxable year, subsection (a) shall be applied—

(i) without regard to the reference to State and local income taxes, and

(ii) as if State and local general sales taxes were referred to in a paragraph thereof.

(B) Definition of general sales tax

The term "general sales tax" means a tax imposed at one rate with respect to the sale at retail of a broad range of classes of items.

(C) Special rules for food, etc.

In the case of items of food, clothing, medical supplies, and motor vehicles—

(i) the fact that the tax does not apply with respect to some or all of such items shall not be taken into account in determining whether the tax applies with respect to a broad range of classes of items, and

(ii) the fact that the rate of tax applicable with respect to some or all of such items is lower than the general rate of tax shall not be taken into account in determining whether the tax is imposed at one rate.

(D) Items taxed at different rates

Except in the case of a lower rate of tax applicable with respect to an item described in subparagraph (C), no deduction shall be allowed under this paragraph for any general sales tax imposed with respect to an item at a rate other than the general rate of tax.

(E) Compensating use taxes

A compensating use tax with respect to an item shall be treated as a general sales tax. For purposes of the preceding sentence, the term "compensating use tax" means, with respect to any item, a tax which—

(i) is imposed on the use, storage, or consumption of such item, and

(ii) is complementary to a general sales tax, but only if a deduction is allowable under this paragraph with respect to items sold at retail in the taxing jurisdiction which are similar to such item.

(F) Special rule for motor vehicles

In the case of motor vehicles, if the rate of tax exceeds the general rate, such excess shall be disregarded and the general rate shall be treated as the rate of tax.

(G) Separately stated general sales taxes

If the amount of any general sales tax is separately stated, then, to the extent that the amount so stated is paid by the consumer (other than in connection with the consumer's trade or business) to the seller, such amount shall be treated as a tax imposed on, and paid by, such consumer.

(H) Amount of deduction may be determined under tables

(i) In general

At the election of the taxpayer for the taxable year, the amount of the deduction allowed under this paragraph for such year shall be—

(I) the amount determined under this paragraph (without regard to this subparagraph) with respect to motor vehicles, boats, and other items specified by the Secretary, and

(II) the amount determined under tables prescribed by the Secretary with respect to items to which subclause (I) does not apply.

(ii) Requirements for tables

The tables prescribed under clause (i)—

(I) shall reflect the provisions of this paragraph,

(II) shall be based on the average consumption by taxpayers on a State-by-State basis (as determined by the Secretary) of items to which clause (i)(I) does not apply, taking into account filing status, number of dependents, adjusted gross income, and rates of State and local general sales taxation, and

(III) need only be determined with respect to adjusted gross incomes up to the applicable

amount (as determined under section 68(b)).

(I) Application of paragraph

This paragraph shall apply to taxable years beginning after December 31, 2003, and before January 1, 2014.

(6) Qualified motor vehicle taxes

(A) In general

For purposes of this section, the term "qualified motor vehicle taxes" means any State or local sales or excise tax imposed on the purchase of a qualified motor vehicle.

(B) Limitation based on vehicle price

The amount of any State or local sales or excise tax imposed on the purchase of a qualified motor vehicle taken into account under subparagraph (A) shall not exceed the portion of such tax attributable to so much of the purchase price as does not exceed $49,500.

(C) Income limitation

The amount otherwise taken into account under subparagraph (A) (after the application of subparagraph (B)) for any taxable year shall be reduced (but not below zero) by the amount which bears the same ratio to the amount which is so treated as—

(i) the excess (if any) of—

(I) the taxpayer's modified adjusted gross income for such taxable year, over

(II) $125,000 ($250,000 in the case of a joint return), bears to

(ii) $10,000.

For purposes of the preceding sentence, the term "modified adjusted gross income" means the adjusted gross income of the taxpayer for the taxable year (determined without regard to sections 911, 931, and 933).

(D) Qualified motor vehicle

For purposes of this paragraph—

(i) In general

The term "qualified motor vehicle" means—

(I) a passenger automobile or light truck which is treated as a motor vehicle for purposes of title II of the Clean Air Act, the gross vehicle weight rating of which is not more than 8,500 pounds, and the original use of which commences with the taxpayer,

(II) a motorcycle the gross vehicle weight rating of which is not more than 8,500 pounds and the original use of which commences with the taxpayer, and

(III) a motor home the original use of which commences with the taxpayer.

(ii) Other terms

The terms "motorcycle" and "motor home" have the meanings given such terms under section 571.3 of title 49, Code of Federal Regulations (as in effect on the date of the enactment of this paragraph).

(E) Qualified motor vehicle taxes not included in cost of acquired property

The last sentence of subsection (a) shall not apply to any qualified motor vehicle taxes.

(F) Coordination with general sales tax

This paragraph shall not apply in the case of a taxpayer who makes an election under paragraph (5) for the taxable year.

(G) Termination

This paragraph shall not apply to purchases after December 31, 2009.

(c) Deduction denied in case of certain taxes

No deduction shall be allowed for the following taxes:

(1) Taxes assessed against local benefits of a kind tending to increase the value of the property assessed; but this paragraph shall not prevent the deduction of so much of such taxes as is properly allocable to maintenance or interest charges.

(2) Taxes on real property, to the extent that subsection (d) requires such taxes to be treated as imposed on another taxpayer.

(d) Apportionment of taxes on real property between seller and purchaser

(1) General rule

For purposes of subsection (a), if real property is sold during any real property tax year, then—

(A) so much of the real property tax as is properly allocable to that part of such year which ends on the day before the date of the sale shall be treated as a tax imposed on the seller, and

(B) so much of such tax as is properly allocable to that part of such year which begins on the date of the sale shall be treated as a tax imposed on the purchaser.

(2) Special rules

(A) in the case of any sale of real property, if—

(i) a taxpayer may not, by reason of his method of accounting, deduct any amount for taxes unless paid, and

(ii) the other party to the sale is (under the law imposing the real property tax) liable for the real property tax for the real property tax year,

then for purposes of subsection (a) the taxpayer shall be treated as having paid, on the date of the sale, so much of such tax as, under paragraph (1) of this subsection, is treated as imposed on the taxpayer. For purposes of the preceding sentence, if neither party is liable for the tax, then the party holding the property at the time the tax becomes a lien on the property shall be considered liable for the real property tax for the real property tax year.

(B) In the case of any sale of real property, if the taxpayer's taxable income for the taxable year during which the sale occurs is computed under an accrual method of accounting, and if no election under section 461(c) (relating to the accrual of real property taxes) applies, then, for purposes of subsection (a), that portion of such tax which—

(i) is treated, under paragraph (1) of this subsection, as imposed on the taxpayer, and

(ii) may not, by reason of the taxpayer's method of accounting, be deducted by the taxpayer for any taxable year,

shall be treated as having accrued on the date of the sale.

(e) Taxes of shareholder paid by corporation

Where a corporation pays a tax imposed on a shareholder on his interest as a shareholder, and where the shareholder does not reimburse the corporation, then—

(1) the deduction allowed by subsection (a) shall be allowed to the corporation; and

(2) no deduction shall be allowed the shareholder for such tax.

(f) Deduction for one-half of self-employment taxes

(1) In general

In the case of an individual, in addition to the taxes described in subsection (a), there shall be allowed as a deduction for the taxable year an amount equal to one-half of the taxes imposed by section 1401 (other than the taxes imposed by section 1401(b)(2)) for such taxable year.

(2) Deduction treated as attributable to trade or business

For purposes of this chapter, the deduction allowed by paragraph (1) shall be treated as attributable to a trade or business carried on by the taxpayer which does not consist of the performance of services by the taxpayer as an employee.

(g) Cross references

(1) For provisions disallowing any deduction for certain taxes, see section 275.

(2) For treatment of taxes imposed by Indian tribal governments (or their subdivisions), see section 7871.

(Aug. 16, 1954, ch. 736, 68A Stat. 47; Pub. L. 85–866, title I, §6(a), Sept. 2, 1958, 72 Stat. 1608; Pub. L. 88–272, title II, §207(a), (b)(1), (2), Feb. 26, 1964, 78 Stat. 40–42; Pub. L. 92–580, §4(a), Oct. 27, 1972, 86 Stat. 1277; Pub. L. 94–455, title XIX, §§1901(a)(25), 1951(b)(3)(A), Oct. 4, 1976, 90 Stat. 1767, 1837; Pub. L. 95–600, title I, §111(a), (b), Nov. 6, 1978, 92 Stat. 2777; Pub. L. 96–223, title I, §101(b), Apr. 2, 1980, 94 Stat. 250; Pub. L. 97–473, title II, §202(b)(3), Jan. 14, 1983, 96 Stat. 2609; Pub. L. 98–21, title I, §124(c)(1), Apr. 20, 1983, 97 Stat. 90; Pub. L. 98–369, div. A, title IV, §474(r)(29)(F), July 18, 1984, 98 Stat. 844; Pub. L. 99–499, title V, §516(b)(2)(A), Oct. 17, 1986, 100 Stat. 1771; Pub. L. 99–514, title I, §134, title XIV, §1432(a)(1), (2), Oct. 22, 1986, 100 Stat. 2116, 2729; Pub. L. 100–418, title I, §1941(b)(2)(A), Aug. 23, 1988, 102 Stat. 1323; Pub. L. 100–647, title I, §1018(u)(11), Nov. 10, 1988, 102 Stat. 3590; Pub. L. 104–188, title I, §1704(t)(79), Aug. 20, 1996, 110 Stat. 1891; Pub. L. 108–357, title V, §501(a), Oct. 22, 2004, 118 Stat. 1520; Pub. L. 109–135, title IV, §403(r)(1), Dec. 21, 2005, 119 Stat. 2628; Pub. L. 109–432, div. A, title I, §103(a), Dec. 20, 2006, 120 Stat. 2934; Pub. L. 110–343, div. C, title II, §201(a), Oct. 3, 2008, 122 Stat. 3864; Pub. L. 111–5, div. B, title I, §1008(a), (b), Feb. 17, 2009, 123 Stat. 317; Pub. L. 111–148, title IX, §9015(b)(2)(A), Mar. 23, 2010, 124 Stat. 871; Pub. L. 111–312, title VII, §722(a), Dec. 17, 2010, 124 Stat. 3316; Pub. L. 112–240, title II, §205(a), Jan. 2, 2013, 126 Stat. 2323.)

REFERENCES IN TEXT

The Clean Air Act, referred to in subsec. (b)(6)(D)(i)(I), is act July 14, 1955, ch. 360, 69 Stat. 322. Title II of the Act, known as the National Emission Standards Act, is classified generally to subchapter II (§7521 et seq.) of chapter 85 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

The date of the enactment of this paragraph, referred to in subsec. (b)(6)(D)(ii), is the date of enactment of Pub. L. 111–5, which was approved Feb. 17, 2009.

AMENDMENTS

2013—Subsec. (b)(5)(I). Pub. L. 112–240 substituted "January 1, 2014" for "January 1, 2012".

2010—Subsec. (b)(5)(I). Pub. L. 111–312 substituted "January 1, 2012" for "January 1, 2010".

Subsec. (f)(1). Pub. L. 111–148, which directed the insertion of "(other than the taxes imposed by section 1401(b)(2))" after "section 1401)" in subsec. (f), was executed by making the insertion after "section 1401" in subsec. (f)(1), to reflect the probable intent of Congress.

2009—Subsec. (a)(6). Pub. L. 111–5, §1008(a), added par. (6).

Subsec. (b)(6). Pub. L. 111–5, §1008(b), added par. (6).

2008—Subsec. (b)(5)(I). Pub. L. 110–343 substituted "January 1, 2010" for "January 1, 2008".

2006—Subsec. (b)(5)(I). Pub. L. 109–432 substituted "2008" for "2006".

2005—Subsec. (b)(5)(A). Pub. L. 109–135 reenacted heading without change and amended text generally. Prior to amendment, text read as follows:

"(i) IN GENERAL.—At the election of the taxpayer for the taxable year, subsection (a) shall be applied—

"(I) without regard to the reference to State and local income taxes, and

"(II) as if State and local general sales taxes were referred to in a paragraph thereof."

2004—Subsec. (b)(5). Pub. L. 108–357 added par. (5).

1996—Subsec. (a)(4), (5). Pub. L. 104–188 added pars. (4) and (5) and struck out former pars. (4) and (5) which read as follows:

"(4) The environmental tax imposed by section 59A.

"(5) The GST tax imposed on income distributions."

1988—Subsec. (a)(4). Pub. L. 100–418 struck out par. (4) relating to windfall profit tax imposed by section 4986 and redesignated par. (5) relating to environmental tax as (4).

Subsec. (a)(5). Pub. L. 100–647 substituted "The GST" for "the GST".

Pub. L. 100–418 redesignated par. (5), relating to environmental tax, as (4).

1986—Subsec. (a). Pub. L. 99–514, §134(a)(2), inserted "Notwithstanding the preceding sentence, any tax (not described in the first sentence of this subsection) which is paid or accrued by the taxpayer in connection

with an acquisition or disposition of property shall be treated as part of the cost of the acquired property or, in the case of a disposition, as a reduction in the amount realized on the disposition."

Subsec. (a)(4). Pub. L. 99–514, §134(a)(1), struck out par. (4) relating to "State and local general sales taxes" and redesignated as par. (4) former par. (5) relating to windfall profit tax.

Subsec. (a)(5). Pub. L. 99–514, §1432(a)(1), added par. (5) relating to GST tax imposed on income distributions.

Pub. L. 99–499 added par. (5) relating to environmental tax.

Subsec. (b)(2). Pub. L. 99–514, §134(b)(1), (2), redesignated par. (3) as (2) and struck out former par. (2), general sales taxes provisions, subpars. (A) to (E) of which covered in general rule, special rules for food, etc., items taxed at different rates, compensating use taxes, and special rules for motor vehicles, respectively.

Subsec. (b)(3). Pub. L. 99–514, §134(b)(2), redesignated par. (4) as (3). Former par. (3) redesignated (2).

Subsec. (b)(4). Pub. L. 99–514, §1432(a)(2), added par. (4).

Pub. L. 99–514, §134(b)(2), redesignated par. (4) as (3).

Subsec. (b)(5). Pub. L. 99–514, §134(b)(1), struck out par. (5), separately stated general sales taxes, which read as follows: "If the amount of any general sales tax is separately stated, then, to the extent that the amount so stated is paid by the consumer (otherwise than in connection with the consumer's trade or business) to his seller, such amount shall be treated as a tax imposed on, and paid by, such consumer."

1984—Subsec. (f). Pub. L. 98–369 redesignated pars. (2) and (3) as pars. (1) and (2), respectively. Former par. (1), which referred to section 1451 for provisions disallowing any deduction for the payment of the tax imposed by subchapter B of chapter 3 (relating to tax-free covenant bonds), was struck out.

1983—Subsec. (f). Pub. L. 98–21 added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (f)(3). Pub. L. 97–473 added par. (3).

Subsec. (g). Pub. L. 98–21 redesignated subsec. (f) as (g).

1980—Subsec. (a)(5). Pub. L. 96–223 added par. (5).

1978—Subsec. (a)(5). Pub. L. 95–600, §111(a), struck out par. (5) relating to a deduction for State and local taxes on the sale of gasoline, diesel fuel, and other motor fuels.

Subsec. (b)(5). Pub. L. 95–600, §111(b), struck out in heading "and gasoline taxes" after "sales taxes", and in text "or of any tax on the sale of gasoline, diesel fuel, or other motor fuel" after "sales tax".

1976—Subsec. (d)(2). Pub. L. 94–455, §1901(a)(25), redesignated subpar. (D) as (B), and struck out subpar. (B) which related to the taxable years that subsec. (d)(1) applied and subpar. (C) which related to the limitations on subsec. (d)(1) where real property tax was allowable as a deduction under the Internal Revenue Code of 1939.

Subsecs. (f), (g). Pub. L. 94–455, §1951(b)(3)(A), redesignated subsec. (g) as (f). Former subsec. (f), which related to payments for municipal services in atomic energy communities, was struck out.

1972—Subsec. (b)(2)(E). Pub. L. 92–580 added subpar. (E).

1964—Subsec. (a). Pub. L. 88–272, §207(a), limited the subsection to State, local and foreign real property, income, war profits, excess profits, and unspecified taxes, on a business or activity described in section 212, and to State and local personal property, general sales, gasoline, diesel fuel and other motor fuel taxes.

Subsec. (b). Pub. L. 88–272, §207(a), added subsec. (b). Former subsec. (b), which denied the deduction for certain Federal income taxes, for Federal war profits and excess profits taxes, import duties, excise and stamp taxes, and estate, inheritance, legacy, succession and gift taxes, local assessments against benefits increasing property values, and certain taxes imposed by any foreign country or possession of the United States if the taxpayer chose to benefit by section 901 relating to foreign tax credit, and for taxes on real property to the extent that they are treated as imposed on another taxpayer, was struck out.

Subsec. (c). Pub. L. 88–272, §207(a), substituted provisions denying the deduction for taxes assessed against local benefits which increase property value, except for so much as is properly allocable to maintenance or interest charges, and for real property taxes to the extent they are treated as imposed on another taxpayer, for provisions relating to certain retail sales taxes and gasoline taxes, the extent to which they were deductible, and to definition of "state or local sales tax".

Subsec. (f). Pub. L. 88–272, §207(b)(1), inserted "State" before "real property taxes".

Subsec. (g). Pub. L. 88–272, §207(b)(2), designated existing provisions as par. (1), substituted "1451" for "1451(f)" and added par. (2).

1958—Subsecs. (f), (g). Pub. L. 85–866, §6(a), added subsec. (f) and redesignated former subsec. (f) as (g).

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title II, §205(b), Jan. 2, 2013, 126 Stat. 2323, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2011."

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §722(b), Dec. 17, 2010, 124 Stat. 3316, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2009."

Pub. L. 111–148, title IX, §9015(c), Mar. 23, 2010, 124 Stat. 872, provided that: "The amendments made by this section [amending this section and sections 1401, 1402, 3101, and 3102 of this title] shall apply with respect to remuneration received, and taxable years beginning, after December 31, 2012."

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–5 applicable to purchases on or after Feb. 17, 2009, in taxable years ending after such date, see section 1008(e) of Pub. L. 111–5, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title II, §201(b), Oct. 3, 2008, 122 Stat. 3864, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2007."

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title I, §103(b), Dec. 20, 2006, 120 Stat. 2934, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2005."

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title V, §501(b), Oct. 22, 2004, 118 Stat. 1521, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2003."

EFFECTIVE DATE OF 1988 AMENDMENT

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

Pub. L. 100–418, title I, §1941(c), Aug. 23, 1988, 102 Stat. 1324, provided that: "The amendments made by this section [amending this section and sections 193, 291, 6161, 6211, 6212, 6213, 6214, 6302, 6344, 6501, 6511, 6512, 6611, 6654, 6655, 6724, 6862, 7422, and 7512 of this title, and repealing sections 280D, 4986 to 4998, 6050C, 6076, 6232, 6429, 6430, and 7241 of this title] shall apply to crude oil removed from the premises on or after the date of the enactment of this Act [Aug. 23, 1988]."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 134 of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 1432(a)(1), (2) of Pub. L. 99–514 applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99–514, set out as an Effective Date note under section 2601 of this title.

Amendment by Pub. L. 99–499 applicable to taxable years beginning after Dec. 31, 1986, see section 516(c) of Pub. L. 99–499, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

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

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable to taxable years beginning after Dec. 31, 1989, see section 124(d)(2) of Pub. L. 98–21, set out as a note under section 1401 of this title.

For effective date of amendment by Pub. L. 97–473, see section 204(1) of Pub. L. 97–473, set out as an Effective Date note under section 7871 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–223 applicable to periods after Feb. 29, 1980, see section 101(i) of Pub. L. 96–223, set out as an Effective Date note under section 6161 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title I, §111(c), Nov. 6, 1978, 92 Stat. 2777, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1978."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see sections 1901(d) and 1951(d) of Pub. L. 94–455, set out as notes under sections 2 and 72 of this title, respectively.

EFFECTIVE DATE OF 1972 AMENDMENT

Pub. L. 92–580, §4(b), Oct. 27, 1972, 86 Stat. 1277, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years ending on or after January 1, 1971."

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88–272, title II, §207(c), Feb. 26, 1964, 78 Stat. 43, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) GENERAL RULE.—Except as provided in paragraph (2), the amendments made by this section [enacting section 275 of this title and amending this section and sections 535, 545, 556, 901, and 903 of this title] shall apply to taxable years beginning after December 31, 1963.

"(2) SPECIAL TAXING DISTRICTS.—Section 164(c)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by subsection (a)) shall not prevent the deduction under section 164 of such Code (as so amended) of taxes levied by a special taxing district which is described in section 164(b)(5) of such Code (as in effect for a taxable year ending on December 31, 1963) and which was in existence on December 31, 1963, for the purpose of retiring indebtedness existing on such date."

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85–866, §6(b), Sept. 2, 1958, 72 Stat. 1608, provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1957."

SAVINGS PROVISION

Pub. L. 94–455, title XIX, §1951(b)(3)(B), Oct. 4, 1976, 90 Stat. 1837, provided that: "Notwithstanding subparagraph (A) [amending this section], any amount paid or accrued in a taxable year beginning after December 31, 1976, to the Atomic Energy Commission or its successors for municipal-type services shall be allowed as a deduction under section 164 if such amount would have been deductible by reason of section 164(f) (as in effect for a taxable year ending on December 31, 1976) and if the amount is paid or accrued with respect to real property in a community (within the meaning of section 21(b) of the Atomic Energy Community Act of 1955 (42 U.S.C. 2304(b))) in which the Commission on December 31, 1976, was rendering municipal-type services for which it received compensation from the owners of property within such community."

§165. Losses

(a) General rule

There shall be allowed as a deduction any loss sustained during the taxable year and not compensated for by insurance or otherwise.

(b) Amount of deduction

For purposes of subsection (a), the basis for determining the amount of the deduction for any loss shall be the adjusted basis provided in section 1011 for determining the loss from the sale or other disposition of property.

(c) Limitation on losses of individuals

In the case of an individual, the deduction under subsection (a) shall be limited to—

(1) losses incurred in a trade or business;

(2) losses incurred in any transaction entered into for profit, though not connected with a trade or business; and

(3) except as provided in subsection (h), losses of property not connected with a trade or

business or a transaction entered into for profit, if such losses arise from fire, storm, shipwreck, or other casualty, or from theft.

(d) Wagering losses

Losses from wagering transactions shall be allowed only to the extent of the gains from such transactions.

(e) Theft losses

For purposes of subsection (a), any loss arising from theft shall be treated as sustained during the taxable year in which the taxpayer discovers such loss.

(f) Capital losses

Losses from sales or exchanges of capital assets shall be allowed only to the extent allowed in sections 1211 and 1212.

(g) Worthless securities

(1) General rule

If any security which is a capital asset becomes worthless during the taxable year, the loss resulting therefrom shall, for purposes of this subtitle, be treated as a loss from the sale or exchange, on the last day of the taxable year, of a capital asset.

(2) Security defined

For purposes of this subsection, the term "security" means—

(A) a share of stock in a corporation;

(B) a right to subscribe for, or to receive, a share of stock in a corporation; or

(C) a bond, debenture, note, or certificate, or other evidence of indebtedness, issued by a corporation or by a government or political subdivision thereof, with interest coupons or in registered form.

(3) Securities in affiliated corporation

For purposes of paragraph (1), any security in a corporation affiliated with a taxpayer which is a domestic corporation shall not be treated as a capital asset. For purposes of the preceding sentence, a corporation shall be treated as affiliated with the taxpayer only if—

(A) the taxpayer owns directly stock in such corporation meeting the requirements of section 1504(a)(2), and

(B) more than 90 percent of the aggregate of its gross receipts for all taxable years has been from sources other than royalties, rents (except rents derived from rental of properties to employees of the corporation in the ordinary course of its operating business), dividends, interest (except interest received on deferred purchase price of operating assets sold), annuities, and gains from sales or exchanges of stocks and securities.

In computing gross receipts for purposes of the preceding sentence, gross receipts from sales or exchanges of stocks and securities shall be taken into account only to the extent of gains therefrom.

(h) Treatment of casualty gains and losses

(1) $100 limitation per casualty

Any loss of an individual described in subsection (c)(3) shall be allowed only to the extent that the amount of the loss to such individual arising from each casualty, or from each theft, exceeds $500 ($100 for taxable years beginning after December 31, 2009).

(2) Net casualty loss allowed only to the extent it exceeds 10 percent of adjusted gross income

(A) In general

If the personal casualty losses for any taxable year exceed the personal casualty gains for such taxable year, such losses shall be allowed for the taxable year only to the extent of the sum

of—

(i) the amount of the personal casualty gains for the taxable year, plus

(ii) so much of such excess as exceeds 10 percent of the adjusted gross income of the individual.

(B) Special rule where personal casualty gains exceed personal casualty losses

If the personal casualty gains for any taxable year exceed the personal casualty losses for such taxable year—

(i) all such gains shall be treated as gains from sales or exchanges of capital assets, and

(ii) all such losses shall be treated as losses from sales or exchanges of capital assets.

(3) Special rule for losses in federally declared disasters

(A) In general

If an individual has a net disaster loss for any taxable year, the amount determined under paragraph (2)(A)(ii) shall be the sum of—

(i) such net disaster loss, and

(ii) so much of the excess referred to in the matter preceding clause (i) of paragraph (2)(A) (reduced by the amount in clause (i) of this subparagraph) as exceeds 10 percent of the adjusted gross income of the individual.

(B) Net disaster loss

For purposes of subparagraph (A), the term "net disaster loss" means the excess of—

(i) the personal casualty losses—

(I) attributable to a federally declared disaster occurring before January 1, 2010, and

(II) occurring in a disaster area, over

(ii) personal casualty gains.

(C) Federally declared disaster

For purposes of this paragraph—

(i) Federally declared disaster

The term "federally declared disaster" means any disaster subsequently determined by the President of the United States to warrant assistance by the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

(ii) Disaster area

The term "disaster area" means the area so determined to warrant such assistance.

(4) Definitions of personal casualty gain and personal casualty loss

For purposes of this subsection—

(A) Personal casualty gain

The term "personal casualty gain" means the recognized gain from any involuntary conversion of property which is described in subsection (c)(3) arising from fire, storm, shipwreck, or other casualty, or from theft.

(B) Personal casualty loss

The term "personal casualty loss" means any loss described in subsection (c)(3). For purposes of paragraphs (2) and (3), the amount of any personal casualty loss shall be determined after the application of paragraph (1).

(5) Special rules

(A) Personal casualty losses allowable in computing adjusted gross income to the extent of personal casualty gains

In any case to which paragraph (2)(A) applies, the deduction for personal casualty losses for

any taxable year shall be treated as a deduction allowable in computing adjusted gross income to the extent such losses do not exceed the personal casualty gains for the taxable year.

(B) Joint returns

For purposes of this subsection, a husband and wife making a joint return for the taxable year shall be treated as 1 individual.

(C) Determination of adjusted gross income in case of estates and trusts

For purposes of paragraph (2), the adjusted gross income of an estate or trust shall be computed in the same manner as in the case of an individual, except that the deductions for costs paid or incurred in connection with the administration of the estate or trust shall be treated as allowable in arriving at adjusted gross income.

(D) Coordination with estate tax

No loss described in subsection (c)(3) shall be allowed if, at the time of filing the return, such loss has been claimed for estate tax purposes in the estate tax return.

(E) Claim required to be filed in certain cases

Any loss of an individual described in subsection (c)(3) to the extent covered by insurance shall be taken into account under this section only if the individual files a timely insurance claim with respect to such loss.

(i) Disaster losses

(1) Election to take deduction for preceding year

Notwithstanding the provisions of subsection (a), any loss occurring in a disaster area (as defined by clause (ii) of subsection (h)(3)(C)) and attributable to a federally declared disaster (as defined by clause (i) of such subsection) may, at the election of the taxpayer, be taken into account for the taxable year immediately preceding the taxable year in which the disaster occurred.

(2) Year of loss

If an election is made under this subsection, the casualty resulting in the loss shall be treated for purposes of this title as having occurred in the taxable year for which the deduction is claimed.

(3) Amount of loss

The amount of the loss taken into account in the preceding taxable year by reason of paragraph (1) shall not exceed the uncompensated amount determined on the basis of the facts existing at the date the taxpayer claims the loss.

(4) Use of disaster loan appraisals to establish amount of loss

Nothing in this title shall be construed to prohibit the Secretary from prescribing regulations or other guidance under which an appraisal for the purpose of obtaining a loan of Federal funds or a loan guarantee from the Federal Government as a result of a federally declared disaster (as defined by subsection (h)(3)(C)(i) [1] may be used to establish the amount of any loss described in paragraph (1) or (2).

(j) Denial of deduction for losses on certain obligations not in registered form

(1) In general

Nothing in subsection (a) or in any other provision of law shall be construed to provide a deduction for any loss sustained on any registration-required obligation unless such obligation is in registered form (or the issuance of such obligation was subject to tax under section 4701).

(2) Definitions

For purposes of this subsection—

(A) Registration-required obligation

The term "registration-required obligation" has the meaning given to such term by section 163(f)(2).

(B) Registered form

The term "registered form" has the same meaning as when used in section 163(f).

(3) Exceptions

The Secretary may, by regulations, provide that this subsection and section 1287 shall not apply with respect to obligations held by any person if—

(A) such person holds such obligations in connection with a trade or business outside the United States,

(B) such person holds such obligations as a broker dealer (registered under Federal or State law) for sale to customers in the ordinary course of his trade or business,

(C) such person complies with reporting requirements with respect to ownership, transfers, and payments as the Secretary may require, or

(D) such person promptly surrenders the obligation to the issuer for the issuance of a new obligation in registered form,

but only if such obligations are held under arrangements provided in regulations or otherwise which are designed to assure that such obligations are not delivered to any United States person other than a person described in subparagraph (A), (B), or (C).

(k) Treatment as disaster loss where taxpayer ordered to demolish or relocate residence in disaster area because of disaster

In the case of a taxpayer whose residence is located in an area which has been determined by the President of the United States to warrant assistance by the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, if—

(1) not later than the 120th day after the date of such determination, the taxpayer is ordered, by the government of the State or any political subdivision thereof in which such residence is located, to demolish or relocate such residence, and

(2) the residence has been rendered unsafe for use as a residence by reason of the disaster,

any loss attributable to such disaster shall be treated as a loss which arises from a casualty and which is described in subsection (i).

(l) Treatment of certain losses in insolvent financial institutions

(1) In general

If—

(A) as of the close of the taxable year, it can reasonably be estimated that there is a loss on a qualified individual's deposit in a qualified financial institution, and

(B) such loss is on account of the bankruptcy or insolvency of such institution,

then the taxpayer may elect to treat the amount so estimated as a loss described in subsection (c)(3) incurred during the taxable year.

(2) Qualified individual defined

For purposes of this subsection, the term "qualified individual" means any individual, except an individual—

(A) who owns at least 1 percent in value of the outstanding stock of the qualified financial institution,

(B) who is an officer of the qualified financial institution,

(C) who is a sibling (whether by the whole or half blood), spouse, aunt, uncle, nephew, niece, ancestor, or lineal descendant of an individual described in subparagraph (A) or (B), or

(D) who otherwise is a related person (as defined in section 267(b)) with respect to an individual described in subparagraph (A) or (B).

(3) Qualified financial institution

For purposes of this subsection, the term "qualified financial institution" means—

(A) any bank (as defined in section 581),

(B) any institution described in section 591,

(C) any credit union the deposits or accounts in which are insured under Federal or State law or are protected or guaranteed under State law, or

(D) any similar institution chartered and supervised under Federal or State law.

(4) Deposit

For purposes of this subsection, the term "deposit" means any deposit, withdrawable account, or withdrawable or repurchasable share.

(5) Election to treat as ordinary loss

(A) In general

In lieu of any election under paragraph (1), the taxpayer may elect to treat the amount referred to in paragraph (1) for the taxable year as an ordinary loss described in subsection (c)(2) incurred during the taxable year.

(B) Limitations

(i) Deposit may not be federally insured

No election may be made under subparagraph (A) with respect to any loss on a deposit in a qualified financial institution if part or all of such deposit is insured under Federal law.

(ii) Dollar limitation

With respect to each financial institution, the aggregate amount of losses attributable to deposits in such financial institution to which an election under subparagraph (A) may be made by the taxpayer for any taxable year shall not exceed $20,000 ($10,000 in the case of a separate return by a married individual). The limitation of the preceding sentence shall be reduced by the amount of any insurance proceeds under any State law which can reasonably be expected to be received with respect to losses on deposits in such institution.

(6) Election

Any election by the taxpayer under this subsection for any taxable year—

(A) shall apply to all losses for such taxable year of the taxpayer on deposits in the institution with respect to which such election was made, and

(B) may be revoked only with the consent of the Secretary.

(7) Coordination with section 166

Section 166 shall not apply to any loss to which an election under this subsection applies.

(m) Cross references

(1) For special rule for banks with respect to worthless securities, see section 582.

(2) For disallowance of deduction for worthlessness of securities to which subsection (g)(2)(C) applies, if issued by a political party or similar organization, see section 271.

(3) For special rule for losses on stock in a small business investment company, see section 1242.

(4) For special rule for losses of a small business investment company, see section 1243.

(5) For special rule for losses on small business stock, see section 1244.

(Aug. 16, 1954, ch. 736, 68A Stat. 49; Pub. L. 85–866, title I, §§7, 57(c)(1), title II, §202(a), Sept. 2, 1958, 72 Stat. 1608, 1646, 1676; Pub. L. 87–426, §2(a), Mar. 31, 1962, 76 Stat. 51; Pub. L. 88–272, title II, §§208(a), 238, Feb. 26, 1964, 78 Stat. 43, 128; Pub. L. 88–348, §3(a), June 30, 1964, 78 Stat. 237; Pub. L. 91–606, title III, §301(h), Dec. 31, 1970, 84 Stat. 1759; Pub. L. 91–677, §1(a), Jan. 12, 1971, 84 Stat. 2061; Pub. L. 91–687, §1, Jan. 12, 1971, 84 Stat. 2071; Pub. L. 92–336, §2(a), July 1, 1972, 86 Stat. 406; Pub. L. 92–418, §2(a), Aug. 29, 1972, 86 Stat. 656, 657; Pub. L. 93–288, title VII, §702(h), formerly title VI, §602(h), May 22, 1974, 88 Stat. 164, renumbered title VII, §702(h), Pub. L. 103–337, div. C, title XXXIV, §3411(a)(1), (2), Oct. 5, 1994, 108 Stat. 3100; Pub. L.

94–455, title XIX, §1901(a)(26), Oct. 4, 1976, 90 Stat. 1767; Pub. L. 97–248, title II, §203(a), (b), title III, §310(b)(5), Sept. 3, 1982, 96 Stat. 422, 598; Pub. L. 98–369, div. A, title I, §42(a)(4), title VII, §711(c)(1), (2)(A)(i), (ii), title X, §1051(a), July 18, 1984, 98 Stat. 556, 943, 1044; Pub. L. 99–514, title IX, §905(a), title X, §1004(a), Oct. 22, 1986, 100 Stat. 2385, 2388; Pub. L. 100–647, title I, §1009(d)(1), Nov. 10, 1988, 102 Stat. 3449; Pub. L. 100–707, title I, §109(l), Nov. 23, 1988, 102 Stat. 4709; Pub. L. 105–34, title IX, §912(a), Aug. 5, 1997, 111 Stat. 878; Pub. L. 106–554, §1(a)(7) [title III, §318(b)(1), (2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–645; Pub. L. 108–311, title IV, §408(a)(7)(A), (B), Oct. 4, 2004, 118 Stat. 1191; Pub. L. 110–343, div. C, title VII, §706(a)(1), (2)(A)–(C), (c), Oct. 3, 2008, 122 Stat. 3921–3923; Pub. L. 111–147, title V, §502(a)(2)(D), Mar. 18, 2010, 124 Stat. 107.)

REFERENCES IN TEXT

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsecs. (h)(3)(C)(i) and (k), is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, which is classified principally to chapter 68 (§5121 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of Title 42 and Tables.

AMENDMENTS

2010—Subsec. (j)(2)(A). Pub. L. 111–147 struck out "except that clause (iv) of subparagraph (A), and subparagraph (B), of such section shall not apply" before period.

2008—Subsec. (h)(1). Pub. L. 110–343, §706(c), substituted "$500 ($100 for taxable years beginning after December 31, 2009)" for "$100".

Subsec. (h)(3). Pub. L. 110–343, §706(a)(1), added par. (3). Former par. (3) redesignated (4).

Subsec. (h)(4). Pub. L. 110–343, §706(a)(1), redesignated par. (3) as (4). Former par. (4) redesignated (5).

Subsec. (h)(4)(B). Pub. L. 110–343, §706(a)(2)(A), substituted "paragraphs (2) and (3)" for "paragraph (2)".

Subsec. (h)(5). Pub. L. 110–343, §706(a)(1), redesignated par. (4) as (5).

Subsec. (i)(1). Pub. L. 110–343, §706(a)(2)(B), substituted "loss occurring in a disaster area (as defined by clause (ii) of subsection (h)(3)(C)) and attributable to a federally declared disaster (as defined by clause (i) of such subsection)" for "loss attributable to a disaster occurring in an area subsequently determined by the President of the United States to warrant assistance by the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act".

Subsec. (i)(4). Pub. L. 110–343, §706(a)(2)(C), substituted "federally declared disaster (as defined by subsection (h)(3)(C)(i)" for "Presidentially declared disaster (as defined by section 1033(h)(3))".

2004—Subsecs. (i)(1), (k). Pub. L. 108–311 inserted "Robert T. Stafford" before "Disaster Relief and Emergency Assistance Act".

2000—Subsec. (g)(3). Pub. L. 106–554, §1(a)(7) [title III, §318(b)(2)], struck out last sentence of concluding provisions which read as follows: "As used in subparagraph (A), the term 'stock' does not include nonvoting stock which is limited and preferred as to dividends."

Subsec. (g)(3)(A). Pub. L. 106–554, §1(a)(7) [title III, §318(b)(1)], amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "stock possessing at least 80 percent of the voting power of all classes of its stock and at least 80 percent of each class of its nonvoting stock is owned directly by the taxpayer, and".

1997—Subsec. (i)(4). Pub. L. 105–34 added par. (4).

1988—Subsecs. (i)(1), (k). Pub. L. 100–707 substituted "and Emergency Assistance Act" for "Act of 1974".

Subsec. (l)(5) to (7). Pub. L. 100–647 added pars. (5) and (6), redesignated former par. (6) as (7), and struck out former par. (5) which read as follows: "ELECTION.—Any election by the taxpayer under this subsection may be revoked only with the consent of the Secretary and shall apply to all losses of the taxpayer on deposits in the institution with respect to which such election was made."

1986—Subsec. (h)(4)(E). Pub. L. 99–514, §1004(a), added subpar. (E).

Subsecs. (l), (m). Pub. L. 99–514, §905(a), added subsec. (l) and redesignated former subsec. (l) as (m).

1984—Subsec. (c)(3). Pub. L. 98–369, §711(c)(2)(A)(i), extended limitation to losses of property not connected with a transaction entered into for profit.

Subsec. (h). Pub. L. 98–369, §711(c)(2)(A)(ii), substituted heading "Treatment of casualty gains and losses" for "Casualty and theft losses"; substituted par. (1) "$100 limitation per casualty" provision for former par. (1) "General rule" provision stating that: "Any loss of an individual described in subsection (c)(3) shall be allowed for any taxable year only to the extent that—

"(A) the amount of loss to such individual arising from each casualty, or from each theft, exceeds

$100, and

"(B) the aggregate amount of all such losses sustained by such individual during the taxable year (determined after application of subparagraph (A) exceeds 10 percent of the adjusted gross income of the individual.";

added par. (2) "Net casualty loss allowed only to the extent it exceeds 10 percent of adjusted gross income" provision and par. (3) "Definitions of personal casualty gain and personal casualty loss" provisions; redesignated as par. (4) former par. (2) catchline; added par. (4)(A) "Personal casualty losses allowable in computing adjusted gross income to the extent of personal casualty gains" provision; redesignated as par. (4)(B) former par. (2)(A) joint returns provision, substituting "For purposes of this section" for "For purposes of the $100 and 10 percent limitations described in paragraph (1)" and "individual" for "one individual"; redesignated as par. (4)(C) former par. (2)(B), substituting therein paragraph "(2)" for "(1)"; and redesignated as par. (4)(D) former par. (2)(C).

Pub. L. 98–369, §711(c)(1), amended par. (2) by redesignating subpar. (B) as (C) and by adding a new subpar. (B) relating to the determination of adjusted gross income in case of estates and trusts.

Subsec. (j)(3). Pub. L. 98–369, §42(a)(4), substituted "section 1287" for "subsection (d) of section 1232".

Subsecs. (k), (l). Pub. L. 98–369, §1051(a), added subsec. (k) and redesignated former subsec. (k) as (l).

1982—Subsec. (c)(3). Pub. L. 97–248, §203(b), inserted "except as provided in subsection (h)," before "losses of property" and struck out provisions that a loss described in this paragraph would be allowed only to the extent that the amount of loss to such individual arising from each casualty, or from each theft, exceeded $100, that, for purposes of the $100 limitation, a husband and wife making a joint return under section 6013 for the taxable year in which the loss was allowed as a deduction would be treated as one individual, and that no loss described in this paragraph would be allowed if, at the time of filing the return, such loss had been claimed for estate tax purposes in the estate tax return.

Subsec. (h). Pub. L. 97–248, §203(a), added subsec. (h) relating to casualty and theft losses. Former subsec. (h), relating to disaster losses, redesignated (i).

Subsec. (i). Pub. L. 97–248, §203(a), redesignated former subsec. (h), relating to disaster losses, as (i), in subsec. (i), as so redesignated, further redesignated existing unnumbered provisions as pars. (1) and (2), in par. (1), as so redesignated, substituted "be taken into account for the taxable year" for "be deducted for the taxable year", in par. (2), as so redesignated, substituted "shall be treated for purposes of this title as having occurred" for "will be deemed to have occurred", added par. (3), and struck out provision that a deduction under this subsection could not be in excess of so much of the loss as would have been deductible in the taxable year in which the casualty occurred, based on facts existing at the date the taxpayer claimed the loss. Former subsec. (i), setting forth cross references, redesignated (j).

Subsec. (j). Pub. L. 97–248, §310(b)(5), added subsec. (j) relating to denial of deduction for losses on certain obligations not in registered form. Former subsec. (j), setting forth cross references, redesignated (k).

Pub. L. 97–248, §203(a), redesignated former subsec. (i), setting forth cross references, as (j).

Subsec. (k). Pub. L. 97–248, §310(b)(5), redesignated former subsec. (j), setting forth cross references, as (k).

1976—Subsecs. (i), (j). Pub. L. 94–455 redesignated subsec. (j) as subsec. (i). Former subsec. (i), which related to property confiscated by Cuba, was struck out.

1974—Subsec. (h). Pub. L. 93–288 substituted "Disaster Relief Act of 1974" for "Disaster Relief Act of 1970".

1972—Subsec. (h). Pub. L. 92–418 struck out par. (1) provisions relating to losses attributable to a disaster occurring during period following close of taxable year and on or before time prescribed by law for filing the income tax return for the taxable year without regard to any extension of time, struck out par. (2) designation, and inserted "attributable to a disaster" before "occurring in an area", and at end of second sentence, inserted "based on facts existing at the date the taxpayer claims the loss".

Subsec. (h)(1). Pub. L. 92–336 substituted provisions relating to losses attributable to a disaster which occurs during the period after the close of the taxable year and on or before the last day of the 6th calendar month beginning after the close of the taxable year, for provisions relating to losses attributable to a disaster which occurs during the period following the close of the taxable year and on or before the time prescribed by law for filing the income tax return for the taxable year, determined without regard to any extension of time.

1971—Subsec. (g)(3). Pub. L. 91–687 substituted "stock possessing at least 80 percent of the voting power of all classes of its stock and at least 80 percent of each class of its nonvoting stock" for "at least 95 percent of each class of its stock" in subpar. (A), and inserted at the end of the subsection the sentence providing that the term "stock", as used in subpar. (A), does not include nonvoting stock which is limited and preferred as to dividends.

Subsec. (i)(1). Pub. L. 91–677, §1(a)(1), (2), struck out "or (2)" after "paragraph (1)" in cl. (B), and

substituted "one or more days in the period beginning on December 31, 1958, and ending on May 16, 1959" for "December 31, 1958".

Subsec. (i)(2)(B). Pub. L. 91–677, §1(a)(3), substituted "one or more days during the period beginning on December 31, 1958, and ending on May 16, 1959" for "December 31, 1958" and "the first day in such period on which the property was held by the taxpayer" for "December 31, 1958".

Subsec. (i)(3). Pub. L. 91–677, §1(a)(4), struck out subsec. (i)(3) which authorized a refund or credit to be given for any overpayment attributable to the application of par. (1), provided that a claim was filed for such refund or credit before Jan. 1, 1965.

1970—Subsec. (h)(2). Pub. L. 91–606 substituted "the Disaster Relief Act of 1970" for "sections 1855–1855g of title 42".

1964—Subsec. (c)(3). Pub. L. 88–272, §208(a), inserted requirement that losses must exceed $100 to be deductible.

Subsec. (i). Pub. L. 88–348 designated existing provisions as par. (1), substituted provisions permitting individuals who were citizens of the United States or resident aliens on Dec. 31, 1958, who sustained any loss of property prior to Jan. 1, 1964, and which was not a loss described in par. (1) or (2) of subsec. (c), to treat such loss as a loss under subsec. (c)(3), except that in cases of tangible property, the property had to be held by the taxpayer, and located in Cuba, on Dec. 31, 1958, for provisions which permitted any loss of tangible property to be treated as a loss from a casualty within subsec. (c)(3), therein, and added pars. (2) and (3).

Pub. L. 88–272, §238, added subsec. (i). Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 88–272, §238, redesignated former subsec. (i) as (j).

1962—Subsecs. (h), (i). Pub. L. 87–426 added subsec. (h) and redesignated former subsec. (h) as (i).

1958—Subsec. (g)(3)(B). Pub. L. 85–866, §7, substituted "rental of" for "rental from".

Subsec. (h)(3), (4). Pub. L. 85–866, §57(c)(1), added pars. (3) and (4).

Subsec. (h)(5). Pub. L. 85–866, §202(a), added par. (5).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–147 applicable to obligations issued after the date which is 2 years after Mar. 18, 2010, see section 502(f) of Pub. L. 111–147, set out as a note under section 149 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by section 706(a)(1), (2)(A)–(C) of Pub. L. 110–343 applicable to disasters declared in taxable years beginning after Dec. 31, 2007, see section 706(d)(1) of Pub. L. 110–343, set out as a note under section 56 of this title.

Amendment by section 706(c) of Pub. L. 110–343 applicable to taxable years beginning after Dec. 31, 2008, see section 706(d)(2) of Pub. L. 110–343, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(7) [title III, §318(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–645, provided that: "The amendments made by this subsection [amending this section] shall apply to taxable years beginning after December 31, 1984."

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title IX, §912(b), Aug. 5, 1997, 111 Stat. 878, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 905(a) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1981, see section 905(c)(1) of Pub. L. 99–514, as amended, set out as a note under section 451 of this title.

Pub. L. 99–514, title X, §1004(b), Oct. 22, 1986, 100 Stat. 2388, provided that: "The amendment made by this section [amending this section] shall apply to losses sustained in taxable years beginning after December 31, 1986."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 42(a)(4) of Pub. L. 98–369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98–369, set out as an Effective Date note under section 1271 of this title.

Amendment by section 711(c)(1) of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

Pub. L. 98–369, div. A, title VII, §711(c)(2)(A)(v), July 18, 1984, 98 Stat. 945, provided that: "The amendments made by this subparagraph [amending this section and sections 873, 931, and 1231 of this title] shall apply to taxable years beginning after December 31, 1983."

Pub. L. 98–369, div. A, title X, §1051(b), July 18, 1984, 98 Stat. 1045, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after December 31, 1981, with respect to residences in areas determined by the President of the United States, after such date, to warrant assistance by the Federal Government under the Disaster Relief Act of 1974 [42 U.S.C. 5121 et seq.]."

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title II, §203(c), Sept. 3, 1982, 96 Stat. 422, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1982. Such amendments shall also apply to the taxpayer's last taxable year beginning before January 1, 1983, solely for purposes of determining the amount allowable as a deduction with respect to any loss taken into account for such year by reason of an election under section 165(i) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by this section)."

Amendment by section 310(b)(5) of Pub. L. 97–248 applicable to obligations issued after Dec. 31, 1982, with exceptions for certain warrants, see section 310(d) of Pub. L. 97–248, set out as a note under section 103 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

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

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–288 effective Apr. 1, 1974, see section 605 of Pub. L. 93–288, formerly set out as an Effective Date note under section 5121 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1972 AMENDMENT

Pub. L. 92–418, §2(c), Aug. 30, 1972, 86 Stat. 657, provided in part that: "The amendment made by subsection (a) [amending this section] shall apply to disasters occurring after December 31, 1971, in taxable years ending after such date."

Pub. L. 92–336, §2(b), July 1, 1972, 86 Stat. 406, provided that: "The amendment made by subsection (a) [amending this section] shall apply to disasters occurring after December 31, 1971, in taxable years ending after such date."

EFFECTIVE DATE OF 1971 AMENDMENT

Pub. L. 91–687, §2, Jan. 12, 1971, 84 Stat. 2071, provided that: "The amendments made by this Act [amending this section] shall apply with respect to taxable years beginning on or after January 1, 1970."

Pub. L. 91–677, §1(b)(1), Jan. 12, 1971, 84 Stat. 2061, provided that: "The amendments made by subsection (a) [amending this section] shall apply in respect of losses sustained in taxable years ending after December 31, 1958."

EFFECTIVE DATE OF 1970 AMENDMENT

Pub. L. 91–606, title III, §304, Dec. 31, 1970, 84 Stat. 1760, provided that: "This Act [enacting sections 4401 to 4485 of Title 42, The Public Health and Welfare, amending this section, sections 5064 and 5708 of this title, sections 1706e, 1709, 1715l of Title 12, Banks and Banking, sections 241–1, 646 and 758 of Title 20, Education, section 1820 [now 3720] of Title 38, Veterans' Benefits, section 461 of former Title 40, Public Buildings, Property, and Works, section 1681 note of Title 42, repealing sections 1855 to 1855g, 1855aa, 1855aa note, 1855bb to 1855ii, 1855aaa, 1855aaa note, 1855bbb to 1855nnn of Title 42, and section 1926 of Title 7, Agriculture, and enacting provisions set out as notes under section 4401 and section 4434 of Title 42] shall take effect immediately upon its enactment [Dec. 31, 1970], except that sections 226(b), 237, 241, 252(a), and 254 [sections 4436(b), 4456, 4460, 4482(a), and 4484 of Title 42, respectively] shall take effect as of August 1, 1969, and sections 231, 232, and 233 [sections 4451, 4452 of Title 42 and amendments to section 1820 [now 3720] of Title 38, respectively] shall take effect as of April 1, 1970."

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88–272, title II, §208(b), Feb. 26, 1964, 78 Stat. 43, provided that: "The amendment made by subsection (a) [amending this section] shall apply to losses sustained after December 31, 1963, in taxable years ending after such date."

Pub. L. 88–348, §3(b), June 30, 1964, 78 Stat. 238, provided that: "The amendment made by subsection (a) [amending this section] shall apply in respect of losses sustained in taxable years ending after December 31, 1958."

EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87–426, §2(b), Mar. 31, 1962, 76 Stat. 51, provided that: "The amendments made by this section [amending this section] shall be effective with respect to any disaster occurring after December 31, 1961."

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85–866, title I, §1(c), Sept. 2, 1958, 72 Stat. 1606, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Except as otherwise expressly provided—

"(1) amendments made by this title to subtitle A of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to income taxes) [enacting section 558 of this title and amending this section and sections 152, 166, 168, 170, 172, 213, 337, 404, 421, 535, 545, 556, 582, 611, 613, 851, 1015, 1031, 1033, 1034, 1053, 1232, 1233, 1234, 1237, 1341, and 1347 of this title] shall apply to taxable years beginning after December 31, 1953, and ending after August 16, 1954; and

"(2) amendments made by this title to subtitle F of such Code (relating to procedure and administration) [enacting sections 7513 and 7514 of this title and amending sections 6013, 6015, 6212, 6325, 6338, 6339, 6501, 6504, 6511, 6601, 6652, 6653, 6851, 6871, 7213, 7324, 7325, and 7422 of this title] shall take effect as of August 17, 1954, and such subtitle, as so amended, shall apply as provided in section 7851 of the Internal Revenue Code of 1986".

Amendment by section 57(c)(1) of Pub. L. 85–866 applicable with respect to taxable years beginning after Sept. 2, 1958, see section 57(d) of Pub. L. 85–866, set out as a note under section 243 of this title.

TRANSITIONAL RULE FOR 1984 AMENDMENT

Pub. L. 98–369, div. A, title VII, §711(c)(2)(B), July 18, 1984, 98 Stat. 945, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "In the case of taxable years beginning before January 1, 1984—

"(i) For purposes of paragraph (1)(B) of section 165(h) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], adjusted gross income shall be determined without regard to the application of section 1231 of such Code to any gain or loss from an involuntary conversion of property described in subsection (c)(3) of section 165 of such Code arising from fire, storm, shipwreck, or other casualty or from theft.

"(ii) Section 1231 of such Code shall be applied after the application of paragraph (1) of section 165(h) of such Code."

CLARIFICATION OF TREATMENT OF CERTAIN FSLIC FINANCIAL ASSISTANCE

Pub. L. 103–66, title XIII, §13224, Aug. 10, 1993, 107 Stat. 485, provided that:

"(a) GENERAL RULE.—For purposes of chapter 1 of the Internal Revenue Code of 1986—

"(1) any FSLIC assistance with respect to any loss of principal, capital, or similar amount upon the disposition of any asset shall be taken into account as compensation for such loss for purposes of section 165 of such Code, and

"(2) any FSLIC assistance with respect to any debt shall be taken into account for purposes of section 166, 585, or 593 of such Code in determining whether such debt is worthless (or the extent to which such debt is worthless) and in determining the amount of any addition to a reserve for bad debts arising from the worthlessness or partial worthlessness of such debts.

"(b) FSLIC ASSISTANCE.—For purposes of this section, the term 'FSLIC assistance' means any assistance (or right to assistance) with respect to a domestic building and loan association (as defined in section 7701(a)(19) of such Code without regard to subparagraph (C) thereof) under section 406(f) of the National Housing Act [former 12 U.S.C. 1729(f)] or [former] section 21A of the Federal Home Loan Bank Act [12 U.S.C. 1441a] (or under any similar provision of law).

"(c) EFFECTIVE DATE.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection—

"(A) The provisions of this section shall apply to taxable years ending on or after March 4, 1991, but only with respect to FSLIC assistance not credited before March 4, 1991.

"(B) If any FSLIC assistance not credited before March 4, 1991, is with respect to a loss sustained or charge-off in a taxable year ending before March 4, 1991, for purposes of determining the amount of any net operating loss carryover to a taxable year ending on or after March 4, 1991, the provisions of this section shall apply to such assistance for purposes of determining the amount of the net operating loss for the taxable year in which such loss was sustained or debt written off. Except as provided in the preceding sentence, this section shall not apply to any FSLIC assistance with respect to a loss sustained or charge-off in a taxable year ending before March 4, 1991.

"(2) EXCEPTIONS.—The provisions of this section shall not apply to any assistance to which the amendments made by section 1401(a)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 [Pub. L. 101–73, amending section 597 of this title and repealing provisions set out as a note under section 597 of this title] apply."

OVERPAYMENTS OR UNDERPAYMENTS OF TAX ATTRIBUTABLE TO CERTAIN AMENDMENTS BY PUB. L. 99–514 OR PUB. L. 100–647

Pub. L. 100–647, title I, §1009(d)(4), Nov. 10, 1988, 102 Stat. 3450, provided that: "If on the date of the enactment of this Act [Nov. 10, 1988] (or at any time before the date 1 year after such date of enactment) credit or refund of any overpayment of tax attributable to amendments made by section 905 of the Reform Act [section 905 of Pub. L. 99–514, amending this section and section 451 of this title] or by this subsection [amending this section and section 451 of this title and provisions set out as a note under section 451 of this title] (or the assessment of any underpayment of tax so attributable) is barred by any law or rule of law—

"(A) credit or refund of any such overpayment may nevertheless be made if claim therefore [sic] is filed before the date 1 year after such date of enactment, and

"(B) assessment of any such underpayment may nevertheless be made if made before the date 1 year after such date of enactment."

DEDUCTION FOR BUS AND FREIGHT FORWARDER OPERATING AUTHORITY

Pub. L. 99–514, title II, §243, Oct. 22, 1986, 100 Stat. 2182, as amended by Pub. L. 100–647, title I, §1002(j), Nov. 10, 1988, 102 Stat. 3371, provided that:

"(a) BUS OPERATING AUTHORITY.—

"(1) IN GENERAL.—Subject to the modifications contained in paragraph (2), section 266 of the Economic Recovery Tax Act of 1981 [section 266 of Pub. L. 97–34, set out below] shall be applied as if the term 'motor carrier operating authority' included a bus operating authority.

"(2) MODIFICATIONS.—For purposes of paragraph (1), section 266 of such Act shall be applied—

"(A) by substituting 'November 19, 1982' for 'July 1, 1980' each place it appears, and

"(B) by substituting 'November 1982' for 'July 1980' in subsection (a) thereof.

"(3) BUS OPERATING AUTHORITY DEFINED.—For purposes of this subsection and section 266 of such Act, the term 'bus operating authority' means—

"(A) a certificate or permit held by a motor common or contract carrier of passengers which was issued pursuant to subchapter II of chapter 109 of title 49, United States Code, and

"(B) a certificate or permit held by a motor carrier authorizing the transportation of passengers, as a common carrier, over regular routes in intrastate commerce which was issued by the appropriate State agency.

"(b) FREIGHT FORWARDER OPERATING AUTHORITY.—

"(1) IN GENERAL.—Subject to the modifications contained in paragraph (2), section 266 of the Economic Recovery Tax Act of 1981 [section 266 of Pub. L. 97–34, set out below] shall be applied as if subsection (b) thereof contained 'or a freight forwarder' after 'contract carrier of property'.

"(2) MODIFICATIONS.—The modifications referred to in this paragraph are:

"(A) 60-MONTH PERIOD.—The 60-month period referred to in section 266(a) of such Act shall begin with the later of—

"(i) the deregulation month, or

"(ii) at the election of the taxpayer, the 1st month of the taxpayer's 1st taxable year beginning after the deregulation month.

"(B) AUTHORITY MUST BE HELD AS OF BEGINNING OF 60-MONTH PERIOD.—A motor carrier operating authority shall not be taken into account unless such authority is held by the taxpayer at the beginning of the 60-month period applicable to the taxpayer under subparagraph (A).

"(C) ADJUSTED BASIS NOT TO EXCEED ADJUSTED BASIS AT BEGINNING OF 60-MONTH PERIOD.—The adjusted basis taken into account with respect to any motor carrier operating authority shall not exceed the adjusted basis of such authority as of the beginning of the 60-month period applicable to the taxpayer under subparagraph (A).

"(3) DEREGULATION MONTH.—For purposes of this section, the term 'deregulation month' means the month in which the Secretary of the Treasury or his delegate determines that a Federal law has been enacted which deregulates the freight forwarding industry.

"(c) SPECIAL RULE FOR MOTOR CARRIER OPERATING AUTHORITY.—In the case of a corporation which was incorporated on December 29, 1969, in the State of Delaware, notwithstanding any other provision of law, there shall be allowed as a deduction for the taxable year of the taxpayer beginning in 1980 an amount equal to $2,705,188 for its entire loss due to a decline in value of its motor carrier operating authority by reason of deregulation.

"(d) APPLICATION OF SECTION 334(b)(2).—For purposes of subsections (a) and (b), the reference to section 334(b)(2) in section 266(c)(2)(A)(ii) of the Economic Recovery Tax Act of 1981 [section 266(c)(2)(A)(ii) of Pub. L. 97–34, set out below] shall be a reference to such section as in effect before its repeal.

"(e) EFFECTIVE DATES.—

"(1) BUS OPERATING AUTHORITY.—

"(A) IN GENERAL.—Subsection (a) shall apply to taxable years ending after November 18, 1982.

"(B) STATUTE OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from subsection (a) is prevented at any time on or before the date which is 1 year after the date of the enactment of this Act [Oct. 22, 1986] by the operation of any law or rule of law (including res judicata), refund or credit of such overpayment (to the extent attributable to the application of such subsection) may, notwithstanding such law or rule of law, be made or allowed if claim therefore [sic] is filed on or before the date which is 18 months after such date of enactment.

"(2) FREIGHT FORWARDER OPERATING AUTHORITY.—Subsection (b) shall apply to taxable years ending after the month preceding the deregulation month."

DEDUCTION FOR MOTOR CARRIER OPERATING AUTHORITY

Pub. L. 97–34, title II, §266, Aug. 13, 1981, 95 Stat. 265, as amended by Pub. L. 97–424, title V, §517(a), Jan. 6, 1983, 96 Stat. 2183; Pub. L. 97–448, title I, §102(n), Jan. 12, 1983, 96 Stat. 2374; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) GENERAL RULE.—For purposes of chapter 1 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [this chapter], in computing the taxable income of a taxpayer who, on July 1, 1980, held one or more motor carrier operating authorities, an amount equal to the aggregate adjusted basis of all motor carrier operating authorities held by the taxpayer on July 1, 1980, or acquired subsequent thereto pursuant to a binding contract in effect on July 1, 1980, shall be allowed as a deduction ratably over a period of 60 months. Such 60-month period shall begin with the month of July 1980 (or if later, the month in which acquired), or at the election of the taxpayer, the first month of the taxpayer's first taxable year beginning after July 1, 1980.

"(b) DEFINITION OF MOTOR CARRIER OPERATING AUTHORITY.—For purposes of this section, the term 'motor carrier operating authority' means a certificate or permit held by a motor common or contract carrier of property and issued pursuant to subchapter II of chapter 109 of title 49 of the United States Code.

"(c) SPECIAL RULES.—

"(1) ADJUSTED BASIS.—For purposes of the Internal Revenue Code of 1986, proper adjustments shall be made in the adjusted basis of any motor carrier operating authority held by the taxpayer on July 1, 1980, for the amounts allowable as a deduction under this section.

"(2) CERTAIN STOCK ACQUISITIONS.—

"(A) IN GENERAL.—Under regulations prescribed by the Secretary of the Treasury or his delegate, and at the election of the holder of the authority, in any case in which a corporation—

"(i) on or before July 1, 1980 (or after such date pursuant to a binding contract in effect on such date), acquired stock in a corporation which held, directly or indirectly, any motor carrier operating authority at the time of such acquisition, and

"(ii) would have been able to allocate to the basis of such authority that portion of the acquiring corporation's cost basis in such stock attributable to such authority if the acquiring corporation had received such authority in the liquidation of the acquired corporation immediately following such acquisition and such allocation would have been proper under section 334(b)(2) of such Code,

the holder of the authority may, for purposes of this section, allocate a portion of the basis of the acquiring corporation in the stock of the acquired corporation to the basis of such authority in such manner as the Secretary may prescribe in such regulations.

"(B) TREATMENT OF CERTAIN NONCORPORATE TAXPAYERS.—Under regulations

prescribed by the Secretary of the Treasury or his delegate, and at the election of the holder of the authority, in any case in which—

"(i) a noncorporate taxpayer or group of noncorporate taxpayers on or before July 1, 1980, acquired in one purchase stock in a corporation which held, directly or indirectly, any motor carrier operating authority at the time of such acquisition, and

"(ii) the acquisition referred to in clause (i) would have satisfied the requirements of subparagraph (A) if the stock had been acquired by a corporation,

then, for purposes of subparagraphs (A) and (C), the noncorporate taxpayer or group of noncorporate taxpayers referred to in clause (i) shall be treated as a corporation. The preceding sentence shall apply only if such noncorporate taxpayer (or group of noncorporate taxpayers) on July 1, 1980, held stock constituting control (within the meaning of section 368(c) of the Internal Revenue Code of 1986) of the corporation holding (directly or indirectly) the motor carrier operating authority.

"(C) ADJUSTMENT TO BASIS.—Under regulations prescribed by the Secretary of the Treasury or his delegate, proper adjustment shall be made to the basis of the stock or other assets in the manner provided by such regulations to take into account any allocation under subparagraph (A).

"(3) SECTION 381 OF THE INTERNAL REVENUE CODE OF 1986 TO APPLY.—For purposes of section 381 of the Internal Revenue Code of 1986, any item described in this section shall be treated as an item described in subsection (c) of such section 381.

"(d) EFFECTIVE DATE.—The provisions of this section shall apply to taxable years ending after June 30, 1980."

[Pub. L. 97–424, title V, §517(b), Jan. 6, 1983, 96 Stat. 2184, provided that: "The amendment made by subsection (a) [adding subsec. (c)(2)(B) of this note] shall apply to taxable years ending after July 30, 1980."]

TAX TREATMENT OF CERTAIN 1972 DISASTER LOANS

Pub. L. 94–455, title XXI, §2103, Oct. 4, 1976, 90 Stat. 1900, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) APPLICATION OF SECTION.—This section shall apply to any individual—

"(1) who was allowed a deduction under section 165 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to losses) for a loss attributable to a disaster occurring during calendar year 1972 which was determined by the President, under section 102 of the Disaster Relief Act of 1970, to warrant disaster assistance by the Federal Government.

"(2) who in connection with such disaster—

"(A) received income in the form of cancellation of a disaster loan under section 7 of the Small Business Act [section 636 of Title 15, Commerce and Trade] or an emergency loan under subtitle C of the Consolidated Farm and Rural Development Act [section 1961 et seq. of Title 7, Agriculture], or

"(B) received income in the form of compensation (not taken into account in computing the amount of the deduction) for such loss in settlement of any claim of the taxpayer against a person for that person's liability in tort for the damage or destruction of that taxpayer's property in connection with the disaster, and

"(3) who elects (at such time and in such manner as the Secretary of the Treasury or his delegate may by regulations prescribe) to take the benefits of this section.

"(b) EFFECT OF ELECTION.—In the case of any individual to whom this section applies—

"(1) the tax imposed by chapter 1 of the Internal Revenue Code of 1986 for the taxable year in which the income taken into account is received or accrued which is attributable to such income shall not exceed the additional tax under such chapter which would have been payable for the year in which the deduction for the loss was taken if such deduction had not been taken for such year,

"(2) any amount of tax imposed by chapter 1 attributable to the income taken into account which, on October 1, 1975, was unpaid may be paid in 3 equal annual installments (with the first such installment due and payable on April 15, 1977), and

"(3) no interest on any deficiency shall be payable for any period before April 16, 1977, to the extent such deficiency is attributable to the receipt of such compensation, and no interest on any installment referred to in paragraph (2) shall be payable for any period before the due date of such installment.

"(c) INCOME TAKEN INTO ACCOUNT.—For purposes of this section, the income taken into account is—

"(1) in the case of an individual described in subsection (a)(2)(A), the amount of income (not in excess of $5,000) attributable to the cancellation of a disaster loan under section 7 of the Small Business Act or an emergency loan under subtitle C of the Consolidated Farm and Rural Development Act received by reason

of the disaster described in subsection (a)(1), or

"(2) in the case of an individual described in subsection (a)(2)(B), the amount of compensation (not in excess of $5,000) for the loss in settlement of any claim of the taxpayer against a person for that person's liability in tort for the damage or destruction of that taxpayer's property in connection with the disaster described in subsection (a)(1).

"(d) PHASEOUT WHERE ADJUSTED GROSS INCOME EXCEEDS $15,000.—If for the taxable year for which the deduction for the loss was taken the individual's adjusted gross income exceeded $15,000, the $5,000 limit set forth in paragraph (1) or (2) of subsection (c) (whichever applies) shall be reduced by one dollar for each full dollar that such adjusted gross income exceeds $15,000. In the case of a married individual filing a separate return, the preceding sentence shall be applied by substituting '$7,500' for '$15,000'.

"(e) STATUTE OF LIMITATIONS.—If refund or credit of any overpayment of income tax resulting from an election made under this section is prevented on the date of the enactment of this Act [Oct. 4, 1976], or at any time within one year after such date, by the operation of any law, or rule of law, refund or credit of such overpayment (to the extent attributable to such election) may, nevertheless, be made or allowed if claim therefor is filed within one year after such date. If the taxpayer makes an election under this section and if assessment of any deficiency for any taxable year resulting from such election is prevented on the date of the enactment of this Act [Oct. 4, 1976], or at any time within one year after such date, by the operation of any law or rule of law, such assessment (to the extent attributable to such election) may, nevertheless, be made if made within one year after such date."

REFUND OR CREDIT OF OVERPAYMENT; TIME FOR FILING CLAIM; INTEREST

Pub. L. 91–677, §1(b)(2), Jan. 12, 1971, 84 Stat. 2061, authorized refund or credit of overpayment attributable to the amendments made by subsec. (a) to subsec. (i) of this section if claim therefor was filed after Jan. 12, 1971, and before July 1, 1971, without interest for any period before Jan. 1, 1972.

[1] So in original. Probably should be followed by a second closing parenthesis.

§166. Bad debts

(a) General rule

(1) Wholly worthless debts

There shall be allowed as a deduction any debt which becomes worthless within the taxable year.

(2) Partially worthless debts

When satisfied that a debt is recoverable only in part, the Secretary may allow such debt, in an amount not in excess of the part charged off within the taxable year, as a deduction.

(b) Amount of deduction

For purposes of subsection (a), the basis for determining the amount of the deduction for any bad debt shall be the adjusted basis provided in section 1011 for determining the loss from the sale or other disposition of property.

[(c) Repealed. Pub. L. 99–514, title VIII, §805(a), Oct. 22, 1986, 100 Stat. 2361]

(d) Nonbusiness debts

(1) General rule

In the case of a taxpayer other than a corporation—

(A) subsection (a) shall not apply to any nonbusiness debt; and

(B) where any nonbusiness debt becomes worthless within the taxable year, the loss resulting therefrom shall be considered a loss from the sale or exchange, during the taxable year, of a capital asset held for not more than 1 year.

(2) Nonbusiness debt defined

For purposes of paragraph (1), the term "nonbusiness debt" means a debt other than—

(A) a debt created or acquired (as the case may be) in connection with a trade or business of the taxpayer; or

(B) a debt the loss from the worthlessness of which is incurred in the taxpayer's trade or business.

(e) Worthless securities

This section shall not apply to a debt which is evidenced by a security as defined in section 165(g)(2)(C).

(f) Cross references

(1) For disallowance of deduction for worthlessness of debts owed by political parties and similar organizations, see section 271.

(2) For special rule for banks with respect to worthless securities, see section 582.

(Aug. 16, 1954, ch. 736, 68A Stat. 50; Pub. L. 85–866, title I, §8, Sept. 2, 1958, 72 Stat. 1608; Pub. L. 89–722, §1(a), Nov. 2, 1966, 80 Stat. 1151; Pub. L. 91–172, title IV, §431(c)(1), Dec. 30, 1969, 83 Stat. 619; Pub. L. 94–455, title VI, §605(a), title XIV, §1402(b)(1)(A), (2), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1575, 1731, 1732, 1834; Pub. L. 98–369, div. A, title X, §1001(b)(1), (e), July 18, 1984, 98 Stat. 1011, 1012; Pub. L. 99–514, title VIII, §805(a), (b), title IX, §901(d)(4)(A), Oct. 22, 1986, 100 Stat. 2361, 2379; Pub. L. 100–647, title I, §1008(d)(1), (2), Nov. 10, 1988, 102 Stat. 3439.)

AMENDMENTS

1988—Subsec. (d)(1)(A). Pub. L. 100–647, §1008(d)(1), substituted "subsection (a)" for "subsections (a) and (c)".

Subsecs. (f), (g). Pub. L. 100–647, §1008(d)(2), made clarifying amendment to directory language of Pub. L. 99–514, §805(b), see 1986 Amendment note below.

1986—Subsec. (c). Pub. L. 99–514, §805(a), struck out subsec. (c), reserve for bad debts, which read as follows: "In lieu of any deduction under subsection (a), there shall be allowed (in the discretion of the Secretary) a deduction for a reasonable addition to a reserve for bad debts."

Subsec. (f). Pub. L. 99–514, §805(b), as amended by Pub. L. 100–647, §1008(d)(2), redesignated subsec. (g) as (f) and struck out former subsec. (f) which related to reserve for certain guaranteed debt obligations, par. (1) thereof providing for allowance of deduction, par. (2) disallowing deduction in other cases, par. (3) relating to opening balance of reserve, and par. (4) relating to suspense account.

Subsec. (g). Pub. L. 99–514, §805(b), as amended by Pub. L. 100–647, §1008(d)(2), redesignated subsec. (g) as (f).

Pub. L. 99–514, §901(d)(4)(A), struck out pars. (3) and (4) which read as follows:

"(3) For special rule for bad debt reserves of certain mutual savings banks, domestic building and loan associations, and cooperative banks, see section 593.

"(4) For special rule for bad debt reserves of banks, small business investment-companies, etc., see sections 585 and 586."

1984—Subsec. (d)(1)(B). Pub. L. 98–369 substituted "6 months" for "1 year", applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

1976—Subsecs. (a)(2), (c). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (d)(1)(B). Pub. L. 94–455, §1401(b)(1)(A), (2), provided that "6 months" would be changed to "9 months" for taxable years beginning in 1977, and "9 months" would be changed to "1 year" for taxable years beginning after Dec. 31, 1977.

Subsec. (f). Pub. L. 94–455, §§605(a), 1906(b)(13)(A), redesignated subsec. (g) as (f) and struck out "or his delegate" after "Secretary" in pars. (1), (3) and (4)(D). Former subsec. (f), which related to treatment of payments made by guarantors of certain noncorporate obligations, was struck out.

Subsecs. (g), (h). Pub. L. 94–455, §605(a), redesignated subsecs. (g) and (h) as (f) and (g), respectively.

1969—Subsec. (h)(4). Pub. L. 91–172 added par. (4).

1966—Subsecs. (g), (h). Pub. L. 89–722 added subsec. (g) and redesignated former subsec. (g) as (h).

1958—Subsec. (d)(2)(A). Pub. L. 85–866 substituted "a trade or business of the taxpayer" for "a taxpayer's trade or business".

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of

the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title VIII, §805(d), Oct. 22, 1986, 100 Stat. 2362, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and sections 81, 108, 461, and 805 of this title] shall apply to taxable years beginning after December 31, 1986.

"(2) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer who maintained a reserve for bad debts for such taxpayer's last taxable year beginning before January 1, 1987, and who is required by the amendments made by this section to change its method of accounting for any taxable year—

"(A) such change shall be treated as initiated by the taxpayer,

"(B) such change shall be treated as made with the consent of the Secretary, and

"(C) the net amount of adjustments required by section 481 of the Internal Revenue Code of 1986 to be taken into account by the taxpayer shall—

"(i) in the case of a taxpayer maintaining a reserve under section 166(f), be reduced by the balance in the suspense account under section 166(f)(4) of such Code as of the close of such last taxable year, and

"(ii) be taken into account ratably in each of the first 4 taxable years beginning after December 31, 1986."

Pub. L. 99–514, title IX, §901(e), Oct. 22, 1986, 100 Stat. 2380, provided that: "The amendments made by this section [amending this section and sections 172, 291, 582, 585, 593, 596, 856, 1277, and 1361 of this title and repealing section 586 of this title] shall apply to taxable years beginning after December 31, 1986."

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title X, §1001(e), July 18, 1984, 98 Stat. 1012, provided that: "The amendments made by this section [amending this section and sections 341, 402, 403, 423, 582, 584, 631, 642, 702, 818, 852, 856, 857, 1222, 1223, 1231, 1232, 1233, 1234, 1235, 1246, 1247, 1248, 1251, and 1278 of this title] shall apply to property acquired after June 22, 1984, and before January 1, 1988."

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title VI, §605(c), Oct. 4, 1976, 90 Stat. 1575, provided that: "The amendments made by this section [amending this section and section 81 of this title] shall apply to guarantees made after December 31, 1975, in taxable years beginning after such date."

Pub. L. 94–455, title XIV, §1402(b)(1), Oct. 4, 1976, 90 Stat. 1731, provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Pub. L. 94–455, title XIV, §1402(b)(2), Oct. 4, 1976, 90 Stat. 1732, provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after July 11, 1969, see section 431(d) of Pub. L. 91–172, set out as an Effective Date note under section 585 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89–722, §2, Nov. 2, 1966, 80 Stat. 1152, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) Except as provided in subsections (b) and (c), the amendments made by the first section of this Act [amending this section and section 81 of this title] shall apply to taxable years ending after October 21, 1965.

"(b) If—

"(1) the taxpayer before October 22, 1965, claimed a deduction, for a taxable year ending before such date, under section 166(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for an addition to a reserve for bad debts on account of debt obligations described in section 166(g)(1)(A) of such Code (as amended by the first section of this Act), and

"(2) the assessment of a deficiency of the tax imposed by chapter 1 of such Code for such taxable year and each subsequent taxable year ending before October 22, 1965, is not prevented on December 31, 1966, by the operation of any law or rule of law,

then such deduction on account of such debt obligations shall be allowed for each such taxable year under such section 166(c) to the extent that the deduction would have been allowable under the provisions of such section 166(g)(1)(A) if such provisions applied to such taxable years.

"(c) Section 166(g)(2) of the Internal Revenue Code of 1986 (as amended by the first section of this Act)

shall apply to taxable years beginning after December 31, 1953, and ending after August 16, 1954."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

ESTABLISHMENT OF RESERVE FOR TAXABLE YEAR ENDING AFTER OCT. 21, 1965, AND BEGINNING BEFORE AUG. 2, 1966

Pub. L. 89–722, §1(c), Nov. 2, 1966, 80 Stat. 1152, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "If the taxpayer establishes a reserve described in section 166(g)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by subsection (a) of this section) for a taxable year ending after October 21, 1965, and beginning before August 2, 1966, the establishment of such reserve shall not be considered as a change in method of accounting for purposes of section 446(e) of such Code."

§167. Depreciation

(a) General rule

There shall be allowed as a depreciation deduction a reasonable allowance for the exhaustion, wear and tear (including a reasonable allowance for obsolescence)—

(1) of property used in the trade or business, or

(2) of property held for the production of income.

(b) Cross reference

For determination of depreciation deduction in case of property to which section 168 applies, see section 168.

(c) Basis for depreciation

(1) In general

The basis on which exhaustion, wear and tear, and obsolescence are to be allowed in respect of any property shall be the adjusted basis provided in section 1011, for the purpose of determining the gain on the sale or other disposition of such property.

(2) Special rule for property subject to lease

If any property is acquired subject to a lease—

(A) no portion of the adjusted basis shall be allocated to the leasehold interest, and

(B) the entire adjusted basis shall be taken into account in determining the depreciation deduction (if any) with respect to the property subject to the lease.

(d) Life tenants and beneficiaries of trusts and estates

In the case of property held by one person for life with remainder to another person, the deduction shall be computed as if the life tenant were the absolute owner of the property and shall be allowed to the life tenant. In the case of property held in trust, the allowable deduction shall be apportioned between the income beneficiaries and the trustee in accordance with the pertinent provisions of the instrument creating the trust, or, in the absence of such provisions, on the basis of the trust income allocable to each. In the case of an estate, the allowable deduction shall be apportioned between the estate and the heirs, legatees, and devisees on the basis of the income of the estate allocable to each.

(e) Certain term interests not depreciable

(1) In general

No depreciation deduction shall be allowed under this section (and no depreciation or amortization deduction shall be allowed under any other provision of this subtitle) to the taxpayer for any term interest in property for any period during which the remainder interest in such property is held (directly or indirectly) by a related person.

(2) Coordination with other provisions

(A) Section 273

This subsection shall not apply to any term interest to which section 273 applies.

(B) Section 305(e)

This subsection shall not apply to the holder of the dividend rights which were separated from any stripped preferred stock to which section 305(e)(1) applies.

(3) Basis adjustments

If, but for this subsection, a depreciation or amortization deduction would be allowable to the taxpayer with respect to any term interest in property—

(A) the taxpayer's basis in such property shall be reduced by any depreciation or amortization deductions disallowed under this subsection, and

(B) the basis of the remainder interest in such property shall be increased by the amount of such disallowed deductions (properly adjusted for any depreciation deductions allowable under subsection (d) to the taxpayer).

(4) Special rules

(A) Denial of increase in basis of remainderman

No increase in the basis of the remainder interest shall be made under paragraph (3)(B) for any disallowed deductions attributable to periods during which the term interest was held—

(i) by an organization exempt from tax under this subtitle, or

(ii) by a nonresident alien individual or foreign corporation but only if income from the term interest is not effectively connected with the conduct of a trade or business in the United States.

(B) Coordination with subsection (d)

If, but for this subsection, a depreciation or amortization deduction would be allowable to any person with respect to any term interest in property, the principles of subsection (d) shall apply to such person with respect to such term interest.

(5) Definitions

For purposes of this subsection—

(A) Term interest in property

The term "term interest in property" has the meaning given such term by section 1001(e)(2).

(B) Related person

The term "related person" means any person bearing a relationship to the taxpayer described in subsection (b) or (e) of section 267.

(6) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including regulations preventing avoidance of this subsection through cross-ownership arrangements or otherwise.

(f) Treatment of certain property excluded from section 197

(1) Computer software

(A) In general

If a depreciation deduction is allowable under subsection (a) with respect to any computer software, such deduction shall be computed by using the straight line method and a useful life of 36 months.

(B) Computer software

For purposes of this section, the term "computer software" has the meaning given to such term by section 197(e)(3)(B); except that such term shall not include any such software which is an amortizable section 197 intangible.

(C) Tax-exempt use property subject to lease

In the case of computer software which would be tax-exempt use property as defined in subsection (h) of section 168 if such section applied to computer software, the useful life under subparagraph (A) shall not be less than 125 percent of the lease term (within the meaning of section 168(i)(3)).

(2) Certain interests or rights acquired separately

If a depreciation deduction is allowable under subsection (a) with respect to any property described in subparagraph (B), (C), or (D) of section 197(e)(4), such deduction shall be computed in accordance with regulations prescribed by the Secretary. If such property would be tax-exempt use property as defined in subsection (h) of section 168 if such section applied to such property, the useful life under such regulations shall not be less than 125 percent of the lease term (within the meaning of section 168(i)(3)).

(3) Mortgage servicing rights

If a depreciation deduction is allowable under subsection (a) with respect to any right described in section 197(e)(6), such deduction shall be computed by using the straight line method and a useful life of 108 months.

(g) Depreciation under income forecast method

(1) In general

If the depreciation deduction allowable under this section to any taxpayer with respect to any property is determined under the income forecast method or any similar method—

(A) the income from the property to be taken into account in determining the depreciation deduction under such method shall be equal to the amount of income earned in connection with the property before the close of the 10th taxable year following the taxable year in which the property was placed in service,

(B) the adjusted basis of the property shall only include amounts with respect to which the requirements of section 461(h) are satisfied,

(C) the depreciation deduction under such method for the 10th taxable year beginning after the taxable year in which the property was placed in service shall be equal to the adjusted basis of such property as of the beginning of such 10th taxable year, and

(D) such taxpayer shall pay (or be entitled to receive) interest computed under the look-back method of paragraph (2) for any recomputation year.

(2) Look-back method

The interest computed under the look-back method of this paragraph for any recomputation year shall be determined by—

(A) first determining the depreciation deductions under this section with respect to such property which would have been allowable for prior taxable years if the determination of the amounts so allowable had been made on the basis of the sum of the following (instead of the estimated income from such property)—

(i) the actual income earned in connection with such property for periods before the close of the recomputation year, and

(ii) an estimate of the future income to be earned in connection with such property for periods after the recomputation year and before the close of the 10th taxable year following the taxable year in which the property was placed in service,

(B) second, determining (solely for purposes of computing such interest) the overpayment or underpayment of tax for each such prior taxable year which would result solely from the application of subparagraph (A), and

(C) then using the adjusted overpayment rate (as defined in section 460(b)(7)), compounded daily, on the overpayment or underpayment determined under subparagraph (B).

For purposes of the preceding sentence, any cost incurred after the property is placed in service (which is not treated as a separate property under paragraph (5)) shall be taken into account by discounting (using the Federal mid-term rate determined under section 1274(d) as of the time such cost is incurred) such cost to its value as of the date the property is placed in service. The taxpayer may elect with respect to any property to have the preceding sentence not apply to such property.

(3) Exception from look-back method

Paragraph (1)(D) shall not apply with respect to any property which had a cost basis of $100,000 or less.

(4) Recomputation year

For purposes of this subsection, except as provided in regulations, the term "recomputation year" means, with respect to any property, the 3d and the 10th taxable years beginning after the taxable year in which the property was placed in service, unless the actual income earned in connection with the property for the period before the close of such 3d or 10th taxable year is within 10 percent of the income earned in connection with the property for such period which was taken into account under paragraph (1)(A).

(5) Special rules

(A) Certain costs treated as separate property

For purposes of this subsection, the following costs shall be treated as separate properties:

(i) Any costs incurred with respect to any property after the 10th taxable year beginning after the taxable year in which the property was placed in service.

(ii) Any costs incurred after the property is placed in service and before the close of such 10th taxable year if such costs are significant and give rise to a significant increase in the income from the property which was not included in the estimated income from the property.

(B) Syndication income from television series

In the case of property which is 1 or more episodes in a television series, income from syndicating such series shall not be required to be taken into account under this subsection before the earlier of—

(i) the 4th taxable year beginning after the date the first episode in such series is placed in service, or

(ii) the earliest taxable year in which the taxpayer has an arrangement relating to the future syndication of such series.

(C) Special rules for financial exploitation of characters, etc.

For purposes of this subsection, in the case of television and motion picture films, the income from the property shall include income from the exploitation of characters, designs, scripts, scores, and other incidental income associated with such films, but only to the extent that such income is earned in connection with the ultimate use of such items by, or the ultimate sale of merchandise to, persons who are not related persons (within the meaning of section 267(b)) to the taxpayer.

(D) Collection of interest

For purposes of subtitle F (other than sections 6654 and 6655), any interest required to be paid by the taxpayer under paragraph (1) for any recomputation year shall be treated as an increase in the tax imposed by this chapter for such year.

(E) Treatment of distribution costs

For purposes of this subsection, the income with respect to any property shall be the taxpayer's gross income from such property.

(F) Determinations

For purposes of paragraph (2), determinations of the amount of income earned in connection with any property shall be made in the same manner as for purposes of applying the income

forecast method; except that any income from the disposition of such property shall be taken into account.

(G) Treatment of pass-thru entities

Rules similar to the rules of section 460(b)(4) shall apply for purposes of this subsection.

(6) Limitation on property for which income forecast method may be used

The depreciation deduction allowable under this section may be determined under the income forecast method or any similar method only with respect to—

(A) property described in paragraph (3) or (4) of section 168(f),
(B) copyrights,
(C) books,
(D) patents, and
(E) other property specified in regulations.

Such methods may not be used with respect to any amortizable section 197 intangible (as defined in section 197(c)).

(7) Treatment of participations and residuals

(A) In general

For purposes of determining the depreciation deduction allowable with respect to a property under this subsection, the taxpayer may include participations and residuals with respect to such property in the adjusted basis of such property for the taxable year in which the property is placed in service, but only to the extent that such participations and residuals relate to income estimated (for purposes of this subsection) to be earned in connection with the property before the close of the 10th taxable year referred to in paragraph (1)(A).

(B) Participations and residuals

For purposes of this paragraph, the term "participations and residuals" means, with respect to any property, costs the amount of which by contract varies with the amount of income earned in connection with such property.

(C) Special rules relating to recomputation years

If the adjusted basis of any property is determined under this paragraph, paragraph (4) shall be applied by substituting "for each taxable year in such period" for "for such period".

(D) Other special rules

(i) Participations and residuals

Notwithstanding subparagraph (A), the taxpayer may exclude participations and residuals from the adjusted basis of such property and deduct such participations and residuals in the taxable year that such participations and residuals are paid.

(ii) Coordination with other rules

Deductions computed in accordance with this paragraph shall be allowable notwithstanding paragraph (1)(B), section 263, 263A, 404, 419, or 461(h).

(E) Authority to make adjustments

The Secretary shall prescribe appropriate adjustments to the basis of property and to the look-back method for the additional amounts allowable as a deduction solely by reason of this paragraph.

(8) Special rules for certain musical works and copyrights

(A) In general

If an election is in effect under this paragraph for any taxable year, then, notwithstanding paragraph (1), any expense which—

(i) is paid or incurred by the taxpayer in creating or acquiring any applicable musical

property placed in service during the taxable year, and

(ii) is otherwise properly chargeable to capital account,

shall be amortized ratably over the 5-year period beginning with the month in which the property was placed in service. The preceding sentence shall not apply to any expense which, without regard to this paragraph, would not be allowable as a deduction.

(B) Exclusive method

Except as provided in this paragraph, no depreciation or amortization deduction shall be allowed with respect to any expense to which subparagraph (A) applies.

(C) Applicable musical property

For purposes of this paragraph—

(i) In general

The term "applicable musical property" means any musical composition (including any accompanying words), or any copyright with respect to a musical composition, which is property to which this subsection applies without regard to this paragraph.

(ii) Exceptions

Such term shall not include any property—

(I) with respect to which expenses are treated as qualified creative expenses to which section 263A(h) applies,

(II) to which a simplified procedure established under section 263A(i)(2) applies, or

(III) which is an amortizable section 197 intangible (as defined in section 197(c)).

(D) Election

An election under this paragraph shall be made at such time and in such form as the Secretary may prescribe and shall apply to all applicable musical property placed in service during the taxable year for which the election applies.

(E) Termination

An election may not be made under this paragraph for any taxable year beginning after December 31, 2010.

(h) Amortization of geological and geophysical expenditures

(1) In general

Any geological and geophysical expenses paid or incurred in connection with the exploration for, or development of, oil or gas within the United States (as defined in section 638) shall be allowed as a deduction ratably over the 24-month period beginning on the date that such expense was paid or incurred.

(2) Half-year convention

For purposes of paragraph (1), any payment paid or incurred during the taxable year shall be treated as paid or incurred on the mid-point of such taxable year.

(3) Exclusive method

Except as provided in this subsection, no depreciation or amortization deduction shall be allowed with respect to such payments.

(4) Treatment upon abandonment

If any property with respect to which geological and geophysical expenses are paid or incurred is retired or abandoned during the 24-month period described in paragraph (1), no deduction shall be allowed on account of such retirement or abandonment and the amortization deduction under this subsection shall continue with respect to such payment.

(5) Special rule for major integrated oil companies

(A) In general

In the case of a major integrated oil company, paragraphs (1) and (4) shall be applied by substituting "7-year" for "24 month".

(B) Major integrated oil company

For purposes of this paragraph, the term "major integrated oil company" means, with respect to any taxable year, a producer of crude oil—

(i) which has an average daily worldwide production of crude oil of at least 500,000 barrels for the taxable year,

(ii) which had gross receipts in excess of $1,000,000,000 for its last taxable year ending during calendar year 2005, and

(iii) to which subsection (c) of section 613A does not apply by reason of paragraph (4) of section 613A(d), determined—

(I) by substituting "15 percent" for "5 percent" each place it occurs in paragraph (3) of section 613A(d), and

(II) without regard to whether subsection (c) of section 613A does not apply by reason of paragraph (2) of section 613A(d).

For purposes of clauses (i) and (ii), all persons treated as a single employer under subsections (a) and (b) of section 52 shall be treated as 1 person and, in case of a short taxable year, the rule under section 448(c)(3)(B) shall apply.

(i) Cross references

(1) For additional rule applicable to depreciation of improvements in the case of mines, oil and gas wells, other natural deposits, and timber, see section 611.

(2) For amortization of goodwill and certain other intangibles, see section 197.

(Aug. 16, 1954, ch. 736, 68A Stat. 51; Pub. L. 85–866, title I, §89(b), Sept. 2, 1958, 72 Stat. 1665; Pub. L. 87–834, §13(b), (c)(1), Oct. 16, 1962, 76 Stat. 1034; Pub. L. 89–800, §2, Nov. 8, 1966, 80 Stat. 1513; Pub. L. 90–26, §§1, 2(b), June 13, 1967, 81 Stat. 57, 58; Pub. L. 91–172, title IV, §441(a), title V, §521(a), (d), Dec. 30, 1969, 83 Stat. 625, 649, 653; Pub. L. 92–178, title I, §109(a), Dec. 10, 1971, 85 Stat. 508; Pub. L. 93–625, §3(c), Jan. 3, 1975, 88 Stat. 2109; Pub. L. 94–455, title II, §§202(c)(3), 203(a), title XIX, §§1901(a)(27), 1906(b)(13)(A), title XXI, §2124(c)(1), (d)(1), Oct. 4, 1976, 90 Stat. 1530, 1768, 1834, 1918; Pub. L. 95–171, §4(a), Nov. 12, 1977, 91 Stat. 1355; Pub. L. 95–600, title III, §§312(c)(4), 367, title VII, §701(f)(4), (6), Nov. 6, 1978, 92 Stat. 2826, 2857, 2901, 2902; Pub. L. 95–615, §7(a), Nov. 8, 1978, 92 Stat. 3098; Pub. L. 95–618, title III, §301(d)(3), (e)(1), Nov. 9, 1978, 92 Stat. 3200, 3201; Pub. L. 96–541, §§2(c), (d), 3, Dec. 17, 1980, 94 Stat. 3204, 3205; Pub. L. 96–613, §2(a), Dec. 28, 1980, 94 Stat. 3579; Pub. L. 97–34, title II, §§203(a)–(c)(1), (d), 209(d)(3), 212(d)(1), 264(a), Aug. 13, 1981, 95 Stat. 221, 222, 227, 239, 264; Pub. L. 97–424, title V, §541(a)(2), Jan. 6, 1983, 96 Stat. 2192; Pub. L. 98–369, div. A, title X, §1064, July 18, 1984, 98 Stat. 1047; Pub. L. 99–514, title II, §201(d)(1), title XV, §1511(c)(4), title XVIII, §1809(d)(1), Oct. 22, 1986, 100 Stat. 2139, 2745, 2821; Pub. L. 100–647, title I, §1002(a)(22), (24), (31), (i)(1), Nov. 10, 1988, 102 Stat. 3356, 3357, 3370; Pub. L. 101–239, title VII, §§7622(b)(1) [(d)(1)], 7645(a), Dec. 19, 1989, 103 Stat. 2378, 2381; Pub. L. 101–508, title XI, §11812(a), (b)(1), Nov. 5, 1990, 104 Stat. 1388–534; Pub. L. 103–66, title XIII, §§13206(c)(2), 13261(b), (f)(1), Aug. 10, 1993, 107 Stat. 466, 538, 539; Pub. L. 104–188, title I, §1604(a), Aug. 20, 1996, 110 Stat. 1836; Pub. L. 105–34, title X, §1086(a), Aug. 5, 1997, 111 Stat. 957; Pub. L. 108–357, title II, §242(a), (b), title VIII, §847(b)(1), (2), Oct. 22, 2004, 118 Stat. 1438, 1439, 1601; Pub. L. 109–58, title XIII, §1329(a), Aug. 8, 2005, 119 Stat. 1020; Pub. L. 109–135, title IV, §412(r), Dec. 21, 2005, 119 Stat. 2638; Pub. L. 109–222, title II, §207(a), title V, §503(a), May 17, 2006, 120 Stat. 350, 354; Pub. L. 110–140, title XV, §1502(a), Dec. 19, 2007, 121 Stat. 1800; Pub. L. 110–172, §11(a)(13), Dec. 29, 2007, 121 Stat. 2485.)

AMENDMENTS

2007—Subsec. (g)(8)(C)(ii)(II). Pub. L. 110–172 substituted "section 263A(i)(2)" for "section 263A(j)(2)".

Subsec. (h)(5)(A). Pub. L. 110–140 substituted "7-year" for "5-year".

2006—Subsec. (g)(8). Pub. L. 109–222, §207(a), added par. (8).

Subsec. (h)(5). Pub. L. 109–222, §503(a), added par. (5).

2005—Subsec. (f)(3). Pub. L. 109–135 substituted "section 197(e)(6)" for "section 197(e)(7)".

Subsecs. (h), (i). Pub. L. 109–58 added subsec. (h) and redesignated former subsec. (h) as (i).

2004—Subsec. (f)(1)(C). Pub. L. 108–357, §847(b)(1), added subpar. (C).

Subsec. (f)(2). Pub. L. 108–357, §847(b)(2), inserted at end "If such property would be tax-exempt use property as defined in subsection (h) of section 168 if such section applied to such property, the useful life under such regulations shall not be less than 125 percent of the lease term (within the meaning of section 168(i)(3))."

Subsec. (g)(5)(E) to (G). Pub. L. 108–357, §242(b), added subpar. (E) and redesignated former subpars. (E) and (F) as (F) and (G), respectively.

Subsec. (g)(7). Pub. L. 108–357, §242(a), added par. (7).

1997—Subsec. (g)(6). Pub. L. 105–34 added par. (6).

1996—Subsecs. (g), (h). Pub. L. 104–188 added subsec. (g) and redesignated former subsec. (g) as (h).

1993—Subsec. (c). Pub. L. 103–66, §13261(b)(2), amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: "The basis on which exhaustion, wear and tear, and obsolescence are to be allowed in respect of any property shall be the adjusted basis provided in section 1011 for the purpose of determining the gain on the sale or other disposition of such property."

Subsec. (e)(2). Pub. L. 103–66, §13206(c)(2), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: "This subsection shall not apply to any term interest to which section 273 applies."

Subsec. (f). Pub. L. 103–66, §13261(b)(1), added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 103–66, §13261(b)(1), (f)(1), redesignated subsec. (f) as (g) and amended heading and text generally, designating existing provisions of text as par. (1) and adding par. (2).

1990—Subsec. (b). Pub. L. 101–508, §11812(a), added subsec. (b) and struck out former subsec. (b) "Use of certain methods and rates" which read as follows: "For taxable years ending after December 31, 1953, the term 'reasonable allowance' as used in subsection (a) shall include (but shall not be limited to) an allowance computed in accordance with regulations prescribed by the Secretary, under any of the following methods:

"(1) the straight line method,

"(2) the declining balance method, using a rate not exceeding twice the rate which would have been used had the annual allowance been computed under the method described in paragraph (1),

"(3) the sum of the years-digits method, and

"(4) any other consistent method productive of an annual allowance which, when added to all allowances for the period commencing with the taxpayer's use of the property and including the taxable year, does not, during the first two-thirds of the useful life of the property, exceed the total of such allowances which would have been used had such allowances been computed under the method described in paragraph (2).

Nothing in this subsection shall be construed to limit or reduce an allowance otherwise allowable under subsection (a)."

Subsec. (c). Pub. L. 101–508, §11812(a)(1), redesignated subsec. (g) as (c) and struck out former subsec. (c) "Limitations on use of certain methods and rates" which read as follows: "Paragraphs (2), (3), and (4) of subsection (b) shall apply only in the case of property (other than intangible property) described in subsection (a) with a useful life of 3 years or more—

"(1) the construction, reconstruction, or erection of which is completed after December 31, 1953, and then only to that portion of the basis which is properly attributable to such construction, reconstruction, or erection after December 31, 1953, or

"(2) acquired after December 31, 1953, if the original use of such property commences with the taxpayer and commences after such date.

Paragraphs (2), (3), and (4) of subsection (b) shall not apply to any motion picture film, video tape, or sound recording."

Subsec. (d). Pub. L. 101–508, §11812(a)(1), redesignated subsec. (h) as (d) and struck out former subsec. (d) "Agreement as to useful life on which depreciation rate is based" which read as follows: "Where, under regulations prescribed by the Secretary, the taxpayer and the Secretary have, after August 16, 1954, entered into an agreement in writing specifically dealing with the useful life and rate of depreciation of any property, the rate so agreed upon shall be binding on both the taxpayer and the Secretary in the absence of facts or circumstances not taken into consideration in the adoption of such agreement. The responsibility of establishing the existence of such facts and circumstances shall rest with the party initiating the modification.

Any change in the agreed rate and useful life specified in the agreement shall not be effective for taxable years before the taxable year in which notice in writing by certified mail or registered mail is served by the party to the agreement initiating such change. This subsection shall not apply with respect to property to which section 168 applies."

Subsec. (e). Pub. L. 101–508, §11812(a)(1), redesignated subsec. (r) as (e) and struck out former subsec. (e) which related to changes in method of depreciation from declining balance method and changes with respect to sections 1245 and 1250 property.

Subsec. (e)(3)(B). Pub. L. 101–508, §11812(b)(1) substituted "(d)" for "(h)".

Subsec. (e)(4)(B). Pub. L. 101–508, §11812(b)(1), substituted "(d)" for "(h)" in heading and text.

Subsec. (f). Pub. L. 101–508, §11812(a)(1), redesignated subsec. (s) as (f) and struck out former subsec. (f) "Salvage value" which read as follows:

"(1) GENERAL RULE.—Under regulations prescribed by the Secretary, a taxpayer may, for purposes of computing the allowance under subsection (a) with respect to personal property, reduce the amount taken into account as salvage value by an amount which does not exceed 10 percent of the basis of such property (as determined under subsection (g) as of the time as of which such salvage value is required to be determined).

"(2) PERSONAL PROPERTY DEFINED.—For purposes of this subsection, the term 'personal property' means depreciable personal property (other than livestock) with a useful life of 3 years or more acquired after October 16, 1962."

Subsecs. (g), (h). Pub. L. 101–508, §11812(a)(1), redesignated subsecs. (g) and (h) as (c) and (d), respectively.

Subsec. (j). Pub. L. 101–508, §11812(a)(1), struck out subsec. (j) which related to special rules for section 1250 property including residential rental property and change in method of depreciation.

Subsec. (k). Pub. L. 101–508, §11812(a)(1), struck out subsec. (k) which related to depreciation of expenditures to rehabilitate low-income rental housing.

Subsec. (l). Pub. L. 101–508, §11812(a)(1), struck out subsec. (l) which related to reasonable allowance in case of property of certain utilities, pre-1970 public utility property and post-1969 public utility property.

Subsec. (m). Pub. L. 101–508, §11812(a)(1), struck out subsec. (m) which related to class lives.

Subsec. (p). Pub. L. 101–508, §11812(a)(1), struck out subsec. (p) which related to straight line method for boilers fueled by oil or gas.

Subsec. (q). Pub. L. 101–508, §11812(a)(1), struck out subsec. (q) which related to retirement or replacement of certain boilers, etc., fueled by oil or gas.

Subsecs. (r), (s). Pub. L. 101–508, §11812(a)(1), redesignated subsecs. (r) and (s) as (e) and (f), respectively.

1989—Subsec. (r). Pub. L. 101–239, §7645(a), added subsec. (r).

Pub. L. 101–239, §7622(b)(1) [(d)(1)], repealed subsec. (r) which provided that trademark or trade name expenditures were not depreciable.

1988—Subsec. (a). Pub. L. 100–647, §1002(a)(24), struck out at end "In the case of recovery property (within the meaning of section 168), the deduction allowable under section 168 shall be deemed to constitute the reasonable allowance provided by this section, except with respect to that portion of the basis of such property to which subsection (k) applies."

Subsec. (d). Pub. L. 100–647, §1002(a)(31), substituted "property to which section 168 applies" for "recovery property defined in section 168".

Subsec. (l)(3)(G). Pub. L. 100–647, §1002(a)(22), substituted "section 168(i)(9)(B)" for "section 168(e)(3)(C)" in last sentence.

Subsecs. (r), (s). Pub. L. 100–647, §1002(i)(1), added subsec. (r) and redesignated former subsec. (r) as (s).

1986—Subsec. (c). Pub. L. 99–514, §1809(d)(1), inserted "Paragraphs (2), (3), and (4) of subsection (b) shall not apply to any motion picture film, video tape, or sound recording."

Subsec. (m)(4). Pub. L. 99–514, §201(d)(1), amended par. (4) generally. Prior to amendment, par. (4) read as follows: "This subsection shall not apply with respect to recovery property (within the meaning of section 168) placed in service after December 31, 1980."

Subsec. (q)(2)(B). Pub. L. 99–514, §1511(c)(4), substituted "at the underpayment rate established under section 6621" for "at the rate determined under section 6621".

1984—Subsec. (k)(1), (3)(D). Pub. L. 98–369 substituted "January 1, 1987" for "January 1, 1984" wherever appearing.

1983—Subsec. (l)(3)(G). Pub. L. 97–424 inserted provision that, for the purposes of this paragraph, rules similar to the rules of section 168(e)(3)(C) of this title shall apply.

1981—Subsec. (a). Pub. L. 97–34, §203(a), inserted provision that, in the case of recovery property (within the meaning of section 168), the deduction allowable under section 168 shall be deemed to constitute the

reasonable allowance provided by this section, except with respect to that portion of the basis of such property to which subsection (k) applies.

Subsec. (d). Pub. L. 97–34, §203(d), provided that subsec. (d) did not apply with respect to recovery property defined in section 168.

Subsec. (k)(2). Pub. L. 97–34, §264(a), substituted "Except as provided in subparagraph (B), the aggregate amount" for "The aggregate amount" in subpar. (A), added subpar. (B), and redesignated former subpar. (B) as (C).

Subsec. (l)(3)(C). Pub. L. 97–34, §209(d)(3), inserted "and which is placed in service before January 1, 1981" after "pre-1970 public utility property".

Subsec. (m)(4). Pub. L. 97–34, §203(b), added par. (4).

Subsecs. (n), (o). Pub. L. 97–34, §212(d)(1), struck out subsec. (n) which dealt with the use of the straight line method of depreciation in certain cases, and subsec. (o) which dealt with the method of depreciation to be used in the case of substantially rehabilitated historic property.

Subsec. (r). Pub. L. 97–34, §203(c)(1), redesignated subsec. (s) as (r). Former subsec. (r), relating to the retirement-replacement-betterment method of calculating depreciation, was struck out.

Subsec. (s). Pub. L. 97–34, §203(c)(1), redesignated subsec. (s) as (r).

1980—Subsec. (k). Pub. L. 96–541, §3, substituted in pars. (1) and (3)(D) "January 1, 1984" for "January 1, 1982" wherever appearing.

Subsec. (n)(4). Pub. L. 96–541, §2(c), added par. (4).

Subsec. (o)(3). Pub. L. 96–541, §2(d), added par. (3).

Subsecs. (r), (s). Pub. L. 96–613 added subsec. (r) and redesignated former subsec. (r) as (s).

1978—Subsec. (i). Pub. L. 95–600, §312(c)(4), struck out subsec. (i) which related to a limitation in the case of property constructed or acquired during the suspension period.

Subsec. (k)(1), (3)(D). Pub. L. 95–615 substituted "January 1, 1979" for "January 1, 1978" wherever appearing.

Pub. L. 95–600, §367, substituted "January 1, 1982" for "January 1, 1979" wherever appearing.

Subsec. (n). Pub. L. 95–600, §701(f)(4), in par. (1), substituted "occupied by a certified historic structure (or by any structure in a registered historic district) which is demolished or substantially altered after such date" for "occupied by a certified historic structure (as defined in section 191(d)(1)) which is demolished or substantially altered (other than by virtue of a certified rehabilitation as defined in section 191(d)(3) after such date", inserted "and" preceding subpar. (B), substituted "means" for "shall mean" in subpar. (B), and inserted provision that "The preceding sentence shall not apply if the last substantial alteration of the structure is a certified rehabilitation."; in par. (2), substituted heading "Exceptions" for "Exception", designated existing text as subpar. (A), and added subpar. (B); and added par. (3).

Subsec. (o). Pub. L. 95–600, §701(f)(6), inserted in par. (1) "(other than property with respect to which an amortization deduction has been allowed to the taxpayer under section 191)" after "substantially rehabilitated historic property" and substituted in par. (2) "section 191(d)(4)" for "section 191(d)(3)".

Subsec. (p). Pub. L. 95–618, §301(d)(3), added subsec. (p). Former subsec. (p) redesignated (r).

Subsec. (q). Pub. L. 95–618, §301(e)(1), added subsec. (q).

Subsec. (r). Pub. L. 95–618, §301(d)(3), redesignated former subsec. (p) as (r).

1977—Subsec. (k). Pub. L. 95–171 substituted "January 1, 1979" for "January 1, 1978" wherever appearing in pars. (1) and (3)(D).

1976—Subsec. (b). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (d). Pub. L. 94–455, §§1901(a)(27)(A), 1906(b)(13)(A), substituted "after August 16, 1954" for "after the date of enactment of this title" and struck out "or his delegate" after "Secretary" in first sentence before "shall be binding".

Subsec. (e). Pub. L. 94–455, §§202(c)(3), 1906(b)(13)(A), substituted in par. (3) "beginning after December 31, 1975" for "beginning after July 24, 1969" and in pars. (1) to (3) struck out "or his delegate" after "Secretary".

Subsec. (f)(1). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (f)(2). Pub. L. 94–455, §1901(a)(27)(B), substituted "October 16, 1962" for "the date of enactment of the Revenue Act of 1962".

Subsec. (i). Pub. L. 94–455, §1906(b)(13)(A), struck out in pars. (1) and (2) "or his delegate" after "Secretary".

Subsec. (j). Pub. L. 94–455, §1906(b)(13)(A), struck out in pars. (1), (4)(B), (5)(C), and (6)(A) "or his delegate" after "Secretary".

Subsec. (k)(1). Pub. L. 94–455, §§203(a)(1), 1906(b)(13)(A), substituted reference to January 1, 1978 for reference to January 1, 1976 and struck out "or his delegate" after "Secretary".

Subsec. (k)(2)(A). Pub. L. 94–455, §203(a)(2), substituted "$20,000" for "$15,000".

Subsec. (k)(3)(B). Pub. L. 94–455, §§203(a)(3), 1906(b)(13)(A), substituted "the Leased Housing Program under section 8 of the United States Housing Act of 1937" for "the policies of the Housing and Urban Development Act of 1968" and struck out "or his delegate" after "Secretary".

Subsec. (k)(3)(D). Pub. L. 94–455, §203(a)(4), added subpar. (D).

Subsec. (l)(3)(F). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (l)(4)(A). Pub. L. 94–455, §§1901(a)(27)(C), 1906(b)(13)(A), substituted "before June 29, 1970," for "within 180 days after the date of the enactment of this subparagraph" and struck out "or his delegate" after "Secretary".

Subsec. (l)(5). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (m). Pub. L. 94–455, §1906(b)(13)(A), struck out in pars. (1) and (3) "or his delegate" after "Secretary".

Subsec. (n). Pub. L. 94–455, §2124(c)(1), added subsec. (n). Former subsec. (n) redesignated (p).

Subsec. (o). Pub. L. 94–455, §2124(d)(1), added subsec. (o).

Subsec. (p). Pub. L. 94–455, §2124(c)(1), redesignated former subsec. (n) as (p).

1975—Subsec. (k)(1). Pub. L. 93–625 substituted "January 1, 1976" for "January 1, 1975".

1971—Subsecs. (m), (n). Pub. L. 92–178 added subsec. (m) and redesignated former subsec. (m) as (n).

1969—Subsec. (e)(3). Pub. L. 91–172, §521(d), added par. (3).

Subsecs. (j), (k). Pub. L. 91–172, §521(a), added subsecs. (j) and (k). Former subsec. (j) redesignated (m).

Subsec. (l). Pub. L. 91–172, §441(a), added subsec. (l).

Subsec. (m). Pub. L. 91–172, §521(a), redesignated former subsec. (j) as (m).

1967—Subsec. (i)(1). Pub. L. 90–26, §2(b), provided that accelerated depreciation was not to apply if the physical construction, reconstruction or erection by any person was begun during the suspension period or begun, pursuant to an order placed during such period, before May 24, 1967, subject to the proviso that only that portion of the basis which was properly attributable to construction, reconstruction or erection before May 24, 1967, shall be affected by the applicability of the suspension period.

Subsec. (i)(3). Pub. L. 90–26, §1, substituted "March 9, 1967" for "December 31, 1967".

1966—Subsecs. (i), (j). Pub. L. 89–800 added subsec. (i) and redesignated former subsec. (i) as (j).

1962—Subsec. (e). Pub. L. 87–834, §13(b), designated existing provisions as par. (1) and added par. (2).

Subsecs. (f) to (i). Pub. L. 87–834, §13(c)(1), added subsec. (f) and redesignated former subsecs. (f), (g), and (h) as (g), (h), and (i), respectively.

1958—Subsec. (d). Pub. L. 85–866 inserted "certified mail or" before "registered mail".

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–140, title XV, §1502(b), Dec. 19, 2007, 121 Stat. 1800, provided that: "The amendment made by this section [amending this section] shall apply to amounts paid or incurred after the date of the enactment of this Act [Dec. 19, 2007]."

Amendment by Pub. L. 110–140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–222, title II, §207(b), May 17, 2006, 120 Stat. 351, provided that: "The amendments made by this section [amending this section] shall apply to expenses paid or incurred with respect to property placed in service in taxable years beginning after December 31, 2005."

Pub. L. 109–222, title V, §503(b), May 17, 2006, 120 Stat. 355, provided that: "The amendment made by this section [amending this section] shall apply to amounts paid or incurred after the date of the enactment of this Act [May 17, 2006]."

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–58, title XIII, §1329(c), Aug. 8, 2005, 119 Stat. 1020, provided that: "The amendments made by this section [amending this section and section 263A of this title] shall apply to amounts paid or incurred in taxable years beginning after the date of the enactment of this Act [Aug. 8, 2005]."

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title II, §242(c), Oct. 22, 2004, 118 Stat. 1439, provided that: "The amendments made by this section [amending this section] shall apply to property placed in service after the date of the enactment of this Act [Oct. 22, 2004]."

Amendment by section 847(b)(1) of Pub. L. 108–357 applicable to leases entered into after Mar. 12, 2004, and amendment by section 847(b)(2) of Pub. L. 108–357 applicable to leases entered into after Oct. 3, 2004,

except that such amendments inapplicable to qualified transportation property, see section 849 of Pub. L. 108–357, set out as an Effective Date note under section 470 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title X, §1086(c), Aug. 5, 1997, 111 Stat. 958, provided that: "The amendment made by this section [amending this section and section 168 of this title] shall apply to property placed in service after the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, §1604(b), Aug. 20, 1996, 110 Stat. 1838, as amended by Pub. L. 105–206, title VI, §6018(d), July 22, 1998, 112 Stat. 823, provided that:

"(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to property placed in service after September 13, 1995.

"(2) BINDING CONTRACTS.—The amendment made by subsection (a) shall not apply to any property produced or acquired by the taxpayer pursuant to a written contract which was binding on September 13, 1995, and at all times thereafter before such production or acquisition.

"(3) UNDERPAYMENTS OF INCOME TAX.—No addition to tax shall be made under section 6662 of the Internal Revenue Code of 1986 as a result of the application of subsection (d) of that section (relating to substantial understatements of income tax) with respect to any underpayment of income tax for any taxable year ending before the date of the enactment of this Act [Aug. 20, 1996], to the extent such underpayment was created or increased by the amendments made by subsection (a)."

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13206(c)(3), Aug. 10, 1993, 107 Stat. 467, provided that: "The amendments made by this subsection [amending this section and section 305 of this title] shall take effect on April 30, 1993."

Amendment by section 13261(b) and (f)(1) of Pub. L. 103–66 applicable, except as otherwise provided, with respect to property acquired after Aug. 10, 1993, see section 13261(g) of Pub. L. 103–66, set out as an Effective Date note under section 197 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

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

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7622(c)[(e)], Dec. 19, 1989, 103 Stat. 2378, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and sections 1245 and 1253 of this title] shall apply to transfers after October 2, 1989.

"(2) BINDING CONTRACT.—The amendments made by this section shall not apply to any transfer pursuant to a written binding contract in effect on October 2, 1989, and at all times thereafter before the transfer."

Pub. L. 101–239, title VII, §7645(b), Dec. 19, 1989, 103 Stat. 2382, provided that: "The amendment made by subsection (a) [amending this section] shall apply to interests created or acquired after July 27, 1989, in taxable years ending after such date."

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 201(d)(1) of Pub. L. 99–514 applicable to property placed in service after Dec. 31, 1986, in taxable years ending after such date, with exceptions, see sections 203 and 204 of Pub. L. 99–514, set out as a note under section 168 of this title.

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

this title.

Amendment by section 1511(c)(4) of Pub. L. 99–514 applicable for purposes of determining interest for periods after Dec. 31, 1986, see section 1511(d) of Pub. L. 99–514, set out as a note under section 47 of this title.

Pub. L. 99–514, title XVIII, §1809(d)(1), Oct. 22, 1986, 100 Stat. 2821, provided that subsec. (c) is amended except with respect to property placed in service by the taxpayer on or before Mar. 28, 1985.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–424 applicable to taxable years beginning after Dec. 31, 1979, with a special rule for periods beginning before Mar. 1, 1980, see section 541(c) of Pub. L. 97–424, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title II, §264(b), Aug. 13, 1981, 95 Stat. 265, provided that: "The amendments made by this section [amending this section] shall apply with respect to rehabilitation expenditures incurred after December 31, 1980."

Amendment by sections 203 and 209 of Pub. L. 97–34 applicable to property placed in service after Dec. 31, 1980, in taxable years ending after that date, except that amendment by section 203(c) of Pub. L. 97–34 effective Jan. 1, 1981, and applicable with respect to taxable years ending after that date, see section 209(a), (b) of Pub. L. 97–34, set out as an Effective Date note under section 168 of this title.

Amendment by section 212(d)(1) of Pub. L. 97–34 applicable to expenditures incurred after Dec. 31, 1981, in taxable years ending after that date, see section 212(e) of Pub. L. 97–34, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–613, §2(b), Dec. 28, 1980, 94 Stat. 3579, provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to taxable years ending after December 31, 1953."

EFFECTIVE AND TERMINATION DATES OF 1978 AMENDMENT

Amendment by section 312(c)(4) of Pub. L. 95–600 applicable to taxable years ending after Dec. 31, 1978, see section 312(d) of Pub. L. 95–600, set out as an Effective Date of 1978 Amendment note under section 46 of this title.

Pub. L. 95–600, title VII, §701(f)(8), Nov. 6, 1978, 92 Stat. 2903, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by this subsection [amending this section and sections 57, 191, 280B, 1245, and 1250 of this title] shall take effect as if included in the respective provisions of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] to which such amendments relate, as such provision[s] were added to such Code, or amended, by section 2124 of the Tax Reform Act of 1976 [Pub. L. 94–455, title XXI, §2124, Oct. 4, 1976, 90 Stat. 1916]."

Amendment by Pub. L. 95–615 to cease to have effect on the day after Nov. 8, 1978, see section 210(a) of Pub. L. 95–615, set out as a Termination Date of 1978 Amendment note under section 61 of this title.

Amendment by section 301(d)(3) of Pub. L. 95–618 applicable to property which is placed in service after Sept. 30, 1978, but not to property which is constructed, reconstructed, erected, or acquired pursuant to a contract which, on Oct. 1, 1978, and at all times thereafter, was binding on the taxpayer, see section 301(d)(4) of Pub. L. 95–618, set out as an Effective Date of 1978 Amendment note under section 48 of this title.

Pub. L. 95–618, title III, §301(e)(2), Nov. 9, 1978, 92 Stat. 3201, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to taxable years ending after the date of enactment of this Act [Nov. 9, 1978]."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(27)(A) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by section 202(c)(3) of Pub. L. 94–455 applicable for taxable years ending after Dec. 31, 1975, see section 202(d) of Pub. L. 94–455, set out as a note under section 1250 of this title.

Pub. L. 94–455, title II, §203(b), Oct. 4, 1976, 90 Stat. 1531, as amended by Pub. L. 95–171, §4(b), Nov. 12, 1977, 91 Stat. 1355; Pub. L. 95–615, §7(b), Nov. 8, 1978, 92 Stat. 3098, provided that: "The amendments made by paragraphs (1), (3), and (4) of subsection (a) [amending this section] shall apply to expenditures paid or incurred after December 31, 1975. The amendment made by paragraph (2) of subsection (a) [amending this section] shall apply to expenditures incurred after December 31, 1975."

[Section 7(b) of Pub. L. 95–615 (which amended section 203(b) of Pub. L. 94–455 exactly as that section 203(b) had been amended by Pub. L. 95–171) to cease to have effect on the day after Nov. 8, 1978, see section 210(a) of Pub. L. 95–615, set out as a Termination Date of 1978 Amendment note under section 61 of this title.]

Pub. L. 94–455, title XXI, §2124(c)(2), (d)(2), Oct. 4, 1976, 90 Stat. 1918, 1919, which provided that the amendment of this section was applicable to that portion of the basis attributable to construction, reconstruction, or erection after Dec. 31, 1975, and before Jan. 1, 1981, and with respect to additions to capital account occurring after June 30, 1976, and before July 1, 1981, was repealed by Pub. L. 96–541, §2(e)(3), (4), Dec. 17, 1980, 94 Stat. 3205.

EFFECTIVE DATE OF 1975 AMENDMENT

Pub. L. 93–625, §5(d), Jan. 3, 1975, 88 Stat. 2112, provided that: "The amendments made by this section [amending section 1250 of this title and enacting and repealing provisions set out as notes under this section] shall apply with respect to property placed in service after December 31, 1973."

EFFECTIVE DATE OF 1971 AMENDMENT

Pub. L. 92–178, title I, §109(d)(1), Dec. 10, 1971, 85 Stat. 509, provided that: "The amendments made by subsection (a) [amending this section] shall apply to property placed in service after December 31, 1970."

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title IV, §441(b), Dec. 30, 1969, 83 Stat. 628, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to all taxable years for which a return has not been filed before August 1, 1969."

Pub. L. 91–172, title V, §521(g), Dec. 30, 1969, 83 Stat. 654, provided that: "The amendments made by this section [amending this section and sections 381 and 1250 of this title] shall apply with respect to taxable years ending after July 24, 1969."

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–26 applicable with respect to taxable years ending after March 9, 1967, see section 4 of Pub. L. 90–26, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–800 applicable to taxable years ending after Oct. 9, 1966, see section 4 of Pub. L. 89–800, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by section 13(b) of Pub. L. 87–834 applicable to taxable years beginning after Dec. 31, 1962, and amendment by section 13(c)(1) of Pub. L. 87–834 applicable to taxable years beginning after Dec. 31, 1961, and ending after Oct. 16, 1962, see section 13(g) of Pub. L. 87–834, set out as an Effective Date note under section 1245 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable only if mailing occurs after Sept. 2, 1958, see section 89(d) of Pub. L. 85–866, set out as a note under section 7502 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

DISCONTINUATION OF RETIREMENT-REPLACEMENT-BETTERMENT METHOD OF DEPRECIATION; TRANSITIONAL RULE

Pub. L. 97–34, title II, §203(c)(2), (3), Aug. 13, 1981, 95 Stat. 222, as amended by Pub. L. 99–514, §2, Oct.

22, 1986, 100 Stat. 2095, provided that:

"(2) CHANGE IN METHOD OF ACCOUNTING.—Sections 446 and 481 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall not apply to the change in the method of depreciation to comply with the provisions of this subsection [which struck out subsec. (r) of this section relating to the retirement-replacement-betterment method of accounting].

"(3) TRANSITIONAL RULE.—The adjusted basis of RRB property (as defined in section 168(g)(6) of such Code) as of December 31, 1980, shall be depreciated using a useful life of no less than 5 years and no more than 50 years and a method described in section 167(b) of such Code, including the method described in section 167(b)(2) of such Code, switching to the method described in section 167(b)(3) of such Code at a time to maximize the deduction."

INTERNAL REVENUE CODE PROVISIONS RELATING TO DEPRECIATION AS NOT APPLICABLE TO CALCULATIONS OF SECRETARY OF HEALTH AND HUMAN SERVICES IN DETERMINING COSTS OF PROGRAMS

Pub. L. 97–34, title II, §203(e), Aug. 13, 1981, 95 Stat. 222, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The Secretary of Health and Human Services is not required to apply any provision of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as amended, in calculating depreciation (for the purpose of determining any cost under a program administered by the Secretary), unless a provision of law requires so expressly."

CLASS LIFE SYSTEM; APPLICATION TO REAL PROPERTY; GENERAL RULE

Pub. L. 93–625, §5(a), Jan. 3, 1975, 88 Stat. 2112, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "In the case of buildings and other items of section 1250 property (within the meaning of section 1250(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) placed in service before the effective date of the class lives first prescribed by the Secretary of the Treasury or his delegate under section 167(m) of such Code for the class in which such property falls, if an election under such section 167(m) applies to the taxpayer for the taxable year in which such property is placed in service, the taxpayer may, in accordance with regulations prescribed by the Secretary of the Treasury or his delegate, elect to determine the useful life of such property—

"(1) under Revenue Procedure 62–21 (as amended and supplemented) as in effect on December 31, 1970, or

"(2) on the facts and circumstances."

TRANSITIONAL RULES FOR REASONABLE ALLOWANCE FOR DEPRECIATION

Pub. L. 92–178, title I, §109(e), Dec. 10, 1971, 85 Stat. 510, as amended by Pub. L. 93–625, §5(b), Jan. 3, 1975, 88 Stat. 2112; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) [Repealed. Pub. L. 93–625, §5(b), Jan. 3, 1975, 88 Stat. 2112.]

"(2) SUBSIDIARY ASSETS.—If a significant portion of a class of property first prescribed by the Secretary of the Treasury or his delegate under section 167(m) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] consists of subsidiary assets, all such subsidiary assets in such class placed in service by the taxpayer during the period beginning on January 1, 1971, and ending on December 31, 1973 (or such earlier date on which a class which includes such subsidiary assets subsequently prescribed by the Secretary of the Treasury or his delegate under such section becomes effective), may, in accordance with regulations prescribed by the Secretary of the Treasury or his delegate, be excluded by the taxpayer from an election under such section."

REHABILITATION EXPENDITURES FOR LOW INCOME RENTAL HOUSING INCURRED AFTER DECEMBER 31, 1974, AND BEFORE JANUARY 1, 1978, PURSUANT TO CONTRACT ENTERED BEFORE DECEMBER 31, 1974

Pub. L. 93–482, §4, Oct. 26, 1974, 88 Stat. 1456, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Notwithstanding the provisions of section 167(k)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to depreciation of expenditures to rehabilitate low income rental housing), the provisions of section 167(k) shall apply with respect to rehabilitation expenditures incurred with respect to low income rental housing after December 31, 1974, and before January 1, 1978, if such expenditures are incurred pursuant to a binding contract entered into before December 31, 1974."

§168. Accelerated cost recovery system

(a) General rule

Except as otherwise provided in this section, the depreciation deduction provided by section 167(a) for any tangible property shall be determined by using—

(1) the applicable depreciation method,

(2) the applicable recovery period, and

(3) the applicable convention.

(b) Applicable depreciation method

For purposes of this section—

(1) In general

Except as provided in paragraphs (2) and (3), the applicable depreciation method is—

(A) the 200 percent declining balance method,

(B) switching to the straight line method for the 1st taxable year for which using the straight line method with respect to the adjusted basis as of the beginning of such year will yield a larger allowance.

(2) 150 percent declining balance method in certain cases

Paragraph (1) shall be applied by substituting "150 percent" for "200 percent" in the case of—

(A) any 15-year or 20-year property not referred to in paragraph (3),

(B) any property used in a farming business (within the meaning of section 263A(e)(4)),

(C) any property (other than property described in paragraph (3)) which is a qualified smart electric meter or qualified smart electric grid system, or

(D) any property (other than property described in paragraph (3)) with respect to which the taxpayer elects under paragraph (5) to have the provisions of this paragraph apply.

(3) Property to which straight line method applies

The applicable depreciation method shall be the straight line method in the case of the following property:

(A) Nonresidential real property.

(B) Residential rental property.

(C) Any railroad grading or tunnel bore.

(D) Property with respect to which the taxpayer elects under paragraph (5) to have the provisions of this paragraph apply.

(E) Property described in subsection (e)(3)(D)(ii).

(F) Water utility property described in subsection (e)(5).

(G) Qualified leasehold improvement property described in subsection (e)(6).

(H) Qualified restaurant property described in subsection (e)(7).

(I) Qualified retail improvement property described in subsection (e)(8).

(4) Salvage value treated as zero

Salvage value shall be treated as zero.

(5) Election

An election under paragraph (2)(C) or (3)(D) may be made with respect to 1 or more classes of property for any taxable year and once made with respect to any class shall apply to all property in such class placed in service during such taxable year. Such an election, once made, shall be irrevocable.

(c) Applicable recovery period

For purposes of this section, the applicable recovery period shall be determined in accordance with the following table:

In the case of:	The applicable recovery period

	is:
3-year property	3 years
5-year property	5 years
7-year property	7 years
10-year property	10 years
15-year property	15 years
20-year property	20 years
Water utility property	25 years
Residential rental property	27.5 years
Nonresidential real property	39 years.
Any railroad grading or tunnel bore	50 years.

(d) Applicable convention

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, the applicable convention is the half-year convention.

(2) Real property

In the case of—

(A) nonresidential real property,
(B) residential rental property, and
(C) any railroad grading or tunnel bore,

the applicable convention is the mid-month convention.

(3) Special rule where substantial property placed in service during last 3 months of taxable year

(A) In general

Except as provided in regulations, if during any taxable year—

(i) the aggregate bases of property to which this section applies placed in service during the last 3 months of the taxable year, exceed

(ii) 40 percent of the aggregate bases of property to which this section applies placed in service during such taxable year,

the applicable convention for all property to which this section applies placed in service during such taxable year shall be the mid-quarter convention.

(B) Certain property not taken into account

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

(i) any nonresidential real property [1] residential rental property, and railroad grading or tunnel bore, and

(ii) any other property placed in service and disposed of during the same taxable year.

(4) Definitions

(A) Half-year convention

The half-year convention is a convention which treats all property placed in service during any taxable year (or disposed of during any taxable year) as placed in service (or disposed of) on the mid-point of such taxable year.

(B) Mid-month convention

The mid-month convention is a convention which treats all property placed in service during any month (or disposed of during any month) as placed in service (or disposed of) on the mid-point of such month.

(C) Mid-quarter convention

The mid-quarter convention is a convention which treats all property placed in service during any quarter of a taxable year (or disposed of during any quarter of a taxable year) as placed in service (or disposed of) on the mid-point of such quarter.

(e) Classification of property

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, property shall be classified under the following table:

Property shall be treated as:	If such property has a class life (in years) of:
3-year property	4 or less
5-year property	More than 4 but less than 10
7-year property	10 or more but less than 16
10-year property	16 or more but less than 20
15-year property	20 or more but less than 25
20-year property	25 or more.

(2) Residential rental or nonresidential real property

(A) Residential rental property

(i) Residential rental property

The term "residential rental property" means any building or structure if 80 percent or more of the gross rental income from such building or structure for the taxable year is rental income from dwelling units.

(ii) Definitions

For purposes of clause (i)—

(I) the term "dwelling unit" means a house or apartment used to provide living accommodations in a building or structure, but does not include a unit in a hotel, motel, or other establishment more than one-half of the units in which are used on a transient basis, and

(II) if any portion of the building or structure is occupied by the taxpayer, the gross rental income from such building or structure shall include the rental value of the portion so occupied.

(B) Nonresidential real property

The term "nonresidential real property" means section 1250 property which is not—

(i) residential rental property, or

(ii) property with a class life of less than 27.5 years.

(3) Classification of certain property

(A) 3-year property

The term "3-year property" includes—

(i) any race horse—

(I) which is placed in service before January 1, 2014, and

(II) which is placed in service after December 31, 2013, and which is more than 2 years old at the time such horse is placed in service by such purchaser,

(ii) any horse other than a race horse which is more than 12 years old at the time it is placed in service, and

(iii) any qualified rent-to-own property.

(B) 5-year property

The term "5-year property" includes—

(i) any automobile or light general purpose truck,

(ii) any semi-conductor manufacturing equipment,

(iii) any computer-based telephone central office switching equipment,

(iv) any qualified technological equipment,

(v) any section 1245 property used in connection with research and experimentation,

(vi) any property which—

(I) is described in subparagraph (A) of section 48(a)(3) (or would be so described if "solar or wind energy" were substituted for "solar energy" in clause (i) thereof and the last sentence of such section did not apply to such subparagraph),

(II) is described in paragraph (15) of section 48(l) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) and is a qualifying small power production facility within the meaning of section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)), as in effect on September 1, 1986, or

(III) is described in section 48(l)(3)(A)(ix) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990), and

(vii) any machinery or equipment (other than any grain bin, cotton ginning asset, fence, or other land improvement) which is used in a farming business (as defined in section 263A(e)(4)), the original use of which commences with the taxpayer after December 31, 2008, and which is placed in service before January 1, 2010.

Nothing in any provision of law shall be construed to treat property as not being described in clause (vi)(I) (or the corresponding provisions of prior law) by reason of being public utility property (within the meaning of section 48(a)(3)).

(C) 7-year property

The term "7-year property" includes—

(i) any railroad track, and [2]

(ii) any motorsports entertainment complex,

(iii) any Alaska natural gas pipeline,

(iv) any natural gas gathering line the original use of which commences with the taxpayer after April 11, 2005, and

(v) any property which—

(I) does not have a class life, and

(II) is not otherwise classified under paragraph (2) or this paragraph.

(D) 10-year property

The term "10-year property" includes—

(i) any single purpose agricultural or horticultural structure (within the meaning of subsection (i)(13)),

(ii) any tree or vine bearing fruit or nuts,

(iii) any qualified smart electric meter, and

(iv) any qualified smart electric grid system.

(E) 15-year property

The term "15-year property" includes—

(i) any municipal wastewater treatment plant,

(ii) any telephone distribution plant and comparable equipment used for 2-way exchange of voice and data communications,

(iii) any section 1250 property which is a retail motor fuels outlet (whether or not food or other convenience items are sold at the outlet),

(iv) any qualified leasehold improvement property placed in service before January 1, 2014,

(v) any qualified restaurant property placed in service before January 1, 2014,

(vi) initial clearing and grading land improvements with respect to gas utility property,

(vii) any section 1245 property (as defined in section 1245(a)(3)) used in the transmission at 69 or more kilovolts of electricity for sale and the original use of which commences with the taxpayer after April 11, 2005,

(viii) any natural gas distribution line the original use of which commences with the taxpayer after April 11, 2005, and which is placed in service before January 1, 2011, and

(ix) any qualified retail improvement property placed in service after December 31, 2008, and before January 1, 2014.

(F) 20-year property

The term "20-year property" means initial clearing and grading land improvements with respect to any electric utility transmission and distribution plant.

(4) Railroad grading or tunnel bore

The term "railroad grading or tunnel bore" means all improvements resulting from excavations (including tunneling), construction of embankments, clearings, diversions of roads and streams, sodding of slopes, and from similar work necessary to provide, construct, reconstruct, alter, protect, improve, replace, or restore a roadbed or right-of-way for railroad track.

(5) Water utility property

The term "water utility property" means property—

(A) which is an integral part of the gathering, treatment, or commercial distribution of water, and which, without regard to this paragraph, would be 20-year property, and

(B) any municipal sewer.

(6) Qualified leasehold improvement property

The term "qualified leasehold improvement property" has the meaning given such term in section 168(k)(3) except that the following special rules shall apply:

(A) Improvements made by lessor

In the case of an improvement made by the person who was the lessor of such improvement when such improvement was placed in service, such improvement shall be qualified leasehold improvement property (if at all) only so long as such improvement is held by such person.

(B) Exception for changes in form of business

Property shall not cease to be qualified leasehold improvement property under subparagraph (A) by reason of—

(i) death,

(ii) a transaction to which section 381(a) applies,

(iii) a mere change in the form of conducting the trade or business so long as the property is retained in such trade or business as qualified leasehold improvement property and the taxpayer retains a substantial interest in such trade or business,

(iv) the acquisition of such property in an exchange described in section 1031, 1033, or 1038 to the extent that the basis of such property includes an amount representing the adjusted basis of other property owned by the taxpayer or a related person, or

(v) the acquisition of such property by the taxpayer in a transaction described in section 332, 351, 361, 721, or 731 (or the acquisition of such property by the taxpayer from the transferee or acquiring corporation in a transaction described in such section), to the extent

that the basis of the property in the hands of the taxpayer is determined by reference to its basis in the hands of the transferor or distributor.

(7) Qualified restaurant property

(A) In general

The term "qualified restaurant property" means any section 1250 property which is—

(i) a building, or

(ii) an improvement to a building,

if more than 50 percent of the building's square footage is devoted to preparation of, and seating for on-premises consumption of, prepared meals.

(B) Exclusion from bonus depreciation

Property described in this paragraph shall not be considered qualified property for purposes of subsection (k).

(8) Qualified retail improvement property

(A) In general

The term "qualified retail improvement property" means any improvement to an interior portion of a building which is nonresidential real property if—

(i) such portion is open to the general public and is used in the retail trade or business of selling tangible personal property to the general public, and

(ii) such improvement is placed in service more than 3 years after the date the building was first placed in service.

(B) Improvements made by owner

In the case of an improvement made by the owner of such improvement, such improvement shall be qualified retail improvement property (if at all) only so long as such improvement is held by such owner. Rules similar to the rules under paragraph (6)(B) shall apply for purposes of the preceding sentence.

(C) Certain improvements not included

Such term shall not include any improvement for which the expenditure is attributable to—

(i) the enlargement of the building,

(ii) any elevator or escalator,

(iii) any structural component benefitting a common area, or

(iv) the internal structural framework of the building.

(D) Exclusion from bonus depreciation

Property described in this paragraph shall not be considered qualified property for purposes of subsection (k).

(f) Property to which section does not apply

This section shall not apply to—

(1) Certain methods of depreciation

Any property if—

(A) the taxpayer elects to exclude such property from the application of this section, and

(B) for the 1st taxable year for which a depreciation deduction would be allowable with respect to such property in the hands of the taxpayer, the property is properly depreciated under the unit-of-production method or any method of depreciation not expressed in a term of years (other than the retirement-replacement-betterment method or similar method).

(2) Certain public utility property

Any public utility property (within the meaning of subsection (i)(10)) if the taxpayer does not use a normalization method of accounting.

(3) Films and video tape

Any motion picture film or video tape.

(4) Sound recordings

Any works which result from the fixation of a series of musical, spoken, or other sounds, regardless of the nature of the material (such as discs, tapes, or other phonorecordings) in which such sounds are embodied.

(5) Certain property placed in service in churning transactions

(A) In general

Property—

(i) described in paragraph (4) of section 168(e) (as in effect before the amendments made by the Tax Reform Act of 1986), or

(ii) which would be described in such paragraph if such paragraph were applied by substituting "1987" for "1981" and "1986" for "1980" each place such terms appear.

(B) Subparagraph (A)(ii) not to apply

Clause (ii) of subparagraph (A) shall not apply to—

(i) any residential rental property or nonresidential real property,

(ii) any property if, for the 1st taxable year in which such property is placed in service—

(I) the amount allowable as a deduction under this section (as in effect before the date of the enactment of this paragraph) with respect to such property is greater than,

(II) the amount allowable as a deduction under this section (as in effect on or after such date and using the half-year convention) for such taxable year, or

(iii) any property to which this section (as amended by the Tax Reform Act of 1986) applied in the hands of the transferor.

(C) Special rule

In the case of any property to which this section would apply but for this paragraph, the depreciation deduction under section 167 shall be determined under the provisions of this section as in effect before the amendments made by section 201 of the Tax Reform Act of 1986.

(g) Alternative depreciation system for certain property

(1) In general

In the case of—

(A) any tangible property which during the taxable year is used predominantly outside the United States,

(B) any tax-exempt use property,

(C) any tax-exempt bond financed property,

(D) any imported property covered by an Executive order under paragraph (6), and

(E) any property to which an election under paragraph (7) applies,

the depreciation deduction provided by section 167(a) shall be determined under the alternative depreciation system.

(2) Alternative depreciation system

For purposes of paragraph (1), the alternative depreciation system is depreciation determined by using—

(A) the straight line method (without regard to salvage value),

(B) the applicable convention determined under subsection (d), and

(C) a recovery period determined under the following table:

In the case of:	The recovery period shall be:
(i) Property not described in clause (ii) or (iii)	The class life.
(ii) Personal property with no class life	12 years.
(iii) Nonresidential real and residential rental property	40 years.
(iv) Any railroad grading or tunnel bore or water utility property	50 years.

(3) Special rules for determining class life

(A) Tax-exempt use property subject to lease

In the case of any tax-exempt use property subject to a lease, the recovery period used for purposes of paragraph (2) shall (notwithstanding any other subparagraph of this paragraph) in no event be less than 125 percent of the lease term.

(B) Special rule for certain property assigned to classes

For purposes of paragraph (2), in the case of property described in any of the following subparagraphs of subsection (e)(3), the class life shall be determined as follows:

If property is described in subparagraph:	The class life is:
(A)(iii)	4
(B)(ii)	5
(B)(iii)	9.5
(B)(vii)	10
(C)(i)	10
(C)(iii)	22
(C)(iv)	14
(D)(i)	15
(D)(ii)	20
(E)(i)	24
(E)(ii)	24
(E)(iii)	20
(E)(iv)	39
(E)(v)	39
(E)(vi)	20
(E)(vii)	30
(E)(viii)	35
(E)(ix)	39
(F)	25

(C) Qualified technological equipment

In the case of any qualified technological equipment, the recovery period used for purposes of paragraph (2) shall be 5 years.

(D) Automobiles, etc.

In the case of any automobile or light general purpose truck, the recovery period used for purposes of paragraph (2) shall be 5 years.

(E) Certain real property

In the case of any section 1245 property which is real property with no class life, the recovery period used for purposes of paragraph (2) shall be 40 years.

(4) Exception for certain property used outside United States

Subparagraph (A) of paragraph (1) shall not apply to—

(A) any aircraft which is registered by the Administrator of the Federal Aviation Agency and which is operated to and from the United States or is operated under contract with the United States;

(B) rolling stock which is used within and without the United States and which is—

(i) of a rail carrier subject to part A of subtitle IV of title 49, or

(ii) of a United States person (other than a corporation described in clause (i)) but only if the rolling stock is not leased to one or more foreign persons for periods aggregating more than 12 months in any 24-month period;

(C) any vessel documented under the laws of the United States which is operated in the foreign or domestic commerce of the United States;

(D) any motor vehicle of a United States person (as defined in section 7701(a)(30)) which is operated to and from the United States;

(E) any container of a United States person which is used in the transportation of property to and from the United States;

(F) any property (other than a vessel or an aircraft) of a United States person which is used for the purpose of exploring for, developing, removing, or transporting resources from the outer Continental Shelf (within the meaning of section 2 of the Outer Continental Shelf Lands Act, as amended and supplemented; (43 U.S.C. 1331));

(G) any property which is owned by a domestic corporation (other than a corporation which has an election in effect under section 936) or by a United States citizen (other than a citizen entitled to the benefits of section 931 or 933) and which is used predominantly in a possession of the United States by such a corporation or such a citizen, or by a corporation created or organized in, or under the law of, a possession of the United States;

(H) any communications satellite (as defined in section 103(3) of the Communications Satellite Act of 1962, 47 U.S.C. 702(3)), or any interest therein, of a United States person;

(I) any cable, or any interest therein, of a domestic corporation engaged in furnishing telephone service to which section 168(i)(10)(C) applies (or of a wholly owned domestic subsidiary of such a corporation), if such cable is part of a submarine cable system which constitutes part of a communication link exclusively between the United States and one or more foreign countries;

(J) any property (other than a vessel or an aircraft) of a United States person which is used in international or territorial waters within the northern portion of the Western Hemisphere for the purpose of exploring for, developing, removing, or transporting resources from ocean waters or deposits under such waters;

(K) any property described in section 48(l)(3)(A)(ix) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) which is owned by a United States person and which is used in international or territorial waters to generate energy for use in the United States; and

(L) any satellite (not described in subparagraph (H)) or other spacecraft (or any interest therein) held by a United States person if such satellite or other spacecraft was launched from within the United States.

For purposes of subparagraph (J), the term "northern portion of the Western Hemisphere" means the area lying west of the 30th meridian west of Greenwich, east of the international dateline, and north of the Equator, but not including any foreign country which is a country of South America.

(5) Tax-exempt bond financed property

For purposes of this subsection—

(A) In general

Except as otherwise provided in this paragraph, the term "tax-exempt bond financed property" means any property to the extent such property is financed (directly or indirectly) by an obligation the interest on which is exempt from tax under section 103(a).

(B) Allocation of bond proceeds

For purposes of subparagraph (A), the proceeds of any obligation shall be treated as used to finance property acquired in connection with the issuance of such obligation in the order in which such property is placed in service.

(C) Qualified residential rental projects

The term "tax-exempt bond financed property" shall not include any qualified residential rental project (within the meaning of section 142(a)(7)).

(6) Imported property

(A) Countries maintaining trade restrictions or engaging in discriminatory acts

If the President determines that a foreign country—

(i) maintains nontariff trade restrictions, including variable import fees, which substantially burden United States commerce in a manner inconsistent with provisions of trade agreements, or

(ii) engages in discriminatory or other acts (including tolerance of international cartels) or policies unjustifiably restricting United States commerce,

the President may by Executive order provide for the application of paragraph (1)(D) to any article or class of articles manufactured or produced in such foreign country for such period as may be provided by such Executive order. Any period specified in the preceding sentence shall not apply to any property ordered before (or the construction, reconstruction, or erection of which began before) the date of the Executive order unless the President determines an earlier date to be in the public interest and specifies such date in the Executive order.

(B) Imported property

For purposes of this subsection, the term "imported property" means any property if—

(i) such property was completed outside the United States, or

(ii) less than 50 percent of the basis of such property is attributable to value added within the United States.

For purposes of this subparagraph, the term "United States" includes the Commonwealth of Puerto Rico and the possessions of the United States.

(7) Election to use alternative depreciation system

(A) In general

If the taxpayer makes an election under this paragraph with respect to any class of property for any taxable year, the alternative depreciation system under this subsection shall apply to all property in such class placed in service during such taxable year. Notwithstanding the preceding sentence, in the case of nonresidential real property or residential rental property, such election may be made separately with respect to each property.

(B) Election irrevocable

An election under subparagraph (A), once made, shall be irrevocable.

(h) Tax-exempt use property

(1) In general

For purposes of this section—

(A) Property other than nonresidential real property

Except as otherwise provided in this subsection, the term "tax-exempt use property" means that portion of any tangible property (other than nonresidential real property) leased to a tax-exempt entity.

(B) Nonresidential real property

(i) In general

In the case of nonresidential real property, the term "tax-exempt use property" means that portion of the property leased to a tax-exempt entity in a disqualified lease.

(ii) Disqualified lease

For purposes of this subparagraph, the term "disqualified lease" means any lease of the property to a tax-exempt entity, but only if—

(I) part or all of the property was financed (directly or indirectly) by an obligation the interest on which is exempt from tax under section 103(a) and such entity (or a related entity) participated in such financing,

(II) under such lease there is a fixed or determinable price purchase or sale option which involves such entity (or a related entity) or there is the equivalent of such an option,

(III) such lease has a lease term in excess of 20 years, or

(IV) such lease occurs after a sale (or other transfer) of the property by, or lease of the property from, such entity (or a related entity) and such property has been used by such entity (or a related entity) before such sale (or other transfer) or lease.

(iii) 35-percent threshold test

Clause (i) shall apply to any property only if the portion of such property leased to tax-exempt entities in disqualified leases is more than 35 percent of the property.

(iv) Treatment of improvements

For purposes of this subparagraph, improvements to a property (other than land) shall not be treated as a separate property.

(v) Leasebacks during 1st 3 months of use not taken into account

Subclause (IV) of clause (ii) shall not apply to any property which is leased within 3 months after the date such property is first used by the tax-exempt entity (or a related entity).

(C) Exception for short-term leases

(i) In general

Property shall not be treated as tax-exempt use property merely by reason of a short-term lease.

(ii) Short-term lease

For purposes of clause (i), the term "short-term lease" means any lease the term of which is—

(I) less than 3 years, and

(II) less than the greater of 1 year or 30 percent of the property's present class life.

In the case of nonresidential real property and property with no present class life, subclause (II) shall not apply.

(D) Exception where property used in unrelated trade or business

The term "tax-exempt use property" shall not include any portion of a property if such portion is predominantly used by the tax-exempt entity (directly or through a partnership of which such entity is a partner) in an unrelated trade or business the income of which is subject to tax under section 511. For purposes of subparagraph (B)(iii), any portion of a property so used shall not be treated as leased to a tax-exempt entity in a disqualified lease.

(E) Nonresidential real property defined

For purposes of this paragraph, the term "nonresidential real property" includes residential rental property.

(2) Tax-exempt entity

(A) In general

For purposes of this subsection, the term "tax-exempt entity" means—

(i) the United States, any State or political subdivision thereof, any possession of the United States, or any agency or instrumentality of any of the foregoing,

(ii) an organization (other than a cooperative described in section 521) which is exempt from tax imposed by this chapter,

(iii) any foreign person or entity, and

(iv) any Indian tribal government described in section 7701(a)(40).

For purposes of applying this subsection, any Indian tribal government referred to in clause (iv) shall be treated in the same manner as a State.

(B) Exception for certain property subject to United States tax and used by foreign person or entity

Clause (iii) of subparagraph (A) shall not apply with respect to any property if more than 50 percent of the gross income for the taxable year derived by the foreign person or entity from the use of such property is—

(i) subject to tax under this chapter, or

(ii) included under section 951 in the gross income of a United States shareholder for the taxable year with or within which ends the taxable year of the controlled foreign corporation in which such income was derived.

For purposes of the preceding sentence, any exclusion or exemption shall not apply for purposes of determining the amount of the gross income so derived, but shall apply for purposes of determining the portion of such gross income subject to tax under this chapter.

(C) Foreign person or entity

For purposes of this paragraph, the term "foreign person or entity" means—

(i) any foreign government, any international organization, or any agency or instrumentality of any of the foregoing, and

(ii) any person who is not a United States person.

Such term does not include any foreign partnership or other foreign pass-thru entity.

(D) Treatment of certain taxable instrumentalities

For purposes of this subsection, a corporation shall not be treated as an instrumentality of the United States or of any State or political subdivision thereof if—

(i) all of the activities of such corporation are subject to tax under this chapter, and

(ii) a majority of the board of directors of such corporation is not selected by the United States or any State or political subdivision thereof.

(E) Certain previously tax-exempt organizations

(i) In general

For purposes of this subsection, an organization shall be treated as an organization described in subparagraph (A)(ii) with respect to any property (other than property held by such organization) if such organization was an organization (other than a cooperative described in section 521) exempt from tax imposed by this chapter at any time during the

5-year period ending on the date such property was first used by such organization. The preceding sentence and subparagraph (D)(ii) shall not apply to the Federal Home Loan Mortgage Corporation.

(ii) Election not to have clause (i) apply

(I) In general

In the case of an organization formerly exempt from tax under section 501(a) as an organization described in section 501(c)(12), clause (i) shall not apply to such organization with respect to any property if such organization elects not to be exempt from tax under section 501(a) during the tax-exempt use period with respect to such property.

(II) Tax-exempt use period

For purposes of subclause (I), the term "tax-exempt use period" means the period beginning with the taxable year in which the property described in subclause (I) is first used by the organization and ending with the close of the 15th taxable year following the last taxable year of the applicable recovery period of such property.

(III) Election

Any election under subclause (I), once made, shall be irrevocable.

(iii) Treatment of successor organizations

Any organization which is engaged in activities substantially similar to those engaged in by a predecessor organization shall succeed to the treatment under this subparagraph of such predecessor organization.

(iv) First used

For purposes of this subparagraph, property shall be treated as first used by the organization—

(I) when the property is first placed in service under a lease to such organization, or

(II) in the case of property leased to (or held by) a partnership (or other pass-thru entity) in which the organization is a member, the later of when such property is first used by such partnership or pass-thru entity or when such organization is first a member of such partnership or pass-thru entity.

(3) Special rules for certain high technology equipment

(A) Exemption where lease term is 5 years or less

For purposes of this section, the term "tax-exempt use property" shall not include any qualified technological equipment if the lease to the tax-exempt entity has a lease term of 5 years or less. Notwithstanding subsection (i)(3)(A)(i), in determining a lease term for purposes of the preceding sentence, there shall not be taken into account any option of the lessee to renew at the fair market value rent determined at the time of renewal; except that the aggregate period not taken into account by reason of this sentence shall not exceed 24 months.

(B) Exception for certain property

(i) In general

For purposes of subparagraph (A), the term "qualified technological equipment" shall not include any property leased to a tax-exempt entity if—

(I) part or all of the property was financed (directly or indirectly) by an obligation the interest on which is exempt from tax under section 103(a),

(II) such lease occurs after a sale (or other transfer) of the property by, or lease of such property from, such entity (or related entity) and such property has been used by such entity (or a related entity) before such sale (or other transfer) or lease, or

(III) such tax-exempt entity is the United States or any agency or instrumentality of the United States.

(ii) Leasebacks during 1st 3 months of use not taken into account

Subclause (II) of clause (i) shall not apply to any property which is leased within 3 months after the date such property is first used by the tax-exempt entity (or a related entity).

(4) Related entities

For purposes of this subsection—

(A)(i) Each governmental unit and each agency or instrumentality of a governmental unit is related to each other such unit, agency, or instrumentality which directly or indirectly derives its powers, rights, and duties in whole or in part from the same sovereign authority.

(ii) For purposes of clause (i), the United States, each State, and each possession of the United States shall be treated as a separate sovereign authority.

(B) Any entity not described in subparagraph (A)(i) is related to any other entity if the 2 entities have—

(i) significant common purposes and substantial common membership, or

(ii) directly or indirectly substantial common direction or control.

(C)(i) An entity is related to another entity if either entity owns (directly or through 1 or more entities) a 50 percent or greater interest in the capital or profits of the other entity.

(ii) For purposes of clause (i), entities treated as related under subparagraph (A) or (B) shall be treated as 1 entity.

(D) An entity is related to another entity with respect to a transaction if such transaction is part of an attempt by such entities to avoid the application of this subsection.

(5) Tax-exempt use of property leased to partnerships, etc., determined at partner level

For purposes of this subsection—

(A) In general

In the case of any property which is leased to a partnership, the determination of whether any portion of such property is tax-exempt use property shall be made by treating each tax-exempt entity partner's proportionate share (determined under paragraph (6)(C)) of such property as being leased to such partner.

(B) Other pass-thru entities; tiered entities

Rules similar to the rules of subparagraph (A) shall also apply in the case of any pass-thru entity other than a partnership and in the case of tiered partnerships and other entities.

(C) Presumption with respect to foreign entities

Unless it is otherwise established to the satisfaction of the Secretary, it shall be presumed that the partners of a foreign partnership (and the beneficiaries of any other foreign pass-thru entity) are persons who are not United States persons.

(6) Treatment of property owned by partnerships, etc.

(A) In general

For purposes of this subsection, if—

(i) any property which (but for this subparagraph) is not tax-exempt use property is owned by a partnership which has both a tax-exempt entity and a person who is not a tax-exempt entity as partners, and

(ii) any allocation to the tax-exempt entity of partnership items is not a qualified allocation,

an amount equal to such tax-exempt entity's proportionate share of such property shall (except as provided in paragraph (1)(D)) be treated as tax-exempt use property.

(B) Qualified allocation

For purposes of subparagraph (A), the term "qualified allocation" means any allocation to a tax-exempt entity which—

(i) is consistent with such entity's being allocated the same distributive share of each item of income, gain, loss, deduction, credit, and basis and such share remains the same during the entire period the entity is a partner in the partnership, and

(ii) has substantial economic effect within the meaning of section 704(b)(2).

For purposes of this subparagraph, items allocated under section 704(c) shall not be taken into account.

(C) Determination of proportionate share

(i) In general

For purposes of subparagraph (A), a tax-exempt entity's proportionate share of any property owned by a partnership shall be determined on the basis of such entity's share of partnership items of income or gain (excluding gain allocated under section 704(c)), whichever results in the largest proportionate share.

(ii) Determination where allocations vary

For purposes of clause (i), if a tax-exempt entity's share of partnership items of income or gain (excluding gain allocated under section 704(c)) may vary during the period such entity is a partner in the partnership, such share shall be the highest share such entity may receive.

(D) Determination of whether property used in unrelated trade or business

For purposes of this subsection, in the case of any property which is owned by a partnership which has both a tax-exempt entity and a person who is not a tax-exempt entity as partners, the determination of whether such property is used in an unrelated trade or business of such an entity shall be made without regard to section 514.

(E) Other pass-thru entities; tiered entities

Rules similar to the rules of subparagraphs (A), (B), (C), and (D) shall also apply in the case of any pass-thru entity other than a partnership and in the case of tiered partnerships and other entities.

(F) Treatment of certain taxable entities

(i) In general

For purposes of this paragraph and paragraph (5), except as otherwise provided in this subparagraph, any tax-exempt controlled entity shall be treated as a tax-exempt entity.

(ii) Election

If a tax-exempt controlled entity makes an election under this clause—

(I) such entity shall not be treated as a tax-exempt entity for purposes of this paragraph and paragraph (5), and

(II) any gain recognized by a tax-exempt entity on any disposition of an interest in such entity (and any dividend or interest received or accrued by a tax-exempt entity from such tax-exempt controlled entity) shall be treated as unrelated business taxable income for purposes of section 511.

Any such election shall be irrevocable and shall bind all tax-exempt entities holding interests in such tax-exempt controlled entity. For purposes of subclause (II), there shall only be taken into account dividends which are properly allocable to income of the tax-exempt controlled entity which was not subject to tax under this chapter.

(iii) Tax-exempt controlled entity

(I) In general

The term "tax-exempt controlled entity" means any corporation (which is not a tax-exempt entity determined without regard to this subparagraph and paragraph (2)(E)) if 50 percent or more (in value) of the stock in such corporation is held by 1 or more

tax-exempt entities (other than a foreign person or entity).

(II) Only 5-percent shareholders taken into account in case of publicly traded stock

For purposes of subclause (I), in the case of a corporation the stock of which is publicly traded on an established securities market, stock held by a tax-exempt entity shall not be taken into account unless such entity holds at least 5 percent (in value) of the stock in such corporation. For purposes of this subclause, related entities (within the meaning of paragraph (4)) shall be treated as 1 entity.

(III) Section 318 to apply

For purposes of this clause, a tax-exempt entity shall be treated as holding stock which it holds through application of section 318 (determined without regard to the 50-percent limitation contained in subsection (a)(2)(C) thereof).

(G) Regulations

For purposes of determining whether there is a qualified allocation under subparagraph (B), the regulations prescribed under paragraph (8) for purposes of this paragraph—

(i) shall set forth the proper treatment for partnership guaranteed payments, and

(ii) may provide for the exclusion or segregation of items.

(7) Lease

For purposes of this subsection, the term "lease" includes any grant of a right to use property.

(8) Regulations

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

(i) Definitions and special rules

For purposes of this section—

(1) Class life

Except as provided in this section, the term "class life" means the class life (if any) which would be applicable with respect to any property as of January 1, 1986, under subsection (m) of section 167 (determined without regard to paragraph (4) and as if the taxpayer had made an election under such subsection). The Secretary, through an office established in the Treasury, shall monitor and analyze actual experience with respect to all depreciable assets. The reference in this paragraph to subsection (m) of section 167 shall be treated as a reference to such subsection as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990.

(2) Qualified technological equipment

(A) In general

The term "qualified technological equipment" means—

(i) any computer or peripheral equipment,

(ii) any high technology telephone station equipment installed on the customer's premises, and

(iii) any high technology medical equipment.

(B) Computer or peripheral equipment defined

For purposes of this paragraph—

(i) In general

The term "computer or peripheral equipment" means—

(I) any computer, and

(II) any related peripheral equipment.

(ii) Computer

The term "computer" means a programmable electronically activated device which—

(I) is capable of accepting information, applying prescribed processes to the information, and supplying the results of these processes with or without human intervention, and

(II) consists of a central processing unit containing extensive storage, logic, arithmetic, and control capabilities.

(iii) Related peripheral equipment

The term "related peripheral equipment" means any auxiliary machine (whether on-line or off-line) which is designed to be placed under the control of the central processing unit of a computer.

(iv) Exceptions

The term "computer or peripheral equipment" shall not include—

(I) any equipment which is an integral part of other property which is not a computer,

(II) typewriters, calculators, adding and accounting machines, copiers, duplicating equipment, and similar equipment, and

(III) equipment of a kind used primarily for amusement or entertainment of the user.

(C) High technology medical equipment

For purposes of this paragraph, the term "high technology medical equipment" means any electronic, electromechanical, or computer-based high technology equipment used in the screening, monitoring, observation, diagnosis, or treatment of patients in a laboratory, medical, or hospital environment.

(3) Lease term

(A) In general

In determining a lease term—

(i) there shall be taken into account options to renew,

(ii) the term of a lease shall include the term of any service contract or similar arrangement (whether or not treated as a lease under section 7701(e))—

(I) which is part of the same transaction (or series of related transactions) which includes the lease, and

(II) which is with respect to the property subject to the lease or substantially similar property, and

(iii) 2 or more successive leases which are part of the same transaction (or a series of related transactions) with respect to the same or substantially similar property shall be treated as 1 lease.

(B) Special rule for fair rental options on nonresidential real property or residential rental property

For purposes of clause (i) of subparagraph (A), in the case of nonresidential real property or residential rental property, there shall not be taken into account any option to renew at fair market value, determined at the time of renewal.

(4) General asset accounts

Under regulations, a taxpayer may maintain 1 or more general asset accounts for any property to which this section applies. Except as provided in regulations, all proceeds realized on any disposition of property in a general asset account shall be included in income as ordinary income.

(5) Changes in use

The Secretary shall, by regulations, provide for the method of determining the deduction allowable under section 167(a) with respect to any tangible property for any taxable year (and the succeeding taxable years) during which such property changes status under this section but continues to be held by the same person.

(6) Treatments of additions or improvements to property

In the case of any addition to (or improvement of) any property—

(A) any deduction under subsection (a) for such addition or improvement shall be computed in the same manner as the deduction for such property would be computed if such property had been placed in service at the same time as such addition or improvement, and

(B) the applicable recovery period for such addition or improvement shall begin on the later of—

(i) the date on which such addition (or improvement) is placed in service, or

(ii) the date on which the property with respect to which such addition (or improvement) was made is placed in service.

(7) Treatment of certain transferees

(A) In general

In the case of any property transferred in a transaction described in subparagraph (B), the transferee shall be treated as the transferor for purposes of computing the depreciation deduction determined under this section with respect to so much of the basis in the hands of the transferee as does not exceed the adjusted basis in the hands of the transferor. In any case where this section as in effect before the amendments made by section 201 of the Tax Reform Act of 1986 applied to the property in the hands of the transferor, the reference in the preceding sentence to this section shall be treated as a reference to this section as so in effect.

(B) Transactions covered

The transactions described in this subparagraph are—

(i) any transaction described in section 332, 351, 361, 721, or 731, and

(ii) any transaction between members of the same affiliated group during any taxable year for which a consolidated return is made by such group.

Subparagraph (A) shall not apply in the case of a termination of a partnership under section 708(b)(1)(B).

(C) Property reacquired by the taxpayer

Under regulations, property which is disposed of and then reacquired by the taxpayer shall be treated for purposes of computing the deduction allowable under subsection (a) as if such property had not been disposed of.

(8) Treatment of leasehold improvements

(A) In general

In the case of any building erected (or improvements made) on leased property, if such building or improvement is property to which this section applies, the depreciation deduction shall be determined under the provisions of this section.

(B) Treatment of lessor improvements which are abandoned at termination of lease

An improvement—

(i) which is made by the lessor of leased property for the lessee of such property, and

(ii) which is irrevocably disposed of or abandoned by the lessor at the termination of the lease by such lessee,

shall be treated for purposes of determining gain or loss under this title as disposed of by the lessor when so disposed of or abandoned.

(C) Cross reference

For treatment of qualified long-term real property constructed or improved in connection with cash or rent reduction from lessor to lessee, see section 110(b).

(9) Normalization rules

(A) In general

In order to use a normalization method of accounting with respect to any public utility property for purposes of subsection (f)(2)—

(i) the taxpayer must, in computing its tax expense for purposes of establishing its cost of service for ratemaking purposes and reflecting operating results in its regulated books of account, use a method of depreciation with respect to such property that is the same as, and a depreciation period for such property that is no shorter than, the method and period used to compute its depreciation expense for such purposes; and

(ii) if the amount allowable as a deduction under this section with respect to such property (respecting all elections made by the taxpayer under this section) differs from the amount that would be allowable as a deduction under section 167 using the method (including the period, first and last year convention, and salvage value) used to compute regulated tax expense under clause (i), the taxpayer must make adjustments to a reserve to reflect the deferral of taxes resulting from such difference.

(B) Use of inconsistent estimates and projections, etc.

(i) In general

One way in which the requirements of subparagraph (A) are not met is if the taxpayer, for ratemaking purposes, uses a procedure or adjustment which is inconsistent with the requirements of subparagraph (A).

(ii) Use of inconsistent estimates and projections

The procedures and adjustments which are to be treated as inconsistent for purposes of clause (i) shall include any procedure or adjustment for ratemaking purposes which uses an estimate or projection of the taxpayer's tax expense, depreciation expense, or reserve for deferred taxes under subparagraph (A)(ii) unless such estimate or projection is also used, for ratemaking purposes, with respect to the other 2 such items and with respect to the rate base.

(iii) Regulatory authority

The Secretary may by regulations prescribe procedures and adjustments (in addition to those specified in clause (ii)) which are to be treated as inconsistent for purposes of clause (i).

(C) Public utility property which does not meet normalization rules

In the case of any public utility property to which this section does not apply by reason of subsection (f)(2), the allowance for depreciation under section 167(a) shall be an amount computed using the method and period referred to in subparagraph (A)(i).

(10) Public utility property

The term "public utility property" means property used predominantly in the trade or business of the furnishing or sale of—

(A) electrical energy, water, or sewage disposal services,

(B) gas or steam through a local distribution system,

(C) telephone services, or other communication services if furnished or sold by the Communications Satellite Corporation for purposes authorized by the Communications Satellite Act of 1962 (47 U.S.C. 701), or

(D) transportation of gas or steam by pipeline,

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

(11) Research and experimentation

The term "research and experimentation" has the same meaning as the term research and experimental has under section 174.

(12) Section 1245 and 1250 property

The terms "section 1245 property" and "section 1250 property" have the meanings given such terms by sections 1245(a)(3) and 1250(c), respectively.

(13) Single purpose agricultural or horticultural structure

(A) In general

The term "single purpose agricultural or horticultural structure" means—

(i) a single purpose livestock structure, and

(ii) a single purpose horticultural structure.

(B) Definitions

For purposes of this paragraph—

(i) Single purpose livestock structure

The term "single purpose livestock structure" means any enclosure or structure specifically designed, constructed, and used—

(I) for housing, raising, and feeding a particular type of livestock and their produce, and

(II) for housing the equipment (including any replacements) necessary for the housing, raising, and feeding referred to in subclause (I).

(ii) Single purpose horticultural structure

The term "single purpose horticultural structure" means—

(I) a greenhouse specifically designed, constructed, and used for the commercial production of plants, and

(II) a structure specifically designed, constructed, and used for the commercial production of mushrooms.

(iii) Structures which include work space

An enclosure or structure which provides work space shall be treated as a single purpose agricultural or horticultural structure only if such work space is solely for—

(I) the stocking, caring for, or collecting of livestock or plants (as the case may be) or their produce,

(II) the maintenance of the enclosure or structure, and

(III) the maintenance or replacement of the equipment or stock enclosed or housed therein.

(iv) Livestock

The term "livestock" includes poultry.

(14) Qualified rent-to-own property

(A) In general

The term "qualified rent-to-own property" means property held by a rent-to-own dealer for purposes of being subject to a rent-to-own contract.

(B) Rent-to-own dealer

The term "rent-to-own dealer" means a person that, in the ordinary course of business, regularly enters into rent-to-own contracts with customers for the use of consumer property, if a substantial portion of those contracts terminate and the property is returned to such person before the receipt of all payments required to transfer ownership of the property from such person to the customer.

(C) Consumer property

The term "consumer property" means tangible personal property of a type generally used within the home for personal use.

(D) Rent-to-own contract

The term "rent-to-own contract" means any lease for the use of consumer property between a

rent-to-own dealer and a customer who is an individual which—

(i) is titled "Rent-to-Own Agreement" or "Lease Agreement with Ownership Option," or uses other similar language,

(ii) provides for level (or decreasing where no payment is less than 40 percent of the largest payment), regular periodic payments (for a payment period which is a week or month),

(iii) provides that legal title to such property remains with the rent-to-own dealer until the customer makes all the payments described in clause (ii) or early purchase payments required under the contract to acquire legal title to the item of property,

(iv) provides a beginning date and a maximum period of time for which the contract may be in effect that does not exceed 156 weeks or 36 months from such beginning date (including renewals or options to extend),

(v) provides for payments within the 156-week or 36-month period that, in the aggregate, generally exceed the normal retail price of the consumer property plus interest,

(vi) provides for payments under the contract that, in the aggregate, do not exceed $10,000 per item of consumer property,

(vii) provides that the customer does not have any legal obligation to make all the payments referred to in clause (ii) set forth under the contract, and that at the end of each payment period the customer may either continue to use the consumer property by making the payment for the next payment period or return such property to the rent-to-own dealer in good working order, in which case the customer does not incur any further obligations under the contract and is not entitled to a return of any payments previously made under the contract, and

(viii) provides that the customer has no right to sell, sublease, mortgage, pawn, pledge, encumber, or otherwise dispose of the consumer property until all the payments stated in the contract have been made.

(15) Motorsports entertainment complex

(A) In general

The term "motorsports entertainment complex" means a racing track facility which—

(i) is permanently situated on land, and

(ii) during the 36-month period following the first day of the month in which the asset is placed in service, hosts 1 or more racing events for automobiles (of any type), trucks, or motorcycles which are open to the public for the price of admission.

(B) Ancillary and support facilities

Such term shall include, if owned by the taxpayer who owns the complex and provided for the benefit of patrons of the complex—

(i) ancillary facilities and land improvements in support of the complex's activities (including parking lots, sidewalks, waterways, bridges, fences, and landscaping),

(ii) support facilities (including food and beverage retailing, souvenir vending, and other nonlodging accommodations), and

(iii) appurtenances associated with such facilities and related attractions and amusements (including ticket booths, race track surfaces, suites and hospitality facilities, grandstands and viewing structures, props, walls, facilities that support the delivery of entertainment services, other special purpose structures, facades, shop interiors, and buildings).

(C) Exception

Such term shall not include any transportation equipment, administrative services assets, warehouses, administrative buildings, hotels, or motels.

(D) Termination

Such term shall not include any property placed in service after December 31, 2013.

(16) Alaska natural gas pipeline

The term "Alaska natural gas pipeline" means the natural gas pipeline system located in the State of Alaska which—

(A) has a capacity of more than 500,000,000,000 Btu of natural gas per day, and

(B) is—

(i) placed in service after December 31, 2013, or

(ii) treated as placed in service on January 1, 2014, if the taxpayer who places such system in service before January 1, 2014, elects such treatment.

Such term includes the pipe, trunk lines, related equipment, and appurtenances used to carry natural gas, but does not include any gas processing plant.

(17) Natural gas gathering line

The term "natural gas gathering line" means—

(A) the pipe, equipment, and appurtenances determined to be a gathering line by the Federal Energy Regulatory Commission, and

(B) the pipe, equipment, and appurtenances used to deliver natural gas from the wellhead or a commonpoint to the point at which such gas first reaches—

(i) a gas processing plant,

(ii) an interconnection with a transmission pipeline for which a certificate as an interstate transmission pipeline has been issued by the Federal Energy Regulatory Commission,

(iii) an interconnection with an intrastate transmission pipeline, or

(iv) a direct interconnection with a local distribution company, a gas storage facility, or an industrial consumer.

(18) Qualified smart electric meters

(A) In general

The term "qualified smart electric meter" means any smart electric meter which—

(i) is placed in service by a taxpayer who is a supplier of electric energy or a provider of electric energy services, and

(ii) does not have a class life (determined without regard to subsection (e)) of less than 10 years.

(B) Smart electric meter

For purposes of subparagraph (A), the term "smart electric meter" means any time-based meter and related communication equipment which is capable of being used by the taxpayer as part of a system that—

(i) measures and records electricity usage data on a time-differentiated basis in at least 24 separate time segments per day,

(ii) provides for the exchange of information between supplier or provider and the customer's electric meter in support of time-based rates or other forms of demand response,

(iii) provides data to such supplier or provider so that the supplier or provider can provide energy usage information to customers electronically, and

(iv) provides net metering.

(19) Qualified smart electric grid systems

(A) In general

The term "qualified smart electric grid system" means any smart grid property which—

(i) is used as part of a system for electric distribution grid communications, monitoring, and management placed in service by a taxpayer who is a supplier of electric energy or a provider of electric energy services, and

(ii) does not have a class life (determined without regard to subsection (e)) of less than 10 years.

(B) Smart grid property

For the purposes of subparagraph (A), the term "smart grid property" means electronics and related equipment that is capable of—

(i) sensing, collecting, and monitoring data of or from all portions of a utility's electric distribution grid,

(ii) providing real-time, two-way communications to monitor or manage such grid, and

(iii) providing real time analysis of and event prediction based upon collected data that can be used to improve electric distribution system reliability, quality, and performance.

(j) Property on Indian reservations

(1) In general

For purposes of subsection (a), the applicable recovery period for qualified Indian reservation property shall be determined in accordance with the table contained in paragraph (2) in lieu of the table contained in subsection (c).

(2) Applicable recovery period for Indian reservation property

For purposes of paragraph (1)—

In the case of:	The applicable recovery period is:
3-year property	2 years
5-year property	3 years
7-year property	4 years
10-year property	6 years
15-year property	9 years
20-year property	12 years
Nonresidential real property	22 years.

(3) Deduction allowed in computing minimum tax

For purposes of determining alternative minimum taxable income under section 55, the deduction under subsection (a) for property to which paragraph (1) applies shall be determined under this section without regard to any adjustment under section 56.

(4) Qualified Indian reservation property defined

For purposes of this subsection—

(A) In general

The term "qualified Indian reservation property" means property which is property described in the table in paragraph (2) and which is—

(i) used by the taxpayer predominantly in the active conduct of a trade or business within an Indian reservation,

(ii) not used or located outside the Indian reservation on a regular basis,

(iii) not acquired (directly or indirectly) by the taxpayer from a person who is related to the taxpayer (within the meaning of section 465(b)(3)(C)), and

(iv) not property (or any portion thereof) placed in service for purposes of conducting or housing class I, II, or III gaming (as defined in section 4 of the Indian Regulatory Act (25 U.S.C. 2703)).

(B) Exception for alternative depreciation property

The term "qualified Indian reservation property" does not include any property to which the

alternative depreciation system under subsection (g) applies, determined—

(i) without regard to subsection (g)(7) (relating to election to use alternative depreciation system), and

(ii) after the application of section 280F(b) (relating to listed property with limited business use).

(C) Special rule for reservation infrastructure investment

(i) In general

Subparagraph (A)(ii) shall not apply to qualified infrastructure property located outside of the Indian reservation if the purpose of such property is to connect with qualified infrastructure property located within the Indian reservation.

(ii) Qualified infrastructure property

For purposes of this subparagraph, the term "qualified infrastructure property" means qualified Indian reservation property (determined without regard to subparagraph (A)(ii)) which—

(I) benefits the tribal infrastructure,

(II) is available to the general public, and

(III) is placed in service in connection with the taxpayer's active conduct of a trade or business within an Indian reservation.

Such term includes, but is not limited to, roads, power lines, water systems, railroad spurs, and communications facilities.

(5) Real estate rentals

For purposes of this subsection, the rental to others of real property located within an Indian reservation shall be treated as the active conduct of a trade or business within an Indian reservation.

(6) Indian reservation defined

For purposes of this subsection, the term "Indian reservation" means a reservation, as defined in—

(A) section 3(d) of the Indian Financing Act of 1974 (25 U.S.C. 1452(d)), or

(B) section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)).

For purposes of the preceding sentence, such section 3(d) shall be applied by treating the term "former Indian reservations in Oklahoma" as including only lands which are within the jurisdictional area of an Oklahoma Indian tribe (as determined by the Secretary of the Interior) and are recognized by such Secretary as eligible for trust land status under 25 CFR Part 151 (as in effect on the date of the enactment of this sentence).

(7) Coordination with nonrevenue laws

Any reference in this subsection to a provision not contained in this title shall be treated for purposes of this subsection as a reference to such provision as in effect on the date of the enactment of this paragraph.

(8) Termination

This subsection shall not apply to property placed in service after December 31, 2013.

(k) Special allowance for certain property acquired after December 31, 2007, and before January 1, 2014

(1) Additional allowance

In the case of any qualified property—

(A) the depreciation deduction provided by section 167(a) for the taxable year in which such property is placed in service shall include an allowance equal to 50 percent of the adjusted basis

of the qualified property, and

(B) the adjusted basis of the qualified property shall be reduced by the amount of such deduction before computing the amount otherwise allowable as a depreciation deduction under this chapter for such taxable year and any subsequent taxable year.

(2) Qualified property

For purposes of this subsection—

(A) In general

The term "qualified property" means property—

(i)(I) to which this section applies which has a recovery period of 20 years or less,

(II) which is computer software (as defined in section 167(f)(1)(B)) for which a deduction is allowable under section 167(a) without regard to this subsection,

(III) which is water utility property, or

(IV) which is qualified leasehold improvement property,

(ii) the original use of which commences with the taxpayer after December 31, 2007,

(iii) which is—

(I) acquired by the taxpayer after December 31, 2007, and before January 1, 2014, but only if no written binding contract for the acquisition was in effect before January 1, 2008, or

(II) acquired by the taxpayer pursuant to a written binding contract which was entered into after December 31, 2007, and before January 1, 2014, and

(iv) which is placed in service by the taxpayer before January 1, 2014, or, in the case of property described in subparagraph (B) or (C), before January 1, 2015.

(B) Certain property having longer production periods treated as qualified property

(i) In general

The term "qualified property" includes any property if such property—

(I) meets the requirements of clauses (i), (ii), (iii), and (iv) of subparagraph (A),

(II) has a recovery period of at least 10 years or is transportation property,

(III) is subject to section 263A, and

(IV) meets the requirements of clause (iii) of section 263A(f)(1)(B) (determined as if such clauses also apply to property which has a long useful life (within the meaning of section 263A(f))).

(ii) Only pre-January 1, 2014, basis eligible for additional allowance

In the case of property which is qualified property solely by reason of clause (i), paragraph (1) shall apply only to the extent of the adjusted basis thereof attributable to manufacture, construction, or production before January 1, 2014.

(iii) Transportation property

For purposes of this subparagraph, the term "transportation property" means tangible personal property used in the trade or business of transporting persons or property.

(iv) Application of subparagraph

This subparagraph shall not apply to any property which is described in subparagraph (C).

(C) Certain aircraft

The term "qualified property" includes property—

(i) which meets the requirements of clauses (ii), (iii), and (iv) of subparagraph (A),

(ii) which is an aircraft which is not a transportation property (as defined in subparagraph (B)(iii)) other than for agricultural or firefighting purposes,

(iii) which is purchased and on which such purchaser, at the time of the contract for purchase, has made a nonrefundable deposit of the lesser of—

(I) 10 percent of the cost, or

(II) $100,000, and

(iv) which has—

(I) an estimated production period exceeding 4 months, and

(II) a cost exceeding $200,000.

(D) Exceptions

(i) Alternative depreciation property

The term "qualified property" shall not include any property to which the alternative depreciation system under subsection (g) applies, determined—

(I) without regard to paragraph (7) of subsection (g) (relating to election to have system apply), and

(II) after application of section 280F(b) (relating to listed property with limited business use).

(ii) Qualified New York Liberty Zone leasehold improvement property

The term "qualified property" shall not include any qualified New York Liberty Zone leasehold improvement property (as defined in section 1400L(c)(2)).

(iii) Election out

If a taxpayer makes an election under this clause with respect to any class of property for any taxable year, this subsection shall not apply to all property in such class placed in service during such taxable year.

(E) Special rules

(i) Self-constructed property

In the case of a taxpayer manufacturing, constructing, or producing property for the taxpayer's own use, the requirements of clause (iii) of subparagraph (A) shall be treated as met if the taxpayer begins manufacturing, constructing, or producing the property after December 31, 2007, and before January 1, 2014.

(ii) Sale-leasebacks

For purposes of clause (iii) and subparagraph (A)(ii), if property is—

(I) originally placed in service after December 31, 2007, by a person, and

(II) sold and leased back by such person within 3 months after the date such property was originally placed in service,

such property shall be treated as originally placed in service not earlier than the date on which such property is used under the leaseback referred to in subclause (II).

(iii) Syndication

For purposes of subparagraph (A)(ii), if—

(I) property is originally placed in service after December 31, 2007, by the lessor of such property,

(II) such property is sold by such lessor or any subsequent purchaser within 3 months after the date such property was originally placed in service (or, in the case of multiple units of property subject to the same lease, within 3 months after the date the final unit is placed in service, so long as the period between the time the first unit is placed in service and the time the last unit is placed in service does not exceed 12 months), and

(III) the user of such property after the last sale during such 3-month period remains the same as when such property was originally placed in service,

such property shall be treated as originally placed in service not earlier than the date of such last sale.

(iv) Limitations related to users and related parties

The term "qualified property" shall not include any property if—

(I) the user of such property (as of the date on which such property is originally placed in service) or a person which is related (within the meaning of section 267(b) or 707(b)) to such user or to the taxpayer had a written binding contract in effect for the acquisition of such property at any time on or before December 31, 2007, or

(II) in the case of property manufactured, constructed, or produced for such user's or person's own use, the manufacture, construction, or production of such property began at any time on or before December 31, 2007.

(F) Coordination with section 280F

For purposes of section 280F—

(i) Automobiles

In the case of a passenger automobile (as defined in section 280F(d)(5)) which is qualified property, the Secretary shall increase the limitation under section 280F(a)(1)(A)(i) by $8,000.

(ii) Listed property

The deduction allowable under paragraph (1) shall be taken into account in computing any recapture amount under section 280F(b)(2).

(G) Deduction allowed in computing minimum tax

For purposes of determining alternative minimum taxable income under section 55, the deduction under subsection (a) for qualified property shall be determined under this section without regard to any adjustment under section 56.

(3) Qualified leasehold improvement property

For purposes of this subsection—

(A) In general

The term "qualified leasehold improvement property" means any improvement to an interior portion of a building which is nonresidential real property if—

(i) such improvement is made under or pursuant to a lease (as defined in subsection (h)(7))—

(I) by the lessee (or any sublessee) of such portion, or

(II) by the lessor of such portion,

(ii) such portion is to be occupied exclusively by the lessee (or any sublessee) of such portion, and

(iii) such improvement is placed in service more than 3 years after the date the building was first placed in service.

(B) Certain improvements not included

Such term shall not include any improvement for which the expenditure is attributable to—

(i) the enlargement of the building,

(ii) any elevator or escalator,

(iii) any structural component benefiting a common area, and

(iv) the internal structural framework of the building.

(C) Definitions and special rules

For purposes of this paragraph—

(i) Commitment to lease treated as lease

A commitment to enter into a lease shall be treated as a lease, and the parties to such commitment shall be treated as lessor and lessee, respectively.

(ii) Related persons

A lease between related persons shall not be considered a lease. For purposes of the preceding sentence, the term "related persons" means—

(I) members of an affiliated group (as defined in section 1504), and

(II) persons having a relationship described in subsection (b) of section 267; except that, for purposes of this clause, the phrase "80 percent or more" shall be substituted for the phrase "more than 50 percent" each place it appears in such subsection.

(4) Election to accelerate the AMT and research credits in lieu of bonus depreciation

(A) In general

If a corporation elects to have this paragraph apply for the first taxable year of the taxpayer ending after March 31, 2008, in the case of such taxable year and each subsequent taxable year—

(i) paragraph (1) shall not apply to any eligible qualified property placed in service by the taxpayer,

(ii) the applicable depreciation method used under this section with respect to such property shall be the straight line method, and

(iii) each of the limitations described in subparagraph (B) for any such taxable year shall be increased by the bonus depreciation amount which is—

(I) determined for such taxable year under subparagraph (C), and

(II) allocated to such limitation under subparagraph (E).

(B) Limitations to be increased

The limitations described in this subparagraph are—

(i) the limitation imposed by section 38(c), and

(ii) the limitation imposed by section 53(c).

(C) Bonus depreciation amount

For purposes of this paragraph—

(i) In general

The bonus depreciation amount for any taxable year is an amount equal to 20 percent of the excess (if any) of—

(I) the aggregate amount of depreciation which would be allowed under this section for eligible qualified property placed in service by the taxpayer during such taxable year if paragraph (1) applied to all such property, over

(II) the aggregate amount of depreciation which would be allowed under this section for eligible qualified property placed in service by the taxpayer during such taxable year if paragraph (1) did not apply to any such property.

The aggregate amounts determined under subclauses (I) and (II) shall be determined without regard to any election made under subsection (b)(2)(C), (b)(3)(D), or (g)(7) and without regard to subparagraph (A)(ii).

(ii) Maximum amount

The bonus depreciation amount for any taxable year shall not exceed the maximum increase amount under clause (iii), reduced (but not below zero) by the sum of the bonus depreciation amounts for all preceding taxable years.

(iii) Maximum increase amount

For purposes of clause (ii), the term "maximum increase amount" means, with respect to any corporation, the lesser of—

(I) $30,000,000, or

(II) 6 percent of the sum of the business credit increase amount, and the AMT credit increase amount, determined with respect to such corporation under subparagraph (E).

(iv) Aggregation rule

All corporations which are treated as a single employer under section 52(a) shall be treated—

(I) as 1 taxpayer for purposes of this paragraph, and

(II) as having elected the application of this paragraph if any such corporation so elects.

(D) Eligible qualified property

For purposes of this paragraph, the term "eligible qualified property" means qualified property under paragraph (2), except that in applying paragraph (2) for purposes of this paragraph—

(i) "March 31, 2008" shall be substituted for "December 31, 2007" each place it appears in subparagraph (A) and clauses (i) and (ii) of subparagraph (E) thereof,

(ii) "April 1, 2008" shall be substituted for "January 1, 2008" in subparagraph (A)(iii)(I) thereof, and

(iii) only adjusted basis attributable to manufacture, construction, or production—

(I) after March 31, 2008, and before January 1, 2010, and

(II) after December 31, 2010, and before January 1, 2014,

shall be taken into account under subparagraph (B)(ii) thereof.

(E) Allocation of bonus depreciation amounts

(i) In general

Subject to clauses (ii) and (iii), the taxpayer shall, at such time and in such manner as the Secretary may prescribe, specify the portion (if any) of the bonus depreciation amount for the taxable year which is to be allocated to each of the limitations described in subparagraph (B) for such taxable year.

(ii) Limitation on allocations

The portion of the bonus depreciation amount which may be allocated under clause (i) to the limitations described in subparagraph (B) for any taxable year shall not exceed—

(I) in the case of the limitation described in subparagraph (B)(i), the excess of the business credit increase amount over the bonus depreciation amount allocated to such limitation for all preceding taxable years, and

(II) in the case of the limitation described in subparagraph (B)(ii), the excess of the AMT credit increase amount over the bonus depreciation amount allocated to such limitation for all preceding taxable years.

(iii) Business credit increase amount

For purposes of this paragraph, the term "business credit increase amount" means the amount equal to the portion of the credit allowable under section 38 (determined without regard to subsection (c) thereof) for the first taxable year ending after March 31, 2008, which is allocable to business credit carryforwards to such taxable year which are—

(I) from taxable years beginning before January 1, 2006, and

(II) properly allocable (determined under the rules of section 38(d)) to the research credit determined under section 41(a).

(iv) AMT credit increase amount

For purposes of this paragraph, the term "AMT credit increase amount" means the amount equal to the portion of the minimum tax credit under section 53(b) for the first taxable year ending after March 31, 2008, determined by taking into account only the adjusted minimum tax for taxable years beginning before January 1, 2006. For purposes of the preceding sentence, credits shall be treated as allowed on a first-in, first-out basis.

(F) Credit refundable

For purposes of section 6401(b), the aggregate increase in the credits allowable under part IV of subchapter A for any taxable year resulting from the application of this paragraph shall be

treated as allowed under subpart C of such part (and not any other subpart).

(G) Other rules

(i) Election

Any election under this paragraph (including any allocation under subparagraph (E)) may be revoked only with the consent of the Secretary.

(ii) Partnerships with electing partners

In the case of a corporation making an election under subparagraph (A) and which is a partner in a partnership, for purposes of determining such corporation's distributive share of partnership items under section 702—

(I) paragraph (1) shall not apply to any eligible qualified property, and

(II) the applicable depreciation method used under this section with respect to such property shall be the straight line method.

(iii) Special rule for passenger aircraft

In the case of any passenger aircraft, the written binding contract limitation under paragraph (2)(A)(iii)(I) shall not apply for purposes of subparagraphs (C)(i)(I) and (D).

(H) Special rules for extension property

(i) Taxpayers previously electing acceleration

In the case of a taxpayer who made the election under subparagraph (A) for its first taxable year ending after March 31, 2008—

(I) the taxpayer may elect not to have this paragraph apply to extension property, but

(II) if the taxpayer does not make the election under subclause (I), in applying this paragraph to the taxpayer a separate bonus depreciation amount, maximum amount, and maximum increase amount shall be computed and applied to eligible qualified property which is extension property and to eligible qualified property which is not extension property.

(ii) Taxpayers not previously electing acceleration

In the case of a taxpayer who did not make the election under subparagraph (A) for its first taxable year ending after March 31, 2008—

(I) the taxpayer may elect to have this paragraph apply to its first taxable year ending after December 31, 2008, and each subsequent taxable year, and

(II) if the taxpayer makes the election under subclause (I), this paragraph shall only apply to eligible qualified property which is extension property.

(iii) Extension property

For purposes of this subparagraph, the term "extension property" means property which is eligible qualified property solely by reason of the extension of the application of the special allowance under paragraph (1) pursuant to the amendments made by section 1201(a) of the American Recovery and Reinvestment Tax Act of 2009 (and the application of such extension to this paragraph pursuant to the amendment made by section 1201(b)(1) of such Act).

(I) Special rules for round 2 extension property

(i) In general

In the case of round 2 extension property, this paragraph shall be applied without regard to—

(I) the limitation described in subparagraph (B)(i) thereof, and

(II) the business credit increase amount under subparagraph (E)(iii) thereof.

(ii) Taxpayers previously electing acceleration

In the case of a taxpayer who made the election under subparagraph (A) for its first taxable

year ending after March 31, 2008, or a taxpayer who made the election under subparagraph (H)(ii) for its first taxable year ending after December 31, 2008—

(I) the taxpayer may elect not to have this paragraph apply to round 2 extension property, but

(II) if the taxpayer does not make the election under subclause (I), in applying this paragraph to the taxpayer the bonus depreciation amount, maximum amount, and maximum increase amount shall be computed and applied to eligible qualified property which is round 2 extension property.

The amounts described in subclause (II) shall be computed separately from any amounts computed with respect to eligible qualified property which is not round 2 extension property.

(iii) Taxpayers not previously electing acceleration

In the case of a taxpayer who neither made the election under subparagraph (A) for its first taxable year ending after March 31, 2008, nor made the election under subparagraph (H)(ii) for its first taxable year ending after December 31, 2008—

(I) the taxpayer may elect to have this paragraph apply to its first taxable year ending after December 31, 2010, and each subsequent taxable year, and

(II) if the taxpayer makes the election under subclause (I), this paragraph shall only apply to eligible qualified property which is round 2 extension property.

(iv) Round 2 extension property

For purposes of this subparagraph, the term "round 2 extension property" means property which is eligible qualified property solely by reason of the extension of the application of the special allowance under paragraph (1) pursuant to the amendments made by section 401(a) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (and the application of such extension to this paragraph pursuant to the amendment made by section 401(c)(1) of such Act).

(J) Special rules for round 3 extension property

(i) In general

In the case of round 3 extension property, this paragraph shall be applied without regard to—

(I) the limitation described in subparagraph (B)(i) thereof, and

(II) the business credit increase amount under subparagraph (E)(iii) thereof.

(ii) Taxpayers previously electing acceleration

In the case of a taxpayer who made the election under subparagraph (A) for its first taxable year ending after March 31, 2008, a taxpayer who made the election under subparagraph (H)(ii) for its first taxable year ending after December 31, 2008, or a taxpayer who made the election under subparagraph (I)(iii) for its first taxable year ending after December 31, 2010—

(I) the taxpayer may elect not to have this paragraph apply to round 3 extension property, but

(II) if the taxpayer does not make the election under subclause (I), in applying this paragraph to the taxpayer the bonus depreciation amount, maximum amount, and maximum increase amount shall be computed and applied to eligible qualified property which is round 3 extension property.

The amounts described in subclause (II) shall be computed separately from any amounts computed with respect to eligible qualified property which is not round 3 extension property.

(iii) Taxpayers not previously electing acceleration

In the case of a taxpayer who neither made the election under subparagraph (A) for its first taxable year ending after March 31, 2008, nor made the election under subparagraph (H)(ii)

for its first taxable year ending after December 31, 2008, nor made the election under subparagraph (I)(iii) for any taxable year ending after December 31, 2010—

(I) the taxpayer may elect to have this paragraph apply to its first taxable year ending after December 31, 2012, and each subsequent taxable year, and

(II) if the taxpayer makes the election under subclause (I), this paragraph shall only apply to eligible qualified property which is round 3 extension property.

(iv) Round 3 extension property

For purposes of this subparagraph, the term "round 3 extension property" means property which is eligible qualified property solely by reason of the extension of the application of the special allowance under paragraph (1) pursuant to the amendments made by section 331(a) of the American Taxpayer Relief Act of 2012 (and the application of such extension to this paragraph pursuant to the amendment made by section 331(c)(1) of such Act).

(5) Special rule for property acquired during certain pre-2012 periods

In the case of qualified property acquired by the taxpayer (under rules similar to the rules of clauses (ii) and (iii) of paragraph (2)(A)) after September 8, 2010, and before January 1, 2012, and which is placed in service by the taxpayer before January 1, 2012 (January 1, 2013, in the case of property described in subparagraph (2)(B) or (2)(C)), paragraph (1)(A) shall be applied by substituting "100 percent" for "50 percent".

(l) Special allowance for second generation biofuel plant property

(1) Additional allowance

In the case of any qualified second generation biofuel plant property—

(A) the depreciation deduction provided by section 167(a) for the taxable year in which such property is placed in service shall include an allowance equal to 50 percent of the adjusted basis of such property, and

(B) the adjusted basis of such property shall be reduced by the amount of such deduction before computing the amount otherwise allowable as a depreciation deduction under this chapter for such taxable year and any subsequent taxable year.

(2) Qualified second generation biofuel plant property

The term "qualified second generation biofuel plant property" means property of a character subject to the allowance for depreciation—

(A) which is used in the United States solely to produce second generation biofuel (as defined in section 40(b)(6)(E)),

(B) the original use of which commences with the taxpayer after the date of the enactment of this subsection,

(C) which is acquired by the taxpayer by purchase (as defined in section 179(d)) after the date of the enactment of this subsection, but only if no written binding contract for the acquisition was in effect on or before the date of the enactment of this subsection, and

(D) which is placed in service by the taxpayer before January 1, 2014.

(3) Exceptions

(A) Bonus depreciation property under subsection (k)

Such term shall not include any property to which section 168(k) applies.

(B) Alternative depreciation property

Such term shall not include any property described in section 168(k)(2)(D)(i).

(C) Tax-exempt bond-financed property

Such term shall not include any property any portion of which is financed with the proceeds of any obligation the interest on which is exempt from tax under section 103.

(D) Election out

If a taxpayer makes an election under this subparagraph with respect to any class of property

for any taxable year, this subsection shall not apply to all property in such class placed in service during such taxable year.

(4) Special rules

For purposes of this subsection, rules similar to the rules of subparagraph (E) of section 168(k)(2) shall apply, except that such subparagraph shall be applied—

(A) by substituting "the date of the enactment of subsection (l)" for "December 31, 2007" each place it appears therein, and

(B) by substituting "qualified second generation biofuel plant property" for "qualified property" in clause (iv) thereof.

(5) Allowance against alternative minimum tax

For purposes of this subsection, rules similar to the rules of section 168(k)(2)(G) shall apply.

(6) Recapture

For purposes of this subsection, rules similar to the rules under section 179(d)(10) shall apply with respect to any qualified second generation biofuel plant property which ceases to be qualified second generation biofuel plant property.

(7) Denial of double benefit

Paragraph (1) shall not apply to any qualified second generation biofuel plant property with respect to which an election has been made under section 179C (relating to election to expense certain refineries).

(m) Special allowance for certain reuse and recycling property

(1) In general

In the case of any qualified reuse and recycling property—

(A) the depreciation deduction provided by section 167(a) for the taxable year in which such property is placed in service shall include an allowance equal to 50 percent of the adjusted basis of the qualified reuse and recycling property, and

(B) the adjusted basis of the qualified reuse and recycling property shall be reduced by the amount of such deduction before computing the amount otherwise allowable as a depreciation deduction under this chapter for such taxable year and any subsequent taxable year.

(2) Qualified reuse and recycling property

For purposes of this subsection—

(A) In general

The term "qualified reuse and recycling property" means any reuse and recycling property—

(i) to which this section applies,

(ii) which has a useful life of at least 5 years,

(iii) the original use of which commences with the taxpayer after August 31, 2008, and

(iv) which is—

(I) acquired by purchase (as defined in section 179(d)(2)) by the taxpayer after August 31, 2008, but only if no written binding contract for the acquisition was in effect before September 1, 2008, or

(II) acquired by the taxpayer pursuant to a written binding contract which was entered into after August 31, 2008.

(B) Exceptions

(i) Bonus depreciation property under subsection (k)

The term "qualified reuse and recycling property" shall not include any property to which section 168(k) applies.

(ii) Alternative depreciation property

The term "qualified reuse and recycling property" shall not include any property to which

the alternative depreciation system under subsection (g) applies, determined without regard to paragraph (7) of subsection (g) (relating to election to have system apply).

(iii) Election out

If a taxpayer makes an election under this clause with respect to any class of property for any taxable year, this subsection shall not apply to all property in such class placed in service during such taxable year.

(C) Special rule for self-constructed property

In the case of a taxpayer manufacturing, constructing, or producing property for the taxpayer's own use, the requirements of clause (iv) of subparagraph (A) shall be treated as met if the taxpayer begins manufacturing, constructing, or producing the property after August 31, 2008.

(D) Deduction allowed in computing minimum tax

For purposes of determining alternative minimum taxable income under section 55, the deduction under subsection (a) for qualified reuse and recycling property shall be determined under this section without regard to any adjustment under section 56.

(3) Definitions

For purposes of this subsection—

(A) Reuse and recycling property

(i) In general

The term "reuse and recycling property" means any machinery and equipment (not including buildings or real estate), along with all appurtenances thereto, including software necessary to operate such equipment, which is used exclusively to collect, distribute, or recycle qualified reuse and recyclable materials.

(ii) Exclusion

Such term does not include rolling stock or other equipment used to transport reuse and recyclable materials.

(B) Qualified reuse and recyclable materials

(i) In general

The term "qualified reuse and recyclable materials" means scrap plastic, scrap glass, scrap textiles, scrap rubber, scrap packaging, recovered fiber, scrap ferrous and nonferrous metals, or electronic scrap generated by an individual or business.

(ii) Electronic scrap

For purposes of clause (i), the term "electronic scrap" means—

(I) any cathode ray tube, flat panel screen, or similar video display device with a screen size greater than 4 inches measured diagonally, or

(II) any central processing unit.

(C) Recycling or recycle

The term "recycling" or "recycle" means that process (including sorting) by which worn or superfluous materials are manufactured or processed into specification grade commodities that are suitable for use as a replacement or substitute for virgin materials in manufacturing tangible consumer and commercial products, including packaging.

(n) Special allowance for qualified disaster assistance property

(1) In general

In the case of any qualified disaster assistance property—

(A) the depreciation deduction provided by section 167(a) for the taxable year in which such property is placed in service shall include an allowance equal to 50 percent of the adjusted basis

of the qualified disaster assistance property, and

(B) the adjusted basis of the qualified disaster assistance property shall be reduced by the amount of such deduction before computing the amount otherwise allowable as a depreciation deduction under this chapter for such taxable year and any subsequent taxable year.

(2) Qualified disaster assistance property

For purposes of this subsection—

(A) In general

The term "qualified disaster assistance property" means any property—

(i)(I) which is described in subsection (k)(2)(A)(i), or

(II) which is nonresidential real property or residential rental property,

(ii) substantially all of the use of which is—

(I) in a disaster area with respect to a federally declared disaster occurring before January 1, 2010, and

(II) in the active conduct of a trade or business by the taxpayer in such disaster area,

(iii) which—

(I) rehabilitates property damaged, or replaces property destroyed or condemned, as a result of such federally declared disaster, except that, for purposes of this clause, property shall be treated as replacing property destroyed or condemned if, as part of an integrated plan, such property replaces property which is included in a continuous area which includes real property destroyed or condemned, and

(II) is similar in nature to, and located in the same county as, the property being rehabilitated or replaced,

(iv) the original use of which in such disaster area commences with an eligible taxpayer on or after the applicable disaster date,

(v) which is acquired by such eligible taxpayer by purchase (as defined in section 179(d)) on or after the applicable disaster date, but only if no written binding contract for the acquisition was in effect before such date, and

(vi) which is placed in service by such eligible taxpayer on or before the date which is the last day of the third calendar year following the applicable disaster date (the fourth calendar year in the case of nonresidential real property and residential rental property).

(B) Exceptions

(i) Other bonus depreciation property

The term "qualified disaster assistance property" shall not include—

(I) any property to which subsection (k) (determined without regard to paragraph (4)), (l), or (m) applies,

(II) any property to which section 1400N(d) applies, and

(III) any property described in section 1400N(p)(3).

(ii) Alternative depreciation property

The term "qualified disaster assistance property" shall not include any property to which the alternative depreciation system under subsection (g) applies, determined without regard to paragraph (7) of subsection (g) (relating to election to have system apply).

(iii) Tax-exempt bond financed property

Such term shall not include any property any portion of which is financed with the proceeds of any obligation the interest on which is exempt from tax under section 103.

(iv) Qualified revitalization buildings

Such term shall not include any qualified revitalization building with respect to which the taxpayer has elected the application of paragraph (1) or (2) of section 1400I(a).

(v) Election out

If a taxpayer makes an election under this clause with respect to any class of property for any taxable year, this subsection shall not apply to all property in such class placed in service during such taxable year.

(C) Special rules

For purposes of this subsection, rules similar to the rules of subparagraph (E) of subsection (k)(2) shall apply, except that such subparagraph shall be applied—

(i) by substituting "the applicable disaster date" for "December 31, 2007" each place it appears therein,

(ii) without regard to "and before January 1, 2014" in clause (i) thereof, and

(iii) by substituting "qualified disaster assistance property" for "qualified property" in clause (iv) thereof.

(D) Allowance against alternative minimum tax

For purposes of this subsection, rules similar to the rules of subsection (k)(2)(G) shall apply.

(3) Other definitions

For purposes of this subsection—

(A) Applicable disaster date

The term "applicable disaster date" means, with respect to any federally declared disaster, the date on which such federally declared disaster occurs.

(B) Federally declared disaster

The term "federally declared disaster" has the meaning given such term under section 165(h)(3)(C)(i).

(C) Disaster area

The term "disaster area" has the meaning given such term under section 165(h)(3)(C)(ii).

(D) Eligible taxpayer

The term "eligible taxpayer" means a taxpayer who has suffered an economic loss attributable to a federally declared disaster.

(4) Recapture

For purposes of this subsection, rules similar to the rules under section 179(d)(10) shall apply with respect to any qualified disaster assistance property which ceases to be qualified disaster assistance property.

(Added Pub. L. 97–34, title II, §201(a), Aug. 13, 1981, 95 Stat. 203; amended Pub. L. 97–248, title II, §§206, 208(a)(1), (2)(A), (b), 209(a), (b), 216(a), 224(c)(1), (2), Sept. 3, 1982, 96 Stat. 431, 432, 435, 442, 445, 470, 489; Pub. L. 97–354, §5(a)(19), (20), Oct. 19, 1982, 96 Stat. 1693, 1694; Pub. L. 97–424, title V, §541(a)(1), Jan. 6, 1983, 96 Stat. 2192; Pub. L. 97–448, title I, §102(a)(1)–(5), (8)–(10)(A), (f)(4), Jan. 12, 1983, 96 Stat. 2367, 2368, 2371; Pub. L. 98–369, div. A, title I, §§12(a)(3), 31(a), (d), 32(a), 111(a)–(e)(4), (9), 113(a)(2), (b)(1), (2)(A), title IV, §474(r)(7), title VI, §§612(e)(4), (5), 628(b), July 18, 1984, 98 Stat. 503, 509, 518, 530, 631–633, 636, 637, 840, 912, 931; Pub. L. 99–121, title I, §103(a), (b)(1)(A), (2)–(4), Oct. 11, 1985, 99 Stat. 509; Pub. L. 99–514, title II, §201(a), title XVIII, §§1802(a)(1)–(2)(E)(i), (G), (3), (4)(A), (B), (7), (b)(1), 1809(a)(1)–(2)(C)(i), (4)(A), (B), (b)(1), (2), Oct. 22, 1986, 100 Stat. 2121, 2786–2789, 2791, 2818–2821; Pub. L. 100–647, title I, §§1002(a)(5)–(8), (11), (16)(B), (21), (23)(A), (i)(2)(A)–(G), 1018(b)(2), title VI, §§6027(a), (b), 6028(a), 6029(a)–(c), 6253, Nov. 10, 1988, 102 Stat. 3353–3356, 3370, 3371, 3577, 3693, 3694, 3753; Pub. L. 101–239, title VII, §7816(e), (f), (w), Dec. 19, 1989, 103 Stat. 2421, 2423; Pub. L. 101–508, title XI, §§11801(c)(8)(B), 11812(b)(2), 11813(b)(9), Nov. 5, 1990, 104 Stat. 1388–524, 1388–534, 1388–552; Pub. L. 103–66, title XIII, §§13151(a), 13321(a), Aug. 10, 1993, 107 Stat. 448, 558; Pub. L. 104–88, title III, §304(a), Dec. 29, 1995, 109 Stat. 943; Pub. L. 104–188, title I, §§1120(a), (b), 1121(a), 1613(b)(1)–(4), 1702(h)(1), 1704(t)(54), Aug. 20,

1996, 110 Stat. 1765, 1766, 1850, 1873, 1890; Pub. L. 105–34, title X, §1086(b), title XII, §1213(c), title XVI, §1604(c)(1), Aug. 5, 1997, 111 Stat. 957, 1001, 1097; Pub. L. 105–206, title VI, §6006(b), July 22, 1998, 112 Stat. 806; Pub. L. 107–147, title I, §101(a), title VI, §613(b), Mar. 9, 2002, 116 Stat. 22, 61; Pub. L. 108–27, title II, §201(a)–(c)(1), May 28, 2003, 117 Stat. 756, 757; Pub. L. 108–311, title III, §316, title IV, §§403(a), 408(a)(6), (8), Oct. 4, 2004, 118 Stat. 1181, 1186, 1191; Pub. L. 108–357, title II, §211(a)–(e), title III, §§336(a), (b), 337(a), title VII, §§704(a), (b), 706(a)–(c), title VIII, §§847(a), (c)–(e), 901(a)–(c), Oct. 22, 2004, 118 Stat. 1429, 1430, 1479, 1480, 1548–1550, 1601, 1602, 1650; Pub. L. 109–58, title XIII, §§1301(f)(5), 1308(a), (b), 1325(a), (b), 1326(a)–(c), Aug. 8, 2005, 119 Stat. 990, 1006, 1016, 1017; Pub. L. 109–135, title IV, §§403(j), 405(a)(1), 410(a), 412(s), Dec. 21, 2005, 119 Stat. 2625, 2634, 2636, 2638; Pub. L. 109–432, div. A, title I, §§112(a), 113(a), title II, §209(a), Dec. 20, 2006, 120 Stat. 2940, 2946; Pub. L. 110–172, §11(b)(1), Dec. 29, 2007, 121 Stat. 2488; Pub. L. 110–185, title I, §103(a)–(c)(7), (11), (12), Feb. 13, 2008, 122 Stat. 618, 619; Pub. L. 110–234, title XV, §15344(a), May 22, 2008, 122 Stat. 1520; Pub. L. 110–246, §4(a), title XV, §15344(a), June 18, 2008, 122 Stat. 1664, 2282; Pub. L. 110–289, div. C, title III, §3081(a), July 30, 2008, 122 Stat. 2903; Pub. L. 110–343, div. B, title II, §201(a), (b), title III, §§306(a)–(c), 308(a), div. C, title III, §§305(a)(1), (b)(1), (c)(1)–(4), 315(a), 317(a), title V, §505(a), (b), title VII, §710(a), Oct. 3, 2008, 122 Stat. 3832, 3848, 3849, 3867, 3868, 3872, 3873, 3879, 3926; Pub. L. 111–5, div. B, title I, §1201(a)(1), (2)(A)–(D), (3)(A), (b)(1), Feb. 17, 2009, 123 Stat. 333, 334; Pub. L. 111–240, title II, §2022(a)–(b)(5), Sept. 27, 2010, 124 Stat. 2558; Pub. L. 111–312, title IV, §401(a)–(d)(5), title VII, §§737(a)–(b)(2), 738(a), 739(a), Dec. 17, 2010, 124 Stat. 3304–3306, 3318, 3319; Pub. L. 112–240, title III, §§311(a), 312(a), 313(a), 331(a), (c)–(e)(3), title IV, §410(a)(1), (b)(1), (2), Jan. 2, 2013, 126 Stat. 2330, 2335–2337, 2342, 2343.)

REFERENCES IN TEXT

The date of the enactment of the Revenue Reconciliation Act of 1990, referred to in subsecs. (e)(3)(B)(vi)(II), (III), (g)(4)(K), and (i)(1), is the date of enactment of Pub. L. 101–508, which was approved Nov. 5, 1990.

Section 168(e) as in effect before the amendments made by the Tax Reform Act of 1986, referred to in subsec. (f)(5)(A)(i), is subsec. (e) of this section prior to the general amendment of this section by Pub. L. 99–514.

The date of the enactment of this paragraph, referred to in subsec. (f)(5)(B)(ii)(I), probably means the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

The Tax Reform Act of 1986, referred to in subsecs. (f)(5)(B)(iii), (C) and (i)(7)(A), is Pub. L. 99–514, section 201(a) of which amended this section generally.

The Communications Satellite Act of 1962, referred to in subsec. (i)(10)(C), is Pub. L. 87–624, Aug. 31, 1962, 76 Stat. 419, as amended, which is classified generally to chapter 6 (§701 et seq.) of Title 47, Telecommunications. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 47 and Tables.

The date of the enactment of this sentence, referred to in subsec. (j)(6), is the date of enactment of Pub. L. 105–34, which was approved Aug. 5, 1997.

The date of the enactment of this paragraph, referred to in subsec. (j)(7), is the date of enactment of Pub. L. 103–66, which was approved Aug. 10, 1993.

Section 1201(a), (b)(1) of the American Recovery and Reinvestment Tax Act of 2009, referred to in subsec. (k)(4)(H)(iii), is section 1201(a), (b)(1) of Pub. L. 111–5, which amended this section and sections 1400N and 6211 of this title.

Section 401(a), (c)(1) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, referred to in subsec. (k)(4)(I)(iv), is section 401(a), (c)(1) of Pub. L. 111–312, which amended this section.

Subsections (a) and (c)(1) of section 331 of the American Taxpayer Relief Act of 2012, referred to in subsec. (k)(4)(J)(iv), are subsecs. (a) and (c)(1) of section 331 of Pub. L. 112–240, which amended this section.

The date of the enactment of this subsection and the date of the enactment of subsection (l), referred to in subsec. (l)(2)(B), (C), (4)(A), is the date of enactment of Pub. L. 109–432, which was approved Dec. 20, 2006.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

PRIOR PROVISIONS

A prior section 168, acts Aug. 16, 1954, ch. 746, 68A Stat. 52; Aug. 26, 1957, Pub. L. 85–165, §4, 71 Stat. 414; Sept. 2, 1958, Pub. L. 85–866, title I, §9(a), (b), 72 Stat. 1608, 1609, related to deductions with respect to amortization of emergency facilities, prior to repeal by Pub. L. 94–455, title XIX, §1951(b)(4)(A), Oct. 4, 1976, 90 Stat. 1837.

Pub. L. 94–455, title XIX, §1951(b)(4)(B), Oct. 4, 1976, 90 Stat. 1837, provided that: "Notwithstanding the repeal made by subparagraph (A) [repealing former section 168], if a certificate was issued before January 1, 1960, with respect to an emergency facility which is or has been placed in service before the date of the enactment of this Act [Oct. 4, 1976], the provisions of [former] section 168 shall not, with respect to such facility, be considered repealed. The benefit of deductions by reason of the preceding sentence shall be allowed to estates and trusts in the same manner as in the case of an individual. The allowable deduction shall be apportioned between the income beneficiaries and the fiduciary in accordance with regulations prescribed under section 642(f)."

AMENDMENTS

2013—Subsec. (e)(3)(E)(iv), (v), (ix). Pub. L. 112–240, §311(a), substituted "January 1, 2014" for "January 1, 2012".

Subsec. (i)(9)(A)(ii). Pub. L. 112–240, §331(d), inserted "(respecting all elections made by the taxpayer under this section)" after "such property".

Subsec. (i)(15)(D). Pub. L. 112–240, §312(a), substituted "December 31, 2013" for "December 31, 2011".

Subsec. (j)(8). Pub. L. 112–240, §313(a), substituted "December 31, 2013" for "December 31, 2011".

Subsec. (k). Pub. L. 112–240, §331(e)(1), substituted "January 1, 2014" for "January 1, 2013" in heading.

Subsec. (k)(2). Pub. L. 112–240, §331(a)(2), substituted "January 1, 2014" for "January 1, 2013" wherever appearing.

Subsec. (k)(2)(A)(iv). Pub. L. 112–240, §331(a)(1), substituted "January 1, 2015" for "January 1, 2014".

Subsec. (k)(2)(B)(ii). Pub. L. 112–240, §331(e)(2), substituted "pre-January 1, 2014" for "pre-January 1, 2013" in heading.

Subsec. (k)(4)(D)(iii)(II). Pub. L. 112–240, §331(c)(1), substituted "2014" for "2013".

Subsec. (k)(4)(J). Pub. L. 112–240, §331(c)(2), added subpar. (J).

Subsec. (l). Pub. L. 112–240, §410(b)(2)(C), substituted "second generation" for "cellulosic" in heading.

Pub. L. 112–240, §410(b)(2)(A), substituted "second generation biofuel" for "cellulosic biofuel" wherever appearing in text.

Subsec. (l)(2). Pub. L. 112–240, §410(b)(2)(D), substituted "second generation" for "cellulosic" in heading.

Subsec. (l)(2)(A). Pub. L. 112–240, §410(b)(1), substituted "solely to produce second generation biofuel (as defined in section 40(b)(6)(E))" for "solely to produce cellulosic biofuel".

Subsec. (l)(2)(D). Pub. L. 112–240, §410(a)(1), substituted "January 1, 2014" for "January 1, 2013".

Subsec. (l)(3) to (8). Pub. L. 112–240, §410(b)(2)(B), redesignated pars. (4) to (8) as (3) to (7), respectively, and struck out former par. (3). Text read as follows: "The term 'cellulosic biofuel' means any liquid fuel which is produced from any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis."

Subsec. (n)(2)(C)(ii). Pub. L. 112–240, §331(e)(3), substituted "January 1, 2014" for "January 1, 2013".

2010—Subsec. (e)(3)(E)(iv), (v), (ix). Pub. L. 111–312, §737(a), substituted "January 1, 2012" for "January 1, 2010".

Subsec. (e)(7)(A)(i). Pub. L. 111–312, §737(b)(1), struck out "if such building is placed in service after December 31, 2008, and before January 1, 2010," after "building,".

Subsec. (e)(8)(E). Pub. L. 111–312, §737(b)(2), struck out subpar. (E). Text read as follows: "Such term shall not include any improvement placed in service after December 31, 2009."

Subsec. (i)(15)(D). Pub. L. 111–312, §738(a), substituted "December 31, 2011" for "December 31, 2009".

Subsec. (j)(8). Pub. L. 111–312, §739(a), substituted "December 31, 2011" for "December 31, 2009".

Subsec. (k). Pub. L. 111–312, §401(d)(1), substituted "January 1, 2013" for "January 1, 2011" in heading.

Pub. L. 111–240, §2022(b)(1), substituted "January 1, 2011" for "January 1, 2010" in heading.

Subsec. (k)(2)(A)(iii). Pub. L. 111–312, §401(a)(2), substituted "January 1, 2013" for "January 1, 2011" in subcls. (I) and (II).

Pub. L. 111–240, §2022(a)(2), substituted "January 1, 2011" for "January 1, 2010" in subcls. (I) and (II).

Subsec. (k)(2)(A)(iv). Pub. L. 111–312, §401(a), substituted "January 1, 2013" for "January 1, 2011" and "January 1, 2014" for "January 1, 2012".

Pub. L. 111–240, §2022(a), substituted "January 1, 2011" for "January 1, 2010" and "January 1, 2012" for "January 1, 2011".

Subsec. (k)(2)(B)(ii). Pub. L. 111–312, §401(a)(2), (d)(2), substituted "pre-January 1, 2013" for "pre-January 1, 2011" in heading and "January 1, 2013" for "January 1, 2011" in text.

Pub. L. 111–240, §2022(a)(2), (b)(2), substituted "pre-January 1, 2011" for "pre-January 1, 2010" in heading and "January 1, 2011" for "January 1, 2010" in text.

Subsec. (k)(2)(E)(i). Pub. L. 111–312, §401(a)(2), substituted "January 1, 2013" for "January 1, 2011".

Pub. L. 111–240, §2022(a)(2), substituted "January 1, 2011" for "January 1, 2010".

Subsec. (k)(4)(D)(ii). Pub. L. 111–312, §401(d)(3)(B), inserted "and" at the end.

Subsec. (k)(4)(D)(iii). Pub. L. 111–312, §401(d)(3)(C), substituted period for comma at the end.

Pub. L. 111–312, §401(c)(1), substituted "or production—" for "or production after March 31, 2008, and before January 1, 2010, shall be taken into account under subparagraph (B)(ii) thereof," and added subcls. (I) and (II) and concluding provisions.

Subsec. (k)(4)(D)(iv), (v). Pub. L. 111–312, §401(d)(3)(A), struck out cls. (iv) and (v) which read as follows:

"(iv) 'January 1, 2011' shall be substituted for 'January 1, 2012' in subparagraph (A)(iv) thereof, and

"(v) 'January 1, 2010' shall be substituted for 'January 1, 2011' each place it appears in subparagraph (A) thereof."

Pub. L. 111–240, §2022(b)(3), added cls. (iv) and (v).

Subsec. (k)(4)(I). Pub. L. 111–312, §401(c)(2), added subpar. (I).

Subsec. (k)(5). Pub. L. 111–312, §401(b), added par. (5).

Subsec. (l)(5)(A). Pub. L. 111–312, §401(d)(4)(A), inserted "and" at the end.

Subsec. (l)(5)(B). Pub. L. 111–312, §401(d)(4)(B), (C), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: "by substituting 'January 1, 2013' for 'January 1, 2011' in clause (i) thereof, and".

Pub. L. 111–240, §2022(b)(4), substituted "January 1, 2011" for "January 1, 2010".

Subsec. (l)(5)(C). Pub. L. 111–312, §401(d)(4)(C), redesignated subpar. (C) as (B).

Subsec. (n)(2)(C)(ii). Pub. L. 111–312, §401(d)(5), substituted "January 1, 2013" for "January 1, 2011".

Pub. L. 111–240, §2022(b)(5), substituted "January 1, 2011" for "January 1, 2010".

2009—Subsec. (k). Pub. L. 111–5, §1201(a)(2)(A), substituted "January 1, 2010" for "January 1, 2009" in heading.

Subsec. (k)(2)(A)(iii)(I), (II). Pub. L. 111–5, §1201(a)(1)(B), substituted "January 1, 2010" for "January 1, 2009".

Subsec. (k)(2)(A)(iv). Pub. L. 111–5, §1201(a)(1), substituted "January 1, 2010," for "January 1, 2009," and "January 1, 2011." for "January 1, 2010."

Subsec. (k)(2)(B)(ii). Pub. L. 111–5, §1201(a)(1)(B), (2)(B), substituted "pre-January 1, 2010" for "pre-January 1, 2009" in heading and "January 1, 2010" for "January 1, 2009" in text.

Subsec. (k)(2)(E)(i). Pub. L. 111–5, §1201(a)(1)(B), substituted "January 1, 2010" for "January 1, 2009".

Subsec. (k)(4)(D)(ii). Pub. L. 111–5, §1201(a)(3)(A)(i), (iii), added cl. (ii). Former cl. (ii) redesignated (iii).

Subsec. (k)(4)(D)(iii). Pub. L. 111–5, §1201(b)(1)(A), substituted "2010" for "2009".

Pub. L. 111–5, §1201(a)(3)(A)(ii), redesignated cl. (ii) as (iii).

Subsec. (k)(4)(H). Pub. L. 111–5, §1201(b)(1)(B), added subpar. (H).

Subsec. (l)(5)(B). Pub. L. 111–5, §1201(a)(2)(C), substituted "January 1, 2010" for "January 1, 2009".

Subsec. (n)(2)(C)(ii). Pub. L. 111–5, §1201(a)(2)(D), substituted "January 1, 2010" for "January 1, 2009".

2008—Subsec. (b)(2)(C), (D). Pub. L. 110–343, §306(c), added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (b)(3)(I). Pub. L. 110–343, §305(c)(3), added subpar. (I).

Subsec. (e)(3)(A)(i). Pub. L. 110–246, §15344(a), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: "any race horse which is more than 2 years old at the time it is placed in service,".

Subsec. (e)(3)(B)(vii). Pub. L. 110–343, §505(a), added cl. (vii).

Subsec. (e)(3)(D)(iii), (iv). Pub. L. 110–343, §306(a), added cls. (iii) and (iv).

Subsec. (e)(3)(E)(iv), (v). Pub. L. 110–343, §305(a)(1), substituted "January 1, 2010" for "January 1, 2008".

Subsec. (e)(3)(E)(ix). Pub. L. 110–343, §305(c)(1), added cl. (ix).

Subsec. (e)(7). Pub. L. 110–343, §305(b)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "The term 'qualified restaurant property' means any section 1250 property which is an improvement to a building if—

"(A) such improvement is placed in service more than 3 years after the date such building was first placed in service, and

"(B) more than 50 percent of the building's square footage is devoted to preparation of, and seating for on-premises consumption of, prepared meals."

Subsec. (e)(8). Pub. L. 110–343, §305(c)(2), added par. (8).
Subsec. (g)(3)(B). Pub. L. 110–343, §505(b), inserted table item relating to subpar. (B)(vii).
Pub. L. 110–343, §305(c)(4), inserted table item relating to subpar. (E)(ix).
Subsec. (i)(15)(D). Pub. L. 110–343, §317(a), substituted "December 31, 2009" for "December 31, 2007".
Subsec. (i)(18), (19). Pub. L. 110–343, §306(b), added pars. (18) and (19).
Subsec. (j)(8). Pub. L. 110–343, §315(a), substituted "December 31, 2009" for "December 31, 2007".
Subsec. (k). Pub. L. 110–185, §103(c)(11), substituted "December 31, 2007" for "September 10, 2001" and "January 1, 2009" for "January 1, 2005" in heading.
Pub. L. 110–185, §103(a)(1), (3), substituted "December 31, 2007" for "September 10, 2001" and "January 1, 2009" for "January 1, 2005" wherever appearing in text.
Subsec. (k)(1)(A). Pub. L. 110–185, §103(b), substituted "50 percent" for "30 percent".
Subsec. (k)(2)(A)(iii)(I). Pub. L. 110–185, §103(a)(2), substituted "January 1, 2008" for "September 11, 2001".
Subsec. (k)(2)(A)(iv). Pub. L. 110–185, §103(a)(4), substituted "January 1, 2010" for "January 1, 2006".
Subsec. (k)(2)(B)(i)(I). Pub. L. 110–185, §103(c)(1), substituted "(iii), and (iv)" for "and (iii)".
Subsec. (k)(2)(B)(i)(IV). Pub. L. 110–185, §103(c)(2), which directed substitution of "clause (iii)" for "clauses (ii) and (iii)", was executed by substituting "clause (iii)" for "clause (ii) or (iii)" to reflect the probable intent of Congress.
Subsec. (k)(2)(B)(ii). Pub. L. 110–185, §103(c)(12), substituted "pre-January 1, 2009" for "pre-January 1, 2005" in heading.
Subsec. (k)(2)(C)(i). Pub. L. 110–185, §103(c)(3), substituted ", (iii), and (iv)" for "and (iii)".
Subsec. (k)(2)(D)(iii). Pub. L. 110–185, §103(c)(5)(B), struck out last sentence which read as follows: "The preceding sentence shall be applied separately with respect to property treated as qualified property by paragraph (4) and other qualified property."
Subsec. (k)(2)(F)(i). Pub. L. 110–185, §103(c)(4), substituted "$8,000" for "$4,600".
Subsec. (k)(4). Pub. L. 110–289 added par. (4).
Pub. L. 110–185, §103(c)(5)(A), struck out par. (4) which related to treatment of 50-percent bonus depreciation for certain property.
Subsec. (k)(4)(B)(iii). Pub. L. 110–185, §103(a)(4), substituted "January 1, 2010" for "January 1, 2006".
Subsec. (l). Pub. L. 110–343, §201(b)(1), (2), substituted "cellulosic biofuel" for "cellulosic biomass ethanol" in heading and wherever appearing in text.
Subsec. (l)(2). Pub. L. 110–343, §201(b)(3), substituted "cellulosic biofuel" for "cellulosic biomass ethanol" in heading.
Subsec. (l)(3). Pub. L. 110–343, §201(a), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: "For purposes of this subsection, the term 'cellulosic biomass ethanol' means ethanol produced by hydrolysis of any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis."
Subsec. (l)(4). Pub. L. 110–185, §103(c)(6), added subpar. (A) and redesignated former subpars. (A) to (C) as (B) to (D), respectively.
Subsec. (l)(5)(A). Pub. L. 110–185, §103(c)(7)(A), substituted "December 31, 2007" for "September 10, 2001".
Subsec. (l)(5)(B). Pub. L. 110–185, §103(c)(7)(B), substituted "January 1, 2009" for "January 1, 2005".
Subsec. (m). Pub. L. 110–343, §308(a), added subsec. (m).
Subsec. (n). Pub. L. 110–343, §710(a), added subsec. (n).
2007—Subsec. (l)(3). Pub. L. 110–172 struck out "enzymatic" before "hydrolysis".
2006—Subsec. (e)(3)(E)(iv), (v). Pub. L. 109–432, §113(a), substituted "2008" for "2006".
Subsec. (j)(8). Pub. L. 109–432, §112(a), substituted "2007" for "2005".
Subsec. (l). Pub. L. 109–432, §209(a), added subsec. (l).
2005—Subsec. (e)(3)(B)(vi)(I). Pub. L. 109–135, §410(a), substituted "if 'solar or wind energy' were substituted for 'solar energy' in clause (i) thereof" for "if 'solar and wind' were substituted for 'solar' in clause (i) thereof".
Pub. L. 109–58, §1301(f)(5), amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: "is described in subparagraph (A) of section 48(a)(3) (or would be so described if 'solar and wind' were substituted for 'solar' in clause (i) thereof),".
Subsec. (e)(3)(C)(iv), (v). Pub. L. 109–58, §1326(a), added cl. (iv) and redesignated former cl. (iv) as (v).
Subsec. (e)(3)(E)(vii). Pub. L. 109–58, §1308(a), added cl. (vii).
Subsec. (e)(3)(E)(viii). Pub. L. 109–58, §1325(a), added cl. (viii).
Subsec. (g)(3)(B). Pub. L. 109–58, §1326(c), inserted table item relating to subpar. (C)(iv).

Pub. L. 109–58, §1325(b), inserted table item relating to subpar. (E)(viii).

Pub. L. 109–58, §1308(b), inserted table item relating to subpar. (E)(vii).

Subsec. (i)(15)(D). Pub. L. 109–135, §412(s), substituted "Such term shall not include" for "This paragraph shall not apply to".

Subsec. (i)(17). Pub. L. 109–58, §1326(b), added par. (17).

Subsec. (k)(2)(A)(iv). Pub. L. 109–135, §403(j)(1), substituted "subparagraph (B) or (C)" for "subparagraphs (B) and (C)".

Subsec. (k)(4)(B)(ii). Pub. L. 109–135, §405(a)(1), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: "which is acquired by the taxpayer after May 5, 2003, and before January 1, 2005, but only if no written binding contract for the acquisition was in effect before May 6, 2003, and".

Subsec. (k)(4)(B)(iii). Pub. L. 109–135, §403(j)(2), substituted "or paragraph (2)(C) (as so modified)" for "and paragraph (2)(C)".

2004—Subsec. (b)(2)(A). Pub. L. 108–357, §211(d)(2), inserted "not referred to in paragraph (3)" before comma at end.

Subsec. (b)(3)(G), (H). Pub. L. 108–357, §211(d)(1), added subpars. (G) and (H).

Subsec. (e)(3)(C)(ii). Pub. L. 108–357, §704(a), added cl. (ii). Former cl. (ii) redesignated (iii).

Subsec. (e)(3)(C)(iii). Pub. L. 108–357, §706(a), added cl. (iii). Former cl. (iii) redesignated (iv).

Pub. L. 108–357, §704(a), redesignated cl. (ii) as (iii).

Subsec. (e)(3)(C)(iv). Pub. L. 108–357, §706(a), redesignated cl. (iii) as (iv).

Subsec. (e)(3)(E)(iv), (v). Pub. L. 108–357, §211(a), added cls. (iv) and (v).

Subsec. (e)(3)(E)(vi). Pub. L. 108–357, §901(a), added cl. (vi).

Subsec. (e)(3)(F). Pub. L. 108–357, §901(b), added subpar. (F).

Subsec. (e)(6), (7). Pub. L. 108–357, §211(b), (c), added pars. (6) and (7).

Subsec. (g)(3)(A). Pub. L. 108–357, §847(a), inserted "(notwithstanding any other subparagraph of this paragraph)" after "shall".

Subsec. (g)(3)(B). Pub. L. 108–357, §901(c), inserted table items relating to subpars. (E)(vi) and (F).

Pub. L. 108–357, §706(c), which directed amendment of table by inserting item relating to subpar. (C)(iii) after item relating to subpar. (C)(ii), was executed by making the insertion after item relating to subpar. (C)(i) to reflect the probable intent of Congress.

Pub. L. 108–357, §211(e), inserted table items relating to subpars. (E)(iv) and (E)(v).

Subsec. (h)(2)(A). Pub. L. 108–357, §847(e), added cl. (iv) and concluding provisions.

Subsec. (h)(3)(A). Pub. L. 108–357, §847(d), inserted at end "Notwithstanding subsection (i)(3)(A)(i), in determining a lease term for purposes of the preceding sentence, there shall not be taken into account any option of the lessee to renew at the fair market value rent determined at the time of renewal; except that the aggregate period not taken into account by reason of this sentence shall not exceed 24 months."

Subsec. (i)(3)(A)(ii), (iii). Pub. L. 108–357, §847(c), added cl. (ii) and redesignated former cl. (ii) as (iii).

Subsec. (i)(15). Pub. L. 108–357, §704(b), added par. (15).

Subsec. (i)(16). Pub. L. 108–357, §706(b), added par. (16).

Subsec. (j)(8). Pub. L. 108–311, §316, substituted "2005" for "2004".

Subsec. (k)(2)(A)(iv). Pub. L. 108–357, §336(a)(2), substituted "subparagraphs (B) and (C)" for "subparagraph (B)".

Subsec. (k)(2)(B)(i). Pub. L. 108–311, §403(a)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "The term 'qualified property' includes property—

"(I) which meets the requirements of clauses (i), (ii), and (iii) of subparagraph (A),

"(II) which has a recovery period of at least 10 years or is transportation property, and

"(III) which is subject to section 263A by reason of clause (ii) or (iii) of subsection (f)(1)(B) thereof."

Subsec. (k)(2)(B)(iv). Pub. L. 108–357, §336(b)(1), added cl. (iv).

Subsec. (k)(2)(C). Pub. L. 108–357, §336(a)(1), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (k)(2)(D). Pub. L. 108–357, §336(a)(1), redesignated subpar. (C) as (D). Former subpar. (D) redesignated (E).

Subsec. (k)(2)(D)(ii). Pub. L. 108–311, §408(a)(6)(A), inserted "is" after "if property" in introductory provisions.

Pub. L. 108–311, §403(a)(2)(B), inserted "clause (iii) and" before "subparagraph (A)(ii)" in introductory provisions.

Subsec. (k)(2)(D)(ii)(I). Pub. L. 108–311, §408(a)(6)(B), struck out "is" before "originally".

Subsec. (k)(2)(D)(iii), (iv). Pub. L. 108–311, §403(a)(2)(A), added cls. (iii) and (iv).

Subsec. (k)(2)(E). Pub. L. 108–357, §336(a)(1), redesignated subpar. (D) as (E). Former subpar. (E) redesignated (F).

Subsec. (k)(2)(E)(iii)(II). Pub. L. 108–357, §337(a), which directed amendment of subcl. (II) by inserting before comma at end "(or, in the case of multiple units of property subject to the same lease, within 3 months after the date the final unit is placed in service, so long as the period between the time the first unit is placed in service and the time the last unit is placed in service does not exceed 12 months)", was executed by making the insertion before ", and" to reflect the probable intent of Congress.

Subsec. (k)(2)(F). Pub. L. 108–357, §336(a)(1), redesignated subpar. (E) as (F). Former subpar. (F) redesignated (G).

Pub. L. 108–311, §408(a)(8), substituted "minimum" for "miniumum" in heading.

Subsec. (k)(2)(G). Pub. L. 108–357, §336(a)(1), redesignated subpar. (F) as (G).

Subsec. (k)(4)(A)(ii). Pub. L. 108–357, §336(b)(2), substituted "paragraph (2)(D)" for "paragraph (2)(C)".

Subsec. (k)(4)(B)(iii). Pub. L. 108–357, §336(b)(3), inserted "and paragraph (2)(C)" after "of this paragraph)".

Subsec. (k)(4)(C). Pub. L. 108–357, §336(b)(4), substituted "subparagraphs (B), (C), and (E)" for "subparagraphs (B) and (D)".

Subsec. (k)(4)(D). Pub. L. 108–357, §336(b)(5), substituted "Paragraph (2)(F)" for "Paragraph (2)(E)".

2003—Subsec. (k). Pub. L. 108–27, §201(c)(1), substituted "January 1, 2005" for "September 11, 2004" in heading.

Subsec. (k)(2)(A)(iii). Pub. L. 108–27, §201(b)(2), substituted "January 1, 2005" for "September 11, 2004" in subcls. (I) and (II).

Subsec. (k)(2)(B)(ii). Pub. L. 108–27, §201(b)(1), substituted "pre-January 1, 2005" for "pre-September 11, 2004" in heading and "January 1, 2005" for "September 11, 2004" in text.

Subsec. (k)(2)(C)(iii). Pub. L. 108–27, §201(b)(3), inserted at end "The preceding sentence shall be applied separately with respect to property treated as qualified property by paragraph (4) and other qualified property."

Subsec. (k)(2)(D)(i). Pub. L. 108–27, §201(b)(1)(A), substituted "January 1, 2005" for "September 11, 2004".

Subsec. (k)(4). Pub. L. 108–27, §201(a), added par. (4).

2002—Subsec. (j)(8). Pub. L. 107–147, §613(b), substituted "December 31, 2004" for "December 31, 2003".

Subsec. (k). Pub. L. 107–147, §101(a), added subsec. (k).

1998—Subsec. (c). Pub. L. 105–206, §6006(b)(2), reenacted subsec. heading without change and substituted "For purposes of this section, the applicable recovery period shall be determined in accordance with the following table:" for "For purposes of this section—

"(1) IN GENERAL.—Except as provided in paragraph (2), the applicable recovery period shall be determined in accordance with the following table:".

Subsec. (c)(2). Pub. L. 105–206, §6006(b)(1), struck out heading and text of par. (2). Text read as follows: "In the case of property to which an election under subsection (b)(2)(C) applies, the applicable recovery period shall be determined under the table contained in subsection (g)(2)(C)."

1997—Subsec. (e)(3)(A)(iii). Pub. L. 105–34, §1086(b)(1), added cl. (iii).

Subsec. (g)(3)(B). Pub. L. 105–34, §1086(b)(2), inserted table item relating to subpar. (A)(iii).

Subsec. (i)(8)(C). Pub. L. 105–34, §1213(c), added subpar. (C).

Subsec. (i)(14). Pub. L. 105–34, §1086(b)(3), added par. (14).

Subsec. (j)(6). Pub. L. 105–34, §1604(c)(1), inserted concluding provisions "For purposes of the preceding sentence, such section 3(d) shall be applied by treating the term 'former Indian reservations in Oklahoma' as including only lands which are within the jurisdictional area of an Oklahoma Indian tribe (as determined by the Secretary of the Interior) and are recognized by such Secretary as eligible for trust land status under 25 CFR Part 151 (as in effect on the date of the enactment of this sentence)."

1996—Subsec. (b)(3)(F). Pub. L. 104–188, §1613(b)(1), added subpar. (F).

Subsec. (c)(1). Pub. L. 104–188, §1613(b)(2), inserted table item relating to water utility property.

Subsec. (e)(3)(B). Pub. L. 104–188, §1702(h)(1)(B), inserted closing provisions.

Subsec. (e)(3)(B)(vi)(I). Pub. L. 104–188, §1704(t)(54), provided that section 11813(b)(9)(A)(i) of Pub. L. 101–508 shall be applied as if a comma appeared after "(3)(A)(ix)" in the material proposed to be stricken. See 1990 Amendment note below.

Subsec. (e)(3)(B)(vi)(III). Pub. L. 104–188, §1702(h)(1)(A), added subcl. (III).

Subsec. (e)(3)(E)(iii). Pub. L. 104–188, §1120(a), added cl. (iii).

Subsec. (e)(3)(F). Pub. L. 104–188, §1613(b)(3)(B)(i), struck out subpar. (F) which read as follows: "20-YEAR PROPERTY.—The term '20-year property' includes any municipal sewers."

Subsec. (e)(5). Pub. L. 104–188, §1613(b)(3)(A), added par. (5).

Subsec. (g)(2)(C)(iv). Pub. L. 104–188, §1613(b)(4), inserted "or water utility property" after "tunnel bore".

Subsec. (g)(3)(B). Pub. L. 104–188, §1120(b), inserted table item relating to subpar. (E)(iii).

Pub. L. 104–188, §1613(b)(3)(B)(ii), struck out table item relating to subpar. (F) for which the class life was 50.

Subsec. (g)(4)(K). Pub. L. 104–188, §1702(h)(1)(C), substituted "section 48(l)(3)(A)(ix) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)" for "section 48(a)(3)(A)(iii)".

Subsec. (i)(8). Pub. L. 104–188, §1121(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "In the case of any building erected (or improvements made) on leased property, if such building or improvement is property to which this section applies, the depreciation deduction shall be determined under the provisions of this section."

1995—Subsec. (g)(4)(B)(i). Pub. L. 104–88 substituted "rail carrier subject to part A of subtitle IV" for "domestic railroad corporation providing transportation subject to subchapter I of chapter 105".

1993—Subsec. (c)(1). Pub. L. 103–66, §13151(a), substituted "39 years" for "31.5 years" in table item relating to nonresidential real property.

Subsec. (j). Pub. L. 103–66, §13321(a), added subsec. (j).

1990—Subsec. (e)(2)(A). Pub. L. 101–508, §11812(b)(2)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "The term 'residential rental property' has the meaning given such term by section 167(j)(2)(B)."

Subsec. (e)(3)(B)(vi)(I). Pub. L. 101–508, §11813(b)(9)(A)(i), which directed the substitution of "subparagraph (A) of section 48(a)(3) (or would be so described if 'solar and wind' were substituted for 'solar' in clause (i) thereof)" for "paragraph (3)(A)(viii), (3)(A)(ix) or (4) of section 48(l)" was executed by making the substitution for "paragraph (3)(A)(viii), (3)(A)(ix), or (4) of section 48(l)". See 1996 Amendment note above.

Subsec. (e)(3)(B)(vi)(II). Pub. L. 101–508, §11813(b)(9)(A)(ii), inserted "(as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)" after "48(l)".

Subsec. (e)(3)(D)(i). Pub. L. 101–508, §11813(b)(9)(B)(i), substituted "subsection (i)(13)" for "section 48(p)".

Subsec. (f)(2). Pub. L. 101–508, §11812(b)(2)(C), substituted "subsection (i)(10)" for "section 167(l)(3)(A)."

Subsec. (g)(4). Pub. L. 101–508, §11813(b)(9)(C), substituted heading for one which read: "Property used predominantly outside the United States" and amended text generally. Prior to amendment, text read as follows: "For purposes of this subsection, rules similar to the rules under section 48(a)(2) (including the exceptions contained in subparagraph (B) thereof) shall apply in determining whether property is used predominantly outside the United States. In addition to the exceptions contained in such subparagraph (B), there shall be excepted any satellite or other spacecraft (or any interest therein) held by a United States person if such satellite or spacecraft was launched from within the United States."

Subsec. (i)(1). Pub. L. 101–508, §11812(b)(2)(D), inserted at end "The reference in this paragraph to subsection (m) of section 167 shall be treated as a reference to such subsection as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990."

Subsec. (i)(7)(B)(i). Pub. L. 101–508, §11801(c)(8)(B), struck out, "371(a), 374(a)," after "361,".

Subsec. (i)(9)(A)(ii). Pub. L. 101–508, §11812(b)(2)(E), struck out "(determined without regard to section 167(l))" after "section 167".

Subsec. (i)(10). Pub. L. 101–508, §11812(b)(2)(B), amended par. (10) generally. Prior to amendment, par. (10) read as follows: "The term 'public utility property' has the meaning given such term by section 167(l)(3)(A)."

Subsec. (i)(13). Pub. L. 101–508, §11813(b)(9)(B)(ii), added par. (13).

1989—Subsec. (b)(3)(D), (E). Pub. L. 101–239, §7816(f), redesignated subpar. (D), relating to property described in subsec. (e)(3)(D)(ii), as (E).

Subsec. (b)(5). Pub. L. 101–239, §7816(e)(1), substituted "paragraph (2)(C)" for "paragraph (2)(B)".

Subsec. (c)(2). Pub. L. 101–239, §7816(e)(2), substituted "subsection (b)(2)(C)" for "subsection (b)(2)(B)".

Subsec. (i)(1). Pub. L. 101–239, §7816(w), made clarifying amendment to directory language of Pub. L. 100–647, §6253, see 1988 Amendment note below.

1988—Subsec. (b)(2). Pub. L. 100–647, §1002(a)(11)(A), substituted "150 percent declining balance method in certain cases" for "15-year and 20-year property" in heading and amended text generally. Prior to amendment, text read as follows: "In the case of 15-year and 20-year property, paragraph (1) shall be applied by substituting '150 percent' for '200 percent'."

Subsec. (b)(2)(B), (C). Pub. L. 100–647, §6028(a), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (b)(3)(C). Pub. L. 100–647, §1002(i)(2)(B)(i), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (b)(3)(D). Pub. L. 100–647, §6029(b), added subpar. (D) relating to property described in subsec. (e)(3)(D)(ii).

Pub. L. 100–647, §1002(i)(2)(B)(i), redesignated subpar. (C), relating to property with respect to which the taxpayer elects under par. (5), as (D).

Subsec. (b)(5). Pub. L. 100–647, §1002(i)(2)(B)(ii), substituted "paragraph (3)(D)" for "paragraph (3)(C)".

Pub. L. 100–647, §1002(a)(11)(B), substituted "paragraph (2)(B) or (3)(C)" for "paragraph (3)(C)".

Subsec. (c). Pub. L. 100–647, §1002(a)(11)(C), amended subsec. (c) generally, designating existing provisions as par. (1) and adding par. (2).

Subsec. (c)(1). Pub. L. 100–647, §1002(i)(2)(A), inserted table item relating to any railroad grading or tunnel bore.

Subsec. (d)(2)(C). Pub. L. 100–647, §1002(i)(2)(D), added subpar. (C).

Subsec. (d)(3)(A)(i). Pub. L. 100–647, §1002(a)(5), struck out "and which are" after "this section applies".

Subsec. (d)(3)(B). Pub. L. 100–647, §1002(a)(23)(A), struck out "real" after "Certain" in heading and amended text generally. Prior to amendment, text read as follows: "For purposes of subparagraph (A), nonresidential real property and residential rental property shall not be taken into account."

Subsec. (d)(3)(B)(i). Pub. L. 100–647, §1002(i)(2)(E), substituted "residential rental property, and railroad grading or tunnel bore" for "and residential rental property".

Subsec. (e)(3)(B)(v). Pub. L. 100–647, §1002(a)(21), substituted "any section 1245 property" for "any property".

Subsec. (e)(3)(C). Pub. L. 100–647, §6027(b)(1)(C), redesignated cl. (iii) as (ii), and struck out former cl. (ii) which read as follows: "any single-purpose agricultural or horticultural structure (within the meaning of section 48(p)), and".

Subsec. (e)(3)(D). Pub. L. 100–647, §6029(a), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: "The term '10-year property' includes any single purpose agricultural or horticultural structure (within the meaning of section 48(p))."

Pub. L. 100–647, §6027(a), added subpar. (D). Former subpar. (D) redesignated (E).

Subsec. (e)(3)(E), (F). Pub. L. 100–647, §6027(a), redesignated former subpars. (D) and (E) as (E) and (F), respectively.

Subsec. (e)(4). Pub. L. 100–647, §1002(i)(2)(C), added par. (4).

Subsec. (f)(4). Pub. L. 100–647, §1002(a)(16)(B), amended par. (4) generally. Prior to amendment, par. (4) read as follows: "Any sound recording described in section 48(r)(5)."

Subsec. (f)(5)(B)(ii). Pub. L. 100–647, §1002(a)(6)(A)(i), substituted "1st taxable year" for "1st full taxable year".

Subsec. (f)(5)(B)(iii). Pub. L. 100–647, §1002(a)(6)(A)(ii), added cl. (iii).

Subsec. (f)(5)(C). Pub. L. 100–647, §100–647, §1002(a)(6)(B), added subpar. (C).

Subsec. (g)(2)(C). Pub. L. 100–647, §1002(i)(2)(F), added item (iv) in table.

Subsec. (g)(3)(B). Pub. L. 100–647, §6029(c), substituted "(D)(i)" for "(D)" and added item for "(D)(ii)" in table.

Pub. L. 100–647, §6027(b)(2), substituted "(D)" for "(C)(ii)", "(E)(i)" for "(D)(i)", "(E)(ii)" for "(D)(ii)", and "(F)" for "(E)" in table.

Subsec. (h)(2)(B). Pub. L. 100–647, §1002(a)(8), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows:

"(i) INCOME FROM PROPERTY SUBJECT TO UNITED STATES TAX.—Clause (iii) of subparagraph (A) shall not apply with respect to any property if more than 50 percent of the gross income for the taxable year derived by the foreign person or entity from the use of such property is—

"(I) subject to tax under this chapter, or

"(II) included under section 951 in the gross income of a United States shareholder for the taxable year with or within which ends the taxable year of the controlled foreign corporation in which such income was derived.

For purposes of the preceding sentence, any exclusion or exemption shall not apply for purposes of determining the amount of the gross income so derived, but shall apply for purposes of determining the portion of such gross income subject to tax under this chapter.

"(ii) MOVIES AND SOUND RECORDINGS.—Clause (iii) of subparagraph (A) shall not apply with respect to any qualified film (as defined in section 48(k)(1)(B)) or any sound recording (as defined in section 48(r)(5))."

Subsec. (i)(1). Pub. L. 100–647, §6253, as amended by Pub. L. 101–239, §7816(w), amended par. (1)

generally, substituting a single par. relating to class life for former subpar. (A) relating to class life generally, (B) relating to Secretarial authority, (C) relating to effect of modification, (D) prohibiting modification of assigned property before January 1, 1992, and (E) relating to assigned property and item.

Subsec. (i)(1)(E)(iii). Pub. L. 100–647, §1002(i)(2)(G), added cl. (iii), which provided: "SPECIAL RULE FOR RAILROAD GRADING OR TUNNEL BORES.—In the case of any property which is a railroad grading or tunnel bore—

"(I) such property shall be treated as an assigned property,

"(II) the recovery period applicable to such property shall be treated as an assigned item, and

"(III) clause (ii) of subparagraph (D) shall not apply."

Subsec. (i)(7)(A). Pub. L. 100–647, §1002(a)(7)(A), inserted at end "In any case where this section as in effect before the amendments made by section 201 of the Tax Reform Act of 1986 applied to the property in the hands of the transferor, the reference in the preceding sentence to this section shall be treated as a reference to this section as so in effect."

Subsec. (i)(7)(B). Pub. L. 100–647, §1002(a)(7)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "The transactions described in this subparagraph are any transaction described in section 332, 351, 361, 371(a), 374(a), 721, or 731. Subparagraph (A) shall not apply in the case of a termination of a partnership under section 708(b)(1)(B)."

Subsec. (i)(7)(D). Pub. L. 100–647, §1002(a)(7)(C), struck out subpar. (D) which read as follows: "This paragraph shall not apply to any transaction to which subsection (f)(5) applies (relating to churning transactions)."

Subsec. (j)(9)(E). Pub. L. 100–647, §1018(b)(2), amended subpar. (E), as amended by section 1802(a)(2) of Pub. L. 99–514 and as in effect before the general amendment by section 201(a) of Pub. L. 99–514, by substituting "this paragraph and paragraph (8)" for "this paragraph" in cls. (i) and (ii)(I) and by striking out cl. (iii) and inserting a new cl. (iii) which read as follows: "TAX-EXEMPT CONTROLLED ENTITY.—

"(I) IN GENERAL.—The term 'tax-exempt controlled entity' means any corporation (which is not a tax-exempt entity determined without regard to this subparagraph and paragraph (4)(E)) if 50 percent or more (in value) of the stock in such corporation is held by 1 or more tax-exempt entities (other than a foreign person or entity).

"(II) ONLY 5-PERCENT SHAREHOLDERS TAKEN INTO ACCOUNT IN CASE OF PUBLICLY TRADED STOCK.—For purposes of subclause (I), in the case of a corporation the stock of which is publicly traded on an established securities market, stock held by a tax-exempt entity shall not be taken into account unless such entity holds at least 5 percent (in value) of the stock in such corporation. For purposes of this subclause, related entities (within the meaning of paragraph (7)) shall be treated as 1 entity.

"(III) SECTION 318 TO APPLY.—For purposes of this clause, a tax-exempt entity shall be treated as holding stock which it holds through application of section 318 (determined without regard to the 50-percent limitation contained in subsection (a)(2)(C) thereof)."

1986—Pub. L. 99–514, §201(a), amended section generally, applicable, with exceptions enumerated in sections 203, 204, and 251(d) of Pub. L. 99–514 [set out as notes below and under section 46 of this title], to property placed in service after Dec. 31, 1986, modifying existing accelerated cost recovery system by substituting new subsecs. (a) to (i) for former subsecs. (a) to (k). See following paragraphs of 1986 Amendment note for amendments to former text by sections 1802 and 1809 of Pub. L. 99–514.

Subsec. (b)(2)(A). Pub. L. 99–514, §1809(a)(2)(A)(i)(I), struck out closing provisions relating to determination, in the case of 19-year real property, of applicable percentage in taxable year in which the property is placed in service.

Subsec. (b)(2)(B). Pub. L. 99–514, §1809(a)(2)(A)(i)(II), substituted "Mid-month convention for 19-year real property" for "Special rule for year of disposition" in heading and amended text generally, substituting "In the case of 19-year real property, the amount of the deduction determined under any provision of this section (or for purposes of section 57(a)(12)(B) or 312(k)) for any taxable year shall be determined on the basis of the number of months (using a mid-month convention) in which the property is in service." for prior provisions.

Subsec. (b)(3)(A). Pub. L. 99–514, §1809(a)(1)(A), which directed that the table be amended by striking "and low-income housing" in last item, was executed by striking "and low-income housing" after "19-year real property" in next-to-the-last item, to reflect the probable intent of Congress, because that phrase did not appear in last item.

Pub. L. 99–514, §1809(a)(1)(B), inserted at the end item for low-income housing with recovery periods of 15, 35, or 45 years.

Subsec. (b)(4)(B). Pub. L. 99–514, §1809(a)(2)(B), substituted "Monthly convention" for "Special rule for year of disposition" in heading and amended text generally, substituting "In the case of low-income housing, the amount of the deduction determined under any provision of this section (or for purposes of section

57(a)(12)(B) or 312(k)) for any taxable year shall be determined on the basis of the number of months (treating all property placed in service or disposed of during any month as placed in service or disposed of on the first day of such month) in which the property is in service." for prior provisions.

Subsec. (f)(2)(B). Pub. L. 99–514, §1809(a)(2)(A)(ii), redesignated existing provisions as entire subpar. (B), struck out "(i) In general", redesignated subcls. (I) and (II) as cls. (i) and (ii), and in cl. (ii) struck out "(taking into account the next to the last sentence of subsection (b)(2)(A))" after "assign percentages" and struck out heading, "(ii) Special rule for disposition" and text, "In the case of a disposition of 19-year real property or low-income housing described in clause (i), subsection (b)(2)(B) shall apply."

Subsec. (f)(10)(A). Pub. L. 99–514, §1809(b)(1), amended subpar. (A) generally, substituting "In the case of recovery property transferred in a transaction described in subparagraph (B), for purposes of computing the deduction allowable under subsection (a) with respect to so much of the basis in the hands of the transferee as does not exceed the adjusted basis in the hands of the transferor—

"(i) if the transaction is described in subparagraph (B)(i), the transferee shall be treated in the same manner as the transferor, or

"(ii) if the transaction is described in clause (ii) or (iii) of subparagraph (B) and the transferor made an election with respect to such property under subsection (b)(3) or (f)(2)(C), the transferee shall be treated as having made the same election (or its equivalent)."

for prior provisions.

Subsec. (f)(10)(B). Pub. L. 99–514, §1809(b)(2), inserted at end "Clause (i) shall not apply in the case of the termination of a partnership under section 708(b)(1)(B)."

Subsec. (f)(12)(B)(ii). Pub. L. 99–514, §1809(a)(4)(A), amended cl. (ii) generally, substituting "In the case of 19-year real property, the amount of the deduction allowed shall be determined by using the straight-line method (without regard to salvage value) and a recovery period of 19 years." for prior provisions.

Subsec. (f)(12)(C). Pub. L. 99–514, §1809(a)(4)(B), substituted "Exception for low- and moderate-income housing" for "Exception for projects for residential rental property" in heading and amended text generally, substituting "Subparagraph (A) shall not apply to—

"(i) any low-income housing, and

"(ii) any other recovery property which is placed in service in connection with projects for residential rental property financed by the proceeds of obligations described in section 103(b)(4)(A)."

for prior provisions.

Subsec. (f)(14), (15). Pub. L. 99–514, §1802(b)(1), redesignated the par. (13) relating to motor vehicle operating leases as (14) and redesignated former par. (14) as (15).

Subsec. (j)(2)(B)(ii). Pub. L. 99–514, §1809(a)(2)(C)(i), substituted "Cross reference" for "19-year real property" in heading and amended text generally, substituting "For other applicable conventions, see paragraphs (2)(B) and (4)(B) of subsection (b)." for prior provisions.

Subsec. (j)(3)(D). Pub. L. 99–514, §1802(a)(1), inserted at end "For purposes of subparagraph (B)(iii), any portion of a property so used shall not be treated as leased to a tax-exempt entity in a disqualified lease."

Subsec. (j)(4)(E)(i). Pub. L. 99–514, §1802(a)(2)(A), (G), substituted "any property (other than property held by such organization)" for "any property of which such organization is the lessee", "first used by" for "first leased to", and "preceding sentence and subparagraph (D)(ii)" for "preceding sentence".

Subsec. (j)(4)(E)(ii). Pub. L. 99–514, §1802(a)(2)(B), (C), struck out "of which such organization is the lessee" after "respect to any property" in subcl. (I) and substituted "is first used by the organization" for "is placed in service under the lease" in subcl. (II).

Subsec. (j)(4)(E)(iv). Pub. L. 99–514, §1802(a)(2)(D), added cl. (iv), first used, which read as follows: "For purposes of this subparagraph, property shall be treated as first used by the organization—

"(I) when the property is first placed in service under a lease to such organization, or

"(II) in the case of property leased to (or held by) a partnership (or other pass-thru entity) in which the organization is a member, the later of when such property is first used by such partnership or pass-thru entity or when such organization is first a member of such partnership or pass-thru entity."

Subsec. (j)(5)(C)(iv). Pub. L. 99–514, §1802(a)(3), struck out cl. (iv), relating to exclusion of property not subject to rapid obsolescence.

Subsec. (j)(8), (9)(A). Pub. L. 99–514, §1802(a)(4)(A), (B)(i), struck out "and paragraphs (4) and (5) of section 48(a)" after "For purposes of this subsection" in introductory provisions.

Subsec. (j)(9)(B)(i). Pub. L. 99–514, §1802(a)(4)(B)(ii), inserted a comma between "loss" and "deduction".

Subsec. (j)(9)(D). Pub. L. 99–514, §1802(a)(7)(A), added subpar. (D), determination of whether property used in unrelated trade or business, which read as follows: "For purposes of this subsection, in the case of any property which is owned by a partnership which has both a tax-exempt entity and a person who is not a tax-exempt entity as partners, the determination of whether such property is used in an unrelated trade or

business of such an entity shall be made without regard to section 514." Former subpar. (D) was redesignated (E).

Subsec. (j)(9)(E). Pub. L. 99–514, §1802(a)(7), redesignated former subpar. (D) as (E) and substituted "(C), and (D)" for "and (C)". Former subpar. (E), was redesignated (F).

Pub. L. 99–514, §1802(a)(2)(E)(i), added subpar. (E), treatment of certain taxable entities, consisting of cl. (i), in general, which read: "For purposes of this paragraph, except as otherwise provided in this subparagraph, any tax-exempt controlled entity shall be treated as a tax-exempt entity.", cl. (ii), election, which read: "If a tax-exempt controlled entity makes an election under this clause—

"(I) such entity shall not be treated as a tax-exempt entity for purposes of this paragraph, and

"(II) any gain recognized by a tax-exempt entity on any disposition of an interest in such entity (and any dividend or interest received or accrued by a tax-exempt entity from such tax-exempt controlled entity) shall be treated as unrelated business taxable income for purposes of section 511.

Any such election shall be irrevocable and shall bind all tax-exempt entities holding interests in such tax-exempt controlled entity. For purposes of subclause (II), there shall only be taken into account dividends which are properly allocable to income of the tax-exempt controlled entity which was not subject to tax under this chapter.", and cl. (iii), tax-exempt controlled entity, which read "The term 'tax-exempt controlled entity' means any corporation (which is not a tax-exempt entity determined without regard to this subparagraph and paragraph (4)(E)) if 50 percent or more (by value) of the stock in such corporation is held (directly or through the application of section 318 determined without regard to the 50-percent limitation contained in subsection (a)(2)(C) thereof) by 1 or more tax-exempt entities." Former subpar. (E) was redesignated (F).

Subsec. (j)(9)(F). Pub. L. 99–514, §1802(a)(7)(A), redesignated former subpar. (E) as (F). Former subpar. (F) redesignated (G).

Pub. L. 99–514, §1802(a)(2)(E)(i), redesignated former subpar. (E) as (F).

Subsec. (j)(9)(G). Pub. L. 99–514, §1802(a)(7)(A), redesignated former subpar. (F) as (G).

1985—Subsec. (b)(2). Pub. L. 99–121, §103(b)(1)(A), substituted "19-year real property" for "18-year real property" in heading and wherever appearing in text.

Subsec. (b)(2)(A)(i). Pub. L. 99–121, §103(a), substituted "19-year recovery period" for "18-year recovery period".

Subsec.(b)(3)(A). Pub. L. 99–121, §103(b)(1)(A), substituted "19-year real property" for "18-year real property" in table.

Pub. L. 99–121, §103(b)(2), substituted "19, 35, or 45 years" for "18, 35, or 45" in table.

Subsec. (b)(3)(B)(ii), (iii). Pub. L. 99–121, §103(b)(1)(A), substituted "19-year real property" for "18-year real property" wherever appearing.

Subsec. (c)(2)(D). Pub. L. 99–121, §103(b)(1)(A), substituted "19-year real property" for "18-year real property" in heading and in text.

Subsec. (d)(2)(B). Pub. L. 99–121, §103(b)(1)(A), substituted "19-year real property" for "18-year real property".

Subsec. (f)(1)(B)(ii). Pub. L. 99–121, §103(b)(3)(B), substituted "March 15, 1984, and before May, 9, 1985, the" for "March 15, 1984, the".

Subsec. (f)(1)(B)(iii), (iv). Pub. L. 99–121, §103(b)(3)(A), (C), added cl. (iii), redesignated former cl. (iii) as (iv), and in cl. (iv) substituted ", (ii), or (iii)" for "or (ii)".

Subsec. (f)(2), (5). Pub. L. 99–121, §103(b)(1)(A), substituted "19-year real property" for "18-year real property" wherever appearing.

Subsec. (f)(12)(B)(ii). Pub. L. 99–121, §103(b)(4), substituted "19-year real property" for "15-year real property" in heading and wherever appearing in text, and substituted "19 years" for "15 years".

Subsec. (j). Pub. L. 99–121, §103(b)(1)(A), substituted "19-year real property" for "18-year real property" wherever appearing in headings, table, and text.

1984—Subsec. (b)(2). Pub. L. 98–369, §111(a)(1), substituted "18-year real property" for "15-year real property" in heading and wherever appearing in text.

Pub. L. 98–369, §111(d), inserted in provision following cl. (ii) "(using a mid-month convention)".

Subsec. (b)(2)(A). Pub. L. 98–369, §111(b)(3)(A), struck out in text following cl. (ii) provision that for purposes of this subparagraph "low-income housing" means property described in section 1250(a)(1)(B)(i), (ii), (iii), or (iv).

Subsec. (b)(2)(A)(i). Pub. L. 98–369, §111(a)(2), substituted "18-year recovery period" for "15-year recovery period".

Subsec. (b)(2)(A)(ii). Pub. L. 98–369, §111(a)(3), struck out "(200 percent declining balance method in the case of low-income housing)" after "declining balance method".

Subsec. (b)(2)(B). Pub. L. 98–369, §111(d), inserted "(using a mid-month convention)".

Subsec. (b)(3)(A). Pub. L. 98–369, §111(e)(9)(A), substituted "under paragraph (1), (2), or (4)" for "under paragraphs (1) and (2)".

Pub. L. 98–369, §111(e)(9)(B), substituted in table "18-year real property and low-income housing" for "15-year real property" and "18" for "15" and struck out "years" after "45".

Subsec. (b)(3)(B)(ii). Pub. L. 98–369, §111(e)(2), substituted "18-year real property or low-income housing," for "15-year real property".

Subsec. (b)(3)(B)(iii). Pub. L. 98–369, §111(e)(1), substituted "18-year real property or low-income housing" for "15-year real property".

Subsec. (b)(4). Pub. L. 98–369, §111(b)(1), added par. (4).

Subsec. (c)(2)(D). Pub. L. 98–369, §111(b)(3)(B), amended subpar. (D) generally, substituting "18-year real property" for "15-year real property" in heading and text and including within such definition section 1250 property which is not low-income housing.

Subsec. (c)(2)(F), (G). Pub. L. 98–369, §111(b)(2), added subpar. (F) and redesignated former subpar. (F) as (G).

Subsec. (d)(2)(B). Pub. L. 98–369, §111(e)(3), substituted "18-year real property or low-income housing" for "15-year real property".

Subsec. (e). Pub. L. 98–369, §113(b)(2)(A), substituted "title" for "section" in provision preceding par. (1).

Subsec. (e)(5). Pub. L. 98–369, §113(b)(1), added par. (5).

Subsec. (f)(1)(B). Pub. L. 98–369, §111(c), designated existing provision as cl. (i), inserted heading, inserted ", and before March 16, 1984," and struck out provision that for the purposes of the preceding sentence, the method of computing the deduction allowable with respect to such first component be determined as if it were a separate building, which provision is covered in cl. (iii), and added cls. (ii) and (iii).

Subsec. (f)(2)(B). Pub. L. 98–369, §111(e)(1), substituted "18-year real property or low-income housing" for "15-year real property" wherever appearing.

Subsec. (f)(2)(C)(i). Pub. L. 98–369, §111(e)(4), substituted in table "18-year real property or low-income housing" for "15-year real property".

Subsec. (f)(2)(C)(ii)(II), (E), (5). Pub. L. 98–369, §111(e)(1), substituted "18-year real property or low-income housing" for "15-year real property".

Subsec. (f)(8)(B)(ii)(I). Pub. L. 98–369, §12(a)(3)(A), in par. (8) as amended by section 209(a) of Pub. L. 97–248, substituted "1990" for "1986".

Subsec. (f)(12)(C). Pub. L. 98–369, §628(b)(1), designated provisions preceding cl. (i) and cl. (i) as subpar. (C), and struck out cls. (ii), (iii), and (iv) which dealt with the application of subpar. (A) to a sewage or solid waste disposal facility, an air or water pollution control facility or a facility which has received an urban development action grant under section 119 of the Housing and Community Development Act of 1974.

Subsec. (f)(12)(D), (E). Pub. L. 98–369, §628(b)(2), redesignated subpar. (E) as (D) and struck out former subpar. (D) which read as follows: "For purposes of this paragraph, the term 'existing facility' means a plant or property in operation before July 1, 1982."

Subsec. (f)(13). Pub. L. 98–369, §32(a), added second par. (13) relating to motor vehicle operating leases.

Subsec. (f)(14). Pub. L. 98–369, §113(a)(2), added par. (14).

Subsec. (g)(2). Pub. L. 98–369, §31(d), inserted "If any property (other than section 1250 class property) does not have a present class life within the meaning of the preceding sentence, the Secretary may prescribe a present class life for such property which reasonably reflects the anticipated useful life of such property to the industry or other group."

Subsec. (i)(1)(D)(i). Pub. L. 98–369, §474(r)(7)(D), in subsec. (i) as amended by section 209(b) of Pub. L. 97–248, substituted "subparts A, B, and D of part IV" for "subpart A of part IV".

Pub. L. 98–369, §474(r)(7)(A), in subsec. (i) as added by section 208(a)(1) of Pub. L. 97–248, substituted "subparts A, B, and D of part IV" for "subpart A of part IV".

Subsec. (i)(1)(D)(iii). Pub. L. 98–369, §612(e)(5), in subsec. (i) as amended by section 209(b) of Pub. L. 97–248, substituted "section 26(b)(2)" for "section 25(b)(2)".

Pub. L. 98–369, §612(e)(4), in subsec. (i) as added by section 208(a)(1) of Pub. L. 97–248, substituted "section 26(b)(2)" for "section 25(b)(2)".

Pub. L. 98–369, §474(r)(7)(E), in subsec. (i) as amended by section 209(b) of Pub. L. 97–248, substituted "section 25(b)(2)" for "the last sentence of section 53(a)".

Pub. L. 98–369, §474(r)(7)(B), in subsec. (i) as added by section 208(a)(1) of Pub. L. 97–248, substituted "section 25(b)(2)" for "the last sentence of section 53(a)".

Subsec. (i)(4)(A). Pub. L. 98–369, §12(a)(3)(B), in subsec. (i) as amended by section 209(b) of Pub. L. 97–248, substituted "1989" for "1985" in cls. (i) and (ii).

Pub. L. 98–369, §474(r)(7)(C), in subsec. (i) as added by section 208(a)(1) of Pub. L. 97–248, substituted

"section 38" for "subpart A of part IV of subchapter A of this chapter".

Subsecs. (j), (k). Pub. L. 98–369, §31(a), added subsec. (j) and redesignated former subsec. (j) as (k).

1983—Subsec. (b)(2)(A). Pub. L. 97–448, §102(a)(5), substituted "In the case of 15-year real property" for "For purposes of this subparagraph" in third sentence.

Subsec. (c)(2)(F). Pub. L. 97–448, §102(a)(8), added subpar. (F).

Subsec. (d)(2)(B). Pub. L. 97–448, §102(a)(2), substituted "paragraph (7) or (10) of subsection (f)" for "subsection (f)(7)".

Subsec. (e)(3)(C), (D). Pub. L. 97–424, §541(a)(1), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (e)(4)(D). Pub. L. 97–448, §102(a)(9)(A), inserted provision that, in the case of the acquisition of property by any partnership which results from the termination of another partnership under section 708(b)(1)(B), the determination of whether the acquiring partnership is related to the other partnership shall be made immediately before the event resulting in such termination occurs.

Subsec. (e)(4)(H), (I). Pub. L. 97–448, §102(a)(9)(B), added subpars. (H) and (I).

Subsec. (f)(4)(B). Pub. L. 97–448, §102(f)(4), substituted "Election made on return" for "Made on return" as the subpar. (B) heading, designated existing provisions as cl. (i), added heading for cl. (i), substituted "Except as provided in clause (ii), any election" for "Any election", in cl. (i) as so designated, and added cl. (ii).

Subsec. (f)(5). Pub. L. 97–448, §102(a)(1), inserted provision that, in the case of 15-year real property, the first sentence of this paragraph shall not apply to the taxable year in which the property is placed in service or disposed of.

Subsec. (f)(8)(D). Pub. L. 97–448, §102(a)(10)(A), amended subpar. (D), as in effect before the amendments made by the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97–248], by inserting at end thereof the following new sentence: "Under regulations prescribed by the Secretary, public utility property shall not be treated as qualified leased property unless the requirements of rules similar to the rules of subsection (e)(3) of this section and section 46(f) are met with respect to such property." See 1982 Amendment note below for subsec. (f)(8)(D).

Subsec. (f)(13). Pub. L. 97–448, §102(a)(3), added par. (13).

Subsec. (g)(8)(A). Pub. L. 97–448, §102(a)(4)(B), substituted "Qualified coal utilization property" for "In general" in heading.

Subsec. (g)(8)(B). Pub. L. 97–448, §102(a)(4)(C), substituted "Coal utilization property" for "In general" in heading.

Subsec. (h)(4). Pub. L. 97–448, §102(a)(4)(A), substituted "coal utilization property which would otherwise be 15-year public utility property" for "coal utilization property which is not 3-year property, 5-year property, or 10-year property (determined without regard to this paragraph)".

1982—Subsec. (b)(1). Pub. L. 97–248, §206(a), substituted "table" for "tables" in introductory provisions, struck out designation "(A)" preceding the table and struck out subpar. (A) heading which had limited the application of the table to property placed in service after Dec. 31, 1980, and before Jan. 1, 1985, and struck out subpars. (B) and (C), which had provided tables, respectively, for property placed in service in 1985 and for property placed in service after Dec. 31, 1985.

Subsec. (e)(4). Pub. L. 97–248, §§206(b), 224(c)(1), substituted "1981" for "1986" in heading, in subpar. (E) inserted provision that a similar rule shall apply in the case of a deemed liquidation under section 338, and struck out former subpar. (H) which had provided for special rules for property placed in service before certain percentages took effect.

Subsec. (f)(8). Pub. L. 97–248, §209(a), amended par. (8) generally, substituting provisions relating to special rules for finance leases for provisions relating to special rule for leases.

Subsec. (f)(8)(A). Pub. L. 97–248, §208(a)(2)(A), inserted "except as provided in subsection (i)," before "for purposes of this subtitle".

Subsec. (f)(8)(B)(i)(I). Pub. L. 97–354, §5(a)(19), substituted "an S corporation" for "an electing small business corporation (within the meaning of section 1371(b))" in subsec. (f)(8)(B)(i)(I) as in effect before the enactment of the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97–248].

Pub. L. 97–248, §208(b)(1), inserted "which is not a related person with respect to the lessee".

Subsec. (f)(8)(B)(iii). Pub. L. 97–248, §208(b)(2), in subcl. (I) substituted "120 percent of the present class life of the property, or" for "90 percent of the useful life of such property for purposes of section 167, or", and in subcl. II substituted "the period equal to the recovery period determined with respect to such property under subsection (i)(2)" for "150 percent of the present class life of such property".

Subsec. (f)(8)(C)(i). Pub. L. 97–354, §5(a)(20), in par. (8) as amended by section 209(a) of Pub. L. 97–248, substituted "an S corporation" for "an electing small business corporation within the meaning of section 1371(b)".

Subsec. (f)(8)(D). Pub. L. 97–248, §208(b)(3), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows:

"(D) QUALIFIED LEASED PROPERTY DEFINED.—For purposes of subparagraph (A), the term 'qualified leased property' means recovery property (other than a qualified rehabilitated building within the meaning of section 48(g)(1)) which is—

"(i) new section 38 property (as defined in section 48(b)) of the lessor which is leased within 3 months after such property was placed in service and which, if acquired by the lessee, would have been new section 38 property of the lessee,

"(ii) property—

"(I) which was new section 38 property of the lessee,

"(II) which was leased within 3 months after such property was placed in service by the lessee, and

"(III) with respect to which the adjusted basis of the lessor does not exceed the adjusted basis of the lessee at the time of the lease, or

"(iii) property which is a qualified mass commuting vehicle (as defined in section 103(b)(9)) and which is financed in whole or in part by obligations the interest on which is excludable from income under section 103(a).

For purposes of this title (other than this subparagraph), any property described in clause (i) or (ii) to which subparagraph (A) applies shall be deemed originally placed in service not earlier than the date such property is used under the lease. In the case of property placed in service after December 31, 1980, and before the date of the enactment of this subparagraph, this subparagraph shall be applied by submitting 'the date of the enactment of this subparagraph' for 'such property was placed in service'." See 1983 Amendment note above for subsec. (f)(8)(D).

Subsec. (f)(8)(H) to (K). Pub. L. 97–248, §208(b)(4), added subpars. (H) to (J) and redesignated former subpar. (H) as (K).

Subsec. (f)(10)(B)(i). Pub. L. 97–248, §224(c)(2), struck out "(other than a transaction with respect to which the basis is determined under section 334(b)(2))" after "section 332".

Subsec. (f)(12). Pub. L. 97–248, §216(a), added par. (12).

Subsec. (i). Pub. L. 97–248, §209(b), amended subsec. (i) generally, substituting provisions concerning limitations relating to leases of finance lease property for provisions concerning limitations relating to lease of qualified leased property.

Pub. L. 97–248, §208(a)(1), added subsec. (i). Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 97–248, §208(a)(1), redesignated former subsec. (i) as (j).

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title III, §311(b), Jan. 2, 2013, 126 Stat. 2330, provided that: "The amendments made by this section [amending this section] shall apply to property placed in service after December 31, 2011."

Pub. L. 112–240, title III, §312(b), Jan. 2, 2013, 126 Stat. 2330, provided that: "The amendment made by this section [amending this section] shall apply to property placed in service after December 31, 2011."

Pub. L. 112–240, title III, §313(b), Jan. 2, 2013, 126 Stat. 2330, provided that: "The amendment made by this section [amending this section] shall apply to property placed in service after December 31, 2011."

Pub. L. 112–240, title III, §331(f), Jan. 2, 2013, 126 Stat. 2337, provided that: "The amendments made by this section [amending this section and sections 460, 1400L, and 1400N of this title] shall apply to property placed in service after December 31, 2012, in taxable years ending after such date."

Pub. L. 112–240, title IV, §410(a)(2), Jan. 2, 2013, 126 Stat. 2342, provided that: "The amendment made by this subsection [amending this section] shall apply to property placed in service after December 31, 2012."

Pub. L. 112–240, title IV, §410(b)(3), Jan. 2, 2013, 126 Stat. 2343, provided that: "The amendments made by this subsection [amending this section] shall apply to property placed in service after the date of the enactment of this Act [Jan. 2, 2013]."

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title IV, §401(e), Dec. 17, 2010, 124 Stat. 3306, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 1400L and 1400N of this title] shall apply to property placed in service after December 31, 2010, in taxable years ending after such date.

"(2) TEMPORARY 100 PERCENT EXPENSING.—The amendment made by subsection (b) [amending this section] shall apply to property placed in service after September 8, 2010, in taxable years ending after such date."

Pub. L. 111–312, title VII, §737(c), Dec. 17, 2010, 124 Stat. 3318, provided that: "The amendments made

by this section [amending this section and section 179 of this title] shall apply to property placed in service after December 31, 2009."

Pub. L. 111–312, title VII, §738(b), Dec. 17, 2010, 124 Stat. 3318, provided that: "The amendment made by this section [amending this section] shall apply to property placed in service after December 31, 2009."

Pub. L. 111–312, title VII, §739(b), Dec. 17, 2010, 124 Stat. 3319, provided that: "The amendment made by this section [amending this section] shall apply to property placed in service after December 31, 2009."

Pub. L. 111–240, title II, §2022(c), Sept. 27, 2010, 124 Stat. 2559, provided that: "The amendments made by this section [amending this section and sections 1400L and 1400N of this title] shall apply to property placed in service after December 31, 2009, in taxable years ending after such date."

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, §1201(c), Feb. 17, 2009, 123 Stat. 334, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 1400N and 6211 of this title] shall apply to property placed in service after December 31, 2008, in taxable years ending after such date.

"(2) TECHNICAL AMENDMENTS.—The amendments made by subsections (a)(3) [amending this section and section 6211 of this title] and (b)(2) [amending section 6211 of this title] shall apply to taxable years ending after March 31, 2008."

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title II, §201(c), Oct. 3, 2008, 122 Stat. 3832, provided that: "The amendments made by this section [amending this section] shall apply to property placed in service after the date of the enactment of this Act [Oct. 3, 2008], in taxable years ending after such date."

Pub. L. 110–343, div. B, title III, §306(d), Oct. 3, 2008, 122 Stat. 3849, provided that: "The amendments made by this section [amending this section] shall apply to property placed in service after the date of the enactment of this Act [Oct. 3, 2008]."

Pub. L. 110–343, div. B, title III, §308(b), Oct. 3, 2008, 122 Stat. 3851, provided that: "The amendment made by this section [amending this section] shall apply to property placed in service after August 31, 2008."

Pub. L. 110–343, div. C, title III, §305(a)(2), Oct. 3, 2008, 122 Stat. 3867, provided that: "The amendments made by this subsection [amending this section] shall apply to property placed in service after December 31, 2007."

Pub. L. 110–343, div. C, title III, §305(b)(2), Oct. 3, 2008, 122 Stat. 3867, provided that: "The amendment made by this subsection [amending this section] shall apply to property placed in service after December 31, 2008."

Pub. L. 110–343, div. C, title III, §305(c)(5), Oct. 3, 2008, 122 Stat. 3868, provided that: "The amendments made by this subsection [amending this section] shall apply to property placed in service after December 31, 2008."

Pub. L. 110–343, div. C, title III, §315(b), Oct. 3, 2008, 122 Stat. 3872, provided that: "The amendment made by this section [amending this section] shall apply to property placed in service after December 31, 2007."

Pub. L. 110–343, div. C, title III, §317(b), Oct. 3, 2008, 122 Stat. 3873, provided that: "The amendment made by this section [amending this section] shall apply to property placed in service after December 31, 2007."

Pub. L. 110–343, div. C, title V, §505(c), Oct. 3, 2008, 122 Stat. 3880, provided that: "The amendments made by this section [amending this section] shall apply to property placed in service after December 31, 2008."

Pub. L. 110–343, div. C, title VII, §710(b), Oct. 3, 2008, 122 Stat. 3928, provided that: "The amendment made by this section [amending this section] shall apply to property placed in service after December 31, 2007, with respect [to] disasters declared after such date."

Pub. L. 110–289, div. C, title III, §3081(d), July 30, 2008, 122 Stat. 2907, provided that: "The amendments made by this section [amending this section and section 1324 of Title 31, Money and Finance] shall apply to taxable years ending after March 31, 2008."

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Pub. L. 110–234, title XV, §15344(b), May 22, 2008, 122 Stat. 1520, and Pub. L. 110–246, §4(a), title XV, §15344(b), June 18, 2008, 122 Stat. 1664, 2282, provided that: "The amendment made by this section [amending this section] shall apply to property placed in service after December 31, 2008."

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by

section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.]

Pub. L. 110–185, title I, §103(d), Feb. 13, 2008, 122 Stat. 619, provided that: "The amendments made by this section [amending this section and sections 1400L and 1400N of this title] shall apply to property placed in service after December 31, 2007, in taxable years ending after such date."

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–172, §11(b)(3), Dec. 29, 2007, 121 Stat. 2488, provided that: "The amendments made by this subsection [amending this section and section 6724 of this title] shall take effect as if included in the provision of the Tax Relief and Health Care Act of 2006 [Pub. L. 109–432] to which they relate."

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title I, §112(b), Dec. 20, 2006, 120 Stat. 2940, provided that: "The amendment made by this section [amending this section] shall apply to property placed in service after December 31, 2005."

Pub. L. 109–432, div. A, title I, §113(b), Dec. 20, 2006, 120 Stat. 2940, provided that: "The amendments made by subsection (a) [amending this section] shall apply to property placed in service after December 31, 2005."

Pub. L. 109–432, div. A, title II, §209(b), Dec. 20, 2006, 120 Stat. 2947, provided that: "The amendment made by this section [amending this section] shall apply to property placed in service after the date of the enactment of this Act [Dec. 20, 2006] in taxable years ending after such date."

EFFECTIVE DATE OF 2005 AMENDMENTS

Amendment by section 403(j) of Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

Pub. L. 109–135, title IV, §405(b), Dec. 21, 2005, 119 Stat. 2634, provided that: "The amendments made by this section [amending this section and section 1400L of this title] shall take effect as if included in section 201 of the Jobs and Growth Tax Relief and Reconciliation Act of 2003 [probably means the Jobs and Growth Tax Relief Reconciliation Act of 2003, Pub. L. 108–27]."

Pub. L. 109–135, title IV, §410(b), Dec. 21, 2005, 119 Stat. 2636, provided that: "The amendment made by this section [amending this section] shall take effect as if included in section 11813 of the Omnibus Budget Reconciliation Act of 1990 [Pub. L. 101–508]."

Amendment by section 1301(f)(5) of Pub. L. 109–58 effective as if included in the amendments made by section 710 of the American Jobs Creation Act of 2004, Pub. L. 108–357, see section 1301(g) of Pub. L. 109–58, set out as a note under section 45 of this title.

Pub. L. 109–58, title XIII, §1308(c), Aug. 8, 2005, 119 Stat. 1006, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to property placed in service after April 11, 2005.

"(2) EXCEPTION.—The amendments made by this section [amending this section] shall not apply to any property with respect to which the taxpayer or a related party has entered into a binding contract for the construction thereof on or before April 11, 2005, or, in the case of self-constructed property, has started construction on or before such date."

Pub. L. 109–58, title XIII, §1325(c), Aug. 8, 2005, 119 Stat. 1016, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to property placed in service after April 11, 2005.

"(2) EXCEPTION.—The amendments made by this section [amending this section] shall not apply to any property with respect to which the taxpayer or a related party has entered into a binding contract for the construction thereof on or before April 11, 2005, or, in the case of self-constructed property, has started construction on or before such date."

Amendment by section 1326(a)–(c) of Pub. L. 109–58 applicable to property placed in service after Apr. 11, 2005, with exception for property with respect to which the taxpayer or a related party has entered into a binding contract for the construction thereof on or before Apr. 11, 2005, or, in the case of self-constructed property, has started construction on or before such date, see section 1326(e) of Pub. L. 109–58, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2004 AMENDMENTS

Pub. L. 108–357, title II, §211(f), Oct. 22, 2004, 118 Stat. 1430, provided that: "The amendments made by this section [amending this section] shall apply to property placed in service after the date of the enactment of this Act [Oct. 22, 2004]."

Pub. L. 108–357, title III, §336(c), Oct. 22, 2004, 118 Stat. 1480, provided that: "The amendments made by this section [amending this section] shall take effect as if included in the amendments made by section 101 of the Job Creation and Worker Assistance Act of 2002 [Pub. L. 107–147]."

Pub. L. 108–357, title III, §337(b), Oct. 22, 2004, 118 Stat. 1480, provided that: "The amendment made by this section [amending this section] shall apply to property sold after June 4, 2004."

Pub. L. 108–357, title VII, §704(c), Oct. 22, 2004, 118 Stat. 1548, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to any property placed in service after the date of the enactment of this Act [Oct. 22, 2004].

"(2) SPECIAL RULE FOR ASSET CLASS 80.0.—In the case of race track facilities placed in service after the date of the enactment of this Act, such facilities shall not be treated as theme and amusement facilities classified under asset class 80.0.

"(3) NO INFERENCE.—Nothing in this section or the amendments made by this section shall be construed to affect the treatment of property placed in service on or before the date of the enactment of this Act."

Pub. L. 108–357, title VII, §706(d), Oct. 22, 2004, 118 Stat. 1550, provided that: "The amendments made by this section [amending this section] shall apply to property placed in service after December 31, 2004."

Amendment by section 847(a), (c), (d) of Pub. L. 108–357 applicable to leases entered into after Mar. 12, 2004, and amendment by section 847(e) of Pub. L. 108–357 applicable to leases entered into after Oct. 3, 2004, except that such amendments inapplicable to qualified transportation property, see section 849 of Pub. L. 108–357, set out as an Effective Date note under section 470 of this title.

Pub. L. 108–357, title VIII, §901(d), Oct. 22, 2004, 118 Stat. 1651, provided that: "The amendments made by this section [amending this section] shall apply to property placed in service after the date of the enactment of this Act [Oct. 22, 2004]."

Amendment by section 403(a) of Pub. L. 108–311 effective as if included in the provisions of the Job Creation and Worker Assistance Act of 2002, Pub. L. 107–147, to which such amendment relates, see section 403(f) of Pub. L. 108–311, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–27, title II, §201(d), May 28, 2003, 117 Stat. 757, provided that: "The amendments made by this section [amending this section and section 1400L of this title] shall apply to taxable years ending after May 5, 2003."

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title I, §101(b), Mar. 9, 2002, 116 Stat. 25, provided that: "The amendments made by this section [amending this section] shall apply to property placed in service after September 10, 2001, in taxable years ending after such date."

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 1086(b) of Pub. L. 105–34 applicable to property placed in service after Aug. 5, 1997, see section 1086(c) of Pub. L. 105–34, set out as a note under section 167 of this title.

Amendment by section 1213(c) of Pub. L. 105–34 applicable to leases entered into after Aug. 5, 1997, see section 1213(e) of Pub. L. 105–34, set out as an Effective Date note under section 110 of this title.

Pub. L. 105–34, title XVI, §1604(c)(2), Aug. 5, 1997, 111 Stat. 1098, provided that: "The amendment made by paragraph (1) [amending this section] shall apply as if included in the amendments made by section 13321 of the Omnibus Budget Reconciliation Act of 1993 [Pub. L. 103–66], except that such amendment shall not apply—

"(A) with respect to property (with an applicable recovery period under section 168(j) of the Internal Revenue Code of 1986 of 6 years or less) held by the taxpayer if the taxpayer claimed the benefits of section 168(j) of such Code with respect to such property on a return filed before March 18, 1997, but only if such return is the first return of tax filed for the taxable year in which such property was placed in service, or

"(B) with respect to wages for which the taxpayer claimed the benefits of section 45A of such Code for a taxable year on a return filed before March 18, 1997, but only if such return was the first return of tax filed for such taxable year."

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, §1120(c), Aug. 20, 1996, 110 Stat. 1765, provided that: "The amendments made by this section [amending this section] shall apply to property which is placed in service on or after the date of the enactment of this Act [Aug. 20, 1996] and to which section 168 of the Internal Revenue Code of 1986 applies after the amendment made by section 201 of the Tax Reform Act of 1986 [Pub. L. 99–514]. A taxpayer may elect (in such form and manner as the Secretary of the Treasury may prescribe) to have such amendments apply with respect to any property placed in service before such date and to which such section so applies."

Pub. L. 104–188, title I, §1121(b), Aug. 20, 1996, 110 Stat. 1766, provided that: "Subparagraph (B) of section 168(i)(8) of the Internal Revenue Code of 1986, as added by the amendment made by subsection (a), shall apply to improvements disposed of or abandoned after June 12, 1996."

Pub. L. 104–188, title I, §1613(b)(5), Aug. 20, 1996, 110 Stat. 1850, provided that: "The amendments made by this subsection [amending this section] shall apply to property placed in service after June 12, 1996, other than property placed in service pursuant to a binding contract in effect before June 10, 1996, and at all times thereafter before the property is placed in service."

Amendment by section 1702(h)(1) of Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1995 AMENDMENT

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

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13151(b), Aug. 10, 1993, 107 Stat. 448, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to property placed in service by the taxpayer on or after May 13, 1993.

"(2) EXCEPTION.—The amendments made by this section [amending this section] shall not apply to property placed in service by the taxpayer before January 1, 1994, if—

"(A) the taxpayer or a qualified person entered into a binding written contract to purchase or construct such property before May 13, 1993, or

"(B) the construction of such property was commenced by or for the taxpayer or a qualified person before May 13, 1993.

For purposes of this paragraph, the term 'qualified person' means any person who transfers his rights in such a contract or such property to the taxpayer but only if the property is not placed in service by such person before such rights are transferred to the taxpayer."

Pub. L. 103–66, title XIII, §13321(b), Aug. 10, 1993, 107 Stat. 559, provided that: "The amendment made by this section [amending this section] shall apply to property placed in service after December 31, 1993."

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11812(b)(2) of Pub. L. 101–508 applicable to property placed in service after Nov. 5, 1990, but not applicable to any property to which section 168 of this title does not apply by reason of subsec. (f)(5) of section 168, and not applicable to rehabilitation expenditures described in section 252(f)(5) of Pub. L. 99–514, see section 11812(c) of Pub. L. 101–508, set out as a note under section 42 of this title.

Amendment by section 11813(b)(9) of Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1002(a)(23)(B), Nov. 10, 1988, 102 Stat. 3356, provided that: "Clause (ii) of section 168(d)(3)(B) of the 1986 Code (as added by subparagraph (A)) shall apply to taxable years beginning after March 31, 1988, unless the taxpayer elects, at such time and in such manner as the Secretary of the

Treasury or his delegate may prescribe, to have such clause apply to taxable years beginning on or before such date."

Amendment by sections 1002(a)(5)–(8), (11), (16)(B), (21), (i)(2)(A)–(G), and 1018(b)(2) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title VI, §6027(c), Nov. 10, 1988, 102 Stat. 3693, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to property placed in service after December 31, 1988.

"(2) EXCEPTION.—The amendments made by this section shall not apply to any property if such property is placed in service before January 1, 1990, and if such property—

"(A) is constructed, reconstructed, or acquired by the taxpayer pursuant to a written contract which was binding on July 14, 1988, or

"(B) is constructed or reconstructed by the taxpayer and such construction or reconstruction began by July 14, 1988."

Pub. L. 100–647, title VI, §6028(b), Nov. 10, 1988, 102 Stat. 3694, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to property placed in service after December 31, 1988.

"(2) EXCEPTION.—The amendments made by this section shall not apply to any property if such property is placed in service before July 1, 1989, and if such property—

"(A) is constructed, reconstructed, or acquired by the taxpayer pursuant to a written contract which was binding on July 14, 1988, or

"(B) is constructed or reconstructed by the taxpayer and such construction or reconstruction began by July 14, 1988."

Pub. L. 100–647, title VI, §6029(d), Nov. 10, 1988, 102 Stat. 3694, provided that: "The amendments made by this section [amending this section] shall apply to property placed in service after December 31, 1988."

EFFECTIVE DATE OF 1986 AMENDMENT; TRANSITIONAL RULES

Pub. L. 99–514, title II, §§203, 204, Oct. 22, 1986, 100 Stat. 2143, 2146, as amended by Pub. L. 99–509, title VIII, §8071, Oct. 21, 1986, 100 Stat. 1964; Pub. L. 100–647, title I, §1002(c)(1), (2), (4)–(8), (d)(1)–(7)(A), (8)–(35), Nov. 10, 1988, 102 Stat. 3358–3367, provided that:

"SEC. 203. EFFECTIVE DATES; GENERAL TRANSITIONAL RULES.

"(a) GENERAL EFFECTIVE DATES.—

"(1) SECTION 201.—

"(A) IN GENERAL.—Except as provided in this section, section 204, and section 251(d) [set out as a note under section 46 of this title], the amendments made by section 201 [amending sections 46, 167, 168, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] shall apply to property placed in service after December 31, 1986, in taxable years ending after such date.

"(B) ELECTION TO HAVE AMENDMENTS MADE BY SECTION 201 APPLY.—A taxpayer may elect (at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe) to have the amendments made by section 201 apply to any property placed in service after July 31, 1986, and before January 1, 1987. No election may be made under this subparagraph with respect to property to which section 168 of the Internal Revenue Code of 1986 would not apply by reason of section 168(f)(5) of such Code if such property were placed in service after December 31, 1986.

"(2) SECTION 202.—

"(A) IN GENERAL.—The amendments made by section 202 [amending section 179 of this title] shall apply to property placed in service after December 31, 1986, in taxable years ending after such date.

"(B) SPECIAL RULE FOR FISCAL YEARS INCLUDING JANUARY 1, 1987.—In the case of any taxable year (other than a calendar year) which includes January 1, 1987, for purposes of applying the amendments made by section 202 to property placed in service during such taxable year and after December 31, 1986—

"(i) the limitation of section 179(b)(1) of the Internal Revenue Code of 1986 (as amended by section 202) shall be reduced by the aggregate deduction under section 179 (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986 [Oct. 22, 1986]) for section 179 property placed in service during such taxable year and before January 1, 1987,

"(ii) the limitation of section 179(b)(2) of such Code (as so amended) shall be applied by taking into account the cost of all section 179 property placed in service during such taxable year, and

"(iii) the limitation of section 179(b)(3) of such Code shall be applied by taking into account

the taxable income for the entire taxable year reduced by the amount of any deduction under section 179 of such Code for property placed in service during such taxable year and before January 1, 1987.

"(b) GENERAL TRANSITIONAL RULE.—

"(1) IN GENERAL.—The amendments made by section 201 [amending this section and sections 46, 167, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] shall not apply to—

"(A) any property which is constructed, reconstructed, or acquired by the taxpayer pursuant to a written contract which was binding on March 1, 1986,

"(B) property which is constructed or reconstructed by the taxpayer if—

"(i) the lesser of (I) $1,000,000, or (II) 5 percent of the cost of such property has been incurred or committed by March 1, 1986, and

"(ii) the construction or reconstruction of such property began by such date, or

"(C) an equipped building or plant facility if construction has commenced as of March 1, 1986, pursuant to a written specific plan and more than one-half of the cost of such equipped building or facility has been incurred or committed by such date.

For purposes of this paragraph, all members of the same affiliated group of corporations (within the meaning of section 1504 of the Internal Revenue Code of 1986) filing a consolidated return shall be treated as one taxpayer.

"(2) REQUIREMENT THAT CERTAIN PROPERTY BE PLACED IN SERVICE BEFORE CERTAIN DATE.—

"(A) IN GENERAL.—Paragraph (1) and section 204(a) (other than paragraph (8) or (12) thereof) shall not apply to any property unless such property has a class life of at least 7 years and is placed in service before the applicable date determined under the following table:

"In the case of property with a class life of:	**The applicable date is:**
At least 7 but less than 20 years	January 1, 1989
20 years or more	January 1, 1991.

"(B) RESIDENTIAL RENTAL AND NONRESIDENTIAL REAL PROPERTY.—In the case of residential rental property and nonresidential real property, the applicable date is January 1, 1991.

"(C) CLASS LIVES.—For purposes of subparagraph (A)—

"(i) the class life of property to which section 168(g)(3)(B) of the Internal Revenue Code of 1986 (as added by section 201) applies shall be the class life in effect on January 1, 1986, except that computer-based telephone central office switching equipment described in section 168(e)(3)(B)(iii) of such Code shall be treated as having a class life of 6 years,

"(ii) property described in section 204(a) shall be treated as having a class life of 20 years, and

"(iii) property with no class life shall be treated as having a class life of 12 years.

"(D) SUBSTITUTION OF APPLICABLE DATES.—If any provision of this Act [see Tables for classification] substitutes a date for an applicable date, this paragraph shall be applied by using such date.

"(3) PROPERTY QUALIFIES IF SOLD AND LEASED BACK IN 3 MONTHS.—Property shall be treated as meeting the requirements of paragraphs (1) and (2) or section 204(a) with respect to any taxpayer if such property is acquired by the taxpayer from a person—

"(A) in whose hands such property met the requirements of paragraphs (1) and (2) or section 204(a) (or would have met such requirements if placed in service by such person), or

"(B) who placed the property in service before January 1, 1987,

and such property is leased back by the taxpayer to such person, or is leased to such person, not later than the earlier of the applicable date under paragraph (2) or the day which is 3 months after such property was placed in service.

"(4) PLANT FACILITY.—For purposes of paragraph (1), the term 'plant facility' means a facility which does not include any building (or with respect to which buildings constitute an insignificant portion) and which is—

"(A) a self-contained single operating unit or processing operation,

"(B) located on a single site, and

"(C) identified as a single unitary project as of March 1, 1986.

"(c) PROPERTY FINANCED WITH TAX-EXEMPT BONDS.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection or section 204, subparagraph (C) of section 168(g)(1) of the Internal Revenue Code of 1986 (as added by this Act) shall apply to property placed in service after December 31, 1986, in taxable years ending after such date, to the extent such property is financed by the proceeds of an obligation (including a refunding obligation) issued after March 1, 1986.

"(2) EXCEPTIONS.—

"(A) CONSTRUCTION OR BINDING AGREEMENTS.—Subparagraph (C) of section 168(g)(1) of such Code (as so added) shall not apply to obligations with respect to a facility—

"(i)(I) the original use of which commences with the taxpayer, and the construction, reconstruction, or rehabilitation of which began before March 2, 1986, and was completed on or after such date,

"(II) with respect to which a binding contract to incur significant expenditures for construction, reconstruction, or rehabilitation was entered into before March 2, 1986, and some of such expenditures are incurred on or after such date, or

"(III) acquired on or after March 2, 1986, pursuant to a binding contract entered into before such date, and

"(ii) described in an inducement resolution or other comparable preliminary approval adopted by the issuing authority (or by a voter referendum) before March 2, 1986.

"(B) REFUNDING.—

"(i) IN GENERAL.—Except as provided in clause (ii), in the case of property placed in service after December 31, 1986, which is financed by the proceeds of an obligation which is issued solely to refund another obligation which was issued before March 2, 1986, subparagraph (C) of section 168(g)(1) of such Code (as so added) shall apply only with respect to an amount equal to the basis in such property which has not been recovered before the date such refunded obligation is issued.

"(ii) SIGNIFICANT EXPENDITURES.—In the case of facilities the original use of which commences with the taxpayer and with respect to which significant expenditures are made before January 1, 1987, subparagraph (C) of section 168(g)(1) of such Code (as so added) shall not apply with respect to such facilities to the extent such facilities are financed by the proceeds of an obligation issued solely to refund another obligation which was issued before March 2, 1986.

"(C) FACILITIES.—In the case of an inducement resolution or other comparable preliminary approval adopted by an issuing authority before March 2, 1986, for purposes of subparagraphs (A) and (B)(ii) with respect to obligations described in such resolution, the term 'facilities' means the facilities described in such resolution.

"(D) SIGNIFICANT EXPENDITURES.—For purposes of this paragraph, the term 'significant expenditures' means expenditures greater than 10 percent of the reasonably anticipated cost of the construction, reconstruction, or rehabilitation of the facility involved.

"(d) MID-QUARTER CONVENTION.—In the case of any taxable year beginning before October 1, 1987 in which property to which the amendments made by section 201 [amending this section and sections 46, 167, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] do not apply is placed in service, such property shall be taken into account in determining whether section 168(d)(3) of the Internal Revenue Code of 1986 (as added by section 201) applies for such taxable year to property to which such amendments apply. The preceding sentence shall only apply to property which would be taken into account if such amendments did apply.

"(e) NORMALIZATION REQUIREMENTS.—

"(1) IN GENERAL.—A normalization method of accounting shall not be treated as being used with respect to any public utility property for purposes of section 167 or 168 of the Internal Revenue Code of 1986 if the taxpayer, in computing its cost of service for ratemaking purposes and reflecting operating results in its regulated books of account, reduces the excess tax reserve more rapidly or to a greater extent than such reserve would be reduced under the average rate assumption method.

"(2) DEFINITIONS.—For purposes of this subsection—

"(A) EXCESS TAX RESERVE.—The term 'excess tax reserve' means the excess of—

"(i) the reserve for deferred taxes (as described in section 167(l)(3)(G)(ii) or 168(e)(3)(B)(ii) of the Internal Revenue Code of 1954 as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]), over

"(ii) the amount which would be the balance in such reserve if the amount of such reserve

were determined by assuming that the corporate rate reductions provided in this Act [see Tables for classification] were in effect for all prior periods.

"(B) AVERAGE RATE ASSUMPTION METHOD.—The average rate assumption method is the method under which the excess in the reserve for deferred taxes is reduced over the remaining lives of the property as used in its regulated books of account which gave rise to the reserve for deferred taxes. Under such method, if timing differences for the property reverse, the amount of the adjustment to the reserve for the deferred taxes is calculated by multiplying—

"(i) the ratio of the aggregate deferred taxes for the property to the aggregate timing differences for the property as of the beginning of the period in question, by

"(ii) the amount of the timing differences which reverse during such period.

"SEC. 204. ADDITIONAL TRANSITIONAL RULES.

"(a) OTHER TRANSITIONAL RULES.—

"(1) URBAN RENOVATION PROJECTS.—

"(A) IN GENERAL.—The amendments made by section 201 [amending this section and sections 46, 167, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] shall not apply to any property which is an integral part of any qualified urban renovation project.

"(B) QUALIFIED URBAN RENOVATION PROJECT.—For purposes of subparagraph (A), the term 'qualified urban renovation project' means any project—

"(i) described in subparagraph (C), (D), (E), or (G) which before March 1, 1986, was publicly announced by a political subdivision of a State for a renovation of an urban area within its jurisdiction,

"(ii) described in subparagraph (C), (D) or (G) which before March 1, 1986, was identified as a single unitary project in the internal financing plans of the primary developer of the project,

"(iii) described in subparagraph (C) or (D), which is not substantially modified on or after March 1, 1986, and

"(iv) described in subparagraph (F) or (H).

"(C) PROJECT WHERE AGREEMENT ON DECEMBER 19, 1984.—A project is described in this subparagraph if—

"(i) a political subdivision granted on July 11, 1985, development rights to the primary developer-purchaser of such project, and

"(ii) such project was the subject of a development agreement between a political subdivision and a bridge authority on December 19, 1984.

For purposes of this subparagraph, section 203(b)(2) shall be applied by substituting 'January 1, 1994' for 'January 1, 1991' each place it appears.

"(D) CERTAIN ADDITIONAL PROJECTS.—A project is described in this subparagraph if it is described in any of the following clauses of this subparagraph and the primary developer of all such projects is the same person:

"(i) A project is described in this clause if the development agreement with respect thereto was entered into during April 1984 and the estimated cost of the project is approximately $194,000,000.

"(ii) A project is described in this clause if the development agreement with respect thereto was entered into during May 1984 and the estimated cost of the project is approximately $190,000,000.

"(iii) A project is described in this clause if the project has an estimated cost of approximately $92,000,000 and at least $7,000,000 was spent before September 26, 1985, with respect to such project.

"(iv) A project is described in this clause if the estimated project cost is approximately $39,000,000 and at least $2,000,000 of construction cost for such project were incurred before September 26, 1985.

"(v) A project is described in this clause if the development agreement with respect thereto was entered into before September 26, 1985, and the estimated cost of the project is approximately $150,000,000.

"(vi) A project is described in this clause if the board of directors of the primary developer approved such project in December 1982, and the estimated cost of such project is approximately $107,000,000.

"(vii) A project is described in this clause if the board of directors of the primary developer approved such project in December 1982, and the estimated cost of such project is approximately

$59,000,000.

"(viii) A project is described in this clause if the Board of Directors of the primary developer approved such project in December 1983, following selection of the developer by a city council on September 26, 1983, and the estimated cost of such project is approximately $107,000,000.

"(E) PROJECT WHERE PLAN CONFIRMED ON OCTOBER 4, 1984.—A project is described in this subparagraph if—

"(i) a State or an agency, instrumentality, or political subdivision thereof approved the filing of a general project plan on June 18, 1981, and on October 4, 1984, a State or an agency, instrumentality, or political subdivision thereof confirmed such plan,

"(ii) the project plan as confirmed on October 4, 1984, included construction or renovation of office buildings, a hotel, a trade mart, theaters, and a subway complex, and

"(iii) significant segments of such project were the subject of one or more conditional designations granted by a State or an agency, instrumentality, or political subdivision thereof to one or more developers before January 1, 1985.

The preceding sentence shall apply with respect to a property only to the extent that a building on such property site was identified as part of the project plan before September 26, 1985, and only to the extent that the size of the building on such property site was not substantially increased by reason of a modification to the project plan with respect to such property on or after such date. For purposes of this subparagraph, section 203(b)(2) shall be applied by substituting 'January 1, 1998' for 'January 1, 1991' each place it appears.

"(F) A project is described in this subparagraph if it is a sports and entertainment facility which—

"(i) is to be used by both a National Hockey League team and a National Basketball Association team;

"(ii) is to be constructed on a platform utilizing air rights over land acquired by a State authority and identified as site B in a report dated May 30, 1984, prepared for a State urban development corporation; and

"(iii) is eligible for real property tax, and power and energy benefits pursuant to the provisions of State legislation approved and effective July 7, 1982.

A project is also described in this subparagraph if it is a mixed-use development which is—

"(I) to be constructed above a public railroad station utilized by the national railroad passenger corporation and commuter railroads serving two States; and

"(II) will include the reconstruction of such station so as to make it a more efficient transportation center and to better integrate the station with the development above, such reconstruction plans to be prepared in cooperation with a State transportation authority.

For purposes of this subparagraph, section 203(b)(2) shall be applied by substituting 'January 1, 1998' for the applicable date that would otherwise apply.

"(G) A project is described in this subparagraph if—

"(i) an inducement resolution was passed on March 9, 1984, for the issuance of obligations with respect to such project,

"(ii) such resolution was extended by resolutions passed on August 14, 1984, April 2, 1985, August 13, 1985, and July 8, 1986,

"(iii) an application was submitted on January 31, 1984, for an Urban Development Action Grant with respect to such project, and

"(iv) an Urban Development Action Grant was preliminarily approved for all or part of such project on July 3, 1986.

"(H) A project is described in this subparagraph if it is a redevelopment project, with respect to which $10,000,000 in industrial revenue bonds were approved by a State Development Finance Authority on January 15, 1986, a village transferred approximately $4,000,000 of bond volume authority to the State in June 1986, and a binding Redevelopment Agreement was executed between a city and the development team on June 30, 1986.

"(2) CERTAIN PROJECTS GRANTED FERC LICENSES, ETC.—The amendments made by section 201 [amending this section and sections 46, 167, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] shall not apply to any property which is part of a project—

"(A) which is certified by the Federal Energy Regulatory Commission before March 2, 1986, as a qualifying facility for purposes of the Public Utility Regulatory Policies Act of 1978 [see Short Title note set out under 16 U.S.C. 2601],

"(B) which was granted before March 2, 1986, a hydroelectric license for such project by the

Federal Energy Regulatory Commission, or

"(C) which is a hydroelectric project of less than 80 megawatts that filed an application for a permit, exemption, or license with the Federal Energy Regulatory Commission before March 2, 1986.

"(3) SUPPLY OR SERVICE CONTRACTS.—The amendments made by section 201 shall not apply to any property which is readily identifiable with and necessary to carry out a written supply or service contract, or agreement to lease, which was binding on March 1, 1986.

"(4) PROPERTY TREATED UNDER PRIOR TAX ACTS.—The amendments made by section 201 shall not apply—

"(A) to property described in section 12(c)(2) (as amended by the Technical and Miscellaneous Revenue Act of 1988), 31(g)(5), or 31(g)(17)(J) of the Tax Reform Act of 1984 [sections 12(c)(2) and 31(g)(5), (17)(J) of Pub. L. 98–369, set out below],

"(B) to property described in section 209(d)(1)(B) of the Tax Equity and Fiscal Responsibility Act of 1982, as amended by the Tax Reform Act of 1984 [section 209(d)(1)(B) of Pub. L. 97–248, as amended, set out below], and

"(C) to property described in section 216(b)(3) of the Tax Equity and Fiscal Responsibility Act of 1982 [section 216(b)(3) of Pub. L. 97–248, set out below].

"(5) SPECIAL RULES FOR PROPERTY INCLUDED IN MASTER PLANS OF INTEGRATED PROJECTS.—The amendments made by section 201 shall not apply to any property placed in service pursuant to a master plan which is clearly identifiable as of March 1, 1986, for any project described in any of the following subparagraphs of this paragraph:

"(A) A project is described in this subparagraph if—

"(i) the project involves production platforms for offshore drilling, oil and gas pipeline to shore, process and storage facilities, and a marine terminal, and

"(ii) at least $900,000,000 of the costs of such project were incurred before September 26, 1985.

"(B) A project is described in this subparagraph if—

"(i) such project involves a fiber optic network of at least 20,000 miles, and

"(ii) before September 26, 1985, construction commenced pursuant to the master plan and at least $85,000,000 was spent on construction.

"(C) A project is described in this subparagraph if—

"(i) such project passes through at least 10 States and involves intercity communication links (including one or more repeater sites, terminals and junction stations for microwave transmissions, regenerators or fiber optics and other related equipment),

"(ii) the lesser of $150,000,000 or 5 percent of the total project cost has been expended, incurred, or committed before March 2, 1986, by one or more taxpayers each of which is a member of the same affiliated group (as defined in section 1504(a) [of the Internal Revenue Code of 1986]), and

"(iii) such project consists of a comprehensive plan for meeting network capacity requirements as encompassed within either:

"(I) a November 5, 1985, presentation made to and accepted by the Chairman of the Board and the president of the taxpayer, or

"(II) the approvals by the Board of Directors of the parent company of the taxpayer on May 3, 1985, and September 22, 1985, and of the executive committee of said board on December 23, 1985.

"(D) A project is described in this subparagraph if—

"(i) such project is part of a flat rolled product modernization plan which was initially presented to the Board of Directors of the taxpayer on July 8, 1983,

"(ii) such program will be carried out at 3 locations, and

"(iii) such project will involve a total estimated minimum capital cost of at least $250,000,000.

"(E) A project is described in this subparagraph if the project is being carried out by a corporation engaged in the production of paint, chemicals, fiberglass, and glass, and if—

"(i) the project includes a production line which applies a thin coating to glass in the manufacture of energy efficient residential products, if approved by the management committee of the corporation on January 29, 1986,

"(ii) the project is a turbogenerator which was approved by the president of such corporation and at least $1,000,000 of the cost of which was incurred or committed before such date,

"(iii) the project is a waste-to-energy disposal system which was initially approved by the management committee of the corporation on March 29, 1982, and at least $5,000,000 of the cost of which was incurred before September 26, 1985,

"(iv) the project, which involves the expansion of an existing service facility and the addition of new lab facilities needed to accommodate topcoat and undercoat production needs of a nearby automotive assembly plant, was approved by the corporation's management committee on March 5, 1986, or

"(v) the project is part of a facility to consolidate and modernize the silica production of such corporation and the project was approved by the president of such corporation on August 19, 1985.

"(F) A project is described in this subparagraph if—

"(i) such project involves a port terminal and oil pipeline extending generally from the area of Los Angeles, California, to the area of Midland, Texas, and

"(ii) before September 26, 1985, there is a binding contract for dredging and channeling with respect thereto and a management contract with a construction manager for such project.

"(G) A project is described in this subparagraph if—

"(i) the project is a newspaper printing and distribution plant project with respect to which a contract for the purchase of 8 printing press units and related equipment to be installed in a single press line was entered into on January 8, 1985, and

"(ii) the contract price for such units and equipment represents at least 50 percent of the total cost of such project.

"(H) A project is described in this subparagraph if it is the second phase of a project involving direct current transmission lines spanning approximately 190 miles from the United States-Canadian border to Ayer, Massachusetts, alternating current transmission lines in Massachusetts from Ayers to Millbury to West Medway, DC–AC converted terminals to Monroe, New Hampshire, and Ayer, Massachusetts, and other related equipment and facilities.

"(I) A project is described in this subparagraph if it involves not more than two natural gas-fired combined cycle electric generating units each having a net electrical capability of approximately 233 megawatts, and a sales contract for approximately one-half of the output of the 1st unit was entered into in December 1985.

"(J) A project is described in this subparagraph if—

"(i) the project involves an automobile manufacturing facility (including equipment and incidental appurtenances) to be located in the United States, and

"(ii) either—

"(I) the project was the subject of a memorandum of understanding between 2 automobile manufacturers that was signed before September 25, 1985, the automobile manufacturing facility (including equipment and incidental appurtenances) will involve a total estimated cost of approximately $750,000,000, and will have an annual production capacity of approximately 240,000 vehicles or

"(II) the Board of Directors of an automobile manufacturer approved a written plan for the conversion of existing facilities to produce new models of a vehicle not currently produced in the United States, such facilities will be placed in service by July 1, 1987, and such Board action occurred in July 1985 with respect to a $602,000,000 expenditure, a $438,000,000 expenditure, and a $321,000,000 expenditure.

"(K) A project is described in this subparagraph if—

"(i) the project involves a joint venture between a utility company and a paper company for a supercalendered paper mill, and at least $50,000,000 was incurred or committed with respect to such project before March 1, 1986, or

"(ii) the project involves a paper mill for the manufacture of newsprint (including a cogeneration facility) is generally based on a written design and feasibility study that was completed on December 15, 1981, and will be placed in service before January 1, 1991, or

"(iii) the project is undertaken by a Maine corporation and involves the modernization of pulp and paper mills in Millinocket and/or East Millinocket, Maine, or

"(iv) the project involves the installation of a paper machine for production of coated publication papers, the modernization of a pulp mill, and the installation of machinery and equipment with respect to related processes, as of December 31, 1985, in excess of $50,000,000 was incurred for the project, as of July 1986, in excess of $150,000,000 was incurred for the project, and the project is located in Pine Bluff, Arkansas, or

"(v) the project involves property of a type described in ADR classes 26.1, 26.2, 25, 00.3 and 00.4 included in a paper plant which will manufacture and distribute tissue, towel or napkin products; is located in Effingham County, Georgia; and is generally based upon a written General Description which was submitted to the Georgia Department of Revenue on or about June 13, 1985.

"(L) A project is described in this subparagraph if—

"(i) a letter of intent with respect to such project was executed on June 4, 1985, and

"(ii) a 5-percent downpayment was made in connection with such project for 2 10-unit press lines and related equipment.

"(M) A project is described in this subparagraph if—

"(i) the project involves the retrofit of ammonia plants,

"(ii) as of March 1, 1986, more than $390,000 had been expended for engineering and equipment, and

"(iii) more than $170,000 was expensed in 1985 as a portion of preliminary engineering expense.

"(N) A project is described in this subparagraph if the project involves bulkhead intermodal flat cars which are placed in service before January 1, 1987, and either—

"(i) more than $2,290,000 of expenditures were made before March 1, 1986, with respect to a project involving up to 300 platforms, or

"(ii) more than $95,000 of expenditures were made before March 1, 1986, with respect to a project involving up to 850 platforms.

"(O) A project is described in this subparagraph if—

"(i) the project involves the production and transportation of oil and gas from a well located north of the Arctic Circle, and

"(ii) more than $200,000,000 of cost had been incurred or committed before September 26, 1985.

"(P) A project is described in this subparagraph if—

"(i) a commitment letter was entered into with a financial institution on January 23, 1986, for the financing of the project,

"(ii) the project involves intercity communication links (including microwave and fiber optics communications systems and related property),

"(iii) the project consists of communications links between—

"(I) Omaha, Nebraska, and Council Bluffs, Iowa,

"(II) Waterloo, Iowa and Sioux City, Iowa,

"(III) Davenport, Iowa and Springfield, Illinois, and

"(iv) the estimated cost of such project is approximately $13,000,000.

"(Q) A project is described in this subparagraph if—

"(i) such project is a mining modernization project involving mining, transport, and milling operations,

"(ii) before September 26, 1985, at least $20,000,000 was expended for engineering studies which were approved by the Board of Directors of the taxpayer on January 27, 1983, and

"(iii) such project will involve a total estimated minimum cost of $350,000,000.

"(R) A project is described in this subparagraph if—

"(i) such project is a dragline acquired in connection with a 3-stage program which began in 1980 to increase production from a coal mine,

"(ii) at least $35,000,000 was spent before September 26, 1985, on the 1st 2 stages of the program, and

"(iii) at least $4,000,000 was spent to prepare the mine site for the dragline.

"(S) A project is described in this subparagraph if—it is a project consisting of a mineral processing facility using a heap leaching system (including waste dumps, low-grade dumps, a leaching area, and mine roads) and if—

"(i) convertible subordinated debentures were issued in August 1985, to finance the project,

"(ii) construction of the project was authorized by the Board of Directors of the taxpayer on or before December 31, 1985,

"(iii) at least $750,000 was paid or incurred with respect to the project on or before December 31, 1985, and

"(iv) the project is placed in service on or before December 31, 1986.

"(T) A project is described in this subparagraph if it is a plant facility on Alaska's North Slope which is placed in service before January 1, 1988, and—

"(i) the approximate cost of which is $675,000,000, of which approximately $400,000,000 was spent on off-site construction,

"(ii) the approximate cost of which is $445,000,000, of which approximately $400,000,000 was spent on off-site construction and more than 50 percent of the project cost was spent prior to December 31, 1985, or

"(iii) the approximate cost of which is $375,000,000, of which approximately $260,000,000 was spent on off-site construction.

"(U) A project is described in this subparagraph if it involves the connecting of existing retail stores in the downtown area of a city to a new covered area, the total project will be 250,000 square feet, a formal Memorandum of Understanding relating to development of the project was executed with the city on July 2, 1986, and the estimated cost of the project is $18,186,424.

"(V) A project is described in this subparagraph if it includes a 200,000 square foot office tower, a 200-room hotel, a 300,000 square foot retail center, an 800-space parking facility, the total cost is projected to be $60,000,000, and $1,250,000 was expended with respect to the site before August 25, 1986.

"(W) A project is described in this subparagraph if it is a joint use and development project including an integrated hotel, convention center, office, related retail facilities and public mass transportation terminal, and vehicle parking facilities which satisfies the following conditions:

"(i) is developed within certain air space rights and upon real property exchanged for such joint use and development project which is owned or acquired by a state department of transportation, a regional mass transit district in a county with a population of at least 5,000,000 and a community redevelopment agency;

"(ii) such project affects an existing, approximately 40 acre public mass transportation bus-way terminal facility located adjacent to an interstate highway;

"(iii) a memorandum of understanding with respect to such joint use and development project is executed by a state department of transportation, such a county regional mass transit district and a community redevelopment agency on or before December 31, 1986, and

"(iv) a major portion of such joint use and development project is placed in service by December 31, 1990.

"(X) A project is described in this subparagraph if—

"(i) it is an $8,000,000 project to provide advanced control technology for adipic acid at a plant, which was authorized by the company's Board of Directors in October 1985, at December 31, 1985, $1,400,000 was committed and $400,000 expended with respect to such project, or

"(ii) it is an $8,300,000 project to achieve compliance with State and Federal regulations for particulates emissions, which was authorized by the company's Board of Directors in December 1985, by March 31, 1986, $250,000 was committed and $250,000 was expended with respect to such project, or

"(iii) it is a $22,000,000 project for the retrofit of a plant that makes a raw material for aspartame, which was approved in the company's December 1985 capital budget, if approximately $3,000,000 of the $22,000,000 was spent before August 1, 1986.

"(Y) A project is described in this subparagraph if such project passes through at least 9 States and involves an intercity communication link (including multiple repeater sites and junction stations for microwave transmissions and amplifiers for fiber optics); the link from Buffalo to New York/Elizabeth was completed in 1984; the link from Buffalo to Chicago was completed in 1985; and the link from New York to Washington is completed in 1986.

"(Z) A project is described in this subparagraph if—

"(i) such project involves a fiber optic network of at least 475 miles, passing through Minnesota and Wisconsin; and

"(ii) before January 1, 1986, at least $15,000,000 was expended or committed for electronic equipment or fiber optic cable to be used in constructing the network.

"(6) NATURAL GAS PIPELINE.—The amendments made by section 201 [amending sections 46, 167, 168, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] shall not apply to any interstate natural gas pipeline (and related equipment) if—

"(A) 3 applications for the construction of such pipeline were filed with the Federal Energy Regulatory Commission before November 22, 1985 (and 2 of which were filed before September 26, 1985), and

"(B) such pipeline has 1 of its terminal points near Bakersfield, California.

"(7) CERTAIN LEASEHOLD IMPROVEMENTS.—The amendments made by section 201 shall not apply to any reasonable leasehold improvements, equipment and furnishings placed in service by a lessee or its affiliates if—

"(A) the lessee or an affiliate is the original lessee of each building in which such property is to be used,

"(B) such lessee is obligated to lease the building under an agreement to lease entered into before

September 26, 1985, and such property is provided for such building, and

"(C) such buildings are to serve as world headquarters of the lessee and its affiliates.

For purposes of this paragraph, a corporation is an affiliate of another corporation if both corporations are members of a controlled group of corporations within the meaning of section 1563(a) of the Internal Revenue Code of 1954 without regard to section 1563(b)(2) of such Code. Such lessee shall include a securities firm that meets the requirements of subparagraph (A), except the lessee is obligated to lease the building under a lease entered into on June 18, 1986.

"(8) SOLID WASTE DISPOSAL FACILITIES.—The amendments made by section 201 [amending sections 46, 167, 168, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] shall not apply to the taxpayer who originally places in service any qualified solid waste disposal facility (as defined in section 7701(e)(3)(B) of the Internal Revenue Code of 1986) if before March 2, 1986—

"(A) there is a binding written contract between a service recipient and a service provider with respect to the operation of such facility to pay for the services to be provided by such facility,

"(B) a service recipient or governmental unit (or any entity related to such recipient or unit) made a financial commitment of at least $200,000 for the financing or construction of such facility,

"(C) such facility is the Tri-Cities Solid Waste Recovery Project involving Fremont, Newark, and Union City, California, and has received an authority to construct from the Environmental Protection Agency or from a State or local agency authorized by the Environmental Protection Agency to issue air quality permits under the Clean Air Act [42 U.S.C. 7401 et seq.],

"(D) a bond volume carryforward election was made for the facility and the facility is for Chattanooga, Knoxville, or Kingsport, Tennessee, or

"(E) such facility is to serve Haverhill, Massachusetts.

"(9) CERTAIN SUBMERSIBLE DRILLING UNITS.—In the case of a binding contract entered into on October 30, 1984, for the purchase of 6 semi-submersible drilling units at a cost of $425,000,000, such units shall be treated as having an applicable date under subsection [section] 203(b)(2) of January 1, 1991.

"(10) WASTEWATER OR SEWAGE TREATMENT FACILITY.—The amendments made by section 201 [amending this section and sections 46, 167, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] shall not apply to any property which is part of a wastewater or sewage treatment facility if—

"(A) site preparation for such facility commenced before September 1985, and a parish council approved a service agreement with respect to such facility on December 4, 1985;

"(B) a city-parish advertised in September 1985, for bids for construction of secondary treatment improvements for such facility, in May 1985, the city-parish received statements from 16 firms interested in privatizing the wastewater treatment facilities, and the metropolitan council selected a privatizer at its meeting on November 20, 1985, and adopted a resolution authorizing the Mayor to enter into contractual negotiation with the selected privatizer;

"(C) the property is part of a wastewater treatment facility serving Greenville, South Carolina with respect to which a binding service agreement between a privatizer and the Western Carolina Regional Sewer Authority with respect to such facility was signed before January 1, 1986; or

"(D) such property is part of a wastewater treatment facility (located in Cameron County, Texas, within one mile of the City of Harlingen), an application for a wastewater discharge permit was filed with respect to such facility on December 4, 1985, and a City Commission approved a letter of intent relating to a service agreement with respect to such facility on August 7, 1986; or a wastewater facility (located in Harlingen, Texas) which is a subject of such letter of intent and service agreement and the design of which was contracted for in a letter of intent dated January 23, 1986.

"(11) CERTAIN AIRCRAFT.—The amendments made by section 201 [amending this section and sections 46, 167, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] shall not apply to any new aircraft with 19 or fewer passenger seats if—

"(A) the aircraft is manufactured in the United States. For purposes of this subparagraph, an aircraft is 'manufactured' at the point of its final assembly,

"(B) the aircraft was in inventory or in the planned production schedule of the final assembly manufacturer, with orders placed for the engine(s) on or before August 16, 1986, and

"(C) the aircraft is purchased or subject to a binding contract on or before December 31, 1986, and is delivered and placed in service by the purchaser, before July 1, 1987.

"(12) CERTAIN SATELLITES.—The amendments made by section 201 shall not apply to any satellite with respect to which—

"(A) on or before January 28, 1986, there was a binding contract to construct or acquire a

satellite, and

"(i) an agreement to launch was in existence on that date, or

"(ii) on or before August 5, 1983, the Federal Communications Commission had authorized the construction and for which the authorized party has a specific although undesignated agreement to launch in existence on January 28, 1986;

"(B) by order adopted on July 25, 1985, the Federal Communications Commission granted the taxpayer an orbital slot and authorized the taxpayer to launch and operate 2 satellites with a cost of approximately $300,000,000; or

"(C) the International Telecommunications Satellite Organization or the International Maritime Satellite Organization entered into written binding contracts before May 1, 1985.

"(13) CERTAIN NONWIRE LINE CELLULAR TELEPHONE SYSTEMS.—The amendments made by section 201 shall not apply to property that is part of a nonwire line system in the Domestic Public Cellular Radio Telecommunications Service for which the Federal Communications Commission has issued a construction permit before September 26, 1985, but only if such property is placed in service before January 1, 1987.

"(14) CERTAIN COGENERATION FACILITIES.—The amendments made by section 201 shall not apply to projects consisting of 1 or more facilities for the cogeneration and distribution of electricity and steam or other forms of thermal energy if—

"(A) at least $100,000 was paid or incurred with respect to the project before March 1, 1986, a memorandum of understanding was executed on September 13, 1985, and the project is placed in service before January 1, 1989,

"(B) at least $500,000 was paid or incurred with respect to the projects before May 6, 1986, the projects involve a 22-megawatt combined cycle gas turbine plant and a 45-megawatt coal waste plant, and applications for qualifying facility status were filed with the Federal Energy Regulatory Commission on March 5, 1986,

"(C) the project cost approximates $125,000,000 to $140,000,000 and an application was made to the Federal Energy Regulatory Commission in July 1985,

"(D) an inducement resolution for such facility was adopted on September 10, 1985, a development authority was given an inducement date of September 10, 1985, for a loan not to exceed $80,000,000 with respect to such facility, and such facility is expected to have a capacity of approximately 30 megawatts of electric power and 70,000 pounds of steam per hour,

"(E) at least $1,000,000 was incurred with respect to the project before May 6, 1986, the project involves a 52-megawatt combined cycle gas turbine plant and a petition was filed with the Connecticut Department of Public Utility Control to approve a power sales agreement with respect to the project on March 27, 1986,

"(F) the project has a planned scheduled capacity of approximately 38,000 kilowatts, the project property is placed in service before January 1, 1991, and the project is operated, established, or constructed pursuant to certain agreements, the negotiation of which began before 1986, with public or municipal utilities conducting business in Massachusetts, or

"(G) the Board of Regents of Oklahoma State University took official action on July 25, 1986, with respect to the project.

In the case of the project described in subparagraph (F), section 203(b)(2)(A) shall be applied by substituting 'January 1, 1991' for 'January 1, 1989'.

"(15) CERTAIN ELECTRIC GENERATING STATIONS.—The amendments made by section 201 shall not apply to a project located in New Mexico consisting of a coal-fired electric generating station (including multiple generating units, coal mine equipment, and transmission facilities) if—

"(A) a tax-exempt entity will own an equity interest in all property included in the project (except the coal mine equipment), and

"(B) at least $72,000,000 was expended in the acquisition of coal leases, land and water rights, engineering studies, and other development costs before May 6, 1986.

For purposes of this paragraph, section 203(b)(2) shall be applied by substituting 'January 1, 1996' for 'January 1, 1991' each place it appears.

"(16) SPORTS ARENAS.—

"(A) INDOOR SPORTS FACILITY.—The amendments made by section 201 shall not apply to up to $20,000,000 of improvements made by a lessee of any indoor sports facility pursuant to a lease from a State commission granting the right to make limited and specified improvements (including planned seat explanations), if architectural renderings of the project were commissioned and received before December 22, 1985.

"(B) METROPOLITAN SPORTS ARENA.—The amendments made by section 201 shall not apply to any property which is part of an arena constructed for professional sports activities in a metropolitan area, provided that such arena is capable of seating no less than 18,000 spectators and a binding contract to incur significant expenditures for its construction was entered into before June 1, 1986.

"(17) CERTAIN WASTE-TO-ENERGY FACILITIES.—The amendments made by section 201 shall not apply to 2 agricultural waste-to-energy powerplants (and required transmission facilities), in connection with which a contract to sell 100 megawatts of electricity to a city was executed in October 1984.

"(18) CERTAIN COAL-FIRED PLANTS.—The amendments made by section 201 shall not apply to one of three 540 megawatt coal-fired plants that are placed in service after a sale leaseback occurring after January 1, 1986, if—

"(A) the Board of Directors of an electric power cooperation authorized the investigation of a sale leaseback of a nuclear generation facility by resolution dated January 22, 1985, and

"(B) a loan was extended by the Rural Electrification Administration on February 20, 1986, which contained a covenant with respect to used property leasing from unit II.

"(19) CERTAIN RAIL SYSTEMS.—

"(A) The amendments made by section 201 shall not apply to a light rail transit system, the approximate cost of which is $235,000,000, if, with respect to which, the board of directors of a corporation (formed in September 1984 for the purpose of developing, financing, and operating the system) authorized a $300,000 expenditure for a feasibility study in April 1985.

"(B) The amendments made by section 201 shall not apply to any project for rehabilitation of regional railroad rights of way and properties including grade crossings which was authorized by the Board of Directors of such company prior to October 1985; and/or was modified, altered or enlarged as a result of termination of company contracts, but approved by said Board of Directors no later than January 30, 1986, and which is in the public interest, and which is subject to binding contracts or substantive commitments by December 31, 1987.

"(20) CERTAIN DETERGENT MANUFACTURING FACILITY.—The amendments made by section 201 shall not apply to a laundry detergent manufacturing facility, the approximate cost of which is $13,200,000, with respect to which a project agreement was fully executed on March 17, 1986.

"(21) CERTAIN RESOURCE RECOVERY FACILITY.—The amendments made by section 201 shall not apply to any of 3 resource recovery plants, the aggregate cost of which approximates $300,000,000, if an industrial development authority adopted a bond resolution with respect to such facilities on December 17, 1984, and the projects were approved by the department of commerce of a Commonwealth on December 27, 1984.

"(22) The amendments made by section 201 shall not apply to a computer and office support center building in Minneapolis, with respect to which the first contract, with an architecture firm, was signed on April 30, 1985, and a construction contract was signed on March 12, 1986.

"(23) CERTAIN DISTRICT HEATING AND COOLING FACILITIES.—The amendments made by section 201 shall not apply to pipes, mains, and related equipment included in district heating and cooling facilities, with respect to which the development authority of a State approved the project through an inducement resolution adopted on October 8, 1985, and in connection with which approximately $11,000,000 of tax-exempt bonds are to be issued.

"(24) CERTAIN VESSELS.—

"(A) CERTAIN OFFSHORE VESSELS.—The amendments made by section 201 shall not apply to any offshore vessel the construction contract for which was signed on February 28, 1986, and the approximate cost of which is $9,000,000.

"(B) CERTAIN INLAND RIVER VESSEL.—The amendments made by section 201 shall not apply to a project involving the reconstruction of an inland river vessel docked on the Mississippi River at St. Louis, Missouri, on July 14, 1986, and with respect to which:

"(i) the estimated cost of reconstruction is approximately $39,000,000;

"(ii) reconstruction was commenced prior to December 1, 1985;

"(iii) at least $17,000,000 was expended before December 31, 1985; and

"(C) SPECIAL AUTOMOBILE CARRIER VESSELS.—The amendments made by section 201 shall not apply to two new automobile carrier vessels which will cost approximately $47,000,000 and will be constructed by a United States-flag carrier to operate, under the United States-flag and with an American crew, to transport foreign automobiles to the United States, in a case where negotiations for such transportation arrangements commenced in April 1985, formal contract bids were submitted prior to the end of 1985, and definitive transportation contracts were awarded in May 1986.

"(D) The amendments made by section 201 shall not apply to a 562-foot passenger cruise ship, which was purchased in 1980 for the purpose of returning the vessel to United States service, the approximate cost of refurbishment of which is approximately $47,000,000.

"(E) The amendments made by section 201 shall not apply to the Muskegon, Michigan, Cross-Lake Ferry project having a projected cost of approximately $7,200,000.

"(F) The amendments made by section 201 shall not apply to a new automobile carrier vessel, the contract price for which is no greater than $28,000,000, and which will be constructed for and placed in service by OSG Car Carriers, Inc., to transport, under the United States flag and with an American crew, foreign automobiles to North America in a case where negotiations for such transportation arrangements commenced in 1985, and definitive transportation contracts were awarded before June 1986.

"(25) CERTAIN WOOD ENERGY PROJECTS.—The amendments made by section 201 shall not apply to two wood energy projects for which applications with the Federal Energy Regulatory Commission were filed before January 1, 1986, which are described as follows:

"(A) a 26.5 megawatt plant in Fresno, California, and

"(B) a 26.5 megawatt plant in Rocklin, California.

"(26) The amendments made by section 201 shall not apply to property which is a geothermal project of less than 20 megawatts that was certified by the Federal Energy Regulatory Commission on July 14, 1986, as a qualifying small power production facility for purposes of the Public Utility Regulatory Policies Act of 1978 [see Short Title note set out under 16 U.S.C. 2601] pursuant to an application filed with the Federal Energy Regulatory Commission on April 17, 1986.

"(27) CERTAIN ECONOMIC DEVELOPMENT PROJECTS.—The amendments made by section 201 shall not apply to any of the following projects:

"(A) A mixed use development on the East River the total cost of which is approximately $400,000,000, with respect to which a letter of intent was executed on January 24, 1984, and with respect to which approximately $2.5 million had been spent by March 1, 1986.

"(B) A 356-room hotel, banquet, and conference facility (including 540,000 square feet of office space) the approximate cost of which is $158,000,000, with respect to which a letter of intent was executed on June 1, 1984, and with respect to which an inducement resolution and bond resolution was adopted on August 20, 1985.

"(C) Phase 1 of a 4-phase project involving the construction of laboratory space and ground-floor retail space the estimated cost of which is $22,000,000 and with respect to which a memoradum [sic] of understanding was made on August 29, 1983.

"(D) A project involving the development of a 490,000 square foot mixed-use building at 152 W. 57th Street, New York, New York, the estimated cost of which is $100,000,000, and with respect to which a building permit application was filed in May 1986.

"(E) A mixed-use project containing a 300 unit, 12-story hotel, garage, two multi-rise office buildings, and also included a park, renovated riverboat, and barge with festival marketplace, the capital outlays for which approximate $68,000,000.

"(F) The construction of a three-story office building that will serve as the home office for an insurance group and its affiliated companies, with respect to which a city agreed to transfer its ownership of the land for the project in a Redevelopment Agreement executed on September 18, 1985, once certain conditions are met.

"(G) A commercial bank formed under the laws of the State of New York which entered into an agreement on September 5, 1985, to construct its headquarters at 60 Wall Street, New York, New York, with respect to such headquarters.

"(H) Any property which is part of a commercial and residential project, the first phase of which is currently under construction, to be developed on land which is the subject of an ordinance passed on July 20, 1981, by the city council of the city in which such land is located, designating such land and the improvements to be placed thereon as a residential-business planned development, which development is being financed in part by the proceeds of industrial development bonds in the amount of $62,600,000 issued on December 4, 1985.

"(I) A 600,000 square foot mixed use building known as Flushing Center with respect to which a letter of intent was executed on March 26, 1986.

In the case of the building described in subparagraph (I), section 203(b)(2)(A) shall be applied by substituting 'January 1, 1993' for the applicable date which would otherwise apply.

"(28) The amendments made by section 201 shall not apply to an $80,000,000 capital project steel seamless tubular casings minimill and melting facility located in Youngstown, Ohio, which was purchased by the taxpayer in April 1985, and—

"(A) the purchase and renovation of which was approved by a committee of the Board of Directors on February 22, 1985, and

"(B) as of December 31, 1985, more than $20,000,000 was incurred or committed with respect to the renovation.

"(29) The amendments made by section 201 shall not apply to any project for residential rental property if—

"(A) an inducement resolution with respect to such project was adopted by the State housing development authority on January 25, 1985, and

"(B) such project was the subject of a law suit filed on October 25, 1985.

"(30) The amendments made by section 201 shall not apply to a 30 megawatt electric generating facility fueled by geothermal and wood waste, the approximate cost of which is $55,000,000, and with respect to which a 30-year power sales contract was executed on March 22, 1985.

"(31) The amendments made by section 201 shall not apply to railroad maintenance-of-way equipment, with respect to which a Boston bank entered into a firm binding contract with a major northeastern railroad before March 2, 1986, to finance $10,500,000 of such equipment, if all of the equipment was placed in service before August 1, 1986.

"(32) The amendment made by section 201 shall not apply to—

"(A) a facility constructed on approximately seven acres of land located on Ogle's Poso Creek Oil field, the primary fuel of which will be bituminous coal from Utah or Wyoming, with respect to which an application for an authority to construct was filed on December 26, 1985, an authority to construct was issued on July 2, 1986, and a prevention of significant deterioration permit application was submitted in May 1985,

"(B) a facility constructed on approximately seven acres of land located on Teorco's Jasmin oil field, the primary fuel of which will be bituminous coal from Utah or Wyoming, with respect to which an authority to construct was filed on December 26, 1985, an authority to construct was issued on July 2, 1986, and a prevention of significant deterioration permit application was submitted in July 1985,

"(C) the Mountain View Apartments, in Hadley, Massachusetts,

"(D) a facility expected to have a capacity of not less than 65 megawatts of electricity, the steam from which is to be sold to a pulp and paper mill, with respect to which application was made to the Federal Regulatory Commission for certification as a qualified facility on November 1, 1985, and received such certification on January 24, 1986,

"(E) $5,000,000 of equipment ordered in 1986, in connection with a 60,000 square foot plant in Masontown, Pennsylvania, that was completed in 1983,

"(F) a magnetic resonance imaging machine, with respect to which a binding contract to purchase was entered into in April 1986, in connection with the construction of a magnetic resonance imaging clinic with respect to which a Determination of Need certification was obtained from a State Department of Public Health on October 22, 1985, if such property is placed in service before December 31, 1986,

"(G) a company located in Salina, Kansas, which has been engaged in the construction of highways and city streets since 1946, but only to the extent of $1,410,000 of investment in new section 38 property,

"(H) a $300,000 project undertaken by a small metal finishing company located in Minneapolis, Minnesota, the first parts of which were received and paid for in January 1986, with respect to which the company received Board approval to purchase the largest piece of machinery it has ever ordered in 1985,

"(I) A $1,200,000 finishing machine that was purchased on April 2, 1986 and placed into service in September 1986 by a company located in Davenport, Iowa,

"(J) A 25 megawatt small power production facility, with respect to which Qualifying Facility status numbered QF86–593–000 was granted on March 5, 1986,

"(K) A 250 megawatt coal-fired electric plant in northeastern Nevada estimated to cost $600,000,000 and known as the Thousand Springs project, on which the Sierra Pacific Power Company, a subsidiary of Sierra Pacific Resources, began in 1980 work to design, finance, construct, and operate (and section 203(b)(2) shall be applied with respect to such plant by substituting 'January 1, 1995' for 'January 1, 1991'),

"(L) 128 units of rental housing in connection with the Point Gloria Limited Partnership,

"(M) property which is part of the Kenosha Downtown Redevelopment Project and which is financed with the proceeds of bonds issued pursuant to section 1317(6)(W) [set out as a note under section 141 of this title],

"(N) Lakeland Park Phase II, in Baton Rouge, Louisiana,

"(O) the Santa Rosa Hotel, in Pensacola, Florida,

"(P) the Sheraton Baton Rouge, in Baton Rouge, Louisiana,

"(Q) $300,000 of equipment placed in service in 1986, in connection with the renovation of the Best Western Townhouse Convention Center in Cedar Rapids, Iowa,

"(R) the segment of a nationwide fiber optics telecommunications network placed in service by SouthernNet, the total estimated cost of which is $37,000,000,

"(S) two cogeneration facilities, to be placed in service by the Reading Anthracite Coal Company (or any subsidiary thereof), costing approximately $110,000,000 each, with respect to which filings were made with the Federal Energy Regulatory Commission by December 31, 1985, and which are located in Pennsylvania,

"(T) a portion of a fiber optics network placed in service by LDX NET after December 31, 1988, but only to the extent the cost of such portion does not exceed $25,000,000,

"(U) 3 newly constructed fishing vessels, and one vessel that is overhauled, constructed by Mid Coast Marine, but only to the extent of $6,700,000 of investment,

"(V) $350,000 of equipment acquired in connection with the reopening of a plant in Bristol, Rhode Island, which plant was purchased by Buttonwoods, Ltd., Associates on February 7, 1986,

"(W) $4,046,000 of equipment placed in service by Brendle's Incorporated, acquired in connection with a Distribution Center,

"(X) a multi-family mixed-use housing project located in a home rule city, the zoning for which was changed to residential business planned development on November 26, 1985, and with respect to which both the home rule city on December 4, 1985, and the State housing finance agency on December 20, 1985, adopted inducement resolutions,

"(Y) the Myrtle Beach Convention Center, in South Carolina, to the extent of $25,000,000 of investment, and

"(Z) railroad cars placed in service by the Pullman Leasing Company, pursuant to an April 3, 1986 purchase order, costing approximately $10,000,000.

"(33) The amendments made by section 201 [amending this section and sections 46, 167, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] shall not apply to—

"(A) $400,000 of equipment placed in service by Super Key Market, if such equipment is placed in service before January 1, 1987,

"(B) the Trolley Square project, the total project cost of which is $24,500,000, and the amount of depreciable real property of which is $14,700,000.

"(C)(i) a waste-to-energy project in Derry, New Hampshire, costing approximately $60,000,000, and

"(ii) a waste-to-energy project in Manchester, New Hampshire, costing approximately $60,000,000,

"(D) the City of Los Angeles Co-composting project, the estimated cost of which is $62,000,000, with respect to which, on July 17, 1985, the California Pollution Control Financing Authority issued an initial resolution in the maximum amount of $75,000,000 to finance this project,

"(E) the St. Charles, Missouri Mixed-Use Center,

"(F) Oxford Place in Tulsa, Oklahoma,

"(G) an amount of investment generating $20,000,000 of investment tax credits attributable to property used on the Illinois Diversatech Campus,

"(H) $25,000,000 of equipment used in the Melrose Park Engine Plant that is sold and leased back by Navistar,

"(I) 80,000 vending machines, for a cost approximating $3,400,000 placed into service by Folz Vending Co.,

"(J) A 25.85 megawatt alternative energy facility located in Deblois, Maine, with respect to which certification by the Federal Energy Regulatory Commission was made on April 3, 1986,

"(K) Burbank Manors, in Illinois, and

"(L) a cogeneration facility to be built at a paper company in Turners Falls, Massachusetts, with respect to which a letter of intent was executed on behalf of the paper company on September 26, 1985.

"(40) [Par. (40) probably should follow par. (39).] CERTAIN TRUCKS, ETC.—The amendments made by section 201 shall not apply to trucks, tractor units, and trailers which a privately held truck leasing company headquartered in Des Moines, Iowa, contracted to purchase in September 1985 but only to the extent the aggregate reduction in Federal tax liability by reason of the application of this paragraph does not exceed $8,500,000.

"(34) The amendments made by section 201 shall not apply to an approximately 240,000 square foot beverage container manufacturing plant located in Batesville, Mississippi, or plant equipment used

exclusively on the plant premises if—

"(A) a 2-year supply contract was signed by the taxpayer and a customer on November 1, 1985,

"(B) such contract further obligated the customer to purchase beverage containers for an additional 5-year period if physical signs of construction of the plant are present before September 1986,

"(C) ground clearing for such plant began before August 1986, and

"(D) construction is completed, the equipment is installed, and operations are commenced before July 1, 1987.

"(35) The amendments made by section 201 shall not apply to any property which is part of the multifamily housing at the Columbia Point Project in Boston, Massachusetts. A project shall be treated as not described in the preceding sentence and as not described in section 252(f)(1)(D) [set out as a note under section 42 of this title] unless such project includes at substantially all times throughout the compliance period (within the meaning of section 42(i)(1) of the Internal Revenue Code of 1986), a facility which provides health services to the residents of such project for fees commensurate with the ability of such individuals to pay for such services.

"(36) The amendments made by section 201 shall not apply to any ethanol facility located in Blair, Nebraska, if—

"(A) in July of 1984 an initial binding construction contract was entered into for such facility,

"(B) in June of 1986, certain Department of Energy recommended contract changes required a change of contractor, and

"(C) in September of 1986, a new contract to construct such facility, consistent with such recommended changes, was entered into.

"(37) The amendments made by section 201 shall not apply to any property which is part of a sewage treatment facility if, prior to January 1, 1986, the City of Conyers, Georgia, selected a privatizer to construct such facility, received a guaranteed maximum price bid for the construction of such facility, signed a letter of intent and began substantial negotiations of a service agreement with respect to such facility.

"(38) The amendments made by section 201 shall not apply to—

"(A) a $28,000,000 wood resource complex for which construction was authorized by the Board of Directors on August 9, 1985,

"(B) an electrical cogeneration plant in Bethel, Maine which is to generate 2 megawatts of electricity from the burning of wood residues, with respect to which a contract was entered into on July 10, 1984, and with respect to which $200,000 of the expected $2,000,000 cost had been committed before June 15, 1986,

"(C) a mixed income housing project in Portland, Maine which is known as the Back Bay Tower and which is expected to cost $17,300,000,

"(D) the Eastman Place project and office building in Rochester, New York, which is projected to cost $20,000,000, with respect to which an inducement resolution was adopted in December 1986, and for which a binding contract of $500,000 was entered into on April 30, 1986,

"(E) the Marquis Two project in Atlanta, Georgia which has a total budget of $72,000,000 and the construction phase of which began under a contract entered into on March 26, 1986,

"(F) a 166-unit continuing care retirement center in New Orleans, Louisiana, the construction contract for which was signed on February 12, 1986, and is for a maximum amount not to exceed $8,500,000,

"(G) the expansion of the capacity of an oil refining facility in Rosemont, Minnesota from 137,000 to 207,000 barrels per day which is expected to be completed by December 31, 1990, and

"(H) a project in Ransom, Pennsylvania which will burn coal waste (known as 'culm') with an approximate cost of $64,000,000 and for which a certification from the Federal Energy Regulatory Commission was received on March 11, 1986.

"(39) The amendments made by section 201 shall not apply to any facility for the manufacture of an improved particle board if a binding contract to purchase such equipment was executed March 3, 1986, such equipment will be placed in service by January 1, 1988, and such facility is located in or near Moncure, North Carolina.

"(b) SPECIAL RULE FOR CERTAIN PROPERTY.—The provisions of section 168(f)(8) of the Internal Revenue Code of 1954 (as amended by section 209 of the Tax Equity and Fiscal Responsibility Act of 1982) shall continue to apply to any transaction permitted by reason of section 12(c)(2) of the Tax Reform Act of 1984 or section 209(d)(1)(B) of the Tax Equity and Fiscal Responsibility Act of 1982 (as amended by the Tax Reform Act of 1984) [section 12(c)(2) of Pub. L. 98–369 and section 209(d)(1)(B) of Pub. L. 97–248, respectively, set out below].

"(c) APPLICABLE DATE IN CERTAIN CASES.—

"(1) Section 203(b)(2) shall be applied by substituting 'January 1, 1992' for 'January 1, 1991' in the following cases.

"(A) in the case of a 2-unit nuclear powered electric generating plant (and equipment and incidental appurtenances), located in Pennsylvania and constructed pursuant to contracts entered into by the owner operator of the facility before December 31, 1975, including contracts with the engineer/constructor and the nuclear steam system supplier, such contracts shall be treated as contracts described in section 203(b)(1)(A),

"(B) a cogeneration facility with respect to which an application with the Federal Energy Regulatory Commission was filed on August 2, 1985, and approved October 15, 1985.

"(C) in the case of a 1,300 megawatt coal-fired steam powered electric generating plant (and related equipment and incidental appurtenances), which the three owners determined in 1984 to convert from nuclear power to coal power and for which more than $600,000,000 had been incurred or committed for construction before September 25, 1985, except that no investment tax credit will be allowable under section 49(d)(3) added by section 211(a) of this Act [section 49(d) of this title does not contain a par. (3)] for any qualified progress expenditures made after December 31, 1990.

"(2) Section 203(b)(2) shall be applied by substituting 'April 1, 1992' for the applicable date that would otherwise apply, in the case of the second unit of a twin steam electric generating facility and related equipment which was granted a certificate of public convenience and necessity by a public service commission prior to January 1, 1982, if the first unit of the facility was placed in service prior to January 1, 1985, and before September 26, 1985, more than $100,000,000 had been expended toward the construction of the second unit.

"(3) Section 203(b)(2) shall be applied by substituting 'January 1, 1990,' (or, in the case of a project described in subparagraph (B), by substituting 'April 1, 1992') for the applicable date that would otherwise apply in the case of—

"(A) new commercial passenger aircraft used by a domestic airline, if a binding contract with respect to such aircraft was entered into on or before April 1, 1986, and such aircraft has a present class life of 12 years,

"(B) a pumped storage hydroelectric project with respect to which an application was made to the Federal Energy Regulatory Commission for a license on February 4, 1974, and license was issued August 1, 1977, the project number of which is 2740, and

"(C) a newsprint mill in Pend Oreille county, Washington, costing about $290,000,000.

In the case of an aircraft described in subparagraph (A), section 203(b)(1)(A) shall be applied by substituting 'April 1, 1986' for 'March 1, 1986' and section 49(e)(1)(B) of the Internal Revenue Code of 1986 shall not apply.

"(4) The amendments made by section 201 [amending this section and sections 46, 167, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] shall not apply to a limited amount of the following property or a limited amount of property set forth in a submission before September 16, 1986, by the following taxpayers:

"(A) Arena project, Michigan, but only with respect to $78,000,000 of investments.

"(B) Campbell Soup Company, Pennsylvania, California, North Carolina, Ohio, Maryland, Florida, Nebraska, Michigan, South Carolina, Texas, New Jersey, and Delaware, but only with respect to $9,329,000 of regular investment tax credits.

"(C) The Southeast Overtown/Park West development, Florida, but only with respect to $200,000,000 of investments.

"(D) Equipment placed in service and operated by Leggett and Platt before July 1, 1987, but only with respect to $2,000,000 of regular investment tax credits, and subsections (c) and (d) of section 49 of the Internal Revenue Code of 1986 shall not apply to such equipment.

"(E) East Bank Housing Project.

"(F) $1,561,215 of investments by Standard Telephone Company.

"(G) Five aircraft placed in service before January 1, 1987, by Presidential Air.

"(H) A rehabilitation project by Ann Arbor Railroad, but only with respect to $2,900,000 of investments.

"(I) Property that is part of a cogeneration project located in Ada, Michigan, but only with respect to $30,000,000 of investments.

"(J) Anchor Store Project, Michigan, but only with respect to $21,000,000 of investments.

"(K) A waste-fired electrical generating facility of Biogen Power, but only with respect to $34,000,000 of investments.

"(L) $14,000,000 of television transmitting towers placed in service by Media General, Inc.,

which were subject to binding contracts as of January 21, 1986, and will be placed in service before January 1, 1988,

"(M) Interests of Samuel A. Hardage (whether owned individually or in partnership form).

"(N) Two aircraft of Mesa Airlines with an aggregate cost of $5,723,484.

"(O) Yarn-spinning equipment used at Spray Cotton Mills, but only with respect to $3,000,000 of investments.

"(P) 328 units of low-income housing at Angelus Plaza, but only with respect to $20,500,000 of investments.

"(Q) One aircraft of Continental Aviation Services with a cost of approximately $15,000,000 that was purchased pursuant to a contract entered into during March of 1983 and that is placed in service by December 31, 1988.

"(d) RAILROAD GRADING AND TUNNEL BORES.—

"(1) IN GENERAL.—In the case of expenditures for railroad grading and tunnel bores which were incurred by a common carrier by railroad to replace property destroyed in a disaster occurring on or about April 17, 1983, near Thistle, Utah, such expenditures, to the extent not in excess of $15,000,000, shall be treated as recovery property which is 5-year property under section 168 of the Internal Revenue Code of 1954 (as in effect before the amendments made by this Act) and which is placed in service at the time such expenditures were incurred.

"(2) BUSINESS INTERRUPTION PROCEEDS.—Business interruption proceeds received for loss of use, revenues, or profits in connection with the disaster described in paragraph (1) and devoted by the taxpayer described in paragraph (1) to the construction of replacement track and related grading and tunnel bore expenditures shall be treated as constituting an amount received from the involuntary conversion of property under section 1033(a)(2) of such Code.

"(3) EFFECTIVE DATE.—This subsection shall apply to taxable years ending after April 17, 1983.

"(e) TREATMENT OF CERTAIN DISASTER LOSSES.—

"(1) IN GENERAL.—In the case of a disaster described in paragraph (2), at the election of the taxpayer, the amendments made by section 201 of this Act [amending this section and sections 46, 167, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title]—

"(A) shall not apply to any property placed in service during 1987 or 1988, or

"(B) shall apply to any property placed in service during 1985 or 1986,

which is property to replace property lost, damaged, or destroyed in such disaster.

"(2) DISASTER TO WHICH SECTION APPLIES.—This section shall apply to a flood which occurred on November 3 through 7, 1985, and which was declared a natural disaster area by the President of the United States."

Pub. L. 100–647, title I, §1002(c)(3), Nov. 10, 1988, 102 Stat. 3358, provided that: "Notwithstanding section 203 of the Reform Act [section 203 of Pub. L. 99–514, set out above], the amendments made by section 201 of the Reform Act [section 201 of Pub. L. 99–514, amending this section and sections 46, 167, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] shall apply to any real property which was acquired before January 1, 1987, and was converted on or after such date from personal use to a use for which depreciation is allowable."

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

Amendment by sections 1802(a)(1)–(2)(D), (G), (3), (4)(A), (B), (7), (b)(1), 1809(a)(1)–(2)(B), (4)(A), (B) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Pub. L. 99–514, title XVIII, §1802(a)(2)(E)(ii), Oct. 22, 1986, 100 Stat. 2788, provided that:

"(I) Except as otherwise provided in this clause, the amendment made by clause (i) [amending this section] shall apply to property placed in service after September 27, 1985; except that such amendment shall not apply to any property acquired pursuant to a binding written contract in effect on such date (and at all times thereafter).

"(II) If an election under this subclause is made with respect to any property, the amendment made by clause (i) shall apply to such property whether or not placed in service on or before September 27, 1985."

Pub. L. 99–514, title XVIII, §1809(a)(2)(C)(i), Oct. 22, 1986, 100 Stat. 2819, provided in part that amendment by section 1809(a)(2)(C)(i) of Pub. L. 99–514 is effective on and after Oct. 22, 1986.

Pub. L. 99–514, title XVIII, §1809(b)(3), Oct. 22, 1986, 100 Stat. 2821, provided that: "The amendments

made by this subsection [amending this section] shall apply to property placed in service by the transferee after December 31, 1985, in taxable years ending after such date."

EFFECTIVE DATE OF 1985 AMENDMENT

Pub. L. 99–121, title I, §105(b), Oct. 11, 1985, 99 Stat. 510, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by section 103 [amending this section and sections 47, 48, 57, 312, and 1245 of this title] shall apply with respect to property placed in service by the taxpayer after May 8, 1985.

"(2) EXCEPTION.—The amendments made by section 103 shall not apply to property placed in service by the taxpayer before January 1, 1987, if—

"(A) the taxpayer or a qualified person entered into a binding contract to purchase or construct such property before May 9, 1985, or

"(B) construction of such property was commenced by or for the taxpayer or a qualified person before May 9, 1985.

For purposes of this paragraph, the term 'qualified person' means any person whose rights in such a contract or such property are transferred to the taxpayer, but only if such property is not placed in service before such rights are transferred to the taxpayer.

"(3) SPECIAL RULE FOR COMPONENTS.—For purposes of applying section 168(f)(1)(B) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by section 103) to components placed in service after December 31, 1986, property to which paragraph (2) of this subsection applies shall be treated as placed in service by the taxpayer before May 9, 1985.

"(4) TECHNICAL CORRECTION.—The amendment made by paragraph (6) of section 103(b) [amending section 47 of this title] shall apply as if included in the amendments made by section 111 of the Tax Reform Act of 1984 [Pub. L. 98–369, see Effective Date of 1984 Amendment note below].

"(5) SPECIAL RULE FOR LEASING OF QUALIFIED REHABILITATED BUILDINGS.—The amendment made by paragraph (5) of section 103(b) to section 48(g)(2)(B)(v) of the Internal Revenue Code of 1986 shall not apply to leases entered into before May 22, 1985, but only if the lessee signed the lease before May 17, 1985."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 12 of Pub. L. 98–369 applicable to taxable years ending after Dec. 31, 1983, see section 18(a) of Pub. L. 98–369, set out as a note under section 48 of this title.

Pub. L. 98–369, div. A, title I, §31(g), July 18, 1984, 98 Stat. 521, as amended by Pub. L. 99–514, §2, title XVIII, §1802(a)(2)(F), (10)(A)–(D)(i), (E)–(G), Oct. 22, 1986, 100 Stat. 2095, 2788, 2790, 2791; Pub. L. 100–647, title I, §1018(b)(1), Nov. 10, 1988, 102 Stat. 3577, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 46, 48, and 7701 of this title] shall apply—

"(A) to property placed in service by the taxpayer after May 23, 1983, in taxable years ending after such date, and

"(B) to property placed in service by the taxpayer on or before May 23, 1983, if the lease to the tax-exempt entity is entered into after May 23, 1983.

"(2) LEASES ENTERED INTO ON OR BEFORE MAY 23, 1983.—The amendments made by this section shall not apply with respect to any property leased to a tax-exempt entity if the property is leased pursuant to—

"(A) a lease entered into on or before May 23, 1983 (or a sublease under such a lease), or

"(B) any renewal or extension of a lease entered into on or before May 23, 1983, if such renewal or extension is pursuant to an option exercisable by the tax-exempt entity which was held by the tax-exempt entity on May 23, 1983.

"(3) BINDING CONTRACTS, ETC.—

"(A) The amendments made by this section shall not apply with respect to any property leased to a tax-exempt entity if such lease is pursuant to 1 or more written binding contracts which, on May 23, 1983, and at all times thereafter, required—

"(i) the taxpayer (or his predecessor in interest under the contract) to acquire, construct, reconstruct, or rehabilitate such property, and

"(ii) the tax-exempt entity (or a tax-exempt predecessor thereof) to be the lessee of such property.

"(B) Paragraph (9) of section 168(j) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this section) shall not apply with respect to any property owned by a partnership if—

"(i) such property was acquired by such partnership on or before October 21, 1983, or

"(ii) such partnership entered into a written binding contract which, on October 21, 1983, and at all times thereafter, required the partnership to acquire or construct such property.

"(C) The amendments made by this section shall not apply with respect to any property leased to a tax-exempt entity (other than any foreign person or entity)—

"(i) if—

"(I) on or before May 23, 1983, the taxpayer (or his predecessor in interest under the contract) or the tax-exempt entity entered into a written binding contract to acquire, construct, reconstruct, or rehabilitate such property and such property had not previously been used by the tax-exempt entity, or

"(II) the taxpayer or the tax-exempt entity acquired the property after June 30, 1982, and on or before May 23, 1983, or completed the construction, reconstruction, or rehabilitation of the property after December 31, 1982, and on or before May 23, 1983, and

"(ii) if such lease is pursuant to a written binding contract entered into before January 1, 1985, which requires the tax-exempt entity to be the lessee of such property.

"(4) OFFICIAL GOVERNMENTAL ACTION ON OR BEFORE NOVEMBER 1, 1983.—

"(A) IN GENERAL.—The amendments made by this section shall not apply with respect to any property leased to a tax-exempt entity (other than the United States, any agency or instrumentality thereof, or any foreign person or entity) if—

"(i) on or before November 1, 1983, there was significant official governmental action with respect to the project or its design, and

"(ii) the lease to the tax-exempt entity is pursuant to a written binding contract entered into before January 1, 1985, which requires the tax-exempt entity to be the lessee of the property.

"(B) SIGNIFICANT OFFICIAL GOVERNMENTAL ACTION.—For purposes of subparagraph (A), the term 'significant official governmental action' does not include granting of permits, zoning changes, environmental impact statements, or similar governmental actions.

"(C) SPECIAL RULE FOR CREDIT UNIONS.—In the case of any property leased to a credit union pursuant to a written binding contract with an expiration date of December 31, 1984, which was entered into by such organization on August 23, 1984—

"(i) such credit union shall not be treated as an agency or instrumentality of the United States; and

"(ii) clause (ii) of subparagraph (A) shall be applied by substituting 'January 1, 1987' for 'January 1, 1985'.

"(D) SPECIAL RULE FOR GREENVILLE AUDITORIUM BOARD.—For purposes of this paragraph, significant official governmental action taken by the Greenville County Auditorium Board of Greenville, South Carolina, before May 23, 1983, shall be treated as significant official governmental action with respect to the coliseum facility subject to a binding contract to lease which was in effect on January 1, 1985.

"(E) TREATMENT OF CERTAIN HISTORIC STRUCTURES.—If—

"(i) on June 16, 1982, the legislative body of the local governmental unit adopted a bond ordinance to provide funds to renovate elevators in a deteriorating building owned by the local governmental unit and listed in the National Register, and

"(ii) the chief executive officer of the local governmental unit, in connection with the renovation of such building, made an application on June 1, 1983, to a State agency for a Federal historic preservation grant and made an application on June 17, 1983, to the Economic Development Administration of the United States Department of Commerce for a grant,

the requirements of clauses (i) and (ii) of subparagraph (A) shall be treated as met.

"(5) MASS COMMUTING VEHICLES.—The amendments made by this section shall not apply to any qualified mass commuting vehicle (as defined in section 103(b)(9) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) which is financed in whole or in part by obligations the interest on which is excludable from gross income under section 103(a) of such Code if—

"(A) such vehicle is placed in service before January 1, 1988, or

"(B) such vehicle is placed in service on or after such date—

"(i) pursuant to a binding contract or commitment entered into before April 1, 1983, and

"(ii) solely because of conditions which, as determined by the Secretary of the Treasury or his delegate, are not within the control of the lessor or lessee.

"(6) CERTAIN TURBINES AND BOILERS.—The amendments made by this section shall not apply to any property described in section 208(d)(3)(E) of the Tax Equity and Fiscal Responsibility Act of 1982 [section 208(d)(3)(E) of Pub. L. 97–248, set out as an Effective Date of 1982 Amendments note below].

"(7) CERTAIN FACILITIES FOR WHICH RULING REQUESTS FILED ON OR BEFORE MAY 23,

1983.—The amendments made by this section shall not apply with respect to any facilities described in clause (ii) of section 168(f)(12)(C) of the Internal Revenue Code of 1986 (relating to certain sewage or solid waste disposal facilities), as in effect on the day before the date of the enactment of this Act [July 18, 1984], if a ruling request with respect to the lease of such facility to the tax-exempt entity was filed with the Internal Revenue Service on or before May 23, 1983.

"(8) RECOVERY PERIOD FOR CERTAIN QUALIFIED SEWAGE FACILITIES.—

"(A) IN GENERAL.—In the case of any property (other than 15-year real property) which is part of a qualified sewage facility, the recovery period used for purposes of paragraph (1) of section 168(j) of the Internal Revenue Code of 1986 (as added by this section) shall be 12 years. For purposes of the preceding sentence, the term '15-year real property' includes 18-year real property.

"(B) QUALIFIED SEWAGE FACILITY.—For purposes of subparagraph (A), the term 'qualified sewage facility' means any facility which is part of the sewer system of a city, if—

"(i) on June 15, 1983, the City Council approved a resolution under which the city authorized the procurement of equity investments for such facility, and

"(ii) on July 12, 1983, the Industrial Development Board of the city approved a resolution to issue a $100,000,000 industrial development bond issue to provide funds to purchase such facility.

"(9) PROPERTY USED BY THE POSTAL SERVICE.—In the case of property used by the United States Postal Service, paragraphs (1) and (2) shall be applied by substituting 'October 31' for 'May 23'.

"(10) EXISTING APPROPRIATIONS.—The amendments made by this section shall not apply to personal property leased to or used by the United States if—

"(A) an express appropriation has been made for rentals under such lease for the fiscal year 1983 before May 23, 1983, and

"(B) the United States or an agency or instrumentality thereof has not provided an indemnification against the loss of all or a portion of the tax benefits claimed under the lease or service contract.

"(11) SPECIAL RULE FOR CERTAIN PARTNERSHIPS.—

"(A) PARTNERSHIPS FOR WHICH QUALIFYING ACTION EXISTED BEFORE OCTOBER 21, 1983.—Paragraph (9) of section 168(j) of the Internal Revenue Code of 1986 (as added by this section) shall not apply to any property acquired, directly or indirectly, before January 1, 1985, by any partnership described in subparagraph (B).

"(B) APPLICATION FILED BEFORE OCTOBER 21, 1983.—A partnership is described in this subparagraph if—

"(i) before October 21, 1983, the partnership was organized, a request for exemption with respect to such partnership was filed with the Department of Labor, and a private placement memorandum stating the maximum number of units in the partnership that would be offered had been circulated,

"(ii) the interest in the property to be acquired, directly or indirectly (including through acquiring an interest in another partnership) by such partnership was described in such private placement memorandum, and

"(iii) the marketing of partnership units in such partnership is completed not later than two years after the later of the date of the enactment of this Act [July 18, 1984] or the date of publication in the Federal Register of such exemption by the Department of Labor and the aggregate number of units in such partnership sold does not exceed the amount described in clause (i).

"(C) PARTNERSHIPS FOR WHICH QUALIFYING ACTION EXISTED BEFORE MARCH 6, 1984 .—Paragraph (9) of section 168(j) of the Internal Revenue Code of 1986 (as added by this section) shall not apply to any property acquired directly or indirectly, before January 1, 1986, by any partnership described in subparagraph (D). For purposes of this subparagraph, property shall be deemed to have been acquired prior to January 1, 1986, if the partnership had entered into a written binding contract to acquire such property prior to January 1, 1986 and the closing of such contract takes place within 6 months of the date of such contract (24 months in the case of new construction).

"(D) PARTNERSHIP ORGANIZED BEFORE MARCH 6, 1984.—A partnership is described in this subparagraph if—

"(i) before March 6, 1984, the partnership was organized and publicly announced the maximum amount (as shown in the registration statement, prospectus or partnership agreement, whichever is greater) of interests which would be sold in the partnership, and

"(ii) the marketing or partnership interests in such partnership was completed not later than the 90th day after the date of the enactment of this Act [July 18, 1984] and the aggregate amount of interest in such partnership sold does not exceed the maximum amount described in clause (i).

"(12) SPECIAL RULE FOR AMENDMENT MADE BY SUBSECTION (C)(2).—The amendment made by subsection (c)(2) [amending section 48(g)(2)(B)(i) of this title] to the extent it relates to subsection (f)(12)

of section 168 of the Internal Revenue Code of 1986 shall take effect as if it had been included in the amendments made by section 216(a) of the Tax Equity and Fiscal Responsibility Act of 1982 [section 216(a) of Pub. L. 97–248, which amended this section].

"(13) SPECIAL RULE FOR SERVICE CONTRACTS NOT INVOLVING TAX-EXEMPT ENTITIES .—In the case of a service contract or other arrangement described in section 7701(e) of the Internal Revenue Code of 1986 (as added by this section) with respect to which no party is a tax-exempt entity, such section 7701(e) shall not apply to—

"(A) such contract or other arrangement if such contract or other arrangement was entered into before November 5, 1983, or

"(B) any renewal or other extension of such contract or other arrangement pursuant to an option contained in such contract or other arrangement on November 5, 1983.

"(14) PROPERTY LEASED TO SECTION 593 ORGANIZATIONS.—For purposes of the amendment made by subsection (f) [enacting section 46(e)(4) of this title], paragraphs (1), (2), and (4) shall be applied by substituting—

"(A) 'November 5, 1983' for 'May 23, 1983' and 'November 1, 1983', as the case may be, and

"(B) 'organization described in section 593 of the Internal Revenue Code of 1986' for 'tax-exempt entity'.

"(15) SPECIAL RULES RELATING TO FOREIGN PERSONS OR ENTITIES.—

"(A) IN GENERAL.—In the case of tax-exempt use property which is used by a foreign person or entity, the amendments made by this section shall not apply to any property which—

"(i) is placed in service by the taxpayer before January 1, 1984, and

"(ii) is used by such foreign person or entity pursuant to a lease entered into before January 1, 1984.

"(B) SPECIAL RULE FOR SUBLEASES.—If tax-exempt use property is being used by a foreign person or entity pursuant to a sublease under a lease described in subparagraph (A)(ii), subparagraph (A) shall apply to such property only if such property was used before January 1, 1984, by any foreign person or entity pursuant to such lease.

"(C) BINDING CONTRACTS, ETC.—The amendments made by this section shall not apply with respect to any property (other than aircraft described in subparagraph (D)) leased to a foreign person or entity—

"(i) if—

"(I) on or before May 23, 1983, the taxpayer (or a predecessor in interest under the contract) or the foreign person or entity entered into a written binding contract to acquire, construct, or rehabilitate such property and such property had not previously been used by the foreign person or entity, or

"(II) the taxpayer or the foreign person or entity acquired the property or completed the construction, reconstruction, or rehabilitation of the property after December 31, 1982 and on or before May 23, 1983, and

"(ii) if such lease is pursuant to a written binding contract entered into before January 1, 1984, which requires the foreign person or entity to be the lessee of such property.

"(D) CERTAIN AIRCRAFT.—The amendments made by this section shall not apply with respect to any wide-body, four-engine, commercial aircraft used by a foreign person or entity if—

"(i) on or before November 1, 1983, the foreign person or entity entered into a written binding contract to acquire such aircraft, and

"(ii) such aircraft is originally placed in service by such foreign person or entity (or its successor in interest under the contract) after May 23, 1983, and before January 1, 1986.

"(E) USE AFTER 1983.—Qualified container equipment placed in service before January 1, 1984, which is used before such date by a foreign person shall not, for purposes of section 47 of the Internal Revenue Code of 1986, be treated as ceasing to be section 38 property by reason of the use of such equipment before January 1, 1985, by a foreign person or entity. For purposes of this subparagraph, the term 'qualified container equipment' means any container, container chassis, or container trailer of a United States person with a present class life of not more than 6 years.

"(16) ORGANIZATIONS ELECTING EXEMPTION FROM RULES RELATING TO PREVIOUSLY TAX-EXEMPT ORGANIZATIONS MUST ELECT TAXATION OF EXEMPT ARBITRAGE PROFITS.—

"(A) IN GENERAL.—An organization may make the election under section 168(j)(4)(E)(ii) of the Internal Revenue Code of 1986 (relating to election not to have rules relating to previously tax-exempt organizations apply) only if such organization elects the tax treatment of exempt arbitrage profits described in subparagraph (B).

"(B) TAXATION OF EXEMPT ARBITRAGE PROFITS.—

"(i) IN GENERAL.—In the case of an organization which elects the application of this subparagraph, there is hereby imposed a tax on the exempt arbitrage profits of such organization.

"(ii) RATE OF TAX, ETC.—The tax imposed by clause (i)—

"(I) shall be the amount of tax which would be imposed by section 11 of such Code if the exempt arbitrage profits were taxable income (and there were no other taxable income), and

"(II) shall be imposed for the first taxable year of the tax-exempt use period (as defined in section 168(j)(4)(E)(ii) of such Code).

"(C) EXEMPT ARBITRAGE PROFITS.—

"(i) IN GENERAL.—For purposes of this paragraph, the term exempt arbitrage profits means the aggregate amount described in clauses (i) and (ii) of subparagraph (D) of section 103(c)(6) of such Code for all taxable years for which the organization was exempt from tax under section 501(a) of such Code with respect to obligations—

"(I) associated with property described in section 168(j)(4)(E)(i), and

"(II) issued before January 1, 1985.

"(ii) APPLICATION OF SECTION 103(b)(6).—For purposes of this paragraph, section 103(b)(6) of such Code shall apply to obligations issued before January 1, 1985, but the amount described in clauses (i) and (ii) of subparagraph (D) thereof shall be determined without regard to clauses (i)(II) and (ii) of subparagraph (F) thereof.

"(D) OTHER LAWS APPLICABLE.—

"(i) IN GENERAL.—Except as provided in clause (ii), all provisions of law, including penalties, applicable with respect to the tax imposed by section 11 of such Code shall apply with respect to the tax imposed by this paragraph.

"(ii) NO CREDITS AGAINST TAX, ETC.—The tax imposed by this paragraph shall not be treated as imposed by section 11 of such Code for purposes of—

"(I) part VI of subchapter A of chapter 1 of such Code (relating to minimum tax for tax preferences), and

"(II) determining the amount of any credit allowable under subpart A of part IV of such subchapter.

"(E) ELECTION.—Any election under subparagraph (A)—

"(i) shall be made at such time and in such manner as the Secretary may prescribe,

"(ii) shall apply to any successor organization which is engaged in substantially similar activities, and

"(iii) once made, shall be irrevocable.

"(17) CERTAIN TRANSITIONAL LEASED PROPERTY.—The amendments made by this section shall not apply to property described in section 168(c)(2)(D) of the Internal Revenue Code of 1986, as in effect on the day before the date of the enactment of this Act [July 18, 1984], and which is described in any of the following subparagraphs:

"(A) Property is described in this subparagraph if such property is leased to a university, and—

"(i) on June 16, 1983, the Board of Administrators of the university adopted a resolution approving the rehabilitation of the property in connection with an overall campus development program; and

"(ii) the property houses a basketball arena and university offices.

"(B) Property is described in this subparagraph if such property is leased to a charitable organization, and—

"(i) on August 21, 1981, the charitable organization acquired the property, with a view towards rehabilitating the property; and

"(ii) on June 12, 1982, an arson fire caused substantial damage to the property, delaying the planned rehabilitation.

"(C) Property is described in this subparagraph if such property is leased to a corporation that is described in section 501(c)(3) of the Internal Revenue Code of 1986 (relating to organizations exempt from tax) pursuant to a contract—

"(i) which was entered into on August 3, 1983; and

"(ii) under which the corporation first occupied the property on December 22, 1983.

"(D) Property is described in this subparagraph if such property is leased to an educational institution for use as an Arts and Humanities Center and with respect to which—

"(i) in November 1982, an architect was engaged to design a planned renovation;

"(ii) in January 1983, the architectural plans were completed;

"(iii) in December 1983, a demolition contract was entered into; and

"(iv) in March 1984, a renovation contract was entered into.

"(E) Property is described in this subparagraph if such property is used by a college as a dormitory, and—

"(i) in October 1981, the college purchased the property with a view towards renovating the property;

"(ii) renovation plans were delayed because of a zoning dispute; and

"(iii) in May 1983, the court of highest jurisdiction in the State in which the college is located resolved the zoning dispute in favor of the college.

"(F) Property is described in this subparagraph if such property is a fraternity house related to a university with respect to which—

"(i) in August 1982, the university retained attorneys to advise the university regarding the rehabilitation of the property;

"(ii) on January 21, 1983, the governing body of the university established a committee to develop rehabilitation plans;

"(iii) on January 10, 1984, the governor of the state in which the university is located approved historic district designation for an area that includes the property; and

"(iv) on February 2, 1984, historic preservation certification applications for the property were filed with a historic landmarks commission.

"(G) Property is described in this subparagraph if such property is leased to a retirement community with respect to which—

"(i) on January 5, 1977, a certificate of incorporation was filed with the appropriate authority of the state in which the retirement community is located; and

"(ii) on November 22, 1983, the Board of Trustees adopted a resolution evidencing the intention to begin immediate construction of the property.

"(H) Property is described in this subparagraph if such property is used by a university, and—

"(i) in July 1982, the Board of Trustees of the university adopted a master plan for the financing of the property; and

"(ii) as of August 1, 1983, at least $60,000 in private expenditures had been expended in connection with the property.

In the case of Clemson University, the preceding sentence applies only to the Continuing Education Center and the component housing project.

"(I) Property is described in this subparagraph if such property is used by a university as a fine arts center and the Board of Trustees of such university authorized the sale-leaseback agreement with respect to such property on March 7, 1984.

"(J) Property is described in this subparagraph if such property is used by a tax-exempt entity as an international trade center, and

"(i) prior to 1982, an environmental impact study for such property was completed;

"(ii) on June 24, 1981, a developer made a written commitment to provide one-third of the financing for the development of such property; and

"(iii) on October 20, 1983, such developer was approved by the Board of Directors of the tax-exempt entity.

"(K) Property is described in this subparagraph if such property is used by university of osteopathic medicine and health sciences, and on or before December 31, 1983, the Board of Trustees of such university approved the construction of such property.

"(L) Property is described in this subparagraph if such property is used by a tax-exempt entity, and—

"(i) such use is pursuant to a lease with a taxpayer which placed substantial improvements in service;

"(ii) on May 23, 1983, there existed architectural plans and specifications (within the meaning of sec. 48(g)(1)(C)(ii) of the Internal Revenue Code of 1986); and

"(iii) prior to May 23, 1983, at least 10 percent of the total cost of such improvements was actually paid or incurred.

Property is described in this subparagraph if such property was leased to a tax-exempt entity pursuant to a lease recorded in the Register of Deed of Essex County, New Jersey, on May 7, 1984, and a deed of such property was recorded in the Register of Deed of Essex County, New Jersey, on May 7, 1984.

"(M) Property is described in this subparagraph if such property is used as a convention center and on June 2, 1983, the City Council of the city in which the center is located provided for over $6 million for the

project.

"(18) SPECIAL RULE FOR AMENDMENT MADE BY SUBSECTION (c)(1).—

"(A) IN GENERAL.—The amendment made by subsection (c)(1) [enacting section 48(g)(2)(B)(vi) of this title] shall not apply to property—

"(i) leased by the taxpayer on or before November 1, 1983, or

"(ii) leased by the taxpayer after November 1, 1983, if on or before such date the taxpayer entered into a written binding contract requiring the taxpayer to lease such property.

"(B) LIMITATION.—Subparagraph (A) shall apply to the amendment made by subsection (c)(1) only to the extent such amendment relates to property described in subclause (II), (III), or (IV) of section 168(j)(3)(B)(ii) of the Internal Revenue Code of 1986 (as added by this section).

"(19) SPECIAL RULE FOR CERTAIN ENERGY MANAGEMENT CONTRACTS.—

"(A) IN GENERAL.—The amendments made by subsection (e) [amending section 7701 of this title] shall not apply to property used pursuant to an energy management contract that was entered into prior to May 1, 1984.

"(B) DEFINITION OF ENERGY MANAGEMENT CONTRACT.—For purposes of subparagraph (A), the term 'energy management contract' means a contract for the providing of energy conservation or energy management services.

"(20) DEFINITIONS.—For purposes of this subsection—

"(A) TAX-EXEMPT ENTITY.—The term 'tax-exempt entity' has the same meaning as when used in section 168(j) of the Internal Revenue Code of 1986 (as added by this section), except that such term shall include any related entity (within the meaning of such section).

"(B) TREATMENT OF IMPROVEMENTS.—

"(i) IN GENERAL.—For purposes of this subsection, an improvement to property shall not be treated as a separate property unless such improvement is a substantial improvement with respect to such property.

"(ii) SUBSTANTIAL IMPROVEMENT.—For purposes of clause (i), the term 'substantial improvement' has the meaning given such term by section 168(f)(1)(C) of such Code determined—

"(I) by substituting 'property' for 'building' each place it appears therein,

"(II) by substituting '20 percent' for '25 percent' in clause (ii) thereof, and

"(III) without regard to clause (iii) thereof.

"(C) FOREIGN PERSON OR ENTITY.—The term 'foreign person or entity' has the meaning given to such term by subparagraph (C) of section 168(j)(4) of such Code (as added by this section). For purposes of this subparagraph and subparagraph (A), such subparagraph (C) shall be applied without regard to the last sentence thereof.

"(D) LEASES AND SUBLEASES.—The determination of whether there is a lease or sublease to a tax-exempt entity shall take into account sections 168(j)(6)(A), 168(j)(8)(A), and 7701(e) of the Internal Revenue Code of 1986 (as added by this section)."

[Pub. L. 99–514, title XVIII, §1802(a)(10)(B), Oct. 22, 1986, 100 Stat. 2790, provided in part that amendment by section 1802(a)(10)(B) of Pub. L. 99–514, amending section 31(g)(15)(D)(ii) of Pub. L. 98–369, set out above, is effective with respect to property placed in service by the taxpayer after July 18, 1984.]

[Pub. L. 99–514, title XVIII, §1802(a)(10)(D)(ii), Oct. 22, 1986, 100 Stat. 2790, provided that: "The amendment made by clause (i) [amending section 31(g)(20)(B)(ii) of Pub. L. 98–369, set out above] shall not apply to any property if—

"(I) on or before March 28, 1985, the taxpayer (or a predecessor in interest under the contract) or the tax-exempt entity entered into a written binding contract to acquire, construct, or rehabilitate the property, or

"(II) the taxpayer or the tax-exempt entity began the construction, reconstruction, or rehabilitation of the property on or before March 28, 1985."]

Pub. L. 98–369, div. A, title I, §32(c), July 18, 1984, 98 Stat. 531, as amended by Pub. L. 99–514, §2, title XVIII, §1802(b)(2), Oct. 22, 1986, 100 Stat. 2095, 2791, provided that: "The amendment made by subsection (a) [amending this section] shall apply to agreements described in section 168(f)(14) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)) entered into more than 90 days after the date of the enactment of this Act [July 18, 1984]."

Pub. L. 98–369, div. A, title I, §111(g), July 18, 1984, 98 Stat. 634, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 48, 51, 312, and 1245 of this title] shall apply with respect to

property placed in service by the taxpayer after March 15, 1984.

"(2) EXCEPTION.—The amendments made by this section shall not apply to property placed in service by the taxpayer before January 1, 1987, if—

"(A) the taxpayer or a qualified person entered into a binding contract to purchase or construct such property before March 16, 1984, or

"(B) construction of such property was commenced by or for the taxpayer or a qualified person before March 16, 1984.

For purposes of this paragraph the term 'qualified person' means any person who transfers his rights in such a contract or such property to the taxpayer, but only if such property is not placed in service by such person before such rights are transferred to the taxpayer.

"(3) SPECIAL RULES FOR APPLICATION OF PARAGRAPH (2).—

"(A) CERTAIN INVENTORY.—In the case of any property which—

"(i) is held by a person as property described in section 1221(1) [26 U.S.C. 1221(1)], and

"(ii) is disposed of by such person before January 1, 1985,

such person shall not, for purposes of paragraph (2), be treated as having placed such property in service before such property is disposed of merely because such person rented such property or held such property for rental. No deduction for depreciation or amortization shall be allowed to such person with respect to such property,

"(B) CERTAIN PROPERTY FINANCED BY BONDS.—In the case of any property with respect to which—

"(i) bonds were issued to finance such property before 1984, and

"(ii) an architectural contract was entered into before March 16, 1984,

paragraph (2) shall be applied by substituting 'May 2' for 'March 16'.

"(4) SPECIAL RULE FOR COMPONENTS.—For purposes of applying section 168(f)(1)(B) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by this section) to components placed in service after December 31, 1986, property to which paragraph (2) applies shall be treated as placed in service by the taxpayer before March 16, 1984.

"(5) SPECIAL RULE FOR MID-MONTH CONVENTION.—In the case of the amendment made by subsection (d) [amending subsec. (b)(2)(A), (B) of this section]—

"(A) paragraph (1) shall be applied by substituting 'June 22, 1984' for 'March 15, 1984', and

"(B) paragraph (2) shall be applied by substituting 'June 23, 1984' for 'March 15, 1984' each place it appears."

Amendment by section 113(a)(2) of Pub. L. 98–369 applicable to property placed in service after Mar. 15, 1984, in taxable years ending after such date, see section 113(c)(1) of Pub. L. 98–369, set out as a note under section 48 of this title.

Pub. L. 98–369, div. A, title I, §113(c)(2), July 18, 1984, 98 Stat. 637, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(A) The amendments made by paragraphs (1) of subsection (b) [amending this section] shall apply to any motion picture film or video tape placed in service before, on, or after the date of the enactment of this Act [July 18, 1984], except that such amendment shall not apply to—

"(i) any qualified film placed in service by the taxpayer before March 15, 1984, if the taxpayer treated such film as recovery property for purposes of section 168 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] on a return of tax under chapter 1 of such Code filed before March 16, 1984, or

"(ii) any qualified film placed in service by the taxpayer before January 1, 1985, if—

"(I) 20 percent or more of the production costs of such film were incurred before March 16, 1984, and

"(II) the taxpayer treats such film as recovery property for purposes of section 168 of such Code.

No credit shall be allowable under section 38 of such Code with respect to any qualified film described in clause (ii), except to the extent provided in section 48(k) of such Code.

"(B) The amendment made by paragraph (2) and (3) of subsection (b) [amending this section and sections 46 and 48 of this title] shall apply as if included in the amendments made by section 201(a), 211(a)(1), and 211(f)(1) of the Economic Recovery Tax Act of 1981 [sections 201(a), 211(a)(1), and 211(f)(1) of Pub. L. 97–34, enacting this section and amending section 46 of this title].

"(C) The amendment made by paragraph (4) of subsection (b) [amending section 48 of this title] shall take effect as if included in the amendments made by section 205(a)(1) of the Tax Equity and Fiscal Responsibility Act of 1982 [section 205(a)(1) of Pub. L. 97–248, amending section 48 of this title].

"(D) For purposes of this paragraph, the terms 'qualified film' and 'production costs' have the same respective meanings as when used in section 48(k) of the Internal Revenue Code of 1986."

Amendment by section 474(r)(7) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 612(e) of Pub. L. 98–369 applicable to interest paid or accrued after Dec. 31, 1984, on indebtedness incurred after Dec. 31, 1984, see section 612(g) of Pub. L. 98–369, set out as an Effective Date note under section 25 of this title.

Amendment by section 628(b) of Pub. L. 98–369 applicable to property placed in service after Dec. 31, 1983, with certain conditions and exceptions, see section 631(b) of Pub. L. 98–369, set out as a note under section 103 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by title I of Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

Pub. L. 97–448, title I, §102(a)(10)(B), Jan. 12, 1983, 96 Stat. 2369, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendment made by subparagraph (A) [amending this section] shall apply with respect to property to which the provisions of section 168(f)(8) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect before the amendments made by the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97–248]) apply."

Amendment by section 541 of Pub. L. 97–424 applicable to taxable years beginning after Dec. 31, 1979, with a special rule for periods beginning before Mar. 1, 1980, see section 541(c) of Pub. L. 97–424, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

Pub. L. 97–248, title II, §208(d), Sept. 3, 1982, 96 Stat. 439, as amended by Pub. L. 97–448, title III, §306(a)(4), Jan. 12, 1983, 96 Stat. 2400; Pub. L. 98–369, div. A, title X, §1067(a), July 18, 1984, 98 Stat. 1048; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by subsections (a) and (b) of this section [amending this section and section 47 of this title] shall apply to agreements entered into after July 1, 1982, or to property placed in service after July 1, 1982.

"(2) TRANSITIONAL RULE FOR CERTAIN SAFE HARBOR LEASE PROPERTY.—

"(A) IN GENERAL.—The amendments made by subsections (a) and (b) [amending this section and section 47 of this title] shall not apply to transitional safe harbor lease property.

"(B) SPECIAL RULE FOR CERTAIN PROVISIONS.—Subparagraph (A) shall not apply with respect to the provisions of paragraph (6) of section 168(i) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)(1)), to the provisions of section 168(f)(8)(J) of such Code (as added by subsection (b)(4)), or to the amendment made by subsection (b)(1).

"(3) TRANSITIONAL SAFE HARBOR LEASE PROPERTY.—For purposes of this subsection, the term 'transitional safe harbor lease property' means property described in any of the following subparagraphs:

"(A) IN GENERAL.—Property is described in this subparagraph if such property is placed in service before January 1, 1983, if—

"(i) with respect to such property a binding contract to acquire or to construct such property was entered into by the lessee after December 31, 1980, and before July 2, 1982, or

"(ii) such property was acquired by the lessee, or construction of such property was commenced by or for the lessee, after December 31, 1980, and before July 2, 1982.

"(B) CERTAIN QUALIFIED LESSEES.—Property is described in this subparagraph if such property is placed in service before July 1, 1982, and with respect to which—

"(i) an agreement to which section 168(f)(8)(A) of the Internal Revenue Code of 1986 applies was entered into before August 15, 1982, and

"(ii) the lessee under such agreement is a qualified lessee (within the meaning of paragraph (6)).

"(C) AUTOMOTIVE MANUFACTURING PROPERTY.—

"(i) IN GENERAL.—Property is described in this subparagraph if—

"(I) such property is used principally by the taxpayer directly in connection with the trade or business of the taxpayer of the manufacture of automobiles or light-duty trucks,

"(II) such property is automotive manufacturing property, and

"(III) such property would be described in subparagraph (A) if 'October 1' were substituted for 'January 1'.

"(ii) LIGHT-DUTY TRUCK.—For purposes of this subparagraph, the term 'light-duty truck' means any truck with a gross vehicle weight of 13,000 pounds or less. Such term shall not include any truck tractor.

"(iii) AUTOMOTIVE MANUFACTURING PROPERTY.—For purposes of this subparagraph, the term 'automotive manufacturing property' means machinery, equipment, and special tools of the type included in the former asset depreciation range guideline classes 37.11 and 37.12.

"(iv) SPECIAL TOOLS USED BY CERTAIN VENDORS.—For purposes of this subparagraph, any special tools owned by a taxpayer described in subclause (I) of clause (i) which are used by a vendor solely for the production of component parts for sale to the taxpayer shall be treated as automotive manufacturing property used directly by such taxpayer.

"(D) CERTAIN AIRCRAFT.—Property is described in this subparagraph if such property—

"(i) is a commercial passenger aircraft (other than a helicopter), and

"(ii) would be described in subparagraph (A) if 'January 1, 1984' were substituted for 'January 1, 1983'.

For purposes of determining whether property described in this subparagraph is described in subparagraph (A), subparagraph (A)(ii) shall be applied by substituting 'June 25, 1981' for 'December 31, 1980' and by substituting 'February 20, 1982' for 'July 2, 1982' and construction of the aircraft shall be treated as having been begun during the period referred to in subparagraph (A)(ii) if during such period construction or reconstruction of a subassembly was commenced, or the stub wing join occurred.

"(E) TURBINES AND BOILERS.—Property is described in this subparagraph if such property—

"(i) is a turbine or boiler of a cooperative organization engaged in the furnishing of electric energy to persons in rural areas, and

"(ii) would be property described in subparagraph (A) if 'July 1' were substituted for 'January 1'.

For purposes of determining whether property described in this subparagraph is described in subparagraph (A), such property shall be treated as having been acquired during the period referred to in subparagraph (A)(ii) if at least 20 percent of the cost of such property is paid during such period.

"(F) PROPERTY USED IN THE PRODUCTION OF STEEL.—Property is described in this subparagraph if such property—

"(i) is used by the taxpayer directly in connection with the trade or business of the taxpayer of the manufacture or production of steel, and

"(ii) would be described in subparagraph (A) if 'January 1, 1984' were substituted for 'January 1, 1983'.

"(G) COAL GASIFICATION FACILITIES.—

"(i) IN GENERAL.—Property is described in this subparagraph if such property—

"(I) is used directly in connection with the manufacture or production of low sulfur gaseous fuel from coal, and

"(II) would be described in subparagraph (A) if 'July 1, 1984' were substituted for 'January 1, 1983'.

"(ii) SPECIAL RULE.—For purposes of determining whether property described in this subparagraph is described in subparagraph (A), such property shall be treated as having been acquired during the period referred to in subparagraph (A)(ii) if at least 20 percent of the cost of such property is paid during such period.

"(iii) LIMITATION ON AMOUNT.—Clause (i) shall only apply to the lease of an undivided interest in the property in an amount which does not exceed the lesser of—

"(I) 50 percent of the cost basis of such property, or

"(II) $67,500,000.

"(iv) PLACED IN SERVICE.—In the case of property to which this subparagraph applies—

"(I) such property shall be treated as placed in service when the taxpayer receives an operating permit with respect to such property from a State environmental protection agency, and

"(II) the term of the lease with respect to such property shall be treated as being 5 years.

"(4) SPECIAL RULE FOR ANTIAVOIDANCE PROVISIONS.—The provisions of paragraph (6) of section 168(i) of such Code (as added by subsection (a)(1)), and the amendment made by subsection (b)(1) [amending this section] shall apply to leases entered into after February 19, 1982, in taxable years ending after such date.

"(5) SPECIAL RULE FOR MASS COMMUTING VEHICLES.—The amendments made by this section

(other than section 168(i)(1) and (7) of such Code, as added by subsection (a)(1) or section 168(f)(8)(J) of such Code, as added by subsection (b)(4)) and section 209 [amending this section and section 48 of this title] shall not apply to qualified leased property described in section 168(f)(8)(D)(V) of such Code (as in effect after the amendments made by this section) which—

"(A) is placed in service before January 1, 1988, or

"(B) is placed in service after such date—

"(i) pursuant to a binding contract or commitment entered into before April 1, 1983, and

"(ii) solely because of conditions which, as determined by the Secretary of the Treasury or his delegate, are not within the control of the lessor or lessee.

"(6) QUALIFIED LESSEE DEFINED.—

"(A) IN GENERAL.—The term 'qualified lessee' means a taxpayer which is a lessee of an agreement to which section 168(f)(8)(A) of such Code applies and which—

"(i) had net operating losses in each of the three most recent taxable years ending before July 1, 1982, and had an aggregate net operating loss for the five most recent taxable years ending before July 1, 1982, and

"(ii) which uses the property subject to the agreement to manufacture and produce within the United States a class of products in an industry with respect to which—

"(I) the taxpayer produced less than 5 percent of the total number of units (or value) of such products during the period covering the three most recent taxable years of the taxpayer ending before July 1, 1982, and

"(II) four or fewer United States persons (including as one person an affiliated group as defined in section 1504(a)) other than the taxpayer manufactured 85 percent or more of the total number of all units (or value) within such class of products manufactured and produced in the United States during such period.

"(B) CLASS OF PRODUCTS.—For purposes of subparagraph (A)—

"(i) the term 'class of products' means any of the categories designated and numbered as a 'class of products' in the 1977 Census of Manufacturers compiled and published by the Secretary of Commerce under title 13 of the United States Code, and

"(ii) information—

"(I) compiled or published by the Secretary of Commerce, as part of or in connection with the Statistical Abstract of the United States or the Census of Manufacturers, regarding the number of units (or value) of a class of products manufactured and produced in the United States during any period, or

"(II) if information under subclause (I) is not available, so compiled or published with respect to the number of such units shipped or sold by such manufacturers during any period,

shall constitute prima facie evidence of the total number of all units of such class of products manufactured and produced in the United States in such period.

"(6) UNDERPAYMENTS OF TAX FOR 1982.—No addition to the tax shall be made under section 6655 of the Internal Revenue Code of 1954 (relating to failure by corporation to pay estimated income tax) for any period before October 15, 1982, with respect to any underpayment of estimated tax by a taxpayer with respect to any tax imposed by chapter 1 of such Code to the extent that such underpayment was created or increased by any provision of this section.

"(7) COORDINATION WITH AT RISK RULES.—Subparagraph (J) of section 168(f)(8) of the Internal Revenue Code of 1986 (as added by subsection (b)(4)) shall take effect as provided in such subparagraph (J)."

[Pub. L. 98–369, div. A, title X, §1067(c), July 18, 1984, 98 Stat. 1049, provided that: "The amendment made by subsection (a) [enacting section 208(d)(3)(G) of Pub. L. 97–248, set out above] shall take effect as if included in the provision of section 208(d)(3) of the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97–248]."

Pub. L. 97–248, title II, §209(d), Sept. 3, 1982, 96 Stat. 447, as amended by Pub. L. 98–369, div. A, title I, §12(a)(1), (2), July 18, 1984, 98 Stat. 503, provided that:

"(1) SUBSECTION (a).—

"(A) IN GENERAL.—Except as provided in subparagraph (B) and paragraph (2), the amendments made by this section [amending this section and section 48 of this title] shall apply to agreements entered into after December 31, 1987.

"(B) SPECIAL RULE FOR FARM PROPERTY AGGREGATING $150,000 OR LESS.—

"(i) IN GENERAL.—The amendments made by subsection (a) [amending this section] shall also apply to any agreement entered into after July 1, 1982, and before January 1, 1988, if the property subject to such agreement is section 38 property which is used for farming purposes (within the meaning of

section 2032A(e)(5)).

"(ii) $150,000 LIMITATION.—The provisions of clause (i) shall not apply to any agreement if the sum of—

"(I) the cost basis of the property subject to the agreement, plus

"(II) the cost basis of any property subject to an agreement to which this subparagraph previously applied, which was entered into during the same calendar year, and with respect to which the lessee was the lessee of the agreement described in subclause (I) (or any related person within the meaning of section 168(e)(4)(D)),

exceeds $150,000. For purposes of subclause (II), in the case of an individual, there shall not be taken into account any agreement of any individual who is a related person involving property which is used in a trade or business of farming of such related person which is separate from the trade or business of farming of the lessee described in subclause (II).

"(2) SPECIAL RULE FOR DEFINITION OF NEW SECTION 38 PROPERTY.—The amendment made by subsection (c) [amending section 48 of this title] shall apply to property placed in service after December 31, 1983."

Pub. L. 97–248, title II, §216(b), Sept. 3, 1982, 96 Stat. 471, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section] shall apply with respect to property placed in service after December 31, 1982, to the extent such property is financed by the proceeds of an obligation (including a refunding obligation) issued after June 30, 1982.

"(2) EXCEPTIONS.—

"(A) CONSTRUCTION OR BINDING AGREEMENT.—The amendments made by this section [amending this section] shall not apply with respect to facilities the original use of which commences with the taxpayer and—

"(i) the construction, reconstruction, or rehabilitation of which began before July 1, 1982, or

"(ii) with respect to which a binding agreement to incur significant expenditures was entered into before July 1, 1982.

"(B) REFUNDING.—

"(i) IN GENERAL.—Except as provided in clause (ii), in the case of property placed in service after December 31, 1982 which is financed by the proceeds of an obligation which is issued solely to refund another obligation which was issued before July 1, 1982, the amendments made by this section [amending this section] shall apply only with respect to the basis in such property which has not been recovered before the date such refunding obligation is issued.

"(ii) SIGNIFICANT EXPENDITURES.—In the case of facilities the original use of which commences with the taxpayer and with respect to which significant expenditures are made before January 1, 1983, the amendments made by this section shall not apply with respect to such facilities to the extent such facilities are financed by the proceeds of an obligation issued solely to refund another obligation which was issued before July 1, 1982.

In the case of an inducement resolution adopted by an issuing authority before July 1, 1982, for purposes of applying subparagraphs (A)(i) and (B)(ii) with respect to obligations described in such resolution, the term 'facilities' means the facilities described in such resolution.

"(3) CERTAIN PROJECTS FOR RESIDENTIAL REAL PROPERTY.—For purposes of clause (i) of section 168(f)(12)(C) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this section), any obligation issued to finance a project described in the table contained in paragraph (1) of section 1104(n) of the Mortgage Subsidy Bond Tax Act of 1980 [section 1104(n) of Pub. L. 96–499, set out as a note under section 103A of this title] shall be treated as an obligation described in section 103(b)(4)(A) of the Internal Revenue Code of 1986."

Amendment by section 224(c)(1), (2) of Pub. L. 97–248 to apply to any target corporation, within the meaning of section 338 of this title, with respect to which the acquisition date, within the meaning of such section, occurs after Aug. 31, 1982, and also to apply to certain acquisitions before September 1, 1982, but not to apply in the case of certain acquisitions of financial institutions, see section 224(d) of Pub. L. 97–248, set out as an Effective Date note under section 338 of this title.

EFFECTIVE DATE

Pub. L. 97–34, title II, §209(a)–(c), Aug. 13, 1981, 95 Stat. 226, as amended by Pub. L. 97–448, title I, §102(d)(1), (g), Jan. 12, 1983, 96 Stat. 2370; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) GENERAL RULE.—Except as otherwise provided in this section, the amendments made by this

subtitle [subtitle A (§§201–209) of title II of Pub. L. 97–34, enacting this section, amending sections 44E, 46, 50A, 53, 57, 167, 172, 179, 263, 312, 381, 453, 812, 825, 964, 1033, 1245, and 1250 of this title, and enacting provisions set out as notes under this section and sections 46 and 167 of this title] shall apply to property placed in service after December 31, 1980, in taxable years ending after such date.

"(b) SPECIAL RULE FOR RRB PROPERTY.—The amendment made by subsection (c) of section 203 [amending section 167 of this title and enacting provisions set out as notes under section 167 of this title] shall take effect on January 1, 1981, and shall apply with respect to taxable years ending after such date.

"(c) SPECIAL RULE FOR CARRYOVERS.—

"(1)(A) Except as provided in subparagraph (B), the amendments made by subsections (a) and (b) of section 207 [amending sections 172, 812, and 825 of this title] shall apply to net operating losses in taxable years ending after December 31, 1975.

"(B) The amendments made by subparagraph (B)(i) of section 207(a)(2) [amending section 172 of this title] shall take effect as if they had been included in the amendments made by section 1(a) of Public Law 96–595 [amending section 172 of this title]; except that the amendments made by such subparagraph shall apply only to net operating losses in taxable years ending after December 31, 1972.

"(C) If any net operating loss for any taxable year ending on or before December 31, 1975, could be a net operating loss carryover to a taxable year ending in 1981 by reason of subclause (II) of section 172(b)(1)(E)(ii) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect on the day before the date of the enactment of this Act [Aug. 13, 1981] and as modified by section 1(b) of Public Law 96–595 [set out as an Effective Date of 1980 Amendment note under section 172 of this title]), such net operating loss shall be a net operating loss carryover under section 172 of such Code to each of the 15 taxable years following the taxable year of such loss.

"(2)(A) The amendments made by subsection (c)(1) of section 207 [amending sections 46 and 50A of this title] shall apply to unused credit years ending after December 31, 1973.

"(B) The amendment made by subsection (c)(2) of section 207 [amending section 53 of this title] shall apply to unused credit years beginning after December 31, 1976.

"(C) The amendments made by subsection (c)(3) of section 207 [amending section 44E of this title] shall apply to unused credit years ending after September 30, 1980.

"(3) CARRYOVER MUST HAVE BEEN ALIVE IN 1981.—The amendments made by subsections (a), (b), and (c) of section 207 [amending sections 44E, 46, 50A, 53, 172, 812, and 825 of this title] shall not apply to any amount which, under the law in effect on the day before the date of the enactment of this Act [Aug. 13, 1981], could not be carried to a taxable year ending in 1981."

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

DEPRECIATION STUDY

Pub. L. 105–277, div. J, title II, §2022, Oct. 21, 1998, 112 Stat. 2681–903, provided that: "The Secretary of the Treasury (or the Secretary's delegate)—

"(1) shall conduct a comprehensive study of the recovery periods and depreciation methods under section 168 of the Internal Revenue Code of 1986, and

"(2) not later than March 31, 2000, shall submit the results of such study, together with recommendations for determining such periods and methods in a more rational manner, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TREATMENT OF CERTAIN FARM FINANCE LEASES

Pub. L. 99–514, title XVIII, §1801(a)(2), Oct. 22, 1986, 100 Stat. 2785, as amended by Pub. L. 100–647, title I, §1018(a), Nov. 10, 1988, 102 Stat. 3577, provided that:

"(A) IN GENERAL.—If—

"(i) any partnership or grantor trust is the lessor under a specified agreement,

"(ii) such partnership or grantor trust met the requirements of section 168(f)(8)(C)(i) of the Internal Revenue Code of 1954 (relating to special rules for finance leases) when the agreement was entered into, and

"(iii) a person became a partner in such partnership (or a beneficiary in such trust) after its formation but before September 26, 1985,

then, for purposes of applying the revenue laws of the United States in respect to such agreement, the portion of the property allocable to partners (or beneficiaries) not described in clause (iii) shall be treated as if it were subject to a separate agreement and the portion of such property allocable to the partner or beneficiary described in clause (iii) shall be treated as if it were subject to a separate agreement.

"(B) SPECIFIED AGREEMENT.—For purposes of subparagraph (A), the term 'specified agreement' means an agreement to which subparagraph (B) of section 209(d)[(1)] of the Tax Equity and Fiscal Responsibility Act of 1982 [section 209(d)(1) of Pub. L. 97–248, set out as a note above] applies which is—

"(i) an agreement dated as of December 20, 1982, as amended and restated as of February 1, 1983, involving approximately $8,734,000 of property at December 31, 1983,

"(ii) an agreement dated as of December 15, 1983, as amended and restated as of January 3, 1984, involving approximately $13,199,000 of property at December 31, 1984, or

"(iii) an agreement dated as of October 25, 1984, as amended and restated as of December 1, 1984, involving approximately $966,000 of property at December 31, 1984."

CERTAIN RESIDENTIAL REAL PROPERTY TREATED AS RESIDENTIAL RENTAL PROPERTY

Pub. L. 99–514, title XVIII, §1809(a)(4)(C), Oct. 22, 1986, 100 Stat. 2820, provided that: "Any property described in paragraph (3) of section 631(d) of the Tax Reform Act of 1984 [section 631(d) of Pub. L. 99–369, set out as a note under section 103 of this title] shall be treated as property described in clause (ii) of section 168(f)(12)(C) of the Internal Revenue Code of 1954 [now 1986] as amended by subparagraph (B)."

COORDINATION WITH IMPUTED INTEREST CHANGES

Pub. L. 99–514, title XVIII, §1809(a)(5), Oct. 22, 1986, 100 Stat. 2820, provided that: "In the case of any property placed in service before May 9, 1985 (or treated as placed in service before such date by section 105(b)(3) of Public Law 99–121 [set out as a note above])—

"(A) any reference in any amendment made by this subsection [amending this section and sections 57 and 312 of this title] to 19-year real property shall be treated as a reference to 18-year real property, and

"(B) section 168(f)(12)(B)(ii) of the Internal Revenue Code of 1954 [now 1986] (as amended by paragraph (4)(A)) shall be applied by substituting '18 years' for '19 years'."

TERMINATION OF SAFE HARBOR LEASING RULES

Pub. L. 98–369, div. A, title I, §12(b), July 18, 1984, 98 Stat. 504, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Paragraph (8) of section 168(f) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to special rules for leasing), as in effect after the amendments made by section 208 of the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97–248] but before the amendments made by section 209 of such Act, shall not apply to agreements entered into after December 31, 1983. The preceding sentence shall not apply to property described in paragraph (3)(G) or (5) of section 208(d) of such Act [set out as an Effective Date of 1982 Amendments note above]."

TRANSITIONAL RULES FOR 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §12(c), July 18, 1984, 98 Stat. 504, as amended by Pub. L. 99–514, §2, title XVIII, §1801(a)(1), Oct. 22, 1986, 100 Stat. 2095, 2785; Pub. L. 100–647, title I, §1002(d)(7)(B), Nov. 10, 1988, 102 Stat. 3360, provided that:

"(1) IN GENERAL.—The amendments made by subsection (a) [amending this section and section 208(d) of Pub. L. 97–248, set out as an Effective Date of 1982 Amendments note above] shall not apply with respect to any property if—

"(A) a binding contract to acquire or to construct such property was entered into by or for the lessee before March 7, 1984, or

"(B) such property was acquired by the lessee, or the construction of such property was begun, by or for the lessee, before March 7, 1984.

The preceding sentence shall not apply to any property with respect to which an election is made under this sentence at such time after the date of the enactment of the Tax Reform Act of 1986 [Oct. 22, 1986] as the Secretary of the Treasury or his delegate may prescribe.

"(2) SPECIAL RULE FOR CERTAIN AUTOMOTIVE PROPERTY.—

"(A) IN GENERAL.—The amendments made by subsection (a) shall not apply to property—

"(i) which is automotive manufacturing property, and

"(ii) with respect to which the lessee is a qualified lessee (within the meaning of section 208(d)(6) of the Tax Equity and Fiscal Responsibility Act of 1982) [Pub. L. 97–248, set out as an Effective Date of 1982 Amendments note above].

"(B) $150,000,000 LIMITATION.—The provisions of subparagraph (A) shall not apply to any agreement if the sum of—

"(i) the cost basis of the property subject to the agreement, plus

"(ii) the cost basis of any property subject to an agreement to which subparagraph (A) previously applied and with respect to which the lessee was the lessee under the agreement described in clause (i) (or any related person within the meaning of section 168(e)(4)(D) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]),

exceeds $150,000,000.

"(C) AUTOMOTIVE MANUFACTURING PROPERTY.—For purposes of this paragraph, the term 'automotive manufacturing property' means—

"(i) property used principally by the taxpayer directly in connection with the trade or business of the taxpayer of the manufacturing of automobiles or trucks (other than truck tractors) with a gross vehicle weight of 13,000 pounds or less,

"(ii) machinery, equipment, and special tools of the type included in former depreciation range guideline classes 37.11 and 37.12, and

"(iii) any special tools owned by the taxpayer which are used by a vendor solely for the production of component parts for sale to the taxpayer.

"(3) SPECIAL RULE FOR CERTAIN COGENERATION FACILITIES.—The amendments made by subsection (a) shall not apply with respect to any property which is part of a coal-fired cogeneration facility—

"(A) for which an application for certification was filed with the Federal Energy Regulatory Commission on December 30, 1983,

"(B) for which an application for a construction permit was filed with a State environmental protection agency on February 20, 1984, and

"(C) which is placed in service before January 1, 1988."

SPECIAL LEASING RULE REGARDING COAL GASIFICATION FACILITIES

Pub. L. 98–369, div. A, title X, §1067(b), July 18, 1984, 98 Stat. 1049, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amount of any recapture under section 47 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] with respect to the credit allowed under section 38 of such Code with respect to progress expenditures (within the meaning of section 46(d) of such Code) shall apply only to the percentage of the cost basis of the coal gasification facility to which the amendment made by subsection (a) [amending section 208(d) of Pub. L. 97–248, set out as an Effective Date of 1982 Amendments note above] applies."

CERTAIN LEASES BEFORE OCTOBER 20, 1981, TREATED AS QUALIFIED LEASES

Pub. L. 97–248, title II, §208(c), Sept. 3, 1982, 96 Stat. 439, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Nothing in paragraph (8) of section 168(f) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], or in any regulations prescribed thereunder, shall be treated as making such paragraph inapplicable to any agreement entered into before October 20, 1981, solely because under such agreement 1 party to such agreement is entitled to the credit allowable under section 38 of such Code with respect to property and another party to such agreement is entitled to the deduction allowable under section 168 of such Code with respect to such property. Section 168(f)(8)(B)(ii) of such Code shall not apply to the party entitled to such credit."

MOTOR VEHICLE OPERATING LEASES

Pub. L. 97–248, title II, §210, Sept. 3, 1982, 96 Stat. 447, as amended by Pub. L. 98–369, div. A, title I, §32(b), title VII, §712(d), July 18, 1984, 98 Stat. 531, 947; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) IN GENERAL.—In the case of any qualified motor vehicle agreement entered into on or before the 90th day after the date of the enactment of the Tax Reform Act of 1984 [July 18, 1984], the fact that such agreement contains a terminal rental adjustment clause shall not be taken into account in determining whether such agreement is a lease.

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

"(1) QUALIFIED MOTOR VEHICLE AGREEMENT.—The term 'qualified motor vehicle agreement'

means any agreement with respect to a motor vehicle (including a trailer)—

"(A) which was entered into before—

"(i) the enactment of any law, or

"(ii) the publication by the Secretary of the Treasury or his delegate of any regulation,

which provides that any agreement with a terminal rental adjustment clause is not a lease,

"(B) with respect to which the lessor under the agreement—

"(i) is personally liable for the repayment of, or

"(ii) has pledged property (but only to the extent of the net fair market value of the lessor's interest in such property), other than property subject to the agreement or property directly or indirectly financed by indebtedness secured by property subject to the agreement, as security for,

all amounts borrowed to finance the acquisition of property subject to the agreement, and

"(C) with respect to which the lessee under the agreement uses the property subject to the agreement in a trade or business or for the production of income.

"(2) TERMINAL RENTAL ADJUSTMENT CLAUSE.—The term 'terminal rental adjustment clause' means a provision of an agreement which permits or requires the rental price to be adjusted upward or downward by reference to the amount realized by the lessor under the agreement upon sale or other disposition of such property. Such term also includes a provision of an agreement which requires a lessee who is a dealer in motor vehicles to purchase the motor vehicle for a predetermined price and then resell such vehicle where such provision achieves substantially the same results as a provision described in the preceding sentence.

"(c) EXCEPTION WHERE LESSEE TOOK POSITION ON RETURN.—Subsection (a) shall not apply to deny a deduction for interest paid or accrued claimed by a lessee with respect to a qualified motor vehicle agreement on a return of tax imposed by chapter 1 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] which was filed before the date of the enactment of this Act [Sept. 3, 1982] or to deny a credit for investment in depreciable property claimed by the lessee on such a return pursuant to an agreement with the lessor that the lessor would not claim the credit."

INFORMATION RETURNS WITH RESPECT TO SAFE HARBOR LEASES

Pub. L. 97–119, title I, §112, Dec. 29, 1981, 95 Stat. 1640, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) REQUIREMENT OF RETURN.—

"(1) IN GENERAL.—Except as provided in paragraph (2), paragraph (8) of section 168(f) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to special rule for leases) shall not apply with respect to an agreement unless a return, signed by the lessor and lessee and containing the information required to be included in the return pursuant to subsection (b), has been filed with the Internal Revenue Service not later than the 30th day after the date on which the agreement is executed.

"(2) SPECIAL RULES FOR AGREEMENTS EXECUTED BEFORE JANUARY 1, 1982.—

"(A) IN GENERAL.—In the case of an agreement executed before January 1, 1982, such agreement shall cease on February 1, 1982, to be treated as a lease under section 168(f)(8) unless a return, signed by the lessor and containing the information required to be included in subsection (b), has been filed with the Internal Revenue Service not later than January 31, 1982.

"(B) FILING BY LESSEE.—If the lessor does not file a return under subparagraph (A), the return requirement under subparagraph (A) shall be satisfied if such return is filed by the lessee before January 31, 1982.

"(3) CERTAIN FAILURE TO FILE.—If—

"(A) a lessor or lessee fails to file any return within the time prescribed by this subsection, and

"(B) such failure is shown to be due to reasonable cause and not due to willful neglect,

the lessor or lessee shall be treated as having filed a timely return if a return is filed within a reasonable time after the failure is ascertained.

"(b) INFORMATION REQUIRED.—The information required to be included in the return pursuant to this subsection is as follows:

"(1) The name, address, and taxpayer identifying number of the lessor and the lessee (and parent company if a consolidated return is filed);

"(2) The district director's office with which the income tax returns of the lessor and lessee are filed;

"(3) A description of each individual property with respect to which the election is made;

"(4) The date on which the lessee places the property in service, the date on which the lease begins and the term of the lease;

"(5) The recovery property class and the ADR midpoint life of the leased property;

"(6) The payment terms between the parties to the lease transaction;

"(7) Whether the ACRS deductions and the investment tax credit are allowable to the same taxpayer;

"(8) The aggregate amount paid to outside parties to arrange or carry out the transaction;

"(9) For the lessor only: the unadjusted basis of the property as defined in section 168(d)(1);

"(10) For the lessor only: if the lessor is a partnership or a grantor trust, the name, address, and taxpayer identifying number of the partners or the beneficiaries, and the district director's office with which the income tax return of each partner or beneficiary is filed; and

"(11) Such other information as may be required by the return or its instructions.

Paragraph (8) shall not apply with respect to any person for any calendar year if it is reasonable to estimate that the aggregate adjusted basis of the property of such person which will be subject to subsection (a) for such year is $1,000,000 or less.

"(c) COORDINATION WITH OTHER INFORMATION REQUIREMENTS.—In the case of agreements executed after December 31, 1982, to the extent provided in regulations prescribed by the Secretary of the Treasury or his delegate, the provisions of this section shall be modified to coordinate such provisions with the other information requirements of the Internal Revenue Code of 1986."

REGULATED PUBLIC UTILITIES; SPECIAL TRANSITIONAL RULE FOR NORMALIZATION REQUIREMENTS

Pub. L. 97–34, title II, §209(d)(1), Aug. 13, 1981, 95 Stat. 226, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "If, by the terms of the applicable rate order last entered before the date of the enactment of this Act [Aug. 13, 1981] by a regulatory commission having appropriate jurisdiction, a regulated public utility would (but for this provision) fail to meet the requirements of section 168(e)(3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] with respect to property because, for an accounting period ending after December 31, 1980, such public utility used a method of accounting other than a normalization method of accounting, such regulated public utility shall not fail to meet such requirements if, by the terms of its first rate order determining cost of service with respect to such property which becomes effective after the date of the enactment of this Act and on or before January 1, 1983, such regulated public utility uses a normalization method of accounting. This provision shall not apply to any rate order which, under the rules in effect before the date of the enactment of this Act, required a regulated public utility to use a method of accounting with respect to the deduction allowable by section 167 which, under section 167(l), it was not permitted to use."

INTERIM REGULATIONS WITH RESPECT TO NORMALIZATION; AUTHORITY TO PRESCRIBE

Pub. L. 97–34, title II, §209(d)(4), Aug. 13, 1981, 95 Stat. 227, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Until Congress acts further, the Secretary of the Treasury or his delegate may prescribe such interim regulations as may be necessary or appropriate to determine whether the requirements of section 168(e)(3)(B) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] have been met with respect to property placed in service after December 31, 1980."

[1] So in original. Probably should be "property,".

[2] So in original. The word "and" probably should not appear.

§169. Amortization of pollution control facilities

(a) Allowance of deduction

Every person, at his election, shall be entitled to a deduction with respect to the amortization of the amortizable basis of any certified pollution control facility (as defined in subsection (d)), based on a period of 60 months. Such amortization deduction shall be an amount, with respect to each month of such period within the taxable year, equal to the amortizable basis of the pollution control facility at the end of such month divided by the number of months (including the month for which the deduction is computed) remaining in the period. Such amortizable basis at the end of the month shall be computed without regard to the amortization deduction for such month. The amortization deduction provided by this section with respect to any month shall be in lieu of the depreciation

deduction with respect to such pollution control facility for such month provided by section 167. The 60-month period shall begin, as to any pollution control facility, at the election of the taxpayer, with the month following the month in which such facility was completed or acquired, or with the succeeding taxable year.

(b) Election of amortization

The election of the taxpayer to take the amortization deduction and to begin the 60-month period with the month following the month in which the facility is completed or acquired, or with the taxable year succeeding the taxable year in which such facility is completed or acquired, shall be made by filing with the Secretary, in such manner, in such form, and within such time, as the Secretary may by regulations prescribe, a statement of such election.

(c) Termination of amortization deduction

A taxpayer which has elected under subsection (b) to take the amortization deduction provided in subsection (a) may, at any time after making such election, discontinue the amortization deduction with respect to the remainder of the amortization period, such discontinuance to begin as of the beginning of any month specified by the taxpayer in a notice in writing filed with the Secretary before the beginning of such month. The depreciation deduction provided under section 167 shall be allowed, beginning with the first month as to which the amortization deduction does not apply, and the taxpayer shall not be entitled to any further amortization deduction under this section with respect to such pollution control facility.

(d) Definitions and special rules

For purposes of this section—

(1) Certified pollution control facility

The term "certified pollution control facility" means a new identifiable treatment facility which is used, in connection with a plant or other property in operation before January 1, 1976, to abate or control water or atmospheric pollution or contamination by removing, altering, disposing, storing, or preventing the creation or omission of pollutants, contaminants, wastes, or heat and which—

(A) the State certifying authority having jurisdiction with respect to such facility has certified to the Federal certifying authority as having been constructed, reconstructed, erected, or acquired in conformity with the State program or requirements for abatement or control of water or atmospheric pollution or contamination;

(B) the Federal certifying authority has certified to the Secretary (i) as being in compliance with the applicable regulations of Federal agencies and (ii) as being in furtherance of the general policy of the United States for cooperation with the States in the prevention and abatement of water pollution under the Federal Water Pollution Control Act, as amended (33 U.S.C. 466 et seq.), or in the prevention and abatement of atmospheric pollution and contamination under the Clean Air Act, as amended (42 U.S.C. 1857 et seq.); and

(C) does not significantly—

(i) increase the output or capacity, extend the useful life, or reduce the total operating costs of such plant or other property (or any unit thereof), or

(ii) alter the nature of the manufacturing or production process or facility.

(2) State certifying authority

The term "State certifying authority" means, in the case of water pollution, the State water pollution control agency as defined in section 13(a) of the Federal Water Pollution Control Act and, in the case of air pollution, the air pollution control agency as defined in section 302(b) of the Clean Air Act. The term "State certifying authority" includes any interstate agency authorized to act in place of a certifying authority of the State.

(3) Federal certifying authority

The term "Federal certifying authority" means, in the case of water pollution, the Secretary of the Interior and, in the case of air pollution, the Secretary of Health and Human Services.

(4) New identifiable treatment facility

(A) In general

For purposes of paragraph (1), the term "new identifiable treatment facility" includes only tangible property (not including a building and its structural components, other than a building which is exclusively a treatment facility) which is of a character subject to the allowance for depreciation provided in section 167, which is identifiable as a treatment facility, and which is property—

(i) the construction, reconstruction, or erection of which is completed by the taxpayer after December 31, 1968, or

(ii) acquired after December 31, 1968, if the original use of the property commences with the taxpayer and commences after such date.

In applying this section in the case of property described in clause (i) there shall be taken into account only that portion of the basis which is properly attributable to construction, reconstruction, or erection after December 31, 1968.

(B) Certain facilities placed in operation after April 11, 2005

In the case of any facility described in paragraph (1) solely by reason of paragraph (5), subparagraph (A) shall be applied by substituting "April 11, 2005" for "December 31, 1968" each place it appears therein.

(5) Special rule relating to certain atmospheric pollution control facilities

In the case of any atmospheric pollution control facility which is placed in service after April 11, 2005, and used in connection with an electric generation plant or other property which is primarily coal fired—

(A) paragraph (1) shall be applied without regard to the phrase "in operation before January 1, 1976", and

(B) in the case of facility [1] placed in service in connection with a plant or other property placed in operation after December 31, 1975, this section shall be applied by substituting "84" for "60" each place it appears in subsections (a) and (b).

(e) Profitmaking abatement works, etc.

The Federal certifying authority shall not certify any property under subsection (d)(1)(B) to the extent it appears that by reason of profits derived through the recovery of wastes or otherwise in the operation of such property, its costs will be recovered over its actual useful life.

(f) Amortizable basis

(1) Defined

For purposes of this section, the term "amortizable basis" means that portion of the adjusted basis (for determining gain) of a certified pollution control facility which may be amortized under this section.

(2) Special rules

(A) If a certified pollution control facility has a useful life (determined as of the first day of the first month for which a deduction is allowable under this section) in excess of 15 years, the amortizable basis of such facility shall be equal to an amount which bears the same ratio to the portion of the adjusted basis of such facility, which would be eligible for amortization but for the application of this subparagraph, as 15 bears to the number of years of useful life of such facility.

(B) The amortizable basis of a certified pollution control facility with respect to which an election under this section is in effect shall not be increased, for purposes of this section, for additions or improvements after the amortization period has begun.

(g) Depreciation deduction

The depreciation deduction provided by section 167 shall, despite the provisions of subsection (a), be allowed with respect to the portion of the adjusted basis which is not the amortizable basis.

[(h) Repealed. Pub. L. 92–178, title I, §104(f)(2), Dec. 10, 1971, 85 Stat. 502]

(i) Life tenant and remainderman

In the case of property held by one person for life with remainder to another person, the deduction under this section shall be computed as if the life tenant were the absolute owner of the property and shall be allowable to the life tenant.

(j) Cross reference

For special rule with respect to certain gain derived from the disposition of property the adjusted basis of which is determined with regard to this section, see section 1245.

(Added Pub. L. 91–172, title VII, §704(a), Dec. 30, 1969, 83 Stat. 667; amended Pub. L. 92–178, title I, §104(f)(2), Dec. 10, 1971, 85 Stat. 502; Pub. L. 93–625, §3(a), Jan. 3, 1975, 88 Stat. 2109; Pub. L. 94–455, title XIX, §1906(b)(13)(A), title XXI, §2112(b), (c), Oct. 4, 1976, 90 Stat. 1834, 1906; Pub. L. 109–58, title XIII, §1309(a)–(d), Aug. 8, 2005, 119 Stat. 1007; Pub. L. 109–135, title IV, §402(e), Dec. 21, 2005, 119 Stat. 2611.)

REFERENCES IN TEXT

The Federal Water Pollution Control Act, as amended (33 U.S.C. 466 et seq.), referred to in subsec. (d)(1)(B), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, §2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§1251 et seq.) of Title 33, Navigation and Navigable Waters. The subject matter of section 13(a) of the act, referred to in subsec. (d)(2), is covered by section 1362(1) of Title 33. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Clean Air Act, referred to in subsec. (d)(1)(B), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§7401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

Section 302(b) of the Clean Air Act, referred to in subsec. (d)(2), formerly classified to section 1857h(b) of Title 42, was reclassified to section 7602(b) of Title 42 on enactment of Pub. L. 95–95.

PRIOR PROVISIONS

A prior section 169, act Aug. 16, 1954, ch. 736, 68A Stat. 55, related to amortization of grain-storage facilities, prior to the reorganization of part VI of subchapter B of chapter 1 of this title by Pub. L. 91–172.

AMENDMENTS

2005—Subsec. (d). Pub. L. 109–58, §1309(c), inserted "and special rules" after "Definitions" in heading.

Subsec. (d)(3). Pub. L. 109–58, §1309(d), substituted "Health and Human Services" for "Health, Education, and Welfare".

Subsec. (d)(4)(B). Pub. L. 109–58, §1309(b), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: "In the case of any treatment facility used in connection with any plant or other property not in operation before January 1, 1969, the preceding sentence shall be applied by substituting December 31, 1975, for December 31, 1968."

Subsec. (d)(5). Pub. L. 109–58, §1309(a), added par. (5).

Subsec. (d)(5)(B). Pub. L. 109–135 inserted "in the case of facility placed in service in connection with a plant or other property placed in operation after December 31, 1975," before "this section".

1976—Subsecs. (b), (c). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (d)(1). Pub. L. 94–455, §§1906(b)(13)(A), 2112(b), substituted in provisions preceding subpar. (A) "January 1, 1976," for "January 1, 1969," and "storing, or preventing the creation or emission of" for "or storing", struck out in subpar. (B) "or his delegate" after "Secretary", and added subpar. (C).

Subsec. (d)(4). Pub. L. 94–455, §2112(c), among other changes, struck out provisions relating to treatment facilities placed in service by taxpayer before Jan. 1, 1976, and inserted provisions that in case of treatment facilities used in connection with any plan or other property not in operation before Jan. 1, 1969, Dec. 31, 1975, shall be substituted for Dec. 31, 1968, as the cut-off date for taking into account that portion of the basis which is attributable to construction, reconstruction, or erection.

1975—Subsec. (d)(4)(B). Pub. L. 93–625 substituted "January 1, 1976" for "January 1, 1975".

1971—Subsec. (h). Pub. L. 92–178 struck out provision that investment credit not be allowed. See section 48(a)(8) of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the Energy Policy Act of 2005, Pub. L. 109–58, to which such amendment relates, see section 402(m)(1) of Pub. L. 109–135, set out as an Effective and Termination Dates of 2005 Amendments note under section 23 of this title.

Pub. L. 109–58, title XIII, §1309(e), Aug. 8, 2005, 119 Stat. 1007, provided that: "The amendments made by this section [amending this section] shall apply to facilities placed in service after April 11, 2005."

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XXI, §2112(d)(2), Oct. 4, 1976, 90 Stat. 1907, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 1975. Such amendments shall not apply in the case of any property with respect to which the amortization period under section 169 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] has begun before January 1, 1976."

EFFECTIVE DATE

Pub. L. 91–172, title VII, §704(c), Dec. 30, 1969, 83 Stat. 670, provided that: "The amendments made by this section [enacting this section and amending sections 642, 1082, 1245, and 1250 of this title] shall apply with respect to taxable years ending after December 31, 1968."

TRANSFER OF FUNCTIONS

Functions vested in Secretary of the Interior and Secretary of Health, Education, and Welfare by subsec. (d)(1)(B), (3) of this section transferred to Administrator of Environmental Protection Agency by Reorg. Plan No. 3, of 1970, §2(a)(9), eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat. 2086, set out in the Appendix to Title 5, Government Organization and Employees.

[1] So in original. Probably should be "a facility".

§170. Charitable, etc., contributions and gifts

(a) Allowance of deduction

(1) General rule

There shall be allowed as a deduction any charitable contribution (as defined in subsection (c)) payment of which is made within the taxable year. A charitable contribution shall be allowable as a deduction only if verified under regulations prescribed by the Secretary.

(2) Corporations on accrual basis

In the case of a corporation reporting its taxable income on the accrual basis, if—

(A) the board of directors authorizes a charitable contribution during any taxable year, and

(B) payment of such contribution is made after the close of such taxable year and on or before the 15th day of the third month following the close of such taxable year,

then the taxpayer may elect to treat such contribution as paid during such taxable year. The election may be made only at the time of the filing of the return for such taxable year, and shall be signified in such manner as the Secretary shall by regulations prescribe.

(3) Future interests in tangible personal property

For purposes of this section, payment of a charitable contribution which consists of a future interest in tangible personal property shall be treated as made only when all intervening interests in, and rights to the actual possession or enjoyment of, the property have expired or are held by persons other than the taxpayer or those standing in a relationship to the taxpayer described in section 267(b) or 707(b). For purposes of the preceding sentence, a fixture which is intended to be severed from the real property shall be treated as tangible personal property.

(b) Percentage limitations

(1) Individuals

In the case of an individual, the deduction provided in subsection (a) shall be limited as provided in the succeeding subparagraphs.

(A) General rule

Any charitable contribution to—

(i) a church or a convention or association of churches,

(ii) an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on,

(iii) an organization the principal purpose or functions of which are the providing of medical or hospital care or medical education or medical research, if the organization is a hospital, or if the organization is a medical research organization directly engaged in the continuous active conduct of medical research in conjunction with a hospital, and during the calendar year in which the contribution is made such organization is committed to spend such contributions for such research before January 1 of the fifth calendar year which begins after the date such contribution is made,

(iv) an organization which normally receives a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(a)) from the United States or any State or political subdivision thereof or from direct or indirect contributions from the general public, and which is organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of a college or university which is an organization referred to in clause (ii) of this subparagraph and which is an agency or instrumentality of a State or political subdivision thereof, or which is owned or operated by a State or political subdivision thereof or by an agency or instrumentality of one or more States or political subdivisions,

(v) a governmental unit referred to in subsection (c)(1),

(vi) an organization referred to in subsection (c)(2) which normally receives a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(a)) from a governmental unit referred to in subsection (c)(1) or from direct or indirect contributions from the general public,

(vii) a private foundation described in subparagraph (F), or

(viii) an organization described in section 509(a)(2) or (3),

shall be allowed to the extent that the aggregate of such contributions does not exceed 50 percent of the taxpayer's contribution base for the taxable year.

(B) Other contributions

Any charitable contribution other than a charitable contribution to which subparagraph (A) applies shall be allowed to the extent that the aggregate of such contributions does not exceed the lesser of—

(i) 30 percent of the taxpayer's contribution base for the taxable year, or

(ii) the excess of 50 percent of the taxpayer's contribution base for the taxable year over the amount of charitable contributions allowable under subparagraph (A) (determined without regard to subparagraph (C)).

If the aggregate of such contributions exceeds the limitation of the preceding sentence, such excess shall be treated (in a manner consistent with the rules of subsection (d)(1)) as a charitable contribution (to which subparagraph (A) does not apply) in each of the 5 succeeding taxable years in order of time.

(C) Special limitation with respect to contributions described in subparagraph (A) of certain capital gain property

(i) In the case of charitable contributions described in subparagraph (A) of capital gain property to which subsection (e)(1)(B) does not apply, the total amount of contributions of such property which may be taken into account under subsection (a) for any taxable year shall not exceed 30 percent of the taxpayer's contribution base for such year. For purposes of this subsection, contributions of capital gain property to which this subparagraph applies shall be taken into account after all other charitable contributions (other than charitable contributions to which subparagraph (D) applies).

(ii) If charitable contributions described in subparagraph (A) of capital gain property to which clause (i) applies exceeds 30 percent of the taxpayer's contribution base for any taxable year, such excess shall be treated, in a manner consistent with the rules of subsection (d)(1), as a charitable contribution of capital gain property to which clause (i) applies in each of the 5 succeeding taxable years in order of time.

(iii) At the election of the taxpayer (made at such time and in such manner as the Secretary prescribes by regulations), subsection (e)(1) shall apply to all contributions of capital gain property (to which subsection (e)(1)(B) does not otherwise apply) made by the taxpayer during the taxable year. If such an election is made, clauses (i) and (ii) shall not apply to contributions of capital gain property made during the taxable year, and, in applying subsection (d)(1) for such taxable year with respect to contributions of capital gain property made in any prior contribution year for which an election was not made under this clause, such contributions shall be reduced as if subsection (e)(1) had applied to such contributions in the year in which made.

(iv) For purposes of this paragraph, the term "capital gain property" means, with respect to any contribution, any capital asset the sale of which at its fair market value at the time of the contribution would have resulted in gain which would have been long-term capital gain. For purposes of the preceding sentence, any property which is property used in the trade or business (as defined in section 1231(b)) shall be treated as a capital asset.

(D) Special limitation with respect to contributions of capital gain property to organizations not described in subparagraph (A)

(i) In general

In the case of charitable contributions (other than charitable contributions to which subparagraph (A) applies) of capital gain property, the total amount of such contributions of such property taken into account under subsection (a) for any taxable year shall not exceed the lesser of—

(I) 20 percent of the taxpayer's contribution base for the taxable year, or

(II) the excess of 30 percent of the taxpayer's contribution base for the taxable year over the amount of the contributions of capital gain property to which subparagraph (C) applies.

For purposes of this subsection, contributions of capital gain property to which this subparagraph applies shall be taken into account after all other charitable contributions.

(ii) Carryover

If the aggregate amount of contributions described in clause (i) exceeds the limitation of clause (i), such excess shall be treated (in a manner consistent with the rules of subsection (d)(1)) as a charitable contribution of capital gain property to which clause (i) applies in each of the 5 succeeding taxable years in order of time.

(E) Contributions of qualified conservation contributions

(i) In general

Any qualified conservation contribution (as defined in subsection (h)(1)) shall be allowed to the extent the aggregate of such contributions does not exceed the excess of 50 percent of

the taxpayer's contribution base over the amount of all other charitable contributions allowable under this paragraph.

(ii) Carryover

If the aggregate amount of contributions described in clause (i) exceeds the limitation of clause (i), such excess shall be treated (in a manner consistent with the rules of subsection (d)(1)) as a charitable contribution to which clause (i) applies in each of the 15 succeeding years in order of time.

(iii) Coordination with other subparagraphs

For purposes of applying this subsection and subsection (d)(1), contributions described in clause (i) shall not be treated as described in subparagraph (A), (B), (C), or (D) and such subparagraphs shall apply without regard to such contributions.

(iv) Special rule for contribution of property used in agriculture or livestock production

(I) In general

If the individual is a qualified farmer or rancher for the taxable year for which the contribution is made, clause (i) shall be applied by substituting "100 percent" for "50 percent".

(II) Exception

Subclause (I) shall not apply to any contribution of property made after the date of the enactment of this subparagraph which is used in agriculture or livestock production (or available for such production) unless such contribution is subject to a restriction that such property remain available for such production. This subparagraph shall be applied separately with respect to property to which subclause (I) does not apply by reason of the preceding sentence prior to its application to property to which subclause (I) does apply.

(v) Definition

For purposes of clause (iv), the term "qualified farmer or rancher" means a taxpayer whose gross income from the trade or business of farming (within the meaning of section 2032A(e)(5)) is greater than 50 percent of the taxpayer's gross income for the taxable year.

(vi) Termination

This subparagraph shall not apply to any contribution made in taxable years beginning after December 31, 2013.

(F) Certain private foundations

The private foundations referred to in subparagraph (A)(vii) and subsection (e)(1)(B) are—

(i) a private operating foundation (as defined in section 4942(j)(3)),

(ii) any other private foundation (as defined in section 509(a)) which, not later than the 15th day of the third month after the close of the foundation's taxable year in which contributions are received, makes qualifying distributions (as defined in section 4942(g), without regard to paragraph (3) thereof), which are treated, after the application of section 4942(g)(3), as distributions out of corpus (in accordance with section 4942(h)) in an amount equal to 100 percent of such contributions, and with respect to which the taxpayer obtains adequate records or other sufficient evidence from the foundation showing that the foundation made such qualifying distributions, and

(iii) a private foundation all of the contributions to which are pooled in a common fund and which would be described in section 509(a)(3) but for the right of any substantial contributor (hereafter in this clause called "donor") or his spouse to designate annually the recipients, from among organizations described in paragraph (1) of section 509(a), of the income attributable to the donor's contribution to the fund and to direct (by deed or by will) the payment, to an organization described in such paragraph (1), of the corpus in the common fund attributable to the donor's contribution; but this clause shall apply only if all of the income of the common fund is required to be (and is) distributed to one or more

organizations described in such paragraph (1) not later than the 15th day of the third month after the close of the taxable year in which the income is realized by the fund and only if all of the corpus attributable to any donor's contribution to the fund is required to be (and is) distributed to one or more of such organizations not later than one year after his death or after the death of his surviving spouse if she has the right to designate the recipients of such corpus.

(G) Contribution base defined

For purposes of this section, the term "contribution base" means adjusted gross income (computed without regard to any net operating loss carryback to the taxable year under section 172).

(2) Corporations

In the case of a corporation—

(A) In general

The total deductions under subsection (a) for any taxable year (other than for contributions to which subparagraph (B) applies) shall not exceed 10 percent of the taxpayer's taxable income.

(B) Qualified conservation contributions by certain corporate farmers and ranchers

(i) In general

Any qualified conservation contribution (as defined in subsection (h)(1))—

(I) which is made by a corporation which, for the taxable year during which the contribution is made, is a qualified farmer or rancher (as defined in paragraph (1)(E)(v)) and the stock of which is not readily tradable on an established securities market at any time during such year, and

(II) which, in the case of contributions made after the date of the enactment of this subparagraph, is a contribution of property which is used in agriculture or livestock production (or available for such production) and which is subject to a restriction that such property remain available for such production,

shall be allowed to the extent the aggregate of such contributions does not exceed the excess of the taxpayer's taxable income over the amount of charitable contributions allowable under subparagraph (A).

(ii) Carryover

If the aggregate amount of contributions described in clause (i) exceeds the limitation of clause (i), such excess shall be treated (in a manner consistent with the rules of subsection (d)(2)) as a charitable contribution to which clause (i) applies in each of the 15 succeeding years in order of time.

(iii) Termination

This subparagraph shall not apply to any contribution made in taxable years beginning after December 31, 2013.

(C) Taxable income

For purposes of this paragraph, taxable income shall be computed without regard to—

(i) this section,

(ii) part VIII (except section 248),

(iii) any net operating loss carryback to the taxable year under section 172,

(iv) section 199, and

(v) any capital loss carryback to the taxable year under section 1212(a)(1).

(3) Temporary suspension of limitations on charitable contributions

In the case of a qualified farmer or rancher (as defined in paragraph (1)(E)(v)), any charitable contribution of food—

(A) to which subsection (e)(3)(C) applies (without regard to clause (ii) thereof), and

(B) which is made during the period beginning on the date of the enactment of this paragraph and before January 1, 2009,

shall be treated for purposes of paragraph (1)(E) or (2)(B), whichever is applicable, as if it were a qualified conservation contribution which is made by a qualified farmer or rancher and which otherwise meets the requirements of such paragraph.

(c) Charitable contribution defined

For purposes of this section, the term "charitable contribution" means a contribution or gift to or for the use of—

(1) A State, a possession of the United States, or any political subdivision of any of the foregoing, or the United States or the District of Columbia, but only if the contribution or gift is made for exclusively public purposes.

(2) A corporation, trust, or community chest, fund, or foundation—

(A) created or organized in the United States or in any possession thereof, or under the law of the United States, any State, the District of Columbia, or any possession of the United States;

(B) organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals;

(C) no part of the net earnings of which inures to the benefit of any private shareholder or individual; and

(D) which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

A contribution or gift by a corporation to a trust, chest, fund, or foundation shall be deductible by reason of this paragraph only if it is to be used within the United States or any of its possessions exclusively for purposes specified in subparagraph (B). Rules similar to the rules of section 501(j) shall apply for purposes of this paragraph.

(3) A post or organization of war veterans, or an auxiliary unit or society of, or trust or foundation for, any such post or organization—

(A) organized in the United States or any of its possessions, and

(B) no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(4) In the case of a contribution or gift by an individual, a domestic fraternal society, order, or association, operating under the lodge system, but only if such contribution or gift is to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals.

(5) A cemetery company owned and operated exclusively for the benefit of its members, or any corporation chartered solely for burial purposes as a cemetery corporation and not permitted by its charter to engage in any business not necessarily incident to that purpose, if such company or corporation is not operated for profit and no part of the net earnings of such company or corporation inures to the benefit of any private shareholder or individual.

For purposes of this section, the term "charitable contribution" also means an amount treated under subsection (g) as paid for the use of an organization described in paragraph (2), (3), or (4).

(d) Carryovers of excess contributions

(1) Individuals

(A) In general

In the case of an individual, if the amount of charitable contributions described in subsection (b)(1)(A) payment of which is made within a taxable year (hereinafter in this paragraph referred to as the "contribution year") exceeds 50 percent of the taxpayer's contribution base for such year, such excess shall be treated as a charitable contribution described in subsection (b)(1)(A) paid in each of the 5 succeeding taxable years in order of time, but, with respect to any such succeeding taxable year, only to the extent of the lesser of the two following amounts:

(i) the amount by which 50 percent of the taxpayer's contribution base for such succeeding taxable year exceeds the sum of the charitable contributions described in subsection (b)(1)(A) payment of which is made by the taxpayer within such succeeding taxable year (determined without regard to this subparagraph) and the charitable contributions described in subsection (b)(1)(A) payment of which was made in taxable years before the contribution year which are treated under this subparagraph as having been paid in such succeeding taxable year; or

(ii) in the case of the first succeeding taxable year, the amount of such excess, and in the case of the second, third, fourth, or fifth succeeding taxable year, the portion of such excess not treated under this subparagraph as a charitable contribution described in subsection (b)(1)(A) paid in any taxable year intervening between the contribution year and such succeeding taxable year.

(B) Special rule for net operating loss carryovers

In applying subparagraph (A), the excess determined under subparagraph (A) for the contribution year shall be reduced to the extent that such excess reduces taxable income (as computed for purposes of the second sentence of section 172(b)(2)) and increases the net operating loss deduction for a taxable year succeeding the contribution year.

(2) Corporations

(A) In general

Any contribution made by a corporation in a taxable year (hereinafter in this paragraph referred to as the "contribution year") in excess of the amount deductible for such year under subsection (b)(2)(A) shall be deductible for each of the 5 succeeding taxable years in order of time, but only to the extent of the lesser of the two following amounts: (i) the excess of the maximum amount deductible for such succeeding taxable year under subsection (b)(2)(A) over the sum of the contributions made in such year plus the aggregate of the excess contributions which were made in taxable years before the contribution year and which are deductible under this subparagraph for such succeeding taxable year; or (ii) in the case of the first succeeding taxable year, the amount of such excess contribution, and in the case of the second, third, fourth, or fifth succeeding taxable year, the portion of such excess contribution not deductible under this subparagraph for any taxable year intervening between the contribution year and such succeeding taxable year.

(B) Special rule for net operating loss carryovers

For purposes of subparagraph (A), the excess of—

(i) the contributions made by a corporation in a taxable year to which this section applies, over

(ii) the amount deductible in such year under the limitation in subsection (b)(2)(A),

shall be reduced to the extent that such excess reduces taxable income (as computed for purposes of the second sentence of section 172(b)(2)) and increases a net operating loss carryover under section 172 to a succeeding taxable year.

(e) Certain contributions of ordinary income and capital gain property

(1) General rule

The amount of any charitable contribution of property otherwise taken into account under this section shall be reduced by the sum of—

(A) the amount of gain which would not have been long-term capital gain (determined without regard to section 1221(b)(3)) if the property contributed had been sold by the taxpayer at its fair market value (determined at the time of such contribution), and

(B) in the case of a charitable contribution—

(i) of tangible personal property—

(I) if the use by the donee is unrelated to the purpose or function constituting the basis for its exemption under section 501 (or, in the case of a governmental unit, to any purpose or function described in subsection (c)), or

(II) which is applicable property (as defined in paragraph (7)(C), but without regard to clause (ii) thereof) which is sold, exchanged, or otherwise disposed of by the donee before the last day of the taxable year in which the contribution was made and with respect to which the donee has not made a certification in accordance with paragraph (7)(D),

(ii) to or for the use of a private foundation (as defined in section 509(a)), other than a private foundation described in subsection (b)(1)(F),

(iii) of any patent, copyright (other than a copyright described in section 1221(a)(3) or 1231(b)(1)(C)), trademark, trade name, trade secret, know-how, software (other than software described in section 197(e)(3)(A)(i)), or similar property, or applications or registrations of such property, or

(iv) of any taxidermy property which is contributed by the person who prepared, stuffed, or mounted the property or by any person who paid or incurred the cost of such preparation, stuffing, or mounting,

the amount of gain which would have been long-term capital gain if the property contributed had been sold by the taxpayer at its fair market value (determined at the time of such contribution).

For purposes of applying this paragraph (other than in the case of gain to which section 617(d)(1), 1245(a), 1250(a), 1252(a), or 1254(a) applies), property which is property used in the trade or business (as defined in section 1231(b)) shall be treated as a capital asset. For purposes of applying this paragraph in the case of a charitable contribution of stock in an S corporation, rules similar to the rules of section 751 shall apply in determining whether gain on such stock would have been long-term capital gain if such stock were sold by the taxpayer.

(2) Allocation of basis

For purposes of paragraph (1), in the case of a charitable contribution of less than the taxpayer's entire interest in the property contributed, the taxpayer's adjusted basis in such property shall be allocated between the interest contributed and any interest not contributed in accordance with regulations prescribed by the Secretary.

(3) Special rule for certain contributions of inventory and other property

(A) Qualified contributions

For purposes of this paragraph, a qualified contribution shall mean a charitable contribution of property described in paragraph (1) or (2) of section 1221(a), by a corporation (other than a corporation which is an S corporation) to an organization which is described in section 501(c)(3) and is exempt under section 501(a) (other than a private foundation, as defined in section 509(a), which is not an operating foundation, as defined in section 4942(j)(3)), but only if—

(i) the use of the property by the donee is related to the purpose or function constituting the basis for its exemption under section 501 and the property is to be used by the donee solely for the care of the ill, the needy, or infants;

(ii) the property is not transferred by the donee in exchange for money, other property, or services;

(iii) the taxpayer receives from the donee a written statement representing that its use and

disposition of the property will be in accordance with the provisions of clauses (i) and (ii); and

(iv) in the case where the property is subject to regulation under the Federal Food, Drug, and Cosmetic Act, as amended, such property must fully satisfy the applicable requirements of such Act and regulations promulgated thereunder on the date of transfer and for one hundred and eighty days prior thereto.

(B) Amount of reduction

The reduction under paragraph (1)(A) for any qualified contribution (as defined in subparagraph (A)) shall be no greater than the sum of—

(i) one-half of the amount computed under paragraph (1)(A) (computed without regard to this paragraph), and

(ii) the amount (if any) by which the charitable contribution deduction under this section for any qualified contribution (computed by taking into account the amount determined in clause (i), but without regard to this clause) exceeds twice the basis of such property.

(C) Special rule for contributions of food inventory

(i) General rule

In the case of a charitable contribution of food from any trade or business of the taxpayer, this paragraph shall be applied—

(I) without regard to whether the contribution is made by a C corporation, and

(II) only to food that is apparently wholesome food.

(ii) Limitation

In the case of a taxpayer other than a C corporation, the aggregate amount of such contributions for any taxable year which may be taken into account under this section shall not exceed 10 percent of the taxpayer's aggregate net income for such taxable year from all trades or businesses from which such contributions were made for such year, computed without regard to this section.

(iii) Apparently wholesome food

For purposes of this subparagraph, the term "apparently wholesome food" has the meaning given to such term by section 22(b)(2) of the Bill Emerson Good Samaritan Food Donation Act (42 U.S.C. 1791(b)(2)), as in effect on the date of the enactment of this subparagraph.

(iv) Termination

This subparagraph shall not apply to contributions made after December 31, 2013.

(D) Special rule for contributions of book inventory to public schools

(i) Contributions of book inventory

In determining whether a qualified book contribution is a qualified contribution, subparagraph (A) shall be applied without regard to whether the donee is an organization described in the matter preceding clause (i) of subparagraph (A).

(ii) Qualified book contribution

For purposes of this paragraph, the term "qualified book contribution" means a charitable contribution of books to a public school which is an educational organization described in subsection (b)(1)(A)(ii) and which provides elementary education or secondary education (kindergarten through grade 12).

(iii) Certification by donee

Subparagraph (A) shall not apply to any contribution of books unless (in addition to the certifications required by subparagraph (A) (as modified by this subparagraph)), the donee certifies in writing that—

(I) the books are suitable, in terms of currency, content, and quantity, for use in the donee's educational programs, and

(II) the donee will use the books in its educational programs.

(iv) Termination

This subparagraph shall not apply to contributions made after December 31, 2011.

(E) This paragraph shall not apply to so much of the amount of the gain described in paragraph (1)(A) which would be long-term capital gain but for the application of sections 617, 1245, 1250, or 1252.

(4) Special rule for contributions of scientific property used for research

(A) Limit on reduction

In the case of a qualified research contribution, the reduction under paragraph (1)(A) shall be no greater than the amount determined under paragraph (3)(B).

(B) Qualified research contributions

For purposes of this paragraph, the term "qualified research contribution" means a charitable contribution by a corporation of tangible personal property described in paragraph (1) of section 1221(a), but only if—

(i) the contribution is to an organization described in subparagraph (A) or subparagraph (B) of section 41(e)(6),

(ii) the property is constructed or assembled by the taxpayer,

(iii) the contribution is made not later than 2 years after the date the construction or assembly of the property is substantially completed,

(iv) the original use of the property is by the donee,

(v) the property is scientific equipment or apparatus substantially all of the use of which by the donee is for research or experimentation (within the meaning of section 174), or for research training, in the United States in physical or biological sciences,

(vi) the property is not transferred by the donee in exchange for money, other property, or services, and

(vii) the taxpayer receives from the donee a written statement representing that its use and disposition of the property will be in accordance with the provisions of clauses (v) and (vi).

(C) Construction of property by taxpayer

For purposes of this paragraph, property shall be treated as constructed by the taxpayer only if the cost of the parts used in the construction of such property (other than parts manufactured by the taxpayer or a related person) do not exceed 50 percent of the taxpayer's basis in such property.

(D) Corporation

For purposes of this paragraph, the term "corporation" shall not include—

(i) an S corporation,

(ii) a personal holding company (as defined in section 542), and

(iii) a service organization (as defined in section 414(m)(3)).

(5) Special rule for contributions of stock for which market quotations are readily available

(A) In general

Subparagraph (B)(ii) of paragraph (1) shall not apply to any contribution of qualified appreciated stock.

(B) Qualified appreciated stock

Except as provided in subparagraph (C), for purposes of this paragraph, the term "qualified appreciated stock" means any stock of a corporation—

(i) for which (as of the date of the contribution) market quotations are readily available on an established securities market, and

(ii) which is capital gain property (as defined in subsection (b)(1)(C)(iv)).

(C) Donor may not contribute more than 10 percent of stock of corporation

(i) In general

In the case of any donor, the term "qualified appreciated stock" shall not include any stock of a corporation contributed by the donor in a contribution to which paragraph (1)(B)(ii) applies (determined without regard to this paragraph) to the extent that the amount of the stock so contributed (when increased by the aggregate amount of all prior such contributions by the donor of stock in such corporation) exceeds 10 percent (in value) of all of the outstanding stock of such corporation.

(ii) Special rule

For purposes of clause (i), an individual shall be treated as making all contributions made by any member of his family (as defined in section 267(c)(4)).

(6) Special rule for contributions of computer technology and equipment for educational purposes

(A) Limit on reduction

In the case of a qualified computer contribution, the reduction under paragraph (1)(A) shall be no greater than the amount determined under paragraph (3)(B).

(B) Qualified computer contribution

For purposes of this paragraph, the term "qualified computer contribution" means a charitable contribution by a corporation of any computer technology or equipment, but only if—

(i) the contribution is to—

(I) an educational organization described in subsection (b)(1)(A)(ii),

(II) an entity described in section 501(c)(3) and exempt from tax under section 501(a) (other than an entity described in subclause (I)) that is organized primarily for purposes of supporting elementary and secondary education, or

(III) a public library (within the meaning of section 213(1)(A) of the Library Services and Technology Act (20 U.S.C. 9122(1)(A))),[1] as in effect on the date of the enactment of the Community Renewal Tax Relief Act of 2000), established and maintained by an entity described in subsection (c)(1),

(ii) the contribution is made not later than 3 years after the date the taxpayer acquired the property (or in the case of property constructed or assembled by the taxpayer, the date the construction or assembling of the property is substantially completed),

(iii) the original use of the property is by the donor or the donee,

(iv) substantially all of the use of the property by the donee is for use within the United States for educational purposes that are related to the purpose or function of the donee,

(v) the property is not transferred by the donee in exchange for money, other property, or services, except for shipping, installation and transfer costs,

(vi) the property will fit productively into the donee's education plan,

(vii) the donee's use and disposition of the property will be in accordance with the provisions of clauses (iv) and (v), and

(viii) the property meets such standards, if any, as the Secretary may prescribe by regulation to assure that the property meets minimum functionality and suitability standards for educational purposes.

(C) Contribution to private foundation

A contribution by a corporation of any computer technology or equipment to a private foundation (as defined in section 509) shall be treated as a qualified computer contribution for purposes of this paragraph if—

(i) the contribution to the private foundation satisfies the requirements of clauses (ii) and (v) of subparagraph (B), and

(ii) within 30 days after such contribution, the private foundation—

(I) contributes the property to a donee described in clause (i) of subparagraph (B) that satisfies the requirements of clauses (iv) through (vii) of subparagraph (B), and

(II) notifies the donor of such contribution.

(D) Donations of property reacquired by manufacturer

In the case of property which is reacquired by the person who constructed or assembled the property—

(i) subparagraph (B)(ii) shall be applied to a contribution of such property by such person by taking into account the date that the original construction or assembly of the property was substantially completed, and

(ii) subparagraph (B)(iii) shall not apply to such contribution.

(E) Special rule relating to construction of property

For the purposes of this paragraph, the rules of paragraph (4)(C) shall apply.

(F) Definitions

For the purposes of this paragraph—

(i) Computer technology or equipment

The term "computer technology or equipment" means computer software (as defined by section 197(e)(3)(B)), computer or peripheral equipment (as defined by section 168(i)(2)(B)), and fiber optic cable related to computer use.

(ii) Corporation

The term "corporation" has the meaning given to such term by paragraph (4)(D).

(G) Termination

This paragraph shall not apply to any contribution made during any taxable year beginning after December 31, 2011.

(7) Recapture of deduction on certain dispositions of exempt use property

(A) In general

In the case of an applicable disposition of applicable property, there shall be included in the income of the donor of such property for the taxable year of such donor in which the applicable disposition occurs an amount equal to the excess (if any) of—

(i) the amount of the deduction allowed to the donor under this section with respect to such property, over

(ii) the donor's basis in such property at the time such property was contributed.

(B) Applicable disposition

For purposes of this paragraph, the term "applicable disposition" means any sale, exchange, or other disposition by the donee of applicable property—

(i) after the last day of the taxable year of the donor in which such property was contributed, and

(ii) before the last day of the 3-year period beginning on the date of the contribution of such property,

unless the donee makes a certification in accordance with subparagraph (D).

(C) Applicable property

For purposes of this paragraph, the term "applicable property" means charitable deduction property (as defined in section 6050L(a)(2)(A))—

(i) which is tangible personal property the use of which is identified by the donee as related to the purpose or function constituting the basis of the donee's exemption under section 501, and

(ii) for which a deduction in excess of the donor's basis is allowed.

(D) Certification

A certification meets the requirements of this subparagraph if it is a written statement which is signed under penalty of perjury by an officer of the donee organization and—

(i) which—

(I) certifies that the use of the property by the donee was substantial and related to the purpose or function constituting the basis for the donee's exemption under section 501, and

(II) describes how the property was used and how such use furthered such purpose or function, or

(ii) which—

(I) states the intended use of the property by the donee at the time of the contribution, and

(II) certifies that such intended use has become impossible or infeasible to implement.

(f) Disallowance of deduction in certain cases and special rules

(1) In general

No deduction shall be allowed under this section for a contribution to or for the use of an organization or trust described in section 508(d) or 4948(c)(4) subject to the conditions specified in such sections.

(2) Contributions of property placed in trust

(A) Remainder interest

In the case of property transferred in trust, no deduction shall be allowed under this section for the value of a contribution of a remainder interest unless the trust is a charitable remainder annuity trust or a charitable remainder unitrust (described in section 664), or a pooled income fund (described in section 642(c)(5)).

(B) Income interests, etc.

No deduction shall be allowed under this section for the value of any interest in property (other than a remainder interest) transferred in trust unless the interest is in the form of a guaranteed annuity or the trust instrument specifies that the interest is a fixed percentage distributed yearly of the fair market value of the trust property (to be determined yearly) and the grantor is treated as the owner of such interest for purposes of applying section 671. If the donor ceases to be treated as the owner of such an interest for purposes of applying section 671, at the time the donor ceases to be so treated, the donor shall for purposes of this chapter be considered as having received an amount of income equal to the amount of any deduction he received under this section for the contribution reduced by the discounted value of all amounts of income earned by the trust and taxable to him before the time at which he ceases to be treated as the owner of the interest. Such amounts of income shall be discounted to the date of the contribution. The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subparagraph.

(C) Denial of deduction in case of payments by certain trusts

In any case in which a deduction is allowed under this section for the value of an interest in property described in subparagraph (B), transferred in trust, no deduction shall be allowed under this section to the grantor or any other person for the amount of any contribution made by the trust with respect to such interest.

(D) Exception

This paragraph shall not apply in a case in which the value of all interests in property transferred in trust are deductible under subsection (a).

(3) Denial of deduction in case of certain contributions of partial interests in property

(A) In general

In the case of a contribution (not made by a transfer in trust) of an interest in property which consists of less than the taxpayer's entire interest in such property, a deduction shall be allowed under this section only to the extent that the value of the interest contributed would be allowable as a deduction under this section if such interest had been transferred in trust. For purposes of this subparagraph, a contribution by a taxpayer of the right to use property shall be treated as a contribution of less than the taxpayer's entire interest in such property.

(B) Exceptions

Subparagraph (A) shall not apply to—

(i) a contribution of a remainder interest in a personal residence or farm,

(ii) a contribution of an undivided portion of the taxpayer's entire interest in property, and

(iii) a qualified conservation contribution.

(4) Valuation of remainder interest in real property

For purposes of this section, in determining the value of a remainder interest in real property, depreciation (computed on the straight line method) and depletion of such property shall be taken into account, and such value shall be discounted at a rate of 6 percent per annum, except that the Secretary may prescribe a different rate.

(5) Reduction for certain interest

If, in connection with any charitable contribution, a liability is assumed by the recipient or by any other person, or if a charitable contribution is of property which is subject to a liability, then, to the extent necessary to avoid the duplication of amounts, the amount taken into account for purposes of this section as the amount of the charitable contribution—

(A) shall be reduced for interest (i) which has been paid (or is to be paid) by the taxpayer, (ii) which is attributable to the liability, and (iii) which is attributable to any period after the making of the contribution, and

(B) in the case of a bond, shall be further reduced for interest (i) which has been paid (or is to be paid) by the taxpayer on indebtedness incurred or continued to purchase or carry such bond, and (ii) which is attributable to any period before the making of the contribution.

The reduction pursuant to subparagraph (B) shall not exceed the interest (including interest equivalent) on the bond which is attributable to any period before the making of the contribution and which is not (under the taxpayer's method of accounting) includible in the gross income of the taxpayer for any taxable year. For purposes of this paragraph, the term "bond" means any bond, debenture, note, or certificate or other evidence of indebtedness.

(6) Deductions for out-of-pocket expenditures

No deduction shall be allowed under this section for an out-of-pocket expenditure made by any person on behalf of an organization described in subsection (c) (other than an organization described in section 501(h)(5) (relating to churches, etc.)) if the expenditure is made for the purpose of influencing legislation (within the meaning of section 501(c)(3)).

(7) Reformations to comply with paragraph (2)

(A) In general

A deduction shall be allowed under subsection (a) in respect of any qualified reformation (within the meaning of section 2055(e)(3)(B)).

(B) Rules similar to section 2055(e)(3) to apply

For purposes of this paragraph, rules similar to the rules of section 2055(e)(3) shall apply.

(8) Substantiation requirement for certain contributions

(A) General rule

No deduction shall be allowed under subsection (a) for any contribution of $250 or more unless the taxpayer substantiates the contribution by a contemporaneous written

acknowledgment of the contribution by the donee organization that meets the requirements of subparagraph (B).

(B) Content of acknowledgement

An acknowledgement meets the requirements of this subparagraph if it includes the following information:

(i) The amount of cash and a description (but not value) of any property other than cash contributed.

(ii) Whether the donee organization provided any goods or services in consideration, in whole or in part, for any property described in clause (i).

(iii) A description and good faith estimate of the value of any goods or services referred to in clause (ii) or, if such goods or services consist solely of intangible religious benefits, a statement to that effect.

For purposes of this subparagraph, the term "intangible religious benefit" means any intangible religious benefit which is provided by an organization organized exclusively for religious purposes and which generally is not sold in a commercial transaction outside the donative context.

(C) Contemporaneous

For purposes of subparagraph (A), an acknowledgment shall be considered to be contemporaneous if the taxpayer obtains the acknowledgment on or before the earlier of—

(i) the date on which the taxpayer files a return for the taxable year in which the contribution was made, or

(ii) the due date (including extensions) for filing such return.

(D) Substantiation not required for contributions reported by the donee organization

Subparagraph (A) shall not apply to a contribution if the donee organization files a return, on such form and in accordance with such regulations as the Secretary may prescribe, which includes the information described in subparagraph (B) with respect to the contribution.

(E) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this paragraph, including regulations that may provide that some or all of the requirements of this paragraph do not apply in appropriate cases.

(9) Denial of deduction where contribution for lobbying activities

No deduction shall be allowed under this section for a contribution to an organization which conducts activities to which section 162(e)(1) applies on matters of direct financial interest to the donor's trade or business, if a principal purpose of the contribution was to avoid Federal income tax by securing a deduction for such activities under this section which would be disallowed by reason of section 162(e) if the donor had conducted such activities directly. No deduction shall be allowed under section 162(a) for any amount for which a deduction is disallowed under the preceding sentence.

(10) Split-dollar life insurance, annuity, and endowment contracts

(A) In general

Nothing in this section or in section 545(b)(2), 642(c), 2055, 2106(a)(2), or 2522 shall be construed to allow a deduction, and no deduction shall be allowed, for any transfer to or for the use of an organization described in subsection (c) if in connection with such transfer—

(i) the organization directly or indirectly pays, or has previously paid, any premium on any personal benefit contract with respect to the transferor, or

(ii) there is an understanding or expectation that any person will directly or indirectly pay any premium on any personal benefit contract with respect to the transferor.

(B) Personal benefit contract

For purposes of subparagraph (A), the term "personal benefit contract" means, with respect to the transferor, any life insurance, annuity, or endowment contract if any direct or indirect beneficiary under such contract is the transferor, any member of the transferor's family, or any other person (other than an organization described in subsection (c)) designated by the transferor.

(C) Application to charitable remainder trusts

In the case of a transfer to a trust referred to in subparagraph (E), references in subparagraphs (A) and (F) to an organization described in subsection (c) shall be treated as a reference to such trust.

(D) Exception for certain annuity contracts

If, in connection with a transfer to or for the use of an organization described in subsection (c), such organization incurs an obligation to pay a charitable gift annuity (as defined in section 501(m)) and such organization purchases any annuity contract to fund such obligation, persons receiving payments under the charitable gift annuity shall not be treated for purposes of subparagraph (B) as indirect beneficiaries under such contract if—

(i) such organization possesses all of the incidents of ownership under such contract,

(ii) such organization is entitled to all the payments under such contract, and

(iii) the timing and amount of payments under such contract are substantially the same as the timing and amount of payments to each such person under such obligation (as such obligation is in effect at the time of such transfer).

(E) Exception for certain contracts held by charitable remainder trusts

A person shall not be treated for purposes of subparagraph (B) as an indirect beneficiary under any life insurance, annuity, or endowment contract held by a charitable remainder annuity trust or a charitable remainder unitrust (as defined in section 664(d)) solely by reason of being entitled to any payment referred to in paragraph (1)(A) or (2)(A) of section 664(d) if—

(i) such trust possesses all of the incidents of ownership under such contract, and

(ii) such trust is entitled to all the payments under such contract.

(F) Excise tax on premiums paid

(i) In general

There is hereby imposed on any organization described in subsection (c) an excise tax equal to the premiums paid by such organization on any life insurance, annuity, or endowment contract if the payment of premiums on such contract is in connection with a transfer for which a deduction is not allowable under subparagraph (A), determined without regard to when such transfer is made.

(ii) Payments by other persons

For purposes of clause (i), payments made by any other person pursuant to an understanding or expectation referred to in subparagraph (A) shall be treated as made by the organization.

(iii) Reporting

Any organization on which tax is imposed by clause (i) with respect to any premium shall file an annual return which includes—

(I) the amount of such premiums paid during the year and the name and TIN of each beneficiary under the contract to which the premium relates, and

(II) such other information as the Secretary may require.

The penalties applicable to returns required under section 6033 shall apply to returns required under this clause. Returns required under this clause shall be furnished at such time and in such manner as the Secretary shall by forms or regulations require.

(iv) Certain rules to apply

The tax imposed by this subparagraph shall be treated as imposed by chapter 42 for purposes of this title other than subchapter B of chapter 42.

(G) Special rule where State requires specification of charitable gift annuitant in contract

In the case of an obligation to pay a charitable gift annuity referred to in subparagraph (D) which is entered into under the laws of a State which requires, in order for the charitable gift annuity to be exempt from insurance regulation by such State, that each beneficiary under the charitable gift annuity be named as a beneficiary under an annuity contract issued by an insurance company authorized to transact business in such State, the requirements of clauses (i) and (ii) of subparagraph (D) shall be treated as met if—

(i) such State law requirement was in effect on February 8, 1999,

(ii) each such beneficiary under the charitable gift annuity is a bona fide resident of such State at the time the obligation to pay a charitable gift annuity is entered into, and

(iii) the only persons entitled to payments under such contract are persons entitled to payments as beneficiaries under such obligation on the date such obligation is entered into.

(H) Member of family

For purposes of this paragraph, an individual's family consists of the individual's grandparents, the grandparents of such individual's spouse, the lineal descendants of such grandparents, and any spouse of such a lineal descendant.

(I) Regulations

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

(11) Qualified appraisal and other documentation for certain contributions

(A) In general

(i) Denial of deduction

In the case of an individual, partnership, or corporation, no deduction shall be allowed under subsection (a) for any contribution of property for which a deduction of more than $500 is claimed unless such person meets the requirements of subparagraphs (B), (C), and (D), as the case may be, with respect to such contribution.

(ii) Exceptions

(I) Readily valued property

Subparagraphs (C) and (D) shall not apply to cash, property described in subsection (e)(1)(B)(iii) or section 1221(a)(1), publicly traded securities (as defined in section 6050L(a)(2)(B)), and any qualified vehicle described in paragraph (12)(A)(ii) for which an acknowledgement under paragraph (12)(B)(iii) is provided.

(II) Reasonable cause

Clause (i) shall not apply if it is shown that the failure to meet such requirements is due to reasonable cause and not to willful neglect.

(B) Property description for contributions of more than $500

In the case of contributions of property for which a deduction of more than $500 is claimed, the requirements of this subparagraph are met if the individual, partnership or corporation includes with the return for the taxable year in which the contribution is made a description of such property and such other information as the Secretary may require. The requirements of this subparagraph shall not apply to a C corporation which is not a personal service corporation or a closely held C corporation.

(C) Qualified appraisal for contributions of more than $5,000

In the case of contributions of property for which a deduction of more than $5,000 is claimed, the requirements of this subparagraph are met if the individual, partnership, or corporation

obtains a qualified appraisal of such property and attaches to the return for the taxable year in which such contribution is made such information regarding such property and such appraisal as the Secretary may require.

(D) Substantiation for contributions of more than $500,000

In the case of contributions of property for which a deduction of more than $500,000 is claimed, the requirements of this subparagraph are met if the individual, partnership, or corporation attaches to the return for the taxable year a qualified appraisal of such property.

(E) Qualified appraisal and appraiser

For purposes of this paragraph—

(i) Qualified appraisal

The term "qualified appraisal" means, with respect to any property, an appraisal of such property which—

(I) is treated for purposes of this paragraph as a qualified appraisal under regulations or other guidance prescribed by the Secretary, and

(II) is conducted by a qualified appraiser in accordance with generally accepted appraisal standards and any regulations or other guidance prescribed under subclause (I).

(ii) Qualified appraiser

Except as provided in clause (iii), the term "qualified appraiser" means an individual who—

(I) has earned an appraisal designation from a recognized professional appraiser organization or has otherwise met minimum education and experience requirements set forth in regulations prescribed by the Secretary,

(II) regularly performs appraisals for which the individual receives compensation, and

(III) meets such other requirements as may be prescribed by the Secretary in regulations or other guidance.

(iii) Specific appraisals

An individual shall not be treated as a qualified appraiser with respect to any specific appraisal unless—

(I) the individual demonstrates verifiable education and experience in valuing the type of property subject to the appraisal, and

(II) the individual has not been prohibited from practicing before the Internal Revenue Service by the Secretary under section 330(c) of title 31, United States Code, at any time during the 3-year period ending on the date of the appraisal.

(F) Aggregation of similar items of property

For purposes of determining thresholds under this paragraph, property and all similar items of property donated to 1 or more donees shall be treated as 1 property.

(G) Special rule for pass-thru entities

In the case of a partnership or S corporation, this paragraph shall be applied at the entity level, except that the deduction shall be denied at the partner or shareholder level.

(H) Regulations

The Secretary may prescribe such regulations as may be necessary or appropriate to carry out the purposes of this paragraph, including regulations that may provide that some or all of the requirements of this paragraph do not apply in appropriate cases.

(12) Contributions of used motor vehicles, boats, and airplanes

(A) In general

In the case of a contribution of a qualified vehicle the claimed value of which exceeds $500—

(i) paragraph (8) shall not apply and no deduction shall be allowed under subsection (a) for

such contribution unless the taxpayer substantiates the contribution by a contemporaneous written acknowledgement of the contribution by the donee organization that meets the requirements of subparagraph (B) and includes the acknowledgement with the taxpayer's return of tax which includes the deduction, and

(ii) if the organization sells the vehicle without any significant intervening use or material improvement of such vehicle by the organization, the amount of the deduction allowed under subsection (a) shall not exceed the gross proceeds received from such sale.

(B) Content of acknowledgement

An acknowledgement meets the requirements of this subparagraph if it includes the following information:

(i) The name and taxpayer identification number of the donor.

(ii) The vehicle identification number or similar number.

(iii) In the case of a qualified vehicle to which subparagraph (A)(ii) applies—

(I) a certification that the vehicle was sold in an arm's length transaction between unrelated parties,

(II) the gross proceeds from the sale, and

(III) a statement that the deductible amount may not exceed the amount of such gross proceeds.

(iv) In the case of a qualified vehicle to which subparagraph (A)(ii) does not apply—

(I) a certification of the intended use or material improvement of the vehicle and the intended duration of such use, and

(II) a certification that the vehicle would not be transferred in exchange for money, other property, or services before completion of such use or improvement.

(v) Whether the donee organization provided any goods or services in consideration, in whole or in part, for the qualified vehicle.

(vi) A description and good faith estimate of the value of any goods or services referred to in clause (v) or, if such goods or services consist solely of intangible religious benefits (as defined in paragraph (8)(B)), a statement to that effect.

(C) Contemporaneous

For purposes of subparagraph (A), an acknowledgement shall be considered to be contemporaneous if the donee organization provides it within 30 days of—

(i) the sale of the qualified vehicle, or

(ii) in the case of an acknowledgement including a certification described in subparagraph (B)(iv), the contribution of the qualified vehicle.

(D) Information to Secretary

A donee organization required to provide an acknowledgement under this paragraph shall provide to the Secretary the information contained in the acknowledgement. Such information shall be provided at such time and in such manner as the Secretary may prescribe.

(E) Qualified vehicle

For purposes of this paragraph, the term "qualified vehicle" means any—

(i) motor vehicle manufactured primarily for use on public streets, roads, and highways,

(ii) boat, or

(iii) airplane.

Such term shall not include any property which is described in section 1221(a)(1).

(F) Regulations or other guidance

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

which exempts sales by the donee organization which are in direct furtherance of such organization's charitable purpose from the requirements of subparagraphs (A)(ii) and (B)(iv)(II).

(13) Contributions of certain interests in buildings located in registered historic districts

(A) In general

No deduction shall be allowed with respect to any contribution described in subparagraph (B) unless the taxpayer includes with the return for the taxable year of the contribution a $500 filing fee.

(B) Contribution described

A contribution is described in this subparagraph if such contribution is a qualified conservation contribution (as defined in subsection (h)) which is a restriction with respect to the exterior of a building described in subsection (h)(4)(C)(ii) and for which a deduction is claimed in excess of $10,000.

(C) Dedication of fee

Any fee collected under this paragraph shall be used for the enforcement of the provisions of subsection (h).

(14) Reduction for amounts attributable to rehabilitation credit

In the case of any qualified conservation contribution (as defined in subsection (h)), the amount of the deduction allowed under this section shall be reduced by an amount which bears the same ratio to the fair market value of the contribution as—

(A) the sum of the credits allowed to the taxpayer under section 47 for the 5 preceding taxable years with respect to any building which is a part of such contribution, bears to

(B) the fair market value of the building on the date of the contribution.

(15) Special rule for taxidermy property

(A) Basis

For purposes of this section and notwithstanding section 1012, in the case of a charitable contribution of taxidermy property which is made by the person who prepared, stuffed, or mounted the property or by any person who paid or incurred the cost of such preparation, stuffing, or mounting, only the cost of the preparing, stuffing, or mounting shall be included in the basis of such property.

(B) Taxidermy property

For purposes of this section, the term "taxidermy property" means any work of art which—

(i) is the reproduction or preservation of an animal, in whole or in part,

(ii) is prepared, stuffed, or mounted for purposes of recreating one or more characteristics of such animal, and

(iii) contains a part of the body of the dead animal.

(16) Contributions of clothing and household items

(A) In general

In the case of an individual, partnership, or corporation, no deduction shall be allowed under subsection (a) for any contribution of clothing or a household item unless such clothing or household item is in good used condition or better.

(B) Items of minimal value

Notwithstanding subparagraph (A), the Secretary may by regulation deny a deduction under subsection (a) for any contribution of clothing or a household item which has minimal monetary value.

(C) Exception for certain property

Subparagraphs (A) and (B) shall not apply to any contribution of a single item of clothing or a household item for which a deduction of more than $500 is claimed if the taxpayer includes

with the taxpayer's return a qualified appraisal with respect to the property.

(D) Household items

For purposes of this paragraph—

(i) In general

The term "household items" includes furniture, furnishings, electronics, appliances, linens, and other similar items.

(ii) Excluded items

Such term does not include—

(I) food,

(II) paintings, antiques, and other objects of art,

(III) jewelry and gems, and

(IV) collections.

(E) Special rule for pass-thru entities

In the case of a partnership or S corporation, this paragraph shall be applied at the entity level, except that the deduction shall be denied at the partner or shareholder level.

(17) Recordkeeping

No deduction shall be allowed under subsection (a) for any contribution of a cash, check, or other monetary gift unless the donor maintains as a record of such contribution a bank record or a written communication from the donee showing the name of the donee organization, the date of the contribution, and the amount of the contribution.

(18) Contributions to donor advised funds

A deduction otherwise allowed under subsection (a) for any contribution to a donor advised fund (as defined in section 4966(d)(2)) shall only be allowed if—

(A) the sponsoring organization (as defined in section 4966(d)(1)) with respect to such donor advised fund is not—

(i) described in paragraph (3), (4), or (5) of subsection (c), or

(ii) a type III supporting organization (as defined in section 4943(f)(5)(A)) which is not a functionally integrated type III supporting organization (as defined in section 4943(f)(5)(B)), and

(B) the taxpayer obtains a contemporaneous written acknowledgment (determined under rules similar to the rules of paragraph (8)(C)) from the sponsoring organization (as so defined) of such donor advised fund that such organization has exclusive legal control over the assets contributed.

(g) Amounts paid to maintain certain students as members of taxpayer's household

(1) In general

Subject to the limitations provided by paragraph (2), amounts paid by the taxpayer to maintain an individual (other than a dependent, as defined in section 152 (determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof), or a relative of the taxpayer) as a member of his household during the period that such individual is—

(A) a member of the taxpayer's household under a written agreement between the taxpayer and an organization described in paragraph (2), (3), or (4) of subsection (c) to implement a program of the organization to provide educational opportunities for pupils or students in private homes, and

(B) a full-time pupil or student in the twelfth or any lower grade at an educational organization described in section 170(b)(1)(A)(ii) located in the United States,

shall be treated as amounts paid for the use of the organization.

(2) Limitations

(A) Amount

Paragraph (1) shall apply to amounts paid within the taxable year only to the extent that such amounts do not exceed $50 multiplied by the number of full calendar months during the taxable year which fall within the period described in paragraph (1). For purposes of the preceding sentence, if 15 or more days of a calendar month fall within such period such month shall be considered as a full calendar month.

(B) Compensation or reimbursement

Paragraph (1) shall not apply to any amount paid by the taxpayer within the taxable year if the taxpayer receives any money or other property as compensation or reimbursement for maintaining the individual in his household during the period described in paragraph (1).

(3) Relative defined

For purposes of paragraph (1), the term "relative of the taxpayer" means an individual who, with respect to the taxpayer, bears any of the relationships described in subparagraphs (A) through (G) of section 152(d)(2).

(4) No other amount allowed as deduction

No deduction shall be allowed under subsection (a) for any amount paid by a taxpayer to maintain an individual as a member of his household under a program described in paragraph (1)(A) except as provided in this subsection.

(h) Qualified conservation contribution

(1) In general

For purposes of subsection (f)(3)(B)(iii), the term "qualified conservation contribution" means a contribution—

(A) of a qualified real property interest,

(B) to a qualified organization,

(C) exclusively for conservation purposes.

(2) Qualified real property interest

For purposes of this subsection, the term "qualified real property interest" means any of the following interests in real property:

(A) the entire interest of the donor other than a qualified mineral interest,

(B) a remainder interest, and

(C) a restriction (granted in perpetuity) on the use which may be made of the real property.

(3) Qualified organization

For purposes of paragraph (1), the term "qualified organization" means an organization which—

(A) is described in clause (v) or (vi) of subsection (b)(1)(A), or

(B) is described in section 501(c)(3) and—

(i) meets the requirements of section 509(a)(2), or

(ii) meets the requirements of section 509(a)(3) and is controlled by an organization described in subparagraph (A) or in clause (i) of this subparagraph.

(4) Conservation purpose defined

(A) In general

For purposes of this subsection, the term "conservation purpose" means—

(i) the preservation of land areas for outdoor recreation by, or the education of, the general public,

(ii) the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,

(iii) the preservation of open space (including farmland and forest land) where such preservation is—

(I) for the scenic enjoyment of the general public, or

(II) pursuant to a clearly delineated Federal, State, or local governmental conservation policy,

and will yield a significant public benefit, or

(iv) the preservation of an historically important land area or a certified historic structure.

(B) Special rules with respect to buildings in registered historic districts

In the case of any contribution of a qualified real property interest which is a restriction with respect to the exterior of a building described in subparagraph (C)(ii), such contribution shall not be considered to be exclusively for conservation purposes unless—

(i) such interest—

(I) includes a restriction which preserves the entire exterior of the building (including the front, sides, rear, and height of the building), and

(II) prohibits any change in the exterior of the building which is inconsistent with the historical character of such exterior,

(ii) the donor and donee enter into a written agreement certifying, under penalty of perjury, that the donee—

(I) is a qualified organization (as defined in paragraph (3)) with a purpose of environmental protection, land conservation, open space preservation, or historic preservation, and

(II) has the resources to manage and enforce the restriction and a commitment to do so, and

(iii) in the case of any contribution made in a taxable year beginning after the date of the enactment of this subparagraph, the taxpayer includes with the taxpayer's return for the taxable year of the contribution—

(I) a qualified appraisal (within the meaning of subsection (f)(11)(E)) of the qualified property interest,

(II) photographs of the entire exterior of the building, and

(III) a description of all restrictions on the development of the building.

(C) Certified historic structure

For purposes of subparagraph (A)(iv), the term "certified historic structure" means—

(i) any building, structure, or land area which is listed in the National Register, or

(ii) any building which is located in a registered historic district (as defined in section 47(c)(3)(B)) and is certified by the Secretary of the Interior to the Secretary as being of historic significance to the district.

A building, structure, or land area satisfies the preceding sentence if it satisfies such sentence either at the time of the transfer or on the due date (including extensions) for filing the transferor's return under this chapter for the taxable year in which the transfer is made.

(5) Exclusively for conservation purposes

For purposes of this subsection—

(A) Conservation purpose must be protected

A contribution shall not be treated as exclusively for conservation purposes unless the conservation purpose is protected in perpetuity.

(B) No surface mining permitted

(i) In general

Except as provided in clause (ii), in the case of a contribution of any interest where there is a retention of a qualified mineral interest, subparagraph (A) shall not be treated as met if at

any time there may be extraction or removal of minerals by any surface mining method.

(ii) Special rule

With respect to any contribution of property in which the ownership of the surface estate and mineral interests has been and remains separated, subparagraph (A) shall be treated as met if the probability of surface mining occurring on such property is so remote as to be negligible.

(6) Qualified mineral interest

For purposes of this subsection, the term "qualified mineral interest" means—

(A) subsurface oil, gas, or other minerals, and

(B) the right to access to such minerals.

(i) Standard mileage rate for use of passenger automobile

For purposes of computing the deduction under this section for use of a passenger automobile, the standard mileage rate shall be 14 cents per mile.

(j) Denial of deduction for certain travel expenses

No deduction shall be allowed under this section for traveling expenses (including amounts expended for meals and lodging) while away from home, whether paid directly or by reimbursement, unless there is no significant element of personal pleasure, recreation, or vacation in such travel.

(k) Disallowance of deductions in certain cases

For disallowance of deductions for contributions to or for the use of communist controlled organizations, see section 11(a) [2] of the Internal Security Act of 1950 (50 U.S.C. 790).

(l) Treatment of certain amounts paid to or for the benefit of institutions of higher education

(1) In general

For purposes of this section, 80 percent of any amount described in paragraph (2) shall be treated as a charitable contribution.

(2) Amount described

For purposes of paragraph (1), an amount is described in this paragraph if—

(A) the amount is paid by the taxpayer to or for the benefit of an educational organization—

(i) which is described in subsection (b)(1)(A)(ii), and

(ii) which is an institution of higher education (as defined in section 3304(f)), and

(B) such amount would be allowable as a deduction under this section but for the fact that the taxpayer receives (directly or indirectly) as a result of paying such amount the right to purchase tickets for seating at an athletic event in an athletic stadium of such institution.

If any portion of a payment is for the purchase of such tickets, such portion and the remaining portion (if any) of such payment shall be treated as separate amounts for purposes of this subsection.

(m) Certain donee income from intellectual property treated as an additional charitable contribution

(1) Treatment as additional contribution

In the case of a taxpayer who makes a qualified intellectual property contribution, the deduction allowed under subsection (a) for each taxable year of the taxpayer ending on or after the date of such contribution shall be increased (subject to the limitations under subsection (b)) by the applicable percentage of qualified donee income with respect to such contribution which is properly allocable to such year under this subsection.

(2) Reduction in additional deductions to extent of initial deduction

With respect to any qualified intellectual property contribution, the deduction allowed under

subsection (a) shall be increased under paragraph (1) only to the extent that the aggregate amount of such increases with respect to such contribution exceed the amount allowed as a deduction under subsection (a) with respect to such contribution determined without regard to this subsection.

(3) Qualified donee income

For purposes of this subsection, the term "qualified donee income" means any net income received by or accrued to the donee which is properly allocable to the qualified intellectual property.

(4) Allocation of qualified donee income to taxable years of donor

For purposes of this subsection, qualified donee income shall be treated as properly allocable to a taxable year of the donor if such income is received by or accrued to the donee for the taxable year of the donee which ends within or with such taxable year of the donor.

(5) 10-year limitation

Income shall not be treated as properly allocable to qualified intellectual property for purposes of this subsection if such income is received by or accrued to the donee after the 10-year period beginning on the date of the contribution of such property.

(6) Benefit limited to life of intellectual property

Income shall not be treated as properly allocable to qualified intellectual property for purposes of this subsection if such income is received by or accrued to the donee after the expiration of the legal life of such property.

(7) Applicable percentage

For purposes of this subsection, the term "applicable percentage" means the percentage determined under the following table which corresponds to a taxable year of the donor ending on or after the date of the qualified intellectual property contribution:

Taxable Year of Donor Ending on or After Date of Contribution:	**Applicable** Percentage:
1st	100
2nd	100
3rd	90
4th	80
5th	70
6th	60
7th	50
8th	40
9th	30
10th	20
11th	10
12th	10.

(8) Qualified intellectual property contribution

For purposes of this subsection, the term "qualified intellectual property contribution" means any charitable contribution of qualified intellectual property—

(A) the amount of which taken into account under this section is reduced by reason of subsection (e)(1), and

(B) with respect to which the donor informs the donee at the time of such contribution that the donor intends to treat such contribution as a qualified intellectual property contribution for purposes of this subsection and section 6050L.

(9) Qualified intellectual property

For purposes of this subsection, the term "qualified intellectual property" means property described in subsection (e)(1)(B)(iii) (other than property contributed to or for the use of an organization described in subsection (e)(1)(B)(ii)).

(10) Other special rules

(A) Application of limitations on charitable contributions

Any increase under this subsection of the deduction provided under subsection (a) shall be treated for purposes of subsection (b) as a deduction which is attributable to a charitable contribution to the donee to which such increase relates.

(B) Net income determined by donee

The net income taken into account under paragraph (3) shall not exceed the amount of such income reported under section 6050L(b)(1).

(C) Deduction limited to 12 taxable years

Except as may be provided under subparagraph (D)(i), this subsection shall not apply with respect to any qualified intellectual property contribution for any taxable year of the donor after the 12th taxable year of the donor which ends on or after the date of such contribution.

(D) Regulations

The Secretary may issue regulations or other guidance to carry out the purposes of this subsection, including regulations or guidance—

(i) modifying the application of this subsection in the case of a donor or donee with a short taxable year, and

(ii) providing for the determination of an amount to be treated as net income of the donee which is properly allocable to qualified intellectual property in the case of a donee who uses such property to further a purpose or function constituting the basis of the donee's exemption under section 501 (or, in the case of a governmental unit, any purpose described in section 170(c)) and does not possess a right to receive any payment from a third party with respect to such property.

(n) Expenses paid by certain whaling captains in support of Native Alaskan subsistence whaling

(1) In general

In the case of an individual who is recognized by the Alaska Eskimo Whaling Commission as a whaling captain charged with the responsibility of maintaining and carrying out sanctioned whaling activities and who engages in such activities during the taxable year, the amount described in paragraph (2) (to the extent such amount does not exceed $10,000 for the taxable year) shall be treated for purposes of this section as a charitable contribution.

(2) Amount described

(A) In general

The amount described in this paragraph is the aggregate of the reasonable and necessary whaling expenses paid by the taxpayer during the taxable year in carrying out sanctioned whaling activities.

(B) Whaling expenses

For purposes of subparagraph (A), the term "whaling expenses" includes expenses for—

(i) the acquisition and maintenance of whaling boats, weapons, and gear used in sanctioned whaling activities,

(ii) the supplying of food for the crew and other provisions for carrying out such activities, and

(iii) storage and distribution of the catch from such activities.

(3) Sanctioned whaling activities

For purposes of this subsection, the term "sanctioned whaling activities" means subsistence bowhead whale hunting activities conducted pursuant to the management plan of the Alaska Eskimo Whaling Commission.

(4) Substantiation of expenses

The Secretary shall issue guidance requiring that the taxpayer substantiate the whaling expenses for which a deduction is claimed under this subsection, including by maintaining appropriate written records with respect to the time, place, date, amount, and nature of the expense, as well as the taxpayer's eligibility for such deduction, and that (to the extent provided by the Secretary) such substantiation be provided as part of the taxpayer's return of tax.

(o) Special rules for fractional gifts

(1) Denial of deduction in certain cases

(A) In general

No deduction shall be allowed for a contribution of an undivided portion of a taxpayer's entire interest in tangible personal property unless all interests in the property are held immediately before such contribution by—

(i) the taxpayer, or

(ii) the taxpayer and the donee.

(B) Exceptions

The Secretary may, by regulation, provide for exceptions to subparagraph (A) in cases where all persons who hold an interest in the property make proportional contributions of an undivided portion of the entire interest held by such persons.

(2) Valuation of subsequent gifts

In the case of any additional contribution, the fair market value of such contribution shall be determined by using the lesser of—

(A) the fair market value of the property at the time of the initial fractional contribution, or

(B) the fair market value of the property at the time of the additional contribution.

(3) Recapture of deduction in certain cases; addition to tax

(A) Recapture

The Secretary shall provide for the recapture of the amount of any deduction allowed under this section (plus interest) with respect to any contribution of an undivided portion of a taxpayer's entire interest in tangible personal property—

(i) in any case in which the donor does not contribute all of the remaining interests in such property to the donee (or, if such donee is no longer in existence, to any person described in section 170(c)) on or before the earlier of—

(I) the date that is 10 years after the date of the initial fractional contribution, or

(II) the date of the death of the donor, and

(ii) in any case in which the donee has not, during the period beginning on the date of the initial fractional contribution and ending on the date described in clause (i)—

(I) had substantial physical possession of the property, and

(II) used the property in a use which is related to a purpose or function constituting the basis for the organizations' exemption under section 501.

(B) Addition to tax

The tax imposed under this chapter for any taxable year for which there is a recapture under

subparagraph (A) shall be increased by 10 percent of the amount so recaptured.

(4) Definitions

For purposes of this subsection—

(A) Additional contribution

The term "additional contribution" means any charitable contribution by the taxpayer of any interest in property with respect to which the taxpayer has previously made an initial fractional contribution.

(B) Initial fractional contribution

The term "initial fractional contribution" means, with respect to any taxpayer, the first charitable contribution of an undivided portion of the taxpayer's entire interest in any tangible personal property.

(p) Other cross references

(1) For treatment of certain organizations providing child care, see section 501(k).

(2) For charitable contributions of estates and trusts, see section 642(c).

(3) For nondeductibility of contributions by common trust funds, see section 584.

(4) For charitable contributions of partners, see section 702.

(5) For charitable contributions of nonresident aliens, see section 873.

(6) For treatment of gifts for benefit of or use in connection with the Naval Academy as gifts to or for use of the United States, see section 6973 of title 10, United States Code.

(7) For treatment of gifts accepted by the Secretary of State, the Director of the International Communication Agency, or the Director of the United States International Development Cooperation Agency, as gifts to or for the use of the United States, see section 25 of the State Department Basic Authorities Act of 1956.

(8) For treatment of gifts of money accepted by the Attorney General for credit to the "Commissary Funds Federal Prisons" as gifts to or for the use of the United States, see section 4043 of title 18, United States Code.

(9) For charitable contributions to or for the use of Indian tribal governments (or their subdivisions), see section 7871.

(Aug. 16, 1954, ch. 736, 68A Stat. 58; Aug. 7, 1956, ch. 1031, §1, 70 Stat. 1117; Pub. L. 85–866, title I, §§10(a), 11, 12(a), Sept. 2, 1958, 72 Stat. 1609, 1610; Pub. L. 86–779, §7(a), Sept. 14, 1960, 74 Stat. 1002; Pub. L. 87–834, §13(d), Oct. 16, 1962, 76 Stat. 1034; Pub. L. 87–858, §2(a), (b), Oct. 23, 1962, 76 Stat. 1134; Pub. L. 88–272, title II, §§209(a), (b), (c)(1), (d)(1), (e), 231(b)(1), Feb. 26, 1964, 78 Stat. 43, 45–47, 105; Pub. L. 89–570, §1(b)(1), Sept. 12, 1966, 80 Stat. 762; Pub. L. 91–172, title I, §101(j)(2), title II, §201(a)(1), (2)(A), (h)(1), Dec. 30, 1969, 83 Stat. 526, 549, 558, 565; Pub. L. 94–455, title II, §205(c)(1)(A), title X, §1052(c)(2), title XIII, §§1307(c), (d)(1)(B)(i), 1313(b)(1), title XIX, §§1901(a)(28), (b)(8)(A), 1906(b)(13)(A), title XXI, §§2124(e)(1), 2135(a), Oct. 4, 1976, 90 Stat. 1535, 1648, 1726, 1727, 1730, 1768, 1794, 1834, 1919, 1928; Pub. L. 95–30, title III, §309(a), May 23, 1977, 91 Stat. 154; Pub. L. 95–600, title IV, §§402(b)(2), 403(c)(1), Nov. 6, 1978, 92 Stat. 2868; Pub. L. 96–465, title II, §2206(e)(2), Oct. 17, 1980, 94 Stat. 2162; Pub. L. 96–541, §6(a), (b), Dec. 17, 1980, 94 Stat. 3206; Pub. L. 97–34, title I, §121(a), title II, §§222(a), 263(a), Aug. 13, 1981, 95 Stat. 196, 248, 264; Pub. L. 97–248, title II, §286(b)(1), Sept. 3, 1982, 96 Stat. 570; Pub. L. 97–258, §3(f)(1), Sept. 13, 1982, 96 Stat. 1064; Pub. L. 97–354, §5(a)(21), Oct. 19, 1982, 96 Stat. 1694; Pub. L. 97–448, title I, §102(f)(7), Jan. 12, 1983, 96 Stat. 2372; Pub. L. 97–473, title II, §202(b)(4), Jan. 14, 1983, 96 Stat. 2609; Pub. L. 98–369, div. A, title I, §174(b)(5)(A), title III, §301(a)–(c), title IV, §492(b)(1), title X, §§1022(b), 1031(a), 1032(b)(1), 1035(a), July 18, 1984, 98 Stat. 707, 777, 778, 854, 1028, 1033, 1042; Pub. L. 99–514, title I, §142(d), title II, §231(f), title III, §301(b)(2), title XVIII, §1831, Oct. 22, 1986, 100 Stat. 2120, 2180, 2217, 2851; Pub. L. 100–203, title X, §10711(a)(1), Dec. 22, 1987, 101 Stat. 1330–464; Pub. L. 100–647, title VI, §6001(a), Nov. 10, 1988, 102 Stat. 3683; Pub. L. 101–508, title XI, §§11801(a)(11), (c)(5), 11813(b)(10), Nov. 5, 1990, 104 Stat. 1388–520, 1388–523, 1388–554; Pub. L. 103–66, title XIII, §§13172(a), 13222(b), Aug. 10, 1993, 107 Stat. 455, 479; Pub. L. 104–188,

title I, §§1206(a), 1316(b), Aug. 20, 1996, 110 Stat. 1776, 1786; Pub. L. 105–34, title II, §224(a), title V, §508(d), title VI, §602(a), title IX, §973(a), Aug. 5, 1997, 111 Stat. 818, 860, 862, 898; Pub. L. 105–206, title VI, §6004(e), July 22, 1998, 112 Stat. 795; Pub. L. 105–277, div. J, title I, §1004(a)(1), Oct. 21, 1998, 112 Stat. 2681–888; Pub. L. 106–170, title V, §§532(c)(1)(A), (B), 537(a), Dec. 17, 1999, 113 Stat. 1930, 1936; Pub. L. 106–554, §1(a)(7) [title I, §165(a)–(e)], Dec. 21, 2000, 114 Stat. 2763, 2763A–626; Pub. L. 107–16, title V, §542(e)(2)(B), June 7, 2001, 115 Stat. 85; Pub. L. 107–147, title IV, §417(7), (22), Mar. 9, 2002, 116 Stat. 56, 57; Pub. L. 108–81, title V, §503, Sept. 25, 2003, 117 Stat. 1003; Pub. L. 108–311, title II, §207(15), (16), title III, §306(a), Oct. 4, 2004, 118 Stat. 1177, 1179; Pub. L. 108–357, title III, §335(a), title IV, §413(c)(30), title VIII, §§882(a), (b), (d), 883(a), 884(a), Oct. 22, 2004, 118 Stat. 1478, 1509, 1627, 1631, 1632; Pub. L. 109–73, title III, §§305(a), 306(a), Sept. 23, 2005, 119 Stat. 2025; Pub. L. 109–135, title IV, §403(a)(16), (gg), Dec. 21, 2005, 119 Stat. 2619, 2631; Pub. L. 109–222, title II, §204(b), May 17, 2006, 120 Stat. 350; Pub. L. 109–280, title XII, §§1202(a), 1204(a), 1206(a), (b)(1), 1213(a)–(d), 1214(a), (b), 1215(a), 1216(a), 1217(a), 1218(a), 1219(c)(1), 1234(a), Aug. 17, 2006, 120 Stat. 1066, 1068, 1069, 1075–1077, 1079, 1080, 1084, 1100; Pub. L. 109–432, div. A, title I, §116(a)(1), (b)(1), (2), Dec. 20, 2006, 120 Stat. 2941; Pub. L. 110–172, §§3(c), 11(a)(14)(A), (B), (15), (16), Dec. 29, 2007, 121 Stat. 2474, 2485; Pub. L. 110–234, title XV, §15302(a), May 22, 2008, 122 Stat. 1501; Pub. L. 110–246, §4(a), title XV, §15302(a), June 18, 2008, 122 Stat. 1664, 2263; Pub. L. 110–343, div. C, title III, §§321(a), 323(a)(1), (b)(1), 324(a), (b), Oct. 3, 2008, 122 Stat. 3873–3875; Pub. L. 111–312, title III, §301(a), title VII, §§723(a), (b), 740(a), 741(a), 742(a), Dec. 17, 2010, 124 Stat. 3300, 3316, 3319; Pub. L. 112–240, title II, §206(a), (b), title III, §314(a), Jan. 2, 2013, 126 Stat. 2324, 2330.)

REFERENCES IN TEXT

The date of the enactment of this subparagraph, referred to in subsecs. (b)(1)(E)(iv)(II), (2)(B)(i)(II) and (h)(4)(B)(iii), is the date of enactment of Pub. L. 109–280, which was approved Aug. 17, 2006.

The date of the enactment of this paragraph, referred to in subsec. (b)(3)(B), is the date of enactment of Pub. L. 110–343, which was approved Oct. 3, 2008.

The Federal Food, Drug, and Cosmetic Act, as amended, referred to in subsec. (e)(3)(A)(iv), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

The date of the enactment of this subparagraph, referred to in subsec. (e)(3)(C)(iii), is the date of enactment of Pub. L. 109–73, which was approved Sept. 23, 2005.

The date of the enactment of the Community Renewal Tax Relief Act of 2000, referred to in subsec. (e)(6)(B)(i)(III), is the date of enactment of H.R. 5662, as enacted by Pub. L. 106–554, which was approved Dec. 21, 2000.

Section 11(a) of the Internal Security Act of 1950 (50 U.S.C. 790), referred to in subsec. (k), was repealed by Pub. L. 103–199, title VIII, §803(1), Dec. 17, 1993, 107 Stat. 2329.

Section 25 of the State Department Basic Authorities Act of 1956, referred to in subsec. (p)(7), is classified to section 2697 of Title 22, Foreign Relations and Intercourse.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

Sections 1202(a), 1204(a), 1206(a), (b)(1), 1213(a)–(d), 1214(a), (b), 1215(a), 1216(a), 1217(a), 1218(a), 1219(c)(1), and 1234(a) of Pub. L. 109–280, which directed the amendment of section 170 without specifying the act to be amended, were executed to this section which is section 170 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

AMENDMENTS

2013—Subsec. (b)(1)(E)(vi). Pub. L. 112–240, §206(a), substituted "December 31, 2013" for "December 31, 2011".

Subsec. (b)(2)(B)(iii). Pub. L. 112–240, §206(b), substituted "December 31, 2013" for "December 31, 2011".

Subsec. (e)(3)(C)(iv). Pub. L. 112–240, §314(a), substituted "December 31, 2013" for "December 31, 2011".

2010—Subsec. (b). Pub. L. 111–312, §723(a), (b), substituted "December 31, 2011" for "December 31,

2009" in pars. (1)(E)(vi) and (2)(B)(iii).

Subsec. (e)(1). Pub. L. 111–312, §301(a), amended subsec. (e)(1) to read as if amendment by Pub. L. 107–16, §542(e)(2)(B), had never been enacted. See 2001 Amendment note below.

Subsec. (e)(3)(C)(iv). Pub. L. 111–312, §740(a), substituted "December 31, 2011" for "December 31, 2009".

Subsec. (e)(3)(D)(iv). Pub. L. 111–312, §741(a), substituted "December 31, 2011" for "December 31, 2009".

Subsec. (e)(6)(G). Pub. L. 111–312, §742(a), substituted "December 31, 2011" for "December 31, 2009".

2008—Subsec. (b). Pub. L. 110–246, §15302(a), substituted "December 31, 2009" for "December 31, 2007" in pars. (1)(E)(vi) and (2)(B)(iii).

Subsec. (b)(3). Pub. L. 110–343, §323(b)(1), added par. (3).

Subsec. (e)(3)(C)(iv). Pub. L. 110–343, §323(a)(1), substituted "December 31, 2009" for "December 31, 2007".

Subsec. (e)(3)(D)(iii). Pub. L. 110–343, §324(b), inserted "of books" after "to any contribution" in introductory provisions.

Subsec. (e)(3)(D)(iv). Pub. L. 110–343, §324(a), substituted "December 31, 2009" for "December 31, 2007".

Subsec. (e)(6)(G). Pub. L. 110–343, §321(a), substituted "December 31, 2009" for "December 31, 2007".

2007—Subsec. (b)(1)(A)(vii). Pub. L. 110–172, §11(a)(14)(A), substituted "subparagraph (F)" for "subparagraph (E)".

Subsec. (e)(1)(B)(i)(II). Pub. L. 110–172, §11(a)(15), inserted ", but without regard to clause (ii) thereof" after "paragraph (7)(C)".

Subsec. (e)(1)(B)(ii). Pub. L. 110–172, §11(a)(14)(B), substituted "subsection (b)(1)(F)" for "subsection (b)(1)(E)".

Subsec. (e)(7)(D)(i)(I). Pub. L. 110–172, §3(c), substituted "substantial and related" for "related".

Subsec. (o)(1)(A). Pub. L. 110–172, §11(a)(16)(A), in introductory provisions, substituted "all interests in the property are" for "all interest in the property is".

Subsec. (o)(3)(A)(i). Pub. L. 110–172, §11(a)(16)(B), in introductory provisions, substituted "interests" for "interest" and "on or before" for "before".

2006—Subsec. (b)(1)(E) to (G). Pub. L. 109–280, §1206(a)(1), added subpar. (E) and redesignated former subpars. (E) and (F) as (F) and (G), respectively. See Codification note above.

Subsec. (b)(2). Pub. L. 109–280, §1206(a)(2), reenacted heading without change and amended text of par. (2) generally. Prior to amendment, text read as follows: "In the case of a corporation, the total deductions under subsection (a) for any taxable year shall not exceed 10 percent of the taxpayer's taxable income computed without regard to—

"(A) this section,

"(B) part VIII (except section 248),

"(C) section 199,

"(D) any net operating loss carryback to the taxable year under section 172, and

"(E) any capital loss carryback to the taxable year under section 1212(a)(1)."

See Codification note above.

Subsec. (d)(2). Pub. L. 109–280, §1206(b)(1), substituted "subsection (b)(2)(A)" for "subsection (b)(2)" wherever appearing. See Codification note above.

Subsec. (e)(1)(A). Pub. L. 109–222 inserted "(determined without regard to section 1221(b)(3))" after "long-term capital gain".

Subsec. (e)(1)(B)(i). Pub. L. 109–280, §1215(a)(1), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: "of tangible personal property, if the use by the donee is unrelated to the purpose or function constituting the basis for its exemption under section 501 (or, in the case of a governmental unit, to any purpose or function described in subsection (c)),". See Codification note above.

Subsec. (e)(1)(B)(iv). Pub. L. 109–280, §1214(a), added cl. (iv). See Codification note above.

Subsec. (e)(3)(C)(iv). Pub. L. 109–280, §1202(a), substituted "2007" for "2005". See Codification note above.

Subsec. (e)(3)(D)(iv). Pub. L. 109–280, §1204(a), substituted "2007" for "2005". See Codification note above.

Subsec. (e)(4)(B)(ii). Pub. L. 109–432, §116(b)(1)(A), inserted "or assembled" after "constructed".

Subsec. (e)(4)(B)(iii). Pub. L. 109–432, §116(b)(1)(B), inserted "or assembly" after "construction".

Subsec. (e)(6)(B)(ii). Pub. L. 109–432, §116(b)(2)(A), inserted "or assembled" after "constructed" and "or assembling" after "construction".

Subsec. (e)(6)(D). Pub. L. 109–432, §116(b)(2)(B), inserted "or assembled" after "constructed" in introductory provisions and "or assembly" after "construction" in cl. (i).

Subsec. (e)(6)(G). Pub. L. 109–432, §116(a)(1), substituted "2007" for "2005".

Subsec. (e)(7). Pub. L. 109–280, §1215(a)(2), added par. (7). See Codification note above.

Subsec. (f)(11)(E). Pub. L. 109–280, §1219(c)(1), amended heading and text of subpar. (E) generally. Prior to amendment, text read as follows: "For purposes of this paragraph, the term 'qualified appraisal' means, with respect to any property, an appraisal of such property which is treated for purposes of this paragraph as a qualified appraisal under regulations or other guidance prescribed by the Secretary." See Codification note above.

Subsec. (f)(13). Pub. L. 109–280, §1213(c), added par. (13). See Codification note above.

Subsec. (f)(14). Pub. L. 109–280, §1213(d), added par. (14). See Codification note above.

Subsec. (f)(15). Pub. L. 109–280, §1214(b), added par. (15). See Codification note above.

Subsec. (f)(16). Pub. L. 109–280, §1216(a), added par. (16). See Codification note above.

Subsec. (f)(17). Pub. L. 109–280, §1217(a), added par. (17). See Codification note above.

Subsec. (f)(18). Pub. L. 109–280, §1234(a), added par. (18). See Codification note above.

Subsec. (h)(4)(B). Pub. L. 109–280, §1213(a)(1), added subpar. (B). Former subpar. (B) redesignated (C).

Subsec. (h)(4)(C). Pub. L. 109–280, §1213(a)(1), (b), redesignated subpar. (B) as (C), struck out "any building, structure, or land area which" after "means" in introductory provisions, inserted "any building, structure, or land area which" before "is listed" in cl. (i), and inserted "any building which" before "is located" in cl. (ii). See Codification note above.

Subsecs. (o), (p). Pub. L. 109–280, §1218(a), added subsec. (o) and redesignated former subsec. (o) as (p). See Codification note above.

2005—Subsec. (b)(2)(C) to (E). Pub. L. 109–135, §403(a)(16), added subpar. (C) and redesignated former subpars. (C) and (D) as (D) and (E), respectively.

Subsec. (e)(3)(C). Pub. L. 109–73, §305(a), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (e)(3)(D). Pub. L. 109–73, §306(a), added subpar. (D). Former subpar. (D) redesignated (E).

Pub. L. 109–73, §305(a), redesignated subpar. (C) as (D).

Subsec. (e)(3)(E). Pub. L. 109–73, §306(a), redesignated subpar. (D) as (E).

Subsec. (f)(12)(B)(v), (vi). Pub. L. 109–135, §403(gg), added cls. (v) and (vi).

2004—Subsec. (e)(1)(B)(iii). Pub. L. 108–357, §882(a), added cl. (iii).

Subsec. (e)(6)(G). Pub. L. 108–311, §306(a), substituted "2005" for "2003".

Subsec. (f)(10)(A). Pub. L. 108–357, §413(c)(30), struck out "556(b)(2)," after "545(b)(2)," in introductory provisions.

Subsec. (f)(11). Pub. L. 108–357, §883(a), added par. (11).

Subsec. (f)(11)(A)(ii)(I). Pub. L. 108–357, §882(d), inserted "subsection (e)(1)(B)(iii) or" before "section 1221(a)(1)".

Subsec. (f)(12). Pub. L. 108–357, §884(a), added par. (12).

Subsec. (g)(1). Pub. L. 108–311, §207(15), inserted "(determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof)" after "section 152" in introductory provisions.

Subsec. (g)(3). Pub. L. 108–311, §207(16), substituted "subparagraphs (A) through (G) of section 152(d)(2)" for "paragraphs (1) through (8) of section 152(a)".

Subsec. (m). Pub. L. 108–357, §882(b), added subsec. (m). Former subsec. (m) redesignated (n).

Subsec. (n). Pub. L. 108–357, §335(a), added subsec. (n). Former subsec. (n) redesignated (o).

Pub. L. 108–357, §882(b), redesignated subsec. (m) as (n). Amendment was executed before the amendment by Pub. L. 108–357, §335(a). See note below.

Subsec. (o). Pub. L. 108–357, §335(a), redesignated subsec. (n) as (o).

2003—Subsec. (e)(6)(B)(i)(III). Pub. L. 108–81 substituted "section 213(1)(A) of the Library Services and Technology Act (20 U.S.C. 9122(1)(A))" for "section 213(2)(A) of the Library Services and Technology Act (20 U.S.C. 9122(2)(A)".

2002—Subsec. (e)(6)(B)(i)(III). Pub. L. 107–147, §417(7), substituted "2000)," for " 2000,".

Subsec. (e)(6)(B)(iv). Pub. L. 107–147, §417(22), provided that the amendment made by section 165(b)(1) of the Community Renewal Tax Relief Act of 2000 [Pub. L. 106–554, §1(a)(7)[title I, §165(b)(1)]] shall be applied as if it struck "in any of the grades K–12". See 2000 Amendment note below.

2001—Subsec. (e)(1). Pub. L. 107–16, §542(e)(2)(B), inserted at end "For purposes of this paragraph, the determination of whether property is a capital asset shall be made without regard to the exception contained in section 1221(a)(3)(C) for basis determined under section 1022."

2000—Subsec. (e)(6). Pub. L. 106–554, §1(a)(7) [title I, §165(b)(2)], substituted "educational purposes" for "elementary or secondary school purposes" in heading.

Subsec. (e)(6)(A), (B). Pub. L. 106–554, §1(a)(7) [title I, §165(a)(1)], substituted "qualified computer contribution" for "qualified elementary or secondary educational contribution" in subpar. (A) and in heading and introductory provisions of subpar. (B).

Subsec. (e)(6)(B)(i)(III). Pub. L. 106–554, §1(a)(7) [title I, §165(a)(2)], added subcl. (III).

Subsec. (e)(6)(B)(ii). Pub. L. 106–554, §1(a)(7) [title I, §165(a)(3)], substituted "3 years" for "2 years".

Subsec. (e)(6)(B)(iv). Pub. L. 106–554, §1(a)(7) [title I, §165(b)(1)], which directed the amendment of cl. (iv) by striking "in any grades of the K–12", was executed by striking out "in any of the grades K–12" after "educational purposes". See 2002 Amendment note above.

Subsec. (e)(6)(B)(viii). Pub. L. 106–554, §1(a)(7) [title I, §165(d)], added cl. (viii).

Subsec. (e)(6)(C). Pub. L. 106–554, §1(a)(7) [title I, §165(a)(1)], substituted "qualified computer contribution" for "qualified elementary or secondary educational contribution" in introductory provisions.

Subsec. (e)(6)(D), (E). Pub. L. 106–554, §1(a)(7) [title I, §165(e)], added subpar. (D) and redesignated former subpar. (D) as (E). Former subpar. (E) redesignated (F).

Subsec. (e)(6)(F). Pub. L. 106–554, §1(a)(7) [title I, §165(e)], redesignated subpar. (E) as (F). Former subpar. (F) redesignated (G).

Pub. L. 106–554, §1(a)(7) [title I, §165(c)], substituted "December 31, 2003" for "December 31, 2000".

Subsec. (e)(6)(G). Pub. L. 106–554, §1(a)(7) [title I, §165(e)], redesignated subpar. (F) as (G).

1999—Subsec. (e)(3)(A), (4)(B). Pub. L. 106–170, §532(c)(1)(A), (B), substituted "section 1221(a)" for "section 1221".

Subsec. (f)(10). Pub. L. 106–170, §537(a), added par. (10).

1998—Subsec. (e)(5)(D). Pub. L. 105–277 struck out heading and text of subpar. (D). Text read as follows: "This paragraph shall not apply to contributions made—

"(i) after December 31, 1994, and before July 1, 1996, or

"(ii) after June 30, 1998."

Subsec. (e)(6)(B)(iv). Pub. L. 105–206, §6004(e)(2), substituted "function of the donee" for "function of the organization or entity".

Subsec. (e)(6)(B)(vi), (vii). Pub. L. 105–206, §6004(e)(1), substituted "donee's" for "entity's".

Subsec. (e)(6)(C)(ii)(I). Pub. L. 105–206, §6004(e)(3), substituted "a donee" for "an entity".

Subsec. (e)(6)(F). Pub. L. 105–206, §6004(e)(4), substituted "2000" for "1999".

1997—Subsec. (e)(5)(D)(ii). Pub. L. 105–34, §602(a), substituted "June 30, 1998" for "May 31, 1997".

Subsec. (e)(6). Pub. L. 105–34, §224(a), added par. (6).

Subsec. (h)(5)(B)(ii). Pub. L. 105–34, §508(d), amended heading and text of cl. (ii) generally. Prior to amendment, text read as follows: "With respect to any contribution of property in which the ownership of the surface estate and mineral interests were separated before June 13, 1976, and remain so separated, subparagraph (A) shall be treated as met if the probability of surface mining occurring on such property is so remote as to be negligible."

Subsec. (i). Pub. L. 105–34, §973(a), amended heading and text of subsec. (i) generally. Prior to amendment, text read as follows: "For purposes of computing the deduction under this section for use of a passenger automobile the standard mileage rate shall be 12 cents per mile."

1996—Subsec. (e)(1). Pub. L. 104–188, §1316(b), inserted at end "For purposes of applying this paragraph in the case of a charitable contribution of stock in an S corporation, rules similar to the rules of section 751 shall apply in determining whether gain on such stock would have been long-term capital gain if such stock were sold by the taxpayer."

Subsec. (e)(5)(D). Pub. L. 104–188, §1206(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "This paragraph shall not apply to contributions made after December 31, 1994."

1993—Subsec. (f)(8). Pub. L. 103–66, §13172(a), added par. (8).

Subsec. (f)(9). Pub. L. 103–66, §13222(b), added par. (9).

1990—Subsec. (h)(4)(B)(ii). Pub. L. 101–508, §11813(b)(10), substituted "section 47(c)(3)(B)" for "section 48(g)(3)(B)".

Subsec. (i). Pub. L. 101–508, §11801(a)(11), (c)(5), redesignated subsec. (j) as (i) and struck out former subsec. (i) which related to rule for nonitemization of deductions, applicable percentage for individuals, limitation for taxable years beginning before 1985, and termination.

Subsecs. (j) to (n). Pub. L. 101–508, §11801(c)(5), redesignated subsecs. (j) to (n) as (i) to (m), respectively.

1988—Subsecs. (m), (n). Pub. L. 100–647 added subsec. (m) and redesignated former subsec. (m) as (n).

1987—Subsec. (c)(2)(D). Pub. L. 100–203 inserted "(or in opposition to)" after "on behalf of".

1986—Subsec. (b)(1)(C)(iv). Pub. L. 99–514, §1831, substituted "this paragraph" for "this subparagraph".

Subsec. (e)(1)(B). Pub. L. 99–514, §301(b)(2), in closing provisions, struck out "40 percent (28/46 in the case of a corporation) of" before "the amount of gain".

Subsec. (e)(4)(B)(i). Pub. L. 99–514, §231(f), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: "the contribution is to an educational organization which is described in subsection (b)(1)(A)(ii) of this section and which is an institution of higher education (as defined in section 3304(f)),".

Subsecs. (k) to (m). Pub. L. 99–514, §142(d), added subsec. (k) and redesignated former subsecs. (k) and (l) as (l) and (m), respectively.

1984—Subsec. (a)(3). Pub. L. 98–369, §174(b)(5)(A), substituted "section 267(b) or 707(b)" for "section 267(b)".

Subsec. (b)(1)(A)(vii). Pub. L. 98–369, §301(c)(2)(A), substituted "subparagraph (E)" for "subparagraph (D)".

Subsec. (b)(1)(B). Pub. L. 98–369, §301(a)(2), inserted at end "If the aggregate of such contributions exceeds the limitation of the preceding sentence, such excess shall be treated (in a manner consistent with the rules of subsection (d)(1)) as a charitable contribution (to which subparagraph (A) does not apply) in each of the 5 succeeding taxable years in order of time."

Subsec. (b)(1)(B)(i). Pub. L. 98–369, §301(a)(1), substituted "30 percent" for "20 percent".

Subsec. (b)(1)(C). Pub. L. 98–369, §301(c)(2)(B), inserted "described in subparagraph (A)" in subpar. (C) heading, and in text of cl. (i) substituted "In the case of charitable contributions described in subparagraph (A) of capital gain property to which subsection (e)(1)(B) does not apply, the total amount of contributions of such property which may be taken into account under subsection (a) for any taxable year shall not exceed 30 percent of the taxpayer's contribution base for such year. For purposes of this subsection, contributions of capital gain property to which this subparagraph applies shall be taken into account after all other charitable contributions (other than charitable contributions to which subparagraph (D) applies)" for "In the case of charitable contributions of capital gain property to which subsection (e)(1)(B) does not apply, the total amount of contributions of such property which may be taken into account under subsection (a) for any taxable year shall not exceed 30 percent of the taxpayer's contribution base for such year. For purposes of this subsection, contributions of capital gain property to which this paragraph applies shall be taken into account after all other charitable contributions".

Subsec. (b)(1)(D) to (F). Pub. L. 98–369, §301(c)(1), added subpar. (D) and redesignated former subpars. (D) and (E) as (E) and (F), respectively.

Subsec. (e)(1). Pub. L. 98–369, §492(b)(1)(A), struck out in provision following subpar. (B) "1251(c)," after "1250(a)".

Subsec. (e)(1)(B)(ii). Pub. L. 98–369, §301(c)(2)(C), substituted "subsection (b)(1)(E)" for "subsection (b)(1)(D)".

Subsec. (e)(3)(C). Pub. L. 98–369, §492(b)(1)(B), struck out "1251," after "1250,".

Subsec. (e)(5). Pub. L. 98–369, §301(b), added par. (5).

Subsec. (f)(7). Pub. L. 98–369, §1022(b), added par. (7).

Subsec. (h)(5)(B). Pub. L. 98–369, §1035(a), designated existing provisions as cl. (i), inserted "Except as provided in clause (ii)", and added cl. (ii).

Subsec. (j). Pub. L. 98–369, §1031(a), added subsec. (j). Former subsec. (j) redesignated (k).

Subsec. (k). Pub. L. 98–369, §1031(a), redesignated subsec. (j) as (k). Former subsec. (k) redesignated (l).

Subsec. (l). Pub. L. 98–369, §1032(b)(1), added par. (1) and redesignated former pars. (1) to (8) as (2) to (9), respectively.

Pub. L. 98–369, §1031(a), redesignated subsec. (k) as (l).

1983—Subsec. (h)(4)(B)(ii). Pub. L. 97–448 substituted "section 48(g)(3)(B)" for "section 191(d)(2)".

Subsec. (k)(8). Pub. L. 97–473 added par. (8).

1982—Subsec. (c)(2). Pub. L. 97–248 inserted provision that rules similar to the rules of section 501(j) of this title shall apply for purposes of this paragraph.

Subsec. (e)(3)(A). Pub. L. 97–354, §5(a)(21)(A), substituted "an S corporation" for "an electing small business corporation within the meaning of section 1371(b)".

Subsec. (e)(4)(D)(i). Pub. L. 97–354, §5(a)(21)(B), substituted "an S corporation" for "an electing small business corporation (as defined in section 1371(b))".

Subsec. (k)(7). Pub. L. 97–258 substituted "section 4043 of title 18, United States Code" for "section 2 of the Act of May 15, 1952, as amended by the Act of July 9, 1952 (31 U.S.C. 725s–4)".

1981—Subsec. (b)(2). Pub. L. 97–34, §263(a), increased to 10 from 5 percent deduction allowable to a corporation in any taxable year for charitable contributions.

Subsec. (e)(4). Pub. L. 97–34, §222(a), added par. (4).

Subsec. (i). Pub. L. 97–34, §121(a), added subsec. (i). Former subsec. (i) redesignated (j).

Subsecs. (j), (k). Pub. L. 97–34, §121(a), redesignated former subsecs. (i) and (j) as (j) and (k), respectively.

1980—Subsec. (f)(3). Pub. L. 96–541, §6(a), reenacted subpar. (B), cls. (i) and (ii), substituted cl. (B)(iii) relating to qualified conservation contribution for prior cl. (B)(iii) relating to contribution of a lease on, option to purchase, or easement with respect to real property granted in perpetuity to a subsec. (b)(1)(A) organization exclusively for conservation purposes, deleted cl. (B)(iv) respecting contribution of a remainder interest in real property granted to a subsec. (b)(1)(A) organization exclusively for conservation purposes, and deleted subpar. (C) definition of "conservation purposes", now covered in an expanded subsec. (h)(4)(A).

Subsecs. (h), (i). Pub. L. 96–541, §6(b), added subsec. (h) and redesignated former subsec. (h) as (i). Former subsec. (i) redesignated (j).

Subsec. (i)(6). Pub. L. 96–465, among other changes, inserted references to Director of the International Communication Agency and the Director of the United States International Development Cooperation Agency, and substituted reference to section 25 of the State Department Basic Authorities Act of 1956 for reference to section 1021(e) of the Foreign Service Act of 1946.

Subsec. (j). Pub. L. 96–541, §6(b), redesignated former subsec. (i) as (j).

1978—Subsec. (e)(1)(B). Pub. L. 95–600 substituted "40 percent" for "50 percent" and "28/46" for "62½ percent".

1977—Subsec. (f)(3)(B)(iii). Pub. L. 95–30 substituted "real property granted in perpetuity to an organization" for "real property of not less than 30 years' duration granted to an organization".

1976—Subsec. (a). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (b)(1)(A)(vii). Pub. L. 94–455, §1901(a)(28)(A)(iii), substituted "subparagraph (D)" for "subparagraph (E)" after "described in".

Subsec. (b)(1)(B)(ii). Pub. L. 94–455, §1901(a)(28)(A)(iv), substituted "subparagraph (C)" for "subparagraph (D)" after "without regard to".

Subsec. (b)(1)(C). Pub. L. 94–455, §1901(a)(28)(A)(ii), struck out subpar. (C) which related to unlimited deductions for certain individuals, redesignated subpar. (D) as (C) and, as so redesignated, §1906(b)(13)(A), struck out "or his delegate" after "Secretary" in cl. (iii).

Subsec. (b)(1)(D) to (F). Pub. L. 94–455, §1901(a)(28)(A)(ii), redesignated subpars. (D) to (F) as (C) to (E), respectively.

Subsec. (b)(2). Pub. L. 95–455, §1052(c)(2), struck out subpar. (D) which related to a special deduction for Western Hemisphere trade corporations, and redesignated subpar. (E) as (D).

Subsec. (c). Pub. L. 94–455, §1901(a)(28)(A)(v), substituted "subsection (g)" for "subsection (h)" after "amount treated under".

Subsec. (c)(2)(B). Pub. L. 94–455, §1313(b)(1), inserted "or to foster national or international amateur sports competition (but only if no part of its activities involves the provision of athletic facilities or equipment)" after "or educational purposes".

Subsec. (c)(2)(D). Pub. L. 94–445, §1307(d)(1)(B)(i), substituted "which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation" for "no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation" after "(D)".

Subsec. (d)(1)(A). Pub. L. 94–455, §1901(a)(28)(B), struck out "(30 percent in the case of a contribution year beginning before January 1, 1970)" after "exceeds 50 percent".

Subsec. (e)(1). Pub. L. 94–455, §205(c)(1)(A), substituted "1252(a), or 1254(a)" for "or 1252(a)" after "1251(c)".

Subsec. (e)(1)(B)(ii). Pub. L. 94–455, §1901(a)(28)(A)(vi), substituted "subsection (b)(1)(D)" for "subsection (b)(1)(E)" after "foundation described in".

Subsec. (e)(2). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (e)(3). Pub. L. 94–455, §2135(a), added par. (3).

Subsec. (f)(2). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (f)(3). Pub. L. 94–455, §2124(e)(1), added subpars. (B)(iii), (iv), and (C).

Subsec. (f)(4). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (f)(6). Pub. L. 94–455, §§1307(c), 1901(a)(28)(A)(i), added par. (6). Former par. (6), which related to the partial reduction of unlimited deduction and definitions for transitional income and deduction percentages, was struck out. Section 1901(a)(28)(A)(i) of Pub. L. 94–455 struck out par. (6) a second time.

Subsec. (g). Pub. L. 94–455, §1901(a)(28)(A)(i), struck out subsec. (g) which related to application of unlimited charitable contribution deductions allowed for taxable years beginning before January 1, 1975, and redesignated subsecs. (h), (i), and (j) as (g), (h), and (i), respectively. Section 1901(a)(28)(A)(i) also struck out former subsec. (f)(6) but this direction was not executed as such former subsec. (f)(6) had previously been stricken by section 1307(c) of Pub. L. 94–455.

Subsec. (g)(1)(B). Pub. L. 94–455, §1901(b)(8)(A), substituted "educational organization described in

section 170(b)(1)(A)(ii)" for "educational institution (as defined in section 151(e)(4)" after "grade at an".

Subsec. (h). Pub. L. 94–455, §1901(a)(28)(A)(i), (C), redesignated subsec. (i) as (h), and struck out "64 Stat. 996" after "Act of 1950". Former subsec. (h) redesignated (g).

Subsec. (i). Pub. L. 94–455, §1901(a)(28)(A)(i), (D), redesignated subsec. (j) as (i) and substituted "6973 of title 10, United States Code" for "3 of the Act of March 31, 1944 (58 Stat. 135; 34 U.S.C. 1115b)" after "see section" in par. (5); struck out par. (6) relating to gifts to library of Post Office Department; struck out "60 Stat. 924" after "1946" in par. (7); substituted "as amended by the Act of July 9, 1952 (3 U.S.C. 725s–4)" for "(66 Stat. 73, as amended by Act of July 9, 1952, 66 Stat. 479, 31 U.S.C. 725s–4)" after "May 15, 1952" in par. (8); and redesignated pars. (7) and (8) as pars. (6) and (7), respectively. Former subsec. (i) redesignated (h).

Subsec. (j). Pub. L. 94–455, §1901(a)(28)(A)(i), redesignated subsec. (j) as (i).

1969—Subsec. (a)(3). Pub. L. 91–172, §201(a)(1)(B), added par. (3).

Subsec. (b). Pub. L. 91–172, §201(a)(1)(B), (h)(1), increased the general limitation on the charitable contributions deduction for individual taxpayers from 30 percent of adjusted gross income to 50 percent of his contribution base and provided that where a taxpayer makes a contribution to a public charity of property which has appreciated in value the taxpayer could deduct such contributions of property under the 50 percent limitation if he elects to take the unrealized appreciation in value into account for the tax purposes, the unlimited charitable deduction is phased out over a 5-year period and contributions to a private operating foundation and contributions to a private nonoperating foundation distributing such contributions to public charities or private operating foundations within two and half months following the year of receipt are also subjected to 50 percent limitation (30 percent in the case of gifts of appreciated property), and, in par. (1)(C), inserted provisions relating to the determination of the amount of charitable contributions and taxes paid by a married individual who previously filed a joint return with a former deceased spouse.

Subsec. (c). Pub. L. 91–172, §201(a)(1)(B), struck out references to "Territory" in pars. (1) and (2)(A), and inserted reference to participation in or intervention in any political campaign on behalf of any candidate for public office in par. (2)(D).

Subsec. (d). Pub. L. 91–172, §201(a)(1)(B), added subsec. (d) consisting of provisions substantially transferred from subsec. (b) in the general amendment of subsec. (b) by Pub. L. 91–172. Former subsec. (d) redesignated (b).

Subsec. (e). Pub. L. 91–172, §201(a)(1)(B), substituted provisions covering certain contributions of ordinary income and capital gain property for provisions setting out a special rule for charitable contributions.

Subsec. (f). Pub. L. 91–172, §201(a)(1)(B), substituted provisions for the disallowance of the deduction in specified cases for provision covering future interests in tangible personal property.

Subsec. (g). Pub. L. 91–172, §201(a)(2)(A), substituted "subsection (d)(1)" for "subsection (b)(5)" in two places in par. (1) and struck out par. (2)(B) covering contributions to organizations substantially more than half of the assets and the total income were devoted to charitable purposes.

Subsec. (h). Pub. L. 91–172, §201(a)(1)(A), redesignated subsec. (d) as (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 91–172, §§101(j)(2), 201(a)(1)(A), redesignated former subsec. (h) as (i), struck out par. (1) covering disallowance of deductions for gifts to charitable organizations engaging in prohibited transactions, and removed the par. (2) designation from the provisions covering disallowance of deductions for use of communist controlled organizations. Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 91–172, §201(a)(1)(A), redesignated former subsec. (i) as (j).

1966—Subsec. (e). Pub. L. 89–570 inserted reference to section 617(d)(1).

1964—Subsec. (b)(1)(A)(v), (vi), (2), (5). Pub. L. 88–272, §209 (a), (c)(1), (d)(1), added cls. (v) and (vi) in par. (1)(A), and par. (5), and in par. (2), extended the 2-year carryforward of unused charitable contributions to 5 years and changed the method of computation by including the aggregate of the excess contributions made in taxable years before the contribution year, in cl. (i), and references to third, fourth or fifth succeeding years in cl. (ii).

Subsec. (e). Pub. L. 88–272, §231(b)(1), substituted "certain property" for "section 1245 property" in heading, and inserted reference to section 1250(a) in text.

Subsec. (f). Pub. L. 88–272, §209(e), added subsec. (f). Former subsec. (f) redesignated (h).

Subsec. (g). Pub. L. 88–272, §209(b), added subsec. (g). Former subsec. (g) redesignated (i).

Subsecs. (h), (i). Pub. L. 88–272, §209(e), redesignated former subsecs. (f) and (g) as (h) and (i), respectively.

1962—Subsec. (b)(1)(A)(iv). Pub. L. 87–858, §2(a), added cl. (iv).

Subsec. (b)(1)(B). Pub. L. 87–858, §2(b), substituted "any charitable contributions described in subparagraph (A)" for "any charitable contributions to the organizations described in clauses (i), (ii), and (iii)".

Subsecs. (e) to (g). Pub. L. 87–834 added subsec. (e) and redesignated former subsecs. (e) and (f) as (f) and (g), respectively.

1960—Subsec. (c). Pub. L. 86–779, §7(a)(1), inserted sentence additionally defining "charitable contribution" for purposes of the section.

Subsecs. (d) to (f). Pub. L. 86–779, §7(a)(2), added subsec. (d) and redesignated former subsecs. (d) and (e) as (e) and (f), respectively.

1958—Subsec. (b)(1)(C). Pub. L. 85–866, §10(a), inserted sentence allowing substitution, in lieu of amount of tax paid during year, amount of tax paid in respect of such year, provided amount so included in the year in respect of which payment was made be not included in any other year.

Subsec. (b)(3). Pub. L. 85–866, §11, added par. (3).

Subsec. (b)(4). Pub. L. 85–866, §12, added par. (4).

1956—Subsec. (b)(1)(A)(iii). Act Aug. 7, 1956, §1, provided for the allowance, as deductions, of contributions to medical research organizations.

CHANGE OF NAME

International Communication Agency, and Director thereof, redesignated United States Information Agency, and Director thereof, by section 303 of Pub. L. 97–241, title III, Aug. 24, 1982, 96 Stat. 291, set out as a note under section 1461 of Title 22, Foreign Relations and Intercourse. United States Information Agency (other than Broadcasting Board of Governors and International Broadcasting Bureau) abolished and functions transferred to Secretary of State, see sections 6531 and 6532 of Title 22.

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title II, §206(c), Jan. 2, 2013, 126 Stat. 2324, provided that: "The amendments made by this section [amending this section] shall apply to contributions made in taxable years beginning after December 31, 2011."

Pub. L. 112–240, title III, §314(b), Jan. 2, 2013, 126 Stat. 2330, provided that: "The amendment made by this section [amending this section] shall apply to contributions made after December 31, 2011."

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 301(a) of Pub. L. 111–312 applicable to estates of decedents dying, and transfers made after Dec. 31, 2009, except as otherwise provided, see section 301(e) of Pub. L. 111–312, set out as an Effective and Termination Dates of 2010 Amendment note under section 121 of this title.

Pub. L. 111–312, title VII, §723(c), Dec. 17, 2010, 124 Stat. 3316, provided that: "The amendments made by this section [amending this section] shall apply to contributions made in taxable years beginning after December 31, 2009."

Pub. L. 111–312, title VII, §740(b), Dec. 17, 2010, 124 Stat. 3319, provided that: "The amendment made by this section [amending this section] shall apply to contributions made after December 31, 2009."

Pub. L. 111–312, title VII, §741(b), Dec. 17, 2010, 124 Stat. 3319, provided that: "The amendment made by this section [amending this section] shall apply to contributions made after December 31, 2009."

Pub. L. 111–312, title VII, §742(b), Dec. 17, 2010, 124 Stat. 3319, provided that: "The amendment made by this section [amending this section] shall apply to contributions made in taxable years beginning after December 31, 2009."

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title III, §321(b), Oct. 3, 2008, 122 Stat. 3873, provided that: "The amendment made by this section [amending this section] shall apply to contributions made during taxable years beginning after December 31, 2007."

Pub. L. 110–343, div. C, title III, §323(a)(2), Oct. 3, 2008, 122 Stat. 3874, provided that: "The amendment made by this subsection [amending this section] shall apply to contributions made after December 31, 2007."

Pub. L. 110–343, div. C, title III, §323(b)(2), Oct. 3, 2008, 122 Stat. 3875, provided that: "The amendment made by this subsection [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Oct. 3, 2008]."

Pub. L. 110–343, div. C, title III, §324(c), Oct. 3, 2008, 122 Stat. 3875, provided that: "The amendments made by this section [amending this section] shall apply to contributions made after December 31, 2007."

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Pub. L. 110–234, title XV, §15302(b), May 22, 2008, 122 Stat. 1501, and Pub. L. 110–246, §4(a), title XV, §15302(b), June 18, 2008, 122 Stat. 1664, 2263, provided that: "The amendments made by this section

[amending this section] shall apply to contributions made in taxable years beginning after December 31, 2007."

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

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–172, §3(j), Dec. 29, 2007, 121 Stat. 2475, provided that: "The amendments made by this section [amending this section and sections 408, 1366, 2055, 2522, 4940, 4958, 4962, 6104, 6695A, and 6696 of this title] shall take effect as if included in the provisions of the Pension Protection Act of 2006 [Pub. L. 109–280] to which they relate."

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title I, §116(a)(2), Dec. 20, 2006, 120 Stat. 2941, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to contributions made in taxable years beginning after December 31, 2005."

Pub. L. 109–432, div. A, title I, §116(b)(3), Dec. 20, 2006, 120 Stat. 2941, provided that: "The amendments made by this subsection [amending this section] shall apply to taxable years beginning after December 31, 2005."

Pub. L. 109–280, title XII, §1202(b), Aug. 17, 2006, 120 Stat. 1066, provided that: "The amendment made by this section [amending this section] shall apply to contributions made after December 31, 2005."

Pub. L. 109–280, title XII, §1204(b), Aug. 17, 2006, 120 Stat. 1066, provided that: "The amendment made by this section [amending this section] shall apply to contributions made after December 31, 2005."

Pub. L. 109–280, title XII, §1206(c), Aug. 17, 2006, 120 Stat. 1070, provided that: "The amendments made by this section [amending this section and section 545 of this title] shall apply to contributions made in taxable years beginning after December 31, 2005."

Pub. L. 109–280, title XII, §1213(e), Aug. 17, 2006, 120 Stat. 1076, provided that:

"(1) SPECIAL RULES FOR BUILDINGS IN REGISTERED HISTORIC DISTRICTS.—The amendments made by subsection (a) [amending this section] shall apply to contributions made after July 25, 2006.

"(2) DISALLOWANCE OF DEDUCTION FOR STRUCTURES AND LAND; REDUCTION FOR REHABILITATION CREDIT.—The amendments made by subsections (b) and (d) [amending this section] shall apply to contributions made after the date of the enactment of this Act [Aug. 17, 2006].

"(3) FILING FEE.—The amendment made by subsection (c) [amending this section] shall apply to contributions made 180 days after the date of the enactment of this Act [Aug. 17, 2006]."

Pub. L. 109–280, title XII, §1214(c), Aug. 17, 2006, 120 Stat. 1077, provided that: "The amendment made by this section [amending this section] shall apply to contributions made after July 25, 2006."

Pub. L. 109–280, title XII, §1215(d)(1), Aug. 17, 2006, 120 Stat. 1079, provided that: "The amendments made by subsection (a) [amending this section] shall apply to contributions after September 1, 2006."

Pub. L. 109–280, title XII, §1216(b), Aug. 17, 2006, 120 Stat. 1080, provided that: "The amendment made by this section [amending this section] shall apply to contributions made after the date of enactment of this Act [Aug. 17, 2006]."

Pub. L. 109–280, title XII, §1217(b), Aug. 17, 2006, 120 Stat. 1080, provided that: "The amendment made by this section [amending this section] shall apply to contributions made in taxable years beginning after the date of the enactment of this Act [Aug. 17, 2006]."

Pub. L. 109–280, title XII, §1218(d), Aug. 17, 2006, 120 Stat. 1083, provided that: "The amendments made by this section [amending this section and sections 2055 and 2522 of this title] shall apply to contributions, bequests, and gifts made after the date of the enactment of this Act [Aug. 17, 2006]."

Pub. L. 109–280, title XII, §1219(e), Aug. 17, 2006, 120 Stat. 1085, provided that:

"(1) MISSTATEMENT PENALTIES.—Except as provided in paragraph (3), the amendments made by subsection (a) [amending sections 6662 and 6664 of this title] shall apply to returns filed after the date of the enactment of this Act [Aug. 17, 2006].

"(2) APPRAISER PROVISIONS.—Except as provided in paragraph (3), the amendments made by subsections (b), (c), and (d) [enacting section 6695A of this title and amending this section, sections 6664 and 6696 of this title, and section 330 of Title 31, Money and Finance] shall apply to appraisals prepared with respect to returns or submissions filed after the date of the enactment of this Act [Aug. 17, 2006].

"(3) SPECIAL RULE FOR CERTAIN EASEMENTS.—In the case of a contribution of a qualified real property interest which is a restriction with respect to the exterior of a building described in section 170(h)(4)(C)(ii) of the Internal Revenue Code of 1986, and an appraisal with respect to the contribution, the amendments made by subsections (a) and (b) [enacting section 6695A of this title and amending sections 6662, 6664, and 6696 of this title] shall apply to returns filed after July 25, 2006."

Pub. L. 109–280, title XII, §1234(d), Aug. 17, 2006, 120 Stat. 1101, provided that: "The amendments made by this section [amending this section and sections 2055 and 2522 of this title] shall apply to contributions made after the date which is 180 days after the date of the enactment of this Act [Aug. 17, 2006]."

Pub. L. 109–222, title II, §204(c), May 17, 2006, 120 Stat. 350, provided that: "The amendments made by this section [amending this section and section 1221 of this title] shall apply to sales and exchanges in taxable years beginning after the date of the enactment of this Act [May 17, 2006]."

EFFECTIVE DATE OF 2005 AMENDMENTS

Amendments by Pub. L. 109–135 effective as if included in the provisions of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which they relate, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

Pub. L. 109–73, title III, §305(b), Sept. 23, 2005, 119 Stat. 2025, provided that: "The amendment made by this section [amending this section] shall apply to contributions made on or after August 28, 2005, in taxable years ending after such date."

Pub. L. 109–73, title III, §306(b), Sept. 23, 2005, 119 Stat. 2026, provided that: "The amendments made by this section [amending this section] shall apply to contributions made on or after August 28, 2005, in taxable years ending after such date."

EFFECTIVE DATE OF 2004 AMENDMENTS

Pub. L. 108–357, title III, §335(b), Oct. 22, 2004, 118 Stat. 1479, provided that: "The amendments made by subsection (a) [amending this section] shall apply to contributions made after December 31, 2004."

Amendment by section 413(c)(30) of Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

Pub. L. 108–357, title VIII, §882(f), Oct. 22, 2004, 118 Stat. 1631, provided that: "The amendments made by this section [amending this section and section 6050L of this title] shall apply to contributions made after June 3, 2004."

Pub. L. 108–357, title VIII, §883(b), Oct. 22, 2004, 118 Stat. 1632, provided that: "The amendment made by this section [amending this section] shall apply to contributions made after June 3, 2004."

Pub. L. 108–357, title VIII, §884(c), Oct. 22, 2004, 118 Stat. 1634, provided that: "The amendments made by this section [enacting section 6720 of this title and amending this section] shall apply to contributions made after December 31, 2004."

Amendment by section 207(15), (16) of Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

Pub. L. 108–311, title III, §306(b), Oct. 4, 2004, 118 Stat. 1179, provided that: "The amendment made by this section [amending this section] shall apply to contributions made in taxable years beginning after December 31, 2003."

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to estates of decedents dying after Dec. 31, 2009, see section 542(f)(1) of Pub. L. 107–16, set out as a note under section 121 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(7) [title I, §165(f)], Dec. 21, 2000, 114 Stat. 2763, 2763A–627, provided that: "The amendments made by this section [amending this section] shall apply to contributions made after December 31, 2000."

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title V, §532(d), Dec. 17, 1999, 113 Stat. 1931, provided that: "The amendments made by this section [amending this section and sections 198, 263A, 267, 341, 367, 475, 543, 751, 775, 818, 856, 857, 864, 865, 871, 954, 988, 995, 1017, 1092, 1221, 1231, 1234, 1256, 1362, 1397B, 4662, and 7704 of this title] shall apply to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after the date of the enactment of this Act [Dec. 17, 1999]."

Pub. L. 106–170, title V, §537(b), Dec. 17, 1999, 113 Stat. 1938, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this section [amending this section], the amendment made by this section shall apply to transfers made after February 8, 1999.

"(2) EXCISE TAX.—Except as provided in paragraph (3) of this subsection, section 170(f)(10)(F) of the Internal Revenue Code of 1986 (as added by this section) shall apply to premiums paid after the date of the

enactment of this Act [Dec. 17, 1999].

"(3) REPORTING.—Clause (iii) of such section 170(f)(10)(F) shall apply to premiums paid after February 8, 1999 (determined as if the tax imposed by such section applies to premiums paid after such date)."

EFFECTIVE DATE OF 1998 AMENDMENTS

Pub. L. 105–277, div. J, title I, §1004(a)(2), Oct. 21, 1998, 112 Stat. 2681–888, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to contributions made after June 30, 1998."

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title II, §224(b), Aug. 5, 1997, 111 Stat. 820, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1997."

Pub. L. 105–34, title V, §508(e)(2), Aug. 5, 1997, 111 Stat. 860, provided that: "The amendments made by subsections (c) and (d) [amending this section and section 2032A of this title] shall apply to easements granted after December 31, 1997."

Pub. L. 105–34, title VI, §602(b), Aug. 5, 1997, 111 Stat. 862, provided that: "The amendment made by subsection (a) [amending this section] shall apply to contributions made after May 31, 1997."

Pub. L. 105–34, title IX, §973(b), Aug. 5, 1997, 111 Stat. 898, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1997."

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, §1206(b), Aug. 20, 1996, 110 Stat. 1776, provided that: "The amendment made by this section [amending this section] shall apply to contributions made after June 30, 1996."

Pub. L. 104–188, title I, §1316(f), Aug. 20, 1996, 110 Stat. 1787, provided that: "The amendments made by this section [amending this section and sections 404, 512, 1042, and 1361 of this title] shall apply to taxable years beginning after December 31, 1997."

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13172(b), Aug. 10, 1993, 107 Stat. 456, provided that: "The provisions of this section [amending this section] shall apply to contributions made on or after January 1, 1994."

Amendment by section 13222(b) of Pub. L. 103–66 applicable to amounts paid or incurred after Dec. 31, 1993, see section 13222(e) of Pub. L. 103–66 set out as a note under section 162 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11813(b)(10) of Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title VI, §6001(b), Nov. 10, 1988, 102 Stat. 3684, provided that:

"(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1983.

"(2) WAIVER OF STATUTE OF LIMITATIONS.—If on the date of the enactment of this Act [Nov. 10, 1988] (or at any time within 1 year after such date of enactment) refund or credit of any overpayment of tax resulting from the application of section 170(m) of the 1986 Code (as added by subsection (a)) is barred by any law or rule of law, refund or credit of such overpayment shall, nevertheless, be made or allowed if claim therefore [sic] is filed before the date 1 year after the date of the enactment of this Act."

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title X, §10711(c), Dec. 22, 1987, 101 Stat. 1330–465, provided that: "The amendments made by this section [amending this section and sections 501, 504, 2055, 2106, and 2522 of this title] shall apply with respect to activities after the date of the enactment of this Act [Dec. 22, 1987]."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 142(d) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986,

see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 231(f) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1985, see section 231(g) of Pub. L. 99–514, set out as a note under section 41 of this title.

Amendment by section 301(b)(2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 301(c) of Pub. L. 99–514, set out as a note under section 62 of this title.

Amendment by section 1831 of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 174(b)(5)(A) of Pub. L. 98–369, applicable to transactions after Dec. 31, 1983, in taxable years ending after that date, see section 174(c)(2)(A) of Pub. L. 98–369, set out as a note under section 267 of this title.

Pub. L. 98–369, div. A, title III, §301(d), July 18, 1984, 98 Stat. 779, provided that:

"(1) SUBSECTIONS (a) AND (c).—The amendments made by subsections (a) and (c) [amending this section] shall apply to contributions made in taxable years ending after the date of the enactment of this Act [July 18, 1984].

"(2) SUBSECTION (b).—The amendment made by subsection (b) [amending this section] shall apply to contributions made after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date."

Pub. L. 98–369, div. A, title IV, §492(d), July 18, 1984, 98 Stat. 854, provided that: "The amendments made by this section [amending this section and sections 341, 453B, 751, and 1252 of this title and repealing section 1251 of this title] shall apply to taxable years beginning after December 31, 1983."

Amendment by section 1022(b) of Pub. L. 98–369 applicable to reformations after Dec. 31, 1978, except inapplicable to any reformation to which section 2055(e)(3) of this title as in effect before July 18, 1984, applies, see section 1022(e)(1) of Pub. L. 98–369, set out as a note under section 2055 of this title.

Pub. L. 98–369, div. A, title X, §1031(b), July 18, 1984, 98 Stat. 1033, provided that: "The amendments made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1984."

Pub. L. 98–369, div. A, title X, §1032(c), July 18, 1984, 98 Stat. 1034, provided that: "The amendments made by subsections (a) and (b) [amending this section and sections 501, 2055, and 2522 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [July 18, 1984]."

Pub. L. 98–369, div. A, title X, §1035(b), July 18, 1984, 98 Stat. 1042, provided that: "The amendment made by subsection (a) [amending this section] shall apply to contributions made after the date of the enactment of this Act [July 18, 1984]."

EFFECTIVE DATE OF 1983 AMENDMENT

For effective date of amendment by Pub. L. 97–473, see section 204(1) of Pub. L. 97–473, set out as an Effective Date note under section 7871 of this title.

Amendment by title I of Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

Amendment by Pub. L. 97–248 effective Oct. 5, 1976, see section 286(c) of Pub. L. 97–248, set out as a note under section 501 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title I, §121(d), Aug. 13, 1981, 95 Stat. 197, provided that: "The amendments made by this section [amending this section and sections 3, 57, and 63 of this title] shall apply to contributions made after December 31, 1981, in taxable years beginning after such date."

Pub. L. 97–34, title II, §222(b), Aug. 13, 1981, 95 Stat. 248, provided that: "The amendment made by subsection (a) [amending this section] shall apply to charitable contributions made after the date of the enactment of this Act [Aug. 13, 1981], in taxable years ending after such date."

Pub. L. 97–34, title II, §263(b), Aug. 13, 1981, 95 Stat. 264, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1981."

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–541, §6(d), Dec. 17, 1980, 94 Stat. 3208, provided that: "The amendments made by subsections (a) and (b) [amending this section] shall apply to transfers made after the date of the enactment of this Act [Dec. 17, 1980] in taxable years ending after such date."

Amendment by Pub. L. 96–465 effective Feb. 15, 1981, except as otherwise provided, see section 2403 of Pub. L. 96–465, set out as an Effective Date note under section 3901 of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title IV, §402(c)(2), Nov. 6, 1978, 92 Stat. 2868, provided that: "The amendment made by subsection (b)(2) [amending this section by substituting "40 percent" for "50 percent"] shall apply to contributions made after October 31, 1978."

Pub. L. 95–600, title IV, §403(d)(2), Nov. 6, 1978, 92 Stat. 2869, provided that: "The amendment made by paragraph (1) of subsection (c) [amending this section by substituting "28/46" for "62½ percent"] shall apply to gifts made after December 31, 1978."

EFFECTIVE DATE OF 1977 AMENDMENT

Pub. L. 95–30, title III, §309(b)(1), May 23, 1977, 91 Stat. 154, as amended by Pub. L. 96–541, §6(c), Dec. 17, 1980, 94 Stat. 3207, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to contributions or transfers made after June 13, 1977."

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title X, §1052(d), Oct. 4, 1976, 90 Stat. 1648, provided that: "The amendments made by subsection (a) and paragraph (1) of subsection (c) [amending section 922 of this title] shall apply with respect to taxable years beginning after December 31, 1975. The amendments made by subsection (b) [repealing sections 921 and 922 of this title] and by subsection (c) (other than paragraph (1)) [amending this section and sections 172, 907, 1503, and 6091 of this title] shall apply with respect to taxable years beginning after December 31, 1979."

Amendment by section 1307 (d)(1)(B)(i), (c) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1307(e) of Pub. L. 94–455, set out as a note under section 501 of this title.

Amendment by section 1313(b)(1) of Pub. L. 94–455 effective Oct. 5, 1976, see section 1313(e) of Pub. L. 94–455, set out as a note under section 501 of this title.

Amendment by section 1901(a)(28) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Pub. L. 94–455, title XXI, §2124(e)(4), Oct. 4, 1976, 90 Stat. 1920, as amended by Pub. L. 95–30, title III, §309(b)(2), May 23, 1977, 91 Stat. 154; Pub. L. 96–541, §6(c), Dec. 17, 1980, 94 Stat. 3207, provided that: "The amendments made by this subsection [amending this section and sections 2055 and 2522 of this title] shall apply with respect to contributions or transfers made after June 13, 1976."

Pub. L. 94–455, title XXI, §2135(b), Oct. 4, 1976, 90 Stat. 1929, provided that: "The amendment made by this section [amending this section] applies to charitable contributions made after the date of enactment of this Act [Oct. 4, 1976], in taxable years ending after such date."

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 101(j)(2) of Pub. L. 91–172 to take effect on Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

Pub. L. 91–172, title II, §201(g), Dec. 30, 1969, 83 Stat. 564, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1)(A) Except as provided in subparagraphs (B) and (C), the amendments made by subsection (a) [amending this section and sections 545, 556, and 809 of this title] shall apply to taxable years beginning after December 31, 1969.

"(B) Subsections (e) and (f)(1) of section 170 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by subsection (a)) shall apply to contributions paid after December 31, 1969, except that, with respect to a letter or memorandum or similar property described in section 1221(3) of such Code (as amended by section 514 of this Act), such subsection (e) shall apply to contributions paid after July 25, 1969.

"(C) Paragraphs (2), (3), and (4) of section 170(f) of such Code (as amended by subsection (a)) shall apply to transfers in trust and contributions made after July 31, 1969.

"(D) For purposes of applying section 170(d) of such Code (as amended by subsection (a)) with respect to contributions paid in a taxable year beginning before January 1, 1970, subsection (b)(1)(D), subsection (e), and paragraphs (1), (2), (3), and (4) of subsection (f) of section 170 of such Code shall not apply.

"(2) The amendments made by subsection (b) [amending section 642 of this title] shall apply with respect to amounts paid, permanently set aside, or to be used for a charitable purpose in taxable years beginning after December 31, 1969, except that section 642(c)(5) of the Internal Revenue Code of 1986 (as added by subsection (b)) shall apply to transfers in trust made after July 31, 1969.

"(3) The amendment made by subsection (c) [amending section 673 of this title] shall apply to transfers in trust made after April 22, 1969.

"(4)(A) Except as provided in subparagraphs (B) and (C), the amendments made by paragraphs (1) and (2) of subsection (d) [amending sections 2055 and 2126 of this title] shall apply in the case of decedents dying after December 31, 1969.

"(B) Such amendments shall not apply in the case of property passing under the terms of a will executed on or before October 9, 1969—

"(i) if the decedent dies before October 9, 1972, without having republished the will after October 9, 1969, by codicil or otherwise,

"(ii) if the decedent at no time after October 9, 1969, had the right to change the portions of the will which pertain to the passing of the property to, or for the use of, an organization described in section 2055(a) [section 2055(a) of this title], or

"(iii) if the will is not republished by codicil or otherwise before October 9, 1972, and the decedent is on such date and at all times thereafter under a mental disability to republish the will by codicil or otherwise.

"(C) Such amendments shall not apply in the case of property transferred in trust on or before October 9, 1969—

"(i) if the decedent dies before October 9, 1972, without having amended after October 9, 1969, the instrument governing the disposition of the property,

"(ii) if the property transferred was an irrevocable interest to, or for the use of, an organization described in section 2055(a), or

"(iii) if the instrument governing the disposition of the property was not amended by the decedent before October 9, 1972, and the decedent is on such date and at all times thereafter under a mental disability to change the disposition of the property.

"(D) The amendment made by paragraph (3) of subsection (d) [amending section 2522 of this title] shall apply to gifts made after December 31, 1969, except that the amendments made to section 2522(c)(2) of the Internal Revenue Code of 1986 shall apply to gifts made after July 31, 1969.

"(E) The amendments made by paragraph (4) of subsection (d) [amending sections 2055, 2106, and 2522 of this title] shall apply to gifts and transfers made after December 31, 1969.

"(5) The amendment made by subsection (e) [enacting section 664 of this title] shall apply to transfers in trust made after July 31, 1969.

"(6) The amendments made by subsection (f) [amending section 1011 of this title] shall apply with respect to sales made after December 19, 1969."

Pub. L. 91–172, title II, §201(h)(2), Dec. 30, 1969, 83 Stat. 565, provided that: "The amendment made by this subsection [amending this section] shall apply to taxable years beginning after December 31, 1968."

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–570 applicable to taxable years ending after Sept. 12, 1966, but only in respect of expenditures paid or incurred after such date, see section 3 of Pub. L. 89–570, set out as an Effective Date note under section 617 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88–272, title II, §209(f), Feb. 26, 1964, 78 Stat. 47, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) The amendments made by subsections (a), (b), and (c) [amending this section and sections 545 and 556 of this title], shall apply with respect to contributions which are paid in taxable years beginning after December 31, 1963.

"(2) The amendments made by subsection (d) [amending this section and section 381 of this title] shall apply to taxable years beginning after December 31, 1963, with respect to contributions which are paid (or treated as paid under section 170(a)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) in taxable years beginning after December 31, 1961.

"(3) The amendments made by subsection (e) [amending this section] shall apply to transfers of future interests made after December 31, 1963, in taxable years ending after such date, except that such amendments shall not apply to any transfer of a future interest made before July 1, 1964, where—

"(A) the sole intervening interest or right is a nontransferable life interest reserved by the donor, or

"(B) in the case of a joint gift by husband and wife, the sole intervening interest or right is a nontransferable life interest reserved by the donors which expires not later than the death of whichever of such donors dies later.

For purposes of the exception contained in the preceding sentence, a right to make a transfer of the reserved life interest to the donee of the future interest shall not be treated as making a life interest transferable."

Amendment by section 231(b)(1) of Pub. L. 88–272 applicable to dispositions after Dec. 31, 1963, in taxable years ending after such date, see section 231(c) of Pub. L. 88–272, set out as an Effective Date note under section 1250 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87–858, §2(c), Oct. 23, 1962, 76 Stat. 1134, provided that: "The amendments made by subsections (a) and (b) [amending this section] shall apply to taxable years beginning after December 31, 1960."

Amendment by Pub. L. 87–834 applicable to taxable years beginning after Dec. 31, 1962, see section 13(g) of Pub. L. 87–834, set out as an Effective Date note under section 1245 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–779 applicable with respect to taxable years beginning after Dec. 31, 1959, see section 7(c) of Pub. L. 86–779, set out as a note under section 162 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85–866, title I, §10(b), Sept. 2, 1958, 72 Stat. 1609, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1957."

Amendment by section 11 of Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

Pub. L. 85–866, title I, §12(b), Sept. 2, 1958, 72 Stat. 1610, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after December 31, 1957, but only with respect to charitable contributions made after such date."

EFFECTIVE DATE OF 1956 AMENDMENT

Act Aug. 7, 1956, ch. 1031, §2, 70 Stat. 1118, provided that: "The amendment made by this Act [amending this section] shall apply only with respect to taxable years beginning after December 31, 1955."

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

TRANSFER OF FUNCTIONS

United States International Development Cooperation Agency (other than Agency for International Development and Overseas Private Investment Corporation) abolished and functions and authorities transferred, see sections 6561 and 6562 of Title 22, Foreign Relations and Intercourse.

ANTI-ABUSE RULES

Pub. L. 108–357, title VIII, §882(e), Oct. 22, 2004, 118 Stat. 1631, provided that: "The Secretary of the Treasury may prescribe such regulations or other guidance as may be necessary or appropriate to prevent the avoidance of the purposes of section 170(e)(1)(B)(iii) of the Internal Revenue Code of 1986 (as added by subsection (a)), including preventing—

"(1) the circumvention of the reduction of the charitable deduction by embedding or bundling the patent or similar property as part of a charitable contribution of property that includes the patent or similar property,

"(2) the manipulation of the basis of the property to increase the amount of the charitable deduction through the use of related persons, pass-thru entities, or other intermediaries, or through the use of any provision of law or regulation (including the consolidated return regulations), and

"(3) a donor from changing the form of the patent or similar property to property of a form for which different deduction rules would apply."

AUTHORITY TO WAIVE APPRAISAL REQUIREMENT FOR CERTAIN CHARITABLE

CONTRIBUTIONS OF PROPERTY

Pub. L. 100–647, title VI, §6281, Nov. 10, 1988, 102 Stat. 3755, provided that: "Notwithstanding paragraph (2) of section 155(a) of the Tax Reform Act of 1984 [section 155(a)(2) of Pub. L. 98–369, set out below], the Secretary of the Treasury or his delegate may in the regulations prescribed pursuant to such section waive the requirement of a qualified appraisal in the case of a qualified contribution (within the meaning of section 170(e)(3)(A) of the 1986 Code) of property described in section 1221(1) [probably means section 1221(1) of the 1986 Code] with a claimed value in excess of $5,000."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TREATMENT OF CERTAIN AMOUNTS PAID TO OR FOR THE BENEFIT OF CERTAIN INSTITUTIONS OF HIGHER EDUCATION

Pub. L. 99–514, title XVI, §1608, Oct. 22, 1986, 100 Stat. 2771, which related to treatment of certain amounts paid to or for the benefit of certain institutions of higher education, was repealed by Pub. L. 100–647, title I, §1016(b), Nov. 10, 1988, 102 Stat. 3575.

SUBSTANTIATION OF CHARITABLE CONTRIBUTIONS OF PROPERTY

Pub. L. 98–369, div. A, title I, §155(a), July 18, 1984, 98 Stat. 691, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—Not later than December 31, 1984, the Secretary shall prescribe regulations under section 170(a)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], which require any individual, closely held corporation, or personal service corporation claiming a deduction under section 170 of such Code for a contribution described in paragraph (2)—

"(A) to obtain a qualified appraisal for the property contributed,

"(B) to attach an appraisal summary to the return on which such deduction is first claimed for such contribution, and

"(C) to include on such return such additional information (including the cost basis and acquisition date of the contributed property) as the Secretary may prescribe in such regulations.

Such regulations shall require the taxpayer to retain any qualified appraisal.

"(2) CONTRIBUTIONS TO WHICH PARAGRAPH (1) APPLIES.—For purposes of paragraph (1), a contribution is described in this paragraph—

"(A) if such contribution is of property (other than publicly traded securities), and

"(B) if the claimed value of such property (plus the claimed value of all similar items of property donated to 1 or more donees) exceeds $5,000.

In the case of any property which is nonpublicly traded stock, subparagraph (B) shall be applied by substituting '$10,000' for '$5,000'.

"(3) APPRAISAL SUMMARY.—For purposes of this subsection, the appraisal summary shall be in such form and include such information as the Secretary prescribes by regulations. Such summary shall be signed by the qualified appraiser preparing the qualified appraisal and shall contain the TIN of such appraiser. Such summary shall be acknowledged by the donee of the property appraised in such manner as the Secretary prescribes in such regulations.

"(4) QUALIFIED APPRAISAL.—The term 'qualified appraisal' means an appraisal prepared by a qualified appraiser which includes—

"(A) a description of the property appraised,

"(B) the fair market value of such property on the date of contribution and the specific basis for the valuation,

"(C) a statement that such appraisal was prepared for income tax purposes,

"(D) the qualifications of the qualified appraiser,

"(E) the signature and TIN of such appaiser, [sic] and

"(F) such additional information as the Secretary prescribes in such regulations.

"(5) QUALIFIED APPRAISER.—

"(A) IN GENERAL.—For purposes of this subsection, the term 'qualified appraiser' means an appraiser qualified to make appraisals of the type of property donated, who is not—

"(i) the taxpayer,

"(ii) a party to the transaction in which the taxpayer acquired the property,

"(iii) the donee,

"(iv) any person employed by any of the foregoing persons or related to any of the foregoing persons under section 267(b) of the Internal Revenue Code of 1986, or

"(v) to the extent provided in such regulations, any person whose relationship to the taxpayer would cause a reasonable person to question the independence of such appraiser.

"(B) APPRAISAL FEES.—For purposes of this subsection, an appraisal shall not be treated as a qualified appraisal if all or part of the fee paid for such appraisal is based on a percentage of the appraised value of the property. The preceding sentence shall not apply to fees based on a sliding scale that are paid to a generally recognized association regulating appraisers.

"(6) OTHER DEFINITIONS.—For purposes of this subsection—

"(A) CLOSELY HELD CORPORATION.—The term 'closely held corporation' means any corporation (other than an S corporation) with respect to which the stock ownership requirement of paragraph (2) of section 542(a) of such Code is met.

"(B) PERSONAL SERVICE CORPORATION.—The term 'personal service corporation' means any corporation (other than an S corporation) which is a service organization (within the meaning of section 414(m)(3) of such Code).

"(C) PUBLICLY TRADED SECURITIES.—The term 'publicly traded securities' means securities for which (as of the date of the contribution) market quotations are readily available on an established securities market.

"(D) NONPUBLICLY TRADED STOCK.—The term 'nonpublicly traded stock' means any stock of a corporation which is not a publicly traded security.

"(E) THE SECRETARY.—The term 'Secretary' means the Secretary of the Treasury or his delegate."

CHARITABLE LEAD TRUSTS AND CHARITABLE REMAINDER TRUSTS IN CASE OF INCOME AND GIFT TAXES

For includibility of provisions comparable to section 2055(e)(3) of this title in this section, see section 514(b) of Pub. L. 95–600, set out as a note under section 2055 of this title.

DEDUCTION OF CONTRIBUTIONS TO CERTAIN ORGANIZATIONS FOR JUDICIAL REFORM

Pub. L. 87–834, §29, Oct. 16, 1962, 76 Stat. 1068, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "For purposes of section 170 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to deduction for charitable, etc., contributions and gifts), a contribution or gift made after December 31, 1961, with respect to a referendum occurring during the calendar year 1962 to or for the use of any nonprofit organization created and operated exclusively—

"(1) to consider proposals for the reorganization of the judicial branch of the government of any State of the United States or political subdivision of such State, and

"(2) to provide information, make recommendations, and seek public support or opposition as to such proposals,

shall be treated as a charitable contribution if no part of the net earnings of such organization inures to the benefit of any private shareholder or individual. The provisions of the preceding sentence shall not apply to any organization which participates in, or intervenes in, any political campaign on behalf of any candidate for public office."

[1] So in original. The third closing parenthesis probably should not appear.

[2] See References in Text note below.

§171. Amortizable bond premium

(a) General rule

In the case of any bond, as defined in subsection (d), the following rules shall apply to the amortizable bond premium (determined under subsection (b)) on the bond:

(1) Taxable bonds

In the case of a bond (other than a bond the interest on which is excludable from gross income),

the amount of the amortizable bond premium for the taxable year shall be allowed as a deduction.

(2) Tax-exempt bonds

In the case of any bond the interest on which is excludable from gross income, no deduction shall be allowed for the amortizable bond premium for the taxable year.

(3) Cross reference

For adjustment to basis on account of amortizable bond premium, see section 1016(a)(5).

(b) Amortizable bond premium

(1) Amount of bond premium

For purposes of paragraph (2), the amount of bond premium, in the case of the holder of any bond, shall be determined—

(A) with reference to the amount of the basis (for determining loss on sale or exchange) of such bond,

(B)(i) with reference to the amount payable on maturity or on earlier call date, in the case of any bond other than a bond to which clause (ii) applies, or and [1]

(ii) with reference to the amount payable on maturity (or if it results in a smaller amortizable bond premium attributable to the period to earlier call date, with reference to the amount payable on earlier call date), in the case of any bond described in subsection (a)(1) which is acquired after December 31, 1957, and

(C) with adjustments proper to reflect unamortized bond premium, with respect to the bond, for the period before the date as of which subsection (a) becomes applicable with respect to the taxpayer with respect to such bond.

In no case shall the amount of bond premium on a convertible bond include any amount attributable to the conversion features of the bond.

(2) Amount amortizable

The amortizable bond premium of the taxable year shall be the amount of the bond premium attributable to such year. In the case of a bond to which paragraph (1)(B)(ii) applies and which has a call date, the amount of bond premium attributable to the taxable year in which the bond is called shall include an amount equal to the excess of the amount of the adjusted basis (for determining loss on sale or exchange) of such bond as of the beginning of the taxable year over the amount received on redemption of the bond or (if greater) the amount payable on maturity.

(3) Method of determination

(A) In general

Except as provided in regulations prescribed by the Secretary, the determinations required under paragraphs (1) and (2) shall be made on the basis of the taxpayer's yield to maturity determined by—

(i) using the taxpayer's basis (for purposes of determining loss on sale or exchange) of the obligation, and

(ii) compounding at the close of each accrual period (as defined in section 1272(a)(5)).

(B) Special rule where earlier call date is used

For purposes of subparagraph (A), if the amount payable on an earlier call date is used under paragraph (1)(B)(ii) in determining the amortizable bond premium attributable to the period before the earlier call date, such bond shall be treated as maturing on such date for the amount so payable and then reissued on such date for the amount so payable.

(4) Treatment of certain bonds acquired in exchange for other property

(A) In general

If—

(i) a bond is acquired by any person in exchange for other property, and

(ii) the basis of such bond is determined (in whole or in part) by reference to the basis of such other property,

for purposes of applying this subsection to such bond while held by such person, the basis of such bond shall not exceed its fair market value immediately after the exchange. A similar rule shall apply in the case of such bond while held by any other person whose basis is determined (in whole or in part) by reference to the basis in the hands of the person referred to in clause (i).

(B) Special rule where bond exchanged in reorganization

Subparagraph (A) shall not apply to an exchange by the taxpayer of a bond for another bond if such exchange is a part of a reorganization (as defined in section 368). If any portion of the basis of the taxpayer in a bond transferred in such an exchange is not taken into account in determining bond premium by reason of this paragraph, such portion shall not be taken into account in determining the amount of bond premium on any bond received in the exchange.

(c) Election as to taxable bonds

(1) Eligibility to elect; bonds with respect to which election permitted

In the case of bonds the interest on which is not excludible from gross income, this section shall apply only if the taxpayer has so elected.

(2) Manner and effect of election

The election authorized under this subsection shall be made in accordance with such regulations as the Secretary shall prescribe. If such election is made with respect to any bond (described in paragraph (1)) of the taxpayer, it shall also apply to all such bonds held by the taxpayer at the beginning of the first taxable year to which the election applies and to all such bonds thereafter acquired by him and shall be binding for all subsequent taxable years with respect to all such bonds of the taxpayer, unless, on application by the taxpayer, the Secretary permits him, subject to such conditions as the Secretary deems necessary, to revoke such election. In the case of bonds held by a common trust fund, as defined in section 584(a), the election authorized under this subsection shall be exercisable with respect to such bonds only by the common trust fund. In case of bonds held by an estate or trust, the election authorized under this subsection shall be exercisable with respect to such bonds only by the fiduciary.

(d) Bond defined

For purposes of this section, the term "bond" means any bond, debenture, note, or certificate or other evidence of indebtedness, but does not include any such obligation which constitutes stock in trade of the taxpayer or any such obligation of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or any such obligation held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business.

(e) Treatment as offset to interest payments

Except as provided in regulations, in the case of any taxable bond—

(1) the amount of any bond premium shall be allocated among the interest payments on the bond under rules similar to the rules of subsection (b)(3), and

(2) in lieu of any deduction under subsection (a), the amount of any premium so allocated to any interest payment shall be applied against (and operate to reduce) the amount of such interest payment.

For purposes of the preceding sentence, the term "taxable bond" means any bond the interest of which is not excludable from gross income.

(f) Dealers in tax-exempt securities

For special rules applicable, in the case of dealers in securities, with respect to premium attributable to certain wholly tax-exempt securities, see section 75.

(Aug. 16, 1954, ch. 736, 68A Stat. 61; Pub. L. 85–866, title I, §13(a), Sept. 2, 1958, 72 Stat. 1610;

Pub. L. 94–455, title XIX, §§1901(b)(1)(E), 1906(b)(13)(A), 1951(b)(5)(A), Oct. 4, 1976, 90 Stat. 1790, 1834, 1837; Pub. L. 99–514, title VI, §643(a), title XVIII, §1803(a)(11)(A), (B), (12)(A), Oct. 22, 1986, 100 Stat. 2285, 2795; Pub. L. 100–647, title I, §1006(j)(1)(A), Nov. 10, 1988, 102 Stat. 3411; Pub. L. 108–357, title IV, §413(c)(2), Oct. 22, 2004, 118 Stat. 1507.)

AMENDMENTS

2004—Subsec. (c)(2). Pub. L. 108–357, §413(c)(2)(B), which directed amendment of par. (2) by striking out ", or foreign personal holding company", was executed by striking out "or foreign personal holding company" after "the common trust fund", to reflect the probable intent of Congress.

Pub. L. 108–357, §413(c)(2)(A), struck out ", or by a foreign personal holding company, as defined in section 552" after "section 584(a)".

1988—Subsec. (e). Pub. L. 100–647 substituted "Treatment as offset to interest payments" for "Treatment as interest" in heading and amended text generally. Prior to amendment, text read as follows: "Except as provided in regulations, the amount of any amortizable bond premium with respect to which a deduction is allowed under subsection (a)(1) for any taxable year shall be treated as interest for purposes of this title."

1986—Subsec. (b)(3). Pub. L. 99–514, §1803(a)(11)(A), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "The determinations required under paragraphs (1) and (2) shall be made—

"(A) in accordance with the method of amortizing bond premium regularly employed by the holder of the bond, if such method is reasonable;

"(B) in all other cases, in accordance with regulations prescribing reasonable methods of amortizing bond premium prescribed by the Secretary."

Subsec. (b)(4). Pub. L. 99–514, §1803(a)(12)(A), added par. (4).

Subsec. (d). Pub. L. 99–514, §1803(a)(11)(B), struck out "issued by any corporation and bearing interest (including any like obligation issued by a government or political subdivision thereof)," after "evidence of indebtedness,".

Subsecs. (e), (f). Pub. L. 99–514, §643(a), added subsec. (e) and redesignated former subsec. (e) as (f).

1976—Subsec. (a)(1). Pub. L. 94–455, §1901(b)(1)(E)(i), substituted "Taxable bonds" for "Interest wholly or partially taxable" after "(1)".

Subsec. (a)(2). Pub. L. 94–455, §1901(b)(1)(E)(ii), substituted "Tax-exempt bonds" for "Interest wholly tax-exempt" after "(2)".

Subsec. (a)(3). Pub. L. 94–455, §1901(b)(1)(E)(iii), redesignated par. (4) as (3). Former par. (3), relating to adjustment of credit or deduction for interest partially tax-exempt, was struck out.

Subsec. (a)(4). Pub. L. 94–455, §1901(b)(1)(E)(iii), redesignated par. (4) as par. (3).

Subsec. (b)(1)(B)(i). Pub. L. 94–455, §1951(b)(5)(A)(ii), substituted "clause (ii) applies, or" for "clause (ii) or (iii) applies" after "bond to which" and inserted "and" at the end.

Subsec. (b)(1)(B)(ii). Pub. L. 94–455, §§1901(b)(1)(E)(iv), 1951(b)(5)(A)(iii), substituted "subsection (a)(1)" for "subsection (c)(1)(B)" after "bond described in" and "and" for "or" after "1957".

Subsec. (b)(1)(B)(iii). Pub. L. 94–455, §1951(b)(5)(A)(i), struck out cl. (iii) relating to certain bonds acquired before 1958.

Subsec. (b)(2). Pub. L. 94–455, §1951(b)(5)(A)(iv), struck out "or (iii)" after "paragraph (1)(B)(ii)".

Subsec. (b)(3)(B). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (c)(1). Pub. L. 94–455, §1901(b)(1)(E)(v), substituted "In the case of bonds the interest on which is not excludible from gross income, this section shall apply only if the taxpayer has so elected" for "This section shall apply with respect to the following classes of taxpayers with respect to the following classes of bonds only if the taxpayer has elected to have this section apply" after "election permitted", and struck out subpars. (A) and (B) relating to partially tax-exempt, and wholly taxable, bonds.

Subsec. (c)(2). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" in three places after "Secretary".

1958—Subsec. (b)(1)(B). Pub. L. 85–866, §13(a)(1), substituted ", in the case of any bond other than a bond to which clause (ii) or (iii) applies" for "(but in the case of bonds described in subsection (c)(1)(B) issued after January 22, 1951, and acquired after January 22, 1954, only if such earlier call date is a date more than 3 years after the date of such issue), and", designated such provision as cl. (i), and added cl. (ii) and (iii).

Subsec. (b)(2). Pub. L. 85–866, §13(a)(2), substituted "In the case of a bond to which paragraph (1)(B)(ii) or (iii) applies and which has a call date," for "In the case of a bond described in subsection (c)(1)(B) issued after January 22, 1951, and acquired after January 22, 1954, which has a call date not more than 3 years after the date of such issue," in second sentence.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1006(j)(1)(C), Nov. 10, 1988, 102 Stat. 3411, provided that: "The amendments made by this paragraph [amending this section and section 1016 of this title] shall apply in the case of obligations acquired after December 31, 1987; except that the taxpayer may elect to have such amendment apply to obligations acquired after October 22, 1986."

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title VI, §643(b), Oct. 22, 1986, 100 Stat. 2285, as amended by Pub. L. 100–647, title I, §1006(j)(2), Nov. 10, 1988, 102 Stat. 3411, provided that:

"(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to obligations acquired after the date of the enactment of this Act [Oct. 22, 1986], in taxable years ending after such date.

"(2) REVOCATION OF ELECTION.—In the case of a taxpayer with respect to whom an election is in effect on the date of enactment of this Act [Oct. 22, 1986], under section 171(c) of the Internal Revenue Code of 1986, such election shall apply to obligations acquired after the date of the enactment of this Act only if the taxpayer chooses (at such time and in such manner as may be prescribed by the Secretary of the Treasury or his delegate) to have such election apply with respect to such obligations."

Pub. L. 99–514, title XVIII, §1803(a)(11)(C), Oct. 22, 1986, 100 Stat. 2795, provided that:

"(i) The amendments made by this paragraph [amending this section] shall apply to obligations issued after September 27, 1985.

"(ii) In the case of a taxpayer with respect to whom an election is in effect on the date of the enactment of this Act [Oct. 22, 1986] under section 171(c) of the Internal Revenue Code of 1954 [now 1986], such election shall apply to obligations issued after September 27, 1985, only if the taxpayer chooses (at such time and in such manner as may be prescribed by the Secretary of the Treasury or his delegate) to have such election apply with respect to such obligations."

Pub. L. 99–514, title XVIII, §1803(a)(12)(B), Oct. 22, 1986, 100 Stat. 2796, provided that: "The amendment made by subparagraph (A) [amending this section] shall apply to exchanges after May 6, 1986."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(b)(1)(E)(iii)–(v) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by section 1951(b)(5)(A)(i) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1951(d) of Pub. L. 94–455, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85–866, title I, §13(b), Sept. 2, 1958, 72 Stat. 1611, provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to taxable years ending after December 31, 1957."

SAVINGS PROVISION

Pub. L. 94–455, title XIX, §1951(b)(5)(B), Oct. 4, 1976, 90 Stat. 1838, provided that: "Notwithstanding the amendments made by subparagraph (A) [amending this section], in the case of a bond the interest on which is not excludable from gross income—

"(i) which was issued after January 22, 1951, with a call date not more than 3 years after the date of such issue, and

"(ii) which was acquired by the taxpayer after January 22, 1954, and before January 1, 1958,

the bond premium for a taxable year beginning after December 31, 1975, shall not be determined under section 171(b)(1)(B)(i) but shall be determined with reference to the amount payable on maturity, and if the bond is called before its maturity, the bond premium for the year in which the bond is called shall be determined in accordance with the provisions of section 171(b)(2)."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such

plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[1] *So in original.*

§172. Net operating loss deduction

(a) Deduction allowed

There shall be allowed as a deduction for the taxable year an amount equal to the aggregate of (1) the net operating loss carryovers to such year, plus (2) the net operating loss carrybacks to such year. For purposes of this subtitle, the term "net operating loss deduction" means the deduction allowed by this subsection.

(b) Net operating loss carrybacks and carryovers

(1) Years to which loss may be carried

(A) General rule

Except as otherwise provided in this paragraph, a net operating loss for any taxable year—

(i) shall be a net operating loss carryback to each of the 2 taxable years preceding the taxable year of such loss, and

(ii) shall be a net operating loss carryover to each of the 20 taxable years following the taxable year of the loss.

(B) Special rules for REIT's

(i) In general

A net operating loss for a REIT year shall not be a net operating loss carryback to any taxable year preceding the taxable year of such loss.

(ii) Special rule

In the case of any net operating loss for a taxable year which is not a REIT year, such loss shall not be carried back to any taxable year which is a REIT year.

(iii) REIT year

For purposes of this subparagraph, the term "REIT year" means any taxable year for which the provisions of part II of subchapter M (relating to real estate investment trusts) apply to the taxpayer.

(C) Specified liability losses

In the case of a taxpayer which has a specified liability loss (as defined in subsection (f)) for a taxable year, such specified liability loss shall be a net operating loss carryback to each of the 10 taxable years preceding the taxable year of such loss.

(D) Bad debt losses of commercial banks

In the case of any bank (as defined in section 585(a)(2)), the portion of the net operating loss for any taxable year beginning after December 31, 1986, and before January 1, 1994, which is attributable to the deduction allowed under section 166(a) shall be a net operating loss carryback to each of the 10 taxable years preceding the taxable year of the loss and a net operating loss carryover to each of the 5 taxable years following the taxable year of such loss.

(E) Excess interest loss

(i) In general

If—

(I) there is a corporate equity reduction transaction, and

(II) an applicable corporation has a corporate equity reduction interest loss for any loss

limitation year ending after August 2, 1989,

then the corporate equity reduction interest loss shall be a net operating loss carryback and carryover to the taxable years described in subparagraph (A), except that such loss shall not be carried back to a taxable year preceding the taxable year in which the corporate equity reduction transaction occurs.

(ii) Loss limitation year

For purposes of clause (i) and subsection (h), the term "loss limitation year" means, with respect to any corporate equity reduction transaction, the taxable year in which such transaction occurs and each of the 2 succeeding taxable years.

(iii) Applicable corporation

For purposes of clause (i), the term "applicable corporation" means—

(I) a C corporation which acquires stock, or the stock of which is acquired in a major stock acquisition,

(II) a C corporation making distributions with respect to, or redeeming, its stock in connection with an excess distribution, or

(III) a C corporation which is a successor of a corporation described in subclause (I) or (II).

(iv) Other definitions

For definitions of terms used in this subparagraph, see subsection (h).

(F) Retention of 3-year carryback in certain cases

(i) In general

Subparagraph (A)(i) shall be applied by substituting "3 taxable years" for "2 taxable years" with respect to the portion of the net operating loss for the taxable year which is an eligible loss with respect to the taxpayer.

(ii) Eligible loss

For purposes of clause (i), the term "eligible loss" means—

(I) in the case of an individual, losses of property arising from fire, storm, shipwreck, or other casualty, or from theft,

(II) in the case of a taxpayer which is a small business, net operating losses attributable to federally declared disasters (as defined by subsection (h)(3)(C)(i)),[1] and

(III) in the case of a taxpayer engaged in the trade or business of farming (as defined in section 263A(e)(4)), net operating losses attributable to such federally declared disasters.

Such term shall not include any farming loss (as defined in subsection (i)) or qualified disaster loss (as defined in subsection (j)).

(iii) Small business

For purposes of this subparagraph, the term "small business" means a corporation or partnership which meets the gross receipts test of section 448(c) for the taxable year in which the loss arose (or, in the case of a sole proprietorship, which would meet such test if such proprietorship were a corporation).

(iv) Coordination with paragraph (2)

For purposes of applying paragraph (2), an eligible loss for any taxable year shall be treated in a manner similar to the manner in which a specified liability loss is treated.

(G) Farming losses

In the case of a taxpayer which has a farming loss (as defined in subsection (i)) for a taxable year, such farming loss shall be a net operating loss carryback to each of the 5 taxable years preceding the taxable year of such loss.

(H) Carryback for 2008 or 2009 net operating losses

(i) In general

In the case of an applicable net operating loss with respect to which the taxpayer has elected the application of this subparagraph—

(I) subparagraph (A)(i) shall be applied by substituting any whole number elected by the taxpayer which is more than 2 and less than 6 for "2",

(II) subparagraph (E)(ii) shall be applied by substituting the whole number which is one less than the whole number substituted under subclause (I) for "2", and

(III) subparagraph (F) shall not apply.

(ii) Applicable net operating loss

For purposes of this subparagraph, the term "applicable net operating loss" means the taxpayer's net operating loss for a taxable year ending after December 31, 2007, and beginning before January 1, 2010.

(iii) Election

(I) In general

Any election under this subparagraph may be made only with respect to 1 taxable year.

(II) Procedure

Any election under this subparagraph shall be made in such manner as may be prescribed by the Secretary, and shall be made by the due date (including extension of time) for filing the return for the taxpayer's last taxable year beginning in 2009. Any such election, once made, shall be irrevocable.

(iv) Limitation on amount of loss carryback to 5th preceding taxable year

(I) In general

The amount of any net operating loss which may be carried back to the 5th taxable year preceding the taxable year of such loss under clause (i) shall not exceed 50 percent of the taxpayer's taxable income (computed without regard to the net operating loss for the loss year or any taxable year thereafter) for such preceding taxable year.

(II) Carrybacks and carryovers to other taxable years

Appropriate adjustments in the application of the second sentence of paragraph (2) shall be made to take into account the limitation of subclause (I).

(III) Exception for 2008 elections by small businesses

Subclause (I) shall not apply to any loss of an eligible small business with respect to any election made under this subparagraph as in effect on the day before the date of the enactment of the Worker, Homeownership, and Business Assistance Act of 2009.

(v) Special rules for small business

(I) In general

In the case of an eligible small business which made or makes an election under this subparagraph as in effect on the day before the date of the enactment of the Worker, Homeownership, and Business Assistance Act of 2009, clause (iii)(I) shall be applied by substituting "2 taxable years" for "1 taxable year".

(II) Eligible small business

For purposes of this subparagraph, the term "eligible small business" has the meaning given such term by subparagraph (F)(iii), except that in applying such subparagraph, section 448(c) shall be applied by substituting "$15,000,000" for "$5,000,000" each place it appears.

(I) Transmission property and pollution control investment

(i) In general

At the election of the taxpayer for any taxable year ending after December 31, 2005, and before January 1, 2009, in the case of a net operating loss for a taxable year ending after December 31, 2002, and before January 1, 2006, there shall be a net operating loss carryback to each of the 5 taxable years preceding the taxable year of such loss to the extent that such loss does not exceed 20 percent of the sum of the electric transmission property capital expenditures and the pollution control facility capital expenditures of the taxpayer for the taxable year preceding the taxable year for which such election is made.

(ii) Limitations

For purposes of this subsection—

(I) not more than one election may be made under clause (i) with respect to any net operating loss for a taxable year, and

(II) an election may not be made under clause (i) for more than 1 taxable year beginning in any calendar year.

(iii) Coordination with ordering rule

For purposes of applying subsection (b)(2), the portion of any loss which is carried back 5 years by reason of clause (i) shall be treated in a manner similar to the manner in which a specified liability loss is treated.

(iv) Special rules relating to credit or refund

In the case of the portion of the loss which is carried back 5 years by reason of clause (i)—

(I) an application under section 6411(a) with respect to such portion shall not fail to be treated as timely filed if filed within 24 months after the due date specified under such section, and

(II) references in sections 6501(h), 6511(d)(2)(A), and 6611(f)(1) to the taxable year in which such net operating loss arises or results in a net operating loss carryback shall be treated as references to the taxable year for which such election is made.

(v) Definitions

For purposes of this subparagraph—

(I) Electric transmission property capital expenditures

The term "electric transmission property capital expenditures" means any expenditure, chargeable to capital account, made by the taxpayer which is attributable to electric transmission property used by the taxpayer in the transmission at 69 or more kilovolts of electricity for sale. Such term shall not include any expenditure which may be refunded or the purpose of which may be modified at the option of the taxpayer so as to cease to be treated as an expenditure within the meaning of such term.

(II) Pollution control facility capital expenditures

The term "pollution control facility capital expenditures" means any expenditure, chargeable to capital account, made by an electric utility company (as defined in section 2(3) of the Public Utility Holding Company Act [2] (15 U.S.C. 79b(3)), as in effect on the day before the date of the enactment of the Energy Tax Incentives Act of 2005) which is attributable to a facility which will qualify as a certified pollution control facility as determined under section 169(d)(1) by striking "before January 1, 1976," and by substituting "an identifiable" for "a new identifiable". Such term shall not include any expenditure which may be refunded or the purpose of which may be modified at the option of the taxpayer so as to cease to be treated as an expenditure within the meaning of such term.

(J) Certain losses attributable [3] federally declared disasters

In the case of a taxpayer who has a qualified disaster loss (as defined in subsection (j)), such loss shall be a net operating loss carryback to each of the 5 taxable years preceding the taxable

year of such loss.

(2) Amount of carrybacks and carryovers

The entire amount of the net operating loss for any taxable year (hereinafter in this section referred to as the "loss year") shall be carried to the earliest of the taxable years to which (by reason of paragraph (1)) such loss may be carried. The portion of such loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of such loss over the sum of the taxable income for each of the prior taxable years to which such loss may be carried. For purposes of the preceding sentence, the taxable income for any such prior taxable year shall be computed—

(A) with the modifications specified in subsection (d) other than paragraphs (1), (4), and (5) thereof, and

(B) by determining the amount of the net operating loss deduction without regard to the net operating loss for the loss year or for any taxable year thereafter,

and the taxable income so computed shall not be considered to be less than zero.

(3) Election to waive carryback

Any taxpayer entitled to a carryback period under paragraph (1) may elect to relinquish the entire carryback period with respect to a net operating loss for any taxable year. Such election shall be made in such manner as may be prescribed by the Secretary, and shall be made by the due date (including extensions of time) for filing the taxpayer's return for the taxable year of the net operating loss for which the election is to be in effect. Such election, once made for any taxable year, shall be irrevocable for such taxable year.

(c) Net operating loss defined

For purposes of this section, the term "net operating loss" means the excess of the deductions allowed by this chapter over the gross income. Such excess shall be computed with the modifications specified in subsection (d).

(d) Modifications

The modifications referred to in this section are as follows:

(1) Net operating loss deduction

No net operating loss deduction shall be allowed.

(2) Capital gains and losses of taxpayers other than corporations

In the case of a taxpayer other than a corporation—

(A) the amount deductible on account of losses from sales or exchanges of capital assets shall not exceed the amount includable on account of gains from sales or exchanges of capital assets; and

(B) the exclusion provided by section 1202 shall not be allowed.

(3) Deduction for personal exemptions

No deduction shall be allowed under section 151 (relating to personal exemptions). No deduction in lieu of any such deduction shall be allowed.

(4) Nonbusiness deductions of taxpayers other than corporations

In the case of a taxpayer other than a corporation, the deductions allowable by this chapter which are not attributable to a taxpayer's trade or business shall be allowed only to the extent of the amount of the gross income not derived from such trade or business. For purposes of the preceding sentence—

(A) any gain or loss from the sale or other disposition of—

(i) property, used in the trade or business, of a character which is subject to the allowance for depreciation provided in section 167, or

(ii) real property used in the trade or business,

shall be treated as attributable to the trade or business;

(B) the modifications specified in paragraphs (1), (2)(B), and (3) shall be taken into account;

(C) any deduction for casualty or theft losses allowable under paragraph (2) or (3) of section 165(c) shall be treated as attributable to the trade or business; and

(D) any deduction allowed under section 404 to the extent attributable to contributions which are made on behalf of an individual who is an employee within the meaning of section 401(c)(1) shall not be treated as attributable to the trade or business of such individual.

(5) Computation of deduction for dividends received, etc.

The deductions allowed by sections 243 (relating to dividends received by corporations), 244 (relating to dividends received on certain preferred stock of public utilities), and 245 (relating to dividends received from certain foreign corporations) shall be computed without regard to section 246(b) (relating to limitation on aggregate amount of deductions); and the deduction allowed by section 247 (relating to dividends paid on certain preferred stock of public utilities) shall be computed without regard to subsection (a)(1)(B) of such section.

(6) Modifications related to real estate investment trusts

In the case of any taxable year for which part II of subchapter M (relating to real estate investment trusts) applies to the taxpayer—

(A) the net operating loss for such taxable year shall be computed by taking into account the adjustments described in section 857(b)(2) (other than the deduction for dividends paid described in section 857(b)(2)(B)); and

(B) where such taxable year is a "prior taxable year" referred to in paragraph (2) of subsection (b), the term "taxable income" in such paragraph shall mean "real estate investment trust taxable income" (as defined in section 857(b)(2)).

(7) Manufacturing deduction

The deduction under section 199 shall not be allowed.

(e) Law applicable to computations

In determining the amount of any net operating loss carryback or carryover to any taxable year, the necessary computations involving any other taxable year shall be made under the law applicable to such other taxable year.

(f) Rules relating to specified liability loss

For purposes of this section—

(1) In general

The term "specified liability loss" means the sum of the following amounts to the extent taken into account in computing the net operating loss for the taxable year:

(A) Any amount allowable as a deduction under section 162 or 165 which is attributable to—

(i) product liability, or

(ii) expenses incurred in the investigation or settlement of, or opposition to, claims against the taxpayer on account of product liability.

(B)(i) Any amount allowable as a deduction under this chapter (other than section 468(a)(1) or 468A(a)) which is in satisfaction of a liability under a Federal or State law requiring—

(I) the reclamation of land,

(II) the decommissioning of a nuclear power plant (or any unit thereof),

(III) the dismantlement of a drilling platform,

(IV) the remediation of environmental contamination, or

(V) a payment under any workers compensation act (within the meaning of section 461(h)(2)(C)(i)).

(ii) A liability shall be taken into account under this subparagraph only if—

(I) the act (or failure to act) giving rise to such liability occurs at least 3 years before the

beginning of the taxable year, and

(II) the taxpayer used an accrual method of accounting throughout the period or periods during which such act (or failure to act) occurred.

(2) Limitation

The amount of the specified liability loss for any taxable year shall not exceed the amount of the net operating loss for such taxable year.

(3) Special rule for nuclear powerplants

Except as provided in regulations prescribed by the Secretary, that portion of a specified liability loss which is attributable to amounts incurred in the decommissioning of a nuclear powerplant (or any unit thereof) may, for purposes of subsection (b)(1)(C), be carried back to each of the taxable years during the period—

(A) beginning with the taxable year in which such plant (or unit thereof) was placed in service, and

(B) ending with the taxable year preceding the loss year.

(4) Product liability

The term "product liability" means—

(A) liability of the taxpayer for damages on account of physical injury or emotional harm to individuals, or damage to or loss of the use of property, on account of any defect in any product which is manufactured, leased, or sold by the taxpayer, but only if

(B) such injury, harm, or damage arises after the taxpayer has completed or terminated operations with respect to, and has relinquished possession of, such product.

(5) Coordination with subsection (b)(2)

For purposes of applying subsection (b)(2), a specified liability loss for any taxable year shall be treated as a separate net operating loss for such taxable year to be taken into account after the remaining portion of the net operating loss for such taxable year.

(6) Election

Any taxpayer entitled to a 10-year carryback under subsection (b)(1)(C) from any loss year may elect to have the carryback period with respect to such loss year determined without regard to subsection (b)(1)(C). Such election shall be made in such manner as may be prescribed by the Secretary and shall be made by the due date (including extensions of time) for filing the taxpayer's return for the taxable year of the net operating loss. Such election, once made for any taxable year, shall be irrevocable for that taxable year.

(g) Rules relating to bad debt losses of commercial banks

For purposes of this section—

(1) Portion attributable to deduction for bad debts

The portion of the net operating loss for any taxable year which is attributable to the deduction allowed under section 166(a) shall be the excess of—

(i) the net operating loss for such taxable year, over

(ii) the net operating loss for such taxable year determined without regard to the amount allowed as a deduction under section 166(a) for such taxable year.

(2) Coordination with subsection (b)(2)

For purposes of subsection (b)(2), the portion of a net operating loss for any taxable year which is attributable to the deduction allowed under section 166(a) shall be treated in a manner similar to the manner in which a specified liability loss is treated.

(h) Corporate equity reduction interest losses

For purposes of this section—

(1) In general

The term "corporate equity reduction interest loss" means, with respect to any loss limitation year, the excess (if any) of—

(A) the net operating loss for such taxable year, over

(B) the net operating loss for such taxable year determined without regard to any allocable interest deductions otherwise taken into account in computing such loss.

(2) Allocable interest deductions

(A) In general

The term "allocable interest deductions" means deductions allowed under this chapter for interest on the portion of any indebtedness allocable to a corporate equity reduction transaction.

(B) Method of allocation

Except as provided in regulations and subparagraph (E), indebtedness shall be allocated to a corporate equity reduction transaction in the manner prescribed under clause (ii) of section 263A(f)(2)(A) (without regard to clause (i) thereof).

(C) Allocable deductions not to exceed interest increases

Allocable interest deductions for any loss limitation year shall not exceed the excess (if any) of—

(i) the amount allowable as a deduction for interest paid or accrued by the taxpayer during the loss limitation year, over

(ii) the average of such amounts for the 3 taxable years preceding the taxable year in which the corporate equity reduction transaction occurred.

(D) De minimis rule

A taxpayer shall be treated as having no allocable interest deductions for any taxable year if the amount of such deductions (without regard to this subparagraph) is less than $1,000,000.

(E) Special rule for certain unforeseeable events

If an unforeseeable extraordinary adverse event occurs during a loss limitation year but after the corporate equity reduction transaction—

(i) indebtedness shall be allocated in the manner described in subparagraph (B) to unreimbursed costs paid or incurred in connection with such event before being allocated to the corporate equity reduction transaction, and

(ii) the amount determined under subparagraph (C)(i) shall be reduced by the amount of interest on indebtedness described in clause (i).

(F) Transition rule

If any of the 3 taxable years described in subparagraph (C)(ii) end on or before August 2, 1989, the taxpayer may substitute for the amount determined under such subparagraph an amount equal to the interest paid or accrued (determined on an annualized basis) during the taxpayer's taxable year which includes August 3, 1989, on indebtedness of the taxpayer outstanding on August 2, 1989.

(3) Corporate equity reduction transaction

(A) In general

The term "corporate equity reduction transaction" means—

(i) a major stock acquisition, or

(ii) an excess distribution.

(B) Major stock acquisition

(i) In general

The term "major stock acquisition" means the acquisition by a corporation pursuant to a plan of such corporation (or any group of persons acting in concert with such corporation) of stock in another corporation representing 50 percent or more (by vote or value) of the stock in

such other corporation.

(ii) Exception

The term "major stock acquisition" does not include a qualified stock purchase (within the meaning of section 338) to which an election under section 338 applies.

(C) Excess distribution

The term "excess distribution" means the excess (if any) of—

(i) the aggregate distributions (including redemptions) made during a taxable year by a corporation with respect to its stock, over

(ii) the greater of—

(I) 150 percent of the average of such distributions during the 3 taxable years immediately preceding such taxable year, or

(II) 10 percent of the fair market value of the stock of such corporation as of the beginning of such taxable year.

(D) Rules for applying subparagraph (B)

For purposes of subparagraph (B)—

(i) Plans to acquire stock

All plans referred to in subparagraph (B) by any corporation (or group of persons acting in concert with such corporation) with respect to another corporation shall be treated as 1 plan.

(ii) Acquisitions during 24-month period

All acquisitions during any 24-month period shall be treated as pursuant to 1 plan.

(E) Rules for applying subparagraph (C)

For purposes of subparagraph (C)—

(i) Certain preferred stock disregarded

Stock described in section 1504(a)(4), and distributions (including redemptions) with respect to such stock, shall be disregarded.

(ii) Issuance of stock

The amounts determined under clauses (i) and (ii)(I) of subparagraph (C) shall be reduced by the aggregate amount of stock issued by the corporation during the applicable period in exchange for money or property other than stock in the corporation.

(4) Other rules

(A) Ordering rule

For purposes of paragraph (1), in determining the allocable interest deductions taken into account in computing the net operating loss for any taxable year, taxable income for such taxable year shall be treated as having been computed by taking allocable interest deductions into account after all other deductions.

(B) Coordination with subsection (b)(2)

For purposes of subsection (b)(2)—

(i) a corporate equity reduction interest loss shall be treated in a manner similar to the manner in which a specified liability loss is treated, and

(ii) in determining the net operating loss deduction for any prior taxable year referred to in the 3rd sentence of subsection (b)(2), the portion of any net operating loss which may not be carried to such taxable year under subsection (b)(1)(E) shall not be taken into account.

(C) Members of affiliated groups

Except as provided by regulations, all members of an affiliated group filing a consolidated return under section 1501 shall be treated as 1 taxpayer for purposes of this subsection and subsection (b)(1)(E).

(5) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including regulations—

(A) for applying this subsection to successor corporations and in cases where a taxpayer becomes, or ceases to be, a member of an affiliated group filing a consolidated return under section 1501,

(B) to prevent the avoidance of this subsection through related parties, pass-through entities, and intermediaries, and

(C) for applying this subsection where more than 1 corporation is involved in a corporate equity reduction transaction.

(i) Rules relating to farming losses

For purposes of this section—

(1) In general

The term "farming loss" means the lesser of—

(A) the amount which would be the net operating loss for the taxable year if only income and deductions attributable to farming businesses (as defined in section 263A(e)(4)) are taken into account, or

(B) the amount of the net operating loss for such taxable year.

Such term shall not include any qualified disaster loss (as defined in subsection (j)).

(2) Coordination with subsection (b)(2)

For purposes of applying subsection (b)(2), a farming loss for any taxable year shall be treated in a manner similar to the manner in which a specified liability loss is treated.

(3) Election

Any taxpayer entitled to a 5-year carryback under subsection (b)(1)(G) from any loss year may elect to have the carryback period with respect to such loss year determined without regard to subsection (b)(1)(G). Such election shall be made in such manner as may be prescribed by the Secretary and shall be made by the due date (including extensions of time) for filing the taxpayer's return for the taxable year of the net operating loss. Such election, once made for any taxable year, shall be irrevocable for such taxable year.

(j) Rules relating to qualified disaster losses

For purposes of this section—

(1) In general

The term "qualified disaster loss" means the lesser of—

(A) the sum of—

(i) the losses allowable under section 165 for the taxable year—

(I) attributable to a federally declared disaster (as defined in section 165(h)(3)(C)(i)) occurring before January 1, 2010, and

(II) occurring in a disaster area (as defined in section 165(h)(3)(C)(ii)), and

(ii) the deduction for the taxable year for qualified disaster expenses which is allowable under section 198A(a) or which would be so allowable if not otherwise treated as an expense, or

(B) the net operating loss for such taxable year.

(2) Coordination with subsection (b)(2)

For purposes of applying subsection (b)(2), a qualified disaster loss for any taxable year shall be treated in a manner similar to the manner in which a specified liability loss is treated.

(3) Election

Any taxpayer entitled to a 5-year carryback under subsection (b)(1)(J) from any loss year may elect to have the carryback period with respect to such loss year determined without regard to subsection (b)(1)(J). Such election shall be made in such manner as may be prescribed by the Secretary and shall be made by the due date (including extensions of time) for filing the taxpayer's return for the taxable year of the net operating loss. Such election, once made for any taxable year, shall be irrevocable for such taxable year.

(4) Exclusion

The term "qualified disaster loss" shall not include any loss with respect to any property described in section 1400N(p)(3).

(k) Cross references

(1) For treatment of net operating loss carryovers in certain corporate acquisitions, see section 381.

(2) For special limitation on net operating loss carryovers in case of a corporate change of ownership, see section 382.

(Aug. 16, 1954, ch. 736, 68A Stat. 63; Pub. L. 85–866, title I, §§14(a), (b), 64(b), title II, §203(a), (b), Sept. 2, 1958, 72 Stat. 1611, 1656, 1678; Pub. L. 87–710, §1, Sept. 27, 1962, 76 Stat. 648; Pub. L. 87–792, §7(f), Oct. 10, 1962, 76 Stat. 829; Pub. L. 87–794, title III, §317(b), Oct. 11, 1962, 76 Stat. 889; Pub. L. 88–272, title II, §§210(a), (b), 234(b)(5), Feb. 26, 1964, 78 Stat. 47, 48, 115; Pub. L. 90–225, §3(a), Dec. 27, 1967, 81 Stat. 732; Pub. L. 91–172, title IV, §431(b), Dec. 30, 1969, 83 Stat. 619; Pub. L. 91–677, §2(a)–(c), Jan. 12, 1971, 84 Stat. 2061; Pub. L. 94–455, title VIII, §806(a)–(c), title X, §1052(c)(3), title XVI, §1606(b), (c), title XIX, §§1901(a)(29), 1906(b)(13)(A), title XXI, §2126, Oct. 4, 1976, 90 Stat. 1598, 1648, 1755, 1756, 1769, 1834, 1920; Pub. L. 95–30, title I, §102(b)(2), May 23, 1977, 91 Stat. 137; Pub. L. 95–600, title III, §371(a), (b), title VI, §601(b)(1), title VII, §§701(d)(1), 703(p)(1), Nov. 6, 1978, 92 Stat. 2859, 2896, 2900, 2943; Pub. L. 96–222, title I, §§103(a)(15), 106(a)(1), (6), (7), Apr. 1, 1980, 94 Stat. 214, 221; Pub. L. 96–595, §1(a), Dec. 24, 1980, 94 Stat. 3464; Pub. L. 97–34, title II, §207(a), Aug. 13, 1981, 95 Stat. 225; Pub. L. 97–354, §5(a)(22), Oct. 19, 1982, 96 Stat. 1694; Pub. L. 97–362, title I, §102(a)–(c), Oct. 25, 1982, 96 Stat. 1727, 1728; Pub. L. 98–369, div. A, title I, §§91(d), 177(c), title IV, §491(d)(5), title VII, §722(a)(4), July 18, 1984, 98 Stat. 606, 710, 849, 973; Pub. L. 99–514, title I, §104(b)(4), title III, §301(b)(3), title IX, §§901(d)(4)(B), 903(a), (b), title XIII, §1303(b)(1), (2), title XVIII, §1899A(6), Oct. 22, 1986, 100 Stat. 2105, 2217, 2380, 2383, 2658, 2958; Pub. L. 100–647, title I, §§1003(a)(1), 1009(c), Nov. 10, 1988, 102 Stat. 3382, 3449; Pub. L. 101–239, title VII, §7211(a), (b), Dec. 19, 1989, 103 Stat. 2342, 2343; Pub. L. 101–508, title XI, §§11324(a), 11701(d), 11704(a)(2), 11811(a)–(b)(2)(A), (3), (4), Nov. 5, 1990, 104 Stat. 1388–465, 1388–507, 1388–518, 1388–530, 1388–532 to 1388–534; Pub. L. 103–66, title XIII, §13113(d)(1), Aug. 10, 1993, 107 Stat. 429; Pub. L. 104–188, title I, §§1702(h)(2), (16), 1704(t)(5), (30), Aug. 20, 1996, 110 Stat. 1873, 1874, 1887, 1889; Pub. L. 105–34, title X, §1082(a), (b), Aug. 5, 1997, 111 Stat. 950; Pub. L. 105–277, div. J, title II, §2013(a)–(c), title III, §3004(a), title IV, §§4003(h), 4004(a), Oct. 21, 1998, 112 Stat. 2681–902, 2681–905, 2681–910; Pub. L. 107–147, title I, §102(a), (b), title IV, §417(8), Mar. 9, 2002, 116 Stat. 25, 56; Pub. L. 108–311, title IV, §403(b)(1), Oct. 4, 2004, 118 Stat. 1187; Pub. L. 109–58, title XIII, §1311, Aug. 8, 2005, 119 Stat. 1009; Pub. L. 109–135, title IV, §§402(f), 403(a)(17), Dec. 21, 2005, 119 Stat. 2611, 2619; Pub. L. 110–343, div. C, title VII, §§706(a)(2)(D)(v), (vi), 708(a), (b), (d), Oct. 3, 2008, 122 Stat. 3922, 3924, 3925; Pub. L. 111–5, div. B, title I, §1211(a), (b), Feb. 17, 2009, 123 Stat. 335, 336; Pub. L. 111–92, §13(a), Nov. 6, 2009, 123 Stat. 2992.)

REFERENCES IN TEXT

The date of the enactment of the Worker, Homeownership, and Business Assistance Act of 2009, referred to in subsec. (b)(1)(H)(iv)(III), (v)(I), is the date of enactment of Pub. L. 111–92, which was approved Nov. 6, 2009.

The date of the enactment of the Energy Tax Incentives Act of 2005, referred to in subsec. (b)(1)(I)(v)(II), is the date of enactment of title XIII of Pub. L. 109–58, which was approved Aug. 8, 2005.

AMENDMENTS

2009—Subsec. (b)(1)(H). Pub. L. 111–92 amended subpar. (H) generally. Prior to amendment, subpar. (H) provided for carryback for 2008 net operating losses of small businesses.

Pub. L. 111–5, §1211(a), amended subpar. (H) generally. Prior to amendment, subpar. (H) read as follows: "In the case of a net operating loss for any taxable year ending during 2001 or 2002, subparagraph (A)(i) shall be applied by substituting '5' for '2' and subparagraph (F) shall not apply."

Subsecs. (k), (l). Pub. L. 111–5, §1211(b), redesignated subsec. (l) as (k) and struck out former subsec. (k). Prior to amendment, text read as follows: "Any taxpayer entitled to a 5-year carryback under subsection (b)(1)(H) from any loss year may elect to have the carryback period with respect to such loss year determined without regard to subsection (b)(1)(H). Such election shall be made in such manner as may be prescribed by the Secretary and shall be made by the due date (including extensions of time) for filing the taxpayer's return for the taxable year of the net operating loss. Such election, once made for any taxable year, shall be irrevocable for such taxable year."

2008—Subsec. (b)(1)(F)(ii). Pub. L. 110–343, §708(d)(1), inserted "or qualified disaster loss (as defined in subsection (j))" before period at end of concluding provisions.

Subsec. (b)(1)(F)(ii)(II). Pub. L. 110–343, §706(a)(2)(D)(v), substituted "federally declared disasters (as defined by subsection (h)(3)(C)(i))" for "Presidentially declared disasters (as defined in section 1033(h)(3))".

Subsec. (b)(1)(F)(ii)(III). Pub. L. 110–343, §706(a)(2)(D)(vi), substituted "federally declared disasters" for "Presidentially declared disasters".

Subsec. (b)(1)(J). Pub. L. 110–343, §708(a), added subpar. (J).

Subsec. (i)(1). Pub. L. 110–343, §708(d)(2), inserted concluding provisions.

Subsecs. (j) to (l). Pub. L. 110–343, §708(b), added subsec. (j) and redesignated former subsecs. (j) and (k) as (k) and (l), respectively.

2005—Subsec. (b)(1)(I). Pub. L. 109–58 added subpar. (I).

Subsec. (b)(1)(I)(i). Pub. L. 109–135, §402(f)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "At the election of the taxpayer in any taxable year ending after December 31, 2005, and before January 1, 2009, in the case of a net operating loss in a taxable year ending after December 31, 2002, and before January 1, 2006, there shall be a net operating loss carryback to each of the 5 years preceding the taxable year of such loss to the extent that such loss does not exceed 20 percent of the sum of electric transmission property capital expenditures and pollution control facility capital expenditures of the taxpayer for the taxable year preceding the taxable year in which such election is made."

Subsec. (b)(1)(I)(ii)(I). Pub. L. 109–135, §402(f)(2), substituted "for a taxable year" for "in a taxable year".

Subsec. (b)(1)(I)(iv) to (vi). Pub. L. 109–135, §402(f)(3), added cl. (iv), redesignated cl. (vi) as (v), and struck out former cls. (iv) and (v) which read as follows:

"(iv) APPLICATION FOR ADJUSTMENT.—In the case of any portion of a net operating loss to which an election under clause (i) applies, an application under section 6411(a) with respect to such loss shall not fail to be treated as timely filed if filed within 24 months after the due date specified under such section.

"(v) SPECIAL RULES RELATING TO REFUND.—For purposes of a net operating loss to which an election under clause (i) applies, references in sections 6501(h), 6511(d)(2)(A), and 6611(f)(1) to the taxable year in which such net operating loss arises or result in a net loss carryback shall be treated as references to the taxable year in which such election occurs."

Subsec. (d)(7). Pub. L. 109–135, §403(a)(17), added par. (7).

2004—Subsec. (b)(1)(H). Pub. L. 108–311 struck out "a taxpayer which has" after "In the case of".

2002—Subsec. (b)(1)(F)(i). Pub. L. 107–147, §417(8), substituted "3 taxable years" for "3 years" and "2 taxable years" for '2 years".

Subsec. (b)(1)(H). Pub. L. 107–147, §102(a), added subpar. (H).

Subsecs. (j), (k). Pub. L. 107–147, §102(b), added subsec. (j) and redesignated former subsec. (j) as (k).

1998—Subsec. (b)(1)(F)(ii). Pub. L. 105–277, §2013(c), inserted concluding provisions.

Subsec. (b)(1)(F)(iv). Pub. L. 105–277, §4003(h), added cl. (iv).

Subsec. (b)(1)(G). Pub. L. 105–277, §2013(a), added subpar. (G).

Subsec. (d)(4)(C). Pub. L. 105–277, §4004(a), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: "any deduction allowable under section 165(c)(3) (relating to casualty losses) shall not be taken into account; and".

Subsec. (f)(1)(B). Pub. L. 105–277, §3004(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "Any amount (not described in subparagraph (A)) allowable as a deduction under this chapter with respect to a liability which arises under a Federal or State law or out of any tort of the taxpayer if—

"(i) in the case of a liability arising out of a Federal or State law, the act (or failure to act) giving rise to such liability occurs at least 3 years before the beginning of the taxable year, or

"(ii) in the case of a liability arising out of a tort, such liability arises out of a series of actions (or failures to act) over an extended period of time a substantial portion of which occurs at least 3 years before the beginning of the taxable year.

A liability shall not be taken into account under subparagraph (B) unless the taxpayer used an accrual method of accounting throughout the period or periods during which the acts or failures to act giving rise to such liability occurred."

Subsecs. (i), (j). Pub. L. 105–277, §2013(b), added subsec. (i) and redesignated former subsec. (i) as (j).

1997—Subsec. (b)(1)(A)(i). Pub. L. 105–34, §1082(a)(1), substituted "2" for "3".

Subsec. (b)(1)(A)(ii). Pub. L. 105–34, §1082(a)(2), substituted "20" for "15".

Subsec. (b)(1)(F). Pub. L. 105–34, §1082(b), added subpar. (F).

1996—Subsec. (b)(1)(E)(ii). Pub. L. 104–188, §1702(h)(2), substituted "subsection (h)" for "subsection (m)".

Subsec. (h)(3)(B)(i). Pub. L. 104–188, §1704(t)(5), substituted "corporation." for "corporation," at end.

Subsec. (h)(4)(B). Pub. L. 104–188, §1704(t)(30), substituted "For purposes of subsection (b)(2)—" for "For purposes of subsection (b)(2)" in introductory provisions.

Subsec. (h)(4)(C). Pub. L. 104–188, §1702(h)(16), substituted "(b)(1)(E)" for "(b)(1)(M)".

1993—Subsec. (d)(2). Pub. L. 103–66, §13113(d)(1)(A), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: "In the case of a taxpayer other than a corporation, the amount deductible on account of losses from sales or exchanges of capital assets shall not exceed the amount includible on account of gains from sales or exchanges of capital assets."

Subsec. (d)(4)(B). Pub. L. 103–66, §13113(d)(1)(B), which directed the insertion of ", (2)(B)," after "paragraph (1)", was executed by making the insertion after "paragraphs (1)" to reflect the probable intent of Congress.

1990—Subsec. (b). Pub. L. 101–508, §11811(a), amended subsec. (b) generally, substituting present provisions for provisions delineating years to which loss may be carried, relating to amount of carrybacks and carryovers, and providing for special rules for foreign expropriation losses.

Subsec. (b)(1)(M)(iii). Pub. L. 101–508, §11701(d), struck out "a C corporation" after "means" in introductory provisions, substituted "a C corporation which acquires" for "which acquires" in subcl. (I), "a C corporation" for "a corporation" in subcl. (II), and "any C corporation which is a successor" for "any successor corporation" in subcl. (III).

Subsec. (f). Pub. L. 101–508, §11811(b)(1), (2)(A), redesignated subsec. (j) as (f), substituted heading for one which read: "Rules relating to product liability losses", and amended text generally, substituting present provisions for provisions defining terms "product liability loss" and "product liability", and providing for an election with respect to carrybacks of such losses.

Subsec. (g). Pub. L. 101–508, §11811(b)(1), redesignated subsec. (l) as (g) and struck out former subsec. (g) which related to carryover of net operating losses for certain regulated transportation corporations.

Subsec. (g)(2). Pub. L. 101–508, §11811(b)(3), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "In applying paragraph (2) of subsection (b), the portion of the net operating loss for any taxable year which is attributable to the deduction allowed under section 166(a) shall be treated in a manner similar to the manner in which a foreign expropriation loss is treated."

Subsec. (h). Pub. L. 101–508, §11811(b)(1), redesignated subsec. (m) as (h) and struck out former subsec. (h) which defined "foreign expropriation loss".

Subsec. (h)(3)(B)(ii). Pub. L. 101–508, §11324(a), in par. (3)(B)(ii), formerly subsec. (m)(3)(B)(ii), substituted heading for one which read: "Exceptions" and amended text generally. Prior to amendment, text read as follows: "The term 'major stock acquisition' shall not include—

"(I) a qualified stock purchase (within the meaning of section 338) to which an election under section 338 applies, or

"(II) except as provided in regulations, an acquisition in which a corporation acquires stock of another corporation which, immediately before the acquisition, was a member of an affiliated group (within the meaning of section 1504(a)) other than the common parent of such group."

Subsec. (h)(4)(B). Pub. L. 101–508, §11811(b)(4), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "In applying paragraph (2) of subsection (b), the corporate equity reduction interest loss shall be treated in a manner similar to the manner in which a foreign expropriation loss is treated."

Pub. L. 101–508, §11704(a)(2), substituted "subsection (b)(2)" for "subsection (B)(2)" in heading.

Subsec. (i). Pub. L. 101–508, §11811(b)(1), redesignated subsec. (n) as (i) and struck out former subsec. (i)

which provided for rules relating to mortgage disposition losses of the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

Subsec. (j). Pub. L. 101–508, §11811(b)(1), redesignated subsec. (j) as (f).

Subsec. (k). Pub. L. 101–508, §11811(b)(1), struck out subsec. (k) which related to definitions and special rules relating to deferred statutory or tort liability losses.

Subsecs. (l) to (n). Pub. L. 101–508, §11811(b)(1), redesignated subsecs. (l) to (n) as (g) to (i), respectively.

1989—Subsec. (b)(1)(M). Pub. L. 101–239, §7211(a), added subpar. (M).

Subsecs. (m), (n). Pub. L. 101–239, §7211(b), added subsec. (m) and redesignated former subsec. (m) as (n).

1988—Subsec. (b)(1)(A). Pub. L. 100–647, §1009(c)(2), substituted "Except as otherwise provided in this paragraph, a net operating loss" for "Except as provided in subparagraphs (D), (E), (F), (G), (H), (I), (J), (K), (L), and (M), a net operating loss".

Subsec. (b)(1)(B). Pub. L. 100–647, §1009(c)(3), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "Except as provided in subparagraphs (C), (D), and (E), a net operating loss for any taxable year ending after December 31, 1955, shall be a net operating loss carryover to each of the 5 taxable years following the taxable year of such loss. Except as provided in subparagraphs (C), (D), (E), (F), (G), (H), (J), (L), and (M), a net operating loss for any taxable year ending after December 31, 1975, shall be a net operating loss carryover to each of the 15 taxable years following the taxable year of such loss."

Subsec. (b)(1)(K) to (M). Pub. L. 100–647, §1009(c)(1), redesignated subpars. (L) and (M) as (K) and (L), respectively.

Subsec. (d)(4)(B). Pub. L. 100–647, §1003(a)(1), substituted "paragraphs (1) and (3)" for "paragraphs (1), (2)(B), and (3)".

1986—Subsec. (b)(1)(A), (B). Pub. L. 99–514, §903(b)(2)(A), (B), inserted reference to subpars. (L) and (M).

Subsec. (b)(1)(F). Pub. L. 99–514, §903(a)(1), inserted "and before January 1, 1987,".

Pub. L. 99–514, §901(d)(4)(B), substituted "referred to in section 582(c)(5)" for "to which section 585, 586, or 593 applies".

Subsec. (b)(1)(G). Pub. L. 99–514, §903(a)(2), inserted "and before January 1, 1987,".

Subsec. (b)(1)(H). Pub. L. 99–514, §903(a)(3)(A), struck out "after December 31, 1981," and inserted "after December 31, 1981, and before January 1, 1987,".

Pub. L. 99–514, §903(a)(3)(B), which directed that subpar. (H) be amended by striking out "after December 31, 1984," and inserting "after December 31, 1984, and before January 1, 1987,", was executed by striking out "after December 31, 1984" and inserting "after December 31, 1984, and before January 1, 1987", to reflect the probable intent of Congress and the fact that no comma appeared after "1984" and was not necessary after "1987".

Subsec. (b)(1)(J), (K). Pub. L. 99–514, §1303(b)(1), redesignated subpar. (K) as (J) and struck out former subpar. (J) which read as follows: "In the case of an electing GSOC which has a net operating loss for any taxable year such loss shall not be a net operating loss carryback to any taxable year preceding the year of such loss, but shall be a net operating loss carryover to each of the 10 taxable years following the year of such loss."

Subsec. (b)(1)(L), (M). Pub. L. 99–514, §903(b)(1), added subpars. (L) and (M).

Subsec. (d)(2). Pub. L. 99–514, §301(b)(3), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "In the case of a taxpayer other than a corporation—

"(A) the amount deductible on account of losses from sales or exchanges of capital assets shall not exceed the amount includible on account of gains from sales or exchanges of capital assets; and

"(B) the deduction for long-term capital gains provided by section 1202 shall not be allowed."

Subsec. (d)(6). Pub. L. 99–514, §1899A(6), added heading.

Subsec. (d)(7). Pub. L. 99–514, §104(b)(4), struck out par. (7), zero bracket amount, which read as follows: "In the case of a taxpayer other than a corporation, the zero bracket amount shall be treated as a deduction allowed by this chapter. For purposes of subsection (c)—

"(A) the deduction provided by the preceding sentence shall be in lieu of any itemized deductions of the taxpayer, and

"(B) such sentence shall not apply to an individual who elects to itemize deductions."

Subsec. (k)(2), (4). Pub. L. 99–514, §1303(b)(2), substituted "subsection (b)(1)(J)" for "subsection (b)(1)(K)".

Subsecs. (l), (m). Pub. L. 99–514, §903(b)(2)(C), added subsec. (l) and redesignated former subsec. (l) as (m).

1984—Subsec. (b)(1)(A). Pub. L. 98–369, §91(d)(3)(A), substituted "(J), and (K)" for "and (J)".

Subsec. (b)(1)(H). Pub. L. 98–369, §177(c)(1)(A), inserted ", or a net operating loss of the Federal Home Loan Mortgage Corporation for any taxable year beginning after December 31, 1984" in introductory provisions.

Subsec. (b)(1)(H)(i), (ii). Pub. L. 98–369, §177(c)(1)(B), (C), struck out "FNMA" before "mortgage disposition loss".

Subsec. (b)(1)(K). Pub. L. 98–369, §91(d)(1), added subpar. (K).

Subsec. (b)(2)(A). Pub. L. 98–369, §722(a)(4)(A), substituted "and (5)" for "and (6)".

Subsec. (d)(4)(D). Pub. L. 98–369, §491(d)(5), struck out "or section 405(c)" after "section 404".

Subsec. (d)(6) to (8). Pub. L. 98–369, §722(a)(4)(B), redesignated pars. (7) and (8) as (6) and (7), respectively.

Subsec. (h). Pub. L. 98–369, §91(d)(3)(B), substituted "this section" for "subsection (b)" in introductory provisions.

Subsec. (i). Pub. L. 98–369, §177(c)(2), substituted "Mortgage disposition loss of the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation" for "FNMA mortgage disposition loss" in heading and struck out "FNMA" before "mortgage disposition loss" wherever appearing in text.

Subsec. (j). Pub. L. 98–369, §91(d)(3)(B), substituted "this section" for "subsection (b)" in introductory provisions.

Subsecs. (k), (l). Pub. L. 98–369, §91(d)(2), added subsec. (k) and redesignated former subsec. (k) as (l).

1982—Subsec. (b)(1)(A). Pub. L. 97–362, §102(c)(1), substituted "(H), (I), and (J)" for "(H), and (I)".

Subsec. (b)(1)(B). Pub. L. 97–362, §102(c)(2), substituted "(H), and (J)" for "and (I)".

Subsec. (b)(1)(H). Pub. L. 97–362, §102(a), added subpar. (H). Former subpar. (H) redesignated (I).

Subsec. (b)(1)(I). Pub. L. 97–362, §102(a), (c)(3), redesignated former subpar. (H) as (I) and substituted "subsection (j)" for "subsection (i)". Former subpar. (I) redesignated (J).

Subsec. (b)(1)(J). Pub. L. 97–362, §102(a), redesignated former subpar. (I) as (J).

Subsec. (f). Pub. L. 97–354 struck out subsec. (f) relating to net operating loss of electing small business corporation.

Subsec. (i). Pub. L. 97–362, §102(b), added subsec. (i). Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 97–362, §102(b), (c)(4), redesignated former subsec. (i) as (j) and, in par. (3) of subsec. (j) as so redesignated, substituted "subsection (b)(1)(I)" for "subsection (b)(1)(H)" wherever appearing. Former subsec. (j) redesignated (k).

Subsec. (k). Pub. L. 97–362, §102(b), redesignated former subsec. (j) as (k).

1981—Subsec. (b)(1)(B). Pub. L. 97–34, §207(a)(1), substituted "15 taxable years" for "7 taxable years".

Subsec. (b)(1)(C). Pub. L. 97–34, §207(a)(2)(A), substituted "ending after December 31, 1955, and before January 1, 1976, shall" for "ending after December 31, 1955, shall" and struck out provision that, for any taxable year ending after Dec. 31, 1975, the preceding sentence was to be applied by substituting "9 taxable years" for "7 taxable years".

Subsec. (b)(1)(E)(i)(II). Pub. L. 97–34, §207(a)(2)(B)(i), substituted "15" for "8".

Subsec. (b)(1)(E)(ii). Pub. L. 97–34, §207(a)(2)(B)(ii), struck out designation subclause "(I)" for provisions prohibiting a loss carryback to any taxable year which is a REIT year and struck out provision formerly designated as subclause (II) directing that the number of taxable years to which a loss could be a net operating loss carryover under subparagraph (B) be increased (to a number not greater than 8) by the number of taxable years to which such loss could not be a net operating loss carryback by reason of subclause (I).

Subsec. (g)(3)(C). Pub. L. 97–34, §207(a)(2)(C), struck out subpar. (C) which provided that, in the case of a net operating loss carryover from a loss year ending after Dec. 31, 1975, subpars. (A) and (B) were to be applied by substituting "8th taxable year" for "6th taxable year" and "9th taxable year" for "7th taxable year".

1980—Subsec. (b)(1)(A). Pub. L. 96–222, §106(a)(6), substituted ", (H), and (I)" for "and (H)".

Pub. L. 96–222, §103(a)(15), amended directory language of Pub. L. 95–600, §371(a)(2), to correct an error, and did not involve any change in text. See 1978 Amendment note for subsec. (b)(1)(A) below.

Subsec. (b)(1)(B). Pub. L. 96–222, §106(a)(7), substituted "(G), and (I)" for "and (G)".

Subsec. (b)(1)(E). Pub. L. 96–595 generally revised subpar. (E) to permit a trust which was formerly a real estate investment trust an additional year of carryforward of net operating losses for each year it was denied a net operating loss carryback because of its status as a real estate investment trust, and removed the restriction that a net operating loss incurred before 1976 can be carried forward to the 6th, 7th, or 8th year only if it qualified as a real estate investment trust for all years from the loss year through the carryover year.

Subsec. (b)(1)(I). Pub. L. 96–222, §106(a)(1), redesignated former subpar. (H), added by section 601(b) of Pub. L. 95–600 relating to an electing GSOC, as (I).

1978—Subsec. (b)(1)(A). Pub. L. 95–600, §371(a)(2), as amended by Pub. L. 96–222, §103(a)(15), substituted "(G), and (H)" for "and (G)".

Pub. L. 95–600, §703(p)(1)(A), struck out provisions relating to net operating loss carryback with respect to a taxable year ending on or after Dec. 31, 1962, for which a certification has been issued under section 317 of the Trade Expansion Act of 1962.

Subsec. (b)(1)(B). Pub. L. 95–600, §701(d)(1), inserted reference to subpar. (G).

Subsec. (b)(1)(H). Pub. L. 95–600, §371(a)(1), added subpar. (H) relating to product liability losses.

Pub. L. 95–600, §601(b)(1), added subpar. (H) relating to an electing GSOC.

Subsec. (b)(3)(A). Pub. L. 95–600, §703(p)(1)(B), redesignated subpar. (C) as (A). Former subpar. (A), which related to conditions for application of paragraph (1)(A)(ii), was struck out.

Subsec. (b)(3)(B). Pub. L. 95–600, §703(p)(1)(B), (C), redesignated subpar. (D) as (B) and substituted "subparagraph (A)(iii)" for "subparagraph (C)(iii)". Former subpar. (B), which related to the applicability of paragraph (1)(A)(ii) to partnerships and electing small business corporations, was struck out.

Subsec. (b)(3)(C). Pub. L. 95–600, §703(p)(1)(B), redesignated subpar. (E) as (C). Former subpar. (C) redesignated (A).

Subsec. (b)(3)(D), (E). Pub. L. 95–600, §703(p)(1)(B), redesignated subpars. (D) and (E) as (B) and (C), respectively.

Subsecs. (i), (j). Pub. L. 95–600, §371(b), added subsec. (i) and redesignated former subsec. (i) as (j).

1977—Subsec. (d)(8). Pub. L. 95–30 added par. (8).

1976—Subsec. (b)(1)(B). Pub. L. 94–455, §806(a), inserted "Except as provided in subparagraphs (C), (D), (E), and (F), a net operating loss for any taxable year ending after December 31, 1975, shall be a net operating loss carryover to each of the 7 taxable years following the taxable year of such loss" after "year of such loss".

Subsec. (b)(1)(C). Pub. L. 94–455, §§806(b)(1), 1901(a)(29)(C)(ii), inserted "For any taxable year ending after December 31, 1975, the preceding sentence shall be applied by substituting '9 taxable years' for '7 taxable years' " after "year of such loss", substituted "subsection (g)(1)" for "subsection (j)(1)" after "as defined in" and "subsection (g)" for "subsection (j)" after "as provided in".

Subsec. (b)(1)(D). Pub. L. 94–455, §§1901(a)(29)(C)(iii), 2126, substituted "subsection (h)" for "subsection (k)" after "as defined in" and "20" for "15" after "expropriation loss, to each of the".

Subsec. (b)(1)(E). Pub. L. 94–455, §1606(b), added subpar. (E).

Subsec. (b)(2). Pub. L. 94–455, §1901(a)(29)(C)(iv), substituted "subsection (g)" for "subsections (i) and (j)" after "provided in".

Subsec. (b)(3). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (b)(3)(A)(i), (ii). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" in two places after "Secretary".

Subsec. (b)(3)(C)(i). Pub. L. 94–455, §1901(a)(29)(C)(iii), substituted "subsection (h)" for "subsection (k)" after "as defined in".

Subsec. (b)(3)(C)(ii), (iii). Pub. L. 94–455, §1906(b)(13)(A), struck out "Or his delegate" in two places after "Secretary".

Subsec. (b)(3)(E). Pub. L. 94–455, §§806(c), 1901(a)(29)(A)(ii), added subpar. (E). Former subpar. (E), which related to applicability of special rules in computing taxpayer's net operating loss deduction, was struck out.

Subsec. (b)(3)(F). Pub. L. 94–455, §1901(a)(29)(A)(ii), struck out subpar. (F) which defined "class of products" and provided for the use of information compiled or published by Secretary of Commerce or manufacturers as prima facie evidence of the total number of units of such class of products manufactured and produced in the United States in a calendar year.

Subsec. (c). Pub. L. 94–455, §1901(a)(29)(B), struck out "(for any taxable year ending after December 31, 1953)" after "means".

Subsec. (d)(5), (6). Pub. L. 94–455, §1052(c)(3), struck out par. (5) relating to special deductions for corporations concerning partially tax-exempt interest and Western Hemisphere corporations, and redesignated par. (6) as (5).

Subsec. (d)(7). Pub. L. 94–455, §1606(c), added par. (7).

Subsec. (e). Pub. L. 94–455, §1901(a)(29)(D), struck out "The preceding sentence shall apply with respect to all taxable years, whether they begin before, on, or after January 1, 1954" after "applicable to such other taxable year".

Subsec. (f). Pub. L. 94–455, §1901(a)(29)(C)(i), redesignated subsec. (h) as (f). Former subsec. (f), relating to net operating loss deduction for taxable years beginning in 1953 and ending in 1954, was struck out.

Subsec. (g). Pub. L. 94–455, §1901(a)(29)(C)(i), redesignated subsec. (j) as (g). Former subsec. (g), relating to special transitional rules to be applied to net operating loss deductions, was struck out.

Subsec. (g)(3)(C). Pub. L. 94–455, §806(b)(2), added subpar. (C).

Subsec. (g)(4). Pub. L. 94–455, §1901(a)(29)(E), struck out par. (4) relating to carryover of net operating

loss for certain regulated transportation corporations for taxable years beginning in 1955 and ending in 1956.

Subsec. (h). Pub. L. 94–455, §1901(a)(29)(C)(i), redesignated subsec. (k) as (h). Former subsec. (h) redesignated (f).

Subsec. (i). Pub. L. 94–455, §1901(a)(29)(C)(i), redesignated subsec. (l) as (i). Former subsec. (i), relating to carryback of net operating loss for taxable years beginning in 1957 and ending in 1958, was struck out.

Subsecs. (j) to (l). Pub. L. 94–455, §1901(a)(29)(C)(i), redesignated subsecs. (j) to (l) as (g) to (i), respectively.

1971—Subsec. (b)(1)(D). Pub. L. 91–677, §2(a), inserted "(or, with respect to that portion of the net operating loss for such year attributable to a Cuban expropriation loss, to each of the 15 taxable years following the taxable year of such loss)" after "the 10 taxable years following the taxable year of such loss".

Subsec. (b)(2). Pub. L. 91–677, §2(b), inserted provisions relating to treatment of Cuban expropriation losses.

Subsec. (k)(3). Pub. L. 91–677, §2(c), added par. (3).

1969—Subsec. (b)(1). Pub. L. 91–172 substituted "(E), (F), and (G)", for "and (E)" in subpar. (A)(i) and added subpars. (F) and (G).

1967—Subsec. (b)(1). Pub. L. 90–225, §3(a)(1)–(3), inserted reference to subpar. (E) in subpars. (A)(i) and (B), and added subpar. (E).

Subsec. (b)(3)(E), (F). Pub. L. 90–225, §3(a)(4), added subpars. (E) and (F).

1964—Subsec. (b). Pub. L. 88–272, §210(a)(1)–(4), (b), inserted subpar. (D) in par. (1), references to such subpar. (D) in par. (1)(A)(i) and (1)(B), subpars. (C) and (D) in par. (3), provided that the net operating loss deduction in par. (2)(B) be determined without regard to that portion of a net operating loss due to a foreign expropriation loss, if such portion may not, under par. (1)(D), be carried back to such prior taxable year, and that if a portion of the net operating loss is attributable to foreign expropriation to which par. (1)(D) applied, such portion shall be considered a separate loss for such year to be applied after the other portion of such net operating loss.

Subsec. (j)(1), (2), Pub. L. 88–272, §234(b)(5), substituted references to section 7701(a)(33) for references to section 1503(c)(1) or (2), wherever appearing.

Subsecs. (k), (l). Pub. L. 88–272, §210(a)(5), added subsec. (k) and redesignated former subsec. (k) as (l).

1962—Subsec. (b)(1). Pub. L. 87–794 designated existing provisions as cl. (A)(i) and struck out provisions therefrom which authorized a net operating loss for any taxable year ending after Dec. 31, 1957, to be a net operating loss carryover to each of the 5 taxable years following the taxable year of such loss, and added cls. (A)(ii), (B), and (C).

Subsec. (b)(2). Pub. L. 87–794 inserted reference to subsection (j), and substituted "shall be carried to the earliest of the taxable years to which (by reason of paragraph (1))" for "shall be carried to the earliest of the 8 taxable years to which (by reason of subparagraphs (A) and (B) of paragraph (1))", and "each of the other taxable years" for "each of the other 7 taxable years".

Subsec. (b)(3). Pub. L. 87–794 added par. (3).

Pub. L. 87–710, §1(a), authorized a carryover of a net operating loss for any taxable year ending after Dec. 31, 1955, to each of the 5 taxable years following the taxable year of loss, or when such loss occurs in the case of regulated transportation corporation, except as provided in subsec. (j), then to each of the 7 taxable years following the taxable year of loss, and struck out provisions authorizing a net operating loss for any taxable years ending Dec. 31, 1957, to be carried over to each of the 5 taxable years following the taxable year of such loss, in par. (1), and inserted reference to subsec. (j) in par. (2).

Subsec. (d)(4)(D). Pub. L. 87–792 added subpar. (D).

Subsecs. (j), (k). Pub. L. 87–710, §1(b), added subsec. (j) and redesignated former subsec. (j) as (k).

1958—Subsec. (b). Pub. L. 85–866, §203(a), substituted "1957" for "1953", and "3" for "2" in par. (1), and substituted "subsection (i)" for "subsection (f)", "8" for "7", and "7" for "6" in par. (2).

Subsecs. (f)(3), (4). Pub. L. 85–866, §14(a), added pars. (3) and (4).

Subsec. (g)(3), (4). Pub. L. 85–866, §14(b), added par. (3) and redesignated former par. (3) as (4).

Subsecs. (h) to (j). Pub. L. 85–866, §§64(b), 203(b), added subsecs. (h) and (i) and redesignated former subsec. (h) as (j).

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–92 applicable to net operating losses arising in taxable years ending after Dec. 31, 2007, with transition provisions and exception for TARP recipients, see section 13(e), (f) of Pub. L. 111–92, set out as a note under section 56 of this title.

Pub. L. 111–5, div. B, title I, §1211(d), Feb. 17, 2009, 123 Stat. 336, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this

section [amending this section] shall apply to net operating losses arising in taxable years ending after December 31, 2007.

"(2) TRANSITIONAL RULE.—In the case of a net operating loss for a taxable year ending before the date of the enactment of this Act [Feb. 17, 2009]—

"(A) any election made under section 172(b)(3) of the Internal Revenue Code of 1986 with respect to such loss may (notwithstanding such section) be revoked before the applicable date,

"(B) any election made under section 172(b)(1)(H) of such Code with respect to such loss shall (notwithstanding such section) be treated as timely made if made before the applicable date, and

"(C) any application under section 6411(a) of such Code with respect to such loss shall be treated as timely filed if filed before the applicable date.

For purposes of this paragraph, the term 'applicable date' means the date which is 60 days after the date of the enactment of this Act [Feb. 17, 2009]."

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by section 706(a)(2)(D)(v), (vi) of Pub. L. 110–343 applicable to disasters declared in taxable years beginning after Dec. 31, 2007, see section 706(d)(1) of Pub. L. 110–343, set out as a note under section 56 of this title.

Amendment by section 708(a), (b), (d) of Pub. L. 110–343 applicable to losses arising in taxable years beginning after Dec. 31, 2007, in connection with disasters declared after such date, see section 708(e) of Pub. L. 110–343, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by 402(f) of Pub. L. 109–135 effective as if included in the provision of the Energy Policy Act of 2005, Pub. L. 109–58, to which such amendment relates, see section 402(m)(1) of Pub. L. 109–135, set out as an Effective and Termination Dates of 2005 Amendments note under section 23 of this title.

Amendment by section 403(a)(17) of Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 effective as if included in the provisions of the Job Creation and Worker Assistance Act of 2002, Pub. L. 107–147, to which such amendment relates, see section 403(f) of Pub. L. 108–311, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title I, §102(d), Mar. 9, 2002, 116 Stat. 26, provided that: "Except as provided in subsection (c) [amending section 56 of this title and enacting provisions set out as a note under section 56 of this title], the amendments made by this section [amending this section and section 56 of this title] shall apply to net operating losses for taxable years ending after December 31, 2000."

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–277, div. J, title II, §2013(d), Oct. 21, 1998, 112 Stat. 2681–903, provided that: "The amendments made by this section [amending this section] shall apply to net operating losses for taxable years beginning after December 31, 1997."

Pub. L. 105–277, div. J, title III, §3004(b), Oct. 21, 1998, 112 Stat. 2681–906, provided that: "The amendment made by this section [amending this section] shall apply to net operating losses arising in taxable years ending after the date of the enactment of this Act [Oct. 21, 1998]."

Amendment by section 4003(h) of Pub. L. 105–277 effective as if included in the provision of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 4003(l) of Pub. L. 105–277, set out as a note under section 86 of this title.

Pub. L. 105–277, div. J, title IV, §4004(c)(1), Oct. 21, 1998, 112 Stat. 2681–911, provided that: "The amendments made by subsections (a) and (b)(3) [amending this section and section 873 of this title] shall apply to taxable years beginning after December 31, 1983."

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title X, §1082(c), Aug. 5, 1997, 111 Stat. 951, provided that: "The amendments made by this section [amending this section] shall apply to net operating losses for taxable years beginning after the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1702(h)(2), (16) of Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to stock issued after Aug. 10, 1993, see section 13113(e) of Pub. L. 103–66, set out as a note under section 53 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, §11324(b), Nov. 5, 1990, 104 Stat. 1388–465, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to acquisitions after October 9, 1990.

"(2) BINDING CONTRACT EXCEPTION.—The amendment made by subsection (a) shall not apply to any acquisition pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such acquisition."

Amendment by section 11701(d) of Pub. L. 101–508 effective, except as otherwise provided, as if included in the provision of the Revenue Reconciliation Act of 1989, Pub. L. 101–239, title VII, to which such amendment relates, see section 11701(n) of Pub. L. 101–508, set out as a note under section 42 of this title.

Pub. L. 101–508, title XI, §11811(c), Nov. 5, 1990, 104 Stat. 1388–534, provided that: "The amendments made by this section [amending this section] shall apply to net operating losses for taxable years beginning after December 31, 1990."

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7211(c), Dec. 19, 1989, 103 Stat. 2345, provided that:

"(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section] shall apply to corporate equity reduction transactions occurring after August 2, 1989, in taxable years ending after August 2, 1989.

"(2) EXCEPTIONS.—In determining whether a corporate equity reduction transaction has occurred after August 2, 1989, there shall not be taken into account—

"(A) acquisitions or redemptions of stock, or distributions with respect to stock, occurring on or before August 2, 1989,

"(B) acquisitions or redemptions of stock after August 2, 1989, pursuant to a binding written contract (or tender offer filed with the Securities and Exchange Commission) in effect on August 2, 1989, and at all times thereafter before such acquisition or redemption, or

"(C) any distribution with respect to stock after August 2, 1989, which was declared on or before August 2, 1989.

Any distribution to which the preceding sentence applies shall be taken into account under section 172(m)(3)(C)(ii)(I) of the Internal Revenue Code of 1986 (relating to base period for distributions)."

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 104(b)(4) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 301(b)(3) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 301(c) of Pub. L. 99–514, set out as a note under section 62 of this title.

Amendment by section 901(d)(4)(B) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 901(e) of Pub. L. 99–514, set out as a note under section 166 of this title.

Pub. L. 99–514, title IX, §903(c), Oct. 22, 1986, 100 Stat. 2384, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to losses incurred in taxable years beginning after December 31, 1986.

"(2) ADDITIONAL CARRYFORWARD PERIOD FOR LOSSES OF THRIFT INSTITUTIONS .—Subparagraph (M) of section 172(b)(1) of the Internal Revenue Code of 1986 (as added by this section) shall apply to losses incurred in taxable years beginning after December 31, 1981."

Amendment by section 1303(b)(1), (2) of Pub. L. 99–514 effective Oct. 22, 1986, see section 1311(f) of

Pub. L. 99–514, as amended, set out as an Effective Date; Transitional Rules note under section 141 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 91(d) of Pub. L. 98–369 applicable to losses for taxable years beginning after Dec. 31, 1983, see section 91(g)(6) of Pub. L. 98–369, as amended, set out as a note under section 461 of this title.

Pub. L. 98–369, div. A, title I, §177(d), July 18, 1984, 98 Stat. 711, as amended by Pub. L. 99–514, §2, title XVIII, §1812(d)(2), Oct. 22, 1986, 100 Stat. 2095, 2836, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and section 246 of this title and section 1452 of Title 12, Banks and Banking] shall take effect on January 1, 1985.

"(2) ADJUSTED BASIS OF ASSETS.—

"(A) IN GENERAL.—Except as otherwise provided in subparagraph (B), the adjusted basis of any asset of the Federal Home Loan Mortgage Corporation held on January 1, 1985, shall—

"(i) for purposes of determining any loss, be equal to the lesser of the adjusted basis of such asset or the fair market value of such asset as of such date, and

"(ii) for purposes of determining any gain, be equal to the higher of the adjusted basis of such asset or the fair market value of such asset as of such date.

"(B) SPECIAL RULE FOR TANGIBLE DEPRECIABLE PROPERTY.—In the case of any tangible property which—

"(i) is of a character subject to the allowance for depreciation provided by section 167 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], and

"(ii) is held by the Federal Home Loan Mortgage Corporation on January 1, 1985,

the adjusted basis of such property shall be equal to the lesser of the basis of such property or the fair market value of such property as of such date.

"(3) TREATMENT OF PARTICIPATION CERTIFICATES.—

"(A) IN GENERAL.—Paragraph (2) shall not apply to any right to receive income with respect to any mortgage pool participation certificate or other similar interest in any mortgage (not including any mortgage).

"(B) TREATMENT OF CERTAIN SALES AFTER MARCH 15, 1984, AND BEFORE JANUARY 1, 1985.—If any gain is realized on the sale or exchange of any right described in subparagraph (A) after March 15, 1984, and before January 1, 1985, the gain shall not be recognized when realized but shall be recognized on January 1, 1985.

"(4) CLARIFICATION OF EARNINGS AND PROFITS OF FEDERAL HOME LOAN MORTGAGE CORPORATION.—

"(A) TREATMENT OF DISTRIBUTION OF PREFERRED STOCK, ETC.—For purposes of the Internal Revenue Code of 1986, the distribution of preferred stock by the Federal Home Loan Mortgage Corporation during December of 1984, and the other distributions of such stock by Federal Home Loan Banks during January of 1985, shall be treated as if they were distributions of money equal to the fair market value of the stock on the date of the distribution by the Federal Home Loan Banks (and such stock shall be treated as if it were purchased with the money treated as so distributed). No deduction shall be allowed under section 243 of the Internal Revenue Code of 1986 with respect to any dividend paid by the Federal Home Loan Mortgage Corporation out of earnings and profits accumulated before January 1, 1985.

"(B) SECTION 246(a) NOT TO APPLY TO DISTRIBUTIONS OUT OF EARNINGS AND PROFITS ACCUMULATED DURING 1985.—Subsection (a) of section 246 of the Internal Revenue Code of 1986 shall not apply to any dividend paid by the Federal Home Loan Mortgage Corporation during 1985 out of earnings and profits accumulated after December 31, 1984.

"(5) ADJUSTED BASIS.—For purposes of this subsection, the adjusted basis of any asset shall be determined under part II of subchapter O of the Internal Revenue Code of 1986.

"(6) NO CARRYBACKS FOR YEARS BEFORE 1985.—No net operating loss, capital loss, or excess credit of the Federal Home Loan Mortgage Corporation for any taxable year beginning after December 31, 1984, shall be allowed as a carryback to any taxable year beginning before January 1, 1985.

"(7) NO DEDUCTION ALLOWED FOR INTEREST ON REPLACEMENT OBLIGATIONS.—

"(A) IN GENERAL.—The Federal Home Loan Mortgage Corporation shall not be allowed any deduction for interest accruing after December 31, 1984, on any replacement obligation.

"(B) REPLACEMENT OBLIGATION DEFINED.—For purposes of subparagraph (A), the term 'replacement obligation' means any obligation to any person created after March 15, 1984, which the Secretary of the Treasury or his delegate determines replaces any equity or debt interest of a Federal Home Loan Bank or any other person in the Federal Home Loan Mortgage Corporation existing on such date. The

preceding sentence shall not apply to any obligation with respect to which the Federal Home Loan Mortgage Corporation establishes that there is no tax avoidance effect."

Amendment by section 491(d)(5) of Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

Pub. L. 98–369, div. A, title VII, §722(a)(6), July 18, 1984, 98 Stat. 973, provided that: "Any amendment made by this subsection [amending this section and sections 57, 1256, and 5684 of this title, and provisions set out as a note under section 338 of this title] shall take effect as if included in the provisions of the Technical Corrections Act of 1982 [Pub. L. 97–448] to which such amendment relates."

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–362, title I, §102(d), Oct. 25, 1982, 96 Stat. 1728, provided that: "The amendments made by this section [amending this section] shall apply to net operating losses for taxable years beginning after December 31, 1981."

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to net operating losses in taxable years ending after Dec. 31, 1975, with special effective date for the amendment by section 207(a)(2)(B)(i) of Pub. L. 97–34, and net operating loss for any taxable year ending on or before Dec. 31, 1975, which could be a net operating loss carryover to a taxable year ending in 1981 by reason of subsec. (b)(1)(E)(ii) (as in effect before the date of enactment of Pub. L. 97–34 and as modified by section 1(b) of Pub. L. 96–595), to be a net operating loss carryover under this section to each of the 15 taxable years following the taxable year of such loss, see section 209(c)(1) of Pub. L. 97–34, set out as an Effective Date note under section 168 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–595, §1(b), Dec. 24, 1980, 94 Stat. 3464, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendment made by subsection (a) [amending this section] shall apply to the determination of the net operating loss deduction for taxable years ending after October 4, 1976. For purposes of applying the preceding sentence to any net operating loss for a taxable year which is not a REIT year and which ends on or before October 4, 1976, subclause (II) of section 172(b)(1)(E)(ii) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall be applied by substituting "the number of REIT years to which such loss was a net operating loss carryback" for "the number of taxable years to which such loss may not be a net operating loss carryback by reason of subclause (I)". In the case of a net operating loss for a taxable year described in the preceding sentence, subclause (II) of section 172(b)(1)(E)(ii) of such Code shall not apply to any taxpayer which acted so as to cause it to cease to qualify as a "real estate investment trust" within the meaning of section 856 of such Code if the principal purpose for such action was to secure the benefit of the allowance of a net operating loss carryover under section 172(b)(1)(B) of such Code."

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title III, §371(d), Nov. 6, 1978, 92 Stat. 2860, provided that: "The amendments made by this section [amending this section and section 537 of this title] shall apply with respect to taxable years beginning after September 30, 1979."

Pub. L. 95–600, title VI, §601(d), Nov. 6, 1978, 92 Stat. 2897, provided that: "The amendments made by this section [enacting sections 1391 to 1397 and 6039B of this title and amending this section and sections 1016 and 3402 of this title] shall apply with respect to corporations chartered after December 31, 1978, and before January 1, 1984."

Pub. L. 95–600, title VII, §701(d)(2), Nov. 6, 1978, 92 Stat. 2900, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to losses incurred in taxable years ending after December 31, 1975."

Pub. L. 95–600, title VII, §703(p)(4), Nov. 6, 1978, 92 Stat. 2944, provided that: "The amendments made by this subsection [amending this section and sections 6501 and 6511 of this title] shall apply with respect to losses sustained in taxable years ending after the date of the enactment of this Act [Nov. 6, 1978]."

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a)

of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title VIII, §806(g)(1), Oct. 4, 1976, 90 Stat. 1605, provided that: "The amendments made by subsections (a), (b), (c), and (d) [amending this section and sections 812 and 825 of this title] shall apply to losses incurred in taxable years ending after December 31, 1975."

Amendment by section 1052(c)(3) of Pub. L. 94–455 effective with respect to taxable years beginning after December 31, 1979, see section 1052(d) of Pub. L. 94–455, set out as a note under section 170 of this title.

Amendment by section 1606(b), (c) of Pub. L. 94–455 effective for taxable years ending after Oct. 4, 1976, see section 1608(c) of Pub. L. 94–455, set out as a note under section 857 of this title.

Amendment by section 1901(a)(29) of Pub. L. 94–455 effective for taxable years ending after Oct. 4, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Pub. L. 91–677, §2(d), Jan. 12, 1971, 84 Stat. 2062, provided that: "The amendments made by this section [amending this section] shall apply in respect of foreign expropriation losses sustained in taxable years ending after December 31, 1958."

EFFECTIVE DATE OF 1967 AMENDMENT

Pub. L. 90–225, §3(b), Dec. 27, 1967, 81 Stat. 733, provided that: "No interest shall be paid or allowed with respect to any overpayment of tax resulting from the application of the amendments made by subsection (a) [amending this section] for any period prior to the date of the enactment of this Act [Dec. 27, 1967]."

Pub. L. 90–225, §3(c), Dec. 27, 1967, 81 Stat. 733, provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to net operating losses sustained in taxable years ending after December 31, 1966."

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88–272, title II, §210(c), Feb. 26, 1964, 78 Stat. 49, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by this section [amending this section] shall apply in respect of foreign expropriation losses (as defined in section 172(k) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as amended by subsection (a)(5) of this section), sustained in taxable years ending after December 31, 1958."

Amendment by section 234(b)(5) of Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 234(c) of Pub. L. 88–272, set out as a note under section 1503 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87–794, title III, §317(b), Oct. 11, 1962, 76 Stat. 889, provided that the amendment made by that section is effective with respect to net operating losses for taxable years ending after Dec. 31, 1955.

Amendment by Pub. L. 87–792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87–792, set out as a note under section 22 of this title.

Pub. L. 87–710, §2, Sept. 27, 1962, 76 Stat. 649, provided that: "The amendments made by the first section of this Act [amending this section] shall apply only with respect to net operating losses for taxable years ending after December 31, 1955."

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85–866, title II, §203(c), Sept. 2, 1958, 72 Stat. 1679, provided that: "The amendments made by subsections (a) and (b) [amending this section] shall apply in respect of net operating losses for taxable years ending after December 31, 1957."

Amendment by section 14(a), (b) of Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

Pub. L. 85–866, title I, §64(e), Sept. 2, 1958, 72 Stat. 1657, provided that: "The amendments made by this section [enacting sections 1371 to 1377 and 6037 of this title, amending this section and sections 1016 and 1504, and renumbering former section 6037 as 6038 of this title] shall apply only with respect to taxable years beginning after December 31, 1957".

ANTI-ABUSE RULES

Pub. L. 111–92, §13(d), Nov. 6, 2009, 123 Stat. 2994, provided that: "The Secretary of [the] Treasury or the Secretary's designee shall prescribe such rules as are necessary to prevent the abuse of the purposes of the

amendments made by this section [amending this section and sections 56 and 810 of this title], including anti-stuffing rules, anti-churning rules (including rules relating to sale-leasebacks), and rules similar to the rules under section 1091 of the Internal Revenue Code of 1986 relating to losses from wash sales."

Pub. L. 111–5, div. B, title I, §1211(c), Feb. 17, 2009, 123 Stat. 336, provided that: "The Secretary of [the] Treasury or the Secretary's designee shall prescribe such rules as are necessary to prevent the abuse of the purposes of the amendments made by this section [amending this section], including anti-stuffing rules, anti-churning rules (including rules relating to sale-leasebacks), and rules similar to the rules under section 1091 of the Internal Revenue Code of 1986 relating to losses from wash sales."

SAVINGS PROVISION

For provisions that nothing in amendment by section 11811 of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

NET OPERATING LOSS CARRYBACK FOR TAXABLE YEAR ENDING DURING 2001 OR 2002

Pub. L. 108–311, title IV, §403(b)(2), Oct. 4, 2004, 118 Stat. 1187, provided that: "In the case of a net operating loss for a taxable year ending during 2001 or 2002—

"(A) an application under section 6411(a) of the Internal Revenue Code of 1986 with respect to such loss shall not fail to be treated as timely filed if filed before November 1, 2002,

"(B) any election made under section 172(b)(3) of such Code may (notwithstanding such section) be revoked before November 1, 2002, and

"(C) any election made under section 172(j) [now 172(k)] of such Code shall (notwithstanding such section) be treated as timely made if made before November 1, 2002."

AMTRAK REFORM LEGISLATION

Pub. L. 105–134, title III, §301(b), Dec. 2, 1997, 111 Stat. 2585, provided that: "This Act [see Short Title of 1997 Amendment note set out under section 20101 of Title 49, Transportation] constitutes Amtrak reform legislation within the meaning of section 977(f)(1) of the Taxpayer Relief Act of 1997 [Pub. L. 105–34, set out as a note below]."

ELECTIVE CARRYBACK OF EXISTING CARRYOVERS OF NATIONAL RAILROAD PASSENGER CORPORATION

Pub. L. 105–34, title IX, §977, Aug. 5, 1997, 111 Stat. 899, as amended by Pub. L. 105–178, title IX, §9007(a), June 9, 1998, 112 Stat. 506; Pub. L. 105–206, title VI, §6009(e), July 22, 1998, 112 Stat. 812, provided that:

"(a) ELECTIVE CARRYBACK.—

"(1) IN GENERAL.—If the National Railroad Passenger Corporation (in this section referred to as the 'Corporation')—

"(A) makes an election under this section for its first taxable year ending after September 30, 1997, and

"(B) agrees to the conditions specified in paragraph (2),

then the Corporation shall be treated as having made a payment of the tax imposed by chapter 1 of the Internal Revenue Code of 1986 for such first taxable year and the succeeding taxable year in an amount (for each such taxable year) equal to 50 percent of the amount determined under paragraph (3). Each such payment shall be treated as having been made by the Corporation on the last day prescribed by law (without regard to extensions) for filing its return of tax under chapter 1 of such Code for the taxable year to which such payment relates.

"(2) CONDITIONS.—

"(A) IN GENERAL.—This section shall only apply to the Corporation if it agrees (in such manner as the Secretary of the Treasury or his delegate may prescribe) to—

"(i) except as provided in clause (ii), use any refund of the payment described in paragraph (1) (and any interest thereon) solely to finance qualified expenses of the Corporation, and

"(ii) make the payments to non-Amtrak States as described in subsection (c).

"(B) REPAYMENT.—

"(i) IN GENERAL.—The Corporation shall repay to the United States any amount not used in accordance with this paragraph and any amount remaining unused as of January 1, 2010.

"(ii) SPECIAL RULES.—For purposes of clause (i)—

"(I) no amount shall be treated as remaining unused as of January 1, 2010, if it is obligated as of such date for a qualified expense, and

"(II) the Corporation shall not be treated as failing to meet the requirements of clause (i) by reason of investing any amount for a temporary period.

"(3) AMOUNT.—For purposes of paragraph (1)—

"(A) IN GENERAL.—The amount determined under this paragraph shall be the lesser of—

"(i) 35 percent of the Corporation's existing qualified carryovers, or

"(ii) the Corporation's net tax liability for the carryback period.

"(B) DOLLAR LIMIT.—Such amount shall not exceed $2,323,000,000.

"(b) EXISTING QUALIFIED CARRYOVERS; NET TAX LIABILITY.—For purposes of this section—

"(1) EXISTING QUALIFIED CARRYOVERS.—The term 'existing qualified carryovers' means the aggregate of the amounts which are net operating loss carryovers under section 172(b) of the Internal Revenue Code of 1986 to the Corporation's first taxable year ending after September 30, 1997.

"(2) NET TAX LIABILITY FOR CARRYBACK PERIOD.—

"(A) IN GENERAL.—The Corporation's net tax liability for the carryback period is the aggregate of the net tax liability of the Corporation's railroad predecessors for taxable years in the carryback period.

"(B) NET TAX LIABILITY.—The term 'net tax liability' means, with respect to any taxable year, the amount of the tax imposed by chapter 1 of the Internal Revenue Code of 1986 (or any corresponding provision of prior law) for such taxable year, reduced by the sum of the credits allowable against such tax under such Code (or any corresponding provision of prior law).

"(C) CARRYBACK PERIOD.—The term 'carryback period' means the period—

"(i) which begins with the first taxable year of any railroad predecessor beginning before January 1, 1971, for which there is a net tax liability, and

"(ii) which ends with the last taxable year of any railroad predecessor beginning before January 1, 1971.

"(3) RAILROAD PREDECESSOR.—

"(A) IN GENERAL.—The term 'railroad predecessor' means—

"(i) any railroad which entered into a contract under section 401 or 404(a) of the Rail Passenger Service Act of 1970 [former sections 561 and 564(a) of Title 45, Railroads] relieving the railroad of its entire responsibility for the provision of intercity rail passenger service, and

"(ii) any predecessor thereof.

"(B) CONSOLIDATED RETURNS.—If any railroad described in subparagraph (A) was a member of an affiliated group which filed a consolidated return for any taxable year in the carryback period, each member of such group shall be treated as a railroad predecessor for such year.

"(c) PAYMENTS TO NON-AMTRAK STATES.—

"(1) IN GENERAL.—Within 30 days after receipt of any refund of any payment described in subsection (a)(1), the Corporation shall pay to each non-Amtrak State an amount equal to 1 percent of the amount of such refund.

"(2) USE OF PAYMENT.—Each non-Amtrak State shall use the payment described in paragraph (1) (and any interest thereon) solely to finance qualified expenses of the State.

"(3) REPAYMENT.—A non-Amtrak State shall pay to the United States—

"(A) any portion of the payment received by the State under paragraph (1) (and any interest thereon) which is used for a purpose other than to finance qualified expenses of the State or which remains unused as of January 1, 2010, or

"(B) if such State ceases to be a non-Amtrak State, the portion of such payment (and any interest thereon) remaining as of the date of the cessation.

Rules similar to the rules of subsection (a)(2)(B) shall apply for purposes of this paragraph.

"(d) TAX CONSEQUENCES.—

"(1) REDUCTION IN CARRYOVERS.—If the Corporation elects the application of this section, the Corporation's existing qualified carryovers shall be reduced by an amount equal to the amount determined under subsection (a)(3) divided by 0.35.

"(2) REDUCTION IN TAX PAID BY RAILROAD PREDECESSORS.—

"(A) IN GENERAL.—The Secretary of the Treasury or his delegate shall appropriately adjust the tax account of each railroad predecessor to reduce the net tax liability of such predecessor for taxable years beginning in the carryback period which is offset by reason of the application of this section.

"(B) FIFO ORDERING RULE.—The Secretary shall make the adjustments under subparagraph (A) first for the earliest year in the carryback period and then for each subsequent year in such period.

"(C) NO EFFECT ON OTHER TAXPAYERS.—In no event shall any taxpayer other than the

Corporation be allowed a refund or credit by reason of this section.

"(D) WAIVER OF LIMITATIONS.—If the adjustment under subparagraph (A) is barred by the operation of any law or rule of law, such law or rule of law shall be waived solely for purposes of making such adjustment.

"(3) TAX TREATMENT OF EXPENDITURES.—With respect to any payment by the Corporation of qualified expenses described in subsection (e)(1)(A) during any taxable year from the amount of any refund of the payment described in subsection (a)(1)—

"(A) no deduction shall be allowed to the Corporation with respect to any amount paid or incurred which is attributable to such amount, and

"(B) the basis of any property shall be reduced by the portion of the cost of such property which is attributable to such amount.

"(4) PAYMENTS TO A NON-AMTRAK STATE.—No deduction shall be allowed to the Corporation under chapter 1 of the Internal Revenue Code of 1986 for any payment to a non-Amtrak State required under subsection (a)(2)(A)(ii).

"(e) DEFINITIONS.—For purposes of this section—

"(1) QUALIFIED EXPENSES.—The term 'qualified expenses' means expenses incurred for—

"(A) in the case of the Corporation—

"(i) the acquisition of equipment, rolling stock, and other capital improvements, the upgrading of maintenance facilities, and the maintenance of existing equipment, in intercity passenger rail service, and

"(ii) the payment of interest and principal on obligations incurred for such acquisition, upgrading, and maintenance, and

"(B) in the case of a non-Amtrak State—

"(i) the acquisition of equipment, rolling stock, and other capital improvements, the upgrading of maintenance facilities, and the maintenance of existing equipment, in intercity passenger rail service,

"(ii) the acquisition of equipment, rolling stock, and other capital improvements, the upgrading of maintenance facilities, and the maintenance of existing equipment, in intercity bus service,

"(iii) the purchase of intercity passenger rail services from the Corporation,

"(iv) capital expenditures related to State-owned rail operations in the State,

"(v) any project that is eligible to receive funding under section 5309, 5310, or 5311 of title 49, United States Code,

"(vi) any project that is eligible to receive funding under section 103, 130, 133, 144, 149, or 152 of title 23, United States Code,

"(vii) the upgrading and maintenance of intercity primary and rural air service facilities, and the purchase of intercity air service between primary and rural airports and regional hubs,

"(viii) the provision of passenger ferryboat service within the State,

"(ix) the provision of harbor improvements within the State, and

"(x) the payment of interest and principal on obligations incurred for such acquisition, upgrading, maintenance, purchase, expenditures, provision, and projects.

In the case of a non-Amtrak State which provides its own intercity passenger rail service on the date of the enactment of this paragraph [Aug. 5, 1997], subparagraph (B) shall be applied by only taking into account clauses (i) and (iv).

"(2) NON-AMTRAK STATE.—The term 'non-Amtrak State' means any State which is not receiving intercity passenger rail service from the Corporation as of the date of the enactment of this Act [Aug. 5, 1997].

"(f) AUTHORIZING REFORM REQUIRED.—

"(1) IN GENERAL.—The Secretary of the Treasury shall not make payment of any refund of any payment described in subsection (a)(1) earlier than the date of the enactment of Federal legislation, other than legislation included in this section, which is enacted after July 29, 1997, and which authorizes reforms of the National Railroad Passenger Corporation.

"(2) NO INTEREST.—Notwithstanding any other provision of law, if the payment of any refund is delayed by reason of paragraph (1), no interest shall accrue with respect to such payment prior to the 45th day following the date of the enactment of Federal legislation described in paragraph (1).

"(3) ESTIMATE OF REVENUE.—For purposes of estimating revenues under budget reconciliation, the impact of this section on Federal revenues shall be determined without regard to this subsection."

[Pub. L. 105–178, title IX, §9007(b), June 9, 1998, 112 Stat. 506, provided that: "The amendments made by

this section [amending section 977 of Pub. L. 105–34, set out above] shall take effect as if included in the enactment of section 977 of the Taxpayer Relief Act of 1997 [Pub. L. 105–34]."]

DEDUCTION FOR SPECIAL ASSESSMENTS

Subsec. (f) of this section not applicable to deduction for special assessments, see section 2711(2) of Pub. L. 104–208, set out as a note under section 162 of this title.

CARRYBACK OF DEFERRED STATUTORY OR TORT LIABILITY LOSS TO TAXABLE YEAR BEGINNING BEFORE JANUARY 1, 1984

Pub. L. 101–508, title XI, §11811(b)(2)(B), Nov. 5, 1990, 104 Stat. 1388–533, provided that: "The portion of any loss which is attributable to a deferred statutory or tort liability loss (as defined in section 172(k) of the Internal Revenue Code of 1986 as in effect on the day before the date of the enactment of this Act [Nov. 5, 1990]) may not be carried back to any taxable year beginning before January 1, 1984, by reason of the amendment made by subparagraph (A) [amending this section]."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

REFUND OR CREDIT OF OVERPAYMENT; LIMITATIONS; INTEREST

Pub. L. 85–866, title I, §14, Sept. 2, 1958, 72 Stat. 1611, provided that if any refund or credit of any overpayment resulting from application of subsecs. (a) and (b) of Pub. L. 85–866, amending former subsecs. (f)(3), (4) and (g)(3), (4), was prevented on Sept. 2, 1958 or 6 months thereafter, by operation of any law or rule of law, refund was to be allowed if a claim was filed within six months of the date of such date but such refund was to be without interest.

INTEREST ATTRIBUTABLE TO NET OPERATING LOSS CARRYBACK FOR CERTAIN TAXABLE YEARS ENDING IN 1954

For payment of interest attributable to net operating loss carryback, see section 83(e) of Pub. L. 85–866, set out as a note under section 6601 of this title.

[1] So in original. Probably means subsection (h)(3)(C)(i) of section 165 of this title.

[2] So in original. Probably should be followed by "of 1935".

[3] So in original. Probably should be followed by "to".

§173. Circulation expenditures

(a) General rule

Notwithstanding section 263, all expenditures (other than expenditures for the purchase of land or depreciable property or for the acquisition of circulation through the purchase of any part of the business of another publisher of a newspaper, magazine, or other periodical) to establish, maintain, or increase the circulation of a newspaper, magazine, or other periodical shall be allowed as a deduction; except that the deduction shall not be allowed with respect to the portion of such expenditures as, under regulations prescribed by the Secretary, is chargeable to capital account if the taxpayer elects, in accordance with such regulations, to treat such portion as so chargeable. Such election, if made, must be for the total amount of such portion of the expenditures which is so chargeable to capital account, and shall be binding for all subsequent taxable years unless, upon application by the taxpayer, the Secretary permits a revocation of such election subject to such conditions as he deems necessary.

(b) Cross reference

For election of 3-year amortization of expenditures allowable as a deduction under

subsection (a), see section 59(e).

(Aug. 16, 1954, ch. 736, 68A Stat. 65; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–248, title II, §201(d)(9)(A), formerly §201(c)(9)(A), Sept. 3, 1982, 96 Stat. 420, renumbered §201(d)(9)(A), Pub. L. 97–448, title III, §306(a)(1)(A)(i), Jan. 12, 1983, 96 Stat. 2400; Pub. L. 98–369, div. A, title VII, §711(a)(3)(C), July 18, 1984, 98 Stat. 942; Pub. L. 99–514, title VII, §701(e)(4)(D), Oct. 22, 1986, 100 Stat. 2343; Pub. L. 100–647, title I, §1007(g)(5), Nov. 10, 1988, 102 Stat. 3435.)

AMENDMENTS

1988—Subsec. (b). Pub. L. 100–647 substituted "section 59(e)" for "section 59(d)".

1986—Subsec. (b). Pub. L. 99–514 substituted "section 59(d)" for "section 58(i)".

1984—Subsec. (b). Pub. L. 98–369 substituted "3-year" for "10-year".

1982—Pub. L. 97–248, §201(d)(9)(A), designated existing provisions as subsec. (a), added subsec. (a) heading, and added subsec. (b).

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" in two places.

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date note under section 55 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

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

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

§174. Research and experimental expenditures

(a) Treatment as expenses

(1) In general

A taxpayer may treat research or experimental expenditures which are paid or incurred by him during the taxable year in connection with his trade or business as expenses which are not chargeable to capital account. The expenditures so treated shall be allowed as a deduction.

(2) When method may be adopted

(A) Without consent

A taxpayer may, without the consent of the Secretary, adopt the method provided in this subsection for his first taxable year—

(i) which begins after December 31, 1953, and ends after August 16, 1954, and

(ii) for which expenditures described in paragraph (1) are paid or incurred.

(B) With consent

A taxpayer may, with the consent of the Secretary, adopt at any time the method provided in this subsection.

(3) Scope

The method adopted under this subsection shall apply to all expenditures described in paragraph (1). The method adopted shall be adhered to in computing taxable income for the taxable year and for all subsequent taxable years unless, with the approval of the Secretary, a change to a different method is authorized with respect to part or all of such expenditures.

(b) Amortization of certain research and experimental expenditures

(1) In general

At the election of the taxpayer, made in accordance with regulations prescribed by the Secretary, research or experimental expenditures which are—

(A) paid or incurred by the taxpayer in connection with his trade or business,

(B) not treated as expenses under subsection (a), and

(C) chargeable to capital account but not chargeable to property of a character which is subject to the allowance under section 167 (relating to allowance for depreciation, etc.) or section 611 (relating to allowance for depletion),

may be treated as deferred expenses. In computing taxable income, such deferred expenses shall be allowed as a deduction ratably over such period of not less than 60 months as may be selected by the taxpayer (beginning with the month in which the taxpayer first realizes benefits from such expenditures). Such deferred expenses are expenditures properly chargeable to capital account for purposes of section 1016(a)(1) (relating to adjustments to basis of property).

(2) Time for and scope of election

The election provided by paragraph (1) may be made for any taxable year beginning after December 31, 1953, but only if made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof). The method so elected, and the period selected by the taxpayer, shall be adhered to in computing taxable income for the taxable year for which the election is made and for all subsequent taxable years unless, with the approval of the Secretary, a change to a different method (or to a different period) is authorized with respect to part or all of such expenditures. The election shall not apply to any expenditure paid or incurred during any taxable year before the taxable year for which the taxpayer makes the election.

(c) Land and other property

This section shall not apply to any expenditure for the acquisition or improvement of land, or for the acquisition or improvement of property to be used in connection with the research or experimentation and of a character which is subject to the allowance under section 167 (relating to allowance for depreciation, etc.) or section 611 (relating to allowance for depletion); but for purposes of this section allowances under section 167, and allowances under section 611, shall be considered as expenditures.

(d) Exploration expenditures

This section shall not apply to any expenditure paid or incurred for the purpose of ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral (including oil and gas).

(e) Only reasonable research expenditures eligible

This section shall apply to a research or experimental expenditure only to the extent that the amount thereof is reasonable under the circumstances.

(f) Cross references

(1) For adjustments to basis of property for amounts allowed as deductions as deferred

expenses under subsection (b), see section 1016(a)(14).

(2) For election of 10-year amortization of expenditures allowable as a deduction under subsection (a), see section 59(e).

(Aug. 16, 1954, ch. 736, 68A Stat. 66; Pub. L. 94–455, title XIX, §§1901(a)(30), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1769, 1834; Pub. L. 97–248, title II, §201(d)(9)(B) formerly §201(c)(9)(B), Sept. 3, 1982, 96 Stat. 420, renumbered §201(d)(9)(B), Pub. L. 97–448, title III, §306(a)(1)(A)(i), Jan. 12, 1983, 96 Stat. 2400; amended Pub. L. 99–514, title VII, §701(e)(4)(D), Oct. 22, 1986, 100 Stat. 2343; Pub. L. 100–647, title I, §1007(g)(5), Nov. 10, 1988, 102 Stat. 3435; Pub. L. 101–239, title VII, §7110(d), Dec. 19, 1989, 103 Stat. 2325.)

AMENDMENTS

1989—Subsecs. (e), (f). Pub. L. 101–239 added subsec. (e) and redesignated former subsec. (e) as (f).

1988—Subsec. (e)(2). Pub. L. 100–647 substituted "section 59(e)" for "section 59(d)".

1986—Subsec. (e)(2). Pub. L. 99–514 substituted "section 59(d)" for "section 58(i)".

1982—Subsec. (e). Pub. L. 97–248, §201(d)(9)(B), substituted "Cross references" for "Cross reference" in heading, designated existing provisions as par. (1), and added par. (2).

1976—Subsec. (a)(2)(A). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (a)(2)(A)(i). Pub. L. 94–455, §1901(a)(30), substituted "August 16, 1954" for "the date on which this title is enacted" after "ends after".

Subsecs. (a)(3), (b)(1), (2). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable to taxable years beginning after Dec. 31, 1989, see section 7110(e) of Pub. L. 101–239, set out as a note under section 41 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date note under section 55 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

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

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

ALLOCATION OR APPORTIONMENT TO SOURCES WITHIN UNITED STATES OF RESEARCH AND EXPERIMENTAL EXPENDITURES PAID OR INCURRED FOR RESEARCH ACTIVITIES CONDUCTED IN UNITED STATES; 2-YEAR PROGRAM

Pub. L. 97–34, title II, §223(a), Aug. 13, 1981, 95 Stat. 249, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "In the case of the taxpayer's first 2 taxable years beginning within 2 years after the date of the enactment of this Act [Aug. 13, 1981], all research and experimental expenditures (within the meaning of section 174 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) which are paid or incurred in such year for research activities conducted in the United States shall be allocated or apportioned to sources within the United States."

§175. Soil and water conservation expenditures; endangered species recovery

expenditures

(a) In general

A taxpayer engaged in the business of farming may treat expenditures which are paid or incurred by him during the taxable year for the purpose of soil or water conservation in respect of land used in farming, or for the prevention of erosion of land used in farming, or for endangered species recovery, as expenses which are not chargeable to capital account. The expenditures so treated shall be allowed as a deduction.

(b) Limitation

The amount deductible under subsection (a) for any taxable year shall not exceed 25 percent of the gross income derived from farming during the taxable year. If for any taxable year the total of the expenditures treated as expenses which are not chargeable to capital account exceeds 25 percent of the gross income derived from farming during the taxable year, such excess shall be deductible for succeeding taxable years in order of time; but the amount deductible under this section for any one such succeeding taxable year (including the expenditures actually paid or incurred during the taxable year) shall not exceed 25 percent of the gross income derived from farming during the taxable year.

(c) Definitions

For purposes of subsection (a)—

(1) The term "expenditures which are paid or incurred by him during the taxable year for the purpose of soil or water conservation in respect of land used in farming, or for the prevention of erosion of land used in farming, or for endangered species recovery" means expenditures paid or incurred for the treatment or moving of earth, including (but not limited to) leveling, grading and terracing, contour furrowing, the construction, control, and protection of diversion channels, drainage ditches, earthen dams, watercourses, outlets, and ponds, the eradication of brush, and the planting of windbreaks. Such term shall include expenditures paid or incurred for the purpose of achieving site-specific management actions recommended in recovery plans approved pursuant to the Endangered Species Act of 1973. Such term does not include—

(A) the purchase, construction, installation, or improvement of structures, appliances, or facilities which are of a character which is subject to the allowance for depreciation provided in section 167, or

(B) any amount paid or incurred which is allowable as a deduction without regard to this section.

Notwithstanding the preceding sentences, such term also includes any amount, not otherwise allowable as a deduction, paid or incurred to satisfy any part of an assessment levied by a soil or water conservation or drainage district to defray expenditures made by such district (i) which, if paid or incurred by the taxpayer, would without regard to this sentence constitute expenditures deductible under this section, or (ii) for property of a character subject to the allowance for depreciation provided in section 167 and used in the soil or water conservation or drainage district's business as such (to the extent that the taxpayer's share of the assessment levied on the members of the district for such property does not exceed 10 percent of such assessment).

(2) The term "land used in farming" means land used (before or simultaneously with the expenditures described in paragraph (1)) by the taxpayer or his tenant for the production of crops, fruits, or other agricultural products or for the sustenance of livestock.

(3) ADDITIONAL LIMITATIONS.—

(A) EXPENDITURES MUST BE CONSISTENT WITH SOIL CONSERVATION PLAN OR ENDANGERED SPECIES RECOVERY PLAN.—Notwithstanding any other provision of this section, subsection (a) shall not apply to any expenditures unless such expenditures are consistent with—

(i) the plan (if any) approved by the Soil Conservation Service of the Department of Agriculture or the recovery plan approved pursuant to the Endangered Species Act of 1973 for the area in which the land is located, or

(ii) if there is no plan described in clause (i), any soil conservation plan of a comparable State agency.

(B) CERTAIN WETLAND, ETC., ACTIVITIES NOT QUALIFIED.—Subsection (a) shall not apply to any expenditures in connection with the draining or filling of wetlands or land preparation for center pivot irrigation systems.

(d) When method may be adopted

(1) Without consent

A taxpayer may, without the consent of the Secretary, adopt the method provided in this section for his first taxable year—

(A) which begins after December 31, 1953, and ends after August 16, 1954, and

(B) for which expenditures described in subsection (a) are paid or incurred.

(2) With consent

A taxpayer may, with the consent of the Secretary, adopt at any time the method provided in this section.

(e) Scope

The method adopted under this section shall apply to all expenditures described in subsection (a). The method adopted shall be adhered to in computing taxable income for the taxable year and for all subsequent taxable years unless, with the approval of the Secretary, a change to a different method is authorized with respect to part or all of such expenditures.

(f) Rules applicable to assessments for depreciable property

(1) Amounts treated as paid or incurred over 9-year period

In the case of an assessment levied to defray expenditures for property described in clause (ii) of the last sentence of subsection (c)(1), if the amount of such assessment paid or incurred by the taxpayer during the taxable year (determined without the application of this paragraph) is in excess of an amount equal to 10 percent of the aggregate amounts which have been and will be assessed as the taxpayer's share of the expenditures by the district for such property, and if such excess is more than $500, the entire excess shall be treated as paid or incurred ratably over each of the 9 succeeding taxable years.

(2) Disposition of land during 9-year period

If paragraph (1) applies to an assessment and the land with respect to which such assessment was made is sold or otherwise disposed of by the taxpayer (other than by the reason of his death) during the 9 succeeding taxable years, any amount of the excess described in paragraph (1) which has not been treated as paid or incurred for a taxable year ending on or before the sale or other disposition shall be added to the adjusted basis of such land immediately prior to its sale or other disposition and shall not thereafter be treated as paid or incurred ratably under paragraph (1).

(3) Disposition by reason of death

If paragraph (1) applies to an assessment and the taxpayer dies during the 9 succeeding taxable years, any amount of the excess described in paragraph (1) which has not been treated as paid or incurred for a taxable year ending before his death shall be treated as paid or incurred in the taxable year in which he dies.

(Aug. 16, 1954, ch. 736, 68A Stat. 67; Pub. L. 90–630, §5(a), (b), Oct. 22, 1968, 82 Stat. 1329; Pub. L. 94–455, title XIX, §§1901(a)(30), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1769, 1834; Pub. L. 99–514, title IV, §401(a), Oct. 22, 1986, 100 Stat. 2221; Pub. L. 110–234, title XV, §15303(a)(1)–(2)(B), (b), May 22, 2008, 122 Stat. 1501, 1502; Pub. L. 110–246, §4(a), title XV, §15303(a)(1)–(2)(B), (b), June 18, 2008, 122 Stat. 1664, 2263, 2264.)

REFERENCES IN TEXT

The Endangered Species Act of 1973, referred to in subsec. (c)(1), (3)(A)(i), is Pub. L. 93–205, Dec. 28,

1973, 87 Stat. 884, which is classified principally to chapter 35 (§1531 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1531 of Title 16 and Tables.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2008—Pub. L. 110–246, §15303(a)(2)(B), inserted "; endangered species recovery expenditures" after "conservation expenditures" in section catchline.

Subsec. (a). Pub. L. 110–246, §15303(a)(2)(A), inserted ", or for endangered species recovery" after "erosion of land used in farming".

Subsec. (c)(1). Pub. L. 110–246, §15303(a)(1), (2)(A), in introductory provisions, inserted ", or for endangered species recovery" after "erosion of land used in farming" and "Such term shall include expenditures paid or incurred for the purpose of achieving site-specific management actions recommended in recovery plans approved pursuant to the Endangered Species Act of 1973." after first sentence.

Subsec. (c)(3)(A). Pub. L. 110–246, §15303(b)(1), inserted "or endangered species recovery plan" after "conservation plan" in heading.

Subsec. (c)(3)(A)(i). Pub. L. 110–246, §15303(b)(2), inserted "or the recovery plan approved pursuant to the Endangered Species Act of 1973" after "Department of Agriculture".

1986—Subsec. (c)(3). Pub. L. 99–514 added par. (3).

1976—Subsec. (d)(1). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (d)(1)(A). Pub. L. 94–455, §1901(a)(30), substituted "August 16, 1954" for "the date on which this title is enacted" after "and ends after".

Subsecs. (d)(2), (e). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

1968—Subsec. (c)(1). Pub. L. 90–630, §5(a), in text following subpar. (B), designated as cl. (i) existing provisions covering amounts which, if paid or incurred by the taxpayer, would without regard to the exception constitute deductible expenditures, and added cl. (ii).

Subsec. (f). Pub. L. 90–630, §5(b), added subsec. (f).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Pub. L. 110–234, title XV, §15303(c), May 22, 2008, 122 Stat. 1502, and Pub. L. 110–246, §4(a), title XV, §15303(c), June 18, 2008, 122 Stat. 1664, 2264, provided that: "The amendments made by this section [amending this section] shall apply to expenditures paid or incurred after December 31, 2008."

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

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title IV, §401(b), Oct. 22, 1986, 100 Stat. 2221, provided that: "The amendment made by this section [amending this section] shall apply to amounts paid or incurred after December 31, 1986, in taxable years ending after such date."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(30) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Pub. L. 90–630, §5(c), Oct. 22, 1968, 82 Stat. 1330, provided that: "The amendments made by subsections (a) and (b) [amending this section] shall apply to assessments levied after the date of the enactment of this Act [Oct. 22, 1968] in taxable years ending after such date."

§176. Payments with respect to employees of certain foreign corporations

In the case of a domestic corporation, there shall be allowed as a deduction amounts (to the extent

not compensated for) paid or incurred pursuant to an agreement entered into under section 3121(l) with respect to services performed by United States citizens employed by foreign subsidiary corporations. Any reimbursement of any amount previously allowed as a deduction under this section shall be included in gross income for the taxable year in which received.

(Added Sept. 1, 1954, ch. 1206, title II, §210(a), 68 Stat. 1096.)

[§177. Repealed. Pub. L. 99–514, title II, §241(a), Oct. 22, 1986, 100 Stat. 2181]

Section, added June 29, 1956, ch. 464, §4(a), 70 Stat. 406; amended Oct. 4, 1976, Pub. L. 94–455, title XIX, §1906(b)(13)(A), 90 Stat. 1834, related to deductions for trademark and trade name expenditures.

EFFECTIVE DATE OF REPEAL

Pub. L. 99–514, title II, §241(c), Oct. 22, 1986, 100 Stat. 2181, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending sections 312 and 1016 of this title and repealing this section] shall apply to expenditures paid or incurred after December 31, 1986.

"(2) TRANSITIONAL RULE.—The amendments made by this section shall not apply to any expenditure incurred—

"(A) pursuant to a binding contract entered into before March 2, 1986, or

"(B) with respect to the development, protection, expansion, registration, or defense of a trademark or trade name commenced before March 2, 1986, but only if not less than the lesser of $1,000,000 or 5 percent of the aggregate cost of such development, protection, expansion, registration, or defense has been incurred or committed before such date.

The preceding sentence shall not apply to any expenditure with respect to a trademark or trade name placed in service after December 31, 1987."

§178. Amortization of cost of acquiring a lease

(a) General rule

In determining the amount of the deduction allowable to a lessee for exhaustion, wear and tear, obsolescence, or amortization in respect of any cost of acquiring the lease, the term of the lease shall be treated as including all renewal options (and any other period for which the parties reasonably expect the lease to be renewed) if less than 75 percent of such cost is attributable to the period of the term of the lease remaining on the date of its acquisition.

(b) Certain periods excluded

For purposes of subsection (a), in determining the period of the term of the lease remaining on the date of acquisition, there shall not be taken into account any period for which the lease may subsequently be renewed, extended, or continued pursuant to an option exercisable by the lessee.

(Added Pub. L. 85–866, title I, §15(a), Sept. 2, 1958, 72 Stat. 1612; amended Pub. L. 99–514, title II, §201(d)(2)(A), title XVIII, §1812(c)(4)(B), Oct. 22, 1986, 100 Stat. 2139, 2835; Pub. L. 100–647, title I, §1002(a)(9), Nov. 10, 1988, 102 Stat. 3354.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–647 substituted "the deduction allowable to a lessee for exhaustion, wear and tear, obsolescence, or amortization" for "the deduction allowable to a lessee of a lease for any taxable year for amortization under section 167, 169, 179, 185, 190, 193, or 194".

1986—Pub. L. 99–514, §201(d)(2)(A), in amending section generally, substituted provision relating to amortization of cost of acquiring a lease, subsec. (a) setting out a general rule and subsec. (b) excluding certain periods, for former provision for depreciation or amortization of improvements made by lessee on lessor's property, subsec. (a) setting out a general rule, subsec. (b), in case of related lessee and lessor, setting out a general rule in par. (1) and defining related persons in par. (2), and subsec. (c) setting out a reasonable certainty test.

Subsec. (b)(2)(B). Pub. L. 99–514, §1812(c)(4)(B), inserted before the period "and subsection (f)(1)(A) of

such section shall not apply".

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 201(d)(2)(A) of Pub. L. 99–514 applicable to property placed in service after Dec. 31, 1986, in taxable years ending after such date, with exceptions, see sections 203 and 204 of Pub. L. 99–514, set out as a note under section 168 of this title.

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

Amendment by section 1812(c)(4)(B) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Pub. L. 85–866, title I, §15(c), Sept. 2, 1958, 72 Stat. 1613, provided that: "The amendments made by this section [enacting this section and amending analysis preceding section 161 of this title] shall apply with respect to costs of acquiring a lease incurred, and improvements begun, after July 28, 1958 (other than improvements which, on July 28, 1958, and at all times thereafter, the lessee was under a binding legal obligation to make)."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§179. Election to expense certain depreciable business assets

(a) Treatment as expenses

A taxpayer may elect to treat the cost of any section 179 property as an expense which is not chargeable to capital account. Any cost so treated shall be allowed as a deduction for the taxable year in which the section 179 property is placed in service.

(b) Limitations

(1) Dollar limitation

The aggregate cost which may be taken into account under subsection (a) for any taxable year shall not exceed—

(A) $250,000 in the case of taxable years beginning after 2007 and before 2010,

(B) $500,000 in the case of taxable years beginning in 2010, 2011, 2012, or 2013, and

(C) $25,000 in the case of taxable years beginning after 2013.

(2) Reduction in limitation

The limitation under paragraph (1) for any taxable year shall be reduced (but not below zero) by the amount by which the cost of section 179 property placed in service during such taxable year exceeds—

(A) $800,000 in the case of taxable years beginning after 2007 and before 2010,

(B) $2,000,000 in the case of taxable years beginning in 2010, 2011, 2012, or 2013, and

(C) $200,000 in the case of taxable years beginning after 2013.

(3) Limitation based on income from trade or business

(A) In general

The amount allowed as a deduction under subsection (a) for any taxable year (determined after the application of paragraphs (1) and (2)) shall not exceed the aggregate amount of taxable income of the taxpayer for such taxable year which is derived from the active conduct by the taxpayer of any trade or business during such taxable year.

(B) Carryover of disallowed deduction

The amount allowable as a deduction under subsection (a) for any taxable year shall be increased by the lesser of—

(i) the aggregate amount disallowed under subparagraph (A) for all prior taxable years (to the extent not previously allowed as a deduction by reason of this subparagraph), or

(ii) the excess (if any) of—

(I) the limitation of paragraphs (1) and (2) (or if lesser, the aggregate amount of taxable income referred to in subparagraph (A)), over

(II) the amount allowable as a deduction under subsection (a) for such taxable year without regard to this subparagraph.

(C) Computation of taxable income

For purposes of this paragraph, taxable income derived from the conduct of a trade or business shall be computed without regard to the deduction allowable under this section.

(4) Married individuals filing separately

In the case of a husband and wife filing separate returns for the taxable year—

(A) such individuals shall be treated as 1 taxpayer for purposes of paragraphs (1) and (2), and

(B) unless such individuals elect otherwise, 50 percent of the cost which may be taken into account under subsection (a) for such taxable year (before application of paragraph (3)) shall be allocated to each such individual.

(5) Limitation on cost taken into account for certain passenger vehicles

(A) In general

The cost of any sport utility vehicle for any taxable year which may be taken into account under this section shall not exceed $25,000.

(B) Sport utility vehicle

For purposes of subparagraph (A)—

(i) In general

The term "sport utility vehicle" means any 4-wheeled vehicle—

(I) which is primarily designed or which can be used to carry passengers over public streets, roads, or highways (except any vehicle operated exclusively on a rail or rails),

(II) which is not subject to section 280F, and

(III) which is rated at not more than 14,000 pounds gross vehicle weight.

(ii) Certain vehicles excluded

Such term does not include any vehicle which—

(I) is designed to have a seating capacity of more than 9 persons behind the driver's seat,

(II) is equipped with a cargo area of at least 6 feet in interior length which is an open area or is designed for use as an open area but is enclosed by a cap and is not readily accessible directly from the passenger compartment, or

(III) has an integral enclosure, fully enclosing the driver compartment and load carrying device, does not have seating rearward of the driver's seat, and has no body section protruding more than 30 inches ahead of the leading edge of the windshield.

(c) Election

(1) In general

An election under this section for any taxable year shall—

(A) specify the items of section 179 property to which the election applies and the portion of the cost of each of such items which is to be taken into account under subsection (a), and

(B) be made on the taxpayer's return of the tax imposed by this chapter for the taxable year.

Such election shall be made in such manner as the Secretary may by regulations prescribe.

(2) Election irrevocable

Any election made under this section, and any specification contained in any such election, may not be revoked except with the consent of the Secretary. Any such election or specification with respect to any taxable year beginning after 2002 and before 2014 may be revoked by the taxpayer with respect to any property, and such revocation, once made, shall be irrevocable.

(d) Definitions and special rules

(1) Section 179 property

For purposes of this section, the term "section 179 property" means property—

(A) which is—

(i) tangible property (to which section 168 applies), or

(ii) computer software (as defined in section 197(e)(3)(B)) which is described in section 197(e)(3)(A)(i), to which section 167 applies, and which is placed in service in a taxable year beginning after 2002 and before 2014,

(B) which is section 1245 property (as defined in section 1245(a)(3)), and

(C) which is acquired by purchase for use in the active conduct of a trade or business.

Such term shall not include any property described in section 50(b) and shall not include air conditioning or heating units.

(2) Purchase defined

For purposes of paragraph (1), the term "purchase" means any acquisition of property, but only if—

(A) the property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of losses under section 267 or 707(b) (but, in applying section 267(b) and (c) for purposes of this section, paragraph (4) of section 267(c) shall be treated as providing that the family of an individual shall include only his spouse, ancestors, and lineal descendants),

(B) the property is not acquired by one component member of a controlled group from another component member of the same controlled group, and

(C) the basis of the property in the hands of the person acquiring it is not determined—

(i) in whole or in part by reference to the adjusted basis of such property in the hands of the person from whom acquired, or

(ii) under section 1014(a) (relating to property acquired from a decedent).

(3) Cost

For purposes of this section, the cost of property does not include so much of the basis of such property as is determined by reference to the basis of other property held at any time by the person acquiring such property.

(4) Section not to apply to estates and trusts

This section shall not apply to estates and trusts.

(5) Section not to apply to certain noncorporate lessors

This section shall not apply to any section 179 property which is purchased by a person who is not a corporation and with respect to which such person is the lessor unless—

(A) the property subject to the lease has been manufactured or produced by the lessor, or

(B) the term of the lease (taking into account options to renew) is less than 50 percent of the class life of the property (as defined in section 168(i)(1)), and for the period consisting of the first 12 months after the date on which the property is transferred to the lessee the sum of the deductions with respect to such property which are allowable to the lessor solely by reason of section 162 (other than rents and reimbursed amounts with respect to such property) exceeds 15 percent of the rental income produced by such property.

(6) Dollar limitation of controlled group

For purposes of subsection (b) of this section—

(A) all component members of a controlled group shall be treated as one taxpayer, and

(B) the Secretary shall apportion the dollar limitation contained in subsection (b)(1) among the component members of such controlled group in such manner as he shall by regulations prescribe.

(7) Controlled group defined

For purposes of paragraphs (2) and (6), the term "controlled group" has the meaning assigned to it by section 1563(a), except that, for such purposes, the phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent" each place it appears in section 1563(a)(1).

(8) Treatment of partnerships and S corporations

In the case of a partnership, the limitations of subsection (b) shall apply with respect to the partnership and with respect to each partner. A similar rule shall apply in the case of an S corporation and its shareholders.

(9) Coordination with section 38

No credit shall be allowed under section 38 with respect to any amount for which a deduction is allowed under subsection (a).

(10) Recapture in certain cases

The Secretary shall, by regulations, provide for recapturing the benefit under any deduction allowable under subsection (a) with respect to any property which is not used predominantly in a trade or business at any time.

(e) Special rules for qualified disaster assistance property

(1) In general

For purposes of this section—

(A) the dollar amount in effect under subsection (b)(1) for the taxable year shall be increased by the lesser of—

(i) $100,000, or

(ii) the cost of qualified section 179 disaster assistance property placed in service during the taxable year, and

(B) the dollar amount in effect under subsection (b)(2) for the taxable year shall be increased by the lesser of—

(i) $600,000, or

(ii) the cost of qualified section 179 disaster assistance property placed in service during the taxable year.

(2) Qualified section 179 disaster assistance property

For purposes of this subsection, the term "qualified section 179 disaster assistance property" means section 179 property (as defined in subsection (d)) which is qualified disaster assistance property (as defined in section 168(n)(2)).

(3) Coordination with empowerment zones and renewal communities

For purposes of sections 1397A and 1400J, qualified section 179 disaster assistance property shall not be treated as qualified zone property or qualified renewal property, unless the taxpayer

elects not to take such qualified section 179 disaster assistance property into account for purposes of this subsection.

(4) Recapture

For purposes of this subsection, rules similar to the rules under subsection (d)(10) shall apply with respect to any qualified section 179 disaster assistance property which ceases to be qualified section 179 disaster assistance property.

(f) Special rules for qualified real property

(1) In general

If a taxpayer elects the application of this subsection for any taxable year beginning in 2010, 2011, 2012, or 2013, the term "section 179 property" shall include any qualified real property which is—

(A) of a character subject to an allowance for depreciation,
(B) acquired by purchase for use in the active conduct of a trade or business, and
(C) not described in the last sentence of subsection (d)(1).

(2) Qualified real property

For purposes of this subsection, the term "qualified real property" means—

(A) qualified leasehold improvement property described in section 168(e)(6),
(B) qualified restaurant property described in section 168(e)(7), and
(C) qualified retail improvement property described in section 168(e)(8).

(3) Limitation

For purposes of applying the limitation under subsection (b)(1)(B), not more than $250,000 of the aggregate cost which is taken into account under subsection (a) for any taxable year may be attributable to qualified real property.

(4) Carryover limitation

(A) In general

Notwithstanding subsection (b)(3)(B), no amount attributable to qualified real property may be carried over to a taxable year beginning after 2013.

(B) Treatment of disallowed amounts

Except as provided in subparagraph (C), to the extent that any amount is not allowed to be carried over to a taxable year beginning after 2013 by reason of subparagraph (A), this title shall be applied as if no election under this section had been made with respect to such amount.

(C) Amounts carried over from 2010, 2011 and 2012

If subparagraph (B) applies to any amount (or portion of an amount) which is carried over from a taxable year other than the taxpayer's last taxable year beginning in 2013, such amount (or portion of an amount) shall be treated for purposes of this title as attributable to property placed in service on the first day of the taxpayer's last taxable year beginning in 2013. For the last taxable year beginning in 2013, the amount determined under subsection (b)(3)(A) for such taxable year shall be determined without regard to this paragraph.

(D) Allocation of amounts

For purposes of applying this paragraph and subsection (b)(3)(B) to any taxable year, the amount which is disallowed under subsection (b)(3)(A) for such taxable year which is attributed to qualified real property shall be the amount which bears the same ratio to the total amount so disallowed as—

(i) the aggregate amount attributable to qualified real property placed in service during such taxable year, increased by the portion of any amount carried over to such taxable year from a prior taxable year which is attributable to such property, bears to

(ii) the total amount of section 179 property placed in service during such taxable year, increased by the aggregate amount carried over to such taxable year from any prior taxable

year.

For purposes of the preceding sentence, only section 179 property with respect to which an election was made under subsection (c)(1) (determined without regard to subparagraph (B) of this paragraph) shall be taken into account.

(Added Pub. L. 85–866, title II, §204(a), Sept. 2, 1958, 72 Stat. 1679; amended Pub. L. 87–834, §13(c)(2), Oct. 16, 1962, 76 Stat. 1034; Pub. L. 91–172, title IV, §401(f), Dec. 30, 1969, 83 Stat. 603; Pub. L. 94–455, title II, §213(a), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1547, 1834; Pub. L. 97–34, title II, §202(a), Aug. 13, 1981, 95 Stat. 219; Pub. L. 97–354, §3(f), Oct. 19, 1982, 96 Stat. 1689; Pub. L. 97–448, title I, §102(aa), Jan. 12, 1983, 96 Stat. 2369; Pub. L. 98–369, div. A, title I, §13, July 18, 1984, 98 Stat. 505; Pub. L. 99–514, title II, §§201(d)(3), 202, Oct. 22, 1986, 100 Stat. 2139, 2142; Pub. L. 100–647, title I, §1002(a)(19), (b)(1), Nov. 10, 1988, 102 Stat. 3356, 3357; Pub. L. 101–508, title XI, §11813(b)(11), Nov. 5, 1990, 104 Stat. 1388–554; Pub. L. 103–66, title XIII, §13116(a), Aug. 10, 1993, 107 Stat. 432; Pub. L. 104–188, title I, §§1111(a), 1702(h)(10), (19), Aug. 20, 1996, 110 Stat. 1758, 1874; Pub. L. 108–27, title II, §202(a)–(e), May 28, 2003, 117 Stat. 757, 758; Pub. L. 108–357, title II, §201, title VIII, §910(a), Oct. 22, 2004, 118 Stat. 1429, 1659; Pub. L. 109–222, title I, §101, May 17, 2006, 120 Stat. 346; Pub. L. 110–28, title VIII, §8212(a)–(c), May 25, 2007, 121 Stat. 192; Pub. L. 110–185, title I, §102(a), Feb. 13, 2008, 122 Stat. 618; Pub. L. 110–343, div. C, title VII, §711(a), Oct. 3, 2008, 122 Stat. 3928; Pub. L. 111–5, div. B, title I, §1202(a), Feb. 17, 2009, 123 Stat. 335; Pub. L. 111–147, title II, §201(a), Mar. 18, 2010, 124 Stat. 77; Pub. L. 111–240, title II, §2021(a)–(d), Sept. 27, 2010, 124 Stat. 2556, 2558; Pub. L. 111–312, title IV, §402(a)–(e), title VII, §737(b)(3), Dec. 17, 2010, 124 Stat. 3306, 3307, 3318; Pub. L. 112–240, title III, §315(a)–(d), Jan. 2, 2013, 126 Stat. 2330, 2331.)

AMENDMENTS

2013—Subsec. (b)(1)(B). Pub. L. 112–240, §315(a)(1)(A), substituted "2010, 2011, 2012, or 2013, and" for "2010 or 2011,".

Subsec. (b)(1)(C), (D). Pub. L. 112–240, §315(a)(1)(B)–(D), redesignated subpar. (D) as (C), substituted "2013" for "2012", and struck out former subpar. (C) which read as follows: "$125,000 in the case of taxable years beginning in 2012, and".

Subsec. (b)(2)(B). Pub. L. 112–240, §315(a)(2)(A), substituted "2010, 2011, 2012, or 2013, and" for "2010 or 2011,".

Subsec. (b)(2)(C), (D). Pub. L. 112–240, §315(a)(2)(B)–(D), redesignated subpar. (D) as (C), substituted "2013" for "2012", and struck out former subpar. (C) which read as follows: "$500,000 in the case of taxable years beginning in 2012, and".

Subsec. (b)(6). Pub. L. 112–240, §315(a)(3), struck out par. (6) which related to inflation adjustment.

Subsec. (c)(2). Pub. L. 112–240, §315(c), substituted "2014" for "2013".

Subsec. (d)(1)(A)(ii). Pub. L. 112–240, §315(b), substituted "2014" for "2013".

Subsec. (f)(1). Pub. L. 112–240, §315(d)(1), substituted "2010, 2011, 2012, or 2013" for "2010 or 2011" in introductory provisions.

Subsec. (f)(4)(A), (B). Pub. L. 112–240, §315(d)(2)(A), substituted "2013" for "2011".

Subsec. (f)(4)(C). Pub. L. 112–240, §315(d)(2)(B), substituted "2010, 2011 and 2012" for "2010" in heading and inserted at end "For the last taxable year beginning in 2013, the amount determined under subsection (b)(3)(A) for such taxable year shall be determined without regard to this paragraph."

Pub. L. 112–240, §315(d)(2)(A), substituted "2013" for "2011" in two places.

2010—Subsec. (b)(1). Pub. L. 111–240, §2021(a)(1), substituted "shall not exceed—" for "shall not exceed $25,000 ($250,000 in the case of taxable years beginning after 2007 and before 2011)." and added subpars. (A) to (C).

Pub. L. 111–147, §201(a)(1), substituted "($250,000 in the case of taxable years beginning after 2007 and before 2011)" for "($125,000 in the case of taxable years beginning after 2006 and before 2011)".

Subsec. (b)(1)(C), (D). Pub. L. 111–312, §402(a), added subpars. (C) and (D) and struck out former subpar. (C), which read as follows: "$25,000 in the case of taxable years beginning after 2011."

Subsec. (b)(2). Pub. L. 111–240, §2021(a)(2), substituted "exceeds—" for "exceeds $200,000 ($800,000 in the case of taxable years beginning after 2007 and before 2011)." and added subpars. (A) to (C).

Pub. L. 111–147, §201(a)(2), substituted "($800,000 in the case of taxable years beginning after 2007 and before 2011)" for "($500,000 in the case of taxable years beginning after 2006 and before 2011)".

Subsec. (b)(2)(C), (D). Pub. L. 111–312, §402(b), added subpars. (C) and (D) and struck out former subpar. (C), which read as follows: "$200,000 in the case of taxable years beginning after 2011."

Subsec. (b)(5). Pub. L. 111–147, §201(a)(3), (4), redesignated par. (6) as (5) and struck out former par. (5) which related to inflation adjustments.

Subsec. (b)(6). Pub. L. 111–312, §402(c), added par. (6).

Pub. L. 111–147, §201(a)(4), redesignated par. (6) as (5).

Subsec. (b)(7). Pub. L. 111–147, §201(a)(3), struck out par. (7) which related to increase in limitations for 2008 and 2009.

Subsec. (c)(2). Pub. L. 111–312, §402(e), substituted "2013" for "2012".

Pub. L. 111–240, §2021(c), substituted "2012" for "2011".

Subsec. (d)(1)(A)(ii). Pub. L. 111–312, §402(d), substituted "2013" for "2012".

Pub. L. 111–240, §2021(d), substituted "2012" for "2011".

Subsec. (f). Pub. L. 111–240, §2021(b), added subsec. (f).

Subsec. (f)(2)(B). Pub. L. 111–312, §737(b)(3)(A), struck out "(without regard to the dates specified in subparagraph (A)(i) thereof)" after "section 168(e)(7)".

Subsec. (f)(2)(C). Pub. L. 111–312, §737(b)(3)(B), struck out "(without regard to subparagraph (E) thereof)" after "section 168(e)(8)".

2009—Subsec. (b)(7). Pub. L. 111–5 substituted "2008, and 2009" for "2008" in heading and "2008, or 2009" for "2008" in introductory provisions.

2008—Subsec. (b)(7). Pub. L. 110–185 added par. (7).

Subsec. (e). Pub. L. 110–343 added subsec. (e).

2007—Subsec. (b)(1). Pub. L. 110–28, §8212(a), (b)(1), substituted "$125,000 in the case of taxable years beginning after 2006" for "$100,000 in the case of taxable years beginning after 2002" and "2011" for "2010".

Subsec. (b)(2). Pub. L. 110–28, §8212(a), (b)(2), substituted "$500,000 in the case of taxable years beginning after 2006" for "$400,000 in the case of taxable years beginning after 2002" and "2011" for "2010".

Subsec. (b)(5)(A). Pub. L. 110–28, §8212(a), (c)(1), (2), in introductory provisions, substituted "2007" for "2003", "2011" for "2010", and "$125,000 and $500,000" for "$100,000 and $400,000".

Subsec. (b)(5)(A)(ii). Pub. L. 110–28, §8212(c)(3), substituted "2006" for "2002".

Subsecs. (c)(2), (d)(1)(A)(ii). Pub. L. 110–28, §8212(a), substituted "2011" for "2010".

2006—Subsecs. (b)(1), (2), (5)(A), (c)(2), (d)(1)(A)(ii). Pub. L. 109–222 substituted "2010" for "2008".

2004—Subsec. (b)(1), (2), (5)(A). Pub. L. 108–357, §201, substituted "2008" for "2006".

Subsec. (b)(6). Pub. L. 108–357, §910(a), added par. (6).

Subsecs. (c)(2), (d)(1)(A)(ii). Pub. L. 108–357, §201, substituted "2008" for "2006".

2003—Subsec. (b)(1). Pub. L. 108–27, §202(a), reenacted heading without change and amended text generally. Prior to amendment, par. (1) contained a table specifying the maximum amounts for taxable years 1997 to 2003 and thereafter which could be taken into account as the aggregate costs under subsec. (a).

Subsec. (b)(2). Pub. L. 108–27, §202(b), inserted "($400,000 in the case of taxable years beginning after 2002 and before 2006)" after "$200,000".

Subsec. (b)(5). Pub. L. 108–27, §202(d), added par. (5).

Subsec. (c)(2). Pub. L. 108–27, §202(e), inserted at end "Any such election or specification with respect to any taxable year beginning after 2002 and before 2006 may be revoked by the taxpayer with respect to any property, and such revocation, once made, shall be irrevocable."

Subsec. (d)(1). Pub. L. 108–27, §202(c), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "For purposes of this section, the term 'section 179 property' means any tangible property (to which section 168 applies) which is section 1245 property (as defined in section 1245(a)(3)) and which is acquired by purchase for use in the active conduct of a trade or business. Such term shall not include any property described in section 50(b) and shall not include air conditioning or heating units."

1996—Subsec. (b)(1). Pub. L. 104–188, §1111(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "The aggregate cost which may be taken into account under subsection (a) for any taxable year shall not exceed $17,500."

Subsec. (d)(1). Pub. L. 104–188, §1702(h)(10), struck out "in" before "a trade or business".

Pub. L. 104–188, §1702(h)(19), inserted at end "Such term shall not include any property described in section 50(b) and shall not include air conditioning or heating units."

1993—Subsec. (b)(1). Pub. L. 103–66 substituted "$17,500" for "$10,000".

1990—Subsec. (d)(1). Pub. L. 101–508, §11813(b)(11)(A), substituted "section 1245 property (as defined in section 1245(a)(3))" for "section 38 property".

Subsec. (d)(5). Pub. L. 101–508, §11813(b)(11)(B), amended par. (5) generally. Prior to amendment, par.

(5) read as follows: "This section shall not apply to any section 179 property purchased by any person described in section 46(e)(3) unless the credit under section 38 is allowable with respect to such person for such property (determined without regard to this section)."

1988—Subsec. (b)(3). Pub. L. 100–647, §1002(b)(1), amended par. (3) generally. Prior to amendment, par. (3) read as follows:

"(A) IN GENERAL.—The aggregate cost of section 179 property taken into account under subsection (a) for any taxable year shall not exceed the aggregate amount of taxable income of the taxpayer for such taxable year which is derived from the active conduct by the taxpayer of any trade or business during such taxable year.

"(B) CARRYOVER OF UNUSED COST.—The amount of any cost which (but for subparagraph (A)) would have been allowed as a deduction under subsection (a) for any taxable year shall be carried to the succeeding taxable year and added to the amount allowable as a deduction under subsection (a) for such succeeding taxable year.

"(C) COMPUTATION OF TAXABLE INCOME.—For purposes of this paragraph, taxable income derived from the conduct of a trade or business shall be computed without regard to the cost of any section 179 property."

Subsec. (d)(1). Pub. L. 100–647, §1002(a)(19), substituted "tangible property (to which section 168 applies)" for "recovery property".

1986—Subsec. (b). Pub. L. 99–514, §202(a), in amending subsec. (b) generally, substituted "Limitations" for "Dollar limitation" in heading, in par. (1) substituted as heading "Dollar limitation" for "In general" and in text "shall not exceed $10,000" for "shall not exceed the following applicable amount:" and a table specifying amounts for specific years, added pars. (2) to (4), and struck out former par. (2) which read as follows: "In the case of a husband and wife filing separate returns for a taxable year, the applicable amount under paragraph (1) shall be equal to 50 percent of the amount otherwise determined under paragraph (1)."

Subsec. (d)(1). Pub. L. 99–514, §202(b), inserted "in the active conduct of".

Subsec. (d)(8). Pub. L. 99–514, §201(d)(3), substituted "Treatment of" for "Dollar limitation in case of" in heading and amended text generally. Prior to amendment, text read as follows: "In the case of a partnership, the dollar limitation contained in subsection (b)(1) shall apply with respect to the partnership and with respect to each partner. A similar rule shall apply in the case of an S corporation and its shareholders."

Subsec. (d)(10). Pub. L. 99–514, §202(c), struck out "before the close of the second taxable year following the taxable year in which it is placed in service by the taxpayer" after "at any time".

1984—Subsec. (b)(1). Pub. L. 98–369 amended table by dropping items setting applicable amounts of $0 for 1981 and $5,000 for 1982, substituting an applicable amount of $5,000 for 1983, 1984, 1985, 1986, and 1987 for former table items which had set applicable amounts of $5,000 for 1983, $7,500 for 1984, $7,500 for 1985, and $10,000 for 1986 or thereafter, and added items setting applicable amounts of $7,500 for 1988 or 1989, and $10,000 for 1990 or thereafter.

1983—Subsec. (d)(10). Pub. L. 97–448 added par. (10).

1982—Subsec. (d)(8). Pub. L. 97–354 substituted "partnerships and S corporations" for "partnerships" in heading, and inserted "A similar rule shall apply in the case of an S corporation and its shareholders."

1981—Pub. L. 97–34 amended section generally, changing its content from provisions that formerly made available an additional first-year depreciation allowance for small businesses to provisions allowing a taxpayer to elect to treat the cost of section 179 property as an expense which is not chargeable to capital account, with any cost so treated to be allowed as a deduction for the taxable year in which the section 179 property is placed in service.

1976—Subsecs. (c)(1), (2), (d)(6)(B). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (d)(8), (9). Pub. L. 94–455, §213(a), added par. (8) and redesignated former par. (8) as par. (9).

Subsec. (e). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

1969—Subsec. (d). Pub. L. 91–172 substituted reference to component members of a controlled group for reference to members of an affiliated group in pars. (2)(B) and (b), and substituted definition of controlled group for definition of affiliated group in par. (7).

1962—Subsec. (d)(5). Pub. L. 87–834, §13(c)(2)(A), substituted "section 167(h)" for "section 167(g)".

Subsec. (d)(8). Pub. L. 87–834, §13(c)(2)(B), substituted "section 167(g)" for "section 167(f)".

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title III, §315(e), Jan. 2, 2013, 126 Stat. 2331, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2011."

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title IV, §402(f), Dec. 17, 2010, 124 Stat. 3307, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2011."

Amendment by section 737(b)(3) of Pub. L. 111–312 applicable to property placed in service after Dec. 31, 2009, see section 737(c) of Pub. L. 111–312, set out as a note under section 168 of this title.

Pub. L. 111–240, title II, §2021(e), Sept. 27, 2010, 124 Stat. 2558, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to property placed in service after December 31, 2009, in taxable years beginning after such date.

"(2) EXTENSIONS.—The amendments made by subsections (c) and (d) shall apply to taxable years beginning after December 31, 2010."

Pub. L. 111–147, title II, §201(b), Mar. 18, 2010, 124 Stat. 77, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2009."

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, §1202(b), Feb. 17, 2009, 123 Stat. 335, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2008."

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title VII, §711(b), Oct. 3, 2008, 122 Stat. 3929, provided that: "The amendment made by this section [amending this section] shall apply to property placed in service after December 31, 2007, with respect [to] disasters declared after such date."

Pub. L. 110–185, title I, §102(b), Feb. 13, 2008, 122 Stat. 618, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2007."

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–28, title VIII, §8212(d), May 25, 2007, 121 Stat. 193, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2006."

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §910(b), Oct. 22, 2004, 118 Stat. 1660, provided that: "The amendment made by this section [amending this section] shall apply to property placed in service after the date of the enactment of this Act [Oct. 22, 2004]."

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–27, title II, §202(f), May 28, 2003, 117 Stat. 758, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2002."

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, §1111(b), Aug. 20, 1996, 110 Stat. 1758, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1996."

Amendment by section 1702(h)(10), (19) of Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13116(b), Aug. 10, 1993, 107 Stat. 432, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1992."

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

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

100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 201(d)(3) of Pub. L. 99–514 applicable to property placed in service after Dec. 31, 1986, in taxable years ending after such date, with exceptions, see sections 203 and 204 of Pub. L. 99–514, set out as a note under section 168 of this title.

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

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years ending after Dec. 31, 1983, see section 18(a) of Pub. L. 98–369, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to property placed in service after Dec. 31, 1980, in taxable years ending after that date, see section 209(a) of Pub. L. 97–34, set out as an Effective Date note under section 168 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 213(a) of Pub. L. 94–455 applicable in the case of partnership taxable years beginning after Dec. 31, 1975, see section 213(f) of Pub. L. 94–455, set out as an Effective Date note under section 709 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable with respect to taxable years ending on or after Dec. 31, 1970, see section 401(h)(3) of Pub. L. 91–172, set out as a note under section 1561 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable to taxable years beginning after Dec. 31, 1961, and ending after Oct. 16, 1962, see section 13(g) of Pub. L. 87–834, set out as an Effective Date note under section 1245 of this title.

EFFECTIVE DATE

Pub. L. 85–866, title II, §204(c), Sept. 2, 1958, 72 Stat. 1680, provided that: "The amendments made by this section [enacting this section] shall apply with respect to taxable years ending after June 30, 1958."

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

§179A. Deduction for clean-fuel vehicles and certain refueling property

(a) Allowance of deduction

(1) In general

There shall be allowed as a deduction an amount equal to the cost of—

(A) any qualified clean-fuel vehicle property, and
(B) any qualified clean-fuel vehicle refueling property.

The deduction under the preceding sentence with respect to any property shall be allowed for the taxable year in which such property is placed in service.

(2) Incremental cost for certain vehicles

If a vehicle may be propelled by both a clean-burning fuel and any other fuel, only the incremental cost of permitting the use of the clean-burning fuel shall be taken into account.

(b) Limitations

(1) Qualified clean-fuel vehicle property

(A) In general

The cost which may be taken into account under subsection (a)(1)(A) with respect to any motor vehicle shall not exceed—

(i) in the case of a motor vehicle not described in clause (ii) or (iii), $2,000,

(ii) in the case of any truck or van with a gross vehicle weight rating greater than 10,000 pounds but not greater than 26,000 pounds, $5,000, or

(iii) $50,000 in the case of—

(I) a truck or van with a gross vehicle weight rating greater than 26,000 pounds, or

(II) any bus which has a seating capacity of at least 20 adults (not including the driver).

(B) Phaseout

In the case of any qualified clean-fuel vehicle property placed in service after December 31, 2005, the limit otherwise allowable under subparagraph (A) shall be reduced by 75 percent.

(2) Qualified clean-fuel vehicle refueling property

(A) In general

The aggregate cost which may be taken into account under subsection (a)(1)(B) with respect to qualified clean-fuel vehicle refueling property placed in service during the taxable year at a location shall not exceed the excess (if any) of—

(i) $100,000, over

(ii) the aggregate amount taken into account under subsection (a)(1)(B) by the taxpayer (or any related person or predecessor) with respect to property placed in service at such location for all preceding taxable years.

(B) Related person

For purposes of this paragraph, a person shall be treated as related to another person if such person bears a relationship to such other person described in section 267(b) or 707(b)(1).

(C) Election

If the limitation under subparagraph (A) applies for any taxable year, the taxpayer shall, on the return of tax for such taxable year, specify the items of property (and the portion of costs of such property) which are to be taken into account under subsection (a)(1)(B).

(c) Qualified clean-fuel vehicle property defined

For purposes of this section—

(1) In general

The term "qualified clean-fuel vehicle property" means property which is acquired for use by the taxpayer and not for resale, the original use of which commences with the taxpayer, with respect to which the environmental standards of paragraph (2) are met, and which is described in either of the following subparagraphs:

(A) Retrofit parts and components

Any property installed on a motor vehicle which is propelled by a fuel which is not a

clean-burning fuel for purposes of permitting such vehicle to be propelled by a clean-burning fuel—

(i) if the property is an engine (or modification thereof) which may use a clean-burning fuel, or

(ii) to the extent the property is used in the storage or delivery to the engine of such fuel, or the exhaust of gases from combustion of such fuel.

(B) Original equipment manufacturer's vehicles

A motor vehicle produced by an original equipment manufacturer and designed so that the vehicle may be propelled by a clean-burning fuel, but only to the extent of the portion of the basis of such vehicle which is attributable to an engine which may use such fuel, to the storage or delivery to the engine of such fuel, or to the exhaust of gases from combustion of such fuel.

(2) Environmental standards

Property shall not be treated as qualified clean-fuel vehicle property unless—

(A) the motor vehicle of which it is a part meets any applicable Federal or State emissions standards with respect to each fuel by which such vehicle is designed to be propelled, or

(B) in the case of property described in paragraph (1)(A), such property meets applicable Federal and State emissions-related certification, testing, and warranty requirements.

(3) Exception for qualified electric vehicles

The term "qualified clean-fuel vehicle property" does not include any qualified electric vehicle (as defined in section 30(c)).[1]

(d) Qualified clean-fuel vehicle refueling property defined

For purposes of this section, the term "qualified clean-fuel vehicle refueling property" means any property (not including a building and its structural components) if—

(1) such property is of a character subject to the allowance for depreciation,

(2) the original use of such property begins with the taxpayer, and

(3) such property is—

(A) for the storage or dispensing of a clean-burning fuel into the fuel tank of a motor vehicle propelled by such fuel, but only if the storage or dispensing of the fuel is at the point where such fuel is delivered into the fuel tank of the motor vehicle, or

(B) for the recharging of motor vehicles propelled by electricity, but only if the property is located at the point where the motor vehicles are recharged.

(e) Other definitions and special rules

For purposes of this section—

(1) Clean-burning fuel

The term "clean-burning fuel" means—

(A) natural gas,

(B) liquefied natural gas,

(C) liquefied petroleum gas,

(D) hydrogen,

(E) electricity, and

(F) any other fuel at least 85 percent of which is 1 or more of the following: methanol, ethanol, any other alcohol, or ether.

(2) Motor vehicle

The term "motor vehicle" means any vehicle which is manufactured primarily for use on public streets, roads, and highways (not including a vehicle operated exclusively on a rail or rails) and which has at least 4 wheels.

(3) Cost of retrofit parts includes cost of installation

The cost of any qualified clean-fuel vehicle property referred to in subsection (c)(1)(A) shall

include the cost of the original installation of such property.

(4) Recapture

The Secretary shall, by regulations, provide for recapturing the benefit of any deduction allowable under subsection (a) with respect to any property which ceases to be property eligible for such deduction.

(5) Property used outside United States, etc., not qualified

No deduction shall be allowed under subsection (a) with respect to any property referred to in section 50(b) or with respect to the portion of the cost of any property taken into account under section 179.

(6) Basis reduction

(A) In general

For purposes of this title, the basis of any property shall be reduced by the portion of the cost of such property taken into account under subsection (a).

(B) Ordinary income recapture

For purposes of section 1245, the amount of the deduction allowable under subsection (a) with respect to any property which is of a character subject to the allowance for depreciation shall be treated as a deduction allowed for depreciation under section 167.

(f) Termination

This section shall not apply to any property placed in service after December 31, 2005.

(Added Pub. L. 102–486, title XIX, §1913(a)(1), Oct. 24, 1992, 106 Stat. 3016; amended Pub. L. 104–188, title I, §1704(j)(2), Aug. 20, 1996, 110 Stat. 1881; Pub. L. 107–147, title VI, §606(a), Mar. 9, 2002, 116 Stat. 60; Pub. L. 108–311, title III, §319(a), Oct. 4, 2004, 118 Stat. 1182; Pub. L. 109–58, title XIII, §1348, Aug. 8, 2005, 119 Stat. 1056.)

REFERENCES IN TEXT

Section 30, referred to in subsec. (c)(3), was amended generally by Pub. L. 111–5, div. B, title I, §1142(a), Feb. 17, 2009, 123 Stat. 328, and as so amended no longer defines "qualified electric vehicle".

AMENDMENTS

2005—Subsec. (f). Pub. L. 109–58 substituted "December 31, 2005" for "December 31, 2006".

2004—Subsec. (b)(1)(B). Pub. L. 108–311 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "In the case of any qualified clean-fuel vehicle property placed in service after December 31, 2003, the limit otherwise applicable under subparagraph (A) shall be reduced by—

"(i) 25 percent in the case of property placed in service in calendar year 2004,

"(ii) 50 percent in the case of property placed in service in calendar year 2005, and

"(iii) 75 percent in the case of property placed in service in calendar year 2006."

2002—Subsec. (b)(1)(B). Pub. L. 107–147, §606(a)(1)(A), substituted "December 31, 2003," for "December 31, 2001," in introductory provisions.

Subsec. (b)(1)(B)(i). Pub. L. 107–147, §606(a)(1)(B), substituted "2004" for "2002"

Subsec. (b)(1)(B)(ii). Pub. L. 107–147, §606(a)(1)(B), substituted "2005" for "2003".

Subsec. (b)(1)(B)(iii). Pub. L. 107–147, §606(a)(1)(B), substituted "2006" for "2004".

Subsec. (f). Pub. L. 107–147, §606(a)(2), substituted "December 31, 2006" for "December 31, 2004".

1996—Subsecs. (f), (g). Pub. L. 104–188 redesignated subsec. (g) as (f).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–311, title III, §319(b), Oct. 4, 2004, 118 Stat. 1182, provided that: "The amendment made by subsection (a) [amending this section] shall apply to property placed in service after December 31, 2003."

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title VI, §606(b), Mar. 9, 2002, 116 Stat. 60, provided that: "The amendments made by subsection (a) [amending this section] shall apply to property placed in service after December 31, 2001."

EFFECTIVE DATE

Section applicable to property placed in service after June 30, 1993, see section 1913(c) of Pub. L. 102–486, set out as a note under section 30 of this title.

[1] *See References in Text note below.*

§179B. Deduction for capital costs incurred in complying with Environmental Protection Agency sulfur regulations

(a) Allowance of deduction

In the case of a small business refiner (as defined in section 45H(c)(1)) which elects the application of this section, there shall be allowed as a deduction an amount equal to 75 percent of qualified costs (as defined in section 45H(c)(2)) which are paid or incurred by the taxpayer during the taxable year and which are properly chargeable to capital account.

(b) Reduced percentage

In the case of a small business refiner with average daily domestic refinery runs for the 1-year period ending on December 31, 2002, in excess of 155,000 barrels, the number of percentage points described in subsection (a) shall be reduced (not below zero) by the product of such number (before the application of this subsection) and the ratio of such excess to 50,000 barrels.

(c) Basis reduction

(1) In general

For purposes of this title, the basis of any property shall be reduced by the portion of the cost of such property taken into account under subsection (a).

(2) Ordinary income recapture

For purposes of section 1245, the amount of the deduction allowable under subsection (a) with respect to any property which is of a character subject to the allowance for depreciation shall be treated as a deduction allowed for depreciation under section 167.

(d) Coordination with other provisions

Section 280B shall not apply to amounts which are treated as expenses under this section.

(e) Election to allocate deduction to cooperative owner

(1) In general

If—

(A) a small business refiner to which subsection (a) applies is an organization to which part I of subchapter T applies, and

(B) one or more persons directly holding an ownership interest in the refiner are organizations to which part I of subchapter T apply,

the refiner may elect to allocate all or a portion of the deduction allowable under subsection (a) to such persons. Such allocation shall be equal to the person's ratable share of the total amount allocated, determined on the basis of the person's ownership interest in the taxpayer. The taxable income of the refiner shall not be reduced under section 1382 by reason of any amount to which the preceding sentence applies.

(2) Form and effect of election

An election under paragraph (1) for any taxable year shall be made on a timely filed return for such year. Such election, once made, shall be irrevocable for such taxable year.

(3) Written notice to owners

If any portion of the deduction available under subsection (a) is allocated to owners under paragraph (1), the cooperative shall provide any owner receiving an allocation written notice of

the amount of the allocation. Such notice shall be provided before the date on which the return described in paragraph (2) is due.

(Added Pub. L. 108–357, title III, §338(a), Oct. 22, 2004, 118 Stat. 1480; amended Pub. L. 109–58, title XIII, §1324(a), Aug. 8, 2005, 119 Stat. 1015; Pub. L. 110–172, §7(a)(3)(A), (C), Dec. 29, 2007, 121 Stat. 2482.)

AMENDMENTS

2007—Subsec. (a). Pub. L. 110–172 substituted "qualified costs" for "qualified capital costs" and inserted "and which are properly chargeable to capital account" before period at end.

2005—Subsec. (e). Pub. L. 109–58 added subsec. (e).

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–172 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 7(e) of Pub. L. 110–172, set out as a note under section 1092 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–58, title XIII, §1324(b), Aug. 8, 2005, 119 Stat. 1015, provided that: "The amendment made by this section [amending this section] shall take effect as if included in the amendment made by section 338(a) of the American Jobs Creation Act of 2004 [Pub. L. 108–357, enacting this section]."

EFFECTIVE DATE

Pub. L. 108–357, title III, §338(c), Oct. 22, 2004, 118 Stat. 1481, provided that: "The amendment made by this section [enacting this section and amending sections 263, 263A, 312, 1016, and 1245 of this title] shall apply to expenses paid or incurred after December 31, 2002, in taxable years ending after such date."

§179C. Election to expense certain refineries

(a) Treatment as expenses

A taxpayer may elect to treat 50 percent of the cost of any qualified refinery property as an expense which is not chargeable to capital account. Any cost so treated shall be allowed as a deduction for the taxable year in which the qualified refinery property is placed in service.

(b) Election

(1) In general

An election under this section for any taxable year shall be made on the taxpayer's return of the tax imposed by this chapter for the taxable year. Such election shall be made in such manner as the Secretary may by regulations prescribe.

(2) Election irrevocable

Any election made under this section may not be revoked except with the consent of the Secretary.

(c) Qualified refinery property

(1) In general

The term "qualified refinery property" means any portion of a qualified refinery—

(A) the original use of which commences with the taxpayer,

(B) which is placed in service by the taxpayer after the date of the enactment of this section and before January 1, 2014,

(C) in the case any portion of a qualified refinery (other than a qualified refinery which is separate from any existing refinery), which meets the requirements of subsection (e),

(D) which meets all applicable environmental laws in effect on the date such portion was placed in service,

(E) no written binding contract for the construction of which was in effect on or before June 14, 2005, and

(F)(i) the construction of which is subject to a written binding construction contract entered into before January 1, 2010,

(ii) which is placed in service before January 1, 2010, or

(iii) in the case of self-constructed property, the construction of which began after June 14, 2005, and before January 1, 2010.

(2) Special rule for sale-leasebacks

For purposes of paragraph (1)(A), if property is—

(A) originally placed in service after the date of the enactment of this section by a person, and

(B) sold and leased back by such person within 3 months after the date such property was originally placed in service,

such property shall be treated as originally placed in service not earlier than the date on which such property is used under the leaseback referred to in subparagraph (B).

(3) Effect of waiver under Clean Air Act

A waiver under the Clean Air Act shall not be taken into account in determining whether the requirements of paragraph (1)(D) are met.

(d) Qualified refinery

For purposes of this section, the term "qualified refinery" means any refinery located in the United States which is designed to serve the primary purpose of processing liquid fuel from crude oil or qualified fuels (as defined in section 45K(c)), or directly from shale or tar sands.

(e) Production capacity

The requirements of this subsection are met if the portion of the qualified refinery—

(1) enables the existing qualified refinery to increase total volume output (determined without regard to asphalt or lube oil) by 5 percent or more on an average daily basis, or

(2) enables the existing qualified refinery to process shale, tar sands, or qualified fuels (as defined in section 45K(c)) at a rate which is equal to or greater than 25 percent of the total throughput of such qualified refinery on an average daily basis.

(f) Ineligible refinery property

No deduction shall be allowed under subsection (a) for any qualified refinery property—

(1) the primary purpose of which is for use as a topping plant, asphalt plant, lube oil facility, crude or product terminal, or blending facility, or

(2) which is built solely to comply with consent decrees or projects mandated by Federal, State, or local governments.

(g) Election to allocate deduction to cooperative owner

(1) In general

If—

(A) a taxpayer to which subsection (a) applies is an organization to which part I of subchapter T applies, and

(B) one or more persons directly holding an ownership interest in the taxpayer are organizations to which part I of subchapter T apply,

the taxpayer may elect to allocate all or a portion of the deduction allowable under subsection (a) to such persons. Such allocation shall be equal to the person's ratable share of the total amount allocated, determined on the basis of the person's ownership interest in the taxpayer. The taxable income of the taxpayer shall not be reduced under section 1382 by reason of any amount to which the preceding sentence applies.

(2) Form and effect of election

An election under paragraph (1) for any taxable year shall be made on a timely filed return for such year. Such election, once made, shall be irrevocable for such taxable year.

(3) Written notice to owners

If any portion of the deduction available under subsection (a) is allocated to owners under paragraph (1), the cooperative shall provide any owner receiving an allocation written notice of the amount of the allocation. Such notice shall be provided before the date on which the return described in paragraph (2) is due.

(h) Reporting

No deduction shall be allowed under subsection (a) to any taxpayer for any taxable year unless such taxpayer files with the Secretary a report containing such information with respect to the operation of the refineries of the taxpayer as the Secretary shall require.

(Added Pub. L. 109–58, title XIII, §1323(a), Aug. 8, 2005, 119 Stat. 1013; amended Pub. L. 110–343, div. B, title II, §209(a), (b), Oct. 3, 2008, 122 Stat. 3840.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (c)(1)(B), (2)(A), is the date of enactment of Pub. L. 109–58, which was approved Aug. 8, 2005.

The Clean Air Act, referred to in subsec. (c)(3), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§7401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

AMENDMENTS

2008—Subsec. (c)(1)(B). Pub. L. 110–343, §209(a)(1), substituted "January 1, 2014" for "January 1, 2012".

Subsec. (c)(1)(F). Pub. L. 110–343, §209(a)(2), substituted "January 1, 2010" for "January 1, 2008" wherever appearing.

Subsec. (d). Pub. L. 110–343, §209(b)(1), inserted ", or directly from shale or tar sands" after "(as defined in section 45K(c))".

Subsec. (e)(2). Pub. L. 110–343, §209(b)(2), inserted "shale, tar sands, or" before "qualified fuels".

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title II, §209(c), Oct. 3, 2008, 122 Stat. 3840, provided that: "The amendments made by this section [amending this section] shall apply to property placed in service after the date of the enactment of this Act [Oct. 3, 2008]."

EFFECTIVE DATE

Pub. L. 109–58, title XIII, §1323(c), Aug. 8, 2005, 119 Stat. 1015, provided that: "The amendments made by this section [enacting this section and amending sections 263, 312, and 1245 of this title] shall apply to properties placed in service after the date of the enactment of this Act [Aug. 8, 2005]."

§179D. Energy efficient commercial buildings deduction

(a) In general

There shall be allowed as a deduction an amount equal to the cost of energy efficient commercial building property placed in service during the taxable year.

(b) Maximum amount of deduction

The deduction under subsection (a) with respect to any building for any taxable year shall not exceed the excess (if any) of—

(1) the product of—

(A) $1.80, and

(B) the square footage of the building, over

(2) the aggregate amount of the deductions under subsection (a) with respect to the building for all prior taxable years.

(c) Definitions

For purposes of this section—

(1) Energy efficient commercial building property

The term "energy efficient commercial building property" means property—

(A) with respect to which depreciation (or amortization in lieu of depreciation) is allowable,

(B) which is installed on or in any building which is—

(i) located in the United States, and

(ii) within the scope of Standard 90.1–2001,

(C) which is installed as part of—

(i) the interior lighting systems,

(ii) the heating, cooling, ventilation, and hot water systems, or

(iii) the building envelope, and

(D) which is certified in accordance with subsection (d)(6) as being installed as part of a plan designed to reduce the total annual energy and power costs with respect to the interior lighting systems, heating, cooling, ventilation, and hot water systems of the building by 50 percent or more in comparison to a reference building which meets the minimum requirements of Standard 90.1–2001 using methods of calculation under subsection (d)(2).

(2) Standard 90.1–2001

The term "Standard 90.1–2001" means Standard 90.1–2001 of the American Society of Heating, Refrigerating, and Air Conditioning Engineers and the Illuminating Engineering Society of North America (as in effect on April 2, 2003).

(d) Special rules

(1) Partial allowance

(A) In general

Except as provided in subsection (f), if—

(i) the requirement of subsection (c)(1)(D) is not met, but

(ii) there is a certification in accordance with paragraph (6) that any system referred to in subsection (c)(1)(C) satisfies the energy-savings targets established by the Secretary under subparagraph (B) with respect to such system,

then the requirement of subsection (c)(1)(D) shall be treated as met with respect to such system, and the deduction under subsection (a) shall be allowed with respect to energy efficient commercial building property installed as part of such system and as part of a plan to meet such targets, except that subsection (b) shall be applied to such property by substituting "$.60" for "$1.80".

(B) Regulations

The Secretary, after consultation with the Secretary of Energy, shall establish a target for each system described in subsection (c)(1)(C) which, if such targets were met for all such systems, the building [1] would meet the requirements of subsection (c)(1)(D).

(2) Methods of calculation

The Secretary, after consultation with the Secretary of Energy, shall promulgate regulations which describe in detail methods for calculating and verifying energy and power consumption and cost, based on the provisions of the 2005 California Nonresidential Alternative Calculation Method Approval Manual.

(3) Computer software

(A) In general

Any calculation under paragraph (2) shall be prepared by qualified computer software.

(B) Qualified computer software

For purposes of this paragraph, the term "qualified computer software" means software—

(i) for which the software designer has certified that the software meets all procedures and detailed methods for calculating energy and power consumption and costs as required by the Secretary,

(ii) which provides such forms as required to be filed by the Secretary in connection with energy efficiency of property and the deduction allowed under this section, and

(iii) which provides a notice form which documents the energy efficiency features of the building and its projected annual energy costs.

(4) Allocation of deduction for public property

In the case of energy efficient commercial building property installed on or in property owned by a Federal, State, or local government or a political subdivision thereof, the Secretary shall promulgate a regulation to allow the allocation of the deduction to the person primarily responsible for designing the property in lieu of the owner of such property. Such person shall be treated as the taxpayer for purposes of this section.

(5) Notice to owner

Each certification required under this section shall include an explanation to the building owner regarding the energy efficiency features of the building and its projected annual energy costs as provided in the notice under paragraph (3)(B)(iii).

(6) Certification

(A) In general

The Secretary shall prescribe the manner and method for the making of certifications under this section.

(B) Procedures

The Secretary shall include as part of the certification process procedures for inspection and testing by qualified individuals described in subparagraph (C) to ensure compliance of buildings with energy-savings plans and targets. Such procedures shall be comparable, given the difference between commercial and residential buildings, to the requirements in the Mortgage Industry National Accreditation Procedures for Home Energy Rating Systems.

(C) Qualified individuals

Individuals qualified to determine compliance shall be only those individuals who are recognized by an organization certified by the Secretary for such purposes.

(e) Basis reduction

For purposes of this subtitle, if a deduction is allowed under this section with respect to any energy efficient commercial building property, the basis of such property shall be reduced by the amount of the deduction so allowed.

(f) Interim rules for lighting systems

Until such time as the Secretary issues final regulations under subsection (d)(1)(B) with respect to property which is part of a lighting system—

(1) In general

The lighting system target under subsection (d)(1)(A)(ii) shall be a reduction in lighting power density of 25 percent (50 percent in the case of a warehouse) of the minimum requirements in Table 9.3.1.1 or Table 9.3.1.2 (not including additional interior lighting power allowances) of Standard 90.1–2001.

(2) Reduction in deduction if reduction less than 40 percent

(A) In general

If, with respect to the lighting system of any building other than a warehouse, the reduction in

lighting power density of the lighting system is not at least 40 percent, only the applicable percentage of the amount of deduction otherwise allowable under this section with respect to such property shall be allowed.

(B) Applicable percentage

For purposes of subparagraph (A), the applicable percentage is the number of percentage points (not greater than 100) equal to the sum of—

(i) 50, and

(ii) the amount which bears the same ratio to 50 as the excess of the reduction of lighting power density of the lighting system over 25 percentage points bears to 15.

(C) Exceptions

This subsection shall not apply to any system—

(i) the controls and circuiting of which do not comply fully with the mandatory and prescriptive requirements of Standard 90.1–2001 and which do not include provision for bilevel switching in all occupancies except hotel and motel guest rooms, store rooms, restrooms, and public lobbies, or

(ii) which does not meet the minimum requirements for calculated lighting levels as set forth in the Illuminating Engineering Society of North America Lighting Handbook, Performance and Application, Ninth Edition, 2000.

(g) Regulations

The Secretary shall promulgate such regulations as necessary—

(1) to take into account new technologies regarding energy efficiency and renewable energy for purposes of determining energy efficiency and savings under this section, and

(2) to provide for a recapture of the deduction allowed under this section if the plan described in subsection (c)(1)(D) or (d)(1)(A) is not fully implemented.

(h) Termination

This section shall not apply with respect to property placed in service after December 31, 2013.

(Added Pub. L. 109–58, title XIII, §1331(a), Aug. 8, 2005, 119 Stat. 1020; amended Pub. L. 109–432, div. A, title II, §204, Dec. 20, 2006, 120 Stat. 2945; Pub. L. 110–343, div. B, title III, §303, Oct. 3, 2008, 122 Stat. 3845.)

AMENDMENTS

2008—Subsec. (h). Pub. L. 110–343 substituted "December 31, 2013" for "December 31, 2008".

2006—Subsec. (h). Pub. L. 109–432 substituted "2008" for "2007".

EFFECTIVE DATE

Pub. L. 109–58, title XIII, §1331(d), Aug. 8, 2005, 119 Stat. 1024, provided that: "The amendments made by this section [enacting this section and amending sections 263, 312, 1016, 1245, and 1250 of this title] shall apply to property placed in service after December 31, 2005."

[1] *So in original.*

§179E. Election to expense advanced mine safety equipment

(a) Treatment as expenses

A taxpayer may elect to treat 50 percent of the cost of any qualified advanced mine safety equipment property as an expense which is not chargeable to capital account. Any cost so treated shall be allowed as a deduction for the taxable year in which the qualified advanced mine safety equipment property is placed in service.

(b) Election

(1) In general

An election under this section for any taxable year shall be made on the taxpayer's return of the tax imposed by this chapter for the taxable year. Such election shall specify the advanced mine safety equipment property to which the election applies and shall be made in such manner as the Secretary may by regulations prescribe.

(2) Election irrevocable

Any election made under this section may not be revoked except with the consent of the Secretary.

(c) Qualified advanced mine safety equipment property

For purposes of this section, the term "qualified advanced mine safety equipment property" means any advanced mine safety equipment property for use in any underground mine located in the United States—

(1) the original use of which commences with the taxpayer, and

(2) which is placed in service by the taxpayer after the date of the enactment of this section.

(d) Advanced mine safety equipment property

For purposes of this section, the term "advanced mine safety equipment property" means any of the following:

(1) Emergency communication technology or device which is used to allow a miner to maintain constant communication with an individual who is not in the mine.

(2) Electronic identification and location device which allows an individual who is not in the mine to track at all times the movements and location of miners working in or at the mine.

(3) Emergency oxygen-generating, self-rescue device which provides oxygen for at least 90 minutes.

(4) Pre-positioned supplies of oxygen which (in combination with self-rescue devices) can be used to provide each miner on a shift, in the event of an accident or other event which traps the miner in the mine or otherwise necessitates the use of such a self-rescue device, the ability to survive for at least 48 hours.

(5) Comprehensive atmospheric monitoring system which monitors the levels of carbon monoxide, methane, and oxygen that are present in all areas of the mine and which can detect smoke in the case of a fire in a mine.

(e) Coordination with section 179

No expenditures shall be taken into account under subsection (a) with respect to the portion of the cost of any property specified in an election under section 179.

(f) Reporting

No deduction shall be allowed under subsection (a) to any taxpayer for any taxable year unless such taxpayer files with the Secretary a report containing such information with respect to the operation of the mines of the taxpayer as the Secretary shall require.

(g) Termination

This section shall not apply to property placed in service after December 31, 2013.

(Added Pub. L. 109–432, div. A, title IV, §404(a), Dec. 20, 2006, 120 Stat. 2955; amended Pub. L. 110–343, div. C, title III, §311, Oct. 3, 2008, 122 Stat. 3869; Pub. L. 111–312, title VII, §743(a), Dec. 17, 2010, 124 Stat. 3319; Pub. L. 112–240, title III, §316(a), Jan. 2, 2013, 126 Stat. 2331.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (c)(2), is the date of enactment of Pub. L. 109–432, which was approved Dec. 20, 2006.

AMENDMENTS

2013—Subsec. (g). Pub. L. 112–240 substituted "December 31, 2013" for "December 31, 2011".

2010—Subsec. (g). Pub. L. 111–312 substituted "December 31, 2011" for "December 31, 2009".

2008—Subsec. (g). Pub. L. 110–343 substituted "December 31, 2009" for "December 31, 2008".

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title III, §316(b), Jan. 2, 2013, 126 Stat. 2331, provided that: "The amendment made by this section [amending this section] shall apply to property placed in service after December 31, 2011."

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §743(b), Dec. 17, 2010, 124 Stat. 3319, provided that: "The amendment made by this section [amending this section] shall apply to property placed in service after December 31, 2009."

EFFECTIVE DATE

Pub. L. 109–432, div. A, title IV, §404(c), Dec. 20, 2006, 120 Stat. 2957, provided that: "The amendments made by this section [enacting this section and amending sections 263, 312, and 1245 of this title] shall apply to costs paid or incurred after the date of the enactment of this Act [Dec. 20, 2006]."

§180. Expenditures by farmers for fertilizer, etc.

(a) In general

A taxpayer engaged in the business of farming may elect to treat as expenses which are not chargeable to capital account expenditures (otherwise chargeable to capital account) which are paid or incurred by him during the taxable year for the purchase or acquisition of fertilizer, lime, ground limestone, marl, or other materials to enrich, neutralize, or condition land used in farming, or for the application of such materials to such land. The expenditures so treated shall be allowed as a deduction.

(b) Land used in farming

For purposes of subsection (a), the term "land used in farming" means land used (before or simultaneously with the expenditures described in subsection (a)) by the taxpayer or his tenant for the production of crops, fruits, or other agricultural products or for the sustenance of livestock.

(c) Election

The election under subsection (a) for any taxable year shall be made within the time prescribed by law (including extensions thereof) for filing the return for such taxable year. Such election shall be made in such manner as the Secretary may by regulations prescribe. Such election may not be revoked except with the consent of the Secretary.

(Added Pub. L. 86–779, §6(a), Sept. 14, 1960, 74 Stat. 1001; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsec. (c). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE

Pub. L. 86–779, §6(d), Sept. 14, 1960, 74 Stat. 1001, provided that: "The amendments made by subsections (a), (b), and (c) [enacting this section and amending section 263 of this title] shall apply to taxable years beginning after December 31, 1959."

§181. Treatment of certain qualified film and television productions

(a) Election to treat costs as expenses

(1) In general

A taxpayer may elect to treat the cost of any qualified film or television production as an expense which is not chargeable to capital account. Any cost so treated shall be allowed as a deduction.

(2) Dollar limitation

(A) In general

Paragraph (1) shall not apply to so much of the aggregate cost of any qualified film or television production as exceeds $15,000,000.

(B) Higher dollar limitation for productions in certain areas

In the case of any qualified film or television production the aggregate cost of which is significantly incurred in an area eligible for designation as—

(i) a low-income community under section 45D, or

(ii) a distressed county or isolated area of distress by the Delta Regional Authority established under section 2009aa–1 of title 7, United States Code,

subparagraph (A) shall be applied by substituting "$20,000,000" for "$15,000,000".

(b) No other deduction or amortization deduction allowable

With respect to the basis of any qualified film or television production to which an election is made under subsection (a), no other depreciation or amortization deduction shall be allowable.

(c) Election

(1) In general

An election under this section with respect to any qualified film or television production shall be made in such manner as prescribed by the Secretary and by the due date (including extensions) for filing the taxpayer's return of tax under this chapter for the taxable year in which costs of the production are first incurred.

(2) Revocation of election

Any election made under this section may not be revoked without the consent of the Secretary.

(d) Qualified film or television production

For purposes of this section—

(1) In general

The term "qualified film or television production" means any production described in paragraph (2) if 75 percent of the total compensation of the production is qualified compensation.

(2) Production

(A) In general

A production is described in this paragraph if such production is property described in section 168(f)(3).

(B) Special rules for television series

In the case of a television series—

(i) each episode of such series shall be treated as a separate production, and

(ii) only the first 44 episodes of such series shall be taken into account.

(C) Exception

A production is not described in this paragraph if records are required under section 2257 of title 18, United States Code, to be maintained with respect to any performer in such production.

(3) Qualified compensation

For purposes of paragraph (1)—

(A) In general

The term "qualified compensation" means compensation for services performed in the United States by actors, production personnel, directors, and producers.

(B) Participations and residuals excluded

The term "compensation" does not include participations and residuals (as defined in section

167(g)(7)(B)).

(e) Application of certain other rules

For purposes of this section, rules similar to the rules of subsections (b)(2) and (c)(4) of section 194 shall apply.

(f) Termination

This section shall not apply to qualified film and television productions commencing after December 31, 2013.

(Added Pub. L. 108–357, title II, §244(a), Oct. 22, 2004, 118 Stat. 1445; amended Pub. L. 109–135, title IV, §403(e)(1), Dec. 21, 2005, 119 Stat. 2623; Pub. L. 110–343, div. C, title V, §502(a), (b), (d), Oct. 3, 2008, 122 Stat. 3876, 3877; Pub. L. 111–312, title VII, §744(a), Dec. 17, 2010, 124 Stat. 3319; Pub. L. 112–240, title III, §317(a), Jan. 2, 2013, 126 Stat. 2331.)

PRIOR PROVISIONS

A prior section 181, Pub. L. 87–834, §2(c), Oct. 16, 1962, 76 Stat. 970, related to a deduction for unused investment credit, prior to repeal by Pub. L. 88–272, title II, §203(a)(3)(B), (4), Feb. 26, 1964, 78 Stat. 34, applicable in case of property placed in service after Dec. 31, 1963, with respect to taxable years ending after such date, and in case of property placed in service before Jan. 1, 1964, with respect to taxable years beginning after Dec. 31, 1963.

AMENDMENTS

2013—Subsec. (f). Pub. L. 112–240 substituted "December 31, 2013" for "December 31, 2011".

2010—Subsec. (f). Pub. L. 111–312 substituted "December 31, 2011" for "December 31, 2009".

2008—Subsec. (a)(2)(A). Pub. L. 110–343, §502(b), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "Paragraph (1) shall not apply to any qualified film or television production the aggregate cost of which exceeds $15,000,000."

Subsec. (d)(3)(A). Pub. L. 110–343, §502(d), substituted "actors, production personnel, directors, and producers." for "actors, directors, producers, and other relevant production personnel."

Subsec. (f). Pub. L. 110–343, §502(a), substituted "December 31, 2009" for "December 31, 2008".

2005—Subsec. (d)(2). Pub. L. 109–135 struck out "For purposes of a television series, only the first 44 episodes of such series may be taken into account." at end of subpar. (A), added subpar. (B), and redesignated former subpar. (B) as (C).

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title III, §317(b), Jan. 2, 2013, 126 Stat. 2331, provided that: "The amendment made by this section [amending this section] shall apply to productions commencing after December 31, 2011."

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §744(b), Dec. 17, 2010, 124 Stat. 3319, provided that: "The amendment made by this section [amending this section] shall apply to productions commencing after December 31, 2009."

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title V, §502(e), Oct. 3, 2008, 122 Stat. 3877, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and section 199 of this title] shall apply to qualified film and television productions commencing after December 31, 2007.

"(2) DEDUCTION.—The amendments made by subsection (c) [amending section 199 of this title] shall apply to taxable years beginning after December 31, 2007."

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE

Pub. L. 108–357, title II, §244(c), Oct. 22, 2004, 118 Stat. 1447, provided that: "The amendments made by this section [enacting this section] shall apply to qualified film and television productions (as defined in section 181(d)(1) of the Internal Revenue Code of 1986, as added by this section) commencing after the date

of the enactment of this Act [Oct. 22, 2004]."

[§182. Repealed. Pub. L. 99–514, title IV, §402(a), Oct. 22, 1986, 100 Stat. 2221]

Section, added Pub. L. 87–834, §21(a), Oct. 16, 1962, 76 Stat. 1063; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, authorized deduction of expenditures by farmers for clearing land.

EFFECTIVE DATE OF REPEAL

Pub. L. 99–514, title IV, §402(c), Oct. 22, 1986, 100 Stat. 2221, provided that: "The amendments made by this section [amending sections 263 and 1252 of this title and repealing this section] shall apply to amounts paid or incurred after December 31, 1985, in taxable years ending after such date."

§183. Activities not engaged in for profit

(a) General rule

In the case of an activity engaged in by an individual or an S corporation, if such activity is not engaged in for profit, no deduction attributable to such activity shall be allowed under this chapter except as provided in this section.

(b) Deductions allowable

In the case of an activity not engaged in for profit to which subsection (a) applies, there shall be allowed—

(1) the deductions which would be allowable under this chapter for the taxable year without regard to whether or not such activity is engaged in for profit, and

(2) a deduction equal to the amount of the deductions which would be allowable under this chapter for the taxable year only if such activity were engaged in for profit, but only to the extent that the gross income derived from such activity for the taxable year exceeds the deductions allowable by reason of paragraph (1).

(c) Activity not engaged in for profit defined

For purposes of this section, the term "activity not engaged in for profit" means any activity other than one with respect to which deductions are allowable for the taxable year under section 162 or under paragraph (1) or (2) of section 212.

(d) Presumption

If the gross income derived from an activity for 3 or more of the taxable years in the period of 5 consecutive taxable years which ends with the taxable year exceeds the deductions attributable to such activity (determined without regard to whether or not such activity is engaged in for profit), then, unless the Secretary establishes to the contrary, such activity shall be presumed for purposes of this chapter for such taxable year to be an activity engaged in for profit. In the case of an activity which consists in major part of the breeding, training, showing, or racing of horses, the preceding sentence shall be applied by substituting "2" for "3" and "7" for "5".

(e) Special rule

(1) In general

A determination as to whether the presumption provided by subsection (d) applies with respect to any activity shall, if the taxpayer so elects, not be made before the close of the fourth taxable year (sixth taxable year, in the case of an activity described in the last sentence of such subsection) following the taxable year in which the taxpayer first engages in the activity. For purposes of the preceding sentence, a taxpayer shall be treated as not having engaged in an activity during any taxable year beginning before January 1, 1970.

(2) Initial period

If the taxpayer makes an election under paragraph (1), the presumption provided by subsection (d) shall apply to each taxable year in the 5-taxable year (or 7-taxable year) period beginning with the taxable year in which the taxpayer first engages in the activity, if the gross income derived from the activity for 3 (or 2 if applicable) or more of the taxable years in such period exceeds the deductions attributable to the activity (determined without regard to whether or not the activity is engaged in for profit).

(3) Election

An election under paragraph (1) shall be made at such time and manner, and subject to such terms and conditions, as the Secretary may prescribe.

(4) Time for assessing deficiency attributable to activity

If a taxpayer makes an election under paragraph (1) with respect to an activity, the statutory period for the assessment of any deficiency attributable to such activity shall not expire before the expiration of 2 years after the date prescribed by law (determined without extensions) for filing the return of tax under chapter 1 for the last taxable year in the period of 5 taxable years (or 7 taxable years) to which the election relates. Such deficiency may be assessed notwithstanding the provisions of any law or rule of law which would otherwise prevent such an assessment.

(Added Pub. L. 91–172, title II, §213(a), Dec. 30, 1969, 83 Stat. 571; amended Pub. L. 92–178, title III, §311(a), Dec. 10, 1971, 85 Stat. 525; Pub. L. 94–455, title II, §214(a), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1549, 1834; Pub. L. 97–354, §5(a)(23), Oct. 19, 1982, 96 Stat. 1694; Pub. L. 99–514, title I, §143(a), Oct. 22, 1986, 100 Stat. 2120; Pub. L. 100–647, title I, §1001(h)(3), Nov. 10, 1988, 102 Stat. 3352.)

AMENDMENTS

1988—Subsec. (e)(2). Pub. L. 100–647 substituted "activity for 3 (or 2 if applicable)" for "activity for 2".

1986—Subsec. (d). Pub. L. 99–514 substituted "3" for "2" before "or more" in first sentence and " '2' for '3' and '7' for '5' " for "the period of 7 consecutive taxable years for the period of 5 consecutive taxable years" in second sentence.

1982—Subsec. (a). Pub. L. 97–354 substituted "an S corporation" for "an electing small business corporation (as defined in section 1371(b))".

1976—Subsecs. (d), (e)(3). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (e)(4). Pub. L. 94–455, §214(a), added par. (4).

1971—Subsec. (e). Pub. L. 92–178 added subsec. (e).

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title II, §214(c), Oct. 4, 1976, 90 Stat. 1549, provided that: "The amendments made by this section [amending this section and section 6212 of this title] shall apply with respect to taxable years beginning after December 31, 1969; except that such amendments shall not apply to any taxable year ending before the date of the enactment of this Act [Oct. 4, 1976] with respect to which the period for assessing a deficiency has expired before such date of enactment."

EFFECTIVE DATE OF 1971 AMENDMENT

Pub. L. 92–178, title III, §311(b), Dec. 10, 1971, 85 Stat. 526, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1969."

EFFECTIVE DATE

Pub. L. 91–172, title II, §213(d), Dec. 30, 1969, 83 Stat. 572, provided that: "The amendments made by this section [enacting this section, amending section 6504 of this title, and repealing section 270 of this title] shall apply to taxable years beginning after December 31, 1969."

[§184. Repealed. Pub. L. 101–508, title XI, §11801(a)(12), Nov. 5, 1990, 104 Stat. 1388–520]

Section, added Pub. L. 91–172, title VII, §705(a), Dec. 30, 1969, 83 Stat. 670; amended Pub. L. 93–625, §3(b), Jan. 3, 1975, 88 Stat. 2109; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, related to amortization of certain railroad rolling stock.

SAVINGS PROVISION

For provisions that nothing in repeal by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

[§185. Repealed. Pub. L. 99–514, title II, §242(a), Oct. 22, 1986, 100 Stat. 2181]

Section, added Pub. L. 91–172, title VII, §705(a), Dec. 30, 1969, 83 Stat. 672; amended Pub. L. 94–455, title XVII, §1702, title XIX, §1906(b) (13)(A), Oct. 4, 1976, 90 Stat. 1760, 1834; Pub. L. 95–473, §2(a)(2)(B), Oct. 17, 1978, 92 Stat. 1464, related to amortization of railroad grading and tunnel bores.

EFFECTIVE DATE OF REPEAL

Pub. L. 99–514, title II, §242(c), Oct. 22, 1986, 100 Stat. 2181, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending sections 1082 and 1250 of this title and repealing this section] shall apply to that portion of the basis of any property which is attributable to expenditures paid or incurred after December 31, 1986.

"(2) TRANSITIONAL RULE.—The amendments made by this section shall not apply to any expenditure incurred—

"(A) pursuant to a binding contract entered into before March 2, 1986, or

"(B) with respect to any improvement commenced before March 2, 1986, but only if not less than the lesser of $1,000,000 or 5 percent of the aggregate cost of such improvement has been incurred or committed before such date.

The preceding sentence shall not apply to any expenditure with respect to an improvement placed in service after December 31, 1987."

§186. Recoveries of damages for antitrust violations, etc.

(a) Allowance of deduction

If a compensatory amount which is included in gross income is received or accrued during the taxable year for a compensable injury, there shall be allowed as a deduction for the taxable year an amount equal to the lesser of—

(1) the amount of such compensatory amount, or

(2) the amount of the unrecovered losses sustained as a result of such compensable injury.

(b) Compensable injury

For purposes of this section, the term "compensable injury" means—

(1) injuries sustained as a result of an infringement of a patent issued by the United States,

(2) injuries sustained as a result of a breach of contract or a breach of fiduciary duty or relationship, or

(3) injuries sustained in business, or to property, by reason of any conduct forbidden in the antitrust laws for which a civil action may be brought under section 4 of the Act entitled "An Act

to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914 (commonly known as the Clayton Act).

(c) Compensatory amount

For purposes of this section, the term "compensatory amount" means the amount received or accrued during the taxable year as damages as a result of an award in, or in settlement of, a civil action for recovery for a compensable injury, reduced by any amounts paid or incurred in the taxable year in securing such award or settlement.

(d) Unrecovered losses

(1) In general

For purposes of this section, the amount of any unrecovered loss sustained as a result of any compensable injury is—

(A) the sum of the amount of the net operating losses (as determined under section 172) for each taxable year in whole or in part within the injury period, to the extent that such net operating losses are attributable to such compensable injury, reduced by

(B) the sum of—

(i) the amount of the net operating losses described in subparagraph (A) which were allowed for any prior taxable year as a deduction under section 172 as a net operating loss carryback or carryover to such taxable year, and

(ii) the amounts allowed as a deduction under subsection (a) for any prior taxable year for prior recoveries of compensatory amounts for such compensable injury.

(2) Injury period

For purposes of paragraph (1), the injury period is—

(A) with respect to any infringement of a patent, the period in which such infringement occurred,

(B) with respect to a breach of contract or breach of fiduciary duty or relationship, the period during which amounts would have been received or accrued but for the breach of contract or breach of fiduciary duty or relationship, and

(C) with respect to injuries sustained by reason of any conduct forbidden in the antitrust laws, the period in which such injuries were sustained.

(3) Net operating losses attributable to compensable injuries

For purposes of paragraph (1)—

(A) a net operating loss for any taxable year shall be treated as attributable to a compensable injury to the extent of the compensable injury sustained during such taxable year, and

(B) if only a portion of a net operating loss for any taxable year is attributable to a compensable injury, such portion shall (in applying section 172 for purposes of this section) be considered to be a separate net operating loss for such year to be applied after the other portion of such net operating loss.

(e) Effect on net operating loss carryovers

If for the taxable year in which a compensatory amount is received or accrued any portion of a net operating loss carryover to such year is attributable to the compensable injury for which such amount is received or accrued, such portion of such net operating loss carryover shall be reduced by an amount equal to—

(1) the deduction allowed under subsection (a) with respect to such compensatory amount, reduced by

(2) any portion of the unrecovered losses sustained as a result of the compensable injury with respect to which the period for carryover under section 172 has expired.

(Added Pub. L. 91–172, title IX, §904(a), Dec. 30, 1969, 83 Stat. 711.)

REFERENCES IN TEXT

Section 4 of the Clayton Act, referred to in subsec. (b)(3), is classified to section 15 of Title 15.

EFFECTIVE DATE

Pub. L. 91–172, title IX, §904(c), Dec. 30, 1969, 83 Stat. 712, provided that: "The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1968."

[§187. Repealed. Pub. L. 94–455, title XIX, §1901(a)(31), Oct. 4, 1976, 90 Stat. 1769]

Section, added Pub. L. 91–172, title VII, §707(a), Dec. 30, 1969, 83 Stat. 674; amended Pub. L. 93–625, §3(d), Jan. 3, 1975, 88 Stat. 2109, provided for an allowance of an amortization deduction for certain coal mine safety equipment, the method of election and termination of such deduction, the definition of term "certified coal mine safety equipment", and special rules applicable to the amortization deduction.

EFFECTIVE DATE OF REPEAL

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

[§188. Repealed. Pub. L. 101–508, title XI, §11801(a)(13), Nov. 5, 1990, 104 Stat. 1388–520]

Section, added Pub. L. 92–178, title III, §303(a), Dec. 10, 1971, 85 Stat. 521; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–30, title IV, §402(a)(1)–(3), May 23, 1977, 91 Stat. 155, related to amortization of certain expenditures for child care facilities.

SAVINGS PROVISION

For provisions that nothing in repeal by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

[§189. Repealed. Pub. L. 99–514, title VIII, §803(b)(1), Oct. 22, 1986, 100 Stat. 2355]

Section, added Pub. L. 94–455, title II, §201(a), Oct. 4, 1976, 90 Stat. 1525; amended Pub. L. 95–600, title VII, §701(m)(1), Nov. 6, 1978, 92 Stat. 2907; Pub. L. 97–34, title II, §262(a), (b), Aug. 13, 1981, 95 Stat. 264; Pub. L. 97–248, title II, §207(a)–(d), Sept. 3, 1982, 96 Stat. 431, 432; Pub. L. 97–354, §5(a)(24), Oct. 19, 1982, 96 Stat. 1694; Pub. L. 98–369, div. A, title I, §93(a), title VII, §712(c), July 18, 1984, 98 Stat. 614, 947, related to amortization of real property construction period interest and taxes.

EFFECTIVE DATE OF REPEAL

If any interest costs incurred after Dec. 31, 1986, are attributable to costs incurred before Jan. 1, 1987, the repeal of this section is applicable to such interest costs only to the extent such interest costs are attributable to costs which were required to be capitalized under section 263 of the Internal Revenue Code of 1954 and which would have been taken into account in applying this section (as in effect before its repeal) or, if applicable, section 266 of such Code, see section 7831(d)(2) of Pub. L. 101–239, set out as an Effective Date note under section 263A of this title.

Repeal applicable to costs incurred after Dec. 31, 1986, in taxable years ending after such date, except as otherwise provided, see section 803(d) of Pub. L. 99–514, set out as an Effective Date note under section 263A of this title.

§190. Expenditures to remove architectural and transportation barriers to the handicapped and elderly

(a) Treatment as expenses

(1) In general

A taxpayer may elect to treat qualified architectural and transportation barrier removal expenses which are paid or incurred by him during the taxable year as expenses which are not chargeable to capital account. The expenditures so treated shall be allowed as a deduction.

(2) Election

An election under paragraph (1) shall be made at such time and in such manner as the Secretary prescribes by regulations.

(b) Definitions

For purposes of this section—

(1) Architectural and transportation barrier removal expenses

The term "architectural and transportation barrier removal expenses" means an expenditure for the purpose of making any facility or public transportation vehicle owned or leased by the taxpayer for use in connection with his trade or business more accessible to, and usable by, handicapped and elderly individuals.

(2) Qualified architectural and transportation barrier removal expenses

The term "qualified architectural and transportation barrier removal expense" means, with respect to any such facility or public transportation vehicle, an architectural or transportation barrier removal expense with respect to which the taxpayer establishes, to the satisfaction of the Secretary, that the resulting removal of any such barrier meets the standards promulgated by the Secretary with the concurrence of the Architectural and Transportation Barriers Compliance Board and set forth in regulations prescribed by the Secretary.

(3) Handicapped individual

The term "handicapped individual" means any individual who has a physical or mental disability (including, but not limited to, blindness or deafness) which for such individual constitutes or results in a functional limitation to employment, or who has any physical or mental impairment (including, but not limited to, a sight or hearing impairment) which substantially limits one or more major life activities of such individual.

(c) Limitation

The deduction allowed by subsection (a) for any taxable year shall not exceed $15,000.

(Added Pub. L. 94–455, title XXI, §2122(a), Oct. 4, 1976, 90 Stat. 1914; amended Pub. L. 98–369, div. A, title X, §1062(a)(1), (b), July 18, 1984, 98 Stat. 1047; Pub. L. 99–514, title II, §244, Oct. 22, 1986, 100 Stat. 2183; Pub. L. 101–508, title XI, §§11611(c), 11801(a)(14), Nov. 5, 1990, 104 Stat. 1388–503, 1388–520.)

AMENDMENTS

1990—Subsec. (c). Pub. L. 101–508, §11611(c), substituted "$15,000" for "$35,000".

Subsec. (d). Pub. L. 101–508, §11801(a)(14), struck out subsec. (d) which related to application of section to taxable years beginning after Dec. 31, 1976, and before Jan. 1, 1983, and to taxable years beginning after Dec. 31, 1983.

1986—Subsec. (d)(2). Pub. L. 99–514 substituted "1983" for "1983, and before January 1, 1986".

1984—Subsec. (c). Pub. L. 98–369, §1062(b), substituted "$35,000" for "$25,000".

Subsec. (d). Pub. L. 98–369, §1062(a)(1), amended subsec. (d) generally, substituting provisions that this section shall apply to taxable years beginning after December 31, 1976, and before January 1, 1983, and to taxable years beginning after December 31, 1983, and before January 1, 1986 for provisions which had required the Secretary to prescribe such regulations as might be necessary to carry out this section within 180 days after October 4, 1976.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11611(c) of Pub. L. 101–508 applicable to taxable years beginning after Nov. 5, 1990, see section 11611(e)(2) of Pub. L. 101–508, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title X, §1062(c), July 18, 1984, 98 Stat. 1047, provided that: "The amendment made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 1983."

EFFECTIVE DATE

Pub. L. 94–455, title XXI, §2122(c), Oct. 4, 1976, 90 Stat. 1915, as amended by Pub. L. 96–167, §9(c), Dec. 29, 1979, 93 Stat. 1278; Pub. L. 98–369, div. A, title X, §1062(a)(2), July 18, 1984, 98 Stat. 1047, provided that: "The amendments made by this section [enacting this section and amending sections 263, 1245, and 1250 of this title] shall apply to taxable years beginning after December 31, 1976."

SAVINGS PROVISION

For provisions that nothing in amendment by section 11801(a)(14) of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

[§191. Repealed. Pub. L. 97–34, title II, §212(d)(1), Aug. 13, 1981, 95 Stat. 239]

Section, added Pub. L. 94–455, title XXI, §2124(a)(1), Oct. 4, 1976, 90 Stat. 1916; amended Pub. L. 95–600, title VII, §701(f)(1), (2), (7), Nov. 6, 1978, 92 Stat. 2900–2902; Pub. L. 96–222, title I, §107(a)(1)(E)(ii), Apr. 1, 1980, 94 Stat. 222; Pub. L. 96–541, §2(a), Dec. 17, 1980, 94 Stat. 3204, related to amortization of certain rehabilitation expenditures for certified historic structures.

EFFECTIVE DATE OF REPEAL

Repeal applicable to expenditures incurred after Dec. 31, 1981, in taxable years ending after such date, with exceptions, see section 212(e) of Pub. L. 97–34, set out as an Effective Date of 1981 Amendment note under section 46 of this title.

§192. Contributions to black lung benefit trust

(a) Allowance of deduction

There is allowed as a deduction for the taxable year an amount equal to the sum of the amounts contributed by the taxpayer during the taxable year to or under a trust or trusts described in section 501(c)(21).

(b) Limitation

The maximum amount of the deduction allowed by subsection (a) for any taxpayer for any taxable year shall not exceed the greater of—

(1) the amount necessary to fund (with level funding) the remaining unfunded liability of the taxpayer for black lung claims filed (or expected to be filed) by (or with respect to) past or present employees of the taxpayer, or

(2) the aggregate amount necessary to increase each trust described in section 501(c)(21) to the amount required to pay all amounts payable out of such trust for the taxable year.

(c) Special rules

(1) Method of determining amounts referred to in subsection (b)

(A) In general

The amounts described in subsection (b) shall be determined by using reasonable actuarial methods and assumptions which are not inconsistent with regulations prescribed by the Secretary.

(B) Funding period

Except as provided in subparagraph (C), the funding period for purposes of subsection (b)(1) shall be the greater of—

(i) the average remaining working life of miners who are present employees of the taxpayer, or

(ii) 10 taxable years.

For purposes of the preceding sentence, the term "miner" has the same meaning as such term has when used in section 402(d) of the Black Lung Benefits Act (30 U.S.C. 902(d)).

(C) Different funding periods

To the extent that—

(i) regulations prescribed by the Secretary provide for a different period, or

(ii) the Secretary consents to a different period proposed by the taxpayer,

such different period shall be substituted for the funding period provided in subparagraph (B).

(2) Benefit payments taken into account

In determining the amounts described in subsection (b), only those black lung benefit claims the payment of which is expected to be made from the trust shall be taken into account.

(3) Time when contributions deemed made

For purposes of this section, a taxpayer shall be deemed to have made a payment of a contribution on the last day of a taxable year if the payment is on account of that taxable year and is made not later than the time prescribed by law for filing the return for that taxable year (including extensions thereof).

(4) Contributions to be in cash or certain other items

No deduction shall be allowed under subsection (a) with respect to any contribution to a trust described in section 501(c)(21) other than a contribution in cash or in items in which such trust may invest under subclause (II) of section 501(c)(21)(A)(ii).

(5) Denial of section 162 deduction with respect to liability

No deduction shall be allowed under section 162(a) with respect to any liability taken into account in determining the deduction under subsection (a) of this section of the taxpayer (or a predecessor).

(d) Carryover of excess contributions

If the amount of the deduction determined under subsection (a) for the taxable year (without regard to the limitation imposed by subsection (b)) with respect to a trust exceeds the limitation imposed by subsection (b) for the taxable year, the excess shall be carried over to the succeeding taxable year and treated as contributed to the trust during that year.

(e) Definition of black lung benefit claim

For purposes of this section, the term "black lung benefit claim" means a claim for compensation for disability or death due to pneumoconiosis under part C of title IV of the Federal Mine Safety and Health Act of 1977 or under any State law providing for such compensation.

(Added Pub. L. 95–227, §4(b)(1), Feb. 10, 1978, 92 Stat. 16; amended Pub. L. 95–488, §1(a)–(c), Oct. 20, 1978, 92 Stat. 1637; Pub. L. 96–222, title I, §108(b)(2)(B), Apr. 1, 1980, 94 Stat. 226; Pub. L. 102–486, title XIX, §1940(c), Oct. 24, 1992, 106 Stat. 3035.)

REFERENCES IN TEXT

The Federal Mine Safety and Health Act of 1977, referred to in subsec. (e), is Pub. L. 91–173, Dec. 30, 1969, 83 Stat. 742, as amended by Pub. L. 95–164, Nov. 9, 1977, 91 Stat. 1290. Part C of title IV of the Federal Mine Safety and Health Act of 1977 is classified generally to part C of subchapter IV of chapter 22 (§931 et seq.) of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 30 and Tables.

AMENDMENTS

1992—Subsec. (c)(4). Pub. L. 102–486 substituted "subclause (II) of section 501(c)(21)(A)(ii)" for "clause

(ii) of section 501(c)(21)(B)".

1980—Subsec. (e). Pub. L. 96–222 substituted "Federal Mine Safety and Health Act of 1977" for "Federal Coal Mine Health and Safety Act of 1969".

1978—Subsec. (b). Pub. L. 95–488, §1(a), substituted provision limiting the allowable deduction to the greater of the amount necessary to fund the remaining unfunded liability of the taxpayer for the black lung claims filed or expected to be filed by past or present employees of the taxpayer or the aggregate amount necessary to increase each trust described in section 501(c)(21) to the amount required to pay all amounts payable out of such trust for the taxable year for provision limiting the allowable deduction to the amount necessary, when added to the fair market value of trust assets at the beginning of the taxable year, to fund the greater of current year obligations or certain future obligations.

Subsec. (c)(1). Pub. L. 95–488, §1(b), substituted "Method of determining amounts referred to in subsection (b)" for "Determination of expected future payments" in heading and in text inserted provisions establishing the funding period as the greater of the average remaining working life of miners who are present employees of the taxpayer or 10 taxable years and permitting a different funding period if prescribed or consented to by the Secretary.

Subsec. (c)(5). Pub. L. 95–488, §1(c), added par. (5).

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–486, title XIX, §1940(d), Oct. 24, 1992, 106 Stat. 3035, provided that: "The amendments made by this section [amending this section and sections 501 and 4951 of this title] shall apply to taxable years beginning after December 31, 1991."

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–222, title I, §108(b)(4), Apr. 1, 1980, 94 Stat. 226, provided that: "Any amendment made by this subsection [amending this section, sections 6503, 6511, 6862, 7422, and 7454 of this title, and sections 934 and 934a of Title 30, Mineral Lands and Mining] shall take effect as if included in the provision of the Black Lung Benefits Revenue Act of 1977 [see Short Title of 1978 Amendments note set out under section 1 of this title] to which such amendment relates."

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–488, §1(e), Oct. 20, 1978, 92 Stat. 1638, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by this section [amending this section and section 6104 of this title] shall apply to taxable years beginning after December 31, 1977. Nothing in the amendments made by subsection (d) to section 6104 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall be construed to permit the disclosure under such section 6104 of confidential business information of contributors to any trust described in section 501(c)(21) of such Code."

EFFECTIVE DATE

Pub. L. 95–227, §4(f), Feb. 10, 1978, 92 Stat. 24, provided that: "The amendments made by this section [enacting this section and sections 4951 to 4953 and amending sections 501, 4946, 6104, 6213, 6405, 6501, 6503, and 7451 of this title] shall apply with respect to contributions, acts, and expenditures made after December 31, 1977, in and for taxable years beginning after such date."

§193. Tertiary injectants

(a) Allowance of deduction

There shall be allowed as a deduction for the taxable year an amount equal to the qualified tertiary injectant expenses of the taxpayer for tertiary injectants injected during such taxable year.

(b) Qualified tertiary injectant expenses

For purposes of this section—

(1) In general

The term "qualified tertiary injectant expenses" means any cost paid or incurred (whether or not chargeable to capital account) for any tertiary injectant (other than a hydrocarbon injectant which is recoverable) which is used as a part of a tertiary recovery method.

(2) Hydrocarbon injectant

The term "hydrocarbon injectant" includes natural gas, crude oil, and any other injectant which is comprised of more than an insignificant amount of natural gas or crude oil. The term does not include any tertiary injectant which is hydrocarbon-based, or a hydrocarbon-derivative, and which is comprised of no more than an insignificant amount of natural gas or crude oil. For purposes of this paragraph, that portion of a hydrocarbon injectant which is not a hydrocarbon shall not be treated as a hydrocarbon injectant.

(3) Tertiary recovery method

The term "tertiary recovery method" means—

(A) any method which is described in subparagraphs (1) through (9) of section 212.78(c) of the June 1979 energy regulations (as defined by section 4996(b)(8)(C) as in effect before its repeal), or

(B) any other method to provide tertiary enhanced recovery which is approved by the Secretary for purposes of this section.

(c) Application with other deductions

No deduction shall be allowed under subsection (a) with respect to any expenditure—

(1) with respect to which the taxpayer has made an election under section 263(c), or

(2) with respect to which a deduction is allowed or allowable to the taxpayer under any other provision of this chapter.

(Added Pub. L. 96–223, title II, §251(a)(1), Apr. 2, 1980, 94 Stat. 286; amended Pub. L. 97–448, title II, §202(b), Jan. 12, 1983, 96 Stat. 2396; Pub. L. 100–418, title I, §1941(b)(7), Aug. 23, 1988, 102 Stat. 1324.)

REFERENCES IN TEXT

Section 4996(b)(8)(C), referred to in subsec. (b)(3)(A), was repealed by Pub. L. 100–418, title I, §1941(a), Aug. 23, 1988, 102 Stat. 1322.

AMENDMENTS

1988—Subsec. (b)(3)(A). Pub. L. 100–418 substituted "section 4996(b)(8)(C) as in effect before its repeal" for "section 4996(b)(8)(C)".

1983—Subsec. (b)(1). Pub. L. 97–448 struck out "during the taxable year" after "any cost paid or incurred".

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–418 applicable to crude oil removed from the premises on or after Aug. 23, 1988, see section 1941(c) of Pub. L. 100–418, set out as a note under section 164 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Crude Oil Windfall Profit Tax Act of 1980, Pub. L. 96–223, to which such amendment relates, see section 203(a) of Pub. L. 97–448, set out as a note under section 6652 of this title.

EFFECTIVE DATE

Pub. L. 96–223, title II, §251(b), Apr. 2, 1980, 94 Stat. 287, provided that: "The amendments made by this section [enacting this section and amending sections 263, 1245, and 1250 of this title] shall apply to taxable years beginning after December 31, 1979."

§194. Treatment of reforestation expenditures

(a) Allowance of deduction

In the case of any qualified timber property with respect to which the taxpayer has made (in accordance with regulations prescribed by the Secretary) an election under this subsection, the taxpayer shall be entitled to a deduction with respect to the amortization of the amortizable basis of qualified timber property based on a period of 84 months. Such amortization deduction shall be an amount, with respect to each month of such period within the taxable year, equal to the amortizable basis at the end of such month divided by the number of months (including the month for which the

deduction is computed) remaining in the period. Such amortizable basis at the end of the month shall be computed without regard to the amortization deduction for such month. The 84-month period shall begin on the first day of the first month of the second half of the taxable year in which the amortizable basis is acquired.

(b) Treatment as expenses

(1) Election to treat certain reforestation expenditures as expenses

(A) In general

In the case of any qualified timber property with respect to which the taxpayer has made (in accordance with regulations prescribed by the Secretary) an election under this subsection, the taxpayer shall treat reforestation expenditures which are paid or incurred during the taxable year with respect to such property as an expense which is not chargeable to capital account. The reforestation expenditures so treated shall be allowed as a deduction.

(B) Dollar limitation

The aggregate amount of reforestation expenditures which may be taken into account under subparagraph (A) with respect to each qualified timber property for any taxable year shall not exceed—

(i) except as provided in clause (ii) or (iii), $10,000,

(ii) in the case of a separate return by a married individual (as defined in section 7703), $5,000, and

(iii) in the case of a trust, zero.

(2) Allocation of dollar limit

(A) Controlled group

For purposes of applying the dollar limitation under paragraph (1)(B)—

(i) all component members of a controlled group shall be treated as one taxpayer, and

(ii) the Secretary shall, under regulations prescribed by him, apportion such dollar limitation among the component members of such controlled group.

For purposes of the preceding sentence, the term "controlled group" has the meaning assigned to it by section 1563(a), except that the phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent" each place it appears in section 1563(a)(1).

(B) Partnerships and S corporations

In the case of a partnership, the dollar limitation contained in paragraph (1)(B) shall apply with respect to the partnership and with respect to each partner. A similar rule shall apply in the case of an S corporation and its shareholders.

(c) Definitions and special rule

For purposes of this section—

(1) Qualified timber property

The term "qualified timber property" means a woodlot or other site located in the United States which will contain trees in significant commercial quantities and which is held by the taxpayer for the planting, cultivating, caring for, and cutting of trees for sale or use in the commercial production of timber products.

(2) Amortizable basis

The term "amortizable basis" means that portion of the basis of the qualified timber property attributable to reforestation expenditures which have not been taken into account under subsection (b).

(3) Reforestation expenditures

(A) In general

The term "reforestation expenditures" means direct costs incurred in connection with forestation or reforestation by planting or artificial or natural seeding, including costs—

(i) for the preparation of the site;

(ii) of seeds or seedlings; and

(iii) for labor and tools, including depreciation of equipment such as tractors, trucks, tree planters, and similar machines used in planting or seeding.

(B) Cost-sharing programs

Reforestation expenditures shall not include any expenditures for which the taxpayer has been reimbursed under any governmental reforestation cost-sharing program unless the amounts reimbursed have been included in the gross income of the taxpayer.

(4) Treatment of trusts and estates

The aggregate amount of reforestation expenditures incurred by any trust or estate shall be apportioned between the income beneficiaries and the fiduciary under regulations prescribed by the Secretary. Any amount so apportioned to a beneficiary shall be taken into account as expenditures incurred by such beneficiary in applying this section to such beneficiary.

(5) Application with other deductions

No deduction shall be allowed under any other provision of this chapter with respect to any expenditure with respect to which a deduction is allowed or allowable under this section to the taxpayer.

(d) Life tenant and remainderman

In the case of property held by one person for life with remainder to another person, the deduction under this section shall be computed as if the life tenant were the absolute owner of the property and shall be allowed to the life tenant.

(Added Pub. L. 96–451, title III, §301(a), Oct. 14, 1980, 94 Stat. 1989; amended Pub. L. 97–354, §3(g), Oct. 19, 1982, 96 Stat. 1689; Pub. L. 99–514, title XIII, §1301(j)(8), Oct. 22, 1986, 100 Stat. 2658; Pub. L. 108–357, title III, §322(a)–(c)(4), Oct. 22, 2004, 118 Stat. 1474, 1475; Pub. L. 109–135, title IV, §403(i)(1), Dec. 21, 2005, 119 Stat. 2624.)

PRIOR PROVISIONS

A prior section 194 was renumbered section 194A of this title.

AMENDMENTS

2005—Subsec. (b)(1)(B). Pub. L. 109–135, §403(i)(1)(A), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "The aggregate amount of reforestation expenditures which may be taken into account under subparagraph (A) with respect to each qualified timber property for any taxable year shall not exceed $10,000 ($5,000 in the case of a separate return by a married individual (as defined in section 7703))."

Subsec. (c)(4). Pub. L. 109–135, §403(i)(1)(B), reenacted heading without change and amended text generally. Prior to amendment, text read as follows:

"(A) IN GENERAL.—Except as provided in subparagraph (B), this section shall not apply to trusts and estates.

"(B) AMORTIZATION DEDUCTION ALLOWED TO ESTATES.—The benefit of the deduction for amortization provided by subsection (a) shall be allowed to estates in the same manner as in the case of an individual. The allowable deduction shall be apportioned between the income beneficiary and the fiduciary under regulations prescribed by the Secretary. Any amount so apportioned to a beneficiary shall be taken into account for purposes of determining the amount allowable as a deduction under subsection (a) to such beneficiary."

2004—Pub. L. 108–357, §322(c)(4), substituted "Treatment" for "Amortization" in section catchline.

Subsec. (b). Pub. L. 108–357, §322(a), substituted "Treatment as expenses" for "Limitations" in heading.

Subsec. (b)(1). Pub. L. 108–357, §322(a), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: "The aggregate amount of amortizable basis acquired during the taxable year which may be taken into account under subsection (a) for such taxable year shall not exceed $10,000 ($5,000 in the case of a separate return by a married individual (as defined in section 7703))."

Subsec. (b)(2). Pub. L. 108–357, §322(c)(2), substituted "paragraph (1)(B)" for "paragraph (1)" in introductory provisions of subpar. (A) and in subpar. (B).

Subsec. (b)(3), (4). Pub. L. 108–357, §322(c)(1), struck out pars. (3) and (4) which related to inapplicability of section to trusts and applicability of section to estates, respectively.

Subsec. (c)(2). Pub. L. 108–357, §322(b), inserted "which have not been taken into account under subsection (b)" after "expenditures".

Subsec. (c)(4), (5). Pub. L. 108–357, §322(c)(3), added pars. (4) and (5) and struck out former par. (4) which related to basis allocation if the amount of the amortizable basis acquired during the taxable year of all qualified timber property with respect to which the taxpayer had made an election under subsec. (a) exceeded the amount of the limitation under subsec. (b)(1).

1986—Subsec. (b)(1). Pub. L. 99–514 substituted "section 7703" for "section 143".

1982—Subsec. (b)(2)(B). Pub. L. 97–354 substituted "Partnerships and S corporations" for "Partnerships" in heading, and inserted "A similar rule shall apply in the case of an S corporation and its shareholders."

EFFECTIVE DATE OF 2005 AMENDMENT

Amendments by Pub. L. 109–135 effective as if included in the provisions of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which they relate, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable with respect to expenditures paid or incurred after Oct. 22, 2004, see section 322(e) of Pub. L. 108–357, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

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

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE

Pub. L. 96–451, title III, §301(d), Oct. 14, 1980, 94 Stat. 1991, provided that: "The amendments made by this section [enacting this section and amending sections 62 and 1245 of this title] shall apply with respect to additions to capital account made after December 31, 1979."

§194A. Contributions to employer liability trusts

(a) Allowance of deduction

There shall be allowed as a deduction for the taxable year an amount equal to the amount—

(1) which is contributed by an employer to a trust described in section 501(c)(22) (relating to withdrawal liability payment fund) which meets the requirements of section 4223(h) of the Employee Retirement Income Security Act of 1974, and

(2) which is properly allocable to such taxable year.

(b) Allocation to taxable year

In the case of a contribution described in subsection (a) which relates to any specified period of time which includes more than one taxable year, the amount properly allocable to any taxable year in such period shall be determined by prorating such amounts to such taxable years under regulations prescribed by the Secretary.

(c) Disallowance of deduction

No deduction shall be allowed under subsection (a) with respect to any contribution described in subsection (a) which does not relate to any specified period of time.

(Added Pub. L. 96–364, title II, §209(c)(1), Sept. 26, 1980, 94 Stat. 1290, §194; renumbered §194A, Pub. L. 97–448, title III, §305(b)(1), Jan. 12, 1983, 96 Stat. 2399.)

REFERENCES IN TEXT

Section 4223(h) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (a), is classified to section 1403(h) of Title 29, Labor.

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 97–448, title III, §311(c)(2), Jan. 12, 1983, 96 Stat. 2411, provided that: "The amendments made by subsection (b) of section 305 [redesignating section 194 of this title, relating to contributions to employer liability trusts, as this section] shall take effect on October 14, 1980."

EFFECTIVE DATE

Section applicable to taxable years ending after Sept. 26, 1980, see section 210(c) of Pub. L. 96–364, set out as a note under section 418 of this title.

§195. Start-up expenditures

(a) Capitalization of expenditures

Except as otherwise provided in this section, no deduction shall be allowed for start-up expenditures.

(b) Election to deduct

(1) Allowance of deduction

If a taxpayer elects the application of this subsection with respect to any start-up expenditures—

(A) the taxpayer shall be allowed a deduction for the taxable year in which the active trade or business begins in an amount equal to the lesser of—

(i) the amount of start-up expenditures with respect to the active trade or business, or

(ii) $5,000, reduced (but not below zero) by the amount by which such start-up expenditures exceed $50,000, and

(B) the remainder of such start-up expenditures shall be allowed as a deduction ratably over the 180-month period beginning with the month in which the active trade or business begins.

(2) Dispositions before close of amortization period

In any case in which a trade or business is completely disposed of by the taxpayer before the end of the period to which paragraph (1) applies, any deferred expenses attributable to such trade or business which were not allowed as a deduction by reason of this section may be deducted to the extent allowable under section 165.

(3) Special rule for taxable years beginning in 2010

In the case of a taxable year beginning in 2010, paragraph (1)(A)(ii) shall be applied—

(A) by substituting "$10,000" for "$5,000", and

(B) by substituting "$60,000" for "$50,000".

(c) Definitions

For purposes of this section—

(1) Start-up expenditures

The term "start-up expenditure" means any amount—

(A) paid or incurred in connection with—

(i) investigating the creation or acquisition of an active trade or business, or

(ii) creating an active trade or business, or

(iii) any activity engaged in for profit and for the production of income before the day on which the active trade or business begins, in anticipation of such activity becoming an active trade or business, and

(B) which, if paid or incurred in connection with the operation of an existing active trade or

business (in the same field as the trade or business referred to in subparagraph (A)), would be allowable as a deduction for the taxable year in which paid or incurred.

The term "start-up expenditure" does not include any amount with respect to which a deduction is allowable under section 163(a), 164, or 174.

(2) Beginning of trade or business

(A) In general

Except as provided in subparagraph (B), the determination of when an active trade or business begins shall be made in accordance with such regulations as the Secretary may prescribe.

(B) Acquired trade or business

An acquired active trade or business shall be treated as beginning when the taxpayer acquires it.

(d) Election

(1) Time for making election

An election under subsection (b) shall be made not later than the time prescribed by law for filing the return for the taxable year in which the trade or business begins (including extensions thereof).

(2) Scope of election

The period selected under subsection (b) shall be adhered to in computing taxable income for the taxable year for which the election is made and all subsequent taxable years.

(Added Pub. L. 96–605, title I, §102(a), Dec. 28, 1980, 94 Stat. 3522; amended Pub. L. 98–369, div. A, title I, §94(a), July 18, 1984, 98 Stat. 614; Pub. L. 108–357, title VIII, §902(a), Oct. 22, 2004, 118 Stat. 1651; Pub. L. 111–240, title II, §2031(a), Sept. 27, 2010, 124 Stat. 2559.)

AMENDMENTS

2010—Subsec. (b)(3). Pub. L. 111–240 added par. (3).

2004—Subsec. (b). Pub. L. 108–357, §902(a)(2), substituted "deduct" for "amortize" in heading.

Subsec. (b)(1). Pub. L. 108–357, §902(a)(1), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: "Start-up expenditures may, at the election of the taxpayer, be treated as deferred expenses. Such deferred expenses shall be allowed as a deduction prorated equally over such period of not less than 60 months as may be selected by the taxpayer (beginning with the month in which the active trade or business begins)."

1984—Subsec. (a). Pub. L. 98–369 amended subsec. (a) generally, substituting provisions dealing with capitalization of expenditures for provisions dealing with election to amortize.

Subsec. (b). Pub. L. 98–369 amended subsec. (b) generally, substituting provisions dealing with election to amortize for provisions dealing with start-up expenditures.

Subsec. (c). Pub. L. 98–369 amended subsec. (c) generally, substituting provisions setting forth definitions for provisions dealing with election.

Subsec. (d). Pub. L. 98–369 amended subsec. (d) generally, substituting provisions dealing with election for provisions dealing with business beginning.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–240, title II, §2031(b), Sept. 27, 2010, 124 Stat. 2559, provided that: "The amendment made by this section [amending this section] shall apply to amounts paid or incurred in taxable years beginning after December 31, 2009."

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §902(d), Oct. 22, 2004, 118 Stat. 1652, provided that: "The amendments made by this section [amending this section and sections 248 and 709 of this title] shall apply to amounts paid or incurred after the date of the enactment of this Act [Oct. 22, 2004]."

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §94(c), July 18, 1984, 98 Stat. 615, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after June 30, 1984."

EFFECTIVE DATE

Pub. L. 96–605, title I, §102(c), Dec. 28, 1980, 94 Stat. 3522, provided that: "The amendments made by this section [enacting this section] shall apply to amounts paid or incurred after July 29, 1980, in taxable years ending after such date."

§196. Deduction for certain unused business credits

(a) Allowance of deduction

If any portion of the qualified business credits determined for any taxable year has not, after the application of section 38(c), been allowed to the taxpayer as a credit under section 38 for any taxable year, an amount equal to the credit not so allowed shall be allowed to the taxpayer as a deduction for the first taxable year following the last taxable year for which such credit could, under section 39, have been allowed as a credit.

(b) Taxpayer's dying or ceasing to exist

If a taxpayer dies or ceases to exist before the first taxable year following the last taxable year for which the qualified business credits could, under section 39, have been allowed as a credit, the amount described in subsection (a) (or the proper portion thereof) shall, under regulations prescribed by the Secretary, be allowed to the taxpayer as a deduction for the taxable year in which such death or cessation occurs.

(c) Qualified business credits

For purposes of this section, the term "qualified business credits" means—

(1) the investment credit determined under section 46 (but only to the extent attributable to property the basis of which is reduced by section 50(c)),

(2) the work opportunity credit determined under section 51(a),

(3) the alcohol fuels credit determined under section 40(a),

(4) the research credit determined under section 41(a) (other than such credit determined under section 280C(c)(3)) for taxable years beginning after December 31, 1988,

(5) the enhanced oil recovery credit determined under section 43(a),

(6) the empowerment zone employment credit determined under section 1396(a),

(7) the Indian employment credit determined under section 45A(a),

(8) the employer Social Security credit determined under section 45B(a),

(9) the new markets tax credit determined under section 45D(a),

(10) the small employer pension plan startup cost credit determined under section 45E(a),

(11) the biodiesel fuels credit determined under section 40A(a),

(12) the low sulfur diesel fuel production credit determined under section 45H(a),

(13) the new energy efficient home credit determined under section 45L(a), and

(14) the small employer health insurance credit determined under section 45R(a).

(d) Special rule for investment tax credit and research credit

Subsection (a) shall be applied by substituting "an amount equal to 50 percent of" for "an amount equal to" in the case of—

(1) the investment credit determined under section 46 (other than the rehabilitation credit), and

(2) the research credit determined under section 41(a) for a taxable year beginning before January 1, 1990.

(Added Pub. L. 97–248, title II, §205(a)(2), Sept. 3, 1982, 96 Stat. 428; amended Pub. L. 98–369, div. A, title IV, §474(r)(8)(A), July 18, 1984, 98 Stat. 840; Pub. L. 100–647, title IV, §4008(b)(2), Nov. 10, 1988, 102 Stat. 3653; Pub. L. 101–239, title VII, §§7110(c)(2), 7814(e)(1), (2)(D), Dec. 19, 1989, 103 Stat. 2325, 2413, 2414; Pub. L. 101–508, title XI, §§11511(b)(3), 11813(b)(12), Nov. 5, 1990, 104 Stat. 1388–485, 1388–554; Pub. L. 103–66, title XIII, §§13302(b)(2), 13322(c)(2), Aug.

10, 1993, 107 Stat. 555, 563; Pub. L. 104–188, title I, §1201(e)(1), Aug. 20, 1996, 110 Stat. 1772; Pub. L. 105–206, title VI, §6020(a), July 22, 1998, 112 Stat. 823; Pub. L. 106–554, §1(a)(7) [title I, §121(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–610; Pub. L. 107–16, title VI, §619(c)(2), June 7, 2001, 115 Stat. 110; Pub. L. 108–357, title III, §§302(c)(2), 339(e), Oct. 22, 2004, 118 Stat. 1465, 1484; Pub. L. 109–58, title XIII, §1332(d), Aug. 8, 2005, 119 Stat. 1026; Pub. L. 111–148, title I, §1421(d)(2), Mar. 23, 2010, 124 Stat. 242.)

CODIFICATION

Another section 339(e) of Pub. L. 108–357 amended the table of sections for subpart D of part IV of subchapter A of this chapter.

AMENDMENTS

2010—Subsec. (c)(14). Pub. L. 111–148 added par. (14).

2005—Subsec. (c)(13). Pub. L. 109–58 added par. (13).

2004—Subsec. (c)(11). Pub. L. 108–357, §302(c)(2), added par. (11).

Subsec. (c)(12). Pub. L. 108–357, §339(e), added par. (12).

2001—Subsec. (c)(10). Pub. L. 107–16 added par. (10).

2000—Subsec. (c)(9). Pub. L. 106–554 added par. (9).

1998—Subsec. (c)(8). Pub. L. 105–206 added par. (8).

1996—Subsec. (c)(2). Pub. L. 104–188 substituted "work opportunity credit" for "targeted jobs credit".

1993—Subsec. (c)(6). Pub. L. 103–66, §13302(b)(2), added par. (6).

Subsec. (c)(7). Pub. L. 103–66, §13322(c)(2), added par. (7).

1990—Subsec. (c)(1). Pub. L. 101–508, §11813(b)(12)(A), substituted "section 46" for "section 46(a)" and "section 50(c)" for "section 48(q)".

Subsec. (c)(5). Pub. L. 101–508, §11511(b)(3), added par. (5).

Subsec. (d)(1). Pub. L. 101–508, §11813(b)(12)(B), substituted "section 46" for "section 46(a)" and "other than the rehabilitation credit" for "other than a credit to which section 48(q)(3) applies".

1989—Subsec. (c)(4). Pub. L. 101–239, §7814(e)(2)(D), inserted "(other than such credit determined under section 280C(c)(3))" after "section 41(a)".

Subsec. (d). Pub. L. 101–239, §7814(e)(1), substituted "substituting 'an amount equal to 50 percent of' for 'an amount equal to' in the case of" for "substituting an amount equal to 50 percent of for an amount equal to in the case of" in introductory provisions.

Subsec. (d)(2). Pub. L. 101–239, §7110(c)(2), inserted "for a taxable year beginning before January 1, 1990" after "under section 41(a)".

1988—Subsec. (c)(4). Pub. L. 100–647, §4008(b)(2)(A), added par. (4).

Subsec. (d). Pub. L. 100–647, §4008(b)(2)(B), inserted "and research credit" after "tax credit" in heading and amended text generally. Prior to amendment, text read as follows: "In the case of the investment credit determined under section 46(a) (other than a credit to which section 48(q)(3) applies), subsection (a) shall be applied by substituting 'an amount equal to 50 percent of' for 'an amount equal to'."

1984—Pub. L. 98–369 amended section generally, substituting provisions relating to deduction for certain unused business credits for provisions relating to deduction for certain unused investment credits.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–148 applicable to amounts paid or incurred in taxable years beginning after Dec. 31, 2009, see section 1421(f)(1) of Pub. L. 111–148, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–58 applicable to qualified new energy efficient homes acquired after Dec. 31, 2005, in taxable years ending after such date, see section 1332(f) of Pub. L. 109–58, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 302(c)(2) of Pub. L. 108–357 applicable to fuel produced, and sold or used, after Dec. 31, 2004, in taxable years ending after such date, see section 302(d) of Pub. L. 108–357, set out as a note under section 38 of this title.

Amendment by section 339(e) of Pub. L. 108–357 applicable to expenses paid or incurred after Dec. 31, 2002, in taxable years ending after such date, see section 339(f) of Pub. L. 108–357, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to costs paid or incurred in taxable years beginning after Dec. 31, 2001, with respect to qualified employer plans first effective after such date, see section 619(d) of Pub. L. 107–16, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 applicable to investments made after Dec. 31, 2000, see §1(a)(7) [title I, §121(e)] of Pub. L. 106–554, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–206, title VI, §6020(b), July 22, 1998, 112 Stat. 823, provided that: "The amendment made by this section [amending this section] shall take effect as if included in the amendments made by section 13443 of the Revenue Reconciliation Act of 1993 [see section 13443(d) of Pub. L. 103–66, set out as an Effective Date of 1993 Amendment note under section 38 of this title]."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to individuals who begin work for the employer after Sept. 30, 1996, see section 1201(g) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13322(c)(2) of Pub. L. 103–66 applicable to wages paid or incurred after Dec. 31, 1993, see section 13322(f) of Pub. L. 103–66, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11511(b)(3) of Pub. L. 101–508 applicable to costs paid or incurred in taxable years beginning after Dec. 31, 1990, see section 11511(d)(1) of Pub. L. 101–508, set out as an Effective Date note under section 43 of this title.

Amendment by section 11813(b)(12) of Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7110(c)(2) of Pub. L. 101–239 applicable to taxable years beginning after Dec. 31, 1989, see section 7110(e) of Pub. L. 101–239, set out as a note under section 41 of this title.

Amendment by section 7814(e)(1), (2)(D) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 applicable to taxable years beginning after Dec. 31, 1988, see section 4008(d) of Pub. L. 100–647, set out as a note under section 41 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

EFFECTIVE DATE

Pub. L. 97–248, title II, §205(c)(1), Sept. 3, 1982, 96 Stat. 430, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(A) GENERAL RULE.—Except as otherwise provided in this paragraph, the amendments made by subsection (a) [enacting this section and amending sections 48, 312, and 1016 of this title] shall apply to periods after December 31, 1982, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].

"(B) EXCEPTION.—The amendments made by subsection (a) shall not apply to any property which—

"(i) is constructed, reconstructed, erected, or acquired pursuant to a contract which was entered into after August 13, 1981, and was, on July 1, 1982, and at all times thereafter, binding on the taxpayer,

"(ii) is placed in service after December 31, 1982, and before January 1, 1986,

"(iii) with respect to which an election under section 168(f)(8)(A) of such Code is not in effect at any time, and

"(iv) is not described in section 167(l)(3)(A) of such Code.

"(C) SPECIAL RULE FOR INTEGRATED MANUFACTURING FACILITIES.—

"(i) IN GENERAL.—In the case of any integrated manufacturing facility, the requirements of clause (i) of subparagraph (B) shall be treated as met if—

"(I) the on-site construction of the facility began before July 1, 1982, and

"(II) during the period beginning after August 13, 1981, and ending on July 1, 1982, the taxpayer constructed (or entered into binding contracts for the construction of) more than 20 percent of the cost of such facility.

"(ii) INTEGRATED MANUFACTURING FACILITY.—For purposes of clause (i), the term 'integrated manufacturing facility' means 1 or more facilities—

"(I) located on a single site,

"(II) for the manufacture of 1 or more manufactured products from raw materials by the application of 2 or more integrated manufacturing processes.

"(D) SPECIAL RULE FOR HISTORIC STRUCTURES.—In the case of any certified historic structure (as defined in section 48(g)(3) of the Internal Revenue Code of 1986), clause (i) of subparagraph (B) shall be applied by substituting 'December 31, 1980' for 'August 13, 1981.'

"(E) CERTAIN PROJECTS WITH RESPECT TO HISTORIC STRUCTURES.—In the case of any certified historic structure (as so defined), the requirements of clause (i) of subparagraph (B) shall be treated as met with respect to such property—

"(i) if the rehabilitation begins after December 31, 1980, and before July 1, 1982, or

"(ii) if—

"(I) before July 1, 1982, a public offering with respect to interests in such property was registered with the Securities and Exchange Commission,

"(II) before such date an application with respect to such property was filed under section 8 of the United States Housing Act of 1937 [section 1437f of Title 42, The Public Health and Welfare], and

"(III) such property is placed in service before July 1, 1984."

SAVINGS PROVISION

For provisions that nothing in amendment by section 11813(b)(12) of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

§197. Amortization of goodwill and certain other intangibles

(a) General rule

A taxpayer shall be entitled to an amortization deduction with respect to any amortizable section 197 intangible. The amount of such deduction shall be determined by amortizing the adjusted basis (for purposes of determining gain) of such intangible ratably over the 15-year period beginning with the month in which such intangible was acquired.

(b) No other depreciation or amortization deduction allowable

Except as provided in subsection (a), no depreciation or amortization deduction shall be allowable with respect to any amortizable section 197 intangible.

(c) Amortizable section 197 intangible

For purposes of this section—

(1) In general

Except as otherwise provided in this section, the term "amortizable section 197 intangible" means any section 197 intangible—

(A) which is acquired by the taxpayer after the date of the enactment of this section, and

(B) which is held in connection with the conduct of a trade or business or an activity described in section 212.

(2) Exclusion of self-created intangibles, etc.

The term "amortizable section 197 intangible" shall not include any section 197 intangible—

(A) which is not described in subparagraph (D), (E), or (F) of subsection (d)(1), and

(B) which is created by the taxpayer.

This paragraph shall not apply if the intangible is created in connection with a transaction (or series of related transactions) involving the acquisition of assets constituting a trade or business or substantial portion thereof.

(3) Anti-churning rules

For exclusion of intangibles acquired in certain transactions, see subsection (f)(9).

(d) Section 197 intangible

For purposes of this section—

(1) In general

Except as otherwise provided in this section, the term "section 197 intangible" means—

(A) goodwill,

(B) going concern value,

(C) any of the following intangible items:

(i) workforce in place including its composition and terms and conditions (contractual or otherwise) of its employment,

(ii) business books and records, operating systems, or any other information base (including lists or other information with respect to current or prospective customers),

(iii) any patent, copyright, formula, process, design, pattern, knowhow, format, or other similar item,

(iv) any customer-based intangible,

(v) any supplier-based intangible, and

(vi) any other similar item,

(D) any license, permit, or other right granted by a governmental unit or an agency or instrumentality thereof,

(E) any covenant not to compete (or other arrangement to the extent such arrangement has substantially the same effect as a covenant not to compete) entered into in connection with an acquisition (directly or indirectly) of an interest in a trade or business or substantial portion thereof, and

(F) any franchise, trademark, or trade name.

(2) Customer-based intangible

(A) In general

The term "customer-based intangible" means—

(i) composition of market,

(ii) market share, and

(iii) any other value resulting from future provision of goods or services pursuant to relationships (contractual or otherwise) in the ordinary course of business with customers.

(B) Special rule for financial institutions

In the case of a financial institution, the term "customer-based intangible" includes deposit base and similar items.

(3) Supplier-based intangible

The term "supplier-based intangible" means any value resulting from future acquisitions of goods or services pursuant to relationships (contractual or otherwise) in the ordinary course of business with suppliers of goods or services to be used or sold by the taxpayer.

(e) Exceptions

For purposes of this section, the term "section 197 intangible" shall not include any of the following:

(1) Financial interests

Any interest—

(A) in a corporation, partnership, trust, or estate, or

(B) under an existing futures contract, foreign currency contract, notional principal contract, or other similar financial contract.

(2) Land

Any interest in land.

(3) Computer software

(A) In general

Any—

(i) computer software which is readily available for purchase by the general public, is subject to a nonexclusive license, and has not been substantially modified, and

(ii) other computer software which is not acquired in a transaction (or series of related transactions) involving the acquisition of assets constituting a trade or business or substantial portion thereof.

(B) Computer software defined

For purposes of subparagraph (A), the term "computer software" means any program designed to cause a computer to perform a desired function. Such term shall not include any data base or similar item unless the data base or item is in the public domain and is incidental to the operation of otherwise qualifying computer software.

(4) Certain interests or rights acquired separately

Any of the following not acquired in a transaction (or series of related transactions) involving the acquisition of assets constituting a trade business or substantial portion thereof:

(A) Any interest in a film, sound recording, video tape, book, or similar property.

(B) Any right to receive tangible property or services under a contract or granted by a governmental unit or agency or instrumentality thereof.

(C) Any interest in a patent or copyright.

(D) To the extent provided in regulations, any right under a contract (or granted by a governmental unit or an agency or instrumentality thereof) if such right—

(i) has a fixed duration of less than 15 years, or

(ii) is fixed as to amount and, without regard to this section, would be recoverable under a method similar to the unit-of-production method.

(5) Interests under leases and debt instruments

Any interest under—

(A) an existing lease of tangible property, or

(B) except as provided in subsection (d)(2)(B), any existing indebtedness.

(6) Mortgage servicing

Any right to service indebtedness which is secured by residential real property unless such right is acquired in a transaction (or series of related transactions) involving the acquisition of assets (other than rights described in this paragraph) constituting a trade or business or substantial portion thereof.

(7) Certain transaction costs

Any fees for professional services, and any transaction costs, incurred by parties to a transaction with respect to which any portion of the gain or loss is not recognized under part III of subchapter C.

(f) Special rules

(1) Treatment of certain dispositions, etc.

(A) In general

If there is a disposition of any amortizable section 197 intangible acquired in a transaction or series of related transactions (or any such intangible becomes worthless) and one or more other amortizable section 197 intangibles acquired in such transaction or series of related transactions are retained—

(i) no loss shall be recognized by reason of such disposition (or such worthlessness), and

(ii) appropriate adjustments to the adjusted bases of such retained intangibles shall be made for any loss not recognized under clause (i).

(B) Special rule for covenants not to compete

In the case of any section 197 intangible which is a covenant not to compete (or other arrangement) described in subsection (d)(1)(E), in no event shall such covenant or other arrangement be treated as disposed of (or becoming worthless) before the disposition of the entire interest described in such subsection in connection with which such covenant (or other arrangement) was entered into.

(C) Special rule

All persons treated as a single taxpayer under section 41(f)(1) shall be so treated for purposes of this paragraph.

(2) Treatment of certain transfers

(A) In general

In the case of any section 197 intangible transferred in a transaction described in subparagraph (B), the transferee shall be treated as the transferor for purposes of applying this section with respect to so much of the adjusted basis in the hands of the transferee as does not exceed the adjusted basis in the hands of the transferor.

(B) Transactions covered

The transactions described in this subparagraph are—

(i) any transaction described in section 332, 351, 361, 721, 731, 1031, or 1033, and

(ii) any transaction between members of the same affiliated group during any taxable year for which a consolidated return is made by such group.

(3) Treatment of amounts paid pursuant to covenants not to compete, etc.

Any amount paid or incurred pursuant to a covenant or arrangement referred to in subsection (d)(1)(E) shall be treated as an amount chargeable to capital account.

(4) Treatment of franchises, etc.

(A) Franchise

The term "franchise" has the meaning given to such term by section 1253(b)(1).

(B) Treatment of renewals

Any renewal of a franchise, trademark, or trade name (or of a license, a permit, or other right referred to in subsection (d)(1)(D)) shall be treated as an acquisition. The preceding sentence shall only apply with respect to costs incurred in connection with such renewal.

(C) Certain amounts not taken into account

Any amount to which section 1253(d)(1) applies shall not be taken into account under this section.

(5) Treatment of certain reinsurance transactions

In the case of any amortizable section 197 intangible resulting from an assumption reinsurance transaction, the amount taken into account as the adjusted basis of such intangible under this section shall be the excess of—

(A) the amount paid or incurred by the acquirer under the assumption reinsurance transaction, over

(B) the amount required to be capitalized under section 848 in connection with such transaction.

Subsection (b) shall not apply to any amount required to be capitalized under section 848.

(6) Treatment of certain subleases

For purposes of this section, a sublease shall be treated in the same manner as a lease of the underlying property involved.

(7) Treatment as depreciable

For purposes of this chapter, any amortizable section 197 intangible shall be treated as property which is of a character subject to the allowance for depreciation provided in section 167.

(8) Treatment of certain increments in value

This section shall not apply to any increment in value if, without regard to this section, such increment is properly taken into account in determining the cost of property which is not a section 197 intangible.

(9) Anti-churning rules

For purposes of this section—

(A) In general

The term "amortizable section 197 intangible" shall not include any section 197 intangible which is described in subparagraph (A) or (B) of subsection (d)(1) (or for which depreciation or amortization would not have been allowable but for this section) and which is acquired by the taxpayer after the date of the enactment of this section, if—

(i) the intangible was held or used at any time on or after July 25, 1991, and on or before such date of enactment by the taxpayer or a related person,

(ii) the intangible was acquired from a person who held such intangible at any time on or after July 25, 1991, and on or before such date of enactment, and, as part of the transaction, the user of such intangible does not change, or

(iii) the taxpayer grants the right to use such intangible to a person (or a person related to such person) who held or used such intangible at any time on or after July 25, 1991, and on or before such date of enactment.

For purposes of this subparagraph, the determination of whether the user of property changes as part of a transaction shall be determined in accordance with regulations prescribed by the Secretary. For purposes of this subparagraph, deductions allowable under section 1253(d) shall be treated as deductions allowable for amortization.

(B) Exception where gain recognized

If—

(i) subparagraph (A) would not apply to an intangible acquired by the taxpayer but for the last sentence of subparagraph (C)(i), and

(ii) the person from whom the taxpayer acquired the intangible elects, notwithstanding any other provision of this title—

(I) to recognize gain on the disposition of the intangible, and

(II) to pay a tax on such gain which, when added to any other income tax on such gain under this title, equals such gain multiplied by the highest rate of income tax applicable to such person under this title,

then subparagraph (A) shall apply to the intangible only to the extent that the taxpayer's adjusted basis in the intangible exceeds the gain recognized under clause (ii)(I).

(C) Related person defined

For purposes of this paragraph—

(i) Related person

A person (hereinafter in this paragraph referred to as the "related person") is related to any person if—

(I) the related person bears a relationship to such person specified in section 267(b) or section 707(b)(1), or

(II) the related person and such person are engaged in trades or businesses under common control (within the meaning of subparagraphs (A) and (B) of section 41(f)(1)).

For purposes of subclause (I), in applying section 267(b) or 707(b)(1), "20 percent" shall be substituted for "50 percent".

(ii) Time for making determination

A person shall be treated as related to another person if such relationship exists immediately before or immediately after the acquisition of the intangible involved.

(D) Acquisitions by reason of death

Subparagraph (A) shall not apply to the acquisition of any property by the taxpayer if the basis of the property in the hands of the taxpayer is determined under section 1014(a).

(E) Special rule for partnerships

With respect to any increase in the basis of partnership property under section 732, 734, or 743, determinations under this paragraph shall be made at the partner level and each partner shall be treated as having owned and used such partner's proportionate share of the partnership assets.

(F) Anti-abuse rules

The term "amortizable section 197 intangible" does not include any section 197 intangible acquired in a transaction, one of the principal purposes of which is to avoid the requirement of subsection (c)(1) that the intangible be acquired after the date of the enactment of this section or to avoid the provisions of subparagraph (A).

(10) Tax-exempt use property subject to lease

In the case of any section 197 intangible which would be tax-exempt use property as defined in subsection (h) of section 168 if such section applied to such intangible, the amortization period under this section shall not be less than 125 percent of the lease term (within the meaning of section 168(i)(3)).

(g) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this section, including such regulations as may be appropriate to prevent avoidance of the purposes of this section through related persons or otherwise.

(Added Pub. L. 103–66, title XIII, §13261(a), Aug. 10, 1993, 107 Stat. 532; amended Pub. L. 108–357, title VIII, §§847(b)(3), 886(a), Oct. 22, 2004, 118 Stat. 1602, 1641.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsecs. (c)(1)(A) and (f)(9)(A), (F), is the date of enactment of Pub. L. 103–66, which was approved Aug. 10, 1993.

AMENDMENTS

2004—Subsec. (e)(6) to (8). Pub. L. 108–357, §886(a), redesignated pars. (7) and (8) as (6) and (7), respectively, and struck out heading and text of former par. (6). Text read as follows: "A franchise to engage in professional football, basketball, baseball, or other professional sport, and any item acquired in connection with such a franchise."

Subsec. (f)(10). Pub. L. 108–357, §847(b)(3), added par. (10).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 847(b)(3) of Pub. L. 108–357 applicable to leases entered into after Oct. 3, 2004, see section 849(b)(4) of Pub. L. 108–357, set out as an Effective Date note under section 470 of this title.

Pub. L. 108–357, title VIII, §886(c), Oct. 22, 2004, 118 Stat. 1641, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 1245 and 1253 of this title and repealing section 1056 of this title] shall apply to property acquired after the date of the enactment of this Act [Oct. 22, 2004].

"(2) SECTION 1245.—The amendment made by subsection (b)(2) [amending section 1245 of this title] shall apply to franchises acquired after the date of the enactment of this Act [Oct. 22, 2004]."

EFFECTIVE DATE

Pub. L. 103–66, title XIII, §13261(g), Aug. 10, 1993, 107 Stat. 540, as amended by Pub. L. 104–188, title I, §1703(l), Aug. 20, 1996, 110 Stat. 1877, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting this section and amending sections 167, 642, 848, 1016, 1060, 1245, and 1253 of this title] shall apply with respect to property acquired after the date of the enactment of this Act [Aug. 10, 1993].

"(2) ELECTION TO HAVE AMENDMENTS APPLY TO PROPERTY ACQUIRED AFTER JULY 25, 1991.—

"(A) IN GENERAL.—If an election under this paragraph applies to the taxpayer—

"(i) the amendments made by this section shall apply to property acquired by the taxpayer after July 25, 1991,

"(ii) subsection (c)(1)(A) of section 197 of the Internal Revenue Code of 1986 (as added by this section) (and so much of subsection (f)(9)(A) of such section 197 as precedes clause (i) thereof) shall be applied with respect to the taxpayer by treating July 25, 1991, as the date of the enactment of such section, and

"(iii) in applying subsection (f)(9) of such section, with respect to any property acquired by the taxpayer or a related person on or before the date of the enactment of this Act, only holding or use on July 25, 1991, shall be taken into account.

"(B) ELECTION.—An election under this paragraph shall be made at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe. Such an election by any taxpayer, once made—

"(i) may be revoked only with the consent of the Secretary, and

"(ii) shall apply to the taxpayer making such election and any other taxpayer under common control with the taxpayer (within the meaning of subparagraphs (A) and (B) of section 41(f)(1) of such Code) at any time after August 2, 1993, and on or before the date on which such election is made.

"(3) ELECTIVE BINDING CONTRACT EXCEPTION.—

"(A) IN GENERAL.—The amendments made by this section shall not apply to any acquisition of property by the taxpayer if—

"(i) such acquisition is pursuant to a written binding contract in effect on the date of the enactment of this Act and at all times thereafter before such acquisition,

"(ii) an election under paragraph (2) does not apply to the taxpayer, and

"(iii) the taxpayer makes an election under this paragraph with respect to such contract.

"(B) ELECTION.—An election under this paragraph shall be made at such time and in such manner as the Secretary of the Treasury or his delegate shall prescribe. Such an election, once made—

"(i) may be revoked only with the consent of the Secretary, and

"(ii) shall apply to all property acquired pursuant to the contract with respect to which such election was made."

§198. Expensing of environmental remediation costs

(a) In general

A taxpayer may elect to treat any qualified environmental remediation expenditure which is paid or incurred by the taxpayer as an expense which is not chargeable to capital account. Any expenditure which is so treated shall be allowed as a deduction for the taxable year in which it is paid or incurred.

(b) Qualified environmental remediation expenditure

For purposes of this section—

(1) In general

The term "qualified environmental remediation expenditure" means any expenditure—

(A) which is otherwise chargeable to capital account, and

(B) which is paid or incurred in connection with the abatement or control of hazardous substances at a qualified contaminated site.

(2) Special rule for expenditures for depreciable property

Such term shall not include any expenditure for the acquisition of property of a character subject to the allowance for depreciation which is used in connection with the abatement or control of hazardous substances at a qualified contaminated site; except that the portion of the allowance under section 167 for such property which is otherwise allocated to such site shall be treated as a qualified environmental remediation expenditure.

(c) Qualified contaminated site

For purposes of this section—

(1) In general

The term "qualified contaminated site" means any area—

(A) which is held by the taxpayer for use in a trade or business or for the production of income, or which is property described in section 1221(a)(1) in the hands of the taxpayer, and

(B) at or on which there has been a release (or threat of release) or disposal of any hazardous substance.

(2) National priorities listed sites not included

Such term shall not include any site which is on, or proposed for, the national priorities list under section 105(a)(8)(B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (as in effect on the date of the enactment of this section).

(3) Taxpayer must receive statement from State environmental agency

An area shall be treated as a qualified contaminated site with respect to expenditures paid or incurred during any taxable year only if the taxpayer receives a statement from the appropriate agency of the State in which such area is located that such area meets the requirement of paragraph (1)(B).

(4) Appropriate State agency

For purposes of paragraph (3), the chief executive officer of each State may, in consultation with the Administrator of the Environmental Protection Agency, designate the appropriate State environmental agency within 60 days of the date of the enactment of this section. If the chief executive officer of a State has not designated an appropriate environmental agency within such 60-day period, the appropriate environmental agency for such State shall be designated by the Administrator of the Environmental Protection Agency.

(d) Hazardous substance

For purposes of this section—

(1) In general

The term "hazardous substance" means—

(A) any substance which is a hazardous substance as defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980,

(B) any substance which is designated as a hazardous substance under section 102 of such Act, and

(C) any petroleum product (as defined in section 4612(a)(3)).

(2) Exception

Such term shall not include any substance with respect to which a removal or remedial action is

not permitted under section 104 of such Act by reason of subsection (a)(3) thereof.

(e) Deduction recaptured as ordinary income on sale, etc.

Solely for purposes of section 1245, in the case of property to which a qualified environmental remediation expenditure would have been capitalized but for this section—

(1) the deduction allowed by this section for such expenditure shall be treated as a deduction for depreciation, and

(2) such property (if not otherwise section 1245 property) shall be treated as section 1245 property solely for purposes of applying section 1245 to such deduction.

(f) Coordination with other provisions

Sections 280B and 468 shall not apply to amounts which are treated as expenses under this section.

(g) Regulations

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

(h) Termination

This section shall not apply to expenditures paid or incurred after December 31, 2011.

(Added Pub. L. 105–34, title IX, §941(a), Aug. 5, 1997, 111 Stat. 882; amended Pub. L. 106–170, title V, §§511, 532(c)(2)(A), Dec. 17, 1999, 113 Stat. 1924, 1930; Pub. L. 106–554, §1(a)(7) [title I, §162(a), (b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–625; Pub. L. 108–311, title III, §308(a), Oct. 4, 2004, 118 Stat. 1179; Pub. L. 109–432, div. A, title I, §109(a), (b), Dec. 20, 2006, 120 Stat. 2939; Pub. L. 110–343, div. C, title III, §318(a), Oct. 3, 2008, 122 Stat. 3873; Pub. L. 111–312, title VII, §745(a), Dec. 17, 2010, 124 Stat. 3319.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (c)(2), (4), is the date of enactment of Pub. L. 105–34, which was approved Aug. 5, 1997.

Sections 101(14), 102, 104, and 105(a)(8)(B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, referred to in subsecs. (c)(2) and (d), are classified to sections 9601(14), 9602, 9604, and 9605(a)(8)(B), respectively, of Title 42, The Public Health and Welfare.

AMENDMENTS

2010—Subsec. (h). Pub. L. 111–312 substituted "December 31, 2011" for "December 31, 2009".

2008—Subsec. (h). Pub. L. 110–343 substituted "December 31, 2009" for "December 31, 2007".

2006—Subsec. (d)(1)(C). Pub. L. 109–432, §109(b), added subpar. (C).

Subsec. (h). Pub. L. 109–432, §109(a), substituted "2007" for "2005".

2004—Subsec. (h). Pub. L. 108–311 substituted "2005" for "2003".

2000—Subsec. (c). Pub. L. 106–554, §1(a)(7) [title I, §162(a)], amended subsec. (c) generally. Prior to amendment, subsec. (c) defined the term "qualified contaminated site" to include certain property described in section 1221(a)(1) of this title, within a targeted area, and at which there had been a release or disposal of any hazardous substance, provided that an area could be treated as a qualified contaminated site only if the taxpayer received a certain statement from an appropriate State agency, provided for designation of appropriate State agencies, and defined targeted area.

Subsec. (h). Pub. L. 106–554, §1(a)(7) [title I, §162(b)], substituted "2003" for "2001".

1999—Subsec. (c)(1)(A)(i). Pub. L. 106–170, §532(c)(2)(A), substituted "section 1221(a)(1)" for "section 1221(1)".

Subsec. (h). Pub. L. 106–170, §511, substituted "2001" for "2000".

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §745(b), Dec. 17, 2010, 124 Stat. 3319, provided that: "The amendment made by this section [amending this section] shall apply to expenditures paid or incurred after December 31, 2009."

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title III, §318(b), Oct. 3, 2008, 122 Stat. 3873, provided that: "The amendment made by this section [amending this section] shall apply to expenditures paid or incurred after December 31,

2007."

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title I, §109(c), Dec. 20, 2006, 120 Stat. 2939, provided that: "The amendments made by this section [amending this section] shall apply to expenditures paid or incurred after December 31, 2005."

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–311, title III, §308(b), Oct. 4, 2004, 118 Stat. 1179, provided that: "The amendment made by subsection (a) [amending this section] shall apply to expenditures paid or incurred after December 31, 2003."

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(7) [title I, §162(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–625, provided that: "The amendments made by this section [amending this section] shall apply to expenditures paid or incurred after the date of the enactment of this Act [Dec. 21, 2000]."

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 532(c)(2)(A) of Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE

Pub. L. 105–34, title IX, §941(c), Aug. 5, 1997, 111 Stat. 885, provided that: "The amendments made by this section [enacting this section] shall apply to expenditures paid or incurred after the date of the enactment of this Act [Aug. 5, 1997], in taxable years ending after such date."

§198A. Expensing of qualified disaster expenses

(a) In general

A taxpayer may elect to treat any qualified disaster expenses which are paid or incurred by the taxpayer as an expense which is not chargeable to capital account. Any expense which is so treated shall be allowed as a deduction for the taxable year in which it is paid or incurred.

(b) Qualified disaster expense

For purposes of this section, the term "qualified disaster expense" means any expenditure—

(1) which is paid or incurred in connection with a trade or business or with business-related property,

(2) which is—

(A) for the abatement or control of hazardous substances that were released on account of a federally declared disaster occurring before January 1, 2010,

(B) for the removal of debris from, or the demolition of structures on, real property which is business-related property damaged or destroyed as a result of a federally declared disaster occurring before such date, or

(C) for the repair of business-related property damaged as a result of a federally declared disaster occurring before such date, and

(3) which is otherwise chargeable to capital account.

(c) Other definitions

For purposes of this section—

(1) Business-related property

The term "business-related property" means property—

(A) held by the taxpayer for use in a trade or business or for the production of income, or

(B) described in section 1221(a)(1) in the hands of the taxpayer.

(2) Federally declared disaster

The term "federally declared disaster" has the meaning given such term by section 165(h)(3)(C)(i).

(d) Deduction recaptured as ordinary income on sale, etc.

Solely for purposes of section 1245, in the case of property to which a qualified disaster expense would have been capitalized but for this section—

(1) the deduction allowed by this section for such expense shall be treated as a deduction for depreciation, and

(2) such property (if not otherwise section 1245 property) shall be treated as section 1245 property solely for purposes of applying section 1245 to such deduction.

(e) Coordination with other provisions

Sections 198, 280B, and 468 shall not apply to amounts which are treated as expenses under this section.

(f) Regulations

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

(Added Pub. L. 110–343, div. C, title VII, §707(a), Oct. 3, 2008, 122 Stat. 3923.)

EFFECTIVE DATE

Pub. L. 110–343, div. C, title VII, §707(c), Oct. 3, 2008, 122 Stat. 3924, provided that: "The amendments made by this section [enacting this section] shall apply to amounts paid or incurred after December 31, 2007[,] in connection with disaster[s] declared after such date."

§199. Income attributable to domestic production activities

(a) Allowance of deduction

(1) In general

There shall be allowed as a deduction an amount equal to 9 percent of the lesser of—

(A) the qualified production activities income of the taxpayer for the taxable year, or

(B) taxable income (determined without regard to this section) for the taxable year.

(2) Phasein

In the case of any taxable year beginning after 2004 and before 2010, paragraph (1) shall be applied by substituting for the percentage contained therein the transition percentage determined under the following table:

For taxable years beginning in:	The transition percentage is:
2005 or 2006	3
2007, 2008, or 2009	6.

(b) Deduction limited to wages paid

(1) In general

The amount of the deduction allowable under subsection (a) for any taxable year shall not exceed 50 percent of the W–2 wages of the taxpayer for the taxable year.

(2) W–2 wages

For purposes of this section—

(A) In general

The term "W–2 wages" means, with respect to any person for any taxable year of such person, the sum of the amounts described in paragraphs (3) and (8) of section 6051(a) paid by such person with respect to employment of employees by such person during the calendar year ending during such taxable year.

(B) Limitation to wages attributable to domestic production

Such term shall not include any amount which is not properly allocable to domestic production gross receipts for purposes of subsection (c)(1).

(C) Return requirement

Such term shall not include any amount which is not properly included in a return filed with the Social Security Administration on or before the 60th day after the due date (including extensions) for such return.

(D) Special rule for qualified film

In the case of a qualified film, such term shall include compensation for services performed in the United States by actors, production personnel, directors, and producers.

(3) Acquisitions and dispositions

The Secretary shall provide for the application of this subsection in cases where the taxpayer acquires, or disposes of, the major portion of a trade or business or the major portion of a separate unit of a trade or business during the taxable year.

(c) Qualified production activities income

For purposes of this section—

(1) In general

The term "qualified production activities income" for any taxable year means an amount equal to the excess (if any) of—

(A) the taxpayer's domestic production gross receipts for such taxable year, over

(B) the sum of—

(i) the cost of goods sold that are allocable to such receipts, and

(ii) other expenses, losses, or deductions (other than the deduction allowed under this section), which are properly allocable to such receipts.

(2) Allocation method

The Secretary shall prescribe rules for the proper allocation of items described in paragraph (1) for purposes of determining qualified production activities income. Such rules shall provide for the proper allocation of items whether or not such items are directly allocable to domestic production gross receipts.

(3) Special rules for determining costs

(A) In general

For purposes of determining costs under clause (i) of paragraph (1)(B), any item or service brought into the United States shall be treated as acquired by purchase, and its cost shall be treated as not less than its value immediately after it entered the United States. A similar rule shall apply in determining the adjusted basis of leased or rented property where the lease or rental gives rise to domestic production gross receipts.

(B) Exports for further manufacture

In the case of any property described in subparagraph (A) that had been exported by the taxpayer for further manufacture, the increase in cost or adjusted basis under subparagraph (A) shall not exceed the difference between the value of the property when exported and the value of the property when brought back into the United States after the further manufacture.

(4) Domestic production gross receipts

(A) In general

The term "domestic production gross receipts" means the gross receipts of the taxpayer which are derived from—

(i) any lease, rental, license, sale, exchange, or other disposition of—

(I) qualifying production property which was manufactured, produced, grown, or extracted by the taxpayer in whole or in significant part within the United States,

(II) any qualified film produced by the taxpayer, or

(III) electricity, natural gas, or potable water produced by the taxpayer in the United States,

(ii) in the case of a taxpayer engaged in the active conduct of a construction trade or business, construction of real property performed in the United States by the taxpayer in the ordinary course of such trade or business, or

(iii) in the case of a taxpayer engaged in the active conduct of an engineering or architectural services trade or business, engineering or architectural services performed in the United States by the taxpayer in the ordinary course of such trade or business with respect to the construction of real property in the United States.

(B) Exceptions

Such term shall not include gross receipts of the taxpayer which are derived from—

(i) the sale of food and beverages prepared by the taxpayer at a retail establishment,

(ii) the transmission or distribution of electricity, natural gas, or potable water, or

(iii) the lease, rental, license, sale, exchange, or other disposition of land.

(C) Special rule for certain Government contracts

Gross receipts derived from the manufacture or production of any property described in subparagraph (A)(i)(I) shall be treated as meeting the requirements of subparagraph (A)(i) if—

(i) such property is manufactured or produced by the taxpayer pursuant to a contract with the Federal Government, and

(ii) the Federal Acquisition Regulation requires that title or risk of loss with respect to such property be transferred to the Federal Government before the manufacture or production of such property is complete.

(D) Partnerships owned by expanded affiliated groups

For purposes of this paragraph, if all of the interests in the capital and profits of a partnership are owned by members of a single expanded affiliated group at all times during the taxable year of such partnership, the partnership and all members of such group shall be treated as a single taxpayer during such period.

(5) Qualifying production property

The term "qualifying production property" means—

(A) tangible personal property,

(B) any computer software, and

(C) any property described in section 168(f)(4).

(6) Qualified film

The term "qualified film" means any property described in section 168(f)(3) if not less than 50 percent of the total compensation relating to the production of such property is compensation for services performed in the United States by actors, production personnel, directors, and producers. Such term does not include property with respect to which records are required to be maintained under section 2257 of title 18, United States Code. A qualified film shall include any copyrights, trademarks, or other intangibles with respect to such film. The methods and means of distributing a qualified film shall not affect the availability of the deduction under this section.

(7) Related persons

(A) In general

The term "domestic production gross receipts" shall not include any gross receipts of the taxpayer derived from property leased, licensed, or rented by the taxpayer for use by any related person.

(B) Related person

For purposes of subparagraph (A), a person shall be treated as related to another person if such persons are treated as a single employer under subsection (a) or (b) of section 52 or subsection (m) or (o) of section 414, except that determinations under subsections (a) and (b) of section 52 shall be made without regard to section 1563(b).

(d) Definitions and special rules

(1) Application of section to pass-thru entities

(A) Partnerships and S corporations

In the case of a partnership or S corporation—

(i) this section shall be applied at the partner or shareholder level,

(ii) each partner or shareholder shall take into account such person's allocable share of each item described in subparagraph (A) or (B) of subsection (c)(1) (determined without regard to whether the items described in such subparagraph (A) exceed the items described in such subparagraph (B)),

(iii) each partner or shareholder shall be treated for purposes of subsection (b) as having W-2 wages for the taxable year in an amount equal to such person's allocable share of the W-2 wages of the partnership or S corporation for the taxable year (as determined under regulations prescribed by the Secretary), and

(iv) in the case of each partner of a partnership, or shareholder of an S corporation, who owns (directly or indirectly) at least 20 percent of the capital interests in such partnership or of the stock of such S corporation—

(I) such partner or shareholder shall be treated as having engaged directly in any film produced by such partnership or S corporation, and

(II) such partnership or S corporation shall be treated as having engaged directly in any film produced by such partner or shareholder.

(B) Trusts and estates

In the case of a trust or estate—

(i) the items referred to in subparagraph (A)(ii) (as determined therein) and the W–2 wages of the trust or estate for the taxable year, shall be apportioned between the beneficiaries and the fiduciary (and among the beneficiaries) under regulations prescribed by the Secretary, and

(ii) for purposes of paragraph (2), adjusted gross income of the trust or estate shall be determined as provided in section 67(e) with the adjustments described in such paragraph.

(C) Regulations

The Secretary may prescribe rules requiring or restricting the allocation of items and wages under this paragraph and may prescribe such reporting requirements as the Secretary determines appropriate.

(2) Application to individuals

In the case of an individual, subsections (a)(1)(B) and (d)(9)(A)(iii) shall be applied by substituting "adjusted gross income" for "taxable income". For purposes of the preceding sentence, adjusted gross income shall be determined—

(A) after application of sections 86, 135, 137, 219, 221, 222, and 469, and

(B) without regard to this section.

(3) Agricultural and horticultural cooperatives

(A) Deduction allowed to patrons

Any person who receives a qualified payment from a specified agricultural or horticultural

cooperative shall be allowed for the taxable year in which such payment is received a deduction under subsection (a) equal to the portion of the deduction allowed under subsection (a) to such cooperative which is—

(i) allowed with respect to the portion of the qualified production activities income to which such payment is attributable, and

(ii) identified by such cooperative in a written notice mailed to such person during the payment period described in section 1382(d).

(B) Cooperative denied deduction for portion of qualified payments

The taxable income of a specified agricultural or horticultural cooperative shall not be reduced under section 1382 by reason of that portion of any qualified payment as does not exceed the deduction allowable under subparagraph (A) with respect to such payment.

(C) Taxable income of cooperatives determined without regard to certain deductions

For purposes of this section, the taxable income of a specified agricultural or horticultural cooperative shall be computed without regard to any deduction allowable under subsection (b) or (c) of section 1382 (relating to patronage dividends, per-unit retain allocations, and nonpatronage distributions).

(D) Special rule for marketing cooperatives

For purposes of this section, a specified agricultural or horticultural cooperative described in subparagraph (F)(ii) shall be treated as having manufactured, produced, grown, or extracted in whole or significant part any qualifying production property marketed by the organization which its patrons have so manufactured, produced, grown, or extracted.

(E) Qualified payment

For purposes of this paragraph, the term "qualified payment" means, with respect to any person, any amount which—

(i) is described in paragraph (1) or (3) of section 1385(a),

(ii) is received by such person from a specified agricultural or horticultural cooperative, and

(iii) is attributable to qualified production activities income with respect to which a deduction is allowed to such cooperative under subsection (a).

(F) Specified agricultural or horticultural cooperative

For purposes of this paragraph, the term "specified agricultural or horticultural cooperative" means an organization to which part I of subchapter T applies which is engaged—

(i) in the manufacturing, production, growth, or extraction in whole or significant part of any agricultural or horticultural product, or

(ii) in the marketing of agricultural or horticultural products.

(4) Special rule for affiliated groups

(A) In general

All members of an expanded affiliated group shall be treated as a single corporation for purposes of this section.

(B) Expanded affiliated group

For purposes of this section, the term "expanded affiliated group" means an affiliated group as defined in section 1504(a), determined—

(i) by substituting "more than 50 percent" for "at least 80 percent" each place it appears, and

(ii) without regard to paragraphs (2) and (4) of section 1504(b).

(C) Allocation of deduction

Except as provided in regulations, the deduction under subsection (a) shall be allocated among the members of the expanded affiliated group in proportion to each member's respective

amount (if any) of qualified production activities income.

(5) Trade or business requirement

This section shall be applied by only taking into account items which are attributable to the actual conduct of a trade or business.

(6) Coordination with minimum tax

For purposes of determining alternative minimum taxable income under section 55—

(A) qualified production activities income shall be determined without regard to any adjustments under sections 56 through 59, and

(B) in the case of a corporation, subsection (a)(1)(B) shall be applied by substituting "alternative minimum taxable income" for "taxable income".

(7) Unrelated business taxable income

For purposes of determining the tax imposed by section 511, subsection (a)(1)(B) shall be applied by substituting "unrelated business taxable income" for "taxable income".

(8) Treatment of activities in Puerto Rico

(A) In general

In the case of any taxpayer with gross receipts for any taxable year from sources within the Commonwealth of Puerto Rico, if all of such receipts are taxable under section 1 or 11 for such taxable year, then for purposes of determining the domestic production gross receipts of such taxpayer for such taxable year under subsection (c)(4), the term "United States" shall include the Commonwealth of Puerto Rico.

(B) Special rule for applying wage limitation

In the case of any taxpayer described in subparagraph (A), for purposes of applying the limitation under subsection (b) for any taxable year, the determination of W–2 wages of such taxpayer shall be made without regard to any exclusion under section 3401(a)(8) for remuneration paid for services performed in Puerto Rico.

(C) Termination

This paragraph shall apply only with respect to the first 8 taxable years of the taxpayer beginning after December 31, 2005, and before January 1, 2014.

(9) Special rule for taxpayers with oil related qualified production activities income

(A) In general

If a taxpayer has oil related qualified production activities income for any taxable year beginning after 2009, the amount otherwise allowable as a deduction under subsection (a) shall be reduced by 3 percent of the least of—

(i) the oil related qualified production activities income of the taxpayer for the taxable year,

(ii) the qualified production activities income of the taxpayer for the taxable year, or

(iii) taxable income (determined without regard to this section).

(B) Oil related qualified production activities income

For purposes of this paragraph, the term "oil related qualified production activities income" means for any taxable year the qualified production activities income which is attributable to the production, refining, processing, transportation, or distribution of oil, gas, or any primary product thereof during such taxable year.

(C) Primary product

For purposes of this paragraph, the term "primary product" has the same meaning as when used in section 927(a)(2)(C), as in effect before its repeal.

(10) Regulations

The Secretary shall prescribe such regulations as are necessary to carry out the purposes of this section, including regulations which prevent more than 1 taxpayer from being allowed a deduction under this section with respect to any activity described in subsection (c)(4)(A)(i).

(Added Pub. L. 108–357, title I, §102(a), Oct. 22, 2004, 118 Stat. 1424; amended Pub. L. 109–135, title IV, §403(a)(1)–(13), Dec. 21, 2005, 119 Stat. 2615–2619; Pub. L. 109–222, title V, §514(a), (b), May 17, 2006, 120 Stat. 366; Pub. L. 109–432, div. A, title IV, §401(a), Dec. 20, 2006, 120 Stat. 2953; Pub. L. 110–343, div. B, title IV, §401(a), (b), div. C, title III, §312(a), title V, §502(c), Oct. 3, 2008, 122 Stat. 3851, 3869, 3876; Pub. L. 111–312, title VII, §746(a), Dec. 17, 2010, 124 Stat. 3319; Pub. L. 112–240, title III, §318(a), Jan. 2, 2013, 126 Stat. 2331.)

REFERENCES IN TEXT

Section 927(a)(2)(C) of this title, referred to in subsec. (d)(9)(C), was repealed by Pub. L. 106–519, §2, Nov. 15, 2000, 114 Stat. 2423.

AMENDMENTS

2013—Subsec. (d)(8)(C). Pub. L. 112–240 substituted "first 8 taxable years" for "first 6 taxable years" and "January 1, 2014" for "January 1, 2012".

2010—Subsec. (d)(8)(C). Pub. L. 111–312 substituted "first 6 taxable years" for "first 4 taxable years" and "January 1, 2012" for "January 1, 2010".

2008—Subsec. (b)(2)(D). Pub. L. 110–343, §502(c)(1), added subpar. (D).

Subsec. (c)(6). Pub. L. 110–343, §502(c)(2), inserted at end "A qualified film shall include any copyrights, trademarks, or other intangibles with respect to such film. The methods and means of distributing a qualified film shall not affect the availability of the deduction under this section."

Subsec. (d)(1)(A)(iv). Pub. L. 110–343, §502(c)(3), added cl. (iv).

Subsec. (d)(2). Pub. L. 110–343, §401(b), substituted "subsections (a)(1)(B) and (d)(9)(A)(iii)" for "subsection (a)(1)(B)" in introductory provisions.

Subsec. (d)(8)(C). Pub. L. 110–343, §312(a), substituted "first 4 taxable years" for "first 2 taxable years" and "January 1, 2010" for "January 1, 2008".

Subsec. (d)(9), (10). Pub. L. 110–343, §401(a), added par. (9) and redesignated former par. (9) as (10).

2006—Subsec. (a)(2). Pub. L. 109–222, §514(b)(2), struck out "and subsection (d)(1)" after "paragraph (1)".

Subsec. (b)(2). Pub. L. 109–222, §514(a), amended par. (2) generally. Prior to amendment, text read as follows: "For purposes of this section, the term 'W–2 wages' means, with respect to any person for any taxable year of such person, the sum of the amounts described in paragraphs (3) and (8) of section 6051(a) paid by such person with respect to employment of employees by such person during the calendar year ending during such taxable year. Such term shall not include any amount which is not properly included in a return filed with the Social Security Administration on or before the 60th day after the due date (including extensions) for such return."

Subsec. (d)(1)(A)(iii). Pub. L. 109–222, §514(b)(1), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: "each partner or shareholder shall be treated for purposes of subsection (b) as having W–2 wages for the taxable year in an amount equal to the lesser of—

"(I) such person's allocable share of the W–2 wages of the partnership or S corporation for the taxable year (as determined under regulations prescribed by the Secretary), or

"(II) 2 times 9 percent of so much of such person's qualified production activities income as is attributable to items allocated under clause (ii) for the taxable year."

Subsec. (d)(8), (9). Pub. L. 109–432 added par. (8) and redesignated former par. (8) as (9).

2005—Subsec. (a)(2). Pub. L. 109–135, §403(a)(11)(B), substituted "subsection (d)(1)" for "subsections (d)(1) and (d)(6)".

Subsec. (b)(1). Pub. L. 109–135, §403(a)(1), substituted "the taxpayer" for "the employer".

Subsec. (b)(2). Pub. L. 109–135, §403(a)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "For purposes of paragraph (1), the term 'W–2 wages' means the sum of the aggregate amounts the taxpayer is required to include on statements under paragraphs (3) and (8) of section 6051(a) with respect to employment of employees of the taxpayer during the calendar year ending during the taxpayer's taxable year."

Subsec. (c)(1)(B). Pub. L. 109–135, §403(a)(3), inserted "and" at end of cl. (i), added cl. (ii), and struck out former cls. (ii) and (iii) which read as follows:

"(ii) other deductions, expenses, or losses directly allocable to such receipts, and

"(iii) a ratable portion of other deductions, expenses, and losses that are not directly allocable to such receipts or another class of income."

Subsec. (c)(2). Pub. L. 109–135, §403(a)(4), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "The Secretary shall prescribe rules for the proper allocation of items of income, deduction, expense, and loss for purposes of determining income attributable to domestic production activities."

Subsec. (c)(4)(A)(ii), (iii). Pub. L. 109–135, §403(a)(5), added cls. (ii) and (iii) and struck out former cls. (ii) and (iii) which read as follows:

"(ii) construction performed in the United States, or

"(iii) engineering or architectural services performed in the United States for construction projects in the United States."

Subsec. (c)(4)(B)(iii). Pub. L. 109–135, §403(a)(6), added cl. (iii).

Subsec. (c)(4)(C), (D). Pub. L. 109–135, §403(a)(7), added subpars. (C) and (D).

Subsec. (d)(1). Pub. L. 109–135, §403(a)(8), reenacted heading without change and amended text generally. Prior to amendment, text consisted of subpars. (A) and (B) relating to general application of section to pass-thru entities and application of wage limitation.

Subsec. (d)(3). Pub. L. 109–135, §403(a)(9), amended heading and text of par. (3) generally. Prior to amendment, text related to deductions allowed to patrons of agricultural and horticultural cooperatives.

Subsec. (d)(4)(B)(i). Pub. L. 109–135, §403(a)(10), substituted "more than 50 percent" for "50 percent" and "at least 80 percent" for "80 percent".

Subsec. (d)(6). Pub. L. 109–135, §403(a)(11)(A), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "The deduction under this section shall be allowed for purposes of the tax imposed by section 55; except that for purposes of section 55, the deduction under subsection (a) shall be 9 percent of the lesser of—

"(A) qualified production activities income (determined without regard to part IV of subchapter A), or

"(B) alternative minimum taxable income (determined without regard to this section) for the taxable year.

In the case of an individual, subparagraph (B) shall be applied by substituting 'adjusted gross income' for 'alternative minimum taxable income'. For purposes of the preceding sentence, adjusted gross income shall be determined in the same manner as provided in paragraph (2)."

Subsec. (d)(7). Pub. L. 109–135, §403(a)(12), added par. (7). Former par. (7) redesignated (8).

Subsec. (d)(8). Pub. L. 109–135, §403(a)(12), (13), redesignated par. (7) as (8) and inserted before period at end ", including regulations which prevent more than 1 taxpayer from being allowed a deduction under this section with respect to any activity described in subsection (c)(4)(A)(i)".

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title III, §318(b), Jan. 2, 2013, 126 Stat. 2331, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2011."

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §746(b), Dec. 17, 2010, 124 Stat. 3320, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2009."

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title IV, §401(c), Oct. 3, 2008, 122 Stat. 3851, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2008."

Pub. L. 110–343, div. C, title III, §312(b), Oct. 3, 2008, 122 Stat. 3869, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2007."

Amendment by section 502(c) of Pub. L. 110–343 applicable to taxable years beginning after Dec. 31, 2007, see section 502(e)(2) of Pub. L. 110–343, set out as a note under section 181 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title IV, §401(b), Dec. 20, 2006, 120 Stat. 2953, provided that: "The amendments made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 2005."

Pub. L. 109–222, title V, §514(c), May 17, 2006, 120 Stat. 367, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [May 17, 2006]."

EFFECTIVE DATE OF 2005 AMENDMENT

Amendments by Pub. L. 109–135 effective as if included in the provisions of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which they relate, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 2004, subject to transition rule, see section 102(e) of Pub. L. 108–357, as amended, set out as an Effective Date of 2004 Amendments note under section 56 of this title.

PART VII—ADDITIONAL ITEMIZED DEDUCTIONS FOR INDIVIDUALS

Sec.

211. Allowance of deductions.
212. Expenses for production of income.
213. Medical, dental, etc., expenses.
[214. Repealed.]
215. Alimony, etc., payments.
216. Deduction of taxes, interest, and business depreciation by cooperative housing corporation tenant-stockholder.
217. Moving expenses.
[218. Repealed.]
219. Retirement savings.
220. Archer MSAs.
221. Interest on education loans.
222. Qualified tuition and related expenses.
223. Health savings accounts.
224. Cross reference.

AMENDMENTS

2003—Pub. L. 108–173, title XII, §1201(j), Dec. 8, 2003, 117 Stat. 2479, added items 223 and 224 and struck out former item 223 "Cross reference".

2001—Pub. L. 107–16, title IV, §431(c)(4), June 7, 2001, 115 Stat. 68, added items 222 and 223 and struck out former item 222 "Cross reference".

2000—Pub. L. 106–554, §1(a)(7) [title II, §202(b)(9)], Dec. 21, 2000, 114 Stat. 2763, 2763A–629, substituted "Archer MSAs" for "Medical savings accounts" in item 220.

1997—Pub. L. 105–34, title II, §202(d), Aug. 5, 1997, 111 Stat. 809, added items 221 and 222 and struck out former item 221 "Cross reference".

1996—Pub. L. 104–191, title III, §301(i), Aug. 21, 1996, 110 Stat. 2052, added items 220 and 221 and struck out former item 220 "Cross reference".

1990—Pub. L. 101–508, title XI, §11802(e)(3), Nov. 5, 1990, 104 Stat. 1388–530, added item 220 and struck out former items 220 "Jury duty pay remitted to employer" and 221 "Cross references".

1988—Pub. L. 100–647, title VI, §6007(c), Nov. 10, 1988, 102 Stat. 3687, added item 220 and redesignated former item 220 as 221.

1986—Pub. L. 99–514, title I, §§131(b)(3), 135(b)(2), title III, §301(b)(5)(B), Oct. 22, 1986, 100 Stat. 2113, 2116, 2217, added item 220, struck out items 221 "Deduction for two-earner married couples" and 222 "Adoption expenses", substituted "reference" for "references" in item 223, and struck out item 223 "Cross reference".

1981—Pub. L. 97–34, title I, §§103(c)(3), 125(b), title III, §311(h)(11), Aug. 13, 1981, 95 Stat. 188, 201, 282, repealed item 220 "Retirement savings for certain married individuals", added items 221 and 222 and redesignated former item 221 as 223.

1978—Pub. L. 95–600, title I, §113(a)(2)(A), Nov. 6, 1978, 92 Stat. 2778, struck out item 218 "Contributions to candidates for public office".

1976—Pub. L. 94–455, title V, §504(b)(2), Oct. 4, 1976, 90 Stat. 1565, struck out item 214 "Expenses for household and dependent care services necessary for gainful employment".

Pub. L. 94–455, title XV, §1501(c), Oct. 4, 1976, 90 Stat. 1737, added item 220 and redesignated former

item 220 as 221.

1974—Pub. L. 93–406, title II, §2002(h)(1), Sept. 2, 1974, 88 Stat. 970, added item 219 and redesignated former item 219 as 220.

1971—Pub. L. 92–178, title II, §210(b), title VII, §702(c), Dec. 10, 1971, 85 Stat. 520, 562, substituted "Expenses for household and dependent care services necessary for gainful employment" for "expenses for care of certain dependents" in item 214, added item 218, and redesignated former item 218 as 219.

1964—Pub. L. 88–272, title II, §213(a)(2), Feb. 26, 1964, 78 Stat. 52, added item 217 and redesignated former item 217 as 218.

1962—Pub. L. 87–834, §28(b), Oct. 16, 1962, 76 Stat. 1068, substituted "Deduction of taxes, interest, and business depreciation by cooperative housing corporation tenant-stockholder" for "Amounts representing taxes and interest paid to cooperative housing corporation" in item 216.

§211. Allowance of deductions

In computing taxable income under section 63, there shall be allowed as deductions the items specified in this part, subject to the exceptions provided in part IX (section 261 and following, relating to items not deductible).

(Aug. 16, 1954, ch. 736, 68A Stat. 69; Pub. L. 95–30, title I, §102(b)(3), May 23, 1977, 91 Stat. 137.)

AMENDMENTS

1977—Pub. L. 95–30 substituted "section 63" for "section 63(a)".

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

§212. Expenses for production of income

In the case of an individual, there shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year—

(1) for the production or collection of income;

(2) for the management, conservation, or maintenance of property held for the production of income; or

(3) in connection with the determination, collection, or refund of any tax.

(Aug. 16, 1954, ch. 736, 68A Stat. 69.)

DENIAL OF DEDUCTION FOR AMOUNTS PAID OR INCURRED ON JUDGMENTS IN SUITS BROUGHT TO RECOVER PRICE INCREASES IN PURCHASE OF NEW PRINCIPAL RESIDENCE

No deductions to be allowed in computing taxable income for two-thirds of any amount paid or incurred on a judgment entered against any person in a suit brought under section 208(b) of Pub. L. 94–12, see section 208(c) of Pub. L. 94–12, set out as a note under section 44 of this title.

§213. Medical, dental, etc., expenses

(a) Allowance of deduction

There shall be allowed as a deduction the expenses paid during the taxable year, not compensated for by insurance or otherwise, for medical care of the taxpayer, his spouse, or a dependent (as defined in section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof), to the extent that such expenses exceed 10 percent of adjusted gross income.

(b) Limitation with respect to medicine and drugs

An amount paid during the taxable year for medicine or a drug shall be taken into account under

subsection (a) only if such medicine or drug is a prescribed drug or is insulin.

(c) Special rule for decedents

(1) Treatment of expenses paid after death

For purposes of subsection (a), expenses for the medical care of the taxpayer which are paid out of his estate during the 1-year period beginning with the day after the date of his death shall be treated as paid by the taxpayer at the time incurred.

(2) Limitation

Paragraph (1) shall not apply if the amount paid is allowable under section 2053 as a deduction in computing the taxable estate of the decedent, but this paragraph shall not apply if (within the time and in the manner and form prescribed by the Secretary) there is filed—

(A) a statement that such amount has not been allowed as a deduction under section 2053, and

(B) a waiver of the right to have such amount allowed at any time as a deduction under section 2053.

(d) Definitions

For purposes of this section—

(1) The term "medical care" means amounts paid—

(A) for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body,

(B) for transportation primarily for and essential to medical care referred to in subparagraph (A),

(C) for qualified long-term care services (as defined in section 7702B(c)), or

(D) for insurance (including amounts paid as premiums under part B of title XVIII of the Social Security Act, relating to supplementary medical insurance for the aged) covering medical care referred to in subparagraphs (A) and (B) or for any qualified long-term care insurance contract (as defined in section 7702B(b)).

In the case of a qualified long-term care insurance contract (as defined in section 7702B(b)), only eligible long-term care premiums (as defined in paragraph (10)) shall be taken into account under subparagraph (D).

(2) AMOUNTS PAID FOR CERTAIN LODGING AWAY FROM HOME TREATED AS PAID FOR MEDICAL CARE.—Amounts paid for lodging (not lavish or extravagant under the circumstances) while away from home primarily for and essential to medical care referred to in paragraph (1)(A) shall be treated as amounts paid for medical care if—

(A) the medical care referred to in paragraph (1)(A) is provided by a physician in a licensed hospital (or in a medical care facility which is related to, or the equivalent of, a licensed hospital), and

(B) there is no significant element of personal pleasure, recreation, or vacation in the travel away from home.

The amount taken into account under the preceding sentence shall not exceed $50 for each night for each individual.

(3) PRESCRIBED DRUG.—The term "prescribed drug" means a drug or biological which requires a prescription of a physician for its use by an individual.

(4) PHYSICIAN.—The term "physician" has the meaning given to such term by section 1861(r) of the Social Security Act (42 U.S.C. 1395x(r)).

(5) SPECIAL RULE IN THE CASE OF CHILD OF DIVORCED PARENTS, ETC.—Any child to whom section 152(e) applies shall be treated as a dependent of both parents for purposes of this section.

(6) In the case of an insurance contract under which amounts are payable for other than medical care referred to in subparagraphs (A), (B), and (C) of paragraph (1)—

(A) no amount shall be treated as paid for insurance to which paragraph (1)(D) applies unless the charge for such insurance is either separately stated in the contract, or furnished to the policyholder by the insurance company in a separate statement,

(B) the amount taken into account as the amount paid for such insurance shall not exceed such charge, and

(C) no amount shall be treated as paid for such insurance if the amount specified in the contract (or furnished to the policyholder by the insurance company in a separate statement) as the charge for such insurance is unreasonably large in relation to the total charges under the contract.

(7) Subject to the limitations of paragraph (6), premiums paid during the taxable year by a taxpayer before he attains the age of 65 for insurance covering medical care (within the meaning of subparagraphs (A), (B), and (C) of paragraph (1)) for the taxpayer, his spouse, or a dependent after the taxpayer attains the age of 65 shall be treated as expenses paid during the taxable year for insurance which constitutes medical care if premiums for such insurance are payable (on a level payment basis) under the contract for a period of 10 years or more or until the year in which the taxpayer attains the age of 65 (but in no case for a period of less than 5 years).

(8) The determination of whether an individual is married at any time during the taxable year shall be made in accordance with the provisions of section 6013(d) (relating to determination of status as husband and wife).

(9) COSMETIC SURGERY.—

(A) IN GENERAL.—The term "medical care" does not include cosmetic surgery or other similar procedures, unless the surgery or procedure is necessary to ameliorate a deformity arising from, or directly related to, a congenital abnormality, a personal injury resulting from an accident or trauma, or disfiguring disease.

(B) COSMETIC SURGERY DEFINED.—For purposes of this paragraph, the term "cosmetic surgery" means any procedure which is directed at improving the patient's appearance and does not meaningfully promote the proper function of the body or prevent or treat illness or disease.

(10) ELIGIBLE LONG-TERM CARE PREMIUMS.—

(A) IN GENERAL.—For purposes of this section, the term "eligible long-term care premiums" means the amount paid during a taxable year for any qualified long-term care insurance contract (as defined in section 7702B(b)) covering an individual, to the extent such amount does not exceed the limitation determined under the following table:

In the case of an individual with an attained age before the close of the taxable year of:	**The limitation is:**
40 or less	$ 200
More than 40 but not more than 50	375
More than 50 but not more than 60	750
More than 60 but not more than 70	2,000
More than 70	2,500.

(B) INDEXING.—

(i) IN GENERAL.—In the case of any taxable year beginning in a calendar year after 1997, each dollar amount contained in subparagraph (A) shall be increased by the medical care cost adjustment of such amount for such calendar year. If any increase determined under the preceding sentence is not a multiple of $10, such increase shall be rounded to the nearest multiple of $10.

(ii) MEDICAL CARE COST ADJUSTMENT.—For purposes of clause (i), the medical care cost adjustment for any calendar year is the percentage (if any) by which—

(I) the medical care component of the Consumer Price Index (as defined in section 1(f)(5)) for August of the preceding calendar year, exceeds

(II) such component for August of 1996.

The Secretary shall, in consultation with the Secretary of Health and Human Services, prescribe an adjustment which the Secretary determines is more appropriate for purposes of this paragraph than the adjustment described in the preceding sentence, and the adjustment so prescribed shall apply in lieu of the adjustment described in the preceding sentence.

(11) CERTAIN PAYMENTS TO RELATIVES TREATED AS NOT PAID FOR MEDICAL CARE.—An amount paid for a qualified long-term care service (as defined in section 7702B(c)) provided to an individual shall be treated as not paid for medical care if such service is provided—

(A) by the spouse of the individual or by a relative (directly or through a partnership, corporation, or other entity) unless the service is provided by a licensed professional with respect to such service, or

(B) by a corporation or partnership which is related (within the meaning of section 267(b) or 707(b)) to the individual.

For purposes of this paragraph, the term "relative" means an individual bearing a relationship to the individual which is described in any of subparagraphs (A) through (G) of section 152(d)(2). This paragraph shall not apply for purposes of section 105(b) with respect to reimbursements through insurance.

(e) Exclusion of amounts allowed for care of certain dependents

Any expense allowed as a credit under section 21 shall not be treated as an expense paid for medical care.

(f) Special rule for 2013, 2014, 2015, and 2016

In the case of any taxable year beginning after December 31, 2012, and ending before January 1, 2017, subsection (a) shall be applied with respect to a taxpayer by substituting "7.5 percent" for "10 percent" if such taxpayer or such taxpayer's spouse has attained age 65 before the close of such taxable year.

(Aug. 16, 1954, ch. 736, 68A Stat. 69; Pub. L. 85–866, title I, §§16, 17(a), (b), Sept. 2, 1958, 72 Stat. 1613, 1614; Pub. L. 86–470, §3(a), May 14, 1960, 74 Stat. 133; Pub. L. 87–863, §1(a), (b), Oct. 23, 1962, 76 Stat. 1141; Pub. L. 88–272, title II, §211(a), Feb. 26, 1964, 78 Stat. 49; Pub. L. 89–97, title I, §106(a)–(d)(1), July 30, 1965, 79 Stat. 336, 337; Pub. L. 94–455, title V, §504(c)(1), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1565, 1834; Pub. L. 97–248, title II, §202(a)–(b)(3)(B), Sept. 3, 1982, 96 Stat. 421; Pub. L. 98–369, div. A, title IV, §§423(b)(1), (3), 474(r)(9), 482(a), (b)(1), title VII, §711(b), July 18, 1984, 98 Stat. 800, 841, 847, 848, 943; Pub. L. 99–514, title I, §133, Oct. 22, 1986, 100 Stat. 2116; Pub. L. 101–508, title XI, §§11111(d)(1), 11342(a), Nov. 5, 1990, 104 Stat. 1388–412, 1388–471; Pub. L. 103–66, title XIII, §13131(d)(3), Aug. 10, 1993, 107 Stat. 435; Pub. L. 104–191, title III, §322(a)–(b)(2)(A), (C), (3), (4), Aug. 21, 1996, 110 Stat. 2060–2062; Pub. L. 108–311, title II, §207(17), (18), Oct. 4, 2004, 118 Stat. 1177; Pub. L. 111–148, title IX, §9013(a), (b), Mar. 23, 2010, 124 Stat. 868.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (d)(1)(D), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part B of title XVIII of the Social Security Act is classified generally to part B (§1395j et seq.) of subchapter XVIII of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this

Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–148, §9013(a), substituted "10 percent" for "7.5 percent".

Subsec. (f). Pub. L. 111–148, §9013(b), added subsec. (f).

2004—Subsec. (a). Pub. L. 108–311, §207(17), inserted ", determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof" after "section 152".

Subsec. (d)(11). Pub. L. 108–311, §207(18), substituted "subparagraphs (A) through (G) of section 152(d)(2)" for "paragraphs (1) through (8) of section 152(a)" in concluding provisions.

1996—Subsec. (d)(1). Pub. L. 104–191, §322(b)(2)(A), inserted concluding provisions "In the case of a qualified long-term care insurance contract (as defined in section 7702B(b)), only eligible long-term care premiums (as defined in paragraph (10)) shall be taken into account under subparagraph (D)."

Subsec. (d)(1)(B). Pub. L. 104–191, §322(a), struck out "or" at end.

Subsec. (d)(1)(C). Pub. L. 104–191, §322(a), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (d)(1)(D). Pub. L. 104–191, §322(b)(1), inserted before period "or for any qualified long-term care insurance contract (as defined in section 7702B(b))".

Pub. L. 104–191, §322(a), redesignated subpar. (C) as (D).

Subsec. (d)(6). Pub. L. 104–191, §322(b)(3)(A), substituted "subparagraphs (A), (B), and (C)" for "subparagraphs (A) and (B)" in introductory provisions.

Subsec. (d)(6)(A). Pub. L. 104–191, §322(b)(3)(B), substituted "paragraph (1)(D)" for "paragraph (1)(C)".

Subsec. (d)(7). Pub. L. 104–191, §322(b)(4), substituted "subparagraphs (A), (B), and (C)" for "subparagraphs (A) and (B)".

Subsec. (d)(10), (11). Pub. L. 104–191, §322(b)(2)(C), added pars. (10) and (11).

1993—Subsec. (f). Pub. L. 103–66 struck out heading and text of subsec. (f). Text read as follows: "The amount otherwise taken into account under subsection (a) as expenses paid for medical care shall be reduced by the amount (if any) of the health insurance credit allowable to the taxpayer for the taxable year under section 32."

1990—Subsec. (d)(9). Pub. L. 101–508, §11342(a), added par. (9).

Subsec. (f). Pub. L. 101–508, §11111(d)(1), added subsec. (f).

1986—Subsec. (a). Pub. L. 99–514 substituted "7.5 percent" for "5 percent".

1984—Subsec. (d)(2), (3). Pub. L. 98–369, §482(a), added par. (2) and redesignated former par. (2) as (3). Former par. (3) redesignated (4).

Subsec. (d)(4). Pub. L. 98–369, §482(a), redesignated par. (3) as (4). Former par. (4), as added by Pub. L. 98–369, §423(b)(1), redesignated (5).

Pub. L. 98–369, §423(b)(1), added par. (4). Former par. (4) redesignated (5).

Subsec. (d)(5). Pub. L. 98–369, §482(a), redesignated par. (4) as (5). Former par. (5) redesignated (6).

Pub. L. 98–369, §423(b)(1), redesignated former par. (4) as (5). Former par. (5) redesignated (6).

Pub. L. 98–369, §711(b), substituted "paragraph (4)" for "paragraph (2)".

Subsec. (d)(6). Pub. L. 98–369, §482(a), redesignated par. (5) as (6). Former par. (6) redesignated (7).

Pub. L. 98–369, §423(b)(1), (3), redesignated former par. (5) as (6) and substituted therein "limitations of paragraph (5)" for "limitations of paragraph (4)". Former par. (6) redesignated (7).

Subsec. (d)(7). Pub. L. 98–369, §482(a), (b)(1), redesignated par. (6) as (7) and substituted therein "paragraph (6)" for "paragraph (5)". Former par. (7) redesignated (8).

Pub. L. 98–369, §423(b)(1), redesignated former par. (6) as (7).

Subsec. (d)(8). Pub. L. 98–369, §482(a), redesignated par. (7) as (8).

Subsec. (e). Pub. L. 98–369, §474(r)(9), substituted "section 21" for "section 44A".

1982—Subsec. (a). Pub. L. 97–248, §202(a), substituted provisions that there shall be allowed as a deduction the expenses paid during the taxable year, not compensated for by insurance or otherwise, for medical care of the taxpayer, his spouse, or a dependent (as defined in section 152), to the extent that such expenses exceed 5 percent of adjusted gross income, for provision allowing as deductions the amount by which the amount of the expenses paid during the taxable year (reduced by any amount deductible under paragraph (2)) for medical care of the taxpayer, his spouse, and dependents (as defined in section 152) exceeded 3 percent of the adjusted gross income, and an amount (not in excess of $150) equal to one-half of the expenses paid during the taxable year for insurance which constituted medical care for the taxpayer, his spouse, and dependents.

Subsec. (b). Pub. L. 97–248, §202(b)(1), amended subsec. (b) generally, substituting provision that an amount paid during the taxable year for medicine or a drug shall be taken into account under subsec. (a) only if such medicine or drug is a prescribed drug or is insulin for former provision that amounts paid during the

taxable year for medicine and drugs which (but for this subsection) would have been taken into account in computing the deduction under subsec. (a) would be taken into account only to the extent that the aggregate of such amounts exceeded 1 percent of the adjusted gross income.

Subsec. (c). Pub. L. 97–248, §202(b)(3)(B), redesignated subsec. (d) as (c). Former subsec. (c) was repealed by Pub. L. 89–97.

Subsec. (d). Pub. L. 97–248, §202(b)(2), (3)(A), (B), redesignated subsec. (e) as (d), added pars. (2) and (3), and redesignated former pars. (2), (3), and (4) as (4), (5), and (6), respectively. Former subsec. (d) redesignated (c).

Subsecs. (e), (f). Pub. L. 97–248, §202(b)(3)(B), redesignated subsecs. (e) and (f) as (d) and (e), respectively.

1976—Subsec. (d)(2). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (f). Pub. L. 94–455, §504(c)(1), substituted "a credit under section 44A" for "a deduction under section 214" after "allowed as".

1965—Subsec. (a). Pub. L. 89–97, §106(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "There shall be allowed as a deduction the following amounts of the expenses paid during the taxable year, not compensated for by insurance or otherwise, for medical care of the taxpayer, his spouse, or a dependent (as defined in section 152):

"(1) If neither the taxpayer nor his spouse has attained the age of 65 before the close of the taxable year—

"(A) the amount of such expenses for the care of any dependent who—

"(i) is the mother or father of the taxpayer or of his spouse, and

"(ii) has attained the age of 65 before the close of the taxable year, and

"(B) the amount by which such expenses for the care of the taxpayer, his spouse, and such dependents (other than any dependent described in subparagraph (A)) exceed 3 percent of the adjusted gross income.

"(2) If either the taxpayer or his spouse has attained the age of 65 before the close of the taxable year—

"(A) the amount of such expenses for the care of the taxpayer and his spouse.

"(B) the amount of such expenses for the care of any dependent described in paragraph (1)(A), and

"(C) the amount by which such expenses for the care of such dependents (other than any dependent described in paragraph (1)(A)) exceed 3 percent of the adjusted gross income."

Subsec. (b). Pub. L. 89–97, §106(b), struck out second sentence which read: "The preceding sentence shall not apply to amounts paid for the care of—

"(1) the taxpayer and his spouse, if either of them has attained the age of 65 before the close of the taxable year, or

"(2) any dependent described in subsection (a)(1)(A)."

Subsec. (c). Pub. L. 89–97, §106(d)(1), struck out subsec. (c) relating to maximum limitations on medical and dental expenses under this section.

Subsec. (e). Pub. L. 89–97, §106(c), struck out from par. (1)(A) "including amounts paid for accident or health insurance" after "function of the body", added pars. (1)(C), (2), and (3), and renumbered former par. (2) as (4).

Subsec. (g). Pub. L. 89–97, §106(d)(1), struck out provisions relating to maximum limitation if taxpayer or spouse has attained age 65 and is disabled, special rule, amounts taken into account, meaning of disabled, and determination of status.

1964—Subsec. (b). Pub. L. 88–272 excluded persons attaining age 65 before the close of the taxable year from the limitation, whether they are the taxpayer and his spouse, or the mother or father of the taxpayer and his spouse.

1962—Subsec. (c). Pub. L. 87–863, §1(a), substituted "$5,000" for "$2,500", "$10,000" for "$5,000", and "$20,000" for "$10,000".

Subsec. (g). Pub. L. 87–863, §1(b), substituted "$20,000" for "$15,000" in three places, and "$40,000" for "$30,000".

1960—Subsec. (a). Pub. L. 86–470 authorized a taxpayer to deduct medical care expenses for dependent parents of the taxpayer or his spouse who have attained the age of 65 before the close of the taxable year without applying the three percent limitation.

1958—Subsec. (c). Pub. L. 85–866, §17(b), substituted "Except as provided in subsection (g), the" for "The".

Subsec. (d)(2)(A). Pub. L. 85–866, §16, struck out "claimed or" before "allowed".

Subsec. (g). Pub. L. 85–866, §17(A), added subsec. (g).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–148 applicable to taxable years beginning after Dec. 31, 2012, see section 9013(d) of Pub. L. 111–148, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–191 applicable to taxable years beginning after Dec. 31, 1996, see section 322(c) of Pub. L. 104–191, set out as a note under section 162 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to taxable years beginning after Dec. 31, 1993, see section 13131(e) of Pub. L. 103–66, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11111(d)(1) of Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, see section 11111(f) of Pub. L. 101–508, set out as a note under section 32 of this title.

Pub. L. 101–508, title XI, §11342(b), Nov. 5, 1990, 104 Stat. 1388–472, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1990."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 423(b) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1984, see section 423(d) of Pub. L. 98–369, set out as a note under section 2 of this title.

Amendment by section 474(r)(9) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Pub. L. 98–369, div. A, title IV, §482(c), July 18, 1984, 98 Stat. 848, provided that: "The amendments made by this section [amending this section and section 152 of this title] shall apply to taxable years beginning after December 31, 1983."

Amendment by section 711(b) of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title II, §202(c), Sept. 3, 1982, 96 Stat. 421, provided that:

"(1) SUBSECTION (a).—The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1982.

"(2) SUBSECTION (b).—The amendments made by subsection (b) [amending this section and section 105 of this title] shall apply to taxable years beginning after December 31, 1983."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 504(c)(1) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, see section 508 of Pub. L. 94–455, set out as a note under section 3 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Pub. L. 89–97, title I, §106(e), July 30, 1965, 79 Stat. 337, provided that: "The amendments made by this section [amending this section and sections 72, 79, 401, and 405 of this title] shall apply to taxable years beginning after December 31, 1966."

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88–272, title II, §211(b), Feb. 26, 1964, 78 Stat. 49, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1963."

EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87–863, §1(c), Oct. 23, 1962, 76 Stat. 1141, provided that: "The amendments made by subsections (a) and (b) [amending this section] shall apply only with respect to taxable years beginning after December 31, 1961."

EFFECTIVE DATE OF 1960 AMENDMENT

Pub. L. 86–470, §3(b), May 14, 1960, 74 Stat. 133, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1959."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 16 of Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

Pub. L. 85–866, §17(c), Sept. 2, 1958, 72 Stat. 1614, provided that: "The amendments made by subsections (a) and (b) [amending this section] shall apply only with respect to taxable years beginning after December 31, 1957."

[§214. Repealed. Pub. L. 94–455, title V, §504(b)(1), Oct. 4, 1976, 90 Stat. 1565]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 70; Apr. 2, 1963, Pub. L. 88–4, §1, 77 Stat. 4; Feb. 26, 1964, Pub. L. 88–272, title II, §212(a), 78 Stat. 49; Dec. 10, 1971, Pub. L. 92–178, title II, §210(a), 85 Stat. 518; Mar. 29, 1975, Pub. L. 94–12, title II, §206, 89 Stat. 32, provided for allowance of deduction for household and dependent care services necessary for gainful employment; defined "qualifying individual", "employment-related expenses", "maintaining a household"; limitation on deductible amount; income limitation; and special rules and regulations applicable in the determination and allowance of deduction.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 1975, see section 508 of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 3 of this title.

§215. Alimony, etc., payments

(a) General rule

In the case of an individual, there shall be allowed as a deduction an amount equal to the alimony or separate maintenance payments paid during such individual's taxable year.

(b) Alimony or separate maintenance payments defined

For purposes of this section, the term "alimony or separate maintenance payment" means any alimony or separate maintenance payment (as defined in section 71(b)) which is includible in the gross income of the recipient under section 71.

(c) Requirement of identification number

The Secretary may prescribe regulations under which—

(1) any individual receiving alimony or separate maintenance payments is required to furnish such individual's taxpayer identification number to the individual making such payments, and

(2) the individual making such payments is required to include such taxpayer identification number on such individual's return for the taxable year in which such payments are made.

(d) Coordination with section 682

No deduction shall be allowed under this section with respect to any payment if, by reason of section 682 (relating to income of alimony trusts), the amount thereof is not includible in such individual's gross income.

(Aug. 16, 1954, ch. 736, 68A Stat. 71; Pub. L. 98–369, div. A, title IV, §422(b), July 18, 1984, 98 Stat. 797.)

AMENDMENTS

1984—Pub. L. 98–369 amended section generally, substituting present provisions for provisions which had declared in: subsec. (a) a general rule as to allowance of deduction for amounts includible under section 71 in the gross income of the wife, payment of which was made within husband's taxable year, and prohibited any deduction with respect to any payment where by reason of section 71(d) or 682 the amount thereof was not includible in husband's gross income; and subsec. (b) cross reference to definitions of husband and wife in section 7701(a)(17).

EFFECTIVE DATE OF 1984 AMENDMENT

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

§216. Deduction of taxes, interest, and business depreciation by cooperative housing corporation tenant-stockholder

(a) Allowance of deduction

In the case of a tenant-stockholder (as defined in subsection (b)(2)), there shall be allowed as a deduction amounts (not otherwise deductible) paid or accrued to a cooperative housing corporation within the taxable year, but only to the extent that such amounts represent the tenant-stockholder's proportionate share of—

(1) the real estate taxes allowable as a deduction to the corporation under section 164 which are paid or incurred by the corporation on the houses or apartment building and on the land on which such houses (or building) are situated, or

(2) the interest allowable as a deduction to the corporation under section 163 which is paid or incurred by the corporation on its indebtedness contracted—

(A) in the acquisition, construction, alteration, rehabilitation, or maintenance of the houses or apartment building, or

(B) in the acquisition of the land on which the houses (or apartment building) are situated.

(b) Definitions

For purposes of this section—

(1) Cooperative housing corporation

The term "cooperative housing corporation" means a corporation—

(A) having one and only one class of stock outstanding,

(B) each of the stockholders of which is entitled, solely by reason of his ownership of stock in the corporation, to occupy for dwelling purposes a house, or an apartment in a building, owned or leased by such corporation,

(C) no stockholder of which is entitled (either conditionally or unconditionally) to receive any distribution not out of earnings and profits of the corporation except on a complete or partial liquidation of the corporation, and

(D) meeting 1 or more of the following requirements for the taxable year in which the taxes and interest described in subsection (a) are paid or incurred:

(i) 80 percent or more of the corporation's gross income for such taxable year is derived from tenant-stockholders.

(ii) At all times during such taxable year, 80 percent or more of the total square footage of the corporation's property is used or available for use by the tenant-stockholders for residential purposes or purposes ancillary to such residential use.

(iii) 90 percent or more of the expenditures of the corporation paid or incurred during such taxable year are paid or incurred for the acquisition, construction, management, maintenance, or care of the corporation's property for the benefit of the tenant-stockholders.

(2) Tenant-stockholder

The term "tenant-stockholder" means a person who is a stockholder in a cooperative housing corporation, and whose stock is fully paid-up in an amount not less than an amount shown to the satisfaction of the Secretary as bearing a reasonable relationship to the portion of the value of the corporation's equity in the houses or apartment building and the land on which situated which is attributable to the house or apartment which such person is entitled to occupy.

(3) Tenant-stockholder's proportionate share

(A) In general

Except as provided in subparagraph (B), the term "tenant-stockholder's proportionate share" means that proportion which the stock of the cooperative housing corporation owned by the tenant-stockholder is of the total outstanding stock of the corporation (including any stock held by the corporation).

(B) Special rule where allocation of taxes or interest reflect cost to corporation of stockholder's unit

(i) In general

If, for any taxable year—

(I) each dwelling unit owned or leased by a cooperative housing corporation is separately allocated a share of such corporation's real estate taxes described in subsection (a)(1) or a share of such corporation's interest described in subsection (a)(2), and

(II) such allocations reasonably reflect the cost to such corporation of such taxes, or of such interest, attributable to the tenant-stockholder's dwelling unit (and such unit's share of the common areas),

then the term "tenant-stockholder's proportionate share" means the shares determined in accordance with the allocations described in subclause (II).

(ii) Election by corporation required

Clause (i) shall apply with respect to any cooperative housing corporation only if such corporation elects its application. Such an election, once made, may be revoked only with the consent of the Secretary.

(4) Stock owned by governmental units

For purposes of this subsection, in determining whether a corporation is a cooperative housing corporation, stock owned and apartments leased by the United States or any of its possessions, a State or any political subdivision thereof, or any agency or instrumentality of the foregoing empowered to acquire shares in a cooperative housing corporation for the purpose of providing housing facilities, shall not be taken into account.

(5) Prior approval of occupancy

For purposes of this section, in the following cases there shall not be taken into account the fact that (by agreement with the cooperative housing corporation) the person or his nominee may not occupy the house or apartment without the prior approval of such corporation:

(A) In any case where a person acquires stock of a cooperative housing corporation by operation of law.

(B) In any case where a person other than an individual acquires stock of a cooperative housing corporation.

(C) In any case where the original seller acquires any stock of the cooperative housing corporation from the corporation not later than 1 year after the date on which the apartments or houses (or leaseholds therein) are transferred by the original seller to the corporation.

(6) Original seller defined

For purposes of paragraph (5), the term "original seller" means the person from whom the corporation has acquired the apartments or houses (or leaseholds therein).

(c) Treatment as property subject to depreciation

(1) In general

So much of the stock of a tenant-stockholder in a cooperative housing corporation as is allocable, under regulations prescribed by the Secretary, to a proprietary lease or right of tenancy in property subject to the allowance for depreciation under section 167(a) shall, to the extent such proprietary lease or right of tenancy is used by such tenant-stockholder in a trade or business or for the production of income, be treated as property subject to the allowance for depreciation under section 167(a). The preceding sentence shall not be construed to limit or deny a deduction for depreciation under section 167(a) by a cooperative housing corporation with respect to property owned by such a corporation and leased to tenant-stockholders.

(2) Deduction limited to adjusted basis in stock

(A) In general

The amount of any deduction for depreciation allowable under section 167(a) to a tenant-stockholder with respect to any stock for any taxable year by reason of paragraph (1) shall not exceed the adjusted basis of such stock as of the close of the taxable year of the tenant-stockholder in which such deduction was incurred.

(B) Carryforward of disallowed amount

The amount of any deduction which is not allowed by reason of subparagraph (A) shall, subject to the provisions of subparagraph (A), be treated as a deduction allowable under section 167(a) in the succeeding taxable year.

(d) Disallowance of deduction for certain payments to the corporation

No deduction shall be allowed to a stockholder in a cooperative housing corporation for any amount paid or accrued to such corporation during any taxable year (in excess of the stockholder's proportionate share of the items described in subsections (a)(1) and (a)(2)) to the extent that, under regulations prescribed by the Secretary, such amount is properly allocable to amounts paid or incurred at any time by the corporation which are chargeable to the corporation's capital account. The stockholder's adjusted basis in the stock in the corporation shall be increased by the amount of such disallowance.

(e) Distributions by cooperative housing corporations

Except as provided in regulations no gain or loss shall be recognized on the distribution by a cooperative housing corporation of a dwelling unit to a stockholder in such corporation if such distribution is in exchange for the stockholder's stock in such corporation and such dwelling unit is used as his principal residence (within the meaning of section 121).

(Aug. 16, 1954, ch. 736, 68A Stat. 71; Pub. L. 87–834, §28(a), Oct. 16, 1962, 76 Stat. 1068; Pub. L. 91–172, title IX, §913(a), Dec. 30, 1969, 83 Stat. 723; Pub. L. 94–455, title XIX, §1906(b)(13)(A), title XXI, §2101(b), (f)(1), Oct. 4, 1976, 90 Stat. 1834, 1899; Pub. L. 95–600, title V, §531(a), Nov. 6, 1978, 92 Stat. 2886; Pub. L. 96–222, title I, §105(a)(6), Apr. 1, 1980, 94 Stat. 219; Pub. L. 99–514, title VI, §644(a)–(d), Oct. 22, 1986, 100 Stat. 2285, 2286; Pub. L. 100–647, title VI, §6282(a), Nov. 10, 1988, 102 Stat. 3755; Pub. L. 101–508, title XI, §11702(i), Nov. 5, 1990, 104 Stat. 1388–516; Pub. L. 105–34, title III, §312(d)(4), Aug. 5, 1997, 111 Stat. 840; Pub. L. 110–142, §4(a), Dec. 20, 2007, 121 Stat. 1804.)

AMENDMENTS

2007—Subsec. (b)(1)(D). Pub. L. 110–142 amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: "80 percent or more of the gross income of which for the taxable year in which the taxes and interest described in subsection (a) are paid or incurred is derived from tenant-stockholders."

1997—Subsec. (e). Pub. L. 105–34 substituted "such dwelling unit is used as his principal residence (within the meaning of section 121)" for "such exchange qualifies for nonrecognition of gain under section 1034(f)".

1990—Subsec. (e). Pub. L. 101–508 substituted "corporations" for "associations" in heading and "corporation" for "association" after "housing" in text.

1988—Subsec. (e). Pub. L. 100–647 added subsec. (e).

1986—Subsec. (b)(2). Pub. L. 99–514, §644(a)(1), substituted "a person" and "such person" for "an individual" and "such individual", respectively.

Subsec. (b)(3). Pub. L. 99–514, §644(d), added heading and amended text generally. Prior to amendment, text read as follows: "The term 'tenant-stockholder's proportionate share' means that proportion which the stock of the cooperative housing corporation owned by the tenant-stockholder is of the total outstanding stock of the corporation (including any stock held by the corporation)."

Subsec. (b)(5). Pub. L. 99–514, §644(a)(2), substituted "Prior approval of occupancy" for "Stock acquired through foreclosure by lending institution" in heading and amended text generally. Prior to amendment, text read as follows: "If a bank or other lending institution acquires by foreclosure (or by instrument in lieu of foreclosure) the stock of a tenant-stockholder, and a lease or the right to occupy an apartment or house to which such stock is appurtenant, such bank or other lending institution shall be treated as a tenant-stockholder for a period not to exceed three years from the date of acquisition. The preceding sentence shall apply even though, by agreement with the cooperative housing corporation, the bank (or other lending institution) or its nominee may not occupy the house or apartment without the prior approval of such corporation."

Subsec. (b)(6). Pub. L. 99–514, §644(a)(2), amended par. (6) generally, substituting provisions defining "original seller" for purposes of par. (5) for provisions relating to stock owned by person from whom corporation acquired its property, subpar. (A) thereof providing for general rule, subpar. (B) providing that stock acquisition must take place not later than 1 year after transfer of dwelling units, subpar. (C) providing that original seller must have right to occupy apartment or house, and subpar. (D) defining "original seller" for purposes of former par. (6).

Subsec. (c). Pub. L. 99–514, §644(b), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "So much of the stock of a tenant-stockholder in a cooperative housing corporation as is allocable, under regulations prescribed by the Secretary, to a proprietary lease or right of tenancy in property subject to the allowance for depreciation under section 167(a) shall, to the extent such proprietary lease or right of tenancy is used by such tenant-stockholder in a trade or business or for the production of income, be treated as property subject to the allowance for depreciation under section 167(a). The preceding sentence shall not be construed to limit or deny a deduction for depreciation under 167(a) by a cooperative housing corporation with respect to property owned by such a corporation and leased to tenant-stockholders."

Subsec. (d). Pub. L. 99–514, §644(c), added subsec. (d).

1980—Subsec. (b)(6)(A). Pub. L. 96–222, §105(a)(6)(A), added subpar. (A). Former subpar. (A), which required the original seller who acquired stock of the corporation from the corporation by purchase or foreclosure to be treated as a tenant-stockholder for a period not to exceed 3 years from the date of acquisition, was struck out.

Subsec. (b)(6)(B) to (D). Pub. L. 96–222, §105(a)(6)(A), (B), added subpar. (B), redesignated former subpars. (B) and (C) as (C) and (D), and, in subpar. (D) as so redesignated, inserted provisions requiring that the estate of the original seller succeed to, and take into account, the tax treatment of the original seller under this paragraph.

1978—Subsec. (b)(6). Pub. L. 95–600, added par. (6).

1976—Subsec. (b)(2). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (b)(5). Pub. L. 94–455, §2101(f), added par. (5).

Subsec. (c). Pub. L. 94–455, §§1906(b)(13)(A), 2101(b), struck out "or his delegate" after "Secretary" and inserted at end "The preceding sentence shall not be construed to limit or deny a deduction for depreciation under 167(a) by a cooperative housing corporation with respect to property owned by such corporation and leased to tenant-stockholders."

1969—Subsec. (b)(4). Pub. L. 91–172 added par. (4).

1962—Pub. L. 87–834 substituted "Deduction of taxes, interest, and business depreciation by cooperative housing corporation tenant-stockholders" for "Amounts representing taxes and interest paid to cooperative housing corporation" in section catchline, and added subsec. (c).

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–142, §4(b), Dec. 20, 2007, 121 Stat. 1804, provided that: "The amendment made by this section [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Dec. 20, 2007]."

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d)[(e)] of Pub. L. 105–34, set out as a note under section 121 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 11702(j) of Pub. L. 101–508, set out as a note under section 59 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title VI, §6282(b), Nov. 10, 1988, 102 Stat. 3755, provided that: "The amendment made by this section [amending this section] shall take effect as if included in the amendments made by section 631 of the Tax Reform Act of 1986 [section 631 of Pub. L. 99–514, see Tables for classification]."

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title VI, §644(f), Oct. 22, 1986, 100 Stat. 2289, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1986.

"(2) SUBSECTION (e).—

"(A) Except as provided in subparagraph (B), subsection (e) [set out below] shall apply to taxable years beginning before January 1, 1986.

"(B) Subsection (e)(7) [set out below] shall apply to amounts paid or incurred, and property acquired, in taxable years beginning, after December 31, 1985."

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title V, §531(b), Nov. 6, 1978, 92 Stat. 2887, provided that: "The amendment made by this section [amending this section] shall apply to stock acquired after the date of the enactment of this Act [Nov. 6, 1978]."

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XXI, §2101(f)(2), Oct. 4, 1976, 90 Stat. 1900, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to stock acquired by banks or other lending institutions after the date of the enactment of this Act [Oct. 4, 1976]."

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title IX, §913(b), Dec. 30, 1969, 83 Stat. 723, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1969."

EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87–834, §28(c), Oct. 16, 1962, 76 Stat. 1068, provided that: "The amendments made by subsection (a) [amending this section] shall be effective with respect to taxable years beginning after December 31, 1961."

TREATMENT OF AMOUNTS RECEIVED IN CONNECTION WITH REFINANCING OF INDEBTEDNESS OF CERTAIN COOPERATIVE HOUSING CORPORATIONS; TREATMENT OF AMOUNTS PAID FROM QUALIFIED REFINANCING-RELATED RESERVE

Pub. L. 99–514, title VI, §644(e), Oct. 22, 1986, 100 Stat. 2287, provided that:

"(1) PAYMENT OF CLOSING COSTS AND CREATION OF RESERVE EXCLUDED FROM GROSS INCOME.—For purposes of the Internal Revenue Code of 1954 [now 1986], no amount shall be included in the gross income of a qualified cooperative housing corporation by reason of the payment or reimbursement by a city housing development agency or corporation of amounts for—

"(A) closing costs, or

"(B) the creation of reserves for the qualified cooperative housing corporation,

in connection with a qualified refinancing.

"(2) INCOME FROM RESERVE FUND TREATED AS MEMBER INCOME.—

"(A) IN GENERAL.—Income from a qualified refinancing-related reserve shall be treated as derived from its members for purposes of—

"(i) section 216 of the Internal Revenue Code of 1954 [now 1986] (relating to deduction of taxes,

interest, and business depreciation by cooperative housing corporation tenant-stockholder), and

"(ii) section 277 of such Code (relating to deductions incurred by certain membership organizations in transactions with members).

"(B) NO INFERENCE.—Nothing in the provisions of this paragraph shall be construed to infer that a change in law is intended with respect to the treatment of deductions under section 277 of the Internal Revenue Code of 1954 [now 1986] with respect to cooperative housing corporations, and any determination of such issue shall be made as if such provisions had not been enacted.

"(3) TREATMENT OF CERTAIN INTEREST CLAIMED AS DEDUCTION.—Any amount—

"(A) claimed (on a return of tax imposed by chapter 1 of the Internal Revenue Code of 1954 [now 1986]) as a deduction by a qualified cooperative housing corporation for interest for any taxable year beginning before January 1, 1986, on a second mortgage loan made by a city housing development agency or corporation in connection with a qualified refinancing, and

"(B) reported (before April 16, 1986) by the qualified cooperative housing corporation to its tenant-stockholders as interest described in section 216(a)(2) of such Code,

shall be treated for purposes of such Code as if such amount were paid by such qualified cooperative housing corporation during such taxable year.

"(4) QUALIFIED COOPERATIVE HOUSING CORPORATION.—

"(A) IN GENERAL.—For purposes of this subsection, the term 'qualified cooperative housing corporation' means any corporation if—

"(i) such corporation is, after the application of paragraphs (1) and (2), a cooperative housing corporation (as defined in section 216(b) of the Internal Revenue Code of 1954 [now 1986]),

"(ii) such corporation is subject to a qualified limited-profit housing companies law, and

"(iii) such corporation either—

"(I) filed for incorporation on July 22, 1965, or

"(II) filed for incorporation on March 5, 1964.

"(B) QUALIFIED LIMITED-PROFIT HOUSING COMPANIES LAW.—For purposes of subparagraph (A), the term 'qualified limited-profit housing companies law' means any limited-profit housing companies law which limits the resale price for a tenant-stockholder's stock in a cooperative housing corporation to the sum of his basis for such stock plus his proportionate share of part or all of the amortization of any mortgage on the building owned by such corporation.

"(5) QUALIFIED REFINANCING.—For purposes of this subsection, the term 'qualified refinancing' means any refinancing—

"(A) which occurred—

"(i) with respect to a qualified cooperative housing corporation described in paragraph (4)(A)(iii)(I) on September 20, 1978, or

"(ii) with respect to a qualified cooperative housing corporation described in paragraph (4)(A)(iii)(II) on November 21, 1978, and

"(B) in which a qualified cooperative housing corporation refinanced a first mortgage loan made to such corporation by a city housing development agency with a first mortgage loan made by a city housing development corporation and insured by an agency of the Federal Government and a second mortgage loan made by such city housing development agency, in the process of which a reserve was created (as required by such Federal agency) and closing costs were paid or reimbursed by such city housing development agency or corporation.

"(6) QUALIFIED REFINANCING-RELATED RESERVE.—For purposes of this subsection, the term 'qualified refinancing-related reserve' means any reserve of a qualified cooperative housing corporation with respect to the creation of which no amount was included in the gross income of such corporation by reason of paragraph (a).

"(7) TREATMENT OF AMOUNTS PAID FROM QUALIFIED REFINANCING-RELATED RESERVE.—

"(A) IN GENERAL.—With respect to any payment from a qualified refinancing-related reserve out of amounts excluded from gross income by reason of paragraph (1)—

"(i) no deduction shall be allowed under chapter 1 of such Code, and

"(ii) the basis of any property acquired with such payment (determined without regard to this subparagraph) shall be reduced by the amount of such payment.

"(B) ORDERING RULES.—For purposes of subparagraph (A), payments from a reserve shall be treated as being made—

"(i) first from amounts excluded from gross income by reason of paragraph (1) to the extent thereof, and

"(ii) then from other amounts in the reserve."

§217. Moving expenses

(a) Deduction allowed

There shall be allowed as a deduction moving expenses paid or incurred during the taxable year in connection with the commencement of work by the taxpayer as an employee or as a self-employed individual at a new principal place of work.

(b) Definition of moving expenses

(1) In general

For purposes of this section, the term "moving expenses" means only the reasonable expenses—

(A) of moving household goods and personal effects from the former residence to the new residence, and

(B) of traveling (including lodging) from the former residence to the new place of residence.

Such term shall not include any expenses for meals.

(2) Individuals other than taxpayer

In the case of any individual other than the taxpayer, expenses referred to in paragraph (1) shall be taken into account only if such individual has both the former residence and the new residence as his principal place of abode and is a member of the taxpayer's household.

(c) Conditions for allowance

No deduction shall be allowed under this section unless—

(1) the taxpayer's new principal place of work—

(A) is at least 50 miles farther from his former residence than was his former principal place of work, or

(B) if he had no former principal place of work, is at least 50 miles from his former residence, and

(2) either—

(A) during the 12-month period immediately following his arrival in the general location of his new principal place of work, the taxpayer is a full-time employee, in such general location, during at least 39 weeks, or

(B) during the 24-month period immediately following his arrival in the general location of his new principal place of work, the taxpayer is a full-time employee or performs services as a self-employed individual on a full-time basis, in such general location, during at least 78 weeks, of which not less than 39 weeks are during the 12-month period referred to in subparagraph (A).

For purposes of paragraph (1), the distance between two points shall be the shortest of the more commonly traveled routes between such two points.

(d) Rules for application of subsection (c)(2)

(1) The condition of subsection (c)(2) shall not apply if the taxpayer is unable to satisfy such condition by reason of—

(A) death or disability, or

(B) involuntary separation (other than for willful misconduct) from the service of, or transfer for the benefit of, an employer after obtaining full-time employment in which the taxpayer could reasonably have been expected to satisfy such condition.

(2) If a taxpayer has not satisfied the condition of subsection (c)(2) before the time prescribed by law (including extensions thereof) for filing the return for the taxable year during which he paid or incurred moving expenses which would otherwise be deductible under this section, but

may still satisfy such condition, then such expenses may (at the election of the taxpayer) be deducted for such taxable year notwithstanding subsection (c)(2).

(3) If—

(A) for any taxable year moving expenses have been deducted in accordance with the rule provided in paragraph (2), and

(B) the condition of subsection (c)(2) cannot be satisfied at the close of a subsequent taxable year,

then an amount equal to the expenses which were so deducted shall be included in gross income for the first such subsequent taxable year.

[(e) Repealed. Pub. L. 103–66, title XIII, §13213(a)(2)(A), Aug. 10, 1993, 107 Stat. 473]

(f) Self-employed individual

For purposes of this section, the term "self-employed individual" means an individual who performs personal services—

(1) as the owner of the entire interest in an unincorporated trade or business, or

(2) as a partner in a partnership carrying on a trade or business.

(g) Rules for members of the Armed Forces of the United States

In the case of a member of the Armed Forces of the United States on active duty who moves pursuant to a military order and incident to a permanent change of station—

(1) the limitations under subsection (c) shall not apply;

(2) any moving and storage expenses which are furnished in kind (or for which reimbursement or an allowance is provided, but only to the extent of the expenses paid or incurred) to such member, his spouse, or his dependents, shall not be includible in gross income, and no reporting with respect to such expenses shall be required by the Secretary of Defense or the Secretary of Transportation, as the case may be; and

(3) if moving and storage expenses are furnished in kind (or if reimbursement or an allowance for such expenses is provided) to such member's spouse and his dependents with regard to moving to a location other than the one to which such member moves (or from a location other than the one from which such member moves), this section shall apply with respect to the moving expenses of his spouse and dependents—

(A) as if his spouse commenced work as an employee at a new principal place of work at such location; and

(B) without regard to the limitations under subsection (c).

(h) Special rules for foreign moves

(1) Allowance of certain storage fees

In the case of a foreign move, for purposes of this section, the moving expenses described in subsection (b)(1)(A) include the reasonable expenses—

(A) of moving household goods and personal effects to and from storage, and

(B) of storing such goods and effects for part or all of the period during which the new place of work continues to be the taxpayer's principal place of work.

(2) Foreign move

For purposes of this subsection, the term "foreign move" means the commencement of work by the taxpayer at a new principal place of work located outside the United States.

(3) United States defined

For purposes of this subsection and subsection (i), the term "United States" includes the possessions of the United States.

(i) Allowance of deductions in case of retirees or decedents who were working abroad

(1) In general

In the case of any qualified retiree moving expenses or qualified survivor moving expenses—

(A) this section (other than subsection (h)) shall be applied with respect to such expenses as if they were incurred in connection with the commencement of work by the taxpayer as an employee at a new principal place of work located within the United States, and

(B) the limitations of subsection (c)(2) shall not apply.

(2) Qualified retiree moving expenses

For purposes of paragraph (1), the term "qualified retiree moving expenses" means any moving expenses—

(A) which are incurred by an individual whose former principal place of work and former residence were outside the United States, and

(B) which are incurred for a move to a new residence in the United States in connection with the bona fide retirement of the individual.

(3) Qualified survivor moving expenses

For purposes of paragraph (1), the term "qualified survivor moving expenses" means moving expenses—

(A) which are paid or incurred by the spouse or any dependent of any decedent who (as of the time of his death) had a principal place of work outside the United States, and

(B) which are incurred for a move which begins within 6 months after the death of such decedent and which is to a residence in the United States from a former residence outside the United States which (as of the time of the decedent's death) was the residence of such decedent and the individual paying or incurring the expense.

(j) Regulations

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

(Added Pub. L. 88–272, title II, §213(a)(1), Feb. 26, 1964, 78 Stat. 50; amended Pub. L. 91–172, title II, §231(a), Dec. 30, 1969, 83 Stat. 577; Pub. L. 94–455, title V, §506 (a)–(c), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1568, 1834; Pub. L. 95–615, title II, §204, Nov. 8, 1978, 92 Stat. 3106; Pub. L. 103–66, title XIII, §13213(a)(1)–(2)(D), (b), Aug. 10, 1993, 107 Stat. 473, 474.)

PRIOR PROVISIONS

A prior section 217 was renumbered section 224 of this title.

AMENDMENTS

1993—Subsec. (b). Pub. L. 103–66, §13213(a)(1), amended subsec. (b) generally, restating former par. (1)(A) and (B) as par. (1) and former par. (3)(C) as par. (2) and striking out former par. (1)(C) to (E) which included certain traveling, meals, lodging, and residence sale, purchase, and lease expenses in the term "moving expenses", par. (2) which defined "qualified residence sale, purchase, or lease expenses", and par. (3)(A) and (B) which placed dollar limits on the amount allowed to be deducted as moving expenses.

Subsec. (c)(1). Pub. L. 103–66, §13213(b), substituted "50 miles" for "35 miles" in subpars. (A) and (B).

Subsec. (e). Pub. L. 103–66, §13213(a)(2)(A), struck out heading and text of subsec. (e). Text read as follows: "The amount realized on the sale of the residence described in subparagraph (A) of subsection (b)(2) shall not be decreased by the amount of any expenses described in such subparagraph which are allowed as a deduction under subsection (a), and the basis of a residence described in subparagraph (B) of subsection (b)(2) shall not be increased by the amount of any expenses described in such subparagraph which are allowed as a deduction under subsection (a). This subsection shall not apply to any expenses with respect to which an amount is included in gross income under subsection (d)(3)."

Subsec. (f). Pub. L. 103–66, §13213(a)(2)(B), amended heading and text of subsec. (f) generally. Prior to amendment, text read as follows:

"(1) DEFINITION.—For purposes of this section, the term 'self-employed individual' means an individual who performs personal services—

"(A) as the owner of the entire interest in an unincorporated trade or business, or

"(B) as a partner in a partnership carrying on a trade or business.

"(2) RULE FOR APPLICATION OF SUBSECTIONS (b)(1)(C) AND (D).—For purposes of subparagraphs (C) and (D) of subsection (b)(1), an individual who commences work at a new principal place

of work as a self-employed individual shall be treated as having obtained employment when he has made substantial arrangements to commence such work."

Subsec. (g)(3). Pub. L. 103–66, §13213(a)(2)(C), inserted "and" at end of subpar. (A), redesignated subpar. (C) as (B), and struck out former subpar. (B) which read as follows: "for purposes of subsection (b)(3), as if such place of work was within the same general location as the member's new principal place of work, and".

Subsec. (h). Pub. L. 103–66, §13213(a)(2)(D), redesignated pars. (2) to (4) as (1) to (3), respectively, and struck out heading and text of former par. (1). Text read as follows: "In the case of a foreign move—

"(A) subsection (b)(1)(D) shall be applied by substituting '90 consecutive days' for '30 consecutive days',

"(B) subsection (b)(3)(A) shall be applied by substituting '$4,500' for '$1,500' and by substituting '$6,000' for '$3,000', and

"(C) subsection (b)(3)(B) shall be applied as if the last sentence of such subsection read as follows: 'In the case of a husband and wife filing separate returns, subparagraph (A) shall be applied by substituting "$2,250" for "$4,500", and by substituting "$3,000" for "$6,000".' "

1978—Subsecs. (h) to (j). Pub. L. 95–615 added subsecs. (h) and (i) and redesignated former subsec. (h) as (j).

1976—Subsec. (b)(3)(A). Pub. L. 94–455, §506(b)(1), (2), substituted "$1,500" for "$1,000" after "(1) shall not exceed" and "$3,000" for "$2,500" after "lease expenses shall not exceed".

Subsec. (b)(3)(B). Pub. L. 94–455, §506(b)(3), substituted " '$750' for '$1,500' " for " '$500' for '$1,000' " after "applied by substituting" and " '$1,500' for '$3,000' " for " '$1,250' for '$2,500' " after "and by substituting".

Subsec. (c)(1)(A), (B). Pub. L. 94–455, §506(a), substituted "35" for "50" after "at least".

Subsecs. (g), (h). Pub. L. 94–455, §§506(c), 1906(b)(13)(A), added subsec. (g), redesignated former subsec. (g) as (h) and struck out "or his delegate" after "Secretary".

1969—Pub. L. 91–172 substantially reenacted existing provisions and extended the coverage to self-employed persons working at the new location for 78 weeks, made it a requirement that the new principal place of work be located 50 miles from the former residence, and redefined the deduction to include costs of house-hunting trips, temporary living expenses prior to locating a new home, and expenses of selling an old home or buying a new one.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to expenses incurred after Dec. 31, 1993, see section 13213(e) of Pub. L. 103–66 set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT; ELECTION OF PRIOR LAW

Amendment by Pub. L. 95–615 applicable to taxable years beginning after Dec. 31, 1977, with provision for election of prior law, see section 209 of Pub. L. 95–615, set out as an Effective Date of 1978 Amendment note under section 911 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title V, §506(d), Oct. 4, 1976, 90 Stat. 1569, provided that: "The amendments made by subsections (a) and (b) [amending this section] shall apply to taxable years beginning after December 31, 1976."

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title II, §231(d), Dec. 30, 1969, 83 Stat. 580, as amended by Pub. L. 91–642, §2, Dec. 31, 1970, 84 Stat. 1880; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by this section [enacting section 82 of this title and amending this section and sections 1001 and 1016 of this title] shall apply to taxable years beginning after December 31, 1969, except that—

"(1) section 217 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by subsection (a)) shall not apply to any item to the extent that the taxpayer received or accrued reimbursement or other expense allowance for such item in a taxable year beginning on or before December 31, 1969, which was not included in his gross income; and

"(2) the amendments made by this section shall not apply (at the election of the taxpayer made at such time and manner as the Secretary of the Treasury or his delegate prescribes) with respect to moving expenses paid or incurred before January 1, 1971, in connection with the commencement of work by the taxpayer as an employee at a new principal place of work of which the taxpayer had been notified by his employer on or before December 19, 1969."

EFFECTIVE DATE

Section applicable to expenses incurred after Dec. 31, 1963, in taxable years ending after such date, see section 213(d) of Pub. L. 88–272, set out as an Effective Date of 1964 Amendment note under section 62 of this title.

MOVING EXPENSES OF MEMBERS OF THE UNIFORMED SERVICES

Pub. L. 93–490, §2, Oct. 26, 1974, 88 Stat. 1466, authorized the Secretary of the Treasury, applicable with respect to taxable years ending before January 1, 1976, to:

(1) enter into an agreement with the Secretary concerned under which the Secretary concerned would not be required to withhold tax on, or to report, moving expense reimbursements made to members of the armed forces;

(2) permit any taxpayer who was a member of the armed forces not to include in adjusted gross income the amount of any reimbursement in kind of moving expenses made by the Secretary concerned; and

(3) permit any taxpayer who was a member of the armed forces to deduct any amount paid by him as moving expenses in connection with any move required by the Secretary concerned, in excess of any reimbursement received for such expenses, without regard to the provisions of subsec. (c) of this section, to the extent it was otherwise deductible under this section.

[§218. Repealed. Pub. L. 95–600, title I, §113(a)(1), Nov. 6, 1978, 92 Stat. 2778]

Section, added Pub. L. 92–178, title VII, §702(a), Dec. 10, 1971, 85 Stat. 561; amended Pub. L. 93–625, §§11(d), 12(b), Jan. 3, 1975, 88 Stat. 2120; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, related to contributions to candidates for public office.

A prior section 218 was renumbered section 224 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to contributions the payment of which is made after Dec. 31, 1978, in taxable years beginning after such date, see section 113(d) of Pub. L. 95–600, set out as an Effective Date of 1978 Amendment note under section 24 of this title.

§219. Retirement savings

(a) Allowance of deduction

In the case of an individual, there shall be allowed as a deduction an amount equal to the qualified retirement contributions of the individual for the taxable year.

(b) Maximum amount of deduction

(1) In general

The amount allowable as a deduction under subsection (a) to any individual for any taxable year shall not exceed the lesser of—

(A) the deductible amount, or

(B) an amount equal to the compensation includible in the individual's gross income for such taxable year.

(2) Special rule for employer contributions under simplified employee pensions

This section shall not apply with respect to an employer contribution to a simplified employee pension.

(3) Plans under section 501(c)(18)

Notwithstanding paragraph (1), the amount allowable as a deduction under subsection (a) with respect to any contributions on behalf of an employee to a plan described in section 501(c)(18) shall not exceed the lesser of—

(A) $7,000, or

(B) an amount equal to 25 percent of the compensation (as defined in section 415(c)(3)) includible in the individual's gross income for such taxable year.

(4) Special rule for simple retirement accounts

This section shall not apply with respect to any amount contributed to a simple retirement account established under section 408(p).

(5) Deductible amount

For purposes of paragraph (1)(A)—

(A) In general

The deductible amount shall be determined in accordance with the following table:

For taxable years beginning in:	The deductible amount is:
2002 through 2004	$3,000
2005 through 2007	$4,000
2008 and thereafter	$5,000.

(B) Catch-up contributions for individuals 50 or older

(i) In general

In the case of an individual who has attained the age of 50 before the close of the taxable year, the deductible amount for such taxable year shall be increased by the applicable amount.

(ii) Applicable amount

For purposes of clause (i), the applicable amount shall be the amount determined in accordance with the following table:

For taxable years beginning in:	The applicable amount is:
2002 through 2005	$500
2006 and thereafter	$1,000.

(C) Catchup contributions for certain individuals

(i) In general

In the case of an applicable individual who elects to make a qualified retirement contribution in addition to the deductible amount determined under subparagraph (A)—

(I) the deductible amount for any taxable year shall be increased by an amount equal to 3 times the applicable amount determined under subparagraph (B) for such taxable year, and

(II) subparagraph (B) shall not apply.

(ii) Applicable individual

For purposes of this subparagraph, the term "applicable individual" means, with respect to any taxable year, any individual who was a qualified participant in a qualified cash or deferred arrangement (as defined in section 401(k)) of an employer described in clause (iii) under which the employer matched at least 50 percent of the employee's contributions to such arrangement with stock of such employer.

(iii) Employer described

An employer is described in this clause if, in any taxable year preceding the taxable year described in clause (ii)—

(I) such employer (or any controlling corporation of such employer) was a debtor in a case under title 11 of the United States Code, or similar Federal or State law, and

(II) such employer (or any other person) was subject to an indictment or conviction resulting from business transactions related to such case.

(iv) Qualified participant

For purposes of clause (ii), the term "qualified participant" means any applicable individual who was a participant in the cash or deferred arrangement described in such clause on the date that is 6 months before the filing of the case described in clause (iii).

(v) Termination

This subparagraph shall not apply to taxable years beginning after December 31, 2009.

(D) Cost-of-living adjustment

(i) In general

In the case of any taxable year beginning in a calendar year after 2008, the $5,000 amount under subparagraph (A) shall be increased by an amount equal to—

(I) such dollar amount, multiplied by

(II) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting "calendar year 2007" for "calendar year 1992" in subparagraph (B) thereof.

(ii) Rounding rules

If any amount after adjustment under clause (i) is not a multiple of $500, such amount shall be rounded to the next lower multiple of $500.

(c) Kay Bailey Hutchison Spousal IRA

(1) In general

In the case of an individual to whom this paragraph applies for the taxable year, the limitation of paragraph (1) of subsection (b) shall be equal to the lesser of—

(A) the dollar amount in effect under subsection (b)(1)(A) for the taxable year, or

(B) the sum of—

(i) the compensation includible in such individual's gross income for the taxable year, plus

(ii) the compensation includible in the gross income of such individual's spouse for the taxable year reduced by—

(I) the amount allowed as a deduction under subsection (a) to such spouse for such taxable year,

(II) the amount of any designated nondeductible contribution (as defined in section 408(o)) on behalf of such spouse for such taxable year, and

(III) the amount of any contribution on behalf of such spouse to a Roth IRA under section 408A for such taxable year.

(2) Individuals to whom paragraph (1) applies

Paragraph (1) shall apply to any individual if—

(A) such individual files a joint return for the taxable year, and

(B) the amount of compensation (if any) includible in such individual's gross income for the taxable year is less than the compensation includible in the gross income of such individual's spouse for the taxable year.

(d) Other limitations and restrictions

(1) Beneficiary must be under age 70½

No deduction shall be allowed under this section with respect to any qualified retirement contribution for the benefit of an individual if such individual has attained age 70½ before the close of such individual's taxable year for which the contribution was made.

(2) Recontributed amounts

No deduction shall be allowed under this section with respect to a rollover contribution described in section 402(c), 403(a)(4), 403(b)(8), 408(d)(3), or 457(e)(16).

(3) Amounts contributed under endowment contract

In the case of an endowment contract described in section 408(b), no deduction shall be allowed under this section for that portion of the amounts paid under the contract for the taxable year which is properly allocable, under regulations prescribed by the Secretary, to the cost of life insurance.

(4) Denial of deduction for amount contributed to inherited annuities or accounts

No deduction shall be allowed under this section with respect to any amount paid to an inherited individual retirement account or individual retirement annuity (within the meaning of section 408(d)(3)(C)(ii)).

(e) Qualified retirement contribution

For purposes of this section, the term "qualified retirement contribution" means—

(1) any amount paid in cash for the taxable year by or on behalf of an individual to an individual retirement plan for such individual's benefit, and

(2) any amount contributed on behalf of any individual to a plan described in section 501(c)(18).

(f) Other definitions and special rules

(1) Compensation

For purposes of this section, the term "compensation" includes earned income (as defined in section 401(c)(2)). The term "compensation" does not include any amount received as a pension or annuity and does not include any amount received as deferred compensation. The term "compensation" shall include any amount includible in the individual's gross income under section 71 with respect to a divorce or separation instrument described in subparagraph (A) of section 71(b)(2). For purposes of this paragraph, section 401(c)(2) shall be applied as if the term trade or business for purposes of section 1402 included service described in subsection (c)(6). The term compensation [1] includes any differential wage payment (as defined in section 3401(h)(2)).

(2) Married individuals

The maximum deduction under subsection (b) shall be computed separately for each individual, and this section shall be applied without regard to any community property laws.

(3) Time when contributions deemed made

For purposes of this section, a taxpayer shall be deemed to have made a contribution to an individual retirement plan on the last day of the preceding taxable year if the contribution is made on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (not including extensions thereof).

(4) Reports

The Secretary shall prescribe regulations which prescribe the time and the manner in which reports to the Secretary and plan participants shall be made by the plan administrator of a qualified employer or government plan receiving qualified voluntary employee contributions.

(5) Employer payments

For purposes of this title, any amount paid by an employer to an individual retirement plan shall be treated as payment of compensation to the employee (other than a self-employed individual who is an employee within the meaning of section 401(c)(1)) includible in his gross income in the taxable year for which the amount was contributed, whether or not a deduction for such payment is allowable under this section to the employee.

(6) Excess contributions treated as contribution made during subsequent year for which

there is an unused limitation

(A) In general

If for the taxable year the maximum amount allowable as a deduction under this section for contributions to an individual retirement plan exceeds the amount contributed, then the taxpayer shall be treated as having made an additional contribution for the taxable year in an amount equal to the lesser of—

(i) the amount of such excess, or

(ii) the amount of the excess contributions for such taxable year (determined under section 4973(b)(2) without regard to subparagraph (C) thereof).

(B) Amount contributed

For purposes of this paragraph, the amount contributed—

(i) shall be determined without regard to this paragraph, and

(ii) shall not include any rollover contribution.

(C) Special rule where excess deduction was allowed for closed year

Proper reduction shall be made in the amount allowable as a deduction by reason of this paragraph for any amount allowed as a deduction under this section for a prior taxable year for which the period for assessing deficiency has expired if the amount so allowed exceeds the amount which should have been allowed for such prior taxable year.

(7) Special rule for compensation earned by members of the Armed Forces for service in a combat zone.

For purposes of subsections (b)(1)(B) and (c), the amount of compensation includible in an individual's gross income shall be determined without regard to section 112.

(8) Election not to deduct contributions

For election not to deduct contributions to individual retirement plans, see section 408(o)(2)(B)(ii).

(g) Limitation on deduction for active participants in certain pension plans

(1) In general

If (for any part of any plan year ending with or within a taxable year) an individual or the individual's spouse is an active participant, each of the dollar limitations contained in subsections (b)(1)(A) and (c)(1)(A) for such taxable year shall be reduced (but not below zero) by the amount determined under paragraph (2).

(2) Amount of reduction

(A) In general

The amount determined under this paragraph with respect to any dollar limitation shall be the amount which bears the same ratio to such limitation as—

(i) the excess of—

(I) the taxpayer's adjusted gross income for such taxable year, over

(II) the applicable dollar amount, bears to

(ii) $10,000 ($20,000 in the case of a joint return for a taxable year beginning after December 31, 2006).

(B) No reduction below $200 until complete phase-out

No dollar limitation shall be reduced below $200 under paragraph (1) unless (without regard to this subparagraph) such limitation is reduced to zero.

(C) Rounding

Any amount determined under this paragraph which is not a multiple of $10 shall be rounded to the next lowest $10.

(3) Adjusted gross income; applicable dollar amount

For purposes of this subsection—

(A) Adjusted gross income

Adjusted gross income of any taxpayer shall be determined—

(i) after application of sections 86 and 469, and

(ii) without regard to sections 135, 137, 199, 221, 222, and 911 or the deduction allowable under this section.

(B) Applicable dollar amount

The term "applicable dollar amount" means the following:

(i) In the case of a taxpayer filing a joint return:

For taxable years beginning in:	The applicable dollar amount is:
1998	$50,000
1999	$51,000
2000	$52,000
2001	$53,000
2002	$54,000
2003	$60,000
2004	$65,000
2005	$70,000
2006	$75,000
2007 and thereafter	$80,000.

(ii) In the case of any other taxpayer (other than a married individual filing a separate return):

For taxable years beginning in:	The applicable dollar amount is:
1998	$30,000
1999	$31,000
2000	$32,000
2001	$33,000
2002	$34,000
2003	$40,000
2004	$45,000
2005 and thereafter	$50,000.

(iii) In the case of a married individual filing a separate return, zero.

(4) Special rule for married individuals filing separately and living apart

A husband and wife who—

(A) file separate returns for any taxable year, and

(B) live apart at all times during such taxable year,

shall not be treated as married individuals for purposes of this subsection.

(5) Active participant

For purposes of this subsection, the term "active participant" means, with respect to any plan year, an individual—

(A) who is an active participant in—

(i) a plan described in section 401(a) which includes a trust exempt from tax under section 501(a),

(ii) an annuity plan described in section 403(a),

(iii) a plan established for its employees by the United States, by a State or political subdivision thereof, or by an agency or instrumentality of any of the foregoing,

(iv) an annuity contract described in section 403(b),

(v) a simplified employee pension (within the meaning of section 408(k)), or

(vi) any simple retirement account (within the meaning of section 408(p)), or

(B) who makes deductible contributions to a trust described in section 501(c)(18).

The determination of whether an individual is an active participant shall be made without regard to whether or not such individual's rights under a plan, trust, or contract are nonforfeitable. An eligible deferred compensation plan (within the meaning of section 457(b)) shall not be treated as a plan described in subparagraph (A)(iii).

(6) Certain individuals not treated as active participants

For purposes of this subsection, any individual described in any of the following subparagraphs shall not be treated as an active participant for any taxable year solely because of any participation so described:

(A) Members of reserve components

Participation in a plan described in subparagraph (A)(iii) of paragraph (5) by reason of service as a member of a reserve component of the Armed Forces (as defined in section 10101 of title 10), unless such individual has served in excess of 90 days on active duty (other than active duty for training) during the year.

(B) Volunteer firefighters

A volunteer firefighter—

(i) who is a participant in a plan described in subparagraph (A)(iii) of paragraph (5) based on his activity as a volunteer firefighter, and

(ii) whose accrued benefit as of the beginning of the taxable year is not more than an annual benefit of $1,800 (when expressed as a single life annuity commencing at age 65).

(7) Special rule for spouses who are not active participants

If this subsection applies to an individual for any taxable year solely because their spouse is an active participant, then, in applying this subsection to the individual (but not their spouse)—

(A) the applicable dollar amount under paragraph (3)(B)(i) shall be $150,000; and

(B) the amount applicable under paragraph (2)(A)(ii) shall be $10,000.

(8) Inflation adjustment

In the case of any taxable year beginning in a calendar year after 2006, the dollar amount in the last row of the table contained in paragraph (3)(B)(i), the dollar amount in the last row of the table contained in paragraph (3)(B)(ii), and the dollar amount contained in paragraph (7)(A), shall each be increased by an amount equal to—

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting "calendar year 2005" for "calendar year 1992" in subparagraph (B) thereof.

Any increase determined under the preceding sentence shall be rounded to the nearest multiple of $1,000.

(h) Cross reference

For failure to provide required reports, see section 6652(g).

(Added Pub. L. 93–406, title II, §2002(a)(1), Sept. 2, 1974, 88 Stat. 958; amended Pub. L. 94–455, title XV, §§1501(b)(4), 1503(a), title XIX, §§ 1901(a)(32), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1736, 1738, 1769, 1834; Pub. L. 95–600, title I, §§152(c), 156(c)(3), 157(a)(1), (b)(1), title VII, §703(c)(1), Nov. 6, 1978, 92 Stat. 2798, 2803, 2939; Pub. L. 96–222, title I, §101(a)(10)(D), (14)(B), Apr. 1, 1980, 94 Stat. 202, 204; Pub. L. 97–34, title III, §§311(a), 312(c)(1), 313(b)(2), Aug. 13, 1981, 95 Stat. 274, 284, 286; Pub. L. 97–248, title II, §243(b)(2), Sept. 3, 1982, 96 Stat. 523; Pub. L. 97–448, title I, §103(c)(1), (2), (3)(A), (4), (5), (12)(A), Jan. 12, 1983, 96 Stat. 2375–2377; Pub. L. 98–369, div. A, title I, §147(c), title IV, §§422(d)(1), 491(d)(6)–(8), title V, §529(a), (b), title VII, §713(d)(2), July 18, 1984, 98 Stat. 687, 798, 849, 877, 957; Pub. L. 99–514, title III, §301(b)(4), title XI, §§1101(a), (b)(1), (2)(A), 1102(f), 1103(a), 1108(g)(2), (3), 1109(b), title XV, §1501(d)(1)(B), title XVIII, §1875(c)(4), (6)(B), Oct. 22, 1986, 100 Stat. 2217, 2411, 2413, 2417, 2434, 2435, 2740, 2894, 2895; Pub. L. 100–647, title I, §1011(a)(1), title VI, §6009(c)(2), Nov. 10, 1988, 102 Stat. 3456, 3690; Pub. L. 101–239, title VII, §§7816(c)(1), 7841(c)(1), Dec. 19, 1989, 103 Stat. 2420, 2428; Pub. L. 102–318, title V, §521(b)(4), July 3, 1992, 106 Stat. 310; Pub. L. 103–337, div. A, title XVI, §1677(c), Oct. 5, 1994, 108 Stat. 3020; Pub. L. 104–188, title I, §§1421(b)(1), 1427(a)–(b)(2), 1807(c)(3), Aug. 20, 1996, 110 Stat. 1795, 1802, 1902; Pub. L. 105–34, title III, §§301(a), (b), 302(c), Aug. 5, 1997, 111 Stat. 824, 825, 829; Pub. L. 105–206, title VI, §§6005(a), 6018(f)(2), July 22, 1998, 112 Stat. 796, 823; Pub. L. 105–277, div. J, title IV, §4003(a)(2)(B), Oct. 21, 1998, 112 Stat. 2681–908; Pub. L. 106–554, §1(a)(7) [title III, §316(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–644; Pub. L. 107–16, title IV, §431(c)(1), title VI, §§601(a), 641(e)(2), June 7, 2001, 115 Stat. 68, 94, 120; Pub. L. 108–357, title I, §102(d)(1), Oct. 22, 2004, 118 Stat. 1428; Pub. L. 109–227, §2(a), May 29, 2006, 120 Stat. 385; Pub. L. 109–280, title VIII, §§831(a), 833(b), Aug. 17, 2006, 120 Stat. 1002, 1004; Pub. L. 110–245, title I, §105(b)(2), June 17, 2008, 122 Stat. 1629; Pub. L. 113–22, §1, July 25, 2013, 127 Stat. 492.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title and Internal Revenue Notices listed in a table under section 401 of this title.

PRIOR PROVISIONS

A prior section 219 was renumbered section 224 of this title.

AMENDMENTS

2013—Subsec. (c). Pub. L. 113–22 substituted "Kay Bailey Hutchison Spousal IRA" for "Special rules for certain married individuals" in heading.

2008—Subsec. (f)(1). Pub. L. 110–245 inserted at end "The term compensation includes any differential wage payment (as defined in section 3401(h)(2))."

2006—Subsec. (b)(5)(C), (D). Pub. L. 109–280, §831(a), added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (f)(7), (8). Pub. L. 109–227 added par. (7) and redesignated former par. (7) as (8).

Subsec. (g)(8). Pub. L. 109–280, §833(b), added par. (8).

2004—Subsec. (g)(3)(A)(ii). Pub. L. 108–357 inserted "199," before "221".

2001—Subsec. (b)(1)(A). Pub. L. 107–16, §601(a)(1), substituted "the deductible amount" for "$2,000".

Subsec. (b)(5). Pub. L. 107–16, §601(a)(2), added par. (5).

Subsec. (d)(2). Pub. L. 107–16, §641(e)(2), substituted "408(d)(3), or 457(e)(16)" for "or 408(d)(3)".

Subsec. (g)(3)(A)(ii). Pub. L. 107–16, §431(c)(1), inserted "222," after "221,".

2000—Subsec. (c)(1)(B)(ii)(II), (III). Pub. L. 106–554 added subcl. (II) and redesignated former subcl. (II) as (III).

1998—Subsec. (g)(1). Pub. L. 105–206, §6005(a)(1)(A), inserted "or the individual's spouse" after "individual".

Subsec. (g)(2)(A)(ii). Pub. L. 105–206, §6005(a)(2), made technical amendment to directory language of Pub. L. 105–34, §301(a)(2). See 1997 Amendment note below.

Subsec. (g)(3)(A)(ii). Pub. L. 105–277 inserted "221," after "137,".

Pub. L. 105–206, §6018(f)(2), made technical amendment to directory language of Pub. L. 104–188, §1807(c)(3). See 1996 Amendment note below.

Subsec. (g)(7). Pub. L. 105–206, §6005(a)(1)(B), added par. (7) and struck out heading and text of former par. (7). Text read as follows: "In the case of an individual who is an active participant at no time during any plan year ending with or within the taxable year but whose spouse is an active participant for any part of any such plan year—

"(A) the applicable dollar amount under paragraph (3)(B)(i) with respect to the taxpayer shall be $150,000, and

"(B) the amount applicable under paragraph (2)(A)(ii) shall be $10,000."

1997—Subsec. (c)(1)(B)(ii). Pub. L. 105–34, §302(c), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: "the compensation includible in the gross income of such individual's spouse for the taxable year reduced by the amount allowed as a deduction under subsection (a) to such spouse for such taxable year."

Subsec. (g)(1). Pub. L. 105–34, §301(b)(1), struck out "or the individual's spouse" after "an individual".

Subsec. (g)(2)(A)(ii). Pub. L. 105–34, §301(a)(2), as amended by Pub. L. 105–206, §6005(a)(2), inserted "($20,000 in the case of a joint return for a taxable year beginning after December 31, 2006)" after "$10,000".

Subsec. (g)(3)(B). Pub. L. 105–34, §301(a)(1), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: "The term 'applicable dollar amount' means—

"(i) in the case of a taxpayer filing a joint return, $40,000,

"(ii) in the case of any other taxpayer (other than a married individual filing a separate return), $25,000, and

"(iii) in the case of a married individual filing a separate return, zero."

Subsec. (g)(7). Pub. L. 105–34, §301(b)(2), added par. (7).

1996—Subsec. (b)(4). Pub. L. 104–188, §1421(b)(1)(A), added par. (4).

Subsec. (c). Pub. L. 104–188, §1427(a), amended subsec. (c) generally, substituting present provisions for former provisions relating to special rules for certain married individuals which set out general provisions in par. (1) and a limitation in par. (2).

Subsec. (f)(2). Pub. L. 104–188, §1427(b)(1), substituted "subsection (b)" for "subsections (b) and (c)".

Subsec. (g)(1). Pub. L. 104–188, §1427(b)(2), substituted "(c)(1)(A)" for "(c)(2)".

Subsec. (g)(3)(A)(ii). Pub. L. 104–188, §1807(c)(3), as amended by Pub. L. 105–206, §6018(f)(2), inserted ", 137," before "and 911".

Subsec. (g)(5)(A)(vi). Pub. L. 104–188, §1421(b)(1)(B), added cl. (vi).

1994—Subsec. (g)(6)(A). Pub. L. 103–337 substituted "section 10101 of title 10" for "section 261(a) of title 10".

1992—Subsec. (d)(2). Pub. L. 102–318 substituted "402(c)" for "402(a)(5), 402(a)(7)".

1989—Subsec. (f)(1). Pub. L. 101–239, §7841(c)(1), inserted at end "For purposes of this paragraph, section 401(c)(2) shall be applied as if the term trade or business for purposes of section 1402 included service described in subsection (c)(6)."

Subsec. (g)(3)(A)(ii). Pub. L. 101–239, §7816(c)(1), made technical correction to directory language of Pub. L. 100–647, §6009(c)(2), see 1988 Amendment note below.

1988—Subsec. (g)(3)(A)(ii). Pub. L. 100–647, §6009(c)(2), as amended by Pub. L. 101–239, §7816(c)(1), substituted "sections 135 and 911" for "section 911".

Subsec. (g)(4). Pub. L. 100–647, §1011(a)(1), inserted "and living apart" after "filing separately" in heading and amended text generally. Prior to amendment, text read as follows: "In the case of a married individual filing a separate return for any taxable year, paragraph (1) shall be applied without regard to whether such individual's spouse is an active participant for any plan year ending with or within such taxable year."

1986—Subsec. (b)(2). Pub. L. 99–514, §1108(g)(2), amended par. (2) generally, substituting provision that this section shall not apply with respect to an employer contribution to a simplified employee pension for former provisions consisting of subpars. (A), (B), and (C) which set out detailed limits on deductibility of employer contributions.

Subsec. (b)(2)(C). Pub. L. 99–514, §1875(c)(6)(B), substituted "the dollar limitation in effect under section 415(c)(1)(A)" for "the $15,000 amount specified in subparagraph (A)(ii)".

Subsec. (b)(3). Pub. L. 99–514, §1109(b), added par. (3).

Pub. L. 99–514, §1101(b)(2)(A), struck out par. (3), special rule for individual retirement plans, which read as follows: "If the individual has paid any qualified voluntary employee contributions for the taxable year, the

amount of the qualified retirement contributions (other than employer contributions to a simplified employee pension) which are paid for the taxable year to an individual retirement plan and which are allowable as a deduction under subsection (a) for such taxable year shall not exceed—

"(A) the amount determined under paragraph (1) for such taxable year, reduced by

"(B) the amount of the qualified voluntary employee contributions for the taxable year."

Subsec. (c)(1)(B). Pub. L. 99–514, §1103(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "whose spouse has no compensation (determined without regard to section 911) for such taxable year,".

Subsec. (c)(2)(B). Pub. L. 99–514, §1108(g)(3), struck out "(determined without regard to so much of the employer contributions to a simplified employee pension as is allowable by reason of paragraph (2) of subsection (b))" after "for the taxable year".

Subsec. (e). Pub. L. 99–514, §1101(b)(1), amended subsec. (e) generally, revising the definition of "qualified retirement contribution".

Subsec. (f)(1). Pub. L. 99–514, §301(b)(4), which directed that par. (1) be amended by substituting "paragraph (6)" for "paragraph (7)", could not be executed because prior amendment by Pub. L. 99–514, §1875(c)(4), see below, struck out language which included phrase "paragraph (7)".

Pub. L. 99–514, §1875(c)(4), struck out "reduced by any amount allowable as a deduction to the individual in computing adjusted gross income under paragraph (7) of section 62" after "(as defined in section 401(c)(2))".

Subsec. (f)(3). Pub. L. 99–514, §1101(a)(2), in amending par. (3) generally, reenacted existing provision without its subpar. "(A) Individual retirement plans" designation, and struck out subpar. (B) relating to time when contributions deemed made with respect to qualified employer or government plans.

Subsec. (f)(7). Pub. L. 99–514, §1102(f), added par. (7).

Subsec. (g). Pub. L. 99–514, §1101(a)(1), added subsec. (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 99–514, §1501(d)(1)(B), which directed that subsec. (g) be amended by substituting "6652(g)" for "6652(h)", was executed by making the substitution in subsec. (h) to reflect the probable intent of Congress and the prior redesignation of former subsec. (g) as (h) by Pub. L. 99–514, §1101(a)(1).

Pub. L. 99–514, §1101(a)(1), redesignated former subsec. (g) as (h).

1984—Subsec. (b)(2)(A)(ii). Pub. L. 98–369, §713(d)(2), substituted "not in excess of the limitation in effect under section 415(c)(1)(A)" for "not in excess of $15,000".

Subsec. (b)(4). Pub. L. 98–369, §529(b), struck out par. (4) which related to a deduction for qualified retirement savings of certain divorced individuals.

Subsec. (b)(4)(B). Pub. L. 98–369, §422(d)(1), substituted "gross income under section 71 (relating to alimony and separate maintenance payments) by reason of a payment under a decree of divorce or separate maintenance or a written agreement incident to such a decree" for "gross income under paragraph (1) of section 71(a) (relating to decree of divorce or separate maintenance)".

Subsec. (d)(2). Pub. L. 98–369, §491(d)(6), substituted "or 408(d)(3)" for "405(d)(3), 408(d)(3), or 409(b)(3)(C)".

Subsec. (e)(1). Pub. L. 98–369, §491(d)(7), struck out concluding provision that for the purposes of the preceding sentence, the term "individual retirement plan" includes retirement bonds described in section 409 only if the bond was not redeemed within 12 months of its issuance.

Subsec. (e)(3). Pub. L. 98–369, §491(d)(8), struck out subpar. (C) which included a qualified bond purchase plan described in section 405(a) within term "qualified employer plan", and redesignated subpar. (D) as (C).

Subsec. (f)(1). Pub. L. 98–369, §529(a), inserted provision that "compensation" shall include any amount includible in the individual's gross income under section 71 with respect to a divorce or separation instrument described in subparagraph (A) of section 71(b)(2).

Subsec. (f)(3)(A). Pub. L. 98–369, §147(c), substituted "not including" for "including".

1983—Subsec. (b)(2)(A). Pub. L. 97–448, §103(c)(12)(A), inserted a close parenthesis after "allowable under paragraph (1)" in introductory provisions.

Subsec. (c)(2)(B). Pub. L. 97–448, §103(c)(1), substituted "the amount allowable as a deduction under subsection (a) for the taxable year (determined without regard to so much of the employer contributions to a simplified employee pension as is allowable by reason of paragraph (2) of subsection (b))" for "the amount allowed as a deduction under subsection (a) for the taxable year".

Subsec. (d)(1). Pub. L. 97–448, §103(c)(2), substituted "Beneficiary must be under age 70½" for "Individuals who have attained age 70½" as par. (1) heading and, in text, substituted "qualified retirement contribution for the benefit of an individual if such individual has attained age 70½ before the close of such

individual's taxable year for which the contribution was made" for "qualified retirement contribution which is made for a taxable year of an individual if such individual has attained age 70½ before the close of such taxable year".

Subsec. (e)(3)(D), (E). Pub. L. 97–448, §103(c)(3)(A), redesignated subpar. (E) as (D). Former subpar. (D), which related to simplified employee pension (within the meaning of section 408(k)), was struck out.

Subsec. (f)(1). Pub. L. 97–448, §103(c)(4), substituted "earned income (as defined in section 401(c)(2)) reduced by any amount allowable as a deduction to the individual in computing adjusted gross income under paragraph (7) of section 62" for "earned income as defined in section 401(c)(2)" and inserted provision that "compensation" does not include any amount received as a pension or annuity and does not include any amount received as deferred compensation.

Subsec. (f)(3)(B). Pub. L. 97–448, §103(c)(5), substituted "if the contribution is made on account of the taxable year which includes such last day and by April 15 of the calendar year" for "if the contribution is made by April 15 of the calendar year".

1982—Subsec. (d)(4). Pub. L. 97–248 added par. (4).

1981—Subsec. (a). Pub. L. 97–34, §311(a), amended subsec. (a) generally, substituting in heading "Allowance of deduction" for "Deduction allowed" and in text "shall be allowed" for "is allowed", allowed as a deduction an amount equal to the qualified retirement contributions of the individual for the taxable year, eliminated part of first sentence for allowance as a deduction amounts paid in cash for the taxable year by or on behalf of the individual for his benefit—(1) to an individual retirement annuity described in section 408(a), (2) for an individual retirement annuity described in section 408(b), or (3) for a retirement bond described in section 409 (but only if the bond is not redeemed within 12 months of the date of its issuance), covered in subsec. (e)(1) and (5) of this section, and eliminated second sentence respecting employer payments, covered in subsec. (f)(5) of this section.

Subsec. (b). Pub. L. 97–34, §311(a), in heading substituted "Maximum amount of deduction" for "Limitations and restrictions".

Subsec. (b)(1). Pub. L. 97–34, §311(a), amended par. (1) generally, substituting "In general" for "Maximum deduction" in heading and in text provision for allowance of a deduction not to exceed the lesser of (A) $2,000, or (B) an amount equal to the compensation includible in the individual's gross income for such taxable year, for provision for an amount not to exceed amount equal to 15 percent of the compensation includible in gross income for the taxable year, or $1,500, whichever is less.

Subsec. (b)(2)(A)(ii), (C). Pub. L. 97–34, §312(c)(1), substituted "$15,000" for "$7,500".

Pub. L. 97–34, §311(a), redesignated par. (7) as (2), substituted in heading "rules for employer contributions under" for "rules in case of", substituted in subpar. (A) introductory text "an employee shall be allowed as a deduction under subsection (a) (in addition to the amount allowable under paragraph (1) an amount equal to the lesser of" for "the limitation under paragraph (1) shall be the lesser of", inserted in subpar. (A)(i) "from such employer" before "includible" and substituted therein "without regard" for "with regard", substituted in subpar. (A)(ii) "the amount contributed by such employer to the simplified employee pension and included in gross income (but not in excess of $7,500" for "the sum of—(I) the amount contributed by the employer to the simplified employee pension and included in gross income (but not in excess of $7,500), and (II) $1,500, reduced (but not below zero) by the amount described in subclause (I)", and substituted in subpar. (B) "Paragraph (1) of this subsection and paragraph (1) of subsection (d)" for "Paragraphs (2) and (3)". Former subsec. (b)(2) provisions which disallowed any deduction under subsec. (a) for an individual for the taxable year if for any part of such year (A) he was an active participant in (i) a plan described in section 401(a), (ii) an annuity plan described in section 403(a), (iii) a qualified bond purchase plan described in section 405(a), or (iv) a plan established for its employees by the United States, by a State or political subdivision thereof, or by an agency or instrumentality of any of the foregoing, or (B) amounts were contributed by his employer for an annuity contract described in section 403(b), are now covered by subsec. (e)(3) and (4) of this section.

Subsec. (b)(3) to (5). Pub. L. 97–34, §311(a), added pars. (3) and (4). Former pars. (3) to (5) redesignated subsec. (d)(1) to (3).

Subsec. (b)(6). Pub. L. 97–34, §311(a), struck out par. (6) which set forth alternative deduction provisions which disallowed a deduction for the taxable year if the individual claimed the deduction allowed by section 220 for the taxable year.

Subsec. (b)(7). Pub. L. 97–34, §311(a), redesignated par. (7) as (2).

Subsec. (c). Pub. L. 97–34, §311(a), added subsec. (c). Former subsec. (c)(1) to (3) and (5) redesignated subsec. (f)(1), (2), (3)(A), and (6). Former subsec. (c)(4), which provided for participation in governmental plans by certain individuals, with subpars. (A) and (B) covering members of reserve components and volunteer firefighters, was struck out.

Subsec. (d). Pub. L. 97–34, §311(a), in heading redesignated former subsec. (b) heading as subsec. (d)

heading and inserted "Other" before "limitations".

Subsec. (d)(1). Pub. L. 97–34, §311(a), redesignated former subsec. (b)(3) as par. (1), substituted as heading "Individuals who have attained age 70½" for "Contributions after age 70½" and in text "shall be allowed under this section" for "is allowed under subsection (a)", "qualified retirement contribution" for "payment described in subsection (a)", and "made for a taxable year of an individual if such individual has attained" for "made during the taxable year of an individual who has attained".

Subsec. (d)(2). Pub. L. 97–34, §313(b)(2), inserted reference to section 405(d)(3).

Pub. L. 97–34, §311(a), redesignated former subsec. (b)(4) as par. (2) and substituted "shall be allowed" for "is allowed".

Subsec. (d)(3). Pub. L. 97–34, §311(a), redesignated former subsec. (b)(5) as par. (3) and, as so redesignated, substituted "shall be allowed under this section" for "is allowed under subsection (a)" and "year which is properly allocable" for "year properly allocable".

Subsec. (e). Pub. L. 97–34, §311(a), added subsec. (e) incorporating former provisions of subsecs. (a) and (b)(2) as pars. (1), and (3) and (4) and, among other changes, inserted provisions relating to a qualified employee pension.

Subsec. (f)(1). Pub. L. 97–34, §311(a), redesignated former subsec. (c)(1) as par. (1).

Subsec. (f)(2). Pub. L. 97–34, §311(a), redesignated former subsec. (c)(2) as par. (2) and, as so redesignated, substituted "deduction under subsections (b) and (c)" for "deduction under subsection (b)(1)", and struck out provision that for purposes of this section, the determination of whether an individual is married shall be made in accordance with the provisions of section 143(a).

Subsec. (f)(3). Pub. L. 97–34, §311(a), redesignated former subsec. (c)(3) as subpar. (A) and, as so redesignated, added subpar. (A) heading "Individual retirement plans", and "to an individual retirement plan" before "on the last day" in text, and added subpar. (B).

Subsec. (f)(4). Pub. L. 97–34, §311(a), added par. (4).

Subsec. (f)(5). Pub. L. 97–34, §311(a), redesignated former provisions of subsec. (a) as par. (5), added par. (5) heading "Employer payments", substituted "to an individual retirement plan shall be treated as payment of compensation to the employee" for "to such a retirement account, or for such a retirement annuity or retirement bond constitutes payment of compensation to the employee", and "in the taxable year for which the amount was contributed" after "gross income", and struck out "after the application of subsection (b)" after "under this section to the employee".

Subsec. (f)(6). Pub. L. 97–34, §311(a), redesignated former subsec. (c)(5) as par. (6), inserted "for contributions to an individual retirement plan" after "under this section" in subpar. (A), and struck out in subpar. (C) "or section 220" after "under this section".

Subsec. (g). Pub. L. 97–34, §311(a), added subsec. (g).

1980—Subsec. (b)(4). Pub. L. 96–222, §101(a)(14)(B), inserted "402(a)(7)," after "section 402(a)(5)".

Subsec. (b)(7). Pub. L. 96–222, §101(a)(10)(D), amended par. (7) generally, including provision requiring that paragraph (3) not apply with respect to employer contribution to a simplified employee pension.

1978—Subsec. (b)(4). Pub. L. 95–600, §156(c)(3), inserted "403(b)(8)" after "403(a)(4)".

Subsec. (b)(7). Pub. L. 95–600, §152(c), added par. (7).

Subsec. (c)(3). Pub. L. 95–600, §157(a)(1), substituted "not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof)" for "not later than 45 days after the end of such taxable year".

Subsec. (c)(4). Pub. L. 95–600, §703(c)(1), substituted "subsection (b)(2)(A)(iv)" for "subsection (b)(3)(A)(iv)" wherever appearing.

Subsec. (c)(5). Pub. L. 95–600, §157(b)(1), added par. (5).

1976—Subsec. (a). Pub. L. 94–455, §1501(b)(4)(B), substituted "for" for "during" after "paid in cash".

Subsec. (b)(2)(A)(iv). Pub. L. 94–455, §1901(a)(32), substituted "subdivision" for "division" after "State or political".

Subsec. (b)(5). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (b)(6). Pub. L. 94–455, §1501(b)(4)(B), added par. (6).

Subsec. (c)(2). Pub. L. 94–455, §1501(b)(4)(C), inserted "For purposes of this section, the determination of whether an individual is married shall be made in accordance with the provisions of section 143(a)" after "community property laws".

Subsec. (c)(3). Pub. L. 94–455, §1501(b)(4)(D), added par. (3).

Subsec. (c)(4). Pub. L. 94–455, §1503(a), added par. (4).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–245, title I, §105(b)(3), June 17, 2008, 122 Stat. 1629, provided that: "The amendments made

by this subsection [amending this section and section 414 of this title] shall apply to years beginning after December 31, 2008."

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title VIII, §831(b), Aug. 17, 2006, 120 Stat. 1003, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2006."

Amendment by section 833(b) of Pub. L. 109–280 applicable to taxable years beginning after 2006, see section 833(d) of Pub. L. 109–280, set out as a note under section 25B of this title.

Pub. L. 109–227, §2(b), May 29, 2006, 120 Stat. 385, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2003."

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years beginning after Dec. 31, 2004, see section 102(e) of Pub. L. 108–357, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 431(c)(1) of Pub. L. 107–16 applicable to payments made in taxable years beginning after Dec. 31, 2001, see section 431(d) of Pub. L. 107–16, set out as a note under section 62 of this title.

Pub. L. 107–16, title VI, §601(c), June 7, 2001, 115 Stat. 95, provided that: "The amendments made by this section [amending this section and section 408 of this title] shall apply to taxable years beginning after December 31, 2001."

Amendment by section 641(e)(2) of Pub. L. 107–16 applicable to distributions after Dec. 31, 2001, see section 641(f)(1) of Pub. L. 107–16, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which such amendment relates, see section §1(a)(7) [title III, §316(e)] of Pub. L. 106–554, set out as a note under section 51 of this title.

EFFECTIVE DATE OF 1998 AMENDMENTS

Amendment by Pub. L. 105–277 effective as if included in the provision of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 4003(l) of Pub. L. 105–277, set out as a note under section 86 of this title.

Amendment by section 6018(f)(2) of Pub. L. 105–206 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which such amendment relates, see section 6018(h) of Pub. L. 105–206, set out as a note under section 23 of this title.

Amendment by section 6005(a) of Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title III, §301(c), Aug. 5, 1997, 111 Stat. 825, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1997."

Pub. L. 105–34, title III, §302(f), Aug. 5, 1997, 111 Stat. 829, provided that: "The amendments made by this section [enacting section 408A of this title and amending this section and sections 408 and 4973 of this title] shall apply to taxable years beginning after December 31, 1997."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1421(b)(1) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1421(e) of Pub. L. 104–188, set out as a note under section 72 of this title.

Pub. L. 104–188, title I, §1427(c), Aug. 20, 1996, 110 Stat. 1802, provided that: "The amendments made by this section [amending this section and section 408 of this title] shall apply to taxable years beginning after December 31, 1996."

Amendment by section 1807(c)(3) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1807(e) of Pub. L. 104–188, set out as an Effective Date note under section 23 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1992 AMENDMENT

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

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7816(c)(1) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

Pub. L. 101–239, title VII, §7841(c)(2), Dec. 19, 1989, 103 Stat. 2428, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to contributions after the date of the enactment of this Act [Dec. 19, 1989] in taxable years ending after such date."

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1011(a)(2), Nov. 10, 1988, 102 Stat. 3456, provided that:

"(A) Except as provided in subparagraph (B), the amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after December 31, 1987.

"(B) A taxpayer may elect to have the amendment made by paragraph (1) apply to any taxable year beginning in 1987."

Amendment by section 6009(c)(2) of Pub. L. 100–647 applicable to taxable years beginning after Dec. 31, 1989, see section 6009(d) of Pub. L. 100–647, set out as a note under section 86 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 301(b)(4) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 301(c) of Pub. L. 99–514, set out as a note under section 62 of this title.

Amendment by section 1101(a), (b)(1), (2)(A) of Pub. L. 99–514 applicable to contributions for taxable years beginning after Dec. 31, 1986, see section 1101(c) of Pub. L. 99–514, set out as a note under section 72 of this title.

Pub. L. 99–514, title XI, §1102(g), Oct. 22, 1986, 100 Stat. 2417, provided that: "The amendments made by this section [amending this section and sections 408, 3405, 4973, and 6693 of this title] shall apply to contributions and distributions for taxable years beginning after December 31, 1986."

Pub. L. 99–514, title XI, §1103(b), Oct. 22, 1986, 100 Stat. 2417, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning before, on, or after December 31, 1985."

Pub. L. 99–514, title XI, §1108(h), Oct. 22, 1986, 100 Stat. 2435, as amended by Pub. L. 100–647, title I, §1011(f)(7), Nov. 10, 1988, 102 Stat. 3463, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 402, 404, 408, 415, 3121, and 3306 of this title] shall apply to years beginning after December 31, 1986.

"(2) INTEGRATION RULES.—Subparagraphs (D) and (E) of section 408(k)(3) of the Internal Revenue Code of 1954 (as in effect before the amendments made by this section) shall continue to apply for years beginning after December 31, 1986, and before January 1, 1989, except that employer contributions under an arrangement under section 408(k)(6) of the Internal Revenue Code of 1986 (as added by this section) may not be integrated under such subparagraphs."

Pub. L. 99–514, title XI, §1109(c), Oct. 22, 1986, 100 Stat. 2435, provided that: "The amendments made by this section [amending this section and section 501 of this title] shall apply to taxable years beginning after December 31, 1986."

Amendment by section 1501(d)(1)(B) of Pub. L. 99–514, applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1986, see section 1501(e) of Pub. L. 99–514, set out as an Effective Date note under section 6721 of this title.

Amendment by section 1875(c)(4), (6)(B) of Pub. L. 99–514 effective as if included in the amendments made by section 238 of Pub. L. 97–248, which amended sections 401, 404, 408, 415, and 1379 of this title, see section 1875(c)(12) of Pub. L. 99–514, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §147(d), July 18, 1984, 98 Stat. 687, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 408 of this title] shall apply to contributions made after December 31,

1984.

"(2) SUBSECTION (b).—The amendment made by subsection (b) [amending section 6693 of this title] shall apply to failures occurring after the date of the enactment of this Act [July 18, 1984]."

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

Amendment by section 491(d)(6)–(8) of Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

Pub. L. 98–369, div. A, title V, §529(c), July 18, 1984, 98 Stat. 877, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1984."

Amendment by section 713(d)(2) of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to with respect to individuals dying after Dec. 31, 1983, see section 243(c) of Pub. L. 97–248, as amended, set out as a note under section 408 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title III, §311(i), Aug. 13, 1981, 95 Stat. 282, as amended by Pub. L. 97–448, title I, §103(c)(11), Jan. 12, 1983, 96 Stat. 2377; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section and sections 62, 72, 402, 403, 408, 409, 415, 2039, 2503, 2517, 3401, 4973, 6047, and 6652 of this title and repealing section 220 of this title] shall apply to taxable years beginning after December 31, 1981.

"(2) TRANSITIONAL RULE.—For purposes of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], any amount allowed as a deduction under section 220 of such Code (as in effect before its repeal by this Act) shall be treated as if it were allowed by section 219 of such Code.

"(3) CERTAIN BOND ROLLOVER PROVISIONS.—The amendment made by subsection (g)(3) [amending section 409 of this title] shall apply to taxable years beginning after December 31, 1974.

"(4) SECTION 415 AMENDMENTS.—The amendments made by subsections (g)(4) and (h)(3) [amending section 415 of this title] shall apply to years after December 31, 1981.

"(5) ESTATE AND GIFT TAX PROVISIONS.—

"(A) ESTATE TAX.—The amendments made by subsections (d)(1) and (h)(4) [amending section 2039 of this title] shall apply to the estates of decedents dying after December 31, 1981.

"(B) GIFT TAX.—The amendments made by subsections (d)(2) and (h)(5) [amending sections 2503 and 2517 of this title] shall apply to transfers after December 31, 1981."

Amendment by section 312(c)(1) of Pub. L. 97–34 applicable to plans which include employees within the meaning of section 401(c)(1) of this title with respect to taxable years beginning after Dec. 31, 1981, see section 312(f)(1) of Pub. L. 97–34, set out as a note under section 72 of this title.

Pub. L. 97–34, title III, §313(c), Aug. 13, 1981, 95 Stat. 286, provided that: "The amendments made by this section [amending this section and sections 405, 408, 2039, and 4973 of this title] shall apply to redemptions after the date of the enactment of this Act [Aug. 13, 1981] in taxable years ending after such date."

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600 to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 152(c) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 152(h) of Pub. L. 95–600, set out as a note under section 408 of this title.

Amendment by section 156(c)(3) of Pub. L. 95–600 applicable to distributions or transfers made after Dec.

31, 1977, in taxable years beginning after such date, see section 156(d) of Pub. L. 95–600 set out as a note under section 403 of this title.

Pub. L. 95–600, title I, §157(a)(3), Nov. 6, 1978, 92 Stat. 2803, provided that: "The amendments made by this subsection [amending this section and section 220 of this title] shall apply to taxable years beginning after December 31, 1977."

Pub. L. 95–600, title I, §157(b)(4)(A), Nov. 6, 1978, 92 Stat. 2805, provided that: "The amendments made by this subsection [amending this section and sections 220 and 4973 of this title] shall apply to the determination of deductions for taxable years beginning after December 31, 1975."

Pub. L. 95–600, title VII, §703(c)(5), Nov. 6, 1978, 92 Stat. 2939, provided that: "The amendments made by this subsection [amending this section and sections 220 and 408 of this title] shall apply to taxable years beginning after December 31, 1976."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1501(b)(4) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1976, see section 1501(d) of Pub. L. 94–455, set out as an Effective Date note under section 62 of this title.

Pub. L. 94–455, title XV, §1503(b), Oct. 4, 1976, 90 Stat. 1738, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1975."

Amendment by section 1901(a)(32) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 2 of this title.

EFFECTIVE DATE

Pub. L. 93–406, title II, §2002(i)(1), Sept. 2, 1974, 88 Stat. 971, provided that: "The amendments made by subsections (a), (b), and (c) [of section 2002 of Pub. L. 93–406, enacting this section and sections 408 and 409 of this title and amending section 62 of this title] apply to taxable years beginning after December 31, 1974."

CONTRIBUTIONS FOR TAXABLE YEARS ENDING BEFORE MAY 29, 2006

Pub. L. 109–227, §2(c), May 29, 2006, 120 Stat. 385, provided that:

"(1) IN GENERAL.—In the case of any taxpayer with respect to whom compensation was excluded from gross income under section 112 of the Internal Revenue Code of 1986 for any taxable year beginning after December 31, 2003, and ending before the date of the enactment of this Act [May 29, 2006], any contribution to an individual retirement plan made on account of such taxable year and not later than the last day of the 3-year period beginning on the date of the enactment of this Act shall be treated, for purposes of such Code, as having been made on the last day of such taxable year.

"(2) WAIVER OF LIMITATIONS.—

"(A) CREDIT OR REFUND.—If the credit or refund of any overpayment of tax resulting from a contribution to which paragraph (1) applies is prevented at any time by the operation of any law or rule of law (including res judicata), such credit or refund may nevertheless be allowed or made if the claim therefor is filed before the close of the 1-year period beginning on the date that such contribution is made (determined without regard to paragraph (1)).

"(B) ASSESSMENT OF DEFICIENCY.—The period for assessing a deficiency attributable to a contribution to which paragraph (1) applies shall not expire before the close of the 3-year period beginning on the date that such contribution is made. Such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

"(3) INDIVIDUAL RETIREMENT PLAN DEFINED.—For purposes of this subsection, the term 'individual retirement plan' has the meaning given such term by section 7701(a)(37) of such Code."

CLARIFICATION OF TREATMENT OF FEDERAL JUDGES

Pub. L. 100–203, title X, §10103, Dec. 22, 1987, 101 Stat. 1330–386, as amended by Pub. L. 100–647, title II, §2004(c), Nov. 10, 1988, 102 Stat. 3599, provided that:

"(a) GENERAL RULE.—A Federal judge—

"(1) shall be treated as an active participant in a plan established for its employees by the United States for purposes of section 219(g) of the Internal Revenue Code of 1986, and

"(2) shall be treated as an employee for purposes of chapter 1 of such Code.

"(b) EFFECTIVE DATE.—The provisions of subsection (a) shall apply to taxable years beginning after December 31, 1987."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

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

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TRANSITIONAL RULES FOR ALLOWABLE DEDUCTIONS FOR FIRST TAXABLE YEAR BEGINNING IN 1978

Pub. L. 95–600, title I, §157(b)(4)(B), Nov. 6, 1978, 92 Stat. 2805, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "If, but for this subparagraph, an amount would be allowable as a deduction by reason of section 219(c)(5) or 220(c)(6) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for a taxable year beginning before January 1, 1978, such amount shall be allowable only for the taxpayer's first taxable year beginning in 1978."

[1] So in original. Probably should be set off by quotation marks.

§220. Archer MSAs

(a) Deduction allowed

In the case of an individual who is an eligible individual for any month during the taxable year, there shall be allowed as a deduction for the taxable year an amount equal to the aggregate amount paid in cash during such taxable year by such individual to an Archer MSA of such individual.

(b) Limitations

(1) In general

The amount allowable as a deduction under subsection (a) to an individual for the taxable year shall not exceed the sum of the monthly limitations for months during such taxable year that the individual is an eligible individual.

(2) Monthly limitation

The monthly limitation for any month is the amount equal to 1/12 of—

(A) in the case of an individual who has self-only coverage under the high deductible health plan as of the first day of such month, 65 percent of the annual deductible under such coverage, and

(B) in the case of an individual who has family coverage under the high deductible health plan as of the first day of such month, 75 percent of the annual deductible under such coverage.

(3) Special rule for married individuals

In the case of individuals who are married to each other, if either spouse has family coverage—

(A) both spouses shall be treated as having only such family coverage (and if such spouses each have family coverage under different plans, as having the family coverage with the lowest annual deductible), and

(B) the limitation under paragraph (1) (after the application of subparagraph (A) of this paragraph) shall be divided equally between them unless they agree on a different division.

(4) Deduction not to exceed compensation

(A) Employees

The deduction allowed under subsection (a) for contributions as an eligible individual described in subclause (I) of subsection (c)(1)(A)(iii) shall not exceed such individual's wages, salaries, tips, and other employee compensation which are attributable to such individual's employment by the employer referred to in such subclause.

(B) Self-employed individuals

The deduction allowed under subsection (a) for contributions as an eligible individual described in subclause (II) of subsection (c)(1)(A)(iii) shall not exceed such individual's earned income (as defined in section 401(c)(1)) derived by the taxpayer from the trade or business with respect to which the high deductible health plan is established.

(C) Community property laws not to apply

The limitations under this paragraph shall be determined without regard to community property laws.

(5) Coordination with exclusion for employer contributions

No deduction shall be allowed under this section for any amount paid for any taxable year to an Archer MSA of an individual if—

(A) any amount is contributed to any Archer MSA of such individual for such year which is excludable from gross income under section 106(b), or

(B) if such individual's spouse is covered under the high deductible health plan covering such individual, any amount is contributed for such year to any Archer MSA of such spouse which is so excludable.

(6) Denial of deduction to dependents

No deduction shall be allowed under this section to any individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which such individual's taxable year begins.

(7) Medicare eligible individuals

The limitation under this subsection for any month with respect to an individual shall be zero for the first month such individual is entitled to benefits under title XVIII of the Social Security Act and for each month thereafter.

(c) Definitions

For purposes of this section—

(1) Eligible individual

(A) In general

The term "eligible individual" means, with respect to any month, any individual if—

(i) such individual is covered under a high deductible health plan as of the 1st day of such month,

(ii) such individual is not, while covered under a high deductible health plan, covered under any health plan—

(I) which is not a high deductible health plan, and

(II) which provides coverage for any benefit which is covered under the high deductible health plan, and

(iii)(I) the high deductible health plan covering such individual is established and maintained by the employer of such individual or of the spouse of such individual and such employer is a small employer, or

(II) such individual is an employee (within the meaning of section 401(c)(1)) or the spouse of such an employee and the high deductible health plan covering such individual is not

established or maintained by any employer of such individual or spouse.

(B) Certain coverage disregarded

Subparagraph (A)(ii) shall be applied without regard to—

(i) coverage for any benefit provided by permitted insurance, and

(ii) coverage (whether through insurance or otherwise) for accidents, disability, dental care, vision care, or long-term care.

(C) Continued eligibility of employee and spouse establishing Archer MSAs

If, while an employer is a small employer—

(i) any amount is contributed to an Archer MSA of an individual who is an employee of such employer or the spouse of such an employee, and

(ii) such amount is excludable from gross income under section 106(b) or allowable as a deduction under this section,

such individual shall not cease to meet the requirement of subparagraph (A)(iii)(I) by reason of such employer ceasing to be a small employer so long as such employee continues to be an employee of such employer.

(D) Limitations on eligibility

For limitations on number of taxpayers who are eligible to have Archer MSAs, see subsection (i).

(2) High deductible health plan

(A) In general

The term "high deductible health plan" means a health plan—

(i) in the case of self-only coverage, which has an annual deductible which is not less than $1,500 and not more than $2,250,

(ii) in the case of family coverage, which has an annual deductible which is not less than $3,000 and not more than $4,500, and

(iii) the annual out-of-pocket expenses required to be paid under the plan (other than for premiums) for covered benefits does not exceed—

(I) $3,000 for self-only coverage, and

(II) $5,500 for family coverage.

(B) Special rules

(i) Exclusion of certain plans

Such term does not include a health plan if substantially all of its coverage is coverage described in paragraph (1)(B).

(ii) Safe harbor for absence of preventive care deductible

A plan shall not fail to be treated as a high deductible health plan by reason of failing to have a deductible for preventive care if the absence of a deductible for such care is required by State law.

(3) Permitted insurance

The term "permitted insurance" means—

(A) insurance if substantially all of the coverage provided under such insurance relates to—

(i) liabilities incurred under workers' compensation laws,

(ii) tort liabilities,

(iii) liabilities relating to ownership or use of property, or

(iv) such other similar liabilities as the Secretary may specify by regulations,

(B) insurance for a specified disease or illness, and

(C) insurance paying a fixed amount per day (or other period) of hospitalization.

(4) Small employer

(A) In general

The term "small employer" means, with respect to any calendar year, any employer if such employer employed an average of 50 or fewer employees on business days during either of the 2 preceding calendar years. For purposes of the preceding sentence, a preceding calendar year may be taken into account only if the employer was in existence throughout such year.

(B) Employers not in existence in preceding year

In the case of an employer which was not in existence throughout the 1st preceding calendar year, the determination under subparagraph (A) shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

(C) Certain growing employers retain treatment as small employer

The term "small employer" includes, with respect to any calendar year, any employer if—

(i) such employer met the requirement of subparagraph (A) (determined without regard to subparagraph (B)) for any preceding calendar year after 1996,

(ii) any amount was contributed to the Archer MSA of any employee of such employer with respect to coverage of such employee under a high deductible health plan of such employer during such preceding calendar year and such amount was excludable from gross income under section 106(b) or allowable as a deduction under this section, and

(iii) such employer employed an average of 200 or fewer employees on business days during each preceding calendar year after 1996.

(D) Special rules

(i) Controlled groups

For purposes of this paragraph, all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as 1 employer.

(ii) Predecessors

Any reference in this paragraph to an employer shall include a reference to any predecessor of such employer.

(5) Family coverage

The term "family coverage" means any coverage other than self-only coverage.

(d) Archer MSA

For purposes of this section—

(1) Archer MSA

The term "Archer MSA" means a trust created or organized in the United States as a medical savings account exclusively for the purpose of paying the qualified medical expenses of the account holder, but only if the written governing instrument creating the trust meets the following requirements:

(A) Except in the case of a rollover contribution described in subsection (f)(5), no contribution will be accepted—

(i) unless it is in cash, or

(ii) to the extent such contribution, when added to previous contributions to the trust for the calendar year, exceeds 75 percent of the highest annual limit deductible permitted under subsection (c)(2)(A)(ii) for such calendar year.

(B) The trustee is a bank (as defined in section 408(n)), an insurance company (as defined in section 816), or another person who demonstrates to the satisfaction of the Secretary that the manner in which such person will administer the trust will be consistent with the requirements of this section.

(C) No part of the trust assets will be invested in life insurance contracts.

(D) The assets of the trust will not be commingled with other property except in a common trust fund or common investment fund.

(E) The interest of an individual in the balance in his account is nonforfeitable.

(2) Qualified medical expenses

(A) In general

The term "qualified medical expenses" means, with respect to an account holder, amounts paid by such holder for medical care (as defined in section 213(d)) for such individual, the spouse of such individual, and any dependent (as defined in section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) of such individual, but only to the extent such amounts are not compensated for by insurance or otherwise. Such term shall include an amount paid for medicine or a drug only if such medicine or drug is a prescribed drug (determined without regard to whether such drug is available without a prescription) or is insulin.

(B) Health insurance may not be purchased from account

(i) In general

Subparagraph (A) shall not apply to any payment for insurance.

(ii) Exceptions

Clause (i) shall not apply to any expense for coverage under—

(I) a health plan during any period of continuation coverage required under any Federal law,

(II) a qualified long-term care insurance contract (as defined in section 7702B(b)), or

(III) a health plan during a period in which the individual is receiving unemployment compensation under any Federal or State law.

(C) Medical expenses of individuals who are not eligible individuals

Subparagraph (A) shall apply to an amount paid by an account holder for medical care of an individual who is not described in clauses (i) and (ii) of subsection (c)(1)(A) for the month in which the expense for such care is incurred only if no amount is contributed (other than a rollover contribution) to any Archer MSA of such account holder for the taxable year which includes such month. This subparagraph shall not apply to any expense for coverage described in subclause (I) or (III) of subparagraph (B)(ii).

(3) Account holder

The term "account holder" means the individual on whose behalf the Archer MSA was established.

(4) Certain rules to apply

Rules similar to the following rules shall apply for purposes of this section:

(A) Section 219(d)(2) (relating to no deduction for rollovers).

(B) Section 219(f)(3) (relating to time when contributions deemed made).

(C) Except as provided in section 106(b), section 219(f)(5) (relating to employer payments).

(D) Section 408(g) (relating to community property laws).

(E) Section 408(h) (relating to custodial accounts).

(e) Tax treatment of accounts

(1) In general

An Archer MSA is exempt from taxation under this subtitle unless such account has ceased to be an Archer MSA. Notwithstanding the preceding sentence, any such account is subject to the taxes imposed by section 511 (relating to imposition of tax on unrelated business income of charitable, etc. organizations).

(2) Account terminations

Rules similar to the rules of paragraphs (2) and (4) of section 408(e) shall apply to Archer MSAs, and any amount treated as distributed under such rules shall be treated as not used to pay qualified medical expenses.

(f) Tax treatment of distributions

(1) Amounts used for qualified medical expenses

Any amount paid or distributed out of an Archer MSA which is used exclusively to pay qualified medical expenses of any account holder shall not be includible in gross income.

(2) Inclusion of amounts not used for qualified medical expenses

Any amount paid or distributed out of an Archer MSA which is not used exclusively to pay the qualified medical expenses of the account holder shall be included in the gross income of such holder.

(3) Excess contributions returned before due date of return

(A) In general

If any excess contribution is contributed for a taxable year to any Archer MSA of an individual, paragraph (2) shall not apply to distributions from the Archer MSAs of such individual (to the extent such distributions do not exceed the aggregate excess contributions to all such accounts of such individual for such year) if—

(i) such distribution is received by the individual on or before the last day prescribed by law (including extensions of time) for filing such individual's return for such taxable year, and

(ii) such distribution is accompanied by the amount of net income attributable to such excess contribution.

Any net income described in clause (ii) shall be included in the gross income of the individual for the taxable year in which it is received.

(B) Excess contribution

For purposes of subparagraph (A), the term "excess contribution" means any contribution (other than a rollover contribution) which is neither excludable from gross income under section 106(b) nor deductible under this section.

(4) Additional tax on distributions not used for qualified medical expenses

(A) In general

The tax imposed by this chapter on the account holder for any taxable year in which there is a payment or distribution from an Archer MSA of such holder which is includible in gross income under paragraph (2) shall be increased by 20 percent of the amount which is so includible.

(B) Exception for disability or death

Subparagraph (A) shall not apply if the payment or distribution is made after the account holder becomes disabled within the meaning of section 72(m)(7) or dies.

(C) Exception for distributions after medicare eligibility

Subparagraph (A) shall not apply to any payment or distribution after the date on which the account holder attains the age specified in section 1811 of the Social Security Act.

(5) Rollover contribution

An amount is described in this paragraph as a rollover contribution if it meets the requirements of subparagraphs (A) and (B).

(A) In general

Paragraph (2) shall not apply to any amount paid or distributed from an Archer MSA to the account holder to the extent the amount received is paid into an Archer MSA or a health savings account (as defined in section 223(d)) for the benefit of such holder not later than the 60th day after the day on which the holder receives the payment or distribution.

(B) Limitation

This paragraph shall not apply to any amount described in subparagraph (A) received by an individual from an Archer MSA if, at any time during the 1-year period ending on the day of such receipt, such individual received any other amount described in subparagraph (A) from an Archer MSA which was not includible in the individual's gross income because of the application of this paragraph.

(6) Coordination with medical expense deduction

For purposes of determining the amount of the deduction under section 213, any payment or distribution out of an Archer MSA for qualified medical expenses shall not be treated as an expense paid for medical care.

(7) Transfer of account incident to divorce

The transfer of an individual's interest in an Archer MSA to an individual's spouse or former spouse under a divorce or separation instrument described in subparagraph (A) of section 71(b)(2) shall not be considered a taxable transfer made by such individual notwithstanding any other provision of this subtitle, and such interest shall, after such transfer, be treated as an Archer MSA with respect to which such spouse is the account holder.

(8) Treatment after death of account holder

(A) Treatment if designated beneficiary is spouse

If the account holder's surviving spouse acquires such holder's interest in an Archer MSA by reason of being the designated beneficiary of such account at the death of the account holder, such Archer MSA shall be treated as if the spouse were the account holder.

(B) Other cases

(i) In general

If, by reason of the death of the account holder, any person acquires the account holder's interest in an Archer MSA in a case to which subparagraph (A) does not apply—

(I) such account shall cease to be an Archer MSA as of the date of death, and

(II) an amount equal to the fair market value of the assets in such account on such date shall be includible if such person is not the estate of such holder, in such person's gross income for the taxable year which includes such date, or if such person is the estate of such holder, in such holder's gross income for the last taxable year of such holder.

(ii) Special rules

(I) Reduction of inclusion for pre-death expenses

The amount includible in gross income under clause (i) by any person (other than the estate) shall be reduced by the amount of qualified medical expenses which were incurred by the decedent before the date of the decedent's death and paid by such person within 1 year after such date.

(II) Deduction for estate taxes

An appropriate deduction shall be allowed under section 691(c) to any person (other than the decedent or the decedent's spouse) with respect to amounts included in gross income under clause (i) by such person.

(g) Cost-of-living adjustment

In the case of any taxable year beginning in a calendar year after 1998, each dollar amount in subsection (c)(2) shall be increased by an amount equal to—

(1) such dollar amount, multiplied by

(2) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which such taxable year begins by substituting "calendar year 1997" for "calendar year 1992" in subparagraph (B) thereof.

If any increase under the preceding sentence is not a multiple of $50, such increase shall be rounded to the nearest multiple of $50.

(h) Reports

The Secretary may require the trustee of an Archer MSA to make such reports regarding such account to the Secretary and to the account holder with respect to contributions, distributions, and such other matters as the Secretary determines appropriate. The reports required by this subsection shall be filed at such time and in such manner and furnished to such individuals at such time and in such manner as may be required by the Secretary.

(i) Limitation on number of taxpayers having Archer MSAs

(1) In general

Except as provided in paragraph (5), no individual shall be treated as an eligible individual for any taxable year beginning after the cut-off year unless—

(A) such individual was an active MSA participant for any taxable year ending on or before the close of the cut-off year, or

(B) such individual first became an active MSA participant for a taxable year ending after the cut-off year by reason of coverage under a high deductible health plan of an MSA-participating employer.

(2) Cut-off year

For purposes of paragraph (1), the term "cut-off year" means the earlier of—

(A) calendar year 2007, or

(B) the first calendar year before 2007 for which the Secretary determines under subsection (j) that the numerical limitation for such year has been exceeded.

(3) Active MSA participant

For purposes of this subsection—

(A) In general

The term "active MSA participant" means, with respect to any taxable year, any individual who is the account holder of any Archer MSA into which any contribution was made which was excludable from gross income under section 106(b), or allowable as a deduction under this section, for such taxable year.

(B) Special rule for cut-off years before 2007

In the case of a cut-off year before 2007—

(i) an individual shall not be treated as an eligible individual for any month of such year or an active MSA participant under paragraph (1)(A) unless such individual is, on or before the cut-off date, covered under a high deductible health plan, and

(ii) an employer shall not be treated as an MSA-participating employer unless the employer, on or before the cut-off date, offered coverage under a high deductible health plan to any employee.

(C) Cut-off date

For purposes of subparagraph (B)—

(i) In general

Except as otherwise provided in this subparagraph, the cut-off date is October 1 of the cut-off year.

(ii) Employees with enrollment periods after October 1

In the case of an individual described in subclause (I) of subsection (c)(1)(A)(iii), if the regularly scheduled enrollment period for health plans of the individual's employer occurs during the last 3 months of the cut-off year, the cut-off date is December 31 of the cut-off year.

(iii) Self-employed individuals

In the case of an individual described in subclause (II) of subsection (c)(1)(A)(iii), the cut-off date is November 1 of the cut-off year.

(iv) Special rules for 1997

If 1997 is a cut-off year by reason of subsection (j)(1)(A)—

(I) each of the cut-off dates under clauses (i) and (iii) shall be 1 month earlier than the date determined without regard to this clause, and

(II) clause (ii) shall be applied by substituting "4 months" for "3 months".

(4) MSA-participating employer

For purposes of this subsection, the term "MSA-participating employer" means any small employer if—

(A) such employer made any contribution to the Archer MSA of any employee during the cut-off year or any preceding calendar year which was excludable from gross income under section 106(b), or

(B) at least 20 percent of the employees of such employer who are eligible individuals for any month of the cut-off year by reason of coverage under a high deductible health plan of such employer each made a contribution of at least $100 to their Archer MSAs for any taxable year ending with or within the cut-off year which was allowable as a deduction under this section.

(5) Additional eligibility after cut-off year

If the Secretary determines under subsection (j)(2)(A) that the numerical limit for the calendar year following a cut-off year described in paragraph (2)(B) has not been exceeded—

(A) this subsection shall not apply to any otherwise eligible individual who is covered under a high deductible health plan during the first 6 months of the second calendar year following the cut-off year (and such individual shall be treated as an active MSA participant for purposes of this subsection if a contribution is made to any Archer MSA with respect to such coverage), and

(B) any employer who offers coverage under a high deductible health plan to any employee during such 6-month period shall be treated as an MSA-participating employer for purposes of this subsection if the requirements of paragraph (4) are met with respect to such coverage.

For purposes of this paragraph, subsection (j)(2)(A) shall be applied for 1998 by substituting "750,000" for "600,000".

(j) Determination of whether numerical limits are exceeded

(1) Determination of whether limit exceeded for 1997

The numerical limitation for 1997 is exceeded if, based on the reports required under paragraph (4), the number of Archer MSAs established as of—

(A) April 30, 1997, exceeds 375,000, or

(B) June 30, 1997, exceeds 525,000.

(2) Determination of whether limit exceeded for 1998, 1999, 2001, 2002, 2004, 2005, or 2006

(A) In general

The numerical limitation for 1998, 1999, 2001, 2002, 2004, 2005, or 2006 is exceeded if the sum of—

(i) the number of MSA returns filed on or before April 15 of such calendar year for taxable years ending with or within the preceding calendar year, plus

(ii) the Secretary's estimate (determined on the basis of the returns described in clause (i)) of the number of MSA returns for such taxable years which will be filed after such date,

exceeds 750,000 (600,000 in the case of 1998). For purposes of the preceding sentence, the term "MSA return" means any return on which any exclusion is claimed under section 106(b) or any deduction is claimed under this section.

(B) Alternative computation of limitation

The numerical limitation for 1998, 1999, 2001, 2002, 2004, 2005, or 2006 is also exceeded if the sum of—

(i) 90 percent of the sum determined under subparagraph (A) for such calendar year, plus

(ii) the product of 2.5 and the number of Archer MSAs established during the portion of such year preceding July 1 (based on the reports required under paragraph (4)) for taxable years beginning in such year,

exceeds 750,000.

(C) No limitation for 2000 or 2003

The numerical limitation shall not apply for 2000 or 2003.

(3) Previously uninsured individuals not included in determination

(A) In general

The determination of whether any calendar year is a cut-off year shall be made by not counting the Archer MSA of any previously uninsured individual.

(B) Previously uninsured individual

For purposes of this subsection, the term "previously uninsured individual" means, with respect to any Archer MSA, any individual who had no health plan coverage (other than coverage referred to in subsection (c)(1)(B)) at any time during the 6-month period before the date such individual's coverage under the high deductible health plan commences.

(4) Reporting by MSA trustees

(A) In general

Not later than August 1 of 1997, 1998, 1999, 2001, 2002, 2004, 2005, and 2006, each person who is the trustee of an Archer MSA established before July 1 of such calendar year shall make a report to the Secretary (in such form and manner as the Secretary shall specify) which specifies—

(i) the number of Archer MSAs established before such July 1 (for taxable years beginning in such calendar year) of which such person is the trustee,

(ii) the name and TIN of the account holder of each such account, and

(iii) the number of such accounts which are accounts of previously uninsured individuals.

(B) Additional report for 1997

Not later than June 1, 1997, each person who is the trustee of an Archer MSA established before May 1, 1997, shall make an additional report described in subparagraph (A) but only with respect to accounts established before May 1, 1997.

(C) Penalty for failure to file report

The penalty provided in section 6693(a) shall apply to any report required by this paragraph, except that—

(i) such section shall be applied by substituting "$25" for "$50", and

(ii) the maximum penalty imposed on any trustee shall not exceed $5,000.

(D) Aggregation of accounts

To the extent practicable, in determining the number of Archer MSAs on the basis of the reports under this paragraph, all Archer MSAs of an individual shall be treated as 1 account and all accounts of individuals who are married to each other shall be treated as 1 account.

(5) Date of making determinations

Any determination under this subsection that a calendar year is a cut-off year shall be made by the Secretary and shall be published not later than October 1 of such year.

(Added Pub. L. 104–191, title III, §301(a), Aug. 21, 1996, 110 Stat. 2037; amended Pub. L. 105–33, title IV, §4006(b)(2), Aug. 5, 1997, 111 Stat. 333; Pub. L. 105–34, title XVI, §1602(a)(2), (3), Aug. 5, 1997, 111 Stat. 1093, 1094; Pub. L. 106–554, §1(a)(7) [title II, §§201(a), (b), 202(a)(4), (b)(2)(B), (3)–(8), (10), (11)], Dec. 21, 2000, 114 Stat. 2763, 2763A–628, 2763A–629; Pub. L. 107–147, title VI, §612(a), (b), Mar. 9, 2002, 116 Stat. 61; Pub. L. 108–173, title XII, §1201(c), Dec. 8, 2003, 117 Stat. 2476; Pub. L. 108–311, title II, §207(19), title III, §322(a), (b), Oct. 4, 2004, 118 Stat. 1178, 1183; Pub. L. 109–432, div. A, title I, §117(a), (b), Dec. 20, 2006, 120 Stat. 2941; Pub. L. 111–148, title IX, §§9003(b), 9004(b), Mar. 23, 2010, 124 Stat. 854.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (b)(7) and (f)(4)(C), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Act is classified generally to subchapter XVIII (§1395 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. Section 1811 of the Act is classified to section 1395c of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 220 was renumbered 224 of this title.

Another prior section 220, added Pub. L. 100–647, title VI, §6007(a), Nov. 10, 1988, 102 Stat. 3687, related to jury duty pay remitted to employer, prior to repeal by Pub. L. 101–508, title XI, §11802(e)(2), Nov. 5, 1990, 104 Stat. 1388–530.

Another prior section 220, added Pub. L. 94–455, title XV, §1501(a), Oct. 4, 1976, 90 Stat. 1734; amended Pub. L. 95–600, title I, §§156(c)(3), 157(a)(2), (b)(2), title VII, §703(c)(2), (3), Nov. 6, 1978, 92 Stat. 2803, 2804, 2939; Pub. L. 96–222, title I, §101(a)(14)(B), Apr. 1, 1980, 94 Stat. 204, related to retirement savings for certain married individuals, prior to repeal by Pub. L. 97–34, title III, §311(e), Aug. 13, 1981, 95 Stat. 280, applicable to taxable years beginning after Dec. 31, 1981, and deductions allowed under section 220 of this title, as in effect prior to its repeal, treated as deductions under section 219 of this title.

AMENDMENTS

2010—Subsec. (d)(2)(A). Pub. L. 111–148, §9003(b), inserted at end "Such term shall include an amount paid for medicine or a drug only if such medicine or drug is a prescribed drug (determined without regard to whether such drug is available without a prescription) or is insulin."

Subsec. (f)(4)(A). Pub. L. 111–148, §9004(b), substituted "20 percent" for "15 percent".

2006—Subsec. (i)(2), (3)(B). Pub. L. 109–432, §117(a), substituted "2007" for "2005" wherever appearing in headings and text.

Subsec. (j)(2). Pub. L. 109–432, §117(b)(1), substituted "2004, 2005, or 2006" for "or 2004" in heading and in introductory provisions of subpars. (A) and (B).

Subsec. (j)(4)(A). Pub. L. 109–432, §117(b)(2), substituted "2004, 2005, and 2006" for "and 2004" in introductory provisions.

2004—Subsec. (d)(2)(A). Pub. L. 108–311, §207(19), inserted ", determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof" after "section 152".

Subsec. (i)(2), (3)(B). Pub. L. 108–311, §322(a), substituted "2005" for "2003" wherever appearing in headings and text.

Subsec. (j)(2). Pub. L. 108–311, §322(b)(1)(B), substituted "2002, or 2004" for "or 2002" in heading.

Subsec. (j)(2)(A), (B). Pub. L. 108–311, §322(b)(1)(A), substituted "2002, or 2004" for "or 2002" in introductory provisions.

Subsec. (j)(2)(C). Pub. L. 108–311, §322(b)(3), amended heading and text of subpar. (C) generally. Prior to amendment text read as follows: "The numerical limitation shall not apply for 2000."

Subsec. (j)(4)(A). Pub. L. 108–311, §322(b)(2), substituted "2002, and 2004" for "and 2002" in introductory provisions.

2003—Subsec. (f)(5)(A). Pub. L. 108–173 inserted "or a health savings account (as defined in section

223(d))" after "paid into an Archer MSA".

2002—Subsec. (i)(2). Pub. L. 107–147, §612(a), substituted "2003" for "2002" in subpars. (A) and (B).

Subsec. (i)(3)(B). Pub. L. 107–147, §612(a), substituted "2003" for "2002" in heading and introductory provisions.

Subsec. (j)(2). Pub. L. 107–147, §612(b)(1), substituted "1998, 1999, 2001, or 2002" for "1998, 1999, or 2001" wherever appearing in heading and text.

Subsec. (j)(4)(A). Pub. L. 107–147, §612(b)(2), substituted "2001, and 2002" for "and 2001".

2000—Pub. L. 106–554, §1(a)(7) [title II, §202(b)(8)], substituted "Archer MSAs" for "Medical savings accounts" in section catchline.

Subsecs. (a), (b)(5). Pub. L. 106–554, §1(a)(7) [title II, §202(b)(10)], substituted "an Archer MSA" for "a Archer MSA".

Pub. L. 106–554, §1(a)(7) [title II, §202(a)(4)], substituted "Archer MSA" for "medical savings account" wherever appearing.

Subsec. (c)(1)(C). Pub. L. 106–554, §1(a)(7) [title II, §202(b)(7)], substituted "Archer MSAs" for "medical savings accounts" in heading.

Subsec. (c)(1)(C)(i). Pub. L. 106–554, §1(a)(7) [title II, §202(b)(10)], substituted "an Archer MSA" for "a Archer MSA".

Pub. L. 106–554, §1(a)(7) [title II, §202(a)(4)], substituted "Archer MSA" for "medical savings account".

Subsec. (c)(1)(D). Pub. L. 106–554, §1(a)(7) [title II, §202(b)(2)(B)], substituted "Archer MSAs" for "medical savings accounts".

Subsec. (c)(4)(C)(ii). Pub. L. 106–554, §1(a)(7) [title II, §202(a)(4)], substituted "Archer MSA" for "medical savings account".

Subsec. (d). Pub. L. 106–554, §1(a)(7) [title II, §202(b)(4)], substituted "Archer MSA" for "Medical savings account" in heading.

Subsec. (d)(1). Pub. L. 106–554, §1(a)(7) [title II, §202(b)(5)], substituted "Archer MSA" for "Medical savings account" in heading.

Pub. L. 106–554, §1(a)(7) [title II, §202(a)(4), (b)(3)], in introductory provisions, substituted "Archer MSA" for "medical savings account" and inserted "as a medical savings account" after "United States".

Subsec. (d)(2)(C), (3). Pub. L. 106–554, §1(a)(7) [title II, §202(a)(4)], substituted "Archer MSA" for "medical savings account".

Subsec. (e)(1). Pub. L. 106–554, §1(a)(7) [title II, §202(b)(10), (11)], substituted "An Archer MSA is exempt" for "A Archer MSA is exempt" and "ceased to be an Archer MSA" for "ceased to be a Archer MSA".

Pub. L. 106–554, §1(a)(7) [title II, §202(a)(4)], substituted "Archer MSA" for "medical savings account" in two places.

Subsec. (e)(2). Pub. L. 106–554, §1(a)(7) [title II, §202(b)(2)(B)], substituted "Archer MSAs" for "medical savings accounts".

Subsec. (f). Pub. L. 106–554, §1(a)(7) [title II, §202(b)(10)], substituted "an Archer MSA" for "a Archer MSA" wherever appearing.

Pub. L. 106–554, §1(a)(7) [title II, §202(a)(4), (b)(2)(B)], substituted "Archer MSA" for "medical savings account" wherever appearing and "Archer MSAs" for "medical savings accounts" in introductory provisions of par. (3)(A).

Subsec. (h). Pub. L. 106–554, §1(a)(7) [title II, §202(b)(10)], substituted "an Archer MSA" for "a Archer MSA".

Pub. L. 106–554, §1(a)(7) [title II, §202(a)(4)], substituted "Archer MSA" for "medical savings account".

Subsec. (i). Pub. L. 106–554, §1(a)(7) [title II, §202(b)(6)], substituted "Archer MSAs" for "medical savings accounts" in heading.

Subsec. (i)(2)(A), (B). Pub. L. 106–554, §1(a)(7) [title II, §201(a)], substituted "2002" for "2000".

Subsec. (i)(3)(A). Pub. L. 106–554, §1(a)(7) [title II, §202(a)(4)], substituted "Archer MSA" for "medical savings account".

Subsec. (i)(3)(B). Pub. L. 106–554, §1(a)(7) [title II, §201(a)], substituted "2002" for "2000" in heading and introductory provisions.

Subsec. (i)(4)(A). Pub. L. 106–554, §1(a)(7) [title II, §202(a)(4)], substituted "Archer MSA" for "medical savings account".

Subsec. (i)(4)(B). Pub. L. 106–554, §1(a)(7) [title II, §202(b)(2)(B)], substituted "Archer MSAs" for "medical savings accounts".

Subsec. (i)(5)(A). Pub. L. 106–554, §1(a)(7) [title II, §202(a)(4)], substituted "Archer MSA" for "medical savings account".

Subsec. (j)(1). Pub. L. 106–554, §1(a)(7) [title II, §202(b)(2)(B)], substituted "Archer MSAs" for "medical

savings accounts" in introductory provisions.

Subsec. (j)(2). Pub. L. 106–554, §1(a)(7) [title II, §201(b)(1)(A)], substituted "1998, 1999, or 2001" for "1998 or 1999" in heading and in introductory provisions of subpars. (A) and (B).

Subsec. (j)(2)(A). Pub. L. 106–554, §1(a)(7) [title II, §201(b)(1)(B)], substituted "750,000 (600,000 in the case of 1998)" for "600,000 (750,000 in the case of 1999)" in concluding provisions.

Subsec. (j)(2)(B)(ii). Pub. L. 106–554, §1(a)(7) [title II, §202(b)(2)(B)], substituted "Archer MSAs" for "medical savings accounts".

Subsec. (j)(2)(C). Pub. L. 106–554, §1(a)(7) [title II, §201(b)(1)(C)], added subpar. (C).

Subsec. (j)(3)(A), (B). Pub. L. 106–554, §1(a)(7) [title II, §202(a)(4)], substituted "Archer MSA" for "medical savings account".

Subsec. (j)(4)(A). Pub. L. 106–554, §1(a)(7) [title II, §202(b)(10)], substituted "an Archer MSA" for "a Archer MSA" in introductory provisions.

Pub. L. 106–554, §1(a)(7) [title II, §§201(b)(2), 202(a)(4)], in introductory provisions, substituted "1999, and 2001" for "and 1999" and "Archer MSA" for "medical savings account".

Subsec. (j)(4)(A)(i). Pub. L. 106–554, §1(a)(7) [title II, §202(b)(2)(B)], substituted "Archer MSAs" for "medical savings accounts".

Subsec. (j)(4)(B). Pub. L. 106–554, §1(a)(7) [title II, §202(b)(10)], substituted "an Archer MSA" for "a Archer MSA".

Pub. L. 106–554, §1(a)(7) [title II, §202(a)(4)], substituted "Archer MSA" for "medical savings account".

Subsec. (j)(4)(D). Pub. L. 106–554, §1(a)(7) [title II, §202(b)(2)(B)], substituted "Archer MSAs" for "medical savings accounts" in two places.

1997—Subsec. (b)(7). Pub. L. 105–33 added par. (7).

Subsec. (c)(3). Pub. L. 105–34, §1602(a)(2), redesignated subpars. (B) to (D) as (A) to (C), respectively, and struck out former subpar. (A) which read as follows: "Medicare supplemental insurance,".

Subsec. (d)(2)(C). Pub. L. 105–34, §1602(a)(3), substituted "described in clauses (i) and (ii) of subsection (c)(1)(A)" for "an eligible individual".

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–148, title IX, §9003(d)(1), Mar. 23, 2010, 124 Stat. 854, provided that: "The amendments made by subsections (a) and (b) [amending this section and section 223 of this title] shall apply to amounts paid with respect to taxable years beginning after December 31, 2010."

Pub. L. 111–148, title IX, §9004(c), Mar. 23, 2010, 124 Stat. 854, provided that: "The amendments made by this section [amending this section and section 223 of this title] shall apply to distributions made after December 31, 2010."

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 207(19) of Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

Pub. L. 108–311, title III, §322(c), Oct. 4, 2004, 118 Stat. 1183, provided that: "The amendments made by this section [amending this section] shall take effect on January 1, 2004."

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–173 applicable to taxable years beginning after Dec. 31, 2003, see section 1201(k) of Pub. L. 108–173, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title VI, §612(c), Mar. 9, 2002, 116 Stat. 61, provided that: "The amendments made by this section [amending this section] shall take effect on January 1, 2002."

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(7) [title II, §201(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–628, provided that: "The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Dec. 21, 2000]."

EFFECTIVE DATE OF 1997 AMENDMENTS

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

Amendment by Pub. L. 105–33 applicable to taxable years beginning after Dec. 31, 1998, see section

4006(c) of Pub. L. 105–33, set out as an Effective Date note under section 138 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1996, see section 301(j) of Pub. L. 104–191, set out as an Effective Date of 1996 Amendment note under section 62 of this title.

TIME FOR FILING REPORTS, ETC.

Pub. L. 109–432, div. A, title I, §117(c), Dec. 20, 2006, 120 Stat. 2942, provided that:

"(1) The report required by section 220(j)(4) of the Internal Revenue Code of 1986 to be made on August 1, 2005, or August 1, 2006, as the case may be, shall be treated as timely if made before the close of the 90-day period beginning on the date of the enactment of this Act [Dec. 20, 2006].

"(2) The determination and publication required by section 220(j)(5) of such Code with respect to calendar year 2005 or calendar year 2006, as the case may be, shall be treated as timely if made before the close of the 120-day period beginning on the date of the enactment of this Act. If the determination under the preceding sentence is that 2005 or 2006 is a cut-off year under section 220(i) of such Code, the cut-off date under such section 220(i) shall be the last day of such 120-day period."

Pub. L. 108–311, title III, §322(d), Oct. 4, 2004, 118 Stat. 1183, provided that:

"(1) The report required by section 220(j)(4) of the Internal Revenue Code of 1986 to be made on August 1, 2004, shall be treated as timely if made before the close of the 90-day period beginning on the date of the enactment of this Act [Oct. 4, 2004].

"(2) The determination and publication required by section 220(j)(5) of such Code with respect to calendar year 2004 shall be treated as timely if made before the close of the 120-day period beginning on the date of the enactment of this Act. If the determination under the preceding sentence is that 2004 is a cut-off year under section 220(i) of such Code, the cut-off date under such section 220(i) shall be the last day of such 120-day period."

MONITORING OF PARTICIPATION IN MEDICAL SAVINGS ACCOUNTS

Pub. L. 104–191, title III, §301(k), Aug. 21, 1996, 110 Stat. 2052, provided that: "The Secretary of the Treasury or his delegate shall—

"(1) during 1997, 1998, 1999, and 2000, regularly evaluate the number of individuals who are maintaining medical savings accounts and the reduction in revenues to the United States by reason of such accounts, and

"(2) provide such reports of such evaluations to Congress as such Secretary determines appropriate."

STUDY OF EFFECTS OF MEDICAL SAVINGS ACCOUNTS ON SMALL GROUP MARKET

Pub. L. 104–191, title III, §301(l), Aug. 21, 1996, 110 Stat. 2052, provided that: "The Comptroller General of the United States shall enter into a contract with an organization with expertise in health economics, health insurance markets, and actuarial science to conduct a comprehensive study regarding the effects of medical savings accounts in the small group market on—

"(1) selection, including adverse selection,

"(2) health costs, including any impact on premiums of individuals with comprehensive coverage,

"(3) use of preventive care,

"(4) consumer choice,

"(5) the scope of coverage of high deductible plans purchased in conjunction with such accounts, and

"(6) other relevant items.

A report on the results of the study conducted under this subsection shall be submitted to the Congress no later than January 1, 1999."

§221. Interest on education loans

(a) Allowance of deduction

In the case of an individual, there shall be allowed as a deduction for the taxable year an amount equal to the interest paid by the taxpayer during the taxable year on any qualified education loan.

(b) Maximum deduction

(1) In general

Except as provided in paragraph (2), the deduction allowed by subsection (a) for the taxable

year shall not exceed the amount determined in accordance with the following table:

In the case of taxable years beginning in:	The dollar amount is:
1998	$1,000
1999	$1,500
2000	$2,000
2001 or thereafter	$2,500.

(2) Limitation based on modified adjusted gross income

(A) In general

The amount which would (but for this paragraph) be allowable as a deduction under this section shall be reduced (but not below zero) by the amount determined under subparagraph (B).

(B) Amount of reduction

The amount determined under this subparagraph is the amount which bears the same ratio to the amount which would be so taken into account as—

(i) the excess of—

(I) the taxpayer's modified adjusted gross income for such taxable year, over

(II) $50,000 ($100,000 in the case of a joint return), bears to

(ii) $15,000 ($30,000 in the case of a joint return).

(C) Modified adjusted gross income

The term "modified adjusted gross income" means adjusted gross income determined—

(i) without regard to this section and sections 199, 222, 911, 931, and 933, and

(ii) after application of sections 86, 135, 137, 219, and 469.

(c) Dependents not eligible for deduction

No deduction shall be allowed by this section to an individual for the taxable year if a deduction under section 151 with respect to such individual is allowed to another taxpayer for the taxable year beginning in the calendar year in which such individual's taxable year begins.

(d) Definitions

For purposes of this section—

(1) Qualified education loan

The term "qualified education loan" means any indebtedness incurred by the taxpayer solely to pay qualified higher education expenses—

(A) which are incurred on behalf of the taxpayer, the taxpayer's spouse, or any dependent of the taxpayer as of the time the indebtedness was incurred,

(B) which are paid or incurred within a reasonable period of time before or after the indebtedness is incurred, and

(C) which are attributable to education furnished during a period during which the recipient was an eligible student.

Such term includes indebtedness used to refinance indebtedness which qualifies as a qualified education loan. The term "qualified education loan" shall not include any indebtedness owed to a person who is related (within the meaning of section 267(b) or 707(b)(1)) to the taxpayer or to any person by reason of a loan under any qualified employer plan (as defined in section 72(p)(4)) or under any contract referred to in section 72(p)(5).

(2) Qualified higher education expenses

The term "qualified higher education expenses" means the cost of attendance (as defined in section 472 of the Higher Education Act of 1965, 20 U.S.C. 1087ll, as in effect on the day before the date of the enactment of the Taxpayer Relief Act of 1997) at an eligible educational institution, reduced by the sum of—

(A) the amount excluded from gross income under section 127, 135, 529, or 530 by reason of such expenses, and

(B) the amount of any scholarship, allowance, or payment described in section 25A(g)(2).

For purposes of the preceding sentence, the term "eligible educational institution" has the same meaning given such term by section 25A(f)(2), except that such term shall also include an institution conducting an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility which offers postgraduate training.

(3) Eligible student

The term "eligible student" has the meaning given such term by section 25A(b)(3).

(4) Dependent

The term "dependent" has the meaning given such term by section 152 (determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof).

(e) Special rules

(1) Denial of double benefit

No deduction shall be allowed under this section for any amount for which a deduction is allowable under any other provision of this chapter.

(2) Married couples must file joint return

If the taxpayer is married at the close of the taxable year, the deduction shall be allowed under subsection (a) only if the taxpayer and the taxpayer's spouse file a joint return for the taxable year.

(3) Marital status

Marital status shall be determined in accordance with section 7703.

(f) Inflation adjustments

(1) In general

In the case of a taxable year beginning after 2002, the $50,000 and $100,000 amounts in subsection (b)(2) shall each be increased by an amount equal to—

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting "calendar year 2001" for "calendar year 1992" in subparagraph (B) thereof.

(2) Rounding

If any amount as adjusted under paragraph (1) is not a multiple of $5,000, such amount shall be rounded to the next lowest multiple of $5,000.

(Added Pub. L. 105–34, title II, §202(a), Aug. 5, 1997, 111 Stat. 806; amended Pub. L. 105–206, title VI, §6004(b), July 22, 1998, 112 Stat. 792; Pub. L. 105–277, div. J, title IV, §4003(a)(2)(A), (3), Oct. 21, 1998, 112 Stat. 2681–908; Pub. L. 107–16, title IV, §§402(b)(2)(B), 412(a)(1), (b)(1), (2), 431(c)(2), June 7, 2001, 115 Stat. 62–64, 68; Pub. L. 108–311, title II, §207(20), title IV, §408(b)(5), Oct. 4, 2004, 118 Stat. 1178, 1192; Pub. L. 108–357, title I, §102(d)(2), Oct. 22, 2004, 118 Stat. 1428; Pub. L. 109–135, title IV, §412(t), Dec. 21, 2005, 119 Stat. 2638.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

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

under section 1 of this title.

REFERENCES IN TEXT

The date of the enactment of the Taxpayer Relief Act of 1997, referred to in subsec. (d)(2), is the date of enactment of Pub. L. 105–34, which was approved Aug. 5, 1997.

PRIOR PROVISIONS

A prior section 221 was renumbered section 224 of this title.

Another prior section 221, added Pub. L. 97–34, title I, §103(a), Aug. 13, 1981, 95 Stat. 187; amended Pub. L. 97–448, title III, §305(d)(4), Jan. 12, 1983, 96 Stat. 2400, related to deduction for two-earner married couples, prior to repeal by Pub. L. 99–514, title I, §131(a), Oct. 22, 1986, 100 Stat. 2113, applicable to taxable years beginning after Dec. 31, 1986.

AMENDMENTS

2005—Subsec. (d)(2). Pub. L. 109–135 substituted "the Taxpayer Relief Act of 1997" for "this Act".

2004—Subsec. (b)(2)(C)(i). Pub. L. 108–357 inserted "199," before "222".

Subsec. (d)(4). Pub. L. 108–311, §207(20), inserted "(determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof)" after "section 152".

Subsec. (f)(1). Pub. L. 108–311, §408(b)(5), amended directory language of Pub. L. 107–16, §412(b)(2). See 2001 Amendment note below.

2001—Subsec. (b)(2)(B)(i), (ii). Pub. L. 107–16, §412(b)(1), amended cls. (i) and (ii) generally. Prior to amendment, cls. (i) and (ii) read as follows:

"(i) the excess of—

"(I) the taxpayer's modified adjusted gross income for such taxable year, over

"(II) $40,000 ($60,000 in the case of a joint return), bears to

"(ii) $15,000."

Subsec. (b)(2)(C)(i). Pub. L. 107–16, §431(c)(2), inserted "222," before "911".

Subsec. (d). Pub. L. 107–16, §412(a)(1), redesignated subsec. (e) as (d), and struck out heading and text of former subsec. (d). Text read as follows: "A deduction shall be allowed under this section only with respect to interest paid on any qualified education loan during the first 60 months (whether or not consecutive) in which interest payments are required. For purposes of this paragraph, any loan and all refinancings of such loan shall be treated as 1 loan. Such 60 months shall be determined in the manner prescribed by the Secretary in the case of multiple loans which are refinanced by, or serviced as, a single loan and in the case of loans incurred before the date of the enactment of this section."

Subsec. (e). Pub. L. 107–16, §412(a)(1), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

Subsec. (e)(2)(A). Pub. L. 107–16, §402(b)(2)(B), inserted "529," after "135,".

Subsec. (f). Pub. L. 107–16, §412(a)(1), redesignated subsec. (g) as (f). Former subsec. (f) redesignated (e).

Subsec. (f)(1). Pub. L. 107–16, §412(b)(2), as amended by Pub. L. 108–311, §408(b)(5), substituted "$50,000 and $100,000 amounts" for "$40,000 and $60,000 amounts".

Subsec. (g). Pub. L. 107–16, §412(a)(1), redesignated subsec. (g) as (f).

1998—Subsec. (b)(2)(C). Pub. L. 105–277, §4003(a)(2)(A)(iii), struck out concluding provisions which read as follows: "For purposes of sections 86, 135, 137, 219, and 469, adjusted gross income shall be determined without regard to the deduction allowed under this section."

Subsec. (b)(2)(C)(i). Pub. L. 105–277, §4003(a)(2)(A)(i), struck out "135, 137," after "sections".

Subsec. (b)(2)(C)(ii). Pub. L. 105–277, §4003(a)(2)(A)(ii), inserted "135, 137," after "sections 86,".

Subsec. (d). Pub. L. 105–206, §6004(b)(2), inserted at end "Such 60 months shall be determined in the manner prescribed by the Secretary in the case of multiple loans which are refinanced by, or serviced as, a single loan and in the case of loans incurred before the date of the enactment of this section."

Subsec. (e)(1). Pub. L. 105–277, §4003(a)(3), inserted before period at end "or to any person by reason of a loan under any qualified employer plan (as defined in section 72(p)(4)) or under any contract referred to in section 72(p)(5)".

Pub. L. 105–206, §6004(b)(1), inserted "by the taxpayer solely" after "incurred" in introductory provisions.

EFFECTIVE DATE OF 2004 AMENDMENTS

Amendment by Pub. L. 108–357 applicable to taxable years beginning after Dec. 31, 2004, see section 102(e) of Pub. L. 108–357, set out as a note under section 56 of this title.

Amendment by section 207(20) of Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 402(b)(2)(B) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 402(h) of Pub. L. 107–16, set out as a note under section 72 of this title.

Pub. L. 107–16, title IV, §412(a)(3), June 7, 2001, 115 Stat. 64, provided that: "The amendments made by this subsection [amending this section and section 6050S of this title] shall apply with respect to any loan interest paid after December 31, 2001, in taxable years ending after such date."

Pub. L. 107–16, title IV, §412(b)(3), June 7, 2001, 115 Stat. 64, provided that: "The amendments made by this subsection [amending this section] shall apply to taxable years ending after December 31, 2001."

Amendment by section 431(c)(2) of Pub. L. 107–16 applicable to payments made in taxable years beginning after Dec. 31, 2001, see section 431(d) of Pub. L. 107–16, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1998 AMENDMENTS

Amendment by Pub. L. 105–277 effective as if included in the provision of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 4003(l) of Pub. L. 105–277, set out as a note under section 86 of this title.

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to any qualified education loan (as defined in subsec. (e)(1) of this section) incurred on, before, or after Aug. 5, 1997, but only with respect to any loan interest payment due and paid after Dec. 31, 1997, and to the portion of the 60-month period referred to in subsec. (d) of this section after Dec. 31, 1997, see section 202(e) of Pub. L. 105–34, set out as an Effective Date of 1997 Amendment note under section 62 of this title.

§222. Qualified tuition and related expenses

(a) Allowance of deduction

In the case of an individual, there shall be allowed as a deduction an amount equal to the qualified tuition and related expenses paid by the taxpayer during the taxable year.

(b) Dollar limitations

(1) In general

The amount allowed as a deduction under subsection (a) with respect to the taxpayer for any taxable year shall not exceed the applicable dollar limit.

(2) Applicable dollar limit

(A) 2002 and 2003

In the case of a taxable year beginning in 2002 or 2003, the applicable dollar limit shall be equal to—

(i) in the case of a taxpayer whose adjusted gross income for the taxable year does not exceed $65,000 ($130,000 in the case of a joint return), $3,000, and—

(ii) in the case of any other taxpayer, zero.

(B) After 2003

In the case of any taxable year beginning after 2003, the applicable dollar amount shall be equal to—

(i) in the case of a taxpayer whose adjusted gross income for the taxable year does not exceed $65,000 ($130,000 in the case of a joint return), $4,000,

(ii) in the case of a taxpayer not described in clause (i) whose adjusted gross income for the taxable year does not exceed $80,000 ($160,000 in the case of a joint return), $2,000, and

(iii) in the case of any other taxpayer, zero.

(C) Adjusted gross income

For purposes of this paragraph, adjusted gross income shall be determined—

(i) without regard to this section and sections 199, 911, 931, and 933, and

(ii) after application of sections 86, 135, 137, 219, 221, and 469.

(c) No double benefit

(1) In general

No deduction shall be allowed under subsection (a) for any expense for which a deduction is allowed to the taxpayer under any other provision of this chapter.

(2) Coordination with other education incentives

(A) Denial of deduction if credit elected

No deduction shall be allowed under subsection (a) for a taxable year with respect to the qualified tuition and related expenses with respect to an individual if the taxpayer or any other person elects to have section 25A apply with respect to such individual for such year.

(B) Coordination with exclusions

The total amount of qualified tuition and related expenses shall be reduced by the amount of such expenses taken into account in determining any amount excluded under section 135, 529(c)(1), or 530(d)(2). For purposes of the preceding sentence, the amount taken into account in determining the amount excluded under section 529(c)(1) shall not include that portion of the distribution which represents a return of any contributions to the plan.

(3) Dependents

No deduction shall be allowed under subsection (a) to any individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which such individual's taxable year begins.

(d) Definitions and special rules

For purposes of this section—

(1) Qualified tuition and related expenses

The term "qualified tuition and related expenses" has the meaning given such term by section 25A(f). Such expenses shall be reduced in the same manner as under section 25A(g)(2).

(2) Identification requirement

No deduction shall be allowed under subsection (a) to a taxpayer with respect to the qualified tuition and related expenses of an individual unless the taxpayer includes the name and taxpayer identification number of the individual on the return of tax for the taxable year.

(3) Limitation on taxable year of deduction

(A) In general

A deduction shall be allowed under subsection (a) for qualified tuition and related expenses for any taxable year only to the extent such expenses are in connection with enrollment at an institution of higher education during the taxable year.

(B) Certain prepayments allowed

Subparagraph (A) shall not apply to qualified tuition and related expenses paid during a taxable year if such expenses are in connection with an academic term beginning during such taxable year or during the first 3 months of the next taxable year.

(4) No deduction for married individuals filing separate returns

If the taxpayer is a married individual (within the meaning of section 7703), this section shall apply only if the taxpayer and the taxpayer's spouse file a joint return for the taxable year.

(5) Nonresident aliens

If the taxpayer is a nonresident alien individual for any portion of the taxable year, this section

shall apply only if such individual is treated as a resident alien of the United States for purposes of this chapter by reason of an election under subsection (g) or (h) of section 6013.

(6) Regulations

The Secretary may prescribe such regulations as may be necessary or appropriate to carry out this section, including regulations requiring recordkeeping and information reporting.

(e) Termination

This section shall not apply to taxable years beginning after December 31, 2013.

(Added Pub. L. 107–16, title IV, §431(a), June 7, 2001, 115 Stat. 66; amended Pub. L. 108–357, title I, §102(d)(3), Oct. 22, 2004, 118 Stat. 1429; Pub. L. 109–432, div. A, title I, §101(a), (b), Dec. 20, 2006, 120 Stat. 2933; Pub. L. 110–343, div. C, title II, §202(a), Oct. 3, 2008, 122 Stat. 3864; Pub. L. 111–312, title VII, §724(a), Dec. 17, 2010, 124 Stat. 3316; Pub. L. 112–240, title II, §207(a), Jan. 2, 2013, 126 Stat. 2324.)

PRIOR PROVISIONS

A prior section 222 was renumbered section 224 of this title.

Another prior section 222, added Pub. L. 97–34, title I, §125(a), Aug. 13, 1981, 95 Stat. 201; amended Pub. L. 97–448, title I, §101(f), Jan. 12, 1983, 96 Stat. 2367, related to deduction of adoption expenses, prior to repeal by Pub. L. 99–514, title I, §§135(a), 151(a), Oct. 22, 1986, 100 Stat. 2116, 2121, applicable to taxable years beginning after Dec. 31, 1986.

AMENDMENTS

2013—Subsec. (e). Pub. L. 112–240 substituted "December 31, 2013" for "December 31, 2011".

2010—Subsec. (e). Pub. L. 111–312 substituted "December 31, 2011" for "December 31, 2009".

2008—Subsec. (e). Pub. L. 110–343 substituted "December 31, 2009" for "December 31, 2007".

2006—Subsec. (b)(2)(B). Pub. L. 109–432, §101(b), substituted "After 2003" for "2004 and 2005" in heading and "any taxable year beginning after 2003" for "a taxable year beginning in 2004 or 2005" in introductory provisions.

Subsec. (e). Pub. L. 109–432, §101(a), substituted "2007" for "2005".

2004—Subsec. (b)(2)(C)(i). Pub. L. 108–357 inserted "199," before "911".

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title II, §207(b), Jan. 2, 2013, 126 Stat. 2324, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2011."

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §724(b), Dec. 17, 2010, 124 Stat. 3316, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2009."

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title II, §202(b), Oct. 3, 2008, 122 Stat. 3864, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2007."

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title I, §101(c), Dec. 20, 2006, 120 Stat. 2933, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2005."

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years beginning after Dec. 31, 2004, see section 102(e) of Pub. L. 108–357, set out as a note under section 56 of this title.

EFFECTIVE DATE

Section applicable to payments made in taxable years beginning after Dec. 31, 2001, see section 431(d) of Pub. L. 107–16, set out as an Effective Date of 2001 Amendment note under section 62 of this title.

§223. Health savings accounts

(a) Deduction allowed

In the case of an individual who is an eligible individual for any month during the taxable year, there shall be allowed as a deduction for the taxable year an amount equal to the aggregate amount paid in cash during such taxable year by or on behalf of such individual to a health savings account of such individual.

(b) Limitations

(1) In general

The amount allowable as a deduction under subsection (a) to an individual for the taxable year shall not exceed the sum of the monthly limitations for months during such taxable year that the individual is an eligible individual.

(2) Monthly limitation

The monthly limitation for any month is 1/12 of—

(A) in the case of an eligible individual who has self-only coverage under a high deductible health plan as of the first day of such month, $2,250.

(B) in the case of an eligible individual who has family coverage under a high deductible health plan as of the first day of such month, $4,500.

(3) Additional contributions for individuals 55 or older

(A) In general

In the case of an individual who has attained age 55 before the close of the taxable year, the applicable limitation under subparagraphs (A) and (B) of paragraph (2) shall be increased by the additional contribution amount.

(B) Additional contribution amount

For purposes of this section, the additional contribution amount is the amount determined in accordance with the following table:

For taxable years beginning in:	The additional contribution amount is:
2004	$500
2005	$600
2006	$700
2007	$800
2008	$900
2009 and thereafter	$1,000.

(4) Coordination with other contributions

The limitation which would (but for this paragraph) apply under this subsection to an individual for any taxable year shall be reduced (but not below zero) by the sum of—

(A) the aggregate amount paid for such taxable year to Archer MSAs of such individual,

(B) the aggregate amount contributed to health savings accounts of such individual which is excludable from the taxpayer's gross income for such taxable year under section 106(d) (and such amount shall not be allowed as a deduction under subsection (a)), and

(C) the aggregate amount contributed to health savings accounts of such individual for such taxable year under section 408(d)(9) (and such amount shall not be allowed as a deduction under subsection (a)).

Subparagraph (A) shall not apply with respect to any individual to whom paragraph (5) applies.

(5) Special rule for married individuals

In the case of individuals who are married to each other, if either spouse has family coverage—

(A) both spouses shall be treated as having only such family coverage (and if such spouses each have family coverage under different plans, as having the family coverage with the lowest annual deductible), and

(B) the limitation under paragraph (1) (after the application of subparagraph (A) and without regard to any additional contribution amount under paragraph (3))—

(i) shall be reduced by the aggregate amount paid to Archer MSAs of such spouses for the taxable year, and

(ii) after such reduction, shall be divided equally between them unless they agree on a different division.

(6) Denial of deduction to dependents

No deduction shall be allowed under this section to any individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which such individual's taxable year begins.

(7) Medicare eligible individuals

The limitation under this subsection for any month with respect to an individual shall be zero for the first month such individual is entitled to benefits under title XVIII of the Social Security Act and for each month thereafter.

(8) Increase in limit for individuals becoming eligible individuals after the beginning of the year

(A) In general

For purposes of computing the limitation under paragraph (1) for any taxable year, an individual who is an eligible individual during the last month of such taxable year shall be treated—

(i) as having been an eligible individual during each of the months in such taxable year, and

(ii) as having been enrolled, during each of the months such individual is treated as an eligible individual solely by reason of clause (i), in the same high deductible health plan in which the individual was enrolled for the last month of such taxable year.

(B) Failure to maintain high deductible health plan coverage

(i) In general

If, at any time during the testing period, the individual is not an eligible individual, then—

(I) gross income of the individual for the taxable year in which occurs the first month in the testing period for which such individual is not an eligible individual is increased by the aggregate amount of all contributions to the health savings account of the individual which could not have been made but for subparagraph (A), and

(II) the tax imposed by this chapter for any taxable year on the individual shall be increased by 10 percent of the amount of such increase.

(ii) Exception for disability or death

Subclauses (I) and (II) of clause (i) shall not apply if the individual ceased to be an eligible individual by reason of the death of the individual or the individual becoming disabled (within the meaning of section 72(m)(7)).

(iii) Testing period

The term "testing period" means the period beginning with the last month of the taxable year referred to in subparagraph (A) and ending on the last day of the 12th month following such month.

(c) Definitions and special rules

For purposes of this section—

(1) Eligible individual

(A) In general

The term "eligible individual" means, with respect to any month, any individual if—

(i) such individual is covered under a high deductible health plan as of the 1st day of such month, and

(ii) such individual is not, while covered under a high deductible health plan, covered under any health plan—

(I) which is not a high deductible health plan, and

(II) which provides coverage for any benefit which is covered under the high deductible health plan.

(B) Certain coverage disregarded

Subparagraph (A)(ii) shall be applied without regard to—

(i) coverage for any benefit provided by permitted insurance,

(ii) coverage (whether through insurance or otherwise) for accidents, disability, dental care, vision care, or long-term care, and

(iii) for taxable years beginning after December 31, 2006, coverage under a health flexible spending arrangement during any period immediately following the end of a plan year of such arrangement during which unused benefits or contributions remaining at the end of such plan year may be paid or reimbursed to plan participants for qualified benefit expenses incurred during such period if—

(I) the balance in such arrangement at the end of such plan year is zero, or

(II) the individual is making a qualified HSA distribution (as defined in section 106(e)) in an amount equal to the remaining balance in such arrangement as of the end of such plan year, in accordance with rules prescribed by the Secretary.

(2) High deductible health plan

(A) In general

The term "high deductible health plan" means a health plan—

(i) which has an annual deductible which is not less than—

(I) $1,000 for self-only coverage, and

(II) twice the dollar amount in subclause (I) for family coverage, and

(ii) the sum of the annual deductible and the other annual out-of-pocket expenses required to be paid under the plan (other than for premiums) for covered benefits does not exceed—

(I) $5,000 for self-only coverage, and

(II) twice the dollar amount in subclause (I) for family coverage.

(B) Exclusion of certain plans

Such term does not include a health plan if substantially all of its coverage is coverage described in paragraph (1)(B).

(C) Safe harbor for absence of preventive care deductible

A plan shall not fail to be treated as a high deductible health plan by reason of failing to have a deductible for preventive care (within the meaning of section 1871 of the Social Security Act, except as otherwise provided by the Secretary).

(D) Special rules for network plans

In the case of a plan using a network of providers—

(i) Annual out-of-pocket limitation

Such plan shall not fail to be treated as a high deductible health plan by reason of having an out-of-pocket limitation for services provided outside of such network which exceeds the applicable limitation under subparagraph (A)(ii).

(ii) Annual deductible

Such plan's annual deductible for services provided outside of such network shall not be taken into account for purposes of subsection (b)(2).

(3) Permitted insurance

The term "permitted insurance" means—

(A) insurance if substantially all of the coverage provided under such insurance relates to—

(i) liabilities incurred under workers' compensation laws,

(ii) tort liabilities,

(iii) liabilities relating to ownership or use of property, or

(iv) such other similar liabilities as the Secretary may specify by regulations,

(B) insurance for a specified disease or illness, and

(C) insurance paying a fixed amount per day (or other period) of hospitalization.

(4) Family coverage

The term "family coverage" means any coverage other than self-only coverage.

(5) Archer MSA

The term "Archer MSA" has the meaning given such term in section 220(d).

(d) Health savings account

For purposes of this section—

(1) In general

The term "health savings account" means a trust created or organized in the United States as a health savings account exclusively for the purpose of paying the qualified medical expenses of the account beneficiary, but only if the written governing instrument creating the trust meets the following requirements:

(A) Except in the case of a rollover contribution described in subsection (f)(5) or section 220(f)(5), no contribution will be accepted—

(i) unless it is in cash, or

(ii) to the extent such contribution, when added to previous contributions to the trust for the calendar year, exceeds the sum of—

(I) the dollar amount in effect under subsection (b)(2)(B), and

(II) the dollar amount in effect under subsection (b)(3)(B).

(B) The trustee is a bank (as defined in section 408(n)), an insurance company (as defined in section 816), or another person who demonstrates to the satisfaction of the Secretary that the manner in which such person will administer the trust will be consistent with the requirements of this section.

(C) No part of the trust assets will be invested in life insurance contracts.

(D) The assets of the trust will not be commingled with other property except in a common trust fund or common investment fund.

(E) The interest of an individual in the balance in his account is nonforfeitable.

(2) Qualified medical expenses

(A) In general

The term "qualified medical expenses" means, with respect to an account beneficiary, amounts paid by such beneficiary for medical care (as defined in section 213(d) [1] for such individual, the spouse of such individual, and any dependent (as defined in section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) of such individual, but only to the extent such amounts are not compensated for by insurance or

otherwise. Such term shall include an amount paid for medicine or a drug only if such medicine or drug is a prescribed drug (determined without regard to whether such drug is available without a prescription) or is insulin.

(B) Health insurance may not be purchased from account

Subparagraph (A) shall not apply to any payment for insurance.

(C) Exceptions

Subparagraph (B) shall not apply to any expense for coverage under—

(i) a health plan during any period of continuation coverage required under any Federal law,

(ii) a qualified long-term care insurance contract (as defined in section 7702B(b)),

(iii) a health plan during a period in which the individual is receiving unemployment compensation under any Federal or State law, or

(iv) in the case of an account beneficiary who has attained the age specified in section 1811 of the Social Security Act, any health insurance other than a medicare supplemental policy (as defined in section 1882 of the Social Security Act).

(3) Account beneficiary

The term "account beneficiary" means the individual on whose behalf the health savings account was established.

(4) Certain rules to apply

Rules similar to the following rules shall apply for purposes of this section:

(A) Section 219(d)(2) (relating to no deduction for rollovers).

(B) Section 219(f)(3) (relating to time when contributions deemed made).

(C) Except as provided in section 106(d), section 219(f)(5) (relating to employer payments).

(D) Section 408(g) (relating to community property laws).

(E) Section 408(h) (relating to custodial accounts).

(e) Tax treatment of accounts

(1) In general

A health savings account is exempt from taxation under this subtitle unless such account has ceased to be a health savings account. Notwithstanding the preceding sentence, any such account is subject to the taxes imposed by section 511 (relating to imposition of tax on unrelated business income of charitable, etc. organizations).

(2) Account terminations

Rules similar to the rules of paragraphs (2) and (4) of section 408(e) shall apply to health savings accounts, and any amount treated as distributed under such rules shall be treated as not used to pay qualified medical expenses.

(f) Tax treatment of distributions

(1) Amounts used for qualified medical expenses

Any amount paid or distributed out of a health savings account which is used exclusively to pay qualified medical expenses of any account beneficiary shall not be includible in gross income.

(2) Inclusion of amounts not used for qualified medical expenses

Any amount paid or distributed out of a health savings account which is not used exclusively to pay the qualified medical expenses of the account beneficiary shall be included in the gross income of such beneficiary.

(3) Excess contributions returned before due date of return

(A) In general

If any excess contribution is contributed for a taxable year to any health savings account of an individual, paragraph (2) shall not apply to distributions from the health savings accounts of

such individual (to the extent such distributions do not exceed the aggregate excess contributions to all such accounts of such individual for such year) if—

(i) such distribution is received by the individual on or before the last day prescribed by law (including extensions of time) for filing such individual's return for such taxable year, and

(ii) such distribution is accompanied by the amount of net income attributable to such excess contribution.

Any net income described in clause (ii) shall be included in the gross income of the individual for the taxable year in which it is received.

(B) Excess contribution

For purposes of subparagraph (A), the term "excess contribution" means any contribution (other than a rollover contribution described in paragraph (5) or section 220(f)(5)) which is neither excludable from gross income under section 106(d) nor deductible under this section.

(4) Additional tax on distributions not used for qualified medical expenses

(A) In general

The tax imposed by this chapter on the account beneficiary for any taxable year in which there is a payment or distribution from a health savings account of such beneficiary which is includible in gross income under paragraph (2) shall be increased by 20 percent of the amount which is so includible.

(B) Exception for disability or death

Subparagraph (A) shall not apply if the payment or distribution is made after the account beneficiary becomes disabled within the meaning of section 72(m)(7) or dies.

(C) Exception for distributions after medicare eligibility

Subparagraph (A) shall not apply to any payment or distribution after the date on which the account beneficiary attains the age specified in section 1811 of the Social Security Act.

(5) Rollover contribution

An amount is described in this paragraph as a rollover contribution if it meets the requirements of subparagraphs (A) and (B).

(A) In general

Paragraph (2) shall not apply to any amount paid or distributed from a health savings account to the account beneficiary to the extent the amount received is paid into a health savings account for the benefit of such beneficiary not later than the 60th day after the day on which the beneficiary receives the payment or distribution.

(B) Limitation

This paragraph shall not apply to any amount described in subparagraph (A) received by an individual from a health savings account if, at any time during the 1-year period ending on the day of such receipt, such individual received any other amount described in subparagraph (A) from a health savings account which was not includible in the individual's gross income because of the application of this paragraph.

(6) Coordination with medical expense deduction

For purposes of determining the amount of the deduction under section 213, any payment or distribution out of a health savings account for qualified medical expenses shall not be treated as an expense paid for medical care.

(7) Transfer of account incident to divorce

The transfer of an individual's interest in a health savings account to an individual's spouse or former spouse under a divorce or separation instrument described in subparagraph (A) of section 71(b)(2) shall not be considered a taxable transfer made by such individual notwithstanding any

other provision of this subtitle, and such interest shall, after such transfer, be treated as a health savings account with respect to which such spouse is the account beneficiary.

(8) Treatment after death of account beneficiary

(A) Treatment if designated beneficiary is spouse

If the account beneficiary's surviving spouse acquires such beneficiary's interest in a health savings account by reason of being the designated beneficiary of such account at the death of the account beneficiary, such health savings account shall be treated as if the spouse were the account beneficiary.

(B) Other cases

(i) In general

If, by reason of the death of the account beneficiary, any person acquires the account beneficiary's interest in a health savings account in a case to which subparagraph (A) does not apply—

(I) such account shall cease to be a health savings account as of the date of death, and

(II) an amount equal to the fair market value of the assets in such account on such date shall be includible if such person is not the estate of such beneficiary, in such person's gross income for the taxable year which includes such date, or if such person is the estate of such beneficiary, in such beneficiary's gross income for the last taxable year of such beneficiary.

(ii) Special rules

(I) Reduction of inclusion for predeath expenses

The amount includible in gross income under clause (i) by any person (other than the estate) shall be reduced by the amount of qualified medical expenses which were incurred by the decedent before the date of the decedent's death and paid by such person within 1 year after such date.

(II) Deduction for estate taxes

An appropriate deduction shall be allowed under section 691(c) to any person (other than the decedent or the decedent's spouse) with respect to amounts included in gross income under clause (i) by such person.

(g) Cost-of-living adjustment

(1) In general

Each dollar amount in subsections (b)(2) and (c)(2)(A) shall be increased by an amount equal to—

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which such taxable year begins determined by substituting for "calendar year 1992" in subparagraph (B) thereof—

(i) except as provided in clause (ii), "calendar year 1997", and

(ii) in the case of each dollar amount in subsection (c)(2)(A), "calendar year 2003".

In the case of adjustments made for any taxable year beginning after 2007, section 1(f)(4) shall be applied for purposes of this paragraph by substituting "March 31" for "August 31", and the Secretary shall publish the adjusted amounts under subsections (b)(2) and (c)(2)(A) for taxable years beginning in any calendar year no later than June 1 of the preceding calendar year.

(2) Rounding

If any increase under paragraph (1) is not a multiple of $50, such increase shall be rounded to the nearest multiple of $50.

(h) Reports

The Secretary may require—

(1) the trustee of a health savings account to make such reports regarding such account to the Secretary and to the account beneficiary with respect to contributions, distributions, the return of excess contributions, and such other matters as the Secretary determines appropriate, and

(2) any person who provides an individual with a high deductible health plan to make such reports to the Secretary and to the account beneficiary with respect to such plan as the Secretary determines appropriate.

The reports required by this subsection shall be filed at such time and in such manner and furnished to such individuals at such time and in such manner as may be required by the Secretary.

(Added Pub. L. 108–173, title XII, §1201(a), Dec. 8, 2003, 117 Stat. 2469; amended Pub. L. 109–135, title IV, §404(c), Dec. 21, 2005, 119 Stat. 2634; Pub. L. 109–432, div. A, title III, §§302(b), 303(a), (b), 304, 305(a), 307(b), Dec. 20, 2006, 120 Stat. 2949, 2950, 2953; Pub. L. 111–148, title IX, §§9003(a), 9004(a), Mar. 23, 2010, 124 Stat. 854.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table below and under section 1 of this title.

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (b)(7), (c)(2)(C), (d)(2)(C)(iv), (f)(4)(C), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Act is classified generally to subchapter XVIII (§1395 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. Sections 1811, 1871, and 1882 of the Act are classified to sections 1395c, 1395hh, and 1395ss, respectively, of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 223 was renumbered section 224 of this title.

AMENDMENTS

2010—Subsec. (d)(2)(A). Pub. L. 111–148, §9003(a), inserted at end "Such term shall include an amount paid for medicine or a drug only if such medicine or drug is a prescribed drug (determined without regard to whether such drug is available without a prescription) or is insulin."

Subsec. (f)(4)(A). Pub. L. 111–148, §9004(a), substituted "20 percent" for "10 percent".

2006—Subsec. (b)(2)(A). Pub. L. 109–432, §303(a)(1), substituted "$2,250." for "the lesser of—

"(i) the annual deductible under such coverage, or

"(ii) $2,250, or".

Subsec. (b)(2)(B). Pub. L. 109–432, §303(a)(2), substituted "$4,500." for "the lesser of—

"(i) the annual deductible under such coverage, or

"(ii) $4,500."

Subsec. (b)(4)(C). Pub. L. 109–432, §307(b), added subpar. (C).

Subsec. (b)(8). Pub. L. 109–432, §305(a), added par. (8).

Subsec. (c)(1)(B)(iii). Pub. L. 109–432, §302(b), added cl. (iii).

Subsec. (d)(1)(A)(ii)(I). Pub. L. 109–432, §303(b), substituted "subsection (b)(2)(B)" for "subsection (b)(2)(B)(ii)".

Subsec. (g)(1). Pub. L. 109–432, §304, inserted concluding provisions.

2005—Subsec. (d)(2)(A). Pub. L. 109–135 inserted ", determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof" after "section 152".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 9003(a) of Pub. L. 111–148 applicable to amounts paid with respect to taxable years beginning after Dec. 31, 2010, see section 9003(d)(1) of Pub. L. 111–148, set out as a note under section 220 of this title.

Amendment by section 9004(a) of Pub. L. 111–148 applicable to distributions made after Dec. 31, 2010, see section 9004(c) of Pub. L. 111–148, set out as a note under section 220 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title III, §302(c)(2), Dec. 20, 2006, 120 Stat. 2949, provided that: "The amendment made by subsection (b) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 20, 2006]."

Pub. L. 109–432, div. A, title III, §303(c), Dec. 20, 2006, 120 Stat. 2950, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2006."

Pub. L. 109–432, div. A, title III, §305(b), Dec. 20, 2006, 120 Stat. 2951, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2006."

Pub. L. 109–432, div. A, title III, §307(c), Dec. 20, 2006, 120 Stat. 2953, provided that: "The amendments made by this section [amending this section and section 408 of this title] shall apply to taxable years beginning after December 31, 2006."

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provisions of the Working Families Tax Relief Act of 2004, Pub. L. 108–311, to which such amendment relates, see section 404(d) of Pub. L. 109–135, set out as a note under section 21 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 2003, see section 1201(k) of Pub. L. 108–173, set out as an Effective Date of 2003 Amendment note under section 62 of this title.

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

Provisions relating to inflation adjustment of items in this section for certain years were contained in the following:

2014—Revenue Procedure 2013–25.
2013—Revenue Procedure 2012–26.
2012—Revenue Procedure 2011–32.
2011—Revenue Procedure 2010–22.
2010—Revenue Procedure 2009–29.
2009—Revenue Procedure 2008–29.
2008—Revenue Procedure 2007–36.

[1] So in original. Probably should be followed by a second closing parenthesis.

§224. Cross reference

For deductions in respect of a decedent, see section 691.

(Aug. 16, 1954, ch. 736, 68A Stat. 72, §217; renumbered §218, Pub. L. 88–272, title II, §213(a)(1), Feb. 26, 1964, 78 Stat. 50; renumbered §219, Pub. L. 92–178, title VII, §702(a), Dec. 10, 1971, 85 Stat. 561; renumbered §220, Pub. L. 93–406, title II, §2002(a)(1), Sept. 2, 1974, 88 Stat. 958; renumbered §221, Pub. L. 94–455, title XV, §1501(a), Oct. 4, 1976, 90 Stat. 1734; renumbered §222, renumbered §223, Pub. L. 97–34, title I, §§103(a), 125(a), Aug. 13, 1981, 95 Stat. 187, 201; renumbered §220 and amended Pub. L. 99–514, title I, §135(b)(1), title III, §301(b)(5)(A), Oct. 22, 1986, 100 Stat. 2116, 2217; renumbered §221, Pub. L. 100–647, title VI, §6007(a), Nov. 10, 1988, 102 Stat. 3687; renumbered §220, Pub. L. 101–508, title XI, §11802(e)(2), Nov. 5, 1990, 104 Stat. 1388–530; renumbered §221, Pub. L. 104–191, title III, §301(a), Aug. 21, 1996, 110 Stat. 2037; renumbered §222, Pub. L. 105–34, title II, §202(a), Aug. 5, 1997, 111 Stat. 806; renumbered §223, Pub. L. 107–16, title IV, §431(a), June 7, 2001, 115 Stat. 66; renumbered §224, Pub. L. 108–173, title XII, §1201(a), Dec. 8, 2003, 117 Stat. 2469.)

AMENDMENTS

2003—Pub. L. 108–173 renumbered section 223 of this title as this section.
2001—Pub. L. 107–16 renumbered section 222 of this title as this section.
1997—Pub. L. 105–34 renumbered section 221 of this title as this section.
1996—Pub. L. 104–191 renumbered section 220 of this title as this section.
1990—Pub. L. 101–508 renumbered section 221 of this title as this section.
1986—Pub. L. 99–514, §135(b)(1), renumbered section 223 of this title as this section.

Pub. L. 99–514, §301(b)(5)(A), amended section generally, substituting "reference" for "references" in section catchline, striking out par. (1) which referred to section 1202 for deduction for long-term capital gains in the case of a taxpayer other than a corporation, and striking out par. (2) designation.

1981—Pub. L. 97–34 successively renumbered sections 221 and 222 of this title as this section.

1976—Pub. L. 94–455 renumbered section 220 of this title as this section.

1974—Pub. L. 93–406 renumbered section 219 of this title as this section.

1971—Pub. L. 92–178 renumbered section 218 of this title as this section.

1964—Pub. L. 88–272 renumbered section 217 of this title as this section.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–173 applicable to taxable years beginning after Dec. 31, 2003, see section 1201(k) of Pub. L. 108–173, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to payments made in taxable years beginning after Dec. 31, 2001, see section 431(d) of Pub. L. 107–16, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 301(b)(5)(A) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 301(c) of Pub. L. 99–514, set out as a note under section 62 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by section 11802(e)(2) of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

PART VIII—SPECIAL DEDUCTIONS FOR CORPORATIONS

Sec.

241. Allowance of special deductions.

[242. Repealed.]

243. Dividends received by corporations.

244. Dividends received on certain preferred stock.

245. Dividends received from certain foreign corporations.

246. Rules applying to deductions for dividends received.

246A. Dividends received deduction reduced where portfolio stock is debt financed.

247. Dividends paid on certain preferred stock of public utilities.

248. Organizational expenditures.

249. Limitation on deduction of bond premium on repurchase.

[250. Repealed.]

AMENDMENTS

1990—Pub. L. 101–508, title XI, §11801(b)(4), Nov. 5, 1990, 104 Stat. 1388–522, struck out item 250 "Certain payments to the National Railroad Passenger Corporation".

1984—Pub. L. 98–369, div. A, title I, §51(b), July 18, 1984, 98 Stat. 564, added item 246A.

1976—Pub. L. 94–455, title XIX, §1901(b)(1)(AA), Oct. 4, 1976, 90 Stat. 1792, struck out item 242 "Partially tax-exempt interest".

1970—Pub. L. 91–518, title IX, §901(b), Oct. 30, 1970, 84 Stat. 1342, added item 250.

1969—Pub. L. 91–172, title IV, §414(b), Dec. 30, 1969, 83 Stat. 613, added item 249.

§241. Allowance of special deductions

In addition to the deductions provided in part VI (sec. 161 and following), there shall be allowed as deductions in computing taxable income the items specified in this part.

(Aug. 16, 1954, ch. 736, 68A Stat. 72.)

[§242. Repealed. Pub. L. 94–455, title XIX, §1901(a)(33), Oct. 4, 1976, 90 Stat. 1769]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 72; Feb. 26, 1964, Pub. L. 88–272, title I, §123(c), 78 Stat. 30, allowed to corporations as a deduction the amount received as interest on obligations of the United States or on obligations of corporations organized under Acts of Congress which are instrumentalities of the United States under certain conditions.

EFFECTIVE DATE OF REPEAL

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

§243. Dividends received by corporations

(a) General rule

In the case of a corporation, there shall be allowed as a deduction an amount equal to the following percentages of the amount received as dividends from a domestic corporation which is subject to taxation under this chapter:

(1) 70 percent, in the case of dividends other than dividends described in paragraph (2) or (3);

(2) 100 percent, in the case of dividends received by a small business investment company operating under the Small Business Investment Act of 1958 (15 U.S.C. 661 and following); and

(3) 100 percent, in the case of qualifying dividends (as defined in subsection (b)(1)).

(b) Qualifying dividends

(1) In general

For purposes of this section, the term "qualifying dividend" means any dividend received by a corporation—

(A) if at the close of the day on which such dividend is received, such corporation is a member of the same affiliated group as the corporation distributing such dividend, and

(B) if—

(i) such dividend is distributed out of the earnings and profits of a taxable year of the distributing corporation which ends after December 31, 1963, for which an election under section 1562 was not in effect, and on each day of which the distributing corporation and the corporation receiving the dividend were members of such affiliated group, or

(ii) such dividend is paid by a corporation with respect to which an election under section 936 is in effect for the taxable year in which such dividend is paid.

(2) Affiliated group

For purposes of this subsection:

(A) In general

The term "affiliated group" has the meaning given such term by section 1504(a), except that for such purposes sections 1504(b)(2), 1504(b)(4), and 1504(c) shall not apply.

(B) Group must be consistent in foreign tax treatment

The requirements of paragraph (1)(A) shall not be treated as being met with respect to any dividend received by a corporation if, for any taxable year which includes the day on which such dividend is received—

(i) 1 or more members of the affiliated group referred to in paragraph (1)(A) choose to any extent to take the benefits of section 901, and

(ii) 1 or more other members of such group claim to any extent a deduction for taxes otherwise creditable under section 901.

(3) Special rule for groups which include life insurance companies

(A) In general

In the case of an affiliated group which includes 1 or more insurance companies under section 801, no dividend by any member of such group shall be treated as a qualifying dividend unless an election under this paragraph is in effect for the taxable year in which the dividend is received. The preceding sentence shall not apply in the case of a dividend described in paragraph (1)(B)(ii).

(B) Effect of election

If an election under this paragraph is in effect with respect to any affiliated group—

(i) part II of subchapter B of chapter 6 (relating to certain controlled corporations) shall be applied with respect to the members of such group without regard to sections 1563(a)(4) and 1563(b)(2)(D), and

(ii) for purposes of this subsection, a distribution by any member of such group which is subject to tax under section 801 shall not be treated as a qualifying dividend if such distribution is out of earnings and profits for a taxable year for which an election under this paragraph is not effective and for which such distributing corporation was not a component member of a controlled group of corporations within the meaning of section 1563 solely by reason of section 1563(b)(2)(D).

(C) Election

An election under this paragraph shall be made by the common parent of the affiliated group and at such time and in such manner as the Secretary shall by regulations prescribe. Any such election shall be binding on all members of such group and may be revoked only with the consent of the Secretary.

(c) Retention of 80-percent dividends received deduction for dividends from 20-percent owned corporations

(1) In general

In the case of any dividend received from a 20-percent owned corporation—

(A) subsection (a)(1) of this section, and

(B) subsections (a)(3) and (b)(2) of section 244,

shall be applied by substituting "80 percent" for "70 percent".

(2) 20-percent owned corporation

For purposes of this section, the term "20-percent owned corporation" means any corporation if 20 percent or more of the stock of such corporation (by vote and value) is owned by the taxpayer. For purposes of the preceding sentence, stock described in section 1504(a)(4) shall not be taken into account.

(d) Special rules for certain distributions

For purposes of subsection (a)—

(1) Any amount allowed as a deduction under section 591 (relating to deduction for dividends paid by mutual savings banks, etc.) shall not be treated as a dividend.

(2) A dividend received from a regulated investment company shall be subject to the limitations prescribed in section 854.

(3) Any dividend received from a real estate investment trust which, for the taxable year of the trust in which the dividend is paid, qualifies under part II of subchapter M (section 856 and following) shall not be treated as a dividend.

(4) Any dividend received which is described in section 244 (relating to dividends received on preferred stock of a public utility) shall not be treated as a dividend.

(e) Certain dividends from foreign corporations

For purposes of subsection (a) and for purposes of section 245, any dividend from a foreign corporation from earnings and profits accumulated by a domestic corporation during a period with respect to which such domestic corporation was subject to taxation under this chapter (or corresponding provisions of prior law) shall be treated as a dividend from a domestic corporation which is subject to taxation under this chapter.

(Aug. 16, 1954, ch. 736, 68A Stat. 73; Pub. L. 85–866, title I, §57(b), Sept. 2, 1958, 72 Stat. 1645; Pub. L. 86–779, §§3(a), 10(g), Sept. 14, 1960, 74 Stat. 998, 1009; Pub. L. 88–272, title II, §214(a), Feb. 26, 1964, 78 Stat. 52; Pub. L. 90–364, title I, §103(e)(2), June 28, 1968, 82 Stat. 264; Pub. L. 91–172, title V, §504(c)(1), Dec. 30, 1969, 83 Stat. 633; Pub. L. 94–12, title III, §304(b), Mar. 29, 1975, 89 Stat. 45; Pub. L. 94–455, title X, §§1031(b)(2), 1051(f)(1), (2), title XIX, §§1901(a)(34), (b)(1)(J)(ii), (21)(A)(i), 1906(b)(3)(C)(ii), (13)(A), Oct. 4, 1976, 90 Stat. 1622, 1646, 1769, 1791, 1797, 1833, 1834; Pub. L. 97–34, title II, §232(b)(2), Aug. 13, 1981, 95 Stat. 250; Pub. L. 98–369, div. A, title II, §211(b)(3), July 18, 1984, 98 Stat. 754; Pub. L. 99–514, title IV, §411(b)(2)(C)(iv), title VI, §611(a)(1), Oct. 22, 1986, 100 Stat. 2227, 2249; Pub. L. 100–203, title X, §10221(a)(1), (b), Dec. 22, 1987, 101 Stat. 1330–408; Pub. L. 100–647, title I, §1010(f)(4), Nov. 10, 1988, 102 Stat. 3454; Pub. L. 101–508, title XI, §11814(a), Nov. 5, 1990, 104 Stat. 1388–556; Pub. L. 104–188, title I, §1702(h)(4), (8), Aug. 20, 1996, 110 Stat. 1873, 1874.)

REFERENCES IN TEXT

The Small Business Investment Act of 1958, referred to in subsec. (a)(2), is Pub. L. 85–699, Aug. 21, 1958, 72 Stat. 689, as amended, which is classified principally to chapter 14B (§661 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 661 of Title 15 and Tables.

Section 1562, referred to in subsec. (b)(1)(B)(i), was repealed by Pub. L. 91–172, title IV, §401(a)(2), Dec. 30, 1969, 83 Stat. 600.

AMENDMENTS

1996—Subsec. (b)(2). Pub. L. 104–188, §1702(h)(8), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "For purposes of this subsection, the term 'affiliated group' has the meaning given such term by section 1504(a), except that for such purposes sections 1504(b)(2), 1504(b)(4), and 1504(c) shall not apply."

Subsec. (b)(3)(A). Pub. L. 104–188, §1702(h)(4), inserted "of" after "In the case".

1990—Subsec. (b). Pub. L. 101–508 amended subsec. (b) generally, substituting present provisions for provisions defining "qualifying dividends", providing for an election by or for an affiliated group, the effect of an election, and the termination of an election, defining an "affiliated group", and providing special rules for insurance companies.

1988—Subsec. (b)(6). Pub. L. 100–647 substituted "section 801" for "section 801 or 821".

1987—Subsec. (a)(1). Pub. L. 100–203, §10221(a)(1), substituted "70 percent" for "80 percent".

Subsecs. (c) to (e). Pub. L. 100–203, §10221(b), added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

1986—Subsec. (a)(1). Pub. L. 99–514, §611(a)(1), substituted "80 percent" for "85 percent".

Subsec. (b)(3)(C). Pub. L. 99–514, §411(b)(2)(C)(iv), inserted "and" at end of cl. (i), redesignated cl. (iii) as (ii), and struck out former cl. (ii) which read as follows: "$400,000 limitation for certain exploration expenditures under section 617(h)(1), and".

1984—Subsec. (b)(3)(C). Pub. L. 98–369, §211(b)(3)(A), inserted "and" at end of cl. (ii), struck out cl. (iii) which provided for a $25,000 limitation on small business deduction of life insurance companies under sections 804(a)(3) and 809(d)(10), and redesignated cl. (iv) as (iii).

Subsec. (b)(6). Pub. L. 98–369, §211(b)(3)(B), substituted "section 801" for "section 802".

1981—Subsec. (b)(3)(C)(i). Pub. L. 97–34 struck out "$150,000" before "minimum accumulated earnings credit".

1976—Subsec. (a)(2). Pub. L. 94–455, §1901(a)(34)(A), inserted "(15 U.S.C. 661 and following)" after "Small Business Investment Act of 1958".

Subsec. (b)(1). Pub. L. 94–455, §1051(f)(1), inserted "either" at end of subpar. (A), substituted a comma for a period and inserted "or" at end of subpar. (B), and added subpar. (C).

Subsec. (b)(2), (3), (4). Pub. L. 94–455, title XIX, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (b)(2)(A). Pub. L. 94–455, §1901(a)(34)(B), struck out "(except that in the case of a taxable year of a member beginning in 1963 and ending in 1964, if the election is effective for the taxable year of the common parent corporation which includes the last day of such taxable year of such member, such election shall be effective for such taxable year of such member, if such member consents to such election with respect to such taxable year)" after "with respect to which the election is made".

Subsec. (b)(3)(B). Pub. L. 94–455, §1031(b)(2), substituted "election under section 901(a) (relating to allowance of foreign tax credit)" for "elections under section 901(a) (relating to allowance of foreign tax credit) and section 904(b)(1) (relating to election of overall limitation)".

Subsec. (b)(3)(C). Pub. L. 94–455, §§1901(b)(1)(J)(ii), (21)(A)(i), 1906(b)(3)(C)(ii), struck out cl. (ii) which set a $100,000 limitation for exploration expenditures under section 615 (a) and (b), redesignated former cls. (iii), (iv), and (v) as cls. (ii), (iii), and (iv), respectively, and substituted "certain exploration expenditures under section 617(h)(1)" for "exploration expenditures under sections 615(c)(1) and 617(h)(1)" in cl. (ii) as so redesignated, "804(a)(3)" for "804(a)(4)" in cl. (iii) as so redesignated, and "section 6154(c)(2) and section 6655(e)(2)" for "sections 6154(c)(2) and (3) and sections 6655(e)(2) and (3)" in cl. (iv) as so redesignated.

Subsec. (b)(5). Pub. L. 94–455, §1051(f)(2), inserted ", 1504(b)(4)," after "sections 1504(b)(2)".

1975—Subsec. (b)(3)(C)(i). Pub. L. 94–12 substituted "$150,000" for "$100,000".

1969—Subsec. (b)(3)(C)(iii). Pub. L. 91–172 substituted "sections 615(c)(1) and 617(h)(1)" for "section 615(c)(1)".

1968—Subsec. (b)(3)(C)(v). Pub. L. 90–364 substituted "surtax exemption, and one amount under section 6154(c)(2) and (3) and sections 6655(e)(2) and (3), for purposes of estimated tax payment requirements under section 6154" for "$100,000 exemption for purposes of estimated tax filing requirements under section 6016".

1964—Subsec. (a). Pub. L. 88–272 substituted provisions permitting a deduction for 85 percent of dividends received except that it shall be 100 percent when received by a small business investment company operating under the Small Business Investment Act of 1958, and 100 percent in case of qualifying dividends, for provisions permitting an 85 percent deduction for corporations other than one operating under the Small Business Investment Act of 1958, and for other than dividends described in section 244(1) of this title.

Subsec. (b). Pub. L. 88–272 added subsec. (b) and omitted a prior subsec. (b) which allowed a 100 percent deduction of dividends received by a small business investment company operating under the Small Business Investment Act of 1958, other than dividends described in section 244(1) of this title.

Subsec. (c). Pub. L. 88–272 substituted "subsection (a)" for "subsections (a) and (b)" and added par. (4).

Subsec. (d). Pub. L. 88–272 substituted "subsection (a)" for "subsections (a) and (b)".

1960—Subsec. (c)(3). Pub. L. 86–779, §10(g), added par. (3).

Subsec. (d). Pub. L. 86–779, §3(a), added subsec. (d).

1958—Subsec. (a). Pub. L. 85–866, §57(b)(1), inserted "(other than a small business investment company operating under the Small Business Investment Act of 1958)".

Subsecs. (b), (c). Pub. L. 85–866, §57(b)(2), (3), added subsec. (b), redesignated former subsec. (b) as (c), and substituted "subsections (a) and (b)" for "subsection (a)".

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, §11814(c), Nov. 5, 1990, 104 Stat. 1388–557, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and section 1504 of this title] shall apply to taxable years beginning after December 31, 1990.

"(2) TREATMENT OF OLD ELECTIONS.—For purposes of section 243(b)(3) of the Internal Revenue Code of 1986 (as amended by subsection (a)), any reference to an election under such section shall be treated as including a reference to an election under section 243(b) of such Code (as in effect on the day before the date of the enactment of this Act [Nov. 5, 1990])."

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title X, §10221(e), Dec. 22, 1987, 101 Stat. 1330–409, as amended by Pub. L. 100–647, title II, §2004(i)(1), Nov. 10, 1988, 102 Stat. 3603, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 244 to 246A, 805, 854, and 861 of this title] shall apply to dividends received or accrued after December 31, 1987, in taxable years ending after such date.

"(2) AMENDMENTS RELATING TO LIMITATIONS.—The amendments made by subsection (c) [amending sections 246 and 805 of this title] shall apply to taxable years beginning after December 31, 1987."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 411(b)(2)(C)(iv) of Pub. L. 99–514 applicable, except as otherwise provided, to costs paid or incurred after Dec. 31, 1986, in taxable years ending after such date, see section 411(c) of Pub. L. 99–514 set out as a note under section 263 of this title.

Amendment by section 611(a)(1) of Pub. L. 99–514 applicable to dividends received or accrued after Dec. 31, 1986, in taxable years ending after such date, see section 611(b) of Pub. L. 99–514, set out as a note under section 246 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 232(c) of Pub. L. 97–34, set out as a note under section 535 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment by section 1031(b)(2) of Pub. L. 94–455, see section 1031(c) of Pub. L. 94–455, set out as a note set out under section 904 of this title.

For effective date of amendment by section 1051(f)(1), (2) of Pub. L. 94–455, see section 1051(i) of Pub. L. 94–455, set out as a note under section 27 of this title.

Amendment by section 1901(a)(34), (b)(1), (21) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

For effective date of amendment by section 1906(b)(3)(C)(ii) of Pub. L. 94–455, see section 1906(d) of Pub. L. 94–455, set out as a note under section 6013 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–12 applicable to taxable years beginning after Dec. 31, 1974, see section 305(c) of Pub. L. 94–12, set out as a note under section 535 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title V, §504(d), Dec. 30, 1969, 83 Stat. 633, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and sections 381, 615, 617, 703, and 1016 of this title] shall apply with respect to exploration expenditures paid or incurred after December 31, 1969.

"(2) PRESUMPTION OF ELECTION UNDER SECTION 617.—For purposes of section 617 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], an election under section 615(e) of such Code, which is effective with respect to exploration expenditures paid or incurred before January 1, 1970, shall be treated as an election under section 617(a) of such Code with respect to exploration expenditures paid or incurred after December 31, 1969. The preceding sentence shall not apply to any taxpayer who notifies the Secretary of the Treasury or his delegate (at such time and in such manner as the Secretary or his delegate prescribes by regulations) that he does not desire his election under section 615(e) to be so treated."

EFFECTIVE DATE OF 1968 AMENDMENT

Pub. L. 90–364, title I, §103(f), June 28, 1968, 82 Stat. 264, provided that: "Except as provided by section 104 [formerly set out as notes under sections 51 and 6154 of this title], the amendments made by this section [enacting section 6425, amending this section and sections 6020, 6154, 6651, 6655, 7203, and 7701, and repealing sections 6016 and 6074 of this title] shall apply with respect to taxable years beginning after December 31, 1967."

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88–272, title II, §214(c), Feb. 26, 1964, 78 Stat. 55, provided that: "The amendments made by subsections (a) [amending this section] and (b) [amending sections 244, 246, 804, and 809 of this title] shall apply with respect to dividends received in taxable years ending after December 31, 1963."

EFFECTIVE DATE OF 1960 AMENDMENT

Pub. L. 86–779, §3(c), Sept. 14, 1960, 74 Stat. 998, provided that: "The amendments made by subsections (a) and (b) [amending this section and section 861 of this title] shall apply to dividends received after December 31, 1959, in taxable years ending after such date."

Amendment by section 10(g) of Pub. L. 86–779 applicable with respect to taxable years of real estate investment trusts beginning after Dec. 31, 1960, see section 10(k) of Pub. L. 86–779, set out as an Effective Date note under section 856 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85–866, §57(d), Sept. 2, 1958, 72 Stat. 1646, provided that: "The amendments made by this section [enacting sections 1242 and 1243 and amending this section and sections 165 and 246 of this title] shall apply with respect to taxable years beginning after the date of the enactment of this Act [Sept. 2, 1958]."

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

§244. Dividends received on certain preferred stock

(a) General rule

In the case of a corporation, there shall be allowed as a deduction an amount computed as follows:

(1) First determine the amount received as dividends on the preferred stock of a public utility which is subject to taxation under this chapter and with respect to which the deduction provided in section 247 for dividends paid is allowable.

(2) Then multiply the amount determined under paragraph (1) by the fraction—

(A) the numerator of which is 14 percent, and

(B) the denominator of which is that percentage which equals the highest rate of tax specified in section 11(b).

(3) Finally ascertain the amount which is 70 percent of the excess of—

(A) the amount determined under paragraph (1), over

(B) the amount determined under paragraph (2).

(b) Exception

If the dividends described in subsection (a)(1) are qualifying dividends (as defined in section 243(b)(1), but determined without regard to section 243(d)(4))—

(1) subsection (a) shall be applied separately to such qualifying dividends, and

(2) for purposes of subsection (a)(3), the percentage applicable to such qualifying dividends shall be 100 percent in lieu of 70 percent.

(Aug. 16, 1954, ch. 736, 68A Stat. 73; Pub. L. 88–272, title II, §214(b)(1), Feb. 26, 1964, 78 Stat. 55; Pub. L. 95–600, title III, §301(b)(3), Nov. 6, 1978, 92 Stat. 2820; Pub. L. 99–514, title VI, §611(a)(2), Oct. 22, 1986, 100 Stat. 2249; Pub. L. 100–203, title X, §10221(a)(2), Dec. 22, 1987, 101 Stat. 1330–408; Pub. L. 100–647, title II, §2004(i)(2), Nov. 10, 1988, 102 Stat. 3603.)

AMENDMENTS

1988—Subsec. (b). Pub. L. 100–647 substituted "section 243(d)(4)" for "section 243(c)(4)".

1987—Subsecs. (a)(3), (b)(2). Pub. L. 100–203 substituted "70 percent" for "80 percent".

1986—Subsecs. (a)(3), (b)(2). Pub. L. 99–514 substituted "80 percent" for "85 percent".

1978—Subsec. (a)(2)(B). Pub. L. 95–600 substituted "the highest rate of tax specified in section 11(b)" for

"the sum of the normal tax rate and the surtax rate for the taxable year prescribed by section 11".

1964—Pub. L. 88–272 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to dividends received or accrued after Dec. 31, 1987, in taxable years ending after such date, see section 10221(e)(1) of Pub. L. 100–203, set out as a note under section 243 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to dividends received or accrued after Dec. 31, 1986, in taxable years ending after such date, see section 611(b) of Pub. L. 99–514, set out as a note under section 246 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95–600, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to dividends received in taxable years ending after Dec. 31, 1963, see section 214(c) of Pub. L. 88–272, set out as a note under section 243 of this title.

§245. Dividends received from certain foreign corporations

(a) Dividends from 10-percent owned foreign corporations

(1) In general

In the case of dividends received by a corporation from a qualified 10-percent owned foreign corporation, there shall be allowed as a deduction an amount equal to the percent (specified in section 243 for the taxable year) of the U.S.-source portion of such dividends.

(2) Qualified 10-percent owned foreign corporation

For purposes of this subsection, the term "qualified 10-percent owned foreign corporation" means any foreign corporation (other than a passive foreign investment company) if at least 10 percent of the stock of such corporation (by vote and value) is owned by the taxpayer.

(3) U.S.-source portion

For purposes of this subsection, the U.S.-source portion of any dividend is an amount which bears the same ratio to such dividend as—

(A) the post-1986 undistributed U.S. earnings, bears to

(B) the total post-1986 undistributed earnings.

(4) Post-1986 undistributed earnings

For purposes of this subsection, the term "post-1986 undistributed earnings" has the meaning given to such term by section 902(c)(1).

(5) Post-1986 undistributed U.S. earnings

For purposes of this subsection, the term "post-1986 undistributed U.S. earnings" means the portion of the post-1986 undistributed earnings which is attributable to—

(A) income of the qualified 10-percent owned foreign corporation which is effectively connected with the conduct of a trade or business within the United States and subject to tax under this chapter, or

(B) any dividend received (directly or through a wholly owned foreign corporation) from a

domestic corporation at least 80 percent of the stock of which (by vote and value) is owned (directly or through such wholly owned foreign corporation) by the qualified 10-percent owned foreign corporation.

(6) Special rule

If the 1st day on which the requirements of paragraph (2) are met with respect to any foreign corporation is in a taxable year of such corporation beginning after December 31, 1986, the post-1986 undistributed earnings and the post-1986 undistributed U.S. earnings of such corporation shall be determined by only taking into account periods beginning on and after the 1st day of the 1st taxable year in which such requirements are met.

(7) Coordination with subsection (b)

Earnings and profits of any qualified 10-percent owned foreign corporation for any taxable year shall not be taken into account under this subsection if the deduction provided by subsection (b) would be allowable with respect to dividends paid out of such earnings and profits.

(8) Disallowance of foreign tax credit

No credit shall be allowed under section 901 for any taxes paid or accrued (or treated as paid or accrued) with respect to the United States-source portion of any dividend received by a corporation from a qualified 10-percent-owned foreign corporation.

(9) Coordination with section 904

For purposes of section 904, the U.S.-source portion of any dividend received by a corporation from a qualified 10-percent owned foreign corporation shall be treated as from sources in the United States.

(10) Coordination with treaties

If—

(A) any portion of a dividend received by a corporation from a qualified 10-percent-owned foreign corporation would be treated as from sources in the United States under paragraph (9),

(B) under a treaty obligation of the United States (applied without regard to this subsection), such portion would be treated as arising from sources outside the United States, and

(C) the taxpayer chooses the benefits of this paragraph,

this subsection shall not apply to such dividend (but subsections (a), (b), and (c) of section 904 and sections 902, 907, and 960 shall be applied separately with respect to such portion of such dividend).

(11) Coordination with section 1248

For purposes of this subsection, the term "dividend" does not include any amount treated as a dividend under section 1248.

(b) Certain dividends received from wholly owned foreign subsidiaries

(1) In general

In the case of dividends described in paragraph (2) received from a foreign corporation by a domestic corporation which, for its taxable year in which such dividends are received, owns (directly or indirectly) all of the outstanding stock of such foreign corporation, there shall be allowed as a deduction (in lieu of the deduction provided by subsection (a)) an amount equal to 100 percent of such dividends.

(2) Eligible dividends

Paragraph (1) shall apply only to dividends which are paid out of the earnings and profits of a foreign corporation for a taxable year during which—

(A) all of its outstanding stock is owned (directly or indirectly) by the domestic corporation to which such dividends are paid; and

(B) all of its gross income from all sources is effectively connected with the conduct of a

trade or business within the United States.

(3) Exception

Paragraph (1) shall not apply to any dividends if an election under section 1562 is effective for either—

(A) the taxable year of the domestic corporation in which such dividends are received, or

(B) the taxable year of the foreign corporation out of the earnings and profits of which such dividends are paid.

(c) Certain dividends received from FSC

(1) In general

In the case of a domestic corporation, there shall be allowed as a deduction an amount equal to—

(A) 100 percent of any dividend received from another corporation which is distributed out of earnings and profits attributable to foreign trade income for a period during which such other corporation was a FSC, and

(B) 70 percent (80 percent in the case of dividends from a 20-percent owned corporation as defined in section 243(c)(2)) of any dividend received from another corporation which is distributed out of earnings and profits attributable to effectively connected income received or accrued by such other corporation while such other corporation was a FSC.

(2) Exception for certain dividends

Paragraph (1) shall not apply to any dividend which is distributed out of earnings and profits attributable to foreign trade income which—

(A) is section 923(a)(2) nonexempt income (within the meaning of section 927(d)(6)), or

(B) would not, but for section 923(a)(4), be treated as exempt foreign trade income.

(3) No deduction under subsection (a) or (b)

No deduction shall be allowable under subsection (a) or (b) with respect to any dividend which is distributed out of earnings and profits of a corporation accumulated while such corporation was a FSC.

(4) Definitions

For purposes of this subsection—

(A) Foreign trade income; exempt foreign trade income

The terms "foreign trade income" and "exempt foreign trade income" have the respective meanings given such terms by section 923.

(B) Effectively connected income

The term "effectively connected income" means any income which is effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States and is subject to tax under this chapter. Such term shall not include any foreign trade income.

(C) FSC

The term "FSC" has the meaning given such term by section 922.

(5) References to prior law

Any reference in this subsection to section 922, 923, or 927 shall be treated as a reference to such section as in effect before its repeal by the FSC Repeal and Extraterritorial Income Exclusion Act of 2000.

(Aug. 16, 1954, ch. 736, 68A Stat. 73; Pub. L. 87–834, §5(c), Oct. 16, 1962, 76 Stat. 977; Pub. L. 89–809, title I, §104(d), (e), Nov. 13, 1966, 80 Stat. 1558; Pub. L. 98–369, div. A, title VIII, §801(b)(1), (2)(B), July 18, 1984, 98 Stat. 994, 995; Pub. L. 99–514, title XII, §1226(a), title XVIII, §1876(d)(1), (j), Oct. 22, 1986, 100 Stat. 2559, 2898, 2900; Pub. L. 100–203, title X, §10221(d)(1), Dec. 22, 1987, 101 Stat. 1330–409; Pub. L. 100–647, title I, §§1006(e)(16), 1012(l)(2), (3),

(bb)(9)(A), Nov. 10, 1988, 102 Stat. 3403, 3513, 3537; Pub. L. 101–239, title VII, §7811(i)(14), Dec. 19, 1989, 103 Stat. 2411; Pub. L. 108–357, title IV, §413(c)(3), Oct. 22, 2004, 118 Stat. 1507; Pub. L. 110–172, §11(g)(3), (4), Dec. 29, 2007, 121 Stat. 2490.)

REFERENCES IN TEXT

Section 1562, referred to in subsec. (b)(3), was repealed by Pub. L. 91–172, title IV, §401(a)(2), Dec. 30, 1969, 83 Stat. 600.

The FSC Repeal and Extraterritorial Income Exclusion Act of 2000, referred to in subsec. (c)(5), is Pub. L. 106–519, Nov. 15, 2000, 114 Stat. 2423. For complete classification of this Act to the Code, see Short Title of 2000 Amendments note set out under section 1 of this title and Tables.

AMENDMENTS

2007—Subsec. (c)(4)(C). Pub. L. 110–172, §11(g)(3), added subpar. (C).

Subsec. (c)(5). Pub. L. 110–172, §11(g)(4), added par. (5).

2004—Subsec. (a)(2). Pub. L. 108–357 struck out "foreign personal holding company or" after "(other than a".

1989—Subsec. (a)(8). Pub. L. 101–239 made clarifying amendment to directory language of Pub. L. 100–647, §1012(l)(2)(A), see 1988 Amendment note below.

1988—Subsec. (a)(8). Pub. L. 100–647, §1012(l)(2)(A), as amended by Pub. L. 101–239, substituted "Disallowance of foreign tax credit" for "Coordination with section 902" in heading and amended text generally. Prior to amendment, text read as follows: "In the case of a dividend received by a corporation from a qualified 10-percent owned foreign corporation, no credit shall be allowed under section 901 for any taxes treated as paid under section 902 with respect to the U.S.-source portion of such dividend."

Subsec. (a)(10), (11). Pub. L. 100–647, §1012(l)(2)(B), (3), added pars. (10) and (11).

Subsec. (c). Pub. L. 100–647, §1012(bb)(9)(A), amended subsec. (c) generally, revising and restating provisions of pars. (1) to (4).

Subsec. (d). Pub. L. 100–647, §1006(e)(16), struck out subsec. (d) which read as follows: "PROPERTY DISTRIBUTIONS.—For purposes of this section, the amount of any distribution of property other than money shall be the amount determined by applying section 301(b)(1)(B)."

1987—Subsec. (c)(1)(B). Pub. L. 100–203 substituted "70 percent (80 percent in the case of dividends from a 20-percent owned corporation as defined in section 243(c)(2))" for "85 percent".

1986—Subsec. (a). Pub. L. 99–514, §1226(a), in amending subsec. (a) generally, substituted "Dividends from 10-percent owned foreign corporations" for "General rule" as heading, and in text substituted provisions set out in nine numbered paragraphs allowing for deduction for dividends received from certain foreign corporations qualifying as "10-percent owned foreign corporations" for former provisions which directed that, in the case of dividends received from a foreign corporation (other than a foreign personal holding company) which was subject to taxation under this chapter, if, for an uninterrupted period of not less than 36 months ending with the close of such foreign corporation's taxable year in which such dividends were paid (or, if the corporation had not been in existence for 36 months at the close of such taxable year, for the period the foreign corporation had been in existence as of the close of such taxable year) such foreign corporation had been engaged in trade or business within the United States and if 50 percent or more of the gross income of such corporation from all sources for such period was effectively connected with the conduct of a trade or business within the United States, there was allowed as a deduction in the case of a corporation a percentage of dividends received.

Subsec. (c)(1). Pub. L. 99–514, §1876(d)(1)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "In the case of a domestic corporation, there shall be allowed as a deduction an amount equal to 100 percent of any dividend received by such corporation from another corporation which is distributed out of earnings and profits attributable to foreign trade income for a period during which such other corporation was a FSC. The deduction allowable under the preceding sentence with respect to any dividend shall be in lieu of any deduction allowable under subsection (a) or (b) with respect to such dividend."

Subsec. (c)(3). Pub. L. 99–514, §1876(j), added par. (3). Former par. (3) redesignated (4).

Pub. L. 99–514, §1876(d)(1)(B), inserted "For purposes of this subsection, the term 'qualified interest and carrying charges' means any interest or carrying charges (as defined in section 927(d)(1)) derived from a transaction which results in foreign trade income."

Subsec. (c)(4). Pub. L. 99–514, §1876(j), redesignated former par. (3) as (4).

1984—Subsec. (c). Pub. L. 98–369 added subsec. (c), redesignated former subsec. (c) as (d), and substituted therein "this section" for "subsections (a) and (b)".

1966—Subsec. (a). Pub. L. 89–809, §104(d), (e)(2), substituted "and if 50 percent or more of the gross

income of such corporation from all sources for such period is effectively connected with the conduct of a trade or business within the United States" for "and has derived 50 percent or more of its gross income from sources within the United States" in provisions preceding par. (1), "which is effectively connected with the conduct of a trade or business within the United States" for "from sources within the United States" in par. (1), ", which is effectively connected with the conduct of a trade or business within the United States," for "from sources within the United States" in par. (2), and inserted provisions following par. (2).

Subsecs. (b), (c). Pub. L. 89–809, §104(e)(1), (3), added subsec. (b), redesignated former subsec. (b) as (c), and substituted therein "subsections (a) and (b)" for "subsection (a)".

1962—Subsec. (b). Pub. L. 87–834 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1012(bb)(9)(B), Nov. 10, 1988, 102 Stat. 3537, provided that: "The amendment made by subparagraph (A) [amending this section] shall apply as if included in the provision of the Tax Reform Act of 1984 [Pub. L. 98–369, div. A] to which it relates."

Amendment by sections 1006(e)(16) and 1012(l)(2), (3) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to dividends received or accrued after Dec. 31, 1987, in taxable years ending after such date, see section 10221(e)(1) of Pub. L. 100–203, set out as a note under section 243 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XII, §1226(c)(1), Oct. 22, 1986, 100 Stat. 2560, provided that: "The amendment made by subsection (a) [amending this section] shall apply to distributions out of earnings and profits for taxable years beginning after December 31, 1986."

Amendment by section 1876(d)(1), (j) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title VIII, §805(a), July 18, 1984, 98 Stat. 1000, as amended by Pub. L. 99–514, §2, title XVIII, §1876(i), (o), (p)(4), Oct. 22, 1986, 100 Stat. 2095, 2900–2902, provided that:

"(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this title [enacting sections 921 to 927 of this title, amending this section and sections 246, 274, 275, 441, 901, 904, 906, 934, 936, 951, 956, 992, 993, 995, 996, 999, 1248, 6011, 6072, 6501, 6686, and 7651 of this title, and enacting provisions set out as notes under sections 921 and 991 of this title] shall apply to transactions after December 31, 1984, in taxable years ending after such date.

"(2) SPECIAL RULE FOR CERTAIN CONTRACTS.—To the extent provided in regulations prescribed by the Secretary of the Treasury or his delegate, any event or activity required to occur or required to be performed, before January 1, 1985, by section 924(c) or (d) or 925(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall be treated as meeting the requirements of such section if such event or activity is with respect to—

"(A) any lease of more than 3 years duration which was entered into before January 1, 1985,

"(B) any contract with respect to which the taxpayer uses the completed contract method of accounting which was entered into before January 1, 1985, or

"(C) in the case of any contract other than a lease or contract described in subparagraph (A) or (B), any contract which was entered into before January 1, 1985; except that this subparagraph shall only apply to the first 3 taxable years of the FSC ending after January 1, 1985, or such later taxable years as the Secretary of the Treasury or his delegate may prescribe.

"(3) SECTION 801(d)(10).—The amendment made by section 801(d)(10) [amending section 996 of this title] shall apply to distributions on or after June 22, 1984.

"(4) SECTION 803.—The amendments made by section 803 [amending section 441 of this title] shall apply to taxable years beginning after December 31, 1984."

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable to distributions made after Dec. 31, 1962, see section 5(d) of Pub. L. 87–834, set out as a note under section 301 of this title.

DIVIDENDS RECEIVED OR ACCRUED DURING 1987

Pub. L. 100–647, title I, §1006(b)(1), Nov. 10, 1988, 102 Stat. 3393, provided that: "In the case of dividends received or accrued during 1987—

"(A) subparagraph (B) of section 245(c)(1) of the 1986 Code shall be applied by substituting '80 percent' for the percentage specified therein, and

"(B) subparagraph (B) of section 861(a)(2) of the 1986 Code shall be applied by substituting '100/80ths' for the fraction specified therein."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§246. Rules applying to deductions for dividends received

(a) Deduction not allowed for dividends from certain corporations

(1) In general

The deductions allowed by sections 243, 244, and 245 shall not apply to any dividend from a corporation which, for the taxable year of the corporation in which the distribution is made, or for the next preceding taxable year of the corporation, is a corporation exempt from tax under section 501 (relating to certain charitable, etc., organizations) or section 521 (relating to farmers' cooperative associations).

(2) Subsection not to apply to certain dividends of Federal Home Loan Banks

(A) Dividends out of current earnings and profits

In the case of any dividend paid by any FHLB out of earnings and profits of the FHLB for the taxable year in which such dividend was paid, paragraph (1) shall not apply to that portion of such dividend which bears the same ratio to the total dividend as—

(i) the dividends received by the FHLB from the FHLMC during such taxable year, bears to

(ii) the total earnings and profits of the FHLB for such taxable year.

(B) Dividends out of accumulated earnings and profits

In the case of any dividend which is paid out of any accumulated earnings and profits of any FHLB, paragraph (1) shall not apply to that portion of the dividend which bears the same ratio to the total dividend as—

(i) the amount of dividends received by such FHLB from the FHLMC which are out of

earnings and profits of the FHLMC—

(I) for taxable years ending after December 31, 1984, and

(II) which were not previously treated as distributed under subparagraph (A) or this subparagraph, bears to

(ii) the total accumulated earnings and profits of the FHLB as of the time such dividend is paid.

For purposes of clause (ii), the accumulated earnings and profits of the FHLB as of January 1, 1985, shall be treated as equal to its retained earnings as of such date.

(C) Coordination with section 243

To the extent that paragraph (1) does not apply to any dividend by reason of subparagraph (A) or (B) of this paragraph, the requirement contained in section 243(a) that the corporation paying the dividend be subject to taxation under this chapter shall not apply.

(D) Definitions

For purposes of this paragraph—

(i) FHLB

The term "FHLB" means any Federal Home Loan Bank.

(ii) FHLMC

The term "FHLMC" means the Federal Home Loan Mortgage Corporation.

(iii) Taxable year of FHLB

The taxable year of an FHLB shall, except as provided in regulations prescribed by the Secretary, be treated as the calendar year.

(iv) Earnings and profits

The earnings and profits of any FHLB for any taxable year shall be treated as equal to the sum of—

(I) any dividends received by the FHLB from the FHLMC during such taxable year, and

(II) the total earnings and profits (determined without regard to dividends described in subclause (I)) of the FHLB as reported in its annual financial statement prepared in accordance with section 20 of the Federal Home Loan Bank Act (12 U.S.C. 1440).

(b) Limitation on aggregate amount of deductions

(1) General rule

Except as provided in paragraph (2), the aggregate amount of the deductions allowed by sections 243(a)(1), 244(a), and subsection (a) or (b) of section 245 shall not exceed the percentage determined under paragraph (3) of the taxable income computed without regard to the deductions allowed by sections 172, 199, 243(a)(1), 244(a), subsection (a) or (b) of section 245, and 247, without regard to any adjustment under section 1059, and without regard to any capital loss carryback to the taxable year under section 1212(a)(1).

(2) Effect of net operating loss

Paragraph (1) shall not apply for any taxable year for which there is a net operating loss (as determined under section 172).

(3) Special rules

The provisions of paragraph (1) shall be applied—

(A) first separately with respect to dividends from 20-percent owned corporations (as defined in section 243(c)(2)) and the percentage determined under this paragraph shall be 80 percent, and

(B) then separately with respect to dividends not from 20-percent owned corporations and the percentage determined under this paragraph shall be 70 percent and the taxable income shall be

reduced by the aggregate amount of dividends from 20-percent owned corporations (as so defined).

(c) Exclusion of certain dividends

(1) In general

No deduction shall be allowed under section 243, 244, or 245, in respect of any dividend on any share of stock—

(A) which is held by the taxpayer for 45 days or less during the 91-day period beginning on the date which is 45 days before the date on which such share becomes ex-dividend with respect to such dividend, or

(B) to the extent that the taxpayer is under an obligation (whether pursuant to a short sale or otherwise) to make related payments with respect to positions in substantially similar or related property.

(2) 90-day rule in the case of certain preference dividends

In the case of stock having preference in dividends, if the taxpayer receives dividends with respect to such stock which are attributable to a period or periods aggregating in excess of 366 days, paragraph (1)(A) shall be applied—

(A) by substituting "90 days" for "45 days" each place it appears, and

(B) by substituting "181-day period" for "91-day period".

(3) Determination of holding periods

For purposes of this subsection, in determining the period for which the taxpayer has held any share of stock—

(A) the day of disposition, but not the day of acquisition, shall be taken into account, and

(B) paragraph (3) of section 1223 shall not apply.

(4) Holding period reduced for periods where risk of loss diminished

The holding periods determined for purposes of this subsection shall be appropriately reduced (in the manner provided in regulations prescribed by the Secretary) for any period (during such periods) in which—

(A) the taxpayer has an option to sell, is under a contractual obligation to sell, or has made (and not closed) a short sale of, substantially identical stock or securities,

(B) the taxpayer is the grantor of an option to buy substantially identical stock or securities, or

(C) under regulations prescribed by the Secretary, a taxpayer has diminished his risk of loss by holding 1 or more other positions with respect to substantially similar or related property.

The preceding sentence shall not apply in the case of any qualified covered call (as defined in section 1092(c)(4) but without regard to the requirement that gain or loss with respect to the option not be ordinary income or loss), other than a qualified covered call option to which section 1092(f) applies.

(d) Dividends from a DISC or former DISC

No deduction shall be allowed under section 243 in respect of a dividend from a corporation which is a DISC or former DISC (as defined in section 992(a)) to the extent such dividend is paid out of the corporation's accumulated DISC income or previously taxed income, or is a deemed distribution pursuant to section 995(b)(1).

(e) Certain distributions to satisfy requirements

No deduction shall be allowed under section 243(a) with respect to a dividend received pursuant to a distribution described in section 936(h)(4).

(Aug. 16, 1954, ch. 736, 68A Stat. 74; Pub. L. 85–866, title I, §§18(a), 57(c)(2), Sept. 2, 1958, 72 Stat. 1614, 1646; Pub. L. 88–272, title II, §214(b)(2), Feb. 26, 1964, 78 Stat. 55; Pub. L. 91–172, title IV, §434(b)(1), title V, §512(f)(3), Dec. 30, 1969, 83 Stat. 625, 641; Pub. L. 92–178, title V, §502(a),

Dec. 10, 1971, 85 Stat. 549; Pub. L. 94–455, title X, §1051(f)(3), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1646, 1834; Pub. L. 97–248, title II, §213(c), Sept. 3, 1982, 96 Stat. 465; Pub. L. 98–369, div. A, title I, §§53(b), (d)(2), 177(b), title VIII, §801(b)(2)(A), July 18, 1984, 98 Stat. 567, 568, 709, 995; Pub. L. 99–514, title VI, §611(a)(3), title XII, §1275(a)(2)(B), title XVIII, §§1804(b)(1)(A), (B), 1812(d)(1), Oct. 22, 1986, 100 Stat. 2249, 2598, 2798, 2835; Pub. L. 100–203, title X, §10221(c)(1), Dec. 22, 1987, 101 Stat. 1330–409; Pub. L. 100–647, title I, §1018(u)(10), Nov. 10, 1988, 102 Stat. 3590; Pub. L. 104–188, title I, §1616(b)(4), Aug. 20, 1996, 110 Stat. 1856; Pub. L. 105–34, title X, §1015(a), (b), Aug. 5, 1997, 111 Stat. 921, 922; Pub. L. 108–311, title IV, §406(f), Oct. 4, 2004, 118 Stat. 1190; Pub. L. 108–357, title I, §102(d)(4), title VIII, §888(d), Oct. 22, 2004, 118 Stat. 1429, 1643; Pub. L. 109–135, title IV, §402(a)(4), Dec. 21, 2005, 119 Stat. 2610.)

AMENDMENTS

2005—Subsec. (c)(3)(B). Pub. L. 109–135 substituted "paragraph (3) of section 1223" for "paragraph (4) of section 1223".

2004—Subsec. (b)(1). Pub. L. 108–357, §102(d)(4), inserted "199," after "172,".

Subsec. (c)(1)(A). Pub. L. 108–311, §406(f)(1), substituted "91-day period" for "90-day period".

Subsec. (c)(2)(B). Pub. L. 108–311, §406(f)(2), substituted "181-day period" for "180-day period" and "91-day period" for "90-day period".

Subsec. (c)(4). Pub. L. 108–357, §888(d), inserted ", other than a qualified covered call option to which section 1092(f) applies" before period at end of concluding provisions.

1997—Subsec. (c)(1)(A). Pub. L. 105–34, §1015(a), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "which is held by the taxpayer for 45 days or less, or".

Subsec. (c)(2). Pub. L. 105–34, §1015(b)(1), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: "In the case of any stock having preference in dividends, the holding period specified in paragraph (1)(A) shall be 90 days in lieu of 45 days if the taxpayer receives dividends with respect to such stock which are attributable to a period or periods aggregating in excess of 366 days."

Subsec. (c)(3). Pub. L. 105–34, §1015(b)(2), inserted "and" at end of subpar. (A), redesignated subpar. (C) as (B), and struck out former subpar. (B) which read as follows: "there shall not be taken into account any day which is more than 45 days (or 90 days in the case of stock to which paragraph (2) applies) after the date on which such share becomes ex-dividend, and".

1996—Subsec. (f). Pub. L. 104–188 struck out subsec. (f) which provided a cross reference to section 596 of this title for special rule relating to mutual savings banks, etc., to which section 593 applies.

1988—Subsec. (c)(1)(A). Pub. L. 100–647 substituted "which" for "Which".

1987—Subsec. (b)(1). Pub. L. 100–203, §10221(c)(1)(A), substituted "the percentage determined under paragraph (3)" for "80 percent".

Subsec. (b)(3). Pub. L. 100–203, §10221(c)(1)(B), added par. (3).

1986—Subsec. (a)(2)(B). Pub. L. 99–514, §1812(d)(1)(A), substituted "In" for "For purposes of subparagraph (A), in" in introductory provisions and substituted cl. (i)(II) for former cl. (i)(II) which read as follows: "which were not taken into account under subparagraph (A), bears to".

Subsec. (a)(2)(C), (D). Pub. L. 99–514, §1812(d)(1)(B), (C), added subpar. (C), redesignated former subpar. (C) as (D), and added cl. (iv) to subpar. (D).

Subsec. (b)(1). Pub. L. 99–514, §611(a)(3), substituted "80 percent" for "85 percent".

Subsec. (c)(1)(A). Pub. L. 99–514, §1804(b)(1)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "which is sold or otherwise disposed of in any case in which the taxpayer has held such share for 45 days or less, or".

Subsec. (c)(4). Pub. L. 99–514, §1804(b)(1)(B), substituted "determined for purposes of this subsection" for "determined under paragraph (3)".

Subsec. (e). Pub. L. 99–514, §1275(a)(2)(B), struck out "or 934(e)(3)" after "936(h)(4)".

1984—Subsec. (a). Pub. L. 98–369, §177(b), amended subsec. (a) generally, designating existing provisions as par. (1) and adding par. (2).

Subsec. (b)(1). Pub. L. 98–369, §801(b)(2)(A), substituted "subsection (a) or (b) of section 245" for "245" in two places.

Pub. L. 98–369, §53(d)(2), substituted "without regard to any adjustment under section 1059, and without regard" for "and without regard".

Subsec. (c)(1)(A). Pub. L. 98–369, §53(b)(1), substituted "45" for "15".

Subsec. (c)(1)(B). Pub. L. 98–369, §53(b)(3), substituted "to make related payments with respect to

positions in substantially similar or related property" for "to make corresponding payments with respect to substantially identical stock or securities".

Subsec. (c)(2). Pub. L. 98–369, §53(b)(1), substituted "45" for "15".

Subsec. (c)(3). Pub. L. 98–369, §53(b)(4), struck out last sentence which directed that the holding periods determined under the preceding provisions of this paragraph be appropriately reduced (in the manner provided in regulations prescribed by the Secretary) for any period (during such holding periods) in which the taxpayer had an option to sell, was under a contractual obligation to sell, or had made (and not closed) a short sale of, substantially identical stock or securities.

Subsec. (c)(3)(B). Pub. L. 98–369, §53(b)(1), substituted "45" for "15".

Subsec. (c)(4). Pub. L. 98–369, §53(b)(2), added par. (4).

1982—Subsecs. (e), (f). Pub. L. 97–248 added subsec. (e) and redesignated former subsec. (e) as (f).

1976—Subsec. (a). Pub. L. 94–455, §1051(f)(3), struck out references to dividends from corporations organized under the China Trade Act, 1922, and corporations to which section 931 (relating to income from sources within possessions of the United States) applies.

Subsec. (c)(3). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

1971—Subsecs. (d), (e). Pub. L. 92–178 added subsec. (d) and redesignated former subsec. (d) as (e).

1969—Subsec. (b)(1). Pub. L. 91–172, §512(f)(3), substituted "and 247, and without regard to any capital loss carryback to the taxable year under section 1212(a)(1)" for "and 247".

Subsec. (d). Pub. L. 91–172, §434(b)(1), added subsec. (d).

1964—Subsec. (b). Pub. L. 88–272 substituted "243(a)(1), 244(a)" for "243(a), 244" wherever appearing.

1958—Subsec. (b)(1). Pub. L. 85–866, §57(c)(2), substituted "243(a)" for "243" wherever appearing.

Subsec. (c). Pub. L. 85–866, §18(a), added subsec. (c).

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109–58, to which it relates, but not applicable with respect to any transaction ordered in compliance with the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.) before its repeal, see section 402(m) of Pub. L. 109–135, set out as an Effective and Termination Dates of 2005 Amendments note under section 23 of this title.

EFFECTIVE DATE OF 2004 AMENDMENTS

Amendment by section 102(d)(4) of Pub. L. 108–357 applicable to taxable years beginning after Dec. 31, 2004, see section 102(e) of Pub. L. 108–357, set out as a note under section 56 of this title.

Pub. L. 108–357, title VIII, §888(e), Oct. 22, 2004, 118 Stat. 1643, provided that: "The amendments made by this section [amending this section and sections 1092 and 1258 of this title] shall apply to positions established on or after the date of the enactment of this Act [Oct. 22, 2004]."

Amendment by Pub. L. 108–311 effective as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 406(h) of Pub. L. 108–311, set out as a note under section 55 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title X, §1015(c), Aug. 5, 1997, 111 Stat. 922, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to dividends received or accrued after the 30th day after the date of the enactment of this Act [Aug. 5, 1997].

"(2) TRANSITIONAL RULE.—The amendments made by this section shall not apply to dividends received or accrued during the 2-year period beginning on the date of the enactment of this Act if—

"(A) the dividend is paid with respect to stock held by the taxpayer on June 8, 1997, and all times thereafter until the dividend is received,

"(B) such stock is continuously subject to a position described in section 246(c)(4) of the Internal Revenue Code of 1986 on June 8, 1997, and all times thereafter until the dividend is received, and

"(C) such stock and position are clearly identified in the taxpayer's records within 30 days after the date of the enactment of this Act.

Stock shall not be treated as meeting the requirement of subparagraph (B) if the position is sold, closed, or otherwise terminated and reestablished."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1995, see section 1616(c) of Pub. L. 104–188, set out as a note under section 593 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to taxable years beginning after Dec. 31, 1987, see section 10221(e)(2) of Pub. L. 100–203, as amended, set out as a note under section 243 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title VI, §611(b), Oct. 22, 1986, 100 Stat. 2249, provided that:

"(1) IN GENERAL.—The amendments made by subsection (a) [amending this section and sections 243, 244, 246A, and 805 of this title] shall apply to dividends received or accrued after December 31, 1986, in taxable years ending after such date.

"(2) AMENDMENT RELATING TO LIMITATION ON DEDUCTIONS.—The amendment made by subsection (a) to section 246(b) of the Internal Revenue Code of 1986 shall apply to taxable years beginning after December 31, 1986."

Amendment by section 1275(a)(2)(B) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99–514, set out as a note under section 931 of this title.

Pub. L. 99–514, title XVIII, §1804(b)(1)(C), Oct. 22, 1986, 100 Stat. 2798, provided that: "The amendments made by this paragraph [amending this section] shall apply to stock acquired after March 1, 1986."

Amendment by section 1812(d)(1) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 53(d)(2) of Pub. L. 98–369 applicable to distributions after Mar. 1, 1984, in taxable years ending after such date, and amendment of subsec. (c) of this section by section 53(b) of Pub. L. 98–369, applicable to stock acquired after July 18, 1984, in taxable years ending after such date, see section 53(e)(1), (2) of Pub. L. 98–369, set out as an Effective Date note under section 1059 of this title.

Amendment by section 177(b) of Pub. L. 98–369, effective Jan. 1, 1985, see section 177(d) of Pub. L. 98–369, set out as a note under section 172 of this title.

Amendment by section 801(b)(2)(A) of Pub. L. 98–369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to taxable years beginning after Dec. 31, 1982, see section 213(e)(1) of Pub. L. 97–248, set out as a note under section 936 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment by section 1051(f)(3) of Pub. L. 94–455, see section 1051(i) of Pub. L. 94–455, set out as a note under section 27 of this title.

Amendment by section 1906(b)(13)(A) of Pub. L. 94–455 effective Feb. 1, 1977, see section 1906(d)(1) of Pub. L. 94–455, set out as a note under section 6013 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–178 applicable with respect to taxable years ending after Dec. 31, 1971, except that a corporation may not be a DISC for any taxable year beginning before Jan. 1, 1972, see section 507 of Pub. L. 92–178, set out as an Effective Date note under section 991 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 512(f)(3) of Pub. L. 91–172 applicable with respect to net capital losses sustained in taxable years beginning after Dec. 31, 1969, see section 512(g) of Pub. L. 91–172, set out as a note under section 1212 of this title.

Pub. L. 91–172, title IV, §434(c), Dec. 30, 1969, 83 Stat. 625, provided that: "The amendments made by this section [enacting section 596 of this title and amending this section] shall apply to taxable years beginning

after July 11, 1969."

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to dividends received in taxable years ending after Dec. 31, 1963, see section 214(c) of Pub. L. 88–272, set out as a note under section 243 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85–866, title I, §18(b), Sept. 2, 1958, 72 Stat. 1615, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years ending after December 31, 1957, but only with respect to shares of stock acquired or short sales made after December 31, 1957."

Amendment by section 57(c)(2) of Pub. L. 85–866 applicable with respect to taxable years beginning after Sept. 2, 1958, see section 57(d) of Pub. L. 85–866, set out as a note under section 243 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§246A. Dividends received deduction reduced where portfolio stock is debt financed

(a) General rule

In the case of any dividend on debt-financed portfolio stock, there shall be substituted for the percentage which (but for this subsection) would be used in determining the amount of the deduction allowable under section 243, 244, or 245(a) a percentage equal to the product of—

(1) 70 percent (80 percent in the case of any dividend from a 20-percent owned corporation as defined in section 243(c)(2)), and

(2) 100 percent minus the average indebtedness percentage.

(b) Section not to apply to dividends for which 100 percent dividends received deduction allowable

Subsection (a) shall not apply to—

(1) qualifying dividends (as defined in section 243(b) without regard to section 243(d)(4)), and

(2) dividends received by a small business investment company operating under the Small Business Investment Act of 1958.

(c) Debt financed portfolio stock

For purposes of this section—

(1) In general

The term "debt financed portfolio stock" means any portfolio stock if at some time during the base period there is portfolio indebtedness with respect to such stock.

(2) Portfolio stock

The term "portfolio stock" means any stock of a corporation unless—

(A) as of the beginning of the ex-dividend date, the taxpayer owns stock of such corporation—

(i) possessing at least 50 percent of the total voting power of the stock of such corporation, and

(ii) having a value equal to at least 50 percent of the total value of the stock of such corporation, or

(B) as of the beginning of the ex-dividend date—

(i) the taxpayer owns stock of such corporation which would meet the requirements of subparagraph (A) if "20 percent" were substituted for "50 percent" each place it appears in

such subparagraph, and

(ii) stock meeting the requirements of subparagraph (A) is owned by 5 or fewer corporate shareholders.

(3) Special rule for stock in a bank or bank holding company

(A) In general

If, as of the beginning of the ex-dividend date, the taxpayer owns stock of any bank or bank holding company having a value equal to at least 80 percent of the total value of the stock of such bank or bank holding company, for purposes of paragraph (2)(A)(i), the taxpayer shall be treated as owning any stock of such bank or bank holding company which the taxpayer has an option to acquire.

(B) Definitions

For purposes of subparagraph (A)—

(i) Bank

The term "bank" has the meaning given such term by section 581.

(ii) Bank holding company

The term "bank holding company" means a bank holding company (within the meaning of section 2(a) of the Bank Holding Company Act of 1956).

(4) Treatment of certain preferred stock

For purposes of determining whether the requirements of subparagraph (A) or (B) of paragraph (2) or of subparagraph (A) of paragraph (3) are met, stock described in section 1504(a)(4) shall not be taken into account.

(d) Average indebtedness percentage

For purposes of this section—

(1) In general

Except as provided in paragraph (2), the term "average indebtedness percentage" means the percentage obtained by dividing—

(A) the average amount (determined under regulations prescribed by the Secretary) of the portfolio indebtedness with respect to the stock during the base period, by

(B) the average amount (determined under regulations prescribed by the Secretary) of the adjusted basis of the stock during the base period.

(2) Special rule where stock not held throughout base period

In the case of any stock which was not held by the taxpayer throughout the base period, paragraph (1) shall be applied as if the base period consisted only of that portion of the base period during which the stock was held by the taxpayer.

(3) Portfolio indebtedness

(A) In general

The term "portfolio indebtedness" means any indebtedness directly attributable to investment in the portfolio stock.

(B) Certain amounts received from short sale treated as indebtedness

For purposes of subparagraph (A), any amount received from a short sale shall be treated as indebtedness for the period beginning on the day on which such amount is received and ending on the day the short sale is closed.

(4) Base period

The term "base period" means, with respect to any dividend, the shorter of—

(A) the period beginning on the ex-dividend date for the most recent previous dividend on the stock and ending on the day before the ex-dividend date for the dividend involved, or

(B) the 1-year period ending on the day before the ex-dividend date for the dividend involved.

(e) Reduction in dividends received deduction not to exceed allocable interest

Under regulations prescribed by the Secretary, any reduction under this section in the amount allowable as a deduction under section 243, 244, or 245 with respect to any dividend shall not exceed the amount of any interest deduction (including any deductible short sale expense) allocable to such dividend.

(f) Regulations

The regulations prescribed for purposes of this section under section 7701(f) shall include regulations providing for the disallowance of interest deductions or other appropriate treatment (in lieu of reducing the dividend received deduction) where the obligor of the indebtedness is a person other than the person receiving the dividend.

(Added Pub. L. 98–369, div. A, title I, §51(a), July 18, 1984, 98 Stat. 562; amended Pub. L. 99–514, title VI, §611(a)(4), title XVIII, §1804(a), Oct. 22, 1986, 100 Stat. 2249, 2798; Pub. L. 100–203, title X, §10221(d)(2), Dec. 22, 1987, 101 Stat. 1330–409; Pub. L. 100–647, title I, §1012(l)(1), Nov. 10, 1988, 102 Stat. 3513; Pub. L. 108–311, title IV, §408(a)(9), Oct. 4, 2004, 118 Stat. 1191.)

REFERENCES IN TEXT

The Small Business Investment Act of 1958, referred to in subsec. (b)(2), is Pub. L. 85–699, Aug. 21, 1958, 72 Stat. 689, as amended, which is classified principally to chapter 14B (§661 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 661 of Title 15 and Tables.

Section 2(a) of the Bank Holding Company Act of 1956, referred to in subsec. (c)(3)(B)(ii), is classified to section 1841(a) of Title 12, Banks and Banking.

AMENDMENTS

2004—Subsec. (b)(1). Pub. L. 108–311 substituted "section 243(d)(4)" for "section 243(c)(4)".

1988—Subsec. (a). Pub. L. 100–647 struck out at end "The preceding sentence shall be applied before any determination of a ratio under paragraph (1) or (2) of section 245(a)."

1987—Subsec. (a)(1). Pub. L. 100–203 substituted "70 percent (80 percent in the case of any dividend from a 20-percent owned corporation as defined in section 243(c)(2))" for "80 percent".

1986—Subsec. (a). Pub. L. 99–514, §1804(a), substituted "or 245(a)" for "or 245" and inserted "The preceding sentence shall be applied before any determination of a ratio under paragraph (1) or (2) of section 245(a)."

Subsec. (a)(1). Pub. L. 99–514, §611(a)(4), substituted "80 percent" for "85 percent".

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to dividends received or accrued after Dec. 31, 1987, in taxable years ending after such date, see section 10221(e)(1) of Pub. L. 100–203, set out as a note under section 243 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 611(a)(4) of Pub. L. 99–514 applicable to dividends received or accrued after Dec. 31, 1986, in taxable years ending after such date, see section 611(b) of Pub. L. 99–514, set out as a note under section 246 of this title.

Amendment by section 1804(a) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Pub. L. 98–369, div. A, title I, §51(c), July 18, 1984, 98 Stat. 564, provided that: "The amendments made

by this section [enacting this section] shall apply with respect to stock the holding period for which begins after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§247. Dividends paid on certain preferred stock of public utilities

(a) Amount of deduction

In the case of a public utility, there shall be allowed as a deduction an amount computed as follows:

(1) First determine the amount which is the lesser of—

(A) the amount of dividends paid during the taxable year on its preferred stock, or

(B) the taxable income for the taxable year (computed without the deduction allowed by this section).

(2) Then multiply the amount determined under paragraph (1) by the fraction—

(A) the numerator of which is 14 percent, and

(B) the denominator of which is that percentage which equals the highest rate of tax specified in section 11(b).

For purposes of the deduction provided in this section, the amount of dividends paid shall not include any amount distributed in the current taxable year with respect to dividends unpaid and accumulated in any taxable year ending before October 1, 1942. Amounts distributed in the current taxable year with respect to dividends unpaid and accumulated for a prior taxable year shall for purposes of this subsection be deemed to be distributed with respect to the earliest year or years for which there are dividends unpaid and accumulated.

(b) Definitions

For purposes of this section and section 244—

(1) Public utility

The term "public utility" means a corporation engaged in the furnishing of telephone service or in the sale of electrical energy, gas, or water, if the rates for such furnishing or sale, as the case may be, have been established or approved by a State or political subdivision thereof or by an agency or instrumentality of the United States or by a public utility or public service commission or other similar body of the District of Columbia or of any State or political subdivision thereof.

(2) Preferred stock

(A) In general

The term "preferred stock" means stock issued before October 1, 1942, which during the whole of the taxable year (or the part of the taxable year after its issue) was stock the dividends in respect of which were cumulative, limited to the same amount, and payable in preference to the payment of dividends on other stock.

(B) Certain stock issued on or after October 1, 1942

Stock issued on or after October 1, 1942, shall be deemed for purposes of this paragraph to have been issued before October 1, 1942, if it was issued to refund or replace bonds or debentures issued before October 1, 1942, or to refund or replace other preferred stock (including stock which is preferred stock by reason of this subparagraph or subparagraph (D)), but only to the extent that the par or stated value of the new stock does not exceed the par,

stated, or face value of the bonds or debentures issued before October 1, 1942, or the other preferred stock, which such new stock is issued to refund or replace.

(C) Determination under regulations

The determination of whether stock was issued to refund or replace bonds or debentures issued before October 1, 1942, or to refund or replace other preferred stock, shall be made under regulations prescribed by the Secretary.

(D) Issuance of stock

For purposes of subparagraph (B), issuance of stock includes issuance either by the same or another corporation in a transaction which is a reorganization (as defined in section 368(a)) or a transaction subject to part VI of subchapter O as in effect before its repeal (relating to exchanges in SEC obedience orders), or the respectively corresponding provisions of the Internal Revenue Code of 1939.

(Aug. 16, 1954, ch. 736, 68A Stat. 75; Pub. L. 94–455, title XIX, §1901(a)(35), Oct. 4, 1976, 90 Stat. 1770; Pub. L. 95–600, title III, §301(b)(4), Nov. 6, 1978, 92 Stat. 2820; Pub. L. 101–508, title XI, §11801(c)(8)(C), Nov. 5, 1990, 104 Stat. 1388–524; Pub. L. 104–188, title I, §1704(t)(49), Aug. 20, 1996, 110 Stat. 1890; Pub. L. 109–135, title IV, §402(a)(5), Dec. 21, 2005, 119 Stat. 2610.)

REFERENCES IN TEXT

The Internal Revenue Code of 1939, referred to in subsec. (b)(2)(D), is act Feb. 10, 1939, ch. 2, 53 Stat. 1, as amended. Prior to the enactment of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the 1939 Code was classified to former Title 26, Internal Revenue Code. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of this title.

AMENDMENTS

2005—Subsec. (b)(2)(D). Pub. L. 109–135 inserted "as in effect before its repeal" after "part VI of subchapter O".

1996—Subsec. (b)(2)(D). Pub. L. 104–188 provided that section 11801(c)(8)(C) of Pub. L. 101–508 shall be applied as if "reorganizations" appeared instead of "reorganization" in the material proposed to be stricken. See 1990 Amendment note below.

1990—Subsec. (b)(2)(D). Pub. L. 101–508 which directed that ", a transaction to which section 371 (relating to insolvency reorganization) applies," be struck out was executed by striking out ", a transaction to which section 371 (relating to insolvency reorganizations) applies," after "(as defined in section 368(a))". See 1996 Amendment note above.

1978—Subsec. (a)(2)(B). Pub. L. 95–600 substituted "the highest rate of tax specified in section 11(b)" for "the sum of the normal tax rate and the surtax rate for the taxable year specified in section 11".

1976—Subsec. (b)(2). Pub. L. 94–455 divided existing provisions into subpars. (A), (B), (C), and (D), added headings for subpars. (A), (B), (C), and (D), and, in subpar. (C) as so redesignated, substituted "prescribed by the Secretary" for "prescribed by the Secretary or his delegate".

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109–58, to which it relates, but not applicable with respect to any transaction ordered in compliance with the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.) before its repeal, see section 402(m) of Pub. L. 109–135, set out as an Effective and Termination Dates of 2005 Amendments note under section 23 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95–600, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain

transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

§248. Organizational expenditures

(a) Election to deduct

If a corporation elects the application of this subsection (in accordance with regulations prescribed by the Secretary) with respect to any organizational expenditures—

(1) the corporation shall be allowed a deduction for the taxable year in which the corporation begins business in an amount equal to the lesser of—

(A) the amount of organizational expenditures with respect to the taxpayer, or

(B) $5,000, reduced (but not below zero) by the amount by which such organizational expenditures exceed $50,000, and

(2) the remainder of such organizational expenditures shall be allowed as a deduction ratably over the 180-month period beginning with the month in which the corporation begins business.

(b) Organizational expenditures defined

The term "organizational expenditures" means any expenditure which—

(1) is incident to the creation of the corporation;

(2) is chargeable to capital account; and

(3) is of a character which, if expended incident to the creation of a corporation having a limited life, would be amortizable over such life.

(c) Time for and scope of election

The election provided by subsection (a) may be made for any taxable year beginning after December 31, 1953, but only if made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof). The period so elected shall be adhered to in computing the taxable income of the corporation for the taxable year for which the election is made and all subsequent taxable years. The election shall apply only with respect to expenditures paid or incurred on or after August 16, 1954.

(Aug. 16, 1954, ch. 736, 68A Stat. 76; Pub. L. 94–455, title XIX, §§1901(a)(36), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1770, 1834; Pub. L. 108–357, title VIII, §902(b), Oct. 22, 2004, 118 Stat. 1651.)

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–357 amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: "The organizational expenditures of a corporation may, at the election of the corporation (made in accordance with regulations prescribed by the Secretary, be treated as deferred expenses. In computing taxable income, such deferred expenses shall be allowed as a deduction ratably over such period of not less than 60 months as may be selected by the corporation (beginning with the month in which the corporation begins business)."

1976—Subsec. (a). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (c). Pub. L. 94–455, §1901(a)(36), substituted "August 16, 1954" for "the date of enactment of this title".

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to amounts paid or incurred after Oct. 22, 2004, see section 902(d) of Pub. L. 108–357, set out as a note under section 195 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(36) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by section 1906(b)(13)(A) of Pub. L. 94–455 effective Feb. 1, 1977, see section 1906(d)(1) of

Pub. L. 94–455, set out as a note under section 6013 of this title.

§249. Limitation on deduction of bond premium on repurchase

(a) General rule

No deduction shall be allowed to the issuing corporation for any premium paid or incurred upon the repurchase of a bond, debenture, note, or certificate or other evidence of indebtedness which is convertible into the stock of the issuing corporation, or a corporation in the same parent-subsidiary controlled group (within the meaning of section 1563(a)(1) [1] as the issuing corporation, to the extent the repurchase price exceeds an amount equal to the adjusted issue price plus a normal call premium on bonds or other evidences of indebtedness which are not convertible. The preceding sentence shall not apply to the extent that the corporation can demonstrate to the satisfaction of the Secretary that such excess is attributable to the cost of borrowing and is not attributable to the conversion feature.

(b) Adjusted issue price

For purposes of subsection (a), the adjusted issue price is the issue price (as defined in sections 1273(b) and 1274) increased by any amount of discount deducted before repurchase, or, in the case of bonds or other evidences of indebtedness issued after February 28, 1913, decreased by any amount of premium included in gross income before repurchase by the issuing corporation.

(Added Pub. L. 91–172, title IV, §414(a), Dec. 30, 1969, 83 Stat. 612; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–369, div. A, title I, §42(a)(5), July 18, 1984, 98 Stat. 557; Pub. L. 112–95, title XI, §1108(a), (b), Feb. 14, 2012, 126 Stat. 154.)

AMENDMENTS

2012—Subsec. (a). Pub. L. 112–95, §1108(a), substituted ", or a corporation in the same parent-subsidiary controlled group (within the meaning of section 1563(a)(1) as" for ", or a corporation in control of, or controlled by,".

Subsec. (b). Pub. L. 112–95, §1108(b), substituted "Adjusted issue price" for "Special rules" in heading and "For purposes of subsection (a)," for "For purposes of subsection (a)—" and par. (1) designation and heading, and "the adjusted issue price" for "The adjusted issue price", and struck out par. (2), which defined "control" as having the meaning assigned to such term by section 368(c).

1984—Subsec. (b)(1). Pub. L. 98–369 substituted "sections 1273(b) and 1274" for "section 1232(b)".

1976—Subsec. (a). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 2012 AMENDMENT

Pub. L. 112–95, title XI, §1108(c), Feb. 14, 2012, 126 Stat. 154, provided that: "The amendments made by this section [amending this section] shall apply to repurchases after the date of the enactment of this Act [Feb. 14, 2012]."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98–369, set out as an Effective Date note under section 1271 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective Feb. 1, 1977, see section 1906(d)(1) of Pub. L. 94–455, set out as a note under section 6013 of this title.

EFFECTIVE DATE

Pub. L. 91–172, title IV, §414(c), Dec. 30, 1969, 83 Stat. 613, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by this section [enacting this section] shall apply to a convertible bond or other convertible evidence of indebtedness repurchased after April 22, 1969, other than such a bond or other evidence of indebtedness repurchased pursuant to a binding obligation incurred on or before April 22, 1969, to repurchase such bond or other evidence of indebtedness at a specified call premium, but no inference shall be drawn from the fact that section 249 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a) of this section) does not apply to the repurchase of such convertible bond or other convertible evidence of indebtedness."

[1] *So in original. Probably should be followed by a closing parenthesis.*

[§250. Repealed. Pub. L. 101–508, title XI, §11801(a)(15), Nov. 5, 1990, 104 Stat. 1388–520]

Section, added Pub. L. 91–518, title IX, §901(a), Oct. 30, 1970, 84 Stat. 1341; amended Pub. L. 93–496, §12, Oct. 28, 1974, 88 Stat. 1531; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–473, §2(a)(2)(C), Oct. 17, 1978, 92 Stat. 1464; Pub. L. 96–454, §3(b)(1), Oct. 15, 1980, 94 Stat. 2012; Pub. L. 97–261, §6(d)(3), Sept. 20, 1982, 96 Stat. 1107; Pub. L. 99–521, §4(3), Oct. 22, 1986, 100 Stat. 2993, related to certain payments to National Railroad Passenger Corporation.

SAVINGS PROVISION

For provisions that nothing in repeal by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

PART IX—ITEMS NOT DEDUCTIBLE

Sec.

261. General rule for disallowance of deductions.
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AMENDMENTS

1996—Pub. L. 104–188, title I, §1704(t)(55), Aug. 20, 1996, 110 Stat. 1890, provided that section 11813(b)(13)(F) of Pub. L. 101–508 shall be applied as if "tax" appeared after "investment" in the material proposed to be stricken. See 1990 Amendment note below.

1990—Pub. L. 101–508, title XI, §11813(b)(13)(F), Nov. 5, 1990, 104 Stat. 1388–555, which directed the striking out of "investment credit and" in item 280F, was executed by striking out "investment tax credit and" after "Limitation on". See 1996 Amendment note above.

1988—Pub. L. 100–418, title I, §1941(b)(4)(B), Aug. 23, 1988, 102 Stat. 1324, struck out item 280D "Portion of chapter 45 taxes for which credit or refund is allowable under section 6429".

1987—Pub. L. 100–203, title X, §10206(c)(2), Dec. 22, 1987, 101 Stat. 1330–402, added item 280H.

1986—Pub. L. 99–514, title VIII, §803(c)(1), (3), Oct. 22, 1986, 100 Stat. 2356, added item 263A and struck out items 278 "Capital expenditures incurred in planting and developing citrus and almond groves" and 280 "Certain expenditures incurred in production of films, books, records, or similar property".

1984—Pub. L. 98–369, div. A, title I, §§67(d)(1), 136(b), 179(c), title X, §1063(b)(2), July 18, 1984, 98 Stat. 587, 670, 718, 1047, added items 269B, 280F, and 280G, and struck out "certain historic" before "structures" in item 280B.

1983—Pub. L. 97–414, §4(b)(2)(B), Jan. 4, 1983, 96 Stat. 2056, substituted "Certain expenses for which credits are allowable" for "Portion of wages for which credit is claimed under section 44B" in item 280C.

1982—Pub. L. 97–248, title II, §250(b), title III, §351(b), Sept. 3, 1982, 96 Stat. 528, 640, added items 269A and 280E.

1980—Pub. L. 96–499, title XI, §1131(d)(2), Dec. 5, 1980, 94 Stat. 2693, added item 280D.

1977—Pub. L. 95–30, title II, §202(c)(2), May 23, 1977, 91 Stat. 147, added item 280C.

1976—Pub. L. 94–455, title II, §210(b), title VI, §601(b), title XXI, §2124(b)(2), Oct. 4, 1976, 90 Stat. 1544, 1572, 1918, added items 280, 280A, and 280B.

1971—Pub. L. 91–680, §1(c), Jan. 12, 1971, 84 Stat. 2064, inserted "and almond" after "citrus" in item 278.

1969—Pub. L. 91–172, title I, §121(b)(3)(B), title II, §§213(c)(2), 216(b), title IV, §411(b), Dec. 30, 1969, 83 Stat. 541, 572, 574, 608, struck out item 270 "Limitation on deductions allowable to individuals in certain cases", and added items 277 to 279.

1966—Pub. L. 89–368, title III, §301(b), Mar. 15, 1966, 80 Stat. 67, added item 276.

1964—Pub. L. 88–272, title II, §§207(b)(3)(B), 227(b)(4), Feb. 26, 1964, 78 Stat. 42, 98, inserted "or domestic iron ore" in item 272, and added item 275.

1962—Pub. L. 87–834, §4(a)(2), Oct. 16, 1962, 76 Stat. 976, added item 274.

[1] *So in original. Does not conform to section catchline.*

§261. General rule for disallowance of deductions

In computing taxable income no deduction shall in any case be allowed in respect of the items specified in this part.

(Aug. 16, 1954, ch. 736, 68A Stat. 76.)

§262. Personal, living, and family expenses

(a) General rule

Except as otherwise expressly provided in this chapter, no deduction shall be allowed for personal, living, or family expenses.

(b) Treatment of certain phone expenses

For purposes of subsection (a), in the case of an individual, any charge (including taxes thereon)

for basic local telephone service with respect to the 1st telephone line provided to any residence of the taxpayer shall be treated as a personal expense.

(Aug. 16, 1954, ch. 736, 68A Stat. 76; Pub. L. 100–647, title V, §5073(a), Nov. 10, 1988, 102 Stat. 3682.)

AMENDMENTS

1988—Pub. L. 100–647 amended section generally. Prior to amendment, section read as follows: "Except as otherwise expressly provided in this chapter, no deduction shall be allowed for personal, living, or family expenses."

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title V, §5073(b), Nov. 10, 1988, 102 Stat. 3682, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1988."

§263. Capital expenditures

(a) General rule

No deduction shall be allowed for—

(1) Any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate. This paragraph shall not apply to—

(A) expenditures for the development of mines or deposits deductible under section 616,

(B) research and experimental expenditures deductible under section 174,

(C) soil and water conservation expenditures deductible under section 175,

(D) expenditures by farmers for fertilizer, etc., deductible under section 180,

(E) expenditures for removal of architectural and transportation barriers to the handicapped and elderly which the taxpayer elects to deduct under section 190,

(F) expenditures for tertiary injectants with respect to which a deduction is allowed under section 193; [1]

(G) expenditures for which a deduction is allowed under section 179; [1]

(H) expenditures for which a deduction is allowed under section 179A,

(I) expenditures for which a deduction is allowed under section 179B,

(J) expenditures for which a deduction is allowed under section 179C,

(K) expenditures for which a deduction is allowed under section 179D, or

(L) expenditures for which a deduction is allowed under section 179E.

(2) Any amount expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made.

[(b) Repealed. Pub. L. 101–508, title XI, §11801(a)(16), Nov. 5, 1990, 104 Stat. 1388–520]

(c) Intangible drilling and development costs in the case of oil and gas wells and geothermal wells

Notwithstanding subsection (a), and except as provided in subsection (i), regulations shall be prescribed by the Secretary under this subtitle corresponding to the regulations which granted the option to deduct as expenses intangible drilling and development costs in the case of oil and gas wells and which were recognized and approved by the Congress in House Concurrent Resolution 50, Seventy-ninth Congress. Such regulations shall also grant the option to deduct as expenses intangible drilling and development costs in the case of wells drilled for any geothermal deposit (as defined in section 613(e)(2)) to the same extent and in the same manner as such expenses are deductible in the case of oil and gas wells. This subsection shall not apply with respect to any costs to which any deduction is allowed under section 59(e) or 291.

(d) Expenditures in connection with certain railroad rolling stock

In the case of expenditures in connection with the rehabilitation of a unit of railroad rolling stock

(except a locomotive) used by a domestic common carrier by railroad which would, but for this subsection, be properly chargeable to capital account, such expenditures, if during any 12-month period they do not exceed an amount equal to 20 percent of the basis of such unit in the hands of the taxpayer, shall, at the election of the taxpayer, be treated (notwithstanding subsection (a)) as deductible repairs under section 162 or 212. An election under this subsection shall be made for any taxable year at such time and in such manner as the Secretary prescribes by regulations. An election may not be made under this subsection for any taxable year to which an election under subsection (e) applies to railroad rolling stock (other than locomotives).

[(e) Repealed. Pub. L. 97–34, title II, §201(c), Aug. 13, 1981, 95 Stat. 219]

(f) Railroad ties

In the case of a domestic common carrier by rail (including a railroad switching or terminal company) which uses the retirement-replacement method of accounting for depreciation of its railroad track, expenditures for acquiring and installing replacement ties of any material (and fastenings related to such ties) shall be accorded the same tax accounting treatment as expenditures for replacement ties of wood (and fastenings related to such ties).

(g) Certain interest and carrying costs in the case of straddles

(1) General rule

No deduction shall be allowed for interest and carrying charges properly allocable to personal property which is part of a straddle (as defined in section 1092(c)). Any amount not allowed as a deduction by reason of the preceding sentence shall be chargeable to the capital account with respect to the personal property to which such amount relates.

(2) Interest and carrying charges defined

For purposes of paragraph (1), the term "interest and carrying charges" means the excess of—

(A) the sum of—

(i) interest on indebtedness incurred or continued to purchase or carry the personal property, and

(ii) all other amounts (including charges to insure, store, or transport the personal property) paid or incurred to carry the personal property, over

(B) the sum of—

(i) the amount of interest (including original issue discount) includible in gross income for the taxable year with respect to the property described in subparagraph (A),

(ii) any amount treated as ordinary income under section 1271(a)(3)(A), 1276, or 1281(a) with respect to such property for the taxable year,

(iii) the excess of any dividends includible in gross income with respect to such property for the taxable year over the amount of any deduction allowable with respect to such dividends under section 243, 244, or 245, and

(iv) any amount which is a payment with respect to a security loan (within the meaning of section 512(a)(5)) includible in gross income with respect to such property for the taxable year.

For purposes of subparagraph (A), the term "interest" includes any amount paid or incurred in connection with personal property used in a short sale.

(3) Exception for hedging transactions

This subsection shall not apply in the case of any hedging transaction (as defined in section 1256(e)).

(4) Application with other provisions

(A) Subsection (c)

In the case of any short sale, this subsection shall be applied after subsection (h).

(B) Section 1277 or 1282

In the case of any obligation to which section 1277 or 1282 applies, this subsection shall be applied after section 1277 or 1282.

(h) Payments in lieu of dividends in connection with short sales

(1) In general

If—

(A) a taxpayer makes any payment with respect to any stock used by such taxpayer in a short sale and such payment is in lieu of a dividend payment on such stock, and

(B) the closing of such short sale occurs on or before the 45th day after the date of such short sale,

then no deduction shall be allowed for such payment. The basis of the stock used to close the short sale shall be increased by the amount not allowed as a deduction by reason of the preceding sentence.

(2) Longer period in case of extraordinary dividends

If the payment described in paragraph (1)(A) is in respect of an extraordinary dividend, paragraph (1)(B) shall be applied by substituting "the day 1 year after the date of such short sale" for "the 45th day after the date of such short sale".

(3) Extraordinary dividend

For purposes of this subsection, the term "extraordinary dividend" has the meaning given to such term by section 1059(c); except that such section shall be applied by treating the amount realized by the taxpayer in the short sale as his adjusted basis in the stock.

(4) Special rule where risk of loss diminished

The running of any period of time applicable under paragraph (1)(B) (as modified by paragraph (2)) shall be suspended during any period in which—

(A) the taxpayer holds, has an option to buy, or is under a contractual obligation to buy, substantially identical stock or securities, or

(B) under regulations prescribed by the Secretary, a taxpayer has diminished his risk of loss by holding 1 or more other positions with respect to substantially similar or related property.

(5) Deduction allowable to extent of ordinary income from amounts paid by lending broker for use of collateral

(A) In general

Paragraph (1) shall apply only to the extent that the payments or distributions with respect to any short sale exceed the amount which—

(i) is treated as ordinary income by the taxpayer, and

(ii) is received by the taxpayer as compensation for the use of any collateral with respect to any stock used in such short sale.

(B) Exception not to apply to extraordinary dividends

Subparagraph (A) shall not apply if one or more payments or distributions is in respect of an extraordinary dividend.

(6) Application of this subsection with subsection (g)

In the case of any short sale, this subsection shall be applied before subsection (g).

(i) Special rules for intangible drilling and development costs incurred outside the United States

In the case of intangible drilling and development costs paid or incurred with respect to an oil, gas, or geothermal well located outside the United States—

(1) subsection (c) shall not apply, and

(2) such costs shall—

(A) at the election of the taxpayer, be included in adjusted basis for purposes of computing the amount of any deduction allowable under section 611 (determined without regard to section 613), or

(B) if subparagraph (A) does not apply, be allowed as a deduction ratably over the 10-taxable year period beginning with the taxable year in which such costs were paid or incurred.

This subsection shall not apply to costs paid or incurred with respect to a nonproductive well.

(Aug. 16, 1954, ch. 736, 68A Stat. 77; Pub. L. 86–779, §6(c), Sept. 14, 1960, 74 Stat. 1001; Pub. L. 87–834, §21(b), Oct. 16, 1962, 76 Stat. 1064; Pub. L. 88–563, §4, Sept. 2, 1964, 78 Stat. 845; Pub. L. 89–243, §4(p)(1), (2), Oct. 9, 1965, 79 Stat. 964; Pub. L. 91–172, title VII, §706(a), Dec. 30, 1969, 83 Stat. 674; Pub. L. 92–178, title I, §109(b), (c), Dec. 10, 1971, 85 Stat. 509; Pub. L. 94–455, title XVII, §1701(a), title XIX, §§1904(b)(10)(A)(i), 1906(b)(13)(A), title XXI, §2122(b)(2), Oct. 4, 1976, 90 Stat. 1759, 1817, 1834, 1915; Pub. L. 95–618, title IV, §402(a), Nov. 9, 1978, 92 Stat. 3201; Pub. L. 96–223, title II, §251(a)(2)(B), Apr. 2, 1980, 94 Stat. 287; Pub. L. 97–34, title II, §§201(c), 202(d)(1), title V, §502, Aug. 13, 1981, 95 Stat. 219, 221, 327; Pub. L. 97–248, title II, §204(c)(1), Sept. 3, 1982, 96 Stat. 426; Pub. L. 97–448, title I, §105(b)(1), title III, §306(a)(9)(A), Jan. 12, 1983, 96 Stat. 2385, 2403; Pub. L. 98–369, div. A, title I, §§56(a), 102(e)(7), (8), July 18, 1984, 98 Stat. 573, 624, 625; Pub. L. 99–514, title IV, §§402(b)(1), 411(b)(1), title VII, §701(e)(4)(D), title XVIII, §1808(b), Oct. 22, 1986, 100 Stat. 2221, 2225, 2343, 2817; Pub. L. 100–647, title I, §1007(g)(5), Nov. 10, 1988, 102 Stat. 3435; Pub. L. 101–508, title XI, §§11801(a)(16), 11815(b)(3), Nov. 5, 1990, 104 Stat. 1388–520, 1388–558; Pub. L. 105–34, title XVI, §1604(a)(1), Aug. 5, 1997, 111 Stat. 1097; Pub. L. 108–311, title IV, §408(a)(10), Oct. 4, 2004, 118 Stat. 1191; Pub. L. 108–357, title III, §338(b)(1), Oct. 22, 2004, 118 Stat. 1481; Pub. L. 109–58, title XIII, §§1323(b)(2), 1331(b)(4), Aug. 8, 2005, 119 Stat. 1015, 1024; Pub. L. 109–432, div. A, title IV, §404(b)(1), Dec. 20, 2006, 120 Stat. 2956.)

AMENDMENTS

2006—Subsec. (a)(1)(L). Pub. L. 109–432 added subpar. (L).

2005—Subsec. (a)(1)(J). Pub. L. 109–58, §1323(b)(2), added subpar. (J).

Subsec. (a)(1)(K). Pub. L. 109–58, §1331(b)(4), added subpar. (K).

2004—Subsec. (a)(1)(I). Pub. L. 108–357 added subpar. (I).

Subsec. (g)(2)(B)(ii). Pub. L. 108–311 substituted "1276" for "1278".

1997—Subsec. (a)(1)(H). Pub. L. 105–34 added subpar. (H).

1990—Subsec. (b). Pub. L. 101–508, §11801(a)(16), struck out subsec. (b) "Expenditures for advertising and good will" which read as follows: "If a corporation has, for the purpose of computing its excess profits tax credit under chapter 2E or subchapter D of chapter 1 of the Internal Revenue Code of 1939 claimed the benefits of the election provided in section 733 or section 451 of such code, as the case may be, no deduction shall be allowable under section 162 to such corporation for expenditures for advertising or the promotion of good will which, under the rules and regulations prescribed under section 733 or section 451 of such code, as the case may be, may be regarded as capital investments."

Subsec. (c). Pub. L. 101–508, §11815(b)(3), substituted "section 613(e)(2)" for "section 613(e)(3)".

1988—Subsec. (c). Pub. L. 100–647 substituted "section 59(e)" for "section 59(d)".

1986—Subsec. (a)(1)(E) to (H). Pub. L. 99–514, §402(b)(1), struck out subpar. (E) relating to nonapplication of par. (1) to expenditures by farmers for clearing land deductible under section 182, and redesignated subpars. (F) to (H) as (E) to (G), respectively.

Subsec. (c). Pub. L. 99–514, §701(e)(4)(D), substituted "59(d)" for "58(i)".

Pub. L. 99–514, §411(b)(1)(B), inserted "and except as provided in subsection (i),".

Subsec. (g)(2)(B)(iv). Pub. L. 99–541, §1808(b), added cl. (iv).

Subsec. (i). Pub. L. 99–514, §411(b)(1)(A), added subsec. (i).

1984—Subsec. (g)(2). Pub. L. 98–369, §102(e)(7), amended par. (2) generally, striking out "charges for temporary use of the personal property in a short sale, or" after "(including" in subpar. (A)(ii), substituting "any amount treated as ordinary income under section 1271(a)(3)(A), 1278, or 1281(a) with respect to such property for the taxable year, and" for "any amount treated as ordinary income under section 1232(a)(3)(A) with respect to such property for the taxable year" in subpar. (B)(ii), and adding subpar. (B)(iii).

Subsec. (g)(4). Pub. L. 98–369, §102(e)(8), added par. (4).

Subsec. (h). Pub. L. 98–369, §56(a), added subsec. (h).

1983—Subsec. (g)(2)(A)(ii). Pub. L. 97–448, §105(b)(1), substituted "all other amounts (including charges for temporary use of the personal property in a short sale, or to insure, store, or transport the personal property) paid or incurred to carry the personal property, over" for "amounts paid or incurred to insure, store, or transport the personal property, over".

Subsec. (g)(2)(B)(ii). Pub. L. 97–448, §306(a)(9)(A), substituted "section 1232(a)(3)(A)" for "section 1232(a)(4)(A)".

1982—Subsec. (c). Pub. L. 97–248, §204(c)(1), inserted provision that this subsection not apply with respect to any costs to which any deduction is allowed under section 58(i) or 291.

1981—Subsec. (a)(1)(H). Pub. L. 97–34, §202(d)(1), added subpar. (H).

Subsec. (e). Pub. L. 97–34, §201(c), struck out subsec. (e) which related to the allowance of repair expenses or specified repair, rehabilitation, or improvement expenditures.

Subsec. (g). Pub. L. 97–34, §502, added subsec. (g).

1980—Subsec. (a)(1)(G). Pub. L. 96–223 added subpar. (G).

1978—Subsec. (c). Pub. L. 95–618 inserted "and geothermal wells" after "gas wells" in heading and in text inserted provision that such regulations also grant the option to deduct as expenses intangible drilling and development costs in the case of wells drilled for any geothermal deposit (as defined in section 613(e)(3)) to the same extent and in the same manner as such expenses are deductible in the case of oil and gas wells.

1976—Subsec. (a)(1)(F). Pub. L. 94–455, §2122(b)(2), added subpar. (F).

Subsec. (a)(3). Pub. L. 94–455, §1904(b)(10)(A)(i)(I), struck out par. (3) which provided that no deduction be allowed for amounts paid as tax under section 4911 (relating to imposition of interest equalization tax) except as provided in subsec. (d).

Subsec. (d). Pub. L. 94–455, §§1904(b)(10)(A)(i)(I), (II), 1906(b)(13)(A), redesignated subsec. (e) as (d) and struck out "or his delegate" after "Secretary" and substituted "subsection (e)" for "subsection (f)". Former subsec. (d) was struck out.

Subsec. (e). Pub. L. 94–455, §§1904(b)(10)(A)(i)(I), 1906(b)(13)(A), redesignated subsec. (f) as (e) and struck out "or his delegate" after "Secretary". Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 94–455, §§1701(a), 1904(b)(10)(A)(i)(I), added subsec. (f). Former subsec. (f) redesignated (e).

1971—Subsec. (e). Pub. L. 92–178, §109(c), substituted "shall, at the election of the taxpayer, be treated" for "shall be treated" and inserted provisions respecting making of election under this subsection for any taxable year at such time and in such manner as Secretary or his delegate prescribed by regulation and prohibiting making of election for any taxable year to which an election under subsec. (f) applies to railroad rolling stock (other than locomotives).

Subsec. (f). Pub. L. 92–178, §109(b), added subsec. (f).

1969—Subsec. (e). Pub. L. 91–172 added subsec. (e).

1965—Subsec. (a)(3). Pub. L. 89–243, §4(p)(1), inserted "Except as provided in subsection (d)", and struck out "except to the extent that any amount attributable to the amount paid as tax is included in gross income for the taxable year" after parenthetical provision.

Subsec. (d). Pub. L. 89–243, §4(p)(2), added subsec. (d).

1964—Subsec. (a)(3). Pub. L. 88–563 added par. (3).

1962—Subsec. (a)(1)(E). Pub. L. 87–834 added subpar. (E).

1960—Subsec. (a)(1)(D). Pub. L. 86–779 added subpar. (D).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–432 applicable to costs paid or incurred after Dec. 20, 2006, see section 404(c) of Pub. L. 109–432, set out as an Effective Date note under section 179E of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 1323(b)(2) of Pub. L. 109–58 applicable to properties placed in service after Aug. 8, 2005, see section 1323(c) of Pub. L. 109–58, set out as an Effective Date note under section 179C of this title.

Amendment by section 1331(b)(4) of Pub. L. 109–58 applicable to property placed in service after Dec. 31, 2005, see section 1331(d) of Pub. L. 109–58, set out as an Effective Date note under section 179D of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to expenses paid or incurred after Dec. 31, 2002, in taxable years ending after such date, see section 338(c) of Pub. L. 108–357, set out as an Effective Date note under

section 179B of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XVI, §1604(a)(4), Aug. 5, 1997, 111 Stat. 1097, provided that: "The amendments made by this subsection [amending this section and sections 312 and 1245 of this title] shall take effect as if included in the amendments made by section 1913 of the Energy Policy Act of 1992 [Pub. L. 102–486]."

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 402(b)(1) of Pub. L. 99–514 applicable to amounts paid or incurred after Dec. 31, 1985, in taxable years ending after such date, see section 402(c) of Pub. L. 99–514 set out as an Effective Date of Repeal note under former section 182 of this title.

Pub. L. 99–514, title IV, §411(c), Oct. 22, 1986, 100 Stat. 2227, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and sections 243, 291, 381, 616, and 617 of this title] shall apply to costs paid or incurred after December 31, 1986, in taxable years ending after such date.

"(2) TRANSITION RULE.—The amendments made by this section shall not apply with respect to intangible drilling and development costs incurred by United States companies pursuant to a minority interest in a license for Netherlands or United Kingdom North Sea development if such interest was acquired on or before December 31, 1985."

Amendment by section 701(e)(4)(D) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date note under section 55 of this title.

Amendment by section 1808(b) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 56(a) of Pub. L. 98–369 applicable to short sales after July 18, 1984, in taxable years ending after that date, see section 56(d) of Pub. L. 98–369, set out as a note under section 163 of this title.

Amendment by section 102(e)(7), (8) of Pub. L. 98–369 applicable to positions established after July 18, 1984, in taxable years ending after that date, except as otherwise provided, see section 102(f), (g) of Pub. L. 98–369, set out as a note under section 1256 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 97–448, title I, §105(b)(2), Jan. 12, 1983, 96 Stat. 2385, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to property acquired, and positions established, by the taxpayer after September 22, 1982, in taxable years ending after such date."

Amendment by section 306 of Pub. L. 97–448 effective as if included in the provisions of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 311(d) of Pub. L. 97–448, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to taxable years beginning after December 31, 1982, see section 204(d)(1) of Pub. L. 97–248, set out as an Effective Date note under section 291 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by sections 201(c) and 202(d)(1) of Pub. L. 97–34 applicable to property placed in service after Dec. 31, 1980, in taxable years ending after that date, see section 209(a) of Pub. L. 97–34, set out as an Effective Date note under section 168 of this title.

Amendment by section 502 of Pub. L. 97–34 applicable to property acquired and positions established by the taxpayer after June 23, 1981, in taxable years ending after such date, and applicable when so elected with respect to property held on June 23, 1981, see section 508 of Pub. L. 97–34, set out as an Effective Date note under section 1092 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–223 applicable to taxable years beginning after Dec. 31, 1979, see section 251(b) of Pub. L. 96–223, set out as an Effective Date note under section 193 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–618, title IV, §402(e), Nov. 9, 1978, 92 Stat. 3203, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and sections 57, 465, 751, and 1254 of this title] shall apply with respect to wells commenced on or after October 1, 1978, in taxable years ending on or after such date.

"(2) ELECTION.—The taxpayer may elect to capitalize or deduct any costs to which section 263(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] applies by reason of the amendments made by this section [amending this section and sections 57, 465, 751, and 1254 of this title]. Any such election shall be made before the expiration of the time for filing claim for credit or refund of any overpayment of tax imposed by chapter 1 of such Code [section 1 et seq. of this title] with respect to the taxpayer's first taxable year to which the amendments made by this section apply and for which he pays or incurs costs to which such section 263(c) applies by reason of the amendments made by this section. Any election under this paragraph may be changed or revoked at any time before the expiration of the time referred to in the preceding sentence, but after the expiration of such time such election may not be changed or revoked."

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XIX, §1904(b)(10)(A)(vii), Oct. 4, 1976, 90 Stat. 1817, provided that: "The amendments made by this subparagraph [amending this section and sections 6011, 6611, and 6651 of this title and repealing sections 6076 and 6680 of this title] shall apply with respect to acquisitions of stock or debt obligations made after June 30, 1974, except that the repeal of paragraph (2) of section 6011(d) under clause (ii) shall apply with respect to loans and commitments made after such date."

Amendment by section 2122(b)(2) of Pub. L. 94–455, as amended by Pub. L. 96–167, §9(c), Dec. 29, 1979, 93 Stat. 1278, applicable to taxable years beginning after Dec. 31, 1976, see section 2122(c) of Pub. L. 94–455, as amended, set out as an Effective Date note under section 190 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Pub. L. 92–178, title I, §109(d)(2), (3), Dec. 10, 1971, 85 Stat. 509, provided that:

"(2) The amendment made by subsection (b) [amending this section] shall apply to taxable years ending after December 31, 1970.

"(3) The amendments made by subsection (c) [amending this section] shall apply to taxable years beginning after December 31, 1969."

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title VII, §706(b), Dec. 30, 1969, 83 Stat. 674, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1969."

EFFECTIVE DATE OF 1965 AMENDMENT

Pub. L. 89–243, §4(p)(3), Oct. 9, 1965, 79 Stat. 965, provided that: "The amendments made by this subsection [amending this section] shall apply to taxable years ending after September 2, 1964."

Pub. L. 89–243, §4(q), Oct. 9, 1965, 79 Stat. 965, provided in part that: "Except as otherwise specifically provided in this section and in the amendments made by this section [amending this section and sections 4912, 4914, 4916, 4917, 4919, 4920, and 4931 of this title], such amendments shall apply with respect to acquisitions of stock and debt obligations made after February 10, 1965."

EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87–834, §21(d), Oct. 16, 1962, 76 Stat. 1064, provided that: "The amendments made by this section [enacting section 182 of this title and amending this section] shall apply with respect to taxable years beginning after December 31, 1962."

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–779 applicable to taxable years beginning after Dec. 31, 1959, see section 6(d) of Pub. L. 86–779, set out as an Effective Date note under section 180 of this title.

SHORT TITLE OF 1965 AMENDMENT

Pub. L. 89–243, §1(a), Oct. 9, 1965, 79 Stat. 954, provided that: "This Act [amending this section and sections 4912, 4914, 4916, 4917, 4919, 4920, and 4931 of this title, and enacting provisions set out as notes under sections 6011 and 6076 of this title] may be cited as the 'Interest Equalization Tax Extension Act of 1965'."

SHORT TITLE OF 1964 AMENDMENT

Pub. L. 88–563, §1(a), Sept. 2, 1964, 78 Stat. 809, provided that: "This Act [enacting sections 4911 to 4920, 4931, 6076, 6680, 6681, and 7241 of this title, amending this section and sections 1232, 6011, and 6103 of this title, and enacting provisions set out as notes under section 6011 of this title] may be cited as the 'Interest Equalization Tax Act'."

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(e)(4)(D) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[1] So in original. The semicolon probably should be a comma.

§263A. Capitalization and inclusion in inventory costs of certain expenses

(a) Nondeductibility of certain direct and indirect costs

(1) In general

In the case of any property to which this section applies, any costs described in paragraph (2)—

(A) in the case of property which is inventory in the hands of the taxpayer, shall be included in inventory costs, and

(B) in the case of any other property, shall be capitalized.

(2) Allocable costs

The costs described in this paragraph with respect to any property are—

(A) the direct costs of such property, and

(B) such property's proper share of those indirect costs (including taxes) part or all of which are allocable to such property.

Any cost which (but for this subsection) could not be taken into account in computing taxable income for any taxable year shall not be treated as a cost described in this paragraph.

(b) Property to which section applies

Except as otherwise provided in this section, this section shall apply to—

(1) Property produced by taxpayer

Real or tangible personal property produced by the taxpayer.

(2) Property acquired for resale

(A) In general

Real or personal property described in section 1221(a)(1) which is acquired by the taxpayer for resale.

(B) Exception for taxpayer with gross receipts of $10,000,000 or less

Subparagraph (A) shall not apply to any personal property acquired during any taxable year by the taxpayer for resale if the average annual gross receipts of the taxpayer (or any predecessor) for the 3-taxable year period ending with the taxable year preceding such taxable year do not exceed $10,000,000.

(C) Aggregation rules, etc.

For purposes of subparagraph (B), rules similar to the rules of paragraphs (2) and (3) of section 448(c) shall apply.

For purposes of paragraph (1), the term "tangible personal property" shall include a film, sound recording, video tape, book, or similar property.

(c) General exceptions

(1) Personal use property

This section shall not apply to any property produced by the taxpayer for use by the taxpayer other than in a trade or business or an activity conducted for profit.

(2) Research and experimental expenditures

This section shall not apply to any amount allowable as a deduction under section 174.

(3) Certain development and other costs of oil and gas wells or other mineral property

This section shall not apply to any cost allowable as a deduction under section 167(h), 179B, 263(c), 263(i), 291(b)(2), 616, or 617.

(4) Coordination with long-term contract rules

This section shall not apply to any property produced by the taxpayer pursuant to a long-term contract.

(5) Timber and certain ornamental trees

This section shall not apply to—

(A) trees raised, harvested, or grown by the taxpayer other than trees described in clause (ii) of subsection (e)(4)(B) (after application of the last sentence thereof), and

(B) any real property underlying such trees.

(6) Coordination with section 59(e)

Paragraphs (2) and (3) shall apply to any amount allowable as a deduction under section 59(e) for qualified expenditures described in subparagraphs (B), (C), (D), and (E) of paragraph (2) thereof.

(d) Exception for farming businesses

(1) Section not to apply to certain property

(A) In general

This section shall not apply to any of the following which is produced by the taxpayer in a farming business:

(i) Any animal.

(ii) Any plant which has a preproductive period of 2 years or less.

(B) Exception for taxpayers required to use accrual method

Subparagraph (A) shall not apply to any corporation, partnership, or tax shelter required to

use an accrual method of accounting under section 447 or 448(a)(3).

(2) Treatment of certain plants lost by reason of casualty

(A) In general

If plants bearing an edible crop for human consumption were lost or damaged (while in the hands of the taxpayer) by reason of freezing temperatures, disease, drought, pests, or casualty, this section shall not apply to any costs of the taxpayer of replanting plants bearing the same type of crop (whether on the same parcel of land on which such lost or damaged plants were located or any other parcel of land of the same acreage in the United States).

(B) Special rule for person with minority interest who materially participates

Subparagraph (A) shall apply to amounts paid or incurred by a person (other than the taxpayer described in subparagraph (A)) if—

(i) the taxpayer described in subparagraph (A) has an equity interest of more than 50 percent in the plants described in subparagraph (A) at all times during the taxable year in which such amounts were paid or incurred, and

(ii) such other person holds any part of the remaining equity interest and materially participates in the planting, maintenance, cultivation, or development of such the plants described in subparagraph (A) during the taxable year in which such amounts were paid or incurred.

The determination of whether an individual materially participates in any activity shall be made in a manner similar to the manner in which such determination is made under section 2032A(e)(6).

(3) Election to have this section not apply

(A) In general

If a taxpayer makes an election under this paragraph, this section shall not apply to any plant produced in any farming business carried on by such taxpayer.

(B) Certain persons not eligible

No election may be made under this paragraph by a corporation, partnership, or tax shelter, if such corporation, partnership, or tax shelter is required to use an accrual method of accounting under section 447 or 448(a)(3).

(C) Special rule for citrus and almond growers

An election under this paragraph shall not apply with respect to any item which is attributable to the planting, cultivation, maintenance, or development of any citrus or almond grove (or part thereof) and which is incurred before the close of the 4th taxable year beginning with the taxable year in which the trees were planted. For purposes of the preceding sentence, the portion of a citrus or almond grove planted in 1 taxable year shall be treated separately from the portion of such grove planted in another taxable year.

(D) Election

Unless the Secretary otherwise consents, an election under this paragraph may be made only for the taxpayer's 1st taxable year which begins after December 31, 1986, and during which the taxpayer engages in a farming business. Any such election, once made, may be revoked only with the consent of the Secretary.

(e) Definitions and special rules for purposes of subsection (d)

(1) Recapture of expensed amounts on disposition

(A) In general

In the case of any plant with respect to which amounts would have been capitalized under subsection (a) but for an election under subsection (d)(3)—

(i) such plant (if not otherwise section 1245 property) shall be treated as section 1245 property, and

(ii) for purposes of section 1245, the recapture amount shall be treated as a deduction allowed for depreciation with respect to such property.

(B) Recapture amount

For purposes of subparagraph (A), the term "recapture amount" means any amount allowable as a deduction to the taxpayer which, but for an election under subsection (d)(3), would have been capitalized with respect to the plant.

(2) Effects of election on depreciation

(A) In general

If the taxpayer (or any related person) makes an election under subsection (d)(3), the provisions of section 168(g)(2) (relating to alternative depreciation) shall apply to all property of the taxpayer used predominantly in the farming business and placed in service in any taxable year during which any such election is in effect.

(B) Related person

For purposes of subparagraph (A), the term "related person" means—

(i) the taxpayer and members of the taxpayer's family,

(ii) any corporation (including an S corporation) if 50 percent or more (in value) of the stock of such corporation is owned (directly or through the application of section 318) by the taxpayer or members of the taxpayer's family,

(iii) a corporation and any other corporation which is a member of the same controlled group described in section 1563(a)(1), and

(iv) any partnership if 50 percent or more (in value) of the interests in such partnership is owned directly or indirectly by the taxpayer or members of the taxpayer's family.

(C) Members of family

For purposes of this paragraph, the term "family" means the taxpayer, the spouse of the taxpayer, and any of their children who have not attained age 18 before the close of the taxable year.

(3) Preproductive period

(A) In general

For purposes of this section, the term "preproductive period" means—

(i) in the case of a plant which will have more than 1 crop or yield, the period before the 1st marketable crop or yield from such plant, or

(ii) in the case of any other plant, the period before such plant is reasonably expected to be disposed of.

For purposes of this subparagraph, use by the taxpayer in a farming business of any supply produced in such business shall be treated as a disposition.

(B) Rule for determining period

In the case of a plant grown in commercial quantities in the United States, the preproductive period for such plant if grown in the United States shall be based on the nationwide weighted average preproductive period for such plant.

(4) Farming business

For purposes of this section—

(A) In general

The term "farming business" means the trade or business of farming.

(B) Certain trades and businesses included

The term "farming business" shall include the trade or business of—

(i) operating a nursery or sod farm, or

(ii) the raising or harvesting of trees bearing fruit, nuts, or other crops, or ornamental trees.

For purposes of clause (ii), an evergreen tree which is more than 6 years old at the time severed from the roots shall not be treated as an ornamental tree.

(5) Certain inventory valuation methods permitted

The Secretary shall by regulations permit the taxpayer to use reasonable inventory valuation methods to compute the amount required to be capitalized under subsection (a) in the case of any plant.

(f) Special rules for allocation of interest to property produced by the taxpayer

(1) Interest capitalized only in certain cases

Subsection (a) shall only apply to interest costs which are—

(A) paid or incurred during the production period, and

(B) allocable to property which is described in subsection (b)(1) and which has—

(i) a long useful life,

(ii) an estimated production period exceeding 2 years, or

(iii) an estimated production period exceeding 1 year and a cost exceeding $1,000,000.

(2) Allocation rules

(A) In general

In determining the amount of interest required to be capitalized under subsection (a) with respect to any property—

(i) interest on any indebtedness directly attributable to production expenditures with respect to such property shall be assigned to such property, and

(ii) interest on any other indebtedness shall be assigned to such property to the extent that the taxpayer's interest costs could have been reduced if production expenditures (not attributable to indebtedness described in clause (i)) had not been incurred.

(B) Exception for qualified residence interest

Subparagraph (A) shall not apply to any qualified residence interest (within the meaning of section 163(h)).

(C) Special rule for flow-through entities

Except as provided in regulations, in the case of any flow-through entity, this paragraph shall be applied first at the entity level and then at the beneficiary level.

(3) Interest relating to property used to produce property

This subsection shall apply to any interest on indebtedness allocable (as determined under paragraph (2)) to property used to produce property to which this subsection applies to the extent such interest is allocable (as so determined) to the produced property.

(4) Definitions

For purposes of this subsection—

(A) Long useful life

Property has a long useful life if such property is—

(i) real property, or

(ii) property with a class life of 20 years or more (as determined under section 168).

(B) Production period

The term "production period" means, when used with respect to any property, the period—

(i) beginning on the date on which production of the property begins, and

(ii) ending on the date on which the property is ready to be placed in service or is ready to

be held for sale.

(C) Production expenditures

The term "production expenditures" means the costs (whether or not incurred during the production period) required to be capitalized under subsection (a) with respect to the property.

(g) Production

For purposes of this section—

(1) In general

The term "produce" includes construct, build, install, manufacture, develop, or improve.

(2) Treatment of property produced under contract for the taxpayer

The taxpayer shall be treated as producing any property produced for the taxpayer under a contract with the taxpayer; except that only costs paid or incurred by the taxpayer (whether under such contract or otherwise) shall be taken into account in applying subsection (a) to the taxpayer.

(h) Exemption for free lance authors, photographers, and artists

(1) In general

Nothing in this section shall require the capitalization of any qualified creative expense.

(2) Qualified creative expense

For purposes of this subsection, the term "qualified creative expense" means any expense—

(A) which is paid or incurred by an individual in the trade or business of such individual (other than as an employee) of being a writer, photographer, or artist, and

(B) which, without regard to this section, would be allowable as a deduction for the taxable year.

Such term does not include any expense related to printing, photographic plates, motion picture films, video tapes, or similar items.

(3) Definitions

For purposes of this subsection—

(A) Writer

The term "writer" means any individual if the personal efforts of such individual create (or may reasonably be expected to create) a literary manuscript, musical composition (including any accompanying words), or dance score.

(B) Photographer

The term "photographer" means any individual if the personal efforts of such individual create (or may reasonably be expected to create) a photograph or photographic negative or transparency.

(C) Artist

(i) In general

The term "artist" means any individual if the personal efforts of such individual create (or may reasonably be expected to create) a picture, painting, sculpture, statue, etching, drawing, cartoon, graphic design, or original print edition.

(ii) Criteria

In determining whether any expense is paid or incurred in the trade or business of being an artist, the following criteria shall be taken into account:

(I) The originality and uniqueness of the item created (or to be created).

(II) The predominance of aesthetic value over utilitarian value of the item created (or to be created).

(D) Treatment of certain corporations

(i) In general

If—

(I) substantially all of the stock of a corporation is owned by a qualified employee-owner and members of his family (as defined in section 267(c)(4)), and

(II) the principal activity of such corporation is performance of personal services directly related to the activities of the qualified employee-owner and such services are substantially performed by the qualified employee-owner,

this subsection shall apply to any expense of such corporation which directly relates to the activities of such employee-owner in the same manner as if such expense were incurred by such employee-owner.

(ii) Qualified employee-owner

For purposes of this subparagraph, the term "qualified employee-owner" means any individual who is an employee-owner of the corporation (as defined in section 269A(b)(2)) and who is a writer, photographer, or artist.

(i) Regulations

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

(1) regulations to prevent the use of related parties, pass-thru entities, or intermediaries to avoid the application of this section, and

(2) regulations providing for simplified procedures for the application of this section in the case of property described in subsection (b)(2).

(Added Pub. L. 99–514, title VIII, §803(a), Oct. 22, 1986, 100 Stat. 2350; amended Pub. L. 100–647, title I, §1008(b)(1)–(4), title VI, §6026(a)–(c), Nov. 10, 1988, 102 Stat. 3437, 3438, 3691–3693; Pub. L. 101–239, title VII, §7816(d)(1), Dec. 19, 1989, 103 Stat. 2420; Pub. L. 106–170, title V, §532(c)(2)(B), Dec. 17, 1999, 113 Stat. 1930; Pub. L. 108–357, title III, §338(b)(2), Oct. 22, 2004, 118 Stat. 1481; Pub. L. 109–58, title XIII, §1329(b), Aug. 8, 2005, 119 Stat. 1020).

AMENDMENTS

2005—Subsec. (c)(3). Pub. L. 109–58 inserted "167(h)," after "under section".

2004—Subsec. (c)(3). Pub. L. 108–357, which directed amendment of par. (3) by inserting "179B," after "section", was executed by making the insertion after "section" the second place it appeared to reflect the probable intent of Congress.

1999—Subsec. (b)(2)(A). Pub. L. 106–170 substituted "1221(a)(1)" for "1221(1)".

1989—Subsec. (h)(3)(D). Pub. L. 101–239 substituted "corporations" for "personal service corporations" in heading and amended text generally. Prior to amendment, text read as follows:

"(i) IN GENERAL.—In the case of a personal service corporation, this subsection shall apply to any expense of such corporation which directly relates to the activities of the qualified employee-owner in the same manner as if such expense were incurred by such employee-owner.

"(ii) QUALIFIED EMPLOYEE-OWNER.—The term 'qualified employee-owner' means any individual who is an employee-owner of the personal service corporation and who is a writer, photographer, or artist, but only if substantially all of the stock of such corporation is owned by such individual and members of his family (as defined in section 267(c)(4)).

"(iii) PERSONAL SERVICE CORPORATION.—For purposes of this subparagraph, the term 'personal service corporation' means any personal service corporation (as defined in section 269A(b))."

1988—Subsec. (a)(2). Pub. L. 100–647, §1008(b)(1), inserted at end "Any cost which (but for this subsection) could not be taken into account in computing taxable income for any taxable year shall not be treated as a cost described in this paragraph."

Subsec. (c)(3). Pub. L. 100–647, §1008(b)(2)(A), substituted "section 263(c), 263(i), 291(b)(2), 616, or 617" for "section 263(c), 616(a), or 617(a)".

Subsec. (c)(6). Pub. L. 100–647, §1008(b)(2)(B), added par. (6).

Subsec. (d)(1). Pub. L. 100–647, §6026(b)(2)(A), substituted "Section not to apply to certain property" for

"Section to apply only if preproductive period is more than 2 years" in heading.

Subsec. (d)(1)(A). Pub. L. 100–647, §6026(b)(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "This section shall not apply to any plant or animal which is produced by the taxpayer in a farming business and which has a preproductive period of 2 years or less."

Subsec. (d)(2)(B)(i). Pub. L. 100–647, §1008(b)(3)(A), substituted "the plants described in subparagraph (A) at all times during the taxable year in which such amounts were paid or incurred" for "such grove, orchard, or vineyard".

Subsec. (d)(2)(B)(ii). Pub. L. 100–647, §1008(b)(3)(B), substituted "the plants described in subparagraph (A) during the taxable year in which such amounts were paid or incurred" for "such grove, orchard, or vineyard during the 4-taxable year period beginning with the taxable year in which the grove, orchard, or vineyard was lost or damaged".

Subsec. (d)(3)(A). Pub. L. 100–647, §6026(b)(2)(B), struck out "or animal" after "plant".

Subsec. (d)(3)(B). Pub. L. 100–647, §6026(c), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "No election may be made under this paragraph—

"(i) by a corporation, partnership, or tax shelter, if such corporation, partnership, or tax shelter is required to use an accrual method of accounting under section 447 or 448(a)(3), or

"(ii) with respect to the planting, cultivation, maintenance, or development of pistachio trees."

Subsec. (e). Pub. L. 100–647, §6026(b)(2)(B), struck out "or animal" after "plant" wherever appearing in pars. (1), (3), and (5).

Subsec. (f)(3). Pub. L. 100–647, §1008(b)(4), substituted "allocable (as determined under paragraph (2)) to" for "incurred or continued in connection with" and inserted "(as so determined)" after "allocable".

Subsecs. (h), (i). Pub. L. 100–647, §6026(a), added subsec. (h) and redesignated former subsec. (h) as (i).

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–58 applicable to amounts paid or incurred in taxable years beginning after Aug. 8, 2005, see section 1329(c) of Pub. L. 109–58, set out as a note under section 167 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to expenses paid or incurred after Dec. 31, 2002, in taxable years ending after such date, see section 338(c) of Pub. L. 108–357, set out as an Effective Date note under section 179B of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1008(b)(1)–(4) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title VI, §6026(d), Nov. 10, 1988, 102 Stat. 3693, as amended by Pub. L. 101–239, title VII, §7816(d)(2), Dec. 19, 1989, 103 Stat. 2421, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this paragraph, the amendments made by this section [amending this section] shall take effect as if included in the amendments made by section 803 of the Tax Reform Act of 1986 [section 803 of Pub. L. 99–514].

"(2) SUBSECTION (b).—

"(A) IN GENERAL.—The amendments made by subsection (b) [amending this section] shall apply to costs incurred after December 31, 1988, in taxable years ending after such date.

"(B) REVOCATION OF ELECTION.—If a taxpayer engaged in a farming business involving the production of animals having a preproductive period of more than 2 years made an election under section 263A(d)(3) of the 1986 Code for a taxable year beginning before January 1, 1989, such taxpayer may, without the consent of the Secretary of the Treasury or his delegate, revoke such election effective for the taxpayer's 1st taxable year beginning after December 31, 1988."

EFFECTIVE DATE

Pub. L. 101–239, title VII, §7831(d)(2), Dec. 19, 1989, 103 Stat. 2427, provided that: "If any interest costs incurred after December 31, 1986, are attributable to costs incurred before January 1, 1987, the amendments made by section 803 of the Tax Reform Act of 1986 [section 803 of Pub. L. 99–514, enacting this section, amending sections 48, 267, 312, 447, 464, and 471 of this title, and repealing sections 189, 278, and 280 of this title] shall apply to such interest costs only to the extent such interest costs are attributable to costs which were required to be capitalized under section 263 of the Internal Revenue Code of 1954 and which would have been taken into account in applying section 189 of the Internal Revenue Code of 1954 (as in effect before its repeal by section 803 of the Tax Reform Act of 1986) or, if applicable, section 266 of such Code."

Pub. L. 99–514, title VIII, §803(d), Oct. 22, 1986, 100 Stat. 2356, as amended by Pub. L. 100–647, title I, §1008(b)(7), Nov. 10, 1988, 102 Stat. 3438; Pub. L. 101–239, title VII, §7831(d)(1), Dec. 19, 1989, 103 Stat. 2426, provided that:

"(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [enacting this section, amending sections 48, 267, 312, 447, 464, and 471 of this title, and repealing sections 189, 278, and 280 of this title] shall apply to costs incurred after December 31, 1986, in taxable years ending after such date.

"(2) SPECIAL RULE FOR INVENTORY PROPERTY.—In the case of any property which is inventory in the hands of the taxpayer—

"(A) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 1986.

"(B) CHANGE IN METHOD OF ACCOUNTING.—If the taxpayer is required by the amendments made by this section to change its method of accounting with respect to such property for any taxable year—

"(i) such change shall be treated as initiated by the taxpayer,

"(ii) such change shall be treated as made with the consent of the Secretary, and

"(iii) the period for taking into account the adjustments under section 481 by reason of such change shall not exceed 4 years.

"(3) SPECIAL RULE FOR SELF-CONSTRUCTED PROPERTY.—The amendments made by this section shall not apply to any property which is produced by the taxpayer for use by the taxpayer if substantial construction had occurred before March 1, 1986.

"(4) TRANSITIONAL RULE FOR CAPITALIZATION OF INTEREST AND TAXES.—

"(A) TRANSITION PROPERTY EXEMPTED FROM INTEREST CAPITALIZATION.—Section 263A of the Internal Revenue Code of 1986 (as added by this section) and the amendment made by subsection (b)(1) [repealing section 189 of this title] shall not apply to interest costs which are allocable to any property—

"(i) to which the amendments made by section 201 [amending sections 46, 167, 168, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] do not apply by reason of sections 204(a)(1)(D) and (E) and 204(a)(5)(A) [set out as a note under section 168 of this title], and

"(ii) to which the amendments made by section 251 [amending sections 46 and 48 of this title and enacting provisions set out as a note under section 46 of this title] do not apply by reason of section 251(d)(3)(M) [set out as a note under section 46 of this title].

"(B) INTEREST AND TAXES.—Section 263A of such Code shall not apply to property described in the matter following subparagraph (B) of section 207(e)(2) of the Tax Equity and Fiscal Responsibility Act of 1982 [section 207(e)(2)(B) of Pub. L. 97–248, formerly set out as a note under section 189 of this title] to the extent it would require the capitalization of interest and taxes paid or incurred in connection with such property which are not required to be capitalized under section 189 of such Code (as in effect before the amendment made by subsection (b)(1)) [repealing section 189 of this title].

"(5) TRANSITION RULE CONCERNING CAPITALIZATION OF INVENTORY RULES.—In the case of a corporation which on the date of the enactment of this Act [Oct. 22, 1986] was a member of an affiliated group of corporations (within the meaning of section 1504(a) of the Internal Revenue Code of 1986), the parent of which—

"(A) was incorporated in California on April 15, 1925,

"(B) adopted LIFO accounting as of the close of the taxable year ended December 31, 1950, and

"(C) was, on May 22, 1986, merged into a Delaware corporation incorporated on March 12, 1986,

the amendments made by this section shall apply under a cut-off method whereby the uniform capitalization rules are applied only in costing layers of inventory acquired during taxable years beginning on or after January 1, 1987.

"(6) TREATMENT OF CERTAIN REHABILITATION PROJECT.—The amendments made by this

section shall not apply to interest and taxes paid or incurred with respect to the rehabilitation and conversion of a certified historic building which was formerly a factory into an apartment project with 155 units, 39 units of which are for low-income families, if the project was approved for annual interest assistance on June 10, 1986, by the housing authority of the State in which the project is located.

"(7) SPECIAL RULE FOR CASUALTY LOSSES.—Section 263A(d)(2) of the Internal Revenue Code of 1986 (as added by this section) shall apply to expenses incurred on or after the date of the enactment of this Act [Oct. 22, 1986]."

ALLOCATION RATIO FOR APPORTIONING STORAGE COSTS AND RELATED HANDLING COSTS

Pub. L. 100–647, title I, §1008(b)(8), Nov. 10, 1988, 102 Stat. 3438, provided that: "The allocation used in the regulations prescribed under section 263A(h)(2) of the Internal Revenue Code of 1986 for apportioning storage costs and related handling costs shall be determined by dividing the amount of such costs by the beginning inventory balances and the purchases during the year and by multiplying the resulting allocation ratio by inventory amounts determined in accordance with the provisions of the joint explanatory statement of the committee of conference of the conference report accompanying H.R. 3838 (H.R. Rept. No. 99–841, Vol. II., 99th Cong., 2d Sess. II–306–307 (1986))."

AMORTIZATION OF PAST SERVICE PENSION COSTS

Pub. L. 100–203, title X, §10204, Dec. 22, 1987, 101 Stat. 1330–394, provided that:

"(a) IN GENERAL.—For purposes of sections 263A and 460 of the Internal Revenue Code of 1986, the allocable costs (within the meaning of section 263A(a)(2) or section 460(c) of such Code, whichever is applicable) with respect to any property shall include contributions paid to or under a pension or annuity plan whether or not such contributions represent past service costs.

"(b) EFFECTIVE DATE.—

"(1) IN GENERAL.—Except as provided in paragraph (2), subsection (a) shall apply to costs incurred after December 31, 1987, in taxable years ending after such date.

"(2) SPECIAL RULE FOR INVENTORY PROPERTY.—In the case of any property which is inventory in the hands of the taxpayer—

"(A) IN GENERAL.—Subsection (a) shall apply to taxable years beginning after December 31, 1987.

"(B) CHANGE IN METHOD OF ACCOUNTING.—If the taxpayer is required by this section to change its method of accounting for any taxable year—

"(i) such change shall be treated as initiated by the taxpayer,

"(ii) such change shall be treated as made with the consent of the Secretary of the Treasury or his delegate, and

"(iii) the net amount of adjustments required by section 481 of the Internal Revenue Code of 1986 shall be taken into account over a period not longer than 4 taxable years."

§264. Certain amounts paid in connection with insurance contracts

(a) General rule

No deduction shall be allowed for—

(1) Premiums on any life insurance policy, or endowment or annuity contract, if the taxpayer is directly or indirectly a beneficiary under the policy or contract.

(2) Any amount paid or accrued on indebtedness incurred or continued to purchase or carry a single premium life insurance, endowment, or annuity contract.

(3) Except as provided in subsection (d), any amount paid or accrued on indebtedness incurred or continued to purchase or carry a life insurance, endowment, or annuity contract (other than a single premium contract or a contract treated as a single premium contract) pursuant to a plan of purchase which contemplates the systematic direct or indirect borrowing of part or all of the increases in the cash value of such contract (either from the insurer or otherwise).

(4) Except as provided in subsection (e), any interest paid or accrued on any indebtedness with respect to 1 or more life insurance policies owned by the taxpayer covering the life of any individual, or any endowment or annuity contracts owned by the taxpayer covering any individual.

Paragraph (2) shall apply in respect of annuity contracts only as to contracts purchased after March 1, 1954. Paragraph (3) shall apply only in respect of contracts purchased after August 6, 1963. Paragraph (4) shall apply with respect to contracts purchased after June 20, 1986.

(b) Exceptions to subsection (a)(1)

Subsection (a)(1) shall not apply to—

(1) any annuity contract described in section 72(s)(5), and

(2) any annuity contract to which section 72(u) applies.

(c) Contracts treated as single premium contracts

For purposes of subsection (a)(2), a contract shall be treated as a single premium contract—

(1) if substantially all the premiums on the contract are paid within a period of 4 years from the date on which the contract is purchased, or

(2) if an amount is deposited after March 1, 1954, with the insurer for payment of a substantial number of future premiums on the contract.

(d) Exceptions

Subsection (a)(3) shall not apply to any amount paid or accrued by a person during a taxable year on indebtedness incurred or continued as part of a plan referred to in subsection (a)(3)—

(1) if no part of 4 of the annual premiums due during the 7-year period (beginning with the date the first premium on the contract to which such plan relates was paid) is paid under such plan by means of indebtedness,

(2) if the total of the amounts paid or accrued by such person during such taxable year for which (without regard to this paragraph) no deduction would be allowable by reason of subsection (a)(3) does not exceed $100.

(3) if such amount was paid or accrued on indebtedness incurred because of an unforeseen substantial loss of income or unforeseen substantial increase in his financial obligations, or

(4) if such indebtedness was incurred in connection with his trade or business.

For purposes of applying paragraph (1), if there is a substantial increase in the premiums on a contract, a new 7-year period described in such paragraph with respect to such contract shall commence on the date of first such increased premium is paid.

(e) Special rules for application of subsection (a)(4)

(1) Exception for key persons

Subsection (a)(4) shall not apply to any interest paid or accrued on any indebtedness with respect to policies or contracts covering an individual who is a key person to the extent that the aggregate amount of such indebtedness with respect to policies and contracts covering such individual does not exceed $50,000.

(2) Interest rate cap on key persons and pre-1986 contracts

(A) In general

No deduction shall be allowed by reason of paragraph (1) or the last sentence of subsection (a) with respect to interest paid or accrued for any month beginning after December 31, 1995, to the extent the amount of such interest exceeds the amount which would have been determined if the applicable rate of interest were used for such month.

(B) Applicable rate of interest

For purposes of subparagraph (A)—

(i) In general

The applicable rate of interest for any month is the rate of interest described as Moody's Corporate Bond Yield Average-Monthly Average Corporates as published by Moody's Investors Service, Inc., or any successor thereto, for such month.

(ii) Pre-1986 contracts

In the case of indebtedness on a contract purchased on or before June 20, 1986—

(I) which is a contract providing a fixed rate of interest, the applicable rate of interest for any month shall be the Moody's rate described in clause (i) for the month in which the contract was purchased, or

(II) which is a contract providing a variable rate of interest, the applicable rate of interest for any month in an applicable period shall be such Moody's rate for the third month preceding the first month in such period.

For purposes of subclause (II), the term "applicable period" means the 12-month period beginning on the date the policy is issued (and each successive 12-month period thereafter) unless the taxpayer elects a number of months (not greater than 12) other than such 12-month period to be its applicable period. Such an election shall be made not later than the 90th day after the date of the enactment of this sentence and, if made, shall apply to the taxpayer's first taxable year ending on or after October 13, 1995, and all subsequent taxable years unless revoked with the consent of the Secretary.

(3) Key person

For purposes of paragraph (1), the term "key person" means an officer or 20-percent owner, except that the number of individuals who may be treated as key persons with respect to any taxpayer shall not exceed the greater of—

(A) 5 individuals, or

(B) the lesser of 5 percent of the total officers and employees of the taxpayer or 20 individuals.

(4) 20-percent owner

For purposes of this subsection, the term "20-percent owner" means—

(A) if the taxpayer is a corporation, any person who owns directly 20 percent or more of the outstanding stock of the corporation or stock possessing 20 percent or more of the total combined voting power of all stock of the corporation, or

(B) if the taxpayer is not a corporation, any person who owns 20 percent or more of the capital or profits interest in the taxpayer.

(5) Aggregation rules

(A) In general

For purposes of paragraph (4)(A) and applying the $50,000 limitation in paragraph (1)—

(i) all members of a controlled group shall be treated as one taxpayer, and

(ii) such limitation shall be allocated among the members of such group in such manner as the Secretary may prescribe.

(B) Controlled group

For purposes of this paragraph, all persons treated as a single employer under subsection (a) or (b) of section 52 or subsection (m) or (o) of section 414 shall be treated as members of a controlled group.

(f) Pro rata allocation of interest expense to policy cash values

(1) In general

No deduction shall be allowed for that portion of the taxpayer's interest expense which is allocable to unborrowed policy cash values.

(2) Allocation

For purposes of paragraph (1), the portion of the taxpayer's interest expense which is allocable to unborrowed policy cash values is an amount which bears the same ratio to such interest expense as—

(A) the taxpayer's average unborrowed policy cash values of life insurance policies, and annuity and endowment contracts, issued after June 8, 1997, bears to

(B) the sum of—

(i) in the case of assets of the taxpayer which are life insurance policies or annuity or endowment contracts, the average unborrowed policy cash values of such policies and contracts, and

(ii) in the case of assets of the taxpayer not described in clause (i), the average adjusted bases (within the meaning of section 1016) of such assets.

(3) Unborrowed policy cash value

For purposes of this subsection, the term "unborrowed policy cash value" means, with respect to any life insurance policy or annuity or endowment contract, the excess of—

(A) the cash surrender value of such policy or contract determined without regard to any surrender charge, over

(B) the amount of any loan with respect to such policy or contract.

If the amount described in subparagraph (A) with respect to any policy or contract does not reasonably approximate its actual value, the amount taken into account under subparagraph (A) shall be the greater of the amount of the insurance company liability or the insurance company reserve with respect to such policy or contract (as determined for purposes of the annual statement approved by the National Association of Insurance Commissioners) or shall be such other amount as is determined by the Secretary.

(4) Exception for certain policies and contracts

(A) Policies and contracts covering 20-percent owners, officers, directors, and employees

Paragraph (1) shall not apply to any policy or contract owned by an entity engaged in a trade or business if such policy or contract covers only 1 individual and if such individual is (at the time first covered by the policy or contract)—

(i) a 20-percent owner of such entity, or

(ii) an individual (not described in clause (i)) who is an officer, director, or employee of such trade or business.

A policy or contract covering a 20-percent owner of such entity shall not be treated as failing to meet the requirements of the preceding sentence by reason of covering the joint lives of such owner and such owner's spouse.

(B) Contracts subject to current income inclusion

Paragraph (1) shall not apply to any annuity contract to which section 72(u) applies.

(C) Coordination with paragraph (2)

Any policy or contract to which paragraph (1) does not apply by reason of this paragraph shall not be taken into account under paragraph (2).

(D) 20-percent owner

For purposes of subparagraph (A), the term "20-percent owner" has the meaning given such term by subsection (e)(4).

(E) Master contracts

If coverage for each insured under a master contract is treated as a separate contract for purposes of sections 817(h), 7702, and 7702A, coverage for each such insured shall be treated as a separate contract for purposes of subparagraph (A). For purposes of the preceding sentence, the term "master contract" shall not include any group life insurance contract (as defined in section 848(e)(2)).

(5) Exception for policies and contracts held by natural persons; treatment of partnerships and S corporations

(A) Policies and contracts held by natural persons

(i) In general

This subsection shall not apply to any policy or contract held by a natural person.

(ii) Exception where business is beneficiary

If a trade or business is directly or indirectly the beneficiary under any policy or contract, such policy or contract shall be treated as held by such trade or business and not by a natural person.

(iii) Special rules

(I) Certain trades or businesses not taken into account

Clause (ii) shall not apply to any trade or business carried on as a sole proprietorship and to any trade or business performing services as an employee.

(II) Limitation on unborrowed cash value

The amount of the unborrowed cash value of any policy or contract which is taken into account by reason of clause (ii) shall not exceed the benefit to which the trade or business is directly or indirectly entitled under the policy or contract.

(iv) Reporting

The Secretary shall require such reporting from policyholders and issuers as is necessary to carry out clause (ii).

(B) Treatment of partnerships and S corporations

In the case of a partnership or S corporation, this subsection shall be applied at the partnership and corporate levels.

(6) Special rules

(A) Coordination with subsection (a) and section 265

If interest on any indebtedness is disallowed under subsection (a) or section 265—

(i) such disallowed interest shall not be taken into account for purposes of applying this subsection, and

(ii) the amount otherwise taken into account under paragraph (2)(B) shall be reduced (but not below zero) by the amount of such indebtedness.

(B) Coordination with section 263A

This subsection shall be applied before the application of section 263A (relating to capitalization of certain expenses where taxpayer produces property).

(7) Interest expense

The term "interest expense" means the aggregate amount allowable to the taxpayer as a deduction for interest (within the meaning of section 265(b)(4)) for the taxable year (determined without regard to this subsection, section 265(b), and section 291).

(8) Aggregation rules

(A) In general

All members of a controlled group (within the meaning of subsection (e)(5)(B)) shall be treated as 1 taxpayer for purposes of this subsection.

(B) Treatment of insurance companies

This subsection shall not apply to an insurance company subject to tax under subchapter L, and subparagraph (A) shall be applied without regard to any member of an affiliated group which is an insurance company.

(Aug. 16, 1954, ch. 736, 68A Stat. 77; Pub. L. 88–272, title II, §215(a), (b), Feb. 26, 1964, 78 Stat. 55; Pub. L. 99–514, title X, §1003(a), (b), Oct. 22, 1986, 100 Stat. 2388; Pub. L. 104–191, title V, §501(a), (b), Aug. 21, 1996, 110 Stat. 2090; Pub. L. 105–34, title X, §1084(a), (b)(1), (c), title XVI, §1602(f)(1)–(3), Aug. 5, 1997, 111 Stat. 951, 952, 1094, 1095; Pub. L. 105–206, title VI,

§6010(o)(1)–(3)(A), (4)(A), (5), July 22, 1998, 112 Stat. 816; Pub. L. 105–277, div. J, title IV, §4003(i), Oct. 21, 1998, 112 Stat. 2681–910.)

REFERENCES IN TEXT

The date of the enactment of this sentence, referred to in subsec. (e)(2)(B)(ii), probably means the date of enactment of Pub. L. 105–34, which was approved Aug. 5, 1997.

CODIFICATION

Another section 1084(b) of Pub. L. 105–34 amended sections 805, 807, 812, and 832 of this title. Another section 1084(c) of Pub. L. 105–34 amended section 265 of this title.

AMENDMENTS

1998—Subsec. (a)(3). Pub. L. 105–206, §6010(o)(1), substituted "subsection (d)" for "subsection (c)".

Subsec. (a)(4). Pub. L. 105–206, §6010(o)(2), substituted "subsection (e)" for "subsection (d)".

Subsec. (f)(3). Pub. L. 105–277 inserted concluding provisions.

Subsec. (f)(4)(E). Pub. L. 105–206, §6010(o)(3)(A), added subpar. (E).

Subsec. (f)(5)(A)(iv). Pub. L. 105–206, §6010(o)(4)(A), struck out at end "Any report required under the preceding sentence shall be treated as a statement referred to in section 6724(d)(1)."

Subsec. (f)(8)(A). Pub. L. 105–206, §6010(o)(5), substituted "subsection (e)(5)(B)" for "subsection (d)(5)(B)".

1997—Subsec. (a)(1). Pub. L. 105–34, §1084(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "Premiums paid on any life insurance policy covering the life of any officer or employee, or of any person financially interested in any trade or business carried on by the taxpayer, when the taxpayer is directly or indirectly a beneficiary under such policy."

Subsec. (a)(4). Pub. L. 105–34, §1602(f)(1), added subpars. (A) and (B) and concluding provisions and struck out former subpars. (A) and (B) and concluding provisions which read as follows:

"(A) is an officer or employee of, or

"(B) is financially interested in,

any trade or business carried on by the taxpayer."

Pub. L. 105–34, §1084(b)(1), substituted "individual." for "individual, who—

"(A) is or was an officer or employee, or

"(B) is or was financially interested in,

any trade or business carried on (currently or formerly) by the taxpayer."

Subsecs. (b), (c). Pub. L. 105–34, §1084(a)(2), added subsec. (b) and redesignated former subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 105–34, §1084(a)(2), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (d)(2)(B)(ii). Pub. L. 105–34, §1602(f)(2), amended concluding provisions generally. Prior to amendment, concluding provisions read as follows: "For purposes of subclause (II), the taxpayer shall elect an applicable period for such contract on its return of tax imposed by this chapter for its first taxable year ending on or after October 13, 1995. Such applicable period shall be for any number of months (not greater than 12) specified in the election and may not be changed by the taxpayer without the consent of the Secretary."

Subsec. (d)(4)(B). Pub. L. 105–34, §1602(f)(3), substituted "interest in the taxpayer" for "interest in the employer".

Subsec. (e). Pub. L. 105–34, §1084(a)(2), redesignated subsec. (d) as (e).

Subsec. (f). Pub. L. 105–34, §1084(c), added subsec. (f).

1996—Subsec. (a)(4). Pub. L. 104–191, §501(a)(1), (b)(1), in introductory provisions, substituted "Except as provided in subsection (d), any" for "Any" and inserted ", or any endowment or annuity contracts owned by the taxpayer covering any individual," after "the life of any individual".

Pub. L. 104–191, §501(a)(2), struck out "to the extent that the aggregate amount of such indebtedness with respect to policies covering such individual exceeds $50,000" after "carried on by the taxpayer" in concluding provisions.

Subsec. (d). Pub. L. 104–191, §501(b)(2), added subsec. (d).

1986—Subsec. (a). Pub. L. 99–514 added par. (4) and last sentence providing that par. (4) shall apply with respect to contracts purchased after June 20, 1986.

1964—Subsec. (a). Pub. L. 88–272 added par. (3) and sentence providing that par. (3) shall apply only to contracts purchased after August 6, 1963.

Subsec. (c). Pub. L. 88–272 added subsec. (c).

EFFECTIVE DATE OF 1998 AMENDMENTS

Amendment by Pub. L. 105–277 effective as if included in the provision of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 4003(l) of Pub. L. 105–277, set out as a note under section 86 of this title.

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 1084(a), (b)(1), (c) of Pub. L. 105–34 applicable to contracts issued after June 8, 1997, in taxable years ending after such date, with special provisions relating to changes in contracts to be treated as new contracts, see section 1084(d) of Pub. L. 105–34, set out as a note under section 101 of this title.

Amendment by section 1602(f)(1)–(3) of Pub. L. 105–34 effective as if included in the provisions of the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104–191, to which such amendment relates, see section 1602(i) of Pub. L. 105–34, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–191, title V, §501(c), Aug. 21, 1996, 110 Stat. 2091, as amended by Pub. L. 105–34, title XVI, §1602(f)(4), Aug. 5, 1997, 111 Stat. 1095, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to interest paid or accrued after October 13, 1995.

"(2) TRANSITION RULE FOR EXISTING INDEBTEDNESS.—

"(A) IN GENERAL.—In the case of—

"(i) indebtedness incurred before January 1, 1996, or

"(ii) indebtedness incurred before January 1, 1997 with respect to any contract or policy entered into in 1994 or 1995,

the amendments made by this section shall not apply to qualified interest paid or accrued on such indebtedness after October 13, 1995, and before January 1, 1999.

"(B) QUALIFIED INTEREST.—For purposes of subparagraph (A), the qualified interest with respect to any indebtedness for any month is the amount of interest (otherwise deductible) which would be paid or accrued for such month on such indebtedness if—

"(i) in the case of any interest paid or accrued after December 31, 1995, indebtedness with respect to no more than 20,000 insured individuals were taken into account, and

"(ii) the lesser of the following rates of interest were used for such month:

"(I) The rate of interest specified under the terms of the indebtedness as in effect on October 13, 1995 (and without regard to modification of such terms after such date).

"(II) The applicable percentage of the rate of interest described as Moody's Corporate Bond Yield Average-Monthly Average Corporates as published by Moody's Investors Service, Inc., or any successor thereto, for such month.

For purposes of clause (i), all persons treated as a single employer under subsection (a) or (b) of section 52 of the Internal Revenue Code of 1986 or subsection (m) or (o) of section 414 of such Code shall be treated as 1 person. Subclause (II) of clause (ii) shall not apply to any month before January 1, 1996.

"(C) APPLICABLE PERCENTAGE.—For purposes of subparagraph (B), the applicable percentage is as follows:

For calendar year:	The percentage is:
1996	100 percent
1997	90 percent
1998	80 percent."

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title X, §1003(c), Oct. 22, 1986, 100 Stat. 2388, provided that: "The amendments made by

this section [amending this section] shall apply to contracts purchased after June 20, 1986, in taxable years ending after such date."

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88–272, title II, §215(c), Feb. 26, 1964, 78 Stat. 56, provided that: "The amendments made by this section [amending this section] shall apply with respect to amounts paid or accrued in taxable years beginning after December 31, 1963."

SPREAD OF INCOME INCLUSION ON SURRENDER, ETC. OF CONTRACTS

Pub. L. 104–191, title V, §501(d), Aug. 21, 1996, 110 Stat. 2092, as amended by Pub. L. 105–34, title XVI, §1602(f)(5), Aug. 5, 1997, 111 Stat. 1095, provided that:

"(1) IN GENERAL.—If any amount is received under any life insurance policy or endowment or annuity contract described in paragraph (4) of section 264(a) of the Internal Revenue Code of 1986—

"(A) on the complete surrender, redemption, or maturity of such policy or contract during calendar year 1996, 1997, or 1998, or

"(B) in full discharge during any such calendar year of the obligation under the policy or contract which is in the nature of a refund of the consideration paid for the policy or contract,

then (in lieu of any other inclusion in gross income) such amount shall be includible in gross income ratably over the 4-taxable year period beginning with the taxable year such amount would (but for this paragraph) be includible. The preceding sentence shall only apply to the extent the amount is includible in gross income for the taxable year in which the event described in subparagraph (A) or (B) occurs.

"(2) SPECIAL RULES FOR APPLYING SECTION 264.—A contract shall not be treated as—

"(A) failing to meet the requirement of section 264(c)(1) of the Internal Revenue Code of 1986, or

"(B) a single premium contract under section 264(b)(1) of such Code,

solely by reason of an occurrence described in subparagraph (A) or (B) of paragraph (1) of this subsection or solely by reason of a lapse occurring after October 13, 1995, by reason of no additional premiums being received under the contract.

"(3) SPECIAL RULE FOR DEFERRED ACQUISITION COSTS.—In the case of the occurrence of any event described in subparagraph (A) or (B) of paragraph (1) of this subsection with respect to any policy or contract—

"(A) section 848 of the Internal Revenue Code of 1986 shall not apply to the unamortized balance (if any) of the specified policy acquisition expenses attributable to such policy or contract immediately before the insurance company's taxable year in which such event occurs, and

"(B) there shall be allowed as a deduction to such company for such taxable year under chapter 1 of such Code an amount equal to such unamortized balance."

§265. Expenses and interest relating to tax-exempt income

(a) General rule

No deduction shall be allowed for—

(1) Expenses

Any amount otherwise allowable as a deduction which is allocable to one or more classes of income other than interest (whether or not any amount of income of that class or classes is received or accrued) wholly exempt from the taxes imposed by this subtitle, or any amount otherwise allowable under section 212 (relating to expenses for production of income) which is allocable to interest (whether or not any amount of such interest is received or accrued) wholly exempt from the taxes imposed by this subtitle.

(2) Interest

Interest on indebtedness incurred or continued to purchase or carry obligations the interest on which is wholly exempt from the taxes imposed by this subtitle.

(3) Certain regulated investment companies

In the case of a regulated investment company which distributes during the taxable year an exempt-interest dividend (including exempt-interest dividends paid after the close of the taxable year as described in section 855), that portion of any amount otherwise allowable as a deduction

which the amount of the income of such company wholly exempt from taxes under this subtitle bears to the total of such exempt income and its gross income (excluding from gross income, for this purpose, capital gain net income, as defined in section 1222(9)).

(4) Interest related to exempt-interest dividends

Interest on indebtedness incurred or continued to purchase or carry shares of stock of a regulated investment company which during the taxable year of the holder thereof distributes exempt-interest dividends.

(5) Special rules for application of paragraph (2) in the case of short sales

For purposes of paragraph (2)—

(A) In general

The term "interest" includes any amount paid or incurred—

(i) by any person making a short sale in connection with personal property used in such short sale, or

(ii) by any other person for the use of any collateral with respect to such short sale.

(B) Exception where no return on cash collateral

If—

(i) the taxpayer provides cash as collateral for any short sale, and

(ii) the taxpayer receives no material earnings on such cash during the period of the sale,

subparagraph (A)(i) shall not apply to such short sale.

(6) Section not to apply with respect to parsonage and military housing allowances

No deduction shall be denied under this section for interest on a mortgage on, or real property taxes on, the home of the taxpayer by reason of the receipt of an amount as—

(A) a military housing allowance, or

(B) a parsonage allowance excludable from gross income under section 107.

(b) Pro rata allocation of interest expense of financial institutions to tax-exempt interest

(1) In general

In the case of a financial institution, no deduction shall be allowed for that portion of the taxpayer's interest expense which is allocable to tax-exempt interest.

(2) Allocation

For purposes of paragraph (1), the portion of the taxpayer's interest expense which is allocable to tax-exempt interest is an amount which bears the same ratio to such interest expense as—

(A) the taxpayer's average adjusted bases (within the meaning of section 1016) of tax-exempt obligations acquired after August 7, 1986, bears to

(B) such average adjusted bases for all assets of the taxpayer.

(3) Exception for certain tax-exempt obligations

(A) In general

Any qualified tax-exempt obligation acquired after August 7, 1986, shall be treated for purposes of paragraph (2) and section 291(e)(1)(B) as if it were acquired on August 7, 1986.

(B) Qualified tax-exempt obligation

(i) In general

For purposes of subparagraph (A), the term "qualified tax-exempt obligation" means a tax-exempt obligation—

(I) which is issued after August 7, 1986, by a qualified small issuer,

(II) which is not a private activity bond (as defined in section 141), and

(III) which is designated by the issuer for purposes of this paragraph.

(ii) Certain bonds not treated as private activity bonds

For purposes of clause (i)(II), there shall not be treated as a private activity bond—

(I) any qualified 501(c)(3) bond (as defined in section 145), or

(II) any obligation issued to refund (or which is part of a series of obligations issued to refund) an obligation issued before August 8, 1986, which was not an industrial development bond (as defined in section 103(b)(2) as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) or a private loan bond (as defined in section 103(o)(2)(A), as so in effect, but without regard to any exemption from such definition other than section 103(o)(2)(A)).

(C) Qualified small issuer

(i) In general

For purposes of subparagraph (B), the term "qualified small issuer" means, with respect to obligations issued during any calendar year, any issuer if the reasonably anticipated amount of tax-exempt obligations (other than obligations described in clause (ii)) which will be issued by such issuer during such calendar year does not exceed $10,000,000.

(ii) Obligations not taken into account in determining status as qualified small issuer

For purposes of clause (i), an obligation is described in this clause if such obligation is—

(I) a private activity bond (other than a qualified 501(c)(3) bond, as defined in section 145),

(II) an obligation to which section 141(a) does not apply by reason of section 1312, 1313, 1316(g), or 1317 of the Tax Reform Act of 1986 and which would (if issued on August 15, 1986) have been an industrial development bond (as defined in section 103(b)(2) as in effect on the day before the date of the enactment of such Act) or a private loan bond (as defined in section 103(o)(2)(A), as so in effect, but without regard to any exception from such definition other than section 103(o)(2)(A)), or

(III) an obligation issued to refund (other than to advance refund within the meaning of section 149(d)(5)) any obligation to the extent the amount of the refunding obligation does not exceed the outstanding amount of the refunded obligation.

(iii) Allocation of amount of issue in certain cases

In the case of an issue under which more than 1 governmental entity receives benefits, if—

(I) all governmental entities receiving benefits from such issue irrevocably agree (before the date of issuance of the issue) on an allocation of the amount of such issue for purposes of this subparagraph, and

(II) such allocation bears a reasonable relationship to the respective benefits received by such entities,

then the amount of such issue so allocated to an entity (and only such amount with respect to such issue) shall be taken into account under clause (i) with respect to such entity.

(D) Limitation on amount of obligations which may be designated

(i) In general

Not more than $10,000,000 of obligations issued by an issuer during any calendar year may be designated by such issuer for purposes of this paragraph.

(ii) Certain refundings of designated obligations deemed designated

Except as provided in clause (iii), in the case of a refunding (or series of refundings) of a qualified tax-exempt obligation, the refunding obligation shall be treated as a qualified tax-exempt obligation (and shall not be taken into account under clause (i)) if—

(I) the refunding obligation was not taken into account under subparagraph (C) by reason of clause (ii)(III) thereof,

(II) the average maturity date of the refunding obligations issued as part of the issue of

which such refunding obligation is a part is not later than the average maturity date of the obligations to be refunded by such issue, and

(III) the refunding obligation has a maturity date which is not later than the date which is 30 years after the date the original qualified tax-exempt obligation was issued.

Subclause (II) shall not apply if the average maturity of the issue of which the original qualified tax-exempt obligation was a part (and of the issue of which the obligations to be refunded are a part) is 3 years or less. For purposes of this clause, average maturity shall be determined in accordance with section 147(b)(2)(A).

(iii) Certain obligations may not be designated or deemed designated

No obligation issued as part of an issue may be designated under this paragraph (or may be treated as designated under clause (ii)) if—

(I) any obligation issued as part of such issue is issued to refund another obligation, and

(II) the aggregate face amount of such issue exceeds $10,000,000.

(E) Aggregation of issuers

For purposes of subparagraphs (C) and (D)—

(i) an issuer and all entities which issue obligations on behalf of such issuer shall be treated as 1 issuer,

(ii) all obligations issued by a subordinate entity shall, for purposes of applying subparagraphs (C) and (D) to each other entity to which such entity is subordinate, be treated as issued by such other entity, and

(iii) an entity formed (or, to the extent provided by the Secretary, availed of) to avoid the purposes of subparagraph (C) or (D) and all entities benefiting thereby shall be treated as 1 issuer.

(F) Treatment of composite issues

In the case of an obligation which is issued as part of a direct or indirect composite issue, such obligation shall not be treated as a qualified tax-exempt obligation unless—

(i) the requirements of this paragraph are met with respect to such composite issue (determined by treating such composite issue as a single issue), and

(ii) the requirements of this paragraph are met with respect to each separate lot of obligations which are part of the issue (determined by treating each such separate lot as a separate issue).

(G) Special rules for obligations issued during 2009 and 2010

(i) Increase in limitation

In the case of obligations issued during 2009 or 2010, subparagraphs (C)(i), (D)(i), and (D)(iii)(II) shall each be applied by substituting "$30,000,000" for "$10,000,000".

(ii) Qualified 501(c)(3) bonds treated as issued by exempt organization

In the case of a qualified 501(c)(3) bond (as defined in section 145) issued during 2009 or 2010, this paragraph shall be applied by treating the 501(c)(3) organization for whose benefit such bond was issued as the issuer.

(iii) Special rule for qualified financings

In the case of a qualified financing issue issued during 2009 or 2010—

(I) subparagraph (F) shall not apply, and

(II) any obligation issued as a part of such issue shall be treated as a qualified tax-exempt obligation if the requirements of this paragraph are met with respect to each qualified portion of the issue (determined by treating each qualified portion as a separate issue which is issued by the qualified borrower with respect to which such portion relates).

(iv) Qualified financing issue

For purposes of this subparagraph, the term "qualified financing issue" means any

composite, pooled, or other conduit financing issue the proceeds of which are used directly or indirectly to make or finance loans to 1 or more ultimate borrowers each of whom is a qualified borrower.

(v) Qualified portion

For purposes of this subparagraph, the term "qualified portion" means that portion of the proceeds which are used with respect to each qualified borrower under the issue.

(vi) Qualified borrower

For purposes of this subparagraph, the term "qualified borrower" means a borrower which is a State or political subdivision thereof or an organization described in section 501(c)(3) and exempt from taxation under section 501(a).

(4) Definitions

For purposes of this subsection—

(A) Interest expense

The term "interest expense" means the aggregate amount allowable to the taxpayer as a deduction for interest for the taxable year (determined without regard to this subsection, section 264, and section 291). For purposes of the preceding sentence, the term "interest" includes amounts (whether or not designated as interest) paid in respect of deposits, investment certificates, or withdrawable or repurchasable shares.

(B) Tax-exempt obligation

The term "tax-exempt obligation" means any obligation the interest on which is wholly exempt from taxes imposed by this subtitle. Such term includes shares of stock of a regulated investment company which during the taxable year of the holder thereof distributes exempt-interest dividends.

(5) Financial institution

For purposes of this subsection, the term "financial institution" means any person who—

(A) accepts deposits from the public in the ordinary course of such person's trade or business, and is subject to Federal or State supervision as a financial institution, or

(B) is a corporation described in section 585(a)(2).

(6) Special rules

(A) Coordination with subsection (a)

If interest on any indebtedness is disallowed under subsection (a) with respect to any tax-exempt obligation—

(i) such disallowed interest shall not be taken into account for purposes of applying this subsection, and

(ii) for purposes of applying paragraph (2), the adjusted basis of such tax-exempt obligation shall be reduced (but not below zero) by the amount of such indebtedness.

(B) Coordination with section 263A

This section shall be applied before the application of section 263A (relating to capitalization of certain expenses where taxpayer produces property).

(7) De minimis exception for bonds issued during 2009 or 2010

(A) In general

In applying paragraph (2)(A), there shall not be taken into account tax-exempt obligations issued during 2009 or 2010.

(B) Limitation

The amount of tax-exempt obligations not taken into account by reason of subparagraph (A) shall not exceed 2 percent of the amount determined under paragraph (2)(B).

(C) Refundings

For purposes of this paragraph, a refunding bond (whether a current or advance refunding) shall be treated as issued on the date of the issuance of the refunded bond (or in the case of a series of refundings, the original bond).

(Aug. 16, 1954, ch. 736, 68A Stat. 78; Pub. L. 88–272, title II, §216(a), Feb. 26, 1964, 78 Stat. 56; Pub. L. 94–455, title XIX, §§1901(a)(37), 1906(b)(13)(A), title XXI, §2137(e), Oct. 4, 1976, 90 Stat. 1770, 1834, 1931; Pub. L. 96–223, title IV, §404(b)(2), Apr. 2, 1980, 94 Stat. 306; Pub. L. 97–34, title III, §§301(b)(2), 302(c)(2), (d)(1), Aug. 13, 1981, 95 Stat. 270, 272, 274; Pub. L. 98–369, div. A, title I, §§16(a), 56(c), July 18, 1984, 98 Stat. 505, 574; Pub. L. 99–514, title I, §144, title IX, §902(a), (b), (d), Oct. 22, 1986, 100 Stat. 2121, 2380–2382; Pub. L. 100–647, title I, §1009(b)(3)(A), Nov. 10, 1988, 102 Stat. 3446; Pub. L. 101–508, title XI, §11801(c)(4), Nov. 5, 1990, 104 Stat. 1388–523; Pub. L. 105–34, title X, §1084(c), Aug. 5, 1997, 111 Stat. 955; Pub. L. 111–5, div. B, title I, §§1501(a), 1502(a), Feb. 17, 2009, 123 Stat. 353.)

REFERENCES IN TEXT

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (b)(3)(B)(ii)(II), (C)(ii)(II), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

Sections 1312, 1313, 1316(g), and 1317 of the Tax Reform Act of 1986, referred to in subsec. (b)(3)(C)(ii)(II), are sections 1312, 1313, 1316(g), and 1317 of Pub. L. 99–514, which are set out as a note under section 141 of this title.

CODIFICATION

Another section 1084(c) of Pub. L. 105–34 amended section 264 of this title.

AMENDMENTS

2009—Subsec. (b)(3)(G). Pub. L. 111–5, §1502(a), added subpar. (G).

Subsec. (b)(7). Pub. L. 111–5, §1501(a), added par. (7).

1997—Subsec. (b)(4)(A). Pub. L. 105–34 inserted ", section 264," before "and section 291".

1990—Subsec. (a)(2). Pub. L. 101–508, §11801(c)(4), struck out before period at end ", or to purchase or carry any certificate to the extent the interest on such certificate is excludable under section 128".

1988—Subsec. (b)(3). Pub. L. 100–647 amended par. (3) generally, reenacting subpar. (A) without change, revising and restating provisions of subpars. (B) to (E), and adding subpar. (F).

1986—Pub. L. 99–514, §902(a), (d), designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

Par. (2). Pub. L. 99–514, §902(b), struck out last sentence which read as follows: "In applying the preceding sentence to a financial institution (other than a bank) which is a face-amount certificate company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 and following) and which is subject to the banking laws of the State in which such institution is incorporated, interest on face-amount certificates (as defined in section 2(a)(15) of such Act) issued by such institution, and interest on amounts received for the purchase of such certificates to be issued by such institution, shall not be considered as interest on indebtedness incurred or continued to purchase or carry obligations the interest on which is wholly exempt from the taxes imposed by this subtitle, to the extent that the average amount of such obligations held by such institution during the taxable year (as determined under regulations prescribed by the Secretary) does not exceed 15 percent of the average of the total assets held by such institution during the taxable year (as so determined)."

Par. (6). Pub. L. 99–514, §144, added par. (6).

1984—Par. (2). Pub. L. 98–369, §16(a), repealed amendments made by Pub. L. 97–34, §302(c). See 1981 Amendment note below.

Par. (5). Pub. L. 98–369, §56(c), added par. (5).

1981—Par. (2). Pub. L. 97–34, §302(c)(2), (d)(1), provided that, applicable to taxable years beginning after Dec. 31, 1984, par. (2) is amended by striking out "or to purchase or carry any certificate to the extent the interest on such certificate is excludable under section 128" and inserting in lieu thereof "or to purchase or carry obligations or shares, or to make other deposits or investments, the interest on which is described in section 128(c)(1) to the extent such interest is excludable from gross income under section 128". Section 16(a) of Pub. L. 98–369, repealed section 302(c) of Pub. L. 97–34, and provided that this title shall be applied and administered as if section 302(c), and the amendments made by such section 302(c), had not been enacted.

Pub. L. 97–34, §301(b)(2), inserted ", or to purchase or carry any certificate to the extent the interest on

such certificate is excludable under section 128" after "116".

1980—Par. (2). Pub. L. 96–223 inserted ", or to purchase or carry obligations or shares, or to make deposits or other investments, the interest on which is described in section 116(c) to the extent such interest is excludable from gross income under section 116" after "subtitle".

1976—Par. (2). Pub. L. 94–455, §§1901(a)(37), 1906(b)(13)(A), struck out "(other than obligations of the United States issued after September 24, 1917, and originally subscribed for by the taxpayer)" after "to purchase or carry obligations" and "or his delegate" after "Secretary".

Pars. (3), (4). Pub. L. 94–455, §2137(e), added pars. (3) and (4).

1964—Par. (2). Pub. L. 88–272 provided that interest on face-amount certificates issued by a face-amount certificate company, and interest on amounts received for the purchase of such certificates to be issued by such institution, shall not be considered interest on indebtedness to purchase or carry obligations the interest on which is wholly exempt from the taxes under this subtitle, to the extent the average amount of such obligations held by such institution during the taxable year doesn't exceed 15 percent of the average total assets held by such institution during the taxable year.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, §1501(c), Feb. 17, 2009, 123 Stat. 353, provided that: "The amendments made by this section [amending this section and section 291 of this title] shall apply to obligations issued after December 31, 2008."

Pub. L. 111–5, div. B, title I, §1502(b), Feb. 17, 2009, 123 Stat. 354, provided that: "The amendment made by this section [amending this section] shall apply to obligations issued after December 31, 2008."

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to contracts issued after June 8, 1997, in taxable years ending after such date, with special provisions relating to changes in contracts to be treated as new contracts, see section 1084(d) of Pub. L. 105–34, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1009(b)(3)(B)–(D), Nov. 10, 1988, 102 Stat. 3448, 3449, as amended by Pub. L. 101–239, title VII, §7811(f)(2), Dec. 19, 1989, 103 Stat. 2409, provided that:

"(B) In the case of any obligation issued after August 7, 1986, and before January 1, 1987, the time for making a designation with respect to such obligation under section 265(b)(3)(B)(i)(III) of the 1986 Code shall not expire before January 1, 1989.

"(C) If—

"(i) an obligation is issued on or after January 1, 1986, and on or before August 7, 1986,

"(ii) when such obligation was issued, the issuer made a designation that it intended to qualify under section 802(e)(3) of H.R. 3838 of the 99th Congress as passed by the House of Representatives [H.R. 3838 was enacted as Pub. L. 99–514], and

"(iii) the issuer makes an election under this subparagraph with respect to such obligation,

for purposes of section 265(b)(3) of the 1986 Code, such obligation shall be treated as issued on August 8, 1986.

"(D)(i) Except as provided in clause (ii), the following provisions of section 265(b)(3) of the 1986 Code (as amended by this subparagraph (A)) shall apply to obligations issued after June 30, 1987:

"(I) subparagraph (C)(ii)(III),

"(II) clauses (ii) and (iii) of subparagraph (D), and

"(III) subparagraphs (E) and (F).

"(ii) At the election of an issuer (made at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe), the provisions referred to in clause (i) shall apply to such issuer as if included in the amendments made by section 902(a) of the Tax Reform Act of 1986 [section 902(a) of Pub. L. 99–514, amending this section]."

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

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 144 of Pub. L. 99–514 applicable to taxable years beginning before, on, or after Dec. 31, 1986, see section 151(e) of Pub. L. 99–514, set out as a note under section 1 of this title.

Pub. L. 99–514, title IX, §902(f), Oct. 22, 1986, 100 Stat. 2382, as amended by Pub. L. 100–647, title I, §1009(b)(1), (2), (7), Nov. 10, 1988, 102 Stat. 3445, 3446, 3449, provided that:

"(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section and sections 163, 291, and 1277 of this title] shall apply to taxable years ending after December 31, 1986.

"(2) OBLIGATIONS ACQUIRED PURSUANT TO CERTAIN COMMITMENTS.—For purposes of sections 265(b) and 291(e)(1)(B) of the Internal Revenue Code of 1986, any tax-exempt obligation which is acquired after August 7, 1986, pursuant to a direct or indirect written commitment—

"(A) to purchase or repurchase such obligation, and

"(B) entered into on or before September 25, 1985,

shall be treated as an obligation acquired before August 8, 1986.

"(3) TRANSITIONAL RULES.—For purposes of sections 265(b) and 291(e)(1)(B) of the Internal Revenue Code of 1986, obligations with respect to any of the following projects shall be treated as obligations acquired before August 8, 1986, in the hands of the first and any subsequent financial institution acquiring such obligations:

"(A) Park Forest, Illinois, redevelopment project.

"(B) Clinton, Tennessee, Carriage Trace project.

"(C) Savannah, Georgia, Mall Terrace Warehouse project.

"(D) Chattanooga, Tennessee, Warehouse Row project.

"(E) Dalton, Georgia, Towne Square project.

"(F) Milwaukee, Wisconsin, Standard Electric Supply Company—distribution facility.

"(G) Wausau, Wisconsin, urban renewal project.

"(H) Cassville, Missouri, UDAG project.

"(I) Outlook Envelope Company—plant expansion.

"(J) Woodstock, Connecticut, Crabtree Warehouse partnership.

"(K) Louisville, Kentucky, Speed Mansion renovation project.

"(L) Charleston, South Carolina, 2 Festival Market Place projects at Union Pier Terminal and 1 project at the Remount Road Container Yard, State Pier No. 15 at North Charleston Terminal.

"(M) New Orleans, Louisiana, Upper Pontalba Building renovation.

"(N) Woodward Wight Building.

"(O) Minneapolis, Minnesota, Miller Milling Company—flour mill project.

"(P) Homewood, Alabama, the Club Apartments.

"(Q) Charlotte, North Carolina—qualified mortgage bonds acquired by NCNB bank ($5,250,000).

"(R) Grand Rapids, Michigan, Central Bank project.

"(S) Ruppman Marketing Services, Inc.—building project.

"(T) Bellows Falls, Vermont—building project.

"(U) East Broadway Project, Louisville, Kentucky.

"(V) O.K. Industries, Oklahoma.

"(4) ADDITIONAL TRANSITIONAL RULE.—Obligations issued pursuant to an allocation of a State's volume limitation for private activity bonds, which allocation was made by Executive Order 25 signed by the Governor of the State on May 22, 1986 (as such order may be amended before January 1, 1987), and qualified 501(c)(3) bonds designated by such Governor for purposes of this paragraph, shall be treated as acquired on or before August 7, 1986, in the hands of the first and any subsequent financial institution acquiring such obligation. The aggregate face amount of obligations to which this paragraph applies shall not exceed $200,000,000."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 16(a) of Pub. L. 98–369 applicable to taxable years ending after Dec. 31, 1983, see section 18(a) of Pub. L. 98–369, set out as a note under section 48 of this title.

Amendment by section 56(c) of Pub. L. 98–369 applicable to short sales after July 18, 1984, in taxable years ending after that date, see section 56(d) of Pub. L. 98–369, set out as a note under section 163 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title III, §301(d), Aug. 13, 1981, 95 Stat. 270, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting section 128 of this title and amending this section and sections 584, 643, and 702 of this title] shall apply to taxable years ending after September 30, 1981.

"(2) CONFORMING AMENDMENTS.—The amendments made by subsection (b)(6) [amending sections 584, 643, and 702 of this title] shall apply to taxable years beginning after December 31, 1981."

EFFECTIVE AND TERMINATION DATES OF 1980 AMENDMENT

Pub. L. 96–223, title IV, §404(c), Apr. 2, 1980, 94 Stat. 308, as amended by Pub. L. 97–34, title III, §302(b)(1), Aug. 13, 1981, 95 Stat. 272, provided that: "The amendments made by this section [amending this section and sections 116, 584, 643, 702, 854, and 857 of this title] shall apply with respect to taxable years beginning after December 31, 1980, and before January 1, 1982."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(37) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by section 2137(e) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1975, see section 2137(e) of Pub. L. 94–455, set out as a note under section 852 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88–272, title II, §216(b), Feb. 26, 1964, 78 Stat. 56, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years ending after the date of the enactment of this Act [Feb. 21, 1964]."

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

CLARIFICATION OF TREATMENT OF AMOUNTS EXCLUDED UNDER SECTION 597

Pub. L. 99–514, title IX, §904(c)(2)(B), Oct. 22, 1986, 100 Stat. 2385, provided that this section shall not deny any deduction by reason of such deduction being allocable to amounts excluded from gross income under section 597 of this title as in effect on Oct. 21, 1986, prior to repeal by Pub. L. 101–73, title XIV, §1401(a)(3)(B), Aug. 9, 1989, 103 Stat. 549.

§266. Carrying charges

No deduction shall be allowed for amounts paid or accrued for such taxes and carrying charges as, under regulations prescribed by the Secretary, are chargeable to capital account with respect to property, if the taxpayer elects, in accordance with such regulations, to treat such taxes or charges as so chargeable.

(Aug. 16, 1954, ch. 736, 68A Stat. 78; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

§267. Losses, expenses, and interest with respect to transactions between related taxpayers

(a) In general

(1) Deduction for losses disallowed

No deduction shall be allowed in respect of any loss from the sale or exchange of property, directly or indirectly, between persons specified in any of the paragraphs of subsection (b). The preceding sentence shall not apply to any loss of the distributing corporation (or the distributee) in the case of a distribution in complete liquidation.

(2) Matching of deduction and payee income item in the case of expenses and interest

If—

(A) by reason of the method of accounting of the person to whom the payment is to be made,

the amount thereof is not (unless paid) includible in the gross income of such person, and

(B) at the close of the taxable year of the taxpayer for which (but for this paragraph) the amount would be deductible under this chapter, both the taxpayer and the person to whom the payment is to be made are persons specified in any of the paragraphs of subsection (b),

then any deduction allowable under this chapter in respect of such amount shall be allowable as of the day as of which such amount is includible in the gross income of the person to whom the payment is made (or, if later, as of the day on which it would be so allowable but for this paragraph). For purposes of this paragraph, in the case of a personal service corporation (within the meaning of section 441(i)(2)), such corporation and any employee-owner (within the meaning of section 269A(b)(2), as modified by section 441(i)(2)) shall be treated as persons specified in subsection (b).

(3) Payments to foreign persons

(A) In general

The Secretary shall by regulations apply the matching principle of paragraph (2) in cases in which the person to whom the payment is to be made is not a United States person.

(B) Special rule for certain foreign entities

(i) In general

Notwithstanding subparagraph (A), in the case of any item payable to a controlled foreign corporation (as defined in section 957) or a passive foreign investment company (as defined in section 1297), a deduction shall be allowable to the payor with respect to such amount for any taxable year before the taxable year in which paid only to the extent that an amount attributable to such item is includible (determined without regard to properly allocable deductions and qualified deficits under section 952(c)(1)(B)) during such prior taxable year in the gross income of a United States person who owns (within the meaning of section 958(a)) stock in such corporation.

(ii) Secretarial authority

The Secretary may by regulation exempt transactions from the application of clause (i), including any transaction which is entered into by a payor in the ordinary course of a trade or business in which the payor is predominantly engaged and in which the payment of the accrued amounts occurs within 8½ months after accrual or within such other period as the Secretary may prescribe.

(b) Relationships

The persons referred to in subsection (a) are:

(1) Members of a family, as defined in subsection (c)(4);

(2) An individual and a corporation more than 50 percent in value of the outstanding stock of which is owned, directly or indirectly, by or for such individual;

(3) Two corporations which are members of the same controlled group (as defined in subsection (f));

(4) A grantor and a fiduciary of any trust;

(5) A fiduciary of a trust and a fiduciary of another trust, if the same person is a grantor of both trusts;

(6) A fiduciary of a trust and a beneficiary of such trust;

(7) A fiduciary of a trust and a beneficiary of another trust, if the same person is a grantor of both trusts;

(8) A fiduciary of a trust and a corporation more than 50 percent in value of the outstanding stock of which is owned, directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;

(9) A person and an organization to which section 501 (relating to certain educational and charitable organizations which are exempt from tax) applies and which is controlled directly or

indirectly by such person or (if such person is an individual) by members of the family of such individual;

(10) A corporation and a partnership if the same persons own—

(A) more than 50 percent in value of the outstanding stock of the corporation, and

(B) more than 50 percent of the capital interest, or the profits interest, in the partnership;

(11) An S corporation and another S corporation if the same persons own more than 50 percent in value of the outstanding stock of each corporation;

(12) An S corporation and a C corporation, if the same persons own more than 50 percent in value of the outstanding stock of each corporation; or

(13) Except in the case of a sale or exchange in satisfaction of a pecuniary bequest, an executor of an estate and a beneficiary of such estate.

(c) Constructive ownership of stock

For purposes of determining, in applying subsection (b), the ownership of stock—

(1) Stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust shall be considered as being owned proportionately by or for its shareholders, partners, or beneficiaries;

(2) An individual shall be considered as owning the stock owned, directly or indirectly, by or for his family;

(3) An individual owning (otherwise than by the application of paragraph (2)) any stock in a corporation shall be considered as owning the stock owned, directly or indirectly, by or for his partner;

(4) The family of an individual shall include only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants; and

(5) Stock constructively owned by a person by reason of the application of paragraph (1) shall, for the purpose of applying paragraph (1), (2), or (3), be treated as actually owned by such person, but stock constructively owned by an individual by reason of the application of paragraph (2) or (3) shall not be treated as owned by him for the purpose of again applying either of such paragraphs in order to make another the constructive owner of such stock.

(d) Amount of gain where loss previously disallowed

If—

(1) in the case of a sale or exchange of property to the taxpayer a loss sustained by the transferor is not allowable to the transferor as a deduction by reason of subsection (a)(1) (or by reason of section 24(b) of the Internal Revenue Code of 1939); and

(2) after December 31, 1953, the taxpayer sells or otherwise disposes of such property (or of other property the basis of which in his hands is determined directly or indirectly by reference to such property) at a gain,

then such gain shall be recognized only to the extent that it exceeds so much of such loss as is properly allocable to the property sold or otherwise disposed of by the taxpayer. This subsection applies with respect to taxable years ending after December 31, 1953. This subsection shall not apply if the loss sustained by the transferor is not allowable to the transferor as a deduction by reason of section 1091 (relating to wash sales) or by reason of section 118 of the Internal Revenue Code of 1939.

(e) Special rules for pass-thru entities

(1) In general

In the case of any amount paid or incurred by, to, or on behalf of, a pass-thru entity, for purposes of applying subsection (a)(2)—

(A) such entity,

(B) in the case of—

(i) a partnership, any person who owns (directly or indirectly) any capital interest or profits interest of such partnership, or

(ii) an S corporation, any person who owns (directly or indirectly) any of the stock of such corporation,

(C) any person who owns (directly or indirectly) any capital interest or profits interest of a partnership in which such entity owns (directly or indirectly) any capital interest or profits interest, and

(D) any person related (within the meaning of subsection (b) of this section or section 707(b)(1)) to a person described in subparagraph (B) or (C),

shall be treated as persons specified in a paragraph of subsection (b). Subparagraph (C) shall apply to a transaction only if such transaction is related either to the operations of the partnership described in such subparagraph or to an interest in such partnership.

(2) Pass-thru entity

For purposes of this section, the term "pass-thru entity" means—

(A) a partnership, and

(B) an S corporation.

(3) Constructive ownership in the case of partnerships

For purposes of determining ownership of a capital interest or profits interest of a partnership, the principles of subsection (c) shall apply, except that—

(A) paragraph (3) of subsection (c) shall not apply, and

(B) interests owned (directly or indirectly) by or for a C corporation shall be considered as owned by or for any shareholder only if such shareholder owns (directly or indirectly) 5 percent or more in value of the stock of such corporation.

(4) Subsection (a)(2) not to apply to certain guaranteed payments of partnerships

In the case of any amount paid or incurred by a partnership, subsection (a)(2) shall not apply to the extent that section 707(c) applies to such amount.

(5) Exception for certain expenses and interest of partnerships owning low-income housing

(A) In general

This subsection shall not apply with respect to qualified expenses and interest paid or incurred by a partnership owning low-income housing to—

(i) any qualified 5-percent or less partner of such partnership, or

(ii) any person related (within the meaning of subsection (b) of this section or section 707(b)(1)) to any qualified 5-percent or less partner of such partnership.

(B) Qualified 5-percent or less partner

For purposes of this paragraph, the term "qualified 5-percent or less partner" means any partner who has (directly or indirectly) an interest of 5 percent or less in the aggregate capital and profits interests of the partnership but only if—

(i) such partner owned the low-income housing at all times during the 2-year period ending on the date such housing was transferred to the partnership, or

(ii) such partnership acquired the low-income housing pursuant to a purchase, assignment, or other transfer from the Department of Housing and Urban Development or any State or local housing authority.

For purposes of the preceding sentence, a partner shall be treated as holding any interest in the partnership which is held (directly or indirectly) by any person related (within the meaning of subsection (b) of this section or section 707(b)(1)) to such partner.

(C) Qualified expenses and interest

For purpose of this paragraph, the term "qualified expenses and interest" means any expense or interest incurred by the partnership with respect to low-income housing held by the

partnership but—

(i) only if the amount of such expense or interest (as the case may be) is unconditionally required to be paid by the partnership not later than 10 years after the date such amount was incurred, and

(ii) in the case of such interest, only if such interest is incurred at an annual rate not in excess of 12 percent.

(D) Low-income housing

For purposes of this paragraph, the term "low-income housing" means—

(i) any interest in property described in clause (i), (ii), (iii), or (iv) of section 1250(a)(1)(B), and

(ii) any interest in a partnership owning such property.

(6) Cross reference

For additional rules relating to partnerships, see section 707(b).

(f) Controlled group defined; special rules applicable to controlled groups

(1) Controlled group defined

For purposes of this section, the term "controlled group" has the meaning given to such term by section 1563(a), except that—

(A) "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears in section 1563(a), and

(B) the determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of section 1563.

(2) Deferral (rather than denial) of loss from sale or exchange between members

In the case of any loss from the sale or exchange of property which is between members of the same controlled group and to which subsection (a)(1) applies (determined without regard to this paragraph but with regard to paragraph (3))—

(A) subsections (a)(1) and (d) shall not apply to such loss, but

(B) such loss shall be deferred until the property is transferred outside such controlled group and there would be recognition of loss under consolidated return principles or until such other time as may be prescribed in regulations.

(3) Loss deferral rules not to apply in certain cases

(A) Transfer to DISC

For purposes of applying subsection (a)(1), the term "controlled group" shall not include a DISC.

(B) Certain sales of inventory

Except to the extent provided in regulations prescribed by the Secretary, subsection (a)(1) shall not apply to the sale or exchange of property between members of the same controlled group (or persons described in subsection (b)(10)) if—

(i) such property in the hands of the transferor is property described in section 1221(a)(1),

(ii) such sale or exchange is in the ordinary course of the transferor's trade or business,

(iii) such property in the hands of the transferee is property described in section 1221(a)(1), and

(iv) the transferee or the transferor is a foreign corporation.

(C) Certain foreign currency losses

To the extent provided in regulations, subsection (a)(1) shall not apply to any loss sustained by a member of a controlled group on the repayment of a loan made to another member of such group if such loan is payable in a foreign currency or is denominated in such a currency and such loss is attributable to a reduction in value of such foreign currency.

(D) Redemptions by fund-of-funds regulated investment companies

Except to the extent provided in regulations prescribed by the Secretary, subsection (a)(1) shall not apply to any distribution in redemption of stock of a regulated investment company if—

(i) such company issues only stock which is redeemable upon the demand of the stockholder, and

(ii) such redemption is upon the demand of another regulated investment company.

(4) Determination of relationship resulting in disallowance of loss, for purposes of other provisions

For purposes of any other section of this title which refers to a relationship which would result in a disallowance of losses under this section, deferral under paragraph (2) shall be treated as disallowance.

(g) Coordination with section 1041

Subsection (a)(1) shall not apply to any transfer described in section 1041(a) (relating to transfers of property between spouses or incident to divorce).

(Aug. 16, 1954, ch. 736, 68A Stat. 78; Pub. L. 95–628, §2(a), Nov. 10, 1978, 92 Stat. 3627; Pub. L. 97–354, §3(h), Oct. 19, 1982, 96 Stat. 1689; Pub. L. 98–369, div. A, title I, §174(a)–(b)(4), title VII, §721(s), July 18, 1984, 98 Stat. 704–707, 970; Pub. L. 99–514, title VIII, §§803(b)(5), 806(c)(2), title XVIII, §§1812(c)(1), (2), (3)(C), (4)(A), 1842(a), Oct. 22, 1986, 100 Stat. 2356, 2364, 2834, 2835, 2852; Pub. L. 100–647, title I, §§1006(e)(9), 1008(e)(6), Nov. 10, 1988, 102 Stat. 3401, 3441; Pub. L. 105–34, title XIII, §1308(a), title XVI, §1604(e)(1), Aug. 5, 1997, 111 Stat. 1041, 1098; Pub. L. 106–170, title V, §532(c)(2)(C), Dec. 17, 1999, 113 Stat. 1930; Pub. L. 108–357, title VIII, §841(b), Oct. 22, 2004, 118 Stat. 1598; Pub. L. 111–325, title III, §306(b), Dec. 22, 2010, 124 Stat. 3549.)

REFERENCES IN TEXT

Sections 24(b) and 118 of the Internal Revenue Code of 1939, referred to in subsec. (d), were classified to sections 24(b) and 118 of former Title 26, Internal Revenue Code. Sections 24(b) and 118 were repealed by section 7851(a)(1) of this title. For table of comparisons of the 1939 Code to the 1986 Code [formerly I.R.C. 1954], see Table I preceding section 1 of this title. See, also, section 7851(e) of this title for provision that references in the 1986 Code to a provision of the 1939 Code, not then applicable, shall be deemed a reference to the corresponding provision of the 1986 Code, which is then applicable.

AMENDMENTS

2010—Subsec. (f)(3)(D). Pub. L. 111–325 added subpar. (D).

2004—Subsec. (a)(3). Pub. L. 108–357 designated existing provisions as subpar. (A), inserted heading, and added subpar. (B).

1999—Subsec. (f)(3)(B)(i), (iii). Pub. L. 106–170 substituted "1221(a)(1)" for "1221(1)".

1997—Subsec. (b)(13). Pub. L. 105–34, §1308(a), added par. (13).

Subsec. (f)(4). Pub. L. 105–34, §1604(e)(1), added par. (4).

1988—Subsec. (a)(1). Pub. L. 100–647, §1006(e)(9), struck out "(other than a loss in case of a distribution in corporate liquidation)" after "exchange of property" and inserted at end "The preceding sentence shall not apply to any loss of the distributing corporation (or the distributee) in the case of a distribution in complete liquidation."

Subsec. (a)(2). Pub. L. 100–647, §1008(e)(6), made technical correction to directory language of Pub. L. 99–514, §806(c)(2), see 1986 Amendment note below.

1986—Subsec. (a)(2). Pub. L. 99–514, §806(c)(2), as amended by Pub. L. 100–647, §1008(e)(6), inserted at end "For purposes of this paragraph, in the case of a personal service corporation (within the meaning of section 441(i)(2)), such corporation and any employee-owner (within the meaning of section 269A(b)(2), as modified by section 441(i)(2)) shall be treated as persons specified in subsection (b)."

Subsec. (a)(3). Pub. L. 99–514, §1812(c)(1), added par. (3).

Subsec. (b)(12). Pub. L. 99–514, §1812(c)(4)(A), substituted "same persons own" for "same persons owns".

Subsec. (e)(5)(D). Pub. L. 99–514, §803(b)(5), substituted in cl. (i) "interest in property described in clause (i), (ii), (iii), or (iv) of section 1250(a)(1)(B)" for "interest in low-income housing (as defined in paragraph (5) of section 189(e))" and in cl. (ii) "such property" for "low-income housing (as so defined)".

Subsec. (e)(6). Pub. L. 99–514, §1812(c)(3)(C), added par. (6).

Subsec. (f)(3)(B). Pub. L. 99–514, §1812(c)(2), inserted "(or persons described in subsection (b)(10))".

Subsec. (g). Pub. L. 99–514, §1842(a), added subsec. (g).

1984—Subsec. (a). Pub. L. 98–369, §174(a), amended subsec. (a) generally, substituting "In general" for "Deduction disallowed" in heading, "Deduction for losses disallowed" for "Losses" in par. (1) heading, and provisions dealing with matching of deduction and payee income item in the case of expenses and interest for provisions dealing with unpaid expenses and interest in par. (2).

Subsec. (b)(3). Pub. L. 98–369, §174(b)(2)(A), substituted "Two corporations which are members of the same controlled group (as defined in subsection (f))" for "Two corporations more than 50 percent in value of the outstanding stock of each of which is owned, directly or indirectly, by or for the same individual, if either one of such corporations, with respect to the taxable year of the corporation preceding the date of the sale or exchange was, under the law applicable to such taxable year, a personal holding company or a foreign personal holding company".

Subsec. (b)(10). Pub. L. 98–369, §174(b)(3), substituted "A corporation" for "An S corporation" in introductory provisions and "the corporation" for "the S corporation" in subpar. (A).

Subsec. (b)(12). Pub. L. 98–369, §174(b)(4), substituted "the same persons" for "the same individual".

Subsec. (e). Pub. L. 98–369, §174(b)(1), added subsec. (e).

Pub. L. 98–369, §174(a)(2), struck out subsec. (e) which provided that for purposes of subsection (a)(2) where the last day of the 2½ month period falls on Saturday, Sunday, or a legal holiday, such last day be treated as falling on the next succeeding day which is not a Saturday, Sunday, or a legal holiday, and the determination of what constitutes a legal holiday be made under section 7503 with respect to the payor's return of tax under this chapter for the preceding taxable year.

Subsec. (f). Pub. L. 98–369, §174(b)(2)(B), added subsec. (f).

Pub. L. 98–369, §174(b)(1), struck out subsec. (f) which related to special rules for unpaid expenses and interest of S corporations and treatment under such provisions of certain shareholders, etc., as related persons.

Pub. L. 98–369, §721(s), in closing provision of par. (1) substituted "then any deduction allowable under such sections in respect of such amount shall be allowable as of the day as of which such payment is includible in the gross income of the person to whom the payment is made (or, if later, as of the day on which it would be so allowable but for this paragraph)" for "then no deduction shall be allowed in respect of expenses otherwise deductible under section 162 or 212, or of interest otherwise deductible under section 163, before the day as of which the amount thereof is includible in the gross income of the person to whom the payment is made".

1982—Subsec. (b)(10) to (12). Pub. L. 97–354, §3(h)(1), (3), added pars. (10) to (12).

Subsec. (f). Pub. L. 97–354, §3(h)(2), added subsec. (f).

1978—Subsec. (e). Pub. L. 95–628 added subsec. (e).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–325, title III, §306(c), Dec. 22, 2010, 124 Stat. 3550, provided that: "The amendments made by this section [amending this section and section 302 of this title] shall apply to distributions after the date of the enactment of this Act [Dec. 22, 2010]."

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to payments accrued on or after Oct. 22, 2004, see section 841(c) of Pub. L. 108–357, set out as a note under section 163 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XIII, §1308(c), Aug. 5, 1997, 111 Stat. 1042, provided that: "The amendments made by this section [amending this section and section 1239 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 5, 1997]."

Pub. L. 105–34, title XVI, §1604(e)(2), Aug. 5, 1997, 111 Stat. 1098, provided that: "The amendment made by paragraph (1) [amending this section] shall take effect as if included in section 174(b) of the Tax Reform Act of 1984 [Pub. L. 98–369]."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of

the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

If any interest costs incurred after Dec. 31, 1986, are attributable to costs incurred before Jan. 1, 1987, the amendment by section 803(b)(5) of Pub. L. 99–514 is applicable to such interest costs only to the extent such interest costs are attributable to costs which were required to be capitalized under section 263 of the Internal Revenue Code of 1954 and which would have been taken into account in applying section 189 of the Internal Revenue Code of 1954 (as in effect before its repeal by section 803 of Pub. L. 99–514) or, if applicable, section 266 of such Code, see section 7831(d)(2) of Pub. L. 101–239, set out as an Effective Date note under section 263A of this title.

Amendment by section 803(b)(5) of Pub. L. 99–514 applicable, except as otherwise provided, to costs incurred after Dec. 31, 1986, in taxable years ending after that date, see section 803(d) of Pub. L. 99–514, set out as a note under section 263A of this title.

Amendment by section 806(c)(2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with special provisions applicable to taxpayers who are required to change their accounting periods, see section 806(e) of Pub. L. 99–514, set out as a note under section 1378 of this title.

Amendment by sections 1812(c)(1), (2), (3)(C), (4)(A) and 1842(a) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §174(c), July 18, 1984, 98 Stat. 707, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) SUBSECTIONS (a) AND (b)(1).—The amendments made by subsections (a) and (b)(1) [amending this section] shall apply to amounts allowable as deductions under chapter 1 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for taxable years beginning after December 31, 1983. For purposes of the preceding sentence, the allowability of a deduction shall be determined without regard to any disallowance or postponement of deductions under section 267 of such Code.

"(2) SUBSECTION (b) (OTHER THAN PARAGRAPH (1)).—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by subsection (b) (other than paragraph (1) thereof) [amending this section and sections 170, 368, 514, and 1235 of this title] shall apply to transactions after December 31, 1983, in taxable years ending after such date.

"(B) EXCEPTION FOR TRANSFERS TO FOREIGN CORPORATIONS ON OR BEFORE MARCH 1, 1984.—The amendments made by subsection (b)(2) [amending this section] shall not apply to property transferred to a foreign corporation on or before March 1, 1984.

"(3) EXCEPTION FOR EXISTING INDEBTEDNESS, ETC.—

"(A) IN GENERAL.—The amendments made by this section [amending this section and sections 170, 368, 514, and 1235 of this title] shall not apply to any amount paid or incurred—

"(i) on indebtedness incurred on or before September 29, 1983, or

"(ii) pursuant to a contract which was binding on September 29, 1983, and at all times thereafter before the amount is paid or incurred.

"(B) TREATMENT OF RENEGOTIATIONS, EXTENSIONS, ETC.—If any indebtedness (or contract described in subparagraph (A)) is renegotiated, extended, renewed, or revised after September 29, 1983, subparagraph (A) shall not apply to any amount paid or incurred on such indebtedness (or pursuant to such contract) after the date of such renegotiation, extension, renewal, or revision."

Amendment by section 721(s) of Pub. L. 98–369 effective as if included in the Subchapter S Revision Act of 1982, Pub. L. 97–354, see section 721(y)(1) of Pub. L. 98–369, set out as a note under section 1361 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–628, §2(b), Nov. 10, 1978, 92 Stat. 3627, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to payments made after the date of the enactment of this Act [Nov. 10, 1978]."

CONSTRUCTION OF SECTION 806 OF PUB. L. 99–514

Nothing in section 806 of Pub. L. 99–514 [amending this section] or in any legislative history relating thereto to be construed as requiring the Secretary of the Treasury or his delegate to permit an automatic change of a taxable year, see section 1008(e)(9) of Pub. L. 100–647, set out as a note under section 1378 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

EXCEPTION FOR CERTAIN INDEBTEDNESS

Pub. L. 99–514, title XVIII, §1812(c)(5), Oct. 22, 1986, 100 Stat. 2835, provided that: "Clause (i) of section 174(c)(3)(A) of the Tax Reform Act of 1984 [section 174(c)(3)(A)(i) of Pub. L. 98–369, set out as a note above] shall be applied by substituting 'December 31, 1983' for 'September 29, 1983' in the case of indebtedness which matures on January 1, 1999, the payments on which from January 1989 through November 1993 equal U/L plus $77,600, the payments on which from December 1993 to maturity equal U/L plus $50,100, and which accrued interest at 13.75 percent through December 31, 1989."

§268. Sale of land with unharvested crop

Where an unharvested crop sold by the taxpayer is considered under the provisions of section 1231 as "property used in the trade or business", in computing taxable income no deduction (whether or not for the taxable year of the sale and whether for expenses, depreciation, or otherwise) attributable to the production of such crop shall be allowed.

(Aug. 16, 1954, ch. 736, 68A Stat. 80.)

§269. Acquisitions made to evade or avoid income tax

(a) In general

If—

(1) any person or persons acquire, or acquired on or after October 8, 1940, directly or indirectly, control of a corporation, or

(2) any corporation acquires, or acquired on or after October 8, 1940, directly or indirectly, property of another corporation, not controlled, directly or indirectly, immediately before such acquisition, by such acquiring corporation or its stockholders, the basis of which property, in the hands of the acquiring corporation, is determined by reference to the basis in the hands of the transferor corporation,

and the principal purpose for which such acquisition was made is evasion or avoidance of Federal income tax by securing the benefit of a deduction, credit, or other allowance which such person or corporation would not otherwise enjoy, then the Secretary may disallow such deduction, credit, or other allowance. For purposes of paragraphs (1) and (2), control means the ownership of stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of shares of all classes of stock of the corporation.

(b) Certain liquidations after qualified stock purchases

(1) In general

If—

(A) there is a qualified stock purchase by a corporation of another corporation,

(B) an election is not made under section 338 with respect to such purchase,

(C) the acquired corporation is liquidated pursuant to a plan of liquidation adopted not more

than 2 years after the acquisition date, and

(D) the principal purpose for such liquidation is the evasion or avoidance of Federal income tax by securing the benefit of a deduction, credit, or other allowance which the acquiring corporation would not otherwise enjoy,

then the Secretary may disallow such deduction, credit, or other allowance.

(2) Meaning of terms

For purposes of paragraph (1), the terms "qualified stock purchase" and "acquisition date" have the same respective meanings as when used in section 338.

(c) Power of Secretary to allow deduction, etc., in part

In any case to which subsection (a) or (b) applies the Secretary is authorized—

(1) to allow as a deduction, credit, or allowance any part of any amount disallowed by such subsection, if he determines that such allowance will not result in the evasion or avoidance of Federal income tax for which the acquisition was made; or

(2) to distribute, apportion, or allocate gross income, and distribute, apportion, or allocate the deductions, credits, or allowances the benefit of which was sought to be secured, between or among the corporations, or properties, or parts thereof, involved, and to allow such deductions, credits, or allowances so distributed, apportioned, or allocated, but to give effect to such allowance only to such extent as he determines will not result in the evasion or avoidance of Federal income tax for which the acquisition was made; or

(3) to exercise his powers in part under paragraph (1) and in part under paragraph (2).

(Aug. 16, 1954, ch. 736, 68A Stat. 80; Pub. L. 88–272, title II, §235(c)(2), Feb. 26, 1964, 78 Stat. 126; Pub. L. 94–455, title XIX, §§1901(a)(38), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1771, 1834; Pub. L. 98–369, div. A, title VII, §712(k)(8)(A), (B), July 18, 1984, 98 Stat. 952.)

AMENDMENTS

1984—Subsecs. (b), (c). Pub. L. 98–369 added subsec. (b), redesignated former subsec. (b) as (c) and inserted reference to subsec. (b).

1976—Subsecs. (a), (b). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary" wherever appearing.

Subsec. (c). Pub. L. 94–455, §1901(a)(38), struck out subsec. (c) relating to presumptions in the case of disproportionate purchase price.

1964—Subsec. (a). Pub. L. 88–272 substituted "the Secretary or his delegate may disallow such deduction, credit, or other allowance" for "such deduction, credit or other allowance shall not be allowed".

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title VII, §712(k)(8)(C), July 18, 1984, 98 Stat. 952, provided that: "The amendments made by this paragraph [amending this section] shall apply to liquidations after October 20, 1983, in taxable years ending after such date."

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to taxable years ending after Dec. 31, 1963, see section 235(d) of Pub. L. 88–272, set out as a note under section 1551 of this title.

§269A. Personal service corporations formed or availed of to avoid or evade income tax

(a) General rule

If—

(1) substantially all of the services of a personal service corporation are performed for (or on behalf of) 1 other corporation, partnership, or other entity, and

(2) the principal purpose for forming, or availing of, such personal service corporation is the avoidance or evasion of Federal income tax by reducing the income of, or securing the benefit of

any expense, deduction, credit, exclusion, or other allowance for, any employee-owner which would not otherwise be available,

then the Secretary may allocate all income, deductions, credits, exclusions, and other allowances between such personal service corporation and its employee-owners, if such allocation is necessary to prevent avoidance or evasion of Federal income tax or clearly to reflect the income of the personal service corporation or any of its employee-owners.

(b) Definitions

For purposes of this section—

(1) Personal service corporation

The term "personal service corporation" means a corporation the principal activity of which is the performance of personal services and such services are substantially performed by employee-owners.

(2) Employee-owner

The term "employee-owner" means any employee who owns, on any day during the taxable year, more than 10 percent of the outstanding stock of the personal service corporation. For purposes of the preceding sentence, section 318 shall apply, except that "5 percent" shall be substituted for "50 percent" in section 318(a)(2)(C).

(3) Related persons

All related persons (within the meaning of section 144(a)(3)) shall be treated as 1 entity.

(Added Pub. L. 97–248, title II, §250(a), Sept. 3, 1982, 96 Stat. 528; amended Pub. L. 99–514, title XIII, §1301(j)(4), Oct. 22, 1986, 100 Stat. 2657.)

AMENDMENTS

1986—Subsec. (b)(3). Pub. L. 99–514 substituted "section 144(a)(3)" for "section 103(b)(6)(C)".

EFFECTIVE DATE OF 1986 AMENDMENT

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

EFFECTIVE DATE

Pub. L. 97–248, title II, §250(c), Sept. 3, 1982, 96 Stat. 529, provided that: "The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1982."

§269B. Stapled entities

(a) General rule

Except as otherwise provided by regulations, for purposes of this title—

(1) if a domestic corporation and a foreign corporation are stapled entities, the foreign corporation shall be treated as a domestic corporation.

(2) in applying section 1563, stock in a second corporation which constitutes a stapled interest with respect to stock of a first corporation shall be treated as owned by such first corporation, and

(3) in applying subchapter M for purposes of determining whether any stapled entity is a regulated investment company or a real estate investment trust, all entities which are stapled entities with respect to each other shall be treated as 1 entity.

(b) Secretary to prescribe regulations

The Secretary shall prescribe such regulations as may be necessary to prevent avoidance or evasion of Federal income tax through the use of stapled entities. Such regulations may include (but shall not be limited to) regulations providing the extent to which 1 of such entities shall be treated as owning the other entity (to the extent of the stapled interest) and regulations providing that any tax

imposed on the foreign corporation referred to in subsection (a)(1) may, if not paid by such corporation, be collected from the domestic corporation referred to in such subsection or the shareholders of such foreign corporation.

(c) Definitions

For purposes of this section—

(1) Entity

The term "entity" means any corporation, partnership, trust, association, estate, or other form of carrying on a business or activity.

(2) Stapled entities

The term "stapled entities" means any group of 2 or more entities if more than 50 percent in value of the beneficial ownership in each of such entities consists of stapled interests.

(3) Stapled interests

Two or more interests are stapled interests if, by reason of form of ownership, restrictions on transfer, or other terms or conditions, in connection with the transfer of 1 of such interests the other such interests are also transferred or required to be transferred.

(d) Special rule for treaties

Nothing in section 894 or 7852(d) or in any other provision of law shall be construed as permitting an exemption, by reason of any treaty obligation of the United States heretofore or hereafter entered into, from the provisions of this section.

(e) Subsection (a)(1) not to apply in certain cases

(1) In general

Subsection (a)(1) shall not apply if it is established to the satisfaction of the Secretary that the domestic corporation and the foreign corporation referred to in such subsection are foreign owned.

(2) Foreign owned

For purposes of paragraph (1), a corporation is foreign owned if less than 50 percent of—

(A) the total combined voting power of all classes of stock of such corporation entitled to vote, and

(B) the total value of the stock of the corporation,

is held directly (or indirectly through applying paragraphs (2) and (3) of section 958(a) and paragraph (4) of section 318(a)) by United States persons (as defined in section 7701(a)(30)).

(Added Pub. L. 98–369, div. A, title I, §136(a), July 18, 1984, 98 Stat. 669; amended Pub. L. 99–514, title XVIII, §1810(j), Oct. 22, 1986, 100 Stat. 2829.)

AMENDMENTS

1986—Subsec. (b). Pub. L. 99–514, §1810(j)(1), inserted "and regulations providing that any tax imposed on the foreign corporation referred to in subsection (a)(1) may, if not paid by such corporation, be collected from the domestic corporation referred to in such subsection or the shareholders of such foreign corporation".

Subsec. (e). Pub. L. 99–514, §1810(j)(2), added subsec. (e).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Pub. L. 98–369, div. A, title I, §136(c), July 18, 1984, 98 Stat. 670, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting this section] shall take effect on the date of the enactment of this Act [July 18, 1984].

"(2) INTERESTS STAPLED AS OF JUNE 30, 1983.—Except as otherwise provided in this subsection, in the case of any interests which on June 30, 1983, were stapled interests (as defined in section 269B(c)(3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this section)), the amendments made by this section shall take effect on January 1, 1985 (January 1, 1987, in the case of stapled interests in a foreign corporation).

"(3) CERTAIN STAPLED ENTITIES WHICH INCLUDE REAL ESTATE INVESTMENT TRUST .—Paragraph (3) of section 269B(a) of such Code shall not apply in determining the application of the provisions of part II of subchapter M of chapter 1 of such Code to any real estate investment trust which is part of a group of stapled entities if—

"(A) all members of such group were stapled entities as of June 30, 1983, and

"(B) as of June 30, 1983, such group included one or more real estate investment trusts.

"(4) CERTAIN STAPLED ENTITIES WHICH INCLUDE PUERTO RICAN CORPORATIONS.—

"(A) Paragraph (1) of section 269B(a) of such Code shall not apply to a domestic corporation and a qualified Puerto Rican corporation which, on June 30, 1983, were stapled entities.

"(B) For purposes of subparagraph (A), the term 'qualified Puerto Rican corporation' means any corporation organized in Puerto Rico—

"(i) which is described in section 957(c) of such Code or would be so described if any dividends it received from any other corporation described in such section 957(c) were treated as gross income of the type described in such section 957(c), and

"(ii) does not, at any time during the taxable year, own (within the meaning of section 958 of such Code but before applying paragraph (2) of section 269B(a) of such Code) any stock of any corporation which is not described in such section 957(c).

"(5) TREATY RULE NOT TO APPLY TO STAPLED ENTITIES ENTITLED TO TREATY BENEFITS AS OF JUNE 30, 1983.—In the case of any entity which was a stapled entity as of June 30, 1983, subsection (d) of section 269B of such Code shall not apply to any treaty benefit to which such entity was entitled as of June 30, 1983.

"(6) ELECTIONS TO TREAT STAPLED FOREIGN ENTITIES AS SUBSIDIARIES.—

"(A) IN GENERAL.—In the case of any foreign corporation and domestic corporation which as of June 30, 1983, were stapled entities, such domestic corporation may elect (in lieu of applying paragraph (1) of section 269B(a) of such Code) to be treated as owning all interests in the foreign corporation which constitute stapled interests with respect to stock of the domestic corporation.

"(B) ELECTION.—Any election under subparagraph (A) shall be made not later than 180 days after the date of the enactment of this Act and shall be made in such manner as the Secretary of the Treasury or his delegate shall prescribe.

"(C) ELECTION IRREVOCABLE.—Any election under subparagraph (A), once made, may be revoked only with the consent of the Secretary of the Treasury or his delegate.

"(7) OTHER STAPLED ENTITIES WHICH INCLUDE REAL ESTATE INVESTMENT TRUST.—

"(A) IN GENERAL.—Paragraph (3) of section 269B(a) of such Code shall not apply in determining the application of the provisions of part II of subchapter M of chapter 1 of such Code to any qualified real estate investment trust which is a part of a group of stapled entities—

"(i) which was created pursuant to a written board of directors resolution adopted on April 5, 1984, and

"(ii) all members of such group were stapled entities as of June 16, 1985.

"(B) QUALIFIED REAL ESTATE INVESTMENT TRUST.—The term 'qualified real estate investment trust' means any real estate trust—

"(i) at least 75 percent of the gross income of which is derived from interest on obligations secured by mortgages on real property (as defined in section 856 of such Code),

"(ii) with respect to which the interest on the obligations described in clause (i) made or acquired by such trust (other than to persons who are independent contractors, as defined in section 856(d)(3) of such Code) is at an arm's length rate or a rate not more than 1 percentage point greater than the associated borrowing cost of the trust, and

"(iii) with respect to which any real property held by the trust is not used in the trade or business of any other member of the group of stapled entities."

TERMINATION OF EXCEPTION FOR CERTAIN REAL ESTATE INVESTMENT TRUSTS FROM THE TREATMENT OF STAPLED ENTITIES

Pub. L. 105–206, title VII, §7002, July 22, 1998, 112 Stat. 827, provided that:

"(a) IN GENERAL.—Notwithstanding paragraph (3) of section 136(c) of the Tax Reform Act of 1984

[Pub. L. 98–369, set out above] (relating to stapled stock; stapled entities), the REIT gross income provisions shall be applied by treating the activities and gross income of members of the stapled REIT group properly allocable to any nonqualified real property interest held by the exempt REIT or any stapled entity which is a member of such group (or treated under subsection (c) as held by such REIT or stapled entity) as the activities and gross income of the exempt REIT in the same manner as if the exempt REIT and such group were one entity.

"(b) NONQUALIFIED REAL PROPERTY INTEREST.—For purposes of this section—

"(1) IN GENERAL.—The term 'nonqualified real property interest' means, with respect to any exempt REIT, any interest in real property acquired after March 26, 1998, by the exempt REIT or any stapled entity.

"(2) EXCEPTION FOR BINDING CONTRACTS, ETC.—Such term shall not include any interest in real property acquired after March 26, 1998, by the exempt REIT or any stapled entity if—

"(A) the acquisition is pursuant to a written agreement (including a put option, buy-sell agreement, and an agreement relating to a third party default) which was binding on such date and at all times thereafter on such REIT or stapled entity; or

"(B) the acquisition is described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission.

"(3) IMPROVEMENTS AND LEASES.—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, the term 'nonqualified real property interest' shall not include—

"(i) any improvement to land owned or leased by the exempt REIT or any member of the stapled REIT group; and

"(ii) any repair to, or improvement of, any improvement owned or leased by the exempt REIT or any member of the stapled REIT group,

if such ownership or leasehold interest is a qualified real property interest.

"(B) LEASES.—The term 'nonqualified real property interest' shall not include—

"(i) any lease of a qualified real property interest if such lease is not otherwise such an interest; or

"(ii) any renewal of a lease which is a qualified real property interest,

but only if the rent on any lease referred to in clause (i) or any renewal referred to in clause (ii) does not exceed an arm's length rate.

"(C) TERMINATION WHERE CHANGE IN USE.—

"(i) IN GENERAL.—Subparagraph (A) shall not apply to any improvement placed in service after December 31, 1999, which is part of a change in the use of the property to which such improvement relates unless the cost of such improvement does not exceed 200 percent of—

"(I) the cost of such property; or

"(II) if such property is substituted basis property (as defined in section 7701(a)(42) of the Internal Revenue Code of 1986), the fair market value of the property at the time of acquisition.

"(ii) BINDING CONTRACTS.—For purposes of clause (i), an improvement shall be treated as placed in service before January 1, 2000, if such improvement is placed in service before January 1, 2004, pursuant to a binding contract in effect on December 31, 1999, and at all times thereafter.

"(4) EXCEPTION FOR PERMITTED TRANSFERS, ETC.—The term 'nonqualified real property interest' shall not include any interest in real property acquired solely as a result of a direct or indirect contribution, distribution, or other transfer of such interest from the exempt REIT or any member of the stapled REIT group to such REIT or any such member, but only to the extent the aggregate of the interests of the exempt REIT and all stapled entities in such interest in real property (determined in accordance with subsection (c)(1)) is not increased by reason of the transfer.

"(5) TREATMENT OF ENTITIES WHICH ARE NOT STAPLED, ETC. ON MARCH 26, 1998 .—Notwithstanding any other provision of this section, all interests in real property held by an exempt REIT or any stapled entity with respect to such REIT (or treated under subsection (c) as held by such REIT or stapled entity) shall be treated as nonqualified real property interests unless—

"(A) such stapled entity was a stapled entity with respect to such REIT as of March 26, 1998, and at all times thereafter; and

"(B) as of March 26, 1998, and at all times thereafter, such REIT was a real estate investment trust.

"(6) QUALIFIED REAL PROPERTY INTEREST.—The term 'qualified real property interest' means any interest in real property other than a nonqualified real property interest.

"(c) TREATMENT OF PROPERTY HELD BY 10-PERCENT SUBSIDIARIES.—For purposes of this

section—

"(1) IN GENERAL.—Any exempt REIT and any stapled entity shall be treated as holding their proportionate shares of each interest in real property held by any 10-percent subsidiary entity of the exempt REIT or stapled entity, as the case may be.

"(2) PROPERTY HELD BY 10-PERCENT SUBSIDIARIES TREATED AS NONQUALIFIED.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), any interest in real property held by a 10-percent subsidiary entity of an exempt REIT or stapled entity shall be treated as a nonqualified real property interest.

"(B) EXCEPTION FOR INTERESTS IN REAL PROPERTY HELD ON MARCH 26, 1998, ETC.—In the case of an entity which was a 10-percent subsidiary entity of an exempt REIT or stapled entity on March 26, 1998, and at all times thereafter, an interest in real property held by such subsidiary entity shall be treated as a qualified real property interest if such interest would be so treated if held or acquired directly by the exempt REIT or the stapled entity.

"(3) REDUCTION IN QUALIFIED REAL PROPERTY INTERESTS IF INCREASE IN OWNERSHIP OF SUBSIDIARY.—If, after March 26, 1998, an exempt REIT or stapled entity increases its ownership interest in a subsidiary entity to which paragraph (2)(B) applies above its ownership interest in such subsidiary entity as of such date, the additional portion of each interest in real property which is treated as held by the exempt REIT or stapled entity by reason of such increased ownership shall be treated as a nonqualified real property interest.

"(4) SPECIAL RULES FOR DETERMINING OWNERSHIP.—For purposes of this subsection—

"(A) percentage ownership of an entity shall be determined in accordance with subsection (e)(4);

"(B) interests in the entity which are acquired by an exempt REIT or a member of the stapled REIT group in any acquisition described in an agreement, announcement, or filing described in subsection (b)(2) shall be treated as acquired on March 26, 1998; and

"(C) except as provided in guidance prescribed by the Secretary, any change in proportionate ownership which is attributable solely to fluctuations in the relative fair market values of different classes of stock shall not be taken into account.

"(5) TREATMENT OF 60-PERCENT PARTNERSHIPS.—

"(A) IN GENERAL.—If, as of March 26, 1998—

"(i) an exempt REIT or stapled entity held directly or indirectly at least 60 percent of the capital or profits interest in a partnership; and

"(ii) 90 percent or more of the capital interests and 90 percent or more of the profits interests in such partnership (other than interests held directly or indirectly by the exempt REIT or stapled entity) are, or will be, redeemable or exchangeable for consideration the amount of which is determined by reference to the value of shares of stock in the exempt REIT or stapled entity (or both),

paragraph (3) shall not apply to such partnership, and such REIT or entity shall be treated for all purposes of this section as holding all of the capital and profits interests in such partnership.

"(B) LIMITATION TO ONE PARTNERSHIP.—If, as of January 1, 1999, more than one partnership owned by any exempt REIT or stapled entity meets the requirements of subparagraph (A), only the largest such partnership on such date (determined by aggregate asset bases) shall be treated as meeting such requirements.

"(C) MIRROR ENTITY.—For purposes of subparagraph (A), an interest in a partnership formed after March 26, 1998, shall be treated as held by an exempt REIT or stapled entity on March 26, 1998, if such partnership is formed to mirror the stapling of an exempt REIT and a stapled entity in connection with an acquisition agreed to or announced on or before March 26, 1998.

"(d) TREATMENT OF PROPERTY SECURED BY MORTGAGE HELD BY EXEMPT REIT OR MEMBER OF STAPLED REIT GROUP.—

"(1) IN GENERAL.—In the case of any nonqualified obligation held by an exempt REIT or any member of the stapled REIT group, the REIT gross income provisions shall be applied by treating the exempt REIT as having impermissible tenant service income equal to—

"(A) the interest income from such obligation which is properly allocable to the property described in paragraph (2); and

"(B) the income of any member of the stapled REIT group from services described in paragraph (2) with respect to such property.

If the income referred to in subparagraph (A) or (B) is of a 10-percent subsidiary entity, only the portion of such income which is properly allocable to the exempt REIT's or the stapled entity's interest in the subsidiary entity shall be taken into account.

"(2) NONQUALIFIED OBLIGATION.—Except as otherwise provided in this subsection, the term

'nonqualified obligation' means any obligation secured by a mortgage on an interest in real property if the income of any member of the stapled REIT group for services furnished with respect to such property would be impermissible tenant service income were such property held by the exempt REIT and such services furnished by the exempt REIT.

"(3) EXCEPTION FOR CERTAIN MARKET RATE OBLIGATIONS.—Such term shall not include any obligation—

"(A) payments under which would be treated as interest if received by a REIT; and

"(B) the rate of interest on which does not exceed an arm's length rate.

"(4) EXCEPTION FOR EXISTING OBLIGATIONS.—Such term shall not include any obligation—

"(A) which is secured on March 26, 1998, by an interest in real property; and

"(B) which is held on such date by the exempt REIT or any entity which is a member of the stapled REIT group on such date and at all times thereafter,

but only so long as such obligation is secured by such interest, and the interest payable on such obligation is not changed to a rate which exceeds an arm's length rate unless such change is pursuant to the terms of the obligation in effect on March 26, 1998. The preceding sentence shall not cease to apply by reason of the refinancing of the obligation if (immediately after the refinancing) the principal amount of the obligation resulting from the refinancing does not exceed the principal amount of the refinanced obligation (immediately before the refinancing) and the interest payable on such refinanced obligation does not exceed an arm's length rate.

"(5) TREATMENT OF ENTITIES WHICH ARE NOT STAPLED, ETC. ON MARCH 26, 1998.—A rule similar to the rule of subsection (b)(5) shall apply for purposes of this subsection.

"(6) INCREASE IN AMOUNT OF NONQUALIFIED OBLIGATIONS IF INCREASE IN OWNERSHIP OF SUBSIDIARY.—A rule similar to the rule of subsection (c)(3) shall apply for purposes of this subsection.

"(7) COORDINATION WITH SUBSECTION (a).—This subsection shall not apply to the portion of any interest in real property that the exempt REIT or stapled entity holds or is treated as holding under this section without regard to this subsection.

"(e) DEFINITIONS.—For purposes of this section—

"(1) REIT GROSS INCOME PROVISIONS.—The term 'REIT gross income provisions' means—

"(A) paragraphs (2), (3), and (6) of section 856(c) of the Internal Revenue Code of 1986; and

"(B) section 857(b)(5) of such Code.

"(2) EXEMPT REIT.—The term 'exempt REIT' means a real estate investment trust to which section 269B of the Internal Revenue Code of 1986 does not apply by reason of paragraph (3) of section 136(c) of the Tax Reform Act of 1984.

"(3) STAPLED REIT GROUP.—The term 'stapled REIT group' means, with respect to an exempt REIT, the group consisting of—

"(A) all entities which are stapled entities with respect to the exempt REIT; and

"(B) all entities which are 10-percent subsidiary entities of the exempt REIT or any such stapled entity.

"(4) 10-PERCENT SUBSIDIARY ENTITY.—

"(A) IN GENERAL.—The term '10-percent subsidiary entity' means, with respect to any exempt REIT or stapled entity, any entity in which the exempt REIT or stapled entity (as the case may be) directly or indirectly holds at least a 10-percent interest.

"(B) EXCEPTION FOR CERTAIN C CORPORATION SUBSIDIARIES OF REITS.—A corporation which would, but for this subparagraph, be treated as a 10-percent subsidiary of an exempt REIT shall not be so treated if such corporation is taxable under section 11 of the Internal Revenue Code of 1986.

"(C) 10-PERCENT INTEREST.—The term '10-percent interest' means—

"(i) in the case of an interest in a corporation, ownership of 10 percent (by vote or value) of the stock in such corporation;

"(ii) in the case of an interest in a partnership, ownership of 10 percent of the capital or profits interest in the partnership; and

"(iii) in any other case, ownership of 10 percent of the beneficial interests in the entity.

"(5) OTHER DEFINITIONS.—Terms used in this section which are used in section 269B or section 856 of such Code shall have the respective meanings given such terms by such section.

"(f) GUIDANCE.—The Secretary may prescribe such guidance as may be necessary or appropriate to carry out the purposes of this section, including guidance to prevent the avoidance of such purposes and to prevent the double counting of income.

"(g) EFFECTIVE DATE.—This section shall apply to taxable years ending after March 26, 1998."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[§270. Repealed. Pub. L. 91–172, title II, §213(b), Dec. 30, 1969, 83 Stat. 572]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 81, related to the limitation on deductions allowable to certain individuals. See section 183 of this title.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 1969, see section 213(d) of Pub. L. 91–172, set out as an Effective Date note under section 183 of this title.

§271. Debts owed by political parties, etc.

(a) General rule

In the case of a taxpayer (other than a bank as defined in section 581) no deduction shall be allowed under section 166 (relating to bad debts) or under section 165(g) (relating to worthlessness of securities) by reason of the worthlessness of any debt owed by a political party.

(b) Definitions

(1) Political party

For purposes of subsection (a), the term "political party" means—

(A) a political party;

(B) a national, State, or local committee of a political party; or

(C) a committee, association, or organization which accepts contributions or makes expenditures for the purpose of influencing or attempting to influence the election of presidential or vice-presidential electors or of any individual whose name is presented for election to any Federal, State, or local elective public office, whether or not such individual is elected.

(2) Contributions

For purposes of paragraph (1)(C), the term "contributions" includes a gift, subscription, loan, advance, or deposit, of money, or anything of value, and includes a contract, promise, or agreement to make a contribution, whether or not legally enforceable.

(3) Expenditures

For purposes of paragraph (1)(C), the term "expenditures" includes a payment, distribution, loan, advance, deposit, or gift, of money, or anything of value, and includes a contract, promise, or agreement to make an expenditure, whether or not legally enforceable.

(c) Exception

In the case of a taxpayer who uses an accrual method of accounting, subsection (a) shall not apply to a debt which accrued as a receivable on a bona fide sale of goods or services in the ordinary course of the taxpayer's trade or business if—

(1) for the taxable year in which such receivable accrued, more than 30 percent of all receivables which accrued in the ordinary course of the trades and businesses of the taxpayer were due from political parties, and

(2) the taxpayer made substantial continuing efforts to collect on the debt.

(Aug. 16, 1954, ch. 736, 68A Stat. 82; Pub. L. 94–455, title XXI, §2104(a), Oct. 4, 1976, 90 Stat.

1901.)

AMENDMENTS

1976—Subsec. (c). Pub. L. 94–455 added subsec. (c).

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XXI, §2104(b), Oct. 4, 1976, 90 Stat. 1902, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1975."

§272. Disposal of coal or domestic iron ore

Where the disposal of coal or iron ore is covered by section 631, no deduction shall be allowed for expenditures attributable to the making and administering of the contract under which such disposition occurs and to the preservation of the economic interest retained under such contract, except that if in any taxable year such expenditures plus the adjusted depletion basis of the coal or iron ore disposed of in such taxable year exceed the amount realized under such contract, such excess, to the extent not availed of as a reduction of gain under section 1231, shall be a loss deductible under section 165(a). This section shall not apply to any taxable year during which there is no income under the contract.

(Aug. 16, 1954, ch. 736, 68A Stat. 82; Pub. L. 88–272, title II, §227(a)(3), (b)(3), Feb. 26, 1964, 78 Stat. 98.)

AMENDMENTS

1964—Pub. L. 88–272 inserted "or domestic iron ore" in section catchline, and "or iron ore" wherever appearing in text.

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88–272, title II, §227(c), Feb. 26, 1964, 78 Stat. 98, provided that: "The amendments made by this section [amending this section and sections 631, 1016, 1231, and 1402 and section 411 of Title 42, The Public Health and Welfare] shall apply with respect to amounts received or accrued in taxable years beginning after December 31, 1963, attributable to iron ore mined in such taxable years."

§273. Holders of life or terminable interest

Amounts paid under the laws of a State, the District of Columbia, a possession of the United States, or a foreign country as income to the holder of a life or terminable interest acquired by gift, bequest, or inheritance shall not be reduced or diminished by any deduction for shrinkage (by whatever name called) in the value of such interest due to the lapse of time.

(Aug. 16, 1954, ch. 736, 68A Stat. 83; Pub. L. 94–455, title XIX, §1901(c)(2), Oct. 4, 1976, 90 Stat. 1803.)

AMENDMENTS

1976—Pub. L. 94–455 struck out reference to amounts paid under laws of a Territory.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

§274. Disallowance of certain entertainment, etc., expenses

(a) Entertainment, amusement, or recreation

(1) In general

No deduction otherwise allowable under this chapter shall be allowed for any item—

(A) Activity

With respect to an activity which is of a type generally considered to constitute entertainment, amusement, or recreation, unless the taxpayer establishes that the item was directly related to, or, in the case of an item directly preceding or following a substantial and bona fide business discussion (including business meetings at a convention or otherwise), that such item was associated with, the active conduct of the taxpayer's trade or business, or

(B) Facility

With respect to a facility used in connection with an activity referred to in subparagraph (A).

In the case of an item described in subparagraph (A), the deduction shall in no event exceed the portion of such item which meets the requirements of subparagraph (A).

(2) Special rules

For purposes of applying paragraph (1)—

(A) Dues or fees to any social, athletic, or sporting club or organization shall be treated as items with respect to facilities.

(B) An activity described in section 212 shall be treated as a trade or business.

(C) In the case of a club, paragraph (1)(B) shall apply unless the taxpayer establishes that the facility was used primarily for the furtherance of the taxpayer's trade or business and that the item was directly related to the active conduct of such trade or business.

(3) Denial of deduction for club dues

Notwithstanding the preceding provisions of this subsection, no deduction shall be allowed under this chapter for amounts paid or incurred for membership in any club organized for business, pleasure, recreation, or other social purpose.

(b) Gifts

(1) Limitation

No deduction shall be allowed under section 162 or section 212 for any expense for gifts made directly or indirectly to any individual to the extent that such expense, when added to prior expenses of the taxpayer for gifts made to such individual during the same taxable year, exceeds $25. For purposes of this section, the term "gift" means any item excludable from gross income of the recipient under section 102 which is not excludable from his gross income under any other provision of this chapter, but such term does not include—

(A) an item having a cost to the taxpayer not in excess of $4.00 on which the name of the taxpayer is clearly and permanently imprinted and which is one of a number of identical items distributed generally by the taxpayer, or

(B) a sign, display rack, or other promotional material to be used on the business premises of the recipient.

(2) Special rules

(A) In the case of a gift by a partnership, the limitation contained in paragraph (1) shall apply to the partnership as well as to each member thereof.

(B) For purposes of paragraph (1), a husband and wife shall be treated as one taxpayer.

(c) Certain foreign travel

(1) In general

In the case of any individual who travels outside the United States away from home in pursuit of a trade or business or in pursuit of an activity described in section 212, no deduction shall be allowed under section 162, or section 212 for that portion of the expenses of such travel otherwise allowable under such section which, under regulations prescribed by the Secretary, is not allocable to such trade or business or to such activity.

(2) Exception

Paragraph (1) shall not apply to the expenses of any travel outside the United States away from home if—

(A) such travel does not exceed one week, or

(B) the portion of the time of travel outside the United States away from home which is not attributable to the pursuit of the taxpayer's trade or business or an activity described in section 212 is less than 25 percent of the total time on such travel.

(3) Domestic travel excluded

For purposes of this subsection, travel outside the United States does not include any travel from one point in the United States to another point in the United States.

(d) Substantiation required

No deduction or credit shall be allowed—

(1) under section 162 or 212 for any traveling expense (including meals and lodging while away from home),

(2) for any item with respect to an activity which is of a type generally considered to constitute entertainment, amusement, or recreation, or with respect to a facility used in connection with such an activity,

(3) for any expense for gifts, or

(4) with respect to any listed property (as defined in section 280F(d)(4)),

unless the taxpayer substantiates by adequate records or by sufficient evidence corroborating the taxpayer's own statement (A) the amount of such expense or other item, (B) the time and place of the travel, entertainment, amusement, recreation, or use of the facility or property, or the date and description of the gift, (C) the business purpose of the expense or other item, and (D) the business relationship to the taxpayer of persons entertained, using the facility or property, or receiving the gift. The Secretary may by regulations provide that some or all of the requirements of the preceding sentence shall not apply in the case of an expense which does not exceed an amount prescribed pursuant to such regulations. This subsection shall not apply to any qualified nonpersonal use vehicle (as defined in subsection (i)).

(e) Specific exceptions to application of subsection (a)

Subsection (a) shall not apply to—

(1) Food and beverages for employees

Expenses for food and beverages (and facilities used in connection therewith) furnished on the business premises of the taxpayer primarily for his employees.

(2) Expenses treated as compensation

(A) In general

Except as provided in subparagraph (B), expenses for goods, services, and facilities, to the extent that the expenses are treated by the taxpayer, with respect to the recipient of the entertainment, amusement, or recreation, as compensation to an employee on the taxpayer's return of tax under this chapter and as wages to such employee for purposes of chapter 24 (relating to withholding of income tax at source on wages).

(B) Specified individuals

(i) In general

In the case of a recipient who is a specified individual, subparagraph (A) and paragraph (9) shall each be applied by substituting "to the extent that the expenses do not exceed the amount of the expenses which" for "to the extent that the expenses".

(ii) Specified individual

For purposes of clause (i), the term "specified individual" means any individual who—

(I) is subject to the requirements of section 16(a) of the Securities Exchange Act of 1934

with respect to the taxpayer or a related party to the taxpayer, or

(II) would be subject to such requirements if the taxpayer (or such related party) were an issuer of equity securities referred to in such section.

For purposes of this clause, a person is a related party with respect to another person if such person bears a relationship to such other person described in section 267(b) or 707(b).

(3) Reimbursed expenses

Expenses paid or incurred by the taxpayer, in connection with the performance by him of services for another person (whether or not such other person is his employer), under a reimbursement or other expense allowance arrangement with such other person, but this paragraph shall apply—

(A) where the services are performed for an employer, only if the employer has not treated such expenses in the manner provided in paragraph (2), or

(B) where the services are performed for a person other than an employer, only if the taxpayer accounts (to the extent provided by subsection (d)) to such person.

(4) Recreational, etc., expenses for employees

Expenses for recreational, social, or similar activities (including facilities therefor) primarily for the benefit of employees (other than employees who are highly compensated employees (within the meaning of section 414(q))). For purposes of this paragraph, an individual owning less than a 10-percent interest in the taxpayer's trade or business shall not be considered a shareholder or other owner, and for such purposes an individual shall be treated as owning any interest owned by a member of his family (within the meaning of section 267(c)(4)). This paragraph shall not apply for purposes of subsection (a)(3).

(5) Employees, stockholder, etc., business meetings

Expenses incurred by a taxpayer which are directly related to business meetings of his employees, stockholders, agents, or directors.

(6) Meetings of business leagues, etc.

Expenses directly related and necessary to attendance at a business meeting or convention of any organization described in section 501(c)(6) (relating to business leagues, chambers of commerce, real estate boards, and boards of trade) and exempt from taxation under section 501(a).

(7) Items available to public

Expenses for goods, services, and facilities made available by the taxpayer to the general public.

(8) Entertainment sold to customers

Expenses for goods or services (including the use of facilities) which are sold by the taxpayer in a bona fide transaction for an adequate and full consideration in money or money's worth.

(9) Expenses includible in income of persons who are not employees

Expenses paid or incurred by the taxpayer for goods, services, and facilities to the extent that the expenses are includible in the gross income of a recipient of the entertainment, amusement, or recreation who is not an employee of the taxpayer as compensation for services rendered or as a prize or award under section 74. The preceding sentence shall not apply to any amount paid or incurred by the taxpayer if such amount is required to be included (or would be so required except that the amount is less than $600) in any information return filed by such taxpayer under part III of subchapter A of chapter 61 and is not so included.

For purposes of this subsection, any item referred to in subsection (a) shall be treated as an expense.

(f) Interest, taxes, casualty losses, etc.

This section shall not apply to any deduction allowable to the taxpayer without regard to its connection with his trade or business (or with his income-producing activity). In the case of a

taxpayer which is not an individual, the preceding sentence shall be applied as if it were an individual.

(g) Treatment of entertainment, etc., type facility

For purposes of this chapter, if deductions are disallowed under subsection (a) with respect to any portion of a facility, such portion shall be treated as an asset which is used for personal, living, and family purposes (and not as an asset used in the trade or business).

(h) Attendance at conventions, etc.

(1) In general

In the case of any individual who attends a convention, seminar, or similar meeting which is held outside the North American area, no deduction shall be allowed under section 162 for expenses allocable to such meeting unless the taxpayer establishes that the meeting is directly related to the active conduct of his trade or business and that, after taking into account in the manner provided by regulations prescribed by the Secretary—

(A) the purpose of such meeting and the activities taking place at such meeting,

(B) the purposes and activities of the sponsoring organizations or groups,

(C) the residences of the active members of the sponsoring organization and the places at which other meetings of the sponsoring organization or groups have been held or will be held, and

(D) such other relevant factors as the taxpayer may present,

it is as reasonable for the meeting to be held outside the North American area as within the North American area.

(2) Conventions on cruise ships

In the case of any individual who attends a convention, seminar, or other meeting which is held on any cruise ship, no deduction shall be allowed under section 162 for expenses allocable to such meeting, unless the taxpayer meets the requirements of paragraph (5) and establishes that the meeting is directly related to the active conduct of his trade or business and that—

(A) the cruise ship is a vessel registered in the United States; and

(B) all ports of call of such cruise ship are located in the United States or in possessions of the United States.

With respect to cruises beginning in any calendar year, not more than $2,000 of the expenses attributable to an individual attending one or more meetings may be taken into account under section 162 by reason of the preceding sentence.

(3) Definitions

For purposes of this subsection—

(A) North American area

The term "North American area" means the United States, its possessions, and the Trust Territory of the Pacific Islands, and Canada and Mexico.

(B) Cruise ship

The term "cruise ship" means any vessel sailing within or without the territorial waters of the United States.

(4) Subsection to apply to employer as well as to traveler

(A) Except as provided in subparagraph (B), this subsection shall apply to deductions otherwise allowable under section 162 to any person, whether or not such person is the individual attending the convention, seminar, or similar meeting.

(B) This subsection shall not deny a deduction to any person other than the individual attending the convention, seminar, or similar meeting with respect to any amount paid by such person to or on behalf of such individual if includible in the gross income of such individual.

The preceding sentence shall not apply if the amount is required to be included in any information return filed by such person under part III of subchapter A of chapter 61 and is not so included.

(5) Reporting requirements

No deduction shall be allowed under section 162 for expenses allocable to attendance at a convention, seminar, or similar meeting on any cruise ship unless the taxpayer claiming the deduction attaches to the return of tax on which the deduction is claimed—

(A) a written statement signed by the individual attending the meeting which includes—

(i) information with respect to the total days of the trip, excluding the days of transportation to and from the cruise ship port, and the number of hours of each day of the trip which such individual devoted to scheduled business activities,

(ii) a program of the scheduled business activities of the meeting, and

(iii) such other information as may be required in regulations prescribed by the Secretary; and

(B) a written statement signed by an officer of the organization or group sponsoring the meeting which includes—

(i) a schedule of the business activities of each day of the meeting,

(ii) the number of hours which the individual attending the meeting attended such scheduled business activities, and

(iii) such other information as may be required in regulations prescribed by the Secretary.

(6) Treatment of conventions in certain Caribbean countries

(A) In general

For purposes of this subsection, the term "North American area" includes, with respect to any convention, seminar, or similar meeting, any beneficiary country if (as of the time such meeting begins)—

(i) there is in effect a bilateral or multilateral agreement described in subparagraph (C) between such country and the United States providing for the exchange of information between the United States and such country, and

(ii) there is not in effect a finding by the Secretary that the tax laws of such country discriminate against conventions held in the United States.

(B) Beneficiary country

For purposes of this paragraph, the term "beneficiary country" has the meaning given to such term by section 212(a)(1)(A) of the Caribbean Basin Economic Recovery Act; except that such term shall include Bermuda.

(C) Authority to conclude exchange of information agreements

(i) In general

The Secretary is authorized to negotiate and conclude an agreement for the exchange of information with any beneficiary country. Except as provided in clause (ii), an exchange of information agreement shall provide for the exchange of such information (not limited to information concerning nationals or residents of the United States or the beneficiary country) as may be necessary or appropriate to carry out and enforce the tax laws of the United States and the beneficiary country (whether criminal or civil proceedings), including information which may otherwise be subject to nondisclosure provisions of the local law of the beneficiary country such as provisions respecting bank secrecy and bearer shares. The exchange of information agreement shall be terminable by either country on reasonable notice and shall provide that information received by either country will be disclosed only to persons or authorities (including courts and administrative bodies) involved in the

administration or oversight of, or in the determination of appeals in respect of, taxes of the United States or the beneficiary country and will be used by such persons or authorities only for such purposes.

(ii) Nondisclosure of qualified confidential information sought for civil tax purposes

An exchange of information agreement need not provide for the exchange of qualified confidential information which is sought only for civil tax purposes if—

(I) the Secretary of the Treasury, after making all reasonable efforts to negotiate an agreement which includes the exchange of such information, determines that such an agreement cannot be negotiated but that the agreement which was negotiated will significantly assist in the administration and enforcement of the tax laws of the United States, and

(II) the President determines that the agreement as negotiated is in the national security interest of the United States.

(iii) Qualified confidential information defined

For purposes of this subparagraph, the term "qualified confidential information" means information which is subject to the nondisclosure provisions of any local law of the beneficiary country regarding bank secrecy or ownership of bearer shares.

(iv) Civil tax purposes

For purposes of this subparagraph, the determination of whether information is sought only for civil tax purposes shall be made by the requesting party.

(D) Coordination with other provisions

Any exchange of information agreement negotiated under subparagraph (C) shall be treated as an income tax convention for purposes of section 6103(k)(4). The Secretary may exercise his authority under subchapter A of chapter 78 to carry out any obligation of the United States under an agreement referred to in subparagraph (C).

(E) Determinations published in the Federal Register

The following shall be published in the Federal Register—

(i) any determination by the President under subparagraph (C)(ii) (including the reasons for such determination),

(ii) any determination by the Secretary under subparagraph (C)(ii) (including the reasons for such determination), and

(iii) any finding by the Secretary under subparagraph (A)(ii) (and any termination thereof).

(7) Seminars, etc. for section 212 purposes

No deduction shall be allowed under section 212 for expenses allocable to a convention, seminar, or similar meeting.

(i) Qualified nonpersonal use vehicle

For purposes of subsection (d), the term "qualified nonpersonal use vehicle" means any vehicle which, by reason of its nature, is not likely to be used more than a de minimis amount for personal purposes.

(j) Employee achievement awards

(1) General rule

No deduction shall be allowed under section 162 or section 212 for the cost of an employee achievement award except to the extent that such cost does not exceed the deduction limitations of paragraph (2).

(2) Deduction limitations

The deduction for the cost of an employee achievement award made by an employer to an employee—

(A) which is not a qualified plan award, when added to the cost to the employer for all other

employee achievement awards made to such employee during the taxable year which are not qualified plan awards, shall not exceed $400, and

(B) which is a qualified plan award, when added to the cost to the employer for all other employee achievement awards made to such employee during the taxable year (including employee achievement awards which are not qualified plan awards), shall not exceed $1,600.

(3) Definitions

For purposes of this subsection—

(A) Employee achievement award

The term "employee achievement award" means an item of tangible personal property which is—

(i) transferred by an employer to an employee for length of service achievement or safety achievement,

(ii) awarded as part of a meaningful presentation, and

(iii) awarded under conditions and circumstances that do not create a significant likelihood of the payment of disguised compensation.

(B) Qualified plan award

(i) In general

The term "qualified plan award" means an employee achievement award awarded as part of an established written plan or program of the taxpayer which does not discriminate in favor of highly compensated employees (within the meaning of section 414(q)) as to eligibility or benefits.

(ii) Limitation

An employee achievement award shall not be treated as a qualified plan award for any taxable year if the average cost of all employee achievement awards which are provided by the employer during the year, and which would be qualified plan awards but for this subparagraph, exceeds $400. For purposes of the preceding sentence, average cost shall be determined by including the entire cost of qualified plan awards, without taking into account employee achievement awards of nominal value.

(4) Special rules

For purposes of this subsection—

(A) Partnerships

In the case of an employee achievement award made by a partnership, the deduction limitations contained in paragraph (2) shall apply to the partnership as well as to each member thereof.

(B) Length of service awards

An item shall not be treated as having been provided for length of service achievement if the item is received during the recipient's 1st 5 years of employment or if the recipient received a length of service achievement award (other than an award excludable under section 132(e)(1)) during that year or any of the prior 4 years.

(C) Safety achievement awards

An item provided by an employer to an employee shall not be treated as having been provided for safety achievement if—

(i) during the taxable year, employee achievement awards (other than awards excludable under section 132(e)(1)) for safety achievement have previously been awarded by the employer to more than 10 percent of the employees of the employer (excluding employees described in clause (ii)), or

(ii) such item is awarded to a manager, administrator, clerical employee, or other professional employee.

(k) Business meals

(1) In general

No deduction shall be allowed under this chapter for the expense of any food or beverages unless—

(A) such expense is not lavish or extravagant under the circumstances, and

(B) the taxpayer (or an employee of the taxpayer) is present at the furnishing of such food or beverages.

(2) Exceptions

Paragraph (1) shall not apply to—

(A) any expense described in paragraph (2), (3), (4), (7), (8), or (9) of subsection (e), and

(B) any other expense to the extent provided in regulations.

(l) Additional limitations on entertainment tickets

(1) Entertainment tickets

(A) In general

In determining the amount allowable as a deduction under this chapter for any ticket for any activity or facility described in subsection (d)(2), the amount taken into account shall not exceed the face value of such ticket.

(B) Exception for certain charitable sports events

Subparagraph (A) shall not apply to any ticket for any sports event—

(i) which is organized for the primary purpose of benefiting an organization which is described in section 501(c)(3) and exempt from tax under section 501(a),

(ii) all of the net proceeds of which are contributed to such organization, and

(iii) which utilizes volunteers for substantially all of the work performed in carrying out such event.

(2) Skyboxes, etc.

In the case of a skybox or other private luxury box leased for more than 1 event, the amount allowable as a deduction under this chapter with respect to such events shall not exceed the sum of the face value of non-luxury box seat tickets for the seats in such box covered by the lease. For purposes of the preceding sentence, 2 or more related leases shall be treated as 1 lease.

(m) Additional limitations on travel expenses

(1) Luxury water transportation

(A) In general

No deduction shall be allowed under this chapter for expenses incurred for transportation by water to the extent such expenses exceed twice the aggregate per diem amounts for days of such transportation. For purposes of the preceding sentence, the term "per diem amounts" means the highest amount generally allowable with respect to a day to employees of the executive branch of the Federal Government for per diem while away from home but serving in the United States.

(B) Exceptions

Subparagraph (A) shall not apply to—

(i) any expense allocable to a convention, seminar, or other meeting which is held on any cruise ship, and

(ii) any expense described in paragraph (2), (3), (4), (7), (8), or (9) of subsection (e).

(2) Travel as form of education

No deduction shall be allowed under this chapter for expenses for travel as a form of education.

(3) Travel expenses of spouse, dependent, or others

No deduction shall be allowed under this chapter (other than section 217) for travel expenses

paid or incurred with respect to a spouse, dependent, or other individual accompanying the taxpayer (or an officer or employee of the taxpayer) on business travel, unless—

(A) the spouse, dependent, or other individual is an employee of the taxpayer,

(B) the travel of the spouse, dependent, or other individual is for a bona fide business purpose, and

(C) such expenses would otherwise be deductible by the spouse, dependent, or other individual.

(n) Only 50 percent of meal and entertainment expenses allowed as deduction

(1) In general

The amount allowable as a deduction under this chapter for—

(A) any expense for food or beverages, and

(B) any item with respect to an activity which is of a type generally considered to constitute entertainment, amusement, or recreation, or with respect to a facility used in connection with such activity,

shall not exceed 50 percent of the amount of such expense or item which would (but for this paragraph) be allowable as a deduction under this chapter.

(2) Exceptions

Paragraph (1) shall not apply to any expense if—

(A) such expense is described in paragraph (2), (3), (4), (7), (8), or (9) of subsection (e),

(B) in the case of an expense for food or beverages, such expense is excludable from the gross income of the recipient under section 132 by reason of subsection (e) thereof (relating to de minimis fringes),

(C) such expense is covered by a package involving a ticket described in subsection (l)(1)(B),

(D) in the case of an employer who pays or reimburses moving expenses of an employee, such expenses are includible in the income of the employee under section 82, or

(E) such expense is for food or beverages—

(i) required by any Federal law to be provided to crew members of a commercial vessel,

(ii) provided to crew members of a commercial vessel—

(I) which is operating on the Great Lakes, the Saint Lawrence Seaway, or any inland waterway of the United States, and

(II) which is of a kind which would be required by Federal law to provide food and beverages to crew members if it were operated at sea,

(iii) provided on an oil or gas platform or drilling rig if the platform or rig is located offshore, or

(iv) provided on an oil or gas platform or drilling rig, or at a support camp which is in proximity and integral to such platform or rig, if the platform or rig is located in the United States north of 54 degrees north latitude.

Clauses (i) and (ii) of subparagraph (E) shall not apply to vessels primarily engaged in providing luxury water transportation (determined under the principles of subsection (m)). In the case of the employee, the exception of subparagraph (A) shall not apply to expenses described in subparagraph (D).

(3) Special rule for individuals subject to Federal hours of service

(A) In general

In the case of any expenses for food or beverages consumed while away from home (within the meaning of section 162(a)(2)) by an individual during, or incident to, the period of duty subject to the hours of service limitations of the Department of Transportation, paragraph (1) shall be applied by substituting "the applicable percentage" for "50 percent".

(B) Applicable percentage

For purposes of this paragraph, the term "applicable percentage" means the percentage determined under the following table:

For taxable years beginning in calendar year—	The applicable percentage is—
1998 or 1999	55
2000 or 2001	60
2002 or 2003	65
2004 or 2005	70
2006 or 2007	75
2008 or thereafter	80.

(o) Regulatory authority

The Secretary shall prescribe such regulations as he may deem necessary to carry out the purposes of this section, including regulations prescribing whether subsection (a) or subsection (b) applies in cases where both such subsections would otherwise apply.

(Added Pub. L. 87–834, §4(a)(1), Oct. 16, 1962, 76 Stat. 974; amended Pub. L. 88–272, title II, §217(a), Feb. 26, 1964, 78 Stat. 56; Pub. L. 94–455, title VI, §602(a), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1572, 1834; Pub. L. 95–600, title III, §361(a), (b), title VII, §701(g)(1)–(3), Nov. 6, 1978, 92 Stat. 2847, 2903, 2904; Pub. L. 96–222, title I, §103(a)(10)(A), (B) Apr. 1, 1980, 94 Stat. 212; Pub. L. 96–598, §5(a), Dec. 24, 1980, 94 Stat. 3488; Pub. L. 96–605, title I, §108(a), Dec. 28, 1980, 94 Stat. 3524; Pub. L. 96–608, §4(a), Dec. 28, 1980, 94 Stat. 3552; Pub. L. 97–34, title II, §265(a), (b), Aug. 13, 1981, 95 Stat. 265; Pub. L. 97–248, title III, §§307(a)(1), 308(a), Sept. 3, 1982, 96 Stat. 589, 591; Pub. L. 97–424, title V, §543(a), Jan. 6, 1983, 96 Stat. 2195; Pub. L. 98–67, title I, §102(a), title II, §222(a), Aug. 5, 1983, 97 Stat. 369, 395; Pub. L. 98–369, div. A, title I, §179(b)(1), title VIII, §801(c), July 18, 1984, 98 Stat. 718, 995; Pub. L. 99–44, §§1(a), 2, 6(b), May 24, 1985, 99 Stat. 77, 79; Pub. L. 99–514, title I, §§122(c), (d), 142(a)–(c), title XI, §1114(b)(6), Oct. 22, 1986, 100 Stat. 2110, 2117–2120, 2451; Pub. L. 100–647, title I, §§1001(g)(1)–(4)(A), (5), 1018(u)(2), title VI, §6003(a), Nov. 10, 1988, 102 Stat. 3351, 3352, 3590, 3684; Pub. L. 101–239, title VII, §§7816(a), 7841(d)(18), Dec. 19, 1989, 103 Stat. 2420, 2429; Pub. L. 101–508, title XI, §11802(b), Nov. 5, 1990, 104 Stat. 1388–529; Pub. L. 103–66, title XIII, §§13209(a), (b), 13210(a), (b), 13272(a), Aug. 10, 1993, 107 Stat. 469, 542; Pub. L. 105–34, title IX, §969(a), Aug. 5, 1997, 111 Stat. 896; Pub. L. 108–357, title VIII, §907(a), Oct. 22, 2004, 118 Stat. 1654; Pub. L. 109–135, title IV, §403(mm), Dec. 21, 2005, 119 Stat. 2632.)

REFERENCES IN TEXT

Section 16 of the Securities Exchange Act of 1934, referred to in subsec. (e)(2)(B)(ii), is classified to section 78p of Title 15, Commerce and Trade.

Section 212(a)(1)(A) of the Caribbean Basin Economic Recovery Act, referred to in subsec. (h)(6)(B), is classified to section 2702(a)(1)(A) of Title 19, Customs Duties.

AMENDMENTS

2005—Subsec. (e)(2)(B)(ii). Pub. L. 109–135, §403(mm)(1), (2), inserted "or a related party to the taxpayer" after "with respect to the taxpayer" in subcl. (I), "(or such related party)" after "the taxpayer" in subcl. (II), and "For purposes of this clause, a person is a related party with respect to another person if such person bears a relationship to such other person described in section 267(b) or 707(b)." at end.

2004—Subsec. (e)(2). Pub. L. 108–357 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "Expenses for goods, services, and facilities, to the extent that the

expenses are treated by the taxpayer, with respect to the recipient of the entertainment, amusement, or recreation, as compensation to an employee on the taxpayer's return of tax under this chapter and as wages to such employee for purposes of chapter 24 (relating to withholding of income tax at source on wages)."

1997—Subsec. (n)(3). Pub. L. 105–34 added par. (3).

1993—Subsec. (a)(3). Pub. L. 103–66, §13210(a), added par. (3).

Subsec. (e)(4). Pub. L. 103–66, §13210(b), inserted at end "This paragraph shall not apply for purposes of subsection (a)(3)."

Subsec. (m)(3). Pub. L. 103–66, §13272(a), added par. (3).

Subsec. (n). Pub. L. 103–66, §13209(a), (b), substituted "50" for "80" in heading and in concluding provisions of par. (1).

1990—Subsec. (l)(2). Pub. L. 101–508, §11802(b)(1), in amending par. (2) generally, struck out "(A) In general" and subpar. (B) which provided for phasein deductions of skybox tickets in the 1987 and 1988 taxable years.

Subsec. (n)(2). Pub. L. 101–508, §11802(b)(2)(A)(ii), (iii), substituted "described in subparagraph (D)" for "described in subparagraph (E)" and "of subparagraph (E)" for "of subparagraph (F)" in concluding provisions.

Subsec. (n)(2)(D) to (F). Pub. L. 101–508, §11802(b)(2)(A)(i), redesignated subpars. (E) and (F) as (D) and (E), respectively, and struck out former subpar. (D) which read as follows: "in the case of an expense for food or beverages before January 1, 1989, such expense is an integral part of a qualified meeting,".

Subsec. (n)(3). Pub. L. 101–508, §11802(b)(2)(B), struck out par. (3) "Qualified meeting" which read as follows: "For purposes of paragraph (2)(D), the term 'qualified meeting' means any convention, seminar, annual meeting, or similar business program with respect to which—

"(A) an expense for food or beverages is not separately stated,

"(B) more than 50 percent of the participants are away from home,

"(C) at least 40 individuals attend, and

"(D) such food and beverages are part of a program which includes a speaker."

1989—Subsec. (n)(2). Pub. L. 101–239, §7816(a), added a new subpar. (E), substantially identical to former subpar. (E), and moved sentence formerly appearing between subpars. (E) and (F) to end of concluding provisions after subpar. (F).

Subsec. (n)(2)(F)(i). Pub. L. 101–239, §7841(d)(18), inserted "any" before "Federal law".

1988—Subsec. (b)(1). Pub. L. 100–647, §1018(u)(2), related to execution of amendment by Pub. L. 99–514, §122(c)(2), see 1986 Amendment note below.

Subsec. (h)(1), (2). Pub. L. 100–647, §1001(g)(5), substituted "trade or business and that" for "trade or business that".

Subsec. (k)(2). Pub. L. 100–647, §1001(g)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "Paragraph (1) shall not apply to any expense if subsection (a) does not apply to such expense by reason of paragraph (2), (3), (4), (7), (8), or (9) of subsection (e)."

Subsec. (m)(1)(B)(ii). Pub. L. 100–647, §1001(g)(3), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: "any expense to which subsection (a) does not apply by reason of paragraph (2), (3), (4), (7), (8), or (9) of subsection (e)."

Subsec. (n)(2). Pub. L. 100–647, §6003(a), struck out "or" at end of subpar. (D), substituted ", or" for the period at end of subpar. (E), and added subpar. (F) and flush sentence at end.

Pub. L. 100–647, §1001(g)(4)(A), struck out "or" at end of subpar. (C), substituted ", or" for the period at end of subpar. (D), and added subpar. (E) and flush sentence at end.

Pub. L. 100–647, §1001(g)(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "subsection (a) does not apply to such expense by reason of paragraph (2), (3), (4), (7), (8), or (9) of subsection (e),".

1986—Subsec. (b)(1). Pub. L. 99–514, §122(c)(1)–(3), and Pub. L. 100–647, §1018(u)(2), made conforming amendments to subpars. (A) and (B) and struck out subpar. (C) which read as follows: "an item of tangible personal property which is awarded to an employee by reason of length of service, productivity, or safety achievement, but only to the extent that—

"(i) the cost of such item to the taxpayer does not exceed $400, or

"(ii) such item is a qualified plan award."

Subsec. (b)(3). Pub. L. 99–514, §122(c)(4), struck out par. (3) relating to qualified plan award, defining such term in subpar. (A), and providing for average amount of awards in subpar. (B) and maximum amount per item in subpar. (C).

Subsec. (e)(1). Pub. L. 99–514, §142(a)(2)(A), redesignated par. (2) as (1) and struck out former par. (1), business meals, which read as follows: "Expenses for food and beverages furnished to any individual under

circumstances which (taking into account the surroundings in which furnished, the taxpayer's trade, business, or income-producing activity and the relationship to such trade, business, or activity of the persons to whom the food and beverages are furnished) are of a type generally considered to be conducive to a business discussion."

Subsec. (e)(2). Pub. L. 99–514, §142(a)(2)(A), redesignated par. (3) as (2). Former par. (2) redesignated (1).

Subsec. (e)(3). Pub. L. 99–514, §142(a)(2), redesignated par. (4) as (3) and substituted "paragraph (2)" for "paragraph (3)" in subpar. (A). Former par. (3) redesignated (2).

Subsec. (e)(4). Pub. L. 99–514, §1114(b)(6), which directed the substitution of "highly compensated employees (within the meaning of section 414(q))" for "officers, shareholders or other owners, or highly compensated employees" in par. (5) was executed to par. (4) to reflect the probable intent of Congress, in view of the redesignation of par. (5) as (4) by section 142(a)(2)(A) of Pub. L. 99–514.

Pub. L. 99–514, §142(a)(2)(A), redesignated par. (5) as (4). Former par. (4) redesignated (3).

Subsec. (e)(5) to (10). Pub. L. 99–514, §142(a)(2)(A), redesignated pars. (5) to (10) as pars. (4) to (9), respectively.

Subsec. (h). Pub. L. 99–514, §142(c), struck out "or 212" after "section 162" in introductory provisions of pars. (1), (2), and (5), in closing provisions of par. (2), and in par. (4)(A), struck out "or to an activity described in section 212 and" after "active conduct of his trade or business" in introductory provisions of pars. (1) and (2), and added par. (7).

Subsec. (j). Pub. L. 99–514, §122(d), added subsec. (j). Former subsec. (j) redesignated (k).

Subsec. (k). Pub. L. 99–514, §142(a)(1), added subsec. (k). Former subsec. (k) redesignated (o).

Subsecs. (l) to (n). Pub. L. 99–514, §142(b), added subsecs. (l) to (n).

Subsec. (o). Pub. L. 99–514, §142(a)(1), redesignated former subsec. (k) as (o).

1985—Subsec. (d). Pub. L. 99–44, §2(a), inserted at end "This subsection shall not apply to any qualified nonpersonal use vehicle (as defined in subsection (i))."

Pub. L. 99–44, §1(a), substituted "adequate records or by sufficient evidence corroborating the taxpayer's own statement" for "adequate contemporaneous records", and provided that the Internal Revenue Code of 1954 [now 1986] [this title] shall be applied as if "contemporaneous" had not been added to subsec. (d). See Effective Date of 1985 Amendment note below.

Subsecs. (i), (j). Pub. L. 99–44, §2(b), added subsec. (i) and redesignated former subsec. (i) as (j).

1984—Subsec. (d). Pub. L. 98–369, §179(b), substituted, in introductory provisions, "No deduction or credit" for "No deduction" and, in provisions following par. (4), "adequate contemporaneous records" for "adequate records or by sufficient evidence corroborating his own statement" and "the facility or property" for "the facility" in two places, and added par. (4).

Subsec. (h)(6)(D). Pub. L. 98–369, §801(c), substituted in heading "with other provisions" for "with section 6103" and in text inserted provision that the Secretary may exercise his authority under subchapter A of chapter 78 to carry out any obligations of the United States under an agreement referred to in subpar. (C).

1983—Subsec. (e)(3). Pub. L. 98–67, §102(a), repealed amendments made by Pub. L. 97–248. See 1982 Amendment note below.

Subsec. (h)(2). Pub. L. 97–424, §543(a)(1), inserted provisions relating to requirements of par. (5) and the description in section 212, and inserted the $2,000 limit relating to section 162 or 212.

Subsec. (h)(5). Pub. L. 97–424, §543(a)(2), added par. (5).

Subsec. (h)(6). Pub. L. 98–67, §227(a), added par. (6).

1982—Subsec. (e)(3). Pub. L. 97–248 provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, par. (3) is amended by inserting "subchapter A of" before "chapter 24". Section 102(a), (b) of Pub. L. 98–67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§301–308) of title III of Pub. L. 97–248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 [now 1986] [this title] shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

1981—Subsec. (b)(1)(C). Pub. L. 97–34, §265(a), excluded from term "gift" an award for productivity, designated existing provisions as cl. (i), and as so designated, increased the limitation to $400 from $100, and added cl. (ii).

Subsec. (b)(3). Pub. L. 97–34, §265(b), added par. (3).

1980—Subsec. (a)(2)(C). Pub. L. 96–222, §103(a)(10)(A), struck out "country" after "the case of a".

Subsec. (e)(10). Pub. L. 96–605 and Pub. L. 96–598 made identical amendments by adding par. (10).

Subsec. (h) Pub. L. 96–608 substituted provision disallowing any deductions for expenses allocable to a convention, seminar, or other similar meeting outside the North American area unless, taking certain factors into account, it is as reasonable for the meeting to be held outside the North American area as within it, disallowing any deductions for a convention, seminar, or similar meeting held on any cruise ship, and defining

North American area and cruise ship, for provision allowing deductions with respect to not more than 2 foreign conventions per year, limiting deductible transportation cost to not to exceed the cost of coach or economy air fare, permitting transportation costs to be fully deductible only if at least one-half of the days are devoted to business related activities, disallowing deductions for subsistence expenses unless the individual attends two-thirds of the business activities, limiting deductible subsistence costs to not to exceed the per diem rate for United States civil servants, defining foreign convention and subsistence expenses, providing that if transportation expenses or subsistence expenses are not separately stated or do not reflect the proper allocation all amounts paid be treated as subsistence expenses, and prescribing special reporting and substantiation requirements.

1978—Subsec. (a)(1). Pub. L. 95–600, §361(a), substituted provisions allowing no deduction for expenses paid or incurred with respect to a facility which is used in conjunction with an activity which is of a type generally considered to constitute entertainment, amusement, or recreation for provisions allowing a deduction for expenses paid or incurred with respect to a facility if the facility used is primarily for the furtherance of the taxpayer's business, and the expense is "directly related" to the active conduct of taxpayer's business.

Subsec. (a)(2)(C). Pub. L. 95–600, §361(b), as amended by Pub. L. 96–222, §103(a)(10)(B), added subpar. (C).

Subsec. (h)(3). Pub. L. 95–600, §701(g)(3), substituted "at least one-half" for "more than one-half" in first sentence.

Subsec. (h)(6)(D). Pub. L. 95–600, §701(g)(1), designated existing provisions as cl. (i), inserted introductory phrase "Except as provided in clause (ii)" and substituted "For the purposes" for "For purpose", and added cl. (ii).

Subsec. (h)(6)(E). Pub. L. 95–600, §701(g)(2), added subpar. (E).

1976—Subsecs. (c)(1), (d). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (h). Pub. L. 94–455, §602(a), added subsec. (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 94–455, §§602(a), 1906(b)(13)(A), redesignated former subsec. (h) as (i) and struck out "or his delegate" after "Secretary".

1964—Subsec. (c). Pub. L. 88–272 limited subsec. (c) to individuals traveling outside the United States.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendments by Pub. L. 109–135 effective as if included in the provisions of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which they relate, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §907(b), Oct. 22, 2004, 118 Stat. 1655, provided that: "The amendment made by this section [amending this section] shall apply to expenses incurred after the date of the enactment of this Act [Oct. 22, 2004]."

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title IX, §969(b), Aug. 5, 1997, 111 Stat. 897, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1997."

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13209(c), Aug. 10, 1993, 107 Stat. 469, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1993."

Pub. L. 103–66, title XIII, §13210(c), Aug. 10, 1993, 107 Stat. 469, provided that: "The amendments made by this section [amending this section] shall apply to amounts paid or incurred after December 31, 1993."

Pub. L. 103–66, title XIII, §13272(b), Aug. 10, 1993, 107 Stat. 542, provided that: "The amendment made by this section [amending this section] shall apply to amounts paid or incurred after December 31, 1993."

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7816(a) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1001(g)(1)–(4)(A), (5) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title VI, §6003(b), Nov. 10, 1988, 102 Stat. 3685, provided that:

"(1) Clauses (i) and (ii) of section 274(n)(2)(F) of the 1986 Code, as added by subsection (a), shall apply to taxable years beginning after December 31, 1988.

"(2) Clauses (iii) and (iv) of section 274(n)(2)(F) of the 1986 Code, as added by subsection (a), shall apply to taxable years beginning after December 31, 1987."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 122(c), (d) of Pub. L. 99–514 applicable to prizes and awards granted after Dec. 31, 1986, see section 151(c) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 142(a)–(c) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 1114(b)(6) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1986, see section 1114(c)(1) of Pub. L. 99–514, set out as a note under section 414 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Pub. L. 99–44, §6(a)–(c), May 24, 1985, 99 Stat. 78, 79, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) REPEALS.—The amendment and repeals made by subsections (a) and (b) of section 1 [amending this section and repealing section 179(b)(2), (3) of Pub. L. 98–369 which had amended sections 6653 and 6695 of this title] shall take effect as if included in the amendments made by section 179(b) of the Tax Reform Act of 1984 [Pub. L. 98–369].

"(b) RESTORATION OF PRIOR LAW FOR 1985.—For taxable years beginning in 1985, section 274(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall apply as it read before the amendments made by section 179(b)(1) of the Tax Reform Act of 1984 [Pub. L. 98–369, see 1984 Amendments note above].

"(c) EXCEPTION FROM SUBSTANTIATION REQUIREMENTS FOR QUALIFIED NONPERSONAL USE VEHICLES.—The amendments made by section 2 [amending this section] shall apply to taxable years beginning after December 31, 1985."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 179(b)(1) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1984, see section 179(d)(2) of Pub. L. 98–369, set out as an Effective Date note under section 280F of this title.

Amendment by section 801(c) of Pub. L. 98–369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 98–67, title II, §222(b), Aug. 5, 1983, 97 Stat. 397, provided that: "The amendment made by subsection (a) [amending this section] shall apply to conventions, seminars, or other meetings which begin after June 30, 1983."

Pub. L. 97–424, title V, §543(b), Jan. 6, 1983, 96 Stat. 2196, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1982."

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title II, §265(c), Aug. 13, 1981, 95 Stat. 265, provided that: "The amendments made by this section [amending this section] shall apply to taxable years ending on or after the date of the enactment of this Act [Aug. 13, 1981]."

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–608, §4(b), Dec. 28, 1980, 94 Stat. 3552, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendment made by subsection (a) of this section [amending this section] shall apply to conventions, seminars, and meetings beginning after December 31, 1980, except that in the case of any convention, seminar, or meeting beginning after such date which was scheduled on or before such date, a person, in such manner as the Secretary of the Treasury or his delegate may prescribe, may elect to have the provisions of section 274(h) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] be applied to such convention seminar or meeting without regard to such amendment."

Pub. L. 96–598, §5(b), Dec. 24, 1980, 94 Stat. 3488, and Pub. L. 96–605, title I, §108(b), Dec. 28, 1980, 94 Stat. 3525, provided that: "The amendment made by this section [amending this section] shall apply to any

expenses paid or incurred after December 31, 1980, in taxable years ending after such date."

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title III, §361(c), Nov. 6, 1978, 92 Stat. 2847, provided that: "The amendments made by this section [amending this section] shall apply to items paid or incurred after December 31, 1978, in taxable years ending after such date."

Pub. L. 95–600, title VII, §701(g)(4), Nov. 6, 1978, 92 Stat. 2904, provided that: "The amendments made by this subsection [amending this section] shall apply to conventions beginning after December 31, 1976."

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title VI, §602(b), Oct. 4, 1976, 90 Stat. 1574, provided that: "The amendments made by this section [amending this section] shall apply to conventions beginning after December 31, 1976."

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88–272, title II, §217(b), Feb. 26, 1964, 78 Stat. 57, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years ending after December 31, 1962, but only in respect of periods after such date."

EFFECTIVE DATE

Section applicable with respect to taxable years ending after Dec. 31, 1962, but only in respect of periods after such date, see section 4(c) of Pub. L. 87–834, set out as an Effective Date of 1962 Amendment note under section 162 of this title.

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1114 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

Pub. L. 99–44, §5, May 24, 1985, 99 Stat. 78, provided that: "Not later than October 1, 1985, the Secretary of the Treasury or his delegate shall prescribe regulations to carry out the provisions of this Act [amending sections 274, 280F, 3402, 6653, and 6695 of this title, and enacting provisions set out as notes under sections 274, 280F, 3402, and 6653 of this title] which shall fully reflect such provisions."

Pub. L. 99–44, §1(c), May 24, 1985, 99 Stat. 77, provided that: "Regulations issued before the date of the enactment of this Act [May 24, 1985] to carry out the amendments made by paragraphs (1)(C), (2), and (3) of section 179(b) of the Tax Reform Act of 1984 [Pub. L. 98–369, amending sections 274, 6653, and 6695 of this title] shall have no force and effect."

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

CERTAIN RECORDKEEPING REQUIREMENTS

For treatment of use of automobile by I.R.S. special agent for purposes of this section and section 132 of this title, see section 1567 of Pub. L. 99–514, set out as a note under section 132 of this title.

SUBSTANTIATION BY ADEQUATE CONTEMPORANEOUS RECORDS

Pub. L. 99–44, §1(a), May 24, 1985, 99 Stat. 77, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided in part that: "the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall be applied and administered as if the word 'contemporaneous' had not been added [by Pub. L. 98–369] to such subsection (d) [subsec. (d) of this section]."

USE OF FACILITIES IN CASE OF INDEPENDENT CONTRACTORS, ETC.

Pub. L. 96–222, title I, §103(a)(10)(C), Apr. 1, 1980, 94 Stat. 212, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(i) IN GENERAL.—Subsection (a) of section 274 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to disallowance of certain entertainment, etc., expenses) shall not apply to expenses paid or incurred by the taxpayer for goods, services, and facilities to the extent that the expenses are includible in the gross income of a recipient of the entertainment, amusement, or recreation who is not an employee of the taxpayer as compensation for services rendered or as a prize or award under section 74 of such Code.

"(ii) INFORMATION RETURN REQUIREMENT.—Clause (i) shall not apply to any amount paid or incurred by the taxpayer if such amount is required to be included in any information return filed by such taxpayer under part III of subchapter A of chapter 61 of such Code [section 6031 et seq. of this title] and is not so included.

"(iii) APPLICATION OF SUBPARAGRAPH.—This subparagraph shall only apply with respect to expenses paid or incurred during 1979 or 1980."

§275. Certain taxes

(a) General rule

No deduction shall be allowed for the following taxes:

(1) Federal income taxes, including—

(A) the tax imposed by section 3101 (relating to the tax on employees under the Federal Insurance Contributions Act);

(B) the taxes imposed by sections 3201 and 3211 (relating to the taxes on railroad employees and railroad employee representatives); and

(C) the tax withheld at source on wages under section 3402.

(2) Federal war profits and excess profits taxes.

(3) Estate, inheritance, legacy, succession, and gift taxes.

(4) Income, war profits, and excess profits taxes imposed by the authority of any foreign country or possession of the United States if the taxpayer chooses to take to any extent the benefits of section 901.

(5) Taxes on real property, to the extent that section 164(d) requires such taxes to be treated as imposed on another taxpayer.

(6) Taxes imposed by chapters 41, 42, 43, 44, 45, 46, and 54.

Paragraph (1) shall not apply to the tax imposed by section 59A. Paragraph (1) shall not apply to any taxes to the extent such taxes are allowable as a deduction under section 164(f).

(b) Cross reference

For disallowance of certain other taxes, see section 164(c).

(Added Pub. L. 88–272, title II, §207(b)(3)(A), Feb. 26, 1964, 78 Stat. 42; amended Pub. L. 93–406, title II, §1016(a)(1), Sept. 2, 1974, 88 Stat. 929; Pub. L. 94–455, title XIII, §1307(d)(2)(A), title XVI, §1605(b)(1), title XIX, §1901(a)(39), Oct. 4, 1976, 90 Stat. 1727, 1754, 1771; Pub. L. 95–600, title VII, §701(t)(3)(B), Nov. 6, 1978, 92 Stat. 2912; Pub. L. 97–248, title III, §§305(a), 308(a), Sept. 3, 1982, 96 Stat. 588, 591; Pub. L. 98–21, title I, §124(c)(5), Apr. 20, 1983, 97 Stat. 91; Pub. L. 98–67, title I, §102(a) Aug. 5, 1983, 97 Stat. 369; Pub. L. 98–369, div. A, title I, §67(b)(2), title VIII, §801(d)(5), July 18, 1984, 98 Stat. 587, 996; Pub. L. 99–499, title V, §516(b)(2)(B), Oct. 17, 1986, 100 Stat. 1771; Pub. L. 100–203, title X, §10228(b), Dec. 22, 1987, 101 Stat. 1330–418; Pub. L. 106–519, §4(2), Nov. 15, 2000, 114 Stat. 2432; Pub. L. 108–357, title I, §101(b)(5), title VIII,

§802(b)(1), Oct. 22, 2004, 118 Stat. 1423, 1568; Pub. L. 110–172, §11(g)(5), Dec. 29, 2007, 121 Stat. 2490.)

REFERENCES IN TEXT

The Federal Insurance Contributions Act, referred to in subsec. (a)(1)(A), is act Aug. 16, 1954, ch. 736, §§3101, 3102, 3111, 3112, 3121 to 3128, 68A Stat. 415, as amended, which is classified generally to chapter 21 (§3101 et seq.) of this title. For complete classification of this Act to the Code, see section 3128 of this title and Tables.

CODIFICATION

Pub. L. 95–600, §701(t)(3)(B) (effective Oct. 4, 1976, see Pub. L. 95–600, §701(t)(5), set out as an Effective Date of 1978 Amendment note under section 859 of this title) repealed §1605(b)(1) of Pub. L. 94–455, cited as a credit to this section, which had duplicated the amendment to subsec. (a)(6) made by §1307(d)(2)(A) of Pub. L. 94–455.

AMENDMENTS

2007—Subsec. (a)(4). Pub. L. 110–172 substituted "if the taxpayer chooses to take to any extent the benefits of section 901." for "if—

"(A) the taxpayer chooses to take to any extent the benefits of section 901, or

"(B) such taxes are paid or accrued with respect to foreign trade income (within the meaning of section 923(b)) of a FSC,."

2004—Subsec. (a). Pub. L. 108–357, §101(b)(5)(B), struck out at end of concluding provisions "A rule similar to the rule of section 943(d) shall apply for purposes of paragraph (4)(C)."

Subsec. (a)(4). Pub. L. 108–357, §101(b)(5)(A), inserted "or" at end of subpar. (A), substituted period for "or" at end of subpar. (B), and struck out subpar. (C) which read as follows: "such taxes are paid or accrued with respect to qualifying foreign trade income (as defined in section 941)."

Subsec. (a)(6). Pub. L. 108–357, §802(b)(1), inserted "45," before "46,".

2000—Subsec. (a). Pub. L. 106–519, §4(2)(B), inserted at end "A rule similar to the rule of section 943(d) shall apply for purposes of paragraph (4)(C)."

Subsec. (a)(4)(C). Pub. L. 106–519, §4(2)(A), added subpar. (C).

1987—Subsec. (a)(6). Pub. L. 100–203 substituted "46, and 54" for "and 46".

1986—Subsec. (a). Pub. L. 99–499 inserted at end "Paragraph (1) shall not apply to the tax imposed by section 59A."

1984—Subsec. (a)(4). Pub. L. 98–369, §801(d)(5), inserted provision disallowing a deduction for income, war profits, and excess profits taxes if such taxes are paid or accrued with respect to foreign trade income, within the meaning of section 923(b), of a FSC.

Subsec. (a)(6). Pub. L. 98–369, §67(b)(2), inserted reference to chapter 46.

1983—Subsec. (a). Pub. L. 98–21 inserted at end "Paragraph (1) shall not apply to any taxes to the extent such taxes are allowable as a deduction under section 164(f)."

Subsec. (a)(1). Pub. L. 98–67 repealed amendments made by Pub. L. 97–248. See 1982 Amendment note below.

1982—Subsec. (a)(1). Pub. L. 97–248 provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, par. (1) is amended by striking out "and" at end of subpar. (B), by substituting "; and" for the period at end of subpar. (C), and by inserting subpar. (D) relating to the tax withheld at source on interest, dividends, and patronage dividends under section 3451. Section 102(a), (b) of Pub. L. 98–67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§301–308) of title III of Pub. L. 97–248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 [now 1986] [this title] shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

1976—Subsec. (a)(1)(C). Pub. L. 94–455, §1901(a)(39), struck out ", and corresponding provisions of prior revenue laws" after "under section 3402".

Subsec. (a)(6). Pub. L. 94–455, §§1307(d)(2)(A), 1605(b)(1), inserted reference to chapters 41 and 44.

1974—Subsec. (a)(6). Pub. L. 93–406 added par. (6).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 101(b)(5) of Pub. L. 108–357 applicable to transactions after Dec. 31, 2004, see section 101(c) of Pub. L. 108–357, set out as a note under section 56 of this title.

Amendment by section 802(b)(1) of Pub. L. 108–357 effective Mar. 4, 2003, see section 802(d) of Pub. L.

108–357, set out as an Effective Date note under section 4985 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–519 applicable to transactions after Sept. 30, 2000, with special rules relating to existing foreign sales corporations, see section 5 of Pub. L. 106–519, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to consideration received after Dec. 22, 1987, in taxable years ending after such date, except not applicable in the case of any acquisition pursuant to a written binding contract in effect on Dec. 15, 1987, and at all times thereafter before the acquisition, see section 10228(d) of Pub. L. 100–203, set out as an Effective Date note under section 5881 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–499 applicable to taxable years beginning after Dec. 31, 1986, see section 516(c) of Pub. L. 99–499, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 67(b)(2) of Pub. L. 98–369 applicable to payments under agreements entered into or renewed after June 14, 1984, in taxable years ending after such date, with contracts entered into before June 15, 1984, which are amended after June 14, 1984, in any significant relevant aspect to be treated as a contract entered into after June 14, 1984, see section 67(e) of Pub. L. 98–369, set out as an Effective Date note under section 280G of this title.

Amendment by section 801(d)(5) of Pub. L. 98–369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable to taxable years beginning after Dec. 31, 1989, see section 124(d)(2) of Pub. L. 98–21, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment by section 1307(d)(2)(A) of Pub. L. 94–455, see section 1307(e) of Pub. L. 94–455, set out as a note under section 501 of this title.

For effective date of amendment by section 1605(b)(1) of Pub. L. 94–455, see section 1608(d) of Pub. L. 94–455, set out as a note under section 856 of this title.

Amendment by section 1901(a)(39) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–406 applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93–406, for plan years beginning after Sept. 2, 1974, but, in the case of plans in existence on Jan. 1, 1974, amendment by Pub. L. 93–406 applicable for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93–406, set out as a note under section 410 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1963, see section 207(c) of Pub. L. 88–272, set out as an Effective Date of 1964 Amendment note under section 164 of this title.

§276. Certain indirect contributions to political parties

(a) Disallowance of deduction

No deduction otherwise allowable under this chapter shall be allowed for any amount paid or incurred for—

(1) advertising in a convention program of a political party, or in any other publication if any part of the proceeds of such publication directly or indirectly inures (or is intended to inure) to or for the use of a political party or a political candidate,

(2) admission to any dinner or program, if any part of the proceeds of such dinner or program

directly or indirectly inures (or is intended to inure) to or for the use of a political party or a political candidate, or

(3) admission to an inaugural ball, inaugural gala, inaugural parade, or inaugural concert, or to any similar event which is identified with a political party or a political candidate.

(b) Definitions

For purposes of this section—

(1) Political party

The term "political party" means—

(A) a political party;

(B) a National, State, or local committee of a political party; or

(C) a committee, association, or organization, whether incorporated or not, which directly or indirectly accepts contributions (as defined in section 271(b)(2)) or make expenditures (as defined in section 271(b)(3)) for the purpose of influencing or attempting to influence the selection, nomination, or election of any individual to any Federal, State, or local elective public office, or the election of presidential and vice-presidential electors, whether or not such individual or electors are selected, nominated, or elected.

(2) Proceeds inuring to or for the use of political candidates

Proceeds shall be treated as inuring to or for the use of a political candidate only if—

(A) such proceeds may be used directly or indirectly for the purpose of furthering his candidacy for selection, nomination, or election to any elective public office, and

(B) such proceeds are not received by such candidate in the ordinary course of a trade or business (other than the trade or business of holding elective public office).

(c) Cross reference

For disallowance of certain entertainment, etc., expenses, see section 274.

(Added Pub. L. 89–368, title III, §301(a), Mar. 15, 1966, 80 Stat. 66; amended Pub. L. 90–364, title I, §108(a), June 28, 1968, 82 Stat. 268; Pub. L. 93–443, title IV, §406(d), Oct. 15, 1974, 88 Stat. 1296.)

AMENDMENTS

1974—Subsecs. (c), (d). Pub. L. 93–443 struck out subsec. (c) relating to advertising in a convention program of a national political convention, and redesignated subsec. (d) as (c).

1968—Subsecs. (c), (d). Pub. L. 90–364 added subsec. (c) and redesignated former subsec. (c) as (d).

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–443 applicable with respect to taxable years beginning after Dec. 31, 1974, see section 410(c)(1) of Pub. L. 93–443, set out as a note under section 30101 of Title 52, Voting and Elections.

EFFECTIVE DATE OF 1968 AMENDMENT

Pub. L. 90–364, title I, §108(b), June 28, 1968, 82 Stat. 269, provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to amounts paid or incurred on or after January 1, 1968."

EFFECTIVE DATE

Pub. L. 89–368, title III, §301(c), Mar. 15, 1966, 80 Stat. 67, provided that: "The amendments made by subsections (a) and (b) [enacting this section] shall apply to taxable years beginning after December 31, 1965, but only with respect to amounts paid or incurred after the date of the enactment of this Act [Mar. 15, 1966]."

PROGRAM ADVERTISING FOR PRESIDENTIAL AND VICE-PRESIDENTIAL NOMINATING CONVENTIONS

Pub. L. 90–346, June 18, 1968, 82 Stat. 183, provided for advertising in a convention program of a national political convention, applicable with respect to amounts paid or incurred on or after Jan. 1, 1968, prior to repeal by Pub. L. 93–625, §10(g), Jan. 3, 1975, 88 Stat. 2119.

§277. Deductions incurred by certain membership organizations in transactions with members

(a) General rule

In the case of a social club or other membership organization which is operated primarily to furnish services or goods to members and which is not exempt from taxation, deductions for the taxable year attributable to furnishing services, insurance, goods, or other items of value to members shall be allowed only to the extent of income derived during such year from members or transactions with members (including income derived during such year from institutes and trade shows which are primarily for the education of members). If for any taxable year such deductions exceed such income, the excess shall be treated as a deduction attributable to furnishing services, insurance, goods, or other items of value to members paid or incurred in the succeeding taxable year. The deductions provided by sections 243, 244, and 245 (relating to dividends received by corporations) shall not be allowed to any organization to which this section applies for the taxable year.

(b) Exceptions

Subsection (a) shall not apply to any organization—

(1) which for the taxable year is subject to taxation under subchapter H or L,

(2) which has made an election before October 9, 1969, under section 456(c) or which is affiliated with such an organization,

(3) which for each day of any taxable year is a national securities exchange subject to regulation under the Securities Exchange Act of 1934 or a contract market subject to regulation under the Commodity Exchange Act, or

(4) which is engaged primarily in the gathering and distribution of news to its members for publication.

(Added Pub. L. 91–172, title I, §121(b)(3)(A), Dec. 30, 1969, 83 Stat. 540; amended Pub. L. 94–568, §1(c), Oct. 20, 1976, 90 Stat. 2697; Pub. L. 99–514, title XVI, §1604(a), Oct. 22, 1986, 100 Stat. 2769.)

REFERENCES IN TEXT

The Securities Exchange Act of 1934, referred to in subsec. (b)(3), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

The Commodity Exchange Act, referred to in subsec. (b)(3), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, as amended, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

AMENDMENTS

1986—Subsec. (b)(4). Pub. L. 99–514 added par. (4).

1976—Subsec. (a). Pub. L. 94–568 provided that the deductions provided by sections 243, 244, and 245 (relating to dividends received by corporations) shall not be allowed to any organization to which this section applies for the taxable year.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XVI, §1604(b), Oct. 22, 1986, 100 Stat. 2769, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 22, 1986]."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–568 applicable to taxable years beginning after Oct. 20, 1976, see section 1(d) of Pub. L. 94–568, set out as a note under section 501 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1970, see section 121(g) of Pub. L. 91–172, set out as an Effective Date of 1969 Amendment note under section 511 of this title.

[§278. Repealed. Pub. L. 99–514, title VIII, §803(b)(6), Oct. 22, 1986, 100 Stat. 2356]

Section, added Pub. L. 91–172, title II, §216(a), Dec. 30, 1969, 83 Stat. 573; amended Pub. L. 91–680, §1(a), (b), (d), Jan. 12, 1971, 84 Stat. 2064; Pub. L. 94–455, title II, §207(b)(1), (2), Oct. 4, 1976, 90 Stat. 1538, related to capital expenditures incurred in planting and developing citrus and almond groves, and certain capital expenditures of farming syndicates.

EFFECTIVE DATE OF REPEAL

If any interest costs incurred after Dec. 31, 1986, are attributable to costs incurred before Jan. 1, 1987, the repeal of this section is applicable to such interest costs only to the extent such interest costs are attributable to costs which were required to be capitalized under section 263 of the Internal Revenue Code of 1954 and which would have been taken into account in applying section 189 of the Internal Revenue Code of 1954 (as in effect before its repeal by section 803 of Pub. L. 99–514) or, if applicable, section 266 of such Code, see section 7831(d)(2) of Pub. L. 101–239, set out as an Effective Date note under section 263A of this title.

Repeal applicable to costs incurred after Dec. 31, 1986, in taxable years ending after such date, except as otherwise provided, see section 803(d) of Pub. L. 99–514, set out as an Effective Date note under section 263A of this title.

§279. Interest on indebtedness incurred by corporation to acquire stock or assets of another corporation

(a) General rule

No deduction shall be allowed for any interest paid or incurred by a corporation during the taxable year with respect to its corporate acquisition indebtedness to the extent that such interest exceeds—

(1) $5,000,000, reduced by

(2) the amount of interest paid or incurred by such corporation during such year on obligations (A) issued after December 31, 1967, to provide consideration for an acquisition described in paragraph (1) of subsection (b), but (B) which are not corporate acquisition indebtedness.

(b) Corporate acquisition indebtedness

For purposes of this section, the term "corporate acquisition indebtedness" means any obligation evidenced by a bond, debenture, note, or certificate or other evidence of indebtedness issued after October 9, 1969, by a corporation (hereinafter in this section referred to as "issuing corporation") if—

(1) such obligation is issued to provide consideration for the acquisition of—

(A) stock in another corporation (hereinafter in this section referred to as "acquired corporation"), or

(B) assets of another corporation (hereinafter in this section referred to as "acquired corporation") pursuant to a plan under which at least two-thirds (in value) of all the assets (excluding money) used in trades and businesses carried on by such corporation are acquired,

(2) such obligation is either—

(A) subordinated to the claims of trade creditors of the issuing corporation generally, or

(B) expressly subordinated in right of payment to the payment of any substantial amount of unsecured indebtedness, whether outstanding or subsequently issued, of the issuing corporation,

(3) the bond or other evidence of indebtedness is either—

(A) convertible directly or indirectly into stock of the issuing corporation, or

(B) part of an investment unit or other arrangement which includes, in addition to such bond or other evidence of indebtedness, an option to acquire, directly or indirectly, stock in the issuing corporation, and

(4) as of a day determined under subsection (c)(1), either—

(A) the ratio of debt to equity (as defined in subsection (c)(2)) of the issuing corporation exceeds 2 to 1, or

(B) the projected earnings (as defined in subsection (c)(3)) do not exceed 3 times the annual interest to be paid or incurred (determined under subsection (c)(4)).

(c) Rules for application of subsection (b)(4)

For purposes of subsection (b)(4)—

(1) Time of determination

Determinations are to be made as of the last day of any taxable year of the issuing corporation in which it issues any obligation to provide consideration for an acquisition described in subsection (b)(1) of stock in, or assets of, the acquired corporation.

(2) Ratio of debt to equity

The term "ratio of debt to equity" means the ratio which the total indebtedness of the issuing corporation bears to the sum of its money and all its other assets (in an amount equal to their adjusted basis for determining gain) less such total indebtedness.

(3) Projected earnings

(A) The term "projected earnings" means the "average annual earnings" (as defined in subparagraph (B)) of—

(i) the issuing corporation only, if clause (ii) does not apply, or

(ii) both the issuing corporation and the acquired corporation, in any case where the issuing corporation has acquired control (as defined in section 368(c)), or has acquired substantially all of the properties, of the acquired corporation.

(B) The average annual earnings referred to in subparagraph (A) is, for any corporation, the amount of its earnings and profits for any 3-year period ending with the last day of a taxable year of the issuing corporation described in paragraph (1), computed without reduction for—

(i) interest paid or incurred,

(ii) depreciation or amortization allowed under this chapter,

(iii) liability for tax under this chapter, and

(iv) distributions to which section 301(c)(1) applies (other than such distributions from the acquired to the issuing corporation),

and reduced to an annual average for such 3-year period pursuant to regulations prescribed by the Secretary. Such regulations shall include rules for cases where any corporation was not in existence for all of such 3-year period or such period includes only a portion of a taxable year of any corporation.

(4) Annual interest to be paid or incurred

The term "annual interest to be paid or incurred" means—

(A) if subparagraph (B) does not apply, the annual interest to be paid or incurred by the issuing corporation only, determined by reference to its total indebtedness outstanding, or

(B) if projected earnings are determined under clause (ii) of paragraph (3)(A), the annual interest to be paid or incurred by both the issuing corporation and the acquired corporation, determined by reference to their combined total indebtedness outstanding.

(5) Special rules for banks and lending or finance companies

With respect to any corporation which is a bank (as defined in section 581) or is primarily engaged in a lending or finance business—

(A) in determining under paragraph (2) the ratio of debt to equity of such corporation (or of the affiliated group of which such corporation is a member), the total indebtedness of such corporation (and the assets of such corporation) shall be reduced by an amount equal to the total indebtedness owed to such corporation which arises out of the banking business of such corporation, or out of the lending or finance business of such corporation, as the case may be;

(B) in determining under paragraph (4) the annual interest to be paid or incurred by such corporation (or by the issuing and acquired corporations referred to in paragraph (4)(B) or by the affiliated group of which such corporation is a member) the amount of such interest (determined without regard to this paragraph) shall be reduced by an amount which bears the same ratio to the amount of such interest as the amount of the reduction for the taxable year under subparagraph (A) bears to the total indebtedness of such corporation; and

(C) in determining under paragraph (3)(B) the average annual earnings, the amount of the earnings and profits for the 3-year period shall be reduced by the sum of the reductions under subparagraph (B) for such period.

For purposes of this paragraph, the term "lending or finance business" means a business of making loans or purchasing or discounting accounts receivable, notes, or installment obligations.

(d) Taxable years to which applicable

In applying this section—

(1) First year of disallowance

The deduction of interest on any obligation shall not be disallowed under subsection (a) before the first taxable year of the issuing corporation as of the last day of which the application of either subparagraph (A) or subparagraph (B) of subsection (b)(4) results in such obligation being corporate acquisition indebtedness.

(2) General rule for succeeding years

Except as provided in paragraphs (3), (4), and (5), if an obligation is determined to be corporate acquisition indebtedness as of the last day of any taxable year of the issuing corporation, it shall be corporate acquisition indebtedness for such taxable year and all subsequent taxable years.

(3) Redetermination where control, etc., is acquired

If an obligation is determined to be corporate acquisition indebtedness as of the close of a taxable year of the issuing corporation in which clause (i) of subsection (c)(3)(A) applied, but would not be corporate acquisition indebtedness if the determination were made as of the close of the first taxable year of such corporation thereafter in which clause (ii) of subsection (c)(3)(A) could apply, such obligation shall be considered not to be corporate acquisition indebtedness for such later taxable year and all taxable years thereafter.

(4) Special 3-year rule

If an obligation which has been determined to be corporate acquisition indebtedness for any taxable year would not be such indebtedness for each of any 3 consecutive taxable years thereafter if subsection (b)(4) were applied as of the close of each of such 3 years, then such obligation shall not be corporate acquisition indebtedness for all taxable years after such 3 consecutive taxable years.

(5) 5 percent stock rule

In the case of obligations issued to provide consideration for the acquisition of stock in another corporation, such obligations shall be corporate acquisition indebtedness for a taxable year only if at some time after October 9, 1969, and before the close of such year the issuing corporation owns 5 percent or more of the total combined voting power of all classes of stock entitled to vote of such other corporation.

(e) Certain nontaxable transactions

An acquisition of stock of a corporation of which the issuing corporation is in control (as defined in section 368(c)) in a transaction in which gain or loss is not recognized shall be deemed an acquisition described in paragraph (1) of subsection (b) only if immediately before such transaction (1) the acquired corporation was in existence, and (2) the issuing corporation was not in control (as defined in section 368(c)) of such corporation.

(f) Exemption for certain acquisitions of foreign corporations

For purposes of this section, the term "corporate acquisition indebtedness" does not include any indebtedness issued to any person to provide consideration for the acquisition of stock in, or assets of, any foreign corporation substantially all of the income of which, for the 3-year period ending with the date of such acquisition or for such part of such period as the foreign corporation was in existence, is from sources without the United States.

(g) Affiliated groups

In any case in which the issuing corporation is a member of an affiliated group, the application of this section shall be determined, pursuant to regulations prescribed by the Secretary, by treating all of the members of the affiliated group in the aggregate as the issuing corporation, except that the ratio of debt to equity of, projected earnings of, and annual interest to be paid or incurred by any corporation (other than the issuing corporation determined without regard to this subsection) shall be included in the determinations required under subparagraphs (A) and (B) of subsection (b)(4) as of any day only if such corporation is a member of the affiliated group on such day, and, in determining projected earnings of such corporation under subsection (c)(3), there shall be taken into account only the earnings and profits of such corporation for the period during which it was a member of the affiliated group. For purposes of the preceding sentence, the term "affiliated group" has the meaning assigned to such term by section 1504(a), except that all corporations other than the acquired corporation shall be treated as includible corporations (without any exclusion under section 1504(b)) and the acquired corporation shall not be treated as an includible corporation.

(h) Changes in obligation

For purposes of this section—

(1) Any extension, renewal, or refinancing of an obligation evidencing a preexisting indebtedness shall not be deemed to be the issuance of a new obligation.

(2) Any obligation which is corporate acquisition indebtedness of the issuing corporation is also corporate acquisition indebtedness of any corporation which becomes liable for such obligation as guarantor, endorser, or indemnitor or which assumes liability for such obligation in any transaction.

(i) Certain obligations issued after October 9, 1969

For purposes of this section, an obligation shall not be corporate acquisition indebtedness if issued after October 9, 1969, to provide consideration for the acquisition of—

(1) stock or assets pursuant to a binding written contract which was in effect on October 9, 1969, and at all times thereafter before such acquisition, or

(2) stock in any corporation where the issuing corporation, on October 9, 1969, and at all times thereafter before such acquisition, owned at least 50 percent of the total combined voting power of all classes of stock entitled to vote of the acquired corporation.

(j) Effect on other provisions

No inference shall be drawn from any provision in this section that any instrument designated as a bond, debenture, note, or certificate or other evidence of indebtedness by its issuer represents an obligation or indebtedness of such issuer in applying any other provision of this title.

(Added Pub. L. 91–172, title IV, §411(a), Dec. 30, 1969, 83 Stat. 604; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 94–514, §1(a), Oct. 15, 1976, 90 Stat. 2443.)

AMENDMENTS

1976—Subsecs. (c)(3)(B), (g). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

Subsec. (i). Pub. L. 94–514 struck out provisions that par. (2) would cease to apply when (at any time on or after October 9, 1969) the issuing corporation has acquired control (as defined in section 368(c)) of the acquired corporation.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–514, §1(b), Oct. 15, 1976, 90 Stat. 2443, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after October 9, 1969. If refund or credit of any

overpayment of income tax resulting from the amendment made by subsection (a) [amending this section] is prevented on the date of the enactment of this Act [Oct. 15, 1976], or at any time within one year after such date, by the operation of any law or rule of law, refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed within one year from such date."

EFFECTIVE DATE

Pub. L. 91–172, title IV, §411(c), Dec. 30, 1969, 83 Stat. 608, provided that: "The amendments made by this section [enacting this section] shall apply to the determination of the allowability of the deduction of interest paid or incurred with respect to indebtedness incurred after October 9, 1969."

[§280. Repealed. Pub. L. 99–514, title VIII, §803(b)(2)(A), Oct. 22, 1986, 100 Stat. 2355]

Section, added Pub. L. 94–455, title II, §210(a), Oct. 4, 1976, 90 Stat. 1544; amended Pub. L. 95–600, title VII, §701(m)(2), Nov. 6, 1978, 92 Stat. 2907; Pub. L. 97–354, §5(a)(25), Oct. 19, 1982, 96 Stat. 1694, related to certain expenditures incurred in the production of films, books, records, or similar property.

EFFECTIVE DATE OF REPEAL

If any interest costs incurred after Dec. 31, 1986, are attributable to costs incurred before Jan. 1, 1987, the repeal of this section is applicable to such interest costs only to the extent such interest costs are attributable to costs which were required to be capitalized under section 263 of the Internal Revenue Code of 1954 and which would have been taken into account in applying section 189 of the Internal Revenue Code of 1954 (as in effect before its repeal by section 803 of Pub. L. 99–514) or, if applicable, section 266 of such Code, see section 7831(d)(2) of Pub. L. 101–239, set out as an Effective Date note under section 263A of this title.

Repeal applicable to costs incurred after Dec. 31, 1986, in taxable years ending after such date, except as otherwise provided, see section 803(d) of Pub. L. 99–514, set out as an Effective Date note under section 263A of this title.

§280A. Disallowance of certain expenses in connection with business use of home, rental of vacation homes, etc.

(a) General rule

Except as otherwise provided in this section, in the case of a taxpayer who is an individual or an S corporation, no deduction otherwise allowable under this chapter shall be allowed with respect to the use of a dwelling unit which is used by the taxpayer during the taxable year as a residence.

(b) Exception for interest, taxes, casualty losses, etc.

Subsection (a) shall not apply to any deduction allowable to the taxpayer without regard to its connection with his trade or business (or with his income-producing activity).

(c) Exceptions for certain business or rental use; limitation on deductions for such use

(1) Certain business use

Subsection (a) shall not apply to any item to the extent such item is allocable to a portion of the dwelling unit which is exclusively used on a regular basis—

(A) as the principal place of business for any trade or business of the taxpayer,

(B) as a place of business which is used by patients, clients, or customers in meeting or dealing with the taxpayer in the normal course of his trade or business, or

(C) in the case of a separate structure which is not attached to the dwelling unit, in connection with the taxpayer's trade or business.

In the case of an employee, the preceding sentence shall apply only if the exclusive use referred to in the preceding sentence is for the convenience of his employer. For purposes of subparagraph (A), the term "principal place of business" includes a place of business which is used by the taxpayer for the administrative or management activities of any trade or business of the taxpayer if

there is no other fixed location of such trade or business where the taxpayer conducts substantial administrative or management activities of such trade or business.

(2) Certain storage use

Subsection (a) shall not apply to any item to the extent such item is allocable to space within the dwelling unit which is used on a regular basis as a storage unit for the inventory or product samples of the taxpayer held for use in the taxpayer's trade or business of selling products at retail or wholesale, but only if the dwelling unit is the sole fixed location of such trade or business.

(3) Rental use

Subsection (a) shall not apply to any item which is attributable to the rental of the dwelling unit or portion thereof (determined after the application of subsection (e)).

(4) Use in providing day care services

(A) In general

Subsection (a) shall not apply to any item to the extent that such item is allocable to the use of any portion of the dwelling unit on a regular basis in the taxpayer's trade or business of providing day care for children, for individuals who have attained age 65, or for individuals who are physically or mentally incapable of caring for themselves.

(B) Licensing, etc., requirement

Subparagraph (A) shall apply to items accruing for a period only if the owner or operator of the trade or business referred to in subparagraph (A)—

(i) has applied for (and such application has not been rejected),
(ii) has been granted (and such granting has not been revoked), or
(iii) is exempt from having,

a license, certification, registration, or approval as a day care center or as a family or group day care home under the provisions of any applicable State law. This subparagraph shall apply only to items accruing in periods beginning on or after the first day of the first month which begins more than 90 days after the date of the enactment of the Tax Reduction and Simplification Act of 1977.

(C) Allocation formula

If a portion of the taxpayer's dwelling unit used for the purposes described in subparagraph (A) is not used exclusively for those purposes, the amount of the expenses attributable to that portion shall not exceed an amount which bears the same ratio to the total amount of the items allocable to such portion as the number of hours the portion is used for such purposes bears to the number of hours the portion is available for use.

(5) Limitation on deductions

In the case of a use described in paragraph (1), (2), or (4), and in the case of a use described in paragraph (3) where the dwelling unit is used by the taxpayer during the taxable year as a residence, the deductions allowed under this chapter for the taxable year by reason of being attributed to such use shall not exceed the excess of—

(A) the gross income derived from such use for the taxable year, over
(B) the sum of—
(i) the deductions allocable to such use which are allowable under this chapter for the taxable year whether or not such unit (or portion thereof) was so used, and
(ii) the deductions allocable to the trade or business (or rental activity) in which such use occurs (but which are not allocable to such use) for such taxable year.

Any amount not allowable as a deduction under this chapter by reason of the preceding sentence shall be taken into account as a deduction (allocable to such use) under this chapter for the succeeding taxable year. Any amount taken into account for any taxable year under the preceding

sentence shall be subject to the limitation of the 1st sentence of this paragraph whether or not the dwelling unit is used as a residence during such taxable year.

(6) Treatment of rental to employer

Paragraphs (1) and (3) shall not apply to any item which is attributable to the rental of the dwelling unit (or any portion thereof) by the taxpayer to his employer during any period in which the taxpayer uses the dwelling unit (or portion) in performing services as an employee of the employer.

(d) Use as residence

(1) In general

For purposes of this section, a taxpayer uses a dwelling unit during the taxable year as a residence if he uses such unit (or portion thereof) for personal purposes for a number of days which exceeds the greater of—

(A) 14 days, or

(B) 10 percent of the number of days during such year for which such unit is rented at a fair rental.

For purposes of subparagraph (B), a unit shall not be treated as rented at a fair rental for any day for which it is used for personal purposes.

(2) Personal use of unit

For purposes of this section, the taxpayer shall be deemed to have used a dwelling unit for personal purposes for a day if, for any part of such day, the unit is used—

(A) for personal purposes by the taxpayer or any other person who has an interest in such unit, or by any member of the family (as defined in section 267(c)(4)) of the taxpayer or such other person;

(B) by any individual who uses the unit under an arrangement which enables the taxpayer to use some other dwelling unit (whether or not a rental is charged for the use of such other unit); or

(C) by any individual (other than an employee with respect to whose use section 119 applies), unless for such day the dwelling unit is rented for a rental which, under the facts and circumstances, is fair rental.

The Secretary shall prescribe regulations with respect to the circumstances under which use of the unit for repairs and annual maintenance will not constitute personal use under this paragraph, except that if the taxpayer is engaged in repair and maintenance on a substantially full time basis for any day, such authority shall not allow the Secretary to treat a dwelling unit as being used for personal use by the taxpayer on such day merely because other individuals who are on the premises on such day are not so engaged.

(3) Rental to family member, etc., for use as principal residence

(A) In general

A taxpayer shall not be treated as using a dwelling unit for personal purposes by reason of a rental arrangement for any period if for such period such dwelling unit is rented, at a fair rental, to any person for use as such person's principal residence.

(B) Special rules for rental to person having interest in unit

(i) Rental must be pursuant to shared equity financing agreement

Subparagraph (A) shall apply to a rental to a person who has an interest in the dwelling unit only if such rental is pursuant to a shared equity financing agreement.

(ii) Determination of fair rental

In the case of a rental pursuant to a shared equity financing agreement, fair rental shall be

determined as of the time the agreement is entered into and by taking into account the occupant's qualified ownership interest.

(C) Shared equity financing agreement

For purposes of this paragraph, the term "shared equity financing agreement" means an agreement under which—

(i) 2 or more persons acquire qualified ownership interests in a dwelling unit, and

(ii) the person (or persons) holding 1 or more of such interests—

(I) is entitled to occupy the dwelling unit for use as a principal residence, and

(II) is required to pay rent to 1 or more other persons holding qualified ownership interests in the dwelling unit.

(D) Qualified ownership interest

For purposes of this paragraph, the term "qualified ownership interest" means an undivided interest for more than 50 years in the entire dwelling unit and appurtenant land being acquired in the transaction to which the shared equity financing agreement relates.

(4) Rental of principal residence

(A) In general

For purposes of applying subsection (c)(5) to deductions allocable to a qualified rental period, a taxpayer shall not be considered to have used a dwelling unit for personal purposes for any day during the taxable year which occurs before or after a qualified rental period described in subparagraph (B)(i), or before a qualified rental period described in subparagraph (B)(ii), if with respect to such day such unit constitutes the principal residence (within the meaning of section 121) of the taxpayer.

(B) Qualified rental period

For purposes of subparagraph (A), the term "qualified rental period" means a consecutive period of—

(i) 12 or more months which begins or ends in such taxable year, or

(ii) less than 12 months which begins in such taxable year and at the end of which such dwelling unit is sold or exchanged, and

for which such unit is rented, or is held for rental, at a fair rental.

(e) Expenses attributable to rental

(1) In general

In any case where a taxpayer who is an individual or an S corporation uses a dwelling unit for personal purposes on any day during the taxable year (whether or not he is treated under this section as using such unit as a residence), the amount deductible under this chapter with respect to expenses attributable to the rental of the unit (or portion thereof) for the taxable year shall not exceed an amount which bears the same relationship to such expenses as the number of days during each year that the unit (or portion thereof) is rented at a fair rental bears to the total number of days during such year that the unit (or portion thereof) is used.

(2) Exception for deductions otherwise allowable

This subsection shall not apply with respect to deductions which would be allowable under this chapter for the taxable year whether or not such unit (or portion thereof) was rented.

(f) Definitions and special rules

(1) Dwelling unit defined

For purposes of this section—

(A) In general

The term "dwelling unit" includes a house, apartment, condominium, mobile home, boat, or

similar property, and all structures or other property appurtenant to such dwelling unit.

(B) Exception

The term "dwelling unit" does not include that portion of a unit which is used exclusively as a hotel, motel, inn, or similar establishment.

(2) Personal use by shareholders of S corporation

In the case of an S corporation, subparagraphs (A) and (B) of subsection (d)(2) shall be applied by substituting "any shareholder of the S corporation" for "the taxpayer" each place it appears.

(3) Coordination with section 183

If subsection (a) applies with respect to any dwelling unit (or portion thereof) for the taxable year—

(A) section 183 (relating to activities not engaged in for profit) shall not apply to such unit (or portion thereof) for such year, but

(B) such year shall be taken into account as a taxable year for purposes of applying subsection (d) of section 183 (relating to 5-year presumption).

(4) Coordination with section 162(a)(2)

Nothing in this section shall be construed to disallow any deduction allowable under section 162(a)(2) (or any deduction which meets the tests of section 162(a)(2) but is allowable under another provision of this title) by reason of the taxpayer's being away from home in the pursuit of a trade or business (other than the trade or business of renting dwelling units).

(g) Special rule for certain rental use

Notwithstanding any other provision of this section or section 183, if a dwelling unit is used during the taxable year by the taxpayer as a residence and such dwelling unit is actually rented for less than 15 days during the taxable year, then—

(1) no deduction otherwise allowable under this chapter because of the rental use of such dwelling unit shall be allowed, and

(2) the income derived from such use for the taxable year shall not be included in the gross income of such taxpayer under section 61.

(Added Pub. L. 94–455, title VI, §601(a), Oct. 4, 1976, 90 Stat. 1569; amended Pub. L. 95–30, title III, §306(a), (b), May 23, 1977, 91 Stat. 152, 153; Pub. L. 95–600, title VII, §701(h)(1), Nov. 6, 1978, 92 Stat. 2904; Pub. L. 97–119, title I, §113(a)–(d), Dec. 29, 1981, 95 Stat. 1641, 1642; Pub. L. 97–216, title II, §215(b), July 18, 1982, 96 Stat. 194; Pub. L. 97–354, §5(a)(26), Oct. 19, 1982, 96 Stat. 1694; Pub. L. 99–514, title I, §143(b), (c), Oct. 22, 1986, 100 Stat. 2120; Pub. L. 100–647, title I, §1001(h)(1), (2), Nov. 10, 1988, 102 Stat. 3352; Pub. L. 104–188, title I, §§1113(a), 1704(t)(39), Aug. 20, 1996, 110 Stat. 1759, 1889; Pub. L. 105–34, title III, §312(d)(1), title IX, §932(a), Aug. 5, 1997, 111 Stat. 839, 881.)

REFERENCES IN TEXT

The date of enactment of the Tax Reduction and Simplification Act of 1977, referred to in subsec. (c)(4)(B), is the date of enactment of Pub. L. 95–30, 91 Stat. 126, which was May 23, 1977.

AMENDMENTS

1997—Subsec. (c)(1). Pub. L. 105–34, §932(a), inserted at end "For purposes of subparagraph (A), the term 'principal place of business' includes a place of business which is used by the taxpayer for the administrative or management activities of any trade or business of the taxpayer if there is no other fixed location of such trade or business where the taxpayer conducts substantial administrative or management activities of such trade or business."

Subsec. (d)(4)(A). Pub. L. 105–34, §312(d)(1), substituted "section 121" for "section 1034".

1996—Subsec. (c)(1)(A). Pub. L. 104–188, §1704(t)(39), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "the principal place of business for any trade or business of the taxpayer."

Subsec. (c)(2). Pub. L. 104–188, §1113(a), substituted "inventory or product samples" for "inventory".

1988—Subsec. (c)(5). Pub. L. 100–647 inserted "(or rental activity)" after "trade or business" in subpar.

(B)(ii) and inserted at end "Any amount taken into account for any taxable year under the preceding sentence shall be subject to the limitation of the 1st sentence of this paragraph whether or not the dwelling unit is used as a residence during such taxable year."

1986—Subsec. (c)(5)(B). Pub. L. 99–514, §143(c), added subpar. (B) and struck out former subpar. (B) which read as follows: "the deductions allocable to such use which are allowable under this chapter for the taxable year whether or not such unit (or portion thereof) was so used."

Subsec. (c)(6). Pub. L. 99–514, §143(b), added par. (6).

1982—Subsecs. (a), (e)(1). Pub. L. 97–354, §5(a)(26)(A), (B), substituted "an S corporation" for "an electing small business corporation".

Subsec. (f)(2). Pub. L. 97–354, §5(a)(26)(C), substituted "shareholders of S corporation" for "electing small business corporation" in subsec. heading, substituted "an S corporation" for "an electing small business corporation" and "any shareholder of the S corporation" for "any shareholder of the electing small business corporation".

Subsec. (f)(4). Pub. L. 97–216 struck out ", etc." after "section 162(a)(2)" in heading, struck out "(A) In general.—" before "Nothing in this section", and struck out subpar. (B) which directed the Secretary to prescribe amounts deductible (without substantiation) pursuant to last sentence of section 162(a) and that no other provisions of this title could permit such a deduction for any taxable year of amounts in excess of the amounts determined to be appropriate under the circumstances.

1981—Subsec. (c)(1)(A). Pub. L. 97–119, §113(c), substituted "the principal place of business for any trade or business of the taxpayer" for "as the taxpayer's principal place of business".

Subsec. (d)(2). Pub. L. 97–119, §113(d), inserted in provision following subpar. (C) ", except that if the taxpayer is engaged in repair and maintenance on a substantially full time basis for any day, such authority shall not allow the Secretary to treat a dwelling unit as being used for personal use by the taxpayer on such day merely because other individuals who are on the premises on such day are not so engaged".

Subsec. (d)(3), (4). Pub. L. 97–119, §113(a), added par. (3), redesignated former par. (3) as (4) and struck out "to a person other than a member of the family (as defined in section 267(c)(4)) of the taxpayer" after "such unit is rented" in subpar. (B).

Subsec. (f)(4). Pub. L. 97–119, §113(b)(1), added par. (4).

1978—Subsec. (d)(3). Pub. L. 95–600 added par. (3).

1977—Subsec. (c)(4), (5). Pub. L. 95–30 added par. (4), redesignated former par. (4) as (5) and substituted "paragraph (1), (2), or (4)" for "paragraph (1) or (2)" in introductory provisions.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 312(d)(1) of Pub. L. 105–34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d) of Pub. L. 105–34, set out as a note under section 121 of this title.

Pub. L. 105–34, title IX, §932(b), Aug. 5, 1997, 111 Stat. 881, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1998."

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, §1113(b), Aug. 20, 1996, 110 Stat. 1759, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1995."

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

EFFECTIVE DATES OF 1982 AMENDMENT

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

Amendment by Pub. L. 97–216 applicable to taxable years beginning after Dec. 31, 1981, see section 215(d) of Pub. L. 97–216, set out as a note under section 162 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–119, title I, §113(e), Dec. 29, 1981, 95 Stat. 1642, provided that: "The amendments made by this

section [amending this section] shall apply to taxable years beginning after December 31, 1975, except that in the case of taxable years beginning after December 31, 1975, and before January 1, 1980, the amendment made by this section shall apply only to taxable years for which, on the date of the enactment of this Act [Dec. 29, 1981], the making of a refund, or the assessment of a deficiency, was not barred by law or any rule of law."

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title VII, §701(h)(2), Nov. 6, 1978, 92 Stat. 2904, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendment made by paragraph (1) [amending this section] shall take effect as if included in section 280A of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as such provision was added to such Code by section 601(a) of the Tax Reform Act of 1976 [Pub. L. 94–455, title VI, §601(a), Oct. 4, 1976, 90 Stat. 1569]."

EFFECTIVE DATE OF 1977 AMENDMENT

Pub. L. 95–30, title III, §306(c), May 23, 1977, 91 Stat. 153, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1975."

EFFECTIVE DATE

Pub. L. 94–455, title VI, §601(c), Oct. 4, 1976, 90 Stat. 1572, provided that: "The amendments made by this section [enacting this section and amending the analysis of sections preceding section 261 of this title] shall apply to taxable years beginning after December 31, 1975."

§280B. Demolition of structures

In the case of the demolition of any structure—

(1) no deduction otherwise allowable under this chapter shall be allowed to the owner or lessee of such structure for—

(A) any amount expended for such demolition, or

(B) any loss sustained on account of such demolition; and

(2) amounts described in paragraph (1) shall be treated as properly chargeable to capital account with respect to the land on which the demolished structure was located.

(Added Pub. L. 94–455, title XXI, §2124(b)(1), Oct. 4, 1976, 90 Stat. 1918; amended Pub. L. 95–600, title VII, §701(f)(5), Nov. 6, 1978, 92 Stat. 2902; Pub. L. 96–541, §2(b), Dec. 17, 1980, 94 Stat. 3204; Pub. L. 97–34, title II, §212(d)(2)(C), Aug. 13, 1981, 95 Stat. 239; Pub. L. 98–369, div. A, title X, §1063(a), (b)(1), July 18, 1984, 98 Stat. 1047.)

AMENDMENTS

1984—Pub. L. 98–369 struck out "certain historic" before "structures" in section catchline, struck out heading "(a) General rule", substituted "In the case of the demolition of any structure" for "In the case of the demolition of a certified historic structure (as defined in 48(g)(3)(A))" in text, and struck out subsecs. (b) and (c) which contained provisions relating to a special rule for registered historic districts and to the application of this section, respectively.

1981—Subsec. (a). Pub. L. 97–34, §212(d)(2)(C)(i), substituted "48(g)(3)(A)" for "section 191(d)(1)" in provisions preceding par. (1).

Subsec. (b). Pub. L. 97–34, §212(d)(2)(C)(ii), substituted "section 48(g)(3)(B)" for "section 191(d)(2)".

1980—Subsec. (c). Pub. L. 96–541 added subsec. (c).

1978—Subsec. (b). Pub. L. 95–600 substituted "registered historic district (as defined in section 191(d)(2))" for "Registered Historic District" and "Secretary of the Interior has certified that such structure is not a certified historic structure, and that such structure is not of historic significance to the district, and if such certification occurs after the beginning of the demolition of such structure, the taxpayer has certified to the Secretary that, at the time of such demolition, he in good faith was not aware of the certification requirement by the Secretary of the Interior" for "Secretary of the Interior has certified, prior to the demolition of such structure, that such structure is not of historic significance to the district".

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title X, §1063(c), July 18, 1984, 98 Stat. 1047, as amended by Pub. L. 99–514, title

XVIII, §1878(h), Oct. 22, 1986, 100 Stat. 2904, provided that:

"(1) The amendments made by this section [amending this section] shall apply to taxable years ending after December 31, 1983, but shall not apply to any demolition (other than of a certified historic structure) commencing before July 19, 1984.

"(2) For purposes of paragraph (1), if a demolition is delayed until the completion of the replacement structure on the same site, the demolition shall be treated as commencing when construction of the replacement structure commences.

"(3) The amendments made by this section [amending this section] shall not apply to any demolition commencing before September 1, 1984, pursuant to a bank headquarters building project if—

"(A) on April 1, 1984, a corporation was retained to advise the bank on the final completion of the project, and

"(B) on June 12, 1984, the Comptroller of the Currency approved the project.

"(4) The amendments made by this section shall not apply to the remaining adjusted basis at the time of demolition of any structure if—

"(A) such structure was used in the manufacture, storage, or distribution of lead alkyl antiknock products and intermediate and related products at facilities located in or near Baton Rouge, Louisiana, and Houston, Texas, owned by the same corporation, and

"(B) demolition of at least one such structure at the Baton Rouge facility commenced before January 1, 1984."

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to expenditures incurred after Dec. 31, 1981, in taxable years ending after such date, see section 212(e) of Pub. L. 97–34, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 effective as if included within the enactment of this section by section 2124 of Pub. L. 94–455, see section 701(f)(8) of Pub. L. 95–600, set out as an Effective and Termination Dates of 1978 Amendments note under section 167 of this title.

EFFECTIVE DATE

Pub. L. 94–455, title XXI, §2124(b)(3), Oct. 4, 1976, 90 Stat. 1918, which had provided that enactment of this section by subsec. (b) shall apply with respect to demolitions commencing after June 30, 1976, and before Jan. 1, 1981, was repealed by Pub. L. 96–541, §2(e)(2), Dec. 17, 1980, 94 Stat. 3205. See subsec. (c) of this section.

§280C. Certain expenses for which credits are allowable

(a) Rule for employment credits

No deduction shall be allowed for that portion of the wages or salaries paid or incurred for the taxable year which is equal to the sum of the credits determined for the taxable year under sections 45A(a), 45P(a), 51(a), and [1] 1396(a), 1400P(b), and 1400R. In the case of a corporation which is a member of a controlled group of corporations (within the meaning of section 52(a)) or a trade or business which is treated as being under common control with other trades or businesses (within the meaning of section 52(b)), this subsection shall be applied under rules prescribed by the Secretary similar to the rules applicable under subsections (a) and (b) of section 52.

(b) Credit for qualified clinical testing expenses for certain drugs

(1) In general

No deduction shall be allowed for that portion of the qualified clinical testing expenses (as defined in section 45C(b)) otherwise allowable as a deduction for the taxable year which is equal to the amount of the credit allowable for the taxable year under section 45C (determined without regard to section 38(c)).

(2) Similar rule where taxpayer capitalizes rather than deducts expenses

If—

(A) the amount of the credit allowable for the taxable year under section 45C (determined

without regard to section 38(c)), exceeds

(B) the amount allowable as a deduction for the taxable year for qualified clinical testing expenses (determined without regard to paragraph (1)),

the amount chargeable to capital account for the taxable year for such expenses shall be reduced by the amount of such excess.

(3) Controlled groups

In the case of a corporation which is a member of a controlled group of corporations (within the meaning of section 41(f)(5)) or a trade or business which is treated as being under common control with other trades or business (within the meaning of section 41(f)(1)(B)), this subsection shall be applied under rules prescribed by the Secretary similar to the rules applicable under subparagraphs (A) and (B) of section 41(f)(1).

(c) Credit for increasing research activities

(1) In general

No deduction shall be allowed for that portion of the qualified research expenses (as defined in section 41(b)) or basic research expenses (as defined in section 41(e)(2)) otherwise allowable as a deduction for the taxable year which is equal to the amount of the credit determined for such taxable year under section 41(a).

(2) Similar rule where taxpayer capitalizes rather than deducts expenses

If—

(A) the amount of the credit determined for the taxable year under section 41(a)(1), exceeds

(B) the amount allowable as a deduction for such taxable year for qualified research expenses or basic research expenses (determined without regard to paragraph (1)),

the amount chargeable to capital account for the taxable year for such expenses shall be reduced by the amount of such excess.

(3) Election of reduced credit

(A) In general

In the case of any taxable year for which an election is made under this paragraph—

(i) paragraphs (1) and (2) shall not apply, and

(ii) the amount of the credit under section 41(a) shall be the amount determined under subparagraph (B).

(B) Amount of reduced credit

The amount of credit determined under this subparagraph for any taxable year shall be the amount equal to the excess of—

(i) the amount of credit determined under section 41(a) without regard to this paragraph, over

(ii) the product of—

(I) the amount described in clause (i), and

(II) the maximum rate of tax under section 11(b)(1).

(C) Election

An election under this paragraph for any taxable year shall be made not later than the time for filing the return of tax for such year (including extensions), shall be made on such return, and shall be made in such manner as the Secretary may prescribe. Such an election, once made, shall be irrevocable.

(4) Controlled groups

Paragraph (3) of subsection (b) shall apply for purposes of this subsection.

(d) Credit for low sulfur diesel fuel production

The deductions otherwise allowed under this chapter for the taxable year shall be reduced by the amount of the credit determined for the taxable year under section 45H(a).

(e) Mine rescue team training credit

No deduction shall be allowed for that portion of the expenses otherwise allowable as a deduction for the taxable year which is equal to the amount of the credit determined for the taxable year under section 45N(a).

(f) Credit for security of agricultural chemicals

No deduction shall be allowed for that portion of the expenses otherwise allowable as a deduction taken into account in determining the credit under section 45O for the taxable year which is equal to the amount of the credit determined for such taxable year under section 45O(a).

(g) [2] Credit for health insurance premiums

No deduction shall be allowed for the portion of the premiums paid by the taxpayer for coverage of 1 or more individuals under a qualified health plan which is equal to the amount of the credit determined for the taxable year under section 36B(a) with respect to such premiums.

(h) Credit for employee health insurance expenses of small employers

No deduction shall be allowed for that portion of the premiums for qualified health plans (as defined in section 1301(a) of the Patient Protection and Affordable Care Act), or for health insurance coverage in the case of taxable years beginning in 2010, 2011, 2012, or 2013, paid by an employer which is equal to the amount of the credit determined under section 45R(a) with respect to the premiums.

(g) [3] Qualifying therapeutic discovery project credit

(1) In general

No deduction shall be allowed for that portion of the qualified investment (as defined in section 48D(b)) otherwise allowable as a deduction for the taxable year which—

(A) would be qualified research expenses (as defined in section 41(b)), basic research expenses (as defined in section 41(e)(2)), or qualified clinical testing expenses (as defined in section 45C(b)) if the credit under section 41 or section 45C were allowed with respect to such expenses for such taxable year, and

(B) is equal to the amount of the credit determined for such taxable year under section 48D(a), reduced by—

(i) the amount disallowed as a deduction by reason of section 48D(e)(2)(B), and

(ii) the amount of any basis reduction under section 48D(e)(1).

(2) Similar rule where taxpayer capitalizes rather than deducts expenses

In the case of expenses described in paragraph (1)(A) taken into account in determining the credit under section 48D for the taxable year, if—

(A) the amount of the portion of the credit determined under such section with respect to such expenses, exceeds

(B) the amount allowable as a deduction for such taxable year for such expenses (determined without regard to paragraph (1)),

the amount chargeable to capital account for the taxable year for such expenses shall be reduced by the amount of such excess.

(3) Controlled groups

Paragraph (3) of subsection (b) shall apply for purposes of this subsection.

(Added Pub. L. 95–30, title II, §202(c)(1), May 23, 1977, 91 Stat. 147; amended Pub. L. 95–600, title III, §322(d)(1), Nov. 6, 1978, 92 Stat. 2838; Pub. L. 96–178, §6(c)(4), Jan. 2, 1980, 93 Stat. 1298; Pub. L. 96–222, title I, §103(a)(7)(D)(iv), Apr. 1, 1980, 94 Stat. 212; Pub. L. 97–414, §4(b)(1), (2)(A), Jan. 4, 1983, 96 Stat. 2055; Pub. L. 98–369, div. A, title IV, §474(r)(10), July 18, 1984, 98

Stat. 841; Pub. L. 99–514, title II, §231(d)(3)(E), title XVIII, §1847(b)(8), Oct. 22, 1986, 100 Stat. 2179, 2856; Pub. L. 100–647, title IV, §4008(a), Nov. 10, 1988, 102 Stat. 3652; Pub. L. 101–239, title VII, §§7110(c)(1), 7814(e)(2)(A), Dec. 19, 1989, 103 Stat. 2325, 2413; Pub. L. 103–66, title XIII, §§13302(b)(1), 13322(c)(1), Aug. 10, 1993, 107 Stat. 555, 563; Pub. L. 104–188, title I, §1205(d)(7), Aug. 20, 1996, 110 Stat. 1776; Pub. L. 106–170, title V, §502(c)(2), Dec. 17, 1999, 113 Stat. 1919; Pub. L. 106–554, §1(a)(7) [title III, §311(a)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–639; Pub. L. 108–357, title III, §339(c), Oct. 22, 2004, 118 Stat. 1484; Pub. L. 109–135, title I, §103(b)(2), title II, §201(b)(2), Dec. 21, 2005, 119 Stat. 2595, 2607; Pub. L. 109–432, div. A, title IV, §405(c), Dec. 20, 2006, 120 Stat. 2957; Pub. L. 110–172, §7(a)(1)(B), Dec. 29, 2007, 121 Stat. 2481; Pub. L. 110–234, title XV, §15343(c), May 22, 2008, 122 Stat. 1519; Pub. L. 110–245, title I, §111(c), June 17, 2008, 122 Stat. 1635; Pub. L. 110–246, §4(a), title XV, §15343(c), June 18, 2008, 122 Stat. 1664, 2281; Pub. L. 111–148, title I, §§1401(b), 1421(d)(1), title IX, §9023(c)(2), title X, §10105(e)(3), Mar. 23, 2010, 124 Stat. 219, 242, 880, 906.)

REFERENCES IN TEXT

Section 1301(a) of the Patient Protection and Affordable Care Act, referred to in subsec. (h), is classified to section 18021(a) of Title 42, The Public Health and Welfare.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2010—Subsec. (g). Pub. L. 111–148, §9023(c)(2), added subsec. (g) relating to qualifying therapeutic discovery project credit.

Pub. L. 111–148, §1401(b), added subsec. (g) relating to credit for health insurance premiums.

Subsec. (h). Pub. L. 111–148, §10105(e)(3), substituted "2010, 2011" for "2011".

Pub. L. 111–148, §1421(d)(1), added subsec. (h).

2008—Subsec. (a). Pub. L. 110–245 inserted "45P(a)," after "45A(a),".

Subsec. (f). Pub. L. 110–246, §15343(c), added subsec. (f).

2007—Subsec. (d). Pub. L. 110–172 amended heading and text generally. Prior to amendment, text read as follows: "No deduction shall be allowed for that portion of the expenses otherwise allowable as a deduction for the taxable year which is equal to the amount of the credit determined for the taxable year under section 45H(a)."

2006—Subsec. (e). Pub. L. 109–432 added subsec. (e).

2005—Subsec. (a). Pub. L. 109–135, §201(b)(2), substituted "1400P(b), and 1400R" for "and 1400P(b)".

Pub. L. 109–135, §103(b)(2), substituted "1396(a), and 1400P(b)" for "and 1396(a)".

2004—Subsec. (d). Pub. L. 108–357 added subsec. (d).

2000—Subsec. (c)(1). Pub. L. 106–554 struck out "or credit" after "deduction" in two places.

1999—Subsec. (c)(1). Pub. L. 106–170 inserted "or credit" after "deduction" in two places.

1996—Subsec. (b)(1). Pub. L. 104–188, §1205(d)(7), substituted "section 45C(b)" for "section 28(b)", "section 45C" for "section 28", and "section 38(c)" for "subsection (d)(2) thereof".

Subsec. (b)(2)(A). Pub. L. 104–188, §1205(d)(7)(B), (C), substituted "section 45C" for "section 28" and "section 38(c)" for "subsection (d)(2) thereof".

1993—Subsec. (a). Pub. L. 103–66, §13322(c)(1), substituted "45A(a), 51(a), and" for "51(a)".

Pub. L. 103–66, §13302(b)(1), substituted "Rule for employment credits" for "Rule for targeted jobs credit" in heading and "the sum of the credits determined for the taxable year under sections 51(a) and 1396(a)" for "the amount of the credit determined for the taxable year under section 51(a)" in text.

1989—Subsec. (c)(1), (2)(A). Pub. L. 101–239, §7110(c)(1), struck out "50 percent of" before "the amount of the credit".

Subsec. (c)(3). Pub. L. 101–239, §7814(e)(2)(A), added par. (3). Former par. (3) redesignated (4).

Subsec. (c)(3)(B)(ii)(I). Pub. L. 101–239, §7110(c)(1), struck out "50 percent of" before "the amount described".

Subsec. (c)(4). Pub. L. 101–239, §7814(e)(2)(A), redesignated par. (3) as (4).

1988—Subsec. (c). Pub. L. 100–647 added subsec. (c).

1986—Subsec. (b)(1), (2)(A). Pub. L. 99–514, §1847(b)(8), substituted "section 28(b)" for "section 29(b)" in par. (1) and "section 28" for "section 29" in pars. (1) and (2)(A).

Subsec. (b)(3). Pub. L. 99–514, §231(d)(3)(E), substituted "section 41(f)(5)", "section 41(f)(1)(B)", and "section 41(f)(1)" for "section 30(f)(5)", "section 30(f)(1)(B)", and "section 30(f)(1)", respectively.

1984—Subsec. (a). Pub. L. 98–369, §474(r)(10)(A), (B), redesignated subsec. (b) as (a), in heading substituted "targeted jobs credit" for "section 44B credit", and in text substituted "No deduction shall be allowed for that portion of the wages or salaries paid or incurred for the taxable year which is equal to the amount of the credit determined for the taxable year under section 51(a)" for "No deduction shall be allowed for that portion of the wage or salaries paid or incurred for the taxable year which is equal to the amount of the credit allowable for the taxable year under section 44B (relating to credit for employment of certain new employees) determined without regard to the provisions of section 53 (relating to limitation based on amount of tax)". Former subsec. (a), which had provided that no deduction would be allowed for that portion of the work incentive program expenses paid or incurred for the taxable year which was equal to the amount of the credit allowable for the taxable year under section 40 (relating to credit for expenses of work incentive programs) determined without regard to the provisions of section 50A(a)(2) (relating to limitation based on amount of tax), and that in the case of a corporation which was a member of a controlled group of corporations (within the meaning of section 50B(g)(1) or a trade or business which was treated as being under common control with other trades or businesses within the meaning of section 50B(g)(2), this subsection would be applied under rules prescribed by the Secretary similar to the rules applicable under paragraphs (1) and (2) of section 50B(g), was struck out.

Subsec. (b). Pub. L. 98–369, §474(r)(10)(A), redesignated subsec. (c) as (b). Former subsec. (b) redesignated (a).

Subsec. (b)(1), (2)(A). Pub. L. 98–369, §474(r)(10)(C), substituted "29" for "44H".

Subsec. (b)(3). Pub. L. 98–369, §474(r)(10)(D), substituted "section 30(f)(5)" for "section 44F(f)(5)", "section 30(f)(1)(B)" for "section 44F(f)(1)(B)", and "section 30(f)(1)" for "section 44F(f)(1)".

Subsec. (c). Pub. L. 98–369, §474(r)(10)(A), redesignated subsec. (c) as (b).

1983—Pub. L. 97–414, §4(b)(2)(A), substituted "Certain expenses for which credits are allowable" for "Portion of wages for which credit is claimed under section 40 or 44B" in section catchline.

Subsec. (c). Pub. L. 97–414, §4(b)(1), added subsec. (c).

1978—Pub. L. 95–600, as amended by Pub. L. 96–178 and Pub. L. 96–222, substituted "section 40 or 44B" for "section 44B" in section catchline, and in text designated existing provisions as subsec. (b) and added subsec. (a).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 1401(b) of Pub. L. 111–148 applicable to taxable years ending after Dec. 31, 2013, see section 1401(e) of Pub. L. 111–148, set out as a note under section 36B of this title.

Amendment by section 1421(d)(1) of Pub. L. 111–148 applicable to amounts paid or incurred in taxable years beginning after Dec. 31, 2009, see section 1421(f)(1) of Pub. L. 111–148, set out as a note under section 38 of this title.

Amendment by section 9023(c)(2) of Pub. L. 111–148 applicable to amounts paid or incurred after Dec. 31, 2008, in taxable years beginning after such date, see section 9023(f) of Pub. L. 111–148, set out as a note under section 46 of this title.

Amendment by section 10105(e)(3) of Pub. L. 111–148 effective as if included in the enactment of section 1421 of Pub. L. 111–148, see section 10105(e)(5) of Pub. L. 111–148, set out as a note under section 45R of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by section 15343(c) of Pub. L. 110–246 applicable to amounts paid or incurred after June 18, 2008, see section 15343(e) of Pub. L. 110–246, set out as a note under section 38 of this title.

Amendment by Pub. L. 110–245 applicable to amounts paid after June 17, 2008, see section 111(e) of Pub. L. 110–245, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–172 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 7(e) of Pub. L. 110–172, set out as a note under section 1092 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–432 applicable to taxable years beginning after Dec. 31, 2005, see section 405(e) of Pub. L. 109–432, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to expenses paid or incurred after Dec. 31, 2002, in taxable years ending after such date, see section 339(f) of Pub. L. 108–357, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 effective as if included in the provisions of the Ticket to Work and Work Incentives Improvement Act of 1999, Pub. L. 106–170, to which such amendment relates, see section 1(a)(7) [title III, §311(d)] of Pub. L. 106–554, set out as a note under section 30A of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to amounts paid or incurred after June 30, 1999, see section 502(c)(3) of Pub. L. 106–170, set out as a note under section 41 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to amounts paid or incurred in taxable years ending after June 30, 1996, see section 1205(e) of Pub. L. 104–188, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13322(c)(1) of Pub. L. 103–66 applicable to wages paid or incurred after Dec. 31, 1993, see section 13322(f) of Pub. L. 103–66, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7110(c)(1) of Pub. L. 101–239 applicable to taxable years beginning after Dec. 31, 1989, see section 7110(e) of Pub. L. 101–239, set out as a note under section 41 of this title.

Amendment by section 7814(e)(2)(A) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 applicable to taxable years beginning after Dec. 31, 1988, see section 4008(d) of Pub. L. 100–647, set out as a note under section 41 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 231(d)(3)(E) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1985, see section 231(g) of Pub. L. 99–514, set out as a note under section 41 of this title.

Amendment by section 1847(b)(8) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–414 applicable to amounts paid or incurred after December 31, 1982, in taxable years ending after such date, see section 4(d) of Pub. L. 97–414, set out as an Effective Date note under section 28 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title III, §322(e), Nov. 6, 1978, 92 Stat. 2839, as amended by Pub. L. 96–178, §6(a), (b), Jan. 2, 1980, 93 Stat. 1297; Pub. L. 96–222, title I, §103(a)(7)(A), (B), Apr. 1, 1980, 94 Stat. 211; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 50A and 50B of this title] shall apply to work incentive program expenses paid or incurred after December 31, 1978, in taxable years ending after such date; except that so

much of the amendment made by subsection (a) as affects section 50A(a)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall apply to taxable years beginning after December 31, 1978. For purposes of applying section 50A(a)(2) of the Internal Revenue Code of 1986 with respect to a taxable year beginning before January 1, 1979, the rules of sections 50A(a)(4), 50A(a)(5), and 50B(e)(3) of such Code (as in effect on the day before the date of the enactment of this Act [Nov. 6, 1978] shall apply.

"(2) SPECIAL RULES FOR CERTAIN ELIGIBLE EMPLOYEES.—

"(A) ELIGIBLE EMPLOYEES HIRED BEFORE SEPTEMBER 27, 1978.—In the case of any eligible employee (as defined in section 50B(h)) hired before September 27, 1978, no credit shall be allowed under section 40 with respect to second-year work incentive program expenses (as defined in section 50B(a)) attributable to service performed by such employee.

"(B) ELIGIBLE EMPLOYEES HIRED AFTER SEPTEMBER 26, 1978.—In the case of any eligible employee (as defined in section 50B(h)) hired after September 26, 1978, for purposes of applying the amendments made by this section, such individual shall be treated for purposes of the credit allowed by section 40 as having first begun work for the taxpayer not earlier than January 1, 1979, and any wages paid or incurred after December 31, 1978, with respect to such individual shall be considered to be attributable to services rendered after that date."

[Pub. L. 96–178, §6(d), Jan. 2, 1980, 93 Stat. 1298, provided that: "Any amendment made by this section to the Revenue Act of 1978 [amending section 322(e)(1) and (2) of Pub. L. 95–600, set out above] shall take effect as if it had been included in the provision of the Revenue Act of 1978 [Pub. L. 95–600] to which such amendment relates."]

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1976, and to credit carrybacks from such years, see section 202(e) of Pub. L. 95–30, set out as a note under section 51 of this title.

TIME AND FORM OF CERTAIN ELECTIONS UNDER SUBSECTION (C)(3)

Pub. L. 101–239, title VII, §7814(e)(2)(B), Dec. 19, 1989, 103 Stat. 2413, provided that: "In the case of a taxable year for which the last date for making the election under section 280C(c)(3) of the Internal Revenue Code of 1986 (as added by subparagraph (A)) is on or before the date which is 75 days after the date of the enactment of this Act [Dec. 19, 1989], such an election for such year may be made—

"(i) at any time before the date which is 75 days after such date of enactment, and

"(ii) in such form and manner as the Secretary of the Treasury or his delegate may prescribe."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[1] So in original. The word "and" probably should not appear.

[2] Another subsec. (g) is set out after subsec. (h).

[3] Another subsec. (g) is set out before subsec. (h).

[§280D. Repealed. Pub. L. 100–418, title I, §1941(b)(4)(A), Aug. 23, 1988, 102 Stat. 1324]

Section, added Pub. L. 96–499, title XI, §1131(d)(1), Dec. 5, 1980, 94 Stat. 2693, related to portion of chapter 45 windfall profit tax on domestic crude oil for which credit or refund was allowable under section 6429.

EFFECTIVE DATE OF REPEAL

Repeal applicable to crude oil removed from the premises on or after Aug. 23, 1988, see section 1941(c) of Pub. L. 100–418, set out as an Effective Date of 1988 Amendment note under section 164 of this title.

§280E. Expenditures in connection with the illegal sale of drugs

No deduction or credit shall be allowed for any amount paid or incurred during the taxable year in carrying on any trade or business if such trade or business (or the activities which comprise such trade or business) consists of trafficking in controlled substances (within the meaning of schedule I and II of the Controlled Substances Act) which is prohibited by Federal law or the law of any State in which such trade or business is conducted.

(Added Pub. L. 97–248, title III, §351(a), Sept. 3, 1982, 96 Stat. 640.)

REFERENCES IN TEXT

The Controlled Substances Act, referred to in text, is title II of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1242, as amended, which is classified principally to subchapter I (§801 et seq.) of chapter 13 of Title 21, Food and Drugs. Schedules I and II are set out in section 812 of Title 21. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables.

EFFECTIVE DATE

Pub. L. 97–248, title III, §351(c), Sept. 3, 1982, 96 Stat. 640, provided that: "The amendments made by this section [enacting this section] shall apply to amounts paid or incurred after the date of the enactment of this Act [Sept. 3, 1982] in taxable years ending after such date."

§280F. Limitation on depreciation for luxury automobiles; limitation where certain property used for personal purposes

(a) Limitation on amount of depreciation for luxury automobiles

(1) Depreciation

(A) Limitation

The amount of the depreciation deduction for any taxable year for any passenger automobile shall not exceed—

(i) $2,560 for the 1st taxable year in the recovery period,
(ii) $4,100 for the 2nd taxable year in the recovery period,
(iii) $2,450 for the 3rd taxable year in the recovery period, and
(iv) $1,475 for each succeeding taxable year in the recovery period.

(B) Disallowed deductions allowed for years after recovery period

(i) In general

Except as provided in clause (ii), the unrecovered basis of any passenger automobile shall be treated as an expense for the 1st taxable year after the recovery period. Any excess of the unrecovered basis over the limitation of clause (ii) shall be treated as an expense in the succeeding taxable year.

(ii) $1,475 limitation

The amount treated as an expense under clause (i) for any taxable year shall not exceed $1,475.

(iii) Property must be depreciable

No amount shall be allowable as a deduction by reason of this subparagraph with respect to any property for any taxable year unless a depreciation deduction would be allowable with respect to such property for such taxable year.

(iv) Amount treated as depreciation deduction

For purposes of this subtitle, any amount allowable as a deduction by reason of this subparagraph shall be treated as a depreciation deduction allowable under section 168.

(C) Special rule for certain clean-fuel passenger automobiles

(i) Modified automobiles

In the case of a passenger automobile which is propelled by a fuel which is not a clean-burning fuel and to which is installed qualified clean-fuel vehicle property (as defined in section 179A(c)(1)(A)) for purposes of permitting such vehicle to be propelled by a clean burning fuel (as defined in section 179A(e)(1)), subparagraph (A) shall not apply to the cost of the installed qualified clean burning vehicle property.

(ii) Purpose built passenger vehicles

In the case of a purpose built passenger vehicle (as defined in section 4001(a)(2)(C)(ii)), each of the annual limitations specified in subparagraphs (A) and (B) shall be tripled.

(iii) Application of subparagraph

This subparagraph shall apply to property placed in service after August 5, 1997, and before January 1, 2007.

(2) Coordination with reductions in amount allowable by reason of personal use, etc.

This subsection shall be applied before—

(A) the application of subsection (b), and

(B) the application of any other reduction in the amount of any depreciation deduction allowable under section 168 by reason of any use not qualifying the property for such credit or depreciation deduction.

(b) Limitation where business use of listed property not greater than 50 percent

(1) Depreciation

If any listed property is not predominantly used in a qualified business use for any taxable year, the deduction allowed under section 168 with respect to such property for such taxable year and any subsequent taxable year shall be determined under section 168(g) (relating to alternative depreciation system).

(2) Recapture

(A) Where business use percentage does not exceed 50 percent

If—

(i) property is predominantly used in a qualified business use in a taxable year in which it is placed in service, and

(ii) such property is not predominantly used in a qualified business use for any subsequent taxable year,

then any excess depreciation shall be included in gross income for the taxable year referred to in clause (ii), and the depreciation deduction for the taxable year referred to in clause (ii) and any subsequent taxable years shall be determined under section 168(g) (relating to alternative depreciation system).

(B) Excess depreciation

For purposes of subparagraph (A), the term "excess depreciation" means the excess (if any) of—

(i) the amount of the depreciation deductions allowable with respect to the property for taxable years before the 1st taxable year in which the property was not predominantly used in a qualified business use, over

(ii) the amount which would have been so allowable if the property had not been predominantly used in a qualified business use for the taxable year in which it was placed in service.

(3) Property predominantly used in qualified business use

For purposes of this subsection, property shall be treated as predominantly used in a qualified business use for any taxable year if the business use percentage for such taxable year exceeds 50

percent.

(c) Treatment of leases

(1) Lessor's deductions not affected

This section shall not apply to any listed property leased or held for leasing by any person regularly engaged in the business of leasing such property.

(2) Lessee's deductions reduced

For purposes of determining the amount allowable as a deduction under this chapter for rentals or other payments under a lease for a period of 30 days or more of listed property, only the allowable percentage of such payments shall be taken into account.

(3) Allowable percentage

For purposes of paragraph (2), the allowable percentage shall be determined under tables prescribed by the Secretary. Such tables shall be prescribed so that the reduction in the deduction under paragraph (2) is substantially equivalent to the applicable restrictions contained in subsections (a) and (b).

(4) Lease term

In determining the term of any lease for purposes of paragraph (2), the rules of section 168(i)(3)(A) shall apply.

(5) Lessee recapture

Under regulations prescribed by the Secretary, rules similar to the rules of subsection (b)(3) shall apply to any lessee to which paragraph (2) applies.

(d) Definitions and special rules

For purposes of this section—

(1) Coordination with section 179

Any deduction allowable under section 179 with respect to any listed property shall be subject to the limitations of subsections (a) and (b), and the limitation of paragraph (3) of this subsection, in the same manner as if it were a depreciation deduction allowable under section 168.

(2) Subsequent depreciation deductions reduced for deductions allocable to personal use

Solely for purposes of determining the amount of the depreciation deduction for subsequent taxable years, if less than 100 percent of the use of any listed property during any taxable year is use in a trade or business (including the holding for the production of income), all of the use of such property during such taxable year shall be treated as use so described.

(3) Deductions of employee

(A) In general

Any employee use of listed property shall not be treated as use in a trade or business for purposes of determining the amount of any depreciation deduction allowable to the employee (or the amount of any deduction allowable to the employee for rentals or other payments under a lease of listed property) unless such use is for the convenience of the employer and required as a condition of employment.

(B) Employee use

For purposes of subparagraph (A), the term "employee use" means any use in connection with the performance of services as an employee.

(4) Listed property

(A) In general

Except as provided in subparagraph (B), the term "listed property" means—

(i) any passenger automobile,

(ii) any other property used as a means of transportation,

(iii) any property of a type generally used for purposes of entertainment, recreation, or amusement,

(iv) any computer or peripheral equipment (as defined in section 168(i)(2)(B)), "and" [1]

(v) any other property of a type specified by the Secretary by regulations.

(B) Exception for certain computers

The term "listed property" shall not include any computer or peripheral equipment (as so defined) used exclusively at a regular business establishment and owned or leased by the person operating such establishment. For purposes of the preceding sentence, any portion of a dwelling unit shall be treated as a regular business establishment if (and only if) the requirements of section 280A(c)(1) are met with respect to such portion.

(C) Exception for property used in business of transporting persons or property

Except to the extent provided in regulations, clause (ii) of subparagraph (A) shall not apply to any property substantially all of the use of which is in a trade or business of providing to unrelated persons services consisting of the transportation of persons or property for compensation or hire.

(5) Passenger automobile

(A) In general

Except as provided in subparagraph (B), the term "passenger automobile" means any 4-wheeled vehicle—

(i) which is manufactured primarily for use on public streets, roads, and highways, and

(ii) which is rated at 6,000 pounds unloaded gross vehicle weight or less.

In the case of a truck or van, clause (ii) shall be applied by substituting "gross vehicle weight" for "unloaded gross vehicle weight".

(B) Exception for certain vehicles

The term "passenger automobile" shall not include—

(i) any ambulance, hearse, or combination ambulance-hearse used by the taxpayer directly in a trade or business,

(ii) any vehicle used by the taxpayer directly in the trade or business of transporting persons or property for compensation or hire, and

(iii) under regulations, any truck or van.

(6) Business use percentage

(A) In general

The term "business use percentage" means the percentage of the use of any listed property during any taxable year which is a qualified business use.

(B) Qualified business use

Except as provided in subparagraph (C), the term "qualified business use" means any use in a trade or business of the taxpayer.

(C) Exception for certain use by 5-percent owners and related persons

(i) In general

The term "qualified business use" shall not include—

(I) leasing property to any 5-percent owner or related person,

(II) use of property provided as compensation for the performance of services by a 5-percent owner or related person, or

(III) use of property provided as compensation for the performance of services by any person not described in subclause (II) unless an amount is included in the gross income of such person with respect to such use, and, where required, there was withholding under

chapter 24.

(ii) Special rule for aircraft

Clause (i) shall not apply with respect to any aircraft if at least 25 percent of the total use of the aircraft during the taxable year consists of qualified business use not described in clause (i).

(D) Definitions

For purposes of this paragraph—

(i) 5-percent owner

The term "5-percent owner" means any person who is a 5-percent owner with respect to the taxpayer (as defined in section 416(i)(1)(B)(i)).

(ii) Related person

The term "related person" means any person related to the taxpayer (within the meaning of section 267(b)).

(7) Automobile price inflation adjustment

(A) In general

In the case of any passenger automobile placed in service after 1988, subsection (a) shall be applied by increasing each dollar amount contained in such subsection by the automobile price inflation adjustment for the calendar year in which such automobile is placed in service. Any increase under the preceding sentence shall be rounded to the nearest multiple of $100 (or if the increase is a multiple of $50, such increase shall be increased to the next higher multiple of $100).

(B) Automobile price inflation adjustment

For purposes of this paragraph—

(i) In general

The automobile price inflation adjustment for any calendar year is the percentage (if any) by which—

(I) the CPI automobile component for October of the preceding calendar year, exceeds

(II) the CPI automobile component for October of 1987.

(ii) CPI automobile component

The term "CPI automobile component" means the automobile component of the Consumer Price Index for All Urban Consumers published by the Department of Labor.

(8) Unrecovered basis

For purposes of subsection (a)(2), the term "unrecovered basis" means the adjusted basis of the passenger automobile determined after the application of subsection (a) and as if all use during the recovery period were use in a trade or business (including the holding of property for the production of income).

(9) All taxpayers holding interests in passenger automobile treated as 1 taxpayer

All taxpayers holding interests in any passenger automobile shall be treated as 1 taxpayer for purposes of applying subsection (a) to such automobile, and the limitations of subsection (a) shall be allocated among such taxpayers in proportion to their interests in such automobile.

(10) Special rule for property acquired in nonrecognition transactions

For purposes of subsection (a)(2) any property acquired in a nonrecognition transaction shall be treated as a single property originally placed in service in the taxable year in which it was placed in service after being so acquired.

(e) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the

purposes of this section, including regulations with respect to items properly included in, or excluded from, the adjusted basis of any listed property.

(Added Pub. L. 98–369, div. A, title I, §179(a), July 18, 1984, 98 Stat. 713; amended Pub. L. 99–44, §4, May 24, 1985, 99 Stat. 78; Pub. L. 99–514, title II, §201(d)(4), title XVIII, §1812(e)(1)(A), (C), (2)–(5), Oct. 22, 1986, 100 Stat. 2139, 2836, 2837; Pub. L. 100–647, title I, §§1002(a)(10), (b)(2), 1018(u)(3), Nov. 10, 1988, 102 Stat. 3354, 3357, 3590; Pub. L. 101–239, title VII, §7643(a), Dec. 19, 1989, 103 Stat. 2381; Pub. L. 101–508, title XI, §11813(b)(13)(A)–(E), Nov. 5, 1990, 104 Stat. 1388–554, 1388–555; Pub. L. 104–188, title I, §1702(h)(5), Aug. 20, 1996, 110 Stat. 1874; Pub. L. 105–34, title IX, §971(a), Aug. 5, 1997, 111 Stat. 897; Pub. L. 105–206, title VI, §6009(c), July 22, 1998, 112 Stat. 812; Pub. L. 107–147, title VI, §602(b)(1), Mar. 9, 2002, 116 Stat. 59; Pub. L. 111–240, title II, §2043(a), Sept. 27, 2010, 124 Stat. 2560.)

INFLATION ADJUSTED ITEMS FOR CERTAIN CALENDAR YEARS

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

AMENDMENTS

2010—Subsec. (d)(4)(A). Pub. L. 111–240 inserted " 'and' " at end of clause (iv), redesignated clause (vi) as (v), and struck out former cl. (v) which read as follows: "any cellular telephone (or other similar telecommunications equipment), and".

2002—Subsec. (a)(1)(C)(iii). Pub. L. 107–147 added cl. (iii).

1998—Subsec. (a)(1)(C)(ii). Pub. L. 105–206 substituted "subparagraphs (A) and (B)" for "subparagraph (A)".

1997—Subsec. (a)(1)(C). Pub. L. 105–34 added subpar. (C).

1996—Subsec. (a). Pub. L. 104–188 struck out "investment tax credit and" after "amount of" in heading.

1990—Pub. L. 101–508, §11813(b)(13)(E), struck out "investment tax credit and" after "Limitation on" in section catchline.

Subsec. (a)(1). Pub. L. 101–508, §11813(b)(13)(A)(i), redesignated par. (2) as (1) and struck out former par. (1) "Investment tax credit" which read as follows: "The amount of the credit determined under section 46(a) for any passenger automobile shall not exceed $675."

Subsec. (a)(2). Pub. L. 101–508, §11813(b)(13)(A)(i), redesignated par. (3) as (2). Former par. (2) redesignated (1).

Subsec. (a)(2)(B). Pub. L. 101–508, §11813(b)(13)(A)(ii), struck out "the credit determined under section 46(a) or" after "the amount of".

Subsec. (a)(3). Pub. L. 101–508, §11813(b)(13)(A)(i), redesignated par. (3) as (2).

Subsec. (a)(4). Pub. L. 101–508, §11813(b)(13)(A)(i), struck out par. (4) "Special rule where election of reduced credit in lieu of the basis adjustment" which read as follows: "In the case of any election under section 48(q)(4) with respect to any passenger automobile, the limitation of paragraph (1) applicable to such passenger automobile shall be 2/3 of the amount which would be so applicable but for this paragraph."

Subsec. (b). Pub. L. 101–508, §11813(b)(13)(B), redesignated pars. (2) to (4) as (1) to (3), respectively, and struck out former par. (1) "Investment tax credit" which read as follows: "For purposes of this subtitle, any listed property shall not be treated as section 38 property for any taxable year unless such property is predominantly used in a qualified business use for such taxable year."

Subsec. (c)(1). Pub. L. 101–508, §11813(b)(13)(C), struck out "credits and" after "Lessor's" in heading.

Subsec. (d)(3)(A). Pub. L. 101–508, §11813(b)(13)(D), struck out "the amount of any credit allowable under section 38 to the employee or" after "of determining".

1989—Subsec. (d)(4)(A)(v), (vi). Pub. L. 101–239 added cl. (v) and redesignated former cl. (v) as (vi).

1988—Subsec. (b)(3)(B)(i). Pub. L. 100–647, §1018(u)(3), substituted "depreciation deductions" for "recovery deductions".

Subsec. (d)(1). Pub. L. 100–647, §1002(b)(2), substituted "subsections (a) and (b), and the limitation of paragraph (3) of this subsection," for "subsections (a) and (b)".

Subsec. (d)(3)(A). Pub. L. 100–647, §1002(a)(10), substituted "depreciation deduction" for "recovery deduction".

1986—Subsec. (a)(2)(A). Pub. L. 99–514, §201(d)(4)(A)(i), (K), substituted "depreciation deduction" for "recovery deduction" in introductory provisions and substituted cls. (i) to (iv) for former cls. (i) and (ii) which read as follows:

"(i) $3,200 for the first taxable year in the recovery period, and

"(ii) $4,800 for each succeeding taxable year in the recovery period."

Subsec. (a)(2)(B). Pub. L. 99–514, §201(d)(4)(A)(ii), (K), substituted "$1,475" for "$4,800" in heading and text of cl. (ii), and "depreciation deduction" for "recovery deduction" in heading and text of cl. (iv).

Subsec. (a)(3)(B). Pub. L. 99–514, §201(d)(4)(K), substituted "depreciation deduction" for "recovery deduction" in two places.

Subsec. (b)(2). Pub. L. 99–514, §201(d)(4)(J), substituted "section 168(g) (relating to alternative depreciation system)" for "the straight line method over the earnings and profits life for such property".

Subsec. (b)(3)(A). Pub. L. 99–514, §201(d)(4)(B), (K), substituted "depreciation deduction" for "recovery deduction" and "section 168(g) (relating to alternative depreciation system)" for "the straight line method over the earnings and profits life" in closing provisions.

Subsec. (b)(4). Pub. L. 99–514, §201(d)(4)(C), in amending par. (4) generally, struck out heading "Definitions", redesignated as par. (4) former subpar. (A) heading and text, substituted "For purposes of this section, property" for "Property", and struck out former subpar. (B) definition of straight line method over earnings and profits life.

Subsec. (c)(4). Pub. L. 99–514, §201(d)(4)(D), substituted "section 168(i)(3)(A)" for "section 168(j)(6)(B)".

Subsec. (d)(1). Pub. L. 99–514, §201(d)(4)(E), substituted "depreciation deduction" for "recovery deduction".

Subsec. (d)(2). Pub. L. 99–514, §1812(e)(5), substituted "is use described in" for "is not use described in".

Pub. L. 99–514, §201(d)(4)(F), substituted "depreciation deduction" for "recovery deduction" and "use in a trade or business (including the holding for the production of income)" for "use described in section 168(c)(1) (defining recovery property)".

Subsec. (d)(3)(A). Pub. L. 99–514, §1812(e)(2), inserted "(or the amount of any deduction allowable to the employee for rentals or other payments under a lease of listed property)".

Subsec. (d)(4)(A)(iv). Pub. L. 99–514, §201(d)(4)(G), substituted "section 168(i)(2)(B)" for "section 168(j)(5)(D)".

Subsec. (d)(4)(B). Pub. L. 99–514, §1812(e)(3), inserted "and owned or leased by the person operating such establishment".

Subsec. (d)(4)(C). Pub. L. 99–514, §1812(e)(4), added subpar. (C).

Subsec. (d)(5)(A). Pub. L. 99–514, §1812(e)(1)(A), (C), substituted "unloaded gross vehicle weight" for "gross vehicle weight" in cl. (ii) and inserted at end "In the case of a truck or van, clause (ii) shall be applied by substituting 'gross vehicle weight' for 'unloaded gross vehicle weight'."

Subsec. (d)(8). Pub. L. 99–514, §201(d)(4)(H), amended par. (8) generally. Prior to amendment, par. (8) read as follows: "For purposes of subsection (a)(2), the term "unrecovered basis" means the excess (if any) of—

"(A) the unadjusted basis (as defined in section 168(d)(1)(A)) of the passenger automobile, over

"(B) the amount of the recovery deductions which would have been allowable for taxable years in the recovery period determined after the application of subsection (a) and as if all use during the recovery period were use described in section 168(c)(1)."

Subsec. (d)(10). Pub. L. 99–514, §201(d)(4)(I), struck out ", notwithstanding any regulations prescribed under section 168(f)(7)," after "For purposes of subsection (a)(2)".

1985—Subsec. (a)(1). Pub. L. 99–44, §4(a)(1), substituted "$675" for "$1,000".

Subsec. (a)(2)(A)(i). Pub. L. 99–44, §4(a)(2)(A), substituted "$3,200" for "$4,000".

Subsec. (a)(2)(A)(ii), (B)(ii). Pub. L. 99–44, §4(a)(2)(B), substituted "$4,800" for "$6,000" wherever appearing in text and heading.

Subsec. (d)(7)(A). Pub. L. 99–44, §4(b)(1), inserted "placed in service after 1988" after "passenger automobile".

Subsec. (d)(7)(B)(i). Pub. L. 99–44, §4(b)(3), struck out last sentence which directed that in the case of calendar year 1984, the automobile price inflation adjustment would be zero.

Subsec. (d)(7)(B)(i)(II). Pub. L. 99–44, §4(b)(2), substituted "1987" for "1983".

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–240, title II, §2043(b), Sept. 27, 2010, 124 Stat. 2560, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2009."

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 applicable to property placed in service after Dec. 31, 2001, see section 602(c) of Pub. L. 107–147, set out as a note under section 30 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title IX, §971(b), Aug. 5, 1997, 111 Stat. 897, as amended by Pub. L. 107–147, title VI, §602(b)(2), Mar. 9, 2002, 116 Stat. 59, provided that: "The amendments made by this section [amending this section] shall apply to property placed in service after the date of enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7643(b), Dec. 19, 1989, 103 Stat. 2381, provided that: "The amendment made by subsection (a) [amending this section] shall apply to property placed in service or leased in taxable years beginning after December 31, 1989."

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 201(d)(4) of Pub. L. 99–514 applicable to property placed in service after Dec. 31, 1986, in taxable years ending after such date, with exceptions, see sections 203 and 204 of Pub. L. 99–514, set out as a note under section 168 of this title.

Amendment by section 201(d)(4) of Pub. L. 99–514 not applicable to any property placed in service before Jan. 1, 1994, if such property placed in service as part of specified rehabilitations, and not applicable to certain additional rehabilitations, see section 251(d)(2), (3) of Pub. L. 99–514, set out as a note under section 46 of this title.

Amendment by section 1812(e)(1)(A), (C), (2)–(5) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Pub. L. 99–44, §6(e), May 24, 1985, 99 Stat. 79, provided that:

"(1) Except as provided in paragraph (2), the amendments made by section 4 [amending this section] shall apply to—

"(A) property placed in service after April 2, 1985, in taxable years ending after such date, and

"(B) property leased after April 2, 1985, in taxable years ending after such date.

"(2) The amendments made by section 4 [amending this section] shall not apply to any property—

"(A) acquired by the taxpayer pursuant to a binding contract in effect on April 1, 1985, and at all times thereafter, but only if the property is placed in service before August 1, 1985, or

"(B) of which the taxpayer is the lessee, but only if the lease is pursuant to a binding contract in effect on April 1, 1985, and at all times thereafter, and only if the taxpayer first uses such property under the lease before August 1, 1985."

EFFECTIVE DATE

Pub. L. 98–369, div. A, title I, §179(d), July 18, 1984, 98 Stat. 719, provided that:

"(1) IN GENERAL.—

"(A) Except as provided in subparagraph (B), the amendments made by subsections (a) and (c)

[enacting this section] shall apply to—

"(i) property placed in service after June 18, 1984, in taxable years ending after such date, and

"(ii) property leased after June 18, 1984, in taxable years ending after such date.

"(B) The amendments made by subsections (a) and (c) shall not apply to any property—

"(i) acquired by the taxpayer pursuant to a binding contract in effect on June 18, 1984, and at all times thereafter (or under construction on such date) but only if the property is placed in service before January 1, 1985 (January 1, 1987, in the case of 15-year real property), or

"(ii) of which the taxpayer is the lessee but only if the lease is pursuant to a binding contract in effect on June 18, 1984, and at all times thereafter and only if the taxpayer first uses such property under the lease before January 1, 1985 (January 1, 1987, in the case of 15-year real property).

For purposes of the preceding sentence, the term '15-year real property' includes 18-year real property.

"(2) COMPLIANCE PROVISIONS.—The amendments made by subsection (b) [amending sections 274, 6653, and 6695 of this title] shall apply to taxable years beginning after December 31, 1984."

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

INFLATION ADJUSTED ITEMS FOR CERTAIN CALENDAR YEARS

Provisions relating to inflation adjustment of items in this section for certain calendar years were contained in the following:

2013—Revenue Procedure 2013–21.
2012—Revenue Procedure 2012–23.
2011—Revenue Procedure 2011–21.
2010—Revenue Procedure 2010–18.
2009—Revenue Procedure 2009–24.
2008—Revenue Procedure 2008–22.
2007—Revenue Procedure 2007–30.
2006—Revenue Procedure 2006–18.
2005—Revenue Procedure 2005–13.
2004—Revenue Procedure 2004–20.
2003—Revenue Procedure 2003–75.
2002—Revenue Procedure 2002–14.
2001—Revenue Procedure 2001–19.
2000—Revenue Procedure 2000–18.
1999—Revenue Procedure 99–14.
1998—Revenue Procedures 98–24 and 98–30.
1997—Revenue Procedure 97–20.
1996—Revenue Procedure 96–25.

[1] *So in original. The quotation marks probably should not appear.*

§280G. Golden parachute payments

(a) General rule

No deduction shall be allowed under this chapter for any excess parachute payment.

(b) Excess parachute payment

For purposes of this section—

(1) In general

The term "excess parachute payment" means an amount equal to the excess of any parachute payment over the portion of the base amount allocated to such payment.

(2) Parachute payment defined

(A) In general

The term "parachute payment" means any payment in the nature of compensation to (or for the benefit of) a disqualified individual if—

(i) such payment is contingent on a change—

(I) in the ownership or effective control of the corporation, or

(II) in the ownership of a substantial portion of the assets of the corporation, and

(ii) the aggregate present value of the payments in the nature of compensation to (or for the benefit of) such individual which are contingent on such change equals or exceeds an amount equal to 3 times the base amount.

For purposes of clause (ii), payments not treated as parachute payments under paragraph (4)(A), (5), or (6) shall not be taken into account.

(B) Agreements

The term "parachute payment" shall also include any payment in the nature of compensation to (or for the benefit of) a disqualified individual if such payment is made pursuant to an agreement which violates any generally enforced securities laws or regulations. In any proceeding involving the issue of whether any payment made to a disqualified individual is a parachute payment on account of a violation of any generally enforced securities laws or regulations, the burden of proof with respect to establishing the occurrence of a violation of such a law or regulation shall be upon the Secretary.

(C) Treatment of certain agreements entered into within 1 year before change of ownership

For purposes of subparagraph (A)(i), any payment pursuant to—

(i) an agreement entered into within 1 year before the change described in subparagraph (A)(i), or

(ii) an amendment made within such 1-year period of a previous agreement,

shall be presumed to be contingent on such change unless the contrary is established by clear and convincing evidence.

(3) Base amount

(A) In general

The term "base amount" means the individual's annualized includible compensation for the base period.

(B) Allocation

The portion of the base amount allocated to any parachute payment shall be an amount which bears the same ratio to the base amount as—

(i) the present value of such payment, bears to

(ii) the aggregate present value of all such payments.

(4) Treatment of amounts which taxpayer establishes as reasonable compensation

In the case of any payment described in paragraph (2)(A)—

(A) the amount treated as a parachute payment shall not include the portion of such payment

which the taxpayer establishes by clear and convincing evidence is reasonable compensation for personal services to be rendered on or after the date of the change described in paragraph (2)(A)(i), and

(B) the amount treated as an excess parachute payment shall be reduced by the portion of such payment which the taxpayer establishes by clear and convincing evidence is reasonable compensation for personal services actually rendered before the date of the change described in paragraph (2)(A)(i).

For purposes of subparagraph (B), reasonable compensation for services actually rendered before the date of the change described in paragraph (2)(A)(i) shall be first offset against the base amount.

(5) Exemption for small business corporations, etc.

(A) In general

Notwithstanding paragraph (2), the term "parachute payment" does not include—

(i) any payment to a disqualified individual with respect to a corporation which (immediately before the change described in paragraph (2)(A)(i)) was a small business corporation (as defined in section 1361(b) but without regard to paragraph (1)(C) thereof), and

(ii) any payment to a disqualified individual with respect to a corporation (other than a corporation described in clause (i)) if—

(I) immediately before the change described in paragraph (2)(A)(i), no stock in such corporation was readily tradeable on an established securities market or otherwise, and

(II) the shareholder approval requirements of subparagraph (B) are met with respect to such payment.

The Secretary may, by regulations, prescribe that the requirements of subclause (I) of clause (ii) are not met where a substantial portion of the assets of any entity consists (directly or indirectly) of stock in such corporation and interests in such other entity are readily tradeable on an established securities market, or otherwise. Stock described in section 1504(a)(4) shall not be taken into account under clause (ii)(I) if the payment does not adversely affect the shareholder's redemption and liquidation rights.

(B) Shareholder approval requirements

The shareholder approval requirements of this subparagraph are met with respect to any payment if—

(i) such payment was approved by a vote of the persons who owned, immediately before the change described in paragraph (2)(A)(i), more than 75 percent of the voting power of all outstanding stock of the corporation, and

(ii) there was adequate disclosure to shareholders of all material facts concerning all payments which (but for this paragraph) would be parachute payments with respect to a disqualified individual.

The regulations prescribed under subsection (e) shall include regulations providing for the application of this subparagraph in the case of shareholders which are not individuals (including the treatment of nonvoting interests in an entity which is a shareholder) and where an entity holds a de minimis amount of stock in the corporation.

(6) Exemption for payments under qualified plans

Notwithstanding paragraph (2), the term "parachute payment" shall not include any payment to or from—

(A) a plan described in section 401(a) which includes a trust exempt from tax under section 501(a),

(B) an annuity plan described in section 403(a),

(C) a simplified employee pension (as defined in section 408(k)), or
(D) a simple retirement account described in section 408(p).

(c) Disqualified individuals

For purposes of this section, the term "disqualified individual" means any individual who is—
(1) an employee, independent contractor, or other person specified in regulations by the Secretary who performs personal services for any corporation, and
(2) is an officer, shareholder, or highly-compensated individual.

For purposes of this section, a personal service corporation (or similar entity) shall be treated as an individual. For purposes of paragraph (2), the term "highly-compensated individual" only includes an individual who is (or would be if the individual were an employee) a member of the group consisting of the highest paid 1 percent of the employees of the corporation or, if less, the highest paid 250 employees of the corporation.

(d) Other definitions and special rules

For purposes of this section—

(1) Annualized includible compensation for base period

The term "annualized includible compensation for the base period" means the average annual compensation which—
(A) was payable by the corporation with respect to which the change in ownership or control described in paragraph (2)(A) of subsection (b) occurs, and
(B) was includible in the gross income of the disqualified individual for taxable years in the base period.

(2) Base period

The term "base period" means the period consisting of the most recent 5 taxable years ending before the date on which the change in ownership or control described in paragraph (2)(A) of subsection (b) occurs (or such portion of such period during which the disqualified individual performed personal services for the corporation).

(3) Property transfers

Any transfer of property—
(A) shall be treated as a payment, and
(B) shall be taken into account as its fair market value.

(4) Present value

Present value shall be determined by using a discount rate equal to 120 percent of the applicable Federal rate (determined under section 1274(d)), compounded semiannually.

(5) Treatment of affiliated groups

Except as otherwise provided in regulations, all members of the same affiliated group (as defined in section 1504, determined without regard to section 1504(b)) shall be treated as 1 corporation for purposes of this section. Any person who is an officer of any member of such group shall be treated as an officer of such 1 corporation.

(e) Special rule for application to employers participating in the Troubled Assets Relief Program

(1) In general

In the case of the severance from employment of a covered executive of an applicable employer during the period during which the authorities under section 101(a) of the Emergency Economic Stabilization Act of 2008 are in effect (determined under section 120 of such Act), this section shall be applied to payments to such executive with the following modifications:
(A) Any reference to a disqualified individual (other than in subsection (c)) shall be treated as a reference to a covered executive.

(B) Any reference to a change described in subsection (b)(2)(A)(i) shall be treated as a reference to an applicable severance from employment of a covered executive, and any reference to a payment contingent on such a change shall be treated as a reference to any payment made during an applicable taxable year of the employer on account of such applicable severance from employment.

(C) Any reference to a corporation shall be treated as a reference to an applicable employer.

(D) The provisions of subsections (b)(2)(C), (b)(4), (b)(5), and (d)(5) shall not apply.

(2) Definitions and special rules

For purposes of this subsection:

(A) Definitions

Any term used in this subsection which is also used in section 162(m)(5) shall have the meaning given such term by such section.

(B) Applicable severance from employment

The term "applicable severance from employment" means any severance from employment of a covered executive—

(i) by reason of an involuntary termination of the executive by the employer, or

(ii) in connection with any bankruptcy, liquidation, or receivership of the employer.

(C) Coordination and other rules

(i) In general

If a payment which is treated as a parachute payment by reason of this subsection is also a parachute payment determined without regard to this subsection, this subsection shall not apply to such payment.

(ii) Regulatory authority

The Secretary may prescribe such guidance, rules, or regulations as are necessary—

(I) to carry out the purposes of this subsection and the Emergency Economic Stabilization Act of 2008, including the extent to which this subsection applies in the case of any acquisition, merger, or reorganization of an applicable employer,

(II) to apply this section and section 4999 in cases where one or more payments with respect to any individual are treated as parachute payments by reason of this subsection, and other payments with respect to such individual are treated as parachute payments under this section without regard to this subsection, and

(III) to prevent the avoidance of the application of this section through the mischaracterization of a severance from employment as other than an applicable severance from employment.

(f) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section (including regulations for the application of this section in the case of related corporations and in the case of personal service corporations).

(Added Pub. L. 98–369, div. A, title I, §67(a), July 18, 1984, 98 Stat. 585; amended Pub. L. 99–121, title I, §102(c)(4), Oct. 11, 1985, 99 Stat. 508; Pub. L. 99–514, title XVIII, §1804(j), Oct. 22, 1986, 100 Stat. 2807; Pub. L. 100–647, title I, §1018(d)(6)–(8), Nov. 10, 1988, 102 Stat. 3581; Pub. L. 104–188, title I, §1421(b)(9)(A), Aug. 20, 1996, 110 Stat. 1798; Pub. L. 110–343, div. A, title III, §302(b), Oct. 3, 2008, 122 Stat. 3805.)

REFERENCES IN TEXT

The Emergency Economic Stabilization Act of 2008, referred to in subsec. (e)(1), (2)(C)(ii)(I), is Pub. L. 110–343, div. A, Oct. 3, 2008, 122 Stat. 3765. Section 101(a) of the Act enacted section 5211(a) of Title 12, Banks and Banking, and amended section 5315 of Title 5, Government Organization and Employees, and

section 301 of Title 31, Money and Finance. Section 120 of the Act is classified to section 5230 of Title 12. For complete classification of this Act to the Code, see Short Title note set out under section 5201 of Title 12 and Tables.

AMENDMENTS

2008—Subsecs. (e), (f). Pub. L. 110–343 added subsec. (e) and redesignated former subsec. (e) as (f).

1996—Subsec. (b)(6)(D). Pub. L. 104–188 added subpar. (D).

1988—Subsec. (b)(5)(A). Pub. L. 100–647, §1018(d)(6), substituted "section 1361(b) but without regard to paragraph (1)(C) thereof)" for "section 1361(b))" in cl. (i) and inserted at end "Stock described in section 1504(a)(4) shall not be taken into account under clause (ii)(I) if the payment does not adversely affect the shareholder's redemption and liquidation rights."

Subsec. (b)(5)(B). Pub. L. 100–647, §1018(d)(7), inserted at end "The regulations prescribed under subsection (e) shall include regulations providing for the application of this subparagraph in the case of shareholders which are not individuals (including the treatment of nonvoting interests in an entity which is a shareholder) and where an entity holds a de minimis amount of stock in the corporation."

Subsec. (d)(5). Pub. L. 100–647, §1018(d)(8), substituted "officer of any member" for "officer or any member".

1986—Subsec. (b)(2)(A). Pub. L. 99–514, §1804(j)(6), inserted "For purposes of clause (ii), payments not treated as parachute payments under paragraph (4)(A), (5), or (6) shall not be taken into account."

Subsec. (b)(2)(B). Pub. L. 99–514, §1804(j)(7), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "The term 'parachute payment' shall also include any payment in the nature of compensation to (or for the benefit of) a disqualified individual if such payment is pursuant to an agreement which violates any securities laws or regulations."

Subsec. (b)(4). Pub. L. 99–514, §1804(j)(2), substituted "Treatment of amounts which taxpayer establishes as reasonable compensation" for "Excess parachute payments reduced to extent taxpayer establishes reasonable compensation" in heading and amended text generally. Prior to amendment, text read as follows: "In the case of any parachute payment described in paragraph (2)(A), the amount of any excess parachute payment shall be reduced by the portion of such payment which the taxpayer establishes by clear and convincing evidence is reasonable compensation for personal services actually rendered. For purposes of the preceding sentence, reasonable compensation shall be first offset against the base amount."

Subsec. (b)(5). Pub. L. 99–514, §1804(j)(1), added par. (5).

Subsec. (b)(6). Pub. L. 99–514, §1804(j)(3), added par. (6).

Subsec. (c). Pub. L. 99–514, §1804(j)(5), inserted provision defining "highly-compensated individual".

Subsec. (d)(2). Pub. L. 99–514, §1804(j)(8), substituted "performed personal services for the corporation" for "was an employee of the corporation".

Subsec. (d)(5). Pub. L. 99–514, §1804(j)(4), added par. (5).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. A, title III, §302(c)(2), Oct. 3, 2008, 122 Stat. 3806, provided that: "The amendments made by subsection (b) [amending this section] shall apply to payments with respect to severances occurring during the period during which the authorities under section 101(a) of this Act [enacting section 5211(a) of Title 12, Banks and Banking, and amending section 5315 of Title 5, Government Organization and Employees, and section 301 of Title 31, Money and Finance] are in effect (determined under section 120 of this Act [12 U.S.C. 5230])."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1421(e) of Pub. L. 104–188, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–121 applicable to sales and exchanges after June 30, 1985, in taxable years ending after such date, see section 105(a)(1) of Pub. L. 99–121, set out as a note under section 1274 of this title.

EFFECTIVE DATE

Pub. L. 98–369, div. A, title I, §67(e), July 18, 1984, 98 Stat. 587, provided that:

"(1) IN GENERAL.—The amendments made by this section [enacting this section and section 4999 of this title and amending sections 275 and 3121 of this title] shall apply to payments under agreements entered into or renewed after June 14, 1984, in taxable years ending after such date.

"(2) SPECIAL RULE FOR CONTRACT AMENDMENTS.—Any contract entered into before June 15, 1984, which is amended after June 14, 1984, in any significant relevant aspect shall be treated as a contract entered into after June 14, 1984."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

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

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§280H. Limitation on certain amounts paid to employee-owners by personal service corporations electing alternative taxable years

(a) General rule

If—

(1) an election by a personal service corporation under section 444 is in effect for a taxable year, and

(2) such corporation does not meet the minimum distribution requirements of subsection (c) for such taxable year,

then the deduction otherwise allowed under this chapter for applicable amounts paid or incurred by such corporation to employee-owners shall not exceed the maximum deductible amount. The preceding sentence shall not apply for purposes of subchapter G (relating to personal holding companies).

(b) Carryover of nondeductible amounts

If any amount is not allowed as a deduction for a taxable year under subsection (a), such amount shall be treated as paid or incurred in the succeeding taxable year.

(c) Minimum distribution requirement

For purposes of this section—

(1) In general

A personal service corporation meets the minimum distribution requirements of this subsection if the applicable amounts paid or incurred during the deferral period of the taxable year (determined without regard to subsection (b)) equal or exceed the lesser of—

(A) the product of—

(i) the applicable amounts paid during the preceding taxable year, divided by the number of months in such taxable year, multiplied by

(ii) the number of months in the deferral period of the preceding taxable year, or

(B) the applicable percentage of the adjusted taxable income for the deferral period of the taxable year.

(2) Applicable percentage

The term "applicable percentage" means the percentage (not in excess of 95 percent) determined by dividing—

(A) the applicable amounts paid or incurred during the 3 taxable years immediately preceding the taxable year, by

(B) the adjusted taxable income of such corporation for such 3 taxable years.

(d) Maximum deductible amount

For purposes of this section, the term "maximum deductible amount" means the sum of—

(1) the applicable amounts paid during the deferral period, plus

(2) an amount equal to the product of—

(A) the amount determined under paragraph (1), divided by the number of months in the deferral period, multiplied by

(B) the number of months in the nondeferral period.

(e) Disallowance of net operating loss carrybacks

No net operating loss carryback shall be allowed to (or from) any taxable year of a personal service corporation to which an election under section 444 applies.

(f) Other definitions and special rules

For purposes of this section—

(1) Applicable amount

The term "applicable amount" means any amount paid to an employee-owner which is includible in the gross income of such employee, other than—

(A) any gain from the sale or exchange of property between the owner-employee and the corporation, or

(B) any dividend paid by the corporation.

(2) Employee-owner

The term "employee-owner" has the meaning given such term by section 269A(b)(2) (as modified by section 441(i)(2)).

(3) Nondeferral and deferral periods

(A) Deferral period

The term "deferral period" has the meaning given to such term by section 444(b)(4).

(B) Nondeferral period

The term "nondeferral period" means the portion of the taxable year of the personal service corporation which occurs after the portion of such year constituting the deferral period.

(4) Adjusted taxable income

The term "adjusted taxable income" means taxable income determined without regard to—

(A) any amount paid to an employee-owner which is includible in the gross income of such employee-owner, and

(B) any net operating loss carryover to the extent such carryover is attributable to amounts described in subparagraph (A).

(5) Personal service corporation

The term "personal service corporation" has the meaning given to such term by section 441(i)(2).

(Added Pub. L. 100–203, title X, §10206(c)(1), Dec. 22, 1987, 101 Stat. 1330–401; amended Pub. L. 100–647, title II, §2004(e)(2)(B), (3), (14)(A), (C), Nov. 10, 1988, 102 Stat. 3600, 3602.)

AMENDMENTS

1988—Subsecs. (c)(1)(A)(i), (d)(1). Pub. L. 100–647, §2004(e)(14)(C), substituted "amounts paid" for "amounts paid or incurred".

Subsec. (f)(2). Pub. L. 100–647, §2004(e)(3), substituted "section 269A(b)(2) (as modified by section 441(i)(2))" for "section 296A(b)(2)".

Subsec. (f)(4). Pub. L. 100–647, §2004(e)(14)(A), amended par. (4) generally. Prior to amendment, par. (4) read as follows: "The term 'adjusted taxable income' means taxable income increased by any amount paid or incurred to an employee-owner which was includible in the gross income of such employee-owner."

Subsec. (f)(5). Pub. L. 100–647, §2004(e)(2)(B), added par. (5).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1986, see section 10206(d)(1) of Pub. L. 100–203, set out as a note under section 444 of this title.

PART X—TERMINAL RAILROAD CORPORATIONS AND THEIR SHAREHOLDERS

Sec.
281. Terminal railroad corporations and their shareholders.

AMENDMENTS

1962—Pub. L. 87–870, §1(a), Oct. 23, 1962, 76 Stat. 1158, added part X and item 281.

§281. Terminal railroad corporations and their shareholders

(a) Computation of taxable income of terminal railroad corporations

(1) In general

In computing the taxable income of a terminal railroad corporation—

(A) such corporation shall not be considered to have received or accrued—

(i) the portion of any liability of any railroad corporation, with respect to related terminal services provided by such corporation, which is discharged by crediting such liability with an amount of related terminal income, or

(ii) the portion of any charge which would be made by such corporation for related terminal services provided by it, but which is not made as a result of taking related terminal income into account in computing such charge; and

(B) no deduction otherwise allowable under this chapter shall be disallowed as a result of any discharge of liability described in subparagraph (A)(i) or as a result of any computation of charges in the manner described in subparagraph (A)(ii).

(2) Limitation

In the case of any taxable year ending after the date of the enactment of this section, paragraph (1) shall not apply to the extent that it would (but for this paragraph) operate to create (or increase) a net operating loss for the terminal railroad corporation for the taxable year.

(b) Computation of taxable income of shareholders

Subject to the limitation in subsection (a)(2), in computing the taxable income of any shareholder of a terminal railroad corporation, no amount shall be considered to have been received or accrued or paid or incurred by such shareholder as a result of any discharge of liability described in subsection

(a)(1)(A)(i) or as a result of any computation of charges in the manner described in subsection (a)(1)(A)(ii).

(c) Agreement required

In the case of any taxable year, subsections (a) and (b) shall apply with respect to any discharge of liability described in subsection (a)(1)(A)(i), and to any computation of charges in the manner described in subsection (a)(1)(A)(ii), only if such discharge or computation (as in the case may be) was provided for in a written agreement, to which all of the shareholders of the terminal railroad corporation were parties, entered into before the beginning of such taxable year.

(d) Definitions

For purposes of this section—

(1) Terminal railroad corporation

The term "terminal railroad corporation" means a domestic railroad corporation which is not a member, other than as a common parent corporation, of an affiliated group (as defined in section 1504) and—

(A) all of the shareholders of which are rail carriers subject to part A of subtitle IV of title 49;

(B) the primary business of which is the providing of railroad terminal and switching facilities and services to rail carriers subject to part A of subtitle IV of title 49 and to the shippers and passengers of such railroad corporations;

(C) a substantial part of the services of which for the taxable year is rendered to one or more of its shareholders; and

(D) each shareholder of which computes its taxable income on the basis of a taxable year beginning or ending on the same day that the taxable year of the terminal railroad corporation begins or ends.

(2) Related terminal income

The term "related terminal income" means the income (determined in accordance with regulations prescribed by the Secretary) of a terminal railroad corporation derived—

(A) from services or facilities of a character ordinarily and regularly provided by terminal railroad corporations for railroad corporations or for the employees, passengers, or shippers of railroad corporations;

(B) from the use by persons other than railroad corporations of portions of a facility, or a service which is used primarily for railroad purposes;

(C) from any railroad corporation for services or facilities provided by such terminal railroad corporation in connection with railroad operations; and

(D) from the United States in payment for facilities or services in connection with mail handling.

For purposes of subparagraph (B), a substantial addition, constructed after the date of the enactment of this section, to a facility shall be treated as a separate facility.

(3) Related terminal services

The term "related terminal services" includes only services, and the use of facilities, taken into account in computing related terminal income.

(e) Regulations

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

(Added Pub. L. 87–870, §1(a), Oct. 23, 1962, 76 Stat. 1158; amended Pub. L. 94–455, title XIX, §§1901(a)(40), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1771, 1834; Pub. L. 95–473, §2(a)(2)(D), (E), Oct. 17, 1978, 92 Stat. 1464; Pub. L. 104–88, title III, §304(b), Dec. 29, 1995, 109 Stat. 943.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsecs. (a)(2), (d)(2), refers to the date of

enactment of Pub. L. 87–870, which was approved Oct. 23, 1962.

AMENDMENTS

1995—Subsec. (d)(1)(A), (B). Pub. L. 104–88 substituted "rail carriers subject to part A of subtitle IV" for "domestic railroad corporations providing transportation subject to subchapter I of chapter 105".

1978—Subsec. (d)(1)(A). Pub. L. 95–473, §2(a)(2)(D), substituted "providing transportation subject to subchapter I of chapter 105 of title 49" for "subject to part I of the Interstate Commerce Act (49 U.S.C. 1 and following)".

Subsec. (d)(1)(B). Pub. L. 95–473, §2(a)(2)(E), substituted "providing transportation subject to subchapter I of chapter 105 of title 49" for "subject to part I of the Interstate Commerce Act".

1976—Subsec. (d)(1)(A). Pub. L. 94–455, §1901(a) (40)(A), inserted "(49 U.S.C. 1 and following)" after "Interstate Commerce Act".

Subsecs. (e), (f). Pub. L. 94–455, §§1901(a)(40)(B), 1906(b)(13)(A), redesignated subsec. (f) as (e) and struck out "or his delegate" after "Secretary". Former subsec. (e), which made special provision for the application of this section to taxable years ending before Oct. 23, 1962, was struck out.

EFFECTIVE DATE OF 1995 AMENDMENT

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

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(40) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE

Pub. L. 87–870, §2(a), Oct. 23, 1962, 76 Stat. 1160, provided that: "The amendments made by the first section of this Act [enacting this section] shall apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954."

INTERNAL REVENUE CODE OF 1939; INCLUSION OF TERMINAL RAILROAD CORPORATIONS AND THEIR SHAREHOLDERS PROVISION

Pub. L. 87–870, §2(b), Oct. 23, 1962, 76 Stat. 1160, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Provisions having the same effect as section 281 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by the first section of this Act) shall be deemed to be included in the Internal Revenue Code of 1939, effective with respect to all taxable years to which such Code applies."

PART XI—SPECIAL RULES RELATING TO CORPORATE PREFERENCE ITEMS

Sec.

291. Special rules relating to corporate preference items.

AMENDMENTS

1982—Pub. L. 97–248, title II, §204(a), Sept. 3, 1982, 96 Stat. 423, added part XI heading and analysis of sections consisting of item 291.

§291. Special rules relating to corporate preference items

(a) Reduction in certain preference items, etc.

For purposes of this subtitle, in the case of a corporation—

(1) Section 1250 capital gain treatment

In the case of section 1250 property which is disposed of during the taxable year, 20 percent of the excess (if any) of—

(A) the amount which would be treated as ordinary income if such property was section 1245 property, over

(B) the amount treated as ordinary income under section 1250 (determined without regard to this paragraph),

shall be treated as gain which is ordinary income under section 1250 and shall be recognized notwithstanding any other provision of this title. Under regulations prescribed by the Secretary, the provisions of this paragraph shall not apply to the disposition of any property to the extent section 1250(a) does not apply to such disposition by reason of section 1250(d).

(2) Reduction in percentage depletion

In the case of iron ore and coal (including lignite), the amount allowable as a deduction under section 613 with respect to any property (as defined in section 614) shall be reduced by 20 percent of the amount of the excess (if any) of—

(A) the amount of the deduction allowable under section 613 for the taxable year (determined without regard to this paragraph), over

(B) the adjusted basis of the property at the close of the taxable year (determined without regard to the depletion deduction for the taxable year).

(3) Certain financial institution preference items

The amount allowable as a deduction under this chapter (determined without regard to this section) with respect to any financial institution preference item shall be reduced by 20 percent.

(4) Amortization of pollution control facilities

If an election is made under section 169 with respect to any certified pollution control facility, the amortizable basis of such facility for purposes of such section shall be reduced by 20 percent.

(b) Special rules for treatment of intangible drilling costs and mineral exploration and development costs

For purposes of this subtitle, in the case of a corporation—

(1) In general

The amount allowable as a deduction for any taxable year (determined without regard to this section)—

(A) under section 263(c) in the case of an integrated oil company, or

(B) under section 616(a) or 617(a),

shall be reduced by 30 percent.

(2) Amortization of amounts not allowable as deductions under paragraph (1)

The amount not allowable as a deduction under section 263(c), 616(a), or 617(a) (as the case may be) for any taxable year by reason of paragraph (1) shall be allowable as a deduction ratably over the 60-month period beginning with the month in which the costs are paid or incurred.

(3) Dispositions

For purposes of section 1254, any deduction under paragraph (2) shall be treated as a deduction allowable under section 263(c), 616(a), or 617(a) (whichever is appropriate).

(4) Integrated oil company defined

For purposes of this subsection, the term "integrated oil company" means, with respect to any taxable year, any producer of crude oil to whom subsection (c) of section 613A does not apply by reason of paragraph (2) or (4) of section 613A(d).

(5) Coordination with cost depletion

The portion of the adjusted basis of any property which is attributable to amounts to which paragraph (1) applied shall not be taken into account for purposes of determining depletion under section 611.

(c) Special rules relating to pollution control facilities

For purposes of this subtitle—

(1) Accelerated cost recovery deduction

Section 168 shall apply with respect to that portion of the basis of any property not taken into account under section 169 by reason of subsection (a)(4).

(2) 1250 Recapture

Subsection (a)(1) shall not apply to any section 1250 property which is part of a certified pollution control facility (within the meaning of section 169(d)(1)) with respect to which an election under section 169 was made.

(d) Special rule for real estate investment trusts

In the case of a real estate investment trust (as defined in section 856), the difference between the amounts described in subparagraphs (A) and (B) of subsection (a)(1) shall be reduced to the extent that a capital gain dividend (as defined in section 857(b)(3)(C), applied without regard to this section) is treated as paid out of such difference. Any capital gain dividend treated as having been paid out of such difference to a shareholder which is an applicable corporation retains its character in the hands of the shareholder as gain from the disposition of section 1250 property for purposes of applying subsection (a)(1) to such shareholder.

(e) Definitions

For purposes of this section—

(1) Financial institution preference item

The term "financial institution preference item" includes the following:

[(A) Repealed. Pub. L. 101–508, title XI, §11801(c)(12)(B), Nov. 5, 1990, 104 Stat. 1388–527]

(B) Interest on debt to carry tax-exempt obligations acquired after December 31, 1982, and before August 8, 1986

(i) In general

In the case of a financial institution which is a bank (as defined in section 585(a)(2)), the amount of interest on indebtedness incurred or continued to purchase or carry obligations acquired after December 31, 1982, and before August 8, 1986, the interest on which is exempt from taxes for the taxable year, to the extent that a deduction would (but for this paragraph or section 265(b)) be allowable with respect to such interest for such taxable year.

(ii) Determination of interest allocable to indebtedness on tax-exempt obligations

Unless the taxpayer (under regulations prescribed by the Secretary) establishes otherwise, the amount determined under clause (i) shall be an amount which bears the same ratio to the aggregate amount allowable (determined without regard to this section and section 265(b)) to the taxpayer as a deduction for interest for the taxable year as—

(I) the taxpayer's average adjusted basis (within the meaning of section 1016) of obligations described in clause (i), bears to

(II) such average adjusted basis for all assets of the taxpayer.

(iii) Interest

For purposes of this subparagraph, the term "interest" includes amounts (whether or not designated as interest) paid in respect of deposits, investment certificates, or withdrawable or repurchasable shares.

(iv) Application of subparagraph to certain obligations issued after August 7, 1986

For application of this subparagraph to certain obligations issued after August 7, 1986, see section 265(b)(3). That portion of any obligation not taken into account under paragraph (2)(A) of section 265(b) by reason of paragraph (7) of such section shall be treated for purposes of this section as having been acquired on August 7, 1986.

(2) Section 1245 and 1250 property

The terms "section 1245 property" and "section 1250 property" have the meanings given such terms by sections 1245(a)(3) and 1250(c), respectively.

(Added Pub. L. 97–248, title II, §204(a), Sept. 3, 1982, 96 Stat. 423; amended Pub. L. 97–354, §5(a)(27), Oct. 19, 1982, 96 Stat. 1694; Pub. L. 97–448, title III, §306(a)(2), Jan. 12, 1983, 96 Stat. 2400; Pub. L. 98–369, div. A, title I, §68(a), (b), title VII, §712(a)(1)(A), (2)–(4), July 18, 1984, 98 Stat. 588, 946; Pub. L. 99–514, title II, §201(d)(5), title IV, §§411(a), (b)(2)(C)(ii), 412(b)(1), title IX, §§901(b)(4), (d)(4)(C), 902(c), title XVIII, §§1804(k)(1), (3)(A), 1854(c)(1), 1876(b)(1), Oct. 22, 1986, 100 Stat. 2140, 2225, 2227, 2378, 2380, 2382, 2809, 2878, 2898; Pub. L. 100–418, title I, §1941(b)(5), Aug. 23, 1988, 102 Stat. 1324; Pub. L. 100–647, title I, §1009(b)(4), (5), Nov. 10, 1988, 102 Stat. 3449; Pub. L. 101–508, title XI, §11801(c)(12)(B), Nov. 5, 1990, 104 Stat. 1388–527; Pub. L. 104–188, title I, §§1602(b)(1), 1616(b)(5), Aug. 20, 1996, 110 Stat. 1833, 1856; Pub. L. 110–172, §11(g)(6), Dec. 29, 2007, 121 Stat. 2490; Pub. L. 111–5, div. B, title I, §1501(b), Feb. 17, 2009, 123 Stat. 353.)

AMENDMENTS

2009—Subsec. (e)(1)(B)(iv). Pub. L. 111–5 inserted at end "That portion of any obligation not taken into account under paragraph (2)(A) of section 265(b) by reason of paragraph (7) of such section shall be treated for purposes of this section as having been acquired on August 7, 1986."

2007—Subsec. (a)(4), (5). Pub. L. 110–172, §11(g)(6)(A), redesignated par. (5) as (4) and struck out former par. (4) which read as follows: "In the case of taxable years beginning after December 31, 1984, section 923(a) shall be applied with respect to any FSC by substituting—

"(A) '30 percent' for '32 percent' in paragraph (2), and

"(B) '15/23' for '16/23' in paragraph (3).

If all of the stock in the FSC is not held by 1 or more C corporations throughout the taxable year, under regulations, proper adjustments shall be made in the application of the preceding sentence to take into account stock held by persons other than C corporations."

Subsec. (c)(1). Pub. L. 110–172, §11(g)(6)(B), substituted "subsection (a)(4)" for "subsection (a)(5)".

1996—Subsec. (e)(1)(B)(i). Pub. L. 104–188, §1616(b)(5), struck out "or to which section 593 applies" after "585(a)(2))".

Subsec. (e)(1)(B)(iv), (v). Pub. L. 104–188, §1602(b)(1), redesignated cl. (v) as (iv) and struck out former cl. (iv) which read as follows: "SPECIAL RULES FOR OBLIGATIONS TO WHICH SECTION 133 APPLIES.—In the case of an obligation to which section 133 applies, interest on such obligation shall not be treated as exempt from taxes for purposes of this subparagraph."

1990—Subsec. (e)(1)(A). Pub. L. 101–508 struck out subpar. (A) "Excess reserves for losses on bad debts of financial institutions" which read as follows: "In the case of a financial institution to which section 585 applies, the excess of—

"(i) the amount which would, but for this section, be allowable as a deduction for the taxable year for a reasonable addition to a reserve for bad debts, over

"(ii) the amount which would have been allowable had such institution maintained its bad debt reserve for all taxable years on the basis of actual experience."

1988—Subsec. (b)(4). Pub. L. 100–418 amended par. (4) generally. Prior to amendment, par. (4) read as follows: "For purposes of this subsection, the term 'integrated oil company' means, with respect to any taxable year, any producer (within the meaning of section 4996(a)(1)) of crude oil other than an independent producer (within the meaning of section 4992(b))."

Subsec. (e)(1)(B)(i). Pub. L. 100–647, §1009(b)(5), substituted "section 585(a)(2)" for "section 582(a)(2)".

Subsec. (e)(1)(B)(iv), (v). Pub. L. 100–647, §1009(b)(4), redesignated cl. (iv), relating to application of subparagraph to certain obligations issued after Aug. 7, 1986, as (v).

1986—Subsec. (a). Pub. L. 99–514, §1804(k)(3)(A), substituted "Reduction" for "20-percent reduction" in heading.

Subsec. (a)(1)(A). Pub. L. 99–514, §201(d)(5)(A), struck out "or section 1245 recovery property" after "section 1245 property".

Subsec. (a)(2). Pub. L. 99–514, §412(b)(1), substituted "20 percent" for "15 percent".

Subsec. (a)(4). Pub. L. 99–514, §1876(b)(1), substituted "Certain FSC income" for "Certain deferred FSC income" in heading and amended text generally. Prior to amendment, text read as follows: "If a C corporation is a shareholder of the FSC, in the case of taxable years beginning after December 31, 1984, section 923(a)

shall be applied with respect to such corporation by substituting—

"(A) '30 percent' for '32 percent' in paragraph (2), and

"(B) '15/23' for '16/23' in paragraph (3)."

Pub. L. 99–514, §1804(k)(1), substituted "If a C corporation" for "If a corporation".

Subsec. (b)(1). Pub. L. 99–514, §411(a)(1), (b)(2)(C)(ii), substituted "30 percent" for "20 percent" in closing provisions and "617(a)" for "617" in subpar. (B).

Subsec. (b)(2) to (6). Pub. L. 99–514, §411(a)(2), added pars. (2) to (5) and struck out former pars. (2) to (6) as follows: former par. (2), special rule for amounts not allowable as deductions under paragraph (1), related in subpar. (A) to intangible drilling costs and in subpar. (B) to mineral exploration and development costs; former par. (3) defined applicable percentage in accordance with table for taxable years 1 to 5; former par. (4) dispositions, related in subpar. (A) to oil, gas, and geothermal property, in subpar. (B) to application of section 617(d) of this title, and in subpar. (C) to recapture of investment credit; former par. (5) defined integrated oil company; and former par. (6) related to coordination with cost depletion.

Subsec. (c)(1). Pub. L. 99–514, §201(d)(5)(B), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "For purposes of subclause (1) of section 168(d)(1)(A)(ii), a taxpayer shall not be treated as electing the amortization deduction under section 169 with respect to that portion of the basis not taken into account under section 169 by reason of subsection (a)(5)."

Subsec. (e)(1)(A). Pub. L. 99–514, §901(b)(4), struck out "or 593" after "section 585".

Subsec. (e)(1)(B). Pub. L. 99–514, §902(c)(2)(C), substituted "1982, and before August 8, 1986" for "1982" in heading.

Subsec. (e)(1)(B)(i). Pub. L. 99–514, §902(c)(1), (2)(A), substituted "1982, and before August 8, 1986" for "1982" and "(but for this paragraph or section 265(b))" for "(but for this paragraph)".

Pub. L. 99–514, §901(d)(4)(C), substituted "which is a bank (as defined in section 582(a)(2)) or to which section 593 applies" for "to which section 585 or 593 applies".

Subsec. (e)(1)(B)(ii). Pub. L. 99–514, §902(c)(2)(B), inserted "and section 265(b)".

Subsec. (e)(1)(B)(iv). Pub. L. 99–514, §1854(c)(1), added cl. (iv) relating to special rules for obligations to which section 133 applies.

Pub. L. 99–514, §902(c)(2)(D), added cl. (iv) relating to application of subparagraph to certain obligations issued after August 7, 1986.

Subsec. (e)(2). Pub. L. 99–514, §201(d)(5)(C), struck out ", 'section 1245 recovery property'," after " 'section 1245 property' " and directed that par. (2) be amended by striking out ", section 1245(a)(5)," which was executed by striking out ", 1245(a)(5)," after "sections 1245(a)(3)" to reflect the probable intent of Congress.

1984—Subsec. (a). Pub. L. 98–369, §68(a), which directed that each subsection be amended by substituting "20 percent" for "15 percent" wherever appearing, was executed in heading by substituting "20-percent" for "15-percent" to reflect the probable intent of Congress.

Subsec. (a)(1). Pub. L. 98–369, §68(a), substituted "20 percent" for "15 percent" in provisions preceding subpar. (A).

Pub. L. 98–369, §712(a)(1)(A)(ii), inserted "under section 1250" in provisions following subpar. (B).

Subsec. (a)(1)(B). Pub. L. 98–369, §712(a)(1)(A)(i), inserted "(determined without regard to this paragraph)".

Subsec. (a)(3). Pub. L. 98–369, §68(a), substituted "20 percent" for "15 percent".

Subsec. (a)(4). Pub. L. 98–369, §68(b), amended par. (4) generally. Prior to amendment, par. (4) read as follows:

"(4) CERTAIN DEFERRED DISC INCOME.—If a corporation is a shareholder of a DISC, in the case of taxable years beginning after December 31, 1982, section 995(b)(1)(F)(i) shall be applied with respect to such corporation by substituting '57.5 percent' for 'one-half'."

Subsec. (a)(5). Pub. L. 98–369, §68(a), substituted "20 percent" for "15 percent".

Subsec. (b)(1). Pub. L. 98–369, §68(a), substituted "20 percent" for "15 percent" in provisions following subpar. (B).

Subsec. (b)(2)(B)(ii). Pub. L. 98–369, §712(a)(2), inserted "in the case of a deposit located in the United States,".

Subsec. (b)(6). Pub. L. 98–369, §712(a)(3), substituted "attributable to amounts to which paragraph (1) applied" for "attributable to intangible drilling and development costs or mining exploration and development costs".

Subsec. (e)(1)(B)(iii). Pub. L. 98–369, §712(a)(4), added cl. (iii).

1983—Subsec. (a)(1). Pub. L. 97–448 inserted provision that, under regulations prescribed by the Secretary, the provisions of this paragraph shall not apply to the disposition of any property to the extent

section 1250(a) does not apply to such disposition by reason of section 1250(d).

1982—Subsec. (a). Pub. L. 97–354, §5(a)(27)(A), substituted "a corporation" for "an applicable corporation" wherever appearing.

Subsec. (b). Pub. L. 97–354, §5(a)(27)(A), substituted "a corporation" for "an applicable corporation".

Subsec. (e)(2), (3). Pub. L. 97–354, §5(a)(27)(B), redesignated par. (3) as (2). Former par. (2), defining "applicable corporation", was struck out.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–5 applicable to obligations issued after Dec. 31, 2008, see section 1501(c) of Pub. L. 111–5, set out as a note under section 265 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1602(b)(1) of Pub. L. 104–188 applicable to loans made after Aug. 20, 1996, with exception and provisions relating to certain refinancings, see section 1602(c) of Pub. L. 104–188, set out as an Effective Date of Repeal note under former section 133 of this title.

Amendment by section 1616(b)(5) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1995, see section 1616(c) of Pub. L. 104–188, set out as a note under section 593 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

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

Amendment by Pub. L. 100–418 applicable to crude oil removed from the premises on or after Aug. 23, 1988, see section 1941(c) of Pub. L. 100–418, set out as a note under section 164 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 201(d)(5) of Pub. L. 99–514 applicable to property placed in service after Dec. 31, 1986, in taxable years ending after such date, with exceptions, see sections 203 and 204 of Pub. L. 99–514, set out as a note under section 168 of this title.

Amendment by section 201(d)(5) of Pub. L. 99–514 not applicable to any property placed in service before Jan. 1, 1994, if such property placed in service as part of specified rehabilitations, not applicable to certain additional rehabilitations, see section 251(d)(2), (3) of Pub. L. 99–514, set out as a note under section 46 of this title.

Amendment by section 411(a), (b)(2)(C)(ii) of Pub. L. 99–514 applicable, except as otherwise provided, to costs paid or incurred after Dec. 31, 1986, in taxable years ending after such date, see section 411(c) of Pub. L. 99–514 set out as a note under section 263 of this title.

Pub. L. 99–514, title IV, §412(b)(2), Oct. 22, 1986, 100 Stat. 2227, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after December 31, 1986."

Amendment by section 901(b)(4), (d)(4)(C) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 901(e) of Pub. L. 99–514, set out as a note under section 166 of this title.

Amendment by section 902(c) of Pub. L. 99–514 applicable to taxable years ending after Dec. 31, 1986, with certain exceptions and qualifications, see section 902(f) of Pub. L. 99–514, set out as a note under section 265 of this title.

Pub. L. 99–514, title XVIII, §1804(k)(1), Oct. 22, 1986, 100 Stat. 2809, provided that amendment made by section 1804(k)(1) of Pub. L. 99–514 is effective with respect to taxable years beginning after Dec. 31, 1982.

Amendment by sections 1804(k)(3)(A), 1854(c)(1), and 1876(b)(1) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §68(e), July 18, 1984, 98 Stat. 588, as amended by Pub. L. 99–514, §2, title XVIII, §1804(k)(2), Oct. 22, 1986, 100 Stat. 2095, 2809, provided that:

"(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section and sections 57 and 995 of this title] shall apply to taxable years beginning after December 31, 1984.

"(2) 1250 GAIN.—The amendments made by this section to section 291(a)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], and the amendment made by subsection (c)(2) of this section [amending section 57 of this title], shall apply to sales or other dispositions after December 31, 1984, in taxable years

ending after such date.

"(3) POLLUTION CONTROL FACILITIES.—The amendments made by this section to section 291(a)(5) [now 291(a)(4)] of such Code, and so much of the amendment made by subsection (c)(1) of this section [amending section 57 of this title] as relates to pollution control facilities, shall apply to property placed in service after December 31, 1984, in taxable years ending after such date.

"(4) DRILLING AND MINING COSTS.—The amendments made by this section to section 291(b) of such Code shall apply to expenditures after December 31, 1984, in taxable years ending after such date."

Amendment by section 712 of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

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

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE

Pub. L. 97–248, title II, §204(d), Sept. 3, 1982, 96 Stat. 427, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [enacting this section and amending sections 57 and 263 of this title] shall apply to taxable years beginning after December 31, 1982.

"(2) 1250 GAIN.—Section 291(a)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall apply to sales or other disposition after December 31, 1982, in taxable years ending after such date.

"(3) POLLUTION CONTROL FACILITIES.—Section 291(a)(5) [now 291(a)(4)] of such Code shall apply to property placed in service after December 31, 1982, in taxable years ending after such date.

"(4) DRILLING AND MINING COSTS.—Section 291(b) of such Code shall apply to expenditures after December 31, 1982, in taxable years ending after such date.

"(5) REDUCTION IN PERCENTAGE DEPLETION FOR COAL AND IRON ORE.—Section 291(a)(2) of such Code shall apply to taxable years beginning after December 31, 1983.

"(6) MINIMUM TAX.—The amendment made by subsection (b) [amending section 57 of this title] shall apply to taxable years ending after December 31, 1982, with respect to items of tax preference described in section 57(b) of such Code to which section 291 of such Code applies; except that in the case of an item described in section 291(a)(2) of such Code, such amendment shall apply to taxable years beginning after December 31, 1983."

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

Subchapter C—Corporate Distributions and Adjustments

Part

I. Distributions by corporations.

II. Corporate liquidations.

III. Corporate organizations and reorganizations.
[IV. Repealed.]
V. Carryovers.
VI. Treatment of certain corporate interests as stock or indebtedness.
[VII. Repealed.]

AMENDMENTS

1990—Pub. L. 101–508, title XI, §11801(b)(5), Nov. 5, 1990, 104 Stat. 1388–522, struck out item for part IV "Insolvency reorganizations".

1988—Pub. L. 100–647, title I, §1006(e)(8)(C), Nov. 10, 1988, 102 Stat. 3401, struck out item for part VII "Miscellaneous corporate provisions".

1984—Pub. L. 98–369, div. A, title I, §75(d), July 18, 1984, 98 Stat. 595, added item for part VII.

1976—Pub. L. 94–455, title XIX, §1901(b)(15), Oct. 4, 1976, 90 Stat. 1796, struck out item for part VII "Effective date of subchapter C."

1969—Pub. L. 91–172, title IV, §415(b), Dec. 30, 1969, 83 Stat. 614, redesignated item for part VI as VII and added part VI.

PART I—DISTRIBUTIONS BY CORPORATIONS

Subpart
A. Effects on recipients.
B. Effects on corporation.
C. Definitions; constructive ownership of stock.

SUBPART A—EFFECTS ON RECIPIENTS

Sec.
301. Distributions of property.
302. Distributions in redemption of stock.
303. Distributions in redemption of stock to pay death taxes.
304. Redemption through use of related corporations.
305. Distributions of stock and stock rights.
306. Dispositions of certain stock.
307. Basis of stock and stock rights acquired in distributions.

§301. Distributions of property

(a) In general

Except as otherwise provided in this chapter, a distribution of property (as defined in section 317(a)) made by a corporation to a shareholder with respect to its stock shall be treated in the manner provided in subsection (c).

(b) Amount distributed

(1) General rule

For purposes of this section, the amount of any distribution shall be the amount of money received, plus the fair market value of the other property received.

(2) Reduction for liabilities

The amount of any distribution determined under paragraph (1) shall be reduced (but not below zero) by—

(A) the amount of any liability of the corporation assumed by the shareholder in connection with the distribution, and

(B) the amount of any liability to which the property received by the shareholder is subject immediately before, and immediately after, the distribution.

(3) Determination of fair market value

For purposes of this section, fair market value shall be determined as of the date of the distribution.

(c) Amount taxable

In the case of a distribution to which subsection (a) applies—

(1) Amount constituting dividend

That portion of the distribution which is a dividend (as defined in section 316) shall be included in gross income.

(2) Amount applied against basis

That portion of the distribution which is not a dividend shall be applied against and reduce the adjusted basis of the stock.

(3) Amount in excess of basis

(A) In general

Except as provided in subparagraph (B), that portion of the distribution which is not a dividend, to the extent that it exceeds the adjusted basis of the stock, shall be treated as gain from the sale or exchange of property.

(B) Distributions out of increase in value accrued before March 1, 1913

That portion of the distribution which is not a dividend, to the extent that it exceeds the adjusted basis of the stock and to the extent that it is out of increase in value accrued before March 1, 1913, shall be exempt from tax.

(d) Basis

The basis of property received in a distribution to which subsection (a) applies shall be the fair market value of such property.

(e) Special rule for certain distributions received by 20 percent corporate shareholder

(1) In general

Except to the extent otherwise provided in regulations, solely for purposes of determining the taxable income of any 20 percent corporate shareholder (and its adjusted basis in the stock of the distributing corporation), section 312 shall be applied with respect to the distributing corporation as if it did not contain subsections (k) and (n) thereof.

(2) 20 percent corporate shareholder

For purposes of this subsection, the term "20 percent corporate shareholder" means, with respect to any distribution, any corporation which owns (directly or through the application of section 318)—

(A) stock in the corporation making the distribution possessing at least 20 percent of the total combined voting power of all classes of stock entitled to vote, or

(B) at least 20 percent of the total value of all stock of the distributing corporation (except nonvoting stock which is limited and preferred as to dividends),

but only if, but for this subsection, the distributee corporation would be entitled to a deduction under section 243, 244, or 245 with respect to such distribution.

(3) Application of section 312(n)(7) not affected

The reference in paragraph (1) to subsection (n) of section 312 shall be treated as not including a reference to paragraph (7) of such subsection.

(4) Regulations

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

(f) Special rules

(1) For distributions in redemption of stock, see section 302.

(2) For distributions in complete liquidation, see part II (sec. 331 and following).

(3) For distributions in corporate organizations and reorganizations, see part III (sec. 351 and following).

(4) For taxation of dividends received by individuals at capital gain rates, see section 1(h)(11).

(Aug. 16, 1954, ch. 736, 68A Stat. 84; Pub. L. 87–403, §2(a), Feb. 2, 1962, 76 Stat. 5; Pub. L. 87–834, §§5(a), (b), 13(f)(2), Oct. 16, 1962, 76 Stat. 977, 1035; Pub. L. 88–272, title II, §231(b)(2), Feb. 26, 1964, 78 Stat. 105; Pub. L. 88–484, §1(b)(1), Aug. 22, 1964, 78 Stat. 597; Pub. L. 89–570, §1(b)(2), Sept. 12, 1966, 80 Stat. 762; Pub. L. 89–809, title I, §104(f), Nov. 13, 1966, 80 Stat. 1559; Pub. L. 91–172, title II, §211(b)(1), (2), title IX, §905(b)(2), Dec. 30, 1969, 83 Stat. 570, 714; Pub. L. 92–178, title III, §312(a), Dec. 10, 1971, 85 Stat. 526; Pub. L. 94–455, title II, §205(c)(1)(B), (C), title XIX, §§1901(a)(41), (b)(32)(A), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1535, 1771, 1800, 1834; Pub. L. 95–628, §3(a), (b), Nov. 10, 1978, 92 Stat. 3627; Pub. L. 98–369, div. A, title I, §§54(b), 61(d), title VII, §712(i)(1), July 18, 1984, 98 Stat. 569, 582, 948; Pub. L. 99–514, title VI, §612(b)(1), title XVIII, §1804(f)(2)(B), Oct. 22, 1986, 100 Stat. 2250, 2805; Pub. L. 100–203, title X, §10222(b)(1), Dec. 22, 1987, 101 Stat. 1330–411; Pub. L. 100–647, title I, §1006(e)(10)–(12), title II, §2004(j)(3)(B), Nov. 10, 1988, 102 Stat. 3401, 3402, 3605; Pub. L. 108–27, title III, §302(e)(2), May 28, 2003, 117 Stat. 763.)

AMENDMENTS

2003—Subsec. (f)(4). Pub. L. 108–27 added par. (4).

1988—Subsec. (b)(1). Pub. L. 100–647, §1006(e)(10), amended par. (1) generally. Prior to amendment, par. (1) contained subpars. (A) to (D) which provided what the amount of any distribution would be for noncorporate distributees, corporate distributees, certain corporate distributees of foreign corporations, and foreign corporate distributees.

Subsec. (d). Pub. L. 100–647, §1006(e)(11), amended subsec. (d) generally. Prior to amendment, subsec. (d) contained pars. (1) to (4) which provided what the basis of property received would be for noncorporate distributees, corporate distributees, foreign corporate distributees, and certain corporate distributees of foreign corporations.

Subsec. (e). Pub. L. 100–647, §2004(j)(3)(B), added par. (3) and redesignated former par. (3) as (4).

Pub. L. 100–647, §1006(e)(12), redesignated subsec. (f) as (e) and struck out former subsec. (e) which related to special rule for holding period of appreciated property distributed to corporation.

Subsecs. (f), (g). Pub. L. 100–647, §1006(e)(12), redesignated subsec. (g) as (f). Former subsec. (f) redesignated (e).

1987—Subsec. (f)(1). Pub. L. 100–203 substituted "subsections (k) and (n)" for "subsection (n)".

1986—Subsec. (f)(3). Pub. L. 99–514, §1804(f)(2)(B), substituted "this subsection" for "this section".

Subsec. (g)(4). Pub. L. 99–514, §612(b)(1), struck out par. (4) which provided: "For partial exclusion from gross income of dividends received by individuals, see section 116."

1984—Subsec. (e). Pub. L. 98–369, §54(b), added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (e)(2). Pub. L. 98–369, §712(i)(1), substituted "complete liquidation" for "partial or complete liquidation" in subsec. (e)(2), which became subsec. (g)(2).

Subsec. (f). Pub. L. 98–369, §61(d), added subsec. (f). Former subsec. (f) redesignated (g).

Pub. L. 98–369, §54(b), redesignated former subsec. (e) as (f).

Subsec. (g). Pub. L. 98–369, §§54(b), 61(d), redesignated former subsec. (e) successively as subsec. (f) and as subsec. (g).

Subsec. (g)(2). Pub. L. 98–369, §712(i)(1), substituted "complete liquidation" for "partial or complete liquidation" in subsec. (e)(2), which became subsec. (g)(2).

1978—Subsec. (b)(1)(B)(ii). Pub. L. 95–628, §3(a), substituted "amount of gain recognized to the distributing corporation on the distribution" for "amount of gain to the distributing corporation which is recognized under subsection (b), (c), or (d) of section 311, under section 341(f), or under section 617(d)(1), 1245(a), 1250(a), 1251(c), 1252(a), or 1254(a)".

Subsec. (d)(2)(B). Pub. L. 95–628, §3(b), substituted "amount of gain recognized to the distributing corporation on the distribution" for "amount of gain to the distributing corporation which is recognized under subsection (b), (c), or (d) of section 311, under section 341(f), or under section 617(d)(1), 1245(a), 1250(a), 1251(c), 1252(a), or 1254(a)".

1976—Subsec. (b)(1)(B)(ii). Pub. L. 94–455, §205(c)(1)(B), substituted "1252(a), or 1254(a)" for "or 1252(a)".

Subsec. (b)(1)(C). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (d)(2)(B). Pub. L. 94–455, §205(c)(1)(C), substituted "1252(a), or 1254(a)" for "or 1252(a)".

Subsec. (e). Pub. L. 94–455, §1901(a)(41), (b)(32)(A), redesignated subsec. (g) as (e). Former subsec. (e), which related to exceptions for certain distributions by personal service corporations, was struck out.

Subsec. (f). Pub. L. 94–455, §1901(b)(32)(A), struck out subsec. (f) which related to special rules for distribution of antitrust stock to corporations.

Subsec. (g). Pub. L. 94–455, §1901(b)(32)(A), redesignated subsec. (g) as (e).

1971—Subsec. (b)(1)(B). Pub. L. 92–178, §312(a)(1), substituted "corporation, unless subparagraph (D) applies" for "corporation" where first appearing.

Subsec. (b)(1)(D). Pub. L. 92–178, §312(a)(2), added subpar. (D).

Subsec. (d)(2). Pub. L. 92–178, §312(a)(3), substituted "corporation, unless paragraph (3) applies" for "corporation" where first appearing.

Subsec. (d)(3), (4). Pub. L. 92–178, §312(a)(4), added par. (3) and redesignated former par. (3) as (4).

1969—Subsec. (b)(1)(B)(ii). Pub. L. 91–172, §§211(b)(1), 905(b)(2), substituted "1250(a), 1251(c), or 1252(a)" for "or 1250(a)" and inserted reference to section 311(a).

Subsec. (d)(2)(B). Pub. L. 91–172, §§211(b)(2), 905(b)(2), substituted "1250(a), 1251(c), or 1252(a)", for "or 1250(a)" and inserted reference to section 311(a).

1966—Subsec. (b)(1)(B)(ii). Pub. L. 89–570 included reference to section 617(d)(1).

Subsec. (b)(1)(C). Pub. L. 89–809 substituted "gross income which is effectively connected with the conduct of a trade or business within the United States" for "gross income from sources within the United States" in cl. (i), "gross income which is not effectively connected with the conduct of a trade or business within the United States" for "gross income from sources without the United States" in cl. (ii), and inserted text following cl. (ii) setting out the treatment to be accorded gross income for any period before the first taxable year beginning after December 31, 1966.

Subsec. (d)(2)(B). Pub. L. 89–570 included reference to section 617(d)(1).

1964—Subsec. (b). Pub. L. 88–484 included amount of gain recognized under section 341(f).

Pub. L. 88–272 inserted reference to section 1250(a).

Subsec. (d). Pub. L. 88–484 included amount of gain recognized under section 341(f).

Pub. L. 88–272 inserted reference to section 1250(a).

1962—Subsec. (b)(1)(B). Pub. L. 87–834, §13(f)(2), substituted "subsection (b) or (c) of section 311 or under section 1245(a)" for "subsection (b) or (c) of section 311".

Subsec. (b)(1)(C). Pub. L. 87–834, §5(a), added subpar. (C).

Subsec. (d)(2). Pub. L. 87–834, §13(f)(2), substituted "subsection (b) or (c) of section 311 or under section 1245(a)" for "subsection (b) or (c) of section 311".

Subsec. (d)(3). Pub. L. 87–834, §5(b), added par. (3).

Subsecs. (f), (g). Pub. L. 87–403 added subsec. (f) and redesignated former subsec. (f) as (g).

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–27 applicable, except as otherwise provided, to taxable years beginning after Dec. 31, 2002, see section 302(f) of Pub. L. 108–27, set out as an Effective and Termination Dates of 2003 Amendment note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1006(e)(10)–(12) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 2004(j)(3)(B) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title X, §10222(b)(2), Dec. 22, 1987, 101 Stat. 1330–411, as amended by Pub. L. 100–647, title II, §2004(j)(4), Nov. 10, 1988, 102 Stat. 3605, provided that:

"(A) IN GENERAL.—The amendment made by paragraph (1) [amending this section] shall apply to distributions after December 15, 1987. For purposes of applying such amendment to any such distribution—

"(i) for purposes of determining earnings and profits, such amendment shall be deemed to be in effect for all periods whether before, on, or after December 15, 1987, but

"(ii) such amendment shall not affect the determination of whether any distribution on or before December 15, 1987, is a dividend and the amount of any reduction in accumulated earnings and profits on account of any such distribution.

"(B) EXCEPTION.—The amendment made by paragraph (1) shall not apply for purposes of determining gain or loss on any disposition of stock after December 15, 1987, and before January 1, 1989, if such disposition is pursuant to a written binding contract, governmental order, letter of intent or preliminary agreement, or stock acquisition agreement, in effect on or before December 15, 1987."

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title VI, §612(c), Oct. 22, 1986, 100 Stat. 2251, provided that: "The amendments made by this section [amending this section and sections 584, 642, 643, 702, 854, and 857 of this title, repealing section 116 of this title, and enacting provisions set out as a note under section 584 of this title] shall apply to taxable years beginning after December 31, 1986."

Amendment by section 1804(f)(2)(B) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 54(b) of Pub. L. 98–369 applicable to distributions after July 18, 1984, in taxable years ending after July 18, 1984, see section 54(d)(2) of Pub. L. 98–369, set out as a note under section 311 of this title.

Pub. L. 98–369, div. A, title I, §61(e)(4), July 18, 1984, 98 Stat. 583, provided that: "The amendment made by subsection (d) [amending this section] shall apply to distributions after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date."

Amendment by section 712(i)(1) of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–628, §3(d), Nov. 10, 1978, 92 Stat. 3628, provided that: "The amendments made by this section [amending this section and section 312 of this title] shall apply to distributions made after the date of the enactment of this Act [Nov. 10, 1978]."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 205(c)(1)(B), (C) of Pub. L. 94–455 effective for taxable years ending after Dec. 31, 1975, see section 205(e) of Pub. L. 94–455, set out as an Effective Date note under section 1254 of this title.

Amendment by section 1901(a)(41), (b)(32)(A) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Pub. L. 92–178, title III, §312(b), Dec. 10, 1971, 85 Stat. 526, provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to distributions made after November 8, 1971."

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title II, §211(c), Dec. 30, 1969, 83 Stat. 570, provided that: "The amendments made by this section [enacting section 1251 of this title and amending this section and sections 312, 341, 453, and 751 of this title] shall apply to taxable years beginning after December 31, 1969."

Amendment by section 905(b)(2) of Pub. L. 91–172 effective with respect to distributions made after Nov. 30, 1969, see section 905(c) of Pub. L. 91–172, set out as a note under section 311 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

Amendment by Pub. L. 89–570 applicable to taxable years ending after Sept. 12, 1966, but only in respect of expenditures paid or incurred after such date, see section 3 of Pub. L. 89–570, set out as an Effective Date note under section 617 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88–484, §2, Aug. 22, 1964, 78 Stat. 597, provided that: "The amendments made by the first section of this Act [amending this section and sections 312, 341, and 453 of this title] shall apply with respect to

transactions after the date of the enactment of this Act [Aug. 22, 1964] in taxable years ending after such date."

Amendment by Pub. L. 88–272 applicable to dispositions after Dec. 31, 1963, in taxable years ending after such date, see section 231(c) of Pub. L. 88–272, set out as an Effective Date note under section 1250 of this title.

EFFECTIVE DATE OF 1962 AMENDMENTS

Pub. L. 87–834, §5(d), Oct. 16, 1962, 76 Stat. 977, provided that: "The amendments made by this section [amending this section and section 245 of this title] shall apply to distributions made after December 31, 1962."

Amendment by section 13(f)(2) of Pub. L. 87–834 applicable to taxable years beginning after Dec. 31, 1962, see section 13(g) of Pub. L. 87–834, set out as an Effective Date note under section 1245 of this title.

Pub. L. 87–403, §2(b), Feb. 2, 1962, 76 Stat. 6, provided that: "The amendments made by this section [amending this section] shall apply only with respect to distributions made after the date of the enactment of this Act [Feb. 2, 1962]."

STUDY OF CORPORATE PROVISIONS

Pub. L. 99–514, title VI, §634, Oct. 22, 1986, 100 Stat. 2282, directed Secretary of the Treasury or his delegate to conduct a study of proposals to reform the provisions of subchapter C of chapter 1 of the Internal Revenue Code of 1986, and not later than Jan. 1, 1988 (due date extended to Jan. 1, 1992, by Pub. L. 101–508, title XI, §11831(b), Nov. 5, 1990, 104 Stat. 1388–559), to submit to Committee on Ways and Means of House of Representatives and Committee on Finance of Senate a report on the study conducted (together with such recommendations he deemed advisable).

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§302. Distributions in redemption of stock

(a) General rule

If a corporation redeems its stock (within the meaning of section 317(b)), and if paragraph (1), (2), (3), (4), or (5) of subsection (b) applies, such redemption shall be treated as a distribution in part or full payment in exchange for the stock.

(b) Redemptions treated as exchanges

(1) Redemptions not equivalent to dividends

Subsection (a) shall apply if the redemption is not essentially equivalent to a dividend.

(2) Substantially disproportionate redemption of stock

(A) In general

Subsection (a) shall apply if the distribution is substantially disproportionate with respect to the shareholder.

(B) Limitation

This paragraph shall not apply unless immediately after the redemption the shareholder owns less than 50 percent of the total combined voting power of all classes of stock entitled to vote.

(C) Definitions

For purposes of this paragraph, the distribution is substantially disproportionate if—

(i) the ratio which the voting stock of the corporation owned by the shareholder immediately after the redemption bears to all of the voting stock of the corporation at such time,

is less than 80 percent of—

(ii) the ratio which the voting stock of the corporation owned by the shareholder immediately before the redemption bears to all of the voting stock of the corporation at such time.

For purposes of this paragraph, no distribution shall be treated as substantially disproportionate unless the shareholder's ownership of the common stock of the corporation (whether voting or nonvoting) after and before redemption also meets the 80 percent requirement of the preceding sentence. For purposes of the preceding sentence, if there is more than one class of common stock, the determinations shall be made by reference to fair market value.

(D) Series of redemptions

This paragraph shall not apply to any redemption made pursuant to a plan the purpose or effect of which is a series of redemptions resulting in a distribution which (in the aggregate) is not substantially disproportionate with respect to the shareholder.

(3) Termination of shareholder's interest

Subsection (a) shall apply if the redemption is in complete redemption of all of the stock of the corporation owned by the shareholder.

(4) Redemption from noncorporate shareholder in partial liquidation

Subsection (a) shall apply to a distribution if such distribution is—

(A) in redemption of stock held by a shareholder who is not a corporation, and

(B) in partial liquidation of the distributing corporation.

(5) Redemptions by certain regulated investment companies

Except to the extent provided in regulations prescribed by the Secretary, subsection (a) shall apply to any distribution in redemption of stock of a publicly offered regulated investment company (within the meaning of section 67(c)(2)(B)) if—

(A) such redemption is upon the demand of the stockholder, and

(B) such company issues only stock which is redeemable upon the demand of the stockholder.

(6) Application of paragraphs

In determining whether a redemption meets the requirements of paragraph (1), the fact that such redemption fails to meet the requirements of paragraph (2), (3), or (4) shall not be taken into account. If a redemption meets the requirements of paragraph (3) and also the requirements of paragraph (1), (2), or (4), then so much of subsection (c)(2) as would (but for this sentence) apply in respect of the acquisition of an interest in the corporation within the 10-year period beginning on the date of the distribution shall not apply.

(c) Constructive ownership of stock

(1) In general

Except as provided in paragraph (2) of this subsection, section 318(a) shall apply in determining the ownership of stock for purposes of this section.

(2) For determining termination of interest

(A) In the case of a distribution described in subsection (b)(3), section 318(a)(1) shall not apply if—

(i) immediately after the distribution the distributee has no interest in the corporation (including an interest as officer, director, or employee), other than an interest as a creditor,

(ii) the distributee does not acquire any such interest (other than stock acquired by bequest or inheritance) within 10 years from the date of such distribution, and

(iii) the distributee, at such time and in such manner as the Secretary by regulations prescribes, files an agreement to notify the Secretary of any acquisition described in clause (ii) and to retain such records as may be necessary for the application of this paragraph.

If the distributee acquires such an interest in the corporation (other than by bequest or inheritance) within 10 years from the date of the distribution, then the periods of limitation provided in sections 6501 and 6502 on the making of an assessment and the collection by levy or a proceeding in court shall, with respect to any deficiency (including interest and additions to the tax) resulting from such acquisition, include one year immediately following the date on which the distributee (in accordance with regulations prescribed by the Secretary) notifies the Secretary of such acquisition; and such assessment and collection may be made notwithstanding any provision of law or rule of law which otherwise would prevent such assessment and collection.

(B) Subparagraph (A) of this paragraph shall not apply if—

(i) any portion of the stock redeemed was acquired, directly or indirectly, within the 10-year period ending on the date of the distribution by the distributee from a person the ownership of whose stock would (at the time of distribution) be attributable to the distributee under section 318(a), or

(ii) any person owns (at the time of the distribution) stock the ownership of which is attributable to the distributee under section 318(a) and such person acquired any stock in the corporation, directly or indirectly, from the distributee within the 10-year period ending on the date of the distribution, unless such stock so acquired from the distributee is redeemed in the same transaction.

The preceding sentence shall not apply if the acquisition (or, in the case of clause (ii), the disposition) by the distributee did not have as one of its principal purposes the avoidance of Federal income tax.

(C) Special rule for waivers by entities

(i) In general

Subparagraph (A) shall not apply to a distribution to any entity unless—

(I) such entity and each related person meet the requirements of clauses (i), (ii), and (iii) of subparagraph (A), and

(II) each related person agrees to be jointly and severally liable for any deficiency (including interest and additions to tax) resulting from an acquisition described in clause (ii) of subparagraph (A).

In any case to which the preceding sentence applies, the second sentence of subparagraph (A) and subparagraph (B)(ii) shall be applied by substituting "distributee or any related person" for "distributee" each place it appears.

(ii) Definitions

For purposes of this subparagraph—

(I) the term "entity" means a partnership, estate, trust, or corporation; and

(II) the term "related person" means any person to whom ownership of stock in the corporation is (at the time of the distribution) attributable under section 318(a)(1) if such stock is further attributable to the entity under section 318(a)(3).

(d) Redemptions treated as distributions of property

Except as otherwise provided in this subchapter, if a corporation redeems its stock (within the meaning of section 317(b)), and if subsection (a) of this section does not apply, such redemption shall be treated as a distribution of property to which section 301 applies.

(e) Partial liquidation defined

(1) In general

For purposes of subsection (b)(4), a distribution shall be treated as in partial liquidation of a corporation if—

(A) the distribution is not essentially equivalent to a dividend (determined at the corporate level rather than at the shareholder level), and

(B) the distribution is pursuant to a plan and occurs within the taxable year in which the plan is adopted or within the succeeding taxable year.

(2) Termination of business

The distributions which meet the requirements of paragraph (1)(A) shall include (but shall not be limited to) a distribution which meets the requirements of subparagraphs (A) and (B) of this paragraph:

(A) The distribution is attributable to the distributing corporation's ceasing to conduct, or consists of the assets of, a qualified trade or business.

(B) Immediately after the distribution, the distributing corporation is actively engaged in the conduct of a qualified trade or business.

(3) Qualified trade or business

For purposes of paragraph (2), the term "qualified trade or business" means any trade or business which—

(A) was actively conducted throughout the 5-year period ending on the date of the redemption, and

(B) was not acquired by the corporation within such period in a transaction in which gain or loss was recognized in whole or in part.

(4) Redemption may be pro rata

Whether or not a redemption meets the requirements of subparagraphs (A) and (B) of paragraph (2) shall be determined without regard to whether or not the redemption is pro rata with respect to all of the shareholders of the corporation.

(5) Treatment of certain pass-thru entities

For purposes of determining under subsection (b)(4) whether any stock is held by a shareholder who is not a corporation, any stock held by a partnership, estate, or trust shall be treated as if it were actually held proportionately by its partners or beneficiaries.

(f) Cross references

For special rules relating to redemption—

(1) Death Taxes.—Of stock to pay death taxes, see section 303.

(2) Section 306 Stock.—Of section 306 stock, see section 306.

(3) Liquidations.—Of stock in complete liquidation, see section 331.

(Aug. 16, 1954, ch. 736, 68A Stat. 85; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–589, §5(b), Dec. 24, 1980, 94 Stat. 3405; Pub. L. 97–248, title II, §§222(c), 228(a), Sept. 3, 1982, 96 Stat. 478, 493; Pub. L. 98–369, div. A, title VII, §712(i)(1), July 18, 1984, 98 Stat. 948; Pub. L. 111–325, title III, §306(a), Dec. 22, 2010, 124 Stat. 3549.)

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–325, §306(a)(2), substituted "(4), or (5)" for "or (4)".

Subsec. (b)(5), (6). Pub. L. 111–325, §306(a)(1), added par. (5) and redesignated former par. (5) as (6).

1984—Subsec. (f)(3). Pub. L. 98–369 substituted "complete liquidation" for "partial or complete liquidation".

1982—Subsec. (a). Pub. L. 97–248, §222(c)(3), substituted "paragraph (1), (2), (3), or (4)" for "paragraph (1), (2), or (3)".

Subsec. (b)(4), (5). Pub. L. 97–248, §222(c)(1), (4), added par. (4), redesignated former par. (4) as (5) and substituted "paragraph (2), (3), or (4)" for "paragraph (2) or (3)" after "to meet the requirements of", and "paragraph (1), (2), or (4)" for "paragraph (1) or (2)" after "and also the requirements of".

Subsec. (c)(2)(C). Pub. L. 97–248, §228(a), added subpar. (C).

Subsecs. (e), (f). Pub. L. 97–248, §222(c)(2), added subsec. (e) and redesignated former subsec. (e) as (f).

1980—Subsec. (a). Pub. L. 96–589, §5(b)(2)(A), struck out reference to par. (4) of subsec. (b).

Subsec. (b)(4), (5). Pub. L. 96–589, §5(b)(1), (2)(B), redesignated par. (5) as (4) and struck out reference to par. (4) in two places. Former par. (4) was struck out.

1976—Subsec. (c)(2). Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–325 applicable to distributions after Dec. 22, 2010, see section 306(c) of Pub. L. 111–325, set out as a note under section 267 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT; PARTIAL LIQUIDATIONS

Pub. L. 97–248, title II, §228(b), Sept. 3, 1982, 96 Stat. 493, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to distributions after August 31, 1982, in taxable years ending after such date."

Pub. L. 97–248, title II, §222(f), Sept. 3, 1982, 96 Stat. 481, as amended by Pub. L. 97–448, title III, §306(a)(6)(A), Jan. 12, 1983, 96 Stat. 2402; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and sections 306, 312, 331, 334, 336, 341, 346, 543, and 562 of this title and repealing section 338 of this title] shall apply to distributions after August 31, 1982.

"(2) EXCEPTIONS.—

"(A) RULING REQUESTS.—The amendments made by this section shall not apply to distributions made by any corporation if—

"(i)(I) on July 22, 1982, there was a ruling request by such corporation pending with the Internal Revenue Service as to whether such distributions would qualify as a partial liquidation, or

"(II) within the period beginning on July 12, 1981, and ending on July 22, 1982, the Internal Revenue Service granted a ruling to such corporation that the distributions would qualify as a partial liquidation, and

"(ii) such distributions are pursuant to a plan of partial liquidation adopted before October 1, 1982 (or, if later, 90 days after the date on which the Internal Revenue Service granted a ruling pursuant to the request described in clause (i)(I)).

"(B) PLANS ADOPTED BEFORE JULY 23, 1982.—The amendments made by this section shall not apply to distributions made pursuant to a plan of partial liquidation adopted before July 23, 1982.

"(C) CONTROL ACQUIRED AFTER 1981 AND BEFORE JULY 23, 1982.—The amendments made by this section shall not apply to distributions made pursuant to a plan of partial liquidation adopted before October 1, 1982, where control of the corporation making the distributions was acquired after December 31, 1981, and before July 23, 1982.

"(D) TENDER OFFER OR BINDING CONTRACT OUTSTANDING ON JULY 22, 1982.—

"(i) IN GENERAL.—The amendments made by this section shall not apply to distributions made by a corporation if—

"(I) such distributions are pursuant to a plan of liquidation adopted before October 1, 1982, and

"(II) control of such corporation was acquired after July 22, 1982, pursuant to a tender offer or binding contract outstanding on such date.

"(ii) EXTENSION OF TIME FOR ADOPTING PLAN WHERE ACQUISITION SUBJECT TO FEDERAL REGULATORY APPROVAL.—If the acquisition described in clause (i)(II) is subject to approval by a Federal regulatory agency, clause (i) shall be applied by substituting for 'October 1, 1982' the date which is 90 days after the date on which approval by the Federal regulatory agency of such acquisition becomes final.

"(iii) SPECIAL RULE WHERE OFFER SUBJECT TO APPROVAL BY FOREIGN REGULATORY BODY.—In any case where an offer to acquire stock in a corporation was subject to intervention by a foreign regulatory body and a public announcement of such an offer resulted in the intervention by such foreign regulatory body before July 23, 1982—

"(I) such public announcement shall be treated as a tender offer, and

"(II) clause (i) shall be applied by substituting for 'October 1, 1982' the date which is 90 days after the date on which such regulatory body approves a public offer to acquire stock in such corporation.

"(iv) SPECIAL RULE WHERE ONE-THIRD OF SHARES ACQUIRED DURING MARCH AND APRIL 1982.—If—

"(I) one-third or more of the shares of a corporation were acquired by another corporation during March and April 1982, and

"(II) during March or April 1982, the acquiring corporation filed with the Federal Trade Commission notification of its intent to acquire control of the acquired corporation,

subclause (II) of clause (i) shall not apply with respect to distributions made by the acquired corporation.

"(E) INSURANCE COMPANIES.—The amendments made by this section shall not apply to distributions made by an insurance company pursuant to a plan of partial liquidation adopted before October 1, 1982, where control was acquired by the distributee or its parent after December 31, 1980, and before July 23, 1982, and the conduct of the insurance business by the distributee is conditioned on approval by a State regulatory authority.

For purposes of this paragraph, the term 'control' has the meaning given to such term by section 368(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], except that in applying such section both direct and indirect ownership of stock shall be taken into account.

"(3) APPROVAL OF PLAN BY BOARD OF DIRECTORS.—For purposes of—

"(A) paragraph (2), and

"(B) applying section 346(a)(2) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act) [Sept. 3, 1982] to distributions to which (but for paragraph (2)) the amendments made by this section would apply,

a plan of liquidation shall be treated as adopted when approved by the corporation's board of directors.

"(4) COORDINATION WITH AMENDMENTS MADE BY SECTION 224.—For purposes of section 338(e)(2)(C) of the Internal Revenue Code of 1986 (as added by section 224), any property acquired in a distribution to which the amendments made by this section do not apply by reason of paragraph (2) shall be treated as acquired before September 1, 1982."

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–589 applicable to stock which is issued after Dec. 31, 1980, except as otherwise provided, see section 7(d)(2), (f) of Pub. L. 96–589, set out as a note under section 108 of this title.

SAVINGS PROVISIONS

Applicability of subsec. (b)(1) to the determination of gross investment income under sections 4940 and 4948(a) of this title, see section 101(l)(8) of Pub. L. 91–172, set out as a note under section 4940 of this title.

§303. Distributions in redemption of stock to pay death taxes

(a) In general

A distribution of property to a shareholder by a corporation in redemption of part or all of the stock of such corporation which (for Federal estate tax purposes) is included in determining the gross estate of a decedent, to the extent that the amount of such distribution does not exceed the sum of—

(1) the estate, inheritance, legacy, and succession taxes (including any interest collected as a part of such taxes) imposed because of such decedent's death, and

(2) the amount of funeral and administration expenses allowable as deductions to the estate under section 2053 (or under section 2106 in the case of the estate of a decedent nonresident, not a citizen of the United States),

shall be treated as a distribution in full payment in exchange for the stock so redeemed.

(b) Limitations on application of subsection (a)

(1) Period for distribution

Subsection (a) shall apply only to amounts distributed after the death of the decedent and—

(A) within the period of limitations provided in section 6501(a) for the assessment of the Federal estate tax (determined without the application of any provision other than section 6501(a)), or within 90 days after the expiration of such period,

(B) if a petition for redetermination of a deficiency in such estate tax has been filed with the Tax Court within the time prescribed in section 6213, at any time before the expiration of 60

days after the decision of the Tax Court becomes final, or

(C) if an election has been made under section 6166 and if the time prescribed by this subparagraph expires at a later date than the time prescribed by subparagraph (B) of this paragraph, within the time determined under section 6166 for the payment of the installments.

(2) Relationship of stock to decedent's estate

(A) In general

Subsection (a) shall apply to a distribution by a corporation only if the value (for Federal estate tax purposes) of all of the stock of such corporation which is included in determining the value of the decedent's gross estate exceeds 35 percent of the excess of—

(i) the value of the gross estate of such decedent, over

(ii) the sum of the amounts allowable as a deduction under section 2053 or 2054.

(B) Special rule for stock of two or more corporations

For purposes of subparagraph (A), stock of 2 or more corporations, with respect to each of which there is included in determining the value of the decedent's gross estate 20 percent or more in value of the outstanding stock, shall be treated as the stock of a single corporation. For purposes of the 20-percent requirement of the preceding sentence, stock which, at the decedent's death, represents the surviving spouse's interest in property held by the decedent and the surviving spouse as community property or as joint tenants, tenants by the entirety, or tenants in common shall be treated as having been included in determining the value of the decedent's gross estate.

(3) Relationship of shareholder to estate tax

Subsection (a) shall apply to a distribution by a corporation only to the extent that the interest of the shareholder is reduced directly (or through a binding obligation to contribute) by any payment of an amount described in paragraph (1) or (2) of subsection (a).

(4) Additional requirements for distributions made more than 4 years after decedent's death

In the case of amounts distributed more than 4 years after the date of the decedent's death, subsection (a) shall apply to a distribution by a corporation only to the extent of the lesser of—

(A) the aggregate of the amounts referred to in paragraph (1) or (2) of subsection (a) which remained unpaid immediately before the distribution, or

(B) the aggregate of the amounts referred to in paragraph (1) or (2) of subsection (a) which are paid during the 1-year period beginning on the date of such distribution.

(c) Stock with substituted basis

If—

(1) a shareholder owns stock of a corporation (referred to in this subsection as "new stock") the basis of which is determined by reference to the basis of stock of a corporation (referred to in this subsection as "old stock"),

(2) the old stock was included (for Federal estate tax purposes) in determining the gross estate of a decedent, and

(3) subsection (a) would apply to a distribution of property to such shareholder in redemption of the old stock,

then, subject to the limitation specified in subsection (b), subsection (a) shall apply in respect of a distribution in redemption of the new stock.

(d) Special rules for generation-skipping transfers

Where stock in a corporation is the subject of a generation-skipping transfer (within the meaning of section 2611(a)) occurring at the same time as and as a result of the death of an individual—

(1) the stock shall be deemed to be included in the gross estate of such individual;

(2) taxes of the kind referred to in subsection (a)(1) which are imposed because of the generation-skipping transfer shall be treated as imposed because of such individual's death (and

for this purpose the tax imposed by section 2601 shall be treated as an estate tax);

(3) the period of distribution shall be measured from the date of the generation-skipping transfer; and

(4) the relationship of stock to the decedent's estate shall be measured with reference solely to the amount of the generation-skipping transfer.

(Aug. 16, 1954, ch. 736, 68A Stat. 88; Pub. L. 94–455, title XX, §§2004(e), 2006(b)(4), Oct. 4, 1976, 90 Stat. 1871, 1889; Pub. L. 97–34, title IV, §422(b), (e)(1), Aug. 13, 1981, 95 Stat. 314, 316; Pub. L. 99–514, title XIV, §1432(b), Oct. 22, 1986, 100 Stat. 2730.)

AMENDMENTS

1986—Subsec. (d). Pub. L. 99–514 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "Under regulations prescribed by the Secretary, where stock in a corporation is subject to tax under section 2601 as a result of a generation-skipping transfer (within the meaning of section 2611(a)), which occurs at or after the death of the deemed transferor (within the meaning of section 2612)—

"(1) the stock shall be deemed to be included in the gross estate of the deemed transferor;

"(2) taxes of the kind referred to in subsection (a)(1) which are imposed because of the generation-skipping transfer shall be treated as imposed because of the deemed transferor's death (and for this purpose the tax imposed by section 2601 shall be treated as an estate tax);

"(3) the period of distribution shall be measured from the date of the generation-skipping transfer; and

"(4) the relationship of stock to the decedent's estate shall be measured with reference solely to the amount of the generation-skipping transfer."

1981—Subsec. (b)(1)(C). Pub. L. 97–34, §422(e)(1), struck out "or 6166A" after "section 6166" in two places.

Subsec. (b)(2)(A). Pub. L. 97–34, §422(b)(1), substituted "35" for "50" before percent.

Subsec. (b)(2)(B). Pub. L. 97–34, §422(b)(2), in heading, substituted "stock in 2" for "stock of two", in first sentence, struck out "the 50 percent requirement" before "of subparagraph (A)" and substituted "2" for "two" and "20 percent or more in value" for "more than 75 percent in value", and, in last sentence, substituted "For purposes of the 20-percent requirement" for "For the purpose of the 75 percent requirement" and, in determining value of decedent's gross estate, treated the estate as including stock which at decedent's death represented surviving spouse's interest in property held by the decedent and surviving spouse either as joint tenants, tenants by the entirety, or tenants in common.

1976—Subsec. (b)(1)(C). Pub. L. 94–455, §2004(e)(1), added subpar. (C).

Subsec. (b)(2)(A). Pub. L. 94–455, §2004(e)(2)(A), substituted provisions limiting the applicability of subsec. (a) to corporate distributions in which the value of the corporate stock included in decedent's gross estate exceeds 50 percent of the gross estate over deductions allowed under sections 2053 and 2054 for provisions limiting the applicability of subsec. (a) to corporate distributions in which the value of the corporate stock included in decedent's gross estate is either more than 35 percent of the gross estate or 50 percent of the taxable estate.

Subsec. (b)(2)(B). Pub. L. 94–455, §2004(e)(2)(B), substituted "the 50 percent requirement" for "the 35 percent and 50 percent requirements".

Subsec. (b)(3), (4). Pub. L. 94–455, §2004(e)(3), added pars. (3) and (4).

Subsec. (c). Pub. L. 94–455, §2004(e)(4), substituted "limitation specified in subsection (b)" for "limitation specified in subsection (b)(1)".

Subsec. (d). Pub. L. 94–455, §2006(b)(4), added subsec. (d).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99–514, set out as an Effective Date note under section 2601 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to estates of decedents dying after Dec. 31, 1981, see section 422(f) of Pub. L. 97–34, set out as a note under section 6166 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 2004(e)(1)–(4) of Pub. L. 94–455 applicable to estates of decedents dying after Dec. 31, 1976, see section 2004(g) of Pub. L. 94–455, set out as an Effective Date note under section 6166 of this title.

For effective date of amendment by section 2006(b)(4) of Pub. L. 94–455, see section 2006(c) of Pub. L. 94–455, set out as an Effective Date note under section 2601 of this title.

§304. Redemption through use of related corporations

(a) Treatment of certain stock purchases

(1) Acquisition by related corporation (other than subsidiary)

For purposes of sections 302 and 303, if—

(A) one or more persons are in control of each of two corporations, and

(B) in return for property, one of the corporations acquires stock in the other corporation from the person (or persons) so in control,

then (unless paragraph (2) applies) such property shall be treated as a distribution in redemption of the stock of the corporation acquiring such stock. To the extent that such distribution is treated as a distribution to which section 301 applies, the transferor and the acquiring corporation shall be treated in the same manner as if the transferor had transferred the stock so acquired to the acquiring corporation in exchange for stock of the acquiring corporation in a transaction to which section 351(a) applies, and then the acquiring corporation had redeemed the stock it was treated as issuing in such transaction.

(2) Acquisition by subsidiary

For purposes of sections 302 and 303, if—

(A) in return for property, one corporation acquires from a shareholder of another corporation stock in such other corporation, and

(B) the issuing corporation controls the acquiring corporation,

then such property shall be treated as a distribution in redemption of the stock of the issuing corporation.

(b) Special rules for application of subsection (a)

(1) Rules for determinations under section 302(b)

In the case of any acquisition of stock to which subsection (a) of this section applies, determinations as to whether the acquisition is, by reason of section 302(b), to be treated as a distribution in part or full payment in exchange for the stock shall be made by reference to the stock of the issuing corporation. In applying section 318(a) (relating to constructive ownership of stock) with respect to section 302(b) for purposes of this paragraph, sections 318(a)(2)(C) and 318(a)(3)(C) shall be applied without regard to the 50 percent limitation contained therein.

(2) Amount constituting dividend

In the case of any acquisition of stock to which subsection (a) applies, the determination of the amount which is a dividend (and the source thereof) shall be made as if the property were distributed—

(A) by the acquiring corporation to the extent of its earnings and profits, and

(B) then by the issuing corporation to the extent of its earnings and profits.

(3) Coordination with section 351

(A) Property treated as received in redemption

Except as otherwise provided in this paragraph, subsection (a) (and not section 351 and not so much of sections 357 and 358 as relates to section 351) shall apply to any property received in a distribution described in subsection (a).

(B) Certain assumptions of liability, etc.

(i) In general

In the case of an acquisition described in section 351, subsection (a) shall not apply to any liability—

(I) assumed by the acquiring corporation, or

(II) to which the stock is subject,

if such liability was incurred by the transferor to acquire the stock. For purposes of the preceding sentence, the term "stock" means stock referred to in paragraph (1)(B) or (2)(A) of subsection (a).

(ii) Extension of obligations, etc.

For purposes of clause (i), an extension, renewal, or refinancing of a liability which meets the requirements of clause (i) shall be treated as meeting such requirements.

(iii) Clause (i) does not apply to stock acquired from related person except where complete termination

Clause (i) shall apply only to stock acquired by the transferor from a person—

(I) none of whose stock is attributable to the transferor under section 318(a) (other than paragraph (4) thereof), or

(II) who satisfies rules similar to the rules of section 302(c)(2) with respect to both the acquiring and the issuing corporations (determined as if such person were a distributee of each such corporation).

(C) Distributions incident to formation of bank holding companies

If—

(i) pursuant to a plan, control of a bank is acquired and within 2 years after the date on which such control is acquired, stock constituting control of such bank is transferred to a BHC in connection with its formation,

(ii) incident to the formation of the BHC there is a distribution of property described in subsection (a), and

(iii) the shareholders of the BHC who receive distributions of such property do not have control of such BHC,

then, subsection (a) shall not apply to any securities received by a qualified minority shareholder incident to the formation of such BHC. For purposes of this subparagraph, any assumption of (or acquisition of stock subject to) a liability under subparagraph (B) shall not be treated as a distribution of property.

(D) Definitions and special rule

For purposes of subparagraph (C) and this subparagraph—

(i) Qualified minority shareholder

The term "qualified minority shareholder" means any shareholder who owns less than 10 percent (in value) of the stock of the BHC. For purposes of the preceding sentence, the rules of paragraph (3) of subsection (c) shall apply.

(ii) BHC

The term "BHC" means a bank holding company (within the meaning of section 2(a) of the Bank Holding Company Act of 1956).

(iii) Special rule in case of BHC's formed before 1985

In the case of a BHC which is formed before 1985, clause (i) of subparagraph (C) shall not apply.

(4) Treatment of certain intragroup transactions

(A) In general

In the case of any transfer described in subsection (a) of stock from 1 member of an affiliated

group to another member of such group, proper adjustments shall be made to—

(i) the adjusted basis of any intragroup stock, and

(ii) the earnings and profits of any member of such group,

to the extent necessary to carry out the purposes of this section.

(B) Definitions

For purposes of this paragraph—

(i) Affiliated group

The term "affiliated group" has the meaning given such term by section 1504(a).

(ii) Intragroup stock

The term "intragroup stock" means any stock which—

(I) is in a corporation which is a member of an affiliated group, and

(II) is held by another member of such group.

(5) Acquisitions by foreign corporations

(A) In general

In the case of any acquisition to which subsection (a) applies in which the acquiring corporation is a foreign corporation, the only earnings and profits taken into account under paragraph (2)(A) shall be those earnings and profits—

(i) which are attributable (under regulations prescribed by the Secretary) to stock of the acquiring corporation owned (within the meaning of section 958(a)) by a corporation or individual which is—

(I) a United States shareholder (within the meaning of section 951(b)) of the acquiring corporation, and

(II) the transferor or a person who bears a relationship to the transferor described in section 267(b) or 707(b), and

(ii) which were accumulated during the period or periods such stock was owned by such person while the acquiring corporation was a controlled foreign corporation.

(B) Special rule in case of foreign acquiring corporation

In the case of any acquisition to which subsection (a) applies in which the acquiring corporation is a foreign corporation, no earnings and profits shall be taken into account under paragraph (2)(A) (and subparagraph (A) shall not apply) if more than 50 percent of the dividends arising from such acquisition (determined without regard to this subparagraph) would neither—

(i) be subject to tax under this chapter for the taxable year in which the dividends arise, nor

(ii) be includible in the earnings and profits of a controlled foreign corporation (as defined in section 957 and without regard to section 953(c)).

(C) Regulations

The Secretary shall prescribe such regulations as are appropriate to carry out the purposes of this paragraph.

(6) Avoidance of multiple inclusions, etc.

In the case of any acquisition to which subsection (a) applies in which the acquiring corporation or the issuing corporation is a foreign corporation, the Secretary shall prescribe such regulations as are appropriate in order to eliminate a multiple inclusion of any item in income by reason of this subpart and to provide appropriate basis adjustments (including modifications to the application of sections 959 and 961).

(c) Control

(1) In general

For purposes of this section, control means the ownership of stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote, or at least 50 percent of the total value of shares of all classes of stock. If a person (or persons) is in control (within the meaning of the preceding sentence) of a corporation which in turn owns at least 50 percent of the total combined voting power of all stock entitled to vote of another corporation, or owns at least 50 percent of the total value of the shares of all classes of stock of another corporation, then such person (or persons) shall be treated as in control of such other corporation.

(2) Stock acquired in the transaction

For purposes of subsection (a)(1)—

(A) General rule

Where 1 or more persons in control of the issuing corporation transfer stock of such corporation in exchange for stock of the acquiring corporation, the stock of the acquiring corporation received shall be taken into account in determining whether such person or persons are in control of the acquiring corporation.

(B) Definition of control group

Where 2 or more persons in control of the issuing corporation transfer stock of such corporation to the acquiring corporation and, after the transfer, the transferors are in control of the acquiring corporation, the person or persons in control of each corporation shall include each of the persons who so transfer stock.

(3) Constructive ownership

(A) In general

Section 318(a) (relating to constructive ownership of stock) shall apply for purposes of determining control under this section.

(B) Modification of 50-percent limitations in section 318

For purposes of subparagraph (A)—

(i) paragraph (2)(C) of section 318(a) shall be applied by substituting "5 percent" for "50 percent", and

(ii) paragraph (3)(C) of section 318(a) shall be applied—

(I) by substituting "5 percent" for "50 percent", and

(II) in any case where such paragraph would not apply but for subclause (I), by considering a corporation as owning the stock (other than stock in such corporation) owned by or for any shareholder of such corporation in that proportion which the value of the stock which such shareholder owned in such corporation bears to the value of all stock in such corporation.

(Aug. 16, 1954, ch. 736, 68A Stat. 89; Pub. L. 88–554, §4(b)(1), Aug. 31, 1964, 78 Stat. 763; Pub. L. 97–248, title II, §226(a)(1)(A), (2), (3), Sept. 3, 1982, 96 Stat. 490, 491; Pub. L. 98–369, div. A, title VII, §712(l)(1)–(5)(A), July 18, 1984, 98 Stat. 953, 954; Pub. L. 99–514, title XVIII, §1875(b), Oct. 22, 1986, 100 Stat. 2894; Pub. L. 100–203, title X, §10223(c), Dec. 22, 1987, 101 Stat. 1330–411; Pub. L. 100–647, title II, §2004(k)(2), Nov. 10, 1988, 102 Stat. 3605; Pub. L. 105–34, title X, §1013(a), (c), Aug. 5, 1997, 111 Stat. 918; Pub. L. 105–206, title VI, §6010(d), July 22, 1998, 112 Stat. 814; Pub. L. 111–226, title II, §215(a), Aug. 10, 2010, 124 Stat. 2399.)

REFERENCES IN TEXT

Section 2(a) of the Bank Holding Company Act of 1956, referred to in subsec. (b)(3)(D)(ii), is classified to section 1841(a) of Title 12, Banks and Banking.

AMENDMENTS

2010—Subsec. (b)(5)(B), (C). Pub. L. 111–226 added subpar. (B) and redesignated former subpar. (B) as (C).

1998—Subsec. (b)(5)(B), (C). Pub. L. 105–206, §6010(d)(1), redesignated subpar. (C) as (B) and struck out heading and text of former subpar. (B). Text read as follows: "For purposes of subparagraph (A), the rules of

section 1248(d) shall apply except to the extent otherwise provided by the Secretary."

Subsec. (b)(6). Pub. L. 105–206, §6010(d)(2), added par. (6).

1997—Subsec. (a)(1). Pub. L. 105–34, §1013(a), amended last sentence generally. Prior to amendment, last sentence read as follows: "To the extent that such distribution is treated as a distribution to which section 301 applies, the stock so acquired shall be treated as having been transferred by the person from whom acquired, and as having been received by the corporation acquiring it, as a contribution to the capital of such corporation."

Subsec. (b)(5). Pub. L. 105–34, §1013(c), added par. (5).

1988—Subsec. (b)(4)(A). Pub. L. 100–647 substituted "stock from 1 member" for "stock of 1 member".

1987—Subsec. (b)(4). Pub. L. 100–203 added par. (4).

1986—Subsec. (a)(1). Pub. L. 99–514 substituted "To the extent that such distribution is treated as a distribution to which section 301 applies" for "In any such case" in last sentence.

1984—Subsec. (b)(2). Pub. L. 98–369, §712(l)(1), consolidated former subpars. "(A) Where subsection (a)(1) applies" and "(B) Where subsection (a)(2) applies" in one paragraph, inserted provision respecting source of dividend, and incorporated in cls. (A) and (B) former subpar. (A) and (B) provisions which had required determination of amount which is a dividend to be made by reference to earnings and profits of the acquiring corporation and as if the property were distributed by the acquiring corporation to the issuing corporation and immediately thereafter distributed by the issuing corporation.

Subsec. (b)(3)(A). Pub. L. 98–369, §712(l)(2), substituted "section 351 and not so much of sections 357 and 358 as relates to section 351" for "part III".

Subsec. (b)(3)(B)(i). Pub. L. 98–369, §712(l)(3)(A)(i), substituted "In the case of an acquisition described in section 351, subsection (a)" for "Subsection (a)".

Subsec. (b)(3)(B)(iii). Pub. L. 98–369, §712(l)(3)(B), added cl. (iii).

Subsec. (b)(3)(C). Pub. L. 98–369, §712(l)(4), inserted following cl. (iii) "For purposes of this subparagraph, any assumption of (or acquisition of stock subject to) a liability under subparagraph (B) shall not be treated as a distribution of property."

Subsec. (c)(3). Pub. L. 98–369, §712(l)(5)(A), designated existing first sentence as subpar. "(A) In general" and substituted subpar. (B) for former second sentence which read "For purposes of the preceding sentence, sections 318(a)(2)(C) and 318(a)(3)(C) shall be applied without regard to the 50 percent limitation contained therein."

1982—Subsec. (b)(2)(A). Pub. L. 97–248, §226(a)(3), substituted "as if the property were distributed by the issuing corporation to the acquiring corporation and immediately thereafter distributed by the acquiring corporation" for "soley by reference to the earnings and profits of the acquiring corporation" after "dividend shall be made".

Subsec. (b)(3). Pub. L. 97–248, §226(a)(1)(A), added par. (3).

Subsec. (c)(2), (3). Pub. L. 97–248, §226(a)(2), added par. (2), redesignated former par. (2) as (3) and substituted "this section" for "paragraph (1)" after "determining control under".

1964—Subsecs. (b)(1), (c)(2). Pub. L. 88–554 inserted reference to section 318(a)(3)(C) of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–226, title II, §215(b), Aug. 10, 2010, 124 Stat. 2400, provided that: "The amendments made by this section [amending this section] shall apply to acquisitions after the date of the enactment of this Act [Aug. 10, 2010]."

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title I, §1013(d), Aug. 5, 1997, 111 Stat. 918, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and section 1059 of this title] shall apply to distributions and acquisitions after June 8, 1997.

"(2) TRANSITION RULE.—The amendments made by this section shall not apply to any distribution or acquisition after June 8, 1997, if such distribution or acquisition is—

"(A) made pursuant to a written agreement which was binding on such date and at all times thereafter,

"(B) described in a ruling request submitted to the Internal Revenue Service on or before such date, or

"(C) described in a public announcement or filing with the Securities and Exchange Commission on or

before such date."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title X, §10223(d), Dec. 22, 1987, 101 Stat. 1330–412, as amended by Pub. L. 100–647, title II, §2004(k)(3), (4), Nov. 10, 1988, 102 Stat. 3605, 3606, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and sections 337 and 355 of this title] shall apply to distributions or transfers after December 15, 1987.

"(2) EXCEPTIONS.—

"(A) DISTRIBUTIONS.—The amendments made by this section shall not apply to any distribution after December 15, 1987, and before January 1, 1993, if—

"(i) 80 percent or more of the stock of the distributing corporation was acquired by the distributee before December 15, 1987, or

"(ii) 80 percent or more of the stock of the distributing corporation was acquired by the distributee before January 1, 1989, pursuant to a binding written contract or tender offer in effect on December 15, 1987.

For purposes of the preceding sentence, stock described in section 1504(a)(4) of the Internal Revenue Code of 1986 shall not be taken into account.

"(B) SECTION 304 TRANSFERS.—The amendment made by subsection (c) [amending this section] shall not apply to any transfer after December 15, 1987, and on or before March 31, 1988, if such transfer is—

"(i) between corporations which are members of the same affiliated group on December 15, 1987, or

"(ii) between corporations which become members of the same affiliated group pursuant to a binding written contract or tender offer in effect on December 15, 1987.

"(C) DISTRIBUTIONS COVERED BY PRIOR TRANSITION RULE.—The amendments made by this section shall not apply to any distribution to which the amendments made by subtitle D of title VI of the Tax Reform Act of 1986 [sections 631 to 634 of Pub. L. 99–514, see Tables for classification] do not apply.

"(D) TREATMENT OF CERTAIN MEMBERS OF AFFILIATED GROUP.—

"(i) IN GENERAL.—For purposes of subparagraph (A), all corporations which were in existence on the designated date and were members of the same affiliated group which included the distributees on such date shall be treated as 1 distributee.

"(ii) LIMITATION TO STOCK HELD ON DESIGNATED DATE.—Clause (i) shall not exempt any distribution from the amendments made by this section if such distribution is with respect to stock not held by the distributee (determined without regard to clause (i)) on the designated date directly or indirectly through a corporation which goes out of existence in the transaction.

"(iii) DESIGNATED DATE.—For purposes of this subparagraph, the term 'designated date' means the later of—

"(I) December 15, 1987, or

"(II) the date on which the acquisition meeting the requirements of subparagraph (A) occurred."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title VII, §712(l)(7), July 18, 1984, 98 Stat. 954, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendments made by paragraphs (1) and (3) [amending this section] shall apply to stock acquired after June 18, 1984, in taxable years ending after such date.

"(B) ELECTION BY TAXPAYER TO HAVE AMENDMENTS APPLY EARLIER.—Any taxpayer may

elect, at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe, to have the amendments made by paragraphs (1) and (3) apply as if included in section 226 of the Tax Equity and Fiscal Responsibility Act of 1982 [section 226 of Pub. L. 97–248, which amended this section and section 306 of this title and enacted Effective Date of 1982 Amendment note set out below].

"(C) SPECIAL RULE FOR CERTAIN TRANSFERS TO FORM BANK HOLDING COMPANY .—Except as provided in subparagraph (D), the amendments made by paragraphs (1) and (3) shall not apply to transfers pursuant to an application to form a BHC (as defined in section 304(b)(3)(D)(ii) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) filed with the Federal Reserve Board before June 18, 1984, if—

"(i) such BHC was formed not later than the 90th day after the date of the last required approval of any regulatory authority to form such BHC, and

"(ii) such BHC did not elect (at such time and in such manner as the Secretary of the Treasury or his delegate shall prescribe) not to have the provisions of this subparagraph apply.

"(D) AMENDMENTS TO APPLY TO CERTAIN LIABILITIES INCURRED BEFORE OCTOBER 20, 1983.—The amendment made by paragraph (3)(A) shall apply to the acquisition of any stock to the extent the liability assumed, or to which such stock is subject, was incurred by the transferor after October 20, 1983."

Amendment by section 712(l)(2), (4), (5)(A) of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title II, §226(c), Sept. 3, 1982, 96 Stat. 492, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 306 and 351 of this title] shall apply to transfers occurring after August 31, 1982, in taxable years ending after such date.

"(2) APPROVAL BY FEDERAL RESERVE BOARD.—The amendments made by this section shall not apply to transfers pursuant to an application to form a BHC filed with the Federal Reserve Board before August 16, 1982, if the BHC was formed not later than the later of—

"(A) the 90th day after the date of the last required approval of any regulatory authority to form such BHC, or

"(B) January 1, 1983.

For purposes of this paragraph, the term 'BHC' means a bank holding company (within the meaning of section 2(a) of the Bank Holding Company Act of 1956 [section 1841(a) of Title 12, Banks and Banking])."

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–554 effective Aug. 31, 1964, except that for purposes of this section and section 302 of this title, such amendments shall not apply to distributions in payment for stock acquisitions or redemptions, if such acquisition or redemption occurred before Aug. 31, 1964, see section 4(c) of Pub. L. 88–554, set out as a note under section 318 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§305. Distributions of stock and stock rights

(a) General rule

Except as otherwise provided in this section, gross income does not include the amount of any distribution of the stock of a corporation made by such corporation to its shareholders with respect to its stock.

(b) Exceptions

Subsection (a) shall not apply to a distribution by a corporation of its stock, and the distribution shall be treated as a distribution of property to which section 301 applies—

(1) Distributions in lieu of money

If the distribution is, at the election of any of the shareholders (whether exercised before or after the declaration thereof), payable either—

(A) in its stock, or

(B) in property.

(2) Disproportionate distributions

If the distribution (or a series of distributions of which such distribution is one) has the result of—

(A) the receipt of property by some shareholders, and

(B) an increase in the proportionate interests of other shareholders in the assets or earnings and profits of the corporation.

(3) Distributions of common and preferred stock

If the distribution (or a series of distributions of which such distribution is one) has the result of—

(A) the receipt of preferred stock by some common shareholders, and

(B) the receipt of common stock by other common shareholders.

(4) Distributions on preferred stock

If the distribution is with respect to preferred stock, other than an increase in the conversion ratio of convertible preferred stock made solely to take account of a stock dividend or stock split with respect to the stock into which such convertible stock is convertible.

(5) Distributions of convertible preferred stock

If the distribution is of convertible preferred stock, unless it is established to the satisfaction of the Secretary that such distribution will not have the result described in paragraph (2).

(c) Certain transactions treated as distributions

For purposes of this section and section 301, the Secretary shall prescribe regulations under which a change in conversion ratio, a change in redemption price, a difference between redemption price and issue price, a redemption which is treated as a distribution to which section 301 applies, or any transaction (including a recapitalization) having a similar effect on the interest of any shareholder shall be treated as a distribution with respect to any shareholder whose proportionate interest in the earnings and profits or assets of the corporation is increased by such change, difference, redemption, or similar transaction. Regulations prescribed under the preceding sentence shall provide that—

(1) where the issuer of stock is required to redeem the stock at a specified time or the holder of stock has the option to require the issuer to redeem the stock, a redemption premium resulting from such requirement or option shall be treated as reasonable only if the amount of such premium does not exceed the amount determined under the principles of section 1273(a)(3),

(2) a redemption premium shall not fail to be treated as a distribution (or series of distributions) merely because the stock is callable, and

(3) in any case in which a redemption premium is treated as a distribution (or series of distributions), such premium shall be taken into account under principles similar to the principles of section 1272(a).

(d) Definitions

(1) Rights to acquire stock

For purposes of this section, the term "stock" includes rights to acquire such stock.

(2) Shareholders

For purposes of subsections (b) and (c), the term "shareholder" includes a holder of rights or of convertible securities.

(e) Treatment of purchaser of stripped preferred stock

(1) In general

If any person purchases after April 30, 1993, any stripped preferred stock, then such person,

while holding such stock, shall include in gross income amounts equal to the amounts which would have been so includible if such stripped preferred stock were a bond issued on the purchase date and having original issue discount equal to the excess, if any, of—

(A) the redemption price for such stock, over

(B) the price at which such person purchased such stock.

The preceding sentence shall also apply in the case of any person whose basis in such stock is determined by reference to the basis in the hands of such purchaser.

(2) Basis adjustments

Appropriate adjustments to basis shall be made for amounts includible in gross income under paragraph (1).

(3) Tax treatment of person stripping stock

If any person strips the rights to 1 or more dividends from any stock described in paragraph (5)(B) and after April 30, 1993, disposes of such dividend rights, for purposes of paragraph (1), such person shall be treated as having purchased the stripped preferred stock on the date of such disposition for a purchase price equal to such person's adjusted basis in such stripped preferred stock.

(4) Amounts treated as ordinary income

Any amount included in gross income under paragraph (1) shall be treated as ordinary income.

(5) Stripped preferred stock

For purposes of this subsection—

(A) In general

The term "stripped preferred stock" means any stock described in subparagraph (B) if there has been a separation in ownership between such stock and any dividend on such stock which has not become payable.

(B) Description of stock

Stock is described in this subsection if such stock—

(i) is limited and preferred as to dividends and does not participate in corporate growth to any significant extent, and

(ii) has a fixed redemption price.

(6) Purchase

For purposes of this subsection, the term "purchase" means—

(A) any acquisition of stock, where

(B) the basis of such stock is not determined in whole or in part by the reference to the adjusted basis of such stock in the hands of the person from whom acquired.

(7) Cross reference

For treatment of stripped interests in certain accounts or entities holding preferred stock, see section 1286(f).

(f) Cross references

For special rules—

(1) Relating to the receipt of stock and stock rights in corporate organizations and reorganizations, see part III (sec. 351 and following).

(2) In the case of a distribution which results in a gift, see section 2501 and following.

(3) In the case of a distribution which has the effect of the payment of compensation, see section 61(a)(1).

(Aug. 16, 1954, ch. 736, 68A Stat. 90; Pub. L. 91–172, title IV, §421(a), Dec. 30, 1969, 83 Stat. 614; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–34, title III, §321(a), (b), Aug. 13, 1981, 95 Stat. 287, 289; Pub. L. 97–448, title I, §103(f), Jan. 12, 1983, 96 Stat.

2378; Pub. L. 101–508, title XI, §§11322(a), 11801(a)(17), (c)(7), Nov. 5, 1990, 104 Stat. 1388–463, 1388–521, 1388–524; Pub. L. 103–66, title XIII, §13206(c)(1), Aug. 10, 1993, 107 Stat. 465; Pub. L. 108–357, title VIII, §831(b), Oct. 22, 2004, 118 Stat. 1587.)

AMENDMENTS

2004—Subsec. (e)(7). Pub. L. 108–357 added par. (7).

1993—Subsecs. (e), (f). Pub. L. 103–66 added subsec. (e) and redesignated former subsec. (e) as (f).

1990—Subsec. (c). Pub. L. 101–508, §11322(a), inserted sentence at end specifying the contents of regulations.

Subsec. (d)(1). Pub. L. 101–508, §11801(c)(7)(A), struck out "(other than subsection (e))" after "this section".

Subsecs. (e), (f). Pub. L. 101–508, §11801(a)(17), (c)(7)(B), redesignated subsec. (f) as (e) and struck out former subsec. (e) relating to dividend reinvestment in stock of public utilities.

1983—Subsec. (e)(3)(A). Pub. L. 97–448, §103(f)(1), substituted "placed in service qualified long-life public utility property having a cost equal to at least 60 percent of the aggregate cost of all tangible property described in subparagraph (A) or (B) of section 1245(a)(3) placed in service by the corporation during such period" for "acquired public utility recovery property having a cost equal to at least 60 percent of the aggregate cost of all tangible property described in section 1245(a)(3) (other than subparagraphs (C) and (D) thereof) acquired by the corporation during such period".

Subsec. (e)(3)(C)(ii). Pub. L. 97–448, §103(f)(2), substituted definition of "qualified long-life public utility property" for definition of "public utility recovery property" which had been defined as public utility property (within the meaning of section 167(l)(3)(A)) which was recovery property which was 10-year property or 15-year public utility property (within the meaning of section 168), except that any requirement that the property be placed in service after December 31, 1980, did not apply.

1981—Subsec. (d)(1). Pub. L. 97–34, §321(b), inserted "(other than subsection (e))" after "this section".

Subsecs. (e), (f). Pub. L. 97–34, §321(a), added subsec. (e) and redesignated former subsec. (e) as (f).

1976—Subsecs. (b)(5), (c). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

1969—Subsec. (a). Pub. L. 91–172 substituted reference to this section for reference to subsec. (b), and omitted reference to rights to acquire its stock.

Subsec. (b). Pub. L. 91–172 omitted reference to rights to acquire its stock, in text preceding par. (1), redesignated former par. (2) as par. (1) and added pars. (2) to (5). Former par. (1), providing for the extent to which distribution of preference dividends were to be treated as distribution of property to which section 301 applied, was struck out.

Subsecs. (c) to (e). Pub. L. 91–172 added subsecs. (c) and (d) and redesignated former subsec. (c) as (e).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §831(c), Oct. 22, 2004, 118 Stat. 1587, provided that: "The amendments made by this section [amending this section and section 1286 of this title] shall apply to purchases and dispositions after the date of the enactment of this Act [Oct. 22, 2004]."

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 effective Apr. 30, 1993, see section 13206(c)(3) of Pub. L. 103–66 set out as a note under section 167 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, §11322(b), Nov. 5, 1990, 104 Stat. 1388–464, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to stock issued after October 9, 1990.

"(2) EXCEPTION.—The amendment made by subsection (a) shall not apply to any stock issued after October 9, 1990, if—

"(A) such stock is issued pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such issuance,

"(B) such stock is issued pursuant to a registration or offering statement filed on or before October 9, 1990, with a Federal or State agency regulating the offering or sale of securities and such stock is issued before the date 90 days after the date of such filing, or

"(C) such stock is issued pursuant to a plan filed on or before October 9, 1990, in a title 11 or similar case (as defined in section 368(a)(3)(A) of the Internal Revenue Code of 1986)."

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title III, §321(c), Aug. 13, 1981, 95 Stat. 289, provided that: "The amendments made by this section [amending this section] shall apply to distributions after December 31, 1981, in taxable years ending after such date."

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title IV, §421(b), Dec. 30, 1969, 83 Stat. 615, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) Except as otherwise provided in this subsection, the amendment made by subsection (a) [amending this section] shall apply with respect to distributions (or deemed distributions) made after January 10, 1969, in taxable years ending after such date.

"(2)(A) Section 305(b)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)) shall not apply to a distribution (or deemed distribution) of stock made before January 1, 1991, with respect to stock (i) outstanding on January 10, 1969, (ii) issued pursuant to a contract binding on January 10, 1969, on the distributing corporation, (iii) which is additional stock of that class of stock which (as of January 10, 1969) had the largest fair market value of all classes of stock of the corporation (taking into account only stock outstanding on January 10, 1969, or issued pursuant to a contract binding on January 10, 1969), (iv) described in subparagraph (C)(iii), or (v) issued in a prior distribution described in clause (i), (ii), (iii), or (iv).

"(B) Subparagraph (A) shall apply only if—

"(i) the stock as to which there is a receipt of property was outstanding on January 10, 1969 (or was issued pursuant to a contract binding on January 10, 1969, on the distributing corporation), and

"(ii) if such stock and any stock described in subparagraph (A)(i) were also outstanding on January 10, 1968, a distribution of property was made on or before January 10, 1969, with respect to such stock, and a distribution of stock was made on or before January 10, 1969, with respect to such stock described in subparagraph (A)(i).

"(C) Subparagraph (A) shall cease to apply when at any time after October 9, 1969, the distributing corporation issues any of its stock (other than in a distribution of stock with respect to stock of the same class) which is not—

"(i) nonconvertible preferred stock.

"(ii) additional stock of that class of stock which meets the requirements of subparagraph (A)(iii), or

"(iii) preferred stock which is convertible into stock which meets the requirements of subparagraph (A)(iii) at a fixed conversion ratio which takes account of all stock dividends and stock splits with respect to the stock into which such convertible stock is convertible.

"(D) For purposes of this paragraph, the term 'stock' includes rights to acquire such stock.

"(3) In cases to which Treasury Decision 6990 (promulgated January 10, 1969) would not have applied, in applying paragraphs (1) and (2) April 22, 1969, shall be substituted for January 10, 1969.

"(4) Section 305(b)(4) of the Internal Revenue Code of 1986 (as added by subsection (a)) shall not apply to any distribution (or deemed distribution) with respect to preferred stock (including any increase in the conversion ratio of convertible stock) made before January 1, 1991, pursuant to the terms relating to the issuance of such stock which were in effect on January 10, 1969.

"(5) With respect to distributions made or considered as made after January 10, 1969, in taxable years ending after such date, to the extent that the amendment made by subsection (a) [amending this section] does not apply by reason of paragraph (2), (3), or (4) of this subsection, section 305 of the Internal Revenue Code of 1986 (as in effect before the amendment made by subsection (a)) shall continue to apply."

SAVINGS PROVISION

For provisions that nothing in amendment by section 11801(a)(17), (c)(7) of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

§306. Dispositions of certain stock

(a) General rule

If a shareholder sells or otherwise disposes of section 306 stock (as defined in subsection (c))—

(1) Dispositions other than redemptions

If such disposition is not a redemption (within the meaning of section 317(b))—

(A) The amount realized shall be treated as ordinary income. This subparagraph shall not apply to the extent that—

(i) the amount realized, exceeds

(ii) such stock's ratable share of the amount which would have been a dividend at the time of distribution if (in lieu of section 306 stock) the corporation had distributed money in an amount equal to the fair market value of the stock at the time of distribution.

(B) Any excess of the amount realized over the sum of—

(i) the amount treated under subparagraph (A) as ordinary income, plus

(ii) the adjusted basis of the stock,

shall be treated as gain from the sale of such stock.

(C) No loss shall be recognized.

(D) TREATMENT AS DIVIDEND.—For purposes of section 1(h)(11) and such other provisions as the Secretary may specify, any amount treated as ordinary income under this paragraph shall be treated as a dividend received from the corporation.

(2) Redemption

If the disposition is a redemption, the amount realized shall be treated as a distribution of property to which section 301 applies.

(b) Exceptions

Subsection (a) shall not apply—

(1) Termination of shareholder's interest, etc.

(A) Not in redemption

If the disposition—

(i) is not a redemption;

(ii) is not, directly or indirectly, to a person the ownership of whose stock would (under section 318(a)) be attributable to the shareholder; and

(iii) terminates the entire stock interest of the shareholder in the corporation (and for purposes of this clause, section 318(a) shall apply).

(B) In redemption

If the disposition is a redemption and paragraph (3) or (4) of section 302(b) applies.

(2) Liquidations

If the section 306 stock is redeemed in a distribution in complete liquidation to which part II (sec. 331 and following) applies.

(3) Where gain or loss is not recognized

To the extent that, under any provision of this subtitle, gain or loss to the shareholder is not recognized with respect to the disposition of the section 306 stock.

(4) Transactions not in avoidance

If it is established to the satisfaction of the Secretary—

(A) that the distribution, and the disposition or redemption, or

(B) in the case of a prior or simultaneous disposition (or redemption) of the stock with respect to which the section 306 stock disposed of (or redeemed) was issued, that the disposition (or redemption) of the section 306 stock,

was not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income tax.

(c) Section 306 stock defined

(1) In general

For purposes of this subchapter, the term "section 306 stock" means stock which meets the requirements of subparagraph (A), (B), or (C) of this paragraph.

(A) Distributed to seller

Stock (other than common stock issued with respect to common stock) which was distributed to the shareholder selling or otherwise disposing of such stock if, by reason of section 305(a), any part of such distribution was not includible in the gross income of the shareholder.

(B) Received in a corporate reorganization or separation

Stock which is not common stock and—

(i) which was received, by the shareholder selling or otherwise disposing of such stock, in pursuance of a plan of reorganization (within the meaning of section 368(a)), or in a distribution or exchange to which section 355 (or so much of section 356 as relates to section 355) applied, and

(ii) with respect to the receipt of which gain or loss to the shareholder was to any extent not recognized by reason of part III, but only to the extent that either the effect of the transaction was substantially the same as the receipt of a stock dividend, or the stock was received in exchange for section 306 stock.

For purposes of this section, a receipt of stock to which the foregoing provisions of this subparagraph apply shall be treated as a distribution of stock.

(C) Stock having transferred or substituted basis

Except as otherwise provided in subparagraph (B), stock the basis of which (in the hands of the shareholder selling or otherwise disposing of such stock) is determined by reference to the basis (in the hands of such shareholder or any other person) of section 306 stock.

(2) Exception where no earnings and profits

For purposes of this section, the term "section 306 stock" does not include any stock no part of the distribution of which would have been a dividend at the time of the distribution if money had been distributed in lieu of the stock.

(3) Certain stock acquired in section 351 exchange

The term "section 306 stock" also includes any stock which is not common stock acquired in an exchange to which section 351 applied if receipt of money (in lieu of the stock) would have been treated as a dividend to any extent. Rules similar to the rules of section 304(b)(2) shall apply—

(A) for purposes of the preceding sentence, and

(B) for purposes of determining the application of this section to any subsequent disposition of stock which is section 306 stock by reason of an exchange described in the preceding sentence.

(4) Application of attribution rules for certain purposes

For purposes of paragraphs (1)(B)(ii) and (3), section 318(a) shall apply. For purposes of applying the preceding sentence to paragraph (3), the rules of section 304(c)(3)(B) shall apply.

(d) Stock rights

For purposes of this section—

(1) stock rights shall be treated as stock, and

(2) stock acquired through the exercise of stock rights shall be treated as stock distributed at the time of the distribution of the stock rights, to the extent of the fair market value of such rights at the time of the distribution.

(e) Convertible stock

For purposes of subsection (c)—

(1) if section 306 stock was issued with respect to common stock and later such section 306 stock is exchanged for common stock in the same corporation (whether or not such exchange is pursuant to a conversion privilege contained in the section 306 stock), then (except as provided in paragraph (2)) the common stock so received shall not be treated as section 306 stock; and

(2) common stock with respect to which there is a privilege of converting into stock other than common stock (or into property), whether or not the conversion privilege is contained in such stock, shall not be treated as common stock.

(f) Source of gain

The amount treated under subsection (a)(1)(A) as ordinary income shall, for purposes of part I of subchapter N (sec. 861 and following, relating to determination of sources of income), be treated as derived from the same source as would have been the source if money had been received from the corporation as a dividend at the time of the distribution of such stock. If under the preceding sentence such amount is determined to be derived from sources within the United States, such amount shall be considered to be fixed or determinable annual or periodical gains, profits, and income within the meaning of section 871(a) or section 881(a), as the case may be.

(g) Change in terms and conditions of stock

If a substantial change is made in the terms and conditions of any stock, then, for purposes of this section—

(1) the fair market value of such stock shall be the fair market value at the time of the distribution or at the time of such change, whichever such value is higher;

(2) such stock's ratable share of the amount which would have been a dividend if money had been distributed in lieu of stock shall be determined as of the time of distribution or as of the time of such change, whichever such ratable share is higher; and

(3) subsection (c)(2) shall not apply unless the stock meets the requirements of such subsection both at the time of such distribution and at the time of such change.

(Aug. 16, 1954, ch. 736, 68A Stat. 90; Pub. L. 94–455, title XIX, §§1901(b)(3)(J), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1793, 1834; Pub. L. 95–600, title VII, §702(a)(1), (2), Nov. 6, 1978, 92 Stat. 2925; Pub. L. 96–223, title IV, §401(a), Apr. 2, 1980, 94 Stat. 299; Pub. L. 97–248, title II, §§222(e)(1)(A), (2), 226(b), 227(a), Sept. 3, 1982, 96 Stat. 480, 492; Pub. L. 98–369, div. A, title VII, §712(i)(2), (l)(5)(B), (6), July 18, 1984, 98 Stat. 948, 954; Pub. L. 101–508, title XI, §11801(a)(18), Nov. 5, 1990, 104 Stat. 1388–521; Pub. L. 108–27, title III, §302(e)(3), May 28, 2003, 117 Stat. 763.)

AMENDMENTS

2003—Subsec. (a)(1)(D). Pub. L. 108–27 added subpar. (D).

1990—Subsec. (h). Pub. L. 101–508 struck out subsec. (h) which related to stock received in distributions and reorganizations to which 1939 Code applied.

1984—Subsec. (b)(1). Pub. L. 98–369, §712(i)(2), substituted "interest, etc." for "interest" in heading.

Subsec. (c)(3). Pub. L. 98–369, §712(l)(6), incorporated existing second sentence in provision designated subpar. (A) and added subpar. (B).

Subsec. (c)(4). Pub. L. 98–369, §712(l)(5)(B), substituted "the rules of section 304(c)(3)(B) shall apply" for "sections 318(a)(2)(C) and 318(a)(3)(C) shall be applied without regard to the 50 percent limitation contained therein".

1982—Subsec. (b)(1)(B). Pub. L. 97–248, §222(e)(2), substituted "paragraph (3) or (4) of section 302(b)" for "section 302(b)(3)".

Subsec. (b)(2). Pub. L. 97–248, §222(e)(1)(A), struck out "partial or" before "complete liquidation".

Subsec. (c)(3). Pub. L. 97–248, §226(b), added par. (3).

Subsec. (c)(4). Pub. L. 97–248, §227(a), added par. (4).

1980—Subsecs. (a)(3), (b)(5). Pub. L. 96–223 repealed the amendments made by Pub. L. 95–600, §702(a)(1), (2). See 1978 Amendment notes below.

1978—Subsec. (a)(3). Pub. L. 95–600, §702(a)(1), added par. (3) which related to ordinary income from the

sale or redemption of section 306 stock which was carryover basis property adjusted for 1976 value. See Repeals note below.

Subsec. (b)(5). Pub. L. 95–600, §702(a)(2), added par. (5) which provided that subsec. (a) of this section shall not apply to the extent that section 303 applies to a distribution in redemption of section 306 stock. See Repeals note below.

1976—Subsec. (a)(1)(A), (B)(i). Pub. L. 94–455, §1901(b)(3)(J), substituted "ordinary income" for "gain from the sale of property which is not a capital asset".

Subsec. (b)(4). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (f). Pub. L. 94–455, §1901(b)(3)(J), substituted "ordinary income" for "gain from the sale of property which is not a capital asset".

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–27 applicable, except as otherwise provided, to taxable years beginning after Dec. 31, 2002, see section 302(f) of Pub. L. 108–27, set out as an Effective and Termination Dates of 2003 Amendment note under section 1 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 222(e)(1)(A), (2) of Pub. L. 97–248 applicable to distributions after Aug. 31, 1982, with exceptions for certain partial liquidations, see section 222(f) of Pub. L. 97–248, set out as a note under section 302 of this title.

Amendment by section 226(b) of Pub. L. 97–248 applicable to transfers occurring after Aug. 31, 1982, except for certain transfers pursuant to an application to form a BHC filed with the Federal Reserve Board before Aug. 16, 1982, see section 226(c) of Pub. L. 97–248, set out as a note under section 304 of this title.

Pub. L. 97–248, title II, §227(c)(1), Sept. 3, 1982, 96 Stat. 492, provided that: "The amendment made by subsection (a) [amending this section] shall apply to stock received after August 31, 1982, in taxable years ending after such date."

EFFECTIVE DATE OF 1980 AMENDMENT AND REVIVAL OF PRIOR LAW

Amendment by Pub. L. 96–223 (repealing section 702(a)(1), (2) of Pub. L. 95–600 and the amendments made thereby, which had amended this section) applicable in respect of decedents dying after Dec. 31, 1976, and, except for certain elections, this title to be applied and administered as if those repealed provisions had not been enacted, see section 401(b), (e) of Pub. L. 96–223, set out as a note under section 1023 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title VII, §702(a)(3), Nov. 6, 1978, 92 Stat. 2925, provided that the amendments made by section 702(a) of Pub. L. 95–600 would apply to the estates of decedents dying after Dec. 31, 1979, prior to repeal by Pub. L. 96–223, title IV, §401(a), Apr. 2, 1980, 94 Stat. 299.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(b)(3)(J) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

REPEALS

Pub. L. 95–600, §702(a)(1), (2), cited as a credit to this section, and the amendments made thereby, were repealed by Pub. L. 96–223, title IV, §401(a), Apr. 2, 1980, 94 Stat. 299, resulting in the text of this section reading as it read prior to enactment of section 702(a)(1), (2). See Effective Date of 1980 Amendment and Revival of Prior Law note above.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

§307. Basis of stock and stock rights acquired in distributions

(a) General rule

If a shareholder in a corporation receives its stock or rights to acquire its stock (referred to in this subsection as "new stock") in a distribution to which section 305(a) applies, then the basis of such new stock and of the stock with respect to which it is distributed (referred to in this section as "old stock"), respectively, shall, in the shareholder's hands, be determined by allocating between the old stock and the new stock the adjusted basis of the old stock. Such allocation shall be made under regulations prescribed by the Secretary.

(b) Exception for certain stock rights

(1) In general

If—

(A) a corporation distributes rights to acquire its stock to a shareholder in a distribution to which section 305(a) applies, and

(B) the fair market value of such rights at the time of the distribution is less than 15 percent of the fair market value of the old stock at such time,

then subsection (a) shall not apply and the basis of such rights shall be zero, unless the taxpayer elects under paragraph (2) of this subsection to determine the basis of the old stock and of the stock rights under the method of allocation provided in subsection (a).

(2) Election

The election referred to in paragraph (1) shall be made in the return filed within the time prescribed by law (including extensions thereof) for the taxable year in which such rights were received. Such election shall be made in such manner as the Secretary may by regulations prescribe, and shall be irrevocable when made.

(c) Cross reference

For basis of stock and stock rights distributed before June 22, 1954, see section 1052.

(Aug. 16, 1954, ch. 736, 68A Stat. 93; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsecs. (a), (b)(2). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

SUBPART B—EFFECTS ON CORPORATION

Sec.

311. Taxability of corporation on distribution.

312. Effect on earnings and profits.

§311. Taxability of corporation on distribution

(a) General rule

Except as provided in subsection (b), no gain or loss shall be recognized to a corporation on the distribution (not in complete liquidation) with respect to its stock of—

(1) its stock (or rights to acquire its stock), or

(2) property.

(b) Distributions of appreciated property

(1) In general

If—

(A) a corporation distributes property (other than an obligation of such corporation) to a shareholder in a distribution to which subpart A applies, and

(B) the fair market value of such property exceeds its adjusted basis (in the hands of the distributing corporation),

then gain shall be recognized to the distributing corporation as if such property were sold to the distributee at its fair market value.

(2) Treatment of liabilities

Rules similar to the rules of section 336(b) shall apply for purposes of this subsection.

(3) Special rule for certain distributions of partnership or trust interests

If the property distributed consists of an interest in a partnership or trust, the Secretary may by regulations provide that the amount of the gain recognized under paragraph (1) shall be computed without regard to any loss attributable to property contributed to the partnership or trust for the principal purpose of recognizing such loss on the distribution.

(Aug. 16, 1954, ch. 736, 68A Stat. 94; Pub. L. 91–172, title IX, §905(a), (b)(1), Dec. 30, 1969, 83 Stat. 713, 714; Pub. L. 94–452, §2(b), Oct. 2, 1976, 90 Stat. 1511; Pub. L. 94–455, title XIX, §1901(a)(42)(A), (B)(i), (C), Oct. 4, 1976, 90 Stat. 1771; Pub. L. 95–600, title VII, §703(j)(2)(A), (B), Nov. 6, 1978, 92 Stat. 2941; Pub. L. 96–471, §2(b)(1), Oct. 19, 1980, 94 Stat. 2253; Pub. L. 97–248, title II, §223(a), Sept. 3, 1982, 96 Stat. 483; Pub. L. 98–369, div. A, title I, §54(a), title VII, §712(j), July 18, 1984, 98 Stat. 568, 948; Pub. L. 99–514, title VI, §631(c), Oct. 22, 1986, 100 Stat. 2272; Pub. L. 100–647, title I, §§1006(e)(8)(B), (21)(B), 1018(d)(5)(E), Nov. 10, 1988, 102 Stat. 3401, 3403, 3580.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–647, §1018(d)(5)(E), substituted "distribution (not in complete liquidation) with respect to its stock" for "distribution, with respect to its stock,".

Subsec. (b)(2). Pub. L. 100–647, §1006(e)(21)(B), substituted "liabilities" for "liabilities in excess of basis" in heading.

Subsec. (b)(3). Pub. L. 100–647, §1006(e)(8)(B), added par. (3).

1986—Pub. L. 99–514 amended section generally, substituting provisions relating to distributions of appreciated property for provisions relating to LIFO inventory, liability in excess of basis, and appreciated property used to redeem stock.

1984—Subsec. (d). Pub. L. 98–369, §54(a)(3), substituted "Distributions of appreciated property" for "Appreciated property used to redeem stock" in heading.

Subsec. (d)(1). Pub. L. 98–369, §54(a)(1), substituted "This subsection shall be applied after the applications of subsections (b) and (c)" for "Subsections (b) and (c) shall not apply to any distribution to which this subsection applies" in provisions following subpar. (B).

Subsec. (d)(1)(A). Pub. L. 98–369, §54(a)(1), struck out "of part or all of his stock in such corporation" before "and".

Subsec. (d)(2)(A). Pub. L. 98–369, §54(a)(2)(A), substituted provisions relating to a distribution which is made with respect to qualified stock if section 302(b)(4) applies to such distribution or such distribution is a qualified distribution for provisions which had related to a distribution to a corporate shareholder if the basis of the property distributed was determined under section 301(d)(2).

Subsec. (d)(2)(B) to (F). Pub. L. 98–369, §54(a)(2)(A), (B), redesignated subpars. (C) to (F) as (B) to (E), respectively, and struck out former subpar. (B) which related to distributions to which section 302(b)(4) applied and which were made with respect to qualified stock.

Subsec. (e)(1)(C). Pub. L. 98–369, §712(j), added subpar. (C).

Subsec. (e)(3). Pub. L. 98–369, §54(a)(2)(C), added par. (3).

1982—Subsec. (d)(2)(A). Pub. L. 97–248, §223(a)(1), substituted reference to a distribution to a corporate shareholder if the basis of the property distributed is determined under section 301(d)(2) for reference to a distribution in complete redemption of all of the stock of a shareholder who, at all times within the 12-month period ending on the date of such distribution owned at least 10 percent in value of the outstanding stock of the distributing corporation, but only if the redemption qualified under section 302(b)(3) (determined without the application of section 302(c)(2)(A)(ii)).

Subsec. (d)(2)(B). Pub. L. 97–248, §223(a)(1), substituted reference to a distribution to which section

302(b)(4) applies and which is made with respect to qualified stock for reference to a distribution of stock or an obligation of a corporation, which was engaged in at least one trade or business, which had not received property constituting a substantial part of its assets from the distributing corporation, in a transaction to which section 351 applied or as a contribution to capital, within the 5-year period ending on the date of the distribution, and at least 50 percent in value of the outstanding stock of which was owned by the distributing corporation at any time within the 9-year period ending one year before the date of the distribution.

Subsec. (d)(2)(C). Pub. L. 97–248, §223(a)(1), substituted reference to a distribution of stock or an obligation of a corporation if the requirements of subsec. (e)(2) of this section are met with respect to the distribution for reference to a distribution of stock or securities pursuant to the terms of a final judgment rendered by a court with respect to the distributing corporation in a court proceeding under the Sherman Act (15 U.S.C. 1–7) or the Clayton Act (15 U.S.C. 12–27), or both, to which the United States was a party, but only if the distribution of such stock or securities in redemption of the distributing corporation's stock was in furtherance of the purposes of the judgment.

Subsec. (d)(2)(G). Pub. L. 97–248, §223(a)(3), struck out subpar. (G) which provided that a distribution of stock to a distributee which is not an organization exempt from tax under section 501(a) of this title, if with respect to such distributee, subsec. (a)(1) or (b)(1) of section 1101 of this title applied to such distribution.

Subsec. (e). Pub. L. 97–248, §223(a)(2), added subsec. (e).

1980—Subsec. (a). Pub. L. 96–471 substituted "section 453B" for "Section 453(d)".

1978—Subsec. (d)(2)(G), (H). Pub. L. 95–600 redesignated subpar. (H) as (G).

1976—Subsec. (d)(1)(B). Pub. L. 94–455, §1901(a) (42)(A), substituted "then a gain shall be recognized" for "then again shall be recognized".

Subsec. (d)(2). Pub. L. 94–452 and Pub. L. 94–455 §1901(a)(42)(B)(i), (C), struck out subpar. (C) relating to certain distributions before Dec. 1, 1974, struck out "26 Stat. 209;" before "15 U.S.C. 1–7)" and "38 Stat. 730;" before "15 U.S.C. 12–27)" in subpar. (D), added subpar. (H), and redesignated subpars. (D) to (G), as so amended, as subpars. (C) to (F), respectively.

1969—Subsec. (a). Pub. L. 91–172, §905(b)(1), inserted reference to subsec. (d).

Subsec. (d). Pub. L. 91–172, §905(a), added subsec. (d).

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, set out as an Effective Date note under section 336 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §54(d), July 18, 1984, 98 Stat. 569, as amended by Pub. L. 99–514, §2, title XVIII, §1804(b)(3), Oct. 22, 1986, 100 Stat. 2095, 2799; Pub. L. 100–647, title I, §1018(d)(1)–(3), Nov. 10, 1988, 102 Stat. 3578, provided that:

"(1) SUBSECTION (a).—Except as otherwise provided in this subsection, the amendments made by subsection (a) [amending this section] shall apply to distributions declared on or after June 14, 1984, in taxable years ending after such date.

"(2) SUBSECTION (b).—The amendment made by subsection (b) [amending section 301 of this title] shall apply to distributions after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.

"(3) EXCEPTION FOR DISTRIBUTIONS BEFORE JANUARY 1, 1985, TO 80-PERCENT CORPORATE SHAREHOLDERS.—

"(A) IN GENERAL.—The amendments made by subsection (a) shall not apply to any distribution before January 1, 1985, to an 80-percent corporate shareholder if the basis of the property distributed is determined under section 301(d)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].

"(B) 80-PERCENT CORPORATE SHAREHOLDER.—The term '80-percent corporate shareholder' means, with respect to any distribution, any corporation which owns—

"(i) stock in the corporation making the distribution possessing at least 80 percent of the total

combined voting power of all classes of stock entitled to vote, and

"(ii) at least 80 percent of the total number of shares of all other classes of stock of the distributing corporation (except nonvoting stock which is limited and preferred as to dividends).

"(C) SPECIAL RULE FOR AFFILIATED GROUP FILING CONSOLIDATED RETURN.—For purposes of this paragraph and paragraph (4), all members of the same affiliated group (as defined in section 1504 of the Internal Revenue Code of 1986) which file a consolidated return for the taxable year which includes the date of the distribution shall be treated as 1 corporation.

"(D) SPECIAL RULE FOR CERTAIN DISTRIBUTIONS BEFORE JANUARY 1, 1988.—

"(i) IN GENERAL.—In the case of a transaction to which this subparagraph applies, subparagraph (A) shall be applied by substituting '1988' for '1985' and the amendments made by subtitle D of title VI of the Tax Reform Act of 1986 [sections 631 to 634 of Pub. L. 99–514, enacting sections 336 and 337 of this title, amending this section and sections 26, 312, 332, 334, 338, 341, 346, 367, 453, 453B, 467, 852, 897, 1056, 1248, 1255, 1276, 1363, 1366, 1374, and 1375 of this title, repealing sections 333, 336, and 337 of this title, and enacting provisions set out as a note under section 301 of this title] shall not apply.

"(ii) TRANSACTION TO WHICH SUBPARAGAPH [sic] APPLIES.—This subparagraph appies [applies] to a transaction in which a Delaware corporation which was incorporated on May 31, 1927, and which was acquired by the transferee on December 10, 1968, transfers to the transferee stock in a corporation—

"(I) with respect to which such Delaware corporation is a 100-percent corporate shareholder, and

"(II) which is a Tennessee corporation which was incorporated on March 2, 1978,, [sic] and which is a successor to an Indiana corporation which was incorporated on June 28, 1946, and acquired by the transferee on December 9 [10], 1968.

"(4) EXCEPTION FOR CERTAIN DISTRIBUTIONS WHERE TENDER OFFER COMMENCED ON MAY 23, 1984.—

"(A) IN GENERAL.—The amendments made by subsection (a) shall not apply to any distribution made before September 1, 1986, if—

"(i) such distribution consists of qualified stock held (directly or indirectly) on June 15, 1984, by the distributing corporation,

"(ii) control of the distributing corporation (as defined in section 368(c) of the Internal Revenue Code of 1986) is acquired other than in a tax-free transaction after January 1, 1984, but before January 1, 1985,

"(iii) a tender offer for the shares of the distributing corporation was commenced on May 23, 1984, and was amended on May 24, 1984, and

"(iv) the distributing corporation and the distributee corporation are members of the same affiliated group (as defined in section 1504 of such Code) which filed a consolidated return for the taxable year which includes the date of the distribution.

If the common parent of any affiliated group filing a consolidated return meets the requirements of clauses (ii) and (iii), each other member of such group shall be treated as meeting such requirements.

"(B) QUALIFIED STOCK.—For purposes of subparagraph (A), the term 'qualified stock' means any stock in a corporation which on June 15, 1984, was a member of the same affiliated group as the distributing corporation and which filed a consolidated return with the distributing corporation for the taxable year which included June 15, 1984.

"(5) EXCEPTION FOR CERTAIN DISTRIBUTIONS.—

"(A) IN GENERAL.—The amendments made by this section [amending this section and sections 301 and 1223 of this title] shall not apply to distributions before February 1, 1986, if—

"(i) the distribution consists of property held on March 7, 1984 (or property acquired thereafter in the ordinary course of a trade or business) by—

"(I) the controlled corporation, or

"(II) any subsidiary controlled corporation,

"(ii) a group of 1 or more shareholders (acting in concert)—

"(I) acquired, during the 1-year period ending on February 1, 1984, at least 10 percent of the outstanding stock of the controlled corporation,

"(II) held at least 10 percent of the outstanding stock of the common parent on February 1, 1984, and

"(III) submitted a proposal for distributions of interests in a royalty trust from the common parent or the controlled corporation, and

"(iii) the common parent acquired control of the controlled corporation during the 1-year period ending on February 1, 1984.

"(B) DEFINITIONS.—For purposes of this paragraph—

"(i) The term 'common parent' has the meaning given such term by section 1504(a) of the Internal Revenue Code of 1986.

"(ii) The term 'controlled corporation' means a corporation with respect to which 50 percent or more of the outstanding stock of its common parent is tendered for pursuant to a tender offer outstanding on March 7, 1984.

"(iii) The term 'subsidiary controlled corporation' means any corporation with respect to which the controlled corporation has control (within the meaning of section 368(c) of such Code) on March 7, 1984.

"(6) EXCEPTION FOR CERTAIN DISTRIBUTION OF PARTNERSHIP INTERESTS.—The amendments made by this section shall not apply to any distribution before February 1, 1986, of an interest in a partnership the interests of which were being traded on a national securities exchange on March 7, 1984, if—

"(A) such interest was owned by the distributing corporation (or any member of an affiliated group within the meaning of section 1504(a) of such Code of which the distributing corporation was a member) on March 7, 1984,

"(B) the distributing corporation (or any such affiliated member) owned more than 80 percent of the interests in such partnership on March 7, 1984, and

"(C) more than 10 percent of the interests in such partnership was offered for sale to the public during the 1-year period ending on March 7, 1984."

Amendment by section 712(j) of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT; EXCEPTIONS

Pub. L. 97–248, title II, §223(b), Sept. 3, 1982, 96 Stat. 484, as amended by Pub. L. 97–448, title III, §306(a)(7), Jan. 12, 1983, 96 Stat. 2402; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section] shall apply to distributions after August 31, 1982.

"(2) DISTRIBUTIONS PURSUANT TO RULING REQUESTS BEFORE JULY 23, 1982.—In the case of a ruling request under section 311(d)(2)(A) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect before the amendments made by this section) made before July 23, 1982, the amendments made by this section [amending this section] shall not apply to distributions made—

"(A) pursuant to a ruling granted pursuant to such request, and

"(B) either before October 21, 1982, or within 90 days after the date of such ruling.

"(3) DISTRIBUTIONS PURSUANT TO FINAL JUDGMENTS OF COURT.—In the case of a final judgment described in section 311(d)(2)(C) of such Code (as in effect before the amendments made by this section) rendered before July 23, 1982, the amendments made by this section [amending this section] shall not apply to distributions made before January 1, 1986, pursuant to such judgment.

"(4) CERTAIN DISTRIBUTIONS WITH RESPECT TO STOCK ACQUIRED BEFORE MAY 1982 .—The amendments made by this section [amending this section] shall not apply to distributions—

"(A) which meet the requirements of section 311(d)(2)(A) of such Code (as in effect on the day before the date of the enactment of this Act [Sept. 3, 1982]),

"(B) which are made on or before August 31, 1983, and

"(C) which are made with respect to stock acquired after 1980 and before May 1982.

"(5) DISTRIBUTIONS OF TIMBERLAND WITH RESPECT TO STOCK OF FOREST PRODUCTS COMPANY.—If—

"(A) a forest products company distributes timberland to a shareholder in redemption of the common and preferred stock in such corporation held by such shareholder,

"(B) section 311(d)(2)(A) of the Internal Revenue Code of 1986 (as in effect before the amendments made by this section) would have applied to such distributions, and

"(C) such distributions are made pursuant to 1 of 2 options contained in a contract between such company and such shareholder which is binding on August 31, 1982, and at all times thereafter,

then such distributions of timberland having an aggregate fair market value on August 31, 1982, not in excess of $10,000,000 shall be treated as distributions to which section 311(d)(2)(A) of such Code (as in effect before the date of the enactment of this Act [Sept. 3, 1982] applies."

EFFECTIVE DATE OF 1980 AMENDMENT

For effective date of amendment by Pub. L. 96–471, see section 6(a)(1) of Pub. L. 96–471, set out as an Effective Date note under section 453 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title VII, §703(j)(2)(C), Nov. 6, 1978, 92 Stat. 2941, provided that: "The amendments made by this paragraph [amending this section] shall take effect as if included in section 2(b) of the Bank Holding Company Tax Act of 1976 [amending this section]."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(42)(A), (C) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Pub. L. 94–455, title XIX, §1901(a)(42)(B)(ii), Oct. 4, 1976, 90 Stat. 1771, provided that: "The amendments made by clause (i) [amending this section] shall apply only with respect to distributions after November 30, 1974."

Pub. L. 94–452, §2(d)(4), Oct. 2, 1976, 90 Stat. 1512, provided that: "The amendment made by subsection (b) [amending this section] shall take effect on October 1, 1977, with respect to distributions after December 31, 1975, in taxable years ending after December 31, 1975."

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title IX, §905(c), Dec. 30, 1969, 83 Stat. 714, as amended by Pub. L. 91–675, Jan. 12, 1971, 84 Stat. 2059, provided that:

"(1) Except as provided in paragraphs (2), (3), (4), and (5), the amendments made by subsections (a) and (b) [amending this section and sections 301 and 312 of this title] shall apply with respect to distributions after November 30, 1969.

"(2) The amendments made by subsections (a) and (b) shall not apply to a distribution before April 1, 1970, pursuant to the terms of—

"(A) a written contract which was binding on the distributing corporation on November 30, 1969, and at all times thereafter before the distribution,

"(B) an offer made by the distributing corporation before December 1, 1969,

"(C) an offer made in accordance with a request for a ruling filed by the distributing corporation with the Internal Revenue Service before December 1, 1969, or

"(D) an offer made in accordance with a registration statement filed with the Securities and Exchange Commission before December 1, 1969.

For purposes of subparagraphs (B), (C), and (D), an offer shall be treated as an offer only if it was in writing and not revocable by its express terms.

"(3) The amendments made by subsections (a) and (b) shall not apply to a distribution by a corporation of specific property in redemption of stock outstanding on November 30, 1969, if—

"(A) every holder of such stock on such date had the right to demand redemption of his stock in such specific property, and

"(B) the corporation had such specific property on hand on such date in a quantity sufficient to redeem all of such stock.

For purposes of the preceding sentence, stock shall be considered to have been outstanding on November 30, 1969, if it could have been acquired on such date through the exercise of an existing right of conversion contained in other stock held on such date.

"(4) The amendments made by subsections (a) and (b) shall not apply to a distribution by a corporation of property (held on December 1, 1969, by the distributing corporation or a corporation which was a wholly owned subsidiary of the distributing corporation on such date) in redemption of stock outstanding on November 30, 1969, which is redeemed and canceled before July 31, 1971, if—

"(A) such redemption is pursuant to a resolution adopted before November 1, 1969, by the Board of Directors authorizing the redemption of a specific amount of stock constituting more than 10 percent of the outstanding stock of the corporation at the time of the adoption of such resolution; and

"(B) more than 40 percent of the stock authorized to be redeemed pursuant to such resolution was redeemed before December 30, 1969, and more than one-half of the stock so redeemed was redeemed with property other than money.

"(5) The amendments made by subsections (a) and (b) shall not apply to a distribution of stock, by a corporation organized prior to December 1, 1969, for the principal purpose of providing an equity participation plan for employees of the corporation whose stock is being distributed (hereinafter referred to as the 'employer corporation') if—

"(A) the stock being distributed was owned by the distributing corporation on November 30, 1969,

"(B) the stock being redeemed was acquired before January 1, 1973, pursuant to such equity participation plan by the shareholder presenting such stock for redemption (or by a predecessor of such shareholder),

"(C) the employment of the shareholder presenting the stock for redemption (or the predecessor of such shareholder) by the employer corporation commenced before January 1, 1971,

"(D) at least 90 percent in value of the assets of the distributing corporation on November 30, 1969, consisted of common stock of the employer corporation, and

"(E) at least 50 percent of the outstanding voting stock of the employer corporation is owned by the distributing corporation at any time within the nine-year period ending one year before the date of such distribution."

§312. Effect on earnings and profits

(a) General rule

Except as otherwise provided in this section, on the distribution of property by a corporation with respect to its stock, the earnings and profits of the corporation (to the extent thereof) shall be decreased by the sum of—

(1) the amount of money,

(2) the principal amount of the obligations of such corporation (or, in the case of obligations having original issue discount, the aggregate issue price of such obligations), and

(3) the adjusted basis of the other property, so distributed.

(b) Distributions of appreciated property

On the distribution by a corporation, with respect to its stock, of any property (other than an obligation of such corporation) the fair market value of which exceeds the adjusted basis thereof—

(1) the earnings and profits of the corporation shall be increased by the amount of such excess, and

(2) subsection (a)(3) shall be applied by substituting "fair market value" for "adjusted basis".

For purposes of this subsection and subsection (a), the adjusted basis of any property is its adjusted basis as determined for purposes of computing earnings and profits.

(c) Adjustments for liabilities

In making the adjustments to the earnings and profits of a corporation under subsection (a) or (b), proper adjustment shall be made for—

(1) the amount of any liability to which the property distributed is subject, and

(2) the amount of any liability of the corporation assumed by a shareholder in connection with the distribution.

(d) Certain distributions of stock and securities

(1) In general

The distribution to a distributee by or on behalf of a corporation of its stock or securities, of stock or securities in another corporation, or of property, in a distribution to which this title applies, shall not be considered a distribution of the earnings and profits of any corporation—

(A) if no gain to such distributee from the receipt of such stock or securities, or property, was recognized under this title, or

(B) if the distribution was not subject to tax in the hands of such distributee by reason of section 305(a).

(2) Prior distributions

In the case of a distribution of stock or securities, or property, to which section 115(h) of the Internal Revenue Code of 1939 (or the corresponding provision of prior law) applied, the effect on earnings and profits of such distribution shall be determined under such section 115(h), or the

corresponding provision of prior law, as the case may be.

(3) Stock or securities

For purposes of this subsection, the term "stock or securities" includes rights to acquire stock or securities.

[(e) Repealed. Pub. L. 98–369, div. A, title I, §61(a)(2)(B), July 18, 1984, 98 Stat. 581]

(f) Effect on earnings and profits of gain or loss and of receipt of tax-free distributions

(1) Effect on earnings and profits of gain or loss

The gain or loss realized from the sale or other disposition (after February 28, 1913) of property by a corporation—

(A) for the purpose of the computation of the earnings and profits of the corporation, shall (except as provided in subparagraph (B)) be determined by using as the adjusted basis the adjusted basis (under the law applicable to the year in which the sale or other disposition was made) for determining gain, except that no regard shall be had to the value of the property as of March 1, 1913; but

(B) for purposes of the computation of the earnings and profits of the corporation for any period beginning after February 28, 1913, shall be determined by using as the adjusted basis the adjusted basis (under the law applicable to the year in which the sale or other disposition was made) for determining gain.

Gain or loss so realized shall increase or decrease the earnings and profits to, but not beyond, the extent to which such a realized gain or loss was recognized in computing taxable income under the law applicable to the year in which such sale or disposition was made. Where, in determining the adjusted basis used in computing such realized gain or loss, the adjustment to the basis differs from the adjustment proper for the purpose of determining earnings and profits, then the latter adjustment shall be used in determining the increase or decrease above provided. For purposes of this subsection, a loss with respect to which a deduction is disallowed under section 1091 (relating to wash sales of stock or securities), or the corresponding provision of prior law, shall not be deemed to be recognized.

(2) Effect on earnings and profits of receipt of tax-free distributions

Where a corporation receives (after February 28, 1913) a distribution from a second corporation which (under the law applicable to the year in which the distribution was made) was not a taxable dividend to the shareholders of the second corporation, the amount of such distribution shall not increase the earnings and profits of the first corporation in the following cases:

(A) no such increase shall be made in respect of the part of such distribution which (under such law) is directly applied in reduction of the basis of the stock in respect of which the distribution was made; and

(B) no such increase shall be made if (under such law) the distribution causes the basis of the stock in respect of which the distribution was made to be allocated between such stock and the property received (or such basis would, but for section 307(b), be so allocated).

(g) Earnings and profits—increase in value accrued before March 1, 1913

(1) If any increase or decrease in the earnings and profits for any period beginning after February 28, 1913, with respect to any matter would be different had the adjusted basis of the property involved been determined without regard to its March 1, 1913, value, then, except as provided in paragraph (2), an increase (properly reflecting such difference) shall be made in that part of the earnings and profits consisting of increase in value of property accrued before March 1, 1913.

(2) If the application of subsection (f) to a sale or other disposition after February 28, 1913, results in a loss which is to be applied in decrease of earnings and profits for any period beginning after February 28, 1913, then, notwithstanding subsection (f) and in lieu of the rule provided in paragraph (1) of this subsection, the amount of such loss so to be applied shall be reduced by the

amount, if any, by which the adjusted basis of the property used in determining the loss exceeds the adjusted basis computed without regard to the value of the property on March 1, 1913, and if such amount so applied in reduction of the decrease exceeds such loss, the excess over such loss shall increase that part of the earnings and profits consisting of increase in value of property accrued before March 1, 1913.

(h) Allocation in certain corporate separations and reorganizations

(1) Section 355

In the case of a distribution or exchange to which section 355 (or so much of section 356 as relates to section 355) applies, proper allocation with respect to the earnings and profits of the distributing corporation and the controlled corporation (or corporations) shall be made under regulations prescribed by the Secretary.

(2) Section 368(a)(1)(C) or (D)

In the case of a reorganization described in subparagraph (C) or (D) of section 368(a)(1), proper allocation with respect to the earnings and profits of the acquired corporation shall, under regulations prescribed by the Secretary, be made between the acquiring corporation and the acquired corporation (or any corporation which had control of the acquired corporation before the reorganization).

(i) Distribution of proceeds of loan insured by the United States

If a corporation distributes property with respect to its stock and if, at the time of distribution—

(1) there is outstanding a loan to such corporation which was made, guaranteed, or insured by the United States (or by any agency or instrumentality thereof), and

(2) the amount of such loan so outstanding exceeds the adjusted basis of the property constituting security for such loan,

then the earnings and profits of the corporation shall be increased by the amount of such excess, and (immediately after the distribution) shall be decreased by the amount of such excess. For purposes of paragraph (2), the adjusted basis of the property at the time of distribution shall be determined without regard to any adjustment under section 1016(a)(2) (relating to adjustment for depreciation, etc.). For purposes of this subsection, a commitment to make, guarantee, or insure a loan shall be treated as the making, guaranteeing, or insuring of a loan.

[(j) Repealed. Pub. L. 108–357, title IV, §413(c)(4), Oct. 22, 2004, 118 Stat. 1507]

(k) Effect of depreciation on earnings and profits

(1) General rule

For purposes of computing the earnings and profits of a corporation for any taxable year beginning after June 30, 1972, the allowance for depreciation (and amortization, if any) shall be deemed to be the amount which would be allowable for such year if the straight line method of depreciation had been used for each taxable year beginning after June 30, 1972.

(2) Exception

If for any taxable year a method of depreciation was used by the taxpayer which the Secretary has determined results in a reasonable allowance under section 167(a) and which is the unit-of-production method or other method not expressed in a term of years, then the adjustment to earnings and profits for depreciation for such year shall be determined under the method so used (in lieu of the straight line method).

(3) Exception for tangible property

(A) In general

Except as provided in subparagraph (B), in the case of tangible property to which section 168 applies, the adjustment to earnings and profits for depreciation for any taxable year shall be determined under the alternative depreciation system (within the meaning of section 168(g)(2)).

(B) Treatment of amounts deductible under section 179, 179A, 179B, 179C, 179D, or 179E

For purposes of computing the earnings and profits of a corporation, any amount deductible under section 179, 179A, 179B, 179C, 179D, or 179E shall be allowed as a deduction ratably over the period of 5 taxable years (beginning with the taxable year for which such amount is deductible under section 179, 179A, 179B, 179C, 179D, or 179E, as the case may be).

(4) Certain foreign corporations

The provisions of paragraph (1) shall not apply in computing the earnings and profits of a foreign corporation for any taxable year for which less than 20 percent of the gross income from all sources of such corporation is derived from sources within the United States.

(5) Basis adjustment not taken into account

In computing the earnings and profits of a corporation for any taxable year, the allowance for depreciation (and amortization, if any) shall be computed without regard to any basis adjustment under section 50(c).

(l) Discharge of indebtedness income

(1) Does not increase earnings and profits if applied to reduce basis

The earnings and profits of a corporation shall not include income from the discharge of indebtedness to the extent of the amount applied to reduce basis under section 1017.

(2) Reduction of deficit in earnings and profits in certain cases

If—

(A) the interest of any shareholder of a corporation is terminated or extinguished in a title 11 or similar case (within the meaning of section 368(a)(3)(A)), and

(B) there is a deficit in the earnings and profits of the corporation,

then such deficit shall be reduced by an amount equal to the paid-in capital which is allocable to the interest of the shareholder which is so terminated or extinguished.

(m) No adjustment for interest paid on certain registration-required obligations not in registered form

The earnings and profits of any corporation shall not be decreased by any interest with respect to which a deduction is not or would not be allowable by reason of section 163(f), unless at the time of issuance the issuer is a foreign corporation that is not a controlled foreign corporation (within the meaning of section 957) and the issuance did not have as a purpose the avoidance of section 163(f) of this subsection [1]

(n) Adjustments to earnings and profits to more accurately reflect economic gain and loss

For purposes of computing the earnings and profits of a corporation, the following adjustments shall be made:

(1) Construction period carrying charges

(A) In general

In the case of any amount paid or incurred for construction period carrying charges—

(i) no deduction shall be allowed with respect to such amount, and

(ii) the basis of the property with respect to which such charges are allocable shall be increased by such amount.

(B) Construction period carrying charges defined

For purposes of this paragraph, the term "construction period carrying charges" means all—

(i) interest paid or accrued on indebtedness incurred or continued to acquire, construct, or carry property,

(ii) property taxes, and

(iii) similar carrying charges,

to the extent such interest, taxes, or charges are attributable to the construction period for such property and would be allowable as a deduction in determining taxable income under this chapter for the taxable year in which paid or incurred.

(C) Construction period

The term "construction period" has the meaning given the term production period under section 263A(f)(4)(B).

(2) Intangible drilling costs and mineral exploration and development costs

(A) Intangible drilling costs

Any amount allowable as a deduction under section 263(c) in determining taxable income (other than costs incurred in connection with a nonproductive well)—

(i) shall be capitalized, and

(ii) shall be allowed as a deduction ratably over the 60-month period beginning with the month in which such amount was paid or incurred.

(B) Mineral exploration and development costs

Any amount allowable as a deduction under section 616(a) or 617 in determining taxable income—

(i) shall be capitalized, and

(ii) shall be allowed as a deduction ratably over the 120-month period beginning with the later of—

(I) the month in which production from the deposit begins, or

(II) the month in which such amount was paid or incurred.

(3) Certain amortization provisions not to apply

Sections 173 and 248 shall not apply.

(4) LIFO inventory adjustments

(A) In general

Earnings and profits shall be increased or decreased by the amount of any increase or decrease in the LIFO recapture amount as of the close of each taxable year; except that any decrease below the LIFO recapture amount as of the close of the taxable year preceding the 1st taxable year to which this paragraph applies to the taxpayer shall be taken into account only to the extent provided in regulations prescribed by the Secretary.

(B) LIFO recapture amount

For purposes of this paragraph, the term "LIFO recapture amount" means the amount (if any) by which—

(i) the inventory amount of the inventory assets under the first-in, first-out method authorized by section 471, exceeds

(ii) the inventory amount of such assets under the LIFO method.

(C) Definitions

For purposes of this paragraph—

(i) LIFO method

The term "LIFO method" means the method authorized by section 472 (relating to last-in, first-out inventories).

(ii) Inventory assets

The term "inventory assets" means stock in trade of the corporation, or other property of a kind which would properly be included in the inventory of the corporation if on hand at the close of the taxable year.

(iii) Inventory amount

The inventory amount of assets under the first-in, first-out method authorized by section 471 shall be determined—

(I) if the corporation uses the retail method of valuing inventories under section 472, by using such method, or

(II) if subclause (I) does not apply, by using cost or market, whichever is lower.

(5) Installment sales

In the case of any installment sale, earnings and profits shall be computed as if the corporation did not use the installment method.

(6) Completed contract method of accounting

In the case of a taxpayer who uses the completed contract method of accounting, earnings and profits shall be computed as if such taxpayer used the percentage of completion method of accounting.

(7) Redemptions

If a corporation distributes amounts in a redemption to which section 302(a) or 303 applies, the part of such distribution which is properly chargeable to earnings and profits shall be an amount which is not in excess of the ratable share of the earnings and profits of such corporation accumulated after February 28, 1913, attributable to the stock so redeemed.

(8) Special rule for certain foreign corporations

In the case of a foreign corporation described in subsection (k)(4)—

(A) paragraphs (4) and (6) shall apply only in the case of taxable years beginning after December 31, 1985, and

(B) paragraph (5) shall apply only in the case of taxable years beginning after December 31, 1987.

(o) Definition of original issue discount and issue price for purposes of subsection (a)(2)

For purposes of subsection (a)(2), the terms "original issue discount" and "issue price" have the same respective meanings as when used in subpart A of part V of subchapter P of this chapter.

(Aug. 16, 1954, ch. 736, 68A Stat. 95; Pub. L. 87–403, §3(a), Feb. 2, 1962, 76 Stat. 6; Pub. L. 87–834, §§13(f)(3), 14(b)(1), Oct. 16, 1962, 76 Stat. 1035, 1040; Pub. L. 88–272, title II, §231(b)(3), Feb. 26, 1964, 78 Stat. 105; Pub. L. 88–484, §1(b)(1), Aug. 22, 1964, 78 Stat. 597; Pub. L. 89–570, §1(b)(3), Sept. 12, 1966, 80 Stat. 762; Pub. L. 91–172, title II, §211(b)(3), title IV, §442(a), title IX, §905(b)(2), Dec. 30, 1969, 83 Stat. 570, 628, 714; Pub. L. 94–455, title II, §205(c)(1)(D), title XIX, §§1901(a)(43), (b)(32)(B)(i), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1535, 1771, 1800, 1834; Pub. L. 95–628, §3(c), Nov. 10, 1978, 92 Stat. 3627; Pub. L. 96–589, §5(f), Dec. 24, 1980, 94 Stat. 3406; Pub. L. 97–34, title II, §206(a), (b), Aug. 13, 1981, 95 Stat. 224; Pub. L. 97–248, title II, §§205(a)(3), 222(e)(3), title III, §310(b)(3), Sept. 3, 1982, 96 Stat. 429, 480, 597; Pub. L. 97–448, title III, §306(a)(6)(B), Jan. 12, 1983, 96 Stat. 2402; Pub. L. 98–369, div. A, title I, §§61(a)–(c)(1), 63(b), 111(e)(5), July 18, 1984, 98 Stat. 579–581, 583, 633; Pub. L. 99–121, title I, §103(b)(1)(C), Oct. 11, 1985, 99 Stat. 509; Pub. L. 99–514, title II, §§201(b), (d)(6), 241(b)(1), title VI, §631(e)(1), title VIII, §803(b)(3), title XVIII, §§1804(f)(1)(A)–(E), 1809(a)(2)(C)(ii), Oct. 22, 1986, 100 Stat. 2137, 2141, 2181, 2273, 2355, 2804, 2805, 2819; Pub. L. 100–647, title I, §§1002(a)(3), 1018(d)(4), (u)(4), Nov. 10, 1988, 102 Stat. 3353, 3578, 3590; Pub. L. 101–239, title VII, §§7611(f)(5)(A), 7811(m)(2), Dec. 19, 1989, 103 Stat. 2373, 2412; Pub. L. 101–508, title XI, §§11812(b)(5), 11813(b)(14), Nov. 5, 1990, 104 Stat. 1388–535, 1388–555; Pub. L. 105–34, title XVI, §1604(a)(2), Aug. 5, 1997, 111 Stat. 1097; Pub. L. 108–357, title III, §338(b)(3), title IV, §413(c)(4), (5), Oct. 22, 2004, 118 Stat. 1481, 1507; Pub. L. 109–58, title XIII, §§1323(b)(3), 1331(b)(5), Aug. 8, 2005, 119 Stat. 1015, 1024; Pub. L. 109–432, div. A, title IV, §404(b)(2), Dec. 20, 2006, 120 Stat. 2956.)

REFERENCES IN TEXT

Section 115(h) of the Internal Revenue Code of 1939, referred to in subsec. (d)(2), was classified to section 115(h) of former Title 26, Internal Revenue Code. Section 115(h) was repealed by section 7851(a)(1) of this title. For table of comparisons of the 1939 Code to the 1986 Code [formerly I.R.C. 1954], see Table I

preceding section 1 of this title. See, also, section 7851(e) of this title for provision that references in the 1986 Code to a provision of the 1939 Code, not then applicable, shall be deemed a reference to the corresponding provision of the 1986 Code, then applicable.

AMENDMENTS

2006—Subsec. (k)(3)(B). Pub. L. 109–432 substituted "179D, or 179E" for "or 179D" in heading and two places in text.

2005—Subsec. (k)(3)(B). Pub. L. 109–58, §1331(b)(5), substituted "179, 179A, 179B, 179C, or 179D" for "179, 179A, 179B, or 179C" in heading and two places in text.

Pub. L. 109–58, §1323(b)(3), substituted "179, 179A, 179B, or 179C" for "179 179A, or 179B" in heading and two places in text.

2004—Subsec. (j). Pub. L. 108–357, §413(c)(4), struck out subsec. (j) which related to earnings and profits of foreign investment companies.

Subsec. (k)(3)(B). Pub. L. 108–357, §338(b)(3), substituted "179A, or 179B" for "or 179A" in heading and two places in text.

Subsec. (m). Pub. L. 108–357, §413(c)(5), struck out ", a foreign investment company (within the meaning of section 1246(b)), or a foreign personal holding company (within the meaning of section 552)" before "and the issuance".

1997—Subsec. (k)(3)(B). Pub. L. 105–34, in heading substituted "179 or 179A" for "179" and in text substituted "section 179 or 179A shall" for "section 179 shall" and "section 179 or 179A, as the case may be)" for "section 179)".

1990—Subsec. (k)(2). Pub. L. 101–508, §11812(b)(5), substituted heading for one which read: "Exceptions" and amended text generally. Prior to amendment, text read as follows: "If for any taxable year beginning after June 30, 1972, a method of depreciation was used by the taxpayer which the Secretary has determined results in a reasonable allowance under section 167(a), and which is not—

"(A) a declining balance method,

"(B) the sum of the years-digit method, or

"(C) any other method allowable solely by reason of the application of subsection (b)(4) or (j)(1)(C) of section 167,

then the adjustment to earnings and profits for depreciation for such year shall be determined under the method so used (in lieu of under the straight line method)."

Subsec. (k)(5). Pub. L. 101–508, §11813(b)(14), substituted "section 50(c)" for "section 48(q)".

1989—Subsec. (b). Pub. L. 101–239, §7811(m)(2), made clarifying amendment to directory language of Pub. L. 100–647, §1018(d)(4), see 1988 Amendment note below.

Subsec. (n)(2)(A)(ii). Pub. L. 101–239, §7611(f)(5)(A), substituted "in which such amount was paid or incurred" for "in which the production from the well begins".

1988—Subsec. (b). Pub. L. 100–647, §1018(d)(4), as amended by Pub. L. 101–239, §7811(m)(2), substituted "of any property (other than an obligation of such corporation)" for "of any property" in introductory provisions.

Subsec. (k)(4). Pub. L. 100–647, §1002(a)(3), substituted "paragraph (1)" for "paragraphs (1) and (3)".

Subsec. (n)(1)(B). Pub. L. 100–647, §1018(u)(4), made technical amendment to directory language of Pub. L. 99–514, §803(b)(3)(A). See 1986 Amendment note below.

1986—Subsec. (b). Pub. L. 99–514, §1804(f)(1)(A), amended subsec. (b) generally, substituting provisions relating to distributions of appreciated property for provisions relating to distribution of certain inventory assets.

Subsec. (c). Pub. L. 99–514, §1804(f)(1)(B), (C), struck out ", etc." after "liabilities" in heading and struck out par. (3) which read as follows: "any gain recognized to the corporation on the distribution."

Subsec. (k)(3). Pub. L. 99–514, §201(b), amended par. (3) generally, substituting provisions relating to tangible property to which section 168 applies and amounts deductible under section 179 for provisions relating to recovery property within the meaning of section 168, amounts deductible under section 179, and flexibility if a different recovery percentage is elected under section 168 based on a longer recovery period.

Subsec. (k)(3)(A). Pub. L. 99–514, §1809(a)(2)(C)(ii), in subpar. (A), struck out "and rules similar to the rules under the next to the last sentence of section 168(b)(2)(A) and section 168(b)(2)(B) shall apply" after "low-income housing)".

Subsec. (k)(4). Pub. L. 99–514, §201(d)(6), struck out last sentence "In determining the earnings and profits of such corporation in the case of recovery property (within the meaning of section 168), the rules of section 168(f)(2) shall apply."

Subsec. (n)(1)(B). Pub. L. 99–514, §803(b)(3)(A), as amended by Pub. L. 100–647, §1018(u)(4), struck out

"(determined without regard to section 189)" after "incurred".

Subsec. (n)(1)(C). Pub. L. 99–514, §803(b)(3)(B), added subpar. (C) and struck out former subpar. (C) which read as follows: "The term 'construction period' has the meaning given such term by section 189(e)(2) (determined without regard to any real property limitation)."

Subsec. (n)(3). Pub. L. 99–514, §241(b)(1), struck out ", 177," after "sections 173".

Subsec. (n)(4). Pub. L. 99–514, §631(e)(1), amended par. (4) generally. Prior to amendment, par. (4) read as follows: "Earnings and profits shall be increased or decreased by the amount of any increase or decrease in the LIFO recapture amount (determined under section 336(b)(3)) as of the close of each taxable year; except that any decrease below the LIFO recapture amount as of the close of the taxable year preceding the first taxable year to which this paragraph applies to the taxpayer shall be taken into account only to the extent provided in regulations prescribed by the Secretary."

Pub. L. 99–514, §1804(f)(1)(D), redesignated par. (5) as (4). Former par. (4), relating to certain untaxed appreciation of distributed property, was struck out.

Subsec. (n)(5) to (7). Pub. L. 99–514, §1804(f)(1)(D), redesignated pars. (6) to (8) as (5) to (7), respectively. Former par. (5) redesignated (4).

Subsec. (n)(8), (9). Pub. L. 99–514, §1804(f)(1)(D), (E), redesignated par. (9) as (8) and substituted provisions of subpars. (A) and (B) for "paragraphs (5), (6), and (7) shall apply only in the case of taxable years beginning after December 31, 1985." Former par. (8) redesignated (7).

1985—Subsec. (k)(3)(A). Pub. L. 99–121 substituted "19-year real property" for "18-year real property" wherever appearing.

1984—Subsec. (a)(2). Pub. L. 98–369, §61(c)(1)(A), inserted "(or, in the case of obligations having original issue discount, the aggregate issue price of such obligations)".

Subsec. (e). Pub. L. 98–369, §61(a)(2)(B), struck out subsec. (e) which provided: "In the case of amounts distributed in a redemption to which section 302(a) or 303 applies, the part of such distribution which is properly chargeable to capital account shall not be treated as a distribution of earnings and profits."

Subsec. (h). Pub. L. 98–369, §63(b), amended subsec. (h) generally, designating existing provisions as par. (1) and adding par. (2).

Subsec. (j)(3). Pub. L. 98–369, §61(a)(2)(A), struck out par. (3) which provided: "If a foreign investment company (as defined in section 1246) distributes amounts in a redemption to which section 302(a) or 303 applies, the part of such distribution which is properly chargeable to earnings and profits shall be an amount which is not in excess of the ratable share of the earnings and profits of the company accumulated after February 28, 1913, attributable to the stock so redeemed."

Subsec. (k)(3)(A). Pub. L. 98–369, §111(e)(5), substituted "18-year real property and low-income housing" for "15-year real property" in three places.

Pub. L. 98–369, §61(b), substituted "40 years" for "35 years" in table item relating to 15-year real property. Directory language that table be amended by substituting "40 years" for "35 years" in item relating to 15-year real property and 20-year real property, was executed by making the substitution in item relating to 15-year real property. The table contained no item relating to 20-year real property.

Subsec. (n). Pub. L. 98–369, §61(a)(1), added subsec. (n).

Subsec. (o). Pub. L. 98–369, §61(c)(1)(B), added subsec. (o).

1983—Subsec. (j)(3). Pub. L. 97–448 substituted "Redemptions" for "Partial liquidations and redemptions" in heading, and in text struck out "in partial liquidation or" after "distributes amounts".

1982—Subsec. (e). Pub. L. 97–248, §222(e)(3), struck out "partial liquidations and" in heading, and in text struck out "in partial liquidation (whether before, on, or after June 22, 1954) or" after "amounts distributed".

Subsec. (k)(5). Pub. L. 97–248, §205(a)(3), added par. (5).

Subsec. (m). Pub. L. 97–248, §310(b)(3), added subsec. (m).

1981—Subsec. (k)(3), (4). Pub. L. 97–34 added par. (3), redesignated former par. (3) as (4) substituted "The provisions of paragraphs (1) and (3)" for "The provisions of paragraph (1)", and inserted provision that the rules of section 168(f)(2) shall apply in determining the earnings and profits of the corporation in the case of recovery property (within the meaning of section 168).

1980—Subsec. (l). Pub. L. 96–589 added subsec. (l).

1978—Subsec. (c)(3). Pub. L. 95–628 substituted "gain recognized to the corporation on the distribution" for "gain to the corporation recognized under subsection (b), (c), or (d) of section 311, under section 341(f), or under section 617(d)(1), 1245(a), 1250(a), 1251(c), 1252(a), or 1254(a)".

1976—Subsec. (c)(3). Pub. L. 94–455, §205(c)(1)(D), substituted "1252(a), or 1254(a)" for "or 1252(a)".

Subsec. (d)(1). Pub. L. 94–455, §1901(a)(43)(A), substituted "this title" for "this Code" wherever appearing.

Subsec. (h). Pub. L. 94–455, §§1901(a)(43)(B), 1906(b)(13)(A), redesignated subsec. (i) as (h) and struck

out "or his delegate" after "Secretary". Former subsec. (h), which related to earnings and profits of personal service corporations, was struck out.

Subsec. (i). Pub. L. 94–455, §1901(a)(43)(B), (C), redesignated subsec. (j) as (i), and, among other changes, substituted "paragraph (2)" for "subparagraph (B) of the preceding sentence" and "of this subsection" for "of this paragraph", and struck out provisions relating to the effective date of this subsec. Former subsec. (i) redesignated (h).

Subsec. (j). Pub. L. 94–455, §§1901(a)(43)(D), (b)(32)(B)(i), 1906(b)(13)(A), redesignated subsec. (l) as (j), struck out "or his delegate" after "Secretary" in par. (1) and in par. (3) provision relating to the effective date of such paragraph. Former subsec. (j) redesignated (i).

Subsec. (k). Pub. L. 94–455, §§1901(b)(32)(B)(i), 1906(b)(13)(A), redesignated subsec. (m) as (k) and struck out "or his delegate" after "Secretary" in par. (2). Former subsec. (k), relating to special adjustment on disposition of antitrust stock received as a dividend, was struck out.

Subsec. (l). Pub. L. 94–455, §1901(b)(32)(B)(i), redesignated subsec. (l) as (j).

Subsec. (m). Pub. L. 94–455, §1901(b)(32)(B)(i), redesignated subsec. (m) as (k).

1969—Subsec. (c)(3). Pub. L. 91–172, §§211(b)(3), 905(b)(2), substituted "1250(a), 1251(c), or 1252(a)", for "or 1250(a)" and inserted reference to section 311(d).

Subsec. (m). Pub. L. 91–172, §442(a), added subsec. (m).

1966—Subsec. (c)(3). Pub. L. 89–570 inserted reference to section 617(d)(1).

1964—Subsec. (c)(3). Pub. L. 88–484 authorized adjustment for amount of gain recognized under section 341(f).

Pub. L. 88–272 inserted reference to section 1250(a).

1962—Subsec. (c)(3). Pub. L. 87–834, §13(f)(3), included any gain recognized under section 1245(a).

Subsec. (k). Pub. L. 87–403 added subsec. (k).

Subsec. (l). Pub. L. 87–834, §14(b)(1), added subsec. (l).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–432 applicable to costs paid or incurred after Dec. 20, 2006, see section 404(c) of Pub. L. 109–432, set out as an Effective Date note under section 179E of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 1323(b)(3) of Pub. L. 109–58 applicable to properties placed in service after Aug. 8, 2005, see section 1323(c) of Pub. L. 109–58, set out as an Effective Date note under section 179C of this title.

Amendment by section 1331(b)(5) of Pub. L. 109–58 applicable to property placed in service after Dec. 31, 2005, see section 1331(d) of Pub. L. 109–58, set out as an Effective Date note under section 179D of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 338(b)(3) of Pub. L. 108–357 applicable to expenses paid or incurred after Dec. 31, 2002, in taxable years ending after such date, see section 338(c) of Pub. L. 108–357, set out as an Effective Date note under section 179B of this title.

Amendment by section 413(c)(4), (5) of Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 effective as if included in the amendments made by section 1913 of the Energy Policy Act of 1992, Pub. L. 102–486, see section 1604(a)(4) of Pub. L. 105–34, set out as a note under section 263 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

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

Amendment by section 11813(b)(14) of Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7611(f)(5)(A) of Pub. L. 101–239 applicable to costs paid or incurred in taxable years beginning after Dec. 31, 1989, see section 7611(g)(2) of Pub. L. 101–239, set out as a note under section 56 of this title.

Amendment by section 7811(m)(2) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

If any interest costs incurred after Dec. 31, 1986, are attributable to costs incurred before Jan. 1, 1987, the amendment by section 803(b)(3) of Pub. L. 99–514 is applicable to such interest costs only to the extent such interest costs are attributable to costs which were required to be capitalized under section 263 of the Internal Revenue Code of 1954 and which would have been taken into account in applying section 189 of the Internal Revenue Code of 1954 (as in effect before its repeal by section 803 of Pub. L. 99–514) or, if applicable, section 266 of such Code, see section 7831(d)(2) of Pub. L. 101–239, set out as an Effective Date note under section 263A of this title.

Amendment by section 201(b), (d)(6) of Pub. L. 99–514 applicable to property placed in service after Dec. 31, 1986, in taxable years ending after such date, with exceptions, see sections 203 and 204 of Pub. L. 99–514, set out as a note under section 168 of this title.

Amendment by section 201(b), (d)(6) of Pub. L. 99–514 not applicable to any property placed in service before Jan. 1, 1994, if such property placed in service as part of specified rehabilitations, and not applicable to certain additional rehabilitations, see section 251(d)(2), (3) of Pub. L. 99–514, set out as a note under section 46 of this title.

Amendment by section 241(b)(1) of Pub. L. 99–514 applicable to expenditures paid or incurred after Dec. 31, 1986, except as otherwise provided, see section 241(c) of Pub. L. 99–514, set out as an Effective Date of Repeal note under former section 177 of this title.

Amendment by section 631(e)(1) of Pub. L. 99–514 applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, set out as an Effective Date note under section 336 of this title.

Amendment by section 803(b)(3) of Pub. L. 99–514 applicable to costs incurred after Dec. 31, 1986, in taxable years ending after such date, except as otherwise provided, see section 803(d) of Pub. L. 99–514, set out as an Effective Date note under section 263A of this title.

Amendment by sections 1804(f)(1)(A)–(E) and 1809(a)(2)(C)(ii) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Pub. L. 99–514, title XVIII, §1804(f)(3), Oct. 22, 1986, 100 Stat. 2805, provided that: "Paragraph (7) of section 312(n) of the Internal Revenue Code of 1954 [now 1986] (as redesignated by paragraph (1)(D) of this subsection), and the amendments made by section 61(a)(2) of the Tax Reform Act of 1984 [amending this section], shall apply to distributions in taxable years beginning after September 30, 1984."

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–121 applicable with respect to property placed in service by the taxpayer after May 8, 1985, with specified exceptions, see section 105(b) of Pub. L. 99–121, set out as a note under section 168 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §61(e)(1)–(3), July 18, 1984, 98 Stat. 582, 583, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) ADJUSTMENTS TO EARNINGS AND PROFITS.—

"(A) PARAGRAPHS (1), (2), AND (3) OF SECTION 312(n).—The provisions of paragraphs (1), (2), and (3) of section 312(n) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)) shall apply to amounts paid or incurred in taxable years beginning after September 30, 1984.

"(B) PARAGRAPH (4) OF SECTION 312(n).—The provisions of paragraph (4) of section 312(n) of such Code (as so added) shall apply to distributions after September 30, 1984; except that such provisions shall not apply to any distribution to which the amendments made by section 54(a) of this Act [amending section 311 of this title] do not apply.

"(C) LIFO INVENTORY.—The provisions of paragraph (5) of section 312(n) of such Code (as so added) shall apply to taxable years beginning after September 30, 1984.

"(D) INSTALLMENT SALES.—The provisions of paragraph (6) of section 312(n) of such Code (as so added) shall apply to sales after September 30, 1984, in taxable years ending after such date.

"(E) COMPLETED CONTRACT METHOD.—The provisions of paragraph (7) of section 312(n) of such Code (as so added) shall apply to contracts entered into after September 30, 1984, in taxable years ending after such date.

"(2) SUBSECTION (b).—The amendments made by subsection (b) [amending this section] shall apply to property placed in service in taxable years beginning after September 30, 1984.

"(3) SUBSECTION (c).—The amendments made by subsection (c) [amending this section and section 1275 of this title] shall apply with respect to distributions declared after March 15, 1984, in taxable years ending after such date."

Amendment by section 61(a)(2) of Pub. L. 98–369 applicable to distributions in taxable years beginning after Sept. 30, 1984, see section 1804(f)(3) of Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note above.

Pub. L. 99–514, title XVIII, §1804(f)(1)(F), Oct. 22, 1986, 100 Stat. 2805, provided that: "Any reference in subsection (e) of section 61 of the Tax Reform Act of 1984 [set out above] to a paragraph of section 312(n) of the Internal Revenue Code of 1954 [now 1986] shall be treated as a reference to such paragraph as in effect before its redesignation by subparagraph (D) [see 1986 Amendment note above]."

Pub. L. 98–369, div. A, title I, §63(c), July 18, 1984, 98 Stat. 584, provided that: "The amendment made by this section [amending this section and section 368 of this title] shall apply to transactions pursuant to plans adopted after the date of the enactment of this Act [July 18, 1984]."

Amendment by section 111(e)(5) of Pub. L. 98–369 applicable with respect to property placed in service by the taxpayer after Mar. 15, 1984, subject to certain exceptions, see section 111(g) of Pub. L. 98–369, set out as a note under section 168 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

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

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 205(a)(3) of Pub. L. 97–248 applicable to periods after Dec. 31, 1982, under rules similar to the rules of section 48(m) of this title, with certain qualifications, see section 205(c)(1) of Pub. L. 97–248, set out as an Effective Date note under section 196 of this title.

Amendment by section 222(e)(3) of Pub. L. 97–248 applicable to distributions after Aug. 31, 1982, with exceptions for certain partial liquidations, see section 222(f) of Pub. L. 97–248, set out as a note under section 302 of this title.

Amendment by section 310(b)(3) of Pub. L. 97–248 applicable to obligations issued after Dec. 31, 1982, with exceptions for certain warrants, see section 310(d) of Pub. L. 97–248, set out as a note under section 103 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to property placed in service after Dec. 31, 1980, in taxable years ending after that date, see section 209(a) of Pub. L. 97–34, set out as an Effective Date note under section 168 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–589 applicable to transactions which occur after Dec. 31, 1980, other than transactions which occur in proceedings in bankruptcy cases or similar judicial proceedings or in proceedings under Title 11, Bankruptcy, commencing on or before Dec. 31, 1980, except as otherwise provided, see section 7 of Pub. L. 96–589, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–628 applicable to distributions made after Nov. 10, 1978, see section 3(d) of Pub. L. 95–628, set out as a note under section 301 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 205(c)(1)(D) of Pub. L. 94–455 effective for taxable years ending after Dec. 31, 1975, see section 205(e) of Pub. L. 94–455, set out as a note under section 1254 of this title.

Amendment by section 1901(a)(43) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by section 1901(b)(32) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 211(b)(3) of Pub. L. 91–172 applicable to taxable years beginning after December 31, 1969, see section 211(c) of Pub. L. 91–172, set out as a note under section 301 of this title.

Amendment by section 905(b)(2) Pub. L. 91–172 effective with respect to distributions made after Nov. 30, 1969, see section 905(c) of Pub. L. 91–172, set out as a note under section 311 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–570 applicable to taxable years ending after Sept. 12, 1966, but only in respect of expenditures paid or incurred after such date, see section 3 of Pub. L. 89–570, set out as an Effective Date note under section 617 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–484 applicable with respect to transactions after Aug. 22, 1964 in taxable years ending after such date, see section 2 of Pub. L. 88–484, set out as a note under section 301 of this title.

Amendment by Pub. L. 88–272 applicable to dispositions after Dec. 31, 1963, in taxable years ending after such date, see section 231(c) of Pub. L. 88–272, set out as an Effective Date note under section 1250 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by section 13(f)(3) of Pub. L. 87–834 applicable to taxable years beginning after Dec. 31, 1962, see section 13(g) of Pub. L. 87–834, set out as an Effective Date note under section 1245 of this title.

Pub. L. 87–834, §14(c), Oct. 16, 1962, 76 Stat. 1041, provided that: "The amendments made by this section [enacting sections 1246 and 1247 of this title and amending this section and sections 751 and 1223 of this title] shall apply with respect to taxable years beginning after December 31, 1962."

Pub. L. 87–403, §3(g), Feb. 2, 1962, 76 Stat. 8, provided that: "The amendments made by this section [amending this section and sections 535, 543, 545, 556 and 561 of this title] shall apply only with respect to distributions made after the date of the enactment of this Act [Feb. 2, 1962]."

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[1] Subsec. (m) was enacted without a period at the end.

SUBPART C—DEFINITIONS; CONSTRUCTIVE OWNERSHIP OF STOCK

Sec.

316. Dividend defined.
317. Other definitions.
318. Constructive ownership of stock.

§316. Dividend defined

(a) General rule

For purposes of this subtitle, the term "dividend" means any distribution of property made by a corporation to its shareholders—

(1) out of its earnings and profits accumulated after February 28, 1913, or

(2) out of its earnings and profits of the taxable year (computed as of the close of the taxable year without diminution by reason of any distributions made during the taxable year), without regard to the amount of the earnings and profits at the time the distribution was made.

Except as otherwise provided in this subtitle, every distribution is made out of earnings and profits to the extent thereof, and from the most recently accumulated earnings and profits. To the extent that any distribution is, under any provision of this subchapter, treated as a distribution of property to which section 301 applies, such distribution shall be treated as a distribution of property for purposes of this subsection.

(b) Special rules

(1) Certain insurance company dividends

The definition in subsection (a) shall not apply to the term "dividend" as used in subchapter L in any case where the reference is to dividends of insurance companies paid to policyholders as such.

(2) Distributions by personal holding companies

(A) In the case of a corporation which—

(i) under the law applicable to the taxable year in which the distribution is made, is a personal holding company (as defined in section 542), or

(ii) for the taxable year in respect of which the distribution is made under section 563(b) (relating to dividends paid after the close of the taxable year), or section 547 (relating to deficiency dividends), or the corresponding provisions of prior law, is a personal holding company under the law applicable to such taxable year,

the term "dividend" also means any distribution of property (whether or not a dividend as defined in subsection (a)) made by the corporation to its shareholders, to the extent of its undistributed personal holding company income (determined under section 545 without regard to distributions under this paragraph) for such year.

(B) For purposes of subparagraph (A), the term "distribution of property" includes a distribution in complete liquidation occurring within 24 months after the adoption of a plan of liquidation, but—

(i) only to the extent of the amounts distributed to distributees other than corporate shareholders, and

(ii) only to the extent that the corporation designates such amounts as a dividend distribution and duly notifies such distributees of such designation, under regulations prescribed by the Secretary, but

(iii) not in excess of the sum of such distributees' allocable share of the undistributed personal holding company income for such year, computed without regard to this subparagraph or section 562(b).

(3) Deficiency dividend distributions by a regulated investment company or real estate investment trust

The term "dividend" also means any distribution of property (whether or not a dividend as defined in subsection (a)) which constitutes a "deficiency dividend" as defined in section 860(f).

(4) Certain distributions by regulated investment companies in excess of earnings and profits

In the case of a regulated investment company that has a taxable year other than a calendar year, if the distributions by the company with respect to any class of stock of such company for the taxable year exceed the company's current and accumulated earnings and profits which may be used for the payment of dividends on such class of stock, the company's current earnings and profits shall, for purposes of subsection (a), be allocated first to distributions with respect to such class of stock made during the portion of the taxable year which precedes January 1.

(Aug. 16, 1954, ch. 736, 68A Stat. 98; Mar. 13, 1956, ch. 83, §5(1), 70 Stat. 49; Pub. L. 88–272, title II, §225(f)(1), Feb. 26, 1964, 78 Stat. 87; Pub. L. 94–455, title XVI, §1601(d), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1746, 1834; Pub. L. 95–600, title III, §362(d)(1), Nov. 6, 1978, 92 Stat. 2851; Pub. L. 111–325, title III, §305(a), Dec. 22, 2010, 124 Stat. 3549.)

AMENDMENTS

2010—Subsec. (b)(4). Pub. L. 111–325 added par. (4).

1978—Subsec. (b)(3). Pub. L. 95–600 inserted "regulated investment company or" after "distributions by a" in heading and substituted in text "section 860(f)" for "section 859(d)".

1976—Subsec. (b)(2)(B)(ii). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (b)(3). Pub. L. 94–455, §1601(d), added par. (3).

1964—Subsec. (b)(2). Pub. L. 88–272 inserted definition of "distribution of property".

1956—Subsec. (b)(1). Act Mar. 13, 1956, substituted "subchapter L" for "sections 803(e), 821(a)(2), and 832(c)(11)".

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–325, title III, §305(b), Dec. 22, 2010, 124 Stat. 3549, provided that: "The amendment made by this section [amending this section] shall apply to distributions made in taxable years beginning after the date of the enactment of this Act [Dec. 22, 2010]."

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable with respect to determinations (as defined in section 860(e) of this title) after Nov. 6, 1978, see section 362(e) of Pub. L. 95–600, set out as an Effective Date note under section 860 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment by section 1601(d) of Pub. L. 94–455, see section 1608(a) of Pub. L. 94–455, set out as a note under section 857 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88–272, title II, §225(l), Feb. 26, 1964, 78 Stat. 94, provided that:

"(1) The amendments made by this section [enacting section 1022, redesignating former section 1022 as 1023, amending this section and sections 331, 333, 381, 541, 542, 543, 544, 545, 551, 553, 554, 562, 856, 1016, 1361, 6501, and the analysis preceding section 1011, and enacting provisions set out as a note under section 333 of this title] (other than by subsections (c)(1), (f), (g), and (j) [enacting section 1022, redesignating former section 1022 as 1023, amending this section and sections 331, 333, 542, 551, 562, 1016, and the analysis preceding section 1011 of this title]) shall apply to taxable years beginning after December 31, 1963.

"(2) The amendment made by subsection (c)(1) [amending section 542 of this title] shall apply to taxable years beginning after October 16, 1962.

"(3) The amendments made by subsections (f) and (g) [amending this section and sections 331, 333, 551, and 562 of this title] shall apply to distributions made in any taxable year of the distributing corporation beginning after December 31, 1963.

"(4) The amendments made by subsection (j) [enacting section 1022, redesignating former section 1022 as 1023, and amending section 1016 and the analysis preceding section 1011 of this title] shall apply in respect of decedents dying after December 31, 1963.

"(5) Subsection (h) [set out as a note under section 333 of this title] shall apply to taxable years beginning after December 31, 1963."

EFFECTIVE DATE OF 1956 AMENDMENT

Act Mar. 13, 1956, ch. 83, §6, 70 Stat. 49, provided that: "The amendments made by this Act [amending this section and sections 501, 594, 801 to 805, 811 to 813, 816 to 818, 821, 822, 832, 841, 842, 843, 891, 1201, 1504, and 4371 of this title] shall apply only to taxable years beginning after December 31, 1954."

§317. Other definitions

(a) Property

For purposes of this part, the term "property" means money, securities, and any other property; except that such term does not include stock in the corporation making the distribution (or rights to acquire such stock).

(b) Redemption of stock

For purposes of this part, stock shall be treated as redeemed by a corporation if the corporation acquires its stock from a shareholder in exchange for property, whether or not the stock so acquired is cancelled, retired, or held as treasury stock.

(Aug. 16, 1954, ch. 736, 68A Stat. 99.)

§318. Constructive ownership of stock

(a) General rule

For purposes of those provisions of this subchapter to which the rules contained in this section are expressly made applicable—

(1) Members of family

(A) In general

An individual shall be considered as owning the stock owned, directly or indirectly, by or for—

(i) his spouse (other than a spouse who is legally separated from the individual under a decree of divorce or separate maintenance), and

(ii) his children, grandchildren, and parents.

(B) Effect of adoption

For purposes of subparagraph (A)(ii), a legally adopted child of an individual shall be treated as a child of such individual by blood.

(2) Attribution from partnerships, estates, trusts, and corporations

(A) From partnerships and estates

Stock owned, directly or indirectly, by or for a partnership or estate shall be considered as owned proportionately by its partners or beneficiaries.

(B) From trusts

(i) Stock owned, directly or indirectly, by or for a trust (other than an employees' trust described in section 401(a) which is exempt from tax under section 501(a)) shall be considered as owned by its beneficiaries in proportion to the actuarial interest of such beneficiaries in such trust.

(ii) Stock owned, directly or indirectly, by or for any portion of a trust of which a person is considered the owner under subpart E of part I of subchapter J (relating to grantors and others treated as substantial owners) shall be considered as owned by such person.

(C) From corporations

If 50 percent or more in value of the stock in a corporation is owned, directly or indirectly, by or for any person, such person shall be considered as owning the stock owned, directly or indirectly, by or for such corporation, in that proportion which the value of the stock which such

person so owns bears to the value of all the stock in such corporation.

(3) Attribution to partnerships, estates, trusts, and corporations

(A) To partnerships and estates

Stock owned, directly or indirectly, by or for a partner or a beneficiary of an estate shall be considered as owned by the partnership or estate.

(B) To trusts

(i) Stock owned, directly or indirectly, by or for a beneficiary of a trust (other than an employees' trust described in section 401(a) which is exempt from tax under section 501(a)) shall be considered as owned by the trust, unless such beneficiary's interest in the trust is a remote contingent interest. For purposes of this clause, a contingent interest of a beneficiary in a trust shall be considered remote if, under the maximum exercise of discretion by the trustee in favor of such beneficiary, the value of such interest, computed actuarially, is 5 percent or less of the value of the trust property.

(ii) Stock owned, directly or indirectly, by or for a person who is considered the owner of any portion of a trust under subpart E of part I of subchapter J (relating to grantors and others treated as substantial owners), shall be considered as owned by the trust.

(C) To corporations

If 50 percent or more in value of the stock in a corporation is owned, directly or indirectly, by or for any person, such corporation shall be considered as owning the stock owned, directly or indirectly, by or for such person.

(4) Options

If any person has an option to acquire stock, such stock shall be considered as owned by such person. For purposes of this paragraph, an option to acquire such an option, and each one of a series of such options, shall be considered as an option to acquire such stock.

(5) Operating rules

(A) In general

Except as provided in subparagraphs (B) and (C), stock constructively owned by a person by reason of the application of paragraph (1), (2), (3), or (4), shall, for purposes of applying paragraphs (1), (2), (3), and (4), be considered as actually owned by such person.

(B) Members of family

Stock constructively owned by an individual by reason of the application of paragraph (1) shall not be considered as owned by him for purposes of again applying paragraph (1) in order to make another the constructive owner of such stock.

(C) Partnerships, estates, trusts, and corporations

Stock constructively owned by a partnership, estate, trust, or corporation by reason of the application of paragraph (3) shall not be considered as owned by it for purposes of applying paragraph (2) in order to make another the constructive owner of such stock.

(D) Option rule in lieu of family rule

For purposes of this paragraph, if stock may be considered as owned by an individual under paragraph (1) or (4), it shall be considered as owned by him under paragraph (4).

(E) S corporation treated as partnership

For purposes of this subsection—

(i) an S corporation shall be treated as a partnership, and

(ii) any shareholder of the S corporation shall be treated as a partner of such partnership.

The preceding sentence shall not apply for purposes of determining whether stock in the S corporation is constructively owned by any person.

(b) Cross references

For provisions to which the rules contained in subsection (a) apply, see—

(1) section 302 (relating to redemption of stock);

(2) section 304 (relating to redemption by related corporations);

(3) section 306(b)(1)(A) (relating to disposition of section 306 stock);

(4) section 338(h)(3) (defining purchase);

(5) section 382(l)(3) (relating to special limitations on net operating loss carryovers);

(6) section 856(d) (relating to definition of rents from real property in the case of real estate investment trusts);

(7) section 958(b) (relating to constructive ownership rules with respect to controlled foreign corporations); and

(8) section 6038(e)(2) (relating to information with respect to certain foreign corporations).

(Aug. 16, 1954, ch. 736, 68A Stat. 99; Pub. L. 86–779, §10(h), Sept. 14, 1960, 74 Stat. 1009; Pub. L. 87–834, §20(d)(1), Oct. 16, 1962, 76 Stat. 1063; Pub. L. 88–554, §4(a), (b)(2), Aug. 31, 1964, 78 Stat. 762, 763; Pub. L. 97–248, title II, §224(c)(3), Sept. 3, 1982, 96 Stat. 489; Pub. L. 98–369, div. A, title VII, §§712(k)(5)(E), 721(j), July 18, 1984, 98 Stat. 950, 969; Pub. L. 99–514, title VI, §621(c)(1), Oct. 22, 1986, 100 Stat. 2266; Pub. L. 105–34, title XI, §1142(e)(3), Aug. 5, 1997, 111 Stat. 983; Pub. L. 109–135, title IV, §412(u), Dec. 21, 2005, 119 Stat. 2638.)

AMENDMENTS

2005—Subsec. (b)(8). Pub. L. 109–135 substituted "section 6038(e)(2)" for "section 6038(d)(2)".

1997—Subsec. (b)(8). Pub. L. 105–34 substituted "6038(d)(2)" for "6038(d)(1)".

1986—Subsec. (b)(5). Pub. L. 99–514 substituted "382(l)(3)" for "382(a)(3)".

1984—Subsec. (a)(5)(E). Pub. L. 98–369, §721(j), added subpar. (E).

Subsec. (b)(4). Pub. L. 98–369, §712(k)(5)(E), substituted "section 338(h)(3) (defining purchase)" for "section 338(h)(3)(B) (relating to purchase of stock from subsidiaries, etc.)".

1982—Subsec. (b)(4). Pub. L. 97–248 substituted "section 338(h)(3)(B) (relating to purchase of stock from subsidiaries, etc.)" for "section 334(b)(3)(C) (relating to basis of property received in certain liquidations of subsidiaries)".

1964—Subsec. (a). Pub. L. 88–554, §4(a), struck out sidewise attribution by providing that when stock is attributed to a partnership, estate, trust, or corporation from a partner, shareholder, or beneficiary, this stock is not to be attributed again to another partner, beneficiary, or shareholder.

Subsec. (b)(7), (8). Pub. L. 88–554, §4(b)(2), added par. (7) and redesignated former par. (7) as (8).

1962—Subsec. (b)(7). Pub. L. 87–834 added par. (7).

1960—Subsec. (b)(6). Pub. L. 86–779 added par. (6).

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XI, §1142(f), Aug. 5, 1997, 111 Stat. 983, provided that: "The amendments made by this section [amending this section and sections 901 and 6038 of this title] shall apply to annual accounting periods beginning after the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to any ownership change after Dec. 31, 1986, except as otherwise provided, see section 621(f) of Pub. L. 99–514, as amended, set out as a note under section 382 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 712(k)(5)(E) of Pub. L. 98–369 not applicable to any qualified stock purchase where the acquisition date is before Sept. 1, 1982, see section 712(k)(9)(A) of Pub. L. 98–369, set out as a note under section 338 of this title.

Amendment by section 712(k)(5)(E) of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

Amendment by section 721(j) of Pub. L. 98–369 effective as if included in the Subchapter S Revision Act of 1982, Pub. L. 97–354, see section 721(y)(1) of Pub. L. 98–369, set out as a note under section 1361 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to any target corporation with respect to which the acquisition date occurs after Aug. 31, 1982, with special rules for certain acquisitions before Sept. 1, 1982, and certain acquisitions of financial institutions in which there was a binding contract on July 22, 1982, to acquire control, see section 224(d) of Pub. L. 97–248, set out as an Effective Date note under section 338 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88–554, §4(c), Aug. 31, 1964, 78 Stat. 764, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by this section [amending this section and sections 304, 382, 856, 958, and 6038 of this title] shall take effect on the date of the enactment of this Act, [Aug. 31, 1964], except that, for purposes of sections 302 and 304 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], such amendments shall not apply with respect to distributions in payment for stock acquisitions or redemptions, if such acquisitions or redemptions occurred before the date of the enactment of this Act."

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–779 applicable with respect to taxable years of real estate investment trusts beginning after Dec. 31, 1960, see section 10(k) of Pub. L. 86–779, set out as an Effective Date note under section 856 of this title.

PART II—CORPORATE LIQUIDATIONS

Subpart

A. Effects on recipients.

B. Effects on corporation.

[C. Repealed.]

D. Definition and special rule.

AMENDMENTS

2003—Pub. L. 108–27, title III, §302(e)(4)(B)(iii), May 28, 2003, 117 Stat. 764, struck out item for subpart C "Collapsible corporations".

1982—Pub. L. 97–248, title II, §222(e)(8)(B), Sept. 3, 1982, 96 Stat. 481, inserted "and special rule" in item for subpart D.

1976—Pub. L. 94–455, title XIX, §1901(b)(12)(B), Oct. 4, 1976, 90 Stat. 1795, struck out in table of subparts for part II of subchapter C of chapter 1 in subpart (C) "; foreign personal holding companies" after "corporations".

SUBPART A—EFFECTS ON RECIPIENTS

Sec.

331. Gain or loss to shareholder in corporate liquidations.[1]

332. Complete liquidations of subsidiaries.

[333. Repealed.]

334. Basis of property received in liquidations.

AMENDMENTS

1986—Pub. L. 99–514, title VI, §631(e)(16), Oct. 22, 1986, 100 Stat. 2275, struck out item 333 "Election as to recognition of gain in certain liquidations".

[1] *So in original. Does not conform to section catchline.*

§331. Gain or loss to shareholders in corporate liquidations

(a) Distributions in complete liquidation treated as exchanges

Amounts received by a shareholder in a distribution in complete liquidation of a corporation shall

be treated as in full payment in exchange for the stock.

(b) Nonapplication of section 301

Section 301 (relating to effects on shareholder of distributions of property) shall not apply to any distribution of property (other than a distribution referred to in paragraph (2)(B) of section 316(b)) in complete liquidation.

(c) Cross reference

For general rule for determination of the amount of gain or loss recognized, see section 1001.

(Aug. 16, 1954, ch. 736, 68A Stat. 101; Pub. L. 88–272, title II, §225(f)(2), Feb. 26, 1964, 78 Stat. 88; Pub. L. 94–455, title XIX, §1901(b)(28)(A), Oct. 4, 1976, 90 Stat. 1799; Pub. L. 97–248, title II, §222(a), (e)(1)(B), Sept. 3, 1982, 96 Stat. 478, 480.)

AMENDMENTS

1982—Subsec. (a). Pub. L. 97–248, §222(a), substituted provisions that amounts received by a shareholder in a distribution in complete liquidation of a corporation shall be treated as in full payment in exchange for the stock for provisions that, in complete liquidations, amounts distributed shall be treated as in full payment in exchange for the stock, while amounts distributed in partial liquidation shall be treated as in part or full payment in exchange for the stock.

Subsec. (b). Pub. L. 97–248, §222(e)(1)(B), struck out "partial or" before "complete liquidation".

1976—Subsec. (c). Pub. L. 94–455 substituted "reference" for "references" in heading and struck out cross reference relating to general rule for determination of the amount of gain or loss to the distributee and substituted "section 1001" for "section 1002".

1964—Subsec. (b). Pub. L. 88–272 inserted "(other than a distribution referred to in paragraph (2)(B) of section 316(b))".

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to distributions after Aug. 31, 1982, with exceptions for certain partial liquidations, see section 222(f) of Pub. L. 97–248, set out as a note under section 302 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to distribution made in any taxable year of the distributing corporation beginning after Dec. 31, 1963, see section 225(l) of Pub. L. 88–272, set out as a note under section 316 of this title.

LIQUIDATIONS BEFORE JANUARY 1, 1966

Pub. L. 88–272, title II, §225(h), Feb. 26, 1964, 78 Stat. 90, provided that in the case of corporations referred to in former subsec. (g)(3) of this section the amendments made by section 225 of Pub. L. 88–272 do not apply if there is a complete liquidation of such corporation and if the distribution of all the property under such liquidation occurs before Jan. 1, 1966, except for certain liquidations to which section 332 of this title applies.

§332. Complete liquidations of subsidiaries

(a) General rule

No gain or loss shall be recognized on the receipt by a corporation of property distributed in complete liquidation of another corporation.

(b) Liquidations to which section applies

For purposes of this section, a distribution shall be considered to be in complete liquidation only if—

(1) the corporation receiving such property was, on the date of the adoption of the plan of

liquidation, and has continued to be at all times until the receipt of the property, the owner of stock (in such other corporation) meeting the requirements of section 1504(a)(2); and either

(2) the distribution is by such other corporation in complete cancellation or redemption of all its stock, and the transfer of all the property occurs within the taxable year; in such case the adoption by the shareholders of the resolution under which is authorized the distribution of all the assets of such corporation in complete cancellation or redemption of all its stock shall be considered an adoption of a plan of liquidation, even though no time for the completion of the transfer of the property is specified in such resolution; or

(3) such distribution is one of a series of distributions by such other corporation in complete cancellation or redemption of all its stock in accordance with a plan of liquidation under which the transfer of all the property under the liquidation is to be completed within 3 years from the close of the taxable year during which is made the first of the series of distributions under the plan, except that if such transfer is not completed within such period, or if the taxpayer does not continue qualified under paragraph (1) until the completion of such transfer, no distribution under the plan shall be considered a distribution in complete liquidation.

If such transfer of all the property does not occur within the taxable year, the Secretary may require of the taxpayer such bond, or waiver of the statute of limitations on assessment and collection, or both, as he may deem necessary to insure, if the transfer of the property is not completed within such 3-year period, or if the taxpayer does not continue qualified under paragraph (1) until the completion of such transfer, the assessment and collection of all income taxes then imposed by law for such taxable year or subsequent taxable years, to the extent attributable to property so received. A distribution otherwise constituting a distribution in complete liquidation within the meaning of this subsection shall not be considered as not constituting such a distribution merely because it does not constitute a distribution or liquidation within the meaning of the corporate law under which the distribution is made; and for purposes of this subsection a transfer of property of such other corporation to the taxpayer shall not be considered as not constituting a distribution (or one of a series of distributions) in complete cancellation or redemption of all the stock of such other corporation, merely because the carrying out of the plan involves (A) the transfer under the plan to the taxpayer by such other corporation of property, not attributable to shares owned by the taxpayer, on an exchange described in section 361, and (B) the complete cancellation or redemption under the plan, as a result of exchanges described in section 354, of the shares not owned by the taxpayer.

(c) Deductible liquidating distributions of regulated investment companies and real estate investment trusts

If a corporation receives a distribution from a regulated investment company or a real estate investment trust which is considered under subsection (b) as being in complete liquidation of such company or trust, then, notwithstanding any other provision of this chapter, such corporation shall recognize and treat as a dividend from such company or trust an amount equal to the deduction for dividends paid allowable to such company or trust by reason of such distribution.

(d) Recognition of gain on liquidation of certain holding companies

(1) In general

In the case of any distribution to a foreign corporation in complete liquidation of an applicable holding company—

(A) subsection (a) and section 331 shall not apply to such distribution, and

(B) such distribution shall be treated as a distribution of property to which section 301 applies.

(2) Applicable holding company

For purposes of this subsection:

(A) In general

The term "applicable holding company" means any domestic corporation—

(i) which is a common parent of an affiliated group,

(ii) stock of which is directly owned by the distributee foreign corporation,

(iii) substantially all of the assets of which consist of stock in other members of such affiliated group, and

(iv) which has not been in existence at all times during the 5 years immediately preceding the date of the liquidation.

(B) Affiliated group

For purposes of this subsection, the term "affiliated group" has the meaning given such term by section 1504(a) (without regard to paragraphs (2) and (4) of section 1504(b)).

(3) Coordination with subpart F

If the distributee of a distribution described in paragraph (1) is a controlled foreign corporation (as defined in section 957), then notwithstanding paragraph (1) or subsection (a), such distribution shall be treated as a distribution to which section 331 applies.

(4) Regulations

The Secretary shall provide such regulations as appropriate to prevent the abuse of this subsection, including regulations which provide, for the purposes of clause (iv) of paragraph (2)(A), that a corporation is not in existence for any period unless it is engaged in the active conduct of a trade or business or owns a significant ownership interest in another corporation so engaged.

(Aug. 16, 1954, ch. 736, 68A Stat. 102; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 99–514, title VI, §631(e)(2), title XVIII, §1804(e)(6)(A), Oct. 22, 1986, 100 Stat. 2273, 2803; Pub. L. 105–277, div. J, title III, §3001(a), (b)(1), Oct. 21, 1998, 112 Stat. 2681–904; Pub. L. 108–357, title VIII, §893(a), Oct. 22, 2004, 118 Stat. 1646; Pub. L. 109–135, title IV, §412(v), Dec. 21, 2005, 119 Stat. 2638.)

AMENDMENTS

2005—Subsec. (d)(1)(B). Pub. L. 109–135 substituted "distribution of property to which section 301 applies" for "distribution to which section 301 applies".

2004—Subsec. (d). Pub. L. 108–357 added subsec. (d).

1998—Subsec. (b). Pub. L. 105–277, §3001(b)(1), substituted "this section" for "subsection (a)" in introductory provisions.

Subsec. (c). Pub. L. 105–277, §3001(a), added subsec. (c).

1986—Subsec. (b)(1). Pub. L. 99–514, §1804(e)(6)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "the corporation receiving such property was, on the date of the adoption of the plan of liquidation, and has continued to be at all times until the receipt of the property, the owner of stock (in such other corporation) possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote and the owner of at least 80 percent of the total number of shares of all other classes of stock (except nonvoting stock which is limited and preferred as to dividends); and either".

Subsec. (c). Pub. L. 99–514, §631(e)(2), struck out subsec. (c) containing special rule for indebtedness of subsidiary to parent in relation to complete liquidations of subsidiaries.

1976—Subsec. (b). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §893(b), Oct. 22, 2004, 118 Stat. 1647, provided that: "The amendment made by this section [amending this section] shall apply to distributions in complete liquidation occurring on or after the date of the enactment of this Act [Oct. 22, 2004]."

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–277, div. J, title III, §3001(c), Oct. 21, 1998, 112 Stat. 2681–904, provided that: "The amendments made by this section [amending this section and section 334 of this title] shall apply to distributions after May 21, 1998."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 631(e)(2) of Pub. L. 99–514 applicable to any distribution in complete liquidation,

and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, set out as an Effective Date note under section 336 of this title.

Pub. L. 99–514, title XVIII, §1804(e)(6)(B), Oct. 22, 1986, 100 Stat. 2803, provided that:

"(i) IN GENERAL.—Except as provided in clause (iii), the amendment made by subparagraph (A) [amending this section] shall apply with respect to plans of complete liquidation adopted after March 28, 1985.

"(ii) CERTAIN DISTRIBUTIONS MADE AFTER DECEMBER 31, 1984.—Except as provided in clause (iii), the amendment made by subparagraph (A) shall also apply with respect to plans of complete liquidations adopted on or before March 28, 1985, pursuant to which any distribution is made in a taxable year beginning after December 31, 1984 (December 31, 1983, in the case of an affiliated group to which an election under section 60(b)(7) of the Tax Reform Act of 1984 [Pub. L. 98–369, set out as a note under section 1504 of this title] applies), but only if the liquidating corporation and any corporation which receives a distribution in complete liquidation of such corporation are members of an affiliated group of corporations filing a consolidated return for the taxable year which includes the date of the distribution.

"(iii) TRANSITIONAL RULE FOR AFFILIATED GROUPS.—The amendment made by subparagraph (A) shall not apply with respect to plans of complete liquidation if the liquidating corporation is a member of an affiliated group of corporations under section 60(b) (2), (5), (6), or (8) of the Tax Reform Act of 1984 [Pub. L. 98–369, set out as a note under section 1504 of this title], for all taxable years which include the date of any distribution pursuant to such plan."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[§333. Repealed. Pub. L. 99–514, title VI, §631(e)(3), Oct. 22, 1986, 100 Stat. 2273]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 103; Feb. 26, 1964, Pub. L. 88–272, title II, §225(g), 78 Stat. 89; Oct. 4, 1976, Pub. L. 94–455, title XIX, §§1901(a)(44), 1906(b)(13)(A), 1951(b)(6)(A), 90 Stat. 1772, 1834, 1838, related to election as to recognition of gain in certain liquidations.

EFFECTIVE DATE OF REPEAL

Repeal applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, set out as an Effective Date note under section 336 of this title.

§334. Basis of property received in liquidations

(a) General rule

If property is received in a distribution in complete liquidation, and if gain or loss is recognized on receipt of such property, then the basis of the property in the hands of the distributee shall be the fair market value of such property at the time of the distribution.

(b) Liquidation of subsidiary

(1) In general

If property is received by a corporate distributee in a distribution in a complete liquidation to which section 332 applies (or in a transfer described in section 337(b)(1)), the basis of such

property in the hands of such distributee shall be the same as it would be in the hands of the transferor; except that, in the hands of such distributee—

(A) the basis of such property shall be the fair market value of the property at the time of the distribution in any case in which gain or loss is recognized by the liquidating corporation with respect to such property, and

(B) the basis of any property described in section 362(e)(1)(B) shall be the fair market value of the property at the time of the distribution in any case in which such distributee's aggregate adjusted basis of such property would (but for this subparagraph) exceed the fair market value of such property immediately after such liquidation.

(2) Corporate distributee

For purposes of this subsection, the term "corporate distributee" means only the corporation which meets the stock ownership requirements specified in section 332(b).

(Aug. 16, 1954, ch. 736, 68A Stat. 104; Pub. L. 89–809, title II, §202(a), (b), Nov. 13, 1966, 80 Stat. 1576; Pub. L. 94–455, title XIX, §§1901(a)(45), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1772, 1834; Pub. L. 97–248, title II, §§222(e)(1)(C), 224(b), Sept. 3, 1982, 96 Stat. 480, 488; Pub. L. 99–514, title VI, §631(e)(4), Oct. 22, 1986, 100 Stat. 2273; Pub. L. 100–647, title I, §1006(e)(6), Nov. 10, 1988, 102 Stat. 3401; Pub. L. 105–277, div. J, title III, §3001(b)(2), Oct. 21, 1998, 112 Stat. 2681–904; Pub. L. 108–357, title VIII, §836(b), Oct. 22, 2004, 118 Stat. 1595; Pub. L. 109–135, title IV, §403(dd)(1), Dec. 21, 2005, 119 Stat. 2630.)

AMENDMENTS

2005—Subsec. (b)(1). Pub. L. 109–135 substituted "except that, in the hands of such distributee—" for "except that the basis of such property in the hands of such distributee shall be the fair market value of the property at the time of the distribution—" in introductory provisions, added subpars. (A) and (B), and struck out former subpars. (A) and (B) which read as follows:

"(A) in any case in which gain or loss is recognized by the liquidating corporation with respect to such property, or

"(B) in any case in which the liquidating corporation is a foreign corporation, the corporate distributee is a domestic corporation, and the corporate distributee's aggregate adjusted bases of property described in section 362(e)(1)(B) which is distributed in such liquidation would (but for this subparagraph) exceed the fair market value of such property immediately after such liquidation."

2004—Subsec. (b)(1). Pub. L. 108–357 reenacted heading without change and amended text of par. (1) generally. Prior to amendment, text read as follows: "If property is received by a corporate distributee in a distribution in a complete liquidation to which section 332 applies (or in a transfer described in section 337(b)(1)), the basis of such property in the hands of such distributee shall be the same as it would be in the hands of the transferor; except that, in any case in which gain or loss is recognized by the liquidating corporation with respect to such property, the basis of such property in the hands of such distributee shall be the fair market value of the property at the time of the distribution."

1998—Subsec. (b)(1). Pub. L. 105–277 substituted "section 332" for "section 332(a)".

1988—Subsec. (b). Pub. L. 100–647 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

"(1) DISTRIBUTION IN COMPLETE LIQUIDATION.—If property is received by a corporation in a distribution in a complete liquidation to which section 332(a) applies, the basis of the property in the hands of the distributee shall be the same as it would be in the hands of the transferor.

"(2) TRANSFERS TO WHICH SECTION 332(c) APPLIES.—If property is received by a corporation in a transfer to which section 332(c) applies, the basis of the property in the hands of the transferee shall be the same as it would be in the hands of the transferor.

"(3) DISTRIBUTEE DEFINED.—For purposes of this subsection, the term 'distributee' means only the corporation which meets the 80-percent stock ownership requirements specified in section 332(b)."

1986—Subsec. (a). Pub. L. 99–514, §631(e)(4)(A), struck out "(other than a distribution to which section 333 applies)" after "liquidation".

Subsec. (c). Pub. L. 99–514, §631(e)(4)(B), struck out subsec. (c) relating to property received in liquidation under section 333.

1982—Subsec. (a). Pub. L. 97–248, §222(e)(1)(C), struck out "partial or" before "complete liquidation".

Subsec. (b). Pub. L. 97–248, §224(b), struck out heading to par. (1) "In general", redesignated first sentence

as par. (1) with heading "Distribution in complete liquidation", in par. (1) as so redesignated substituted reference to section 332(a) for reference to section 332(b) relating to a distribution in complete liquidation, struck out reference to par. (2) as an exception to the determination of basis, redesignated second sentence as par. (2) with heading "Transfers to which section 332(c) applies", in par. (2) as so redesignated struck out reference to par. (2) as an exception to the determination of basis, struck out par. (2) which had provided that if property was received by a corporation in a distribution in complete liquidation of another corporation and if the distribution was pursuant to a plan of liquidation adopted not more than 2 years after the date of the transaction described below, or in the case of a series of transactions, the date of the last such transaction, and stock of the distributing corporation possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote, and at least 80 percent of the total number of shares of all other classes of stock (except nonvoting stock which was limited and preferred as to dividends), was acquired by the distributee by purchase (as defined in par. (3)) during a 12-month period beginning with the earlier of the date of the first acquisition by purchase of such stock, or if any of such stock was acquired in an acquisition which is a purchase within the meaning of second sentence of par. (3), the date on which the distributee was first considered under section 318(a) as owning stock owned by the corporation from which such acquisition was made, then the basis of the property in the hands of the distributee would be the adjusted basis of the stock with respect to which the distribution was made, and under regulations prescribed by the Secretary, proper adjustment in the adjusted basis of any stock would be made for any distribution made to the distributee with respect to such stock before the adoption of the plan of liquidation, for any money received, for any liabilities assumed or subject to which the property was received, and for other items, and struck out par. (3) which provided that "purchase" meant any acquisition of stock, but only if the basis of the stock in the hands of the distributee was not determined in whole or in part by reference to the adjusted basis of such stock in the hands of the person from whom acquired, or under section 1014(a) of this title the stock was not acquired in an exchange to which section 351 of this title applies, and the stock was not acquired from a person the ownership of whose stock would, under section 318(a) of this title, be attributed to the person acquiring such stock, but that "purchase" also meant an acquisition of stock from a corporation when ownership of such stock would be attributed under section 318(a) to the person acquiring such stock, if the stock of such corporation by reason of which such ownership would be attributed was acquired by purchase, and redesignated par. (4) as (3).

1976—Subsec. (b)(2). Pub. L. 94–455, §§1901(a)(45), 1906(b)(13)(A), struck out in subpar. (A) provision relating to distributions made pursuant to a plan of liquidation adopted on or before June 22, 1954, and in provisions following subpar. (B)(ii) "or his delegate" after "Secretary".

1966—Subsec. (b)(2)(B). Pub. L. 89–809, §202(b), inserted provisions for the determination of the date on which to commence the running of the 12-month period during which the distributee must have acquired the stock by purchase by adding clauses (i) and (ii).

Subsec. (b)(3). Pub. L. 89–809, §202(a), inserted provision that, for purposes of par. (2)(B), "purchase" also means an acquisition of stock from a corporation when ownership of such stock would be attributed under section 318(a) to the person acquiring such stock, if the stock of such corporation by reason of which such ownership would be attributed was acquired by purchase.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §836(c)(2), Oct. 22, 2004, 118 Stat. 1596, provided that: "The amendment made by subsection (b) [amending this section] shall apply to liquidations after the date of the enactment of this Act [Oct. 22, 2004]."

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–277 applicable to distributions after May 21, 1998, see section 3001(c) of Pub. L. 105–277, set out as a note under section 332 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, set out as an Effective Date note under section 336 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 222(e)(1)(C) of Pub. L. 97–248 applicable to distributions after Aug. 31, 1982, with exceptions for certain partial liquidations, see section 222(f) of Pub. L. 97–248, set out as a note under section 302 of this title.

Amendment by section 224(b) of Pub. L. 97–248 applicable to any target corporation with respect to which the acquisition date occurs after Aug. 31, 1982, with special rules for certain acquisitions before Sept. 1, 1982, and certain acquisitions of financial institutions in which there was a binding contract on July 22, 1982, to acquire control, see section 224(d) of Pub. L. 97–248, set out as an Effective Date note under section 338 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(45) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89–809, title II, §202(d), Nov. 13, 1966, 80 Stat. 1576, provided that: "The amendment made by subsection (a) [amending this section] shall apply only with respect to acquisitions of stock after December 31, 1965. The amendment made by subsections (b) and (c) [amending this section and section 453 of this title] shall apply only with respect to distributions made after the date of the enactment of this Act [Nov. 13, 1966]."

ADJUSTMENT FOR LIABILITY TO BASIS OF PROPERTY DISTRIBUTED IN COMPLETE LIQUIDATION OF CORPORATION PRIOR TO JULY 1, 1957; DEDUCTION FOR UNCOMPENSATED LIABILITY

Pub. L. 93–497, §3, Oct. 29, 1974, 88 Stat. 1534, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) Notwithstanding the provisions of section 334 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to basis of property received in liquidations), no adjustment to the basis of any property distributed in complete liquidation of a corporation prior to July 1, 1957, shall be made for any liability if—

"(1) the distributor and distributee did not consider the liability relevant to the value of the stock with respect to which the distribution was made,

"(2) the distributor and distributee reasonably relied upon a decision of a United States district court specifically adjudicating the amount of the liability and its affirmance by the appropriate United States court of appeals, and

"(3) the amount of liability so adjudicated was not greater than would be compensated for by insurance.

The provisions of this section apply without regard to whether such decision was subsequently reversed or modified by that United States court of appeals following distribution of such property in complete liquidation.

"(b) To the extent that the liability described in subsection (a) is not compensated for by insurance or otherwise, the amount thereof shall be allowed as a deduction under the appropriate provision of the Internal Revenue Code of 1986 for the taxable year in which payment thereof was made and shall be effective in determining income tax liabilities of all taxable years prior thereto."

SUBPART B—EFFECTS ON CORPORATION

Sec.
336. Gain or loss recognized on property distributed in complete liquidation.
337. Nonrecognition for property distributed to parent in complete liquidation of subsidiary.

338. Certain stock purchases treated as asset acquisitions.

AMENDMENTS

1986—Pub. L. 99–514, title VI, §631(e)(17), Oct. 22, 1986, 100 Stat. 2275, substituted "Gain or loss recognized on property distributed in complete liquidation" for "General rule" in item 336 and "Nonrecognition for property distributed to parent in complete liquidation of subsidiary" for "Gain or loss on sales or exchanges in connection with certain liquidations" in item 337.

1982—Pub. L. 97–248, title II, §224(c)(9), Sept. 3, 1982, 96 Stat. 489, substituted "Certain stock purchases treated as asset acquisitions" for "Effect on earnings and profits" in item 338.

§336. Gain or loss recognized on property distributed in complete liquidation

(a) General rule

Except as otherwise provided in this section or section 337, gain or loss shall be recognized to a liquidating corporation on the distribution of property in complete liquidation as if such property were sold to the distributee at its fair market value.

(b) Treatment of liabilities

If any property distributed in the liquidation is subject to a liability or the shareholder assumes a liability of the liquidating corporation in connection with the distribution, for purposes of subsection (a) and section 337, the fair market value of such property shall be treated as not less than the amount of such liability.

(c) Exception for liquidations which are part of a reorganization

For provision providing that this subpart does not apply to distributions in pursuance of a plan of reorganization, see section 361(c)(4).

(d) Limitations on recognition of loss

(1) No loss recognized in certain distributions to related persons

(A) In general

No loss shall be recognized to a liquidating corporation on the distribution of any property to a related person (within the meaning of section 267) if—

(i) such distribution is not pro rata, or

(ii) such property is disqualified property.

(B) Disqualified property

For purposes of subparagraph (A), the term "disqualified property" means any property which is acquired by the liquidating corporation in a transaction to which section 351 applied, or as a contribution to capital, during the 5-year period ending on the date of the distribution. Such term includes any property if the adjusted basis of such property is determined (in whole or in part) by reference to the adjusted basis of property described in the preceding sentence.

(2) Special rule for certain property acquired in certain carryover basis transactions

(A) In general

For purposes of determining the amount of loss recognized by any liquidating corporation on any sale, exchange, or distribution of property described in subparagraph (B), the adjusted basis of such property shall be reduced (but not below zero) by the excess (if any) of—

(i) the adjusted basis of such property immediately after its acquisition by such corporation, over

(ii) the fair market value of such property as of such time.

(B) Description of property

(i) In general

For purposes of subparagraph (A), property is described in this subparagraph if—

(I) such property is acquired by the liquidating corporation in a transaction to which

section 351 applied or as a contribution to capital, and

(II) the acquisition of such property by the liquidating corporation was part of a plan a principal purpose of which was to recognize loss by the liquidating corporation with respect to such property in connection with the liquidation.

Other property shall be treated as so described if the adjusted basis of such other property is determined (in whole or in part) by reference to the adjusted basis of property described in the preceding sentence.

(ii) Certain acquisitions treated as part of plan

For purposes of clause (i), any property described in clause (i)(I) acquired by the liquidated corporation after the date 2 years before the date of the adoption of the plan of complete liquidation shall, except as provided in regulations, be treated as acquired as part of a plan described in clause (i)(II).

(C) Recapture in lieu of disallowance

The Secretary may prescribe regulations under which, in lieu of disallowing a loss under subparagraph (A) for a prior taxable year, the gross income of the liquidating corporation for the taxable year in which the plan of complete liquidation is adopted shall be increased by the amount of the disallowed loss.

(3) Special rule in case of liquidation to which section 332 applies

In the case of any liquidation to which section 332 applies, no loss shall be recognized to the liquidating corporation on any distribution in such liquidation. The preceding sentence shall apply to any distribution to the 80-percent distributee only if subsection (a) or (b)(1) of section 337 applies to such distribution.

(e) Certain stock sales and distributions may be treated as asset transfers

Under regulations prescribed by the Secretary, if—

(1) a corporation owns stock in another corporation meeting the requirements of section 1504(a)(2), and

(2) such corporation sells, exchanges, or distributes all of such stock,

an election may be made to treat such sale, exchange, or distribution as a disposition of all of the assets of such other corporation, and no gain or loss shall be recognized on the sale, exchange, or distribution of such stock.

(Added Pub. L. 99–514, title VI, §631(a), Oct. 22, 1986, 100 Stat. 2269; amended Pub. L. 100–647, title I, §§1006(e)(1)–(3), (21)(A), 1018(d)(5)(D), Nov. 10, 1988, 102 Stat. 3400, 3403, 3580.)

PRIOR PROVISIONS

A prior section 336, acts Aug. 16, 1954, ch. 736, 68A Stat. 106; Apr. 2, 1980, Pub. L. 96–223, title IV, §403(b)(1), 94 Stat. 304; Oct. 19, 1980, Pub. L. 96–471, §2(b)(1), (c)(1), 94 Stat. 2253, 2254; Sept. 3, 1982, Pub. L. 97–248, title II, §222(b), (e)(1)(D), 224(c)(4), 96 Stat. 478, 480, 489, related to distributions of property in liquidation, prior to repeal by Pub. L. 99–514, §631(a).

AMENDMENTS

1988—Subsec. (b). Pub. L. 100–647, §1006(e)(21)(A), substituted "liabilities" for "liabilities in excess of basis" in heading.

Subsec. (c). Pub. L. 100–647, §1018(d)(5)(D), substituted "liquidations which are part of a reorganization" for "certain liquidations to which part III applies" in heading and amended text generally. Prior to amendment, text read as follows: "This section shall not apply with respect to any distribution of property to the extent there is nonrecognition of gain or loss with respect to such property to the recipient under part III."

Subsec. (d)(2)(B)(ii). Pub. L. 100–647, §1006(e)(1), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: "For purposes of clause (i), any property described in clause (i)(I) acquired by the liquidating corporation during the 2-year period ending on the date of the adoption of the plan of complete liquidation shall, except as provided in regulations, be treated as part of a plan described in clause (i)(II)."

Subsec. (d)(3). Pub. L. 100–647, §1006(e)(2), inserted at end "The preceding sentence shall apply to any

distribution to the 80-percent distributee only if subsection (a) or (b)(1) of section 337 applies to such distribution."

Subsec. (e). Pub. L. 100–647, §1006(e)(3), substituted "an election may be made" for "such corporation may elect" in concluding provisions.

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE

Pub. L. 99–514, title VI, §633, Oct. 22, 1986, 100 Stat. 2277, as amended by Pub. L. 100–647, title I, §1006(g), Nov. 10, 1988, 102 Stat. 3407, provided that:

"(a) GENERAL RULE.—Except as otherwise provided in this section, the amendments made by this subtitle [subtitle D (§§631–634) of title VI of Pub. L. 99–514, enacting this section and section 337 of this title, amending sections 26, 311, 312, 332, 334, 338, 341, 346, 367, 453, 453B, 467, 852, 897, 1056, 1248, 1255, 1276, 1363, 1366, 1374, and 1375 of this title, and repealing former sections 333, 336, and 337 of this title] shall apply to—

"(1) any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before January 1, 1987,

"(2) any transaction described in section 338 of the Internal Revenue Code of 1986 for which the acquisition date occurs after December 31, 1986, and

"(3) any distribution (not in complete liquidation) made after December 31, 1986.

"(b) BUILT-IN GAINS OF S CORPORATIONS.—

"(1) IN GENERAL.—The amendments made by section 632 (other than subsection (b) thereof) [amending sections 26, 1366, 1374, and 1375 of this title] shall apply to taxable years beginning after December 31, 1986, but only in cases where the return for the taxable year is filed pursuant to an S election made after December 31, 1986.

"(2) APPLICATION OF PRIOR LAW.—In the case of any taxable year of an S corporation which begins after December 31, 1986, and to which the amendments made by section 632 (other than subsection (b) thereof) do not apply, paragraph (1) of section 1374(b) of the Internal Revenue Code of 1954 (as in effect on the date before the date of the enactment of this Act [Oct. 22, 1986]) shall be applied as if it read as follows:

" '(1) an amount equal to 34 percent of the amount by which the net capital gain of the corporation for the taxable year exceeds $25,000, or'[.]

"(c) EXCEPTION FOR CERTAIN PLANS OF LIQUIDATION AND BINDING CONTRACTS.—

"(1) IN GENERAL.—The amendments made by this subtitle shall not apply to—

"(A) any distribution or sale or exchange made pursuant to a plan of liquidation adopted before August 1, 1986, if the liquidating corporation is completely liquidated before January 1, 1988,

"(B) any distribution or sale or exchange made by any corporation if more than 50 percent of the voting stock (by value) of such corporation is acquired on or after August 1, 1986, pursuant to a written binding contract in effect before such date and if such corporation is completely liquidated before January 1, 1988,

"(C) any distribution or sale or exchange made by any corporation if substantially all of the assets of such corporation are sold on or after August 1, 1986, pursuant to 1 or more written binding contracts in effect before such date and if such corporation is completely liquidated before January 1, 1988, or

"(D) any transaction described in section 338 of the Internal Revenue Code of 1986 with respect to any target corporation if a qualified stock purchase of such target corporation is made on or after August 1, 1986, pursuant to a written binding contract in effect before such date and the acquisition date (within the meaning of such section 338) is before January 1, 1988.

"(2) SPECIAL RULE FOR CERTAIN ACTIONS TAKEN BEFORE NOVEMBER 20, 1985.—For purposes of paragraph (1), transactions shall be treated as pursuant to a plan of liquidation adopted before August 1, 1986, if—

"(A) before November 20, 1985—

"(i) the board of directors of the liquidating corporation adopted a resolution to solicit shareholder approval for a transaction of a kind described in section 336 or 337, or

"(ii) the shareholders or board of directors have approved such a transaction,

"(B) before November 20, 1985—

"(i) there has been an offer to purchase a majority of the voting stock of the liquidating

corporation, or

"(ii) the board of directors of the liquidating corporation has adopted a resolution approving an acquisition or recommending the approval of an acquisition to the shareholders, or

"(C) before November 20, 1985, a ruling request was submitted to the Secretary of the Treasury or his delegate with respect to a transaction of a kind described in section 336 or 337 of the Internal Revenue Code of 1954 (as in effect before the amendments made by this subtitle).

For purposes of the preceding sentence, any action taken by the board of directors or shareholders of a corporation with respect to any subsidiary of such corporation shall be treated as taken by the board of directors or shareholders of such subsidiary.

"(d) TRANSITIONAL RULE FOR CERTAIN SMALL CORPORATIONS.—

"(1) IN GENERAL.—In the case of the complete liquidation before January 1, 1989, of a qualified corporation, the amendments made by this subtitle shall not apply to the applicable percentage of each gain or loss which (but for this paragraph) would be recognized by the liquidating corporation by reason of the amendments made by this subtitle. Section 333 of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]) shall continue to apply to any complete liquidation described in the preceding sentence.

"(2) PARAGRAPH (1) NOT TO APPLY TO CERTAIN ITEMS.—Paragraph (1) shall not apply to—

"(A) any gain or loss which is an ordinary gain or loss (determined without regard to section 1239 of the Internal Revenue Code of 1986),

"(B) any gain or loss on a capital asset held for not more than 6 months, and

"(C) any gain on an asset acquired by the qualified corporation if—

"(i) the basis of such asset in the hands of the qualified corporation is determined (in whole or in part) by reference to the basis of such asset in the hands of the person from whom acquired, and

"(ii) a principal purpose for the transfer of such asset to the qualified corporation was to secure the benefits of this subsection.

"(3) APPLICABLE PERCENTAGE.—For purposes of this subsection, the term 'applicable percentage' means—

"(A) 100 percent if the applicable value of the qualified corporation is less than $5,000,000, or

"(B) 100 percent reduced by an amount which bears the same ratio to 100 percent as—

"(i) the excess of the applicable value of the corporation over $5,000,000, bears to

"(ii) $5,000,000.

"(4) APPLICABLE VALUE.—For purposes of this subsection, the applicable value is the fair market value of all of the stock of the corporation on the date of the adoption of the plan of complete liquidation (or if greater, on August 1, 1986).

"(5) QUALIFIED CORPORATION.—For purposes of this subsection, the term 'qualified corporation' means any corporation if—

"(A) on August 1, 1986, and at all times thereafter before the corporation is completely liquidated, more than 50 percent (by value) of the stock in such corporation is held by a qualified group, and

"(B) the applicable value of such corporation does not exceed $10,000,000.

"(6) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

"(A) QUALIFIED GROUP.—

"(i) IN GENERAL.—Except as provided in clause (ii), the term 'qualified group' means any group of 10 or fewer qualified persons who at all times during the 5-year period ending on the date of the adoption of the plan of complete liquidation (or, if shorter, the period during which the corporation or any predecessor was in existence) owned (or was treated as owning under the rules of subparagraph (C)) more than 50 percent (by value) of the stock in such corporation.

"(ii) 5-YEAR OWNERSHIP REQUIREMENT NOT TO APPLY IN CERTAIN CASES .—In the case of—

"(I) any complete liquidation pursuant to a plan of liquidation adopted before March 31, 1988,

"(II) any distribution not in liquidation made before March 31, 1988,

"(III) an election to be an S corporation filed before March 31, 1988, or

"(IV) a transaction described in section 338 of the Internal Revenue Code of 1986 where the acquisition date (within the meaning of such section 338) is before March 31, 1988,

the term 'qualified group' means any group of 10 or fewer qualified persons.

"(B) QUALIFIED PERSON.—The term 'qualified person' means—

"(i) an individual,

"(ii) an estate, or

"(iii) any trust described in clause (ii) or clause (iii) of section 1361(c)(2)(A) of the Internal Revenue Code of 1986.

"(C) ATTRIBUTION RULES.—

"(i) IN GENERAL.—Any stock owned by a corporation, trust (other than a trust referred to in subparagraph (B)(iii)[)], or partnership shall be treated as owned proportionately by its shareholders, beneficiaries, or partners, and shall not be treated as owned by such corporation, trust, or partnership. Stock considered to be owned by a person by reason of the application of the preceding sentence shall, for purposes of applying such sentence, be treated as actually owned by such person.

"(ii) FAMILY MEMBERS.—Stock owned (or treated as owned) by members of the same family (within the meaning of section 318(a)(1) of the Internal Revenue Code of 1986) shall be treated as owned by 1 person, and shall be treated as owned by such 1 person for any period during which it was owned (or treated as owned) by any such member.

"(iii) TREATMENT OF CERTAIN TRUSTS.—Stock owned (or treated as owned) by the estate of any decedent or by any trust referred to in subparagraph (B)(iii) with respect to such decedent shall be treated as owned by 1 person and shall be treated as owned by such 1 person for the period during which it was owned (or treated as owned) by such estate or any such trust or by the decedent.

"(D) SPECIAL HOLDING PERIOD RULES.—Any property acquired by reason of the death of an individual shall be treated as owned at all times during which such property was owned (or treated as owned) by the decedent.

"(E) CONTROLLED GROUP OF CORPORATIONS.—All members of the same controlled group (as defined in section 267(f)(1) of such Code) shall be treated as 1 corporation for purposes of determining whether any of such corporations met the requirement of paragraph (5)(B) and for purposes of determining the applicable percentage with respect to any of such corporations. For purposes of the preceding sentence, an S corporation shall not be treated as a member of a controlled group unless such corporation was a C corporation for its taxable year which includes August 1, 1986, or it was not described for such taxable year in paragraph (1) or (2) of section 1374(c) of such Code (as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]).

"(7) SECTION 338 TRANSACTIONS.—The provisions of this subsection shall also apply in the case of a transaction described in section 338 of the Internal Revenue Code of 1986 where the acquisition date (within the meaning of such section 338) is before January 1, 1989.

"(8) APPLICATION OF SECTION 1374.—Rules similar to the rules of this subsection shall apply for purposes of applying section 1374 of the Internal Revenue Code of 1986 (as amended by section 632) in the case of a qualified corporation which makes an election to be an S corporation under section 1362 of such Code before January 1, 1989, without regard to whether such corporation is completely liquidated.

"(9) APPLICATION TO NONLIQUIDATING DISTRIBUTIONS.—The provisions of this subsection shall also apply in the case of any distribution (not in complete liquidation) made by a qualified corporation before January 1, 1989, without regard to whether such corporation is completely liquidated.

"(e) COMPLETE LIQUIDATION DEFINED.—For purposes of this section, a corporation shall be treated as completely liquidated if all of the assets of such corporation are distributed in complete liquidation, less assets retained to meet claims.

"(f) OTHER TRANSITIONAL RULES.—

"(1) The amendments made by this subtitle shall not apply to any liquidation of a corporation incorporated under the laws of Pennsylvania on August 3, 1970, if—

"(A) the board of directors of such corporation approved a plan of liquidation before January 1, 1986,

"(B) an agreement for the sale of a material portion of the assets of such corporation was signed on May 9, 1986 (whether or not the assets are sold in accordance with such agreement), and

"(C) the corporation is completely liquidated on or before December 31, 1988.

"(2) The amendments made by this subtitle shall not apply to any liquidation (or deemed liquidation under section 338 of the Internal Revenue Code of 1986) of a diversified financial services corporation incorporated under the laws of Delaware on May 9, 1929 (or any direct or indirect subsidiary of such corporation), pursuant to a binding written contract entered into on or before December 31, 1986; but only if the liquidation is completed (or in the case of a section 338 election, the acquisition date occurs) before January 1, 1988.

"(3) The amendments made by this subtitle shall not apply to any distribution, or sale, or exchange—

"(A) of the assets owned (directly or indirectly) by a testamentary trust established under the will of a decedent dying on June 15, 1956, or its beneficiaries,

"(B) made pursuant to a court order in an action filed on January 18, 1984, if such order—

"(i) is issued after July 31, 1986, and

"(ii) directs the disposition of the assets of such trust and the division of the trust corpus into 3 separate sub-trusts.

For purposes of the preceding sentence, an election under section 338(g) of the Internal Revenue Code of 1986 (or an election under section 338(h)(10) of such Code qualifying as a section 337 liquidation pursuant to regulations prescribed by the Secretary under section 1.338(h)(10)–1T(j)) made in connection with a sale or exchange pursuant to a court order described in subparagraph (B) shall be treated as a sale of [or] exchange.

"(4)(A) The amendments made by this subtitle shall not apply to any distribution, or sale, or exchange—

"(i) if—

"(I) an option agreement to sell substantially all of the assets of a selling corporation organized under the laws of Massachusetts on October 20, 1976, is executed before August 1, 1986, the corporation adopts (by approval of its shareholders) a conditional plan of liquidation before August 1, 1986 to become effective upon the exercise of such option agreement (or modification thereto), and the assets are sold pursuant to the exercise of the option (as originally executed or subsequently modified provided that the purchase price is not thereby increased), or

"(II) in the event that the optionee does not acquire substantially all the assets of the corporation, the optionor corporation sells substantially all its assets to another purchaser at a purchase price not greater than that contemplated by such option agreement pursuant to an effective plan of liquidation, and

"(ii) the complete liquidation of the corporation occurs within 12 months of the time the plan of liquidation becomes effective, but in no event later than December 31, 1989.

"(B) For purposes of subparagraph (A), a distribution, or sale, or exchange, of a distributee corporation (within the meaning of section 337(c)(3) of the Internal Revenue Code of 1986) shall be treated as satisfying the requirements of subparagraph (A) if its subsidiary satisfies the requirements of subparagraph (A).

"(C) For purposes of section 56 of the Internal Revenue Code of 1986 (as amended by this Act), any gain or loss not recognized by reason of this paragraph shall not be taken into account in determining the adjusted net book income of the corporation.

"(5) In the case of a corporation incorporated under the laws of Wisconsin on April 3, 1948—

"(A) a voting trust established not later than December 31, 1987, shall qualify as a trust permitted as a shareholder of an S corporation and shall be treated as only 1 shareholder if the holders of beneficial interests in such voting trust are—

"(i) employees or retirees of such corporation, or

"(ii) in the case of stock or voting trust certificates acquired from an employee or retiree of such corporation, the spouse, child, or estate of such employee or retiree or a trust created by such employee or retiree which is described in section 1361(c)(2) of the Internal Revenue Code of 1986 (or treated as described in such section by reason of section 1361(d) of such Code), and

"(B) the amendment made by section 632 (other than subsection (b) thereof) shall not apply to such corporation if it elects to be an S corporation before January 1, 1989.

"(6) The amendments made by this subtitle shall not apply to the liquidation of a corporation incorporated on January 26, 1982, under the laws of the State of Alabama with a principal place of business in Colbert County, Alabama, but only if such corporation is completely liquidated on or before December 31, 1987.

"(7) The amendments made by this subtitle shall not apply to the acquisition by a Delaware bank holding company of all of the assets of an Iowa bank holding company pursuant to a written contract dated December 9, 1981.

"(8) The amendments made by this subtitle shall not apply to the liquidation of a corporation incorporated under the laws of Delaware on January 20, 1984, if more than 40 percent of the stock of such corporation was acquired by purchase on June 11, 1986, and there was a tender offer with respect to all additional outstanding shares of such corporation on July 29, 1986, but only if the corporation is completely liquidated on or before December 31, 1987.

"(g) TREATMENT OF CERTAIN DISTRIBUTIONS IN RESPONSE TO HOSTILE TENDER OFFER.—

"(1) IN GENERAL.—No gain or loss shall be recognized under the Internal Revenue Code of 1986 to a corporation (hereinafter in this subsection referred to as 'parent') on a qualified distribution.

"(2) QUALIFIED DISTRIBUTION DEFINED.—For purposes of paragraph (1)—

"(A) IN GENERAL.—The term 'qualified distribution' means a distribution—

"(i) by parent of all of the stock of a qualified subsidiary in exchange for stock of parent which was acquired for purposes of such exchange pursuant to a tender offer dated February 16, 1982, and

"(ii) pursuant to a contract dated February 13, 1982, and

"(iii) which was made not more than 60 days after the board of directors of parent recommended rejection of an unsolicited tender offer to obtain control of parent.

"(B) QUALIFIED SUBSIDIARY.—The term 'qualified subsidiary' means a corporation created or organized under the laws of Delaware on September 7, 1976, all of the stock of which was owned by parent immediately before the qualified distribution."

§337. Nonrecognition for property distributed to parent in complete liquidation of subsidiary

(a) In general

No gain or loss shall be recognized to the liquidating corporation on the distribution to the 80-percent distributee of any property in a complete liquidation to which section 332 applies.

(b) Treatment of indebtedness of subsidiary, etc.

(1) Indebtedness of subsidiary to parent

If—

(A) a corporation is liquidated in a liquidation to which section 332 applies, and

(B) on the date of the adoption of the plan of liquidation, such corporation was indebted to the 80-percent distributee,

for purposes of this section and section 336, any transfer of property to the 80-percent distributee in satisfaction of such indebtedness shall be treated as a distribution to such distributee in such liquidation.

(2) Treatment of tax-exempt distributee

(A) In general

Except as provided in subparagraph (B), paragraph (1) and subsection (a) shall not apply where the 80-percent distributee is an organization (other than a cooperative described in section 521) which is exempt from the tax imposed by this chapter.

(B) Exception where property will be used in unrelated business

(i) In general

Subparagraph (A) shall not apply to any distribution of property to an organization described in section 511(a)(2) if, immediately after such distribution, such organization uses such property in an activity the income from which is subject to tax under section 511(a).

(ii) Later disposition or change in use

If any property to which clause (i) applied is disposed of by the organization acquiring such property, notwithstanding any other provision of law, any gain (not in excess of the amount not recognized by reason of clause (i)) shall be included in such organization's unrelated business taxable income. For purposes of the preceding sentence, if such property ceases to be used in an activity referred to in clause (i), such organization shall be treated as having disposed of such property on the date of such cessation.

(c) 80-percent distributee

For purposes of this section, the term "80-percent distributee" means only the corporation which meets the 80-percent stock ownership requirements specified in section 332(b). For purposes of this section, the determination of whether any corporation is an 80-percent distributee shall be made without regard to any consolidated return regulation.

(d) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of the amendments made by subtitle D of title VI of the Tax Reform Act of 1986, including—

(1) regulations to ensure that such purposes may not be circumvented through the use of any provision of law or regulations (including the consolidated return regulations and part III of this subchapter) or through the use of a regulated investment company, real estate investment trust, or tax-exempt entity, and

(2) regulations providing for appropriate coordination of the provisions of this section with the provisions of this title relating to taxation of foreign corporations and their shareholders.

(Added Pub. L. 99–514, title VI, §631(a), Oct. 22, 1986, 100 Stat. 2271; amended Pub. L. 100–203, title X, §10223(a), Dec. 22, 1987, 101 Stat. 1330–411; Pub. L. 100–647, title I, §1006(e)(4), (5)(A), Nov. 10, 1988, 102 Stat. 3400.)

REFERENCES IN TEXT

The Tax Reform Act of 1986, referred to in subsec. (d), is Pub. L. 99–514, Oct. 22, 1986, 100 Stat. 2085, as amended. Subtitle D (§§631–634) of title VI of the Tax Reform Act of 1986 enacted sections 336 and 337 of this title, amended sections 26, 311, 312, 332, 334, 338, 341, 346, 367, 453, 453B, 467, 852, 897, 1056, 1248, 1255, 1276, 1363, 1366, 1374, and 1375 of this title, and repealed former sections 333, 336, and 337 of this title. For complete classification of this Act to the Code, see Tables.

PRIOR PROVISIONS

A prior section 337, acts Aug. 16, 1954, ch. 736, 68A Stat. 106; Sept. 2, 1958, Pub. L. 85–866, title I, §19, 72 Stat. 1615; Oct. 4, 1976, Pub. L. 94–455, title XIX, §§1901(a)(46), 1906(b)(13)(A), title XXI, §2118(a), 90 Stat. 1772, 1834, 1912; Nov. 6, 1978, Pub. L. 95–600, title VII, §701(i)(1), 92 Stat. 2904; Nov. 10, 1978, Pub. L. 95–628, §4(a), 92 Stat. 3628; Apr. 2, 1980, Pub. L. 96–223, title IV, §403(b)(2)(A), 94 Stat. 304; Oct. 19, 1980, Pub. L. 96–471, §2(c)(2), 94 Stat. 2254; Dec. 24, 1980, Pub. L. 96–589, §5(c), 94 Stat. 3405; Sept. 3, 1982, Pub. L. 97–248, title II, §224(c)(5), (6), 96 Stat. 489; Oct. 22, 1986, Pub. L. 99–514, title XVIII, §1804(e)(7)(A), 100 Stat. 2803, related to gain or loss on sales or exchanges in connection with certain liquidations, prior to repeal by Pub. L. 99–514, §631(a).

AMENDMENTS

1988—Subsec. (b)(2)(B)(i). Pub. L. 100–647, §1006(e)(4)(A), (B), substituted "described in section 511(a)(2)" for "described in section 511(a)(2) or 511(b)(2)" and "in an activity the income from which is subject to tax under section 511(a)" for "in an unrelated trade or business (as defined in section 513)".

Subsec. (b)(2)(B)(ii). Pub. L. 100–647, §1006(e)(4)(C), substituted "an activity referred to in clause (i)" for "an unrelated trade or business of such organization".

Subsec. (d). Pub. L. 100–647, §1006(e)(5)(A), in introductory provisions, substituted "amendments made by subtitle D of title VI of the Tax Reform Act of 1986" for "amendments made to this subpart by the Tax Reform Act of 1986", and in par. (1), substituted "this subchapter) or through the use of a regulated investment company, real estate investment trust, or tax-exempt entity" for "this subchapter)".

1987—Subsec. (c). Pub. L. 100–203 inserted at end "For purposes of this section, the determination of whether any corporation is an 80-percent distributee shall be made without regard to any consolidated return regulation."

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1006(e)(5)(B), Nov. 10, 1988, 102 Stat. 3401, provided that: "The amendment made by subparagraph (A)(ii) [amending this section] shall not apply to any reorganization if before June 10, 1987—

"(i) the board of directors of a party to the reorganization adopted a resolution to solicit shareholder approval for the transaction, or

"(ii) the shareholders or the board of directors of a party to the reorganization approved the transaction."

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

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to distributions or transfers after Dec. 15, 1987, with exceptions for certain distributee corporations and distributions covered by prior transition rule, see section 10223(d) of Pub. L. 100–203, set out as a note under section 304 of this title.

EFFECTIVE DATE

Section applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, set out as a note under section 336 of this title.

§338. Certain stock purchases treated as asset acquisitions

(a) General rule

For purposes of this subtitle, if a purchasing corporation makes an election under this section (or is treated under subsection (e) as having made such an election), then, in the case of any qualified stock purchase, the target corporation—

(1) shall be treated as having sold all of its assets at the close of the acquisition date at fair market value in a single transaction, and

(2) shall be treated as a new corporation which purchased all of the assets referred to in paragraph (1) as of the beginning of the day after the acquisition date.

(b) Basis of assets after deemed purchase

(1) In general

For purposes of subsection (a), the assets of the target corporation shall be treated as purchased for an amount equal to the sum of—

(A) the grossed-up basis of the purchasing corporation's recently purchased stock, and

(B) the basis of the purchasing corporation's nonrecently purchased stock.

(2) Adjustment for liabilities and other relevant items

The amount described in paragraph (1) shall be adjusted under regulations prescribed by the Secretary for liabilities of the target corporation and other relevant items.

(3) Election to step-up the basis of certain target stock

(A) In general

Under regulations prescribed by the Secretary, the basis of the purchasing corporation's nonrecently purchased stock shall be the basis amount determined under subparagraph (B) of this paragraph if the purchasing corporation makes an election to recognize gain as if such stock were sold on the acquisition date for an amount equal to the basis amount determined under subparagraph (B).

(B) Determination of basis amount

For purposes of subparagraph (A), the basis amount determined under this subparagraph shall be an amount equal to the grossed-up basis determined under subparagraph (A) of paragraph (1) multiplied by a fraction—

(i) the numerator of which is the percentage of stock (by value) in the target corporation attributable to the purchasing corporation's nonrecently purchased stock, and

(ii) the denominator of which is 100 percent minus the percentage referred to in clause (i).

(4) Grossed-up basis

For purposes of paragraph (1), the grossed-up basis shall be an amount equal to the basis of the corporation's recently purchased stock, multiplied by a fraction—

(A) the numerator of which is 100 percent, minus the percentage of stock (by value) in the

target corporation attributable to the purchasing corporation's nonrecently purchased stock, and

(B) the denominator of which is the percentage of stock (by value) in the target corporation attributable to the purchasing corporation's recently purchased stock.

(5) Allocation among assets

The amount determined under paragraphs (1) and (2) shall be allocated among the assets of the target corporation under regulations prescribed by the Secretary.

(6) Definitions of recently purchased stock and nonrecently purchased stock

For purposes of this subsection—

(A) Recently purchased stock

The term "recently purchased stock" means any stock in the target corporation which is held by the purchasing corporation on the acquisition date and which was purchased by such corporation during the 12-month acquisition period.

(B) Nonrecently purchased stock

The term "nonrecently purchased stock" means any stock in the target corporation which is held by the purchasing corporation on the acquisition date and which is not recently purchased stock.

[(c) Repealed. Pub. L. 99–514, title VI, §631(b)(2), Oct. 22, 1986, 100 Stat. 2272]

(d) Purchasing corporation; target corporation; qualified stock purchase

For purposes of this section—

(1) Purchasing corporation

The term "purchasing corporation" means any corporation which makes a qualified stock purchase of stock of another corporation.

(2) Target corporation

The term "target corporation" means any corporation the stock of which is acquired by another corporation in a qualified stock purchase.

(3) Qualified stock purchase

The term "qualified stock purchase" means any transaction or series of transactions in which stock (meeting the requirements of section 1504(a)(2)) of 1 corporation is acquired by another corporation by purchase during the 12-month acquisition period.

(e) Deemed election where purchasing corporation acquires asset of target corporation

(1) In general

A purchasing corporation shall be treated as having made an election under this section with respect to any target corporation if, at any time during the consistency period, it acquires any asset of the target corporation (or a target affiliate).

(2) Exceptions

Paragraph (1) shall not apply with respect to any acquisition by the purchasing corporation if—

(A) such acquisition is pursuant to a sale by the target corporation (or the target affiliate) in the ordinary course of its trade or business,

(B) the basis of the property acquired is determined wholly by reference to the adjusted basis of such property in the hands of the person from whom acquired,

(C) such acquisition was before September 1, 1982, or

(D) such acquisition is described in regulations prescribed by the Secretary and meets such conditions as such regulations may provide.

(3) Anti-avoidance rule

Whenever necessary to carry out the purpose of this subsection and subsection (f), the Secretary may treat stock acquisitions which are pursuant to a plan and which meet the requirements of

section 1504(a)(2) as qualified stock purchases.

(f) Consistency required for all stock acquisitions from same affiliated group

If a purchasing corporation makes qualified stock purchases with respect to the target corporation and 1 or more target affiliates during any consistency period, then (except as otherwise provided in subsection (e))—

(1) any election under this section with respect to the first such purchase shall apply to each other such purchase, and

(2) no election may be made under this section with respect to the second or subsequent such purchase if such an election was not made with respect to the first such purchase.

(g) Election

(1) When made

Except as otherwise provided in regulations, an election under this section shall be made not later than the 15th day of the 9th month beginning after the month in which the acquisition date occurs.

(2) Manner

An election by the purchasing corporation under this section shall be made in such manner as the Secretary shall by regulations prescribe.

(3) Election irrevocable

An election by a purchasing corporation under this section, once made, shall be irrevocable.

(h) Definitions and special rules

For purposes of this section—

(1) 12-month acquisition period

The term "12-month acquisition period" means the 12-month period beginning with the date of the first acquisition by purchase of stock included in a qualified stock purchase (or, if any of such stock was acquired in an acquisition which is a purchase by reason of subparagraph (C) of paragraph (3), the date on which the acquiring corporation is first considered under section 318(a) (other than paragraph (4) thereof) as owning stock owned by the corporation from which such acquisition was made).

(2) Acquisition date

The term "acquisition date" means, with respect to any corporation, the first day on which there is a qualified stock purchase with respect to the stock of such corporation.

(3) Purchase

(A) In general

The term "purchase" means any acquisition of stock, but only if—

(i) the basis of the stock in the hands of the purchasing corporation is not determined (I) in whole or in part by reference to the adjusted basis of such stock in the hands of the person from whom acquired, or (II) under section 1014(a) (relating to property acquired from a decedent),

(ii) the stock is not acquired in an exchange to which section 351, 354, 355, or 356 applies and is not acquired in any other transaction described in regulations in which the transferor does not recognize the entire amount of the gain or loss realized on the transaction, and

(iii) the stock is not acquired from a person the ownership of whose stock would, under section 318(a) (other than paragaraph [1] (4) thereof), be attributed to the person acquiring such stock.

(B) Deemed purchase under subsection (a)

The term "purchase" includes any deemed purchase under subsection (a)(2). The acquisition date for a corporation which is deemed purchased under subsection (a)(2) shall be determined

under regulations prescribed by the Secretary.

(C) Certain stock acquisitions from related corporations

(i) In general

Clause (iii) of subparagraph (A) shall not apply to an acquisition of stock from a related corporation if at least 50 percent in value of the stock of such related corporation was acquired by purchase (within the meaning of subparagraphs (A) and (B)).

(ii) Certain distributions

Clause (i) of subparagraph (A) shall not apply to an acquisition of stock described in clause (i) of this subparagraph if the corporation acquiring such stock—

(I) made a qualified stock purchase of stock of the related corporation, and

(II) made an election under this section (or is treated under subsection (e) as having made such an election) with respect to such qualified stock purchase.

(iii) Related corporation defined

For purposes of this subparagraph, a corporation is a related corporation if stock owned by such corporation is treated (under section 318(a) other than paragraph (4) thereof) as owned by the corporation acquiring the stock.

(4) Consistency period

(A) In general

Except as provided in subparagraph (B), the term "consistency period" means the period consisting of—

(i) the 1-year period before the beginning of the 12-month acquisition period for the target corporation,

(ii) such acquisition period (up to and including the acquisition date), and

(iii) the 1-year period beginning on the day after the acquisition date.

(B) Extension where there is plan

The period referred to in subparagraph (A) shall also include any period during which the Secretary determines that there was in effect a plan to make a qualified stock purchase plus 1 or more other qualified stock purchases (or asset acquisitions described in subsection (e)) with respect to the target corporation or any target affiliate.

(5) Affiliated group

The term "affiliated group" has the meaning given to such term by section 1504(a) (determined without regard to the exceptions contained in section 1504(b)).

(6) Target affiliate

(A) In general

A corporation shall be treated as a target affiliate of the target corporation if each of such corporations was, at any time during so much of the consistency period as ends on the acquisition date of the target corporation, a member of an affiliated group which had the same common parent.

(B) Certain foreign corporations, etc.

Except as otherwise provided in regulations (and subject to such conditions as may be provided in regulations)—

(i) the term "target affiliate" does not include a foreign corporation, a DISC, or a corporation to which an election under section 936 applies, and

(ii) stock held by a target affiliate in a foreign corporation or a domestic corporation which is a DISC or described in section 1248(e) shall be excluded from the operation of this section.

[(7) Repealed. Pub. L. 100–647, title I, §1006(e)(20), Nov. 10, 1988, 102 Stat. 3403]

(8) Acquisitions by affiliated group treated as made by 1 corporation

Except as provided in regulations prescribed by the Secretary, stock and asset acquisitions made by members of the same affiliated group shall be treated as made by 1 corporation.

(9) Target not treated as member of affiliated group

Except as otherwise provided in paragraph (10) or in regulations prescribed under this paragraph, the target corporation shall not be treated as a member of an affiliated group with respect to the sale described in subsection (a)(1).

(10) Elective recognition of gain or loss by target corporation, together with nonrecognition of gain or loss on stock sold by selling consolidated group

(A) In general

Under regulations prescribed by the Secretary, an election may be made under which if—

(i) the target corporation was, before the transaction, a member of the selling consolidated group, and

(ii) the target corporation recognizes gain or loss with respect to the transaction as if it sold all of its assets in a single transaction,

then the target corporation shall be treated as a member of the selling consolidated group with respect to such sale, and (to the extent provided in regulations) no gain or loss will be recognized on stock sold or exchanged in the transaction by members of the selling consolidated group.

(B) Selling consolidated group

For purposes of subparagraph (A), the term "selling consolidated group" means any group of corporations which (for the taxable period which includes the transaction)—

(i) includes the target corporation, and

(ii) files a consolidated return.

To the extent provided in regulations, such term also includes any affiliated group of corporations which includes the target corporation (whether or not such group files a consolidated return).

(C) Information required to be furnished to the Secretary

Under regulations, where an election is made under subparagraph (A), the purchasing corporation and the common parent of the selling consolidated group shall, at such times and in such manner as may be provided in regulations, furnish to the Secretary the following information:

(i) The amount allocated under subsection (b)(5) to goodwill or going concern value.

(ii) Any modification of the amount described in clause (i).

(iii) Any other information as the Secretary deems necessary to carry out the provisions of this paragraph.

(11) Elective formula for determining fair market value

For purposes of subsection (a)(1), fair market value may be determined on the basis of a formula provided in regulations prescribed by the Secretary which takes into account liabilities and other relevant items.

[(12) Repealed. Pub. L. 99–514, title VI, §631(e)(5), Oct. 22, 1986, 100 Stat. 2273]

(13) Tax on deemed sale not taken into account for estimated tax purposes

For purposes of section 6655, tax attributable to the sale described in subsection (a)(1) shall not be taken into account. The preceding sentence shall not apply with respect to a qualified stock purchase for which an election is made under paragraph (10).

[(14) Repealed. Pub. L. 108–27, title III, §302(e)(4)(B)(i), May 28, 2003, 117 Stat. 763]

(15) Combined deemed sale return

Under regulations prescribed by the Secretary, a combined deemed sale return may be filed by all target corporations acquired by a purchasing corporation on the same acquisition date if such target corporations were members of the same selling consolidated group (as defined in subparagraph (B) of paragraph (10)).

(16) Coordination with foreign tax credit provisions

Except as provided in regulations, this section shall not apply for purposes of determining the source or character of any item for purposes of subpart A of part III of subchapter N of this chapter (relating to foreign tax credit). The preceding sentence shall not apply to any gain to the extent such gain is includible in gross income as a dividend under section 1248 (determined without regard to any deemed sale under this section by a foreign corporation).

(i) Regulations

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

(1) regulations to ensure that the purpose of this section to require consistency of treatment of stock and asset sales and purchases may not be circumvented through the use of any provision of law or regulations (including the consolidated return regulations) and

(2) regulations providing for the coordination of the provisions of this section with the provision of this title relating to foreign corporations and their shareholders.

(Added Pub. L. 97–248, title II, §224(a), Sept. 3, 1982, 96 Stat. 485; amended Pub. L. 97–448, title III, §306(a)(8)(A)(i), Jan. 12, 1983, 96 Stat. 2402; Pub. L. 98–369, div. A, title VII, §712(k)(1)–(5)(D), (6), (7), July 18, 1984, 98 Stat. 948–952; Pub. L. 99–514, title VI, §631(b), (e)(5), title XII, §1275(c)(6), title XVIII, §§1804(e)(8)(A), 1899A(7), Oct. 22, 1986, 100 Stat. 2272, 2273, 2599, 2804, 2958; Pub. L. 100–647, title I, §§1006(e)(20), 1012(bb)(5)(A), 1018(d)(9), Nov. 10, 1988, 102 Stat. 3403, 3535, 3581; Pub. L. 101–508, title XI, §11323(c)(1), Nov. 5, 1990, 104 Stat. 1388–465; Pub. L. 108–27, title III, §302(e)(4)(B)(i), May 28, 2003, 117 Stat. 763; Pub. L. 108–357, title VIII, §839(a), Oct. 22, 2004, 118 Stat. 1597.)

PRIOR PROVISIONS

A prior section 338, act Aug. 16, 1954, ch. 736, 68A Stat. 107, made reference to a special rule relating to the effect on earnings and profits of certain distributions in partial liquidation in section 312(e), prior to repeal by Pub. L. 97–248, §222(e)(4).

AMENDMENTS

2004—Subsec. (h)(13). Pub. L. 108–357 inserted at end "The preceding sentence shall not apply with respect to a qualified stock purchase for which an election is made under paragraph (10)."

2003—Subsec. (h)(14). Pub. L. 108–27 struck out heading and text of par. (14). Text read as follows: "For purposes of determining whether section 341 applies to a disposition within 1 year after the acquisition date of stock by a shareholder (other than the acquiring corporation) who held stock in the target corporation on the acquisition date, section 341 shall be applied without regard to this section."

1990—Subsec. (h)(10)(C). Pub. L. 101–508 added subpar. (C).

1988—Subsec. (e)(3). Pub. L. 100–647, §1018(d)(9), substituted "which meet the requirements of section 1504(a)(2)" for "which meet the 80 percent requirements of subparagraphs (A) and (B) of subsection (d)(3)".

Subsec. (h)(7). Pub. L. 100–647, §1006(e)(20), struck out par. (7) which read as follows: "ADDITIONAL PERCENTAGE MUST BE ATTRIBUTABLE TO PURCHASE, ETC.—For purposes of subsection (c)(1), any increase in the maximum percentage of stock taken into account over the percentage of stock (by value) of the target corporation held by the purchasing corporation on the acquisition date shall be taken into account only to the extent such increase is attributable to—

"(A) purchase, or

"(B) a redemption of stock of the target corporation—

"(i) to which section 302(a) applies, or

"(ii) in the case of a shareholder who is not a corporation, to which section 301 applies."

Subsec. (h)(16). Pub. L. 100–647, §1012(bb)(5)(A), added par. (16).

1986—Subsec. (a)(1). Pub. L. 99–514, §631(b)(1), struck out "to which section 337 applies" after "in a

single transaction".

Subsec. (c). Pub. L. 99–514, §631(b)(2), struck out subsec. (c) relating to special rules for coordination with section 337 where purchasing corporation holds less than 100 percent of stock, and in case of certain redemptions where an election is made under this section.

Subsec. (d)(3). Pub. L. 99–514, §1804(e)(8)(A), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "The term 'qualified stock purchase' means any transaction or series of transactions in which stock of 1 corporation possessing—

"(A) at least 80 percent of total combined voting power of all classes of stock entitled to vote, and

"(B) at least 80 percent of the total number of shares of all other classes of stock (except nonvoting stock which is limited and preferred as to dividends),

is acquired by another corporation by purchase during the 12-month acquisition period."

Subsec. (h)(3)(C)(i). Pub. L. 99–514, §1899A(7), substituted "subparagraphs" for "subparagraph".

Subsec. (h)(6)(B)(i). Pub. L. 99–514, §1275(c)(6), struck out "a corporation described in section 934(b)," after "DISC,".

Subsec. (h)(10)(B). Pub. L. 99–514, §631(b)(3), inserted provision that to the extent provided in regulations, term "selling consolidated group" also includes any affiliated group of corporations which includes the target corporation (whether or not such group files a consolidated return).

Subsec. (h)(12). Pub. L. 99–514, §631(e)(5), struck out par. (12) relating to applicability of section 337 where target had adopted plan for complete liquidation.

1984—Subsec. (a)(1). Pub. L. 98–369, §712(k)(1)(A), inserted "at fair market value" after "acquisition date".

Subsec. (b). Pub. L. 98–369, §712(k)(1)(B), substituted "Basis of assets after deemed purchase" for "Price at which deemed sale made" in heading.

Subsec. (b)(1). Pub. L. 98–369, §712(k)(1)(B), amended par. (1) generally, substituting "as purchased for an amount equal to the sum of" for "as sold (and purchased) at an amount equal to" in introductory text, "purchasing corporation's recently purchased stock, and" for "purchasing corporation's stock in the target corporation on the acquisition date" in subpar. (A), and "the basis of the purchasing corporation's nonrecently purchased stock" in subpar. (B) in lieu of provision relating to adjustment for liabilities and other relevant items, now covered in par. (2).

Subsec. (b)(2). Pub. L. 98–369, §712(k)(1)(B), amended par. (2) generally, incorporating former par. (1)(B) provision, inserting heading "Adjustment for liabilities and other relevant items" and substituting "adjusted under regulations" for "properly adjusted under regulations". Former par. (2) redesignated (4).

Subsec. (b)(3). Pub. L. 98–369, §712(k)(1)(B), added par. (3). Former par. (3) redesignated (5).

Subsec. (b)(4). Pub. L. 98–369, §712(k)(1)(B), redesignated former par. (2) as (4), substituted in introductory text "corporation's recently purchased stock," for "purchasing corporation's stock in the target corporation on the acquisition date", inserted in subpar. (A) "minus the percentage of stock (by value) in the target corporation attributable to the purchasing corporation's nonrecently purchased stock", and substituted in subpar. (B) "in the target corporation attributable to the purchasing corporation's recently purchased stock" for "of the target corporation held by the purchasing corporation on the acquisition date".

Subsec. (b)(5). Pub. L. 98–369, §712(k)(1)(B), redesignated former par. (3) as (5) and inserted reference to par. (2).

Subsec. (b)(6). Pub. L. 98–369, §712(k)(1)(B), added par. (6).

Subsec. (c)(1). Pub. L. 98–369, §712(k)(2), inserted in last sentence "and section 333 does not apply to such liquidation".

Subsec. (e)(2). Pub. L. 98–369, §712(k)(3), substituted "wholly" for "(in whole or in part)" in subpar. (B), struck out subpar. (D) providing for nonapplication of par. (1) to any acquisition by the purchasing corporation if, to the extent provided in regulations, the property acquired is located outside the United States, redesignated subpar. (E) as (D), and, in subpar. (D) as redesignated, inserted "and meets such conditions as such regulations may provide".

Subsec. (g)(1). Pub. L. 98–369, §712(k)(4), substituted "the 15th day of the 9th month beginning after the month in which the acquisition date occurs" for "75 days after the acquisition date".

Subsec. (h)(1). Pub. L. 98–369, §712(k)(5)(C), included within 12-month acquisition period the period beginning with the date on which the acquiring corporation is first considered as owning stock owned by corporation from which acquisition was made.

Subsec. (h)(3)(A)(ii). Pub. L. 98–369, §712(k)(5)(D), included references to sections 354, 355, and 356 and in defining "purchase" provided that the stock not be acquired in any other transaction described in regulations in which the transferor does not recognize the entire amount of the gain or loss realized on the transaction.

Subsec. (h)(3)(B). Pub. L. 98–369, §712(k)(5)(A), substituted in heading "under subsection (a)" for "of

stock of subsidiaries" and in text "The term 'purchase' includes any deemed purchase under subsection (a)(2). The acquisition date for a corporation which is deemed purchased under subsection (a)(2) shall be determined under regulations prescribed by the Secretary" for "If stock in a corporation is acquired by purchase (within the meaning of subparagraph (A)) and, as a result of such acquisition, the corporation making such purchase is treated (by reason of section 318(a)) as owning stock in a 3rd corporation, the corporation making such purchase shall be treated as having purchased such stock in such 3rd corporation. The corporation making such purchase shall be treated as purchasing stock in the 3rd corporation by reason of the preceding sentence on the first day on which the purchasing corporation is considered under section 318(a) as owning such stock".

Subsec. (h)(3)(C). Pub. L. 98–369, §712(k)(5)(B), added subpar. (C).

Subsec. (h)(7). Pub. L. 98–369, §712(k)(6)(A), added par. (7) and struck out former par. (7) which had provided that acquisitions by purchasing corporation include acquisitions by corporations affiliated with purchasing corporation. See subsec. (h)(8).

Subsec. (h)(8). Pub. L. 98–369, §712(k)(6)(A), added par. (8) incorporating former par. (7) provision stating that "Except as otherwise provided in regulations, an acquisition of stock or assets by any member of an affiliated group which includes a purchasing corporation shall be treated as made by the purchasing corporation." Former par. (8) redesignated (9).

Subsec. (h)(9). Pub. L. 98–369, §712(k)(6)(A), (B), redesignated former par. (8) as (9) and substituted therein "paragraph (10)" for "paragraph (9)". Former par. (9) redesignated (10).

Subsec. (h)(10). Pub. L. 98–369, §712(k)(6)(A), redesignated former par. (9) as (10).

Subsec. (h)(11) to (15). Pub. L. 98–369, §712(k)(6)(C), added pars. (11) to (15).

Subsec. (i). Pub. L. 98–369, §712(k)(7), provided in introductory text that the regulations be appropriate to carry out the purposes of this section; designated existing provisions as par. (1) and substituted therein "treatment of stock and asset sales and purchases" for "treatment of stock and asset purchases with respect to a target corporation and its target affiliates (whether by treating all of them as stock purchases or as asset purchases)" before "may not be circumvented", and added par. (2).

1983—Subsec. (h)(8), (9). Pub. L. 97–448 added pars. (8) and (9).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §839(b), Oct. 22, 2004, 118 Stat. 1597, provided that: "The amendment made by subsection (a) [amending this section] shall apply to transactions occurring after the date of the enactment of this Act [Oct. 22, 2004]."

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–27 applicable, except as otherwise provided, to taxable years beginning after Dec. 31, 2002, see section 302(f) of Pub. L. 108–27, set out as an Effective and Termination Dates of 2003 Amendment note under section 1 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, §11323(d), Nov. 5, 1990, 104 Stat. 1388–465, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 1060 and 6724 of this title] shall apply to acquisitions after October 9, 1990.

"(2) BINDING CONTRACT EXCEPTION.—The amendments made by this section shall not apply to any acquisition pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such acquisition."

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1012(bb)(5)(B), Nov. 10, 1988, 102 Stat. 3535, provided that: "The amendment made by subparagraph (A) [amending this section] shall apply to qualified stock purchases (as defined in section 338(d)(3) of the 1986 Code) after March 31, 1988, except that, in the case of an election under section 338(h)(10) of the 1986 Code, such amendment shall apply to qualified stock purchases (as so defined) after June 10, 1987."

Amendment by sections 1006(e)(20) and 1018(d)(9) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 631(b), (e)(5) of Pub. L. 99–514 applicable to any distribution in complete

liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, set out as an Effective Date note under section 336 of this title.

Amendment by section 1275(c)(6) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99–514, set out as a note under section 931 of this title.

Pub. L. 99–514, title XVIII, §1804(e)(8)(B), Oct. 22, 1986, 100 Stat. 2804, provided that: "The amendment made by subparagraph (A) [amending this section] shall apply in cases where the 12-month acquisition period (as defined in section 338(h)(1) of the Internal Revenue Code of 1954 [now 1986] begins after December 31, 1985."

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title VII, §712(k)(9), July 18, 1984, 98 Stat. 952, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(A) IN GENERAL.—The amendments made by this subsection [amending this section and sections 269 and 318 of this title] shall not apply to any qualified stock purchase (as defined in section 338(d)(3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) where the acquisition date (as defined in section 338(h)(2) of such Code) is before September 1, 1982.

"(B) EXTENSION OF TIME FOR MAKING ELECTION.—In the case of any qualified stock purchase described in subparagraph (A), the time for making an election under section 338 of such Code shall not expire before the close of the 60th day after the date of the enactment of this Act [July 18, 1984]."

Amendment by section 712(k) of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

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

EFFECTIVE DATE

Pub. L. 97–248, title II, §224(d), Sept. 3, 1982, 96 Stat. 489, as amended by Pub. L. 97–448, title III, §306(a)(8)(B), Jan. 12, 1983, 96 Stat. 2403; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—The amendments made by this section [enacting this section and amending sections 168, 318, 334, 336, 337, 381, and 617 of this title] shall apply to any target corporation (within the meaning of section 338 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] as added by this section) with respect to which the acquisition date (within the meaning of such section) occurs after August 31, 1982.

"(2) CERTAIN ACQUISITIONS BEFORE SEPTEMBER 1, 1982.—If—

"(A) an acquisition date (within the meaning of section 338 of such Code without regard to paragraph (5) of this subsection) occurred after August 31, 1980, and before September 1, 1982,

"(B) the target corporation (within the meaning of section 338 of such Code) is not liquidated before September 1, 1982, and

"(C) the purchasing corporation (within the meaning of section 338 of such Code) makes, not later than November 15, 1982, an election under section 338 of such Code,

then the amendments made by this section shall apply to the acquisition of such target corporation.

"(3) CERTAIN ACQUISITIONS OF FINANCIAL INSTITUTIONS.—In any case in which—

"(A) there is, on July 22, 1982, a binding contract to acquire control (within the meaning of section 368(c) of such Code) of any financial institution,

"(B) the approval of one or more regulatory authorities is required in order to complete such acquisition, and

"(C) within 90 days after the date of the final approval of the last such regulatory authority granting final approval, a plan of complete liquidation of such financial institution is adopted,

then the purchasing corporation may elect not to have the amendments made by this section apply to the acquisition pursuant to such contract.

"(4) EXTENSION OF TIME FOR MAKING ELECTIONS; REVOCATION OF ELECTIONS.—

"(A) EXTENSION.—The time for making an election under section 338 of such Code shall not expire before the close of February 28, 1983.

"(B) REVOCATION.—Any election made under section 338 of such Code may be revoked by the purchasing corporation if revoked before March 1, 1983.

"(5) RULES FOR ACQUISITIONS DESCRIBED IN PARAGRAPH (2).—

"(A) IN GENERAL.—For purposes of applying section 338 of such Code with respect to any acquisition described in paragraph (2)—

"(i) the date selected under subparagraph (B) of this paragraph shall be treated as the acquisition date,

"(ii) a rule similar to the last sentence of section 334(b)(2) of such Code (as in effect on August 31, 1982) shall apply, and

"(iii) subsections (e), (f), and (i) of such section 338, and paragraphs (4), (6), (8), and (9) of subsection (h) of such section 338, shall not apply.

"(B) SELECTION OF ACQUISITION DATE BY PURCHASING CORPORATION.—The purchasing corporation may select any date for purposes of subparagraph (A)(i) if such date—

"(i) is after the later of June 30, 1982, or the acquisition date (within the meaning of section 338 of such Code without regard to this paragraph), and

"(ii) is on or before the date on which the election described in paragraph (2)(C) is made."

TREATMENT OF CERTAIN CORPORATION ORGANIZED ON FEBRUARY 22, 1983

Pub. L. 99–514, title XVIII, §1804(e)(9), Oct. 22, 1986, 100 Stat. 2804, provided that: "In the case of a Rhode Island corporation which was organized on February 22, 1983, and which on February 25, 1983—

"(A) purchased the stock of another corporation,

"(B) filed an election under section 338(g) of the Internal Revenue Code of 1986 with respect to such purchase, and

"(C) merged into the acquired corporation,

such purchase of stock shall be considered as made by the acquiring corporation, such election shall be valid, and the acquiring corporation shall be considered a purchasing corporation for purposes of section 338 of such Code without regard to the duration of the existence of the acquiring corporation."

SPECIAL RULES FOR DEEMED PURCHASES UNDER PRIOR LAW

Pub. L. 98–369, div. A, title VII, §712(k)(10), July 18, 1984, 98 Stat. 953, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "If, before October 20, 1983, a corporation was treated as making a qualified stock purchase (as defined in section 338(d)(3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]), but would not be so treated under the amendments made by paragraphs (5) and (6) [amending subsec. (h) and section 318(b)(4) of this title] of this subsection, the amendments made by such paragraphs shall not apply to such purchase unless such corporation elects (at such time and in such manner as the Secretary of the Treasury or his delegate may by regulations prescribe) to have the amendments made by such paragraphs apply."

EXCEPTION FOR STOCK PURCHASES IN CONTEMPLATION OF TARGET CORPORATION AS MEMBER OF AFFILIATED GROUP

Pub. L. 97–448, title III, §306(a)(8)(A)(ii), Jan. 12, 1983, 96 Stat. 2402, as amended by Pub. L. 98–369, div. A, title VII, §722(a)(3), July 18, 1984, 98 Stat. 973; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "If—

"(I) any portion of a qualified stock purchase is pursuant to a binding contract entered into on or after September 1, 1982, and on or before the date of the enactment of this Act [Jan. 12, 1983], and

"(II) the purchasing corporation establishes by clear and convincing evidence that such contract was negotiated on the contemplation that, with respect to the deemed sale under section 338 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the target corporation would be treated as a member of the affiliated group which includes the selling corporation,

then the amendment made by clause (i) [amending subsec. (h)] shall not apply to such qualified stock purchase."

[1] *So in original.*

[SUBPART C—REPEALED]

[§341. Repealed. Pub. L. 108–27, title III, §302(e)(4)(A), May 28, 2003, 117 Stat. 763]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 107; Pub. L. 85–866, title I, §20(a), Sept. 2, 1958, 72 Stat. 1615; Pub. L. 87–834, §13(f)(4), Oct. 16, 1962, 76 Stat. 1035; Pub. L. 88–272, title II, §231(b)(4), Feb. 26, 1964, 78 Stat. 105; Pub. L. 88–484, §1(a), Aug. 22, 1964, 78 Stat. 596; Pub. L. 89–570, §1(b)(4), Sept. 12, 1966, 80 Stat. 762; Pub. L. 91–172, title II, §211(b)(4), title V, §514(b)(1), Dec. 30, 1969, 83 Stat. 570, 643; Pub. L. 94–455, title II, §205(c)(2), title XIV, §1402(b)(1)(B), (2), title XIX, §§1901(b)(3)(A), (I), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1535, 1731, 1732, 1792, 1793, 1834; Pub. L. 97–34, title V, §505(c)(2), Aug. 13, 1981, 95 Stat. 332; Pub. L. 97–248, title II, §222(e)(5), Sept. 3, 1982, 96 Stat. 480; Pub. L. 98–369, div. A, title I, §§43(c)(1), 65(a)–(c), 135(a), title IV, §492(b)(2), title X, §1001(b)(2), (e), July 18, 1984, 98 Stat. 558, 584, 669, 854, 1011, 1012; Pub. L. 99–514, title VI, §631(e)(6), title XVIII, §§1804(i)(1), 1899A(8), Oct. 22, 1986, 100 Stat. 2273, 2807, 2958; Pub. L. 100–647, title I, §1006(e)(18), Nov. 10, 1988, 102 Stat. 3403; Pub. L. 104–188, title I, §1702(h)(7), Aug. 20, 1996, 110 Stat. 1874; Pub. L. 106–170, title V, §532(c)(2)(D), Dec. 17, 1999, 113 Stat. 1930; Pub. L. 107–147, title IV, §417(24)(B)(i), Mar. 9, 2002, 116 Stat. 57, related to collapsible corporations.

EFFECTIVE DATE OF REPEAL

Repeal applicable, except as otherwise provided, to taxable years beginning after Dec. 31, 2002, see section 302(f) of Pub. L. 108–27, set out as an Effective and Termination Dates of 2003 Amendment note under section 1 of this title.

[§342. Repealed. Pub. L. 94–455, title XIX, §1901(a)(47), Oct. 4, 1976, 90 Stat. 1772]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 110, related to liquidation of certain foreign personal holding companies.

EFFECTIVE DATE OF REPEAL

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

SUBPART D—DEFINITION AND SPECIAL RULE

Sec.
346. Definition and special rule.

AMENDMENTS

1982—Pub. L. 97–248, title II, §222(e)(8)(A), Sept. 3, 1982, 96 Stat. 481, inserted "and Special Rule" in subpart heading, and substituted "Definition and special rule" for "Partial liquidation defined" in item 346.

§346. Definition and special rule

(a) Complete liquidation

For purposes of this subchapter, a distribution shall be treated as in complete liquidation of a corporation if the distribution is one of a series of distributions in redemption of all of the stock of the corporation pursuant to a plan.

(b) Transactions which might reach same result as partial liquidations

The Secretary shall prescribe such regulations as may be necessary to ensure that the purposes of subsections (a) and (b) of section 222 of the Tax Equity and Fiscal Responsibility Act of 1982 (which repeal the special tax treatment for partial liquidations) may not be circumvented through the use of section 355, 351, or any other provision of law or regulations (including the consolidated return regulations).

(Aug. 16, 1954, ch. 736, 68A Stat. 110; Pub. L. 97–248, title II, §222(d), Sept. 3, 1982, 96 Stat. 479; Pub. L. 99–514, title VI, §631(e)(7), Oct. 22, 1986, 100 Stat. 2273.)

REFERENCES IN TEXT

Subsections (a) and (b) of section 222 of the Tax Equity and Fiscal Responsibility Act of 1982, referred to in subsec. (b), are subsecs. (a) and (b) of Pub. L. 97–248, title II, §222, Sept. 3, 1982, 96 Stat. 478, which amended sections 331(a) and 336(a) of this title.

AMENDMENTS

1986—Subsec. (b). Pub. L. 99–514 struck out "337," after "351,".

1982—Subsec. (a). Pub. L. 97–248 substituted provision that a distribution shall be treated as in complete liquidation if the distribution is one of a series in redemption of all the stock pursuant to a plan for provision that a distribution was to be treated as in partial liquidation if the distribution was one of a series in redemption of all the stock pursuant to a plan, or the distribution was not essentially equivalent to a dividend, was in redemption of part of the stock pursuant to a plan, and occurred within the taxable year or the next taxable year of the plan being adopted, including but not limited to a distribution which met the requirements of former subsec. (b) of this section, and that for the purposes of sections 562(b) and 6043 of this title, a partial liquidation included a redemption of stock to which section 302 of this title applied.

Subsec. (b). Pub. L. 97–248 added subsec. (b) and struck out former subsec. (b) which provided that a distribution was to be treated as in partial liquidation of a corporation if the distribution was attributable to the cessation of a business which had been carried on for the previous 5-year period and had not been acquired by the corporation in a transaction involving recognition of gain or loss during that time, and if the distributing corporation was actively involved in a trade or business immediately after the distribution under the terms described above for the business being liquidated, and that compliance with the above requirements would be determined without regard to whether or not the distribution was pro rata with respect to all the shareholders of the corporation.

Subsec. (c). Pub. L. 97–248 struck out subsec. (c) which provided that the fact that, with respect to a shareholder, a distribution qualified under section 302(a) by reason of section 302(b) would not be taken into account in determining whether the distribution, with respect to such shareholder, was also a distribution in partial liquidation of the corporation.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, set out as an Effective Date note under section 336 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to distributions after Aug. 31, 1982, with exceptions for certain partial liquidations, see section 222(f) of Pub. L. 97–248, set out as a note under section 302 of this title.

PART III—CORPORATE ORGANIZATIONS AND REORGANIZATIONS

Subpart

A. Corporate organizations.
B. Effects on shareholders and security holders.
C. Effects on corporations.[1]
D. Special rule; definitions.

[1] *So in original. Does not conform to subpart heading.*

SUBPART A—CORPORATE ORGANIZATIONS

Sec.

§351. Transfer to corporation controlled by transferor

(a) General rule

No gain or loss shall be recognized if property is transferred to a corporation by one or more persons solely in exchange for stock in such corporation and immediately after the exchange such person or persons are in control (as defined in section 368(c)) of the corporation.

(b) Receipt of property

If subsection (a) would apply to an exchange but for the fact that there is received, in addition to the stock permitted to be received under subsection (a), other property or money, then—

(1) gain (if any) to such recipient shall be recognized, but not in excess of—

(A) the amount of money received, plus

(B) the fair market value of such other property received; and

(2) no loss to such recipient shall be recognized.

(c) Special rules where distribution to shareholders

(1) In general

In determining control for purposes of this section, the fact that any corporate transferor distributes part or all of the stock in the corporation which it receives in the exchange to its shareholders shall not be taken into account.

(2) Special rule for section 355

If the requirements of section 355 (or so much of section 356 as relates to section 355) are met with respect to a distribution described in paragraph (1), then, solely for purposes of determining the tax treatment of the transfers of property to the controlled corporation by the distributing corporation, the fact that the shareholders of the distributing corporation dispose of part or all of the distributed stock, or the fact that the corporation whose stock was distributed issues additional stock, shall not be taken into account in determining control for purposes of this section.

(d) Services, certain indebtedness, and accrued interest not treated as property

For purposes of this section, stock issued for—

(1) services,

(2) indebtedness of the transferee corporation which is not evidenced by a security, or

(3) interest on indebtedness of the transferee corporation which accrued on or after the beginning of the transferor's holding period for the debt,

shall not be considered as issued in return for property.

(e) Exceptions

This section shall not apply to—

(1) Transfer of property to an investment company

A transfer of property to an investment company. For purposes of the preceding sentence, the determination of whether a company is an investment company shall be made—

(A) by taking into account all stock and securities held by the company, and

(B) by treating as stock and securities—

(i) money,

(ii) stocks and other equity interests in a corporation, evidences of indebtedness, options, forward or futures contracts, notional principal contracts and derivatives,

(iii) any foreign currency,

(iv) any interest in a real estate investment trust, a common trust fund, a regulated investment company, a publicly-traded partnership (as defined in section 7704(b)) or any

other equity interest (other than in a corporation) which pursuant to its terms or any other arrangement is readily convertible into, or exchangeable for, any asset described in any preceding clause, this clause or clause (v) or (viii),

(v) except to the extent provided in regulations prescribed by the Secretary, any interest in a precious metal, unless such metal is used or held in the active conduct of a trade or business after the contribution,

(vi) except as otherwise provided in regulations prescribed by the Secretary, interests in any entity if substantially all of the assets of such entity consist (directly or indirectly) of any assets described in any preceding clause or clause (viii),

(vii) to the extent provided in regulations prescribed by the Secretary, any interest in any entity not described in clause (vi), but only to the extent of the value of such interest that is attributable to assets listed in clauses (i) through (v) or clause (viii), or

(viii) any other asset specified in regulations prescribed by the Secretary.

The Secretary may prescribe regulations that, under appropriate circumstances, treat any asset described in clauses (i) through (v) as not so listed.

(2) Title 11 or similar case

A transfer of property of a debtor pursuant to a plan while the debtor is under the jurisdiction of a court in a title 11 or similar case (within the meaning of section 368(a)(3)(A)), to the extent that the stock received in the exchange is used to satisfy the indebtedness of such debtor.

(f) Treatment of controlled corporation

If—

(1) property is transferred to a corporation (hereinafter in this subsection referred to as the "controlled corporation") in an exchange with respect to which gain or loss is not recognized (in whole or in part) to the transferor under this section, and

(2) such exchange is not in pursuance of a plan of reorganization,

section 311 shall apply to any transfer in such exchange by the controlled corporation in the same manner as if such transfer were a distribution to which subpart A of part I applies.

(g) Nonqualified preferred stock not treated as stock

(1) In general

In the case of a person who transfers property to a corporation and receives nonqualified preferred stock—

(A) subsection (a) shall not apply to such transferor, and

(B) if (and only if) the transferor receives stock other than nonqualified preferred stock—

(i) subsection (b) shall apply to such transferor; and

(ii) such nonqualified preferred stock shall be treated as other property for purposes of applying subsection (b).

(2) Nonqualified preferred stock

For purposes of paragraph (1)—

(A) In general

The term "nonqualified preferred stock" means preferred stock if—

(i) the holder of such stock has the right to require the issuer or a related person to redeem or purchase the stock,

(ii) the issuer or a related person is required to redeem or purchase such stock,

(iii) the issuer or a related person has the right to redeem or purchase the stock and, as of the issue date, it is more likely than not that such right will be exercised, or

(iv) the dividend rate on such stock varies in whole or in part (directly or indirectly) with reference to interest rates, commodity prices, or other similar indices.

(B) Limitations

Clauses (i), (ii), and (iii) of subparagraph (A) shall apply only if the right or obligation referred to therein may be exercised within the 20-year period beginning on the issue date of such stock and such right or obligation is not subject to a contingency which, as of the issue date, makes remote the likelihood of the redemption or purchase.

(C) Exceptions for certain rights or obligations

(i) In general

A right or obligation shall not be treated as described in clause (i), (ii), or (iii) of subparagraph (A) if—

(I) it may be exercised only upon the death, disability, or mental incompetency of the holder, or

(II) in the case of a right or obligation to redeem or purchase stock transferred in connection with the performance of services for the issuer or a related person (and which represents reasonable compensation), it may be exercised only upon the holder's separation from service from the issuer or a related person.

(ii) Exception

Clause (i)(I) shall not apply if the stock relinquished in the exchange, or the stock acquired in the exchange is in—

(I) a corporation if any class of stock in such corporation or a related party is readily tradable on an established securities market or otherwise, or

(II) any other corporation if such exchange is part of a transaction or series of transactions in which such corporation is to become a corporation described in subclause (I).

(3) Definitions

For purposes of this subsection—

(A) Preferred stock

The term "preferred stock" means stock which is limited and preferred as to dividends and does not participate in corporate growth to any significant extent. Stock shall not be treated as participating in corporate growth to any significant extent unless there is a real and meaningful likelihood of the shareholder actually participating in the earnings and growth of the corporation. If there is not a real and meaningful likelihood that dividends beyond any limitation or preference will actually be paid, the possibility of such payments will be disregarded in determining whether stock is limited and preferred as to dividends.

(B) Related person

A person shall be treated as related to another person if they bear a relationship to such other person described in section 267(b) or 707(b).

(4) Regulations

The Secretary may prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection and sections 354(a)(2)(C), 355(a)(3)(D), and 356(e). The Secretary may also prescribe regulations, consistent with the treatment under this subsection and such sections, for the treatment of nonqualified preferred stock under other provisions of this title.

(h) Cross references

(1) For special rule where another party to the exchange assumes a liability, see section 357.

(2) For the basis of stock or property received in an exchange to which this section applies, see sections 358 and 362.

(3) For special rule in the case of an exchange described in this section but which results in a gift, see section 2501 and following.

(4) For special rule in the case of an exchange described in this section but which has the effect of the payment of compensation by the corporation or by a transferor, see section 61(a)(1).

(5) For coordination of this section with section 304, see section 304(b)(3).

(Aug. 16, 1954, ch. 736, 68A Stat. 111; Pub. L. 89–809, title II, §203(a), (b), Nov. 13, 1966, 80 Stat. 1577; Pub. L. 94–455, title XIX, §1901(a)(48)(A), (B), Oct. 4, 1976, 90 Stat. 1772; Pub. L. 96–589, §5(e), Dec. 24, 1980, 94 Stat. 3406; Pub. L. 97–248, title II, §226(a)(1)(B), Sept. 3, 1982, 96 Stat. 491; Pub. L. 100–647, title I, §1018(d)(5)(G), Nov. 10, 1988, 102 Stat. 3580; Pub. L. 101–239, title VII, §7203(a), (b), Dec. 19, 1989, 103 Stat. 2333; Pub. L. 101–508, title XI, §11704(a)(3), Nov. 5, 1990, 104 Stat. 1388–518; Pub. L. 105–34, title X, §§1002(a), 1012(c)(1), 1014(a), Aug. 5, 1997, 111 Stat. 909, 916, 919; Pub. L. 105–206, title VI, §6010(c)(3)(A), (e)(1), July 22, 1998, 112 Stat. 813, 814; Pub. L. 105–277, div. J, title IV, §4003(f)(1), Oct. 21, 1998, 112 Stat. 2681–910; Pub. L. 106–36, title III, §3001(d)(1), June 25, 1999, 113 Stat. 183; Pub. L. 107–147, title IV, §417(9), Mar. 9, 2002, 116 Stat. 56; Pub. L. 108–357, title VIII, §899(a), Oct. 22, 2004, 118 Stat. 1649; Pub. L. 109–135, title IV, §403(kk), Dec. 21, 2005, 119 Stat. 2632.)

AMENDMENTS

2005—Subsec. (g)(3)(A). Pub. L. 109–135 inserted at end "If there is not a real and meaningful likelihood that dividends beyond any limitation or preference will actually be paid, the possibility of such payments will be disregarded in determining whether stock is limited and preferred as to dividends."

2004—Subsec. (g)(3)(A). Pub. L. 108–357 inserted at end "Stock shall not be treated as participating in corporate growth to any significant extent unless there is a real and meaningful likelihood of the shareholder actually participating in the earnings and growth of the corporation."

2002—Subsec. (h)(1). Pub. L. 107–147 inserted comma after "liability".

1999—Subsec. (h)(1). Pub. L. 106–36 struck out ", or acquires property subject to a liability," after "liability".

1998—Subsec. (c). Pub. L. 105–206, §6010(c)(3)(A), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "In determining control for purposes of this section—

"(1) the fact that any corporate transferor distributes part or all of the stock in the corporation which it receives in the exchange to its shareholders shall not be taken into account, and

"(2) if the requirements of section 355 are met with respect to such distribution, the shareholders shall be treated as in control of such corporation immediately after the exchange if the shareholders own (immediately after the distribution) stock possessing—

"(A) more than 50 percent of the total combined voting power of all classes of stock of such corporation entitled to vote, and

"(B) more than 50 percent of the total value of shares of all classes of stock of such corporation."

Subsec. (c)(2). Pub. L. 105–277 inserted ", or the fact that the corporation whose stock was distributed issues additional stock," after "dispose of part or all of the distributed stock".

Subsec. (g)(1)(A) to (C). Pub. L. 105–206, §6010(e)(1), inserted "and" at end of subpar. (A), added subpar. (B), and struck out former subpars. (B) and (C) which read as follows:

"(B) subsection (b) shall apply to such transferor, and

"(C) such nonqualified preferred stock shall be treated as other property for purposes of applying subsection (b)."

1997—Subsec. (c). Pub. L. 105–34, §1012(c)(1), amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: "In determining control, for purposes of this section, the fact that any corporate transferor distributes part or all of the stock which it receives in the exchange to its shareholders shall not be taken into account."

Subsec. (e)(1). Pub. L. 105–34, §1002(a), inserted last two sentences.

Subsecs. (g), (h). Pub. L. 105–34, §1014(a), added subsec. (g) and redesignated former subsec. (g) as (h).

1990—Subsec. (e)(2). Pub. L. 101–508 substituted "is used" for "are used".

1989—Subsec. (a). Pub. L. 101–239, §7203(a), struck out "or securities" after "stock".

Subsecs. (b), (d), (e)(2). Pub. L. 101–239, §7203(b)(1), struck out "or securities" after "stock".

Subsec. (g)(2). Pub. L. 101–239, §7203(b)(2), substituted "stock or property" for "stock, securities, or property".

1988—Subsecs. (f), (g). Pub. L. 100–647 added subsec. (f) and redesignated former subsec. (f) as (g).

1982—Subsec. (f)(5). Pub. L. 97–248 added par. (5).

1980—Subsec. (a). Pub. L. 96–589, §5(e)(2), struck out provision that stock or securities issued for services shall not be considered as issued in return for property for purposes of this section.

Subsec. (d). Pub. L. 96–589, §5(e)(1), added subsec. (d). Former subsec. (d) redesignated (e)(1).

Subsec. (e). Pub. L. 96–589, §5(e)(2), redesignated former subsec. (d) as par. (1) and added par. (2). Former

subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 96–589, §5(e)(1), redesignated former subsec. (e) as (f).

1976—Subsec. (a). Pub. L. 94–455, §1901(a)(48)(A), struck out "(including, in the case of transfers made on or before June 30, 1967, an investment company)" after "property is transferred to a corporation".

Subsec. (d). Pub. L. 94–455, §1901(a)(48)(B), among other changes, substituted "Exception" for "Application of June 30, 1967, date" in heading and in text provision that this section does not apply to a transfer of property to an investment company for provisions relating to treatment of a transfer of property to an investment company as made on or before June 30, 1967.

1966—Subsec. (a). Pub. L. 89–809, §203(a), inserted "(including, in the case of transfers made on or before June 30, 1967, an investment company)" after "if property is transferred to a corporation".

Subsecs. (d), (e). Pub. L. 89–809, §203(b), added subsec. (d) and redesignated former subsec. (d) as (e).

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §899(b), Oct. 22, 2004, 118 Stat. 1649, provided that: "The amendment made by this section [amending this section] shall apply to transactions after May 14, 2003."

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–36, title III, §3001(e), June 25, 1999, 113 Stat. 184, provided that: "The amendments made by this section [amending this section and sections 357, 358, 362, 368, 584, and 1031 of this title] shall apply to transfers after October 18, 1998."

EFFECTIVE DATE OF 1998 AMENDMENTS

Amendment by Pub. L. 105–277 effective as if included in the provision of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 4003(l) of Pub. L. 105–277, set out as a note under section 86 of this title.

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title X, §1002(b), Aug. 5, 1997, 111 Stat. 909, provided that:

"(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to transfers after June 8, 1997, in taxable years ending after such date.

"(2) BINDING CONTRACTS.—The amendment made by subsection (a) shall not apply to any transfer pursuant to a written binding contract in effect on June 8, 1997, and at all times thereafter before such transfer if such contract provides for the transfer of a fixed amount of property."

Pub. L. 105–34, title X, §1012(d), Aug. 5, 1997, 111 Stat. 917, as amended by Pub. L. 105–206, title VI, §6010(c)(1), July 22, 1998, 112 Stat. 813, provided that:

"(1) SECTION 355 RULES.—The amendments made by subsections (a) and (b) [amending sections 355 and 358 of this title] shall apply to distributions after April 16, 1997; except that the amendment made by subsection (a) [amending section 355 of this title] shall apply to such distributions only if pursuant to a plan (or series of related transactions) which involves an acquisition described in section 355(e)(2)(A)(ii) of the Internal Revenue Code of 1986 occurring after such date.

"(2) DIVISIVE TRANSACTIONS.—The amendments made by subsection (c) [amending this section and section 368 of this title] shall apply to transfers after the date of the enactment of this Act [Aug. 5, 1997].

"(3) TRANSITION RULE.—The amendments made by this section [amending this section and sections 355, 358, and 368 of this title] shall not apply to any distribution pursuant to a plan (or series of related transactions) which involves an acquisition described in section 355(e)(2)(A)(ii) of the Internal Revenue Code of 1986 (or, in the case of the amendments made by subsection (c), any transfer) occurring after April 16, 1997, if such acquisition or transfer is—

"(A) made pursuant to an agreement which was binding on such date and at all times thereafter,

"(B) described in a ruling request submitted to the Internal Revenue Service on or before such date, or

"(C) described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission required solely by reason of the acquisition or transfer.

This paragraph shall not apply to any agreement, ruling request, or public announcement or filing unless it identifies the acquirer of the distributing corporation or any controlled corporation, or the transferee, whichever is applicable."

Pub. L. 105–34, title X, §1014(f), Aug. 5, 1997, 111 Stat. 921, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and sections 354 to 356 and 1036 of this title] shall apply to transactions after June 8, 1997.

"(2) TRANSITION RULE.—The amendments made by this section shall not apply to any transaction after June 8, 1997, if such transaction is—

"(A) made pursuant to a written agreement which was binding on such date and at all times thereafter,

"(B) described in a ruling request submitted to the Internal Revenue Service on or before such date, or

"(C) described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission required solely by reason of the transaction."

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7203(c), Dec. 19, 1989, 103 Stat. 2334, provided that:

"(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section] shall apply to transfers after October 2, 1989, in taxable years ending after such date.

"(2) BINDING CONTRACT.—The amendments made by this section shall not apply to any transfer pursuant to a written binding contract in effect on October 2, 1989, and at all times thereafter before such transfer.

"(3) CORPORATE TRANSFERS.—In the case of property transferred (directly or indirectly through a partnership or otherwise) by a C corporation, paragraphs (1) and (2) shall be applied by substituting 'July 11, 1989' for 'October 2, 1989'. The preceding sentence shall not apply where the corporation meets the requirements of section 1504(a)(2) of the Internal Revenue Code of 1986 with respect to the transferee corporation (and where the transfer is not part of a plan pursuant to which the transferor subsequently fails to meet such requirements)."

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1018(d)(5)(G), Nov. 10, 1988, 102 Stat. 3580, provided that the amendment made by that section is effective with respect to transfers on or after June 21, 1988.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to transfers occurring after Aug. 31, 1982, except for certain transfers pursuant to an application to form a BHC filed with the Federal Reserve Board before Aug. 16, 1982, see section 226(c) of Pub. L. 97–248, set out as a note under section 304 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–589 applicable to transactions which occur after Dec. 31, 1980, other than transactions which occur in proceedings in bankruptcy cases or similar judicial proceedings or in proceedings under Title 11, Bankruptcy, commencing on or before Dec. 31, 1980, except as otherwise provided, see section 7 of Pub. L. 96–589, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XIX, §1901(a)(48)(C), Oct. 4, 1976, 90 Stat. 1772, provided that: "The amendments made by this paragraph [amending this section] shall take effect with respect to transfers of property occurring after the date of the enactment of this Act [Oct. 4, 1976]."

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89–809, title II, §203(c), Nov. 13, 1966, 80 Stat. 1577, provided that: "The amendments made by subsections (a) and (b) [amending this section] shall apply with respect to transfers of property to investment companies whether made before, on, or after the date of the enactment of this Act [Nov. 13, 1966]."

SUBPART B—EFFECTS ON SHAREHOLDERS AND SECURITY HOLDERS

Sec.
354. Exchanges of stock and securities in certain reorganizations.
355. Distribution of stock and securities of a controlled corporation.
356. Receipt of additional consideration.

357. Assumption of liability.
358. Basis to distributees.

§354. Exchanges of stock and securities in certain reorganizations

(a) General rule

(1) In general

No gain or loss shall be recognized if stock or securities in a corporation a party to a reorganization are, in pursuance of the plan of reorganization, exchanged solely for stock or securities in such corporation or in another corporation a party to the reorganization.

(2) Limitation

(A) Excess principal amount

Paragraph (1) shall not apply if—

(i) the principal amount of any such securities received exceeds the principal amount of any such securities surrendered, or

(ii) any such securities are received and no such securities are surrendered.

(B) Property attributable to accrued interest

Neither paragraph (1) nor so much of section 356 as relates to paragraph (1) shall apply to the extent that any stock (including nonqualified preferred stock, as defined in section 351(g)(2)), securities, or other property received is attributable to interest which has accrued on securities on or after the beginning of the holder's holding period.

(C) Nonqualified preferred stock

(i) In general

Nonqualified preferred stock (as defined in section 351(g)(2)) received in exchange for stock other than nonqualified preferred stock (as so defined) shall not be treated as stock or securities.

(ii) Recapitalizations of family-owned corporations

(I) In general

Clause (i) shall not apply in the case of a recapitalization under section 368(a)(1)(E) of a family-owned corporation.

(II) Family-owned corporation

For purposes of this clause, except as provided in regulations, the term "family-owned corporation" means any corporation which is described in clause (i) of section 447(d)(2)(C) throughout the 8-year period beginning on the date which is 5 years before the date of the recapitalization. For purposes of the preceding sentence, stock shall not be treated as owned by a family member during any period described in section 355(d)(6)(B).

(III) Extension of statute of limitations

The statutory period for the assessment of any deficiency attributable to a corporation failing to be a family-owned corporation shall not expire before the expiration of 3 years after the date the Secretary is notified by the corporation (in such manner as the Secretary may prescribe) of such failure, and such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

(3) Cross references

(A) For treatment of the exchange if any property is received which is not permitted to be received under this subsection (including nonqualified preferred stock and an excess principal amount of securities received over securities surrendered, but not including property to which

paragraph (2)(B) applies), see section 356.

(B) For treatment of accrued interest in the case of an exchange described in paragraph (2)(B), see section 61.

(b) Exception

(1) In general

Subsection (a) shall not apply to an exchange in pursuance of a plan of reorganization within the meaning of subparagraph (D) or (G) of section 368(a)(1), unless—

(A) the corporation to which the assets are transferred acquires substantially all of the assets of the transferor of such assets; and

(B) the stock, securities, and other properties received by such transferor, as well as the other properties of such transferor, are distributed in pursuance of the plan of reorganization.

(2) Cross reference

For special rules for certain exchanges in pursuance of plans of reorganization within the meaning of subparagraph (D) or (G) of section 368(a)(1), see section 355.

(c) Certain railroad reorganizations

Notwithstanding any other provision of this subchapter, subsection (a)(1) (and so much of section 356 as relates to this section) shall apply with respect to a plan of reorganization (whether or not a reorganization within the meaning of section 368(a)) for a railroad confirmed under section 1173 of title 11 of the United States Code, as being in the public interest.

(Aug. 16, 1954, ch. 736, 68A Stat. 112; Pub. L. 94–253, §1(c), Mar. 31, 1976, 90 Stat. 296; Pub. L. 95–473, §2(a)(2)(F), Oct. 17, 1978, 92 Stat. 1465; Pub. L. 96–589, §§4(e)(1), (h)(1), 6(i)(2), Dec. 24, 1980, 94 Stat. 3403, 3404, 3410; Pub. L. 101–508, title XI, §11801(c)(8)(D), Nov. 5, 1990, 104 Stat. 1388–524; Pub. L. 104–88, title III, §304(c), Dec. 29, 1995, 109 Stat. 944; Pub. L. 105–34, title X, §1014(b), (e)(1), (2), Aug. 5, 1997, 111 Stat. 920, 921; Pub. L. 105–206, title VI, §6010(e)(2), July 22, 1998, 112 Stat. 814.)

AMENDMENTS

1998—Subsec. (a)(2)(C)(ii)(III). Pub. L. 105–206 added subcl. (III).

1997—Subsec. (a)(2)(B). Pub. L. 105–34, §1014(e)(1), inserted "(including nonqualified preferred stock, as defined in section 351(g)(2))" after "stock".

Subsec. (a)(2)(C). Pub. L. 105–34, §1014(b), added subpar. (C).

Subsec. (a)(3)(A). Pub. L. 105–34, §1014(e)(2), inserted "nonqualified preferred stock and" after "subsection (including".

1995—Subsec. (c). Pub. L. 104–88 struck out "or approved by the Interstate Commerce Commission under subchapter IV of chapter 113 of title 49," after "Code,".

1990—Subsec. (d). Pub. L. 101–508 struck out subsec. (d) "Exchanges under the final system plan for ConRail" which read as follows: "No gain or loss shall be recognized if stock or securities in a corporation are, in pursuance of an exchange to which paragraph (1) or (2) of section 374(c) applies, exchanged solely for stock of the Consolidated Rail Corporation, securities of such Corporation, certificates of value of the United States Railway Association, or any combination thereof."

1980—Subsec. (a)(2). Pub. L. 96–589, §4(e)(1), redesignated existing pars. (A) and (B) as par. (A)(i), (ii), and added par. (B).

Subsec. (a)(3). Pub. L. 96–589, §4(e)(1), designated existing provisions as subpar. (A), inserted provisions excluding property to which paragraph (2)(B) applies, and added subpar. (B).

Subsec. (b). Pub. L. 96–589, §4(h)(1), substituted "subparagraph (D) or (G) of section 368(a)(1)" for "section 368(a)(1)(D)", wherever appearing.

Subsec. (c). Pub. L. 96–589, §6(i)(2), substituted "confirmed under section 1173 of title 11 of the United States Code, or approved by the Interstate Commerce Commission" for "approved by the Interstate Commerce Commission under section 77 of the Bankruptcy Act, or".

1978—Subsec. (c). Pub. L. 95–473 substituted "subchapter IV of chapter 113 of title 49" for "section 20b of the Interstate Commerce Act".

1976—Subsec. (d). Pub. L. 94–253 added subsec. (d).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable, with certain exceptions, to transactions after June 8, 1997, see section 1014(f) of Pub. L. 105–34, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 4(e)(1) of Pub. L. 96–589 applicable to bankruptcy cases or similar judicial proceedings commencing after Dec. 31, 1980, and to exchanges which occur after Dec. 31, 1980, and which do not occur in a bankruptcy case or similar judicial proceeding or in a proceeding under Title 11, Bankruptcy, commenced on or before Dec. 31, 1980, with an exception permitting the debtor to make the amendment applicable to such cases, proceedings or exchanges commencing after Sept. 30, 1979, see section 7(c), (f) of Pub. L. 96–589, set out as a note under section 108 of this title.

Amendment by section 4(h)(1) of Pub. L. 96–589 applicable to bankruptcy cases or similar judicial proceedings commencing after Dec. 31, 1980, with an exception permitting the debtor to make the amendment applicable to such cases or proceedings commencing after Sept. 30, 1979, see section 7(c)(1), (f) of Pub. L. 96–589, set out as a note under section 108 of this title.

Amendment by section 6(i)(2) of Pub. L. 96–589 effective Oct. 1, 1979, but not applicable to any proceeding under Title 11 commenced before Oct. 1, 1979, see section 7(e) of Pub. L. 96–589, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–253, §2, Mar. 31, 1976, 90 Stat. 297, provided that: "The amendments made by section 1 [amending this section and sections 356, 358, and 374 of this title] shall apply to taxable years ending after March 31, 1976."

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

ABOLITION OF UNITED STATES RAILWAY ASSOCIATION AND TRANSFER OF FUNCTIONS

United States Railway Association abolished effective Apr. 1, 1987, all powers, duties, rights, and obligations of Association relating to Consolidated Rail Corporation under Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) transferred to Secretary of Transportation on Jan. 1, 1987, and any securities of Corporation held by Association transferred to Secretary of Transportation on Oct. 21, 1986, see section 1341 of Title 45, Railroads.

§355. Distribution of stock and securities of a controlled corporation

(a) Effect on distributees

(1) General rule

If—

(A) a corporation (referred to in this section as the "distributing corporation")—

(i) distributes to a shareholder, with respect to its stock, or

(ii) distributes to a security holder, in exchange for its securities,

solely stock or securities of a corporation (referred to in this section as "controlled corporation") which it controls immediately before the distribution,

(B) the transaction was not used principally as a device for the distribution of the earnings

and profits of the distributing corporation or the controlled corporation or both (but the mere fact that subsequent to the distribution stock or securities in one or more of such corporations are sold or exchanged by all or some of the distributees (other than pursuant to an arrangement negotiated or agreed upon prior to such distribution) shall not be construed to mean that the transaction was used principally as such a device),

(C) the requirements of subsection (b) (relating to active businesses) are satisfied, and

(D) as part of the distribution, the distributing corporation distributes—

(i) all of the stock and securities in the controlled corporation held by it immediately before the distribution, or

(ii) an amount of stock in the controlled corporation constituting control within the meaning of section 368(c), and it is established to the satisfaction of the Secretary that the retention by the distributing corporation of stock (or stock and securities) in the controlled corporation was not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income tax,

then no gain or loss shall be recognized to (and no amount shall be includible in the income of) such shareholder or security holder on the receipt of such stock or securities.

(2) Non pro rata distributions, etc.

Paragraph (1) shall be applied without regard to the following:

(A) whether or not the distribution is pro rata with respect to all of the shareholders of the distributing corporation,

(B) whether or not the shareholder surrenders stock in the distributing corporation, and

(C) whether or not the distribution is in pursuance of a plan of reorganization (within the meaning of section 368(a)(1)(D)).

(3) Limitations

(A) Excess principal amount

Paragraph (1) shall not apply if—

(i) the principal amount of the securities in the controlled corporation which are received exceeds the principal amount of the securities which are surrendered in connection with such distribution, or

(ii) securities in the controlled corporation are received and no securities are surrendered in connection with such distribution.

(B) Stock acquired in taxable transactions within 5 years treated as boot

For purposes of this section (other than paragraph (1)(D) of this subsection) and so much of section 356 as relates to this section, stock of a controlled corporation acquired by the distributing corporation by reason of any transaction—

(i) which occurs within 5 years of the distribution of such stock, and

(ii) in which gain or loss was recognized in whole or in part,

shall not be treated as stock of such controlled corporation, but as other property.

(C) Property attributable to accrued interest

Neither paragraph (1) nor so much of section 356 as relates to paragraph (1) shall apply to the extent that any stock (including nonqualified preferred stock, as defined in section 351(g)(2)), securities, or other property received is attributable to interest which has accrued on securities on or after the beginning of the holder's holding period.

(D) Nonqualified preferred stock

Nonqualified preferred stock (as defined in section 351(g)(2)) received in a distribution with respect to stock other than nonqualified preferred stock (as so defined) shall not be treated as stock or securities.

(4) Cross references

(A) For treatment of the exchange if any property is received which is not permitted to be received under this subsection (including nonqualified preferred stock and an excess principal amount of securities received over securities surrendered, but not including property to which paragraph (3)(C) applies), see section 356.

(B) For treatment of accrued interest in the case of an exchange described in paragraph (3)(C), see section 61.

(b) Requirements as to active business

(1) In general

Subsection (a) shall apply only if either—

(A) the distributing corporation, and the controlled corporation (or, if stock of more than one controlled corporation is distributed, each of such corporations), is engaged immediately after the distribution in the active conduct of a trade or business, or

(B) immediately before the distribution, the distributing corporation had no assets other than stock or securities in the controlled corporations and each of the controlled corporations is engaged immediately after the distribution in the active conduct of a trade or business.

(2) Definition

For purposes of paragraph (1), a corporation shall be treated as engaged in the active conduct of a trade or business if and only if—

(A) it is engaged in the active conduct of a trade or business,

(B) such trade or business has been actively conducted throughout the 5-year period ending on the date of the distribution,

(C) such trade or business was not acquired within the period described in subparagraph (B) in a transaction in which gain or loss was recognized in whole or in part, and

(D) control of a corporation which (at the time of acquisition of control) was conducting such trade or business—

(i) was not acquired by any distributee corporation directly (or through 1 or more corporations, whether through the distributing corporation or otherwise) within the period described in subparagraph (B) and was not acquired by the distributing corporation directly (or through 1 or more corporations) within such period, or

(ii) was so acquired by any such corporation within such period, but, in each case in which such control was so acquired, it was so acquired, only by reason of transactions in which gain or loss was not recognized in whole or in part, or only by reason of such transactions combined with acquisitions before the beginning of such period.

For purposes of subparagraph (D), all distributee corporations which are members of the same affiliated group (as defined in section 1504(a) without regard to section 1504(b)) shall be treated as 1 distributee corporation.

(3) Special rules for determining active conduct in the case of affiliated groups

(A) In general

For purposes of determining whether a corporation meets the requirements of paragraph (2)(A), all members of such corporation's separate affiliated group shall be treated as one corporation.

(B) Separate affiliated group

For purposes of this paragraph, the term "separate affiliated group" means, with respect to any corporation, the affiliated group which would be determined under section 1504(a) if such corporation were the common parent and section 1504(b) did not apply.

(C) Treatment of trade or business conducted by acquired member

If a corporation became a member of a separate affiliated group as a result of one or more transactions in which gain or loss was recognized in whole or in part, any trade or business

conducted by such corporation (at the time that such corporation became such a member) shall be treated for purposes of paragraph (2) as acquired in a transaction in which gain or loss was recognized in whole or in part.

(D) Regulations

The Secretary shall prescribe such regulations as are necessary or appropriate to carry out the purposes of this paragraph, including regulations which provide for the proper application of subparagraphs (B), (C), and (D) of paragraph (2), and modify the application of subsection (a)(3)(B), in connection with the application of this paragraph.

(c) Taxability of corporation on distribution

(1) In general

Except as provided in paragraph (2), no gain or loss shall be recognized to a corporation on any distribution to which this section (or so much of section 356 as relates to this section) applies and which is not in pursuance of a plan of reorganization.

(2) Distribution of appreciated property

(A) In general

If—

(i) in a distribution referred to in paragraph (1), the corporation distributes property other than qualified property, and

(ii) the fair market value of such property exceeds its adjusted basis (in the hands of the distributing corporation),

then gain shall be recognized to the distributing corporation as if such property were sold to the distributee at its fair market value.

(B) Qualified property

For purposes of subparagraph (A), the term "qualified property" means any stock or securities in the controlled corporation.

(C) Treatment of liabilities

If any property distributed in the distribution referred to in paragraph (1) is subject to a liability or the shareholder assumes a liability of the distributing corporation in connection with the distribution, then, for purposes of subparagraph (A), the fair market value of such property shall be treated as not less than the amount of such liability.

(3) Coordination with sections 311 and 336(a)

Sections 311 and 336(a) shall not apply to any distribution referred to in paragraph (1).

(d) Recognition of gain on certain distributions of stock or securities in controlled corporation

(1) In general

In the case of a disqualified distribution, any stock or securities in the controlled corporation shall not be treated as qualified property for purposes of subsection (c)(2) of this section or section 361(c)(2).

(2) Disqualified distribution

For purposes of this subsection, the term "disqualified distribution" means any distribution to which this section (or so much of section 356 as relates to this section) applies if, immediately after the distribution—

(A) any person holds disqualified stock in the distributing corporation which constitutes a 50-percent or greater interest in such corporation, or

(B) any person holds disqualified stock in the controlled corporation (or, if stock of more than 1 controlled corporation is distributed, in any controlled corporation) which constitutes a 50-percent or greater interest in such corporation.

(3) Disqualified stock

For purposes of this subsection, the term "disqualified stock" means—

(A) any stock in the distributing corporation acquired by purchase after October 9, 1990, and during the 5-year period ending on the date of the distribution, and

(B) any stock in any controlled corporation—

(i) acquired by purchase after October 9, 1990, and during the 5-year period ending on the date of the distribution, or

(ii) received in the distribution to the extent attributable to distributions on—

(I) stock described in subparagraph (A), or

(II) any securities in the distributing corporation acquired by purchase after October 9, 1990, and during the 5-year period ending on the date of the distribution.

(4) 50-percent or greater interest

For purposes of this subsection, the term "50-percent or greater interest" means stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of shares of all classes of stock.

(5) Purchase

For purposes of this subsection—

(A) In general

Except as otherwise provided in this paragraph, the term "purchase" means any acquisition but only if—

(i) the basis of the property acquired in the hands of the acquirer is not determined (I) in whole or in part by reference to the adjusted basis of such property in the hands of the person from whom acquired, or (II) under section 1014(a), and

(ii) the property is not acquired in an exchange to which section 351, 354, 355, or 356 applies.

(B) Certain section 351 exchanges treated as purchases

The term "purchase" includes any acquisition of property in an exchange to which section 351 applies to the extent such property is acquired in exchange for—

(i) any cash or cash item,

(ii) any marketable stock or security, or

(iii) any debt of the transferor.

(C) Carryover basis transactions

If—

(i) any person acquires property from another person who acquired such property by purchase (as determined under this paragraph with regard to this subparagraph), and

(ii) the adjusted basis of such property in the hands of such acquirer is determined in whole or in part by reference to the adjusted basis of such property in the hands of such other person,

such acquirer shall be treated as having acquired such property by purchase on the date it was so acquired by such other person.

(6) Special rule where substantial diminution of risk

(A) In general

If this paragraph applies to any stock or securities for any period, the running of any 5-year period set forth in subparagraph (A) or (B) of paragraph (3) (whichever applies) shall be suspended during such period.

(B) Property to which suspension applies

This paragraph applies to any stock or securities for any period during which the holder's risk

of loss with respect to such stock or securities, or with respect to any portion of the activities of the corporation, is (directly or indirectly) substantially diminished by—

(i) an option,

(ii) a short sale,

(iii) any special class of stock, or

(iv) any other device or transaction.

(7) Aggregation rules

(A) In general

For purposes of this subsection, a person and all persons related to such person (within the meaning of section 267(b) or 707(b)(1)) shall be treated as one person.

(B) Persons acting pursuant to plans or arrangements

If two or more persons act pursuant to a plan or arrangement with respect to acquisitions of stock or securities in the distributing corporation or controlled corporation, such persons shall be treated as one person for purposes of this subsection.

(8) Attribution from entities

(A) In general

Paragraph (2) of section 318(a) shall apply in determining whether a person holds stock or securities in any corporation (determined by substituting "10 percent" for "50 percent" in subparagraph (C) of such paragraph (2) and by treating any reference to stock as including a reference to securities).

(B) Deemed purchase rule

If—

(i) any person acquires by purchase an interest in any entity, and

(ii) such person is treated under subparagraph (A) as holding any stock or securities by reason of holding such interest,

such stock or securities shall be treated as acquired by purchase by such person on the later of the date of the purchase of the interest in such entity or the date such stock or securities are acquired by purchase by such entity.

(9) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including—

(A) regulations to prevent the avoidance of the purposes of this subsection through the use of related persons, intermediaries, pass-thru entities, options, or other arrangements, and

(B) regulations modifying the definition of the term "purchase".

(e) Recognition of gain on certain distributions of stock or securities in connection with acquisitions

(1) General rule

If there is a distribution to which this subsection applies, any stock or securities in the controlled corporation shall not be treated as qualified property for purposes of subsection (c)(2) of this section or section 361(c)(2).

(2) Distributions to which subsection applies

(A) In general

This subsection shall apply to any distribution—

(i) to which this section (or so much of section 356 as relates to this section) applies, and

(ii) which is part of a plan (or series of related transactions) pursuant to which 1 or more persons acquire directly or indirectly stock representing a 50-percent or greater interest in the

distributing corporation or any controlled corporation.

(B) Plan presumed to exist in certain cases

If 1 or more persons acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or any controlled corporation during the 4-year period beginning on the date which is 2 years before the date of the distribution, such acquisition shall be treated as pursuant to a plan described in subparagraph (A)(ii) unless it is established that the distribution and the acquisition are not pursuant to a plan or series of related transactions.

(C) Certain plans disregarded

A plan (or series of related transactions) shall not be treated as described in subparagraph (A)(ii) if, immediately after the completion of such plan or transactions, the distributing corporation and all controlled corporations are members of a single affiliated group (as defined in section 1504 without regard to subsection (b) thereof).

(D) Coordination with subsection (d)

This subsection shall not apply to any distribution to which subsection (d) applies.

(3) Special rules relating to acquisitions

(A) Certain acquisitions not taken into account

Except as provided in regulations, the following acquisitions shall not be taken into account in applying paragraph (2)(A)(ii):

(i) The acquisition of stock in any controlled corporation by the distributing corporation.

(ii) The acquisition by a person of stock in any controlled corporation by reason of holding stock or securities in the distributing corporation.

(iii) The acquisition by a person of stock in any successor corporation of the distributing corporation or any controlled corporation by reason of holding stock or securities in such distributing or controlled corporation.

(iv) The acquisition of stock in the distributing corporation or any controlled corporation to the extent that the percentage of stock owned directly or indirectly in such corporation by each person owning stock in such corporation immediately before the acquisition does not decrease.

This subparagraph shall not apply to any acquisition if the stock held before the acquisition was acquired pursuant to a plan (or series of related transactions) described in paragraph (2)(A)(ii).

(B) Asset acquisitions

Except as provided in regulations, for purposes of this subsection, if the assets of the distributing corporation or any controlled corporation are acquired by a successor corporation in a transaction described in subparagraph (A), (C), or (D) of section 368(a)(1) or any other transaction specified in regulations by the Secretary, the shareholders (immediately before the acquisition) of the corporation acquiring such assets shall be treated as acquiring stock in the corporation from which the assets were acquired.

(4) Definition and special rules

For purposes of this subsection—

(A) 50-percent or greater interest

The term "50-percent or greater interest" has the meaning given such term by subsection (d)(4).

(B) Distributions in title 11 or similar case

Paragraph (1) shall not apply to any distribution made in a title 11 or similar case (as defined in section 368(a)(3)).

(C) Aggregation and attribution rules

(i) Aggregation

The rules of paragraph (7)(A) of subsection (d) shall apply.

(ii) Attribution

Section 318(a)(2) shall apply in determining whether a person holds stock or securities in any corporation. Except as provided in regulations, section 318(a)(2)(C) shall be applied without regard to the phrase "50 percent or more in value" for purposes of the preceding sentence.

(D) Successors and predecessors

For purposes of this subsection, any reference to a controlled corporation or a distributing corporation shall include a reference to any predecessor or successor of such corporation.

(E) Statute of limitations

If there is a distribution to which paragraph (1) applies—

(i) the statutory period for the assessment of any deficiency attributable to any part of the gain recognized under this subsection by reason of such distribution shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may by regulations prescribe) that such distribution occurred, and

(ii) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

(5) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including regulations—

(A) providing for the application of this subsection where there is more than 1 controlled corporation,

(B) treating 2 or more distributions as 1 distribution where necessary to prevent the avoidance of such purposes, and

(C) providing for the application of rules similar to the rules of subsection (d)(6) where appropriate for purposes of paragraph (2)(B).

(f) Section not to apply to certain intragroup distributions

Except as provided in regulations, this section (or so much of section 356 as relates to this section) shall not apply to the distribution of stock from 1 member of an affiliated group (as defined in section 1504(a)) to another member of such group if such distribution is part of a plan (or series of related transactions) described in subsection (e)(2)(A)(ii) (determined after the application of subsection (e)).

(g) Section not to apply to distributions involving disqualified investment corporations

(1) In general

This section (and so much of section 356 as relates to this section) shall not apply to any distribution which is part of a transaction if—

(A) either the distributing corporation or controlled corporation is, immediately after the transaction, a disqualified investment corporation, and

(B) any person holds, immediately after the transaction, a 50-percent or greater interest in any disqualified investment corporation, but only if such person did not hold such an interest in such corporation immediately before the transaction.

(2) Disqualified investment corporation

For purposes of this subsection—

(A) In general

The term "disqualified investment corporation" means any distributing or controlled corporation if the fair market value of the investment assets of the corporation is—

(i) in the case of distributions after the end of the 1-year period beginning on the date of the enactment of this subsection, 2/3 or more of the fair market value of all assets of the corporation, and

(ii) in the case of distributions during such 1-year period, ¾ or more of the fair market value of all assets of the corporation.

(B) Investment assets

(i) In general

Except as otherwise provided in this subparagraph, the term "investment assets" means—

(I) cash,

(II) any stock or securities in a corporation,

(III) any interest in a partnership,

(IV) any debt instrument or other evidence of indebtedness,

(V) any option, forward or futures contract, notional principal contract, or derivative,

(VI) foreign currency, or

(VII) any similar asset.

(ii) Exception for assets used in active conduct of certain financial trades or businesses

Such term shall not include any asset which is held for use in the active and regular conduct of—

(I) a lending or finance business (within the meaning of section 954(h)(4)),

(II) a banking business through a bank (as defined in section 581), a domestic building and loan association (within the meaning of section 7701(a)(19)), or any similar institution specified by the Secretary, or

(III) an insurance business if the conduct of the business is licensed, authorized, or regulated by an applicable insurance regulatory body.

This clause shall only apply with respect to any business if substantially all of the income of the business is derived from persons who are not related (within the meaning of section 267(b) or 707(b)(1)) to the person conducting the business.

(iii) Exception for securities marked to market

Such term shall not include any security (as defined in section 475(c)(2)) which is held by a dealer in securities and to which section 475(a) applies.

(iv) Stock or securities in a 20-percent controlled entity

(I) In general

Such term shall not include any stock and securities in, or any asset described in subclause (IV) or (V) of clause (i) issued by, a corporation which is a 20-percent controlled entity with respect to the distributing or controlled corporation.

(II) Look-thru rule

The distributing or controlled corporation shall, for purposes of applying this subsection, be treated as owning its ratable share of the assets of any 20-percent controlled entity.

(III) 20-percent controlled entity

For purposes of this clause, the term "20-percent controlled entity" means, with respect to any distributing or controlled corporation, any corporation with respect to which the distributing or controlled corporation owns directly or indirectly stock meeting the requirements of section 1504(a)(2), except that such section shall be applied by substituting "20 percent" for "80 percent" and without regard to stock described in section 1504(a)(4).

(v) Interests in certain partnerships

(I) In general

Such term shall not include any interest in a partnership, or any debt instrument or other evidence of indebtedness, issued by the partnership, if 1 or more of the trades or businesses of the partnership are (or, without regard to the 5-year requirement under subsection (b)(2)(B), would be) taken into account by the distributing or controlled corporation, as the case may be, in determining whether the requirements of subsection (b) are met with respect to the distribution.

(II) Look-thru rule

The distributing or controlled corporation shall, for purposes of applying this subsection, be treated as owning its ratable share of the assets of any partnership described in subclause (I).

(3) 50-percent or greater interest

For purposes of this subsection—

(A) In general

The term "50-percent or greater interest" has the meaning given such term by subsection (d)(4).

(B) Attribution rules

The rules of section 318 shall apply for purposes of determining ownership of stock for purposes of this paragraph.

(4) Transaction

For purposes of this subsection, the term "transaction" includes a series of transactions.

(5) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out, or prevent the avoidance of, the purposes of this subsection, including regulations—

(A) to carry out, or prevent the avoidance of, the purposes of this subsection in cases involving—

(i) the use of related persons, intermediaries, pass-thru entities, options, or other arrangements, and

(ii) the treatment of assets unrelated to the trade or business of a corporation as investment assets if, prior to the distribution, investment assets were used to acquire such unrelated assets,

(B) which in appropriate cases exclude from the application of this subsection a distribution which does not have the character of a redemption which would be treated as a sale or exchange under section 302, and

(C) which modify the application of the attribution rules applied for purposes of this subsection.

(Aug. 16, 1954, ch. 736, 68A Stat. 113; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–589, §4(e)(2), Dec. 24, 1980, 94 Stat. 3403; Pub. L. 100–203, title X, §10223(b), Dec. 22, 1987, 101 Stat. 1330–411; Pub. L. 100–647, title I, §1018(d)(5)(C), title II, §2004(k)(1), Nov. 10, 1988, 102 Stat. 3580, 3605; Pub. L. 101–508, title XI, §§11321(a), 11702(e)(2), Nov. 5, 1990, 104 Stat. 1388–460, 1388–515; Pub. L. 104–188, title I, §1704(t)(31), Aug. 20, 1996, 110 Stat. 1889; Pub. L. 105–34, title X, §§1012(a), (b)(1), 1014(c), (e)(1), (2), Aug. 5, 1997, 111 Stat. 914, 916, 921; Pub. L. 105–206, title VI, §6010(c)(2), July 22, 1998, 112 Stat. 813; Pub. L. 109–222, title II, §202, title V, §507(a), May 17, 2006, 120 Stat. 348, 358; Pub. L. 109–432, div. A, title IV, §410(a), Dec. 20, 2006, 120 Stat. 2963; Pub. L. 110–172, §4(b)(1), (2), Dec. 29, 2007, 121 Stat. 2476.)

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (g)(2)(A)(i), is the date of enactment of Pub. L. 109–222, which was approved May 17, 2006.

AMENDMENTS

2007—Subsec. (b)(2)(A). Pub. L. 110–172, §4(b)(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "it is engaged in the active conduct of a trade or business, or substantially all of its assets consist of stock and securities of a corporation controlled by it (immediately after the distribution) which is so engaged,".

Subsec. (b)(3). Pub. L. 110–172, §4(b)(2), amended par. (3) generally. Prior to amendment, par. (3) provided for special rule relating to active business requirement applicable in the case of any distribution made after May 17, 2006.

2006—Subsec. (b)(3). Pub. L. 109–222, §202, added par. (3).

Subsec. (b)(3)(A), (D). Pub. L. 109–432 struck out "and on or before December 31, 2010" after "this paragraph" in subpar. (A) and after "such date" in subpar. (D).

Subsec. (g). Pub. L. 109–222, §507(a), added subsec. (g).

1998—Subsec. (e)(3)(A). Pub. L. 105–206, §6010(c)(2)(A), substituted "shall not be taken into account in applying" for "shall not be treated as described in" in introductory provisions.

Subsec. (e)(3)(A)(iv). Pub. L. 105–206, §6010(c)(2)(B), added cl. (iv) and struck out former cl. (iv) which read as follows: "The acquisition of stock in a corporation if shareholders owning directly or indirectly stock possessing—

"(I) more than 50 percent of the total combined voting power of all classes of stock entitled to vote, and

"(II) more than 50 percent of the total value of shares of all classes of stock,

in the distributing corporation or any controlled corporation before such acquisition own directly or indirectly stock possessing such vote and value in such distributing or controlled corporation after such acquisition."

1997—Subsec. (a)(3)(C). Pub. L. 105–34, §1014(e)(1), inserted "(including nonqualified preferred stock, as defined in section 351(g)(2))" after "stock".

Subsec. (a)(3)(D). Pub. L. 105–34, §1014(c), added subpar. (D).

Subsec. (a)(4)(A). Pub. L. 105–34, §1014(e)(2), inserted "nonqualified preferred stock and" after "subsection (including".

Subsec. (e). Pub. L. 105–34, §1012(a), added subsec. (e).

Subsec. (f). Pub. L. 105–34, §1012(b)(1), added subsec. (f).

1996—Subsec. (d)(7)(A). Pub. L. 104–188 inserted "section" before "267(b)".

1990—Subsec. (c). Pub. L. 101–508, §11321(a), added subsec. (c) and struck out former subsec. (c) which read as follows:

"(1) IN GENERAL.—Except as provided in paragraph (2), no gain or loss shall be recognized to a corporation on any distribution to which this section (or so much of section 356 as relates to this section) applies and which is not in pursuance of a plan of reorganization.

"(2) DISTRIBUTION OF APPRECIATED PROPERTY.—

"(A) IN GENERAL.—If—

"(i) in a distribution referred to in paragraph (1), the corporation distributes property other than stock or securities in the controlled corporation, and

"(ii) the fair market value of such property exceeds its adjusted basis (in the hands of the distributing corporation),

then gain shall be recognized to the distributing corporation as if such property were sold to the distributee at its fair market value.

"(B) TREATMENT OF LIABILITIES.—If any property distributed in the distribution referred to in paragraph (1) is subject to a liability or the shareholder assumes a liability of the distributing corporation in connection with the distribution, then, for purposes of subparagraph (A), the fair market value of such property shall be treated as not less than the amount of such liability.

"(3) COORDINATION WITH SECTIONS 311 AND 336(a).—Sections 311 and 336(a) shall not apply to any distribution referred to in paragraph (1)."

Pub. L. 101–508, §11702(e)(2), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "Section 311 shall apply to any distribution—

"(1) to which this section (or so much of section 356 as relates to this section) applies, and

"(2) which is not in pursuance of a plan of reorganization,

in the same manner as if such distribution were a distribution to which subpart A of part I applies; except that subsection (b) of section 311 shall not apply to any distribution of stock or securities in the controlled corporation."

Subsec. (d). Pub. L. 101–508, §11321(a), added subsec. (d).

1988—Subsec. (b)(2)(D)(i), (ii). Pub. L. 100–647, §2004(k)(1), added cls. (i) and (ii) and struck out former cls. (i) and (ii) which read as follows:

"(i) was not acquired by any distributee corporation directly (or through 1 or more corporations, whether through the distributing corporation or otherwise) within the period described in subparagraph (B), or

"(ii) was so acquired such distributee corporation within such period, but such control was so acquired only by reason of transactions in which gain or loss was not recognized in whole or in part, or only by reason of such transactions combined with acquisitions before the beginning of such period."

Subsec. (c). Pub. L. 100–647, §1018(d)(5)(C), added subsec. (c).

1987—Subsec. (b)(2)(D). Pub. L. 100–203, §10223(b)(3), inserted at end "For purposes of subparagraph (D), all distributee corporations which are members of the same affiliated group (as defined in section 1504(a) without regard to section 1504(b)) shall be treated as 1 distributee corporation."

Subsec. (b)(2)(D)(i). Pub. L. 100–203, §10223(b)(1), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: "was not acquired directly (or through one or more corporations) by another corporation within the period described in subparagraph (B), or".

Subsec. (b)(2)(D)(ii). Pub. L. 100–203, §10223(b)(2), substituted "such distributee corporation" for "by another corporation".

1980—Subsec. (a)(3). Pub. L. 96–589 designated existing provisions as subpars. (A) and (B) and added subpar. (C).

Subsec. (a)(4). Pub. L. 96–589, §4(e)(2), designated existing provisions as subpar. (A), substituted "exchange if any property" for "distribution if any property", inserted provisions excluding property to which paragraph (3)(C) applies, and added subpar. (B).

1976—Subsec. (a)(1)(D)(ii). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–172, §4(d), Dec. 29, 2007, 121 Stat. 2478, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 911 and 954 of this title] shall take effect as if included in the provisions of the Tax Increase Prevention and Reconciliation Act of 2005 [Pub. L. 109–222] to which they relate.

"(2) MODIFICATION OF ACTIVE BUSINESS DEFINITION UNDER SECTION 355.—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendments made by subsection (b) [amending this section] shall apply to distributions made after May 17, 2006.

"(B) TRANSITION RULE.—The amendments made by subsection (b) shall not apply to any distribution pursuant to a transaction which is—

"(i) made pursuant to an agreement which was binding on May 17, 2006, and at all times thereafter,

"(ii) described in a ruling request submitted to the Internal Revenue Service on or before such date, or

"(iii) described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission.

"(C) ELECTION OUT OF TRANSITION RULE.—Subparagraph (B) shall not apply if the distributing corporation elects not to have such subparagraph apply to distributions of such corporation. Any such election, once made, shall be irrevocable.

"(D) SPECIAL RULE FOR CERTAIN PRE-ENACTMENT DISTRIBUTIONS.—For purposes of determining the continued qualification under section 355(b)(2)(A) of the Internal Revenue Code of 1986 of distributions made on or before May 17, 2006, as a result of an acquisition, disposition, or other restructuring after such date, such distribution shall be treated as made on the date of such acquisition, disposition, or restructuring for purposes of applying subparagraphs (A) through (C) of this paragraph. The preceding sentence shall only apply with respect to the corporation that undertakes such acquisition, disposition, or other restructuring, and only if such application results in continued qualification under section 355(b)(2)(A) of such Code.

"(3) AMENDMENT RELATED TO SECTION 515 OF THE ACT.—The amendment made by subsection (c) [amending section 911 of this title] shall apply to taxable years beginning after December 31, 2006."

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title IV, §410(b), Dec. 20, 2006, 120 Stat. 2963, provided that: "The amendments made by this section [amending this section] shall take effect as if included in section 202 of the Tax Increase Prevention and Reconciliation Act of 2005 [Pub. L. 109–222]."

Pub. L. 109–222, title V, §507(b), May 17, 2006, 120 Stat. 361, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to distributions after the date of the enactment of this Act [May 17, 2006].

"(2) TRANSITION RULE.—The amendments made by this section shall not apply to any distribution pursuant to a transaction which is—

"(A) made pursuant to an agreement which was binding on such date of enactment and at all times thereafter,

"(B) described in a ruling request submitted to the Internal Revenue Service on or before such date, or

"(C) described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission."

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 1012(a), (b)(1) of Pub. L. 105–34 applicable, with transition rule, to distributions after Apr. 16, 1997, except that amendment by section 1012(a) applicable to such distributions only if pursuant to a plan (or series of related transactions) which involves an acquisition described in subsec. (e)(2)(A)(ii) of this section occurring after such date, see section 1012(d) of Pub. L. 105–34, as amended, set out as a note under section 351 of this title.

Amendment by section 1014(c), (e)(1), (2) of Pub. L. 105–34 applicable, with certain exceptions, to transactions after June 8, 1997, see section 1014(f) of Pub. L. 105–34, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, §11321(c), Nov. 5, 1990, 104 Stat. 1388–463, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and section 361 of this title] shall apply to distributions after October 9, 1990.

"(2) BINDING CONTRACT EXCEPTION.—The amendments made by this section shall not apply to any distribution pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such distribution.

"(3) TRANSITIONAL RULES.—For purposes of subparagraphs (A) and (B) of section 355(d)(3) of the Internal Revenue Code of 1986 (as amended by subsection (a)), an acquisition shall be treated as occurring on or before October 9, 1990, if—

"(A) such acquisition is pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such acquisition,

"(B) such acquisition is pursuant to a transaction which was described in documents filed with the Securities and Exchange Commission on or before October 9, 1990, or

"(C) such acquisition is pursuant to a transaction—

"(i) the material terms of which were described in a written public announcement on or before October 9, 1990,

"(ii) which was the subject of a prior filing with the Securities and Exchange Commission, and

"(iii) which is the subject of a subsequent filing with the Securities and Exchange Commission before January 1, 1991."

Amendment by section 11702(e)(2) of Pub. L. 101–508 effective as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 11702(j) of Pub. L. 101–508, set out as a note under section 59 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1018(d)(5)(C) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 2004(k)(1) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to distributions or transfers after Dec. 15, 1987, with exceptions for certain distributee corporations and distributions covered by prior transition rule, see section 10223(d) of Pub. L. 100–203, set out as a note under section 304 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–589 applicable to bankruptcy cases or similar judicial proceedings commencing after Dec. 31, 1980, and to exchanges which occur after Dec. 31, 1980, and which do not occur in a bankruptcy case or similar judicial proceeding or in a proceeding under Title 11, Bankruptcy, commenced on or before Dec. 31, 1980, with an exception permitting the debtor to make the amendment applicable to such cases, proceedings or exchanges commencing after Sept. 30, 1979, see section 7(c), (f) of Pub. L. 96–589, set out as a note under section 108 of this title.

TERMINATION OF TAX INCREASE PREVENTION AND RECONCILIATION ACT OF 2005 AND TAX RELIEF AND HEALTH CARE ACT OF 2006 AMENDMENTS

Pub. L. 110–172, §4(b)(3), Dec. 29, 2007, 121 Stat. 2476, provided that: "The Internal Revenue Code of 1986 shall be applied and administered as if the amendments made by section 202 of the Tax Increase Prevention and Reconciliation Act of 2005 [Pub. L. 109–222, amending this section] and by section 410 of division A of the Tax Relief and Health Care Act of 2006 [Pub. L. 109–432, amending this section] had never been enacted."

§356. Receipt of additional consideration

(a) Gain on exchanges

(1) Recognition of gain

If—

(A) section 354 or 355 would apply to an exchange but for the fact that

(B) the property received in the exchange consists not only of property permitted by section 354 or 355 to be received without the recognition of gain but also of other property or money,

then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property.

(2) Treatment as dividend

If an exchange is described in paragraph (1) but has the effect of the distribution of a dividend (determined with the application of section 318(a)), then there shall be treated as a dividend to each distributee such an amount of the gain recognized under paragraph (1) as is not in excess of his ratable share of the undistributed earnings and profits of the corporation accumulated after February 28, 1913. The remainder, if any, of the gain recognized under paragraph (1) shall be treated as gain from the exchange of property.

(b) Additional consideration received in certain distributions

If—

(1) section 355 would apply to a distribution but for the fact that

(2) the property received in the distribution consists not only of property permitted by section 355 to be received without the recognition of gain, but also of other property or money,

then an amount equal to the sum of such money and the fair market value of such other property shall be treated as a distribution of property to which section 301 applies.

(c) Loss

If—

(1) section 354 would apply to an exchange or section 355 would apply to an exchange or distribution, but for the fact that

(2) the property received in the exchange or distribution consists not only of property permitted by section 354 or 355 to be received without the recognition of gain or loss, but also of other

property or money,

then no loss from the exchange or distribution shall be recognized.

(d) Securities as other property

For purposes of this section—

(1) In general

Except as provided in paragraph (2), the term "other property" includes securities.

(2) Exceptions

(A) Securities with respect to which nonrecognition of gain would be permitted

The term "other property" does not include securities to the extent that, under section 354 or 355, such securities would be permitted to be received without the recognition of gain.

(B) Greater principal amount in section 354 exchange

If—

(i) in an exchange described in section 354 (other than subsection (c) thereof), securities of a corporation a party to the reorganization are surrendered and securities of any corporation a party to the reorganization are received, and

(ii) the principal amount of such securities received exceeds the principal amount of such securities surrendered,

then, with respect to such securities received, the term "other property" means only the fair market value of such excess. For purposes of this subparagraph and subparagraph (C) if no securities are surrendered, the excess shall be the entire principal amount of the securities received.

(C) Greater principal amount in section 355 transaction

If, in an exchange or distribution described in section 355, the principal amount of the securities in the controlled corporation which are received exceeds the principal amount of the securities in the distributing corporation which are surrendered, then, with respect to such securities received, the term "other property" means only the fair market value of such excess.

(e) Nonqualified preferred stock treated as other property

For purposes of this section—

(1) In general

Except as provided in paragraph (2), the term "other property" includes nonqualified preferred stock (as defined in section 351(g)(2)).

(2) Exception

The term "other property" does not include nonqualified preferred stock (as so defined) to the extent that, under section 354 or 355, such preferred stock would be permitted to be received without the recognition of gain.

(f) Exchanges for section 306 stock

Notwithstanding any other provision of this section, to the extent that any of the other property (or money) is received in exchange for section 306 stock, an amount equal to the fair market value of such other property (or the amount of such money) shall be treated as a distribution of property to which section 301 applies.

(g) Transactions involving gift or compensation

For special rules for a transaction described in section 354, 355, or this section, but which—

(1) results in a gift, see section 2501 and following, or

(2) has the effect of the payment of compensation, see section 61(a)(1).

(Aug. 16, 1954, ch. 736, 68A Stat. 115; Pub. L. 94–253, §1(c), Mar. 31, 1976, 90 Stat. 296; Pub. L.

97–248, title II, §227(b), Sept. 3, 1982, 96 Stat. 492; Pub. L. 101–508, title XI, §11801(c)(8)(E), Nov. 5, 1990, 104 Stat. 1388–524; Pub. L. 105–34, title X, §1014(d), Aug. 5, 1997, 111 Stat. 921.)

AMENDMENTS

1997—Subsecs. (e) to (g). Pub. L. 105–34 added subsec. (e) and redesignated former subsecs. (e) and (f) as (f) and (g), respectively.

1990—Subsec. (d)(2)(B)(i). Pub. L. 101–508 struck out "or (d)" after "subsection (c)".

1982—Subsec. (a)(2). Pub. L. 97–248 inserted "(determined with the application of section 318(a))" after "distribution of a dividend".

1976—Subsec. (d)(2)(B)(i). Pub. L. 94–253 substituted "subsection (c) or (d) thereof" for "subsection (c) thereof".

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable, with certain exceptions, to transactions after June 8, 1997, see section 1014(f) of Pub. L. 105–34, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title II, §227(c)(2), Sept. 3, 1982, 96 Stat. 492, provided that: "The amendment made by subsection (b) [amending this section] shall apply to distributions after August 31, 1982, in taxable years ending after such date."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–253 applicable to taxable years ending after Mar. 31, 1976, see section 2 of Pub. L. 94–253, set out as a note under section 354 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

§357. Assumption of liability

(a) General rule

Except as provided in subsections (b) and (c), if—

(1) the taxpayer receives property which would be permitted to be received under section 351 or 361 without the recognition of gain if it were the sole consideration, and

(2) as part of the consideration, another party to the exchange assumes a liability of the taxpayer,

then such assumption shall not be treated as money or other property, and shall not prevent the exchange from being within the provisions of section 351 or 361, as the case may be.

(b) Tax avoidance purpose

(1) In general

If, taking into consideration the nature of the liability and the circumstances in the light of which the arrangement for the assumption was made, it appears that the principal purpose of the taxpayer with respect to the assumption described in subsection (a)—

(A) was a purpose to avoid Federal income tax on the exchange, or

(B) if not such purpose, was not a bona fide business purpose,

then such assumption (in the total amount of the liability assumed pursuant to such exchange) shall, for purposes of section 351 or 361 (as the case may be), be considered as money received by the taxpayer on the exchange.

(2) Burden of proof

In any suit or proceeding where the burden is on the taxpayer to prove such assumption is not to be treated as money received by the taxpayer, such burden shall not be considered as sustained unless the taxpayer sustains such burden by the clear preponderance of the evidence.

(c) Liabilities in excess of basis

(1) In general

In the case of an exchange—

(A) to which section 351 applies, or

(B) to which section 361 applies by reason of a plan of reorganization within the meaning of section 368(a)(1)(D) with respect to which stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 355,

if the sum of the amount of the liabilities assumed exceeds the total of the adjusted basis of the property transferred pursuant to such exchange, then such excess shall be considered as a gain from the sale or exchange of a capital asset or of property which is not a capital asset, as the case may be.

(2) Exceptions

Paragraph (1) shall not apply to any exchange—

(A) to which subsection (b)(1) of this section applies, or

(B) which is pursuant to a plan of reorganization within the meaning of section 368(a)(1)(G) where no former shareholder of the transferor corporation receives any consideration for his stock.

(3) Certain liabilities excluded

(A) In general

If a taxpayer transfers, in an exchange to which section 351 applies, a liability the payment of which either—

(i) would give rise to a deduction, or

(ii) would be described in section 736(a),

then, for purposes of paragraph (1), the amount of such liability shall be excluded in determining the amount of liabilities assumed.

(B) Exception

Subparagraph (A) shall not apply to any liability to the extent that the incurrence of the liability resulted in the creation of, or an increase in, the basis of any property.

(d) Determination of amount of liability assumed

(1) In general

For purposes of this section, section 358(d), section 358(h), section 361(b)(3), section 362(d), section 368(a)(1)(C), and section 368(a)(2)(B), except as provided in regulations—

(A) a recourse liability (or portion thereof) shall be treated as having been assumed if, as determined on the basis of all facts and circumstances, the transferee has agreed to, and is expected to, satisfy such liability (or portion), whether or not the transferor has been relieved of such liability; and

(B) except to the extent provided in paragraph (2), a nonrecourse liability shall be treated as having been assumed by the transferee of any asset subject to such liability.

(2) Exception for nonrecourse liability

The amount of the nonrecourse liability treated as described in paragraph (1)(B) shall be reduced by the lesser of—

(A) the amount of such liability which an owner of other assets not transferred to the transferee and also subject to such liability has agreed with the transferee to, and is expected to,

satisfy; or

(B) the fair market value of such other assets (determined without regard to section 7701(g)).

(3) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection and section 362(d). The Secretary may also prescribe regulations which provide that the manner in which a liability is treated as assumed under this subsection is applied, where appropriate, elsewhere in this title.

(Aug. 16, 1954, ch. 736, 68A Stat. 116; June 29, 1956, ch. 463, §2, 70 Stat. 403; Pub. L. 95–600, title III, §365(a), Nov. 6, 1978, 92 Stat. 2854; Pub. L. 96–222, title I, §103(a)(12), Apr. 1, 1980, 94 Stat. 213; Pub. L. 96–589, §4(h)(2), Dec. 24, 1980, 94 Stat. 3405; Pub. L. 101–508, title XI, §11801(c)(8)(F), Nov. 5, 1990, 104 Stat. 1388–524; Pub. L. 106–36, title III, §3001(a)(1), (b)(1), (d)(2)–(5), June 25, 1999, 113 Stat. 181–184; Pub. L. 106–554, §1(a)(7) [title III, §309(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–638; Pub. L. 108–357, title VIII, §898(b), Oct. 22, 2004, 118 Stat. 1649; Pub. L. 109–135, title IV, §403(jj)(2), Dec. 21, 2005, 119 Stat. 2632.)

AMENDMENTS

2005—Subsec. (d)(1). Pub. L. 109–135 inserted "section 361(b)(3)," after "section 358(h),".

2004—Subsec. (c)(1)(B). Pub. L. 108–357 inserted "with respect to which stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 355" after "section 368(a)(1)(D)".

2000—Subsec. (d)(1). Pub. L. 106–554 inserted "section 358(h)," after "section 358(d)," in introductory provisions.

1999—Subsec. (a). Pub. L. 106–36, §3001(d)(2), struck out "or acquisition" after "assumption" in concluding provisions.

Subsec. (a)(2). Pub. L. 106–36, §3001(a)(1), struck out ", or acquires from the taxpayer property subject to a liability" before comma at end.

Subsec. (b). Pub. L. 106–36, §3001(d)(2), (3), struck out "or acquisition" after "assumption" wherever appearing and struck out "or acquired" after "liability assumed" in concluding provisions of par. (1).

Subsec. (c)(1). Pub. L. 106–36, §3001(d)(4), struck out ", plus the amount of the liabilities to which the property is subject," after "liabilities assumed" in concluding provisions.

Subsec. (c)(3)(A). Pub. L. 106–36, §3001(d)(5), struck out "or to which the property transferred is subject" after "liabilities assumed" in concluding provisions.

Subsec. (d). Pub. L. 106–36, §3001(b)(1), added subsec. (d).

1990—Subsecs. (a), (b)(1). Pub. L. 101–508, §11801(c)(8)(F)(i), substituted "351 or 361" for "351, 361, 371, or 374" wherever appearing.

Subsec. (c)(2). Pub. L. 101–508, §11801(c)(8)(F)(ii), inserted "or" at end of subpar. (A), redesignated subpar. (C) as (B), and struck out former subpar. (B) which read as follows: "to which section 371 or 374 applies, or".

1980—Subsec. (c)(2)(C). Pub. L. 96–589 added subpar. (C).

Subsec. (c)(3)(A). Pub. L. 96–222 struck out requirement that only taxpayers who compute taxable income under the cash receipts and disbursements method of accounting are eligible to exclude certain liabilities in determining the amount of gain realized on a transfer to a controlled corporation and the requirement that the excluded liability must be an account payable.

1978—Subsec. (c)(3). Pub. L. 95–600 added par. (3).

1956—Subsec. (a). Act June 29, 1956, §2(1), substituted "371, or 374" for "or 371" in two places.

Subsec. (b). Act June 29, 1956, §2(1), substituted "371, or 374" for "or 371".

Subsec. (c)(2)(B). Act June 29, 1956, §2(2), substituted "371 or 374" for "371".

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §898(c), Oct. 22, 2004, 118 Stat. 1649, provided that: "The amendments made by this section [amending this section and section 361 of this title] shall apply to transfers of money or other

property, or liabilities assumed, in connection with a reorganization occurring on or after the date of the enactment of this Act [Oct. 22, 2004]."

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 applicable to assumptions of liability after Oct. 18, 1999, see section 1(a)(7) [title III, §309(d)] of Pub. L. 106–554, set out as a note under section 358 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–36 applicable to transfers after Oct. 18, 1998, see section 3001(e) of Pub. L. 106–36, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–589 applicable to bankruptcy cases or similar judicial proceedings commencing after Dec. 31, 1980, with exception permitting the debtor to make the amendment applicable to such cases or proceedings commencing after Sept. 30, 1979, see section 7(c)(1), (f) of Pub. L. 96–589, set out as a note under section 108 of this title.

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title III, §365(c), Nov. 6, 1978, 92 Stat. 2855, provided that: "The amendments made by subsections (a) and (b) [amending this section and section 358 of this title] shall apply to transfers occurring on or after the date of the enactment of this Act [Nov. 6, 1978]."

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

§358. Basis to distributees

(a) General rule

In the case of an exchange to which section 351, 354, 355, 356, or 361 applies—

(1) Nonrecognition property

The basis of the property permitted to be received under such section without the recognition of gain or loss shall be the same as that of the property exchanged—

(A) decreased by—

(i) the fair market value of any other property (except money) received by the taxpayer,

(ii) the amount of any money received by the taxpayer, and

(iii) the amount of loss to the taxpayer which was recognized on such exchange, and

(B) increased by—

(i) the amount which was treated as a dividend, and

(ii) the amount of gain to the taxpayer which was recognized on such exchange (not including any portion of such gain which was treated as a dividend).

(2) Other property

The basis of any other property (except money) received by the taxpayer shall be its fair market value.

(b) Allocation of basis

(1) In general

Under regulations prescribed by the Secretary, the basis determined under subsection (a)(1)

shall be allocated among the properties permitted to be received without the recognition of gain or loss.

(2) Special rule for section 355

In the case of an exchange to which section 355 (or so much of section 356 as relates to section 355) applies, then in making the allocation under paragraph (1) of this subsection, there shall be taken into account not only the property so permitted to be received without the recognition of gain or loss, but also the stock or securities (if any) of the distributing corporation which are retained, and the allocation of basis shall be made among all such properties.

(c) Section 355 transactions which are not exchanges

For purposes of this section, a distribution to which section 355 (or so much of section 356 as relates to section 355) applies shall be treated as an exchange, and for such purposes the stock and securities of the distributing corporation which are retained shall be treated as surrendered, and received back, in the exchange.

(d) Assumption of liability

(1) In general

Where, as part of the consideration to the taxpayer, another party to the exchange assumed a liability of the taxpayer, such assumption shall, for purposes of this section, be treated as money received by the taxpayer on the exchange.

(2) Exception

Paragraph (1) shall not apply to the amount of any liability excluded under section 357(c)(3).

(e) Exception

This section shall not apply to property acquired by a corporation by the exchange of its stock or securities (or the stock or securities of a corporation which is in control of the acquiring corporation) as consideration in whole or in part for the transfer of the property to it.

(f) Definition of nonrecognition property in case of section 361 exchange

For purposes of this section, the property permitted to be received under section 361 without the recognition of gain or loss shall be treated as consisting only of stock or securities in another corporation a party to the reorganization.

(g) Adjustments in intragroup transactions involving section 355

In the case of a distribution to which section 355 (or so much of section 356 as relates to section 355) applies and which involves the distribution of stock from 1 member of an affiliated group (as defined in section 1504(a) without regard to subsection (b) thereof) to another member of such group, the Secretary may, notwithstanding any other provision of this section, provide adjustments to the adjusted basis of any stock which—

(1) is in a corporation which is a member of such group, and
(2) is held by another member of such group,

to appropriately reflect the proper treatment of such distribution.

(h) Special rules for assumption of liabilities to which subsection (d) does not apply

(1) In general

If, after application of the other provisions of this section to an exchange or series of exchanges, the basis of property to which subsection (a)(1) applies exceeds the fair market value of such property, then such basis shall be reduced (but not below such fair market value) by the amount (determined as of the date of the exchange) of any liability—

(A) which is assumed by another person as part of the exchange, and
(B) with respect to which subsection (d)(1) does not apply to the assumption.

(2) Exceptions

Except as provided by the Secretary, paragraph (1) shall not apply to any liability if—

(A) the trade or business with which the liability is associated is transferred to the person assuming the liability as part of the exchange, or

(B) substantially all of the assets with which the liability is associated are transferred to the person assuming the liability as part of the exchange.

(3) Liability

For purposes of this subsection, the term "liability" shall include any fixed or contingent obligation to make payment, without regard to whether the obligation is otherwise taken into account for purposes of this title.

(Aug. 16, 1954, ch. 736, 68A Stat. 117; Pub. L. 85–866, title I, §21(a), Sept. 2, 1958, 72 Stat. 1620; Pub. L. 90–621, §2(a), Oct. 22, 1968, 82 Stat. 1311; Pub. L. 94–253, §1(b), Mar. 31, 1976, 90 Stat. 296; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–600, title III, §365(b), Nov. 6, 1978, 92 Stat. 2855; Pub. L. 100–647, title I, §1018(d)(5)(B), Nov. 10, 1988, 102 Stat. 3580; Pub. L. 101–508, title XI, §11801(c)(8)(G), Nov. 5, 1990, 104 Stat. 1388–524; Pub. L. 105–34, title X, §1012(b)(2), Aug. 5, 1997, 111 Stat. 916; Pub. L. 106–36, title III, §3001(a)(2), (d)(6), June 25, 1999, 113 Stat. 182, 184; Pub. L. 106–554, §1(a)(7) [title III, §309(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–638; Pub. L. 107–147, title IV, §412(c), Mar. 9, 2002, 116 Stat. 53.)

AMENDMENTS

2002—Subsec. (h)(1)(A). Pub. L. 107–147 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "which is assumed in exchange for such property, and".

2000—Subsec. (h). Pub. L. 106–554 added subsec. (h).

1999—Subsec. (d)(1). Pub. L. 106–36 struck out "or acquired from the taxpayer property subject to a liability" after "liability of the taxpayer" and "or acquisition (in the amount of the liability)" after "such assumption".

1997—Subsec. (g). Pub. L. 105–34 added subsec. (g).

1990—Subsec. (a). Pub. L. 101–508, §11801(c)(8)(G)(i), substituted "or 361" for "361, 371(b), or 374".

Subsec. (b)(3). Pub. L. 101–508, §11801(c)(8)(G)(ii), struck out par. (3) "Certain exchanges involving ConRail" which read as follows: "To the extent provided in regulations prescribed by the Secretary in the case of an exchange to which section 354(d) (or so much of section 356 as relates to section 354(d)) or section 374(c) applies, for purposes of allocating basis under paragraph (1), stock of the Consolidated Rail Corporation and the certificate of value of the United States Railway Association which relates to such stock shall, so long as they are held by the same person, be treated as one property."

1988—Subsec. (f). Pub. L. 100–647 added subsec. (f).

1978—Subsec. (d). Pub. L. 95–600 designated existing provisions as par. (1) and added par. (2).

1976—Subsec. (a). Pub. L. 94–253, §1(b)(1), substituted "371(b), or 374" for "or 371(b)".

Subsec. (b)(1), (3). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

Pub. L. 94–253, §1(b)(2), added par. (3).

1968—Subsec. (e). Pub. L. 90–621 substituted exchange of stock and securities for issuance of stock or securities as the transaction involved and inserted parenthetical provisions making reference to stock or securities of a corporation which is in control of the acquiring corporation.

1958—Subsec. (a)(1)(A)(iii). Pub. L. 85–866 added cl. (iii).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Community Renewal Tax Relief Act of 2000 [H.R. 5662, as enacted by Pub. L. 106–554], to which such amendment relates, see section 412(e) of Pub. L. 107–147, set out as a note under section 151 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(7) [title III, §309(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–638, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and section 357 of this title] shall apply to assumptions of liability after October 18, 1999.

"(2) RULES.—The rules prescribed under subsection (c) [see Application of Comparable Rules to Partnerships and S Corporations note below] shall apply to assumptions of liability after October 18, 1999, or such later date as may be prescribed in such rules."

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–36 applicable to transfers after Oct. 18, 1998, see section 3001(e) of Pub. L. 106–36, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable, with certain exceptions, to distributions after Apr. 16, 1997, pursuant to a plan (or series of related transactions) which involves an acquisition described in section 355(e)(2)(A)(ii) of this title occurring after such date, see section 1012(d) of Pub. L. 105–34, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable to transfers occurring on or after Nov. 6, 1978, see section 365(c) of Pub. L. 95–600, set out as a note under section 357 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–253 applicable to taxable years ending after Mar. 31, 1976, see section 2 of Pub. L. 94–253, set out as a note under section 354 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Pub. L. 90–621, §2(c), Oct. 22, 1968, 82 Stat. 1311, provided that: "The amendments made by subsections (a) and (b) [amending this section and section 362 of this title] shall apply only in respect of plans of reorganization adopted after the date of the enactment of this Act [Oct. 22, 1968]."

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85–866, §21(b), Sept. 2, 1958, 72 Stat. 1620, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendment made by subsection (a) [amending this section] shall apply as provided in section 393 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] as if the clause (iii) added by such amendment had been included in such Code at the time of its enactment [Aug. 16, 1954]."

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

ABOLITION OF UNITED STATES RAILWAY ASSOCIATION AND TRANSFER OF FUNCTIONS

United States Railway Association abolished effective Apr. 1, 1987, all powers, duties, rights, and obligations of Association relating to Consolidated Rail Corporation under Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) transferred to Secretary of Transportation on Jan. 1, 1987, and any securities of Corporation held by Association transferred to Secretary of Transportation on Oct. 21, 1986, see section 1341 of Title 45, Railroads.

APPLICATION OF COMPARABLE RULES TO PARTNERSHIPS AND S CORPORATIONS

Pub. L. 106–554, §1(a)(7) [title III, §309(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–638, provided that: "The Secretary of the Treasury or his delegate—

"(1) shall prescribe rules which provide appropriate adjustments under subchapter K of chapter 1 of the Internal Revenue Code of 1986 to prevent the acceleration or duplication of losses through the assumption of (or transfer of assets subject to) liabilities described in section 358(h)(3) of such Code (as added by subsection (a)) in transactions involving partnerships, and

"(2) may prescribe rules which provide appropriate adjustments under subchapter S of chapter 1 of such Code in transactions described in paragraph (1) involving S corporations rather than partnerships."

SUBPART C—EFFECTS ON CORPORATION

Sec.
361. Nonrecognition of gain or loss to corporations; treatment of distributions.
362. Basis to corporations.
[363. Repealed.]

AMENDMENTS

1988—Pub. L. 100–647, title I, §1018(d)(5)(F), Nov. 10, 1988, 102 Stat. 3580, substituted "corporations; treatment of distributions." for "transferor corporation; other treatment of transferor corporation; etc." in item 361.

1986—Pub. L. 99–514, title XVIII, §1804(g)(3), Oct. 22, 1986, 100 Stat. 2806, substituted "to transferor corporation; other treatment of transferor corporation; etc." for "corporations" in item 361.

1976—Pub. L. 94–455, title XIX, §1901(b)(13), Oct. 4, 1976, 90 Stat. 1795, struck out item 363 "Effect on earnings and profits".

§361. Nonrecognition of gain or loss to corporations; treatment of distributions

(a) General rule

No gain or loss shall be recognized to a corporation if such corporation is a party to a reorganization and exchanges property, in pursuance of the plan of reorganization, solely for stock or securities in another corporation a party to the reorganization.

(b) Exchanges not solely in kind

(1) Gain

If subsection (a) would apply to an exchange but for the fact that the property received in exchange consists not only of stock or securities permitted by subsection (a) to be received without the recognition of gain, but also of other property or money, then—

(A) Property distributed

If the corporation receiving such other property or money distributes it in pursuance of the plan of reorganization, no gain to the corporation shall be recognized from the exchange, but

(B) Property not distributed

If the corporation receiving such other property or money does not distribute it in pursuance of the plan of reorganization, the gain, if any, to the corporation shall be recognized.

The amount of gain recognized under subparagraph (B) shall not exceed the sum of the money and the fair market value of the other property so received which is not so distributed.

(2) Loss

If subsection (a) would apply to an exchange but for the fact that the property received in exchange consists not only of property permitted by subsection (a) to be received without the recognition of gain or loss, but also of other property or money, then no loss from the exchange shall be recognized.

(3) Treatment of transfers to creditors

For purposes of paragraph (1), any transfer of the other property or money received in the exchange by the corporation to its creditors in connection with the reorganization shall be treated as a distribution in pursuance of the plan of reorganization. The Secretary may prescribe such regulations as may be necessary to prevent avoidance of tax through abuse of the preceding sentence or subsection (c)(3). In the case of a reorganization described in section 368(a)(1)(D) with respect to which stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 355, this paragraph shall apply only to

the extent that the sum of the money and the fair market value of other property transferred to such creditors does not exceed the adjusted bases of such assets transferred (reduced by the amount of the liabilities assumed (within the meaning of section 357(c))).

(c) Treatment of distributions

(1) In general

Except as provided in paragraph (2), no gain or loss shall be recognized to a corporation a party to a reorganization on the distribution to its shareholders of property in pursuance of the plan of reorganization.

(2) Distributions of appreciated property

(A) In general

If—

(i) in a distribution referred to in paragraph (1), the corporation distributes property other than qualified property, and

(ii) the fair market value of such property exceeds its adjusted basis (in the hands of the distributing corporation),

then gain shall be recognized to the distributing corporation as if such property were sold to the distributee at its fair market value.

(B) Qualified property

For purposes of this subsection, the term "qualified property" means—

(i) any stock in (or right to acquire stock in) the distributing corporation or obligation of the distributing corporation, or

(ii) any stock in (or right to acquire stock in) another corporation which is a party to the reorganization or obligation of another corporation which is such a party if such stock (or right) or obligation is received by the distributing corporation in the exchange.

(C) Treatment of liabilities

If any property distributed in the distribution referred to in paragraph (1) is subject to a liability or the shareholder assumes a liability of the distributing corporation in connection with the distribution, then, for purposes of subparagraph (A), the fair market value of such property shall be treated as not less than the amount of such liability.

(3) Treatment of certain transfers to creditors

For purposes of this subsection, any transfer of qualified property by the corporation to its creditors in connection with the reorganization shall be treated as a distribution to its shareholders pursuant to the plan of reorganization.

(4) Coordination with other provisions

Section 311 and subpart B of part II of this subchapter shall not apply to any distribution referred to in paragraph (1).

(5) Cross reference

For provision providing for recognition of gain in certain distributions, see section 355(d).

(Aug. 16, 1954, ch. 736, 68A Stat. 118; Pub. L. 99–514, title XVIII, §1804(g)(1), Oct. 22, 1986, 100 Stat. 2805; Pub. L. 100–647, title I, §1018(d)(5)(A), Nov. 10, 1988, 102 Stat. 3578; Pub. L. 101–508, title XI, §11321(b), Nov. 5, 1990, 104 Stat. 1388–463; Pub. L. 108–357, title VIII, §898(a), Oct. 22, 2004, 118 Stat. 1649; Pub. L. 109–135, title IV, §403(jj)(1), Dec. 21, 2005, 119 Stat. 2632.)

AMENDMENTS

2005—Subsec. (b)(3). Pub. L. 109–135 inserted before period at end "(reduced by the amount of the liabilities assumed (within the meaning of section 357(c)))".

2004—Subsec. (b)(3). Pub. L. 108–357 inserted at end "In the case of a reorganization described in section 368(a)(1)(D) with respect to which stock or securities of the corporation to which the assets are transferred are

distributed in a transaction which qualifies under section 355, this paragraph shall apply only to the extent that the sum of the money and the fair market value of other property transferred to such creditors does not exceed the adjusted bases of such assets transferred."

1990—Subsec. (c)(5). Pub. L. 101–508 added par. (5).

1988—Pub. L. 100–647 substituted "corporations; treatment of distributions" for "transferor corporations; other treatment of transferor corporation; etc." in section catchline and amended text generally, revising content and structure of section.

1986—Pub. L. 99–514 amended section generally. Prior to amendment, section related to whether gain or loss was recognized if corporation which was party to reorganization exchanged property, pursuant to plan of reorganization, for stock or securities in another corporation which was party to the reorganization or for other property or money.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to transfers of money or other property, or liabilities assumed, in connection with a reorganization occurring on or after Oct. 22, 2004, see section 898(c) of Pub. L. 108–357, set out as a note under section 357 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to distributions after Oct. 9, 1990, but not applicable to any distribution pursuant to a written binding contract in effect on Oct. 9, 1990, and at all times thereafter before such distribution, see section 11321(c) of Pub. L. 101–508, set out as a note under section 355 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XVIII, §1804(g)(4), Oct. 22, 1986, 100 Stat. 2806, provided that: "The amendments made by this subsection [amending this section and section 368 of this title] shall apply to plans of reorganizations adopted after the date of the enactment of this Act [Oct. 22, 1986]."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§362. Basis to corporations

(a) Property acquired by issuance of stock or as paid-in surplus

If property was acquired on or after June 22, 1954, by a corporation—

(1) in connection with a transaction to which section 351 (relating to transfer of property to corporation controlled by transferor) applies, or

(2) as paid-in surplus or as a contribution to capital,

then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain recognized to the transferor on such transfer.

(b) Transfers to corporations

If property was acquired by a corporation in connection with a reorganization to which this part applies, then the basis shall be the same as it would be in the hands of the transferor, increased in the

amount of gain recognized to the transferor on such transfer. This subsection shall not apply if the property acquired consists of stock or securities in a corporation a party to the reorganization, unless acquired by the exchange of stock or securities of the transferee (or of a corporation which is in control of the transferee) as the consideration in whole or in part for the transfer.

(c) Special rule for certain contributions to capital

(1) Property other than money

Notwithstanding subsection (a)(2), if property other than money—

(A) is acquired by a corporation, on or after June 22, 1954, as a contribution to capital, and

(B) is not contributed by a shareholder as such,

then the basis of such property shall be zero.

(2) Money

Notwithstanding subsection (a)(2), if money—

(A) is received by a corporation, on or after June 22, 1954, as a contribution to capital, and

(B) is not contributed by a shareholder as such,

then the basis of any property acquired with such money during the 12-month period beginning on the day the contribution is received shall be reduced by the amount of such contribution. The excess (if any) of the amount of such contribution over the amount of the reduction under the preceding sentence shall be applied to the reduction (as of the last day of the period specified in the preceding sentence) of the basis of any other property held by the taxpayer. The particular properties to which the reductions required by this paragraph shall be allocated shall be determined under regulations prescribed by the Secretary.

(d) Limitation on basis increase attributable to assumption of liability

(1) In general

In no event shall the basis of any property be increased under subsection (a) or (b) above the fair market value of such property (determined without regard to section 7701(g)) by reason of any gain recognized to the transferor as a result of the assumption of a liability.

(2) Treatment of gain not subject to tax

Except as provided in regulations, if—

(A) gain is recognized to the transferor as a result of an assumption of a nonrecourse liability by a transferee which is also secured by assets not transferred to such transferee; and

(B) no person is subject to tax under this title on such gain,

then, for purposes of determining basis under subsections (a) and (b), the amount of gain recognized by the transferor as a result of the assumption of the liability shall be determined as if the liability assumed by the transferee equaled such transferee's ratable portion of such liability determined on the basis of the relative fair market values (determined without regard to section 7701(g)) of all of the assets subject to such liability.

(e) Limitations on built-in losses

(1) Limitation on importation of built-in losses

(A) In general

If in any transaction described in subsection (a) or (b) there would (but for this subsection) be an importation of a net built-in loss, the basis of each property described in subparagraph (B) which is acquired in such transaction shall (notwithstanding subsections (a) and (b)) be its fair market value immediately after such transaction.

(B) Property described

For purposes of subparagraph (A), property is described in this subparagraph if—

(i) gain or loss with respect to such property is not subject to tax under this subtitle in the hands of the transferor immediately before the transfer, and

(ii) gain or loss with respect to such property is subject to such tax in the hands of the transferee immediately after such transfer.

In any case in which the transferor is a partnership, the preceding sentence shall be applied by treating each partner in such partnership as holding such partner's proportionate share of the property of such partnership.

(C) Importation of net built-in loss

For purposes of subparagraph (A), there is an importation of a net built-in loss in a transaction if the transferee's aggregate adjusted bases of property described in subparagraph (B) which is transferred in such transaction would (but for this paragraph) exceed the fair market value of such property immediately after such transaction.

(2) Limitation on transfer of built-in losses in section 351 transactions

(A) In general

If—

(i) property is transferred by a transferor in any transaction which is described in subsection (a) and which is not described in paragraph (1) of this subsection, and

(ii) the transferee's aggregate adjusted bases of such property so transferred would (but for this paragraph) exceed the fair market value of such property immediately after such transaction,

then, notwithstanding subsection (a), the transferee's aggregate adjusted bases of the property so transferred shall not exceed the fair market value of such property immediately after such transaction.

(B) Allocation of basis reduction

The aggregate reduction in basis by reason of subparagraph (A) shall be allocated among the property so transferred in proportion to their respective built-in losses immediately before the transaction.

(C) Election to apply limitation to transferor's stock basis

(i) In general

If the transferor and transferee of a transaction described in subparagraph (A) both elect the application of this subparagraph—

(I) subparagraph (A) shall not apply, and

(II) the transferor's basis in the stock received for property to which subparagraph (A) does not apply by reason of the election shall not exceed its fair market value immediately after the transfer.

(ii) Election

Any election under clause (i) shall be made at such time and in such form and manner as the Secretary may prescribe, and, once made, shall be irrevocable.

(Aug. 16, 1954, ch. 736, 68A Stat. 118; Pub. L. 90–621, §2(b), Oct. 22, 1968, 82 Stat. 1311; Pub. L. 94–455, title XIX, §1906(b)(13)(A), title XXI, §2120(b), Oct. 4, 1976, 90 Stat. 1834, 1913; Pub. L. 99–514, title VIII, §824(b), Oct. 22, 1986, 100 Stat. 2374; Pub. L. 106–36, title III, §3001(b)(2), June 25, 1999, 113 Stat. 182; Pub. L. 108–357, title VIII, §836(a), Oct. 22, 2004, 118 Stat. 1594; Pub. L. 109–135, title IV, §403(dd)(2), Dec. 21, 2005, 119 Stat. 2631.)

AMENDMENTS

2005—Subsec. (e)(2)(C)(ii). Pub. L. 109–135 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "An election under clause (i) shall be included with the return of tax for the taxable year in which the transaction occurred, shall be in such form and manner as the

Secretary may prescribe, and, once made, shall be irrevocable."

2004—Subsec. (e). Pub. L. 108–357 added subsec. (e).

1999—Subsec. (d). Pub. L. 106–36 added subsec. (d).

1986—Subsec. (c)(3). Pub. L. 99–514 struck out par. (3) relating to exceptions for contributions in aid of construction.

1976—Subsec. (c)(2)(B). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (c)(3). Pub. L. 94–455, §2120(b), added par. (3).

1968—Subsec. (b). Pub. L. 90–621 substituted the exchange of stock or securities of the transferee (or of a corporation which is in control of the transferee) for the issuance of stock or securities of the transferee as the transaction rendering the subsection applicable.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §836(c)(1), Oct. 22, 2004, 118 Stat. 1596, provided that: "The amendment made by subsection (a) [amending this section] shall apply to transactions after the date of the enactment of this Act [Oct. 22, 2004]."

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–36 applicable to transfers after Oct. 18, 1998, see section 3001(e) of Pub. L. 106–36, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to amounts received after Dec. 31, 1986, in taxable years ending after such date, with certain exceptions and qualifications, see section 824(c) of Pub. L. 99–514, set out as a note under section 118 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 2120(b) of Pub. L. 94–455 applicable to contributions made after Jan. 31, 1976, see section 2120(c) of Pub. L. 94–455, set out as a note under section 118 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–621 applicable only in respect of plans of reorganization adopted after Oct. 22, 1968, see section 2(c) of Pub. L. 90–621, set out as a note under section 358 of this title.

[§363. Repealed. Pub. L. 94–455, title XIX, §1901(a)(49), Oct. 4, 1976, 90 Stat. 1773]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 119, related to cross reference for rules relating to effect on earnings and profits of transactions to which this part applies.

EFFECTIVE DATE OF REPEAL

Repeal effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 2 of this title.

SUBPART D—SPECIAL RULE; DEFINITIONS

Sec.

367. Foreign corporations.
368. Definitions relating to corporate reorganizations.

§367. Foreign corporations

(a) Transfers of property from the United States

(1) General rule

If, in connection with any exchange described in section 332, 351, 354, 356, or 361, a United States person transfers property to a foreign corporation, such foreign corporation shall not, for purposes of determining the extent to which gain shall be recognized on such transfer, be considered to be a corporation.

(2) Exception for certain stock or securities

Except to the extent provided in regulations, paragraph (1) shall not apply to the transfer of stock or securities of a foreign corporation which is a party to the exchange or a party to the reorganization.

(3) Exception for transfers of certain property used in the active conduct of a trade or business

(A) In general

Except as provided in regulations prescribed by the Secretary, paragraph (1) shall not apply to any property transferred to a foreign corporation for use by such foreign corporation in the active conduct of a trade or business outside of the United States.

(B) Paragraph not to apply to certain property

Except as provided in regulations prescribed by the Secretary, subparagraph (A) shall not apply to any—

(i) property described in paragraph (1) or (3) of section 1221(a) (relating to inventory and copyrights, etc.),

(ii) installment obligations, accounts receivable, or similar property,

(iii) foreign currency or other property denominated in foreign currency,

(iv) intangible property (within the meaning of section 936(h)(3)(B)), or

(v) property with respect to which the transferor is a lessor at the time of the transfer, except that this clause shall not apply if the transferee was the lessee.

(C) Transfer of foreign branch with previously deducted losses

Except as provided in regulations prescribed by the Secretary, subparagraph (A) shall not apply to gain realized on the transfer of the assets of a foreign branch of a United States person to a foreign corporation in an exchange described in paragraph (1) to the extent that—

(i) the sum of losses—

(I) which were incurred by the foreign branch before the transfer, and

(II) with respect to which a deduction was allowed to the taxpayer, exceeds

(ii) the sum of—

(I) any taxable income of such branch for a taxable year after the taxable year in which the loss was incurred and through the close of the taxable year of the transfer, and

(II) the amount which is recognized under section 904(f)(3) on account of the transfer.

Any gain recognized by reason of the preceding sentence shall be treated for purposes of this chapter as income from sources outside the United States having the same character as such losses had.

(4) Special rule for transfer of partnership interests

Except as provided in regulations prescribed by the Secretary, a transfer by a United States person of an interest in a partnership to a foreign corporation in an exchange described in paragraph (1) shall, for purposes of this subsection, be treated as a transfer to such corporation of such person's pro rata share of the assets of the partnership.

(5) Paragraphs (2) and (3) not to apply to certain section 361 transactions

Paragraphs (2) and (3) shall not apply in the case of an exchange described in subsection (a) or

(b) of section 361. Subject to such basis adjustments and such other conditions as shall be provided in regulations, the preceding sentence shall not apply if the transferor corporation is controlled (within the meaning of section 368(c)) by 5 or fewer domestic corporations. For purposes of the preceding sentence, all members of the same affiliated group (within the meaning of section 1504) shall be treated as 1 corporation.

(6) Secretary may exempt certain transactions from application of this subsection

Paragraph (1) shall not apply to the transfer of any property which the Secretary, in order to carry out the purposes of this subsection, designates by regulation.

(b) Other transfers

(1) Effect of section to be determined under regulations

In the case of any exchange described in section 332, 351, 354, 355, 356, or 361 in connection with which there is no transfer of property described in subsection (a)(1), a foreign corporation shall be considered to be a corporation except to the extent provided in regulations prescribed by the Secretary which are necessary or appropriate to prevent the avoidance of Federal income taxes.

(2) Regulations relating to sale or exchange of stock in foreign corporations

The regulations prescribed pursuant to paragraph (1) shall include (but shall not be limited to) regulations dealing with the sale or exchange of stock or securities in a foreign corporation by a United States person, including regulations providing—

(A) the circumstances under which—

(i) gain shall be recognized currently, or amounts included in gross income currently as a dividend, or both, or

(ii) gain or other amounts may be deferred for inclusion in the gross income of a shareholder (or his successor in interest) at a later date, and

(B) the extent to which adjustments shall be made to earnings and profits, basis of stock or securities, and basis of assets.

(c) Transactions to be treated as exchanges

(1) Section 355 distribution

For purposes of this section, any distribution described in section 355 (or so much of section 356 as relates to section 355) shall be treated as an exchange whether or not it is an exchange.

(2) Contribution of capital to controlled corporations

For purposes of this chapter, any transfer of property to a foreign corporation as a contribution to the capital of such corporation by one or more persons who, immediately after the transfer, own (within the meaning of section 318) stock possessing at least 80 percent of the total combined voting power of all classes of stock of such corporation entitled to vote shall be treated as an exchange of such property for stock of the foreign corporation equal in value to the fair market value of the property transferred.

(d) Special rules relating to transfers of intangibles

(1) In general

Except as provided in regulations prescribed by the Secretary, if a United States person transfers any intangible property (within the meaning of section 936(h)(3)(B)) to a foreign corporation in an exchange described in section 351 or 361—

(A) subsection (a) shall not apply to the transfer of such property, and

(B) the provisions of this subsection shall apply to such transfer.

(2) Transfer of intangibles treated as transfer pursuant to sale of contingent payments

(A) In general

If paragraph (1) applies to any transfer, the United States person transferring such property

shall be treated as—

(i) having sold such property in exchange for payments which are contingent upon the productivity, use, or disposition of such property, and

(ii) receiving amounts which reasonably reflect the amounts which would have been received—

(I) annually in the form of such payments over the useful life of such property, or

(II) in the case of a disposition following such transfer (whether direct or indirect), at the time of the disposition.

The amounts taken into account under clause (ii) shall be commensurate with the income attributable to the intangible.

(B) Effect on earnings and profits

For purposes of this chapter, the earnings and profits of a foreign corporation to which the intangible property was transferred shall be reduced by the amount required to be included in the income of the transferor of the intangible property under subparagraph (A)(ii).

(C) Amounts received treated as ordinary income

For purposes of this chapter, any amount included in gross income by reason of this subsection shall be treated as ordinary income. For purposes of applying section 904(d), any such amount shall be treated in the same manner as if such amount were a royalty.

(3) Regulations relating to transfers of intangibles to partnerships

The Secretary may provide by regulations that the rules of paragraph (2) also apply to the transfer of intangible property by a United States person to a partnership in circumstances consistent with the purposes of this subsection.

(e) Treatment of distributions described in section 355 or liquidations under section 332

(1) Distributions described in section 355

In the case of any distribution described in section 355 (or so much of section 356 as relates to section 355) by a domestic corporation to a person who is not a United States person, to the extent provided in regulations, gain shall be recognized under principles similar to the principles of this section.

(2) Liquidations under section 332

In the case of any liquidation to which section 332 applies, except as provided in regulations, subsections (a) and (b)(1) of section 337 shall not apply where the 80-percent distributee (as defined in section 337(c)) is a foreign corporation.

(f) Other transfers

To the extent provided in regulations, if a United States person transfers property to a foreign corporation as paid-in surplus or as a contribution to capital (in a transaction not otherwise described in this section), such transfer shall be treated as a sale or exchange for an amount equal to the fair market value of the property transferred, and the transferor shall recognize as gain the excess of—

(1) the fair market value of the property so transferred, over

(2) the adjusted basis (for purposes of determining gain) of such property in the hands of the transferor.

(Aug. 16, 1954, ch. 736, 68A Stat. 119; Pub. L. 91–681, §1(a), Jan. 12, 1971, 84 Stat. 2065; Pub. L. 94–455, title X, §1042(a), Oct. 4, 1976, 90 Stat. 1634; Pub. L. 97–248, title II, §213(d), Sept. 3, 1982, 96 Stat. 465; Pub. L. 98–369, div. A, title I, §131(a)–(c), July 18, 1984, 98 Stat. 662–664; Pub. L. 99–514, title VI, §631(d)(1), title XII, §1231(e)(2), title XVIII, §1810(g)(1), (4), Oct. 22, 1986, 100 Stat. 2272, 2563, 2828, 2829; Pub. L. 100–647, title I, §1006(e)(13)(A), Nov. 10, 1988, 102 Stat. 3402; Pub. L. 101–508, title XI, §11702(a)(1), Nov. 5, 1990, 104 Stat. 1388–514; Pub. L. 105–34,

title XI, §1131(b)(2), (4), (5)(A), Aug. 5, 1997, 111 Stat. 979, 980; Pub. L. 106–170, title V, §532(c)(1)(C), Dec. 17, 1999, 113 Stat. 1930; Pub. L. 108–357, title IV, §406(a), Oct. 22, 2004, 118 Stat. 1498.)

CODIFICATION

Another section 1131(b) of Pub. L. 105–34 enacted section 684 of this title.

AMENDMENTS

2004—Subsec. (d)(2)(C). Pub. L. 108–357 inserted at end "For purposes of applying section 904(d), any such amount shall be treated in the same manner as if such amount were a royalty."

1999—Subsec. (a)(3)(B)(i). Pub. L. 106–170 substituted "section 1221(a)" for "section 1221".

1997—Subsec. (d)(2)(C). Pub. L. 105–34, §1131(b)(4), amended heading and text of subpar. (C) generally. Prior to amendment, text read as follows: "For purposes of this chapter, any amount included in gross income by reason of this subsection shall be treated as ordinary income from sources within the United States."

Subsec. (d)(3). Pub. L. 105–34, §1131(b)(5)(A), added par. (3).

Subsec. (f). Pub. L. 105–34, §1131(b)(2), added subsec. (f).

1990—Subsec. (a)(5). Pub. L. 101–508 substituted "subsection (a) or (b) of section 361" for "section 361".

1988—Subsec. (a)(5), (6). Pub. L. 100–647 added par. (5) and redesignated former par. (5) as (6).

1986—Subsec. (a)(1). Pub. L. 99–514, §1810(g)(4)(A), struck out "355," after "354,".

Subsec. (d)(2)(A). Pub. L. 99–514, §1231(e)(2), inserted at end "The amounts taken into account under clause (ii) shall be commensurate with the income attributable to the intangible."

Subsec. (e). Pub. L. 99–514, §631(d)(1), amended subsec. (e) generally. Prior to amendment, subsec. (e), treatment of distributions described in section 336 or 355, read as follows: "In the case of any distribution described in section 336 or 355 (or so much of section 356 as relates to section 355) by a domestic corporation which is made to a person who is not a United States person, to the extent provided in regulations, gain shall be recognized under principles similar to the principles of this section."

Subsec. (f). Pub. L. 99–514, §1810(g)(1), struck out subsec. (f) which related to transitional rules in the case of any exchanges beginning before Jan. 1, 1978.

Pub. L. 99–514, §1810(g)(4)(B), in heading substituted "distributions described in section 336 or 355" for "liquidations under section 336", and in text inserted "or 355 (or so much of section 356 as relates to section 355)".

1984—Subsec. (a). Pub. L. 98–369, §131(a), amended subsec. (a) generally, revising provisions of pars. (1) and (2), and adding pars. (3) to (5).

Subsec. (d). Pub. L. 98–369, §131(b), amended subsec. (d) generally, substituting provision providing special rules relating to transfers of intangibles for provision providing special rules relating to transfers of intangibles by possession corporation.

Subsecs. (e), (f). Pub. L. 98–369, §131(c), added subsec. (e) and redesignated former subsec. (e) as (f).

1982—Subsecs. (d), (e). Pub. L. 97–248 added subsec. (d) and redesignated former subsec. (d) as (e).

1976—Pub. L. 94–455, among other changes, inserted provisions permitting nonrecognition of gain if a request for a ruling that tax avoidance is not present is filed within 183 days after beginning of an exchange, relating to an organization, reorganization, and liquidation of a foreign corporation, in the case of outbound transfers, however, for all other transfers, regulations are to provide the extent that earnings are to be taken into account as dividends and provisions relating to Tax Court review of the tax avoidance rulings.

1971—Subsec. (a). Pub. L. 91–681 designated existing provisions as subsec. (a), and, as so designated, inserted provisions relating to instances of an exchange, described in subsec. (b). Provisions relating to distributions described in section 355 (or so much of section 356 as relates to section 355) were stricken and were transferred to subsec. (c).

Subsec. (b). Pub. L. 91–681 added subsec. (b).

Subsec. (c). Pub. L. 91–681 designated as subsec. (c) provisions relating to distribution described in section 355 (or so much of section 356 as relates to section 355).

Subsec. (d). Pub. L. 91–681 added subsec. (d).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title IV, §406(b), Oct. 22, 2004, 118 Stat. 1498, provided that: "The amendment made by this section [amending this section] shall apply to amounts treated as received pursuant to section 367(d)(2) of the Internal Revenue Code of 1986 on or after August 5, 1997."

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XI, §1131(d), Aug. 5, 1997, 111 Stat. 980, provided that: "The amendments made by this section [enacting section 684 of this title, amending this section and sections 721, 814, 1035, and 6422 of this title, and repealing sections 1057, 1491, 1492, and 1494 of this title] shall take effect on the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 11702(j) of Pub. L. 101–508, set out as a note under section 59 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1006(e)(13)(B), Nov. 10, 1988, 102 Stat. 3402, provided that: "The amendment made by subparagraph (A) [amending this section] shall apply to exchanges on or after June 21, 1988, except that such amendment shall not apply to any exchange pursuant to any reorganization for which a plan of reorganization was adopted before June 21, 1988."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 631(d)(1) of Pub. L. 99–514 applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, set out as an Effective Date note under section 336 of this title.

Amendment by section 1231(e)(2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, but only with respect to transfers after Nov. 16, 1985, or licenses granted after such date, or before such date with respect to property not in existence or owned by taxpayer on such date, except that for purposes of section 936(h)(5)(C) of this title, such amendment applicable to taxable years beginning after Dec. 31, 1986, without regard to when the transfer or license was made, see section 1231(g)(2) of Pub. L. 99–514, set out as a note under section 936 of this title.

Amendment by section 1810(g)(1), (4) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §131(g), July 18, 1984, 98 Stat. 665, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—The amendments made by this section [enacting section 6038B of this title, amending this section and sections 1492, 1494, 6501, and 7482 of this title, and repealing section 7477 of this title] shall apply to transfers or exchanges after December 31, 1984, in taxable years ending after such date.

"(2) SPECIAL RULE FOR CERTAIN TRANSFERS OF INTANGIBLES.—

"(A) IN GENERAL.—If, after June 6, 1984, and before January 1, 1985, a United States person transfers any intangible property (within the meaning of section 936(h)(3)(B) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) to a foreign corporation or in a transfer described in section 1491, such transfer shall be treated for purposes of sections 367(a), 1492(2), and 1494(b) of such Code as pursuant to a plan having as 1 of its principal purposes the avoidance of Federal income tax.

"(B) WAIVER.—Subject to such terms and conditions as the Secretary of the Treasury or his delegate may prescribe, the Secretary may waive the application of subparagraph (A) with respect to any transfer.

"(3) RULING REQUEST BEFORE MARCH 1, 1984.—The amendments made by this section (and the provisions of paragraph (2) of this subsection) shall not apply to any transfer or exchange of property described in a request filed before March 1, 1984, under section 367(a), 1492(2), or 1494(b) of the Internal Revenue Code of 1986 (as in effect before such amendments)."

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to taxable years ending after Aug. 14, 1982, see section

213(e)(3) of Pub. L. 97–248, set out as a note under section 936 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title X, §1042(e), Oct. 4, 1976, 90 Stat. 1639, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) The amendments made by this section (other than by subsection (d)) [amending this section and sections 751 and 1248 of this title] shall apply to transfers beginning after October 9, 1975, and to sales, exchanges, and distributions taking place after such date. The amendments made by subsection (d) [enacting section 7477 of this title and amending sections 7476 and 7482 of this title] shall apply with respect to pleadings filed with the Tax Court after the date of the enactment of this Act [Oct. 4, 1976] but only with respect to transfers beginning after October 9, 1975.

"(2) In the case of any exchange described in section 367 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect on December 31, 1974) in any taxable year beginning after December 31, 1962, and before the date of the enactment of this Act [Oct. 4, 1976], which does not involve the transfer of property to or from a United States person, a taxpayer shall have for purposes of such section until 183 days after the date of the enactment of this Act [Oct. 4, 1976] to file a request with the Secretary of the Treasury or his delegate seeking to establish to the satisfaction of the Secretary of the Treasury or his delegate that such exchange was not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes and that for purposes of such section a foreign corporation is to be treated as a foreign corporation."

EFFECTIVE DATE OF 1971 AMENDMENT

Pub. L. 91–681, §1(c), Jan. 12, 1971, 84 Stat. 2066, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by this section [amending this section and section 1492 of this title] shall apply to transfers made after December 31, 1967; except that sections 367(d) and 1492 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by this section) shall apply only with respect to transfers made after December 31, 1970."

APPLICABILITY OF SUBSECTION (E)(2)

Pub. L. 100–647, title I, §1006(e)(13)(C), Nov. 10, 1988, 102 Stat. 3402, provided that: "Section 367(e)(2) of the 1986 Code (as amended by the Reform Act [Pub. L. 99–514]) shall not apply in the case of any corporation completely liquidated before June 10, 1987, into a corporation organized in a country which has an income tax treaty with the United States."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§368. Definitions relating to corporate reorganizations

(a) Reorganization

(1) In general

For purposes of parts I and II and this part, the term "reorganization" means—

(A) a statutory merger or consolidation;

(B) the acquisition by one corporation, in exchange solely for all or a part of its voting stock (or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation), of stock of another corporation if, immediately after the acquisition, the acquiring corporation has control of such other corporation (whether or not such acquiring corporation had control immediately before the acquisition);

(C) the acquisition by one corporation, in exchange solely for all or a part of its voting stock (or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation), of substantially all of the properties of another corporation, but in determining whether the exchange is solely for stock the assumption by the acquiring corporation of a liability of the other shall be disregarded;

(D) a transfer by a corporation of all or a part of its assets to another corporation if

immediately after the transfer the transferor, or one or more of its shareholders (including persons who were shareholders immediately before the transfer), or any combination thereof, is in control of the corporation to which the assets are transferred; but only if, in pursuance of the plan, stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 354, 355, or 356;

(E) a recapitalization;

(F) a mere change in identity, form, or place of organization of one corporation, however effected; or

(G) a transfer by a corporation of all or part of its assets to another corporation in a title 11 or similar case; but only if, in pursuance of the plan, stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 354, 355, or 356.

(2) Special rules relating to paragraph (1)

(A) Reorganizations described in both paragraph (1)(C) and paragraph (1)(D)

If a transaction is described in both paragraph (1)(C) and paragraph (1)(D), then, for purposes of this subchapter (other than for purposes of subparagraph (C)), such transaction shall be treated as described only in paragraph (1)(D).

(B) Additional consideration in certain paragraph (1)(C) cases

If—

(i) one corporation acquires substantially all of the properties of another corporation,

(ii) the acquisition would qualify under paragraph (1)(C) but for the fact that the acquiring corporation exchanges money or other property in addition to voting stock, and

(iii) the acquiring corporation acquires, solely for voting stock described in paragraph (1)(C), property of the other corporation having a fair market value which is at least 80 percent of the fair market value of all of the property of the other corporation,

then such acquisition shall (subject to subparagraph (A) of this paragraph) be treated as qualifying under paragraph (1)(C). Solely for the purpose of determining whether clause (iii) of the preceding sentence applies, the amount of any liability assumed by the acquiring corporation shall be treated as money paid for the property.

(C) Transfers of assets or stock to subsidiaries in certain paragraph (1)(A), (1)(B), (1)(C), and (1)(G) cases

A transaction otherwise qualifying under paragraph (1)(A), (1)(B), or (1)(C) shall not be disqualified by reason of the fact that part or all of the assets or stock which were acquired in the transaction are transferred to a corporation controlled by the corporation acquiring such assets or stock. A similar rule shall apply to a transaction otherwise qualifying under paragraph (1)(G) where the requirements of subparagraphs (A) and (B) of section 354(b)(1) are met with respect to the acquisition of the assets.

(D) Use of stock of controlling corporation in paragraph (1)(A) and (1)(G) cases

The acquisition by one corporation, in exchange for stock of a corporation (referred to in this subparagraph as "controlling corporation") which is in control of the acquiring corporation, of substantially all of the properties of another corporation shall not disqualify a transaction under paragraph (1)(A) or (1)(G) if—

(i) no stock of the acquiring corporation is used in the transaction, and

(ii) in the case of a transaction under paragraph (1)(A), such transaction would have qualified under paragraph (1)(A) had the merger been into the controlling corporation.

(E) Statutory merger using voting stock of corporation controlling merged corporation

A transaction otherwise qualifying under paragraph (1)(A) shall not be disqualified by reason of the fact that stock of a corporation (referred to in this subparagraph as the "controlling corporation") which before the merger was in control of the merged corporation is used in the

transaction, if—

(i) after the transaction, the corporation surviving the merger holds substantially all of its properties and of the properties of the merged corporation (other than stock of the controlling corporation distributed in the transaction); and

(ii) in the transaction, former shareholders of the surviving corporation exchanged, for an amount of voting stock of the controlling corporation, an amount of stock in the surviving corporation which constitutes control of such corporation.

(F) Certain transactions involving 2 or more investment companies

(i) If immediately before a transaction described in paragraph (1) (other than subparagraph (E) thereof), 2 or more parties to the transaction were investment companies, then the transaction shall not be considered to be a reorganization with respect to any such investment company (and its shareholders and security holders) unless it was a regulated investment company, a real estate investment trust, or a corporation which meets the requirements of clause (ii).

(ii) A corporation meets the requirements of this clause if not more than 25 percent of the value of its total assets is invested in the stock and securities of any one issuer, and not more than 50 percent of the value of its total assets is invested in the stock and securities of 5 or fewer issuers. For purposes of this clause, all members of a controlled group of corporations (within the meaning of section 1563(a)) shall be treated as one issuer. For purposes of this clause, a person holding stock in a regulated investment company, a real estate investment trust, or an investment company which meets the requirements of this clause shall, except as provided in regulations, be treated as holding its proportionate share of the assets held by such company or trust.

(iii) For purposes of this subparagraph the term "investment company" means a regulated investment company, a real estate investment trust, or a corporation 50 percent or more of the value of whose total assets are stock and securities and 80 percent or more of the value of whose total assets are assets held for investment. In making the 50-percent and 80-percent determinations under the preceding sentence, stock and securities in any subsidiary corporation shall be disregarded and the parent corporation shall be deemed to own its ratable share of the subsidiary's assets, and a corporation shall be considered a subsidiary if the parent owns 50 percent or more of the combined voting power of all classes of stock entitled to vote, or 50 percent or more of the total value of shares of all classes of stock outstanding.

(iv) For purposes of this subparagraph, in determining total assets there shall be excluded cash and cash items (including receivables). Government securities, and, under regulations prescribed by the Secretary, assets acquired (through incurring indebtedness or otherwise) for purposes of meeting the requirements of clause (ii) or ceasing to be an investment company.

(v) This subparagraph shall not apply if the stock of each investment company is owned substantially by the same persons in the same proportions.

(vi) If an investment company which does not meet the requirements of clause (ii) acquires assets of another corporation, clause (i) shall be applied to such investment company and its shareholders and security holders as though its assets had been acquired by such other corporation. If such investment company acquires stock of another corporation in a reorganization described in section 368(a)(1)(B), clause (i) shall be applied to the shareholders of such investment company as though they had exchanged with such other corporation all of their stock in such company for stock having a fair market value equal to the fair market value of their stock of such investment company immediately after the exchange. For purposes of section 1001, the deemed acquisition or exchange referred to in the two preceding sentences shall be treated as a sale or exchange of property by the corporation and by the shareholders and security holders to which clause (i) is applied.

(vii) For purposes of clauses (ii) and (iii), the term "securities" includes obligations of State and local governments, commodity futures contracts, shares of regulated investment companies and real estate investment trusts, and other investments constituting a security

within the meaning of the Investment Company Act of 1940 (15 U.S.C. 80a–2(36)).[1]

[(viii) Repealed. Pub. L. 98–369, div. A, title I, §174(b)(5)(D), July 18, 1984, 98 Stat. 707]

(G) Distribution requirement for paragraph (1)(C)

(i) In general

A transaction shall fail to meet the requirements of paragraph (1)(C) unless the acquired corporation distributes the stock, securities, and other properties it receives, as well as its other properties, in pursuance of the plan of reorganization. For purposes of the preceding sentence, if the acquired corporation is liquidated pursuant to the plan of reorganization, any distribution to its creditors in connection with such liquidation shall be treated as pursuant to the plan of reorganization.

(ii) Exception

The Secretary may waive the application of clause (i) to any transaction subject to any conditions the Secretary may prescribe.

(H) Special rules for determining whether certain transactions are qualified under paragraph (1)(D)

For purposes of determining whether a transaction qualifies under paragraph (1)(D)—

(i) in the case of a transaction with respect to which the requirements of subparagraphs (A) and (B) of section 354(b)(1) are met, the term "control" has the meaning given such term by section 304(c), and

(ii) in the case of a transaction with respect to which the requirements of section 355 (or so much of section 356 as relates to section 355) are met, the fact that the shareholders of the distributing corporation dispose of part or all of the distributed stock, or the fact that the corporation whose stock was distributed issues additional stock, shall not be taken into account.

(3) Additional rules relating to title 11 and similar cases

(A) Title 11 or similar case defined

For purposes of this part, the term "title 11 or similar case" means—

(i) a case under title 11 of the United States Code, or

(ii) a receivership, foreclosure, or similar proceeding in a Federal or State court.

(B) Transfer of assets in a title 11 or similar case

In applying paragraph (1)(G), a transfer of the assets of a corporation shall be treated as made in a title 11 or similar case if and only if—

(i) any party to the reorganization is under the jurisdiction of the court in such case, and

(ii) the transfer is pursuant to a plan of reorganization approved by the court.

(C) Reorganizations qualifying under paragraph (1)(G) and another provision

If a transaction would (but for this subparagraph) qualify both—

(i) under subparagraph (G) of paragraph (1), and

(ii) under any other subparagraph of paragraph (1) or under section 332 or 351,

then, for purposes of this subchapter (other than section 357(c)(1)), such transaction shall be treated as qualifying only under subparagraph (G) of paragraph (1).

(D) Agency receivership proceedings which involve financial institutions

For purposes of subparagraphs (A) and (B), in the case of a receivership, foreclosure, or similar proceeding before a Federal or State agency involving a financial institution referred to in section 581 or 591, the agency shall be treated as a court.

(E) Application of paragraph (2)(E)(ii)

In the case of a title 11 or similar case, the requirement of clause (ii) of paragraph (2)(E) shall

be treated as met if—

(i) no former shareholder of the surviving corporation received any consideration for his stock, and

(ii) the former creditors of the surviving corporation exchanged, for an amount of voting stock of the controlling corporation, debt of the surviving corporation which had a fair market value equal to 80 percent or more of the total fair market value of the debt of the surviving corporation.

(b) Party to a reorganization

For purposes of this part, the term "a party to a reorganization" includes—

(1) a corporation resulting from a reorganization, and

(2) both corporations, in the case of a reorganization resulting from the acquisition by one corporation of stock or properties of another.

In the case of a reorganization qualifying under paragraph (1)(B) or (1)(C) of subsection (a), if the stock exchanged for the stock or properties is stock of a corporation which is in control of the acquiring corporation, the term "a party to a reorganization" includes the corporation so controlling the acquiring corporation. In the case of a reorganization qualifying under paragraph (1)(A), (1)(B), or (1)(C), or (1)(G) of subsection (a) by reason of paragraph (2)(C) of subsection (a), the term "a party to a reorganization" includes the corporation controlling the corporation to which the acquired assets or stock are transferred. In the case of a reorganization qualifying under paragraph (1)(A) or (1)(G) of subsection (a) by reason of paragraph (2)(D) of that subsection, the term "a party to a reorganization" includes the controlling corporation referred to in such paragraph (2)(D). In the case of a reorganization qualifying under subsection (a)(1)(A) by reason of subsection (a)(2)(E), the term "party to a reorganization" includes the controlling corporation referred to in subsection (a)(2)(E).

(c) Control defined

For purposes of part I (other than section 304), part II, this part, and part V, the term "control" means the ownership of stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote and at least 80 percent of the total number of shares of all other classes of stock of the corporation.

(Aug. 16, 1954, ch. 736, 68A Stat. 120; Pub. L. 88–272, title II, §218(a), (b), Feb. 26, 1964, 78 Stat. 57; Pub. L. 90–621, §1(a), (b), Oct. 22, 1968, 82 Stat. 1310, 1311; Pub. L. 91–693, §1(a), (b), Jan. 12, 1971, 84 Stat. 2077; Pub. L. 94–455, title VIII, §806(f)(1), title XXI, §2131(a), Oct. 4, 1976, 90 Stat. 1605, 1922; Pub. L. 95–600, title VII, §701(j)(1), Nov. 6, 1978, 92 Stat. 2905; Pub. L. 96–589, §4(a)–(d), (h)(3), (4), Dec. 24, 1980, 94 Stat. 3401–3403, 3405; Pub. L. 97–34, title II, §241, Aug. 13, 1981, 95 Stat. 254; Pub. L. 97–248, title II, §225(a), Sept. 3, 1982, 96 Stat. 490; Pub. L. 97–448, title III, §304(b), (c), Jan. 12, 1983, 96 Stat. 2398; Pub. L. 98–369, div. A, title I, §§63(a), 64(a), 174(b)(5)(D), July 18, 1984, 98 Stat. 583, 584, 707; Pub. L. 99–514, title VI, §621(e)(1), title IX, §904(a), title XVIII, §§1804(g)(2), (h), 1879(l)(1), Oct. 22, 1986, 100 Stat. 2266, 2385, 2806, 2909; Pub. L. 100–647, title I, §1018(q)(5), title IV, §4012(b)(1)(A), Nov. 10, 1988, 102 Stat. 3586, 3656; Pub. L. 101–73, title XIV, §1401(a)(1), (b)(1), Aug. 9, 1989, 103 Stat. 548, 549; Pub. L. 105–34, title X, §1012(c)(2), Aug. 5, 1997, 111 Stat. 917; Pub. L. 105–206, title VI, §6010(c)(3)(B), July 22, 1998, 112 Stat. 813; Pub. L. 105–277, div. J, title IV, §4003(f)(2), Oct. 21, 1998, 112 Stat. 2681–910; Pub. L. 106–36, title III, §3001(a)(3), June 25, 1999, 113 Stat. 182.)

REFERENCES IN TEXT

The Investment Company Act of 1940, referred to in subsec. (a)(2)(F)(vii), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§80a–1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80a–51 of Title 15 and Tables.

AMENDMENTS

1999—Subsec. (a)(1)(C). Pub. L. 106–36, §3001(a)(3)(A), struck out ", or the fact that property acquired is subject to a liability," before "shall be disregarded".

Subsec. (a)(2)(B). Pub. L. 106–36, §3001(a)(3)(B), which directed amendment of concluding provisions by striking out ", and the amount of any liability to which any property acquired from the acquiring corporation is subject,", was executed by striking out ", and the amount of any liability to which any property acquired by the acquiring corporation is subject," after "acquiring corporation", to reflect the probable intent of Congress.

1998—Subsec. (a)(2)(H)(ii). Pub. L. 105–277 inserted ", or the fact that the corporation whose stock was distributed issues additional stock," after "dispose of part or all of the distributed stock".

Pub. L. 105–206 amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: "in the case of a transaction with respect to which the requirements of section 355 are met, the shareholders described in paragraph (1)(D) shall be treated as having control of the corporation to which the assets are transferred if such shareholders own (immediately after the distribution) stock possessing—

"(I) more than 50 percent of the total combined voting power of all classes of stock of such corporation entitled to vote, and

"(II) more than 50 percent of the total value of shares of all classes of stock of such corporation."

1997—Subsec. (a)(2)(H). Pub. L. 105–34 amended heading and text of subpar. (H) generally. Prior to amendment, text read as follows: "In the case of any transaction with respect to which the requirements of subparagraphs (A) and (B) of section 354(b)(1) are met, for purposes of determining whether such transaction qualifies under subparagraph (D) of paragraph (1), the term 'control' has the meaning given to such term by section 304(c)."

1989—Subsec. (a)(3)(D). Pub. L. 101–73, §1401(b)(1), repealed amendment made by Pub. L. 99–514, §904(a), see 1986 Amendment note below.

Pub. L. 101–73, §1401(a)(1), inserted "receivership" in heading and amended text generally, changing the structure of the subparagraph from one consisting of five clauses designated (i) to (v) to one consisting of a single undesignated subparagraph.

1988—Subsec. (a)(2)(F)(ii). Pub. L. 100–647, §1018(q)(5), struck out "(other than stock in a regulated investment company, a real estate investment trust, or an investment company which meets the requirements of this clause (ii))" after "any one issuer" and after "or fewer issuers" and inserted at end "For purposes of this clause, a person holding stock in a regulated investment company, a real estate investment trust, or an investment company which meets the requirements of this clause shall, except as provided in regulations, be treated as holding its proportionate share of the assets held by such company or trust."

Subsec. (a)(3)(D)(iv), (v). Pub. L. 100–647, §4012(b)(1)(A), amended subpar. (D), as in effect before the amendment made by section 904(a) of Pub. L. 99–514, by adding cls. (iv) and (v).

1986—Subsec. (a)(2)(A). Pub. L. 99–514, §1804(h)(3), inserted "(other than for purposes of subparagraph (C))" after "subchapter".

Subsec. (a)(2)(F)(ii). Pub. L. 99–514, §1879(l)(1), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: "A corporation meets the requirements of this clause if not more than 25 percent of the value of its total assets is invested in the stock and securities of any one issuer, and not more than 50 percent of the value of its total assets is invested in the stock and securities of 5 or fewer issuers. For purposes of this clause, all members of a controlled group of corporations (within the meaning of section 1563(a)) shall be treated as one issuer."

Subsec. (a)(2)(G)(i). Pub. L. 99–514, §1804(g)(2), inserted "For purposes of the preceding sentence, if the acquired corporation is liquidated pursuant to the plan of reorganization, any distribution to its creditors in connection with such liquidation shall be treated as pursuant to the plan of reorganization."

Subsec. (a)(2)(H). Pub. L. 99–514, §1804(h)(2), added subpar. (H).

Subsec. (a)(3)(D). Pub. L. 99–514, §904(a), (c)(1), as amended by Pub. L. 100–647, §4012(a)(1), which (applicable to acquisitions after Dec. 31, 1989, in taxable years ending after such date) directed amendment of subpar. (D) to read "(D) AGENCY RECEIVERSHIP PROCEEDINGS WHICH INVOLVE FINANCIAL INSTITUTIONS.—For purposes of subparagraphs (A) and (B), in the case of a receivership, foreclosure, or similar proceeding before a Federal or State agency involving a financial institution referred to in section 581 or 591, the agency shall be treated as a court.", was repealed by Pub. L. 101–73, §1401(b)(1), (c)(4), eff. Oct. 22, 1986, and I.R.C. of 1986 applicable as if the amendments made by such section had not been enacted.

Subsec. (c). Pub. L. 99–514, §1804(h)(1), in amending subsec. (c) generally, struck out par. (1) designation and struck out par. (2) defining term "control" as having meaning given to such term by section 304(c) in case of any transaction with respect to which requirements of subpars. (A) and (B) of section 354(b)(1) are met, for purposes of determining whether such transaction is described in subpar. (D) of subsec. (a)(1).

Pub. L. 99–514, §621(e)(1), repealed amendment by Pub. L. 94–455, §806(f)(1). See 1976 Amendment note below.

1984—Subsec. (a)(2)(F)(viii). Pub. L. 98–369, §174(b)(5)(D), struck out cl. (viii) which provided that in applying paragraph (3) of section 267(b) in respect of any transaction to which this subparagraph applies, the

reference to a personal holding company in such paragraph (3) be treated as including a reference to an investment company and the determination of whether a corporation is an investment company be made as of the time immediately before the transaction instead of with respect to the taxable year referred to in such paragraph (3).

Subsec. (a)(2)(G). Pub. L. 98–369, §63(a), added subpar. (G).

Subsec. (c). Pub. L. 98–369, §64(a), designated existing provisions as par. (1) and added par. (2).

1983—Subsec. (a)(2)(C). Pub. L. 97–448, §304(b), struck out "or stock" after "acquisition of the assets".

Subsec. (a)(3)(B)(i). Pub. L. 97–448, §304(c), substituted "any party to the reorganization" for "such corporation".

1982—Subsec. (a)(1)(F). Pub. L. 97–248 inserted "of one corporation" after "place of organization".

1981—Subsec. (a)(3)(D). Pub. L. 97–34 substituted "Agency proceedings" for "Agency receivership proceedings" in heading, incorporated existing provisions in text designated cl. (i), inserted in cl. (i)(II) definition for term "title 11 or similar case", and added cls. (ii) and (iii).

1980—Subsec. (a)(1)(G). Pub. L. 96–589, §4(a), (h)(3), added subpar. (G).

Subsec. (a)(2)(C). Pub. L. 96–589, §4(c), inserted provision that a similar rule would apply to a transaction otherwise qualifying under par. (1)(G), where the requirements of subpars. (A) and (B) of section 354(b)(1) are met with respect to the acquisition of the assets or stock.

Subsec. (a)(2)(D). Pub. L. 96–589, §4(d), among other changes, inserted reference to par. (1)(G).

Subsec. (a)(3). Pub. L. 96–589, §4(b), added par. (3).

Subsec. (b). Pub. L. 96–589, §4(h)(4), substituted "paragraph (1)(A), (1)(B), (1)(C), or (1)(G) of subsection (a) by reason of paragraph (2)(C)" and "paragraph (1)(A) or (1)(G) of subsection (a) by reason of paragraph (2)(D)" for "paragraph (1)(A), (1)(B), or (1)(C) of subsection (a) by reason of paragraph (2)(C)" and "paragraph (1)(A) of subsection (a) by reason of paragraph (2)(D)", respectively.

1978—Subsec. (a)(2)(F). Pub. L. 95–600 substituted in cl. (iii), first sentence, "50 percent or more" and "80 percent or more" for "more than 50 percent" and "more than 80 percent"; substituted in cl. (vi), first sentence, "does not meet the requirements" for "is not diversified within the meaning"; struck from cl. (vi), second sentence, "(hereafter referred to as the ('actual acquisition')" after "section 368(a)(1)(B)" and "and security holders" after "the shareholders" and substituted "stock in such company for stock having a fair market value equal to the fair market value of their stock of such investment company immediately after the exchange" for "stock in such investment company for a percentage of the value of the total outstanding stock of the other corporation equal to the percentage of the value of the total outstanding stock of such investment company which such shareholders own immediately after the actual acquisition"; and added cls. (vii) and (viii).

1976—Subsec. (a)(2)(F). Pub. L. 94–455, §2131(a), added subpar. (F).

Subsec. (c). Pub. L. 94–455, §806(f)(1), which substituted "this part, and Part V," for "and this part," was repealed by Pub. L. 99–514, §621(e)(1). See Effective Date of 1986 and 1976 Amendment notes below.

1971—Subsec. (a)(2)(E). Pub. L. 91–693, §1(a), added subpar. (E).

Subsec. (b). Pub. L. 91–693, §1(b), defined "party to a reorganization" in the case of a reorganization qualifying under subsection (a)(1)(A) by reason of subsection (a)(2)(E).

1968—Subsec. (a)(2)(D). Pub. L. 90–621, §1(a), added subpar. (D).

Subsec. (b). Pub. L. 90–621, §1(b), inserted reference to the inclusion of the controlling corporation in term "a party to a reorganization" in reorganizations qualifying under paragraph (1)(A) of subsection (a) by reason of paragraph (2)(D) of subsection (a).

1964—Subsec. (a). Pub. L. 88–272, §218(a), (b)(1), inserted "(or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation)" in par. (1)(B), and in par. (2)(C), inserted references to par. (1)(B), and substituted "assets or stock" for "assets" wherever appearing.

Subsec. (b). Pub. L. 88–272, §218(b)(2), inserted references to par. (1)(B) wherever appearing.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–36 applicable to transfers after Oct. 18, 1998, see section 3001(e) of Pub. L. 106–36, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–277 effective as if included in the provision of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 4003(l) of Pub. L. 105–277, set out as a note under section 86 of this title.

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable, with certain exceptions, to transfers after Aug. 5, 1997, see section 1012(d) of Pub. L. 105–34, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Repeal of amendment by section 904(a) of Pub. L. 99–514 effective Oct. 22, 1986, and I.R.C. of 1986 applicable as if the amendment had not been enacted, see section 1401(b)(1) of Pub. L. 101–73, set out as a Repeal of Provisions Relating to Repeal of Special Reorganization Rules for Financial Institutions note set out under section 597 of this title, and section 1401(c)(4) of Pub. L. 101–73, set out as Effective Date of 1989 Amendment note under section 597 of this title.

Pub. L. 101–73, title XIV, §1401(c)(1), Aug. 9, 1989, 103 Stat. 550, provided that: "The amendment made by subsection (a)(1) [amending this section] shall apply to acquisitions on or after May 10, 1989."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1018(q)(5) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title IV, §4012(b)(1)(C)(i), Nov. 10, 1988, 102 Stat. 3657, provided that: "The amendment made by subparagraph (A) [amending this section] shall apply to acquisitions after the date of the enactment of this Act [Nov. 10, 1988] and before January 1, 1990."

EFFECTIVE DATE OF 1986 AMENDMENT

Repeal of amendment by section 806(f)(1) of Pub. L. 94–455 effective Jan. 1, 1986, with certain exceptions, see section 621(f)(2) of Pub. L. 99–514, set out as a note under section 382 of this title.

Pub. L. 99–514, title IX, §904(c)(1), Oct. 22, 1986, 100 Stat. 2385, as amended by Pub. L. 100–647, title IV, §4012(a)(1), Nov. 10, 1988, 102 Stat. 3656, which provided that the amendments made by subsection (a), amending this section, were to apply to acquisitions after Dec. 31, 1989, in taxable years ending after such date, was repealed by Pub. L. 101–73, title XIV, §1401(b)(1), Aug. 9, 1989, 103 Stat. 549.

Amendment by section 1804(g)(2) of Pub. L. 99–514 applicable to plans of reorganizations adopted after Oct. 22, 1986, see section 1804(g)(4) of Pub. L. 99–514, set out as a note under section 361 of this title.

Amendment by section 1804(h) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Pub. L. 99–514, title XVIII, §1879(l)(2), Oct. 22, 1986, 100 Stat. 2910, provided that: "The amendment made by this subsection [amending this section] shall apply as if included in section 2131 of the Tax Reform Act of 1976 [Pub. L. 94–455]."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 63(a) of Pub. L. 98–369 applicable to transactions pursuant to plans adopted after July 18, 1984, see section 63(c) of Pub. L. 98–369, set out as a note under section 312 of this title.

Pub. L. 98–369, div. A, title I, §64(b), July 18, 1984, 98 Stat. 584, provided that: "The amendments made by this section [amending this section] shall apply to transactions pursuant to plans adopted after the date of the enactment of this Act [July 18, 1984]."

Amendment by section 174(b)(5)(D) of Pub. L. 98–369 applicable to transactions after Dec. 31, 1983, in taxable years ending after that date, see section 174(c)(2)(A) of Pub. L. 98–369, set out as a note under section 267 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 97–448, title III, §311(b)(2), Jan. 12, 1983, 96 Stat. 2411, provided that: "The amendment made by subsection (b) of section 304 [amending this section] shall take effect as if included in the amendments made by section 4 of such Act [Pub. L. 96–589, the Bankruptcy Tax Act of 1980, see 1980 Amendment notes above]."

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title II, §225(b), Sept. 3, 1982, 96 Stat. 490, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply with respect to transactions occurring after August 31, 1982.

"(2) PLANS ADOPTED ON OR BEFORE AUGUST 31, 1982.—The amendment made by subsection (a) shall not apply with respect to plans of reorganization adopted on or before August 31, 1982, but only if the

transaction occurs before January 1, 1983."

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title II, §246(a), Aug. 13, 1981, 95 Stat. 256, provided that: "The amendment made by sections 241 and 242 [amending this section and section 382 of this title] shall apply to any transfer made on or after January 1, 1981."

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–589 applicable to bankruptcy cases or similar judicial proceedings commencing after Dec. 31, 1980, with exception permitting the debtor to make the amendment applicable to such cases or proceedings commencing after Sept. 30, 1979, see section 7(c)(1), (f) of Pub. L. 96–589, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title VII, §701(j)(2), Nov. 6, 1978, 92 Stat. 2906, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(A) Except as provided in subparagraphs (B) and (C), the amendments made by paragraph (1) [amending this section] shall apply as if included in section 368(a)(2)(F) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] as added by section 2131(a) of the Tax Reform Act of 1976 [Pub. L. 94–455, title XX, §2131(a), Oct. 4, 1976, 90 Stat. 1922].

"(B) Clause (viii) of section 368(a)(2)(F) of the Internal Revenue Code of 1986 (as added by paragraph (1)) shall apply only with respect to losses sustained after September 26, 1977.

"(C) Clause (vii) of section 368(a)(2)(F) of the Internal Revenue Code of 1986 (as added by paragraph (1)) shall apply only with respect to transfers made after September 26, 1977."

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XXI, §2131(f)(1), (2), Oct. 4, 1976, 90 Stat. 1924, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to transfers made after February 17, 1976, in taxable years ending after such date.

"(2) The amendment made by subsection (a) shall not apply to transfers made in accordance with a ruling issued by the Internal Revenue Service before February 18, 1976, holding that a proposed transaction would be a reorganization described in paragraph (1) of section 368(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]."

For effective date of amendment by section 806(f)(1) of Pub. L. 94–455, see section 806(g)(2), (3) of Pub. L. 94–455, formerly set out as a note under section 382 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Pub. L. 91–693, §1(c), Jan. 12, 1971, 84 Stat. 2077, provided that: "The amendments made by this section [amending this section] shall apply to statutory mergers occurring after December 31, 1970."

EFFECTIVE DATE OF 1968 AMENDMENT

Pub. L. 90–621, §1(c), Oct. 22, 1968, 82 Stat. 1311, provided that: "The amendments made by subsections (a) and (b) [amending this section] shall apply to statutory mergers occurring after the date of the enactment of this Act [Oct. 22, 1968]."

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88–272, title II, §218(c), Feb. 26, 1964, 78 Stat. 57, provided that: "The amendments made by this section [amending this section] shall apply with respect to transactions after December 31, 1963, in taxable years ending after such date."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[1] So in original. A reference to 15 U.S.C. 80a–2(a)(36) was probably intended.

[PART IV—REPEALED]

[§§370 to 372. Repealed. Pub. L. 101–508, title XI, §11801(a)(19), Nov. 5, 1990, 104 Stat. 1388–521]

Section 370, added Pub. L. 96–589, §4(f), Dec. 24, 1980, 94 Stat. 3404, related to termination of part.

Section 371, acts Aug. 16, 1954, ch. 736, 68A Stat. 121; Oct. 4, 1976, Pub. L. 94–455, title XIX, §1901(a)(50), 90 Stat. 1773, related to reorganization in certain receivership and bankruptcy proceedings.

Section 372, acts Aug. 16, 1954, ch. 736, 68A Stat. 122; Sept. 2, 1958, Pub. L. 85–866, title I, §95(a), 72 Stat. 1671; Oct. 4, 1976, Pub. L. 94–455, title XIX, §§1901(a)(51), (b)(14)(A), 1906(b)(13)(A), 90 Stat. 1773, 1795, 1834, related to basis in connection with certain receivership and bankruptcy proceedings.

SAVINGS PROVISION

For provisions that nothing in repeal by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

[§373. Repealed. Pub. L. 94–455, title XIX, §1901(a)(52), Oct. 4, 1976, 90 Stat. 1773]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 123; June 29, 1956, ch. 463, §3, 70 Stat. 403, related to loss not recognized in certain railroad reorganizations.

EFFECTIVE DATE OF REPEAL

Repeal effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 2 of this title.

[§374. Repealed. Pub. L. 101–508, title XI, §11801(a)(19), Nov. 5, 1990, 104 Stat. 1388–521]

Section, added June 29, 1956, ch. 463, §1, 70 Stat. 402; amended Mar. 31, 1976, Pub. L. 94–253, §1(a), (d), 90 Stat. 295, 296; Oct. 4, 1976, Pub. L. 94–455, title XIX, §1901(a)(53), (b)(10)(A), (14)(B), (C), 90 Stat. 1773, 1795, 1796; Nov. 6, 1978, Pub. L. 95–600, title III, §369(a), 92 Stat. 2857; Apr. 1, 1980, Pub. L. 96–222, title I, §103(a)(14), 94 Stat. 214; Oct. 22, 1986, Pub. L. 99–514, title XVIII, §1899A(9), 100 Stat. 2958, related to nonrecognition of gain or loss in certain railroad reorganizations.

SAVINGS PROVISION

For provisions that nothing in repeal by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

PART V—CARRYOVERS

Sec.

381. Carryovers in certain corporate acquisitions.

382. Limitation on net operating loss carryforwards and certain built-in losses following ownership change.

383. Special limitations on certain excess credits, etc.

384. Limitation on use of preacquisition losses to offset built-in gains.

AMENDMENTS

1987—Pub. L. 100–203, title X, §10226(b), Dec. 22, 1987, 101 Stat. 1330–415, added item 384.

1986—Pub. L. 99–514, title VI, §621(c)(2), Oct. 22, 1986, 100 Stat. 2266, substituted "Limitation on net operating loss carryforwards and certain built-in losses following ownership change" for "Special limitations on net operating loss carryovers" in item 382 and "Special limitations on certain excess credits, etc." for "Special limitations on unused business credits, research credits, foreign taxes, and capital losses" in item 383.

1984—Pub. L. 98–369, div. A, title IV, §474(r)(12)(C), July 18, 1984, 98 Stat. 842, substituted "unused business credits, research credits, foreign taxes, and capital losses" for "carryovers of unused investment credits, work incentive program credits, new employee credits, alcohol fuel credits, research credits, employee stock ownership credits, foreign taxes, and capital losses" in item 383.

1981—Pub. L. 97–34, title II, §221(b)(1)(E), title III, §331(d)(1)(E), Aug. 13, 1981, 95 Stat. 246, 295, inserted references to alcohol fuel credits, research credits, and employee stock ownership credits in item 383. For applicability of amendment by section 221(b)(1)(E) to amounts paid or incurred after June 30, 1981, and before Jan. 1, 1986, see section 221(d) of Pub. L. 97–34, set out as an Effective Date note under section 30 of this title.

1977—Pub. L. 95–30, title II, §202(d)(3)(D), May 23, 1977, 91 Stat. 148, inserted "new employee credits," after "work incentive program credits," in item 383.

1971—Pub. L. 92–178, title III, §302(b), Dec. 10, 1971, 85 Stat. 521, added item 383.

§381. Carryovers in certain corporate acquisitions

(a) General rule

In the case of the acquisition of assets of a corporation by another corporation—

(1) in a distribution to such other corporation to which section 332 (relating to liquidations of subsidiaries) applies; or

(2) in a transfer to which section 361 (relating to nonrecognition of gain or loss to corporations) applies, but only if the transfer is in connection with a reorganization described in subparagraph (A), (C), (D), (F), or (G) of section 368(a)(1),

the acquiring corporation shall succeed to and take into account, as of the close of the day of distribution or transfer, the items described in subsection (c) of the distributor or transferor corporation, subject to the conditions and limitations specified in subsections (b) and (c). For purposes of the preceding sentence, a reorganization shall be treated as meeting the requirements of subparagraph (D) or (G) of section 368(a)(1) only if the requirements of subparagraphs (A) and (B) of section 354(b)(1) are met.

(b) Operating rules

Except in the case of an acquisition in connection with a reorganization described in subparagraph (F) of section 368(a)(1)—

(1) The taxable year of the distributor or transferor corporation shall end on the date of distribution or transfer.

(2) For purposes of this section, the date of distribution or transfer shall be the day on which the distribution or transfer is completed; except that, under regulations prescribed by the Secretary, the date when substantially all of the property has been distributed or transferred may be used if the distributor or transferor corporation ceases all operations, other than liquidating activities, after such date.

(3) The corporation acquiring property in a distribution or transfer described in subsection (a) shall not be entitled to carry back a net operating loss or a net capital loss for a taxable year ending after the date of distribution or transfer to a taxable year of the distributor or transferor corporation.

(c) Items of the distributor or transferor corporation

The items referred to in subsection (a) are:

(1) Net operating loss carryovers

The net operating loss carryovers determined under section 172, subject to the following

conditions and limitations:

(A) the taxable year of the acquiring corporation to which the net operating loss carryovers of the distributor or transferor corporation are first carried shall be the first taxable year ending after the date of distribution or transfer.

(B) In determining the net operating loss deduction, the portion of such deduction attributable to the net operating loss carryovers of the distributor or transferor corporation to the first taxable year of the acquiring corporation ending after the date of distribution or transfer shall be limited to an amount which bears the same ratio to the taxable income (determined without regard to a net operating loss deduction) of the acquiring corporation in such taxable year as the number of days in the taxable year after the date of distribution or transfer bears to the total number of days in the taxable year.

(C) For the purpose of determining the amount of the net operating loss carryovers under section 172(b)(2), a net operating loss for a taxable year (hereinafter in this subparagraph referred to as the "loss year") of a distributor or transferor corporation which ends on or before the end of a loss year of the acquiring corporation shall be considered to be a net operating loss for a year prior to such loss year of the acquiring corporation. For the same purpose, the taxable income for a "prior taxable year" (as the term is used in section 172(b)(2)) shall be computed as provided in such section; except that, if the date of distribution or transfer is on a day other than the last day of a taxable year of the acquiring corporation—

(i) such taxable year shall (for the purpose of this subparagraph only) be considered to be 2 taxable years (hereinafter in this subparagraph referred to as the "pre-acquisition part year" and the "post-acquisition part year");

(ii) the pre-acquisition part year shall begin on the same day as such taxable year begins and shall end on the date of distribution or transfer;

(iii) the post-acquisition part year shall begin on the day following the date of distribution or transfer and shall end on the same day as the end of such taxable year;

(iv) the taxable income for such taxable year (computed with the modifications specified in section 172(b)(2)(A) but without a net operating loss deduction) shall be divided between the pre-acquisition part year and the post-acquisition part year in proportion to the number of days in each;

(v) the net operating loss deduction for the pre-acquisition part year shall be determined as provided in section 172(b)(2)(B), but without regard to a net operating loss year of the distributor or transferor corporation; and

(vi) the net operating loss deduction for the post-acquisition part year shall be determined as provided in section 172(b)(2)(B).

(2) Earnings and profits

In the case of a distribution or transfer described in subsection (a)—

(A) the earnings and profits or deficit in earnings and profits, as the case may be, of the distributor or transferor corporation shall, subject to subparagraph (B), be deemed to have been received or incurred by the acquiring corporation as of the close of the date of the distribution or transfer; and

(B) a deficit in earnings and profits of the distributor, transferor, or acquiring corporation shall be used only to offset earnings and profits accumulated after the date of transfer. For this purpose, the earnings and profits for the taxable year of the acquiring corporation in which the distribution or transfer occurs shall be deemed to have been accumulated after such distribution or transfer in an amount which bears the same ratio to the undistributed earnings and profits of the acquiring corporation for such taxable year (computed without regard to any earnings and profits received from the distributor or transferor corporation, as described in subparagraph (A) of this paragraph) as the number of days in the taxable year after the date of distribution or transfer bears to the total number of days in the taxable year.

(3) Capital loss carryover

The capital loss carryover determined under section 1212, subject to the following conditions

and limitations:

(A) The taxable year of the acquiring corporation to which the capital loss carryover of the distributor or transferor corporation is first carried shall be the first taxable year ending after the date of distribution or transfer.

(B) The capital loss carryover shall be a short-term capital loss in the taxable year determined under subparagraph (A) but shall be limited to an amount which bears the same ratio to the capital gain net income (determined without regard to a short-term capital loss attributable to capital loss carryover), if any, of the acquiring corporation in such taxable year as the number of days in the taxable year after the date of distribution or transfer bears to the total number of days in the taxable year.

(C) For purposes of determining the amount of such capital loss carryover to taxable years following the taxable year determined under subparagraph (A), the capital gain net income in the taxable year determined under subparagraph (A) shall be considered to be an amount equal to the amount determined under subparagraph (B).

(4) Method of accounting

The acquiring corporation shall use the method of accounting used by the distributor or transferor corporation on the date of distribution or transfer unless different methods were used by several distributor or transferor corporations or by a distributor or transferor corporation and the acquiring corporation. If different methods were used, the acquiring corporation shall use the method or combination of methods of computing taxable income adopted pursuant to regulations prescribed by the Secretary.

(5) Inventories

In any case in which inventories are received by the acquiring corporation, such inventories shall be taken by such corporation (in determining its income) on the same basis on which such inventories were taken by the distributor or transferor corporation, unless different methods were used by several distributor or transferor corporations or by a distributor or transferor corporation and the acquiring corporation. If different methods were used, the acquiring corporation shall use the method or combination of methods of taking inventory adopted pursuant to regulations prescribed by the Secretary.

(6) Method of computing depreciation allowance

The acquiring corporation shall be treated as the distributor or transferor corporation for purposes of computing the depreciation allowance under sections 167 and 168 on property acquired in a distribution or transfer with respect to so much of the basis in the hands of the acquiring corporation as does not exceed the adjusted basis in the hands of the distributor or transferor corporation.

[(7) Repealed. June 15, 1955, ch. 143, §2(1), 69 Stat. 134]

(8) Installment method

If the acquiring corporation acquires installment obligations (the income from which the distributor or transferor corporation reports on the installment basis under section 453) the acquiring corporation shall, for purposes of section 453, be treated as if it were the distributor or transferor corporation.

(9) Amortization of bond discount or premium

If the acquiring corporation assumes liability for bonds of the distributor or transferor corporation issued at a discount or premium, the acquiring corporation shall be treated as the distributor or transferor corporation after the date of distribution or transfer for purposes of determining the amount of amortization allowable or includible with respect to such discount or premium.

(10) Treatment of certain mining development and exploration expenses of distributor of transferor corporation

The acquiring corporation shall be entitled to deduct, if it were the distributor or transferor corporation, expenses deferred under section 616 (relating to certain development expenditures) if the distributor or transferor corporation has so elected.

(11) Contributions to pension plans, employees' annuity plans, and stock bonus and profit-sharing plans

The acquiring corporation shall be considered to be the distributor or transferor corporation after the date of distribution or transfer for the purpose of determining the amounts deductible under section 404 with respect to pension plans, employees' annuity plans, and stock bonus and profit-sharing plans.

(12) Recovery of tax benefit items

If the acquiring corporation is entitled to the recovery of any amounts previously deducted by (or allowable as credits to) the distributor or transferor corporation, the acquiring corporation shall succeed to the treatment under section 111 which would apply to such amounts in the hands of the distributor or transferor corporation.

(13) Involuntary conversions under section 1033

The acquiring corporation shall be treated as the distributor or transferor corporation after the date of distribution or transfer for purposes of applying section 1033.

(14) Dividend carryover to personal holding company

The dividend carryover (described in section 564) to taxable years ending after the date of distribution or transfer.

[(15) Repealed. Pub. L. 101–508, title XI, §11801(c)(10)(A), Nov. 5, 1990, 104 Stat. 1388–526]

(16) Certain obligations of distributor or transferor corporation

If the acquiring corporation—

(A) assumes an obligation of the distributor or transferor corporation which, after the date of the distribution or transfer, gives rise to a liability, and

(B) such liability, if paid or accrued by the distributor or transferor corporation, would have been deductible in computing its taxable income,

the acquiring corporation shall be entitled to deduct such items when paid or accrued, as the case may be, as if such corporation were the distributor or transferor corporation. A corporation which would have been an acquiring corporation under this section if the date of distribution or transfer had occurred on or after the effective date of the provisions of this subchapter applicable to a liquidation or reorganization, as the case may be, shall be entitled, even though the date of distribution or transfer occurred before such effective date, to apply this paragraph with respect to amounts paid or accrued in taxable years beginning after December 31, 1953, on account of such obligations of the distributor or transferor corporation. This paragraph shall not apply if such obligations are reflected in the amount of stock, securities, or property transferred by the acquiring corporation to the transferor corporation for the property of the transferor corporation.

(17) Deficiency dividend of personal holding company

If the acquiring corporation pays a deficiency dividend (as defined in section 547(d)) with respect to the distributor or transferor corporation, such distributor or transferor corporation shall, with respect to such payments, be entitled to the deficiency dividend deduction provided in section 547.

(18) Percentage depletion on extraction of ores or minerals from the waste or residue of prior mining

The acquiring corporation shall be considered to be the distributor or transferor corporation for the purpose of determining the applicability of section 613(c)(3) (relating to extraction of ores or minerals from the ground).

(19) Charitable contributions in excess of prior years' limitation

Contributions made in the taxable year ending on the date of distribution or transfer and the 4 prior taxable years by the distributor or transferor corporation in excess of the amount deductible under section 170(b)(2) for such taxable years shall be deductible by the acquiring corporation for its taxable years which begin after the date of distribution or transfer, subject to the limitations imposed in section 170(b)(2). In applying the preceding sentence, each taxable year of the distributor or transferor corporation beginning on or before the date of distribution or transfer shall be treated as a prior taxable year with reference to the acquiring corporation's taxable years beginning after such date.

[(20), (21) Repealed. Pub. L. 94–455, title XIX, §1901(a)(54), (b)(16), Oct. 4, 1976, 90 Stat. 1773, 1796]

(22) Successor insurance company

If the acquiring corporation is an insurance company taxable under subchapter L, there shall be taken into account (to the extent proper to carry out the purposes of this section and of subchapter L, and under such regulations as may be prescribed by the Secretary) the items required to be taken into account for purposes of subchapter L in respect of the distributor or transferor corporation.

(23) Deficiency dividend of regulated investment company or real estate investment trust

If the acquiring corporation pays a deficiency dividend (as defined in section 860(f)) with respect to the distributor or transferor corporation, such distributor or transferor corporation shall, with respect to such payments, be entitled to the deficiency dividend deduction provided in section 860.

(24) Credit under section 38

The acquiring corporation shall take into account (to the extent proper to carry out the purposes of this section and section 38, and under such regulations as may be prescribed by the Secretary) the items required to be taken into account for purposes of section 38 in respect of the distributor or transferor corporation.

(25) Credit under section 53

The acquiring corporation shall take into account (to the extent proper to carry out the purposes of this section and section 53, and under such regulations as may be prescribed by the Secretary) the items required to be taken into account for purposes of section 53 in respect of the distributor or transferor corporation.

(26) Enterprise zone provisions

The acquiring corporation shall take into account (to the extent proper to carry out the purposes of this section and subchapter U, and under such regulations as may be prescribed by the Secretary) the items required to be taken into account for purposes of subchapter U in respect of the distributor or transferor corporation.

(d) Operations loss carrybacks and carryovers of life insurance companies

For application of this part to operations loss carrybacks and carryovers of life insurance companies, see section 810.

(Aug. 16, 1954, ch. 736, 68A Stat. 124; June 15, 1955, ch. 143, §2(1), 69 Stat. 134; Jan. 28, 1956, ch. 15, §1, 70 Stat. 7; Pub. L. 85–866, title I, §29(c), Sept. 2, 1958, 72 Stat. 1628; Pub. L. 86–69, §3(c), June 25, 1959, 73 Stat. 139; Pub. L. 87–834, §2(d), Oct. 16, 1962, 76 Stat. 971; Pub. L. 88–272, title II, §§209(d)(2), 225(i)(3), Feb. 26, 1964, 78 Stat. 46, 92; Pub. L. 90–240, §5(d), Jan. 2, 1968, 81 Stat. 778; Pub. L. 91–172, title V, §§504(c)(2), 512(c), 521(f), Dec. 30, 1969, 83 Stat. 633, 639, 654; Pub. L. 92–178, title VI, §601(c)(3), Dec. 10, 1971, 85 Stat. 557; Pub. L. 94–455, title XVI, §1601(e), title XIX, §§1901(a)(54), (b)(16), (17), (21)(B), (33)(N), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1746, 1773, 1796, 1797, 1802, 1834; Pub. L. 95–30, title II, §202(d)(3)(A), May 23, 1977, 91 Stat. 148; Pub. L. 95–600, title III, §362(d)(2), Nov. 6, 1978, 92 Stat. 2851; Pub. L. 96–223,

title II, §232(b)(2)(B), Apr. 2, 1980, 94 Stat. 276; Pub. L. 96–471, §2(b)(2), Oct. 19, 1980, 94 Stat. 2253; Pub. L. 96–589, §4(g), Dec. 24, 1980, 94 Stat. 3404; Pub. L. 97–34, title II, §§208, 221(b)(1)(B), title III, §331(d)(1)(B), Aug. 13, 1981, 95 Stat. 226, 246, 294; Pub. L. 97–248, title II, §224(c)(7), Sept. 3, 1982, 96 Stat. 489; Pub. L. 97–448, title I, §§102(h)(3), 103(g)(2)(F), Jan. 12, 1983, 96 Stat. 2372, 2379; Pub. L. 98–369, div. A, title II, §211(b)(4), title IV, §474(r)(11), July 18, 1984, 98 Stat. 754, 841; Pub. L. 99–514, title II, §231(d)(3)(F), title IV, §411(b)(2)(C)(iii), title VII, §701(e)(1), title XVIII, §1812(a)(3), Oct. 22, 1986, 100 Stat. 2179, 2227, 2342, 2833; Pub. L. 100–203, title X, §10202(c)(3), Dec. 22, 1987, 101 Stat. 1330–392; Pub. L. 100–647, title I, §1002(a)(13), Nov. 10, 1988, 102 Stat. 3355; Pub. L. 101–239, title VII, §7841(d)(10), Dec. 19, 1989, 103 Stat. 2428; Pub. L. 101–508, title XI, §§11801(c)(10)(A), 11812(b)(6), Nov. 5, 1990, 104 Stat. 1388–526, 1388–535; Pub. L. 103–66, title XIII, §13302(e), Aug. 10, 1993, 107 Stat. 556; Pub. L. 104–188, title I, §1704(t)(26), Aug. 20, 1996, 110 Stat. 1888.)

AMENDMENTS

1996—Subsec. (c)(26), (27). Pub. L. 104–188 amended directory language of Pub. L. 101–239. See 1989 Amendment note below.

1993—Subsec. (c)(26). Pub. L. 103–66 added par. (26).

1990—Subsec. (c)(6). Pub. L. 101–508, §11812(b)(6)(A), substituted "sections 167 and 168" for "subsections (b), (j), and (k) of section 167".

Subsec. (c)(15). Pub. L. 101–508, §11801(c)(10)(A), struck out par. (15) "Indebtedness of certain personal holding companies" which read as follows: "The acquiring corporation shall be considered to be the distributor or transferor corporation for the purpose of determining the applicability of subsection (c) of section 545, relating to deduction with respect to payment of certain indebtedness."

Subsec. (c)(24) to (26). Pub. L. 101–508, §11812(b)(6)(B), redesignated pars. (25) and (26) as (24) and (25), respectively, and struck out former par. (24) "Method of computing depreciation deduction" which read as follows: "The acquiring corporation shall be treated as the distributor or transferor corporation for purposes of computing the deduction allowable under section 168(a) on property acquired in a distribution or transfer with respect to so much of the basis in the hands of the acquiring corporation as does not exceed the adjusted basis in the hands of the distributor or transferor corporation."

1989—Subsec. (c)(26), (27). Pub. L. 101–239, as amended by Pub. L. 104–188, redesignated par. (27) as (26).

1988—Subsec. (c)(24). Pub. L. 100–647 substituted "depreciation deduction" for "recovery allowance for recovery property" in heading.

1987—Subsec. (c)(8). Pub. L. 100–203 struck out "or 453A" after "section 453" in two places.

1986—Subsec. (c)(10). Pub. L. 99–514, §411(b)(2)(C)(iii), struck out last sentence which read: "For the purpose of applying the limitation provided in section 617(h), if, for any taxable year, the distributor or transferor corporation was allowed a deduction under section 617(a), the acquiring corporation shall be deemed to have been allowed such deduction."

Subsec. (c)(12). Pub. L. 99–514, §1812(a)(3), amended par. (12) generally. Prior to amendment, par. (12), recovery of bad debts, prior taxes, or delinquency amounts, read as follows: "If the acquiring corporation is entitled to the recovery of bad debts, prior taxes, or delinquency amounts previously deducted or credited by the distributor or transferor corporation, the acquiring corporation shall include in its income such amounts as would have been includible by the distributor or transferor corporation in accordance with section 111 (relating to the recovery of bad debts, prior taxes, and delinquency amounts)."

Subsec. (c)(25), (26). Pub. L. 99–514, §231(d)(3)(F), redesignated par. (26) as (25). Former par. (25), relating to credit under section 30, was struck out.

Subsec. (c)(27). Pub. L. 99–514, §701(e)(1), added par. (27).

1984—Subsec. (c)(23). Pub. L. 98–369, §474(r)(11)(B), redesignated par. (25) as (23). Former par. (23), relating to credit under section 38 for investment in certain depreciable property, was struck out.

Subsec. (c)(24). Pub. L. 98–369, §474(r)(11)(B), redesignated par. (28) as (24). Former par. (24), relating to credit under section 40 for work incentive program expenses, was struck out.

Subsec. (c)(25). Pub. L. 98–369, §474(r)(11)(B), (C), redesignated par. (29) as (25), and substituted "30" for "44F" wherever appearing in heading and text. Former par. (25) redesignated (23).

Subsec. (c)(26). Pub. L. 98–369, §474(r)(11)(D), added par. (26). Former par. (26), relating to credit under section 44B for employment of certain new employees, was struck out.

Subsec. (c)(27). Pub. L. 98–369, §474(r)(11)(A), struck out par. (27) relating to credit under section 44E for alcohol used as fuel.

Subsec. (c)(28), (29). Pub. L. 98–369, §474(r)(11)(B), redesignated pars. (28) and (29) as (24) and (25), respectively.

Subsec. (c)(30). Pub. L. 98–369, §474(r)(11)(A), struck out par. (30) relating to credit under section 44G.

Subsec. (d). Pub. L. 98–369, §211(b)(4), substituted "section 810" for "section 812(f)".

1983—Subsec. (c)(28), (29). Pub. L. 97–448, §102(h)(3), redesignated par. (28), relating to credit under section 44F, as (29). Former par. (29) redesignated (30).

Subsec. (c)(30). Pub. L. 97–448, §103(g)(2)(F), redesignated former par. (29), relating to credit under section 44G, as (30).

1982—Subsec. (a)(1). Pub. L. 97–248 struck out ", except in a case in which the basis of the assets distributed is determined under section 334(b)(2)" after "applies".

1981—Subsec. (c)(28). Pub. L. 97–34, §208, added par. (28) relating to recovery allowance for recovery property.

Pub. L. 97–34, §221(b)(1)(B), added par. (28) relating to credit under section 44F.

Subsec. (c)(29). Pub. L. 97–34, §331(d)(1)(B), added par. (29).

1980—Subsec. (a). Pub. L. 96–589, §4(g)(2), inserted provisions that a reorganization shall be treated as meeting the requirements of subparagraph (D) or (G) of section 368(a)(1) only if the requirements of subparagraphs (A) and (B) of section 354(b)(1) are met.

Subsec. (a)(2). Pub. L. 96–589, §4(g)(1), substituted "subparagraph (A), (C), (D), (F), or (G) of section 368(a)(1)" for "subparagraph (A), (C), (D) (but only if the requirements of subparagraphs (A) and (B) of section 354(b)(1) are met), or (F) of section 368(a)(1)".

Subsec. (c)(8). Pub. L. 96–471 substituted "reports on the installment basis under section 453 or 453A" for "has elected, under section 453, to report on the installment basis" and "for purposes of section 453 or 453A" for "for purposes of section 453."

Subsec. (c)(27). Pub. L. 96–223 added par. (27).

1978—Subsec. (c)(25). Pub. L. 95–600 substituted "regulated investment company or real estate investment trust" for "real estate investment trust" in heading, and in text "section 860(f)" for "section 859(d)" and "section 860" for "section 859".

1977—Subsec. (c)(26). Pub. L. 95–30 added par. (26).

1976—Subsec. (b)(2). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (c)(3). Pub. L. 94–455, §1901(b)(33)(N), substituted in subpars. (B) and (C) "capital gain net income" for "net capital gain".

Subsec. (c)(4), (5). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (c)(10). Pub. L. 94–455, §1901(b)(21(B), among other changes, substituted reference to section 616 (relating to certain development expenditures) if the distributor or transferor corporation has so elected for reference to sections 615 and 616 (relating to pre-1970 exploration expenditures and development expenditures, respectively) if the distributor or transferor corporation has so elected and struck out provisions that if, for any taxable year, the distributor of transferor corporation was allowed or made the election of the deduction under section 615 of this title, the acquiring corporation shall be deemed to have been allowed or to have made such election of the deduction under section 615 of this title.

Subsec. (c)(15). Pub. L. 94–455, §1901(b)(17), substituted "subsection (c)" for "subsections (b)(7) and (c)".

Subsec. (c)(20). Pub. L. 94–455, §1901(a)(54), struck out par. (20) which related to carry-over of unused pension trust deductions in certain cases.

Subsec. (c)(21). Pub. L. 94–455, §1901(b)(16), struck out par. (21) which related to pre-1954 adjustments resulting from change in method of accounting.

Subsec. (c)(22) to (24). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (c)(25). Pub. L. 94–455, §1601(e), added par. (25).

1971—Subsec. (c)(24). Pub. L. 92–178 added par. (24).

1969—Subsec. (b)(3). Pub. L. 91–172, §512(c), substituted "a net operating loss or a net capital loss" for "a net operating loss".

Subsec. (c)(6). Pub. L. 91–172, §521(f), substituted "subsections (b), (j) and (k) of section 167" for "paragraphs (2), (3) and (4) of section 167(b)" and inserted reference to adjusted basis in the hand of the distributor or transferor corporation.

Subsec. (c)(10). Pub. L. 91–172, §504(c)(2), substituted "Treatment of certain mining exploration and development expenses of distributor or transferor corporation" for "Treatment of certain expenses deferred by the election of distributor or transferor corporation" in heading, limited deduction of expenses deferred under sections 615 and 616 of this title by the acquiring corporation as if it were the distributor or transferor corporation to pre-1970 exploration and development expenditures, and inserted provision that if distributor or transferor corporation, for any taxable year, was allowed the deduction in sections 615(a) or 617(a) of this title

or made the election provided in section 615(b) of this title, acquiring corporation shall be deemed to have been allowed such deduction or deductions or to have made such election, as the case may be, for the purpose of applying the limitation provided in section 617 of this title.

1968—Subsec. (c)(22). Pub. L. 90–240 substituted successor insurance companies for successor life insurance companies as the business enterprise covered, substituted reference to insurance companies taxable under subchapter L for reference to life insurance companies as defined in section 801(a), and substituted reference to the purposes of this section and of subchapter L for reference to the purposes of this section and part I of subchapter L.

1964—Subsec. (c)(15). Pub. L. 88–272, §225(i)(3), substituted "subsections (b)(7) and (c) of section 545, relating to deductions with respect to payment of certain indebtedness" for "section 545(b)(7), relating to a deduction for payment of certain indebtedness incurred before Jan. 1, 1934".

Subsec. (c)(19). Pub. L. 88–272, §209(d)(2), permitted deductions for contributions made in the taxable year and in 4 prior taxable years, instead of one prior taxable year, and provided that each taxable year beginning on or before the distribution or transfer date shall be treated as a prior taxable year with reference to the acquiring corporation's taxable years beginning after such date.

1962—Subsec. (c)(23). Pub. L. 87–834 added par. (23).

1959—Subsec. (c)(22). Pub. L. 86–69, §3(c)(1), added par. (22).

Subsec. (d). Pub. L. 86–69, §3(c)(2), added subsec. (d).

1958—Subsec. (c)(21). Pub. L. 85–866 added par. (21).

1956—Subsec. (c)(20). Act Jan. 28, 1956 added par. (20).

1955—Subsec. (c)(7). Act June 15, 1955, repealed par. (7) which related to carryover of prepaid income.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11812(b)(6) of Pub. L. 101–508 applicable to property placed in service after Nov. 5, 1990, but not applicable to any property to which section 168 of this title does not apply by reason of subsec. (f)(5) of section 168, and not applicable to rehabilitation expenditures described in section 252(f)(5) of Pub. L. 99–514, see section 11812(c) of Pub. L. 101–508, set out as a note under section 42 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to dispositions in taxable years beginning after Dec. 31, 1987, with special rules for nondealers and coordination with Tax Reform Act of 1986, see section 10202(e)(1), (3), (5) of Pub. L. 100–203, set out as a note under section 453 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 231(d)(3)(F) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1985, see section 231(g) of Pub. L. 99–514, set out as a note under section 41 of this title.

Amendment by section 411(b)(2)(C)(iii) of Pub. L. 99–514 applicable, except as otherwise provided, to costs paid or incurred after Dec. 31, 1986, in taxable years ending after such date, see section 411(c) of Pub. L. 99–514, set out as a note under section 263 of this title.

Amendment by section 701(e)(1) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date note under section 55 of this title.

Amendment by section 1812(a)(3) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 211(b)(4) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

Amendment by section 474(r)(11) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to any target corporation with respect to which the acquisition date occurs after Aug. 31, 1982, with special rules for certain acquisitions before Sept. 1, 1982, and certain acquisitions of financial institutions in which there was a binding contract on July 22, 1982, to acquire control, see section 224(d) of Pub. L. 97–248, set out as an Effective Date note under section 338 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 208 of Pub. L. 97–34 applicable to property placed in service after Dec. 31, 1980, in taxable years ending after that date, see section 209(a) of Pub. L. 97–34, set out as an Effective Date note under section 168 of this title.

Amendment by section 221(b)(1)(B) of Pub. L. 97–34 applicable to amounts paid or incurred after June 30, 1981, see section 221(d) of Pub. L. 97–34, as amended, set out as an Effective Date note under section 41 of this title.

Amendment by section 331(d)(1)(B) of Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 339 of Pub. L. 97–34, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–589 applicable to bankruptcy cases or similar judicial proceeding commencing after Dec. 31, 1980, with exception permitting the debtor to make the amendment applicable to such cases or proceeding commencing after Sept. 30, 1979, see section 7(c)(1), (f) of Pub. L. 96–589, set out as a note under section 108 of this title.

For effective date of amendment by Pub. L. 96–471, see section 6(a)(1) of Pub. L. 96–471, set out as an Effective Date note under section 453 of this title.

Amendment by Pub. L. 96–223 applicable to sales or uses after Sept. 30, 1980, in taxable years ending after such date, see section 232(h)(1) of Pub. L. 96–223, set out as an Effective Date note under section 40 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable with respect to determinations (as defined in section 860(e) of this title) after Nov. 6, 1978, see section 362(e) of Pub. L. 95–600, set out as an Effective Date note under section 860 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, and to credit carrybacks from such years, see section 202(e) of Pub. L. 95–30, set out as an Effective Date note under section 51 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment by section 1601(e) of Pub. L. 94–455, see section 1608(a) of Pub. L. 94–455, set out as a note under section 857 of this title.

Amendment by section 1901(a)(54), (b)(16), (17), (21)(B), (33)(N) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Pub. L. 92–178, title VI, §601(f), Dec. 10, 1971, 85 Stat. 560, provided that: "The amendments made by this section [enacting sections 40, 50A, and 50B of this title and amending this section and sections 56, 6411, 6501, 6511, 6601, and 6611 of this title] shall apply to taxable years beginning after December 31, 1971."

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 504(c)(2) of Pub. L. 91–172 applicable with respect to exploration expenditures paid or incurred after Dec. 31, 1969, see section 504(d)(1) of Pub. L. 91–172, set out as a note under section 243 of this title.

Amendment by section 512(c) of Pub. L. 91–172 applicable with respect to net capital losses sustained in taxable years beginning after Dec. 31, 1969, see section 512(g) of Pub. L. 91–172, set out as a note under section 1212 of this title.

Amendment by section 521(f) of Pub. L. 91–172 applicable with respect to taxable years ending after July 24, 1969, see section 521(g) of Pub. L. 91–172, set out as a note under section 167 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–240 applicable to taxable years beginning after Dec. 31, 1966, see section 5(e) of Pub. L. 90–240, set out as a note under section 832 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by section 225(i)(3) of Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 225(l) of Pub. L. 88–272 set out as a note under section 316 of this title.

Amendment by section 209(d)(2) of Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, with respect to contributions paid or treated as paid under section 170(a)(2) of this title, in taxable years beginning after Dec. 31, 1961, see section 209(f)(2) of Pub. L. 88–272, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable with respect to taxable years ending after Dec. 31, 1961, see section 2(h) of Pub. L. 87–834, set out as an Effective Date note under section 46 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Pub. L. 86–69, §4, June 25, 1959, 73 Stat. 141, provided that: "Except as otherwise provided in this Act, the amendments made by this Act [amending this section, part I (§801 et seq.) of subchapter L, and sections 841, 842, 891, 1016, 1201, 1232, 1504, 4371, and 6501 of this title] shall apply only with respect to taxable years beginning after December 31, 1957."

EFFECTIVE DATE OF 1958 AMENDMENT

For effective date of amendment by Pub. L. 85–866, see section 29(d) of Pub. L. 85–866, set out as a note under section 481 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Act Jan. 28, 1956, ch. 15, §2, 70 Stat. 7, provided that: "The amendments made by the first section of this Act [amending this section] shall reply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954."

EFFECTIVE DATE OF 1955 AMENDMENT

Act June 15, 1955, ch. 143, §3, 69 Stat. 135, provided that: "The amendments made by this Act [amending this section and repealing sections 452 and 462 of this title] shall apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954."

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

Act June 15, 1955, ch. 143, §4, 69 Stat. 135, as amended by act Oct. 22, 1986, Pub. L. 99–514, §2, 100 Stat. 2095, provided:

"(a) FILING OF STATEMENT.—If—

"(1) the amount of any tax required to be paid for any taxable year ending on or before the date of the enactment of this Act [June 15, 1955] is increased by reason of the enactment of this Act [amending this section and repealing sections 452 and 462], and

"(2) the last date prescribed for payment of such tax (or any installment thereof) is before December 15, 1955, then the taxpayer shall, on or before December 15, 1955, file a statement which shows the increase in the amount of such tax required to be paid by reason of the enactment of this Act.

"(b) FORM AND EFFECT OF STATEMENT.—

"(1) FORM OF STATEMENT, ETC.—The statement required by subsection (a) shall be filed at the place fixed for filing the return. Such statement shall be in such form, and shall include such information necessary or appropriate to show the increase in the amount of the tax required to be paid for the taxable year by reason of the enactment of this Act, as the Secretary of the Treasury or his delegate shall by regulations prescribe.

"(2) TREATMENT AS AMOUNT SHOWN ON RETURN.—The amount shown on a statement filed

under subsection (a) as the increase in the amount of the tax required to be paid for the taxable year by reason of the enactment of this Act shall, for all purposes of the internal revenue laws, be treated as tax shown on the return. Notwithstanding the preceding sentence, that portion of the amount of increase in tax for any taxable year which is attributable to a decrease (by reason of the enactment of this Act) in the net operating loss for a succeeding taxable year shall not be treated as tax shown on the return.

"(3) WAIVER OF INTEREST IN CASE OF PAYMENT ON OR BEFORE DECEMBER 15, 1955.—If the taxpayer, on or before December 15, 1955, files the statement referred to in subsection (a) and pays in full that portion of the amount shown thereon for which the last date prescribed for payment is before December 15, 1955, then for purposes of computing interest (other than interest on overpayments) such portion shall be treated as having been paid on the last date prescribed for payment. This paragraph shall not apply if the amount shown on the statement as the increase in the amount of the tax required to be paid for the taxable year by reason of the enactment of this Act is greater than the actual increase unless the taxpayer establishes, to the satisfaction of the Secretary of the Treasury or his delegate, that his computation of the greater amount was based upon a reasonable interpretation and application of sections 452 and 462 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [sections 452 and 462 of this title], as those sections existed before the enactment of this Act.

"(c) SPECIAL RULES.—

"(1) INTEREST FOR PERIOD BEFORE ENACTMENT.—Interest shall not be imposed on the amount of any increase in tax resulting from the enactment of this Act for any period before the day after the date of the enactment of this Act [June 15, 1955].

"(2) ESTIMATED TAX.—Any addition to the tax under section 294(d) of the Internal Revenue Code of 1939 [section 294(d) of former Title 26, Internal Revenue Code], shall be computed as if this Act had not been enacted. In the case of any installment for which the last date prescribed for payment is before December 15, 1955, any addition to the tax under section 6654 of the Internal Revenue Code of 1986 [section 6654 of this title], shall be computed as if this Act had not been enacted.

"(3) TREATMENT OF CERTAIN PAYMENTS WHICH TAXPAYER IS REQUIRED TO MAKE.—If—

"(A) the taxpayer is required to make a payment (or an additional payment) to another person by reason of the enactment of this Act, and

"(B) the Internal Revenue Code of 1986 [this title] prescribes a period, which expires after the close of the taxable year, within which the taxpayer must make such payment (or additional payment) if the amount thereof is to be taken into account (as a deduction or otherwise) in computing taxable income for such taxable year,

then, subject to such regulations as the Secretary of the Treasury or his delegate may prescribe, if such payment (or additional payment) is made on or before December 15, 1955, it shall be treated as having been made within the period prescribed by such Code.

"(4) TREATMENT OF CERTAIN DIVIDENDS.—Subject to such regulations as the Secretary of the Treasury or his delegate may prescribe, for purposes of section 561(a)(1) of the Internal Revenue Code of 1986 [section 561(a)(1) of this title], dividends paid after the 15th day of the third month following the close of the taxable year and on or before December 15, 1955, may be treated as having been paid on the last day of the taxable year, but only to the extent (A) that such dividends are attributable to an increase in taxable income for the taxable year resulting from the enactment of this Act, and (B) elected by the taxpayer.

"(5) DETERMINATION OF DATE PRESCRIBED.—For purposes of this section, the determination of the last date prescribed for payment or for filing a return shall be made without regard to any extension of time therefor and without regard to any provision of this section.

"(6) REGULATIONS.—For requirement that the Secretary of the Treasury or his delegate shall prescribe all rules and regulations as may be necessary by reason of the enactment of this Act, see section 7805(a) of the Internal Revenue Code of 1986 [section 7805(a) of this title]."

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(e)(1) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§382. Limitation on net operating loss carryforwards and certain built-in losses following ownership change

(a) General rule

The amount of the taxable income of any new loss corporation for any post-change year which may be offset by pre-change losses shall not exceed the section 382 limitation for such year.

(b) Section 382 limitation

For purposes of this section—

(1) In general

Except as otherwise provided in this section, the section 382 limitation for any post-change year is an amount equal to—

(A) the value of the old loss corporation, multiplied by

(B) the long-term tax-exempt rate.

(2) Carryforward of unused limitation

If the section 382 limitation for any post-change year exceeds the taxable income of the new loss corporation for such year which was offset by pre-change losses, the section 382 limitation for the next post-change year shall be increased by the amount of such excess.

(3) Special rule for post-change year which includes change date

In the case of any post-change year which includes the change date—

(A) Limitation does not apply to taxable income before change

Subsection (a) shall not apply to the portion of the taxable income for such year which is allocable to the period in such year on or before the change date. Except as provided in subsection (h)(5) and in regulations, taxable income shall be allocated ratably to each day in the year.

(B) Limitation for period after change

For purposes of applying the limitation of subsection (a) to the remainder of the taxable income for such year, the section 382 limitation shall be an amount which bears the same ratio to such limitation (determined without regard to this paragraph) as—

(i) the number of days in such year after the change date, bears to

(ii) the total number of days in such year.

(c) Carryforwards disallowed if continuity of business requirements not met

(1) In general

Except as provided in paragraph (2), if the new loss corporation does not continue the business enterprise of the old loss corporation at all times during the 2-year period beginning on the change date, the section 382 limitation for any post-change year shall be zero.

(2) Exception for certain gains

The section 382 limitation for any post-change year shall not be less than the sum of—

(A) any increase in such limitation under—

(i) subsection (h)(1)(A) for recognized built-in gains for such year, and

(ii) subsection (h)(1)(C) for gain recognized by reason of an election under section 338, plus

(B) any increase in such limitation under subsection (b)(2) for amounts described in subparagraph (A) which are carried forward to such year.

(d) Pre-change loss and post-change year

For purposes of this section—

(1) Pre-change loss

The term "pre-change loss" means—

(A) any net operating loss carryforward of the old loss corporation to the taxable year ending with the ownership change or in which the change date occurs, and

(B) the net operating loss of the old loss corporation for the taxable year in which the ownership change occurs to the extent such loss is allocable to the period in such year on or before the change date.

Except as provided in subsection (h)(5) and in regulations, the net operating loss shall, for purposes of subparagraph (B), be allocated ratably to each day in the year.

(2) Post-change year

The term "post-change year" means any taxable year ending after the change date.

(e) Value of old loss corporation

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, the value of the old loss corporation is the value of the stock of such corporation (including any stock described in section 1504(a)(4)) immediately before the ownership change.

(2) Special rule in the case of redemption or other corporate contraction

If a redemption or other corporate contraction occurs in connection with an ownership change, the value under paragraph (1) shall be determined after taking such redemption or other corporate contraction into account.

(3) Treatment of foreign corporations

Except as otherwise provided in regulations, in determining the value of any old loss corporation which is a foreign corporation, there shall be taken into account only items treated as connected with the conduct of a trade or business in the United States.

(f) Long-term tax-exempt rate

For purposes of this section—

(1) In general

The long-term tax-exempt rate shall be the highest of the adjusted Federal long-term rates in effect for any month in the 3-calendar-month period ending with the calendar month in which the change date occurs.

(2) Adjusted Federal long-term rate

For purposes of paragraph (1), the term "adjusted Federal long-term rate" means the Federal long-term rate determined under section 1274(d), except that—

(A) paragraphs (2) and (3) thereof shall not apply, and

(B) such rate shall be properly adjusted for differences between rates on long-term taxable and tax-exempt obligations.

(g) Ownership change

For purposes of this section—

(1) In general

There is an ownership change if, immediately after any owner shift involving a 5-percent shareholder or any equity structure shift—

(A) the percentage of the stock of the loss corporation owned by 1 or more 5-percent shareholders has increased by more than 50 percentage points, over

(B) the lowest percentage of stock of the loss corporation (or any predecessor corporation) owned by such shareholders at any time during the testing period.

(2) Owner shift involving 5-percent shareholder

There is an owner shift involving a 5-percent shareholder if—

(A) there is any change in the respective ownership of stock of a corporation, and

(B) such change affects the percentage of stock of such corporation owned by any person who is a 5-percent shareholder before or after such change.

(3) Equity structure shift defined

(A) In general

The term "equity structure shift" means any reorganization (within the meaning of section 368). Such term shall not include—

(i) any reorganization described in subparagraph (D) or (G) of section 368(a)(1) unless the requirements of section 354(b)(1) are met, and

(ii) any reorganization described in subparagraph (F) of section 368(a)(1).

(B) Taxable reorganization-type transactions, etc.

To the extent provided in regulations, the term "equity structure shift" includes taxable reorganization-type transactions, public offerings, and similar transactions.

(4) Special rules for application of subsection

(A) Treatment of less than 5-percent shareholders

Except as provided in subparagraphs (B)(i) and (C), in determining whether an ownership change has occurred, all stock owned by shareholders of a corporation who are not 5-percent shareholders of such corporation shall be treated as stock owned by 1 5-percent shareholder of such corporation.

(B) Coordination with equity structure shifts

For purposes of determining whether an equity structure shift (or subsequent transaction) is an ownership change—

(i) Less than 5-percent shareholders

Subparagraph (A) shall be applied separately with respect to each group of shareholders (immediately before such equity structure shift) of each corporation which was a party to the reorganization involved in such equity structure shift.

(ii) Acquisitions of stock

Unless a different proportion is established, acquisitions of stock after such equity structure shift shall be treated as being made proportionately from all shareholders immediately before such acquisition.

(C) Coordination with other owner shifts

Except as provided in regulations, rules similar to the rules of subparagraph (B) shall apply in determining whether there has been an owner shift involving a 5-percent shareholder and whether such shift (or subsequent transaction) results in an ownership change.

(D) Treatment of worthless stock

If any stock held by a 50-percent shareholder is treated by such shareholder as becoming worthless during any taxable year of such shareholder and such stock is held by such shareholder as of the close of such taxable year, for purposes of determining whether an ownership change occurs after the close of such taxable year, such shareholder—

(i) shall be treated as having acquired such stock on the 1st day of his 1st succeeding taxable year, and

(ii) shall not be treated as having owned such stock during any prior period.

For purposes of the preceding sentence, the term "50-percent shareholder" means any person owning 50 percent or more of the stock of the corporation at any time during the 3-year period ending on the last day of the taxable year with respect to which the stock was so treated.

(h) Special rules for built-in gains and losses and section 338 gains

For purposes of this section—

(1) In general

(A) Net unrealized built-in gain

(i) In general

If the old loss corporation has a net unrealized built-in gain, the section 382 limitation for any recognition period taxable year shall be increased by the recognized built-in gains for such taxable year.

(ii) Limitation

The increase under clause (i) for any recognition period taxable year shall not exceed—

(I) the net unrealized built-in gain, reduced by

(II) recognized built-in gains for prior years ending in the recognition period.

(B) Net unrealized built-in loss

(i) In general

If the old loss corporation has a net unrealized built-in loss, the recognized built-in loss for any recognition period taxable year shall be subject to limitation under this section in the same manner as if such loss were a pre-change loss.

(ii) Limitation

Clause (i) shall apply to recognized built-in losses for any recognition period taxable year only to the extent such losses do not exceed—

(I) the net unrealized built-in loss, reduced by

(II) recognized built-in losses for prior taxable years ending in the recognition period.

(C) Special rules for certain section 338 gains

If an election under section 338 is made in connection with an ownership change and the net unrealized built-in gain is zero by reason of paragraph (3)(B), then, with respect to such change, the section 382 limitation for the post-change year in which gain is recognized by reason of such election shall be increased by the lesser of—

(i) the recognized built-in gains by reason of such election, or

(ii) the net unrealized built-in gain (determined without regard to paragraph (3)(B)).

(2) Recognized built-in gain and loss

(A) Recognized built-in gain

The term "recognized built-in gain" means any gain recognized during the recognition period on the disposition of any asset to the extent the new loss corporation establishes that—

(i) such asset was held by the old loss corporation immediately before the change date, and

(ii) such gain does not exceed the excess of—

(I) the fair market value of such asset on the change date, over

(II) the adjusted basis of such asset on such date.

(B) Recognized built-in loss

The term "recognized built-in loss" means any loss recognized during the recognition period on the disposition of any asset except to the extent the new loss corporation establishes that—

(i) such asset was not held by the old loss corporation immediately before the change date, or

(ii) such loss exceeds the excess of—

(I) the adjusted basis of such asset on the change date, over

(II) the fair market value of such asset on such date.

Such term includes any amount allowable as depreciation, amortization, or depletion for any period within the recognition period except to the extent the new loss corporation establishes that the amount so allowable is not attributable to the excess described in clause (ii).

(3) Net unrealized built-in gain and loss defined

(A) Net unrealized built-in gain and loss

(i) In general

The terms "net unrealized built-in gain" and "net unrealized built-in loss" mean, with respect to any old loss corporation, the amount by which—

(I) the fair market value of the assets of such corporation immediately before an ownership change is more or less, respectively, than

(II) the aggregate adjusted basis of such assets at such time.

(ii) Special rule for redemptions or other corporate contractions

If a redemption or other corporate contraction occurs in connection with an ownership change, to the extent provided in regulations, determinations under clause (i) shall be made after taking such redemption or other corporate contraction into account.

(B) Threshold requirement

(i) In general

If the amount of the net unrealized built-in gain or net unrealized built-in loss (determined without regard to this subparagraph) of any old loss corporation is not greater than the lesser of—

(I) 15 percent of the amount determined for purposes of subparagraph (A)(i)(I), or

(II) $10,000,000,

the net unrealized built-in gain or net unrealized built-in loss shall be zero.

(ii) Cash and cash items not taken into account

In computing any net unrealized built-in gain or net unrealized built-in loss under clause (i), except as provided in regulations, there shall not be taken into account—

(I) any cash or cash item, or

(II) any marketable security which has a value which does not substantially differ from adjusted basis.

(4) Disallowed loss allowed as a carryforward

If a deduction for any portion of a recognized built-in loss is disallowed for any post-change year, such portion—

(A) shall be carried forward to subsequent taxable years under rules similar to the rules for the carrying forward of net operating losses (or to the extent the amount so disallowed is attributable to capital losses, under rules similar to the rules for the carrying forward of net capital losses), but

(B) shall be subject to limitation under this section in the same manner as a pre-change loss.

(5) Special rules for post-change year which includes change date

For purposes of subsection (b)(3)—

(A) in applying subparagraph (A) thereof, taxable income shall be computed without regard to recognized built-in gains to the extent such gains increased the section 382 limitation for the

year (or recognized built-in losses to the extent such losses are treated as pre-change losses), and gain described in paragraph (1)(C), for the year, and

(B) in applying subparagraph (B) thereof, the section 382 limitation shall be computed without regard to recognized built-in gains, and gain described in paragraph (1)(C), for the year.

(6) Treatment of certain built-in items

(A) Income items

Any item of income which is properly taken into account during the recognition period but which is attributable to periods before the change date shall be treated as a recognized built-in gain for the taxable year in which it is properly taken into account.

(B) Deduction items

Any amount which is allowable as a deduction during the recognition period (determined without regard to any carryover) but which is attributable to periods before the change date shall be treated as a recognized built-in loss for the taxable year for which it is allowable as a deduction.

(C) Adjustments

The amount of the net unrealized built-in gain or loss shall be properly adjusted for amounts which would be treated as recognized built-in gains or losses under this paragraph if such amounts were properly taken into account (or allowable as a deduction) during the recognition period.

(7) Recognition period, etc.

(A) Recognition period

The term "recognition period" means, with respect to any ownership change, the 5-year period beginning on the change date.

(B) Recognition period taxable year

The term "recognition period taxable year" means any taxable year any portion of which is in the recognition period.

(8) Determination of fair market value in certain cases

If 80 percent or more in value of the stock of a corporation is acquired in 1 transaction (or in a series of related transactions during any 12-month period), for purposes of determining the net unrealized built-in loss, the fair market value of the assets of such corporation shall not exceed the grossed up amount paid for such stock properly adjusted for indebtedness of the corporation and other relevant items.

(9) Tax-free exchanges or transfers

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection where property held on the change date was acquired (or is subsequently transferred) in a transaction where gain or loss is not recognized (in whole or in part).

(i) Testing period

For purposes of this section—

(1) 3-year period

Except as otherwise provided in this section, the testing period is the 3-year period ending on the day of any owner shift involving a 5-percent shareholder or equity structure shift.

(2) Shorter period where there has been recent ownership change

If there has been an ownership change under this section, the testing period for determining whether a 2nd ownership change has occurred shall not begin before the 1st day following the change date for such earlier ownership change.

(3) Shorter period where all losses arise after 3-year period begins

The testing period shall not begin before the earlier of the 1st day of the 1st taxable year from which there is a carryforward of a loss or of an excess credit to the 1st post-change year or the taxable year in which the transaction being tested occurs. Except as provided in regulations, this paragraph shall not apply to any loss corporation which has a net unrealized built-in loss (determined after application of subsection (h)(3)(B)).

(j) Change date

For purposes of this section, the change date is—

(1) in the case where the last component of an ownership change is an owner shift involving a 5-percent shareholder, the date on which such shift occurs, and

(2) in the case where the last component of an ownership change is an equity structure shift, the date of the reorganization.

(k) Definitions and special rules

For purposes of this section—

(1) Loss corporation

The term "loss corporation" means a corporation entitled to use a net operating loss carryover or having a net operating loss for the taxable year in which the ownership change occurs. Except to the extent provided in regulations, such term includes any corporation with a net unrealized built-in loss.

(2) Old loss corporation

The term "old loss corporation" means any corporation—

(A) with respect to which there is an ownership change, and

(B) which (before the ownership change) was a loss corporation.

(3) New loss corporation

The term "new loss corporation" means a corporation which (after an ownership change) is a loss corporation. Nothing in this section shall be treated as implying that the same corporation may not be both the old loss corporation and the new loss corporation.

(4) Taxable income

Taxable income shall be computed with the modifications set forth in section 172(d).

(5) Value

The term "value" means fair market value.

(6) Rules relating to stock

(A) Preferred stock

Except as provided in regulations and subsection (e), the term "stock" means stock other than stock described in section 1504(a)(4).

(B) Treatment of certain rights, etc.

The Secretary shall prescribe such regulations as may be necessary—

(i) to treat warrants, options, contracts to acquire stock, convertible debt interests, and other similar interests as stock, and

(ii) to treat stock as not stock.

(C) Determinations on basis of value

Determinations of the percentage of stock of any corporation held by any person shall be made on the basis of value.

(7) 5-percent shareholder

The term "5-percent shareholder" means any person holding 5 percent or more of the stock of the corporation at any time during the testing period.

(l) Certain additional operating rules

For purposes of this section—

(1) Certain capital contributions not taken into account

(A) In general

Any capital contribution received by an old loss corporation as part of a plan a principal purpose of which is to avoid or increase any limitation under this section shall not be taken into account for purposes of this section.

(B) Certain contributions treated as part of plan

For purposes of subparagraph (A), any capital contribution made during the 2-year period ending on the change date shall, except as provided in regulations, be treated as part of a plan described in subparagraph (A).

(2) Ordering rules for application of section

(A) Coordination with section 172(b) carryover rules

In the case of any pre-change loss for any taxable year (hereinafter in this subparagraph referred to as the "loss year") subject to limitation under this section, for purposes of determining under the 2nd sentence of section 172(b)(2) the amount of such loss which may be carried to any taxable year, taxable income for any taxable year shall be treated as not greater than—

(i) the section 382 limitation for such taxable year, reduced by

(ii) the unused pre-change losses for taxable years preceding the loss year.

Similar rules shall apply in the case of any credit or loss subject to limitation under section 383.

(B) Ordering rule for losses carried from same taxable year

In any case in which—

(i) a pre-change loss of a loss corporation for any taxable year is subject to a section 382 limitation, and

(ii) a net operating loss of such corporation from such taxable year is not subject to such limitation,

taxable income shall be treated as having been offset first by the loss subject to such limitation.

(3) Operating rules relating to ownership of stock

(A) Constructive ownership

Section 318 (relating to constructive ownership of stock) shall apply in determining ownership of stock, except that—

(i) paragraphs (1) and (5)(B) of section 318(a) shall not apply and an individual and all members of his family described in paragraph (1) of section 318(a) shall be treated as 1 individual for purposes of applying this section,

(ii) paragraph (2) of section 318(a) shall be applied—

(I) without regard to the 50-percent limitation contained in subparagraph (C) thereof, and

(II) except as provided in regulations, by treating stock attributed thereunder as no longer being held by the entity from which attributed,

(iii) paragraph (3) of section 318(a) shall be applied only to the extent provided in regulations,

(iv) except to the extent provided in regulations, an option to acquire stock shall be treated as exercised if such exercise results in an ownership change, and

(v) in attributing stock from an entity under paragraph (2) of section 318(a), there shall not be taken into account—

(I) in the case of attribution from a corporation, stock which is not treated as stock for

purposes of this section, or

(II) in the case of attribution from another entity, an interest in such entity similar to stock described in subclause (I).

A rule similar to the rule of clause (iv) shall apply in the case of any contingent purchase, warrant, convertible debt, put, stock subject to a risk of forfeiture, contract to acquire stock, or similar interests.

(B) Stock acquired by reason of death, gift, divorce, separation, etc.

If—

(i) the basis of any stock in the hands of any person is determined—

(I) under section 1014 (relating to property acquired from a decedent),

(II) section 1015 (relating to property acquired by a gift or transfer in trust), or

(III) section 1041(b)(2) (relating to transfers of property between spouses or incident to divorce),

(ii) stock is received by any person in satisfaction of a right to receive a pecuniary bequest, or

(iii) stock is acquired by a person pursuant to any divorce or separation instrument (within the meaning of section 71(b)(2)),

such person shall be treated as owning such stock during the period such stock was owned by the person from whom it was acquired.

(C) Certain changes in percentage ownership which are attributable to fluctuations in value not taken into account

Except as provided in regulations, any change in proportionate ownership which is attributable solely to fluctuations in the relative fair market values of different classes of stock shall not be taken into account.

(4) Reduction in value where substantial nonbusiness assets

(A) In general

If, immediately after an ownership change, the new loss corporation has substantial nonbusiness assets, the value of the old loss corporation shall be reduced by the excess (if any) of—

(i) the fair market value of the nonbusiness assets of the old loss corporation, over

(ii) the nonbusiness asset share of indebtedness for which such corporation is liable.

(B) Corporation having substantial nonbusiness assets

For purposes of subparagraph (A)—

(i) In general

The old loss corporation shall be treated as having substantial nonbusiness assets if at least 1/3 of the value of the total assets of such corporation consists of nonbusiness assets.

(ii) Exception for certain investment entities

A regulated investment company to which part I of subchapter M applies, a real estate investment trust to which part II of subchapter M applies, or a REMIC to which part IV of subchapter M applies, shall not be treated as a new loss corporation having substantial nonbusiness assets.

(C) Nonbusiness assets

For purposes of this paragraph, the term "nonbusiness assets" means assets held for investment.

(D) Nonbusiness asset share

For purposes of this paragraph, the nonbusiness asset share of the indebtedness of the corporation is an amount which bears the same ratio to such indebtedness as—

(i) the fair market value of the nonbusiness assets of the corporation, bears to

(ii) the fair market value of all assets of such corporation.

(E) Treatment of subsidiaries

For purposes of this paragraph, stock and securities in any subsidiary corporation shall be disregarded and the parent corporation shall be deemed to own its ratable share of the subsidiary's assets. For purposes of the preceding sentence, a corporation shall be treated as a subsidiary if the parent owns 50 percent or more of the combined voting power of all classes of stock entitled to vote, and 50 percent or more of the total value of shares of all classes of stock.

(5) Title 11 or similar case

(A) In general

Subsection (a) shall not apply to any ownership change if—

(i) the old loss corporation is (immediately before such ownership change) under the jurisdiction of the court in a title 11 or similar case, and

(ii) the shareholders and creditors of the old loss corporation (determined immediately before such ownership change) own (after such ownership change and as a result of being shareholders or creditors immediately before such change) stock of the new loss corporation (or stock of a controlling corporation if also in bankruptcy) which meets the requirements of section 1504(a)(2) (determined by substituting "50 percent" for "80 percent" each place it appears).

(B) Reduction for interest payments to creditors becoming shareholders

In any case to which subparagraph (A) applies, the pre-change losses and excess credits (within the meaning of section 383(a)(2)) which may be carried to a post-change year shall be computed as if no deduction was allowable under this chapter for the interest paid or accrued by the old loss corporation on indebtedness which was converted into stock pursuant to title 11 or similar case during—

(i) any taxable year ending during the 3-year period preceding the taxable year in which the ownership change occurs, and

(ii) the period of the taxable year in which the ownership change occurs on or before the change date.

(C) Coordination with section 108

In applying section 108(e)(8) to any case to which subparagraph (A) applies, there shall not be taken into account any indebtedness for interest described in subparagraph (B).

(D) Section 382 limitation zero if another change within 2 years

If, during the 2-year period immediately following an ownership change to which this paragraph applies, an ownership change of the new loss corporation occurs, this paragraph shall not apply and the section 382 limitation with respect to the 2nd ownership change for any post-change year ending after the change date of the 2nd ownership change shall be zero.

(E) Only certain stock taken into account

For purposes of subparagraph (A)(ii), stock transferred to a creditor shall be taken into account only to the extent such stock is transferred in satisfaction of indebtedness and only if such indebtedness—

(i) was held by the creditor at least 18 months before the date of the filing of the title 11 or similar case, or

(ii) arose in the ordinary course of the trade or business of the old loss corporation and is held by the person who at all times held the beneficial interest in such indebtedness.

(F) Special rule for certain financial institutions

(i) In general

In the case of any ownership change to which this subparagraph applies, this paragraph shall be applied—

(I) by substituting "1504(a)(2)(B)" for "1504(a)(2)" and "20 percent" for "50 percent" in subparagraph (A)(ii), and

(II) without regard to subparagraphs (B) and (C).

(ii) Special rule for depositors

For purposes of applying this paragraph to an ownership change to which this subparagraph applies—

(I) a depositor in the old loss corporation shall be treated as a stockholder in such loss corporation immediately before the change,

(II) deposits which, after the change, become deposits of the new loss corporation shall be treated as stock of the new loss corporation, and

(III) the fair market value of the outstanding stock of the new loss corporation shall include the amount of deposits in the new loss corporation immediately after the change.

(iii) Changes to which subparagraph applies

This subparagraph shall apply to—

(I) an equity structure shift which is a reorganization described in section 368(a)(3)(D)(ii) [1] (as modified by section 368(a)(3)(D)(iv)),[1] or

(II) any other equity structure shift (or transaction to which section 351 applies) which occurs as an integral part of a transaction involving a change to which subclause (I) applies.

This subparagraph shall not apply to any equity structure shift or transaction occurring on or after May 10, 1989.

(G) Title 11 or similar case

For purposes of this paragraph, the term "title 11 or similar case" has the meaning given such term by section 368(a)(3)(A).

(H) Election not to have paragraph apply

A new loss corporation may elect, subject to such terms and conditions as the Secretary may prescribe, not to have the provisions of this paragraph apply.

(6) Special rule for insolvency transactions

If paragraph (5) does not apply to any reorganization described in subparagraph (G) of section 368(a)(1) or any exchange of debt for stock in a title 11 or similar case (as defined in section 368(a)(3)(A)), the value under subsection (e) shall reflect the increase (if any) in value of the old loss corporation resulting from any surrender or cancellation of creditors' claims in the transaction.

(7) Coordination with alternative minimum tax

The Secretary shall by regulation provide for the application of this section to the alternative tax net operating loss deduction under section 56(d).

(8) Predecessor and successor entities

Except as provided in regulations, any entity and any predecessor or successor entities of such entity shall be treated as 1 entity.

(m) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section and section 383, including (but not limited to) regulations—

(1) providing for the application of this section and section 383 where an ownership change with respect to the old loss corporation is followed by an ownership change with respect to the new loss corporation, and

(2) providing for the application of this section and section 383 in the case of a short taxable year,

(3) providing for such adjustments to the application of this section and section 383 as is necessary to prevent the avoidance of the purposes of this section and section 383, including the avoidance of such purposes through the use of related persons, pass-thru entities, or other intermediaries,

(4) providing for the application of subsection (g)(4) where there is only 1 corporation involved, and

(5) providing, in the case of any group of corporations described in section 1563(a) (determined by substituting "50 percent" for "80 percent" each place it appears and determined without regard to paragraph (4) thereof), appropriate adjustments to value, built-in gain or loss, and other items so that items are not omitted or taken into account more than once.

(n) Special rule for certain ownership changes

(1) In general

The limitation contained in subsection (a) shall not apply in the case of an ownership change which is pursuant to a restructuring plan of a taxpayer which—

(A) is required under a loan agreement or a commitment for a line of credit entered into with the Department of the Treasury under the Emergency Economic Stabilization Act of 2008, and

(B) is intended to result in a rationalization of the costs, capitalization, and capacity with respect to the manufacturing workforce of, and suppliers to, the taxpayer and its subsidiaries.

(2) Subsequent acquisitions

Paragraph (1) shall not apply in the case of any subsequent ownership change unless such ownership change is described in such paragraph.

(3) Limitation based on control in corporation

(A) In general

Paragraph (1) shall not apply in the case of any ownership change if, immediately after such ownership change, any person (other than a voluntary employees' beneficiary association under section 501(c)(9)) owns stock of the new loss corporation possessing 50 percent or more of the total combined voting power of all classes of stock entitled to vote, or of the total value of the stock of such corporation.

(B) Treatment of related persons

(i) In general

Related persons shall be treated as a single person for purposes of this paragraph.

(ii) Related persons

For purposes of clause (i), a person shall be treated as related to another person if—

(I) such person bears a relationship to such other person described in section 267(b) or 707(b), or

(II) such persons are members of a group of persons acting in concert.

(Aug. 16, 1954, ch. 736, 68A Stat. 129; Pub. L. 88–554, §4(b)(3), Aug. 31, 1964, 78 Stat. 763; Pub. L. 94–455, title VIII, §806(e), Oct. 4, 1976, 90 Stat. 1599; Pub. L. 96–589, §2(d), Dec. 24, 1980, 94 Stat. 3396; Pub. L. 97–34, title II, §242, Aug. 13, 1981, 95 Stat. 255; Pub. L. 98–369, div. A, title I, §62(b)(1), July 18, 1984, 98 Stat. 583; Pub. L. 99–514, title VI, §621(a), (e)(1), Oct. 22, 1986, 100 Stat. 2254, 2266; Pub. L. 100–203, title X, §10225(a), (b), Dec. 22, 1987, 101 Stat. 1330–413; Pub. L. 100–647, title I, §1006(d)(1)(A)–(C), (2)–(10), (17)(A), (18)–(28)(A), (29), (t)(22)(A), title IV, §4012(a)(3), (b)(1)(B), title V, §5077(a), Nov. 10, 1988, 102 Stat. 3395–3400, 3426, 3656, 3657, 3683; Pub. L. 101–73, title XIV, §1401(a)(2), Aug. 9, 1989, 103 Stat. 548; Pub. L. 101–239, title VII, §§7205(a), 7304(d)(1), 7811(c)(5)(A), 7815(h), 7841(d)(11), Dec. 19, 1989, 103 Stat. 2335, 2354, 2407, 2420, 2428; Pub. L. 103–66, title XIII, §13226(a)(2)(A), Aug. 10, 1993, 107 Stat. 487; Pub. L. 104–188, title I, §1621(b)(3), Aug. 20, 1996, 110 Stat. 1867; Pub. L. 108–357, title VIII,

§835(b)(2), Oct. 22, 2004, 118 Stat. 1593; Pub. L. 111–5, div. B, title I, §1262(a), Feb. 17, 2009, 123 Stat. 343.)

REFERENCES IN TEXT

Section 368(a)(3)(D), referred to in subsec. (l)(5)(F)(iii)(I), was amended generally by Pub. L. 99–514, title IX, §904(a), Oct. 22, 1986, 100 Stat. 2385, and, as so amended, does not contain a cl. (ii) or (iv).

The Emergency Economic Stabilization Act of 2008, referred to in subsec. (n)(1)(A), is div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, which is classified principally to chapter 52 (§5201 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 5201 of Title 12 and Tables.

AMENDMENTS

2009—Subsec. (n). Pub. L. 111–5 added subsec. (n).

2004—Subsec. (l)(4)(B)(ii). Pub. L. 108–357 substituted "or a REMIC to which part IV of subchapter M applies," for "a REMIC to which part IV of subchapter M applies, or a FASIT to which part V of subchapter M applies,".

1996—Subsec. (l)(4)(B)(ii). Pub. L. 104–188 substituted "a REMIC to which part IV of subchapter M applies, or a FASIT to which part V of subchapter M applies" for "or a REMIC to which part IV of subchapter M applies".

1993—Subsec. (l)(5)(C). Pub. L. 103–66 amended heading and text of subpar. (C) generally. Prior to amendment, text read as follows:

"(i) IN GENERAL.—In any case to which subparagraph (A) applies, 50 percent of the amount which, but for the application of section 108(e)(10)(B), would have been applied to reduce tax attributes under section 108(b) shall be so applied.

"(ii) CLARIFICATION WITH SUBPARAGRAPH (B).—In applying clause (i), there shall not be taken into account any indebtedness for interest described in subparagraph (B)."

1989—Subsec. (h)(3)(B)(i). Pub. L. 101–239, §7205(a), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: "If the amount of the net unrealized built-in gain or net unrealized built-in loss (determined without regard to this subparagraph) of any old loss corporation is not greater than 25 percent of the amount determined for purposes of subparagraph (A)(i)(I), the net unrealized built-in gain or net unrealized built-in loss shall be zero."

Subsec. (h)(6)(B). Pub. L. 101–239, §7811(c)(5)(A)(i), inserted "(determined without regard to any carryover)" after "during the recognition period".

Subsec. (h)(6)(C). Pub. L. 101–239, §7811(c)(5)(A)(ii), substituted "which would be treated as recognized built-in gains or losses under this paragraph if such amounts were properly taken into account (or allowable as a deduction) during the recognition period" for "treated as recognized built-in gains or losses under this paragraph".

Subsec. (l)(3)(B)(i)(III). Pub. L. 101–239, §7841(d)(11), substituted "incident to divorce)," for "incident to divorce,".

Subsec. (l)(3)(C). Pub. L. 101–239, §7304(d)(1), redesignated subpar. (D) as (C) and struck out former subpar. (C) which related to special rule for employee stock ownership plans.

Subsec. (l)(3)(C)(ii). Pub. L. 101–239, §7815(h), substituted "For purposes of subclause (III)," for "for purposes of subclause (III)," in concluding provisions.

Subsec. (l)(3)(D). Pub. L. 101–239, §7304(d)(1), redesignated subpar. (D) as (C).

Subsec. (l)(5)(F). Pub. L. 101–73 substituted "on or after May 10, 1989" for "after December 31, 1989" in last sentence.

1988—Subsec. (e)(2). Pub. L. 100–647, §1006(d)(1)(A), inserted "or other corporate contraction" after "redemption" in heading and in two places in text.

Subsec. (e)(3). Pub. L. 100–647, §1006(d)(17)(A), added par. (3).

Subsec. (g)(1)(A). Pub. L. 100–647, §1006(d)(21)(A), struck out "new" after "stock of the".

Subsec. (g)(1)(B). Pub. L. 100–647, §1006(d)(21)(B), struck out "old" after "stock of the".

Subsec. (g)(4)(C). Pub. L. 100–647, §1006(d)(2), inserted "rules similar to" after "provided in regulations,".

Subsec. (h)(1)(C). Pub. L. 100–647, §1006(d)(3)(A), substituted "Special rules for certain section 338 gains" for "Section 338 gain" in heading and amended text generally. Prior to amendment, text read as follows: "The section 382 limitation for any taxable year in which gain is recognized by reason of an election under section 338 shall be increased by the excess of—

"(i) the amount of such gain, over

"(ii) the portion of such gain taken into account in computing recognized built-in gains for such

taxable year."

Subsec. (h)(3)(A)(ii). Pub. L. 100–647, §1006(d)(28)(A), inserted "to the extent provided in regulations," after "an ownership change,".

Pub. L. 100–647, §1006(d)(1)(B), inserted "or other corporate contractions" after "redemptions" in heading and "or other corporate contraction" after "redemption" in two places in text.

Subsec. (h)(3)(B)(ii). Pub. L. 100–647, §1006(d)(26), inserted "except as provided in regulations," after "under clause (i),".

Subsec. (h)(4). Pub. L. 100–647, §1006(d)(20), substituted "allowed as a carryforward" for "treated as a net operating loss" in heading and inserted "(or to the extent the amount so disallowed is attributable to capital losses, under rules similar to the rules for the carrying forward of net capital losses)" after "net operating losses" in subpar. (A).

Subsec. (h)(5)(A). Pub. L. 100–647, §1006(d)(3)(B), substituted "recognized built-in gains to the extent such gains increased the section 382 limitation for the year (or recognized built-in losses to the extent such losses are treated as pre-change losses)" for "recognized built-in gains and losses".

Subsec. (h)(6). Pub. L. 100–647, §1006(d)(22), substituted "Treatment of certain built-in items" for "Secretary may treat certain deductions as built-in losses" in heading and amended text generally. Prior to amendment, text read as follows: "The Secretary may by regulation treat amounts which accrue on or before the change date but which are allowable as a deduction after such date as recognized built-in losses."

Subsec. (h)(9). Pub. L. 100–647, §1006(d)(23), substituted "was acquired (or is subsequently transferred)" for "is transferred".

Subsec. (i)(3). Pub. L. 100–647, §1006(d)(4), inserted "the earlier of" after "not begin before" and "or the taxable year in which the transaction being tested occurs" after "1st post-change year".

Subsec. (k)(1). Pub. L. 100–647, §1006(d)(5)(A), inserted "or having a net operating loss for the taxable year in which the ownership change occurs" after "operating loss carryover".

Subsec. (k)(2). Pub. L. 100–647, §1006(d)(5)(B), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "The term 'old loss corporation' means any corporation with respect to which there is an ownership change—

"(A) which (before the ownership change) was a loss corporation, or

"(B) with respect to which there is a pre-change loss described in subsection (d)(1)(B)."

Subsec. (l)(3)(A)(iv), (v). Pub. L. 100–647, §1006(d)(6), added cls. (iv) and (v) and struck out former cl. (iv) which read as follows: "except to the extent provided in regulations, paragraph (4) of section 318(a) shall apply to an option if such application results in an ownership change."

Subsec. (l)(3)(C)(ii). Pub. L. 100–647, §5077(a), added subcl. (III) and concluding provisions.

Subsec. (l)(4)(B)(ii). Pub. L. 100–647, §1006(t)(22)(A), substituted "REMIC" for "real estate mortgage pool".

Subsec. (l)(5)(A)(ii). Pub. L. 100–647, §1006(d)(25), substituted "stock of a controlling corporation" for "stock of controlling corporation".

Pub. L. 100–647, §1006(d)(7), substituted "after such ownership change and as a result of being shareholders or creditors immediately before such change" for "immediately after such ownership change".

Subsec. (l)(5)(B). Pub. L. 100–647, §1006(d)(27), substituted "the pre-change losses and excess credits (within the meaning of section 383(a)(2)) which may be carried to a post-change year shall be computed" for "the net operating loss deduction under section 172(a) for any post-change year shall be determined".

Subsec. (l)(5)(C). Pub. L. 100–647, §1006(d)(18), substituted "tax attributes" for "carryforwards" in heading and amended text generally. Prior to amendment, text read as follows: "In any case to which subparagraph (A) applies, the pre-change losses and excess credits (within the meaning of section 383(a)(2)) which may be carried to a post-change year shall be computed as if 50 percent of the amount which, but for the application of section 108(e)(10)(B), would have been includible in gross income for any taxable year had been so included."

Subsec. (l)(5)(E). Pub. L. 100–647, §1006(d)(19), substituted "taken into account" for "of creditors taken into account" in heading and amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: "For purposes of subparagraph (A)(ii), stock transferred to a creditor in satisfaction of indebtedness shall be taken into account only if such indebtedness—".

Subsec. (l)(5)(F). Pub. L. 100–647, §4012(a)(3), substituted "1989" for "1988" in last sentence.

Subsec. (l)(5)(F)(i)(I). Pub. L. 100–647, §1006(d)(8)(A), inserted " '1504(a)(2)(B)' for '1504(a)(2)' and" after "by substituting".

Subsec. (l)(5)(F)(ii)(III). Pub. L. 100–647, §1006(d)(8)(B), substituted "the amount of deposits in the new loss corporation immediately after the change" for "deposits described in subclause (II)".

Subsec. (l)(5)(F)(iii)(I). Pub. L. 100–647, §4012(b)(1)(B), inserted "(as modified by section

368(a)(3)(D)(iv))" after "section 368(a)(3)(D)(ii)".

Pub. L. 100–647, §1006(d)(29), which directed amendment of subcl. (I) by substituting "section 368(a)(3)(D)(ii)" for "section 368(a)(D)(ii)", could not be executed because "section 368(a)(3)(D)(ii)" appeared and "section 368(a)(D)(ii)" did not appear.

Subsec. (l)(6). Pub. L. 100–647, §1006(d)(9), substituted "shall reflect the increase (if any) in value of the old loss corporation resulting from any surrender or cancellation of creditors' claims in the transaction" for "shall be the value of the new loss corporation immediately after the ownership change".

Subsec. (l)(8). Pub. L. 100–647, §1006(d)(10), added par. (8).

Subsec. (m)(4). Pub. L. 100–647, §1006(d)(1)(C), redesignated par. (5) as (4) and struck out former par. (4) which read as follows: "providing for the treatment of corporate contractions as redemptions for purposes of subsections (e)(2) and (h)(3)(A), and".

Subsec. (m)(5). Pub. L. 100–647, §1006(d)(24), added par. (5).

Pub. L. 100–647, §1006(d)(1)(C), redesignated former par. (5) as (4).

1987—Subsec. (g)(4)(D). Pub. L. 100–203, §10225(a), added subpar. (D).

Subsec. (h)(2)(B). Pub. L. 100–203, §10225(b), inserted at end "Such term includes any amount allowable as depreciation, amortization, or depletion for any period within the recognition period except to the extent the new loss corporation establishes that the amount so allowable is not attributable to the excess described in clause (ii)."

1986—Pub. L. 99–514, §621(a), in amending section generally, in subsec. (a), substituted provisions setting forth general rule that amount of taxable income of any new loss corporation for any post-change year which may be offset by pre-change losses shall not exceed section 382 limitation for such year for provisions relating to change in ownership of corporation and change in its business, description of persons owning corporation, attribution of ownership, and definition of "purchase", in subsec. (b), substituted provisions relating to section 382 limitation for provisions relating to change in ownership as result of reorganization, in subsec. (c), substituted provisions relating to disallowance of carryforwards if continuity of business requirements are not met for provisions defining stock as all shares except nonvoting stock which is limited and preferred as to dividends, and added subsecs. (d) to (m).

Pub. L. 99–514, §621(e)(1), repealed amendment by Pub. L. 94–455, §806(e). See 1976 Amendment note below.

1984—Subsec. (b)(1). Pub. L. 98–369, in section as amended by Pub. L. 94–455, substituted "subparagraph (A), (B), (C), or (F) of section 368(a)(1) or subparagraph (D) or (G) of section 368(a)(1) (but only if the requirements of section 354(b)(1) are met)" for "section 368(a)(1)(A), (B), (C), (D) (but only if the requirements of section 354(b)(1) are met, or (F)".

1981—Subsec. (b)(7). Pub. L. 97–34 designated existing provisions as subpar. (A) and added subpar. (B).

1980—Subsec. (b)(7). Pub. L. 96–589 added par. (7).

1976—Pub. L. 94–455, §806(e), which amended section generally, substituting provisions relating to special limitations on net operating loss carryovers based on continuity of trade or business conducted, for provisions relating to special limitations on net operating loss carryovers based on continuity of ownership, was repealed by Pub. L. 99–514, §621(e)(1). See Effective Date of 1986 and 1976 Amendment notes below.

1964—Subsec. (a)(3). Pub. L. 88–554 inserted reference to section 318(a)(3)(C) of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, §1262(b), Feb. 17, 2009, 123 Stat. 344, provided that: "The amendment made by this section [amending this section] shall apply to ownership changes after the date of the enactment of this Act [Feb. 17, 2009]."

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 effective Jan. 1, 2005, with exception for any FASIT in existence on Oct. 22, 2004, to the extent that regular interests issued by the FASIT before such date continue to remain outstanding in accordance with the original terms of issuance, see section 835(c) of Pub. L. 108–357, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective Sept. 1, 1997, see section 1621(d) of Pub. L. 104–188, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to stock transferred after Dec. 31, 1994, in satisfaction of any indebtedness, except that such amendment inapplicable to stock transferred in satisfaction of any indebtedness

if such transfer is in a title 11 or similar case filed on or before Dec. 31, 1993, see section 13226(a)(3) of Pub. L. 103–66, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7205(a) of Pub. L. 101–239 applicable, except as otherwise provided, to ownership changes and acquisitions after Oct. 2, 1989, in taxable years ending after such date, see section 7205(c) of Pub. L. 101–239, set out as a note under section 56 of this title.

Pub. L. 101–239, title VII, §7304(d)(2), Dec. 19, 1989, 103 Stat. 2354, provided that: "The amendments made by this subsection [amending this section] shall apply to acquisitions of employer securities after July 12, 1989, except that such amendments shall not apply to acquisitions after July 12, 1989, pursuant to a written binding contract in effect on July 12, 1989, and at all times thereafter before such acquisition."

Amendment by sections 7811(c)(5)(A) and 7815(h) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

Pub. L. 101–73, title XIV, §1401(c)(2), Aug. 9, 1989, 103 Stat. 550, provided that: "The amendment made by subsection (a)(2) [amending this section] shall apply to transactions on or after May 10, 1989."

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1006(d)(1)(D), Nov. 10, 1988, 102 Stat. 3395, provided that: "The amendments made by this paragraph [amending this section] shall apply with respect to ownership changes after June 10, 1987."

Pub. L. 100–647, title I, §1006(d)(17)(B), Nov. 10, 1988, 102 Stat. 3398, provided that: "The amendment made by subparagraph (A) [amending this section] shall apply to any ownership change after June 10, 1987. For purposes of the preceding sentence, any equity structure shift pursuant to a plan of reorganization adopted on or before June 10, 1987, shall be treated as occurring when such plan was adopted."

Pub. L. 100–647, title I, §1006(d)(28)(B), Nov. 10, 1988, 102 Stat. 3400, provided that: "The amendment made by subparagraph (A) [amending this section] shall apply in the case of ownership changes on or after June 21, 1988."

Amendment by section 1006(d)(2)–(10), (18)–(27), (29), (t)(22)(A) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title IV, §4012(b)(1)(C)(ii), Nov. 10, 1988, 102 Stat. 3657, provided that: "The amendment made by subparagraph (B) [amending this section] shall apply to any ownership change occurring after the date of the enactment of this Act [Nov. 10, 1988] and before January 1, 1990."

Pub. L. 100–647, title V, §5077(b), Nov. 10, 1988, 102 Stat. 3683, provided that:

"(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to acquisition after December 31, 1988.

"(2) EXCEPTION.—The amendment made by subsection (a) shall not apply to acquisitions after December 31, 1988, pursuant to a binding written contract entered into on or before October 21, 1988."

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title X, §10225(c), Dec. 22, 1987, 101 Stat. 1330–413, provided that:

"(1) SUBSECTION (a).—The amendment made by subsection (a) [amending this section] shall apply in the case of stock treated as becoming worthless in taxable years beginning after December 31, 1987.

"(2) SUBSECTION (b).—The amendment made by subsection (b) [amending this section] shall apply in the case of ownership changes (as defined in section 382 of the Internal Revenue Code of 1986 as amended by subsection (a)) after December 15, 1987; except that such amendment shall not apply in the case of any ownership change pursuant to a binding written contract which was in effect on December 15, 1987, and at all times thereafter before such ownership change."

EFFECTIVE DATE OF 1986 AMENDMENT; SAVINGS PROVISIONS

Pub. L. 99–514, title VI, §621(f), Oct. 22, 1986, 100 Stat. 2266, as amended by Pub. L. 100–647, title I, §1006(d)(11)–(16), title VI, §6277(a), (b), Nov. 10, 1988, 102 Stat. 3397, 3398, 3753, 3754, provided that:

"(1) AMENDMENTS MADE BY SUBSECTIONS (a), (b), AND (c).—

"(A) IN GENERAL.—

"(i) CHANGES AFTER 1986.—The amendments made by subsections (a), (b), and (c) [amending this section and sections 318 and 383 of this title] shall apply to any ownership change after December 31, 1986.

"(ii) PLANS OF REORGANIZATION ADOPTED BEFORE 1987.—For purposes of clause (i), any equity structure shift pursuant to a plan of reorganization adopted before January 1, 1987, shall be treated as occurring when such plan was adopted.

"(B) TERMINATION OF OLD SECTION 382.—Except in a case described in any of the following paragraphs—

"(i) section 382(a) of the Internal Revenue Code of 1954 (as in effect before the amendment made by subsection (a) and the amendments made by section 806 of the Tax Reform Act of 1976 [section 806 of Pub. L. 94–455]) shall not apply to any increase in percentage points occurring after December 31, 1988, and

"(ii) section 382(b) of such Code (as so in effect) shall not apply to any reorganization occurring pursuant to a plan of reorganization adopted after December 31, 1986.

In no event shall sections 382(a) and (b) of such Code (as so in effect) apply to any ownership change described in subparagraph (A).

"(C) COORDINATION WITH SECTION 382(i).—For purposes of section 382(i) of the Internal Revenue Code of 1986 (as added by this section), any equity structure shift pursuant to a plan of reorganization adopted before January 1, 1987, shall be treated as occurring when such plan was adopted.

"(2) FOR AMENDMENTS TO TAX REFORM ACT OF 1976.—

"(A) IN GENERAL.—The repeals made by subsection (e)(1) [repealing amendments by Pub. L. 94–455, §806(e), (f), amending this section and sections 108, 368, and 383 of this title] and the amendment made by subsection (e)(2) [repealing section 806(g)(2), (3) of Pub. L. 94–455, formerly set out as an Effective Date of 1976 Amendment note below] shall take effect on January 1, 1986.

"(B) ELECTION TO HAVE AMENDMENTS APPLY.—

"(i) If a taxpayer described in clause (ii) elects to have the provisions of this subparagraph apply, the amendments made by subsections (e) and (f) of section 806 of the Tax Reform Act of 1976 [amending this section and sections 108, 368, and 383 of this title] shall apply to the reorganization described in clause (ii).

"(ii) A taxpayer is described in this clause if the taxpayer filed a title 11 or similar case on December 8, 1981, filed a plan of reorganization on February 5, 1986, filed an amended plan on March 14, 1986, and received court approval for the amended plan and disclosure statement on April 16, 1986.

"(C) APPLICATION OF OLD RULES TO CERTAIN DEBT.—In the case of debt of a corporation incorporated in Colorado on November 8, 1924, and reincorporated in Delaware in 1987, with headquarters in Denver, Colorado—

"(i) the amendments made by subsections (a), (b), and (c) shall not apply to any debt restructuring of such debt which was approved by the debtor's Board of Directors and the lenders in 1986, and

"(ii) the amendments made by subsections (e) and (f) of section 806 of the Tax Reform Act of 1976 shall not apply to such debt restructuring, except that the amendment treated as part of such subsections under section 59(b) of the Tax Reform Act of 1984 (relating to qualified workouts) shall apply to such debt restructuring.

"(D) SPECIAL RULE FOR OIL AND GAS WELL DRILLING BUSINESS.—In the case of a Texas corporation incorporated on July 23, 1935, in applying section 382 of the Internal Revenue Code of 1986 (as in effect before and after the amendments made by subsections (a), (b), and (c)) to a loan restructuring agreement during 1985, section 382(a)(5)(C) of the Internal Revenue Code of 1954 (as added by the amendments made by subsections (e) and (f) of section 806 of the Tax Reform Act of 1976) shall be applied as if it were in effect with respect to such restructuring. For purposes of the preceding sentence, in applying section 382 (as so in effect), if a person has a warrant to acquire stock, such stock shall be considered as owned by such person.

"(3) TESTING PERIOD.—For purposes of determining whether there is an ownership change, the testing period shall not begin before the later of—

"(A) May 6, 1986, or

"(B) in the case of an ownership change which occurs after May 5, 1986, and to which the amendments made by subsections (a), (b), and (c) do not apply, the first day following the date on which such ownership change occurs.

"(4) SPECIAL TRANSITION RULES.—The amendments made by subsections (a), (b), and (c) shall not apply to any—

"(A) stock-for-debt exchanges and stock sales made pursuant to a plan of reorganization with respect to a petition for reorganization filed by a corporation under chapter 11 of title 11, United States Code, on August 26, 1982, and which filed with a United States district court a first amended and related plan of reorganization before March 1, 1986, or

"(B) ownership change of a Delaware corporation incorporated in August 1983, which may result from the exercise of put or call option under an agreement entered into on September 14, 1983, but only with respect to taxable years beginning after 1991 regardless of when such ownership change takes place.

Any regulations prescribed under section 382 of the Internal Revenue Code of 1986 (as added by subsection (a)) which have the effect of treating a group of shareholders as a separate 5-percent shareholder by reason of a public offering shall not apply to any public offering before January 1, 1989, for the benefit of institutions described in section 591 of such Code. Unless the corporation otherwise elects, an underwriter of any offering of stock in a corporation before September 19, 1986 (January 1, 1989, in the case of an offering for the benefit of an institution described in the preceding sentence), shall not be treated as acquiring any stock of such corporation by reason of a firm commitment underwriting to the extent the stock is disposed of pursuant to the offering (but in no event later than 60 days after the initial offering).

"(5) BANKRUPTCY PROCEEDINGS.—Unless the taxpayer elects not to have the provisions of this paragraph apply, in the case of a reorganization described in subparagraph (G) of section 368(a)(1) of the Internal Revenue Code of 1986 or an exchange of debt for stock in a title 11 or similar case, as defined in section 368(a)(3) of such Code, the amendments made by subsections (a), (b), and (c) shall not apply to any ownership change resulting from such a reorganization or proceeding if a petition in such case was filed with the court before August 14, 1986. The determination as to whether an ownership change has occurred during the period beginning January 1, 1987, and ending on the final settlement of any reorganization or proceeding described in the preceding sentence shall be redetermined as of the time of such final settlement.

"(6) CERTAIN PLANS.—The amendments made by subsections (a), (b), and (c) shall not apply to any ownership change with respect to—

"(A) the acquisition of a corporation the stock of which is acquired pursuant to a plan of divestiture which identified such corporation and its assets, and was agreed to by the board of directors of such corporation's parent corporation on May 17, 1985,

"(B) a merger which occurs pursuant to a merger agreement (entered into before September 24, 1985) and an application for approval by the Federal Home Loan Bank Board was filed on October 4, 1985,

"(C) a reorganization involving a party to a reorganization of a group of corporations engaged in enhanced oil recovery operations in California, merged in furtherance of a plan of reorganization adopted by a board of directors vote on September 24, 1985, and a Delaware corporation whose principal oil and gas producing fields are located in California, or

"(D) the conversion of a mutual savings and loan association holding a Federal charter dated March 22, 1985, to a stock savings and loan association pursuant to the rules and regulations of the Federal Home Loan Bank Board.

"(7) OWNERSHIP CHANGE OF REGULATED AIR CARRIER.—The amendments made by subsections (a), (b), and (c) shall not apply to an ownership change of a regulated air carrier if—

"(A) on July 16, 1986, at least 40 percent of the outstanding common stock (excluding all preferred stock, whether or not convertible) of such carrier had been acquired by a parent corporation incorporated in March 1980 under the laws of Delaware, and

"(B) the acquisition (by or for such parent corporation) or retirement of the remaining common stock of such carrier is completed before the later of March 31, 1987, or 90 days after the requisite governmental approvals are finally granted,

but only if the ownership change occurs on or before the later of March 31, 1987, or such 90th day. The aggregate reduction in tax for any taxable year by reason of this paragraph shall not exceed $10,000,000. The testing period for determining whether a subsequent ownership change has occurred shall not begin before the 1st day following an ownership change to which this paragraph applies.

"(8) The amendments made by subsections (a), (b), and (c) shall not apply to any ownership change resulting from the conversion of a Minnesota mutual savings bank holding a Federal charter dated December 31, 1985, to a stock savings bank pursuant to the rules and regulations of the Federal Home Loan Bank Board, and from the issuance of stock pursuant to that conversion to a holding company incorporated in Delaware on February 21, 1984. For purposes of determining whether any ownership change occurs with respect to the holding company or any subsidiary thereof (whether resulting from the transaction described in the preceding sentence or otherwise), any issuance of stock made by such holding company in connection with the transaction described in the preceding sentence shall not be taken into account.

"(9) DEFINITIONS.—Except as otherwise provided, terms used in this subsection shall have the same meaning as when used in section 382 of the Internal Revenue Code of 1986 (as amended by this section)."

[Pub. L. 100–647, title VI, §6277(c), Nov. 10, 1988, 102 Stat. 3754, provided that: "The amendments made by this section [amending section 621(f) of Pub. L. 99–514, set out above] shall take effect as if included in section 621(f)(5) of the Tax Reform Act of 1986 [Pub. L. 99–514]."]

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §62(b)(2), July 18, 1984, 98 Stat. 583, provided that: "The amendment made by paragraph (1) [amending this section] shall take effect as if included in the amendments made by section 4 of the Bankruptcy Tax Act of 1980 [Pub. L. 96–589]."

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to any transfer made on or after Jan. 1, 1981, see section 246(a) of Pub. L. 97–34, set out as a note under section 368 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–589, §2(d), Dec. 24, 1980, 94 Stat. 3396, provided that the amendment made by section 2(b) of Pub. L. 96–589 is to subsec. (b) as in effect before its amendment by section 806 of the Tax Reform Act of 1976, Pub. L. 94–455.

Amendment by Pub. L. 96–589 applicable to transactions which occur after Dec. 31, 1980, other than transactions which occur in a proceeding in a bankruptcy case or similar judicial proceeding or in a proceeding under Title 11 commencing on or before Dec. 31, 1980, with an exception permitting the debtor to make the amendment applicable to transactions occurring after Sept. 30, 1979, in a specified manner, see section 7(a)(1), (f) of Pub. L. 96–589, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title VIII, §806(g)(2), (3), Oct. 4, 1976, 90 Stat. 1605, 1606, as amended by Pub. L. 95–600, title III, §368(a), Nov. 6, 1978, 92 Stat. 2857; Pub. L. 95–615, §8, Nov. 8, 1978, 92 Stat. 3098; Pub. L. 96–167, §9(e), Dec. 29, 1979, 93 Stat. 1279; Pub. L. 97–119, title I, §111, Dec. 29, 1981, 95 Stat. 1640; Pub. L. 98–369, div. A, title I, §62(a), July 18, 1984, 98 Stat. 583, which provided an effective date for the amendments made by section 806(e), (f) of Pub. L. 94–455 for purposes of applying sections 382(a) and 383 (as it relates to section 382(a)) of this title, was repealed by Pub. L. 99–514, title VI, §621(e)(2), (f)(2), Oct. 22, 1986, 100 Stat. 2266, eff. Jan. 1, 1986.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–554 effective Aug. 31, 1964, except that for purposes of sections 302 and 304 of this title, such amendment shall not apply to distributions in payment for stock acquisitions or redemptions, if such acquisitions or redemptions occurred before Aug. 31, 1964, see section 4(c) of Pub. L. 88–554, set out as a note under section 318 of this title.

DELAY IN EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 95–600, title III, §368, Nov. 6, 1978, 92 Stat. 2857, provided for delaying the effective date established by section 806(g)(2), (3) of Pub. L. 94–455, formerly set out above, by substituting "1980" for "1978", with certain elections.

CLARIFICATION OF REGULATIONS RELATED TO LIMITATIONS ON CERTAIN BUILT-IN LOSSES FOLLOWING AN OWNERSHIP CHANGE

Pub. L. 111–5, div. B, title I, §1261, Feb. 17, 2009, 123 Stat. 342, provided that:

"(a) FINDINGS.—Congress finds as follows:

"(1) The delegation of authority to the Secretary of the Treasury under section 382(m) of the Internal Revenue Code of 1986 does not authorize the Secretary to provide exemptions or special rules that are restricted to particular industries or classes of taxpayers.

"(2) Internal Revenue Service Notice 2008–83 is inconsistent with the congressional intent in enacting such section 382(m).

"(3) The legal authority to prescribe Internal Revenue Service Notice 2008–83 is doubtful.

"(4) However, as taxpayers should generally be able to rely on guidance issued by the Secretary of the Treasury legislation is necessary to clarify the force and effect of Internal Revenue Service Notice 2008–83 and restore the proper application under the Internal Revenue Code of 1986 of the limitation on built-in losses following an ownership change of a bank.

"(b) DETERMINATION OF FORCE AND EFFECT OF INTERNAL REVENUE SERVICE NOTICE 2008–83 EXEMPTING BANKS FROM LIMITATION ON CERTAIN BUILT–IN LOSSES FOLLOWING OWNERSHIP CHANGE.—

"(1) IN GENERAL.—Internal Revenue Service Notice 2008–83—

"(A) shall be deemed to have the force and effect of law with respect to any ownership change (as defined in section 382(g) of the Internal Revenue Code of 1986) occurring on or before January 16, 2009,

and

"(B) shall have no force or effect with respect to any ownership change after such date.

"(2) BINDING CONTRACTS.—Notwithstanding paragraph (1), Internal Revenue Service Notice 2008–83 shall have the force and effect of law with respect to any ownership change (as so defined) which occurs after January 16, 2009, if such change—

"(A) is pursuant to a written binding contract entered into on or before such date, or

"(B) is pursuant to a written agreement entered into on or before such date and such agreement was described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission required by reason of such ownership change."

REPORT ON DEPRECIATION AND BUILT-IN DEDUCTIONS; REPORT ON BANKRUPTCY WORKOUTS

Pub. L. 99–514, title VI, §621(d), Oct. 22, 1986, 100 Stat. 2266, directed Secretary of the Treasury or his delegate to, not later than Jan. 1, 1989, conduct a study and report to Committee on Ways and Means of House of Representatives and Committee on Finance of Senate with respect to treatment of depreciation, amortization, depletion, and other built-in deductions for purposes of sections 382 and 383 of this title, and, not later than Jan. 1, 1988, conduct a study and report to committees referred to above with respect to treatment of informal bankruptcy workouts for purposes of sections 108 and 382 of this title, prior to repeal by Pub. L. 101–508, title XI, §11832(3), Nov. 5, 1990, 104 Stat. 1388–559.

[1] *See References in Text note below.*

§383. Special limitations on certain excess credits, etc.

(a) Excess credits

(1) In general

Under regulations, if an ownership change occurs with respect to a corporation, the amount of any excess credit for any taxable year which may be used in any post-change year shall be limited to an amount determined on the basis of the tax liability which is attributable to so much of the taxable income as does not exceed the section 382 limitation for such post-change year to the extent available after the application of section 382 and subsections (b) and (c) of this section.

(2) Excess credit

For purposes of paragraph (1), the term "excess credit" means—

(A) any unused general business credit of the corporation under section 39, and

(B) any unused minimum tax credit of the corporation under section 53.

(b) Limitation on net capital loss

If an ownership change occurs with respect to a corporation, the amount of any net capital loss under section 1212 for any taxable year before the 1st post-change year which may be used in any post-change year shall be limited under regulations which shall be based on the principles applicable under section 382. Such regulations shall provide that any such net capital loss used in a post-change year shall reduce the section 382 limitation which is applied to pre-change losses under section 382 for such year.

(c) Foreign tax credits

If an ownership change occurs with respect to a corporation, the amount of any excess foreign taxes under section 904(c) for any taxable year before the 1st post-change taxable year shall be limited under regulations which shall be consistent with purposes of this section and section 382.

(d) Pro ration rules for year which includes change

For purposes of this section, rules similar to the rules of subsections (b)(3) and (d)(1)(B) of section 382 shall apply.

(e) Definitions

Terms used in this section shall have the same respective meanings as when used in section 382, except that appropriate adjustments shall be made to take into account that the limitations of this section apply to credits and net capital losses.

(Added Pub. L. 92–178, title III, §302(a), Dec. 10, 1971, 85 Stat. 521; amended Pub. L. 94–455, title VIII, §806(f)(2), title X, §1031(b)(5), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1605, 1623, 1834; Pub. L. 95–30, title II, §202(d)(3)(B), (C), May 23, 1977, 91 Stat. 148; Pub. L. 96–222, title I, §103(a)(6)(G)(xiii), Apr. 1, 1980, 94 Stat. 211; Pub. L. 96–223, title II, §232(b)(2)(C), (D), Apr. 2, 1980, 94 Stat. 276; Pub. L. 97–34, title II, §221(b)(1)(C), (D), title III, §331(d)(1)(C), (D), Aug. 13, 1981, 95 Stat. 246, 294; Pub. L. 98–369, div. A, title IV, §474(r)(12)(A), (B), July 18, 1984, 98 Stat. 841; Pub. L. 99–514, title VI, §621(b), (e)(1), Oct. 22, 1986, 100 Stat. 2265, 2266.)

AMENDMENTS

1986—Pub. L. 99–514, §621(b), amended section generally. Prior to amendment, section read as follows: "If—

"(1) the ownership and business of a corporation are changed in the manner described in section 382(a)(1), or

"(2) in the case of a reorganization specified in paragraph (2) of section 381(a), there is a change in ownership described in section 382(b)(1)(B),

then the limitations provided in section 382 in such cases with respect to the carryover of net operating losses shall apply in the same manner, as provided under regulations prescribed by the Secretary, with respect to any unused business credit of the corporation which can otherwise be carried forward under section 39, to any unused credit of the corporation which could otherwise be carried forward under section 30(g)(2), to any excess foreign taxes of the corporation which could otherwise be carried forward under section 904(c), and to any net capital loss of the corporation which can otherwise be carried forward under section 1212."

Pub. L. 99–514, §621(e)(1), repealed amendment by Pub. L. 94–455, §806(f)(2). See 1976 Amendment note below.

1984—Pub. L. 98–369, §474(r)(12)(A)(ii), in catchline of section 383, as in effect prior to amendment by Pub. L. 94–455, §806(f)(2), as related to section 382(a) of this title, substituted "Special limitations on unused business credits, research credits, foreign taxes, and capital losses" for "Special limitations on carryovers of unused investment credits, work incentive program credits, new employee credits, alcohol fuel credits, research credits, employee stock ownership credits, foreign taxes, and capital losses".

Pub. L. 98–369, §474(r)(12)(B)(ii), in catchline of section 383, as amended by Pub. L. 94–455, §806(f)(2), as related to section 382(b) of this title, substituted "business credits, research credits" for "investment credits, work incentive program credits".

Pub. L. 98–369, §474(r)(12)(B)(ii), in catchline of section 383, as amended by Pub. L. 94–455, §806(f)(2), as related to section 382(a) of this title, substituted "business credits" for "investment credits" and struck out references to work incentive program credits, new employee credits, alcohol fuel credits, and employee stock ownership credits.

Pub. L. 98–369, §474(r)(12)(A)(i), in section 383, as in effect prior to amendment by Pub. L. 94–455, §806(f)(2), as related to section 382(a) of this title, substituted "with respect to any unused business credit of the corporation which can otherwise be carried forward under section 39, to any unused credit of the corporation which could otherwise be carried forward under section 30(g)(2), to any excess foreign taxes of the corporation which could otherwise be carried forward under section 904(c), and to any net capital loss of the corporation which can otherwise be carried forward under section 1212" for "with respect to any unused investment credit of the corporation which can otherwise be carried forward under section 46(b), to any unused work incentive program credit of the corporation which can otherwise be carried forward under section 50A(b), to any unused new employee credit of the corporation which could otherwise be carried forward under section 53(b), to any unused credit of the corporation which could otherwise be carried forward under section 44E(e)(2), to any unused credit of the corporation which could otherwise be carried forward under section 44F(g)(2), to any unused credit of the corporation which could otherwise be carried forward under section 44G(b)(2), to any excess foreign taxes of the corporation which can otherwise be carried forward under section 904(c), and to any net capital loss of the corporation which can otherwise be carried forward under section 1212".

Pub. L. 98–369, §474(r)(12)(B)(i), in section 383, as amended by Pub. L. 94–455, §806(f)(2), as related to section 382(b) of this title, substituted "with respect to any unused business credit of the corporation under section 39, to any unused credit of the corporation under section 30(g)(2), to any excess foreign taxes of the corporation under section 904(c), and to any net capital loss of the corporation under section 1212" for "with

respect to any unused investment credit of the corporation under section 46(b), to any unused work incentive program credit of the corporation under section 50A(b), to any excess foreign taxes of the corporation under section 904(c), and to any net capital loss of the corporation under section 1212".

Pub. L. 98–369, §474(r)(12)(B)(i), in section 383, as amended by Pub. L. 94–455, §806(f)(2), as related to section 382(a) of this title, substituted "with respect to any unused business credit of the corporation under section 39, to any unused credit of the corporation under section 30(g)(2), to any excess foreign taxes of the corporation under section 904(c), and to any net capital loss of the corporation under section 1212" for "with respect to any unused investment credit of the corporation under section 46(b), to any unused work incentive program credit of the corporation under section 50A(b), to any unused new employee credit of the corporation under section 53(b), to any unused credit of the corporation under section 44E(e)(2), to any unused credit of the corporation under section 44F(g)(2), to any unused credit of the corporation under section 44G(b)(2), to any excess foreign taxes of the corporation under section 904(c), and to any net capital loss of the corporation under section 1212".

1981—Pub. L. 97–34, §331(d)(1)(C)(ii), (D)(ii), in catchlines of sections 383, as related to section 382(a) of this title, before and after amendment by Pub. L. 94–455, §806(f)(2), inserted reference to employee stock ownership credits.

Pub. L. 97–34, §331(d)(1)(D)(i), in section 383, as in effect prior to amendment by Pub. L. 94–455, §806(f)(2), as related to section 382(a) of this title, inserted "to any unused credit of the corporation which could otherwise be carried forward under section 44G(b)(2),".

Pub. L. 97–34, §331(d)(1)(C)(i), in section 383, as amended by Pub. L. 94–455, §806(f)(2), as related to section 382(a) of this title, inserted "to any unused credit of the corporation under section 44G(b)(2),".

Pub. L. 97–34, §221(b)(1)(C)(ii), (D)(ii), in catchlines of sections 383, as related to section 382(a) of this title, before and after amendment by Pub. L. 94–455, §806(f)(2), inserted reference to research credits.

Pub. L. 97–34, §221(b)(1)(D)(i), in section 383, as in effect prior to amendment by Pub. L. 94–455, §806(f)(2), as related to section 382(a) of this title, inserted "to any unused credit of the corporation which could otherwise be carried forward under section 44F(g)(2)," after "section 44E(e)(2),".

Pub. L. 97–34, §221(b)(1)(C)(i), in section 383, as amended by Pub. L. 94–455, §806(f)(2), as related to section 382(a) of this title, inserted "to any unused credit of the corporation under section 44F(g)(2)," after "section 44E(e)(2),".

1980—Pub. L. 96–223, §232(b)(2)(D), in section 383, as in effect prior to amendment by Pub. L. 94–455, §806(f)(2), as related to section 382(a) of this title, inserted reference to unused alcohol fuel credits in section catchline and reference to any unused credit of the corporation which could otherwise be carried forward under section 44E(e)(2) in text.

Pub. L. 96–223, §232(b)(2)(C), in section 383, as amended by Pub. L. 94–455, §806(f)(2), as related to section 382(a) of this title, inserted reference to unused alcohol fuel credits in section catchline and reference to any unused credit of the corporation under section 44E(e)(2) in text.

Pub. L. 96–222, in sections 383, as related to section 382(a) of this title, before and after amendment by Pub. L. 94–455, §806(f)(2), substituted "section 53(b)" for "section 53(c)".

1977—Pub. L. 95–30, §202(d)(3)(C), in section 383, as in effect prior to amendment by Pub. L. 94–455, §806(f)(2), as related to section 382(a) of this title, inserted "to any unused new employee credit of the corporation which could otherwise be carried forward under section 53(c)" in text and "new employee credits," in catchline.

Pub. L. 95–30, §202(d)(3)(B), in section 383, as amended by Pub. L. 94–455, §806(f)(2), as related to section 382(a) of this title, inserted "to any unused new employee credit of the corporation under section 53(c)" in text and "new employee credits," in section catchline.

1976—Pub. L. 94–455, §§1031(b)(5), 1906(b)(13)(A), struck out "or his delegate" after "Secretary", and substituted "section 904(c)" for "section 904(d)", respectively, in section 383 set out first.

Pub. L. 94–455, §806(f)(2), which substituted, in sections 383 as related to section 382(a) and (b) of this title, provisions that the net operating loss limitations in section 382 shall apply to unused investment credits under section 46(b), to unused work incentive program credits under section 50A(b), to excess foreign taxes under section 904(d) and to net capital losses under section 1212 for provisions that the net operating loss carryover limitations in section 382 shall apply, in the case of ownership changes described in section 382(a)(1) or reorganizations specified in section 381(a)(2) resulting in ownership changes described in section 382(b)(1)(B), to unused investment credits under section 46(b), to unused work incentive program credits under section 50A(B), to excess foreign taxes under section 904(c), and to net capital losses under section 1212, was repealed by Pub. L. 99–514, §621(e)(1). See Effective Date of 1986 and 1976 Amendment notes below.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 621(b) of Pub. L. 99–514 applicable to any ownership change after Dec. 31, 1986, except as otherwise provided, see section 621(f) of Pub. L. 99–514, as amended, set out as a note under section 382 of this title.

Repeal of amendment by section 806(f)(1) of Pub. L. 94–455 effective Jan. 1, 1986, with certain exceptions, see section 621(f)(2) of Pub. L. 99–514, set out as a note under section 382 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 221(b)(1)(C), (D) of Pub. L. 97–34 applicable to amounts paid or incurred after June 30, 1981, see section 221(d) of Pub. L. 97–34, as amended, set out as an Effective Date note under section 41 of this title.

Amendment by section 331(d)(1)(C), (D) of Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 339 of Pub. L. 97–34, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–223 applicable to sales or uses after Sept. 30, 1980, in taxable years ending after such date, see section 232(h)(1) of Pub. L. 96–223, set out as an Effective Date note under section 40 of this title.

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, Nov. 6, 1978, 92 Stat. 2763, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment by section 1031(b)(5) of Pub. L. 94–455, see section 1031(c) of Pub. L. 94–455, set out as a note under section 904 of this title.

For purposes of applying this section (as it relates to section 382(a) of this title) as amended by section 806(e), (f) of Pub. L. 94–455, the amendments made by section 806(e), (f) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1985, with specified provisions for determining the beginning of the taxable years specified in section 382(a)(1)(B)(ii) of this title, and this section (as it relates to section 382(b) of this title) as amended by section 806(e), (f) of Pub. L. 94–455 to apply (and such sections as in effect prior to such amendment not to apply) to reorganizations pursuant to a plan of reorganization adopted by one or more of the parties thereto on or after Jan. 1, 1986, see section 806(g)(2), (3) of Pub. L. 94–455, as amended, formerly set out as a note under section 382 of this title.

EFFECTIVE DATE

Pub. L. 92–178, title III, §302(c), Dec. 10, 1971, 85 Stat. 521, provided that: "The amendments made by this section [enacting this section] shall be applicable only with respect to reorganizations and other changes in ownership occurring after the date of enactment of this Act [Dec. 10, 1971] pursuant to a plan of reorganization or contract entered into on or after September 29, 1971."

DELAY IN EFFECTIVE DATE OF 1976 AMENDMENT

For election by taxpayer for application of prior law with respect to any acquisition or reorganization occurring before the end of the taxpayer's first taxable year beginning after June 30, 1978, see section 368 of Pub. L. 95–600, set out as a Delay in Effective Date of 1976 Amendment note under section 382 of this title.

§384. Limitation on use of preacquisition losses to offset built-in gains

(a) General rule

If—

(1)(A) a corporation acquires directly (or through 1 or more other corporations) control of another corporation, or

(B) the assets of a corporation are acquired by another corporation in a reorganization described in subparagraph (A), (C), or (D) of section 368(a)(1), and

(2) either of such corporations is a gain corporation,

income for any recognition period taxable year (to the extent attributable to recognized built-in gains) shall not be offset by any preacquisition loss (other than a preacquisition loss of the gain corporation).

(b) Exception where corporations under common control

(1) In general

Subsection (a) shall not apply to the preacquisition loss of any corporation if such corporation and the gain corporation were members of the same controlled group at all times during the 5-year period ending on the acquisition date.

(2) Controlled group

For purposes of this subsection, the term "controlled group" means a controlled group of corporations (as defined in section 1563(a)); except that—

(A) "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears,

(B) the ownership requirements of section 1563(a) must be met both with respect to voting power and value, and

(C) the determination shall be made without regard to subsection (a)(4) of section 1563.

(3) Shorter period where corporations not in existence for 5 years

If either of the corporations referred to in paragraph (1) was not in existence throughout the 5-year period referred to in paragraph (1), the period during which such corporation was in existence (or if both, the shorter of such periods) shall be substituted for such 5-year period.

(c) Definitions

For purposes of this section—

(1) Recognized built-in gain

(A) In general

The term "recognized built-in gain" means any gain recognized during the recognition period on the disposition of any asset except to the extent the gain corporation (or, in any case described in subsection (a)(1)(B), the acquiring corporation) establishes that—

(i) such asset was not held by the gain corporation on the acquisition date, or

(ii) such gain exceeds the excess (if any) of—

(I) the fair market value of such asset on the acquisition date, over

(II) the adjusted basis of such asset on such date.

(B) Treatment of certain income items

Any item of income which is properly taken into account for any recognition period taxable year but which is attributable to periods before the acquisition date shall be treated as a recognized built-in gain for the taxable year in which it is properly taken into account and shall be taken into account in determining the amount of the net unrealized built-in gain.

(C) Limitation

The amount of the recognized built-in gains for any recognition period taxable year shall not exceed—

(i) the net unrealized built-in gain, reduced by

(ii) the recognized built-in gains for prior years ending in the recognition period which (but for this section) would have been offset by preacquisition losses.

(2) Acquisition date

The term "acquisition date" means—

(A) in any case described in subsection (a)(1)(A), the date on which the acquisition of control occurs, or

(B) in any case described in subsection (a)(1)(B), the date of the transfer in the

reorganization.

(3) Preacquisition loss

(A) In general

The term "preacquisition loss" means—

(i) any net operating loss carryforward to the taxable year in which the acquisition date occurs, and

(ii) any net operating loss for the taxable year in which the acquisition date occurs to the extent such loss is allocable to the period in such year on or before the acquisition date.

Except as provided in regulations, the net operating loss shall, for purposes of clause (ii), be allocated ratably to each day in the year.

(B) Treatment of recognized built-in loss

In the case of a corporation with a net unrealized built-in loss, the term "preacquisition loss" includes any recognized built-in loss.

(4) Gain corporation

The term "gain corporation" means any corporation with a net unrealized built-in gain.

(5) Control

The term "control" means ownership of stock in a corporation which meets the requirements of section 1504(a)(2).

(6) Treatment of members of same group

Except as provided in regulations and except for purposes of subsection (b), all corporations which are members of the same affiliated group immediately before the acquisition date shall be treated as 1 corporation. To the extent provided in regulations, section 1504 shall be applied without regard to subsection (b) thereof for purposes of the preceding sentence.

(7) Treatment of predecessors and successors

Any reference in this section to a corporation shall include a reference to any predecessor or successor thereof.

(8) Other definitions

Except as provided in regulations, the terms "net unrealized built-in gain", "net unrealized built-in loss", "recognized built-in loss", "recognition period", and "recognition period taxable year", have the same respective meanings as when used in section 382(h), except that the acquisition date shall be taken into account in lieu of the change date.

(d) Limitation also to apply to excess credits or net capital losses

Rules similar to the rules of subsection (a) shall also apply in the case of any excess credit (as defined in section 383(a)(2)) or net capital loss.

(e) Ordering rules for net operating losses, etc.

(1) Carryover rules

If any preacquisition loss may not offset a recognized built-in gain by reason of this section, such gain shall not be taken into account in determining under section 172(b)(2) the amount of such loss which may be carried to other taxable years. A similar rule shall apply in the case of any excess credit or net capital loss limited by reason of subsection (d).

(2) Ordering rule for losses carried from same taxable year

In any case in which—

(A) a preacquisition loss for any taxable year is subject to limitation under subsection (a), and

(B) a net operating loss from such taxable year is not subject to such limitation,

taxable income shall be treated as having been offset 1st by the loss subject to such limitation.

(f) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section, including regulations to ensure that the purposes of this section may not be circumvented through—

(1) the use of any provision of law or regulations (including subchapter K of this chapter), or

(2) contributions of property to a corporation.

(Added Pub. L. 100–203, title X, §10226(a), Dec. 22, 1987, 101 Stat. 1330–414; amended Pub. L. 100–647, title II, §2004(m)(1)–(4), Nov. 10, 1988, 102 Stat. 3606, 3607; Pub. L. 101–239, title VII, §7812(c)(1), Dec. 19, 1989, 103 Stat. 2412.)

AMENDMENTS

1989—Subsec. (e)(1). Pub. L. 101–239 substituted "built-in gain" for "build-in gain".

1988—Subsec. (a). Pub. L. 100–647, §2004(m)(1)(A), amended subsec. (a) generally, making changes in substance and structure.

Subsec. (b). Pub. L. 100–647, §2004(m)(3), substituted "corporations under common control" for "50 percent of gain corporation held" in heading and amended text generally. Prior to amendment, text read as follows: "Subsection (a) shall not apply if more than 50 percent of the stock (by vote and value) of the gain corporation was held throughout the 5-year period ending on the acquisition date—

"(1) in any case described in subsection (a)(1), by members of the affiliated group referred to in subsection (a)(1), or

"(2) in any case described in subsection (a)(2), by the acquiring corporation or members of such acquiring corporation's affiliated group.

For purposes of the preceding sentence, stock described in section 1504(a)(4) shall not be taken into account."

Subsec. (c)(1)(A). Pub. L. 100–647, §2004(m)(1)(D), substituted "subsection (a)(1)(B)" for "subsection (a)(2)".

Subsec. (c)(2). Pub. L. 100–647, §2004(m)(1)(C), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "The term 'acquisition date' means the date on which the gain corporation becomes a member of the affiliated group or, in any case described in subsection (a)(2), the date of the distribution or transfer in the liquidation or reorganization."

Subsec. (c)(4) to (8). Pub. L. 100–647, §2004(m)(1)(B), redesignated par. (4) as (8) and added pars. (4) to (7).

Subsecs. (e), (f). Pub. L. 100–647, §2004(m)(2), (4), substituted "a corporation" for "the gain corporation" in subsec. (e)(2), redesignated subsec. (e) as (f), and added subsec. (e).

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE

Pub. L. 100–203, title X, §10226(c), Dec. 22, 1987, 101 Stat. 1330–416, provided that: "The amendments made by this section [enacting this section] shall apply in cases where the acquisition date (as defined in section 384(c)(2) of the Internal Revenue Code of 1986 as added by this section) is after December 15, 1987; except that such amendments shall not apply in the case of any transaction pursuant to—

"(1) a binding written contract in effect on or before December 15, 1987, or

"(2) a letter of intent or agreement of merger signed on or before December 15, 1987."

ELECTION TO HAVE AMENDMENTS BY PUB. L. 100–647 NOT APPLY

Pub. L. 100–647, title II, §2004(m)(5), Nov. 10, 1988, 102 Stat. 3607, provided that: "In any case where the acquisition date (as defined in section 384(c)(2) of the 1986 Code as amended by this subsection) is before March 31, 1988, the acquiring corporation may elect to have the amendments made by this subsection not

apply. Such an election shall be made in such manner as the Secretary of the Treasury or his delegate shall prescribe and shall be made not later than the later of the due date (including extensions) for filing the return for the taxable year of the acquiring corporation in which the acquisition date occurs or the date 120 days after the date of the enactment of this Act [Nov. 10, 1989]. Such an election, once made, shall be irrevocable."

PART VI—TREATMENT OF CERTAIN CORPORATE INTERESTS AS STOCK OR INDEBTEDNESS

Sec.
385. Treatment of certain interests in corporations as stock or indebtedness.

AMENDMENTS

1969—Pub. L. 91–172, title IV, §415(a), Dec. 30, 1969, 83 Stat. 613, added part heading and analysis of sections.

§385. Treatment of certain interests in corporations as stock or indebtedness

(a) Authority to prescribe regulations

The Secretary is authorized to prescribe such regulations as may be necessary or appropriate to determine whether an interest in a corporation is to be treated for purposes of this title as stock or indebtedness (or as in part stock and in part indebtedness).

(b) Factors

The regulations prescribed under this section shall set forth factors which are to be taken into account in determining with respect to a particular factual situation whether a debtor-creditor relationship exists or a corporation-shareholder relationship exists. The factors so set forth in the regulations may include among other factors:

(1) whether there is a written unconditional promise to pay on demand or on a specified date a sum certain in money in return for an adequate consideration in money or money's worth, and to pay a fixed rate of interest,

(2) whether there is subordination to or preference over any indebtedness of the corporation,

(3) the ratio of debt to equity of the corporation,

(4) whether there is convertibility into the stock of the corporation, and

(5) the relationship between holdings of stock in the corporation and holdings of the interest in question.

(c) Effect of classification by issuer

(1) In general

The characterization (as of the time of issuance) by the issuer as to whether an interest in a corporation is stock or indebtedness shall be binding on such issuer and on all holders of such interest (but shall not be binding on the Secretary).

(2) Notification of inconsistent treatment

Except as provided in regulations, paragraph (1) shall not apply to any holder of an interest if such holder on his return discloses that he is treating such interest in a manner inconsistent with the characterization referred to in paragraph (1).

(3) Regulations

The Secretary is authorized to require such information as the Secretary determines to be necessary to carry out the provisions of this subsection.

(Added Pub. L. 91–172, title IV, §415(a), Dec. 30, 1969, 83 Stat. 613; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 101–239, title VII, §7208(a)(1), Dec. 19, 1989, 103 Stat. 2337; Pub. L. 102–486, title XIX, §1936(a), Oct. 24, 1992, 106 Stat. 3032.)

AMENDMENTS

1992—Subsec. (c). Pub. L. 102–486 added subsec. (c).

1989—Subsec. (a). Pub. L. 101–239 inserted "(or as in part stock and in part indebtedness)" before period at end.

1976—Subsec. (a). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–486, title XIX, §1936(b), Oct. 24, 1992, 106 Stat. 3032, provided that: "The amendment made by subsection (a) [amending this section] shall apply to instruments issued after the date of the enactment of this Act [Oct. 24, 1992]."

REGULATIONS NOT TO BE APPLIED RETROACTIVELY

Pub. L. 101–239, title VII, §7208(a)(2), Dec. 19, 1989, 103 Stat. 2337, provided that: "Any regulations issued pursuant to the authority granted by the amendment made by paragraph (1) [amending this section] shall only apply with respect to instruments issued after the date on which the Secretary of the Treasury or his delegate provides public guidance as to the characterization of such instruments whether by regulation, ruling, or otherwise."

[PART VII—REPEALED]

[§386. Repealed. Pub. L. 100–647, title I, §1006(e)(8)(A), Nov. 10, 1988, 102 Stat. 3401]

Section, added Pub. L. 98–369, div. A, title I, §75(a), July 18, 1984, 98 Stat. 594; amended Pub. L. 99–514, title XVIII, §1805(c)(1), Oct. 22, 1986, 100 Stat. 2810, related to transfers of partnership and trust interests by corporations.

EFFECTIVE DATE OF REPEAL

Repeal effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as an Effective Date of 1988 Amendment note under section 1 of this title.

[§§391 to 395. Repealed. Pub. L. 94–455, title XIX, §1901(a)(55), Oct. 4, 1976, 90 Stat. 1773]

Section 391, acts Aug. 16, 1954, ch. 736, 68A Stat. 131; Sept. 2, 1958, Pub. L. 85–866, title I, §22(a), 72 Stat. 1620, related to effective date of section 301 et seq. of this title.

Section 392, act Aug. 16, 1954, ch. 736, 68A Stat. 131, related to effective date of section 331 et seq. of this title.

Section 393, act Aug. 16, 1954, ch. 736, 68A Stat. 132, related to effective date of section 351 et seq. of this title.

Section 394, act Aug. 16, 1954, ch. 736, 68A Stat. 133, related to effective date of section 381 et seq. of this title.

Section 395, act Aug. 16, 1954, ch. 736, 68A Stat. 133, related to special rules for application of this subchapter.

EFFECTIVE DATE OF REPEAL

Repeal effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 2 of this title.

Subchapter D—Deferred Compensation, Etc.

Part
I. Pension, profit-sharing, stock bonus plans, etc.
II. Certain stock options.
III Rules relating to minimum funding standards and benefit limitations.[1]

AMENDMENTS

2006—Pub. L. 109–280, title I, §113(a)(2), Aug. 17, 2006, 120 Stat. 852, added item for part III.

1964—Pub. L. 88–272, title II, §221(d)(1), Feb. 26, 1964, 78 Stat. 75, substituted "Certain stock options" for "Miscellaneous provisions" in heading to part II.

[1] Period editorially supplied.

PART I—PENSION, PROFIT-SHARING, STOCK BONUS PLANS, ETC.

Subpart
A. General rule.
B. Special rules.
C. Special rules for multiemployer plans.
D. Treatment of welfare benefit funds.
E. Treatment of transfers to retiree health accounts.[1]

AMENDMENTS

1984—Pub. L. 98–369, div. A, title V, §511(d), July 18, 1984, 98 Stat. 862, added heading for subpart D.

1980—Pub. L. 96–364, title II, §202(b), Sept. 26, 1980, 94 Stat. 1285, added heading for subpart C.

[1] Editorially supplied. Subpart E of part I added by Pub. L. 101–508 without corresponding amendment of part analysis.

SUBPART A—GENERAL RULE

Sec.
401. Qualified pension, profit-sharing, and stock bonus plans.
402. Taxability of beneficiary of employees' trust.
402A. Optional treatment of elective deferrals as Roth contributions.
403. Taxation of employee annuities.
404. Deduction for contributions of an employer to an employees' trust or annuity plan and compensation under a deferred-payment plan.
404A. Deduction for certain foreign deferred compensation plans.
[405. Repealed.]
406. Employees of foreign affiliates covered by section 3121(l) agreements.
407. Certain employees of domestic subsidiaries engaged in business outside the United States.
408. Individual retirement accounts.
408A. Roth IRAs.
409. Qualifications for tax credit employee stock ownership plans.
409A. Inclusion in gross income of deferred compensation under nonqualified deferred compensation plans.

AMENDMENTS

2004—Pub. L. 108–357, title VIII, §885(c), Oct. 22, 2004, 118 Stat. 1640, added item 409A.

2001—Pub. L. 107–16, title VI, §617(e)(2), June 7, 2001, 115 Stat. 106, added item 402A.

1997—Pub. L. 105–34, title III, §302(e), Aug. 5, 1997, 111 Stat. 829, added item 408A.

1986—Pub. L. 99–514, title XVIII, §1899A(70), Oct. 22, 1986, 100 Stat. 2963, substituted "Qualifications" for "Qualification" in item 409.

1984—Pub. L. 98–369, div. A, title IV, §491(d)(54), (e)(10), July 18, 1984, 98 Stat. 852, 853, struck out items 405 and 409, which read "Qualified bond purchase plans" and "Retirement bonds", respectively, and redesignated item 409A as 409.

1983—Pub. L. 98–21, title III, §321(e)(2)(D)(ii), Apr. 20, 1983, 97 Stat. 120, substituted "Employees of foreign affiliates covered by section 3121(l) agreements" for "Certain employees of foreign subsidiaries" in item 406.

1980—Pub. L. 96–603, §2(d)(1), Dec. 28, 1980, 94 Stat. 3510, added item 404A.

Pub. L. 96–222, title I, §101(a)(7)(L)(v)(VIII), Apr. 1, 1980, 94 Stat. 200, substituted "tax credit employee stock ownership plans" for "ESOPS" in item 409A.

1978—Pub. L. 95–600, title I, §141(f)(8), Nov. 6, 1978, 92 Stat. 2795, added item 409A.

1974—Pub. L. 93–406, title II, §1016(b)(1), Sept. 2, 1974, 88 Stat. 932, inserted heading "Subpart A—General Rule" and added analysis of subparts.

Pub. L. 93–406, title II, §2002(h)(2), Sept. 2, 1974, 88 Stat. 970, added items 408 and 409.

1964—Pub. L. 88–272, title II, §220(c)(1), Feb. 26, 1964, 78 Stat. 62, added items 406 and 407.

1962—Pub. L. 87–792, §5(b), Oct. 10, 1962, 76 Stat. 827, added item 405.

§401. Qualified pension, profit-sharing, and stock bonus plans

(a) Requirements for qualification

A trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries shall constitute a qualified trust under this section—

(1) if contributions are made to the trust by such employer, or employees, or both, or by another employer who is entitled to deduct his contributions under section 404(a)(3)(B) (relating to deduction for contributions to profit-sharing and stock bonus plans), or by a charitable remainder trust pursuant to a qualified gratuitous transfer (as defined in section 664(g)(1)), for the purpose of distributing to such employees or their beneficiaries the corpus and income of the fund accumulated by the trust in accordance with such plan;

(2) if under the trust instrument it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees and their beneficiaries under the trust, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, purposes other than for the exclusive benefit of his employees or their beneficiaries (but this paragraph shall not be construed, in the case of a multiemployer plan, to prohibit the return of a contribution within 6 months after the plan administrator determines that the contribution was made by a mistake of fact or law (other than a mistake relating to whether the plan is described in section 401(a) or the trust which is part of such plan is exempt from taxation under section 501(a), or the return of any withdrawal liability payment determined to be an overpayment within 6 months of such determination).; [1]

(3) if the plan of which such trust is a part satisfies the requirements of section 410 (relating to minimum participation standards); and

(4) if the contributions or benefits provided under the plan do not discriminate in favor of highly compensated employees (within the meaning of section 414(q)). For purposes of this paragraph, there shall be excluded from consideration employees described in section 410(b)(3)(A) and (C).

(5) SPECIAL RULES RELATING TO NONDISCRIMINATION REQUIREMENTS.—

(A) SALARIED OR CLERICAL EMPLOYEES.—A classification shall not be considered discriminatory within the meaning of paragraph (4) or section 410(b)(2)(A)(i) merely because it is limited to salaried or clerical employees.

(B) CONTRIBUTIONS AND BENEFITS MAY BEAR UNIFORM RELATIONSHIP TO COMPENSATION.—A plan shall not be considered discriminatory within the meaning of paragraph (4) merely because the contributions or benefits of, or on behalf of, the employees under the plan bear a uniform relationship to the compensation (within the meaning of section 414(s)) of such employees.

(C) CERTAIN DISPARITY PERMITTED.—A plan shall not be considered discriminatory

within the meaning of paragraph (4) merely because the contributions or benefits of, or on behalf of, the employees under the plan favor highly compensated employees (as defined in section 414(q)) in the manner permitted under subsection (l).

(D) INTEGRATED DEFINED BENEFIT PLAN.—

(i) IN GENERAL.—A defined benefit plan shall not be considered discriminatory within the meaning of paragraph (4) merely because the plan provides that the employer-derived accrued retirement benefit for any participant under the plan may not exceed the excess (if any) of—

(I) the participant's final pay with the employer, over

(II) the employer-derived retirement benefit created under Federal law attributable to service by the participant with the employer.

For purposes of this clause, the employer-derived retirement benefit created under Federal law shall be treated as accruing ratably over 35 years.

(ii) FINAL PAY.—For purposes of this subparagraph, the participant's final pay is the compensation (as defined in section 414(q)(4)) paid to the participant by the employer for any year—

(I) which ends during the 5-year period ending with the year in which the participant separated from service for the employer, and

(II) for which the participant's total compensation from the employer was highest.

(E) 2 OR MORE PLANS TREATED AS SINGLE PLAN.—For purposes of determining whether 2 or more plans of an employer satisfy the requirements of paragraph (4) when considered as a single plan—

(i) CONTRIBUTIONS.—If the amount of contributions on behalf of the employees allowed as a deduction under section 404 for the taxable year with respect to such plans, taken together, bears a uniform relationship to the compensation (within the meaning of section 414(s)) of such employees, the plans shall not be considered discriminatory merely because the rights of employees to, or derived from, the employer contributions under the separate plans do not become nonforfeitable at the same rate.

(ii) BENEFITS.—If the employees' rights to benefits under the separate plans do not become nonforfeitable at the same rate, but the levels of benefits provided by the separate plans satisfy the requirements of regulations prescribed by the Secretary to take account of the differences in such rates, the plans shall not be considered discriminatory merely because of the difference in such rates.

(F) SOCIAL SECURITY RETIREMENT AGE.—For purposes of testing for discrimination under paragraph (4)—

(i) the social security retirement age (as defined in section 415(b)(8)) shall be treated as a uniform retirement age, and

(ii) subsidized early retirement benefits and joint and survivor annuities shall not be treated as being unavailable to employees on the same terms merely because such benefits or annuities are based in whole or in part on an employee's social security retirement age (as so defined).

(G) GOVERNMENTAL PLANS.—Paragraphs (3) and (4) shall not apply to a governmental plan (within the meaning of section 414(d)).

(6) A plan shall be considered as meeting the requirements of paragraph (3) during the whole of any taxable year of the plan if on one day in each quarter it satisfied such requirements.

(7) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part satisfies the requirements of section 411 (relating to minimum vesting standards).

(8) A trust forming part of a defined benefit plan shall not constitute a qualified trust under this

section unless the plan provides that forfeitures must not be applied to increase the benefits any employee would otherwise receive under the plan.

(9) REQUIRED DISTRIBUTIONS.—

(A) IN GENERAL.—A trust shall not constitute a qualified trust under this subsection unless the plan provides that the entire interest of each employee—

(i) will be distributed to such employee not later than the required beginning date, or

(ii) will be distributed, beginning not later than the required beginning date, in accordance with regulations, over the life of such employee or over the lives of such employee and a designated beneficiary (or over a period not extending beyond the life expectancy of such employee or the life expectancy of such employee and a designated beneficiary).

(B) REQUIRED DISTRIBUTION WHERE EMPLOYEE DIES BEFORE ENTIRE INTEREST IS DISTRIBUTED.—

(i) WHERE DISTRIBUTIONS HAVE BEGUN UNDER SUBPARAGRAPH (A)(ii).—A trust shall not constitute a qualified trust under this section unless the plan provides that if—

(I) the distribution of the employee's interest has begun in accordance with subparagraph (A)(ii), and

(II) the employee dies before his entire interest has been distributed to him,

the remaining portion of such interest will be distributed at least as rapidly as under the method of distributions being used under subparagraph (A)(ii) as of the date of his death.

(ii) 5-YEAR RULE FOR OTHER CASES.—A trust shall not constitute a qualified trust under this section unless the plan provides that, if an employee dies before the distribution of the employee's interest has begun in accordance with subparagraph (A)(ii), the entire interest of the employee will be distributed within 5 years after the death of such employee.

(iii) EXCEPTION TO 5-YEAR RULE FOR CERTAIN AMOUNTS PAYABLE OVER LIFE OF BENEFICIARY.—If—

(I) any portion of the employee's interest is payable to (or for the benefit of) a designated beneficiary,

(II) such portion will be distributed (in accordance with regulations) over the life of such designated beneficiary (or over a period not extending beyond the life expectancy of such beneficiary), and

(III) such distributions begin not later than 1 year after the date of the employee's death or such later date as the Secretary may by regulations prescribe,

for purposes of clause (ii), the portion referred to in subclause (I) shall be treated as distributed on the date on which such distributions begin.

(iv) SPECIAL RULE FOR SURVIVING SPOUSE OF EMPLOYEE.—If the designated beneficiary referred to in clause (iii)(I) is the surviving spouse of the employee—

(I) the date on which the distributions are required to begin under clause (iii)(III) shall not be earlier than the date on which the employee would have attained age 70½, and

(II) if the surviving spouse dies before the distributions to such spouse begin, this subparagraph shall be applied as if the surviving spouse were the employee.

(C) REQUIRED BEGINNING DATE.—For purposes of this paragraph—

(i) IN GENERAL.—The term "required beginning date" means April 1 of the calendar year following the later of—

(I) the calendar year in which the employee attains age 70½, or

(II) the calendar year in which the employee retires.

(ii) EXCEPTION.—Subclause (II) of clause (i) shall not apply—

(I) except as provided in section 409(d), in the case of an employee who is a 5-percent owner (as defined in section 416) with respect to the plan year ending in the calendar year

in which the employee attains age 70½, or

(II) for purposes of section 408(a)(6) or (b)(3).

(iii) ACTUARIAL ADJUSTMENT.—In the case of an employee to whom clause (i)(II) applies who retires in a calendar year after the calendar year in which the employee attains age 70½, the employee's accrued benefit shall be actuarially increased to take into account the period after age 70½ in which the employee was not receiving any benefits under the plan.

(iv) EXCEPTION FOR GOVERNMENTAL AND CHURCH PLANS.—Clauses (ii) and (iii) shall not apply in the case of a governmental plan or church plan. For purposes of this clause, the term "church plan" means a plan maintained by a church for church employees, and the term "church" means any church (as defined in section 3121(w)(3)(A)) or qualified church-controlled organization (as defined in section 3121(w)(3)(B)).

(D) LIFE EXPECTANCY.—For purposes of this paragraph, the life expectancy of an employee and the employee's spouse (other than in the case of a life annuity) may be redetermined but not more frequently than annually.

(E) DESIGNATED BENEFICIARY.—For purposes of this paragraph, the term "designated beneficiary" means any individual designated as a beneficiary by the employee.

(F) TREATMENT OF PAYMENTS TO CHILDREN.—Under regulations prescribed by the Secretary, for purposes of this paragraph, any amount paid to a child shall be treated as if it had been paid to the surviving spouse if such amount will become payable to the surviving spouse upon such child reaching majority (or other designated event permitted under regulations).

(G) TREATMENT OF INCIDENTAL DEATH BENEFIT DISTRIBUTIONS.—For purposes of this title, any distribution required under the incidental death benefit requirements of this subsection shall be treated as a distribution required under this paragraph.

(H) TEMPORARY WAIVER OF MINIMUM REQUIRED DISTRIBUTION.—

(i) IN GENERAL.—The requirements of this paragraph shall not apply for calendar year 2009 to—

(I) a defined contribution plan which is described in this subsection or in section 403(a) or 403(b),

(II) a defined contribution plan which is an eligible deferred compensation plan described in section 457(b) but only if such plan is maintained by an employer described in section 457(e)(1)(A), or

(III) an individual retirement plan.

(ii) SPECIAL RULES REGARDING WAIVER PERIOD.—For purposes of this paragraph—

(I) the required beginning date with respect to any individual shall be determined without regard to this subparagraph for purposes of applying this paragraph for calendar years after 2009, and

(II) if clause (ii) of subparagraph (B) applies, the 5-year period described in such clause shall be determined without regard to calendar year 2009.

(10) OTHER REQUIREMENTS.—

(A) PLANS BENEFITING OWNER-EMPLOYEES.—In the case of any plan which provides contributions or benefits for employees some or all of whom are owner-employees (as defined in subsection (c)(3)), a trust forming part of such plan shall constitute a qualified trust under this section only if the requirements of subsection (d) are also met.

(B) TOP-HEAVY PLANS.—

(i) IN GENERAL.—In the case of any top-heavy plan, a trust forming part of such plan shall constitute a qualified trust under this section only if the requirements of section 416 are met.

(ii) PLANS WHICH MAY BECOME TOP-HEAVY.—Except to the extent provided in regulations, a trust forming part of a plan (whether or not a top-heavy plan) shall constitute a qualified trust under this section only if such plan contains provisions—

(I) which will take effect if such plan becomes a top-heavy plan, and

(II) which meet the requirements of section 416.

(iii) EXEMPTION FOR GOVERNMENTAL PLANS.—This subparagraph shall not apply to any governmental plan.

(11) REQUIREMENT OF JOINT AND SURVIVOR ANNUITY AND PRERETIREMENT SURVIVOR ANNUITY.—

(A) IN GENERAL.—In the case of any plan to which this paragraph applies, except as provided in section 417, a trust forming part of such plan shall not constitute a qualified trust under this section unless—

(i) in the case of a vested participant who does not die before the annuity starting date, the accrued benefit payable to such participant is provided in the form of a qualified joint and survivor annuity, and

(ii) in the case of a vested participant who dies before the annuity starting date and who has a surviving spouse, a qualified preretirement survivor annuity is provided to the surviving spouse of such participant.

(B) PLANS TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to—

(i) any defined benefit plan,

(ii) any defined contribution plan which is subject to the funding standards of section 412, and

(iii) any participant under any other defined contribution plan unless—

(I) such plan provides that the participant's nonforfeitable accrued benefit (reduced by any security interest held by the plan by reason of a loan outstanding to such participant) is payable in full, on the death of the participant, to the participant's surviving spouse (or, if there is no surviving spouse or the surviving spouse consents in the manner required under section 417(a)(2), to a designated beneficiary),

(II) such participant does not elect a payment of benefits in the form of a life annuity, and

(III) with respect to such participant, such plan is not a direct or indirect transferee (in a transfer after December 31, 1984) of a plan which is described in clause (i) or (ii) or to which this clause applied with respect to the participant.

Clause (iii)(III) shall apply only with respect to the transferred assets (and income therefrom) if the plan separately accounts for such assets and any income therefrom.

(C) EXCEPTION FOR CERTAIN ESOP BENEFITS.—

(i) IN GENERAL.—In the case of—

(I) a tax credit employee stock ownership plan (as defined in section 409(a)), or

(II) an employee stock ownership plan (as defined in section 4975(e)(7)),

subparagraph (A) shall not apply to that portion of the employee's accrued benefit to which the requirements of section 409(h) apply.

(ii) NONFORFEITABLE BENEFIT MUST BE PAID IN FULL, ETC.—In the case of any participant, clause (i) shall apply only if the requirements of subclauses (I), (II), and (III) of subparagraph (B)(iii) are met with respect to such participant.

(D) SPECIAL RULE WHERE PARTICIPANT AND SPOUSE MARRIED LESS THAN 1 YEAR.—A plan shall not be treated as failing to meet the requirements of subparagraphs (B)(iii) or (C) merely because the plan provides that benefits will not be payable to the

surviving spouse of the participant unless the participant and such spouse had been married throughout the 1-year period ending on the earlier of the participant's annuity starting date or the date of the participant's death.

(E) EXCEPTION FOR PLANS DESCRIBED IN SECTION 404(c).—This paragraph shall not apply to a plan which the Secretary has determined is a plan described in section 404(c) (or a continuation thereof) in which participation is substantially limited to individuals who, before January 1, 1976, ceased employment covered by the plan.

(F) CROSS REFERENCE.—For—

(i) provisions under which participants may elect to waive the requirements of this paragraph, and

(ii) other definitions and special rules for purposes of this paragraph,

see section 417.

(12) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that in the case of any merger or consolidation with, or transfer of assets or liabilities to, any other plan after September 2, 1974, each participant in the plan would (if the plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer (if the plan had then terminated). The preceding sentence does not apply to any multiemployer plan with respect to any transaction to the extent that participants either before or after the transaction are covered under a multiemployer plan to which title IV of the Employee Retirement Income Security Act of 1974 applies.

(13) ASSIGNMENT AND ALIENATION.—

(A) IN GENERAL.—A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that benefits provided under the plan may not be assigned or alienated. For purposes of the preceding sentence, there shall not be taken into account any voluntary and revocable assignment of not to exceed 10 percent of any benefit payment made by any participant who is receiving benefits under the plan unless the assignment or alienation is made for purposes of defraying plan administration costs. For purposes of this paragraph a loan made to a participant or beneficiary shall not be treated as an assignment or alienation if such loan is secured by the participant's accrued nonforfeitable benefit and is exempt from the tax imposed by section 4975 (relating to tax on prohibited transactions) by reason of section 4975(d)(1). This paragraph shall take effect on January 1, 1976 and shall not apply to assignments which were irrevocable on September 2, 1974.

(B) SPECIAL RULES FOR DOMESTIC RELATIONS ORDERS.—Subparagraph (A) shall apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a participant pursuant to a domestic relations order, except that subparagraph (A) shall not apply if the order is determined to be a qualified domestic relations order.

(C) SPECIAL RULE FOR CERTAIN JUDGMENTS AND SETTLEMENTS .—Subparagraph (A) shall not apply to any offset of a participant's benefits provided under a plan against an amount that the participant is ordered or required to pay to the plan if—

(i) the order or requirement to pay arises—

(I) under a judgment of conviction for a crime involving such plan,

(II) under a civil judgment (including a consent order or decree) entered by a court in an action brought in connection with a violation (or alleged violation) of part 4 of subtitle B of title I of the Employee Retirement Income Security Act of 1974, or

(III) pursuant to a settlement agreement between the Secretary of Labor and the participant, or a settlement agreement between the Pension Benefit Guaranty Corporation and the participant, in connection with a violation (or alleged violation) of part 4 of such subtitle by a fiduciary or any other person,

(ii) the judgment, order, decree, or settlement agreement expressly provides for the offset

of all or part of the amount ordered or required to be paid to the plan against the participant's benefits provided under the plan, and

(iii) in a case in which the survivor annuity requirements of section 401(a)(11) apply with respect to distributions from the plan to the participant, if the participant has a spouse at the time at which the offset is to be made—

(I) either such spouse has consented in writing to such offset and such consent is witnessed by a notary public or representative of the plan (or it is established to the satisfaction of a plan representative that such consent may not be obtained by reason of circumstances described in section 417(a)(2)(B)), or an election to waive the right of the spouse to either a qualified joint and survivor annuity or a qualified preretirement survivor annuity is in effect in accordance with the requirements of section 417(a),

(II) such spouse is ordered or required in such judgment, order, decree, or settlement to pay an amount to the plan in connection with a violation of part 4 of such subtitle, or

(III) in such judgment, order, decree, or settlement, such spouse retains the right to receive the survivor annuity under a qualified joint and survivor annuity provided pursuant to section 401(a)(11)(A)(i) and under a qualified preretirement survivor annuity provided pursuant to section 401(a)(11)(A)(ii), determined in accordance with subparagraph (D).

A plan shall not be treated as failing to meet the requirements of this subsection, subsection (k), section 403(b), or section 409(d) solely by reason of an offset described in this subparagraph.

(D) SURVIVOR ANNUITY.—

(i) IN GENERAL.—The survivor annuity described in subparagraph (C)(iii)(III) shall be determined as if—

(I) the participant terminated employment on the date of the offset,

(II) there was no offset,

(III) the plan permitted commencement of benefits only on or after normal retirement age,

(IV) the plan provided only the minimum-required qualified joint and survivor annuity, and

(V) the amount of the qualified preretirement survivor annuity under the plan is equal to the amount of the survivor annuity payable under the minimum-required qualified joint and survivor annuity.

(ii) DEFINITION.—For purposes of this subparagraph, the term "minimum-required qualified joint and survivor annuity" means the qualified joint and survivor annuity which is the actuarial equivalent of the participant's accrued benefit (within the meaning of section 411(a)(7)) and under which the survivor annuity is 50 percent of the amount of the annuity which is payable during the joint lives of the participant and the spouse.

(14) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that, unless the participant otherwise elects, the payment of benefits under the plan to the participant will begin not later than the 60th day after the latest of the close of the plan year in which—

(A) the date on which the participant attains the earlier of age 65 or the normal retirement age specified under the plan,

(B) occurs the 10th anniversary of the year in which the participant commenced participation in the plan, or

(C) the participant terminates his service with the employer.

In the case of a plan which provides for the payment of an early retirement benefit, a trust forming a part of such plan shall not constitute a qualified trust under this section unless a participant who satisfied the service requirements for such early retirement benefit, but separated from the service (with any nonforfeitable right to an accrued benefit) before satisfying the age requirement for such

early retirement benefit, is entitled upon satisfaction of such age requirement to receive a benefit not less than the benefit to which he would be entitled at the normal retirement age, actuarially, reduced under regulations prescribed by the Secretary.

(15) a [2] trust shall not constitute a qualified trust under this section unless under the plan of which such trust is a part—

(A) in the case of a participant or beneficiary who is receiving benefits under such plan, or

(B) in the case of a participant who is separated from the service and who has nonforfeitable rights to benefits,

such benefits are not decreased by reason of any increase in the benefit levels payable under title II of the Social Security Act or any increase in the wage base under such title II, if such increase takes place after September 2, 1974, or (if later) the earlier of the date of first receipt of such benefits or the date of such separation, as the case may be.

(16) A trust shall not constitute a qualified trust under this section if the plan of which such trust is a part provides for benefits or contributions which exceed the limitations of section 415.

(17) COMPENSATION LIMIT.—

(A) IN GENERAL.—A trust shall not constitute a qualified trust under this section unless, under the plan of which such trust is a part, the annual compensation of each employee taken into account under the plan for any year does not exceed $200,000.

(B) COST-OF-LIVING ADJUSTMENT.—The Secretary shall adjust annually the $200,000 amount in subparagraph (A) for increases in the cost-of-living at the same time and in the same manner as adjustments under section 415(d); except that the base period shall be the calendar quarter beginning July 1, 2001, and any increase which is not a multiple of $5,000 shall be rounded to the next lowest multiple of $5,000.

[(18) Repealed. Pub. L. 97–248, title II, §237(b), Sept. 3, 1982, 96 Stat. 511.]

(19) A trust shall not constitute a qualified trust under this section if under the plan of which such trust is a part any part of a participant's accrued benefit derived from employer contributions (whether or not otherwise nonforfeitable), is forfeitable solely because of withdrawal by such participant of any amount attributable to the benefit derived from contributions made by such participant. The preceding sentence shall not apply to the accrued benefit of any participant unless, at the time of such withdrawal, such participant has a nonforfeitable right to at least 50 percent of such accrued benefit (as determined under section 411). The first sentence of this paragraph shall not apply to the extent that an accrued benefit is permitted to be forfeited in accordance with section 411(a)(3)(D)(iii) (relating to proportional forfeitures of benefits accrued before September 2, 1974, in the event of withdrawal of certain mandatory contributions).

(20) A trust forming part of a pension plan shall not be treated as failing to constitute a qualified trust under this section merely because the pension plan of which such trust is a part makes 1 or more distributions within 1 taxable year to a distributee on account of a termination of the plan of which the trust is a part, or in the case of a profit-sharing or stock bonus plan, a complete discontinuance of contributions under such plan. This paragraph shall not apply to a defined benefit plan unless the employer maintaining such plan files a notice with the Pension Benefit Guaranty Corporation (at the time and in the manner prescribed by the Pension Benefit Guaranty Corporation) notifying the Corporation of such payment or distribution and the Corporation has approved such payment or distribution or, within 90 days after the date on which such notice was filed, has failed to disapprove such payment or distribution. For purposes of this paragraph, rules similar to the rules of section 402(a)(6)(B) (as in effect before its repeal by section 521 of the Unemployment Compensation Amendments of 1992) shall apply.

[(21) Repealed. Pub. L. 99–514, title XI, §1171(b)(5), Oct. 22, 1986, 100 Stat. 2513.]

(22) If a defined contribution plan (other than a profit-sharing plan)—

(A) is established by an employer whose stock is not readily tradable on an established market, and

(B) after acquiring securities of the employer, more than 10 percent of the total assets of the

plan are securities of the employer,

any trust forming part of such plan shall not constitute a qualified trust under this section unless the plan meets the requirements of subsection (e) of section 409. The requirements of subsection (e) of section 409 shall not apply to any employees of an employer who are participants in any defined contribution plan established and maintained by such employer if the stock of such employer is not readily tradable on an established market and the trade or business of such employer consists of publishing on a regular basis a newspaper for general circulation. For purposes of the preceding sentence, subsections (b), (c), (m), and (o) of section 414 shall not apply except for determining whether stock of the employer is not readily tradable on an established market.

(23) A stock bonus plan shall not be treated as meeting the requirements of this section unless such plan meets the requirements of subsections (h) and (o) of section 409, except that in applying section 409(h) for purposes of this paragraph, the term "employer securities" shall include any securities of the employer held by the plan.

(24) Any group trust which otherwise meets the requirements of this section shall not be treated as not meeting such requirements on account of the participation or inclusion in such trust of the moneys of any plan or governmental unit described in section 818(a)(6).

(25) REQUIREMENT THAT ACTUARIAL ASSUMPTIONS BE SPECIFIED.—A defined benefit plan shall not be treated as providing definitely determinable benefits unless, whenever the amount of any benefit is to be determined on the basis of actuarial assumptions, such assumptions are specified in the plan in a way which precludes employer discretion.

(26) ADDITIONAL PARTICIPATION REQUIREMENTS.—

(A) IN GENERAL.—In the case of a trust which is a part of a defined benefit plan, such trust shall not constitute a qualified trust under this subsection unless on each day of the plan year such trust benefits at least the lesser of—

(i) 50 employees of the employer, or

(ii) the greater of—

(I) 40 percent of all employees of the employer, or

(II) 2 employees (or if there is only 1 employee, such employee).

(B) TREATMENT OF EXCLUDABLE EMPLOYEES.—

(i) IN GENERAL.—A plan may exclude from consideration under this paragraph employees described in paragraphs (3) and (4)(A) of section 410(b).

(ii) SEPARATE APPLICATION FOR CERTAIN EXCLUDABLE EMPLOYEES.—If employees described in section 410(b)(4)(B) are covered under a plan which meets the requirements of subparagraph (A) separately with respect to such employees, such employees may be excluded from consideration in determining whether any plan of the employer meets such requirements if—

(I) the benefits for such employees are provided under the same plan as benefits for other employees,

(II) the benefits provided to such employees are not greater than comparable benefits provided to other employees under the plan, and

(III) no highly compensated employee (within the meaning of section 414(q)) is included in the group of such employees for more than 1 year.

(C) SPECIAL RULE FOR COLLECTIVE BARGAINING UNITS.—Except to the extent provided in regulations, a plan covering only employees described in section 410(b)(3)(A) may exclude from consideration any employees who are not included in the unit or units in which the covered employees are included.

(D) PARAGRAPH NOT TO APPLY TO MULTIEMPLOYER PLANS.—Except to the extent provided in regulations, this paragraph shall not apply to employees in a multiemployer plan (within the meaning of section 414(f)) who are covered by collective bargaining

agreements.

(E) SPECIAL RULE FOR CERTAIN DISPOSITIONS OR ACQUISITIONS.—Rules similar to the rules of section 410(b)(6)(C) shall apply for purposes of this paragraph.

(F) SEPARATE LINES OF BUSINESS.—At the election of the employer and with the consent of the Secretary, this paragraph may be applied separately with respect to each separate line of business of the employer. For purposes of this paragraph, the term "separate line of business" has the meaning given such term by section 414(r) (without regard to paragraph (2)(A) or (7) thereof).

(G) EXCEPTION FOR GOVERNMENTAL PLANS.—This paragraph shall not apply to a governmental plan (within the meaning of section 414(d)).

(H) REGULATIONS.—The Secretary may by regulation provide that any separate benefit structure, any separate trust, or any other separate arrangement is to be treated as a separate plan for purposes of applying this paragraph.

(27) DETERMINATIONS AS TO PROFIT-SHARING PLANS.—

(A) CONTRIBUTIONS NEED NOT BE BASED ON PROFITS.—The determination of whether the plan under which any contributions are made is a profit-sharing plan shall be made without regard to current or accumulated profits of the employer and without regard to whether the employer is a tax-exempt organization.

(B) PLAN MUST DESIGNATE TYPE.—In the case of a plan which is intended to be a money purchase pension plan or a profit-sharing plan, a trust forming part of such plan shall not constitute a qualified trust under this subsection unless the plan designates such intent at such time and in such manner as the Secretary may prescribe.

(28) ADDITIONAL REQUIREMENTS RELATING TO EMPLOYEE STOCK OWNERSHIP PLANS.—

(A) IN GENERAL.—In the case of a trust which is part of an employee stock ownership plan (within the meaning of section 4975(e)(7)) or a plan which meets the requirements of section 409(a), such trust shall not constitute a qualified trust under this section unless such plan meets the requirements of subparagraphs (B) and (C).

(B) DIVERSIFICATION OF INVESTMENTS.—

(i) IN GENERAL.—A plan meets the requirements of this subparagraph if each qualified participant in the plan may elect within 90 days after the close of each plan year in the qualified election period to direct the plan as to the investment of at least 25 percent of the participant's account in the plan (to the extent such portion exceeds the amount to which a prior election under this subparagraph applies). In the case of the election year in which the participant can make his last election, the preceding sentence shall be applied by substituting "50 percent" for "25 percent".

(ii) METHOD OF MEETING REQUIREMENTS.—A plan shall be treated as meeting the requirements of clause (i) if—

(I) the portion of the participant's account covered by the election under clause (i) is distributed within 90 days after the period during which the election may be made, or

(II) the plan offers at least 3 investment options (not inconsistent with regulations prescribed by the Secretary) to each participant making an election under clause (i) and within 90 days after the period during which the election may be made, the plan invests the portion of the participant's account covered by the election in accordance with such election.

(iii) QUALIFIED PARTICIPANT.—For purposes of this subparagraph, the term "qualified participant" means any employee who has completed at least 10 years of participation under the plan and has attained age 55.

(iv) QUALIFIED ELECTION PERIOD.—For purposes of this subparagraph, the term "qualified election period" means the 6-plan-year period beginning with the later of—

(I) the 1st plan year in which the individual first became a qualified participant, or
(II) the 1st plan year beginning after December 31, 1986.

For purposes of the preceding sentence, an employer may elect to treat an individual first becoming a qualified participant in the 1st plan year beginning in 1987 as having become a participant in the 1st plan year beginning in 1988.

(v) EXCEPTION.—This subparagraph shall not apply to an applicable defined contribution plan (as defined in paragraph (35)(E)).

(C) USE OF INDEPENDENT APPRAISER.—A plan meets the requirements of this subparagraph if all valuations of employer securities which are not readily tradable on an established securities market with respect to activities carried on by the plan are by an independent appraiser. For purposes of the preceding sentence, the term "independent appraiser" means any appraiser meeting requirements similar to the requirements of the regulations prescribed under section 170(a)(1).

(29) BENEFIT LIMITATIONS.—In the case of a defined benefit plan (other than a multiemployer plan or a CSEC plan) to which the requirements of section 412 apply, the trust of which the plan is a part shall not constitute a qualified trust under this subsection unless the plan meets the requirements of section 436.

(30) LIMITATIONS ON ELECTIVE DEFERRALS.—In the case of a trust which is part of a plan under which elective deferrals (within the meaning of section 402(g)(3)) may be made with respect to any individual during a calendar year, such trust shall not constitute a qualified trust under this subsection unless the plan provides that the amount of such deferrals under such plan and all other plans, contracts, or arrangements of an employer maintaining such plan may not exceed the amount of the limitation in effect under section 402(g)(1)(A) for taxable years beginning in such calendar year.

(31) DIRECT TRANSFER OF ELIGIBLE ROLLOVER DISTRIBUTIONS.—

(A) IN GENERAL.—A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that if the distributee of any eligible rollover distribution—

(i) elects to have such distribution paid directly to an eligible retirement plan, and

(ii) specifies the eligible retirement plan to which such distribution is to be paid (in such form and at such time as the plan administrator may prescribe),

such distribution shall be made in the form of a direct trustee-to-trustee transfer to the eligible retirement plan so specified.

(B) CERTAIN MANDATORY DISTRIBUTIONS.—

(i) IN GENERAL.—In case of a trust which is part of an eligible plan, such trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that if—

(I) a distribution described in clause (ii) in excess of $1,000 is made, and

(II) the distributee does not make an election under subparagraph (A) and does not elect to receive the distribution directly,

the plan administrator shall make such transfer to an individual retirement plan of a designated trustee or issuer and shall notify the distributee in writing (either separately or as part of the notice under section 402(f)) that the distribution may be transferred to another individual retirement plan.

(ii) ELIGIBLE PLAN.—For purposes of clause (i), the term "eligible plan" means a plan which provides that any nonforfeitable accrued benefit for which the present value (as determined under section 411(a)(11)) does not exceed $5,000 shall be immediately distributed to the participant.

(C) LIMITATION.—Subparagraphs (A) and (B) shall apply only to the extent that the eligible rollover distribution would be includible in gross income if not transferred as provided in subparagraph (A) (determined without regard to sections 402(c), 403(a)(4), 403(b)(8), and 457(e)(16)). The preceding sentence shall not apply to such distribution if the plan to which such distribution is transferred—

(i) is a qualified trust which is part of a plan which is a defined contribution plan and agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible, or

(ii) is an eligible retirement plan described in clause (i) or (ii) of section 402(c)(8)(B).

(D) ELIGIBLE ROLLOVER DISTRIBUTION.—For purposes of this paragraph, the term "eligible rollover distribution" has the meaning given such term by section 402(f)(2)(A).

(E) ELIGIBLE RETIREMENT PLAN.—For purposes of this paragraph, the term "eligible retirement plan" has the meaning given such term by section 402(c)(8)(B), except that a qualified trust shall be considered an eligible retirement plan only if it is a defined contribution plan, the terms of which permit the acceptance of rollover distributions.

(32) TREATMENT OF FAILURE TO MAKE CERTAIN PAYMENTS IF PLAN HAS LIQUIDITY SHORTFALL.—

(A) IN GENERAL.—A trust forming part of a pension plan to which section section [3] 430(j)(4) or 433(f)(5) applies shall not be treated as failing to constitute a qualified trust under this section merely because such plan ceases to make any payment described in subparagraph (B) during any period that such plan has a liquidity shortfall (as defined in section section [3] 430(j)(4) or 433(f)(5)).

(B) PAYMENTS DESCRIBED.—A payment is described in this subparagraph if such payment is—

(i) any payment, in excess of the monthly amount paid under a single life annuity (plus any social security supplements described in the last sentence of section 411(a)(9)), to a participant or beneficiary whose annuity starting date (as defined in section 417(f)(2)) occurs during the period referred to in subparagraph (A),

(ii) any payment for the purchase of an irrevocable commitment from an insurer to pay benefits, and

(iii) any other payment specified by the Secretary by regulations.

(C) PERIOD OF SHORTFALL.—For purposes of this paragraph, a plan has a liquidity shortfall during the period that there is an underpayment of an installment under section 430(j)(3) or 433(f) by reason of section 430(j)(4)(A) or 433(f)(5), respectively.

(33) PROHIBITION ON BENEFIT INCREASES WHILE SPONSOR IS IN BANKRUPTCY.—

(A) IN GENERAL.—A trust which is part of a plan to which this paragraph applies shall not constitute a qualified trust under this section if an amendment to such plan is adopted while the employer is a debtor in a case under title 11, United States Code, or similar Federal or State law, if such amendment increases liabilities of the plan by reason of—

(i) any increase in benefits,

(ii) any change in the accrual of benefits, or

(iii) any change in the rate at which benefits become nonforfeitable under the plan,

with respect to employees of the debtor, and such amendment is effective prior to the effective date of such employer's plan of reorganization.

(B) EXCEPTIONS.—This paragraph shall not apply to any plan amendment if—

(i) the plan, were such amendment to take effect, would have a funding target attainment percentage (as defined in section 430(d)(2)) of 100 percent or more,

(ii) the Secretary determines that such amendment is reasonable and provides for only de minimis increases in the liabilities of the plan with respect to employees of the debtor,

(iii) such amendment only repeals an amendment described in section 412(d)(2), or

(iv) such amendment is required as a condition of qualification under this part.

(C) PLANS TO WHICH THIS PARAGRAPH APPLIES.—This paragraph shall apply only to plans (other than multiemployer plans or CSEC plans) covered under section 4021 of the Employee Retirement Income Security Act of 1974.

(D) EMPLOYER.—For purposes of this paragraph, the term "employer" means the employer referred to in section 412(b)(1), without regard to section 412(b)(2).

(34) BENEFITS OF MISSING PARTICIPANTS ON PLAN TERMINATION.—In the case of a plan covered by title IV of the Employee Retirement Income Security Act of 1974, a trust forming part of such plan shall not be treated as failing to constitute a qualified trust under this section merely because the pension plan of which such trust is a part, upon its termination, transfers benefits of missing participants to the Pension Benefit Guaranty Corporation in accordance with section 4050 of such Act.

(35) DIVERSIFICATION REQUIREMENTS FOR CERTAIN DEFINED CONTRIBUTION PLANS.—

(A) IN GENERAL.—A trust which is part of an applicable defined contribution plan shall not be treated as a qualified trust unless the plan meets the diversification requirements of subparagraphs (B), (C), and (D).

(B) EMPLOYEE CONTRIBUTIONS AND ELECTIVE DEFERRALS INVESTED IN EMPLOYER SECURITIES.—In the case of the portion of an applicable individual's account attributable to employee contributions and elective deferrals which is invested in employer securities, a plan meets the requirements of this subparagraph if the applicable individual may elect to direct the plan to divest any such securities and to reinvest an equivalent amount in other investment options meeting the requirements of subparagraph (D).

(C) EMPLOYER CONTRIBUTIONS INVESTED IN EMPLOYER SECURITIES.—In the case of the portion of the account attributable to employer contributions other than elective deferrals which is invested in employer securities, a plan meets the requirements of this subparagraph if each applicable individual who—

(i) is a participant who has completed at least 3 years of service, or

(ii) is a beneficiary of a participant described in clause (i) or of a deceased participant,

may elect to direct the plan to divest any such securities and to reinvest an equivalent amount in other investment options meeting the requirements of subparagraph (D).

(D) INVESTMENT OPTIONS.—

(i) IN GENERAL.—The requirements of this subparagraph are met if the plan offers not less than 3 investment options, other than employer securities, to which an applicable individual may direct the proceeds from the divestment of employer securities pursuant to this paragraph, each of which is diversified and has materially different risk and return characteristics.

(ii) TREATMENT OF CERTAIN RESTRICTIONS AND CONDITIONS.—

(I) TIME FOR MAKING INVESTMENT CHOICES.—A plan shall not be treated as failing to meet the requirements of this subparagraph merely because the plan limits the time for divestment and reinvestment to periodic, reasonable opportunities occurring no less frequently than quarterly.

(II) CERTAIN RESTRICTIONS AND CONDITIONS NOT ALLOWED.—Except as provided in regulations, a plan shall not meet the requirements of this subparagraph if the plan imposes restrictions or conditions with respect to the investment of employer

securities which are not imposed on the investment of other assets of the plan. This subclause shall not apply to any restrictions or conditions imposed by reason of the application of securities laws.

(E) APPLICABLE DEFINED CONTRIBUTION PLAN.—For purposes of this paragraph—

(i) IN GENERAL.—The term "applicable defined contribution plan" means any defined contribution plan which holds any publicly traded employer securities.

(ii) EXCEPTION FOR CERTAIN ESOPS.—Such term does not include an employee stock ownership plan if—

(I) there are no contributions to such plan (or earnings thereunder) which are held within such plan and are subject to subsection (k) or (m), and

(II) such plan is a separate plan for purposes of section 414(l) with respect to any other defined benefit plan or defined contribution plan maintained by the same employer or employers.

(iii) EXCEPTION FOR ONE PARTICIPANT PLANS.—Such term does not include a one-participant retirement plan.

(iv) ONE-PARTICIPANT RETIREMENT PLAN.—For purposes of clause (iii), the term "one-participant retirement plan" means a retirement plan that on the first day of the plan year—

(I) covered only one individual (or the individual and the individual's spouse) and the individual (or the individual and the individual's spouse) owned 100 percent of the plan sponsor (whether or not incorporated), or

(II) covered only one or more partners (or partners and their spouses) in the plan sponsor.

(F) CERTAIN PLANS TREATED AS HOLDING PUBLICLY TRADED EMPLOYER SECURITIES.—

(i) IN GENERAL.—Except as provided in regulations or in clause (ii), a plan holding employer securities which are not publicly traded employer securities shall be treated as holding publicly traded employer securities if any employer corporation, or any member of a controlled group of corporations which includes such employer corporation, has issued a class of stock which is a publicly traded employer security.

(ii) EXCEPTION FOR CERTAIN CONTROLLED GROUPS WITH PUBLICLY TRADED SECURITIES.—Clause (i) shall not apply to a plan if—

(I) no employer corporation, or parent corporation of an employer corporation, has issued any publicly traded employer security, and

(II) no employer corporation, or parent corporation of an employer corporation, has issued any special class of stock which grants particular rights to, or bears particular risks for, the holder or issuer with respect to any corporation described in clause (i) which has issued any publicly traded employer security.

(iii) DEFINITIONS.—For purposes of this subparagraph, the term—

(I) "controlled group of corporations" has the meaning given such term by section 1563(a), except that "50 percent" shall be substituted for "80 percent" each place it appears,

(II) "employer corporation" means a corporation which is an employer maintaining the plan, and

(III) "parent corporation" has the meaning given such term by section 424(e).

(G) OTHER DEFINITIONS.—For purposes of this paragraph—

(i) APPLICABLE INDIVIDUAL.—The term "applicable individual" means—

(I) any participant in the plan, and

(II) any beneficiary who has an account under the plan with respect to which the

beneficiary is entitled to exercise the rights of a participant.

(ii) ELECTIVE DEFERRAL.—The term "elective deferral" means an employer contribution described in section 402(g)(3)(A).

(iii) EMPLOYER SECURITY.—The term "employer security" has the meaning given such term by section 407(d)(1) of the Employee Retirement Income Security Act of 1974.

(iv) EMPLOYEE STOCK OWNERSHIP PLAN.—The term "employee stock ownership plan" has the meaning given such term by section 4975(e)(7).

(v) PUBLICLY TRADED EMPLOYER SECURITIES.—The term "publicly traded employer securities" means employer securities which are readily tradable on an established securities market.

(vi) YEAR OF SERVICE.—The term "year of service" has the meaning given such term by section 411(a)(5).

(H) TRANSITION RULE FOR SECURITIES ATTRIBUTABLE TO EMPLOYER CONTRIBUTIONS.—

(i) RULES PHASED IN OVER 3 YEARS.—

(I) IN GENERAL.—In the case of the portion of an account to which subparagraph (C) applies and which consists of employer securities acquired in a plan year beginning before January 1, 2007, subparagraph (C) shall only apply to the applicable percentage of such securities. This subparagraph shall be applied separately with respect to each class of securities.

(II) EXCEPTION FOR CERTAIN PARTICIPANTS AGED 55 OR OVER.—Subclause (I) shall not apply to an applicable individual who is a participant who has attained age 55 and completed at least 3 years of service before the first plan year beginning after December 31, 2005.

(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage shall be determined as follows:

Plan year to which subparagraph (C) applies:	**The applicable percentage is:**
1st	33
2d	66
3d and following	100.

(36) DISTRIBUTIONS DURING WORKING RETIREMENT.—A trust forming part of a pension plan shall not be treated as failing to constitute a qualified trust under this section solely because the plan provides that a distribution may be made from such trust to an employee who has attained age 62 and who is not separated from employment at the time of such distribution.

(37) DEATH BENEFITS UNDER USERRA-QUALIFIED ACTIVE MILITARY SERVICE .—A trust shall not constitute a qualified trust unless the plan provides that, in the case of a participant who dies while performing qualified military service (as defined in section 414(u)), the survivors of the participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the plan had the participant resumed and then terminated employment on account of death.

Paragraphs (11), (12), (13), (14), (15), (19), and (20) shall apply only in the case of a plan to which section 411 (relating to minimum vesting standards) applies without regard to subsection (e)(2) of such section.

(b) Certain retroactive changes in plan

A stock bonus, pension, profit-sharing, or annuity plan shall be considered as satisfying the requirements of subsection (a) for the period beginning with the date on which it was put into effect, or for the period beginning with the earlier of the date on which there was adopted or put into effect any amendment which caused the plan to fail to satisfy such requirements, and ending with the time prescribed by law for filing the return of the employer for his taxable year in which such plan or amendment was adopted (including extensions thereof) or such later time as the Secretary may designate, if all provisions of the plan which are necessary to satisfy such requirements are in effect by the end of such period and have been made effective for all purposes for the whole of such period.

(c) Definitions and rules relating to self-employed individuals and owner-employees

For purposes of this section—

(1) Self-employed individual treated as employee

(A) In general

The term "employee" includes, for any taxable year, an individual who is a self-employed individual for such taxable year.

(B) Self-employed individual

The term "self-employed individual" means, with respect to any taxable year, an individual who has earned income (as defined in paragraph (2)) for such taxable year. To the extent provided in regulations prescribed by the Secretary, such term also includes, for any taxable year—

(i) an individual who would be a self-employed individual within the meaning of the preceding sentence but for the fact that the trade or business carried on by such individual did not have net profits for the taxable year, and

(ii) an individual who has been a self-employed individual within the meaning of the preceding sentence for any prior taxable year.

(2) Earned income

(A) In general

The term "earned income" means the net earnings from self-employment (as defined in section 1402(a)), but such net earnings shall be determined—

(i) only with respect to a trade or business in which personal services of the taxpayer are a material income-producing factor,

(ii) without regard to paragraphs (4) and (5) of section 1402(c),

(iii) in the case of any individual who is treated as an employee under sections [4] 3121(d)(3)(A), (C), or (D), without regard to paragraph (2) of section 1402(c),

(iv) without regard to items which are not included in gross income for purposes of this chapter, and the deductions properly allocable to or chargeable against such items,

(v) with regard to the deductions allowed by section 404 to the taxpayer, and

(vi) with regard to the deduction allowed to the taxpayer by section 164(f).

For purposes of this subparagraph, section 1402, as in effect for a taxable year ending on December 31, 1962, shall be treated as having been in effect for all taxable years ending before such date. For purposes of this part only (other than sections 419 and 419A), this subparagraph shall be applied as if the term "trade or business" for purposes of section 1402 included service described in section 1402(c)(6).

[(B) Repealed]

(C) Income from disposition of certain property

For purposes of this section, the term "earned income" includes gains (other than any gain which is treated under any provision of this chapter as gain from the sale or exchange of a capital asset) and net earnings derived from the sale or other disposition of, the transfer of any

interest in, or the licensing of the use of property (other than good will) by an individual whose personal efforts created such property.

(3) Owner-employee

The term "owner-employee" means an employee who—

(A) owns the entire interest in an unincorporated trade or business, or

(B) in the case of a partnership, is a partner who owns more than 10 percent of either the capital interest or the profits interest in such partnership.

To the extent provided in regulations prescribed by the Secretary, such term also means an individual who has been an owner-employee within the meaning of the preceding sentence.

(4) Employer

An individual who owns the entire interest in an unincorporated trade or business shall be treated as his own employer. A partnership shall be treated as the employer of each partner who is an employee within the meaning of paragraph (1).

(5) Contributions on behalf of owner-employees

The term "contribution on behalf of an owner-employee" includes, except as the context otherwise requires, a contribution under a plan—

(A) by the employer for an owner-employee, and

(B) by an owner-employee as an employee.

(6) Special rule for certain fishermen

For purposes of this subsection, the term "self-employed individual" includes an individual described in section 3121(b)(20) (relating to certain fishermen).

(d) Contribution limit on owner-employees

A trust forming part of a pension or profit-sharing plan which provides contributions or benefits for employees some or all of whom are owner-employees shall constitute a qualified trust under this section only if, in addition to meeting the requirements of subsection (a), the plan provides that contributions on behalf of any owner-employee may be made only with respect to the earned income of such owner-employee which is derived from the trade or business with respect to which such plan is established.

[(e) Repealed. Pub. L. 98–369, div. A, title VII, §713(d)(3), July 18, 1984, 98 Stat. 958]

(f) Certain custodial accounts and contracts

For purposes of this title, a custodial account, an annuity contract, or a contract (other than a life, health or accident, property, casualty, or liability insurance contract) issued by an insurance company qualified to do business in a State shall be treated as a qualified trust under this section if—

(1) the custodial account or contract would, except for the fact that it is not a trust, constitute a qualified trust under this section, and

(2) in the case of a custodial account the assets thereof are held by a bank (as defined in section 408(n)) or another person who demonstrates, to the satisfaction of the Secretary, that the manner in which he will hold the assets will be consistent with the requirements of this section.

For purposes of this title, in the case of a custodial account or contract treated as a qualified trust under this section by reason of this subsection, the person holding the assets of such account or holding such contract shall be treated as the trustee thereof.

(g) Annuity defined

For purposes of this section and sections 402, 403, and 404, the term "annuity" includes a face-amount certificate, as defined in section 2(a)(15) of the Investment Company Act of 1940 (15 U.S.C., sec. 80a–2); but does not include any contract or certificate issued after December 31, 1962, which is transferable, if any person other than the trustee of a trust described in section 401(a) which is exempt from tax under section 501(a) is the owner of such contract or certificate.

(h) Medical, etc., benefits for retired employees and their spouses and dependents

Under regulations prescribed by the Secretary, and subject to the provisions of section 420, a pension or annuity plan may provide for the payment of benefits for sickness, accident, hospitalization, and medical expenses of retired employees, their spouses and their dependents, but only if—

(1) such benefits are subordinate to the retirement benefits provided by the plan,

(2) a separate account is established and maintained for such benefits,

(3) the employer's contributions to such separate account are reasonable and ascertainable,

(4) it is impossible, at any time prior to the satisfaction of all liabilities under the plan to provide such benefits, for any part of the corpus or income of such separate account to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of such benefits,

(5) notwithstanding the provisions of subsection (a)(2), upon the satisfaction of all liabilities under the plan to provide such benefits, any amount remaining in such separate account must, under the terms of the plan, be returned to the employer, and

(6) in the case of an employee who is a key employee, a separate account is established and maintained for such benefits payable to such employee (and his spouse and dependents) and such benefits (to the extent attributable to plan years beginning after March 31, 1984, for which the employee is a key employee) are only payable to such employee (and his spouse and dependents) from such separate account.

For purposes of paragraph (6), the term "key employee" means any employee, who at any time during the plan year or any preceding plan year during which contributions were made on behalf of such employee, is or was a key employee as defined in section 416(i). In no event shall the requirements of paragraph (1) be treated as met if the aggregate actual contributions for medical benefits, when added to actual contributions for life insurance protection under the plan, exceed 25 percent of the total actual contributions to the plan (other than contributions to fund past service credits) after the date on which the account is established. For purposes of this subsection, the term "dependent" shall include any individual who is a child (as defined in section 152(f)(1)) of a retired employee who as of the end of the calendar year has not attained age 27.

(i) Certain union-negotiated pension plans

In the case of a trust forming part of a pension plan which has been determined by the Secretary to constitute a qualified trust under subsection (a) and to be exempt from taxation under section 501(a) for a period beginning after contributions were first made to or for such trust, if it is shown to the satisfaction of the Secretary that—

(1) such trust was created pursuant to a collective bargaining agreement between employee representatives and one or more employers,

(2) any disbursements of contributions, made to or for such trust before the time as of which the Secretary or his delegate determined that the trust constituted a qualified trust, substantially complied with the terms of the trust, and the plan of which the trust is a part, as subsequently qualified, and

(3) before the time as of which the Secretary determined that the trust constitutes a qualified trust, the contributions to or for such trust were not used in a manner which would jeopardize the interests of its beneficiaries,

then such trust shall be considered as having constituted a qualified trust under subsection (a) and as having been exempt from taxation under section 501(a) for the period beginning on the date on which contributions were first made to or for such trust and ending on the date such trust first constituted (without regard to this subsection) a qualified trust under subsection (a).

[(j) Repealed. Pub. L. 97–248, title II, §238(b), Sept. 3, 1982, 96 Stat. 512]

(k) Cash or deferred arrangements

(1) General rule

A profit-sharing or stock bonus plan, a pre-ERISA money purchase plan, or a rural cooperative plan shall not be considered as not satisfying the requirements of subsection (a) merely because the plan includes a qualified cash or deferred arrangement.

(2) Qualified cash or deferred arrangement

A qualified cash or deferred arrangement is any arrangement which is part of a profit-sharing or stock bonus plan, a pre-ERISA money purchase plan, or a rural cooperative plan which meets the requirements of subsection (a)—

(A) under which a covered employee may elect to have the employer make payments as contributions to a trust under the plan on behalf of the employee, or to the employee directly in cash;

(B) under which amounts held by the trust which are attributable to employer contributions made pursuant to the employee's election—

(i) may not be distributable to participants or other beneficiaries earlier than—

(I) severance from employment, death, or disability,

(II) an event described in paragraph (10),

(III) in the case of a profit-sharing or stock bonus plan, the attainment of age 59½,

(IV) in the case of contributions to a profit-sharing or stock bonus plan to which section 402(e)(3) applies, upon hardship of the employee, or

(V) in the case of a qualified reservist distribution (as defined in section 72(t)(2)(G)(iii)), the date on which a period referred to in subclause (III) of such section begins, and

(ii) will not be distributable merely by reason of the completion of a stated period of participation or the lapse of a fixed number of years;

(C) which provides that an employee's right to his accrued benefit derived from employer contributions made to the trust pursuant to his election is nonforfeitable, and

(D) which does not require, as a condition of participation in the arrangement, that an employee complete a period of service with the employer (or employers) maintaining the plan extending beyond the period permitted under section 410(a)(1) (determined without regard to subparagraph (B)(i) thereof).

(3) Application of participation and discrimination standards

(A) A cash or deferred arrangement shall not be treated as a qualified cash or deferred arrangement unless—

(i) those employees eligible to benefit under the arrangement satisfy the provisions of section 410(b)(1), and

(ii) the actual deferral percentage for eligible highly compensated employees (as defined in paragraph (5)) for the plan year bears a relationship to the actual deferral percentage for all other eligible employees for the preceding plan year which meets either of the following tests:

(I) The actual deferral percentage for the group of eligible highly compensated employees is not more than the actual deferral percentage of all other eligible employees multiplied by 1.25.

(II) The excess of the actual deferral percentage for the group of eligible highly compensated employees over that of all other eligible employees is not more than 2 percentage points, and the actual deferral percentage for the group of eligible highly compensated employees is not more than the actual deferral percentage of all other eligible employees multiplied by 2.

If 2 or more plans which include cash or deferred arrangements are considered as 1 plan for purposes of section 401(a)(4) or 410(b), the cash or deferred arrangements included in such plans shall be treated as 1 arrangement for purposes of this subparagraph.

If any highly compensated employee is a participant under 2 or more cash or deferred arrangements of the employer, for purposes of determining the deferral percentage with respect to such employee, all such cash or deferred arrangements shall be treated as 1 cash or deferred arrangement. An arrangement may apply clause (ii) by using the plan year rather than the preceding plan year if the employer so elects, except that if such an election is made, it may not be changed except as provided by the Secretary.

(B) For purposes of subparagraph (A), the actual deferral percentage for a specified group of employees for a plan year shall be the average of the ratios (calculated separately for each employee in such group) of—

(i) the amount of employer contributions actually paid over to the trust on behalf of each such employee for such plan year, to

(ii) the employee's compensation for such plan year.

(C) A cash or deferred arrangement shall be treated as meeting the requirements of subsection (a)(4) with respect to contributions if the requirements of subparagraph (A)(ii) are met.

(D) For purposes of subparagraph (B), the employer contributions on behalf of any employee—

(i) shall include any employer contributions made pursuant to the employee's election under paragraph (2), and

(ii) under such rules as the Secretary may prescribe, may, at the election of the employer, include—

(I) matching contributions (as defined in 401(m)(4)(A)) which meet the requirements of paragraph (2)(B) and (C), and

(II) qualified nonelective contributions (within the meaning of section 401(m)(4)(C)).

(E) For purposes of this paragraph, in the case of the first plan year of any plan (other than a successor plan), the amount taken into account as the actual deferral percentage of nonhighly compensated employees for the preceding plan year shall be—

(i) 3 percent, or

(ii) if the employer makes an election under this subclause, the actual deferral percentage of nonhighly compensated employees determined for such first plan year.

(F) SPECIAL RULE FOR EARLY PARTICIPATION.—If an employer elects to apply section 410(b)(4)(B) in determining whether a cash or deferred arrangement meets the requirements of subparagraph (A)(i), the employer may, in determining whether the arrangement meets the requirements of subparagraph (A)(ii), exclude from consideration all eligible employees (other than highly compensated employees) who have not met the minimum age and service requirements of section 410(a)(1)(A).

(G) GOVERNMENTAL PLAN.—A governmental plan (within the meaning of section 414(d)) shall be treated as meeting the requirements of this paragraph.

(4) Other requirements

(A) Benefits (other than matching contributions) must not be contingent on election to defer

A cash or deferred arrangement of any employer shall not be treated as a qualified cash or deferred arrangement if any other benefit is conditioned (directly or indirectly) on the employee electing to have the employer make or not make contributions under the arrangement in lieu of receiving cash. The preceding sentence shall not apply to any matching contribution (as defined in section 401(m)) made by reason of such an election.

(B) Eligibility of State and local governments and tax-exempt organizations

(i) Tax-exempts eligible

Except as provided in clause (ii), any organization exempt from tax under this subtitle may include a qualified cash or deferred arrangement as part of a plan maintained by it.

(ii) Governments ineligible

A cash or deferred arrangement shall not be treated as a qualified cash or deferred arrangement if it is part of a plan maintained by a State or local government or political subdivision thereof, or any agency or instrumentality thereof. This clause shall not apply to a rural cooperative plan or to a plan of an employer described in clause (iii).

(iii) Treatment of Indian tribal governments

An employer which is an Indian tribal government (as defined in section 7701(a)(40)), a subdivision of an Indian tribal government (determined in accordance with section 7871(d)), an agency or instrumentality of an Indian tribal government or subdivision thereof, or a corporation chartered under Federal, State, or tribal law which is owned in whole or in part by any of the foregoing may include a qualified cash or deferred arrangement as part of a plan maintained by the employer.

(C) Coordination with other plans

Except as provided in section 401(m), any employer contribution made pursuant to an employee's election under a qualified cash or deferred arrangement shall not be taken into account for purposes of determining whether any other plan meets the requirements of section 401(a) or 410(b). This subparagraph shall not apply for purposes of determining whether a plan meets the average benefit requirement of section 410(b)(2)(A)(ii).

(5) Highly compensated employee

For purposes of this subsection, the term "highly compensated employee" has the meaning given such term by section 414(q).

(6) Pre-ERISA money purchase plan

For purposes of this subsection, the term "pre-ERISA money purchase plan" means a pension plan—

(A) which is a defined contribution plan (as defined in section 414(i)),

(B) which was in existence on June 27, 1974, and which, on such date, included a salary reduction arrangement, and

(C) under which neither the employee contributions nor the employer contributions may exceed the levels provided for by the contribution formula in effect under the plan on such date.

(7) Rural cooperative plan

For purposes of this subsection—

(A) In general

The term "rural cooperative plan" means any pension plan—

(i) which is a defined contribution plan (as defined in section 414(i)), and

(ii) which is established and maintained by a rural cooperative.

(B) Rural cooperative defined

For purposes of subparagraph (A), the term "rural cooperative" means—

(i) any organization which—

(I) is engaged primarily in providing electric service on a mutual or cooperative basis, or

(II) is engaged primarily in providing electric service to the public in its area of service and which is exempt from tax under this subtitle or which is a State or local government (or an agency or instrumentality thereof), other than a municipality (or an agency or instrumentality thereof),

(ii) any organization described in paragraph (4) or (6) of section 501(c) and at least 80

percent of the members of which are organizations described in clause (i),

(iii) a cooperative telephone company described in section 501(c)(12),

(iv) any organization which—

(I) is a mutual irrigation or ditch company described in section 501(c)(12) (without regard to the 85 percent requirement thereof), or

(II) is a district organized under the laws of a State as a municipal corporation for the purpose of irrigation, water conservation, or drainage, and

(v) an organization which is a national association of organizations described in clause (i), (ii),,[5] (iii), or (iv).

(C) Special rule for certain distributions

A rural cooperative plan which includes a qualified cash or deferred arrangement shall not be treated as violating the requirements of section 401(a) or of paragraph (2) merely by reason of a hardship distribution or a distribution to a participant after attainment of age 59½. For purposes of this section, the term "hardship distribution" means a distribution described in paragraph (2)(B)(i)(IV) (without regard to the limitation of its application to profit-sharing or stock bonus plans).

(8) Arrangement not disqualified if excess contributions distributed

(A) In general

A cash or deferred arrangement shall not be treated as failing to meet the requirements of clause (ii) of paragraph (3)(A) for any plan year if, before the close of the following plan year—

(i) the amount of the excess contributions for such plan year (and any income allocable to such contributions through the end of such year) is distributed, or

(ii) to the extent provided in regulations, the employee elects to treat the amount of the excess contributions as an amount distributed to the employee and then contributed by the employee to the plan.

Any distribution of excess contributions (and income) may be made without regard to any other provision of law.

(B) Excess contributions

For purposes of subparagraph (A), the term "excess contributions" means, with respect to any plan year, the excess of—

(i) the aggregate amount of employer contributions actually paid over to the trust on behalf of highly compensated employees for such plan year, over

(ii) the maximum amount of such contributions permitted under the limitations of clause (ii) of paragraph (3)(A) (determined by reducing contributions made on behalf of highly compensated employees in order of the actual deferral percentages beginning with the highest of such percentages).

(C) Method of distributing excess contributions

Any distribution of the excess contributions for any plan year shall be made to highly compensated employees on the basis of the amount of contributions by, or on behalf of, each of such employees.

(D) Additional tax under section 72(t) not to apply

No tax shall be imposed under section 72(t) on any amount required to be distributed under this paragraph.

(E) Treatment of matching contributions forfeited by reason of excess deferral or contribution or permissible withdrawal

For purposes of paragraph (2)(C), a matching contribution (within the meaning of subsection (m)) shall not be treated as forfeitable merely because such contribution is forfeitable if the

contribution to which the matching contribution relates is treated as an excess contribution under subparagraph (B), an excess deferral under section 402(g)(2)(A), a permissible withdrawal under section 414(w), or an excess aggregate contribution under section 401(m)(6)(B).

(F) Cross reference

For excise tax on certain excess contributions, see section 4979.

(9) Compensation

For purposes of this subsection, the term "compensation" has the meaning given such term by section 414(s).

(10) Distributions upon termination of plan

(A) In general

An event described in this subparagraph is the termination of the plan without establishment or maintenance of another defined contribution plan (other than an employee stock ownership plan as defined in section 4975(e)(7)).

(B) Distributions must be lump sum distributions

(i) In general

A termination shall not be treated as described in subparagraph (A) with respect to any employee unless the employee receives a lump sum distribution by reason of the termination.

(ii) Lump-sum distribution

For purposes of this subparagraph, the term "lump-sum distribution" has the meaning given such term by section 402(e)(4)(D) (without regard to subclauses (I), (II), (III), and (IV) of clause (i) thereof). Such term includes a distribution of an annuity contract from—

(I) a trust which forms a part of a plan described in section 401(a) and which is exempt from tax under section 501(a), or

(II) an annuity plan described in section 403(a).

(11) Adoption of simple plan to meet nondiscrimination tests

(A) In general

A cash or deferred arrangement maintained by an eligible employer shall be treated as meeting the requirements of paragraph (3)(A)(ii) if such arrangement meets—

(i) the contribution requirements of subparagraph (B),

(ii) the exclusive plan requirements of subparagraph (C), and

(iii) the vesting requirements of section 408(p)(3).

(B) Contribution requirements

(i) In general

The requirements of this subparagraph are met if, under the arrangement—

(I) an employee may elect to have the employer make elective contributions for the year on behalf of the employee to a trust under the plan in an amount which is expressed as a percentage of compensation of the employee but which in no event exceeds the amount in effect under section 408(p)(2)(A)(ii),

(II) the employer is required to make a matching contribution to the trust for the year in an amount equal to so much of the amount the employee elects under subclause (I) as does not exceed 3 percent of compensation for the year, and

(III) no other contributions may be made other than contributions described in subclause (I) or (II).

(ii) Employer may elect 2-percent nonelective contribution

An employer shall be treated as meeting the requirements of clause (i)(II) for any year if, in lieu of the contributions described in such clause, the employer elects (pursuant to the

terms of the arrangement) to make nonelective contributions of 2 percent of compensation for each employee who is eligible to participate in the arrangement and who has at least $5,000 of compensation from the employer for the year. If an employer makes an election under this subparagraph for any year, the employer shall notify employees of such election within a reasonable period of time before the 60th day before the beginning of such year.

(iii) Administrative requirements

(I) In general

Rules similar to the rules of subparagraphs (B) and (C) of section 408(p)(5) shall apply for purposes of this subparagraph.

(II) Notice of election period

The requirements of this subparagraph shall not be treated as met with respect to any year unless the employer notifies each employee eligible to participate, within a reasonable period of time before the 60th day before the beginning of such year (and, for the first year the employee is so eligible, the 60th day before the first day such employee is so eligible), of the rules similar to the rules of section 408(p)(5)(C) which apply by reason of subclause (I).

(C) Exclusive plan requirement

The requirements of this subparagraph are met for any year to which this paragraph applies if no contributions were made, or benefits were accrued, for services during such year under any qualified plan of the employer on behalf of any employee eligible to participate in the cash or deferred arrangement, other than contributions described in subparagraph (B).

(D) Definitions and special rule

(i) Definitions

For purposes of this paragraph, any term used in this paragraph which is also used in section 408(p) shall have the meaning given such term by such section.

(ii) Coordination with top-heavy rules

A plan meeting the requirements of this paragraph for any year shall not be treated as a top-heavy plan under section 416 for such year if such plan allows only contributions required under this paragraph.

(12) Alternative methods of meeting nondiscrimination requirements

(A) In general

A cash or deferred arrangement shall be treated as meeting the requirements of paragraph (3)(A)(ii) if such arrangement—

(i) meets the contribution requirements of subparagraph (B) or (C), and

(ii) meets the notice requirements of subparagraph (D).

(B) Matching contributions

(i) In general

The requirements of this subparagraph are met if, under the arrangement, the employer makes matching contributions on behalf of each employee who is not a highly compensated employee in an amount equal to—

(I) 100 percent of the elective contributions of the employee to the extent such elective contributions do not exceed 3 percent of the employee's compensation, and

(II) 50 percent of the elective contributions of the employee to the extent that such elective contributions exceed 3 percent but do not exceed 5 percent of the employee's compensation.

(ii) Rate for highly compensated employees

The requirements of this subparagraph are not met if, under the arrangement, the rate of

matching contribution with respect to any elective contribution of a highly compensated employee at any rate of elective contribution is greater than that with respect to an employee who is not a highly compensated employee.

(iii) Alternative plan designs

If the rate of any matching contribution with respect to any rate of elective contribution is not equal to the percentage required under clause (i), an arrangement shall not be treated as failing to meet the requirements of clause (i) if—

(I) the rate of an employer's matching contribution does not increase as an employee's rate of elective contributions increase, and

(II) the aggregate amount of matching contributions at such rate of elective contribution is at least equal to the aggregate amount of matching contributions which would be made if matching contributions were made on the basis of the percentages described in clause (i).

(C) Nonelective contributions

The requirements of this subparagraph are met if, under the arrangement, the employer is required, without regard to whether the employee makes an elective contribution or employee contribution, to make a contribution to a defined contribution plan on behalf of each employee who is not a highly compensated employee and who is eligible to participate in the arrangement in an amount equal to at least 3 percent of the employee's compensation.

(D) Notice requirement

An arrangement meets the requirements of this paragraph if, under the arrangement, each employee eligible to participate is, within a reasonable period before any year, given written notice of the employee's rights and obligations under the arrangement which—

(i) is sufficiently accurate and comprehensive to apprise the employee of such rights and obligations, and

(ii) is written in a manner calculated to be understood by the average employee eligible to participate.

(E) Other requirements

(i) Withdrawal and vesting restrictions

An arrangement shall not be treated as meeting the requirements of subparagraph (B) or (C) of this paragraph unless the requirements of subparagraphs (B) and (C) of paragraph (2) are met with respect to all employer contributions (including matching contributions) taken into account in determining whether the requirements of subparagraphs (B) and (C) of this paragraph are met.

(ii) Social security and similar contributions not taken into account

An arrangement shall not be treated as meeting the requirements of subparagraph (B) or (C) unless such requirements are met without regard to subsection (l), and, for purposes of subsection (l), employer contributions under subparagraph (B) or (C) shall not be taken into account.

(F) Other plans

An arrangement shall be treated as meeting the requirements under subparagraph (A)(i) if any other plan maintained by the employer meets such requirements with respect to employees eligible under the arrangement.

(13) Alternative method for automatic contribution arrangements to meet nondiscrimination requirements

(A) In general

A qualified automatic contribution arrangement shall be treated as meeting the requirements of paragraph (3)(A)(ii).

(B) Qualified automatic contribution arrangement

For purposes of this paragraph, the term "qualified automatic contribution arrangement" means any cash or deferred arrangement which meets the requirements of subparagraphs (C) through (E).

(C) Automatic deferral

(i) In general

The requirements of this subparagraph are met if, under the arrangement, each employee eligible to participate in the arrangement is treated as having elected to have the employer make elective contributions in an amount equal to a qualified percentage of compensation.

(ii) Election out

The election treated as having been made under clause (i) shall cease to apply with respect to any employee if such employee makes an affirmative election—

(I) to not have such contributions made, or

(II) to make elective contributions at a level specified in such affirmative election.

(iii) Qualified percentage

For purposes of this subparagraph, the term "qualified percentage" means, with respect to any employee, any percentage determined under the arrangement if such percentage is applied uniformly, does not exceed 10 percent, and is at least—

(I) 3 percent during the period ending on the last day of the first plan year which begins after the date on which the first elective contribution described in clause (i) is made with respect to such employee,

(II) 4 percent during the first plan year following the plan year described in subclause (I),

(III) 5 percent during the second plan year following the plan year described in subclause (I), and

(IV) 6 percent during any subsequent plan year.

(iv) Automatic deferral for current employees not required

Clause (i) may be applied without taking into account any employee who—

(I) was eligible to participate in the arrangement (or a predecessor arrangement) immediately before the date on which such arrangement becomes a qualified automatic contribution arrangement (determined after application of this clause), and

(II) had an election in effect on such date either to participate in the arrangement or to not participate in the arrangement.

(D) Matching or nonelective contributions

(i) In general

The requirements of this subparagraph are met if, under the arrangement, the employer—

(I) makes matching contributions on behalf of each employee who is not a highly compensated employee in an amount equal to the sum of 100 percent of the elective contributions of the employee to the extent that such contributions do not exceed 1 percent of compensation plus 50 percent of so much of such contributions as exceed 1 percent but do not exceed 6 percent of compensation, or

(II) is required, without regard to whether the employee makes an elective contribution or employee contribution, to make a contribution to a defined contribution plan on behalf of each employee who is not a highly compensated employee and who is eligible to participate in the arrangement in an amount equal to at least 3 percent of the employee's compensation.

(ii) Application of rules for matching contributions

The rules of clauses (ii) and (iii) of paragraph (12)(B) shall apply for purposes of clause (i)(I).

(iii) Withdrawal and vesting restrictions

An arrangement shall not be treated as meeting the requirements of clause (i) unless, with respect to employer contributions (including matching contributions) taken into account in determining whether the requirements of clause (i) are met—

(I) any employee who has completed at least 2 years of service (within the meaning of section 411(a)) has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from such employer contributions, and

(II) the requirements of subparagraph (B) of paragraph (2) are met with respect to all such employer contributions.

(iv) Application of certain other rules

The rules of subparagraphs (E)(ii) and (F) of paragraph (12) shall apply for purposes of subclauses (I) and (II) of clause (i).

(E) Notice requirements

(i) In general

The requirements of this subparagraph are met if, within a reasonable period before each plan year, each employee eligible to participate in the arrangement for such year receives written notice of the employee's rights and obligations under the arrangement which—

(I) is sufficiently accurate and comprehensive to apprise the employee of such rights and obligations, and

(II) is written in a manner calculated to be understood by the average employee to whom the arrangement applies.

(ii) Timing and content requirements

A notice shall not be treated as meeting the requirements of clause (i) with respect to an employee unless—

(I) the notice explains the employee's right under the arrangement to elect not to have elective contributions made on the employee's behalf (or to elect to have such contributions made at a different percentage),

(II) in the case of an arrangement under which the employee may elect among 2 or more investment options, the notice explains how contributions made under the arrangement will be invested in the absence of any investment election by the employee, and

(III) the employee has a reasonable period of time after receipt of the notice described in subclauses (I) and (II) and before the first elective contribution is made to make either such election.

(l) Permitted disparity in plan contributions or benefits

(1) In general

The requirements of this subsection are met with respect to a plan if—

(A) in the case of a defined contribution plan, the requirements of paragraph (2) are met, and

(B) in the case of a defined benefit plan, the requirements of paragraph (3) are met.

(2) Defined contribution plan

(A) In general

A defined contribution plan meets the requirements of this paragraph if the excess contribution percentage does not exceed the base contribution percentage by more than the lesser of—

(i) the base contribution percentage, or

(ii) the greater of—

(I) 5.7 percentage points, or

(II) the percentage equal to the portion of the rate of tax under section 3111(a) (in effect as of the beginning of the year) which is attributable to old-age insurance.

(B) Contribution percentages

For purposes of this paragraph—

(i) Excess contribution percentage

The term "excess contribution percentage" means the percentage of compensation which is contributed by the employer under the plan with respect to that portion of each participant's compensation in excess of the integration level.

(ii) Base contribution percentage

The term "base contribution percentage" means the percentage of compensation contributed by the employer under the plan with respect to that portion of each participant's compensation not in excess of the integration level.

(3) Defined benefit plan

A defined benefit plan meets the requirements of this paragraph if—

(A) Excess plans

(i) In general

In the case of a plan other than an offset plan—

(I) the excess benefit percentage does not exceed the base benefit percentage by more than the maximum excess allowance,

(II) any optional form of benefit, preretirement benefit, actuarial factor, or other benefit or feature provided with respect to compensation in excess of the integration level is provided with respect to compensation not in excess of such level, and

(III) benefits are based on average annual compensation.

(ii) Benefit percentages

For purposes of this subparagraph, the excess and base benefit percentages shall be computed in the same manner as the excess and base contribution percentages under paragraph (2)(B), except that such determination shall be made on the basis of benefits attributable to employer contributions rather than contributions.

(B) Offset plans

In the case of an offset plan, the plan provides that—

(i) a participant's accrued benefit attributable to employer contributions (within the meaning of section 411(c)(1)) may not be reduced (by reason of the offset) by more than the maximum offset allowance, and

(ii) benefits are based on average annual compensation.

(4) Definitions relating to paragraph (3)

For purposes of paragraph (3)—

(A) Maximum excess allowance

The maximum excess allowance is equal to—

(i) in the case of benefits attributable to any year of service with the employer taken into account under the plan, ¾ of a percentage point, and

(ii) in the case of total benefits, ¾ of a percentage point, multiplied by the participant's years of service (not in excess of 35) with the employer taken into account under the plan.

In no event shall the maximum excess allowance exceed the base benefit percentage.

(B) Maximum offset allowance

The maximum offset allowance is equal to—

(i) in the case of benefits attributable to any year of service with the employer taken into account under the plan, ¾ percent of the participant's final average compensation, and

(ii) in the case of total benefits, ¾ percent of the participant's final average compensation,

multiplied by the participant's years of service (not in excess of 35) with the employer taken into account under the plan.

In no event shall the maximum offset allowance exceed 50 percent of the benefit which would have accrued without regard to the offset reduction.

(C) Reductions

(i) In general

The Secretary shall prescribe regulations requiring the reduction of the ¾ percentage factor under subparagraph (A) or (B)—

(I) in the case of a plan other than an offset plan which has an integration level in excess of covered compensation, or

(II) with respect to any participant in an offset plan who has final average compensation in excess of covered compensation.

(ii) Basis of reductions

Any reductions under clause (i) shall be based on the percentages of compensation replaced by the employer-derived portions of primary insurance amounts under the Social Security Act for participants with compensation in excess of covered compensation.

(D) Offset plan

The term "offset plan" means any plan with respect to which the benefit attributable to employer contributions for each participant is reduced by an amount specified in the plan.

(5) Other definitions and special rules

For purposes of this subsection—

(A) Integration level

(i) In general

The term "integration level" means the amount of compensation specified under the plan (by dollar amount or formula) at or below which the rate at which contributions or benefits are provided (expressed as a percentage) is less than such rate above such amount.

(ii) Limitation

The integration level for any year may not exceed the contribution and benefit base in effect under section 230 of the Social Security Act for such year.

(iii) Level to apply to all participants

A plan's integration level shall apply with respect to all participants in the plan.

(iv) Multiple integration levels

Under rules prescribed by the Secretary, a defined benefit plan may specify multiple integration levels.

(B) Compensation

The term "compensation" has the meaning given such term by section 414(s).

(C) Average annual compensation

The term "average annual compensation" means the participant's highest average annual compensation for—

(i) any period of at least 3 consecutive years, or

(ii) if shorter, the participant's full period of service.

(D) Final average compensation

(i) In general

The term "final average compensation" means the participant's average annual

compensation for—

(I) the 3-consecutive year period ending with the current year, or

(II) if shorter, the participant's full period of service.

(ii) Limitation

A participant's final average compensation shall be determined by not taking into account in any year compensation in excess of the contribution and benefit base in effect under section 230 of the Social Security Act for such year.

(E) Covered compensation

(i) In general

The term "covered compensation" means, with respect to an employee, the average of the contribution and benefit bases in effect under section 230 of the Social Security Act for each year in the 35-year period ending with the year in which the employee attains the social security retirement age.

(ii) Computation for any year

For purposes of clause (i), the determination for any year preceding the year in which the employee attains the social security retirement age shall be made by assuming that there is no increase in the bases described in clause (i) after the determination year and before the employee attains the social security retirement age.

(iii) Social security retirement age

For purposes of this subparagraph, the term "social security retirement age" has the meaning given such term by section 415(b)(8).

(F) Regulations

The Secretary shall prescribe such regulations as are necessary or appropriate to carry out the purposes of this subsection, including—

(i) in the case of a defined benefit plan which provides for unreduced benefits commencing before the social security retirement age (as defined in section 415(b)(8)), rules providing for the reduction of the maximum excess allowance and the maximum offset allowance, and

(ii) in the case of an employee covered by 2 or more plans of the employer which fail to meet the requirements of subsection (a)(4) (without regard to this subsection), rules preventing the multiple use of the disparity permitted under this subsection with respect to any employee.

For purposes of clause (i), unreduced benefits shall not include benefits for disability (within the meaning of section 223(d) of the Social Security Act).

(6) Special rule for plan maintained by railroads

In determining whether a plan which includes employees of a railroad employer who are entitled to benefits under the Railroad Retirement Act of 1974 meets the requirements of this subsection, rules similar to the rules set forth in this subsection shall apply. Such rules shall take into account the employer-derived portion of the employees' tier 2 railroad retirement benefits and any supplemental annuity under the Railroad Retirement Act of 1974.

(m) Nondiscrimination test for matching contributions and employee contributions

(1) In general

A defined contribution plan shall be treated as meeting the requirements of subsection (a)(4) with respect to the amount of any matching contribution or employee contribution for any plan year only if the contribution percentage requirement of paragraph (2) of this subsection is met for such plan year.

(2) Requirements

(A) Contribution percentage requirement

A plan meets the contribution percentage requirement of this paragraph for any plan year only if the contribution percentage for eligible highly compensated employees for such plan year does not exceed the greater of—

(i) 125 percent of such percentage for all other eligible employees for the preceding plan year, or

(ii) the lesser of 200 percent of such percentage for all other eligible employees for the preceding plan year, or such percentage for all other eligible employees for the preceding plan year plus 2 percentage points.

This subparagraph may be applied by using the plan year rather than the preceding plan year if the employer so elects, except that if such an election is made, it may not be changed except as provided by the Secretary.

(B) Multiple plans treated as a single plan

If two or more plans of an employer to which matching contributions, employee contributions, or elective deferrals are made are treated as one plan for purposes of section 410(b), such plans shall be treated as one plan for purposes of this subsection. If a highly compensated employee participates in two or more plans of an employer to which contributions to which this subsection applies are made, all such contributions shall be aggregated for purposes of this subsection.

(3) Contribution percentage

For purposes of paragraph (2), the contribution percentage for a specified group of employees for a plan year shall be the average of the ratios (calculated separately for each employee in such group) of—

(A) the sum of the matching contributions and employee contributions paid under the plan on behalf of each such employee for such plan year, to

(B) the employee's compensation (within the meaning of section 414(s)) for such plan year.

Under regulations, an employer may elect to take into account (in computing the contribution percentage) elective deferrals and qualified nonelective contributions under the plan or any other plan of the employer. If matching contributions are taken into account for purposes of subsection (k)(3)(A)(ii) for any plan year, such contributions shall not be taken into account under subparagraph (A) for such year. Rules similar to the rules of subsection (k)(3)(E) shall apply for purposes of this subsection.

(4) Definitions

For purposes of this subsection—

(A) Matching contribution

The term "matching contribution" means—

(i) any employer contribution made to a defined contribution plan on behalf of an employee on account of an employee contribution made by such employee, and

(ii) any employer contribution made to a defined contribution plan on behalf of an employee on account of an employee's elective deferral.

(B) Elective deferral

The term "elective deferral" means any employer contribution described in section 402(g)(3).

(C) Qualified nonelective contributions

The term "qualified nonelective contribution" means any employer contribution (other than a matching contribution) with respect to which—

(i) the employee may not elect to have the contribution paid to the employee in cash instead of being contributed to the plan, and

(ii) the requirements of subparagraphs (B) and (C) of subsection (k)(2) are met.

(5) Employees taken into consideration

(A) In general

Any employee who is eligible to make an employee contribution (or, if the employer takes elective contributions into account, elective contributions) or to receive a matching contribution under the plan being tested under paragraph (1) shall be considered an eligible employee for purposes of this subsection.

(B) Certain nonparticipants

If an employee contribution is required as a condition of participation in the plan, any employee who would be a participant in the plan if such employee made such a contribution shall be treated as an eligible employee on behalf of whom no employer contributions are made.

(C) Special rule for early participation

If an employer elects to apply section 410(b)(4)(B) in determining whether a plan meets the requirements of section 410(b), the employer may, in determining whether the plan meets the requirements of paragraph (2), exclude from consideration all eligible employees (other than highly compensated employees) who have not met the minimum age and service requirements of section 410(a)(1)(A).

(6) Plan not disqualified if excess aggregate contributions distributed before end of following plan year

(A) In general

A plan shall not be treated as failing to meet the requirements of paragraph (1) for any plan year if, before the close of the following plan year, the amount of the excess aggregate contributions for such plan year (and any income allocable to such contributions through the end of such year) is distributed (or, if forfeitable, is forfeited). Such contributions (and such income) may be distributed without regard to any other provision of law.

(B) Excess aggregate contributions

For purposes of subparagraph (A), the term "excess aggregate contributions" means, with respect to any plan year, the excess of—

(i) the aggregate amount of the matching contributions and employee contributions (and any qualified nonelective contribution or elective contribution taken into account in computing the contribution percentage) actually made on behalf of highly compensated employees for such plan year, over

(ii) the maximum amount of such contributions permitted under the limitations of paragraph (2)(A) (determined by reducing contributions made on behalf of highly compensated employees in order of their contribution percentages beginning with the highest of such percentages).

(C) Method of distributing excess aggregate contributions

Any distribution of the excess aggregate contributions for any plan year shall be made to highly compensated employees on the basis of the amount of contributions on behalf of, or by, each such employee. Forfeitures of excess aggregate contributions may not be allocated to participants whose contributions are reduced under this paragraph.

(D) Coordination with subsection (k) and 402(g)

The determination of the amount of excess aggregate contributions with respect to a plan shall be made after—

(i) first determining the excess deferrals (within the meaning of section 402(g)), and

(ii) then determining the excess contributions under subsection (k).

(7) Treatment of distributions

(A) Additional tax of section 72(t) not applicable

No tax shall be imposed under section 72(t) on any amount required to be distributed under paragraph (6).

(B) Exclusion of employee contributions

Any distribution attributable to employee contributions shall not be included in gross income except to the extent attributable to income on such contributions.

(8) Highly compensated employee

For purposes of this subsection, the term "highly compensated employee" has the meaning given to such term by section 414(q).

(9) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection and subsection (k), including regulations permitting appropriate aggregation of plans and contributions.

(10) Alternative method of satisfying tests

A defined contribution plan shall be treated as meeting the requirements of paragraph (2) with respect to matching contributions if the plan—

(A) meets the contribution requirements of subparagraph (B) of subsection (k)(11),

(B) meets the exclusive plan requirements of subsection (k)(11)(C), and

(C) meets the vesting requirements of section 408(p)(3).

(11) Additional alternative method of satisfying tests

(A) In general

A defined contribution plan shall be treated as meeting the requirements of paragraph (2) with respect to matching contributions if the plan—

(i) meets the contribution requirements of subparagraph (B) or (C) of subsection (k)(12),

(ii) meets the notice requirements of subsection (k)(12)(D), and

(iii) meets the requirements of subparagraph (B).

(B) Limitation on matching contributions

The requirements of this subparagraph are met if—

(i) matching contributions on behalf of any employee may not be made with respect to an employee's contributions or elective deferrals in excess of 6 percent of the employee's compensation,

(ii) the rate of an employer's matching contribution does not increase as the rate of an employee's contributions or elective deferrals increase, and

(iii) the matching contribution with respect to any highly compensated employee at any rate of an employee contribution or rate of elective deferral is not greater than that with respect to an employee who is not a highly compensated employee.

(12) Alternative method for automatic contribution arrangements

A defined contribution plan shall be treated as meeting the requirements of paragraph (2) with respect to matching contributions if the plan—

(A) is a qualified automatic contribution arrangement (as defined in subsection (k)(13)), and

(B) meets the requirements of paragraph (11)(B).

(13) Cross reference

For excise tax on certain excess contributions, see section 4979.

(n) Coordination with qualified domestic relations orders

The Secretary shall prescribe such rules or regulations as may be necessary to coordinate the requirements of subsection (a)(13)(B) and section 414(p) (and the regulations issued by the Secretary of Labor thereunder) with the other provisions of this chapter.

(o) Cross reference

For exemption from tax of a trust qualified under this section, see section 501(a).

(Aug. 16, 1954, ch. 736, 68A Stat. 134; Pub. L. 87–792, §2, Oct. 10, 1962, 76 Stat. 809; Pub. L. 87–863, §2(a), Oct. 23, 1962, 76 Stat. 1141; Pub. L. 88–272, title II, §219(a), Feb. 26, 1964, 78 Stat. 57; Pub. L. 89–97, title I, §106(d)(4), July 30, 1965, 79 Stat. 337; Pub. L. 89–809, title II, §§204(b)(1), (c), 205(a), Nov. 13, 1966, 80 Stat. 1577, 1578; Pub. L. 91–691, §1(a), Jan. 12, 1971, 84 Stat. 2074; Pub. L. 93–406, title II, §§1012(b), 1016(a)(2), 1021, 1022(a)–(d), (f), 1023, 2001(c)–(e)(4), (h)(1), 2004(a)(1), Sept. 2, 1974, 88 Stat. 913, 929, 935, 938–940, 943, 952–955, 957, 979; Pub. L. 94–267, §1(c)(1), (2), Apr. 15, 1976, 90 Stat. 367; Pub. L. 94–455, title VIII, §803(b)(2), title XV, §1505(b), title XIX, §§1901(a)(56), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1584, 1738, 1773, 1834; Pub. L. 95–600, title I, §§135(a), 141(f)(3), 143(a), 152(e), Nov. 6, 1978, 92 Stat. 2785, 2795, 2796, 2799; Pub. L. 96–222, title I, §101(a)(7)(L)(i)(V), (9), (14)(E)(iii), Apr. 1, 1980, 94 Stat. 199, 201, 205; Pub. L. 96–364, title II, §208(a), (e), title IV, §410(b), Sept. 26, 1980, 94 Stat. 1289, 1290, 1308; Pub. L. 96–605, title II, §§221(a), 225(b)(1), (2), Dec. 28, 1980, 94 Stat. 3528, 3529; Pub. L. 97–34, title III, §§312(b)(1), (c)(2)–(4), (e)(2), 314(a)(1), 335, 338(a), Aug. 13, 1981, 95 Stat. 283–286, 297, 298; Pub. L. 97–248, title II, §§237(a), (b), (e)(1), 238(b), (d)(1), (2), 240(b), 242(a), 249(a), 254(a), Sept. 3, 1982, 96 Stat. 511–513, 520, 521, 527, 533; Pub. L. 97–448, title I, §103(c)(10)(A), (d)(2), (g)(2)(A), title III, §306(a)(12), Jan. 12, 1983, 96 Stat. 2377–2379, 2405; Pub. L. 98–21, title I, §124(c)(4)(A), Apr. 20, 1983, 97 Stat. 91; Pub. L. 98–369, div. A, title II, §211(b)(5), title IV, §§474(r)(13), 491(e)(4), (5), title V, §§521(a), 524(d)(1), 527(a), (b), 528(b), title VII, §713(c)(2)(A), (d)(3), July 18, 1984, 98 Stat. 754, 842, 853, 865, 872, 875–877, 957, 958; Pub. L. 98–397, title II, §§203(a), 204(a), title III, §301(b), Aug. 23, 1984, 98 Stat. 1440, 1445, 1451; Pub. L. 99–514, title XI, §§1106(d)(1), 1111(a), (b), 1112(b), (d)(1), 1114(b)(7), 1116(a)–(e), 1117(a), 1119(a), 1121(b), 1136(a), 1143(a), 1145(a), 1171(b)(5), 1174(c)(2)(A), 1175(a)(1), 1176(a), title XVIII, §§1848(b), 1852(a)(4)(A), (6), (b)(8), (g), (h)(1), 1879(g)(1), (2), 1898(b)(2)(A), (3)(A), (7)(A), (13)(A), (14)(A), (c)(3), 1899A(10), Oct. 22, 1986, 100 Stat. 2435, 2439, 2444, 2445, 2451, 2454–2456, 2459, 2463, 2465, 2485, 2490, 2513, 2518, 2519, 2857, 2865–2869, 2906, 2907, 2945, 2948, 2950, 2953, 2958; Pub. L. 100–203, title IX, §9341(a), Dec. 22, 1987, 101 Stat. 1330–369; Pub. L. 100–647, title I, §§1011(c)(7)(A), (d)(4), (e)(3), (g)(1)–(3), (h)(3), (k)(1)(A), (B), s2)–(7), (9), (l)(1)–(5)(A), (6), (7), 1011A(j), (l), 1011B(j)(1), (2), (6), (k)(1), (2), title VI, §§6053(a), 6055(a), 6071(a), (b), Nov. 10, 1988, 102 Stat. 3458–3460, 3463, 3464, 3468–3470, 3483, 3492, 3493, 3696, 3697, 3705; Pub. L. 101–140, title II, §203(a)(5), Nov. 8, 1989, 103 Stat. 830; Pub. L. 101–239, title VII, §§7311(a), 7811(g)(1), (h)(3), 7816(l), 7881(i)(1)(A), (4)(A), Dec. 19, 1989, 103 Stat. 2354, 2409, 2421, 2442; Pub. L. 101–508, title XII, §12011(b), Nov. 5, 1990, 104 Stat. 1388–571; Pub. L. 102–318, title V, §§521(b)(5)–(8), 522(a)(1), July 3, 1992, 106 Stat. 310, 313; Pub. L. 103–66, title XIII, §13212(a), Aug. 10, 1993, 107 Stat. 471; Pub. L. 103–465, title VII, §§732(a), 751(a)(9)(C), 766(b), 776(d), Dec. 8, 1994, 108 Stat. 5004, 5021, 5037, 5048; Pub. L. 104–188, title I, §§1401(b)(5), (6), 1404(a), 1422(a), (b), 1426(a), 1431(b)(2), (c)(1)(B), 1432(a), (b), 1433(a)–(e), 1441(a), 1443(a), (b), 1445(a), 1459(a), (b), 1704(a), (t)(67), Aug. 20, 1996, 110 Stat. 1789, 1791, 1800, 1801, 1803–1809, 1811, 1820, 1878, 1890; Pub. L. 105–34, title XV, §§1502(b), 1505(a)(1), (2), (b), 1525(a), 1530(c)(1), title XVI, §1601(d)(2)(A), (B), (D), (3), Aug. 5, 1997, 111 Stat. 1059, 1063, 1072, 1078, 1088, 1089; Pub. L. 106–554, §1(a)(7) [title III, §316(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–644; Pub. L. 107–16, title VI, §§611(c), (f)(3), (g)(1), 641(e)(3), 643(b), 646(a)(1), 657(a), 666(a), June 7, 2001, 115 Stat. 97, 99, 120, 122, 126, 135, 143; Pub. L. 107–147, title IV, §411(o)(2), (q)(1), Mar. 9, 2002, 116 Stat. 48, 51; Pub. L. 108–311, title IV, §407(b), Oct. 4, 2004, 118 Stat. 1190; Pub. L. 109–280, title I, §114(a), title VIII, §§827(b)(1), 861(a), (b), title IX, §§901(a)(1), (2)(A), 902(a), (b), (d)(2)(C), (D), (e)(3)(B), 905(b), Aug. 17, 2006, 120 Stat. 853, 1000, 1020, 1021, 1026, 1029, 1033, 1035, 1038, 1050; Pub. L. 110–245, title I, §104(a), June 17, 2008, 122 Stat. 1626; Pub. L. 110–458, title I, §§101(d)(2)(A)–(C), 109(a)–(b)(2), title II, §201(a), Dec. 23, 2008, 122 Stat. 5099, 5111, 5116; Pub. L. 111–152, title I, §1004(d)(5), Mar. 30, 2010, 124 Stat. 1036; Pub. L. 113–97, title II, §202(c)(3)(A), (4), (5), Apr. 7, 2014, 128 Stat. 1136.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table below.

REFERENCES IN TEXT

The Employee Retirement Income Security Act of 1974, referred to in subsec. (a)(12), (13)(C)(i)(II), (III), (iii)(II), (29)(B)(i), (33)(C), (34), (35)(G)(iii), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, as amended. Part 4 of subtitle B of title I of the Act is classified generally to part 4 (§1101 et seq.) of subtitle B of subchapter I of chapter 18 of Title 29, Labor. Title IV of the Act is classified generally to subchapter III (§1301 et seq.) of chapter 18 of Title 29. Sections 407, 412, 4021, and 4050 of the Act are classified to sections 1107, 1112, 1321, and 1350, respectively, of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

The Social Security Act, referred to in subsecs. (a)(15), (l)(4)(C)(ii), (5)(A)(ii), (D)(ii), (E)(i), (F), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§301 et seq.) of Title 42, The Public Health and Welfare. Title II of the Social Security Act is classified generally to subchapter II (§401 et seq.) of Title 42. Sections 223(d) and 230 of the Social Security Act are classified to sections 423(d) and 430, respectively, of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 521 of the Unemployment Compensation Amendments of 1992, referred to in subsec. (a)(20), is section 521 of Pub. L. 102–318, which amended section 402(a) to (f) of this title generally, and, as so amended, subsec. (a) of section 402 does not contain a par. (6)(B).

The Railroad Retirement Act of 1974, referred to in subsec. (l)(6), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, §101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§231 et seq.) of chapter 9 of Title 45, Railroads. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

AMENDMENTS

2014—Subsec. (a)(29). Pub. L. 113–97, §202(c)(3)(A), substituted "multiemployer plan or a CSEC plan" for "multiemployer plan".

Subsec. (a)(32)(A). Pub. L. 113–97, §202(c)(5)(A), substituted "430(j)(4) or 433(f)(5)" for "430(j)(4)" in two places.

Subsec. (a)(32)(C). Pub. L. 113–97, §202(c)(5)(B), substituted "430(j)(3) or 433(f) by reason of section 430(j)(4)(A) or 433(f)(5), respectively" for "430(j)(3) by reason of section 430(j)(4)(A) thereof".

Subsec. (a)(33)(C). Pub. L. 113–97, §202(c)(4), substituted "multiemployer plans or CSEC plans" for "multiemployer plans".

2010—Subsec. (h). Pub. L. 111–152 inserted at end "For purposes of this subsection, the term 'dependent' shall include any individual who is a child (as defined in section 152(f)(1)) of a retired employee who as of the end of the calendar year has not attained age 27."

2008—Subsec. (a)(9)(H). Pub. L. 110–458, §201(a), added subpar. (H).

Subsec. (a)(29). Pub. L. 110–458, §101(d)(2)(A), struck out "on plans in at-risk status" after "limitations" in heading.

Subsec. (a)(32)(C). Pub. L. 110–458, §101(d)(2)(B), substituted "section 430(j)(3)" for "section 430(j)" and "section 430(j)(4)(A)" for "paragraph (5)(A)".

Subsec. (a)(33)(B)(iii). Pub. L. 110–458, §101(d)(2)(C)(i), substituted "section 412(d)(2)" for "section 412(c)(2)".

Subsec. (a)(33)(D). Pub. L. 110–458, §101(d)(2)(C)(ii), substituted "section 412(b)(1), without regard to section 412(b)(2)" for "section 412(b)(2) (without regard to subparagraph (B) thereof)".

Subsec. (a)(35)(E)(iv). Pub. L. 110–458, §109(a), amended cl. (iv) generally. Prior to amendment, text read as follows: "For purposes of clause (iii), the term 'one-participant retirement plan' means a retirement plan that—

"(I) on the first day of the plan year covered only one individual (or the individual and the individual's spouse) and the individual owned 100 percent of the plan sponsor (whether or not incorporated), or covered only one or more partners (or partners and their spouses) in the plan sponsor,

"(II) meets the minimum coverage requirements of section 410(b) without being combined with any other plan of the business that covers the employees of the business,

"(III) does not provide benefits to anyone except the individual (and the individual's spouse) or the partners (and their spouses),

"(IV) does not cover a business that is a member of an affiliated service group, a controlled group of

corporations, or a group of businesses under common control, and

"(V) does not cover a business that uses the services of leased employees (within the meaning of section 414(n)).

For purposes of this clause, the term "partner" includes a 2-percent shareholder (as defined in section 1372(b)) of an S corporation."

Subsec. (a)(37). Pub. L. 110–245 added par. (37).

Subsec. (k)(8)(E). Pub. L. 110–458, §109(b)(2), substituted "permissible withdrawal" for "erroneous automatic contribution" in heading and "a permissible withdrawal" for "an erroneous automatic contribution" in text.

Subsec. (k)(13)(D)(i)(I). Pub. L. 110–458, §109(b)(1), substituted "such contributions as exceed 1 percent but do not" for "such compensation as exceeds 1 percent but does not".

2006—Subsec. (a)(5)(G). Pub. L. 109–280, §861(a)(1), (b)(1), substituted "Governmental" for "State and local governmental" in heading and "section 414(d))" for "section 414(d)) maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof)" in text.

Subsec. (a)(26)(G). Pub. L. 109–280, §861(a)(1), (b)(2), substituted "Exception for" for "Exception for state and local" in heading and "section 414(d))" for "section 414(d)) maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof)" in text.

Subsec. (a)(28)(B)(v). Pub. L. 109–280, §901(a)(2)(A), added cl. (v).

Subsec. (a)(29). Pub. L. 109–280, §114(a)(1), amended heading and text of par. (29) generally, substituting provisions relating to benefit limitations on plans in at-risk status for provisions relating to security required upon adoption of plan amendment resulting in significant underfunding.

Subsec. (a)(32)(A). Pub. L. 109–280, §114(a)(2)(A), substituted "section 430(j)(4)" for "412(m)(5)" in two places.

Subsec. (a)(32)(C). Pub. L. 109–280, §114(a)(2)(B), substituted "section 430(j)" for "section 412(m)".

Subsec. (a)(33)(B)(i). Pub. L. 109–280, §114(a)(3)(A), which directed amendment of cl. (i) by substituting "funding target attainment percentage (as defined in section 430(d)(2))" for "funded current liability percentage (within the meaning of section 412(l)(8))", was executed by making the substitution for "funded current liability percentage (as defined in section 412(l)(8))", to reflect the probable intent of Congress.

Subsec. (a)(33)(B)(iii). Pub. L. 109–280, §114(a)(3)(B), substituted "section 412(c)(2)" for "subsection 412(c)(8)".

Subsec. (a)(33)(D). Pub. L. 109–280, §114(a)(3)(C), substituted "section 412(b)(2) (without regard to subparagraph (B) thereof)" for "section 412(c)(11) (without regard to subparagraph (B) thereof)".

Subsec. (a)(35). Pub. L. 109–280, §901(a)(1), added par. (35).

Subsec. (a)(36). Pub. L. 109–280, §905(b), added par. (36).

Subsec. (k)(2)(B)(i)(V). Pub. L. 109–280, §827(b)(1), added subcl. (V).

Subsec. (k)(3)(G). Pub. L. 109–280, §861(a)(2), (b)(3), inserted heading and struck out "maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof)" after "414(d))" in text.

Subsec. (k)(8)(A)(i). Pub. L. 109–280, §902(e)(3)(B)(i), inserted "through the end of such year" after "such contributions".

Subsec. (k)(8)(E). Pub. L. 109–280, §902(d)(2)(C), (D), inserted "or erroneous automatic contribution" after "or contribution" in heading and inserted "an erroneous automatic contribution under section 414(w)," after "402(g)(2)(A)," in text.

Subsec. (k)(13). Pub. L. 109–280, §902(a), added par. (13).

Subsec. (m)(6)(A). Pub. L. 109–280, §902(e)(3)(B)(ii), inserted "through the end of such year" after "to such contributions".

Subsec. (m)(12), (13). Pub. L. 109–280, §902(b), added par. (12) and redesignated former par. (12) as (13).

2004—Subsec. (a)(26)(C) to (I). Pub. L. 108–311 redesignated subpars. (D) to (I) as (C) to (H), respectively, and struck out heading and text of former subpar. (C). Text read as follows: "In the case of contributions under section 401(k) or 401(m), employees who are eligible to contribute (or may elect to have contributions made on their behalf) shall be treated as benefiting under the plan."

2002—Subsec. (a)(30). Pub. L. 107–147, §411(o)(2), substituted "402(g)(1)(A)" for "402(g)(1)".

Subsec. (a)(31)(C)(i). Pub. L. 107–147, §411(q)(1), inserted "is a qualified trust which is part of a plan which is a defined contribution plan and" before "agrees".

2001—Subsec. (a)(17). Pub. L. 107–16, §611(c)(1), substituted "$200,000" for "$150,000" in two places.

Subsec. (a)(17)(B). Pub. L. 107–16, §611(c)(2), substituted "July 1, 2001" for "October 1, 1993" and substituted "$5,000" for "$10,000" in two places.

Subsec. (a)(31). Pub. L. 107–16, §657(a)(2)(A), substituted "Direct" for "Optional direct" in heading.

Subsec. (a)(31)(B). Pub. L. 107–16, §657(a)(1), added subpar. (B). Former subpar. (B) redesignated (C).

Pub. L. 107–16, §643(b), inserted at end "The preceding sentence shall not apply to such distribution if the plan to which such distribution is transferred—

"(i) agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible, or

"(ii) is an eligible retirement plan described in clause (i) or (ii) of section 402(c)(8)(B)."

Pub. L. 107–16, §641(e)(3), substituted ", 403(a)(4), 403(b)(8), and 457(e)(16)" for "and 403(a)(4)".

Subsec. (a)(31)(C). Pub. L. 107–16, §657(a)(2)(B), substituted "Subparagraphs (A) and (B)" for "Subparagraph (A)".

Pub. L. 107–16, §657(a)(1), redesignated subpar. (B) as (C). Former subpar. (C) redesignated (D).

Subsec. (a)(31)(D), (E). Pub. L. 107–16, §657(a)(1), redesignated subpars. (C) and (D) as (D) and (E), respectively.

Subsec. (c)(2)(A). Pub. L. 107–16, §611(g)(1), inserted at end "For purposes of this part only (other than sections 419 and 419A), this subparagraph shall be applied as if the term 'trade or business' for purposes of section 1402 included service described in section 1402(c)(6)."

Subsec. (k)(2)(B)(i)(I). Pub. L. 107–16, §646(a)(1)(A), substituted "severance from employment" for "separation from service".

Subsec. (k)(10). Pub. L. 107–16, §646(a)(1)(C)(iii), struck out "or disposition of assets or subsidiary" after "plan" in heading.

Subsec. (k)(10)(A). Pub. L. 107–16, §646(a)(1)(B), reenacted heading without change and amended text generally, substituting present provisions for provisions including termination of plan, disposition of assets, and disposition of subsidiary as events described in this paragraph.

Subsec. (k)(10)(B)(i). Pub. L. 107–16, §646(a)(1)(C)(i), substituted "A termination" for "An event" and "the termination" for "the event".

Subsec. (k)(10)(C). Pub. L. 107–16, §646(a)(1)(C)(ii), struck out heading and text of subpar. (C). Text read as follows: "An event shall not be treated as described in clause (ii) or (iii) of subparagraph (A) unless the transferor corporation continues to maintain the plan after the disposition."

Subsec. (k)(11)(B)(i)(I). Pub. L. 107–16, §611(f)(3)(A), substituted "the amount in effect under section 408(p)(2)(A)(ii)" for "$6,000".

Subsec. (k)(11)(E). Pub. L. 107–16, §611(f)(3)(B), struck out heading and text of subpar. (E). Text read as follows: "The Secretary shall adjust the $6,000 amount under subparagraph (B)(i)(I) at the same time and in the same manner as under section 408(p)(2)(E)."

Subsec. (m)(9). Pub. L. 107–16, §666(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection and subsection (k) including—

"(A) such regulations as may be necessary to prevent the multiple use of the alternative limitation with respect to any highly compensated employee, and

"(B) regulations permitting appropriate aggregation of plans and contributions.

For purposes of the preceding sentence, the term 'alternative limitation' means the limitation of section 401(k)(3)(A)(ii)(II) and the limitation of paragraph (2)(A)(ii) of this subsection."

2000—Subsec. (k)(10)(B)(ii). Pub. L. 106–554 inserted at end "Such term includes a distribution of an annuity contract from—

"(I) a trust which forms a part of a plan described in section 401(a) and which is exempt from tax under section 501(a), or

"(II) an annuity plan described in section 403(a)."

1997—Subsec. (a)(1). Pub. L. 105–34, §1530(c)(1), inserted "or by a charitable remainder trust pursuant to a qualified gratuitous transfer (as defined in section 664(g)(1))," after "stock bonus plans),".

Subsec. (a)(5)(G). Pub. L. 105–34, §1505(a)(1), added subpar. (G).

Subsec. (a)(13)(C), (D). Pub. L. 105–34, §1502(b), added subpars. (C) and (D).

Subsec. (a)(26)(H). Pub. L. 105–34, §1505(a)(2), amended heading and text of subpar. (H) generally. Prior to amendment, text read as follows:

"(i) IN GENERAL.—An employer may elect to have this paragraph applied separately with respect to any classification of qualified public safety employees for whom a separate plan is maintained.

"(ii) QUALIFIED PUBLIC SAFETY EMPLOYEE.—For purposes of this subparagraph, the term 'qualified public safety employee' means any employee of any police department or fire department organized and operated by a State or political subdivision if the employee provides police protection, firefighting services, or emergency medical services for any area within the jurisdiction of such State or political subdivision."

Subsec. (k)(3)(G). Pub. L. 105–34, §1505(b), added subpar. (G).

Subsec. (k)(7)(B)(iii) to (v). Pub. L. 105–34, §1525(a), struck out "and" at end of cl. (iii), added cl. (iv), redesignated former cl. (iv) as (v), and in cl. (v), substituted ", (iii), or (iv)" for "or (iii)".

Subsec. (k)(11)(B)(iii). Pub. L. 105–34, §1601(d)(2)(D), added cl. (iii).

Subsec. (k)(11)(D)(ii). Pub. L. 105–34, §1601(d)(2)(A), inserted "if such plan allows only contributions required under this paragraph" before period at end.

Subsec. (k)(11)(E). Pub. L. 105–34, §1601(d)(2)(B), added subpar. (E).

Subsec. (m)(11). Pub. L. 105–34, §1601(d)(3), substituted "Additional alternative" for "Alternative" in heading.

1996—Subsec. (a)(5)(D)(ii). Pub. L. 104–188, §1431(c)(1)(B), substituted "section 414(q)(4)" for "section 414(q)(7)" in introductory provisions.

Subsec. (a)(5)(F). Pub. L. 104–188, §1445(a), added subpar. (F).

Subsec. (a)(9)(C). Pub. L. 104–188, §1404(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "For purposes of this paragraph, the term 'required beginning date' means April 1 of the calendar year following the calendar year in which the employee attains age 70½. In the case of a governmental plan or church plan, the required beginning date shall be the later of the date determined under the preceding sentence or April 1 of the calendar year following the calendar year in which the employee retires. For purposes of this subparagraph, the term 'church plan' means a plan maintained by a church for church employees, and the term 'church' means any church (as defined in section 3121(w)(3)(A)) or qualified church-controlled organization (as defined in section 3121(w)(3)(B))."

Subsec. (a)(17)(A). Pub. L. 104–188, §1431(b)(2), struck out at end "In determining the compensation of an employee, the rules of section 414(q)(6) shall apply, except that in applying such rules, the term 'family' shall include only the spouse of the employee and any lineal descendants of the employee who have not attained age 19 before the close of the year."

Subsec. (a)(20). Pub. L. 104–188, §1704(t)(67), substituted "section 521" for "section 211" in last sentence.

Subsec. (a)(26)(A). Pub. L. 104–188, §1432(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "A trust shall not constitute a qualified trust under this subsection unless such trust is part of a plan which on each day of the plan year benefits the lesser of—

"(i) 50 employees of the employer, or

"(ii) 40 percent or more of all employees of the employer."

Subsec. (a)(26)(G). Pub. L. 104–188, §1432(b), substituted "paragraph (2)(A) or (7)" for "paragraph (7)".

Subsec. (a)(28)(B)(v). Pub. L. 104–188, §1401(b)(5), struck out cl. (v) which read as follows:

"(v) COORDINATION WITH DISTRIBUTION RULES.—Any distribution required by this subparagraph shall not be taken into account in determining whether a subsequent distribution is a lump sum distribution under section 402(d)(4)(A) or in determining whether section 402(c)(10) applies."

Subsec. (d). Pub. L. 104–188, §1441(a), amended subsec. (d) generally, substituting provisions relating to contribution limit on owner-employees for former provisions relating to additional requirements for qualification of trusts and plans benefiting owner-employees.

Subsec. (h). Pub. L. 104–188, §1704(a), provided that, except as otherwise expressly provided, whenever in title XII of Pub. L. 101–508 an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986. Section 12011(b) of title XII of Pub. L. 101–508 directed the amendment of this section without specifying that the amendment was to the Internal Revenue Code of 1986. See 1990 Amendment note below.

Subsec. (k)(3)(A). Pub. L. 104–188, §1433(c)(1), in introductory provisions of cl. (ii) substituted "the plan year" for "such year" and "for the preceding plan year" for "for such plan year" and inserted at end of closing provisions of subpar. (A) "An arrangement may apply clause (ii) by using the plan year rather than the preceding plan year if the employer so elects, except that if such an election is made, it may not be changed except as provided by the Secretary."

Subsec. (k)(3)(E). Pub. L. 104–188, §1433(d)(1), added subpar. (E).

Subsec. (k)(3)(F). Pub. L. 104–188, §1459(a), added subpar. (F).

Subsec. (k)(4)(B). Pub. L. 104–188, §1426(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows:

"(B) STATE AND LOCAL GOVERNMENTS AND TAX-EXEMPT ORGANIZATIONS NOT ELIGIBLE.—A cash or deferred arrangement shall not be treated as a qualified cash or deferred arrangement if it is part of a plan maintained by—

"(i) a State or local government or political subdivision thereof, or any agency or instrumentality thereof, or

"(ii) any organization exempt from tax under this subtitle.

This subparagraph shall not apply to a rural cooperative plan."

Subsec. (k)(7)(B)(i). Pub. L. 104–188, §1443(b), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: "any organization which—

"(I) is exempt from tax under this subtitle or which is a State or local government or political subdivision thereof (or agency or instrumentality thereof), and

"(II) is engaged primarily in providing electric service on a mutual or cooperative basis,".

Subsec. (k)(7)(C). Pub. L. 104–188, §1443(a), added subpar. (C).

Subsec. (k)(8)(C). Pub. L. 104–188, §1433(e)(1), substituted "on the basis of the amount of contributions by, or on behalf of, each of such employees" for "on the basis of the respective portions of the excess contributions attributable to each of such employees".

Subsec. (k)(10)(B)(ii). Pub. L. 104–188, §1401(b)(6), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows:

"(ii) LUMP SUM DISTRIBUTION.—For purposes of this subparagraph, the term 'lump sum distribution' has the meaning given such term by section 402(d)(4), without regard to clauses (i), (ii), (iii), and (iv) of subparagraph (A), subparagraph (B), or subparagraph (F) thereof."

Subsec. (k)(11). Pub. L. 104–188, §1422(a), added par. (11).

Subsec. (k)(12). Pub. L. 104–188, §1433(a), added par. (12).

Subsec. (m)(2)(A). Pub. L. 104–188, §1433(c)(2), inserted "for such plan year" after "highly compensated employees" in introductory provisions, inserted "for the preceding plan year" after "eligible employees" wherever appearing in cls. (i) and (ii), and inserted at end "This subparagraph may be applied by using the plan year rather than the preceding plan year if the employer so elects, except that if such an election is made, it may not be changed except as provided by the Secretary."

Subsec. (m)(3). Pub. L. 104–188, §1433(d)(2), inserted at end of closing provisions "Rules similar to the rules of subsection (k)(3)(E) shall apply for purposes of this subsection."

Subsec. (m)(5)(C). Pub. L. 104–188, §1459(b), added subpar. (C).

Subsec. (m)(6)(C). Pub. L. 104–188, §1433(e)(2), substituted "on the basis of the amount of contributions on behalf of, or by, each such employee" for "on the basis of the respective portions of such amounts attributable to each of such employees".

Subsec. (m)(10). Pub. L. 104–188, §1422(b), added par. (10). Former par. (10) redesignated (11).

Subsec. (m)(11). Pub. L. 104–188, §1433(b), added par. (11). Former par. (11) redesignated (12).

Pub. L. 104–188, §1422(b), redesignated par. (10) as (11).

Subsec. (m)(12). Pub. L. 104–188, §1433(b), redesignated par. (11) as (12).

1994—Subsec. (a)(17)(B). Pub. L. 103–465, §732(a), reenacted subpar. (B) heading without change and amended text generally. Prior to amendment, text read as follows:

"(i) IN GENERAL.—If, for any calendar year after 1994, the excess (if any) of—

"(I) $150,000, increased by the cost-of-living adjustment for the calendar year, over

"(II) the dollar amount in effect under subparagraph (A) for taxable years beginning in the calendar year,

is equal to or greater than $10,000, then the $150,000 amount under subparagraph (A) (as previously adjusted under this subparagraph) for any taxable year beginning in any subsequent calendar year shall be increased by the amount of such excess, rounded to the next lowest multiple of $10,000.

"(ii) COST-OF-LIVING ADJUSTMENT.—The cost-of-living adjustment for any calendar year shall be the adjustment made under section 415(d) for such calendar year, except that the base period for purposes of section 415(d)(1)(A) shall be the calendar quarter beginning October 1, 1993."

Subsec. (a)(32). Pub. L. 103–465, §751(a)(9)(C), which directed amendment of subsec. (a) by adding par. (32) at end, was executed by adding par. (32) after par. (31) to reflect the probable intent of Congress.

Subsec. (a)(33). Pub. L. 103–465, §766(b), which directed amendment of subsec. (a) by adding par. (33) at end, was executed by adding par. (33) after par. (32) to reflect the probable intent of Congress.

Subsec. (a)(34). Pub. L. 103–465, §776(d), added par. (34).

1993—Subsec. (a)(17). Pub. L. 103–66 inserted par. heading, designated existing provisions as subpar. (A), inserted subpar. heading, substituted "$150,000" for "$200,000" in first sentence, struck out after first sentence "The Secretary shall adjust the $200,000 amount at the same time and in the same manner as under section 415(d).", and added subpar. (B).

1992—Subsec. (a)(20). Pub. L. 102–318, §521(b)(5), substituted "1 or more distributions within 1 taxable year to a distributee on account of a termination of the plan of which the trust is a part, or in the case of a profit-sharing or stock bonus plan, a complete discontinuance of contributions under such plan" for "a qualified total distribution described in section 402(a)(5)(E)(i)(I)" and inserted at end "For purposes of this

paragraph, rules similar to the rules of section 402(a)(6)(B) (as in effect before its repeal by section 211 of the Unemployment Compensation Amendments of 1992) shall apply."

Subsec. (a)(28)(B)(v). Pub. L. 102–318, §521(b)(6), amended cl. (v) generally. Prior to amendment, cl. (v) read as follows: "Any distribution required by this subparagraph shall not be taken into account in determining whether—

"(I) a subsequent distribution is a lump-sum distribution under section 402(e)(4)(A), or

"(II) section 402(a)(5)(D)(iii) applies to a subsequent distribution."

Subsec. (a)(31). Pub. L. 102–318, §522(a)(1), added par. (31).

Subsec. (k)(2)(B)(i)(IV). Pub. L. 102–318, §521(b)(7), substituted "402(e)(3)" for "402(a)(8)".

Subsec. (k)(10)(B)(ii). Pub. L. 102–318, §521(b)(8), substituted "402(d)(4)" for "402(e)(4)" and "subparagraph (F)" for "subparagraph (H)".

1990—Subsec. (h). Pub. L. 101–508, which directed that "section 401(h) is amended by inserting ', and subject to the provisions of section 420' " without specifying that amendment was to the Internal Revenue Code of 1986, was executed by making the insertion in subsec. (h) of this section. See 1996 Amendment note above.

1989—Subsec. (a)(9)(C). Pub. L. 101–140 struck out "(as defined in section 89(i)(4))" after "governmental or church plan" and inserted at end "For purposes of this subparagraph, the term 'church plan' means a plan maintained by a church for church employees, and the term 'church' means any church (as defined in section 3121(w)(3)(A)) or qualified church-controlled organization (as defined in section 3121(w)(3)(B))."

Subsec. (a)(28)(B)(ii)(II). Pub. L. 101–239, §7811(h)(3), made technical correction to directory language of Pub. L. 100–647, §1011B(j)(1), see 1988 Amendment note below.

Subsec. (a)(29)(A)(i). Pub. L. 101–239, §7881(i)(4)(A), substituted "multiemployer plan) to which the requirements of section 412 apply" for "multiemployer plan)".

Subsec. (a)(29)(C)(i)(II). Pub. L. 101–239, §7881(i)(1)(A), substituted "plan amendment and any other plan amendments adopted after December 22, 1987, and before such plan amendment" for "plan amendment".

Subsec. (a)(30). Pub. L. 101–239, §7811(g)(1), moved par. (30) from a position after the undesignated closing par. to a position immediately after par. (29).

Subsec. (h). Pub. L. 101–239, §7311(a), inserted at end "In no event shall the requirements of paragraph (1) be treated as met if the aggregate actual contributions for medical benefits, when added to actual contributions for life insurance protection under the plan, exceed 25 percent of the total actual contributions to the plan (other than contributions to fund past service credits) after the date on which the account is established."

Subsec. (k)(4)(B). Pub. L. 101–239, §7816(l), amended Pub. L. 100–647, §6071(b)(2), see 1988 Amendment note below.

1988—Subsec. (a)(9)(C). Pub. L. 100–647, §6053(a), inserted at end "In the case of a governmental plan or church plan (as defined in section 89(i)(4)), the required beginning date shall be the later of the date determined under the preceding sentence or April 1 of the calendar year following the calendar year in which the employee retires."

Subsec. (a)(11)(E), (F). Pub. L. 100–647, §1011A(l), redesignated subpar. (E), relating to cross reference, as (F).

Subsec. (a)(17). Pub. L. 100–647, §1011(d)(4), inserted at end "In determining the compensation of an employee, the rules of section 414(q)(6) shall apply, except that in applying such rules, the term 'family' shall include only the spouse of the employee and any lineal descendants of the employee who have not attained age 19 before the close of the year."

Subsec. (a)(22). Pub. L. 100–647, §1011B(k)(1), (2), substituted "is not readily tradable on an established market" for "is not publicly traded" in subpar. (A) and in last sentence, and inserted at end "For purposes of the preceding sentence, subsections (b), (c), (m), and (o) of section 414 shall not apply except for determining whether stock of the employer is not readily tradable on an established market."

Subsec. (a)(26)(F), (G). Pub. L. 100–647, §1011(h)(3), added subpars. (F) and (G). Former subpar. (F) redesignated (H).

Subsec. (a)(26)(H). Pub. L. 100–647, §6055(a), added subpar. (H). Former subpar. (H) redesignated (I).

Pub. L. 100–647, §1011(h)(3), redesignated former subpar. (F) as (H).

Subsec. (a)(26)(I). Pub. L. 100–647, §6055(a), redesignated former subpar. (H) as (I).

Subsec. (a)(27). Pub. L. 100–647, §1011A(j), inserted par. heading, designated existing provisions as subpar. (A), inserted subpar. (A) heading, and added subpar. (B).

Subsec. (a)(28)(B)(ii)(II). Pub. L. 100–647, §1011B(j)(1), as amended by Pub. L. 101–239, §7811(h)(3), inserted "and within 90 days after the period during which the election may be made, the plan invests the portion of the participant's account covered by the election in accordance with such election" after "clause (i)".

Subsec. (a)(28)(B)(iv). Pub. L. 100–647, §1011B(d)(2), amended cl. (iv) generally. Prior to amendment, cl.

(iv) read as follows: "For purposes of this subparagraph, the term 'qualified election period' means the 5-plan-year period beginning with the plan year after the plan year in which the participant attains age 55 (or, if later, beginning with the plan year after the 1st plan year in which the individual 1st became a qualified participant)."

Subsec. (a)(28)(B)(v). Pub. L. 100–647, §1011B(j)(6), added cl. (v).

Subsec. (a)(30). Pub. L. 100–647, §1011(c)(7)(A), added par. (30) at end.

Subsec. (k)(1), (2). Pub. L. 100–647, §6071(a), struck out "electric" after "or a rural".

Subsec. (k)(2)(B). Pub. L. 100–647, §1011(k)(2)(A), inserted "amounts held by the trust which are attributable to employer contributions made pursuant to the employee's election" after "under which".

Subsec. (k)(2)(B)(i). Pub. L. 100–647, §1011(k)(2)(B), struck out "amounts held by the trust which are attributable to employer contributions made pursuant to the employee's election" before "may not be".

Pub. L. 100–647, §1011(k)(1)(A), added subcl. (II), redesignated former subcls. (V) and (VI) as (III) and (IV), respectively, and struck out former subcls. (II) to (IV) which read as follows:

"(II) termination of the plan without establishment of a successor plan,

"(III) the date of the sale by a corporation of substantially all of the assets (within the meaning of section 409(d)(2)) used by such corporation in a trade or business of such corporation with respect to an employee who continues employment with the corporation acquiring such assets,

"(IV) the date of the sale by a corporation of such corporation's interest in a subsidiary (within the meaning of section 409(d)(3)) with respect to an employee who continues employment with such subsidiary,".

Subsec. (k)(2)(B)(ii). Pub. L. 100–647, §1011(k)(2)(C), struck out "amounts" before "will not be".

Subsec. (k)(3)(A). Pub. L. 100–647, §1011(k)(3)(B), made technical correction to Pub. L. 99–514, §1116(b)(4). See 1986 Amendment note below.

Subsec. (k)(3)(A)(ii). Pub. L. 100–647, §1011(k)(3)(A), inserted "eligible" before "highly compensated employees" in introductory text, in subcl. (I), and in two places in subcl. (II).

Subsec. (k)(3)(C), (D). Pub. L. 100–647, §1011(k)(4), (5), redesignated subpar. (C), relating to employer contributions, as (D), and substituted "meet" for "meets" in cl. (ii)(I).

Subsec. (k)(4)(A). Pub. L. 100–647, §1011(k)(6), struck out "provided by such employer" after "any other benefit".

Subsec. (k)(4)(B). Pub. L. 100–647, §6071(b)(2), as amended by Pub. L. 101–239, §7816(l), substituted "rural cooperative plan" for "rural electric cooperative plan" in last sentence.

Pub. L. 100–647, §1011(k)(9), inserted at end "This subparagraph shall not apply to a rural electric cooperative plan."

Subsec. (k)(7). Pub. L. 100–647, §6071(b)(1), substituted "Rural cooperative plan" for "Rural electric cooperative plan" in heading and amended text generally. Prior to amendment, text read as follows: "For purposes of this subsection—

"(A) IN GENERAL.—The term 'rural cooperative plan' means any pension plan—

"(i) which is a defined contribution plan (as defined in section 414(i)), and

"(ii) which is established and maintained by a rural cooperative.

"(B) RURAL COOPERATIVE DEFINED.—For purposes of subparagraph (A), the term 'rural cooperative' means—

"(i) any organization which—

"(I) is exempt from tax under this subtitle or which is a State or local government or political subdivision thereof (or agency or instrumentality thereof), and

"(II) is engaged primarily in providing electric service on a mutual or cooperative basis,

"(ii) any organization described in paragraph (4) or (6) of section 501(c) and at least 80 percent of the members of which are organizations described in clause (i), and

"(iii) an organization which is a national association of organizations described in clause (i) or (ii)."

Pub. L. 100–647, §1011(e)(3), amended par. (7) generally. Prior to amendment, par. (7) read as follows: "For purposes of this subsection, the term 'rural electric cooperative plan' means any pension plan—

"(A) which is a defined contribution plan (as defined in section 414(i)), and

"(B) which is established and maintained by a rural electric cooperative (as defined in section 457(d)(9)(B)) or a national association of such rural electric cooperatives."

Subsec. (k)(8)(E), (F). Pub. L. 100–647, §1011(k)(7), added subpar. (E) and redesignated former subpar. (E) as (F).

Subsec. (k)(10). Pub. L. 100–647, §1011(k)(1)(B), added par. (10).

Subsec. (l)(2)(B)(i), (ii). Pub. L. 100–647, §1011(g)(1)(A), substituted "contributed by the employer under" for "contributed under".

Subsec. (l)(3)(A)(ii). Pub. L. 100–647, §1011(g)(1)(B), inserted "attributable to employer contributions" after "basis of benefits".

Subsec. (l)(5)(C). Pub. L. 100–647, §1011(g)(2), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: "The term 'average annual compensation' means the greater of—

"(i) the participant's final average compensation (determined without regard to subparagraph (D)(ii)), or

"(ii) the participant's highest average annual compensation for any other period of at least 3 consecutive years."

Subsec. (l)(5)(E). Pub. L. 100–647, §1011(g)(3), substituted "the social security retirement age" for "age 65" in cl. (i) and in two places in cl. (ii), and added cl. (iii).

Subsec. (m)(1). Pub. L. 100–647, §1011(l)(1), substituted "A defined contribution plan" for "A plan".

Subsec. (m)(2)(B). Pub. L. 100–647, §1011(l)(3), substituted "contributions to which this subsection applies are made" for "such contributions are made".

Subsec. (m)(3). Pub. L. 100–647, §1011(l)(2), inserted at end "If matching contributions are taken into account for purposes of subsection (k)(3)(A)(ii) for any plan year, such contributions shall not be taken into account under subparagraph (A) for such year."

Subsec. (m)(4)(A)(i), (ii). Pub. L. 100–647, §1011(l)(4), substituted "a defined contribution plan" for "the plan".

Subsec. (m)(4)(B). Pub. L. 100–647, §1011(l)(5)(A), substituted "section 402(g)(3)" for "section 402(g)(3)(A)".

Subsec. (m)(6)(C). Pub. L. 100–647, §1011(l)(6), substituted "excess aggregate contributions" for "excess contributions" in heading.

Subsec. (m)(7)(A). Pub. L. 100–647, §1011(l)(7), substituted "paragraph (6)" for "paragraph (8)".

1987—Subsec. (a)(29). Pub. L. 100–203 added par. (29).

1986—Subsec. (a)(4). Pub. L. 99–514, §1114(b)(7), amended par. (4) generally. Prior to amendment, par. (4) read as follows: "if the contributions or the benefits provided under the plan do not discriminate in favor of employees who are—

"(A) officers,

"(B) shareholders, or

"(C) highly compensated.

For purposes of this paragraph, there shall be excluded from consideration employees described in section 410(b)(3)(A) and (C)."

Subsec. (a)(5). Pub. L. 99–514, §1111(b), amended par. (5) generally. Prior to amendment, par. (5) related to conditions which taken alone would not require a classification to be considered discriminatory and means of determining the basic or regular rate of compensation of an employee and whether two or more plans of an employer satisfy requirements of par. (4) when considered as a single plan.

Subsec. (a)(8). Pub. L. 99–514, §1119(a), substituted "defined benefit plan" for "pension plan".

Subsec. (a)(9)(C). Pub. L. 99–514, §1121(b), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: "For purposes of this paragraph, the term 'required beginning date' means April 1 of the calendar year following the later of—

"(i) the calendar year in which the employee attains age 70½, or

"(ii) the calendar year in which the employee retires.

Clause (ii) shall not apply in the case of an employee who is a 5-percent owner (as defined in section 416(i)(1)(B)) at any time during the 5-plan-year period ending in the calendar year in which the employee attains age 70½. If the employee becomes a 5-percent owner during any subsequent plan year, the required beginning date shall be April 1 of the calendar year following the calendar year in which such subsequent plan year ends."

Pub. L. 99–514, §1852(a)(4)(A), substituted last 2 sentences for "Except as provided in section 409(d), clause (ii) shall not apply in the case of an employee who is a 5-percent owner (as defined in section 416) with respect to the plan year ending in the calendar year in which the employee attains 70½."

Subsec. (a)(9)(G). Pub. L. 99–514, §1852(a)(6), added subpar. (G).

Subsec. (a)(11)(A)(i). Pub. L. 99–514, §1898(b)(3)(A), substituted "who does not die before the annuity starting date" for "who retires under the plan".

Subsec. (a)(11)(B). Pub. L. 99–514, §1898(b)(2)(A)(ii), inserted at end "Clause (iii)(III) shall apply only with respect to the transferred assets (and income therefrom) if the plan separately accounts for such assets and any income therefrom."

Subsec. (a)(11)(B)(iii)(I). Pub. L. 99–514, §1898(b)(7)(A), inserted "(reduced by any security interest held by the plan by reason of a loan outstanding to such participant)".

Pub. L. 99–514, §1898(b)(13)(A), substituted "section 417(a)(2)" for "section 417(a)(2)(A)".

Subsec. (a)(11)(B)(iii)(III). Pub. L. 99–514, §1898(b)(2)(A)(i), inserted "(in a transfer after December 31, 1984)".

Subsec. (a)(11)(D), (E). Pub. L. 99–514, §1145(a), added subpar. (E) relating to exception for plans described in section 404(c) and redesignated former subpar. (D), relating to cross references, as (E).

Pub. L. 99–514, §1898(b)(14)(A), added subpar. (D) and redesignated former subpar. (D), relating to cross references, as (E).

Subsec. (a)(17). Pub. L. 99–514, §1106(d)(1), added par. (17).

Subsec. (a)(20). Pub. L. 99–514, §1852(b)(8), substituted "qualified total distribution described in section 402(a)(5)(E)(i)(I)" for "qualifying rollover distribution (determined as if section 402(a)(5)(D)(i) did not contain subclause (II) thereof) described in section 402(a)(5)(A)(i) or 403(a)(4)(A)(i)".

Subsec. (a)(21). Pub. L. 99–514, §1171(b)(5), struck out par. (21) which read as follows: "A trust forming part of a tax credit employee stock ownership plan shall not fail to be considered a permanent program merely because employer contributions under the plan are determined solely by reference to the amount of credit which would be allowable under section 41 if the employer made the transfer described in section 41(c)(1)(B)".

Subsec. (a)(22). Pub. L. 99–514, §1899A(10), substituted "If" for "if".

Pub. L. 99–514, §1176(a), inserted at end "The requirements of subsection (e) of section 409 shall not apply to any employees of an employer who are participants in any defined contribution plan established and maintained by such employer if the stock of such employer is not publicly traded and the trade or business of such employer consists of publishing on a regular basis a newspaper for general circulation."

Subsec. (a)(23). Pub. L. 99–514, §1174(c)(2)(A), amended par. (23) generally. Prior to amendment, par. (23) read as follows: "A stock bonus plan which otherwise meets the requirements of this section shall not be considered to fail to meet the requirements of this section because it provides a cash distribution option to participants if that option meets the requirements of section 409(h), except that in applying section 409(h) for purposes of this paragraph, the term 'employer securities' shall include any securities of the employer held by the plan."

Subsec. (a)(26). Pub. L. 99–514, §1112(b), added par. (26).

Subsec. (a)(27). Pub. L. 99–514, §1136(a), added par. (27).

Subsec. (a)(28). Pub. L. 99–514, §1175(a)(1), added par. (28).

Subsec. (c)(2)(A)(v). Pub. L. 99–514, §1848(b), substituted "section 404" for "sections 404 and 405(c)".

Subsec. (c)(6). Pub. L. 99–514, §1143(a), added par. (6).

Subsec. (h). Pub. L. 99–514, §1852(h)(1), substituted "key employee" for "5-percent owner" in two places in par. (6) and amended last sentence generally, substituting " 'key employee' means any employee, who" for " '5-percent owner' means any employee who," and "key employee as defined in section 416(i)" for "5-percent owner (as defined in section 416(i)(1)(B))".

Subsec. (k)(1), (2). Pub. L. 99–514, §1879(g)(1), substituted ", a pre-ERISA money purchase plan, or a rural electric cooperative plan" for "(or a pre-ERISA money purchase plan)".

Subsec. (k)(2)(B). Pub. L. 99–514, §1116(b)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "under which amounts held by the trust which are attributable to employer contributions made pursuant to the employee's election may not be distributable to participants or other beneficiaries earlier than upon retirement, death, disability, or separation from service (or in the case of a profit sharing or stock bonus plan, hardship or the attainment of age 59½) and will not be distributable merely by reason of the completion of a stated period of participation or the lapse of a fixed number of years; and".

Subsec. (k)(2)(C). Pub. L. 99–514, §1852(g)(3), substituted "is nonforfeitable" for "are nonforfeitable".

Subsec. (k)(2)(D). Pub. L. 99–514, §1116(b)(2), added subpar. (D).

Subsec. (k)(3). Pub. L. 99–514, §1116(d)(3), which directed that the last sentence of subpar. (B) be struck out was executed by striking out the last sentence of par. (3) as the probable intent of Congress because subpar. (B) is composed of only one sentence. Prior to being stricken, such last sentence read as follows: "For purposes of the preceding sentence, the compensation of any employee for a plan year shall be the amount of his compensation which is taken into account under the plan in calculating the contribution which may be made on his behalf for such plan year."

Subsec. (k)(3)(A). Pub. L. 99–514, §1116(b)(4), as amended by Pub. L. 100–647, §1011(k)(3)(B), substituted "any highly compensated employee" for "an employee" in concluding provisions.

Pub. L. 99–514, §1852(g)(2), substituted "If an employee is a participant under 2 or more cash or deferred arrangements of the employer, for purposes of determining the deferral percentage with respect to such employee, all such cash or deferred arrangements shall be treated as 1 cash or deferred arrangement" for "The deferral percentage taken into account under this subparagraph for any employee who is a participant under 2

or more cash or deferred arrangements of the employer shall be the sum of the deferral percentages for such employee under each of such arrangements".

Subsec. (k)(3)(A)(i). Pub. L. 99–514, §1112(d)(1), struck out "subparagraph (A) or (B) of" before "section 410(b)(1)".

Subsec. (k)(3)(A)(ii). Pub. L. 99–514, §1116(c)(2), substituted "paragraph (5)" for "paragraph (4)".

Pub. L. 99–514, §1116(a), substituted "1.25" for "1.5" in subcl. (I), and "2 percentage points" for "3 percentage points" and "2" for "2.5" in subcl. (II).

Subsec. (k)(3)(C). Pub. L. 99–514, §1852(g)(1), added subpar. (C) relating to treatment of cash or deferred arrangements.

Pub. L. 99–514, §1116(e), added subpar. (C) relating to employer contributions.

Subsec. (k)(4). Pub. L. 99–514, §1116(b)(3), added par. (4). Former par. (4) redesignated (5).

Subsec. (k)(5). Pub. L. 99–514, §1116(b)(3), (d)(1), redesignated former par. (4) as (5) and substituted "the term 'highly compensated employee' has the meaning given such term by section 414(q)" for "the term 'highly compensated employee' means any employee who is more highly compensated than two-thirds of all eligible employees, taking into account only compensation which is considered in applying paragraph (3)". Former par. (5) redesignated (6).

Subsec. (k)(6). Pub. L. 99–514, §1116(b)(3), redesignated former par. (5) as (6). Former par. (6) redesignated (7).

Pub. L. 99–514, §1879(g)(2), added par. (6).

Subsec. (k)(7). Pub. L. 99–514, §1116(b)(3), redesignated former par. (6) as (7).

Subsec. (k)(8). Pub. L. 99–514, §1116(c)(1), added par. (8).

Subsec. (k)(9). Pub. L. 99–514, §1116(d)(2), added par. (9).

Subsec. (l). Pub. L. 99–514, §1111(a), amended subsec. (l) generally, substituting provisions relating to permitted disparity in plan contributions or benefits for provisions relating to nondiscriminatory coordination of defined contribution plans with OASDI.

Subsec. (m). Pub. L. 99–514, §1117(a), added subsec. (m) and redesignated former subsec. (m) as (n).

Pub. L. 99–514, §1898(c)(3), added subsec. (m).

Subsec. (n). Pub. L. 99–514, §1117(a), redesignated former subsec. (m) as (n). Former subsec. (n) redesignated (o).

Pub. L. 99–514, §1898(c)(3), redesignated subsec. (o) as (n).

Subsec. (o). Pub. L. 99–514, §1117(a), redesignated former subsec. (n) as (o).

Pub. L. 99–514, §1898(c)(3), redesignated subsec. (o) as (n).

1984—Subsec. (a)(9). Pub. L. 98–369, §521(a)(1), amended par. (9) generally, redesignating existing provisions as subpar. (A) and in subpar. (A) as so redesignated struck out "In the case of a plan which provides contributions or benefits for employees some or all of whom are employees within the meaning of subsection (c)(1)" before "a trust forming part of such plan", substituted "the plan provides that the entire interest of each employee—" for ", under the plan, the entire interest of each employee—", redesignated subpars. (A) and (B) as cls. (i) and (ii) respectively, in cl. (i) as so redesignated substituted provisions stating that a qualified plan provides that the entire interest will be distributed to the employee not later than the beginning date for former provisions which provided alternative dates for providing interest, in cl. (ii) as so redesignated substituted alternate distribution dates to be set in accordance with regulations for former provisions stating that a qualified plan shall be distributed not later than the taxable year in which the taxpayer attains age 70½, and struck out the par. following cl. (ii) which provided "A trust shall not be disqualified under this paragraph by reason of distributions under a designation, prior to the date of the enactment of this paragraph, by any employee under the plan of which such trust is a part, of a method of distribution which does not meet the terms of the preceding sentence.", and added subpars. (B) to (F).

Pub. L. 98–369, §521(a)(2), repealed amendment made by Pub. L. 97–248, §242(a). See 1982 Amendment note below.

Subsec. (a)(10)(B)(iii). Pub. L. 98–369, §524(d)(1), added cl. (iii).

Subsec. (a)(11). Pub. L. 98–397, §203(a), amended par. (11) generally, inserting provisions relating to preretirement survivor annuities, and substituting present four subpars. for former eight subpars.

Subsec. (a)(13). Pub. L. 98–397, §204(a), designated existing provisions as subpar. (A), corrected the margin of subpar. (A), and added subpar. (B).

Subsec. (a)(21). Pub. L. 98–369, §474(r)(13), substituted provisions relating to the amount of the credit which would be allowable under section 41 if the employer made the transfer described in section 41(c)(1)(B) for former provisions which had related to the amount of credit which would be allowable under section 46(a) if the employer made the transfer described in section 48(n)(1) or under section 44G if the employer made the transfer described in section 44G(c)(1)(B).

Subsec. (a)(22). Pub. L. 98–369, §491(e)(4), substituted "section 409" for "section 409A".

Subsec. (a)(23). Pub. L. 98–369, §491(e)(5), substituted "section 409(h)" for "section 409A(h)" in two places.

Subsec. (a)(24). Pub. L. 98–369, §211(b)(5), substituted "section 818(a)(6)" for "section 805(d)(6)".

Subsec. (a)(25). Pub. L. 98–397, §301(b), added par. (25).

Subsec. (e). Pub. L. 98–369, §713(d)(3), repealed subsec. (e) which related to contributions for premiums on annuity, etc., contracts.

Subsec. (f)(2). Pub. L. 98–369, §713(c)(2)(A), substituted "(as defined in section 408(n))" for "(as defined in subsection (d)(1))".

Subsec. (h)(6). Pub. L. 98–369, §528(b), added par. (6).

Subsec. (k)(1), (2). Pub. L. 98–369, §527(b)(1), inserted "(or a pre-ERISA money purchase plan)".

Subsec. (k)(2)(B). Pub. L. 98–369, §527(b)(3), substituted "(or in the case of a profit sharing or stock bonus plan, hardship or the attainment of age 59½)" for ", hardship or the attainment of age 59½,".

Subsec. (k)(3)(A). Pub. L. 98–369, §527(a), struck out "qualified" before "cash or deferred arrangement", substituted "shall not be treated as a qualified cash or deferred arrangement unless" for "shall be considered to satisfy the requirements of subsection (a)(4), with respect to the amount of contributions, and of subparagraph (B) of section 410(b)(1) for a plan year if", designated provisions beginning "those employees" and ending "section 401(b)(1)" as cl. (i) and text following as cl. (ii), redesignated former cls. (i) and (ii) as subcls. (I) and (II) and inserted text following subcl. (II).

Subsec. (k)(5). Pub. L. 98–369, §527(b)(2), added par. (5).

1983—Subsec. (a)(21). Pub. L. 97–448, §103(g)(2)(A), designated part of existing provisions as subpar. (A) and added subpar. (B).

Subsec. (c)(2)(A)(vi). Pub. L. 98–21 added cl. (vi).

Subsec. (d)(2). Pub. L. 97–448, §306(a)(12), substituted "paragraph (1)(B)" for "paragraph (9)(B)".

Subsec. (d)(5). Pub. L. 97–448, §103(c)(10)(A), substituted "Subparagraphs (A) and (B) shall not apply to contributions described in subsection (e), and shall not apply to any deductible employee contribution (as defined in section 72(o)(5))" for "Subparagraphs (A) and (B) do not apply to contributions described in subsection (e)" in second sentence.

Subsec. (j)(3). Pub. L. 97–448, §103(d)(2), substituted "under subparagraph (A) of paragraph (2) shall be treated as beginning a new period of plan participation with respect only to such change" for "under subparagraph (A) of subsection (j)(2) shall be treated as beginning a new period of plan participation" in last sentence.

1982—Subsec. (a)(9). Pub. L. 97–248, §242(a), which was repealed by Pub. L. 98–369, §521(a)(2), had amended par. (9) generally, redesignating existing provisions as subpar. (A), in subpar. (A), as so redesignated, struck out preliminary provision which limited the application of this paragraph to plans providing contributions or benefits for employees some or all of whom were employees within the meaning of subsec. (c)(1), redesignated former subpars. (A) and (B) as cls. (i) and (ii) of subpar. (A), in cl. (i), as so redesignated, substituted reference to a key employee who is a participant in a top-heavy plan for former reference to owner-employees (within the meaning of subsec. (c)(3)), redesignated former cls. (i) and (ii) of subpar. (B) as subcls. (I) and (II) of cl. (ii), struck out former provision that a trust would not be disqualified under this paragraph by reason of distributions under a designation, prior to the date of the enactment of this paragraph, by any employee under the plan of which such trust was a part, of a method of distribution which did not meet the terms of this paragraph, and adding subpar. (B).

Subsec. (a)(10). Pub. L. 97–248, §237(e)(1), amended par. (10) generally, redesignating subpar. (B) as (A) and striking out former subpar. (A) relating to qualified trust as a trust forming part of such plan, for provisions relating to discriminatory plans with respect to nonapplicability of paragraph (3), the first and second sentences of paragraph (5) and section 410 of this title.

Subsec. (a)(10)(B). Pub. L. 97–248, §240(b), added subpar. (B).

Subsec. (a)(17), (18). Pub. L. 97–248, §237(b), struck out pars. (17) and (18) which related, respectively, to a plan which provides contributions or benefits for employees some or all of whom are employees within the meaning of subsection (c)(1), or are shareholder-employees within the meaning of section 1379(d), and a trust which is part of a plan providing a defined benefit for employees some or all of whom are employees within the meaning of subsection (c)(1), or are shareholder-employees within the meaning of section 1379(d).

Subsec. (a)(24). Pub. L. 97–248 added par. (24).

Subsec. (c)(1). Pub. L. 97–248, §238(d)(1), amended par. (1) generally, substituting in heading "Self-employed individual treated as employee" for "Employee", adding subparagraph headings, and substituting provisions defining "employee" and "self-employed individual", for provisions defining "employee".

Subsec. (c)(2)(A). Pub. L. 97–248, §238(d)(2), added cl. (v).

Subsec. (d). Pub. L. 97–248, §237(a), redesignated pars. (9) to (11) as (1) to (3), respectively. Former pars. (1) to (7), which related to trusts created or organized before or after October 10, 1962, contributions under the plan, benefits under the plan for employees, contributions or benefits under the plan, limitations pursuant to the plan, applicability of requirements of subsec. (a)(4) of this section, and distributions under the plan, respectively, were struck out.

Subsec. (j). Pub. L. 97–248, §238(b), struck out subsec. (j) which related to general requirements, regulation guidelines, applicable percentage, certain contributions and benefits not taken into account, definitions, and special rules with respect to defined benefit plans providing benefits for self-employed individuals and shareholder-employees.

Subsecs. (l), (o). Pub. L. 97–248, §249(a), added subsec. (l) and redesignated former subsec. (l) as (o).

1981—Subsec. (a)(17). Pub. L. 97–34, §312(b)(1), designated provision relating to the annual compensation of each employee as subpar. (A), and in subpar. (A) as so designated, substituted "$200,000" for "$100,000", and added subpar. (B).

Subsec. (a)(22). Pub. L. 97–34, §338(a), inserted "(other than a profit-sharing plan)" and substituted "if" for "If" and "such plan" for "said plan".

Subsec. (a)(23). Pub. L. 97–34, §335, substituted "409A(h), except that in applying section 409A(h) for purposes of this paragraph, the term 'employer securities' shall include any securities of the employer held by the plan" for "409A(h)(2)".

Subsec. (d)(4). Pub. L. 97–34, §312(e)(2), inserted provision making subpar. (B) inapplicable to any distribution to which section 72(m)(9) applies.

Subsec. (d)(5). Pub. L. 97–34, §314(a)(1), inserted provision making subpar. (C) inapplicable to a distribution on account of the termination of the plan.

Subsec. (e). Pub. L. 97–34, §312(c)(2), substituted "for such taxable year exceeds $15,000" for "for all such years exceeds $7,500".

Subsec. (j). Pub. L. 97–34, §312(c)(3), (4), substituted in par. (2)(A) "$100,000" for "$50,000" and in par. (3) inserted provision that for purposes of this paragraph, a change in the annual compensation taken into account under subpar. (A) of subsec. (j)(2) be treated as beginning a new period of plan participation.

1980—Subsec. (a)(2). Pub. L. 96–364, §§208(e), 410(b), inserted provisions relating to applicability to multiemployer plans and return of contributions made by a mistake of law or fact, or return of withdrawal liability payment.

Subsec. (a)(4). Pub. L. 96–605, §225(b)(1), substituted "section 410(b)(3)(A)" for "section 410(b)(2)(A)".

Subsec. (a)(12). Pub. L. 96–364, §208(a), substituted provisions relating to applicability to multiemployer plans subject to title IV of the Employee Retirement Income Security Act of 1974 of provisions of preceding sentence, for provisions relating to applicability of paragraph to multiemployer plans to extent determined by Corporation.

Subsec. (a)(20). Pub. L. 96–222, §101(a)(14)(E)(iii), substituted "makes a qualifying rollover distribution (determined as if section 402(a)(5)(D)(i) did not contain subclause (II) thereof) described in section 402(a)(5)(A)(i) or 403(a)(4)(A)(i)" for "makes a payment or distribution described in section 402(a)(5)(i) or 403(a)(4)(i)".

Subsec. (a)(21). Pub. L. 96–222, §101(a)(7)(L)(i)(V), substituted "a tax credit employee stock ownership plan" for "an ESOP".

Subsec. (a)(22)(B). Pub. L. 96–222, §101(a)(9), substituted "are securities" for "as securities".

Subsec. (a)(23). Pub. L. 96–605, §221(a), added par. (23).

Subsec. (d)(3)(B). Pub. L. 96–605, §225(b)(2), substituted in cl. (i) "section 410(b)(3)(A)" for "section 410(b)(2)(A)" and in cl. (ii) "section 410(b)(3)(C)" for "section 410(b)(2)(C)".

1978—Subsec. (a)(5). Pub. L. 95–600, §152(e), inserted provision that for purposes of determining whether one or more plans of the employer satisfy the requirements of section 410(b)(4), an employer may take into account all simplified employee pensions to which only the employer contributes.

Subsec. (a)(21). Pub. L. 95–600, §141(f)(3), substituted "ESOP" for "employee stock option plan which satisfies the requirements of section 301(d) of the Tax Reduction Act of 1975" and "section 48(n)(1)" for "subsection (d)(6) or (e)(3) of section 301 of the Tax Reduction Act of 1975".

Subsec. (a)(22). Pub. L. 95–600, §143(a), added par. (22).

Subsecs. (k), (l). Pub. L. 95–600, §135(a), added subsec. (k) and redesignated former subsec. (k) as (l).

1976—Subsec. (a). Pub. L. 94–455, §§803(b)(2), 1901(a)(56), 1906(b)(13)(A), struck out "or his delegate" after "Secretary" in pars. (5), (11), and (14), substituted references to Sept. 2, 1974, for references to the

enactment of the Employee Retirement Income Security Act of 1974 in pars. (12), (13), (15), and (19), added par. (21), and inserted reference to par. (20) in provisions following par. (21), such addition of reference to par. (20) duplicating amendment by Pub. L. 94–267, §1(c)(2).

Pub. L. 94–267, §1(c)(2), substituted "(19), and (20)" for "and (19)".

Subsec. (a)(20). Pub. L. 94–267, §1(c)(1), added par. (20).

Subsecs. (b), (c), (d). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (f). Pub. L. 94–455, §1505(b), inserted reference to contracts (other than life, health, or accident, property, casualty, or liability insurance contracts) issued by an insurance company qualified to do a business in a State and struck out "or his delegate" after "Secretary".

Subsecs. (h), (i), (j). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

1974—Subsec. (a). Pub. L. 93–406, §1021(a)(2), inserted provision that paragraphs (11), (12), (13), (14), (15), and (19) shall apply only in the case of a plan to which section 411 (relating to minimum vesting standards) applies without regard to subsection (e)(2) of this section.

Subsec. (a)(3). Pub. L. 93–406, §1016(a)(2)(A), substituted provisions referring simply to a plan of which the trust is a part and the satisfaction by that plan of the requirements of section 410 (relating to minimum participation standards) for provisions referring to a trust, trusts, or trust or trusts and annuity plan or plans designated by the employer as constituting parts of a plan intended to qualify under subsec. (a) and spelling out the requisite coverage of the plan.

Subsec. (a)(4). Pub. L. 93–406, §1022(a), struck out provisions referring to persons whose principal duties consist in supervising the work of other employees and inserted provisions directing the exclusion from consideration of employees described in section 410(b)(2) (A) and (C).

Subsec. (a)(5). Pub. L. 93–406, §§1012(b), 1016(a)(2)(B), inserted provisions covering the determination of whether two or more plans of an employer satisfy the requirements of par. (4) when considered as a single plan and substituted "shall not be considered discriminatory within the meaning of paragraph (4) of section 410(b) (without regard to paragraph (1)(A) thereof)" for "shall not be considered discriminatory within the meaning of paragraph (3)(B) or (4)".

Subsec. (a)(7). Pub. L. 93–406, §1016(a)(2)(C), substituted provisions referring simply to the satisfaction by the plan of which a trust is a part of the requirements of section 411 (relating to minimum vesting standards) for provisions spelling out in detail the conditions which the plan had to satisfy in order that the trust forming part of that plan constitute a qualified trust under this section.

Subsec. (a)(10)(A). Pub. L. 93–406, §§1022(b)(1), 2001(e)(4), inserted reference to section 410 in provisions preceding cl. (i) and substituted "subsection (e)" for "subsection (e)(3)(A)" in cl. (ii).

Subsec. (a)(11). Pub. L. 93–406, §1021(a)(1), added par. (11).

Subsec. (a)(12). Pub. L. 93–406, §1021(b), added par. (12).

Subsec. (a)(13). Pub. L. 93–406, §1021(c), added par. (13).

Subsec. (a)(14). Pub. L. 93–406, §1021(d), added par. (14).

Subsec. (a)(15). Pub. L. 93–406, §1021(e), added par. (15).

Subsec. (a)(16). Pub. L. 93–406, §2004(a)(1), added par. (16).

Subsec. (a)(17). Pub. L. 93–406, §2001(c), added par. (17).

Subsec. (a)(18). Pub. L. 93–406, §2001(d)(1), added par. (18).

Subsec. (a)(19). Pub. L. 93–406, §1021(f), added par. (19).

Subsec. (b). Pub. L. 93–406, §1023, substituted reference to the requirements of subsection (a) for the period beginning with the date on which a stock bonus, pension, profit-sharing, or annuity plan was put into effect, or for the period beginning with the earlier of the date on which there was adopted or put into effect any amendment which caused the plan to fail to satisfy such requirements, and ending with the time prescribed by law for filing the return of the employer for his taxable year in which such plan or amendment was adopted (including extensions thereof) or such later time as the Secretary or his delegate may designate for reference to the requirements of paragraphs (3), (4), (5), and (6) of subsection (a) for the period beginning with the date on which a stock bonus, pension, profit-sharing, or annuity plan was put into effect and ending with the 15th day of the third month following the close of the taxable year of the employer in which the plan was put in effect.

Subsec. (d)(1). Pub. L. 93–406, §1022(c), (f), substituted "October 10, 1962" for "the date of the enactment of this subsection" and "assets thereof are held by a bank or other person who demonstrates to the satisfaction of the Secretary or his delegate that the manner in which he will administer the trust will be consistent with the requirements of this section. A trust shall not be disqualified under this paragraph merely because a person (including the employer) other than the trustee or custodian so administering the trust" for "trustee is a bank, but a person (including the employer) other than a bank" and inserted reference to an insured credit union (within the meaning of section 101(6) of the Federal Credit Union Act) in definition of "bank".

Subsec. (d)(3). Pub. L. 93–406, §1022(b)(2), inserted reference to the section 410(a)(3) definition of "years of service" and substituted reference to employees included in a unit of employees covered by a collective-bargaining agreement described in section 410(b)(2)(A) and employees who are nonresident aliens described in section 410(b)(2)(C) for reference to employees whose customary employment was for not more than 20 hours in any one week or was for not more than 5 months in any calendar year.

Subsec. (d)(4)(B). Pub. L. 93–406, §2001(h)(1), inserted "in excess of contributions made by an owner-employee as an employee" after "benefits".

Subsec. (d)(5). Pub. L. 93–406, §2001(e)(1), substituted "Subparagraphs (A) and (B) do not apply to contributions described in subsection (e)" for "Subparagraphs (A) and (B) shall not apply to any contribution which is not considered to be an excess contribution (as defined in subsection (e)(1)) by reason of the application of subsection (e)(3)".

Subsec. (d)(8). Pub. L. 93–406, §2001(e)(2), struck out par. (8) covering excess contributions.

Subsec. (e). Pub. L. 93–406, §2001(e)(3), struck out pars. (1) and (2) which defined and described the effect of excess contributions, redesignated par. (3) as the entire subsec. (e) and in provisions as thus carried forward as the entire subsec. (e) substituted "$7,500" for "$2,500" and inserted references to section 4972(b).

Subsec. (f). Pub. L. 93–406, §1022(d), expanded provisions to cover annuity contracts.

Subsecs. (j), (k). Pub. L. 93–406, §2001(d)(2), added subsec. (j) and redesignated former subsec. (j) as (k).

1971—Subsec. (i). Pub. L. 91–691 struck out "multi-employer" before "pension plans" in heading, and substituted "one or more employers" for "two or more employers who are not related (determined under regulations prescribed by the Secretary or his delegate)" in par. (1).

1966—Subsec. (a)(10)(A)(ii). Pub. L. 89–809, §204(b)(1)(A), struck out "(determined without regard to section 404(a)(10))" after "deducted under section 404".

Subsec. (c)(2)(A). Pub. L. 89–809, §204(c), struck out "to the extent that such net earnings constitute earned income (as defined in section 911(b) but determined with the application of subparagraph (B))" after "The term 'earned income' means the net earnings from self-employment (as defined in section 1402(a))", added cl. (i) and redesignated former cls. (i) to (ii) as (ii) to (iv) respectively, and struck out references to section 911(b) and subparagraph (B), as in effect for a taxable year beginning on January 1, 1963, in text following cl. (iv).

Subsec. (c)(2)(B). Pub. L. 89–809, §204(c), struck out subpar. (B) relating to earned income when both personal services and capital are material income-producing factors. See subsec. (c)(2)(A)(i).

Subsec. (c)(2)(C). Pub. L. 89–809, §205(a), added subpar. (C).

Subsecs. (d)(5)(A), (B), (d)(6)(A), (e)(1)(A), (B)(i), (3). Pub. L. 89–809, §204(b)(1)(B) to (E), struck out "(determined without regard to section 404(a)(10))" wherever appearing.

1965—Subsec. (d)(4)(B). Pub. L. 89–97 substituted "section 72(m)(7)" for "section 213(g)(3)".

1964—Subsecs. (i), (j). Pub. L. 88–272 added subsec. (i) and redesignated former subsec. (i) as (j).

1962—Subsec. (a)(5). Pub. L. 87–792, §2(1), inserted provisions defining total compensation for purposes of par. (5) and par. (10) of this subsection.

Subsec. (a)(7) to (10). Pub. L. 87–792, §2(2), added pars. (7) to (10).

Subsecs. (c) to (g). Pub. L. 87–792, §2(3), added subsecs. (c) to (g). Former subsec. (c) redesignated (h).

Subsec. (h). Pub. L. 87–863 added subsec. (h). Former subsec. (h) redesignated (i).

Pub. L. 87–792, §2(3), redesignated former subsec. (c) as (h).

Subsec. (i). Pub. L. 87–863 redesignated former subsec. (h) as (i).

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113–97, §3, Apr. 7, 2014, 128 Stat. 1101, provided that: "Unless otherwise specified in this Act [see Tables for classification], the provisions of this Act shall apply to years beginning after December 31, 2013."

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–192, title II, §202(c)(1), June 25, 2010, 124 Stat. 1299, provided that: "The amendment made by subsection (a) [amending sections 1021, 1023, 1053, 1054, 1056, 1057, 1103, 1108, 1301, 1303, 1310, 1362, 1371, and 1423 of Title 29, Labor, and section 106 of 1978 Reorg. Plan No. 4, set out in the Appendix to Title 5, Government Organization and Employees, and as a note under section 1001 of Title 29, enacting provisions set out as a note under this section, and amending provisions set out as a note under section 1021 of Title 29] shall take effect as if included in the Pension Protection Act of 2006 [Pub. L. 109–280]."

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by sections 101(d)(2)(A)–(C) and 109(a)–(b)(2) of Pub. L. 110–458 effective as if included in the provisions of Pub. L. 109–280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110–458, set out as a note under section 72 of this title.

Pub. L. 110–458, title II, §201(c), Dec. 23, 2008, 122 Stat. 5117, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and section 402 of this title] shall apply for calendar years beginning after December 31, 2008.

"(2) PROVISIONS RELATING TO PLAN OR CONTRACT AMENDMENTS.—

"(A) IN GENERAL.—If this paragraph applies to any pension plan or contract amendment, such pension plan or contract shall not fail to be treated as being operated in accordance with the terms of the plan during the period described in subparagraph (B)(ii) solely because the plan operates in accordance with this section.

"(B) AMENDMENTS TO WHICH PARAGRAPH APPLIES.—

"(i) IN GENERAL.—This paragraph shall apply to any amendment to any pension plan or annuity contract which—

"(I) is made pursuant to the amendments made by this section, and

"(II) is made on or before the last day of the first plan year beginning on or after January 1, 2011.

In the case of a governmental plan, subclause (II) shall be applied by substituting '2012' for '2011'.

"(ii) CONDITIONS.—This paragraph shall not apply to any amendment unless during the period beginning on the effective date of the amendment and ending on December 31, 2009, the plan or contract is operated as if such plan or contract amendment were in effect."

Pub. L. 110–245, title I, §104(d), June 17, 2008, 122 Stat. 1627, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and sections 403, 404, 414, and 457 of this title] shall apply with respect to deaths and disabilities occurring on or after January 1, 2007.

"(2) PROVISIONS RELATING TO PLAN AMENDMENTS.—

"(A) IN GENERAL.—If this subparagraph applies to any plan or contract amendment, such plan or contract shall be treated as being operated in accordance with the terms of the plan during the period described in subparagraph (B)(iii).

"(B) AMENDMENTS TO WHICH SUBPARAGRAPH (A) APPLIES.—

"(i) IN GENERAL.—Subparagraph (A) shall apply to any amendment to any plan or annuity contract which is made—

"(I) pursuant to the amendments made by subsection (a) [amending this section] or pursuant to any regulation issued by the Secretary of the Treasury under subsection (a), and

"(II) on or before the last day of the first plan year beginning on or after January 1, 2010.

In the case of a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986), this clause shall be applied by substituting '2012' for '2010' in subclause (II).

"(ii) CONDITIONS.—This paragraph shall not apply to any amendment unless—

"(I) the plan or contract is operated as if such plan or contract amendment were in effect for the period described in clause (iii), and

"(II) such plan or contract amendment applies retroactively for such period.

"(iii) PERIOD DESCRIBED.—The period described in this clause is the period—

"(I) beginning on the effective date specified by the plan, and

"(II) ending on the date described in clause (i)(II) (or, if earlier, the date the plan or contract amendment is adopted)."

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title I, §114(g), as added by Pub. L. 110–458, title I, §101(d)(3), Dec. 23, 2008, 122 Stat. 5099, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and sections 411, 414, 420, 4971, 4972, and 6059 of this title] shall apply to plan years beginning after 2007.

"(2) EXCISE TAX.—The amendments made by subsection (e) [amending sections 4971 and 4972 of this title] shall apply to taxable years beginning after 2007, but only with respect to plan years described in paragraph (1) which end with or within any such taxable year."

Amendment by section 827(b)(1) of Pub. L. 109–280 applicable to distributions after Sept. 11, 2001, with waiver of limitations if refund or credit of overpayment of tax resulting from such amendment is prevented before the close of the 1-year period beginning on Aug. 17, 2006, see section 827(c) of Pub. L. 109–280, set out as a note under section 72 of this title.

Pub. L. 109–280, title VIII, §861(c), Aug. 17, 2006, 120 Stat. 1021, provided that: "The amendments made by this section [amending this section and provisions set out as a note under this section] shall apply to any

year beginning after the date of the enactment of this Act [Aug. 17, 2006]."

Pub. L. 109–280, title IX, §901(c), Aug. 17, 2006, 120 Stat. 1032, provided that:

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section [amending this section, sections 409 and 4980 of this title, and sections 1054 and 1107 of Title 29, Labor] shall apply to plan years beginning after December 31, 2006.

"(2) SPECIAL RULE FOR COLLECTIVELY BARGAINED AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified on or before the date of the enactment of this Act [Aug. 17, 2006], paragraph (1) shall be applied to benefits pursuant to, and individuals covered by, any such agreement by substituting for 'December 31, 2006' the earlier of—

"(A) the later of—

"(i) December 31, 2007, or

"(ii) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after such date of enactment), or

"(B) December 31, 2008.

"(3) SPECIAL RULE FOR CERTAIN EMPLOYER SECURITIES HELD IN AN ESOP.—

"(A) IN GENERAL.—In the case of employer securities to which this paragraph applies, the amendments made by this section [amending this section, sections 409 and 4980 of this title, and sections 1054 and 1107 of Title 29, Labor] shall apply to plan years beginning after the earlier of—

"(i) December 31, 2007, or

"(ii) the first date on which the fair market value of such securities exceeds the guaranteed minimum value described in subparagraph (B)(ii).

"(B) APPLICABLE SECURITIES.—This paragraph shall apply to employer securities which are attributable to employer contributions other than elective deferrals, and which, on September 17, 2003—

"(i) consist of preferred stock, and

"(ii) are within an employee stock ownership plan (as defined in section 4975(e)(7) of the Internal Revenue Code of 1986), the terms of which provide that the value of the securities cannot be less than the guaranteed minimum value specified by the plan on such date.

"(C) COORDINATION WITH TRANSITION RULE.—In applying section 401(a)(35)(H) of the Internal Revenue Code of 1986 and section 204(j)(7) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1054(j)(7)] (as added by this section) to employer securities to which this paragraph applies, the applicable percentage shall be determined without regard to this paragraph."

Pub. L. 109–280, title IX, §902(g), Aug. 17, 2006, 120 Stat. 1039, provided that: "The amendments made by this section [amending this section, sections 411, 414, 416, and 4979 of this title, and sections 1053, 1132, and 1144 of Title 29, Labor] shall apply to plan years beginning after December 31, 2007, except that the amendments made by subsection (f) [amending sections 1132 and 1144 of Title 29] shall take effect on the date of the enactment of this Act [Aug. 17, 2006]."

Pub. L. 109–280, title IX, §905(c), Aug. 17, 2006, 120 Stat. 1051, provided that: "The amendments made by this section [amending this section and section 1002 of Title 29, Labor] shall apply to distributions in plan years beginning after December 31, 2006."

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–311, title IV, §407(c), Oct. 4, 2004, 118 Stat. 1190, provided that: "The amendments made by this section [amending this section and section 1377 of this title] shall take effect as if included in the provisions of the Small Business Job Protection Act of 1996 [Pub. L. 104–188] to which they relate."

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 611(c), (f)(3), (g)(1) of Pub. L. 107–16 applicable to years beginning after Dec. 31, 2001, see section 611(i)(1) of Pub. L. 107–16, set out as a note under section 415 of this title.

Amendment by section 641(e)(3) of Pub. L. 107–16 applicable to distributions after Dec. 31, 2001, see section 641(f)(1) of Pub. L. 107–16, set out as a note under section 402 of this title.

Pub. L. 107–16, title VI, §643(d), June 7, 2001, 115 Stat. 123, provided that: "The amendments made by this section [amending this section and sections 402 and 408 of this title] shall apply to distributions made after December 31, 2001."

Pub. L. 107–16, title VI, §646(b), June 7, 2001, 115 Stat. 126, provided that: "The amendments made by this section [amending this section and sections 403 and 457 of this title] shall apply to distributions after December 31, 2001."

Pub. L. 107–16, title VI, §657(d), June 7, 2001, 115 Stat. 137, provided that: "The amendments made by this section [amending this section, section 402 of this title, and section 1104 of Title 29, Labor] shall apply to distributions made after final regulations implementing subsection (c)(2)(A) [set out as a note below] are prescribed [Final regulations implementing subsec. (c)(2)(A) became effective Mar. 28, 2005. See 69 F.R. 58017.]."

Pub. L. 107–16, title VI, §666(b), June 7, 2001, 115 Stat. 144, provided that: "The amendment made by this section [amending this section] shall apply to years beginning after December 31, 2001."

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which such amendment relates, see section 1(a)(7) [title III, §316(e)] of Pub. L. 106–554, set out as a note under section 51 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XV, §1502(c), Aug. 5, 1997, 111 Stat. 1061, provided that: "The amendments made by this section [amending this section and section 1056 of Title 29, Labor] shall apply to judgments, orders, and decrees issued, and settlement agreements entered into, on or after the date of the enactment of this Act [Aug. 5, 1997]."

Pub. L. 105–34, title XV, §1505(d), Aug. 5, 1997, 111 Stat. 1064, as amended by Pub. L. 105–206, title VI, §6015(b), July 22, 1998, 112 Stat. 820; Pub. L. 109–280, title VIII, §861(a)(2), Aug. 17, 2006, 120 Stat. 1021, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and sections 403 and 410 of this title] apply to taxable years beginning on or after the date of enactment of this Act [Aug. 5, 1997].

"(2) TREATMENT FOR YEARS BEGINNING BEFORE DATE OF ENACTMENT.—A governmental plan (within the meaning of section 414(d) of the Internal Revenue Code of 1986) shall be treated as satisfying the requirements of sections 401(a)(3), 401(a)(4), 401(a)(26), 401(k), 401(m), 403(b)(1)(D) and (b)(12)(A)(i), and 410 of such Code for all taxable years beginning before the date of enactment of this Act."

Pub. L. 105–34, title XV, §1525(b), Aug. 5, 1997, 111 Stat. 1072, provided that: "The amendments made by subsection (a) [amending this section] shall apply to years beginning after December 31, 1997."

Pub. L. 105–34, title XV, §1530(d), Aug. 5, 1997, 111 Stat. 1080, provided that: "The amendments made by this section [amending this section and sections 404, 415, 664, 674, 2055, 2056, 4947, 4975, 4978, and 4979A of this title] shall apply to transfers made by trusts to, or for the use of, an employee stock ownership plan after the date of the enactment of this Act [Aug. 5, 1997]."

Amendment by section 1601(d)(2)(A), (B), (3) of Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, and amendment by section 1601(d)(2)(D) of Pub. L. 105–34 applicable to calendar years beginning after Aug. 5, 1997, see section 1601(j) of Pub. L. 105–34, set out as a note under section 23 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1401(b)(5), (6) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1999, with retention of certain transition rules, see section 1401(c) of Pub. L. 104–188, set out as a note under section 402 of this title.

Pub. L. 104–188, title I, §1404(b), Aug. 20, 1996, 110 Stat. 1792, provided that: "The amendment made by subsection (a) [amending this section] shall apply to years beginning after December 31, 1996."

Pub. L. 104–188, title I, §1422(c), Aug. 20, 1996, 110 Stat. 1801, provided that: "The amendments made by this section [amending this section] shall apply to plan years beginning after December 31, 1996."

Pub. L. 104–188, title I, §1426(b), Aug. 20, 1996, 110 Stat. 1802, provided that: "The amendment made by this section [amending this section] shall apply to plan years beginning after December 31, 1996, but shall not apply to any cash or deferred arrangement to which clause (i) of section 1116(f)(2)(B) of the Tax Reform Act of 1986 applies [Pub. L. 99–514, set out below]."

Amendment by section 1431(b)(2) of Pub. L. 104–188 applicable to years beginning after Dec. 31, 1996, and amendment by section 1431(c)(1)(B) of Pub. L. 104–188 applicable to years beginning after Dec. 31, 1996, except that in determining whether an employee is a highly compensated employee for years beginning in 1997, amendment by section 1431(c)(1)(B) to be treated as having been in effect for years beginning in 1996, see section 1431(d) of Pub. L. 104–188, set out as a note under section 414 of this title.

Pub. L. 104–188, title I, §1432(c), Aug. 20, 1996, 110 Stat. 1804, provided that: "The amendments made by

this section [amending this section] shall apply to years beginning after December 31, 1996."

Pub. L. 104–188, title I, §1433(f), Aug. 20, 1996, 110 Stat. 1807, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to years beginning after December 31, 1998.

"(2) EXCEPTIONS.—The amendments made by subsections (c), (d), and (e) [amending this section] shall apply to years beginning after December 31, 1996."

Pub. L. 104–188, title I, §1441(b), Aug. 20, 1996, 110 Stat. 1808, provided that: "The amendments made by this section [amending this section] shall apply to years beginning after December 31, 1996."

Pub. L. 104–188, title I, §1443(c), Aug. 20, 1996, 110 Stat. 1809, provided that:

"(1) DISTRIBUTIONS.—The amendments made by subsection (a) [amending this section] shall apply to distributions after the date of the enactment of this Act [Aug. 20, 1996].

"(2) PUBLIC UTILITY DISTRICTS.—The amendments made by subsection (b) [amending this section] shall apply to plan years beginning after December 31, 1996."

Pub. L. 104–188, title I, §1445(b), Aug. 20, 1996, 110 Stat. 1811, provided that: "The amendment made by this section [amending this section] shall apply to years beginning after December 31, 1996."

Pub. L. 104–188, title I, §1459(c), Aug. 20, 1996, 110 Stat. 1820, provided that: "The amendments made by this section [amending this section] shall apply to plan years beginning after December 31, 1998."

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103–465, title VII, §732(e), Dec. 8, 1994, 108 Stat. 5005, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 402, 408, and 415 of this title] shall apply to years beginning after December 31, 1994.

"(2) ROUNDING NOT TO RESULT IN DECREASES.—The amendments made by this section providing for the rounding of indexed amounts shall not apply to any year to the extent the rounding would require the indexed amount to be reduced below the amount in effect for years beginning in 1994."

Pub. L. 103–465, title VII, §751(b), Dec. 8, 1994, 108 Stat. 5022, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 404, 412, and 4971 of this title] shall apply to plan years beginning after December 31, 1994.

"(2) REFERENCE.—The amendment made by subsection (a)(11) [amending section 404 of this title] shall take effect on the date of the enactment of this Act [Dec. 8, 1994]."

Pub. L. 103–465, title VII, §766(d), Dec. 8, 1994, 108 Stat. 5037, provided that: "The amendments made by this section [amending this section and sections 1054 and 1322 of Title 29, Labor] shall apply to plan amendments adopted on or after the date of enactment of this Act [Dec. 8, 1994]."

Amendment by section 776(d) of Pub. L. 103–465 effective with respect to distributions that occur in plan years commencing on or after Jan. 1, 1996, see section 776(e) of Pub. L. 103–465, set out as a note under section 1056 of Title 29, Labor.

Pub. L. 103–465, title VII, §781, Dec. 8, 1994, 108 Stat. 5050, provided that: "Except as otherwise provided in this subtitle [subtitle F (§§750–781) of title VII of Pub. L. 103–465, enacting sections 1310, 1311, and 1350 of Title 29, Labor, amending this section, sections 404, 411, 412, 415, 417, 4971, and 4972 of this title, and sections 1053 to 1056, 1082, 1132, 1301, 1303, 1305, 1306, 1322, 1341, 1342, and 1343 of Title 29, and enacting provisions set out as notes under this section, sections 1, 411, 412, and 4972 of this title, and sections 1056, 1082, 1303, 1306, 1310, 1311, 1322, 1341, and 1342 of Title 29], the amendments made by this subtitle shall be effective on the date of enactment of this Act [Dec. 8, 1994]."

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13212(d), Aug. 10, 1993, 107 Stat. 472, provided that:

"(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section and sections 404, 408, and 505 of this title] shall apply to benefits accruing in plan years beginning after December 31, 1993.

"(2) COLLECTIVELY BARGAINED PLANS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before the date of the enactment of this Act [Aug. 10, 1993], the amendments made by this section shall not apply to contributions or benefits pursuant to such agreements for plan years beginning before the earlier of—

"(A) the latest of—

"(i) January 1, 1994,

"(ii) the date on which the last of such collective bargaining agreements terminates (without regard to any extension, amendment, or modification of such agreements on or after such date of

enactment), or

"(iii) in the case of a plan maintained pursuant to collective bargaining under the Railway Labor Act [45 U.S.C. 151 et seq.], the date of execution of an extension or replacement of the last of such collective bargaining agreements in effect on such date of enactment, or

"(B) January 1, 1997.

"(3) TRANSITION RULE FOR STATE AND LOCAL PLANS.—

"(A) IN GENERAL.—In the case of an eligible participant in a governmental plan (within the meaning of section 414(d) of the Internal Revenue Code of 1986), the dollar limitation under section 401(a)(17) of such Code shall not apply to the extent the amount of compensation which is allowed to be taken into account under the plan would be reduced below the amount which was allowed to be taken into account under the plan as in effect on July 1, 1993.

"(B) ELIGIBLE PARTICIPANT.—For purposes of subparagraph (A), an eligible participant is an individual who first became a participant in the plan during a plan year beginning before the 1st plan year beginning after the earlier of—

"(i) the plan year in which the plan is amended to reflect the amendments made by this section, or

"(ii) December 31, 1995.

"(C) PLAN MUST BE AMENDED TO INCORPORATE LIMITS.—This paragraph shall not apply to any eligible participant of a plan unless the plan is amended so that the plan incorporates by reference the dollar limitation under section 401(a)(17) of the Internal Revenue Code of 1986, effective with respect to noneligible participants for plan years beginning after December 31, 1995 (or earlier if the plan amendment so provides)."

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 521(b)(5)–(8) of Pub. L. 102–318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102–318, set out as a note under section 402 of this title.

Pub. L. 102–318, title V, §522(d), July 3, 1992, 106 Stat. 315, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 402 to 404, 3402, 3405, 6047, and 6652 of this title] shall apply to distributions after December 31, 1992.

"(2) TRANSITION RULE FOR CERTAIN ANNUITY CONTRACTS.—If, as of July 1, 1992, a State law prohibits a direct trustee-to-trustee transfer from an annuity contract described in section 403(b) of the Internal Revenue Code of 1986 which was purchased for an employee by an employer which is a State or a political subdivision thereof (or an agency or instrumentality of any 1 or more of either), the amendments made by this section shall not apply to distributions before the earlier of—

"(A) 90 days after the first day after July 1, 1992, on which such transfer is allowed under State law, or

"(B) January 1, 1994."

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to transfers in taxable years beginning after Dec. 31, 1990, see section 12011(c)(1) of Pub. L. 101–508, set out as an Effective Date note under section 420 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7311(b), Dec. 19, 1989, 103 Stat. 2354, provided that:

"(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to contributions after October 3, 1989.

"(2) TRANSITION.—The amendment made by this section shall not apply to contributions made before January 1, 1990, if—

"(A) the employer requested before October 3, 1989, a private letter ruling or determination letter with respect to the qualification of the plan maintaining the account under section 401(h) of the Internal Revenue Code of 1986,

"(B) the request sets forth a method under which the amount of contributions to the account are to be determined on the basis of cost,

"(C) such method is permissible under section 401(h) of such Code under the provisions of General Counsel Memorandum 39785, and

"(D) the Internal Revenue Service issued before October 4, 1989, a private letter ruling, determination letter, or other letter providing that the specific plan involved qualifies under section 401(a) of such Code when such method is used, that contributions to the account are deductible, or acknowledging that the account would not adversely affect the qualified status of the plan (contingent on all phases of the particular plan being approved)."

Amendment by sections 7811(g)(1), (h)(3) and 7816(l) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

Pub. L. 101–239, title VII, §7882, Dec. 19, 1989, 103 Stat. 2445, provided that: "Except as otherwise provided in this subpart [subpart C (§§7881, 7882) of part V of title VII of Pub. L. 101–239, amending this section and sections 411 and 412 of this title, and sections 1002, 1021, 1023, 1054, 1082, 1083, 1085b, 1103, 1107, 1108, 1113, 1132, 1306, 1322, 1341, 1342, 1344, 1362, 1364, 1368, 1370, and 1371 of Title 29, Labor, enacting provisions set out as a note under section 1054 of Title 29, and amending provisions set out as notes under sections 404 and 412 of this title and sections 1021, 1301, 1322, and 1344 of Title 29], any amendment made by this subpart shall take effect as if included in the provision of the Pension Protection Act [Pub. L. 100–203, title IX, subtitle D, part II, §§9302–9346] to which such amendment relates."

Amendment by Pub. L. 101–140 effective as if included in section 1151 of Pub. L. 99–514, see section 203(c) of Pub. L. 101–140, set out as a note under section 79 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1011(c)(7)(E), Nov. 10, 1988, 102 Stat. 3458, provided that:

"(i) Except as provided in clause (ii), the amendments made by this paragraph [amending this section and sections 403, 408, and 501 of this title] shall apply to plan years beginning after December 31, 1987.

"(ii) In the case of a plan described in section 1105(c)(2) of the Reform Act [section 1105(c)(2) of Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note under section 402 of this title], the amendments made by this paragraph shall not apply to contributions made pursuant to an agreement described in such section for plan years beginning before the earlier of—

"(I) the later of January 1, 1988, or the date on which the last of such agreements terminates (determined without regard to any extension thereof after February 28, 1986), or

"(II) January 1, 1989."

Pub. L. 100–647, title I, §1011(k)(1)(C), Nov. 10, 1988, 102 Stat. 3469, provided that:

"(i) Subparagraph (A)(i) of section 401(k)(10) of the 1986 Code (as added by subparagraph (B)) shall apply to distributions after October 16, 1987.

"(ii) Subparagraph (B) of section 401(k)(10) of the 1986 Code (as added by subparagraph (B)) shall apply to distributions after March 31, 1988."

Pub. L. 100–647, title I, §1011(l)(5)(B), Nov. 10, 1988, 102 Stat. 3470, provided that: "The amendment made by this paragraph [amending this section] shall take effect as if included in the amendments made by section 1120 of the Reform Act [Pub. L. 99–514]."

Amendment by sections 1011(d)(4), (e)(3), (g)(1)–(3), (h)(3), (k)(1)(A), (B), (2)–(7), (9), (l)(1)–(4), (6), (7), 1011A(j), (l), and 1011B(j)(1), (2), (6), (k)(1), (2) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title VI, §6053(b), Nov. 10, 1988, 102 Stat. 3696, provided that: "The amendment made by subsection (a) [amending this section] shall take effect as if included in the amendments made by section 1121 of the Reform Act [Pub. L. 99–514]."

Pub. L. 100–647, title VI, §6055(b), Nov. 10, 1988, 102 Stat. 3697, provided that: "The amendment made by this section [amending this section] shall take effect as if included in the amendments made by section 1112(b) of the Reform Act [Pub. L. 99–514]."

Pub. L. 100–647, title VI, §6071(d), Nov. 10, 1988, 102 Stat. 3705, provided that: "The amendments made by this section [amending this section and section 457 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Nov. 10, 1988]."

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title IX, §9341(c), Dec. 22, 1987, 101 Stat. 1330–371, as amended by Pub. L. 101–239, title VII, §7881(i)(5), Dec. 19, 1989, 103 Stat. 2442, provided that:

"(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [enacting section 1085b of Title 29, Labor, and amending this section] shall apply to plan amendments adopted after the date of the enactment of this Act [Dec. 22, 1987].

"(2) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before the date of the enactment of this Act, the amendments made by this section shall not apply to plan

amendments adopted pursuant to collective bargaining agreements ratified before the date of enactment (without regard to any extension, amendment, or modification of such agreements on or after such date of enactment)."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1106(d)(1) of Pub. L. 99–514 applicable to benefits accruing in years beginning after Dec. 31, 1988, except as otherwise provided, see section 1106(i)(5) of Pub. L. 99–514, set out as a note under section 415 of this title.

Pub. L. 99–514, title XI, §1111(c), Oct. 22, 1986, 100 Stat. 2440, as amended by Pub. L. 100–647, title I, §1011(g)(4), Nov. 10, 1988, 102 Stat. 3464, provided that:

"(1) SUBSECTION (a).—The amendments made by subsection (a) [amending this section] shall apply to benefits attributable to plan years beginning after December 31, 1988.

"(2) SUBSECTION (b).—The amendments made by subsection (b) [amending this section] shall apply to years beginning after December 31, 1988.

"(3) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this section shall not apply to plan years beginning before the earlier of—

"(A) the later of—

"(i) January 1, 1989, or

"(ii) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986), or

"(B) January 1, 1991."

Pub. L. 99–514, title XI, §1112(e), Oct. 22, 1986, 100 Stat. 2445, as amended by Pub. L. 100–647, title I, §1011(h)(6)–(9), Nov. 10, 1988, 102 Stat. 3465, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and sections 402, 404, 406, 407, 410, and 818 of this title] shall apply to plan years beginning after December 31, 1988.

"(2) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this section shall not apply to plan years beginning before the earlier of—

"(A) the later of—

"(i) January 1, 1989, or

"(ii) the date on which the last of such collective bargaining agreement terminates (determined without regard to any extension thereof after February 28, 1986), or

"(B) January 1, 1991.

"(3) WAIVER OF EXCISE TAX ON REVERSIONS.—

"(A) IN GENERAL.—If—

"(i) a plan is in existence on August 16, 1986,

"(ii) such plan would fail to meet the requirements of section 401(a)(26) of the Internal Revenue Code of 1986 (as added by subsection (b)) if such section were in effect for the plan year including August 16, 1986, and

"(iii) there is no transfer of assets to or liabilities from the plan or spinoff or merger involving such plan after August 16, 1986,

then no tax shall be imposed under section 4980 of such Code on any employer reversion by reason of the termination or merger of such plan before the 1st year to which the amendment made by subsection (b) applies.

"(B) INTEREST RATE FOR DETERMINING ACCRUED BENEFIT OF HIGHLY COMPENSATED EMPLOYEES FOR CERTAIN PURPOSES.—In the case of a termination, transfer, or distribution of assets of a plan described in subparagraph (A)(ii) before the 1st year to which the amendment made by subsection (b) applies—

"(i) AMOUNT ELIGIBLE FOR ROLLOVER, INCOME AVERAGING, OR TAX-FREE TRANSFER.—For purposes of determining any eligible amount, the present value of the accrued benefit of any highly compensated employee shall be determined by using an interest rate not less than the highest of—

"(I) the applicable rate under the plan's method in effect under the plan on August 16, 1986,

"(II) the highest rate (as of the date of the termination, transfer, or distribution) determined under any of the methods applicable under the plan at any time after August 15, 1986, and before the

termination, transfer, or distribution in calculating the present value of the accrued benefit of an employee who is not a highly compensated employee under the plan (or any other plan used in determining whether the plan meets the requirements of section 401 of the Internal Revenue Code of 1986), or

"(III) 5 percent.

"(ii) ELIGIBLE AMOUNT.—For purposes of clause (i), the term 'eligible amount' means any amount with respect to a highly compensated employee which—

"(I) may be rolled over under section 402(a)(5) of such Code,

"(II) is eligible for income averaging under section 402(e)(1) of such Code, or capital gains treatment under section 402(a)(2) or 403(a)(2) of such Code (as in effect before this Act), or

"(III) may be transferred to another plan without inclusion in gross income.

"(iii) AMOUNTS SUBJECT TO EARLY WITHDRAWAL OR EXCESS DISTRIBUTION TAX .—For purposes of sections 72(t) and 4980A of such Code, there shall not be taken into account the excess (if any) of—

"(I) the amount distributed to a highly compensated employee by reason of such termination or distribution, over

"(II) the amount determined by using the interest rate applicable under clause (i).

"(iv) DISTRIBUTIONS OF ANNUITY CONTRACTS.—If an annuity contract purchased after August 16, 1986, is distributed to a highly compensated employee in connection with such termination or distribution, there shall be included in gross income for the taxable year of such distribution an amount equal to the excess of—

"(I) the purchase price of such contract, over

"(II) the present value of the benefits payable under such contract determined by using the interest rate applicable under clause (i).

Such excess shall not be taken into account for purposes of sections 72(t) and 4980A of such Code.

"(v) HIGHLY COMPENSATED EMPLOYEE.—For purposes of this subparagraph, the term 'highly compensated employee' has the meaning given such term by section 414(q) of such Code.

"(4) SPECIAL RULE FOR PLANS WHICH MAY NOT TERMINATE.—To the extent provided in regulations prescribed by the Secretary of the Treasury or his delegate, if a plan is prohibited from terminating under title IV of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1301 et seq.] before the 1st year to which the amendment made by subsection (b) would apply, the amendment made by subsection (b) shall only apply to years after the 1st year in which the plan is able to terminate."

Amendment by section 1114(b)(7) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1988, see section 1114(c)(3) of Pub. L. 99–514, set out as a note under section 414 of this title.

Pub. L. 99–514, title XI, §1116(f), Oct. 22, 1986, 100 Stat. 2457, as amended by Pub. L. 100–647, title I, §1011(k)(8), (10), Nov. 10, 1988, 102 Stat. 3470, provided that:

"(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section] shall apply to years beginning after December 31, 1988.

"(2) NONDISCRIMINATION RULES.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by subsections (a), (b)(4), and (d) [amending this section], and the provisions of section 401(k)(4)(B) of the Internal Revenue Code of 1986 (as added by this section), shall apply to years beginning after December 31, 1986.

"(B) TRANSITION RULES FOR CERTAIN GOVERNMENTAL AND TAX-EXEMPT PLANS .—Subparagraph (B) of section 401(k)(4) of the Internal Revenue Code of 1986 (relating to governments and tax-exempt organizations not eligible for cash or deferred arrangements), as added by this section, shall not apply to any cash or deferred arrangement adopted by—

"(i) a State or local government or political subdivision thereof, or any agency or instrumentality thereof, before May 6, 1986, or

"(ii) a tax-exempt organization before July 2, 1986.

In the case of an arrangement described in clause (i), the amendments made by subsections (a), (b)(4), and (d) shall apply to years beginning after December 31, 1988. If clause (i) or (ii) applies to any arrangement adopted by a governmental unit, then any cash or deferred arrangement adopted by such unit on or after the date referred to in the applicable clause shall be treated as adopted before such date.

"(3) AGGREGATION AND EXCESS CONTRIBUTIONS.—The amendments made by subsections (c) and (e) [amending this section] shall apply to years beginning after December 31, 1986.

"(4) COLLECTIVE BARGAINING AGREEMENTS.—

"(A) IN GENERAL.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this section shall not apply to years beginning before the earlier of—

"(i) the later of—

"(I) January 1, 1989, or

"(II) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986), or

"(ii) January 1, 1991.

"(B) SPECIAL RULE FOR NONDISCRIMINATION RULES.—In the case of a plan described in subparagraph (A), the amendments and provisions described in paragraph (2) shall not apply to years beginning before the earlier of—

"(i) the date determined under subparagraph (A)(i)(II), or

"(ii) January 1, 1989.

"(5) SPECIAL RULE FOR QUALIFIED OFFSET ARRANGEMENTS.—

"(A) IN GENERAL.—A cash or deferred arrangement shall not be treated as failing to meet the requirements of section 401(k)(4) of the Internal Revenue Code of 1986 (as added by this section) to the extent such arrangement is part of a qualified offset arrangement consisting of such cash or deferred arrangement and a defined benefit plan.

"(B) QUALIFIED OFFSET ARRANGEMENT.—For purposes of subparagraph (A), a cash or deferred arrangement is part of a qualified offset arrangement with a defined benefit plan to the extent such offset arrangement satisfies each of the following conditions with respect to the employer maintaining the arrangement on April 16, 1986, and at all times thereafter:

"(i) The benefit under the defined benefit plan is directly and uniformly conditioned on the initial elective deferrals (up to 4 percent of compensation).

"(ii) The benefit provided under the defined benefit plan (before the offset) is at least 60 percent of an employee's cumulative elective deferrals (up to 4 percent of compensation).

"(iii) The benefit under the defined benefit plan is reduced by the benefit attributable to the employee's elective deferrals under the plan (up to 4 percent of compensation) and the income allocable thereto. The interest rate used to calculate the reduction shall not exceed the greater of the rate under section 411(a)(11)(B)(ii) of such Code or the interest rate applicable under section 411(c)(2)(C)(iii) of such Code, taking into account section 411(c)(2)(D) of such Code.

For purposes of applying section 401(k)(3) of such Code to the cash or deferred arrangement, the benefits under the defined benefit plan conditioned on initial elective deferrals may be treated as matching contributions under such rules as the Secretary of the Treasury or his delegate may prescribe. The Secretary shall provide rules for the application of this paragraph in the case of successor plans.

"(C) DEFINITION OF EMPLOYER.—For purposes of this paragraph, the term 'employer' includes any research and development center which is federally funded and engaged in cancer research, but only with respect to employees of contractor-operators whose salaries are reimbursed as direct costs against the operator's contract to perform work at such center.

"(6) WITHDRAWALS ON SALE OF ASSETS.—Subclauses (II), (III), and (IV) of section 401(k)(2)(B)(i) of the Internal Revenue Code of 1986 (as added by subsection (b)(1)) shall apply to distributions after December 31, 1984.

"(7) DISTRIBUTIONS BEFORE PLAN AMENDMENT.—

"(A) IN GENERAL.—If a plan amendment is required to allow a plan to make any distribution described in section 401(k)(8) of the Internal Revenue Code of 1986, any such distribution which is made before the close of the 1st plan year for which such amendment is required to be in effect under section 1140 [set out as a note below], shall be treated as made in accordance with the provisions of such plan.

"(B) DISTRIBUTIONS PURSUANT TO MODEL AMENDMENT.—

"(i) SECRETARY TO PRESCRIBE AMENDMENT.—The Secretary of the Treasury or his delegate shall prescribe an amendment which allows a plan to make any distribution described in section 401(k)(8) of such Code.

"(ii) ADOPTION BY PLAN.—If a plan adopts the amendment prescribed under clause (i) and makes a distribution in accordance with such amendment, such distribution shall be treated as made in accordance with the provisions of the plan."

Pub. L. 99–514, title XI, §1117(d), Oct. 22, 1986, 100 Stat. 2462, as amended by Pub. L. 100–647, title I, §1011(l)(12), Nov. 10, 1988, 102 Stat. 3471, provided that:

"(1) IN GENERAL.—The amendments made by this section [enacting section 4979 of this title and

amending this section and section 414 of this title] shall apply to plan years beginning after December 31, 1986.

"(2) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this section shall not apply to plan years beginning before the earlier of—

"(A) January 1, 1989, or

"(B) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986).

"(3) ANNUITY CONTRACTS.—In the case of an annuity contract under section 403(b) of the Internal Revenue Code of 1986—

"(A) the amendments made by this section shall apply to plan years beginning after December 31, 1988, and

"(B) in the case of a collective bargaining agreement described in paragraph (2), the amendments made by this section shall not apply to years beginning before the earlier of—

"(i) the later of—

"(I) January 1, 1989, or

"(II) the date determined under paragraph (2)(B), or

"(ii) January 1, 1991.

"(4) DISTRIBUTIONS BEFORE PLAN AMENDMENT.—

"(A) IN GENERAL.—If a plan amendment is required to allow a plan to make any distribution described in section 401(m)(6) of the Internal Revenue Code of 1986, any such distribution which is made before the close of the 1st plan year for which such amendment is required to be in effect under section 1140 [set out as a note below] shall be treated as made in accordance with the provisions of the plan.

"(B) DISTRIBUTIONS PURSUANT TO MODEL AMENDMENT.—

"(i) SECRETARY TO PRESCRIBE AMENDMENT.—The Secretary of the Treasury or his delegate shall prescribe an amendment which allows a plan to make any distribution described in section 401(m)(6) of the Internal Revenue Code of 1986.

"(ii) ADOPTION BY PLAN.—If a plan adopts the amendment prescribed under clause (i) and makes a distribution in accordance with such amendment, such distribution shall be treated as made in accordance with the provisions of the plan."

Pub. L. 99–514, title XI, §1119(b), Oct. 22, 1986, 100 Stat. 2463, provided that: "The amendment made by subsection (a) [amending this section] shall apply to plan years beginning after December 31, 1985."

Pub. L. 99–514, title XI, §1121(d), Oct. 22, 1986, 100 Stat. 2465, as amended by Pub. L. 100–647, title I, §1011A(a)(3), (4), Nov. 10, 1988, 102 Stat. 3472, provided that:

"(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section and sections 402, 408, and 4974 of this title] shall apply to years beginning after December 31, 1988.

"(2) SUBSECTION (c).—The amendments made by subsection (c) [amending sections 402 and 408 of this title] shall apply to years beginning after December 31, 1986.

"(3) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this section shall not apply to distributions to individuals covered by such agreements in years beginning before the earlier of—

"(A) the later of—

"(i) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986), or

"(ii) January 1, 1989, or

"(B) January 1, 1991.

"(4) TRANSITION RULES.—

"(A) The amendments made by subsections (a) and (b) [amending this section and section 4974 of this title] shall not apply with respect to any benefits with respect to which a designation is in effect under section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act of 1982 [section 242(b)(2) of Pub. L. 97–248, formerly set out as a note below].

"(B)(i) Except as provided in clause (ii), the amendment made by subsection (b) [amending this section] shall not apply in the case of any individual who has attained age 70½ before January 1, 1988.

"(ii) Clause (i) shall not apply to any individual who is a 5-percent owner (as defined in section 416(i) of the Internal Revenue Code of 1986), at any time during—

"(I) the plan year ending with or within the calendar year in which such owner attains age 66½, and

"(II) any subsequent plan year.

"(5) PLANS MAY INCORPORATE SECTION 401(a)(9) REQUIREMENTS BY REFERENCE .—Notwithstanding any other provision of law, except as provided in regulations prescribed by the Secretary of the Treasury or his delegate, a plan may incorporate by reference the requirements of section 401(a)(9) of the Internal Revenue Code of 1986."

Pub. L. 99–514, title XI, §1136(c), Oct. 22, 1986, 100 Stat. 2486, provided that: "The amendment made by subsection (a) [amending this section] shall apply to years beginning after December 31, 1985."

Pub. L. 99–514, title XI, §1143(b), Oct. 22, 1986, 100 Stat. 2490, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1986."

Pub. L. 99–514, title XI, §1145(d), Oct. 22, 1986, 100 Stat. 2491, provided that: "The amendments made by this section [amending this section, section 1055 of Title 29, Labor, and provisions set out as a note under section 1001 of Title 29] shall apply as if included in the amendments made by the Retirement Equity Act of 1984 [Pub. L. 98–397]."

Amendment by section 1171(b)(5) of Pub. L. 99–514 applicable to compensation paid or accrued after Dec. 31, 1986, in taxable years ending after such date, except as otherwise provided, see section 1171(c) of Pub. L. 99–514, set out as a note under section 38 of this title.

Pub. L. 99–514, title XI, §1174(c)(2)(B), Oct. 22, 1986, 100 Stat. 2518, provided that: "The amendment made by this paragraph [amending this section] shall apply to distributions attributable to stock acquired after December 31, 1986."

Pub. L. 99–514, title XI, §1175(a)(2), Oct. 22, 1986, 100 Stat. 2519, provided that: "The amendment made by this subsection [amending this section] shall apply to stock acquired after December 31, 1986."

Pub. L. 99–514, title XI, §1176(c), Oct. 22, 1986, 100 Stat. 2520, provided that: "The amendment made by subsection (a) [amending this section] shall be effective December 31, 1986. The amendment made by subsection (b) [amending section 409 of this title] shall apply to acquisitions of securities after December 31, 1986."

Pub. L. 99–514, title XVIII, §1852(h)(1), Oct. 22, 1986, 100 Stat. 2869, as amended by Pub. L. 100–647, title I, §1018(t)(3)(C), Nov. 10, 1988, 102 Stat. 3588, provided that the amendment made by that section is effective for years beginning after Dec. 31, 1985.

Pub. L. 99–514, title XVIII, §1879(g)(3), Oct. 22, 1986, 100 Stat. 2907, provided that: "The amendments made by this subsection [amending this section] shall apply to plan years beginning after December 31, 1984."

Amendment by sections 1848(b) and 1852(a)(4)(A), (6), (b)(8), (g), (h)(1) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Pub. L. 99–514, title XVIII, §1898(j), Oct. 22, 1986, 100 Stat. 2957, provided that: "Except as otherwise provided in this section, any amendment made by this section [amending this section, sections 402, 411, 414, 415, 417, and 2503 of this title, and sections 1053 to 1056 of Title 29, Labor, and provisions set out as notes under section 1001 of Title 29] shall take effect as if included in the provision of the Retirement Equity Act of 1984 [Pub. L. 98–397] to which such amendment relates."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 203(a) of Pub. L. 98–397 applicable to plan years beginning after Dec. 31, 1984, amendment by section 204(a) of Pub. L. 98–397 effective Jan. 1, 1985, and amendment by section 301(b) of Pub. L. 98–397 applicable to plan amendments made after July 30, 1984, but not applicable to the termination of a certain defined benefit plan, except as otherwise provided, see sections 302 and 303 of Pub. L. 98–397, set out as a note under section 1001 of Title 29, Labor.

Nothing in amendment by section 203(a) of Pub. L. 98–397 to prevent any distribution required by reason of a failure to comply with the terms of a loan made on or before Aug. 18, 1985, and secured by a portion of the participant's accrued benefit, see section 1898(b)(4)(C)(ii) of Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note under section 417 of this title.

Amendment by section 211(b)(5) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

Amendment by section 474(r)(13) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Pub. L. 98–369, div. A, title IV, §491(f)(3), July 18, 1984, 98 Stat. 853, provided that: "The amendments

made by subsection (e) [redesignating section 409A as section 409 of this title and amending this section and sections 41, 415, 4975, and 6699 of this title] shall take effect on January 1, 1984."

Pub. L. 98–369, div. A, title V, §521(e), July 18, 1984, 98 Stat. 868, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and sections 72, 403, and 408 of this title and repealing provisions set out as a note under this section] shall apply to years beginning after December 31, 1984.

"(2) REPEAL OF SECTION 242 OF TEFRA.—The amendment made by subsection (a)(2) [repealing section 242 of Pub. L. 97–248, which amended this section and enacted provisions formerly set out below] shall take effect as if included in the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97–248].

"(3) TRANSITION RULE.—A trust forming part of a plan shall not be disqualified under paragraph (9) of section 401(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as amended by subsection (a)(1), by reason of distributions under a designation (before January 1, 1984) by any employee in accordance with a designation described in section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act of 1982 (as in efffect [sic] before the amendments made by this Act) [formerly set out as an Effective Date of 1982 Amendment note below].

"(4) SPECIAL RULE FOR GOVERNMENTAL PLANS.—In the case of a governmental plan (within the meaning of section 414(d) of the Internal Revenue Code of 1986), paragraph (1) shall be applied by substituting '1986' for '1984'.

"(5) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to one or more collective bargaining agreements ratified on or before the date of the enactment of this Act [July 18, 1984] between employee representatives and one or more employers, the amendments made by this section shall not apply to years beginning before the earlier of—

"(A) the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act), or

"(B) January 1, 1988.

For purposes of subparagraph (A), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section shall not be treated as a termination of such collective bargaining agreement."

Pub. L. 98–369, div. A, title V, §524(d)(2), July 18, 1984, 98 Stat. 872, provided that: "The amendment made by this subsection [amending this section] shall apply to plan years beginning after December 31, 1983."

Pub. L. 98–369, div. A, title V, §527(c), July 18, 1984, 98 Stat. 876, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) SUBSECTION (a).—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the amendment made by subsection (a) [amending this section] shall apply to plan years beginning after December 31, 1984.

"(B) EXCEPTION FOR CERTAIN EXISTING PLANS.—The amendment made by subsection (a) shall not apply to any plan—

"(i) which was maintained by a State on June 8, 1984, and

"(ii) with respect to which a determination letter had been issued by the Secretary on December 6, 1982.

"(2) SUBSECTION (b).—

"(A) IN GENERAL.—The amendments made by this section [amending this section] shall apply with respect to plan years beginning after the date of the enactment of this Act [July 18, 1984].

"(B) TRANSITIONAL RULE.—Rules similar to the rules under section 135(c)(2) of the Revenue Act of 1978 [section 135(c)(2) of Pub. L. 95–600, set out below] shall apply with respect to any pre-ERISA money purchase plan (as defined in section 401(k)(5) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) for plan years beginning after December 31, 1979, and on or before the date of the enactment of this Act."

Pub. L. 98–369, div. A, title V, §528(c), July 18, 1984, 98 Stat. 877, provided that: "The amendments made by this section [amending this section and section 415 of this title] shall apply to years beginning after March 31, 1984."

Amendment by section 713 of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable to taxable years beginning after Dec. 31, 1989, see section

124(d)(2) of Pub. L. 98–21, set out as a note under section 1401 of this title.

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title II, §242(b), Sept. 3, 1982, 96 Stat. 521, which prescribed the effective date for amendment by section 242(a) of Pub. L. 97–248, was repealed by Pub. L. 98–369, div. A, title V, §521(a)(2), July 18, 1984, 98 Stat. 867.

Pub. L. 97–248, title II, §249(b), Sept. 3, 1982, 96 Stat. 528, provided that: "The amendments made by this section [amending this section] shall apply to plan years beginning after December 31, 1983."

Pub. L. 97–248, title II, §254(b), Sept. 3, 1982, 96 Stat. 533, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1981."

Amendment by sections 237, 238, and 240 of Pub. L. 97–248 applicable to years beginning after Dec. 31, 1983, see section 241 of Pub. L. 97–248, set out as an Effective Date note under section 416 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 312(b)(1), (c)(2)–(4), (e)(2) of Pub. L. 97–34 applicable to plans which include employees within the meaning of subsec. (c)(1) of this section with respect to taxable years beginning after Dec. 31, 1981, see section 312(f)(1) of Pub. L. 97–34, set out as a note under section 72 of this title.

Pub. L. 97–34, title III, §314(a)(2), Aug. 13, 1981, 95 Stat. 286, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to distributions after December 31, 1980, in taxable years beginning after such date."

Pub. L. 97–34, title III, §338(b), Aug. 13, 1981, 95 Stat. 298, provided that: "The amendment made by this section [amending this section] shall apply to acquisitions of securities after December 31, 1979."

Pub. L. 97–34, title III, §339, Aug. 13, 1981, 95 Stat. 299, provided that: "Except as otherwise provided, the amendments made by this subtitle [subtitle D (§§331–339) of title III of Pub. L. 97–34, enacting section 44G of this title and amending this section and sections 46, 48, 55, 56, 381, 383, 404, 409A, 415, 6096, 6411, 6511, and 6699 of this title] shall apply to taxable years beginning after December 31, 1981."

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–605, title II, §221(b), Dec. 28, 1980, 94 Stat. 3528, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to plan years beginning after December 31, 1980."

Pub. L. 96–605, title II, §225(c), Dec. 28, 1980, 94 Stat. 3529, provided that: "The amendments made by this section [amending this section and sections 408 and 410 of this title] shall apply with respect to plan years beginning after December 31, 1980."

Pub. L. 96–364, title IV, §410(c), Sept. 26, 1980, 94 Stat. 1308, provided that: "The amendment made by this section [amending this section and section 1103 of Title 29, Labor] shall take effect on January 1, 1975, except that in the case of contributions received by a collectively bargained plan maintained by more than one employer before the date of enactment of this Act, [Sept. 26, 1980], any determination by the plan administrator that any such contribution was made by mistake of fact or law before such date shall be deemed to have been made on such date of enactment."

Amendment by section 208(a), (e) of Pub. L. 96–364 effective Sept. 26, 1980, see section 210(a) of Pub. L. 96–364, set out as an Effective Date note under section 418 of this title.

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title I, §135(c)(1), Nov. 6, 1978, 92 Stat. 2787, provided that: "The amendments made by this section [amending this section and section 402 of this title] shall apply to plan years beginning after December 31, 1979."

Amendment by section 141(f)(3) of Pub. L. 95–600 effective with respect to qualified investment for taxable years beginning after Dec. 31, 1978, see section 141(g)(1) of Pub. L. 95–600, set out as an Effective Date note under section 409 of this title.

Pub. L. 95–600, title I, §143(b), Nov. 6, 1978, 92 Stat. 2796, provided that: "The amendment made by subsection (a) [amending this section] shall apply to acquisitions of securities after December 31, 1979."

Amendment by section 152(e) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 152(h) of Pub. L. 95–600, set out as a note under section 408 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 803(b)(2) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1974, see section 803(j) of Pub. L. 94–455, set out as a note under section 46 of this title.

Pub. L. 94–455, title XV, §1505(c), Oct. 4, 1976, 90 Stat. 1739, provided that: "The amendments made by this section [amending this section and section 801 of this title] apply for taxable years beginning after December 31, 1975."

Amendment by section 1901(a)(56) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Pub. L. 94–267, §1(e), Apr. 15, 1976, 90 Stat. 369, provided that: "The amendments made by this Act [amending this section and sections 402 to 404 and 805 of this title, and enacting provisions set out as a note under section 402 of this title] shall apply with respect to payments made to an employee on or after July 4, 1974."

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by sections 1012(b) and 1016(a)(2) of Pub. L. 93–406 applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93–406, for plan years beginning after Sept. 2, 1974, but, in the case of plans in existence on Jan. 1, 1974, amendment by sections 1012(b) and 196(a)(2) of Pub. L. 93–406 applicable for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93–406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

Pub. L. 93–406, title II, §1021(a)(1), (b), Sept. 2, 1974, 88 Stat. 935, 937, provided that the amendment made by that section is effective with respect to plan years beginning after Dec. 31, 1975.

Pub. L. 93–406, title II, §1022(d), Sept. 2, 1974, 88 Stat. 939, provided that the amendment made by that section is effective as of Jan. 1, 1974.

Pub. L. 93–406, title II, §1022(f), Sept. 2, 1974, 88 Stat. 940, provided that the amendment made by that section is effective as of Jan. 1, 1974.

Pub. L. 93–406, title II, §1024, Sept. 2, 1974, 88 Stat. 943, provided that: "Except as otherwise provided in section 1021, the amendments made by section 1021 [amending this section] shall apply to plan years to which part I applies. [For description of plan years to which part I applies, see section 1017 of Pub. L. 93–406, set out as an Effective Date; Transitional Rules note under section 410 of this title.] Except as otherwise provided in section 1022, the amendments made by section 1022 [amending this section and section 6051 of this title] shall apply to plan years to which part I applies. Section 1023 [amending this section] shall take effect on the date of the enactment of this Act [Sept. 2, 1974]."

Pub. L. 93–406, title II, §2001(i)(2)–(4), Sept. 2, 1974, 88 Stat. 958, provided that:

"(2) The amendments made by subsection (c) [amending this section] apply to

"(A) taxable years beginning after December 31, 1975, and

"(B) any other taxable years beginning after December 31, 1973, for which contributions were made under the plan in excess of the amounts permitted to be made under sections 404(e) and 1379(b) [of this title] as in effect on the day before the date of the enactment of this Act [Sept. 2, 1974].

"(3) The amendments made by subsection (d) [amending this section] apply to taxable years beginning after December 31, 1975.

"(4) The amendments made by subsections (e) and (f) [enacting section 4972 of this title and amending this section and section 72 of this title] apply to contributions made in taxable years beginning after December 31, 1975."

Amendment by section 2001(h)(1) of Pub. L. 93–406 applicable to taxable years ending after Sept. 2, 1974, see section 2001(i)(6) of Pub. L. 93–406, set out as a note under section 72 of this title.

Amendment by section 2004(a)(1) of Pub. L. 93–406 applicable to years beginning after Dec. 31, 1975, see section 2004(d) of Pub. L. 93–406, set out as an Effective Date; Transitional Provisions note under section 415 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Pub. L. 91–691, §1(b), Jan. 12, 1971, 84 Stat. 2074, provided that: "The amendments made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1953, and ending after August 16, 1954, but only with respect to contributions made after December 31, 1954."

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89–809, title II, §204(d), Nov. 13, 1966, 80 Stat. 1578, as amended by Pub. L. 90–607, Oct. 21,

1968, 82 Stat. 1189; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by subsections (a) and (b) [amending this section and section 404 of this title] shall apply with respect to taxable years beginning after December 31, 1967. The amendment made by subsection (c) [amending this section] shall apply with respect to taxable years beginning after December 31, 1967, and in the case of a taxpayer who applies the averaging provisions of section 401(e)(3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for a taxable year beginning after December 31, 1967, the computation of the amount deductible under section 404 of such Code for any prior taxable year which began before January 1, 1968, shall be made, for purposes of such averaging provisions, as if the amendment made by subsection (c) were applicable to such prior taxable year."

Pub. L. 89–809, title II, §205(b), Nov. 13, 1966, 80 Stat. 1578, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Nov. 13, 1966]."

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–97 applicable to taxable years beginning after Dec. 31, 1966, see section 106(e) of Pub. L. 89–97, set out as a note under section 213 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88–272, title II, §219(b), Feb. 26, 1964, 78 Stat. 58, provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954, but only with respect to contributions made after December 31, 1954."

EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87–863, §2(c), Oct. 23, 1962, 76 Stat. 1142, provided that: "The amendments made by subsections (a) and (b) [amending this section and section 404 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 23, 1962]."

Amendment by Pub. L. 87–792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87–792, set out as a note under section 22 of this title.

SHORT TITLE OF 1962 AMENDMENT

Pub. L. 87–792, §1, Oct. 10, 1962, 76 Stat. 809, provided: "That this Act [enacting sections 405 and 6047 of this title and amending this section and sections 37, 62, 72, 101, 104, 105, 172, 402 to 404, 503, 805, 1361, 2039, 2517, 3306, 3401, and 7207 of this title] may be cited as the 'Self-Employed Individuals Tax Retirement Act of 1962'."

REGULATIONS

Pub. L. 109–280, title VIII, §823, Aug. 17, 2006, 120 Stat. 998, provided that: "The Secretary of the Treasury shall issue regulations under which a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986) shall, for all years to which section 401(a)(9) of such Code applies to such plan, be treated as having complied with such section 401(a)(9) if such plan complies with a reasonable good faith interpretation of such section 401(a)(9)."

Pub. L. 109–280, title VIII, §826, Aug. 17, 2006, 120 Stat. 999, provided that: "Within 180 days after the date of the enactment of this Act [Aug. 17, 2006], the Secretary of the Treasury shall modify the rules for determining whether a participant has had a hardship for purposes of section 401(k)(2)(B)(i)(IV) of the Internal Revenue Code of 1986 to provide that if an event (including the occurrence of a medical expense) would constitute a hardship under the plan if it occurred with respect to the participant's spouse or dependent (as defined in section 152 of such Code), such event shall, to the extent permitted under a plan, constitute a hardship if it occurs with respect to a person who is a beneficiary under the plan with respect to the participant. The Secretary of the Treasury shall issue similar rules for purposes of determining whether a participant has had—

"(1) a hardship for purposes of section 403(b)(11)(B) of such Code; or

"(2) an unforeseen financial emergency for purposes of sections 409A(a)(2)(A)(vi), 409A(a)(2)(B)(ii), and 457(d)(1)(A)(iii) of such Code."

Pub. L. 107–16, title VI, §657(c)(2), June 7, 2001, 115 Stat. 136, provided that:

"(A) AUTOMATIC ROLLOVER SAFE HARBOR.—Not later than 3 years after the date of enactment of this Act [June 7, 2001], the Secretary of Labor shall prescribe regulations providing for safe harbors under

which the designation of an institution and investment of funds in accordance with section 401(a)(31)(B) of the Internal Revenue Code of 1986 is deemed to satisfy the fiduciary requirements of section 404(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104(a)).

"(B) USE OF LOW-COST INDIVIDUAL RETIREMENT PLANS.—The Secretary of the Treasury and the Secretary of Labor may provide, and shall give consideration to providing, special relief with respect to the use of low-cost individual retirement plans for purposes of transfers under section 401(a)(31)(B) of the Internal Revenue Code of 1986 and for other uses that promote the preservation of assets for retirement income purposes."

Pub. L. 99–514, title XI, §1141, Oct. 22, 1986, 100 Stat. 2490, provided that: "The Secretary of the Treasury or his delegate shall issue before February 1, 1988, such final regulations as may be necessary to carry out the amendments made by—

"(1) section 1111 [amending this section], relating to application of nondiscrimination rules to integrated plans,

"(2) section 1112 [amending this section and sections 402, 404, 406, 407, 410, and 818 of this title], relating to coverage requirements for qualified plans,

"(3) section 1113 [amending sections 410 and 411 of this title and sections 1052 to 1054 of Title 29, Labor], relating to minimum vesting standards,

"(4) section 1114 [amending this section, sections 106, 117, 120, 127, 129, 132, 274, 404A, 406, 407, 411, 414, 415, 423, 501, 505, and 4975 of this title, and section 1108 of Title 29], relating to the definition of highly compensated employee,

"(5) section 1115 [amending section 414 of this title], relating to separate lines of business and the definition of compensation,

"(6) section 1116 [amending this section], relating to rules for section 401(k) plans,

"(7) section 1117 [enacting section 4979 of this title and amending this section and section 414 of this title], relating to nondiscrimination requirements for employer matching and employer contribution,

"(8) section 1120 [amending section 403 of this title], relating to nondiscrimination requirements for tax sheltered annuities, and

"(9) section 1133 [enacting section 4981A [now 4980A] of this title], relating to tax on excess distributions."

SPECIAL RULES FOR MULTIPLE EMPLOYER PLANS OF CERTAIN COOPERATIVES

Pub. L. 109–280, title I, §104, Aug. 17, 2006, 120 Stat. 816, as amended by Pub. L. 111–192, title II, §202(b), June 25, 2010, 124 Stat. 1298; Pub. L. 113–97, title I, §103(b), Apr. 7, 2014, 128 Stat. 1117, provided that:

"(a) GENERAL RULE.—Except as provided in this section, if a plan in existence on July 26, 2005, was an eligible cooperative plan or an eligible charity plan for its plan year which includes such date, the amendments made by this subtitle [subtitle A (§§101 to 108) of title I of Pub. L. 109–280, enacting sections 1082 and 1083 of Title 29, Labor, amending sections 1021, 1023, 1053, 1054, 1056, 1103, 1108, 1132, 1301, 1303, 1310, 1362, 1371, and 1423 of Title 29 and section 106 of 1978 Reorg. Plan No. 4, set out in the Appendix to Title 5, Government Organization and Employees, and as a note under section 1001 of Title 29, and repealing sections 1057, 1082 to 1086 of Title 29] and subtitle B [subtitle B (§§111 to 116) of title I of Pub. L. 109–280, enacting sections 430 and 436 of this title, amending this section and sections 409A, 411, 412, 414, 420, 4971, 4972, and 6059 of this title, and amending provisions set out as a note under section 412 of this title] shall not apply to plan years beginning before the earlier of—

"(1) the first plan year for which the plan ceases to be an eligible cooperative plan or an eligible charity plan, or

"(2) January 1, 2017.

"(b) INTEREST RATE.—In applying section 302(b)(5)(B) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1082(b)(5)(B)] and section 412(b)(5)(B) of the Internal Revenue Code of 1986 (as in effect before the amendments made by this subtitle and subtitle B) to an eligible cooperative plan or an eligible charity plan for plan years beginning after December 31, 2007, and before the first plan year to which such amendments apply, the third segment rate determined under section 303(h)(2)(C)(iii) of such Act [29 U.S.C. 1083(h)(2)(C)(iii)] and section 430(h)(2)(C)(iii) of such Code (as added by such amendments) shall be used in lieu of the interest rate otherwise used.

"(c) ELIGIBLE COOPERATIVE PLAN DEFINED.—For purposes of this section, a plan shall be treated as an eligible cooperative plan for a plan year if the plan is maintained by more than 1 employer and at least 85 percent of the employers are—

"(1) rural cooperatives (as defined in section 401(k)(7)(B) of such Code without regard to clause (iv)

thereof), or

"(2) organizations which are—

"(A) cooperative organizations described in section 1381(a) of such Code which are more than 50-percent owned by agricultural producers or by cooperatives owned by agricultural producers, or

"(B) more than 50-percent owned, or controlled by, one or more cooperative organizations described in subparagraph (A).

A plan shall also be treated as an eligible cooperative plan for any plan year for which it is described in section 210(a) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1060(a)] and is maintained by a rural telephone cooperative association described in section 3(40)(B)(v) of such Act [29 U.S.C. 1002(40)(B)(v)].

"(d) ELIGIBLE CHARITY PLAN DEFINED.—

"(1) IN GENERAL.—For purposes of this section, a plan shall be treated as an eligible charity plan for a plan year if the plan is maintained by more than one employer (determined without regard to section 414(c) of the Internal Revenue Code) and 100 percent of the employers are described in section 501(c)(3) of such Code.

"(2) ELECTION NOT TO BE AN ELIGIBLE CHARITY PLAN.—A plan sponsor may elect for a plan to cease to be treated as an eligible charity plan for plan years beginning after December 31, 2013. Such election shall be made at such time and in such form and manner as shall be prescribed by the Secretary of the Treasury. Any such election may be revoked only with the consent of the Secretary of the Treasury.

"(3) ELECTION TO USE FUNDING OPTIONS AVAILABLE TO OTHER PLAN SPONSORS.—

"(A) A plan sponsor that makes the election described in paragraph (2) may elect for a plan to apply the rules described in subparagraphs (B), (C), and (D) for plan years beginning after December 31, 2013. Such election shall be made at such time and in such form and manner as shall be prescribed by the Secretary of the Treasury. Any such election may be revoked only with the consent of the Secretary of the Treasury.

"(B) Under the rules described in this subparagraph, for the first plan year beginning after December 31, 2013, a plan has—

"(i) an 11-year shortfall amortization base,

"(ii) a 12-year shortfall amortization base, and

"(iii) a 7-year shortfall amortization base.

"(C) Under the rules described in this subparagraph, section 303(c)(2)(A) and (B) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1083(c)(2)(A), (B)], and section 430(c)(2)(A) and (B) of the Internal Revenue Code of 1986 shall be applied by—

"(i) in the case of an 11-year shortfall amortization base, substituting '11-plan-year period' for '7-plan-year period' wherever such phrase appears, and

"(ii) in the case of a 12-year shortfall amortization base, substituting '12-plan-year period' for '7-plan-year period' wherever such phrase appears.

"(D) Under the rules described in this subparagraph, section 303(c)(7) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1083(c)(7)] and section 430(c)(7) of the Internal Revenue Code of 1986 shall apply to a plan for which an election has been made under subparagraph (A). Such provisions shall apply in the following manner:

"(i) The first plan year beginning after December 31, 2013, shall be treated as an election year, and no other plan years shall be so treated.

"(ii) All references in section 303(c)(7) of such Act [29 U.S.C. 1083(c)(7)] and section 430(c)(7) of such Code to 'February 28, 2010' or 'March 1, 2010' shall be treated as references to 'February 28, 2013' or 'March 1, 2013', respectively.

"(E) For purposes of this paragraph, the 11-year amortization base is an amount, determined for the first plan year beginning after December 31, 2013, equal to the unamortized principal amount of the shortfall amortization base (as defined in section 303(c)(3) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1083(c)(3)] and section 430(c)(3) of the Internal Revenue Code of 1986) that would have applied to the plan for the first plan beginning after December 31, 2009, if—

"(i) the plan had never been an eligible charity plan,

"(ii) the plan sponsor had made the election described in section 303(c)(2)(D)(i) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1083(c)(2)(D)(i)] and in section 430(c)(2)(D)(i) of the Internal Revenue Code of 1986 to have section 303(c)(2)(D)(i) of such Act and section 430(c)(2)(D)(iii) of such Code apply with respect to the shortfall amortization base for the first plan year beginning after December 31, 2009, and

"(iii) no event had occurred under paragraph (6) or (7) of section 303(c) of such Act [29 U.S.C. 1083(c)(6), (7)] or paragraph (6) or (7) of section 430(c) of such Code that, as of the first day of the first plan year beginning after December 31, 2013, would have modified the shortfall amortization base or the shortfall amortization installments with respect to the first plan year beginning after December 31, 2009.

"(F) For purposes of this paragraph, the 12-year amortization base is an amount, determined for the first plan year beginning after December 31, 2013, equal to the unamortized principal amount of the shortfall amortization base (as defined in section 303(c)(3) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1083(c)(3)] and section 430(c)(3) of the Internal Revenue Code of 1986) that would have applied to the plan for the first plan beginning after December 31, 2010, if—

"(i) the plan had never been an eligible charity plan,

"(ii) the plan sponsor had made the election described in section 303(c)(2)(D)(i) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1083(c)(2)(D)(i)] and in section 430(c)(2)(D)(i) of the Internal Revenue Code of 1986 to have section 303(c)(2)(D)(i) of such Act and section 430(c)(2)(D)(iii) of such Code apply with respect to the shortfall amortization base for the first plan year beginning after December 31, 2010, and

"(iii) no event had occurred under paragraph (6) or (7) of section 303(c) of such Act [29 U.S.C. 1083(c)(6), (7)] or paragraph (6) or (7) of section 430(c) of such Code that, as of the first day of the first plan year beginning after December 31, 2013, would have modified the shortfall amortization base or the shortfall amortization installments with respect to the first plan year beginning after December 31, 2010.

"(G) For purposes of this paragraph, the 7-year shortfall amortization base is an amount, determined for the first plan year beginning after December 31, 2013, equal to—

"(i) the shortfall amortization base for the first plan year beginning after December 31, 2013, without regard to this paragraph, minus

"(ii) the sum of the 11-year shortfall amortization base and the 12-year shortfall amortization base.

"(4) RETROACTIVE ELECTION.—Not later than December 31, 2014, a plan sponsor may make a one-time, irrevocable, retroactive election to not be treated as an eligible charity plan. Such election shall be effective for plan years beginning after December 31, 2007, and shall be made by providing reasonable notice to the Secretary of the Treasury."

[Pub. L. 111–192, title II, §202(c)(2), June 25, 2010, 124 Stat. 1299, provided that: "The amendments made by subsection (b) [amending section 104 of Pub. L. 109–280, set out above] shall apply to plan years beginning after December 31, 2007, except that a plan sponsor may elect to apply such amendments to plan years beginning after December 31, 2008. Any such election shall be made at such time, and in such form and manner, as shall be prescribed by the Secretary of the Treasury, and may be revoked only with the consent of the Secretary of the Treasury."]

TEMPORARY RELIEF FOR CERTAIN PBGC SETTLEMENT PLANS

Pub. L. 109–280, title I, §105, Aug. 17, 2006, 120 Stat. 817, provided that:

"(a) GENERAL RULE.—Except as provided in this section, if a plan in existence on July 26, 2005, was a PBGC settlement plan as of such date, the amendments made by this subtitle [subtitle A (§§101 to 108) of title I of Pub. L. 109–280, enacting sections 1082 and 1083 of Title 29, Labor, amending sections 1021, 1023, 1053, 1054, 1056, 1103, 1108, 1132, 1301, 1303, 1310, 1362, 1371, and 1423 of Title 29 and section 106 of 1978 Reorg. Plan No. 4, set out in the Appendix to Title 5, Government Organization and Employees, and as a note under section 1001 of Title 29, and repealing sections 1057, 1082 to 1086 of Title 29] and subtitle B [subtitle B (§§111 to 116) of title I of Pub. L. 109–280, enacting sections 430 and 436 of this title, amending this section and sections 409A, 411, 412, 414, 420, 4971, 4972, and 6059 of this title, and amending provisions set out as a note under section 412 of this title] shall not apply to plan years beginning before January 1, 2014.

"(b) INTEREST RATE.—In applying section 302(b)(5)(B) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1082(b)(5)(B)] and section 412(b)(5)(B) of the Internal Revenue Code of 1986 (as in effect before the amendments made by this subtitle and subtitle B), to a PBGC settlement plan for plan years beginning after December 31, 2007, and before January 1, 2014, the third segment rate determined under section 303(h)(2)(C)(iii) of such Act [29 U.S.C. 1083(h)(2)(C)(iii)] and section 430(h)(2)(C)(iii) of such Code (as added by such amendments) shall be used in lieu of the interest rate otherwise used.

"(c) PBGC SETTLEMENT PLAN.—For purposes of this section, the term 'PBGC settlement plan' means a defined benefit plan (other than a multiemployer plan) to which section 302 of such Act [29 U.S.C. 1082] and

section 412 of such Code apply and—

"(1) which was sponsored by an employer which was in bankruptcy, giving rise to a claim by the Pension Benefit Guaranty Corporation of not greater than $150,000,000, and the sponsorship of which was assumed by another employer that was not a member of the same controlled group as the bankrupt sponsor and the claim of the Pension Benefit Guaranty Corporation was settled or withdrawn in connection with the assumption of the sponsorship, or

"(2) which, by agreement with the Pension Benefit Guaranty Corporation, was spun off from a plan subsequently terminated by such Corporation under section 4042 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1342]."

SPECIAL RULES FOR PLANS OF CERTAIN GOVERNMENT CONTRACTORS

Pub. L. 109–280, title I, §106, Aug. 17, 2006, 120 Stat. 817, provided that:

"(a) GENERAL RULE.—Except as provided in this section, if a plan is an eligible government contractor plan, this subtitle [subtitle A (§§101 to 108) of title I of Pub. L. 109–280, enacting sections 1082 and 1083 of Title 29, Labor, amending sections 1021, 1023, 1053, 1054, 1056, 1103, 1108, 1132, 1301, 1303, 1310, 1362, 1371, and 1423 of Title 29 and section 106 of 1978 Reorg. Plan No. 4, set out in the Appendix to Title 5, Government Organization and Employees, and as a note under section 1001 of Title 29, repealing sections 1057, 1082 to 1086 of Title 29, and enacting provisions set out as notes under this section and sections 1021, 1082, and 1083 of Title 29] and subtitle B [subtitle B (§§111 to 116) of title I of Pub. L. 109–280, enacting sections 430 and 436 of this title, amending this section and sections 409A, 411, 412, 414, 420, 4971, 4972, and 6059 of this title, enacting provisions set out as notes under sections 409A, 412, 430, and 436 of this title, and amending provisions set out as a note under section 412 of this title] shall not apply to plan years beginning before the earliest of—

"(1) the first plan year for which the plan ceases to be an eligible government contractor plan,

"(2) the effective date of the Cost Accounting Standards Pension Harmonization Rule, or

"(3) January 1, 2011.

"(b) INTEREST RATE.—In applying section 302(b)(5)(B) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1082(b)(5)(B)] and section 412(b)(5)(B) of the Internal Revenue Code of 1986 (as in effect before the amendments made by this subtitle and subtitle B) to an eligible government contractor plan for plan years beginning after December 31, 2007, and before the first plan year to which such amendments apply, the third segment rate determined under section 303(h)(2)(C)(iii) of such Act [29 U.S.C. 1083(h)(2)(C)(iii)] and section 430(h)(2)(C)(iii) of such Code (as added by such amendments) shall be used in lieu of the interest rate otherwise used.

"(c) ELIGIBLE GOVERNMENT CONTRACTOR PLAN DEFINED.—For purposes of this section, a plan shall be treated as an eligible government contractor plan if it is maintained by a corporation or a member of the same affiliated group (as defined by section 1504(a) of the Internal Revenue Code of 1986), whose primary source of revenue is derived from business performed under contracts with the United States that are subject to the Federal Acquisition Regulations (chapter 1 of title 48, CFR) and that are also subject to the Defense Federal Acquisition Regulation Supplement (chapter 2 of title 48, CFR), and whose revenue derived from such business in the previous fiscal year exceeded $5,000,000,000, and whose pension plan costs that are assignable under those contracts are subject to sections 412 and 413 of the Cost Accounting Standards (48 CFR 9904.412 and 9904.413).

"(d) COST ACCOUNTING STANDARDS PENSION HARMONIZATION RULE.—The Cost Accounting Standards Board shall review and revise sections 412 and 413 of the Cost Accounting Standards (48 CFR 9904.412 and 9904.413) to harmonize the minimum required contribution under the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq.] of eligible government contractor plans and government reimbursable pension plan costs not later than January 1, 2010. Any final rule adopted by the Cost Accounting Standards Board shall be deemed the Cost Accounting Standards Pension Harmonization Rule."

APPLICATION OF EXTENDED AMORTIZATION PERIODS TO PLANS WITH DELAYED EFFECTIVE DATE

Pub. L. 109–280, title I, §107, as added by Pub. L. 111–192, title II, §202(a), June 25, 2010, 124 Stat. 1297, provided that:

"(a) IN GENERAL.—If the plan sponsor of a plan to which section 104, 105, or 106 of this Act [see notes above] applies elects to have this section apply for any eligible plan year (in this section referred to as an 'election year'), section 302 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1082] and section 412 of the Internal Revenue Code of 1986 (as in effect before the amendments made by this subtitle [subtitle A (§§101 to 108) of title I of Pub. L. 109–280, enacting sections 1082 and 1083 of Title 29, Labor, amending sections 1021, 1023, 1053, 1054, 1056, 1103, 1108, 1132, 1301, 1303, 1310, 1362, 1371, and 1423

of Title 29 and section 106 of 1978 Reorg. Plan No. 4, set out in the Appendix to Title 5, Government Organization and Employees, and as a note under section 1001 of Title 29, and repealing sections 1057, 1082 to 1086 of Title 29] and subtitle B [subtitle B (§§111 to 116) of title I of Pub. L. 109–280, enacting sections 430 and 436 of this title, amending this section and sections 409A, 411, 412, 414, 420, 4971, 4972, and 6059 of this title, and amending provisions set out as a note under section 412 of this title]) shall apply to such year in the manner described in subsection (b) or (c), whichever is specified in the election. All references in this section to 'such Act' or 'such Code' shall be to such Act or such Code as in effect before the amendments made by this subtitle and subtitle B.

"(b) APPLICATION OF 2 AND 7 RULE.—In the case of an election year to which this subsection applies—

"(1) 2-YEAR LOOKBACK FOR DETERMINING DEFICIT REDUCTION CONTRIBUTIONS FOR CERTAIN PLANS.—For purposes of applying section 302(d)(9) of such Act [29 U.S.C. 1082(d)(9)] and section 412(l)(9) of such Code, the funded current liability percentage (as defined in subparagraph (C) thereof) for such plan for such plan year shall be such funded current liability percentage of such plan for the second plan year preceding the first election year of such plan.

"(2) CALCULATION OF DEFICIT REDUCTION CONTRIBUTION.—For purposes of applying section 302(d) of such Act [29 U.S.C. 1082(d)] and section 412(l) of such Code to a plan to which such sections apply (after taking into account paragraph (1))—

"(A) in the case of the increased unfunded new liability of the plan, the applicable percentage described in section 302(d)(4)(C) of such Act [29 U.S.C. 1082(d)(4)(C)] and section 412(l)(4)(C) of such Code shall be the third segment rate described in sections 104(b), 105(b), and 106(b) of this Act [see notes above], and

"(B) in the case of the excess of the unfunded new liability over the increased unfunded new liability, such applicable percentage shall be determined without regard to this section.

"(c) APPLICATION OF 15-YEAR AMORTIZATION.—In the case of an election year to which this subsection applies, for purposes of applying section 302(d) of such Act [29 U.S.C. 1082(d)] and section 412(l) of such Code—

"(1) in the case of the increased unfunded new liability of the plan, the applicable percentage described in section 302(d)(4)(C) of such Act [29 U.S.C. 1082(d)(4)(C)] and section 412(l)(4)(C) of such Code for any pre-effective date plan year beginning with or after the first election year shall be the ratio of—

"(A) the annual installments payable in each year if the increased unfunded new liability for such plan year were amortized over 15 years, using an interest rate equal to the third segment rate described in sections 104(b), 105(b), and 106(b) of this Act, to

"(B) the increased unfunded new liability for such plan year, and

"(2) in the case of the excess of the unfunded new liability over the increased unfunded new liability, such applicable percentage shall be determined without regard to this section.

"(d) ELECTION.—

"(1) IN GENERAL.—The plan sponsor of a plan may elect to have this section apply to not more than 2 eligible plan years with respect to the plan, except that in the case of a plan to which section 106 of this Act applies, the plan sponsor may only elect to have this section apply to 1 eligible plan year.

"(2) AMORTIZATION SCHEDULE.—Such election shall specify whether the rules under subsection (b) or (c) shall apply to an election year, except that if a plan sponsor elects to have this section apply to 2 eligible plan years, the plan sponsor must elect the same rule for both years.

"(3) OTHER RULES.—Such election shall be made at such time, and in such form and manner, as shall be prescribed by the Secretary of the Treasury, and may be revoked only with the consent of the Secretary of the Treasury.

"(e) DEFINITIONS.—For purposes of this section—

"(1) ELIGIBLE PLAN YEAR.—For purposes of this subparagraph, the term 'eligible plan year' means any plan year beginning in 2008, 2009, 2010, or 2011, except that a plan year beginning in 2008 shall only be treated as an eligible plan year if the due date for the payment of the minimum required contribution for such plan year occurs on or after the date of the enactment of this clause [June 25, 2010].

"(2) PRE-EFFECTIVE DATE PLAN YEAR.—The term 'pre-effective date plan year' means, with respect to a plan, any plan year prior to the first year in which the amendments made by this subtitle and subtitle B apply to the plan.

"(3) INCREASED UNFUNDED NEW LIABILITY.—The term 'increased unfunded new liability' means, with respect to a year, the excess (if any) of the unfunded new liability over the amount of unfunded new liability determined as if the value of the plan's assets determined under subsection 302(c)(2) of such Act [29 U.S.C. 1082(c)(2)] and section 412(c)(2) of such Code equaled the product of the current liability

of the plan for the year multiplied by the funded current liability percentage (as defined in section 302(d)(8)(B) of such Act [29 U.S.C. 1082(d)(8)(B)] and 412(l)(8)(B) of such Code) of the plan for the second plan year preceding the first election year of such plan.

"(4) OTHER DEFINITIONS.—The terms 'unfunded new liability' and 'current liability' shall have the meanings set forth in section 302(d) of such Act [29 U.S.C. 1082(d)] and section 412(l) of such Code."

GRANDFATHER RULE FOR CHURCH PLANS WHICH SELF-ANNUITIZE

Pub. L. 109–280, title VIII, §865, Aug. 17, 2006, 120 Stat. 1025, provided that:

"(a) IN GENERAL.—In the case of any plan year ending after the date of the enactment of this Act [Aug. 17, 2006], annuity payments provided with respect to any account maintained for a participant or beneficiary under a qualified church plan shall not fail to satisfy the requirements of section 401(a)(9) of the Internal Revenue Code of 1986 merely because the payments are not made under an annuity contract purchased from an insurance company if such payments would not fail such requirements if provided with respect to a retirement income account described in section 403(b)(9) of such Code.

"(b) QUALIFIED CHURCH PLAN.—For purposes of this section, the term 'qualified church plan' means any money purchase pension plan described in section 401(a) of such Code which—

"(1) is a church plan (as defined in section 414(e) of such Code) with respect to which the election provided by section 410(d) of such Code has not been made, and

"(2) was in existence on April 17, 2002."

NEW TECHNOLOGIES IN RETIREMENT PLANS

Pub. L. 105–34, title XV, §1510, Aug. 5, 1997, 111 Stat. 1068, provided that:

"(a) IN GENERAL.—Not later than December 31, 1998, the Secretary of the Treasury and the Secretary of Labor shall each issue guidance which is designed to—

"(1) interpret the notice, election, consent, disclosure, and time requirements (and related recordkeeping requirements) under the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq.] relating to retirement plans as applied to the use of new technologies by plan sponsors and administrators while maintaining the protection of the rights of participants and beneficiaries, and

"(2) clarify the extent to which writing requirements under the Internal Revenue Code of 1986 relating to retirement plans shall be interpreted to permit paperless transactions.

"(b) APPLICABILITY OF FINAL REGULATIONS.—Final regulations applicable to the guidance regarding new technologies described in subsection (a) shall not be effective until the first plan year beginning at least 6 months after the issuance of such final regulations."

TREATMENT OF QUALIFIED FOOTBALL COACHES PLAN

Pub. L. 104–188, title I, §1704(k), Aug. 20, 1996, 110 Stat. 1882, provided that:

"(1) IN GENERAL.—For purposes of the Internal Revenue Code of 1986, a qualified football coaches plan—

"(A) shall be treated as a multiemployer collectively bargained plan, and

"(B) notwithstanding section 401(k)(4)(B) of such Code, may include a qualified cash and deferred arrangement under section 401(k) of such Code.

"(2) QUALIFIED FOOTBALL COACHES PLAN.—For purposes of this subsection, the term 'qualified football coaches plan' means any defined contribution plan which is established and maintained by an organization—

"(A) which is described in section 501(c) of such Code,

"(B) the membership of which consists entirely of individuals who primarily coach football as full-time employees of 4-year colleges or universities described in section 170(b)(1)(A)(ii) of such Code, and

"(C) which was in existence on September 18, 1986.

"(3) EFFECTIVE DATE.—This subsection shall apply to years beginning after December 22, 1987."

APPLICABILITY OF SUBSECTION (A)(26)

Pub. L. 100–647, title VI, §6065, Nov. 10, 1988, 102 Stat. 3702, provided that: "In the case of plan years beginning before January 1, 1993, section 401(a)(26) of the 1986 Code shall not apply to any governmental plan (within the meaning of section 414(d) of such Code) with respect to employees who were participants in such plan on July 14, 1988."

COORDINATION OF INTERNAL REVENUE CODE OF 1986 WITH EMPLOYEE RETIREMENT

INCOME SECURITY ACT OF 1974

Pub. L. 100–203, title IX, §9343(a), Dec. 22, 1987, 101 Stat. 1330–372, provided that: "Except to the extent specifically provided in the Internal Revenue Code of 1986 or as determined by the Secretary of the Treasury, titles I and IV of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq., 1301 et seq.] are not applicable in interpreting such Code."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

Pub. L. 104–188, title I, §1465, Aug. 20, 1996, 110 Stat. 1825, provided that: "If any amendment made by this subtitle [subtitle D (§§1401–1465) of title I of Pub. L. 104–188, see Tables for classification] requires an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after January 1, 1998, if—

"(1) during the period after such amendment takes effect and before such first plan year, the plan or contract is operated in accordance with the requirements of such amendment, and

"(2) such amendment applies retroactively to such period.

In the case of a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986), this section shall be applied by substituting '2000' for '1998'."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

Pub. L. 102–318, title V, §523, July 3, 1992, 106 Stat. 315, provided that: "If any amendment made by this subtitle [subtitle B (§§521–523) of title V of Pub. L. 102–318, amending this section and sections 55, 62, 72, 219, 402 to 404, 406 to 408, 411, 414, 415, 457, 691, 871, 877, 1441, 3121, 3306, 3402, 3405, 4973, 4980A, 6047, 6652, and 7701 of this title] requires an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after January 1, 1994, if—

"(1) during the period after such amendment takes effect and before such first plan year, the plan is operated in accordance with the requirements of such amendment, and

"(2) such plan amendment applies retroactively to such period."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

Pub. L. 99–514, title XI, §1140, Oct. 22, 1986, 100 Stat. 2489, as amended by Pub. L. 101–239, title VII, §7861(c), Dec. 19, 1989, 103 Stat. 2431; Pub. L. 104–188, title I, §1704(t)(27), Aug. 20, 1996, 110 Stat. 1888, provided that:

"(a) IN GENERAL.—If any amendment made by this subtitle, subtitle C [subtitles A (§§1101–1147) and C (§§1171–1177) of title XI of Pub. L. 99–514, enacting sections 2057, 4972, 4979, 4980, 4981A, and 6659A of this title, amending this section, sections 38, 56, 72, 106, 108, 117, 120, 127, 129, 132, 133, 219, 274, 402 to 404A, 406 to 411, 414 to 417, 423, 457, 501, 505, 818, 852, 3121, 3306, 3405, 4973 to 4975, 4979A, 6051, 6693, and 7701 of this title, and sections 1052 to 1055 and 1108 of Title 29, Labor, repealing sections 41 and 6699 of this title, and amending provisions set out as a note under section 1001 of Title 29], or title XVIII of this Act [see Tables for classification] requires an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after January 1, 1989, if—

"(1) during the period after such amendment takes effect and before such first plan year, the plan is operated in accordance with the requirements of such amendment or in accordance with an amendment prescribed by the Secretary and adopted by the plan, and

"(2) such plan amendment applies retroactively to the period after such amendment takes effect and such first plan year.

A pension plan shall not be treated as failing to provide definitely determinable benefits or contributions, or to be operated in accordance with the provisions of the plan, merely because it operates in accordance with this provision.

"(b) MODEL AMENDMENT.—

"(1) SECRETARY TO PRESCRIBE AMENDMENT.—The Secretary of the Treasury or his delegate shall prescribe an amendment or amendments which allow a plan to meet the requirements of any amendment made by this subtitle or subtitle C—

"(A) which requires an amendment to such plan, and

"(B) is effective before the first plan year beginning after December 31, 1988.

"(2) ADOPTION BY PLAN.—If a plan adopts the amendment or amendments prescribed under paragraph (1) and operates in accordance with such amendment or amendments, such plan shall not be treated as failing to provide definitely determinable benefits or contributions or to be operated in accordance with the provisions of the plan.

"(c) SPECIAL RULE FOR COLLECTIVELY BARGAINED PLANS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more

employers ratified before March 1, 1986, subsection (a) shall be applied by substituting for the first plan year beginning on or after January 1, 1989, the first plan year beginning after the later of—

"(1) December 31, 1988, or

"(2) the earlier of—

"(A) December 31, 1990, or

"(B) the date on which the last of such collective bargaining agreements terminate (without regard to any extension after February 28, 1986).

For purposes of paragraph (1)(B) [(2)(B)] and any other provision of this title [see Tables for classification], an agreement shall not be treated as terminated merely because the plan is amended pursuant to such agreement to meet the requirements of any amendment made by this title or title XVIII of this Act."

SECRETARY TO ACCEPT APPLICATIONS WITH RESPECT TO SECTION 401(K) PLANS

Pub. L. 99–514, title XI, §1142, Oct. 22, 1986, 100 Stat. 2490, provided that: "The Secretary of the Treasury or his delegate shall, not later than May 1, 1987, begin accepting applications for opinion letters with respect to master and prototype plans for qualified cash or deferred arrangements under section 401(k) of the Internal Revenue Code of 1986."

TREATMENT OF INDIVIDUALS HAVING BEGINNING DATE AFFECTED BY PUB. L. 99–514

Pub. L. 99–514, title XVIII, §1852(a)(4)(C), as added by Pub. L. 100–647, title I, §1018(t)(3)(A), Nov. 10, 1988, 102 Stat. 3588, provided that: "An individual whose required beginning date would, but for the amendment made by subparagraph (A) [amending this section], occur after December 31, 1986, but whose required beginning date after such amendment occurs before January 1, 1987, shall be treated as if such individual had become a 5-percent owner during the plan year ending in 1986."

DISTRIBUTION REQUIREMENTS FOR ACCOUNTS AND ANNUITIES OF AN INSURER IN A REHABILITATION PROCEEDING

Pub. L. 98–369, div. A, title V, §553, July 18, 1984, 98 Stat. 897, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) IN GENERAL.—For purposes of sections 401(a)(9), 408(a)(6) and (7), and 408(b)(3) and (4) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]—

"(1) a trust, custodial account, or annuity or other contract forming part of a pension or profit-sharing plan, or a retirement annuity, or

"(2) a grantor of an individual retirement account or an individual retirement annuity,

shall not be treated as failing to meet the requirements of such sections if such account, annuity, or contract was issued by an insurance company which, on March 15, 1984, was a party to a rehabilitation proceeding under the applicable State insurance law.

"(b) LIMITATION.—Subsection (a) shall apply only during the period during which—

"(1) the insurance company continues to be a party to the proceeding described in subsection (a), and

"(2) distributions under the trust, custodial account, or annuity or other contract may not be made by reason of such proceeding."

QUALIFICATION REQUIREMENTS MODIFIED IF REGULATIONS NOT ISSUED

Pub. L. 98–369, div. A, title V, §524(e), July 18, 1984, 98 Stat. 872, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—If the Secretary of the Treasury or his delegate does not publish final regulations under section 416 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect on the day before the date of the enactment of this Act [July 18, 1984]) before January 1, 1985, the Secretary shall publish before such date plan amendment provisions which may be incorporated in a plan to meet the requirements of section 401(a)(10)(B)(ii) of such Code.

"(2) EFFECT OF INCORPORATION.—If a plan is amended to incorporate the plan amendment provisions described in paragraph (1), such plan shall be treated as meeting the requirements of section 401(a)(10)(B)(ii) of the Internal Revenue Code of 1986 during the period such amendment is in effect but not later than 6 months after the final regulations described in paragraph (1) are published.

"(3) FAILURE BY SECRETARY TO PUBLISH.—If the Secretary of the Treasury or his delegate does not publish plan amendment provisions described in paragraph (1), the plan shall be treated as meeting the requirements of section 401(a)(10)(B) of the Internal Revenue Code of 1986 if—

"(A) such plan is amended to incorporate such requirements by reference, except that

"(B) in the case of any optional requirement under section 416 of such Code, if such amendment does not specify the manner in which such requirement will be met, the employer shall be treated as having

elected the requirement with respect to each employee which provides the maximum vested accrued benefit for such employee."

TRANSITIONAL RULE

Pub. L. 95–600, title I, §135(c)(2), Nov. 6, 1978, 92 Stat. 2787, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "In the case of cash or deferred arrangements in existence on June 27, 1974—

"(A) the qualification of the plan and the trust under section 401 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954];

"(B) the exemption of the trust under section 501(a) of such Code;

"(C) the taxable year of inclusion in gross income of the employee of any amount so contributed by the employer to the trust; and

"(D) the excludability of the interest of the employee in the trust under sections 2039 and 2517 of such Code,

shall be determined for plan years beginning before January 1, 1980 in a manner consistent with Revenue Ruling 56–497 (1956–2 C.B. 284), Revenue Ruling 63–180 (1963–2 C.B. 189), and Revenue Ruling 68–89 (1968–1 C.B. 402)."

SALARY REDUCTION REGULATIONS

Pub. L. 93–406, title II, §2006, Sept. 2, 1974, 88 Stat. 992, as amended by Pub. L. 94–455, title XV, §1506, Oct. 4, 1976, 90 Stat. 1739; Pub. L. 95–615, §5, Nov. 8, 1978, 92 Stat. 3097; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) INCLUSION OF CERTAIN CONTRIBUTIONS IN INCOME.—Except in the case of plans or arrangements in existence on June 27, 1974, a contribution made before January 1, 1980, to an employees' trust described in section 401(a), 403(a) or 405(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] which is exempt from tax under section 501(a) of such Code, or under an arrangement which, but for the fact that it was not in existence on June 27, 1974, would be an arrangement described in subsection (b)(2) of this section, shall be treated as a contribution made by an employee if the contribution is made under an arrangement under which the contribution will be made only if the employee elects to receive a reduction in his compensation or to forego an increase in his compensation.

"(b) ADMINISTRATION IN THE CASE OF CERTAIN QUALIFIED PENSION OR PROFIT-SHARING PLANS, ETC., IN EXISTENCE ON JUNE 27, 1974.—No salary reduction regulations may be issued by the Secretary of the Treasury in final form before January 1, 1980, with respect to an arrangement which was in existence on June 27, 1974, and which, on that date—

"(1) provided for contributions to an employee's trust described in section 401(a), 403(a), or 405(a) of the Internal Revenue Code of 1986 [subsec. (a) of this section, section 403(a) of this title, or section 405(a) of this title] which is exempt from tax under section 501(a) of such Code [section 501(a) of this title], or

"(2) was maintained as part of an arrangement under which an employee was permitted to elect to receive part of his compensation in one or more alternative forms if one of such forms results in the inclusion of amounts in income under the Internal Revenue Code of 1986 [this title].

"(c) ADMINISTRATION OF LAW WITH RESPECT TO CERTAIN PLANS.—

"(1) ADMINISTRATION IN THE CASE OF PLANS DESCRIBED IN SUBSECTION (b).—Until salary reduction regulations have been issued in final form, the law with respect to plans or arrangements described in subsection (b) shall be administered—

"(A) without regard to the proposed salary reduction regulations (37 FR 25938) and without regard to any other proposed salary reduction regulations, and

"(B) in the manner in which such law was administered before January 1, 1972.

"(2) ADMINISTRATION IN THE CASE OF QUALIFIED PROFIT-SHARING PLANS.—In the case of plans or arrangements described in subsection (b), in applying this section to the tax treatment of contributions to qualified profit-sharing plans where the contributed amounts are distributable only after a period of deferral, the law shall be administered in a manner consistent with—

"(A) Revenue Ruling 56–497 (1956—2 C.B. 284),

"(B) Revenue Ruling 63–180 (1963—2 C.B. 189), and

"(C) Revenue Ruling 68–89 (1968—1 C.B. 402).

"(d) LIMITATION ON RETROACTIVITY OF FINAL REGULATIONS.—In the case of any salary reduction regulations which become final after December 31, 1979—

"(1) for purposes of chapter 1 of the Internal Revenue Code of 1986 (relating to normal taxes and surtaxes), such regulations shall not apply before January 1, 1980; and

"(2) for purposes of chapter 21 of such Code (relating to Federal Insurance Contributions Act) and for

purposes of chapter 24 of such Code (relating to collection of income tax at source on wages), such regulations shall not apply before the day on which such regulations are issued in final form.

"(e) SALARY REDUCTION REGULATIONS DEFINED.—For purpose of this section, the term 'salary reduction regulations' means regulations dealing with the includibility in gross income (at the time of contribution) of amounts contributed to a plan which includes a trust that qualifies under section 401(a) [subsec. (a) of this section], or a plan described in section 403(a) or 405(a), including plans or arrangements described in subsection (b)(2), if the contribution is made under an arrangement under which the contribution will be made only if the employee elects to receive a reduction in his compensation or to forego an increase in his compensation, or under an arrangement under which the employee is permitted to elect to receive part of his compensation in one or more alternative forms (if one of such forms results in the inclusion of amounts in income under the Internal Revenue Code of 1986)."

[Pub. L. 95–615, §210(b), Nov. 8, 1978, 92 Stat. 3109, provided that: "Section 5 of this Act [amending section 2006 of Pub. L. 93–406, set out above] shall not apply with respect to any type of plan for any period for which rules for that type of plan are provided by the Revenue Act of 1978 [Pub. L. 95–600, see Short Title of 1978 Amendment note set out under section 1 of this title]."]

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

Provisions relating to inflation adjustment of items in sections 25B, 45A, 219, 401, 402, 404, 408, 408A, 409, 414 to 416, 430, and 457 of this title for certain years were contained in the following:

2014—Internal Revenue Notice 2013–73.
2013—Internal Revenue Notice 2012–67.
2012—Internal Revenue Notice 2011–90.
2011—Internal Revenue Notice 2010–78.
2010—Internal Revenue Notice 2009–94.
2009—Internal Revenue Notice 2008–102.
2008—Internal Revenue Notice 2007–87.
2007—Internal Revenue Notice 2006–98.
2006—Internal Revenue Notice 2005–75.
2005—Internal Revenue Notice 2004–72.
2004—Internal Revenue Notice 2003–73.
2003—Internal Revenue Notice 2002–71.
2002—Internal Revenue Notice 2001–84.
2001—Internal Revenue Notice 2000–66.
2000—Internal Revenue Notice 99–55.
1999—Internal Revenue Notice 98–53.
1998—Internal Revenue Notice 97–58.
1997—Internal Revenue Notice 96–55.

[1] *So in original. Period before semicolon probably should be a closing parenthesis.*

[2] *So in original. Probably should be capitalized.*

[3] *So in original.*

[4] *So in original. Probably should be "section".*

[5] *So in original.*

§402. Taxability of beneficiary of employees' trust

(a) Taxability of beneficiary of exempt trust

Except as otherwise provided in this section, any amount actually distributed to any distributee by any employees' trust described in section 401(a) which is exempt from tax under section 501(a) shall be taxable to the distributee, in the taxable year of the distributee in which distributed, under section

72 (relating to annuities).

(b) Taxability of beneficiary of nonexempt trust

(1) Contributions

Contributions to an employees' trust made by an employer during a taxable year of the employer which ends with or within a taxable year of the trust for which the trust is not exempt from tax under section 501(a) shall be included in the gross income of the employee in accordance with section 83 (relating to property transferred in connection with performance of services), except that the value of the employee's interest in the trust shall be substituted for the fair market value of the property for purposes of applying such section.

(2) Distributions

The amount actually distributed or made available to any distributee by any trust described in paragraph (1) shall be taxable to the distributee, in the taxable year in which so distributed or made available, under section 72 (relating to annuities), except that distributions of income of such trust before the annuity starting date (as defined in section 72(c)(4)) shall be included in the gross income of the employee without regard to section 72(e)(5) (relating to amounts not received as annuities).

(3) Grantor trusts

A beneficiary of any trust described in paragraph (1) shall not be considered the owner of any portion of such trust under subpart E of part I of subchapter J (relating to grantors and others treated as substantial owners).

(4) Failure to meet requirements of section 410(b)

(A) Highly compensated employees

If 1 of the reasons a trust is not exempt from tax under section 501(a) is the failure of the plan of which it is a part to meet the requirements of section 401(a)(26) or 410(b), then a highly compensated employee shall, in lieu of the amount determined under paragraph (1) or (2) include in gross income for the taxable year with or within which the taxable year of the trust ends an amount equal to the vested accrued benefit of such employee (other than the employee's investment in the contract) as of the close of such taxable year of the trust.

(B) Failure to meet coverage tests

If a trust is not exempt from tax under section 501(a) for any taxable year solely because such trust is part of a plan which fails to meet the requirements of section 401(a)(26) or 410(b), paragraphs (1) and (2) shall not apply by reason of such failure to any employee who was not a highly compensated employee during—

(i) such taxable year, or

(ii) any preceding period for which service was creditable to such employee under the plan.

(C) Highly compensated employee

For purposes of this paragraph, the term "highly compensated employee" has the meaning given such term by section 414(q).

(c) Rules applicable to rollovers from exempt trusts

(1) Exclusion from income

If—

(A) any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution,

(B) the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and

(C) in the case of a distribution of property other than money, the amount so transferred consists of the property distributed,

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

(2) Maximum amount which may be rolled over

In the case of any eligible rollover distribution, the maximum amount transferred to which paragraph (1) applies shall not exceed the portion of such distribution which is includible in gross income (determined without regard to paragraph (1)). The preceding sentence shall not apply to such distribution to the extent—

(A) such portion is transferred in a direct trustee-to-trustee transfer to a qualified trust or to an annuity contract described in section 403(b) and such trust or contract provides for separate accounting for amounts so transferred (and earnings thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible, or

(B) such portion is transferred to an eligible retirement plan described in clause (i) or (ii) of paragraph (8)(B).

In the case of a transfer described in subparagraph (A) or (B), the amount transferred shall be treated as consisting first of the portion of such distribution that is includible in gross income (determined without regard to paragraph (1)).

(3) Transfer must be made within 60 days of receipt

(A) In general

Except as provided in subparagraph (B), paragraph (1) shall not apply to any transfer of a distribution made after the 60th day following the day on which the distributee received the property distributed.

(B) Hardship exception

The Secretary may waive the 60-day requirement under subparagraph (A) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement.

(4) Eligible rollover distribution

For purposes of this subsection, the term "eligible rollover distribution" means any distribution to an employee of all or any portion of the balance to the credit of the employee in a qualified trust; except that such term shall not include—

(A) any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made—

(i) for the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of the employee and the employee's designated beneficiary, or

(ii) for a specified period of 10 years or more,

(B) any distribution to the extent such distribution is required under section 401(a)(9), and

(C) any distribution which is made upon hardship of the employee.

If all or any portion of a distribution during 2009 is treated as an eligible rollover distribution but would not be so treated if the minimum distribution requirements under section 401(a)(9) had applied during 2009, such distribution shall not be treated as an eligible rollover distribution for purposes of section 401(a)(31) or 3405(c) or subsection (f) of this section.

(5) Transfer treated as rollover contribution under section 408

For purposes of this title, a transfer to an eligible retirement plan described in clause (i) or (ii) of paragraph (8)(B) resulting in any portion of a distribution being excluded from gross income under paragraph (1) shall be treated as a rollover contribution described in section 408(d)(3).

(6) Sales of distributed property

For purposes of this subsection—

(A) Transfer of proceeds from sale of distributed property treated as transfer of distributed property

The transfer of an amount equal to any portion of the proceeds from the sale of property received in the distribution shall be treated as the transfer of property received in the distribution.

(B) Proceeds attributable to increase in value

The excess of fair market value of property on sale over its fair market value on distribution shall be treated as property received in the distribution.

(C) Designation where amount of distribution exceeds rollover contribution

In any case where part or all of the distribution consists of property other than money—

(i) the portion of the money or other property which is to be treated as attributable to amounts not included in gross income, and

(ii) the portion of the money or other property which is to be treated as included in the rollover contribution,

shall be determined on a ratable basis unless the taxpayer designates otherwise. Any designation under this subparagraph for a taxable year shall be made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof). Any such designation, once made, shall be irrevocable.

(D) Nonrecognition of gain or loss

No gain or loss shall be recognized on any sale described in subparagraph (A) to the extent that an amount equal to the proceeds is transferred pursuant to paragraph (1).

(7) Special rule for frozen deposits

(A) In general

The 60-day period described in paragraph (3) shall not—

(i) include any period during which the amount transferred to the employee is a frozen deposit, or

(ii) end earlier than 10 days after such amount ceases to be a frozen deposit.

(B) Frozen deposits

For purposes of this subparagraph, the term "frozen deposit" means any deposit which may not be withdrawn because of—

(i) the bankruptcy or insolvency of any financial institution, or

(ii) any requirement imposed by the State in which such institution is located by reason of the bankruptcy or insolvency (or threat thereof) of 1 or more financial institutions in such State.

A deposit shall not be treated as a frozen deposit unless on at least 1 day during the 60-day period described in paragraph (3) (without regard to this paragraph) such deposit is described in the preceding sentence.

(8) Definitions

For purposes of this subsection—

(A) Qualified trust

The term "qualified trust" means an employees' trust described in section 401(a) which is exempt from tax under section 501(a).

(B) Eligible retirement plan

The term "eligible retirement plan" means—

(i) an individual retirement account described in section 408(a),

(ii) an individual retirement annuity described in section 408(b) (other than an endowment contract),

(iii) a qualified trust,

(iv) an annuity plan described in section 403(a),

(v) an eligible deferred compensation plan described in section 457(b) which is maintained by an eligible employer described in section 457(e)(1)(A), and

(vi) an annuity contract described in section 403(b).

If any portion of an eligible rollover distribution is attributable to payments or distributions from a designated Roth account (as defined in section 402A), an eligible retirement plan with respect to such portion shall include only another designated Roth account and a Roth IRA.

(9) Rollover where spouse receives distribution after death of employee

If any distribution attributable to an employee is paid to the spouse of the employee after the employee's death, the preceding provisions of this subsection shall apply to such distribution in the same manner as if the spouse were the employee.

(10) Separate accounting

Unless a plan described in clause (v) of paragraph (8)(B) agrees to separately account for amounts rolled into such plan from eligible retirement plans not described in such clause, the plan described in such clause may not accept transfers or rollovers from such retirement plans.

(11) Distributions to inherited individual retirement plan of nonspouse beneficiary

(A) In general

If, with respect to any portion of a distribution from an eligible retirement plan described in paragraph (8)(B)(iii) of a deceased employee, a direct trustee-to-trustee transfer is made to an individual retirement plan described in clause (i) or (ii) of paragraph (8)(B) established for the purposes of receiving the distribution on behalf of an individual who is a designated beneficiary (as defined by section 401(a)(9)(E)) of the employee and who is not the surviving spouse of the employee—

(i) the transfer shall be treated as an eligible rollover distribution,

(ii) the individual retirement plan shall be treated as an inherited individual retirement account or individual retirement annuity (within the meaning of section 408(d)(3)(C)) for purposes of this title, and

(iii) section 401(a)(9)(B) (other than clause (iv) thereof) shall apply to such plan.

(B) Certain trusts treated as beneficiaries

For purposes of this paragraph, to the extent provided in rules prescribed by the Secretary, a trust maintained for the benefit of one or more designated beneficiaries shall be treated in the same manner as a designated beneficiary.

(d) Taxability of beneficiary of certain foreign situs trusts

For purposes of subsections (a), (b), and (c), a stock bonus, pension, or profit-sharing trust which would qualify for exemption from tax under section 501(a) except for the fact that it is a trust created or organized outside the United States shall be treated as if it were a trust exempt from tax under section 501(a).

(e) Other rules applicable to exempt trusts

(1) Alternate payees

(A) Alternate payee treated as distributee

For purposes of subsection (a) and section 72, an alternate payee who is the spouse or former spouse of the participant shall be treated as the distributee of any distribution or payment made

to the alternate payee under a qualified domestic relations order (as defined in section 414(p)).

(B) Rollovers

If any amount is paid or distributed to an alternate payee who is the spouse or former spouse of the participant by reason of any qualified domestic relations order (within the meaning of section 414(p)), subsection (c) shall apply to such distribution in the same manner as if such alternate payee were the employee.

(2) Distributions by United States to nonresident aliens

The amount includible under subsection (a) in the gross income of a nonresident alien with respect to a distribution made by the United States in respect of services performed by an employee of the United States shall not exceed an amount which bears the same ratio to the amount includible in gross income without regard to this paragraph as—

(A) the aggregate basic pay paid by the United States to such employee for such services, reduced by the amount of such basic pay which was not includible in gross income by reason of being from sources without the United States, bears to

(B) the aggregate basic pay paid by the United States to such employee for such services.

In the case of distributions under the civil service retirement laws, the term "basic pay" shall have the meaning provided in section 8331(3) of title 5, United States Code.

(3) Cash or deferred arrangements

For purposes of this title, contributions made by an employer on behalf of an employee to a trust which is a part of a qualified cash or deferred arrangement (as defined in section 401(k)(2)) or which is part of a salary reduction agreement under section 403(b) shall not be treated as distributed or made available to the employee nor as contributions made to the trust by the employee merely because the arrangement includes provisions under which the employee has an election whether the contribution will be made to the trust or received by the employee in cash.

(4) Net unrealized appreciation

(A) Amounts attributable to employee contributions

For purposes of subsection (a) and section 72, in the case of a distribution other than a lump sum distribution, the amount actually distributed to any distributee from a trust described in subsection (a) shall not include any net unrealized appreciation in securities of the employer corporation attributable to amounts contributed by the employee (other than deductible employee contributions within the meaning of section 72(o)(5)). This subparagraph shall not apply to a distribution to which subsection (c) applies.

(B) Amounts attributable to employer contributions

For purposes of subsection (a) and section 72, in the case of any lump sum distribution which includes securities of the employer corporation, there shall be excluded from gross income the net unrealized appreciation attributable to that part of the distribution which consists of securities of the employer corporation. In accordance with rules prescribed by the Secretary, a taxpayer may elect, on the return of tax on which a lump sum distribution is required to be included, not to have this subparagraph apply to such distribution.

(C) Determination of amounts and adjustments

For purposes of subparagraphs (A) and (B), net unrealized appreciation and the resulting adjustments to basis shall be determined in accordance with regulations prescribed by the Secretary.

(D) Lump-sum distribution

For purposes of this paragraph—

(i) In general

The term "lump-sum distribution" means the distribution or payment within one taxable

year of the recipient of the balance to the credit of an employee which becomes payable to the recipient—

(I) on account of the employee's death,

(II) after the employee attains age 59½,

(III) on account of the employee's separation from service, or

(IV) after the employee has become disabled (within the meaning of section 72(m)(7)),

from a trust which forms a part of a plan described in section 401(a) and which is exempt from tax under section 501 or from a plan described in section 403(a). Subclause (III) of this clause shall be applied only with respect to an individual who is an employee without regard to section 401(c)(1), and subclause (IV) shall be applied only with respect to an employee within the meaning of section 401(c)(1). For purposes of this clause, a distribution to two or more trusts shall be treated as a distribution to one recipient. For purposes of this paragraph, the balance to the credit of the employee does not include the accumulated deductible employee contributions under the plan (within the meaning of section 72(o)(5)).

(ii) Aggregation of certain trusts and plans

For purposes of determining the balance to the credit of an employee under clause (i)—

(I) all trusts which are part of a plan shall be treated as a single trust, all pension plans maintained by the employer shall be treated as a single plan, all profit-sharing plans maintained by the employer shall be treated as a single plan, and all stock bonus plans maintained by the employer shall be treated as a single plan, and

(II) trusts which are not qualified trusts under section 401(a) and annuity contracts which do not satisfy the requirements of section 404(a)(2) shall not be taken into account.

(iii) Community property laws

The provisions of this paragraph shall be applied without regard to community property laws.

(iv) Amounts subject to penalty

This paragraph shall not apply to amounts described in subparagraph (A) of section 72(m)(5) to the extent that section 72(m)(5) applies to such amounts.

(v) Balance to credit of employee not to include amounts payable under qualified domestic relations order

For purposes of this paragraph, the balance to the credit of an employee shall not include any amount payable to an alternate payee under a qualified domestic relations order (within the meaning of section 414(p)).

(vi) Transfers to cost-of-living arrangement not treated as distribution

For purposes of this paragraph, the balance to the credit of an employee under a defined contribution plan shall not include any amount transferred from such defined contribution plan to a qualified cost-of-living arrangement (within the meaning of section 415(k)(2)) under a defined benefit plan.

(vii) Lump-sum distributions of alternate payees

If any distribution or payment of the balance to the credit of an employee would be treated as a lump-sum distribution, then, for purposes of this paragraph, the payment under a qualified domestic relations order (within the meaning of section 414(p)) of the balance to the credit of an alternate payee who is the spouse or former spouse of the employee shall be treated as a lump-sum distribution. For purposes of this clause, the balance to the credit of the alternate payee shall not include any amount payable to the employee.

(E) Definitions relating to securities

For purposes of this paragraph—

(i) Securities

The term "securities" means only shares of stock and bonds or debentures issued by a corporation with interest coupons or in registered form.

(ii) Securities of the employer

The term "securities of the employer corporation" includes securities of a parent or subsidiary corporation (as defined in subsections (e) and (f) of section 424) of the employer corporation.

[(5) Repealed. Pub. L. 104–188, title I, §1401(b)(13), Aug. 20, 1996, 110 Stat. 1789]

(6) Direct trustee-to-trustee transfers

Any amount transferred in a direct trustee-to-trustee transfer in accordance with section 401(a)(31) shall not be includible in gross income for the taxable year of such transfer.

(f) Written explanation to recipients of distributions eligible for rollover treatment

(1) In general

The plan administrator of any plan shall, within a reasonable period of time before making an eligible rollover distribution, provide a written explanation to the recipient—

(A) of the provisions under which the recipient may have the distribution directly transferred to an eligible retirement plan and that the automatic distribution by direct transfer applies to certain distributions in accordance with section 401(a)(31)(B),

(B) of the provision which requires the withholding of tax on the distribution if it is not directly transferred to an eligible retirement plan,

(C) of the provisions under which the distribution will not be subject to tax if transferred to an eligible retirement plan within 60 days after the date on which the recipient received the distribution,

(D) if applicable, of the provisions of subsections (d) and (e) of this section, and

(E) of the provisions under which distributions from the eligible retirement plan receiving the distribution may be subject to restrictions and tax consequences which are different from those applicable to distributions from the plan making such distribution.

(2) Definitions

For purposes of this subsection—

(A) Eligible rollover distribution

The term "eligible rollover distribution" has the same meaning as when used in subsection (c) of this section, paragraph (4) of section 403(a), subparagraph (A) of section 403(b)(8), or subparagraph (A) of section 457(e)(16). Such term shall include any distribution to a designated beneficiary which would be treated as an eligible rollover distribution by reason of subsection (c)(11), or section 403(a)(4)(B), 403(b)(8)(B), or 457(e)(16)(B), if the requirements of subsection (c)(11) were satisfied.

(B) Eligible retirement plan

The term "eligible retirement plan" has the meaning given such term by subsection (c)(8)(B).

(g) Limitation on exclusion for elective deferrals

(1) In general

(A) Limitation

Notwithstanding subsections (e)(3) and (h)(1)(B), the elective deferrals of any individual for any taxable year shall be included in such individual's gross income to the extent the amount of such deferrals for the taxable year exceeds the applicable dollar amount. The preceding sentence shall not apply to the portion of such excess as does not exceed the designated Roth contributions of the individual for the taxable year.

(B) Applicable dollar amount

For purposes of subparagraph (A), the applicable dollar amount shall be the amount

determined in accordance with the following table:

For taxable years beginning in calendar year:	The applicable dollar amount:
2002	$11,000
2003	$12,000
2004	$13,000
2005	$14,000
2006 or thereafter	$15,000.

(C) Catch-up contributions

In addition to subparagraph (A), in the case of an eligible participant (as defined in section 414(v)), gross income shall not include elective deferrals in excess of the applicable dollar amount under subparagraph (B) to the extent that the amount of such elective deferrals does not exceed the applicable dollar amount under section 414(v)(2)(B)(i) for the taxable year (without regard to the treatment of the elective deferrals by an applicable employer plan under section 414(v)).

(2) Distribution of excess deferrals

(A) In general

If any amount (hereinafter in this paragraph referred to as "excess deferrals") is included in the gross income of an individual under paragraph (1) (or would be included but for the last sentence thereof) for any taxable year—

(i) not later than the 1st March 1 following the close of the taxable year, the individual may allocate the amount of such excess deferrals among the plans under which the deferrals were made and may notify each such plan of the portion allocated to it, and

(ii) not later than the 1st April 15 following the close of the taxable year, each such plan may distribute to the individual the amount allocated to it under clause (i) (and any income allocable to such amount through the end of such taxable year).

The distribution described in clause (ii) may be made notwithstanding any other provision of law.

(B) Treatment of distribution under section 401(k)

Except to the extent provided under rules prescribed by the Secretary, notwithstanding the distribution of any portion of an excess deferral from a plan under subparagraph (A)(ii), such portion shall, for purposes of applying section 401(k)(3)(A)(ii), be treated as an employer contribution.

(C) Taxation of distribution

In the case of a distribution to which subparagraph (A) applies—

(i) except as provided in clause (ii), such distribution shall not be included in gross income, and

(ii) any income on the excess deferral shall, for purposes of this chapter, be treated as earned and received in the taxable year in which such income is distributed.

No tax shall be imposed under section 72(t) on any distribution described in the preceding sentence.

(D) Partial distributions

If a plan distributes only a portion of any excess deferral and income allocable thereto, such

portion shall be treated as having been distributed ratably from the excess deferral and the income.

(3) Elective deferrals

For purposes of this subsection, the term "elective deferrals" means, with respect to any taxable year, the sum of—

(A) any employer contribution under a qualified cash or deferred arrangement (as defined in section 401(k)) to the extent not includible in gross income for the taxable year under subsection (e)(3) (determined without regard to this subsection),

(B) any employer contribution to the extent not includible in gross income for the taxable year under subsection (h)(1)(B) (determined without regard to this subsection),

(C) any employer contribution to purchase an annuity contract under section 403(b) under a salary reduction agreement (within the meaning of section 3121(a)(5)(D)), and

(D) any elective employer contribution under section 408(p)(2)(A)(i).

An employer contribution shall not be treated as an elective deferral described in subparagraph (C) if under the salary reduction agreement such contribution is made pursuant to a one-time irrevocable election made by the employee at the time of initial eligibility to participate in the agreement or is made pursuant to a similar arrangement involving a one-time irrevocable election specified in regulations.

(4) Cost-of-living adjustment

In the case of taxable years beginning after December 31, 2006, the Secretary shall adjust the $15,000 amount under paragraph (1)(B) at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter beginning July 1, 2005, and any increase under this paragraph which is not a multiple of $500 shall be rounded to the next lowest multiple of $500.

(5) Disregard of community property laws

This subsection shall be applied without regard to community property laws.

(6) Coordination with section 72

For purposes of applying section 72, any amount includible in gross income for any taxable year under this subsection but which is not distributed from the plan during such taxable year shall not be treated as investment in the contract.

(7) Special rule for certain organizations

(A) In general

In the case of a qualified employee of a qualified organization, with respect to employer contributions described in paragraph (3)(C) made by such organization, the limitation of paragraph (1) for any taxable year shall be increased by whichever of the following is the least:

(i) $3,000,

(ii) $15,000 reduced by the sum of—

(I) the amounts not included in gross income for prior taxable years by reason of this paragraph, plus

(II) the aggregate amount of designated Roth contributions (as defined in section 402A(c)) permitted for prior taxable years by reason of this paragraph, or

(iii) the excess of $5,000 multiplied by the number of years of service of the employee with the qualified organization over the employer contributions described in paragraph (3) made by the organization on behalf of such employee for prior taxable years (determined in the manner prescribed by the Secretary).

(B) Qualified organization

For purposes of this paragraph, the term "qualified organization" means any educational

organization, hospital, home health service agency, health and welfare service agency, church, or convention or association of churches. Such term includes any organization described in section 414(e)(3)(B)(ii). Terms used in this subparagraph shall have the same meaning as when used in section 415(c)(4) (as in effect before the enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001).

(C) Qualified employee

For purposes of this paragraph, the term "qualified employee" means any employee who has completed 15 years of service with the qualified organization.

(D) Years of service

For purposes of this paragraph, the term "years of service" has the meaning given such term by section 403(b).

(8) Matching contributions on behalf of self-employed individuals not treated as elective employer contributions

Except as provided in section 401(k)(3)(D)(ii), any matching contribution described in section 401(m)(4)(A) which is made on behalf of a self-employed individual (as defined in section 401(c)) shall not be treated as an elective employer contribution under a qualified cash or deferred arrangement (as defined in section 401(k)) for purposes of this title.

(h) Special rules for simplified employee pensions

For purposes of this chapter—

(1) In general

Except as provided in paragraph (2), contributions made by an employer on behalf of an employee to an individual retirement plan pursuant to a simplified employee pension (as defined in section 408(k))—

(A) shall not be treated as distributed or made available to the employee or as contributions made by the employee, and

(B) if such contributions are made pursuant to an arrangement under section 408(k)(6) under which an employee may elect to have the employer make contributions to the simplified employee pension on behalf of the employee, shall not be treated as distributed or made available or as contributions made by the employee merely because the simplified employee pension includes provisions for such election.

(2) Limitations on employer contributions

Contributions made by an employer to a simplified employee pension with respect to an employee for any year shall be treated as distributed or made available to such employee and as contributions made by the employee to the extent such contributions exceed the lesser of—

(A) 25 percent of the compensation (within the meaning of section 414(s)) from such employer includible in the employee's gross income for the year (determined without regard to the employer contributions to the simplified employee pension), or

(B) the limitation in effect under section 415(c)(1)(A), reduced in the case of any highly compensated employee (within the meaning of section 414(q)) by the amount taken into account with respect to such employee under section 408(k)(3)(D).

(3) Distributions

Any amount paid or distributed out of an individual retirement plan pursuant to a simplified employee pension shall be included in gross income by the payee or distributee, as the case may be, in accordance with the provisions of section 408(d).

(i) Treatment of self-employed individuals

For purposes of this section, except as otherwise provided in subparagraph (A) of subsection (d)(4),[1] the term "employee" includes a self-employed individual (as defined in section 401(c)(1)(B)) and the employer of such individual shall be the person treated as his employer under section

401(c)(4).

(j) Effect of disposition of stock by plan on net unrealized appreciation

(1) In general

For purposes of subsection (e)(4), in the case of any transaction to which this subsection applies, the determination of net unrealized appreciation shall be made without regard to such transaction.

(2) Transaction to which subsection applies

This subsection shall apply to any transaction in which—

(A) the plan trustee exchanges the plan's securities of the employer corporation for other such securities, or

(B) the plan trustee disposes of securities of the employer corporation and uses the proceeds of such disposition to acquire securities of the employer corporation within 90 days (or such longer period as the Secretary may prescribe), except that this subparagraph shall not apply to any employee with respect to whom a distribution of money was made during the period after such disposition and before such acquisition.

(k) Treatment of simple retirement accounts

Rules similar to the rules of paragraphs (1) and (3) of subsection (h) shall apply to contributions and distributions with respect to a simple retirement account under section 408(p).

(l) Distributions from governmental plans for health and long-term care insurance

(1) In general

In the case of an employee who is an eligible retired public safety officer who makes the election described in paragraph (6) with respect to any taxable year of such employee, gross income of such employee for such taxable year does not include any distribution from an eligible retirement plan maintained by the employer described in paragraph (4)(B) to the extent that the aggregate amount of such distributions does not exceed the amount paid by such employee for qualified health insurance premiums for such taxable year.

(2) Limitation

The amount which may be excluded from gross income for the taxable year by reason of paragraph (1) shall not exceed $3,000.

(3) Distributions must otherwise be includible

(A) In general

An amount shall be treated as a distribution for purposes of paragraph (1) only to the extent that such amount would be includible in gross income without regard to paragraph (1).

(B) Application of section 72

Notwithstanding section 72, in determining the extent to which an amount is treated as a distribution for purposes of subparagraph (A), the aggregate amounts distributed from an eligible retirement plan in a taxable year (up to the amount excluded under paragraph (1)) shall be treated as includible in gross income (without regard to subparagraph (A)) to the extent that such amount does not exceed the aggregate amount which would have been so includible if all amounts to the credit of the eligible public safety officer in all eligible retirement plans maintained by the employer described in paragraph (4)(B) were distributed during such taxable year and all such plans were treated as 1 contract for purposes of determining under section 72 the aggregate amount which would have been so includible. Proper adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.

(4) Definitions

For purposes of this subsection—

(A) Eligible retirement plan

For purposes of paragraph (1), the term "eligible retirement plan" means a governmental plan (within the meaning of section 414(d)) which is described in clause (iii), (iv), (v), or (vi) of subsection (c)(8)(B).

(B) Eligible retired public safety officer

The term "eligible retired public safety officer" means an individual who, by reason of disability or attainment of normal retirement age, is separated from service as a public safety officer with the employer who maintains the eligible retirement plan from which distributions subject to paragraph (1) are made.

(C) Public safety officer

The term "public safety officer" shall have the same meaning given such term by section 1204(9)(A) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796b(9)(A)), as in effect immediately before the enactment of the National Defense Authorization Act for Fiscal Year 2013.

(D) Qualified health insurance premiums

The term "qualified health insurance premiums" means premiums for coverage for the eligible retired public safety officer, his spouse, and dependents (as defined in section 152), by an accident or health plan or qualified long-term care insurance contract (as defined in section 7702B(b)).

(5) Special rules

For purposes of this subsection—

(A) Direct payment to insurer required

Paragraph (1) shall only apply to a distribution if payment of the premiums is made directly to the provider of the accident or health plan or qualified long-term care insurance contract by deduction from a distribution from the eligible retirement plan.

(B) Related plans treated as 1

All eligible retirement plans of an employer shall be treated as a single plan.

(6) Election described

(A) In general

For purposes of paragraph (1), an election is described in this paragraph if the election is made by an employee after separation from service with respect to amounts not distributed from an eligible retirement plan to have amounts from such plan distributed in order to pay for qualified health insurance premiums.

(B) Special rule

A plan shall not be treated as violating the requirements of section 401, or as engaging in a prohibited transaction for purposes of section 503(b), merely because it provides for an election with respect to amounts that are otherwise distributable under the plan or merely because of a distribution made pursuant to an election described in subparagraph (A).

(7) Coordination with medical expense deduction

The amounts excluded from gross income under paragraph (1) shall not be taken into account under section 213.

(8) Coordination with deduction for health insurance costs of self-employed individuals

The amounts excluded from gross income under paragraph (1) shall not be taken into account under section 162(l).

(Aug. 16, 1954, ch. 736, 68A Stat. 135; Pub. L. 86–437, §§1, 2(a), Apr. 22, 1960, 74 Stat. 79; Pub. L. 87–792, §4(c), Oct. 10, 1962, 76 Stat. 825; Pub. L. 88–272, title II, §§221(c)(1), 232(e)(1)–(3), Feb. 26, 1964, 78 Stat. 75, 111; Pub. L. 91–172, title III, §321(b)(1), title V, §515(a)(1), Dec. 30, 1969, 83 Stat. 590, 643; Pub. L. 93–406, title II, §§2002(g)(5), 2005(a), (b)(1), (c)(1), (2), Sept. 2,

1974, 88 Stat. 968, 987, 990, 991: Pub. L. 94–267, §1(a), Apr. 15, 1976, 90 Stat. 365; Pub. L. 94–455, title XIV, §1402(b)(1)(C), (2), title XV, §1512(a), title XIX, §§1901(a)(57)(A)–(C)(i), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1731, 1732, 1742, 1773, 1774, 1834; Pub. L. 95–30, title I, §102(b)(4), May 23, 1977, 91 Stat. 137; Pub. L. 95–458, §4(a), (c), Oct. 14, 1978, 92 Stat. 1257, 1259; Pub. L. 95–600, title I, §§101(d)(1), 135(b), 157(f)(1), (g)(1), (h)(1), Nov. 6, 1978, 92 Stat. 2770, 2787, 2806–2808; Pub. L. 96–222, title I, §101(a)(14)(C), (E)(i), Apr. 1, 1980, 94 Stat. 204, 205; Pub. L. 96–608, §2(a), Dec. 28, 1980, 94 Stat. 3551; Pub. L. 97–34, title III, §§311(b)(2), (3)(A), (c), 314(c)(1), Aug. 13, 1981, 95 Stat. 280, 286; Pub. L. 97–448, title I, §§101(b), 103(c)(7), (8)(A), (12)(D), Jan. 12, 1983, 96 Stat. 2366, 2376, 2377; Pub. L. 98–369, div. A, title IV, §491(c)(2), (d)(9)–(11), title V, §522(a)(1), (b)–(d)(8), title VII, §713(c)(3), title X, §1001(b)(3), (e), July 18, 1984, 98 Stat. 848, 849, 868–870, 957, 1011, 1012; Pub. L. 98–397, title II, §§204(c)(1), (3), (4), 207(a), Aug. 23, 1984, 98 Stat. 1448, 1449; Pub. L. 99–272, title XI, §11012(c), Apr. 7, 1986, 100 Stat. 260; Pub. L. 99–514, title I, §104(b)(5), title XI, §§1105(a), 1106(c)(2), 1108(b), 1112(c), 1121(c)(1), 1122(a), (b)(1)(A), (2), (e)(1), (2)(A), (g), title XVIII, §§1852(a)(5)(A), (b)(1)–(7), (c)(5), 1854(f)(2), 1875(c)(1)(A), 1898(a)(2), (3), (c)(1)(A), (7)(A)(i), (e), Oct. 22, 1986, 100 Stat. 2105, 2417, 2423, 2432, 2444, 2465, 2466, 2469, 2470, 2865–2867, 2881, 2894, 2942, 2943, 2951, 2954, 2955; Pub. L. 100–647, title I, §§1011(c)(1)–(6)(B), (11), (h)(4), 1011A(a)(1), (b)(4)(A)–(D), (5)–(8), (10), (c)(9), 1018(t)(8)(A), (C), (u)(1), (6), (7), title VI, §6068(a), Nov. 10, 1988, 102 Stat. 3457–3459, 3464, 3472–3474, 3476, 3589, 3590, 3703; Pub. L. 101–239, title VII, §7811(g)(2), (i)(13), Dec. 19, 1989, 103 Stat. 2409, 2411; Pub. L. 101–508, title XI, §11801(c)(9)(I), Nov. 5, 1990, 104 Stat. 1388–526; Pub. L. 102–318, title V, §§521(a), (b)(9)–(11), 522(c)(1), July 3, 1992, 106 Stat. 300, 310, 311, 315; Pub. L. 103–465, title VII, §732(c), Dec. 8, 1994, 108 Stat. 5005; Pub. L. 104–188, title I, §§1401(a)–(b)(2), (13), 1421(b)(3)(A), (9)(B), 1450(a)(2), 1704(t)(68), Aug. 20, 1996, 110 Stat. 1787–1789, 1796, 1798, 1814, 1891; Pub. L. 105–34, title XV, §1501(a), Aug. 5, 1997, 111 Stat. 1058; Pub. L. 105–206, title VI, §6005(c)(2)(A), July 22, 1998, 112 Stat. 800; Pub. L. 107–16, title VI, §§611(d)(1)–(3)(A), 617(b), (c), 632(a)(3)(G), 636(b)(1), 641(a)(2)(A), (B), (b)(2)–(d), (e)(4)–(6), 643(a), 644(a), 657(b), June 7, 2001, 115 Stat. 97, 98, 105, 114, 117, 119–123, 136; Pub. L. 107–147, title IV, §411(l)(3), (o)(1), (p)(6), (q)(2), Mar. 9, 2002, 116 Stat. 47, 48, 51; Pub. L. 109–135, title IV, §407(a), Dec. 21, 2005, 119 Stat. 2635; Pub. L. 109–280, title VIII, §§822(a), 829(a)(1), 845(a), Aug. 17, 2006, 120 Stat. 998, 1001, 1013; Pub. L. 110–172, §8(a)(1), Dec. 29, 2007, 121 Stat. 2483; Pub. L. 110–458, title I, §§108(f)(1)–(2)(B), (j), 109(b)(3), title II, §201(b), Dec. 23, 2008, 122 Stat. 5109–5111, 5117; Pub. L. 112–239, div. A, title X, §1086(b)(3)(A), Jan. 2, 2013, 126 Stat. 1968.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table under section 401 of this title.

REFERENCES IN TEXT

Section 415(c)(4) (as in effect before the enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001), referred to in subsec. (g)(7)(B), means section 415(c)(4) of this title prior to its repeal by Pub. L. 107–16, title VI, §632(a)(3)(E), June 7, 2001, 115 Stat. 114.

Subsection (d), referred to in subsec. (i), was amended generally by Pub. L. 104–188, title I, §1401(a), Aug. 20, 1996, 110 Stat. 1787, and as so amended, no longer contains a par. (4).

Section 1204(9)(A) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796b(9)(A)), as in effect immediately before the enactment of the National Defense Authorization Act for Fiscal Year 2013, referred to in subsec. (l)(4)(C), means section 1204(9)(A) of Pub. L. 90–351 prior to its amendment by Pub. L. 112–239, div. A, title X, §1086(b)(1)(E)(v)(I), Jan. 2, 2013, 126 Stat. 1967. Section 1204(9)(A) of Pub. L. 90–351 is classified to section 3796b(9)(A) of Title 42, The Public Health and Welfare.

AMENDMENTS

2013—Subsec. (l)(4)(C). Pub. L. 112–239 inserted ", as in effect immediately before the enactment of the National Defense Authorization Act for Fiscal Year 2013" before period at end.

2008—Subsec. (c)(4). Pub. L. 110–458, §201(b), inserted concluding provisions.

Subsec. (c)(11)(A). Pub. L. 110–458, §108(f)(1)(A), inserted "described in paragraph (8)(B)(iii)" after

"eligible retirement plan" in introductory provisions.

Subsec. (c)(11)(A)(i). Pub. L. 110–458, §108(f)(2)(B), struck out "for purposes of this subsection" after "eligible rollover distribution".

Subsec. (c)(11)(B). Pub. L. 110–458, §108(f)(1)(B), struck out "trust" before "designated beneficiary".

Subsec. (f)(2)(A). Pub. L. 110–458, §108(f)(2)(A), inserted at end "Such term shall include any distribution to a designated beneficiary which would be treated as an eligible rollover distribution by reason of subsection (c)(11), or section 403(a)(4)(B), 403(b)(8)(B), or 457(e)(16)(B), if the requirements of subsection (c)(11) were satisfied."

Subsec. (g)(2)(A)(ii). Pub. L. 110–458, §109(b)(3), inserted "through the end of such taxable year" after "such amount".

Subsec. (l)(1). Pub. L. 110–458, §108(j)(1)(A), inserted "maintained by the employer described in paragraph (4)(B)" after "an eligible retirement plan" and struck out "of the employee, his spouse, or dependents (as defined in section 152)" after "qualified health insurance premiums".

Subsec. (l)(3)(B). Pub. L. 110–458, §108(j)(2), substituted "all amounts to the credit of the eligible public safety officer in all eligible retirement plans maintained by the employer described in paragraph (4)(B) were distributed during such taxable year and all such plans were treated as 1 contract for purposes of determining under section 72 the aggregate amount which would have been so includible" for "all amounts distributed from all eligible retirement plans were treated as 1 contract for purposes of determining the inclusion of such distribution under section 72".

Subsec. (l)(4)(D). Pub. L. 110–458, §108(j)(1)(B), inserted "(as defined in section 152)" after "dependents" and substituted "health plan" for "health insurance plan".

Subsec. (l)(5)(A). Pub. L. 110–458, §108(j)(1)(C), substituted "health plan" for "health insurance plan".

2007—Subsec. (g)(7)(A)(ii)(II). Pub. L. 110–172 substituted "permitted for prior taxable years by reason of this paragraph" for "for prior taxable years". Amendment was executed to subsec. (g)(7)(A)(ii) as amended by Pub. L. 109–135, §407(a)(1), as the probable intent of Congress, notwithstanding Pub. L. 110–172, §8(b), which provided that the amendment take effect as if included in the provisions of Pub. L. 107–16 to which it relates. See 2006 Amendment note and Effective Date of 2007 Amendment note below.

2006—Subsec. (c)(2)(A). Pub. L. 109–280, §822(a), which directed the amendment of section 402(c)(2)(A) by substituting "or to an annuity contract described in section 403(b) and such trust or contract provides for separate accounting" for "which is part of a plan which is a defined contribution plan and which agrees to separately account" and inserting "(and earnings thereon)" after "so transferred", without specifying the act to be amended, was executed to this section, which is section 402(c)(2)(A) of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

Subsec. (c)(11). Pub. L. 109–280, §829(a)(1), added par. (11).

Subsec. (l). Pub. L. 109–280, §845(a), added subsec. (l).

2005—Subsec. (g)(1)(A). Pub. L. 109–135, §407(a)(2), inserted "to" after "shall not apply".

Subsec. (g)(7)(A)(ii). Pub. L. 109–135, §407(a)(1), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: "$15,000 reduced by amounts not included in gross income for prior taxable years by reason of this paragraph, or".

2002—Subsec. (c)(2). Pub. L. 107–147, §411(q)(2), inserted at end: "In the case of a transfer described in subparagraph (A) or (B), the amount transferred shall be treated as consisting first of the portion of such distribution that is includible in gross income (determined without regard to paragraph (1))."

Subsec. (g)(1)(C). Pub. L. 107–147, §411(o)(1), added subpar. (C).

Subsec. (g)(7)(B). Pub. L. 107–147, §411(p)(6), substituted "2001)." for "2001."

Subsec. (h)(2)(A). Pub. L. 107–147, §411(l)(3), substituted "25 percent" for "15 percent".

2001—Subsec. (c)(2). Pub. L. 107–16, §643(a), inserted at end "The preceding sentence shall not apply to such distribution to the extent—

"(A) such portion is transferred in a direct trustee-to-trustee transfer to a qualified trust which is part of a plan which is a defined contribution plan and which agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible, or

"(B) such portion is transferred to an eligible retirement plan described in clause (i) or (ii) of paragraph (8)(B)."

Subsec. (c)(3). Pub. L. 107–16, §644(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "Paragraph (1) shall not apply to any transfer of a distribution made after the 60th day following the day on which the distributee received the property distributed."

Subsec. (c)(4)(C). Pub. L. 107–16, §636(b)(1), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: "any hardship distribution described in section 401(k)(2)(B)(i)(IV)."

Subsec. (c)(8)(B). Pub. L. 107–16, §617(c), inserted concluding provisions.

Subsec. (c)(8)(B)(v). Pub. L. 107–16, §641(a)(2)(A), added cl. (v).

Subsec. (c)(8)(B)(vi). Pub. L. 107–16, §641(b)(2), added cl. (vi).

Subsec. (c)(9). Pub. L. 107–16, §641(d), struck out before period at end "; except that a trust or plan described in clause (iii) or (iv) of paragraph (8)(B) shall not be treated as an eligible retirement plan with respect to such distribution".

Subsec. (c)(10). Pub. L. 107–16, §641(a)(2)(B), added par. (10).

Subsec. (f)(1). Pub. L. 107–16, §641(e)(5), struck out "from an eligible retirement plan" after "rollover distribution" in introductory provisions.

Subsec. (f)(1)(A). Pub. L. 107–16, §657(b), inserted before comma at end "and that the automatic distribution by direct transfer applies to certain distributions in accordance with section 401(a)(31)(B)".

Pub. L. 107–16, §641(e)(6), substituted "an eligible retirement plan" for "another eligible retirement plan".

Subsec. (f)(1)(B). Pub. L. 107–16, §641(e)(6), substituted "an eligible retirement plan" for "another eligible retirement plan".

Subsec. (f)(1)(E). Pub. L. 107–16, §641(c), added subpar. (E).

Subsec. (f)(2)(A). Pub. L. 107–16, §641(e)(4), substituted ", paragraph (4) of section 403(a), subparagraph (A) of section 403(b)(8), or subparagraph (A) of section 457(e)(16)" for "or paragraph (4) of section 403(a)".

Subsec. (g)(1). Pub. L. 107–16, §611(d)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "Notwithstanding subsections (e)(3) and (h)(1)(B), the elective deferrals of any individual for any taxable year shall be included in such individual's gross income to the extent the amount of such deferrals for the taxable year exceeds $7,000."

Subsec. (g)(1)(A). Pub. L. 107–16, title VI, §617(b)(1), inserted at end "The preceding sentence shall not apply the portion of such excess as does not exceed the designated Roth contributions of the individual for the taxable year."

Subsec. (g)(2)(A). Pub. L. 107–16, title VI, §617(b)(2), inserted "(or would be included but for the last sentence thereof)" after "paragraph (1)".

Subsec. (g)(4). Pub. L. 107–16, §611(d)(3)(A), redesignated par. (5) as (4) and struck out heading and text of former par. (4). Text read as follows: "The limitation under paragraph (1) shall be increased (but not to an amount in excess of $9,500) by the amount of any employer contributions for the taxable year described in paragraph (3)(C)."

Subsec. (g)(5). Pub. L. 107–16, §611(d)(3)(A), redesignated par. (6) as (5). Former par. (5) redesignated (4).

Pub. L. 107–16, §611(d)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "The Secretary shall adjust the $7,000 amount under paragraph (1) at the same time and in the same manner as under section 415(d); except that any increase under this paragraph which is not a multiple of $500 shall be rounded to the next lowest multiple of $500."

Subsec. (g)(6). Pub. L. 107–16, §611(d)(3)(A), redesignated par. (7) as (6). Former par. (6) redesignated (5).

Subsec. (g)(7). Pub. L. 107–16, §611(d)(3)(A), redesignated par. (8) as (7).

Subsec. (g)(7)(B). Pub. L. 107–16, §632(a)(3)(G), inserted "(as in effect before the enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001" before period at end.

Subsec. (g)(8), (9). Pub. L. 107–16, §611(d)(3)(A), redesignated par. (9) as (8). Former par. (8) redesignated (7).

1998—Subsec. (c)(4)(C). Pub. L. 105–206 added subpar. (C).

1997—Subsec. (g)(9). Pub. L. 105–34 added par. (9).

1996—Subsec. (c)(10). Pub. L. 104–188, §1401(b)(2), struck out par. (10) which read as follows:

"(10) DENIAL OF AVERAGING FOR SUBSEQUENT DISTRIBUTIONS.—If paragraph (1) applies to any distribution paid to any employee, paragraphs (1) and (3) of subsection (d) shall not apply to any distribution (paid after such distribution) of the balance to the credit of the employee under the plan under which the preceding distribution was made (or under any other plan which, under subsection (d)(4)(C), would be aggregated with such plan)."

Subsec. (d). Pub. L. 104–188, §1401(a), amended subsec. (d) generally, substituting provisions relating to taxability of beneficiary of certain foreign situs trusts for former provisions relating to tax on lump sum distributions.

Subsec. (e)(3). Pub. L. 104–188, §1450(a)(2), inserted "or which is part of a salary reduction agreement under section 403(b)" after "section 401(k)(2))".

Subsec. (e)(4)(D). Pub. L. 104–188, §1401(b)(1), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows:

"(D) LUMP SUM DISTRIBUTION.—For purposes of this paragraph, the term 'lump sum distribution' has the meaning given such term by subsection (d)(4)(A) (without regard to subsection (d)(4)(F))."

Subsec. (e)(5). Pub. L. 104–188, §1401(b)(13), struck out par. (5) which read as follows:

"(5) TAXABILITY OF BENEFICIARY OF CERTAIN FOREIGN SITUS TRUSTS.—For purposes of subsections (a), (b), and (c), a stock bonus, pension, or profit-sharing trust which would qualify for exemption from tax under section 501(a) except for the fact that it is a trust created or organized outside the United States shall be treated as if it were a trust exempt from tax under section 501(a)."

Subsec. (g)(3)(A). Pub. L. 104–188, §1704(t)(68), substituted "subsection (e)(3)" for "subsection (a)(8)".

Subsec. (g)(3)(D). Pub. L. 104–188, §1421(b)(9)(B), added subpar. (D).

Subsec. (k). Pub. L. 104–188, §1421(b)(3)(A), added subsec. (k).

1994—Subsec. (g)(5). Pub. L. 103–465 inserted before period at end "; except that any increase under this paragraph which is not a multiple of $500 shall be rounded to the next lowest multiple of $500".

1992—Subsecs. (a) to (d). Pub. L. 102–318, §521(a), amended subsecs. (a) to (d) generally, substituting present provisions for former provisions which in subsec. (a) related to taxability of beneficiaries of exempt trusts, in subsec. (b) related to taxability of beneficiaries of nonexempt trusts, in subsec. (c) related to taxability of beneficiaries of certain foreign situs trusts, and subsec. (d) which had been previously repealed.

Subsec. (e). Pub. L. 102–318, §521, amended subsec. (e) generally, substituting provisions relating to other rules applicable to exempt trusts for provisions relating to tax on lump sum distributions.

Subsec. (e)(6). Pub. L. 102–318, §522(c)(1), added par. (6).

Subsec. (f). Pub. L. 102–318, §521(a), amended subsec. (f) generally, substituting present provisions for provisions requiring a different time when explanation was to be provided and a different content of explanation to be given and using different definitions for "eligible rollover distribution" and "eligible retirement plan".

Subsec. (g)(1). Pub. L. 102–318, §521(b)(9), substituted "subsections (e)(3)" for "subsections (a)(8)".

Subsec. (i). Pub. L. 102–318, §521(b)(10), substituted "subsection (d)(4)" for "subsection (e)(4)".

Subsec. (j)(1). Pub. L. 102–318, §521(b)(11), substituted "(e)(4)" for "(a)(1) or (e)(4)(J)".

1990—Subsec. (a)(3)(B). Pub. L. 101–508, §11801(c)(9)(I)(i), substituted "section 424" for "section 425".

Subsec. (a)(6)(B)(i). Pub. L. 101–508, §11801(c)(9)(I)(ii), substituted "section 424(f)" for "section 425(f)".

1989—Subsec. (e)(7). Pub. L. 101–239, §7811(i)(13), added par. (7).

Subsec. (g)(3). Pub. L. 101–239, §7811(g)(2), inserted "involving a one-time irrevocable election" after "similar arrangement" in last sentence.

1988—Subsec. (a)(1). Pub. L. 100–647, §1011A(b)(8)(A), substituted "paragraph (4)" for "paragraphs (2) and (4)".

Subsec. (a)(4). Pub. L. 100–647, §1011A(b)(8)(B), struck out "or (2)" after "under paragraph (1)".

Subsec. (a)(5)(D)(i). Pub. L. 100–647, §1011A(b)(4)(C), inserted at end "Any distribution described in section 401(a)(28)(B)(ii) shall be treated as meeting the requirements of subclauses (I) and (II)."

Pub. L. 100–647, §1011A(b)(4)(A), repealed amendment by Pub. L. 99–514, §1122(e)(1), which had amended cl. (i) generally, and provided that the Internal Revenue Code of 1986 shall be applied and administered as if such amendment had not been enacted. See 1986 Amendment note and Effective Date of 1988 Amendment note below.

Subsec. (a)(5)(D)(i)(I). Pub. L. 100–647, §1011A(b)(4)(B), inserted "is payable as provided in clause (i), (iii), or (iv) of subsection (e)(4)(A) (without regard to the second sentence thereof) and" after "(I) such distribution".

Subsec. (a)(5)(D)(iii). Pub. L. 100–647, §1011A(b)(4)(D), struck out "10-year" after "Denial of" in heading.

Subsec. (a)(5)(F). Pub. L. 100–647, §1011A(a)(1), substituted "resulting in any portion of a distribution being excluded from gross income under subparagraph (A)" for "described in subparagraph (A)".

Subsec. (a)(6)(C). Pub. L. 100–647, §1011A(b)(8)(C), struck out "paragraph (2) of subsection (a), and" after "paragraph (5)(A) applies,".

Subsec. (a)(6)(E)(ii). Pub. L. 100–647, §1011A(b)(8)(D), substituted "then paragraphs (1) and (3) of subsection (e) shall" for "then paragraph (2) of subsection (a), and paragraphs (1) and (3) of subsection (e), shall".

Subsec. (a)(6)(G). Pub. L. 100–647, §1018(t)(8)(A), redesignated subpar. (G), relating to treatment of potential future vesting, as (I).

Subsec. (a)(6)(H)(ii). Pub. L. 100–647, §1011A(b)(5), inserted at end "A deposit shall not be treated as a frozen deposit unless on at least 1 day during the 60-day period described in paragraph (5)(C) (without regard to this subparagraph) such deposit is described in the preceding sentence."

Subsec. (a)(6)(I). Pub. L. 100–647, §1018(t)(8)(A), redesignated subpar. (G), relating to treatment of potential future vesting, as (I).

Subsec. (b)(2)(A). Pub. L. 100–647, §1011(h)(4), added subpar. (A) and struck out former subpar. (A) which related to trust which is not exempt from tax under section 501(a) because plan fails to meet requirements of section 410(b).

Subsec. (b)(2)(B). Pub. L. 100–647, §1011(h)(4), added subpar. (B) and struck out former subpar. (B) which related to failure of plan to meet requirements of section 410(b) for more than 1 taxable year.

Subsec. (e)(1)(A). Pub. L. 100–647, §1011A(b)(8)(E), struck out "ordinary income portion of a" after "subparagraph (B)) on the".

Subsec. (e)(1)(B). Pub. L. 100–647, §1011A(b)(10), inserted at end "For purposes of the preceding sentence, in determining the amount of tax under section 1(c), section 1(g) shall be applied without regard to paragraph (2)(B) thereof."

Pub. L. 100–647, §1018(u)(1), made technical correction to directory language of Pub. L. 99–514, §104(b)(5). See 1986 Amendment note below.

Pub. L. 100–647, §1018(u)(6), related to execution of amendment by Pub. L. 99–514, §1122(b)(2)(B), see 1986 Amendment note below.

Subsec. (e)(3). Pub. L. 100–647, §1018(u)(7), related to execution of amendment by Pub. L. 99–514, §1122(b)(2)(C), see 1986 Amendment note below.

Subsec. (e)(4)(A). Pub. L. 100–647, §1011A(b)(8)(F), in concluding provisions, substituted "A" for "Except for purposes of subsection (a)(2) and section 403(a)(2), a", and struck out "subsection (a)(2) of this section, and subsection (a)(2) of section 403," before "the balance to".

Subsec. (e)(4)(B)(i). Pub. L. 100–647, §1011A(b)(6), substituted "employee" for "taxpayer".

Subsec. (e)(4)(I). Pub. L. 100–647, §1011A(c)(9), struck out "clause (ii) of" after "amounts described in".

Subsec. (e)(4)(J). Pub. L. 100–647, §1011A(b)(7), amended last sentence generally. Prior to amendment, last sentence read as follows: "To the extent provided by the Secretary, a taxpayer may elect before any distribution not to have this paragraph apply with respect to such distribution."

Subsec. (e)(4)(L). Pub. L. 100–647, §1011A(b)(8)(G), struck out subpar. (L) which related to election to treat pre-1974 participation as post-1973 participation.

Subsec. (e)(4)(M). Pub. L. 100–647, §1011A(b)(8)(H), struck out ", subsection (a)(2) of this section, and section 403(a)(2)" after "of this subsection".

Subsec. (e)(4)(O). Pub. L. 100–647, §6068(a), added subpar. (O).

Subsec. (e)(5). Pub. L. 100–647, §1011A(b)(8)(I), struck out "and paragraph (2) of subsection (a)" after "of this subsection".

Subsec. (e)(6)(C). Pub. L. 100–647, §1011A(b)(8)(J), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: "For purposes of this paragraph, special lump sum treatment applies to any distribution if any portion of such distribution—

"(i) is taxed under this subsection by reason of an election under paragraph (4)(B), or

"(ii) is treated as long-term capital gain under subsection (a)(2) of this section or section 403(a)(2)."

Subsec. (f)(1). Pub. L. 100–647, §1018(t)(8)(C), substituted "an eligible" for "a eligible".

Subsec. (g). Pub. L. 100–647, §1011(c)(6)(B), redesignated subsec. (g), relating to effect of disposition of stock by plan on net unrealized appreciation, as (j).

Pub. L. 100–647, §1011(c)(6)(A), redesignated subsec. (g), relating to treatment of self-employed individuals, as (i).

Subsec. (g)(2). Pub. L. 100–647, §1011(c)(2), substituted "Distribution" for "Required distribution" in heading.

Subsec. (g)(2)(C). Pub. L. 100–647, §1011(c)(1), struck out "(and no tax shall be imposed under section 72(t))" after "in gross income", in cl. (i), substituted "such income is distributed" for "such excess deferral is made" in cl. (ii), and inserted at end "No tax shall be imposed under section 72(t) on any distribution described in the preceding sentence."

Subsec. (g)(2)(D). Pub. L. 100–647, §1011(c)(3), added subpar. (D).

Subsec. (g)(3). Pub. L. 100–647, §1011(c)(4), substituted "this subsection" for "this paragraph".

Pub. L. 100–647, §1011(c)(11), inserted at end "An employer contribution shall not be treated as an elective deferral described in subparagraph (C) if under the salary reduction agreement such contribution is made pursuant to a one-time irrevocable election made by the employee at the time of initial eligibility to participate in the agreement or is made pursuant to a similar arrangement specified in regulations."

Subsec. (g)(8)(A)(iii). Pub. L. 100–647, §1011(c)(5)(A), inserted "(determined in the manner prescribed by the Secretary)" after "prior taxable years".

Subsec. (g)(8)(D). Pub. L. 100–647, §1011(c)(5)(B), added subpar. (D).

Subsec. (i). Pub. L. 100–647, §1011(c)(6)(A), redesignated subsec. (g), relating to treatment of self-employed individuals, as (i).

Subsec. (j). Pub. L. 100–647, §1011(c)(6)(B), redesignated subsec. (g), relating to effect of disposition of stock by plan on net unrealized appreciation, as (j).

1986—Subsec. (a)(2). Pub. L. 99–514, §1122(b)(1)(A), struck out par. (2) relating to capital gains treatment for portion of lump sum distribution.

Subsec. (a)(5)(D)(i). Pub. L. 99–514, §1122(e)(1), amended cl. (i) generally, to read as follows: "Subparagraph (A) shall apply to a partial distribution only if the employee elects to have subparagraph (A) apply to such distribution and such distribution would be a lump sum distribution if subsection (e)(4)(A) were applied—

"(I) by substituting '50 percent of the balance to the credit of an employee' for 'the balance to the credit of an employee',

"(II) without regard to clause (ii) thereof, the second sentence thereof, and subparagraph (B) of subsection (e)(4).

Any distribution described in section 401(a)(28)(B)(ii) shall be treated as meeting the requirements of this clause." This amendment was repealed by Pub. L. 100–647, §1011A(b)(4)(A). See 1988 Amendment note above.

Pub. L. 99–514, §1852(b)(2), inserted at end "For purposes of subclause (I), the balance to the credit of the employee shall not include any accumulated deductible employee contributions (within the meaning of section 72(o)(5))."

Subsec. (a)(5)(D)(ii). Pub. L. 99–514, §1852(b)(5), substituted "a trust or plan described in subclause (III) or (IV)" for "a plan described in subclause (IV) or (V)".

Subsec. (a)(5)(D)(iii). Pub. L. 99–514, §1122(b)(2)(A), struck out "and capital gains treatment" in heading and amended text generally. Prior to amendment, cl. (iii) read as follows: "If an election under clause (i) is made with respect to any partial distribution paid to any employee—

"(I) paragraph (2) of this subsection,

"(II) paragraphs (1) and (3) of subsection (e), and

"(III) paragraph (2) of section 403(a),

shall not apply to any distribution (paid after such partial distribution) of the balance to the credit of such employee under the plan under which such partial distribution was made (or under any other plan which, under subsection (e)(4)(C), would be aggregated with such plan)."

Subsec. (a)(5)(E)(v). Pub. L. 99–514, §1852(b)(1), substituted "of all or any portion of" for "of any portion of".

Subsec. (a)(5)(F). Pub. L. 99–514, §1121(c)(1), amended subpar. (F) generally. Prior to amendment, subpar. (F) heading read "Special rules" and text read as follows:

"(i) Transfer treated as rollover contribution under section 408

"For purposes of this title, a transfer resulting in any portion of a distribution being excluded from gross income under subparagraph (A) to an eligible retirement plan described in subclause (I) or (II) of subparagraph (E)(iv) shall be treated as a rollover contribution described in section 408(d)(3).

"(ii) 5-percent owners

"An eligible retirement plan described in subclause (III) or (IV) of subparagraph (E)(iv) shall not be treated as an eligible retirement plan for the transfer of a distribution if the employee is a 5-percent owner at the time such distribution is made. For purposes of the preceding sentence, the term '5-percent owner' means any individual who is a 5-percent owner (as defined in section 416(i)(1)(B)) at any time during the 5 plan years preceding the plan year in which the distribution is made."

Pub. L. 99–514, §1852(b)(6), in cl. (i) substituted "a transfer resulting in any portion of a distribution being excluded from gross income under subparagraph (A)" for "a transfer described in subparagraph (A)".

Pub. L. 99–514, §1875(c)(1)(A), amended cl. (ii) generally. Prior to amendment, cl. (ii), key employees, read as follows: "An eligible retirement plan described in subclause (III) or (IV) of subparagraph (E)(iv) shall not be treated as an eligible retirement plan for the transfer of a distribution if any part of the distribution is attributable to contributions made on behalf of the employee while he was a key employee in a top-heavy plan. For purposes of the preceding sentence, the terms 'key employee' and 'top-heavy plan' have the same respective meanings as when used in section 416."

Subsec. (a)(5)(G). Pub. L. 99–514, §1852(a)(5)(A), added subpar. (G).

Subsec. (a)(6)(D)(v). Pub. L. 99–514, §1852(b)(7), substituted "(7)" for "(7)(B)".

Subsec. (a)(6)(F). Pub. L. 99–514, §1898(c)(7)(A)(i), substituted "paragraph (5)" for "paragraph (5)(A)".

Subsec. (a)(6)(G). Pub. L. 99–514, §1898(a)(3), added subpar. (G) relating to treatment of potential future vesting.

Pub. L. 99–272 added subpar. (G) relating to payments from certain pension plan termination trusts.

Subsec. (a)(6)(H). Pub. L. 99–514, §1122(e)(2)(A), added subpar. (H).

Subsec. (a)(7). Pub. L. 99–514, §1852(b)(4), inserted "; except that a trust or plan described in subclause (III) or (IV) of paragraph (5)(E)(iv) shall not be treated as an eligible retirement plan with respect to such distribution" after "the spouse were the employee".

Subsec. (a)(9). Pub. L. 99–514, §1898(c)(1)(A), substituted "any alternate payee who is the spouse or former spouse of the participant shall be treated" for "the alternate payee shall be treated".

Subsec. (b). Pub. L. 99–514, §1112(c), designated existing provisions as par. (1), inserted par. (1) heading, and added par. (2).

Pub. L. 99–514, §1852(c)(5), substituted "section 72(e)(5)" for "section 72(e)(1)".

Subsec. (e)(1)(B). Pub. L. 99–514, §1122(b)(2)(B), and Pub. L. 100–647, §1018(u)(6), redesignated subpar. (C) as (B), substituted "Amount of tax" for "Initial separate tax" in heading and "The amount of tax imposed by subparagraph (A)" for "The initial separate tax", and struck out former subpar. (B) which related to computation of tax on lump sum distributions.

Pub. L. 99–514, §104(b)(5), as amended by Pub. L. 100–647, §1018(u)(1), struck out "the zero bracket amount applicable to such individual for the taxable year plus" after "amount equal to".

Pub. L. 99–514, §1122(a)(2)(A), (B), substituted "5" for "10" and "1/5" for "one-tenth".

Subsec. (e)(1)(C) to (E). Pub. L. 99–514, §1122(b)(2)(B)(i), redesignated subpars. (C) to (E) as (B) to (D), respectively.

Subsec. (e)(3). Pub. L. 99–514, §1122(b)(2)(C), and Pub. L. 100-647, §1018(u)(7), substituted "total taxable amount" for "ordinary income portion".

Subsec. (e)(4)(B). Pub. L. 99–514, §1122(a)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "For purposes of this section and section 403, no amount which is not an annuity contract may be treated as a lump sum distribution under subparagraph (A) unless the taxpayer elects for the taxable year to have all such amounts received during such year so treated at the time and in the manner provided under regulations prescribed by the Secretary. Not more than one election may be made under this subparagraph with respect to any individual after such individual has attained age 59½. No election may be made under this subparagraph by any taxpayer other than an individual, an estate, or a trust. In the case of a lump sum distribution made with respect to an employee to two or more trusts, the election under this subparagraph shall be made by the personal representative of the employee."

Subsec. (e)(4)(E). Pub. L. 99–514, §1122(b)(2)(D), struck out subpar. (E) defining "ordinary income portion" with respect to a lump sum distribution.

Subsec. (e)(4)(F). Pub. L. 99–514, §1852(b)(3)(B), struck out subpar. (F) defining "employee". See subsec. (g) of this section relating to treatment of self-employed individuals.

Subsec. (e)(4)(H). Pub. L. 99–514, §1122(b)(2)(E), struck out "(but not for purposes of subsection (a)(2) or section 403(a)(2)(A))" after "For purposes of this subsection".

Subsec. (e)(4)(J). Pub. L. 99–514, §1122(g), inserted at end "To the extent provided by the Secretary, a taxpayer may elect before any distribution not to have this paragraph apply with respect to such distribution."

Subsec. (e)(4)(N). Pub. L. 99–514, §1106(c)(2), added subpar. (N).

Subsec. (e)(6). Pub. L. 99–514, §1898(a)(2), added par. (6).

Subsec. (f)(1). Pub. L. 99–514, §1898(e)(1), substituted "eligible rollover distribution" for "qualifying rollover distribution".

Subsec. (f)(2). Pub. L. 99–514, §1898(e)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "For purposes of this subsection, the terms 'qualifying rollover distribution' and 'eligible retirement plan' have the respective meanings given such terms by subsection (a)(5)(E)."

Subsec. (g). Pub. L. 99–514, §1854(f)(2), added subsec. (g) relating to effect of disposition of stock by plan on net unrealized appreciation.

Pub. L. 99–514, §1852(b)(3)(A), added subsec. (g) relating to treatment of self-employed individuals.

Pub. L. 99–514, §1105(a), added subsec. (g) relating to limitation on exclusion for elective deferrals.

Subsec. (h). Pub. L. 99–514, §1108(b), added subsec. (h).

1984—Subsec. (a)(2). Pub. L. 98–369, §1001(b)(3), substituted "6 months" for "1 year".

Subsec. (a)(5)(A)(i). Pub. L. 98–369, §522(a)(1), substituted "any portion of the balance to the credit of an employee in a qualified trust is paid to him" for "the balance to the credit of an employee in a qualified trust is paid to him in a qualifying rollover distribution".

Subsec. (a)(5)(B). Pub. L. 98–369, §522(d)(1)(A), (2), substituted "qualified total distribution" for "qualifying rollover distribution", and inserted "In the case of any partial distribution, the maximum amount transferred to which subparagraph (A) applies shall not exceed the portion of such distribution which is includible in gross income (determined without regard to subparagraph (A))."

Subsec. (a)(5)(D). Pub. L. 98–369, §522(b), added subpar. (D). Former subpar. (D) redesignated (E).

Subsec. (a)(5)(D)(iv)(III)–(V). Pub. L. 98–369, §491(d)(9), struck out subcl. (III), which included a

retirement bond described in section 409 within term "eligible retirement plan" and redesignated former subcls. (IV) and (V) and (III) and (IV), respectively.

Subsec. (a)(5)(E). Pub. L. 98–369, §522(b), redesignated subpar. (D) as (E). Former subpar. (E) redesignated (F).

Subsec. (a)(5)(E)(i). Pub. L. 98–369, §522(d)(1)(B), substituted "qualified total distribution" for "qualifying rollover distribution" in heading and text.

Subsec. (a)(5)(E)(ii)(II). Pub. L. 98–369, §522(d)(3), substituted "gross income (determined without regard to this paragraph)" for "gross income".

Subsec. (a)(5)(E)(v). Pub. L. 98–369, §522(d)(4), substituted provision dealing with partial distribution for provision dealing with rollover of partial distributions of deductible employee contributions permitted.

Subsec. (a)(5)(F). Pub. L. 98–369, §522(b), redesignated subpar. (E) as (F).

Subsec. (a)(5)(F)(i). Pub. L. 98–369, §522(d)(5), substituted "subparagraph (E)(iv)" for "subparagraph (D)(iv)".

Pub. L. 98–369, §491(d)(10), substituted "or (II)" for ", (II), or (III)".

Subsec. (a)(5)(F)(ii). Pub. L. 98–369, §522(d)(5), substituted "subparagraph (E)(iv)" for "subparagraph (D)(iv)".

Pub. L. 98–369, §491(d)(11), substituted "(III) or (IV)" for "(IV) and (V)".

Pub. L. 98–369, §713(c)(3), substituted "Key employees" for "Self-employed individuals and owner-employees" in heading and "attributable to contributions made on behalf of the employee while he was a key employee in a top-heavy plan" for "attributable to a trust forming part of a plan under which the employee was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan" in text, and inserted sentence adopting the meaning of "key employee" and "top-heavy plan" used in section 416.

Subsec. (a)(6)(A), (B). Pub. L. 98–369, §522(d)(6), substituted "paragraph (5)(E)(i)" for "paragraph (5)(D)(i)".

Subsec. (a)(6)(D)(iii), (iv). Pub. L. 98–369, §522(d)(7), substituted "employee contributions (or, in the case of a partial distribution, the amount not includible in gross income)" for "employee contributions".

Subsec. (a)(6)(E)(i). Pub. L. 98–369, §522(d)(1)(C), (8), substituted "qualified total distribution" for "qualifying rollover distribution", and "paragraph (5)(D) or (5)(E)(i)(II)" for "paragraph (5)(D)(i)(II)".

Subsec. (a)(6)(F). Pub. L. 98–397, §204(c)(3), added subpar. (F).

Subsec. (a)(7). Pub. L. 98–369, §522(c), substituted provisions relating to rollover where spouse receives distributions after death of employee for provisions dealing with rollover where spouse receives lump-sum distribution at death of employee.

Subsec. (a)(9). Pub. L. 98–397, §204(c)(1), added par. (9).

Subsec. (e)(4)(L). Pub. L. 98–369, §1001(b)(3), substituted "6 months" for "1 year", applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

Subsec. (e)(4)(M). Pub. L. 98–397, §204(c)(4), added subpar. (M).

Subsec. (e)(5). Pub. L. 98–369, §491(c)(2), added par. (5).

Subsec. (f). Pub. L. 98–397, §207(a), added subsec. (f).

1983—Subsec. (a)(5)(D)(v). Pub. L. 97–448, §103(c)(8)(A), added cl. (v).

Subsec. (e)(1)(C). Pub. L. 97–448, §101(b), substituted "the zero bracket amount applicable to such an individual for the taxable year" for "$2,300".

Subsec. (e)(4)(A). Pub. L. 97–448, §103(c)(7), substituted "this subsection, subsection (a)(2) of this section, and subsection (a)(2) of section 403" for "this section and section 403" in last sentence.

Subsec. (e)(4)(J). Pub. L. 97–448, §103(c)(12)(D), amended Pub. L. 97–34, §311(c)(2) [see 1981 Amendment note below], by substituting "section 72(o)(5)" for "section 77(o)(5)" in last sentence of subpar. (j).

1981—Subsec. (a)(1). Pub. L. 97–34, §311(c)(1), inserted "(other than deductible employee contributions within the meaning of section 72(o)(5))".

Pub. L. 97–34, §314(c)(1), struck out "or made available" after "distributed" in three places.

Subsec. (a)(5). Pub. L. 97–34, §311(b)(3)(A), inserted "(other than accumulated deductible employee contributions within the meaning of section 72(o)(5))" after "contributions" in subpar. (B) and added subcl. (III) in subpar. (D).

Subsec. (e)(4). Pub. L. 97–34, §311(b)(2), (c)(2), added to subpar. (A) provision that for purposes of sections 402 and 403, the balance to the credit of the employee does not include the accumulated deductible employee contributions under the plan (within the meaning of section 72(o)(5)), and added subpar. (J) provision making subpar. (J) inapplicable to distributions of accumulated deductible employee contributions (within the meaning of section 77(o)(5)). See 1983 Amendment note above.

1980—Subsec. (a)(6)(D)(iii). Pub. L. 96–222, §101(a)(14)(E)(i), substituted "may designate" for "many designate".

Subsec. (a)(6)(E). Pub. L. 96–608 added subpar. (E).

Subsec. (a)(7)(A)(i). Pub. L. 96–222, §101(a)(14)(C), substituted "qualifying rollover distribution attributable to an employee is paid to the spouse of the employee after" for "lump-sum distribution from a qualified trust is paid to the spouse of the employee on account of".

1978—Subsec. (a)(5). Pub. L. 95–458, §4(a), among other changes, substituted provision permitting tax-free treatment for any portion of a lump sum distribution from a qualified retirement plan which is deposited in an individual retirement account or another qualifying plan for provision which required transfer of all such property received.

Subsec. (a)(5)(D)(i)(II). Pub. L. 95–600, §157(h)(1), substituted "subparagraphs (B) and (H) of subsection (e)(4)" for "subsection (e)(4)(B)".

Subsec. (a)(6). Pub. L. 95–458, §4(c), in provision preceding subpar. (A) struck out "For purposes of paragraph (5)(A)(i)", in subpar. (A) substituted "For purposes of paragraph (5)(D)(i), a complete" for "A complete", in subpar. (B) inserted "For purposes of paragraph (5)(D)(i)—" after "assets.—" in provision preceding cl. (i), and added subpar. (C).

Subsec. (a)(6)(D). Pub. L. 95–600, §157(f)(1), added subpar. (D).

Subsec. (a)(7). Pub. L. 95–600, §157(g)(1), added par. (7).

Subsec. (a)(8). Pub. L. 95–600, §135(b), added par. (8).

Subsec. (e)(1)(C). Pub. L. 95–600, §101(d)(1), substituted "$2,300" for "$2,200".

1977—Subsec. (e)(1)(C). Pub. L. 95–30 substituted "amount equal to $2,200 plus one-tenth of the excess of" for "amount equal to one-tenth of the excess of" in provisions preceding cl. (i).

1976—Subsec. (a)(1). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (a)(2). Pub. L. 94–455, §1402(b)(2), provided that "9 months" would be changed to "1 year".

Pub. L. 94–455, §§1402(b)(1)(C), 1906(b)(13)(A), provided that "6 months" would be changed to "9 months" for taxable years beginning in 1977 and struck out "or his delegate" after "Secretary".

Subsec. (a)(4). Pub. L. 94–455, §1901(a)(57)(A), substituted "basic pay" for "basic salary", "civil service retirement laws" for "Civil Service Retirement Act (5 U.S.C. 2251)", and "section 8331(3) of title 5, United States Code" for "section 1(d) of such Act".

Subsec. (a)(5). Pub. L. 94–267, §1(a)(2), substituted "a payment" for "the lump-sum distribution".

Subsec. (a)(5)(A). Pub. L. 94–267, §1(a)(1), restructured provision by adding cl. (i) and designating existing provision as cl. (ii).

Subsec. (a)(6). Pub. L. 94–267, §1(a)(3), added par. (6).

Subsec. (a)(6)(A). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (d). Pub. L. 94–455, §1901(a)(57)(B), struck out subsec. (d) which related to certain trust agreements made before Oct. 21, 1942.

Subsec. (e)(2). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (e)(4)(A). Pub. L. 94–455, §1901(a)(57)(C)(i), substituted "Except for purposes of subsection (a)(2) and section 403(a)(2)" for "For purposes of this subparagraph".

Subsec. (e)(4)(B), (J). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (e)(4)(L). Pub. L. 94–455, §1402(b)(2), substituted "1 year" for "9 months".

Pub. L. 94–455, §§1402(b)(1)(C), 1512(a), added subsec. (e)(4)(L) to be applicable to distributions and payments after Dec. 31, 1975, in taxable years beginning after Dec. 31, 1975, and provided that "6 months" would be changed to "9 months" for taxable years beginning in 1977.

1974—Subsec. (a)(2). Pub. L. 93–406, §2005(b)(1), substituted provisions covering capital gains treatment of portions of lump sum distributions determined through the application of a fraction formula susceptible of producing a phaseout of capital gains treatment for provisions covering capital gains treatment of portions of lump sum distributions determined on a fixed formula.

Subsec. (a)(3)(C). Pub. L. 93–406, §2005(c)(1), struck out subsec. (a)(3)(C) which defined "total distribution payable".

Subsec. (a)(5). Pub. L. 93–406, §§2002(g)(5), 2005(c)(2), substituted provisions covering rollover amounts for provisions covering limitation on capital gains treatment.

Subsec. (e). Pub. L. 93–406, §2005(a), substituted provisions covering tax on lump sum distributions for provisions covering plan termination distributions made after Dec. 31, 1953, and before Jan. 1, 1955.

1969—Subsec. (a)(5). Pub. L. 91–172, §515(a)(1), added par. (5).

Subsec. (b). Pub. L. 91–172, §321(b)(1), substituted provision for inclusion of contributions made by an employer to a nonexempt trust in the "gross income of the employee in accordance with section 83 (relating to property transferred in connection with performance of services), except that the value of the employee's

interest in the trust shall be substituted for the fair market value of the property for purposes of applying such section" for prior provision for inclusion in the "gross income of an employee for the taxable year in which the contribution is made to the trust in the case of an employee whose beneficial interest in such contribution is nonforfeitable at the time the contribution is made", and provided that distributions of income of such trust before the annuity starting date (as defined in section 72(c)(4)) shall be included in the gross income of the employee without regard to section 72(e)(1) (relating to amount not received as annuities) and that a beneficiary of any such trust shall not be considered the owner of any portion of such trust under subpart E of part I of subch. J (relating to grantors and others treated as substantial owners).

1964—Subsec. (a)(1). Pub. L. 88–272, §232(e)(1), struck out "except that section 72(e)(3) shall not apply" after "(relating to annuities)".

Subsec. (a)(3)(B). Pub. L. 88–272, §221(c)(1), substituted "subsections (e) and (f) of section 425" for "section 421(d)(2) and (3)".

Subsecs. (b), (d). Pub. L. 88–272, §232(e)(2), (3), struck out "except that section 72(e)(3) shall not apply" after "(relating to annuities)".

1962—Subsec. (a)(2). Pub. L. 87–792 inserted sentence providing that this paragraph shall not apply to distributions paid to any distributee to the extent such distributions are attributable to contributions made on behalf of the employee while he was an employee within the meaning of section 401(c)(1).

1960—Subsec. (a)(1). Pub. L. 86–437, §2(a), substituted "paragraphs (2) and (4)" for "paragraph (2)".

Subsec. (a)(4). Pub. L. 86–437, §1, added par. (4).

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112–239 effective Jan. 2, 2013, and applicable to matters pending on Jan. 2, 2013, or filed or accruing after that date, with certain exceptions, see section 1086(d) of Pub. L. 112–239, set out as a note under section 3791 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–458, title I, §108(f)(2)(C), Dec. 23, 2008, 122 Stat. 5109, provided that: "The amendments made by this paragraph [amending this section] shall apply with respect to plan years beginning after December 31, 2009."

Amendment by sections 108(f)(1)–(2)(B), (j) and 109(b)(3) of Pub. L. 110–458 effective as if included in the provisions of Pub. L. 109–280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110–458, set out as a note under section 72 of this title.

Amendment by section 201(b) of Pub. L. 110–458 applicable to calendar years beginning after December 31, 2008, with provisions relating to pension plan or contract amendments, see section 201(c) of Pub. L. 110–458, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–172, §8(b), Dec. 29, 2007, 121 Stat. 2484, provided that: "The amendments made by this section [amending this section and section 3121 of this title] shall take effect as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 [Pub. L. 107–16] to which they relate."

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title VIII, §822(b), Aug. 17, 2006, 120 Stat. 998, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 2006."

Pub. L. 109–280, title VIII, §829(b), Aug. 17, 2006, 120 Stat. 1002, provided that: "The amendments made by this section [amending this section and sections 403 and 457 of this title] shall apply to distributions after December 31, 2006."

Pub. L. 109–280, title VIII, §845(c), Aug. 17, 2006, 120 Stat. 1015, provided that: "The amendments made by this section [amending this section and sections 403 and 457 of this title] shall apply to distributions in taxable years beginning after December 31, 2006."

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–135, title IV, §407(c), Dec. 21, 2005, 119 Stat. 2635, provided that: "The amendments made by this section [amending this section and section 415 of this title] shall take effect as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 [Pub. L. 107–16] to which they relate."

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax

Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 611(d)(1)–(3)(A) of Pub. L. 107–16 applicable to years beginning after Dec. 31, 2001, see section 611(i)(1) of Pub. L. 107–16, set out as a note under section 415 of this title.

Pub. L. 107–16, title VI, §617(f), June 7, 2001, 115 Stat. 106, provided that: "The amendments made by this section [enacting section 402A of this title and amending this section and sections 408A, 6047, and 6051 of this title] shall apply to taxable years beginning after December 31, 2005."

Amendment by section 632(a)(3)(G) of Pub. L. 107–16 applicable to years beginning after Dec. 31, 2001, see section 632(a)(4) of Pub. L. 107–16, set out as a note under section 72 of this title.

Pub. L. 107–16, title VI, §636(b)(2), June 7, 2001, 115 Stat. 117, provided that: "The amendment made by this subsection [amending this section] shall apply to distributions made after December 31, 2001."

Pub. L. 107–16, title VI, §641(f), June 7, 2001, 115 Stat. 121, provided that:

"(1) EFFECTIVE DATE.—The amendments made by this section [amending this section and sections 72, 219, 401, 403, 408, 415, 457, 3401, 3405, and 4973 of this title] shall apply to distributions after December 31, 2001.

"(2) REASONABLE NOTICE.—No penalty shall be imposed on a plan for the failure to provide the information required by the amendment made by subsection (c) [amending this section] with respect to any distribution made before the date that is 90 days after the date on which the Secretary of the Treasury issues a safe harbor rollover notice after the date of the enactment of this Act [June 7, 2001], if the administrator of such plan makes a reasonable attempt to comply with such requirement.

"(3) SPECIAL RULE.—Notwithstanding any other provision of law, subsections (h)(3) and (h)(5) of section 1122 of the Tax Reform Act of 1986 [Pub. L. 99–514, set out as a note below] shall not apply to any distribution from an eligible retirement plan (as defined in clause (iii) or (iv) of section 402(c)(8)(B) of the Internal Revenue Code of 1986) on behalf of an individual if there was a rollover to such plan on behalf of such individual which is permitted solely by reason of any amendment made by this section."

Amendment by section 643(a) of Pub. L. 107–16 applicable to distributions made after Dec. 31, 2001, see section 643(d) of Pub. L. 107–16, set out as a note under section 401 of this title.

Pub. L. 107–16, title VI, §644(c), June 7, 2001, 115 Stat. 123, provided that: "The amendments made by this section [amending this section and section 408 of this title] shall apply to distributions after December 31, 2001."

Amendment by section 657(b) of Pub. L. 107–16 applicable to distributions made after Mar. 28, 2005, see section 657(d) of Pub. L. 107–16, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–206, title VI, §6005(c)(2)(C), July 22, 1998, 112 Stat. 800, provided that: "The amendments made by this paragraph [amending this section and section 403 of this title] shall apply to distributions after December 31, 1998."

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XV, §1501(c)(1), Aug. 5, 1997, 111 Stat. 1058, provided that: "The amendment made by subsection (a) [amending this section] shall apply to years beginning after December 31, 1997."

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, §1401(c), Aug. 20, 1996, 110 Stat. 1789, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and sections 55, 62, 401, 406, 407, 691, 871, 877, and 4980A of this title] shall apply to taxable years beginning after December 31, 1999.

"(2) RETENTION OF CERTAIN TRANSITION RULES.—The amendments made by this section shall not apply to any distribution for which the taxpayer is eligible to elect the benefits of section 1122(h)(3) or (5) of the Tax Reform Act of 1986 [Pub. L. 99–514, set out below]. Notwithstanding the preceding sentence, individuals who elect such benefits after December 31, 1999, shall not be eligible for 5-year averaging under section 402(d) of the Internal Revenue Code of 1986 (as in effect immediately before such amendments)."

Amendment by section 1421(b)(3)(A), (9)(B) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1421(e) of Pub. L. 104–188, set out as a note under section 72 of this title.

Amendment by section 1450(a)(2) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1995, see section 1450(a)(3) of Pub. L. 104–188, set out in a Modifications of Subsection (b) of This Section note under section 403 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 applicable to years beginning after Dec. 31, 1994, and, to the extent of providing for the rounding of indexed amounts, not applicable to any year to the extent the rounding would require the indexed amount to be reduced below the amount in effect for years beginning in 1994, see section 732(e) of Pub. L. 103–465, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–318, title V, §521(e), July 3, 1992, 106 Stat. 313, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and sections 55, 62, 72, 219, 401, 403, 406 to 408, 411, 414, 415, 457, 691, 871, 877, 1441, 3121, 3306, 3405, 4973, 4980A, and 7701 of this title] shall apply to distributions after December 31, 1992.

"(2) SPECIAL RULE FOR PARTIAL DISTRIBUTIONS.—For purposes of section 402(a)(5)(D)(i)(II) of the Internal Revenue Code of 1986 (as in effect before the amendments made by this section), a distribution before January 1, 1993, which is made before or at the same time as a series of periodic payments shall not be treated as one of such series if it is not substantially equal in amount to other payments in such series."

Amendment by section 522(c)(1) of Pub. L. 102–318 applicable, except as otherwise provided, to distributions after Dec. 31, 1992, see section 522(d) of Pub. L. 102–318, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7811(i)(13), Dec. 19, 1989, 103 Stat. 2411, provided that the amendment made by that section is effective with respect to taxable years ending after Dec. 19, 1989 (or, at the election of the taxpayer, beginning after Dec. 31, 1986).

Amendment by section 7811(g)(2) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 1011(c)(1)–(6)(B), (11), (h)(4), 1011A(a)(1), (b)(4)(A)–(D), (5)–(8), (10), (c)(9), and 1018(t)(8)(A), (C), (u)(1), (6), (7) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title VI, §6068(b), Nov. 10, 1988, 102 Stat. 3704, provided that: "The amendment made by this section [amending this section] shall apply to taxable years ending after December 31, 1984."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 104(b)(5) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Pub. L. 99–514, title XI, §1105(c), Oct. 22, 1986, 100 Stat. 2419, as amended by Pub. L. 100–647, title I, §1011(c)(8), (9), Nov. 10, 1988, 102 Stat. 3458, provided that:

"(1) IN GENERAL.—Except as provided in this subsection, the amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1986.

"(2) DEFERRALS UNDER COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendment made by subsection (a) shall not apply to contributions made pursuant to such an agreement for taxable years beginning before the earlier of—

"(A) the date on which such agreement terminates (determined without regard to any extension thereof after February 28, 1986), or

"(B) January 1, 1989.

Such contributions shall be taken into account for purposes of applying the amendment made by this section to other plans.

"(3) DISTRIBUTIONS MADE BEFORE PLAN AMENDMENT.—

"(A) IN GENERAL.—If a plan amendment is required to allow the plan to make any distribution described in section 402(g)(2)(A)(ii) of the Internal Revenue Code of 1986, any such distribution which is made before the close of the 1st plan year for which such amendment is required to be in effect under section 1140 [set out as a note under section 401 of this title] shall be treated as made in accordance with the provisions of such plan.

"(B) DISTRIBUTIONS PURSUANT TO MODEL AMENDMENT.—

"(i) SECRETARY TO PRESCRIBE AMENDMENT.—The Secretary of the Treasury or his delegate shall prescribe an amendment which allows a plan to make any distribution described in section 402(g)(2)(A)(ii) of such Code.

"(ii) ADOPTION BY PLAN.—If a plan adopts the amendment prescribed under clause (i) and makes a distribution in accordance with such amendment, such distribution shall be treated as made in accordance with the provisions of the plan.

"(4) SPECIAL RULE FOR TAXABLE YEARS OF PARTNERSHIPS WHICH INCLUDE JANUARY 1, 1987.—In the case of the taxable year of any partnership which begins before January 1, 1987, and ends after January 1, 1987, elective deferrals (within the meaning of section 402(g)(3) of the Internal Revenue Code of 1986) made on behalf of a partner for such taxable year shall, for purposes of section 402(g)(3) of such Code, be treated as having been made ratably during such taxable year.

"(5) CASH OR DEFERRED ARRANGEMENTS.—The amendments made by this section [amending this section and section 6051 of this title] shall not apply to employer contributions made during 1987 and attributable to services performed during 1986 under a qualified cash or deferred arrangement (as defined in section 401(k) of the Internal Revenue Code of 1986) if, under the terms of such arrangement as in effect on August 16, 1986—

"(A) the employee makes an election with respect to such contribution before January 1, 1987, and

"(B) the employer identifies the amount of such contribution before January 1, 1987.

"(6) REPORTING REQUIREMENTS.—The amendments made by subsection (b) [amending section 6051 of this title] shall apply to calendar years beginning after December 31, 1986."

Amendment by section 1106(c)(2) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1986, see section 1106(i) of Pub. L. 99–514, set out as a note under section 415 of this title.

Amendment by section 1108(b) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1986, see section 1108(h) of Pub. L. 99–514, set out as a note under section 219 of this title.

Amendment by section 1112(c) of Pub. L. 99–514 applicable to plan years beginning after Dec. 31, 1988, with special rule regarding collective bargaining agreements ratified before Mar. 1, 1986, and with provision for waiver of excise tax on reversions, see section 1112(e) of Pub. L. 99–514, set out as a note under section 401 of this title.

Amendment by section 1121(c)(1) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1986, with special provisions for plans maintained pursuant to collective bargaining agreements ratified before Mar. 1, 1986, and transition rules, see section 1121(d) of Pub. L. 99–514, set out as a note under section 401 of this title.

Pub. L. 99–514, title XI, §1122(h), Oct. 22, 1986, 100 Stat. 2470, as amended by Pub. L. 100–647, title I, §1011A(b)(11)–(15), Nov. 10, 1988, 102 Stat. 3474, 3475, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 72, 403, and 408 of this title] shall apply to amounts distributed after December 31, 1986, in taxable years ending after such date.

"(2) SUBSECTION (c).—

"(A) SUBSECTION (c)(1).—The amendment made by subsection (c)(1) [amending section 72 of this title] shall apply to individuals whose annuity starting date is after July 1, 1986.

"(B) SUBSECTION (c)(2).—The amendment made by subsection (c)(2) [amending section 72 of this title] shall apply to individuals whose annuity starting date is after December 31, 1986, except that section 72(b)(3) of the Internal Revenue Code of 1986 (as added by such subsection) shall apply to individuals whose annuity starting date is after July 1, 1986.

"(C) SPECIAL RULE FOR AMOUNTS NOT RECEIVED AS ANNUITIES.—In the case of any plan not described in section 72(e)(8)(D) of the Internal Revenue Code of 1986 (as added by subsection (c)(3)), the amendments made by subsection (c)(3) [amending section 72 of this title] shall apply to amounts received after July 1, 1986.

"(3) SPECIAL RULE FOR INDIVIDUALS WHO ATTAINED AGE 50 BEFORE JANUARY 1, 1986.—

"(A) IN GENERAL.—In the case of a lump sum distribution to which this paragraph applies—

"(i) the existing capital gains provisions shall continue to apply, and

"(ii) the requirement of subparagraph (B) of section 402(e)(4) of the Internal Revenue Code of 1986 (as amended by subsection (a)) that the distribution be received after attaining age 59½ shall not apply.

"(B) COMPUTATION OF TAX.—If subparagraph (A) applies to any lump sum distribution of any taxpayer for any taxable year, the tax imposed by section 1 of the Internal Revenue Code of 1986 on such taxpayer for such taxable year shall be equal to the sum of—

"(i) the tax imposed by such section 1 on the taxable income of the taxpayer (reduced by the portion of such lump sum distribution to which clause (ii) applies), plus

"(ii) 20 percent of the portion of such lump sum distribution to which the existing capital gains provisions continue to apply by reason of this paragraph.

"(C) LUMP SUM DISTRIBUTIONS TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to any lump sum distribution if—

"(i) such lump sum distribution is received by an employee who has attained age 50 before January 1, 1986 or by an individual, estate, or trust with respect to such an employee, and

"(ii) the taxpayer makes an election under this paragraph.

Not more than 1 election may be made under this paragraph with respect to an employee. An election under this subparagraph shall be treated as an election under section 402(e)(4)(B) of such Code for purposes of such Code.

"(4) 5-YEAR PHASE-OUT OF CAPITAL GAINS TREATMENT.—

"(A) Notwithstanding the amendment made by subsection (b) [amending this section and section 403 of this title], if the taxpayer elects the application of this paragraph with respect to any distribution after December 31, 1986, and before January 1, 1992, the phase-out percentage of the amount which would have been treated, without regard to this subparagraph, as long-term capital gain under the existing capital gains provisions shall be treated as long-term capital gain.

"(B) For purposes of this paragraph—

"In the case of distributions during calendar year:	The phase-out percentage is:
1987	100
1988	95
1989	75
1990	50
1991	25.

"(C) No more than 1 election may be made under this paragraph with respect to an employee. An election under this paragraph shall be treated as an election under section 402(e)(4)(B) of the Internal Revenue Code of 1986 for purposes of such Code.

"(5) ELECTION OF 10-YEAR AVERAGING.—An employee who has attained age 50 before January 1, 1986, and elects the application of paragraph (3) or section 402(e)(1) of the Internal Revenue Code of 1986 (as amended by this Act) may elect to have such section applied by substituting '10 times' for '5 times' and '1/10' for '1/5' in subparagraph (B) thereof. For purposes of the preceding sentence, section 402(e)(1) of such Code shall be applied by using the rate of tax in effect under section 1 of the Internal Revenue Code of 1954 for taxable years beginning during 1986 and by including in gross income the zero bracket amount in effect under section 63(d) of such Code for such years. This paragraph shall also apply to an individual, estate, or trust which receives a distribution with respect to an employee described in this paragraph.

"(6) EXISTING CAPITAL GAIN PROVISIONS.—For purposes of paragraphs (3) and (4), the term 'existing capital gains provisions' means the provisions of paragraph (2) of section 402(a) of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]) and paragraph (2) of section 403(a) of such Code (as so in effect).

"(7) SUBSECTION (d).—The amendments made by subsection (d) [amending section 403 of this title] shall apply to taxable years beginning after December 31, 1985.

"(8) FROZEN DEPOSITS.—The amendments made by subsection (e)(2) [amending this section and section 408 of this title] shall apply to amounts transferred to an employee before, on, or after the date of the enactment of this Act [Oct. 22, 1986], except that in the case of an amount transferred on or before such date, the 60-day period referred to in section 402(a)(5)(C) of the Internal Revenue Code of 1986 shall not expire before the 60th day after the date of the enactment of this Act.

"(9) SPECIAL RULE FOR STATE PLANS.—In the case of a plan maintained by a State which on May 5, 1986, permitted withdrawal by the employee of employee contributions (other than as an annuity), section 72(e) of the Internal Revenue Code of 1986 shall be applied—

"(A) without regard to the phrase 'before separation from service' in paragraph (8)(D), and

"(B) by treating any amount received (other than as an annuity) before or with the 1st annuity payment as having been received before the annuity starting date."

Amendment by section 1852(a)(5)(A), (b)(1)–(7), (c)(5) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Pub. L. 99–514, title XVIII, §1854(f)(4)(C), Oct. 22, 1986, 100 Stat. 2882, as amended by Pub. L. 100–647, title I, §1011(c)(6)(C), Nov. 10, 1988, 102 Stat. 3458, provided that: "The amendments made by paragraph (2) [amending this section] shall apply to any transaction occurring after December 31, 1984, except that in the case of any transaction occurring before the date of the enactment of this Act [Oct. 22, 1986], the period under which proceeds are required to be invested under section 402(j) of the Internal Revenue Code of 1954 [now 1986] (as added by paragraph (2)) shall not end before the earlier of 1 year after the date of such transaction or 180 days after the date of the enactment of this Act."

Pub. L. 99–514, title XVIII, §1875(c)(1)(B), Oct. 22, 1986, 100 Stat. 2894, provided that: "The amendments made by subparagraph (A) [amending this section] shall apply to distributions after the date of the enactment of this Act [Oct. 22, 1986]. Such amendments shall apply also to distributions after 1983 and on or before the date of the enactment of this Act to individuals who are not 5-percent owners (as defined in section 402(a)(5)(F)(ii) of the Internal Revenue Code of 1954 [now 1986] (as amended by this paragraph))."

Amendment by section 1898(a)(2), (3), (c)(7)(A)(i), (e) of Pub. L. 99–514 effective as if included in the provision of the Retirement Equity Act of 1984, Pub. L. 98–397, to which such amendment relates, except as otherwise provided, see section 1898(j) of Pub. L. 99–514, set out as a note under section 401 of this title.

Amendment by section 1898(c)(1)(A) of Pub. L. 99–514 applicable to payments made after Oct. 22, 1986, see section 1898(c)(1)(C) of Pub. L. 99–514, set out as a note under section 72 of this title.

Amendment by Pub. L. 99–272 effective Jan. 1, 1986, with certain exceptions, see section 11019 of Pub. L. 99–272, set out as a note under section 1341 of Title 29, Labor.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 204 of Pub. L. 98–397 effective Jan. 1, 1985, and amendment by section 207 of Pub. L. 98–397 applicable to plan years beginning after Dec. 31, 1984, except as otherwise provided, see sections 302 and 303 of Pub. L. 98–397, set out as a note under section 1001 of Title 29, Labor.

Amendment by section 491(d)(9)–(11) of Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

Pub. L. 98–369, div. A, title IV, §491(f)(2), July 18, 1984, 98 Stat. 853, provided that: "The amendment made by subsection (c) [amending this section and section 405 of this title] shall apply to redemptions after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date."

Pub. L. 98–369, div. A, title V, §522(e), July 18, 1984, 98 Stat. 871, as amended by Pub. L. 99–514, title XVIII, §1852(b)(9), Oct. 22, 1986, 100 Stat. 2867, provided that: "The amendments made by this section [amending this section and sections 403, 408, and 409 of this title] shall apply to distributions made after the date of the enactment of this Act [July 18, 1984], in taxable years ending after such date.

Pub. L. 98–369, div. A, title VII, §713(c)(4), as added by Pub. L. 99–514, title XVIII, §1875(c)(2), Oct. 22, 1986, 100 Stat. 2894, provided that: "The amendment made by paragraph (3) [amending this section] shall apply to distributions after July 18, 1984."

Amendment by section 1001(b)(3) of Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 311(b)(2), (3)(A), (c) of Pub. L. 97–34, applicable to taxable years beginning after Dec. 31, 1981, see section 311(i)(1) of Pub. L. 97–34, set out as a note under section 219 of this title.

Pub. L. 97–34, title III, §314(c)(2), Aug. 13, 1981, 95 Stat. 286, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after December 31, 1981."

EFFECTIVE DATE OF 1980 AMENDMENTS

Pub. L. 96–608, §2(b), Dec. 28, 1980, 94 Stat. 3551, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to

payments made in taxable years beginning after December 31, 1978.

"(2) TRANSITIONAL RULE.—In the case of any payment made before January 1, 1982, in a taxable year beginning after December 31, 1978, which is treated as a qualifying rollover distribution (as defined in section 402(a)(5)(D)(i) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) by reason of the amendment made by subsection (a), the applicable period specified in section 402(a)(5)(C) of such Code shall not expire before the close of December 31, 1981."

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 101(d) of Pub. L. 95–600 effective with respect to taxable years beginning after Dec. 31, 1978, see section 101(f)(1) of Pub. L. 95–600, set out as a note under section 1 of this title.

Amendment by section 135(b) of Pub. L. 95–600 applicable to plan years beginning after December 31, 1979, see section 135(c)(1) of Pub. L. 95–600, set out as a note under section 401 of this title.

Pub. L. 95–600, title I, §157(f)(2), Nov. 6, 1978, 92 Stat. 2807, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to qualifying rollover distributions (as defined in section 402(a)(5)(D)(i) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) completed after December 31, 1978, in taxable years ending after such date."

Pub. L. 95–600, title I, §157(g)(4), Nov. 6, 1978, 92 Stat. 2808, provided that: "The amendments made by this subsection [amending this section and sections 403 and 408 of this title] shall apply to lump-sum distributions completed after December 31, 1978, in taxable years ending after such date."

Pub. L. 95–600, title I, §157(h)(3)(A), Nov. 6, 1978, 92 Stat. 2808, as amended by Pub. L. 96–222, title I, §101(a)(14)(A), Apr. 1, 1980, 94 Stat. 204, provided that: "The amendments made by this subsection [amending this section and section 408 of this title] shall apply to payments made in taxable years beginning after December 31, 1977."

EFFECTIVE DATE OF 1978 AMENDMENT; CERTAIN ROLLOVERS VALIDATED

Pub. L. 95–458, §4(d), Oct. 14, 1978, 92 Stat. 1260, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—The amendments made by subsections (a), (b), and (c) [amending this section and section 403 of this title] shall apply with respect to taxable years beginning after December 31, 1974.

"(2) VALIDATION OF CERTAIN ATTEMPTED ROLLOVERS.—If the taxpayer—

"(A) attempted to comply with the requirements of section 402(a)(5) or 403(a)(4) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for a taxable year beginning before the date of the enactment of this Act, [Oct. 14, 1978], and

"(B) failed to meet the requirements of such section that all property received in the distribution be transferred,

such section (as amended by this section) shall be applied by treating any transfer of property made on or before December 31, 1978, as if it were made on or before the 60th day after the day on which the taxpayer received such property. For purposes of the preceding sentence, a transfer of money shall be treated as a transfer of property received in a distribution to the extent that the amount of the money transferred does not exceed the highest fair market value of the property distributed during the 60-day period beginning on the date on which the taxpayer received such property."

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XIV, §1402(b)(1), Oct. 4, 1976, 90 Stat. 1731, provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Pub. L. 94–455, title XIV, §1402(b)(2), Oct. 4, 1976, 90 Stat. 1732, provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

Pub. L. 94–455, title XV, §1512(b), Oct. 4, 1976, 90 Stat. 1742, provided that: "The amendment made by this section [amending this section] shall apply to distributions and payments made after December 31, 1975, in taxable years beginning after such date."

Pub. L. 94–455, title XIX, §1901(a)(57)(C)(ii), Oct. 4, 1976, 90 Stat. 1774, provided that: "The amendment made by clause (i) [amending this section] shall apply with respect to distributions or payments made after

December 31, 1973, in taxable years beginning after such date."

Amendment by Pub. L. 94–267 applicable with respect to payments made to an employee on or after July 4, 1974, see section 1(e) of Pub. L. 94–267, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Pub. L. 93–406, title II, §2002(i)(3), Sept. 2, 1974, 88 Stat. 971, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by subsection (g)(5) and (6) [amending this section and section 403 of this title] shall apply on and after the date of enactment of this Act [Sept. 2, 1974] with respect to contributions to an employees' trust described in section 401(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] which is exempt from tax under section 501(a) of such Code or an annuity plan described in section 403(a) of such Code."

Pub. L. 93–406, title II, §2005(d), Sept. 2, 1974, 88 Stat. 992, provided that: "The amendments made by this section [amending this section and sections 46, 50A, 56, 62, 72, 101, 122, 403, 405, 406, 407, 871, 877, 901, 1304, and 1348 of this title] shall apply only with respect to distributions or payments made after December 31, 1973, in taxable years beginning after such date."

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 321(b)(1) of Pub. L. 91–172 applicable with respect to contributions made and premiums paid after Aug. 1, 1969, see section 321(d) of Pub. L. 91–172, set out as an Effective Date note under section 83 of this title.

Pub. L. 91–172, title V, §515(d), Dec. 30, 1969, 83 Stat. 646, provided that: "The amendments made by this section [amending this section and sections 72, 403, 405, 406, 407 and 1304 of this title] shall apply to taxable years ending after December 31, 1969."

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by section 221(c)(1) of Pub. L. 88–272 applicable to taxable years ending after Dec. 31, 1963, see section 221(e) of Pub. L. 88–272, set out as a note under section 421 of this title.

Amendment by section 232(e)(1)–(3) of Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 232(g) of Pub. L. 88–272, set out as a note under section 5 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87–792, set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Pub. L. 86–437, §3, Apr. 22, 1960, 74 Stat. 79, provided that: "The amendments made by this Act [amending this section and section 871 of this title] shall apply only with respect to taxable years beginning after December 31, 1959."

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1112 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

CLARIFICATION OF DISQUALIFICATION RULES RELATING TO ACCEPTANCE OF ROLLOVER CONTRIBUTIONS

Pub. L. 105–34, title XV, §1509, Aug. 5, 1997, 111 Stat. 1068, provided that: "The Secretary of the Treasury or his delegate shall clarify that, under the Internal Revenue Service regulations protecting pension plans from disqualification by reason of the receipt of invalid rollover contributions under section 402(c) of the Internal Revenue Code of 1986, in order for the administrator of the plan receiving any such contribution to reasonably conclude that the contribution is a valid rollover contribution it is not necessary for the distributing plan to have a determination letter with respect to its status as a qualified plan under section 401 of such Code."

MODEL EXPLANATION

Pub. L. 102–318, title V, §521(d), July 3, 1992, 106 Stat. 313, provided that: "The Secretary of the Treasury or his delegate shall develop a model explanation which a plan administrator may provide to a recipient in order to meet the requirements of section 402(f) of the Internal Revenue Code of 1986."

INCORPORATION BY REFERENCE OF SUBSECTION (G) LIMITATIONS

Pub. L. 100–647, title I, §1011(c)(10), Nov. 10, 1988, 102 Stat. 3459, provided that: "Notwithstanding any other provision of law, a plan may incorporate by reference the dollar limitations under section 402(g) of the Internal Revenue Code of 1986."

APPLICABILITY OF SUBSECTION (A)(5)(F)(II)

Pub. L. 100–647, title I, §1011A(a)(5), Nov. 10, 1988, 102 Stat. 3472, provided that: "Section 402(a)(5)(F)(ii) of the Internal Revenue Code of 1954 shall not apply to distributions after October 22, 1986, and before the 1st taxable year beginning after 1986 which are attributable to benefits which accrued before January 1, 1985."

APPLICABILITY OF SUBSECTION (A)(5)(D)(I)(II)

Pub. L. 100–647, title I, §1011A(b)(4)(E), Nov. 10, 1988, 102 Stat. 3473, provided that: "Section 402(a)(5)(D)(i)(II) of the 1986 Code (as in effect after the amendment made by subparagraph (A)) shall not apply to distributions after December 31, 1986, and before March 31, 1988."

ELECTION TO TREAT CERTAIN LUMP SUM DISTRIBUTIONS RECEIVED DURING 1987 AS RECEIVED DURING 1986

Pub. L. 99–514, title XI, §1124, Oct. 22, 1986, 100 Stat. 2475, as amended by Pub. L. 100–647, title I, §1011A(d), Nov. 10, 1988, 102 Stat. 3476, provided that:

"(a) IN GENERAL.—If an employee dies, separates from service, or becomes disabled before 1987 and an individual, trust, or estate receives a lump-sum distribution with respect to such employee after December 31, 1986, and before March 16, 1987, on account of such death, separation from service, or disability, then, for purposes of the Internal Revenue Code of 1986, such individual, estate, or trust may treat such distribution as if it were received in 1986.

"(b) SPECIAL RULE FOR TERMINATED PLAN.—In the case of an individual, estate, or trust who receives with respect to an employee a distribution from a terminated plan which was maintained by a corporation organized under the laws of the State of Nevada, the principal place of business of which is Denver, Colorado, and which filed for relief from creditors under the United States Bankruptcy Code on August 28, 1986, the individual, estate, or trust may treat a lump sum distribution received from such plan before June 30, 1987, as if it were received in 1986.

"(c) LUMP SUM DISTRIBUTION.—For purposes of this section, the term 'lump sum distribution' has the meaning given such term by section 402(e)(4)(A) of the Internal Revenue Code of 1986, without regard to subparagraph (B) or (H) of section 402(e)(4) of such Code."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§1401–1465] of title I of Pub. L. 104–188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TREATMENT OF CERTAIN DISTRIBUTIONS FROM QUALIFIED TERMINATED PLAN

Pub. L. 98–369, div. A, title V, §551, July 18, 1984, 98 Stat. 896, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) IN GENERAL.—For purposes of the Internal Revenue Code [of] 1986 [formerly I.R.C. 1954], if—

"(1) a distribution was made from a qualified terminated plan to an employee on December 16, 1976, and on January 6, 1977, such employee transferred all of the property received in such distribution to an individual retirement account (within the meaning of section 408(a) of such Code) established for the benefit of such employee, and

"(2) the remaining balance to the credit of such employee in such qualified terminated plan was distributed to such employee on January 21, 1977, and all the property received by such employee in such distribution was transferred by such employee to such individual retirement account on January 21, 1977,

then such distributions shall be treated as qualifying rollover distributions (within the meaning of section 402(a)(5) of such Code) and shall not be includible in the gross income of such employee for the taxable year in which paid.

"(b) QUALIFIED TERMINATED PLAN.—For purposes of this section, the term 'qualified terminated plan' means a pension plan—

"(1) with respect to which a notice of sufficiency was issued by the Pension Benefit Guaranty Corporation on December 2, 1976, and

"(2) which was terminated by corporate action on February 20, 1976.

"(c) REFUND OR CREDIT OF OVERPAYMENT BARRED BY STATUTE OF LIMITATIONS .—Notwithstanding section 6511(a) of the Internal Revenue Code of 1986 or any other period of limitation or lapse of time, a claim for credit or refund of overpayment of the tax imposed by such Code which arises by reason of this section may be filed by any person at any time within the 1-year period beginning on the date of enactment of this Act [July 18, 1984]. Sections 6511(b) and 6514 of such Code shall not apply to any claim for credit or refund filed under this subsection within such 1-year period."

TRANSITIONAL RULE IN CASE OF ROLLOVER CONTRIBUTIONS TO EMPLOYEE TRUSTS OR ANNUITIES

Pub. L. 95–600, title I, §157(h)(3)(B), Nov. 6, 1978, 92 Stat. 2808, as amended by Pub. L. 96–222, title I, §101(a)(14)(A), (D), Apr. 1, 1980, 94 Stat. 204, 205; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "In the case of any payment made during 1978 which is described in section 402(a)(5)(A) or 403(a)(4)(A) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] by reason of the amendments made by this subsection [amending sections 402 and 408 of this title], the applicable period specified in section 402(a)(5)(C) of such Code (or in the case of an individual retirement annuity, such section as made applicable by section 403(a)(4)(B) of such code) shall not expire before the close of December 31, 1980."

TRANSITIONAL RULES RELATING TO PERIOD FOR ROLLOVER CONTRIBUTION

Pub. L. 94–267, §1(d), Apr. 15, 1976, 90 Stat. 367, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—

"(A) PERIOD FOR ROLLOVER CONTRIBUTION.—In the case of a payment described in section 402(a)(5)(A) (other than a payment described in section 402(a)(5)(A) as in effect on the day before the date of the enactment of this Act) [Apr. 15, 1976] or section 403(a)(4)(A) (other than a payment described in section 403(a)(4)(A) as in effect on the day before the date of the enactment of this Act [Apr. 15, 1976] of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to distributions of the balance to the credit of the employee) which is contributed by an employee after the date of the enactment of this Act [Apr. 15, 1976] to a trust, plan, account, annuity, or bond described in section 402(a)(5)(B) or 403(a)(4)(B) of such Code, the applicable period specified in section 402(a)(5)(B) or 403(a)(4)(B) of such Code (relating to rollover distributions to another plan or retirement account) shall not expire before December 31, 1976.

"(B) TIME OF CONTRIBUTION.—

(i) GENERAL RULE.—If the initial portion of a payment the applicable period for which is determined under subparagraph (A) is contributed before December 31, 1976, by an individual to a trust, plan, account, annuity, or bond described in subparagraph (A) and the remaining portion of such payment is contributed by such individual to such a trust, plan, account, annuity, or bond not later than 30 days after the date a credit or refund is allowed by the Secretary of the Treasury or his delegate under section 6402 of the Internal Revenue Code of 1986 with respect to the contribution, then, for purposes of subparagraph (A) and sections 402(a)(5) and 403(a)(4) of such Code, at the election of the individual (made in accordance with regulations prescribed by the Secretary or his delegate), such remaining portion shall be considered to have been contributed on the date the initial portion of the

payment was contributed. For purposes of this subparagraph, the initial portion of a payment is the amount by which such payment exceeds the amount of the tax imposed on such payment by chapter 1 of such Code (determined without regard to this subparagraph). [chapter 1 of this title]

"(ii) REGULATIONS.—For purposes of this subparagraph, the tax imposed on a payment by chapter 1 of the Internal Revenue Code of 1986, and the date a credit or refund is allowed by the Secretary of the Treasury or his delegate under section 6402 with respect to a contribution, shall be determined under regulations prescribed by the Secretary of the Treasury or his delegate.

"(C) PERIOD OF LIMITATIONS.—If an individual has made the election provided by subparagraph (B), then—

"(i) the period provided by the Internal Revenue Code of 1986 for the assessment of any deficiency for the taxable year in which the payment described in subparagraph (A) was made and each subsequent taxable year for which tax is determined by reference to the treatment of such payment under such Code or the status under such Code of any trust, plan, account, annuity, or bond described in subparagraph (A) shall, to the extent attributable to such treatment, not expire before the expiration of 3 years from the date the Secretary of the Treasury or his delegate is notified by the individual (in such manner as the Secretary of the Treasury or his delegate may prescribe) that such individual has made (or failed to make) the contribution of the remaining portion of the payment within the period specified in subparagraph (B)(i), and

"(ii) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of section 6212(c) of such Code or the provisions of any other law or rule of law which would otherwise prevent such assessment.

"(2) ROLLOVER CONTRIBUTION FOR CERTAIN PROPERTY SOLD.—Sections 402(a)(5)(C) and 403(a)(4)(C) of the Internal Revenue Code of 1986 (relating to the requirement that rollover amount must consist of property received in a distribution) shall not apply with respect to that portion of the property received in a payment described in section 402(a)(5)(A) (other than a payment described in section 402(a)(5)(A) as in effect on the day before the date of the enactment of this Act [Apr. 15, 1976] or 403(a)(4)(A) (other than a payment described in section 403(a)(4)(A) as in effect on the day before the date of the enactment of this Act) [Apr. 15, 1976] of such Code which is sold or exchanged by the employee on or before the date of the enactment of this Act, [Apr. 15, 1976], if the employee transfers an amount of cash equal to the proceeds received from the sale or exchange of such property in excess of the amount considered contributed by the employee (within the meaning of section 402(a)(4)(D)(i) of such Code).

"(3) NONRECOGNITION OF GAIN OR LOSS.—For purposes of the Internal Revenue Code of 1986 [this title] no gain or loss shall be recognized with respect to the sale or exchange of property described in paragraph (2) if the proceeds of such sale or exchange are transferred by an employee in accordance with this subsection and the applicable provisions of section 402(a)(5) or 403(a)(4) of such Code."

[1] *See References in Text note below.*

§402A. Optional treatment of elective deferrals as Roth contributions

(a) General rule

If an applicable retirement plan includes a qualified Roth contribution program—

(1) any designated Roth contribution made by an employee pursuant to the program shall be treated as an elective deferral for purposes of this chapter, except that such contribution shall not be excludable from gross income, and

(2) such plan (and any arrangement which is part of such plan) shall not be treated as failing to meet any requirement of this chapter solely by reason of including such program.

(b) Qualified Roth contribution program

For purposes of this section—

(1) In general

The term "qualified Roth contribution program" means a program under which an employee may elect to make designated Roth contributions in lieu of all or a portion of elective deferrals the employee is otherwise eligible to make under the applicable retirement plan.

(2) Separate accounting required

A program shall not be treated as a qualified Roth contribution program unless the applicable retirement plan—

(A) establishes separate accounts ("designated Roth accounts") for the designated Roth contributions of each employee and any earnings properly allocable to the contributions, and

(B) maintains separate recordkeeping with respect to each account.

(c) Definitions and rules relating to designated Roth contributions

For purposes of this section—

(1) Designated Roth contribution

The term "designated Roth contribution" means any elective deferral which—

(A) is excludable from gross income of an employee without regard to this section, and

(B) the employee designates (at such time and in such manner as the Secretary may prescribe) as not being so excludable.

(2) Designation limits

The amount of elective deferrals which an employee may designate under paragraph (1) shall not exceed the excess (if any) of—

(A) the maximum amount of elective deferrals excludable from gross income of the employee for the taxable year (without regard to this section), over

(B) the aggregate amount of elective deferrals of the employee for the taxable year which the employee does not designate under paragraph (1).

(3) Rollover contributions

(A) In general

A rollover contribution of any payment or distribution from a designated Roth account which is otherwise allowable under this chapter may be made only if the contribution is to—

(i) another designated Roth account of the individual from whose account the payment or distribution was made, or

(ii) a Roth IRA of such individual.

(B) Coordination with limit

Any rollover contribution to a designated Roth account under subparagraph (A) shall not be taken into account for purposes of paragraph (1).

(4) Taxable rollovers to designated Roth accounts

(A) In general

Notwithstanding sections 402(c), 403(b)(8), and 457(e)(16), in the case of any distribution to which this paragraph applies—

(i) there shall be included in gross income any amount which would be includible were it not part of a qualified rollover contribution,

(ii) section 72(t) shall not apply, and

(iii) unless the taxpayer elects not to have this clause apply, any amount required to be included in gross income for any taxable year beginning in 2010 by reason of this paragraph shall be so included ratably over the 2-taxable-year period beginning with the first taxable year beginning in 2011.

Any election under clause (iii) for any distributions during a taxable year may not be changed after the due date for such taxable year.

(B) Distributions to which paragraph applies

In the case of an applicable retirement plan which includes a qualified Roth contribution program, this paragraph shall apply to a distribution from such plan other than from a designated Roth account which is contributed in a qualified rollover contribution (within the

meaning of section 408A(e)) to the designated Roth account maintained under such plan for the benefit of the individual to whom the distribution is made.

(C) Coordination with limit

Any distribution to which this paragraph applies shall not be taken into account for purposes of paragraph (1).

(D) Other rules

The rules of subparagraphs (D), (E), and (F) of section 408A(d)(3) (as in effect for taxable years beginning after 2009) shall apply for purposes of this paragraph.

(E) Special rule for certain transfers

In the case of an applicable retirement plan which includes a qualified Roth contribution program—

(i) the plan may allow an individual to elect to have the plan transfer any amount not otherwise distributable under the plan to a designated Roth account maintained for the benefit of the individual,

(ii) such transfer shall be treated as a distribution to which this paragraph applies which was contributed in a qualified rollover contribution (within the meaning of section 408A(e)) to such account, and

(iii) the plan shall not be treated as violating the provisions of section 401(k)(2)(B)(i), 403(b)(7)(A)(i), 403(b)(11), or 457(d)(1)(A), or of section 8433 of title 5, United States Code, solely by reason of such transfer.

(d) Distribution rules

For purposes of this title—

(1) Exclusion

Any qualified distribution from a designated Roth account shall not be includible in gross income.

(2) Qualified distribution

For purposes of this subsection—

(A) In general

The term "qualified distribution" has the meaning given such term by section 408A(d)(2)(A) (without regard to clause (iv) thereof).

(B) Distributions within nonexclusion period

A payment or distribution from a designated Roth account shall not be treated as a qualified distribution if such payment or distribution is made within the 5-taxable-year period beginning with the earlier of—

(i) the first taxable year for which the individual made a designated Roth contribution to any designated Roth account established for such individual under the same applicable retirement plan, or

(ii) if a rollover contribution was made to such designated Roth account from a designated Roth account previously established for such individual under another applicable retirement plan, the first taxable year for which the individual made a designated Roth contribution to such previously established account.

(C) Distributions of excess deferrals and contributions and earnings thereon

The term "qualified distribution" shall not include any distribution of any excess deferral under section 402(g)(2) or any excess contribution under section 401(k)(8), and any income on the excess deferral or contribution.

(3) Treatment of distributions of certain excess deferrals

Notwithstanding section 72, if any excess deferral under section 402(g)(2) attributable to a

designated Roth contribution is not distributed on or before the 1st April 15 following the close of the taxable year in which such excess deferral is made, the amount of such excess deferral shall—

(A) not be treated as investment in the contract, and

(B) be included in gross income for the taxable year in which such excess is distributed.

(4) Aggregation rules

Section 72 shall be applied separately with respect to distributions and payments from a designated Roth account and other distributions and payments from the plan.

(e) Other definitions

For purposes of this section—

(1) Applicable retirement plan

The term "applicable retirement plan" means—

(A) an employees' trust described in section 401(a) which is exempt from tax under section 501(a),

(B) a plan under which amounts are contributed by an individual's employer for an annuity contract described in section 403(b), and

(C) an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A).

(2) Elective deferral

The term "elective deferral" means—

(A) any elective deferral described in subparagraph (A) or (C) of section 402(g)(3), and

(B) any elective deferral of compensation by an individual under an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A).

(Added Pub. L. 107–16, title VI, §617(a), June 7, 2001, 115 Stat. 103; amended Pub. L. 111–240, title II, §§2111(a), (b), 2112(a), Sept. 27, 2010, 124 Stat. 2565, 2566; Pub. L. 112–240, title IX, §902(a), Jan. 2, 2013, 126 Stat. 2371.)

AMENDMENTS

2013—Subsec. (c)(4)(E). Pub. L. 112–240 added subpar. (E).

2010—Subsec. (c)(4). Pub. L. 111–240, §2112(a), added par. (4).

Subsec. (e)(1)(C). Pub. L. 111–240, §2111(a), added subpar. (C).

Subsec. (e)(2). Pub. L. 111–240, §2111(b), amended par. (2) generally. Prior to amendment, text read as follows: "The term 'elective deferral' means any elective deferral described in subparagraph (A) or (C) of section 402(g)(3)."

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title IX, §902(b), Jan. 2, 2013, 126 Stat. 2371, provided that: "The amendment made by this section [amending this section] shall apply to transfers after December 31, 2012, in taxable years ending after such date."

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–240, title II, §2111(c), Sept. 27, 2010, 124 Stat. 2566, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2010."

Pub. L. 111–240, title II, §2112(b), Sept. 27, 2010, 124 Stat. 2566, provided that: "The amendments made by this section [amending this section] shall apply to distributions after the date of the enactment of this Act [Sept. 27, 2010]."

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 2005, see section 617(f) of Pub. L. 107–16, set out as an Effective Date of 2001 Amendment note under section 402 of this title.

§403. Taxation of employee annuities

(a) Taxability of beneficiary under a qualified annuity plan

(1) Distributee taxable under section 72

If an annuity contract is purchased by an employer for an employee under a plan which meets the requirements of section 404(a)(2) (whether or not the employer deducts the amounts paid for the contract under such section), the amount actually distributed to any distributee under the contract shall be taxable to the distributee (in the year in which so distributed) under section 72 (relating to annuities).

(2) Special rule for health and long-term care insurance

To the extent provided in section 402(l), paragraph (1) shall not apply to the amount distributed under the contract which is otherwise includible in gross income under this subsection.

(3) Self-employed individuals

For purposes of this subsection, the term "employee" includes an individual who is an employee within the meaning of section 401(c)(1), and the employer of such individual is the person treated as his employer under section 401(c)(4).

(4) Rollover amounts

(A) General rule

If—

(i) any portion of the balance to the credit of an employee in an employee annuity described in paragraph (1) is paid to him in an eligible rollover distribution (within the meaning of section 402(c)(4)),

(ii) the employee transfers any portion of the property he receives in such distribution to an eligible retirement plan, and

(iii) in the case of a distribution of property other than money, the amount so transferred consists of the property distributed,

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

(B) Certain rules made applicable

The rules of paragraphs (2) through (7) and (11) and (9) of section 402(c) and section 402(f) shall apply for purposes of subparagraph (A).

(5) Direct trustee-to-trustee transfer

Any amount transferred in a direct trustee-to-trustee transfer in accordance with section 401(a)(31) shall not be includible in gross income for the taxable year of such transfer.

(b) Taxability of beneficiary under annuity purchased by section 501(c)(3) organization or public school

(1) General rule

If—

(A) an annuity contract is purchased—

(i) for an employee by an employer described in section 501(c)(3) which is exempt from tax under section 501(a),

(ii) for an employee (other than an employee described in clause (i)), who performs services for an educational organization described in section 170(b)(1) (A)(ii), by an employer which is a State, a political subdivision of a State, or an agency or instrumentality of any one or more of the foregoing, or

(iii) for the minister described in section 414(e)(5)(A) by the minister or by an employer,

(B) such annuity contract is not subject to subsection (a),

(C) the employee's rights under the contract are nonforfeitable, except for failure to pay

future premiums,

(D) except in the case of a contract purchased by a church, such contract is purchased under a plan which meets the nondiscrimination requirements of paragraph (12), and

(E) in the case of a contract purchased under a salary reduction agreement, the contract meets the requirements of section 401(a)(30),

then contributions and other additions by such employer for such annuity contract shall be excluded from the gross income of the employee for the taxable year to the extent that the aggregate of such contributions and additions (when expressed as an annual addition (within the meaning of section 415(c)(2))) does not exceed the applicable limit under section 415. The amount actually distributed to any distributee under such contract shall be taxable to the distributee (in the year in which so distributed) under section 72 (relating to annuities). For purposes of applying the rules of this subsection to contributions and other additions by an employer for a taxable year, amounts transferred to a contract described in this paragraph by reason of a rollover contribution described in paragraph (8) of this subsection or section 408(d)(3)(A)(ii) shall not be considered contributed by such employer.

(2) Special rule for health and long-term care insurance

To the extent provided in section 402(l), paragraph (1) shall not apply to the amount distributed under the contract which is otherwise includible in gross income under this subsection.

(3) Includible compensation

For purposes of this subsection, the term "includible compensation" means, in the case of any employee, the amount of compensation which is received from the employer described in paragraph (1)(A), and which is includible in gross income (computed without regard to section 911) for the most recent period (ending not later than the close of the taxable year) which under paragraph (4) may be counted as one year of service, and which precedes the taxable year by no more than five years. Such term does not include any amount contributed by the employer for any annuity contract to which this subsection applies. Such term includes—

(A) any elective deferral (as defined in section 402(g)(3)), and

(B) any amount which is contributed or deferred by the employer at the election of the employee and which is not includible in the gross income of the employee by reason of section 125, 132(f)(4), or 457.

(4) Years of service

In determining the number of years of service for purposes of this subsection, there shall be included—

(A) one year for each full year during which the individual was a full-time employee of the organization purchasing the annuity for him, and

(B) a fraction of a year (determined in accordance with regulations prescribed by the Secretary) for each full year during which such individual was a part-time employee of such organization and for each part of a year during which such individual was a full-time or part-time employee of such organization.

In no case shall the number of years of service be less than one.

(5) Application to more than one annuity contract

If for any taxable year of the employee this subsection applies to 2 or more annuity contracts purchased by the employer, such contracts shall be treated as one contract.

[(6) Repealed. Pub. L. 107–147, title IV, §411(p)(2), Mar. 9, 2002, 116 Stat. 50]

(7) Custodial accounts for regulated investment company stock

(A) Amounts paid treated as contributions

For purposes of this title, amounts paid by an employer described in paragraph (1)(A) to a

custodial account which satisfies the requirements of section 401(f)(2) shall be treated as amounts contributed by him for an annuity contract for his employee if—

(i) the amounts are to be invested in regulated investment company stock to be held in that custodial account, and

(ii) under the custodial account no such amounts may be paid or made available to any distributee (unless such amount is a distribution to which section 72(t)(2)(G) applies) before the employee dies, attains age 59½, has a severance from employment, becomes disabled (within the meaning of section 72(m)(7)), or in the case of contributions made pursuant to a salary reduction agreement (within the meaning of section 3121(a)(5)(D)), encounters financial hardship.

(B) Account treated as plan

For purposes of this title, a custodial account which satisfies the requirements of section 401(f)(2) shall be treated as an organization described in section 401(a) solely for purposes of subchapter F and subtitle F with respect to amounts received by it (and income from investment thereof).

(C) Regulated investment company

For purposes of this paragraph, the term "regulated investment company" means a domestic corporation which is a regulated investment company within the meaning of section 851(a).

(8) Rollover amounts

(A) General rule

If—

(i) any portion of the balance to the credit of an employee in an annuity contract described in paragraph (1) is paid to him in an eligible rollover distribution (within the meaning of section 402(c)(4)),

(ii) the employee transfers any portion of the property he receives in such distribution to an eligible retirement plan described in section 402(c)(8)(B), and

(iii) in the case of a distribution of property other than money, the property so transferred consists of the property distributed,

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

(B) Certain rules made applicable

The rules of paragraphs (2) through (7), (9), and (11) of section 402(c) and section 402(f) shall apply for purposes of subparagraph (A), except that section 402(f) shall be applied to the payor in lieu of the plan administrator.

(9) Retirement income accounts provided by churches, etc.

(A) Amounts paid treated as contributions

For purposes of this title—

(i) a retirement income account shall be treated as an annuity contract described in this subsection, and

(ii) amounts paid by an employer described in paragraph (1)(A) to a retirement income account shall be treated as amounts contributed by the employer for an annuity contract for the employee on whose behalf such account is maintained.

(B) Retirement income account

For purposes of this paragraph, the term "retirement income account" means a defined contribution program established or maintained by a church, or a convention or association of churches, including an organization described in section 414(e)(3)(A), to provide benefits under section 403(b) for an employee described in paragraph (1) or his beneficiaries.

(10) Distribution requirements

Under regulations prescribed by the Secretary, this subsection shall not apply to any annuity contract (or to any custodial account described in paragraph (7) or retirement income account described in paragraph (9)) unless requirements similar to the requirements of sections 401(a)(9) and 401(a)(31) are met (and requirements similar to the incidental death benefit requirements of section 401(a) are met) with respect to such annuity contract (or custodial account or retirement income account). Any amount transferred in a direct trustee-to-trustee transfer in accordance with section 401(a)(31) shall not be includible in gross income for the taxable year of the transfer.

(11) Requirement that distributions not begin before age 59½, severance from employment, death, or disability

This subsection shall not apply to any annuity contract unless under such contract distributions attributable to contributions made pursuant to a salary reduction agreement (within the meaning of section 402(g)(3)(C)) may be paid only—

(A) when the employee attains age 59½, has a severance from employment, dies, or becomes disabled (within the meaning of section 72(m)(7)),

(B) in the case of hardship, or

(C) for distributions to which section 72(t)(2)(G) applies.

Such contract may not provide for the distribution of any income attributable to such contributions in the case of hardship.

(12) Nondiscrimination requirements

(A) In general

For purposes of paragraph (1)(D), a plan meets the nondiscrimination requirements of this paragraph if—

(i) with respect to contributions not made pursuant to a salary reduction agreement, such plan meets the requirements of paragraphs (4), (5), (17), and (26) of section 401(a), section 401(m), and section 410(b) in the same manner as if such plan were described in section 401(a), and

(ii) all employees of the organization may elect to have the employer make contributions of more than $200 pursuant to a salary reduction agreement if any employee of the organization may elect to have the organization make contributions for such contracts pursuant to such agreement.

For purposes of clause (i), a contribution shall be treated as not made pursuant to a salary reduction agreement if under the agreement it is made pursuant to a 1-time irrevocable election made by the employee at the time of initial eligibility to participate in the agreement or is made pursuant to a similar arrangement involving a one-time irrevocable election specified in regulations. For purposes of clause (ii), there may be excluded any employee who is a participant in an eligible deferred compensation plan (within the meaning of section 457) or a qualified cash or deferred arrangement of the organization or another annuity contract described in this subsection. Any nonresident alien described in section 410(b)(3)(C) may also be excluded. Subject to the conditions applicable under section 410(b)(4), there may be excluded for purposes of this subparagraph employees who are students performing services described in section 3121(b)(10) and employees who normally work less than 20 hours per week.

(B) Church

For purposes of paragraph (1)(D), the term "church" has the meaning given to such term by section 3121(w)(3)(A). Such term shall include any qualified church-controlled organization (as defined in section 3121(w)(3)(B)).

(C) State and local governmental plans

For purposes of paragraph (1)(D), the requirements of subparagraph (A)(i) (other than those

relating to section 401(a)(17)) shall not apply to a governmental plan (within the meaning of section 414(d)) maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof).

(13) Trustee-to-trustee transfers to purchase permissive service credit

No amount shall be includible in gross income by reason of a direct trustee-to-trustee transfer to a defined benefit governmental plan (as defined in section 414(d)) if such transfer is—

(A) for the purchase of permissive service credit (as defined in section 415(n)(3)(A)) under such plan, or

(B) a repayment to which section 415 does not apply by reason of subsection (k)(3) thereof.

(14) Death benefits under USERRA-qualified active military service

This subsection shall not apply to an annuity contract unless such contract meets the requirements of section 401(a)(37).

(c) Taxability of beneficiary under nonqualified annuities or under annuities purchased by exempt organizations

Premiums paid by an employer for an annuity contract which is not subject to subsection (a) shall be included in the gross income of the employee in accordance with section 83 (relating to property transferred in connection with performance of services), except that the value of such contract shall be substituted for the fair market value of the property for purposes of applying such section. The preceding sentence shall not apply to that portion of the premiums paid which is excluded from gross income under subsection (b). In the case of any portion of any contract which is attributable to premiums to which this subsection applies, the amount actually paid or made available under such contract to any beneficiary which is attributable to such premiums shall be taxable to the beneficiary (in the year in which so paid or made available) under section 72 (relating to annuities).

(Aug. 16, 1954, ch. 736, 68A Stat. 137; Pub. L. 85–866, title I, §23(a)–(c), Sept. 2, 1958, 72 Stat. 1620–1622; Pub. L. 87–370, §3(a), Oct. 4, 1961, 75 Stat. 801; Pub. L. 87–792, §4(d), Oct. 10, 1962, 76 Stat. 825; Pub. L. 88–272, title II, §232(e)(4)–(6), Feb. 26, 1964, 78 Stat. 111; Pub. L. 91–172, title III, §321(b)(2), title V, §515(a)(2), Dec. 30, 1969, 83 Stat. 591, 644; Pub. L. 93–406, title II, §§1022(e), 2002(g)(6), 2004(c)(4), 2005(b)(2), Sept. 2, 1974, 88 Stat. 940, 969, 986, 991; Pub. L. 94–267, §1(b), Apr. 15, 1976, 90 Stat. 366; Pub. L. 94–455, title XIV, §1402(b)(1)(D), (2), title XV, §1504(a), title XIX, §§1901(a)(58), (b)(8)(A), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1731, 1732, 1738, 1774, 1794, 1834; Pub. L. 95–458, §4(b), Oct. 14, 1978, 92 Stat. 1259; Pub. L. 95–600, title I, §§154(a), 156(a), (b), 157(g)(2), Nov. 6, 1978, 92 Stat. 2801, 2802, 2808; Pub. L. 96–222, title I, §101(a)(12), (13)(C), Apr. 1, 1980, 94 Stat. 204; Pub. L. 97–34, title III, §311(b)(3)(B), Aug. 13, 1981, 95 Stat. 280; Pub. L. 97–248, title II, §251(a), (b), (c)(3), Sept. 3, 1982, 96 Stat. 529–531; Pub. L. 97–448, title I, §103(c)(8)(B), Jan. 12, 1983, 96 Stat. 2377; Pub. L. 98–21, title I, §122(c)(4), Apr. 20, 1983, 97 Stat. 87; Pub. L. 98–369, div. A, title IV, §491(d)(12), title V, §§521(c), 522(a)(2), (3), (d)(9)–(11), title X, §1001(b)(4), (e), July 18, 1984, 98 Stat. 849, 867, 869–871, 1011, 1012; Pub. L. 99–514, title XI, §§1120(a), (b), 1122(b)(1)(B), (d), 1123(c), title XVIII, §1852(a)(3)(A), (B), (5)(B), (b)(10), Oct. 22, 1986, 100 Stat. 2463, 2466, 2469, 2474, 2865, 2867; Pub. L. 100–647, title I, §1011(c)(7)(B), (12), (m)(1), (2), title VI, §6052(a)(1), Nov. 10, 1988, 102 Stat. 3458, 3459, 3471, 3696; Pub. L. 101–508, title XI, §11701(k), Nov. 5, 1990, 104 Stat. 1388–513; Pub. L. 102–318, title V, §§521(b)(12), (13), 522(a)(3), (c)(2), (3), July 3, 1992, 106 Stat. 311, 314, 315; Pub. L. 104–188, title I, §§1450(c)(1), 1704(t)(69), Aug. 20, 1996, 110 Stat. 1815, 1891; Pub. L. 105–34, title XV, §§1504(a)(1), 1505(c), title XVI, §1601(d)(6)(B), Aug. 5, 1997, 111 Stat. 1063, 1064, 1090; Pub. L. 105–206, title VI, §6005(c)(2)(B), July 22, 1998, 112 Stat. 800; Pub. L. 106–554, §1(a)(7) [title III, §314(e)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–643; Pub. L. 107–16, title VI, §§632(a)(2), 641(b)(1), (e)(7), 642(b)(1), 646(a)(2), 647(a), June 7, 2001, 115 Stat. 113, 120, 121, 126, 127; Pub. L. 107–147, title IV, §411(p)(1)–(3), Mar. 9, 2002, 116 Stat. 49, 50; Pub. L. 108–311, title IV, §§404(e), 408(a)(11), Oct. 4, 2004, 118 Stat. 1188, 1191; Pub. L. 109–135, title IV, §412(w), Dec.

21, 2005, 119 Stat. 2638; Pub. L. 109–280, title VIII, §§827(b)(2), (3), 829(a)(2), (3), 845(b)(1), (2), Aug. 17, 2006, 120 Stat. 1000, 1002, 1015; Pub. L. 110–245, title I, §104(c)(2), June 17, 2008, 122 Stat. 1627.)

AMENDMENTS

2008—Subsec. (b)(14). Pub. L. 110–245 added par. (14).

2006—Subsec. (a)(2). Pub. L. 109–280, §845(b)(1), added par. (2).

Subsec. (a)(4)(B). Pub. L. 109–280, §829(a)(2), inserted "and (11)" after "(7)".

Subsec. (b)(2). Pub. L. 109–280, §845(b)(2), added par. (2).

Subsec. (b)(7)(A)(ii). Pub. L. 109–280, §827(b)(2), inserted "(unless such amount is a distribution to which section 72(t)(2)(G) applies)" after "distributee".

Subsec. (b)(8)(B). Pub. L. 109–280, §829(a)(3), substituted ", (9), and (11)" for "and (9)".

Subsec. (b)(11)(C). Pub. L. 109–280, §827(b)(3), added subpar. (C).

2005—Subsec. (b)(9)(B). Pub. L. 109–135 inserted "or" before "a convention".

2004—Subsec. (a)(4)(B). Pub. L. 108–311, §404(e), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "Rules similar to the rules of paragraphs (2) through (7) of section 402(c) shall apply for purposes of subparagraph (A)."

Subsec. (b)(7)(A)(ii). Pub. L. 108–311, §408(a)(11), substituted "3121(a)(5)(D)" for "3121(a)(1)(D)".

2002—Subsec. (b)(1). Pub. L. 107–147, §411(p)(1), inserted concluding provisions and struck out former concluding provisions which read as follows: "then amounts contributed by such employer for such annuity contract on or after such rights become nonforfeitable shall be excluded from the gross income of the employee for the taxable year to the extent that the aggregate of such amounts does not exceed the applicable limit under section 415. The amount actually distributed to any distributee under such contract shall be taxable to the distributee (in the year in which so distributed) under section 72 (relating to annuities). For purposes of applying the rules of this subsection to amounts contributed by an employer for a taxable year, amounts transferred to a contract described in this paragraph by reason of a rollover contribution described in paragraph (8) of this subsection or section 408(d)(3)(A)(ii) shall not be considered contributed by such employer."

Subsec. (b)(3). Pub. L. 107–147, §411(p)(3), in first sentence, inserted ", and which precedes the taxable year by no more than five years" before period at end and, in second sentence, struck out "or any amount received by a former employee after the fifth taxable year following the taxable year in which such employee was terminated" after "this subsection applies".

Subsec. (b)(6). Pub. L. 107–147, §411(p)(2), struck out heading and text of par. (6). Text read as follows: "For purposes of this subsection and section 72(f) (relating to special rules for computing employees' contributions to annuity contracts), if rights of the employee under an annuity contract described in subparagraphs (A) and (B) of paragraph (1) change from forfeitable to nonforfeitable rights, then the amount (determined without regard to this subsection) includible in gross income by reason of such change shall be treated as an amount contributed by the employer for such annuity contract as of the time such rights become nonforfeitable."

2001—Subsec. (b)(1). Pub. L. 107–16, §642(b)(1), substituted "section 408(d)(3)(A)(ii)" for "section 408(d)(3)(A)(iii)" in concluding provisions.

Pub. L. 107–16, §632(a)(2)(A), substituted "the applicable limit under section 415" for "the exclusion allowance for such taxable year" in concluding provisions.

Subsec. (b)(2). Pub. L. 107–16, §632(a)(2)(B), struck out par. (2), which described exclusion allowance for purposes of subsec. (b) providing general criteria, determination under section 415 rules, number of years of service for duly ordained, commissioned, or licensed ministers or lay employees, and alternative exclusion allowance for such ministers or lay employees.

Subsec. (b)(3). Pub. L. 107–16, §632(a)(2)(C), inserted "or any amount received by a former employee after the fifth taxable year following the taxable year in which such employee was terminated" before period at end of second sentence.

Subsec. (b)(7)(A)(ii). Pub. L. 107–16, §646(a)(2)(A), substituted "has a severance from employment" for "separates from service".

Subsec. (b)(8)(A)(ii). Pub. L. 107–16, §641(b)(1), substituted "such distribution to an eligible retirement plan described in section 402(c)(8)(B), and" for "such distribution to an individual retirement plan or to an annuity contract described in paragraph (1), and".

Subsec. (b)(8)(B). Pub. L. 107–16, §641(e)(7), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "Rules similar to the rules of paragraphs (2) through (7) of section 402(c) (including paragraph (4)(C) thereof) shall apply for purposes of subparagraph (A)."

Subsec. (b)(11). Pub. L. 107–16, §646(a)(2)(B), substituted "severance from employment" for "separation from service" in heading.

Subsec. (b)(11)(A). Pub. L. 107–16, §646(a)(2)(A), substituted "has a severance from employment" for "separates from service".

Subsec. (b)(13). Pub. L. 107–16, §647(a), added par. (13).

2000—Subsec. (b)(3)(B). Pub. L. 106–554 substituted "section 125, 132(f)(4), or" for "section 125 or".

1998—Subsec. (b)(8)(B). Pub. L. 105–206 inserted "(including paragraph (4)(C) thereof)" after "section 402(c)".

1997—Subsec. (b)(1)(A)(iii). Pub. L. 105–34, §1601(d)(6)(B), added cl. (iii).

Subsec. (b)(3). Pub. L. 105–34, §1504(a)(1), inserted at end "Such term includes—" and subpars. (A) and (B).

Subsec. (b)(12)(C). Pub. L. 105–34, §1505(c), added subpar. (C).

1996—Subsec. (b)(1)(E). Pub. L. 104–188, §1450(c)(1), amended subpar. (E) generally. Prior to amendment, subpar. (E) read as follows: "in the case of a contract purchased under a plan which provides a salary reduction agreement, the plan meets the requirements of section 401(a)(30),".

Subsec. (b)(10). Pub. L. 104–188, §1704(t)(69), substituted "a direct" for "an direct" in last sentence.

1992—Subsec. (a)(4)(A)(i). Pub. L. 102–318, §521(b)(12)(A), inserted before comma at end "in an eligible rollover distribution (within the meaning of section 402(c)(4))".

Subsec. (a)(4)(B). Pub. L. 102–318, §521(b)(12)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "Rules similar to the rules of subparagraphs (B) through (G) of section 402(a)(5) and of paragraphs (6) and (7) of section 402(a) shall apply for purposes of subparagraph (A)."

Subsec. (a)(5). Pub. L. 102–318, §522(c)(2), added par. (5).

Subsec. (b)(8)(A)(i). Pub. L. 102–318, §521(b)(13)(A), inserted before comma at end "in an eligible rollover distribution (within the meaning of section 402(c)(4))".

Subsec. (b)(8)(B) to (D). Pub. L. 102–318, §521(b)(13)(B), added subpar. (B) and struck out former subpars. (B) to (D), which related to special rules for partial distributions, applicability of certain similar rules, and eligibility for rollover treatment of required distributions.

Subsec. (b)(10). Pub. L. 102–318, §522(a)(3), (c)(3), substituted "sections 401(a)(9) and 401(a)(31)" for "section 401(a)(9)" and inserted at end "Any amount transferred in an direct trustee-to-trustee transfer in accordance with section 401(a)(31) shall not be includible in gross income for the taxable year of the transfer."

1990—Subsec. (b)(12)(A). Pub. L. 101–508 inserted "involving a one-time irrevocable election" after "similar arrangement" in second sentence.

1988—Subsec. (b)(1)(D). Pub. L. 100–647, §1011(m)(1)(B), substituted "paragraph (12)" for "paragraph (10)".

Subsec. (b)(1)(E). Pub. L. 100–647, §1011(c)(7)(B), added subpar. (E).

Subsec. (b)(10). Pub. L. 100–647, §1011(m)(1)(A), redesignated par. (10), relating to nondiscrimination requirements, as (12).

Subsec. (b)(12). Pub. L. 100–647, §1011(m)(1)(A), redesignated par. (10), relating to nondiscrimination requirements, as (12).

Subsec. (b)(12)(A). Pub. L. 100–647, §1011(m)(2), inserted "(17)," after "paragraphs (4), (5)," and ", section 401(m)," after "of section 401(a)" in cl. (i).

Pub. L. 100–647, §1011(c)(12), inserted after cl. (ii) "For purposes of clause (i), a contribution shall be treated as not made pursuant to a salary reduction agreement if under the agreement it is made pursuant to a 1-time irrevocable election made by the employee at the time of initial eligibility to participate in the agreement or is made pursuant to a similar arrangement specified in regulations."

Pub. L. 100–647, §6052(a)(1), amended last sentence generally. Prior to amendment, last sentence read as follows: "For purposes of this subparagraph, students who normally work less than 20 hours per week may (subject to the conditions applicable under section 410(b)(4)) be excluded."

1986—Subsec. (a)(1). Pub. L. 99–514, §1122(d)(1), substituted "Distributee taxable under section 72" for "General rule" in heading and amended par. (1) generally. Prior to amendment, par. (1) read as follows: "Except as provided in paragraph (2), if an annuity contract is purchased by an employer for an employee under a plan which meets the requirements of section 404(a)(2) (whether or not the employer deducts the amounts paid for the contract under such section), the employee shall include in his gross income the amounts received under such contract for the year received as provided in section 72 (relating to annuities)."

Subsec. (a)(2). Pub. L. 99–514, §1122(b)(1)(B), struck out par. (2) which read as follows:

"(A) General rule

"If—

"(i) an annuity contract is purchased by an employer for an employee under a plan described in paragraph (1);

"(ii) such plan requires that refunds of contributions with respect to annuity contracts purchased under such plan be used to reduce subsequent premiums on the contracts under the plan; and

"(iii) a lump sum distribution (as defined in section 402(e)(4)(A)) is paid to the recipient,

so much of the total taxable amount (as defined in section 402(e)(4)(D)) of such distribution as is equal to the product of such total taxable amount multiplied by the fraction described in section 402(a)(2) shall be treated as a gain from the sale or exchange of a capital asset held for more than 6 months. For purposes of this paragraph, in the case of an individual who is an employee without regard to section 401(c)(1), determination of whether or not any distribution is a lump sum distribution shall be made without regard to the requirement that an election be made under subsection (e)(4)(B) of section 402, but no distribution to any taxpayer other than an individual, estate, or trust may be treated as a lump sum distribution under this paragraph.

"(B) Cross reference

"For imposition of separate tax on ordinary income portion of lump sum distribution, see section 402(e)."

Subsec. (a)(4)(B). Pub. L. 99–514, §1852(a)(5)(B)(i), substituted "through (G)" for "through (F)".

Subsec. (b)(1). Pub. L. 99–514, §1122(d)(2), amended second sentence generally. Prior to amendment, second sentence read as follows: "The employee shall include in his gross income the amounts received under such contract for the year received as provided in section 72 (relating to annuities)".

Subsec. (b)(1)(D). Pub. L. 99–514, §1120(a), added subpar. (D).

Subsec. (b)(7)(A)(ii). Pub. L. 99–514, §1123(c)(2), inserted "in the case of contributions made pursuant to a salary reduction agreement (within the meaning of section 3121(a)(1)(D))," after "section 72(m)(7)), or".

Subsec. (b)(7)(D). Pub. L. 99–514, §1852(a)(3)(B), struck out subpar. (D) "Distribution requirements" which read as follows: "For purposes of determining when the interest of an employee in a custodial account must be distributed, such account shall be treated in the same manner as an annuity contract."

Subsec. (b)(8)(C). Pub. L. 99–514, §1852(b)(10), inserted "and" before "(F)(i)".

Subsec. (b)(8)(D). Pub. L. 99–514, §1852(a)(5)(B)(ii), added subpar. (D).

Subsec. (b)(10). Pub. L. 99–514, §1120(b), added par. (10) relating to nondiscrimination requirements.

Pub. L. 99–514, §1852(a)(3)(A), added par. (10) relating to distribution requirements.

Subsec. (b)(11). Pub. L. 99–514, §1123(c)(1), added par. (11).

Subsec. (c). Pub. L. 99–514, §1122(d)(3), amended last sentence generally. Prior to amendment, last sentence read as follows: "The amount actually paid or made available to any beneficiary under such contract shall be taxable to him in the year in which so paid or made available under section 72 (relating to annuities)."

1984—Subsec. (a)(2)(A). Pub. L. 98–369, §1001(b)(4), substituted "6 months" for "1 year", applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

Subsec. (a)(4)(A)(i). Pub. L. 98–369, §522(a)(2), substituted "any portion of the balance to the credit of an employee in an employee annuity described in paragraph (1) is paid to him," for "the balance to the credit of an employee in an employee annuity described in paragraph (1) is paid to him in a qualifying rollover distribution."

Subsec. (a)(4)(B). Pub. L. 98–369, §522(d)(9), substituted "(B) through (F)" for "(B) through (E)".

Subsec. (b)(1). Pub. L. 98–369, §491(d)(12), struck out "or 409(b)(3)(C)" after "408(d)(3)(A)(iii)".

Subsec. (b)(7)(D). Pub. L. 98–369, §521(c), added subpar. (D).

Subsec. (b)(8)(A)(i). Pub. L. 98–369, §522(a)(3), substituted "any portion of the balance to the credit of an employee in an annuity contract described in paragraph (1) is paid to him" for "the balance to the credit of an employee is paid to him in a qualifying distribution".

Subsec. (b)(8)(B). Pub. L. 98–369, §522(d)(10), substituted provisions relating to special rules for partial distributions for provisions relating to definition of qualifying distributions.

Subsec. (b)(8)(C). Pub. L. 98–369, §522(d)(11), substituted "(F)(i)" for "(D)(v), and (E)(i)".

1983—Subsec. (b)(3). Pub. L. 98–21 substituted "section 911" for "sections 105(d) and 911".

Subsec. (b)(8)(C). Pub. L. 97–448 substituted "subparagraphs (B), (C), (D)(v), and (E)(i) of section 402(a)(5)" for "subparagraphs (B), (C), and (E)(i) of section 402(a)(5)".

1982—Subsec. (b)(2)(B). Pub. L. 97–248, §251(a)(1), (c)(3), substituted "home health service agencies, and certain churches, etc." for "and home health service agencies", and "(under section 415 without regard to section 415(c)(8))" for "(under section 415)".

Subsec. (b)(2)(C), (D). Pub. L. 97–248, §251(a)(2), added subpars. (C) and (D).

Subsec. (b)(9). Pub. L. 97–248, §251(b), added par. (9).

1981—Subsec. (b)(8)(B)(i). Pub. L. 97–34 inserted ", or 1 or more distributions of accumulated deductible employee contributions (within the meaning of section 72(o)(5))" after "subsection (a)".

1980—Subsec. (b). Pub. L. 96–222 substituted in par. (1) "409(b)(3)(C)" for "409(d)(3)(C)", and in par. (7)(A) "which satisfies" for "which satisfied".

1978—Subsec. (a)(4). Pub. L. 95–600, §157(g)(2), in subpar. (B) substituted "paragraphs (6) and (7)" for "paragraph (6)".

Pub. L. 95–458, among other changes, substituted provision permitting tax free treatment for any portion of a lump sum distribution from a qualified retirement plan which is deposited in an individual retirement account or another qualifying plan for provision which required transfer of all such property received.

Subsec. (a)(5). Pub. L. 95–458 struck out par. (5) which related to special rules concerning time of termination of a profit-sharing plan and the treatment of the sale of a corporate subsidiary or assets as payment or distribution on account of termination of a plan of which an annuity trust was a part.

Subsec. (b)(1). Pub. L. 95–600, §156(b), inserted provision relating to application of rules of this subsection to amounts contributed by an employer for a taxable year.

Subsec. (b)(7)(A). Pub. L. 95–600, §154(a), struck out "the amounts are paid to provide a retirement benefit for that employee and are to be invested in regulated investment company stock to be held in that custodial account" after "contract for his employee if", and added cls. (i) and (ii).

Subsec. (b)(8). Pub. L. 95–600, §156(a), added par. (8).

1976—Subsec. (a)(2)(A). Pub. L. 94–455, §1402(b)(2), provided that "9 months" would be changed to "1 year".

Pub. L. 94–455, §1402(b) (1)(D), provided that "6 months" would be changed to "9 months" for taxable years beginning in 1977.

Subsec. (a)(4). Pub. L. 94–455, §1901(a)(58), reenacted provisions following subpar. (C) without substantive change.

Pub. L. 94–267, §1(b)(2), substituted "a payment" for "the lump-sum distribution".

Subsec. (a)(4)(A). Pub. L. 94–267, §1(b)(1), restructured provisions by adding cl. (i) and designating existing provision as cl. (ii).

Subsec. (a)(5). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary" wherever appearing.

Pub. L. 94–267, §1(b)(3), added par. (5).

Subsec. (b)(1)(A)(ii). Pub. L. 94–455, §1901(b)(8)(A), substituted "educational organization described in section 170(b)(1)(A)(ii)" for "educational institution (as defined in section 151(e)(4))".

Subsec. (b)(4)(B). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (b)(7)(C). Pub. L. 94–455, §1504(a), struck out ", and which issues only redeemable stock" after "regulated investment company within the meaning of section 851(a)".

1974—Subsec. (a)(2). Pub. L. 93–406, §2005(b)(2), substituted "a lump sum distribution (as defined in section 4002(e)(4)(A)) is paid to the recipient" for "the total amounts payable by reason of an employee's death or other separation from the service, or by reason of the death of an employee after the employee's separation from the service, are paid to the payee within one taxable year of the payee" as cl. (iii) of subpar. (A), substituted "so much of the total taxable amount (as defined in section 402(e)(4)(D)) of such distribution as is equal to the product of such total taxable amount multiplied by the fraction described in section 402(a)(2) shall be treated as a gain from the sale or exchange of a capital asset held for more than 6 months. For purposes of this paragraph, in the case of an individual who is an employee without regard to section 401(c)(1), determination of whether or not any distribution is a lump sum distribution shall be made without regard to the requirement that an election be made under subsection (e)(4)(B) of section 402, but no distribution to any taxpayer other than an individual, estate, or trust may be treated as a lump sum distribution under this paragraph" for "then the amount of such payments, to the extent exceeding the amount contributed by the employee (determined by applying section 72(f)), which employee contributions shall be reduced by any amounts theretofore paid to him which were not includible in gross income, shall be considered a gain from the sale or exchange of a capital asset held for more than 6 months. This subparagraph shall not apply to amounts paid to any payee to the extent such amounts are attributable to contributions made on behalf of the employee while he was an employee within the meaning of section 401(c)(1)" following cl. (iii) of subpar. (A), substituted provisions setting out a cross reference to section 402(e) for provisions defining "total amounts" as subpar. (B), and struck out subpar. (C) setting out limitations on capital gains treatment.

Subsec. (a)(4). Pub. L. 93–406, §2002(g)(6), added par. (4).

Subsec. (b)(2). Pub. L. 93–406, §2004(c)(4), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (b)(7). Pub. L. 93–406, §1022(e), added par. (7).

1969—Subsec. (a)(2)(C). Pub. L. 91–172, §515(a)(2), added subpar. (C).

Subsec. (c). Pub. L. 91–172, §321(b)(2), consolidated provisions of subsec. (c) providing for taxability of

beneficiary under a nonqualified annuity, the employees gross income to include amount contributed by employer for annuity contract in the year in which amount is contributed, the amount to be included as provided in section 72 of this title and of subsec. (d) providing for taxability of beneficiary under certain forfeitable contracts purchased by exempt organizations, including farmers' cooperatives, the gross income to include amount contributed by employer after Dec. 31, 1957, in the year of change from forfeitable to nonforfeitable rights, the new provisions including premiums paid by an employer in accordance with section 83, except that value of the contract shall be substituted for fair market value of the property for purposes of applying such section 83, such provision not to be applicable to that portion of premiums paid which is excluded from gross income under subsec. (b) of this section.

Subsec. (d). Pub. L. 91–172, §321(b)(2), struck out subsec. (d) providing for taxability of beneficiary under certain forfeitable contracts purchased by exempt organizations, including farmers' cooperatives, gross income of the employee to include (amount contributed by employer after Dec. 31, 1957), in year of change from forfeitable to nonforfeitable rights. See subsec. (c) of this section.

1964—Subsecs. (a)(1), (b)(1), (c). Pub. L. 88–272, §232(e)(4)–(6), struck out "except that section 72(e)(3) shall not apply" after "(relating to annuities)".

1962—Subsec. (a)(2)(A). Pub. L. 87–792, §4(d)(1), (2), substituted "described in paragraph (1)" for "which meets the requirements of section 401(a)(3), (4), (5), and (6)" in cl. (i), and inserted sentence at end thereof providing that this subparagraph shall not apply to amounts paid to any payee to the extent such amounts are attributable to contributions made on behalf of the employee while he was an employee within the meaning of section 401(c)(1).

Subsec. (a)(3). Pub. L. 87–792, §4(d)(3), added par. (3).

1961—Subsec. (b). Pub. L. 87–370, §3(a)(3), inserted "or public school" in heading.

Subsec. (b)(1)(A). Pub. L. 87–370, §3(a)(1), included annuity contracts purchased for an employee, other than one described in clause (i) of this subpar., who performs services for an educational institution, as defined in section 151(e)(4) of this title, by an employer which is a State, a political subdivision of a State, or an agency or instrumentality of either.

Subsec. (b)(3). Pub. L. 87–370, §(3)(a)(2), substituted "the employer described in paragraph (1)(A)" for "the employer described in section 501(c)(3) and exempt from tax under section 501(a)".

1958—Subsec. (a)(1). Pub. L. 85–866, §23(b), substituted "which meets the requirements of section 404(a)(2) (whether or not the employer deducts the amounts paid for the contract under such section)," for "with respect to which the employer's contribution is deductible under section 404(a)(2), or if an annuity contract is purchased for an employee by an employer described in section 501(c)(3) which is exempt from tax under section 501(a),".

Subsecs. (b) to (d). Pub. L. 85–866, §23(a), added subsec. (b), redesignated former subsec. (b) as (c), and added subsec. (d).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–245 applicable with respect to deaths and disabilities occurring on or after Jan. 1, 2007, see section 104(d)(1) of Pub. L. 110–245, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 827(b)(2), (3) of Pub. L. 109–280 applicable to distributions after Sept. 11, 2001, with waiver of limitations if refund or credit of overpayment of tax resulting from such amendment is prevented before the close of the 1-year period beginning on Aug. 17, 2006, see section 827(c) of Pub. L. 109–280, set out as a note under section 72 of this title.

Amendment by section 829(a)(2), (3) of Pub. L. 109–280 applicable to distributions after Dec. 31, 2006, see section 829(b) of Pub. L. 109–280, set out as a note under section 402 of this title.

Amendment by section 845(b)(1), (2) of Pub. L. 109–280 applicable to distributions in taxable years beginning after Dec. 31, 2006, see section 845(c) of Pub. L. 109–280, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 404(e) of Pub. L. 108–311 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 404(f) of Pub. L. 108–311, set out as a note under section 45A of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of

Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 632(a)(2) of Pub. L. 107–16 applicable to years beginning after Dec. 31, 2001, see section 632(a)(4) of Pub. L. 107–16, set out as a note under section 72 of this title.

Amendment by section 641(b)(1), (e)(7) of Pub. L. 107–16 applicable to distributions after Dec. 31, 2001, see section 641(f)(1) of Pub. L. 107–16, set out as a note under section 402 of this title.

Amendment by section 642(b)(1) of Pub. L. 107–16 applicable to distributions after Dec. 31, 2001, see section 642(c) of Pub. L. 107–16, set out as a note under section 408 of this title.

Amendment by section 646(a)(2) of Pub. L. 107–16 applicable to distributions after Dec. 31, 2001, see section 646(b) of Pub. L. 107–16, set out as a note under section 401 of this title.

Pub. L. 107–16, title VI, §647(c), June 7, 2001, 115 Stat. 127, provided that: "The amendments made by this section [amending this section and section 457 of this title] shall apply to trustee-to-trustee transfers after December 31, 2001."

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 effective as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 1(a)(7) [title III, §314(g)] of Pub. L. 106–554, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 6005 of Pub. L. 105–206 applicable to distributions after Dec. 31, 1998, see section 6005(c)(2)(C) of Pub. L. 105–206, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XV, §1504(a)(2), Aug. 5, 1997, 111 Stat. 1063, provided that: "The amendment made by this subsection [amending this section] shall apply to years beginning after December 31, 1997."

Amendment by section 1505(c) of Pub. L. 105–34 applicable to taxable years beginning on or after Aug. 5, 1997, with certain governmental plans treated as satisfying requirements for all taxable years beginning before Aug. 5, 1997, see section 1505(d) of Pub. L. 105–34, set out as a note under section 401 of this title.

Amendment by section 1601(d)(6)(B) of Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 23 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, §1450(c)(2), Aug. 20, 1996, 110 Stat. 1815, provided that: "The amendment made by this subsection [amending this section] shall apply to years beginning after December 31, 1995, except a contract shall not be required to meet any change in any requirement by reason of such amendment before the 90th day after the date of the enactment of this Act [Aug. 20, 1996]."

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 521(b)(12), (13) of Pub. L. 102–318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102–318, set out as a note under section 402 of this title.

Amendment by section 522(a)(3), (c)(2), (3) of Pub. L. 102–318 applicable, except as otherwise provided, to distributions after Dec. 31, 1992, see section 522(d) of Pub. L. 102–318, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective, except as otherwise provided, as if included in the provision of the Revenue Reconciliation Act of 1989, Pub. L. 101–239, title VII, to which such amendment relates, see section 11701(n) of Pub. L. 101–508, set out as a note under section 42 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011(c)(7)(B) of Pub. L. 100–647 applicable to plan years beginning after Dec. 31, 1987, with exception in case of a plan described in section 1105(c)(2) of Pub. L. 99–514, see section 1011(c)(7)(E) of Pub. L. 100–647, set out as a note under section 401 of this title.

Amendment by section 1011(c)(12), (m)(1), (2) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title VI, §6052(a)(2), Nov. 10, 1988, 102 Stat. 3696, provided that: "The amendment

made by paragraph (1) [amending this section] shall take effect as if included in the amendment made by section 1120(b) of the Reform Act [Pub. L. 99–514]."

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XI, §1120(c), Oct. 22, 1986, 100 Stat. 2464, as amended by Pub. L. 100–647, title I, §1011(m)(3), Nov. 10, 1988, 102 Stat. 3471, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to years beginning after December 31, 1988.

"(2) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this section shall not apply to plan years beginning before the earlier of—

"(A) January 1, 1991, or

"(B) the later of—

"(i) January 1, 1989, or

"(ii) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986)."

Amendment by section 1122(b)(1)(B), (d) of Pub. L. 99–514 applicable, except as otherwise provided, to amounts distributed after Dec. 31, 1986, in taxable years ending after such date, see section 1122(h) of Pub. L. 99–514, set out as a note under section 402 of this title.

Amendment by section 1123(c) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1988, but only with respect to distributions from contracts described in subsec. (b) of this section which are attributable to assets other than assets held as of the close of the last year beginning before Jan. 1, 1989, with certain exceptions and transition rule, see section 1123(e) of Pub. L. 99–514, as amended, set out as a note under section 72 of this title.

Pub. L. 99–514, title XVIII, §1852(a)(3)(C), Oct. 22, 1986, 100 Stat. 2865, provided that: "The amendments made by this paragraph [amending this section] shall apply to benefits accruing after December 31, 1986, in taxable years ending after such date."

Amendment by section 1852(a)(5)(B), (b)(10) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 491(d)(12) of Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

Amendment by section 521(c) of Pub. L. 98–369 applicable to years beginning after Dec. 31, 1984, see section 521(e) of Pub. L. 98–369, set out as a note under section 401 of this title.

Amendment by section 522 of Pub. L. 98–369 applicable to distributions made after July 18, 1984, in taxable years ending after that date, see section 522(e) of Pub. L. 98–369, set out as a note under section 402 of this title.

Amendment by section 1001(b)(4) of Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable to taxable years beginning after Dec. 31, 1983, except that if an individual's annuity starting date was deferred under section 105(d)(6) of this title as in effect on the day before Apr. 20, 1983, such deferral shall end on the first day of such individual's first taxable year beginning after Dec. 31, 1983, see section 122(d) of Pub. L. 98–21, set out as a note under section 22 of this title.

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title II, §251(e), Sept. 3, 1982, 96 Stat. 531, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section and section 415 of this title, and enacting a provision set out as a note below] shall apply to taxable years beginning after December 31, 1981.

"(2) RETIREMENT INCOME ACCOUNTS.—The amendments made by subsection (b) [amending this

section] shall apply to taxable years beginning after December 31, 1974.

"(3) SECTION 415 AMENDMENTS.—The amendments made by subsection (c) [amending section 415 of this title] shall apply to years beginning after December 31, 1981.

"(4) CORRECTION PERIOD.—The amendment made by subsection (d) [enacting provisions set out below] shall take effect on July 1, 1982.

"(5) SPECIAL RULE FOR EXISTING DEFINED BENEFIT ARRANGEMENTS.—Any defined benefit arrangement which is established by a church or a convention or association of churches (including an organization described in section 414(e)(3)(B)(ii) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) and which is in effect on the date of the enactment of this Act [Sept. 3, 1982] shall not be treated as failing to meet the requirements of section 403(b)(2) of such Code merely because it is a defined benefit arrangement."

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 311(i)(1) of Pub. L. 97–34, set out as a note under section 219 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title I, §154(b), Nov. 6, 1978, 92 Stat. 2801, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1978."

Pub. L. 95–600, title I, §156(d), Nov. 6, 1978, 92 Stat. 2803, as amended by Pub. L. 96–222, title I, §101(a)(13)(A), Apr. 1, 1980, 94 Stat. 204, provided that: "The amendments made by this section [amending this section and sections 219, 220, 408, 409, 2039, and 4973] shall apply to distributions or transfers made after December 31, 1977, in taxable years beginning after such date."

Amendment by section 157(g)(2) of Pub. L. 95–600 applicable to lump-sum distributions completed after Dec. 31, 1978, in taxable years ending after such date, see section 157(g)(4) of Pub. L. 95–600, set out as a note under section 402 of this title.

Amendment by Pub. L. 95–458 applicable with respect to taxable years beginning after Dec. 31, 1974, see section 4(d) of Pub. L. 95–458, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XIV, §1402(b)(1), Oct. 4, 1976, 90 Stat. 1731, provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Pub. L. 94–455, title XIV, §1402(b)(2), Oct. 4, 1976, 90 Stat. 1732, provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

Pub. L. 94–455, title XIV, §1504(b), Oct. 4, 1976, 90 Stat. 1738, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1975."

Amendment by section 1901(a)(58), (b)(8)(A) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by Pub. L. 94–267 applicable with respect to payments made to an employee on or after July 4, 1974, see section 1(e) of Pub. L. 94–267, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Pub. L. 93–406, title II, §1022(e), Sept. 2, 1974, 88 Stat. 940, provided that the amendment made by that section is effective Jan. 1, 1974.

Amendment by section 2002(g)(6) of Pub. L. 93–406 applicable on and after Sept. 2, 1974, with respect to contributions to an employees' trust described in section 401(a) which is exempt from tax under section 501(a) or an annuity plan described in section 403(a), see section 2002(i)(3) of Pub. L. 93–406, set out as a note under section 402 of this title.

Amendment by section 2004(c)(4) of Pub. L. 93–406 applicable to years beginning after Dec. 31, 1975, see section 2004(d) of Pub. L. 93–406, set out as an Effective Date; Transition Provisions note under section 415 of this title.

Amendment by section 2005(b)(2) of Pub. L. 93–406 applicable only with respect to distributions or payments made after Dec. 31, 1973, in taxable years beginning after Dec. 31, 1973, see section 2005(d) of Pub. L. 93–406, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 321(b)(2) of Pub. L. 91–172 applicable with respect to contributions made and premiums paid after Aug. 1, 1969, see section 321(d) of Pub. L. 91–172, set out as an Effective Date note under section 83 of this title.

Amendment by section 515(a)(2) of Pub. L. 91–172 applicable to taxable years ending after Dec. 31, 1969, see section 515(d) of Pub. L. 91–172, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 232(g) of Pub. L. 88–272, set out as a note under section 5 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87–792, set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Pub. L. 87–370, §3(b), Oct. 4, 1961, 75 Stat. 801, provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1957."

EFFECTIVE DATES OF 1958 AMENDMENT

Pub. L. 85–866, §23(g), Sept. 2, 1958, 72 Stat. 1623, provided that: "The amendments made by subsections (a), (b), (c), and (d) [amending this section and section 101 of this title] shall apply with respect to taxable years beginning after December 31, 1957. The amendments made by subsection (e) [amending section 2039 of this title] shall apply with respect to estates of decedents dying after December 31, 1957. The amendments made by subsection (f) [amending section 2517 of this title] shall apply with respect to calendar years after 1957."

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1120 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

ELECTION TO MODIFY SECTION 403(B) EXCLUSION ALLOWANCE TO CONFORM TO SECTION 415 MODIFICATION

Pub. L. 107–16, title VI, §632(b)(3), June 7, 2001, 115 Stat. 115, provided that: "In the case of taxable years beginning after December 31, 1999, and before January 1, 2002, a plan may disregard the requirement in the regulations regarding the exclusion allowance under section 403(b)(2) of the Internal Revenue Code of 1986 that contributions to a defined benefit pension plan be treated as previously excluded amounts for purposes of the exclusion allowance."

MODIFICATIONS OF SUBSECTION (B) OF THIS SECTION

Pub. L. 105–34, title XVI, §1601(d)(4), Aug. 5, 1997, 111 Stat. 1089, as amended by Pub. L. 105–206, title VI, §6016(a)(2), July 22, 1998, 112 Stat. 822, provided that:

"(A) Paragraphs (7)(A)(ii) and (11) of section 403(b) of the Internal Revenue Code of 1986 shall not apply with respect to a distribution from a contract described in section 1450(b)(1) of such Act [Pub. L. 104–188, set out below] to the extent that such distribution is not includible in income by reason of—

"(i) in the case of distributions before January 1, 1998, section 403(b)(8) or (b)(10) of such Code (determined after the application of section 1450(b)(2) of such Act [Pub. L. 104–188, set out below]), and

"(ii) in the case of distributions on and after such date, such section 403(b)(10).

"(B) This paragraph shall apply as if included in section 1450 of the Small Business Job Protection Act of 1996 [Pub. L. 104–188, set out below]."

Pub. L. 104–188, title I, §1450(a), (b), Aug. 20, 1996, 110 Stat. 1814, provided that:

"(a) MULTIPLE SALARY REDUCTION AGREEMENTS PERMITTED.—

"(1) GENERAL RULE.—For purposes of section 403(b) of the Internal Revenue Code of 1986, the frequency that an employee is permitted to enter into a salary reduction agreement, the salary to which such an agreement may apply, and the ability to revoke such an agreement shall be determined under the rules applicable to cash or deferred elections under section 401(k) of such Code.

"(2) CONSTRUCTIVE RECEIPT.—[Amended section 402 of this title.]

"(3) EFFECTIVE DATE.—This subsection shall apply to taxable years beginning after December 31,

1995.

"(b) TREATMENT OF INDIAN TRIBAL GOVERNMENTS.—

"(1) IN GENERAL.—In the case of any contract purchased in a plan year beginning before January 1, 1995, section 403(b) of the Internal Revenue Code of 1986 shall be applied as if any reference to an employer described in section 501(c)(3) of the Internal Revenue Code of 1986 which is exempt from tax under section 501 of such Code included a reference to an employer which is an Indian tribal government (as defined by section 7701(a)(40) of such Code), a subdivision of an Indian tribal government (determined in accordance with section 7871(d) of such Code), an agency or instrumentality of an Indian tribal government or subdivision thereof, or a corporation chartered under Federal, State, or tribal law which is owned in whole or in part by any of the foregoing.

"(2) ROLLOVERS.—Solely for purposes of applying section 403(b)(8) of such Code to a contract to which paragraph (1) applies, a qualified cash or deferred arrangement under section 401(k) of such Code shall be treated as if it were a plan or contract described in clause (ii) of section 403(b)(8)(A) of such Code."

SAMPLING TO DETERMINE WHETHER PLAN MEETS SUBSECTION (B)(12) REQUIREMENTS

Pub. L. 100–647, title VI, §6052(b), Nov. 10, 1988, 102 Stat. 3696, provided that: "In the case of plan years beginning in 1989, 1990, or 1991, determinations as to whether a plan meets the requirements of section 403(b)(12) of the 1986 Code may be made on the basis of a statistically valid random sample. The preceding sentence shall apply only if—

"(1) the sampling is conducted by an independent person in a manner not inconsistent with regulations prescribed by the Secretary, and

"(2) the statistical method and sample size result in a 95 percent probability that the results will have a margin of error not greater than 3 percent."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§1401–1465] of title I of Pub. L. 104–188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

CORRECTION PERIOD FOR CHURCH PLANS

Pub. L. 97–248, title II, §251(d), Sept. 3, 1982, 96 Stat. 531, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "A church plan (within the meaning of section 414(e) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) shall not be treated as not meeting the requirements of section 401 or 403 of such Code if—

"(1) by reason of any change in any law, regulation, ruling, or otherwise such plan is required to be amended to meet such requirements, and

"(2) such plan is so amended at the next earliest church convention or such other time as the Secretary of the Treasury or his delegate may prescribe."

TRANSITIONAL RULE FOR MAKING SECTION 403(B)(8) ROLLOVER IN THE CASE OF PAYMENTS DURING 1978

Pub. L. 96–222, title I, §101(a)(13)(B), Apr. 1, 1980, 94 Stat. 204, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "In the case of any payment made during 1978 in a qualifying

distribution described in section 403(b)(8) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the applicable period specified in section 402(a)(5)(C) of such Code shall not expire before the close of December 31, 1980."

TRANSITIONAL RULE IN CASE OF ROLLOVER CONTRIBUTIONS TO EMPLOYEE TRUSTS OR ANNUITIES

Applicable period specified in section 402(a)(5)(C) of this title shall not expire before close of Dec. 31, 1980 in case of any payment described in subsec. (a)(4)(A) of this section or section 402(a)(5)(A) of this title, see section 157(h)(3)(B) of Pub. L. 95–600, set out as a note under section 402 of this title.

§404. Deduction for contributions of an employer to an employees' trust or annuity plan and compensation under a deferred-payment plan

(a) General rule

If contributions are paid by an employer to or under a stock bonus, pension, profit-sharing, or annuity plan, or if compensation is paid or accrued on account of any employee under a plan deferring the receipt of such compensation, such contributions or compensation shall not be deductible under this chapter; but, if they would otherwise be deductible, they shall be deductible under this section, subject, however, to the following limitations as to the amounts deductible in any year:

(1) Pension trusts

(A) In general

In the taxable year when paid, if the contributions are paid into a pension trust (other than a trust to which paragraph (3) applies), and if such taxable year ends within or with a taxable year of the trust for which the trust is exempt under section 501(a), in the case of a defined benefit plan other than a multiemployer plan, in an amount determined under subsection (o), and in the case of any other plan in an amount determined as follows:

(i) the amount necessary to satisfy the minimum funding standard provided by section 412(a) for plan years ending within or with such taxable year (or for any prior plan year), if such amount is greater than the amount determined under clause (ii) or (iii) (whichever is applicable with respect to the plan),

(ii) the amount necessary to provide with respect to all of the employees under the trust the remaining unfunded cost of their past and current service credits distributed as a level amount, or a level percentage of compensation, over the remaining future service of each such employee, as determined under regulations prescribed by the Secretary, but if such remaining unfunded cost with respect to any 3 individuals is more than 50 percent of such remaining unfunded cost, the amount of such unfunded cost attributable to such individuals shall be distributed over a period of at least 5 taxable years,

(iii) an amount equal to the normal cost of the plan, as determined under regulations prescribed by the Secretary, plus, if past service or other supplementary pension or annuity credits are provided by the plan, an amount necessary to amortize the unfunded costs attributable to such credits in equal annual payments (until fully amortized) over 10 years, as determined under regulations prescribed by the Secretary.

In determining the amount deductible in such year under the foregoing limitations the funding method and the actuarial assumptions used shall be those used for such year under section 431, and the maximum amount deductible for such year shall be an amount equal to the full funding limitation for such year determined under section 431.

(B) Special rule in case of certain amendments

In the case of a multiemployer plan which the Secretary of Labor finds to be collectively bargained which makes an election under this subparagraph (in such manner and at such time as

may be provided under regulations prescribed by the Secretary), if the full funding limitation determined under section 431(c)(6) for such year is zero, if as a result of any plan amendment applying to such plan year, the amount determined under section 431(c)(6)(A)(ii) exceeds the amount determined under section 431(c)(6)(A)(i), and if the funding method and the actuarial assumptions used are those used for such year under section 431, the maximum amount deductible in such year under the limitations of this paragraph shall be an amount equal to the lesser of—

(i) the full funding limitation for such year determined by applying section 431(c)(6) but increasing the amount referred to in subparagraph (A) thereof by the decrease in the present value of all unamortized liabilities resulting from such amendment, or

(ii) the normal cost under the plan reduced by the amount necessary to amortize in equal annual installments over 10 years (until fully amortized) the decrease described in clause (i).

In the case of any election under this subparagraph, the amount deductible under the limitations of this paragraph with respect to any of the plan years following the plan year for which such election was made shall be determined as provided under such regulations as may be prescribed by the Secretary to carry out the purposes of this subparagraph.

(C) Certain collectively-bargained plans

In the case of a plan which the Secretary of Labor finds to be collectively bargained, established or maintained by an employer doing business in not less than 40 States and engaged in the trade or business of furnishing or selling services described in section 168(i)(10)(C), with respect to which the rates have been established or approved by a State or political subdivision thereof, by any agency or instrumentality of the United States, or by a public service or public utility commission or other similar body of any State or political subdivision thereof, and in the case of any employer which is a member of a controlled group with such employer, subparagraph (B) shall be applied by substituting for the words "plan amendment" the words "plan amendment or increase in benefits payable under title II of the Social Security Act". For the purposes of this subparagraph, the term "controlled group" has the meaning provided by section 1563(a), determined without regard to section 1563(a)(4) and (e)(3)(C).

(D) Amount determined on basis of unfunded current liability

In the case of a defined benefit plan which is a multiemployer plan, except as provided in regulations, the maximum amount deductible under the limitations of this paragraph shall not be less than the excess (if any) of—

(i) 140 percent of the current liability of the plan determined under section 431(c)(6)(D), over

(ii) the value of the plan's assets determined under section 431(c)(2).

(E) Carryover

Any amount paid in a taxable year in excess of the amount deductible in such year under the foregoing limitations shall be deductible in the succeeding taxable years in order of time to the extent of the difference between the amount paid and deductible in each such succeeding year and the maximum amount deductible for such year under the foregoing limitations.

(2) Employees' annuities

In the taxable year when paid, in an amount determined in accordance with paragraph (1), if the contributions are paid toward the purchase of retirement annuities, or retirement annuities and medical benefits as described in section 401(h), and such purchase is part of a plan which meets the requirements of section 401(a)(3), (4), (5), (6), (7), (8), (9), (11), (12), (13), (14), (15), (16), (17),[1] (19), (20), (22), (26), (27), (31), and (37) and, if applicable, the requirements of section 401(a)(10) and of section 401(d), and if refunds of premiums, if any, are applied within the current taxable year or next succeeding taxable year toward the purchase of such retirement annuities, or such retirement annuities and medical benefits.

(3) Stock bonus and profit-sharing trusts

(A) Limits on deductible contributions

(i) In general

In the taxable year when paid, if the contributions are paid into a stock bonus or profit-sharing trust, and if such taxable year ends within or with a taxable year of the trust with respect to which the trust is exempt under section 501(a), in an amount not in excess of the greater of—

(I) 25 percent of the compensation otherwise paid or accrued during the taxable year to the beneficiaries under the stock bonus or profit-sharing plan, or

(II) the amount such employer is required to contribute to such trust under section 401(k)(11) for such year.

(ii) Carryover of excess contributions

Any amount paid into the trust in any taxable year in excess of the limitation of clause (i) (or the corresponding provision of prior law) shall be deductible in the succeeding taxable years in order of time, but the amount so deductible under this clause in any 1 such succeeding taxable year together with the amount allowable under clause (i) shall not exceed the amount described in subclause (I) or (II) of clause (i), whichever is greater, with respect to such taxable year.

(iii) Certain retirement plans excluded

For purposes of this subparagraph, the term "stock bonus or profit-sharing trust" shall not include any trust designed to provide benefits upon retirement and covering a period of years, if under the plan the amounts to be contributed by the employer can be determined actuarially as provided in paragraph (1).

(iv) 2 or more trusts treated as 1 trust

If the contributions are made to 2 or more stock bonus or profit-sharing trusts, such trusts shall be considered a single trust for purposes of applying the limitations in this subparagraph.

(v) Defined contribution plans subject to the funding standards

Except as provided by the Secretary, a defined contribution plan which is subject to the funding standards of section 412 shall be treated in the same manner as a stock bonus or profit-sharing plan for purposes of this subparagraph.

(B) Profit-sharing plan of affiliated group

In the case of a profit-sharing plan, or a stock bonus plan in which contributions are determined with reference to profits, of a group of corporations which is an affiliated group within the meaning of section 1504, if any member of such affiliated group is prevented from making a contribution which it would otherwise have made under the plan, by reason of having no current or accumulated earnings or profits or because such earnings or profits are less than the contributions which it would otherwise have made, then so much of the contribution which such member was so prevented from making may be made, for the benefit of the employees of such member, by the other members of the group, to the extent of current or accumulated earnings or profits, except that such contribution by each such other member shall be limited, where the group does not file a consolidated return, to that proportion of its total current and accumulated earnings or profits remaining after adjustment for its contribution deductible without regard to this subparagraph which the total prevented contribution bears to the total current and accumulated earnings or profits of all the members of the group remaining after adjustment for all contributions deductible without regard to this subparagraph. Contributions made under the preceding sentence shall be deductible under subparagraph (A) of this paragraph by the employer making such contribution, and, for the purpose of determining amounts which may be carried forward and deducted under the second sentence of

subparagraph (A) of this paragraph in succeeding taxable years, shall be deemed to have been made by the employer on behalf of whose employees such contributions were made.

(4) Trusts created or organized outside the United States

If a stock bonus, pension, or profit-sharing trust would qualify for exemption under section 501(a) except for the fact that it is a trust created or organized outside the United States, contributions to such a trust by an employer which is a resident, or corporation, or other entity of the United States, shall be deductible under the preceding paragraphs.

(5) Other plans

If the plan is not one included in paragraph (1), (2), or (3), in the taxable year in which an amount attributable to the contribution is includible in the gross income of employees participating in the plan, but, in the case of a plan in which more than one employee participates only if separate accounts are maintained for each employee. For purposes of this section, any vacation pay which is treated as deferred compensation shall be deductible for the taxable year of the employer in which paid to the employee.

(6) Time when contributions deemed made

For purposes of paragraphs (1), (2), and (3), a taxpayer shall be deemed to have made a payment on the last day of the preceding taxable year if the payment is on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof).

(7) Limitation on deductions where combination of defined contribution plan and defined benefit plan

(A) In general

If amounts are deductible under the foregoing paragraphs of this subsection (other than paragraph (5)) in connection with 1 or more defined contribution plans and 1 or more defined benefit plans or in connection with trusts or plans described in 2 or more of such paragraphs, the total amount deductible in a taxable year under such plans shall not exceed the greater of—

(i) 25 percent of the compensation otherwise paid or accrued during the taxable year to the beneficiaries under such plans, or

(ii) the amount of contributions made to or under the defined benefit plans to the extent such contributions do not exceed the amount of employer contributions necessary to satisfy the minimum funding standard provided by section 412 with respect to any such defined benefit plans for the plan year which ends with or within such taxable year (or for any prior plan year).

A defined contribution plan which is a pension plan shall not be treated as failing to provide definitely determinable benefits merely by limiting employer contributions to amounts deductible under this section. In the case of a defined benefit plan which is a single employer plan, the amount necessary to satisfy the minimum funding standard provided by section 412 shall not be less than the excess (if any) of the plan's funding target (as defined in section 430(d)(1)) over the value of the plan's assets (as determined under section 430(g)(3)).

(B) Carryover of contributions in excess of the deductible limit

Any amount paid under the plans in any taxable year in excess of the limitation of subparagraph (A) shall be deductible in the succeeding taxable years in order of time, but the amount so deductible under this subparagraph in any 1 such succeeding taxable year together with the amount allowable under subparagraph (A) shall not exceed 25 percent of the compensation otherwise paid or accrued during such taxable year to the beneficiaries under the plans.

(C) Paragraph not to apply in certain cases

(i) Beneficiary test

This paragraph shall not have the effect of reducing the amount otherwise deductible under paragraphs (1), (2), and (3), if no employee is a beneficiary under more than 1 trust or under a trust and an annuity plan.

(ii) Elective deferrals

If, in connection with 1 or more defined contribution plans and 1 or more defined benefit plans, no amounts (other than elective deferrals (as defined in section 402(g)(3))) are contributed to any of the defined contribution plans for the taxable year, then subparagraph (A) shall not apply with respect to any of such defined contribution plans and defined benefit plans.

(iii) Limitation

In the case of employer contributions to 1 or more defined contribution plans—

(I) if such contributions do not exceed 6 percent of the compensation otherwise paid or accrued during the taxable year to the beneficiaries under such plans, this paragraph shall not apply to such contributions or to employer contributions to the defined benefit plans to which this paragraph would otherwise apply by reason of contributions to the defined contribution plans, and

(II) if such contributions exceed 6 percent of such compensation, this paragraph shall be applied by only taking into account such contributions to the extent of such excess.

For purposes of this clause, amounts carried over from preceding taxable years under subparagraph (B) shall be treated as employer contributions to 1 or more defined contributions plans to the extent attributable to employer contributions to such plans in such preceding taxable years.

(iv) Guaranteed plans

In applying this paragraph, any single-employer plan covered under section 4021 of the Employee Retirement Income Security Act of 1974 shall not be taken into account.

(v) Multiemployer plans

In applying this paragraph, any multiemployer plan shall not be taken into account.

(D) Insurance contract plans

For purposes of this paragraph, a plan described in section 412(e)(3) shall be treated as a defined benefit plan.

(8) Self-employed individuals

In the case of a plan included in paragraph (1), (2), or (3) which provides contributions or benefits for employees some or all of whom are employees within the meaning of section 401(c)(1), for purposes of this section—

(A) the term "employee" includes an individual who is an employee within the meaning of section 401(c)(1), and the employer of such individual is the person treated as his employer under section 401(c)(4);

(B) the term "earned income" has the meaning assigned to it by section 401(c)(2);

(C) the contributions to such plan on behalf of an individual who is an employee within the meaning of section 401(c)(1) shall be considered to satisfy the conditions of section 162 or 212 to the extent that such contributions do not exceed the earned income of such individual (determined without regard to the deductions allowed by this section) derived from the trade or business with respect to which such plan is established, and to the extent that such contributions are not allocable (determined in accordance with regulations prescribed by the Secretary) to the purchase of life, accident, health, or other insurance; and

(D) any reference to compensation shall, in the case of an individual who is an employee within the meaning of section 401(c)(1), be considered to be a reference to the earned income of such individual derived from the trade or business with respect to which the plan is established.

(9) Certain contributions to employee stock ownership plans

(A) Principal payments

Notwithstanding the provisions of paragraphs (3) and (7), if contributions are paid into a trust which forms a part of an employee stock ownership plan (as described in section 4975(e)(7)), and such contributions are, on or before the time prescribed in paragraph (6), applied by the plan to the repayment of the principal of a loan incurred for the purpose of acquiring qualifying employer securities (as described in section 4975(e)(8)), such contributions shall be deductible under this paragraph for the taxable year determined under paragraph (6). The amount deductible under this paragraph shall not, however, exceed 25 percent of the compensation otherwise paid or accrued during the taxable year to the employees under such employee stock ownership plan. Any amount paid into such trust in any taxable year in excess of the amount deductible under this paragraph shall be deductible in the succeeding taxable years in order of time to the extent of the difference between the amount paid and deductible in each such succeeding year and the maximum amount deductible for such year under the preceding sentence.

(B) Interest payment

Notwithstanding the provisions of paragraphs (3) and (7), if contributions are made to an employee stock ownership plan (described in subparagraph (A)) and such contributions are applied by the plan to the repayment of interest on a loan incurred for the purpose of acquiring qualifying employer securities (as described in subparagraph (A)), such contributions shall be deductible for the taxable year with respect to which such contributions are made as determined under paragraph (6).

(C) S corporations

This paragraph shall not apply to an S corporation.

(D) Qualified gratuitous transfers

A qualified gratuitous transfer (as defined in section 664(g)(1)) shall have no effect on the amount or amounts otherwise deductible under paragraph (3) or (7) or under this paragraph.

(10) Contributions by certain ministers to retirement income accounts

In the case of contributions made by a minister described in section 414(e)(5) to a retirement income account described in section 403(b)(9) and not by a person other than such minister, such contributions—

(A) shall be treated as made to a trust which is exempt from tax under section 501(a) and which is part of a plan which is described in section 401(a), and

(B) shall be deductible under this subsection to the extent such contributions do not exceed the limit on elective deferrals under section 402(g) or the limit on annual additions under section 415.

For purposes of this paragraph, all plans in which the minister is a participant shall be treated as one plan.

(11) Determinations relating to deferred compensation

For purposes of determining under this section—

(A) whether compensation of an employee is deferred compensation; and

(B) when deferred compensation is paid,

no amount shall be treated as received by the employee, or paid, until it is actually received by the employee.

(12) Definition of compensation

For purposes of paragraphs (3), (7), (8), and (9) and subsection (h)(1)(C), the term "compensation" shall include amounts treated as "participant's compensation" under subparagraph

(C) or (D) of section 415(c)(3).

(b) Method of contributions, etc., having the effect of a plan; certain deferred benefits

(1) Method of contributions, etc., having the effect of a plan

If—

(A) there is no plan, but

(B) there is a method or arrangement of employer contributions or compensation which has the effect of a stock bonus, pension, profit-sharing, or annuity plan, or other plan deferring the receipt of compensation (including a plan described in paragraph (2)),

subsection (a) shall apply as if there were such a plan.

(2) Plans providing certain deferred benefits

(A) In general

For purposes of this section, any plan providing for deferred benefits (other than compensation) for employees, their spouses, or their dependents shall be treated as a plan deferring the receipt of compensation. In the case of such a plan, for purposes of this section, the determination of when an amount is includible in gross income shall be made without regard to any provisions of this chapter excluding such benefits from gross income.

(B) Exception

Subparagraph (A) shall not apply to any benefit provided through a welfare benefit fund (as defined in section 419(e)).

(c) Certain negotiated plans

If contributions are paid by an employer—

(1) under a plan under which such contributions are held in trust for the purpose of paying (either from principal or income or both) for the benefit of employees and their families and dependents at least medical or hospital care, or pensions on retirement or death of employees; and

(2) such plan was established prior to January 1, 1954, as a result of an agreement between employee representatives and the Government of the United States during a period of Government operation, under seizure powers, of a major part of the productive facilities of the industry in which such employer is engaged,

such contributions shall not be deductible under this section nor be made nondeductible by this section, but the deductibility thereof shall be governed solely by section 162 (relating to trade or business expenses). For purposes of this chapter and subtitle B, in the case of any individual who before July 1, 1974, was a participant in a plan described in the preceding sentence—

(A) such individual, if he is or was an employee within the meaning of section 401(c)(1), shall be treated (with respect to service covered by the plan) as being an employee other than an employee within the meaning of section 401(c)(1) and as being an employee of a participating employer under the plan,

(B) earnings derived from service covered by the plan shall be treated as not being earned income within the meaning of section 401(c)(2), and

(C) such individual shall be treated as an employee of a participating employer under the plan with respect to service before July 1, 1975, covered by the plan.

Section 277 (relating to deductions incurred by certain membership organizations in transactions with members) does not apply to any trust described in this subsection. The first and third sentences of this subsection shall have no application with respect to amounts contributed to a trust on or after any date on which such trust is qualified for exemption from tax under section 501(a).

(d) Deductibility of payments of deferred compensation, etc., to independent contractors

If a plan would be described in so much of subsection (a) as precedes paragraph (1) thereof (as

modified by subsection (b)) but for the fact that there is no employer-employee relationship, the contributions or compensation—

(1) shall not be deductible by the payor thereof under this chapter, but

(2) shall (if they would be deductible under this chapter but for paragraph (1)) be deductible under this subsection for the taxable year in which an amount attributable to the contribution or compensation is includible in the gross income of the persons participating in the plan.

(e) Contributions allocable to life insurance protection for self-employed individuals

In the case of a self-employed individual described in section 401(c)(1), contributions which are allocable (determined under regulations prescribed by the Secretary) to the purchase of life, accident, health, or other insurance shall not be taken into account under paragraph (1), (2), or (3) of subsection (a).

[(f) Repealed. Pub. L. 98–369, div. A, title VII, §713(b)(3), July 18, 1984, 98 Stat. 957]

(g) Certain employer liability payments considered as contributions

(1) In general

For purposes of this section, any amount paid by an employer under section 4041(b), 4062, 4063, or 4064, or part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974 shall be treated as a contribution to which this section applies by such employer to or under a stock bonus, pension, profit-sharing, or annuity plan.

(2) Controlled group deductions

In the case of a payment described in paragraph (1) made by an entity which is liable because it is a member of a commonly controlled group of corporations, trades, or businesses, within the meaning of subsection (b) or (c) of section 414, the fact that the entity did not directly employ participants of the plan with respect to which the liability payment was made shall not affect the deductibility of a payment which otherwise satisfies the conditions of section 162 (relating to trade or business expenses) or section 212 (relating to expenses for the production of income).

(3) Timing of deduction of contributions

(A) In general

Except as otherwise provided in this paragraph, any payment described in paragraph (1) shall (subject to the last sentence of subsection (a)(1)(A)) be deductible under this section when paid.

(B) Contributions under standard terminations

Subparagraph (A) shall not apply (and subsection (a)(1)(A) shall apply) to any payments described in paragraph (1) which are paid to terminate a plan under section 4041(b) of the Employee Retirement Income Security Act of 1974 to the extent such payments result in the assets of the plan being in excess of the total amount of benefits under such plan which are guaranteed by the Pension Benefit Guaranty Corporation under section 4022 of such Act.

(C) Contributions to certain trusts

Subparagraph (A) shall not apply to any payment described in paragraph (1) which is made under section 4062(c) of such Act and such payment shall be deductible at such time as may be prescribed in regulations which are based on principles similar to the principles of subsection (a)(1)(A).

(4) References to Employee Retirement Income Security Act of 1974

For purposes of this subsection, any reference to a section of the Employee Retirement Income Security Act of 1974 shall be treated as a reference to such section as in effect on the date of the enactment of the Retirement Protection Act of 1994.

(h) Special rules for simplified employee pensions

(1) In general

Employer contributions to a simplified employee pension shall be treated as if they are made to

a plan subject to the requirements of this section. Employer contributions to a simplified employee pension are subject to the following limitations:

(A) Contributions made for a year are deductible—

(i) in the case of a simplified employee pension maintained on a calendar year basis, for the taxable year with or within which the calendar year ends, or

(ii) in the case of a simplified employee pension which is maintained on the basis of the taxable year of the employer, for such taxable year.

(B) Contributions shall be treated for purposes of this subsection as if they were made for a taxable year if such contributions are made on account of such taxable year and are made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof).

(C) The amount deductible in a taxable year for a simplified employee pension shall not exceed 25 percent of the compensation paid to the employees during the calendar year ending with or within the taxable year (or during the taxable year in the case of a taxable year described in subparagraph (A)(ii)). The excess of the amount contributed over the amount deductible for a taxable year shall be deductible in the succeeding taxable years in order of time, subject to the 25 percent limit of the preceding sentence.

(2) Effect on certain trusts

For any taxable year for which the employer has a deduction under paragraph (1), the otherwise applicable limitations in subsection (a)(3)(A) shall be reduced by the amount of the allowable deductions under paragraph (1) with respect to participants in the trust subject to subsection (a)(3)(A).

(3) Coordination with subsection (a)(7)

For purposes of subsection (a)(7), a simplified employee pension shall be treated as if it were a separate stock bonus or profit-sharing trust.

[(i) Repealed. Pub. L. 99–514, title XI, §1171(b)(6), Oct. 22, 1986, 100 Stat. 2513]

(j) Special rules relating to application with section 415

(1) No deduction in excess of section 415 limitation

In computing the amount of any deduction allowable under paragraph (1), (2), (3), (4), (7), or (9) of subsection (a) for any year—

(A) in the case of a defined benefit plan, there shall not be taken into account any benefits for any year in excess of any limitation on such benefits under section 415 for such year, or

(B) in the case of a defined contribution plan, the amount of any contributions otherwise taken into account shall be reduced by any annual additions in excess of the limitation under section 415 for such year.

(2) No advance funding of cost-of-living adjustments

For purposes of clause (i), (ii) or (iii) of subsection (a)(1)(A), and in computing the full funding limitation, there shall not be taken into account any adjustments under section 415(d)(1) for any year before the year for which such adjustment first takes effect.

(k) Deduction for dividends paid on certain employer securities

(1) General rule

In the case of a C corporation, there shall be allowed as a deduction for a taxable year the amount of any applicable dividend paid in cash by such corporation with respect to applicable employer securities. Such deduction shall be in addition to the deductions allowed under subsection (a).

(2) Applicable dividend

For purposes of this subsection—

(A) In general

The term "applicable dividend" means any dividend which, in accordance with the plan provisions—

(i) is paid in cash to the participants in the plan or their beneficiaries,

(ii) is paid to the plan and is distributed in cash to participants in the plan or their beneficiaries not later than 90 days after the close of the plan year in which paid,

(iii) is, at the election of such participants or their beneficiaries—

(I) payable as provided in clause (i) or (ii), or

(II) paid to the plan and reinvested in qualifying employer securities, or

(iv) is used to make payments on a loan described in subsection (a)(9) the proceeds of which were used to acquire the employer securities (whether or not allocated to participants) with respect to which the dividend is paid.

(B) Limitation on certain dividends

A dividend described in subparagraph (A)(iv) which is paid with respect to any employer security which is allocated to a participant shall not be treated as an applicable dividend unless the plan provides that employer securities with a fair market value of not less than the amount of such dividend are allocated to such participant for the year which (but for subparagraph (A)) such dividend would have been allocated to such participant.

(3) Applicable employer securities

For purposes of this subsection, the term "applicable employer securities" means, with respect to any dividend, employer securities which are held on the record date for such dividend by an employee stock ownership plan which is maintained by—

(A) the corporation paying such dividend, or

(B) any other corporation which is a member of a controlled group of corporations (within the meaning of section 409(l)(4)) which includes such corporation.

(4) Time for deduction

(A) In general

The deduction under paragraph (1) shall be allowable in the taxable year of the corporation in which the dividend is paid or distributed to a participant or his beneficiary.

(B) Reinvestment dividends

For purposes of subparagraph (A), an applicable dividend reinvested pursuant to clause (iii)(II) of paragraph (2)(A) shall be treated as paid in the taxable year of the corporation in which such dividend is reinvested in qualifying employer securities or in which the election under clause (iii) of paragraph (2)(A) is made, whichever is later.

(C) Repayment of loans

In the case of an applicable dividend described in clause (iv) of paragraph (2)(A), the deduction under paragraph (1) shall be allowable in the taxable year of the corporation in which such dividend is used to repay the loan described in such clause.

(5) Other rules

For purposes of this subsection—

(A) Disallowance of deduction

The Secretary may disallow the deduction under paragraph (1) for any dividend if the Secretary determines that such dividend constitutes, in substance, an avoidance or evasion of taxation.

(B) Plan qualification

A plan shall not be treated as violating the requirements of section 401, 409, or 4975(e)(7), or as engaging in a prohibited transaction for purposes of section 4975(d)(3), merely by reason of

any payment or distribution described in paragraph (2)(A).

(6) Definitions

For purposes of this subsection—

(A) Employer securities

The term "employer securities" has the meaning given such term by section 409(l).

(B) Employee stock ownership plan

The term "employee stock ownership plan" has the meaning given such term by section 4975(e)(7). Such term includes a tax credit employee stock ownership plan (as defined in section 409).

(7) Full vesting

In accordance with section 411, an applicable dividend described in clause (iii)(II) of paragraph (2)(A) shall be subject to the requirements of section 411(a)(1).

(l) Limitation on amount of annual compensation taken into account

For purposes of applying the limitations of this section, the amount of annual compensation of each employee taken into account under the plan for any year shall not exceed $200,000. The Secretary shall adjust the $200,000 amount at the same time, and by the same amount, as any adjustment under section 401(a)(17)(B). For purposes of clause (i), (ii), or (iii) of subsection (a)(1)(A), and in computing the full funding limitation, any adjustment under the preceding sentence shall not be taken into account for any year before the year for which such adjustment first takes effect.

(m) Special rules for simple retirement accounts

(1) In general

Employer contributions to a simple retirement account shall be treated as if they are made to a plan subject to the requirements of this section.

(2) Timing

(A) Deduction

Contributions described in paragraph (1) shall be deductible in the taxable year of the employer with or within which the calendar year for which the contributions were made ends.

(B) Contributions after end of year

For purposes of this subsection, contributions shall be treated as made for a taxable year if they are made on account of the taxable year and are made not later than the time prescribed by law for filing the return for the taxable year (including extensions thereof).

(n) Elective deferrals not taken into account for purposes of deduction limits

Elective deferrals (as defined in section 402(g)(3)) shall not be subject to any limitation contained in paragraph (3), (7), or (9) of subsection (a) or paragraph (1)(C) of subsection (h) and such elective deferrals shall not be taken into account in applying any such limitation to any other contributions.

(o) Deduction limit for single-employer plans

For purposes of subsection (a)(1)(A)—

(1) In general

In the case of a defined benefit plan to which subsection (a)(1)(A) applies (other than a multiemployer plan), the amount determined under this subsection for any taxable year shall be equal to the greater of—

(A) the sum of the amounts determined under paragraph (2) with respect to each plan year ending with or within the taxable year, or

(B) the sum of the minimum required contributions under section 430 for such plan years.

(2) Determination of amount

(A) In general

The amount determined under this paragraph for any plan year shall be equal to the excess (if any) of—

(i) the sum of—

(I) the funding target for the plan year,

(II) the target normal cost for the plan year, and

(III) the cushion amount for the plan year, over

(ii) the value (determined under section 430(g)(3)) of the assets of the plan which are held by the plan as of the valuation date for the plan year.

(B) Special rule for certain employers

If section 430(i) does not apply to a plan for a plan year, the amount determined under subparagraph (A)(i) for the plan year shall in no event be less than the sum of—

(i) the funding target for the plan year (determined as if section 430(i) applied to the plan), plus

(ii) the target normal cost for the plan year (as so determined).

(3) Cushion amount

For purposes of paragraph (2)(A)(i)(III)—

(A) In general

The cushion amount for any plan year is the sum of—

(i) 50 percent of the funding target for the plan year, and

(ii) the amount by which the funding target for the plan year would increase if the plan were to take into account—

(I) increases in compensation which are expected to occur in succeeding plan years, or

(II) if the plan does not base benefits for service to date on compensation, increases in benefits which are expected to occur in succeeding plan years (determined on the basis of the average annual increase in benefits over the 6 immediately preceding plan years).

(B) Limitations

(i) In general

In making the computation under subparagraph (A)(ii), the plan's actuary shall assume that the limitations under subsection (l) and section 415(b) shall apply.

(ii) Expected increases

In the case of a plan year during which a plan is covered under section 4021 of the Employee Retirement Income Security Act of 1974, the plan's actuary may, notwithstanding subsection (l), take into account increases in the limitations which are expected to occur in succeeding plan years.

(4) Special rules for plans with 100 or fewer participants

(A) In general

For purposes of determining the amount under paragraph (3) for any plan year, in the case of a plan which has 100 or fewer participants for the plan year, the liability of the plan attributable to benefit increases for highly compensated employees (as defined in section 414(q)) resulting from a plan amendment which is made or becomes effective, whichever is later, within the last 2 years shall not be taken into account in determining the target liability.

(B) Rule for determining number of participants

For purposes of determining the number of plan participants, all defined benefit plans maintained by the same employer (or any member of such employer's controlled group (within the meaning of section 412(d)(3)) shall be treated as one plan, but only participants of such

member or employer shall be taken into account.

(5) Special rule for terminating plans

In the case of a plan which, subject to section 4041 of the Employee Retirement Income Security Act of 1974, terminates during the plan year, the amount determined under paragraph (2) shall in no event be less than the amount required to make the plan sufficient for benefit liabilities (within the meaning of section 4041(d) of such Act).

(6) Actuarial assumptions

Any computation under this subsection for any plan year shall use the same actuarial assumptions which are used for the plan year under section 430 (determined by not taking into account any adjustment under clause (iv) of subsection (h)(2)(C) thereof).

(7) Definitions

Any term used in this subsection which is also used in section 430 shall have the same meaning given such term by section 430.

(8) CSEC plans

Solely for purposes of this subsection, a CSEC plan shall be treated as though section 430 applied to such plan and the minimum required contribution for any plan year shall be the amount described in section 412(a)(2)(D).

(Aug. 16, 1954, ch. 736, 68A Stat. 138; Pub. L. 85–866, title I, §24, Sept. 2, 1958, 72 Stat. 1623; Pub. L. 87–792, §3, Oct. 10, 1962, 76 Stat. 819; Pub. L. 87–863, §2(b), Oct. 23, 1962, 76 Stat. 1141; Pub. L. 89–809, title II, §204(a), (b)(2), (3), Nov. 13, 1966, 80 Stat. 1577; Pub. L. 91–172, title III, §321(b)(3), Dec. 30, 1969, 83 Stat. 591; Pub. L. 93–406, title II, §§1013(c), 1016(a)(3), 2001(a), (g)(2)(E), (F), 2004(b), (c)(1), 2007(a), (b), title IV, §4401(a), formerly §4081(a), Sept. 2, 1974, 88 Stat. 921, 929, 952, 957, 986, 993, 994, 1033, renumbered §4401(a), Pub. L. 96–364, title I, §108(a), Sept. 26, 1980, 94 Stat. 1267; Pub. L. 94–267, §1(c)(3), Apr. 15, 1976, 90 Stat. 367; Pub. L. 94–455, title XV, §1502(a)(2), title XIX, §§1901(a)(59), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1737, 1774, 1834; Pub. L. 95–600, title I, §§133(a), (b), 141(f)(9), 152(f), Nov. 6, 1978, 92 Stat. 2783, 2795, 2799; Pub. L. 96–222, title I, §101(a)(10)(E), (J)(ii), Apr. 1, 1980, 94 Stat. 202, 204; Pub. L. 96–364, title II, §205, Sept. 26, 1980, 94 Stat. 1287; Pub. L. 97–34, title III, §§312(a), 331(b), 333(a), Aug. 13, 1981, 95 Stat. 283, 293, 296; Pub. L. 97–248, title II, §§235(f), 237(e)(2), 238(a), 253(b), Sept. 3, 1982, 96 Stat. 507, 512, 533; Pub. L. 98–369, div. A, title IV, §474(r)(14), title V, §§512(a), 542(a), title VII, §713(b)(3), (d)(4)(A), (5), (6), (9), July 18, 1984, 98 Stat. 842, 862, 890, 957, 958; Pub. L. 99–272, title XI, §11011(c)(1), (2), Apr. 7, 1986, 100 Stat. 257, 258; Pub. L. 99–514, title XI, §§1106(d)(2), 1108(c), 1112(d)(2), 1131(a), (b), 1136(b), 1171(b)(6), 1173(a), title XVIII, §§1848(c), 1851(b)(2)(A)–(C)(ii), 1854(b)(2)–(5), 1875(c)(7), Oct. 22, 1986, 100 Stat. 2424, 2433, 2445, 2476, 2477, 2486, 2513, 2515, 2857, 2863, 2878, 2895; Pub. L. 100–203, title IX, §9307(c), (d), title X, §10201(b)(2), (3), Dec. 22, 1987, 101 Stat. 1330–357, 1330–387; Pub. L. 100–647, title I, §§1011(d)(1), (4), (f)(6), 1011A(e)(4), 1011B(h)(3), (6), 1018(t)(4)(A), (5), title II, §2005(b), Nov. 10, 1988, 102 Stat. 3459, 3463, 3478, 3491, 3492, 3588, 3589, 3610; Pub. L. 101–239, title VII, §§7302(a), 7841(b)(1), Dec. 19, 1989, 103 Stat. 2351, 2428; Pub. L. 101–508, title XI, §11812(b)(7), Nov. 5, 1990, 104 Stat. 1388–535; Pub. L. 102–318, title V, §522(a)(2), July 3, 1992, 106 Stat. 314; Pub. L. 103–66, title XIII, §13212(c)(1), Aug. 10, 1993, 107 Stat. 472; Pub. L. 103–465, title VII, §751(a)(11), Dec. 8, 1994, 108 Stat. 5022; Pub. L. 104–188, title I, §§1316(d)(1), (2), 1421(b)(2), 1431(b)(3), 1461(b), 1704(q)(1), (t)(76), Aug. 20, 1996, 110 Stat. 1786, 1795, 1803, 1823, 1887, 1891; Pub. L. 105–34, title XV, §1530(c)(2), title XVI, §1601(d)(2)(C), Aug. 5, 1997, 111 Stat. 1078, 1088; Pub. L. 105–206, title VI, §6015(d), title VII, §7001(a), July 22, 1998, 112 Stat. 821, 827; Pub. L. 107–16, title VI, §§611(c)(1), 614(a), 616(a)–(b)(2)(A), 632(a)(3)(B), 652(a), 662(a), (b), June 7, 2001, 115 Stat. 97, 102, 103, 114, 129, 142; Pub. L. 107–147, title IV, §411(l)(1), (2), (4), (s), (w), Mar. 9, 2002, 116 Stat. 47, 51, 52; Pub. L. 108–218, title I, §101(b)(5), Apr. 10, 2004, 118 Stat. 598; Pub. L. 109–280, title VIII, §§801(a)–(c)(3), (d), 802(a), 803(a), (b), Aug. 17, 2006, 120 Stat. 992–996; Pub. L. 110–245, title I, §104(c)(1), June 17, 2008, 122 Stat. 1627; Pub. L. 110–458, title I, §108(a)–(c), Dec. 23, 2008, 122 Stat. 5108; Pub. L. 112–141, div. D, title II,

§40211(a)(2)(A), July 6, 2012, 126 Stat. 847; Pub. L. 113–97, title II, §202(c)(6), Apr. 7, 2014, 128 Stat. 1136.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table under section 401 of this title.

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(1)(C), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 401(a)(17), referred to in subsec. (a)(2), was repealed by Pub. L. 97–248, title II, §237(b), Sept. 3, 1982, 96 Stat. 511. A new section 401(a)(17) was added by Pub. L. 99–514, title XI, §1106(d)(1), Oct. 22, 1986, 100 Stat. 2423.

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (a)(3)(A)(v)(II), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

The Employee Retirement Income Security Act of 1974, referred to in subsecs. (a)(1)(D)(iv), (7)(C)(iv), (g)(1), (3)(B), (C), (4), and (o)(3)(B)(ii), (5), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, as amended, which is classified principally to chapter 18 (§1001 et seq.) of Title 29, Labor. Part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974 is classified generally to part 1 (§1381 et seq.) of subtitle E of subchapter III of chapter 18 of Title 29. Sections 4021, 4022, 4041, 4062, 4063, and 4064 of the Employee Retirement Income Security Act of 1974 are classified to sections 1321, 1322, 1341, 1362, 1363, and 1364, respectively, of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

The date of the enactment of the Retirement Protection Act of 1994, referred to in subsec. (g)(4), is the date of enactment of subtitle F (§§750–781) of title VII of Pub. L. 103–465, which was approved Dec. 8, 1994.

AMENDMENTS

2014—Subsec. (o)(8). Pub. L. 113–97 added par. (8).

2012—Subsec. (o)(6). Pub. L. 112–141 inserted "(determined by not taking into account any adjustment under clause (iv) of subsection (h)(2)(C) thereof)" before period at end.

2008—Subsec. (a)(1)(D)(i). Pub. L. 110–458, §108(b), substituted "431(c)(6)(D)" for "431(c)(6)(C)".

Subsec. (a)(2). Pub. L. 110–245 substituted "(31), and (37)" for "and (31)".

Subsec. (a)(7)(A). Pub. L. 110–458, §108(a)(2), in concluding provisions, substituted "the excess (if any) of the plan's funding target (as defined in section 430(d)(1)) over the value of the plan's assets (as determined under section 430(g)(3))" for "the plan's funding shortfall determined under section 430" in last sentence and struck out second sentence which read as follows: "For purposes of clause (ii), if paragraph (1)(D) applies to a defined benefit plan for any plan year, the amount necessary to satisfy the minimum funding standard provided by section 412 with respect to such plan for such plan year shall not be less than the unfunded current liability of such plan under section 412(l)."

Subsec. (a)(7)(C)(iii). Pub. L. 110–458, §108(c), amended cl. (iii) generally. Prior to amendment, text read as follows: "In the case of employer contributions to 1 or more defined contribution plans, this paragraph shall only apply to the extent that such contributions exceed 6 percent of the compensation otherwise paid or accrued during the taxable year to the beneficiaries under such plans. For purposes of this clause, amounts carried over from preceding taxable years under subparagraph (B) shall be treated as employer contributions to 1 or more defined contributions to the extent attributable to employer contributions to such plans in such preceding taxable years."

Subsec. (o)(2)(A)(ii). Pub. L. 110–458, §108(a)(1)(A), substituted "430(g)(3)" for "430(g)(2)".

Subsec. (o)(4)(B). Pub. L. 110–458, §108(a)(1)(B), substituted "412(d)(3)" for "412(f)(4)".

2006—Subsec. (a)(1)(A). Pub. L. 109–280, §801(a)(1), (c)(1), inserted "in the case of a defined benefit plan other than a multiemployer plan, in an amount determined under subsection (o), and in the case of any other plan" after "section 501(a)," in introductory provisions and substituted "431" for "412" in two places in concluding provisions.

Subsec. (a)(1)(B). Pub. L. 109–280, §801(c)(2), in introductory provisions, substituted "In the case of a multiemployer plan" for "In the case of a plan", "431(c)(6)" for "412(c)(7)", "431(c)(6)(A)(ii)" for "412(c)(7)(B)", "431(c)(6)(A)(i)" for "412(c)(7)(A)", and "431" for "412", and, in cl. (i), substituted "431(c)(6)" for "412(c)(7)".

Subsec. (a)(1)(D). Pub. L. 109–280, §802(a), amended heading and text of subpar. (D) generally, substituting provisions relating to maximum amount deductible in the case of a defined benefit plan which is a multiemployer plan for provisions relating to maximum amount deductible in the case of any defined benefit plan and stating rule for plans with 100 or less participants, rule for determining number of participants, and rule for terminating plans.

Subsec. (a)(1)(D)(i). Pub. L. 109–280, §801(d)(1), substituted "section 412(l)(8)(A), except that section 412(l)(8)(A) shall be applied for purposes of this clause by substituting '150 percent (140 percent in the case of a multiemployer plan) of current liability' for 'the current liability' in clause (i)." for "section 412(l)".

Subsec. (a)(1)(F). Pub. L. 109–280, §801(d)(2), struck out heading and text of subpar. (F). Text read as follows: "An employer may elect to disregard subsections (b)(5)(B)(ii)(II) and (l)(7)(C)(i)(IV) of section 412 solely for purposes of determining the interest rate used in calculating the maximum amount of the deduction allowable under this paragraph."

Subsec. (a)(7)(A). Pub. L. 109–280, §801(c)(3)(A), inserted at end "In the case of a defined benefit plan which is a single employer plan, the amount necessary to satisfy the minimum funding standard provided by section 412 shall not be less than the plan's funding shortfall determined under section 430."

Subsec. (a)(7)(C)(iii). Pub. L. 109–280, §803(a), added cl. (iii).

Subsec. (a)(7)(C)(iv). Pub. L. 109–280, §801(b), added cl. (iv).

Subsec. (a)(7)(C)(v). Pub. L. 109–280, §803(b), added cl. (v).

Subsec. (a)(7)(D). Pub. L. 109–280, §801(c)(3)(B), added subpar. (D) and struck out heading and text of former subpar. (D). Former text read as follows: "For purposes of this paragraph, any plan described in section 412(i) shall be treated as a defined benefit plan."

Subsec. (o). Pub. L. 109–280, §801(a)(2), added subsec. (o).

2004—Subsec. (a)(1)(F). Pub. L. 108–218 added subpar. (F).

2002—Subsec. (a)(1)(D)(iv). Pub. L. 107–147, §411(s), substituted "Special rule for terminating plans" for "Plans maintained by professional service employers" in heading.

Subsec. (a)(7)(C). Pub. L. 107–147, §411(l)(4), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "This paragraph shall not have the effect of reducing the amount otherwise deductible under paragraphs (1), (2), and (3), if no employee is a beneficiary under more than 1 trust or under a trust and an annuity plan."

Subsec. (a)(12). Pub. L. 107–147, §411(l)(1), substituted "(9) and subsection (h)(1)(C)," for "(9),".

Subsec. (k)(1). Pub. L. 107–147, §411(w)(1)(A), struck out "during the taxable year" after "such corporation".

Subsec. (k)(2)(B). Pub. L. 107–147, §411(w)(1)(B), substituted "(A)(iv)" for "(A)(iii)".

Subsec. (k)(4)(B), (C). Pub. L. 107–147, §411(w)(1)(C), (D), substituted "clause (iv)" for "clause (iii)" in subpar. (B), added a new subpar. (B), and redesignated former subpar. (B) as (C).

Subsec. (k)(7). Pub. L. 107–147, §411(w)(2), added par. (7).

Subsec. (n). Pub. L. 107–147, §411(l)(2), substituted "subsection (a) or paragraph (1)(C) of subsection (h)" for "subsection (a),".

2001—Subsec. (a)(1)(A). Pub. L. 107–16, §616(a)(2)(B)(i), inserted "(other than a trust to which paragraph (3) applies)" after "pension trust" in introductory provisions.

Subsec. (a)(1)(D). Pub. L. 107–16, §652(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "In the case of any defined benefit plan (other than a multiemployer plan) which has more than 100 participants for the plan year, except as provided in regulations, the maximum amount deductible under the limitations of this paragraph shall not be less than the unfunded current liability determined under section 412(l). For purposes of determining whether a plan has more than 100 participants, all defined benefit plans maintained by the same employer (or any member of such employer's controlled group (within the meaning of section 412(l)(8)(C))) shall be treated as 1 plan, but only employees of such member or employer shall be taken into account."

Subsec. (a)(3)(A)(i)(I). Pub. L. 107–16, §616(a)(1)(A), substituted "25 percent" for "15 percent".

Subsec. (a)(3)(A)(v). Pub. L. 107–16, §616(a)(2)(A), amended cl. (v) generally, substituting present provisions for provisions which directed that the limitation of cl. (i) for any taxable year would be increased by the unused pre-87 limitation carryforwards and defined "unused pre-87 limitation carryforwards".

Subsec. (a)(3)(B). Pub. L. 107–16, §616(b)(2)(A), struck out at end "The term 'compensation otherwise paid or accrued during the taxable year to all employees' shall include any amount with respect to which an election under section 415(c)(3)(C) is in effect, but only to the extent that any contribution with respect to such amount is nonforfeitable."

Subsec. (a)(10)(B). Pub. L. 107–16, §632(a)(3)(B), struck out ", the exclusion allowance under section 403(b)(2)," after "deferrals under section 402(g)".

Subsec. (a)(12). Pub. L. 107–16, §616(b)(1), added par. (12).

Subsec. (h)(1)(C). Pub. L. 107–16, §616(a)(1)(B), substituted "25 percent" for "15 percent" in two places.

Subsec. (h)(2). Pub. L. 107–16, §616(a)(2)(B)(ii), (iii), substituted "certain trusts" for "stock bonus and profit-sharing trust" in heading and "trust subject to subsection (a)(3)(A)" for "stock bonus or profit-sharing trust" in text.

Subsec. (k)(2)(A)(iii), (iv). Pub. L. 107–16, §662(a), added cl. (iii) and redesignated former cl. (iii) as (iv).

Subsec. (k)(5)(A). Pub. L. 107–16, §662(b), inserted "avoidance or" before "evasion".

Subsec. (l). Pub. L. 107–16, §611(c)(1), substituted "$200,000" for "$150,000" in two places.

Subsec. (n). Pub. L. 107–16, §614(a), added subsec. (n).

1998—Subsec. (a)(9)(C), (D). Pub. L. 105–206, §6015(d), redesignated subpar. (C), relating to qualified gratuitous transfers, as (D) and inserted heading.

Subsec. (a)(11). Pub. L. 105–206, §7001(a), added par. (11).

1997—Subsec. (a)(3)(A)(i). Pub. L. 105–34, §1601(d)(2)(C)(i), substituted "not in excess of the greater of—" and subcls. (I) and (II) for "not in excess of 15 percent of the compensation otherwise paid or accrued during the taxable year to the beneficiaries under the stock bonus or profit-sharing plan."

Subsec. (a)(3)(A)(ii). Pub. L. 105–34, §1601(d)(2)(C)(ii), substituted "the amount described in subclause (I) or (II) of clause (i), whichever is greater, with respect to such taxable year." for "15 percent of the compensation otherwise paid or accrued during such taxable year to the beneficiaries under the plan."

Subsec. (a)(9)(C). Pub. L. 105–34, §1530(c)(2), added subpar. (C) relating to qualified gratuitous transfers.

1996—Subsec. (a)(2). Pub. L. 104–188, §1704(t)(76), struck out "(18)," after "(17),".

Subsec. (a)(9)(C). Pub. L. 104–188, §1316(d)(1), added subpar. (C) relating to S corporations.

Subsec. (a)(10). Pub. L. 104–188, §1461(b), added par. (10).

Subsec. (j)(1). Pub. L. 104–188, §1704(q)(1), substituted "(9)" for "(10)" in introductory provisions.

Subsec. (k)(1). Pub. L. 104–188, §1316(d)(2), substituted "a C corporation" for "a corporation".

Subsec. (l). Pub. L. 104–188, §1431(b)(3), struck out at end "In determining the compensation of an employee, the rules of section 414(q)(6) shall apply, except that in applying such rules, the term 'family' shall include only the spouse of the employee and any lineal descendants of the employee who have not attained age 19 before the close of the year."

Subsec. (m). Pub. L. 104–188, §1421(b)(2), added subsec. (m).

1994—Subsec. (g)(4). Pub. L. 103–465 substituted "the Retirement Protection Act of 1994" for "the Single-Employer Pension Plan Amendments Act of 1986".

1993—Subsec. (l). Pub. L. 103–66 substituted "$150,000" for "$200,000" in first sentence and "The Secretary shall adjust the $150,000 amount at the same time, and by the same amount, as any adjustment under section 401(a)(17)(B)." for "The Secretary shall adjust the $200,000 amount at the same time and in the same manner as under section 415(d)."

1992—Subsec. (a)(2). Pub. L. 102–318 substituted "(27), and (31)" for "and (27)".

1990—Subsec. (a)(1)(C). Pub. L. 101–508 substituted "section 168(i)(10)(C)" for "section 167(l)(3)(A)(iii)".

1989—Subsec. (g)(1). Pub. L. 101–239, §7841(b)(1), inserted "4041(b)," after "under section".

Subsec. (k). Pub. L. 101–239, §7302(a), amended subsec. (k) generally, substituting "Deduction for dividends paid on certain employer securities" for "Dividends paid deductions" in heading and pars. (1) to (6) for former pars. (1) and (2) and concluding provisions.

1988—Subsec. (a)(1)(D). Pub. L. 100–647, §2005(b)(3), struck out "(without regard to any reduction by the credit balance in the funding standard account)" after "under section 412(l)".

Pub. L. 100–647, §2005(b)(1), substituted "For purposes of determining whether a plan has more than 100 participants" for "For purposes of this subparagraph".

Subsec. (a)(7)(A). Pub. L. 100–647, §2005(b)(2), inserted at end "For purposes of clause (ii), if paragraph (1)(D) applies to a defined benefit plan for any plan year, the amount necessary to satisfy the minimum funding standard provided by section 412 with respect to such plan for such plan year shall not be less than the unfunded current liability of such plan under section 412(l)."

Pub. L. 100–647, §1011A(e)(4)(A), in introductory provisions, substituted "foregoing paragraphs" for "foregoing provisions" and inserted "or in connection with trusts or plans described in 2 or more of such paragraphs" after "defined benefit plans".

Subsec. (a)(8)(D). Pub. L. 100–647, §1018(t)(5), made technical correction to Pub. L. 99–514, §1875(c)(7)(B), see 1986 Amendment note below.

Subsec. (h)(1)(C). Pub. L. 100–647, §1011(f)(6), inserted "(or during the taxable year in the case of a taxable year described in subparagraph (A)(ii))" after "within the taxable year".

Subsec. (h)(3). Pub. L. 100–647, §1011A(e)(4)(B), substituted "Coordination with subsection (a)(7)" for

"Effect on limit on deductions" in heading and amended text generally. Prior to amendment, text read as follows: "For any taxable year for which the employer has a deduction under paragraph (1), the otherwise applicable 25 percent limitations in subsection (a)(7) shall be reduced by the amount of the allowable deductions under paragraph (1) with respect to participants in the stock bonus or profit-sharing trust."

Subsec. (k). Pub. L. 100–647, §1011B(h)(3)(A), inserted "(whether or not allocated to participants)" after "to employer securities" in par. (2)(C).

Pub. L. 100–647, §1011B(h)(6), substituted "or as engaging in a prohibited transaction for purposes of section 4975(d)(3) merely by reason of any distribution or payment" for "merely by reason of any distribution" in third sentence.

Pub. L. 100–647, §1018(t)(4)(A), substituted "evasion of taxation" for "avoidance of taxation" in fourth sentence.

Pub. L. 100–647, §1011B(h)(3)(B), inserted at end "Paragraph (2)(C) shall not apply to dividends from employer securities which are allocated to any participant unless the plan provides that employer securities with a fair market value not less than the amount of such dividends are allocated to such participant for the year which (but for paragraph (2)(C)) such dividends would have been allocated to such participant."

Subsec. (l). Pub. L. 100–647, §1011(d)(4), inserted at end "In determining the compensation of an employee, the rules of section 414(q)(6) shall apply, except that in applying such rules, the term 'family' shall include only the spouse of the employee and any lineal descendants of the employee who have not attained age 19 before the close of the year."

Pub. L. 100–647, §1011(d)(1), inserted at end "For purposes of clause (i), (ii), or (iii) of subsection (a)(1)(A), and in computing the full funding limitation, any adjustment under the preceding sentence shall not be taken into account for any year before the year for which such adjustment first takes effect."

1987—Subsec. (a)(1)(A)(iii). Pub. L. 100–203, §9307(d), inserted "the unfunded costs attributable to" after "to amortize".

Subsec. (a)(1)(D), (E). Pub. L. 100–203, §9307(c), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (a)(5). Pub. L. 100–203, §10201(b)(3), inserted at end "For purposes of this section, any vacation pay which is treated as deferred compensation shall be deductible for the taxable year of the employer in which paid to the employee."

Subsec. (b)(2)(B). Pub. L. 100–203, §10201(b)(2), substituted "Exception" for "Exception for certain benefits" in heading and amended text generally. Prior to amendment, text read as follows: "Subparagraph (A) shall not apply to—

"(i) any benefit provided through a welfare benefit fund (as defined in section 419(e)), or

"(ii) any benefit with respect to which an election under section 463 applies."

1986—Subsec. (a). Pub. L. 99–514, §1851(b)(2)(C)(i), substituted "this chapter; but, if they would otherwise be deductible" for "section 162 (relating to trade or business expenses) or section 212 (relating to expenses for the production of income); but, if they satisfy the conditions of either of such sections".

Subsec. (a)(2). Pub. L. 99–514, §1136(b), substituted "(26), and (27)" for "and (26)".

Pub. L. 99–514, §1112(d)(2), substituted "(22), and (26)" for "and (22)".

Subsec. (a)(3)(A). Pub. L. 99–514, §1131(a), amended subpar. (A) generally, revising and restating as cls. (i) to (v) provisions formerly contained in single paragraph.

Subsec. (a)(7). Pub. L. 99–514, §1131(b), amended par. (7) generally, revising and restating as subpars. (A) to (C) provisions formerly contained in single paragraph, and adding subpar. (D).

Subsec. (a)(8)(C). Pub. L. 99–514, §1875(c)(7)(A), inserted "(determined without regard to the deductions allowed by this section)".

Subsec. (a)(8)(D). Pub. L. 99–514, §1875(c)(7)(B), as amended by Pub. L. 100–647, §1018(t)(5), struck out "(determined without regard to the deductions allowed by this section)" after "earned income of such individual".

Pub. L. 99–514, §1848(c), substituted "the deduction allowed by this section" for "the deductions allowed by this section and section 405(c)".

Subsec. (b). Pub. L. 99–514, §1851(b)(2)(B)(i), substituted "certain" for "unfunded" in heading.

Subsec. (b)(2). Pub. L. 99–514, §1851(b)(2)(A), (B)(ii), substituted "certain" for "unfunded" in heading, and in subpar. (B)(ii), substituted "any benefit" for "to any benefit".

Subsec. (d). Pub. L. 99–514, §1851(b)(2)(C)(ii), substituted "under this chapter" for "under section 162 or 212" in pars. (1) and (2).

Subsec. (g)(3). Pub. L. 99–272, §11011(c)(1), amended par. (3) generally. Prior to the amendment, par. (3), coordination with subsection (a), read as follows: "Any payment described in paragraph (1) shall (subject to the last sentence of subsection (a)(1)(A)) be deductible under this section when paid."

Subsec. (g)(4). Pub. L. 99–272, §11011(c)(2), added par. (4).

Subsec. (h)(1)(A), (B). Pub. L. 99–514, §1108(c), amended subpars. (A) and (B) generally. Prior to amendment, subpars. (A) and (B) read as follows:

"(A) Contributions made for a calendar year are deductible for the taxable year with which or within which the calendar year ends.

"(B) Contributions made within 3½ months after the close of a calendar year are treated as if they were made on the last day of such calendar year if they are made on account of such calendar year."

Subsec. (i). Pub. L. 99–514, §1171(b)(6), struck out subsec. (i) relating to the deductibility of unused portions of employee stock ownership credit.

Subsec. (k). Pub. L. 99–514, §1854(b)(2)(B), struck out "during the taxable year" after "cash by such corporation" in introductory provisions.

Pub. L. 99–514, §1854(b)(4), inserted "The Secretary may disallow the deduction under this subsection for any dividend if the Secretary determines that such dividend constitutes, in substance, an avoidance of taxation."

Pub. L. 99–514, §1854(b)(3), inserted "A plan to which this subsection applies shall not be treated as violating the requirements of section 401, 409, or 4975(e)(7) merely by reason of any distribution described in paragraph (2)."

Pub. L. 99–514, §1854(b)(2)(A), inserted "Any deduction under subparagraph (A) or (B) of paragraph (2) shall be allowed in the taxable year of the corporation in which the dividend is paid or distributed to the participant under paragraph (2)."

Pub. L. 99–514, §1173(a)(2), inserted "Any deduction under paragraph (2)(C) shall be allowable in the taxable year of the corporation in which the dividend is used to repay the loan described in such paragraph."

Subsec. (k)(2)(A), (B). Pub. L. 99–514, §1854(b)(5), inserted "or their beneficiaries".

Subsec. (k)(2)(C). Pub. L. 99–514, §1173(a)(1), added subpar. (C).

Subsec. (l). Pub. L. 99–514, §1106(d)(2), added subsec. (l).

1984—Subsec. (a)(8)(D). Pub. L. 98–369, §713(d)(6), inserted "(determined without regard to the deductions allowed by this section and section 405(c))".

Subsec. (a)(9), (10). Pub. L. 98–369, §713(d)(4)(A), struck out par. (9) relating to plans benefiting self-employed individuals and redesignated par. (10) as (9).

Subsec. (b). Pub. L. 98–369, §512(a), amended subsec. (b) generally, inserting heading, redesignating former heading as par. (1) heading, designating existing provisions as par. (1), and in par. (1) as so designated, inserted "(including a plan described in paragraph (2))" after "compensation" and adding par. (2).

Subsec. (e). Pub. L. 98–369, §713(d)(9), substituted "under paragraph (1), (2), or (3) of subsection (a)" for "under this section".

Subsec. (f). Pub. L. 98–369, §713(b)(3), repealed subsec. (f) which related to certain loan repayments considered as contributions.

Subsec. (h)(4). Pub. L. 98–369, §713(d)(5), repealed par. (4) which related to effect on self-employed individuals or shareholder-employees.

Subsec. (i). Pub. L. 98–369, §474(r)(14), in par. (1), substituted "If any portion of the employee stock ownership credit determined under section 41 for any taxable year has not, after the application of section 38(c), been allowed under section 38 for any taxable year, such portion shall be allowed as a deduction (without regard to any limitations provided under this section) for the last taxable year to which such portion could have been allowed as a credit under section 39" for "There shall be allowed as a deduction (without regard to any limitations provided under this section) for the last taxable year to which an unused employee stock ownership credit carryover (within the meaning of section 44G(b)(2)(A)) may be carried, an amount equal to the portion of such unused credit carryover which expires at the close of such taxable year", and in par. (2), substituted references to section 41 and 41(c)(3) for references to section 44G and 44G(c)(3), respectively.

Subsec. (k). Pub. L. 98–369, §542(a), added subsec. (k).

1982—Subsec. (a)(2). Pub. L. 97–248, §237(e)(2), substituted "(8), (9)" for "(8)", and "401(a)(10) and of section 401(d)" for "401(a)(9), (10), (17), and (18) and of section 401(d) (other than paragraph (1))".

Subsec. (a)(3)(B). Pub. L. 97–248, §253(b), inserted provision that "compensation otherwise paid or accrued during the taxable year to all employees" shall include any amount with respect to which an election under section 415(c)(3)(C) is in effect, but only to the extent that any contribution with respect to such amount is nonforfeitable.

Subsec. (e). Pub. L. 97–248, §238(a), amended subsec. (e) generally, substituting provisions relating to contributions allocable to life insurance protection for self-employed individuals, for provisions relating to general requirements, contributions made under more than one plan, contributions allocable to insurance

protection, and limitations of not lower than $750 or 100 percent of earned income with respect to special limitations for self-employed individuals.

Subsec. (j). Pub. L. 97–248, §235(f), added subsec. (j).

1981—Subsec. (a)(10). Pub. L. 97–34, §333(a), added par. (10).

Subsec. (e). Pub. L. 97–34, §312(a), substituted in pars. (1) and (2)(A) "$15,000" for "$7,500".

Subsec. (i). Pub. L. 97–34, §331(b), added subsec. (i).

1980—Subsec. (g). Pub. L. 96–364 redesignated existing provisions as par. (1), inserted applicability to part 1 of subtitle E of title IV of Employee Retirement Income Security Act of 1974, and added pars. (2) and (3).

Subsec. (h). Pub. L. 96–222 inserted "or shareholder employees" after "individuals" in heading, and in par. (4) "or described in section 1379(b)(1)" after "of subsection (e)" and "or a shareholder-employee (as defined in section 1379(d))" after "section 401(c)(1)" and substituted in pars. (2) to (4) "paragraph (1)" for "subparagraph (1)".

1978—Subsec. (a)(2). Pub. L. 95–600, §141(f)(9), substituted "(20), and (22)" for "and (20)".

Subsec. (b). Pub. L. 95–600, §133(b), substituted "other plan" for "similar plan".

Subsec. (d). Pub. L. 95–600, §133(a), added subsec. (d).

Subsec. (h). Pub. L. 95–600, §152(f), added subsec. (h).

1976—Subsecs. (a)(1)(B), (8)(C). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (a)(2). Pub. L. 94–267 substituted "(19), and (20)" for "and (19)".

Subsec. (d). Pub. L. 94–455, §1901(a)(59), struck out subsec. (d) which related to the taxability of the beneficiary under certain forfeitable contracts purchased by exempt organizations.

Subsecs. (e)(2)(B), (3). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (e)(4). Pub. L. 94–455, §1502(a)(2), inserted provisions following subpar. (B).

1974—Subsec. (a)(1). Pub. L. 93–406, §1013(c)(1), expanded subpars. (A), (B), and (C) to accommodate the increased minimum funding standards required by section 412.

Subsec. (a)(2). Pub. L. 93–406, §§1016(a)(3), 2001(g)(2)(E), 2004(c)(1), inserted references to the requirements of section 401(a)(11), (12), (13), (14), (15), (16), (17), (18), and (19), and, if applicable, the requirements of section 401(a)(17) and (18).

Subsec. (a)(3)(A). Pub. L. 93–406, §2004(b), inserted ", but the amount so deductible under this sentence in any one succeeding taxable year together with the amount so deductible under the first sentence of this subparagraph shall not exceed 25 percent of the compensation otherwise paid or accrued during such taxable year to the beneficiaries under the plan" after "If in any taxable year there is paid into the trust, or a similar trust then in effect, amounts less than the amounts deductible under the preceding sentence, the excess, or if no amount is paid, the amounts deductible, shall be carried forward and be deductible when paid in the succeeding taxable years in order of time, but the amount so deductible under this sentence in any such succeeding taxable year shall not exceed 15 percent of the compensation otherwise paid or accrued during such succeeding taxable year to the beneficiaries under the plan".

Subsec. (a)(6). Pub. L. 93–406, §1013(c)(2), substituted provisions covering only taxpayers operating on the accrual basis for provisions covering the time when contributions shall be deemed made.

Subsec. (a)(7). Pub. L. 93–406, §1013(c)(3), inserted reference to the amount of contributions made to or under the trusts or plans to the extent such contributions do not exceed the amount of employer contributions necessary to satisfy the minimum funding standards provided by section 412 for the plan year which ends with or within such taxable year (or for any prior plan year) and substituted "25 percent" for "30 percent" in provision covering amounts paid into trusts or under an annuity plan in any taxable year in excess of the amount allowable with respect to such year.

Subsec. (a)(9)(B)(ii). Pub. L. 93–406, §2001(g)(2)(F), substituted "the second sentence of paragraph (3)" for "paragraph (1)(D), the second and third sentences of paragraph (3), and the second sentence of paragraph (7)".

Subsec. (c). Pub. L. 93–406, §2008(a), (b), substituted "or pensions" for "and pensions" in par. (1), substituted "The first and third sentences of this subsection" for "This subsection" in provisions covering amounts contributed to a trust on or after any date on which such trust is qualified for exemption from tax under section 501(a), inserted provisions setting out specified treatment to be accorded individuals who before July 1, 1974, were participants in plans described in the subsections, and inserted provision that section 277 (relating to deductions incurred by certain membership organizations in transactions with members) does not apply to any trust described in the subsection.

Subsec. (e)(1). Pub. L. 93–406, §2001(a)(1), substituted "subject to paragraphs (2) and (4), not exceed $7,500, or 15 percent" for "subject to the provisions of paragraph (2), not exceed $2,500, or 10 percent".

Subsec. (e)(2)(A). Pub. L. 93–406, §2001(a)(2), substituted "shall (subject to paragraph (4)) not exceed

$7,500, or 15 percent" for "shall not exceed $2,500 or 10 percent".

Subsec. (e)(4). Pub. L. 93–406, §2001(a)(3), added par. (4).

Subsec. (g). Pub. L. 93–406, §4081(a), added subsec. (g).

1969—Subsec. (a)(5). Pub. L. 91–172 substituted "If the plan is not one included in paragraph (1), (2), or (3), in the taxable year in which an amount attributable to the contribution is includible in the gross income of employees participating in the plan, but, in the case of a plan in which more than one employee participates only if separate accounts are maintained for each employee" for "In the taxable year when paid, if the plan is not one included in paragraph (1), (2), or (3), if the employees' rights to or derived from such employer's contribution or such compensation are nonforfeitable at the time the contribution or compensation is paid".

1966—Subsec. (a). Pub. L. 89–809, §204(a), repealed par. (10) which provided for a special limitation on the amount allowed as a deduction for self-employed individuals.

Subsec. (e). Pub. L. 89–809, §204(b)(2), (3), struck out references to par. (10) of subsec. (a) wherever appearing.

1962—Subsec. (a)(2). Pub. L. 87–863 inserted ", or retirement annuities and medical benefits as described in section 401(h)," after "purchase of retirement annuities", and ", or such retirement annuities and medical benefits" after "such retirement annuities."

Pub. L. 87–792, §3(a)(1), substituted "(5), (6), (7), and (8), and, if applicable, the requirements of section 401(a)(9) and (10) and of section 401(d) (other than paragraph (1))," for "(5), and (6),".

Subsecs. (a)(8) to (10). Pub. L. 87–792, §3(a)(2), added pars. (8) to (10).

Subsecs. (e), (f). Pub. L. 87–792, §3(b), added subsecs. (e) and (f).

1958—Subsec. (a). Pub. L. 85–866 substituted "income); but, if" for "income) but if" preceding par. (1).

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–97 applicable to years beginning after Dec. 31, 2013, see section 3 of Pub. L. 113–97, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 2012 AMENDMENT

Pub. L. 112–141, div. D, title II, §40211(c), July 6, 2012, 126 Stat. 850, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section, sections 417, 420 and 430 of this title, and sections 1021, 1055, 1083, 1306, and 1310 of Title 29, Labor, and enacting provisons set out as a note under section 1021 of Title 29] shall apply with respect to plan years beginning after December 31, 2011.

"(2) RULES WITH RESPECT TO ELECTIONS.—

"(A) ADJUSTED FUNDING TARGET ATTAINMENT PERCENTAGE.—A plan sponsor may elect not to have the amendments made by this section apply to any plan year beginning before January 1, 2013, either (as specified in the election)—

"(i) for all purposes for which such amendments apply, or

"(ii) solely for purposes of determining the adjusted funding target attainment percentage under sections 436 of the Internal Revenue Code of 1986 and 206(g) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1056(g)] for such plan year.

A plan shall not be treated as failing to meet the requirements of sections 204(g) of such Act [29 U.S.C. 1054(g)] and 411(d)(6) of such Code solely by reason of an election under this paragraph.

"(B) OPT OUT OF EXISTING ELECTIONS.—If, on the date of the enactment of this Act [July 6, 2012], an election is in effect with respect to any plan under sections 303(h)((2)(D)(ii) [sic] of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1083(h)(2)(D)(ii)] and 430(h)((2)(D)(ii) [sic] of the Internal Revenue Code of 1986, then, notwithstanding the last sentence of each such section, the plan sponsor may revoke such election without the consent of the Secretary of the Treasury. The plan sponsor may make such revocation at any time before the date which is 1 year after such date of enactment and such revocation shall be effective for the 1st plan year to which the amendments made by this section apply and all subsequent plan years. Nothing in this subparagraph shall preclude a plan sponsor from making a subsequent election in accordance with such sections."

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–458 effective as if included in the provisions of Pub. L. 109–280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110–458, set out as a note under section 72 of this title.

Amendment by Pub. L. 110–245 applicable with respect to deaths and disabilities occurring on or after Jan. 1, 2007, see section 104(d)(1) of Pub. L. 110–245, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title VIII, §801(e), Aug. 17, 2006, 120 Stat. 995, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 404A of this title] shall apply to years beginning after December 31, 2007.

"(2) SPECIAL RULES.—The amendments made by subsection (d) [amending this section] shall apply to years beginning after December 31, 2005."

Pub. L. 109–280, title VIII, §802(b), Aug. 17, 2006, 120 Stat. 996, provided that: "The amendment made by subsection (a) [amending this section] shall apply to years beginning after December 31, 2007."

Pub. L. 109–280, title VIII, §803(d), Aug. 17, 2006, 120 Stat. 996, provided that: "The amendments made by this section [amending this section and section 4972 of this title] shall apply to contributions for taxable years beginning after December 31, 2005."

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–218, title I, §101(d), Apr. 10, 2004, 118 Stat. 599, provided that:

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section [amending this section, sections 412 and 415 of this title, and sections 1082 and 1306 of Title 29, Labor] shall apply to plan years beginning after December 31, 2003.

"(2) LOOKBACK RULES.—For purposes of applying subsections (d)(9)(B)(ii) and (e)(1) of section 302 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1082(d)(9)(B)(ii), (e)(1)] and subsections (l)(9)(B)(ii) and (m)(1) of [former] section 412 of the Internal Revenue Code of 1986 to plan years beginning after December 31, 2003, the amendments made by this section may be applied as if such amendments had been in effect for all prior plan years. The Secretary of the Treasury may prescribe simplified assumptions which may be used in applying the amendments made by this section to such prior plan years.

"(3) TRANSITION RULE FOR SECTION 415 LIMITATION.—In the case of any participant or beneficiary receiving a distribution after December 31, 2003[,] and before January 1, 2005, the amount payable under any form of benefit subject to section 417(e)(3) of the Internal Revenue Code of 1986 and subject to adjustment under section 415(b)(2)(B) of such Code shall not, solely by reason of the amendment made by subsection (b)(4) [amending section 415 of this title], be less than the amount that would have been so payable had the amount payable been determined using the applicable interest rate in effect as of the last day of the last plan year beginning before January 1, 2004."

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 611(c)(1) of Pub. L. 107–16 applicable to years beginning after Dec. 31, 2001, see section 611(i)(1) of Pub. L. 107–16, set out as a note under section 415 of this title.

Pub. L. 107–16, title VI, §614(b), June 7, 2001, 115 Stat. 102, provided that: "The amendment made by this section [amending this section] shall apply to years beginning after December 31, 2001."

Pub. L. 107–16, title VI, §616(c), June 7, 2001, 115 Stat. 103, provided that: "The amendments made by this section [amending this section and section 4972 of this title] shall apply to years beginning after December 31, 2001."

Amendment by section 632(a)(3)(B) of Pub. L. 107–16 applicable to years beginning after Dec. 31, 2001, see section 632(a)(4) of Pub. L. 107–16, set out as a note under section 72 of this title.

Pub. L. 107–16, title VI, §652(c), June 7, 2001, 115 Stat. 130, provided that: "The amendments made by this section [amending this section and section 4972 of this title] shall apply to plan years beginning after December 31, 2001."

Pub. L. 107–16, title VI, §662(c), June 7, 2001, 115 Stat. 142, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2001."

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 6015(d) of Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

Pub. L. 105–206, title VII, §7001(b), July 22, 1998, 112 Stat. 827, provided that:

"(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [July 22, 1998].

"(2) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer required by the amendment made by subsection (a) [amending this section] to change its method of accounting for its first taxable year ending after the date of the enactment of this Act [July 22, 1998]—

"(A) such change shall be treated as initiated by the taxpayer,

"(B) such change shall be treated as made with the consent of the Secretary of the Treasury; and

"(C) the net amount of the adjustments required to be taken into account by the taxpayer under section 481 of the Internal Revenue Code of 1986 shall be taken into account ratably over the 3-taxable year period beginning with such first taxable year."

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 1530(c)(2) of Pub. L. 105–34 applicable to transfers made by trusts to, or for the use of, an employee stock ownership plan after Aug. 5, 1997, see section 1530(d) of Pub. L. 105–34, set out as a note under section 401 of this title.

Amendment by section 1601(d)(2)(C) of Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 23 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1316(d)(1), (2) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1997, see section 1316(f) of Pub. L. 104–188, set out as a note under section 170 of this title.

Amendment by section 1421(b)(2) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1421(e) of Pub. L. 104–188, set out as a note under section 72 of this title.

Amendment by section 1431(b)(3) of Pub. L. 104–188 applicable to years beginning after Dec. 31, 1996, see section 1431(d)(2) of Pub. L. 104–188, set out as a note under section 414 of this title.

Pub. L. 104–188, title I, §1461(c), Aug. 20, 1996, 110 Stat. 1824, provided that: "The amendments made by this section [amending this section and section 1414 of this title] shall apply to years beginning after December 31, 1996."

Pub. L. 104–188, title I, §1704(q)(2), Aug. 20, 1996, 110 Stat. 1887, provided that: "The amendment made by paragraph (1) [amending this section] shall take effect as if included in the amendments made by section 713(d)(4)(A) of the Deficit Reduction Act of 1984 [Pub. L. 98–369]."

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable, except as otherwise provided, to benefits accruing in plan years beginning after Dec. 31, 1993, see section 13212(d) of Pub. L. 103–66, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–318 applicable, except as otherwise provided, to distributions after Dec. 31, 1992, see section 522(d) of Pub. L. 102–318, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to property placed in service after Nov. 5, 1990, but not applicable to any property to which section 168 of this title does not apply by reason of subsec. (f)(5) of section 168, and not applicable to rehabilitation expenditures described in section 252(f)(5) of Pub. L. 99–514, see section 11812(c) of Pub. L. 101–508, set out as a note under section 42 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7302(b), Dec. 19, 1989, 103 Stat. 2352, provided that:

"(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to employer securities acquired after August 4, 1989.

"(2) SECURITIES ACQUIRED WITH CERTAIN LOANS.—The amendment made by this section shall not apply to employer securities acquired after August 4, 1989, which are acquired—

"(A) with the proceeds of any loan which was made pursuant to a binding written commitment in effect on August 4, 1989, and at all times thereafter before such loan is made, and

"(B) pursuant to a written binding contract (or tender offer registered with the Securities and Exchange Commission) in effect on August 4, 1989, and at all times thereafter before such securities are acquired."

Pub. L. 101–239, title VII, §7841(b)(2), Dec. 19, 1989, 103 Stat. 2428, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to payments made after January 1, 1986, in taxable years ending after such date."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 1011(d)(1), (4), (f)(6), 1011A(e)(4), 1011B(h)(3), (6), and 1018(t)(4)(A), (5) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title II, §2005(e), Nov. 10, 1988, 102 Stat. 3612, as amended by Pub. L. 101–239, title VII, §7812(d), Dec. 19, 1989, 103 Stat. 2412, provided that: "The amendments made by this section [amending this section and sections 412, 414, and 4972 of this title and section 1082 of Title 29, Labor] shall take effect as if included in the amendments made by the provisions of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203] to which it relates, except that the amendment made by subsection (a)(1) [amending section 4972 of this title] shall take effect as if included in the amendment made by section 1131(c) of the Tax Reform Act of 1986 [Pub. L. 99–514]."

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title IX, §9307(f), Dec. 22, 1987, 101 Stat. 1330–359, as amended by Pub. L. 101–239, title VII, §7881(d)(3), Dec. 19, 1989, 103 Stat. 2439, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 412 of this title and section 1082 of Title 29, Labor] shall apply to years beginning after December 31, 1987.

"(2) AMORTIZATION OF GAINS AND LOSSES.—Sections 412(b)(2)(B)(iv) and 412(b)(3)(B)(ii) of the Internal Revenue Code of 1986 and sections 302(b)(2)(B)(iv) and 302(b)(3)(B)(ii) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1082(b)(2)(B)(iv), (3)(B)(ii)] (as amended by paragraphs (1)(A) and (2)(A) of subsection (a)) shall apply to gains and losses established in years beginning after December 31, 1987. For purposes of the preceding sentence, any gain or loss determined by a valuation occurring as of January 1, 1988, shall be treated as established in years beginning before 1988, or at the election of the employer, shall be amortized in accordance with Internal Revenue Service Notice 89–52."

Pub. L. 100–203, title X, §10201(c)(1), Dec. 22, 1987, 101 Stat. 1330–388, provided that: "The amendments made by this section [amending this section and sections 419 and 461 of this title, and repealing sections 81 and 463 of this title] shall apply to taxable years beginning after December 31, 1987."

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 1106(d)(2) of Pub. L. 99–514 applicable to benefits accruing in years beginning after Dec. 31, 1988, except as otherwise provided, see section 1106(i)(5) of Pub. L. 99–514, set out as a note under section 415 of this title.

Amendment by section 1108(c) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1986, see section 1108(h) of Pub. L. 99–514, set out as a note under section 219 of this title.

Amendment by section 1112(d)(2) of Pub. L. 99–514 applicable to plan years beginning after Dec. 31, 1988, with special rule regarding collective bargaining agreements ratified before Mar. 1, 1986, and with provision for waiver of excise tax on reversions, see section 1112(e) of Pub. L. 99–514, set out as a note under section 401 of this title.

Pub. L. 99–514, title XI, §1131(d), Oct. 22, 1986, 100 Stat. 2478, as amended by Pub. L. 100–647, title I, §1011A(e)(3), Nov. 10, 1988, 102 Stat. 3478, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting section 4972 of this title and amending this section] shall apply to taxable years beginning after December 31, 1986.

"(2) SPECIAL RULES FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this section shall not apply to contributions pursuant to any such agreement for taxable years beginning before the earlier of—

"(A) January 1, 1989, or

"(B) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986)."

Amendment by section 1171(b)(6) of Pub. L. 99–514 applicable to compensation paid or accrued after Dec. 31, 1986, in taxable years ending after such date, but this section 404(i) of this title to continue to apply with respect to credits under section 41 of this title attributable to compensation paid or accrued before Jan. 1, 1987 (or under section 38 of this title with respect to qualified investment before Jan. 1, 1983), see section 1171(c) of Pub. L. 99–514, set out as a note under section 38 of this title.

Pub. L. 99–514, title XI, §1173(c)(1), Oct. 22, 1986, 100 Stat. 2516, provided that: "The amendments made

by subsection (a) [amending this section] shall apply to dividends paid in taxable years beginning after the date of the enactment of this Act [Oct. 22, 1986]."

Amendment by sections 1848(c), 1851(b)(2)(A)–(C)(ii), and 1854(b)(3)–(5) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Amendment by section 1854(b)(2) of Pub. L. 99–514 not applicable to dividends paid before Jan. 1, 1986, if the taxpayer treated such dividends in a manner inconsistent with such amendment on a return filed with the Secretary before Oct. 22, 1986, see section 1854(b)(6) of Pub. L. 99–514, set out as a note under section 72 of this title.

Pub. L. 99–514, title XVIII, §1875(c)(7)(B), Oct. 22, 1986, 100 Stat. 2895, provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1984.

Pub. L. 99–272, title XI, §11011(c)(3), Apr. 7, 1986, 100 Stat. 258, provided that: "The amendments made by this subsection [amending this section] shall apply to payments made after January 1, 1986, in taxable years ending after such date."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(14) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Pub. L. 98–369, div. A, title V, §512(c), July 18, 1984, 98 Stat. 863, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 162 of this title] shall apply to amounts paid or incurred after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.

"(2) EXCEPTION FOR CERTAIN EXTENDED VACATION PAY PLANS.—In the case of any extended vacation pay plan maintained pursuant to a collective bargaining agreement—

"(A) between employee representatives and 1 or more employers, and

"(B) in effect on June 22, 1984,

the amendments made by this section shall not apply before the date on which such collective bargaining agreement terminates (determined without regard to any extension thereof agreed to after June 22, 1984). For purposes of the preceding sentence, any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section shall not be treated as a termination of such collective bargaining agreement."

Pub. L. 98–369, div. A, title V, §542(d), July 18, 1984, 98 Stat. 891, provided that: "The amendments made by this section [amending this section and sections 116 and 3405 of this title] shall apply to taxable years beginning after the date of enactment of this Act [July 18, 1984]."

Amendment by section 713 of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title II, §253(c), Sept. 3, 1982, 96 Stat. 533, provided that: "The amendments made by this section [amending this section and section 415 of this title] shall apply to taxable years beginning after December 31, 1981."

Amendment by section 235(f) of Pub. L. 97–248, in the case of any plan which is not in existence on July 1, 1982, applicable to years ending after July 1, 1982, and in the case of any plan which is in existence on July 1, 1982, applicable to years beginning after Dec. 31, 1982, see section 235(g)(1) of Pub. L. 97–248, set out as a note under section 415 of this title.

Amendment by sections 237 and 238 of Pub. L. 97–248 applicable to years beginning after Dec. 31, 1983, see section 241 of Pub. L. 97–248, set out as an Effective Date note under section 416 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 312(a) of Pub. L. 97–34 applicable to plans which include employees within the meaning of section 401(c)(1) of this title with respect to taxable years beginning after Dec. 31, 1981, see section 312(f)(1) of Pub. L. 97–34, set out as a note under section 72 of this title.

Pub. L. 97–34, title III, §331(f)(2), Aug. 13, 1981, 95 Stat. 295, provided that: "The amendments made by subsections (b) and (c) [amending this section and sections 56, 409A, and 6699 of this title] shall apply to taxable years ending after December 31, 1982."

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–364 effective Sept. 26, 1980, see section 210(a) of Pub. L. 96–364, set out as an Effective Date note under section 418 of this title.

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title I, §133(c), Nov. 6, 1978, 92 Stat. 2783, as amended by Pub. L. 96–222, title I, §101(a)(5), Apr. 1, 1980, 94 Stat. 196; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to deductions for taxable years beginning after December 31, 1978.

"(2) SPECIAL RULE FOR CERTAIN TITLE INSURANCE COMPANIES.—

"(A) IN GENERAL.—In the case of a qualified title insurance company plan, the amendment made by subsection (a) [amending this section] shall apply to deductions for taxable years beginning after December 31, 1979.

"(B) QUALIFIED TITLE INSURANCE COMPANY PLAN.—For purposes of subparagraph (A), the term 'qualified title insurance company plan' means a plan of a qualified title insurance company—

"(i) which defers the payment of amounts credited by such company to separate accounts for members of such company in consideration of their issuance of policies of title insurance, and

"(ii) under which no part of such amounts is payable to or withdrawable by the members until after the period for the adverse possession of real property under applicable State law.

"(C) QUALIFIED TITLE INSURANCE COMPANY.—For purposes of subparagraph (B), the term 'qualified title insurance company' means an unincorporated title insurance company organized as a business trust—

"(i) which is engaged in the business of providing title insurance coverage on interests in and liens upon real property obtained by clients of the members of such company, and

"(ii) which is subject to tax under section 831 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]."

Amendment by section 141(f)(9) of Pub. L. 95–600 effective with respect to qualified investment for taxable years beginning after Dec. 31, 1978, see section 141(g)(1) of Pub. L. 95–600, set out as an Effective Date note under section 409 of this title.

Amendment by section 152(f) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 152(h) of Pub. L. 95–600, set out as a note under section 408 of this title.

EFFECTIVE DATE OF 1976 AMENDMENTS

Amendment by section 1502(a)(2) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1975, see section 1502(b) of Pub. L. 94–455, set out as a note under section 415 of this title.

Amendment by section 1901(a)(59) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by Pub. L. 94–267 applicable with respect to payments made to an employee on or after July 4, 1974, see section 1(e) of Pub. L. 94–267, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by sections 1013(c) and 1016(a)(3) of Pub. L. 93–406 applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93–406, for plan years beginning after Sept. 2, 1974, but, in the case of plans in existence on Jan. 1, 1974, amendment by sections 1013(c) and 1016(a)(3) of Pub. L. 93–406 applicable for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93–406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

Pub. L. 93–406, title II, §2001(i)(1), Sept. 2, 1974, 88 Stat. 957, provided that: "The amendments made by subsections (a) [amending this section] and (b) [amending section 1379 of this title] apply to taxable years beginning after December 31, 1973."

Amendment by section 2001(g)(2)(E), (F) of Pub. L. 93–406 applicable to distributions made in taxable years beginning after Dec. 31, 1975, see section 2001(i)(5) of Pub. L. 93–406, set out as a note under section 72 of this title.

Pub. L. 93–406, title II, §2008(c), Sept. 2, 1974, 88 Stat. 994, provided that: "The amendments made by this section [amending this section] shall apply to taxable years ending on or after June 30, 1972."

Amendment by section 2004(b), (c)(1) of Pub. L. 93–406 applicable to years beginning after Dec. 31, 1975, see section 2004(d) of Pub. L. 93–406, set out as an Effective Date; Transition Provisions note under section

415 of this title.

Amendment by section 4081(a) of Pub. L. 93–406 effective on Sept. 2, 1974, with exceptions specified in section 1461(b), (c) of Title 29, Labor, see section 1461(a) of Title 29.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable with respect to contributions made and premiums paid after Aug. 1, 1969, see section 321(d) of Pub. L. 91–172, set out as an Effective Date note under section 83 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1967, see section 204(d) of Pub. L. 89–809, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1962 AMENDMENTS

Amendment by Pub. L. 87–863 applicable to taxable years beginning after Oct. 23, 1962, see section 2(c) of Pub. L. 87–863, set out as a note under section 401 of this title.

Amendment by Pub. L. 87–792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87–792, set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1112 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

CLARIFICATION OF TREATMENT OF CONTRIBUTIONS TO MULTIEMPLOYER PLAN

Pub. L. 107–16, title VI, §658, June 7, 2001, 115 Stat. 137, provided that:

"(a) NOT CONSIDERED METHOD OF ACCOUNTING.—For purposes of section 446 of the Internal Revenue Code of 1986, a determination under section 404(a)(6) of such Code regarding the taxable year with respect to which a contribution to a multiemployer pension plan is deemed made shall not be treated as a method of accounting of the taxpayer. No deduction shall be allowed for any taxable year for any contribution to a multiemployer pension plan with respect to which a deduction was previously allowed.

"(b) REGULATIONS.—The Secretary of the Treasury shall promulgate such regulations as necessary to clarify that a taxpayer shall not be allowed an aggregate amount of deductions for contributions to a multiemployer pension plan which exceeds the amount of such contributions made or deemed made under section 404(a)(6) of the Internal Revenue Code of 1986 to such plan.

"(c) EFFECTIVE DATE.—Subsection (a), and any regulations promulgated under subsection (b), shall be effective for years ending after the date of the enactment of this Act [June 7, 2001]."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§1401–1465] of title I of Pub. L. 104–188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

COORDINATION OF REPEALS OF CERTAIN SECTIONS

Pub. L. 98–369, div. A, title VII, §713(d)(8), July 18, 1984, 98 Stat. 958, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Sections 404(e) and 1379(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect on the day before the date of the enactment of the Tax Equity and Fiscal Responsibility Act of 1982 [Sept. 3, 1982]) shall not apply to any plan to which section 401(j) of such Code applies (or would apply but for its repeal)."

DEDUCTIBILITY OF PAYMENTS TO PLAN BY CORPORATION OPERATING PUBLIC TRANSPORTATION SYSTEM ACQUIRED BY STATE

Pub. L. 96–364, title IV, §408, Sept. 26, 1980, 94 Stat. 1307, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) For purposes of subsection (g) of section 404 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to certain employer liability payments considered as contributions), as amended by section 205 of this Act, any payment made to a plan covering employees of a corporation operating a public transportation system shall be treated as a payment described in paragraph (1) of such subsection if—

"(1) such payment is made to fund accrued benefits under the plan in conjunction with an acquisition by a State (or agency or instrumentality thereof) of the stock or assets of such corporation, and

"(2) such acquisition is pursuant to a State public transportation law enacted after June 30, 1979, and before January 1, 1980.

"(b) The provisions of this section shall apply to payments made after June 29, 1980."

YEAR OF DEDUCTION FOR CERTAIN EMPLOYER CONTRIBUTIONS FOR SEVERANCE PAYMENTS REQUIRED BY FOREIGN LAW

Pub. L. 93–406, title II, §1022(j), Sept. 2, 1974, 88 Stat. 942, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Effective for taxable years beginning after December 31, 1973, if—

"(1) an employer is engaged in a trade or business in a foreign country,

"(2) such employer is required by the laws of that country to make payments, based on periods of service, to its employees or their beneficiaries after the employees' retirement, death, or other separation from the service, and

"(3) such employer establishes a trust (whether organized within or outside the United States) for the purpose of funding the payments required by such law,

then, in determining for purposes of paragraph (5) of section 404(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] the taxable year in which any contribution to or under the plan is includible in the gross income of the nonresident alien employees of such employer, such paragraph (5) shall be treated as not requiring that separate accounts be maintained for such nonresident alien employees."

[1] *See References in Text note below.*

§404A. Deduction for certain foreign deferred compensation plans

(a) General rule

Amounts paid or accrued by an employer under a qualified foreign plan—

(1) shall not be allowable as a deduction under this chapter, but

(2) if they would otherwise be deductible, shall be allowed as a deduction under this section for the taxable year for which such amounts are properly taken into account under this section.

(b) Rules for qualified funded plans

For purposes of this section—

(1) In general

Except as otherwise provided in this section, in the case of a qualified funded plan contributions are properly taken into account for the taxable year in which paid.

(2) Payment after close of taxable year

For purposes of paragraph (1), a payment made after the close of a taxable year shall be treated as made on the last day of such year if the payment is made—

(A) on account of such year, and

(B) not later than the time prescribed by law for filing the return for such year (including extensions thereof).

(3) Limitations

In the case of a qualified funded plan, the amount allowable as a deduction for the taxable year shall be subject to—

(A) in the case of—

(i) a plan under which the benefits are fixed or determinable, limitations similar to those contained in clauses (ii) and (iii) of subparagraph (A) of section 404(a)(1) (determined without regard to the last sentence of such subparagraph (A)), or

(ii) any other plan, limitations similar to the limitations contained in paragraph (3) of section 404(a), and

(B) limitations similar to those contained in paragraph (7) of section 404(a).

(4) Carryover

If—

(A) the aggregate of the contributions paid during the taxable year reduced by any contributions not allowable as a deduction under paragraphs (1) and (2) of subsection (g), exceeds

(B) the amount allowable as a deduction under subsection (a) (determined without regard to subsection (d)),

such excess shall be treated as an amount paid in the succeeding taxable year.

(5) Amounts must be paid to qualified trust, etc.

In the case of a qualified funded plan, a contribution shall be taken into account only if it is paid—

(A) to a trust (or the equivalent of a trust) which meets the requirements of section 401(a)(2),

(B) for a retirement annuity, or

(C) to a participant or beneficiary.

(c) Rules relating to qualified reserve plans

For purposes of this section—

(1) In general

In the case of a qualified reserve plan, the amount properly taken into account for the taxable year is the reasonable addition for such year to a reserve for the taxpayer's liability under the plan. Unless otherwise required or permitted in regulations prescribed by the Secretary, the reserve for the taxpayer's liability shall be determined under the unit credit method modified to reflect the requirements of paragraphs (3) and (4). All benefits paid under the plan shall be charged to the reserve.

(2) Income item

In the case of a plan which is or has been a qualified reserve plan, an amount equal to that portion of any decrease for the taxable year in the reserve which is not attributable to the payment of benefits shall be included in gross income.

(3) Rights must be nonforfeitable, etc.

In the case of a qualified reserve plan, an item shall be taken into account for a taxable year only if—

(A) there is no substantial risk that the rights of the employee will be forfeited, and

(B) such item meets such additional requirements as the Secretary may by regulations prescribe as necessary or appropriate to ensure that the liability will be satisfied.

(4) Spreading of certain increases and decreases in reserves

There shall be amortized over a 10-year period any increase or decrease to the reserve on account of—

(A) the adoption of the plan or a plan amendment,

(B) experience gains and losses, and [1]

(C) any change in actuarial assumptions,

(D) changes in the interest rate under subsection (g)(3)(B), and

(E) such other factors as may be prescribed by regulations.

(d) Amounts taken into account must be consistent with amounts allowed under foreign law

(1) General rule

In the case of any plan, the amount allowed as a deduction under subsection (a) for any taxable year shall equal—

(A) the lesser of—

(i) the cumulative United States amount, or

(ii) the cumulative foreign amount, reduced by

(B) the aggregate amount determined under this section for all prior taxable years.

(2) Cumulative amounts defined

For purposes of paragraph (1)—

(A) Cumulative United States amount

The term "cumulative United States amount" means the aggregate amount determined with respect to the plan under this section for the taxable year and for all prior taxable years to which this section applies. Such determination shall be made for each taxable year without regard to the application of paragraph (1).

(B) Cumulative foreign amount

The term "cumulative foreign amount" means the aggregate amount allowed as a deduction under the appropriate foreign tax laws for the taxable year and all prior taxable years to which this section applies.

(3) Effect on earnings and profits, etc.

In determining the earnings and profits and accumulated profits of any foreign corporation with respect to a qualified foreign plan, except as provided in regulations, the amount determined under paragraph (1) with respect to any plan for any taxable year shall in no event exceed the amount allowed as a deduction under the appropriate foreign tax laws for such taxable year.

(e) Qualified foreign plan

For purposes of this section, the term "qualified foreign plan" means any written plan of an employer for deferring the receipt of compensation but only if—

(1) such plan is for the exclusive benefit of the employer's employees or their beneficiaries,

(2) 90 percent or more of the amounts taken into account for the taxable year under the plan are attributable to services—

(A) performed by nonresident aliens, and

(B) the compensation for which is not subject to tax under this chapter, and

(3) the employer elects (at such time and in such manner as the Secretary shall by regulations prescribe) to have this section apply to such plan.

(f) Funded and reserve plans

For purposes of this section—

(1) Qualified funded plan

The term "qualified funded plan" means a qualified foreign plan which is not a qualified reserve plan.

(2) Qualified reserve plan

The term "qualified reserve plan" means a qualified foreign plan with respect to which an election made by the taxpayer is in effect for the taxable year. An election under the preceding sentence shall be made in such manner and form as the Secretary may by regulations prescribe and, once made, may be revoked only with the consent of the Secretary.

(g) Other special rules

(1) No deduction for certain amounts

Except as provided in section 404(a)(5), no deduction shall be allowed under this section for any item to the extent such item is attributable to services—

(A) performed by a citizen or resident of the United States who is a highly compensated employee (within the meaning of section 414(q)), or

(B) performed in the United States the compensation for which is subject to tax under this chapter.

(2) Taxpayer must furnish information

(A) In general

No deduction shall be allowed under this section with respect to any plan for any taxable year unless the taxpayer furnishes to the Secretary with respect to such plan (at such time as the Secretary may by regulations prescribe)—

(i) a statement from the foreign tax authorities specifying the amount of the deduction allowed in computing taxable income under foreign law for such year with respect to such plan,

(ii) if the return under foreign tax law shows the deduction for plan contributions or reserves as a separate, identifiable item, a copy of the foreign tax return for the taxable year, or

(iii) such other statement, return, or other evidence as the Secretary prescribes by regulation as being sufficient to establish the amount of the deduction under foreign law.

(B) Redetermination where foreign tax deduction is adjusted

If the deduction under foreign tax law is adjusted, the taxpayer shall notify the Secretary of such adjustment on or before the date prescribed by regulations, and the Secretary shall redetermine the amount of the tax for the year or years affected. In any case described in the preceding sentence, rules similar to the rules of subsection (c) of section 905 shall apply.

(3) Actuarial assumptions must be reasonable; full funding

(A) In general

Except as provided in subparagraph (B), principles similar to those set forth in paragraphs (3) and (6) of section 431(c) shall apply for purposes of this section.

(B) Interest rate for reserve plan

(i) In general

In the case of a qualified reserve plan, in lieu of taking rates of interest into account under subparagraph (A), the rate of interest for the plan shall be the rate selected by the taxpayer which is within the permissible range.

(ii) Rate remains in effect so long as it falls within permissible range

Any rate selected by the taxpayer for the plan under this subparagraph shall remain in effect for such plan until the first taxable year for which such rate is no longer within the permissible range. At such time, the taxpayer shall select a new rate of interest which is

within the permissible range applicable at such time.

(iii) Permissible range

For purposes of this subparagraph, the term "permissible range" means a rate of interest which is not more than 20 percent above, and not more than 20 percent below, the average rate of interest for long-term corporate bonds in the appropriate country for the 15-year period ending on the last day before the beginning of the taxable year.

(4) Accounting method

Any change in the method (but not the actuarial assumptions) used to determine the amount allowed as a deduction under subsection (a) shall be treated as a change in accounting method under section 446(e).

(5) Section 481 applies to election

For purposes of section 481, any election under this section shall be treated as a change in the taxpayer's method of accounting. In applying section 481 with respect to any such election, the period for taking into account any increase or decrease in accumulated profits, earnings and profits or taxable income resulting from the application of section 481(a)(2) shall be the year for which the election is made and the fourteen succeeding years.

(h) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section (including regulations providing for the coordination of the provisions of this section with section 404 in the case of a plan which has been subject to both of such sections).

(Added Pub. L. 96–603, §2(a), Dec. 28, 1980, 94 Stat. 3505; amended Pub. L. 99–514, title XI, §1114(b)(8), title XVIII, §1851(b)(2)(C)(iii), Oct. 22, 1986, 100 Stat. 2451, 2863; Pub. L. 100–647, title I, §1012(b)(4), Nov. 10, 1988, 102 Stat. 3496; Pub. L. 109–280, title VIII, §801(c)(4), Aug. 17, 2006, 120 Stat. 995.)

AMENDMENTS

2006—Subsec. (g)(3)(A). Pub. L. 109–280 substituted "paragraphs (3) and (6) of section 431(c)" for "paragraphs (3) and (7) of section 412(c)".

1988—Subsec. (d)(3). Pub. L. 100–647 inserted "except as provided in regulations," after "qualified foreign plan,".

1986—Subsec. (a). Pub. L. 99–514, §1851(b)(2)(C)(iii), substituted "under this chapter" for "under section 162, 212, or 404" in par. (1) and "they would otherwise be deductible" for "they satisfy the conditions of section 162" in par. (2).

Subsec. (g)(1)(A). Pub. L. 99–514, §1114(b)(8), substituted "a highly compensated employee (within the meaning of section 414(q))" for "an officer, shareholder, or highly compensated".

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 applicable to years beginning after Dec. 31, 2007, see section 801(e)(1) of Pub. L. 109–280, set out as a note under section 404 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1114(b)(8) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1988, see section 1114(c)(3) of Pub. L. 99–514, set out as a note under section 414 of this title.

Amendment by section 1851(b)(2)(C)(iii) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Pub. L. 96–603, §2(e), Dec. 28, 1980, 94 Stat. 3510, as amended by Pub. L. 97–448, title III, §305(a), Jan.

12, 1983, 96 Stat. 2399; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—The amendments made by this section [enacting this section and section 6689 of this title and amending sections 679 and 905 of this title] shall apply with respect to employer contributions or accruals for taxable years beginning after December 31, 1979.

"(2) ELECTION TO APPLY AMENDMENTS RETROACTIVELY WITH RESPECT TO FOREIGN SUBSIDIARIES.—

"(A) IN GENERAL.—The taxpayer may elect to have the amendments made by this section [enacting this section and section 6689 of this title and amending sections 679 and 905 of this title] apply retroactively with respect to its foreign subsidiaries.

"(B) SCOPE OF RETROACTIVE APPLICATION.—Any election made under this paragraph shall apply with respect to all foreign subsidiaries of the taxpayer for the taxpayer's open period.

"(C) DISTRIBUTIONS BY FOREIGN SUBSIDIARY MUST BE OUT OF POST-1971 EARNINGS AND PROFITS.—The election under this paragraph shall apply to distributions made by a foreign subsidiary only if made out of accumulated profits (or earnings and profits) earned after December 31, 1970.

"(D) REVOCATION ONLY WITH CONSENT.—An election under this paragraph may be revoked only with the consent of the Secretary of the Treasury or his delegate.

"(E) OPEN PERIOD.—For purposes of this subsection, the term 'open period' means, with respect to any taxpayer, all taxable years which begin before January 1, 1980, and which begin after December 31, 1971, and for which, on December 31, 1980, the making of a refund, or the assessment of a deficiency, was not barred by any law or rule of law.

"(3) ALLOWANCE OF PRIOR DEDUCTIONS IN CASE OF CERTAIN FUNDED BRANCH PLANS.—

"(A) IN GENERAL.—If—

"(i) the taxpayer elects to have this paragraph apply, and

"(ii) the taxpayer agrees to the assessment of all deficiencies (including interest thereon) arising from all erroneous deductions,

then an amount equal to 1/15th of the aggregate of the prior deductions which would have been allowable if the amendments made by this section [enacting this section and section 6689 of this title and amending sections 679 and 905 of this title] applied to taxable years beginning before January 1, 1980, shall be allowed as a deduction for the taxpayer's first taxable year beginning in 1980, and an equal amount shall be allowed for each of the succeeding 14 taxable years.

"(B) PRIOR DEDUCTION.—For purposes of subparagraph (A), the term 'prior deduction' means a deduction with respect to a qualified funded plan (within the meaning of section 404A(f)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) of the taxpayer—

"(i) which the taxpayer claimed for a taxable year (or could have claimed if the amendments made by this section [enacting this section and section 6689 of this title and amending sections 679 and 905 of this title] applied to taxable years beginning before January 1, 1980) beginning before January 1, 1980,

"(ii) which was not allowable, and

"(iii) with respect to which, on December 1, 1980, the assessment of a deficiency was not barred by any law or rule of law.

"(4) TIME AND MANNER FOR MAKING ELECTIONS.—

"(A) TIME.—An election under paragraph (2) or (3) may be made only on or before the due date (including extensions) for filing the taxpayer's return of tax under chapter 1 of the Internal Revenue Code of 1986 [section 1 et seq. of this title] for its first taxable year ending on or after December 31, 1980.

"(B) MANNER.—An election under paragraph (2) may be made only by a statement attached to the taxpayer's return for its first taxable year ending on or after December 31, 1980. An election under paragraph (3) may be made only if the taxpayer, on or before the last day for making the election, files with the Secretary of the Treasury or his delegate such amended return and such other information as the Secretary of the Treasury or his delegate may require, and agrees to the assessment of a deficiency for any closed year falling within the open period, to the extent such deficiency is attributable to the operation of such election."

[Pub. L. 97–448, title III, §311(c)(1), Jan. 12, 1983, 96 Stat. 2411, provided that: "The amendment made by subsection (a) of section 305 [amending par. (2)(E) of this note] shall take effect on December 28, 1980."]

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1114 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note

under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[1] So in original. The word "and" probably should not appear.

[§405. Repealed. Pub. L. 98–369, div. A, title IV, §491(a), July 18, 1984, 98 Stat. 848]

Section, added Pub. L. 87–792, §5(a), Oct. 10, 1962, 76 Stat. 826; amended Pub. L. 89–97, title I, §106(d)(5), July 30, 1965, 79 Stat. 337; Pub. L. 91–172, title V, §515(c)(1), Dec. 30, 1969, 83 Stat. 645; Pub. L. 93–406, title II, §§2004(c)(2), 2005(c)(11), Sept. 2, 1974, 88 Stat. 986, 992; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–34, title III, §313(a), (b)(1), Aug. 13, 1981, 95 Stat. 285, 286; Pub. L. 97–452, §2(c)(1), Jan. 12, 1983, 96 Stat. 2478; Pub. L. 98–369, div. A, title I, §42(a)(6), July 18, 1984, 98 Stat. 557, related to qualified bond purchase plans.

EFFECTIVE DATE OF REPEAL

Repeal applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as an Effective Date of 1984 Amendment note under section 62 of this title.

ROLLOVER OF EXISTING BONDS INTO QUALIFIED EMPLOYER PLANS

Pub. L. 98–369, div. A, title IV, §491(c)(1), (f)(2), July 18, 1984, 98 Stat. 848, 853, provided that, applicable to redemptions after July 18, 1984, in taxable years ending after such date, subsec. (d)(3)(A) of this section, as in effect before its repeal, is amended to read as follows:

"(A) IN GENERAL.—If—

"(i) any qualified bond is redeemed,

"(ii) any portion of the excess of the proceeds from such redemption over the basis of such bond is transferred to an individual retirement plan which is maintained for the benefit of the individual redeeming such bond, or to a qualified trust (as defined in section 402(a)(5)(D)(iii)) for the benefit of such individual, and

"(iii) such transfer is made on or before the 60th day after the individual received the proceeds of such redemption,

then gross income shall not include the proceeds to the extent so transferred and the transfer shall be treated as a rollover contribution described in section 408(d)(3)."

BONDS UNDER QUALIFIED BOND PURCHASE PLANS REDEEMABLE AT ANY TIME AFTER JULY 18, 1984

Pub. L. 98–369, div. A, title IV, §491(f)(4), July 18, 1984, 98 Stat. 853, provided that: "Notwithstanding—

"(A) subparagraph (D) of section 405(b)(1) of the Internal Revenue Code of 1954 (as in effect before its repeal by this section) [see above], and

"(B) the terms of any bond described in subsection (b) of such section 405,

such a bond may be redeemed at any time after the date of the enactment of this Act [July 18, 1984] in the same manner as if the individual redeeming the bond had attained age 59½."

§406. Employees of foreign affiliates covered by section 3121(l) agreements

(a) Treatment as employees of American employer

For purposes of applying this part with respect to a pension, profit-sharing, or stock bonus plan described in section 401(a) or an annuity plan described in section 403(a), of an American employer

(as defined in section 3121(h)), an individual who is a citizen or resident of the United States and who is an employee of a foreign affiliate (as defined in section 3121(l)(6)) of such American employer shall be treated as an employee of such American employer, if—

(1) such American employer has entered into an agreement under section 3121(l) which applies to the foreign affiliate of which such individual is an employee;

(2) the plan of such American employer expressly provides for contributions or benefits for individuals who are citizens or residents of the United States and who are employees of its foreign affiliates to which an agreement entered into by such American employer under section 3121(l) applies; and

(3) contributions under a funded plan of deferred compensation (whether or not a plan described in section 401(a) or 403(a)) are not provided by any other person with respect to the remuneration paid to such individual by the foreign affiliate.

(b) Special rules for application of section 401(a)

(1) Nondiscrimination requirements

For purposes of applying section 401(a)(4) and section 410(b) with respect to an individual who is treated as an employee of an American employer under subsection (a)—

(A) if such individual is a highly compensated employee (within the meaning of section 414(q)), he shall be treated as having such capacity with respect to such American employer; and

(B) the determination of whether such individual is a highly compensated employee (as so defined) shall be made by treating such individual's total compensation (determined with the application of paragraph (2) of this subsection) as compensation paid by such American employer and by determining such individual's status with regard to such American employer.

(2) Determination of compensation

For purposes of applying paragraph (5) of section 401(a) with respect to an individual who is treated as an employee of an American employer under subsection (a)—

(A) the total compensation of such individual shall be the remuneration paid to such individual by the foreign affiliate which would constitute his total compensation if his services had been performed for such American employer, and the basic or regular rate of compensation of such individual shall be determined under regulations prescribed by the Secretary; and

(B) such individual shall be treated as having paid the amount paid by such American employer which is equivalent to the tax imposed by section 3101.

[(c) Repealed. Pub. L. 104–188, title I, §1401(b)(7), Aug. 20, 1996, 110 Stat. 1789]

(d) Deductibility of contributions

For purposes of applying section 404 with respect to contributions made to or under a pension, profit-sharing, stock bonus, or annuity plan by an American employer, or by another taxpayer which is entitled to deduct its contributions under section 404(a)(3)(B), on behalf of an individual who is treated as an employee of such American employer under subsection (a)—

(1) except as provided in paragraph (2), no deduction shall be allowed to such American employer or to any other taxpayer which is entitled to deduct its contributions under such sections,

(2) there shall be allowed as a deduction to the foreign affiliate of which such individual is an employee an amount equal to the amount which (but for paragraph (1)) would be deductible under section 404 by the American employer if he were an employee of the American employer, and

(3) any reference to compensation shall be considered to be a reference to the total compensation of such individual (determined with the application of subsection (b)(2)).

Any amount deductible by a foreign affiliate under this subsection shall be deductible for its taxable year with or within which the taxable year of such American employer ends.

(e) Treatment as employee under related provisions

An individual who is treated as an employee of an American employer under subsection (a) shall

also be treated as an employee of such American employer, with respect to the plan described in subsection (a)(2), for purposes of applying the following provisions of this title:

(1) Section 72(f) (relating to special rules for computing employees' contributions).

(2) Section 2039 (relating to annuities).

(Added Pub. L. 88–272, title II, §220(a), Feb. 26, 1964, 78 Stat. 58; amended Pub. L. 91–172, title V, §515(c)(2), Dec. 30, 1969, 83 Stat. 645; Pub. L. 93–406, title II, §§1016(a)(4), 2005(c)(12), Sept. 2, 1974, 88 Stat. 929, 992; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–21, title III, §321(c), (e)(2)(A)–(D)(i), Apr. 20, 1983, 97 Stat. 119, 120; Pub. L. 98–369, div. A, title IV, §491(d)(13)–(15), July 18, 1984, 98 Stat. 849; Pub. L. 99–514, title XI, §§1112(d)(3), 1114(b)(9)(A), (C), title XVIII, §1852(e)(2)(C), Oct. 22, 1986, 100 Stat. 2445, 2451, 2868; Pub. L. 100–647, title I, §1011A(b)(1)(C), (16), Nov. 10, 1988, 102 Stat. 3472, 3475; Pub. L. 101–239, title VII, §§7811(g)(3), 7831(f), title X, §10201(b)(1), (2), Dec. 19, 1989, 103 Stat. 2409, 2427, 2472; Pub. L. 102–318, title V, §521(b)(14), July 3, 1992, 106 Stat. 311; Pub. L. 104–188, title I, §§1401(b)(7), 1402(b)(2), Aug. 20, 1996, 110 Stat. 1789, 1790.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–188, §1401(b)(7), struck out subsec. (c) which related to treatment of termination of status as deemed employee.

Subsec. (e)(2), (3). Pub. L. 104–188, §1402(b)(2), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: "Section 101(b) (relating to employees' death benefits)."

1992—Subsec. (c). Pub. L. 102–318 substituted "402(d)" for "402(e)".

1989—Subsec. (a). Pub. L. 101–239, §10201(b)(1), substituted "3121(l)(6)" for "3121(l)(8)".

Subsec. (b)(1)(A). Pub. L. 101–239, §7831(f), made technical correction to Pub. L. 99–514, §1114(b)(9)(A), see 1986 Amendment note below.

Subsec. (c). Pub. L. 101–239, §7811(g)(3), substituted "purposes of limitation" for "purposes limitation" in heading.

Subsec. (c)(3). Pub. L. 101–239, §10201(b)(2), substituted "3121(l)(6)(B)" for "3121(l)(8)(B)".

1988—Subsec. (c). Pub. L. 100–647, §1011A(b)(16), struck out "of capital gain provisions and" after "service for purposes" in heading and substituted "applying section 402(e)" for "applying subsections (a)(2) and (e) of section 402, and section 403(a)(2)" in text.

Subsec. (e). Pub. L. 100–647, §1011A(b)(1)(C), redesignated pars. (2) to (4) as (1) to (3), respectively, and struck out former par. (1) which read as follows: "Section 72(d) (relating to employees' annuities)."

1986—Subsec. (b)(1). Pub. L. 99–514, §1112(d)(3), struck out "(without regard to paragraph (1)(A) thereof)" after "section 410(b)" in introductory text.

Subsec. (b)(1)(A). Pub. L. 99–514, §1114(b)(9)(A), as amended by Pub. L. 101–239, §7831(f), substituted "a highly compensated employee (within the meaning of section 414(q))" for "an officer, shareholder, or person whose principal duties consist in supervising the work of other employees of a foreign affiliate of such American employer".

Subsec. (b)(1)(B). Pub. L. 99–514, §1114(b)(9)(C), inserted "(as so defined)" after "employee".

Subsec. (e)(5). Pub. L. 99–514, §1852(e)(2)(C), struck out par. (5) which read as follows: "Section 2517 (relating to certain annuities under qualified plans)."

1984—Subsec. (a). Pub. L. 98–369, §491(d)(13), substituted in introductory provision "or an annuity plan described in section 403(a)" for ", an annuity plan described in section 403(a), or a bond purchase plan described in section 405(a)".

Subsec. (a)(3). Pub. L. 98–369, §491(d)(14), substituted "or 403(a)" for ", 403(a), or 405(a)".

Subsec. (d). Pub. L. 98–369, §491(d)(15)(A), (B), substituted in introductory provision "section 404" for "sections 404 and 405(c)", and "or annuity" for "annuity, or bond purchase".

Subsec. (d)(2). Pub. L. 98–369, §491(d)(15)(C), struck out "(or section 405(c))" after "section 404".

1983—Pub. L. 98–21, §321(e)(2)(D)(i), substituted "Employees of foreign affiliates covered by section 3121(l) agreements" for "Certain employees of foreign subsidiaries" in section catchline.

Subsec. (a). Pub. L. 98–21, §321(c), amended subsec. (a) generally, substituting "American employer" for "domestic corporation" in heading and in text wherever appearing, inserting reference to section 3121(h) of this title, inserting "or resident" after "citizen" wherever appearing, substituting "foreign affiliate" for "foreign subsidiary" wherever appearing, and "foreign affiliates" for "foreign subsidiaries".

Subsec. (b). Pub. L. 98–21, §321(e)(2)(A), substituted reference to an American employer for reference to a domestic corporation, and reference to an affiliate for reference to a subsidiary, wherever appearing.

Subsec. (c). Pub. L. 98–21, §321(e)(2)(A), substituted reference to an American employer for reference to a

domestic corporation, and reference to an affiliate for reference to a subsidiary, wherever appearing in provisions preceding par. (1) and in pars. (1) and (2).

Subsec. (c)(3). Pub. L. 98–21, §321(e)(2)(A), (B), substituted "foreign affiliate by reason of which he is treated as an employee of such American employer, if he becomes an employee of another entity in which such American employer has not less than a 10-percent interest (within the meaning of section 3121(l)(8)(B)" for "foreign subsidiary by reason of which he is treated as an employee of such domestic corporation, if he becomes an employee of another corporation controlled by such domestic corporation".

Subsec. (d). Pub. L. 98–21, §321(e)(2)(A), (C), substituted references to an American employer for references to a domestic corporation and reference to an affiliate for a reference to a subsidiary wherever appearing, substituted "another taxpayer" for "another corporation" in provisions preceding par. (1), and substituted "any other taxpayer" for "any other corporation" in par. (1).

Subsec. (e). Pub. L. 98–21, §321(e)(2)(A), substituted reference to an American employer for reference to a domestic corporation wherever appearing in provisions preceding par. (1).

1976—Subsec. (b)(2)(A). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

1974—Subsec. (b)(1). Pub. L. 93–406, §1016(a)(4), substituted "section 401(a)(4) and section 410(b) (without regard to paragraph (1)(A) thereof)" for "paragraphs (3)(B) and (4) of section 401(a)".

Subsec. (c). Pub. L. 93–406, §2005(c)(12), substituted "subsections (a)(2) and (e) of section 402" for "section 72(n), section 402(a)(2)".

1969—Subsec. (c). Pub. L. 91–172 substituted "provisions and limitation of tax" for "provisions" in heading, and substituted "section 72(n), section 402(a)(2)," for "section 402(a)(2)" in text.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1401(b)(7) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1999, with retention of certain transition rules, see section 1401(c) of Pub. L. 104–188, set out as a note under section 402 of this title.

Amendment by section 1402(b)(2) of Pub. L. 104–188 applicable with respect to decedents dying after Aug. 20, 1996, see section 1402(c) of Pub. L. 104–188, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102–318, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7811(g)(3) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

Amendment by section 7831(f) of Pub. L. 101–239 effective as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 7831(g) of Pub. L. 101–239, set out as a note under section 1 of this title.

Pub. L. 101–239, title X, §10201(c), Dec. 19, 1989, 103 Stat. 2472, provided that: "The amendments made by this section [amending this section, section 3121 of this title, and section 410 of Title 42, The Public Health and Welfare] shall apply with respect to any agreement in effect under section 3121(l) of the Internal Revenue Code of 1986 on or after June 15, 1989, with respect to which no notice of termination is in effect on such date."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1112(d)(3) of Pub. L. 99–514 applicable to plan years beginning after Dec. 31, 1988, with special rule regarding collective bargaining agreements ratified before Mar. 1, 1986, and with provision for waiver of excise tax on reversions, see section 1112(e) of Pub. L. 99–514, set out as a note under section 401 of this title.

Amendment by section 1114(b)(9)(A), (C) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1988, see section 1114(c)(3) of Pub. L. 99–514, set out as a note under section 414 of this title.

Pub. L. 99–514, title XVIII, §1852(e)(2)(E), Oct. 22, 1986, 100 Stat. 2868, provided that: "The amendments

made by this paragraph [amending this section and section 407 of this title and repealing section 2517 of this title] shall apply to transfers after the date of the enactment of this Act [Oct. 22, 1986]."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 98–21, title III, §321(f), Apr. 20, 1983, 97 Stat. 120, provided that:

"(1)(A) The amendments made by this section [amending this section and sections 407, 1402, 3121, and 6413 of this title and section 410 of Title 42, The Public Health and Welfare] (other than subsection (d) [amending section 407 of this title]) shall apply to agreements entered into after the date of the enactment of this Act [Apr. 20, 1983].

"(B) At the election of any American employer, the amendments made by this section (other than subsection (d)) shall also apply to any agreement entered into on or before the date of the enactment of this Act. Any such election shall be made at such time and in such manner as the Secretary may by regulations prescribe.

"(2)(A) The amendments made by subsection (d) [amending section 407 of this title] shall apply to plans established after the date of the enactment of this Act [Apr. 20, 1983].

"(B) At the election of any domestic parent corporation the amendments made by subsection (d) shall also apply to any plan established on or before the date of the enactment of this Act. Any such election shall be made at such time and in such manner as the Secretary may by regulations prescribe."

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by section 1016(a)(4) of Pub. L. 93–406 applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93–406, for plan years beginning after Sept. 2, 1974, but, in the case of plans in existence on Jan. 1, 1974, amendment by Pub. L. 93–406 applicable for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93–406, set out as an Effective Date; Transition of Rules note under section 410 of this title.

Amendment by section 2005(c)(12) of Pub. L. 93–406 applicable only with respect to distributions or payments made after Dec. 31, 1973, in taxable years beginning after Dec. 31, 1973, see section 2005(d) of Pub. L. 93–406, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years ending after Dec. 31, 1969, see section 515(d) of Pub. L. 91–172, set out as a note under section 402 of this title.

EFFECTIVE DATE

Pub. L. 88–272, title II, §220(d), Feb. 26, 1964, 78 Stat. 63, provided that: "The amendments made by subsections (a) [enacting this section], (b) [enacting section 407 of this title], and (c)(1) [amending the analysis preceding section 401 of this title] shall apply to taxable years ending after December 31, 1963. The amendments made by subsections (c)(2) [amending section 3121 of this title] and (3) [amending section 409 of Title 42, The Public Health and Welfare] shall apply to remuneration paid after December 31, 1962."

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by sections 1112 and 1114 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§1401–1465] of title I of Pub. L. 104–188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§407. Certain employees of domestic subsidiaries engaged in business outside the United States

(a) Treatment as employees of domestic parent corporation

(1) In general

For purposes of applying this part with respect to a pension, profit-sharing, or stock bonus plan described in section 401(a) or an annuity plan described in section 403(a), of a domestic parent corporation, an individual who is a citizen or resident of the United States and who is an employee of a domestic subsidiary (within the meaning of paragraph (2)) of such domestic parent corporation shall be treated as an employee of such domestic parent corporation, if—

(A) the plan of such domestic parent corporation expressly provides for contributions or benefits for individuals who are citizens or residents of the United States and who are employees of its domestic subsidiaries; and

(B) contributions under a funded plan of deferred compensation (whether or not a plan described in section 401(a) or 403(a)) are not provided by any other person with respect to the remuneration paid to such individual by the domestic subsidiary.

(2) Definitions

For purposes of this section—

(A) Domestic subsidiary

A corporation shall be treated as a domestic subsidiary for any taxable year only if—

(i) such corporation is a domestic corporation 80 percent or more of the outstanding voting stock of which is owned by another domestic corporation;

(ii) 95 percent or more of its gross income for the three-year period immediately preceding the close of its taxable year which ends on or before the close of the taxable year of such other domestic corporation (or for such part of such period during which the corporation was in existence), was derived from sources without the United States; and

(iii) 90 percent or more of its gross income for such period (or such part) was derived from the active conduct of a trade or business.

If for the period (or part thereof) referred to in clauses (ii) and (iii) such corporation has no gross income, the provisions of clauses (ii) and (iii) shall be treated as satisfied if it is reasonable to anticipate that, with respect to the first taxable year thereafter for which such corporation has gross income, the provisions of such clauses will be satisfied.

(B) Domestic parent corporation

The domestic parent corporation of any domestic subsidiary is the domestic corporation which owns 80 percent or more of the outstanding voting stock of such domestic subsidiary.

(b) Special rules for application of section 401(a)

(1) Nondiscrimination requirements

For purposes of applying section 401(a)(4) and section 410(b) with respect to an individual who is treated as an employee of a domestic parent corporation under subsection (a)—

(A) if such individual is a highly compensated employee (within the meaning of section 414(q)), he shall be treated as having such capacity with respect to such domestic parent corporation; and

(B) the determination of whether such individual is a highly compensated employee (as so defined) shall be made by treating such individual's total compensation (determined with the application of paragraph (2) of this subsection) as compensation paid by such domestic parent corporation and by determining such individual's status with regard to such domestic parent corporation.

(2) Determination of compensation

For purposes of applying paragraph (5) of section 401(a) with respect to an individual who is treated as an employee of a domestic parent corporation under subsection (a), the total compensation of such individual shall be the remuneration paid to such individual by the domestic subsidiary which would constitute his total compensation if his services had been performed for such domestic parent corporation, and the basic or regular rate of compensation of such individual shall be determined under regulations prescribed by the Secretary.

[(c) Repealed. Pub. L. 104–188, title I, §1401(b)(8), Aug. 20, 1996, 110 Stat. 1789]

(d) Deductibility of contributions

For purposes of applying section 404 with respect to contributions made to or under a pension, profit-sharing, stock bonus, or annuity plan by a domestic parent corporation, or by another corporation which is entitled to deduct its contributions under section 404(a)(3)(B), on behalf of an individual who is treated as an employee of such domestic corporation under subsection (a)—

(1) except as provided in paragraph (2), no deduction shall be allowed to such domestic parent corporation or to any other corporation which is entitled to deduct its contributions under such sections,

(2) there shall be allowed as a deduction to the domestic subsidiary of which such individual is an employee an amount equal to the amount which (but for paragraph (1)) would be deductible under section 404 by the domestic parent corporation if he were an employee of the domestic parent corporation, and

(3) any reference to compensation shall be considered to be a reference to the total compensation of such individual (determined with the application of subsection (b)(2)).

Any amount deductible by a domestic subsidiary under this subsection shall be deductible for its taxable year with or within which the taxable year of such domestic parent corporation ends.

(e) Treatment as employee under related provisions

An individual who is treated as an employee of a domestic parent corporation under subsection (a) shall also be treated as an employee of such domestic parent corporation, with respect to the plan described in subsection (a)(1)(A), for purposes of applying the following provisions of this title:

(1) Section 72(f) (relating to special rules for computing employees' contributions).

(2) Section 2039 (relating to annuities).

(Added Pub. L. 88–272, title II, §220(b), Feb. 26, 1964, 78 Stat. 60; amended Pub. L. 91–172, title V, §515(c)(3), Dec. 30, 1969, 83 Stat. 646; Pub. L. 93–406, title II, §§1016(a)(5), 2005(c)(13), Sept. 2, 1974, 88 Stat. 929, 992; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–21, title III, §321(d), Apr. 20, 1983, 97 Stat. 119; Pub. L. 98–369, div. A, title IV, §491(d)(16)–(18), July 18, 1984, 98 Stat. 850; Pub. L. 99–514, title XI, §§1112(d)(3), 1114(b)(9)(B), (C), title XVIII, §1852(e)(2)(D), Oct. 22, 1986, 100 Stat. 2445, 2451, 2868; Pub. L. 100–647, title I, §1011A(b)(1)(C), (16), Nov. 10, 1988, 102 Stat. 3472, 3475; Pub. L. 101–239, title VII, §§7811(g)(3), 7831(f), Dec. 19, 1989, 103 Stat. 2409, 2427; Pub. L. 102–318, title V, §521(b)(15), July 3, 1992, 106 Stat. 311; Pub. L. 104–188, title I, §§1401(b)(8), 1402(b)(2), Aug. 20, 1996, 110 Stat. 1789, 1790.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–188, §1401(b)(8), struck out subsec. (c) which related to treatment of termination of status as deemed employee.

Subsec. (e)(2), (3). Pub. L. 104–188, §1402(b)(2), redesignated par. (3) as (2) and struck out former par. (2)

which read as follows: "Section 101(b) (relating to employees' death benefits)."

1992—Subsec. (c). Pub. L. 102–318 substituted "402(d)" for "402(e)".

1989—Subsec. (b)(1)(A). Pub. L. 101–239, §7831(f), made technical correction to Pub. L. 99–514, §1114(b)(9)(B), see 1986 Amendment note below.

Subsec. (c). Pub. L. 101–239, §7811(g)(3), substituted "purposes of limitation" for "purposes limitation" in heading.

1988—Subsec. (c). Pub. L. 100–647, §1011A(b)(16), struck out "of capital gain provisions and" after "service for purposes" in heading and substituted "applying section 402(e)" for "applying subsections (a)(2) and (e) of section 402, and section 403(a)(2)" in text.

Subsec. (e). Pub. L. 100–647, §1011A(b)(1)(C), redesignated pars. (2) to (4) as (1) to (3), respectively, and struck out former par. (1) which read as follows: "Section 72(d) (relating to employees' annuities)."

1986—Subsec. (b)(1). Pub. L. 99–514, §1112(d)(3), struck out "(without regard to paragraph (1)(A) thereof)" after "section 410(b)" in introductory text.

Subsec. (b)(1)(A). Pub. L. 99–514, §1114(b)(9)(B), as amended by Pub. L. 101–239, §7831(f), substituted "a highly compensated employee (within the meaning of section 414(q))" for "an officer, shareholder, or person whose principal duties consist in supervising the work of other employees of a domestic subsidiary".

Subsec. (b)(1)(B). Pub. L. 99–514, §1114(b)(9)(C), inserted "(as so defined)" after "employee".

Subsec. (e)(5). Pub. L. 99–514, §1852(e)(2)(D), struck out par. (5) which read as follows: "Section 2517 (relating to certain annuities under qualified plans)."

1984—Subsec. (a)(1). Pub. L. 98–369, §491(d)(16), substituted "or an annuity plan described in section 403(a)" for ", an annuity plan described in section 403(a), or a bond purchase plan described in section 405(a)".

Subsec. (a)(1)(B). Pub. L. 98–369, §491(d)(17), substituted "or 403(a)" for ", 403(a), or 405(a)".

Subsec. (d). Pub. L. 98–369, §491(d)(18)(A), (B), substituted in introductory provision "section 404" for "sections 404 and 405(a)", and "or annuity" for "annuity, or bond purchase".

Subsec. (d)(2). Pub. L. 98–369, §491(d)(18)(C), struck out "(or section 405(c))" after "section 404".

1983—Subsec. (a)(1). Pub. L. 98–21 inserted "or resident" after "citizen", and inserted "or residents" after "citizens" in subpar. (A).

1976—Subsec. (b)(2). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

1974—Subsec. (b)(1). Pub. L. 93–406, §1016(a)(5), substituted "section 401(a)(4) and section 410(b) (without regard to paragraph (1)(A) thereof)" for "paragraphs (3)(B) and (4) of section 401(a)".

Subsec. (c). Pub. L. 93–406, §2005(c)(13), substituted "subsections (a)(2) and (e) of section 402" for "section 72(n), section 402(a)(2)".

1969—Subsec. (c). Pub. L. 91–172 substituted "provisions and limitation of tax" for "provisions" in heading, and substituted "section 72(n), section 402(a)(2)," for "section 402(a)(2)" in text.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1401(b)(8) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1999, with retention of certain transition rules, see section 1401(c) of Pub. L. 104–188, set out as a note under section 402 of this title.

Amendment by section 1402(b)(2) of Pub. L. 104–188 applicable with respect to decedents dying after Aug. 20, 1996, see section 1402(c) of Pub. L. 104–188, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102–318, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7811(g)(3) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

Amendment by section 7831(f) of Pub. L. 101–239 effective as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 7831(g) of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L.

100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1112(d)(3) of Pub. L. 99–514 applicable to plan years beginning after Dec. 31, 1988, with special rule regarding collective bargaining agreements ratified before Mar. 1, 1986, and with provision for waiver of excise tax on reversions, see section 1112(e) of Pub. L. 99–514, set out as a note under section 401 of this title.

Amendment by section 1114(b)(9)(B), (C) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1988, see section 1114(c)(3) of Pub. L. 99–514, set out as a note under section 414 of this title.

Amendment by section 1852(e)(2)(D) of Pub. L. 99–514 applicable to transfers after Oct. 22, 1986, see section 1852(e)(2)(E) of Pub. L. 99–514, set out as a note under section 406 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable to plans established after Apr. 20, 1983, except that at the election of any domestic parent corporation such amendment shall also apply to any plan established on or before Apr. 20, 1983, see section 321(f) of Pub. L. 98–21 set out as a note under section 406 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by section 1016(a)(5) of Pub. L. 93–406 applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93–406, for plan years beginning after Sept. 2, 1974, but, in the case of plans in existence on Jan. 1, 1974, amendment by Pub. L. 93–406 applicable for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93–406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

Amendment by section 2005(c)(13) of Pub. L. 93–406 applicable only with respect to distributions or payments made after Dec. 31, 1973, in taxable years beginning after Dec. 31, 1973, see section 2005(d) of Pub. L. 93–406, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years ending after Dec. 31, 1969, see section 515(d) of Pub. L. 91–172, set out as a note under section 402 of this title.

EFFECTIVE DATE

Section applicable to taxable years ending after Dec. 31, 1963, see section 220(d) of Pub. L. 88–272, set out as a note under section 406 of this title.

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by sections 1112 and 1114 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§1401–1465] of title I of Pub. L. 104–188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989,

see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§408. Individual retirement accounts

(a) Individual retirement account

For purposes of this section, the term "individual retirement account" means a trust created or organized in the United States for the exclusive benefit of an individual or his beneficiaries, but only if the written governing instrument creating the trust meets the following requirements:

(1) Except in the case of a rollover contribution described in subsection (d)(3) in [1] section 402(c), 403(a)(4), 403(b)(8), or 457(e)(16), no contribution will be accepted unless it is in cash, and contributions will not be accepted for the taxable year on behalf of any individual in excess of the amount in effect for such taxable year under section 219(b)(1)(A).

(2) The trustee is a bank (as defined in subsection (n)) or such other person who demonstrates to the satisfaction of the Secretary that the manner in which such other person will administer the trust will be consistent with the requirements of this section.

(3) No part of the trust funds will be invested in life insurance contracts.

(4) The interest of an individual in the balance in his account is nonforfeitable.

(5) The assets of the trust will not be commingled with other property except in a common trust fund or common investment fund.

(6) Under regulations prescribed by the Secretary, rules similar to the rules of section 401(a)(9) and the incidental death benefit requirements of section 401(a) shall apply to the distribution of the entire interest of an individual for whose benefit the trust is maintained.

(b) Individual retirement annuity

For purposes of this section, the term "individual retirement annuity" means an annuity contract, or an endowment contract (as determined under regulations prescribed by the Secretary), issued by an insurance company which meets the following requirements:

(1) The contract is not transferable by the owner.

(2) Under the contract—

(A) the premiums are not fixed,

(B) the annual premium on behalf of any individual will not exceed the dollar amount in effect under section 219(b)(1)(A), and

(C) any refund of premiums will be applied before the close of the calendar year following the year of the refund toward the payment of future premiums or the purchase of additional benefits.

(3) Under regulations prescribed by the Secretary, rules similar to the rules of section 401(a)(9) and the incidental death benefit requirements of section 401(a) shall apply to the distribution of the entire interest of the owner.

(4) The entire interest of the owner is nonforfeitable.

Such term does not include such an annuity contract for any taxable year of the owner in which it is disqualified on the application of subsection (e) or for any subsequent taxable year. For purposes of this subsection, no contract shall be treated as an endowment contract if it matures later than the taxable year in which the individual in whose name such contract is purchased attains age 70½; if it is not for the exclusive benefit of the individual in whose name it is purchased or his beneficiaries; or if the aggregate annual premiums under all such contracts purchased in the name of such individual for any taxable year exceed the dollar amount in effect under section 219(b)(1)(A).

(c) Accounts established by employers and certain associations of employees

A trust created or organized in the United States by an employer for the exclusive benefit of his employees or their beneficiaries, or by an association of employees (which may include employees within the meaning of section 401(c)(1)) for the exclusive benefit of its members or their

beneficiaries, shall be treated as an individual retirement account (described in subsection (a)), but only if the written governing instrument creating the trust meets the following requirements:

(1) The trust satisfies the requirements of paragraphs (1) through (6) of subsection (a).

(2) There is a separate accounting for the interest of each employee or member (or spouse of an employee or member).

The assets of the trust may be held in a common fund for the account of all individuals who have an interest in the trust.

(d) Tax treatment of distributions

(1) In general

Except as otherwise provided in this subsection, any amount paid or distributed out of an individual retirement plan shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72.

(2) Special rules for applying section 72

For purposes of applying section 72 to any amount described in paragraph (1)—

(A) all individual retirement plans shall be treated as 1 contract,

(B) all distributions during any taxable year shall be treated as 1 distribution, and

(C) the value of the contract, income on the contract, and investment in the contract shall be computed as of the close of the calendar year in which the taxable year begins.

For purposes of subparagraph (C), the value of the contract shall be increased by the amount of any distributions during the calendar year.

(3) Rollover contribution

An amount is described in this paragraph as a rollover contribution if it meets the requirements of subparagraphs (A) and (B).

(A) In general

Paragraph (1) does not apply to any amount paid or distributed out of an individual retirement account or individual retirement annuity to the individual for whose benefit the account or annuity is maintained if—

(i) the entire amount received (including money and any other property) is paid into an individual retirement account or individual retirement annuity (other than an endowment contract) for the benefit of such individual not later than the 60th day after the day on which he receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to this paragraph).

For purposes of clause (ii), the term "eligible retirement plan" means an eligible retirement plan described in clause (iii), (iv), (v), or (vi) of section 402(c)(8)(B).

(B) Limitation

This paragraph does not apply to any amount described in subparagraph (A)(i) received by an individual from an individual retirement account or individual retirement annuity if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in that subparagraph from an individual retirement account or an individual retirement annuity which was not includible in his gross income because of the application of this paragraph.

(C) Denial of rollover treatment for inherited accounts, etc.

(i) In general

In the case of an inherited individual retirement account or individual retirement annuity—

(I) this paragraph shall not apply to any amount received by an individual from such an account or annuity (and no amount transferred from such account or annuity to another individual retirement account or annuity shall be excluded from gross income by reason of such transfer), and

(II) such inherited account or annuity shall not be treated as an individual retirement account or annuity for purposes of determining whether any other amount is a rollover contribution.

(ii) Inherited individual retirement account or annuity

An individual retirement account or individual retirement annuity shall be treated as inherited if—

(I) the individual for whose benefit the account or annuity is maintained acquired such account by reason of the death of another individual, and

(II) such individual was not the surviving spouse of such other individual.

(D) Partial rollovers permitted

(i) In general

If any amount paid or distributed out of an individual retirement account or individual retirement annuity would meet the requirements of subparagraph (A) but for the fact that the entire amount was not paid into an eligible plan as required by clause (i) or (ii) of subparagraph (A), such amount shall be treated as meeting the requirements of subparagraph (A) to the extent it is paid into an eligible plan referred to in such clause not later than the 60th day referred to in such clause.

(ii) Eligible plan

For purposes of clause (i), the term "eligible plan" means any account, annuity, contract, or plan referred to in subparagraph (A).

(E) Denial of rollover treatment for required distributions

This paragraph shall not apply to any amount to the extent such amount is required to be distributed under subsection (a)(6) or (b)(3).

(F) Frozen deposits

For purposes of this paragraph, rules similar to the rules of section 402(c)(7) (relating to frozen deposits) shall apply.

(G) Simple retirement accounts

In the case of any payment or distribution out of a simple retirement account (as defined in subsection (p)) to which section 72(t)(6) applies, this paragraph shall not apply unless such payment or distribution is paid into another simple retirement account.

(H) Application of section 72

(i) In general

If—

(I) a distribution is made from an individual retirement plan, and

(II) a rollover contribution is made to an eligible retirement plan described in section 402(c)(8)(B)(iii), (iv), (v), or (vi) with respect to all or part of such distribution,

then, notwithstanding paragraph (2), the rules of clause (ii) shall apply for purposes of applying section 72.

(ii) Applicable rules

In the case of a distribution described in clause (i)—

(I) section 72 shall be applied separately to such distribution,

(II) notwithstanding the pro rata allocation of income on, and investment in, the contract to distributions under section 72, the portion of such distribution rolled over to an eligible retirement plan described in clause (i) shall be treated as from income on the contract (to the extent of the aggregate income on the contract from all individual retirement plans of the distributee), and

(III) appropriate adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.

(I) Waiver of 60-day requirement

The Secretary may waive the 60-day requirement under subparagraphs (A) and (D) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement.

(4) Contributions returned before due date of return

Paragraph (1) does not apply to the distribution of any contribution paid during a taxable year to an individual retirement account or for an individual retirement annuity if—

(A) such distribution is received on or before the day prescribed by law (including extensions of time) for filing such individual's return for such taxable year,

(B) no deduction is allowed under section 219 with respect to such contribution, and

(C) such distribution is accompanied by the amount of net income attributable to such contribution.

In the case of such a distribution, for purposes of section 61, any net income described in subparagraph (C) shall be deemed to have been earned and receivable in the taxable year in which such contribution is made.

(5) Distributions of excess contributions after due date for taxable year and certain excess rollover contributions

(A) In general

In the case of any individual, if the aggregate contributions (other than rollover contributions) paid for any taxable year to an individual retirement account or for an individual retirement annuity do not exceed the dollar amount in effect under section 219(b)(1)(A), paragraph (1) shall not apply to the distribution of any such contribution to the extent that such contribution exceeds the amount allowable as a deduction under section 219 for the taxable year for which the contribution was paid—

(i) if such distribution is received after the date described in paragraph (4),

(ii) but only to the extent that no deduction has been allowed under section 219 with respect to such excess contribution.

If employer contributions on behalf of the individual are paid for the taxable year to a simplified employee pension, the dollar limitation of the preceding sentence shall be increased by the lesser of the amount of such contributions or the dollar limitation in effect under section 415(c)(1)(A) for such taxable year.

(B) Excess rollover contributions attributable to erroneous information

If—

(i) the taxpayer reasonably relies on information supplied pursuant to subtitle F for determining the amount of a rollover contribution, but

(ii) the information was erroneous,

subparagraph (A) shall be applied by increasing the dollar limit set forth therein by that portion of the excess contribution which was attributable to such information.

For purposes of this paragraph, the amount allowable as a deduction under section 219 shall be computed without regard to section 219(g).

(6) Transfer of account incident to divorce

The transfer of an individual's interest in an individual retirement account or an individual retirement annuity to his spouse or former spouse under a divorce or separation instrument described in subparagraph (A) of section 71(b)(2) is not to be considered a taxable transfer made by such individual notwithstanding any other provision of this subtitle, and such interest at the time of the transfer is to be treated as an individual retirement account of such spouse, and not of such individual. Thereafter such account or annuity for purposes of this subtitle is to be treated as maintained for the benefit of such spouse.

(7) Special rules for simplified employee pensions or simple retirement accounts

(A) Transfer or rollover of contributions prohibited until deferral test met

Notwithstanding any other provision of this subsection or section 72(t), paragraph (1) and section 72(t)(1) shall apply to the transfer or distribution from a simplified employee pension of any contribution under a salary reduction arrangement described in subsection (k)(6) (or any income allocable thereto) before a determination as to whether the requirements of subsection (k)(6)(A)(iii) are met with respect to such contribution.

(B) Certain exclusions treated as deductions

For purposes of paragraphs (4) and (5) and section 4973, any amount excludable or excluded from gross income under section 402(h) or 402(k) shall be treated as an amount allowable or allowed as a deduction under section 219.

(8) Distributions for charitable purposes

(A) In general

So much of the aggregate amount of qualified charitable distributions with respect to a taxpayer made during any taxable year which does not exceed $100,000 shall not be includible in gross income of such taxpayer for such taxable year.

(B) Qualified charitable distribution

For purposes of this paragraph, the term "qualified charitable distribution" means any distribution from an individual retirement plan (other than a plan described in subsection (k) or (p))—

(i) which is made directly by the trustee to an organization described in section 170(b)(1)(A) (other than any organization described in section 509(a)(3) or any fund or account described in section 4966(d)(2)), and

(ii) which is made on or after the date that the individual for whose benefit the plan is maintained has attained age 70½.

A distribution shall be treated as a qualified charitable distribution only to the extent that the distribution would be includible in gross income without regard to subparagraph (A).

(C) Contributions must be otherwise deductible

For purposes of this paragraph, a distribution to an organization described in subparagraph (B)(i) shall be treated as a qualified charitable distribution only if a deduction for the entire distribution would be allowable under section 170 (determined without regard to subsection (b) thereof and this paragraph).

(D) Application of section 72

Notwithstanding section 72, in determining the extent to which a distribution is a qualified charitable distribution, the entire amount of the distribution shall be treated as includible in gross income without regard to subparagraph (A) to the extent that such amount does not

exceed the aggregate amount which would have been so includible if all amounts in all individual retirement plans of the individual were distributed during such taxable year and all such plans were treated as 1 contract for purposes of determining under section 72 the aggregate amount which would have been so includible. Proper adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.

(E) Denial of deduction

Qualified charitable distributions which are not includible in gross income pursuant to subparagraph (A) shall not be taken into account in determining the deduction under section 170.

(F) Termination

This paragraph shall not apply to distributions made in taxable years beginning after December 31, 2013.

(9) Distribution for health savings account funding

(A) In general

In the case of an individual who is an eligible individual (as defined in section 223(c)) and who elects the application of this paragraph for a taxable year, gross income of the individual for the taxable year does not include a qualified HSA funding distribution to the extent such distribution is otherwise includible in gross income.

(B) Qualified HSA funding distribution

For purposes of this paragraph, the term "qualified HSA funding distribution" means a distribution from an individual retirement plan (other than a plan described in subsection (k) or (p)) of the employee to the extent that such distribution is contributed to the health savings account of the individual in a direct trustee-to-trustee transfer.

(C) Limitations

(i) Maximum dollar limitation

The amount excluded from gross income by subparagraph (A) shall not exceed the excess of—

(I) the annual limitation under section 223(b) computed on the basis of the type of coverage under the high deductible health plan covering the individual at the time of the qualified HSA funding distribution, over

(II) in the case of a distribution described in clause (ii)(II), the amount of the earlier qualified HSA funding distribution.

(ii) One-time transfer

(I) In general

Except as provided in subclause (II), an individual may make an election under subparagraph (A) only for one qualified HSA funding distribution during the lifetime of the individual. Such an election, once made, shall be irrevocable.

(II) Conversion from self-only to family coverage

If a qualified HSA funding distribution is made during a month in a taxable year during which an individual has self-only coverage under a high deductible health plan as of the first day of the month, the individual may elect to make an additional qualified HSA funding distribution during a subsequent month in such taxable year during which the individual has family coverage under a high deductible health plan as of the first day of the subsequent month.

(D) Failure to maintain high deductible health plan coverage

(i) In general

If, at any time during the testing period, the individual is not an eligible individual, then the

aggregate amount of all contributions to the health savings account of the individual made under subparagraph (A)—

(I) shall be includible in the gross income of the individual for the taxable year in which occurs the first month in the testing period for which such individual is not an eligible individual, and

(II) the tax imposed by this chapter for any taxable year on the individual shall be increased by 10 percent of the amount which is so includible.

(ii) Exception for disability or death

Subclauses (I) and (II) of clause (i) shall not apply if the individual ceased to be an eligible individual by reason of the death of the individual or the individual becoming disabled (within the meaning of section 72(m)(7)).

(iii) Testing period

The term "testing period" means the period beginning with the month in which the qualified HSA funding distribution is contributed to a health savings account and ending on the last day of the 12th month following such month.

(E) Application of section 72

Notwithstanding section 72, in determining the extent to which an amount is treated as otherwise includible in gross income for purposes of subparagraph (A), the aggregate amount distributed from an individual retirement plan shall be treated as includible in gross income to the extent that such amount does not exceed the aggregate amount which would have been so includible if all amounts from all individual retirement plans were distributed. Proper adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.

(e) Tax treatment of accounts and annuities

(1) Exemption from tax

Any individual retirement account is exempt from taxation under this subtitle unless such account has ceased to be an individual retirement account by reason of paragraph (2) or (3). Notwithstanding the preceding sentence, any such account is subject to the taxes imposed by section 511 (relating to imposition of tax on unrelated business income of charitable, etc. organizations).

(2) Loss of exemption of account where employee engages in prohibited transaction

(A) In general

If, during any taxable year of the individual for whose benefit any individual retirement account is established, that individual or his beneficiary engages in any transaction prohibited by section 4975 with respect to such account, such account ceases to be an individual retirement account as of the first day of such taxable year. For purposes of this paragraph—

(i) the individual for whose benefit any account was established is treated as the creator of such account, and

(ii) the separate account for any individual within an individual retirement account maintained by an employer or association of employees is treated as a separate individual retirement account.

(B) Account treated as distributing all its assets

In any case in which any account ceases to be an individual retirement account by reason of subparagraph (A) as of the first day of any taxable year, paragraph (1) of subsection (d) applies as if there were a distribution on such first day in an amount equal to the fair market value (on such first day) of all assets in the account (on such first day).

(3) Effect of borrowing on annuity contract

If during any taxable year the owner of an individual retirement annuity borrows any money

under or by use of such contract, the contract ceases to be an individual retirement annuity as of the first day of such taxable year. Such owner shall include in gross income for such year an amount equal to the fair market value of such contract as of such first day.

(4) Effect of pledging account as security

If, during any taxable year of the individual for whose benefit an individual retirement account is established, that individual uses the account or any portion thereof as security for a loan, the portion so used is treated as distributed to that individual.

(5) Purchase of endowment contract by individual retirement account

If the assets of an individual retirement account or any part of such assets are used to purchase an endowment contract for the benefit of the individual for whose benefit the account is established—

(A) to the extent that the amount of the assets involved in the purchase are not attributable to the purchase of life insurance, the purchase is treated as a rollover contribution described in subsection (d)(3), and

(B) to the extent that the amount of the assets involved in the purchase are attributable to the purchase of life, health, accident, or other insurance, such amounts are treated as distributed to that individual (but the provisions of subsection (f) do not apply).

(6) Commingling individual retirement account amounts in certain common trust funds and common investment funds

Any common trust fund or common investment fund of individual retirement account assets which is exempt from taxation under this subtitle does not cease to be exempt on account of the participation or inclusion of assets of a trust exempt from taxation under section 501(a) which is described in section 401(a).

[(f) Repealed. Pub. L. 99–514, title XI, §1123(d)(2), Oct. 22, 1986, 100 Stat. 2475]

(g) Community property laws

This section shall be applied without regard to any community property laws.

(h) Custodial accounts

For purposes of this section, a custodial account shall be treated as a trust if the assets of such account are held by a bank (as defined in subsection (n)) or another person who demonstrates, to the satisfaction of the Secretary, that the manner in which he will administer the account will be consistent with the requirements of this section, and if the custodial account would, except for the fact that it is not a trust, constitute an individual retirement account described in subsection (a). For purposes of this title, in the case of a custodial account treated as a trust by reason of the preceding sentence, the custodian of such account shall be treated as the trustee thereof.

(i) Reports

The trustee of an individual retirement account and the issuer of an endowment contract described in subsection (b) or an individual retirement annuity shall make such reports regarding such account, contract, or annuity to the Secretary and to the individuals for whom the account, contract, or annuity is, or is to be, maintained with respect to contributions (and the years to which they relate), distributions aggregating $10 or more in any calendar year, and such other matters as the Secretary may require. The reports required by this subsection—

(1) shall be filed at such time and in such manner as the Secretary prescribes, and

(2) shall be furnished to individuals—

(A) not later than January 31 of the calendar year following the calendar year to which such reports relate, and

(B) in such manner as the Secretary prescribes.

In the case of a simple retirement account under subsection (p), only one report under this subsection shall be required to be submitted each calendar year to the Secretary (at the time provided

under paragraph (2)) but, in addition to the report under this subsection, there shall be furnished, within 31 days after each calendar year, to the individual on whose behalf the account is maintained a statement with respect to the account balance as of the close of, and the account activity during, such calendar year.

(j) Increase in maximum limitations for simplified employee pensions

In the case of any simplified employee pension, subsections (a)(1) and (b)(2) of this section shall be applied by increasing the amounts contained therein by the amount of the limitation in effect under section 415(c)(1)(A).

(k) Simplified employee pension defined

(1) In general

For purposes of this title, the term "simplified employee pension" means an individual retirement account or individual retirement annuity—

(A) with respect to which the requirements of paragraphs (2), (3), (4), and (5) of this subsection are met, and

(B) if such account or annuity is part of a top-heavy plan (as defined in section 416), with respect to which the requirements of section 416(c)(2) are met.

(2) Participation requirements

This paragraph is satisfied with respect to a simplified employee pension for a year only if for such year the employer contributes to the simplified employee pension of each employee who—

(A) has attained age 21,

(B) has performed service for the employer during at least 3 of the immediately preceding 5 years, and

(C) received at least $450 in compensation (within the meaning of section 414(q)(4)) from the employer for the year.

For purposes of this paragraph, there shall be excluded from consideration employees described in subparagraph (A) or (C) of section 410(b)(3). For purposes of any arrangement described in subsection (k)(6), any employee who is eligible to have employer contributions made on the employee's behalf under such arrangement shall be treated as if such a contribution was made.

(3) Contributions may not discriminate in favor of the highly compensated, etc.

(A) In general

The requirements of this paragraph are met with respect to a simplified employee pension for a year if for such year the contributions made by the employer to simplified employee pensions for his employees do not discriminate in favor of any highly compensated employee (within the meaning of section 414(q)).

(B) Special rules

For purposes of subparagraph (A), there shall be excluded from consideration employees described in subparagraph (A) or (C) of section 410(b)(3).

(C) Contributions must bear uniform relationship to total compensation

For purposes of subparagraph (A), and except as provided in subparagraph (D), employer contributions to simplified employee pensions (other than contributions under an arrangement described in paragraph (6)) shall be considered discriminatory unless contributions thereto bear a uniform relationship to the compensation (not in excess of the first $200,000) of each employee maintaining a simplified employee pension.

(D) Permitted disparity

For purposes of subparagraph (C), the rules of section 401(l)(2) shall apply to contributions to simplified employee pensions (other than contributions under an arrangement described in paragraph (6)).

(4) Withdrawals must be permitted

A simplified employee pension meets the requirements of this paragraph only if—

(A) employer contributions thereto are not conditioned on the retention in such pension of any portion of the amount contributed, and

(B) there is no prohibition imposed by the employer on withdrawals from the simplified employee pension.

(5) Contributions must be made under written allocation formula

The requirements of this paragraph are met with respect to a simplified employee pension only if employer contributions to such pension are determined under a definite written allocation formula which specifies—

(A) the requirements which an employee must satisfy to share in an allocation, and

(B) the manner in which the amount allocated is computed.

(6) Employee may elect salary reduction arrangement

(A) Arrangements which qualify

(i) In general

A simplified employee pension shall not fail to meet the requirements of this subsection for a year merely because, under the terms of the pension, an employee may elect to have the employer make payments—

(I) as elective employer contributions to the simplified employee pension on behalf of the employee, or

(II) to the employee directly in cash.

(ii) 50 percent of eligible employees must elect

Clause (i) shall not apply to a simplified employee pension unless an election described in clause (i)(I) is made or is in effect with respect to not less than 50 percent of the employees of the employer eligible to participate.

(iii) Requirements relating to deferral percentage

Clause (i) shall not apply to a simplified employee pension for any year unless the deferral percentage for such year of each highly compensated employee eligible to participate is not more than the product of—

(I) the average of the deferral percentages for such year of all employees (other than highly compensated employees) eligible to participate, multiplied by

(II) 1.25.

(iv) Limitations on elective deferrals

Clause (i) shall not apply to a simplified employee pension unless the requirements of section 401(a)(30) are met.

(B) Exception where more than 25 employees

This paragraph shall not apply with respect to any year in the case of a simplified employee pension maintained by an employer with more than 25 employees who were eligible to participate (or would have been required to be eligible to participate if a pension was maintained) at any time during the preceding year.

(C) Distributions of excess contributions

(i) In general

Rules similar to the rules of section 401(k)(8) shall apply to any excess contribution under this paragraph. Any excess contribution under a simplified employee pension shall be treated as an excess contribution for purposes of section 4979.

(ii) Excess contribution

For purposes of clause (i), the term "excess contribution" means, with respect to a highly

compensated employee, the excess of elective employer contributions under this paragraph over the maximum amount of such contributions allowable under subparagraph (A)(iii).

(D) Deferral percentage

For purposes of this paragraph, the deferral percentage for an employee for a year shall be the ratio of—

(i) the amount of elective employer contributions actually paid over to the simplified employee pension on behalf of the employee for the year, to

(ii) the employee's compensation (not in excess of the first $200,000) for the year.

(E) Exception for State and local and tax-exempt pensions

This paragraph shall not apply to a simplified employee pension maintained by—

(i) a State or local government or political subdivision thereof, or any agency or instrumentality thereof, or

(ii) an organization exempt from tax under this title.

(F) Exception where pension does not meet requirements necessary to insure distribution of excess contributions

This paragraph shall not apply with respect to any year for which the simplified employee pension does not meet such requirements as the Secretary may prescribe as are necessary to insure that excess contributions are distributed in accordance with subparagraph (C), including—

(i) reporting requirements, and

(ii) requirements which, notwithstanding paragraph (4), provide that contributions (and any income allocable thereto) may not be withdrawn from a simplified employee pension until a determination has been made that the requirements of subparagraph (A)(iii) have been met with respect to such contributions.

(G) Highly compensated employee

For purposes of this paragraph, the term "highly compensated employee" has the meaning given such term by section 414(q).

(H) Termination

This paragraph shall not apply to years beginning after December 31, 1996. The preceding sentence shall not apply to a simplified employee pension of an employer if the terms of simplified employee pensions of such employer, as in effect on December 31, 1996, provide that an employee may make the election described in subparagraph (A).

(7) Definitions

For purposes of this subsection and subsection (l)—

(A) Employee, employer, or owner-employee

The terms "employee", "employer", and "owner-employee" shall have the respective meanings given such terms by section 401(c).

(B) Compensation

Except as provided in paragraph (2)(C), the term "compensation" has the meaning given such term by section 414(s).

(C) Year

The term "year" means—

(i) the calendar year, or

(ii) if the employer elects, subject to such terms and conditions as the Secretary may prescribe, to maintain the simplified employee pension on the basis of the employer's taxable year.

(8) Cost-of-living adjustment

The Secretary shall adjust the $450 amount in paragraph (2)(C) at the same time and in the same manner as under section 415(d) and shall adjust the $200,000 amount in paragraphs (3)(C) and (6)(D)(ii) at the same time, and by the same amount, as any adjustment under section 401(a)(17)(B); except that any increase in the $450 amount which is not a multiple of $50 shall be rounded to the next lowest multiple of $50.

(9) Cross reference

For excise tax on certain excess contributions, see section 4979.

(l) Simplified employer reports

(1) In general

An employer who makes a contribution on behalf of an employee to a simplified employee pension shall provide such simplified reports with respect to such contributions as the Secretary may require by regulations. The reports required by this subsection shall be filed at such time and in such manner, and information with respect to such contributions shall be furnished to the employee at such time and in such manner, as may be required by regulations.

(2) Simple retirement accounts

(A) No employer reports

Except as provided in this paragraph, no report shall be required under this section by an employer maintaining a qualified salary reduction arrangement under subsection (p).

(B) Summary description

The trustee of any simple retirement account established pursuant to a qualified salary reduction arrangement under subsection (p) and the issuer of an annuity established under such an arrangement shall provide to the employer maintaining the arrangement, each year a description containing the following information:

(i) The name and address of the employer and the trustee or issuer.

(ii) The requirements for eligibility for participation.

(iii) The benefits provided with respect to the arrangement.

(iv) The time and method of making elections with respect to the arrangement.

(v) The procedures for, and effects of, withdrawals (including rollovers) from the arrangement.

(C) Employee notification

The employer shall notify each employee immediately before the period for which an election described in subsection (p)(5)(C) may be made of the employee's opportunity to make such election. Such notice shall include a copy of the description described in subparagraph (B).

(m) Investment in collectibles treated as distributions

(1) In general

The acquisition by an individual retirement account or by an individually-directed account under a plan described in section 401(a) of any collectible shall be treated (for purposes of this section and section 402) as a distribution from such account in an amount equal to the cost to such account of such collectible.

(2) Collectible defined

For purposes of this subsection, the term "collectible" means—

(A) any work of art,

(B) any rug or antique,

(C) any metal or gem,

(D) any stamp or coin,

(E) any alcoholic beverage, or

(F) any other tangible personal property specified by the Secretary for purposes of this subsection.

(3) Exception for certain coins and bullion

For purposes of this subsection, the term "collectible" shall not include—

(A) any coin which is—

(i) a gold coin described in paragraph (7), (8), (9), or (10) of section 5112(a) of title 31, United States Code,

(ii) a silver coin described in section 5112(e) of title 31, United States Code,

(iii) a platinum coin described in section 5112(k) of title 31, United States Code, or

(iv) a coin issued under the laws of any State, or

(B) any gold, silver, platinum, or palladium bullion of a fineness equal to or exceeding the minimum fineness that a contract market (as described in section 7 of the Commodity Exchange Act, 7 U.S.C. 7) [2] requires for metals which may be delivered in satisfaction of a regulated futures contract,

if such bullion is in the physical possession of a trustee described under subsection (a) of this section.

(n) Bank

For purposes of subsection (a)(2), the term "bank" means—

(1) any bank (as defined in section 581),

(2) an insured credit union (within the meaning of paragraph (6) or (7) of section 101 of the Federal Credit Union Act), and

(3) a corporation which, under the laws of the State of its incorporation, is subject to supervision and examination by the Commissioner of Banking or other officer of such State in charge of the administration of the banking laws of such State.

(o) Definitions and rules relating to nondeductible contributions to individual retirement plans

(1) In general

Subject to the provisions of this subsection, designated nondeductible contributions may be made on behalf of an individual to an individual retirement plan.

(2) Limits on amounts which may be contributed

(A) In general

The amount of the designated nondeductible contributions made on behalf of any individual for any taxable year shall not exceed the nondeductible limit for such taxable year.

(B) Nondeductible limit

For purposes of this paragraph—

(i) In general

The term "nondeductible limit" means the excess of—

(I) the amount allowable as a deduction under section 219 (determined without regard to section 219(g)), over

(II) the amount allowable as a deduction under section 219 (determined with regard to section 219(g)).

(ii) Taxpayer may elect to treat deductible contributions as nondeductible

If a taxpayer elects not to deduct an amount which (without regard to this clause) is allowable as a deduction under section 219 for any taxable year, the nondeductible limit for such taxable year shall be increased by such amount.

(C) Designated nondeductible contributions

(i) In general

For purposes of this paragraph, the term "designated nondeductible contribution" means

any contribution to an individual retirement plan for the taxable year which is designated (in such manner as the Secretary may prescribe) as a contribution for which a deduction is not allowable under section 219.

(ii) Designation

Any designation under clause (i) shall be made on the return of tax imposed by chapter 1 for the taxable year.

(3) Time when contributions made

In determining for which taxable year a designated nondeductible contribution is made, the rule of section 219(f)(3) shall apply.

(4) Individual required to report amount of designated nondeductible contributions

(A) In general

Any individual who—

(i) makes a designated nondeductible contribution to any individual retirement plan for any taxable year, or

(ii) receives any amount from any individual retirement plan for any taxable year,

shall include on his return of the tax imposed by chapter 1 for such taxable year and any succeeding taxable year (or on such other form as the Secretary may prescribe for any such taxable year) information described in subparagraph (B).

(B) Information required to be supplied

The following information is described in this subparagraph:

(i) The amount of designated nondeductible contributions for the taxable year.

(ii) The amount of distributions from individual retirement plans for the taxable year.

(iii) The excess (if any) of—

(I) the aggregate amount of designated nondeductible contributions for all preceding taxable years, over

(II) the aggregate amount of distributions from individual retirement plans which was excludable from gross income for such taxable years.

(iv) The aggregate balance of all individual retirement plans of the individual as of the close of the calendar year in which the taxable year begins.

(v) Such other information as the Secretary may prescribe.

(C) Penalty for reporting contributions not made

For penalty where individual reports designated nondeductible contributions not made, see section 6693(b).

(p) Simple retirement accounts

(1) In general

For purposes of this title, the term "simple retirement account" means an individual retirement plan (as defined in section 7701(a)(37))—

(A) with respect to which the requirements of paragraphs (3), (4), and (5) are met; and

(B) with respect to which the only contributions allowed are contributions under a qualified salary reduction arrangement.

(2) Qualified salary reduction arrangement

(A) In general

For purposes of this subsection, the term "qualified salary reduction arrangement" means a written arrangement of an eligible employer under which—

(i) an employee eligible to participate in the arrangement may elect to have the employer make payments—

(I) as elective employer contributions to a simple retirement account on behalf of the employee, or

(II) to the employee directly in cash,

(ii) the amount which an employee may elect under clause (i) for any year is required to be expressed as a percentage of compensation and may not exceed a total of the applicable dollar amount for any year,

(iii) the employer is required to make a matching contribution to the simple retirement account for any year in an amount equal to so much of the amount the employee elects under clause (i)(I) as does not exceed the applicable percentage of compensation for the year, and

(iv) no contributions may be made other than contributions described in clause (i) or (iii).

(B) Employer may elect 2-percent nonelective contribution

(i) In general

An employer shall be treated as meeting the requirements of subparagraph (A)(iii) for any year if, in lieu of the contributions described in such clause, the employer elects to make nonelective contributions of 2 percent of compensation for each employee who is eligible to participate in the arrangement and who has at least $5,000 of compensation from the employer for the year. If an employer makes an election under this subparagraph for any year, the employer shall notify employees of such election within a reasonable period of time before the 60-day period for such year under paragraph (5)(C).

(ii) Compensation limitation

The compensation taken into account under clause (i) for any year shall not exceed the limitation in effect for such year under section 401(a)(17).

(C) Definitions

For purposes of this subsection—

(i) Eligible employer

(I) In general

The term "eligible employer" means, with respect to any year, an employer which had no more than 100 employees who received at least $5,000 of compensation from the employer for the preceding year.

(II) 2-year grace period

An eligible employer who establishes and maintains a plan under this subsection for 1 or more years and who fails to be an eligible employer for any subsequent year shall be treated as an eligible employer for the 2 years following the last year the employer was an eligible employer. If such failure is due to any acquisition, disposition, or similar transaction involving an eligible employer, the preceding sentence shall not apply.

(ii) Applicable percentage

(I) In general

The term "applicable percentage" means 3 percent.

(II) Election of lower percentage

An employer may elect to apply a lower percentage (not less than 1 percent) for any year for all employees eligible to participate in the plan for such year if the employer notifies the employees of such lower percentage within a reasonable period of time before the 60-day election period for such year under paragraph (5)(C). An employer may not elect a lower percentage under this subclause for any year if that election would result in the applicable percentage being lower than 3 percent in more than 2 of the years in the 5-year period ending with such year.

(III) Special rule for years arrangement not in effect

If any year in the 5-year period described in subclause (II) is a year prior to the first year for which any qualified salary reduction arrangement is in effect with respect to the employer (or any predecessor), the employer shall be treated as if the level of the employer matching contribution was at 3 percent of compensation for such prior year.

(D) Arrangement may be only plan of employer

(i) In general

An arrangement shall not be treated as a qualified salary reduction arrangement for any year if the employer (or any predecessor employer) maintained a qualified plan with respect to which contributions were made, or benefits were accrued, for service in any year in the period beginning with the year such arrangement became effective and ending with the year for which the determination is being made. If only individuals other than employees described in subparagraph (A) of section 410(b)(3) are eligible to participate in such arrangement, then the preceding sentence shall be applied without regard to any qualified plan in which only employees so described are eligible to participate.

(ii) Qualified plan

For purposes of this subparagraph, the term "qualified plan" means a plan, contract, pension, or trust described in subparagraph (A) or (B) of section 219(g)(5).

(E) Applicable dollar amount; cost-of-living adjustment

(i) In general

For purposes of subparagraph (A)(ii), the applicable dollar amount shall be the amount determined in accordance with the following table:

For years beginning in calendar year:	The applicable dollar amount:
2002	$7,000
2003	$8,000
2004	$9,000
2005 or thereafter	$10,000.

(ii) Cost-of-living adjustment

In the case of a year beginning after December 31, 2005, the Secretary shall adjust the $10,000 amount under clause (i) at the same time and in the same manner as under section 415(d), except that the base period taken into account shall be the calendar quarter beginning July 1, 2004, and any increase under this subparagraph which is not a multiple of $500 shall be rounded to the next lower multiple of $500.

(3) Vesting requirements

The requirements of this paragraph are met with respect to a simple retirement account if the employee's rights to any contribution to the simple retirement account are nonforfeitable. For purposes of this paragraph, rules similar to the rules of subsection (k)(4) shall apply.

(4) Participation requirements

(A) In general

The requirements of this paragraph are met with respect to any simple retirement account for a year only if, under the qualified salary reduction arrangement, all employees of the employer who—

(i) received at least $5,000 in compensation from the employer during any 2 preceding years, and

(ii) are reasonably expected to receive at least $5,000 in compensation during the year,

are eligible to make the election under paragraph (2)(A)(i) or receive the nonelective contribution described in paragraph (2)(B).

(B) Excludable employees

An employer may elect to exclude from the requirement under subparagraph (A) employees described in section 410(b)(3).

(5) Administrative requirements

The requirements of this paragraph are met with respect to any simple retirement account if, under the qualified salary reduction arrangement—

(A) an employer must—

(i) make the elective employer contributions under paragraph (2)(A)(i) not later than the close of the 30-day period following the last day of the month with respect to which the contributions are to be made, and

(ii) make the matching contributions under paragraph (2)(A)(iii) or the nonelective contributions under paragraph (2)(B) not later than the date described in section 404(m)(2)(B),

(B) an employee may elect to terminate participation in such arrangement at any time during the year, except that if an employee so terminates, the arrangement may provide that the employee may not elect to resume participation until the beginning of the next year, and

(C) each employee eligible to participate may elect, during the 60-day period before the beginning of any year (and the 60-day period before the first day such employee is eligible to participate), to participate in the arrangement, or to modify the amounts subject to such arrangement, for such year.

(6) Definitions

For purposes of this subsection—

(A) Compensation

(i) In general

The term "compensation" means amounts described in paragraphs (3) and (8) of section 6051(a). For purposes of the preceding sentence, amounts described in section 6051(a)(3) shall be determined without regard to section 3401(a)(3).

(ii) Self-employed

In the case of an employee described in subparagraph (B), the term "compensation" means net earnings from self-employment determined under section 1402(a) without regard to any contribution under this subsection. The preceding sentence shall be applied as if the term "trade or business" for purposes of section 1402 included service described in section 1402(c)(6).

(B) Employee

The term "employee" includes an employee as defined in section 401(c)(1).

(C) Year

The term "year" means the calendar year.

(7) Use of designated financial institution

A plan shall not be treated as failing to satisfy the requirements of this subsection or any other provision of this title merely because the employer makes all contributions to the individual retirement accounts or annuities of a designated trustee or issuer. The preceding sentence shall not

apply unless each plan participant is notified in writing (either separately or as part of the notice under subsection (l)(2)(C)) that the participant's balance may be transferred without cost or penalty to another individual account or annuity in accordance with subsection (d)(3)(G).

(8) Coordination with maximum limitation under subsection (a)

In the case of any simple retirement account, subsections (a)(1) and (b)(2) shall be applied by substituting "the sum of the dollar amount in effect under paragraph (2)(A)(ii) of this subsection and the employer contribution required under subparagraph (A)(iii) or (B)(i) of paragraph (2) of this subsection, whichever is applicable" for "the dollar amount in effect under section 219(b)(1)(A)".

(9) Matching contributions on behalf of self-employed individuals not treated as elective employer contributions

Any matching contribution described in paragraph (2)(A)(iii) which is made on behalf of a self-employed individual (as defined in section 401(c)) shall not be treated as an elective employer contribution to a simple retirement account for purposes of this title.

(10) Special rules for acquisitions, dispositions, and similar transactions

(A) In general

An employer which fails to meet any applicable requirement by reason of an acquisition, disposition, or similar transaction shall not be treated as failing to meet such requirement during the transition period if—

(i) the employer satisfies requirements similar to the requirements of section 410(b)(6)(C)(i)(II); and

(ii) the qualified salary reduction arrangement maintained by the employer would satisfy the requirements of this subsection after the transaction if the employer which maintained the arrangement before the transaction had remained a separate employer.

(B) Applicable requirement

For purposes of this paragraph, the term "applicable requirement" means—

(i) the requirement under paragraph (2)(A)(i) that an employer be an eligible employer;

(ii) the requirement under paragraph (2)(D) that an arrangement be the only plan of an employer; and

(iii) the participation requirements under paragraph (4).

(C) Transition period

For purposes of this paragraph, the term "transition period" means the period beginning on the date of any transaction described in subparagraph (A) and ending on the last day of the second calendar year following the calendar year in which such transaction occurs.

(q) Deemed IRAs under qualified employer plans

(1) General rule

If—

(A) a qualified employer plan elects to allow employees to make voluntary employee contributions to a separate account or annuity established under the plan, and

(B) under the terms of the qualified employer plan, such account or annuity meets the applicable requirements of this section or section 408A for an individual retirement account or annuity,

then such account or annuity shall be treated for purposes of this title in the same manner as an individual retirement plan and not as a qualified employer plan (and contributions to such account or annuity as contributions to an individual retirement plan and not to the qualified employer plan). For purposes of subparagraph (B), the requirements of subsection (a)(5) shall not apply.

(2) Special rules for qualified employer plans

For purposes of this title, a qualified employer plan shall not fail to meet any requirement of this title solely by reason of establishing and maintaining a program described in paragraph (1).

(3) Definitions

For purposes of this subsection—

(A) Qualified employer plan

The term "qualified employer plan" has the meaning given such term by section 72(p)(4)(A)(i); except that such term shall also include an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A).

(B) Voluntary employee contribution

The term "voluntary employee contribution" means any contribution (other than a mandatory contribution within the meaning of section 411(c)(2)(C))—

(i) which is made by an individual as an employee under a qualified employer plan which allows employees to elect to make contributions described in paragraph (1), and

(ii) with respect to which the individual has designated the contribution as a contribution to which this subsection applies.

(r) Cross references

(1) For tax on excess contributions in individual retirement accounts or annuities, see section 4963.

(2) For tax on certain accumulations in individual retirement accounts or annuities, see section 4974.

(Added Pub. L. 93–406, title II, §2002(b), Sept. 2, 1974, 88 Stat. 959; amended Pub. L. 94–455, title XV, §1501(b)(2), (5), (10), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1735–1737, 1834; Pub. L. 95–600, title I, §§152(a), (b), 156(c)(1), (3), 157(c)(1), (d)(1), (e)(1)(A), (g)(3), (h)(2), title VII, §703(c)(4), Nov. 6, 1978, 92 Stat. 2797, 2802, 2803, 2805, 2806, 2808, 2939; Pub. L. 96–222, title I, §101(a)(10)(A), (C), (F), (G), (J)(i), (14)(B), (E)(ii), Apr. 1, 1980, 94 Stat. 201–205; Pub. L. 96–605, title II, §225(b)(3), (4), Dec. 28, 1980, 94 Stat. 3529; Pub. L. 97–34, title III, §§311(g)(1)(A)–(C), (2), (h)(2), 312(b)(2), (c)(5), 313(b)(2), 314(b)(1), Aug. 13, 1981, 95 Stat. 281–284, 286; Pub. L. 97–248, title II, §§237(e)(3), 238(d)(3), (4), 243(a), (b)(1)(A), title III, §335(a)(1), Sept. 3, 1982, 96 Stat. 512, 513, 521, 522, 628; Pub. L. 97–448, title I, §103(d)(1), (e), Jan. 12, 1983, 96 Stat. 2378; Pub. L. 98–369, div. A, title I, §147(a), title IV, §491(d)(19)–(24), title V, §§521(b), 522(d)(12), title VII, §713(c)(2)(B), (f)(2), (5)(B), (g)(2), (j), July 18, 1984, 98 Stat. 687, 850, 867, 871, 957, 959, 960; Pub. L. 99–514, title XI, §§1102(a), (b)(2), (c), (e)(2), 1108(a), (d)–(g)(1), (4), (6), 1121(c)(2), 1122(e)(2)(B), 1123(d)(2), 1144(a), title XVIII, §§1852(a)(1), (5)(C), (7)(A), 1875(c)(6)(A), (8), 1898(a)(5), Oct. 22, 1986, 100 Stat. 2414–2416, 2431, 2433, 2434, 2465, 2470, 2475, 2490, 2864–2866, 2895, 2944; Pub. L. 100–647, title I, §§1011(b)(1)–(3), (c)(7)(C), (f)(1)–(5), (10), (i)(5), 1011A(a)(2)(A), 1018(t)(3)(D), title VI, §6057(a), Nov. 10, 1988, 102 Stat. 3456, 3458, 3461–3463, 3468, 3472, 3588, 3698; Pub. L. 101–239, title VII, §§7811(m)(7), 7841(a)(1), Dec. 19, 1989, 103 Stat. 2412, 2427; Pub. L. 102–318, title V, §521(b)(16)–(19), July 3, 1992, 106 Stat. 311; Pub. L. 103–66, title XIII, §13212(b), Aug. 10, 1993, 107 Stat. 472; Pub. L. 103–465, title VII, §732(d), Dec. 8, 1994, 108 Stat. 5005; Pub. L. 104–188, title I, §§1421(a), (b)(3)(B), (5), (6), (c), 1427(b)(3), 1431(c)(1)(B), 1455(b)(1), Aug. 20, 1996, 110 Stat. 1792, 1796–1798, 1802, 1803, 1817; Pub. L. 105–34, title III, §§302(d), 304(a), title XV, §1501(b), title XVI, §1601(d)(1)(A)–(C)(i), (D)–(G), Aug. 5, 1997, 111 Stat. 829, 831, 1058, 1087, 1088; Pub. L. 105–206, title VI, §§6015(a), 6016(a)(1), 6018(b), July 22, 1998, 112 Stat. 820–822; Pub. L. 106–554, §1(a)(7) [title III, §319(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–646; Pub. L. 107–16, title VI, §§601(b), 602(a), 611(c)(1), (f)(1), (2), (g)(2), 641(e)(8), 642(a), (b)(2), (3), 643(c), 644(b), June 7, 2001, 115 Stat. 95, 97, 99, 121–123; Pub. L. 107–147, title IV, §411(i)(1), (j)(1), Mar. 9, 2002, 116 Stat. 46, 47; Pub. L. 108–311, title IV, §§404(d), 408(a)(12), (13), Oct. 4, 2004, 118 Stat. 1188, 1191; Pub. L. 109–280, title XII, §1201(a), Aug. 17, 2006, 120 Stat. 1063; Pub. L. 109–432, div. A, title III, §307(a), Dec.

20, 2006, 120 Stat. 2951; Pub. L. 110–172, §3(a), Dec. 29, 2007, 121 Stat. 2474; Pub. L. 110–343, div. C, title II, §205(a), Oct. 3, 2008, 122 Stat. 3865; Pub. L. 111–312, title VII, §725(a), Dec. 17, 2010, 124 Stat. 3316; Pub. L. 112–240, title II, §208(a), Jan. 2, 2013, 126 Stat. 2324.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table under section 401 of this title.

REFERENCES IN TEXT

Section 7 of the Commodity Exchange Act, referred to in subsec. (m)(3)(B), is classified to section 11 of Title 7, Agriculture, and relates to vacation on request of designation as "contract market". Section 5 of the Commodity Exchange Act, which is classified to section 7 of Title 7, relates to designation of boards of trade as "contract markets".

Paragraph (6) or (7) of section 101 of the Federal Credit Union Act, referred to in subsec. (n)(2), is classified to section 1752(6), (7) of Title 12, Banks and Banking.

AMENDMENTS

2013—Subsec. (d)(8)(F). Pub. L. 112–240 substituted "December 31, 2013" for "December 31, 2011".

2010—Subsec. (d)(8)(F). Pub. L. 111–312 substituted "December 31, 2011" for "December 31, 2009".

2008—Subsec. (d)(8)(F). Pub. L. 110–343 substituted "December 31, 2009" for "December 31, 2007".

2007—Subsec. (d)(8)(D). Pub. L. 110–172 substituted "all amounts in all individual retirement plans of the individual were distributed during such taxable year and all such plans were treated as 1 contract for purposes of determining under section 72 the aggregate amount which would have been so includible" for "all amounts distributed from all individual retirement plans were treated as 1 contract under paragraph (2)(A) for purposes of determining the inclusion of such distribution under section 72".

2006—Subsec. (d)(8). Pub. L. 109–280, which directed the amendment of section 408(d) by adding par. (8), without specifying the act to be amended, was executed by making the addition to this section, which is section 408 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

Subsec. (d)(9). Pub. L. 109–432 added par. (9).

2004—Subsec. (a)(1). Pub. L. 108–311, §408(a)(12), substituted "457(e)(16)," for "457(e)(16)".

Subsec. (n)(2). Pub. L. 108–311, §408(a)(13), substituted "paragraph (6) or (7) of section 101" for "section 101(6)".

Subsec. (p)(6)(A)(i). Pub. L. 108–311, §404(d), inserted at end "For purposes of the preceding sentence, amounts described in section 6051(a)(3) shall be determined without regard to section 3401(a)(3)."

2002—Subsec. (k)(2)(C). Pub. L. 107–147, §411(j)(1)(A), substituted "$450" for "$300".

Subsec. (k)(8). Pub. L. 107–147, §411(j)(1)(B), substituted "$450" for "$300" in two places.

Subsec. (q)(3)(A). Pub. L. 107–147, §411(i)(1), reenacted heading without change and amended text of subpar. (A) generally. Prior to amendment, text read as follows: "The term 'qualified employer plan' has the meaning given such term by section 72(p)(4); except such term shall not include a government plan which is not a qualified plan unless the plan is an eligible deferred compensation plan (as defined in section 457(b))."

2001—Subsec. (a)(1). Pub. L. 107–16, §641(e)(8), substituted "403(b)(8), or 457(e)(16)" for "or 403(b)(8),".

Pub. L. 107–16, §601(b)(1), substituted "on behalf of any individual in excess of the amount in effect for such taxable year under section 219(b)(1)(A)" for "in excess of $2,000 on behalf of any individual".

Subsec. (b). Pub. L. 107–16, §601(b)(3), substituted "the dollar amount in effect under section 219(b)(1)(A)" for "$2,000" in concluding provisions.

Subsec. (b)(2)(B). Pub. L. 107–16, §601(b)(2), substituted "the dollar amount in effect under section 219(b)(1)(A)" for "$2,000".

Subsec. (d)(3)(A). Pub. L. 107–16, §642(a), inserted "or" at end of cl. (i), added cl. (ii) and concluding provisions, and struck out former cls. (ii) and (iii) which read as follows:

"(ii) no amount in the account and no part of the value of the annuity is attributable to any source other than a rollover contribution (as defined in section 402) from an employee's trust described in section 401(a) which is exempt from tax under section 501(a) or from an annuity plan described in section 403(a) (and any earnings on such contribution), and the entire amount received (including property and other money) is paid (for the benefit of such individual) into another such trust or annuity plan not later than the 60th day on which the individual receives the payment or the distribution; or

"(iii)(I) the entire amount received (including money and other property) represents the entire interest in the account or the entire value of the annuity,

"(II) no amount in the account and no part of the value of the annuity is attributable to any source other than a rollover contribution from an annuity contract described in section 403(b) and any earnings on such rollover, and

"(III) the entire amount thereof is paid into another annuity contract described in section 403(b) (for the benefit of such individual) not later than the 60th day after he receives the payment or distribution."

Subsec. (d)(3)(D)(i). Pub. L. 107–16, §642(b)(2), substituted "(i) or (ii)" for "(i), (ii), or (iii)".

Subsec. (d)(3)(G). Pub. L. 107–16, §642(b)(3), reenacted heading without change and amended text of subpar. (G) generally. Prior to amendment, text read as follows: "This paragraph shall not apply to any amount paid or distributed out of a simple retirement account (as defined in subsection (p)) unless—

"(i) it is paid into another simple retirement account, or

"(ii) in the case of any payment or distribution to which section 72(t)(6) does not apply, it is paid into an individual retirement plan."

Subsec. (d)(3)(H). Pub. L. 107–16, §643(c), added subpar. (H).

Subsec. (d)(3)(I). Pub. L. 107–16, §644(b), added subpar. (I).

Subsec. (j). Pub. L. 107–16, §601(b)(4), struck out "$2,000" before "amounts".

Subsec. (k)(3)(C), (6)(D)(ii), (8). Pub. L. 107–16, §611(c)(1), substituted "$200,000" for "$150,000".

Subsec. (p)(2)(A)(ii). Pub. L. 107–16, §611(f)(1), substituted "the applicable dollar amount" for "$6,000".

Subsec. (p)(2)(E). Pub. L. 107–16, §611(f)(2), amended heading and text of subpar. (E) generally. Prior to amendment, text read as follows: "The Secretary shall adjust the $6,000 amount under subparagraph (A)(ii) at the same time and in the same manner as under section 415(d), except that the base period taken into account shall be the calendar quarter ending September 30, 1996, and any increase under this subparagraph which is not a multiple of $500 shall be rounded to the next lower multiple of $500."

Subsec. (p)(6)(A)(ii). Pub. L. 107–16, §611(g)(2), inserted at end "The preceding sentence shall be applied as if the term 'trade or business' for purposes of section 1402 included service described in section 1402(c)(6)."

Subsec. (p)(8). Pub. L. 107–16, §601(b)(5), substituted "the dollar amount in effect under section 219(b)(1)(A)" for "$2,000".

Subsecs. (q), (r). Pub. L. 107–16, §602(a), added subsec. (q) and redesignated former subsec. (q) as (r).

2000—Subsec. (d)(5). Pub. L. 106–554 amended heading generally. Prior to amendment, heading read as follows: "Certain distributions of excess contributions after due date for taxable year".

1998—Subsec. (d)(7). Pub. L. 105–206, §6018(b)(2), inserted "or simple retirement accounts" after "pensions" in heading.

Subsec. (d)(7)(B). Pub. L. 105–206, §6018(b)(1), inserted "or 402(k)" after "section 402(h)".

Subsec. (p)(2)(C)(i)(II). Pub. L. 105–206, §6016(a)(1)(C)(i), substituted "the preceding sentence shall not apply" for "the preceding sentence shall apply only in accordance with rules similar to the rules of section 410(b)(6)(C)(i)" in last sentence.

Subsec. (p)(2)(D)(i). Pub. L. 105–206, §6016(a)(1)(A), struck out "or (B)" after "(A)" in last sentence.

Subsec. (p)(2)(D)(iii). Pub. L. 105–206, §6016(a)(1)(C)(ii), struck out heading and text of cl. (iii). Text read as follows: "In the case of an employer who establishes and maintains a plan under this subsection for 1 or more years and who fails to meet any requirement of this subsection for any subsequent year due to any acquisition, disposition, or similar transaction involving another such employer, rules similar to the rules of section 410(b)(6)(C) shall apply for purposes of this subsection."

Subsec. (p)(8), (9). Pub. L. 105–206, §6015(a), redesignated par. (8), relating to matching contributions on behalf of self-employed individuals not treated as elective employer contributions, as (9).

Subsec. (p)(10). Pub. L. 105–206, §6016(a)(1)(B), added par. (10).

1997—Subsec. (i). Pub. L. 105–34, §1601(d)(1)(A), substituted "31 days" for "30 days" in concluding provisions.

Pub. L. 105–34, §302(d), struck out "under regulations" after "may require" in introductory provisions and struck out "in such regulations" after "prescribes" in pars. (1) and (2)(B).

Subsec. (k)(6)(H). Pub. L. 105–34, §1601(d)(1)(B), substituted "of an employer if the terms of simplified employee pensions of such employer" for "if the terms of such pension".

Subsec. (l)(2)(B). Pub. L. 105–34, §1601(d)(1)(C)(i), inserted "and the issuer of an annuity established under such an arrangement" after "under subsection (p)" in introductory provisions and "or issuer" after "trustee" in cl. (i).

Subsec. (m)(3). Pub. L. 105–34, §304(a), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: "In the case of an individual retirement account, paragraph (2) shall not apply to—

"(A) any gold coin described in paragraph (7), (8), (9), or (10) of section 5112(a) of title 31,

"(B) any silver coin described in section 5112(e) of title 31, or

"(C) any coin issued under the laws of any State."

Subsec. (p)(2)(D)(i). Pub. L. 105–34, §1601(d)(1)(E), inserted at end "If only individuals other than employees described in subparagraph (A) or (B) of section 410(b)(3) are eligible to participate in such arrangement, then the preceding sentence shall be applied without regard to any qualified plan in which only employees so described are eligible to participate."

Subsec. (p)(2)(D)(iii). Pub. L. 105–34, §1601(d)(1)(F), added cl. (iii).

Subsec. (p)(5). Pub. L. 105–34, §1601(d)(1)(G), substituted "simple" for "simplified" in introductory provisions.

Subsec. (p)(8). Pub. L. 105–34, §1601(d)(1)(D), added par. (8) relating to coordination with maximum limitation under subsection (a).

Pub. L. 105–34, §1501(b), added par. (8) relating to matching contributions on behalf of self-employed individuals not treated as elective employer contributions.

1996—Subsec. (d)(3)(G). Pub. L. 104–188, §1421(b)(3)(B), added subpar. (G).

Subsec. (d)(5)(A). Pub. L. 104–188, §1427(b)(3), substituted "the dollar amount in effect under section 219(b)(1)(A)" for "$2,250" in introductory provisions.

Subsec. (i). Pub. L. 104–188, §1455(b)(1), inserted "aggregating $10 or more in any calendar year" after "distributions" in introductory provisions.

Pub. L. 104–188, §1421(b)(6), inserted at end "In the case of a simple retirement account under subsection (p), only one report under this subsection shall be required to be submitted each calendar year to the Secretary (at the time provided under paragraph (2)) but, in addition to the report under this subsection, there shall be furnished, within 30 days after each calendar year, to the individual on whose behalf the account is maintained a statement with respect to the account balance as of the close of, and the account activity during, such calendar year."

Subsec. (k)(2)(C). Pub. L. 104–188, §1431(c)(1)(B), substituted "section 414(q)(4)" for "section 414(q)(7)".

Subsec. (k)(6)(H). Pub. L. 104–188, §1421(c), added subpar. (H).

Subsec. (l). Pub. L. 104–188, §1421(b)(5), designated existing provisions as par. (1), inserted heading, and added par. (2).

Subsecs. (p), (q). Pub. L. 104–188, §1421(a), added subsec. (p) and redesignated former subsec. (p) as (q).

1994—Subsec. (k)(8). Pub. L. 103–465 inserted before period at end "; except that any increase in the $300 amount which is not a multiple of $50 shall be rounded to the next lowest multiple of $50".

1993—Subsec. (k)(3)(C), (6)(D)(ii). Pub. L. 103–66, §13212(b)(1), substituted "$150,000" for "$200,000".

Subsec. (k)(8). Pub. L. 103–66, §13212(b)(2), amended heading and text of par. (8) generally. Prior to amendment, text read as follows: "The Secretary shall adjust the $300 amount in paragraph (2)(C) and the $200,000 amount in paragraphs (3)(C) and (6)(D)(ii) at the same time and in the same manner as under section 415(d), except that in the case of years beginning after 1988, the $200,000 amount (as so adjusted) shall not exceed the amount in effect under section 401(a)(17)."

1992—Subsec. (a)(1). Pub. L. 102–318, §521(b)(16), substituted "402(c)" for "402(a)(5), 402(a)(7)".

Subsec. (d)(3)(A)(ii). Pub. L. 102–318, §521(b)(17), amended clause (ii) generally. Prior to amendment, clause (ii) read as follows: "the entire amount received (including money and any other property) represents the entire amount in the account or the entire value of the annuity and no amount in the account and no part of the value of the annuity is attributable to any source other than a rollover contribution of a qualified total distribution (as defined in section 402(a)(5)(E)(i)) from an employee's trust described in section 401(a) which is exempt from tax under section 501(a), or an annuity plan described in section 403(a) and any earnings on such sums and the entire amount thereof is paid into another such trust (for the benefit of such individual) or annuity plan not later than the 60th day on which he receives the payment or distribution; or".

Subsec. (d)(3)(B). Pub. L. 102–318, §521(b)(18), struck out at end "Clause (ii) of subparagraph (A) shall not apply to any amount paid or distributed out of an individual retirement account or an individual retirement annuity to which an amount was contributed which was treated as a rollover contribution by section 402(a)(7) (or in the case of an individual retirement annuity, such section as made applicable by section 403(a)(4)(B))."

Subsec. (d)(3)(F). Pub. L. 102–318, §521(b)(19), substituted "402(c)(7)" for "402(a)(6)(H)".

1989—Subsecs. (a)(6), (b)(3). Pub. L. 101–239, §7811(m)(7), struck out "(without regard to subparagraph (C)(ii) thereof)" after "section 401(a)(9)".

Subsec. (d)(6). Pub. L. 101–239, §7841(a)(1), substituted "his spouse or former spouse under a divorce or separation instrument described in subparagraph (A) of section 71(b)(2)" for "his former spouse under a divorce decree or under a written instrument incident to such divorce".

1988—Subsec. (d)(2)(C). Pub. L. 100–647, §1011(b)(1), substituted "in which the taxable year begins" for "with or within which the taxable year ends".

Subsec. (d)(3)(A). Pub. L. 100–647, §1011A(a)(2)(A), struck out at end "Clause (ii) shall not apply during the 5-year period beginning on the date of the qualified total distribution referred to in such clause if the individual was treated as a 5-percent owner with respect to such distribution under section 402(a)(5)(F)(ii)."

Subsec. (d)(3)(E). Pub. L. 100–647, §1018(t)(3)(D), substituted "paragraph" for "subparagraph".

Subsec. (d)(4). Pub. L. 100–647, §1011(b)(2), substituted "Contributions" for "Excess contributions" in heading, struck out "to the extent that such contribution exceeds the amount allowable as a deduction under section 219" after "individual retirement annuity" in introductory provisions, and substituted "such contribution" for "such excess contribution" in subpars. (B) and (C) and in last sentence.

Subsec. (d)(5). Pub. L. 100–647, §1011(b)(3), substituted "shall be computed without regard to section 219(g)" for "(after application of section 408(o)(2)(B)(ii)) shall be increased by the nondeductible limit under section 408(o)(2)(B)" in last sentence.

Subsec. (d)(7). Pub. L. 100–647, §1011(f)(5), added par. (7).

Subsec. (k)(3)(B). Pub. L. 100–647, §1011(i)(5), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "For purposes of subparagraph (A)—

"(i) there shall be excluded from consideration employees described in subparagraph (A) or (C) of section 410(b)(3), and

"(ii) an individual shall be considered a shareholder if he owns (with the application of section 318) more than 10 percent of the value of the stock of the employer."

Subsec. (k)(3)(C). Pub. L. 100–647, §1011(f)(3)(C), struck out "total" before "compensation".

Subsec. (k)(6)(A). Pub. L. 100–647, §1011(f)(1), substituted "Arrangements which qualify" for "In general" in heading and amended text generally. Prior to amendment, text read as follows: "A simplified employee pension shall not fail to meet the requirements of this subsection for a year merely because, under the terms of the pension—

"(i) an employee may elect to have the employer make payments—

"(I) as elective employer contributions to the simplified employee pension on behalf of the employee, or

"(II) to the employee directly in cash,

"(ii) an election described in clause (i)(I) is made or is in effect with respect to not less than 50 percent of the employees of the employer, and

"(iii) the deferral percentage for such year of each highly compensated employee eligible to participate is not more than the product derived by multiplying the average of the deferral percentages for such year of all employees (other than highly compensated employees) eligible to participate by 1.25."

Subsec. (k)(6)(A)(iv). Pub. L. 100–647, §1011(c)(7)(C), added cl. (iv).

Subsec. (k)(6)(B). Pub. L. 100–647, §1011(f)(2), inserted "who were eligible to participate (or would have been required to be eligible to participate if a pension was maintained)" after "than 25 employees".

Subsec. (k)(6)(D)(ii). Pub. L. 100–647, §1011(f)(3)(A), substituted "(not in excess of the first $200,000)" for "(within the meaning of section 414(s))".

Subsec. (k)(6)(F), (G). Pub. L. 100–647, §1011(f)(4), added subpar. (f) and redesignated former subpar. (F) as (G).

Subsec. (k)(7)(B). Pub. L. 100–647, §1011(f)(3)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "The term 'compensation' means, in the case of an employee within the meaning of section 401(c)(1), earned income within the meaning of section 401(c)(2)."

Subsec. (k)(8). Pub. L. 100–647, §1011(f)(3)(D), (10), substituted "paragraphs (3)(C) and (6)(D)(ii)" for "paragraph (3)(C)" and inserted ", except that in the case of years beginning after 1988, the $200,000 amount (as so adjusted) shall not exceed the amount in effect under section 401(a)(17)" after "under section 415(d)".

Subsec. (m)(3). Pub. L. 100–647, §6057(a), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "In the case of an individual retirement account, paragraph (2) shall not apply to any gold coin described in paragraph (7), (8), (9), or (10) of section 5112(a) of title 31 or any silver coin described in section 5112(e) of title 31."

Subsec. (o)(4)(B)(iv). Pub. L. 100–647, §1011(b)(1), substituted "in which the taxable year begins" for "with or within which the taxable year ends".

1986—Subsecs. (a)(6), (b)(3). Pub. L. 99–514, §1852(a)(1), substituted "(without regard to subparagraph (C)(ii) thereof) and the incidental death benefit requirements of section 401(a)" for "(relating to required distributions)".

Subsec. (c)(1). Pub. L. 99–514, §1852(a)(7)(A), substituted "paragraphs (1) through (6)" for "paragraphs (1) through (7)".

Subsec. (d)(1). Pub. L. 99–514, §1102(c), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "Except as otherwise provided in this subsection, any amount paid or distributed out of an individual

retirement account or under an individual retirement annuity shall be included in gross income by the payee or distributee, as the case may be, for the taxable year in which the payment or distribution is received. Notwithstanding any other provision of this title (including chapters 11 and 12), the basis any person in such an account or annuity is zero."

Subsec. (d)(2). Pub. L. 99–514, §1102(c), substituted "Special rules for applying section 72" for "Distributions of annuity contracts" in heading and amended par. generally. Prior to amendment, par. (2) read as follows: "Paragraph (1) does not apply to any annuity contract which meets the requirements of paragraphs (1), (3), (4), and (5) of subsection (b) and which is distributed from an individual retirement account. Section 72 applies to any such annuity contract, and for purposes of section 72 the investment in such contract is zero."

Subsec. (d)(3)(A). Pub. L. 99–514, §1875(c)(8)(C), inserted at end "Clause (ii) shall not apply during the 5-year period beginning on the date of the qualified total distribution referred to in such clause if the individual was treated as a 5-percent owner with respect to such distribution under section 402(a)(5)(F)(ii)."

Subsec. (d)(3)(A)(ii). Pub. L. 99–514, §1875(c)(8)(A), (B), struck out "(other than a trust forming part of a plan under which the individual was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan)" after "section 501(a)" and struck out "(other than a plan under which the individual was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan)" after "section 403(a)".

Pub. L. 99–514, §1121(c)(2), made amendment identical to Pub. L. 99–514, §1875(c)(8)(A), (B), see above.

Subsec. (d)(3)(E). Pub. L. 99–514, §1852(a)(5)(C), added subpar. (E).

Subsec. (d)(3)(F). Pub. L. 99–514, §1122(e)(2)(B), added subpar. (F).

Subsec. (d)(5). Pub. L. 99–514, §1102(b)(2), inserted at end "For purposes of this paragraph, the amount allowable as a deduction under section 219 (after application of section 408(o)(2)(B)(ii)) shall be increased by the nondeductible limit under section 408(o)(2)(B)."

Subsec. (d)(5)(A). Pub. L. 99–514, §1875(c)(6)(A), substituted "the dollar limitation in effect under section 415(c)(1)(A) for such taxable year" for "$15,000".

Subsec. (f). Pub. L. 99–514, §1123(d)(2), struck out subsec. (f) which related to additional tax on certain amounts included in gross income before age 59½.

Subsec. (i). Pub. L. 99–514, §1102(e)(2), amended last sentence generally. Prior to amendment, last sentence read as follows: "The reports required by this subsection shall be filed at such time and in such manner and furnished to such individuals at such time and in such manner as may be required by those regulations."

Subsec. (k)(2). Pub. L. 99–514, §1108(d), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "This paragraph is satisfied with respect to a simplified employee pension for a calendar year only if for such year the employer contributes to the simplified employee pension of each employee who—

"(A) has attained age 21, and

"(B) has performed service for the employer during at least 3 of the immediately preceding 5 calendar years.

For purposes of this paragraph, there shall be excluded from consideration employees described in subparagraph (A) or (C) of section 410(b)(3)."

Subsec. (k)(2)(A). Pub. L. 99–514, §1898(a)(5), substituted "age 21" for "age 25".

Subsec. (k)(3)(A). Pub. L. 99–514, §1108(g)(4), substituted "year" for "calendar year".

Pub. L. 99–514, §1108(g)(1)(A), substituted "any highly compensated employee (within the meaning of section 414(q))" for "any employee who is—

"(i) an officer,

"(ii) a shareholder,

"(iii) a self-employed individual, or

"(iv) highly compensated".

Subsec. (k)(3)(C). Pub. L. 99–514, §1108(g)(1)(B), inserted "and except as provided in subparagraph (D)," and "(other than contributions under an arrangement described in paragraph (6))", and struck out end sentence which read as follows: "The Secretary shall annually adjust the $200,000 amount contained in the preceding sentence at the same time and in the same manner as he adjusts the dollar amount contained in section 415(c)(1)(A)."

Subsec. (k)(3)(D), (E). Pub. L. 99–514, §1108(g)(1)(C), added subpar. (D) and struck out former subpar. (D), treatment of certain contributions and taxes, which read "Except as provided in this subparagraph, employer contributions do not meet the requirements of this paragraph unless such contributions meet the requirements of this paragraph without taking into account contributions or benefits under chapter 2 (relating to tax on self-employment income), chapter 21 (relating to Federal Insurance Contribution Act), title II of the

Social Security Act, or any other Federal or State law. If the employer does not maintain an integrated plan at any time during the taxable year, OASDI contributions (as defined in section 401(l)(2)) may, for purposes of this paragraph, be taken into account as contributions by the employer to the employee's simplified employee pension, but only if such contributions are so taken into account with respect to each employee maintaining a simplified employee pension.", and former subpar. (E), integrated plan defined, which read "For purposes of subparagraph (D), the term 'integrated plan' means a plan which meets the requirements of section 401(a) or 403(a) but would not meet such requirements if contributions or benefits under chapter 2 (relating to tax on self-employment income), chapter 21 (relating to Federal Insurance Contributions Act), title II of the Social Security Act, or any other Federal or State law were not taken into account."

Subsec. (k)(6). Pub. L. 99–514, §1108(a), added par. (6).

Subsec. (k)(7)(C). Pub. L. 99–514, §1108(f), added subpar. (C).

Subsec. (k)(8). Pub. L. 99–514, §1108(e), added par. (8).

Subsec. (k)(9). Pub. L. 99–514, §1108(g)(6), added par. (9).

Subsec. (m)(3). Pub. L. 99–514, §1144(a), added par. (3).

Subsecs. (o), (p). Pub. L. 99–514, §1102(a), added subsec. (o) and redesignated former subsec. (o) as (p).

1984—Subsec. (a)(1). Pub. L. 98–369, §491(d)(19), substituted "or 403(b)(8)" for "403(b)(8), 405(d)(3), or 409(b)(3)(C)".

Subsec. (a)(6). Pub. L. 98–369, §521(b)(1), added par. (6) and struck out former par. (6) which provided that the entire interest of an individual for whose benefit the trust is maintained will be distributed to him not later than the close of his taxable year in which he attains age 70½, or will be distributed, commencing before the close of such taxable year, in accordance with regulations prescribed by the Secretary, over (A) the life of such individual or the lives of such individual and his spouse, or (B) a period not extending beyond the life expectancy of such individual or the life expectancy of such individual and his spouse.

Subsec. (a)(7). Pub. L. 98–369, §521(b)(1), struck out par. (7) which provided that if (A) an individual for whose benefit the trust is maintained dies before his entire interest has been distributed to him, or (B) distribution has been commenced as provided in paragraph (6) to his surviving spouse and such surviving spouse dies before the entire interest has been distributed to such spouse, the entire interest (or the remaining part of such interest if distribution thereof has commenced) will be distributed within 5 years after his death (or the death of the surviving spouse). The preceding sentence shall not apply if distributions over a term certain commenced before the death of the individual for whose benefit the trust was maintained and the term certain is for a period permitted under paragraph (6).

Subsec. (b)(3). Pub. L. 98–369, §521(b)(2), added par. (3) and struck out former par. (3) which provided that the entire interest of the owner will be distributed to him not later than the close of his taxable year in which he attains age 70½, or will be distributed, in accordance with regulations prescribed by the Secretary, over (A) the life of such owner or the lives of such owner and his spouse, or (B) a period not extending beyond the life expectancy of such owner or the life expectancy of such owner and his spouse.

Subsec. (b)(4), (5). Pub. L. 98–369, §521(b)(2), redesignated par. (5) as (4) and struck out former par. (4) which provided that if (A) the owner dies before his entire interest has been distributed to him, or (B) distribution has been commenced as provided in paragraph (3) to his surviving spouse and such surviving spouse dies before the entire interest has been distributed to such spouse, the entire interest (or the remaining part of such interest if distribution thereof has commenced) will be distributed within 5 years after his death (or the death of the surviving spouse). The preceding sentence shall not apply if distributions over a term certain commenced before the death of the owner and the term certain is for a period permitted under paragraph (3).

Subsec. (d)(3)(A)(i). Pub. L. 98–369, §491(d)(20), struck out "or retirement bond" before "for the benefit".

Subsec. (d)(3)(A)(ii). Pub. L. 98–369, §522(d)(12), substituted "rollover contribution of a qualified total distribution (as defined in section 402(a)(5)(E)(i)) from an employee's trust" for "rollover contribution from an employee's trust".

Subsec. (d)(3)(B). Pub. L. 98–369, §491(d)(21), substituted "or an individual retirement annuity" for ", individual retirement annuity, or a retirement bond".

Subsec. (d)(3)(C), (D). Pub. L. 98–369, §713(g)(2), designated the subpar. (C), as added by section 335(a)(1) of Pub. L. 97–248, relating to permitting partial rollovers, as subpar. (D).

Subsec. (d)(3)(D)(ii). Pub. L. 98–369, §491(d)(22), struck out "bond," after "annuity,".

Subsec. (d)(6). Pub. L. 98–369, §491(d)(23), substituted "or an individual retirement annuity" for ", individual retirement annuity, or retirement bond", and "or annuity" for ", annuity, or bond".

Subsec. (h). Pub. L. 98–369, §713(c)(2)(B), substituted "(as defined in subsection (n))" for "(as defined in section 401(d)(1))".

Subsec. (i). Pub. L. 98–369, §147(a), inserted "(and the years to which they relate)".

Subsec. (k)(1). Pub. L. 98–369, §713(f)(2), amended par. (1) generally, designating existing provisions as subpar. (A) and adding subpar. (B).

Subsec. (k)(3)(C). Pub. L. 98–369, §713(f)(5)(B), inserted provision which required annual adjustment of the $200,000 amount concurrently with the dollar amount adjustment in section 415(c)(1)(A).

Subsec. (k)(3)(D). Pub. L. 98–369, §713(j), substituted in penultimate sentence "OASDI contributions (as defined in section 401(l)(2)" for "taxes paid under section 3111 (relating to tax on employers) with respect to an employee" and "as contributions by the employer to the employee's simplified employee pension, but only if such contributions are so taken into account with respect to each employee maintaining a simplified employee pension" for "as a contribution by the employer to an employee's simplified pension" and struck out third sentence which provided "If contributions are made to the simplified employee pension of an owner-employee, the preceding sentence shall not apply unless taxes paid by all such owner-employees under chapter 2, and the taxes which would be payable under chapter 2 by such owner-employees but for paragraphs (4) and (5) of section 1402(c), are taken into account as contributions by the employer on behalf of such owner-employees."

Subsec. (k)(3)(E). Pub. L. 98–369, §491(d)(24), substituted "or 403(a)" for ", 403(a), or 405(a)".

1983—Subsec. (j). Pub. L. 97–448, §103(d)(1)(B), substituted "$17,000" for "$15,000" in provisions preceding par. (1).

Subsec. (k)(3)(C)(ii). Pub. L. 97–448, §103(d)(1)(A), inserted "(other than an employee within the meaning of section 401(c)(1))" after "a simplified employee pension on behalf of each employee".

Subsecs. (m), (n). Pub. L. 97–448, §103(e)(1), amended directory language of Pub. L. 97–34, §314(b)(1), thereby correcting subsec. designations. See 1981 Amendment note below for subsecs. (m) and (n).

1982—Subsec. (a)(2). Pub. L. 97–248, §237(e)(3)(A), substituted reference to subsection (n) of this section, for reference to section 401(d)(1).

Subsec. (a)(7). Pub. L. 97–248, §243(a)(1), amended par. (7) generally, designating existing provisions as subpars. (A) and (B), in subpar. (B), as so designated, striking out "if" before "distribution", in provisions following subpar. (B) substituting "will be distributed within 5 years after his death (or the death of the surviving spouse)" for "will, within 5 years after his death (or the death of the surviving spouse), be distributed, or applied to the purchase of an immediate annuity for his beneficiary or beneficiaries (or the beneficiary or beneficiaries of his surviving spouse) which will be payable for the life of such beneficiary or beneficiaries (or for a term certain not extending beyond the life expectancy of such beneficiary or beneficiaries) and which annuity will be immediately distributed to such beneficiary or beneficiaries", and substituting "shall not apply" for "does not apply".

Subsec. (b)(4). Pub. L. 97–248, §243(a)(2), amended par. (4) generally, designating existing provisions, as subpars. (A) and (B), in subpar. (B), as so redesignated, striking out "if" before "distribution", in provisions following subpar. (B) substituting "will be distributed within 5 years after his death (or the death of the surviving spouse)" for "will, within 5 years after his death (or the death of the surviving spouse), be distributed, or applied to the purchase of an immediate annuity for his beneficiary or beneficiaries (or the beneficiary or beneficiaries of his surviving spouse) which will be payable for the life of such beneficiary or beneficiaries (or for a term certain not extending beyond the life expectancy of such beneficiary or beneficiaries) and which annuity will be immediately distributed to such beneficiary or beneficiaries", and substituting "shall not apply" for "shall have no application".

Subsec. (d)(3)(C). Pub. L. 97–248, §243(b)(1)(A), added subpar. (C) relating to denial of rollover treatment for inherited accounts.

Pub. L. 97–248, §335(a)(1), added subpar. (C) relating to permitting partial rollovers.

Subsec. (j). Pub. L. 97–248, §238(d)(3), amended subsec. (j) generally, substituting provisions increasing amount by the amount of the limitation in effect under section 415(c)(1)(A), for provisions increasing amount by substituting "$15,000" for "$2,000".

Subsec. (k)(1). Pub. L. 97–248, §238(d)(4)(B), struck out reference to par. (6) of this subsection.

Subsec. (k)(3)(C). Pub. L. 97–248, §238(d)(4)(C), amended subpar. (C) generally, striking out cl. "(i)" designation and cl. (ii) which related to taking into account compensation in excess of $100,000 with respect to a simplified employee pension.

Subsec. (k)(6). Pub. L. 97–248, §238(d)(4)(A), struck out par. (6) which related to prohibition on employer maintaining plan to which section 401(j) applies.

Subsecs. (n), (o). Pub. L. 97–248, §237(e)(3)(B), added subsec. (n) and redesignated former subsec. (n) as (o).

1981—Subsec. (a)(1). Pub. L. 97–34, §313(b)(2), inserted reference to section 405(d)(3).

Pub. L. 97–34, §311(g)(1)(A), substituted "$2,000" for "$1,500".

Subsec. (b). Pub. L. 97–34, §311(g)(1)(B), substituted in par. (2)(B) and provision following par. (5)

"$2,000" for "$1,500".

Subsec. (d)(4). Pub. L. 97–34, §311(h)(2), substituted section "219" for "219 or 220" in provision preceding subpar. (A) and in subpar. (B).

Subsec. (d)(5)(A). Pub. L. 97–34, §312(c)(5), substituted "$15,000" for "$7,500".

Pub. L. 97–34, §311(g)(2), (h)(2), substituted "$2,250" for "$1,750" and "219" for "219 or 220" in two places.

Subsec. (j). Pub. L. 97–34, §312(c)(5), substituted "$15,000" for "$7,500".

Pub. L. 97–34, §311(g)(1)(C), substituted "$2,000" for "$1,500".

Subsec. (k)(3)(C). Pub. L. 97–34, §312(b)(2), designated provision relating to compensation bearing a uniform relationship to total compensation as cl. (i), and in cl. (i) as so designated, substituted "$200,000" for "$100,000", and added cl. (ii).

Subsecs. (m), (n). Pub. L. 97–34, §314(b)(1), as amended by Pub. L. 97–448, §103(e)(1), added subsec. (m) and redesignated former subsec. (m) as (n).

1980—Subsec. (a)(1). Pub. L. 96–222, §101(a)(14)(B), inserted reference to section 402(a)(7).

Subsec. (d)(5). Pub. L. 96–222, §101(a)(10)(C), (14)(E)(ii), in subpar. (A) inserted provisions requiring that if employer contributions on behalf of the individual are paid for the taxable year to a simplified employee pension, the dollar amount of the preceding sentence be increased by the lessor of the amount of such contributions or $7,500 and restructured subpar. (B).

Subsec. (j)(3). Pub. L. 96–222, §101(a)(10)(J)(i), struck out par. (3) which made reference to paragraph (5) of subsection (b).

Subsec. (k). Pub. L. 96–222, §101(a)(10)(A), (F), (G), substituted in par. (1) "(5), and (6)" for "and (5)" and in par. (3)(D) "If the employer does not maintain an integrated plan at any time during the taxable year, taxes paid" for "Taxes paid", inserted in par. (2) provisions requiring that for purposes of this paragraph there be excluded from consideration employees described in subparagraph (A) or (C) of section 410(b)(2) and pars. (3)(E) and (6), and redesignated former par. (6) as (7).

Subsec. (k)(2), (3)(B)(i). Pub. L. 96–605, §225(b)(3), (4), substituted "section 410(b)(3)" for "section 410(b)(2)".

1978—Subsec. (a)(1). Pub. L. 95–600, §156(c)(3), inserted reference to section 403(b)(8).

Subsec. (b)(2). Pub. L. 95–600, §157(d)(1), (e)(1)(A), designated existing provisions as subpars. (B) and (C) and added subpar. (A), and in subpar. (B) as so designated, inserted "on behalf of any individual" after "annual premium", respectively.

Subsec. (d)(3)(A)(iii). Pub. L. 95–600, §156(c)(1), added cl. (iii).

Subsec. (d)(3)(B). Pub. L. 95–600, §157(g)(3), (h)(2), inserted provision relating to the applicability of clause (ii) of subparagraph (A) to any amount paid or distributed out of an individual retirement account or annuity to which an amount was contributed which was treated as a rollover contribution by section 402(a)(7) and substituted "1-year period" for "3-year period".

Subsec. (d)(4). Pub. L. 95–600, §703(c)(4), amended Pub. L. 94–455, §1501(b)(5). See 1976 Amendment note below.

Subsec. (d)(5), (6). Pub. L. 95–600, §157(c)(1), added par. (5) and redesignated former par. (5) as (6).

Subsecs. (j) to (m). Pub. L. 95–600, §152(a), added subsecs. (j) to (l) and redesignated former subsec. (j) as (m).

1976—Subsecs. (a)(2), (6), (b). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (c)(2). Pub. L. 94–455, §1501(b)(2), substituted "member (or spouse of an employee or member)" for "member".

Subsec. (d)(1). Pub. L. 94–455, §1501(b)(10), substituted "Notwithstanding any other provision of this title (including chapters 11 and 12), the basis" for "The basis".

Subsec. (d)(4). Pub. L. 94–455, §1501(b)(5), as amended by Pub. L. 95–600, §703(c)(4), inserted reference to section 220 and substituted "In the case of such a distribution, for purposes of section 61, any net income described in subparagraph (C) shall be deemed to have been earned and receivable in the taxable year in which such excess contribution is made" for "Any net income described in subparagraph (C) shall be included in the gross income of the individual for the taxable year in which received".

Subsecs. (h), (i). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title II, §208(b), Jan. 2, 2013, 126 Stat. 2324, provided that:

"(1) EFFECTIVE DATE.—The amendment made by this section [amending this section] shall apply to distributions made in taxable years beginning after December 31, 2011.

"(2) SPECIAL RULES.—For purposes of subsections (a)(6), (b)(3), and (d)(8) of section 408 of the Internal Revenue Code of 1986, at the election of the taxpayer (at such time and in such manner as prescribed by the Secretary of the Treasury)—

"(A) any qualified charitable distribution made after December 31, 2012, and before February 1, 2013, shall be deemed to have been made on December 31, 2012, and

"(B) any portion of a distribution from an individual retirement account to the taxpayer after November 30, 2012, and before January 1, 2013, may be treated as a qualified charitable distribution to the extent that—

"(i) such portion is transferred in cash after the distribution to an organization described in section 408(d)(8)(B)(i) before February 1, 2013, and

"(ii) such portion is part of a distribution that would meet the requirements of section 408(d)(8) but for the fact that the distribution was not transferred directly to an organization described in section 408(d)(8)(B)(i)."

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §725(b), Dec. 17, 2010, 124 Stat. 3316, provided that:

"(1) EFFECTIVE DATE.—The amendment made by this section [amending this section] shall apply to distributions made in taxable years beginning after December 31, 2009.

"(2) SPECIAL RULE.—For purposes of subsections (a)(6), (b)(3), and (d)(8) of section 408 of the Internal Revenue Code of 1986, at the election of the taxpayer (at such time and in such manner as prescribed by the Secretary of the Treasury) any qualified charitable distribution made after December 31, 2010, and before February 1, 2011, shall be deemed to have been made on December 31, 2010."

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title II, §205(b), Oct. 3, 2008, 122 Stat. 3865, provided that: "The amendment made by this section [amending this section] shall apply to distributions made in taxable years beginning after December 31, 2007."

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–172 effective as if included in the provisions of the Pension Protection Act of 2006, Pub. L. 109–280, to which such amendment relates, see section 3(j) of Pub. L. 110–172, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–432 applicable to taxable years beginning after Dec. 31, 2006, see section 307(c) of Pub. L. 109–432, set out as a note under section 223 of this title.

Pub. L. 109–280, title XII, §1201(c)(1), Aug. 17, 2006, 120 Stat. 1066, provided that: "The amendment made by subsection (a) [amending this section] shall apply to distributions made in taxable years beginning after December 31, 2005."

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 404(d) of Pub. L. 108–311 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 404(f) of Pub. L. 108–311, set out as a note under section 45A of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 601(b) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 601(c) of Pub. L. 107–16, set out as a note under section 219 of this title.

Pub. L. 107–16, title VI, §602(c), June 7, 2001, 115 Stat. 96, provided that: "The amendments made by this section [amending this section and section 1003 of Title 29, Labor] shall apply to plan years beginning after December 31, 2002."

Amendment by section 611(c)(1), (f)(1), (2), (g)(2) of Pub. L. 107–16 applicable to years beginning after Dec. 31, 2001, see section 611(i)(1) of Pub. L. 107–16, set out as a note under section 415 of this title.

Amendment by section 641(e)(8) of Pub. L. 107–16 applicable to distributions after Dec. 31, 2001, see

section 641(f)(1) of Pub. L. 107–16, set out as a note under section 402 of this title.

Pub. L. 107–16, title VI, §642(c), June 7, 2001, 115 Stat. 122, provided that:

"(1) EFFECTIVE DATE.—The amendments made by this section [amending this section and section 403 of this title] shall apply to distributions after December 31, 2001.

"(2) SPECIAL RULE.—Notwithstanding any other provision of law, subsections (h)(3) and (h)(5) of section 1122 of the Tax Reform Act of 1986 [Pub. L. 99–514, set out as a note under section 402 of this title] shall not apply to any distribution from an eligible retirement plan (as defined in clause (iii) or (iv) of section 402(c)(8)(B) of the Internal Revenue Code of 1986) on behalf of an individual if there was a rollover to such plan on behalf of such individual which is permitted solely by reason of the amendments made by this section."

Amendment by section 643(c) of Pub. L. 107–16 applicable to distributions made after Dec. 31, 2001, see section 643(d) of Pub. L. 107–16, set out as a note under section 401 of this title.

Amendment by section 644(b) of Pub. L. 107–16 applicable to distributions after Dec. 31, 2001, see section 644(c) of Pub. L. 107–16, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 6018(b) of Pub. L. 105–206 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which such amendment relates, see section 6018(h) of Pub. L. 105–206, set out as a note under section 23 of this title.

Amendment by sections 6015(a) and 6016(a)(1) of Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 302(d) of Pub. L. 105–34 applicable to taxable years beginning after Dec. 31, 1997, see section 302(f) of Pub. L. 105–34, set out as a note under section 219 of this title.

Pub. L. 105–34, title III, §304(b), Aug. 5, 1997, 111 Stat. 831, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1997."

Pub. L. 105–34, title XV, §1501(c)(2), Aug. 5, 1997, 111 Stat. 1058, provided that: "The amendment made by subsection (b) [amending this section] shall apply to years beginning after December 31, 1996."

Amendment by section 1601(d)(1)(A)–(C)(i), (D)–(G) of Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 23 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1421(a), (b)(3)(B), (5), (6), (c) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1421(e) of Pub. L. 104–188, set out as a note under section 72 of this title.

Amendment by section 1427(b)(3) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1427(c) of Pub. L. 104–188, set out as a note under section 219 of this title.

Amendment by section 1431(c)(1)(B) of Pub. L. 104–188 applicable to years beginning after Dec. 31, 1996, except that in determining whether an employee is a highly compensated employee for years beginning in 1997, such amendment to be treated as having been in effect for years beginning in 1996, see section 1431(d)(1) of Pub. L. 104–188, set out as a note under section 414 of this title.

Pub. L. 104–188, title I, §1455(e), Aug. 20, 1996, 110 Stat. 1818, provided that: "The amendments made by this section [amending this section and sections 6047, 6652, 6693, and 6724 of this title] shall apply to returns, reports, and other statements the due date for which (determined without regard to extensions) is after December 31, 1996."

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 applicable to years beginning after Dec. 31, 1994, and, to the extent of providing for the rounding of indexed amounts, not applicable to any year to the extent the rounding would require the indexed amount to be reduced below the amount in effect for years beginning in 1994, see section 732(e) of Pub. L. 103–465, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable, except as otherwise provided, to benefits accruing in plan years beginning after Dec. 31, 1993, see section 13212(d) of Pub. L. 103–66, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102–318, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7811(m)(7) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

Pub. L. 101–239, title VII, §7841(a)(3), Dec. 19, 1989, 103 Stat. 2428, provided that: "The amendments made by this subsection [amending this section and section 414 of this title] shall apply to transfers after the date of the enactment of this Act [Dec. 19, 1989] in taxable years ending after such date."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011(c)(7)(C) of Pub. L. 100–647 applicable to plan years beginning after Dec. 31, 1987, with exception in case of a plan described in section 1105(c)(2) of Pub. L. 99–514, see section 1011(c)(7)(E) of Pub. L. 100–647, set out as a note under section 401 of this title.

Pub. L. 100–647, title I, §1011A(a)(2)(B), Nov. 10, 1988, 102 Stat. 3472, provided that: "The amendment made by subparagraph (A) [amending this section] shall apply to rollover contributions made in taxable years beginning after December 31, 1986."

Amendment by sections 1011(b)(1)–(3), (f)(1)–(5), (10), (i)(5) and 1018(t)(3)(D) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title VI, §6057(b), Nov. 10, 1988, 102 Stat. 3698, provided that: "The amendments made by subsection (a) [amending this section] shall apply to acquisitions after the date of the enactment of this Act [Nov. 10, 1988]."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1102(a), (b)(2), (c), (e)(2) of Pub. L. 99–514 applicable to contributions and distributions for taxable years beginning after Dec. 31, 1986, see section 1102(g) of Pub. L. 99–514, set out as a note under section 219 of this title.

Amendment by section 1108(a), (d)–(g)(1), (4), (6) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1986, except that section 408(k)(3)(D) and (E) of the Internal Revenue Code of 1954 (as in effect before the amendments made by section 1108 of Pub. L. 99–514) shall continue to apply for years beginning after Dec. 31, 1986, and before Jan. 1, 1989, except that employer contributions under an arrangement under section 408(k)(6) of the Internal Revenue Code of 1986 (as added by section 1108 of Pub. L. 99–514) may not be integrated under section 408(k)(3)(D) and (E) of the Internal Revenue Code of 1954, see section 1108(h) of Pub. L. 99–514, as amended, set out as a note under section 219 of this title.

Amendment by section 1121(c)(2) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1986, with special provisions for plans maintained pursuant to collective bargaining agreements ratified before Mar. 1, 1986, and transition rules, see section 1121(d) of Pub. L. 99–514, set out as a note under section 401 of this title.

Amendment by section 1122(e)(2)(B) of Pub. L. 99–514 applicable, except as otherwise provided, to amounts distributed after Dec. 31, 1986, in taxable years ending after such date, see section 1122(h) of Pub. L. 99–514, set out as a note under section 402 of this title.

Amendment by section 1123(d)(2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, except as otherwise provided, see section 1123(e) of Pub. L. 99–514, set out as a note under section 72 of this title.

Pub. L. 99–514, title XI, §1144(b), Oct. 22, 1986, 100 Stat. 2490, provided that: "The amendment made by this section [amending this section] shall apply to acquisitions after December 31, 1986."

Amendment by sections 1852(a)(1), (5)(C), (7)(A) and 1875(c)(8) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Amendment by section 1875(c)(6)(A) of Pub. L. 99–514 effective as if included in the amendments made by section 238 of Pub. L. 97–248, see section 1875(c)(12) of Pub. L. 99–514, set out as a note under section 62 of this title.

Pub. L. 99–514, title XVIII, §1898(a)(5), Oct. 22, 1986, 100 Stat. 2944, provided that the amendment made by that section is effective with respect to plan years beginning after Oct. 22, 1986.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 147(a) of Pub. L. 98–369 applicable to contributions made after Dec. 31, 1984, see section 147(d)(1) of Pub. L. 98–369, set out as a note under section 219 of this title.

Amendment by section 491(d)(19)–(24) of Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

Amendment by section 521(b) of Pub. L. 98–369 applicable to years beginning after Dec. 31, 1984, see section 521(e) of Pub. L. 98–369, set out as a note under section 401 of this title.

Amendment by section 522(d)(12) of Pub. L. 98–369 applicable to distributions made after July 18, 1984, in taxable years ending after that date, see section 522(e) of Pub. L. 98–369, set out as a note under section 402 of this title.

Amendment by section 713 of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by sections 237 and 238 of Pub. L. 97–248 applicable to years beginning after Dec. 31, 1983, see section 241 of Pub. L. 97–248, set out as an Effective Date note under section 416 of this title.

Pub. L. 97–248, title II, §243(c), Sept. 3, 1982, 96 Stat. 523, as amended by Pub. L. 98–369, div. A, title VII, §713(g)(1), July 18, 1984, 98 Stat. 960, provided that: "The amendments made by this section [amending this section and sections 219 and 409 of this title] shall apply with respect to individuals dying after December 31, 1983."

Pub. L. 97–248, title III, §335(b), Sept. 3, 1982, 96 Stat. 628, provided that: "The amendments made by subsection (a) [amending this section and section 409 of this title] shall apply to distributions made after December 31, 1982, in taxable years ending after such date."

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 311(g)(1)(A)–(C), (2), (h)(2) of Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 311(i) of Pub. L. 97–34, set out as a note under section 219 of this title.

Amendment by section 312(b)(2), (c)(5) of Pub. L. 97–34 applicable to plans which include employees within the meaning of section 401(c)(1) with respect to taxable years beginning after Dec. 31, 1981, see section 312(f) of Pub. L. 97–34, set out as a note under section 72 of this title.

Amendment by section 313(b)(2) of Pub. L. 97–34 applicable to redemptions after Aug. 13, 1981, in taxable years ending after such date, see section 313(c) of Pub. L. 97–34, set out as a note under section 219 of this title.

Pub. L. 97–34, title III, §314(b)(2), Aug. 13, 1981, 95 Stat. 286, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to property acquired after December 31, 1981, in taxable years ending after such date."

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–605 applicable with respect to plan years beginning after Dec. 31, 1980, see section 225(c) of Pub. L. 96–605, set out as a note under section 401 of this title.

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title I, §152(h), Nov. 6, 1978, 92 Stat. 2800, provided that: "The amendments made by this section [amending this section and sections 219, 401, 404, 414, and 415 of this title] shall apply to taxable years beginning after December 31, 1978."

Amendment by section 156(c)(1), (3) of Pub. L. 95–600 applicable to distributions or transfers made after Dec. 31, 1977, in taxable years beginning after such date, see section 156(d) of Pub. L. 95–600, set out as a

note under section 403 of this title.

Pub. L. 95–600, title I, §157(c)(2)(A), Nov. 6, 1978, 92 Stat. 2805, provided that: "The amendments made by paragraph (1) [amending this section] shall apply to distributions in taxable years beginning after December 31, 1975."

Pub. L. 95–600, title I, §157(d)(2), Nov. 6, 1978, 92 Stat. 2806, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to contracts issued after the date of the enactment of this Act [Nov. 6, 1978]."

Amendment by section 157(h)(2) of Pub. L. 95–600 applicable to payments made in taxable years beginning after Dec. 31, 1977, see section 157(h)(3)(A) of Pub. L. 95–600, set out as a note under section 402 of this title.

Pub. L. 95–600, title I, §157(e)(2), Nov. 6, 1978, 92 Stat. 2806, provided that: "The amendments made by paragraph (1) [amending this section and section 409 of this title] shall apply to taxable years beginning after December 31, 1976."

Amendment by section 157(g)(3) of Pub. L. 95–600 applicable to lump-sum distributions completed after Dec. 31, 1978, in taxable years ending after such date, see section 157(g)(4) of Pub. L. 95–600, set out as a note under section 402 of this title.

Amendment by section 703(c)(4) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1976, see section 703(c)(5) of Pub. L. 95–600, set out as a note under section 219 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1501(b)(2), (5), (10) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1501(d) of Pub. L. 94–455, set out as a note under section 62 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1974, see section 2002(i)(1) of Pub. L. 93–406, set out as a note under section 219 of this title.

ROLLOVER OF AMOUNTS RECEIVED IN AIRLINE CARRIER BANKRUPTCY

Pub. L. 112–95, title XI, §1106, Feb. 14, 2012, 126 Stat. 152, as amended by Pub. L. 113–243, §1, Dec. 18, 2014, 128 Stat. 2863, provided that:

"(a) GENERAL RULES.—

"(1) ROLLOVER OF AIRLINE PAYMENT AMOUNT.—If a qualified airline employee receives any airline payment amount and transfers any portion of such amount to a traditional IRA within 180 days of receipt of such amount (or, if later, within 180 days of the date of the enactment of this Act [Feb. 14, 2012]), then such amount (to the extent so transferred) shall be treated as a rollover contribution described in section 402(c) of the Internal Revenue Code of 1986. A qualified airline employee making such a transfer may exclude from gross income the amount transferred, in the taxable year in which the airline payment amount was paid to the qualified airline employee by the commercial passenger airline carrier.

"(2) TRANSFER OF AMOUNTS ATTRIBUTABLE TO AIRLINE PAYMENT AMOUNT FOLLOWING ROLLOVER TO ROTH IRA.—A qualified airline employee who has contributed an airline payment amount to a Roth IRA that is treated as a qualified rollover contribution pursuant to section 125 of the Worker, Retiree, and Employer Recovery Act of 2008 [Pub. L. 110–458, 26 U.S.C. 408A note], may transfer to a traditional IRA, in a trustee-to-trustee transfer, all or any part of the contribution (together with any net income allocable to such contribution), and the transfer to the traditional IRA will be deemed to have been made at the time of the rollover to the Roth IRA, if such transfer is made within 180 days of the date of the enactment of this Act. A qualified airline employee making such a transfer may exclude from gross income the airline payment amount previously rolled over to the Roth IRA, to the extent an amount attributable to the previous rollover was transferred to a traditional IRA, in the taxable year in which the airline payment amount was paid to the qualified airline employee by the commercial passenger airline carrier. No amount so transferred to a traditional IRA may be treated as a qualified rollover contribution with respect to a Roth IRA within the 5-taxable year period beginning with the taxable year in which such transfer was made.

"(3) EXTENSION OF TIME TO FILE CLAIM FOR REFUND.—A qualified airline employee who excludes an amount from gross income in a prior taxable year under paragraph (1) or (2) may reflect such exclusion in a claim for refund filed within the period of limitation under section 6511(a) of such Code (or, if later, April 15, 2015).

"(4) OVERALL LIMITATION ON AMOUNTS TRANSFERRED TO TRADITIONAL IRAS.—

"(A) IN GENERAL.—The aggregate amount of airline payment amounts which may be transferred to 1 or more traditional IRAs under paragraphs (1) and (2) with respect to any qualified

employee for any taxable year shall not exceed the excess (if any) of—

"(i) 90 percent of the aggregate airline payment amounts received by the qualified airline employee during the taxable year and all preceding taxable years, over

"(ii) the aggregate amount of such transfers to which paragraphs (1) and (2) applied for all preceding taxable years.

"(B) SPECIAL RULES.—For purposes of applying the limitation under subparagraph (A)—

"(i) any airline payment amount received by the surviving spouse of any qualified employee, and any amount transferred to a traditional IRA by such spouse under subsection (d), shall be treated as an amount received or transferred by the qualified employee, and

"(ii) any amount transferred to a traditional IRA which is attributable to net income described in paragraph (2) shall not be taken into account.

"(5) COVERED EXECUTIVES NOT ELIGIBLE TO MAKE TRANSFERS.—Paragraphs (1) and (2) shall not apply to any transfer by a qualified airline employee (or any transfer authorized under subsection (d) by a surviving spouse of the qualified airline employee) if at any time during the taxable year of the transfer or any preceding taxable year the qualified airline employee held a position described in subparagraph (A) or (B) of section 162(m)(3) [probably means section 162(m)(3) of the Internal Revenue Code of 1986] with the commercial passenger airline carrier from whom the airline payment amount was received.

"(b) TREATMENT OF AIRLINE PAYMENT AMOUNTS AND TRANSFERS FOR EMPLOYMENT TAXES.—For purposes of chapter 21 of the Internal Revenue Code of 1986 and section 209 of the Social Security Act [42 U.S.C. 409], an airline payment amount shall not fail to be treated as a payment of wages by the commercial passenger airline carrier to the qualified airline employee in the taxable year of payment because such amount is excluded from the qualified airline employee's gross income under subsection (a).

"(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) AIRLINE PAYMENT AMOUNT.—

"(A) IN GENERAL.—The term 'airline payment amount' means any payment of any money or other property which is payable by a commercial passenger airline carrier to a qualified airline employee—

"(i) under the approval of an order of a Federal bankruptcy court in a case filed after September 11, 2001, and before January 1, 2007, or filed on November 29, 2011, and

"(ii) in respect of the qualified airline employee's interest in a bankruptcy claim against the carrier, any note of the carrier (or amount paid in lieu of a note being issued), or any other fixed obligation of the carrier to pay a lump sum amount.

The amount of such payment shall be determined without regard to any requirement to deduct and withhold tax from such payment under sections 3102(a) of the Internal Revenue Code of 1986 and 3402(a) of such Code.

"(B) EXCEPTION.—An airline payment amount shall not include any amount payable on the basis of the carrier's future earnings or profits.

"(2) QUALIFIED AIRLINE EMPLOYEE.—The term 'qualified airline employee' means an employee or former employee of a commercial passenger airline carrier who was a participant in a defined benefit plan maintained by the carrier which—

"(A) is a plan described in section 401(a) of the Internal Revenue Code of 1986 which includes a trust exempt from tax under section 501(a) of such Code, and

"(B) was terminated, became subject to the restrictions contained in paragraphs (2) and (3) of section 402(b) of the Pension Protection Act of 2006 [Pub. L. 109–280, 26 U.S.C. 430 note], or was frozen effective November 1, 2012.

"(3) TRADITIONAL IRA.—The term 'traditional IRA' means an individual retirement plan (as defined in section 7701(a)(37) of the Internal Revenue Code of 1986) which is not a Roth IRA.

"(4) ROTH IRA.—The term 'Roth IRA' has the meaning given such term by section 408A(b) of such Code.

"(d) SURVIVING SPOUSE.—If a qualified airline employee died after receiving an airline payment amount, or if an airline payment amount was paid to the surviving spouse of a qualified airline employee in respect of the qualified airline employee, the surviving spouse of the qualified airline employee may take all actions permitted under section 125 of the Worker, Retiree and Employer Recovery Act of 2008 [Pub. L. 110–458, 26 U.S.C. 408A note], or under this section, to the same extent that the qualified airline employee could have done had the qualified airline employee survived.

"(e) EFFECTIVE DATE.—This section shall apply to transfers made after the date of the enactment of this Act [Feb. 14, 2012] with respect to airline payment amounts paid before, on, or after such date."

DIRECT PAYMENT OF TAX REFUNDS TO INDIVIDUAL RETIREMENT PLANS

Pub. L. 109–280, title VIII, §830, Aug. 17, 2006, 120 Stat. 1002, provided that:

"(a) IN GENERAL.—The Secretary of the Treasury (or the Secretary's delegate) shall make available a form (or modify existing forms) for use by individuals to direct that a portion of any refund of overpayment of tax imposed by chapter 1 of the Internal Revenue Code of 1986 be paid directly to an individual retirement plan (as defined in section 7701(a)(37) of such Code) of such individual.

"(b) EFFECTIVE DATE.—The form required by subsection (a) shall be made available for taxable years beginning after December 31, 2006."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§1401–1465] of title I of Pub. L. 104–188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TRANSITIONAL RULE FOR CONTRIBUTIONS FOR TAXABLE YEARS BEGINNING BEFORE JANUARY 1, 1978

Pub. L. 95–600, title I, §157(c)(2)(B), Nov. 6, 1978, 92 Stat. 2805, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "In the case of contributions for taxable years beginning before January 1, 1978, paragraph (5) of section 408(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall be applied as if such paragraph did not contain any dollar limitation."

EXCHANGE OF FIXED PREMIUM ANNUITY OR ENDOWMENT CONTRACT ISSUED ON OR BEFORE NOV. 6, 1978, FOR INDIVIDUAL RETIREMENT ANNUITY

Pub. L. 95–600, title I, §157(d)(3), Nov. 6, 1978, 92 Stat. 2806, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "In the case of any annuity or endowment contract issued on or before the date of the enactment of this Act [Nov. 6, 1978] which would be an individual retirement annuity within the meaning of section 408(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by paragraph (1) [amending subsec. (b)(2) of this section]) but for the fact that the premiums under the contract are fixed, at the election of the taxpayer an exchange before January 1, 1981, of that contract for an individual retirement annuity within the meaning of such section 408(b) (as amended by paragraph (1)) shall be treated as a nontaxable exchange which does not constitute a distribution."

[1] *So in original.*

[2] *See References in Text note below.*

§408A. Roth IRAs

(a) General rule

Except as provided in this section, a Roth IRA shall be treated for purposes of this title in the same manner as an individual retirement plan.

(b) Roth IRA

For purposes of this title, the term "Roth IRA" means an individual retirement plan (as defined in section 7701(a)(37)) which is designated (in such manner as the Secretary may prescribe) at the time of establishment of the plan as a Roth IRA. Such designation shall be made in such manner as the Secretary may prescribe.

(c) Treatment of contributions

(1) No deduction allowed

No deduction shall be allowed under section 219 for a contribution to a Roth IRA.

(2) Contribution limit

The aggregate amount of contributions for any taxable year to all Roth IRAs maintained for the benefit of an individual shall not exceed the excess (if any) of—

(A) the maximum amount allowable as a deduction under section 219 with respect to such individual for such taxable year (computed without regard to subsection (d)(1) or (g) of such section), over

(B) the aggregate amount of contributions for such taxable year to all other individual retirement plans (other than Roth IRAs) maintained for the benefit of the individual.

(3) Limits based on modified adjusted gross income

(A) Dollar limit

The amount determined under paragraph (2) for any taxable year shall not exceed an amount equal to the amount determined under paragraph (2)(A) for such taxable year, reduced (but not below zero) by the amount which bears the same ratio to such amount as—

(i) the excess of—

(I) the taxpayer's adjusted gross income for such taxable year, over

(II) the applicable dollar amount, bears to

(ii) $15,000 ($10,000 in the case of a joint return or a married individual filing a separate return).

The rules of subparagraphs (B) and (C) of section 219(g)(2) shall apply to any reduction under this subparagraph.

(B) Definitions

For purposes of this paragraph—

(i) adjusted gross income shall be determined in the same manner as under section 219(g)(3), except that any amount included in gross income under subsection (d)(3) shall not be taken into account, and

(ii) the applicable dollar amount is—

(I) in the case of a taxpayer filing a joint return, $150,000,

(II) in the case of any other taxpayer (other than a married individual filing a separate return), $95,000, and

(III) in the case of a married individual filing a separate return, zero.

(C) Marital status

Section 219(g)(4) shall apply for purposes of this paragraph.

(D) Inflation adjustment

In the case of any taxable year beginning in a calendar year after 2006, the dollar amounts in subclauses (I) and (II) of subparagraph (B)(ii) shall each be increased by an amount equal to—

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting "calendar year 2005" for "calendar year 1992" in subparagraph (B) thereof.

Any increase determined under the preceding sentence shall be rounded to the nearest multiple of $1,000.

(4) Contributions permitted after age 70½

Contributions to a Roth IRA may be made even after the individual for whom the account is maintained has attained age 70½.

(5) Mandatory distribution rules not to apply before death

Notwithstanding subsections (a)(6) and (b)(3) of section 408 (relating to required distributions), the following provisions shall not apply to any Roth IRA:

(A) Section 401(a)(9)(A).

(B) The incidental death benefit requirements of section 401(a).

(6) Rollover contributions

(A) In general

No rollover contribution may be made to a Roth IRA unless it is a qualified rollover contribution.

(B) Coordination with limit

A qualified rollover contribution shall not be taken into account for purposes of paragraph (2).

(7) Time when contributions made

For purposes of this section, the rule of section 219(f)(3) shall apply.

(d) Distribution rules

For purposes of this title—

(1) Exclusion

Any qualified distribution from a Roth IRA shall not be includible in gross income.

(2) Qualified distribution

For purposes of this subsection—

(A) In general

The term "qualified distribution" means any payment or distribution—

(i) made on or after the date on which the individual attains age 59½,

(ii) made to a beneficiary (or to the estate of the individual) on or after the death of the individual,

(iii) attributable to the individual's being disabled (within the meaning of section 72(m)(7)), or

(iv) which is a qualified special purpose distribution.

(B) Distributions within nonexclusion period

A payment or distribution from a Roth IRA shall not be treated as a qualified distribution under subparagraph (A) if such payment or distribution is made within the 5-taxable year period beginning with the first taxable year for which the individual made a contribution to a Roth IRA (or such individual's spouse made a contribution to a Roth IRA) established for such individual.

(C) Distributions of excess contributions and earnings

The term "qualified distribution" shall not include any distribution of any contribution described in section 408(d)(4) and any net income allocable to the contribution.

(3) Rollovers from an eligible retirement plan other than a Roth IRA

(A) In general

Notwithstanding sections 402(c), 403(b)(8), 408(d)(3), and 457(e)(16), in the case of any distribution to which this paragraph applies—

(i) there shall be included in gross income any amount which would be includible were it not part of a qualified rollover contribution,

(ii) section 72(t) shall not apply, and

(iii) unless the taxpayer elects not to have this clause apply, any amount required to be included in gross income for any taxable year beginning in 2010 by reason of this paragraph shall be so included ratably over the 2-taxable-year period beginning with the first taxable year beginning in 2011.

Any election under clause (iii) for any distributions during a taxable year may not be changed after the due date for such taxable year.

(B) Distributions to which paragraph applies

This paragraph shall apply to a distribution from an eligible retirement plan (as defined by section 402(c)(8)(B)) maintained for the benefit of an individual which is contributed to a Roth IRA maintained for the benefit of such individual in a qualified rollover contribution. This paragraph shall not apply to a distribution which is a qualified rollover contribution from a Roth IRA or a qualified rollover contribution from a designated Roth account which is a rollover contribution described in section 402A(c)(3)(A) [1]

(C) Conversions

The conversion of an individual retirement plan (other than a Roth IRA) to a Roth IRA shall be treated for purposes of this paragraph as a distribution to which this paragraph applies.

(D) Additional reporting requirements

Trustees of Roth IRAs, trustees of individual retirement plans, persons subject to section 6047(d)(1), or all of the foregoing persons, whichever is appropriate, shall include such additional information in reports required under section 408(i) or 6047 as the Secretary may require to ensure that amounts required to be included in gross income under subparagraph (A) are so included.

(E) Special rules for contributions to which 2-year averaging applies

In the case of a qualified rollover contribution to a Roth IRA of a distribution to which subparagraph (A)(iii) applied, the following rules shall apply:

(i) Acceleration of inclusion

(I) In general

The amount otherwise required to be included in gross income for any taxable year beginning in 2010 or the first taxable year in the 2-year period under subparagraph (A)(iii) shall be increased by the aggregate distributions from Roth IRAs for such taxable year which are allocable under paragraph (4) to the portion of such qualified rollover contribution required to be included in gross income under subparagraph (A)(i).

(II) Limitation on aggregate amount included

The amount required to be included in gross income for any taxable year under subparagraph (A)(iii) shall not exceed the aggregate amount required to be included in gross income under subparagraph (A)(iii) for all taxable years in the 2-year period (without regard to subclause (I)) reduced by amounts included for all preceding taxable years.

(ii) Death of distributee

(I) In general

If the individual required to include amounts in gross income under such subparagraph dies before all of such amounts are included, all remaining amounts shall be included in gross income for the taxable year which includes the date of death.

(II) Special rule for surviving spouse

If the spouse of the individual described in subclause (I) acquires the individual's entire interest in any Roth IRA to which such qualified rollover contribution is properly allocable, the spouse may elect to treat the remaining amounts described in subclause (I) as includible in the spouse's gross income in the taxable years of the spouse ending with or within the taxable years of such individual in which such amounts would otherwise have been includible. Any such election may not be made or changed after the due date for the spouse's taxable year which includes the date of death.

(F) Special rule for applying section 72

(i) In general

If—

(I) any portion of a distribution from a Roth IRA is properly allocable to a qualified rollover contribution described in this paragraph; and

(II) such distribution is made within the 5-taxable year period beginning with the taxable year in which such contribution was made,

then section 72(t) shall be applied as if such portion were includible in gross income.

(ii) Limitation

Clause (i) shall apply only to the extent of the amount of the qualified rollover contribution includible in gross income under subparagraph (A)(i).

(4) Aggregation and ordering rules

(A) Aggregation rules

Section 408(d)(2) shall be applied separately with respect to Roth IRAs and other individual retirement plans.

(B) Ordering rules

For purposes of applying this section and section 72 to any distribution from a Roth IRA, such distribution shall be treated as made—

(i) from contributions to the extent that the amount of such distribution, when added to all previous distributions from the Roth IRA, does not exceed the aggregate contributions to the Roth IRA; and

(ii) from such contributions in the following order:

(I) Contributions other than qualified rollover contributions to which paragraph (3) applies.

(II) Qualified rollover contributions to which paragraph (3) applies on a first-in, first-out basis.

Any distribution allocated to a qualified rollover contribution under clause (ii)(II) shall be allocated first to the portion of such contribution required to be included in gross income.

(5) Qualified special purpose distribution

For purposes of this section, the term "qualified special purpose distribution" means any distribution to which subparagraph (F) of section 72(t)(2) applies.

(6) Taxpayer may make adjustments before due date

(A) In general

Except as provided by the Secretary, if, on or before the due date for any taxable year, a taxpayer transfers in a trustee-to-trustee transfer any contribution to an individual retirement plan made during such taxable year from such plan to any other individual retirement plan, then, for purposes of this chapter, such contribution shall be treated as having been made to the transferee plan (and not the transferor plan).

(B) Special rules

(i) Transfer of earnings

Subparagraph (A) shall not apply to the transfer of any contribution unless such transfer is accompanied by any net income allocable to such contribution.

(ii) No deduction

Subparagraph (A) shall apply to the transfer of any contribution only to the extent no deduction was allowed with respect to the contribution to the transferor plan.

(7) Due date

For purposes of this subsection, the due date for any taxable year is the date prescribed by law (including extensions of time) for filing the taxpayer's return for such taxable year.

(e) Qualified rollover contribution

For purposes of this section—

(1) In general

The term "qualified rollover contribution" means a rollover contribution—

(A) to a Roth IRA from another such account,

(B) from an eligible retirement plan, but only if—

(i) in the case of an individual retirement plan, such rollover contribution meets the requirements of section 408(d)(3), and

(ii) in the case of any eligible retirement plan (as defined in section 402(c)(8)(B) other than clauses (i) and (ii) thereof), such rollover contribution meets the requirements of section 402(c), 403(b)(8), or 457(e)(16), as applicable.

For purposes of section 408(d)(3)(B), there shall be disregarded any qualified rollover contribution from an individual retirement plan (other than a Roth IRA) to a Roth IRA.

(2) Military death gratuity

(A) In general

The term "qualified rollover contribution" includes a contribution to a Roth IRA maintained for the benefit of an individual made before the end of the 1-year period beginning on the date on which such individual receives an amount under section 1477 of title 10, United States Code, or section 1967 of title 38 of such Code, with respect to a person, to the extent that such contribution does not exceed—

(i) the sum of the amounts received during such period by such individual under such sections with respect to such person, reduced by

(ii) the amounts so received which were contributed to a Coverdell education savings account under section 530(d)(9).

(B) Annual limit on number of rollovers not to apply

Section 408(d)(3)(B) shall not apply with respect to amounts treated as a rollover by the [2] subparagraph (A).

(C) Application of section 72

For purposes of applying section 72 in the case of a distribution which is not a qualified distribution, the amount treated as a rollover by reason of subparagraph (A) shall be treated as investment in the contract.

(f) Individual retirement plan

For purposes of this section—

(1) a simplified employee pension or a simple retirement account may not be designated as a Roth IRA; and

(2) contributions to any such pension or account shall not be taken into account for purposes of subsection (c)(2)(B).

(Added Pub. L. 105–34, title III, §302(a), Aug. 5, 1997, 111 Stat. 825; amended Pub. L. 105–206, title VI, §6005(b)(1)–(7), (9), title VII, §7004(a), July 22, 1998, 112 Stat. 796–800, 833; Pub. L. 105–277, div. J, title IV, §4002(j), Oct. 21, 1998, 112 Stat. 2681–908; Pub. L. 107–16, title VI, §617(e)(1), June 7, 2001, 115 Stat. 106; Pub. L. 109–222, title V, §512(a), (b), May 17, 2006, 120 Stat. 365; Pub. L. 109–280, title VIII, §§824(a), (b), 833(c), Aug. 17, 2006, 120 Stat. 998, 1004; Pub. L. 110–245, title I, §109(a), (b), June 17, 2008, 122 Stat. 1631, 1632; Pub. L. 110–458, title I, §108(d), (h), Dec. 23, 2008, 122 Stat. 5109.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title and Internal Revenue Notices listed in a table under section 401 of this title.

AMENDMENTS

2008—Subsec. (c)(3)(B). Pub. L. 110–458, §108(d)(1), in introductory provisions, struck out second "an" before "eligible" and "other than a Roth IRA" before "during any taxable year", and inserted as concluding provisions "This subparagraph shall not apply to a qualified rollover contribution from a Roth IRA or to a qualified rollover contribution from a designated Roth account which is a rollover contribution described in section 402A(c)(3)(A)."

Subsec. (c)(3)(C), (E). Pub. L. 110–458, §108(h)(1), redesignated subpar. (C) relating to inflation adjustment as subpar. (E).

Subsec. (d)(3)(B). Pub. L. 110–458, §108(d)(2), struck out "(other than a Roth IRA)" after "section 402(c)(8)(B))" and inserted at end "This paragraph shall not apply to a distribution which is a qualified rollover contribution from a Roth IRA or a qualified rollover contribution from a designated Roth account which is a rollover contribution described in section 402A(c)(3)(A)".

Subsec. (e). Pub. L. 110–245, §109(b), amended subsec. (e), as in effect after amendment by section 824(a) of Pub. L. 109–280, by amending text generally. Prior to amendment, text read as follows: "For purposes of this section, the term 'qualified rollover contribution' means a rollover contribution—

"(1) to a Roth IRA from another such account,

"(2) from an eligible retirement plan, but only if—

"(A) in the case of an individual retirement plan, such rollover contribution meets the requirements of section 408(d)(3), and

"(B) in the case of any eligible retirement plan (as defined in section 402(c)(8)(B) other than clauses (i) and (ii) thereof), such rollover contribution meets the requirements of section 402(c), 403(b)(8), or 457(e)(16), as applicable.

For purposes of section 408(d)(3)(B), there shall be disregarded any qualified rollover contribution from an individual retirement plan (other than a Roth IRA) to a Roth IRA."

Pub. L. 110–245, §109(a), amended subsec. (e), as in effect before amendment by section 824(a) of Pub. L. 109–280, by reenacting heading without change and amending text to read as follows: "For purposes of this section—

"(1) IN GENERAL.—The term 'qualified rollover contribution' means a rollover contribution to a Roth IRA from another such account, or from an individual retirement plan, but only if such rollover contribution meets the requirements of section 408(d)(3). Such term includes a rollover contribution described in section 402A(c)(3)(A). For purposes of section 408(d)(3)(B), there shall be disregarded any qualified rollover contribution from an individual retirement plan (other than a Roth IRA) to a Roth IRA.

"(2) MILITARY DEATH GRATUITY.—

"(A) IN GENERAL.—The term 'qualified rollover contribution' includes a contribution to a Roth IRA maintained for the benefit of an individual made before the end of the 1-year period beginning on the date on which such individual receives an amount under section 1477 of title 10, United States Code, or section 1967 of title 38 of such Code, with respect to a person, to the extent that such contribution does not exceed—

"(i) the sum of the amounts received during such period by such individual under such sections with respect to such person, reduced by

"(ii) the amounts so received which were contributed to a Coverdell education savings account under section 530(d)(9).

"(B) ANNUAL LIMIT ON NUMBER OF ROLLOVERS NOT TO APPLY.—Section 408(d)(3)(B) shall not apply with respect to amounts treated as a rollover by subparagraph (A).

"(C) APPLICATION OF SECTION 72.—For purposes of applying section 72 in the case of a

distribution which is not a qualified distribution, the amount treated as a rollover by reason of subparagraph (A) shall be treated as investment in the contract." See 2006 Amendment note below.

2006—Subsec. (c)(3)(B). Pub. L. 109–222, §512(a)(1), redesignated subpar. (C) as (B) and struck out former subpar. (B). Prior to amendment, text read as follows: "A taxpayer shall not be allowed to make a qualified rollover contribution to a Roth IRA from an individual retirement plan other than a Roth IRA during any taxable year if, for the taxable year of the distribution to which such contribution relates—

"(i) the taxpayer's adjusted gross income exceeds $100,000, or

"(ii) the taxpayer is a married individual filing a separate return.

This subparagraph shall not apply to a qualified rollover contribution from a Roth IRA or to a qualified rollover contribution from a designated Roth account which is a rollover contribution described in section 402A(c)(3)(A)." See Effective Date of 2006 Amendment note below.

Pub. L. 109–280, §824(b)(1), substituted "eligible retirement plan" for "IRA" in heading and "an eligible retirement plan (as defined by section 402(c)(8)(B))" for "individual retirement plan" in introductory provisions. See Effective Date of 2006 Amendment note below.

Subsec. (c)(3)(B)(i). Pub. L. 109–222, §512(a)(2), substituted "except that any amount included in gross income under subsection (d)(3) shall not be taken into account, and" for "except that—

"(I) any amount included in gross income under subsection (d)(3) shall not be taken into account; and

"(II) any amount included in gross income by reason of a required distribution under a provision described in paragraph (5) shall not be taken into account for purposes of subparagraph (B)(i), and".

Subsec. (c)(3)(C). Pub. L. 109–222, §512(a)(1), redesignated subpar. (D), relating to marital status, as (C). Former subpar. (C) redesignated (B). See Effective Date of 2006 Amendment note below.

Pub. L. 109–280, §833(c), added subpar. (C) relating to inflation adjustment.

Subsec. (c)(3)(D), (E). Pub. L. 110–458, §108(h)(2), redesignated subpar. (E) as (D) and substituted "subparagraph (B)(ii)" for "subparagraph (C)(ii)".

Subsec. (d)(3). Pub. L. 109–280, §824(b)(2)(E), substituted "an eligible retirement plan" for "an IRA" in heading.

Subsec. (d)(3)(A). Pub. L. 109–280, §824(b)(2)(A), substituted "sections 402(c), 403(b)(8), 408(d)(3), and 457(e)(16)" for "section 408(d)(3)" in introductory provisions.

Subsec. (d)(3)(A)(iii). Pub. L. 109–222, §512(b)(1), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: "unless the taxpayer elects not to have this clause apply for any taxable year, any amount required to be included in gross income for such taxable year by reason of this paragraph for any distribution before January 1, 1999, shall be so included ratably over the 4-taxable year period beginning with such taxable year."

Subsec. (d)(3)(B). Pub. L. 109–280, §824(b)(2)(B), substituted "eligible retirement plan (as defined by section 402(c)(8)(B))" for "individual retirement plan".

Subsec. (d)(3)(D). Pub. L. 109–280, §824(b)(2)(C), (D), substituted "persons subject to section 6047(d)(1), or all of the foregoing persons" for "or both" and inserted "or 6047" after "408(i)".

Subsec. (d)(3)(E). Pub. L. 109–222, §512(b)(2)(B), substituted "2-year" for "4-year" in heading.

Subsec. (d)(3)(E)(i). Pub. L. 109–222, §512(b)(2)(A), amended cl. (i) generally. Prior to amendment, text read as follows:

"(I) IN GENERAL.—The amount required to be included in gross income for each of the first 3 taxable years in the 4-year period under subparagraph (A)(iii) shall be increased by the aggregate distributions from Roth IRAs for such taxable year which are allocable under paragraph (4) to the portion of such qualified rollover contribution required to be included in gross income under subparagraph (A)(i).

"(II) LIMITATION ON AGGREGATE AMOUNT INCLUDED.—The amount required to be included in gross income for any taxable year under subparagraph (A)(iii) shall not exceed the aggregate amount required to be included in gross income under subparagraph (A)(iii) for all taxable years in the 4-year period (without regard to subclause (I)) reduced by amounts included for all preceding taxable years."

Subsec. (e). Pub. L. 109–280, §824(a), reenacted heading without change and amended text of subsec. (e) generally. Prior to amendments by Pub. L. 109–280, §824(a), and Pub. L. 110–245, §109(a), text read as follows: "For purposes of this section, the term 'qualified rollover contribution' means a rollover contribution to a Roth IRA from another such account, or from an individual retirement plan, but only if such rollover contribution meets the requirements of section 408(d)(3). For purposes of section 408(d)(3)(B), there shall be disregarded any qualified rollover contribution from an individual retirement plan (other than a Roth IRA) to a Roth IRA." See 2008 Amendment note above.

2001—Subsec. (e). Pub. L. 107–16 inserted "Such term includes a rollover contribution described in section 402A(c)(3)(A)." after first sentence.

1998—Subsec. (c)(3)(A). Pub. L. 105–206, §6005(b)(1), substituted "shall not exceed an amount equal to

the amount determined under paragraph (2)(A) for such taxable year, reduced" for "shall be reduced" in introductory provisions.

Subsec. (c)(3)(A)(ii). Pub. L. 105–206, §6005(b)(2)(A), inserted "or a married individual filing a separate return" after "joint return".

Subsec. (c)(3)(B). Pub. L. 105–206, §6005(b)(2)(B)(i), inserted ", for the taxable year of the distribution to which such contribution relates" after "if" in introductory provisions.

Subsec. (c)(3)(B)(i). Pub. L. 105–206, §6005(b)(2)(B)(ii), struck out "for such taxable year" after "gross income".

Subsec. (c)(3)(C)(i). Pub. L. 105–206, §7004(a), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: "adjusted gross income shall be determined in the same manner as under section 219(g)(3), except that any amount included in gross income under subsection (d)(3) shall not be taken into account, and".

Pub. L. 105–206, §6005(b)(2)(C), struck out "and the deduction under section 219 shall be taken into account" after "taken into account".

Subsec. (c)(3)(C)(i)(II). Pub. L. 105–277 substituted ", and" for period at end.

Subsec. (d)(1). Pub. L. 105–206, §6005(b)(5)(B), substituted "Exclusion" for "General rules" in heading and amended text generally. Prior to amendment, text read as follows:

"(A) EXCLUSIONS FROM GROSS INCOME.—Any qualified distribution from a Roth IRA shall not be includible in gross income.

"(B) NONQUALIFIED DISTRIBUTIONS.—In applying section 72 to any distribution from a Roth IRA which is not a qualified distribution, such distribution shall be treated as made from contributions to the Roth IRA to the extent that such distribution, when added to all previous distributions from the Roth IRA, does not exceed the aggregate amount of contributions to the Roth IRA."

Subsec. (d)(2)(B). Pub. L. 105–206, §6005(b)(3)(A), added subpar. (B) and struck out heading and text of former subpar. (B). Text read as follows: "A payment or distribution shall not be treated as a qualified distribution under subparagraph (A) if—

"(i) it is made within the 5-taxable year period beginning with the 1st taxable year for which the individual made a contribution to a Roth IRA (or such individual's spouse made a contribution to a Roth IRA) established for such individual, or

"(ii) in the case of a payment or distribution properly allocable (as determined in the manner prescribed by the Secretary) to a qualified rollover contribution from an individual retirement plan other than a Roth IRA (or income allocable thereto), it is made within the 5-taxable year period beginning with the taxable year in which the rollover contribution was made."

Subsec. (d)(2)(C). Pub. L. 105–206, §6005(b)(3)(B), added subpar. (C).

Subsec. (d)(3)(A). Pub. L. 105–206, §6005(b)(4)(A), added cl. (iii) and concluding provisions and struck out former cl. (iii) which read as follows: "in the case of a distribution before January 1, 1999, any amount required to be included in gross income by reason of this paragraph shall be so included ratably over the 4-taxable year period beginning with the taxable year in which the payment or distribution is made."

Subsec. (d)(3)(D). Pub. L. 105–206, §6005(b)(6)(B), redesignated subpar. (E) as (D) and struck out heading and text of former subpar. (D). Text read as follows: "If, no later than the due date for filing the return of tax for any taxable year (without regard to extensions), an individual transfers, from an individual retirement plan (other than a Roth IRA), contributions for such taxable year (and any earnings allocable thereto) to a Roth IRA, no such amount shall be includible in gross income to the extent no deduction was allowed with respect to such amount."

Subsec. (d)(3)(E). Pub. L. 105–206, §6005(b)(6)(B), redesignated subpar. (F) as (E). Former subpar. (E) redesignated (D).

Subsec. (d)(3)(F). Pub. L. 105–206, §6005(b)(6)(B), redesignated subpar. (G) as (F). Former subpar. (F) redesignated (E).

Pub. L. 105–206, §6005(b)(4)(B), added subpar. (F).

Subsec. (d)(3)(G). Pub. L. 105–206, §6005(b)(6)(B), redesignated subpar. (G) as (F).

Pub. L. 105–206, §6005(b)(4)(B), added subpar. (G).

Subsec. (d)(4). Pub. L. 105–206, §6005(b)(5)(A), substituted "Aggregation and ordering rules" for "Coordination with individual retirement accounts" in heading and amended text generally. Prior to amendment, text read as follows: "Section 408(d)(2) shall be applied separately with respect to Roth IRAs and other individual retirement plans."

Subsec. (d)(6). Pub. L. 105–206, §6005(b)(6)(A), added par. (6).

Subsec. (d)(7). Pub. L. 105–206, §6005(b)(7), added par. (7).

Subsec. (f). Pub. L. 105–206, §6005(b)(9), added subsec. (f).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–458, title I, §108(h)(2), Dec. 23, 2008, 122 Stat. 5109, amended this section "[i]n the case of taxable years beginning after December 31, 2009".

Amendment by Pub. L. 110–458 effective as if included in the provisions of Pub. L. 109–280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110–458, set out as a note under section 72 of this title.

Pub. L. 110–245, title I, §109(d), June 17, 2008, 122 Stat. 1633, provided that:

"(1) IN GENERAL.—Except as provided by paragraphs (2) and (3), the amendments made by this section [amending this section and section 530 of this title] shall apply with respect to deaths from injuries occurring on or after the date of the enactment of this Act [June 17, 2008].

"(2) APPLICATION OF AMENDMENTS TO DEATHS FROM INJURIES OCCURRING ON OR AFTER OCTOBER 7, 2001, AND BEFORE ENACTMENT.—The amendments made by this section shall apply to any contribution made pursuant to section 408A(e)(2) or 530(d)(5) of the Internal Revenue Code of 1986, as amended by this Act, with respect to amounts received under section 1477 of title 10, United States Code, or under section 1967 of title 38 of such Code, for deaths from injuries occurring on or after October 7, 2001, and before the date of the enactment of this Act if such contribution is made not later than 1 year after the date of the enactment of this Act.

"(3) PENSION PROTECTION ACT CHANGES.—Section 408A(e)(1) of the Internal Revenue Code of 1986 (as in effect after the amendments made by subsection (b)) shall apply to taxable years beginning after December 31, 2007."

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title VIII, §824(b)(1), Aug. 17, 2006, 120 Stat. 998, provided that the amendment made by section 824(b)(1) amends this section as in effect before the Tax Increase Prevention and Reconciliation Act of 2005, Pub. L. 109–222. See below.

Pub. L. 109–280, title VIII, §824(c), Aug. 17, 2006, 120 Stat. 999, provided that: "The amendments made by this section [amending this section] shall apply to distributions after December 31, 2007."

Amendment by section 833(c) of Pub. L. 109–280 applicable to taxable years beginning after 2006, see section 833(d) of Pub. L. 109–280, set out as a note under section 25B of this title.

Pub. L. 109–222, title V, §512(c), May 17, 2006, 120 Stat. 366, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2009."

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2005, see section 617(f) of Pub. L. 107–16, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1998 AMENDMENTS

Amendment by Pub. L. 105–277 effective as if included in the provision of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105–206, to which such amendment relates, see section 4002(k) of Pub. L. 105–277, set out as a note under section 1 of this title.

Amendment by section 6005(b)(1)–(7), (9) of Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

Pub. L. 105–206, title VII, §7004(b), July 22, 1998, 112 Stat. 833, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2004."

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1997, see section 302(f) of Pub. L. 105–34, set out as an Effective Date of 1997 Amendment note under section 219 of this title.

ROLLOVER OF AMOUNTS RECEIVED IN AIRLINE CARRIER BANKRUPTCY TO ROTH IRAS

Pub. L. 110–458, title I, §125, Dec. 23, 2008, 122 Stat. 5115, provided that:

"(a) GENERAL RULE.—If a qualified airline employee receives any airline payment amount and transfers any portion of such amount to a Roth IRA within 180 days of receipt of such amount (or, if later, within 180 days of the date of the enactment of this Act [Dec. 23, 2008]), then such amount (to the extent so transferred) shall be treated as a qualified rollover contribution described in section 408A(e) of the Internal Revenue Code of 1986, and the limitations described in section 408A(c)(3) of such Code shall not apply to any such transfer.

"(b) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) AIRLINE PAYMENT AMOUNT.—

"(A) IN GENERAL.—The term 'airline payment amount' means any payment of any money or

other property which is payable by a commercial passenger airline carrier to a qualified airline employee—

"(i) under the approval of an order of a Federal bankruptcy court in a case filed after September 11, 2001, and before January 1, 2007, and

"(ii) in respect of the qualified airline employee's interest in a bankruptcy claim against the carrier, any note of the carrier (or amount paid in lieu of a note being issued), or any other fixed obligation of the carrier to pay a lump sum amount.

The amount of such payment shall be determined without regard to any requirement to deduct and withhold tax from such payment under sections 3102(a) and 3402(a).

"(B) EXCEPTION.—An airline payment amount shall not include any amount payable on the basis of the carrier's future earnings or profits.

"(2) QUALIFIED AIRLINE EMPLOYEE.—The term 'qualified airline employee' means an employee or former employee of a commercial passenger airline carrier who was a participant in a defined benefit plan maintained by the carrier which—

"(A) is a plan described in section 401(a) of the Internal Revenue Code of 1986 which includes a trust exempt from tax under section 501(a) of such Code, and

"(B) was terminated or became subject to the restrictions contained in paragraphs (2) and (3) of section 402(b) of the Pension Protection Act of 2006 [Pub. L. 109–280, 26 U.S.C. 430 note].

"(3) REPORTING REQUIREMENTS.—If a commercial passenger airline carrier pays 1 or more airline payment amounts, the carrier shall, within 90 days of such payment (or, if later, within 90 days of the date of the enactment of this Act [Dec. 23, 2008]), report—

"(A) to the Secretary of the Treasury, the names of the qualified airline employees to whom such amounts were paid, and

"(B) to the Secretary and to such employees, the years and the amounts of the payments.

Such reports shall be in such form, and contain such additional information, as the Secretary may prescribe.

"(c) EFFECTIVE DATE.—This section shall apply to transfers made after the date of the enactment of this Act [Dec. 23, 2008] with respect to airline payment amounts paid before, on, or after such date."

[1] So in original. Probably should be followed by a period.

[2] So in original. The word "the" probably should not appear.

§409. Qualifications for tax credit employee stock ownership plans

(a) Tax credit employee stock ownership plan defined

Except as otherwise provided in this title, for purposes of this title, the term "tax credit employee stock ownership plan" means a defined contribution plan which—

(1) meets the requirements of section 401(a),

(2) is designed to invest primarily in employer securities, and

(3) meets the requirements of subsections (b), (c), (d), (e), (f), (g), (h), and (o) of this section.

(b) Required allocation of employer securities

(1) In general

A plan meets the requirements of this subsection if—

(A) the plan provides for the allocation for the plan year of all employer securities transferred to it or purchased by it (because of the requirements of section 41(c)(1)(B)) [1] to the accounts of all participants who are entitled to share in such allocation, and

(B) for the plan year the allocation to each participant so entitled is an amount which bears substantially the same proportion to the amount of all such securities allocated to all such participants in the plan for that year as the amount of compensation paid to such participant during that year bears to the compensation paid to all such participants during that year.

(2) Compensation in excess of $100,000 disregarded

For purposes of paragraph (1), compensation of any participant in excess of the first $100,000 per year shall be disregarded.

(3) Determination of compensation

For purposes of this subsection, the amount of compensation paid to a participant for any period is the amount of such participant's compensation (within the meaning of section 415(c)(3)) for such period.

(4) Suspension of allocation in certain cases

Notwithstanding paragraph (1), the allocation to the account of any participant which is attributable to the basic employee plan credit or the credit allowed under section 41 [1] (relating to the employee stock ownership credit) may be extended over whatever period may be necessary to comply with the requirements of section 415.

(c) Participants must have nonforfeitable rights

A plan meets the requirements of this subsection only if it provides that each participant has a nonforfeitable right to any employer security allocated to his account.

(d) Employer securities must stay in the plan

A plan meets the requirements of this subsection only if it provides that no employer security allocated to a participant's account under subsection (b) (or allocated to a participant's account in connection with matched employer and employee contributions) may be distributed from that account before the end of the 84th month beginning after the month in which the security is allocated to the account. To the extent provided in the plan, the preceding sentence shall not apply in the case of—

(1) death, disability, separation from service, or termination of the plan;

(2) a transfer of a participant to the employment of an acquiring employer from the employment of the selling corporation in the case of a sale to the acquiring corporation of substantially all of the assets used by the selling corporation in a trade or business conducted by the selling corporation, or

(3) with respect to the stock of a selling corporation, a disposition of such selling corporation's interest in a subsidiary when the participant continues employment with such subsidiary.

This subsection shall not apply to any distribution required under section 401(a)(9) or to any distribution or reinvestment required under section 401(a)(28).

(e) Voting rights

(1) In general

A plan meets the requirements of this subsection if it meets the requirements of paragraph (2) or (3), whichever is applicable.

(2) Requirements where employer has a registration-type class of securities

If the employer has a registration-type class of securities, the plan meets the requirements of this paragraph only if each participant or beneficiary in the plan is entitled to direct the plan as to the manner in which securities of the employer which are entitled to vote and are allocated to the account of such participant or beneficiary are to be voted.

(3) Requirement for other employers

If the employer does not have a registration-type class of securities, the plan meets the requirements of this paragraph only if each participant or beneficiary in the plan is entitled to direct the plan as to the manner in which voting rights under securities of the employer which are allocated to the account of such participant or beneficiary are to be exercised with respect to any corporate matter which involves the voting of such shares with respect to the approval or

disapproval of any corporate merger or consolidation, recapitalization, reclassification, liquidation, dissolution, sale of substantially all assets of a trade or business, or such similar transaction as the Secretary may prescribe in regulations.

(4) Registration-type class of securities defined

For purposes of this subsection, the term, "registration-type class of securities" means—

(A) a class of securities required to be registered under section 12 of the Securities Exchange Act of 1934, and

(B) a class of securities which would be required to be so registered except for the exemption from registration provided in subsection (g)(2)(H) of such section 12.

(5) 1 vote per participant

A plan meets the requirements of paragraph (3) with respect to an issue if—

(A) the plan permits each participant 1 vote with respect to such issue, and

(B) the trustee votes the shares held by the plan in the proportion determined after application of subparagraph (A).

(f) Plan must be established before employer's due date

(1) In general

A plan meets the requirements of this subsection only if it is established on or before the due date (including any extension of such date) for the filing of the employer's tax return for the first taxable year of the employer for which an employee plan credit is claimed by the employer with respect to the plan.

(2) Special rule for first year

A plan which otherwise meets the requirements of this section shall not be considered to have failed to meet the requirements of section 401(a) merely because it was not established by the close of the first taxable year of the employer for which an employee plan credit is claimed by the employer with respect to the plan.

(g) Transferred amounts must stay in plan even though investment credit is redetermined or recaptured

A plan meets the requirement of this subsection only if it provides that amounts which are transferred to the plan (because of the requirements of section 48(n)(1) or 41(c)(1)(B)) [1] shall remain in the plan (and, if allocated under the plan, shall remain so allocated) even though part or all of the employee plan credit or the credit allowed under section 41 [1] (relating to employee stock ownership credit) is recaptured or redetermined. For purposes of the preceding sentence, the references to section 48(n)(1) [1] and the employee plan credit shall refer to such section and credit as in effect before the enactment of the Tax Reform Act of 1984.

(h) Right to demand employer securities; put option

(1) In general

A plan meets the requirements of this subsection if a participant who is entitled to a distribution from the plan—

(A) has a right to demand that his benefits be distributed in the form of employer securities, and

(B) if the employer securities are not readily tradable on an established market, has a right to require that the employer repurchase employer securities under a fair valuation formula.

(2) Plan may distribute cash in certain cases

(A) In general

A plan which otherwise meets the requirements of this subsection or of section 4975(e)(7) shall not be considered to have failed to meet the requirements of section 401(a) merely because under the plan the benefits may be distributed in cash or in the form of employer securities.

(B) Exception for certain plans restricted from distributing securities

(i) In general

A plan to which this subparagraph applies shall not be treated as failing to meet the requirements of this subsection or section 401(a) merely because it does not permit a participant to exercise the right described in paragraph (1)(A) if such plan provides that the participant entitled to a distribution has a right to receive the distribution in cash, except that such plan may distribute employer securities subject to a requirement that such securities may be resold to the employer under terms which meet the requirements of paragraph (1)(B).

(ii) Applicable plans

This subparagraph shall apply to a plan which otherwise meets the requirements of this subsection or section 4975(e)(7) and which is established and maintained by—

(I) an employer whose charter or bylaws restrict the ownership of substantially all outstanding employer securities to employees or to a trust described in section 401(a), or

(II) an S corporation.

(3) Special rule for banks

In the case of a plan established and maintained by a bank (as defined in section 581) which is prohibited by law from redeeming or purchasing its own securities, the requirements of paragraph (1)(B) shall not apply if the plan provides that participants entitled to a distribution from the plan shall have a right to receive a distribution in cash.

(4) Put option period

An employer shall be deemed to satisfy the requirements of paragraph (1)(B) if it provides a put option for a period of at least 60 days following the date of distribution of stock of the employer and, if the put option is not exercised within such 60-day period, for an additional period of at least 60 days in the following plan year (as provided in regulations promulgated by the Secretary).

(5) Payment requirement for total distribution

If an employer is required to repurchase employer securities which are distributed to the employee as part of a total distribution, the requirements of paragraph (1)(B) shall be treated as met if—

(A) the amount to be paid for the employer securities is paid in substantially equal periodic payments (not less frequently than annually) over a period beginning not later than 30 days after the exercise of the put option described in paragraph (4) and not exceeding 5 years, and

(B) there is adequate security provided and reasonable interest paid on the unpaid amounts referred to in subparagraph (A).

For purposes of this paragraph, the term "total distribution" means the distribution within 1 taxable year to the recipient of the balance to the credit of the recipient's account.

(6) Payment requirement for installment distributions

If an employer is required to repurchase employer securities as part of an installment distribution, the requirements of paragraph (1)(B) shall be treated as met if the amount to be paid for the employer securities is paid not later than 30 days after the exercise of the put option described in paragraph (4).

(7) Exception where employee elected diversification

Paragraph (1)(A) shall not apply with respect to the portion of the participant's account which the employee elected to have reinvested under section 401(a)(28)(B) or subparagraph (B) or (C) of section 401(a)(35).

(i) Reimbursement for expenses of establishing and administering plan

A plan which otherwise meets the requirements of this section shall not be treated as failing to meet such requirements merely because it provides that—

(1) Expenses of establishing plan

As reimbursement for the expenses of establishing the plan, the employer may withhold from amounts due the plan for the taxable year for which the plan is established (or the plan may pay) so much of the amounts paid or incurred in connection with the establishment of the plan as does not exceed the sum of—

(A) 10 percent of the first $100,000 which the employer is required to transfer to the plan for that taxable year under section 41(c)(1)(B),[1] and

(B) 5 percent of any amount so required to be transferred in excess of the first $100,000; and

(2) Administrative expenses

As reimbursement for the expenses of administering the plan, the employer may withhold from amounts due the plan (or the plan may pay) so much of the amounts paid or incurred during the taxable year as expenses of administering the plan as does not exceed the lesser of—

(A) the sum of—

(i) 10 percent of the first $100,000 of the dividends paid to the plan with respect to stock of the employer during the plan year ending with or within the employer's taxable year, and

(ii) 5 percent of the amount of such dividends in excess of $100,000 or

(B) $100,000.

(j) Conditional contributions to the plan

A plan which otherwise meets the requirements of this section shall not be treated as failing to satisfy such requirements (or as failing to satisfy the requirements of section 401(a) of this title or of section 403(c)(1) of the Employee Retirement Income Security Act of 1974) merely because of the return of a contribution (or a provision permitting such a return) if—

(1) the contribution to the plan is conditioned on a determination by the Secretary that such plan meets the requirements of this section,

(2) the application for a determination described in paragraph (1) is filed with the Secretary not later than 90 days after the date on which an employee plan credit is claimed, and

(3) the contribution is returned within 1 year after the date on which the Secretary issues notice to the employer that such plan does not satisfy the requirements of this section.

(k) Requirements relating to certain withdrawals

Notwithstanding any other law or rule of law—

(1) the withdrawal from a plan which otherwise meets the requirements of this section by the employer of an amount contributed for purposes of the matching employee plan credit shall not be considered to make the benefits forfeitable, and

(2) the plan shall not, by reason of such withdrawal, fail to be for the exclusive benefit of participants or their beneficiaries,

if the withdrawn amounts were not matched by employee contributions or were in excess of the limitations of section 415. Any withdrawal described in the preceding sentence shall not be considered to violate the provisions of section 403(c)(1) of the Employee Retirement Income Security Act of 1974. For purposes of this subsection, the reference to the matching employee plan credit shall refer to such credit as in effect before the enactment of the Tax Reform Act of 1984.

(l) Employer securities defined

For purposes of this section—

(1) In general

The term "employer securities" means common stock issued by the employer (or by a corporation which is a member of the same controlled group) which is readily tradable on an established securities market.

(2) Special rule where there is no readily tradable common stock

If there is no common stock which meets the requirements of paragraph (1), the term "employer securities" means common stock issued by the employer (or by a corporation which is a member of the same controlled group) having a combination of voting power and dividend rights equal to or in excess of—

(A) that class of common stock of the employer (or of any other such corporation) having the greatest voting power, and

(B) that class of common stock of the employer (or of any other such corporation) having the greatest dividend rights.

(3) Preferred stock may be issued in certain cases

Noncallable preferred stock shall be treated as employer securities if such stock is convertible at any time into stock which meets the requirements of paragraph (1) or (2) (whichever is applicable) and if such conversion is at a conversion price which (as of the date of the acquisition by the tax credit employee stock ownership plan) is reasonable. For purposes of the preceding sentence, under regulations prescribed by the Secretary, preferred stock shall be treated as noncallable if after the call there will be a reasonable opportunity for a conversion which meets the requirements of the preceding sentence.

(4) Application to controlled group of corporations

(A) In general

For purposes of this subsection, the term "controlled group of corporations" has the meaning given to such term by section 1563(a) (determined without regard to subsections (a)(4) and (e)(3)(C) of section 1563).

(B) Where common parent owns at least 50 percent of first tier subsidiary

For purposes of subparagraph (A), if the common parent owns directly stock possessing at least 50 percent of the voting power of all classes of stock and at least 50 percent of each class of nonvoting stock in a first tier subsidiary, such subsidiary (and all other corporations below it in the chain which would meet the 80 percent test of section 1563(a) if the first tier subsidiary were the common parent) shall be treated as includible corporations.

(C) Where common parent owns 100 percent of first tier subsidiary

For purposes of subparagraph (A), if the common parent owns directly stock possessing all of the voting power of all classes of stock and all of the nonvoting stock, in a first tier subsidiary, and if the first tier subsidiary owns directly stock possessing at least 50 percent of the voting power of all classes of stock, and at least 50 percent of each class of nonvoting stock, in a second tier subsidiary of the common parent, such second tier subsidiary (and all other corporations below it in the chain which would meet the 80 percent test of section 1563(a) if the second tier subsidiary were the common parent) shall be treated as includible corporations.

(5) Nonvoting common stock may be acquired in certain cases

Nonvoting common stock of an employer described in the second sentence of section 401(a)(22) shall be treated as employer securities if an employer has a class of nonvoting common stock outstanding and the specific shares that the plan acquires have been issued and outstanding for at least 24 months.

(m) Nonrecognition of gain or loss on contribution of employer securities to tax credit employee stock ownership plan

No gain or loss shall be recognized to the taxpayer with respect to the transfer of employer securities to a tax credit employee stock ownership plan maintained by the taxpayer to the extent that such transfer is required under section 41(c)(1)(B),[1] or subparagraph (A) or (B) of section 48(n)(1).[1]

(n) Securities received in certain transactions

(1) In general

A plan to which section 1042 applies and an eligible worker-owned cooperative (within the

meaning of section 1042(c)) shall provide that no portion of the assets of the plan or cooperative attributable to (or allocable in lieu of) employer securities acquired by the plan or cooperative in a sale to which section 1042 applies may accrue (or be allocated directly or indirectly under any plan of the employer meeting the requirements of section 401(a))—

(A) during the nonallocation period, for the benefit of—

(i) any taxpayer who makes an election under section 1042(a) with respect to employer securities,,,[2]

(ii) any individual who is related to the taxpayer (within the meaning of section 267(b)), or

(B) for the benefit of any other person who owns (after application of section 318(a)) more than 25 percent of—

(i) any class of outstanding stock of the corporation which issued such employer securities or of any corporation which is a member of the same controlled group of corporations (within the meaning of subsection (l)(4)) as such corporation, or

(ii) the total value of any class of outstanding stock of any such corporation.

For purposes of subparagraph (B), section 318(a) shall be applied without regard to the employee trust exception in paragraph (2)(B)(i).

(2) Failure to meet requirements

If a plan fails to meet the requirements of paragraph (1)—

(A) the plan shall be treated as having distributed to the person described in paragraph (1) the amount allocated to the account of such person in violation of paragraph (1) at the time of such allocation,

(B) the provisions of section 4979A shall apply, and

(C) the statutory period for the assessment of any tax imposed by section 4979A shall not expire before the date which is 3 years from the later of—

(i) the 1st allocation of employer securities in connection with a sale to the plan to which section 1042 applies, or

(ii) the date on which the Secretary is notified of such failure.

(3) Definitions and special rules

For purposes of this subsection—

(A) Lineal descendants

Paragraph (1)(A)(ii) shall not apply to any individual if—

(i) such individual is a lineal descendant of the taxpayer, and

(ii) the aggregate amount allocated to the benefit of all such lineal descendants during the nonallocation period does not exceed more than 5 percent of the employer securities (or amounts allocated in lieu thereof) held by the plan which are attributable to a sale to the plan by any person related to such descendants (within the meaning of section 267(c)(4)) in a transaction to which section 1042 applied.

(B) 25-percent shareholders

A person shall be treated as failing to meet the stock ownership limitation under paragraph (1)(B) if such person fails such limitation—

(i) at any time during the 1-year period ending on the date of sale of qualified securities to the plan or cooperative, or

(ii) on the date as of which qualified securities are allocated to participants in the plan or cooperative.

(C) Nonallocation period

The term "nonallocation period" means the period beginning on the date of the sale of the qualified securities and ending on the later of—

(i) the date which is 10 years after the date of sale, or

(ii) the date of the plan allocation attributable to the final payment of acquisition indebtedness incurred in connection with such sale.

(o) Distribution and payment requirements

A plan meets the requirements of this subsection if—

(1) Distribution requirement

(A) In general

The plan provides that, if the participant and, if applicable pursuant to sections 401(a)(11) and 417, with the consent of the participant's spouse elects, the distribution of the participant's account balance in the plan will commence not later than 1 year after the close of the plan year—

(i) in which the participant separates from service by reason of the attainment of normal retirement age under the plan, disability, or death, or

(ii) which is the 5th plan year following the plan year in which the participant otherwise separates from service, except that this clause shall not apply if the participant is reemployed by the employer before distribution is required to begin under this clause.

(B) Exception for certain financed securities

For purposes of this subsection, the account balance of a participant shall not include any employer securities acquired with the proceeds of the loan described in section 404(a)(9) until the close of the plan year in which such loan is repaid in full.

(C) Limited distribution period

The plan provides that, unless the participant elects otherwise, the distribution of the participant's account balance will be in substantially equal periodic payments (not less frequently than annually) over a period not longer than the greater of—

(i) 5 years, or

(ii) in the case of a participant with an account balance in excess of $800,000, 5 years plus 1 additional year (but not more than 5 additional years) for each $160,000 or fraction thereof by which such balance exceeds $800,000.

(2) Cost-of-living adjustment

The Secretary shall adjust the dollar amounts under paragraph (1)(C) at the same time and in the same manner as under section 415(d).

(p) Prohibited allocations of securities in an S corporation

(1) In general

An employee stock ownership plan holding employer securities consisting of stock in an S corporation shall provide that no portion of the assets of the plan attributable to (or allocable in lieu of) such employer securities may, during a nonallocation year, accrue (or be allocated directly or indirectly under any plan of the employer meeting the requirements of section 401(a)) for the benefit of any disqualified person.

(2) Failure to meet requirements

(A) In general

If a plan fails to meet the requirements of paragraph (1), the plan shall be treated as having distributed to any disqualified person the amount allocated to the account of such person in violation of paragraph (1) at the time of such allocation.

(B) Cross reference

For excise tax relating to violations of paragraph (1) and ownership of synthetic equity, see section 4979A.

(3) Nonallocation year

For purposes of this subsection—

(A) In general

The term "nonallocation year" means any plan year of an employee stock ownership plan if, at any time during such plan year—

(i) such plan holds employer securities consisting of stock in an S corporation, and

(ii) disqualified persons own at least 50 percent of the number of shares of stock in the S corporation.

(B) Attribution rules

For purposes of subparagraph (A)—

(i) In general

The rules of section 318(a) shall apply for purposes of determining ownership, except that—

(I) in applying paragraph (1) thereof, the members of an individual's family shall include members of the family described in paragraph (4)(D), and

(II) paragraph (4) thereof shall not apply.

(ii) Deemed-owned shares

Notwithstanding the employee trust exception in section 318(a)(2)(B)(i), an individual shall be treated as owning deemed-owned shares of the individual.

Solely for purposes of applying paragraph (5), this subparagraph shall be applied after the attribution rules of paragraph (5) have been applied.

(4) Disqualified person

For purposes of this subsection—

(A) In general

The term "disqualified person" means any person if—

(i) the aggregate number of deemed-owned shares of such person and the members of such person's family is at least 20 percent of the number of deemed-owned shares of stock in the S corporation, or

(ii) in the case of a person not described in clause (i), the number of deemed-owned shares of such person is at least 10 percent of the number of deemed-owned shares of stock in such corporation.

(B) Treatment of family members

In the case of a disqualified person described in subparagraph (A)(i), any member of such person's family with deemed-owned shares shall be treated as a disqualified person if not otherwise treated as a disqualified person under subparagraph (A).

(C) Deemed-owned shares

(i) In general

The term "deemed-owned shares" means, with respect to any person—

(I) the stock in the S corporation constituting employer securities of an employee stock ownership plan which is allocated to such person under the plan, and

(II) such person's share of the stock in such corporation which is held by such plan but which is not allocated under the plan to participants.

(ii) Person's share of unallocated stock

For purposes of clause (i)(II), a person's share of unallocated S corporation stock held by such plan is the amount of the unallocated stock which would be allocated to such person if the unallocated stock were allocated to all participants in the same proportions as the most recent stock allocation under the plan.

(D) Member of family

For purposes of this paragraph, the term "member of the family" means, with respect to any individual—

(i) the spouse of the individual,

(ii) an ancestor or lineal descendant of the individual or the individual's spouse,

(iii) a brother or sister of the individual or the individual's spouse and any lineal descendant of the brother or sister, and

(iv) the spouse of any individual described in clause (ii) or (iii).

A spouse of an individual who is legally separated from such individual under a decree of divorce or separate maintenance shall not be treated as such individual's spouse for purposes of this subparagraph.

(5) Treatment of synthetic equity

For purposes of paragraphs (3) and (4), in the case of a person who owns synthetic equity in the S corporation, except to the extent provided in regulations, the shares of stock in such corporation on which such synthetic equity is based shall be treated as outstanding stock in such corporation and deemed-owned shares of such person if such treatment of synthetic equity of 1 or more such persons results in—

(A) the treatment of any person as a disqualified person, or

(B) the treatment of any year as a nonallocation year.

For purposes of this paragraph, synthetic equity shall be treated as owned by a person in the same manner as stock is treated as owned by a person under the rules of paragraphs (2) and (3) of section 318(a). If, without regard to this paragraph, a person is treated as a disqualified person or a year is treated as a nonallocation year, this paragraph shall not be construed to result in the person or year not being so treated.

(6) Definitions

For purposes of this subsection—

(A) Employee stock ownership plan

The term "employee stock ownership plan" has the meaning given such term by section 4975(e)(7).

(B) Employer securities

The term "employer security" has the meaning given such term by section 409(l).

(C) Synthetic equity

The term "synthetic equity" means any stock option, warrant, restricted stock, deferred issuance stock right, or similar interest or right that gives the holder the right to acquire or receive stock of the S corporation in the future. Except to the extent provided in regulations, synthetic equity also includes a stock appreciation right, phantom stock unit, or similar right to a future cash payment based on the value of such stock or appreciation in such value.

(7) Regulations and guidance

(A) In general

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection.

(B) Avoidance or evasion

The Secretary may, by regulation or other guidance of general applicability, provide that a nonallocation year occurs in any case in which the principal purpose of the ownership structure of an S corporation constitutes an avoidance or evasion of this subsection.

(q) Cross references

(1) For requirements for allowance of employee plan credit, see section 48(n).[1]

(2) For assessable penalties for failure to meet requirements of this section, or for failure to make contributions required with respect to the allowance of an employee plan credit or employee stock ownership credit, see section 6699.[1]

(3) For requirements for allowance of an employee stock ownership credit, see section 41.[1]

(Added Pub. L. 95–600, title I, §141(a), Nov. 6, 1978, 92 Stat. 2787, §409A; amended Pub. L. 96–222, title I, §101(a)(7)(D)–(F), (I), (J), (L)(i)(VI), (ii)(I), (II), (iii)(V), (v)(VI), (VII), Apr. 1, 1980, 94 Stat. 198–200; Pub. L. 96–605, title II, §224(a), Dec. 28, 1980, 94 Stat. 3528; Pub. L. 97–34, title III, §§331(c)(1), 334, 336, 337(a), Aug. 13, 1981, 95 Stat. 293, 297, 298; Pub. L. 97–448, title I, §103(h), (i), Jan. 12, 1983, 96 Stat. 2379; renumbered §409 and amended Pub. L. 98–369, div. A, title IV, §§474(r)(15), 491(e)(1), July 18, 1984, 98 Stat. 843, 852; Pub. L. 99–514, title XI, §§1172(b)(1), 1174(a)(1), (b)(1), (2), (c)(1)(A), 1176(b), title XVIII, §§1852(a)(4)(B), 1854(a)(3)(A), (f)(1), (3)(C), 1899A(11), Oct. 22, 1986, 100 Stat. 2514, 2516, 2517, 2520, 2865, 2873, 2881, 2882, 2958; Pub. L. 100–647, title I, §§1011B(g)(1), (2), (i)(1), (3), (j)(3), (5), (k)(3), 1018(t)(4)(B), (C), (H), Nov. 10, 1988, 102 Stat. 3490, 3492, 3493, 3588, 3589; Pub. L. 101–239, title VII, §§7304(a)(2)(A), (B), 7811(h)(1), Dec. 19, 1989, 103 Stat. 2352, 2353, 2409; Pub. L. 105–34, title XV, §1506(a), Aug. 5, 1997, 111 Stat. 1064; Pub. L. 107–16, title VI, §656(a), June 7, 2001, 115 Stat. 131; Pub. L. 107–147, title IV, §411(j)(2), Mar. 9, 2002, 116 Stat. 47; Pub. L. 109–280, title IX, §901(a)(2)(B), Aug. 17, 2006, 120 Stat. 1029.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table under section 401 of this title.

REFERENCES IN TEXT

Section 41, referred to in subsecs. (b)(1)(A), (4), (g), (i)(1)(A), (m), and (p), which related to employee stock ownership credit, was repealed by Pub. L. 99–514, title XI, §1171(a), Oct. 22, 1986, 100 Stat. 2513. Section 30 of this title, relating to credit for increasing research activities, was renumbered section 41.

Section 12 of the Securities Exchange Act of 1934, referred to in subsec. (e)(4), is classified to section 78l of Title 15, Commerce and Trade.

Section 403(c)(1) of the Employee Retirement Income Security Act of 1974, referred to in subsecs. (j) and (k), is classified to section 1103(c)(1) of Title 29, Labor.

The enactment of the Tax Reform Act of 1984, referred to in subsecs. (g) and (k), means the enactment of div. A of Pub. L. 98–369, which was approved July 18, 1984.

Subsec. (n) of section 48, referred to in subsecs. (g), (m), and (p)(1), was repealed by section 474(o)(15) of Pub. L. 98–369.

Section 6699, referred to in subsec. (p)(2), was repealed by Pub. L. 99–514, title XI, §1171(b)(7)(A), Oct. 22, 1986, 100 Stat. 2513.

PRIOR PROVISIONS

A prior section 409, added Pub. L. 93–406, title II, §2002(c), Sept. 2, 1974, 88 Stat. 964; amended Pub. L. 94–455, title XV, §1501(b)(6), title XIX, §§1901(a)(60), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1736, 1774, 1834; Pub. L. 95–600, title I, §§156(c)(2), (3), 157(e)(1)(B), Nov. 6, 1978, 92 Stat. 2803, 2806; Pub. L. 96–222, title I, §101(a)(14)(B), Apr. 1, 1980, 94 Stat. 204; Pub. L. 97–34, title III, §311(g)(1)(D), (3), Aug. 13, 1981, 95 Stat. 281; Pub. L. 97–248, title II, §243(b)(1)(B), title III, §335(a)(2), Sept. 3, 1982, 96 Stat. 523, 628; Pub. L. 97–452, §2(c)(1), Jan. 12, 1983, 96 Stat. 2478; Pub. L. 98–369, div. A, title I, §42(a)(7), title V, §522(d)(13), July 18, 1984, 98 Stat. 557, 871, related to retirement bonds, prior to repeal by Pub. L. 98–369, div. A, title IV, §491(b), (f)(1), July 18, 1984, 98 Stat. 848, 853, applicable to obligations issued after Dec. 31, 1983.

AMENDMENTS

2006—Subsec. (h)(7). Pub. L. 109–280 inserted "or subparagraph (B) or (C) of section 401(a)(35)" before period at end.

2002—Subsec. (o)(1)(C)(ii). Pub. L. 107–147 substituted "$800,000" for "$500,000" in two places and "$160,000" for "$100,000".

2001—Subsecs. (p), (q). Pub. L. 107–16 added subsec. (p) and redesignated former subsec. (p) as (q).

1997—Subsec. (h)(2). Pub. L. 105–34 designated existing provisions as subpar. (A), inserted subpar.

heading, struck out "In the case of an employer whose charter or bylaws restrict the ownership of substantially all outstanding employer securities to employees or to a trust described in section 401(a), a plan which otherwise meets the requirements of this subsection or section 4975(e)(7) shall not be considered to have failed to meet the requirements of this subsection or of section 401(a) merely because it does not permit a participant to exercise the right described in paragraph (1)(A) if such plan provides that participants entitled to a distribution from the plan shall have a right to receive such distribution in cash, except that such plan may distribute employer securities subject to a requirement that such securities may be resold to the employer under terms which meet the requirements of paragraph (1)(B)." after "employer securities.", and added subpar. (B).

1989—Subsec. (l)(5). Pub. L. 101–239, §7811(h)(1), substituted "the second sentence" for "the last sentence".

Subsec. (n)(1). Pub. L. 101–239, §7304(a)(2)(A)(i), struck out "or section 2057" after "section 1042" in two places in introductory provisions.

Subsec. (n)(1)(A)(i). Pub. L. 101–239, §7304(a)(2)(A)(ii), struck out "or any decedent if the executor of the estate of such decedent makes a qualified sale to which section 2057 applies" after "employer securities,".

Subsec. (n)(1)(A)(ii). Pub. L. 101–239, §7304(a)(2)(A)(iii), struck out "or the decedent" after "the taxpayer".

Subsec. (n)(2)(C)(i), (3)(A)(ii). Pub. L. 101–239, §7304(a)(2)(B), struck out "or section 2057" after "section 1042".

1988—Subsec. (d). Pub. L. 100–647, §1011B(j)(3), inserted "or to any distribution or reinvestment required under section 401(a)(28)" after "under section 401(a)(9)".

Subsec. (e)(5). Pub. L. 100–647, §1018(t)(4)(H), substituted "paragraph (3)" for "paragraph (2) or (3)".

Subsec. (h)(2). Pub. L. 100–647, §1018(t)(4)(B), substituted "paragraph (1)(B)" for "section 409(o)".

Subsec. (h)(7). Pub. L. 100–647, §1011B(j)(5), added par. (7).

Subsec. (l)(4), (5). Pub. L. 100–647, §1011B(k)(3), redesignated par. (4), relating to nonvoting common stock may be acquired in certain cases, as (5).

Subsec. (n)(1). Pub. L. 100–647, §1011B(g)(1), made technical amendment to directory language of Pub. L. 99–514, §1172(b)(1). See 1986 Amendment note below.

Subsec. (n)(2)(C)(i), (3)(A)(ii). Pub. L. 100–647, §1011B(g)(2), inserted "or section 2057" after "which section 1042".

Subsec. (n)(3)(C). Pub. L. 100–647, §1018(t)(4)(C), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: "The term 'nonallocation period' means the 10-year period beginning on the later of—

"(i) the date of the sale of the qualified securities, or

"(ii) the date of the plan allocation attributable to the final payment of acquisition indebtedness incurred in connection with such sale."

Subsec. (o)(1)(A). Pub. L. 100–647, §1011B(i)(3), substituted "if the participant and, if applicable pursuant to sections 401(a)(11) and 417, with the consent of the participant's spouse elects" for "unless the participant otherwise elects".

Subsec. (o)(1)(A)(ii). Pub. L. 100–647, §1011B(i)(1), substituted "distribution is required to begin under this clause" for "such year".

1986—Subsec. (a)(3). Pub. L. 99–514, §1174(b)(2), inserted reference to subsec. (o).

Subsec. (d). Pub. L. 99–514, §1899A(11), substituted "participant's" for "participants's".

Pub. L. 99–514, §1852(a)(4)(B), inserted at end "This subsection shall not apply to any distribution required under section 401(a)(9)."

Subsec. (d)(1). Pub. L. 99–514, §1174(a)(1), substituted "separation from service, or termination of the plan" for "or separation from service".

Subsec. (e)(2). Pub. L. 99–514, §1854(f)(1)(C), (D), inserted "or beneficiary" after "participant" in two places and substituted "securities of the employer" for "employer securities".

Subsec. (e)(3). Pub. L. 99–514, §1854(f)(1)(B)–(D), inserted "or beneficiary" after "participant" in two places and substituted "securities of the employer" for "employer securities" and "any corporate matter which involves the voting of such shares with respect to the approval or disapproval of any corporate merger or consolidation, recapitalization, reclassification, liquidation, dissolution, sale of substantially all assets of a trade or business, or such similar transaction as the Secretary may prescribe in regulations" for "a corporate matter which (by law or charter) must be decided by more than a majority vote of outstanding common shares voted".

Subsec. (e)(5). Pub. L. 99–514, §1854(f)(1)(A), added par. (5).

Subsec. (h)(2). Pub. L. 99–514, §1854(f)(3)(C), inserted ", except that such plan may distribute employer

securities subject to a requirement that such securities may be resold to the employer under terms which meet the requirements of section 409(o)".

Subsec. (h)(5), (6). Pub. L. 99–514, §1174(c)(1)(A), added pars. (5) and (6).

Subsec. (l)(4). Pub. L. 99–514, §1176(b), added par. (4) relating to acquisition of nonvoting common stock.

Subsec. (n). Pub. L. 99–514, §1854(a)(3)(A), added subsec. (n). Former subsec. (n) redesignated (o).

Subsec. (n)(1). Pub. L. 99–514, §1172(b)(1), as amended by Pub. L. 100–647, §1011B(g)(1), inserted "or section 2057" in two places in introductory provisions, "or any decedent if the executor of the estate of such decedent makes a qualified sale to which section 2057 applies," in subpar. (A)(i), and "or the decedent" in subpar. (A)(ii).

Subsec. (o). Pub. L. 99–514, §1174(b)(1), added subsec. (o). Former subsec. (o) redesignated (p).

Pub. L. 99–514, §1854(a)(3)(A), redesignated former subsec. (n) as (o).

Subsec. (p). Pub. L. 99–514, §1174(b)(1), redesignated former subsec. (o) as (p).

1984—Subsec. (b)(1)(A). Pub. L. 98–369, §474(r)(15)(A), (B), substituted "41" for "44G" and struck out "48(n)(1)(A) or" after "requirements of section".

Subsec. (b)(4). Pub. L. 98–369, §474(r)(15)(A), substituted "41" for "44G".

Subsec. (g). Pub. L. 98–369, §474(r)(15)(A), (C), substituted "41" for "44G" in two places, and inserted provision directing that, for purposes of the preceding sentence, the references to section 48(n)(1) and the employee plan credit shall refer to such section and credit as in effect before the enactment of the Tax Reform Act of 1984.

Subsec. (i)(1)(A). Pub. L. 98–369, §474(r)(15)(A), (D), substituted "41" for "44G", and struck out "48(n)(1) or" after "taxable year under section".

Subsec. (k). Pub. L. 98–369, §474(r)(15)(E), inserted provision requiring that, for purposes of this subsection, the reference to the matching employee plan credit refer to such credit as in effect before the enactment of the Tax Reform Act of 1984.

Subsec. (m). Pub. L. 98–369, §474(r)(15)(A), substituted "41" for "44G".

Subsec. (n)(3). Pub. L. 98–369, §474(r)(15)(A), substituted "41" for "44G".

1983—Subsec. (d)(2). Pub. L. 97–448, §103(i), struck out provisions covering the sale of substantially all of the stock of a subsidiary of the employer.

Subsec. (h)(2). Pub. L. 97–448, §103(h), substituted "the requirements of this subsection or of section 401(a)" for "the requirements of section 401(a)".

1981—Subsec. (b). Pub. L. 97–34, §331(c)(1)(A), (B), inserted in par. (1)(A) reference to section 44G(c)(1)(B), and inserted in par. (4) "or the credit allowed under section 44G (relating to the employee stock ownership credit)" after "basic employee plan credit".

Subsec. (d). Pub. L. 97–34, §337, designated provision relating to death, disability, or separation from service as par. (1) and added pars. (2) and (3).

Subsec. (g). Pub. L. 97–34, §331(c)(1)(C), (D), inserted reference to section 44G(c)(1)(B) and inserted "or the credit allowed under section 44G (relating to employee stock ownership credit)" after "employee plan credit".

Subsec. (h)(2). Pub. L. 97–34, §334, substituted "this subsection" for "this section" and inserted provision respecting receipt of distributions in cash where employer's charter or bylaws restrict ownership of substantially all outstanding employer securities to employees or to a section 401(a) trust where a participant is not permitted to exercise the right described in par. (1)(A).

Subsec. (h)(3), (4). Pub. L. 97–34, §336, added pars. (3) and (4).

Subsec. (i)(1)(A). Pub. L. 97–34, §331(c)(1)(E), inserted reference to section 44G(c)(1)(B).

Subsec. (m). Pub. L. 97–34, §331(c)(1)(F), inserted reference to section 44G(c)(1)(B).

Subsec. (n)(2), (3). Pub. L. 97–34, §331(c)(1)(G), (H), inserted "or employee stock ownership credit" after "employee plan credit" in par. (2) and added par. (3).

1980—Pub. L. 96–222, §101(a)(7)(L)(v)(VII), substituted "tax credit employee stock ownership plans" for "ESOPS" in section catchline.

Subsec. (a). Pub. L. 96–222, §101(a)(7)(L)(ii)(I), (v)(VI), substituted in heading and in text "tax credit employee stock ownership plan" for "ESOP".

Subsec. (b)(4). Pub. L. 96–222, §101(a)(7)(L)(iii)(V), substituted "employee plan credit" for "ESOP credit".

Subsec. (d). Pub. L. 96–222, §101(a)(7)(F), inserted "(or allocated to a participant's account in connection with matched employer and employee contributions)" after "under subsection (b)".

Subsec. (f)(1). Pub. L. 96–222, §101(a)(7)(I)(i), substituted "only if it is established on or before the due date (including any extension of such date) for the filing of the employer's tax return for the first taxable year

of the employer for which an employee plan credit is claimed by the employer with respect to the plan" for "for a plan year only if it is established on or before the due date for the filing of the employer's tax return for the taxable year (including any extension of such date) in which or with which the plan year ends".

Subsec. (f)(2). Pub. L. 96–222, §101(a)(7)(I)(ii), (L)(v)(VII), substituted "employee plan" for "ESOP" and inserted "with respect to the plan" after "by the employer".

Subsec. (g). Pub. L. 96–222, §101(a)(7)(L)(iii)(V), substituted "employee plan credit" for "ESOP credit".

Subsec. (h)(2). Pub. L. 96–222, §101(a)(7)(E), inserted "or of section 4975(e)(7)" after "the requirements of this section".

Subsecs. (j)(2), (k)(1). Pub. L. 96–222, §101(a)(7)(L)(iii)(V), substituted "employee plan credit" for "ESOP credit".

Subsec. (l)(2)(B). Pub. L. 96–222, §101(a)(7)(J)(i), substituted "class of common stock" for "class of stock".

Subsec. (l)(3). Pub. L. 96–222, §101(a)(7)(J)(ii), (L)(ii)(II), substituted "as employer securities" for "as meeting the requirements of paragraph (1)", "paragraph (1) or (2)" for "paragraph (2)", and "tax credit employee stock ownership plan" for "ESOP" and inserted provisions requiring preferred stock to be treated as noncallable if after the call there will be a reasonable opportunity for a conversion which meets the requirements of the preceding sentence.

Subsec. (l)(4). Pub. L. 96–605 substituted in heading "Application to controlled group of corporations" for "Controlled group of corporations defined" and in subpar. (B) heading "Where common parent owns at least" for "Common parent may own only" and added subpar. (C).

Subsec. (m). Pub. L. 96–222, §101(a)(7)(D), (L)(i), substituted provisions relating to nonrecognition of gain or loss on contribution of employer securities to a tax credit employee stock ownership plan for provisions relating to contributions of stock of a controlling corporation.

Subsec. (n). Pub. L. 96–222, §101(a)(7)(L)(iii)(V), substituted "employee plan credit" for "ESOP credit" in pars. (1) and (2).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 applicable to plan years beginning after Dec. 31, 2006, with special rules for collectively bargained agreements and certain employer securities held in an ESOP, see section 901(c) of Pub. L. 109–280, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–16, title VI, §656(d), June 7, 2001, 115 Stat. 135, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and sections 4975 and 4979A of this title] shall apply to plan years beginning after December 31, 2004.

"(2) EXCEPTION FOR CERTAIN PLANS.—In the case of any—

"(A) employee stock ownership plan established after March 14, 2001, or

"(B) employee stock ownership plan established on or before such date if employer securities held by the plan consist of stock in a corporation with respect to which an election under section 1362(a) of the Internal Revenue Code of 1986 is not in effect on such date,

the amendments made by this section shall apply to plan years ending after March 14, 2001."

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title I, §1506(c), Aug. 5, 1997, 111 Stat. 1066, provided that: "The amendments made by this section [amending this section, section 4975 of this title, and section 1108 of Title 29, Labor] shall apply to taxable years beginning after December 31, 1997."

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7304(a)(3), Dec. 19, 1989, 103 Stat. 2353, provided that: "The amendments made by this subsection [amending this section and sections 4978 and 4979A of this title and repealing sections 2057 and 4978A of this title] shall apply to the estates of decedents dying after the date of the enactment of this Act [Dec. 19, 1989]."

Amendment by section 7811(h)(1) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to

which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XI, §1172(c), Oct. 22, 1986, 100 Stat. 2515, provided that: "The amendments made by this section [enacting section 2057 of this title and amending this section and section 4979A of this title] shall apply to sales after the date of the enactment of this Act [Oct. 22, 1986] with respect to which an election is made by the executor of an estate who is required to file the return of the tax imposed by the Internal Revenue Code of 1986 on a date (including extensions) after the date of the enactment of this Act."

Pub. L. 99–514, title XI, §1174(a)(2), Oct. 22, 1986, 100 Stat. 2516, as amended by Pub. L. 100–647, title I, §1011B(i)(2), Nov. 10, 1988, 102 Stat. 3492, provided that: "The amendment made by this subsection [amending this section] shall apply to distributions after December 31, 1984."

Pub. L. 99–514, title XI, §1174(b)(3), Oct. 22, 1986, 100 Stat. 2517, provided that: "The amendments made by this subsection [amending this section] shall apply to distributions attributable to stock acquired after December 31, 1986."

Pub. L. 99–514, title XI, §1174(c)(1)(B), Oct. 22, 1986, 100 Stat. 2518, provided that: "The amendment made by this paragraph [amending this section] shall apply to distributions attributable to stock acquired after December 31, 1986, except that a plan may elect to have such amendment apply to all distributions after the date of the enactment of this Act [Oct. 22, 1986]."

Amendment by section 1176(b) of Pub. L. 99–514 applicable to acquisitions of securities after Dec. 31, 1986, see section 1176(c) of Pub. L. 99–514, set out as a note under section 401 of this title.

Amendment by section 1852(a)(4)(B) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Pub. L. 99–514, title XVIII, §1854(a)(3)(C), Oct. 22, 1986, 100 Stat. 2874, as amended by Pub. L. 100–647, title I, §1018(t)(4)(G), Nov. 10, 1988, 102 Stat. 3588, provided that:

"(i) Except as provided in clause (ii), the amendments made by this paragraph [amending this section and section 1042 of this title] shall apply to sales of securities after the date of the enactment of this Act [Oct. 22, 1986].

"(ii) A taxpayer or executor may elect to have section 1042(b)(3) of the Internal Revenue Code of 1954 (as in effect before the amendment made by subparagraph (B)) apply to sales before the date of the enactment of this Act as if such section included the last sentence of section 409(n)(1) of the Internal Revenue Code of 1986 (as added by subparagraph (A))."

Pub. L. 99–514, title XVIII, §1854(f)(4)(A), (B), Oct. 22, 1986, 100 Stat. 2882, provided that:

"(A) The amendments made by paragraph (1)(A) and (3) [amending this section and sections 1042 and 4975 of this title] shall take effect on the date of the enactment of this Act [Oct. 22, 1986]."

"(B) The amendments made by subparagraphs (B), (C), and (D) of paragraph (1) [amending this section] shall apply after December 31, 1986, to stock acquired after December 31, 1979."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(15) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Redesignation of section 409A as 409 by section 491(e)(1) of Pub. L. 98–369 effective Jan. 1, 1984, see section 491(f)(3) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 331(c)(1) of Pub. L. 97–34 applicable to taxable years ending after Dec. 31, 1982, see section 331(f)(2) of Pub. L. 97–34, set out as a note under section 404 of this title.

Pub. L. 97–34, title III, §337(b), Aug. 13, 1981, 95 Stat. 298, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by this section [amending this section] shall apply to distributions described in section 409A(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (or any corresponding provision of prior law) made after March 29, 1975."

Amendment by sections 334 and 336 of Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 339 of Pub. L. 97–34, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Pub. L. 96–605, title II, §224(b), Dec. 28, 1980, 94 Stat. 3529, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to qualified investment for taxable years beginning after December 31, 1978."

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE

Pub. L. 95–600, title I, §141(g), Nov. 6, 1978, 92 Stat. 2795, as added by Pub. L. 96–222, title I, §101(a)(7)(B), Apr. 1, 1980, 94 Stat. 197; amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection and subsection (h) [set out as an Effective Date of 1978 Amendment note under section 4975 of this title], the amendments made by this section [enacting sections 409A [now 409] and 6699 of this title and amending sections 46, 48, 56, 401, 404, 415, 805, 1504, and 4975 of this title] shall apply with respect to qualified investment for taxable years beginning after December 31, 1978.

"(2) ELECTION TO HAVE AMENDMENTS APPLY DURING 1978.—At the election of the taxpayer, paragraph (1) shall be applied by substituting 'December 31, 1977' for 'December 31, 1978'; except that in the case of a plan in existence before December 31, 1978, any such election shall not affect the required allocation of employer securities attributable to qualified investment for taxable years beginning before January 1, 1979. An election under the preceding sentence shall be made at such time and in such manner as the Secretary of the Treasury or his delegate shall prescribe. Such an election, once made, shall be irrevocable.

"(3) VOTING RIGHT PROVISIONS.—Section 409A(e) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)) [now section 409] shall apply to plans to which section 409A of such Code applies, beginning with the first day of such application.

"(4) RIGHT TO DEMAND EMPLOYER SECURITIES, ETC.—Paragraphs (1)(A) and (2) of section 409A(h) of the Internal Revenue Code of 1986 (as added by subsection (a)) [now section 409] shall apply to distributions after December 31, 1978, made by a plan to which section 409A of such Code applies.

"(5) SUBSECTION (f)(7).—The amendment made by subsection (f)(7) [amending section 415 of this title] shall apply to years beginning after December 31, 1978.

"(6) RETROACTIVE APPLICATION OF AMENDMENT MADE BY SUBSECTION (d).—In determining the regular tax deduction under section 56(c) of the Internal Revenue Code of 1986 for any taxable year beginning before January 1, 1979, the amount of the credit allowable under section 38 of such Code shall be determined without regard to section 46(a)(2)(B) of such Code (as in effect before the enactment of the Energy Tax Act of 1978 [Nov. 9, 1978])."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[1] *See References in Text note below.*

[2] *So in original.*

§409A. Inclusion in gross income of deferred compensation under nonqualified deferred compensation plans

(a) Rules relating to constructive receipt

(1) Plan failures

(A) Gross income inclusion

(i) In general

If at any time during a taxable year a nonqualified deferred compensation plan—

(I) fails to meet the requirements of paragraphs (2), (3), and (4), or

(II) is not operated in accordance with such requirements,

all compensation deferred under the plan for the taxable year and all preceding taxable years shall be includible in gross income for the taxable year to the extent not subject to a substantial risk of forfeiture and not previously included in gross income.

(ii) Application only to affected participants

Clause (i) shall only apply with respect to all compensation deferred under the plan for participants with respect to whom the failure relates.

(B) Interest and additional tax payable with respect to previously deferred compensation

(i) In general

If compensation is required to be included in gross income under subparagraph (A) for a taxable year, the tax imposed by this chapter for the taxable year shall be increased by the sum of—

(I) the amount of interest determined under clause (ii), and

(II) an amount equal to 20 percent of the compensation which is required to be included in gross income.

(ii) Interest

For purposes of clause (i), the interest determined under this clause for any taxable year is the amount of interest at the underpayment rate plus 1 percentage point on the underpayments that would have occurred had the deferred compensation been includible in gross income for the taxable year in which first deferred or, if later, the first taxable year in which such deferred compensation is not subject to a substantial risk of forfeiture.

(2) Distributions

(A) In general

The requirements of this paragraph are met if the plan provides that compensation deferred under the plan may not be distributed earlier than—

(i) separation from service as determined by the Secretary (except as provided in subparagraph (B)(i)),

(ii) the date the participant becomes disabled (within the meaning of subparagraph (C)),

(iii) death,

(iv) a specified time (or pursuant to a fixed schedule) specified under the plan at the date of the deferral of such compensation,

(v) to the extent provided by the Secretary, a change in the ownership or effective control of the corporation, or in the ownership of a substantial portion of the assets of the corporation, or

(vi) the occurrence of an unforeseeable emergency.

(B) Special rules

(i) Specified employees

In the case of any specified employee, the requirement of subparagraph (A)(i) is met only if distributions may not be made before the date which is 6 months after the date of separation from service (or, if earlier, the date of death of the employee). For purposes of the

preceding sentence, a specified employee is a key employee (as defined in section 416(i) without regard to paragraph (5) thereof) of a corporation any stock in which is publicly traded on an established securities market or otherwise.

(ii) Unforeseeable emergency

For purposes of subparagraph (A)(vi)—

(I) In general

The term "unforeseeable emergency" means a severe financial hardship to the participant resulting from an illness or accident of the participant, the participant's spouse, or a dependent (as defined in section 152(a)) of the participant, loss of the participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant.

(II) Limitation on distributions

The requirement of subparagraph (A)(vi) is met only if, as determined under regulations of the Secretary, the amounts distributed with respect to an emergency do not exceed the amounts necessary to satisfy such emergency plus amounts necessary to pay taxes reasonably anticipated as a result of the distribution, after taking into account the extent to which such hardship is or may be relieved through reimbursement or compensation by insurance or otherwise or by liquidation of the participant's assets (to the extent the liquidation of such assets would not itself cause severe financial hardship).

(C) Disabled

For purposes of subparagraph (A)(ii), a participant shall be considered disabled if the participant—

(i) is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, or

(ii) is, by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, receiving income replacement benefits for a period of not less than 3 months under an accident and health plan covering employees of the participant's employer.

(3) Acceleration of benefits

The requirements of this paragraph are met if the plan does not permit the acceleration of the time or schedule of any payment under the plan, except as provided in regulations by the Secretary.

(4) Elections

(A) In general

The requirements of this paragraph are met if the requirements of subparagraphs (B) and (C) are met.

(B) Initial deferral decision

(i) In general

The requirements of this subparagraph are met if the plan provides that compensation for services performed during a taxable year may be deferred at the participant's election only if the election to defer such compensation is made not later than the close of the preceding taxable year or at such other time as provided in regulations.

(ii) First year of eligibility

In the case of the first year in which a participant becomes eligible to participate in the plan, such election may be made with respect to services to be performed subsequent to the election within 30 days after the date the participant becomes eligible to participate in such plan.

(iii) Performance-based compensation

In the case of any performance-based compensation based on services performed over a period of at least 12 months, such election may be made no later than 6 months before the end of the period.

(C) Changes in time and form of distribution

The requirements of this subparagraph are met if, in the case of a plan which permits under a subsequent election a delay in a payment or a change in the form of payment—

(i) the plan requires that such election may not take effect until at least 12 months after the date on which the election is made,

(ii) in the case of an election related to a payment not described in clause (ii), (iii), or (vi) of paragraph (2)(A), the plan requires that the payment with respect to which such election is made be deferred for a period of not less than 5 years from the date such payment would otherwise have been made, and

(iii) the plan requires that any election related to a payment described in paragraph (2)(A)(iv) may not be made less than 12 months prior to the date of the first scheduled payment under such paragraph.

(b) Rules relating to funding

(1) Offshore property in a trust

In the case of assets set aside (directly or indirectly) in a trust (or other arrangement determined by the Secretary) for purposes of paying deferred compensation under a nonqualified deferred compensation plan, for purposes of section 83 such assets shall be treated as property transferred in connection with the performance of services whether or not such assets are available to satisfy claims of general creditors—

(A) at the time set aside if such assets (or such trust or other arrangement) are located outside of the United States, or

(B) at the time transferred if such assets (or such trust or other arrangement) are subsequently transferred outside of the United States.

This paragraph shall not apply to assets located in a foreign jurisdiction if substantially all of the services to which the nonqualified deferred compensation relates are performed in such jurisdiction.

(2) Employer's financial health

In the case of compensation deferred under a nonqualified deferred compensation plan, there is a transfer of property within the meaning of section 83 with respect to such compensation as of the earlier of—

(A) the date on which the plan first provides that assets will become restricted to the provision of benefits under the plan in connection with a change in the employer's financial health, or

(B) the date on which assets are so restricted,

whether or not such assets are available to satisfy claims of general creditors.

(3) Treatment of employer's defined benefit plan during restricted period

(A) In general

If—

(i) during any restricted period with respect to a single-employer defined benefit plan, assets are set aside or reserved (directly or indirectly) in a trust (or other arrangement as determined by the Secretary) or transferred to such a trust or other arrangement for purposes of paying deferred compensation of an applicable covered employee under a nonqualified deferred compensation plan of the plan sponsor or member of a controlled group which includes the plan sponsor, or

(ii) a nonqualified deferred compensation plan of the plan sponsor or member of a controlled group which includes the plan sponsor provides that assets will become restricted to the provision of benefits under the plan to an applicable covered employee in connection with such restricted period (or other similar financial measure determined by the Secretary) with respect to the defined benefit plan, or assets are so restricted,

such assets shall, for purposes of section 83, be treated as property transferred in connection with the performance of services whether or not such assets are available to satisfy claims of general creditors. Clause (i) shall not apply with respect to any assets which are so set aside before the restricted period with respect to the defined benefit plan.

(B) Restricted period

For purposes of this section, the term "restricted period" means, with respect to any plan described in subparagraph (A)—

(i) any period during which the plan is in at-risk status (as defined in section 430(i)); [1]

(ii) any period the plan sponsor is a debtor in a case under title 11, United States Code, or similar Federal or State law, and

(iii) the 12-month period beginning on the date which is 6 months before the termination date of the plan if, as of the termination date, the plan is not sufficient for benefit liabilities (within the meaning of section 4041 of the Employee Retirement Income Security Act of 1974).

(C) Special rule for payment of taxes on deferred compensation included in income

If an employer provides directly or indirectly for the payment of any Federal, State, or local income taxes with respect to any compensation required to be included in gross income by reason of this paragraph—

(i) interest shall be imposed under subsection (a)(1)(B)(i)(I) on the amount of such payment in the same manner as if such payment was part of the deferred compensation to which it relates,

(ii) such payment shall be taken into account in determining the amount of the additional tax under subsection (a)(1)(B)(i)(II) in the same manner as if such payment was part of the deferred compensation to which it relates, and

(iii) no deduction shall be allowed under this title with respect to such payment.

(D) Other definitions

For purposes of this section—

(i) Applicable covered employee

The term "applicable covered employee" means any—

(I) covered employee of a plan sponsor,

(II) covered employee of a member of a controlled group which includes the plan sponsor, and

(III) former employee who was a covered employee at the time of termination of employment with the plan sponsor or a member of a controlled group which includes the plan sponsor.

(ii) Covered employee

The term "covered employee" means an individual described in section 162(m)(3) or an individual subject to the requirements of section 16(a) of the Securities Exchange Act of 1934.

(4) Income inclusion for offshore trusts and employer's financial health

For each taxable year that assets treated as transferred under this subsection remain set aside in a trust or other arrangement subject to paragraph (1), (2), or (3), any increase in value in, or earnings with respect to, such assets shall be treated as an additional transfer of property under this subsection (to the extent not previously included in income).

(5) Interest on tax liability payable with respect to transferred property

(A) In general

If amounts are required to be included in gross income by reason of paragraph (1), (2), or (3) for a taxable year, the tax imposed by this chapter for such taxable year shall be increased by the sum of—

(i) the amount of interest determined under subparagraph (B), and

(ii) an amount equal to 20 percent of the amounts required to be included in gross income.

(B) Interest

For purposes of subparagraph (A), the interest determined under this subparagraph for any taxable year is the amount of interest at the underpayment rate plus 1 percentage point on the underpayments that would have occurred had the amounts so required to be included in gross income by paragraph (1), (2), or (3) been includible in gross income for the taxable year in which first deferred or, if later, the first taxable year in which such amounts are not subject to a substantial risk of forfeiture.

(c) No inference on earlier income inclusion or requirement of later inclusion

Nothing in this section shall be construed to prevent the inclusion of amounts in gross income under any other provision of this chapter or any other rule of law earlier than the time provided in this section. Any amount included in gross income under this section shall not be required to be included in gross income under any other provision of this chapter or any other rule of law later than the time provided in this section.

(d) Other definitions and special rules

For purposes of this section:

(1) Nonqualified deferred compensation plan

The term "nonqualified deferred compensation plan" means any plan that provides for the deferral of compensation, other than—

(A) a qualified employer plan, and

(B) any bona fide vacation leave, sick leave, compensatory time, disability pay, or death benefit plan.

(2) Qualified employer plan

The term "qualified employer plan" means—

(A) any plan, contract, pension, account, or trust described in subparagraph (A) or (B) of section 219(g)(5) (without regard to subparagraph (A)(iii)),

(B) any eligible deferred compensation plan (within the meaning of section 457(b)), and

(C) any plan described in section 415(m).

(3) Plan includes arrangements, etc.

The term "plan" includes any agreement or arrangement, including an agreement or arrangement that includes one person.

(4) Substantial risk of forfeiture

The rights of a person to compensation are subject to a substantial risk of forfeiture if such person's rights to such compensation are conditioned upon the future performance of substantial services by any individual.

(5) Treatment of earnings

References to deferred compensation shall be treated as including references to income (whether actual or notional) attributable to such compensation or such income.

(6) Aggregation rules

Except as provided by the Secretary, rules similar to the rules of subsections (b) and (c) of section 414 shall apply.

(e) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations—

(1) providing for the determination of amounts of deferral in the case of a nonqualified deferred compensation plan which is a defined benefit plan,

(2) relating to changes in the ownership and control of a corporation or assets of a corporation for purposes of subsection (a)(2)(A)(v),

(3) exempting arrangements from the application of subsection (b) if such arrangements will not result in an improper deferral of United States tax and will not result in assets being effectively beyond the reach of creditors,

(4) defining financial health for purposes of subsection (b)(2), and

(5) disregarding a substantial risk of forfeiture in cases where necessary to carry out the purposes of this section.

(Added Pub. L. 108–357, title VIII, §885(a), Oct. 22, 2004, 118 Stat. 1634; amended Pub. L. 109–135, title IV, §403(hh)(2), Dec. 21, 2005, 119 Stat. 2631; Pub. L. 109–280, title I, §116(a), (b), Aug. 17, 2006, 120 Stat. 856, 858; Pub. L. 110–458, title I, §101(e), Dec. 23, 2008, 122 Stat. 5100.)

REFERENCES IN TEXT

Section 4041 of the Employee Retirement Income Security Act of 1974, referred to in subsec. (b)(3)(B)(iii), is classified to section 1341 of Title 29, Labor.

Section 16(a) of the Securities Exchange Act of 1934, referred to in subsec. (b)(3)(D)(ii), is classified to section 78p(a) of Title 15, Commerce and Trade.

PRIOR PROVISIONS

A prior section 409A was renumbered section 409 of this title.

AMENDMENTS

2008—Subsec. (b)(3)(A)(ii). Pub. L. 110–458 inserted "to an applicable covered employee" after "under the plan".

2006—Subsec. (b)(3). Pub. L. 109–280, §116(a), added par. (3). Former par. (3) redesignated (4).

Subsec. (b)(4), (5). Pub. L. 109–280 redesignated pars. (3) and (4) as (4) and (5), respectively, and substituted "paragraph (1), (2), or (3)" for "paragraph (1) or (2)" wherever appearing.

2005—Subsec. (a)(4)(C)(ii). Pub. L. 109–135 struck out "first" after "requires that the".

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–458 effective as if included in the provisions of Pub. L. 109–280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110–458, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title I, §116(c), Aug. 17, 2006, 120 Stat. 858, provided that: "The amendments made by this section [amending this section] shall apply to transfers or other reservation of assets after the date of the enactment of this Act [Aug. 17, 2006]."

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE

Pub. L. 109–135, title IV, §403(hh)(3)(A), Dec. 21, 2005, 119 Stat. 2631, provided that: "Notwithstanding section 885(d)(1) of the American Jobs Creation Act of 2004 [Pub. L. 108–357, set out below], subsection (b) of section 409A of the Internal Revenue Code of 1986 shall take effect on January 1, 2005."

Pub. L. 108–357, title VIII, §885(d), Oct. 22, 2004, 118 Stat. 1640, provided that:

"(1) IN GENERAL.—The amendments made by this section [enacting this section and amending sections 3401, 6041, and 6051 of this title] shall apply to amounts deferred after December 31, 2004.

"(2) SPECIAL RULES.—

"(A) EARNINGS.—The amendments made by this section shall apply to earnings on deferred compensation only to the extent that such amendments apply to such compensation.

"(B) MATERIAL MODIFICATIONS.—For purposes of this subsection, amounts deferred in taxable years beginning before January 1, 2005, shall be treated as amounts deferred in a taxable year beginning on or after such date if the plan under which the deferral is made is materially modified after October 3, 2004, unless such modification is pursuant to the guidance issued under subsection (f) [set out as a note below].

"(3) EXCEPTION FOR NONELECTIVE DEFERRED COMPENSATION.—The amendments made by this section shall not apply to any nonelective deferred compensation to which section 457 of the Internal Revenue Code of 1986 does not apply by reason of section 457(e)(12) of such Code, but only if such compensation is provided under a nonqualified deferred compensation plan—

"(A) which was in existence on May 1, 2004,

"(B) which was providing nonelective deferred compensation described in such section 457(e)(12) on such date, and

"(C) which is established or maintained by an organization incorporated on July 2, 1974.

If, after May 1, 2004, a plan described in the preceding sentence adopts a plan amendment which provides a material change in the classes of individuals eligible to participate in the plan, this paragraph shall not apply to any nonelective deferred compensation provided under the plan on or after the date of the adoption of the amendment."

APPLICABILITY OF AMENDMENTS BY SUBTITLES A AND B OF TITLE I OF PUB. L. 109–280

For special rules on applicability of amendments by subtitles A (§§101–108) and B (§§111–116) of title I of Pub. L. 109–280 to certain eligible cooperative plans, PBGC settlement plans, and eligible government contractor plans, see sections 104, 105, and 106 of Pub. L. 109–280, set out as notes under section 401 of this title.

GUIDANCE RELATING TO CONFORMANCE WITH FUNDING RULES

Pub. L. 109–135, title IV, §403(hh)(3)(B), Dec. 21, 2005, 119 Stat. 2631, provided that: "Not later than 90 days after the date of the enactment of this Act [Dec. 21, 2005], the Secretary of the Treasury shall issue guidance under which a nonqualified deferred compensation plan which is in violation of the requirements of section 409A(b) of such Code shall be treated as not having violated such requirements if such plan comes into conformance with such requirements during such limited period as the Secretary may specify in such guidance."

GUIDANCE RELATING TO CHANGE OF OWNERSHIP OR CONTROL

Pub. L. 108–357, title VIII, §885(e), Oct. 22, 2004, 118 Stat. 1640, provided that: "Not later than 90 days after the date of the enactment of this Act [Oct. 22, 2004], the Secretary of the Treasury shall issue guidance on what constitutes a change in ownership or effective control for purposes of section 409A of the Internal Revenue Code of 1986, as added by this section."

GUIDANCE RELATING TO TERMINATION OF CERTAIN EXISTING ARRANGEMENTS

Pub. L. 108–357, title VIII, §885(f), Oct. 22, 2004, 118 Stat. 1641, as amended by Pub. L. 109–135, title IV, §403(hh)(4), Dec. 21, 2005, 119 Stat. 2632, provided that: "Not later than 60 days after the date of the enactment of this Act [Oct. 22, 2004], the Secretary of the Treasury shall issue guidance providing a limited period during which a nonqualified deferred compensation plan adopted before January 1, 2005, may, without violating the requirements of paragraphs (2), (3), and (4) of section 409A(a) of the Internal Revenue Code of 1986 (as added by this section), be amended—

"(1) to provide that a participant may terminate participation in the plan, or cancel an outstanding deferral election with regard to amounts deferred after December 31, 2004, but only if amounts subject to the termination or cancellation are includible in income of the participant as earned (or, if later, when no longer subject to substantial risk of forfeiture), and

"(2) to conform to the requirements of such section 409A with regard to amounts deferred after December 31, 2004."

[1] *So in original. The semicolon probably should be a comma.*

SUBPART B—SPECIAL RULES

Sec.
410. Minimum participation standards.
411. Minimum vesting standards.
412. Minimum funding standards.
413. Collectively bargained plans.[1]
414. Definitions and special rules.
415. Limitations on benefits and contribution under qualified plans.
416. Special rules for top-heavy plans.
417. Definitions and special rules for purposes of minimum survivor annuity requirements.

AMENDMENTS

1984—Pub. L. 98–397, title II, §203(c), Aug. 23, 1984, 98 Stat. 1445, added item 417.

1982—Pub. L. 97–248, title II, §240(d), Sept. 3, 1982, 96 Stat. 520, added item 416.

1974—Pub. L. 93–406, title II, §1011, Sept. 2, 1974, 88 Stat. 898, added subpart heading and analysis of sections.

[1] *So in original. Does not conform to section catchline.*

§410. Minimum participation standards

(a) Participation

(1) Minimum age and service conditions

(A) General rule

A trust shall not constitute a qualified trust under section 401(a) if the plan of which it is a part requires, as a condition of participation in the plan, that an employee complete a period of service with the employer or employers maintaining the plan extending beyond the later of the following dates—

(i) the date on which the employee attains the age of 21; or

(ii) the date on which he completes 1 year of service.

(B) Special rules for certain plans

(i) In the case of any plan which provides that after not more than 2 years of service each participant has a right to 100 percent of his accrued benefit under the plan which is nonforfeitable (within the meaning of section 411) at the time such benefit accrues, clause (ii) of subparagraph (A) shall be applied by substituting "2 years of service" for "1 year of service".

(ii) In the case of any plan maintained exclusively for employees of an educational institution (as defined in section 170(b)(1)(A)(ii) by an employer which is exempt from tax under section 501(a) which provides that each participant having at least 1 year of service has a right to 100 percent of his accrued benefit under the plan which is nonforfeitable (within the meaning of section 411) at the time such benefit accrues, clause (i) of subparagraph (A) shall be applied by substituting "26" for "21". This clause shall not apply to any plan to which clause (i) applies.

(2) Maximum age conditions

A trust shall not constitute a qualified trust under section 401(a) if the plan of which it is a part excludes from participation (on the basis of age) employees who have attained a specified age.

(3) Definition of year of service

(A) General rule

For purposes of this subsection, the term "year of service" means a 12-month period during which the employee has not less than 1,000 hours of service. For purposes of this paragraph, computation of any 12-month period shall be made with reference to the date on which the employee's employment commenced, except that, under regulations prescribed by the Secretary of Labor, such computation may be made by reference to the first day of a plan year in the case

of an employee who does not complete 1,000 hours of service during the 12-month period beginning on the date his employment commenced.

(B) Seasonal industries

In the case of any seasonal industry where the customary period of employment is less than 1,000 hours during a calendar year, the term "year of service" shall be such period as may be determined under regulations prescribed by the Secretary of Labor.

(C) Hours of service

For purposes of this subsection, the term "hour of service" means a time of service determined under regulations prescribed by the Secretary of Labor.

(D) Maritime industries

For purposes of this subsection, in the case of any maritime industry, 125 days of service shall be treated as 1,000 hours of service. The Secretary of Labor may prescribe regulations to carry out this subparagraph.

(4) Time of participation

A plan shall be treated as not meeting the requirements of paragraph (1) unless it provides that any employee who has satisfied the minimum age and service requirements specified in such paragraph, and who is otherwise entitled to participate in the plan, commences participation in the plan no later than the earlier of—

(A) the first day of the first plan year beginning after the date on which such employee satisfied such requirements, or

(B) the date 6 months after the date on which he satisfied such requirements,

unless such employee was separated from the service before the date referred to in subparagraph (A) or (B), whichever is applicable.

(5) Breaks in service

(A) General rule

Except as otherwise provided in subparagraphs (B), (C), and (D), all years of service with the employer or employers maintaining the plan shall be taken into account in computing the period of service for purposes of paragraph (1).

(B) Employees under 2-year 100 percent vesting

In the case of any employee who has any 1-year break in service (as defined in section 411(a)(6)(A)) under a plan to which the service requirements of clause (i) of paragraph (1)(B) apply, if such employee has not satisfied such requirements, service before such break shall not be required to be taken into account.

(C) 1-year break in service

In computing an employee's period of service for purposes of paragraph (1) in the case of any participant who has any 1-year break in service (as defined in section 411(a)(6)(A)), service before such break shall not be required to be taken into account under the plan until he has completed a year of service (as defined in paragraph (3)) after his return.

(D) Nonvested participants

(i) In general

For purposes of paragraph (1), in the case of a nonvested participant, years of service with the employer or employers maintaining the plan before any period of consecutive 1-year breaks in service shall not be required to be taken into account in computing the period of service if the number of consecutive 1-year breaks in service within such period equals or exceeds the greater of—

(I) 5, or

(II) the aggregate number of years of service before such period.

(ii) Years of service not taken into account

If any years of service are not required to be taken into account by reason of a period of breaks in service to which clause (i) applies, such years of service shall not be taken into account in applying clause (i) to a subsequent period of breaks in service.

(iii) Nonvested participant defined

For purposes of clause (i), the term "nonvested participant" means a participant who does not have any nonforfeitable right under the plan to an accrued benefit derived from employer contributions.

(E) Special rule for maternity or paternity absences

(i) General rule

In the case of each individual who is absent from work for any period—

(I) by reason of the pregnancy of the individual,

(II) by reason of the birth of a child of the individual,

(III) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or

(IV) for purposes of caring for such child for a period beginning immediately following such birth or placement,

the plan shall treat as hours of service, solely for purposes of determining under this paragraph whether a 1-year break in service (as defined in section 411(a)(6)(A)) has occurred, the hours described in clause (ii).

(ii) Hours treated as hours of service

The hours described in this clause are—

(I) the hours of service which otherwise would normally have been credited to such individual but for such absence, or

(II) in any case in which the plan is unable to determine the hours described in subclause (I), 8 hours of service per day of such absence,

except that the total number of hours treated as hours of service under this clause by reason of any such pregnancy or placement shall not exceed 501 hours.

(iii) Year to which hours are credited

The hours described in clause (ii) shall be treated as hours of service as provided in this subparagraph—

(I) only in the year in which the absence from work begins, if a participant would be prevented from incurring a 1-year break in service in such year solely because the period of absence is treated as hours of service as provided in clause (i); or

(II) in any other case, in the immediately following year.

(iv) Year defined

For purposes of this subparagraph, the term "year" means the period used in computations pursuant to paragraph (3).

(v) Information required to be filed

A plan shall not fail to satisfy the requirements of this subparagraph solely because it provides that no credit will be given pursuant to this subparagraph unless the individual furnishes to the plan administrator such timely information as the plan may reasonably require to establish—

(I) that the absence from work is for reasons referred to in clause (i), and

(II) the number of days for which there was such an absence.

(b) Minimum coverage requirements

(1) In general

A trust shall not constitute a qualified trust under section 401(a) unless such trust is designated by the employer as part of a plan which meets 1 of the following requirements:

(A) The plan benefits at least 70 percent of employees who are not highly compensated employees.

(B) The plan benefits—

(i) a percentage of employees who are not highly compensated employees which is at least 70 percent of

(ii) the percentage of highly compensated employees benefiting under the plan.

(C) The plan meets the requirements of paragraph (2).

(2) Average benefit percentage test

(A) In general

A plan shall be treated as meeting the requirements of this paragraph if—

(i) the plan benefits such employees as qualify under a classification set up by the employer and found by the Secretary not to be discriminatory in favor of highly compensated employees, and

(ii) the average benefit percentage for employees who are not highly compensated employees is at least 70 percent of the average benefit percentage for highly compensated employees.

(B) Average benefit percentage

For purposes of this paragraph, the term "average benefit percentage" means, with respect to any group, the average of the benefit percentages calculated separately with respect to each employee in such group (whether or not a participant in any plan).

(C) Benefit percentage

For purposes of this paragraph—

(i) In general

The term "benefit percentage" means the employer-provided contribution or benefit of an employee under all qualified plans maintained by the employer, expressed as a percentage of such employee's compensation (within the meaning of section 414(s)).

(ii) Period for computing percentage

At the election of an employer, the benefit percentage for any plan year shall be computed on the basis of contributions or benefits for—

(I) such plan year, or

(II) any consecutive plan year period (not greater than 3 years) which ends with such plan year and which is specified in such election.

An election under this clause, once made, may be revoked or modified only with the consent of the Secretary.

(D) Employees taken into account

For purposes of determining who is an employee for purposes of determining the average benefit percentage under subparagraph (B)—

(i) except as provided in clause (ii), paragraph (4)(A) shall not apply, or

(ii) if the employer elects, paragraph (4)(A) shall be applied by using the lowest age and service requirements of all qualified plans maintained by the employer.

(E) Qualified plan

For purposes of this paragraph, the term "qualified plan" means any plan which (without regard to this subsection) meets the requirements of section 401(a).

(3) Exclusion of certain employees

For purposes of this subsection, there shall be excluded from consideration—

(A) employees who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, if there is evidence that retirement benefits were the subject of good faith bargaining between such employee representatives and such employer or employers,

(B) in the case of a trust established or maintained pursuant to an agreement which the Secretary of Labor finds to be a collective bargaining agreement between air pilots represented in accordance with title II of the Railway Labor Act and one or more employers, all employees not covered by such agreement, and

(C) employees who are nonresident aliens and who receive no earned income (within the meaning of section 911(d)(2)) from the employer which constitutes income from sources within the United States (within the meaning of section 861(a)(3)).

Subparagraph (A) shall not apply with respect to coverage of employees under a plan pursuant to an agreement under such subparagraph. For purposes of subparagraph (B), management pilots who are not represented in accordance with title II of the Railway Labor Act shall be treated as covered by a collective bargaining agreement described in such subparagraph if the management pilots manage the flight operations of air pilots who are so represented and the management pilots are, pursuant to the terms of the agreement, included in the group of employees benefitting under the trust described in such subparagraph. Subparagraph (B) shall not apply in the case of a plan which provides contributions or benefits for employees whose principal duties are not customarily performed aboard an aircraft in flight (other than management pilots described in the preceding sentence).

(4) Exclusion of employees not meeting age and service requirements

(A) In general

If a plan—

(i) prescribes minimum age and service requirements as a condition of participation, and

(ii) excludes all employees not meeting such requirements from participation,

then such employees shall be excluded from consideration for purposes of this subsection.

(B) Requirements may be met separately with respect to excluded group

If employees not meeting the minimum age or service requirements of subsection (a)(1) (without regard to subparagraph (B) thereof) are covered under a plan of the employer which meets the requirements of paragraph (1) separately with respect to such employees, such employees may be excluded from consideration in determining whether any plan of the employer meets the requirements of paragraph (1).

(C) Requirements not treated as being met before entry date

An employee shall not be treated as meeting the age and service requirements described in this paragraph until the first date on which, under the plan, any employee with the same age and service would be eligible to commence participation in the plan.

(5) Line of business exception

(A) In general

If, under section 414(r), an employer is treated as operating separate lines of business for a year, the employer may apply the requirements of this subsection for such year separately with respect to employees in each separate line of business.

(B) Plan must be nondiscriminatory

Subparagraph (A) shall not apply with respect to any plan maintained by an employer unless

such plan benefits such employees as qualify under a classification set up by the employer and found by the Secretary not to be discriminatory in favor of highly compensated employees.

(6) Definitions and special rules

For purposes of this subsection—

(A) Highly compensated employee

The term "highly compensated employee" has the meaning given such term by section 414(q).

(B) Aggregation rules

An employer may elect to designate—

(i) 2 or more trusts,

(ii) 1 or more trusts and 1 or more annuity plans, or

(iii) 2 or more annuity plans,

as part of 1 plan intended to qualify under section 401(a) to determine whether the requirements of this subsection are met with respect to such trusts or annuity plans. If an employer elects to treat any trusts or annuity plans as 1 plan under this subparagraph, such trusts or annuity plans shall be treated as 1 plan for purposes of section 401(a)(4).

(C) Special rules for certain dispositions or acquisitions

(i) In general

If a person becomes, or ceases to be, a member of a group described in subsection (b), (c), (m), or (o) of section 414, then the requirements of this subsection shall be treated as having been met during the transition period with respect to any plan covering employees of such person or any other member of such group if—

(I) such requirements were met immediately before each such change, and

(II) the coverage under such plan is not significantly changed during the transition period (other than by reason of the change in members of a group) or such plan meets such other requirements as the Secretary may prescribe by regulation.

(ii) Transition period

For purposes of clause (i), the term "transition period" means the period—

(I) beginning on the date of the change in members of a group, and

(II) ending on the last day of the 1st plan year beginning after the date of such change.

(D) Special rule for certain employee stock ownership plans

A trust which is part of a tax credit employee stock ownership plan which is the only plan of an employer intended to qualify under section 401(a) shall not be treated as not a qualified trust under section 401(a) solely because it fails to meet the requirements of this subsection if—

(i) such plan benefits 50 percent or more of all the employees who are eligible under a nondiscriminatory classification under the plan, and

(ii) the sum of the amounts allocated to each participant's account for the year does not exceed 2 percent of the compensation of that participant for the year.

(E) Eligibility to contribute

In the case of contributions which are subject to section 401(k) or 401(m), employees who are eligible to contribute (or elect to have contributions made on their behalf) shall be treated as benefiting under the plan (other than for purposes of paragraph (2)(A)(ii)).

(F) Employers with only highly compensated employees

A plan maintained by an employer which has no employees other than highly compensated employees for any year shall be treated as meeting the requirements of this subsection for such year.

(G) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection.

(c) Application of participation standards to certain plans

(1) The provisions of this section (other than paragraph (2) of this subsection) shall not apply to—

(A) a governmental plan (within the meaning of section 414(d)),

(B) a church plan (within the meaning of section 414(e)) with respect to which the election provided by subsection (d) of this section has not been made,

(C) a plan which has not at any time after September 2, 1974, provided for employer contributions, and

(D) a plan established and maintained by a society, order, or association described in section 501(c)(8) or (9) if no part of the contributions to or under such plan are made by employers of participants in such plan.

(2) A plan described in paragraph (1) shall be treated as meeting the requirements of this section for purposes of section 401(a), except that in the case of a plan described in subparagraph (B), (C), or (D) of paragraph (1), this paragraph shall apply only if such plan meets the requirements of section 401(a)(3) (as in effect on September 1, 1974).

(d) Election by church to have participation, vesting, funding, etc., provisions apply

(1) In general

If the church or convention or association of churches which maintains any church plan makes an election under this subsection (in such form and manner as the Secretary may by regulations prescribe), then the provisions of this title relating to participation, vesting, funding, etc. (as in effect from time to time) shall apply to such church plan as if such provisions did not contain an exclusion for church plans.

(2) Election irrevocable

An election under this subsection with respect to any church plan shall be binding with respect to such plan, and, once made, shall be irrevocable.

(Added Pub. L. 93–406, title II, §1011, Sept. 2, 1974, 88 Stat. 898; amended Pub. L. 94–455, title XIX, §§1901(a)(61), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1774, 1834; Pub. L. 96–605, title II, §225(a), Dec. 28, 1980, 94 Stat. 3529; Pub. L. 97–34, title I, §111(b)(4), Aug. 13, 1981, 95 Stat. 194; Pub. L. 98–397, title II, §202(a), (d)(1), (e)(1), Aug. 23, 1984, 98 Stat. 1436–1438; Pub. L. 99–509, title IX, §9203(a)(2), Oct. 21, 1986, 100 Stat. 1979; Pub. L. 99–514, title XI, §§1112(a), 1113(c), (d)(A), Oct. 22, 1986, 100 Stat. 2440, 2447; Pub. L. 100–647, title I, §1011(h)(1), (2), (11), title III, §3021(a)(13)(B), Nov. 10, 1988, 102 Stat. 3464, 3467, 3631; Pub. L. 101–239, title VII, §7841(d)(6), Dec. 19, 1989, 103 Stat. 2428; Pub. L. 105–34, title XV, §1505(a)(3), Aug. 5, 1997, 111 Stat. 1063; Pub. L. 109–280, title IV, §402(h)(1), Aug. 17, 2006, 120 Stat. 927.)

REFERENCES IN TEXT

The Railway Labor Act, referred to in subsec. (b)(3), is act May 20, 1926, ch. 347, 44 Stat. 577, as amended. Title II of the Railway Labor Act was added by act Apr. 10, 1936, ch. 166, 49 Stat. 1189, and is classified generally to subchapter II (§181 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables.

AMENDMENTS

2006—Subsec. (b)(3). Pub. L. 109–280, in concluding provisions, substituted "For purposes of subparagraph (B), management pilots who are not represented in accordance with title II of the Railway Labor Act shall be treated as covered by a collective bargaining agreement described in such subparagraph if the management pilots manage the flight operations of air pilots who are so represented and the management pilots are, pursuant to the terms of the agreement, included in the group of employees benefitting under the trust described in such subparagraph. Subparagraph (B) shall not apply in the case of a plan which provides contributions or benefits for employees whose principal duties are not customarily performed aboard an

aircraft in flight (other than management pilots described in the preceding sentence)." for "Subparagraph (B) shall not apply in the case of a plan which provides contributions or benefits for employees whose principal duties are not customarily performed aboard aircraft in flight."

1997—Subsec. (c)(2). Pub. L. 105–34 amended par. (2) generally. Prior to amendment, par. (2) read as follows: "A plan described in paragraph (1) shall be treated as meeting the requirements of this section, for purposes of section 401(a), if such plan meets the requirements of section 401(a)(3) as in effect on September 1, 1974."

1989—Subsec. (a)(2). Pub. L. 101–239 struck out comma before period at end.

1988—Subsec. (b)(4)(B). Pub. L. 100–647, §1011(h)(1), substituted "not meeting" for "do not meet" and struck out "and" before "are covered".

Subsec. (b)(4)(C). Pub. L. 100–647, §1011(h)(11), added subpar. (C).

Subsec. (b)(6)(C)(i)(II). Pub. L. 100–647, §3021(a)(13)(B), inserted "or such plan meets such other requirements as the Secretary may prescribe by regulation" after "of a group)".

Subsec. (b)(6)(F), (G). Pub. L. 100–647, §1011(h)(2), added subpar. (F) and redesignated former subpar. (F) as (G).

1986—Subsec. (a)(1)(B)(i). Pub. L. 99–514, §1113(c), substituted "2 years of service" for "3 years of service" in two places.

Subsec. (a)(2). Pub. L. 99–509 substituted a period for "unless—

"(A) the plan is a—

"(i) defined benefit plan, or

"(ii) target benefit plan (as defined under regulations prescribed by the Secretary), and

"(B) such employees begin employment with the employer after they have attained a specified age which is not more than 5 years before the normal retirement age under the plan."

Subsec. (a)(5)(B). Pub. L. 99–514, §1113(d)(A), substituted "2-year" for "3-year" in heading.

Subsec. (b). Pub. L. 99–514, §1112(a), substituted "Minimum coverage requirements" for "Eligibility" as subsec. (b) heading and amended subsec. generally, revising and restating as pars. (1) to (6) provisions formerly contained in pars. (1) to (3).

1984—Subsec. (a)(1)(A)(i). Pub. L. 98–397, §202(a)(1), substituted "21" for "25".

Subsec. (a)(1)(B)(ii). Pub. L. 98–397, §202(a)(2), substituted " '26' for '21' " for " '30' for '25' ".

Subsec. (a)(5)(D). Pub. L. 98–397, §202(d)(1), amended subpar. (D) generally.

Subsec. (a)(5)(E). Pub. L. 98–397, §202(e)(1), added subpar. (E).

1981—Subsec. (b)(3)(C). Pub. L. 97–34 substituted "section 911(d)(2)" for "section 911(b)".

1980—Subsec. (b)(2), (3). Pub. L. 96–605 added par. (2), redesignated former par. (2) as (3) and substituted "paragraphs (1) and (2)" for "paragraph (1)".

1976—Subsec. (a)(2)(A)(ii). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (a)(5)(C), (D). Pub. L. 94–455, §1901(a)(61)(A), substituted "purposes of paragraph (1)" for "purposes of subsection (a)(1)".

Subsec. (b)(1)(B). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (c)(1)(C). Pub. L. 94–455, §1901(a)(61)(B), substituted "September 2, 1974," for "the date of the enactment of the Employee Retirement Income Security Act of 1974".

Subsec. (c)(2). Pub. L. 94–455, §1901(a)(61)(C), substituted "September 1, 1974" for "the day before the date of the enactment of this section".

Subsec. (d)(1). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 applicable to years beginning before, on, or after Aug. 17, 2006, see section 402(h)(2) of Pub. L. 109–280, set out as a Special Funding Rules for Certain Plans Maintained by Commercial Airlines note under section 430 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to taxable years beginning on or after Aug. 5, 1997, with certain governmental plans treated as satisfying requirements for all taxable years beginning before Aug. 5, 1997, see section 1505(d) of Pub. L. 105–34, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011(h)(1), (2), (11) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates,

see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 3021(a)(13)(B) of Pub. L. 100–647 effective as if included in the amendments by section 1151 of Pub. L. 99–514, see section 3021(d)(1) of Pub. L. 100–647, set out as a note under section 129 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 1112(a) of Pub. L. 99–514 applicable to plan years beginning after Dec. 31, 1988, with special rule regarding collective bargaining agreements ratified before Mar. 1, 1986, and with provision for waiver of excise tax on reversions, see section 1112(e) of Pub. L. 99–514, set out as a note under section 401 of this title.

Amendment by section 1113(c), (d)(A) of Pub. L. 99–514 applicable to plan years beginning after Dec. 31, 1988, with special rule for plans maintained pursuant to collective bargaining agreements ratified before Mar. 1, 1986, and not applicable to employees who do not have 1 hour of service in any plan year to which the amendment applies, see section 1113(f) of Pub. L. 99–514, as amended, set out as a note under section 411 of this title.

Amendment by Pub. L. 99–509 applicable only with respect to plan years beginning on or after January 1, 1988, and only with respect to service performed on or after such date, see section 9204(b) of Pub. L. 99–509, set out as an Effective and Termination Dates of 1986 Amendments note under section 623 of Title 29, Labor.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–397 applicable to plan years beginning after Dec. 31, 1984, except as otherwise provided, see sections 302 and 303 of Pub. L. 98–397, set out as a note under section 1001 of Title 29, Labor.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable with respect to taxable years beginning after Dec. 31, 1981, see section 115 of Pub. L. 97–34, set out as a note under section 911 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–605 applicable with respect to plan years beginning after December 31, 1980, see section 225(c) of Pub. L. 96–605, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(61) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE; TRANSITIONAL RULES

Pub. L. 93–406, title II, §1017, Sept. 2, 1974, 88 Stat. 932, as amended by Pub. L. 94–12, title IV, §402, Mar. 29, 1975, 89 Stat. 47; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) GENERAL RULE.—Except as otherwise provided in this section, the amendments made by this part [part 1 (§§1011–1017) of subtitle A of title II of Pub. L. 93–406, enacting this section and sections 411, 412, 413, 414, and 4971 of this title, amending sections 275, 401, 404, 406, 407, 805, 6161, 6201, 6204, 6211, 6212, 6213, 6214, 6344, 6501, 6503, 6512, 6601, 6653, 6659 [now 6662], 6676, 6677, 6679, 6682, 6688, 6861, 6862, and 7422 of this title and enacting provisions set out as notes under this section and sections 411 and 412 of this title] shall apply for plan years beginning after the date of the enactment of this Act [Sept. 2, 1974].

"(b) EXISTING PLANS.—Except as otherwise provided in subsections (c) through (i), in the case of a plan in existence on January 1, 1974, the amendments made by this part shall apply for plan years beginning after December 31, 1975.

"(c) EXISTING PLANS UNDER COLLECTIVE BARGAINING AGREEMENTS.—

"(1) APPLICATION OF VESTING RULES TO CERTAIN PLAN PROVISIONS.—

"(A) WAIVER OF APPLICATION.—In the case of a plan maintained on January 1, 1974, pursuant to one or more agreements which the Secretary of Labor finds to be collective bargaining agreements between employee representatives and one or more employers, during the special temporary waiver period the plan shall not be treated as not meeting the requirements of section 411(b)(1) or (2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] solely by reason of a supplementary or special plan provision (within the meaning of subparagraph (D)).

"(B) SPECIAL TEMPORARY WAIVER PERIOD.—For purposes of this paragraph, the term 'special temporary waiver period' means plan years beginning after December 31, 1975, and before the earlier of—

"(i) the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act [Sept. 2, 1974]), or

"(ii) January 1, 1981.

For purposes of clause (i), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement contained in this Act [see Short Title note set out under section 1001 of Title 29, Labor] shall not be treated as a termination of such collective bargaining agreement.

"(C) DETERMINATION BY SECRETARY OF LABOR REQUIRED.—Subparagraph (A) shall not apply unless the Secretary of Labor determines that the participation and vesting rules in effect on the date of the enactment of this Act [Sept. 2, 1974] are not less favorable to the employees, in the aggregate than the rules provided under sections 410 and 411 of the Internal Revenue Code of 1986.

"(D) SUPPLEMENTARY OR SPECIAL PLAN PROVISIONS.—For purposes of this paragraph, the term 'supplementary or special plan provision' means any plan provision which—

"(i) provides supplementary benefits, not in excess of one-third of the basic benefit, in the form of an annuity for the life of the participant, or

"(ii) provides that, under a contractual agreement based on medical evidence as to the effects of working in an adverse environment for an extended period of time, a participant having 25 years of service is to be treated as having 30 years of service.

"(2) APPLICATION OF FUNDING RULES.—

"(A) IN GENERAL.—In the case of a plan maintained on January 1, 1974, pursuant to one or more agreements which the Secretary of Labor finds to be collective bargaining agreements between employee representatives and one or more employers, section 412 of the Internal Revenue Code of 1986, and other amendments made by this part to the extent such amendments relate to such section 412, shall not apply during the special temporary waiver period (as defined in paragraph (1)(B)).

"(B) WAIVER OF UNDERFUNDING.—In the case of a plan maintained on January 1, 1974, pursuant to one or more agreements which the Secretary of Labor finds to be collective bargaining agreements between employee representatives and one or more employers, if by reason of subparagraph (A) the requirements of section 401(a)(7) of the Internal Revenue Code of 1986 apply without regard to the amendment of such section 401(a)(7) by section 1016(a)(2)(C) of this Act [Pub. L. 93–406], the plan shall not be treated as not meeting such requirements solely by reason of the application of the amendments made by sections 1011 and 1012 of this Act [enacting this section and section 411 of this title] or related amendments made by this part.

"(C) LABOR ORGANIZATION CONVENTIONS.—In the case of a plan maintained by a labor organization, which is exempt from tax under section 501(c)(5) of the Internal Revenue Code of 1986 exclusively for the benefit of its employees and their beneficiaries, section 412 of such Code and other amendments made by this part to the extent such amendments relate to such section 412, shall be applied by substituting for the term 'December 31, 1975' in subsection (b), the earlier of—

"(i) the date on which the second convention of such labor organization held after the date of the enactment of this Act [Sept. 2, 1974] ends, or

"(ii) December 31, 1980,

but in no event shall a date earlier than the later of December 31, 1975, or the date determined under subparagraph (A) or (B) be substituted.

"(d) EXISTING PLANS MAY ELECT NEW PROVISIONS.—In the case of a plan in existence on January 1, 1974, the provisions of the Internal Revenue Code of 1986 relating to participation, vesting, funding, and form of benefit (as in effect from time to time) shall apply in the case of the plan year (which begins after the date of the enactment of this Act [Sept. 2, 1974] but before the applicable effective date determined under subsection (b) or (c)) selected by the plan administrator and to all subsequent plan years, if the plan administrator elects (in such manner and at such time as the Secretary of the Treasury or his delegate shall by regulations prescribe) to have such provisions so apply. Any election made under this subsection, once made, shall be irrevocable.

"(e) CERTAIN DEFINITIONS AND SPECIAL RULES.—Section 414 of the Internal Revenue Code of 1986 (other than subsections (b) and (c) of such section 414), as added by section 1015(a) of this Act [Pub. L. 93–406], shall take effect on the date of the enactment of this Act [Sept. 2, 1974].

"(f) TRANSITIONAL RULES WITH RESPECT TO BREAKS IN SERVICE.—

"(1) PARTICIPATION.—In the case of a plan to which section 410 of the Internal Revenue Code of 1986 [this section] applies, if any plan amendment with respect to breaks in service (which amendment is made or becomes effective after January 1, 1974, and before the date on which such section 410 first

becomes effective with respect to such plan) provides that any employee's participation in the plan would commence at any date later than the later of—

"(A) the date on which his participation would commence under the break in service rules of section 410(a)(5) of such Code, or

"(B) the date on which his participation would commence under the plan as in effect on January 1, 1974,

such plan shall not constitute a plan described in section 403(a) or 405(a) of such Code and a trust forming a part of such plan shall not constitute a qualified trust under section 401(a) of such Code.

"(2) VESTING.—In the case of a plan to which section 411 of the Internal Revenue Code of 1986 applies, if any plan amendment with respect to breaks in service (which amendment is made or becomes effective after January 1, 1974, and before the date on which such section 411 first becomes effective with respect to such plan) provides that the nonforfeitable benefit derived from employer contributions to which any employee would be entitled is less than the lesser of the nonforfeitable benefit derived from employer contributions to which he would be entitled under—

"(A) the break in service rules of section 411(a)(6) of such Code, or

"(B) the plan as in effect on January 1, 1974,

such plan shall not constitute a plan described in section 403(a) or 405(a) of such Code and a trust forming a part of such plan shall not constitute a qualified trust under section 401(a) of such Code. Subparagraph (B) shall not apply if the break in service rules under the plan would have been in violation of any law or rule of law in effect on January 1, 1974.

"(g) 3-YEAR DELAY FOR CERTAIN PROVISIONS.—Subparagraphs (B) and (C) of section 404(a)(1) shall apply only in the case of plan years beginning on or after 3 years after the date of the enactment of this Act [Sept. 2, 1974].

"(h)(1) Except as provided in paragraph (2), section 413 of the Internal Revenue Code of 1986 shall apply to plan years beginning after December 31, 1953.

"(2)(A) For plan years beginning before the applicable effective date of section 410 of such Code, the provisions of paragraphs (1) and (8) of subsection (b) of such section 413 shall be applied by substituting '401(a)(3)' for '410'.

"(B) For plan years beginning before the applicable effective date of section 411 of such Code, the provisions of subsection (b)(2) of such section 413 shall be applied by substituting '401(a)(7)' for '411(d)(3)'.

"(C)(i) The provisions of subsection (b)(4) of such section 413 shall not apply to plan years beginning before the applicable effective date of section 411 of such Code.

"(ii) The provisions of subsection (b)(5) (other than the second sentence thereof) of such section 413 shall not apply to plan years beginning before the applicable effective date of section 412 of such Code.

"(i) CONTRIBUTIONS TO H.R. 10 PLANS.—Notwithstanding subsections (b) and (c)(2), in the case of a plan in existence on January 1, 1974, the amendment made by section 1013(c)(2) of this Act [amending section 404(a)(6) of this title] shall apply, with respect to a plan which provides contributions or benefits for employees some or all of whom are employees within the meaning of section 401(c)(1) of the Internal Revenue Code of 1986, for plan years beginning after December 31, 1974, but only if the employer (within the meaning of section 401(c)(4) of such Code) elects in such manner and at such time as the Secretary of the Treasury or his delegate shall by regulations prescribe, to have such amendment so apply. Any election made under this subsection, once made, shall be irrevocable."

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by sections 1112 and 1113 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

Secretary of Labor, Secretary of the Treasury, and Equal Employment Opportunity Commission shall each issue before Feb. 1, 1988, final regulations to carry out amendments made by section 9203 of Pub. L. 99–509, see section 9204 of Pub. L. 99–509, set out as a note under section 623 of Title 29, Labor.

DEEMED ELECTION

Pub. L. 113–97, title I, §103(c), Apr. 7, 2014, 128 Stat. 1120, provided that: "For purposes of the Internal Revenue Code of 1986, sections 4(b)(2) and 4021(b)(3) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1003(b)(2), 1321(b)(3)], and all other purposes, a plan shall be deemed to have made an irrevocable election under section 410(d) of the Internal Revenue Code of 1986 if—

"(1) the plan was established before January 1, 2014;

"(2) the plan falls within the definition of a CSEC plan;

"(3) the plan sponsor does not make an election under section 210(f)(3)(A) of the Employee

Retirement Income Security Act of 1974 [29 U.S.C. 1060(f)(3)(A)] and section 414(y)(3)(A) of the Internal Revenue Code of 1986, as added by this Act; and

"(4) the plan, plan sponsor, administrator, or fiduciary remits one or more premium payments for the plan to the Pension Benefit Guaranty Corporation for a plan year beginning after December 31, 2013."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

For provisions directing that if any amendments made by section 9203(a)(2) of Pub. L. 99–509 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 9204 of Pub. L. 99–509, set out as a note under section 623 of Title 29, Labor.

§411. Minimum vesting standards

(a) General rule

A trust shall not constitute a qualified trust under section 401(a) unless the plan of which such trust is a part provides that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age (as defined in paragraph (8)) and in addition satisfies the requirements of paragraphs (1), (2), and (11) of this subsection and the requirements of subsection (b)(3), and also satisfies, in the case of a defined benefit plan, the requirements of subsection (b)(1) and, in the case of a defined contribution plan, the requirements of subsection (b)(2).

(1) Employee contributions

A plan satisfies the requirements of this paragraph if an employee's rights in his accrued benefit derived from his own contributions are nonforfeitable.

(2) Employer contributions

(A) Defined benefit plans

(i) In general

In the case of a defined benefit plan, a plan satisfies the requirements of this paragraph if it satisfies the requirements of clause (ii) or (iii).

(ii) 5-year vesting

A plan satisfies the requirements of this clause if an employee who has completed at least 5 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions.

(iii) 3 to 7 year vesting

A plan satisfies the requirements of this clause if an employee has a nonforfeitable right to a percentage of the employee's accrued benefit derived from employer contributions determined under the following table:

Years of service:	The nonforfeitable percentage is:
3	20
4	40
5	60
6	80
7 or more	100.

(B) Defined contribution plans

(i) In general

In the case of a defined contribution plan, a plan satisfies the requirements of this paragraph if it satisfies the requirements of clause (ii) or (iii).

(ii) 3-year vesting

A plan satisfies the requirements of this clause if an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions.

(iii) 2 to 6 year vesting

A plan satisfies the requirements of this clause if an employee has a nonforfeitable right to a percentage of the employee's accrued benefit derived from employer contributions determined under the following table:

Years of service:	The nonforfeitable percentage is:
2	20
3	40
4	60
5	80
6 or more	100.

(3) Certain permitted forfeitures, suspensions, etc.

For purposes of this subsection—

(A) Forfeiture on account of death

A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that it is not payable if the participant dies (except in the case of a survivor annuity which is payable as provided in section 401(a)(11)).

(B) Suspension of benefits upon reemployment of retiree

A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that the payment of benefits is suspended for such period as the employee is employed, subsequent to the commencement of payment of such benefits—

(i) in the case of a plan other than a multi-employer plan, by the employer who maintains the plan under which such benefits were being paid; and

(ii) in the case of a multiemployer plan, in the same industry, the same trade or craft, and the same geographic area covered by the plan as when such benefits commenced.

The Secretary of Labor shall prescribe such regulations as may be necessary to carry out the purposes of this subparagraph, including regulations with respect to the meaning of the term "employed".

(C) Effect of retroactive plan amendments

A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because plan amendments may be given retroactive application as provided in section 412(d)(2).

(D) Withdrawal of mandatory contribution

(i) A right to an accrued benefit derived from employer contributions shall not be treated as

forfeitable solely because the plan provides that, in the case of a participant who does not have a nonforfeitable right to at least 50 percent of his accrued benefit derived from employer contributions, such accrued benefit may be forfeited on account of the withdrawal by the participant of any amount attributable to the benefit derived from mandatory contributions (as defined in subsection (c)(2)(C)) made by such participant.

(ii) Clause (i) shall not apply to a plan unless the plan provides that any accrued benefit forfeited under a plan provision described in such clause shall be restored upon repayment by the participant of the full amount of the withdrawal described in such clause plus, in the case of a defined benefit plan, interest. Such interest shall be computed on such amount at the rate determined for purposes of subsection (c)(2)(C) on the date of such repayment (computed annually from the date of such withdrawal). The plan provision required under this clause may provide that such repayment must be made (I) in the case of a withdrawal on account of separation from service, before the earlier of 5 years after the first date on which the participant is subsequently re-employed by the employer, or the close of the first period of 5 consecutive 1-year breaks in service commencing after the withdrawal; or (II) in the case of any other withdrawal, 5 years after the date of the withdrawal.

(iii) In the case of accrued benefits derived from employer contributions which accrued before September 2, 1974, a right to such accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that an amount of such accrued benefit may be forfeited on account of the withdrawal by the participant of an amount attributable to the benefit derived from mandatory contributions (as defined in subsection (c)(2)(C)) made by such participant before September 2, 1974 if such amount forfeited is proportional to such amount withdrawn. This clause shall not apply to any plan to which any mandatory contribution is made after September 2, 1974. The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this clause.

(iv) For purposes of this subparagraph, in the case of any class-year plan, a withdrawal of employee contributions shall be treated as a withdrawal of such contributions on a plan year by plan year basis in succeeding order of time.

(v) For nonforfeitability where the employee has a nonforfeitable right to at least 50 percent of his accrued benefit, see section 401(a)(19).

(E) Cessation of contributions under a multiemployer plan

A right to an accrued benefit derived from employer contributions under a multiemployer plan shall not be treated as forfeitable solely because the plan provides that benefits accrued as a result of service with the participant's employer before the employer had an obligation to contribute under the plan may not be payable if the employer ceases contributions to the multiemployer plan.

(F) Reduction and suspension of benefits by a multiemployer plan

A participant's right to an accrued benefit derived from employer contributions under a multiemployer plan shall not be treated as forfeitable solely because—

(i) the plan is amended to reduce benefits under section 418D or under section 4281 of the Employee Retirement Income Security Act of 1974, or

(ii) benefit payments under the plan may be suspended under section 418E or under section 4281 of the Employee Retirement Income Security Act of 1974.

(G) Treatment of matching contributions forfeited by reason of excess deferral or contribution or permissible withdrawal

A matching contribution (within the meaning of section 401(m)) shall not be treated as forfeitable merely because such contribution is forfeitable if the contribution to which the matching contribution relates is treated as an excess contribution under section 401(k)(8)(B), an excess deferral under section 402(g)(2)(A), a permissible withdrawal under section 414(w), or an excess aggregate contribution under section 401(m)(6)(B).

(4) Service included in determination of nonforfeitable percentage

In computing the period of service under the plan for purposes of determining the nonforfeitable percentage under paragraph (2), all of an employee's years of service with the employer or employers maintaining the plan shall be taken into account, except that the following may be disregarded:

(A) years of service before age 18,[1]

(B) years of service during a period for which the employee declined to contribute to a plan requiring employee contributions;

(C) years of service with an employer during any period for which the employer did not maintain the plan or a predecessor plan (as defined under regulations prescribed by the Secretary;

(D) service not required to be taken into account under paragraph (6);

(E) years of service before January 1, 1971, unless the employee has had at least 3 years of service after December 31, 1970;

(F) years of service before the first plan year to which this section applies, if such service would have been disregarded under the rules of the plan with regard to breaks in service as in effect on the applicable date; and

(G) in the case of a multiemployer plan, years of service—

(i) with an employer after—

(I) a complete withdrawal of that employer from the plan (within the meaning of section 4203 of the Employee Retirement Income Security Act of 1974), or

(II) to the extent permitted in regulations prescribed by the Secretary, a partial withdrawal described in section 4205(b)(2)(A)(i) of such Act in conjunction with the decertification of the collective bargaining representative, and

(ii) with any employer under the plan after the termination date of the plan under section 4048 of such Act.

(5) Year of service

(A) General rule

For purposes of this subsection, except as provided in subparagraph (C), the term "year of service" means a calendar year, plan year, or other 12-consecutive month period designated by the plan (and not prohibited under regulations prescribed by the Secretary of Labor) during which the participant has completed 1,000 hours of service.

(B) Hours of service

For purposes of this subsection, the term "hours of service" has the meaning provided by section 410(a)(3)(C).

(C) Seasonal industries

In the case of any seasonal industry where the customary period of employment is less than 1,000 hours during a calendar year, the term "year of service" shall be such period as may be determined under regulations prescribed by the Secretary of Labor.

(D) Maritime industries

For purposes of this subsection, in the case of any maritime industry, 125 days of service shall be treated as 1,000 hours of service. The Secretary of Labor may prescribe regulations to carry out the purposes of this subparagraph.

(6) Breaks in service

(A) Definition of 1-year break in service

For purposes of this paragraph, the term "1-year break in service" means a calendar year, plan year, or other 12-consecutive-month period designated by the plan (and not prohibited under regulations prescribed by the Secretary of Labor) during which the participant has not completed more than 500 hours of service.

(B) 1 year of service after 1-year break in service

For purposes of paragraph (4), in the case of any employee who has any 1-year break in service, years of service before such break shall not be required to be taken into account until he has completed a year of service after his return.

(C) 5 consecutive 1-year breaks in service under defined contribution plan

For purposes of paragraph (4), in the case of any participant in a defined contribution plan, or an insured defined benefit plan which satisfies the requirements of subsection (b)(1)(F), who has 5 consecutive 1-year breaks in service, years of service after such 5-year period shall not be required to be taken into account for purposes of determining the nonforfeitable percentage of his accrued benefit derived from employer contributions which accrued before such 5-year period.

(D) Nonvested participants

(i) In general

For purposes of paragraph (4), in the case of a nonvested participant, years of service with the employer or employers maintaining the plan before any period of consecutive 1-year breaks in service shall not be required to be taken into account if the number of consecutive 1-year breaks in service within such period equals or exceeds the greater of—

(I) 5, or

(II) the aggregate number of years of service before such period.

(ii) Years of service not taken into account

If any years of service are not required to be taken into account by reason of a period of breaks in service to which clause (i) applies, such years of service shall not be taken into account in applying clause (i) to a subsequent period of breaks in service.

(iii) Nonvested participant defined

For purposes of clause (i), the term "nonvested participant" means a participant who does not have any nonforfeitable right under the plan to an accrued benefit derived from employer contributions.

(E) Special rule for maternity or paternity absences

(i) General rule

In the case of each individual who is absent from work for any period—

(I) by reason of the pregnancy of the individual,

(II) by reason of the birth of a child of the individual,

(III) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or

(IV) for purposes of caring for such child for a period beginning immediately following such birth or placement,

the plan shall treat as hours of service, solely for purposes of determining under this paragraph whether a 1-year break in service has occurred, the hours described in clause (ii).

(ii) Hours treated as hours of service

The hours described in this clause are—

(I) the hours of service which otherwise would normally have been credited to such individual but for such absence, or

(II) in any case in which the plan is unable to determine the hours described in subclause (I), 8 hours of service per day of absence,

except that the total number of hours treated as hours of service under this clause by reason of any such pregnancy or placement shall not exceed 501 hours.

(iii) Year to which hours are credited

The hours described in clause (ii) shall be treated as hours of service as provided in this subparagraph—

(I) only in the year in which the absence from work begins, if a participant would be prevented from incurring a 1-year break in service in such year solely because the period of absence is treated as hours of service as provided in clause (i); or

(II) in any other case, in the immediately following year.

(iv) Year defined

For purposes of this subparagraph, the term "year" means the period used in computations pursuant to paragraph (5).

(v) Information required to be filed

A plan shall not fail to satisfy the requirements of this subparagraph solely because it provides that no credit will be given pursuant to this subparagraph unless the individual furnishes to the plan administrator such timely information as the plan may reasonably require to establish—

(I) that the absence from work is for reasons referred to in clause (i), and

(II) the number of days for which there was such an absence.

(7) Accrued benefit

(A) In general

For purposes of this section, the term "accrued benefit" means—

(i) in the case of a defined benefit plan, the employee's accrued benefit determined under the plan and, except as provided in subsection (c)(3), expressed in the form of an annual benefit commencing at normal retirement age, or

(ii) in the case of a plan which is not a defined benefit plan, the balance of the employee's account.

(B) Effect of certain distributions

Notwithstanding paragraph (4), for purposes of determining the employee's accrued benefit under the plan, the plan may disregard service performed by the employee with respect to which he has received—

(i) a distribution of the present value of his entire nonforfeitable benefit if such distribution was in an amount (not more than the dollar limit under section 411(a)(11)(A)) permitted under regulations prescribed by the Secretary, or

(ii) a distribution of the present value of his nonforfeitable benefit attributable to such service which he elected to receive.

Clause (i) of this subparagraph shall apply only if such distribution was made on termination of the employee's participation in the plan. Clause (ii) of this subparagraph shall apply only if such distribution was made on termination of the employee's participation in the plan or under such other circumstances as may be provided under regulations prescribed by the Secretary.

(C) Repayment of subparagraph (B) distributions

For purposes of determining the employee's accrued benefit under a plan, the plan may not disregard service as provided in subparagraph (B) unless the plan provides an opportunity for the participant to repay the full amount of the distribution described in such subparagraph (B) with, in the case of a defined benefit plan, interest at the rate determined for purposes of subsection (c)(2)(C) and provides that upon such repayment the employee's accrued benefit shall be recomputed by taking into account service so disregarded. This subparagraph shall apply only in the case of a participant who—

(i) received such a distribution in any plan year to which this section applies, which distribution was less than the present value of his accrued benefit,

(ii) resumes employment covered under the plan, and

(iii) repays the full amount of such distribution with, in the case of a defined benefit plan, interest at the rate determined for purposes of subsection (c)(2)(C).

The plan provision required under this subparagraph may provide that such repayment must be made (I) in the case of a withdrawal on account of separation from service, before the earlier of 5 years after the first date on which the participant is subsequently re-employed by the employer, or the close of the first period of 5 consecutive 1-year breaks in service commencing after the withdrawal; or (II) in the case of any other withdrawal, 5 years after the date of the withdrawal.

(D) Accrued benefit attributable to employee contributions

The accrued benefit of an employee shall not be less than the amount determined under subsection (c)(2)(B) with respect to the employee's accumulated contributions.

(8) Normal retirement age

For purposes of this section, the term "normal retirement age" means the earlier of—

(A) the time a plan participant attains normal retirement age under the plan, or

(B) the later of—

(i) the time a plan participant attains age 65, or

(ii) the 5th anniversary of the time a plan participant commenced participation in the plan.

(9) Normal retirement benefit

For purposes of this section, the term "normal retirement benefit" means the greater of the early retirement benefit under the plan, or the benefit under the plan commencing at normal retirement age. The normal retirement benefit shall be determined without regard to—

(A) medical benefits, and

(B) disability benefits not in excess of the qualified disability benefit.

For purposes of this paragraph, a qualified disability benefit is a disability benefit provided by a plan which does not exceed the benefit which would be provided for the participant if he separated from the service at normal retirement age. For purposes of this paragraph, the early retirement benefit under a plan shall be determined without regard to any benefits commencing before benefits payable under title II of the Social Security Act become payable which—

(i) do not exceed such social security benefits, and

(ii) terminate when such social security benefits commence.

(10) Changes in vesting schedule

(A) General rule

A plan amendment changing any vesting schedule under the plan shall be treated as not satisfying the requirements of paragraph (2) if the nonforfeitable percentage of the accrued benefit derived from employer contributions (determined as of the later of the date such amendment is adopted, or the date such amendment becomes effective) of any employee who is a participant in the plan is less than such nonforfeitable percentage computed under the plan without regard to such amendment.

(B) Election of former schedule

A plan amendment changing any vesting schedule under the plan shall be treated as not satisfying the requirements of paragraph (2) unless each participant having not less than 3 years of service is permitted to elect, within a reasonable period after the adoption of such amendment, to have his nonforfeitable percentage computed under the plan without regard to such amendment.

(11) Restrictions on certain mandatory distributions

(A) In general

If the present value of any nonforfeitable accrued benefit exceeds $5,000, a plan meets the

requirements of this paragraph only if such plan provides that such benefit may not be immediately distributed without the consent of the participant.

(B) Determination of present value

For purposes of subparagraph (A), the present value shall be calculated in accordance with section 417(e)(3).

(C) Dividend distributions of ESOPS arrangement

This paragraph shall not apply to any distribution of dividends to which section 404(k) applies.

(D) Special rule for rollover contributions

A plan shall not fail to meet the requirements of this paragraph if, under the terms of the plan, the present value of the nonforfeitable accrued benefit is determined without regard to that portion of such benefit which is attributable to rollover contributions (and earnings allocable thereto). For purposes of this subparagraph, the term "rollover contributions" means any rollover contribution under sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(e)(16).

[(12) Repealed. Pub. L. 109–280, title IX, §904(a)(2), Aug. 17, 2006, 120 Stat. 1049]

(13) Special rules for plans computing accrued benefits by reference to hypothetical account balance or equivalent amounts

(A) In general

An applicable defined benefit plan shall not be treated as failing to meet—

(i) subject to subparagraph (B), the requirements of subsection (a)(2), or

(ii) the requirements of subsection (a)(11) or (c), or the requirements of section 417(e),

with respect to accrued benefits derived from employer contributions,

solely because the present value of the accrued benefit (or any portion thereof) of any participant is, under the terms of the plan, equal to the amount expressed as the balance in the hypothetical account described in subparagraph (C) or as an accumulated percentage of the participant's final average compensation.

(B) 3-year vesting

In the case of an applicable defined benefit plan, such plan shall be treated as meeting the requirements of subsection (a)(2) only if an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions.

(C) Applicable defined benefit plan and related rules

For purposes of this subsection—

(i) In general

The term "applicable defined benefit plan" means a defined benefit plan under which the accrued benefit (or any portion thereof) is calculated as the balance of a hypothetical account maintained for the participant or as an accumulated percentage of the participant's final average compensation.

(ii) Regulations to include similar plans

The Secretary shall issue regulations which include in the definition of an applicable defined benefit plan any defined benefit plan (or any portion of such a plan) which has an effect similar to an applicable defined benefit plan.

(b) Accrued benefit requirements

(1) Defined benefit plans

(A) 3-percent method

A defined benefit plan satisfies the requirements of this paragraph if the accrued benefit to which each participant is entitled upon his separation from the service is not less than—

(i) 3 percent of the normal retirement benefit to which he would be entitled if he commenced participation at the earliest possible entry age under the plan and served continuously until the earlier of age 65 or the normal retirement age specified under the plan, multiplied by

(ii) the number of years (not in excess of 331/3) of his participation in the plan.

In the case of a plan providing retirement benefits based on compensation during any period, the normal retirement benefit to which a participant would be entitled shall be determined as if he continued to earn annually the average rate of compensation which he earned during consecutive years of service, not in excess of 10, for which his compensation was the highest. For purposes of this subparagraph, social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after such current year.

(B) 1331/3 percent rule

A defined benefit plan satisfies the requirements of this paragraph for a particular plan year if under the plan the accrued benefit payable at the normal retirement age is equal to the normal retirement benefit and the annual rate at which any individual who is or could be a participant can accrue the retirement benefits payable at normal retirement age under the plan for any later plan year is not more than 1331/3 percent of the annual rate at which he can accrue benefits for any plan year beginning on or after such particular plan year and before such later plan year. For purposes of this subparagraph—

(i) any amendment to the plan which is in effect for the current year shall be treated as in effect for all other plan years;

(ii) any change in an accrual rate which does not apply to any individual who is or could be a participant in the current year shall be disregarded;

(iii) the fact that benefits under the plan may be payable to certain employees before normal retirement age shall be disregarded; and

(iv) social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after the current year.

(C) Fractional rule

A defined benefits plan satisfies the requirements of this paragraph if the accrued benefit to which any participant is entitled upon his separation from the service is not less than a fraction of the annual benefit commencing at normal retirement age to which he would be entitled under the plan as in effect on the date of his separation if he continued to earn annually until normal retirement age the same rate of compensation upon which his normal retirement benefit would be computed under the plan, determined as if he had attained normal retirement age on the date on which any such determination is made (but taking into account no more than the 10 years of service immediately preceding his separation from service). Such fraction shall be a fraction, not exceeding 1, the numerator of which is the total number of his years of participation in the plan (as of the date of his separation from the service) and the denominator of which is the total number of years he would have participated in the plan if he separated from the service at the normal retirement age. For purposes of this subparagraph, social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after such current year.

(D) Accrual for service before effective date

Subparagraphs (A), (B), and (C) shall not apply with respect to years of participation before the first plan year to which this section applies, but a defined benefit plan satisfies the requirements of this subparagraph with respect to such years of participation only if the accrued

benefit of any participant with respect to such years of participation is not less than the greater of—

(i) his accrued benefit determined under the plan, as in effect from time to time prior to September 2, 1974, or

(ii) an accrued benefit which is not less than one-half of the accrued benefit to which such participant would have been entitled if subparagraph (A), (B), or (C) applied with respect to such years of participation.

(E) First two years of service

Notwithstanding subparagraphs (A), (B), and (C) of this paragraph, a plan shall not be treated as not satisfying the requirements of this paragraph solely because the accrual of benefits under the plan does not become effective until the employee has two continuous years of service. For purposes of this subparagraph, the term "years of service" has the meaning provided by section 410(a)(3)(A).

(F) Certain insured defined benefit plans

Notwithstanding subparagraphs (A), (B), and (C), a defined benefit plan satisfies the requirements of this paragraph if such plan—

(i) is funded exclusively by the purchase of insurance contracts, and

(ii) satisfies the requirements of subparagraphs (B) and (C) of section 412(e)(3) (relating to certain insurance contract plans),

but only if an employee's accrued benefit as of any applicable date is not less than the cash surrender value his insurance contracts would have on such applicable date if the requirements of subparagraphs (D), (E), and (F) of section 412(e)(3) were satisfied.

(G) Accrued benefit may not decrease on account of increasing age or service

Notwithstanding the preceding subparagraphs, a defined benefit plan shall be treated as not satisfying the requirements of this paragraph if the participant's accrued benefit is reduced on account of any increase in his age or service. The preceding sentence shall not apply to benefits under the plan commencing before entitlement to benefits payable under title II of the Social Security Act which benefits under the plan—

(i) do not exceed such social security benefits, and

(ii) terminate when such social security benefits commence.

(H) Continued accrual beyond normal retirement age

(i) In general

Notwithstanding the preceding subparagraphs, a defined benefit plan shall be treated as not satisfying the requirements of this paragraph if, under the plan, an employee's benefit accrual is ceased, or the rate of an employee's benefit accrual is reduced, because of the attainment of any age.

(ii) Certain limitations permitted

A plan shall not be treated as failing to meet the requirements of this subparagraph solely because the plan imposes (without regard to age) a limitation on the amount of benefits that the plan provides or a limitation on the number of years of service or years of participation which are taken into account for purposes of determining benefit accrual under the plan.

(iii) Adjustments under plan for delayed retirement taken into account

In the case of any employee who, as of the end of any plan year under a defined benefit plan, has attained normal retirement age under such plan—

(I) if distribution of benefits under such plan with respect to such employee has commenced as of the end of such plan year, then any requirement of this subparagraph for

continued accrual of benefits under such plan with respect to such employee during such plan year shall be treated as satisfied to the extent of the actuarial equivalent of inservice distribution of benefits, and

(II) if distribution of benefits under such plan with respect to such employee has not commenced as of the end of such year in accordance with section 401(a)(14)(C), and the payment of benefits under such plan with respect to such employee is not suspended during such plan year pursuant to subsection (a)(3)(B), then any requirement of this subparagraph for continued accrual of benefits under such plan with respect to such employee during such plan year shall be treated as satisfied to the extent of any adjustment in the benefit payable under the plan during such plan year attributable to the delay in the distribution of benefits after the attainment of normal retirement age.

The preceding provisions of this clause shall apply in accordance with regulations of the Secretary. Such regulations may provide for the application of the preceding provisions of this clause, in the case of any such employee, with respect to any period of time within a plan year.

(iv) Disregard of subsidized portion of early retirement benefit

A plan shall not be treated as failing to meet the requirements of clause (i) solely because the subsidized portion of any early retirement benefit is disregarded in determining benefit accruals.

(v) Coordination with other requirements

The Secretary shall provide by regulation for the coordination of the requirements of this subparagraph with the requirements of subsection (a), sections 404, 410, and 415, and the provisions of this subchapter precluding discrimination in favor of highly compensated employees.

(2) Defined contribution plans

(A) In general

A defined contribution plan satisfies the requirements of this paragraph if, under the plan, allocations to the employee's account are not ceased, and the rate at which amounts are allocated to the employee's account is not reduced, because of the attainment of any age.

(B) Application to target benefit plans

The Secretary shall provide by regulation for the application of the requirements of this paragraph to target benefit plans.

(C) Coordination with other requirements

The Secretary may provide by regulation for the coordination of the requirements of this paragraph with the requirements of subsection (a), sections 404, 410, and 415, and the provisions of this subchapter precluding discrimination in favor of highly compensated employees.

(3) Separate accounting required in certain cases

A plan satisfies the requirements of this paragraph if—

(A) in the case of the defined benefit plan, the plan requires separate accounting for the portion of each employee's accrued benefit derived from any voluntary employee contributions permitted under the plan; and

(B) in the case of any plan which is not a defined benefit plan, the plan requires separate accounting for each employee's accrued benefit.

(4) Year of participation

(A) Definition

For purposes of determining an employee's accrued benefit, the term "year of participation"

means a period of service (beginning at the earliest date on which the employee is a participant in the plan and which is included in a period of service required to be taken into account under section 410(a)(5), determined without regard to section 410(a)(5)(E)) as determined under regulations prescribed by the Secretary of Labor which provide for the calculation of such period on any reasonable and consistent basis.

(B) Less than full time service

For purposes of this paragraph, except as provided in subparagraph (C), in the case of any employee whose customary employment is less than full time, the calculation of such employee's service on any basis which provides less than a ratable portion of the accrued benefit to which he would be entitled under the plan if his customary employment were full time shall not be treated as made on a reasonable and consistent basis.

(C) Less than 1,000 hours of service during year

For purposes of this paragraph, in the case of any employee whose service is less than 1,000 hours during any calendar year, plan year or other 12-consecutive month period designated by the plan (and not prohibited under regulations prescribed by the Secretary of Labor) the calculation of his period of service shall not be treated as not made on a reasonable and consistent basis solely because such service is not taken into account.

(D) Seasonal industries

In the case of any seasonal industry where the customary period of employment is less than 1,000 hours during a calendar year, the term "year of participation" shall be such period as determined under regulations prescribed by the Secretary of Labor.

(E) Maritime industries

For purposes of this subsection, in the case of any maritime industry, 125 days of service shall be treated as a year of participation. The Secretary of Labor may prescribe regulations to carry out the purposes of this subparagraph.

(5) Special rules relating to age

(A) Comparison to similarly situated younger individual

(i) In general

A plan shall not be treated as failing to meet the requirements of paragraph (1)(H)(i) if a participant's accrued benefit, as determined as of any date under the terms of the plan, would be equal to or greater than that of any similarly situated, younger individual who is or could be a participant.

(ii) Similarly situated

For purposes of this subparagraph, a participant is similarly situated to any other individual if such participant is identical to such other individual in every respect (including period of service, compensation, position, date of hire, work history, and any other respect) except for age.

(iii) Disregard of subsidized early retirement benefits

In determining the accrued benefit as of any date for purposes of this subparagraph, the subsidized portion of any early retirement benefit or retirement-type subsidy shall be disregarded.

(iv) Accrued benefit

For purposes of this subparagraph, the accrued benefit may, under the terms of the plan, be expressed as an annuity payable at normal retirement age, the balance of a hypothetical account, or the current value of the accumulated percentage of the employee's final average compensation.

(B) Applicable defined benefit plans

(i) Interest credits

(I) In general

An applicable defined benefit plan shall be treated as failing to meet the requirements of paragraph (1)(H) unless the terms of the plan provide that any interest credit (or an equivalent amount) for any plan year shall be at a rate which is not greater than a market rate of return. A plan shall not be treated as failing to meet the requirements of this subclause merely because the plan provides for a reasonable minimum guaranteed rate of return or for a rate of return that is equal to the greater of a fixed or variable rate of return.

(II) Preservation of capital

An applicable defined benefit plan shall be treated as failing to meet the requirements of paragraph (1)(H) unless the plan provides that an interest credit (or equivalent amount) of less than zero shall in no event result in the account balance or similar amount being less than the aggregate amount of contributions credited to the account.

(III) Market rate of return

The Secretary may provide by regulation for rules governing the calculation of a market rate of return for purposes of subclause (I) and for permissible methods of crediting interest to the account (including fixed or variable interest rates) resulting in effective rates of return meeting the requirements of subclause (I).

(ii) Special rule for plan conversions

If, after June 29, 2005, an applicable plan amendment is adopted, the plan shall be treated as failing to meet the requirements of paragraph (1)(H) unless the requirements of clause (iii) are met with respect to each individual who was a participant in the plan immediately before the adoption of the amendment.

(iii) Rate of benefit accrual

Subject to clause (iv), the requirements of this clause are met with respect to any participant if the accrued benefit of the participant under the terms of the plan as in effect after the amendment is not less than the sum of—

(I) the participant's accrued benefit for years of service before the effective date of the amendment, determined under the terms of the plan as in effect before the amendment, plus

(II) the participant's accrued benefit for years of service after the effective date of the amendment, determined under the terms of the plan as in effect after the amendment.

(iv) Special rules for early retirement subsidies

For purposes of clause (iii)(I), the plan shall credit the accumulation account or similar amount [2] with the amount of any early retirement benefit or retirement-type subsidy for the plan year in which the participant retires if, as of such time, the participant has met the age, years of service, and other requirements under the plan for entitlement to such benefit or subsidy.

(v) Applicable plan amendment

For purposes of this subparagraph—

(I) In general

The term "applicable plan amendment" means an amendment to a defined benefit plan which has the effect of converting the plan to an applicable defined benefit plan.

(II) Special rule for coordinated benefits

If the benefits of 2 or more defined benefit plans established or maintained by an employer are coordinated in such a manner as to have the effect of the adoption of an

amendment described in subclause (I), the sponsor of the defined benefit plan or plans providing for such coordination shall be treated as having adopted such a plan amendment as of the date such coordination begins.

(III) Multiple amendments

The Secretary shall issue regulations to prevent the avoidance of the purposes of this subparagraph through the use of 2 or more plan amendments rather than a single amendment.

(IV) Applicable defined benefit plan

For purposes of this subparagraph, the term "applicable defined benefit plan" has the meaning given such term by section 411(a)(13).

(vi) Termination requirements

An applicable defined benefit plan shall not be treated as meeting the requirements of clause (i) unless the plan provides that, upon the termination of the plan—

(I) if the interest credit rate (or an equivalent amount) under the plan is a variable rate, the rate of interest used to determine accrued benefits under the plan shall be equal to the average of the rates of interest used under the plan during the 5-year period ending on the termination date, and

(II) the interest rate and mortality table used to determine the amount of any benefit under the plan payable in the form of an annuity payable at normal retirement age shall be the rate and table specified under the plan for such purpose as of the termination date, except that if such interest rate is a variable rate, the interest rate shall be determined under the rules of subclause (I).

(C) Certain offsets permitted

A plan shall not be treated as failing to meet the requirements of paragraph (1)(H)(i) solely because the plan provides offsets against benefits under the plan to the extent such offsets are otherwise allowable in applying the requirements of section 401(a).

(D) Permitted disparities in plan contributions or benefits

A plan shall not be treated as failing to meet the requirements of paragraph (1)(H) solely because the plan provides a disparity in contributions or benefits with respect to which the requirements of section 401(l) are met.

(E) Indexing permitted

(i) In general

A plan shall not be treated as failing to meet the requirements of paragraph (1)(H) solely because the plan provides for indexing of accrued benefits under the plan.

(ii) Protection against loss

Except in the case of any benefit provided in the form of a variable annuity, clause (i) shall not apply with respect to any indexing which results in an accrued benefit less than the accrued benefit determined without regard to such indexing.

(iii) Indexing

For purposes of this subparagraph, the term "indexing" means, in connection with an accrued benefit, the periodic adjustment of the accrued benefit by means of the application of a recognized investment index or methodology.

(F) Early retirement benefit or retirement-type subsidy

For purposes of this paragraph, the terms "early retirement benefit" and "retirement-type subsidy" have the meaning given such terms in subsection (d)(6)(B)(i).

(G) Benefit accrued to date

For purposes of this paragraph, any reference to the accrued benefit shall be a reference to

such benefit accrued to date.

(c) Allocation of accrued benefits between employer and employee contributions

(1) Accrued benefit derived from employer contributions

For purposes of this section, an employee's accrued benefit derived from employer contributions as of any applicable date is the excess, if any, of the accrued benefit for such employee as of such applicable date over the accrued benefit derived from contributions made by such employee as of such date.

(2) Accrued benefit derived from employee contributions

(A) Plans other than defined benefit plans

In the case of a plan other than a defined benefit plan, the accrued benefit derived from contributions made by an employee as of any applicable date is—

(i) except as provided in clause (ii), the balance of the employee's separate account consisting only of his contributions and the income, expenses, gains, and losses attributable thereto, or

(ii) if a separate account is not maintained with respect to an employee's contributions under such a plan, the amount which bears the same ratio to his total accrued benefit as the total amount of the employee's contributions (less withdrawals) bears to the sum of such contributions and the contributions made on his behalf by the employer (less withdrawals).

(B) Defined benefit plans

In the case of a defined benefit plan, the accrued benefit derived from contributions made by an employee as of any applicable date is the amount equal to the employee's accumulated contributions expressed as an annual benefit commencing at normal retirement age, using an interest rate which would be used under the plan under section 417(e)(3) (as of the determination date).

(C) Definition of accumulated contributions

For purposes of this subsection, the term "accumulated contribution" means the total of—

(i) all mandatory contributions made by the employee,

(ii) interest (if any) under the plan to the end of the last plan year to which subsection (a)(2) does not apply (by reason of the applicable effective date), and

(iii) interest on the sum of the amounts determined under clauses (i) and (ii) compounded annually—

(I) at the rate of 120 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of a plan year) for the period beginning with the 1st plan year to which subsection (a)(2) applies (by reason of the applicable effective date) and ending with the date on which the determination is being made, and

(II) at the interest rate which would be used under the plan under section 417(e)(3) (as of the determination date) for the period beginning with the determination date and ending on the date on which the employee attains normal retirement age.

For purposes of this subparagraph, the term "mandatory contributions" means amounts contributed to the plan by the employee which are required as a condition of employment, as a condition of participation in such plan, or as a condition of obtaining benefits under the plan attributable to employer contributions.

(D) Adjustments

The Secretary is authorized to adjust by regulation the conversion factor described in subparagraph (B) from time to time as he may deem necessary. No such adjustment shall be effective for a plan year beginning before the expiration of 1 year after such adjustment is determined and published.

(3) Actuarial adjustment

For purposes of this section, in the case of any defined benefit plan, if an employee's accrued benefit is to be determined as an amount other than an annual benefit commencing at normal retirement age, or if the accrued benefit derived from contributions made by an employee is to be determined with respect to a benefit other than an annual benefit in the form of a single life annuity (without ancillary benefits) commencing at normal retirement age, the employee's accrued benefit, or the accrued benefits derived from contributions made by an employee, as the case may be, shall be the actuarial equivalent of such benefit or amount determined under paragraph (1) or (2).

(d) Special rules

(1) Coordination with section 401(a)(4)

A plan which satisfies the requirements of this section shall be treated as satisfying any vesting requirements resulting from the application of section 401(a)(4) unless—

(A) there has been a pattern of abuse under the plan (such as a dismissal of employees before their accrued benefits become nonforfeitable) tending to discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q)), or

(B) there have been, or there is reason to believe there will be, an accrual of benefits or forfeitures tending to discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q)).

(2) Prohibited discrimination

Subsection (a) shall not apply to benefits which may not be provided for designated employees in the event of early termination of the plan under provisions of the plan adopted pursuant to regulations prescribed by the Secretary to preclude the discrimination prohibited by section 401(a)(4).

(3) Termination or partial termination; discontinuance of contributions

Notwithstanding the provisions of subsection (a), a trust shall not constitute a qualified trust under section 401(a) unless the plan of which such trust is a part provides that—

(A) upon its termination or partial termination, or

(B) in the case of a plan to which section 412 does not apply, upon complete discontinuance of contributions under the plan,

the rights of all affected employees to benefits accrued to the date of such termination, partial termination, or discontinuance, to the extent funded as of such date, or the amounts credited to the employees' accounts, are nonforfeitable. This paragraph shall not apply to benefits or contributions which, under provisions of the plan adopted pursuant to regulations prescribed by the Secretary to preclude the discrimination prohibited by section 401(a)(4), may not be used for designated employees in the event of early termination of the plan. For purposes of this paragraph, in the case of the complete discontinuance of contributions under a profit-sharing or stock bonus plan, such plan shall be treated as having terminated on the day on which the plan administrator notifies the Secretary (in accordance with regulations) of the discontinuance.

[(4) Repealed. Pub. L. 99–514, title XI, §1113(b), Oct. 22, 1986, 100 Stat. 2447]

(5) Treatment of voluntary employee contributions

In the case of a defined benefit plan which permits voluntary employee contributions, the portion of an employee's accrued benefit derived from such contributions shall be treated as an accrued benefit derived from employee contributions under a plan other than a defined benefit plan.

(6) Accrued benefit not to be decreased by amendment

(A) In general

A plan shall be treated as not satisfying the requirements of this section if the accrued benefit of a participant is decreased by an amendment of the plan, other than an amendment described

in section 412(d)(2), or section 4281 of the Employee Retirement Income Security Act of 1974.

(B) Treatment of certain plan amendments

For purposes of subparagraph (A), a plan amendment which has the effect of—

(i) eliminating or reducing an early retirement benefit or a retirement-type subsidy (as defined in regulations), or

(ii) eliminating an optional form of benefit,

with respect to benefits attributable to service before the amendment shall be treated as reducing accrued benefits. In the case of a retirement-type subsidy, the preceding sentence shall apply only with respect to a participant who satisfies (either before or after the amendment) the preamendment conditions for the subsidy. The Secretary shall by regulations provide that this subparagraph shall not apply to any plan amendment which reduces or eliminates benefits or subsidies which create significant burdens or complexities for the plan and plan participants, unless such amendment adversely affects the rights of any participant in a more than de minimis manner. The Secretary may by regulations provide that this subparagraph shall not apply to a plan amendment described in clause (ii) (other than a plan amendment having an effect described in clause (i)).

(C) Special rule for ESOPS

For purposes of this paragraph, any—

(i) tax credit employee stock ownership plan (as defined in section 409(a)), or

(ii) employee stock ownership plan (as defined in section 4975(e)(7)),

shall not be treated as failing to meet the requirements of this paragraph merely because it modifies distribution options in a nondiscriminatory manner.

(D) Plan transfers

(i) In general

A defined contribution plan (in this subparagraph referred to as the "transferee plan") shall not be treated as failing to meet the requirements of this subsection merely because the transferee plan does not provide some or all of the forms of distribution previously available under another defined contribution plan (in this subparagraph referred to as the "transferor plan") to the extent that—

(I) the forms of distribution previously available under the transferor plan applied to the account of a participant or beneficiary under the transferor plan that was transferred from the transferor plan to the transferee plan pursuant to a direct transfer rather than pursuant to a distribution from the transferor plan,

(II) the terms of both the transferor plan and the transferee plan authorize the transfer described in subclause (I),

(III) the transfer described in subclause (I) was made pursuant to a voluntary election by the participant or beneficiary whose account was transferred to the transferee plan,

(IV) the election described in subclause (III) was made after the participant or beneficiary received a notice describing the consequences of making the election, and

(V) the transferee plan allows the participant or beneficiary described in subclause (III) to receive any distribution to which the participant or beneficiary is entitled under the transferee plan in the form of a single sum distribution.

(ii) Special rule for mergers, etc.

Clause (i) shall apply to plan mergers and other transactions having the effect of a direct transfer, including consolidations of benefits attributable to different employers within a multiple employer plan.

(E) Elimination of form of distribution

Except to the extent provided in regulations, a defined contribution plan shall not be treated

as failing to meet the requirements of this section merely because of the elimination of a form of distribution previously available thereunder. This subparagraph shall not apply to the elimination of a form of distribution with respect to any participant unless—

(i) a single sum payment is available to such participant at the same time or times as the form of distribution being eliminated, and

(ii) such single sum payment is based on the same or greater portion of the participant's account as the form of distribution being eliminated.

(e) Application of vesting standards to certain plans

(1) The provisions of this section (other than paragraph (2)) shall not apply to—

(A) a governmental plan (within the meaning of section 414(d)),

(B) a church plan (within the meaning of section 414(e)) with respect to which the election provided by section 410(d) has not been made,

(C) a plan which has not, at any time after September 2, 1974, provided for employer contributions, and

(D) a plan established and maintained by a society, order, or association described in section 501(c)(8) or (9), if no part of the contributions to or under such plan are made by employers of participants in such plan.

(2) A plan described in paragraph (1) shall be treated as meeting the requirements of this section, for purposes of section 401(a), if such plan meets the vesting requirements resulting from the application of sections 401(a)(4) and 401(a)(7) as in effect on September 1, 1974.

(Added Pub. L. 93–406, title II, §1012(a), Sept. 2, 1974, 88 Stat. 901; amended Pub. L. 94–455, title XIX, §§1901(a)(62), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1774, 1834; Pub. L. 96–364, title II, §206, Sept. 26, 1980, 94 Stat. 1287; Pub. L. 98–397, title II, §202(b), (c), (d)(2), (e)(2), (3), (f), 205, title III, §301(a)(1), Aug. 23, 1984, 98 Stat. 1437, 1439, 1440, 1449, 1450; Pub. L. 99–509, title IX, §§9202(b), 9203(b)(2), Oct. 21, 1986, 100 Stat. 1977, 1979; Pub. L. 99–514, title XI, §§1113(a), (b), (d)(B), 1114(b)(10), 1139(a), title XVIII, §1898(a)(1)(A), (4)(A), (d)(1)(A), (2)(A), (f)(1)(A), Oct. 22, 1986, 100 Stat. 2446, 2447, 2451, 2487, 2941, 2943, 2955, 2956; Pub. L. 100–203, title IX, §9346(b), Dec. 22, 1987, 101 Stat. 1330–374; Pub. L. 100–647, title I, §1018(t)(8)(B), Nov. 10, 1988, 102 Stat. 3589; Pub. L. 101–239, title VII, §§7861(a)(5)(A), (6)(A), 7871(a)(1), (2), (b)(1), 7881(m)(1), Dec. 19, 1989, 103 Stat. 2430, 2435, 2443; Pub. L. 102–318, title V, §521(b)(44), July 3, 1992, 106 Stat. 313; Pub. L. 103–465, title VII, §767(a)(1), Dec. 8, 1994, 108 Stat. 5037; Pub. L. 104–188, title I, §1442(a), Aug. 20, 1996, 110 Stat. 1808; Pub. L. 105–34, title X, §1071(a)(1), (2)(A), Aug. 5, 1997, 111 Stat. 948; Pub. L. 107–16, title VI, §§633(a), 645(a)(1), (b)(1), 648(a)(1), June 7, 2001, 115 Stat. 115, 123, 125, 127; Pub. L. 108–311, title IV, §408(a)(14), Oct. 4, 2004, 118 Stat. 1192; Pub. L. 109–280, title I, §114(b), title VII, 701(b), title IX, §§902(d)(2)(A), (B), 904(a), Aug. 17, 2006, 120 Stat. 853, 984, 1038, 1048; Pub. L. 110–458, title I, §§101(d)(2)(D), 107(b), 109(b)(2), Dec. 23, 2008, 122 Stat. 5099, 5107, 5111.)

REFERENCES IN TEXT

Section 4281 of the Employee Retirement Income Security Act of 1974, referred to in subsecs. (a)(3)(F)(i), (ii) and (d)(6)(A), is classified to section 1441 of Title 29, Labor.

Section 4203 of the Employee Retirement Income Security Act of 1974, referred to in subsec. (a)(4)(G)(i)(I), is classified to section 1383 of Title 29.

Section 4205(b)(2)(A)(i) of such Act, referred to in subsec. (a)(4)(G)(i)(II), is classified to section 1385(b)(2)(A)(i) of Title 29.

Section 4048 of such Act, referred to in subsec. (a)(4)(G)(ii), is classified to section 1348 of Title 29.

The Social Security Act, referred to in subsecs. (a)(9) and (b)(1)(G), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2008—Subsec. (a)(3)(C). Pub. L. 110–458, §101(d)(2)(D)(i), substituted "section 412(d)(2)" for "section

412(c)(2)".

Subsec. (a)(3)(G). Pub. L. 110–458, §109(b)(2), substituted "permissible withdrawal" for "erroneous automatic contribution" in heading and "a permissible withdrawal" for "an erroneous automatic contribution" in text.

Subsec. (a)(13)(A). Pub. L. 110–458, §107(b)(2), substituted "subparagraph (B)" for "paragraph (2)" in cl. (i) and "subparagraph (C)" for paragraph (3) in concluding provisions, added cl. (ii), and struck out former cl. (ii) which read as follows: "the requirements of subsection (c) or section 417(e) with respect to contributions other than employee contributions,".

Subsec. (b)(5)(A)(iii). Pub. L. 110–458, §107(b)(1)(A), substituted "subparagraph" for "clause".

Subsec. (b)(5)(B)(i)(II). Pub. L. 110–458, §107(b)(3), amended subcl. (II) generally. Prior to amendment, text read as follows: "An interest credit (or an equivalent amount) of less than zero shall in no event result in the account balance or similar amount being less than the aggregate amount of contributions credited to the account."

Subsec. (b)(5)(C). Pub. L. 110–458, §107(b)(1)(B), inserted "otherwise" before "allowable".

Subsec. (d)(6)(A). Pub. L. 110–458, §101(d)(2)(D)(ii), substituted "section 412(d)(2)" for "section 412(e)(2)".

2006—Subsec. (a)(2). Pub. L. 109–280, §904(a)(1), reenacted heading without change and amended text of par. (2) generally, substituting provisions relating to vesting requirements under defined benefit plans and defined contribution plans for provisions relating to 5-year vesting and 3 to 7 year vesting under all plans.

Subsec. (a)(3)(C). Pub. L. 109–280, §114(b)(1), substituted "412(c)(2)" for "412(c)(8)".

Subsec. (a)(3)(G). Pub. L. 109–280, §902(d)(2)(A), (B), inserted "or erroneous automatic contribution" after "or contribution" in heading and "an erroneous automatic contribution under section 414(w)," after "402(g)(2)(A)," in text.

Subsec. (a)(12). Pub. L. 109–280, §904(a)(2), struck out par. (12), which related to faster vesting for matching contributions by employers.

Subsec. (a)(13). Pub. L. 109–280, §701(b)(2), added par. (13).

Subsec. (b)(1)(F). Pub. L. 109–280, §114(b)(2), substituted "subparagraphs (B) and (C) of section 412(e)(3)" for "paragraphs (2) and (3) of section 412(i)" in cl. (ii) and "subparagraphs (D), (E), and (F) of section 412(e)(3)" for "paragraphs (4), (5), and (6) of section 412(i)" in concluding provisions.

Subsec. (b)(5). Pub. L. 109–280, §701(b)(1), added par. (5).

Subsec. (d)(6)(A). Pub. L. 109–280, §114(b)(3), substituted "412(e)(2)" for "412(c)(8)".

2004—Subsec. (a)(12)(B). Pub. L. 108–311 substituted "6 or more" for "6" in table.

2001—Subsec. (a)(2). Pub. L. 107–16, §633(a)(1), substituted "Except as provided in paragraph (12), a plan" for "A plan" in introductory provisions.

Subsec. (a)(11)(D). Pub. L. 107–16, §648(a)(1), added subpar. (D).

Subsec. (a)(12). Pub. L. 107–16, §633(a)(2), added par. (12).

Subsec. (d)(6)(B). Pub. L. 107–16, §645(b)(1), inserted after second sentence "The Secretary shall by regulations provide that this subparagraph shall not apply to any plan amendment which reduces or eliminates benefits or subsidies which create significant burdens or complexities for the plan and plan participants, unless such amendment adversely affects the rights of any participant in a more than de minimis manner."

Subsec. (d)(6)(D), (E). Pub. L. 107–16, §645(a)(1), added subpars. (D) and (E).

1997—Subsec. (a)(7)(B)(i). Pub. L. 105–34, §1071(a)(2)(A), substituted "the dollar limit under section 411(a)(11)(A)" for "$3,500".

Subsec. (a)(11)(A). Pub. L. 105–34, §1071(a)(1), substituted "$5,000" for "$3,500".

1996—Subsec. (a)(2). Pub. L. 104–188 substituted "subparagraph (A) or (B)" for "subparagraph (A), (B), or (C)" in introductory provisions and struck out subpar. (C) which read as follows: "MULTIEMPLOYER PLANS.—A plan satisfies the requirements of this subparagraph if—

"(i) the plan is a multiemployer plan (within the meaning of section 414(f)), and

"(ii) under the plan—

"(I) an employee who is covered pursuant to a collective bargaining agreement described in section 414(f)(1)(B) and who has completed at least 10 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions, and

"(II) the requirements of subparagraph (A) or (B) are met with respect to employees not described in subclause (I)."

1994—Subsec. (a)(11)(B). Pub. L. 103–465 reenacted subpar. (B) heading without change and amended text generally. Prior to amendment, text read as follows:

"(i) IN GENERAL.—For purposes of subparagraph (A), the present value shall be calculated—

"(I) by using an interest rate no greater than the applicable interest rate if the vested accrued benefit

(using such rate) is not in excess of $25,000, and

"(II) by using an interest rate no greater than 120 percent of the applicable interest rate if the vested accrued benefit exceeds $25,000 (as determined under subclause (I)).

In no event shall the present value determined under subclause (II) be less than $25,000.

"(ii) APPLICABLE INTEREST RATE.—For purposes of clause (i), the term 'applicable interest rate' means the interest rate which would be used (as of the date of the distribution) by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a lump sum distribution on plan termination."

1992—Subsec. (d)(3). Pub. L. 102–318 inserted at end "For purposes of this paragraph, in the case of the complete discontinuance of contributions under a profit-sharing or stock bonus plan, such plan shall be treated as having terminated on the day on which the plan administrator notifies the Secretary (in accordance with regulations) of the discontinuance."

1989—Subsec. (a)(3)(G). Pub. L. 101–239, §7861(a)(5)(A), added subpar. (G).

Subsec. (a)(4)(A). Pub. L. 101–239, §7861(a)(6)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "years of service before age 18, except that in the case of a plan which does not satisfy subparagraph (A) or (B) of paragraph (2), the plan may not disregard any such year of service during which the employee was a participant;".

Subsec. (a)(7)(D). Pub. L. 101–239, §7881(m)(1)(D), added subpar. (D).

Subsec. (a)(8)(B). Pub. L. 101–239, §7871(b)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "the latest of—

"(i) the time a plan participant attains age 65,

"(ii) in the case of a plan participant who commences participation in the plan within 5 years before attaining normal retirement age under the plan, the 5th anniversary of the time the plan participant commences participation in the plan, or

"(iii) in the case of a plan participant not described in clause (ii), the 10th anniversary of the time the plan participant commences participation in the plan."

Subsec. (b)(2)(B). Pub. L. 101–239, §7871(a)(1), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: "DISREGARD OF SUBSIDIZED PORTION OF EARLY RETIREMENT BENEFIT.—A plan shall not be treated as failing to meet the requirements of subparagraph (A) solely because the subsidized portion of any early retirement benefit is disregarded in determining benefit accruals."

Subsec. (b)(2)(C), (D). Pub. L. 101–239, §7871(a)(1), (2), redesignated subpar. (D) as (C) and substituted "this paragraph" for "this subparagraph". Former subpar. (C) redesignated (B).

Subsec. (c)(2)(B). Pub. L. 101–239, §7881(m)(1)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows:

"(i) IN GENERAL.—In the case of a defined benefit plan providing an annual benefit in the form of a single life annuity (without ancillary benefits) commencing at normal retirement age, the accrued benefit derived from contributions made by an employee as of any applicable date is the annual benefit equal to the employee's accumulated contributions multiplied by the appropriate conversion factor.

"(ii) APPROPRIATE CONVERSION FACTOR.—For purposes of clause (i), the term 'appropriate conversion factor' means the factor necessary to convert an amount equal to the accumulated contributions to a single life annuity (without ancillary benefits) commencing at normal retirement age and shall be 10 percent for a normal retirement age of 65 years. For other normal retirement ages the conversion factor shall be determined in accordance with regulations prescribed by the Secretary."

Subsec. (c)(2)(C)(iii). Pub. L. 101–239, §7881(m)(1)(A), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: "interest on the sum of the amounts determined under clauses (i) and (ii) compounded annually at the rate of 120 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of a plan year) from the beginning of the first plan year to which subsection (a)(2) applies (by reason of the applicable effective date) to the date upon which the employee would attain normal retirement age."

Subsec. (c)(2)(E). Pub. L. 101–239, §7881(m)(1)(C), struck out subpar. (E) which read as follows: " LIMITATION.—The accrued benefit derived from employee contributions shall not exceed the greater of—

"(i) the employee's accrued benefit under the plan, or

"(ii) the accrued benefit derived from employee contributions determined as though the amounts calculated under clauses (ii) and (iii) of subparagraph (C) were zero."

1988—Subsec. (a)(11)(A). Pub. L. 100–647 substituted "nonforfeitable" for "vested".

1987—Subsec. (c)(2)(C)(iii). Pub. L. 100–203, §9346(b)(1), substituted "120 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of a plan year)" for "5 percent per annum".

Subsec. (c)(2)(D). Pub. L. 100–203, §9346(b)(2), struck out ", the rate of interest described in clause (iii) of subparagraph (C), or both" before "from time to time" in first sentence and struck out second sentence which

read as follows: "The rate of interest described in clause (iii) of subparagraph (C), or both, from time to time as he may deem necessary. The rate of interest shall bear the relationship to 5 percent which the Secretary determines to be comparable to the relationship which the long-term money rates and investment yields for the last period of 10 calendar years ending at least 12 months before the beginning of the plan year bear to the long-term money rates and investment yields for the 10-calendar year period 1964 through 1973."

1986—Subsec. (a). Pub. L. 99–514, §1898(d)(1)(A)(ii), inserted reference to par. (11) in introductory text.

Pub. L. 99–509, §9202(b)(3), substituted "subsection (b)(3), and also satisfies, in the case of a defined benefit plan, the requirements of subsection (b)(1) and, in the case of a defined contribution plan, the requirements of subsection (b)(2)" for "paragraph (2) of subsection (b), and in the case of a defined benefit plan, also satisfies the requirements of paragraph (1) of subsection (b)" in first sentence.

Subsec. (a)(2). Pub. L. 99–514, §1113(a), amended par. (2) generally, substituting provisions covering 5-year vesting, 3 to 7 year vesting, and multiemployer plans, for former provisions which had covered 10-year vesting, 5- to 15-year vesting, and the "rule of 45".

Subsec. (a)(3)(D)(ii). Pub. L. 99–514, §1898(a)(4)(A)(i), substituted last sentence for former last sentence which read as follows: "In the case of a defined contribution plan, the plan provision required under this clause may provide that such repayment must be made before the participant has any one-year break in service commencing after the withdrawal."

Subsec. (a)(7)(C). Pub. L. 99–514, §1898(a)(4)(A)(ii), substituted last sentence for former last sentence which read as follows: "In the case of a defined contribution plan, the plan provision required under this subparagraph may provide that such repayment must be made before the participant has 5 consecutive 1-year breaks in service commencing after such withdrawal."

Subsec. (a)(8)(B). Pub. L. 99–509, §9203(b)(2), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "the latter of—

"(i) the time a plan participant attains age 65, or

"(ii) the 10th anniversary of the time a plan participant commenced participation in the plan."

Subsec. (a)(10)(B). Pub. L. 99–514, §1113(d)(B), substituted "3 years" for "5 years".

Subsec. (a)(11)(A). Pub. L. 99–514, §1898(d)(1)(A)(i), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "If the present value of any accrued benefit exceeds $3,500, such benefit shall not be treated as nonforfeitable if the plan provides that the present value of such benefit could be immediately distributed without the consent of the participant."

Subsec. (a)(11)(B). Pub. L. 99–514, §1139(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "For purposes of subparagraph (A), the present value shall be calculated by using an interest rate not greater than the interest rate which would be used (as of the date of the distribution) by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a lump sum distribution on plan termination."

Subsec. (a)(11)(C). Pub. L. 99–514, §1898(d)(2)(A), added subpar. (C).

Subsec. (b)(1). Pub. L. 99–509, §9202(b)(1), substituted "Defined benefit plans" for "General rules" in heading and added subpar. (H).

Subsec. (b)(2) to (4). Pub. L. 99–509, §9202(b)(2), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

Subsec. (d)(1)(A), (B). Pub. L. 99–514, §1114(b)(10), substituted "highly compensated employees (within the meaning of section 414(q))" for "officers, shareholders, or highly compensated".

Subsec. (d)(4). Pub. L. 99–514, §1113(b), repealed par. (4) which provided that a class year plan satisfied the requirements of subsec. (a)(2) if it provided that 100 percent of each employee's right to or derived from the contributions of the employer on his behalf with respect to any plan year were nonforfeitable not later than the end of the 5th plan year following the plan year for which such contributions were made.

Pub. L. 99–514, §1898(a)(1)(A), substituted "Class-year" for "Class year" in heading and amended par. (4) generally. Prior to amendment, par. (4) read as follows: "The requirements of subsection (a)(2) shall be deemed to be satisfied in the case of a class year plan if such plan provides that 100 percent of each employee's right to or derived from the contributions of the employer on his behalf with respect to any plan year are nonforfeitable not later than the end of the 5th plan year following the plan year for which such contributions were made. For purposes of this section, the term 'class year plan' means a profit-sharing, stock bonus, or money purchase plan which provides for the separate nonforfeitability of employees' rights to or derived from the contributions for each plan year."

Subsec. (d)(6)(C). Pub. L. 99–514, §1898(f)(1)(A), added subpar. (C).

1984—Subsec. (a)(4)(A). Pub. L. 98–397, §202(b), substituted "18" for "22".

Subsec. (a)(6)(C). Pub. L. 98–397, §202(c), substituted "5 consecutive 1-year breaks" for "1-year break", in heading, and in text substituted "5 consecutive 1-year breaks in service" for "any 1-year break in service" and

"such 5-year period" for "such break" in two places.

Subsec. (a)(6)(D). Pub. L. 98–397, §202(d)(2), amended subpar. (D) generally.

Subsec. (a)(6)(E). Pub. L. 98–397, §202(e)(2), added subpar. (E).

Subsec. (a)(7)(B)(i). Pub. L. 98–397, §205(b), substituted "$3,500" for "$1,750".

Subsec. (a)(7)(C). Pub. L. 98–397, §202(f), substituted "5 consecutive 1-year breaks in service" for "any one-year break in service".

Subsec. (a)(11). Pub. L. 98–397, §205(a), added par. (11).

Subsec. (b)(3)(A). Pub. L. 98–397, §202(e)(3), inserted ", determined without regard to section 410(a)(5)(E)".

Subsec. (d)(6). Pub. L. 98–397, §301(a)(1), designated existing provisions as subpar. (A) and added subpar. (B).

1980—Subsec. (a). Pub. L. 96–364, §206(1)–(4), in par. (3) added subpars. (E) and (F), and in par. (4) added subpar. (G).

Subsec. (d)(6). Pub. L. 96–364, §206(5), inserted reference to section 4281 of the Employee Retirement Income Security Act of 1974.

1976—Subsec. (a). Pub. L. 94–455, §§1901(a)(62)(A)–(C), 1906(b)(13)(A), substituted "paragraph (8)" for "subsection (a)(8)" in provisions preceding par. (1), substituted references to Sept. 2, 1974, for references to the date of enactment of the Employee Retirement Income Security Act of 1974 in par. (3)(D)(iii), struck out "or his delegate" after "Secretary" in pars. (4)(C) and (7)(B), and substituted "(B)" for "(b)" in heading of par. (7)(C).

Subsec. (b)(1)(D)(i). Pub. L. 94–455, §1901(a)(62)(D), substituted reference to Sept. 2, 1974, for reference to the date of enactment of the Employee Retirement Income Security Act of 1974.

Subsecs. (c)(2)(B)(ii), (D), (d)(2), (3). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (e)(1)(C). Pub. L. 94–455, §1901(a)(62)(D), substituted reference to Sept. 2, 1974, for reference to the date of enactment of the Employee Retirement Income Security Act of 1974.

Subsec. (e)(2). Pub. L. 94–455, §1901(a)(62)(E), substituted reference to Sept. 1, 1974, for reference to the date before the date of enactment of the Employee Retirement Income Security Act of 1974.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–458 effective as if included in the provisions of Pub. L. 109–280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110–458, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 114(b) of Pub. L. 109–280 applicable to plan years beginning after 2007, see section 114(g)(1) of Pub. L. 109–280, as added by Pub. L. 110–458, set out as a note under section 401 of this title.

Pub. L. 109–280, title VII, §701(e), Aug. 17, 2006, 120 Stat. 991, as amended by Pub. L. 110–458, title I, §107(c)(2), Dec. 23, 2008, 122 Stat. 5107, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and sections 623, 1053, and 1054 of Title 29, Labor] shall apply to periods beginning on or after June 29, 2005.

"(2) PRESENT VALUE OF ACCRUED BENEFIT.—The amendments made by subsections (a)(2) and (b)(2) [amending this section and section 1053 of Title 29] shall apply to distributions made after the date of the enactment of this Act [Aug. 17, 2006].

"(3) VESTING AND INTEREST CREDIT REQUIREMENTS.—In the case of a plan in existence on June 29, 2005, the requirements of clause (i) of section 411(b)(5)(B) of the Internal Revenue Code of 1986, clause (i) of section 204(b)(5)(B) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1054(b)(5)(B)], and clause (i) of section 4(i)(10)(B) of the Age Discrimination in Employment Act of 1967 [29 U.S.C. 623(i)(10)(B)] (as added by this Act) and the requirements of 203(f)(2) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1053(f)(2)] and section 411(a)(13)(B) of the Internal Revenue Code of 1986 (as so added) shall, for purposes of applying the amendments made by subsections (a) and (b) [amending this section and sections 1053 and 1054 of Title 29], apply to years beginning after December 31, 2007, unless the plan sponsor elects the application of such requirements for any period on or after June 29, 2005, and before the first year beginning after December 31, 2007.

"(4) SPECIAL RULE FOR COLLECTIVELY BARGAINED PLANS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified on or before the date of the enactment of this Act [Aug. 17, 2006], the requirements

described in paragraph (3) shall, for purposes of applying the amendments made by subsections (a) and (b) [amending this section and sections 1053 and 1054 of Title 29], not apply to plan years beginning before the earlier of—

"(A) the later of—

"(i) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof on or after such date of enactment), or

"(ii) January 1, 2008, or

"(B) January 1, 2010.

"(5) CONVERSIONS.—The requirements of clause (ii) of section 411(b)(5)(B) of the Internal Revenue Code of 1986, clause (ii) of section 204(b)(5)(B) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1054(b)(5)(B)], and clause (ii) of section 4(i)(10)(B) of the Age Discrimination in Employment Act of 1967 [29 U.S.C. 623(i)(10)(B)] (as added by this Act), shall apply to plan amendments adopted on or after, and taking effect on or after, June 29, 2005, except that the plan sponsor may elect to have such amendments apply to plan amendments adopted before, and taking effect on or after, such date.

"(6) SPECIAL RULE FOR VESTING REQUIREMENTS.—The requirements of section 203(f)(2) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1053(f)(2)] and section 411(a)(13)(B) of the Internal Revenue Code of 1986 (as added by this Act)—

"(A) shall not apply to a participant who does not have an hour of service after the effective date of such requirements (as otherwise determined under this subsection); and

"(B) in the case of a plan other than a plan described in paragraph (3) or (4), shall apply to plan years ending on or after June 29, 2005."

[Pub. L. 110–458, §107(c)(2)(B)(i), which directed insertion of "the earlier of" after "before" in introductory provisions of section 701(e)(4) of Pub. L. 109–280, set out above, was executed by making the insertion after the second instance of "before" to reflect the probable intent of Congress.]

Amendment by section 902(d)(2)(A), (B) of Pub. L. 109–280 applicable to plan years beginning after Dec. 31, 2007, see section 902(g) of Pub. L. 109–280, set out as a note under section 401 of this title.

Pub. L. 109–280, title IX, §904(c), Aug. 17, 2006, 120 Stat. 1050, provided that:

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (4), the amendments made by this section [amending this section and section 1053 of Title 29, Labor] shall apply to contributions for plan years beginning after December 31, 2006.

"(2) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before the date of the enactment of this Act [Aug. 17, 2006], the amendments made by this section shall not apply to contributions on behalf of employees covered by any such agreement for plan years beginning before the earlier of—

"(A) the later of—

"(i) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof on or after such date of the enactment); or

"(ii) January 1, 2007; or

"(B) January 1, 2009.

"(3) SERVICE REQUIRED.—With respect to any plan, the amendments made by this section shall not apply to any employee before the date that such employee has 1 hour of service under such plan in any plan year to which the amendments made by this section apply.

"(4) SPECIAL RULE FOR STOCK OWNERSHIP PLANS.—Notwithstanding paragraph (1) or (2), in the case of an employee stock ownership plan (as defined in section 4975(e)(7) of the Internal Revenue Code of 1986) which had outstanding on September 26, 2005, a loan incurred for the purpose of acquiring qualifying employer securities (as defined in section 4975(e)(8) of such Code), the amendments made by this section shall not apply to any plan year beginning before the earlier of—

"(A) the date on which the loan is fully repaid, or

"(B) the date on which the loan was, as of September 26, 2005, scheduled to be fully repaid."

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–16, title VI, §633(c), June 7, 2001, 115 Stat. 116, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 1053 of Title 29, Labor] shall apply to contributions for plan years beginning after December 31, 2001.

"(2) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified

by the date of the enactment of this Act [June 7, 2001], the amendments made by this section shall not apply to contributions on behalf of employees covered by any such agreement for plan years beginning before the earlier of—

"(A) the later of—

"(i) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof on or after such date of the enactment); or

"(ii) January 1, 2002; or

"(B) January 1, 2006.

"(3) SERVICE REQUIRED.—With respect to any plan, the amendments made by this section shall not apply to any employee before the date that such employee has 1 hour of service under such plan in any plan year to which the amendments made by this section apply."

Pub. L. 107–16, title VI, §645(a)(3), June 7, 2001, 115 Stat. 125, provided that: "The amendments made by this subsection [amending this section and section 1054 of Title 29, Labor] shall apply to years beginning after December 31, 2001."

Pub. L. 107–16, title VI, §648(c), June 7, 2001, 115 Stat. 128, provided that: "The amendments made by this section [amending this section, section 457 of this title, and section 1053 of Title 29, Labor] shall apply to distributions after December 31, 2001."

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title X, §1071(c), Aug. 5, 1997, 111 Stat. 948, provided that: "The amendments made by this section [amending this section, sections 417 and 457 of this title, and sections 1053 to 1055 of Title 29, Labor] shall apply to plan years beginning after the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, §1442(c), Aug. 20, 1996, 110 Stat. 1808, provided that: "The amendments made by this section [amending this section and section 1053 of Title 29, Labor] shall apply to plan years beginning on or after the earlier of—

"(1) the later of—

"(A) January 1, 1997, or

"(B) the date on which the last of the collective bargaining agreements pursuant to which the plan is maintained terminates (determined without regard to any extension thereof after the date of the enactment of this Act [Aug. 20, 1996]), or

"(2) January 1, 1999.

Such amendments shall not apply to any individual who does not have more than 1 hour of service under the plan on or after the 1st day of the 1st plan year to which such amendments apply."

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103–465, title VII, §767(d), Dec. 8, 1994, 108 Stat. 5040, as amended by Pub. L. 104–188, title I, §1449(a), Aug. 20, 1996, 110 Stat. 1813; Pub. L. 105–34, title XVI, §1604(b)(3), Aug. 5, 1997, 111 Stat. 1097, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section, sections 415 and 417 of this title, and sections 1053 and 1055 of Title 29, Labor] shall apply to plan years and limitation years beginning after December 31, 1994; except that an employer may elect to treat the amendments made by this section as being effective on or after the date of the enactment of this Act [Dec. 8, 1994].

"(2) NO REDUCTION IN ACCRUED BENEFITS.—A participant's accrued benefit shall not be considered to be reduced in violation of section 411(d)(6) of the Internal Revenue Code of 1986 or section 204(g) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1054(g)] merely because (A) the benefit is determined in accordance with section 417(e)(3)(A) of such Code, as amended by this Act, or section 205(g)(3) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1055(g)(3)], as amended by this Act, or (B) the plan applies section 415(b)(2)(E) of such Code, as amended by this Act.

"(3) SECTION 415.—

"(A) EXCEPTION.—A plan that was adopted and in effect before December 8, 1994, shall not be required to apply the amendments made by subsection (b) [amending section 415 of this title] with respect to benefits accrued before the earlier of—

"(i) the later of the date a plan amendment applying the amendments made by subsection (b) is adopted or made effective, or

"(ii) the first day of the first limitation year beginning after December 31, 1999.

Determinations under section 415(b)(2)(E) of the Internal Revenue Code of 1986 before such earlier date shall be made with respect to such benefits on the basis of such section as in effect on

December 7, 1994, and the provisions of the plan as in effect on December 7, 1994, but only if such provisions of the plan meet the requirements of such section (as so in effect).

"(B) TIMING OF PLAN AMENDMENT.—A plan that operates in accordance with the amendments made by subsection (b) shall not be treated as failing to satisfy section 401(a) of the Internal Revenue Code of 1986 or as not being operated in accordance with the provisions of the plan until such date as the Secretary of the Treasury provides merely because the plan has not been amended to include the amendments made by subsection (b)."

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102–318, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7861(a)(5)(A), (6)(A) of Pub. L. 101–239 effective as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 7863 of Pub. L. 101–239, set out as a note under section 106 of this title.

Pub. L. 101–239, title VII, §7871(a)(4), Dec. 19, 1989, 103 Stat. 2435, provided that: "The amendments made by this subsection [amending this section and section 1054 of Title 29, Labor] shall take effect as if included in the amendments made by section 9202 of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99–509]."

Pub. L. 101–239, title VII, §7871(b)(3), Dec. 19, 1989, 103 Stat. 2435, provided that: "The amendments made by this subsection [amending this section and section 1002 of Title 29, Labor] shall take effect as if included in the amendments made by section 9203 of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99–509]."

Amendment by section 7881(m)(1) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Pension Protection Act, Pub. L. 100–203, §§9302–9346, to which such amendment relates, see section 7882 of Pub. L. 101–239, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to plan years beginning after Dec. 31, 1987, with plan amendments not required to be made before first plan year beginning on or after Jan. 1, 1989, if certain conditions are met, see section 9346(c) of Pub. L. 100–203, set out as a note under section 1054 of Title 29, Labor.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XI, §1113(f), formerly §1113(e), Oct. 22, 1986, 100 Stat. 2447, as redesignated and amended by Pub. L. 101–239, title VII, §7861(a)(3), (4), Dec. 19, 1989, 103 Stat. 2430, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 410 of this title and sections 1052 to 1054 of Title 29, Labor] shall apply to plan years beginning after December 31, 1988.

"(2) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this section shall not apply to employees covered by any such agreement in plan years beginning before the earlier of—

"(A) the later of—

"(i) January 1, 1989, or

"(ii) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986), or

"(B) January 1, 1991.

"(3) PARTICIPATION REQUIRED.—The amendments made by this section shall not apply to any employee who does not have 1 hour of service in any plan year to which the amendments made by this section apply.

"(4) REPEAL OF CLASS YEAR VESTING.—If a plan amendment repealing class year vesting is adopted after October 22, 1986, such amendment shall not apply to any employee for the 1st plan year to which the

amendments made by subsections (b) and (e)(2) [amending this section and section 1053 of Title 29] apply (and any subsequent plan year) if—

"(A) such plan amendment would reduce the nonforfeitable right of such employee for such year, and

"(B) such employee has at least 1 hour of service before the adoption of such plan amendment and after the beginning of such 1st plan year.

This paragraph shall not apply to an employee who has 5 consecutive 1-year breaks in service (as defined in section 411(a)(6)(A) of the Internal Revenue Code of 1986) which include the 1st day of the 1st plan year to which the amendments made by subsection (b) and (e)(2) apply. A plan shall not be treated as failing to meet the requirements of section 401(a)(26) of such Code by reason of complying with the provisions of this paragraph."

Amendment by section 1114(b)(10) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1988, see section 1114(c)(3) of Pub. L. 99–514, set out as a note under section 414 of this title.

Pub. L. 99–514, title XI, §1139(d), Oct. 22, 1986, 100 Stat. 2488, as amended by Pub. L. 100–647, title I, §1011A(k), Nov. 10, 1988, 102 Stat. 3483, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and section 417 of this title and sections 1053 and 1055 of Title 29, Labor] shall apply to distributions in plan years beginning after December 31, 1984, except that such amendments shall not apply to any distributions in plan years beginning after December 31, 1984, and before January 1, 1987, if such distributions were made in accordance with the requirements of the regulations issued under the Retirement Equity Act of 1984 [Pub. L. 98–397, see Short Title of 1984 Amendment note set out under section 1001 of Title 29].

"(2) REDUCTION IN ACCRUED BENEFITS.—

"(A) IN GENERAL.—If a plan—

"(i) adopts a plan amendment before the close of the first plan year beginning on or after January 1, 1989, which provides for the calculation of the present value of the accrued benefits in the manner provided by the amendments made by this section, and

"(ii) the plan reduces the accrued benefits for any plan year to which such plan amendment applies in accordance with such plan amendment,

such reduction shall not be treated as a violation of section 411(d)(6) of the Internal Revenue Code of 1986 or section 204(g) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1054(g)).

"(B) SPECIAL RULE.—In the case of a plan maintained by a corporation incorporated on April 11, 1934, which is headquartered in Tarrant County, Texas—

"(i) such plan may be amended to remove the option of an employee to receive a lump sum distribution (within the meaning of section 402(e)(5) of such Code) if such amendment—

"(I) is adopted within 1 year of the date of the enactment of this Act [Oct. 22, 1986], and

"(II) is not effective until 2 years after the employees are notified of such amendment, and

"(ii) the present value of any vested accrued benefit of such plan determined during the 3-year period beginning on the date of the enactment of this Act shall be determined under the applicable interest rate (within the meaning of section 411(a)(11)(B)(ii) of such Code), except that if such value (as so determined) exceeds $50,000, then the value of any excess over $50,000 shall be determined by using the interest rate specified in the plan as of August 16, 1986."

Pub. L. 99–514, title XVIII, §1898(a)(1)(C), Oct. 22, 1986, 100 Stat. 2942, provided that: "The amendments made by this paragraph [amending this section and section 1053 of Title 29, Labor] shall apply to contributions made for plan years beginning after the date of the enactment of this Act [Oct. 22, 1986]; except that, in the case of a plan described in section 302(b) of the Retirement Equity Act of 1984 [section 302(b) of Pub. L. 98–397, set out as a note under section 1001 of Title 29], such amendments shall not apply to any plan year to which the amendments made by such Act [see Short Title of 1984 Amendment note set out under section 1001 of Title 29] do not apply by reason of such section 302(b)."

Amendment by section 1898(a)(4)(A), (d)(1)(A), (2)(A), (f)(1)(A) of Pub. L. 99–514 effective as if included in the provision of the Retirement Equity Act of 1984, Pub. L. 98–397, to which such amendment relates, except as otherwise provided, see section 1898(j) of Pub. L. 99–514, set out as a note under section 401 of this title.

Amendment by section 9202(b) of Pub. L. 99–509 applicable only with respect to plan years beginning on or after Jan. 1, 1988, and only to employees who have 1 hour of service in any plan year to which amendment applies, with special rule for collectively bargained plans, and amendment by section 9203(b)(2) of Pub. L. 99–509 applicable only with respect to plan years beginning on or after Jan. 1, 1988, and only with respect to service performed on or after such date, see section 9204(a), (b) of Pub. L. 99–509, set out as an Effective and Termination Dates of 1986 Amendments note under section 623 of Title 29, Labor.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–397 applicable to plan years beginning after Dec. 31, 1984, except as otherwise provided, see sections 302 and 303 of Pub. L. 98–397, set out as a note under section 1001 of Title 29, Labor.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–364 effective Sept. 26, 1980, see section 210(a) of Pub. L. 96–364, set out as an Effective Date note under section 418 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(62) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE

Section applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93–406, for plan years beginning after Sept. 2, 1974, and, in the case of plans in existence on Jan. 1, 1974, for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93–406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

REGULATIONS

Pub. L. 109–280, title VII, §702, Aug. 17, 2006, 120 Stat. 992, provided that: "The Secretary of the Treasury or his delegate shall, not later than 12 months after the date of the enactment of this Act [Aug. 17, 2006], prescribe regulations for the application of the amendments made by, and the provisions of, this title [amending this section and sections 623, 1053, and 1054 of Title 29, Labor, and enacting provisions set out as notes under this section] in cases where the conversion of a plan to an applicable defined benefit plan is made with respect to a group of employees who become employees by reason of a merger, acquisition, or similar transaction."

Pub. L. 109–280, title XI, §1102(b), Aug. 17, 2006, 120 Stat. 1056, provided that:

"(1) IN GENERAL.—The Secretary of the Treasury shall modify the regulations under section 411(a)(11) of the Internal Revenue Code of 1986 and under section 205 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1055] to provide that the description of a participant's right, if any, to defer receipt of a distribution shall also describe the consequences of failing to defer such receipt.

"(2) EFFECTIVE DATE.—

"(A) IN GENERAL.—The modifications required by paragraph (1) shall apply to years beginning after December 31, 2006.

"(B) REASONABLE NOTICE.—A plan shall not be treated as failing to meet the requirements of section 411(a)(11) of such Code or section 205 of such Act with respect to any description of consequences described in paragraph (1) made within 90 days after the Secretary of the Treasury issues the modifications required by paragraph (1) if the plan administrator makes a reasonable attempt to comply with such requirements."

Pub. L. 107–16, title VI, §645(b)(3), June 7, 2001, 115 Stat. 126, provided that: "Not later than December 31, 2003, the Secretary of the Treasury is directed to issue regulations under section 411(d)(6) of the Internal Revenue Code of 1986 and section 204(g) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1054(g)], including the regulations required by the amendment made by this subsection [amending this section and section 1054 of Title 29, Labor]. Such regulations shall apply to plan years beginning after December 31, 2003, or such earlier date as is specified by the Secretary of the Treasury."

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by sections 1113 and 1114 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

Secretary of Labor, Secretary of the Treasury, and Equal Employment Opportunity Commission shall each issue before Feb. 1, 1988, final regulations to carry out amendments made by sections 9202 and 9203 of Pub. L. 99–509, see section 9204 of Pub. L. 99–509, set out as a note under section 623 of Title 29, Labor.

CONSTRUCTION OF 2006 AMENDMENT

Pub. L. 109–280, title VII, §701(d), Aug. 17, 2006, 120 Stat. 991, as amended by Pub. L. 110–458, title I, §107(c)(1), Dec. 23, 2008, 122 Stat. 5107, provided that: "Nothing in the amendments made by this section [amending this section and sections 623, 1053, and 1054 of Title 29, Labor] shall be construed to create an inference with respect to—

"(1) the treatment of applicable defined benefit plans or conversions to applicable defined benefit plans under sections 204(b)(1)(H) of the Employee Retirement Income Security Act of 1974 [29 U.S.C.

1054(b)(1)(H)], 4(i)(1) of the Age Discrimination in Employment Act of 1967 [29 U.S.C. 623(i)(1)], and 411(b)(1)(H) of the Internal Revenue Code of 1986, as in effect before such amendments, or

"(2) the determination of whether an applicable defined benefit plan fails to meet the requirements of sections 203(a)(2), 204(c), or 205(g) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1053(a)(2), 1054(c), 1055(g)] or sections 411(a)(2), 411(c), or 417(e) of such Code, as in effect before such amendments, solely because the present value of the accrued benefit (or any portion thereof) of any participant is, under the terms of the plan, equal to the amount expressed as the balance in a hypothetical account or as an accumulated percentage of the participant's final average compensation.

For purposes of this subsection, the term 'applicable defined benefit plan' has the meaning given such term by section 203(f)(3) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1053(f)(3)] and section 411(a)(13)(C) of such Code, as in effect after such amendments."

APPLICABILITY OF AMENDMENTS BY SUBTITLES A AND B OF TITLE I OF PUB. L. 109–280

For special rules on applicability of amendments by subtitles A (§§101–108) and B (§§111–116) of title I of Pub. L. 109–280 to certain eligible cooperative plans, PBGC settlement plans, and eligible government contractor plans, see sections 104, 105, and 106 of Pub. L. 109–280, set out as notes under section 401 of this title.

PROVISIONS RELATING TO PLAN AMENDMENTS

Pub. L. 109–280, title XI, §1107, Aug. 17, 2006, 120 Stat. 1063, provided that:

"(a) IN GENERAL.—If this section applies to any pension plan or contract amendment—

"(1) such pension plan or contract shall be treated as being operated in accordance with the terms of the plan during the period described in subsection (b)(2)(A), and

"(2) except as provided by the Secretary of the Treasury, such pension plan shall not fail to meet the requirements of section 411(d)(6) of the Internal Revenue Code of 1986 and section 204(g) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1054(g)] by reason of such amendment.

"(b) AMENDMENTS TO WHICH SECTION APPLIES.—

"(1) IN GENERAL.—This section shall apply to any amendment to any pension plan or annuity contract which is made—

"(A) pursuant to any amendment made by this Act [see Tables for classification] or pursuant to any regulation issued by the Secretary of the Treasury or the Secretary of Labor under this Act, and

"(B) on or before the last day of the first plan year beginning on or after January 1, 2009.

In the case of a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986), this paragraph shall be applied by substituting '2011' for '2009'.

"(2) CONDITIONS.—This section shall not apply to any amendment unless—

"(A) during the period—

"(i) beginning on the date the legislative or regulatory amendment described in paragraph (1)(A) takes effect (or in the case of a plan or contract amendment not required by such legislative or regulatory amendment, the effective date specified by the plan), and

"(ii) ending on the date described in paragraph (1)(B) (or, if earlier, the date the plan or contract amendment is adopted), the plan or contract is operated as if such plan or contract amendment were in effect; and

"(B) such plan or contract amendment applies retroactively for such period."

Pub. L. 108–218, title I, §101(c), Apr. 10, 2004, 118 Stat. 598, as amended by Pub. L. 109–280, title III, §301(c), Aug. 17, 2006, 120 Stat. 920; Pub. L. 110–458, title I, §103(a), Dec. 23, 2008, 122 Stat. 5103, provided that:

"(1) IN GENERAL.—If this subsection applies to any plan or annuity contract amendment—

"(A) such plan or contract shall be treated as being operated in accordance with the terms of the plan or contract during the period described in paragraph (2)(B)(i), and

"(B) except as provided by the Secretary of the Treasury, such plan shall not fail to meet the requirements of section 411(d)(6) of the Internal Revenue Code of 1986 and section 204(g) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1054(g)] by reason of such amendment.

"(2) AMENDMENTS TO WHICH SECTION APPLIES.—

"(A) IN GENERAL.—This subsection shall apply to any amendment to any plan or annuity contract which is made—

"(i) pursuant to any amendment made by this section [amending sections 404, 412, and 415 of this title and sections 1082 and 1306 of Title 29, Labor], and

"(ii) on or before the last day of the first plan year beginning on or after January 1, 2009.

"(B) CONDITIONS.—This subsection shall not apply to any plan or annuity contract amendment unless—

"(i) during the period beginning on the date the amendment described in subparagraph (A)(i) takes effect and ending on the date described in subparagraph (A)(ii) (or, if earlier, the date the plan or contract amendment is adopted), the plan or contract is operated as if such plan or contract amendment were in effect; and

"(ii) such plan or contract amendment applies retroactively for such period."

Pub. L. 105–34, title XV, §1541, Aug. 5, 1997, 111 Stat. 1085, provided that:

"(a) IN GENERAL.—If this section applies to any plan or contract amendment—

"(1) such plan or contract shall be treated as being operated in accordance with the terms of the plan during the period described in subsection (b)(2)(A), and

"(2) such plan shall not fail to meet the requirements of section 411(d)(6) of the Internal Revenue Code of 1986 or section 204(g) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1054(g)] by reason of such amendment.

"(b) AMENDMENTS TO WHICH SECTION APPLIES.—

"(1) IN GENERAL.—This section shall apply to any amendment to any plan or annuity contract which is made—

"(A) pursuant to any amendment made by this title [enacting sections 9811 and 9812 of this title, amending sections 101, 401 to 404, 408, 409, 410, 412, 414, 415, 512, 664, 674, 2055, 2056, 4947, 4972, 4975, 4978, 4979A, 4980D, 9801, 9802, and 9831 of this title, sections 1021, 1022, 1024, 1026 to 1028, 1056, 1082, 1107, 1108, and 1132 of Title 29, Labor, and section 1320b–14 of Title 42, The Public Health and Welfare, renumbering sections 9804 to 9806 of this title as sections 9831 to 9833, respectively, of this title, and amending provisions set out as a note under section 412 of this title] or subtitle H of title X [§§1071–1075, amending this section, sections 72, 132, 417, 457, 691, 2013, 2053, 4975, and 6018 of this title, and sections 1053 to 1055 of Title 29 and repealing section 4980A of this title], and

"(B) before the first day of the first plan year beginning on or after January 1, 1999.

In the case of a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986), this paragraph shall be applied by substituting '2001' for '1999'.

"(2) CONDITIONS.—This section shall not apply to any amendment unless—

"(A) during the period—

"(i) beginning on the date the legislative amendment described in paragraph (1)(A) takes effect (or in the case of a plan or contract amendment not required by such legislative amendment, the effective date specified by the plan), and

"(ii) ending on the date described in paragraph (1)(B) (or, if earlier, the date the plan or contract amendment is adopted),

the plan or contract is operated as if such plan or contract amendment were in effect, and

"(B) such plan or contract amendment applies retroactively for such period."

TRANSITIONAL RULE: CERTAIN PLAN AMENDMENTS ADOPTED OR EFFECTIVE ON OR BEFORE AUGUST 20, 1996

Pub. L. 104–188, title I, §1449(d), Aug. 20, 1996, 110 Stat. 1814, provided that: "In the case of a plan that was adopted and in effect before December 8, 1994, if—

"(1) a plan amendment was adopted or made effective on or before the date of the enactment of this Act [Aug. 20, 1996] applying the amendments made by section 767 of the Uruguay Round Agreements Act [Pub. L. 103–465, see Effective Date of 1994 Amendment note set out above], and

"(2) within 1 year after the date of the enactment of this Act [Aug. 20, 1996], a plan amendment is adopted which repeals the amendment referred to in paragraph (1),

the amendment referred to in paragraph (1) shall not be taken into account in applying section 767(d)(3)(A) of the Uruguay Round Agreements Act, as amended by subsection (a)."

PLAN AMENDMENTS REFLECTING AMENDMENTS BY SECTION 7881(M) OF PUB. L. 101–239 NOT TREATED AS REDUCING ACCRUED BENEFITS

For provisions directing that if during the period beginning Dec. 22, 1987, and ending June 21, 1988, a plan was amended to reflect the amendments by section 9346 of Pub. L. 100–203 and such plan is amended to reflect the amendments by section 7881(m) of Pub. L. 101–239, any plan amendments made to reflect the

amendments by section 7881(m) of Pub. L. 101–239 shall not be treated as reducing accrued benefits for purposes of subsection (d)(6) of this section or section 1054(g) of Title 29, Labor, see section 7881(m)(3) of Pub. L. 101–239, set out as a note under section 1054 of Title 29.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§1401–1465] of title I of Pub. L. 104–188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

For provisions directing that if any amendments made by sections 9202(b) and 9203(b)(2) of Pub. L. 99–509 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 9204 of Pub. L. 99–509, set out as a note under section 623 of Title 29, Labor.

ALTERNATE METHODS OF SATISFYING REQUIREMENTS FOR VESTING AND ACCRUED BENEFITS

Pub. L. 93–406, title II, §1012(c), Sept. 2, 1974, 88 Stat. 913, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "In the case of any plan maintained on January 1, 1974, if, not later than 2 years after the date of the enactment of this Act [Sept. 2, 1974], the plan administrator petitions the Secretary of Labor, the Secretary of Labor may prescribe an alternate method which shall be treated as satisfying the requirements of subsection (a)(2) of section 411 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], or of subsection (b)(1) (other than subparagraph (D) thereof) of such section 411, or of both such provisions for a period of not more than 4 years. The Secretary may prescribe such alternate method only when he finds that—

"(1) the application of such requirements would increase the costs of the plan to such an extent that there would result a substantial risk to the voluntary continuation of the plan or a substantial curtailment of benefit levels or the levels of employees' compensation,

"(2) the application of such requirements or discontinuance of the plan would be adverse to the interests of plan participants in the aggregate, and

"(3) a waiver or extension of time granted under [former] section 412(d) or (e) would be inadequate.

In the case of any plan with respect to which an alternate method has been prescribed under the preceding provisions of this subsection for a period of not more than 4 years, if, not later than 1 year before the expiration of such period, the plan administrator petitions the Secretary of Labor for an extension of such alternate method, and the Secretary makes the findings required by the preceding sentence, such alternate method may be extended for not more than 3 years."

[1] *So in original. The comma probably should be a semicolon.*

[2] *So in original. Probably should be "similar account".*

§412. Minimum funding standards

(a) Requirement to meet minimum funding standard

(1) In general

A plan to which this section applies shall satisfy the minimum funding standard applicable to the plan for any plan year.

(2) Minimum funding standard

For purposes of paragraph (1), a plan shall be treated as satisfying the minimum funding standard for a plan year if—

(A) in the case of a defined benefit plan which is not a multiemployer plan or a CSEC plan, the employer makes contributions to or under the plan for the plan year which, in the aggregate, are not less than the minimum required contribution determined under section 430 for the plan for the plan year,

(B) in the case of a money purchase plan which is not a multiemployer plan, the employer makes contributions to or under the plan for the plan year which are required under the terms of the plan,

(C) in the case of a multiemployer plan, the employers make contributions to or under the plan for any plan year which, in the aggregate, are sufficient to ensure that the plan does not have an accumulated funding deficiency under section 431 as of the end of the plan year, and

(D) in the case of a CSEC plan, the employers make contributions to or under the plan for any plan year which, in the aggregate, are sufficient to ensure that the plan does not have an accumulated funding deficiency under section 433 as of the end of the plan year.

(b) Liability for contributions

(1) In general

Except as provided in paragraph (2), the amount of any contribution required by this section (including any required installments under paragraphs (3) and (4) of section 430(j) or under section 433(f)) shall be paid by the employer responsible for making contributions to or under the plan.

(2) Joint and several liability where employer member of controlled group

If the employer referred to in paragraph (1) is a member of a controlled group, each member of such group shall be jointly and severally liable for payment of such contributions.

(3) Multiemployer plans in critical status

Paragraph (1) shall not apply in the case of a multiemployer plan for any plan year in which the plan is in critical status pursuant to section 432. This paragraph shall only apply if the plan sponsor adopts a rehabilitation plan in accordance with section 432(e) and complies with such rehabilitation plan (and any modifications of the plan).

(c) Variance from minimum funding standards

(1) Waiver in case of business hardship

(A) In general

If—

(i) an employer is (or in the case of a multiemployer plan or a CSEC plan, 10 percent or more of the number of employers contributing to or under the plan are) unable to satisfy the minimum funding standard for a plan year without temporary substantial business hardship (substantial business hardship in the case of a multiemployer plan), and

(ii) application of the standard would be adverse to the interests of plan participants in the aggregate,

the Secretary may, subject to subparagraph (C), waive the requirements of subsection (a) for such year with respect to all or any portion of the minimum funding standard. The Secretary shall not waive the minimum funding standard with respect to a plan for more than 3 of any 15 (5 of any 15 in the case of a multiemployer plan) consecutive plan years [1]

(B) Effects of waiver

If a waiver is granted under subparagraph (A) for any plan year—

(i) in the case of a defined benefit plan which is not a multiemployer plan or a CSEC plan, the minimum required contribution under section 430 for the plan year shall be reduced by the amount of the waived funding deficiency and such amount shall be amortized as required under section 430(e),

(ii) in the case of a multiemployer plan, the funding standard account shall be credited under section 431(b)(3)(C) with the amount of the waived funding deficiency and such amount shall be amortized as required under section 431(b)(2)(C), and

(iii) in the case of a CSEC plan, the funding standard account shall be credited under section 433(b)(3)(C) with the amount of the waived funding deficiency and such amount shall be amortized as required under section 433(b)(2)(C).

(C) Waiver of amortized portion not allowed

The Secretary may not waive under subparagraph (A) any portion of the minimum funding standard under subsection (a) for a plan year which is attributable to any waived funding deficiency for any preceding plan year.

(2) Determination of business hardship

For purposes of this subsection, the factors taken into account in determining temporary substantial business hardship (substantial business hardship in the case of a multiemployer plan) shall include (but shall not be limited to) whether or not—

(A) the employer is operating at an economic loss,

(B) there is substantial unemployment or underemployment in the trade or business and in the industry concerned,

(C) the sales and profits of the industry concerned are depressed or declining, and

(D) it is reasonable to expect that the plan will be continued only if the waiver is granted.

(3) Waived funding deficiency

For purposes of this section and part III of this subchapter, the term "waived funding deficiency" means the portion of the minimum funding standard under subsection (a) (determined without regard to the waiver) for a plan year waived by the Secretary and not satisfied by employer contributions.

(4) Security for waivers for single-employer plans, consultations

(A) Security may be required

(i) In general

Except as provided in subparagraph (C), the Secretary may require an employer maintaining a defined benefit plan which is a single-employer plan (within the meaning of section 4001(a)(15) of the Employee Retirement Income Security Act of 1974) to provide security to such plan as a condition for granting or modifying a waiver under paragraph (1) or for granting an extension under section 433(d).

(ii) Special rules

Any security provided under clause (i) may be perfected and enforced only by the Pension Benefit Guaranty Corporation, or at the direction of the Corporation, by a contributing sponsor (within the meaning of section 4001(a)(13) of the Employee Retirement Income Security Act of 1974), or a member of such sponsor's controlled group (within the meaning of section 4001(a)(14) of such Act).

(B) Consultation with the Pension Benefit Guaranty Corporation

Except as provided in subparagraph (C), the Secretary shall, before granting or modifying a waiver under this subsection or an extension under 433(d) [2] with respect to a plan described in subparagraph (A)(i)—

(i) provide the Pension Benefit Guaranty Corporation with—

(I) notice of the completed application for any waiver, modification, or extension, and

(II) an opportunity to comment on such application within 30 days after receipt of such notice, and

(ii) consider—

(I) any comments of the Corporation under clause (i)(II), and

(II) any views of any employee organization (within the meaning of section 3(4) of the Employee Retirement Income Security Act of 1974) representing participants in the plan which are submitted in writing to the Secretary in connection with such application.

Information provided to the Corporation under this subparagraph shall be considered tax return information and subject to the safeguarding and reporting requirements of section 6103(p).

(C) Exception for certain waivers or extensions

(i) In general

The preceding provisions of this paragraph shall not apply to any plan with respect to which the sum of—

(I) the aggregate unpaid minimum required contributions (within the meaning of section 4971(c)(4)) for the plan year and all preceding plan years, or the accumulated funding deficiency under section 433, whichever is applicable,

(II) the present value of all waiver amortization installments determined for the plan year and succeeding plan years under section 430(e)(2) or 433(b)(2)(C), whichever is applicable, and

(III) the total amounts not paid by reason of an extension in effect under section 433(d),

is less than $1,000,000.

(ii) Treatment of waivers or extensions for which applications are pending

The amount described in clause (i)(I) shall include any increase in such amount which would result if all applications for waivers or extensions with respect to the minimum funding standard under this subsection which are pending with respect to such plan were denied.

(5) Special rules for single-employer plans

(A) Application must be submitted before date 2½ months after close of year

In the case of a defined benefit plan which is not a multiemployer plan, no waiver may be granted under this subsection with respect to any plan for any plan year unless an application therefor is submitted to the Secretary not later than the 15th day of the 3rd month beginning after the close of such plan year.

(B) Special rule if employer is member of controlled group

In the case of a defined benefit plan which is not a multiemployer plan, if an employer is a member of a controlled group, the temporary substantial business hardship requirements of paragraph (1) shall be treated as met only if such requirements are met—

(i) with respect to such employer, and

(ii) with respect to the controlled group of which such employer is a member (determined by treating all members of such group as a single employer).

The Secretary may provide that an analysis of a trade or business or industry of a member need not be conducted if the Secretary determines such analysis is not necessary because the taking into account of such member would not significantly affect the determination under this paragraph.

(6) Advance notice

(A) In general

The Secretary shall, before granting a waiver under this subsection, require each applicant to provide evidence satisfactory to the Secretary that the applicant has provided notice of the filing of the application for such waiver to each affected party (as defined in section 4001(a)(21) of the Employee Retirement Income Security Act of 1974). Such notice shall include a description of the extent to which the plan is funded for benefits which are guaranteed under title IV of the Employee Retirement Income Security Act of 1974 and for benefit liabilities.

(B) Consideration of relevant information

The Secretary shall consider any relevant information provided by a person to whom notice was given under subparagraph (A).

(7) Restriction on plan amendments

(A) In general

No amendment of a plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan shall be adopted if a waiver under this subsection or an extension of time under section 431(d) or section 433(d) is in effect with respect to the plan, or if a plan amendment described in subsection (d)(2) which reduces the accrued benefit of any participant has been made at any time in the preceding 12 months (24 months in the case of a multiemployer plan). If a plan is amended in violation of the preceding sentence, any such waiver, or extension of time, shall not apply to any plan year ending on or after the date on which such amendment is adopted.

(B) Exception

Subparagraph (A) shall not apply to any plan amendment which—

(i) the Secretary determines to be reasonable and which provides for only de minimis increases in the liabilities of the plan,

(ii) only repeals an amendment described in subsection (d)(2), or

(iii) is required as a condition of qualification under part I of subchapter D,[3] of chapter 1.

(d) Miscellaneous rules

(1) Change in method or year

If the funding method or a plan year for a plan is changed, the change shall take effect only if approved by the Secretary.

(2) Certain retroactive plan amendments

For purposes of this section, any amendment applying to a plan year which—

(A) is adopted after the close of such plan year but no later than 2½ months after the close of the plan year (or, in the case of a multiemployer plan, no later than 2 years after the close of such plan year),

(B) does not reduce the accrued benefit of any participant determined as of the beginning of the first plan year to which the amendment applies, and

(C) does not reduce the accrued benefit of any participant determined as of the time of adoption except to the extent required by the circumstances,

shall, at the election of the plan administrator, be deemed to have been made on the first day of such plan year. No amendment described in this paragraph which reduces the accrued benefits of any participant shall take effect unless the plan administrator files a notice with the Secretary notifying him of such amendment and the Secretary has approved such amendment, or within 90 days after the date on which such notice was filed, failed to disapprove such amendment. No amendment described in this subsection shall be approved by the Secretary unless the Secretary determines that such amendment is necessary because of a temporary substantial business hardship (as determined under subsection (c)(2)) or a substantial business hardship (as so determined) in the case of a multiemployer plan and that a waiver under subsection (c) (or, in the case of a

multiemployer plan or a CSEC plan, any extension of the amortization period under section 431(d) or section 433(d)) is unavailable or inadequate.

(3) Controlled group

For purposes of this section, the term "controlled group" means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414.

(e) Plans to which section applies

(1) In general

Except as provided in paragraphs (2) and (4), this section applies to a plan if, for any plan year beginning on or after the effective date of this section for such plan under the Employee Retirement Income Security Act of 1974—

(A) such plan included a trust which qualified (or was determined by the Secretary to have qualified) under section 401(a), or

(B) such plan satisfied (or was determined by the Secretary to have satisfied) the requirements of section 403(a).

(2) Exceptions

This section shall not apply to—

(A) any profit-sharing or stock bonus plan,

(B) any insurance contract plan described in paragraph (3),

(C) any governmental plan (within the meaning of section 414(d)),

(D) any church plan (within the meaning of section 414(e)) with respect to which the election provided by section 410(d) has not been made,

(E) any plan which has not, at any time after September 2, 1974, provided for employer contributions, or

(F) any plan established and maintained by a society, order, or association described in section 501(c)(8) or (9), if no part of the contributions to or under such plan are made by employers of participants in such plan.

No plan described in subparagraph (C), (D), or (F) shall be treated as a qualified plan for purposes of section 401(a) unless such plan meets the requirements of section 401(a)(7) as in effect on September 1, 1974.

(3) Certain insurance contract plans

A plan is described in this paragraph if—

(A) the plan is funded exclusively by the purchase of individual insurance contracts,

(B) such contracts provide for level annual premium payments to be paid extending not later than the retirement age for each individual participating in the plan, and commencing with the date the individual became a participant in the plan (or, in the case of an increase in benefits, commencing at the time such increase becomes effective),

(C) benefits provided by the plan are equal to the benefits provided under each contract at normal retirement age under the plan and are guaranteed by an insurance carrier (licensed under the laws of a State to do business with the plan) to the extent premiums have been paid,

(D) premiums payable for the plan year, and all prior plan years, under such contracts have been paid before lapse or there is reinstatement of the policy,

(E) no rights under such contracts have been subject to a security interest at any time during the plan year, and

(F) no policy loans are outstanding at any time during the plan year.

A plan funded exclusively by the purchase of group insurance contracts which is determined under regulations prescribed by the Secretary to have the same characteristics as contracts described in the preceding sentence shall be treated as a plan described in this paragraph.

(4) Certain terminated multiemployer plans

This section applies with respect to a terminated multiemployer plan to which section 4021 of the Employee Retirement Income Security Act of 1974 applies until the last day of the plan year in which the plan terminates (within the meaning of section 4041A(a)(2) of such Act).

(Added Pub. L. 93–406, title II, §1013(a), Sept. 2, 1974, 88 Stat. 914; amended Pub. L. 94–455, title XIX, §§1901(a)(63), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1775, 1834; Pub. L. 96–364, title II, §§203, 208(c), Sept. 26, 1980, 94 Stat. 1285, 1289; Pub. L. 98–369, div. A, title IV, §491(d)(25), July 18, 1984, 98 Stat. 850; Pub. L. 99–272, title XI, §§11015(a)(2), (b)(2), 11016(c)(4), Apr. 7, 1986, 100 Stat. 265, 267, 273; Pub. L. 100–203, title IX, §§9301(a), 9303(a), (d)(1), 9304(a)(1), (b)(1), (e)(1), 9305(b)(1), 9306(a)(1), (b)(1), (c)(1), (d)(1), (e)(1), 9307(a)(1), (b)(1), (e)(1), Dec. 22, 1987, 101 Stat. 1330–331, 1330–333, 1330–342 to 1330–344, 1330–348, 1330–351, 1330–352, 1330–354 to 1330–357; Pub. L. 100–647, title II, §2005(a)(2)(A), (d)(1), Nov. 10, 1988, 102 Stat. 3610, 3612; Pub. L. 101–239, title VII, §7881(a)(1)(A), (2)(A), (3)(A), (4)(A), (5)(A), (6)(A), (b)(1)(A), (2)(A), (3)(A), (4)(A), (6)(A), (c)(1), (d)(1)(A), Dec. 19, 1989, 103 Stat. 2435–2439; Pub. L. 103–465, title VII, §§751(a)(1)–(9)(A), (10), 752(a), 753(a), 754(a), 768(a), Dec. 8, 1994, 108 Stat. 5012–5019, 5021–5023, 5040; Pub. L. 105–34, title XV, §1521(a), (c)(1), (3)(A), title XVI, §1604(b)(2)(A), Aug. 5, 1997, 111 Stat. 1069, 1070, 1097; Pub. L. 107–16, title VI, §§651(a), 661(a), June 7, 2001, 115 Stat. 129, 141; Pub. L. 107–147, title IV, §§405(a), 411(v)(1), Mar. 9, 2002, 116 Stat. 42, 52; Pub. L. 108–218, title I, §§101(b)(1)–(3), 102(b), 104(b), Apr. 10, 2004, 118 Stat. 597, 598, 601, 606; Pub. L. 109–135, title IV, §412(x)(1), Dec. 21, 2005, 119 Stat. 2638; Pub. L. 109–280, title I, §111(a), title II, §212(c), title III, §301(b), Aug. 17, 2006, 120 Stat. 820, 917, 919; Pub. L. 110–458, title I, §§101(a)(2), 102(b)(2)(H), Dec. 23, 2008, 122 Stat. 5093, 5103; Pub. L. 113–97, title II, §202(c)(1), (2), Apr. 7, 2014, 128 Stat. 1135.)

AMENDMENT OF SECTION

For termination of subsection (b)(3) of this section by section 221(c) of Pub. L. 109–280, see Effective and Termination Dates of 2006 Amendment note below.

REFERENCES IN TEXT

The Employee Retirement Income Security Act of 1974, referred to in subsecs. (c)(4)(A), (B)(ii)(II), (6)(A), and (e)(1), (4), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, which is classified principally to chapter 18 (§1001 et seq.) of Title 29, Labor. Title IV of the Act is classified generally to subchapter III (§1301 et seq.) of chapter 18 of Title 29. Sections 3, 4001, 4021, and 4041A of the Act are classified to sections 1002, 1301, 1321, and 1341a of Title 29, respectively. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

The effective date of this section, referred to in subsec. (e)(1), probably means the effective date of Pub. L. 109–280, §111(a), which amended this section. See Effective and Termination Dates of 2006 Amendment note below.

AMENDMENTS

2014—Subsec. (a)(2)(A). Pub. L. 113–97, §202(c)(2)(A), substituted "multiemployer plan or a CSEC plan" for "multiemployer plan".

Subsec. (a)(2)(D). Pub. L. 113–97, §202(c)(1), added subpar. (D).

Subsec. (b)(1). Pub. L. 113–97, §202(c)(2)(B), substituted "430(j) or under section 433(f)" for "430(j)".

Subsec. (c)(1)(A)(i). Pub. L. 113–97, §202(c)(2)(A), substituted "multiemployer plan or a CSEC plan, 10 percent" for "multiemployer plan, 10 percent".

Subsec. (c)(1)(B)(i). Pub. L. 113–97, §202(c)(2)(A), substituted "multiemployer plan or a CSEC plan" for "multiemployer plan".

Subsec. (c)(1)(B)(iii). Pub. L. 113–97, §202(c)(2)(C), added cl. (iii).

Subsec. (c)(4)(A)(i). Pub. L. 113–97, §202(c)(2)(D), substituted "under paragraph (1) or for granting an extension under section 433(d)" for "under paragraph (1)".

Subsec. (c)(4)(B). Pub. L. 113–97, §202(c)(2)(E), substituted "waiver under this subsection or an extension under 433(d)" for "waiver under this subsection" in introductory provisions.

Subsec. (c)(4)(B)(i)(I). Pub. L. 113–97, §202(c)(2)(F), substituted "waiver, modification, or extension" for "waiver or modification".

Subsec. (c)(4)(C). Pub. L. 113–97, §202(c)(2)(G), substituted "waivers or extensions" for "waivers" in heading.

Subsec. (c)(4)(C)(i)(I). Pub. L. 113–97, §202(c)(2)(I), substituted "or the accumulated funding deficiency under section 433, whichever is applicable," for "and" at end.

Subsec. (c)(4)(C)(i)(II). Pub. L. 113–97, §202(c)(2)(J), substituted "430(e)(2) or 433(b)(2)(C), whichever is applicable, and" for "430(e)(2),".

Subsec. (c)(4)(C)(i)(III). Pub. L. 113–97, §202(c)(2)(K), added subcl. (III).

Subsec. (c)(4)(C)(ii). Pub. L. 113–97, §202(c)(2)(L), substituted "for waivers or extensions with respect to" for "for waivers of".

Pub. L. 113–97, §202(c)(2)(G), substituted "waivers or extensions" for "waivers" in heading.

Subsec. (c)(7)(A). Pub. L. 113–97, §202(c)(2)(H), substituted "section 431(d) or section 433(d)" for "section 431(d)".

Subsec. (d)(2). Pub. L. 113–97, §202(c)(2)(H), substituted "section 431(d) or section 433(d)" for "section 431(d)" in concluding provisions.

Pub. L. 113–97, §202(c)(2)(A), substituted "multiemployer plan or a CSEC plan, any extension" for "multiemployer plan, any extension" in concluding provisions.

2008—Subsec. (b)(3). Pub. L. 110–458, §102(b)(2)(H), substituted "the plan sponsor adopts" for "the plan adopts".

Subsec. (c)(1)(A)(i). Pub. L. 110–458, §101(a)(2)(A), substituted "the plan are" for "the plan is".

Subsec. (c)(7)(A). Pub. L. 110–458, §101(a)(2)(B), inserted "which reduces the accrued benefit of any participant" after "subsection (d)(2)".

Subsec. (d)(1). Pub. L. 110–458, §101(a)(2)(C), struck out ", the valuation date," after "If the funding method".

2006—Pub. L. 109–280, §111(a), reenacted heading without change and amended text generally, substituting provisions relating to minimum funding standard requirement, liability for contributions, variance from minimum funding standards, miscellaneous rules, and plans to which section applies, consisting of subsecs. (a) to (e), for provisions relating to general rule for satisfaction of minimum funding standard, funding standard account, special rules, variance from minimum funding standard, extension of amortization periods, requirements relating to waivers and extensions, alternative minimum funding standard, exceptions, certain insurance contract plans, certain terminated multiemployer plans, financial assistance, additional funding requirements for plans which are not multiemployer plans, quarterly contributions requirement, and imposition of lien where failure to make required contributions, consisting of subsecs. (a) to (n).

Subsec. (b)(3). Pub. L. 109–280, §§212(c), 221(c), temporarily added par. (3). See Effective and Termination Dates of 2006 Amendment note below.

Subsec. (b)(5)(B)(ii)(II). Pub. L. 109–280, §301(b)(1), substituted ", 2005, 2006, and 2007" for "and 2005" in heading and "2008" for "2006" in text.

Subsec. (l)(7)(C)(i)(IV). Pub. L. 109–280, §301(b)(2), substituted ", 2005, 2006, and 2007" for "and 2005" in heading and ", 2005, 2006, or 2007" for "or 2005" in text.

2005—Subsec. (m)(4)(B)(i). Pub. L. 109–135 substituted "subsection (d)" for "subsection (c)".

2004—Subsec. (b)(5)(B)(ii)(I). Pub. L. 108–218, §101(b)(1)(C), inserted "or (III)" after "subclause (II)".

Subsec. (b)(5)(B)(ii)(II), (III). Pub. L. 108–218, §101(b)(1)(A), (B), added subcl. (II), redesignated former subcl. (II) as (III), and, in subcl. (III), inserted "or (II)" after "permissible under subclause (I)" and substituted "such subclause" for "subclause (I)" before period at end.

Subsec. (b)(7)(F). Pub. L. 108–218, §104(b), added subpar. (F).

Subsec. (l)(7)(C)(i)(IV). Pub. L. 108–218, §101(b)(2), added subcl. (IV).

Subsec. (l)(12). Pub. L. 108–218, §102(b), added par. (12).

Subsec. (m)(7). Pub. L. 108–218, §101(b)(3), amended heading and text of par. (7) generally, substituting provisions relating to special rule for 2002 for provisions relating to special rules for 2002 and 2004.

2002—Subsec. (c)(9)(B)(ii). Pub. L. 107–147, §411(v)(1)(A), substituted "100 percent" for "125 percent".

Subsec. (c)(9)(B)(iv). Pub. L. 107–147, §411(v)(1)(B), added cl. (iv).

Subsec. (l)(7)(C)(i)(III). Pub. L. 107–147, §405(a)(1), added subcl. (III).

Subsec. (m)(7). Pub. L. 107–147, §405(a)(2), added par. (7).

2001—Subsec. (c)(7)(A)(i)(I). Pub. L. 107–16, §651(a)(1), substituted "in the case of plan years beginning before January 1, 2004, the applicable percentage" for "the applicable percentage".

Subsec. (c)(7)(F). Pub. L. 107–16, §651(a)(2), reenacted heading and introductory provisions without change and amended table generally, substituting present provisions for provisions which had set out applicable percentage of 155 in the case of any plan year beginning in 1999 or 2000, 160 in the case of any plan year beginning in 2001 or 2002, 165 in the case of any plan year beginning in 2003 or 2004, and 170 in the case of any plan year beginning in 2005 and succeeding years.

Subsec. (c)(9). Pub. L. 107–16, §661(a), reenacted heading without change and amended text of par. (9)

generally. Prior to amendment, text read as follows: "For purposes of this section, a determination of experience gains and losses and a valuation of the plan's liability shall be made not less frequently than once every year, except that such determination shall be made more frequently to the extent required in particular cases under regulations prescribed by the Secretary."

1997—Subsec. (b)(2)(E). Pub. L. 105–34, §1521(c)(1), added subpar. (E).

Subsec. (c)(7)(A)(i)(I). Pub. L. 105–34, §1521(a)(A), substituted "the applicable percentage" for "150 percent".

Subsec. (c)(7)(D). Pub. L. 105–34, §1521(c)(3)(A), inserted "and" at end of cl. (i), substituted a period for ", and" at end of cl. (ii), and struck out cl. (iii) which read as follows: "for the treatment under this section of contributions which would be required to be made under the plan but for the provisions of subparagraph (A)(i)(I)."

Subsec. (c)(7)(F). Pub. L. 105–34, §1521(a)(B), added subpar. (F).

Subsec. (m)(5)(E)(ii)(II). Pub. L. 105–34, §1604(b)(2)(A), substituted "subclause (I)" for "clause (i)".

1994—Subsec. (c)(5). Pub. L. 103–465, §752(a), designated existing provisions as subpar. (A), inserted subpar. heading, and added subpar. (B).

Subsec. (c)(7)(A)(i)(I). Pub. L. 103–465, §751(a)(10)(A), inserted "(including the expected increase in current liability due to benefits accruing during the plan year)" after "current liability".

Subsec. (c)(7)(B). Pub. L. 103–465, §751(a)(10)(C), reenacted subpar. (B) heading without change and amended text generally. Prior to amendment, text read as follows: "For purposes of subparagraphs (A) and (D), the term 'current liability' has the meaning given such term by subsection (l)(7) (without regard to subparagraph (D) thereof)."

Subsec. (c)(7)(E). Pub. L. 103–465, §751(a)(10)(B), added subpar. (E).

Subsec. (c)(12). Pub. L. 103–465, §753(a), added par. (12).

Subsec. (l)(1). Pub. L. 103–465, §751(a)(1)(A), (2)(B), in introductory provisions, substituted "to which this subsection applies under paragraph (9)" for "which has an unfunded current liability", and amended concluding provisions generally. Prior to amendment, concluding provisions read as follows: "Such increase shall not exceed the amount necessary to increase the funded current liability percentage to 100 percent."

Subsec. (l)(1)(A)(ii). Pub. L. 103–465, §751(a)(2)(A), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: "the sum of the charges for such plan year under subparagraphs (B) (other than clauses (iv) and (v) thereof), (C), and (D) of subsection (b)(2), reduced by the sum of the credits for such plan year under subparagraph (B)(i) of subsection (b)(3), plus".

Subsec. (l)(2)(C). Pub. L. 103–465, §751(a)(3), added subpar. (C).

Subsec. (l)(2)(D). Pub. L. 103–465, §751(a)(7)(B)(i), added subpar. (D).

Subsec. (l)(3)(D), (E). Pub. L. 103–465, §751(a)(4)(A), added subpars. (D) and (E).

Subsec. (l)(4)(B)(i). Pub. L. 103–465, §751(a)(4)(B), (7)(B)(iii), inserted ", the unamortized portion of the additional unfunded old liability, the unamortized portion of each unfunded mortality increase," after "old liability".

Subsec. (l)(4)(C). Pub. L. 103–465, §751(a)(5), substituted ".40" for ".25" in cl. (i) and "60" for "35" in cl. (ii).

Subsec. (l)(5)(A). Pub. L. 103–465, §751(a)(6)(A)(i), substituted "greatest of" for "greater of" in introductory provisions.

Subsec. (l)(5)(A)(iii). Pub. L. 103–465, §751(a)(6)(A)(ii)–(iv), added cl. (iii).

Subsec. (l)(5)(E). Pub. L. 103–465, §751(a)(6)(B), added subpar. (E).

Subsec. (l)(7)(C). Pub. L. 103–465, §751(a)(7)(A), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: "(C) INTEREST RATES USED.—The rate of interest used to determine current liability shall be the rate of interest used under subsection (b)(5)."

Subsec. (l)(9). Pub. L. 103–465, §751(a)(1)(B), added par. (9).

Subsec. (l)(10). Pub. L. 103–465, §751(a)(7)(B)(ii), added par. (10).

Subsec. (l)(11). Pub. L. 103–465, §751(a)(8), added par. (11).

Subsec. (m)(1). Pub. L. 103–465, §754(a), in introductory provisions, inserted "which has a funded current liability percentage (as defined in subsection (l)(8)) for the preceding plan year of less than 100 percent" before "fails" and substituted "the plan year" for "any plan year".

Subsec. (m)(4)(D)(ii). Pub. L. 103–465, §751(a)(6)(C)(i), substituted "greatest of" for "greater of" in introductory provisions.

Subsec. (m)(4)(D)(ii)(III). Pub. L. 103–465, §751(a)(6)(C)(ii)–(iv), added subcl. (III).

Subsec. (m)(5), (6). Pub. L. 103–465, §751(a)(9)(A), added par. (5) and redesignated former par. (5) as (6).

Subsec. (n)(2). Pub. L. 103–465, §768(a)(1), inserted at end "This subsection shall not apply to any plan to which section 4021 of the Employee Retirement Income Security Act of 1974 does not apply (as such section

is in effect on the date of the enactment of the Retirement Protection Act of 1994)."

Subsec. (n)(3). Pub. L. 103–465, §768(a)(2), reenacted par. (3) heading without change and amended text generally. Prior to amendment, text read as follows: "For purposes of paragraph (1), the amount of the lien shall be equal to the lesser of—

"(A) the amount by which the unpaid balances described in paragraph (1)(B) (including interest) exceed $1,000,000, or

"(B) the aggregate unpaid balance of required installments and other payments required under this section (including interest)—

"(i) for plan years beginning after 1987, and

"(ii) for which payment has not been made before the due date."

Subsec. (n)(4)(B). Pub. L. 103–465, §768(a)(3), struck out "60th day following the" before "due date".

1989—Subsec. (b)(5)(B)(iii). Pub. L. 101–239, §7881(d)(1)(A), struck out "for purposes of this section and for purposes of determining current liability," before "the interest rate" in introductory provisions.

Subsec. (c)(9). Pub. L. 101–239, §7881(a)(6)(A), substituted "Annual" for "3-year" in heading and "every year" for "every 3 years" in text.

Subsec. (c)(10)(A). Pub. L. 101–239, §7881(b)(1)(A), substituted "Defined benefit plans" for "Plans" in heading and "defined benefit plan other" for "plan other" in introductory provisions.

Subsec. (c)(10)(B). Pub. L. 101–239, §7881(b)(2)(A), substituted "Other" for "Multiemployer" in heading and "plan not described in subparagraph (A)" for "multiemployer plan" in text.

Subsec. (d)(1)(A)(ii). Pub. L. 101–239, §7881(b)(6)(A)(ii), substituted "costs (including adjustments under subsection (b)(5)(B))" for "costs".

Subsec. (f)(4)(A). Pub. L. 101–239, §7881(c)(1), substituted "for benefit liabilities" for "the benefit liabilities".

Subsec. (l)(3)(C)(ii)(II). Pub. L. 101–239, §7881(a)(1)(A), substituted "reducing (but not below zero)" for "reducing".

Subsec. (l)(4)(B)(i). Pub. L. 101–239, §7881(a)(2)(A), substituted "liability and the unamortized portion of the unfunded existing benefit increase liability" for "liability".

Subsec. (l)(5)(C). Pub. L. 101–239, §7881(a)(3)(A), substituted "the first plan year beginning after December 31, 1988" for "October 17, 1987".

Subsec. (l)(7)(D)(iii)(III). Pub. L. 101–239, §7881(a)(4)(A)(i), added subcl. (III).

Subsec. (l)(7)(D)(iv). Pub. L. 101–239, §7881(a)(4)(A)(ii), added cl. (iv).

Subsec. (l)(8)(A)(ii). Pub. L. 101–239, §7881(a)(5)(A)(i), struck out "reduced by any credit balance in the funding standard account" after "under subsection (c)(2)".

Subsec. (l)(8)(E). Pub. L. 101–239, §7881(a)(5)(A)(ii), added subpar. (E).

Subsec. (m)(1). Pub. L. 101–239, §7881(b)(3)(A), substituted "defined benefit plan (other than" for "plan (other than" in introductory provisions.

Subsec. (m)(1)(B). Pub. L. 101–239, §7881(b)(6)(A)(i), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "the rate under subsection (b)(5)."

Subsec. (m)(4)(D). Pub. L. 101–239, §7881(b)(4)(A), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: "In the case of a plan with any unpredictable contingent event benefit liabilities—

"(i) such liabilities shall not be taken into account in computing the required annual payment under subparagraph (B), and

"(ii) each required installment shall be increased by the greater of—

"(I) the amount of benefits described in subsection (l)(5)(A)(i) paid during the 3-month period preceding the month in which the due date for such installment occurs, or

"(II) 25 percent of the amount determined under subsection (l)(5)(A)(ii) for the plan year."

1988—Subsec. (l)(3)(C)(i), (iii). Pub. L. 100–647, §2005(a)(2)(A), (d)(1), amended cl. (i) identically, substituting "October 29" for "October 17" and amended cl. (iii) identically, substituting "October 28" for "October 16".

1987—Subsec. (b)(2). Pub. L. 100–203, §9303(a)(2), inserted at end "For additional requirements in the case of plans other than multiemployer plans, see subsection (l)."

Subsec. (b)(2)(B)(iv). Pub. L. 100–203, §9307(a)(1)(A), substituted "5 plan years (15 plan years in the case of a multiemployer plan)" for "15 plan years".

Subsec. (b)(2)(B)(v). Pub. L. 100–203, §9307(a)(1)(B), substituted "10 plan years (30 plan years in the case of a multiemployer plan)" for "30 plan years".

Subsec. (b)(2)(C), (3)(B)(ii). Pub. L. 100–203, §9307(a)(1)(A), substituted "5 plan years (15 plan years in the case of a multiemployer plan)" for "15 plan years".

Subsec. (b)(3)(B)(iii). Pub. L. 100–203, §9307(a)(1)(B), substituted "10 plan years (30 plan years in the

case of a multiemployer plan)" for "30 plan years".

Subsec. (b)(5). Pub. L. 100–203, §9307(e)(1), amended par. (5) generally. Prior to amendment, par. (5) read as follows: "The funding standard account (and items therein) shall be charged or credited (as determined under regulations prescribed by the Secretary) with interest at the appropriate rate consistent with the rate or rates of interest used under the plan to determine costs."

Subsec. (c)(2)(B). Pub. L. 100–203, §9303(d)(1), inserted at end "In the case of a plan other than a multiemployer plan, this subparagraph shall not apply, but the Secretary may by regulations provide that the value of any dedicated bond portfolio of such plan shall be determined by using the interest rate under subsection (b)(5)."

Subsec. (c)(3). Pub. L. 100–203, §9307(b)(1), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "For purposes of this section, all costs, liabilities, rates of interest, and other factors under the plan shall be determined on the basis of actuarial assumptions and methods which, in the aggregate, are reasonable (taking into account the experience of the plan and reasonable expectations) and which, in combination, offer the actuary's best estimate of anticipated experience under the plan."

Subsec. (c)(7). Pub. L. 100–203, §9301(a), substituted "Full-funding" for "Full funding" in heading and amended text generally. Prior to amendment, text read as follows: "For purposes of paragraph (6), the term full funding limitation means the excess (if any) of—

"(A) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

"(B) the lesser of the fair market value of the plan's assets or the value of such assets determined under paragraph (2)."

Subsec. (c)(10). Pub. L. 100–203, §9304(a)(1), amended par. (10) generally. Prior to amendment, par. (10) read as follows: "For purposes of this section, any contributions for a plan year made by an employer after the last day of such plan year, but not later than two and one-half months after such day, shall be deemed to have been made on such last day. For purposes of this paragraph, such two and one-half month period may be extended for not more than six months under regulations prescribed by the Secretary."

Subsec. (c)(11). Pub. L. 100–203, §9305(b)(1), added par. (11).

Subsec. (d)(1). Pub. L. 100–203, §9306(a)(1)(B), struck out "substantial" after "in case of" in heading, and substituted "temporary substantial business hardship (substantial business hardship in the case of a multiemployer plan)" for "substantial business hardship" in text.

Pub. L. 100–203, §9306(b)(1), substituted "more than 3 of any 15 (5 of any 15 in the case of a multiemployer plan)" for "more than 5 of any 15".

Pub. L. 100–203, §9306(c)(1)(A), substituted "The interest rate used for purposes of computing the amortization charge described in subsection (b)(2)(C) for any plan year shall be—" and subpars. (A) and (B) for "The interest rate used for purposes of computing the amortization charge described in section 412(b)(2)(C) for a variance granted under this subsection shall be the rate determined under section 6621(b)."

Subsec. (d)(2). Pub. L. 100–203, §9306(a)(1)(B), struck out "substantial" after "Determination of" in heading, and substituted "temporary substantial business hardship (substantial business hardship in the case of a multiemployer plan)" for "substantial business hardship" in introductory provisions.

Subsec. (d)(4). Pub. L. 100–203, §9306(a)(1)(A), added par. (4).

Subsec. (d)(5). Pub. L. 100–203, §9306(a)(1)(C), added par. (5).

Subsec. (e). Pub. L. 100–203, §9306(c)(1)(B), substituted last two sentences for "The interest rate applicable under any arrangement entered into by the Secretary in connection with an extension granted under this subsection shall be the rate determined under section 6621(b)."

Subsec. (f)(3)(C)(i). Pub. L. 100–203, §9306(e)(1), substituted "$1,000,000" for "$2,000,000" at end.

Subsec. (f)(4)(A). Pub. L. 100–203, §9306(d)(1), substituted "plan, and each participant, beneficiary, and alternate payee (within the meaning of section 414(p)(8)). Such notice shall include a description of the extent to which the plan is funded for benefits which are guaranteed under title IV of such Act and the benefit liabilities." for "plan."

Subsec. (l). Pub. L. 100–203, §9303(a)(1), added subsec. (l).

Subsec. (m). Pub. L. 100–203, §9304(b)(1), added subsec. (m).

Subsec. (n). Pub. L. 100–203, §9304(e)(1), added subsec. (n).

1986—Subsec. (d)(1). Pub. L. 99–272, §11015(b)(2)(A), inserted provision that the interest rate used for purposes of computing the amortization charge described in section 412(b)(2)(C) for a variance granted under this subsection be the rate determined under section 6621(b).

Subsec. (e). Pub. L. 99–272, §11015(b)(2)(B), inserted provision that the interest rate applicable under any arrangement entered into by the Secretary in connection with an extension granted under this subsection be the

rate determined under section 6621(b).

Subsec. (f). Pub. L. 99–272, §11015(a)(2), substituted in heading "Requirements relating to waivers and extensions" for "Benefits may not be increased during waiver or extension period" and in par. (1) heading "Benefits may not be increased during waiver or extension period" for "In general", and added par. (3).

Pub. L. 99–272, §11016(c)(4), added par. (4).

1984—Subsec. (a)(2). Pub. L. 98–369 struck out "or 405(a)" after "section 403(a)".

1980—Subsec. (a). Pub. L. 96–364, §208(c), inserted provisions relating to plan years where multiemployer plan is in reorganization.

Subsec. (b). Pub. L. 96–364, §203(1), (2), struck out in pars. (2)(B)(ii), (iii), and (3)(B)(i) provisions respecting applicability of multiemployer plans with 40 plan years and in pars. (2)(B)(iv) and (3)(B)(ii) provisions respecting applicability of multiemployer plans with 20 year plans and added pars. (6) and (7).

Subsecs. (j), (k). Pub. L. 96–364, §203(3), added subsecs. (j) and (k).

1976—Subsecs. (a) to (d). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (h). Pub. L. 94–455, §1901(a)(63), substituted reference to Sept. 2, 1974, for reference to the date of enactment of the Employee Retirement Income Security Act of 1974 in par. (5) and substituted reference to Sept. 1, 1974, for reference to the day before the date of enactment of the Employee Retirement Income Security Act of 1974 in the provisions following par. (6).

Subsec. (i). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–97 applicable to years beginning after Dec. 31, 2013, see section 3 of Pub. L. 113–97, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–458 effective as if included in the provisions of Pub. L. 109–280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110–458, set out as a note under section 72 of this title.

EFFECTIVE AND TERMINATION DATES OF 2006 AMENDMENT

Pub. L. 109–280, title I, §111(b), Aug. 17, 2006, 120 Stat. 826, provided that: "The amendments made by this section [amending this section] shall apply to plan years beginning after December 31, 2007."

Pub. L. 109–280, title II, §212(e), Aug. 17, 2006, 120 Stat. 917, as amended by Pub. L. 110–458, title I, §102(b)(3)(B), (C), Dec. 23, 2008, 122 Stat. 5103, provided that:

"(1) IN GENERAL.—The amendments made by this section [enacting section 432 of this title and amending this section and section 4971 of this title] shall apply with respect to plan years beginning after 2007, except that the amendments made by subsection (b) [amending section 4971 of this title] shall apply to taxable years beginning after 2007, but only with respect to plan years beginning after 2007 which end with or within any such taxable year.

"(2) SPECIAL RULE FOR CERTAIN NOTICES.—In any case in which a plan's actuary certifies that it is reasonably expected that a multiemployer plan will be in critical status under section 432(b)(3) of the Internal Revenue Code of 1986, as added by this section, with respect to the first plan year beginning after 2007, the notice required under subparagraph (D) of such section may be provided at any time after the date of enactment [Aug. 17, 2006], so long as it is provided on or before the last date for providing the notice under such subparagraph.

"(3) SPECIAL RULE FOR CERTAIN RESTORED BENEFITS.—In the case of a multiemployer plan—

"(A) with respect to which benefits were reduced pursuant to a plan amendment adopted on or after January 1, 2002, and before June 30, 2005, and

"(B) which, pursuant to the plan document, the trust agreement, or a formal written communication from the plan sponsor to participants provided before June 30, 2005, provided for the restoration of such benefits,

the amendments made by this section shall not apply to such benefit restorations to the extent that any restriction on the providing or accrual of such benefits would otherwise apply by reason of such amendments."

Pub. L. 109–280, title II, §221(c), Aug. 17, 2006, 120 Stat. 919, provided that:

"(1) IN GENERAL.—Except as provided in this subsection, notwithstanding any other provision of this Act [see Tables for classification], the provisions of, and the amendments made by, sections 201(b), 202, and 212 [enacting section 432 of this title and section 1085 of Title 29, Labor, amending this section, section 4971 of this title, and sections 1082 and 1132 of Title 29, and enacting provisions set out as notes under this section and sections 1082 and 1084 of Title 29] shall not apply to plan years beginning after December 31, 2014.

"(2) FUNDING IMPROVEMENT AND REHABILITATION PLANS.—If a plan is operating under a

funding improvement or rehabilitation plan under section 305 of such Act [probably means section 305 of the Employee Retirement Income Security Act of 1974, Pub. L. 93–406, 29 U.S.C. 1085] or 432 of such Code [probably means section 432 of the Internal Revenue Code of 1986] for its last year beginning before January 1, 2015, such plan shall continue to operate under such funding improvement or rehabilitation plan during any period after December 31, 2014, such funding improvement or rehabilitation plan is in effect and all provisions of such Act or Code relating to the operation of such funding improvement or rehabilitation plan shall continue in effect during such period."

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 101(b)(1)–(3) of Pub. L. 108–218 applicable, except as otherwise provided, to plan years beginning after Dec. 31, 2003, see section 101(d) of Pub. L. 108–218, set out as a note under section 404 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by section 411(v)(1) of Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–16, title VI, §651(c), June 7, 2001, 115 Stat. 129, provided that: "The amendments made by this section [amending this section and section 1082 of Title 29, Labor] shall apply to plan years beginning after December 31, 2001."

Pub. L. 107–16, title VI, §661(c), June 7, 2001, 115 Stat. 142, provided that: "The amendments made by this section [amending this section and section 1082 of Title 29, Labor] shall apply to plan years beginning after December 31, 2001."

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XV, §1521(d)(1), Aug. 5, 1997, 111 Stat. 1070, provided that: "The amendments made by this section [amending this section and section 1082 of Title 29, Labor] shall apply to plan years beginning after December 31, 1998."

Pub. L. 105–34, title XVI, §1604(b)(4), Aug. 5, 1997, 111 Stat. 1097, provided that: "The amendments made by this subsection [amending this section, section 6621 of this title, section 1082 of Title 29, Labor, and provisions set out as a note under section 411 of this title] shall take effect as if included in the sections of the Uruguay Round Agreements Act [Pub. L. 103–465] to which they relate."

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 751(a)(1)–(9)(A), (10) of Pub. L. 103–465 applicable to plan years beginning after Dec. 31, 1994, see section 751(b)(1) of Pub. L. 103–465, set out as a note under section 401 of this title.

Pub. L. 103–465, title VII, §752(b), Dec. 8, 1994, 108 Stat. 5023, provided that:

"(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to changes in assumptions for plan years beginning after October 28, 1993.

"(2) CERTAIN CHANGES CEASE TO BE EFFECTIVE.—In the case of changes in assumptions for plan years beginning after December 31, 1992, and on or before October 28, 1993, such changes shall cease to be effective for plan years beginning after December 31, 1994, if—

"(A) such change would have required the approval of the Secretary of the Treasury had such amendment applied to such change, and

"(B) such change is not so approved."

Pub. L. 103–465, title VII, §753(b), Dec. 8, 1994, 108 Stat. 5023, provided that: "The amendment made by this section [amending this section] shall apply to plan years beginning after December 31, 1994, with respect to collective bargaining agreements in effect on or after January 1, 1995."

Pub. L. 103–465, title VII, §754(b), Dec. 8, 1994, 108 Stat. 5023, provided that: "The amendment made by this section [amending this section] shall apply to plan years beginning after the date of enactment of this Act [Dec. 8, 1994]."

Pub. L. 103–465, title VII, §768(c), Dec. 8, 1994, 108 Stat. 5041, provided that: "The amendments made by this section [amending this section and section 1082 of Title 29, Labor] shall be effective for installments and other payments required under section 412 of the Internal Revenue Code of 1986 or under part 3 of subtitle B [of title I] of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1081 et seq.] that become due on or after the date of enactment [Dec. 8, 1994]."

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Pension Protection Act, Pub. L. 100–203, §§9302–9346, to which such amendment relates, see section 7882 of Pub. L. 101–239, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective as if included in the amendments made by the provisions of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, to which it relates, see section 2005(e) of Pub. L. 100–647, as amended, set out as a note under section 404 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title IX, §9301(c)(1), (2), Dec. 22, 1987, 101 Stat. 1330–333, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and section 1082 of Title 29, Labor] shall apply to years beginning after December 31, 1987.

"(2) REGULATIONS.—The Secretary of the Treasury or his delegate shall prescribe such regulations as are necessary to carry out the amendments made by this section no later than August 15, 1988."

Pub. L. 100–203, title IX, §9303(e), Dec. 22, 1987, 101 Stat. 1330–342, as amended by Pub. L. 101–239, title VII, §7881(a)(7), Dec. 19, 1989, 103 Stat. 2436, provided that:

"(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section and section 1082 of Title 29, Labor] shall apply with respect to plan years beginning after December 31, 1988.

"(2) SUBSECTIONS (c) AND (d).—The amendments made by subsections (c) [set out below] and (d) [amending this section and section 1082 of Title 29] shall apply with respect to years beginning after December 31, 1987.

"(3) SPECIAL RULE FOR STEEL COMPANIES.—

"(A) IN GENERAL.—For any plan year beginning before January 1, 1994, any increase in the funding standard account under [former] section 412(l) of the 1986 Code or section 302(d) of ERISA (as added by this section) [29 U.S.C. 1082(d)] with respect to any steel employee plan shall not exceed the sum of—

"(i) the required percentage of the current liability under such plan, plus

"(ii) the amount determined under subparagraph (C)(i) for such plan year.

"(B) REQUIRED PERCENTAGE.—For purposes of subparagraph (A), the term 'required percentage' means, with respect to any plan year, the excess (if any) of—

"(i) the sum of—

"(I) the funded current liability percentage as of the beginning of the 1st plan year beginning after December 31, 1988 (determined without regard to any plan amendment adopted after June 30, 1987), plus

"(II) 1 percentage point for the plan year for which the determination under this paragraph is being made and for each prior plan year beginning after December 31, 1988, over

"(ii) the funded current liability percentage as of the beginning of the plan year for which such determination is being made.

"(C) SPECIAL RULES FOR CONTINGENT EVENTS.—In the case of any unpredictable contingent event benefit with respect to which the event on which such benefits are contingent occurs after December 17, 1987—

"(i) AMORTIZATION AMOUNT.—For purposes of subparagraph (A)(ii), the amount determined under this clause for any plan year is the amount which would be determined if the unpredictable contingent event benefit liability were amortized in equal annual installments over 10 plan years (beginning with the plan year in which such event occurs).

"(ii) BENEFIT AND CONTRIBUTIONS NOT TAKEN INTO ACCOUNT.—For purposes of subparagraph (B), in determining the funded current liability percentage for any plan year, there shall not be taken into account—

"(I) the unpredictable contingent event benefit liability, or

"(II) any amount contributed to the plan which is attributable to clause (i) (and any income allocable to such amount).

"(D) STEEL EMPLOYEE PLAN.—For purposes of this paragraph, the term 'steel employee plan' means any plan if—

"(i) such plan is maintained by a steel company, and

"(ii) substantially all of the employees covered by such plan are employees of such company.

"(E) OTHER DEFINITIONS.—For purposes of this paragraph—

"(i) STEEL COMPANY.—The term 'steel company' means any corporation described in section 806(b) of the Steel Import Stabilization Act [section 806(b) of Pub. L. 98–573, 19 U.S.C. 2253 note].

"(ii) OTHER DEFINITIONS.—The terms 'current liability', 'funded current liability percentage', and 'unpredictable contingent event benefit' have the meanings given such terms by [former] section 412(l) of the 1986 Code (as added by this section).

"(F) SPECIAL RULE.—The provisions of this paragraph shall apply in the case of a company which was originally incorporated on April 25, 1927, in Michigan and reincorporated on June 3, 1968, in Delaware in the same manner as if such company were a steel company."

Pub. L. 100–203, title IX, §9304(a)(3), Dec. 22, 1987, 101 Stat. 1330–344, provided that: "The amendments made by this subsection [amending this section and section 1082 of Title 29, Labor] shall apply to plan years beginning after December 31, 1987."

Pub. L. 100–203, title IX, §9304(b)(3), Dec. 22, 1987, 101 Stat. 1330–347, provided that: "The amendments made by this subsection [amending this section and section 1082 of Title 29] shall apply with respect to plan years beginning after 1988."

Pub. L. 100–203, title IX, §9304(e)(3), Dec. 22, 1987, 101 Stat. 1330–351, provided that: "The amendments made by this subsection [amending this section and section 1082 of Title 29] shall apply to plan years beginning after December 31, 1987."

Pub. L. 100–203, title IX, §9305(d), Dec. 22, 1987, 101 Stat. 1330–352, provided that: "The amendments made by this section [amending this section and sections 414 and 4971 of this title and section 1082 of Title 29] shall apply with respect to plan years beginning after December 31, 1987."

Pub. L. 100–203, title IX, §9306(f), Dec. 22, 1987, 101 Stat. 1330–355, as amended by Pub. L. 101–239, title VII, §7881(c)(3), Dec. 19, 1989, 103 Stat. 2439, provided that:

"(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section and sections 1083, 1084, and 1085a of Title 29, Labor] shall apply in the case of—

"(A) any application submitted after December 17, 1987, and

"(B) any waiver granted pursuant to such an application.

"(2) SPECIAL RULE FOR APPLICATION REQUIREMENT.—

"(A) IN GENERAL.—The amendments made by subsections (a)(1)(A) and (a)(2)(A) [amending this section and section 1083 of Title 29] shall apply to plan years beginning after December 31, 1987.

"(B) TRANSITIONAL RULE FOR YEARS BEGINNING IN 1988.—In the case of any plan year beginning during calendar 1988, [former] section 412(d)(4) of the 1986 Code and section 303(d)(1) of ERISA [29 U.S.C. 1083(d)(1)] (as added by subsection (a)(1) [and (2)]) shall be applied by substituting '6th month' for '3rd month'.

"(3) SUBSECTION (b).—The amendments made by subsection (b) [amending this section and section 1083 of Title 29] shall apply to waivers for plan years beginning after December 31, 1987. For purposes of applying such amendments, the number of waivers which may be granted for plan years after December 31, 1987, shall be determined without regard to any waivers granted for plan years beginning before January 1, 1988.

"(4) SUBSECTION (d).—The amendments made by subsection (d) [amending this section and section 1083 of Title 29] shall apply to applications submitted more than 90 days after the date of the enactment of this Act [Dec. 22, 1987]."

Amendment by section 9307(a)(1), (b)(1), (e)(1) of Pub. L. 100–203 applicable to years beginning after Dec. 31, 1987, except that subsec. (b)(2)(B)(iv) and (3)(B)(ii) of this section (as amended by section 9307(a)(1)(A) of Pub. L. 100–203) is applicable to gains and losses established in years beginning after Dec. 31, 1987, see section 9307(f) of Pub. L. 100–203, as amended, set out as a note under section 404 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–272, title XI, §11015(a)(3), Apr. 7, 1986, 100 Stat. 267, provided that: "The amendments made by this subsection [enacting section 1085a of Title 29, Labor, and amending this section and section 1061 of Title 29] shall apply with respect to applications for waivers, extensions, and modifications filed on or after the date of the enactment of this Act [Apr. 7, 1986]."

Amendment by sections 11015(b)(2) and 11016(c)(4) of Pub. L. 99–272 effective Jan. 1, 1986, with certain exceptions, see section 11019 of Pub. L. 99–272, set out as a note under section 1341 of Title 29.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–364 effective Sept. 26, 1980, see section 210(a) of Pub. L. 96–364, set out as an Effective Date note under section 418 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(63) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE

Section applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93–406, for plan years beginning after Sept. 2, 1974, and, in the case of plans in existence on Jan. 1, 1974, for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93–406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

REGULATIONS

Pub. L. 103–465, title VII, §769, Dec. 8, 1994, 108 Stat. 5041, as amended by Pub. L. 105–34, title XV, §1508(a), Aug. 5, 1997, 111 Stat. 1067; Pub. L. 108–218, title II, §201(a), Apr. 10, 2004, 118 Stat. 608; Pub. L. 109–280, title I, §115(d)(1), (e)(1), Aug. 17, 2006, 120 Stat. 856, provided that:

"(a) FUNDING RULES NOT TO APPLY TO CERTAIN PLANS.—Any changes made by this Act [Pub. L. 103–465] to section 412 of the Internal Revenue Code of 1986 or to part 3 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1081 et seq.] shall not apply to—

"(1) a plan which is, on the date of enactment of this Act [Dec. 8, 1994], subject to a restoration payment schedule order issued by the Pension Benefit Guaranty Corporation that meets the requirements of section 1.412(c)(1)–3 of the Treasury Regulations, or

"(2) a plan established by an affected air carrier (as defined under section 4001(a)(14)(C)(ii)(I) of such Act [29 U.S.C. 1301(a)(14)(C)(ii)(I)]) and assumed by a new plan sponsor pursuant to the terms of a written agreement with the Pension Benefit Guaranty Corporation dated January 5, 1993, and approved by the United States Bankruptcy Court for the District of Delaware on December 30, 1992.

"(b) CHANGE IN ACTUARIAL METHOD.—Any amortization installments for bases established under [former] section 412(b) of the Internal Revenue Code of 1986 and section 302(b) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1082(b)] for plan years beginning after December 31, 1987, and before January 1, 1993, by reason of nonelective changes under the frozen entry age actuarial cost method shall not be included in the calculation of offsets under [former] section 412(l)(1)(A)(ii) of such Code and section 302(d)(1)(A)(ii) of such Act for the 1st 5 plan years beginning after December 31, 1994."

[Pub. L. 109–280, title I, §115(d)(2), Aug. 17, 2006, 120 Stat. 856, provided that: "The amendment made by paragraph (1) [amending section 769 of Pub. L. 103–465, set out above] shall apply to plan years beginning after December 31, 2005."]

[Pub. L. 109–280, title I, §115(e)(2), Aug. 17, 2006, 120 Stat. 856, provided that: "The amendment made by paragraph (1) [amending section 769 of Pub. L. 103–465, set out above] shall take effect on December 31, 2007, and shall apply to plan years beginning after such date."]

[Pub. L. 108–218, title II, §201(b), Apr. 10, 2004, 118 Stat. 608, provided that: "The amendments made by this section [amending section 769 of Pub. L. 103–465, set out above] shall apply to plan years beginning after December 31, 2003."]

[Pub. L. 105–34, title XV, §1508(b), Aug. 5, 1997, 111 Stat. 1068, provided that: "The amendment made by this section [amending section 769 of Pub. L. 103–465, set out above] shall apply to plan years beginning after December 31, 1996."]

Pub. L. 100–203, title IX, §9303(c), Dec. 22, 1987, 101 Stat. 1330–342, provided that: "Effective with respect to plan years beginning after December 31, 1987, the provisions of the regulations prescribed under section 412(c)(2) of the 1986 Code which permit asset valuations to be based on a range between 85 percent and 115 percent of average value shall have no force and effect with respect to plans other than multiemployer plans (as defined in section 414(f) of the 1986 Code). The Secretary of the Treasury or his delegate shall amend such regulations to carry out the purposes of the preceding sentence."

APPLICABILITY OF AMENDMENTS BY SUBTITLES A AND B OF TITLE I OF PUB. L. 109–280

For special rules on applicability of amendments by subtitles A (§§101–108) and B (§§111–116) of title I of Pub. L. 109–280 to certain eligible cooperative plans, PBGC settlement plans, and eligible government contractor plans, see sections 104, 105, and 106 of Pub. L. 109–280, set out as notes under section 401 of this title.

SPECIAL RULE FOR CERTAIN BENEFITS FUNDED UNDER AN AGREEMENT APPROVED BY

THE PENSION BENEFIT GUARANTY CORPORATION

Pub. L. 109–280, title II, §206, Aug. 17, 2006, 120 Stat. 889, provided that: "In the case of a multiemployer plan that is a party to an agreement that was approved by the Pension Benefit Guaranty Corporation prior to June 30, 2005, and that—

"(1) increases benefits, and

"(2) provides for special withdrawal liability rules under section 4203(f) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1383[(f)]),

the amendments made by sections 201, 202, 211, and 212 of this Act [enacting sections 431 and 432 of this title and sections 1084 and 1085 of Title 29, Labor, and amending this section, section 4971 of this title, and sections 1081, 1082, and 1132 of Title 29] shall not apply to the benefit increases under any plan amendment adopted prior to June 30, 2005, that are funded pursuant to such agreement if the plan is funded in compliance with such agreement (and any amendments thereto)."

APPLICABILITY OF SECTION TO CERTAIN PLANS MAINTAINED BY COMMERCIAL AIRLINES

For special rules on applicability of this section to certain plans maintained by commercial airlines, see section 402 of Pub. L. 109–280, set out as a note under section 430 of this title.

EFFECT OF ELECTION

Pub. L. 108–218, title I, §102(c), Apr. 10, 2004, 118 Stat. 602, provided that: "An election under section 302(d)(12) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1082(d)(12)] or [former] section 412(l)(12) of the Internal Revenue Code of 1986 (as added by this section) with respect to a plan shall not invalidate any obligation (pursuant to a collective bargaining agreement in effect on the date of the election) to provide benefits, to change the accrual of benefits, or to change the rate at which benefits become nonforfeitable under the plan."

SPECIAL RULE FOR UNAMORTIZED BALANCES UNDER EXISTING LAW

Pub. L. 105–34, title XV, §1521(d)(2), Aug. 5, 1997, 111 Stat. 1070, provided that: "The unamortized balance (as of the close of the plan year preceding the plan's first year beginning in 1999) of any amortization base established under [former] section 412(c)(7)(D)(iii) of such Code [26 U.S.C. 412(c)(7)(D)(iii)] and section 302(c)(7)(D)(iii) of such Act [29 U.S.C. 1082(c)(7)(D)(iii)] (as repealed by subsection (c)(3)) for any plan year beginning before 1999 shall be amortized in equal annual installments (until fully amortized) over a period of years equal to the excess of—

"(A) 20 years, over

"(B) the number of years since the amortization base was established."

ALTERNATIVE AMORTIZATION METHOD FOR CERTAIN MULTIEMPLOYER PLANS

Pub. L. 93–406, title II, §1013(d), Sept. 2, 1974, 88 Stat. 923, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) GENERAL RULE.—In the case of any multiemployer plan (as defined in section 414(f) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) to which section 412 of such Code applies, if—

"(A) on January 1, 1974, the contributions under the plan were based on a percentage of pay,

"(B) the actuarial assumptions with respect to pay are reasonably related to past and projected experience, and

"(C) the rates of interest under the plan are determined on the basis of reasonable actuarial assumptions,

the plan may elect (in such manner and at such time as may be provided under regulations prescribed by the Secretary of the Treasury or his delegate) to fund the unfunded past service liability under the plan existing as of the date 12 months following the first date on which such section 412 first applies to the plan by charging the funding standard account with an equal annual percentage of the aggregate pay of all participants in the plan in lieu of the level dollar charges to such account required under clauses (i), (ii), and (iii) of [former] section 412(b)(2)(B) of such Code and section 302(b)(2)(B)(i), (ii), and (iii) of this Act [section 1082(b)(2)(B)(i), (ii), and (iii) of Title 29, Labor].

"(2) LIMITATION.—In the case of a plan which makes an election under paragraph (1), the aggregate of the charges required under such paragraph for a plan year shall not be less than the interest on the unfunded past service liabilities described in clauses (i), (ii), and (iii) of [former] section 412(b)(2)(B) of the Internal Revenue Code of 1986."

[1] *So in original. Probably should be followed by a period.*

[2] *So in original. Probably should be preceded by "section".*

[3] *So in original. The comma probably should not appear.*

§413. Collectively bargained plans, etc.

(a) Application of subsection (b)

Subsection (b) applies to—

(1) a plan maintained pursuant to an agreement which the Secretary of Labor finds to be a collective-bargaining agreement between employee representatives and one or more employers, and

(2) each trust which is a part of such plan.

(b) General rule

If this subsection applies to a plan, notwithstanding any other provision of this title—

(1) Participation

Section 410 shall be applied as if all employees of each of the employers who are parties to the collective-bargaining agreement and who are subject to the same benefit computation formula under the plan were employed by a single employer.

(2) Discrimination, etc.

Sections 401(a)(4) and 411(d)(3) shall be applied as if all participants who are subject to the same benefit computation formula and who are employed by employers who are parties to the collective bargaining agreement were employed by a single employer.

(3) Exclusive benefit

For purposes of section 401(a), in determining whether the plan of an employer is for the exclusive benefit of his employees and their beneficiaries, all plan participants shall be considered to be his employees.

(4) Vesting

Section 411 (other than subsection (d)(3)) shall be applied as if all employers who have been parties to the collective-bargaining agreement constituted a single employer, except that the application of any rules with respect to breaks in service shall be made under regulations prescribed by the Secretary of Labor.

(5) Funding

The minimum funding standard provided by section 412 shall be determined as if all participants in the plan were employed by a single employer.

(6) Liability for funding tax

For a plan year the liability under section 4971 of each employer who is a party to the collective bargaining agreement shall be determined in a reasonable manner not inconsistent with regulations prescribed by the Secretary—

(A) first on the basis of their respective delinquencies in meeting required employer contributions under the plan, and

(B) then on the basis of their respective liabilities for contributions under the plan.

For purposes of this subsection and the last sentence of section 4971(a),[1] an employer's withdrawal liability under part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974 shall not be treated as a liability for contributions under the plan.

(7) Deduction limitations

Each applicable limitation provided by section 404(a) shall be determined as if all participants in the plan were employed by a single employer. The amounts contributed to or under the plan by each employer who is a party to the agreement, for the portion of his taxable year which is included within such a plan year, shall be considered not to exceed such a limitation if the anticipated employer contributions for such plan year (determined in a manner consistent with the manner in which actual employer contributions for such plan year are determined) do not exceed such limitation. If such anticipated contributions exceed such a limitation, the portion of each such employer's contributions which is not deductible under section 404 shall be determined in accordance with regulations prescribed by the Secretary.

(8) Employees of labor unions

For purposes of this subsection, employees or employee representatives shall be treated as employees of an employer described in subsection (a)(1) if such representatives meet the requirements of sections 401(a)(4) and 410 with respect to such employees.

(9) Plans covering a professional employee

Notwithstanding subsection (a), in the case of a plan (and trust forming part thereof) which covers any professional employee, paragraph (1) shall be applied by substituting "section 410(a)" for "section 410", and paragraph (2) shall not apply.

(c) Plans maintained by more than one employer

In the case of a plan maintained by more than one employer—

(1) Participation

Section 410(a) shall be applied as if all employees of each of the employers who maintain the plan were employed by a single employer.

(2) Exclusive benefit

For purposes of section 401(a), in determining whether the plan of an employer is for the exclusive benefit of his employees and their beneficiaries all plan participants shall be considered to be his employees.

(3) Vesting

Section 411 shall be applied as if all employers who maintain the plan constituted a single employer, except that the application of any rules with respect to breaks in service shall be made under regulations prescribed by the Secretary of Labor.

(4) Funding

(A) In general

In the case of a plan established after December 31, 1988, each employer shall be treated as maintaining a separate plan for purposes of section 412 unless such plan uses a method for determining required contributions which provides that any employer contributes not less than the amount which would be required if such employer maintained a separate plan.

(B) Other plans

In the case of a plan not described in subparagraph (A), the requirements of section 412 shall be determined as if all participants in the plan were employed by a single employer unless the plan administrator elects not later than the close of the first plan year of the plan beginning after the date of enactment of the Technical and Miscellaneous Revenue Act of 1988 to have the provisions of subparagraph (A) apply. An election under the preceding sentence shall take effect for the plan year in which made and, once made, may be revoked only with the consent of the Secretary.

(5) Liability for funding tax

For a plan year the liability under section 4971 of each employer who maintains the plan shall

be determined in a reasonable manner not inconsistent with regulations prescribed by the Secretary—

(A) first on the basis of their respective delinquencies in meeting required employer contributions under the plan, and

(B) then on the basis of their respective liabilities for contributions under the plan.

(6) Deduction limitations

(A) In general

In the case of a plan established after December 31, 1988, each applicable limitation provided by section 404(a) shall be determined as if each employer were maintaining a separate plan.

(B) Other plans

(i) In general

In the case of a plan not described in subparagraph (A), each applicable limitation provided by section 404(a) shall be determined as if all participants in the plan were employed by a single employer, except that if an election is made under paragraph (4)(B), subparagraph (A) shall apply to such plan.

(ii) Special rule

If this subparagraph applies, the amounts contributed to or under the plan by each employer who maintains the plan (for the portion of the taxable year included within a plan year) shall be considered not to exceed any such limitation if the anticipated employer contributions for such plan year (determined in a reasonable manner not inconsistent with regulations prescribed by the Secretary) do not exceed such limitation. If such anticipated contributions exceed such a limitation, the portion of each such employer's contributions which is not deductible under section 404 shall be determined in accordance with regulations prescribed by the Secretary.

(7) Allocations

(A) In general

Except as provided in subparagraph (B), allocations of amounts under paragraphs (4), (5), and (6) among the employers maintaining the plan shall not be inconsistent with regulations prescribed for this purpose by the Secretary.

(B) Assets and liabilities of plan

For purposes of applying paragraphs (4)(A) and (6)(A), the assets and liabilities of each plan shall be treated as the assets and liabilities which would be allocated to a plan maintained by the employer if the employer withdrew from the multiple employer plan.

(d) CSEC plans

Notwithstanding any other provision of this section, in the case of a CSEC plan—

(1) Funding

The requirements of section 412 shall be determined as if all participants in the plan were employed by a single employer.

(2) Application of provisions

Paragraphs (1), (2), (3), and (5) of subsection (c) shall apply.

(3) Deduction limitations

Each applicable limitation provided by section 404(a) shall be determined as if all participants in the plan were employed by a single employer. The amounts contributed to or under the plan by each employer who maintains the plan (for the portion of the taxable year included within a plan year) shall be considered not to exceed such applicable limitation if the anticipated employer contributions for such plan year of all employers (determined in a reasonable manner not inconsistent with regulations prescribed by the Secretary) do not exceed such limitation. If such

anticipated contributions exceed such limitation, the portion of each such employer's contributions which is not deductible under section 404 shall be determined in accordance with regulations prescribed by the Secretary.

(4) Allocations

Allocations of amounts under paragraph (3) and subsection (c)(5) among the employers maintaining the plan shall not be inconsistent with the regulations prescribed for this purpose by the Secretary.

(Added Pub. L. 93–406, title II, §1014, Sept. 2, 1974, 88 Stat. 924; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–364, title II, §208(d), Sept. 26, 1980, 94 Stat. 1290; Pub. L. 100–647, title I, §1011(h)(10), title VI, §6058(a)–(c), Nov. 10, 1988, 102 Stat. 3466, 3698, 3699; Pub. L. 101–508, title XI, §11704(a)(4), Nov. 5, 1990, 104 Stat. 1388–518; Pub. L. 113–97, title II, §202(b), Apr. 7, 2014, 128 Stat. 1134.)

REFERENCES IN TEXT

The last sentence of section 4971(a), referred to in subsec. (b)(6), was struck out by Pub. L. 100–203, title IX, §9305(a)(2)(A), Dec. 22, 1987, 101 Stat. 1330–351.

The Employee Retirement Income Security Act of 1974, referred to in subsec. (b)(6), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, as amended. Part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974 is classified generally to part 1 (§1381 et seq.) of subtitle E of subchapter III of chapter 18 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

The date of enactment of the Technical and Miscellaneous Revenue Act of 1988, referred to in subsec. (c)(4)(B), is the date of enactment of Pub. L. 100–647, which was approved Nov. 10, 1988.

AMENDMENTS

2014—Subsec. (d). Pub. L. 113–97 added subsec. (d).

1990—Subsec. (c)(7)(B). Pub. L. 101–508 substituted "Assets" for "Asset" in heading.

1988—Subsec. (b)(9). Pub. L. 100–647, §1011(h)(10), added par. (9).

Subsec. (c). Pub. L. 100–647, §6058(c), struck out at end "Allocations of amounts under paragraphs (4), (5), and (6), among the employers maintaining the plan, shall not be inconsistent with regulations prescribed for this purpose by the Secretary."

Subsec. (c)(4). Pub. L. 100–647, §6058(a), amended par. (4) generally. Prior to amendment, par. (4) read as follows: "The minimum funding standard provided by section 412 shall be determined as if all participants in the plan were employed by a single employer."

Subsec. (c)(6). Pub. L. 100–647, §6058(b), amended par. (6) generally. Prior to amendment, par. (6) read as follows: "Each applicable limitation provided by section 404(a) shall be determined as if all participants in the plan were employed by a single employer. The amounts contributed to or under the plan by each employer who maintains the plan, for the portion of this taxable year which is included within such a plan year, shall be considered not to exceed such a limitation if the anticipated employer contributions for such plan year (determined in a reasonable manner not inconsistent with regulations prescribed by the Secretary) do not exceed such limitation. If such anticipated contributions exceed such a limitation, the portion of each such employer's contributions which is not deductible under section 404 shall be determined in accordance with regulations prescribed by the Secretary."

Subsec. (c)(7). Pub. L. 100–647, §6058(c), added par. (7).

1980—Subsec. (b)(6). Pub. L. 96–364 inserted provisions relating to withdrawal liability of employer.

1976—Subsecs. (b), (c). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–97 applicable to years beginning after Dec. 31, 2013, see section 3 of Pub. L. 113–97, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011(h)(10) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title VI, §6058(d), Nov. 10, 1988, 102 Stat. 3699, provided that: "Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to plan years

beginning after the date of the enactment of this Act [Nov. 10, 1988]."

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–364 effective Sept. 26, 1980, see section 210(a) of Pub. L. 96–364, set out as an Effective Date note under section 418 of this title.

EFFECTIVE DATE

Section applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93–406, for plan years beginning after Sept. 2, 1974, and, in the case of plans in existence on Jan. 1, 1974, for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93–406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

[1] See References in Text note below.

§414. Definitions and special rules

(a) Service for predecessor employer

For purposes of this part—

(1) in any case in which the employer maintains a plan of a predecessor employer, service for such predecessor shall be treated as service for the employer, and

(2) in any case in which the employer maintains a plan which is not the plan maintained by a predecessor employer, service for such predecessor shall, to the extent provided in regulations prescribed by the Secretary, be treated as service for the employer.

(b) Employees of controlled group of corporations

For purposes of sections 401, 408(k), 408(p), 410, 411, 415, and 416, all employees of all corporations which are members of a controlled group of corporations (within the meaning of section 1563(a), determined without regard to section 1563(a)(4) and (e)(3)(C)) shall be treated as employed by a single employer. With respect to a plan adopted by more than one such corporation, the applicable limitations provided by section 404(a) shall be determined as if all such employers were a single employer, and allocated to each employer in accordance with regulations prescribed by the Secretary.

(c) Employees of partnerships, proprietorships, etc., which are under common control

For purposes of sections 401, 408(k), 408(p), 410, 411, 415, and 416, under regulations prescribed by the Secretary, all employees of trades or businesses (whether or not incorporated) which are under common control shall be treated as employed by a single employer. The regulations prescribed under this subsection shall be based on principles similar to the principles which apply in the case of subsection (b).

(d) Governmental plan

For purposes of this part, the term "governmental plan" means a plan established and maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing. The term "governmental plan" also includes any plan to which the Railroad Retirement Act of 1935 or 1937 applies and which is financed by contributions required under that Act and any plan of an international organization which is exempt from taxation by reason of the International Organizations Immunities Act (59 Stat. 669). The term "governmental plan" includes a plan which is established and maintained by an Indian tribal government (as defined in section 7701(a)(40)), a subdivision of an Indian tribal government (determined in accordance with section 7871(d)), or an agency or instrumentality of either, and all of the participants of which are employees of such entity substantially all of whose services as such an employee are in the performance of essential governmental functions but not in the performance of commercial activities (whether or not an essential government function).

(e) Church plan

(1) In general

For purposes of this part, the term "church plan" means a plan established and maintained (to the extent required in paragraph (2)(B)) for its employees (or their beneficiaries) by a church or by a convention or association of churches which is exempt from tax under section 501.

(2) Certain plans excluded

The term "church plan" does not include a plan—

(A) which is established and maintained primarily for the benefit of employees (or their beneficiaries) of such church or convention or association of churches who are employed in connection with one or more unrelated trades or businesses (within the meaning of section 513); or

(B) if less than substantially all of the individuals included in the plan are individuals described in paragraph (1) or (3)(B) (or their beneficiaries).

(3) Definitions and other provisions

For purposes of this subsection—

(A) Treatment as church plan

A plan established and maintained for its employees (or their beneficiaries) by a church or by a convention or association of churches includes a plan maintained by an organization, whether a civil law corporation or otherwise, the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church or a convention or association of churches, if such organization is controlled by or associated with a church or a convention or association of churches.

(B) Employee defined

The term employee of a church or a convention or association of churches shall include—

(i) a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry, regardless of the source of his compensation;

(ii) an employee of an organization, whether a civil law corporation or otherwise, which is exempt from tax under section 501 and which is controlled by or associated with a church or a convention or association of churches; and

(iii) an individual described in subparagraph (E).

(C) Church treated as employer

A church or a convention or association of churches which is exempt from tax under section 501 shall be deemed the employer of any individual included as an employee under subparagraph (B).

(D) Association with church

An organization, whether a civil law corporation or otherwise, is associated with a church or a convention or association of churches if it shares common religious bonds and convictions with that church or convention or association of churches.

(E) Special rule in case of separation from plan

If an employee who is included in a church plan separates from the service of a church or a convention or association of churches or an organization described in clause (ii) of paragraph (3)(B), the church plan shall not fail to meet the requirements of this subsection merely because the plan—

(i) retains the employee's accrued benefit or account for the payment of benefits to the employee or his beneficiaries pursuant to the terms of the plan; or

(ii) receives contributions on the employee's behalf after the employee's separation from such service, but only for a period of 5 years after such separation, unless the employee is

disabled (within the meaning of the disability provisions of the church plan or, if there are no such provisions in the church plan, within the meaning of section 72(m)(7)) at the time of such separation from service.

(4) Correction of failure to meet church plan requirements

(A) In general

If a plan established and maintained for its employees (or their beneficiaries) by a church or by a convention or association of churches which is exempt from tax under section 501 fails to meet one or more of the requirements of this subsection and corrects its failure to meet such requirements within the correction period, the plan shall be deemed to meet the requirements of this subsection for the year in which the correction was made and for all prior years.

(B) Failure to correct

If a correction is not made within the correction period, the plan shall be deemed not to meet the requirements of this subsection beginning with the date on which the earliest failure to meet one or more of such requirements occurred.

(C) Correction period defined

The term "correction period" means—

(i) the period, ending 270 days after the date of mailing by the Secretary of a notice of default with respect to the plan's failure to meet one or more of the requirements of this subsection;

(ii) any period set by a court of competent jurisdiction after a final determination that the plan fails to meet such requirements, or, if the court does not specify such period, any reasonable period determined by the Secretary on the basis of all the facts and circumstances, but in any event not less than 270 days after the determination has become final; or

(iii) any additional period which the Secretary determines is reasonable or necessary for the correction of the default,

whichever has the latest ending date.

(5) Special rules for chaplains and self-employed ministers

(A) Certain ministers may participate

For purposes of this part—

(i) In general

A duly ordained, commissioned, or licensed minister of a church is described in paragraph (3)(B) if, in connection with the exercise of their ministry, the minister—

(I) is a self-employed individual (within the meaning of section 401(c)(1)(B), or

(II) is employed by an organization other than an organization which is described in section 501(c)(3) and with respect to which the minister shares common religious bonds.

(ii) Treatment as employer and employee

For purposes of sections 403(b)(1)(A) and 404(a)(10), a minister described in clause (i)(I) shall be treated as employed by the minister's own employer which is an organization described in section 501(c)(3) and exempt from tax under section 501(a).

(B) Special rules for applying section 403(b) to self-employed ministers

In the case of a minister described in subparagraph (A)(i)(I)—

(i) the minister's includible compensation under section 403(b)(3) shall be determined by reference to the minister's earned income (within the meaning of section 401(c)(2)) from such ministry rather than the amount of compensation which is received from an employer, and

(ii) the years (and portions of years) in which such minister was a self-employed individual (within the meaning of section 401(c)(1)(B)) with respect to such ministry shall be included for purposes of section 403(b)(4).

(C) Effect on non-denominational plans

If a duly ordained, commissioned, or licensed minister of a church in the exercise of his or her ministry participates in a church plan (within the meaning of this section) and in the exercise of such ministry is employed by an employer not otherwise participating in such church plan, then such employer may exclude such minister from being treated as an employee of such employer for purposes of applying sections 401(a)(3), 401(a)(4), and 401(a)(5), as in effect on September 1, 1974, and sections 401(a)(4), 401(a)(5), 401(a)(26), 401(k)(3), 401(m), 403(b)(1)(D) (including section 403(b)(12)), and 410 to any stock bonus, pension, profit-sharing, or annuity plan (including an annuity described in section 403(b) or a retirement income account described in section 403(b)(9)). The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purpose of, and prevent the abuse of, this subparagraph.

(D) Compensation taken into account only once

If any compensation is taken into account in determining the amount of any contributions made to, or benefits to be provided under, any church plan, such compensation shall not also be taken into account in determining the amount of any contributions made to, or benefits to be provided under, any other stock bonus, pension, profit-sharing, or annuity plan which is not a church plan.

(E) Exclusion

In the case of a contribution to a church plan made on behalf of a minister described in subparagraph (A)(i)(II), such contribution shall not be included in the gross income of the minister to the extent that such contribution would not be so included if the minister was an employee of a church.

(f) Multiemployer plan

(1) Definition

For purposes of this part, the term "multiemployer plan" means a plan—

(A) to which more than one employer is required to contribute,

(B) which is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer, and

(C) which satisfies such other requirements as the Secretary of Labor may prescribe by regulation.

(2) Cases of common control

For purposes of this subsection, all trades or businesses (whether or not incorporated) which are under common control within the meaning of subsection (c) are considered a single employer.

(3) Continuation of status after termination

Notwithstanding paragraph (1), a plan is a multiemployer plan on and after its termination date under title IV of the Employee Retirement Income Security Act of 1974 if the plan was a multiemployer plan under this subsection for the plan year preceding its termination date.

(4) Transitional rule

For any plan year which began before the date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980, the term "multiemployer plan" means a plan described in this subsection as in effect immediately before that date.

(5) Special election

Within one year after the date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980, a multiemployer plan may irrevocably elect, pursuant to procedures established by the Pension Benefit Guaranty Corporation and subject to the provisions of section 4403(b) and (c) of the Employee Retirement Income Security Act of 1974, that the plan shall not be treated as a multiemployer plan for any purpose under such Act or this title, if for each of the

last 3 plan years ending prior to the effective date of the Multiemployer Pension Plan Amendments Act of 1980—

(A) the plan was not a multiemployer plan because the plan was not a plan described in section 3(37)(A)(iii) of the Employee Retirement Income Security Act of 1974 and section 414(f)(1)(C) (as such provisions were in effect on the day before the date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980); and

(B) the plan had been identified as a plan that was not a multiemployer plan in substantially all its filings with the Pension Benefit Guaranty Corporation, the Secretary of Labor and the Secretary.

(6) Election with regard to multiemployer status

(A) Within 1 year after the enactment of the Pension Protection Act of 2006—

(i) An election under paragraph (5) may be revoked, pursuant to procedures prescribed by the Pension Benefit Guaranty Corporation, if, for each of the 3 plan years prior to the date of the enactment of that Act, the plan would have been a multiemployer plan but for the election under paragraph (5), and

(ii) a plan that meets the criteria in subparagraph (A) and (B) of paragraph (1) of this subsection or that is described in subparagraph (E) may, pursuant to procedures prescribed by the Pension Benefit Guaranty Corporation, elect to be a multiemployer plan, if—

(I) for each of the 3 plan years immediately preceding the first plan year for which the election under this paragraph is effective with respect to the plan, the plan has met those criteria or is so described,

(II) substantially all of the plan's employer contributions for each of those plan years were made or required to be made by organizations that were exempt from tax under section 501, and

(III) the plan was established prior to September 2, 1974.

(B) An election under this paragraph shall be effective for all purposes under this Act [1] and under the Employee Retirement Income Security Act of 1974, starting with any plan year beginning on or after January 1, 1999, and ending before January 1, 2008, as designated by the plan in the election made under subparagraph (A)(ii).

(C) Once made, an election under this paragraph shall be irrevocable, except that a plan described in subparagraph (A)(ii) shall cease to be a multiemployer plan as of the plan year beginning immediately after the first plan year for which the majority of its employer contributions were made or required to be made by organizations that were not exempt from tax under section 501.

(D) The fact that a plan makes an election under subparagraph (A)(ii) does not imply that the plan was not a multiemployer plan prior to the date of the election or would not be a multiemployer plan without regard to the election.

(E) A plan is described in this subparagraph if it is a plan sponsored by an organization which is described in section 501(c)(5) and exempt from tax under section 501(a) and which was established in Chicago, Illinois, on August 12, 1881.

(F) MAINTENANCE UNDER COLLECTIVE BARGAINING AGREEMENT.—For purposes of this title and the Employee Retirement Income Security Act of 1974, a plan making an election under this paragraph shall be treated as maintained pursuant to a collective bargaining agreement if a collective bargaining agreement, expressly or otherwise, provides for or permits employer contributions to the plan by one or more employers that are signatory to such agreement, or participation in the plan by one or more employees of an employer that is signatory to such agreement, regardless of whether the plan was created, established, or maintained for such employees by virtue of another document that is not a collective bargaining agreement.

(g) Plan administrator

For purposes of this part, the term "plan administrator" means—

(1) the person specifically so designated by the terms of the instrument under which the plan is

operated;

(2) in the absence of a designation referred to in paragraph (1)—

(A) in the case of a plan maintained by a single employer, such employer,

(B) in the case of a plan maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who maintained the plan, or

(C) in any case to which subparagraph (A) or (B) does not apply, such other person as the Secretary may by regulation, prescribe.

(h) Tax treatment of certain contributions

(1) In general

Effective with respect to taxable years beginning after December 31, 1973, for purposes of this title, any amount contributed—

(A) to an employees' trust described in section 401(a), or

(B) under a plan described in section 403(a), shall not be treated as having been made by the employer if it is designated as an employee contribution.

(2) Designation by units of government

For purposes of paragraph (1), in the case of any plan established by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing, or a governmental plan described in the last sentence of section 414(d) (relating to plans of Indian tribal governments), where the contributions of employing units are designated as employee contributions but where any employing unit picks up the contributions, the contributions so picked up shall be treated as employer contributions.

(i) Defined contribution plan

For purposes of this part, the term "defined contribution plan" means a plan which provides for an individual account for each participant and for benefits based solely on the amount contributed to the participant's account, and any income, expenses, gains and losses, and any forfeitures of accounts of other participants which may be allocated to such participant's account.

(j) Defined benefit plan

For purposes of this part, the term "defined benefit plan" means any plan which is not a defined contribution plan.

(k) Certain plans

A defined benefit plan which provides a benefit derived from employer contributions which is based partly on the balance of the separate account of a participant shall—

(1) for purposes of section 410 (relating to minimum participation standards), be treated as a defined contribution plan.

(2) for purposes of sections 72(d) (relating to treatment of employee contributions as separate contract), 411(a)(7)(A) (relating to minimum vesting standards), 415 (relating to limitations on benefits and contributions under qualified plans), and 401(m) (relating to nondiscrimination tests for matching requirements and employee contributions), be treated as consisting of a defined contribution plan to the extent benefits are based on the separate account of a participant and as a defined benefit plan with respect to the remaining portion of benefits under the plan, and

(3) for purposes of section 4975 (relating to tax on prohibited transactions), be treated as a defined benefit plan.

(l) Merger and consolidations of plans or transfers of plan assets

(1) In general

A trust which forms a part of a plan shall not constitute a qualified trust under section 401 and a plan shall be treated as not described in section 403(a) unless in the case of any merger or consolidation of the plan with, or in the case of any transfer of assets or liabilities of such plan to, any other trust plan after September 2, 1974, each participant in the plan would (if the plan then

terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer (if the plan had then terminated). The preceding sentence does not apply to any multiemployer plan with respect to any transaction to the extent that participants either before or after the transaction are covered under a multiemployer plan to which Title IV of the Employee Retirement Income Security Act of 1974 applies.

(2) Allocation of assets in plan spin-offs, etc.

(A) In general

In the case of a plan spin-off of a defined benefit plan, a trust which forms part of—

(i) the original plan, or

(ii) any plan spun off from such plan,

shall not constitute a qualified trust under this section unless the applicable percentage of excess assets are allocated to each of such plans.

(B) Applicable percentage

For purposes of subparagraph (A), the term "applicable percentage" means, with respect to each of the plans described in clauses (i) and (ii) of subparagraph (A), the percentage determined by dividing—

(i) the excess (if any) of—

(I) the sum of the funding target and target normal cost determined under section 430, over

(II) the amount of the assets required to be allocated to the plan after the spin-off (without regard to this paragraph), by

(ii) the sum of the excess amounts determined separately under clause (i) for all such plans.

(C) Excess assets

For purposes of subparagraph (A), the term "excess assets" means an amount equal to the excess (if any) of—

(i) the fair market value of the assets of the original plan immediately before the spin-off, over

(ii) the amount of assets required to be allocated after the spin-off to all plans (determined without regard to this paragraph).

(D) Certain spun-off plans not taken into account

(i) In general

A plan involved in a spin-off which is described in clause (ii), (iii), or (iv) shall not be taken into account for purposes of this paragraph, except that the amount determined under subparagraph (C)(ii) shall be increased by the amount of assets allocated to such plan.

(ii) Plans transferred out of controlled groups

A plan is described in this clause if, after such spin-off, such plan is maintained by an employer who is not a member of the same controlled group as the employer maintaining the original plan.

(iii) Plans transferred out of multiple employer plans

A plan as described in this clause if, after the spin-off, any employer maintaining such plan (and any member of the same controlled group as such employer) does not maintain any other plan remaining after the spin-off which is also maintained by another employer (or member of the same controlled group as such other employer) which maintained the plan in existence before the spin-off.

(iv) Terminated plans

A plan is described in this clause if, pursuant to the transaction involving the spin-off, the plan is terminated.

(v) Controlled group

For purposes of this subparagraph, the term "controlled group" means any group treated as a single employer under subsection (b), (c), (m), or (o).

(E) Paragraph not to apply to multiemployer plans

This paragraph does not apply to any multiemployer plan with respect to any spin-off to the extent that participants either before or after the spin-off are covered under a multiemployer plan to which title IV of the Employee Retirement Income Security Act of 1974 applies.

(F) Application to similar transaction

Except as provided by the Secretary, rules similar to the rules of this paragraph shall apply to transactions similar to spin-offs.

(G) Special rules for bridge banks [2]

For purposes of this paragraph, in the case of a bridge depository institution established under section 11(i) of the Federal Deposit Insurance Act (12 U.S.C. 1821(i))—

(i) such bank shall be treated as a member of any controlled group which includes any insured bank (as defined in section 3(h) of such Act (12 U.S.C. 1813(h)))—

(I) which maintains a defined benefit plan,

(II) which is closed by the appropriate bank regulatory authorities, and

(III) any asset and liabilities of which are received by the bridge depository institution, and

(ii) the requirements of this paragraph shall not be treated as met with respect to such plan unless during the 180-day period beginning on the date such insured bank is closed—

(I) the bridge depository institution has the right to require the plan to transfer (subject to the provisions of this paragraph) not more than 50 percent of the excess assets (as defined in subparagraph (C)) to a defined benefit plan maintained by the bridge depository institution with respect to participants or former participants (including retirees and beneficiaries) in the original plan employed by the bridge depository institution or formerly employed by the closed bank, and

(II) no other merger, spin-off, termination, or similar transaction involving the portion of the excess assets described in subclause (I) may occur without the prior written consent of the bridge depository institution.

(m) Employees of an affiliated service group

(1) In general

For purposes of the employee benefit requirements listed in paragraph (4), except to the extent otherwise provided in regulations, all employees of the members of an affiliated service group shall be treated as employed by a single employer.

(2) Affiliated service group

For purposes of this subsection, the term "affiliated service group" means a group consisting of a service organization (hereinafter in this paragraph referred to as the "first organization") and one or more of the following:

(A) any service organization which—

(i) is a shareholder or partner in the first organization, and

(ii) regularly performs services for the first organization or is regularly associated with the first organization in performing services for third persons, and

(B) any other organization if—

(i) a significant portion of the business of such organization is the performance of services

(for the first organization, for organizations described in subparagraph (A), or for both) of a type historically performed in such service field by employees, and

(ii) 10 percent or more of the interests in such organization is held by persons who are highly compensated employees (within the meaning of section 414(q)) of the first organization or an organization described in subparagraph (A).

(3) Service organizations

For purposes of this subsection, the term "service organization" means an organization the principal business of which is the performance of services.

(4) Employee benefit requirements

For purposes of this subsection, the employee benefit requirements listed in this paragraph are—

(A) paragraphs (3), (4), (7), (16), (17), and (26) of section 401(a), and

(B) sections 408(k), 408(p), 410, 411, 415, and 416.

(5) Certain organizations performing management functions

For purposes of this subsection, the term "affiliated service group" also includes a group consisting of—

(A) an organization the principal business of which is performing, on a regular and continuing basis, management functions for 1 organization (or for 1 organization and other organizations related to such 1 organization), and

(B) the organization (and related organizations) for which such functions are so performed by the organization described in subparagraph (A).

For purposes of this paragraph, the term "related organizations" has the same meaning as the term "related persons" when used in section 144(a)(3).

(6) Other definitions

For purposes of this subsection—

(A) Organization defined

The term "organization" means a corporation, partnership, or other organization.

(B) Ownership

In determining ownership, the principles of section 318(a) shall apply.

(n) Employee leasing

(1) In general

For purposes of the requirements listed in paragraph (3), with respect to any person (hereinafter in this subsection referred to as the "recipient") for whom a leased employee performs services—

(A) the leased employee shall be treated as an employee of the recipient, but

(B) contributions or benefits provided by the leasing organization which are attributable to services performed for the recipient shall be treated as provided by the recipient.

(2) Leased employee

For purposes of paragraph (1), the term "leased employee" means any person who is not an employee of the recipient and who provides services to the recipient if—

(A) such services are provided pursuant to an agreement between the recipient and any other person (in this subsection referred to as the "leasing organization"),

(B) such person has performed such services for the recipient (or for the recipient and related persons) on a substantially full-time basis for a period of at least 1 year, and

(C) such services are performed under primary direction or control by the recipient.

(3) Requirements

For purposes of this subsection, the requirements listed in this paragraph are—

(A) paragraphs (3), (4), (7), (16), (17), and (26) of section 401(a),

(B) sections 408(k), 408(p), 410, 411, 415, and 416, and
(C) sections 79, 106, 117(d), 120, 125, 127, 129, 132, 137, 274(j), 505, and 4980B.

(4) Time when first considered as employee

(A) In general

In the case of any leased employee, paragraph (1) shall apply only for purposes of determining whether the requirements listed in paragraph (3) are met for periods after the close of the period referred to in paragraph (2)(B).

(B) Years of service

In the case of a person who is an employee of the recipient (whether by reason of this subsection or otherwise), for purposes of the requirements listed in paragraph (3), years of service for the recipient shall be determined by taking into account any period for which such employee would have been a leased employee but for the requirements of paragraph (2)(B).

(5) Safe harbor

(A) In general

In the case of requirements described in subparagraphs (A) and (B) of paragraph (3), this subsection shall not apply to any leased employee with respect to services performed for a recipient if—

(i) such employee is covered by a plan which is maintained by the leasing organization and meets the requirements of subparagraph (B), and

(ii) leased employees (determined without regard to this paragraph) do not constitute more than 20 percent of the recipient's nonhighly compensated work force.

(B) Plan requirements

A plan meets the requirements of this subparagraph if—

(i) such plan is a money purchase pension plan with a nonintegrated employer contribution rate for each participant of at least 10 percent of compensation,

(ii) such plan provides for full and immediate vesting, and

(iii) each employee of the leasing organization (other than employees who perform substantially all of their services for the leasing organization) immediately participates in such plan.

Clause (iii) shall not apply to any individual whose compensation from the leasing organization in each plan year during the 4-year period ending with the plan year is less than $1,000.

(C) Definitions

For purposes of this paragraph—

(i) Highly compensated employee

The term "highly compensated employee" has the meaning given such term by section 414(q).

(ii) Nonhighly compensated work force

The term "nonhighly compensated work force" means the aggregate number of individuals (other than highly compensated employees)—

(I) who are employees of the recipient (without regard to this subsection) and have performed services for the recipient (or for the recipient and related persons) on a substantially full-time basis for a period of at least 1 year, or

(II) who are leased employees with respect to the recipient (determined without regard to this paragraph).

(iii) Compensation

The term "compensation" has the same meaning as when used in section 415; except that such term shall include—

(I) any employer contribution under a qualified cash or deferred arrangement to the extent not included in gross income under section 402(e)(3) or 402(h)(1)(B),

(II) any amount which the employee would have received in cash but for an election under a cafeteria plan (within the meaning of section 125), and

(III) any amount contributed to an annuity contract described in section 403(b) pursuant to a salary reduction agreement (within the meaning of section 3121(a)(5)(D)).

(6) Other rules

For purposes of this subsection—

(A) Related persons

The term "related persons" has the same meaning as when used in section 144(a)(3).

(B) Employees of entities under common control

The rules of subsections (b), (c), (m), and (o) shall apply.

(o) Regulations

The Secretary shall prescribe such regulations (which may provide rules in addition to the rules contained in subsections (m) and (n)) as may be necessary to prevent the avoidance of any employee benefit requirement listed in subsection (m)(4) or (n)(3) or any requirement under section 457 through the use of—

(1) separate organizations,

(2) employee leasing, or

(3) other arrangements.

The regulations prescribed under subsection (n) shall include provisions to minimize the recordkeeping requirements of subsection (n) in the case of an employer which has no top-heavy plans (within the meaning of section 416(g)) and which uses the services of persons (other than employees) for an insignificant percentage of the employer's total workload.

(p) Qualified domestic relations order defined

For purposes of this subsection and section 401(a)(13)—

(1) In general

(A) Qualified domestic relations order

The term "qualified domestic relations order" means a domestic relations order—

(i) which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan, and

(ii) with respect to which the requirements of paragraphs (2) and (3) are met.

(B) Domestic relations order

The term "domestic relations order" means any judgment, decree, or order (including approval of a property settlement agreement) which—

(i) relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant, and

(ii) is made pursuant to a State domestic relations law (including a community property law).

(2) Order must clearly specify certain facts

A domestic relations order meets the requirements of this paragraph only if such order clearly specifies—

(A) the name and the last known mailing address (if any) of the participant and the name and mailing address of each alternate payee covered by the order,

(B) the amount or percentage of the participant's benefits to be paid by the plan to each such alternate payee, or the manner in which such amount or percentage is to be determined,

(C) the number of payments or period to which such order applies, and
(D) each plan to which such order applies.

(3) Order may not alter amount, form, etc., of benefits

A domestic relations order meets the requirements of this paragraph only if such order—
(A) does not require a plan to provide any type or form of benefit, or any option, not otherwise provided under the plan,
(B) does not require the plan to provide increased benefits (determined on the basis of actuarial value), and
(C) does not require the payment of benefits to an alternate payee which are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order.

(4) Exception for certain payments made after earliest retirement age

(A) In general

A domestic relations order shall not be treated as failing to meet the requirements of subparagraph (A) of paragraph (3) solely because such order requires that payment of benefits be made to an alternate payee—
(i) in the case of any payment before a participant has separated from service, on or after the date on which the participant attains (or would have attained) the earliest retirement age,
(ii) as if the participant had retired on the date on which such payment is to begin under such order (but taking into account only the present value of the benefits actually accrued and not taking into account the present value of any employer subsidy for early retirement), and
(iii) in any form in which such benefits may be paid under the plan to the participant (other than in the form of a joint and survivor annuity with respect to the alternate payee and his or her subsequent spouse).

For purposes of clause (ii), the interest rate assumption used in determining the present value shall be the interest rate specified in the plan or, if no rate is specified, 5 percent.

(B) Earliest retirement age

For purposes of this paragraph, the term "earliest retirement age" means the earlier of—
(i) the date on which the participant is entitled to a distribution under the plan, or
(ii) the later of—
(I) the date the participant attains age 50, or
(II) the earliest date on which the participant could begin receiving benefits under the plan if the participant separated from service.

(5) Treatment of former spouse as surviving spouse for purposes of determining survivor benefits

To the extent provided in any qualified domestic relations order—
(A) the former spouse of a participant shall be treated as a surviving spouse of such participant for purposes of sections 401(a)(11) and 417 (and any spouse of the participant shall not be treated as a spouse of the participant for such purposes), and
(B) if married for at least 1 year, the surviving former spouse shall be treated as meeting the requirements of section 417(d).

(6) Plan procedures with respect to orders

(A) Notice and determination by administrator

In the case of any domestic relations order received by a plan—
(i) the plan administrator shall promptly notify the participant and each alternate payee of the receipt of such order and the plan's procedures for determining the qualified status of domestic relations orders, and
(ii) within a reasonable period after receipt of such order, the plan administrator shall

determine whether such order is a qualified domestic relations order and notify the participant and each alternate payee of such determination.

(B) Plan to establish reasonable procedures

Each plan shall establish reasonable procedures to determine the qualified status of domestic relations orders and to administer distributions under such qualified orders.

(7) Procedures for period during which determination is being made

(A) In general

During any period in which the issue of whether a domestic relations order is a qualified domestic relations order is being determined (by the plan administrator, by a court of competent jurisdiction, or otherwise), the plan administrator shall separately account for the amounts (hereinafter in this paragraph referred to as the "segregated amounts") which would have been payable to the alternate payee during such period if the order had been determined to be a qualified domestic relations order.

(B) Payment to alternate payee if order determined to be qualified domestic relations order

If within the 18-month period described in subparagraph (E) the order (or modification thereof) is determined to be a qualified domestic relations order, the plan administrator shall pay the segregated amounts (including any interest thereon) to the person or persons entitled thereto.

(C) Payment to plan participant in certain cases

If within the 18-month period described in subparagraph (E)—

(i) it is determined that the order is not a qualified domestic relations order, or

(ii) the issue as to whether such order is a qualified domestic relations order is not resolved,

then the plan administrator shall pay the segregated amounts (including any interest thereon) to the person or persons who would have been entitled to such amounts if there had been no order.

(D) Subsequent determination or order to be applied prospectively only

Any determination that an order is a qualified domestic relations order which is made after the close of the 18-month period described in subparagraph (E) shall be applied prospectively only.

(E) Determination of 18-month period

For purposes of this paragraph, the 18-month period described in this subparagraph is the 18-month period beginning with the date on which the first payment would be required to be made under the domestic relations order.

(8) Alternate payee defined

The term "alternate payee" means any spouse, former spouse, child or other dependent of a participant who is recognized by a domestic relations order as having a right to receive all, or a portion of, the benefits payable under a plan with respect to such participant.

(9) Subsection not to apply to plans to which section 401(a)(13) does not apply

This subsection shall not apply to any plan to which section 401(a)(13) does not apply. For purposes of this title, except as provided in regulations, any distribution from an annuity contract under section 403(b) pursuant to a qualified domestic relations order shall be treated in the same manner as a distribution from a plan to which section 401(a)(13) applies.

(10) Waiver of certain distribution requirements

With respect to the requirements of subsections (a) and (k) of section 401, section 403(b), section 409(d), and section 457(d), a plan shall not be treated as failing to meet such requirements solely by reason of payments to an alternative payee pursuant to a qualified domestic relations

order.

(11) Application of rules to certain other plans

For purposes of this title, a distribution or payment from a governmental plan (as defined in subsection (d)) or a church plan (as described in subsection (e)) or an eligible deferred compensation plan (within the meaning of section 457(b)) shall be treated as made pursuant to a qualified domestic relations order if it is made pursuant to a domestic relations order which meets the requirement of clause (i) of paragraph (1)(A).

(12) Tax treatment of payments from a section 457 plan

If a distribution or payment from an eligible deferred compensation plan described in section 457(b) is made pursuant to a qualified domestic relations order, rules similar to the rules of section 402(e)(1)(A) shall apply to such distribution or payment.

(13) Consultation with the Secretary

In prescribing regulations under this subsection and section 401(a)(13), the Secretary of Labor shall consult with the Secretary.

(q) Highly compensated employee

(1) In general

The term "highly compensated employee" means any employee who—

(A) was a 5-percent owner at any time during the year or the preceding year, or

(B) for the preceding year—

(i) had compensation from the employer in excess of $80,000, and

(ii) if the employer elects the application of this clause for such preceding year, was in the top-paid group of employees for such preceding year.

The Secretary shall adjust the $80,000 amount under subparagraph (B) at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter ending September 30, 1996.

(2) 5-percent owner

An employee shall be treated as a 5-percent owner for any year if at any time during such year such employee was a 5-percent owner (as defined in section 416(i)(1)) of the employer.

(3) Top-paid group

An employee is in the top-paid group of employees for any year if such employee is in the group consisting of the top 20 percent of the employees when ranked on the basis of compensation paid during such year.

(4) Compensation

For purposes of this subsection, the term "compensation" has the meaning given such term by section 415(c)(3).

(5) Excluded employees

For purposes of subsection (r) and for purposes of determining the number of employees in the top-paid group, the following employees shall be excluded—

(A) employees who have not completed 6 months of service,

(B) employees who normally work less than 17½ hours per week,

(C) employees who normally work during not more than 6 months during any year,

(D) employees who have not attained age 21, and

(E) except to the extent provided in regulations, employees who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and the employer.

Except as provided by the Secretary, the employer may elect to apply subparagraph (A), (B), (C),

or (D) by substituting a shorter period of service, smaller number of hours or months, or lower age for the period of service, number of hours or months, or age (as the case may be) than that specified in such subparagraph.

(6) Former employees

A former employee shall be treated as a highly compensated employee if—

(A) such employee was a highly compensated employee when such employee separated from service, or

(B) such employee was a highly compensated employee at any time after attaining age 55.

(7) Coordination with other provisions

Subsections (b), (c), (m), (n), and (o) shall be applied before the application of this subsection.

(8) Special rule for nonresident aliens

For purposes of this subsection and subsection (r), employees who are nonresident aliens and who receive no earned income (within the meaning of section 911(d)(2)) from the employer which constitutes income from sources within the United States (within the meaning of section 861(a)(3)) shall not be treated as employees.

(9) Certain employees not considered highly compensated and excluded employees under pre-ERISA rules for church plans

In the case of a church plan (as defined in subsection (e)), no employee shall be considered an officer, a person whose principal duties consist of supervising the work of other employees, or a highly compensated employee for any year unless such employee is a highly compensated employee under paragraph (1) for such year.

(r) Special rules for separate line of business

(1) In general

For purposes of sections 129(d)(8) and 410(b), an employer shall be treated as operating separate lines of business during any year if the employer for bona fide business reasons operates separate lines of business.

(2) Line of business must have 50 employees, etc.

A line of business shall not be treated as separate under paragraph (1) unless—

(A) such line of business has at least 50 employees who are not excluded under subsection (q)(5),

(B) the employer notifies the Secretary that such line of business is being treated as separate for purposes of paragraph (1), and

(C) such line of business meets guidelines prescribed by the Secretary or the employer receives a determination from the Secretary that such line of business may be treated as separate for purposes of paragraph (1).

(3) Safe harbor rule

(A) In general

The requirements of subparagraph (C) of paragraph (2) shall not apply to any line of business if the highly compensated employee percentage with respect to such line of business is—

(i) not less than one-half, and

(ii) not more than twice,

the percentage which highly compensated employees are of all employees of the employer. An employer shall be treated as meeting the requirements of clause (i) if at least 10 percent of all highly compensated employees of the employer perform services solely for such line of business.

(B) Determination may be based on preceding year

The requirements of subparagraph (A) shall be treated as met with respect to any line of

business if such requirements were met with respect to such line of business for the preceding year and if—

(i) no more than a de minimis number of employees were shifted to or from the line of business after the close of the preceding year, or

(ii) the employees shifted to or from the line of business after the close of the preceding year contained a substantially proportional number of highly compensated employees.

(4) Highly compensated employee percentage defined

For purposes of this subsection, the term "highly compensated employee percentage" means the percentage which highly compensated employees performing services for the line of business are of all employees performing services for the line of business.

(5) Allocation of benefits to line of business

For purposes of this subsection, benefits which are attributable to services provided to a line of business shall be treated as provided by such line of business.

(6) Headquarters personnel, etc.

The Secretary shall prescribe rules providing for—

(A) the allocation of headquarters personnel among the lines of business of the employer, and

(B) the treatment of other employees providing services for more than 1 line of business of the employer or not in lines of business meeting the requirements of paragraph (2).

(7) Separate operating units

For purposes of this subsection, the term "separate line of business" includes an operating unit in a separate geographic area separately operated for a bona fide business reason.

(8) Affiliated service groups

This subsection shall not apply in the case of any affiliated service group (within the meaning of section 414(m)).

(s) Compensation

For purposes of any applicable provision—

(1) In general

Except as provided in this subsection, the term "compensation" has the meaning given such term by section 415(c)(3).

(2) Employer may elect not to treat certain deferrals as compensation

An employer may elect not to include as compensation any amount which is contributed by the employer pursuant to a salary reduction agreement and which is not includible in the gross income of an employee under section 125, 132(f)(4), 402(e)(3), 402(h), or 403(b).

(3) Alternative determination of compensation

The Secretary shall by regulation provide for alternative methods of determining compensation which may be used by an employer, except that such regulations shall provide that an employer may not use an alternative method if the use of such method discriminates in favor of highly compensated employees (within the meaning of subsection (q)).

(4) Applicable provision

For purposes of this subsection, the term "applicable provision" means any provision which specifically refers to this subsection.

(t) Application of controlled group rules to certain employee benefits

(1) In general

All employees who are treated as employed by a single employer under subsection (b), (c), or (m) shall be treated as employed by a single employer for purposes of an applicable section. The provisions of subsection (o) shall apply with respect to the requirements of an applicable section.

(2) Applicable section

For purposes of this subsection, the term "applicable section" means section 79, 106, 117(d), 120, 125, 127, 129, 132, 137, 274(j), 505, or 4980B.

(u) Special rules relating to veterans' reemployment rights under USERRA and to differential wage payments to members on active duty

(1) Treatment of certain contributions made pursuant to veterans' reemployment rights

If any contribution is made by an employer or an employee under an individual account plan with respect to an employee, or by an employee to a defined benefit plan that provides for employee contributions, and such contribution is required by reason of such employee's rights under chapter 43 of title 38, United States Code, resulting from qualified military service, then—

(A) such contribution shall not be subject to any otherwise applicable limitation contained in section 402(g), 402(h), 403(b), 404(a), 404(h), 408, 415, or 457, and shall not be taken into account in applying such limitations to other contributions or benefits under such plan or any other plan, with respect to the year in which the contribution is made,

(B) such contribution shall be subject to the limitations referred to in subparagraph (A) with respect to the year to which the contribution relates (in accordance with rules prescribed by the Secretary), and

(C) such plan shall not be treated as failing to meet the requirements of section 401(a)(4), 401(a)(26), 401(k)(3), 401(k)(11), 401(k)(12), 401(m), 403(b)(12), 408(k)(3), 408(k)(6), 408(p), 410(b), or 416 by reason of the making of (or the right to make) such contribution.

For purposes of the preceding sentence, any elective deferral or employee contribution made under paragraph (2) shall be treated as required by reason of the employee's rights under such chapter 43.

(2) Reemployment rights under USERRA with respect to elective deferrals

(A) In general

For purposes of this subchapter and section 457, if an employee is entitled to the benefits of chapter 43 of title 38, United States Code, with respect to any plan which provides for elective deferrals, the employer sponsoring the plan shall be treated as meeting the requirements of such chapter 43 with respect to such elective deferrals only if such employer—

(i) permits such employee to make additional elective deferrals under such plan (in the amount determined under subparagraph (B) or such lesser amount as is elected by the employee) during the period which begins on the date of the reemployment of such employee with such employer and has the same length as the lesser of—

(I) the product of 3 and the period of qualified military service which resulted in such rights, and

(II) 5 years, and

(ii) makes a matching contribution with respect to any additional elective deferral made pursuant to clause (i) which would have been required had such deferral actually been made during the period of such qualified military service.

(B) Amount of makeup required

The amount determined under this subparagraph with respect to any plan is the maximum amount of the elective deferrals that the individual would have been permitted to make under the plan in accordance with the limitations referred to in paragraph (1)(A) during the period of qualified military service if the individual had continued to be employed by the employer during such period and received compensation as determined under paragraph (7). Proper adjustment shall be made to the amount determined under the preceding sentence for any elective deferrals actually made during the period of such qualified military service.

(C) Elective deferral

For purposes of this paragraph, the term "elective deferral" has the meaning given such term

by section 402(g)(3); except that such term shall include any deferral of compensation under an eligible deferred compensation plan (as defined in section 457(b)).

(D) After-tax employee contributions

References in subparagraphs (A) and (B) to elective deferrals shall be treated as including references to employee contributions.

(3) Certain retroactive adjustments not required

For purposes of this subchapter and subchapter E, no provision of chapter 43 of title 38, United States Code, shall be construed as requiring—

(A) any crediting of earnings to an employee with respect to any contribution before such contribution is actually made, or

(B) any allocation of any forfeiture with respect to the period of qualified military service.

(4) Loan repayment suspensions permitted

If any plan suspends the obligation to repay any loan made to an employee from such plan for any part of any period during which such employee is performing service in the uniformed services (as defined in chapter 43 of title 38, United States Code), whether or not qualified military service, such suspension shall not be taken into account for purposes of section 72(p), 401(a), or 4975(d)(1).

(5) Qualified military service

For purposes of this subsection, the term "qualified military service" means any service in the uniformed services (as defined in chapter 43 of title 38, United States Code) by any individual if such individual is entitled to reemployment rights under such chapter with respect to such service.

(6) Individual account plan

For purposes of this subsection, the term "individual account plan" means any defined contribution plan [3] (including any tax-sheltered annuity plan under section 403(b), any simplified employee pension under section 408(k), any qualified salary reduction arrangement under section 408(p), and any eligible deferred compensation plan (as defined in section 457(b)).

(7) Compensation

For purposes of sections 403(b)(3), 415(c)(3), and 457(e)(5), an employee who is in qualified military service shall be treated as receiving compensation from the employer during such period of qualified military service equal to—

(A) the compensation the employee would have received during such period if the employee were not in qualified military service, determined based on the rate of pay the employee would have received from the employer but for absence during the period of qualified military service, or

(B) if the compensation the employee would have received during such period was not reasonably certain, the employee's average compensation from the employer during the 12-month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

(8) USERRA requirements for qualified retirement plans

For purposes of this subchapter and section 457, an employer sponsoring a retirement plan shall be treated as meeting the requirements of chapter 43 of title 38, United States Code, only if each of the following requirements is met:

(A) An individual reemployed under such chapter is treated with respect to such plan as not having incurred a break in service with the employer maintaining the plan by reason of such individual's period of qualified military service.

(B) Each period of qualified military service served by an individual is, upon reemployment under such chapter, deemed with respect to such plan to constitute service with the employer

maintaining the plan for the purpose of determining the nonforfeitability of the individual's accrued benefits under such plan and for the purpose of determining the accrual of benefits under such plan.

(C) An individual reemployed under such chapter is entitled to accrued benefits that are contingent on the making of, or derived from, employee contributions or elective deferrals only to the extent the individual makes payment to the plan with respect to such contributions or deferrals. No such payment may exceed the amount the individual would have been permitted or required to contribute had the individual remained continuously employed by the employer throughout the period of qualified military service. Any payment to such plan shall be made during the period beginning with the date of reemployment and whose duration is 3 times the period of the qualified military service (but not greater than 5 years).

(9) Treatment in the case of death or disability resulting from active military service

(A) In general

For benefit accrual purposes, an employer sponsoring a retirement plan may treat an individual who dies or becomes disabled (as defined under the terms of the plan) while performing qualified military service with respect to the employer maintaining the plan as if the individual has resumed employment in accordance with the individual's reemployment rights under chapter 43 of title 38, United States Code, on the day preceding death or disability (as the case may be) and terminated employment on the actual date of death or disability. In the case of any such treatment, and subject to subparagraphs (B) and (C), any full or partial compliance by such plan with respect to the benefit accrual requirements of paragraph (8) with respect to such individual shall be treated for purposes of paragraph (1) as if such compliance were required under such chapter 43.

(B) Nondiscrimination requirement

Subparagraph (A) shall apply only if all individuals performing qualified military service with respect to the employer maintaining the plan (as determined under subsections (b), (c), (m), and (o)) who die or became disabled as a result of performing qualified military service prior to reemployment by the employer are credited with service and benefits on reasonably equivalent terms.

(C) Determination of benefits

The amount of employee contributions and the amount of elective deferrals of an individual treated as reemployed under subparagraph (A) for purposes of applying paragraph (8)(C) shall be determined on the basis of the individual's average actual employee contributions or elective deferrals for the lesser of—

(i) the 12-month period of service with the employer immediately prior to qualified military service, or

(ii) if service with the employer is less than such 12-month period, the actual length of continuous service with the employer.

(10) Plans not subject to title 38

This subsection shall not apply to any retirement plan to which chapter 43 of title 38, United States Code, does not apply.

(11) References

For purposes of this section, any reference to chapter 43 of title 38, United States Code, shall be treated as a reference to such chapter as in effect on December 12, 1994 (without regard to any subsequent amendment).

(12) Treatment of differential wage payments

(A) In general

Except as provided in this paragraph, for purposes of applying this title to a retirement plan to which this subsection applies—

(i) an individual receiving a differential wage payment shall be treated as an employee of the employer making the payment,

(ii) the differential wage payment shall be treated as compensation, and

(iii) the plan shall not be treated as failing to meet the requirements of any provision described in paragraph (1)(C) by reason of any contribution or benefit which is based on the differential wage payment.

(B) Special rule for distributions

(i) In general

Notwithstanding subparagraph (A)(i), for purposes of section 401(k)(2)(B)(i)(I), 403(b)(7)(A)(ii), 403(b)(11)(A), or 457(d)(1)(A)(ii), an individual shall be treated as having been severed from employment during any period the individual is performing service in the uniformed services described in section 3401(h)(2)(A).

(ii) Limitation

If an individual elects to receive a distribution by reason of clause (i), the plan shall provide that the individual may not make an elective deferral or employee contribution during the 6-month period beginning on the date of the distribution.

(C) Nondiscrimination requirement

Subparagraph (A)(iii) shall apply only if all employees of an employer (as determined under subsections (b), (c), (m), and (o)) performing service in the uniformed services described in section 3401(h)(2)(A) are entitled to receive differential wage payments on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the employer, to make contributions based on the payments on reasonably equivalent terms. For purposes of applying this subparagraph, the provisions of paragraphs (3), (4), and (5) of section 410(b) shall apply.

(D) Differential wage payment

For purposes of this paragraph, the term "differential wage payment" has the meaning given such term by section 3401(h)(2).

(v) Catch-up contributions for individuals age 50 or over

(1) In general

An applicable employer plan shall not be treated as failing to meet any requirement of this title solely because the plan permits an eligible participant to make additional elective deferrals in any plan year.

(2) Limitation on amount of additional deferrals

(A) In general

A plan shall not permit additional elective deferrals under paragraph (1) for any year in an amount greater than the lesser of—

(i) the applicable dollar amount, or

(ii) the excess (if any) of—

(I) the participant's compensation (as defined in section 415(c)(3)) for the year, over

(II) any other elective deferrals of the participant for such year which are made without regard to this subsection.

(B) Applicable dollar amount

For purposes of this paragraph—

(i) In the case of an applicable employer plan other than a plan described in section 401(k)(11) or 408(p), the applicable dollar amount shall be determined in accordance with the following table:

For taxable years beginning in:	The applicable dollar amount is:
2002	$1,000
2003	$2,000
2004	$3,000
2005	$4,000
2006 and thereafter	$5,000.

(ii) In the case of an applicable employer plan described in section 401(k)(11) or 408(p), the applicable dollar amount shall be determined in accordance with the following table:

For taxable years beginning in:	The applicable dollar amount is:
2002	$500
2003	$1,000
2004	$1,500
2005	$2,000
2006 and thereafter	$2,500.

(C) Cost-of-living adjustment

In the case of a year beginning after December 31, 2006, the Secretary shall adjust annually the $5,000 amount in subparagraph (B)(i) and the $2,500 amount in subparagraph (B)(ii) for increases in the cost-of-living at the same time and in the same manner as adjustments under section 415(d); except that the base period taken into account shall be the calendar quarter beginning July 1, 2005, and any increase under this subparagraph which is not a multiple of $500 shall be rounded to the next lower multiple of $500.

(D) Aggregation of plans

For purposes of this paragraph, plans described in clauses (i), (ii), and (iv) of paragraph (6)(A) that are maintained by the same employer (as determined under subsection (b), (c), (m) or (o)) shall be treated as a single plan, and plans described in clause (iii) of paragraph (6)(A) that are maintained by the same employer shall be treated as a single plan.

(3) Treatment of contributions

In the case of any contribution to a plan under paragraph (1)—

(A) such contribution shall not, with respect to the year in which the contribution is made—

(i) be subject to any otherwise applicable limitation contained in sections 401(a)(30), 402(h), 403(b), 408, 415(c), and 457(b)(2) (determined without regard to section 457(b)(3)), or

(ii) be taken into account in applying such limitations to other contributions or benefits under such plan or any other such plan, and

(B) except as provided in paragraph (4), such plan shall not be treated as failing to meet the requirements of section 401(a)(4), 401(k)(3), 401(k)(11), 403(b)(12), 408(k), 410(b), or 416 by reason of the making of (or the right to make) such contribution.

(4) Application of nondiscrimination rules

(A) In general

An applicable employer plan shall be treated as failing to meet the nondiscrimination requirements under section 401(a)(4) with respect to benefits, rights, and features unless the plan allows all eligible participants to make the same election with respect to the additional

elective deferrals under this subsection.

(B) Aggregation

For purposes of subparagraph (A), all plans maintained by employers who are treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as 1 plan, except that a plan described in clause (i) of section 410(b)(6)(C) shall not be treated as a plan of the employer until the expiration of the transition period with respect to such plan (as determined under clause (ii) of such section).

(5) Eligible participant

For purposes of this subsection, the term "eligible participant" means a participant in a plan—

(A) who would attain age 50 by the end of the taxable year,

(B) with respect to whom no other elective deferrals may (without regard to this subsection) be made to the plan for the plan (or other applicable) year by reason of the application of any limitation or other restriction described in paragraph (3) or comparable limitation or restriction contained in the terms of the plan.

(6) Other definitions and rules

For purposes of this subsection—

(A) Applicable employer plan

The term "applicable employer plan" means—

(i) an employees' trust described in section 401(a) which is exempt from tax under section 501(a),

(ii) a plan under which amounts are contributed by an individual's employer for an annuity contract described in section 403(b),

(iii) an eligible deferred compensation plan under section 457 of an eligible employer described in section 457(e)(1)(A), and

(iv) an arrangement meeting the requirements of section 408(k) or (p).

(B) Elective deferral

The term "elective deferral" has the meaning given such term by subsection (u)(2)(C).

(C) Exception for section 457 plans

This subsection shall not apply to a participant for any year for which a higher limitation applies to the participant under section 457(b)(3).

(w) Special rules for certain withdrawals from eligible automatic contribution arrangements

(1) In general

If an eligible automatic contribution arrangement allows an employee to elect to make permissible withdrawals—

(A) the amount of any such withdrawal shall be includible in the gross income of the employee for the taxable year of the employee in which the distribution is made,

(B) no tax shall be imposed under section 72(t) with respect to the distribution, and

(C) the arrangement shall not be treated as violating any restriction on distributions under this title solely by reason of allowing the withdrawal.

In the case of any distribution to an employee by reason of an election under this paragraph, employer matching contributions shall be forfeited or subject to such other treatment as the Secretary may prescribe.

(2) Permissible withdrawal

For purposes of this subsection—

(A) In general

The term "permissible withdrawal" means any withdrawal from an eligible automatic contribution arrangement meeting the requirements of this paragraph which—

(i) is made pursuant to an election by an employee, and

(ii) consists of elective contributions described in paragraph (3)(B) (and earnings attributable thereto).

(B) Time for making election

Subparagraph (A) shall not apply to an election by an employee unless the election is made no later than the date which is 90 days after the date of the first elective contribution with respect to the employee under the arrangement.

(C) Amount of distribution

Subparagraph (A) shall not apply to any election by an employee unless the amount of any distribution by reason of the election is equal to the amount of elective contributions made with respect to the first payroll period to which the eligible automatic contribution arrangement applies to the employee and any succeeding payroll period beginning before the effective date of the election (and earnings attributable thereto).

(3) Eligible automatic contribution arrangement

For purposes of this subsection, the term "eligible automatic contribution arrangement" means an arrangement under an applicable employer plan—

(A) under which a participant may elect to have the employer make payments as contributions under the plan on behalf of the participant, or to the participant directly in cash,

(B) under which the participant is treated as having elected to have the employer make such contributions in an amount equal to a uniform percentage of compensation provided under the plan until the participant specifically elects not to have such contributions made (or specifically elects to have such contributions made at a different percentage), and

(C) which meets the requirements of paragraph (4).

(4) Notice requirements

(A) In general

The administrator of a plan containing an arrangement described in paragraph (3) shall, within a reasonable period before each plan year, give to each employee to whom an arrangement described in paragraph (3) applies for such plan year notice of the employee's rights and obligations under the arrangement which—

(i) is sufficiently accurate and comprehensive to apprise the employee of such rights and obligations, and

(ii) is written in a manner calculated to be understood by the average employee to whom the arrangement applies.

(B) Time and form of notice

A notice shall not be treated as meeting the requirements of subparagraph (A) with respect to an employee unless—

(i) the notice includes an explanation of the employee's right under the arrangement to elect not to have elective contributions made on the employee's behalf (or to elect to have such contributions made at a different percentage),

(ii) the employee has a reasonable period of time after receipt of the notice described in clause (i) and before the first elective contribution is made to make such election, and

(iii) the notice explains how contributions made under the arrangement will be invested in the absence of any investment election by the employee.

(5) Applicable employer plan

For purposes of this subsection, the term "applicable employer plan" means—

(A) an employees' trust described in section 401(a) which is exempt from tax under section 501(a),

(B) a plan under which amounts are contributed by an individual's employer for an annuity contract described in section 403(b),

(C) an eligible deferred compensation plan described in section 457(b) which is maintained by an eligible employer described in section 457(e)(1)(A),

(D) a simplified employee pension the terms of which provide for a salary reduction arrangement described in section 408(k)(6), and

(E) a simple retirement account (as defined in section 408(p)).

(6) Special rule

A withdrawal described in paragraph (1) (subject to the limitation of paragraph (2)(C)) shall not be taken into account for purposes of section 401(k)(3) or for purposes of applying the limitation under section 402(g)(1).

(x) Special rules for eligible combined defined benefit plans and qualified cash or deferred arrangements

(1) General rule

Except as provided in this subsection, the requirements of this title shall be applied to any defined benefit plan or applicable defined contribution plan which are [4] part of an eligible combined plan in the same manner as if each such plan were not a part of the eligible combined plan. In the case of a termination of the defined benefit plan and the applicable defined contribution plan forming part of an eligible combined plan, the plan administrator shall terminate each such plan separately.

(2) Eligible combined plan

For purposes of this subsection—

(A) In general

The term "eligible combined plan" means a plan—

(i) which is maintained by an employer which, at the time the plan is established, is a small employer,

(ii) which consists of a defined benefit plan and an applicable defined contribution plan,

(iii) the assets of which are held in a single trust forming part of the plan and are clearly identified and allocated to the defined benefit plan and the applicable defined contribution plan to the extent necessary for the separate application of this title under paragraph (1), and

(iv) with respect to which the benefit, contribution, vesting, and nondiscrimination requirements of subparagraphs (B), (C), (D), (E), and (F) are met.

For purposes of this subparagraph, the term "small employer" has the meaning given such term by section 4980D(d)(2), except that such section shall be applied by substituting "500" for "50" each place it appears.

(B) Benefit requirements

(i) In general

The benefit requirements of this subparagraph are met with respect to the defined benefit plan forming part of the eligible combined plan if the accrued benefit of each participant derived from employer contributions, when expressed as an annual retirement benefit, is not less than the applicable percentage of the participant's final average pay. For purposes of this clause, final average pay shall be determined using the period of consecutive years (not exceeding 5) during which the participant had the greatest aggregate compensation from the employer.

(ii) Applicable percentage

For purposes of clause (i), the applicable percentage is the lesser of—

(I) 1 percent multiplied by the number of years of service with the employer, or

(II) 20 percent.

(iii) Special rule for applicable defined benefit plans

If the defined benefit plan under clause (i) is an applicable defined benefit plan as defined in section 411(a)(13)(B) which meets the interest credit requirements of section 411(b)(5)(B)(i), the plan shall be treated as meeting the requirements of clause (i) with respect to any plan year if each participant receives a pay credit for the year which is not less than the percentage of compensation determined in accordance with the following table:

If the participant's age as of the beginning of the year is—	The percentage is—
30 or less	2
Over 30 but less than 40	4
40 or over but less than 50	6
50 or over	8.

(iv) Years of service

For purposes of this subparagraph, years of service shall be determined under the rules of paragraphs (4), (5), and (6) of section 411(a), except that the plan may not disregard any year of service because of a participant making, or failing to make, any elective deferral with respect to the qualified cash or deferred arrangement to which subparagraph (C) applies.

(C) Contribution requirements

(i) In general

The contribution requirements of this subparagraph with respect to any applicable defined contribution plan forming part of an eligible combined plan are met if—

(I) the qualified cash or deferred arrangement included in such plan constitutes an automatic contribution arrangement, and

(II) the employer is required to make matching contributions on behalf of each employee eligible to participate in the arrangement in an amount equal to 50 percent of the elective contributions of the employee to the extent such elective contributions do not exceed 4 percent of compensation.

Rules similar to the rules of clauses (ii) and (iii) of section 401(k)(12)(B) shall apply for purposes of this clause.

(ii) Nonelective contributions

An applicable defined contribution plan shall not be treated as failing to meet the requirements of clause (i) because the employer makes nonelective contributions under the plan but such contributions shall not be taken into account in determining whether the requirements of clause (i)(II) are met.

(D) Vesting requirements

The vesting requirements of this subparagraph are met if—

(i) in the case of a defined benefit plan forming part of an eligible combined plan an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit under the plan derived from employer contributions, and

(ii) in the case of an applicable defined contribution plan forming part of eligible combined plan—

(I) an employee has a nonforfeitable right to any matching contribution made under the qualified cash or deferred arrangement included in such plan by an employer with respect to any elective contribution, including matching contributions in excess of the contributions required under subparagraph (C)(i)(II), and

(II) an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived under the arrangement from nonelective contributions of the employer.

For purposes of this subparagraph, the rules of section 411 shall apply to the extent not inconsistent with this subparagraph.

(E) Uniform provision of contributions and benefits

In the case of a defined benefit plan or applicable defined contribution plan forming part of an eligible combined plan, the requirements of this subparagraph are met if all contributions and benefits under each such plan, and all rights and features under each such plan, must be provided uniformly to all participants.

(F) Requirements must be met without taking into account social security and similar contributions and benefits or other plans

(i) In general

The requirements of this subparagraph are met if the requirements of clauses (ii) and (iii) are met.

(ii) Social security and similar contributions

The requirements of this clause are met if—

(I) the requirements of subparagraphs (B) and (C) are met without regard to section 401(l), and

(II) the requirements of sections 401(a)(4) and 410(b) are met with respect to both the applicable defined contribution plan and defined benefit plan forming part of an eligible combined plan without regard to section 401(l).

(iii) Other plans and arrangements

The requirements of this clause are met if the applicable defined contribution plan and defined benefit plan forming part of an eligible combined plan meet the requirements of sections 401(a)(4) and 410(b) without being combined with any other plan.

(3) Nondiscrimination requirements for qualified cash or deferred arrangement

(A) In general

A qualified cash or deferred arrangement which is included in an applicable defined contribution plan forming part of an eligible combined plan shall be treated as meeting the requirements of section 401(k)(3)(A)(ii) if the requirements of paragraph (2)(C) are met with respect to such arrangement.

(B) Matching contributions

In applying section 401(m)(11) to any matching contribution with respect to a contribution to which paragraph (2)(C) applies, the contribution requirement of paragraph (2)(C) and the notice requirements of paragraph (5)(B) shall be substituted for the requirements otherwise applicable under clauses (i) and (ii) of section 401(m)(11)(A).

(4) Satisfaction of top-heavy rules

A defined benefit plan and applicable defined contribution plan forming part of an eligible combined plan for any plan year shall be treated as meeting the requirements of section 416 for the plan year.

(5) Automatic contribution arrangement

For purposes of this subsection—

(A) In general

A qualified cash or deferred arrangement shall be treated as an automatic contribution arrangement if the arrangement—

(i) provides that each employee eligible to participate in the arrangement is treated as having elected to have the employer make elective contributions in an amount equal to 4 percent of the employee's compensation unless the employee specifically elects not to have such contributions made or to have such contributions made at a different rate, and

(ii) meets the notice requirements under subparagraph (B).

(B) Notice requirements

(i) In general

The requirements of this subparagraph are met if the requirements of clauses (ii) and (iii) are met.

(ii) Reasonable period to make election

The requirements of this clause are met if each employee to whom subparagraph (A)(i) applies—

(I) receives a notice explaining the employee's right under the arrangement to elect not to have elective contributions made on the employee's behalf or to have the contributions made at a different rate, and

(II) has a reasonable period of time after receipt of such notice and before the first elective contribution is made to make such election.

(iii) Annual notice of rights and obligations

The requirements of this clause are met if each employee eligible to participate in the arrangement is, within a reasonable period before any year, given notice of the employee's rights and obligations under the arrangement.

The requirements of clauses (i) and (ii) of section 401(k)(12)(D) shall be met with respect to the notices described in clauses (ii) and (iii) of this subparagraph.

(6) Coordination with other requirements

(A) Treatment of separate plans

Section 414(k) shall not apply to an eligible combined plan.

(B) Reporting

An eligible combined plan shall be treated as a single plan for purposes of sections 6058 and 6059.

(7) Applicable defined contribution plan

For purposes of this subsection—

(A) In general

The term "applicable defined contribution plan" means a defined contribution plan which includes a qualified cash or deferred arrangement.

(B) Qualified cash or deferred arrangement

The term "qualified cash or deferred arrangement" has the meaning given such term by section 401(k)(2).

(y) Cooperative and small employer charity pension plans

(1) In general

For purposes of this title, except as provided in this subsection, a CSEC plan is a defined benefit plan (other than a multiemployer plan)—

(A) to which section 104 of the Pension Protection Act of 2006 applies, without regard to—

(i) section 104(a)(2) of such Act;

(ii) the amendments to such section 104 by section 202(b) of the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010; and

(iii) paragraph (3)(B); or

(B) that, as of June 25, 2010, was maintained by more than one employer and all of the employers were organizations described in section 501(c)(3).

(2) Aggregation

All employers that are treated as a single employer under subsection (b) or (c) shall be treated as a single employer for purposes of determining if a plan was maintained by more than one employer under paragraph (1)(B).

(3) Election

(A) In general

If a plan falls within the definition of a CSEC plan under this subsection (without regard to this paragraph), such plan shall be a CSEC plan unless the plan sponsor elects not later than the close of the first plan year of the plan beginning after December 31, 2013, not to be treated as a CSEC plan. An election under the preceding sentence shall take effect for such plan year and, once made, may be revoked only with the consent of the Secretary.

(B) Special rule

If a plan described in subparagraph (A) is treated as a CSEC plan, section 104 of the Pension Protection Act of 2006, as amended by the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010, shall cease to apply to such plan as of the first date as of which such plan is treated as a CSEC plan.

(Added Pub. L. 93–406, title II, §1015, Sept. 2, 1974, 88 Stat. 925; amended Pub. L. 94–455, title XIX, §§1901(a)(64), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1775, 1834; Pub. L. 95–600, title I, §152(d), Nov. 6, 1978, 92 Stat. 2799; Pub. L. 96–364, title II, §§207, 208(a), title IV, §407(b), Sept. 26, 1980, 94 Stat. 1288, 1289, 1305; Pub. L. 96–605, title II, §201(a), Dec. 28, 1980, 94 Stat. 3526; Pub. L. 96–613, §5(a), Dec. 28, 1980, 94 Stat. 3580; Pub. L. 97–248, title II, §§240(c), 246(a), 248(a), Sept. 3, 1982, 96 Stat. 520, 525, 526; Pub. L. 98–369, div. A, title IV, §491(d)(26), (27), title V, §526(a)(1), (b)(1), (d)(1), (2), title VII, §713(i), July 18, 1984, 98 Stat. 850, 874, 875, 960; Pub. L. 98–397, title II, §204(b), Aug. 23, 1984, 98 Stat. 1445; Pub. L. 99–514, title XI, §§1114(a), (b)(11), 1115(a), 1117(c), 1146(a), (b), 1151(e)(1), (i), title XIII, §1301(j)(4), title XVIII, §§1852(f), 1898(c)(2)(A), (4)(A), (6)(A), (7)(A)(ii)–(vii), 1899A(12), Oct. 22, 1986, 100 Stat. 2448, 2451, 2452, 2462, 2491, 2506, 2507, 2657, 2868, 2951, 2953, 2954, 2958; Pub. L. 100–203, title IX, §9305(c), Dec. 22, 1987, 101 Stat. 1330–352; Pub. L. 100–647, title I, §§1011(d)(8), (e)(4), (h)(5), (i)(1)–(4)(A), (j)(1), (2), 1011A(b)(3), 1011B(a)(16), (17), (19), (20), 1018(t)(8)(E)–(G), title II, §2005(c)(1), (2), title III, §§3011(b)(4), (5), 3021(b)(1), (2)(A), title VI, §6067(a), Nov. 10, 1988, 102 Stat. 3460, 3461, 3465, 3467, 3468, 3473, 3485, 3589, 3611, 3612, 3625, 3631, 3632, 3703; Pub. L. 101–140, title II, §§203(a)(6), 204(b)(2), Nov. 8, 1989, 103 Stat. 831, 833; Pub. L. 101–239, title VII, §§7811(m)(5), 7813(b), 7841(a)(2), Dec. 19, 1989, 103 Stat. 2412, 2413, 2427; Pub. L. 101–508, title XI, §11703(b)(1), Nov. 5, 1990, 104 Stat. 1388–517; Pub. L. 102–318, title V, §521(b)(20)–(22), July 3, 1992, 106 Stat. 311; Pub. L. 104–188, title I, §§1421(b)(9)(C), 1431(a), (b)(1), (c)(1)(A), (D), (E), 1434(b), 1454(a), 1461(a), 1462(a), 1704(n)(1), Aug. 20, 1996, 110 Stat. 1798, 1802, 1803, 1807, 1817, 1822, 1824, 1883; Pub. L. 105–34, title XV, §1522(a), title XVI, §1601(d)(6)(A), (7), (h)(2)(D)(i), (ii), Aug. 5, 1997, 111 Stat. 1070, 1089, 1090, 1092; Pub. L. 105–206, title VI, §6018(c), July 22, 1998, 112 Stat. 822; Pub. L. 106–554, §1(a)(7) [title III, §314(e)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–643; Pub. L. 107–16, title VI, §§631(a), 635(a)–(c), June 7, 2001, 115 Stat. 111, 117; Pub. L. 107–147, title IV, §411(o)(3)–(8), Mar. 9, 2002, 116 Stat. 48, 49; Pub. L. 108–311, title IV, §408(a)(15), Oct. 4, 2004, 118 Stat. 1192; Pub. L. 109–280, title I, §114(c), title IX, §§902(d)(1), 903(a), 906(a)(1), (b)(1)(C), title XI, §1106(b), Aug. 17, 2006, 120 Stat. 853, 1036, 1040, 1051, 1052, 1062; Pub. L. 110–28, title VI, §6611(a)(2), (b)(2), May 25, 2007, 121 Stat. 180, 181; Pub. L. 110–245, title I, §§104(b), 105(b)(1), June 17, 2008, 122 Stat. 1626, 1628; Pub. L. 110–289, div. A, title VI, §1604(b)(4), July 30, 2008, 122 Stat. 2829; Pub. L. 110–458, title I, §§101(d)(2)(E), 109(b)(4)–(c)(1), Dec. 23, 2008, 122 Stat. 5099, 5111; Pub. L. 113–97, title II, §§201, 203(a), Apr. 7, 2014, 128 Stat. 1121, 1138.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table under section 401 of this title.

REFERENCES IN TEXT

The Railroad Retirement Act of 1935 or 1937, referred to in subsec. (d), means act Aug. 29, 1935, ch. 812, 49 Stat. 867, known as the Railroad Retirement Act of 1935. The Railroad Retirement Act of 1935 was amended generally by act June 24, 1937, ch. 382, part I, 50 Stat. 307, and was known as the Railroad Retirement Act of 1937. The Railroad Retirement Act of 1937 was amended generally and redesignated the Railroad Retirement Act of 1974 by Pub. L. 93–444, title I, Oct. 16, 1974, 88 Stat. 1305 and is classified generally to subchapter IV (§231 et seq.) of chapter 9 of Title 45, Railroads. For complete classification of this Act to the Code, see Tables.

The International Organizations Immunities Act (59 Stat. 669), referred to in subsec. (d), is act Dec. 29, 1945, ch. 652, title I, 59 Stat. 669, as amended, which is classified principally to subchapter XVIII (§288 et seq.) of chapter 7 of Title 22, Foreign Relations and Intercourse. The Act also amended several other laws including the Internal Revenue Code of 1939. For exemption from taxation of income of international organizations and of the compensation of employees thereof, see sections 892 and 893 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 288 of Title 22 and Tables.

The Employee Retirement Income Security Act of 1974, referred to in subsecs. (f)(3), (5), (6)(B), (F) and (l)(1), (2)(E), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, which is classified principally to chapter 18 (§1001 et seq.) of Title 29, Labor. Title IV of the Act is classified principally to subchapter III (§1301 et seq.) of chapter 18 of Title 29. Section 3(37)(A)(iii) of the Act is classified to section 1002(37)(A)(iii) of Title 29. Section 4403(b) and (c) of the Employee Retirement Income Security Act of 1974 probably means section 4303(b) and (c) of such Act which is classified to section 1453(b) and (c) of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

The date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980, referred to in subsec. (f)(4), (5), means the date of the enactment of Pub. L. 96–364, which was approved Sept. 26, 1980.

Effective date of the Multiemployer Pension Plan Amendments Act of 1980, referred to in subsec. (f)(5), probably means the date of enactment of the Multiemployer Pension Plan Amendments Act of 1980, which was approved Sept. 26, 1980.

The Pension Protection Act of 2006, referred to in subsecs. (f)(6)(A) and (y)(1)(A), (3)(B), is Pub. L. 109–280, Aug. 17, 2006, 120 Stat. 780. Section 104 of the Act is set out as a note under section 401 of this title. For complete classification of this Act to the Code, see Short Title of 2006 Amendment note set out under section 1001 of Title 29, Labor, and Tables.

The Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010, referred to in subsec. (y)(1)(A)(ii), (3)(B), is Pub. L. 111–192, June 25, 2010, 124 Stat. 1280. For complete classification of this Act to the Code, see Short Title of 2010 Amendment note set out under section 1001 of Title 29, Labor, and Tables.

AMENDMENTS

2014—Subsec. (y). Pub. L. 113–97, §201, added subsec. (y).

Subsec. (y)(3). Pub. L. 113–97, §203(a), added par. (3).

2008—Subsec. (l)(2)(B)(i)(I). Pub. L. 110–458, §101(d)(2)(E), amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: "the amount determined under section 431(c)(6)(A)(i) in the case of a multiemployer plan (and the sum of the funding shortfall and target normal cost determined under section 430 in the case of any other plan), over".

Subsec. (l)(2)(G). Pub. L. 110–289, §1604(b)(4), which directed substitution of "bridge depository institution" for "bridge bank", was executed by making the substitution wherever appearing in text, to reflect the probable intent of Congress.

Subsec. (u). Pub. L. 110–245, §105(b)(1)(B), inserted "and to differential wage payments to members on active duty" after "USERRA" in heading.

Subsec. (u)(9) to (11). Pub. L. 110–245, §104(b), added par. (9) and redesignated former pars. (9) and (10) as (10) and (11), respectively.

Subsec. (u)(12). Pub. L. 110–245, §105(b)(1)(A), added par. (12).

Subsec. (w)(3)(B) to (D). Pub. L. 110–458, §109(b)(4), inserted "and" after comma at end of subpar. (B), redesignated subpar. (D) as (C), and struck out former subpar. (C) which read as follows: "under which, in the absence of an investment election by the participant, contributions described in subparagraph (B) are invested

in accordance with regulations prescribed by the Secretary of Labor under section 404(c)(5) of the Employee Retirement Income Security Act of 1974, and".

Subsec. (w)(5)(D), (E). Pub. L. 110–458, §109(b)(5), added subpars. (D) and (E).

Subsec. (w)(6). Pub. L. 110–458, §109(b)(6), inserted "or for purposes of applying the limitation under section 402(g)(1)" before period at end.

Subsec. (x)(1). Pub. L. 110–458, §109(c)(1), inserted at end "In the case of a termination of the defined benefit plan and the applicable defined contribution plan forming part of an eligible combined plan, the plan administrator shall terminate each such plan separately."

2007—Subsec. (f)(6)(A)(ii)(I). Pub. L. 110–28, §6611(a)(2)(A), substituted "for each of the 3 plan years immediately preceding the first plan year for which the election under this paragraph is effective with respect to the plan," for "for each of the 3 plan years immediately before the date of enactment of the Pension Protection Act of 2006,".

Subsec. (f)(6)(B). Pub. L. 110–28, §6611(a)(2)(B), substituted "starting with any plan year beginning on or after January 1, 1999, and ending before January 1, 2008, as designated by the plan in the election made under subparagraph (A)(ii)" for "starting with the first plan year ending after the date of the enactment of the Pension Protection Act of 2006".

Subsec. (f)(6)(E). Pub. L. 110–28, §6611(b)(2), substituted "if it is a plan sponsored by an organization which is described in section 501(c)(5) and exempt from tax under section 501(a) and which was established in Chicago, Illinois, on August 12, 1881." for "if it is a plan—

"(i) that was established in Chicago, Illinois, on August 12, 1881; and

"(ii) sponsored by an organization described in section 501(c)(5) and exempt from tax under section 501(a)."

Subsec. (f)(6)(F). Pub. L. 110–28, §6611(a)(2)(C), added subpar. (F).

2006—Subsec. (d). Pub. L. 109–280, §906(a)(1), inserted at end "The term 'governmental plan' includes a plan which is established and maintained by an Indian tribal government (as defined in section 7701(a)(40)), a subdivision of an Indian tribal government (determined in accordance with section 7871(d)), or an agency or instrumentality of either, and all of the participants of which are employees of such entity substantially all of whose services as such an employee are in the performance of essential governmental functions but not in the performance of commercial activities (whether or not an essential government function)."

Subsec. (f)(6). Pub. L. 109–280, §1106(b), added par. (6).

Subsec. (h)(2). Pub. L. 109–280, §906(b)(1)(C), inserted "or a governmental plan described in the last sentence of section 414(d) (relating to plans of Indian tribal governments)," after "foregoing,".

Subsec. (l)(2)(B)(i)(I). Pub. L. 109–280, §114(c), amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: "the amount determined under section 412(c)(7)(A)(i) with respect to the plan, over".

Subsec. (w). Pub. L. 109–280, §902(d)(1), added subsec. (w).

Subsec. (x). Pub. L. 109–280, §903(a), added subsec. (x).

2004—Subsec. (q)(7). Pub. L. 108–311 substituted "subsection" for "section".

2002—Subsec. (v)(2)(D). Pub. L. 107–147, §411(o)(3), added subpar. (D).

Subsec. (v)(3)(A)(i). Pub. L. 107–147, §411(o)(4), substituted "sections 401(a)(30), 402(h), 403(b), 408, 415(c), and 457(b)(2) (determined without regard to section 457(b)(3))" for "section 402(g), 402(h), 403(b), 404(a), 404(h), 408(k), 408(p), 415, or 457".

Subsec. (v)(3)(B). Pub. L. 107–147, §411(o)(5), substituted "section 401(a)(4), 401(k)(3), 401(k)(11), 403(b)(12), 408(k), 410(b), or 416" for "section 401(a)(4), 401(a)(26), 401(k)(3), 401(k)(11), 401(k)(12), 403(b)(12), 408(k), 408(p), 408B, 410(b), or 416".

Subsec. (v)(4)(B). Pub. L. 107–147, §411(o)(6), inserted before period at end ", except that a plan described in clause (i) of section 410(b)(6)(C) shall not be treated as a plan of the employer until the expiration of the transition period with respect to such plan (as determined under clause (ii) of such section)".

Subsec. (v)(5). Pub. L. 107–147, §411(o)(7)(A), struck out ", with respect to any plan year," before "a participant" in introductory provisions.

Subsec. (v)(5)(A). Pub. L. 107–147, §411(o)(7)(B), amended subpar. (A) generally. Prior to amendment, subpar (A) read as follows: "who has attained the age of 50 before the close of the plan year, and".

Subsec. (v)(5)(B). Pub. L. 107–147, §411(o)(7)(C), substituted "plan (or other applicable) year" for "plan year".

Subsec. (v)(6)(C). Pub. L. 107–147, §411(o)(8), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "This subsection shall not apply to an applicable employer plan described in subparagraph (A)(iii) for any year to which section 457(b)(3) applies."

2001—Subsec. (p)(10). Pub. L. 107–16, §635(b), substituted "section 409(d), and section 457(d)" for "and section 409(d)".

Subsec. (p)(11). Pub. L. 107–16, §635(a), in heading substituted "certain other plans" for "governmental and church plans" and in text inserted "or an eligible deferred compensation plan (within the meaning of section 457(b))" after "subsection (e))".

Subsec. (p)(12), (13). Pub. L. 107–16, §635(c), added par. (12) and redesignated former par. (12) as (13).

Subsec. (v). Pub. L. 107–16, §631(a), added subsec. (v).

2000—Subsec. (s)(2). Pub. L. 106–554 substituted "section 125, 132(f)(4), 402(e)(3)" for "section 125, 402(e)(3)".

1998—Subsec. (q)(5). Pub. L. 105–206 made technical amendment to Pub. L. 104–188, §1434(c)(1)(E). See 1996 Amendment note below.

1997—Subsec. (e)(5)(A). Pub. L. 105–34, §1601(d)(6)(A), amended heading and text of subpar. (A) generally. Prior to amendment, text read as follows: "For purposes of this part—

"(i) IN GENERAL.—An employee of a church or a convention or association of churches shall include a duly ordained, commissioned, or licensed minister of a church who, in connection with the exercise of his or her ministry—

"(I) is a self-employed individual (within the meaning of section 401(c)(1)(B)), or

"(II) is employed by an organization other than an organization described in section 501(c)(3).

"(ii) TREATMENT AS EMPLOYER AND EMPLOYEE.—

"(I) SELF-EMPLOYED.—A minister described in clause (i)(I) shall be treated as his or her own employer which is an organization described in section 501(c)(3) and which is exempt from tax under section 501(a).

"(II) OTHERS.—A minister described in clause (i)(II) shall be treated as employed by an organization described in section 501(c)(3) and exempt from tax under section 501(a)."

Subsec. (e)(5)(C). Pub. L. 105–34, §1522(a)(1), substituted "not otherwise participating" for "not eligible to participate".

Subsec. (e)(5)(E). Pub. L. 105–34, §1522(a)(2), added subpar. (E).

Subsec. (n)(3)(C). Pub. L. 105–34, §1601(h)(2)(D)(i), inserted "137," after "132,".

Subsec. (q)(7), (9). Pub. L. 105–34, §1601(d)(7), redesignated par. (7), relating to certain employees not considered highly compensated and excluded employees under pre-ERISA rules for church plans, as (9).

Subsec. (t)(2). Pub. L. 105–34, §1601(h)(2)(D)(ii), inserted "137," after "132,".

1996—Subsecs. (b), (c). Pub. L. 104–188, §1421(b)(9)(C), inserted "408(p)," after "408(k),".

Subsec. (e)(5). Pub. L. 104–188, §1461(a), added par. (5).

Subsec. (m)(4)(B). Pub. L. 104–188, §1421(b)(9)(C), inserted "408(p)," after "408(k),".

Subsec. (n)(2)(C). Pub. L. 104–188, §1454(a), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: "such services are of a type historically performed, in the business field of the recipient, by employees."

Subsec. (n)(3)(B). Pub. L. 104–188, §1421(b)(9)(C), inserted "408(p)," after "408(k),".

Subsec. (q)(1). Pub. L. 104–188, §1431(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "IN GENERAL.—The term 'highly compensated employee' means any employee who, during the year or the preceding year—

"(A) was at any time a 5-percent owner,

"(B) received compensation from the employer in excess of $75,000,

"(C) received compensation from the employer in excess of $50,000 and was in the top-paid group of employees for such year, or

"(D) was at any time an officer and received compensation greater than 50 percent of the amount in effect under section 415(b)(1)(A) for such year.

The Secretary shall adjust the $75,000 and $50,000 amounts under this paragraph at the same time and in the same manner as under section 415(d)."

Subsec. (q)(2), (3). Pub. L. 104–188, §1431(c)(1)(A), redesignated pars. (3) and (4) as (2) and (3), respectively, and struck out former par. (2) which read as follows: "SPECIAL RULE FOR CURRENT YEAR .—In the case of the year for which the relevant determination is being made, an employee not described in subparagraph (B), (C), or (D) of paragraph (1) for the preceding year (without regard to this paragraph) shall not be treated as described in subparagraph (B), (C), or (D) of paragraph (1) unless such employee is a member of the group consisting of the 100 employees paid the greatest compensation during the year for which such determination is being made."

Subsec. (q)(4). Pub. L. 104–188, §1434(b)(1), amended heading and text of par. (4) generally. Prior to amendment, text read as follows: "For purposes of this subsection—

"(A) IN GENERAL.—The term 'compensation' means compensation within the meaning of section 415(c)(3).

"(B) CERTAIN PROVISIONS NOT TAKEN INTO ACCOUNT.—The determination under subparagraph (A) shall be made—

"(i) without regard to sections 125, 402(e)(3), and 402(h)(1)(B), and

"(ii) in the case of employer contributions made pursuant to a salary reduction agreement, without regard to section 403(b)."

Pub. L. 104–188, §1431(c)(1)(A), redesignated par. (7) as (4).

Subsec. (q)(5). Pub. L. 104–188, §1434(c)(1)(E), as amended by Pub. L. 105–206, §6018(c), struck out "under paragraph (4) or the number of officers taken into account under paragraph (5)" after "top-paid group" in introductory provisions.

Pub. L. 104–188, §1431(c)(1)(A), redesignated par. (8) as (5) and struck out former par. (5) which read as follows: "SPECIAL RULES FOR TREATMENT OF OFFICERS.—

"(A) NOT MORE THAN 50 OFFICERS TAKEN INTO ACCOUNT.—For purposes of paragraph (1)(D), no more than 50 employees (or, if lesser, the greater of 3 employees or 10 percent of the employees) shall be treated as officers.

"(B) AT LEAST 1 OFFICER TAKEN INTO ACCOUNT.—If for any year no officer of the employer is described in paragraph (1)(D), the highest paid officer of the employer for such year shall be treated as described in such paragraph."

Subsec. (q)(6). Pub. L. 104–188, §1431(b)(1), (c)(1)(A), redesignated par. (9) as (6) and struck out former par. (6) which related to treatment of families of 5-percent owners or of highly compensated employees.

Subsec. (q)(7). Pub. L. 104–188, §1462(a), added par. (7) relating to certain employees not considered highly compensated and excluded employees under pre-ERISA rules for church plans.

Pub. L. 104–188, §1431(c)(1)(A), redesignated par. (10), relating to coordination with other provisions, as (7). Former par. (7) redesignated (4).

Subsec. (q)(8) to (12). Pub. L. 104–188, §1431(c)(1)(A), redesignated pars. (8) to (11) as (5) to (8), respectively, and struck out par. (12) which related to simplified method for determining highly compensated employees.

Subsec. (r)(2)(A). Pub. L. 104–188, §1431(c)(1)(D), substituted "subsection (q)(5)" for "subsection (q)(8)".

Subsec. (s)(2). Pub. L. 104–188, §1434(b)(2), inserted "not" after "elect" in heading and in text.

Subsec. (u). Pub. L. 104–188, §1704(n)(1), added subsec. (u).

1992—Subsec. (n)(5)(C)(iii)(I). Pub. L. 102–318, §521(b)(20), substituted "402(e)(3)" for "402(a)(8)".

Subsec. (q)(7)(B)(i). Pub. L. 102–318, §521(b)(21), substituted "402(e)(3)" for "402(a)(8)".

Subsec. (s)(2). Pub. L. 102–318, §521(b)(22), substituted "402(e)(3)" for "402(a)(8)".

1990—Subsec. (n)(2)(B). Pub. L. 101–508 struck out "(6 months in the case of core health benefits)" after "1 year".

1989—Subsec. (n)(3)(C). Pub. L. 101–239, §7813(b), amended directory language of Pub. L. 100–647, §3011(b)(4), see 1988 Amendment note below.

Pub. L. 101–140, §203(a)(6)(A), struck out "89," after "79,".

Subsec. (p)(10). Pub. L. 101–239, §7811(m)(5), inserted "section" before "403(b)".

Subsec. (p)(11). Pub. L. 101–239, §7841(a)(2), added par. (11) and redesignated former par. (11) as (12).

Subsec. (r)(1). Pub. L. 101–140, §204(b)(2), substituted "sections 129(d)(8) and 410(b)" for "section 410(b)".

Pub. L. 101–140, §203(a)(6)(B), substituted "section 410(b)" for "sections 89 and 410(b)".

Subsec. (t)(2). Pub. L. 101–239, §7813(b), amended directory language of Pub. L. 100–647, §3011(b)(5), see 1988 Amendment note below.

Pub. L. 101–140, §203(a)(6)(C), struck out "89," after "79,".

1988—Subsec. (k)(2). Pub. L. 100–647, §1011A(b)(3), inserted "72(d) (relating to treatment of employee contributions as separate contract)," after "purposes of sections".

Subsec. (l). Pub. L. 100–647, §2005(c)(1), (2), substituted "Merger" for "Mergers" in heading, designated existing provision as par. (1), inserted par. (1) heading, and added par. (2).

Subsec. (l)(2)(G). Pub. L. 100–647, §6067(a), added subpar. (G).

Subsec. (m)(4)(A). Pub. L. 100–647, §1011(h)(5), substituted "(16), (17), and (26)" for "and (16)".

Subsec. (m)(4)(C), (D). Pub. L. 100–647, §1011B(a)(16), struck out subpars. (C) and (D) which read as follows:

"(C) section 105(h), and

"(D) section 125."

Subsec. (n)(3)(A). Pub. L. 100–647, §1011(h)(5), substituted "(16), (17), and (26)" for "and (16)".

Subsec. (n)(3)(C). Pub. L. 100–647, §3011(b)(4), as amended by Pub. L. 101–239, §7813(b), struck out "162(i)(2), 162(k)," after "132," and substituted "505, and 4980B" for "and 505".

Pub. L. 100–647, §1011B(a)(19), inserted "162(i)(2), 162(k)," after "132,".

Subsec. (o). Pub. L. 100–647, §1011(e)(4), inserted "or any requirement under section 457" after "or (n)(3)".

Subsec. (p)(4)(B). Pub. L. 100–647, §1018(t)(8)(E), substituted "means the earlier of" for "means earlier of" and struck out "in" at beginning of cls. (i) and (ii).

Subsec. (p)(9). Pub. L. 100–647, §1018(t)(8)(G), inserted at end "For purposes of this title, except as provided in regulations, any distribution from an annuity contract under section 403(b) pursuant to a qualified domestic relations order shall be treated in the same manner as a distribution from a plan to which section 401(a)(13) applies."

Subsec. (p)(10). Pub. L. 100–647, §1018(t)(8)(F), inserted ", 403(b)," after "section 401".

Subsec. (q)(1). Pub. L. 100–647, §1011(i)(1), inserted at end "The Secretary shall adjust the $75,000 and $50,000 amounts under this paragraph at the same time and in the same manner as under section 415(d)."

Subsec. (q)(1)(D). Pub. L. 100–647, §1011(d)(8), substituted "50" for "150" and "415(b)(1)(A)" for "415(c)(1)(A)".

Subsec. (q)(6)(C). Pub. L. 100–647, §1011(i)(2), added subpar. (C).

Subsec. (q)(8). Pub. L. 100–647, §1011(i)(4)(A), inserted "or the number of officers taken into account under paragraph (5)" after "under paragraph (4)".

Pub. L. 100–647, §1011(i)(3)(A)(ii), substituted "Except as provided by the Secretary, the employer" for "The employer" in last sentence.

Subsec. (q)(8)(F). Pub. L. 100–647, §1011(i)(3)(A)(i), struck out subpar. (F) which read as follows: "employees who are nonresident aliens and who receive no earned income (within the meaning of section 911(d)(2)) from the employer which constitutes income from sources within the United States (within the meaning of section 861(a)(3))."

Subsec. (q)(11). Pub. L. 100–647, §1011(i)(3)(B), added par. (11).

Subsec. (q)(12). Pub. L. 100–647, §3021(b)(1), added par. (12).

Subsec. (r)(3). Pub. L. 100–647, §3021(b)(2)(A), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "The requirements of subparagraph (C) of paragraph (2) shall not apply to any line of business if the highly compensated employee percentage with respect to such line of business is—

"(A) not less than one-half, and

"(B) not more than twice,

the percentage which highly compensated employees are of all employees of the employer. An employer shall be treated as meeting the requirements of subparagraph (A) if at least 10 percent of all highly compensated employees of the employer perform services solely for such line of business."

Subsec. (s). Pub. L. 100–647, §1011(j)(1), substituted "any applicable provision" for "this part" in introductory provisions.

Subsec. (s)(1). Pub. L. 100–647, §1011(j)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "The term 'compensation' means compensation for service performed for an employer which (taking into account the provisions of this chapter) is currently includible in gross income."

Subsec. (s)(2) to (4). Pub. L. 100–647, §1011(j)(2), added par. (4), redesignated former pars. (3) and (4) as (2) and (3), respectively, and struck out former par. (2) which read as follows: "The Secretary shall prescribe regulations for the determination of the compensation of an employee who is a self-employed individual (within the meaning of section 401(c)(1)) which are based on the principles of paragraph (1)."

Subsec. (t)(1). Pub. L. 100–647, §1011B(a)(20), struck out "of section 414" before "shall be treated" and "shall apply with".

Subsec. (t)(2). Pub. L. 100–647, §3011(b)(5), as amended by Pub. L. 101–239, §7813(b), struck out "162(i)(2), 162(k)," after "132," and substituted "505, or 4980B" for "or 505".

Pub. L. 100–647, §1011B(a)(17), inserted "162(i)(2), 162(k)," after "132,".

1987—Subsec. (b). Pub. L. 100–203 struck out "the minimum funding standard of section 412, the tax imposed by section 4971, and" after "one such corporation,".

1986—Subsec. (k)(2). Pub. L. 99–514, §1117(c), inserted reference to section 401(m) (relating to nondiscrimination tests for matching requirements and employee contributions).

Subsec. (m)(2)(B)(ii). Pub. L. 99–514, §1114(b)(11), substituted "highly compensated employees (within the meaning of section 414(q))" for "officers, highly compensated employees, or owners".

Subsec. (m)(5). Pub. L. 99–514, §1301(j)(4), substituted "section 144(a)(3)" for "section 103(b)(6)(C)".

Subsec. (m)(7). Pub. L. 99–514, §1852(f), amended directory language of Pub. L. 98–369, §526(d)(2), to correct an error, and did not involve any change in text. See 1984 Amendment note below.

Subsec. (n)(1). Pub. L. 99–514, §1151(i)(1), substituted "requirements" for "pension requirements".

Pub. L. 99–514, §1146(b)(2), struck out "except to the extent otherwise provided in regulations," after

"listed in paragraph (3),".

Subsec. (n)(2)(B). Pub. L. 99–514, §1151(i)(2), inserted "(6 months in the case of core health benefits)" after "1 year".

Subsec. (n)(3). Pub. L. 99–514, §1151(i)(3), substituted "Requirements" for "Pension requirements" in heading, substituted "requirements" for "pension requirements" in text, and added subpar. (C).

Subsec. (n)(4). Pub. L. 99–514, §1146(a)(2), substituted "Time when first considered as employee" for "Time when leased employee is first considered as employee" in heading and amended text generally. Prior to amendment, text read as follows: "In the case of any leased employee, paragraph (1) shall apply only for purposes of determining whether the pension requirements listed in paragraph (3) are met for periods after the close of the 1-year period referred to in paragraph (2); except that years of service for the recipient shall be determined by taking into account the entire period for which the leased employee performed services for the recipient (or related persons)."

Subsec. (n)(5). Pub. L. 99–514, §1146(a)(1), amended par. (5) generally. Prior to amendment, par. (5) read as follows: "This subsection shall not apply to any leased employee if such employee is covered by a plan which is maintained by the leasing organization if, with respect to such employee, such plan—

"(A) is a money purchase pension plan with a nonintegrated employer contribution rate of at least 7½ percent, and

"(B) provides for immediate participation and for full and immediate vesting."

Subsec. (n)(6). Pub. L. 99–514, §1301(j)(4), substituted "section 144(a)(3)" for "section 103(b)(6)(C)" in subpar. (A).

Pub. L. 99–514, §1146(a)(3), substituted "Other rules" for "Related persons" in heading and amended text generally. Prior to amendment, text read as follows: "For purposes of this subsection, the term 'related persons' has the same meaning as when used in section 103(b)(6)(C)."

Subsec. (o). Pub. L. 99–514, §1146(b)(1), inserted provision relating to regulations to minimize recordkeeping requirements in case of employer which has no top-heavy plans and uses the services of persons other than employees for an insignificant percentage of the employer's total workload.

Subsec. (p)(1)(B)(i). Pub. L. 99–514, §1898(c)(7)(A)(ii), inserted "former spouse,".

Subsec. (p)(3)(B). Pub. L. 99–514, §1899A(12), struck out the comma after "benefits".

Subsec. (p)(4)(A). Pub. L. 99–514, §1898(c)(7)(A)(vi), substituted "A" for "In the case of any payment before a participant has separated from service, a" in introductory provisions and inserted "in the case of any payment before a participant has separated from service," in cl. (i).

Subsec. (p)(4)(B). Pub. L. 99–514, §1898(c)(7)(A)(vii), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "For purposes of this paragraph, the term 'earliest retirement age' has the meaning given such term by section 417(f)(3), except that in the case of any defined contribution plan, the earliest retirement age shall be the date which is 10 years before the normal retirement age (within the meaning of section 411(a)(8))."

Subsec. (p)(5). Pub. L. 99–514, §1898(c)(7)(A)(v), struck out last sentence which read as follows: "A plan shall not be treated as failing to meet the requirements of subsection (a) or (k) of section 401 which prohibit payment of benefits before termination of employment solely by reason of payments to an alternate payee pursuant to a qualified domestic relations order."

Subsec. (p)(5)(A). Pub. L. 99–514, §1898(c)(6)(A), inserted "(and any spouse of the participant shall not be treated as a spouse of the participant for such purposes)".

Subsec. (p)(5)(B). Pub. L. 99–514, §1898(c)(7)(A)(iv), substituted "the surviving former spouse" for "the surviving spouse".

Subsec. (p)(6)(A)(i). Pub. L. 99–514, §1898(c)(7)(A)(iii), substituted "each alternate payee" for "any other alternate payee".

Subsec. (p)(7)(A). Pub. L. 99–514, §1898(c)(2)(A)(i), substituted "shall separately account for the amounts (hereinafter in this paragraph referred to as the 'segregated amounts')" for "shall segregate in a separate account in the plan or in an escrow account the amounts".

Subsec. (p)(7)(B). Pub. L. 99–514, §1898(c)(2)(A)(ii), substituted "the 18-month period described in subparagraph (E)" for "18 months" and "including any interest" for "plus any interest".

Subsec. (p)(7)(C). Pub. L. 99–514, §1898(c)(2)(A)(iii), substituted "the 18-month period described in subparagraph (E)" for "18 months" and "including any interest" for "plus any interest".

Subsec. (p)(7)(D). Pub. L. 99–514, §1898(c)(2)(A)(iv), inserted "described in subparagraph (E)".

Subsec. (p)(7)(E). Pub. L. 99–514, §1898(c)(2)(A)(v), added subpar. (E).

Subsec. (p)(9). Pub. L. 99–514, §1898(c)(4)(A), added par. (9). Former par. (9) redesignated (11).

Subsec. (p)(10). Pub. L. 99–514, §1898(c)(7)(A)(v), added par. (10).

Subsec. (p)(11). Pub. L. 99–514, §1898(c)(4)(A), redesignated former par. (9) as (11).

Subsec. (q). Pub. L. 99–514, §1114(a), added subsec. (q).

Subsecs. (r), (s). Pub. L. 99–514, §1115(a), added subsecs. (r) and (s).

Subsec. (t). Pub. L. 99–514, §1151(e)(1), added subsec. (t).

1984—Subsec. (h)(1)(B). Pub. L. 98–369, §491(d)(26), struck out "or 405(a)" after "section 403(a)".

Subsec. (l). Pub. L. 98–369, §491(d)(27), struck out "or 405" after "section 403(a)".

Subsec. (m)(6)(B). Pub. L. 98–369, §526(a)(1), substituted "section 318(a)" for "section 267(c)".

Subsec. (m)(7). Pub. L. 98–369, §526(d)(2), as amended by Pub. L. 99–514, §1852(f), struck out par. (7) relating to regulations. See subsec. (o) of this section.

Subsec. (n)(2). Pub. L. 98–369, §§526(b)(1), 713(i), made identical amendments, substituting "any person who is not an employee of the recipient and" for "any person" in text preceding subpar. (A).

Subsec. (o). Pub. L. 98–369, §526(d)(1), added subsec. (o).

Subsec. (p). Pub. L. 98–397 added subsec. (p).

1982—Subsecs. (b), (c). Pub. L. 97–248, §240(c)(1), inserted reference to section 416.

Subsec. (m)(4)(B). Pub. L. 97–248, §240(c)(2), inserted reference to section 416.

Subsec. (m)(5) to (7). Pub. L. 97–248, §246(a), added par. (5) and redesignated former pars. (5) and (6) as (6) and (7), respectively.

Subsec. (n). Pub. L. 97–248, §248(a), added subsec. (n).

1980—Subsec. (e). Pub. L. 96–364, §407(b), substituted provisions defining "church plan" with respect to general requirements, exclusion of certain plans, definitions and other provisions, and correction of failures to meet church plan requirements, for provisions defining "church plan" with respect to general requirements, certain unrelated business or multiemployer plans, and special temporary rules for certain church agencies under church plan.

Subsec. (f). Pub. L. 96–364, §207, substituted provisions setting forth definition, cases of common control, continuation of status after termination, transitional rule, and special election with respect to a multiemployer plan, for provisions setting forth definition and special rules with respect to a multiemployer plan.

Subsec. (l). Pub. L. 96–364, §208(a), substituted provisions relating to applicability to multiemployer plans subject to title IV of the Employee Retirement Income Security Act of 1974 of provisions of preceding sentence, for provisions relating to applicability of paragraph to multiemployer plans to extent determined by Corporation.

Subsec. (m). Pub. L. 96–605 and Pub. L. 96–613 added an identical subsec. (m).

1978—Subsecs. (b), (c). Pub. L. 95–600 inserted "408(k)," after "sections 401," wherever appearing.

1976—Subsecs. (a) to (c). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (f). Pub. L. 94–455, §1901(a)(64)(A), substituted "Plan" for "plan" in heading.

Subsec. (g)(2)(C). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (l). Pub. L. 94–455, §1901(a)(64)(B), substituted reference to Sept. 2, 1974, for reference to the date of enactment of the Employee Retirement Income Security Act of 1974.

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by section 201 of Pub. L. 113–97 applicable to years beginning after Dec. 31, 2013, see section 3 of Pub. L. 113–97, set out as a note under section 401 of this title.

Pub. L. 113–97, title II, §203(b), Apr. 7, 2014, 128 Stat. 1139, provided that: "The amendment made by this section [amending this section] shall apply as of the date of enactment of this Act [Apr. 7, 2014]."

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–458 effective as if included in the provisions of Pub. L. 109–280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110–458, set out as a note under section 72 of this title.

Amendment by section 104(b) of Pub. L. 110–245 applicable with respect to deaths and disabilities occurring on or after Jan. 1, 2007, see section 104(d)(1) of Pub. L. 110–245, set out as a note under section 401 of this title.

Amendment by section 105(b)(1) of Pub. L. 110–245 applicable to years beginning after December 31, 2008, see section 105(b)(3) of Pub. L. 110–245, set out as a note under section 219 of this title.

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–28, title VI, §6611(c), May 25, 2007, 121 Stat. 181, provided that: "The amendments made by this section [amending this section and section 1002 of Title 29, Labor] shall take effect as if included in section 1106 of the Pension Protection Act of 2006 [Pub. L. 109–280]."

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 114(c) of Pub. L. 109–280 applicable to plan years beginning after 2007, see section 114(g)(1) of Pub. L. 109–280, as added by Pub. L. 110–458, set out as a note under section 401 of this title.

Amendment by section 902(d)(1) of Pub. L. 109–280 applicable to plan years beginning after Dec. 31, 2007, see section 902(g) of Pub. L. 109–280, set out as a note under section 401 of this title.

Pub. L. 109–280, title IX, §903(c), Aug. 17, 2006, 120 Stat. 1048, provided that: "The amendments made by this section [amending this section and section 1060 of Title 29, Labor] shall apply to plan years beginning after December 31, 2009."

Pub. L. 109–280, title IX, §906(c), Aug. 17, 2006, 120 Stat. 1052, provided that: "The amendments made by this section [amending this section, section 415 of this title, and sections 1002 and 1321 of Title 29, Labor] shall apply to any year beginning on or after the date of the enactment of this Act [Aug. 17, 2006]."

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–16, title VI, §631(b), June 7, 2001, 115 Stat. 113, provided that: "The amendment made by this section [amending this section] shall apply to contributions in taxable years beginning after December 31, 2001."

Pub. L. 107–16, title VI, §635(d), June 7, 2001, 115 Stat. 117, provided that: "The amendment made by this section [amending this section] shall apply to transfers, distributions, and payments made after December 31, 2001."

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 effective as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 1(a)(7) [title III, §314(g)] of Pub. L. 106–554, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 6018 of Pub. L. 105–206 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which such amendment relates, see section 6018(h) of Pub. L. 105–206, set out as a note under section 23 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XV, §1522(b), Aug. 5, 1997, 111 Stat. 1070, provided that: "The amendments made by this section [amending this section] shall apply to years beginning after December 31, 1997."

Amendment by section 1601(d)(6)(A), (7), (h)(2)(D)(i), (ii) of Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 23 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1421(b)(9)(C) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1421(e) of Pub. L. 104–188, set out as a note under section 72 of this title.

Pub. L. 104–188, title I, §1431(d), Aug. 20, 1996, 110 Stat. 1803, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section, sections 129, 401, 404, 408, and 416 of this title, and provisions set out as a note below] shall apply to years beginning after December 31, 1996, except that in determining whether an employee is a highly compensated employee for years beginning in 1997, such amendments shall be treated as having been in effect for years beginning in 1996.

"(2) FAMILY AGGREGATION.—The amendments made by subsection (b) [amending this section and sections 401 and 404 of this title] shall apply to years beginning after December 31, 1996."

Pub. L. 104–188, title I, §1434(c), Aug. 20, 1996, 110 Stat. 1807, provided that: "The amendments made by this section [amending this section and section 415 of this title] shall apply to years beginning after December 31, 1997."

Pub. L. 104–188, title I, §1454(b), Aug. 20, 1996, 110 Stat. 1817, provided that: "The amendment made by subsection (a) [amending this section] shall apply to years beginning after December 31, 1996, but shall not

apply to any relationship determined under an Internal Revenue Service ruling issued before the date of the enactment of this Act [Aug. 20, 1996] pursuant to section 414(n)(2)(C) of the Internal Revenue Code of 1986 (as in effect on the day before such date) not to involve a leased employee."

Amendment by section 1461(a) of Pub. L. 104–188 applicable to years beginning after Dec. 31, 1996, see section 1461(c) of Pub. L. 104–188, set out as a note under section 404 of this title.

Pub. L. 104–188, title I, §1462(c), Aug. 20, 1996, 110 Stat. 1824, provided that: "The amendments made by subsection (a) [amending this section] shall apply to years beginning after December 31, 1996."

Pub. L. 104–188, title I, §1704(n)(3), Aug. 20, 1996, 110 Stat. 1886, provided that: "The amendments made by this subsection [amending this section and section 1108 of Title 29, Labor] shall be effective as of December 12, 1994."

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102–318, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, §11703(b)(2), Nov. 5, 1990, 104 Stat. 1388–517, provided that: "The amendment made by subsection (a) [probably means par. (1), which amended this section] shall take effect as if included in the amendments made by section 1151 of the Tax Reform Act of 1986 [Pub. L. 99–514]."

EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by sections 7811(m)(5) and 7813(b) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

Amendment by section 7841(a)(2) of Pub. L. 101–239 applicable to transfers after Dec. 19, 1989, in taxable years ending after such date, see section 7841(a)(3) of Pub. L. 101–239, set out as a note under section 408 of this title.

Amendment by section 203(a)(6) of Pub. L. 101–140 effective as if included in section 1151 of Pub. L. 99–514, see section 203(c) of Pub. L. 101–140, set out as a note under section 79 of this title.

Amendment by section 204(b)(2) of Pub. L. 101–140 applicable to years beginning after Dec. 31, 1988, see section 204(d)(1) of Pub. L. 101–140, set out as a note under section 129 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 1011(d)(8), (e)(4), (h)(5), (i)(1)–(4)(A), (j)(1), (2), 1011A(b)(3), 1011B(a)(16), (17), (19), (20), and 1018(t)(8)(E)–(G) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title II, §2005(c)(3), Nov. 10, 1988, 102 Stat. 3612, provided that:

"(A) Except as provided in subparagraph (B), the amendments made by this subsection [amending this section] shall apply with respect to transactions occurring after July 26, 1988.

"(B) The amendments made by this subsection shall not apply to any transaction occurring after July 26, 1988, if on or before such date the board of directors of the employer, approves such transaction or the employer took similar binding action."

Amendment by section 3011(b)(4), (5) of Pub. L. 100–647 applicable to taxable years beginning after Dec. 31, 1988, but not applicable to any plan for any plan year to which section 162(k) of this title (as in effect on the day before Nov. 10, 1988) did not apply by reason of section 10001(e)(2) of Pub. L. 99–272, see section 3011(d) of Pub. L. 100–647, set out as a note under section 162 of this title.

Amendment by section 3021(b)(1), (2)(A) of Pub. L. 100–647 applicable to years beginning after Dec. 31, 1986, see section 3021(d)(2) of Pub. L. 100–647, set out as a note under section 129 of this title.

Pub. L. 100–647, title VI, §6067(c), Nov. 10, 1988, 102 Stat. 3703, as amended by Pub. L. 101–239, title VII, §7816(k), Dec. 19, 1989, 103 Stat. 2421, provided that: "The amendment made by this section [amending this section] shall take effect as if included in the amendments made by section 2005(c) of this Act [amending this section]."

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable with respect to plan years beginning after Dec. 31, 1987, see section 9305(d) of Pub. L. 100–203, set out as a note under section 412 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XI, §1114(c), Oct. 22, 1986, 100 Stat. 2452, as amended by Pub. L. 104–188, title I, §1431(c)(2), Aug. 20, 1996, 110 Stat. 1803; Pub. L. 107–16, title VI, §663(a), June 7, 2001, 115 Stat. 142, provided that:

"(1) IN GENERAL.—Except as provided in this subsection, the amendment made by this section [amending this section and sections 106, 274, 423, and 501 of this title] shall apply to years beginning after December 31, 1986.

"(2) CONFORMING AMENDMENTS TO EMPLOYEE BENEFIT PROVISIONS.—The amendments made by paragraphs (2), (3), (4), (5), and (16) of subsection (b) [amending sections 117, 120, 127, 129, 132, and 505 of this title] shall apply to years beginning after December 31, 1987.

"(3) CONFORMING AMENDMENTS TO PENSION PROVISIONS.—The amendments made by paragraphs (7), (8), (9), (10), (11), (12), and (15) of subsection (b) [amending this section and sections 401, 404A, 406, 407, 411, 415, and 4975 of this title and section 1108 of Title 29, Labor] shall apply to years beginning after December 31, 1988."

[Pub. L. 107–16, title VI, §663(b), June 7, 2001, 115 Stat. 143, provided that: "The repeal made by subsection (a) [repealing par. (4) of section 1114(c) of Pub. L. 99–514, set out above] shall apply to plan years beginning after December 31, 2001."]

Pub. L. 99–514, title XI, §1115(b), Oct. 22, 1986, 100 Stat. 2454, provided that: "The amendment made by subsection (a) [amending this section] shall apply to years beginning after December 31, 1986."

Amendment by section 1117(c) of Pub. L. 99–514 applicable to plan years beginning after Dec. 31, 1986, with special provisions for plans maintained pursuant to collective bargaining agreements ratified before Mar. 1, 1986, and for annuity contracts under section 403(b) of this title, see section 1117(d) of Pub. L. 99–514, set out as a note under section 401 of this title.

Pub. L. 99–514, title XI, §1146(c), Oct. 22, 1986, 100 Stat. 2493, provided that:

"(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1983.

"(2) SUBSECTION (a)(1).—The amendment made by subsection (a)(1) shall apply to services performed after December 31, 1986.

"(3) RECORDKEEPING REQUIREMENTS.—In the case of years beginning before the date of the enactment of this Act [Oct. 22, 1986], the last sentence of section 414(o) shall be applied without regard to the requirement that an insignificant percentage of the workload be performed by persons other than employees."

Amendment by section 1151(e)(1), (i) of Pub. L. 99–514 applicable, with certain qualifications and exceptions, to years beginning after Dec. 31, 1988, see section 1151(k) of Pub. L. 99–514, as amended, set out as a note under section 79 of this title.

Amendment by section 1301(j)(4) of Pub. L. 99–514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99–514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

Amendment by section 1852(f) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Amendment by section 1898(c)(2)(A), (4)(A), (6)(A), (7)(A)(ii)–(vii) of Pub. L. 99–514 effective as if included in the provision of the Retirement Equity Act of 1984, Pub. L. 98–397, to which such amendment relates, except as otherwise provided, see section 1898(j) of Pub. L. 99–514, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–397 effective Jan. 1, 1985, except as otherwise provided, see section 303(d) of Pub. L. 98–397, set out as a note under section 1001 of Title 29, Labor.

Amendment by section 491(d)(26), (27) of Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

Pub. L. 98–369, div. A, title V, §526(a)(2), July 18, 1984, 98 Stat. 874, provided that: "The amendment made by this subsection [amending this section] shall apply to taxable years beginning after December 31, 1984."

Pub. L. 98–369, div. A, title V, §526(b)(2), July 18, 1984, 98 Stat. 874, provided that: "The amendment made by this subsection [amending this section] shall apply to taxable years beginning after December 31, 1983."

Pub. L. 98–369, div. A, title V, §526(d)(3), July 18, 1984, 98 Stat. 875, provided that: "The amendments made by this subsection [amending this section] shall take effect on the date of the enactment of this Act [July

18, 1984]."

Amendment by section 713(i) of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 240(c) of Pub. L. 97–248, applicable to years beginning after Dec. 31, 1983, see section 241(a) of Pub. L. 97–248, set out as a note under section 416 of this title.

Pub. L. 97–248, title II, §246(b), Sept. 3, 1982, 96 Stat. 525, provided that: "The amendments made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1983."

Pub. L. 97–248, title II, §248(b), Sept. 3, 1982, 96 Stat. 527, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1983."

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–605, title II, §201(c), Dec. 28, 1980, 94 Stat. 3527, and Pub. L. 96–613, §5(c), Dec. 28, 1980, 94 Stat. 3582, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 105 and 125 of this title] shall apply to plan years ending after November 30, 1980.

"(2) PLANS IN EXISTENCE ON NOVEMBER 30, 1980.—In the case of a plan in existence on November 30, 1980, the amendments made by this section [amending this section and sections 105 and 125 of this title] shall apply to plan years beginning after November 30, 1980."

Pub. L. 96–364, title IV, §407(c), Sept. 26, 1980, 94 Stat. 1307, provided that: "The amendments made by this section [amending this section and section 1002 of Title 29, Labor] shall be effective as of January 1, 1974."

Amendment by sections 207 and 208(a) of Pub. L. 96–364 effective Sept. 26, 1980, see section 210(a) of Pub. L. 96–364, set out as an Effective Date note under section 418 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 152(h) of Pub. L. 95–600, set out as a note under section 408 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(64) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE

Section applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93–406, for plan years beginning after Sept. 2, 1974, and, in the case of plans in existence on Jan. 1, 1974, for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93–406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

REGULATIONS

Pub. L. 109–280, title X, §1001, Aug. 17, 2006, 120 Stat. 1052, provided that: "Not later than 1 year after the date of the enactment of this Act [Aug. 17, 2006], the Secretary of Labor shall issue regulations under section 206(d)(3) of the Employee Retirement Security Act of 1974 [29 U.S.C. 1056(d)(3)] and section 414(p) of the Internal Revenue Code of 1986 which clarify that—

"(1) a domestic relations order otherwise meeting the requirements to be a qualified domestic relations order, including the requirements of section 206(d)(3)(D) of such Act and section 414(p)(3) of such Code, shall not fail to be treated as a qualified domestic relations order solely because—

"(A) the order is issued after, or revises, another domestic relations order or qualified domestic relations order; or

"(B) of the time at which it is issued; and

"(2) any order described in paragraph (1) shall be subject to the same requirements and protections which apply to qualified domestic relations orders, including the provisions of section 206(d)(3)(H) of such Act and section 414(p)(7) of such Code."

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by sections 1114, 1115, and 1117 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

PROVISIONS RELATING TO PLAN AMENDMENTS PURSUANT TO PUB. L. 110–245

Pub. L. 110–245, title I, §105(c), June 17, 2008, 122 Stat. 1629, provided that:

"(1) IN GENERAL.—If this subsection applies to any plan or annuity contract amendment, such plan or contract shall be treated as being operated in accordance with the terms of the plan or contract during the period described in paragraph (2)(B)(i).

"(2) AMENDMENTS TO WHICH SECTION APPLIES.—

"(A) IN GENERAL.—This subsection shall apply to any amendment to any plan or annuity contract which is made—

"(i) pursuant to any amendment made by subsection (b)(1) [amending this section], and

"(ii) on or before the last day of the first plan year beginning on or after January 1, 2010.

In the case of a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986), this subparagraph shall be applied by substituting '2012' for '2010' in clause (ii).

"(B) CONDITIONS.—This subsection shall not apply to any plan or annuity contract amendment unless—

"(i) during the period beginning on the date the amendment described in subparagraph (A)(i) takes effect and ending on the date described in subparagraph (A)(ii) (or, if earlier, the date the plan or contract amendment is adopted), the plan or contract is operated as if such plan or contract amendment were in effect, and

"(ii) such plan or contract amendment applies retroactively for such period."

APPLICABILITY OF AMENDMENTS BY SUBTITLES A AND B OF TITLE I OF PUB. L. 109–280

For special rules on applicability of amendments by subtitles A (§§101–108) and B (§§111–116) of title I of Pub. L. 109–280 to certain eligible cooperative plans, PBGC settlement plans, and eligible government contractor plans, see sections 104, 105, and 106 of Pub. L. 109–280, set out as notes under section 401 of this title.

SAMPLE LANGUAGE FOR SPOUSAL CONSENT AND QUALIFIED DOMESTIC RELATIONS FORMS

Pub. L. 104–188, title I, §1457, Aug. 20, 1996, 110 Stat. 1818, provided that:

"(a) DEVELOPMENT OF SAMPLE LANGUAGE.—Not later than January 1, 1997, the Secretary of the Treasury shall develop—

"(1) sample language for inclusion in a form for the spousal consent required under section 417(a)(2) of the Internal Revenue Code of 1986 and section 205(c)(2) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1055(c)(2)] which—

"(A) is written in a manner calculated to be understood by the average person, and

"(B) discloses in plain form—

"(i) whether the waiver to which the spouse consents is irrevocable, and

"(ii) whether such waiver may be revoked by a qualified domestic relations order, and

"(2) sample language for inclusion in a form for a qualified domestic relations order described in section 414(p)(1)(A) of such Code and section 206(d)(3)(B)(i) of such Act [29 U.S.C. 1056(d)(3)(B)(i)] which—

"(A) meets the requirements contained in such sections, and

"(B) the provisions of which focus attention on the need to consider the treatment of any lump sum payment, qualified joint and survivor annuity, or qualified preretirement survivor annuity.

"(b) PUBLICITY.—The Secretary of the Treasury shall include publicity for the sample language developed under subsection (a) in the pension outreach efforts undertaken by the Secretary."

SAFEHARBOR AUTHORITY

Pub. L. 104–188, title I, §1462(b), Aug. 20, 1996, 110 Stat. 1824, provided that: "The Secretary of the Treasury may design nondiscrimination and coverage safe harbors for church plans."

APPLICATION OF LINE OF BUSINESS TEST FOR PERIOD BEFORE GUIDELINES ISSUED

Pub. L. 101–140, title II, §204(b)(1), Nov. 8, 1989, 103 Stat. 833, provided that: "In the case of any plan year beginning on or before the date the Secretary of the Treasury or his delegate issues guidelines and begins issuing determinations under section 414(r)(2)(C) of the Internal Revenue Code of 1986, an employer shall be treated as operating separate lines of business if the employer reasonably determines that it meets the requirements of section 414(r) (other than paragraph (2)(C) thereof) of such Code."

[Pub. L. 101–140, title II, §204(d)(3), Nov. 8, 1989, 103 Stat. 833, provided that: "The provisions of

subsection (b)(1) [set out above] shall apply to years beginning after December 31, 1986."]

NONENFORCEMENT OF AMENDMENT MADE BY SECTION 1151 OF PUB. L. 99–514 FOR FISCAL YEAR 1990

No monies appropriated by Pub. L. 101–136 to be used to implement or enforce section 1151 of Pub. L. 99–514 or the amendments made by such section, see section 528 of Pub. L. 101–136, set out as a note under section 89 of this title.

STUDY REFLECTING ALLOCATION OF ASSETS

Pub. L. 100–647, title VI, §6067(b), Nov. 10, 1988, 102 Stat. 3703, directed Secretary of the Treasury or his delegate, in consultation with Federal Deposit Insurance Corporation, to conduct a study with respect to proper method of allocating assets in case of a transaction to which the amendment made by such section and, not later than Jan. 1, 1990 (due date extended to Jan. 1, 1992, by Pub. L. 101–508, title XI, §11831(b), Nov. 5, 1990, 104 Stat. 1388–559) to report results of such study to Committee on Ways and Means of House of Representatives and to Committee on Finance of Senate.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§1401–1465] of title I of Pub. L. 104–188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[1] So in original. Probably should be "title".

[2] So in original. Probably should be "bridge depository institutions"

[3] So in original. There is no closing parenthesis.

[4] So in original. Probably should be "is".

§415. Limitations on benefits and contribution under qualified plans

(a) General rule

(1) Trusts

A trust which is a part of a pension, profitsharing, or stock bonus plan shall not constitute a qualified trust under section 401(a) if—

(A) in the case of a defined benefit plan, the plan provides for the payment of benefits with respect to a participant which exceed the limitation of subsection (b), or

(B) in the case of a defined contribution plan, contributions and other additions under the plan with respect to any participant for any taxable year exceed the limitation of subsection (c).

(2) Section applies to certain annuities and accounts

In the case of—

(A) an employee annuity plan described in section 403(a),
(B) an annuity contract described in section 403(b), or
(C) a simplified employee pension described in section 408(k),

such a contract, plan, or pension shall not be considered to be described in section 403(a), 403(b), or 408(k), as the case may be, unless it satisfies the requirements of subparagraph (A) or subparagraph (B) of paragraph (1), whichever is appropriate, and has not been disqualified under subsection (g). In the case of an annuity contract described in section 403(b), the preceding sentence shall apply only to the portion of the annuity contract which exceeds the limitation of subsection (b) or the limitation of subsection (c), whichever is appropriate.

(b) Limitation for defined benefit plans

(1) In general

Benefits with respect to a participant exceed the limitation of this subsection if, when expressed as an annual benefit (within the meaning of paragraph (2)), such annual benefit is greater than the lesser of—

(A) $160,000, or
(B) 100 percent of the participant's average compensation for his high 3 years.

(2) Annual benefit

(A) In general

For purposes of paragraph (1), the term "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) under a plan to which employees do not contribute and under which no rollover contributions (as defined in sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16)) are made.

(B) Adjustment for certain other forms of benefit

If the benefit under the plan is payable in any form other than the form described in subparagraph (A), or if the employees contribute to the plan or make rollover contributions (as defined in sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16)), the determinations as to whether the limitation described in paragraph (1) has been satisfied shall be made, in accordance with regulations prescribed by the Secretary by adjusting such benefit so that it is equivalent to the benefit described in subparagraph (A). For purposes of this subparagraph, any ancillary benefit which is not directly related to retirement income benefits shall not be taken into account; and that portion of any joint and survivor annuity which constitutes a qualified joint and survivor annuity (as defined in section 417) shall not be taken into account.

(C) Adjustment to $160,000 limit where benefit begins before age 62

If the retirement income benefit under the plan begins before age 62, the determination as to whether the $160,000 limitation set forth in paragraph (1)(A) has been satisfied shall be made, in accordance with regulations prescribed by the Secretary, by reducing the limitation of paragraph (1)(A) so that such limitation (as so reduced) equals an annual benefit (beginning when such retirement income benefit begins) which is equivalent to a $160,000 annual benefit beginning at age 62.

(D) Adjustment to $160,000 limit where benefit begins after age 65

If the retirement income benefit under the plan begins after age 65, the determination as to whether the $160,000 limitation set forth in paragraph (1)(A) has been satisfied shall be made, in accordance with regulations prescribed by the Secretary, by increasing the limitation of paragraph (1)(A) so that such limitation (as so increased) equals an annual benefit (beginning when such retirement income benefit begins) which is equivalent to a $160,000 annual benefit beginning at age 65.

(E) Limitation on certain assumptions

(i) For purposes of adjusting any limitation under subparagraph (C) and, except as provided

in clause (ii), for purposes of adjusting any benefit under subparagraph (B), the interest rate assumption shall not be less than the greater of 5 percent or the rate specified in the plan.

(ii) For purposes of adjusting any benefit under subparagraph (B) for any form of benefit subject to section 417(e)(3), the interest rate assumption shall not be less than the greatest of—

(I) 5.5 percent,

(II) the rate that provides a benefit of not more than 105 percent of the benefit that would be provided if the applicable interest rate (as defined in section 417(e)(3)) were the interest rate assumption, or

(III) the rate specified under the plan.

(iii) For purposes of adjusting any limitation under subparagraph (D), the interest rate assumption shall not be greater than the lesser of 5 percent or the rate specified in the plan.

(iv) For purposes of this subsection, no adjustments under subsection (d)(1) shall be taken into account before the year for which such adjustment first takes effect.

(v) For purposes of adjusting any benefit or limitation under subparagraph (B), (C), or (D), the mortality table used shall be the applicable mortality table (within the meaning of section 417(e)(3)(B)).

(vi) In the case of a plan maintained by an eligible employer (as defined in section 408(p)(2)(C)(i)), clause (ii) shall be applied without regard to subclause (II) thereof.

[(F) Repealed. Pub. L. 107–16, title VI, §611(a)(5)(A), June 7, 2001, 115 Stat. 97]

(G) Special limitation for qualified police or firefighters

In the case of a qualified participant, subparagraph (C) of this paragraph shall not apply.

(H) Qualified participant defined

For purposes of subparagraph (G), the term "qualified participant" means a participant—

(i) in a defined benefit plan which is maintained by a State, Indian tribal government (as defined in section 7701(a)(40)), or any political subdivision thereof,

(ii) with respect to whom the period of service taken into account in determining the amount of the benefit under such defined benefit plan includes at least 15 years of service of the participant—

(I) as a full-time employee of any police department or fire department which is organized and operated by the State, Indian tribal government (as so defined), or any political subdivision maintaining such defined benefit plan to provide police protection, firefighting services, or emergency medical services for any area within the jurisdiction of such State, Indian tribal government (as so defined), or any political subdivision, or

(II) as a member of the Armed Forces of the United States.

(I) Exemption for survivor and disability benefits provided under governmental plans

Subparagraph (C) of this paragraph and paragraph (5) shall not apply to—

(i) income received from a governmental plan (as defined in section 414(d)) as a pension, annuity, or similar allowance as the result of the recipient becoming disabled by reason of personal injuries or sickness, or

(ii) amounts received from a governmental plan by the beneficiaries, survivors, or the estate of an employee as the result of the death of the employee.

(3) Average compensation for high 3 years

For purposes of paragraph (1), a participant's high 3 years shall be the period of consecutive calendar years (not more than 3) during which the participant had the greatest aggregate compensation from the employer. In the case of an employee within the meaning of section 401(c)(1), the preceding sentence shall be applied by substituting for "compensation from the employer" the following: "the participant's earned income (within the meaning of section 401(c)(2) but determined without regard to any exclusion under section 911)".

(4) Total annual benefits not in excess of $10,000

Notwithstanding the preceding provisions of this subsection, the benefits payable with respect to a participant under any defined benefit plan shall be deemed not to exceed the limitation of this subsection if—

(A) the retirement benefits payable with respect to such participant under such plan and under all other defined benefit plans of the employer do not exceed $10,000 for the plan year, or for any prior plan year, and

(B) the employer has not at any time maintained a defined contribution plan in which the participant participated.

(5) Reduction for participation or service of less than 10 years

(A) Dollar limitation

In the case of an employee who has less than 10 years of participation in a defined benefit plan, the limitation referred to in paragraph (1)(A) shall be the limitation determined under such paragraph (without regard to this paragraph) multiplied by a fraction—

(i) the numerator of which is the number of years (or part thereof) of participation in the defined benefit plan of the employer, and

(ii) the denominator of which is 10.

(B) Compensation and benefits limitations

The provisions of subparagraph (A) shall apply to the limitations under paragraphs (1)(B) and (4), except that such subparagraph shall be applied with respect to years of service with an employer rather than years of participation in a plan.

(C) Limitation on reduction

In no event shall subparagraph (A) or (B) reduce the limitations referred to in paragraphs (1) and (4) to an amount less than 1/10 of such limitation (determined without regard to this paragraph).

(D) Application to changes in benefit structure

To the extent provided in regulations, subparagraph (A) shall be applied separately with respect to each change in the benefit structure of a plan.

(6) Computation of benefits and contributions

The computation of—

(A) benefits under a defined contribution plan, for purposes of section 401(a)(4),

(B) contributions made on behalf of a participant in a defined benefit plan, for purposes of section 401(a)(4), and

(C) contributions and benefits provided for a participant in a plan described in section 414(k), for purposes of this section

shall not be made on a basis inconsistent with regulations prescribed by the Secretary.

(7) Benefits under certain collectively bargained plans

For a year, the limitation referred to in paragraph (1)(B) shall not apply to benefits with respect to a participant under a defined benefit plan (other than a multiemployer plan)—

(A) which is maintained for such year pursuant to a collective bargaining agreement between employee representatives and one or more employers,

(B) which, at all times during such year, has at least 100 participants,

(C) under which benefits are determined solely by reference to length of service, the particular years during which service was rendered, age at retirement, and date of retirement,

(D) which provides that an employee who has at least 4 years of service has a nonforfeitable right to 100 percent of his accrued benefit derived from employer contributions, and

(E) which requires, as a condition of participation in the plan, that an employee complete a period of not more than 60 consecutive days of service with the employer or employers maintaining the plan.

This paragraph shall not apply to a participant whose compensation for any 3 years during the 10-year period immediately preceding the year in which he separates from service exceeded the average compensation for such 3 years of all participants in such plan. This paragraph shall not apply to a participant for any period for which he is a participant under another plan to which this section applies which is maintained by an employer maintaining this plan. For any year for which the paragraph applies to benefits with respect to a participant, paragraph (1)(A) and subsection (d)(1)(A) shall be applied with respect to such participant by substituting one-half the amount otherwise applicable for such year under paragraph (1)(A) for "$160,000".

(8) Social security retirement age defined

For purposes of this subsection, the term "social security retirement age" means the age used as the retirement age under section 216(l) of the Social Security Act, except that such section shall be applied—

(A) without regard to the age increase factor, and

(B) as if the early retirement age under section 216(l)(2) of such Act were 62.

(9) Special rule for commercial airline pilots

(A) In general

Except as provided in subparagraph (B), in the case of any participant who is a commercial airline pilot, if, as of the time of the participant's retirement, regulations prescribed by the Federal Aviation Administration require an individual to separate from service as a commercial airline pilot after attaining any age occurring on or after age 60 and before age 62, paragraph (2)(C) shall be applied by substituting such age for age 62.

(B) Individuals who separate from service before age 60

If a participant described in subparagraph (A) separates from service before age 60, the rules of paragraph (2)(C) shall apply.

(10) Special rule for State, Indian tribal, and local government plans

(A) Limitation to equal accrued benefit

In the case of a plan maintained for its employees by any State or political subdivision thereof, or by any agency or instrumentality of the foregoing, or a governmental plan described in the last sentence of section 414(d) (relating to plans of Indian tribal governments), the limitation with respect to a qualified participant under this subsection shall not be less than the accrued benefit of the participant under the plan (determined without regard to any amendment of the plan made after October 14, 1987).

(B) Qualified participant

For purposes of this paragraph, the term "qualified participant" means a participant who first became a participant in the plan maintained by the employer before January 1, 1990.

(C) Election

(i) In general

This paragraph shall not apply to any plan unless each employer maintaining the plan elects before the close of the 1st plan year beginning after December 31, 1989, to have this subsection (other than paragraph (2)(G)).

(ii) Revocation of election

An election under clause (i) may be revoked not later than the last day of the third plan year beginning after the date of the enactment of this clause. The revocation shall apply to all plan years to which the election applied and to all subsequent plan years. Any amount paid by a plan in a taxable year ending after the revocation shall be includible in income in such taxable year under the rules of this chapter in effect for such taxable year, except that, for purposes of applying the limitations imposed by this section, any portion of such amount

which is attributable to any taxable year during which the election was in effect shall be treated as received in such taxable year.

(11) Special limitation rule for governmental and multiemployer plans

In the case of a governmental plan (as defined in section 414(d)) or a multiemployer plan (as defined in section 414(f)), subparagraph (B) of paragraph (1) shall not apply. Subparagraph (B) of paragraph (1) shall not apply to a plan maintained by an organization described in section 3121(w)(3)(A) except with respect to highly compensated benefits. For purposes of this paragraph, the term "highly compensated benefits" means any benefits accrued for an employee in any year on or after the first year in which such employee is a highly compensated employee (as defined in section 414(q)) of the organization described in section 3121(w)(3)(A). For purposes of applying paragraph (1)(B) to highly compensated benefits, all benefits of the employee otherwise taken into account (without regard to this paragraph) shall be taken into account.

(c) Limitation for defined contribution plans

(1) In general

Contributions and other additions with respect to a participant exceed the limitation of this subsection if, when expressed as an annual addition (within the meaning of paragraph (2)) to the participant's account, such annual addition is greater than the lesser of—

(A) $40,000, or

(B) 100 percent of the participant's compensation.

(2) Annual addition

For purposes of paragraph (1), the term "annual addition" means the sum of any year of—

(A) employer contributions,

(B) the employee contributions, and

(C) forfeitures.

For the purposes of this paragraph, employee contributions under subparagraph (B) are determined without regard to any rollover contributions (as defined in sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16)) without regard to employee contributions to a simplified employee pension which are excludable from gross income under section 408(k)(6). Subparagraph (B) of paragraph (1) shall not apply to any contribution for medical benefits (within the meaning of section 419A(f)(2)) after separation from service which is treated as an annual addition.

(3) Participant's compensation

For purposes of paragraph (1)—

(A) In general

The term "participant's compensation" means the compensation of the participant from the employer for the year.

(B) Special rule for self-employed individuals

In the case of an employee within the meaning of section 401(c)(1), subparagraph (A) shall be applied by substituting "the participant's earned income (within the meaning of section 401(c)(2) but determined without regard to any exclusion under section 911)" for "compensation of the participant from the employer".

(C) Special rules for permanent and total disability

In the case of a participant in any defined contribution plan—

(i) who is permanently and totally disabled (as defined in section 22(e)(3)),

(ii) who is not a highly compensated employee (within the meaning of section 414(q)), and

(iii) with respect to whom the employer elects, at such time and in such manner as the Secretary may prescribe, to have this subparagraph apply,

the term "participant's compensation" means the compensation the participant would have

received for the year if the participant was paid at the rate of compensation paid immediately before becoming permanently and totally disabled. This subparagraph shall apply only if contributions made with respect to amounts treated as compensation under this subparagraph are nonforfeitable when made. If a defined contribution plan provides for the continuation of contributions on behalf of all participants described in clause (i) for a fixed or determinable period, this subparagraph shall be applied without regard to clauses (ii) and (iii).

(D) Certain deferrals included

The term "participant's compensation" shall include—

(i) any elective deferral (as defined in section 402(g)(3)), and

(ii) any amount which is contributed or deferred by the employer at the election of the employee and which is not includible in the gross income of the employee by reason of section 125, 132(f)(4), or 457.

(E) Annuity contracts

In the case of an annuity contract described in section 403(b), the term "participant's compensation" means the participant's includible compensation determined under section 403(b)(3).

[(4) Repealed. Pub. L. 107–16, title VI, §632(a)(3)(E), June 7, 2001, 115 Stat. 114]

[(5) Repealed. Pub. L. 97–248, title II, §238(d)(5), Sept. 3, 1982, 96 Stat. 513]

(6) Special rule for employee stock ownership plans

If no more than one-third of the employer contributions to an employee stock ownership plan (as described in section 4975(e)(7)) for a year which are deductible under paragraph (9) of section 404(a) are allocated to highly compensated employees (within the meaning of section 414(q)), the limitations imposed by this section shall not apply to—

(A) forfeitures of employer securities (within the meaning of section 409) under such an employee stock ownership plan if such securities were acquired with the proceeds of a loan (as described in section 404(a)(9)(A)), or

(B) employer contributions to such an employee stock ownership plan which are deductible under section 404(a)(9)(B) and charged against the participant's account.

The amount of any qualified gratuitous transfer (as defined in section 664(g)(1)) allocated to a participant for any limitation year shall not exceed the limitations imposed by this section, but such amount shall not be taken into account in determining whether any other amount exceeds the limitations imposed by this section.

(7) Special rules relating to church plans

(A) Alternative contribution limitation

(i) In general

Notwithstanding any other provision of this subsection, at the election of a participant who is an employee of a church or a convention or association of churches, including an organization described in section 414(e)(3)(B)(ii), contributions and other additions for an annuity contract or retirement income account described in section 403(b) with respect to such participant, when expressed as an annual addition to such participant's account, shall be treated as not exceeding the limitation of paragraph (1) if such annual addition is not in excess of $10,000.

(ii) $40,000 aggregate limitation

The total amount of additions with respect to any participant which may be taken into account for purposes of this subparagraph for all years may not exceed $40,000.

(B) Number of years of service for duly ordained, commissioned, or licensed ministers or lay employees

For purposes of this paragraph—

(i) all years of service by—

(I) a duly ordained, commissioned, or licensed minister of a church, or

(II) a lay person,

as an employee of a church, a convention or association of churches, including an organization described in section 414(e)(3)(B)(ii), shall be considered as years of service for 1 employer, and

(ii) all amounts contributed for annuity contracts by each such church (or convention or association of churches) or such organization during such years for such minister or lay person shall be considered to have been contributed by 1 employer.

(C) Foreign missionaries

In the case of any individual described in subparagraph (B) performing services outside the United States, contributions and other additions for an annuity contract or retirement income account described in section 403(b) with respect to such employee, when expressed as an annual addition to such employee's account, shall not be treated as exceeding the limitation of paragraph (1) if such annual addition is not in excess of $3,000. This subparagraph shall not apply with respect to any taxable year to any individual whose adjusted gross income for such taxable year (determined separately and without regard to community property laws) exceeds $17,000.

(D) Annual addition

For purposes of this paragraph, the term "annual addition" has the meaning given such term by paragraph (2).

(E) Church, convention or association of churches

For purposes of this paragraph, the terms "church" and "convention or association of churches" have the same meaning as when used in section 414(e).

(d) Cost-of-living adjustments

(1) In general

The Secretary shall adjust annually—

(A) the $160,000 amount in subsection (b)(1)(A),

(B) in the case of a participant who is separated from service, the amount taken into account under subsection (b)(1)(B), and

(C) the $40,000 amount in subsection (c)(1)(A),

for increases in the cost-of-living in accordance with regulations prescribed by the Secretary.

(2) Method

The regulations prescribed under paragraph (1) shall provide for—

(A) an adjustment with respect to any calendar year based on the increase in the applicable index for the calendar quarter ending September 30 of the preceding calendar year over such index for the base period, and

(B) adjustment procedures which are similar to the procedures used to adjust benefit amounts under section 215(i)(2)(A) of the Social Security Act.

(3) Base period

For purposes of paragraph (2)—

(A) $160,000 amount

The base period taken into account for purposes of paragraph (1)(A) is the calendar quarter beginning July 1, 2001.

(B) Separations after December 31, 1994

The base period taken into account for purposes of paragraph (1)(B) with respect to individuals separating from service with the employer after December 31, 1994, is the calendar quarter beginning July 1 of the calendar year preceding the calendar year in which such separation occurs.

(C) Separations before January 1, 1995

The base period taken into account for purposes of paragraph (1)(B) with respect to individuals separating from service with the employer before January 1, 1995, is the calendar quarter beginning October 1 of the calendar year preceding the calendar year in which such separation occurs.

(D) $40,000 amount

The base period taken into account for purposes of paragraph (1)(C) is the calendar quarter beginning July 1, 2001.

(4) Rounding

(A) $160,000 amount

Any increase under subparagraph (A) of paragraph (1) which is not a multiple of $5,000 shall be rounded to the next lowest multiple of $5,000. This subparagraph shall also apply for purposes of any provision of this title that provides for adjustments in accordance with the method contained in this subsection, except to the extent provided in such provision.

(B) $40,000 amount

Any increase under subparagraph (C) of paragraph (1) which is not a multiple of $1,000 shall be rounded to the next lowest multiple of $1,000.

[(e) Repealed. Pub. L. 104–188, title I, §1452(a), Aug. 20, 1996, 110 Stat. 1816]

(f) Combining of plans

(1) In general

For purposes of applying the limitations of subsections (b) and (c)—

(A) all defined benefit plans (whether or not terminated) of an employer are to be treated as one defined benefit plan, and

(B) all defined contribution plans (whether or not terminated) of an employer are to be treated as one defined contribution plan.

(2) Exception for multiemployer plans

Notwithstanding paragraph (1) and subsection (g), a multiemployer plan (as defined in section 414(f)) shall not be combined or aggregated—

(A) with any other plan which is not a multiemployer plan for purposes of applying subsection (b)(1)(B) to such other plan, or

(B) with any other multiemployer plan for purposes of applying the limitations established in this section.

(g) Aggregation of plans

Except as provided in subsection (f)(3),[1] the Secretary, in applying the provisions of this section to benefits or contributions under more than one plan maintained by the same employer, and to any trusts, contracts, accounts, or bonds referred to in subsection (a)(2), with respect to which the participant has the control required under section 414(b) or (c), as modified by subsection (h), shall, under regulations prescribed by the Secretary, disqualify one or more trusts, plans, contracts, accounts, or bonds, or any combination thereof until such benefits or contributions do not exceed the limitations contained in this section. In addition to taking into account such other factors as may be necessary to carry out the purposes of subsection (f), the regulations prescribed under this paragraph shall provide that no plan which has been terminated shall be disqualified until all other trusts, plans, contracts, accounts, or bonds have been disqualified.

(h) 50 percent control

For purposes of applying subsections (b) and (c) of section 414 to this section, the phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent" each place it appears in section 1563(a)(1).

(i) Records not available for past periods

Where for the period before January 1, 1976, or (if later) the first day of the first plan year of the plan, the records necessary for the application of this section are not available, the Secretary may by regulations prescribe alternate methods for determining the amounts to be taken into account for such period.

(j) Regulations; definition of year

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section, including, but not limited to, regulations defining the term "year" for purposes of any provision of this section.

(k) Special rules

(1) Defined benefit plan and defined contribution plan

For purposes of this title, the term "defined contribution plan" or "defined benefit plan" means a defined contribution plan (within the meaning of section 414(i)) or a defined benefit plan (within the meaning of section 414(j)), whichever applies, which is—

(A) a plan described in section 401(a) which includes a trust which is exempt from tax under section 501(a),

(B) an annuity plan described in section 403(a),

(C) an annuity contract described in section 403(b), or

(D) a simplified employee pension.

(2) Contributions to provide cost-of-living protection under defined benefit plans

(A) In general

In the case of a defined benefit plan which maintains a qualified cost-of-living arrangement—

(i) any contribution made directly by an employee under such an arrangement shall not be treated as an annual addition for purposes of subsection (c), and

(ii) any benefit under such arrangement which is allocable to an employer contribution which was transferred from a defined contribution plan and to which the requirements of subsection (c) were applied shall, for purposes of subsection (b), be treated as a benefit derived from an employee contribution (and subsection (c) shall not again apply to such contribution by reason of such transfer).

(B) Qualified cost-of-living arrangement defined

For purposes of this paragraph, the term "qualified cost-of-living arrangement" means an arrangement under a defined benefit plan which—

(i) provides a cost-of-living adjustment to a benefit provided under such plan or a separate plan subject to the requirements of section 412, and

(ii) meets the requirements of subparagraphs (C), (D), (E), and (F) and such other requirements as the Secretary may prescribe.

(C) Determination of amount of benefit

An arrangement meets the requirement of this subparagraph only if the cost-of-living adjustment of participants is based—

(i) on increases in the cost-of-living after the annuity starting date, and

(ii) on average cost-of-living increases determined by reference to 1 or more indexes prescribed by the Secretary, except that the arrangement may provide that the increase for any year will not be less than 3 percent of the retirement benefit (determined without regard to such increase).

(D) Arrangement elective; time for election

An arrangement meets the requirements of this subparagraph only if it is elective, it is available under the same terms to all participants, and it provides that such election may at least be made in the year in which the participant—

(i) attains the earliest retirement age under the defined benefit plan (determined without regard to any requirement of separation from service), or

(ii) separates from service.

(E) Nondiscrimination requirements

An arrangement shall not meet the requirements of this subparagraph if the Secretary finds that a pattern of discrimination exists with respect to participation.

(F) Special rules for key employees

(i) In general

An arrangement shall not meet the requirements of this paragraph if any key employee is eligible to participate.

(ii) Key employee

For purposes of this subparagraph, the term "key employee" has the meaning given such term by section 416(i)(1), except that in the case of a plan other than a top-heavy plan (within the meaning of section 416(g)), such term shall not include an individual who is a key employee solely by reason of section 416(i)(1)(A)(i).

(3) Repayments of cashouts under governmental plans

In the case of any repayment of contributions (including interest thereon) to the governmental plan with respect to an amount previously refunded upon a forfeiture of service credit under the plan or under another governmental plan maintained by a State or local government employer within the same State, any such repayment shall not be taken into account for purposes of this section.

(4) Special rules for sections 403(b) and 408

For purposes of this section, any annuity contract described in section 403(b) for the benefit of a participant shall be treated as a defined contribution plan maintained by each employer with respect to which the participant has the control required under subsection (b) or (c) of section 414 (as modified by subsection (h)). For purposes of this section, any contribution by an employer to a simplified employee pension plan for an individual for a taxable year shall be treated as an employer contribution to a defined contribution plan for such individual for such year.

(l) Treatment of certain medical benefits

(1) In general

For purposes of this section, contributions allocated to any individual medical benefit account which is part of a pension or annuity plan shall be treated as an annual addition to a defined contribution plan for purposes of subsection (c). Subparagraph (B) of subsection (c)(1) shall not apply to any amount treated as an annual addition under the preceding sentence.

(2) Individual medical benefit account

For purposes of paragraph (1), the term "individual medical benefit account" means any separate account—

(A) which is established for a participant under a pension or annuity plan, and

(B) from which benefits described in section 401(h) are payable solely to such participant, his spouse, or his dependents.

(m) Treatment of qualified governmental excess benefit arrangements

(1) Governmental plan not affected

In determining whether a governmental plan (as defined in section 414(d)) meets the

requirements of this section, benefits provided under a qualified governmental excess benefit arrangement shall not be taken into account. Income accruing to a governmental plan (or to a trust that is maintained solely for the purpose of providing benefits under a qualified governmental excess benefit arrangement) in respect of a qualified governmental excess benefit arrangement shall constitute income derived from the exercise of an essential governmental function upon which such governmental plan (or trust) shall be exempt from tax under section 115.

(2) Taxation of participant

For purposes of this chapter—

(A) the taxable year or years for which amounts in respect of a qualified governmental excess benefit arrangement are includible in gross income by a participant, and

(B) the treatment of such amounts when so includible by the participant,

shall be determined as if such qualified governmental excess benefit arrangement were treated as a plan for the deferral of compensation which is maintained by a corporation not exempt from tax under this chapter and which does not meet the requirements for qualification under section 401.

(3) Qualified governmental excess benefit arrangement

For purposes of this subsection, the term "qualified governmental excess benefit arrangement" means a portion of a governmental plan if—

(A) such portion is maintained solely for the purpose of providing to participants in the plan that part of the participant's annual benefit otherwise payable under the terms of the plan that exceeds the limitations on benefits imposed by this section,

(B) under such portion no election is provided at any time to the participant (directly or indirectly) to defer compensation, and

(C) benefits described in subparagraph (A) are not paid from a trust forming a part of such governmental plan unless such trust is maintained solely for the purpose of providing such benefits.

(n) Special rules relating to purchase of permissive service credit

(1) In general

If a participant makes 1 or more contributions to a defined benefit governmental plan (within the meaning of section 414(d)) to purchase permissive service credit under such plan, then the requirements of this section shall be treated as met only if—

(A) the requirements of subsection (b) are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of subsection (b), or

(B) the requirements of subsection (c) are met, determined by treating all such contributions as annual additions for purposes of subsection (c).

(2) Application of limit

For purposes of—

(A) applying paragraph (1)(A), the plan shall not fail to meet the reduced limit under subsection (b)(2)(C) solely by reason of this subsection, and

(B) applying paragraph (1)(B), the plan shall not fail to meet the percentage limitation under subsection (c)(1)(B) solely by reason of this subsection.

(3) Permissive service credit

For purposes of this subsection—

(A) In general

The term "permissive service credit" means service credit—

(i) recognized by the governmental plan for purposes of calculating a participant's benefit under the plan,

(ii) which such participant has not received under such governmental plan, and

(iii) which such participant may receive only by making a voluntary additional

contribution, in an amount determined under such governmental plan, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

Such term may include service credit for periods for which there is no performance of service, and, notwithstanding clause (ii), may include service credited in order to provide an increased benefit for service credit which a participant is receiving under the plan.

(B) Limitation on nonqualified service credit

A plan shall fail to meet the requirements of this section if—

(i) more than 5 years of nonqualified service credit are taken into account for purposes of this subsection, or

(ii) any nonqualified service credit is taken into account under this subsection before the employee has at least 5 years of participation under the plan.

(C) Nonqualified service credit

For purposes of subparagraph (B), the term "nonqualified service credit" means permissive service credit other than that allowed with respect to—

(i) service (including parental, medical, sabbatical, and similar leave) as an employee of the Government of the United States, any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of a repayment described in subsection (k)(3)),

(ii) service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in clause (i)) of an educational organization described in section 170(b)(1)(A)(ii) which is a public, private, or sectarian school which provides elementary or secondary education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed,

(iii) service as an employee of an association of employees who are described in clause (i), or

(iv) military service (other than qualified military service under section 414(u)) recognized by such governmental plan.

In the case of service described in clause (i), (ii), or (iii), such service will be nonqualified service if recognition of such service would cause a participant to receive a retirement benefit for the same service under more than one plan.

(D) Special rules for trustee-to-trustee transfers

In the case of a trustee-to-trustee transfer to which section 403(b)(13)(A) or 457(e)(17)(A) applies (without regard to whether the transfer is made between plans maintained by the same employer)—

(i) the limitations of subparagraph (B) shall not apply in determining whether the transfer is for the purchase of permissive service credit, and

(ii) the distribution rules applicable under this title to the defined benefit governmental plan to which any amounts are so transferred shall apply to such amounts and any benefits attributable to such amounts.

(Added Pub. L. 93–406, title II, §2004(a)(2), Sept. 2, 1974, 88 Stat. 979; amended Pub. L. 94–455, title VIII, §803(b)(4), (f), title XV, §§1501(b)(3), 1502(a)(1), 1511(a), title XIX, §§1901(a)(65), (b)(8)(D), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1584, 1589, 1735–1737, 1741, 1775, 1794, 1834; Pub. L. 95–600, title I, §§141(f)(7), 152(g), 153(a), Nov. 6, 1978, 92 Stat. 2795, 2800; Pub. L. 96–222, title I, §101(a)(7)(L)(i)(VII), (iv)(I), (10)(I), (J)(iii), (11), Apr. 1, 1980, 94 Stat. 199, 200, 203, 204; Pub. L. 96–605, title II, §222(a), Dec. 28, 1980, 94 Stat. 3528; Pub. L. 97–34, title III, §§311(g)(4), (h)(3), 333(b)(1), Aug. 13, 1981, 95 Stat. 281, 282, 297; Pub. L. 97–248, title II, §§235(a)–(e), 238(d)(5), 251(c)(1), (2), 253(a), Sept. 3, 1982, 96 Stat. 505–507, 513, 530, 532; Pub. L. 98–21, title I, §122(c)(5), Apr. 20, 1983, 97 Stat. 87; Pub. L. 98–369, div. A, title I, §15, title IV, §491(d)(28)–(32), (e)(6), title (V), §528(a), title VII, §713(a)(1), (3), (d)(4)(B), (7), (k), July 18,

1984, 98 Stat. 505, 850, 853, 876, 955, 956, 958, 960; Pub. L. 99–514, title XI, §§1106(a)–(c)(1), (e)–(g), 1108(g)(5), 1114(b)(12), 1174(d)(1), (2), title XVIII, §§1847(b)(4), 1852(h)(2), (3), 1875(c)(9), (11), 1898(b)(15)(C), 1899A(13), Oct. 22, 1986, 100 Stat. 2420, 2422, 2424, 2425, 2434, 2451, 2518, 2856, 2869, 2895, 2951, 2958; Pub. L. 100–647, title I, §§1011(d)(2), (3), (6), (7), 1018(t)(3)(B), (8)(D), title VI, §§6054(a), 6059(a), Nov. 10, 1988, 102 Stat. 3459, 3460, 3588, 3589, 3696, 3699; Pub. L. 101–239, title VII, §7304(c)(1), Dec. 19, 1989, 103 Stat. 2353; Pub. L. 102–318, title V, §521(b)(23)–(25), July 3, 1992, 106 Stat. 311, 312; Pub. L. 103–465, title VII, §§732(b), 767(b), Dec. 8, 1994, 108 Stat. 5004, 5038; Pub. L. 104–188, title I, §§1434(a), 1444(a), (b)(1), (c), (d), 1446(a), 1449(b), 1452(a), (c)(1)–(6), 1704(t)(75), Aug. 20, 1996, 110 Stat. 1807, 1809–1811, 1814, 1816, 1891; Pub. L. 105–34, title XV, §§1526(a), (b), 1527(a), 1530(c)(3), (4), Aug. 5, 1997, 111 Stat. 1072–1074, 1078; Pub. L. 106–554, §1(a)(7) [title III, §314(e)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–643; Pub. L. 107–16, title VI, §§611(a), (b), (h), 632(a)(1), (3)(C)–(F), (b)(1), 641(e)(9), (10), 654(a), (b), June 7, 2001, 115 Stat. 96, 97, 100, 113–115, 121, 130, 131; Pub. L. 107–147, title IV, §411(p)(4), Mar. 9, 2002, 116 Stat. 50; Pub. L. 108–218, title I, §101(b)(4), Apr. 10, 2004, 118 Stat. 598; Pub. L. 108–311, title IV, §§404(b)(2), 408(a)(17), Oct. 4, 2004, 118 Stat. 1188, 1192; Pub. L. 109–135, title IV, §§407(b), 412(y), (z), Dec. 21, 2005, 119 Stat. 2635, 2638; Pub. L. 109–280, title III, §303(a), title VIII, §§821(a)–(c), 832(a), 867(a), title IX, §906(b)(1)(A), (B), Aug. 17, 2006, 120 Stat. 921, 997, 1003, 1025, 1051, 1052; Pub. L. 110–458, title I, §§103(b)(2)(B)(i), 108(g), 109(d)(1), 122(a), Dec. 23, 2008, 122 Stat. 5103, 5109, 5112, 5114.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table under section 401 of this title.

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (b)(8) and (d)(2)(B), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§301 et seq.) of Title 42, The Public Health and Welfare. Sections 215(i)(2)(A) and 216(l) of the Act enacted sections 415(i)(2)(A) and 416(l) of Title 42, respectively. For complete classification of this Act to the Code, see Tables.

The date of the enactment of this clause, referred to in subsec. (b)(10)(C)(ii), is the date of enactment of Pub. L. 104–188, which was approved Aug. 20, 1996.

Subsection (f)(3), referred to in subsec. (g), was redesignated subsection (f)(2) by Pub. L. 100–458, title I, §108(g), Dec. 23, 2008, 122 Stat. 5109.

AMENDMENTS

2008—Subsec. (b)(2)(E)(v). Pub. L. 110–458, §103(b)(2)(B)(i), amended cl. (v) generally. Prior to amendment, cl. (v) read as follows: "For purposes of adjusting any benefit or limitation under subparagraph (B), (C), or (D), the mortality table used shall be the table prescribed by the Secretary. Such table shall be based on the prevailing commissioners' standard table (described in section 807(d)(5)(A)) used to determine reserves for group annuity contracts issued on the date the adjustment is being made (without regard to any other subparagraph of section 807(d)(5))."

Subsec. (b)(2)(E)(vi). Pub. L. 110–458, §122(a), added cl. (vi).

Subsec. (b)(10). Pub. L. 110–458, §109(d)(1), made technical correction to directory language of Pub. L. 109–280, §906(b)(1)(B)(ii). See 2006 Amendment note below.

Subsec. (f)(2), (3). Pub. L. 110–458, §108(g), redesignated par. (3) as par. (2) and struck out former par. (2) which related to annual compensation taken into account for defined benefit plans.

2006—Subsec. (b)(2)(E)(ii). Pub. L. 109–280, §303(a), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: "For purposes of adjusting any benefit under subparagraph (B) for any form of benefit subject to section 417(e)(3), the applicable interest rate (as defined in section 417(e)(3)) shall be substituted for '5 percent' in clause (i), except that in the case of plan years beginning in 2004 or 2005, '5.5 percent' shall be substituted for '5 percent' in clause (i)."

Subsec. (b)(2)(H)(i). Pub. L. 109–280, §906(b)(1)(A)(i), substituted "State, Indian tribal government (as defined in section 7701(a)(40)), or any political subdivision" for "State or political subdivision".

Subsec. (b)(2)(H)(ii)(I). Pub. L. 109–280, §906(b)(1)(A)(ii), substituted "State, Indian tribal government (as so defined), or any political subdivision" for "State or political subdivision" in two places.

Subsec. (b)(3). Pub. L. 109–280, §832(a), struck out "both was an active participant in the plan and" before "had the greatest".

Subsec. (b)(10). Pub. L. 109–280, §906(b)(1)(B)(ii), as amended by Pub. L. 110–458, §109(d)(1), substituted "State, Indian tribal, and" for "State and" in heading.

Subsec. (b)(10)(A). Pub. L. 109–280, §906(b)(1)(B)(i), inserted "or a governmental plan described in the last sentence of section 414(d) (relating to plans of Indian tribal governments)," after "foregoing,".

Subsec. (b)(11). Pub. L. 109–280, §867(a), inserted at end "Subparagraph (B) of paragraph (1) shall not apply to a plan maintained by an organization described in section 3121(w)(3)(A) except with respect to highly compensated benefits. For purposes of this paragraph, the term 'highly compensated benefits' means any benefits accrued for an employee in any year on or after the first year in which such employee is a highly compensated employee (as defined in section 414(q)) of the organization described in section 3121(w)(3)(A). For purposes of applying paragraph (1)(B) to highly compensated benefits, all benefits of the employee otherwise taken into account (without regard to this paragraph) shall be taken into account."

Subsec. (n)(1). Pub. L. 109–280, §821(a)(1), substituted "a participant" for "an employee" in introductory provisions.

Subsec. (n)(3)(A). Pub. L. 109–280, §821(a)(2), inserted concluding provisions.

Subsec. (n)(3)(B)(i), (ii). Pub. L. 109–280, §821(c)(1), substituted "nonqualified service credit" for "permissive service credit attributable to nonqualified service".

Subsec. (n)(3)(C). Pub. L. 109–280, §821(c)(2), substituted "service credit" for "service" in heading and "the term 'nonqualified service credit' means permissive service credit other than that allowed with respect to" for "the term 'nonqualified service' means service for which permissive service credit is allowed other than" in introductory provisions.

Subsec. (n)(3)(C)(ii). Pub. L. 109–280, §821(c)(3), substituted "or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed" for "as determined under State law".

Subsec. (n)(3)(D). Pub. L. 109–280, §821(b), added subpar. (D).

2005—Subsec. (c)(7)(C). Pub. L. 109–135, §407(b), substituted "$3,000. This subparagraph shall not apply with respect to any taxable year to any individual whose adjusted gross income for such taxable year (determined separately and without regard to community property laws) exceeds $17,000" for "the greater of $3,000 or the employee's includible compensation determined under section 403(b)(3)".

Subsec. (l)(1). Pub. L. 109–135, §412(y), substituted "individual medical benefit account" for "individual medical account".

Subsec. (n)(3)(C). Pub. L. 109–135, §412(z), substituted "clause" for "clauses" in concluding provisions.

2004—Subsec. (b)(2)(E)(ii). Pub. L. 108–218 inserted before period at end ", except that in the case of plan years beginning in 2004 or 2005, '5.5 percent' shall be substituted for '5 percent' in clause (i)".

Subsec. (c)(7)(C). Pub. L. 108–311, §408(a)(17), substituted "subparagraph (B)" for "subparagraph (D)".

Subsec. (d)(4)(A). Pub. L. 108–311, §404(b)(2), inserted at end "This subparagraph shall also apply for purposes of any provision of this title that provides for adjustments in accordance with the method contained in this subsection, except to the extent provided in such provision."

2002—Subsec. (c)(7). Pub. L. 107–147 amended heading and text of par. (7) generally, substituting provisions relating to special rules relating to church plans for provisions relating to certain contributions by church plans not treated as exceeding limit and adding provisions relating to foreign missionaries and definitions of "church" and "convention or association of churches".

2001—Subsec. (a)(2). Pub. L. 107–16, §632(a)(3)(C), struck out ", and the amount of the contribution for such portion shall reduce the exclusion allowance as provided in section 403(b)(2)" before period at end.

Subsec. (b)(1)(A). Pub. L. 107–16, §611(a)(1)(A), substituted "$160,000" for "$90,000".

Subsec. (b)(2)(A), (B). Pub. L. 107–16, §641(e)(9), substituted "403(b)(8), 408(d)(3), and 457(e)(16)" for "and 408(d)(3)".

Subsec. (b)(2)(C). Pub. L. 107–16, §611(a)(1)(B), (2), in heading substituted "$160,000" for "$90,000" and "age 62" for "the social security retirement age" and in text substituted "age 62" for "the social security retirement age" in two places, "$160,000" for "$90,000" in two places, and struck out at end "The reduction under this subparagraph shall be made in such manner as the Secretary may prescribe which is consistent with the reduction for old-age insurance benefits commencing before the social security retirement age under the Social Security Act."

Subsec. (b)(2)(D). Pub. L. 107–16, §611(a)(1)(B), (3), in heading substituted "$160,000" for "$90,000" and "age 65" for "the social security retirement age" and in text substituted "age 65" for "the social security retirement age" in two places and "$160,000" for "$90,000" in two places.

Subsec. (b)(2)(F). Pub. L. 107–16, §611(a)(5)(A), struck out subpar. (F), which related to the application of subpars. (C) and (D) in the case of a governmental plan, a plan maintained by a tax-exempt organization, or a qualified merchant marine plan and defined "qualified merchant marine plan".

Subsec. (b)(7). Pub. L. 107–16, §654(a)(2), inserted "(other than a multiemployer plan)" after "defined benefit plan" in introductory provisions.

Pub. L. 107–16, §611(a)(1)(C), substituted "one-half the amount otherwise applicable for such year under paragraph (1)(A) for '$160,000' " for "the greater of $68,212 or one-half the amount otherwise applicable for such year under paragraph (1)(A) for '$90,000' " in concluding provisions.

Subsec. (b)(9). Pub. L. 107–16, §611(a)(5)(B), amended par. (9) generally, substituting present provisions for provisions which provided that, in the case of any participant who was a commercial airline pilot, the rule of par. (2)(F)(i)(II) would apply, and if, as of the time of the participant's retirement, regulations prescribed by the Federal Aviation Administration required an individual to separate from service as a commercial airline pilot after attaining any age occurring on or after age 60 and before the social security retirement age, par. (2)(C) would be applied by substituting such age for the social security retirement age, and provisions which provided that if a participant separated from service before age 60, the rules of par. (2)(F) would apply.

Subsec. (b)(10)(C)(i). Pub. L. 107–16, §611(a)(5)(C), struck out "applied without regard to paragraph (2)(F)" before period at end.

Subsec. (b)(11). Pub. L. 107–16, §654(a)(1), amended heading and text of par. (11) generally. Prior to amendment, text read as follows: "In the case of a governmental plan (as defined in section 414(d)), subparagraph (B) of paragraph (1) shall not apply."

Subsec. (c)(1)(A). Pub. L. 107–16, §611(b)(1), substituted "$40,000" for "$30,000".

Subsec. (c)(1)(B). Pub. L. 107–16, §632(a)(1), substituted "100 percent" for "25 percent".

Subsec. (c)(2). Pub. L. 107–16, §641(e)(10), substituted "408(d)(3), and 457(e)(16)" for "and 408(d)(3)" in concluding provisions.

Subsec. (c)(3)(E). Pub. L. 107–16, §632(a)(3)(D), added subpar. (E).

Subsec. (c)(4). Pub. L. 107–16, §632(a)(3)(E), struck out par. (4), which related to special election for section 403(b) contracts purchased by educational organizations, hospitals, home health service agencies, certain churches, and other organizations.

Subsec. (c)(7). Pub. L. 107–16, §632(a)(3)(F), amended par. (7) generally, redesignating cls. (i) and (ii) of subpar. (B) as subpars. (A) and (B), respectively, reenacting subpar. (C) without change, striking out former subpar. (A), which directed that any contribution or addition with respect to any participant, when expressed as an annual addition, which was allocable to the application of section 403(b)(2)(D) to such participant for such year, would be treated as not exceeding the limitations of par. (1), and striking out former subpar. (B), cl. (iii), which prohibited making of election under this subpar. for any year if an election had been made under former par. (4)(A) for such year.

Subsec. (d)(1)(A). Pub. L. 107–16, §611(a)(4)(A), substituted "$160,000" for "$90,000".

Subsec. (d)(1)(C). Pub. L. 107–16, §611(b)(2)(A), substituted "$40,000" for "$30,000".

Subsec. (d)(3)(A). Pub. L. 107–16, §611(a)(4)(B), in heading substituted "$160,000" for "$90,000" and in text substituted "July 1, 2001" for "October 1, 1986".

Subsec. (d)(3)(D). Pub. L. 107–16, §611(b)(2)(B), in heading substituted "$40,000" for "$30,000" and in text substituted "July 1, 2001" for "October 1, 1993".

Subsec. (d)(4). Pub. L. 107–16, §611(h), reenacted heading without change and amended text of par. (4) generally. Prior to amendment, text read as follows: "Any increase under subparagraph (A) or (C) of paragraph (1) which is not a multiple of $5,000 shall be rounded to the next lowest multiple of $5,000."

Subsec. (f)(3). Pub. L. 107–16, §654(b)(1), added par. (3).

Subsec. (g). Pub. L. 107–16, §654(b)(2), substituted "Except as provided in subsection (f)(3), the Secretary" for "The Secretary".

Subsec. (k)(4). Pub. L. 107–16, §632(b)(1), added par. (4).

2000—Subsec. (c)(3)(D)(ii). Pub. L. 106–554 substituted "section 125, 132(f)(4), or" for "section 125 or".

1997—Subsec. (b)(2)(G). Pub. L. 105–34, §1527(a), substituted "participant, subparagraph (C) of this paragraph shall not apply." for "participant—

"(i) subparagraph (C) shall not reduce the limitation of paragraph (1)(A) to an amount less than $50,000, and

"(ii) the rules of subparagraph (F) shall apply.

The Secretary shall adjust the $50,000 amount in clause (i) at the same time and in the same manner as under section 415(d)."

Subsec. (c)(6). Pub. L. 105–34, §1530(c)(3), inserted concluding provisions "The amount of any qualified gratuitous transfer (as defined in section 664(g)(1)) allocated to a participant for any limitation year shall not exceed the limitations imposed by this section, but such amount shall not be taken into account in determining whether any other amount exceeds the limitations imposed by this section."

Subsec. (e)(6), (7). Pub. L. 105–34, §1530(c)(4), added par. (6) and redesignated former par. (6) as (7).

Subsec. (k)(3). Pub. L. 105–34, §1526(b), added par. (3).

Subsec. (n). Pub. L. 105–34, §1526(a), added subsec. (n).

1996—Subsec. (a)(1). Pub. L. 104–188, §1452(c)(1), inserted "or" at end of subpar. (A), struck out ", or" at end of subpar. (B), and struck out subpar. (C) which read as follows: "in any case in which an individual is a participant in both a defined benefit plan and a defined contribution plan maintained by the employer, the trust has been disqualified under subsection (g)."

Subsec. (b)(2)(E)(i). Pub. L. 104–188, §1449(b)(1), substituted "For purposes of adjusting any limitation under subparagraph (C) and, except as provided in clause (ii), for purposes of adjusting any benefit under subparagraph (B)," for "Except as provided in clause (ii), for purposes of adjusting any benefit or limitation under subparagraph (B) or (C),".

Subsec. (b)(2)(E)(ii). Pub. L. 104–188, §1449(b)(2), substituted "For purposes of adjusting any benefit under subparagraph (B) for any form of benefit subject to section 417(e)(3)," for "For purposes of adjusting the benefit or limitation of any form of benefit subject to section 417(e)(3),".

Subsec. (b)(2)(I). Pub. L. 104–188, §1444(c), added subpar. (I).

Subsec. (b)(5)(B). Pub. L. 104–188, §1452(c)(2), struck out "and subsection (e)" after "and (4)".

Subsec. (b)(10)(C). Pub. L. 104–188, §1444(d), designated existing provisions as cl. (i), inserted heading, and added cl. (ii).

Subsec. (b)(11). Pub. L. 104–188, §1444(a), added par. (11).

Subsec. (c)(3)(C). Pub. L. 104–188, §1446(a), inserted at end "If a defined contribution plan provides for the continuation of contributions on behalf of all participants described in clause (i) for a fixed or determinable period, this subparagraph shall be applied without regard to clauses (ii) and (iii)."

Subsec. (c)(3)(D). Pub. L. 104–188, §1434(a), added subpar. (D).

Subsec. (e). Pub. L. 104–188, §1452(a), struck out subsec. (e) which related to limitation in case of a defined benefit plan and a defined contribution plan for same employee.

Subsec. (f)(1). Pub. L. 104–188, §1452(c)(3), in introductory provisions, substituted "subsections (b) and (c)" for "subsections (b), (c), and (e)".

Subsec. (g). Pub. L. 104–188, §1452(c)(4), in last sentence, substituted "subsection (f)" for "subsections (e) and (f)".

Subsec. (k)(1)(C) to (F). Pub. L. 104–188, §1704(t)(75), inserted "or" at end of subpar. (C), redesignated subpar. (F) as (D), and struck out former subpars. (D) and (E) which read as follows:

"(D) an individual retirement account described in section 408(a),

"(E) an individual retirement annuity described in section 408(b), or".

Subsec. (k)(2)(A)(i). Pub. L. 104–188, §1452(c)(5), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: "any contribution made directly by an employee under such arrangement—

"(I) shall not be treated as an annual addition for purposes of subsection (c), but

"(II) shall be so treated for purposes of subsection (e), and".

Subsec. (k)(2)(A)(ii). Pub. L. 104–188, §1452(c)(6), substituted "subsection (c)" for "subsections (c) and (e)" before "shall not again".

Subsec. (m). Pub. L. 104–188, §1444(b)(1), added subsec. (m).

1994—Subsec. (b)(2)(E). Pub. L. 103–465, §767(b), added cls. (i), (ii), and (v), redesignated former cls. (ii) and (iii) as (iii) and (iv), respectively, and struck out former cl. (i) which read as follows: "For purposes of adjusting any benefit or limitation under subparagraph (B) or (C), the interest rate assumption shall not be less than the greater of 5 percent or the rate specified in the plan."

Subsec. (c)(1)(A). Pub. L. 103–465, §732(b)(2), struck out "(or, if greater, ¼ of the dollar limitation in effect under subsection (b)(1)(A))" after "$30,000".

Subsec. (d). Pub. L. 103–465, §732(b)(1), amended subsec. (d) generally, substituting present provisions for provisions authorizing annual cost-of-living adjustments, outlining base periods, and providing for a freeze on adjustment to defined contribution and benefit limits.

1992—Subsecs. (b)(2)(A), (B), (c)(2). Pub. L. 102–318 substituted "402(c)" for "402(a)(5)".

1989—Subsec. (c)(6). Pub. L. 101–239 substituted "Special rule for employee stock ownership plans" for "Special limitation for employee stock ownership plan" in heading and amended text generally, substituting introductory provisions and subpars. (A) and (B) for former subpars. (A) to (C).

1988—Subsec. (b)(2)(H)(ii). Pub. L. 100–647, §6059(a), substituted "15" for "20".

Subsec. (b)(5)(B). Pub. L. 100–647, §1011(d)(6), inserted "and subsection (e)" after "paragraphs (1)(B) and (4)".

Subsec. (b)(5)(D). Pub. L. 100–647, §1011(d)(2), substituted "subparagraph (A)" for "this paragraph".

Subsec. (b)(10). Pub. L. 100–647, §6054(a), added par. (10).

Subsec. (c)(6)(A). Pub. L. 100–647, §1011(d)(7), substituted "paragraph (1)(A)" for "paragraph (c)(1)(A)

(as adjusted for such year pursuant to subsection (d)(1))" and for "paragraph (c)(1)(A) (as so adjusted)".

Subsec. (k). Pub. L. 100–647, §1018(t)(8)(D), repealed Pub. L. 99–514, §1899A(13), see 1986 Amendment note below.

Subsec. (k)(2)(C)(ii). Pub. L. 100–647, §1011(d)(3)(A), substituted "to such increase" for "to the arrangement".

Subsec. (k)(2)(D). Pub. L. 100–647, §1011(d)(3)(B), added subpar. (D) and struck out former subpar. (D) which read as follows: "An arrangement meets the requirements of this subparagraph only if it is elective, it is available under the same terms to all participants, and it provides that such election may be made in—

"(i) the year in which the participant—

"(I) attains the earliest retirement age under the defined benefit plan (determined without regard to any requirement of separation from service), or

"(II) separates from service, or

"(ii) both such years."

Subsec. (l)(1). Pub. L. 100–647, §1018(t)(3)(B), made technical correction to directory language of Pub. L. 99–514, §1852(h)(2). See 1986 Amendment note below.

1986—Subsec. (b)(2)(B). Pub. L. 99–514, §1898(b)(15)(C), substituted reference to section 417 for reference to section 401(a)(11)(G)(iii).

Subsec. (b)(2)(C). Pub. L. 99–514, §1106(b)(1)(A), substituted in heading and in two places in text "the social security retirement age" for "age 62" and substituted new last sentence for "The reduction under this subparagraph shall not reduce the limitation of paragraph (1)(A) below—

"(i) if the benefit begins at or after age 55, $75,000, or

"(ii) if the benefit begins before age 55, the amount which is the equivalent of the $75,000 limitation for age 55."

Subsec. (b)(2)(D). Pub. L. 99–514, §1106(b)(1)(A)(i), substituted in heading and in two places in text "the social security retirement age" for "age 65".

Subsec. (b)(2)(E)(iii). Pub. L. 99–514, §1875(c)(9), substituted "this subsection" for "adjusting any benefit or limitation under subparagraph (B), (C), or (D)".

Subsec. (b)(2)(F) to (H). Pub. L. 99–514, §1106(b)(2), added subpars. (F) to (H).

Subsec. (b)(5). Pub. L. 99–514, §1106(f), substituted "Reduction for participation or service of less than 10 years" for "Reduction for service less than 10 years" in heading and amended text generally. Prior to amendment, text read as follows: "In the case of an employee who has less than 10 years of service with the employer, the limitation referred to in paragraph (1), and the limitation referred to in paragraph (4), shall be the limitation determined under such paragraph (without regard to this paragraph), multiplied by a fraction, the numerator of which is the number of years (or part thereof) of service with the employer and the denominator of which is 10."

Subsec. (b)(8). Pub. L. 99–514, §1106(b)(1)(B), added par. (8).

Subsec. (b)(9). Pub. L. 99–514, §1106(b)(3), added par. (9).

Subsec. (c)(1)(A). Pub. L. 99–514, §1106(a), amended subpar. (A) generally, inserting "(or, if greater, ¼ of the dollar limitation in effect under subsection (b)(1)(A))".

Subsec. (c)(2). Pub. L. 99–514, §1108(g)(5), substituted "which are excludable from gross income under section 408(k)(6)" for "allowable as a deduction under section 219(a), and without regard to deductible employee contributions within the meaning of section 72(o)(5)" in last sentence.

Pub. L. 99–514, §1106(e)(2), inserted at end "Subparagraph (B) of paragraph (1) shall not apply to any contribution for medical benefits (within the meaning of section 419A(f)(2)) after separation from service which is treated as an annual addition."

Subsec. (c)(2)(B). Pub. L. 99–514, §1106(e)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "the lesser of—

"(i) the amount of the employee contributions in excess of 6 percent of his compensation, or

"(ii) one-half of the employee contributions, and".

Subsec. (c)(3)(C). Pub. L. 99–514, §1875(c)(11), substituted "any defined contribution plan" for "a profit-sharing or stock bonus plan".

Subsec. (c)(3)(C)(i). Pub. L. 99–514, §1847(b)(4), substituted "section 22(e)(3)" for "section 37(e)(3)".

Subsec. (c)(3)(C)(ii). Pub. L. 99–514, §1114(b)(12), substituted "a highly compensated employee (within the meaning of section 414(q))" for "an officer, owner, or highly compensated".

Subsec. (c)(4)(A) to (C). Pub. L. 99–514, §1106(b)(4), inserted "a health and welfare service agency," after "a home health service agency,".

Subsec. (c)(6)(A). Pub. L. 99–514, §1174(d)(1), substituted "highly compensated employees (within the meaning of section 414(q))" for "the group of employees consisting of officers, shareholders owning more

than 10 percent of the employer's stock (determined under subparagraph (B)(iv)), or employees described in subparagraph (B)(iii)".

Subsec. (c)(6)(B)(iii), (iv). Pub. L. 99–514, §1174(d)(2)(A), struck out cls. (iii) and (iv) which read as follows:

"(iii) an employee described in this clause is any participant whose compensation for a year exceeds an amount equal to twice the amount described in paragraph (1)(A) for such year (as adjusted for such year pursuant to subsection (d)(1)), determined without regard to subparagraph (A) of this paragraph, and

"(iv) an individual shall be considered to own more than 10 percent of the employer's stock if, without regard to stock held under the employee stock ownership plan, he owns (after application of section 1563(e)) more than 10 percent of the total combined voting power of all classes of stock entitled to vote or more than 10 percent of the total value of shares of all classes of stock."

Subsec. (c)(6)(C). Pub. L. 99–514, §1174(d)(2)(B), substituted "highly compensated employees (within the meaning of section 414(q))" for "the group of employees consisting of officers, shareholders owning more than 10 percent of the employer's stock (determined under subparagraph (B)(iv)), or employees described in subparagraph (B)(iii)".

Subsec. (d)(1)(B), (C). Pub. L. 99–514, §1106(g)(1), redesignated subpar. (C) as (B) and struck out former subpar. (B), which related to the $30,000 amount in subsection (c)(1)(A).

Subsec. (d)(2)(A). Pub. L. 99–514, §1106(g)(2)(A), substituted "subparagraph (A)" for "subparagraphs (A) and (B)".

Subsec. (d)(2)(B). Pub. L. 99–514, §1106(g)(2)(B), substituted "subparagraph (B)" for "subparagraph (C)".

Subsec. (d)(3). Pub. L. 99–514, §1106(g)(3), substituted "subparagraph (A)" for "subparagraph (A) or (B)".

Subsec. (k). Pub. L. 99–514, §1899A(13), which directed the general amendment of subsec. (k) by striking out par. (1) designation and redesignating subpars. (A) to (F) as pars. (1) to (6), respectively, was repealed by Pub. L. 100–647, §1018(t)(8)(D).

Subsec. (k)(2). Pub. L. 99–514, §1106(c)(1), added par. (2) relating to contributions to provide cost-of-living protection under defined benefit plans.

Subsec. (l). Pub. L. 99–514, §1852(h)(3), substituted "a pension or annuity plan" for "a defined benefit plan" in pars. (1) and (2)(A).

Pub. L. 99–514, §1852(h)(2), as amended by Pub. L. 100–647, §1018(t)(3)(B), inserted at end of par. (1) "Subparagraph (B) of subsection (c)(1) shall not apply to any amount treated as an annual addition under the preceding sentence."

1984—Subsec. (a)(2). Pub. L. 98–369, §491(d)(28), struck out subpar. (D) which related to application of this section to a plan described in section 405(a), and in provision following subpar. (C) struck out "405(a)," after "403(b),".

Subsec. (b)(2)(A), (B). Pub. L. 98–369, §491(d)(29), (30), substituted "and 408(d)(3)" for "408(d)(3) and 409(b)(3)(C)".

Subsec. (b)(2)(C). Pub. L. 98–369, §713(a)(1)(A), substituted provision respecting determination as to whether $90,000 limitation has been satisfied by reducing the limitation of par. (1)(A) so that such limitation (as so reduced) equals an annual benefit (beginning when such retirement income benefit begins) which is equivalent to a $90,000 annual benefit beginning at age 62 for provision for such determination by adjusting the benefit so that it is equivalent to such a benefit beginning at age 62.

Subsec. (b)(2)(D). Pub. L. 98–369, §713(a)(1)(B), substituted "limit" for "limitation" in heading, and in text substituted provision respecting determination as to whether $90,000 limitation has been satisfied by increasing the limitation of par. (1)(A) so that such limitation (as so increased) equals an annual benefit (beginning when such retirement income benefit begins) which is equivalent to a $90,000 annual benefit beginning at age 65 for provision for such determination by adjusting the benefit so that it is equivalent to such a benefit beginning at age 65.

Subsec. (b)(2)(E). Pub. L. 98–369, §713(a)(1)(C), provided in cls. (i) and (iii) for adjustment of any limitation and substituted in cl. (ii) "any limitation" for "any benefit".

Subsec. (c)(2). Pub. L. 98–369, §491(d)(31), substituted "and 408(d)(3)" for "405(d)(3), 408(d)(3), and 409(b)(3)(C)".

Subsec. (c)(3)(C). Pub. L. 98–369, §713(k), inserted in introductory text "in a profit-sharing or stock bonus plan", and substituted in last sentence "if contributions made with respect to amounts treated as compensation under this subparagraph" for "if contributions made with respect to such participant".

Subsec. (c)(6)(B)(ii). Pub. L. 98–369, §491(e)(6), substituted "section 409" for "section 409A".

Subsec. (c)(6)(C). Pub. L. 98–369, §713(d)(4)(B)(i)–(iii), substituted "paragraph (9)" for "paragraph (10)" of section 404(a), section "404(a)(9)(A)" for "404(a)(10)(A)", and section "404(a)(9)(B)" for "404(a)(10)(B)".

Subsec. (c)(7), (8). Pub. L. 98–369, §713(d)(7)(A), redesignated par. (8) as (7), and struck out former par.

(7) relating to certain level premium annuity contracts under plans benefiting owner-employees.

Subsec. (d)(2)(A). Pub. L. 98–369, §15(b), substituted "1986" for "1984".

Subsec. (d)(3). Pub. L. 98–369, §15(a), substituted "January 1, 1988" for "January 1, 1986".

Subsec. (e)(3)(B)(ii)(II). Pub. L. 98–369, §713(d)(7)(B), struck out reference to subsec. (c)(8).

Subsec. (e)(6)(C). Pub. L. 98–369, §713(a)(3), added subpar. (C).

Subsec. (k)(1). Pub. L. 98–369, §491(d)(32), struck out subpars. (C) and (H), which included a qualified bond purchase plan described in section 405(a) and an individual retirement bond described in section 409 within the term "defined contribution plan" or "defined benefit plan", respectively, and redesignated subpars. (D) to (G) as (C) to (F), respectively.

Subsec. (l). Pub. L. 98–369, §528(a), added subsec. (l).

1983—Subsec. (c)(3)(C)(i). Pub. L. 98–21 substituted "section 37(e)(3)" for "section 105(d)(4)".

1982—Subsec. (b)(1)(A). Pub. L. 97–248, §235(a)(1), substituted "$90,000" for "$75,000".

Subsec. (b)(2)(C). Pub. L. 97–248, §235(a)(3)(A), (e)(1), (2), inserted provisions relating to reduction under this subparagraph, and substituted "$90,000" for "$75,000" and "62" for "55", wherever appearing.

Subsec. (b)(2)(D), (E). Pub. L. 97–248, §235(e)(3), (4), added subpars. (D) and (E).

Subsec. (b)(7). Pub. L. 97–248, §235(a)(3)(B), substituted "the greater of $68,212 or one-half the amount otherwise applicable for such year under paragraph (1)(A) for '$90,000' " for " '37,500' for '75,000' ".

Subsec. (c)(1)(A). Pub. L. 97–248, §235(a)(2), substituted "$30,000" for "$25,000".

Subsec. (c)(3). Pub. L. 97–248, §253(a), designated existing provisions as subpars. (A) and (B) and added subpar. (C).

Subsec. (c)(4). Pub. L. 97–248, §251(c)(1), substituted ", home health service agencies, and certain churches, etc." for "and home health service agencies" in heading, in subpar. (A) inserted "(as determined for purposes of section 403(b)(2))" after "by taking into account his service for the employer", substituted "a home health service agency, or a church, convention or association of churches, or an organization described in section 414(e)(3)(B)(ii)" for "or a home health service agency" in subpars. (A), (B) and (C), respectively, and, in subpar. (D), added cl. (iv).

Subsec. (c)(5). Pub. L. 97–248, §238(d)(5), struck out par. (5) relating to application with section 404(e)(4).

Subsec. (c)(8). Pub. L. 97–248, §251(c)(2), added par. (8).

Subsec. (d)(1). Pub. L. 97–248, §235(b)(1), substituted "benefit amounts" for "primary insurance amounts" in provision following subpar. (C).

Pub. L. 97–248, §235(b)(3), substituted "$90,000" for "$75,000" in subpar. (A), and in subpar. (B) substituted "$30,000" for "$25,000".

Subsec. (d)(2)(A). Pub. L. 97–248, §235(b)(2)(B), substituted "1984" for "1974".

Subsec. (d)(3). Pub. L. 97–248, §235(b)(2)(A), added par. (3).

Subsec. (e)(1). Pub. L. 97–248, §235(c)(1), substituted "1.0" for "1.4".

Subsec. (e)(2)(B). Pub. L. 97–248, §235(c)(2)(A), substituted provisions that for purposes of this subsection, the defined benefit plan fraction for any year has a denominator which is the lesser of the product of 1.25 multiplied by the dollar limitation in effect under subsec. (b)(1)(A) for such year, or the product of 1.4 multiplied by the amount which may be taken into account under subsec. (b)(1)(B) with respect to such individual under the plan for such year, for provisions that such benefit plan fraction had a denominator which was the projected annual benefit of the participant under the plan (determined as of the close of the year) if the plan provided the maximum benefit allowable under subsec. (b).

Subsec. (e)(3)(B). Pub. L. 97–248, §235(c)(2)(B), substituted provision that the defined contribution plan fraction for any year has a denominator which, determined for such year and for each prior year of service with the employer, is the lesser of either the product of 1.25 multiplied by the dollar limitation in effect under subsec. (c)(1)(A) for such year (determined without regard to subsec. (c)(6)), or the product of 1.4 multiplied by the amount which may be taken into account under subsec. (c)(1)(B) (or subsec. (c)(7) or (8), if applicable) with respect to such individual under such plan for such year, for provision that the denominator of such fraction was the sum of the maximum amount of annual additions to the participant's account which could have been made under subsec. (c) for such year and for each prior year of service with the employer (determined without regard to subsec. (c)(6)).

Subsec. (e)(6). Pub. L. 97–248, §235(d), added par. (6).

1981—Subsec. (a)(2). Pub. L. 97–34, §311(g)(4)(A), struck out in provision preceding subpar. (A) "Except as provided in paragraph (3)", redesignated former subpar. (E) as (C), and in subpar. (C) as so designated, inserted "described in section 408(k), or", redesignated former subpar. (F) as (D), struck out former subpars. (C), relating to an individual retirement account described under section 408(a), (D), relating to an individual

retirement annuity described in section 408(b), and (G), relating to a retirement bond described in section 409, and in provision following subpar. (D), substituted "such a contract, plan, or pension," for "such contract, annuity plan, account, annuity, plan, or bond" and "408(k)" for "408(a), 408(b), or 409".

Subsec. (a)(3). Pub. L. 97–34, §311(h)(3), struck out par. (3) which provided that par. (2) not apply to an account, annuity, or bond described in section 408(a), 408(b), or 409, established for the benefit of the spouse of the individual contributing to such account, or for such annuity or bond, if a deduction is allowed under section 220 to such individual with respect to such contribution for such year.

Subsec. (c)(2). Pub. L. 97–34, §311(g)(4)(B), included in provision following subpar. (C) references to sections 403(b)(8) and 405(d)(3) and inserted "without regard to employee contributions to a simplified employee pension allowable as a deduction under section 219(a), and without regard to deductible employee contributions within the meaning of section 72(o)(5)".

Subsec. (c)(6)(C). Pub. L. 97–34, §333(b)(1), added subpar. (C).

Subsec. (e)(5). Pub. L. 97–34, §311(g)(4)(C), struck out ", any individual retirement account described in section 408(a), any individual retirement annuity described in section 408(b), and any retirement bond described in section 409," before "for the benefit".

1980—Subsec. (b)(7). Pub. L. 96–222, §101(a)(11), substituted in subpar. (C) "under which benefits are determined solely by reference to length of service, the particular years during which service was rendered, age at retirement, and date of retirement" for "benefits under which are determined by multiplying a specified amount (which is the same amount for each participant) by the number of the participant's years of service" and inserted in text following subpar. (E) provisions requiring that this paragraph not apply to a participant for any period for which he is a participant under another plan to which this section applies which is maintained by an employer maintaining this plan.

Subsec. (c)(6)(A). Pub. L. 96–605 inserted ", or purchased with cash contributed," after "securities contributed".

Subsec. (c)(6)(B)(i). Pub. L. 96–222, §101(a)(7)(L)(i)(VII), (iv)(I), substituted "a tax credit employee stock ownership plan" for "an ESOP" and struck out "leveraged" before "employee".

Subsec. (e)(5). Pub. L. 96–222, §101(a)(10)(I), inserted provisions requiring that for purposes of this section, any contribution by an employer to a simplified employee pension for an individual for a taxable year be treated as an employer contribution to a defined contribution plan for such individual for such year.

1978—Subsec. (a)(2). Pub. L. 95–600, §152(g)(1), (2), as amended by Pub. L. 96–222, §101(a)(10)(J)(iii), added subpar. (E), redesignated former subpars. (E) and (F) as (F) and (G), respectively, and in provision following subpar. (G) as so redesignated, inserted "408(k)," after "408(b),".

Subsec. (b)(7). Pub. L. 95–600, §153(a), added par. (7).

Subsec. (c)(6)(B)(i). Pub. L. 95–600, §141(f)(7), substituted "leveraged employee stock ownership plan (within the meaning of section 4975(e)(7)) or an ESOP" for "a plan which meets the requirements of section 4975(e)(7) or section 301(d) of the Tax Reduction Act of 1975".

Subsec. (c)(6)(B)(ii). Pub. L. 95–600, §141(f)(7), substituted "has the meaning given to such term by section 409A" for "means, in the case of an employee stock ownership plan within the meaning of section 4975(e)(7), qualifying employer securities within the meaning of section 4975(e)(8), but only if they are described in section 301(d)(9)(A) of the Tax Reduction Act of 1975, or, in the case of an employee stock ownership plan described in section 301(d)(2) of the Tax Reduction Act of 1975, employer securities within the meaning of section 301(d)(9)(A) of such Act".

Subsec. (e)(5). Pub. L. 95–600, §152(g)(3), inserted "any simplified employee pension," after "section 408(b),".

Subsec. (k)(1)(G), (H). Pub. L. 95–600, §152(g)(4), added subpar. (G) and redesignated former subpar. (G) as (H).

1976—Subsec. (a)(2). Pub. L. 94–455, §1501(b)(3)(A), substituted "Except as provided in paragraph (3), in the case" for "In the case".

Subsec. (a)(3). Pub. L. 94–455, §1501(b)(3)(B), added par. (3).

Subsec. (b)(2)(A). Pub. L. 94–455, §1901(a)(65)(A), inserted closing parenthesis after "409(b)(3)(C)".

Subsec. (b)(2)(B). Pub. L. 94–455, §§1901(a)(65)(B), 1906(b)(13)(A), struck out "or his delegate" after "Secretary" and substituted "section 401(a)(11)(G)(iii)" for "section 401(a)(11)(H)(iii)".

Subsec. (b)(2)(C), (6). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (c)(4). Pub. L. 94–455, §§1901(b)(8)(D), 1906(b)(13)(A), substituted "educational organizations" for "educational institutions" in the heading and "educational organization" for "educational institution" in subpars. (A), (B), and (C), struck out "or his delegate" after "Secretary" in subpar. (D)(i), and substituted "For

purposes of this paragraph the term 'educational organization' means an educational organization described in section 170(b)(1)(A)(ii)" for "For purposes of this paragraph the term 'educational institution' means an educational institution as defined in section 151(e)(4)" in subpar. (D)(ii).

Subsec. (c)(5). Pub. L. 94–455, §1502(a)(1), added par. (5).

Subsec. (c)(6). Pub. L. 94–455, §803(f)(1), added par. (6).

Subsec. (c)(7). Pub. L. 94–455, §1511(a), added par. (7).

Subsec. (d)(1). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (e)(3)(B). Pub. L. 94–455, §803(f)(2), substituted "with the employer determined without regard to paragraph (6) of such subsection)" for "with the employer".

Subsec. (e)(5). Pub. L. 94–455, §803(b)(4), substituted "For purposes of this section" for "For purposes of this subsection".

Subsecs. (g), (i), (j). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–458, title I, §103(b)(2)(B)(ii), Dec. 23, 2008, 122 Stat. 5103, provided that:

"(I) Except as provided in subclause (II), the amendment made by clause (i) [amending this section] shall apply to years beginning after December 31, 2008.

"(II) A plan sponsor may elect to have the amendment made by clause (i) apply to any year beginning after December 31, 2007, and before January 1, 2009, or to any portion of any such year."

Amendment by sections 108(g) and 109(d)(1) of Pub. L. 110–458 effective as if included in the provisions of Pub. L. 109–280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110–458, set out as a note under section 72 of this title.

Pub. L. 110–458, title I, §122(b), Dec. 23, 2008, 122 Stat. 5114, provided that: "The amendment made by this section [amending this section] shall apply to years beginning after December 31, 2008."

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title III, §303(b), Aug. 17, 2006, 120 Stat. 921, provided that: "The amendment made by subsection (a) [amending this section] shall apply to distributions made in years beginning after December 31, 2005."

Pub. L. 109–280, title VIII, §821(d), Aug. 17, 2006, 120 Stat. 998, provided that:

"(1) IN GENERAL.—The amendments made by subsections (a) and (c) [amending this section] shall take effect as if included in the amendments made by section 1526 of the Taxpayer Relief Act of 1997 [Pub. L. 105–34].

"(2) SUBSECTION (b).—The amendments made by subsection (b) [amending this section] shall take effect as if included in the amendments made by section 647 of the Economic Growth and Tax Relief Reconciliation Act of 2001 [see section 647(c) of Pub. L. 107–16, set out as an Effective Date of 2001 Amendment note under section 403 of this title]."

Pub. L. 109–280, title VIII, §832(b), Aug. 17, 2006, 120 Stat. 1003, provided that: "The amendment made by this section [amending this section] shall apply to years beginning after December 31, 2005."

Pub. L. 109–280, title VIII, §867(b), Aug. 17, 2006, 120 Stat. 1025, provided that: "The amendment made by this section [amending this section] shall apply to years beginning after December 31, 2006."

Amendment by section 906(b)(1)(A), (B) of Pub. L. 109–280 applicable to any year beginning on or after Aug. 17, 2006, see section 906(c) of Pub. L. 109–280, set out as a note under section 414 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 407(b) of Pub. L. 109–135 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 407(c) of Pub. L. 109–135, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 2004 AMENDMENTS

Amendment by section 404(b)(2) of Pub. L. 108–311 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 404(f) of Pub. L. 108–311, set out as a note under section 45A of this title.

Amendment by Pub. L. 108–218 applicable, except as otherwise provided, to plan years beginning after Dec. 31, 2003, see section 101(d) of Pub. L. 108–218, set out as a note under section 404 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of

Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–16, title VI, §611(i), June 7, 2001, 115 Stat. 100, as amended by Pub. L. 107–147, title IV, §411(j)(3), Mar. 9, 2002, 116 Stat. 47, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and sections 401, 402, 404, 408, 457, 501, and 505 of this title] shall apply to years beginning after December 31, 2001.

"(2) DEFINED BENEFIT PLANS.—The amendments made by subsection (a) [amending this section] shall apply to years ending after December 31, 2001."

"(3) SPECIAL RULE.—In the case of plan that, on June 7, 2001, incorporated by reference the limitation of section 415(b)(1)(A) of the Internal Revenue Code of 1986, section 411(d)(6) of such Code and section 204(g)(1) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1054(g)(1)] do not apply to a plan amendment that—

"(A) is adopted on or before June 30, 2002,

"(B) reduces benefits to the level that would have applied without regard to the amendments made by subsection (a) of this section, and

"(C) is effective no earlier than the years described in paragraph (2)."

Amendment by section 632(a)(1), (3)(C)–(F) of Pub. L. 107–16 applicable to years beginning after Dec. 31, 2001, see section 632(a)(4) of Pub. L. 107–16, set out as a note under section 72 of this title.

Pub. L. 107–16, title VI, §632(b)(2), June 7, 2001, 115 Stat. 115, provided that:

"(A) IN GENERAL.—The amendment made by paragraph (1) [amending this section] shall apply to limitation years beginning after December 31, 1999.

"(B) EXCLUSION ALLOWANCE.—Effective for limitation years beginning in 2000, in the case of any annuity contract described in section 403(b) of the Internal Revenue Code of 1986, the amount of the contribution disqualified by reason of section 415(g) of such Code shall reduce the exclusion allowance as provided in section 403(b)(2) of such Code."

Amendment by section 641(e)(9), (10) of Pub. L. 107–16 applicable to distributions after Dec. 31, 2001, see section 641(f)(1) of Pub. L. 107–16, set out as a note under section 402 of this title.

Pub. L. 107–16, title VI, §654(c), June 7, 2001, 115 Stat. 131, provided that: "The amendments made by this section [amending this section] shall apply to years beginning after December 31, 2001."

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 effective as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 1(a)(7) [title III, §314(g)] of Pub. L. 106–554, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XV, §1526(c), Aug. 5, 1997, 111 Stat. 1073, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to permissive service credit contributions made in years beginning after December 31, 1997.

"(2) TRANSITION RULE.—

"(A) IN GENERAL.—In the case of an eligible participant in a governmental plan (within the meaning of section 414(d) of the Internal Revenue Code of 1986), the limitations of section 415(c)(1) of such Code shall not be applied to reduce the amount of permissive service credit which may be purchased to an amount less than the amount which was allowed to be purchased under the terms of the plan as in effect on the date of the enactment of this Act [Aug. 5, 1997].

"(B) ELIGIBLE PARTICIPANT.—For purposes of subparagraph (A), an eligible participant is an individual who first became a participant in the plan before the first plan year beginning after the last day of the calendar year in which the next regular session (following the date of the enactment of this Act) of the governing body with authority to amend the plan ends."

Pub. L. 105–34, title XV, §1527(b), Aug. 5, 1997, 111 Stat. 1074, provided that: "The amendment made by subsection (a) [amending this section] shall apply to years beginning after December 31, 1996."

Amendment by section 1530(c)(3), (4) of Pub. L. 105–34 applicable to transfers made by trusts to, or for the use of, an employee stock ownership plan after Aug. 5, 1997, see section 1530(d) of Pub. L. 105–34, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1434(a) of Pub. L. 104–188 applicable to years beginning after Dec. 31, 1997, see section 1434(c) of Pub. L. 104–188, set out as a note under section 414 of this title.

Pub. L. 104–188, title I, §1444(e), Aug. 20, 1996, 110 Stat. 1811, provided that:

"(1) IN GENERAL.—The amendments made by subsections (a), (b), and (c) [amending this section and section 457 of this title] shall apply to years beginning after December 31, 1994. The amendments made by subsection (d) [amending this section] shall apply with respect to revocations adopted after the date of the enactment of this Act [Aug. 20, 1997].

"(2) TREATMENT FOR YEARS BEGINNING BEFORE JANUARY 1, 1995.—Nothing in the amendments made by this section shall be construed to imply that a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986) fails to satisfy the requirements of section 415 of such Code for any taxable year beginning before January 1, 1995."

Pub. L. 104–188, title I, §1446(b), Aug. 20, 1996, 110 Stat. 1811, provided that: "The amendment made by this section [amending this section] shall apply to years beginning after December 31, 1996."

Pub. L. 104–188, title I, §1449(c), Aug. 20, 1996, 110 Stat. 1814, provided that: "The amendments made by this section [amending this section and provisions set out as a note under section 411 of this title] shall take effect as if included in the provisions of section 767 of the Uruguay Round Agreements Act [Pub. L. 103–465]."

Pub. L. 104–188, title I, §1452(d), Aug. 20, 1996, 110 Stat. 1816, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 416 and 4980A of this title] shall apply to limitation years beginning after December 31, 1999.

"(2) EXCESS DISTRIBUTIONS.—The amendment made by subsection (b) [amending section 4980A of this title] shall apply to years beginning after December 31, 1996."

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 732(b) of Pub. L. 103–465 applicable to years beginning after Dec. 31, 1994, and, to the extent of providing for the rounding of indexed amounts, not applicable to any year to the extent the rounding would require the indexed amount to be reduced below the amount in effect for years beginning in 1994, see section 732(e) of Pub. L. 103–465, set out as a note under section 401 of this title.

Amendment by section 767(b) of Pub. L. 103–465 applicable to plan years and limitation years beginning after Dec. 31, 1994, except that employer may elect to treat such amendment as effective on or after Dec. 8, 1994, with provisions relating to reduction of accrued benefits, exception, and timing of plan amendment, see section 767(d) of Pub. L. 103–465, as amended, set out as a note under section 411 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102–318, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7304(c)(2), Dec. 19, 1989, 103 Stat. 2354, provided that: "The amendment made by this subsection [amending this section] shall apply to years beginning after July 12, 1989."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 1011(d)(2), (3), (6), (7) and 1018(t)(3)(B), (8)(D) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title VI, §6054(b), Nov. 10, 1988, 102 Stat. 3697, as amended by Pub. L. 101–239, title VII, §7816(h), Dec. 19, 1989, 103 Stat. 2421, provided that:

"(1) IN GENERAL.—Except as provided in this subsection, the amendment made by this section [amending this section] shall apply to years beginning after December 31, 1982.

"(2) ELECTION.—Section 415(b)(10)(C) of the 1986 Code (as added by subsection (a)) shall not apply to any year beginning before January 1, 1990."

Pub. L. 100–647, title VI, §6059(b), Nov. 10, 1988, 102 Stat. 3699, provided that: "The amendment made by this section [amending this section] shall apply as if included in the amendments made by section 1106(b)(2) of the Reform Act [Pub. L. 99–514]."

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XI, §1106(i), Oct. 22, 1986, 100 Stat. 2425, as amended by Pub. L. 100–647, title I, §1011(d)(5), title VI, §6062(a), Nov. 10, 1988, 102 Stat. 3460, 3700, provided that:

"(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section

[amending this section and sections 401, 402, 404, 416, and 818 of this title] shall apply to years beginning after December 31, 1986.

"(2) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan in effect before March 1, 1986, pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers, the amendments made by this section (other than subsection (d)) shall not apply to contributions or benefits pursuant to such agreement in years beginning before October 1, 1991.

"(3) RIGHT TO HIGHER ACCRUED DEFINED BENEFIT PRESERVED.—

"(A) IN GENERAL.—In the case of an individual who is a participant (as of the 1st day of the 1st year to which the amendments made by this section apply) in a defined benefit plan which is in existence on May 6, 1986, and with respect to which the requirements of section 415 of the Internal Revenue Code of 1986 have been met for all plan years, if such individual's current accrued benefit under the plan exceeds the limitation of subsection (b) of section 415 of such Code (as amended by this section), then (in the case of such plan), for purposes of subsections (b) and (e) of such section, the limitation of such subsection (b)(1)(A) with respect to such individual shall be equal to such current accrued benefit.

"(B) CURRENT ACCRUED BENEFIT DEFINED.—

"(i) IN GENERAL.—For purposes of this paragraph, the term 'current accrued benefit' means the individual's accrued benefit (at the close of the last year to which the amendments made by this section do not apply) when expressed as an annual benefit (within the meaning of section 415(b)(2) of such Code).

"(ii) SPECIAL RULE.—For purposes of determining the amount of any individual's current accrued benefit—

"(I) no change in the terms and conditions of the plan after May 5, 1986, and

"(II) no cost-of-living adjustment occurring after May 5, 1986,

shall be taken into account. For purposes of subclause (I), any change in the terms and conditions of the plan pursuant to a collective bargaining agreement ratified before May 6, 1986, shall be treated as a change made before May 6, 1986.

"(4) TRANSITION RULE WHERE THE SUM OF DEFINED CONTRIBUTION AND DEFINED BENEFIT PLAN FRACTIONS EXCEEDS 1.0.—In the case of a plan which satisfied the requirements of section 415 of the Internal Revenue Code of 1986 for its last year beginning before January 1, 1987, the Secretary of the Treasury or his delegate shall prescribe regulations under which an amount is subtracted from the numerator of the defined contribution plan fraction (not exceeding such numerator) so that the sum of the defined benefit plan fraction and the defined contribution plan fraction computed under section 415(e)(1) of such Code does not exceed 1.0 for such year (determined as if the amendments made by this section were in effect for such year).

"(5) EFFECTIVE DATE FOR SUBSECTION (d).—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the amendment made by subsection (d) [amending sections 401, 404, 416, and 818 of this title] shall apply to benefits accruing in years beginning after December 31, 1988.

"(B) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan described in paragraph (2), the amendments made by subsection (d) shall apply to benefits accruing in years beginning on or after the earlier of—

"(i) the later of—

"(I) the date determined under paragraph (2)(A), or

"(II) January 1, 1989, or

"(ii) January 1, 1991.

"(6) SPECIAL RULE FOR AMENDMENT MADE BY SUBSECTION (e).—The amendment made by subsection (e) [amending this section] shall not require the recomputation, for purposes of section 415(e) of the Internal Revenue Code of 1986, of the annual addition for any year beginning before 1987."

[Pub. L. 100–647, title VI, §6062(b), Nov. 10, 1988, 102 Stat. 3700, provided that: "The amendment made by this section [amending section 1106(i) of Pub. L. 99–514, set out above] shall take effect as if included in the provisions of section 1106 of the Reform Act [Pub. L. 99–514]."]

Amendment by section 1108(g)(5) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1986, see section 1108(h) of Pub. L. 99–514, set out as a note under section 219 of this title.

Amendment by section 1114(b)(12) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1988, see section 1114(c)(3) of Pub. L. 99–514, set out as a note under section 414 of this title.

Pub. L. 99–514, title XI, §1174(d)(3), Oct. 22, 1986, 100 Stat. 2518, provided that: "The amendments made by this subsection [amending this section] shall apply to years beginning after December 31, 1986."

Amendment by sections 1847(b)(4), 1852(h)(2), (3), and 1875(c)(9), (11) of Pub. L. 99–514 effective,

except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Amendment by section 1898(b)(15)(C) of Pub. L. 99–514 effective as if included in the provision of the Retirement Equity Act of 1984, Pub. L. 98–397, to which such amendment relates, except as otherwise provided, see section 1898(j) of Pub. L. 99–514, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 15 of Pub. L. 98–369 applicable to taxable years ending after Dec. 31, 1983, see section 18(a) of Pub. L. 98–369, set out as a note under section 48 of this title.

Amendment by section 491(d)(28)–(32) of Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

Amendment by section 491(e)(6) of Pub. L. 98–369 effective Jan. 1, 1984, see section 491(f)(3) of Pub. L. 98–369, set out as a note under section 401 of this title.

Amendment by section 528(a) of Pub. L. 98–369 applicable to years beginning after Mar. 31, 1984, see section 528(c) of Pub. L. 98–369, set out as a note under section 401 of this title.

Amendment by section 713 of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable to taxable years beginning after Dec. 31, 1983, except that if an individual's annuity starting date was deferred under section 105(d)(6) of this title as in effect on the day before Apr. 20, 1983, such deferral shall end on the first day of such individual's first taxable year beginning after Dec. 31, 1983, see section 122(d) of Pub. L. 98–21, set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title II, §235(g), Sept. 3, 1982, 96 Stat. 508, as amended by Pub. L. 97–448, title III, §306(a)(10), Jan. 12, 1983, 96 Stat. 2404; Pub. L. 98–369, div. A, title VII, §713(a)(2), (4), (f)(3), July 18, 1984, 98 Stat. 956, 959; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—

"(A) NEW PLANS.—In the case of any plan which is not in existence on July 1, 1982, the amendments made by this section [amending this section and section 404 of this title] shall apply to years ending after July 1, 1982.

"(B) EXISTING PLANS.—

"(i) In the case of any plan which is in existence on July 1, 1982, the amendments made by this section [amending this section and section 404 of this title] shall apply to years beginning after December 31, 1982.

"(ii) PLAN REQUIREMENTS.—A plan shall not be treated as failing to meet the requirements of section 401(a)(16) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for any year beginning before January 1, 1984, merely because such plan provides for benefit or contribution limits which are in excess of the limitations under section 415 of such Code, as amended by this section. The preceding sentence shall not apply to any plan which provides such limits in excess of the limitation under section 415 of such Code before such amendments.

"(2) AMENDMENTS RELATED TO COST-OF-LIVING ADJUSTMENTS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by subsection (b) [amending this section] shall apply to adjustments for years beginning after December 31, 1982.

"(B) ADJUSTMENT PROCEDURES.—The amendments made by subsections (b)(1) and (b)(2)(B) [amending this section] shall apply to adjustments for years beginning after December 31, 1985.

"(3) TRANSITION RULE WHERE THE SUM OF DEFINED CONTRIBUTION AND DEFINED BENEFIT PLAN FRACTIONS EXCEEDS 1.0.—In the case of a plan which satisfied the requirements of section 415 of the Internal Revenue Code of 1986 for the last year beginning before January 1, 1983, the Secretary of the Treasury or his delegate shall prescribe regulations under which an amount is subtracted from the numerator of the defined contribution plan fraction (not exceeding such numerator) so that the sum of the defined benefit plan fraction and the defined contribution plan fraction computed under section 415(e)(1) of the Internal Revenue Code of 1986 (as amended by the Tax Equity and Fiscal Responsibility Act of 1982) does not exceed 1.0 for such year. A similar rule shall apply with respect to the last plan year beginning before January 1, 1984, for purposes of applying section 416(h) of the Internal Revenue Code of 1986.

"(4) RIGHT TO HIGHER ACCRUED DEFINED BENEFIT PRESERVED.—

"(A) IN GENERAL.—In the case of an individual who is a participant before January 1, 1983, in a defined benefit plan which is in existence on July 1, 1982, and with respect to which the requirements of section 415 of such Code have been met for all years, if such individual's current accrued benefit under such plan exceeds the limitation of subsection (b) of section 415 of the Internal Revenue Code of 1986 (as amended by this section), then (in the case of such plan) for purposes of subsections (b) and (e) of such section, the limitation of such subsection (b) with respect to such individual shall be equal to such current accrued benefit.

"(B) CURRENT ACCRUED BENEFIT DEFINED.—

"(i) IN GENERAL.—For purposes of this paragraph, the term 'current accrued benefit' means the individual's accrued benefit (at the close of the last year beginning before January 1, 1983) when expressed as an annual benefit (within the meaning of section 415(b)(2) of such Code as in effect before the amendments made by this Act). In the case of any plan described in the first sentence of paragraph (5), the preceding sentence shall be applied by substituting for 'January 1, 1983' the applicable date determined under paragraph (5).

"(ii) SPECIAL RULE.—For purposes of determining the amount of any individual's current accrued benefit—

"(I) no change in the terms and conditions of the plan after July 1, 1982, and

"(II) no cost-of-living adjustment occurring after July 1, 1982,

shall be taken into account. For purposes of subclause (I), any change in the terms and conditions of the plan pursuant to a collective bargaining agreement entered into before July 1, 1982, and ratified before September 3, 1982, shall be treated as a change made before July 1, 1982.

"(5) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained on the date of the enactment of this Act [Sept. 3, 1982] pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers, the amendments made by this section [amending this section and section 404 of this title] and section 242 [amending section 401 of this title and enacting a provision set out as a note under section 401 of this title] (relating to age 70½) shall not apply to years beginning before the earlier of—

"(A) the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act [Sept. 3, 1982]), or

"(B) January 1, 1986.

For purposes of subparagraph (A), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section and section 242 shall not be treated as a termination of such collective bargaining agreement."

Amendment by section 238(d)(5) of Pub. L. 97–248 applicable to years beginning after Dec. 31, 1983, see section 241 of Pub. L. 97–248, set out as an Effective Date note under section 416 of this title.

Amendment by section 251(c)(1), (2) of Pub. L. 97–248 applicable to years beginning after Dec. 31, 1981, see section 251(e)(3) of Pub. L. 97–248, set out as a note under section 403 of this title.

Amendment by section 253(a) of Pub. L. 97–248 applicable to taxable years beginning after Dec. 31, 1981, see section 253(c) of Pub. L. 97–248, set out as a note under section 404 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 311(g)(4), (h)(3) of Pub. L. 97–34 applicable to years beginning after Dec. 31, 1981, see section 311(i)(4) of Pub. L. 97–34, set out as a note under section 219 of this title.

Pub. L. 97–34, title III, §333(b)(2), Aug. 13, 1981, 95 Stat. 297, provided that: "The amendment made by this subsection [amending this section] shall apply to years beginning after December 31, 1981."

EFFECTIVE DATE OF 1980 AMENDMENTS

Pub. L. 96–605, title II, §222(b), Dec. 28, 1980, 94 Stat. 3528, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to years beginning after December 31, 1980."

Pub. L. 96–222, title I, §101(b)(1)(G), Apr. 1, 1980, 94 Stat. 205, provided that: "The amendment made by subparagraph (I) of subsection (a)(10) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Apr. 1, 1980]."

Amendment by section 101(a)(7)(L)(i)(VII), (iv)(i), (10)(J)(iii), (11) of Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 141(f)(7) of Pub. L. 95–600 effective for years beginning after Dec. 31, 1978, and with respect to qualified investment for taxable years beginning after Dec. 31, 1978, see section 141(g)(1) of Pub. L. 95–600, set out as an Effective Date note under section 409 of this title.

Pub. L. 95–600, title I, §141(g)(5), as added by Pub. L. 96–222, title I, §101(a)(7)(B), Apr. 1, 1980, 94 Stat. 197, provided that: "The amendment made by subsection (f)(7) [amending this section] shall apply to years beginning after December 31, 1978."

Amendment by section 152(g) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 152(h) of Pub. L. 95–600, set out as a note under section 408 of this title.

Pub. L. 95–600, title I, §153(b), Nov. 6, 1978, 92 Stat. 2801, provided that: "The amendment made by this section [amending this section] shall apply to years beginning after December 31, 1978."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 803(b)(4), (f) of Pub. L. 94–455 effective for years beginning after Dec. 31, 1975, see section 803(j) of Pub. L. 94–455, set out as a note under section 46 of this title.

Amendment by section 1501(b)(3) of Pub. L. 94–455 effective for years beginning after Dec. 31, 1976, see section 1501(d) of Pub. L. 94–455, set out as a note under section 62 of this title.

Pub. L. 94–455, title XV, §1502(b), Oct. 4, 1976, 90 Stat. 1738, provided that: "The amendment made by subsection (a)(1) [amending this section] shall apply to years beginning after December 31, 1975. The amendment made by subsection (a)(2) [amending section 404 of this title] shall apply to taxable years beginning after December 31, 1975."

Pub. L. 94–455, title XV, §1511(b), Oct. 4, 1976, 90 Stat. 1742, provided that: "The amendment made by this section [amending this section] shall apply for years beginning after December 31, 1975."

Amendment by section 1901(a)(65), (b)(8)(D) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE; TRANSITION PROVISIONS

Pub. L. 93–406, title II, §2004(d), Sept. 2, 1974, 88 Stat. 987, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) GENERAL RULE.—The amendments made by this section [enacting this section, amending sections 401, 403, 404, 405, and 805 of this title, and enacting provisions set out as notes under this section] shall apply to years beginning after December 31, 1975. The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out the provisions of this paragraph.

"(2) TRANSITION RULE FOR DEFINED BENEFIT PLANS.—In the case of an individual who was an active participant in a defined benefit plan before October 3, 1973, if—

"(A) the annual benefit (within the meaning of section 415(b)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) payable to such participant on retirement does not exceed 100 percent of his annual rate of compensation on the earlier of (i) October 2, 1973, or (ii) the date on which he separated from the service of the employer,

"(B) such annual benefit is no greater than the annual benefit which would have been payable to such participant on retirement if (i) all the terms and conditions of such plan in existence on such date had remained in existence until such retirement, and (ii) his compensation taken into account for any period after October 2, 1973, had not exceeded his annual rate of compensation on such date, and

"(C) in the case of a participant who separated from the service of the employer prior to October 2, 1973, such annual benefit is no greater than his vested accrued benefit as of the date he separated from the service,

then such annual benefit shall be treated as not exceeding the limitation of subsection (b) of section 415 of the Internal Revenue Code of 1986."

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1114 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

PLANS MAY INCORPORATE SECTION 415 LIMITATIONS BY REFERENCE

Pub. L. 99–514, title XI, §1106(h), Oct. 22, 1986, 100 Stat. 2425, provided that: "Notwithstanding any other provision of law, except as provided in regulations prescribed by the Secretary of the Treasury or his delegate, a plan may incorporate by reference the limitations under section 415 of the Internal Revenue Code of 1986."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§1401–1465] of title I of Pub. L. 104–188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

SPECIAL RULE FOR CERTAIN PLANS IN EFFECT ON SEPTEMBER 2, 1974

Pub. L. 93–406, title II, §2004(a)(3), Sept. 2, 1974, 88 Stat. 985, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "In any case in which, on the date of enactment of this Act [Sept. 2, 1974], an individual is a participant in both a defined benefit plan and a defined contribution plan maintained by the same employer, and the sum of the defined benefit plan fraction and the defined contribution plan fraction for the year during which such date occurs exceeds 1.4, the sum of such fractions may continue to exceed 1.4 if—

"(A) the defined benefit plan fraction is not increased, by amendment of the plan or otherwise, after

"(B) no contributions are made under the defined contribution plan after such date.

A trust which is part of a pension, profit-sharing, or stock bonus plan described in the preceding sentence shall not be treated as not constituting a qualified trust under section 401(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] on account of the provisions of section 415(e) of such Code, as long as it is described in the preceding sentence of this subsection."

[1] *See References in Text note below.*

§416. Special rules for top-heavy plans

(a) General rule

A trust shall not constitute a qualified trust under section 401(a) for any plan year if the plan of which it is a part is a top-heavy plan for such plan year unless such plan meets—

(1) the vesting requirements of subsection (b), and

(2) the minimum benefit requirements of subsection (c).

(b) Vesting requirements

(1) In general

A plan satisfies the requirements of this subsection if it satisfies the requirements of either of the following subparagraphs:

(A) 3-year vesting

A plan satisfies the requirements of this subparagraph if an employee who has completed at least 3 years of service with the employer or employers maintaining the plan has a nonforfeitable right to 100 percent of his accrued benefit derived from employer contributions.

(B) 6-year graded vesting

A plan satisfies the requirements of this subparagraph if an employee has a nonforfeitable right to a percentage of his accrued benefit derived from employer contributions determined under the following table:

Years of service	The nonforfeitable percentage is:
2	20
3	40
4	60
5	80
6 or more	100

(2) Certain rules made applicable

Except to the extent inconsistent with the provisions of this subsection, the rules of section 411 shall apply for purposes of this subsection.

(c) Plan must provide minimum benefits

(1) Defined benefit plans

(A) In general

A defined benefit plan meets the requirements of this subsection if the accrued benefit derived from employer contributions of each participant who is a non-key employee, when expressed as an annual retirement benefit, is not less than the applicable percentage of the participant's average compensation for years in the testing period.

(B) Applicable percentage

For purposes of subparagraph (A), the term "applicable percentage" means the lesser of—

(i) 2 percent multiplied by the number of years of service with the employer, or

(ii) 20 percent.

(C) Years of service

For purposes of this paragraph—

(i) In general

Except as provided in clause (ii) or (iii), years of service shall be determined under the rules of paragraphs (4), (5), and (6) of section 411(a).

(ii) Exception for years during which plan was not top-heavy

A year of service with the employer shall not be taken into account under this paragraph if—

(I) the plan was not a top-heavy plan for any plan year ending during such year of service, or

(II) such year of service was completed in a plan year beginning before January 1, 1984.

(iii) Exception for plan under which no key employee (or former key employee) benefits for plan year

For purposes of determining an employee's years of service with the employer, any service with the employer shall be disregarded to the extent that such service occurs during a plan year when the plan benefits (within the meaning of section 410(b)) no key employee or former key employee.

(D) Average compensation for high 5 years

For purposes of this paragraph—

(i) In general

A participant's testing period shall be the period of consecutive years (not exceeding 5) during which the participant had the greatest aggregate compensation from the employer.

(ii) Year must be included in year of service

The years taken into account under clause (i) shall be properly adjusted for years not included in a year of service.

(iii) Certain years not taken into account

Except to the extent provided in the plan, a year shall not be taken into account under clause (i) if—

(I) such year ends in a plan year beginning before January 1, 1984, or

(II) such year begins after the close of the last year in which the plan was a top-heavy plan.

(E) Annual retirement benefit

For purposes of this paragraph, the term "annual retirement benefit" means a benefit payable annually in the form of a single life annuity (with no ancillary benefits) beginning at the normal retirement age under the plan.

(2) Defined contribution plans

(A) In general

A defined contribution plan meets the requirements of the subsection if the employer contribution for the year for each participant who is a non-key employee is not less than 3 percent of such participant's compensation (within the meaning of section 415). Employer matching contributions (as defined in section 401(m)(4)(A)) shall be taken into account for purposes of this subparagraph (and any reduction under this sentence shall not be taken into account in determining whether section 401(k)(4)(A) applies).

(B) Special rule where maximum contribution less than 3 percent

(i) In general

The percentage referred to in subparagraph (A) for any year shall not exceed the percentage at which contributions are made (or required to be made) under the plan for the year for the key employee for whom such percentage is the highest for the year.

(ii) Treatment of aggregation groups

(I) For purposes of this subparagraph, all defined contribution plans required to be included in an aggregation group under subsection (g)(2)(A)(i) shall be treated as one plan.

(II) This subparagraph shall not apply to any plan required to be included in an aggregation group if such plan enables a defined benefit plan required to be included in such group to meet the requirements of section 401(a)(4) or 410.

[(d) Repealed. Pub. L. 99–514, title XI, §1106(d)(3)(B)(i), Oct. 22, 1986, 100 Stat. 2424]

(e) Plan must meet requirements without taking into account social security and similar contributions and benefits

A top-heavy plan shall not be treated as meeting the requirement of subsection (b) or (c) unless such plan meets such requirement without taking into account contributions or benefits under chapter 2 (relating to tax on self-employment income), chapter 21 (relating to Federal Insurance Contributions Act), title II of the Social Security Act, or any other Federal or State law.

(f) Coordination where employer has 2 or more plans

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section where the employer has 2 or more plans including (but not limited to) regulations to prevent inappropriate omissions or required duplication of minimum benefits or contributions.

(g) Top-heavy plan defined

For purposes of this section—

(1) In general

(A) Plans not required to be aggregated

Except as provided in subparagraph (B), the term "top-heavy plan" means, with respect to any plan year—

(i) any defined benefit plan if, as of the determination date, the present value of the cumulative accrued benefits under the plan for key employees exceeds 60 percent of the present value of the cumulative accrued benefits under the plan for all employees, and

(ii) any defined contribution plan if, as of the determination date, the aggregate of the accounts of key employees under the plan exceeds 60 percent of the aggregate of the accounts of all employees under such plan.

(B) Aggregated plans

Each plan of an employer required to be included in an aggregation group shall be treated as a top-heavy plan if such group is a top-heavy group.

(2) Aggregation

For purposes of this subsection—

(A) Aggregation group

(i) Required aggregation

The term "aggregation group" means—

(I) each plan of the employer in which a key employee is a participant, and

(II) each other plan of the employer which enables any plan described in subclause (I) to meet the requirements of section 401(a)(4) or 410.

(ii) Permissive aggregation

The employer may treat any plan not required to be included in an aggregation group under clause (i) as being part of such group if such group would continue to meet the requirements of sections 401(a)(4) and 410 with such plan being taken into account.

(B) Top-heavy group

The term "top-heavy group" means any aggregation group if—

(i) the sum (as of the determination date) of—

(I) the present value of the cumulative accrued benefits for key employees under all defined benefit plans included in such group, and

(II) the aggregate of the accounts of key employees under all defined contribution plans included in such group,

(ii) exceeds 60 percent of a similar sum determined for all employees.

(3) Distributions during last year before determination date taken into account

(A) In general

For purposes of determining—

(i) the present value of the cumulative accrued benefit for any employee, or

(ii) the amount of the account of any employee,

such present value or amount shall be increased by the aggregate distributions made with respect to such employee under the plan during the 1-year period ending on the determination date. The preceding sentence shall also apply to distributions under a terminated plan which if it had not been terminated would have been required to be included in an aggregation group.

(B) 5-year period in case of in-service distribution

In the case of any distribution made for a reason other than severance from employment, death, or disability, subparagraph (A) shall be applied by substituting "5-year period" for "1-year period".

(4) Other special rules

For purposes of this subsection—

(A) Rollover contributions to plan not taken into account

Except to the extent provided in regulations, any rollover contribution (or similar transfer) initiated by the employee and made after December 31, 1983, to a plan shall not be taken into account with respect to the transferee plan for purposes of determining whether such plan is a top-heavy plan (or whether any aggregation group which includes such plan is a top-heavy group).

(B) Benefits not taken into account if employee ceases to be key employee

If any individual is a non-key employee with respect to any plan for any plan year, but such individual was a key employee with respect to such plan for any prior plan year, any accrued benefit for such employee (and the account of such employee) shall not be taken into account.

(C) Determination date

The term "determination date" means, with respect to any plan year—

(i) the last day of the preceding plan year, or

(ii) in the case of the first plan year of any plan, the last day of such plan year.

(D) Years

To the extent provided in regulations, this section shall be applied on the basis of any year specified in such regulations in lieu of plan years.

(E) Benefits not taken into account if employee not employed for last year before determination date

If any individual has not performed services for the employer maintaining the plan at any time during the 1-year period ending on the determination date, any accrued benefit for such individual (and the account of such individual) shall not be taken into account.

(F) Accrued benefits treated as accruing ratably

The accrued benefit of any employee (other than a key employee) shall be determined—

(i) under the method which is used for accrual purposes for all plans of the employer, or

(ii) if there is no method described in clause (i), as if such benefit accrued not more rapidly than the slowest accrual rate permitted under section 411(b)(1)(C).

(G) Simple retirement accounts

The term "top-heavy plan" shall not include a simple retirement account under section 408(p).

(H) Cash or deferred arrangements using alternative methods of meeting nondiscrimination requirements

The term "top-heavy plan" shall not include a plan which consists solely of—

(i) a cash or deferred arrangement which meets the requirements of section 401(k)(12) or 401(k)(13), and

(ii) matching contributions with respect to which the requirements of section 401(m)(11) or 401(m)(12) are met.

If, but for this subparagraph, a plan would be treated as a top-heavy plan because it is a member of an aggregation group which is a top-heavy group, contributions under the plan may be taken into account in determining whether any other plan in the group meets the requirements of subsection (c)(2).

[(h) Repealed. Pub. L. 104–188, title I, §1452(c)(7), Aug. 20, 1996, 110 Stat. 1816]

(i) Definitions

For purposes of this section—

(1) Key employee

(A) In general

The term "key employee" means an employee who, at any time during the plan year, is—

(i) an officer of the employer having an annual compensation greater than $130,000,

(ii) a 5-percent owner of the employer, or

(iii) a 1-percent owner of the employer having an annual compensation from the employer of more than $150,000.

For purposes of clause (i), no more than 50 employees (or, if lesser, the greater of 3 or 10 percent of the employees) shall be treated as officers. In the case of plan years beginning after December 31, 2002, the $130,000 amount in clause (i) shall be adjusted at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter beginning July 1, 2001, and any increase under this sentence which is not a multiple of $5,000 shall be rounded to the next lower multiple of $5,000. Such term shall not include any officer or employee of an entity referred to in section 414(d) (relating to governmental plans). For purposes of determining the number of officers taken into account under clause (i), employees described in section 414(q)(5) shall be excluded.

(B) Percentage owners

(i) 5-percent owner

For purposes of this paragraph, the term "5-percent owner" means—

(I) if the employer is a corporation, any person who owns (or is considered as owning within the meaning of section 318) more than 5 percent of the outstanding stock of the corporation or stock possessing more than 5 percent of the total combined voting power of all stock of the corporation, or

(II) if the employer is not a corporation, any person who owns more than 5 percent of the capital or profits interest in the employer.

(ii) 1-percent owner

For purposes of this paragraph, the term "1-percent owner" means any person who would be described in clause (i) if "1 percent" were substituted for "5 percent" each place it appears in clause (i).

(iii) Constructive ownership rules

For purposes of this subparagraph—

(I) subparagraph (C) of section 318(a)(2) shall be applied by substituting "5 percent" for "50 percent", and

(II) in the case of any employer which is not a corporation, ownership in such employer shall be determined in accordance with regulations prescribed by the Secretary which shall be based on principles similar to the principles of section 318 (as modified by subclause (I)).

(C) Aggregation rules do not apply for purposes of determining ownership in the employer

The rules of subsections (b), (c), and (m) of section 414 shall not apply for purposes of determining ownership in the employer.

(D) Compensation

For purposes of this paragraph, the term "compensation" has the meaning given such term by section 414(q)(4).

(2) Non-key employee

The term "non-key employee" means any employee who is not a key employee.

(3) Self-employed individuals

In the case of a self-employed individual described in section 401(c)(1)—

(A) such individual shall be treated as an employee, and

(B) such individual's earned income (within the meaning of section 401(c)(2)) shall be treated as compensation.

(4) Treatment of employees covered by collective bargaining agreements

The requirements of subsections (b), (c), and (d) shall not apply with respect to any employee included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and 1 or more employers if there is evidence that retirement benefits were the subject of good faith bargaining between such employee representatives and such employer or employers.

(5) Treatment of beneficiaries

The terms "employee" and "key employee" include their beneficiaries.

(6) Treatment of simplified employee pensions

(A) Treatment as defined contribution plans

A simplified employee pension shall be treated as a defined contribution plan.

(B) Election to have determinations based on employer contributions

In the case of a simplified employee pension, at the election of the employer, paragraphs (1)(A)(ii) and (2)(B) of subsection (g) shall be applied by taking into account aggregate employer contributions in lieu of the aggregate of the accounts of employees.

(Added Pub. L. 97–248, title II, §240(a), Sept. 3, 1982, 96 Stat. 514; amended Pub. L. 98–369, div. A, title V, §524(a)(1), (b)(1), (c)(1), title VII, §713(f)(1), (4), (5)(A), (6), July 18, 1984, 98 Stat. 872, 958–960; Pub. L. 99–514, title XI, §§1106(d)(3)(A), (B), 1118(a), title XVIII, §1852(d), Oct. 22, 1986, 100 Stat. 2424, 2463, 2867; Pub. L. 100–647, title I, §1011(d)(8), (i)(4)(B), (j)(3)(A), Nov. 10, 1988, 102 Stat. 3460, 3467, 3468; Pub. L. 104–188, title I, §§1421(b)(7), 1431(c)(1)(B), (C), 1452(c)(7), Aug. 20, 1996, 110 Stat. 1797, 1803, 1816; Pub. L. 107–16, title VI, §613(a)–(e), June 7, 2001, 115 Stat. 100–102; Pub. L. 107–147, title IV, §411(k), Mar. 9, 2002, 116 Stat. 47; Pub. L. 108–311, title IV, §408(a)(16), Oct. 4, 2004, 118 Stat. 1192; Pub. L. 109–280, title IX, §902(c), Aug. 17, 2006, 120 Stat. 1036.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table under section 401 of this title.

REFERENCES IN TEXT

The Federal Insurance Contributions Act, referred to in subsec. (e), is act Aug. 16, 1954, ch. 736, §§3101, 3102, 3111, 3112, 3121 to 3128, 68A Stat. 415, as amended, which is classified generally to chapter 21 (§3101 et seq.) of this title. For complete classification of this Act to the Code, see section 3128 of this title and Tables.

The Social Security Act, referred to in subsec. (e), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2006—Subsec. (g)(4)(H)(i). Pub. L. 109–280, §902(c)(1), inserted "or 401(k)(13)" after "401(k)(12)".

Subsec. (g)(4)(H)(ii). Pub. L. 109–280, §902(c)(2), inserted "or 401(m)(12)" after "401(m)(11)".

2004—Subsec. (i)(1)(A). Pub. L. 108–311 substituted "In the case of plan years" for "in the case of plan years" in concluding provisions.

2002—Subsec. (c)(1)(C)(iii). Pub. L. 107–147, §411(k)(1), substituted "Exception for plan under which no key employee (or former key employee) benefits for plan year" for "Exception for frozen plan" in heading.

Subsec. (g)(3)(B). Pub. L. 107–147, §411(k)(2), substituted "severance from employment" for "separation from service".

2001—Subsec. (c)(1)(C)(i). Pub. L. 107–16, §613(e)(A), substituted "clause (ii) or (iii)" for "clause (ii)".

Subsec. (c)(1)(C)(iii). Pub. L. 107–16, §613(e)(B), added cl. (iii).

Subsec. (c)(2)(A). Pub. L. 107–16, §613(b), inserted at end "Employer matching contributions (as defined in section 401(m)(4)(A)) shall be taken into account for purposes of this subparagraph (and any reduction under this sentence shall not be taken into account in determining whether section 401(k)(4)(A) applies)."

Subsec. (g)(3). Pub. L. 107–16, §613(c)(1), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: "For purposes of determining—

"(A) the present value of the cumulative accrued benefit for any employee, or

"(B) the amount of the account of any employee,

such present value or amount shall be increased by the aggregate distributions made with respect to such employee under the plan during the 5-year period ending on the determination date. The preceding sentence shall also apply to distributions under a terminated plan which if it had not been terminated would have been required to be included in an aggregation group."

Subsec. (g)(4)(E). Pub. L. 107–16, §613(c)(2), in heading substituted "last year before determination date" for "last 5 years" and in text substituted "1-year period" for "5-year period".

Subsec. (g)(4)(H). Pub. L. 107–16, §613(d), added subpar. (H).

Subsec. (i)(1)(A). Pub. L. 107–16, §613(a)(1)(D), in concluding provisions, substituted "in the case of plan years beginning after December 31, 2002, the $130,000 amount in clause (i) shall be adjusted at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter beginning July 1, 2001, and any increase under this sentence which is not a multiple of $5,000 shall be rounded to the next lower multiple of $5,000." for "For purposes of clause (ii), if 2 employees have the same interest in the employer, the employee having greater annual compensation from the employer shall be treated as having a larger interest."

Pub. L. 107–16, §613(a)(1)(A), struck out "or any of the 4 preceding plan years" after "plan year" in introductory provisions.

Subsec. (i)(1)(A)(i). Pub. L. 107–16, § 613(a)(1)(B), added cl. (i) and struck out former cl. (i) which read as follows: "an officer of the employer having an annual compensation greater than 50 percent of the amount in effect under section 415(b)(1)(A) for any such plan year,".

Subsec. (i)(1)(A)(ii)–(iv). Pub. L. 107–16, §613(a)(1)(C), redesignated cls. (iii) and (iv) as (ii) and (iii), respectively, and struck out former cl. (ii) which read as follows: "1 of the 10 employees having annual compensation from the employer of more than the limitation in effect under section 415(c)(1)(A) and owning (or considered as owning within the meaning of section 318) the largest interests in the employer,".

Subsec. (i)(1)(B)(iii). Pub. L. 107–16, §613(a)(2), struck out "and subparagraph (A)(ii)" after "this subparagraph" in introductory provisions.

1996—Subsec. (g)(4)(G). Pub. L. 104–188, §1421(b)(7), added subpar. (G).

Subsec. (h). Pub. L. 104–188, §1452(c)(7), struck out subsec. (h) which related to adjustments in section 415 limits for top-heavy plans.

Subsec. (i)(1)(A). Pub. L. 104–188, §1431(c)(1)(C), substituted "section 414(q)(5)" for "section 414(q)(8)" in closing provisions.

Subsec. (i)(1)(D). Pub. L. 104–188, §1431(c)(1)(B), substituted "section 414(q)(4)" for "section 414(q)(7)".

1988—Subsec. (i)(1)(A). Pub. L. 100–647, §1011(i)(4)(B), inserted at end "For purposes of determining the number of officers taken into account under clause (i), employees described in section 414(q)(8) shall be excluded."

Subsec. (i)(1)(A)(i). Pub. L. 100–647, §1011(d)(8), substituted "50" for "150" and "415(b)(1)(A)" for "415(c)(1)(A)".

Subsec. (i)(1)(D). Pub. L. 100–647, §1011(j)(3)(A), added subpar. (D).

1986—Subsec. (a)(3). Pub. L. 99–514, §1106(d)(3)(A), struck out par. (3) which read as follows: "the limitation on compensation requirement of subsection (d)."

Subsec. (c)(2)(B)(ii), (iii). Pub. L. 99–514, §1106(d)(3)(B)(ii), redesignated cl. (iii) as (ii) and struck out former cl. (ii) which read as follows: "DETERMINATION OF PERCENTAGE.—The determination referred to in clause (i) shall be determined for each key employee by dividing the contributions for such employee by so much of his total compensation for the year as does not exceed $200,000."

Subsec. (d). Pub. L. 99–514, §1106(d)(3)(B)(i), repealed subsec. (d) which provided for a $200,000 limitation on the amount of annual compensation of each employee taken into account.

Subsec. (g)(4)(E). Pub. L. 99–514, §1852(d)(2), amended subpar. (E) generally. Prior to amendment, subpar. (E) read as follows: "If any individual has not received any compensation from any employer

maintaining the plan (other than benefits under the plan) at any time during the 5-year period ending on the determination date, any accrued benefit for such individual (and the account of such individual) shall not be taken into account."

Subsec. (g)(4)(F). Pub. L. 99–514, §1118(a), added subpar. (F).

Subsec. (i)(1)(A). Pub. L. 99–514, §1852(d)(1), inserted at end "Such term shall not include any officer or employee of an entity referred to in section 414(d) (relating to governmental plans)."

1984—Subsec. (c)(2)(C). Pub. L. 98–369, §524(c)(1), struck out subpar. (C) which provided that for purposes of this paragraph, any employer contribution attributable to a salary reduction or similar arrangement shall not be taken into account.

Subsec. (d)(2). Pub. L. 98–369, §713(f)(5)(A), inserted "at the same time and".

Subsec. (f). Pub. L. 98–369, §713(f)(6)(A), substituted "required" for "require".

Subsec. (g)(3). Pub. L. 98–369, §713(f)(4), inserted at end "The preceding sentence shall also apply to distributions under a terminated plan which if it had not been terminated would have been required to be included in an aggregation group."

Subsec. (g)(4)(E). Pub. L. 98–369, §524(b)(1), added subpar. (E).

Subsec. (i)(1)(A). Pub. L. 98–369, §713(f)(1)(A), (C), substituted in provisions preceding cl. (i) "an employee" for "any participant in an employer plan" and inserted at end thereof provision for treatment of an employee with the greater annual compensation as having a larger interest in the employer where, for purposes of cl. (ii), 2 employees have the same interest in the employer.

Subsec. (i)(1)(A)(i). Pub. L. 98–369, §524(a)(1), inserted "having an annual compensation greater than 150 percent of the amount in effect under section 415(c)(1)(A) for any plan year".

Subsec. (i)(1)(A)(ii). Pub. L. 98–369, §713(f)(1)(B), required a key employee to have annual compensation from the employer of more than the limitation in effect under section 415(c)(1)(A).

Subsec. (i)(1)(B)(iii). Pub. L. 98–369, §713(f)(6)(B), substituted subparagraph "(A)(ii)" for "(A)(ii)(II)".

Subsec. (i)(1)(C). Pub. L. 98–369, §713(f)(1)(A), substituted in heading "ownership in the employer" for "5-percent or 1-percent owners".

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 applicable to plan years beginning after Dec. 31, 2007, see section 902(g) of Pub. L. 109–280, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–16, title VI, §613(f), June 7, 2001, 115 Stat. 102, provided that: "The amendments made by this section [amending this section] shall apply to years beginning after December 31, 2001."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1421(b)(7) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1421(e) of Pub. L. 104–188, set out as a note under section 72 of this title.

Amendment by section 1431(c)(1)(B), (C) of Pub. L. 104–188 applicable to years beginning after Dec. 31, 1996, except that in determining whether an employee is a highly compensated employee for years beginning in 1997, such amendment to be treated as having been in effect for years beginning in 1996, see section 1431(d)(1) of Pub. L. 104–188, set out as a note under section 414 of this title.

Amendment by section 1452(c)(7) of Pub. L. 104–188 applicable to limitation years beginning after Dec. 31, 1999, see section 1452(d) of Pub. L. 104–188, set out as a note under section 415 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1011(j)(3)(B), Nov. 10, 1988, 102 Stat. 3468, provided that: "The amendment made by this paragraph [amending this section] shall apply to years beginning after December 31, 1988."

Amendment by section 1011(d)(8), (i)(4)(B) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1106(d)(3)(A), (B) of Pub. L. 99–514 applicable to benefits accruing in years

beginning after Dec. 31, 1988, except as otherwise provided, see section 1106(i)(5) of Pub. L. 99–514, set out as a note under section 415 of this title.

Pub. L. 99–514, title XI, §1118(b), Oct. 22, 1986, 100 Stat. 2463, provided that: "The amendment made by subsection (a) [amending this section] shall apply to plan years beginning after December 31, 1986."

Amendment by section 1852(d) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title V, §524(a)(2), July 18, 1984, 98 Stat. 872, provided that: "The amendment made by this subsection [amending this section] shall apply to plan years beginning after December 31, 1983."

Pub. L. 98–369, div. A, title V, §524(b)(2), July 18, 1984, 98 Stat. 872, provided that: "The amendment made by this subsection [amending this section] shall apply to plan years beginning after December 31, 1984."

Pub. L. 98–369, div. A, title V, §524(c)(2), July 18, 1984, 98 Stat. 872, provided that: "The amendment made by this subsection [amending this section] shall apply to plan years beginning after December 31, 1984."

Amendment by section 713 of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE

Pub. L. 97–248, title II, §241, Sept. 3, 1982, 96 Stat. 520, provided that:

"(a) GENERAL RULE.—Except as provided in subsection (b), the amendments made by this part [part II (§§237–241) of subtitle C of title II of Pub. L. 97–248, enacting this section, amending sections 72, 401, 404, 408, 414, 415, and 1379 of this title, and repealing section 4972 of this title] shall apply to years beginning after December 31, 1983.

"(b) ALLOWANCE OF EXCLUSION OF DEATH BENEFIT FOR SELF-EMPLOYED INDIVIDUALS .—The amendment made by section 239 [amending section 101 of this title] shall apply with respect to decedents dying after December 31, 1983."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§1401–1465] of title I of Pub. L. 104–188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§417. Definitions and special rules for purposes of minimum survivor annuity requirements

(a) Election to waive qualified joint and survivor annuity or qualified preretirement survivor annuity

(1) In general

A plan meets the requirements of section 401(a)(11) only if—

(A) under the plan, each participant—

(i) may elect at any time during the applicable election period to waive the qualified joint and survivor annuity form of benefit or the qualified preretirement survivor annuity form of benefit (or both),

(ii) if the participant elects a waiver under clause (i), may elect the qualified optional survivor annuity at any time during the applicable election period, and

(iii) may revoke any such election at any time during the applicable election period, and

(B) the plan meets the requirements of paragraphs (2), (3), and (4) of this subsection.

(2) Spouse must consent to election

Each plan shall provide that an election under paragraph (1)(A)(i) shall not take effect unless—

(A)(i) the spouse of the participant consents in writing to such election, (ii) such election designates a beneficiary (or a form of benefits) which may not be changed without spousal consent (or the consent of the spouse expressly permits designations by the participant without any requirement of further consent by the spouse), and (iii) the spouse's consent acknowledges the effect of such election and is witnessed by a plan representative or a notary public, or

(B) it is established to the satisfaction of a plan representative that the consent required under subparagraph (A) may not be obtained because there is no spouse, because the spouse cannot be located, or because of such other circumstances as the Secretary may by regulations prescribe.

Any consent by a spouse (or establishment that the consent of a spouse may not be obtained) under the preceding sentence shall be effective only with respect to such spouse.

(3) Plan to provide written explanations

(A) Explanation of joint and survivor annuity

Each plan shall provide to each participant, within a reasonable period of time before the annuity starting date (and consistent with such regulations as the Secretary may prescribe), a written explanation of—

(i) the terms and conditions of the qualified joint and survivor annuity and of the qualified optional survivor annuity,

(ii) the participant's right to make, and the effect of, an election under paragraph (1) to waive the joint and survivor annuity form of benefit,

(iii) the rights of the participant's spouse under paragraph (2), and

(iv) the right to make, and the effect of, a revocation of an election under paragraph (1).

(B) Explanation of qualified preretirement survivor annuity

(i) In general

Each plan shall provide to each participant, within the applicable period with respect to such participant (and consistent with such regulations as the Secretary may prescribe), a written explanation with respect to the qualified preretirement survivor annuity comparable to that required under subparagraph (A).

(ii) Applicable period

For purposes of clause (i), the term "applicable period" means, with respect to a participant, whichever of the following periods ends last:

(I) The period beginning with the first day of the plan year in which the participant attains age 32 and ending with the close of the plan year preceding the plan year in which the participant attains age 35.

(II) A reasonable period after the individual becomes a participant.

(III) A reasonable period ending after paragraph (5) ceases to apply to the participant.

(IV) A reasonable period ending after section 401(a)(11) applies to the participant.

In the case of a participant who separates from service before attaining age 35, the applicable period shall be a reasonable period after separation.

(4) Requirement of spousal consent for using plan assets as security for loans

Each plan shall provide that, if section 401(a)(11) applies to a participant when part or all of the participant's accrued benefit is to be used as security for a loan, no portion of the participant's accrued benefit may be used as security for such loan unless—

(A) the spouse of the participant (if any) consents in writing to such use during the 90-day period ending on the date on which the loan is to be so secured, and

(B) requirements comparable to the requirements of paragraph (2) are met with respect to such consent.

(5) Special rules where plan fully subsidizes costs

(A) In general

The requirements of this subsection shall not apply with respect to the qualified joint and survivor annuity form of benefit or the qualified preretirement survivor annuity form of benefit, as the case may be, if such benefit may not be waived (or another beneficiary selected) and if the plan fully subsidizes the costs of such benefit.

(B) Definition

For purposes of subparagraph (A), a plan fully subsidizes the costs of a benefit if under the plan the failure to waive such benefit by a participant would not result in a decrease in any plan benefits with respect to such participant and would not result in increased contributions from such participant.

(6) Applicable election period defined

For purposes of this subsection, the term "applicable election period" means—

(A) in the case of an election to waive the qualified joint and survivor annuity form of benefit, the 180-day period ending on the annuity starting date, or

(B) in the case of an election to waive the qualified preretirement survivor annuity, the period which begins on the first day of the plan year in which the participant attains age 35 and ends on the date of the participant's death.

In the case of a participant who is separated from service, the applicable election period under subparagraph (B) with respect to benefits accrued before the date of such separation from service shall not begin later than such date.

(7) Special rules relating to time for written explanation

Notwithstanding any other provision of this subsection—

(A) Explanation may be provided after annuity starting date

(i) In general

A plan may provide the written explanation described in paragraph (3)(A) after the annuity starting date. In any case to which this subparagraph applies, the applicable election period under paragraph (6) shall not end before the 30th day after the date on which such explanation is provided.

(ii) Regulatory authority

The Secretary may by regulations limit the application of clause (i), except that such regulations may not limit the period of time by which the annuity starting date precedes the provision of the written explanation other than by providing that the annuity starting date may not be earlier than termination of employment.

(B) Waiver of 30-day period

A plan may permit a participant to elect (with any applicable spousal consent) to waive any requirement that the written explanation be provided at least 30 days before the annuity starting date (or to waive the 30-day requirement under subparagraph (A)) if the distribution commences more than 7 days after such explanation is provided.

(b) Definition of qualified joint and survivor annuity

For purposes of this section and section 401(a)(11), the term "qualified joint and survivor annuity" means an annuity—

(1) for the life of the participant with a survivor annuity for the life of the spouse which is not less than 50 percent of (and is not greater than 100 percent of) the amount of the annuity which is payable during the joint lives of the participant and the spouse, and

(2) which is the actuarial equivalent of a single annuity for the life of the participant.

Such term also includes any annuity in a form having the effect of an annuity described in the preceding sentence.

(c) Definition of qualified preretirement survivor annuity

For purposes of this section and section 401(a)(11)—

(1) In general

Except as provided in paragraph (2), the term "qualified preretirement survivor annuity" means a survivor annuity for the life of the surviving spouse of the participant if—

(A) the payments to the surviving spouse under such annuity are not less than the amounts which would be payable as a survivor annuity under the qualified joint and survivor annuity under the plan (or the actuarial equivalent thereof) if—

(i) in the case of a participant who dies after the date on which the participant attained the earliest retirement age, such participant had retired with an immediate qualified joint and survivor annuity on the day before the participant's date of death, or

(ii) in the case of a participant who dies on or before the date on which the participant would have attained the earliest retirement age, such participant had—

(I) separated from service on the date of death,

(II) survived to the earliest retirement age,

(III) retired with an immediate qualified joint and survivor annuity at the earliest retirement age, and

(IV) died on the day after the day on which such participant would have attained the earliest retirement age, and

(B) under the plan, the earliest period for which the surviving spouse may receive a payment under such annuity is not later than the month in which the participant would have attained the earliest retirement age under the plan.

In the case of an individual who separated from service before the date of such individual's death, subparagraph (A)(ii)(I) shall not apply.

(2) Special rule for defined contribution plans

In the case of any defined contribution plan or participant described in clause (ii) or (iii) of section 401(a)(11)(B), the term "qualified preretirement survivor annuity" means an annuity for the life of the surviving spouse the actuarial equivalent of which is not less than 50 percent of the portion of the account balance of the participant (as of the date of death) to which the participant had a nonforfeitable right (within the meaning of section 411(a)).

(3) Security interests taken into account

For purposes of paragraphs (1) and (2), any security interest held by the plan by reason of a loan outstanding to the participant shall be taken into account in determining the amount of the qualified preretirement survivor annuity.

(d) Survivor annuities need not be provided if participant and spouse married less than 1 year

(1) In general

Except as provided in paragraph (2), a plan shall not be treated as failing to meet the requirements of section 401(a)(11) merely because the plan provides that a qualified joint and survivor annuity (or a qualified preretirement survivor annuity) will not be provided unless the participant and spouse had been married throughout the 1-year period ending on the earlier of—

(A) the participant's annuity starting date, or

(B) the date of the participant's death.

(2) Treatment of certain marriages within 1 year of annuity starting date for purposes of

qualified joint and survivor annuities

For purposes of paragraph (1), if—

(A) a participant marries within 1 year before the annuity starting date, and

(B) the participant and the participant's spouse in such marriage have been married for at least a 1-year period ending on or before the date of the participant's death,

such participant and such spouse shall be treated as having been married throughout the 1-year period ending on the participant's annuity starting date.

(e) Restrictions on cash-outs

(1) Plan may require distribution if present value not in excess of dollar limit

A plan may provide that the present value of a qualified joint and survivor annuity or a qualified preretirement survivor annuity will be immediately distributed if such value does not exceed the amount that can be distributed without the participant's consent under section 411(a)(11). No distribution may be made under the preceding sentence after the annuity starting date unless the participant and the spouse of the participant (or where the participant has died, the surviving spouse) consents in writing to such distribution.

(2) Plan may distribute benefit in excess of dollar limit only with consent

If—

(A) the present value of the qualified joint and survivor annuity or the qualified preretirement survivor annuity exceeds the amount that can be distributed without the participant's consent under section 411(a)(11), and

(B) the participant and the spouse of the participant (or where the participant has died, the surviving spouse) consent in writing to the distribution,

the plan may immediately distribute the present value of such annuity.

(3) Determination of present value

(A) In general

For purposes of paragraphs (1) and (2), the present value shall not be less than the present value calculated by using the applicable mortality table and the applicable interest rate.

(B) Applicable mortality table

For purposes of subparagraph (A), the term "applicable mortality table" means a mortality table, modified as appropriate by the Secretary, based on the mortality table specified for the plan year under subparagraph (A) of section 430(h)(3) (without regard to subparagraph (C) or (D) of such section).

(C) Applicable interest rate

For purposes of subparagraph (A), the term "applicable interest rate" means the adjusted first, second, and third segment rates applied under rules similar to the rules of section 430(h)(2)(C) (determined by not taking into account any adjustment under clause (iv) thereof) for the month before the date of the distribution or such other time as the Secretary may by regulations prescribe.

(D) Applicable segment rates

For purposes of subparagraph (C), the adjusted first, second, and third segment rates are the first, second, and third segment rates which would be determined under section 430(h)(2)(C) (determined by not taking into account any adjustment under clause (iv) thereof) if—

(i) section 430(h)(2)(D) were applied by substituting the average yields for the month described in subparagraph (C) for the average yields for the 24-month period described in such section,

(ii) section 430(h)(2)(G)(i)(II) were applied by substituting "section 417(e)(3)(A)(ii)(II)" for "section 412(b)(5)(B)(ii)(II)", and

(iii) the applicable percentage under section 430(h)(2)(G) were determined in accordance with the following table:

In the case of plan years beginning in:	The applicable percentage is:
2008	20 percent
2009	40 percent
2010	60 percent
2011	80 percent.

(f) Other definitions and special rules

For purposes of this section and section 401(a)(11)—

(1) Vested participant

The term "vested participant" means any participant who has a nonforfeitable right (within the meaning of section 411(a)) to any portion of such participant's accrued benefit.

(2) Annuity starting date

(A) In general

The term "annuity starting date" means—

(i) the first day of the first period for which an amount is payable as an annuity, or

(ii) in the case of a benefit not payable in the form of an annuity, the first day on which all events have occurred which entitle the participant to such benefit.

(B) Special rule for disability benefits

For purposes of subparagraph (A), the first day of the first period for which a benefit is to be received by reason of disability shall be treated as the annuity starting date only if such benefit is not an auxiliary benefit.

(3) Earliest retirement age

The term "earliest retirement age" means the earliest date on which, under the plan, the participant could elect to receive retirement benefits.

(4) Plan may take into account increased costs

A plan may take into account in any equitable manner (as determined by the Secretary) any increased costs resulting from providing a qualified joint or survivor annuity or a qualified preretirement survivor annuity.

(5) Distributions by reason of security interests

If the use of any participant's accrued benefit (or any portion thereof) as security for a loan meets the requirements of subsection (a)(4), nothing in this section or section 411(a)(11) shall prevent any distribution required by reason of a failure to comply with the terms of such loan.

(6) Requirements for certain spousal consents

No consent of a spouse shall be effective for purposes of subsection (e)(1) or (e)(2) (as the case may be) unless requirements comparable to the requirements for spousal consent to an election under subsection (a)(1)(A) are met.

(7) Consultation with the Secretary of Labor

In prescribing regulations under this section and section 401(a)(11), the Secretary shall consult with the Secretary of Labor.

(g) Definition of qualified optional survivor annuity

(1) In general

For purposes of this section, the term "qualified optional survivor annuity" means an annuity—

(A) for the life of the participant with a survivor annuity for the life of the spouse which is equal to the applicable percentage of the amount of the annuity which is payable during the joint lives of the participant and the spouse, and

(B) which is the actuarial equivalent of a single annuity for the life of the participant.

Such term also includes any annuity in a form having the effect of an annuity described in the preceding sentence.

(2) Applicable percentage

(A) In general

For purposes of paragraph (1), if the survivor annuity percentage—

(i) is less than 75 percent, the applicable percentage is 75 percent, and

(ii) is greater than or equal to 75 percent, the applicable percentage is 50 percent.

(B) Survivor annuity percentage

For purposes of subparagraph (A), the term "survivor annuity percentage" means the percentage which the survivor annuity under the plan's qualified joint and survivor annuity bears to the annuity payable during the joint lives of the participant and the spouse.

(Added Pub. L. 98–397, title II, §203(b), Aug. 23, 1984, 98 Stat. 1441; amended Pub. L. 99–514, title XI, §1139(b), title XVIII, §1898(b)(1)(A), (4)(A), (5)(A), (6)(A), (8)(A), (9)(A), (10)(A), (11)(A), (12)(A), (15)(A), (B), Oct. 22, 1986, 100 Stat. 2487, 2944, 2945, 2947–2951; Pub. L. 100–647, title I, §1018(u)(9), Nov. 10, 1988, 102 Stat. 3590; Pub. L. 101–239, title VII, §7862(d)(1)(A), Dec. 19, 1989, 103 Stat. 2433; Pub. L. 103–465, title VII, §767(a)(2), Dec. 8, 1994, 108 Stat. 5038; Pub. L. 104–188, title I, §1451(a), Aug. 20, 1996, 110 Stat. 1815; Pub. L. 105–34, title X, §1071(a)(2), Aug. 5, 1997, 111 Stat. 948; Pub. L. 107–147, title IV, §411(r)(1), Mar. 9, 2002, 116 Stat. 51; Pub. L. 109–280, title III, §302(b), title X, §1004(a), title XI, §1102(a)(1)(A), Aug. 17, 2006, 120 Stat. 920, 1053, 1056; Pub. L. 110–458, title I, §103(b)(2)(A), Dec. 23, 2008, 122 Stat. 5103; Pub. L. 112–141, div. D, title II, §40211(a)(2)(C), July 6, 2012, 126 Stat. 847.)

AMENDMENTS

2012—Subsec. (e)(3)(C), (D). Pub. L. 112–141 substituted "section 430(h)(2)(C) (determined by not taking into account any adjustment under clause (iv) thereof)" for "section 430(h)(2)(C)".

2008—Subsec. (e)(3)(D)(i). Pub. L. 110–458 substituted "subparagraph (C)" for "clause (ii)".

2006—Subsec. (a)(1)(A)(ii), (iii). Pub. L. 109–280, §1004(a)(1), added cl. (ii) and redesignated former cl. (ii) as (iii).

Subsec. (a)(3)(A)(i). Pub. L. 109–280, §1004(a)(3), inserted "and of the qualified optional survivor annuity" before comma at end.

Subsec. (a)(6)(A). Pub. L. 109–280, §1102(a)(1)(A), substituted "180-day" for "90-day".

Subsec. (e)(3). Pub. L. 109–280, §302(b), reenacted heading without change and amended text of par. (3) generally, substituting provisions relating to determination of present value by using the applicable mortality table and the applicable interest rate, provisions defining "applicable mortality table" and "applicable interest rate", and provisions relating to determination of the adjusted first, second, and third segment rates, for provisions relating to determination of present value, provisions defining "applicable mortality table" and "applicable interest rate", and provisions stating exception for a distribution from a plan that was adopted and in effect before the date of the enactment of the Retirement Protection Act of 1994.

Subsec. (g). Pub. L. 109–280, §1004(a)(2), added subsec. (g).

2002—Subsec. (e)(1). Pub. L. 107–147, §411(r)(1)(A), substituted "exceed the amount that can be distributed without the participant's consent under section 411(a)(11)" for "exceed the dollar limit under section 411(a)(11)(A)".

Subsec. (e)(2)(A). Pub. L. 107–147, §411(r)(1)(B), substituted "exceeds the amount that can be distributed without the participant's consent under section 411(a)(11)" for "exceeds the dollar limit under section 411(a)(11)(A)".

1997—Subsec. (e)(1), (2). Pub. L. 105–34 substituted "dollar limit" for "$3,500" in headings of pars. (1)

and (2) and "the dollar limit under section 411(a)(11)(A)" for "$3,500" in text of pars. (1) and (2)(A).

1996—Subsec. (a)(7). Pub. L. 104–188 added par. (7).

1994—Subsec. (e)(3). Pub. L. 103–465 amended par. (3) generally, substituting present provisions for provisions directing that present value be calculated by using a rate no greater than the applicable interest rate or 120 percent of such rate, depending upon amount of vested accrued benefit, and defining "applicable interest rate".

1989—Subsec. (a)(3)(B)(ii). Pub. L. 101–239 added sentence at end and struck out former subcl. (V) which read as follows: "A reasonable period after separation from service in case of a participant who separates before attaining age 35."

1988—Subsec. (e)(3)(A). Pub. L. 100–647 substituted "clause (ii)" for "subclause (II)" in last sentence.

1986—Subsec. (a)(1). Pub. L. 99–514, §1898(b)(15)(A), substituted "section 401(a)(11)" for "section 401(a)(ii)".

Subsec. (a)(1)(B). Pub. L. 99–514, §1898(b)(4)(A)(i), substituted "paragraphs (2), (3), and (4)" for "paragraphs (2) and (3)".

Subsec. (a)(2)(A). Pub. L. 99–514, §1898(b)(6)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "the spouse of the participant consents in writing to such election, and the spouse's consent acknowledges the effect of such election and is witnessed by a plan representative or a notary public, or".

Subsec. (a)(3)(B). Pub. L. 99–514, §1898(b)(5)(A), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "Each plan shall provide to each participant, within the period beginning with the first day of the plan year in which the participant attains age 32 and ending with the close of the plan year preceding the plan year in which the participant attains age 35 (and consistent with such regulations as the Secretary may prescribe), a written explanation with respect to the qualified preretirement survivor annuity comparable to that required under subparagraph (A)."

Subsec. (a)(4). Pub. L. 99–514, §1898(b)(4)(A)(ii), added par. (4). Former par. (4) redesignated (5).

Subsec. (a)(5), (6). Pub. L. 99–514, §1898(b)(4)(A)(ii), (11)(A), redesignated former par. (4) as (5) and inserted in subpar. (A) "if such benefit may not be waived (or another beneficiary selected) and" before "if the plan". Former par. (5) redesignated (6).

Subsec. (c)(1). Pub. L. 99–514, §1898(b)(15)(B), substituted "survivor annuity for the life of" for "survivor annuity or the life of".

Pub. L. 99–514, §1898(b)(1)(A), inserted "In the case of an individual who separated from service before the date of such individual's death, subparagraph (A)(ii)(I) shall not apply."

Subsec. (c)(2). Pub. L. 99–514, §1898(b)(9)(A)(i), substituted "the portion of the account balance of the participant (as of the date of death) to which the participant had a nonforfeitable right (within the meaning of section 411(a))" for "the account balance of the participant as of the date of death".

Subsec. (c)(3). Pub. L. 99–514, §1898(b)(9)(A)(ii), added par. (3).

Subsec. (e)(3). Pub. L. 99–514, §1139(b), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "For purposes of paragraphs (1) and (2), the present value of a qualified joint and survivor annuity or a qualified preretirement survivor annuity shall be determined as of the date of the distribution and by using an interest rate not greater than the interest rate which would be used (as of the date of the distribution) by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a lump sum distribution on plan termination."

Subsec. (f)(1). Pub. L. 99–514, §1898(b)(8)(A), substituted "such participant's accrued benefit" for "the accrued benefit derived from employer contributions".

Subsec. (f)(2). Pub. L. 99–514, §1898(b)(12)(A), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "The term 'annuity starting date' means the first day of the first period for which an amount is received as an annuity (whether by reason of retirement or disability)."

Subsec. (f)(5). Pub. L. 99–514, §1898(b)(4)(A)(iii), added par. (5) and redesignated former par. (5) as (6).

Subsec. (f)(6), (7). Pub. L. 99–514, §1898(b)(10)(A), added par. (6) and redesignated former par. (6) as (7).

Pub. L. 99–514, §1898(b)(4)(A)(iii), redesignated former par. (5) as (6).

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112–141 applicable with respect to plan years beginning after December 31, 2011, except as otherwise provided, see section 40211(c) of Pub. L. 112–141, set out as a note under section 404 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–458 effective as if included in the provisions of Pub. L. 109–280 to which the

amendment relates, except as otherwise provided, see section 112 of Pub. L. 110–458, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title III, §302(c), Aug. 17, 2006, 120 Stat. 921, provided that: "The amendments made by this section [amending this section and section 1055 of Title 29, Labor] shall apply with respect to plan years beginning after December 31, 2007."

Pub. L. 109–280, title X, §1004(c), Aug. 17, 2006, 120 Stat. 1055, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and section 1055 of Title 29, Labor] shall apply to plan years beginning after December 31, 2007.

"(2) SPECIAL RULE FOR COLLECTIVELY BARGAINED PLANS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified on or before the date of the enactment of this Act [Aug. 17, 2006], the amendments made by this section shall not apply to plan years beginning before the earlier of—

"(A) the later of—

"(i) January 1, 2008, or

"(ii) the date on which the last collective bargaining agreement related to the plan terminates (determined without regard to any extension thereof after the date of enactment of this Act), or

"(B) January 1, 2009."

Pub. L. 109–280, title XI, §1102(a)(3), Aug. 17, 2006, 120 Stat. 1056, provided that: "The amendments and modifications made or required by this subsection [amending this section and section 1055 of Title 29, Labor] shall apply to years beginning after December 31, 2006."

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to plan years beginning after Aug. 5, 1997, see section 1071(c) of Pub. L. 105–34, set out as a note under section 411 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, §1451(c), Aug. 20, 1996, 110 Stat. 1816, provided that: "The amendments made by this section [amending this section and section 1055 of Title 29, Labor] shall apply to plan years beginning after December 31, 1996."

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 applicable to plan years and limitation years beginning after Dec. 31, 1994, except that employer may elect to treat such amendment as effective on or after Dec. 8, 1994, with provisions relating to reduction of accrued benefits, exception, and timing of plan amendment, see section 767(d) of Pub. L. 103–465, as amended, set out as a note under section 411 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 7863 of Pub. L. 101–239, set out as a note under section 106 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1139(b) of Pub. L. 99–514 applicable to distributions in plan years beginning after Dec. 31, 1984, except that such amendments shall not apply to any distributions in plan years beginning after Dec. 31, 1984, and before Jan. 1, 1987, if such distributions were made in accordance with the requirements of the regulations issued under the Retirement Equity Act of 1984, Pub. L. 98–397, with additional provisions relating to reductions in accrued benefits, see section 1139(d) of Pub. L. 99–514, set out as a note under section 411 of this title.

Pub. L. 99–514, title XVIII, §1898(b)(4)(C), Oct. 22, 1986, 100 Stat. 2946, provided that:

"(i) The amendments made by this paragraph [amending this section and section 1055 of Title 29, Labor] shall apply with respect to loans made after August 18, 1985.

"(ii) In the case of any loan which was made on or before August 18, 1985, and which is secured by a portion of the participant's accrued benefit, nothing in the amendments made by sections 103 and 203 of the Retirement Equity Act of 1984 [sections 103 and 203 of Pub. L. 98–397, enacting this section and amending section 401 of this title and section 1055 of Title 29] shall prevent any distribution required by reason of a failure to comply with the terms of such loan.

"(iii) For purposes of this subparagraph, any loan which is revised, extended, renewed, or renegotiated after August 18, 1985, shall be treated as made after August 18, 1985.

Section 1898(b)(6)(C) of Pub. L. 99–514 provided that: "The amendments made by this paragraph [amending this section and section 1055 of Title 29, Labor] shall apply to plan years beginning after the date of the enactment of this Act [Oct. 22, 1986]."

Section 1898(b)(8)(C) of Pub. L. 99–514, as added by Pub. L. 101–239, title VII, §7862(d)(2), Dec. 19, 1989, 103 Stat. 2434, provided that: "The amendments made by this paragraph [amending this section and section 1055 of Title 29, Labor] shall apply to distributions after the date of the enactment of this Act [Oct. 22, 1986]."

Amendment by section 1898(b)(1)(A), (5)(A), (9)(A), (10)(A), (11)(A), (12)(A), (15)(A), (B) of Pub. L. 99–514 effective as if included in the provision of the Retirement Equity Act of 1984, Pub. L. 98–397, to which such amendment relates, except as otherwise provided, see section 1898(j) of Pub. L. 99–514, set out as a note under section 401 of this title.

EFFECTIVE DATE

Section applicable to plan years beginning after Dec. 31, 1984, except as otherwise provided, see sections 302 and 303 of Pub. L. 98–397, set out as an Effective Date of 1984 Amendment note under section 1001 of Title 29, Labor.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§1401–1465] of title I of Pub. L. 104–188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

SUBPART C—SPECIAL RULES FOR MULTIEMPLOYER PLANS

Sec.

418. Reorganization status.

418A. Notice of reorganization and funding requirements.

418B. Minimum contribution requirement.

418C. Overburden credit against minimum contribution requirement.

418D. Adjustments in accrued benefits.

418E. Insolvent plans.

AMENDMENTS

1980—Pub. L. 96–364, title II, §202(a), Sept. 26, 1980, 94 Stat. 1271, added subpart C heading "Special Rules for Multiemployer Plans" and items 418 to 418E.

§418. Reorganization status

(a) General rule

A multiemployer plan is in reorganization for a plan year if the plan's reorganization index for that year is greater than zero.

(b) Reorganization index

For purposes of this subpart—

(1) In general

A plan's reorganization index for any plan year is the excess of—

(A) the vested benefits charge for such year, over

(B) the net charge to the funding standard account for such year.

(2) Net charge to funding standard account

The net charge to the funding standard account for any plan year is the excess (if any) of—

(A) the charges to the funding standard account for such year under section 412(b)(2),[1] over

(B) the credits to the funding standard account under section 412(b)(3)(B).[1]

(3) Vested benefits charge

The vested benefits charge for any plan year is the amount which would be necessary to amortize the plan's unfunded vested benefits as of the end of the base plan year in equal annual installments—

(A) over 10 years, to the extent such benefits are attributable to persons in pay status, and

(B) over 25 years, to the extent such benefits are attributable to other participants.

(4) Determination of vested benefits charge

(A) In general

The vested benefits charge for a plan year shall be based on an actuarial valuation of the plan as of the end of the base plan year, adjusted to reflect—

(i) any—

(I) decrease of 5 percent or more in the value of plan assets, or increase of 5 percent or more in the number of persons in pay status, during the period beginning on the first day of the plan year following the base plan year and ending on the adjustment date, or

(II) at the election of the plan sponsor, actuarial valuation of the plan as of the adjustment date or any later date not later than the last day of the plan year for which the determination is being made,

(ii) any change in benefits under the plan which is not otherwise taken into account under this subparagraph and which is pursuant to any amendment—

(I) adopted before the end of the plan year for which the determination is being made, and

(II) effective after the end of the base plan year and on or before the end of the plan year referred to in subclause (I), and

(iii) any other event (including an event described in subparagraph (B)(i)(I)) which, as determined in accordance with regulations prescribed by the Secretary, would substantially increase the plan's vested benefit charge.

(B) Certain changes in benefit levels

(i) In general

In determining the vested benefits charge for a plan year following a plan year in which the plan was not in reorganization, any change in benefits which—

(I) results from the changing of a group of participants from one benefit level to another benefit level under a schedule of plan benefits as a result of changes in a collective bargaining agreement, or

(II) results from any other change in a collective bargaining agreement,

shall not be taken into account except to the extent provided in regulations prescribed by the Secretary.

(ii) Plan in reorganization

Except as otherwise determined by the Secretary, in determining the vested benefits charge for any plan year following any plan year in which the plan was in reorganization, any change in benefits—

(I) described in clause (i)(I), or

(II) described in clause (i)(II) as determined under regulations prescribed by the Secretary,

shall, for purposes of subparagraph (A)(ii), be treated as a change in benefits pursuant to an amendment to a plan.

(5) Base plan year

(A) In general

The base plan year for any plan year is—

(i) if there is a relevant collective bargaining agreement, the last plan year ending at least 6 months before the relevant effective date, or

(ii) if there is no relevant collective bargaining agreement, the last plan year ending at least 12 months before the beginning of the plan year.

(B) Relevant collective bargaining agreement

A relevant collective bargaining agreement is a collective bargaining agreement—

(i) which is in effect for at least 6 months during the plan year, and

(ii) which has not been in effect for more than 36 months as of the end of the plan year.

(C) Relevant effective date

The relevant effective date is the earliest of the effective dates for the relevant collective bargaining agreements.

(D) Adjustment date

The adjustment date is the date which is—

(i) 90 days before the relevant effective date, or

(ii) if there is no relevant effective date, 90 days before the beginning of the plan year.

(6) Person in pay status

The term "person in pay status" means—

(A) a participant or beneficiary on the last day of the base plan year who, at any time during such year, was paid an early, late, normal, or disability retirement benefit (or a death benefit related to a retirement benefit), and

(B) to the extent provided in regulations prescribed by the Secretary, any other person who is entitled to such a benefit under the plan.

(7) Other definitions and special rules

(A) Unfunded vested benefits

The term "unfunded vested benefits" means, in connection with a plan, an amount (determined in accordance with regulations prescribed by the Secretary) equal to—

(i) the value of vested benefits under the plan, less

(ii) the value of the assets of the plan.

(B) Vested benefits

The term "vested benefits" means any nonforfeitable benefit (within the meaning of section 4001(a)(8) of the Employee Retirement Income Security Act of 1974).

(C) Allocation of assets

In determining the plan's unfunded vested benefits, plan assets shall first be allocated to the vested benefits attributable to persons in pay status.

(D) Treatment of certain benefit reductions

The vested benefits charge shall be determined without regard to reductions in accrued benefits under section 418D which are first effective in the plan year.

(E) Withdrawal liability

For purposes of this part, any outstanding claim for withdrawal liability shall not be considered a plan asset, except as otherwise provided in regulations prescribed by the Secretary.

(c) Prohibition of nonannuity payments

Except as provided in regulations prescribed by the Pension Benefit Guaranty Corporation, while a plan is in reorganization a benefit with respect to a participant (other than a death benefit) which is attributable to employer contributions and which has a value of more than $1,750 may not be paid in a form other than an annuity which (by itself or in combination with social security, railroad retirement, or workers' compensation benefits) provides substantially level payments over the life of the participant.

(d) Terminated plans

Any multiemployer plan which terminates under section 4041A(a)(2) of the Employee Retirement Income Security Act of 1974 shall not be considered in reorganization after the last day of the plan year in which the plan is treated as having terminated.

(Added Pub. L. 96–364, title II, §202(a), Sept. 26, 1980, 94 Stat. 1271.)

REFERENCES IN TEXT

Section 412, referred to in subsec. (b)(2), was amended generally by Pub. L. 109–280, title I, §111(a), Aug. 17, 2006, 120 Stat. 820, and as so amended, section 412(b)(3) no longer contains a subpar. (B) and section 412(b)(2) no longer relates to charges to the funding standard account.

Section 4001(a)(8) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (b)(7)(B), is classified to section 1301(a)(8) of Title 29, Labor.

Section 4041A(a)(2) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (d), is classified to section 1341a(a)(2) of Title 29.

EFFECTIVE DATE

Pub. L. 96–364, title II, §210, Sept. 26, 1980, 94 Stat. 1291, provided that:

"(a) Except as otherwise provided in this section, the amendments made by this title [amending sections 401, 404, 411 to 414, 4971, and 4975 of this title] shall take effect on the date of the enactment of this Act [Sept. 26, 1980].

"(b) Subpart C of part I of subchapter D of chapter 1 of such Code (as added by this Act) [sections 418 to 418E of this title] shall take effect, with respect to each plan, on the first day of the first plan year beginning on or after the earlier of—

"(1) the date on which the last collective-bargaining agreement providing for employer contributions under the plan, which was in effect on the date of the enactment of this Act [Sept. 26, 1980], expires, without regard to extensions agreed to after such date of enactment, or

"(2) 3 years after the date of the enactment of this Act [Sept. 26, 1980].

"(c) The amendments made by section 209 [enacting section 194 of this title, and amending sections 501 and 4975 of this title] shall apply to taxable years ending after the date of the enactment of this Act [Sept. 26, 1980]."

[1] *See References in Text note below.*

§418A. Notice of reorganization and funding requirements

(a) Notice requirement

(1) In general

If—

(A) a multiemployer plan is in reorganization for a plan year, and

(B) section 418B would require an increase in contributions for such plan year,

the plan sponsor shall notify the persons described in paragraph (2) that the plan is in reorganization and that, if contributions to the plan are not increased, accrued benefits under the plan may be reduced or an excise tax may be imposed (or both such reduction and imposition may occur).

(2) Persons to whom notice is to be given

The persons described in this paragraph are—

(A) each employer who has an obligation to contribute under the plan (within the meaning of section 4212(a) of the Employee Retirement Income Security Act of 1974), and

(B) each employee organization which, for purposes of collective bargaining, represents plan participants employed by such an employer.

(3) Overburden credit not taken into account

The determination under paragraph (1)(B) shall be made without regard to the overburden credit provided by section 418C.

(b) Additional requirements

The Pension Benefit Guaranty Corporation may prescribe additional or alternative requirements for assuring, in the case of a plan with respect to which notice is required by subsection (a)(1), that the persons described in subsection (a)(2)—

(1) receive appropriate notice that the plan is in reorganization,

(2) are adequately informed of the implications of reorganization status, and

(3) have reasonable access to information relevant to the plan's reorganization status.

(Added Pub. L. 96–364, title II, §202(a), Sept. 26, 1980, 94 Stat. 1274.)

REFERENCES IN TEXT

Section 4212(a) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (a)(2)(A), is classified to section 1392(a) of Title 29, Labor.

§418B. Minimum contribution requirement

(a) Accumulated funding deficiency in reorganization

(1) In general

For any plan year in which a multiemployer plan is in reorganization—

(A) the plan shall continue to maintain its funding standard account, and

(B) the plan's accumulated funding deficiency under section 412(a) [1] for such plan year shall be equal to the excess (if any) of—

(i) the sum of the minimum contribution requirement for such plan year (taking into account any overburden credit under section 418C(a)) plus the plan's accumulated funding deficiency for the preceding plan year (determined under this section if the plan was in reorganization during such plan year or under section 412(a) [1] if the plan was not in reorganization), over

(ii) amounts considered contributed by employers to or under the plan for the plan year (increased by any amount waived under subsection (f) for the plan year).

(2) Treatment of withdrawal liability payments

For purposes of paragraph (1), withdrawal liability payments (whether or not received) which are due with respect to withdrawals before the end of the base plan year shall be considered

amounts contributed by the employer to or under the plan if, as of the adjustment date, it was reasonable for the plan sponsor to anticipate that such payments would be made during the plan year.

(b) Minimum contribution requirement

(1) In general

Except as otherwise provided in this section for purposes of this subpart the minimum contribution requirement for a plan year in which a plan is in reorganization is an amount equal to the excess of—

(A) the sum of—

(i) the plan's vested benefits charge for the plan year; and

(ii) the increase in normal cost for the plan year determined under the entry age normal funding method which is attributable to plan amendments adopted while the plan was in reorganization, over

(B) the amount of the overburden credit (if any) determined under section 418C for the plan year.

(2) Adjustment for reductions in contribution base units

If the plan's current contribution base for the plan year is less than the plan's valuation contribution base for the plan year, the minimum contribution requirement for such plan year shall be equal to the product of the amount determined under paragraph (1) (after any adjustment required by this subpart other than this paragraph) multiplied by a fraction—

(A) the numerator of which is the plan's current contribution base for the plan year, and

(B) the denominator of which is the plan's valuation contribution base for the plan year.

(3) Special rule where cash-flow amount exceeds vested benefits charge

(A) In general

If the vested benefits charge for a plan year of a plan in reorganization is less than the plan's cash-flow amount for the plan year, the plan's minimum contribution requirement for the plan year is the amount determined under paragraph (1) (determined before the application of paragraph (2)) after substituting the term "cash-flow amount" for the term "vested benefits charge" in paragraph (1)(A).

(B) Cash-flow amount

For purposes of subparagraph (A), a plan's cash-flow amount for a plan year is an amount equal to—

(i) the amount of the benefits payable under the plan for the base plan year, plus the amount of the plan's administrative expenses for the base plan year, reduced by

(ii) the value of the available plan assets for the base plan year determined under regulations prescribed by the Secretary,

adjusted in a manner consistent with section 418(b)(4).

(c) Current contribution base; valuation contribution base

(1) Current contribution base

For purposes of this subpart, a plan's current contribution base for a plan year is the number of contribution base units with respect to which contributions are required to be made under the plan for that plan year, determined in accordance with regulations prescribed by the Secretary.

(2) Valuation contribution base

(A) In general

Except as provided in subparagraph (B), for purposes of this subpart a plan's valuation contribution base is the number of contribution base units for which contributions were received

for the base plan year—

(i) adjusted to reflect declines in the contribution base which have occurred (or could reasonably be anticipated) as of the adjustment date for the plan year referred to in paragraph (1),

(ii) adjusted upward (in accordance with regulations prescribed by the Secretary) for any contribution base reduction in the base plan year caused by a strike or lockout or by unusual events, such as fire, earthquake, or severe weather conditions, and

(iii) adjusted (in accordance with regulations prescribed by the Secretary) for reductions in the contribution base resulting from transfers of liabilities.

(B) Insolvent plans

For any plan year—

(i) in which the plan is insolvent (within the meaning of section 418E(b)(1)), and

(ii) beginning with the first plan year beginning after the expiration of all relevant collective bargaining agreements which were in effect in the plan year in which the plan became insolvent,

the plan's valuation contribution base is the greater of the number of contribution base units for which contributions were received for the first or second plan year preceding the first plan year in which the plan is insolvent, adjusted as provided in clause (ii) or (iii) of subparagraph (A).

(3) Contribution base unit

For purposes of this subpart, the term "contribution base unit" means a unit with respect to which an employer has an obligation to contribute under a multiemployer plan (as defined in regulations prescribed by the Secretary).

(d) Limitation on required increases in rate of employer contributions

(1) In general

Under regulations prescribed by the Secretary, the minimum contribution requirement applicable to any plan for any plan year which is determined under subsection (b) (without regard to subsection (b)(2)) shall not exceed an amount which is equal to the sum of—

(A) the greater of—

(i) the funding standard requirement for such plan year, or

(ii) 107 percent of—

(I) if the plan was not in reorganization in the preceding plan year, the funding standard requirement for such preceding plan year, or

(II) if the plan was in reorganization in the preceding plan year, the sum of the amount determined under this subparagraph for the preceding plan year and the amount (if any) determined under subparagraph (B) for the preceding plan year, plus

(B) if for the plan year a change in benefits is first required to be considered in computing the charges under section 412(b)(2)(A) or (B),[1] the sum of—

(i) the increase in normal cost for a plan year determined under the entry age normal funding method due to increases in benefits described in section 418(b)(4)(A)(ii) (determined without regard to section 418(b)(4)(B)(ii)), and

(ii) the amount necessary to amortize in equal annual installments the increase in the value of vested benefits under the plan due to increases in benefits described in clause (i) over—

(I) 10 years, to the extent such increase in value is attributable to persons in pay status, or

(II) 25 years, to the extent such increase in value is attributable to other participants.

(2) Funding standard requirement

For purposes of paragraph (1), the funding standard requirement for any plan year is an amount equal to the net charge to the funding standard account for such plan year (as defined in section

418(b)(2)).

(3) Special rule for certain plans

(A) In general

In the case of a plan described in section 4216(b) of the Employee Retirement Income Security Act of 1974, if a plan amendment which increases benefits is adopted after January 1, 1980—

(i) paragraph (1) shall apply only if the plan is a plan described in subparagraph (B), and

(ii) the amount under paragraph (1) shall be determined without regard to subparagraph (1)(B).

(B) Eligible plans

A plan is described in this subparagraph if—

(i) the rate of employer contributions under the plan for the first plan year beginning on or after the date on which an amendment increasing benefits is adopted, multiplied by the valuation contribution base for that plan year, equals or exceeds the sum of—

(I) the amount that would be necessary to amortize fully, in equal annual installments, by July 1, 1986, the unfunded vested benefits attributable to plan provisions in effect on July 1, 1977 (determined as of the last day of the base plan year); and

(II) the amount that would be necessary to amortize fully, in equal annual installments, over the period described in subparagraph (C), beginning with the first day of the first plan year beginning on or after the date on which the amendment is adopted, the unfunded vested benefits (determined as of the last day of the base plan year) attributable to each plan amendment after July 1, 1977; and

(ii) the rate of employer contributions for each subsequent plan year is not less than the lesser of—

(I) the rate which when multiplied by the valuation contribution base for that subsequent plan year produces the annual amount that would be necessary to complete the amortization schedule described in clause (i), or

(II) the rate for the plan year immediately preceding such subsequent plan year, plus 5 percent of such rate.

(C) Period

The period determined under this subparagraph is the lesser of—

(i) 12 years, or

(ii) a period equal in length to the average of the remaining expected lives of all persons receiving benefits under the plan.

(4) Exception in case of certain benefit increases

Paragraph (1) shall not apply with respect to a plan, other than a plan described in paragraph (3), for the period of consecutive plan years in each of which the plan is in reorganization, beginning with a plan year in which occurs the earlier of the date of the adoption or the effective date of any amendment of the plan which increases benefits with respect to service performed before the plan year in which the adoption of the amendment occurred.

(e) Certain retroactive plan amendments

In determining the minimum contribution requirement with respect to a plan for a plan year under subsection (b), the vested benefits charge may be adjusted to reflect a plan amendment reducing benefits under section 412(c)(8).[1]

(f) Waiver of accumulated funding deficiency

(1) In general

The Secretary may waive any accumulated funding deficiency under this section in accordance

with the provisions of section 412(d)(1).[1]

(2) Treatment of waiver

Any waiver under paragraph (1) shall not be treated as a waived funding deficiency (within the meaning of section 412(d)(3)).[1]

(g) Actuarial assumptions must be reasonable

For purposes of making any determination under this subpart, the requirements of section 412(c)(3) [1] shall apply.

(Added Pub. L. 96–364, title II, §202(a), Sept. 26, 1980, 94 Stat. 1274.)

REFERENCES IN TEXT

Section 412, referred to in subsecs. (a)(1)(B), (d)(1)(B), and (e) to (g), was amended generally by Pub. L. 109–280, title I, §111(a), Aug. 17, 2006, 120 Stat. 820, and as so amended, provisions formerly contained in section 412(a), (b)(2)(A), (B), (c)(3), (8), (d)(1), and (3), have been revised and restated elsewhere in, or omitted from, the section.

Section 4216(b) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (d)(3)(A), is classified to section 1396(b) of Title 29, Labor.

[1] See References in Text note below.

§418C. Overburden credit against minimum contribution requirement

(a) General rule

For purposes of determining the contribution under section 418B (before the application of section 418B(b)(2) or (d)), the plan sponsor of a plan which is overburdened for the plan year shall apply an overburden credit against the plan's minimum contribution requirement for the plan year (determined without regard to section 418B(b)(2) or (d) and without regard to this section).

(b) Definition of overburdened plan

A plan is overburdened for a plan year if—

(1) the average number of pay status participants under the plan in the base plan year exceeds the average of the number of active participants in the base plan year and the 2 plan years preceding the base plan year, and

(2) the rate of employer contributions under the plan equals or exceeds the greater of—

(A) such rate for the preceding plan year, or

(B) such rate for the plan year preceding the first year in which the plan is in reorganization.

(c) Amount of overburden credit

The amount of the overburden credit for a plan year is the product of—

(1) one-half of the average guaranteed benefit paid for the base plan year, and

(2) the overburden factor for the plan year.

The amount of the overburden credit for a plan year shall not exceed the amount of the minimum contribution requirement for such year (determined without regard to this section).

(d) Overburden factor

For purposes of this section, the overburden factor of a plan for the plan year is an amount equal to—

(1) the average number of pay status participants for the base plan year, reduced by

(2) the average of the number of active participants for the base plan year and for each of the 2 plan years preceding the base plan year.

(e) Definitions

For purposes of this section—

(1) Pay status participant

The term "pay status participant" means, with respect to a plan, a participant receiving retirement benefits under the plan.

(2) Number of active participants

The number of active participants for a plan year shall be the sum of—

(A) the number of active employees who are participants in the plan and on whose behalf contributions are required to be made during the plan year;

(B) the number of active employees who are not participants in the plan but who are in an employment unit covered by a collective bargaining agreement which requires the employees' employer to contribute to the plan unless service in such employment unit was never covered under the plan or a predecessor thereof, and

(C) the total number of active employees attributed to employers who made payments to the plan for the plan year of withdrawal liability pursuant to part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974, determined by dividing—

(i) the total amount of such payments, by

(ii) the amount equal to the total contributions received by the plan during the plan year divided by the average number of active employees who were participants in the plan during the plan year.

The Secretary shall by regulations provide alternative methods of determining active participants where (by reason of irregular employment, contributions on a unit basis, or otherwise) this paragraph does not yield a representative basis for determining the credit.

(3) Average number

The term "average number" means, with respect to pay status participants for a plan year, a number equal to one-half the sum of—

(A) the number with respect to the plan as of the beginning of the plan year, and

(B) the number with respect to the plan as of the end of the plan year.

(4) Average guaranteed benefit

The average guaranteed benefit paid is 12 times the average monthly pension payment guaranteed under section 4022A(c)(1) of the Employee Retirement Income Security Act of 1974 determined under the provisions of the plan in effect at the beginning of the first plan year in which the plan is in reorganization and without regard to section 4022A(c)(2).

(5) First year in reorganization

The first year in which the plan is in reorganization is the first of a period of 1 or more consecutive plan years in which the plan has been in reorganization not taking into account any plan years the plan was in reorganization prior to any period of 3 or more consecutive plan years in which the plan was not in reorganization.

(f) No overburden credit in case of certain reductions in contributions

(1) In general

Notwithstanding any other provision of this section, a plan is not eligible for an overburden credit for a plan year if the Secretary finds that the plan's current contribution base for any plan year was reduced, without a corresponding reduction in the plan's unfunded vested benefits attributable to pay status participants, as a result of a change in an agreement providing for employer contributions under the plan.

(2) Treatment of certain withdrawals

For purposes of paragraph (1), a complete or partial withdrawal of an employer (within the meaning of part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974) does not impair a plan's eligibility for an overburden credit, unless the Secretary finds that a

contribution base reduction described in paragraph (1) resulted from a transfer of liabilities to another plan in connection with the withdrawal.

(g) Mergers

Notwithstanding any other provision of this section, if 2 or more multiemployer plans merge, the amount of the overburden credit which may be applied under this section with respect to the plan resulting from the merger for any of the 3 plan years ending after the effective date of the merger shall not exceed the sum of the used overburden credit for each of the merging plans for its last plan year ending before the effective date of the merger. For purposes of the preceding sentence, the used overburden credit is that portion of the credit which does not exceed the excess of the minimum contribution requirement determined without regard to any overburden credit under this section over the employer contributions required under the plan.

(Added Pub. L. 96–364, title II, §202(a), Sept. 26, 1980, 94 Stat. 1278.)

REFERENCES IN TEXT

The Employee Retirement Income Security Act of 1974, referred to in subsecs. (e)(2)(C), (4), and (f)(2), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, as amended. Part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974 is classified generally to part 1 (§1381 et seq.) of subtitle E of subchapter III of chapter 18 of Title 29, Labor. Section 4022A of the Employee Retirement Income Security Act of 1974 is classified to section 1322a of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

§418D. Adjustments in accrued benefits

(a) Adjustments in accrued benefits

(1) In general

Notwithstanding section 411, a multiemployer plan in reorganization may be amended, in accordance with this section, to reduce or eliminate accrued benefits attributable to employer contributions which, under section 4022A(b) of the Employee Retirement Income Security Act of 1974, are not eligible for the Pension Benefit Guaranty Corporation's guarantee. The preceding sentence shall only apply to accrued benefits under plan amendments (or plans) adopted after March 26, 1980, or under collective bargaining agreement entered into after March 26, 1980.

(2) Adjustment of vested benefits charge

In determining the minimum contribution requirement with respect to a plan for a plan year under section 418B(b), the vested benefits charge may be adjusted to reflect a plan amendment reducing benefits under this section or section 412(c)(8),[1] but only if the amendment is adopted and effective no later than 2½ months after the end of the plan year, or within such extended period as the Secretary may prescribe by regulations under section 412(c)(10).[1]

(b) Limitation on reduction

(1) In general

Accrued benefits may not be reduced under this section unless—

(A) notice has been given, at least 6 months before the first day of the plan year in which the amendment reducing benefits is adopted, to—

(i) plan participants and beneficiaries,

(ii) each employer who has an obligation to contribute (within the meaning of section 4212(a) of the Employee Retirement Income Security Act of 1974) under the plan, and

(iii) each employee organization which, for purposes of collective bargaining, represents plan participants employed by such an employer,

that the plan is in reorganization and that, if contributions under the plan are not increased, accrued benefits under the plan will be reduced or an excise tax will be imposed on employers;

(B) in accordance with regulations prescribed by the Secretary—

(i) any category of accrued benefits is not reduced with respect to inactive participants to a greater extent proportionally that such category of accrued benefits is reduced with respect to active participants,

(ii) benefits attributable to employer contributions other than accrued benefits and the rate of future benefit accruals are reduced at least to an extent equal to the reduction in accrued benefits of inactive participants, and

(iii) in any case in which the accrued benefit of a participant or beneficiary is reduced by changing the benefit form or the requirements which the participant or beneficiary must satisfy to be entitled to the benefit, such reduction is not applicable to—

(I) any participant or beneficiary in pay status on the effective date of the amendment, or the beneficiary of such a participant, or

(II) any participant who has attained normal retirement age, or who is within 5 years of attaining normal retirement age, on the effective date of the amendment, or the beneficiary of any such participant; and

(C) the rate of employer contributions for the plan year in which the amendment becomes effective and for all succeeding plan years in which the plan is in reorganization equals or exceeds the greater of—

(i) the rate of employer contributions, calculated without regard to the amendment, for the plan year in which the amendment becomes effective, or

(ii) the rate of employer contributions for the plan year preceding the plan year in which the amendment becomes effective.

(2) Information required to be included in notice

The plan sponsors shall include in any notice required to be sent to plan participants and beneficiaries under paragraph (1) information as to the rights and remedies of plan participants and beneficiaries as well as how to contact the Department of Labor for further information and assistance where appropriate.

(c) No recoupment

A plan may not recoup a benefit payment which is in excess of the amount payable under the plan because of an amendment retroactively reducing accrued benefits under this section.

(d) Benefit increases under multiemployer plan in reorganization

(1) Restoration of previously reduced benefits

(A) In general

A plan which has been amended to reduce accrued benefits under this section may be amended to increase or restore accrued benefits, or the rate of future benefit accruals, only if the plan is amended to restore levels of previously reduced accrued benefits of inactive participants and of participants who are within 5 years of attaining normal retirement age to at least the same extent as any such increase in accrued benefits or in the rate of future benefit accruals.

(B) Benefit increases and benefit restorations

For purposes of this subsection, in the case of a plan which has been amended under this section to reduce accrued benefits—

(i) an increase in a benefit, or in the rate of future benefit accruals, shall be considered a benefit increase to the extent that the benefit, or the accrual rate, is thereby increased above the highest benefit level, or accrual rate, which was in effect under the terms of the plan before the effective date of the amendment reducing accrued benefits, and

(ii) an increase in a benefit, or in the rate of future benefit accruals, shall be considered a benefit restoration to the extent that the benefit, or the accrual rate, is not thereby increased above the highest benefit level, or accrual rate, which was in effect under the terms of the plan immediately before the effective date of the amendment reducing accrued benefits.

(2) Uniformity in benefit restoration

If a plan is amended to partially restore previously reduced accrued benefit levels, or the rate of future benefit accruals, the benefits of inactive participants shall be restored in at least the same proportions as other accrued benefits which are restored.

(3) No benefit increases in year of benefit reduction

No benefit increase under a plan may take effect in a plan year in which an amendment reducing accrued benefits under the plan, in accordance with this section, is adopted or first becomes effective.

(4) Retroactive payments

A plan is not required to make retroactive benefit payments with respect to that portion of an accrued benefit which was reduced and subsequently restored under this section.

(e) Inactive participant

For purposes of this section, the term "inactive participant" means a person not in covered service under the plan who is in pay status under the plan or who has a nonforfeitable benefit under the plan.

(f) Regulations

The Secretary may prescribe rules under which, notwithstanding any other provision of this section, accrued benefit reductions or benefit increases for different participant groups may be varied equitably to reflect variations in contribution rates and other relevant factors reflecting differences in negotiated levels of financial support for plan benefit obligations.

(Added Pub. L. 96–364, title II, §202(a), Sept. 26, 1980, 94 Stat. 1280.)

REFERENCES IN TEXT

Section 4022A(b) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (a)(1), is classified to section 1322a(b) of Title 29, Labor.

Section 412, referred to in subsec. (a)(2), was amended generally by Pub. L. 109–280, title I, §111(a), Aug. 17, 2006, 120 Stat. 820, and as so amended, no longer contains a subsec. (c)(8) or (10).

Section 4212(a) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (b)(1)(A)(ii), is classified to section 1392(a) of Title 29.

[1] *See References in Text note below.*

§418E. Insolvent plans

(a) Suspension of certain benefit payments

Notwithstanding section 411, in any case in which benefit payments under an insolvent multiemployer plan exceed the resource benefit level, any such payments of benefits which are not basic benefits shall be suspended, in accordance with this section, to the extent necessary to reduce the sum of such payments and the payments of such basic benefits to the greater of the resource benefit level or the level of basic benefits, unless an alternative procedure is prescribed by the Pension Benefit Guaranty Corporation under section 4022A(g)(5) of the Employee Retirement Income Security Act of 1974.

(b) Definitions

For purposes of this section, for a plan year—

(1) Insolvency

A multiemployer plan is insolvent if the plan's available resources are not sufficient to pay benefits under the plan when due for the plan year, or if the plan is determined to be insolvent under subsection (d).

(2) Resource benefit level

The term "resource benefit level" means the level of monthly benefits determined under subsections (c)(1) and (3) and (d)(3) to be the highest level which can be paid out of the plan's available resources.

(3) Available resources

The term "available resources" means the plan's cash, marketable assets, contributions, withdrawal liability payments, and earnings, less reasonable administrative expenses and amounts owed for such plan year to the Pension Benefit Guaranty Corporation under section 4261(b)(2) of the Employee Retirement Income Security Act of 1974.

(4) Insolvency year

The term "insolvency year" means a plan year in which a plan is insolvent.

(c) Benefit payments under insolvent plans

(1) Determination of resource benefit level

The plan sponsor of a plan in reorganization shall determine in writing the plan's resource benefit level for each insolvency year, based on the plan sponsor's reasonable projection of the plan's available resources and the benefits payable under the plan.

(2) Uniformity of the benefit suspension

The suspension of benefit payments under this section shall, in accordance with regulations prescribed by the Secretary, apply in substantially uniform proportions to the benefits of all persons in pay status (within the meaning of section 418(b)(6)) under the plan, except that the Secretary may prescribe rules under which benefit suspensions for different participant groups may be varied equitably to reflect variations in contribution rates and other relevant factors including differences in negotiated levels of financial support for plan benefit obligations.

(3) Resource benefit level below level of basic benefits

Notwithstanding paragraph (2), if a plan sponsor determines in writing a resource benefit level for a plan year which is below the level of basic benefits, the payment of all benefits other than basic benefits shall be suspended for that plan year.

(4) Excess resources

(A) In general

If, by the end of an insolvency year, the plan sponsor determines in writing that the plan's available resources in that insolvency year could have supported benefit payments above the resource benefit level for that insolvency year, the plan sponsor shall distribute the excess resources to the participants and beneficiaries who received benefit payments from the plan in that insolvency year, in accordance with regulations prescribed by the Secretary.

(B) Excess resources

For purposes of this paragraph, the term "excess resources" means available resources above the amount necessary to support the resource benefit level, but no greater than the amount necessary to pay benefits for the plan year at the benefit levels under the plan.

(5) Unpaid benefits

If, by the end of an insolvency year, any benefit has not been paid at the resource benefit level, amounts up to the resource benefit level which were unpaid shall be distributed to the participants and beneficiaries, in accordance with regulations prescribed by the Secretary, to the extent possible taking into account the plan's total available resources in that insolvency year.

(6) Retroactive payments

Except as provided in paragraph (4) or (5), a plan is not required to make retroactive benefit payments with respect to that portion of a benefit which was suspended under this section.

(d) Plan sponsor determination

(1) Triennial test

As of the end of the first plan year in which a plan is in reorganization, and at least every 3 plan years thereafter (unless the plan is no longer in reorganization), the plan sponsor shall compare the value of plan assets (determined in accordance with section 418B(b)(3)(B)(ii)) for that plan year with the total amount of benefit payments made under the plan for that plan year. Unless the plan sponsor determines that the value of plan assets exceeds 3 times the total amount of benefit payments, the plan sponsor shall determine whether the plan will be insolvent in any of the next 5 plan years. If the plan sponsor makes such a determination that the plan will be insolvent in any of the next 5 plan years, the plan sponsor shall make the comparison under this paragraph at least annually until the plan sponsor makes a determination that the plan will not be insolvent in any of the next 5 plan years.

(2) Determination of insolvency

If, at any time, the plan sponsor of a plan in reorganization reasonably determines, taking into account the plan's recent and anticipated financial experience, that the plan's available resources are not sufficient to pay benefits under the plan when due for the next plan year, the plan sponsor shall make such determination available to interested parties.

(3) Determination of resource benefit level

The plan sponsor of a plan in reorganization shall determine in writing for each insolvency year the resource benefit level and the level of basic benefits no later than 3 months before the insolvency year.

(e) Notice requirements

(1) Impending insolvency

If the plan sponsor of a plan in reorganization determines under subsection (d)(1) or (2) that the plan may become insolvent (within the meaning of subsection (b)(1)), the plan sponsor shall—

(A) notify the Secretary, the Pension Benefit Guaranty Corporation, the parties described in section 418A(a)(2), and the plan participants and beneficiaries of that determination, and

(B) inform the parties described in section 418A(a)(2) and the plan participants and beneficiaries that if insolvency occurs certain benefit payments will be suspended, but that basic benefits will continue to be paid.

(2) Resource benefit level

No later than 2 months before the first day of each insolvency year, the plan sponsor of a plan in reorganization shall notify the Secretary, the Pension Benefit Guaranty Corporation, the parties described in section 418A(a)(2), and the plan participants and beneficiaries of the resource benefit level determined in writing for that insolvency year.

(3) Potential need for financial assistance

In any case in which the plan sponsor anticipates that the resource benefit level for an insolvency year may not exceed the level of basic benefits, the plan sponsor shall notify the Pension Benefit Guaranty Corporation.

(4) Regulations

Notice required by this subsection shall be given in accordance with regulations prescribed by the Pension Benefit Guaranty Corporation, except that notice to the Secretary shall be given in accordance with regulations prescribed by the Secretary.

(5) Corporation may prescribe time

The Pension Benefit Guaranty Corporation may prescribe a time other than the time prescribed by this section for the making of a determination or the filing of a notice under this section.

(f) Financial assistance

(1) Permissive application

If the plan sponsor of an insolvent plan for which the resource benefit level is above the level of basic benefits anticipates that, for any month in an insolvency year, the plan will not have funds sufficient to pay basic benefits, the plan sponsor may apply for financial assistance from the Pension Benefit Guaranty Corporation under section 4261 of the Employee Retirement Income Security Act of 1974.

(2) Mandatory application

A plan sponsor who has determined a resource benefit level for an insolvency year which is below the level of basic benefits shall apply for financial assistance from the Pension Benefit Guaranty Corporation under section 4261 of the Employee Retirement Income Security Act of 1974.

(g) Financial assistance

Any amount of any financial assistance from the Pension Benefit Guaranty Corporation to any plan, and any repayment of such amount, shall be taken into account under this subpart in such manner as determined by the Secretary.

(Added Pub. L. 96–364, title II, §202(a), Sept. 26, 1980, 94 Stat. 1282; amended Pub. L. 109–280, title II, §213(a), Aug. 17, 2006, 120 Stat. 917.)

REFERENCES IN TEXT

Section 4022A(g)(5) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (a), is classified to section 1322a(g)(5) of Title 29, Labor.

Section 4261 of the Employee Retirement Income Security Act of 1974, referred to in subsecs. (b)(3) and (f), is classified to section 1431 of Title 29.

AMENDMENTS

2006—Subsec. (d)(1). Pub. L. 109–280 substituted "5 plan years" for "3 plan years" the second place it appeared and inserted at end "If the plan sponsor makes such a determination that the plan will be insolvent in any of the next 5 plan years, the plan sponsor shall make the comparison under this paragraph at least annually until the plan sponsor makes a determination that the plan will not be insolvent in any of the next 5 plan years."

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title II, §213(b), Aug. 17, 2006, 120 Stat. 918, provided that: "The amendments made by this section [amending this section] shall apply with respect to the determinations made in plan years beginning after 2007."

SUBPART D—TREATMENT OF WELFARE BENEFIT FUNDS

Sec.
419. Treatment of funded welfare benefit plans.
419A. Qualified asset account; limitation on additions to account.

§419. Treatment of funded welfare benefit plans

(a) General rule

Contributions paid or accrued by an employer to a welfare benefit fund—

(1) shall not be deductible under this chapter, but

(2) if they would otherwise be deductible, shall (subject to the limitation of subsection (b)) be deductible under this section for the taxable year in which paid.

(b) Limitation

The amount of the deduction allowable under subsection (a)(2) for any taxable year shall not exceed the welfare benefit fund's qualified cost for the taxable year.

(c) Qualified cost

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, the term "qualified cost" means, with respect to any taxable year, the sum of—

(A) the qualified direct cost for such taxable year, and

(B) subject to the limitation of section 419A(b), any addition to a qualified asset account for the taxable year.

(2) Reduction for funds after-tax income

In the case of any welfare benefit fund, the qualified cost for any taxable year shall be reduced by such fund's after-tax income for such taxable year.

(3) Qualified direct cost

(A) In general

The term "qualified direct cost" means, with respect to any taxable year, the aggregate amount (including administrative expenses) which would have been allowable as a deduction to the employer with respect to the benefits provided during the taxable year, if—

(i) such benefits were provided directly by the employer, and

(ii) the employer used the cash receipts and disbursements method of accounting.

(B) Time when benefits provided

For purposes of subparagraph (A), a benefit shall be treated as provided when such benefit would be includible in the gross income of the employee if provided directly by the employer (or would be so includible but for any provision of this chapter excluding such benefit from gross income).

(C) 60-month amortization of child care facilities

(i) In general

In determining qualified direct costs with respect to any child care facility for purposes of subparagraph (A), in lieu of depreciation the adjusted basis of such facility shall be allowable as a deduction ratably over a period of 60 months beginning with the month in which the facility is placed in service.

(ii) Child care facility

The term "child care facility" means any tangible property which qualifies under regulations prescribed by the Secretary as a child care center primarily for children of employees of the employer; except that such term shall not include any property—

(I) not of a character subject to depreciation; or

(II) located outside the United States.

(4) After-tax income

(A) In general

The term "after-tax income" means, with respect to any taxable year, the gross income of the welfare benefit fund reduced by the sum of—

(i) the deductions allowed by this chapter which are directly connected with the production of such gross income, and

(ii) the tax imposed by this chapter on the fund for the taxable year.

(B) Treatment of certain amounts

In determining the gross income of any welfare benefit fund—

(i) contributions and other amounts received from employees shall be taken into account, but

(ii) contributions from the employer shall not be taken into account.

(5) Item only taken into account once

No item may be taken into account more than once in determining the qualified cost of any welfare benefit fund.

(d) Carryover of excess contributions

If—

(1) the amount of the contributions paid (or deemed paid under this subsection) by the employer during any taxable year to a welfare benefit fund, exceeds

(2) the limitation of subsection (b),

such excess shall be treated as an amount paid by the employer to such fund during the succeeding taxable year.

(e) Welfare benefit fund

For purposes of this section—

(1) In general

The term "welfare benefit fund" means any fund—

(A) which is part of a plan of an employer, and

(B) through which the employer provides welfare benefits to employees or their beneficiaries.

(2) Welfare benefit

The term "welfare benefit" means any benefit other than a benefit with respect to which—

(A) section 83(h) applies,

(B) section 404 applies (determined without regard to section 404(b)(2)), or

(C) section 404A applies.

(3) Fund

The term "fund" means—

(A) any organization described in paragraph (7), (9), (17), or (20) of section 501(c),

(B) any trust, corporation, or other organization not exempt from the tax imposed by this chapter, and

(C) to the extent provided in regulations, any account held for an employer by any person.

(4) Treatment of amounts held pursuant to certain insurance contracts

(A) In general

Notwithstanding paragraph (3)(C), the term "fund" shall not include amounts held by an insurance company pursuant to an insurance contract if—

(i) such contract is a life insurance contract described in section 264(a)(1), or

(ii) such contract is a qualified nonguaranteed contract.

(B) Qualified nonguaranteed contract

(i) In general

For purposes of this paragraph, the term "qualified nonguaranteed contract" means any insurance contract (including a reasonable premium stabilization reserve held thereunder) if—

(I) there is no guarantee of a renewal of such contract, and

(II) other than insurance protection, the only payments to which the employer or employees are entitled are experience rated refunds or policy dividends which are not guaranteed and which are determined by factors other than the amount of welfare benefits paid to (or on behalf of) the employees of the employer or their beneficiaries.

(ii) Limitation

In the case of any qualified nonguaranteed contract, subparagraph (A) shall not apply unless the amount of any experience rated refund or policy dividend payable to an employer

with respect to a policy year is treated by the employer as received or accrued in the taxable year in which the policy year ends.

(f) Method of contributions, etc., having the effect of a plan

If—

(1) there is no plan, but

(2) there is a method or arrangement of employer contributions or benefits which has the effect of a plan,

this section shall apply as if there were a plan.

(g) Extension to plans for independent contractors

If any fund would be a welfare benefit fund (as modified by subsection (f)) but for the fact that there is no employee-employer relationship—

(1) this section shall apply as if there were such a relationship, and

(2) any reference in this section to the employer shall be treated as a reference to the person for whom services are provided, and any reference in this section to an employee shall be treated as a reference to the person providing the services.

(Added Pub. L. 98–369, div. A, title V, §511(a), July 18, 1984, 98 Stat. 854; amended Pub. L. 99–514, title XVIII, §1851(a)(1), (8)(A), (b)(2)(C)(iv), Oct. 22, 1986, 100 Stat. 2858, 2860, 2863; Pub. L. 100–203, title IX, §10201(b)(4), Dec. 22, 1987, 101 Stat. 1330–387; Pub. L. 100–647, title I, §1018(t)(2)(C), Nov. 10, 1988, 102 Stat. 3587.)

AMENDMENTS

1988—Subsec. (a)(1). Pub. L. 100–647 substituted "chapter" for "subchapter".

1987—Subsec. (e)(2)(D). Pub. L. 100–203 struck out subpar. (D) which related to a benefit with respect to which an election under section 463 applies.

1986—Subsec. (a)(1). Pub. L. 99–514, §1851(b)(2)(C)(iv)(I), substituted "under this subchapter" for "under section 162 or 212".

Subsec. (a)(2). Pub. L. 99–514, §1851(b)(2)(C)(iv)(II), substituted "they would otherwise be deductible" for "they satisfy the requirements of either of such sections".

Subsec. (e)(4). Pub. L. 99–514, §1851(a)(8)(A), added par. (4).

Subsec. (g)(1). Pub. L. 99–514, §1851(a)(1), substituted "such a relationship" for "such a plan".

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to taxable years beginning after Dec. 31, 1987, see section 10201(c)(1) of Pub. L. 100–203, set out as a note under section 404 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Pub. L. 98–369, div. A, title V, §511(e), July 18, 1984, 98 Stat. 862, as amended by Pub. L. 99–514, title XVIII, §1851(a)(12), (14), Oct. 22, 1986, 100 Stat. 2862, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting this subpart] shall apply to contributions paid or accrued after December 31, 1985, in taxable years ending after such date.

"(2) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of plan maintained pursuant to 1 or more collective bargaining agreements—

"(A) between employee representatives and 1 or more employers, and

"(B) in effect on July 1, 1985 (or ratified on or before such date),

the amendments made by this section shall not apply to years beginning before the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after July 1, 1985).

"(3) SPECIAL RULE FOR PARAGRAPH (2).—For purposes of paragraph (2), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section shall not be treated as a termination of such collective bargaining agreement.

"(4) SPECIAL EFFECTIVE DATE FOR CONTRIBUTIONS OF FACILITIES.—Notwithstanding paragraphs (1) and (2), the amendments made by this section shall apply in the case of—

"(A) any contribution after June 22, 1984, of a facility to a welfare benefit fund, and

"(B) any other contribution after June 22, 1984, to a welfare benefit fund to be used to acquire or improve a facility.

"(5) BINDING CONTRACT EXCEPTIONS TO PARAGRAPH (4).—Paragraph (4) shall not apply to any facility placed in service before January 1, 1987—

"(A) which is acquired or improved by the fund (or contributed to the fund) pursuant to a binding contract in effect on June 22, 1984, and at all times thereafter, or

"(B) the construction of which by or for the fund began before June 22, 1984.

"(6) AMENDMENTS RELATED TO TAX ON UNRELATED BUSINESS INCOME.—The amendments made by subsection (b) [amending section 512 of this title] shall apply with respect to taxable years ending after December 31, 1985. For purposes of section 15 of the Internal Revenue Code of 1954 [now 1986], such amendments shall be treated as a change in the rate of a tax imposed by chapter 1 of such Code.

"(7) AMENDMENTS RELATED TO EXCISE TAXES ON CERTAIN WELFARE BENEFIT PLANS .—The amendments made by subsection (c) [enacting section 4976 of this title] shall apply to benefits provided after December 31, 1985."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

EFFECTIVE DATE OF REGULATIONS

Pub. L. 99–514, title XVIII, §1851(a)(8)(B), Oct. 22, 1986, 100 Stat. 2860, provided that: "Except in the case of a reserve for post-retirement medical or life insurance benefits and any other arrangement between an insurance company and an employer under which the employer has a contractual right to a refund or dividend based solely on the experience of such employer, any account held for an employer by any person and defined as a fund in regulations issued pursuant to section 419(e)(3)(C) of the Internal Revenue Code of 1954 [now 1986] shall be considered a 'fund' no earlier than 6 months following the date such regulations are published in final form."

§419A. Qualified asset account; limitation on additions to account

(a) General rule

For purposes of this subpart and section 512, the term "qualified asset account" means any account consisting of assets set aside to provide for the payment of—

(1) disability benefits,

(2) medical benefits,

(3) SUB or severance pay benefits, or

(4) life insurance benefits.

(b) Limitation on additions to account

No addition to any qualified asset account may be taken into account under section 419(c)(1)(B) to the extent such addition results in the amount in such account exceeding the account limit.

(c) Account limit

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, the account limit for any qualified asset account for any taxable year is the amount reasonably and actuarially necessary to fund—

(A) claims incurred but unpaid (as of the close of such taxable year) for benefits referred to in subsection (a), and

(B) administrative costs with respect to such claims.

(2) Additional reserve for post-retirement medical and life insurance benefits

The account limit for any taxable year may include a reserve funded over the working lives of the covered employees and actuarially determined on a level basis (using assumptions that are reasonable in the aggregate) as necessary for—

(A) post-retirement medical benefits to be provided to covered employees (determined on the basis of current medical costs), or

(B) post-retirement life insurance benefits to be provided to covered employees.

(3) Amount taken into account for SUB or severance pay benefits

(A) In general

The account limit for any taxable year with respect to SUB or severance pay benefits is 75 percent of the average annual qualified direct costs for SUB or severance pay benefits for any 2 of the immediately preceding 7 taxable years (as selected by the fund).

(B) Special rule for certain new plans

In the case of any new plan for which SUB or severance pay benefits are not available to any key employee, the Secretary shall, by regulations, provide for an interim amount to be taken into account under paragraph (1).

(4) Limitation on amounts to be taken into account

(A) Disability benefits

For purposes of paragraph (1), disability benefits payable to any individual shall not be taken into account to the extent such benefits are payable at an annual rate in excess of the lower of—

(i) 75 percent of such individual's average compensation for his high 3 years (within the meaning of section 415(b)(3)), or

(ii) the limitation in effect under section 415(b)(1)(A).

(B) Limitation on SUB or severance pay benefits

For purposes of paragraph (3), any SUB or severance pay benefit payable to any individual shall not be taken into account to the extent such benefit is payable at an annual rate in excess of 150 percent of the limitation in effect under section 415(c)(1)(A).

(5) Special limitation where no actuarial certification

(A) In general

Unless there is an actuarial certification of the account limit determined under this subsection for any taxable year, the account limit for such taxable year shall not exceed the sum of the safe harbor limits for such taxable year.

(B) Safe harbor limits

(i) Short-term disability benefits

In the case of short-term disability benefits, the safe harbor limit for any taxable year is 17.5 percent of the qualified direct costs (other than insurance premiums) for the immediately preceding taxable year with respect to such benefits.

(ii) Medical benefits

In the case of medical benefits, the safe harbor limit for any taxable year is 35 percent of the qualified direct costs (other than insurance premiums) for the immediately preceding taxable year with respect to medical benefits.

(iii) SUB or severance pay benefits

In the case of SUB or severance pay benefits, the safe harbor limit for any taxable year is the amount determined under paragraph (3).

(iv) Long-term disability or life insurance benefits

In the case of any long-term disability benefit or life insurance benefit, the safe harbor limit for any taxable year shall be the amount prescribed by regulations.

(6) Additional reserve for medical benefits of bona fide association plans

(A) In general

An applicable account limit for any taxable year may include a reserve in an amount not to exceed 35 percent of the sum of—

(i) the qualified direct costs, and

(ii) the change in claims incurred but unpaid,

for such taxable year with respect to medical benefits (other than post-retirement medical benefits).

(B) Applicable account limit

For purposes of this subsection, the term "applicable account limit" means an account limit for a qualified asset account with respect to medical benefits provided through a plan maintained by a bona fide association (as defined in section 2791(d)(3) of the Public Health Service Act (42 U.S.C. 300gg–91(d)(3)).[1]

(d) Requirement of separate accounts for post-retirement medical or life insurance benefits provided to key employees

(1) In general

In the case of any employee who is a key employee—

(A) a separate account shall be established for any medical benefits or life insurance benefits provided with respect to such employee after retirement, and

(B) medical benefits and life insurance benefits provided with respect to such employee after retirement may only be paid from such separate account.

The requirements of this paragraph shall apply to the first taxable year for which a reserve is taken into account under subsection (c)(2) and to all subsequent taxable years.

(2) Coordination with section 415

For purposes of section 415, any amount attributable to medical benefits allocated to an account established under paragraph (1) shall be treated as an annual addition to a defined contribution plan for purposes of section 415(c). Subparagraph (B) of section 415(c)(1) shall not apply to any amount treated as an annual addition under the preceding sentence.

(3) Key employee

For purposes of this section, the term "key employee" means any employee who, at any time during the plan year or any preceding plan year, is or was a key employee as defined in section 416(i).

(e) Special limitations on reserves for medical benefits or life insurance benefits provided to retired employees

(1) Reserve must be nondiscriminatory

No reserve may be taken into account under subsection (c)(2) for post-retirement medical benefits or life insurance benefits to be provided to covered employees unless the plan meets the requirements of section 505(b) with respect to such benefits (whether or not such requirements apply to such plan). The preceding sentence shall not apply to any plan maintained pursuant to an

agreement between employee representatives and 1 or more employers if the Secretary finds that such agreement is a collective bargaining agreement and that post-retirement medical benefits or life insurance benefits were the subject of good faith bargaining between such employee representatives and such employer or employers.

(2) Limitation on amount of life insurance benefits

Life insurance benefits shall not be taken into account under subsection (c)(2) to the extent the aggregate amount of such benefits to be provided with respect to the employee exceeds $50,000.

(f) Definitions and other special rules

For purposes of this section—

(1) SUB or severance pay benefit

The term "SUB or severance pay benefit" means—

(A) any supplemental unemployment compensation benefit (as defined in section 501(c)(17)(D)), and

(B) any severance pay benefit.

(2) Medical benefit

The term "medical benefit" means a benefit which consists of the providing (directly or through insurance) of medical care (as defined in section 213(d)).

(3) Life insurance benefit

The term "life insurance benefit" includes any other death benefit.

(4) Valuation

For purposes of this section, the amount of the qualified asset account shall be the value of the assets in such account (as determined under regulations).

(5) Special rule for collective bargained and employee pay-all plans

No account limits shall apply in the case of any qualified asset account under a separate welfare benefit fund—

(A) under a collective bargaining agreement, or

(B) an employee pay-all plan under section 501(c)(9) if—

(i) such plan has at least 50 employees (determined without regard to subsection (h)(1)), and

(ii) no employee is entitled to a refund with respect to amounts in the fund, other than a refund based on the experience of the entire fund.

(6) Exception for 10-or-more employer plans

(A) In general

This subpart shall not apply in the case of any welfare benefit fund which is part of a 10 or more employer plan. The preceding sentence shall not apply to any plan which maintains experience-rating arrangements with respect to individual employers.

(B) 10 or more employer plan

For purposes of subparagraph (A), the term "10 or more employer plan" means a plan—

(i) to which more than 1 employer contributes, and

(ii) to which no employer normally contributes more than 10 percent of the total contributions contributed under the plan by all employers.

(7) Adjustments for existing excess reserves

(A) Increase in account limit

The account limit for any of the first 4 taxable years to which this section applies shall be increased by the applicable percentage of any existing excess reserves.

(B) Applicable percentage

For purposes of subparagraph (A)—

In the case of:	**The applicable percentage is:**
The first taxable year to which this section applies	80
The second taxable year to which this section applies	60
The third taxable year to which this section applies	40
The fourth taxable year to which this section applies	20.

(C) Existing excess reserve

For purposes of computing the increase under subparagraph (A) for any taxable year, the term "existing excess reserve" means the excess (if any) of—

(i) the amount of assets set aside at the close of the first taxable year ending after July 18, 1984, for purposes described in subsection (a), over

(ii) the account limit determined under this section (without regard to this paragraph) for the taxable year for which such increase is being computed.

(D) Funds to which paragraph applies

This paragraph shall apply only to a welfare benefit fund which, as of July 18, 1984, had assets set aside for purposes described in subsection (a).

(g) Employer taxed on income of welfare benefit fund in certain cases

(1) In general

In the case of any welfare benefit fund which is not an organization described in paragraph (7), (9), (17), or (20) of section 501(c), the employer shall include in gross income for any taxable year an amount equal to such fund's deemed unrelated income for the fund's taxable year ending within the employer's taxable year.

(2) Deemed unrelated income

For purposes of paragraph (1), the deemed unrelated income of any welfare benefit fund shall be the amount which would have been its unrelated business taxable income under section 512(a)(3) if such fund were an organization described in paragraph (7), (9), (17), or (20) of section 501(c).

(3) Coordination with section 419

If any amount is included in the gross income of an employer for any taxable year under paragraph (1) with respect to any welfare benefit fund—

(A) the amount of the tax imposed by this chapter which is attributable to the amount so included shall be treated as a contribution paid to such welfare benefit fund on the last day of such taxable year, and

(B) the tax so attributable shall be treated as imposed on the fund for purposes of section 419(c)(4)(A).

(h) Aggregation rules

For purposes of this subpart—

(1) Aggregation of funds

(A) Mandatory aggregation

For purposes of subsections (c)(4), (d)(2), and (e)(2), all welfare benefit funds of an employer shall be treated as 1 fund.

(B) Permissive aggregation for purposes not specified in subparagraph (A)

For purposes of this section (other than the provisions specified in subparagraph (A)), at the

election of the employer, 2 or more welfare benefit funds of such employer may (to the extent not inconsistent with the purposes of this subpart and section 512) be treated as 1 fund.

(2) Treatment of related employers

Rules similar to the rules of subsections (b), (c), (m), and (n) of section 414 shall apply.

(i) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this subpart. Such regulations may provide that the plan administrator of any welfare benefit fund which is part of a plan to which more than 1 employer contributes shall submit such information to the employers contributing to the fund as may be necessary to enable the employers to comply with the provisions of this section.

(Added Pub. L. 98–369, div. A, title V, §511(a), July 18, 1984, 98 Stat. 856; amended Pub. L. 99–514, title XVIII, §1851(a)(2), (3)(A), (4)–(7), (9), (13), Oct. 22, 1986, 100 Stat. 2858–2860, 2862; Pub. L. 100–647, title I, §1018(t)(1)(C), (2)(A), (u)(12), Nov. 10, 1988, 102 Stat. 3587, 3590; Pub. L. 104–188, title I, §1704(t)(60), Aug. 20, 1996, 110 Stat. 1890; Pub. L. 109–280, title VIII, §843(a), Aug. 17, 2006, 120 Stat. 1010.)

AMENDMENTS

2006—Subsec. (c)(6). Pub. L. 109–280 added par. (6).

1996—Subsec. (c)(3). Pub. L. 104–188 substituted "severance" for "severence" in heading.

1988—Subsec. (a). Pub. L. 100–647, §1018(u)(12), made technical amendment to directory language of Pub. L. 99–514, §1851(a)(6)(B). See 1986 Amendment note below.

Subsec. (f)(5). Pub. L. 100–647, §1018(t)(2)(A), repealed Pub. L. 99–514, §1851(a)(4). See 1986 Amendment note below.

Pub. L. 100–647, §1018(t)(1)(C), substituted "account" for "accounts".

1986—Subsec. (a). Pub. L. 99–514, §1851(a)(6)(B), as amended by Pub. L. 100–647, §1018(u)(12), inserted "and section 512" after "this subpart".

Subsec. (c)(5)(A). Pub. L. 99–514, §1851(a)(5), substituted "under this subsection" for "under paragraph (1)".

Subsec. (d)(1). Pub. L. 99–514, §1851(a)(2)(B), inserted "The requirements of this paragraph shall apply to the first taxable year for which a reserve is taken into account under subsection (c)(2) and to all subsequent taxable years."

Subsec. (d)(2). Pub. L. 99–514, §1851(a)(2)(A), inserted "Subparagraph (B) of section 415(c)(1) shall not apply to any amount treated as an annual addition under the preceding sentence."

Subsec. (e). Pub. L. 99–514, §1851(a)(3)(A), amended subsec. (e) generally. Prior to amendment, par. (1), benefits must be nondiscriminatory, read as follows: "No reserve may be taken into account under subsection (c)(2) for post-retirement medical benefits or life insurance benefits to be provided to covered employees unless the plan meets the requirements of section 505(b)(1) with respect to such benefits.", and par. (2), taxable life insurance benefits not taken into account, read as follows: "No life insurance benefit may be taken into account under subsection (c)(2) to the extent—

"(A) such benefit is includible in gross income under section 79, or

"(B) such benefit would be includible in gross income under section 101(b) (determined by substituting '$50,000' for '$5,000')."

Subsec. (f)(5). Pub. L. 99–514, §1851(a)(13), amended par. (5) generally. Prior to amendment, par. (5) read as follows: "HIGHER LIMIT IN CASE OF COLLECTIVELY BARGAINED PLANS.—Not later than July 1, 1985, the Secretary shall by regulations provide for special account limits in the case of any qualified asset account under a welfare benefit fund established under a collective bargaining agreement."

Pub. L. 99–514, §1851(a)(4), which directed amendment of par. (5) by substituting "welfare benefit fund maintained pursuant to" for "welfare benefit fund established under", was repealed by Pub. L. 100–647, §1018(t)(2)(A).

Subsec. (f)(7)(C), (D). Pub. L. 99–514, §1851(a)(7), added subpars. (C) and (D) and struck out former subpar. (C) which read as follows: "For purposes of this paragraph, the term 'existing excess reserve' means the excess (if any) of—

"(i) the amount of assets set aside for purposes described in subsection (a) as of the close of the first taxable year ending after the date of the enactment of the Tax Reform Act of 1984, over

"(ii) the account limit which would have applied under this section to such taxable year if this section

had applied to such taxable year."

Subsec. (g)(3). Pub. L. 99–514, §1851(a)(9), added par. (3).

Subsec. (h)(1). Pub. L. 99–514, §1851(a)(6)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "At the election of the employer, 2 or more welfare benefit funds of such employer may be treated as 1 fund."

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title VIII, §843(b), Aug. 17, 2006, 120 Stat. 1010, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2006."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

APPLICATION OF SECTION 419A(E) TO GROUP-TERM LIFE INSURANCE

Pub. L. 99–514, title XVIII, §1851(a)(3)(B), Oct. 22, 1986, 100 Stat. 2859, as amended by Pub. L. 100–647, title I, §1018(t)(2)(D), Nov. 10, 1988, 102 Stat. 3587, provided that: "Subsection (e) of section 419A, section 505, and section 4976(b)(1)(B) of the Internal Revenue Code of 1954 [now 1986] (as amended by subparagraph (A)) shall not apply to any group-term life insurance to the extent that the amendments made by section 223(a) of the Tax Reform Act of 1984 [section 223(a) of Pub. L. 98–369, amending section 79 of this title] do not apply to such insurance by reason of paragraph (2) of section 223(d) of such Act [set out as a note under section 79 of this title]."

[1] So in original. The period probably should be preceded by an additional closing parenthesis.

SUBPART E—TREATMENT OF TRANSFERS TO RETIREE HEALTH ACCOUNTS

Sec.
420. Transfers of excess pension assets to retiree health accounts.

§420. Transfers of excess pension assets to retiree health accounts

(a) General rule

If there is a qualified transfer of any excess pension assets of a defined benefit plan to a health benefits account, or an applicable life insurance account, which is part of such plan—

(1) a trust which is part of such plan shall not be treated as failing to meet the requirements of subsection (a) or (h) of section 401 solely by reason of such transfer (or any other action authorized under this section),

(2) no amount shall be includible in the gross income of the employer maintaining the plan solely by reason of such transfer,

(3) such transfer shall not be treated—

(A) as an employer reversion for purposes of section 4980, or
(B) as a prohibited transaction for purposes of section 4975, and

(4) the limitations of subsection (d) shall apply to such employer.

(b) Qualified transfer

For purposes of this section—

(1) In general

The term "qualified transfer" means a transfer—

(A) of excess pension assets of a defined benefit plan to a health benefits account, or an applicable life insurance account, which is part of such plan,

(B) which does not contravene any other provision of law, and

(C) with respect to which the following requirements are met in connection with the plan—

(i) the use requirements of subsection (c)(1),

(ii) the vesting requirements of subsection (c)(2), and

(iii) the minimum cost requirements of subsection (c)(3).

(2) Only 1 transfer per year

No more than 1 transfer with respect to any plan during a taxable year may be treated as a qualified transfer for purposes of this section. If there is a transfer from a defined benefit plan to both a health benefits account and an applicable life insurance account during any taxable year, such transfers shall be treated as 1 transfer for purposes of this paragraph.

(3) Limitation on amount transferred

The amount of excess pension assets which may be transferred to an account in a qualified transfer shall not exceed the amount which is reasonably estimated to be the amount the employer maintaining the plan will pay (whether directly or through reimbursement) out of such account during the taxable year of the transfer for qualified current retiree liabilities.

(4) Expiration

No transfer made after December 31, 2021, shall be treated as a qualified transfer.

(c) Requirements of plans transferring assets

(1) Use of transferred assets

(A) In general

Any assets transferred to a health benefits account, or an applicable life insurance account, in a qualified transfer (and any income allocable thereto) shall be used only to pay qualified current retiree liabilities (other than liabilities of key employees not taken into account under subsection (e)(1)(D)) [1] for the taxable year of the transfer (whether directly or through reimbursement). In the case of a qualified future transfer or collectively bargained transfer to which subsection (f) applies, any assets so transferred may also be used to pay liabilities described in subsection (f)(2)(C).

(B) Amounts not used to pay for health benefits or life insurance

(i) In general

Any assets transferred to a health benefits account, or an applicable life insurance account, in a qualified transfer (and any income allocable thereto) which are not used as provided in subparagraph (A) shall be transferred out of the account to the transferor plan.

(ii) Tax treatment of amounts

Any amount transferred out of an account under clause (i)—

(I) shall not be includible in the gross income of the employer for such taxable year, but

(II) shall be treated as an employer reversion for purposes of section 4980 (without regard to subsection (d) thereof).

(C) Ordering rule

For purposes of this section, any amount paid out of a health benefits account, or an applicable life insurance account, shall be treated as paid first out of the assets and income described in subparagraph (A).

(2) Requirements relating to pension benefits accruing before transfer

The requirements of this paragraph are met if the plan provides that the accrued pension benefits of any participant or beneficiary under the plan become nonforfeitable in the same manner which would be required if the plan had terminated immediately before the qualified transfer (or in the case of a participant who separated during the 1-year period ending on the date of the transfer, immediately before such separation).

(3) Minimum cost requirements

(A) In general

The requirements of this paragraph are met if each group health plan or arrangement under which applicable health benefits are provided, and each group-term life insurance plan under which applicable life insurance benefits are provided, provides that the applicable employer cost for each taxable year during the cost maintenance period shall not be less than the higher of the applicable employer costs for each of the 2 taxable years immediately preceding the taxable year of the qualified transfer or, in the case of a transfer which involves a plan maintained by an employer described in subsection (f)(2)(E)(i)(III), if the plan meets the requirements of subsection (f)(2)(D)(i)(II).

(B) Applicable employer cost

For purposes of this paragraph, the term "applicable employer cost" means, with respect to any taxable year, the amount determined by dividing—

(i) the qualified current retiree liabilities of the employer for such taxable year determined—

(I) separately with respect to applicable health benefits and applicable life insurance benefits,

(II) without regard to any reduction under subsection (e)(1)(B), and

(III) in the case of a taxable year in which there was no qualified transfer, in the same manner as if there had been such a transfer at the end of the taxable year, by

(ii) the number of individuals to whom coverage was provided during such taxable year for the benefits with respect to which the determination under clause (i) is made.

(C) Election to compute cost separately

An employer may elect to have this paragraph applied separately for applicable health benefits with respect to individuals eligible for benefits under title XVIII of the Social Security Act at any time during the taxable year and with respect to individuals not so eligible, and separately for applicable life insurance benefits with respect to individuals age 65 or older at any time during the taxable year and with respect to individuals under age 65 during the taxable year.

(D) Cost maintenance period

For purposes of this paragraph, the term "cost maintenance period" means the period of 5 taxable years beginning with the taxable year in which the qualified transfer occurs. If a taxable year is in two or more overlapping cost maintenance periods, this paragraph shall be applied by taking into account the highest applicable employer cost required to be provided under subparagraph (A) for such taxable year.

(E) Regulations

(i) In general

The Secretary shall prescribe such regulations as may be necessary to prevent an employer

who significantly reduces retiree health coverage or retiree life insurance coverage, as the case may be, during the cost maintenance period from being treated as satisfying the minimum cost requirement of this subsection.

(ii) Insignificant cost reductions for retiree health coverage permitted

(I) In general

An eligible employer shall not be treated as failing to meet the requirements of this paragraph for any taxable year if, in lieu of any reduction of retiree health coverage permitted under the regulations prescribed under clause (i), the employer reduces applicable employer cost by an amount not in excess of the reduction in costs which would have occurred if the employer had made the maximum permissible reduction in retiree health coverage under such regulations. In applying such regulations to any subsequent taxable year, any reduction in applicable employer cost under this clause shall be treated as if it were an equivalent reduction in retiree health coverage.

(II) Eligible employer

For purposes of subclause (I), an employer shall be treated as an eligible employer for any taxable year if, for the preceding taxable year, the qualified current retiree liabilities of the employer with respect to applicable health benefits were at least 5 percent of the gross receipts of the employer. For purposes of this subclause, the rules of paragraphs (2), (3)(B), and (3)(C) of section 448(c) shall apply in determining the amount of an employer's gross receipts.

(d) Limitations on employer

For purposes of this title—

(1) Deduction limitations

No deduction shall be allowed—

(A) for the transfer of any amount to a health benefits account, or an applicable life insurance account, in a qualified transfer (or any retransfer to the plan under subsection (c)(1)(B)),

(B) for qualified current retiree liabilities paid out of the assets (and income) described in subsection (c)(1), or

(C) for any amounts to which subparagraph (B) does not apply and which are paid for qualified current retiree liabilities for the taxable year to the extent such amounts are not greater than the excess (if any) of—

(i) the amount determined under subparagraph (A) (and income allocable thereto), over

(ii) the amount determined under subparagraph (B).

(2) No contributions allowed

An employer may not contribute any amount to a health benefits account or welfare benefit fund (as defined in section 419(e)(1)) with respect to qualified current retiree liabilities for which transferred assets are required to be used under subsection (c)(1).

(e) Definition and special rules

For purposes of this section—

(1) Qualified current retiree liabilities

For purposes of this section—

(A) In general

The term "qualified current retiree liabilities" means, with respect to any taxable year, the aggregate amounts (including administrative expenses) which would have been allowable as a deduction to the employer for such taxable year with respect to applicable health benefits and applicable life insurance benefits provided during such taxable year if—

(i) such benefits were provided directly by the employer, and

(ii) the employer used the cash receipts and disbursements method of accounting.

For purposes of the preceding sentence, the rule of section 419(c)(3)(B) shall apply.

(B) Reductions for amounts previously set aside

The amount determined under subparagraph (A) shall be reduced by the amount (determined separately for applicable health benefits and applicable life insurance benefits) which bears the same ratio to such amount as—

(i) the value (as of the close of the plan year preceding the year of the qualified transfer) of the assets in all health benefits accounts or applicable life insurance accounts or welfare benefit funds (as defined in section 419(e)(1)) set aside to pay for the qualified current retiree liability, bears to

(ii) the present value of the qualified current retiree liabilities for all plan years (determined without regard to this subparagraph).

(C) Applicable health benefits

The term "applicable health benefits" means health benefits or coverage which are provided to—

(i) retired employees who, immediately before the qualified transfer, are entitled to receive such benefits by reason of retirement and who are entitled to pension benefits under the plan, and

(ii) their spouses and dependents.

(D) Applicable life insurance benefits

The term "applicable life insurance benefits" means group-term life insurance coverage provided to retired employees who, immediately before the qualified transfer, are entitled to receive such coverage by reason of retirement and who are entitled to pension benefits under the plan, but only to the extent that such coverage is provided under a policy for retired employees and the cost of such coverage is excludable from the retired employee's gross income under section 79.

(E) Key employees excluded

If an employee is a key employee (within the meaning of section 416(i)(1)) with respect to any plan year ending in a taxable year, such employee shall not be taken into account in computing qualified current retiree liabilities for such taxable year or in calculating applicable employer cost under subsection (c)(3)(B).

(2) Excess pension assets

The term "excess pension assets" means the excess (if any) of—

(A) the lesser of—

(i) the fair market value of the plan's assets (reduced by the prefunding balance and funding standard carryover balance determined under section 430(f)), or

(ii) the value of plan assets as determined under section 430(g)(3) after reduction under section 430(f), over

(B) 125 percent of the sum of the funding target and the target normal cost determined under section 430 for such plan year.

(3) Health benefits account

The term "health benefits account" means an account established and maintained under section 401(h).

(4) Applicable life insurance account

The term "applicable life insurance account" means a separate account established and maintained for amounts transferred under this section for qualified current retiree liabilities based on premiums for applicable life insurance benefits.

(5) Coordination with sections 430 and 433

In the case of a qualified transfer, any assets so transferred shall not, for purposes of this section and sections 430 and 433, be treated as assets in the plan.

(6) Application to multiemployer plans

In the case of a multiemployer plan, this section shall be applied to any such plan—

(A) by treating any reference in this section to an employer as a reference to all employers maintaining the plan (or, if appropriate, the plan sponsor), and

(B) in accordance with such modifications of this section (and the provisions of this title relating to this section) as the Secretary determines appropriate to reflect the fact the plan is not maintained by a single employer.

(f) Qualified transfers to cover future retiree costs and collectively bargained retiree benefits

(1) In general

An employer maintaining a defined benefit plan (other than a multiemployer plan) may, in lieu of a qualified transfer, elect for any taxable year to have the plan make—

(A) a qualified future transfer, or

(B) a collectively bargained transfer.

Except as provided in this subsection, a qualified future transfer and a collectively bargained transfer shall be treated for purposes of this title and the Employee Retirement Income Security Act of 1974 as if it were a qualified transfer.

(2) Qualified future and collectively bargained transfers

For purposes of this subsection—

(A) In general

The terms "qualified future transfer" and "collectively bargained transfer" mean a transfer which meets all of the requirements for a qualified transfer, except that—

(i) the determination of excess pension assets shall be made under subparagraph (B),

(ii) the limitation on the amount transferred shall be determined under subparagraph (C),

(iii) the minimum cost requirements of subsection (c)(3) shall be modified as provided under subparagraph (D), and

(iv) in the case of a collectively bargained transfer, the requirements of subparagraph (E) shall be met with respect to the transfer.

(B) Excess pension assets

(i) In general

In determining excess pension assets for purposes of this subsection, subsection (e)(2) shall be applied by substituting "120 percent" for "125 percent".

(ii) Requirement to maintain funded status

If, as of any valuation date of any plan year in the transfer period, the amount determined under subsection (e)(2)(B) (after application of clause (i)) exceeds the amount determined under subsection (e)(2)(A), either—

(I) the employer maintaining the plan shall make contributions to the plan in an amount not less than the amount required to reduce such excess to zero as of such date, or

(II) there is transferred from the health benefits account or applicable life insurance account, as the case may be, to the plan an amount not less than the amount required to reduce such excess to zero as of such date.

(C) Limitation on amount transferred

Notwithstanding subsection (b)(3), the amount of the excess pension assets which may be transferred—

(i) in the case of a qualified future transfer shall be equal to the sum of—

(I) if the transfer period includes the taxable year of the transfer, the amount determined

under subsection (b)(3) for such taxable year, plus

(II) in the case of all other taxable years in the transfer period, the sum of the qualified current retiree liabilities which the plan reasonably estimates, in accordance with guidance issued by the Secretary, will be incurred for each of such years, and

(ii) in the case of a collectively bargained transfer, shall not exceed the amount which is reasonably estimated, in accordance with the provisions of the collective bargaining agreement and generally accepted accounting principles, to be the amount the employer maintaining the plan will pay (whether directly or through reimbursement) out of such account during the collectively bargained cost maintenance period for collectively bargained retiree liabilities.

(D) Minimum cost requirements

(i) In general

The requirements of subsection (c)(3) shall be treated as met if—

(I) in the case of a qualified future transfer, each group health plan or arrangement under which applicable health benefits are provided, and each group-term life insurance plan or arrangement under which applicable life insurance benefits are provided, provides applicable health benefits or applicable life insurance benefits, as the case may be, during the period beginning with the first year of the transfer period and ending with the last day of the 4th year following the transfer period such that the annual average amount of the applicable employer cost during such period is not less than the applicable employer cost determined under subsection (c)(3)(A) with respect to the transfer, and

(II) in the case of a collectively bargained transfer, each collectively bargained plan under which collectively bargained health benefits or collectively bargained life insurance benefits are provided provides that the collectively bargained employer cost for each taxable year during the collectively bargained cost maintenance period shall not be less than the amount specified by the collective bargaining agreement.

(ii) Election to maintain benefits for future transfers

An employer may elect, in lieu of the requirements of clause (i)(I), to meet the requirements of subsection (c)(3) with respect to applicable health benefits or applicable life insurance benefits by meeting the requirements of such subsection (as in effect before the amendments made by section 535 of the Tax Relief Extension Act of 1999) for each of the years described in the period under clause (i)(I). Such election may be made separately with respect to applicable health benefits and applicable life insurance benefits. In the case of an election with respect to applicable life insurance benefits, the first sentence of this clause shall be applied as if subsection (c)(3) as in effect before the amendments made by such Act applied to such benefits.

(iii) Collectively bargained employer cost

For purposes of this subparagraph, the term "collectively bargained employer cost" means the average cost per covered individual of providing collectively bargained health benefits, collectively bargained life insurance benefits, or both, as the case may be, as determined in accordance with the applicable collective bargaining agreement. Such agreement may provide for an appropriate reduction in the collectively bargained employer cost to take into account any portion of the collectively bargained health benefits, collectively bargained life insurance benefits, or both, as the case may be, that is provided or financed by a government program or other source.

(E) Special rules for collectively bargained transfers

(i) In general

A collectively bargained transfer shall only include a transfer which—

(I) is made in accordance with a collective bargaining agreement,

(II) before the transfer, the employer designates, in a written notice delivered to each employee organization that is a party to the collective bargaining agreement, as a collectively bargained transfer in accordance with this section, and

(III) involves a defined benefit plan maintained by an employer which, in its taxable year ending in 2005, provided health benefits or coverage to retirees and their spouses and dependents under all of the health benefit plans maintained by the employer, but only if the aggregate cost (including administrative expenses) of such benefits or coverage which would have been allowable as a deduction to the employer (if such benefits or coverage had been provided directly by the employer and the employer used the cash receipts and disbursements method of accounting) is at least 5 percent of the gross receipts of the employer (determined in accordance with the last sentence of subsection (c)(3)(E)(ii)(II)) for such taxable year, or a plan maintained by a successor to such employer.

(ii) Use of assets

Any assets transferred to a health benefits account, or an applicable life insurance account, in a collectively bargained transfer (and any income allocable thereto) shall be used only to pay collectively bargained retiree liabilities (other than liabilities of key employees not taken into account under paragraph (6)(B)(iii)) for the taxable year of the transfer or for any subsequent taxable year during the collectively bargained cost maintenance period (whether directly or through reimbursement).

(3) Coordination with other transfers

In applying subsection (b)(3) to any subsequent transfer during a taxable year in a transfer period or collectively bargained cost maintenance period, qualified current retiree liabilities shall be reduced by any such liabilities taken into account with respect to the qualified future transfer or collectively bargained transfer to which such period relates.

(4) Special deduction rules for collectively bargained transfers

In the case of a collectively bargained transfer—

(A) the limitation under subsection (d)(1)(C) shall not apply, and

(B) notwithstanding subsection (d)(2), an employer may contribute an amount to a health benefits account or welfare benefit fund (as defined in section 419(e)(1)) with respect to collectively bargained retiree liabilities for which transferred assets are required to be used under subsection (c)(1)(B), and the deductibility of any such contribution shall be governed by the limits applicable to the deductibility of contributions to a welfare benefit fund under a collective bargaining agreement (as determined under section 419A(f)(5)(A)) without regard to whether such contributions are made to a health benefits account or welfare benefit fund and without regard to the provisions of section 404 or the other provisions of this section.

The Secretary shall provide rules to ensure that the application of this paragraph does not result in a deduction being allowed more than once for the same contribution or for 2 or more contributions or expenditures relating to the same collectively bargained retiree liabilities.

(5) Transfer period

For purposes of this subsection, the term "transfer period" means, with respect to any transfer, a period of consecutive taxable years (not less than 2) specified in the election under paragraph (1) which begins and ends during the 10-taxable-year period beginning with the taxable year of the transfer.

(6) Terms relating to collectively bargained transfers

For purposes of this subsection—

(A) Collectively bargained cost maintenance period

The term "collectively bargained cost maintenance period" means, with respect to each covered retiree and his covered spouse and dependents, the shorter of—

(i) the remaining lifetime of such covered retiree and, in the case of a transfer to a health

benefits account, his covered spouse and dependents, or

(ii) the period of coverage provided by the collectively bargained plan (determined as of the date of the collectively bargained transfer) with respect to such covered retiree and, in the case of a transfer to a health benefits account, his covered spouse and dependents.

(B) Collectively bargained retiree liabilities

(i) In general

The term "collectively bargained retiree liabilities" means the present value, as of the beginning of a taxable year and determined in accordance with the applicable collective bargaining agreement, of all collectively bargained health benefits, and collectively bargained life insurance benefits, (including administrative expenses) for such taxable year and all subsequent taxable years during the collectively bargained cost maintenance period.

(ii) Reduction for amounts previously set aside

The amount determined under clause (i) shall be reduced by the value (as of the close of the plan year preceding the year of the collectively bargained transfer) of the assets in all health benefits accounts, applicable life insurance accounts, or welfare benefit funds (as defined in section 419(e)(1)) set aside to pay for the collectively bargained retiree liabilities. The preceding sentence shall be applied separately for collectively bargained health benefits and collectively bargained life insurance benefits.

(iii) Key employees excluded

If an employee is a key employee (within the meaning of section 416(i)(1)) with respect to any plan year ending in a taxable year, such employee shall not be taken into account in computing collectively bargained retiree liabilities for such taxable year or in calculating collectively bargained employer cost under subsection (c)(3)(C).

(C) Collectively bargained health benefits

The term "collectively bargained health benefits" means health benefits or coverage—

(i) which are provided to retired employees who, immediately before the collectively bargained transfer, are entitled to receive such benefits by reason of retirement and who are entitled to pension benefits under the plan, and their spouses and dependents, and

(ii) if specified by the provisions of the collective bargaining agreement governing the collectively bargained transfer, which will be provided at retirement to employees who are not retired employees at the time of the transfer and who are entitled to receive such benefits and who are entitled to pension benefits under the plan, and their spouses and dependents.

(D) Collectively bargained life insurance benefits

The term "collectively bargained life insurance benefits" means, with respect to any collectively bargained transfer—

(i) applicable life insurance benefits which are provided to retired employees who, immediately before the transfer, are entitled to receive such benefits by reason of retirement, and

(ii) if specified by the provisions of the collective bargaining agreement governing the transfer, applicable life insurance benefits which will be provided at retirement to employees who are not retired employees at the time of the transfer.

(E) Collectively bargained plan

The term "collectively bargained plan" means a group health plan or arrangement for retired employees and their spouses and dependents, or a group-term life insurance plan or arrangement for retired employees, that is maintained pursuant to 1 or more collective bargaining agreements.

(g) Segment rates determined without pension stabilization

For purposes of this section, section 430 shall be applied without regard to subsection (h)(2)(C)(iv) thereof.

(Added Pub. L. 101–508, title XII, §12011(a), Nov. 5, 1990, 104 Stat. 1388–567; amended Pub. L. 103–465, title VII, §731(a)–(c)(3), Dec. 8, 1994, 108 Stat. 5003, 5004; Pub. L. 104–188, title I, §1704(a), (t)(32), Aug. 20, 1996, 110 Stat. 1878, 1889; Pub. L. 106–170, title V, §535(a)(1), (b), Dec. 17, 1999, 113 Stat. 1934; Pub. L. 108–218, title II, §204(a), Apr. 10, 2004, 118 Stat. 609; Pub. L. 108–357, title VII, §709(b)(1), (2), Oct. 22, 2004, 118 Stat. 1551, 1552; Pub. L. 109–280, title I, §114(d), title VIII, §§841(a), 842(a), Aug. 17, 2006, 120 Stat. 854, 1005, 1009; Pub. L. 110–28, title VI, §§6612(a), (b), 6613(a), May 25, 2007, 121 Stat. 181; Pub. L. 110–458, title I, §108(i)(1), (2), Dec. 23, 2008, 122 Stat. 5110; Pub. L. 112–141, div. D, title II, §§40211(a)(2)(D), 40241(a), 40242(a)–(c), (e)(1)–(13), (f), (g), July 6, 2012, 126 Stat. 847, 859, 860, 862, 863; Pub. L. 113–97, title II, §202(c)(7), Apr. 7, 2014, 128 Stat. 1137.)

REFERENCES IN TEXT

Subsection (e)(1)(D), referred to in subsec. (c)(1)(A), was redesignated subsec. (e)(1)(E) and a new subsec. (e)(1)(D) was added by Pub. L. 112–141, div. D, title II, §40242(b)(2), July 6, 2012, 126 Stat. 859.

The Social Security Act, referred to in subsec. (c)(3)(C), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Act is classified generally to subchapter XVIII (§1395 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Employee Retirement Income Security Act of 1974, referred to in subsec. (f)(1), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, as amended, which is classified principally to chapter 18 (§1001 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

Subsection (c)(3) as in effect before the amendments made by section 535 of the Tax Relief Extension Act of 1999, referred to in subsec. (f)(2)(D)(ii), is subsec. (c)(3) of this section prior to its general amendment by section 535(b)(1) of Pub. L. 106–170.

AMENDMENTS

2014—Subsec. (e)(5). Pub. L. 113–97 substituted "sections 430 and 433" for "section 430" in heading and text.

2012—Pub. L. 112–141, §40242(e)(1), substituted "qualified current retiree liabilities" for "qualified current retiree health liabilities" wherever appearing in subsecs. (b) to (d), (e)(1), and (f).

Subsec. (a). Pub. L. 112–141, §40242(a), inserted ", or an applicable life insurance account," after "health benefits account".

Subsec. (b)(1)(A). Pub. L. 112–141, §40242(g)(1), struck out "in a taxable year beginning after December 31, 1990" after "such plan".

Pub. L. 112–141, §40242(e)(2), inserted ", or an applicable life insurance account," after "a health benefits account".

Subsec. (b)(2). Pub. L. 112–141, §40242(g)(3), struck out "(A) In general" before "No more than" and struck out heading and text of subpar. (B). Prior to amendment, text read as follows: "A transfer described in paragraph (4) shall not be taken into account for purposes of subparagraph (A)."

Subsec. (b)(2)(A). Pub. L. 112–141, §40242(e)(3)(A), inserted at end "If there is a transfer from a defined benefit plan to both a health benefits account and an applicable life insurance account during any taxable year, such transfers shall be treated as 1 transfer for purposes of this paragraph."

Subsec. (b)(3). Pub. L. 112–141, §40242(e)(3)(B), inserted "to an account" after "may be transferred".

Subsec. (b)(4). Pub. L. 112–141, §40242(g)(2), redesignated par. (5) as (4) and struck out former par. (4) which related to a special rule for 1990.

Subsec. (b)(5). Pub. L. 112–141, §40242(g)(2), redesignated par. (5) as (4).

Pub. L. 112–141, §40241(a), substituted "December 31, 2021" for "December 31, 2013".

Subsec. (c)(1)(A). Pub. L. 112–141, §40242(e)(2), inserted ", or an applicable life insurance account," after "a health benefits account".

Subsec. (c)(1)(B). Pub. L. 112–141, §40242(e)(4), inserted "or life insurance" after "health benefits" in heading.

Subsec. (c)(1)(B)(i). Pub. L. 112–141, §40242(e)(2), inserted ", or an applicable life insurance account," after "a health benefits account".

Subsec. (c)(1)(C). Pub. L. 112–141, §40242(e)(2), inserted ", or an applicable life insurance account," after "a health benefits account".

Subsec. (c)(2). Pub. L. 112–141, §40242(g)(4), struck out "(A) In general" before "The requirements of",

realigned margins, and struck out heading and text of subpar. (B). Prior to amendment, text read as follows: "In the case of a qualified transfer described in subsection (b)(4), the requirements of this paragraph are met with respect to any participant who separated from service during the taxable year to which such transfer relates by recomputing such participant's benefits as if subparagraph (A) had applied immediately before such separation."

Subsec. (c)(3)(A). Pub. L. 112–141, §40242(c)(1), inserted ", and each group-term life insurance plan under which applicable life insurance benefits are provided," after "health benefits are provided".

Subsec. (c)(3)(B)(i). Pub. L. 112–141, §40242(c)(2)(A)(i), redesignated subcls. (I) and (II) as (II) and (III), respectively, and added subcl. (I).

Subsec. (c)(3)(B)(ii). Pub. L. 112–141, §40242(c)(2)(A)(ii), substituted "was provided during such taxable year for the benefits with respect to which the determination under clause (i) is made." for "for applicable health benefits was provided during such taxable year."

Subsec. (c)(3)(C). Pub. L. 112–141, §40242(c)(2)(B), inserted "for applicable health benefits" after "applied separately" and ", and separately for applicable life insurance benefits with respect to individuals age 65 or older at any time during the taxable year and with respect to individuals under age 65 during the taxable year" before the period at end.

Subsec. (c)(3)(E)(i). Pub. L. 112–141, §40242(c)(2)(C)(i), inserted "or retiree life insurance coverage, as the case may be," after "retiree health coverage".

Subsec. (c)(3)(E)(ii). Pub. L. 112–141, §40242(c)(2)(C)(ii), inserted "for retiree health coverage" after "cost reductions" in heading.

Subsec. (c)(3)(E)(ii)(II). Pub. L. 112–141, §40242(c)(2)(C)(iii), inserted "with respect to applicable health benefits" after "liabilities of the employer".

Subsec. (d)(1)(A). Pub. L. 112–141, §40242(e)(2), inserted ", or an applicable life insurance account," after "a health benefits account".

Subsec. (d)(2). Pub. L. 112–141, §40242(g)(5), struck out "after December 31, 1990" after "may not contribute".

Subsec. (e)(1). Pub. L. 112–141, §40242(e)(5)(B), struck out "health" after "Qualified current retiree" in the heading.

Subsec. (e)(1)(A). Pub. L. 112–141, §40242(e)(5)(A), inserted "and applicable life insurance benefits" after "applicable health benefits".

Subsec. (e)(1)(B). Pub. L. 112–141, §40242(e)(6)(A), inserted "(determined separately for applicable health benefits and applicable life insurance benefits)" after "shall be reduced by the amount" in introductory provisions.

Subsec. (e)(1)(B)(i). Pub. L. 112–141, §40242(e)(6)(C), substituted "qualified current retiree liability" for "qualified current retiree health liability".

Pub. L. 112–141, §40242(e)(6)(B), which directed the insertion of "or applicable life insurance accounts" after "health benefit accounts", was executed by making the insertion after "health benefits accounts" to reflect the probable intent of Congress.

Subsec. (e)(1)(C)(i). Pub. L. 112–141, §40242(b)(3)(B)(i), substituted "by reason of retirement" for "upon retirement".

Subsec. (e)(1)(D), (E). Pub. L. 112–141, §40242(b)(2), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (e)(4) to (6). Pub. L. 112–141, §40242(b)(1), added par. (4) and redesignated former pars. (4) and (5) as (5) and (6), respectively.

Subsec. (f). Pub. L. 112–141, §40242(e)(7), struck out "health" after "retiree" in two places in the heading.

Subsec. (f)(2)(B)(ii)(II). Pub. L. 112–141, §40242(e)(8), inserted "or applicable life insurance account, as the case may be," after "health benefits account".

Subsec. (f)(2)(C)(ii). Pub. L. 112–141, §40242(c)(2)(D), substituted "collectively bargained retiree liabilities" for "collectively bargained retiree health liabilities".

Subsec. (f)(2)(D)(i)(I). Pub. L. 112–141, §40242(c)(2)(E)(i), (ii), inserted ", and each group-term life insurance plan or arrangement under which applicable life insurance benefits are provided," after "applicable health benefits are provided" and "or applicable life insurance benefits, as the case may be," after "provides applicable health benefits".

Subsec. (f)(2)(D)(i)(II). Pub. L. 112–141, §40242(c)(2)(E)(iii), (iv), struck out "group health" after "each collectively bargained" and inserted "or collectively bargained life insurance benefits" after "collectively bargained health benefits".

Subsec. (f)(2)(D)(ii). Pub. L. 112–141, §40242(c)(2)(F), inserted "with respect to applicable health benefits or applicable life insurance benefits" after "requirements of subsection (c)(3)" and inserted at end "Such

election may be made separately with respect to applicable health benefits and applicable life insurance benefits. In the case of an election with respect to applicable life insurance benefits, the first sentence of this clause shall be applied as if subsection (c)(3) as in effect before the amendments made by such Act applied to such benefits."

Subsec. (f)(2)(D)(iii). Pub. L. 112–141, §40242(c)(2)(G), struck out "retiree" before "health benefits" in two places and inserted ", collectively bargained life insurance benefits, or both, as the case may be," after "health benefits" in two places.

Subsec. (f)(2)(E)(i)(III). Pub. L. 112–141, §40242(e)(9), inserted "defined benefit" before "plan maintained by an employer" and "health" before "benefit plans maintained by the employer".

Subsec. (f)(2)(E)(ii). Pub. L. 112–141, §40242(e)(2), inserted ", or an applicable life insurance account," after "a health benefits account".

Pub. L. 112–141, §40242(c)(2)(D), substituted "collectively bargained retiree liabilities" for "collectively bargained retiree health liabilities".

Subsec. (f)(4). Pub. L. 112–141, §40242(e)(10), substituted "collectively bargained retiree liabilities" for "collectively bargained retiree health liabilities" in two places.

Subsec. (f)(6)(A)(i). Pub. L. 112–141, §40242(e)(11)(A), inserted ", in the case of a transfer to a health benefits account," before "his covered spouse and dependents".

Subsec. (f)(6)(A)(ii). Pub. L. 112–141, §40242(e)(11), inserted ", in the case of a transfer to a health benefits account," before "his covered spouse and dependents" and substituted "plan" for "health plan".

Subsec. (f)(6)(B). Pub. L. 112–141, §40242(e)(12)(C), struck out "health" after "retiree" in the heading.

Pub. L. 112–141, §40242(e)(10), substituted "collectively bargained retiree liabilities" for "collectively bargained retiree health liabilities" wherever appearing.

Subsec. (f)(6)(B)(i). Pub. L. 112–141, §40242(e)(12)(A), inserted ", and collectively bargained life insurance benefits," after "collectively bargained health benefits".

Subsec. (f)(6)(B)(ii). Pub. L. 112–141, §40242(e)(12)(B)(ii), which directed the insertion of ", applicable life insurance accounts," after "health benefit accounts", was executed by making the insertion after "health benefits accounts" to reflect the probable intent of Congress.

Pub. L. 112–141, §40242(e)(12)(B)(i), inserted at end "The preceding sentence shall be applied separately for collectively bargained health benefits and collectively bargained life insurance benefits."

Subsec. (f)(6)(B)(iii). Pub. L. 112–141, §40242(f), substituted "416(i)(1)" for "416(I)(1)".

Subsec. (f)(6)(C). Pub. L. 112–141, §40242(b)(3)(B)(ii)(I), struck out "which are provided to" after "coverage" in introductory provisions.

Subsec. (f)(6)(C)(i). Pub. L. 112–141, §40242(b)(3)(B)(ii)(II), (III), inserted "which are provided to" before "retired employees" and substituted "by reason of retirement" for "upon retirement".

Subsec. (f)(6)(C)(ii). Pub. L. 112–141, §40242(b)(3)(B)(ii)(IV), substituted "which will be provided at retirement to employees who are not retired employees at the time of the transfer and who" for "active employees who, following their retirement,".

Subsec. (f)(6)(D). Pub. L. 112–141, §40242(b)(3)(A), added subpar. (D). Former subpar. (D) redesignated (E).

Subsec. (f)(6)(E). Pub. L. 112–141, §40242(e)(13), struck out "health" after "bargained" in heading, substituted "bargained" for "bargained health", and inserted ", or a group-term life insurance plan or arrangement for retired employees," after "dependents".

Pub. L. 112–141, §40242(b)(3)(A), redesignated subpar. (D) as (E).

Subsec. (g). Pub. L. 112–141, §40211(a)(2)(D), added subsec. (g).

2008—Subsec. (c)(1)(A). Pub. L. 110–458, §108(i)(1), inserted last sentence "In the case of a qualified future transfer or collectively bargained transfer to which subsection (f) applies, any assets so transferred may also be used to pay liabilities described in subsection (f)(2)(C)."

Subsec. (f)(2)(D)(i)(I). Pub. L. 110–458, §108(i)(2), struck out "such" after "average amount of".

2007—Subsec. (c)(3)(A). Pub. L. 110–28, §6613(a), substituted "transfer or, in the case of a transfer which involves a plan maintained by an employer described in subsection (f)(2)(E)(i)(III), if the plan meets the requirements of subsection (f)(2)(D)(i)(II)." for "transfer."

Subsec. (e)(2)(B). Pub. L. 110–28, §6612(b), substituted "funding target" for "funding shortfall".

Subsec. (f)(2)(E)(i)(III). Pub. L. 110–28, §6612(a), substituted "subsection (c)(3)(E)(ii)(II)" for "subsection (c)(2)(E)(ii)(II)".

2006—Subsec. (a). Pub. L. 109–280, §842(a)(1), struck out "(other than a multiemployer plan)" after "defined benefit plan" in introductory provisions.

Subsec. (e)(2). Pub. L. 109–280, §114(d)(1), reenacted heading without change and amended text of par. (2) generally. Prior to amendment, text read as follows: "The term 'excess pension assets' means the excess (if

any) of—

"(A) the amount determined under section 412(c)(7)(A)(ii), over

"(B) the greater of—

"(i) the amount determined under section 412(c)(7)(A)(i), or

"(ii) 125 percent of current liability (as defined in section 412(c)(7)(B)).

The determination under this paragraph shall be made as of the most recent valuation date of the plan preceding the qualified transfer."

Subsec. (e)(4). Pub. L. 109–280, §114(d)(2), amended heading and text of par. (4) generally. Prior to amendment, text read as follows: "In the case of a qualified transfer to a health benefits account—

"(A) any assets transferred in a plan year on or before the valuation date for such year (and any income allocable thereto) shall, for purposes of section 412, be treated as assets in the plan as of the valuation date for such year, and

"(B) the plan shall be treated as having a net experience loss under section 412(b)(2)(B)(iv) in an amount equal to the amount of such transfer (reduced by any amounts transferred back to the pension plan under subsection (c)(1)(B)) and for which amortization charges begin for the first plan year after the plan year in which such transfer occurs, except that such section shall be applied to such amount by substituting '10 plan years' for '5 plan years'."

Subsec. (e)(5). Pub. L. 109–280, §842(a)(2), added par. (5).

Subsec. (f). Pub. L. 109–280, §841(a), added subsec. (f).

2004—Subsec. (b)(5). Pub. L. 108–218 substituted "2013" for "2005".

Subsec. (c)(3)(E). Pub. L. 108–357 designated existing provisions as cl. (i), inserted heading, and added cl. (ii).

1999—Subsec. (b)(1)(C)(iii). Pub. L. 106–170, §535(b)(2)(A), substituted "cost" for "benefits".

Subsec. (b)(5). Pub. L. 106–170, §535(a)(1), substituted "made after December 31, 2005" for "in any taxable year beginning after December 31, 2000".

Subsec. (c)(3). Pub. L. 106–170, §535(b)(1), amended heading and text of par. (3) generally, substituting present provisions for provisions relating to maintenance of benefit requirements.

Subsec. (e)(1)(D). Pub. L. 106–170, §535(b)(2)(B), substituted "or in calculating applicable employer cost under subsection (c)(3)(B)" for "and shall not be subject to the minimum benefit requirements of subsection (c)(3)".

1996—Pub. L. 104–188, §1704(a), provided that, except as otherwise expressly provided, whenever in title XII of Pub. L. 101–508 an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986. Section 12011(a) of title XII of Pub. L. 101–508 directed the amendment of part I of subchapter D of chapter 1 by adding this subpart, including this section, without specifying that amendment was to the Internal Revenue Code of 1986.

Subsec. (e)(1)(C). Pub. L. 104–188, §1704(t)(32), substituted "means" for "mean".

1994—Subsec. (b)(1)(C)(iii). Pub. L. 103–465, §731(c)(1), substituted "benefits" for "cost".

Subsec. (b)(5). Pub. L. 103–465, §731(a), substituted "2000" for "1995".

Subsec. (c)(3). Pub. L. 103–465, §731(b), amended par. (3) generally, substituting present provisions for provisions outlining minimum cost requirements for plans, providing for elections to compute costs separately, and defining "applicable employer cost" and "cost maintenance period".

Subsec. (e)(1)(B). Pub. L. 103–465, §731(c)(2), reenacted subpar. (B) heading without change and amended text generally. Prior to amendment, text read as follows: "The amount determined under subparagraph (A) shall be reduced by any amount previously contributed to a health benefits account or welfare benefit fund (as defined in section 419(e)(1)) to pay for the qualified current retiree health liabilities. The portion of any reserves remaining as of the close of December 31, 1990, shall be allocated on a pro rata basis to qualified current retiree health liabilities."

Subsec. (e)(1)(D). Pub. L. 103–465, §731(c)(3), substituted "and shall not be subject to the minimum benefit requirements of subsection (c)(3)" for "or in calculating applicable employer cost under subsection (c)(3)(B)".

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–97 applicable to years beginning after Dec. 31, 2013, see section 3 of Pub. L. 113–97, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by section 40211(a)(2)(D) of Pub. L. 112–141 applicable with respect to plan years beginning

after December 31, 2011, except as otherwise provided, see section 40211(c) of Pub. L. 112–141, set out as a note under section 404 of this title.

Pub. L. 112–141, div. D, title II, §40241(c), July 6, 2012, 126 Stat. 859, provided that: "The amendments made by this Act [probably should be "section", amending this section and sections 1021, 1103, and 1108 of Title 29, Labor] shall take effect on the date of the enactment of this Act [July 6, 2012]."

Pub. L. 112–141, div. D, title II, §40242(h), July 6, 2012, 126 Stat. 864, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section, section 79 of this title, and section 1021 of Title 29, Labor] shall apply to transfers made after the date of the enactment of this Act [July 6, 2012].

"(2) CONFORMING AMENDMENTS RELATING TO PENSION PROTECTION ACT.—The amendments made by subsections (b)(3)(B) and (f) [amending this section] shall take effect as if included in the amendments made by section 841(a) of the Pension Protection Act of 2006 [Pub. L. 109–280]."

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–458 effective as if included in the provisions of Pub. L. 109–280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110–458, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–28, title VI, §6612(c), May 25, 2007, 121 Stat. 181, provided that: "The amendments made by this section [amending this section] shall take effect as if included in the provisions of the Pension Protection Act of 2006 [Pub. L. 109–280] to which they relate."

Pub. L. 110–28, title VI, §6613(b), May 25, 2007, 121 Stat. 181, provided that: "The amendment made by subsection (a) [amending this section] shall apply to transfers after the date of the enactment of this Act [May 25, 2007]."

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 114(d) of Pub. L. 109–280 applicable to plan years beginning after 2007, see section 114(g)(1) of Pub. L. 109–280, as added by Pub. L. 110–458, set out as a note under section 401 of this title.

Pub. L. 109–280, title VIII, §841(b), Aug. 17, 2006, 120 Stat. 1009, provided that: "The amendments made by this section [amending this section] shall apply to transfers after the date of the enactment of this Act [Aug. 17, 2006]."

Pub. L. 109–280, title VIII, §842(b), Aug. 17, 2006, 120 Stat. 1009, provided that: "The amendment made by this section [amending this section] shall apply to transfers made in taxable years beginning after December 31, 2006."

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VII, §709(b)(3), Oct. 22, 2004, 118 Stat. 1552, provided that: "The amendments made by this subsection [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Oct. 22, 2004]."

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title V, §535(c), Dec. 17, 1999, 113 Stat. 1935, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and sections 1021, 1103, and 1108 of Title 29, Labor] shall apply to qualified transfers occurring after the date of the enactment of this Act [Dec. 17, 1999].

"(2) TRANSITION RULE.—If the cost maintenance period for any qualified transfer after the date of the enactment of this Act [Dec. 17, 1999] includes any portion of a benefit maintenance period for any qualified transfer on or before such date, the amendments made by subsection (b) [amending this section] shall not apply to such portion of the cost maintenance period (and such portion shall be treated as a benefit maintenance period)."

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103–465, title VII, §731(d), Dec. 8, 1994, 108 Stat. 5004, provided that:

"(1) EXTENSION.—The amendments made by subsections (a) and (c)(3) [amending this section] shall apply to taxable years beginning after December 31, 1995.

"(2) BENEFITS.—The amendments made by subsections (b) and (c)(1) and (2) [amending this section] shall apply to qualified transfers occurring after the date of the enactment of this Act [Dec. 8, 1994]."

EFFECTIVE DATE

Pub. L. 101–508, title XII, §12011(c), Nov. 5, 1990, 104 Stat. 1388–571, provided that:

"(1) IN GENERAL.—The amendments made by this section [enacting this section and amending section 401 of this title] shall apply to transfers in taxable years beginning after December 31, 1990.

"(2) WAIVER OF ESTIMATED TAX PENALTIES.—No addition to tax shall be made under section 6654 or section 6655 of the Internal Revenue Code of 1986 for the taxable year preceding the taxpayer's 1st taxable year beginning after December 31, 1990, with respect to any underpayment to the extent such underpayment was created or increased by reason of [former] section 420(b)(4)(B) of such Code (as added by subsection (a))."

APPLICABILITY OF AMENDMENTS BY SUBTITLES A AND B OF TITLE I OF PUB. L. 109–280

For special rules on applicability of amendments by subtitles A (§§101–108) and B (§§111–116) of title I of Pub. L. 109–280 to certain eligible cooperative plans, PBGC settlement plans, and eligible government contractor plans, see sections 104, 105, and 106 of Pub. L. 109–280, set out as notes under section 401 of this title.

[1] See References in Text note below.

PART II—CERTAIN STOCK OPTIONS

Sec.

421. General rules.

422. Incentive stock options.

[422A. Renumbered.]

423. Employee stock purchase plans.

424. Definitions and special rules.

[425. Renumbered.]

AMENDMENTS

1990—Pub. L. 101–508, title XI, §11801(b)(6), (c)(9)(A)(ii), Nov. 5, 1990, 104 Stat. 1388–522, 1388–524, struck out items 422 "Qualified stock options" and 424 "Restricted stock options" and redesignated items 422A and 425 as 422 and 424, respectively.

1981—Pub. L. 97–34, title II, §251(b)(6), Aug. 13, 1981, 95 Stat. 259, added item 422A.

1964—Pub. L. 88–272, title II, §221(a), Feb. 26, 1964, 78 Stat. 63, substituted "CERTAIN STOCK OPTIONS" for "MISCELLANEOUS PROVISIONS" in part II heading, and "General rules" for "Employee stock options" in item 421, and added items 422–425.

§421. General rules

(a) Effect of qualifying transfer

If a share of stock is transferred to an individual in a transfer in respect of which the requirements of section 422(a) or 423(a) are met—

(1) no income shall result at the time of the transfer of such share to the individual upon his exercise of the option with respect to such share;

(2) no deduction under section 162 (relating to trade or business expenses) shall be allowable at any time to the employer corporation, a parent or subsidiary corporation of such corporation, or a corporation issuing or assuming a stock option in a transaction to which section 424(a) applies, with respect to the share so transferred; and

(3) no amount other than the price paid under the option shall be considered as received by any of such corporations for the share so transferred.

(b) Effect of disqualifying disposition

If the transfer of a share of stock to an individual pursuant to his exercise of an option would otherwise meet the requirements of section 422(a) or 423(a) except that there is a failure to meet any

of the holding period requirements of section 422(a)(1) or 423(a)(1), then any increase in the income of such individual or deduction from the income of his employer corporation for the taxable year in which such exercise occurred attributable to such disposition, shall be treated as an increase in income or a deduction from income in the taxable year of such individual or of such employer corporation in which such disposition occurred. No amount shall be required to be deducted and withheld under chapter 24 with respect to any increase in income attributable to a disposition described in the preceding sentence.

(c) Exercise by estate

(1) In general

If an option to which this part applies is exercised after the death of the employee by the estate of the decedent, or by a person who acquired the right to exercise such option by bequest or inheritance or by reason of the death of the decedent, the provisions of subsection (a) shall apply to the same extent as if the option had been exercised by the decedent, except that—

(A) the holding period and employment requirements of sections 422(a) and 423(a) shall not apply, and

(B) any transfer by the estate of stock acquired shall be considered a disposition of such stock for purposes of section 423(c).

(2) Deduction for estate tax

If an amount is required to be included under section 423(c) in gross income of the estate of the deceased employee or of a person described in paragraph (1), there shall be allowed to the estate or such person a deduction with respect to the estate tax attributable to the inclusion in the taxable estate of the deceased employee of the net value for estate tax purposes of the option. For this purpose, the deduction shall be determined under section 691(c) as if the option acquired from the deceased employee were an item of gross income in respect of the decedent under section 691 and as if the amount includible in gross income under section 423(c) were an amount included in gross income under section 691 in respect of such item of gross income.

(3) Basis of shares acquired

In the case of a share of stock acquired by the exercise of an option to which paragraph (1) applies—

(A) the basis of such share shall include so much of the basis of the option as is attributable to such share; except that the basis of such share shall be reduced by the excess (if any) of (i) the amount which would have been includible in gross income under section 423(c) if the employee had exercised the option on the date of his death and had held the share acquired pursuant to such exercise at the time of his death, over (ii) the amount which is includible in gross income under such section; and

(B) the last sentence of section 423(c) shall apply only to the extent that the amount includible in gross income under such section exceeds so much of the basis of the option as is attributable to such share.

(d) Certain sales to comply with conflict-of-interest requirements

If—

(1) a share of stock is transferred to an eligible person (as defined in section 1043(b)(1)) pursuant to such person's exercise of an option to which this part applies, and

(2) such share is disposed of by such person pursuant to a certificate of divestiture (as defined in section 1043(b)(2)),

such disposition shall be treated as meeting the requirements of section 422(a)(1) or 423(a)(1), whichever is applicable.

(Aug. 16, 1954, ch. 736, 68A Stat. 142; Pub. L. 85–320, §1, Feb. 11, 1958, 72 Stat. 4; Pub. L. 85–866, title I, §§25, 26(a), Sept. 2, 1958, 72 Stat. 1623, 1624; Pub. L. 88–272, title II, §221(a), Feb. 26, 1964, 78 Stat. 63; Pub. L. 97–34, title II, §251(b)(1), Aug. 13, 1981, 95 Stat. 259; Pub. L.

101–508, title XI, §11801(c)(9)(B), Nov. 5, 1990, 104 Stat. 1388–524; Pub. L. 108–357, title II, §251(b), title VIII, §905(a), Oct. 22, 2004, 118 Stat. 1458, 1653.)

AMENDMENTS

2004—Subsec. (b). Pub. L. 108–357, §251(b), inserted at end "No amount shall be required to be deducted and withheld under chapter 24 with respect to any increase in income attributable to a disposition described in the preceding sentence."

Subsec. (d). Pub. L. 108–357, §905(a), added subsec. (d).

1990—Subsec. (a). Pub. L. 101–508, §11801(c)(9)(B)(i)(I), substituted "422(a) or 423(a)" for "422(a), 422A(a), 423(a), or 424(a)" in introductory provisions.

Subsec. (a)(1). Pub. L. 101–508, §11801(c)(9)(B)(i)(II), struck out "except as provided in section 422(c)(1)," before "no income".

Subsec. (a)(2). Pub. L. 101–508, §11801(c)(9)(B)(i)(III), substituted "424(a)" for "425(a)".

Subsec. (b). Pub. L. 101–508, §11801(c)(9)(B)(ii), substituted "422(a) or 423(a)" for "422(a), 422A(a), 423(a), or 424(a)" and "422(a)(1) or 423(a)(1)," for "422(a)(1), 422A(a)(1), 423(a)(1), or 424(a)(1),".

Subsec. (c)(1)(A). Pub. L. 101–508, §11801(c)(9)(B)(iii)(I), substituted "422(a) and 423(a)" for "422(a), 422A(a), 423(a), and 424(a)".

Subsec. (c)(1)(B). Pub. L. 101–508, §11801(c)(9)(B)(iii)(II), substituted "section 423(c)" for "sections 423(c) and 424(c)(1)".

Subsec. (c)(2), (3)(A). Pub. L. 101–508, §11801(c)(9)(B)(iii)(III), substituted "423(c)" for "422(c)(1), 423(c), or 424(c)(1)" wherever appearing.

Subsec. (c)(3)(B). Pub. L. 101–508, §11801(c)(9)(B)(iii)(IV), (V), substituted "section 423(c)" for "sections 422(c)(1), 423(c), and 424(c)(1)" and "such section" for "such sections".

1981—Subsecs. (a), (b), (c)(1)(A). Pub. L. 97–34 inserted references to section 422A(a) in subsecs. (a), (b), and (c)(1)(A) and to section 422A(a)(1) in subsec. (b).

1964—Pub. L. 88–272 amended section generally, and among other changes, inserted provisions relating to the effect of a qualifying transfer, and to the basis of shares acquired when an option is exercised by an estate, and omitted provisions relating to treatment of restricted stock options, a special rule where option price was between 85 percent and 95 percent of value of stock, acquisition of new stock, definitions, modification, extension, or renewal of option, and corporate reorganizations, liquidations, etc. See sections 421 to 425 of this title.

1958—Subsec. (a). Pub. L. 85–866, §25, inserted sentence authorizing substitution of "grantor corporation" or "corporation issuing or assuming a stock option in a transaction to which subsection (g) is applicable" for "employer corporation".

Subsec. (d)(6)(C). Pub. L. 85–320 added subpar. (C).

Subsec. (d)(1)(A)(ii). Pub. L. 85–866, §26(a)(1), substituted "in the case of a variable price option" for "in case the purchase price of the stock under the option is fixed or determinable under a formula in which the only variable is the value of the stock at any time during a period of 6 months which includes the time the option is exercised" and inserted "fair" before "market value".

Subsec. (d)(7). Pub. L. 85–866, §26(a)(2), added par. (7).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title II, §251(d), Oct. 22, 2004, 118 Stat. 1459, provided that: "The amendments made by this section [amending this section, sections 423, 3121, 3231, and 3306 of this title, and section 409 of Title 42, The Public Health and Welfare] shall apply to stock acquired pursuant to options exercised after the date of the enactment of this Act [Oct. 22, 2004]."

Pub. L. 108–357, title VIII, §905(b), Oct. 22, 2004, 118 Stat. 1653, provided that: "The amendment made by this section [amending this section] shall apply to sales after the date of the enactment of this Act [Oct. 22, 2004]."

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable with respect to options granted on or after Jan. 1, 1976, and exercised on or after Jan. 1, 1981, or outstanding on Jan. 1, 1981, or granted on or after Jan. 1, 1976, and outstanding Aug. 13, 1981, see section 251(c) of Pub. L. 97–34, set out as an Effective Date note under section 422 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88–272, title II, §221(e), Feb. 26, 1964, 78 Stat. 75, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) Except as provided in paragraphs (2) and (3), the amendments made by this section [enacting sections 422 to 425 and 6039, amending this section, sections 402, 691, 6652, 6678, and the analysis preceding sections 401 and 6031, and renumbering section 3039 as 3040 of this title] shall apply to taxable years ending after December 31, 1963.

"(2) The amendments made by paragraphs (1) and (3) of subsection (b) [enacting section 3039, renumbering former section 3039 as 3040, and amending section 6678 of this title] and paragraph (2) of section 6652(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by paragraph (2) of subsection (b)), shall apply to stock transferred pursuant to options exercised on or after January 1, 1964.

"(3) In the case of an option granted after December 31, 1963, and before January 1, 1965—

"(A) paragraphs (1) and (2) of section 422(b) of the Internal Revenue Code of 1986 (as added by subsection (a)), shall not apply, and

"(B) paragraph (1) of section 425(h) of such Code (as added by subsection (a)), shall not apply to any change in the terms of such option made before January 1, 1965, to permit such option to qualify under paragraphs (3), (4), and (5) of such section 422(b)."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 25 of Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

Pub. L. 85–866, title I, §26(b), Sept. 2, 1958, 72 Stat. 1624, provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to taxable years ending after September 30, 1958."

Pub. L. 85–320, §3, Feb. 11, 1958, 72 Stat. 5, provided that: "The amendments made by this Act [amending this section and section 1014 of this title] shall apply with respect to taxable years ending after December 31, 1956, but only in the case of employees dying after such date."

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

§422. Incentive stock options

(a) In general

Section 421(a) shall apply with respect to the transfer of a share of stock to an individual pursuant to his exercise of an incentive stock option if—

(1) no disposition of such share is made by him within 2 years from the date of the granting of the option nor within 1 year after the transfer of such share to him, and

(2) at all times during the period beginning on the date of the granting of the option and ending on the day 3 months before the date of such exercise, such individual was an employee of either the corporation granting such option, a parent or subsidiary corporation of such corporation, or a corporation or a parent or subsidiary corporation of such corporation issuing or assuming a stock option in a transaction to which section 424(a) applies.

(b) Incentive stock option

For purposes of this part, the term "incentive stock option" means an option granted to an individual for any reason connected with his employment by a corporation, if granted by the employer corporation or its parent or subsidiary corporation, to purchase stock of any of such corporations, but only if—

(1) the option is granted pursuant to a plan which includes the aggregate number of shares which may be issued under options and the employees (or class of employees) eligible to receive options, and which is approved by the stockholders of the granting corporation within 12 months before or after the date such plan is adopted;

(2) such option is granted within 10 years from the date such plan is adopted, or the date such plan is approved by the stockholders, whichever is earlier;

(3) such option by its terms is not exercisable after the expiration of 10 years from the date such option is granted;

(4) the option price is not less than the fair market value of the stock at the time such option is granted;

(5) such option by its terms is not transferable by such individual otherwise than by will or the laws of descent and distribution, and is exercisable, during his lifetime, only by him; and

(6) such individual, at the time the option is granted, does not own stock possessing more than 10 percent of the total combined voting power of all classes of stock of the employer corporation or of its parent or subsidiary corporation.

Such term shall not include any option if (as of the time the option is granted) the terms of such option provide that it will not be treated as an incentive stock option.

(c) Special rules

(1) Good faith efforts to value of stock

If a share of stock is transferred pursuant to the exercise by an individual of an option which would fail to qualify as an incentive stock option under subsection (b) because there was a failure in an attempt, made in good faith, to meet the requirement of subsection (b)(4), the requirement of subsection (b)(4) shall be considered to have been met. To the extent provided in regulations by the Secretary, a similar rule shall apply for purposes of subsection (d).

(2) Certain disqualifying dispositions where amount realized is less than value at exercise

If—

(A) an individual who has acquired a share of stock by the exercise of an incentive stock option makes a disposition of such share within either of the periods described in subsection (a)(1), and

(B) such disposition is a sale or exchange with respect to which a loss (if sustained) would be recognized to such individual,

then the amount which is includible in the gross income of such individual, and the amount which is deductible from the income of his employer corporation, as compensation attributable to the exercise of such option shall not exceed the excess (if any) of the amount realized on such sale or exchange over the adjusted basis of such share.

(3) Certain transfers by insolvent individuals

If an insolvent individual holds a share of stock acquired pursuant to his exercise of an incentive stock option, and if such share is transferred to a trustee, receiver, or other similar fiduciary in any proceeding under title 11 or any other similar insolvency proceeding, neither such transfer, nor any other transfer of such share for the benefit of his creditors in such proceeding, shall constitute a disposition of such share for purposes of subsection (a)(1).

(4) Permissible provisions

An option which meets the requirements of subsection (b) shall be treated as an incentive stock option even if—

(A) the employee may pay for the stock with stock of the corporation granting the option,

(B) the employee has a right to receive property at the time of exercise of the option, or

(C) the option is subject to any condition not inconsistent with the provisions of subsection (b).

Subparagraph (B) shall apply to a transfer of property (other than cash) only if section 83 applies to the property so transferred.

(5) 10-percent shareholder rule

Subsection (b)(6) shall not apply if at the time such option is granted the option price is at least 110 percent of the fair market value of the stock subject to the option and such option by its terms

is not exercisable after the expiration of 5 years from the date such option is granted.

(6) Special rule when disabled

For purposes of subsection (a)(2), in the case of an employee who is disabled (within the meaning of section 22(e)(3)), the 3-month period of subsection (a)(2) shall be 1 year.

(7) Fair market value

For purposes of this section, the fair market value of stock shall be determined without regard to any restriction other than a restriction which, by its terms, will never lapse.

(d) $100,000 per year limitation

(1) In general

To the extent that the aggregate fair market value of stock with respect to which incentive stock options (determined without regard to this subsection) are exercisable for the 1st time by any individual during any calendar year (under all plans of the individual's employer corporation and its parent and subsidiary corporations) exceeds $100,000, such options shall be treated as options which are not incentive stock options.

(2) Ordering rule

Paragraph (1) shall be applied by taking options into account in the order in which they were granted.

(3) Determination of fair market value

For purposes of paragraph (1), the fair market value of any stock shall be determined as of the time the option with respect to such stock is granted.

(Added Pub. L. 97–34, title II, §251(a), Aug. 13, 1981, 95 Stat. 256, §422A; amended Pub. L. 97–448, title I, §102(j)(1)–(4), Jan. 12, 1983, 96 Stat. 2373; Pub. L. 98–369, div. A, title V, §555(a)(1), div. B, title VI, §2662(f)(1), July 18, 1984, 98 Stat. 897, 1159; Pub. L. 99–514, title III, §321(a), (b), title XVIII, §1847(b)(5), Oct. 22, 1986, 100 Stat. 2220, 2856; Pub. L. 100–647, title I, §1003(d)(1)(A), (2), Nov. 10, 1988, 102 Stat. 3384; renumbered §422 and amended Pub. L. 101–508, title XI, §11801(c)(9)(A)(i), (C), Nov. 5, 1990, 104 Stat. 1388–524, 1388–525.)

PRIOR PROVISIONS

A prior section 422, added Pub. L. 88–272, title II, §221(a), Feb. 26, 1964, 78 Stat. 64; amended Pub. L. 94–455, title VI, §603(a), (b), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1574, 1834; Pub. L. 96–589, §6(i)(3), Dec. 24, 1980, 94 Stat. 3410, related to qualified stock options, prior to repeal by Pub. L. 101–508, title XI, §11801(a)(20), Nov. 5, 1990, 104 Stat. 1388–521. For savings provision, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

AMENDMENTS

1990—Pub. L. 101–508, §11801(c)(9)(A)(i), renumbered section 422A of this title as this section.

Subsec. (a)(2). Pub. L. 101–508, §11801(c)(9)(C)(i), substituted "424(a)" for "425(a)".

Subsec. (c)(5) to (8). Pub. L. 101–508, §11801(c)(9)(C)(ii), redesignated pars. (6) to (8) as (5) to (7), respectively, and struck out former par. (5) "Coordination with sections 422 and 424" which read as follows: "Sections 422 and 424 shall not apply to an incentive stock option."

1988—Subsec. (b). Pub. L. 100–647, §1003(d)(1)(A), inserted at end "Such term shall not include any option if (as of the time the option is granted) the terms of such option provide that it will not be treated as an incentive stock option."

Subsec. (b)(7). Pub. L. 100–647, §1003(d)(2)(B), struck out par. (7) which read as follows: "under the terms of the plan, the aggregate fair market value (determined at the time the option is granted) of the stock with respect to which incentive stock options are exercisable for the 1st time by such individual during any calendar year (under all such plans of the individual's employer corporation and its parent and subsidiary corporations) shall not exceed $100,000."

Subsec. (c)(1). Pub. L. 100–647, §1003(d)(2)(C), substituted "subsection (d)" for "paragraph (7) of subsection (b)".

Subsec. (d). Pub. L. 100–647, §1003(d)(2)(A), added subsec. (d).

1986—Subsec. (b)(7). Pub. L. 99–514, §321(a), added par. (7) and struck out former par. (7) which read as

follows: "such option by its terms is not exercisable while there is outstanding (within the meaning of subsection (c)(7)) any incentive stock option which was granted, before the granting of such option, to such individual to purchase stock in his employer corporation or in a corporation which (at the time of the granting of such option) is a parent or subsidiary corporation of the employer corporation, or in a predecessor corporation of any of such corporations; and".

Subsec. (b)(8). Pub. L. 99–514, §321(a), struck out par. (8) which read as follows: "in the case of an option granted after December 31, 1980, under the terms of the plan the aggregate fair market value (determined as of the time the option is granted) of the stock for which any employee may be granted incentive stock options in any calendar year (under all such plans of his employer corporation and its parent and subsidiary corporation) shall not exceed $100,000 plus any unused limit carryover to such year."

Subsec. (c)(1). Pub. L. 99–514, §321(b)(2), substituted "paragraph (7) of subsection (b)" for "paragraph (8) of subsection (b) and paragraph (4) of this subsection".

Subsec. (c)(4). Pub. L. 99–514, §321(b)(1), redesignated par. (5) as (4) and struck out former par. (4) relating to carryover of unused limit.

Subsec. (c)(5), (6). Pub. L. 99–514, §321(b)(1)(B), redesignated pars. (6) and (8) as (5) and (6), respectively. Former par. (5) redesignated (4).

Subsec. (c)(7). Pub. L. 99–514, §321(b)(1), redesignated par. (9) as (7) and struck out former par. (7) which provided that for purposes of subsec. (b)(7) any incentive stock option be treated as outstanding until such option was exercised in full or expired by reason of lapse of time.

Subsec. (c)(8). Pub. L. 99–514, §321(b)(1)(B), redesignated par. (10) as (8). Former par. (8) redesignated (6).

Subsec. (c)(9). Pub. L. 99–514, §321(b)(1)(B), redesignated par. (9) as (7).

Pub. L. 99–514, §1847(b)(5), substituted "section 22(e)(3)" for "section 37(e)(3)".

Subsec. (c)(10). Pub. L. 99–514, §321(b)(1)(B), redesignated par. (10) as (8).

1984—Subsec. (c)(9). Pub. L. 98–369, §2662(f)(1), substituted "section 37(e)(3)" for "section 105(d)(4)".

Subsec. (c)(10). Pub. L. 98–369, §555(a)(1), added par. (10).

1983—Subsec. (b)(8). Pub. L. 97–448, §102(j)(1), substituted "granted incentive stock options" for "granted options".

Subsec. (c)(1). Pub. L. 97–448, §102(j)(2), substituted "Good faith efforts to value stock" for "Exercise of option when price is less than value of stock" as par. (1) heading and inserted sentence providing that, to the extent provided in regulations by the Secretary, a rule similar to that already enunciated in the paragraph applies for purposes of par. (8) of subsec. (b) and par. (4) of subsec. (c).

Subsec. (c)(2)(A). Pub. L. 97–448, §102(j)(3), substituted "either of the periods" for "the 2-year period".

Subsec. (c)(4)(A)(ii). Pub. L. 97–448, §102(j)(4), substituted "granted incentive stock options" for "granted options".

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title III, §321(c), Oct. 22, 1986, 100 Stat. 2220, provided that: "The amendments made by this section [amending this section] shall apply to options granted after December 31, 1986."

Amendment by section 1847(b)(5) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title V, §555(c)(1), July 18, 1984, 98 Stat. 898, as amended by Pub. L. 99–514, title XVIII, §1855(a)(1), Oct. 22, 1986, 100 Stat. 2882, provided that: "The amendment made by subsection (a)(1) [amending this section] shall apply to options granted after March 20, 1984, except that such subsection shall not apply to any incentive stock option granted before September 20, 1984, pursuant to a plan adopted or corporate action taken by the board of directors of the grantor corporation before May 15, 1984."

Amendment by section 2662 of Pub. L. 98–369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98–21, see section 2664(a) of Pub. L. 98–369, set out as a note under section 401 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE

Pub. L. 97–34, title II, §251(c), Aug. 13, 1981, 95 Stat. 259, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) OPTIONS TO WHICH SECTION APPLIES.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this section [enacting this section and amending sections 421, 425 [now 424], and 6039 of this title] shall apply with respect to options granted on or after January 1, 1976, and exercised on or after January 1, 1981, or outstanding on such date.

"(B) ELECTION AND DESIGNATION OF OPTIONS.—In the case of an option granted before January 1, 1981, the amendments made by this section shall apply only if the corporation granting such option elects (in the manner and at the time prescribed by the Secretary of the Treasury or his delegate) to have the amendments made by this section apply to such option. The aggregate fair market value (determined at the time the option is granted) of the stock for which any employee was granted options (under all plans of his employer corporation and its parent and subsidiary corporations) to which the amendments made by this section apply by reason of this subparagraph shall not exceed $50,000 per calendar year ans shall not exceed $200,000 in the aggregate.

"(2) CHANGES IN TERMS OF OPTIONS.—In the case of an option granted on or after January 1, 1976, and outstanding on the date of the enactment of this Act [Aug. 13, 1981], paragraph (1) of section 425(h) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall not apply to any change in the terms of such option (or the terms of the plan under which granted, including shareholder approval) made within 1 year after such date of enactment to permit such option to qualify as a incentive stock option."

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

TREATMENT OF OPTIONS AS INCENTIVE STOCK OPTIONS

Pub. L. 100–647, title I, §1003(d)(1)(B), Nov. 10, 1988, 102 Stat. 3384, provided that: "In the case of an option granted after December 31, 1986, and on or before the date of the enactment of this Act [Nov. 10, 1988], such option shall not be treated as an incentive stock option if the terms of such option are amended before the date 90 days after such date of enactment to provide that such option will not be treated as an incentive stock option."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[§422A. Renumbered §422]

§423. Employee stock purchase plans

(a) General rule

Section 421(a) shall apply with respect to the transfer of a share of stock to an individual pursuant to his exercise of an option granted after December 31, 1963, under an employee stock purchase plan (as defined in subsection (b)) if—

(1) no disposition of such share is made by him within 2 years after the date of the granting of the option nor within 1 year after the transfer of such share to him; and

(2) at all times during the period beginning with the date of the granting of the option and ending on the day 3 months before the date of such exercise, he is an employee of the corporation granting such option, a parent or subsidiary corporation of such corporation, or a corporation or a parent or subsidiary corporation of such corporation issuing or assuming a stock option in a transaction to which section 424(a) applies.

(b) Employee stock purchase plan

For purposes of this part, the term "employee stock purchase plan" means a plan which meets the following requirements:

(1) the plan provides that options are to be granted only to employees of the employer corporation or of its parent or subsidiary corporation to purchase stock in any such corporation;

(2) such plan is approved by the stockholders of the granting corporation within 12 months before or after the date such plan is adopted;

(3) under the terms of the plan, no employee can be granted an option if such employee, immediately after the option is granted, owns stock possessing 5 percent or more of the total combined voting power or value of all classes of stock of the employer corporation or of its parent or subsidiary corporation. For purposes of this paragraph, the rules of section 424(d) shall apply in determining the stock ownership of an individual, and stock which the employee may purchase under outstanding options shall be treated as stock owned by the employee;

(4) under the terms of the plan, options are to be granted to all employees of any corporation whose employees are granted any of such options by reason of their employment by such corporation, except that there may be excluded—

(A) employees who have been employed less than 2 years,

(B) employees whose customary employment is 20 hours or less per week,

(C) employees whose customary employment is for not more than 5 months in any calendar year, and

(D) highly compensated employees (within the meaning of section 414(q));

(5) under the terms of the plan, all employees granted such options shall have the same rights and privileges, except that the amount of stock which may be purchased by any employee under such option may bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of employees, and the plan may provide that no employee may purchase more than a maximum amount of stock fixed under the plan;

(6) under the terms of the plan, the option price is not less than the lesser of—

(A) an amount equal to 85 percent of the fair market value of the stock at the time such option is granted, or

(B) an amount which under the terms of the option may not be less than 85 percent of the fair market value of the stock at the time such option is exercised;

(7) under the terms of the plan, such option cannot be exercised after the expiration of—

(A) 5 years from the date such option is granted if, under the terms of such plan, the option price is to be not less than 85 percent of the fair market value of such stock at the time of the exercise of the option, or

(B) 27 months from the date such option is granted, if the option price is not determinable in the manner described in subparagraph (A)

(8) under the terms of the plan, no employee may be granted an option which permits his rights to purchase stock under all such plans of his employer corporation and its parent and subsidiary corporations to accrue at a rate which exceeds $25,000 of fair market value of such stock (determined at the time such option is granted) for each calendar year in which such option is outstanding at any time. For purposes of this paragraph—

(A) the right to purchase stock under an option accrues when the option (or any portion thereof) first becomes exercisable during the calendar year;

(B) the right to purchase stock under an option accrues at the rate provided in the option, but

in no case may such rate exceed $25,000 of fair market value of such stock (determined at the time such option is granted) for any one calendar year; and

(C) a right to purchase stock which has accrued under one option granted pursuant to the plan may not be carried over to any other option; and

(9) under the terms of the plan, such option is not transferable by such individual otherwise than by will or the laws of descent and distribution, and is exercisable, during his lifetime, only by him.

For purposes of paragraphs (3) to (9), inclusive, where additional terms are contained in an offering made under a plan, such additional terms shall, with respect to options exercised under such offering, be treated as a part of the terms of such plan.

(c) Special rule where option price is between 85 percent and 100 percent of value of stock

If the option price of a share of stock acquired by an individual pursuant to a transfer to which subsection (a) applies was less than 100 percent of the fair market value of such share at the time such option was granted, then, in the event of any disposition of such share by him which meets the holding period requirements of subsection (a), or in the event of his death (whenever occurring) while owning such share, there shall be included as compensation (and not as gain upon the sale or exchange of a capital asset) in his gross income, for the taxable year in which falls the date of such disposition or for the taxable year closing with his death, whichever applies, an amount equal to the lesser of—

(1) the excess of the fair market value of the share at the time of such disposition or death over the amount paid for the share under the option, or

(2) the excess of the fair market value of the share at the time the option was granted over the option price.

If the option price is not fixed or determinable at the time the option is granted, then for purposes of this subsection, the option price shall be determined as if the option were exercised at such time. In the case of the disposition of such share by the individual, the basis of the share in his hands at the time of such disposition shall be increased by an amount equal to the amount so includible in his gross income. No amount shall be required to be deducted and withheld under chapter 24 with respect to any amount treated as compensation under this subsection.

(Added Pub. L. 88–272, title II, §221(a), Feb. 26, 1964, 78 Stat. 67; amended Pub. L. 94–455, title XIV, §1402(b)(1)(E), (2), Oct. 4, 1976, 90 Stat. 1732; Pub. L. 98–369, div. A, title X, §1001(b)(5), (e), July 18, 1984, 98 Stat. 1011, 1012; Pub. L. 99–514, title XI, §1114(b)(13), Oct. 22, 1986, 100 Stat. 2451; Pub. L. 101–508, title XI, §11801(c)(9)(D), (E), Nov. 5, 1990, 104 Stat. 1388–525; Pub. L. 108–357, title II, §251(c), Oct. 22, 2004, 118 Stat. 1459.)

AMENDMENTS

2004—Subsec. (c). Pub. L. 108–357 inserted at end of concluding provisions "No amount shall be required to be deducted and withheld under chapter 24 with respect to any amount treated as compensation under this subsection."

1990—Subsec. (a). Pub. L. 101–508, §11801(c)(9)(D)(i), struck out "(other than a restricted stock option granted pursuant to a plan described in section 424(c)(3)(B))" after "December 31, 1963".

Subsec. (a)(2). Pub. L. 101–508, §11801(c)(9)(D)(ii), substituted "424(a)" for "425(a)".

Subsec. (b)(3). Pub. L. 101–508, §11801(c)(9)(E), substituted "424(d)" for "425(d)".

1986—Subsec. (b)(4)(D). Pub. L. 99–514 substituted "highly compensated employees (within the meaning of section 414(q))" for "officers, persons whose principal duties consist of supervising the work of other employees, or highly compensated employees".

1984—Subsec. (a)(1). Pub. L. 98–369 substituted "6 months" for "1 year", applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

1976—Subsec. (a)(1). Pub. L. 94–455, §1402(b)(2), provided that "9 months" would be changed to "1 year".

Pub. L. 94–455, §1402(b)(1)(E), provided that "6 months" would be changed to "9 months" for taxable years beginning in 1977.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to stock acquired pursuant to options exercised after Oct. 22, 2004, see section 251(d) of Pub. L. 108–357, set out as a note under section 421 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to years beginning after Dec. 31, 1986, see section 1114(c)(1) of Pub. L. 99–514, set out as a note under section 414 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XIV, §1402(b)(1), Oct. 4, 1976, 90 Stat. 1731, provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Pub. L. 94–455, title XIV, §1402(b)(2), Oct. 4, 1976, 90 Stat. 1732, provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

EFFECTIVE DATE

Section applicable to taxable years ending after Dec. 31, 1963, see section 221(e) of Pub. L. 88–272, set out as an Effective Date of 1964 Amendment note under section 421 of this title.

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1114 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§424. Definitions and special rules

(a) Corporate reorganizations, liquidations, etc.

For purposes of this part, the term "issuing or assuming a stock option in a transaction to which section 424(a) applies" means a substitution of a new option for the old option, or an assumption of the old option, by an employer corporation, or a parent or subsidiary of such corporation, by reason of a corporate merger, consolidation, acquisition of property or stock, separation, reorganization, or liquidation, if—

(1) the excess of the aggregate fair market value of the shares subject to the option immediately after the substitution or assumption over the aggregate option price of such shares is not more than the excess of the aggregate fair market value of all shares subject to the option immediately before such substitution or assumption over the aggregate option price of such shares, and

(2) the new option or the assumption of the old option does not give the employee additional benefits which he did not have under the old option.

For purposes of this subsection, the parent-subsidiary relationship shall be determined at the time of any such transaction under this subsection.

(b) Acquisition of new stock

For purposes of this part, if stock is received by an individual in a distribution to which section 305, 354, 355, 356, or 1036 (or so much of section 1031 as relates to section 1036) applies, and such distribution was made with respect to stock transferred to him upon his exercise of the option, such stock shall be considered as having been transferred to him on his exercise of such option. A similar rule shall be applied in the case of a series of such distributions.

(c) Disposition

(1) In general

Except as provided in paragraphs (2), (3), and (4), for purposes of this part, the term "disposition" includes a sale, exchange, gift, or a transfer of legal title, but does not include—

(A) a transfer from a decedent to an estate or a transfer by request or inheritance;

(B) an exchange to which section 354, 355, 356, or 1036 (or so much of section 1031 as relates to section 1036) applies; or

(C) a mere pledge or hypothecation.

(2) Joint tenancy

The acquisition of a share of stock in the name of the employee and another jointly with the right of survivorship or a subsequent transfer of a share of stock into such joint ownership shall not be deemed a disposition, but a termination of such joint tenancy (except to the extent such employee acquires ownership of such stock) shall be treated as a disposition by him occurring at the time such joint tenancy is terminated.

(3) Special rule where incentive stock is acquired through use of other statutory option stock

(A) Nonrecognition sections not to apply

If—

(i) there is a transfer of statutory option stock in connection with the exercise of any incentive stock option, and

(ii) the applicable holding period requirements (under section 422(a)(1) or 423(a)(1)) are not met before such transfer,

then no section referred to in subparagraph (B) of paragraph (1) shall apply to such transfer.

(B) Statutory option stock

For purpose of subparagraph (A), the term "statutory option stock" means any stock acquired through the exercise of an incentive stock option or an option granted under an employee stock purchase plan.

(4) Transfers between spouses or incident to divorce

In the case of any transfer described in subsection (a) of section 1041—

(A) such transfer shall not be treated as a disposition for purposes of this part, and

(B) the same tax treatment under this part with respect to the transferred property shall apply to the transferee as would have applied to the transferor.

(d) Attribution of stock ownership

For purposes of this part, in applying the percentage limitations of sections 422(b)(6) and 423(b)(3)—

(1) the individual with respect to whom such limitation is being determined shall be considered as owning the stock owned, directly or indirectly, by or for his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants; and

(2) stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust, shall be considered as being owned proportionately by or for its shareholders, partners, or beneficiaries.

(e) Parent corporation

For purposes of this part, the term "parent corporation" means any corporation (other than the

employer corporation) in an unbroken chain of corporations ending with the employer corporation if, at the time of the granting of the option, each of the corporations other than the employer corporation owns stock possessing 50 percent or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

(f) Subsidiary corporation

For purposes of this part, the term "subsidiary corporation" means any corporation (other than the employer corporation) in an unbroken chain of corporations beginning with the employer corporation if, at the time of the granting of the option, each of the corporations other than the last corporation in the unbroken chain owns stock possessing 50 percent or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

(g) Special rule for applying subsections (e) and (f)

In applying subsections (e) and (f) for purposes of section [1] 422(a)(2) and 423(a)(2), there shall be substituted for the term "employer corporation" wherever it appears in subsection (e) and (f) the term "grantor corporation" or the term "corporation issuing or assuming a stock option in a transaction to which section 424(a) applies" as the case may be.

(h) Modification, extension, or renewal of option

(1) In general

For purposes of this part, if the terms of any option to purchase stock are modified, extended, or renewed, such modification, extension, or renewal shall be considered as the granting of a new option.

(2) Special rule for section 423 options

In the case of the transfer of stock pursuant to the exercise of an option to which section 423 applies and which has been so modified, extended, or renewed, the fair market value of such stock at the time of the granting of the option shall be considered as whichever of the following is the highest—

(A) the fair market value of such stock on the date of the original granting of the option,

(B) the fair market value of such stock on the date of the making of such modification, extension, or renewal, or

(C) the fair market value of such stock at the time of the making of any intervening modification, extension, or renewal.

(3) Definition of modification

The term "modification" means any change in the terms of the option which gives the employee additional benefits under the option, but such term shall not include a change in the terms of the option—

(A) attributable to the issuance or assumption of an option under subsection (a);

(B) to permit the option to qualify under section 423(b)(9); or

(C) in the case of an option not immediately exercisable in full, to accelerate the time at which the option may be exercised.

(i) Stockholder approval

For purposes of this part, if the grant of an option is subject to approval by stockholders, the date of grant of the option shall be determined as if the option had not been subject to such approval.

(j) Cross references

For provisions requiring the reporting of certain acts with respect to a qualified stock option, an incentive stock option, options granted under employer stock purchase plans, or a restricted stock option, see section 6039.

(Added Pub. L. 88–272, title II, §221(a), Feb. 26, 1964, 78 Stat. 71, §425; amended Pub. L. 97–34, title II, §251(b)(2)–(4), Aug. 13, 1981, 95 Stat. 259; Pub. L. 97–448, title I, §102(j)(5), (6), Jan. 12, 1983, 96 Stat. 2373; Pub. L. 98–369, div. A, title V, §555(b), July 18, 1984, 98 Stat. 898; Pub. L.

100–647, title I, §1018(l)(1), (2), Nov. 10, 1988, 102 Stat. 3584; Pub. L. 101–239, title VII, §7811(m)(6), Dec. 19, 1989, 103 Stat. 2412; renumbered §424 and amended Pub. L. 101–508, title XI, §11801(c)(9)(A)(i), (F), Nov. 5, 1990, 104 Stat. 1388–524, 1388–525; Pub. L. 104–188, title I, §1702(h)(13), Aug. 20, 1996, 110 Stat. 1874.)

PRIOR PROVISIONS

A prior section 424, added Pub. L. 88–272, title II, §221(a), Feb. 26, 1964, 78 Stat. 69; amended Pub. L. 94–455, title VI, §603(c), title XIV, §1402(b)(1)(F), (2), Oct. 4, 1976, 90 Stat. 1574, 1732, related to restricted stock options, prior to repeal by Pub. L. 101–508, title XI, §11801(a)(21), Nov. 5, 1990, 104 Stat. 1388–521. For savings provisions, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

AMENDMENTS

1996—Subsec. (c)(3)(B). Pub. L. 104–188 substituted "an incentive stock option or an option granted under an employee stock purchase plan" for "a qualified stock option, an incentive stock option, an option granted under an employee stock purchase plan, or a restricted stock option".

1990—Pub. L. 101–508, §11801(c)(9)(A)(i), renumbered section 425 of this title as this section.

Subsec. (a). Pub. L. 101–508, §11801(c)(9)(F)(i), substituted "424(a)" for "425(a)".

Subsec. (c)(3)(A)(ii). Pub. L. 101–508, §11801(c)(9)(F)(ii), substituted "422(a)(1) or 423(a)(1)" for "422(a)(1), 422A(a)(1), 423(a)(1), or 424(a)(1)".

Subsec. (d). Pub. L. 101–508, §11801(c)(9)(F)(iii), substituted "422(b)(6) and 423(b)(3)" for "422(b)(7), 422A(b)(6), 423(b)(3), and 424(b)(3)".

Subsec. (g). Pub. L. 101–508, §11801(c)(9)(F)(iv), substituted "422(a)(2) and 423(a)(2)" for "422(a)(2), 422A(a)(2), 423(a)(2), and 424(a)(2)" and "424(a)" for "425(a)".

Subsec. (h)(2). Pub. L. 101–508, §11801(c)(9)(F)(v)(I), added par. (2) and struck out former par. (2) which related to special rules for sections 423 and 424 options and to an exception that such rules would not apply with respect to a modification, extension or renewal of a restricted stock option before Jan. 1, 1964, if the aggregate of the monthly fair market value for 12 consecutive months before date of modification, etc., divided by 12 is an amount less than 80% of the fair market value of such stock on the date of original granting or the date of modification, etc., whichever is higher.

Subsec. (h)(3). Pub. L. 101–508, §11801(c)(9)(F)(v)(III), struck out at end "If a restricted stock option is exercisable after the expiration of 10 years from the date such option is granted, subparagraph (B) shall not apply unless the terms of the option are also changed to make it not exercisable after the expiration of such period."

Subsec. (h)(3)(B). Pub. L. 101–508, §11801(c)(9)(F)(v)(II), substituted "section 423(b)(9)" for "sections 422(b)(6), 423(b)(9), and 424(b)(2)".

1989—Subsec. (c)(1). Pub. L. 101–239 made technical correction to Pub. L. 100–647, §1018(l)(2), see 1988 Amendment note below.

1988—Subsec. (c)(1). Pub. L. 100–647, §1018(l)(2), as amended by Pub. L. 101–239, substituted "paragraphs (2), (3), and (4)" for "paragraphs (2) and (3)".

Subsec. (c)(4). Pub. L. 100–647, §1018(l)(1), added par. (4).

1984—Subsec. (h)(3)(B). Pub. L. 98–369 struck out reference to section 422A(b)(5).

1983—Subsec. (c)(1). Pub. L. 97–448, §102(j)(6)(B), substituted "paragraphs (2) and (3)" for "paragraph (2)".

Subsec. (c)(3). Pub. L. 97–448, §102(j)(6)(A), added par. (3).

Subsec. (j). Pub. L. 97–448, §102(j)(5), inserted reference to an incentive stock option.

1981—Subsec. (d). Pub. L. 97–34, §251(b)(2), inserted reference to section 422A(b)(6).

Subsec. (g). Pub. L. 97–34, §251(b)(3), inserted reference to section 422A(a)(2).

Subsec. (h)(3)(B). Pub. L. 97–34, §251(b)(4), inserted reference to section 422A(b)(5).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates,

see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title V, §555(c)(3), July 18, 1984, 98 Stat. 898, as amended by Pub. L. 99–514, title XVIII, §1855(a)(4), Oct. 22, 1986, 100 Stat. 2882, provided that: "The amendment made by subsection (b) [amending this section] shall apply with respect to modifications of options after March 20, 1984."

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 97–448, title I, §102(j)(6), Jan. 12, 1983, 96 Stat. 2373, provided that the amendment made by that section is effective only with respect to transfers after March 15, 1982.

Amendment by section 102(j)(5) of title I of Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable with respect to options granted on or after Jan. 1, 1976, and exercised on or after Jan. 1, 1981, or outstanding on Jan. 1, 1981, or granted on or after Jan. 1, 1976, and outstanding Aug. 13, 1981, see section 251(c) of Pub. L. 97–34, set out as an Effective Date note under section 422 of this title.

EFFECTIVE DATE

Section applicable to taxable years ending after Dec. 31, 1963, except in cases of options granted after Dec. 31, 1963, and before Jan. 1, 1965, in which case par. (1) of subsec. (h) shall not apply to any change in the terms of such option made before Jan. 1, 1965, to permit such option to qualify under pars. (3), (4), and (5) of section 422(b), see section 221(e) of Pub. L. 88–272, set out as an Effective Date of 1964 Amendment note under section 421 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

[1] So in original. Probably should be "sections".

[§425. Renumbered §424]

PART III—RULES RELATING TO MINIMUM FUNDING STANDARDS AND BENEFIT LIMITATIONS

Subpart

A. Minimum funding standards for pension plans.

B. Benefit limitations under single-employer plans.

AMENDMENTS

2006—Pub. L. 109–280, title I, §113(a)(1)(A), Aug. 17, 2006, 120 Stat. 846, substituted "RULES RELATING TO MINIMUM FUNDING STANDARDS AND BENEFIT LIMITATIONS" for "MINIMUM FUNDING STANDARDS FOR SINGLE-EMPLOYER DEFINED BENEFIT PENSION PLANS" in part heading and added subpart analysis.

SUBPART A—MINIMUM FUNDING STANDARDS FOR PENSION PLANS

Sec.
430. Minimum funding standards for single-employer defined benefit pension plans.
431. Minimum funding standards for multiemployer plans.[1]
432. Additional funding rules for multiemployer plans in endangered status or critical status.
433. Minimum funding standards.[2]

AMENDMENT OF ANALYSIS

For termination of amendment by section 221(c) of Pub. L. 109–280, see Effective and Termination Dates of 2006 Amendment note set out under section 412 of this title.

AMENDMENTS

2006—Pub. L. 109–280, title II, §§212(d), 221(c), Aug. 17, 2006, 120 Stat. 917, 919, temporarily added item 432. See Effective and Termination Dates of 2006 Amendment note set out under section 412 of this title.

[1] Editorially supplied. Section 431 added by Pub. L. 109–280 without corresponding amendment of subpart analysis.

[2] Editorially supplied. Section 433 added by Pub. L. 113–97 without corresponding amendment of subpart analysis.

§430. Minimum funding standards for single-employer defined benefit pension plans

(a) Minimum required contribution

For purposes of this section and section 412(a)(2)(A), except as provided in subsection (f), the term "minimum required contribution" means, with respect to any plan year of a defined benefit plan which is not a multiemployer plan—

(1) in any case in which the value of plan assets of the plan (as reduced under subsection (f)(4)(B)) is less than the funding target of the plan for the plan year, the sum of—

(A) the target normal cost of the plan for the plan year,

(B) the shortfall amortization charge (if any) for the plan for the plan year determined under subsection (c), and

(C) the waiver amortization charge (if any) for the plan for the plan year as determined under subsection (e);

(2) in any case in which the value of plan assets of the plan (as reduced under subsection (f)(4)(B)) equals or exceeds the funding target of the plan for the plan year, the target normal cost of the plan for the plan year reduced (but not below zero) by such excess.

(b) Target normal cost

For purposes of this section:

(1) In general

Except as provided in subsection (i)(2) with respect to plans in at-risk status, the term "target normal cost" means, for any plan year, the excess of—

(A) the sum of—

(i) the present value of all benefits which are expected to accrue or to be earned under the plan during the plan year, plus

(ii) the amount of plan-related expenses expected to be paid from plan assets during the plan year, over

(B) the amount of mandatory employee contributions expected to be made during the plan year.

(2) Special rule for increase in compensation

For purposes of this subsection, if any benefit attributable to services performed in a preceding plan year is increased by reason of any increase in compensation during the current plan year, the increase in such benefit shall be treated as having accrued during the current plan year.

(c) Shortfall amortization charge

(1) In general

For purposes of this section, the shortfall amortization charge for a plan for any plan year is the aggregate total (not less than zero) of the shortfall amortization installments for such plan year with respect to any shortfall amortization base which has not been fully amortized under this subsection.

(2) Shortfall amortization installment

For purposes of paragraph (1)—

(A) Determination

The shortfall amortization installments are the amounts necessary to amortize the shortfall amortization base of the plan for any plan year in level annual installments over the 7-plan-year period beginning with such plan year.

(B) Shortfall installment

The shortfall amortization installment for any plan year in the 7-plan-year period under subparagraph (A) with respect to any shortfall amortization base is the annual installment determined under subparagraph (A) for that year for that base.

(C) Segment rates

In determining any shortfall amortization installment under this paragraph, the plan sponsor shall use the segment rates determined under subparagraph (C) of subsection (h)(2), applied under rules similar to the rules of subparagraph (B) of subsection (h)(2).

(D) Special election for eligible plan years

(i) In general

If a plan sponsor elects to apply this subparagraph with respect to the shortfall amortization base of a plan for any eligible plan year (in this subparagraph and paragraph (7) referred to as an "election year"), then, notwithstanding subparagraphs (A) and (B)—

(I) the shortfall amortization installments with respect to such base shall be determined under clause (ii) or (iii), whichever is specified in the election, and

(II) the shortfall amortization installment for any plan year in the 9-plan-year period described in clause (ii) or the 15-plan-year period described in clause (iii), respectively, with respect to such shortfall amortization base is the annual installment determined under the applicable clause for that year for that base.

(ii) 2 plus 7 amortization schedule

The shortfall amortization installments determined under this clause are—

(I) in the case of the first 2 plan years in the 9-plan-year period beginning with the election year, interest on the shortfall amortization base of the plan for the election year (determined using the effective interest rate for the plan for the election year), and

(II) in the case of the last 7 plan years in such 9-plan-year period, the amounts necessary to amortize the remaining balance of the shortfall amortization base of the plan for the election year in level annual installments over such last 7 plan years (using the segment rates under subparagraph (C) for the election year).

(iii) 15-year amortization

The shortfall amortization installments determined under this subparagraph are the amounts necessary to amortize the shortfall amortization base of the plan for the election year in level annual installments over the 15-plan-year period beginning with the election year (using the segment rates under subparagraph (C) for the election year).

(iv) Election

(I) In general

The plan sponsor of a plan may elect to have this subparagraph apply to not more than 2 eligible plan years with respect to the plan, except that in the case of a plan described in section 106 of the Pension Protection Act of 2006, the plan sponsor may only elect to have this subparagraph apply to a plan year beginning in 2011.

(II) Amortization schedule

Such election shall specify whether the amortization schedule under clause (ii) or (iii) shall apply to an election year, except that if a plan sponsor elects to have this subparagraph apply to 2 eligible plan years, the plan sponsor must elect the same schedule for both years.

(III) Other rules

Such election shall be made at such time, and in such form and manner, as shall be prescribed by the Secretary, and may be revoked only with the consent of the Secretary. The Secretary shall, before granting a revocation request, provide the Pension Benefit Guaranty Corporation an opportunity to comment on the conditions applicable to the treatment of any portion of the election year shortfall amortization base that remains unamortized as of the revocation date.

(v) Eligible plan year

For purposes of this subparagraph, the term "eligible plan year" means any plan year beginning in 2008, 2009, 2010, or 2011, except that a plan year shall only be treated as an eligible plan year if the due date under subsection (j)(1) for the payment of the minimum required contribution for such plan year occurs on or after the date of the enactment of this subparagraph.

(vi) Reporting

A plan sponsor of a plan who makes an election under clause (i) shall—

(I) give notice of the election to participants and beneficiaries of the plan, and

(II) inform the Pension Benefit Guaranty Corporation of such election in such form and manner as the Director of the Pension Benefit Guaranty Corporation may prescribe.

(vii) Increases in required installments in certain cases

For increases in required contributions in cases of excess compensation or extraordinary dividends or stock redemptions, see paragraph (7).

(3) Shortfall amortization base

For purposes of this section, the shortfall amortization base of a plan for a plan year is—

(A) the funding shortfall of such plan for such plan year, minus

(B) the present value (determined using the segment rates determined under subparagraph (C) of subsection (h)(2), applied under rules similar to the rules of subparagraph (B) of subsection (h)(2)) of the aggregate total of the shortfall amortization installments and waiver amortization installments which have been determined for such plan year and any succeeding plan year with respect to the shortfall amortization bases and waiver amortization bases of the plan for any plan year preceding such plan year.

(4) Funding shortfall

For purposes of this section, the funding shortfall of a plan for any plan year is the excess (if any) of—

(A) the funding target of the plan for the plan year, over

(B) the value of plan assets of the plan (as reduced under subsection (f)(4)(B)) for the plan year which are held by the plan on the valuation date.

(5) Exemption from new shortfall amortization base

(A) In general

In any case in which the value of plan assets of the plan (as reduced under subsection (f)(4)(A)) is equal to or greater than the funding target of the plan for the plan year, the shortfall amortization base of the plan for such plan year shall be zero.

(B) Transition rule

(i) In general

Except as provided in clause (iii), in the case of plan years beginning after 2007 and before 2011, only the applicable percentage of the funding target shall be taken into account under paragraph (3)(A) in determining the funding shortfall for purposes of paragraph (3)(A) and subparagraph (A).

(ii) Applicable percentage

For purposes of subparagraph (A), the applicable percentage shall be determined in accordance with the following table:

In the case of a plan year beginning in calendar year:	The applicable percentage is
2008	92
2009	94
2010	96.

(iii) Transition relief not available for new or deficit reduction plans

Clause (i) shall not apply to a plan—

(I) which was not in effect for a plan year beginning in 2007, or

(II) which was in effect for a plan year beginning in 2007 and which was subject to section 412(l) (as in effect for plan years beginning in 2007) for such year, determined after the application of paragraphs (6) and (9) thereof.

(6) Early deemed amortization upon attainment of funding target

In any case in which the funding shortfall of a plan for a plan year is zero, for purposes of determining the shortfall amortization charge for such plan year and succeeding plan years, the shortfall amortization bases for all preceding plan years (and all shortfall amortization installments determined with respect to such bases) shall be reduced to zero.

(7) Increases in alternate required installments in cases of excess compensation or extraordinary dividends or stock redemptions

(A) In general

If there is an installment acceleration amount with respect to a plan for any plan year in the restriction period with respect to an election year under paragraph (2)(D), then the shortfall amortization installment otherwise determined and payable under such paragraph for such plan year shall, subject to the limitation under subparagraph (B), be increased by such amount.

(B) Total installments limited to shortfall base

Subject to rules prescribed by the Secretary, if a shortfall amortization installment with respect to any shortfall amortization base for an election year is required to be increased for any

plan year under subparagraph (A)—

(i) such increase shall not result in the amount of such installment exceeding the present value of such installment and all succeeding installments with respect to such base (determined without regard to such increase but after application of clause (ii)), and

(ii) subsequent shortfall amortization installments with respect to such base shall, in reverse order of the otherwise required installments, be reduced to the extent necessary to limit the present value of such subsequent shortfall amortization installments (after application of this paragraph) to the present value of the remaining unamortized shortfall amortization base.

(C) Installment acceleration amount

For purposes of this paragraph—

(i) In general

The term "installment acceleration amount" means, with respect to any plan year in a restriction period with respect to an election year, the sum of—

(I) the aggregate amount of excess employee compensation determined under subparagraph (D) with respect to all employees for the plan year, plus

(II) the aggregate amount of extraordinary dividends and redemptions determined under subparagraph (E) for the plan year.

(ii) Annual limitation

The installment acceleration amount for any plan year shall not exceed the excess (if any) of—

(I) the sum of the shortfall amortization installments for the plan year and all preceding plan years in the amortization period elected under paragraph (2)(D) with respect to the shortfall amortization base with respect to an election year, determined without regard to paragraph (2)(D) and this paragraph, over

(II) the sum of the shortfall amortization installments for such plan year and all such preceding plan years, determined after application of paragraph (2)(D) (and in the case of any preceding plan year, after application of this paragraph).

(iii) Carryover of excess installment acceleration amounts

(I) In general

If the installment acceleration amount for any plan year (determined without regard to clause (ii)) exceeds the limitation under clause (ii), then, subject to subclause (II), such excess shall be treated as an installment acceleration amount with respect to the succeeding plan year.

(II) Cap to apply

If any amount treated as an installment acceleration amount under subclause (I) or this subclause with respect any succeeding plan year, when added to other installment acceleration amounts (determined without regard to clause (ii)) with respect to the plan year, exceeds the limitation under clause (ii), the portion of such amount representing such excess shall be treated as an installment acceleration amount with respect to the next succeeding plan year.

(III) Limitation on years to which amounts carried for

No amount shall be carried under subclause (I) or (II) to a plan year which begins after the first plan year following the last plan year in the restriction period (or after the second plan year following such last plan year in the case of an election year with respect to which 15-year amortization was elected under paragraph (2)(D)).

(IV) Ordering rules

For purposes of applying subclause (II), installment acceleration amounts for the plan year (determined without regard to any carryover under this clause) shall be applied first

against the limitation under clause (ii) and then carryovers to such plan year shall be applied against such limitation on a first-in, first-out basis.

(D) Excess employee compensation

For purposes of this paragraph—

(i) In general

The term "excess employee compensation" means, with respect to any employee for any plan year, the excess (if any) of—

(I) the aggregate amount includible in income under this chapter for remuneration during the calendar year in which such plan year begins for services performed by the employee for the plan sponsor (whether or not performed during such calendar year), over

(II) $1,000,000.

(ii) Amounts set aside for nonqualified deferred compensation

If during any calendar year assets are set aside or reserved (directly or indirectly) in a trust (or other arrangement as determined by the Secretary), or transferred to such a trust or other arrangement, by a plan sponsor for purposes of paying deferred compensation of an employee under a nonqualified deferred compensation plan (as defined in section 409A) of the plan sponsor, then, for purposes of clause (i), the amount of such assets shall be treated as remuneration of the employee includible in income for the calendar year unless such amount is otherwise includible in income for such year. An amount to which the preceding sentence applies shall not be taken into account under this paragraph for any subsequent calendar year.

(iii) Only remuneration for certain post-2009 services counted

Remuneration shall be taken into account under clause (i) only to the extent attributable to services performed by the employee for the plan sponsor after February 28, 2010.

(iv) Exception for certain equity payments

(I) In general

There shall not be taken into account under clause (i)(I) any amount includible in income with respect to the granting after February 28, 2010, of service recipient stock (within the meaning of section 409A) that, upon such grant, is subject to a substantial risk of forfeiture (as defined under section 83(c)(1)) for at least 5 years from the date of such grant.

(II) Secretarial authority

The Secretary may by regulation provide for the application of this clause in the case of a person other than a corporation.

(v) Other exceptions

The following amounts includible in income shall not be taken into account under clause (i)(I):

(I) Commissions

Any remuneration payable on a commission basis solely on account of income directly generated by the individual performance of the individual to whom such remuneration is payable.

(II) Certain payments under existing contracts

Any remuneration consisting of nonqualified deferred compensation, restricted stock, stock options, or stock appreciation rights payable or granted under a written binding contract that was in effect on March 1, 2010, and which was not modified in any material respect before such remuneration is paid.

(vi) Self-employed individual treated as employee

The term "employee" includes, with respect to a calendar year, a self-employed individual

who is treated as an employee under section 401(c) for the taxable year ending during such calendar year, and the term "compensation" shall include earned income of such individual with respect to such self-employment.

(vii) Indexing of amount

In the case of any calendar year beginning after 2010, the dollar amount under clause (i)(II) shall be increased by an amount equal to—

(I) such dollar amount, multiplied by

(II) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year, determined by substituting "calendar year 2009" for "calendar year 1992" in subparagraph (B) thereof.

If the amount of any increase under clause (i) is not a multiple of $1,000, such increase shall be rounded to the next lowest multiple of $1,000.

(E) Extraordinary dividends and redemptions

(i) In general

The amount determined under this subparagraph for any plan year is the excess (if any) of the sum of the dividends declared during the plan year by the plan sponsor plus the aggregate amount paid for the redemption of stock of the plan sponsor redeemed during the plan year over the greater of—

(I) the adjusted net income (within the meaning of section 4043 of the Employee Retirement Income Security Act of 1974) of the plan sponsor for the preceding plan year, determined without regard to any reduction by reason of interest, taxes, depreciation, or amortization, or

(II) in the case of a plan sponsor that determined and declared dividends in the same manner for at least 5 consecutive years immediately preceding such plan year, the aggregate amount of dividends determined and declared for such plan year using such manner.

(ii) Only certain post-2009 dividends and redemptions counted

For purposes of clause (i), there shall only be taken into account dividends declared, and redemptions occurring, after February 28, 2010.

(iii) Exception for intra-group dividends

Dividends paid by one member of a controlled group (as defined in section 412(d)(3)) to another member of such group shall not be taken into account under clause (i).

(iv) Exception for certain redemptions

Redemptions that are made pursuant to a plan maintained with respect to employees, or that are made on account of the death, disability, or termination of employment of an employee or shareholder, shall not be taken into account under clause (i).

(v) Exception for certain preferred stock

(I) In general

Dividends and redemptions with respect to applicable preferred stock shall not be taken into account under clause (i) to the extent that dividends accrue with respect to such stock at a specified rate in all events and without regard to the plan sponsor's income, and interest accrues on any unpaid dividends with respect to such stock.

(II) Applicable preferred stock

For purposes of subclause (I), the term "applicable preferred stock" means preferred stock which was issued before March 1, 2010 (or which was issued after such date and is held by an employee benefit plan subject to the provisions of title I of [1] Employee Retirement Income Security Act of 1974).

(F) Other definitions and rules

For purposes of this paragraph—

(i) Plan sponsor

The term "plan sponsor" includes any member of the plan sponsor's controlled group (as defined in section 412(d)(3)).

(ii) Restriction period

The term "restriction period" means, with respect to any election year—

(I) except as provided in subclause (II), the 3-year period beginning with the election year (or, if later, the first plan year beginning after December 31, 2009), and

(II) if the plan sponsor elects 15-year amortization for the shortfall amortization base for the election year, the 5-year period beginning with the election year (or, if later, the first plan year beginning after December 31, 2009).

(iii) Elections for multiple plans

If a plan sponsor makes elections under paragraph (2)(D) with respect to 2 or more plans, the Secretary shall provide rules for the application of this paragraph to such plans, including rules for the ratable allocation of any installment acceleration amount among such plans on the basis of each plan's relative reduction in the plan's shortfall amortization installment for the first plan year in the amortization period described in subparagraph (A) (determined without regard to this paragraph).

(iv) Mergers and acquisitions

The Secretary shall prescribe rules for the application of paragraph (2)(D) and this paragraph in any case where there is a merger or acquisition involving a plan sponsor making the election under paragraph (2)(D).

(d) Rules relating to funding target

For purposes of this section—

(1) Funding target

Except as provided in subsection (i)(1) with respect to plans in at-risk status, the funding target of a plan for a plan year is the present value of all benefits accrued or earned under the plan as of the beginning of the plan year.

(2) Funding target attainment percentage

The "funding target attainment percentage" of a plan for a plan year is the ratio (expressed as a percentage) which—

(A) the value of plan assets for the plan year (as reduced under subsection (f)(4)(B)), bears to

(B) the funding target of the plan for the plan year (determined without regard to subsection (i)(1)).

(e) Waiver amortization charge

(1) Determination of waiver amortization charge

The waiver amortization charge (if any) for a plan for any plan year is the aggregate total of the waiver amortization installments for such plan year with respect to the waiver amortization bases for each of the 5 preceding plan years.

(2) Waiver amortization installment

For purposes of paragraph (1)—

(A) Determination

The waiver amortization installments are the amounts necessary to amortize the waiver amortization base of the plan for any plan year in level annual installments over a period of 5 plan years beginning with the succeeding plan year.

(B) Waiver installment

The waiver amortization installment for any plan year in the 5-year period under subparagraph (A) with respect to any waiver amortization base is the annual installment determined under subparagraph (A) for that year for that base.

(3) Interest rate

In determining any waiver amortization installment under this subsection, the plan sponsor shall use the segment rates determined under subparagraph (C) of subsection (h)(2), applied under rules similar to the rules of subparagraph (B) of subsection (h)(2).

(4) Waiver amortization base

The waiver amortization base of a plan for a plan year is the amount of the waived funding deficiency (if any) for such plan year under section 412(c).

(5) Early deemed amortization upon attainment of funding target

In any case in which the funding shortfall of a plan for a plan year is zero, for purposes of determining the waiver amortization charge for such plan year and succeeding plan years, the waiver amortization bases for all preceding plan years (and all waiver amortization installments determined with respect to such bases) shall be reduced to zero.

(f) Reduction of minimum required contribution by prefunding balance and funding standard carryover balance

(1) Election to maintain balances

(A) Prefunding balance

The plan sponsor of a defined benefit plan which is not a multiemployer plan may elect to maintain a prefunding balance.

(B) Funding standard carryover balance

(i) In general

In the case of a defined benefit plan (other than a multiemployer plan) described in clause (ii), the plan sponsor may elect to maintain a funding standard carryover balance, until such balance is reduced to zero.

(ii) Plans maintaining funding standard account in 2007

A plan is described in this clause if the plan—

(I) was in effect for a plan year beginning in 2007, and

(II) had a positive balance in the funding standard account under section 412(b) as in effect for such plan year and determined as of the end of such plan year.

(2) Application of balances

A prefunding balance and a funding standard carryover balance maintained pursuant to this paragraph—

(A) shall be available for crediting against the minimum required contribution, pursuant to an election under paragraph (3),

(B) shall be applied as a reduction in the amount treated as the value of plan assets for purposes of this section, to the extent provided in paragraph (4), and

(C) may be reduced at any time, pursuant to an election under paragraph (5).

(3) Election to apply balances against minimum required contribution

(A) In general

Except as provided in subparagraphs (B) and (C), in the case of any plan year in which the plan sponsor elects to credit against the minimum required contribution for the current plan year all or a portion of the prefunding balance or the funding standard carryover balance for the current plan year (not in excess of such minimum required contribution), the minimum required contribution for the plan year shall be reduced as of the first day of the plan year by the amount

so credited by the plan sponsor. For purposes of the preceding sentence, the minimum required contribution shall be determined after taking into account any waiver under section 412(c).

(B) Coordination with funding standard carryover balance

To the extent that any plan has a funding standard carryover balance greater than zero, no amount of the prefunding balance of such plan may be credited under this paragraph in reducing the minimum required contribution.

(C) Limitation for underfunded plans

The preceding provisions of this paragraph shall not apply for any plan year if the ratio (expressed as a percentage) which—

(i) the value of plan assets for the preceding plan year (as reduced under paragraph (4)(C)), bears to

(ii) the funding target of the plan for the preceding plan year (determined without regard to subsection (i)(1)),

is less than 80 percent. In the case of plan years beginning in 2008, the ratio under this subparagraph may be determined using such methods of estimation as the Secretary may prescribe.

(D) Special rule for certain years of plans maintained by charities

(i) In general

For purposes of applying subparagraph (C) for plan years beginning after August 31, 2009, and before September 1, 2011, the ratio determined under such subparagraph for the preceding plan year of a plan shall be the greater of—

(I) such ratio, as determined without regard to this subsection, or

(II) the ratio for such plan for the plan year beginning after August 31, 2007 and before September 1, 2008, as determined under rules prescribed by the Secretary.

(ii) Special rule

In the case of a plan for which the valuation date is not the first day of the plan year—

(I) clause (i) shall apply to plan years beginning after December 31, 2007, and before January 1, 2010, and

(II) clause (i)(II) shall apply based on the last plan year beginning before September 1, 2007, as determined under rules prescribed by the Secretary.

(iii) Limitation to charities

This subparagraph shall not apply to any plan unless such plan is maintained exclusively by one or more organizations described in section 501(c)(3).

(4) Effect of balances on amounts treated as value of plan assets

In the case of any plan maintaining a prefunding balance or a funding standard carryover balance pursuant to this subsection, the amount treated as the value of plan assets shall be deemed to be such amount, reduced as provided in the following subparagraphs:

(A) Applicability of shortfall amortization base

For purposes of subsection (c)(5), the value of plan assets is deemed to be such amount, reduced by the amount of the prefunding balance, but only if an election under paragraph (3) applying any portion of the prefunding balance in reducing the minimum required contribution is in effect for the plan year.

(B) Determination of excess assets, funding shortfall, and funding target attainment percentage

(i) In general

For purposes of subsections (a), (c)(4)(B), and (d)(2)(A), the value of plan assets is deemed to be such amount, reduced by the amount of the prefunding balance and the funding

standard carryover balance.

(ii) Special rule for certain binding agreements with PBGC

For purposes of subsection (c)(4)(B), the value of plan assets shall not be deemed to be reduced for a plan year by the amount of the specified balance if, with respect to such balance, there is in effect for a plan year a binding written agreement with the Pension Benefit Guaranty Corporation which provides that such balance is not available to reduce the minimum required contribution for the plan year. For purposes of the preceding sentence, the term "specified balance" means the prefunding balance or the funding standard carryover balance, as the case may be.

(C) Availability of balances in plan year for crediting against minimum required contribution

For purposes of paragraph (3)(C)(i) of this subsection, the value of plan assets is deemed to be such amount, reduced by the amount of the prefunding balance.

(5) Election to reduce balance prior to determinations of value of plan assets and crediting against minimum required contribution

(A) In general

The plan sponsor may elect to reduce by any amount the balance of the prefunding balance and the funding standard carryover balance for any plan year (but not below zero). Such reduction shall be effective prior to any determination of the value of plan assets for such plan year under this section and application of the balance in reducing the minimum required contribution for such plan for such plan year pursuant to an election under paragraph (2).

(B) Coordination between prefunding balance and funding standard carryover balance

To the extent that any plan has a funding standard carryover balance greater than zero, no election may be made under subparagraph (A) with respect to the prefunding balance.

(6) Prefunding balance

(A) In general

A prefunding balance maintained by a plan shall consist of a beginning balance of zero, increased and decreased to the extent provided in subparagraphs (B) and (C), and adjusted further as provided in paragraph (8).

(B) Increases

(i) In general

As of the first day of each plan year beginning after 2008, the prefunding balance of a plan shall be increased by the amount elected by the plan sponsor for the plan year. Such amount shall not exceed the excess (if any) of—

(I) the aggregate total of employer contributions to the plan for the preceding plan year, over—

(II) the minimum required contribution for such preceding plan year.

(ii) Adjustments for interest

Any excess contributions under clause (i) shall be properly adjusted for interest accruing for the periods between the first day of the current plan year and the dates on which the excess contributions were made, determined by using the effective interest rate for the preceding plan year and by treating contributions as being first used to satisfy the minimum required contribution.

(iii) Certain contributions necessary to avoid benefit limitations disregarded

The excess described in clause (i) with respect to any preceding plan year shall be reduced (but not below zero) by the amount of contributions an employer would be required to make under subsection (b), (c), or (e) of section 436 to avoid a benefit limitation which would

otherwise be imposed under such paragraph for the preceding plan year. Any contribution which may be taken into account in satisfying the requirements of more than 1 of such paragraphs shall be taken into account only once for purposes of this clause.

(C) Decreases

The prefunding balance of a plan shall be decreased (but not below zero) by—

(i) as of the first day of each plan year after 2008, the amount of such balance credited under paragraph (2) (if any) in reducing the minimum required contribution of the plan for the preceding plan year, and

(ii) as of the time specified in paragraph (5)(A), any reduction in such balance elected under paragraph (5).

(7) Funding standard carryover balance

(A) In general

A funding standard carryover balance maintained by a plan shall consist of a beginning balance determined under subparagraph (B), decreased to the extent provided in subparagraph (C), and adjusted further as provided in paragraph (8).

(B) Beginning balance

The beginning balance of the funding standard carryover balance shall be the positive balance described in paragraph (1)(B)(ii)(II).

(C) Decreases

The funding standard carryover balance of a plan shall be decreased (but not below zero) by—

(i) as of the first day of each plan year after 2008, the amount of such balance credited under paragraph (2) (if any) in reducing the minimum required contribution of the plan for the preceding plan year, and

(ii) as of the time specified in paragraph (5)(A), any reduction in such balance elected under paragraph (5).

(8) Adjustments for investment experience

In determining the prefunding balance or the funding standard carryover balance of a plan as of the first day of the plan year, the plan sponsor shall, in accordance with regulations prescribed by the Secretary, adjust such balance to reflect the rate of return on plan assets for the preceding plan year. Notwithstanding subsection (g)(3), such rate of return shall be determined on the basis of fair market value and shall properly take into account, in accordance with such regulations, all contributions, distributions, and other plan payments made during such period.

(9) Elections

Elections under this subsection shall be made at such times, and in such form and manner, as shall be prescribed in regulations of the Secretary.

(g) Valuation of plan assets and liabilities

(1) Timing of determinations

Except as otherwise provided under this subsection, all determinations under this section for a plan year shall be made as of the valuation date of the plan for such plan year.

(2) Valuation date

For purposes of this section—

(A) In general

Except as provided in subparagraph (B), the valuation date of a plan for any plan year shall be the first day of the plan year.

(B) Exception for small plans

If, on each day during the preceding plan year, a plan had 100 or fewer participants, the plan may designate any day during the plan year as its valuation date for such plan year and succeeding plan years. For purposes of this subparagraph, all defined benefit plans (other than multiemployer plans) maintained by the same employer (or any member of such employer's controlled group) shall be treated as 1 plan, but only participants with respect to such employer or member shall be taken into account.

(C) Application of certain rules in determination of plan size

For purposes of this paragraph—

(i) Plans not in existence in preceding year

In the case of the first plan year of any plan, subparagraph (B) shall apply to such plan by taking into account the number of participants that the plan is reasonably expected to have on days during such first plan year.

(ii) Predecessors

Any reference in subparagraph (B) to an employer shall include a reference to any predecessor of such employer.

(3) Determination of value of plan assets

For purposes of this section—

(A) In general

Except as provided in subparagraph (B), the value of plan assets shall be the fair market value of the assets.

(B) Averaging allowed

A plan may determine the value of plan assets on the basis of the averaging of fair market values, but only if such method—

(i) is permitted under regulations prescribed by the Secretary,

(ii) does not provide for averaging of such values over more than the period beginning on the last day of the 25th month preceding the month in which the valuation date occurs and ending on the valuation date (or a similar period in the case of a valuation date which is not the 1st day of a month), and

(iii) does not result in a determination of the value of plan assets which, at any time, is lower than 90 percent or greater than 110 percent of the fair market value of such assets at such time.

Any such averaging shall be adjusted for contributions, distributions, and expected earnings (as determined by the plan's actuary on the basis of an assumed earnings rate specified by the actuary but not in excess of the third segment rate applicable under subsection (h)(2)(C)(iii)), as specified by the Secretary.

(4) Accounting for contribution receipts

For purposes of determining the value of assets under paragraph (3)—

(A) Prior year contributions

If—

(i) an employer makes any contribution to the plan after the valuation date for the plan year in which the contribution is made, and

(ii) the contribution is for a preceding plan year,

the contribution shall be taken into account as an asset of the plan as of the valuation date, except that in the case of any plan year beginning after 2008, only the present value (determined as of the valuation date) of such contribution may be taken into account. For purposes of the preceding sentence, present value shall be determined using the effective interest rate for the preceding plan year to which the contribution is properly allocable.

(B) Special rule for current year contributions made before valuation date

If any contributions for any plan year are made to or under the plan during the plan year but before the valuation date for the plan year, the assets of the plan as of the valuation date shall not include—

(i) such contributions, and

(ii) interest on such contributions for the period between the date of the contributions and the valuation date, determined by using the effective interest rate for the plan year.

(h) Actuarial assumptions and methods

(1) In general

Subject to this subsection, the determination of any present value or other computation under this section shall be made on the basis of actuarial assumptions and methods—

(A) each of which is reasonable (taking into account the experience of the plan and reasonable expectations), and

(B) which, in combination, offer the actuary's best estimate of anticipated experience under the plan.

(2) Interest rates

(A) Effective interest rate

For purposes of this section, the term "effective interest rate" means, with respect to any plan for any plan year, the single rate of interest which, if used to determine the present value of the plan's accrued or earned benefits referred to in subsection (d)(1), would result in an amount equal to the funding target of the plan for such plan year.

(B) Interest rates for determining funding target

For purposes of determining the funding target and target normal cost of a plan for any plan year, the interest rate used in determining the present value of the benefits of the plan shall be—

(i) in the case of benefits reasonably determined to be payable during the 5-year period beginning on the valuation date for the plan year, the first segment rate with respect to the applicable month,

(ii) in the case of benefits reasonably determined to be payable during the 15-year period beginning at the end of the period described in clause (i), the second segment rate with respect to the applicable month, and

(iii) in the case of benefits reasonably determined to be payable after the period described in clause (ii), the third segment rate with respect to the applicable month.

(C) Segment rates

For purposes of this paragraph—

(i) First segment rate

The term "first segment rate" means, with respect to any month, the single rate of interest which shall be determined by the Secretary for such month on the basis of the corporate bond yield curve for such month, taking into account only that portion of such yield curve which is based on bonds maturing during the 5-year period commencing with such month.

(ii) Second segment rate

The term "second segment rate" means, with respect to any month, the single rate of interest which shall be determined by the Secretary for such month on the basis of the corporate bond yield curve for such month, taking into account only that portion of such yield curve which is based on bonds maturing during the 15-year period beginning at the end of the period described in clause (i).

(iii) Third segment rate

The term "third segment rate" means, with respect to any month, the single rate of interest which shall be determined by the Secretary for such month on the basis of the corporate bond

yield curve for such month, taking into account only that portion of such yield curve which is based on bonds maturing during periods beginning after the period described in clause (ii).

(iv) Segment rate stabilization

(I) In general

If a segment rate described in clause (i), (ii), or (iii) with respect to any applicable month (determined without regard to this clause) is less than the applicable minimum percentage, or more than the applicable maximum percentage, of the average of the segment rates described in such clause for years in the 25-year period ending with September 30 of the calendar year preceding the calendar year in which the plan year begins, then the segment rate described in such clause with respect to the applicable month shall be equal to the applicable minimum percentage or the applicable maximum percentage of such average, whichever is closest. The Secretary shall determine such average on an annual basis and may prescribe equivalent rates for years in any such 25-year period for which the rates described in any such clause are not available.

(II) Applicable minimum percentage; applicable maximum percentage

For purposes of subclause (I), the applicable minimum percentage and the applicable maximum percentage for a plan year beginning in a calendar year shall be determined in accordance with the following table:

If the calendar year is:	The applicable minimum percentage is:	The applicable maximum percentage is:
2012, 2013, 2014, 2015, 2016, or 2017	90%	110%
2018	85%	115%
2019	80%	120%
2020	75%	125%
After 2020	70%	130%.

(D) Corporate bond yield curve

For purposes of this paragraph—

(i) In general

The term "corporate bond yield curve" means, with respect to any month, a yield curve which is prescribed by the Secretary for such month and which reflects the average, for the 24-month period ending with the month preceding such month, of monthly yields on investment grade corporate bonds with varying maturities and that are in the top 3 quality levels available.

(ii) Election to use yield curve

Solely for purposes of determining the minimum required contribution under this section, the plan sponsor may, in lieu of the segment rates determined under subparagraph (C), elect to use interest rates under the corporate bond yield curve. For purposes of the preceding sentence such curve shall be determined without regard to the 24-month averaging described in clause (i). Such election, once made, may be revoked only with the consent of the Secretary.

(E) Applicable month

For purposes of this paragraph, the term "applicable month" means, with respect to any plan for any plan year, the month which includes the valuation date of such plan for such plan year or, at the election of the plan sponsor, any of the 4 months which precede such month. Any

election made under this subparagraph shall apply to the plan year for which the election is made and all succeeding plan years, unless the election is revoked with the consent of the Secretary.

(F) Publication requirements

The Secretary shall publish for each month the corporate bond yield curve (and the corporate bond yield curve reflecting the modification described in section 417(e)(3)(D)(i) for such month) and each of the rates determined under subparagraph (C) and the averages determined under subparagraph (C)(iv) for such month. The Secretary shall also publish a description of the methodology used to determine such yield curve and such rates which is sufficiently detailed to enable plans to make reasonable projections regarding the yield curve and such rates for future months based on the plan's projection of future interest rates.

(G) Transition rule

(i) In general

Notwithstanding the preceding provisions of this paragraph, for plan years beginning in 2008 or 2009, the first, second, or third segment rate for a plan with respect to any month shall be equal to the sum of—

(I) the product of such rate for such month determined without regard to this subparagraph, multiplied by the applicable percentage, and

(II) the product of the rate determined under the rules of section 412(b)(5)(B)(ii)(II) (as in effect for plan years beginning in 2007), multiplied by a percentage equal to 100 percent minus the applicable percentage.

(ii) Applicable percentage

For purposes of clause (i), the applicable percentage is 331/3 percent for plan years beginning in 2008 and 662/3 percent for plan years beginning in 2009.

(iii) New plans ineligible

Clause (i) shall not apply to any plan if the first plan year of the plan begins after December 31, 2007.

(iv) Election

The plan sponsor may elect not to have this subparagraph apply. Such election, once made, may be revoked only with the consent of the Secretary.

(3) Mortality tables

(A) In general

Except as provided in subparagraph (C) or (D), the Secretary shall by regulation prescribe mortality tables to be used in determining any present value or making any computation under this section. Such tables shall be based on the actual experience of pension plans and projected trends in such experience. In prescribing such tables, the Secretary shall take into account results of available independent studies of mortality of individuals covered by pension plans.

(B) Periodic revision

The Secretary shall (at least every 10 years) make revisions in any table in effect under subparagraph (A) to reflect the actual experience of pension plans and projected trends in such experience.

(C) Substitute mortality table

(i) In general

Upon request by the plan sponsor and approval by the Secretary, a mortality table which meets the requirements of clause (iii) shall be used in determining any present value or making any computation under this section during the period of consecutive plan years (not to exceed 10) specified in the request.

(ii) Early termination of period

Notwithstanding clause (i), a mortality table described in clause (i) shall cease to be in effect as of the earliest of—

(I) the date on which there is a significant change in the participants in the plan by reason of a plan spinoff or merger or otherwise, or

(II) the date on which the plan actuary determines that such table does not meet the requirements of clause (iii).

(iii) Requirements

A mortality table meets the requirements of this clause if—

(I) there is a sufficient number of plan participants, and the pension plans have been maintained for a sufficient period of time, to have credible information necessary for purposes of subclause (II), and

(II) such table reflects the actual experience of the pension plans maintained by the sponsor and projected trends in general mortality experience.

(iv) All plans in controlled group must use separate table

Except as provided by the Secretary, a plan sponsor may not use a mortality table under this subparagraph for any plan maintained by the plan sponsor unless—

(I) a separate mortality table is established and used under this subparagraph for each other plan maintained by the plan sponsor and if the plan sponsor is a member of a controlled group, each member of the controlled group, and

(II) the requirements of clause (iii) are met separately with respect to the table so established for each such plan, determined by only taking into account the participants of such plan, the time such plan has been in existence, and the actual experience of such plan.

(v) Deadline for submission and disposition of application

(I) Submission

The plan sponsor shall submit a mortality table to the Secretary for approval under this subparagraph at least 7 months before the 1st day of the period described in clause (i).

(II) Disposition

Any mortality table submitted to the Secretary for approval under this subparagraph shall be treated as in effect as of the 1st day of the period described in clause (i) unless the Secretary, during the 180-day period beginning on the date of such submission, disapproves of such table and provides the reasons that such table fails to meet the requirements of clause (iii). The 180-day period shall be extended upon mutual agreement of the Secretary and the plan sponsor.

(D) Separate mortality tables for the disabled

Notwithstanding subparagraph (A)—

(i) In general

The Secretary shall establish mortality tables which may be used (in lieu of the tables under subparagraph (A)) under this subsection for individuals who are entitled to benefits under the plan on account of disability. The Secretary shall establish separate tables for individuals whose disabilities occur in plan years beginning before January 1, 1995, and for individuals whose disabilities occur in plan years beginning on or after such date.

(ii) Special rule for disabilities occurring after 1994

In the case of disabilities occurring in plan years beginning after December 31, 1994, the tables under clause (i) shall apply only with respect to individuals described in such subclause who are disabled within the meaning of title II of the Social Security Act and the regulations thereunder.

(iii) Periodic revision

The Secretary shall (at least every 10 years) make revisions in any table in effect under clause (i) to reflect the actual experience of pension plans and projected trends in such experience.

(4) Probability of benefit payments in the form of lump sums or other optional forms

For purposes of determining any present value or making any computation under this section, there shall be taken into account—

(A) the probability that future benefit payments under the plan will be made in the form of optional forms of benefits provided under the plan (including lump sum distributions, determined on the basis of the plan's experience and other related assumptions), and

(B) any difference in the present value of such future benefit payments resulting from the use of actuarial assumptions, in determining benefit payments in any such optional form of benefits, which are different from those specified in this subsection.

(5) Approval of large changes in actuarial assumptions

(A) In general

No actuarial assumption used to determine the funding target for a plan to which this paragraph applies may be changed without the approval of the Secretary.

(B) Plans to which paragraph applies

This paragraph shall apply to a plan only if—

(i) the plan is a defined benefit plan (other than a multiemployer plan) to which title IV of the Employee Retirement Income Security Act of 1974 applies,

(ii) the aggregate unfunded vested benefits as of the close of the preceding plan year (as determined under section 4006(a)(3)(E)(iii) of the Employee Retirement Income Security Act of 1974) of such plan and all other plans maintained by the contributing sponsors (as defined in section 4001(a)(13) of such Act) and members of such sponsors' controlled groups (as defined in section 4001(a)(14) of such Act) which are covered by title IV (disregarding plans with no unfunded vested benefits) exceed $50,000,000, and

(iii) the change in assumptions (determined after taking into account any changes in interest rate and mortality table) results in a decrease in the funding shortfall of the plan for the current plan year that exceeds $50,000,000, or that exceeds $5,000,000 and that is 5 percent or more of the funding target of the plan before such change.

(i) Special rules for at-risk plans

(1) Funding target for plans in at-risk status

(A) In general

In the case of a plan which is in at-risk status for a plan year, the funding target of the plan for the plan year shall be equal to the sum of—

(i) the present value of all benefits accrued or earned under the plan as of the beginning of the plan year, as determined by using the additional actuarial assumptions described in subparagraph (B), and

(ii) in the case of a plan which also has been in at-risk status for at least 2 of the 4 preceding plan years, a loading factor determined under subparagraph (C).

(B) Additional actuarial assumptions

The actuarial assumptions described in this subparagraph are as follows:

(i) All employees who are not otherwise assumed to retire as of the valuation date but who will be eligible to elect benefits during the plan year and the 10 succeeding plan years shall be assumed to retire at the earliest retirement date under the plan but not before the end of the plan year for which the at-risk funding target and at-risk target normal cost are being determined.

(ii) All employees shall be assumed to elect the retirement benefit available under the plan at the assumed retirement age (determined after application of clause (i)) which would result

in the highest present value of benefits.

(C) Loading factor

The loading factor applied with respect to a plan under this paragraph for any plan year is the sum of—

(i) $700, times the number of participants in the plan, plus

(ii) 4 percent of the funding target (determined without regard to this paragraph) of the plan for the plan year.

(2) Target normal cost of at-risk plans

In the case of a plan which is in at-risk status for a plan year, the target normal cost of the plan for such plan year shall be equal to the sum of—

(A) the excess of—

(i) the sum of—

(I) the present value of all benefits which are expected to accrue or to be earned under the plan during the plan year, determined using the additional actuarial assumptions described in paragraph (1)(B), plus

(II) the amount of plan-related expenses expected to be paid from plan assets during the plan year, over

(ii) the amount of mandatory employee contributions expected to be made during the plan year, plus

(B) in the case of a plan which also has been in at-risk status for at least 2 of the 4 preceding plan years, a loading factor equal to 4 percent of the amount determined under subsection (b)(1)(A)(i) with respect to the plan for the plan year.

(3) Minimum amount

In no event shall—

(A) the at-risk funding target be less than the funding target, as determined without regard to this subsection, or

(B) the at-risk target normal cost be less than the target normal cost, as determined without regard to this subsection.

(4) Determination of at-risk status

For purposes of this subsection—

(A) In general

A plan is in at-risk status for a plan year if—

(i) the funding target attainment percentage for the preceding plan year (determined under this section without regard to this subsection) is less than 80 percent, and

(ii) the funding target attainment percentage for the preceding plan year (determined under this section by using the additional actuarial assumptions described in paragraph (1)(B) in computing the funding target) is less than 70 percent.

(B) Transition rule

In the case of plan years beginning in 2008, 2009, and 2010, subparagraph (A)(i) shall be applied by substituting the following percentages for "80 percent":

(i) 65 percent in the case of 2008.

(ii) 70 percent in the case of 2009.

(iii) 75 percent in the case of 2010.

In the case of plan years beginning in 2008, the funding target attainment percentage for the preceding plan year under subparagraph (A) may be determined using such methods of estimation as the Secretary may provide.

(C) Special rule for employees offered early retirement in 2006

(i) In general

For purposes of subparagraph (A)(ii), the additional actuarial assumptions described in paragraph (1)(B) shall not be taken into account with respect to any employee if—

(I) such employee is employed by a specified automobile manufacturer,

(II) such employee is offered a substantial amount of additional cash compensation, substantially enhanced retirement benefits under the plan, or materially reduced employment duties on the condition that by a specified date (not later than December 31, 2010) the employee retires (as defined under the terms of the plan),

(III) such offer is made during 2006 and pursuant to a bona fide retirement incentive program and requires, by the terms of the offer, that such offer can be accepted not later than a specified date (not later than December 31, 2006), and

(IV) such employee does not elect to accept such offer before the specified date on which the offer expires.

(ii) Specified automobile manufacturer

For purposes of clause (i), the term "specified automobile manufacturer" means—

(I) any manufacturer of automobiles, and

(II) any manufacturer of automobile parts which supplies such parts directly to a manufacturer of automobiles and which, after a transaction or series of transactions ending in 1999, ceased to be a member of a controlled group which included such manufacturer of automobiles.

(5) Transition between applicable funding targets and between applicable target normal costs

(A) In general

In any case in which a plan which is in at-risk status for a plan year has been in such status for a consecutive period of fewer than 5 plan years, the applicable amount of the funding target and of the target normal cost shall be, in lieu of the amount determined without regard to this paragraph, the sum of—

(i) the amount determined under this section without regard to this subsection, plus

(ii) the transition percentage for such plan year of the excess of the amount determined under this subsection (without regard to this paragraph) over the amount determined under this section without regard to this subsection.

(B) Transition percentage

For purposes of subparagraph (A), the transition percentage shall be determined in accordance with the following table:

If the consecutive number of years (including the plan year) the plan is in at-risk status is—	The transition percentage is—
1	20
2	40
3	60
4	80.

(C) Years before effective date

For purposes of this paragraph, plan years beginning before 2008 shall not be taken into account.

(6) Small plan exception

If, on each day during the preceding plan year, a plan had 500 or fewer participants, the plan shall not be treated as in at-risk status for the plan year. For purposes of this paragraph, all defined benefit plans (other than multiemployer plans) maintained by the same employer (or any member of such employer's controlled group) shall be treated as 1 plan, but only participants with respect to such employer or member shall be taken into account and the rules of subsection (g)(2)(C) shall apply.

(j) Payment of minimum required contributions

(1) In general

For purposes of this section, the due date for any payment of any minimum required contribution for any plan year shall be 8½ months after the close of the plan year.

(2) Interest

Any payment required under paragraph (1) for a plan year that is made on a date other than the valuation date for such plan year shall be adjusted for interest accruing for the period between the valuation date and the payment date, at the effective rate of interest for the plan for such plan year.

(3) Accelerated quarterly contribution schedule for underfunded plans

(A) Failure to timely make required installment

In any case in which the plan has a funding shortfall for the preceding plan year, the employer maintaining the plan shall make the required installments under this paragraph and if the employer fails to pay the full amount of a required installment for the plan year, then the amount of interest charged under paragraph (2) on the underpayment for the period of underpayment shall be determined by using a rate of interest equal to the rate otherwise used under paragraph (2) plus 5 percentage points. In the case of plan years beginning in 2008, the funding shortfall for the preceding plan year may be determined using such methods of estimation as the Secretary may provide.

(B) Amount of underpayment, period of underpayment

For purposes of subparagraph (A)—

(i) Amount

The amount of the underpayment shall be the excess of—

(I) the required installment, over

(II) the amount (if any) of the installment contributed to or under the plan on or before the due date for the installment.

(ii) Period of underpayment

The period for which any interest is charged under this paragraph with respect to any portion of the underpayment shall run from the due date for the installment to the date on which such portion is contributed to or under the plan.

(iii) Order of crediting contributions

For purposes of clause (i)(II), contributions shall be credited against unpaid required installments in the order in which such installments are required to be paid.

(C) Number of required installments; due dates

For purposes of this paragraph—

(i) Payable in 4 installments

There shall be 4 required installments for each plan year.

(ii) Time for payment of installments

The due dates for required installments are set forth in the following table:

In the case of the following required installment:	The due date is:
1st	April 15
2nd	July 15
3rd	October 15
4th	January 15 of the following year.

(D) Amount of required installment

For purposes of this paragraph—

(i) In general

The amount of any required installment shall be 25 percent of the required annual payment.

(ii) Required annual payment

For purposes of clause (i), the term "required annual payment" means the lesser of—

(I) 90 percent of the minimum required contribution (determined without regard to this subsection) to the plan for the plan year under this section, or

(II) 100 percent of the minimum required contribution (determined without regard to this subsection or to any waiver under section 412(c)) to the plan for the preceding plan year.

Subclause (II) shall not apply if the preceding plan year referred to in such clause was not a year of 12 months.

(E) Fiscal years, short years, and years with alternate valuation date

(i) Fiscal years

In applying this paragraph to a plan year beginning on any date other than January 1, there shall be substituted for the months specified in this paragraph, the months which correspond thereto.

(ii) Short plan year

This subparagraph shall be applied to plan years of less than 12 months in accordance with regulations prescribed by the Secretary.

(iii) Plan with alternate valuation date

The Secretary shall prescribe regulations for the application of this paragraph in the case of a plan which has a valuation date other than the first day of the plan year.

(F) Quarterly contributions not to include certain increased contributions

Subparagraph (D) shall be applied without regard to any increase under subsection (c)(7).

(4) Liquidity requirement in connection with quarterly contributions

(A) In general

A plan to which this paragraph applies shall be treated as failing to pay the full amount of any required installment under paragraph (3) to the extent that the value of the liquid assets paid in such installment is less than the liquidity shortfall (whether or not such liquidity shortfall exceeds the amount of such installment required to be paid but for this paragraph).

(B) Plans to which paragraph applies

This paragraph shall apply to a plan (other than a plan described in subsection (g)(2)(B)) which—

(i) is required to pay installments under paragraph (3) for a plan year, and

(ii) has a liquidity shortfall for any quarter during such plan year.

(C) Period of underpayment

For purposes of paragraph (3)(A), any portion of an installment that is treated as not paid under subparagraph (A) shall continue to be treated as unpaid until the close of the quarter in which the due date for such installment occurs.

(D) Limitation on increase

If the amount of any required installment is increased by reason of subparagraph (A), in no event shall such increase exceed the amount which, when added to prior installments for the plan year, is necessary to increase the funding target attainment percentage of the plan for the plan year (taking into account the expected increase in funding target due to benefits accruing or earned during the plan year) to 100 percent.

(E) Definitions

For purposes of this paragraph—

(i) Liquidity shortfall

The term "liquidity shortfall" means, with respect to any required installment, an amount equal to the excess (as of the last day of the quarter for which such installment is made) of—

(I) the base amount with respect to such quarter, over

(II) the value (as of such last day) of the plan's liquid assets.

(ii) Base amount

(I) In general

The term "base amount" means, with respect to any quarter, an amount equal to 3 times the sum of the adjusted disbursements from the plan for the 12 months ending on the last day of such quarter.

(II) Special rule

If the amount determined under subclause (I) exceeds an amount equal to 2 times the sum of the adjusted disbursements from the plan for the 36 months ending on the last day of the quarter and an enrolled actuary certifies to the satisfaction of the Secretary that such excess is the result of nonrecurring circumstances, the base amount with respect to such quarter shall be determined without regard to amounts related to those nonrecurring circumstances.

(iii) Disbursements from the plan

The term "disbursements from the plan" means all disbursements from the trust, including purchases of annuities, payments of single sums and other benefits, and administrative expenses.

(iv) Adjusted disbursements

The term "adjusted disbursements" means disbursements from the plan reduced by the product of—

(I) the plan's funding target attainment percentage for the plan year, and

(II) the sum of the purchases of annuities, payments of single sums, and such other disbursements as the Secretary shall provide in regulations.

(v) Liquid assets

The term "liquid assets" means cash, marketable securities, and such other assets as specified by the Secretary in regulations.

(vi) Quarter

The term "quarter" means, with respect to any required installment, the 3-month period preceding the month in which the due date for such installment occurs.

(F) Regulations

The Secretary may prescribe such regulations as are necessary to carry out this paragraph.

(k) Imposition of lien where failure to make required contributions

(1) In general

In the case of a plan to which this subsection applies (as provided under paragraph (2)), if—

(A) any person fails to make a contribution payment required by section 412 and this section before the due date for such payment, and

(B) the unpaid balance of such payment (including interest), when added to the aggregate unpaid balance of all preceding such payments for which payment was not made before the due date (including interest), exceeds $1,000,000,

then there shall be a lien in favor of the plan in the amount determined under paragraph (3) upon all property and rights to property, whether real or personal, belonging to such person and any other person who is a member of the same controlled group of which such person is a member.

(2) Plans to which subsection applies

This subsection shall apply to a defined benefit plan (other than a multiemployer plan) covered under section 4021 of the Employee Retirement Income Security Act of 1974 for any plan year for which the funding target attainment percentage (as defined in subsection (d)(2)) of such plan is less than 100 percent.

(3) Amount of lien

For purposes of paragraph (1), the amount of the lien shall be equal to the aggregate unpaid balance of contribution payments required under this section and section 412 for which payment has not been made before the due date.

(4) Notice of failure; lien

(A) Notice of failure

A person committing a failure described in paragraph (1) shall notify the Pension Benefit Guaranty Corporation of such failure within 10 days of the due date for the required contribution payment.

(B) Period of lien

The lien imposed by paragraph (1) shall arise on the due date for the required contribution payment and shall continue until the last day of the first plan year in which the plan ceases to be described in paragraph (1)(B). Such lien shall continue to run without regard to whether such plan continues to be described in paragraph (2) during the period referred to in the preceding sentence.

(C) Certain rules to apply

Any amount with respect to which a lien is imposed under paragraph (1) shall be treated as taxes due and owing the United States and rules similar to the rules of subsections (c), (d), and (e) of section 4068 of the Employee Retirement Income Security Act of 1974 shall apply with respect to a lien imposed by subsection (a) and the amount with respect to such lien.

(5) Enforcement

Any lien created under paragraph (1) may be perfected and enforced only by the Pension Benefit Guaranty Corporation, or at the direction of the Pension Benefit Guaranty Corporation, by the contributing sponsor (or any member of the controlled group of the contributing sponsor).

(6) Definitions

For purposes of this subsection—

(A) Contribution payment

The term "contribution payment" means, in connection with a plan, a contribution payment required to be made to the plan, including any required installment under paragraphs (3) and (4) of subsection (j).

(B) Due date; required installment

The terms "due date" and "required installment" have the meanings given such terms by subsection (j).

(C) Controlled group

The term "controlled group" means any group treated as a single employer under subsections (b), (c), (m), and (o) of section 414.

(l) Qualified transfers to health benefit accounts

In the case of a qualified transfer (as defined in section 420), any assets so transferred shall not, for purposes of this section, be treated as assets in the plan.

(Added Pub. L. 109–280, title I, §112(a), Aug. 17, 2006, 120 Stat. 826; amended Pub. L. 110–458, title I, §§101(b)(2), 121(b), title II, §202(b), Dec. 23, 2008, 122 Stat. 5095, 5113, 5118; Pub. L. 111–192, title II, §§201(b), 204(b), June 25, 2010, 124 Stat. 1290, 1301; Pub. L. 112–141, div. D, title II, §40211(a)(1), (2)(B), July 6, 2012, 126 Stat. 846, 847; Pub. L. 113–159, title II, §2003(a), (d)(1), Aug. 8, 2014, 128 Stat. 1849, 1851.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table under section 401 of this title.

REFERENCES IN TEXT

Section 106 of the Pension Protection Act of 2006, referred to in subsec. (c)(2)(D)(iv)(I), is section 106 of Pub. L. 109–280, which is set out as a note under section 401 of this title.

The date of the enactment of this subparagraph, referred to in subsec. (c)(2)(D)(v), is the date of enactment of Pub. L. 111–192, which was approved June 25, 2010.

The Employee Retirement Income Security Act of 1974, referred to in subsecs. (c)(7)(E)(i)(I), (v)(II), (h)(5)(B)(i), (ii), and (k)(2), (4)(C), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829. Title I of the Act is classified generally to subchapter I (§1001 et seq.) of chapter 18 of Title 29, Labor. Title IV of the Act is classified principally to subchapter III (§1301 et seq.) of chapter 18 of Title 29. Sections 4001, 4006, 4021, 4043, and 4068 of the Act are classified to sections 1301, 1306, 1321, 1343, and 1368, respectively, of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

The Social Security Act, referred to in subsec. (h)(3)(D)(ii), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2014—Subsec. (h)(2)(B)(i). Pub. L. 113–159, §2003(d)(1), substituted "the valuation date for the plan year" for "the first day of the plan year".

Subsec. (h)(2)(C)(iv)(II). Pub. L. 113–159, §2003(a), amended table generally. Prior to amendment, table read as follows:

"If the calendar year is:	The applicable minimum percentage is:	The applicable maximum percentage is:
2012	90%	110%
2013	85%	115%
2014	80%	120%
2015	75%	125%
After 2015	70%	130%."

2012—Subsec. (h)(2)(C)(iv). Pub. L. 112–141, §40211(a)(1), added cl. (iv).

Subsec. (h)(2)(F). Pub. L. 112–141, §40211(a)(2)(B), inserted "and the averages determined under subparagraph (C)(iv)" after "subparagraph (C)".

2010—Subsec. (c)(1). Pub. L. 111–192, §201(b)(3)(A), substituted "any shortfall amortization base which has not been fully amortized under this subsection" for "the shortfall amortization bases for such plan year and each of the 6 preceding plan years".

Subsec. (c)(2)(D). Pub. L. 111–192, §201(b)(1), added subpar. (D).

Subsec. (c)(7). Pub. L. 111–192, §201(b)(2), added par. (7).

Subsec. (f)(3)(D). Pub. L. 111–192, §204(b), added subpar. (D).

Subsec. (j)(3)(F). Pub. L. 111–192, §201(b)(3)(B), added subpar. (F).

2008—Subsec. (b). Pub. L. 110–458, §101(b)(2)(A), amended subsec. (b) generally. Prior to amendment, text read as follows: "For purposes of this section, except as provided in subsection (i)(2) with respect to plans in at-risk status, the term "target normal cost" means, for any plan year, the present value of all benefits which are expected to accrue or to be earned under the plan during the plan year. For purposes of this subsection, if any benefit attributable to services performed in a preceding plan year is increased by reason of any increase in compensation during the current plan year, the increase in such benefit shall be treated as having accrued during the current plan year."

Subsec. (c)(5)(B)(i). Pub. L. 110–458, §202(b)(2), added cl. (i) and struck out former cl. (i). Prior to amendment, text read as follows: "Except as provided in clauses (iii) and (iv), in the case of plan years beginning after 2007 and before 2011, only the applicable percentage of the funding target shall be taken into account under paragraph (3)(A) in determining the funding shortfall for the plan year for purposes of subparagraph (A)."

Subsec. (c)(5)(B)(iii). Pub. L. 110–458, §202(b)(1), redesignated cl. (iv) as (iii) and struck out former cl. (iii). Prior to amendment, text read as follows: "Clause (i) shall not apply with respect to any plan year beginning after 2008 unless the shortfall amortization base for each of the preceding years beginning after 2007 was zero (determined after application of this subparagraph)."

Pub. L. 110–458, §101(b)(2)(B), inserted "beginning" before "after 2008".

Subsec. (c)(5)(B)(iv). Pub. L. 110–458, §202(b)(1), redesignated cl. (iv) as (iii).

Subsec. (c)(5)(B)(iv)(II). Pub. L. 110–458, §101(b)(2)(C), inserted "for such year" after "beginning in 2007)".

Subsec. (f)(3)(A). Pub. L. 110–458, §101(b)(2)(D)(i), struck out "as of the first day of the plan year" after "credited by the plan sponsor".

Subsec. (f)(4)(A). Pub. L. 110–458, §101(b)(2)(D)(ii), substituted "paragraph (3)" for "paragraph (2)".

Subsec. (f)(6)(B)(iii). Pub. L. 110–458, §101(b)(2)(D)(iii), substituted "subsection (b), (c), or (e) of section 436" for "paragraph (1), (2), or (4) of section 206(g)".

Subsec. (f)(6)(C). Pub. L. 110–458, §101(b)(2)(D)(iv), struck out "the sum of" after "by" in introductory provisions.

Subsec. (f)(8). Pub. L. 110–458, §101(b)(2)(D)(v), struck out "of the Treasury" after "by the Secretary".

Subsec. (g)(3)(B). Pub. L. 110–458, §121(b), amended concluding provisions generally. Prior to amendment, concluding provisions read as follows: "Any such averaging shall be adjusted for contributions and distributions (as provided by the Secretary)."

Subsec. (h)(2)(B). Pub. L. 110–458, §101(b)(2)(E)(i), (ii), in introductory provisions, inserted "and target normal cost" after "funding target" and substituted "benefits" for "liabilities".

Subsec. (h)(2)(F). Pub. L. 110–458, §101(b)(2)(E)(iii), (iv), substituted "section 417(e)(3)(D)(i) for such month)" for "section 417(e)(3)(D)(i)) for such month" and "subparagraph (C)" for "subparagraph (B)".

Subsec. (i)(2)(A). Pub. L. 110–458, §101(b)(2)(F)(i)(I), added subpar. (A) and struck out former subpar. (A) which read as follows: "the present value of all benefits which are expected to accrue or be earned under the plan during the plan year, determined using the additional actuarial assumptions described in paragraph (1)(B), plus".

Subsec. (i)(2)(B). Pub. L. 110–458, §101(b)(2)(F)(i)(II), substituted "the amount determined under subsection (b)(1)(A)(i) with respect to the plan for the plan year" for "the target normal cost (determined without regard to this paragraph) of the plan for the plan year".

Subsec. (i)(4)(B). Pub. L. 110–458, §101(b)(2)(F)(ii), substituted "subparagraph (A)" for "subparagraph (A)(ii)" in concluding provisions.

Subsec. (j)(3)(A). Pub. L. 110–458, §101(b)(2)(G)(i), inserted at end "In the case of plan years beginning in 2008, the funding shortfall for the preceding plan year may be determined using such methods of estimation as the Secretary may provide."

Subsec. (j)(3)(D)(ii)(II). Pub. L. 110–458, §101(b)(2)(G)(ii), substituted "section 412(c)" for "section

302(c)".

Subsec. (j)(3)(E). Pub. L. 110–458, §101(b)(2)(G)(iii), (iv), substituted ", short years, and years with alternate valuation date" for "and short years" in heading and added cl. (iii).

Subsec. (k)(1). Pub. L. 110–458, §101(b)(2)(H)(i), inserted "(as provided under paragraph (2))" after "applies" in introductory provisions.

Subsec. (k)(6)(B). Pub. L. 110–458, §101(b)(2)(H)(ii), struck out ", except that in the case of a payment other than a required installment, the due date shall be the date such payment is required to be made under section 430" before period at end.

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113–159, title II, §2003(e), Aug. 8, 2014, 128 Stat. 1851, provided that:

"(1) IN GENERAL.—The amendments made by subsections (a), (b), and (d) [amending this section and sections 1021 and 1083 of Title 29, Labor] shall apply with respect to plan years beginning after December 31, 2012.

"(2) ELECTIONS.—A plan sponsor may elect not to have the amendments made by subsections (a), (b), and (d) apply to any plan year beginning before January 1, 2014, either (as specified in the election)—

"(A) for all purposes for which such amendments apply, or

"(B) solely for purposes of determining the adjusted funding target attainment percentage under sections 436 of the Internal Revenue Code of 1986 [26 U.S.C. 436] and 206(g) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1054(g) [probably should be 29 U.S.C. 1056(g)]) for such plan year.

A plan shall not be treated as failing to meet the requirements of section 204(g) of such Act [29 U.S.C. 1054(g)] and section 411(d)(6) of such Code [26 U.S.C. 411(d)(6)] solely by reason of an election under this paragraph."

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112–141 applicable with respect to plan years beginning after December 31, 2011, except as otherwise provided, see section 40211(c) of Pub. L. 112–141, set out as a note under section 404 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–192, title II, §201(c), June 25, 2010, 124 Stat. 1296, provided that: "The amendments made by this section [amending this section and section 1083 of Title 29, Labor] shall apply to plan years beginning after December 31, 2007."

Pub. L. 111–192, title II, §204(c), June 25, 2010, 124 Stat. 1302, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 1083 of Title 29, Labor] shall apply to plan years beginning after August 31, 2009.

"(2) SPECIAL RULE.—In the case of a plan for which the valuation date is not the first day of the plan year, the amendments made by this section shall apply to plan years beginning after December 31, 2008."

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–458, title I, §101(b)(3), Dec. 23, 2008, 122 Stat. 5096, provided that:

"(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by paragraphs (1)(A) [amending section 1083 of Title 29, Labor], (1)(F)(i) [amending section 1083 of Title 29], (2)(A) [amending this section], and (2)(F)(i) [amending this section] shall apply to plan years beginning after December 31, 2008."

"(B) ELECTION FOR EARLIER APPLICATION.—The amendments made by such paragraphs shall apply to a plan for the first plan year beginning after December 31, 2007, if the plan sponsor makes the election under this subparagraph. An election under this subparagraph shall be made at such time and in such manner as the Secretary of the Treasury or the Secretary's delegate may prescribe, and, once made, may be revoked only with the consent of the Secretary."

Amendment by section 101(b)(2)(B)–(E), (F)(ii)–(H) of Pub. L. 110–458 effective as if included in the provisions of Pub. L. 109–280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110–458, set out as a note under section 72 of this title.

Pub. L. 110–458, title I, §121(c), Dec. 23, 2008, 122 Stat. 5114, provided that: "The amendments made by this section [amending this section and section 1083 of Title 29, Labor] shall take effect as if included in the provisions of the 2006 Act [Pub. L. 109–280] to which the amendments relate."

Pub. L. 110–458, title II, §202(c), Dec. 23, 2008, 122 Stat. 5118, provided that: "The amendments made by

subsections (a) and (b) [amending this section and section 1083 of Title 29, Labor] shall apply as if included in the enactment of sections 102 and 112, respectively, of the Pension Protection Act of 2006 [Pub. L. 109–280]."

EFFECTIVE DATE

Pub. L. 109–280, title I, §112(b), Aug. 17, 2006, 120 Stat. 846, provided that: "The amendments made by this section [enacting this section] shall apply with respect to plan years beginning after December 31, 2007."

APPLICABILITY OF SUBTITLES A AND B OF TITLE I OF PUB. L. 109–280

For special rules on applicability of subtitles A (§§101–108) and B (§§111–116) of title I of Pub. L. 109–280 to certain eligible cooperative plans, PBGC settlement plans, and eligible government contractor plans, see sections 104, 105, and 106 of Pub. L. 109–280, set out as notes under section 401 of this title.

MODIFICATION OF TRANSITION RULE TO PENSION FUNDING REQUIREMENTS

Pub. L. 109–280, title I, §115(a)–(c), Aug. 17, 2006, 120 Stat. 855, 856, provided that:

"(a) IN GENERAL.—In the case of a plan that—

"(1) was not required to pay a variable rate premium for the plan year beginning in 1996,

"(2) has not, in any plan year beginning after 1995, merged with another plan (other than a plan sponsored by an employer that was in 1996 within the controlled group of the plan sponsor), and

"(3) is sponsored by a company that is engaged primarily in the interurban or interstate passenger bus service,

the rules described in subsection (b) shall apply for any plan year beginning after December 31, 2007.

"(b) MODIFIED RULES.—The rules described in this subsection are as follows:

"(1) For purposes of section 430(j)(3) of the Internal Revenue Code of 1986 and section 303(j)(3) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1083(j)(3)], the plan shall be treated as not having a funding shortfall for any plan year.

"(2) For purposes of—

"(A) determining unfunded vested benefits under section 4006(a)(3)(E)(iii) of such Act [29 U.S.C. 1306(a)(3)(E)(iii)], and

"(B) determining any present value or making any computation under section 412 of such Code or section 302 of such Act [29 U.S.C. 1082],

the mortality table shall be the mortality table used by the plan.

"(3) Section 430(c)(5)(B) of such Code and section 303(c)(5)(B) of such Act [29 U.S.C. 1083(c)(5)(B)] (relating to phase-in of funding target for exemption from new shortfall amortization base) shall each be applied by substituting '2012' for '2011' therein and by substituting for the table therein the following:

"In the case of a plan year beginning in calendar year:	The applicable percentage is:
2008	90 percent
2009	92 percent
2010	94 percent
2011	96 percent.

"(c) DEFINITIONS.—Any term used in this section which is also used in section 430 of such Code or section 303 of such Act [29 U.S.C. 1083] shall have the meaning provided such term in such section. If the same term has a different meaning in such Code and such Act [29 U.S.C. 1001 et seq.], such term shall, for purposes of this section, have the meaning provided by such Code when applied with respect to such Code and the meaning provided by such Act when applied with respect to such Act."

SPECIAL FUNDING RULES FOR CERTAIN PLANS MAINTAINED BY COMMERCIAL AIRLINES

Pub. L. 109–280, title IV, §402, Aug. 17, 2006, 120 Stat. 922, as amended by Pub. L. 110–28, title VI, §§6614(a), 6615(a), May 25, 2007, 121 Stat. 181; Pub. L. 110–458, title I, §§104(b), 126(a), Dec. 23, 2008, 122 Stat. 5104, 5116, provided that:

"(a) IN GENERAL.—The plan sponsor of an eligible plan may elect to either—

"(1) have the rules of subsection (b) apply, or

"(2) have section 303 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1083] and

section 430 of the Internal Revenue Code of 1986 applied to its first taxable year beginning in 2008 by amortizing the shortfall amortization base for such taxable year over a period of 10 plan years (rather than 7 plan years) beginning with such plan year and by using, in determining the funding target for each of the 10 plan years during such period, an interest rate of 8.25 percent (rather than the segment rates calculated on the basis of the corporate bond yield curve).

"(b) ALTERNATIVE FUNDING SCHEDULE.—

"(1) IN GENERAL.—If an election is made under subsection (a)(1) to have this subsection apply to an eligible plan and the requirements of paragraphs (2) and (3) are met with respect to the plan—

"(A) in the case of any applicable plan year beginning before January 1, 2008, the plan shall not have an accumulated funding deficiency for purposes of section 302 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1082] and sections 412 and 4971 of the Internal Revenue Code of 1986 if contributions to the plan for the plan year are not less than the minimum required contribution determined under subsection (e) for the plan for the plan year, and

"(B) in the case of any applicable plan year beginning on or after January 1, 2008, the minimum required contribution determined under sections 303 of such Act [29 U.S.C. 1083] and 430 of such Code shall, for purposes of sections 302 and 303 of such Act and sections 412, 430, and 4971 of such Code, be equal to the minimum required contribution determined under subsection (e) for the plan for the plan year.

"(2) ACCRUAL RESTRICTIONS.—

"(A) IN GENERAL.—The requirements of this paragraph are met if, effective as of the first day of the first applicable plan year and at all times thereafter while an election under this section is in effect, the plan provides that—

"(i) the accrued benefit, any death or disability benefit, and any social security supplement described in the last sentence of section 411(a)(9) of such Code and section 204(b)(1)(G) of such Act [29 U.S.C. 1054(b)(1)(G)], of each participant are frozen at the amount of such benefit or supplement immediately before such first day, and

"(ii) all other benefits under the plan are eliminated,

but only to the extent the freezing or elimination of such benefits would have been permitted under section 411(d)(6) of such Code and section 204(g) of such Act if they had been implemented by a plan amendment adopted immediately before such first day.

"(B) INCREASES IN SECTION 415 LIMITS.—If a plan provides that an accrued benefit of a participant which has been subject to any limitation under section 415 of such Code will be increased if such limitation is increased, the plan shall not be treated as meeting the requirements of this section unless, effective as of the first day of the first applicable plan year (or, if later, the date of the enactment of this Act [Aug. 17, 2006]) and at all times thereafter while an election under this section is in effect, the plan provides that any such increase shall not take effect. A plan shall not fail to meet the requirements of section 411(d)(6) of such Code and section 204(g) of such Act solely because the plan is amended to meet the requirements of this subparagraph.

"(3) RESTRICTION ON APPLICABLE BENEFIT INCREASES.—

"(A) IN GENERAL.—The requirements of this paragraph are met if no applicable benefit increase takes effect at any time during the period beginning on July 26, 2005, and ending on the day before the first day of the first applicable plan year.

"(B) APPLICABLE BENEFIT INCREASE.—For purposes of this paragraph, the term 'applicable benefit increase' means, with respect to any plan year, any increase in liabilities of the plan by plan amendment (or otherwise provided in regulations provided by the Secretary) which, but for this paragraph, would occur during the plan year by reason of—

"(i) any increase in benefits,

"(ii) any change in the accrual of benefits, or

"(iii) any change in the rate at which benefits become nonforfeitable under the plan.

"(4) EXCEPTION FOR IMPUTED DISABILITY SERVICE.—Paragraphs (2) and (3) shall not apply to any accrual or increase with respect to imputed service provided to a participant during any period of the participant's disability occurring on or after the effective date of the plan amendment providing the restrictions under paragraph (2) (or on or after July 26, 2005, in the case of the restrictions under paragraph (3)) if the participant—

"(A) was receiving disability benefits as of such date, or

"(B) was receiving sick pay and subsequently determined to be eligible for disability benefits as of such date.

"(c) DEFINITIONS.—For purposes of this section—

"(1) ELIGIBLE PLAN.—The term 'eligible plan' means a defined benefit plan (other than a multiemployer plan) to which sections 302 of such Act [29 U.S.C. 1082] and 412 of such Code applies which is sponsored by an employer—

"(A) which is a commercial passenger airline, or

"(B) the principal business of which is providing catering services to a commercial passenger airline.

"(2) APPLICABLE PLAN YEAR.—The term 'applicable plan year' means each plan year to which the election under subsection (a)(1) applies under subsection (d)(1)(A).

"(d) ELECTIONS AND RELATED TERMS.—

"(1) YEARS FOR WHICH ELECTION MADE.—

"(A) ALTERNATIVE FUNDING SCHEDULE.—If an election under subsection (a)(1) was made with respect to an eligible plan, the plan sponsor may select either a plan year beginning in 2006 or a plan year beginning in 2007 as the first plan year to which such election applies. The election shall apply to such plan year and all subsequent years. The election shall be made—

"(i) not later than December 31, 2006, in the case of an election for a plan year beginning in 2006, or

"(ii) not later than December 31, 2007, in the case of an election for a plan year beginning in 2007.

"(B) 10 YEAR AMORTIZATION.—An election under subsection (a)(2) shall be made not later than December 31, 2007.

"(C) ELECTION OF NEW PLAN YEAR FOR ALTERNATIVE FUNDING SCHEDULE.—In the case of an election under subsection (a)(1), the plan sponsor may specify a new plan year in such election and the plan year of the plan may be changed to such new plan year without the approval of the Secretary of the Treasury.

"(2) MANNER OF ELECTION.—A plan sponsor shall make any election under subsection (a) in such manner as the Secretary of the Treasury may prescribe. Such election, once made, may be revoked only with the consent of such Secretary.

"(e) MINIMUM REQUIRED CONTRIBUTION.—In the case of an eligible plan with respect to which an election is made under subsection (a)(1)—

"(1) IN GENERAL.—In the case of any applicable plan year during the amortization period, the minimum required contribution shall be the amount necessary to amortize the unfunded liability of the plan, determined as of the first day of the plan year, in equal annual installments (until fully amortized) over the remainder of the amortization period. Such amount shall be separately determined for each applicable plan year.

"(2) YEARS AFTER AMORTIZATION PERIOD.—In the case of any plan year beginning after the end of the amortization period, section 302(a)(2)(A) of such Act [29 U.S.C. 1082(a)(2)(A)] and section 412(a)(2)(A) of such Code shall apply to such plan, but the prefunding balance and funding standard carryover balance as of the first day of the first of such years under section 303(f) of such Act [29 U.S.C. 1083(f)] and section 430(f) of such Code shall be zero.

"(3) DEFINITIONS.—For purposes of this section—

"(A) UNFUNDED LIABILITY.—The term 'unfunded liability' means the unfunded accrued liability under the plan, determined under the unit credit funding method.

"(B) AMORTIZATION PERIOD.—The term 'amortization period' means the 17-plan year period beginning with the first applicable plan year.

"(4) OTHER RULES.—In determining the minimum required contribution and amortization amount under this subsection—

"(A) the provisions of section 302(c)(3) of such Act and section 412(c)(3) of such Code, as in effect before the date of enactment of this section [Aug. 17, 2006], shall apply,

"(B) a rate of interest of 8.85 percent shall be used for all calculations requiring an interest rate, and

"(C) the value of plan assets shall be determined under sections 303(g)(3) of such Act [29 U.S.C. 1083(g)(3)] and 430(g)(3) of such Code.

"(5) SPECIAL RULE FOR CERTAIN PLAN SPINOFFS.—For purposes of subsection (b), if, with respect to any eligible plan to which this subsection applies—

"(A) any applicable plan year includes the date of the enactment of this Act,

"(B) a plan was spun off from the eligible plan during the plan year but before such date of enactment,

the minimum required contribution under paragraph (1) for the eligible plan for such applicable

plan year shall be an aggregate amount determined as if the plans were a single plan for that plan year (based on the full 12-month plan year in effect prior to the spin-off). The employer shall designate the allocation of such aggregate amount between such plans for the applicable plan year.

"(f) SPECIAL RULES FOR CERTAIN BALANCES AND WAIVERS.—In the case of an eligible plan with respect to which an election is made under subsection (a)(1)—

"(1) FUNDING STANDARD ACCOUNT AND CREDIT BALANCES.—Any charge or credit in the funding standard account under section 302 of such Act [29 U.S.C. 1082] or section 412 of such Code, and any prefunding balance or funding standard carryover balance under section 303 of such Act [29 U.S.C. 1083] or section 430 of such Code, as of the day before the first day of the first applicable plan year, shall be reduced to zero.

"(2) WAIVED FUNDING DEFICIENCIES.—Any waived funding deficiency under sections 302 and 303 of such Act or section 412 of such Code, as in effect before the date of enactment of this section [Aug. 17, 2006], shall be deemed satisfied as of the first day of the first applicable plan year and the amount of such waived funding deficiency shall be taken into account in determining the plan's unfunded liability under subsection (e)(3)(A). In the case of a plan amendment adopted to satisfy the requirements of subsection (b)(2), the plan shall not be deemed to violate section 304(b) of such Act [29 U.S.C. 1084(b)] or section 412(f) of such Code, as so in effect, by reason of such amendment or any increase in benefits provided to such plan's participants under a separate plan that is a defined contribution plan or a multiemployer plan.

"(g) OTHER RULES FOR PLANS MAKING ELECTION UNDER THIS SECTION.—

"(1) SUCCESSOR PLANS TO CERTAIN PLANS.—If—

"(A) an election under paragraph (1) or (2) of subsection (a) is in effect with respect to any eligible plan, and

"(B) the eligible plan is maintained by an employer that establishes or maintains 1 or more other defined benefit plans (other than any multiemployer plan), and such other plans in combination provide benefit accruals to any substantial number of successor employees,

the Secretary of the Treasury may, in the Secretary's discretion, determine that any trust of which any other such plan is a part does not constitute a qualified trust under section 401(a) of the Internal Revenue Code of 1986 unless all benefit obligations of the eligible plan have been satisfied. For purposes of this paragraph, the term 'successor employee' means any employee who is or was covered by the eligible plan and any employees who perform substantially the same type of work with respect to the same business operations as an employee covered by such eligible plan.

"(2) SPECIAL RULES FOR TERMINATIONS.—

"(A) PBGC LIABILITY LIMITED.—[Amended section 1322 of Title 29, Labor.]

"(B) TERMINATION PREMIUM.—In applying section 4006(a)(7)(A) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1306(a)(7)(A)] to an eligible plan during any period in which an election under subsection (a)(1) is in effect—

"(i) '$2,500' shall be substituted for '$1,250' in such section if such plan terminates during the 5-year period beginning on the first day of the first applicable plan year with respect to such plan, and

"(ii) such section shall be applied without regard to subparagraph (B) of section 8101(d)(2) of the Deficit Reduction Act of 2005 [Pub. L. 109–171, 29 U.S.C. 1306 note] (relating to special rule for plans terminated in bankruptcy).

The substitution described in clause (i) shall not apply with respect to any plan if the Secretary of Labor determines that such plan terminated as a result of extraordinary circumstances such as a terrorist attack or other similar event.

"(3) LIMITATION ON DEDUCTIONS UNDER CERTAIN PLANS.—Section 404(a)(7)(C)(iv) of the Internal Revenue Code of 1986, as added by this Act, shall not apply with respect to any taxable year of a plan sponsor of an eligible plan if any applicable plan year with respect to such plan ends with or within such taxable year.

"(4) NOTICE.—In the case of a plan amendment adopted in order to comply with this section, any notice required under section 204(h) of such Act [29 U.S.C. 1054(h)] or section 4980F(e) of such Code shall be provided within 15 days of the effective date of such plan amendment. This subsection shall not apply to any plan unless such plan is maintained pursuant to one or more collective bargaining agreements between employee representatives and 1 or more employers.

"(h) EXCLUSION OF CERTAIN EMPLOYEES FROM MINIMUM COVERAGE REQUIREMENTS.—

"(1) IN GENERAL.—[Amended section 410 of this title.]

"(2) EFFECTIVE DATE.—The amendment made by this subsection [amending section 410 of this

title] shall apply to years beginning before, on, or after the date of the enactment of this Act [Aug. 17, 2006].

"(i) EXTENSION OF SPECIAL RULE FOR ADDITIONAL FUNDING REQUIREMENTS.—In the case of an employer which is a commercial passenger airline, section 302(d)(12) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1082(d)(12)] and section 412(l)(12) of the Internal Revenue Code of 1986, as in effect before the date of the enactment of this Act [Aug. 17, 2006], shall each be applied—

"(1) by substituting 'January 1, 2008' for 'December 28, 2005' in subparagraph (D)(i) thereof, and

"(2) without regard to subparagraph (D)(ii).

"(j) EFFECTIVE DATE.—Except as otherwise provided in this section, the provisions of and amendments made by this section [amending section 410 of this title and section 1322 of Title 29, Labor] shall apply to plan years ending after the date of the enactment of this Act [Aug. 17, 2006]."

[Pub. L. 110–458, title I, §126(b), Dec. 23, 2008, 122 Stat. 5116, provided that: "The amendment made by this section [amending section 402(e)(4)(C) of Pub. L. 109–280, set out above] shall apply to plan years beginning after December 31, 2007."]

[Pub. L. 110–28, title VI, §6614(b), May 25, 2007, 121 Stat. 181, provided that: "The amendment made by subsection (a) [amending section 402(i)(1) of Pub. L. 109–280, set out above] shall take effect as if included in section 402 of the Pension Protection Act of 2006 [Pub. L. 109–280]."]

[Pub. L. 110–28, title VI, §6615(b), May 25, 2007, 121 Stat. 181, provided that: "The amendment made by this section [amending section 402(a)(2) of Pub. L. 109–280, set out above] shall take effect as if included in the provisions of the Pension Protection Act of 2006 [Pub. L. 109–280] to which such amendment relates."]

[1] So in original. Probably should be followed by "the".

§431. Minimum funding standards for multiemployer plans

(a) In general

For purposes of section 412, the accumulated funding deficiency of a multiemployer plan for any plan year is—

(1) except as provided in paragraph (2), the amount, determined as of the end of the plan year, equal to the excess (if any) of the total charges to the funding standard account of the plan for all plan years (beginning with the first plan year for which this part applies to the plan) over the total credits to such account for such years, and

(2) if the multiemployer plan is in reorganization for any plan year, the accumulated funding deficiency of the plan determined under section 4243 of the Employee Retirement Income Security Act of 1974.

(b) Funding standard account

(1) Account required

Each multiemployer plan to which this part applies shall establish and maintain a funding standard account. Such account shall be credited and charged solely as provided in this section.

(2) Charges to account

For a plan year, the funding standard account shall be charged with the sum of—

(A) the normal cost of the plan for the plan year,

(B) the amounts necessary to amortize in equal annual installments (until fully amortized)—

(i) in the case of a plan which comes into existence on or after January 1, 2008, the unfunded past service liability under the plan on the first day of the first plan year to which this section applies, over a period of 15 plan years,

(ii) separately, with respect to each plan year, the net increase (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 15 plan years,

(iii) separately, with respect to each plan year, the net experience loss (if any) under the plan, over a period of 15 plan years, and

(iv) separately, with respect to each plan year, the net loss (if any) resulting from changes

in actuarial assumptions used under the plan, over a period of 15 plan years,

(C) the amount necessary to amortize each waived funding deficiency (within the meaning of section 412(c)(3)) for each prior plan year in equal annual installments (until fully amortized) over a period of 15 plan years,

(D) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 5 plan years any amount credited to the funding standard account under section 412(b)(3)(D) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2006), and

(E) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 20 years the contributions which would be required to be made under the plan but for the provisions of section 412(c)(7)(A)(i)(I) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2006).

(3) Credits to account

For a plan year, the funding standard account shall be credited with the sum of—

(A) the amount considered contributed by the employer to or under the plan for the plan year,

(B) the amount necessary to amortize in equal annual installments (until fully amortized)—

(i) separately, with respect to each plan year, the net decrease (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 15 plan years,

(ii) separately, with respect to each plan year, the net experience gain (if any) under the plan, over a period of 15 plan years, and

(iii) separately, with respect to each plan year, the net gain (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 15 plan years,

(C) the amount of the waived funding deficiency (within the meaning of section 412(c)(3)) for the plan year, and

(D) in the case of a plan year for which the accumulated funding deficiency is determined under the funding standard account if such plan year follows a plan year for which such deficiency was determined under the alternative minimum funding standard under section 412(g) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2006), the excess (if any) of any debit balance in the funding standard account (determined without regard to this subparagraph) over any debit balance in the alternative minimum funding standard account.

(4) Special rule for amounts first amortized in plan years before 2008

In the case of any amount amortized under section 412(b) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2006) over any period beginning with a plan year beginning before 2008 in lieu of the amortization described in paragraphs (2)(B) and (3)(B), such amount shall continue to be amortized under such section as so in effect.

(5) Combining and offsetting amounts to be amortized

Under regulations prescribed by the Secretary, amounts required to be amortized under paragraph (2) or paragraph (3), as the case may be—

(A) may be combined into one amount under such paragraph to be amortized over a period determined on the basis of the remaining amortization period for all items entering into such combined amount, and

(B) may be offset against amounts required to be amortized under the other such paragraph, with the resulting amount to be amortized over a period determined on the basis of the remaining amortization periods for all items entering into whichever of the two amounts being offset is the greater.

(6) Interest

The funding standard account (and items therein) shall be charged or credited (as determined

under regulations prescribed by the Secretary of the Treasury) with interest at the appropriate rate consistent with the rate or rates of interest used under the plan to determine costs.

(7) Special rules relating to charges and credits to funding standard account

For purposes of this part—

(A) Withdrawal liability

Any amount received by a multiemployer plan in payment of all or part of an employer's withdrawal liability under part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974 shall be considered an amount contributed by the employer to or under the plan. The Secretary may prescribe by regulation additional charges and credits to a multiemployer plan's funding standard account to the extent necessary to prevent withdrawal liability payments from being unduly reflected as advance funding for plan liabilities.

(B) Adjustments when a multiemployer plan leaves reorganization

If a multiemployer plan is not in reorganization in the plan year but was in reorganization in the immediately preceding plan year, any balance in the funding standard account at the close of such immediately preceding plan year—

(i) shall be eliminated by an offsetting credit or charge (as the case may be), but

(ii) shall be taken into account in subsequent plan years by being amortized in equal annual installments (until fully amortized) over 30 plan years.

The preceding sentence shall not apply to the extent of any accumulated funding deficiency under section 4243(a) of such Act as of the end of the last plan year that the plan was in reorganization.

(C) Plan payments to supplemental program or withdrawal liability payment fund

Any amount paid by a plan during a plan year to the Pension Benefit Guaranty Corporation pursuant to section 4222 of such Act or to a fund exempt under section 501(c)(22) pursuant to section 4223 of such Act shall reduce the amount of contributions considered received by the plan for the plan year.

(D) Interim withdrawal liability payments

Any amount paid by an employer pending a final determination of the employer's withdrawal liability under part 1 of subtitle E of title IV of such Act and subsequently refunded to the employer by the plan shall be charged to the funding standard account in accordance with regulations prescribed by the Secretary.

(E) Election for deferral of charge for portion of net experience loss

If an election is in effect under section 412(b)(7)(F) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2006) for any plan year, the funding standard account shall be charged in the plan year to which the portion of the net experience loss deferred by such election was deferred with the amount so deferred (and paragraph (2)(B)(iii) shall not apply to the amount so charged).

(F) Financial assistance

Any amount of any financial assistance from the Pension Benefit Guaranty Corporation to any plan, and any repayment of such amount, shall be taken into account under this section and section 412 in such manner as is determined by the Secretary.

(G) Short-term benefits

To the extent that any plan amendment increases the unfunded past service liability under the plan by reason of an increase in benefits which are not payable as a life annuity but are payable under the terms of the plan for a period that does not exceed 14 years from the effective date of the amendment, paragraph (2)(B)(ii) shall be applied separately with respect to such increase in unfunded past service liability by substituting the number of years of the period during which such benefits are payable for "15".

(8) Special relief rules

Notwithstanding any other provision of this subsection—

(A) Amortization of net investment losses

(i) In general

A multiemployer plan with respect to which the solvency test under subparagraph (C) is met may treat the portion of any experience loss or gain attributable to net investment losses incurred in either or both of the first two plan years ending after August 31, 2008, as an item separate from other experience losses, to be amortized in equal annual installments (until fully amortized) over the period—

(I) beginning with the plan year in which such portion is first recognized in the actuarial value of assets, and

(II) ending with the last plan year in the 30-plan year period beginning with the plan year in which such net investment loss was incurred.

(ii) Coordination with extensions

If this subparagraph applies for any plan year—

(I) no extension of the amortization period under clause (i) shall be allowed under subsection (d), and

(II) if an extension was granted under subsection (d) for any plan year before the election to have this subparagraph apply to the plan year, such extension shall not result in such amortization period exceeding 30 years.

(iii) Net investment losses

For purposes of this subparagraph—

(I) In general

Net investment losses shall be determined in the manner prescribed by the Secretary on the basis of the difference between actual and expected returns (including any difference attributable to any criminally fraudulent investment arrangement).

(II) Criminally fraudulent investment arrangements

The determination as to whether an arrangement is a criminally fraudulent investment arrangement shall be made under rules substantially similar to the rules prescribed by the Secretary for purposes of section 165.

(B) Expanded smoothing period

(i) In general

A multiemployer plan with respect to which the solvency test under subparagraph (C) is met may change its asset valuation method in a manner which—

(I) spreads the difference between expected and actual returns for either or both of the first 2 plan years ending after August 31, 2008, over a period of not more than 10 years,

(II) provides that for either or both of the first 2 plan years beginning after August 31, 2008, the value of plan assets at any time shall not be less than 80 percent or greater than 130 percent of the fair market value of such assets at such time, or

(III) makes both changes described in subclauses (I) and (II) to such method.

(ii) Asset valuation methods

If this subparagraph applies for any plan year—

(I) the Secretary shall not treat the asset valuation method of the plan as unreasonable solely because of the changes in such method described in clause (i), and

(II) such changes shall be deemed approved by the Secretary under section 302(d)(1) of the Employee Retirement Income Security Act of 1974 and section 412(d)(1).

(iii) Amortization of reduction in unfunded accrued liability

If this subparagraph and subparagraph (A) both apply for any plan year, the plan shall treat any reduction in unfunded accrued liability resulting from the application of this subparagraph as a separate experience amortization base, to be amortized in equal annual installments (until fully amortized) over a period of 30 plan years rather than the period such liability would otherwise be amortized over.

(C) Solvency test

The solvency test under this paragraph is met only if the plan actuary certifies that the plan is projected to have sufficient assets to timely pay expected benefits and anticipated expenditures over the amortization period, taking into account the changes in the funding standard account under this paragraph.

(D) Restriction on benefit increases

If subparagraph (A) or (B) apply to a multiemployer plan for any plan year, then, in addition to any other applicable restrictions on benefit increases, a plan amendment increasing benefits may not go into effect during either of the 2 plan years immediately following such plan year unless—

(i) the plan actuary certifies that—

(I) any such increase is paid for out of additional contributions not allocated to the plan immediately before the application of this paragraph to the plan, and

(II) the plan's funded percentage and projected credit balances for such 2 plan years are reasonably expected to be at least as high as such percentage and balances would have been if the benefit increase had not been adopted, or

(ii) the amendment is required as a condition of qualification under part I of subchapter D or to comply with other applicable law.

(E) Reporting

A plan sponsor of a plan to which this paragraph applies shall—

(i) give notice of such application to participants and beneficiaries of the plan, and

(ii) inform the Pension Benefit Guaranty Corporation of such application in such form and manner as the Director of the Pension Benefit Guaranty Corporation may prescribe.

(c) Additional rules

(1) Determinations to be made under funding method

For purposes of this part, normal costs, accrued liability, past service liabilities, and experience gains and losses shall be determined under the funding method used to determine costs under the plan.

(2) Valuation of assets

(A) In general

For purposes of this part, the value of the plan's assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value and which is permitted under regulations prescribed by the Secretary.

(B) Election with respect to bonds

The value of a bond or other evidence of indebtedness which is not in default as to principal or interest may, at the election of the plan administrator, be determined on an amortized basis running from initial cost at purchase to par value at maturity or earliest call date. Any election under this subparagraph shall be made at such time and in such manner as the Secretary shall by regulations provide, shall apply to all such evidences of indebtedness, and may be revoked only with the consent of the Secretary.

(3) Actuarial assumptions must be reasonable

For purposes of this section, all costs, liabilities, rates of interest, and other factors under the

plan shall be determined on the basis of actuarial assumptions and methods—

(A) each of which is reasonable (taking into account the experience of the plan and reasonable expectations), and

(B) which, in combination, offer the actuary's best estimate of anticipated experience under the plan.

(4) Treatment of certain changes as experience gain or loss

For purposes of this section, if—

(A) a change in benefits under the Social Security Act or in other retirement benefits created under Federal or State law, or

(B) a change in the definition of the term "wages" under section 3121, or a change in the amount of such wages taken into account under regulations prescribed for purposes of section 401(a)(5),

results in an increase or decrease in accrued liability under a plan, such increase or decrease shall be treated as an experience loss or gain.

(5) Full funding

If, as of the close of a plan year, a plan would (without regard to this paragraph) have an accumulated funding deficiency in excess of the full funding limitation—

(A) the funding standard account shall be credited with the amount of such excess, and

(B) all amounts described in subparagraphs (B), (C), and (D) of subsection (b)(2) and subparagraph (B) of subsection (b)(3) which are required to be amortized shall be considered fully amortized for purposes of such subparagraphs.

(6) Full-funding limitation

(A) In general

For purposes of paragraph (5), the term "full-funding limitation" means the excess (if any) of—

(i) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

(ii) the lesser of—

(I) the fair market value of the plan's assets, or

(II) the value of such assets determined under paragraph (2).

(B) Minimum amount

(i) In general

In no event shall the full-funding limitation determined under subparagraph (A) be less than the excess (if any) of—

(I) 90 percent of the current liability of the plan (including the expected increase in current liability due to benefits accruing during the plan year), over

(II) the value of the plan's assets determined under paragraph (2).

(ii) Assets

For purposes of clause (i), assets shall not be reduced by any credit balance in the funding standard account.

(C) Full funding limitation

For purposes of this paragraph, unless otherwise provided by the plan, the accrued liability under a multiemployer plan shall not include benefits which are not nonforfeitable under the plan after the termination of the plan (taking into consideration section 411(d)(3)).

(D) Current liability

For purposes of this paragraph—

(i) In general

The term "current liability" means all liabilities to employees and their beneficiaries under the plan.

(ii) Treatment of unpredictable contingent event benefits

For purposes of clause (i), any benefit contingent on an event other than—

(I) age, service, compensation, death, or disability, or

(II) an event which is reasonably and reliably predictable (as determined by the Secretary),

shall not be taken into account until the event on which the benefit is contingent occurs.

(iii) Interest rate used

The rate of interest used to determine current liability under this paragraph shall be the rate of interest determined under subparagraph (E).

(iv) Mortality tables

(I) Commissioners' standard table

In the case of plan years beginning before the first plan year to which the first tables prescribed under subclause (II) apply, the mortality table used in determining current liability under this paragraph shall be the table prescribed by the Secretary which is based on the prevailing commissioners' standard table (described in section 807(d)(5)(A)) used to determine reserves for group annuity contracts issued on January 1, 1993.

(II) Secretarial authority

The Secretary may by regulation prescribe for plan years beginning after December 31, 1999, mortality tables to be used in determining current liability under this subsection. Such tables shall be based upon the actual experience of pension plans and projected trends in such experience. In prescribing such tables, the Secretary shall take into account results of available independent studies of mortality of individuals covered by pension plans.

(v) Separate mortality tables for the disabled

Notwithstanding clause (iv)—

(I) In general

The Secretary shall establish mortality tables which may be used (in lieu of the tables under clause (iv)) to determine current liability under this subsection for individuals who are entitled to benefits under the plan on account of disability. The Secretary shall establish separate tables for individuals whose disabilities occur in plan years beginning before January 1, 1995, and for individuals whose disabilities occur in plan years beginning on or after such date.

(II) Special rule for disabilities occurring after 1994

In the case of disabilities occurring in plan years beginning after December 31, 1994, the tables under subclause (I) shall apply only with respect to individuals described in such subclause who are disabled within the meaning of title II of the Social Security Act and the regulations thereunder.

(vi) Periodic review

The Secretary shall periodically (at least every 5 years) review any tables in effect under this subparagraph and shall, to the extent such Secretary determines necessary, by regulation update the tables to reflect the actual experience of pension plans and projected trends in such experience.

(E) Required change of interest rate

For purposes of determining a plan's current liability for purposes of this paragraph—

(i) In general

If any rate of interest used under the plan under subsection (b)(6) to determine cost is not within the permissible range, the plan shall establish a new rate of interest within the permissible range.

(ii) Permissible range

For purposes of this subparagraph—

(I) In general

Except as provided in subclause (II), the term "permissible range" means a rate of interest which is not more than 5 percent above, and not more than 10 percent below, the weighted average of the rates of interest on 30-year Treasury securities during the 4-year period ending on the last day before the beginning of the plan year.

(II) Secretarial authority

If the Secretary finds that the lowest rate of interest permissible under subclause (I) is unreasonably high, the Secretary may prescribe a lower rate of interest, except that such rate may not be less than 80 percent of the average rate determined under such subclause.

(iii) Assumptions

Notwithstanding paragraph (3)(A), the interest rate used under the plan shall be—

(I) determined without taking into account the experience of the plan and reasonable expectations, but

(II) consistent with the assumptions which reflect the purchase rates which would be used by insurance companies to satisfy the liabilities under the plan.

(7) Annual valuation

(A) In general

For purposes of this section, a determination of experience gains and losses and a valuation of the plan's liability shall be made not less frequently than once every year, except that such determination shall be made more frequently to the extent required in particular cases under regulations prescribed by the Secretary.

(B) Valuation date

(i) Current year

Except as provided in clause (ii), the valuation referred to in subparagraph (A) shall be made as of a date within the plan year to which the valuation refers or within one month prior to the beginning of such year.

(ii) Use of prior year valuation

The valuation referred to in subparagraph (A) may be made as of a date within the plan year prior to the year to which the valuation refers if, as of such date, the value of the assets of the plan are not less than 100 percent of the plan's current liability (as defined in paragraph (6)(D) without regard to clause (iv) thereof).

(iii) Adjustments

Information under clause (ii) shall, in accordance with regulations, be actuarially adjusted to reflect significant differences in participants.

(iv) Limitation

A change in funding method to use a prior year valuation, as provided in clause (ii), may not be made unless as of the valuation date within the prior plan year, the value of the assets of the plan are not less than 125 percent of the plan's current liability (as defined in paragraph (6)(D) without regard to clause (iv) thereof).

(8) Time when certain contributions deemed made

For purposes of this section, any contributions for a plan year made by an employer after the last day of such plan year, but not later than two and one-half months after such day, shall be deemed to have been made on such last day. For purposes of this subparagraph, such two and one-half month period may be extended for not more than six months under regulations prescribed by the Secretary.

(d) Extension of amortization periods for multiemployer plans

(1) Automatic extension upon application by certain plans

(A) In general

If the plan sponsor of a multiemployer plan—

(i) submits to the Secretary an application for an extension of the period of years required to amortize any unfunded liability described in any clause of subsection (b)(2)(B) or described in subsection (b)(4), and

(ii) includes with the application a certification by the plan's actuary described in subparagraph (B),

the Secretary shall extend the amortization period for the period of time (not in excess of 5 years) specified in the application. Such extension shall be in addition to any extension under paragraph (2).

(B) Criteria

A certification with respect to a multiemployer plan is described in this subparagraph if the plan's actuary certifies that, based on reasonable assumptions—

(i) absent the extension under subparagraph (A), the plan would have an accumulated funding deficiency in the current plan year or any of the 9 succeeding plan years,

(ii) the plan sponsor has adopted a plan to improve the plan's funding status,

(iii) the plan is projected to have sufficient assets to timely pay expected benefits and anticipated expenditures over the amortization period as extended, and

(iv) the notice required under paragraph (3)(A) has been provided.

(C) Termination

The preceding provisions of this paragraph shall not apply with respect to any application submitted after December 31, 2014.

(2) Alternative extension

(A) In general

If the plan sponsor of a multiemployer plan submits to the Secretary an application for an extension of the period of years required to amortize any unfunded liability described in any clause of subsection (b)(2)(B) or described in subsection (b)(4), the Secretary may extend the amortization period for a period of time (not in excess of 10 years reduced by the number of years of any extension under paragraph (1) with respect to such unfunded liability) if the Secretary makes the determination described in subparagraph (B). Such extension shall be in addition to any extension under paragraph (1).

(B) Determination

The Secretary may grant an extension under subparagraph (A) if the Secretary determines that—

(i) such extension would carry out the purposes of this Act [1] and would provide adequate protection for participants under the plan and their beneficiaries, and

(ii) the failure to permit such extension would—

(I) result in a substantial risk to the voluntary continuation of the plan, or a substantial curtailment of pension benefit levels or employee compensation, and

(II) be adverse to the interests of plan participants in the aggregate.

(C) Action by Secretary

The Secretary shall act upon any application for an extension under this paragraph within 180 days of the submission of such application. If the Secretary rejects the application for an extension under this paragraph, the Secretary shall provide notice to the plan detailing the specific reasons for the rejection, including references to the criteria set forth above.

(3) Advance notice

(A) In general

The Secretary shall, before granting an extension under this subsection, require each applicant to provide evidence satisfactory to such Secretary that the applicant has provided notice of the filing of the application for such extension to each affected party (as defined in section 4001(a)(21) of the Employee Retirement Income Security Act of 1974) with respect to the affected plan. Such notice shall include a description of the extent to which the plan is funded for benefits which are guaranteed under title IV of such Act and for benefit liabilities.

(B) Consideration of relevant information

The Secretary shall consider any relevant information provided by a person to whom notice was given under paragraph (1).

(Added Pub. L. 109–280, title II, §211(a), Aug. 17, 2006, 120 Stat. 890; amended Pub. L. 111–192, title II, §211(a)(2), June 25, 2010, 124 Stat. 1304.)

REFERENCES IN TEXT

The Employee Retirement Income Security Act of 1974, referred to in subsecs. (a)(2), (b)(7)(A) to (D), (8)(B)(ii)(II), and (d)(3)(A), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829. Title IV of the Act is classified principally to subchapter III (§1301 et seq.) of chapter 18 of Title 29, Labor. Part 1 of subtitle E of title IV of the Act is classified generally to part 1 (§1381 et seq.) of subtitle E of subchapter III of chapter 18 of Title 29. Sections 302, 4001, 4222, 4223, and 4243 of the Act are classified to sections 1082, 1301, 1402, 1403, and 1423, respectively, of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

The date of the enactment of the Pension Protection Act of 2006, referred to in subsec. (b)(2)(D), (E), (3)(D), (4), (7)(E), is the date of enactment of Pub. L. 109–280, which was approved Aug. 17, 2006.

The Social Security Act, referred to in subsec. (c)(4)(A), (6)(D)(v)(II), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, which is classified generally to chapter 7 (§301 et seq.) of Title 42, The Public Health and Welfare. Title II of the Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2010—Subsec. (b)(8). Pub. L. 111–192 added par. (8).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–192, title II, §211(b), June 25, 2010, 124 Stat. 1306, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and section 1084 of Title 29, Labor] shall take effect as of the first day of the first plan year ending after August 31, 2008, except that any election a plan makes pursuant to this section that affects the plan's funding standard account for the first plan year beginning after August 31, 2008, shall be disregarded for purposes of applying the provisions of section 305 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1085] and section 432 of the Internal Revenue Code of 1986 to such plan year.

"(2) RESTRICTIONS ON BENEFIT INCREASES.—Notwithstanding paragraph (1), the restrictions on plan amendments increasing benefits in sections 304(b)(8)(D) of such Act [29 U.S.C. 1084(b)(8)(D)] and 431(b)(8)(D) of such Code, as added by this section, shall take effect on the date of enactment of this Act [June 25, 2010]."

EFFECTIVE DATE

Pub. L. 109–280, title II, §211(b), Aug. 17, 2006, 120 Stat. 898, provided that:

"(1) IN GENERAL.—The amendments made by this section [enacting this section] shall apply to plan years beginning after 2007.

"(2) SPECIAL RULE FOR CERTAIN AMORTIZATION EXTENSIONS.—If the Secretary of the

Treasury grants an extension under section 304 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1084] and section 412(e) of the Internal Revenue Code of 1986 with respect to any application filed with the Secretary of the Treasury on or before June 30, 2005, the extension (and any modification thereof) shall be applied and administered under the rules of such sections as in effect before the enactment of this Act [Aug. 17, 2006], including the use of the rate of interest determined under section 6621(b) of such Code."

SPECIAL RULE FOR CERTAIN BENEFITS FUNDED UNDER AN AGREEMENT APPROVED BY THE PENSION BENEFIT GUARANTY CORPORATION

For applicability of this section to a multiemployer plan that is a party to an agreement that was approved by the Pension Benefit Guaranty Corporation prior to June 30, 2005, and that increases benefits and provides for certain withdrawal liability rules, see section 206 of Pub. L. 109–280, set out as a note under section 412 of this title.

[1] So in original. Probably should be "title".

§432. Additional funding rules for multiemployer plans in endangered status or critical status

(a) General rule

For purposes of this part, in the case of a multiemployer plan in effect on July 16, 2006—

(1) if the plan is in endangered status—

(A) the plan sponsor shall adopt and implement a funding improvement plan in accordance with the requirements of subsection (c), and

(B) the requirements of subsection (d) shall apply during the funding plan adoption period and the funding improvement period, and

(2) if the plan is in critical status—

(A) the plan sponsor shall adopt and implement a rehabilitation plan in accordance with the requirements of subsection (e), and

(B) the requirements of subsection (f) shall apply during the rehabilitation plan adoption period and the rehabilitation period.

(b) Determination of endangered and critical status

For purposes of this section—

(1) Endangered status

A multiemployer plan is in endangered status for a plan year if, as determined by the plan actuary under paragraph (3), the plan is not in critical status for the plan year and, as of the beginning of the plan year, either—

(A) the plan's funded percentage for such plan year is less than 80 percent, or

(B) the plan has an accumulated funding deficiency for such plan year, or is projected to have such an accumulated funding deficiency for any of the 6 succeeding plan years, taking into account any extension of amortization periods under section 431(d).

For purposes of this section, a plan shall be treated as in seriously endangered status for a plan year if the plan is described in both subparagraphs (A) and (B).

(2) Critical status

A multiemployer plan is in critical status for a plan year if, as determined by the plan actuary under paragraph (3), the plan is described in 1 or more of the following subparagraphs as of the beginning of the plan year:

(A) A plan is described in this subparagraph if—

(i) the funded percentage of the plan is less than 65 percent, and

(ii) the sum of—

(I) the fair market value of plan assets, plus

(II) the present value of the reasonably anticipated employer contributions for the current plan year and each of the 6 succeeding plan years, assuming that the terms of all collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years,

is less than the present value of all nonforfeitable benefits projected to be payable under the plan during the current plan year and each of the 6 succeeding plan years (plus administrative expenses for such plan years).

(B) A plan is described in this subparagraph if—

(i) the plan has an accumulated funding deficiency for the current plan year, not taking into account any extension of amortization periods under section 431(d), or

(ii) the plan is projected to have an accumulated funding deficiency for any of the 3 succeeding plan years (4 succeeding plan years if the funded percentage of the plan is 65 percent or less), not taking into account any extension of amortization periods under section 431(d).

(C) A plan is described in this subparagraph if—

(i)(I) the plan's normal cost for the current plan year, plus interest (determined at the rate used for determining costs under the plan) for the current plan year on the amount of unfunded benefit liabilities under the plan as of the last date of the preceding plan year, exceeds

(II) the present value of the reasonably anticipated employer and employee contributions for the current plan year,

(ii) the present value, as of the beginning of the current plan year, of nonforfeitable benefits of inactive participants is greater than the present value of nonforfeitable benefits of active participants, and

(iii) the plan has an accumulated funding deficiency for the current plan year, or is projected to have such a deficiency for any of the 4 succeeding plan years, not taking into account any extension of amortization periods under section 431(d).

(D) A plan is described in this subparagraph if the sum of—

(i) the fair market value of plan assets, plus

(ii) the present value of the reasonably anticipated employer contributions for the current plan year and each of the 4 succeeding plan years, assuming that the terms of all collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years,

is less than the present value of all benefits projected to be payable under the plan during the current plan year and each of the 4 succeeding plan years (plus administrative expenses for such plan years).

(3) Annual certification by plan actuary

(A) In general

Not later than the 90th day of each plan year of a multiemployer plan, the plan actuary shall certify to the Secretary and to the plan sponsor—

(i) whether or not the plan is in endangered status for such plan year and whether or not the plan is or will be in critical status for such plan year, and

(ii) in the case of a plan which is in a funding improvement or rehabilitation period, whether or not the plan is making the scheduled progress in meeting the requirements of its funding improvement or rehabilitation plan.

(B) Actuarial projections of assets and liabilities

(i) In general

In making the determinations and projections under this subsection, the plan actuary shall make projections required for the current and succeeding plan years of the current value of the assets of the plan and the present value of all liabilities to participants and beneficiaries under the plan for the current plan year as of the beginning of such year. The actuary's projections shall be based on reasonable actuarial estimates, assumptions, and methods that, except as provided in clause (iii), offer the actuary's best estimate of anticipated experience under the plan. The projected present value of liabilities as of the beginning of such year shall be determined based on the most recent of either—

(I) the actuarial statement required under section 103(d) of the Employee Retirement Income Security Act of 1974 with respect to the most recently filed annual report, or

(II) the actuarial valuation for the preceding plan year.

(ii) Determinations of future contributions

Any actuarial projection of plan assets shall assume—

(I) reasonably anticipated employer contributions for the current and succeeding plan years, assuming that the terms of the one or more collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years, or

(II) that employer contributions for the most recent plan year will continue indefinitely, but only if the plan actuary determines there have been no significant demographic changes that would make such assumption unreasonable.

(iii) Projected industry activity

Any projection of activity in the industry or industries covered by the plan, including future covered employment and contribution levels, shall be based on information provided by the plan sponsor, which shall act reasonably and in good faith.

(C) Penalty for failure to secure timely actuarial certification

Any failure of the plan's actuary to certify the plan's status under this subsection by the date specified in subparagraph (A) shall be treated for purposes of section 502(c)(2) of the Employee Retirement Income Security Act of 1974 as a failure or refusal by the plan administrator to file the annual report required to be filed with the Secretary under section 101(b)(1) of such Act.

(D) Notice

(i) In general

In any case in which it is certified under subparagraph (A) that a multiemployer plan is or will be in endangered or critical status for a plan year, the plan sponsor shall, not later than 30 days after the date of the certification, provide notification of the endangered or critical status to the participants and beneficiaries, the bargaining parties, the Pension Benefit Guaranty Corporation, and the Secretary of Labor.

(ii) Plans in critical status

If it is certified under subparagraph (A) that a multiemployer plan is or will be in critical status, the plan sponsor shall include in the notice under clause (i) an explanation of the possibility that—

(I) adjustable benefits (as defined in subsection (e)(8)) may be reduced, and

(II) such reductions may apply to participants and beneficiaries whose benefit commencement date is on or after the date such notice is provided for the first plan year in which the plan is in critical status.

(iii) Model notice

The Secretary, in consultation with the Secretary of Labor [1] shall prescribe a model notice that a multiemployer plan may use to satisfy the requirements under clause (ii).

(c) Funding improvement plan must be adopted for multiemployer plans in endangered status

(1) In general

In any case in which a multiemployer plan is in endangered status for a plan year, the plan sponsor, in accordance with this subsection—

(A) shall adopt a funding improvement plan not later than 240 days following the required date for the actuarial certification of endangered status under subsection (b)(3)(A), and

(B) within 30 days after the adoption of the funding improvement plan—

(i) shall provide to the bargaining parties 1 or more schedules showing revised benefit structures, revised contribution structures, or both, which, if adopted, may reasonably be expected to enable the multiemployer plan to meet the applicable benchmarks in accordance with the funding improvement plan, including—

(I) one proposal for reductions in the amount of future benefit accruals necessary to achieve the applicable benchmarks, assuming no amendments increasing contributions under the plan (other than amendments increasing contributions necessary to achieve the applicable benchmarks after amendments have reduced future benefit accruals to the maximum extent permitted by law), and

(II) one proposal for increases in contributions under the plan necessary to achieve the applicable benchmarks, assuming no amendments reducing future benefit accruals under the plan, and

(ii) may, if the plan sponsor deems appropriate, prepare and provide the bargaining parties with additional information relating to contribution rates or benefit reductions, alternative schedules, or other information relevant to achieving the applicable benchmarks in accordance with the funding improvement plan.

For purposes of this section, the term "applicable benchmarks" means the requirements applicable to the multiemployer plan under paragraph (3) (as modified by paragraph (5)).

(2) Exception for years after process begins

Paragraph (1) shall not apply to a plan year if such year is in a funding plan adoption period or funding improvement period by reason of the plan being in endangered status for a preceding plan year. For purposes of this section, such preceding plan year shall be the initial determination year with respect to the funding improvement plan to which it relates.

(3) Funding improvement plan

For purposes of this section—

(A) In general

A funding improvement plan is a plan which consists of the actions, including options or a range of options to be proposed to the bargaining parties, formulated to provide, based on reasonably anticipated experience and reasonable actuarial assumptions, for the attainment by the plan during the funding improvement period of the following requirements:

(i) Increase in plan's funding percentage

The plan's funded percentage as of the close of the funding improvement period equals or exceeds a percentage equal to the sum of—

(I) such percentage as of the beginning of such period, plus

(II) 33 percent of the difference between 100 percent and the percentage under subclause (I).

(ii) Avoidance of accumulated funding deficiencies

No accumulated funding deficiency for any plan year during the funding improvement period (taking into account any extension of amortization periods under section 431(d)).

(B) Seriously endangered plans

In the case of a plan in seriously endangered status, except as provided in paragraph (5), subparagraph (A)(i)(II) shall be applied by substituting "20 percent" for "33 percent".

(4) Funding improvement period

For purposes of this section—

(A) In general

The funding improvement period for any funding improvement plan adopted pursuant to this subsection is the 10-year period beginning on the first day of the first plan year of the multiemployer plan beginning after the earlier of—

(i) the second anniversary of the date of the adoption of the funding improvement plan, or

(ii) the expiration of the collective bargaining agreements in effect on the due date for the actuarial certification of endangered status for the initial determination year under subsection (b)(3)(A) and covering, as of such due date, at least 75 percent of the active participants in such multiemployer plan.

(B) Seriously endangered plans

In the case of a plan in seriously endangered status, except as provided in paragraph (5), subparagraph (A) shall be applied by substituting "15-year period" for "10-year period".

(C) Coordination with changes in status

(i) Plans no longer in endangered status

If the plan's actuary certifies under subsection (b)(3)(A) for a plan year in any funding plan adoption period or funding improvement period that the plan is no longer in endangered status and is not in critical status, the funding plan adoption period or funding improvement period, whichever is applicable, shall end as of the close of the preceding plan year.

(ii) Plans in critical status

If the plan's actuary certifies under subsection (b)(3)(A) for a plan year in any funding plan adoption period or funding improvement period that the plan is in critical status, the funding plan adoption period or funding improvement period, whichever is applicable, shall end as of the close of the plan year preceding the first plan year in the rehabilitation period with respect to such status.

(D) Plans in endangered status at end of period

If the plan's actuary certifies under subsection (b)(3)(A) for the first plan year following the close of the period described in subparagraph (A) that the plan is in endangered status, the provisions of this subsection and subsection (d) shall be applied as if such first plan year were an initial determination year, except that the plan may not be amended in a manner inconsistent with the funding improvement plan in effect for the preceding plan year until a new funding improvement plan is adopted.

(5) Special rules for seriously endangered plans more than 70 percent funded

(A) In general

If the funded percentage of a plan in seriously endangered status was more than 70 percent as of the beginning of the initial determination year—

(i) paragraphs (3)(B) and (4)(B) shall apply only if the plan's actuary certifies, within 30 days after the certification under subsection (b)(3)(A) for the initial determination year, that, based on the terms of the plan and the collective bargaining agreements in effect at the time of such certification, the plan is not projected to meet the requirements of paragraph (3)(A) (without regard to paragraphs (3)(B) and (4)(B)), and

(ii) if there is a certification under clause (i), the plan may, in formulating its funding improvement plan, only take into account the rules of paragraph (3)(B) and (4)(B) for plan years in the funding improvement period beginning on or before the date on which the last of the collective bargaining agreements described in paragraph (4)(A)(ii) expires.

(B) Special rule after expiration of agreements

Notwithstanding subparagraph (A)(ii), if, for any plan year ending after the date described in subparagraph (A)(ii), the plan actuary certifies (at the time of the annual certification under subsection (b)(3)(A) for such plan year) that, based on the terms of the plan and collective bargaining agreements in effect at the time of that annual certification, the plan is not projected to be able to meet the requirements of paragraph (3)(A) (without regard to paragraphs (3)(B) and (4)(B)), paragraphs (3)(B) and (4)(B) shall continue to apply for such year.

(6) Updates to funding improvement plans and schedules

(A) Funding improvement plan

The plan sponsor shall annually update the funding improvement plan and shall file the update with the plan's annual report under section 104 of the Employee Retirement Income Security Act of 1974.

(B) Schedules

The plan sponsor shall annually update any schedule of contribution rates provided under this subsection to reflect the experience of the plan.

(C) Duration of schedule

A schedule of contribution rates provided by the plan sponsor and relied upon by bargaining parties in negotiating a collective bargaining agreement shall remain in effect for the duration of that collective bargaining agreement.

(7) Imposition of default schedule where failure to adopt funding improvement plan

(A) In general

If—

(i) a collective bargaining agreement providing for contributions under a multiemployer plan that was in effect at the time the plan entered endangered status expires, and

(ii) after receiving one or more schedules from the plan sponsor under paragraph (1)(B), the bargaining parties with respect to such agreement fail to adopt a contribution schedule with terms consistent with the funding improvement plan and a schedule from the plan sponsor,

the plan sponsor shall implement the schedule described in paragraph (1)(B)(i)(I) beginning on the date specified in subparagraph (B).

(B) Date of implementation

The date specified in this subparagraph is the date which is 180 days after the date on which the collective bargaining agreement described in subparagraph (A) expires.

(8) Funding plan adoption period

For purposes of this section, the term "funding plan adoption period" means the period beginning on the date of the certification under subsection (b)(3)(A) for the initial determination year and ending on the day before the first day of the funding improvement period.

(d) Rules for operation of plan during adoption and improvement periods

(1) Special rules for plan adoption period

During the funding plan adoption period—

(A) the plan sponsor may not accept a collective bargaining agreement or participation agreement with respect to the multiemployer plan that provides for—

(i) a reduction in the level of contributions for any participants,

(ii) a suspension of contributions with respect to any period of service, or

(iii) any new direct or indirect exclusion of younger or newly hired employees from plan participation,

(B) no amendment of the plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan may be adopted unless the amendment is required as a condition of qualification under part I of subchapter D of chapter 1 or to comply with other applicable law, and

(C) in the case of a plan in seriously endangered status, the plan sponsor shall take all reasonable actions which are consistent with the terms of the plan and applicable law and which are expected, based on reasonable assumptions, to achieve—

(i) an increase in the plan's funded percentage, and

(ii) postponement of an accumulated funding deficiency for at least 1 additional plan year.

Actions under subparagraph (C) include applications for extensions of amortization periods under section 431(d), use of the shortfall funding method in making funding standard account computations, amendments to the plan's benefit structure, reductions in future benefit accruals, and other reasonable actions consistent with the terms of the plan and applicable law.

(2) Compliance with funding improvement plan

(A) In general

A plan may not be amended after the date of the adoption of a funding improvement plan so as to be inconsistent with the funding improvement plan.

(B) No reduction in contributions

A plan sponsor may not during any funding improvement period accept a collective bargaining agreement or participation agreement with respect to the multiemployer plan that provides for—

(i) a reduction in the level of contributions for any participants,

(ii) a suspension of contributions with respect to any period of service, or

(iii) any new direct or indirect exclusion of younger or newly hired employees from plan participation.

(C) Special rules for benefit increases

A plan may not be amended after the date of the adoption of a funding improvement plan so as to increase benefits, including future benefit accruals, unless the plan actuary certifies that the benefit increase is consistent with the funding improvement plan and is paid for out of contributions not required by the funding improvement plan to meet the applicable benchmark in accordance with the schedule contemplated in the funding improvement plan.

(e) Rehabilitation plan must be adopted for multiemployer plans in critical status

(1) In general

In any case in which a multiemployer plan is in critical status for a plan year, the plan sponsor, in accordance with this subsection—

(A) shall adopt a rehabilitation plan not later than 240 days following the required date for the actuarial certification of critical status under subsection (b)(3)(A), and

(B) within 30 days after the adoption of the rehabilitation plan—

(i) shall provide to the bargaining parties 1 or more schedules showing revised benefit structures, revised contribution structures, or both, which, if adopted, may reasonably be expected to enable the multiemployer plan to emerge from critical status in accordance with the rehabilitation plan, and

(ii) may, if the plan sponsor deems appropriate, prepare and provide the bargaining parties with additional information relating to contribution rates or benefit reductions, alternative schedules, or other information relevant to emerging from critical status in accordance with the rehabilitation plan.

The schedule or schedules described in subparagraph (B)(i) shall reflect reductions in future

benefit accruals and adjustable benefits, and increases in contributions, that the plan sponsor determines are reasonably necessary to emerge from critical status. One schedule shall be designated as the default schedule and such schedule shall assume that there are no increases in contributions under the plan other than the increases necessary to emerge from critical status after future benefit accruals and other benefits (other than benefits the reduction or elimination of which are not permitted under section 411(d)(6)) have been reduced to the maximum extent permitted by law.

(2) Exception for years after process begins

Paragraph (1) shall not apply to a plan year if such year is in a rehabilitation plan adoption period or rehabilitation period by reason of the plan being in critical status for a preceding plan year. For purposes of this section, such preceding plan year shall be the initial critical year with respect to the rehabilitation plan to which it relates.

(3) Rehabilitation plan

For purposes of this section—

(A) In general

A rehabilitation plan is a plan which consists of—

(i) actions, including options or a range of options to be proposed to the bargaining parties, formulated, based on reasonably anticipated experience and reasonable actuarial assumptions, to enable the plan to cease to be in critical status by the end of the rehabilitation period and may include reductions in plan expenditures (including plan mergers and consolidations), reductions in future benefit accruals or increases in contributions, if agreed to by the bargaining parties, or any combination of such actions, or

(ii) if the plan sponsor determines that, based on reasonable actuarial assumptions and upon exhaustion of all reasonable measures, the plan can not reasonably be expected to emerge from critical status by the end of the rehabilitation period, reasonable measures to emerge from critical status at a later time or to forestall possible insolvency (within the meaning of section 4245 of the Employee Retirement Income Security Act of 1974).

A rehabilitation plan must provide annual standards for meeting the requirements of such rehabilitation plan. Such plan shall also include the schedules required to be provided under paragraph (1)(B)(i) and if clause (ii) applies, shall set forth the alternatives considered, explain why the plan is not reasonably expected to emerge from critical status by the end of the rehabilitation period, and specify when, if ever, the plan is expected to emerge from critical status in accordance with the rehabilitation plan.

(B) Updates to rehabilitation plan and schedules

(i) Rehabilitation plan

The plan sponsor shall annually update the rehabilitation plan and shall file the update with the plan's annual report under section 104 of the Employee Retirement Income Security Act of 1974.

(ii) Schedules

The plan sponsor shall annually update any schedule of contribution rates provided under this subsection to reflect the experience of the plan.

(iii) Duration of schedule

A schedule of contribution rates provided by the plan sponsor and relied upon by bargaining parties in negotiating a collective bargaining agreement shall remain in effect for the duration of that collective bargaining agreement.

(C) Imposition of default schedule where failure to adopt rehabilitation plan

(i) In general

If—

(I) a collective bargaining agreement providing for contributions under a multiemployer plan that was in effect at the time the plan entered critical status expires, and

(II) after receiving one or more schedules from the plan sponsor under paragraph (1)(B), the bargaining parties with respect to such agreement fail to adopt a to adopt a [2] contribution schedule with terms consistent with the rehabilitation plan and a schedule from the plan sponsor under paragraph (1)(B)(i),

the plan sponsor shall implement the default schedule described in the last sentence of paragraph (1) beginning on the date specified in clause (ii).

(ii) Date of implementation

The date specified in this clause is the date which is 180 days after the date on which the collective bargaining agreement described in clause (i) expires.

(4) Rehabilitation period

For purposes of this section—

(A) In general

The rehabilitation period for a plan in critical status is the 10-year period beginning on the first day of the first plan year of the multiemployer plan following the earlier of—

(i) the second anniversary of the date of the adoption of the rehabilitation plan, or

(ii) the expiration of the collective bargaining agreements in effect on the due date for the actuarial certification of critical status for the initial critical year under subsection (a)(1) and covering, as of such date at least 75 percent of the active participants in such multiemployer plan.

If a plan emerges from critical status as provided under subparagraph (B) before the end of such 10-year period, the rehabilitation period shall end with the plan year preceding the plan year for which the determination under subparagraph (B) is made.

(B) Emergence

A plan in critical status shall remain in such status until a plan year for which the plan actuary certifies, in accordance with subsection (b)(3)(A), that the plan is not projected to have an accumulated funding deficiency for the plan year or any of the 9 succeeding plan years, without regard to the use of the shortfall method but taking into account any extension of amortization periods under section 431(d).

(5) Rehabilitation plan adoption period

For purposes of this section, the term "rehabilitation plan adoption period" means the period beginning on the date of the certification under subsection (b)(3)(A) for the initial critical year and ending on the day before the first day of the rehabilitation period.

(6) Limitation on reduction in rates of future accruals

Any reduction in the rate of future accruals under the default schedule described in the last sentence of paragraph (1) shall not reduce the rate of future accruals below—

(A) a monthly benefit (payable as a single life annuity commencing at the participant's normal retirement age) equal to 1 percent of the contributions required to be made with respect to a participant, or the equivalent standard accrual rate for a participant or group of participants under the collective bargaining agreements in effect as of the first day of the initial critical year, or

(B) if lower, the accrual rate under the plan on such first day.

The equivalent standard accrual rate shall be determined by the plan sponsor based on the standard or average contribution base units which the plan sponsor determines to be representative for active participants and such other factors as the plan sponsor determines to be relevant. Nothing in

this paragraph shall be construed as limiting the ability of the plan sponsor to prepare and provide the bargaining parties with alternative schedules to the default schedule that establish lower or higher accrual and contribution rates than the rates otherwise described in this paragraph.

(7) Automatic employer surcharge

(A) Imposition of surcharge

Each employer otherwise obligated to make a contribution for the initial critical year shall be obligated to pay to the plan for such year a surcharge equal to 5 percent of the contribution otherwise required under the applicable collective bargaining agreement (or other agreement pursuant to which the employer contributes). For each succeeding plan year in which the plan is in critical status for a consecutive period of years beginning with the initial critical year, the surcharge shall be 10 percent of the contribution otherwise so required.

(B) Enforcement of surcharge

The surcharges under subparagraph (A) shall be due and payable on the same schedule as the contributions on which the surcharges are based. Any failure to make a surcharge payment shall be treated as a delinquent contribution under section 515 of the Employee Retirement Income Security Act of 1974 and shall be enforceable as such.

(C) Surcharge to terminate upon collective bargaining agreement renegotiation

The surcharge under this paragraph shall cease to be effective with respect to employees covered by a collective bargaining agreement (or other agreement pursuant to which the employer contributes), beginning on the effective date of a collective bargaining agreement (or other such agreement) that includes terms consistent with a schedule presented by the plan sponsor under paragraph (1)(B)(i), as modified under subparagraph (B) of paragraph (3).

(D) Surcharge not to apply until employer receives notice

The surcharge under this paragraph shall not apply to an employer until 30 days after the employer has been notified by the plan sponsor that the plan is in critical status and that the surcharge is in effect.

(E) Surcharge not to generate increased benefit accruals

Notwithstanding any provision of a plan to the contrary, the amount of any surcharge under this paragraph shall not be the basis for any benefit accrual under the plan.

(8) Benefit adjustments

(A) Adjustable benefits

(i) In general

Notwithstanding section 411(d)(6), the plan sponsor shall, subject to the notice requirement under subparagraph (C), make any reductions to adjustable benefits which the plan sponsor deems appropriate, based upon the outcome of collective bargaining over the schedule or schedules provided under paragraph (1)(B)(i).

(ii) Exception for retirees

Except in the case of adjustable benefits described in clause (iv)(III), the plan sponsor of a plan in critical status shall not reduce adjustable benefits of any participant or beneficiary whose benefit commencement date is before the date on which the plan provides notice to the participant or beneficiary under subsection (b)(3)(D) for the initial critical year.

(iii) Plan sponsor flexibility

The plan sponsor shall include in the schedules provided to the bargaining parties an allowance for funding the benefits of participants with respect to whom contributions are not currently required to be made, and shall reduce their benefits to the extent permitted under this title and considered appropriate by the plan sponsor based on the plan's then current overall funding status.

(iv) Adjustable benefit defined

For purposes of this paragraph, the term "adjustable benefit" means—

(I) benefits, rights, and features under the plan, including post-retirement death benefits, 60-month guarantees, disability benefits not yet in pay status, and similar benefits,

(II) any early retirement benefit or retirement-type subsidy (within the meaning of section 411(d)(6)(B)(i)) and any benefit payment option (other than the qualified joint and survivor annuity), and

(III) benefit increases that would not be eligible for a guarantee under section 4022A of the Employee Retirement Income Security Act of 1974 on the first day of initial critical year because the increases were adopted (or, if later, took effect) less than 60 months before such first day.

(B) Normal retirement benefits protected

Except as provided in subparagraph (A)(iv)(III), nothing in this paragraph shall be construed to permit a plan to reduce the level of a participant's accrued benefit payable at normal retirement age.

(C) Notice requirements

(i) In general

No reduction may be made to adjustable benefits under subparagraph (A) unless notice of such reduction has been given at least 30 days before the general effective date of such reduction for all participants and beneficiaries to—

(I) plan participants and beneficiaries,

(II) each employer who has an obligation to contribute (within the meaning of section 4212(a) of the Employee Retirement Income Security Act of 1974) under the plan, and

(III) each employee organization which, for purposes of collective bargaining, represents plan participants employed by such an employer.

(ii) Content of notice

The notice under clause (i) shall contain—

(I) sufficient information to enable participants and beneficiaries to understand the effect of any reduction on their benefits, including an estimate (on an annual or monthly basis) of any affected adjustable benefit that a participant or beneficiary would otherwise have been eligible for as of the general effective date described in clause (i), and

(II) information as to the rights and remedies of plan participants and beneficiaries as well as how to contact the Department of Labor for further information and assistance where appropriate.

(iii) Form and manner

Any notice under clause (i)—

(I) shall be provided in a form and manner prescribed in regulations of the Secretary, in consultation with the Secretary of Labor,

(II) shall be written in a manner so as to be understood by the average plan participant, and

(III) may be provided in written, electronic, or other appropriate form to the extent such form is reasonably accessible to persons to whom the notice is required to be provided.

the [3] Secretary shall in the regulations prescribed under subclause (I) establish a model notice that a plan sponsor may use to meet the requirements of this subparagraph.

(9) Adjustments disregarded in withdrawal liability determination

(A) Benefit reductions

Any benefit reductions under this subsection shall be disregarded in determining a plan's unfunded vested benefits for purposes of determining an employer's withdrawal liability under

section 4201 of the Employee Retirement Income Security Act of 1974.

(B) Surcharges

Any surcharges under paragraph (7) shall be disregarded in determining the allocation of unfunded vested benefits to an employer under section 4211 of such Act, except for purposes of determining the unfunded vested benefits attributable to an employer under section 4211(c)(4) of such Act or a comparable method approved under section 4211(c)(5) of such Act.

(C) Simplified calculations

The Pension Benefit Guaranty Corporation shall prescribe simplified methods for the application of this paragraph in determining withdrawal liability.

(f) Rules for operation of plan during adoption and rehabilitation period

(1) Compliance with rehabilitation plan

(A) In general

A plan may not be amended after the date of the adoption of a rehabilitation plan under subsection (e) so as to be inconsistent with the rehabilitation plan.

(B) Special rules for benefit increases

A plan may not be amended after the date of the adoption of a rehabilitation plan under subsection (e) so as to increase benefits, including future benefit accruals, unless the plan actuary certifies that such increase is paid for out of additional contributions not contemplated by the rehabilitation plan, and, after taking into account the benefit increase, the multiemployer plan still is reasonably expected to emerge from critical status by the end of the rehabilitation period on the schedule contemplated in the rehabilitation plan.

(2) Restriction on lump sums and similar benefits

(A) In general

Effective on the date the notice of certification of the plan's critical status for the initial critical year under subsection (b)(3)(D) is sent, and notwithstanding section 411(d)(6), the plan shall not pay—

(i) any payment, in excess of the monthly amount paid under a single life annuity (plus any social security supplements described in the last sentence of section 411(a)(9)), to a participant or beneficiary whose annuity starting date (as defined in section 417(f)(2)) occurs after the date such notice is sent,

(ii) any payment for the purchase of an irrevocable commitment from an insurer to pay benefits, and

(iii) any other payment specified by the Secretary by regulations.

(B) Exception

Subparagraph (A) shall not apply to a benefit which under section 411(a)(11) may be immediately distributed without the consent of the participant or to any makeup payment in the case of a retroactive annuity starting date or any similar payment of benefits owed with respect to a prior period.

(3) Adjustments disregarded in withdrawal liability determination

Any benefit reductions under this subsection shall be disregarded in determining a plan's unfunded vested benefits for purposes of determining an employer's withdrawal liability under section 4201 of the Employee Retirement Income Security Act of 1974.

(4) Special rules for plan adoption period

During the rehabilitation plan adoption period—

(A) the plan sponsor may not accept a collective bargaining agreement or participation agreement with respect to the multiemployer plan that provides for—

(i) a reduction in the level of contributions for any participants,

(ii) a suspension of contributions with respect to any period of service, or

(iii) any new direct or indirect exclusion of younger or newly hired employees from plan participation, and

(B) no amendment of the plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan may be adopted unless the amendment is required as a condition of qualification under part I of subchapter D of chapter 1 or to comply with other applicable law.

(g) Expedited resolution of plan sponsor decisions

If, within 60 days of the due date for adoption of a funding improvement plan under subsection (c) or a rehabilitation plan under subsection (e), the plan sponsor of a plan in endangered status or a plan in critical status has not agreed on a funding improvement plan or rehabilitation plan, then any member of the board or group that constitutes the plan sponsor may require that the plan sponsor enter into an expedited dispute resolution procedure for the development and adoption of a funding improvement plan or rehabilitation plan.

(h) Nonbargained participation

(1) Both bargained and nonbargained employee-participants

In the case of an employer that contributes to a multiemployer plan with respect to both employees who are covered by one or more collective bargaining agreements and employees who are not so covered, if the plan is in endangered status or in critical status, benefits of and contributions for the nonbargained employees, including surcharges on those contributions, shall be determined as if those nonbargained employees were covered under the first to expire of the employer's collective bargaining agreements in effect when the plan entered endangered or critical status.

(2) Nonbargained employees only

In the case of an employer that contributes to a multiemployer plan only with respect to employees who are not covered by a collective bargaining agreement, this section shall be applied as if the employer were the bargaining party, and its participation agreement with the plan were a collective bargaining agreement with a term ending on the first day of the plan year beginning after the employer is provided the schedule or schedules described in subsections (c) and (e).

(i) Definitions; actuarial method

For purposes of this section—

(1) Bargaining party

The term "bargaining party" means—

(A)(i) except as provided in clause (ii), an employer who has an obligation to contribute under the plan; or

(ii) in the case of a plan described under section 404(c), or a continuation of such a plan, the association of employers that is the employer settlor of the plan; and

(B) an employee organization which, for purposes of collective bargaining, represents plan participants employed by an employer who has an obligation to contribute under the plan.

(2) Funded percentage

The term "funded percentage" means the percentage equal to a fraction—

(A) the numerator of which is the value of the plan's assets, as determined under section 431(c)(2), and

(B) the denominator of which is the accrued liability of the plan, determined using actuarial assumptions described in section 431(c)(3).

(3) Accumulated funding deficiency

The term "accumulated funding deficiency" has the meaning given such term in section 431(a).

(4) Active participant

The term "active participant" means, in connection with a multiemployer plan, a participant who is in covered service under the plan.

(5) Inactive participant

The term "inactive participant" means, in connection with a multiemployer plan, a participant, or the beneficiary or alternate payee of a participant, who—

(A) is not in covered service under the plan, and

(B) is in pay status under the plan or has a nonforfeitable right to benefits under the plan.

(6) Pay status

A person is in pay status under a multiemployer plan if—

(A) at any time during the current plan year, such person is a participant or beneficiary under the plan and is paid an early, late, normal, or disability retirement benefit under the plan (or a death benefit under the plan related to a retirement benefit), or

(B) to the extent provided in regulations of the Secretary, such person is entitled to such a benefit under the plan.

(7) Obligation to contribute

The term "obligation to contribute" has the meaning given such term under section 4212(a) of the Employee Retirement Income Security Act of 1974.

(8) Actuarial method

Notwithstanding any other provision of this section, the actuary's determinations with respect to a plan's normal cost, actuarial accrued liability, and improvements in a plan's funded percentage under this section shall be based upon the unit credit funding method (whether or not that method is used for the plan's actuarial valuation).

(9) Plan sponsor

For purposes of this section, section 431, and section 4971(g):

(A) In general

The term "plan sponsor" means, with respect to any multiemployer plan, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan.

(B) Special rule for section 404(c) plans

In the case of a plan described in section 404(c) (or a continuation of such plan), such term means the bargaining parties described in paragraph (1).

(10) Benefit commencement date

The term "benefit commencement date" means the annuity starting date (or in the case of a retroactive annuity starting date, the date on which benefit payments begin).

(Added Pub. L. 109–280, title II, §212(a), Aug. 17, 2006, 120 Stat. 899; amended Pub. L. 110–458, title I, §102(b)(2)(A)–(G), Dec. 23, 2008, 122 Stat. 5101, 5102.)

TERMINATION OF SECTION

For termination of section by section 221(c) of Pub. L. 109–280, see Effective and Termination Dates note below.

REFERENCES IN TEXT

The Employee Retirement Income Security Act of 1974, referred to in text, is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, as amended. Sections 101, 103, 104, 502, 515, 4022A, 4201, 4211, 4212, and 4245 of the Act are classified to sections 1021, 1023, 1024, 1132, 1145, 1322a, 1381, 1391, 1392, and 1426, respectively, of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

AMENDMENTS

2008—Subsec. (b)(3)(C). Pub. L. 110–458, §102(b)(2)(A), substituted "section 101(b)(1)" for "section 101(b)(4)".

Subsec. (b)(3)(D)(iii). Pub. L. 110–458, §102(b)(2)(B), substituted "The Secretary, in consultation with the Secretary of Labor" for "The Secretary of Labor".

Subsec. (c)(3)(A)(ii). Pub. L. 110–458, §102(b)(2)(C)(i), substituted "section 431(d)" for "section 304(d)".

Subsec. (c)(7)(A)(ii). Pub. L. 110–458, §102(b)(2)(C)(ii)(I), substituted "to adopt a contribution schedule with terms consistent with the funding improvement plan and a schedule from the plan sponsor," for "to agree on changes to contribution or benefit schedules necessary to meet the applicable benchmarks in accordance with the funding improvement plan,".

Subsec. (c)(7)(B). Pub. L. 110–458, §102(b)(2)(C)(ii)(II), added subpar. (B), and struck out former subpar. (B). Prior to amendment, text read as follows: "The date specified in this subparagraph is the earlier of the date—

"(i) on which the Secretary of Labor certifies that the parties are at an impasse, or

"(ii) which is 180 days after the date on which the collective bargaining agreement described in subparagraph (A) expires."

Subsec. (e)(3)(C)(i)(II). Pub. L. 110–458, §102(b)(2)(D)(i)(I), substituted "to adopt a contribution schedule with terms consistent with the rehabilitation plan and a schedule from the plan sponsor under paragraph (1)(B)(i)," for "contribution or benefit schedules with terms consistent with the rehabilitation plan and the schedule from the plan sponsor under paragraph (1)(B)(i),".

Subsec. (e)(3)(C)(ii). Pub. L. 110–458, §102(b)(2)(D)(i)(II), added cl. (ii) and struck out former cl. (ii). Prior to amendment, text read as follows: "The date specified in this clause is the earlier of the date—

"(I) on which the Secretary of Labor certifies that the parties are at an impasse, or

"(II) which is 180 days after the date on which the collective bargaining agreement described in clause (i) expires."

Subsec. (e)(4)(A)(ii). Pub. L. 110–458, §102(b)(2)(D)(ii)(I), struck out "the date of" after "in effect on".

Subsec. (e)(4)(B). Pub. L. 110–458, §102(b)(2)(D)(ii)(II), substituted "but taking" for "and taking".

Subsec. (e)(6). Pub. L. 110–458, §102(b)(2)(D)(iii), substituted "the last sentence of paragraph (1)" for "paragraph (1)(B)(i)" in introductory provisions and "establish" for "established" in concluding provisions.

Subsec. (e)(8)(A)(i). Pub. L. 110–458, §102(b)(2)(D)(iv)(I), substituted "section 411(d)(6)" for "section 204(g)".

Subsec. (e)(8)(C)(i)(II). Pub. L. 110–458, §102(b)(2)(D)(iv)(II), inserted "of the Employee Retirement Income Security Act of 1974" after "section 4212(a)".

Subsec. (e)(8)(C)(iii). Pub. L. 110–458, §102(b)(2)(D)(iv)(IV), which directed substitution of "the Secretary" for "the Secretary of Labor" in last sentence, was executed by making the substitution for "The Secretary of Labor", to reflect the probable intent of Congress.

Subsec. (e)(8)(C)(iii)(I). Pub. L. 110–458, §102(b)(2)(D)(iv)(III), substituted "the Secretary, in consultation with the Secretary of Labor" for "the Secretary of Labor".

Subsec. (e)(9)(B). Pub. L. 110–458, §102(b)(2)(D)(v), substituted "the allocation of unfunded vested benefits to an employer" for "an employer's withdrawal liability".

Subsec. (f)(2)(A)(i). Pub. L. 110–458, §102(b)(2)(E), substituted "section 411(a)(9)" for "411(b)(1)(A)" and inserted at end "to a participant or beneficiary whose annuity starting date (as defined in section 417(f)(2)) occurs after the date such notice is sent,".

Subsec. (g). Pub. L. 110–458, §102(b)(2)(F), inserted "under subsection (c)" after "for adoption of a funding improvement plan".

Subsec. (i)(3). Pub. L. 110–458, §102(b)(2)(G)(i), substituted "section 431(a)" for "section 412(a)".

Subsec. (i)(9). Pub. L. 110–458, §102(b)(2)(G)(ii), added par. (9) and struck out former par. (9). Prior to amendment, text read as follows: "In the case of a plan described under section 404(c), or a continuation of such a plan, the term 'plan sponsor' means the bargaining parties described under paragraph (1)."

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–458 effective as if included in the provisions of Pub. L. 109–280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110–458, set out as a note under section 72 of this title.

EFFECTIVE AND TERMINATION DATES

Section applicable with respect to plan years beginning after 2007, with special rules for certain notices and certain restored benefits, see section 212(e) of Pub. L. 109–280, set out as an Effective and Termination Dates

of 2006 Amendment note under section 412 of this title.

Section inapplicable to plan years beginning after Dec. 31, 2014, with exception for certain funding improvement and rehabilitation plans, see section 221(c) of Pub. L. 109–280, set out as an Effective and Termination Dates of 2006 Amendment note under section 412 of this title.

TEMPORARY DELAY OF DESIGNATION OF MULTIEMPLOYER PLANS AS IN ENDANGERED OR CRITICAL STATUS

Pub. L. 110–458, title II, §204, Dec. 23, 2008, 122 Stat. 5118, provided that:

"(a) IN GENERAL.—Notwithstanding the actuarial certification under section 305(b)(3) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1085(b)(3)] and section 432(b)(3) of the Internal Revenue Code of 1986, if a plan sponsor of a multiemployer plan elects the application of this section, then, for purposes of section 305 of such Act and section 432 of such Code—

"(1) the status of the plan for its first plan year beginning during the period beginning on October 1, 2008, and ending on September 30, 2009, shall be the same as the status of such plan under such sections for the plan year preceding such plan year, and

"(2) in the case of a plan which was in endangered or critical status for the preceding plan year described in paragraph (1), the plan shall not be required to update its plan or schedules under section 305(c)(6) of such Act and section 432(c)(6) of such Code, or section 305(e)(3)(B) of such Act and section 432(e)(3)(B) of such Code, whichever is applicable, until the plan year following the first plan year described in paragraph (1).

If section 305 of the Employee Retirement Income Security Act of 1974 and section 432 of the Internal Revenue Code of 1986 did not apply to the preceding plan year described in paragraph (1), the plan actuary shall make a certification of the status of the plan under section 305(b)(3) of such Act and section 432(b)(3) of such Code for the preceding plan year in the same manner as if such sections had applied to such preceding plan year.

"(b) EXCEPTION FOR PLANS BECOMING CRITICAL DURING ELECTION.—If—

"(1) an election was made under subsection (a) with respect to a multiemployer plan, and

"(2) such plan has, without regard to such election, been certified by the plan actuary under section 305(b)(3) of such Act [29 U.S.C. 1085(b)(3)] and section 432(b)(3) of such Code to be in critical status for the first plan year described in subsection (a)(1),

then such plan shall be treated as a plan in critical status for such plan year for purposes of applying section 4971(g)(1)(A) of such Code, section 302(b)(3) of such Act [29 U.S.C. 1082(b)(3)] (without regard to the second sentence thereof), and section 412(b)(3) of such Code (without regard to the second sentence thereof).

"(c) ELECTION AND NOTICE.—

"(1) ELECTION.—An election under subsection (a) shall—

"(A) be made at such time and in such manner as the Secretary of the Treasury or the Secretary's delegate may prescribe and, once made, may be revoked only with the consent of the Secretary, and

"(B) if the election is made—

"(i) before the date the annual certification is submitted to the Secretary or the Secretary's delegate under section 305(b)(3) of such Act [29 U.S.C. 1085(b)(3)] and section 432(b)(3) of such Code, be included with such annual certification, and

"(ii) after such date, be submitted to the Secretary or the Secretary's delegate not later than 30 days after the date of the election.

"(2) NOTICE TO PARTICIPANTS.—

"(A) IN GENERAL.—Notwithstanding section 305(b)(3)(D) of such Act and section 431(b)(3)(D) of such Code, if the plan is neither in endangered nor critical status by reason of an election made under subsection (a)—

"(i) the plan sponsor of a multiemployer plan shall not be required to provide notice under such sections, and

"(ii) the plan sponsor shall provide to the participants and beneficiaries, the bargaining parties, the Pension Benefit Guaranty Corporation, and the Secretary of Labor a notice of the election and such other information as the Secretary of the Treasury (in consultation with the Secretary of Labor) may require—

"(I) if the election is made before the date the annual certification is submitted to the Secretary or the Secretary's delegate under section 305(b)(3) of such Act and section 432(b)(3) of such Code, not later than 30 days after the date of the certification, and

"(II) if the election is made after such date, not later than 30 days after the date of the election.

"(B) NOTICE OF ENDANGERED STATUS.—Notwithstanding section 305(b)(3)(D) of such

Act and section 431(b)(3)(D) of such Code, if the plan is certified to be in critical status for any plan year but is in endangered status by reason of an election made under subsection (a), the notice provided under such sections shall be the notice which would have been provided if the plan had been certified to be in endangered status."

TEMPORARY EXTENSION OF THE FUNDING IMPROVEMENT AND REHABILITATION PERIODS FOR MULTIEMPLOYER PENSION PLANS IN CRITICAL AND ENDANGERED STATUS FOR 2008 OR 2009

Pub. L. 110–458, title II, §205, Dec. 23, 2008, 122 Stat. 5120, provided that:

"(a) IN GENERAL.—If the plan sponsor of a multiemployer plan which is in endangered or critical status for a plan year beginning in 2008 or 2009 (determined after application of section 204 [of Pub. L. 110–458, set out above]) elects the application of this section, then, for purposes of section 305 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1085] and section 432 of the Internal Revenue Code of 1986—

"(1) except as provided in paragraph (2), the plan's funding improvement period or rehabilitation period, whichever is applicable, shall be 13 years rather than 10 years, and

"(2) in the case of a plan in seriously endangered status, the plan's funding improvement period shall be 18 years rather than 15 years.

"(b) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) ELECTION.—An election under this section shall be made at such time, and in such manner and form, as (in consultation with the Secretary of Labor) the Secretary of the Treasury or the Secretary's delegate may prescribe.

"(2) DEFINITIONS.—Any term which is used in this section which is also used in section 305 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1085] and section 432 of the Internal Revenue Code of 1986 shall have the same meaning as when used in such sections.

"(c) EFFECTIVE DATE.—This section shall apply to plan years beginning after December 31, 2007."

SPECIAL RULE FOR CERTAIN BENEFITS FUNDED UNDER AN AGREEMENT APPROVED BY THE PENSION BENEFIT GUARANTY CORPORATION

For applicability of this section to a multiemployer plan that is a party to an agreement that was approved by the Pension Benefit Guaranty Corporation prior to June 30, 2005, and that increases benefits and provides for certain withdrawal liability rules, see section 206 of Pub. L. 109–280, set out as a note under section 412 of this title.

[1] *So in original. Probably should be followed by a comma.*

[2] *So in original.*

[3] *So in original. Probably should be capitalized.*

§433. Minimum funding standards

(a) General rule

For purposes of section 412, the term "accumulated funding deficiency" for a CSEC plan means the excess of the total charges to the funding standard account for all plan years (beginning with the first plan year to which section 412 applies) over the total credits to such account for such years or, if less, the excess of the total charges to the alternative minimum funding standard account for such plan years over the total credits to such account for such years.

(b) Funding standard account

(1) Account required

Each plan to which this section applies shall establish and maintain a funding standard account. Such account shall be credited and charged solely as provided in this section.

(2) Charges to account

For a plan year, the funding standard account shall be charged with the sum of—

(A) the normal cost of the plan for the plan year,

(B) the amounts necessary to amortize in equal annual installments (until fully amortized)—

(i) in the case of a plan in existence on January 1, 1974, the unfunded past service liability under the plan on the first day of the first plan year to which section 412 applies, over a period of 40 plan years,

(ii) in the case of a plan which comes into existence after January 1, 1974, but before the first day of the first plan year beginning after December 31, 2013, the unfunded past service liability under the plan on the first day of the first plan year to which section 412 applies, over a period of 30 plan years,

(iii) separately, with respect to each plan year, the net increase (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 15 plan years,

(iv) separately, with respect to each plan year, the net experience loss (if any) under the plan, over a period of 5 plan years, and

(v) separately, with respect to each plan year, the net loss (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 10 plan years,

(C) the amount necessary to amortize each waived funding deficiency (within the meaning of section 412(c)(3)) for each prior plan year in equal annual installments (until fully amortized) over a period of 5 plan years,

(D) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 5 plan years any amount credited to the funding standard account under paragraph (3)(D), and

(E) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 20 years the contributions which would be required to be made under the plan but for the provisions of section 412(c)(7)(A)(i)(I) (as in effect on the day before the enactment of the Pension Protection Act of 2006).

(3) Credits to account

For a plan year, the funding standard account shall be credited with the sum of—

(A) the amount considered contributed by the employer to or under the plan for the plan year,

(B) the amount necessary to amortize in equal annual installments (until fully amortized)—

(i) separately, with respect to each plan year, the net decrease (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 15 plan years,

(ii) separately, with respect to each plan year, the net experience gain (if any) under the plan, over a period of 5 plan years, and

(iii) separately, with respect to each plan year, the net gain (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 10 plan years,

(C) the amount of the waived funding deficiency (within the meaning of section 412(c)(3)) for the plan year, and

(D) in the case of a plan year for which the accumulated funding deficiency is determined under the funding standard account if such plan year follows a plan year for which such deficiency was determined under the alternative minimum funding standard, the excess (if any) of any debit balance in the funding standard account (determined without regard to this subparagraph) over any debit balance in the alternative minimum funding standard account.

(4) Combining and offsetting amounts to be amortized

Under regulations prescribed by the Secretary, amounts required to be amortized under paragraph (2) or paragraph (3), as the case may be—

(A) may be combined into one amount under such paragraph to be amortized over a period determined on the basis of the remaining amortization period for all items entering into such

combined amount, and

(B) may be offset against amounts required to be amortized under the other such paragraph, with the resulting amount to be amortized over a period determined on the basis of the remaining amortization periods for all items entering into whichever of the two amounts being offset is the greater.

(5) Interest

(A) In general

Except as provided in subparagraph (B), the funding standard account (and items therein) shall be charged or credited (as determined under regulations prescribed by the Secretary) with interest at the appropriate rate consistent with the rate or rates of interest used under the plan to determine costs.

(B) Exception

The interest rate used for purposes of computing the amortization charge described in subsection (b)(2)(C) or for purposes of any arrangement under subsection (d) for any plan year shall be the greater of—

(i) 150 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of such plan year), or

(ii) the rate of interest determined under subparagraph (A).

(6) Amortization schedules in effect

Amortization schedules for amounts described in paragraphs (2) and (3) that are in effect as of the last day of the last plan year beginning before January 1, 2014, by reason of section 104 of the Pension Protection Act of 2006 shall remain in effect pursuant to their terms and this section, except that such amounts shall not be amortized again under this section.

(c) Special rules

(1) Determinations to be made under funding method

For purposes of this section, normal costs, accrued liability, past service liabilities, and experience gains and losses shall be determined under the funding method used to determine costs under the plan.

(2) Valuation of assets

(A) In general

For purposes of this section, the value of the plan's assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value and which is permitted under regulations prescribed by the Secretary.

(B) Dedicated bond portfolio

The Secretary may by regulations provide that the value of any dedicated bond portfolio of a plan shall be determined by using the interest rate under section 412(b)(5) (as in effect on the day before the enactment of the Pension Protection Act of 2006).

(3) Actuarial assumptions must be reasonable

For purposes of this section, all costs, liabilities, rates of interest, and other factors under the plan shall be determined on the basis of actuarial assumptions and methods—

(A) each of which is reasonable (taking into account the experience of the plan and reasonable expectations), and

(B) which, in combination, offer the actuary's best estimate of anticipated experience under the plan.

(4) Treatment of certain changes as experience gain or loss

For purposes of this section, if—

(A) a change in benefits under the Social Security Act or in other retirement benefits created

under Federal or State law, or

(B) a change in the definition of the term "wages" under section 3121 or a change in the amount of such wages taken into account under regulations prescribed for purposes of section 401(a)(5),

results in an increase or decrease in accrued liability under a plan, such increase or decrease shall be treated as an experience loss or gain.

(5) Funding method and plan year

(A) Funding methods available

All funding methods available to CSEC plans under section 412 (as in effect on the day before the enactment of the Pension Protection Act of 2006) shall continue to be available under this section.

(B) Changes

If the funding method for a plan is changed, the new funding method shall become the funding method used to determine costs and liabilities under the plan only if the change is approved by the Secretary. If the plan year for a plan is changed, the new plan year shall become the plan year for the plan only if the change is approved by the Secretary.

(C) Approval required for certain changes in assumptions by certain single-employer plans subject to additional funding requirement

(i) In general

No actuarial assumption (other than the assumptions described in subsection (h)(3)) used to determine the current liability for a plan to which this subparagraph applies may be changed without the approval of the Secretary.

(ii) Plans to which subparagraph applies

This subparagraph shall apply to a plan only if—

(I) the plan is a CSEC plan,

(II) the aggregate unfunded vested benefits as of the close of the preceding plan year (as determined under section 4006(a)(3)(E)(iii) of the Employee Retirement Income Security Act of 1974) of such plan and all other plans maintained by the contributing sponsors (as defined in section 4001(a)(13) of such Act) and members of such sponsors' controlled groups (as defined in section 4001(a)(14) of such Act) which are covered by title IV [1] (disregarding plans with no unfunded vested benefits) exceed $50,000,000, and

(III) the change in assumptions (determined after taking into account any changes in interest rate and mortality table) results in a decrease in the funding shortfall of the plan for the current plan year that exceeds $50,000,000, or that exceeds $5,000,000 and that is 5 percent or more of the current liability of the plan before such change.

(6) Full funding

If, as of the close of a plan year, a plan would (without regard to this paragraph) have an accumulated funding deficiency (determined without regard to the alternative minimum funding standard account permitted under subsection (e)) in excess of the full funding limitation—

(A) the funding standard account shall be credited with the amount of such excess, and

(B) all amounts described in paragraphs (2)(B), (C), and (D) and (3)(B) of subsection (b) which are required to be amortized shall be considered fully amortized for purposes of such paragraphs.

(7) Full-funding limitation

For purposes of paragraph (6), the term "full-funding limitation" means the excess (if any) of—

(A) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

(B) the lesser of—
(i) the fair market value of the plan's assets, or
(ii) the value of such assets determined under paragraph (2).

(C) MINIMUM AMOUNT.—
(i) IN GENERAL.—In no event shall the full-funding limitation determined under subparagraph (A) be less than the excess (if any) of—
(I) 90 percent of the current liability (determined without regard to paragraph (4) of subsection (h)) of the plan (including the expected increase in such current liability due to benefits accruing during the plan year), over
(II) the value of the plan's assets determined under paragraph (2).

(ii) ASSETS.—For purposes of clause (i), assets shall not be reduced by any credit balance in the funding standard account.

(8) Annual valuation

(A) In general

For purposes of this section, a determination of experience gains and losses and a valuation of the plan's liability shall be made not less frequently than once every year, except that such determination shall be made more frequently to the extent required in particular cases under regulations prescribed by the Secretary.

(B) Valuation date

(i) Current year

Except as provided in clause (ii), the valuation referred to in subparagraph (A) shall be made as of a date within the plan year to which the valuation refers or within one month prior to the beginning of such year.

(ii) Use of prior year valuation

The valuation referred to in subparagraph (A) may be made as of a date within the plan year prior to the year to which the valuation refers if, as of such date, the value of the assets of the plan are not less than 100 percent of the plan's current liability.

(iii) Adjustments

Information under clause (ii) shall, in accordance with regulations, be actuarially adjusted to reflect significant differences in participants.

(iv) Limitation

A change in funding method to use a prior year valuation, as provided in clause (ii), may not be made unless as of the valuation date within the prior plan year, the value of the assets of the plan are not less than 125 percent of the plan's current liability.

(9) Time when certain contributions deemed made

For purposes of this section, any contributions for a plan year made by an employer during the period—
(A) beginning on the day after the last day of such plan year, and
(B) ending on the day which is 8½ months after the close of the plan year,

shall be deemed to have been made on such last day.

(10) Anticipation of benefit increases effective in the future

In determining projected benefits, the funding method of a collectively bargained CSEC plan described in section 413(a) shall anticipate benefit increases scheduled to take effect during the term of the collective bargaining agreement applicable to the plan.

(d) Extension of amortization periods

The period of years required to amortize any unfunded liability (described in any clause of subsection (b)(2)(B)) of any plan may be extended by the Secretary for a period of time (not in excess of 10 years) if the Secretary determines that such extension would carry out the purposes of the Employee Retirement Income Security Act of 1974 and provide adequate protection for participants under the plan and their beneficiaries, and if the Secretary determines that the failure to permit such extension would result in—

(1) a substantial risk to the voluntary continuation of the plan, or

(2) a substantial curtailment of pension benefit levels or employee compensation.

(e) Alternative minimum funding standard

(1) In general

A CSEC plan which uses a funding method that requires contributions in all years not less than those required under the entry age normal funding method may maintain an alternative minimum funding standard account for any plan year. Such account shall be credited and charged solely as provided in this subsection.

(2) Charges and credits to account

For a plan year the alternative minimum funding standard account shall be—

(A) charged with the sum of—

(i) the lesser of normal cost under the funding method used under the plan or normal cost determined under the unit credit method,

(ii) the excess, if any, of the present value of accrued benefits under the plan over the fair market value of the assets, and

(iii) an amount equal to the excess (if any) of credits to the alternative minimum standard account for all prior plan years over charges to such account for all such years, and

(B) credited with the amount considered contributed by the employer to or under the plan for the plan year.

(3) Interest

The alternative minimum funding standard account (and items therein) shall be charged or credited with interest in the manner provided under subsection (b)(5) with respect to the funding standard account.

(f) Quarterly contributions required

(1) In general

If a CSEC plan which has a funded current liability percentage for the preceding plan year of less than 100 percent fails to pay the full amount of a required installment for the plan year, then the rate of interest charged to the funding standard account under subsection (b)(5) with respect to the amount of the underpayment for the period of the underpayment shall be equal to the greater of—

(A) 175 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of such plan year), or

(B) the rate of interest used under the plan in determining costs.

(2) Amount of underpayment, period of underpayment

For purposes of paragraph (1)—

(A) Amount

The amount of the underpayment shall be the excess of—

(i) the required installment, over

(ii) the amount (if any) of the installment contributed to or under the plan on or before the due date for the installment.

(B) Period of underpayment

The period for which interest is charged under this subsection with regard to any portion of the underpayment shall run from the due date for the installment to the date on which such portion is contributed to or under the plan (determined without regard to subsection (c)(9)).

(C) Order of crediting contributions

For purposes of subparagraph (A)(ii), contributions shall be credited against unpaid required installments in the order in which such installments are required to be paid.

(3) Number of required installments; due dates

For purposes of this subsection—

(A) Payable in 4 installments

There shall be 4 required installments for each plan year.

(B) Time for payment of installments

In the case of the following required installments:	The due date is:
1st	April 15
2nd	July 15
3rd	October 15
4th	January 15 of the following year.

(4) Amount of required installment

For purposes of this subsection—

(A) In general

The amount of any required installment shall be 25 percent of the required annual payment.

(B) Required annual payment

For purposes of subparagraph (A), the term "required annual payment" means the lesser of—

(i) 90 percent of the amount required to be contributed to or under the plan by the employer for the plan year under section 412 (without regard to any waiver under subsection (c) thereof), or

(ii) 100 percent of the amount so required for the preceding plan year.

Clause (ii) shall not apply if the preceding plan year was not a year of 12 months.

(5) Liquidity requirement

(A) In general

A plan to which this paragraph applies shall be treated as failing to pay the full amount of any required installment to the extent that the value of the liquid assets paid in such installment is less than the liquidity shortfall (whether or not such liquidity shortfall exceeds the amount of such installment required to be paid but for this paragraph).

(B) Plans to which paragraph applies

This paragraph shall apply to a CSEC plan other than a plan described in section 412(l)(6)(A) (as in effect on the day before the enactment of the Pension Protection Act of 2006) which—

(i) is required to pay installments under this subsection for a plan year, and

(ii) has a liquidity shortfall for any quarter during such plan year.

(C) Period of underpayment

For purposes of paragraph (1), any portion of an installment that is treated as not paid under subparagraph (A) shall continue to be treated as unpaid until the close of the quarter in which the due date for such installment occurs.

(D) Limitation on increase

If the amount of any required installment is increased by reason of subparagraph (A), in no event shall such increase exceed the amount which, when added to prior installments for the plan year, is necessary to increase the funded current liability percentage (taking into account the expected increase in current liability due to benefits accruing during the plan year) to 100 percent.

(E) Definitions

For purposes of this paragraph—

(i) Liquidity shortfall

The term "liquidity shortfall" means, with respect to any required installment, an amount equal to the excess (as of the last day of the quarter for which such installment is made) of the base amount with respect to such quarter over the value (as of such last day) of the plan's liquid assets.

(ii) Base amount

(I) In general

The term "base amount" means, with respect to any quarter, an amount equal to 3 times the sum of the adjusted disbursements from the plan for the 12 months ending on the last day of such quarter.

(II) Special rule

If the amount determined under subclause (I) exceeds an amount equal to 2 times the sum of the adjusted disbursements from the plan for the 36 months ending on the last day of the quarter and an enrolled actuary certifies to the satisfaction of the Secretary that such excess is the result of nonrecurring circumstances, the base amount with respect to such quarter shall be determined without regard to amounts related to those nonrecurring circumstances.

(iii) Disbursements from the plan

The term "disbursements from the plan" means all disbursements from the trust, including purchases of annuities, payments of single sums and other benefits, and administrative expenses.

(iv) Adjusted disbursements

The term "adjusted disbursements" means disbursements from the plan reduced by the product of—

(I) the plan's funded current liability percentage for the plan year, and

(II) the sum of the purchases of annuities, payments of single sums, and such other disbursements as the Secretary shall provide in regulations.

(v) Liquid assets

The term "liquid assets" means cash, marketable securities and such other assets as specified by the Secretary in regulations.

(vi) Quarter

The term "quarter" means, with respect to any required installment, the 3-month period preceding the month in which the due date for such installment occurs.

(F) Regulations

The Secretary may prescribe such regulations as are necessary to carry out this paragraph.

(6) Fiscal years and short years

(A) Fiscal years

In applying this subsection to a plan year beginning on any date other than January 1, there

shall be substituted for the months specified in this subsection, the months which correspond thereto.

(B) Short plan year

This subsection shall be applied to plan years of less than 12 months in accordance with regulations prescribed by the Secretary.

(g) Imposition of lien where failure to make required contributions

(1) In general

In the case of a plan to which this section applies, if—

(A) any person fails to make a required installment under subsection (f) or any other payment required under this section before the due date for such installment or other payment, and

(B) the unpaid balance of such installment or other payment (including interest), when added to the aggregate unpaid balance of all preceding such installments or other payments for which payment was not made before the due date (including interest), exceeds $1,000,000,

then there shall be a lien in favor of the plan in the amount determined under paragraph (3) upon all property and rights to property, whether real or personal, belonging to such person and any other person who is a member of the same controlled group of which such person is a member.

(2) Plans to which subsection applies

This subsection shall apply to a CSEC plan for any plan year for which the funded current liability percentage of such plan is less than 100 percent. This subsection shall not apply to any plan to which section 4021 of the Employee Retirement Income Security Act of 1974 does not apply (as such section is in effect on the date of the enactment of the Retirement Protection Act of 1994).

(3) Amount of lien

For purposes of paragraph (1), the amount of the lien shall be equal to the aggregate unpaid balance of required installments and other payments required under this section (including interest)—

(A) for plan years beginning after 1987, and

(B) for which payment has not been made before the due date.

(4) Notice of failure; lien

(A) Notice of failure

A person committing a failure described in paragraph (1) shall notify the Pension Benefit Guaranty Corporation of such failure within 10 days of the due date for the required installment or other payment.

(B) Period of lien

The lien imposed by paragraph (1) shall arise on the due date for the required installment or other payment and shall continue until the last day of the first plan year in which the plan ceases to be described in paragraph (1)(B). Such lien shall continue to run without regard to whether such plan continues to be described in paragraph (2) during the period referred to in the preceding sentence.

(C) Certain rules to apply

Any amount with respect to which a lien is imposed under paragraph (1) shall be treated as taxes due and owing the United States and rules similar to the rules of subsections (c), (d), and (e) of section 4068 of the Employee Retirement Income Security Act of 1974 shall apply with respect to a lien imposed by subsection (a) and the amount with respect to such lien.

(5) Enforcement

Any lien created under paragraph (1) may be perfected and enforced only by the Pension Benefit Guaranty Corporation, or at the direction of the Pension Benefit Guaranty Corporation, by

any contributing employer (or any member of the controlled group of the contributing employer).

(6) Definitions

For purposes of this subsection—

(A) Due date; required installment

The terms "due date" and "required installment" have the meanings given such terms by subsection (f), except that in the case of a payment other than a required installment, the due date shall be the date such payment is required to be made under this section.

(B) Controlled group

The term "controlled group" means any group treated as a single employer under subsections (b), (c), (m), and (o) of section 414.

(h) Current liability

For purposes of this section—

(1) In general

The term "current liability" means all liabilities to employees and their beneficiaries under the plan.

(2) Treatment of unpredictable contingent event benefits

(A) In general

For purposes of paragraph (1), any unpredictable contingent event benefit shall not be taken into account until the event on which the benefit is contingent occurs.

(B) Unpredictable contingent event benefit

The term "unpredictable contingent event benefit" means any benefit contingent on an event other than—

(i) age, service, compensation, death, or disability, or

(ii) an event which is reasonably and reliably predictable (as determined by the Secretary).

(3) Interest rate and mortality assumptions used

(A) Interest rate

The rate of interest used to determine current liability under this section shall be the third segment rate determined under section 430(h)(2)(C).

(B) Mortality tables

(i) Secretarial authority

The Secretary may by regulation prescribe mortality tables to be used in determining current liability under this subsection. Such tables shall be based upon the actual experience of pension plans and projected trends in such experience. In prescribing such tables, the Secretary shall take into account results of available independent studies of mortality of individuals covered by pension plans.

(ii) Periodic review

The Secretary shall periodically (at least every 5 years) review any tables in effect under this subsection and shall, to the extent the Secretary determines necessary, by regulation update the tables to reflect the actual experience of pension plans and projected trends in such experience.

(C) Separate mortality tables for the disabled

Notwithstanding subparagraph (B)—

(i) In general

In the case of plan years beginning after December 31, 1995, the Secretary shall establish mortality tables which may be used (in lieu of the tables under subparagraph (B)) to

determine current liability under this subsection for individuals who are entitled to benefits under the plan on account of disability. The Secretary shall establish separate tables for individuals whose disabilities occur in plan years beginning before January 1, 1995, and for individuals whose disabilities occur in plan years beginning on or after such date.

(ii) Special rule for disabilities occurring after 1994

In the case of disabilities occurring in plan years beginning after December 31, 1994, the tables under clause (i) shall apply only with respect to individuals described in such subclause who are disabled within the meaning of title II of the Social Security Act and the regulations thereunder.

(4) Certain service disregarded

(A) In general

In the case of a participant to whom this paragraph applies, only the applicable percentage of the years of service before such individual became a participant shall be taken into account in computing the current liability of the plan.

(B) Applicable percentage

For purposes of this subparagraph, the applicable percentage shall be determined as follows:

If the years of participation are:	The applicable percentage is:
1	20
2	40
3	60
4	80
5 or more	100.

(C) Participants to whom paragraph applies

This subparagraph shall apply to any participant who, at the time of becoming a participant—

(i) has not accrued any other benefit under any defined benefit plan (whether or not terminated) maintained by the employer or a member of the same controlled group of which the employer is a member,

(ii) who first becomes a participant under the plan in a plan year beginning after December 31, 1987, and

(iii) has years of service greater than the minimum years of service necessary for eligibility to participate in the plan.

(D) Election

An employer may elect not to have this subparagraph apply. Such an election, once made, may be revoked only with the consent of the Secretary.

(i) Funded current liability percentage

For purposes of this section, the term "funded current liability percentage" means, with respect to any plan year, the percentage which—

(1) the value of the plan's assets determined under subsection (c)(2), is of

(2) the current liability under the plan.

(j) Funding restoration status

Notwithstanding any other provisions of this section—

(1) Normal cost payment

(A) In general

In the case of a CSEC plan that is in funding restoration status for a plan year, for purposes of

section 412, the term "accumulated funding deficiency" means, for such plan year, the greater of—

(i) the amount described in subsection (a), or

(ii) the excess of the normal cost of the plan for the plan year over the amount actually contributed to or under the plan for the plan year.

(B) Normal cost

In the case of a CSEC plan that uses a spread gain funding method, for purposes of this subsection, the term "normal cost" means normal cost as determined under the entry age normal funding method.

(2) Plan amendments

In the case of a CSEC plan that is in funding restoration status for a plan year, no amendment to such plan may take effect during such plan year if such amendment has the effect of increasing liabilities of the plan by means of increases in benefits, establishment of new benefits, changing the rate of benefit accrual, or changing the rate at which benefits become nonforfeitable. This paragraph shall not apply to any plan amendment that is required to comply with any applicable law. This paragraph shall cease to apply with respect to any plan year, effective as of the first day of the plan year (or if later, the effective date of the amendment) upon payment by the plan sponsor of a contribution to the plan (in addition to any contribution required under this section without regard to this paragraph) in an amount equal to the increase in the funding liability of the plan attributable to the plan amendment.

(3) Funding restoration plan

The sponsor of a CSEC plan shall establish a written funding restoration plan within 180 days of the receipt by the plan sponsor of a certification from the plan actuary that the plan is in funding restoration status for a plan year. Such funding restoration plan shall consist of actions that are calculated, based on reasonably anticipated experience and reasonable actuarial assumptions, to increase the plan's funded percentage to 100 percent over a period that is not longer than the greater of 7 years or the shortest amount of time practicable. Such funding restoration plan shall take into account contributions required under this section (without regard to this paragraph). If a plan remains in funding restoration status for 2 or more years, such funding restoration plan shall be updated each year after the 1st such year within 180 days of receipt by the plan sponsor of a certification from the plan actuary that the plan remains in funding restoration status for the plan year.

(4) Annual certification by plan actuary

Not later than the 90th day of each plan year of a CSEC plan, the plan actuary shall certify to the plan sponsor whether or not the plan is in funding restoration status for the plan year, based on the plan's funded percentage as of the beginning of the plan year. For this purpose, the actuary may conclusively rely on an estimate of—

(A) the plan's funding liability, based on the funding liability of the plan for the preceding plan year and on reasonable actuarial estimates, assumptions, and methods, and

(B) the amount of any contributions reasonably anticipated to be made for the preceding plan year.

Contributions described in subparagraph (B) shall be taken into account in determining the plan's funded percentage as of the beginning of the plan year.

(5) Definitions

For purposes of this subsection—

(A) Funding restoration status

A CSEC plan shall be treated as in funding restoration status for a plan year if the plan's funded percentage as of the beginning of such plan year is less than 80 percent.

(B) Funded percentage

The term "funded percentage" means the ratio (expressed as a percentage) which—

(i) the value of plan assets (as determined under subsection (c)(2)), bears to

(ii) the plan's funding liability.

(C) Funding liability

The term "funding liability" for a plan year means the present value of all benefits accrued or earned under the plan as of the beginning of the plan year, based on the assumptions used by the plan pursuant to this section, including the interest rate described in subsection (b)(5)(A) (without regard to subsection (b)(5)(B)).

(D) Spread gain funding method

The term "spread gain funding method" has the meaning given such term under rules and forms issued by the Secretary.

(E) Plan sponsor

The term "plan sponsor" means, with respect to a CSEC plan, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan.

(Added Pub. L. 113–97, title II, §202(a), Apr. 7, 2014, 128 Stat. 1122.)

REFERENCES IN TEXT

Section 412 (as in effect on the day before the enactment of the Pension Protection Act of 2006), referred to in subsecs. (b)(2)(E), (c)(2)(B), (5)(A), and (f)(5)(B), means section 412 of this title as in effect on the day before the enactment of Pub. L. 109–280. Section 111(a) of Pub. L. 109–280 generally amended section 412.

Section 104 of the Pension Protection Act of 2006, referred to in subsec. (b)(6), is section 104 of Pub. L. 109–280, which is set out as a note under section 401 of this title.

The Social Security Act, referred to in subsecs. (c)(4)(A) and (h)(3)(C)(ii), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, which is classified generally to chapter 7 (§301 et seq.) of Title 42, The Public Health and Welfare. Title II of the Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Employee Retirement Income Security Act of 1974, referred to in subsecs. (c)(5)(C)(ii)(II), (d), and (g)(2), (4)(C), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, which is classified principally to chapter 18 (§1001 et seq.) of Title 29, Labor. Title IV of the Act is classified principally to subchapter III (§1301 et seq.) of chapter 18 of Title 29. Sections 4001, 4006, 4021, and 4068 of the Act are classified to sections 1301, 1306, 1321, and 1368 of Title 29, respectively. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

The date of the enactment of the Retirement Protection Act of 1994, referred to in subsec. (g)(2), is the date of enactment of subtitle F of title VII of Pub. L. 103–465, which was approved Dec. 8, 1994.

EFFECTIVE DATE

Section applicable to years beginning after Dec. 31, 2013, see section 3 of Pub. L. 113–97, set out as an Effective Date of 2014 Amendment note under section 401 of this title.

[1] So in original. Probably should be followed by "of such Act".

SUBPART B—BENEFIT LIMITATIONS UNDER SINGLE-EMPLOYER PLANS

Sec.

436. Funding-based limitation on shutdown benefits and other unpredictable contingent event benefits under single-employer plans.[1]

[1] So in original. Does not conform to section catchline.

§436. Funding-based limits on benefits and benefit accruals under single-employer plans

(a) General rule

For purposes of section 401(a)(29), a defined benefit plan which is a single-employer plan (other than a CSEC plan) shall be treated as meeting the requirements of this section if the plan meets the requirements of subsections (b), (c), (d), and (e).

(b) Funding-based limitation on shutdown benefits and other unpredictable contingent event benefits under single-employer plans

(1) In general

If a participant of a defined benefit plan which is a single-employer plan is entitled to an unpredictable contingent event benefit payable with respect to any event occurring during any plan year, the plan shall provide that such benefit may not be provided if the adjusted funding target attainment percentage for such plan year—

(A) is less than 60 percent, or

(B) would be less than 60 percent taking into account such occurrence.

(2) Exemption

Paragraph (1) shall cease to apply with respect to any plan year, effective as of the first day of the plan year, upon payment by the plan sponsor of a contribution (in addition to any minimum required contribution under section 430) equal to—

(A) in the case of paragraph (1)(A), the amount of the increase in the funding target of the plan (under section 430) for the plan year attributable to the occurrence referred to in paragraph (1), and

(B) in the case of paragraph (1)(B), the amount sufficient to result in an adjusted funding target attainment percentage of 60 percent.

(3) Unpredictable contingent event benefit

For purposes of this subsection, the term "unpredictable contingent event benefit" means any benefit payable solely by reason of—

(A) a plant shutdown (or similar event, as determined by the Secretary), or

(B) an event other than the attainment of any age, performance of any service, receipt or derivation of any compensation, or occurrence of death or disability.

(c) Limitations on plan amendments increasing liability for benefits

(1) In general

No amendment to a defined benefit plan which is a single-employer plan which has the effect of increasing liabilities of the plan by reason of increases in benefits, establishment of new benefits, changing the rate of benefit accrual, or changing the rate at which benefits become nonforfeitable may take effect during any plan year if the adjusted funding target attainment percentage for such plan year is—

(A) less than 80 percent, or

(B) would be less than 80 percent taking into account such amendment.

(2) Exemption

Paragraph (1) shall cease to apply with respect to any plan year, effective as of the first day of the plan year (or if later, the effective date of the amendment), upon payment by the plan sponsor of a contribution (in addition to any minimum required contribution under section 430) equal to—

(A) in the case of paragraph (1)(A), the amount of the increase in the funding target of the plan (under section 430) for the plan year attributable to the amendment, and

(B) in the case of paragraph (1)(B), the amount sufficient to result in an adjusted funding target attainment percentage of 80 percent.

(3) Exception for certain benefit increases

Paragraph (1) shall not apply to any amendment which provides for an increase in benefits under a formula which is not based on a participant's compensation, but only if the rate of such increase is not in excess of the contemporaneous rate of increase in average wages of participants covered by the amendment.

(d) Limitations on accelerated benefit distributions

(1) Funding percentage less than 60 percent

A defined benefit plan which is a single-employer plan shall provide that, in any case in which the plan's adjusted funding target attainment percentage for a plan year is less than 60 percent, the plan may not pay any prohibited payment after the valuation date for the plan year.

(2) Bankruptcy

A defined benefit plan which is a single-employer plan shall provide that, during any period in which the plan sponsor is a debtor in a case under title 11, United States Code, or similar Federal or State law, the plan may not pay any prohibited payment. The preceding sentence shall not apply on or after the date on which the enrolled actuary of the plan certifies that the adjusted funding target attainment percentage of such plan (determined by not taking into account any adjustment of segment rates under section 430(h)(2)(C)(iv)) is not less than 100 percent.

(3) Limited payment if percentage at least 60 percent but less than 80 percent

(A) In general

A defined benefit plan which is a single-employer plan shall provide that, in any case in which the plan's adjusted funding target attainment percentage for a plan year is 60 percent or greater but less than 80 percent, the plan may not pay any prohibited payment after the valuation date for the plan year to the extent the amount of the payment exceeds the lesser of—

(i) 50 percent of the amount of the payment which could be made without regard to this section, or

(ii) the present value (determined under guidance prescribed by the Pension Benefit Guaranty Corporation, using the interest and mortality assumptions under section 417(e)) of the maximum guarantee with respect to the participant under section 4022 of the Employee Retirement Income Security Act of 1974.

(B) One-time application

(i) In general

The plan shall also provide that only 1 prohibited payment meeting the requirements of subparagraph (A) may be made with respect to any participant during any period of consecutive plan years to which the limitations under either paragraph (1) or (2) or this paragraph applies.

(ii) Treatment of beneficiaries

For purposes of this subparagraph, a participant and any beneficiary on his behalf (including an alternate payee, as defined in section 414(p)(8)) shall be treated as 1 participant. If the accrued benefit of a participant is allocated to such an alternate payee and 1 or more other persons, the amount under subparagraph (A) shall be allocated among such persons in the same manner as the accrued benefit is allocated unless the qualified domestic relations order (as defined in section 414(p)(1)(A)) provides otherwise.

(4) Exception

This subsection shall not apply to any plan for any plan year if the terms of such plan (as in effect for the period beginning on September 1, 2005, and ending with such plan year) provide for no benefit accruals with respect to any participant during such period.

(5) Prohibited payment

For purpose of this subsection, the term "prohibited payment" means—

(A) any payment, in excess of the monthly amount paid under a single life annuity (plus any

social security supplements described in the last sentence of section 411(a)(9)), to a participant or beneficiary whose annuity starting date (as defined in section 417(f)(2)) occurs during any period a limitation under paragraph (1) or (2) is in effect,

(B) any payment for the purchase of an irrevocable commitment from an insurer to pay benefits, and

(C) any other payment specified by the Secretary by regulations.

Such term shall not include the payment of a benefit which under section 411(a)(11) may be immediately distributed without the consent of the participant.

(e) Limitation on benefit accruals for plans with severe funding shortfalls

(1) In general

A defined benefit plan which is a single-employer plan shall provide that, in any case in which the plan's adjusted funding target attainment percentage for a plan year is less than 60 percent, benefit accruals under the plan shall cease as of the valuation date for the plan year.

(2) Exemption

Paragraph (1) shall cease to apply with respect to any plan year, effective as of the first day of the plan year, upon payment by the plan sponsor of a contribution (in addition to any minimum required contribution under section 430) equal to the amount sufficient to result in an adjusted funding target attainment percentage of 60 percent.

(f) Rules relating to contributions required to avoid benefit limitations

(1) Security may be provided

(A) In general

For purposes of this section, the adjusted funding target attainment percentage shall be determined by treating as an asset of the plan any security provided by a plan sponsor in a form meeting the requirements of subparagraph (B).

(B) Form of security

The security required under subparagraph (A) shall consist of—

(i) a bond issued by a corporate surety company that is an acceptable surety for purposes of section 412 of the Employee Retirement Income Security Act of 1974,

(ii) cash, or United States obligations which mature in 3 years or less, held in escrow by a bank or similar financial institution, or

(iii) such other form of security as is satisfactory to the Secretary and the parties involved.

(C) Enforcement

Any security provided under subparagraph (A) may be perfected and enforced at any time after the earlier of—

(i) the date on which the plan terminates,

(ii) if there is a failure to make a payment of the minimum required contribution for any plan year beginning after the security is provided, the due date for the payment under section 430(j), or

(iii) if the adjusted funding target attainment percentage is less than 60 percent for a consecutive period of 7 years, the valuation date for the last year in the period.

(D) Release of security

The security shall be released (and any amounts thereunder shall be refunded together with any interest accrued thereon) at such time as the Secretary may prescribe in regulations, including regulations for partial releases of the security by reason of increases in the adjusted funding target attainment percentage.

(2) Prefunding balance or funding standard carryover balance may not be used

No prefunding balance or funding standard carryover balance under section 430(f) may be used

under subsection (b), (c), or (e) to satisfy any payment an employer may make under any such subsection to avoid or terminate the application of any limitation under such subsection.

(3) Deemed reduction of funding balances

(A) In general

Subject to subparagraph (C), in any case in which a benefit limitation under subsection (b), (c), (d), or (e) would (but for this subparagraph and determined without regard to subsection (b)(2), (c)(2), or (e)(2)) apply to such plan for the plan year, the plan sponsor of such plan shall be treated for purposes of this title as having made an election under section 430(f) to reduce the prefunding balance or funding standard carryover balance by such amount as is necessary for such benefit limitation to not apply to the plan for such plan year.

(B) Exception for insufficient funding balances

Subparagraph (A) shall not apply with respect to a benefit limitation for any plan year if the application of subparagraph (A) would not result in the benefit limitation not applying for such plan year.

(C) Restrictions of certain rules to collectively bargained plans

With respect to any benefit limitation under subsection (b), (c), or (e), subparagraph (A) shall only apply in the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers.

(g) New plans

Subsections (b), (c), and (e) shall not apply to a plan for the first 5 plan years of the plan. For purposes of this subsection, the reference in this subsection to a plan shall include a reference to any predecessor plan.

(h) Presumed underfunding for purposes of benefit limitations

(1) Presumption of continued underfunding

In any case in which a benefit limitation under subsection (b), (c), (d), or (e) has been applied to a plan with respect to the plan year preceding the current plan year, the adjusted funding target attainment percentage of the plan for the current plan year shall be presumed to be equal to the adjusted funding target attainment percentage of the plan for the preceding plan year until the enrolled actuary of the plan certifies the actual adjusted funding target attainment percentage of the plan for the current plan year.

(2) Presumption of underfunding after 10th month

In any case in which no certification of the adjusted funding target attainment percentage for the current plan year is made with respect to the plan before the first day of the 10th month of such year, for purposes of subsections (b), (c), (d), and (e), such first day shall be deemed, for purposes of such subsection, to be the valuation date of the plan for the current plan year and the plan's adjusted funding target attainment percentage shall be conclusively presumed to be less than 60 percent as of such first day.

(3) Presumption of underfunding after 4th month for nearly underfunded plans

In any case in which—

(A) a benefit limitation under subsection (b), (c), (d), or (e) did not apply to a plan with respect to the plan year preceding the current plan year, but the adjusted funding target attainment percentage of the plan for such preceding plan year was not more than 10 percentage points greater than the percentage which would have caused such subsection to apply to the plan with respect to such preceding plan year, and

(B) as of the first day of the 4th month of the current plan year, the enrolled actuary of the plan has not certified the actual adjusted funding target attainment percentage of the plan for the current plan year,

until the enrolled actuary so certifies, such first day shall be deemed, for purposes of such subsection, to be the valuation date of the plan for the current plan year and the adjusted funding target attainment percentage of the plan as of such first day shall, for purposes of such subsection, be presumed to be equal to 10 percentage points less than the adjusted funding target attainment percentage of the plan for such preceding plan year.

(i) Treatment of plan as of close of prohibited or cessation period

For purposes of applying this title—

(1) Operation of plan after period

Unless the plan provides otherwise, payments and accruals will resume effective as of the day following the close of the period for which any limitation of payment or accrual of benefits under subsection (d) or (e) applies.

(2) Treatment of affected benefits

Nothing in this subsection shall be construed as affecting the plan's treatment of benefits which would have been paid or accrued but for this section.

(j) Terms relating to funding target attainment percentage

For purposes of this section—

(1) In general

The term "funding target attainment percentage" has the same meaning given such term by section 430(d)(2).

(2) Adjusted funding target attainment percentage

The term "adjusted funding target attainment percentage" means the funding target attainment percentage which is determined under paragraph (1) by increasing each of the amounts under subparagraphs (A) and (B) of section 430(d)(2) by the aggregate amount of purchases of annuities for employees other than highly compensated employees (as defined in section 414(q)) which were made by the plan during the preceding 2 plan years.

(3) [1] Application to plans which are fully funded without regard to reductions for funding balances

(A) In general

In the case of a plan for any plan year, if the funding target attainment percentage is 100 percent or more (determined without regard to the reduction in the value of assets under section 430(f)(4)), the funding target attainment percentage for purposes of paragraphs (1) and (2) shall be determined without regard to such reduction.

(B) Transition rule

Subparagraph (A) shall be applied to plan years beginning after 2007 and before 2011 by substituting for "100 percent" the applicable percentage determined in accordance with the following table:

In the case of a plan year beginning in calendar year:	The applicable percentage is
2008	92
2009	94
2010	96.

(C) Limitation

Subparagraph (B) shall not apply with respect to any plan year beginning after 2008 unless

the funding target attainment percentage (determined without regard to the reduction in the value of assets under section 430(f)(4)) of the plan for each preceding plan year beginning after 2007 was not less than the applicable percentage with respect to such preceding plan year determined under subparagraph (B).

(3) [1] Special rule for certain years

Solely for purposes of any applicable provision—

(A) In general

For plan years beginning on or after October 1, 2008, and before October 1, 2010, the adjusted funding target attainment percentage of a plan shall be the greater of—

(i) such percentage, as determined without regard to this paragraph, or

(ii) the adjusted funding target attainment percentage for such plan for the plan year beginning after October 1, 2007, and before October 1, 2008, as determined under rules prescribed by the Secretary.

(B) Special rule

In the case of a plan for which the valuation date is not the first day of the plan year—

(i) subparagraph (A) shall apply to plan years beginning after December 31, 2007, and before January 1, 2010, and

(ii) subparagraph (A)(ii) shall apply based on the last plan year beginning before November 1, 2007, as determined under rules prescribed by the Secretary.

(C) Applicable provision

For purposes of this paragraph, the term "applicable provision" means—

(i) subsection (d), but only for purposes of applying such paragraph to a payment which, as determined under rules prescribed by the Secretary, is a payment under a social security leveling option which accelerates payments under the plan before, and reduces payments after, a participant starts receiving social security benefits in order to provide substantially similar aggregate payments both before and after such benefits are received, and

(ii) subsection (e).

(k) Secretarial authority for plans with alternate valuation date

In the case of a plan which has designated a valuation date other than the first day of the plan year, the Secretary may prescribe rules for the application of this section which are necessary to reflect the alternate valuation date.

(l) Single-employer plan

For purposes of this section, the term "single-employer plan" means a plan which is not a multiemployer plan.

(m) Special rule for 2008

For purposes of this section, in the case of plan years beginning in 2008, the funding target attainment percentage for the preceding plan year may be determined using such methods of estimation as the Secretary may provide.

(Added Pub. L. 109–280, title I, §113(a)(1)(B), Aug. 17, 2006, 120 Stat. 847; amended Pub. L. 110–458, title I, §101(c)(2), Dec. 23, 2008, 122 Stat. 5097; Pub. L. 111–192, title II, §203(a)(2), June 25, 2010, 124 Stat. 1300; Pub. L. 113–97, title II, §202(c)(3)(B), Apr. 7, 2014, 128 Stat. 1136; Pub. L. 113–159, title II, §2003(c)(1), Aug. 8, 2014, 128 Stat. 1850.)

REFERENCES IN TEXT

Section 4022 of the Employee Retirement Income Security Act of 1974, referred to in subsec. (d)(3)(A)(ii), is classified to section 1322 of Title 29, Labor.

Section 412 of the Employee Retirement Income Security Act of 1974, referred to in subsec (f)(1)(B)(i), is classified to section 1112 of Title 29, Labor.

AMENDMENTS

2014—Subsec. (a). Pub. L. 113–97 substituted "single-employer plan (other than a CSEC plan)" for "single-employer plan".

Subsec. (d)(2). Pub. L. 113–159, §2003(c)(1), substituted "of such plan (determined by not taking into account any adjustment of segment rates under section 430(h)(2)(C)(iv))" for "of such plan".

2010—Subsec. (j)(3). Pub. L. 111–192 added par. (3) relating to special rule for certain years.

2008—Subsec. (b)(2). Pub. L. 110–458, §101(c)(2)(A), substituted "section 430" for "section 303" in introductory provisions and "an adjusted funding" for "a funding" in subpar. (B).

Subsec. (b)(3). Pub. L. 110–458, §101(c)(2)(B), inserted "benefit" after "event" in heading and substituted "an event" for "any event" in subpar. (B).

Subsec. (d)(5). Pub. L. 110–458, §101(c)(2)(C), inserted concluding provisions.

Subsec. (f)(1)(D). Pub. L. 110–458, §101(c)(2)(D)(i), inserted "adjusted" before "funding".

Subsec. (f)(2). Pub. L. 110–458, §101(c)(2)(D)(ii), substituted "prefunding balance or funding standard carryover balance under section 430(f)" for "prefunding balance under section 430(f) or funding standard carryover balance".

Subsec. (j)(3)(A). Pub. L. 110–458, §101(c)(2)(E)(i), struck out "without regard to this paragraph and" before "without regard to the reduction" and substituted "section 430(f)(4)" for "section 430(f)(4)(A)" and "paragraphs (1) and (2)" for "paragraph (1)".

Subsec. (j)(3)(C). Pub. L. 110–458, §101(c)(2)(E)(ii), substituted "without regard to the reduction in the value of assets under section 430(f)(4)" for "without regard to this paragraph" and inserted "beginning" before "after" in two places.

Subsecs. (k) to (m). Pub. L. 110–458, §101(c)(2)(F), added subsecs. (k) and (l) and redesignated former subsec. (k) as (m).

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113–159, title II, §2003(c)(3), Aug. 8, 2014, 128 Stat. 1850, provided that:

"(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection [amending this section and section 1056 of Title 29, Labor] shall apply to plan years beginning after December 31, 2014.

"(B) COLLECTIVELY BARGAINED PLANS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements, the amendments made by this subsection shall apply to plan years beginning after December 31, 2015."

Amendment by Pub. L. 113–97 applicable to years beginning after Dec. 31, 2013, see section 3 of Pub. L. 113–97, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–192, title II, §203(c), June 25, 2010, 124 Stat. 1300, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 1056 of Title 29, Labor] shall apply to plan years beginning on or after October 1, 2008.

"(2) SPECIAL RULE.—In the case of a plan for which the valuation date is not the first day of the plan year, the amendments made by this section shall apply to plan years beginning after December 31, 2007."

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–458 effective as if included in the provisions of Pub. L. 109–280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110–458, set out as a note under section 72 of this title.

EFFECTIVE DATE

Pub. L. 109–280, title I, §113(b), Aug. 17, 2006, 120 Stat. 852, as amended by Pub. L. 110–458, title I, §101(c)(3), Dec. 23, 2008, 122 Stat. 5098, provided that:

"(1) IN GENERAL.—The amendments made by this section [enacting this subpart] shall apply to plan years beginning after December 31, 2007.

"(2) COLLECTIVE BARGAINING EXCEPTION.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before January 1, 2008, the amendments made by this section shall not apply to plan years beginning before the earlier of—

"(A) the later of—

"(i) the date on which the last collective bargaining agreement relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act

[Aug. 17, 2006]), or

"(ii) the first day of the first plan year to which the amendments made by this section [enacting this subpart] would (but for this paragraph) apply, or

"(B) January 1, 2010.

For purposes of subparagraph (A)(i), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section shall not be treated as a termination of such collective bargaining agreement."

PROVISIONS RELATING TO PLAN AMENDMENTS

Pub. L. 113–159, title II, §2003(c)(4), Aug. 8, 2014, 128 Stat. 1850, provided that:

"(A) IN GENERAL.—If this paragraph applies to any amendment to any plan or annuity contract, such plan or contract shall be treated as being operated in accordance with the terms of the plan during the period described in subparagraph (B)(ii).

"(B) AMENDMENTS TO WHICH PARAGRAPH APPLIES.—

"(i) IN GENERAL.—This paragraph shall apply to any amendment to any plan or annuity contract which is made—

"(I) pursuant to the amendments made by this subsection [amending this section and section 1056 of Title 29, Labor], or pursuant to any regulation issued by the Secretary of the Treasury or the Secretary of Labor under any provision as so amended, and

"(II) on or before the last day of the first plan year beginning on or after January 1, 2016, or such later date as the Secretary of the Treasury may prescribe.

"(ii) CONDITIONS.—This subsection [amending this section and section 1056 of Title 29, Labor, and enacting provisions set out as a note under this section] shall not apply to any amendment unless, during the period—

"(I) beginning on the date that the amendments made by this subsection or the regulation described in clause (i)(I) takes effect (or in the case of a plan or contract amendment not required by such amendments or such regulation, the effective date specified by the plan), and

"(II) ending on the date described in clause (i)(II) (or, if earlier, the date the plan or contract amendment is adopted),

the plan or contract is operated as if such plan or contract amendment were in effect, and such plan or contract amendment applies retroactively for such period.

"(C) ANTI-CUTBACK RELIEF.—A plan shall not be treated as failing to meet the requirements of section 204(g) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1054(g)) and section 411(d)(6) of the Internal Revenue Code of 1986 [26 U.S.C. 411(d)(6)] solely by reason of a plan amendment to which this paragraph applies."

TEMPORARY MODIFICATION OF APPLICATION OF LIMITATION ON BENEFIT ACCRUALS

Pub. L. 111–192, title II, §203(b), June 25, 2010, 124 Stat. 1300, provided that: "Section 203 of the Worker, Retiree, and Employer Recovery Act of 2008 [Pub. L. 110–458, set out below] shall apply to a plan for any plan year in lieu of the amendments made by this section applying to sections 206(g)(4) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1056(g)(4)] and 436(e) of the Internal Revenue Code of 1986 only to the extent that such section produces a higher adjusted funding target attainment percentage for such plan for such year."

Pub. L. 110–458, title II, §203, Dec. 23, 2008, 122 Stat. 5118, provided that: "In the case of the first plan year beginning during the period beginning on October 1, 2008, and ending on September 30, 2009, sections 206(g)(4)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1056(g)(4)(A)) and 436(e)(1) of the Internal Revenue Code of 1986 shall be applied by substituting the plan's adjusted funding target attainment percentage for the preceding plan year for such percentage for such plan year but only if the adjusted funding target attainment percentage for the preceding plan year is greater."

APPLICABILITY OF AMENDMENTS BY SUBTITLES A AND B OF TITLE I OF PUB. L. 109–280

For special rules on applicability of amendments by subtitles A (§§101–108) and B (§§111–116) of title I of Pub. L. 109–280 to certain eligible cooperative plans, PBGC settlement plans, and eligible government contractor plans, see sections 104, 105, and 106 of Pub. L. 109–280, set out as notes under section 401 of this title.

[1] *So in original. Two pars. (3) have been enacted.*

Subchapter E—Accounting Periods and Methods of Accounting

Part

I. Accounting periods.
II. Methods of accounting.
III. Adjustments.

PART I—ACCOUNTING PERIODS

Sec.

441. Period for computation of taxable income.
442. Change of annual accounting period.
443. Returns for a period of less than 12 months.
444. Election of taxable year other than required taxable year.

AMENDMENTS

1987—Pub. L. 100–203, title X, §10206(a)(2), Dec. 22, 1987, 101 Stat. 1330–398, added item 444.

§441. Period for computation of taxable income

(a) Computation of taxable income

Taxable income shall be computed on the basis of the taxpayer's taxable year.

(b) Taxable year

For purposes of this subtitle, the term "taxable year" means—

(1) the taxpayer's annual accounting period, if it is a calendar year or a fiscal year;

(2) the calendar year, if subsection (g) applies;

(3) the period for which the return is made, if a return is made for a period of less than 12 months; or

(4) in the case of a DISC filing a return for a period of at least 12 months, the period determined under subsection (h).

(c) Annual accounting period

For purposes of this subtitle, the term "annual accounting period" means the annual period on the basis of which the taxpayer regularly computes his income in keeping his books.

(d) Calendar year

For purposes of this subtitle, the term "calendar year" means a period of 12 months ending on December 31.

(e) Fiscal year

For purposes of this subtitle, the term "fiscal year" means a period of 12 months ending on the last day of any month other than December. In the case of any taxpayer who has made the election provided by subsection (f) the term means the annual period (varying from 52 to 53 weeks) so elected.

(f) Election of year consisting of 52–53 weeks

(1) General rule

A taxpayer who, in keeping his books, regularly computes his income on the basis of an annual period which varies from 52 to 53 weeks and ends always on the same day of the week and ends always—

(A) on whatever date such same day of the week last occurs in a calendar month, or

(B) on whatever date such same day of the week falls which is nearest to the last day of a calendar month,

may (in accordance with the regulations prescribed under paragraph (3)) elect to compute his

taxable income for purposes of this subtitle on the basis of such annual period. This paragraph shall apply to taxable years ending after the date of the enactment of this title.

(2) Special rules for 52–53-week year

(A) Effective dates

In any case in which the effective date or the applicability of any provision of this title is expressed in terms of taxable years beginning, including, or ending with reference to a specified date which is the first or last day of a month, a taxable year described in paragraph (1) shall (except for purposes of the computation under section 15) be treated—

(i) as beginning with the first day of the calendar month beginning nearest to the first day of such taxable year, or

(ii) as ending with the last day of the calendar month ending nearest to the last day of such taxable year,

as the case may be.

(B) Change in accounting period

In the case of a change from or to a taxable year described in paragraph (1)—

(i) if such change results in a short period (within the meaning of section 443) of 359 days or more, or of less than 7 days, section 443(b) (relating to alternative tax computation) shall not apply;

(ii) if such change results in a short period of less than 7 days, such short period shall, for purposes of this subtitle, be added to and deemed a part of the following taxable year; and

(iii) if such change results in a short period to which subsection (b) of section 443 applies, the taxable income for such short period shall be placed on an annual basis for purposes of such subsection by multiplying the gross income for such short period (minus the deductions allowed by this chapter for the short period, but only the adjusted amount of the deductions for personal exemptions as described in section 443(c)) by 365, by dividing the result by the number of days in the short period, and the tax shall be the same part of the tax computed on the annual basis as the number of days in the short period is of 365 days.

(3) Special rule for partnerships, S corporations, and personal service corporations

The Secretary may by regulation provide terms and conditions for the application of this subsection to a partnership, S corporation, or personal service corporation (within the meaning of section 441(i)(2)).

(4) Regulations

The Secretary shall prescribe such regulations as he deems necessary for the application of this subsection.

(g) No books kept; no accounting period

Except as provided in section 443 (relating to returns for periods of less than 12 months), the taxpayer's taxable year shall be the calendar year if—

(1) the taxpayer keeps no books;

(2) the taxpayer does not have an annual accounting period; or

(3) the taxpayer has an annual accounting period, but such period does not qualify as a fiscal year.

(h) Taxable year of DISC's

(1) In general

For purposes of this subtitle, the taxable year of any DISC shall be the taxable year of that shareholder (or group of shareholders with the same 12-month taxable year) who has the highest percentage of voting power.

(2) Special rule where more than one shareholder (or group) has highest percentage

If 2 or more shareholders (or groups) have the highest percentage of voting power under paragraph (1), the taxable year of the DISC shall be the same 12-month period as that of any such shareholder (or group).

(3) Subsequent changes of ownership

The Secretary shall prescribe regulations under which paragraphs (1) and (2) shall apply to a change of ownership of a corporation after the taxable year of the corporation has been determined under paragraph (1) or (2) only if such change is a substantial change of ownership.

(4) Voting power determined

For purposes of this subsection, voting power shall be determined on the basis of total combined voting power of all classes of stock of the corporation entitled to vote.

(i) Taxable year of personal service corporations

(1) In general

For purposes of this subtitle, the taxable year of any personal service corporation shall be the calendar year unless the corporation establishes, to the satisfaction of the Secretary, a business purpose for having a different period for its taxable year. For purposes of this paragraph, any deferral of income to shareholders shall not be treated as a business purpose.

(2) Personal service corporation

For purposes of this subsection, the term "personal service corporation" has the meaning given such term by section 269A(b)(1), except that section 269A(b)(2) shall be applied—

(A) by substituting "any" for "more than 10 percent", and

(B) by substituting "any" for "50 percent or more in value" in section 318(a)(2)(C).

A corporation shall not be treated as a personal service corporation unless more than 10 percent of the stock (by value) in such corporation is held by employee-owners (within the meaning of section 269A(b)(2), as modified by the preceding sentence). If a corporation is a member of an affiliated group filing a consolidated return, all members of such group shall be taken into account in determining whether such corporation is a personal service corporation.

(Aug. 16, 1954, ch. 736, 68A Stat. 148; Pub. L. 88–272, title II, §235(c)(3), Feb. 26, 1964, 78 Stat. 127; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–30, title I, §102(b)(5), May 23, 1977, 91 Stat. 137; Pub. L. 98–369, div. A, title IV, §474(b)(2), title VIII, §803, July 18, 1984, 98 Stat. 830, 1000; Pub. L. 99–514, title I, §104(b)(6), title VIII, §806(c)(1), (d), Oct. 22, 1986, 100 Stat. 2105, 2364; Pub. L. 100–647, title I, §1008(e)(4), Nov. 10, 1988, 102 Stat. 3440; Pub. L. 110–172, §11(g)(7), Dec. 29, 2007, 121 Stat. 2490.)

AMENDMENTS

2007—Subsec. (b)(4). Pub. L. 110–172, §11(g)(7)(A), struck out "FSC or" before "DISC filing".

Subsec. (h). Pub. L. 110–172, §11(g)(7)(B), struck out "FSC's and" before "DISC's" in heading and "FSC or" before "DISC" in pars. (1) and (2).

1988—Subsec. (i)(2). Pub. L. 100–647 inserted at end "A corporation shall not be treated as a personal service corporation unless more than 10 percent of the stock (by value) in such corporation is held by employee-owners (within the meaning of section 269A(b)(2), as modified by the preceding sentence). If a corporation is a member of an affiliated group filing a consolidated return, all members of such group shall be taken into account in determining whether such corporation is a personal service corporation."

1986—Subsec. (f)(2)(B)(iii). Pub. L. 99–514, §104(b)(6), struck out "and by adding the zero bracket amount," after "in the short period,".

Subsec. (f)(3), (4). Pub. L. 99–514, §806(d), added par. (3) and redesignated former par. (3) as (4).

Subsec. (i). Pub. L. 99–514, §806(c)(1), added subsec. (i).

1984—Subsec. (b)(4). Pub. L. 98–369, §803(a), added par. (4).

Subsec. (f)(2)(A). Pub. L. 98–369, §474(b)(2), substituted "section 15" for "section 21" in provisions preceding cl. (i).

Subsec. (h). Pub. L. 98–369, §803(b), added subsec. (h).

1977—Subsec. (f)(2)(B)(iii). Pub. L. 95–30 substituted "multiplying the gross income for such short period

(minus the deductions allowed by this chapter for the short period, but only the adjusted amount of the deductions for personal exemptions as described in section 443(c)) by 365, by dividing the result by the number of days in the short period, and by adding the zero bracket amount" for "multiplying such income by 365 and dividing the result by the number of days in the short period".

1976—Subsec. (f)(3). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

1964—Subsec. (f)(2)(A). Pub. L. 88–272 inserted ", including," before "or ending with reference to".

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 104(b)(6) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 806(c)(1), (d) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with special provisions applicable to taxpayers who are required to change their accounting periods, see section 806(e) of Pub. L. 99–514, set out as a note under section 1378 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(b)(2) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 803 of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1984, see section 805(a)(4) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to taxable years ending after Dec. 31, 1963, see section 235(d) of Pub. L. 88–272, set out as a note under section 1551 of this title.

CONSTRUCTION OF SECTION 806 OF PUB. L. 99–514

Nothing in section 806 of Pub. L. 99–514 or in any legislative history relating thereto to be construed as requiring the Secretary of the Treasury or his delegate to permit an automatic change of a taxable year, see section 1008(e)(9) of Pub. L. 100–647, set out as a note under section 1378 of this title.

§442. Change of annual accounting period

If a taxpayer changes his annual accounting period, the new accounting period shall become the taxpayer's taxable year only if the change is approved by the Secretary. For purposes of this subtitle, if a taxpayer to whom section 441(g) applies adopts an annual accounting period (as defined in section 441(c)) other than a calendar year, the taxpayer shall be treated as having changed his annual accounting period.

(Aug. 16, 1954, ch. 736, 68A Stat. 149; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

§443. Returns for a period of less than 12 months

(a) Returns for short period

A return for a period of less than 12 months (referred to in this section as "short period") shall be

made under any of the following circumstances:

(1) Change of annual accounting period

When the taxpayer, with the approval of the Secretary, changes his annual accounting period. In such a case, the return shall be made for the short period beginning on the day after the close of the former taxable year and ending at the close of the day before the day designated as the first day of the new taxable year.

(2) Taxpayer not in existence for entire taxable year

When the taxpayer is in existence during only part of what would otherwise be his taxable year.

(b) Computation of tax on change of annual accounting period

(1) General rule

If a return is made under paragraph (1) of subsection (a), the taxable income for the short period shall be placed on an annual basis by multiplying the modified taxable income for such short period by 12, dividing the result by the number of months in the short period. The tax shall be the same part of the tax computed on the annual basis as the number of months in the short period is of 12 months.

(2) Exception

(A) Computation based on 12-month period

If the taxpayer applies for the benefits of this paragraph and establishes the amount of this taxable income for the 12-month period described in subparagraph (B), computed as if that period were a taxable year and under the law applicable to that year, then the tax for the short period, computed under paragraph (1), shall be reduced to the greater of the following:

(i) an amount which bears the same ratio to the tax computed on the taxable income for the 12-month period as the modified taxable income computed on the basis of the short period bears to the modified taxable income for the 12-month period; or

(ii) the tax computed on the modified taxable income for the short period.

The taxpayer (other than a taxpayer to whom subparagraph (B)(ii) applies) shall compute the tax and file his return without the application of this paragraph.

(B) 12-month period

The 12-month period referred to in subparagraph (A) shall be—

(i) the period of 12 months beginning on the first day of the short period, or

(ii) the period of 12 months ending at the close of the last day of the short period, if at the end of the 12 months referred to in clause (i) the taxpayer is not in existence or (if a corporation) has theretofore disposed of substantially all of its assets.

(C) Application for benefits

Application for the benefits of this paragraph shall be made in such manner and at such time as the regulations prescribed under subparagraph (D) may require; except that the time so prescribed shall not be later than the time (including extensions) for filing the return for the first taxable year which ends on or after the day which is 12 months after the first day of the short period. Such application, in case the return was filed without regard to this paragraph, shall be considered a claim for credit or refund with respect to the amount by which the tax is reduced under this paragraph.

(D) Regulations

The Secretary shall prescribe such regulations as he deems necessary for the application of this paragraph.

(3) Modified taxable income defined

For purposes of this subsection the term "modified taxable income" means, with respect to any period, the gross income for such period minus the deductions allowed by this chapter for such

period (but, in the case of a short period, only the adjusted amount of the deductions for personal exemptions).

(c) Adjustment in deduction for personal exemption

In the case of a taxpayer other than a corporation, if a return is made for a short period by reason of subsection (a)(1) and if the tax is not computed under subsection (b)(2), then the exemptions allowed as a deduction under section 151 (and any deduction in lieu thereof) shall be reduced to amounts which bear the same ratio to the full exemptions as the number of months in the short period bears to 12.

(d) Adjustment in computing minimum tax and tax preferences

If a return is made for a short period by reason of subsection (a)—

(1) the alternative minimum taxable income for the short period shall be placed on an annual basis by multiplying such amount by 12 and dividing the result by the number of months in the short period, and

(2) the amount computed under paragraph (1) of section 55(a) shall bear the same relation to the tax computed on the annual basis as the number of months in the short period bears to 12.

(e) Cross references

For inapplicability of subsection (b) in computing—

(1) Accumulated earnings tax, see section 536.

(2) Personal holding company tax, see section 546.

(3) The taxable income of a regulated investment company, see section 852(b)(2)(E).

(4) The taxable income of a real estate investment trust, see section 857(b)(2)(C).

For returns for a period of less than 12 months in the case of a debtor's election to terminate a taxable year, see section 1398(d)(2)(E).

(Aug. 16, 1954, ch. 736, 68A Stat. 149; Pub. L. 86–779, §10(i), Sept. 14, 1960, 74 Stat. 1009; Pub. L. 91–172, title III, §301(b)(6), Dec. 30, 1969, 83 Stat. 585; Pub. L. 94–455, title III, §301(e), title XII, §1204(c)(2), title XVI, §1607(b)(1)(C), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1553, 1697, 1757, 1834; Pub. L. 95–30, title I, §102(b)(6), May 23, 1977, 91 Stat. 137; Pub. L. 95–600, title IV, §421(e)(2), title VII, §703(o)(1)–(3), Nov. 6, 1978, 92 Stat. 2876, 2943; Pub. L. 96–222, title I, §104(a)(4)(H)(iii), Apr. 1, 1980, 94 Stat. 217; Pub. L. 96–589, §3(d), Dec. 24, 1980, 94 Stat. 3401; Pub. L. 97–448, title III, §304(a), Jan. 12, 1983, 96 Stat. 2398; Pub. L. 99–514, title I, §104(b)(7), title VII, §701(e)(3), Oct. 22, 1986, 100 Stat. 2105, 2342; Pub. L. 108–357, title IV, §413(c)(6), Oct. 22, 2004, 118 Stat. 1507.)

AMENDMENTS

2004—Subsec. (e)(3) to (5). Pub. L. 108–357 redesignated pars. (4) and (5) as (3) and (4), respectively, and struck out former par. (3) which read as follows: "Undistributed foreign personal holding company income, see section 557."

1986—Subsec. (b)(1). Pub. L. 99–514, §104(b)(7)(A), struck out ", and adding the zero bracket amount" after "by the number of months in the short period".

Subsec. (b)(2)(A)(ii). Pub. L. 99–514, §104(b)(7)(B), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: "the tax computed on the sum of the modified taxable income for the short period plus the zero bracket amount."

Subsec. (d). Pub. L. 99–514, §701(e)(3), substituted "and tax preferences" for "for tax preferences" in heading and amended text generally. Prior to amendment, subsec. (d) read as follows: "If a return is made for a short period by reason of subsection (a), then—

"(1) in the case of a taxpayer other than a corporation, the alternative minimum taxable income for the short period shall be placed on an annual basis by multiplying that amount by 12 and dividing the result by the number of months in the short period, and the amount computed under paragraph (1) of section 55(a) shall be the same part of the tax computed on the annual basis as the number of months in the short period is of 12 months; and

"(2) the $10,000 amount specified in section 56 (relating to minimum tax for tax preferences), modified as provided by section 58, shall be reduced to the amount which bears the same ratio to such specified amount as the number of days in the short period bears to 365."

1983—Subsec. (e). Pub. L. 97–448 substituted "section 1398(d)(2)(E)" for "section 1398(d)(3)(E)".

1980—Subsec. (d)(2). Pub. L. 96–222 struck out "in the case of a corporation," before "the $10,000 amount".

Subsec. (e). Pub. L. 96–589 inserted cross reference to section 1398(d)(3)(E) for returns for a period of less than 12 months in the case of a debtor's election to terminate a taxable year.

1978—Subsec. (b)(1). Pub. L. 95–600, §703(o)(2), substituted "modified taxable income for such short period" for "gross income for such short period (minus the deductions allowed by this chapter for the short period, but only the adjusted amount of the deductions for personal exemptions)".

Subsec. (b)(2). Pub. L. 95–600, §703(o)(1), substituted in cl. (i) "modified taxable income" for "taxable income" in two places and in cl. (ii) "the sum of the modified taxable income" for "the taxable income" and "plus the zero bracket amount" for "without placing the taxable income on an annual basis".

Subsec. (b)(3). Pub. L. 95–600, §703(o)(3), added par. (3).

Subsec. (d). Pub. L. 95–600, §421(e)(2), substituted "Adjustment in computing minimum tax for tax preferences" for "Adjustment in exclusion for computing minimum tax for tax preferences" in heading, redesignated existing provisions as par. (2) and as so redesignated applied par. (2) to corporations, and added par. (1).

1977—Subsec. (b)(1). Pub. L. 95–30 substituted "multiplying the gross income for such short period (minus the deductions allowed by this chapter for the short period, but only the adjusted amount of the deductions for personal exemptions) by 12, dividing the result by the number of months in the short period, and adding the zero bracket amount" for "multiplying such income by 12, and dividing the result by the number of months in the short period".

1976—Subsec. (a)(1). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (a)(3). Pub. L. 94–455, §1204(c)(2), struck out par. (3) which made termination of taxpayer's taxable year under section 6851 as one of the circumstances under which a tax return for a period of less than 12 months shall be made.

Subsec. (b)(2)(D). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (d). Pub. L. 94–455, §301(e), substituted "$10,000" for "$30,000".

Subsec. (e)(5). Pub. L. 94–455, §1607(b)(1)(C), substituted "section 857(b)(2)(C)" for "section 857(b)(2)(D)".

1969—Subsecs. (d), (e). Pub. L. 91–172 added subsec. (d) and redesignated former subsec. (d) as (e).

1960—Subsec. (d)(5). Pub. L. 86–779 added par. (5).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 104(b)(7) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 701(e)(3) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date note under section 55 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 97–448, title III, §311(b)(1), Jan. 12, 1983, 96 Stat. 2411, provided that: "The amendment made by subsection (a) of section 304 [amending this section] shall take effect as if included in the amendments made by section 3 of the Bankruptcy Tax Act of 1980 [section 3 of Pub. L. 96–589, which amended this section and sections 6012 and 6103 of this title]."

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–589 applicable to bankruptcy cases commencing more than 90 days after Dec. 24, 1980, see section 7(b) of Pub. L. 96–589, set out as a note under section 108 of this title.

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title VII, §703(o)(4), Nov. 6, 1978, 92 Stat. 2943, provided that: "The amendments made

by this subsection [amending this section] shall apply to taxable years beginning after December 31, 1976."

Amendment by section 421(e)(2) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 421(g) of Pub. L. 95–600, set out as a note under section 5 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title III, §301(g)(1), Oct. 4, 1976, 90 Stat. 1553, provided that the amendment made by section 301(e) of Pub. L. 94–455 is effective for items of tax preferences for taxable years beginning after Dec. 31, 1975, with certain exceptions.

Amendment by section 1204(c)(2) of Pub. L. 94–455 effective with respect to action taken under section 6851, 6861, or 6862 of this title where the notice and demand takes place after Feb. 28, 1977, see section 1204(d) of Pub. L. 94–455, as amended, set out as a note under section 6851 of this title.

For effective date of amendment by section 1607(b)(1)(C) of Pub. L. 94–455, see section 1608(c) of Pub. L. 94–455, set out as a note under section 857 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years ending after Dec. 31, 1969, see section 301(c) of Pub. L. 91–172, set out as a note under section 5 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–779 applicable with respect to taxable years of real estate investment trusts beginning after Dec. 31, 1960, see section 10(k) of Pub. L. 86–779, set out as an Effective Date note under section 856 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(e)(3) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, see section 1012(aa)(2) of Pub. L. 100–647, set out as a note under section 861 of this title.

§444. Election of taxable year other than required taxable year

(a) General rule

Except as otherwise provided in this section, a partnership, S corporation, or personal service corporation may elect to have a taxable year other than the required taxable year.

(b) Limitations on taxable years which may be elected

(1) In general

Except as provided in paragraphs (2) and (3), an election may be made under subsection (a) only if the deferral period of the taxable year elected is not longer than 3 months.

(2) Changes in taxable year

Except as provided in paragraph (3), in the case of an entity changing a taxable year, an election may be made under subsection (a) only if the deferral period of the taxable year elected is not longer than the shorter of—

(A) 3 months, or

(B) the deferral period of the taxable year which is being changed.

(3) Special rule for entities retaining 1986 taxable years

In the case of an entity's 1st taxable year beginning after December 31, 1986, an entity may elect a taxable year under subsection (a) which is the same as the entity's last taxable year beginning in 1986.

(4) Deferral period

For purposes of this subsection, except as provided in regulations, the term "deferral period" means, with respect to any taxable year of the entity, the months between—

(A) the beginning of such year, and

(B) the close of the 1st required taxable year ending within such year.

(c) Effect of election

If an entity makes an election under subsection (a), then—

(1) in the case of a partnership or S corporation, such entity shall make the payments required by section 7519, and

(2) in the case of a personal service corporation, such corporation shall be subject to the deduction limitations of section 280H.

(d) Elections

(1) Person making election

An election under subsection (a) shall be made by the partnership, S corporation, or personal service corporation.

(2) Period of election

(A) In general

Any election under subsection (a) shall remain in effect until the partnership, S corporation, or personal service corporation changes its taxable year or otherwise terminates such election. Any change to a required taxable year may be made without the consent of the Secretary.

(B) No further election

If an election is terminated under subparagraph (A) or paragraph (3)(A), the partnership, S corporation, or personal service corporation may not make another election under subsection (a).

(3) Tiered structures, etc.

(A) In general

Except as otherwise provided in this paragraph—

(i) no election may be under subsection (a) with respect to any entity which is part of a tiered structure, and

(ii) an election under subsection (a) with respect to any entity shall be terminated if such entity becomes part of a tiered structure.

(B) Exceptions for structures consisting of certain entities with same taxable year

Subparagraph (A) shall not apply to any tiered structure which consists only of partnerships or S corporations (or both) all of which have the same taxable year.

(e) Required taxable year

For purposes of this section, the term "required taxable year" means the taxable year determined under section 706(b), 1378, or 441(i) without taking into account any taxable year which is allowable by reason of business purposes. Solely for purposes of the preceding sentence, sections 706(b), 1378, and 441(i) shall be treated as in effect for taxable years beginning before January 1, 1987.

(f) Personal service corporation

For purposes of this section, the term "personal service corporation" has the meaning given to such term by section 441(i)(2).

(g) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section, including regulations to prevent the avoidance of subsection (b)(2)(B) or (d)(2)(B) through the change in form of an entity.

(Added Pub. L. 100–203, title X, §10206(a)(1), Dec. 22, 1987, 101 Stat. 1330–397; amended Pub. L.

100–647, title II, §2004(e)(1), (2)(A), (12), (13), Nov. 10, 1988, 102 Stat. 3600, 3602.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–647, §2004(e)(1)(A), substituted "as otherwise provided in this section" for "as provided in subsections (b) and (c)".

Subsec. (b)(4). Pub. L. 100–647, §2004(e)(13), inserted "except as provided in regulations," before "the term".

Subsec. (d)(2)(A). Pub. L. 100–647, §2004(e)(12), inserted "or otherwise terminates such election" after "its taxable year".

Subsec. (d)(2)(B). Pub. L. 100–647, §2004(e)(1)(C), inserted "or paragraph (3)(A)" after "under subparagraph (A)".

Subsec. (d)(3). Pub. L. 100–647, §2004(e)(1)(B), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "No election may be made under subsection (a) with respect to an entity which is part of a tiered structure other than a tiered structure comprised of 1 or more partnerships or S corporations all of which have the same taxable year."

Subsecs. (f), (g). Pub. L. 100–647, §2004(e)(2)(A), added subsec. (f) and redesignated former subsec. (f) as (g).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE

Pub. L. 100–203, title X, §10206(d), Dec. 22, 1987, 101 Stat. 1330–403, as amended by Pub. L. 100–647, title II, §2004(e)(11), Nov. 10, 1988, 102 Stat. 3602, provided that:

"(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [enacting this section and sections 280H and 7519 of this title] shall apply to taxable years beginning after December 31, 1986.

"(2) REQUIRED PAYMENTS.—The amendments made by subsection (b) [enacting section 7519 of this title] shall apply to applicable election years beginning after December 31, 1986.

"(3) ELECTIONS.—Any election under section 444 of the Internal Revenue Code of 1986 (as added by subsection (a)) for an entity's 1st taxable year beginning after December 31, 1986, shall not be required to be made before the 90th day after the date of the enactment of this Act [Dec. 22, 1987].

"(4) SPECIAL RULE FOR EXISTING ENTITIES ELECTING S CORPORATION STATUS.—If a C corporation (within the meaning of section 1361(a)(2) of the Internal Revenue Code of 1986) with a taxable year other than the calendar year—

"(A) made an election after September 18, 1986, and before January 1, 1988, under section 1362 of such Code to be treated as an S corporation, and

"(B) elected to have the calendar year as the taxable year of the S corporation,

then section 444(b)(2)(B) of such Code shall be applied by taking into account the deferral period of the last taxable year of the C corporation rather than the deferral period of the taxable year being changed. The preceding sentence shall apply only in the case of an election under section 444 of such Code made for a taxable year beginning before 1989."

PART II—METHODS OF ACCOUNTING

Subpart

A. Methods of accounting in general.

B. Taxable year for which items of gross income included.

C. Taxable year for which deductions taken.

D. Inventories.

SUBPART A—METHODS OF ACCOUNTING IN GENERAL

Sec.

446. General rule for methods of accounting.

447. Method of accounting for corporations engaged in farming.

448. Limitation on use of cash method of accounting.

AMENDMENTS

1986—Pub. L. 99–514, title VIII, §801(c), Oct. 22, 1986, 100 Stat. 2348, added item 448.
1976—Pub. L. 94–455, title II, §207(c)(1)(B), Oct. 4, 1976, 90 Stat. 1541, added item 447.

§446. General rule for methods of accounting

(a) General rule

Taxable income shall be computed under the method of accounting on the basis of which the taxpayer regularly computes his income in keeping his books.

(b) Exceptions

If no method of accounting has been regularly used by the taxpayer, or if the method used does not clearly reflect income, the computation of taxable income shall be made under such method as, in the opinion of the Secretary, does clearly reflect income.

(c) Permissible methods

Subject to the provisions of subsections (a) and (b), a taxpayer may compute taxable income under any of the following methods of accounting—

(1) the cash receipts and disbursements method;
(2) an accrual method;
(3) any other method permitted by this chapter; or
(4) any combination of the foregoing methods permitted under regulations prescribed by the Secretary.

(d) Taxpayer engaged in more than one business

A taxpayer engaged in more than one trade or business may, in computing taxable income, use a different method of accounting for each trade or business.

(e) Requirement respecting change of accounting method

Except as otherwise expressly provided in this chapter, a taxpayer who changes the method of accounting on the basis of which he regularly computes his income in keeping his books shall, before computing his taxable income under the new method, secure the consent of the Secretary.

(f) Failure to request change of method of accounting

If the taxpayer does not file with the Secretary a request to change the method of accounting, the absence of the consent of the Secretary to a change in the method of accounting shall not be taken into account—

(1) to prevent the imposition of any penalty, or the addition of any amount to tax, under this title, or
(2) to diminish the amount of such penalty or addition to tax.

(Aug. 16, 1954, ch. 736, 68A Stat. 151; Pub. L. 94–455, title XIX, §1906 (b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–369, div. A, title I, §161(a), July 18, 1984, 98 Stat. 696.)

AMENDMENTS

1984—Subsec. (f). Pub. L. 98–369 added subsec. (f).
1976—Subsecs. (b), (c), (e). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §161(b), July 18, 1984, 98 Stat. 697, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [July 18, 1984]."

§447. Method of accounting for corporations engaged in farming

(a) General rule

Except as otherwise provided by law, the taxable income from farming of—

(1) a corporation engaged in the trade or business of farming, or

(2) a partnership engaged in the trade or business of farming, if a corporation is a partner in such partnership,

shall be computed on an accrual method of accounting. This section shall not apply to the trade or business of operating a nursery or sod farm or to the raising or harvesting of trees (other than fruit and nut trees).

(b) Preproductive period expenses

For rules requiring capitalization of certain preproductive period expenses, see section 263A.

(c) Exception for certain corporations

For purposes of subsection (a), a corporation shall be treated as not being a corporation if it is—

(1) an S corporation, or

(2) a corporation the gross receipts of which meet the requirements of subsection (d).

(d) Gross receipts requirements

(1) In general

A corporation meets the requirements of this subsection if, for each prior taxable year beginning after December 31, 1975, such corporation (and any predecessor corporation) did not have gross receipts exceeding $1,000,000. For purposes of the preceding sentence, all corporations which are members of the same controlled group of corporations (within the meaning of section 1563(a)) shall be treated as 1 corporation.

(2) Special rules for family corporations

(A) In general

In the case of a family corporation, paragraph (1) shall be applied—

(i) by substituting "December 31, 1985," for "December 31, 1975,"; and

(ii) by substituting "$25,000,000" for "$1,000,000".

(B) Gross receipts test

(i) Controlled groups

Notwithstanding the last sentence of paragraph (1), in the case of a family corporation—

(I) except as provided by the Secretary, only the applicable percentage of gross receipts of any other member of any controlled group of corporations of which such corporation is a member shall be taken into account, and

(II) under regulations, gross receipts of such corporation or of another member of such group shall not be taken into account by such corporation more than once.

(ii) Pass-thru entities

For purposes of paragraph (1), if a family corporation holds directly or indirectly any interest in a partnership, estate, trust or other pass-thru entity, such corporation shall take into account its proportionate share of the gross receipts of such entity.

(iii) Applicable percentage

For purposes of clause (i), the term "applicable percentage" means the percentage equal to a fraction—

(I) the numerator of which is the fair market value of the stock of another corporation held directly or indirectly as of the close of the taxable year by the family corporation, and

(II) the denominator of which is the fair market value of all stock of such corporation as of such time.

For purposes of this clause, the term "stock" does not include stock described in section 1563(c)(1).

(C) Family corporation

For purposes of this section, the term "family corporation" means—

(i) any corporation if at least 50 percent of the total combined voting power of all classes of stock entitled to vote, and at least 50 percent of all other classes of stock of the corporation, are owned by members of the same family, and

(ii) any corporation described in subsection (h).

(e) Members of the same family

For purposes of subsection (d)—

(1) the members of the same family are an individual, such individual's brothers and sisters, the brothers and sisters of such individual's parents and grandparents, the ancestors and lineal descendants or any of the foregoing, a spouse of any of the foregoing, and the estate of any of the foregoing,

(2) stock owned, directly or indirectly, by or for a partnership or trust shall be treated as owned proportionately by its partners or beneficiaries, and

(3) if 50 percent or more in value of the stock in a corporation (hereinafter in this paragraph referred to as "first corporation") is owned, directly or through paragraph (2), by or for members of the same family, such members shall be considered as owning each class of stock in a second corporation (or a wholly owned subsidiary of such second corporation) owned, directly or indirectly, by or for the first corporation, in that proportion which the value of the stock in the first corporation which such members so own bears to the value of all the stock in the first corporation.

For purposes of paragraph (1), individuals related by the half blood or by legal adoption shall be treated as if they were related by the whole blood.

(f) Coordination with section 481

In the case of any taxpayer required by this section to change its method of accounting for any taxable year—

(1) such change shall be treated as having been made with the consent of the Secretary,

(2) for purposes of section 481(a)(2), such change shall be treated as a change not initiated by the taxpayer, and

(3) under regulations prescribed by the Secretary, the net amount of adjustments required by section 481(a) to be taken into account by the taxpayer in computing taxable income shall be taken into account in each of the 10 taxable years (or the remaining taxable years where there is a stated future life of less than 10 taxable years) beginning with the year of change.

(g) Certain annual accrual accounting methods

(1) In general

Notwithstanding subsection (a) or section 263A, if—

(A) for its 10 taxable years ending with its first taxable year beginning after December 31, 1975, a corporation or qualified partnership used an annual accrual method of accounting with respect to its trade or business of farming,

(B) such corporation or qualified partnership raises crops which are harvested not less than 12 months after planting, and

(C) such corporation or qualified partnership has used such method of accounting for all taxable years intervening between its first taxable year beginning after December 31, 1975, and the taxable year,

such corporation or qualified partnership may continue to employ such method of accounting for the taxable year with respect to its qualified farming trade or business.

(2) Annual accrual method of accounting defined

For purposes of paragraph (1), the term "annual accrual method of accounting" means a method under which revenues, costs, and expenses are computed on an accrual method of accounting and the preproductive period expenses incurred during the taxable year are charged to harvested crops or deducted in determining the taxable income for such years.

(3) Certain nonrecognition transfers

For purposes of this subsection, if—

(A) a corporation acquired substantially all the assets of a qualified farming trade or business from another corporation in a transaction in which no gain or loss was recognized to the transferor or transferee corporation, or

(B) a qualified partnership acquired substantially all the assets of a qualified farming trade or business from one of its partners in a transaction to which section 721 applies,

the transferee corporation or qualified partnership shall be deemed to have computed its taxable income on an annual accrual method of accounting during the period for which the transferor corporation or partnership computed its taxable income from such trade or business on an annual accrual method.

(4) Qualified partnership defined

For purposes of this subsection—

(A) Qualified partnership

The term "qualified partnership" means a partnership which is engaged in a qualified farming trade or business and each of the partners of which is a corporation other than—

(i) an S corporation, or

(ii) a personal holding company (within the meaning of section 542(a)).

(B) Qualified farming trade or business

(i) In general

The term "qualified farming trade or business" means the trade or business of farming—

(I) sugar cane,

(II) any plant with a preproductive period (as defined in section 263A(e)(3)) of 2 years or less, and

(III) any other plant (other than any citrus or almond tree) if an election by the corporation under this subparagraph is in effect.

In the case of a partnership and for purposes of paragraph (3)(A), subclauses (II) and (III) shall not apply.

(ii) Effect of election

For purposes of paragraphs (1) and (2) of section 263A(e), any election under this subparagraph shall be treated as if it were an election under subsection (d)(3) of section 263A.

(iii) Election

Unless the Secretary otherwise consents, an election under this subparagraph may be made only for the corporation's 1st taxable year which begins after December 31, 1986, and during which the corporation engages in a farming business. Any such election, once made, may be revoked only with the consent of the Secretary.

(h) Exception for certain closely held corporations

(1) In general

A corporation is described in this subsection if, on October 4, 1976, and at all times thereafter—

(A) members of 2 families (within the meaning of subsection (e)(1)) have owned (directly or through the application of subsection (e)) at least 65 percent of the total combined voting power

of all classes of stock of such corporation entitled to vote, and at least 65 percent of the total number of shares of all other classes of stock of such corporation; or

(B)(i) members of 3 families (within the meaning of subsection (e)(1)) have owned (directly or through the application of subsection (e)) at least 50 percent of the total combined voting power of all classes of stock of such corporation entitled to vote, and at least 50 percent of the total number of shares of all other classes of stock of such corporation; and

(ii) substantially all of the stock of such corporation which is not so owned (directly or through the application of subsection (e)) by members of such 3 families is owned directly—

(I) by employees of the corporation or members of their families (within the meaning of section 267(c)(4)), or

(II) by a trust for the benefit of the employees of such corporation which is described in section 401(a) and which is exempt from taxation under section 501(a).

(2) Stock held by employees, etc.

For purposes of this subsection, stock which—

(A) is owned directly by employes [1] of the corporation or members of their families (within the meaning of section 267(c)(4)) or by a trust described in paragraph (1)(B)(ii)(II), and

(B) was acquired on or after October 4, 1976, from the corporation or from a member of a family which, on October 4, 1976, was described in subparagraph (A) or (B)(i) of paragraph (1).

shall be treated as owned by a member of a family which, on October 4, 1976, was described in subparagraph (A) or (B)(i) of paragraph (1).

(3) Corporation must be engaged in farming

This subsection shall apply only in the case of a corporation which was, on October 4, 1976, and at all times thereafter, engaged in the trade or business of farming.

(i) Suspense account for family corporations

(1) In general

If any family corporation is required by this section to change its method of accounting for any taxable year (hereinafter in this subsection referred to as the "year of the change"), notwithstanding subsection (f), such corporation shall establish a suspense account under this subsection in lieu of taking into account adjustments under section 481(a) with respect to amounts included in the suspense account.

(2) Initial opening balance

The initial opening balance of the account described in paragraph (1) shall be the lesser of—

(A) the net adjustments which would have been required to be taken into account under section 481 but for this subsection, or

(B) the amount of such net adjustments determined as of the beginning of the taxable year preceding the year of change.

If the amount referred to in subparagraph (A) exceeds the amount referred to in subparagraph (B), notwithstanding paragraph (1), such excess shall be included in gross income in the year of the change.

(3) Inclusion where corporation ceases to be a family corporation

(A) In general

If the corporation ceases to be a family corporation during any taxable year, the amount in the suspense account (after taking into account prior reductions) shall be included in gross income for such taxable year.

(B) Special rule for certain transfers

For purposes of subparagraph (A), any transfer in a corporation after December 15, 1987, shall be treated as a transfer to a person whose ownership could not qualify such corporation as

a family corporation unless it is a transfer—

(i) to a member of the family of the transferor, or

(ii) in the case of a corporation described in subsection (h), to a member of a family which on December 15, 1987, held stock in such corporation which qualified the corporation under subsection (h).

(4) Subchapter C transactions

The application of this subsection with respect to a taxpayer which is a party to any transaction with respect to which there is nonrecognition of gain or loss to any party by reason of subchapter C shall be determined under regulations prescribed by the Secretary.

(5) Termination

(A) In general

No suspense account may be established under this subsection by any corporation required by this section to change its method of accounting for any taxable year ending after June 8, 1997.

(B) Phaseout of existing suspense accounts

(i) In general

Each suspense account under this subsection shall be reduced (but not below zero) for each taxable year beginning after June 8, 1997, by an amount equal to the lesser of—

(I) the applicable portion of such account, or

(II) 50 percent of the taxable income of the corporation for the taxable year, or, if the corporation has no taxable income for such year, the amount of any net operating loss (as defined in section 172(c)) for such taxable year.

For purposes of the preceding sentence, the amount of taxable income and net operating loss shall be determined without regard to this paragraph.

(ii) Coordination with other reductions

The amount of the applicable portion for any taxable year shall be reduced (but not below zero) by the amount of any reduction required for such taxable year under any other provision of this subsection.

(iv) [2] Inclusion in income

Any reduction in a suspense account under this paragraph shall be included in gross income for the taxable year of the reduction.

(C) Applicable portion

For purposes of subparagraph (B), the term "applicable portion" means, for any taxable year, the amount which would ratably reduce the amount in the account (after taking into account prior reductions) to zero over the period consisting of such taxable year and the remaining taxable years in such first 20 taxable years.

(D) Amounts after 20th year

Any amount in the account as of the close of the 20th year referred to in subparagraph (C) shall be treated as the applicable portion for each succeeding year thereafter to the extent not reduced under this paragraph for any prior taxable year after such 20th year.

(Added Pub. L. 94–455, title II, §207(c)(1)(A), Oct. 4, 1976, 90 Stat. 1538; amended Pub. L. 95–600, title III, §§351(a), 353(a), title VII, §§701(l)(1), 703(d), Nov. 6, 1978, 92 Stat. 2846, 2847, 2906, 2939; Pub. L. 97–248, title II, §230(a), Sept. 3, 1982, 96 Stat. 495; Pub. L. 97–354, §5(a)(28), (29), Oct. 19, 1982, 96 Stat. 1695; Pub. L. 99–514, title VIII, §803(b)(7), Oct. 22, 1986, 100 Stat. 2356; Pub. L. 100–203, title X, §10205(a)–(c), Dec. 22, 1987, 101 Stat. 1330–395 to 1330–397; Pub. L. 100–647, title I, §1008(b)(5), (6), Nov. 10, 1988, 102 Stat. 3438; Pub. L. 101–508, title XI, §11702(b), Nov. 5, 1990, 104 Stat. 1388–514; Pub. L. 105–34, title X, §1081(a), Aug. 5, 1997, 111 Stat. 949.)

AMENDMENTS

1997—Subsec. (i)(3). Pub. L. 105–34 redesignated par. (5) as (3) and struck out heading and text of former par. (3). Text read as follows: "If—

"(A) the gross receipts of the corporation from the trade or business of farming for the year of the change or any subsequent taxable year, is less than

"(B) such gross receipts for the taxpayer's last taxable year beginning before the year of the change (or for the most recent taxable year for which a reduction in the suspense account was made under this paragraph),

the amount in the suspense account (after taking into account prior reductions) shall be reduced by the percentage by which the amount described in subparagraph (A) is less than the amount described in subparagraph (B)."

Subsec. (i)(4). Pub. L. 105–34 redesignated par. (6) as (4) and struck out heading and text of former par. (4). Text read as follows: "Any reduction in the suspense account under paragraph (3) shall be included in gross income for the taxable year of the reduction."

Subsec. (i)(5), (6). Pub. L. 105–34 added par. (5) and redesignated former pars. (5) and (6) as (3) and (4), respectively.

1990—Subsec. (g)(1)(A). Pub. L. 101–508, §11702(b)(2), substituted "trade or business of farming" for "qualified farming trade or business".

Subsec. (g)(4)(B). Pub. L. 101–508, §11702(b)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "The term 'qualified farming trade or business' means the trade or business of farming sugar cane."

1988—Subsec. (b). Pub. L. 100–647, §1008(b)(5), substituted "period expenses" for "period of expenses" in heading and in text.

Subsec. (g)(1). Pub. L. 100–647, §1008(b)(6), substituted "qualified farming trade or business" for "trade or business of farming" in subpar. (A) and in concluding provisions.

1987—Subsec. (c). Pub. L. 100–203, §10205(a), added subsec. (c), substituting "certain corporations" for "small business and family corporations" in heading and striking out former text which read as follows: "For purposes of subsection (a), a corporation shall be treated as not being a corporation if it is—

"(1) an S corporation,

"(2) a corporation of which at least 50 percent of the total combined voting power of all classes of stock entitled to vote, and at least 50 percent of the total number of shares of all other classes of stock of the corporation, are owned by members of the same family, or

"(3) a corporation the gross receipts of which meet the requirements of subsection (e)."

Subsec. (d). Pub. L. 100–203, §10205(a), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 100–203, §10205(c)(1), substituted "subsection (d)" for "subsection (c)(2)".

Pub. L. 100–203, §10205(a), redesignated former subsec. (d) as (e) and struck out former subsec. (e), "Corporation having gross receipts of $1,000,000 or less", which read as follows: "A corporation meets the requirements of this subsection if, for each prior taxable year beginning after December 31, 1975, such corporation (and any predecessor corporation) did not have gross receipts exceeding $1,000,000. For purposes of the preceding sentence, all corporations which are members of a controlled group of corporations (within the meaning of section 1563(a)) shall be treated as one corporation."

Subsec. (h)(1). Pub. L. 100–203, §10205(c)(2)(A), substituted "A corporation is described in this subsection" for "This section shall not apply to any corporation".

Subsec. (h)(1)(A), (B). Pub. L. 100–203, §10205(c)(2)(B), (C), substituted "subsection (e)" for "subsection (d)" and "subsection (e)(1)" for "subsection (d)(1)" wherever appearing.

Subsec. (i). Pub. L. 100–203, §10205(b), added subsec. (i).

1986—Subsec. (a). Pub. L. 99–514, §803(b)(7)(B), which directed that subsec. (a) be amended by striking out "and with the capitalization of preproductive period of expenses described in subsection (b)", was executed by striking out "and with the capitalization of preproductive period expenses described in subsection (b)" after "accrual method of accounting", as the probable intent of Congress.

Subsec. (b). Pub. L. 99–514, §803(b)(7)(A), in amending subsec. (b) generally, substituted in heading "period of expenses" for "period expenses" and in text the cross reference to section 263A for former par. (1) defining "preproductive period expenses", par. (2) relating to exceptions, and par. (3) defining "preproductive period".

Subsec. (g)(1). Pub. L. 99–514, §803(b)(7)(C), substituted "Notwithstanding subsection (a) or section 263A, if" for "If".

1982—Subsec. (c)(1). Pub. L. 97–354, §5(a)(28), substituted "an S corporation" for "an electing small

business corporation (within the meaning of section 1371(b))".

Subsec. (g)(1). Pub. L. 97–248, §230(a)(1), inserted "or qualified partnership" after "corporation" wherever appearing.

Subsec. (g)(3). Pub. L. 97–248, §230(a)(2), designated existing provisions from "a corporation acquired" through "transferee corporation", as subpar. (A), inserted "qualified" before "farming trade", and added subpar. (B).

Subsec. (g)(4). Pub. L. 97–354, §5(a)(29), substituted in subpar. (A)(i) "an S corporation" for "an electing small business corporation (within the meaning of section 1371(b))".

Pub. L. 97–248, §230(a)(3), added par. (4).

1978—Subsec. (a). Pub. L. 95–600, §§353(a), 703(d), substituted in provisions following par. (2) "preproductive period expenses" for "preproductive expenses" and "nursery or sod farm" for "nursery".

Subsec. (f)(3). Pub. L. 95–600, §701(l)(1), struck out "(except as otherwise provided in such regulations)" before "be taken" and inserted "(or the remaining taxable years where there is a stated future life of less than 10 taxable years)" after "10 taxable years".

Subsec. (g)(2). Pub. L. 95–600, §703(d), substituted "preproductive period expenses" for "preproductive expenses".

Subsec. (h). Pub. L. 95–600, §351(a), added subsec. (h).

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title X, §1081(b), Aug. 5, 1997, 111 Stat. 950, provided that: "The amendments made by this section [amending this section] shall apply to taxable years ending after June 8, 1997."

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 11702(j) of Pub. L. 101–508, set out as a note under section 59 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title X, §10205(d), Dec. 22, 1987, 101 Stat. 1330–397, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1987."

EFFECTIVE DATE OF 1986 AMENDMENT

If any interest costs incurred after Dec. 31, 1986, are attributable to costs incurred before Jan. 1, 1987, the amendment by Pub. L. 99–514 is applicable to such interest costs only to the extent such interest costs are attributable to costs which were required to be capitalized under section 263 of the Internal Revenue Code of 1954 and which would have been taken into account in applying section 189 of the Internal Revenue Code of 1954 (as in effect before its repeal by section 803 of Pub. L. 99–514) or, if applicable, section 266 of such Code, see section 7831(d)(2) of Pub. L. 101–239, set out as an Effective Date note under section 263A of this title.

Amendment by Pub. L. 99–514 applicable to costs incurred after Dec. 31, 1986, in taxable years ending after such date, except as otherwise provided, see section 803(d) of Pub. L. 99–514, set out as an Effective Date note under section 263A of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

Pub. L. 97–248, title II, §230(b), Sept. 3, 1982, 96 Stat. 496, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1981."

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title III, §351(b), Nov. 6, 1978, 92 Stat. 2846, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1977."

Pub. L. 95–600, title III, §353(b), Nov. 6, 1978, 92 Stat. 2847, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1976."

Pub. L. 95–600, title VII, §703(l)(4), Nov. 6, 1978, 92 Stat. 2907, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendment made by paragraphs (1) [amending this section] and (3) [amending section 464 of this title] shall take effect as if included in section 447 or 464 (as the case may be) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] at the time of the enactment of such sections [Oct. 4, 1976]."

Amendment by section 703(d) of Pub. L. 95–600 effective on Oct. 4, 1976, see section 703(r) of Pub. L. 95–600, set out as a note under section 46 of this title.

EFFECTIVE DATE

Pub. L. 94–455, title II, §207(c)(2), Oct. 4, 1976, 90 Stat. 1541, as amended by Pub. L. 95–30, title IV, §404, May 23, 1977, 91 Stat. 155; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by paragraph (1) [enacting this section] shall apply to taxable years beginning after December 31, 1976.

"(B) SPECIAL RULE FOR CERTAIN CORPORATIONS.—In the case of a corporation engaged in the trade or business of farming and with respect to which—

"(i) members of two families (within the meaning of paragraph (1) of section 447(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as added by paragraph (1)) owned, on October 4, 1976 (directly or through the application of such section 447(d)), at least 65 percent of the total combined voting power of all classes of stock of such corporation entitled to vote, and at least 65 percent of the total number of shares of all other classes of stock of such corporation; or

"(ii) members of three families (within the meaning of paragraph (1) of such section 447(d)) owned, on October 4, 1976 (directly or through the application of such section 447(d)), at least 50 percent of the total combined voting power of all classes of stock of such corporation entitled to vote, and at least 50 percent of the total number of shares of all other classes of stock of such corporation; and substantially all of the stock of such corporation which was not so owned (directly or through the application of such section 447(d)), by members of such three families was owned, on October 4, 1976, directly—

"(I) by employees of the corporation or members of the families (within the meaning of section 267(c)(4) of such Code) of such employees, or

"(II) by a trust for the benefit of the employees of such corporation which is described in section 401(a) of such Code and which is exempt from taxation under section 501(a) of such Code,

the amendments made by paragraph (1) shall apply to taxable years beginning after December 31, 1977."

ACCOUNTING FOR GROWING CROPS

Pub. L. 95–600, title III, §352, Nov. 6, 1978, 92 Stat. 2846, provided that:

"(a) APPLICATION OF SECTION.—This section shall apply to a taxpayer who—

"(1) is a farmer, nurseryman, or florist,

"(2) is on an accrual method of accounting, and

"(3) is not required by section 447 of the Internal Revenue Code of 1954 to capitalize preproductive period expenses.

"(b) TAXPAYER MAY NOT BE REQUIRED TO INVENTORY GROWING CROPS.—A taxpayer to whom this section applies may not be required to inventory growing crops for any taxable year beginning after December 31, 1977.

"(c) TAXPAYER MAY ELECT TO CHANGE TO CASH METHOD.—A taxpayer to whom this section applies may, for any taxable year beginning after December 31, 1977 and before January 1, 1981, change to the cash receipts and disbursements method of accounting with respect to any trade or business in which the principal activity is growing crops.

"(d) SECTION 481 OF CODE TO APPLY.—Any change in the way in which a taxpayer accounts for the costs of growing crops resulting from the application of subsection (b) or (c)—

"(1) shall not require the consent of the Secretary of the Treasury or his delegate, and

"(2) shall be treated, for purposes of section 481 of the Internal Revenue Code of 1954 as a change in the method of accounting initiated by the taxpayer.

"(e) GROWING CROPS.—For purposes of this section, the term 'Growing crops' does not include trees grown for lumber, pulp, or other nonlife purposes."

AUTOMATIC TEN-YEAR ADJUSTMENT FOR FARMING SYNDICATES CHANGING TO ACCRUAL ACCOUNTING

Pub. L. 95–600, title VII, §703(l)(2), Nov. 6, 1978, 92 Stat. 2906, provided that: "If—

"(A) a farming syndicate (within the meaning of section 464(c) of the Internal Revenue Code of 1954) was in existence on December 31, 1975, and

"(B) such syndicate elects an accrual method of accounting (including the capitalization of preproductive period expenses described in section 447(b) of such Code) for a taxable year beginning before January 1, 1979,

then such election shall be treated as having been made with the consent of the Secretary of the Treasury or his delegate and, under regulations prescribed by the Secretary of the Treasury or his delegate, the net amount of the adjustments required by section 481(a) of such Code to be taken into account by the taxpayer in computing taxable income shall be taken into account in each of the 10 taxable years (or the remaining taxable years where there is a stated future life of less than 10 taxable years) beginning with the year of change."

ELECTION TO CHANGE FROM STATIC VALUE METHOD TO ACCRUAL METHOD OF ACCOUNTING

Pub. L. 94–455, title II, §207(c)(3), Oct. 4, 1976, 90 Stat. 1541, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(A) IN GENERAL.—If—

"(i) a corporation has computed its taxable income on an annual accrual method of accounting together with a static value method of accounting for deferred costs of growing crops for the 10 taxable years ending with its first taxable year beginning after December 31, 1975,

"(ii) such corporation raises crops which are harvested not less than 12 months after planting, and

"(iii) such corporation elects, within one year after the date of the enactment of this Act [Oct. 4, 1976] and in such manner as the Secretary of the Treasury or his delegate prescribes, to change to the annual accrual method of accounting (within the meaning of section 447(g)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) for taxable years beginning after December 31, 1976,

such change shall be treated as having been made with the consent of the Secretary of the Treasury, and, under regulations prescribed by the Secretary of the Treasury or his delegate, the net amount of the adjustments required by section 481(a) of the Internal Revenue Code of 1986 to be taken into account by the taxpayer in computing taxable income shall (except as otherwise provided in such regulations) be taken into account in each of the 10 taxable years beginning with the year of change.

"(B) COORDINATION WITH SECTION 447 OF THE CODE.—A corporation which elects under subparagraph (A) to change to the annual accrual method of accounting shall, for purposes of section 447(g) of the Internal Revenue Code of 1986, be deemed to be a corporation which has computed its taxable income on an annual accrual method of accounting for its 10 taxable years ending with its first taxable year beginning after December 31, 1975.

"(C) CERTAIN CORPORATE REORGANIZATIONS.—For purposes of this paragraph, if a corporation acquired substantially all the assets of a farming trade or business from another corporation in a transaction in which no gain or loss was recognized to the transferor or transferee corporation, the transferee corporation shall be deemed to have computed its taxable income on an annual accrual method of accounting together with a static value method of accounting for deferred costs of growing crops during the period for which the transferor corporation computed its taxable income from such trade or business on such accrual and static value method."

[1] So in original.

[2] So in original. Probably should be "(iii)".

§448. Limitation on use of cash method of accounting

(a) General rule

Except as otherwise provided in this section, in the case of a—

(1) C corporation,

(2) partnership which has a C corporation as a partner, or

(3) tax shelter,

taxable income shall not be computed under the cash receipts and disbursements method of accounting.

(b) Exceptions

(1) Farming business

Paragraphs (1) and (2) of subsection (a) shall not apply to any farming business.

(2) Qualified personal service corporations

Paragraphs (1) and (2) of subsection (a) shall not apply to a qualified personal service corporation, and such a corporation shall be treated as an individual for purposes of determining whether paragraph (2) of subsection (a) applies to any partnership.

(3) Entities with gross receipts of not more than $5,000,000

Paragraphs (1) and (2) of subsection (a) shall not apply to any corporation or partnership for any taxable year if, for all prior taxable years beginning after December 31, 1985, such entity (or any predecessor) met the $5,000,000 gross receipts test of subsection (c).

(c) $5,000,000 gross receipts test

For purposes of this section—

(1) In general

A corporation or partnership meets the $5,000,000 gross receipts test of this subsection for any prior taxable year if the average annual gross receipts of such entity for the 3-taxable-year period ending with such prior taxable year does not exceed $5,000,000.

(2) Aggregation rules

All persons treated as a single employer under subsection (a) or (b) of section 52 or subsection (m) or (o) of section 414 shall be treated as one person for purposes of paragraph (1).

(3) Special rules

For purposes of this subsection—

(A) Not in existence for entire 3-year period

If the entity was not in existence for the entire 3-year period referred to in paragraph (1), such paragraph shall be applied on the basis of the period during which such entity (or trade or business) was in existence.

(B) Short taxable years

Gross receipts for any taxable year of less than 12 months shall be annualized by multiplying the gross receipts for the short period by 12 and dividing the result by the number of months in the short period.

(C) Gross receipts

Gross receipts for any taxable year shall be reduced by returns and allowances made during such year.

(D) Treatment of predecessors

Any reference in this subsection to an entity shall include a reference to any predecessor of such entity.

(d) Definitions and special rules

For purposes of this section—

(1) Farming business

(A) In general

The term "farming business" means the trade or business of farming (within the meaning of section 263A(e)(4)).

(B) Timber and ornamental trees

The term "farming business" includes the raising, harvesting, or growing of trees to which

section 263A(c)(5) applies.

(2) Qualified personal service corporation

The term "qualified personal service corporation" means any corporation—

(A) substantially all of the activities of which involve the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, or consulting, and

(B) substantially all of the stock of which (by value) is held directly (or indirectly through 1 or more partnerships, S corporations, or qualified personal service corporations not described in paragraph (2) or (3) of subsection (a)) by—

(i) employees performing services for such corporation in connection with the activities involving a field referred to in subparagraph (A),

(ii) retired employees who had performed such services for such corporation,

(iii) the estate of any individual described in clause (i) or (ii), or

(iv) any other person who acquired such stock by reason of the death of an individual described in clause (i) or (ii) (but only for the 2-year period beginning on the date of the death of such individual).

To the extent provided in regulations which shall be prescribed by the Secretary, indirect holdings through a trust shall be taken into account under subparagraph (B).

(3) Tax shelter defined

The term "tax shelter" has the meaning given such term by section 461(i)(3) (determined after application of paragraph (4) thereof). An S corporation shall not be treated as a tax shelter for purposes of this section merely by reason of being required to file a notice of exemption from registration with a State agency described in section 461(i)(3)(A), but only if there is a requirement applicable to all corporations offering securities for sale in the State that to be exempt from such registration the corporation must file such a notice.

(4) Special rules for application of paragraph (2)

For purposes of paragraph (2)—

(A) community property laws shall be disregarded,

(B) stock held by a plan described in section 401(a) which is exempt from tax under section 501(a) shall be treated as held by an employee described in paragraph (2)(B)(i), and

(C) at the election of the common parent of an affiliated group (within the meaning of section 1504(a)), all members of such group may be treated as 1 taxpayer for purposes of paragraph (2)(B) if 90 percent or more of the activities of such group involve the performance of services in the same field described in paragraph (2)(A).

(5) Special rule for certain services

(A) In general

In the case of any person using an accrual method of accounting with respect to amounts to be received for the performance of services by such person, such person shall not be required to accrue any portion of such amounts which (on the basis of such person's experience) will not be collected if—

(i) such services are in fields referred to in paragraph (2)(A), or

(ii) such person meets the gross receipts test of subsection (c) for all prior taxable years.

(B) Exception

This paragraph shall not apply to any amount if interest is required to be paid on such amount or there is any penalty for failure to timely pay such amount.

(C) Regulations

The Secretary shall prescribe regulations to permit taxpayers to determine amounts referred to in subparagraph (A) using computations or formulas which, based on experience, accurately

reflect the amount of income that will not be collected by such person. A taxpayer may adopt, or request consent of the Secretary to change to, a computation or formula that clearly reflects the taxpayer's experience. A request under the preceding sentence shall be approved if such computation or formula clearly reflects the taxpayer's experience.

(6) Treatment of certain trusts subject to tax on unrelated business income

For purposes of this section, a trust subject to tax under section 511(b) shall be treated as a C corporation with respect to its activities constituting an unrelated trade or business.

(7) Coordination with section 481

In the case of any taxpayer required by this section to change its method of accounting for any taxable year—

(A) such change shall be treated as initiated by the taxpayer,

(B) such change shall be treated as made with the consent of the Secretary, and

(C) the period for taking into account the adjustments under section 481 by reason of such change—

(i) except as provided in clause (ii), shall not exceed 4 years, and

(ii) in the case of a hospital, shall be 10 years.

(8) Use of related parties, etc.

The Secretary shall prescribe such regulations as may be necessary to prevent the use of related parties, pass-thru entities, or intermediaries to avoid the application of this section.

(Added Pub. L. 99–514, title VIII, §801(a), Oct. 22, 1986, 100 Stat. 2345; amended Pub. L. 100–647, title I, §1008(a)(1), (2), (7)–(9), title VI, §6032(a), Nov. 10, 1988, 102 Stat. 3436, 3437, 3695; Pub. L. 107–147, title IV, §403(a), Mar. 9, 2002, 116 Stat. 40.)

AMENDMENTS

2002—Subsec. (d)(5). Pub. L. 107–147 amended heading and text of par. (5) generally. Prior to amendment, text read as follows: "In the case of any person using an accrual method of accounting with respect to amounts to be received for the performance of services by such person, such person shall not be required to accrue any portion of such amounts which (on the basis of experience) will not be collected. This paragraph shall not apply to any amount if interest is required to be paid on such amount or there is any penalty for failure to timely pay such amount."

1988—Subsec. (c)(3)(D). Pub. L. 100–647, §1008(a)(9), added subpar. (D).

Subsec. (d)(2). Pub. L. 100–647, §6032(a), inserted at end "To the extent provided in regulations which shall be prescribed by the Secretary, indirect holdings through a trust shall be taken into account under subparagraph (B)."

Subsec. (d)(2)(B). Pub. L. 100–647, §1008(a)(1)(A), substituted "(or indirectly through 1 or more partnerships, S corporations, or qualified personal service corporations not described in paragraph (2) or (3) of subsection (a))" for "or indirectly".

Subsec. (d)(3). Pub. L. 100–647, §1008(a)(7), inserted sentence at end relating to treatment of S corporation as tax shelter.

Subsec. (d)(4)(C). Pub. L. 100–647, §1008(a)(8), substituted "90 percent or more of" for "substantially all of".

Pub. L. 100–647, §1008(a)(2), substituted "such group" for "all such members".

Subsec. (d)(8). Pub. L. 100–647, §1008(a)(1)(B), added par. (8).

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title IV, §403(b), Mar. 9, 2002, 116 Stat. 41, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Mar. 9, 2002].

"(2) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer required by the amendments made by this section to change its method of accounting for its first taxable year ending after the date of the enactment of this Act—

"(A) such change shall be treated as initiated by the taxpayer,

"(B) such change shall be treated as made with the consent of the Secretary of the Treasury, and

"(C) the net amount of the adjustments required to be taken into account by the taxpayer under section

481 of the Internal Revenue Code of 1986 shall be taken into account over a period of 4 years (or if less, the number of taxable years that the taxpayer used the method permitted under section 448(d)(5) of such Code as in effect before the date of the enactment of this Act) beginning with such first taxable year."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1008(a)(1), (2), (7)–(9) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title VI, §6032(b), Nov. 10, 1988, 102 Stat. 3695, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1986."

EFFECTIVE DATE

Pub. L. 99–514, title VIII, §801(d), Oct. 22, 1986, 100 Stat. 2348, as amended by Pub. L. 100–647, title I, §1008(a)(5), (6), Nov. 10, 1988, 102 Stat. 3437, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this section and amending section 461 of this title] shall apply to taxable years beginning after December 31, 1986.

"(2) ELECTION TO RETAIN CASH METHOD FOR CERTAIN TRANSACTIONS.—A taxpayer may elect not to have the amendments made by this section apply to any loan or lease, or any transaction with a related party (within the meaning of section 267(b) of the Internal Revenue Code of 1954, as in effect before the enactment of this Act), entered into on or before September 25, 1985. Any election under the preceding sentence may be made separately with respect to each transaction.

"(3) CERTAIN CONTRACTS.—The amendments made by this section shall not apply to—

"(A) contracts for the acquisition or transfer of real property, and

"(B) contracts for services related to the acquisition or development of real property,

but only if such contracts were entered into before September 25, 1985, and the sole element of the contract which has not been performed as of September 25, 1985, is payment for such property or services.

"(4) TREATMENT OF AFFILIATED GROUP PROVIDING ENGINEERING SERVICES.—Each member of an affiliated group of corporations (within the meaning of section 1504(a) of the Internal Revenue Code of 1986) shall be allowed to use the cash receipts and disbursements method of accounting for any trade or business of providing engineering services with respect to taxable years ending after December 31, 1986, if the common parent of such group—

"(A) was incorporated in the State of Delaware in 1970,

"(B) was the successor to a corporation that was incorporated in the State of Illinois in 1949, and

"(C) used a method of accounting for long-term contracts of accounting [sic] for a substantial part of its income from the performance of engineering services.

"(5) SPECIAL RULE FOR PARAGRAPHS (2) AND (3).—If any loan, lease, contract, or evidence of any transaction to which paragraph (2) or (3) applies is transferred after June 10, 1987, to a person other than a related party (within the meaning of paragraph (2)), paragraph (2) or (3) shall cease to apply on and after the date of such transfer."

SUBPART B—TAXABLE YEAR FOR WHICH ITEMS OF GROSS INCLUDED

Sec.

451. General rule for taxable year of inclusion.

[452. Repealed.]

453. Installment method.

453A. Special rules for nondealers.

453B. Gain or loss on disposition of installment obligations.[1]

[453C. Repealed.]

454. Obligations issued at discount.

455. Prepaid subscription income.

456. Prepaid dues income of certain membership organizations.

457. Deferred compensation plans of State and local governments and tax-exempt organizations.

457A. Nonqualified deferred compensation from certain tax indifferent parties.
458. Magazines, paperbacks, and records returned after the close of the taxable year.
460. Special rules for long-term contracts.

AMENDMENTS

Pub. L. 110–343, div. C, title VIII, §801(c), Oct. 3, 2008, 122 Stat. 3931, added item 457A.

1988—Pub. L. 100–647, title V, §5076(b)(2), Nov. 10, 1988, 102 Stat. 3683, struck out "of real property" after "rules for nondealers" in item 453A.

1987—Pub. L. 100–203, title X, §10202(a)(2), (c)(2), Dec. 22, 1987, 101 Stat. 1330–388, 1330–392, substituted "Special rules for nondealers of real property" for "Installment method for dealers in personal property" in item 453A, and struck out item 453C "Certain indebtedness treated as payments on installment obligations".

1986—Pub. L. 99–514, title XI, §1107(b), (c), Oct. 22, 1986, 101 Stat. 2430, added item 457, applicable to taxable years beginning after Dec. 31, 1988, with certain exceptions, and struck out former item 457 "Deferred compensation plans with respect to service for State and local governments".

Pub. L. 99–514, title VIII, §§804(c), 811(b), Oct. 22, 1986, 100 Stat. 2361, 2368, added items 453C and 460.

1980—Pub. L. 96–471, §2(d), Oct. 19, 1980, 94 Stat. 2254, added items 453 to 453B and struck out former item 453 "Installment method".

1978—Pub. L. 95–600, title I, §131(b), title III, §372(b), Nov. 6, 1978, 92 Stat. 2782, 2862, added items 457 and 458.

1961—Pub. L. 87–109, §1(b), July 26, 1961, 75 Stat. 224, added item 456.

1958—Pub. L. 85–866, title I, §28(b), Sept. 2, 1958, 72 Stat. 1626, added item 455, effective with respect to taxable years beginning after Dec. 31, 1957. See section 28(c) of Pub. L. 85–866 set out as an Effective Date note under section 455 of this title.

1955—Act June 15, 1955, ch. 143, §2(2), 69 Stat. 135, struck out item 452 "Adjustment in case of position inconsistent with prior income tax liability".

[1] *So in original. Does not conform to section catchline.*

§451. General rule for taxable year of inclusion

(a) General rule

The amount of any item of gross income shall be included in the gross income for the taxable year in which received by the taxpayer, unless, under the method of accounting used in computing taxable income, such amount is to be properly accounted for as of a different period.

(b) Special rule in case of death

In the case of the death of a taxpayer whose taxable income is computed under an accrual method of accounting, any amount accrued only by reason of the death of the taxpayer shall not be included in computing taxable income for the period in which falls the date of the taxpayer's death.

(c) Special rule for employee tips

For purposes of subsection (a), tips included in a written statement furnished an employer by an employee pursuant to section 6053(a) shall be deemed to be received at the time the written statement including such tips is furnished to the employer.

(d) Special rule for crop insurance proceeds or disaster payments

In the case of insurance proceeds received as a result of destruction or damage to crops, a taxpayer reporting on the cash receipts and disbursements method of accounting may elect to include such proceeds in income for the taxable year following the taxable year of destruction or damage, if he establishes that, under his practice, income from such crops would have been reported in a following taxable year. For purposes of the preceding sentence, payments received under the Agricultural Act of 1949, as amended, or title II of the Disaster Assistance Act of 1988, as a result of (1) destruction or damage to crops caused by drought, flood, or any other natural disaster, or (2) the inability to plant crops because of such a natural disaster shall be treated as insurance proceeds received as a result of

destruction or damage to crops. An election under this subsection for any taxable year shall be made at such time and in such manner as the Secretary prescribes.

(e) Special rule for proceeds from livestock sold on account of drought, flood, or other weather-related conditions

(1) In general

In the case of income derived from the sale or exchange of livestock in excess of the number the taxpayer would sell if he followed his usual business practices, a taxpayer reporting on the cash receipts and disbursements method of accounting may elect to include such income for the taxable year following the taxable year in which such sale or exchange occurs if he establishes that, under his usual business practices, the sale or exchange would not have occurred in the taxable year in which it occurred if it were not for drought, flood, or other weather-related conditions, and that such conditions had resulted in the area being designated as eligible for assistance by the Federal Government.

(2) Limitation

Paragraph (1) shall apply only to a taxpayer whose principal trade or business is farming (within the meaning of section 6420(c)(3)).

(3) Special election rules

If section 1033(e)(2) applies to a sale or exchange of livestock described in paragraph (1), the election under paragraph (1) shall be deemed valid if made during the replacement period described in such section.

(f) Special rule for utility services

(1) In general

In the case of a taxpayer the taxable income of which is computed under an accrual method of accounting, any income attributable to the sale or furnishing of utility services to customers shall be included in gross income not later than the taxable year in which such services are provided to such customers.

(2) Definition and special rule

For purposes of this subsection—

(A) Utility services

The term "utility services" includes—

(i) the providing of electrical energy, water, or sewage disposal,
(ii) the furnishing of gas or steam through a local distribution system,
(iii) telephone or other communication services, and
(iv) the transporting of gas or steam by pipeline.

(B) Year in which services provided

The taxable year in which services are treated as provided to customers shall not, in any manner, be determined by reference to—

(i) the period in which the customers' meters are read, or
(ii) the period in which the taxpayer bills (or may bill) the customers for such service.

(g) Treatment of interest on frozen deposits in certain financial institutions

(1) In general

In the case of interest credited during any calendar year on a frozen deposit in a qualified financial institution, the amount of such interest includible in the gross income of a qualified individual shall not exceed the sum of—

(A) the net amount withdrawn by such individual from such deposit during such calendar year, and

(B) the amount of such deposit which is withdrawable as of the close of the taxable year

(determined without regard to any penalty for premature withdrawals of a time deposit).

(2) Interest tested each year

Any interest not included in gross income by reason of paragraph (1) shall be treated as credited in the next calendar year.

(3) Deferral of interest deduction

No deduction shall be allowed to any qualified financial institution for interest not includible in gross income under paragraph (1) until such interest is includible in gross income.

(4) Frozen deposit

For purposes of this subsection, the term "frozen deposit" means any deposit if, as of the close of the calendar year, any portion of such deposit may not be withdrawn because of—

(A) the bankruptcy or insolvency of the qualified financial institution (or threat thereof), or

(B) any requirement imposed by the State in which such institution is located by reason of the bankruptcy or insolvency (or threat thereof) of 1 or more financial institutions in the State.

(5) Other definitions

For purposes of this subsection, the terms "qualified individual", "qualified financial institution", and "deposit" have the same respective meanings as when used in section 165(l).

(h) Special rule for cash options for receipt of qualified prizes

(1) In general

For purposes of this title, in the case of an individual on the cash receipts and disbursements method of accounting, a qualified prize option shall be disregarded in determining the taxable year for which any portion of the qualified prize is properly includible in gross income of the taxpayer.

(2) Qualified prize option; qualified prize

For purposes of this subsection—

(A) In general

The term "qualified prize option" means an option which—

(i) entitles an individual to receive a single cash payment in lieu of receiving a qualified prize (or remaining portion thereof), and

(ii) is exercisable not later than 60 days after such individual becomes entitled to the qualified prize.

(B) Qualified prize

The term "qualified prize" means any prize or award which—

(i) is awarded as a part of a contest, lottery, jackpot, game, or other similar arrangement,

(ii) does not relate to any past services performed by the recipient and does not require the recipient to perform any substantial future service, and

(iii) is payable over a period of at least 10 years.

(3) Partnership, etc.

The Secretary shall provide for the application of this subsection in the case of a partnership or other pass-through entity consisting entirely of individuals described in paragraph (1).

(i) Special rule for sales or dispositions to implement Federal Energy Regulatory Commission or State electric restructuring policy

(1) In general

In the case of any qualifying electric transmission transaction for which the taxpayer elects the application of this section, qualified gain from such transaction shall be recognized—

(A) in the taxable year which includes the date of such transaction to the extent the amount realized from such transaction exceeds—

(i) the cost of exempt utility property which is purchased by the taxpayer during the 4-year

period beginning on such date, reduced (but not below zero) by

(ii) any portion of such cost previously taken into account under this subsection, and

(B) ratably over the 8-taxable year period beginning with the taxable year which includes the date of such transaction, in the case of any such gain not recognized under subparagraph (A).

(2) Qualified gain

For purposes of this subsection, the term "qualified gain" means, with respect to any qualifying electric transmission transaction in any taxable year—

(A) any ordinary income derived from such transaction which would be required to be recognized under section 1245 or 1250 for such taxable year (determined without regard to this subsection), and

(B) any income derived from such transaction in excess of the amount described in subparagraph (A) which is required to be included in gross income for such taxable year (determined without regard to this subsection).

(3) Qualifying electric transmission transaction

For purposes of this subsection, the term "qualifying electric transmission transaction" means any sale or other disposition before January 1, 2008 (before January 1, 2014, in the case of a qualified electric utility), of—

(A) property used in the trade or business of providing electric transmission services, or

(B) any stock or partnership interest in a corporation or partnership, as the case may be, whose principal trade or business consists of providing electric transmission services,

but only if such sale or disposition is to an independent transmission company.

(4) Independent transmission company

For purposes of this subsection, the term "independent transmission company" means—

(A) an independent transmission provider approved by the Federal Energy Regulatory Commission,

(B) a person—

(i) who the Federal Energy Regulatory Commission determines in its authorization of the transaction under section 203 of the Federal Power Act (16 U.S.C. 824b) or by declaratory order is not a market participant within the meaning of such Commission's rules applicable to independent transmission providers, and

(ii) whose transmission facilities to which the election under this subsection applies are under the operational control of a Federal Energy Regulatory Commission-approved independent transmission provider before the close of the period specified in such authorization, but not later than the date which is 4 years after the close of the taxable year in which the transaction occurs, or

(C) in the case of facilities subject to the jurisdiction of the Public Utility Commission of Texas—

(i) a person which is approved by that Commission as consistent with Texas State law regarding an independent transmission provider, or

(ii) a political subdivision or affiliate thereof whose transmission facilities are under the operational control of a person described in clause (i).

(5) Exempt utility property

For purposes of this subsection:

(A) In general

The term "exempt utility property" means property used in the trade or business of—

(i) generating, transmitting, distributing, or selling electricity, or

(ii) producing, transmitting, distributing, or selling natural gas.

(B) Nonrecognition of gain by reason of acquisition of stock

Acquisition of control of a corporation shall be taken into account under this subsection with respect to a qualifying electric transmission transaction only if the principal trade or business of such corporation is a trade or business referred to in subparagraph (A).

(C) Exception for property located outside the United States

The term "exempt utility property" shall not include any property which is located outside the United States.

(6) Qualified electric utility

For purposes of this subsection, the term "qualified electric utility" means a person that, as of the date of the qualifying electric transmission transaction, is vertically integrated, in that it is both—

(A) a transmitting utility (as defined in section 3(23) of the Federal Power Act (16 U.S.C. 796(23))) with respect to the transmission facilities to which the election under this subsection applies, and

(B) an electric utility (as defined in section 3(22) of the Federal Power Act (16 U.S.C. 796(22))).

(7) Special rule for consolidated groups

In the case of a corporation which is a member of an affiliated group filing a consolidated return, any exempt utility property purchased by another member of such group shall be treated as purchased by such corporation for purposes of applying paragraph (1)(A).

(8) Time for assessment of deficiencies

If the taxpayer has made the election under paragraph (1) and any gain is recognized by such taxpayer as provided in paragraph (1)(B), then—

(A) the statutory period for the assessment of any deficiency, for any taxable year in which any part of the gain on the transaction is realized, attributable to such gain shall not expire prior to the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may by regulations prescribe) of the purchase of exempt utility property or of an intention not to purchase such property, and

(B) such deficiency may be assessed before the expiration of such 3-year period notwithstanding any law or rule of law which would otherwise prevent such assessment.

(9) Purchase

For purposes of this subsection, the taxpayer shall be considered to have purchased any property if the unadjusted basis of such property is its cost within the meaning of section 1012.

(10) Election

An election under paragraph (1) shall be made at such time and in such manner as the Secretary may require and, once made, shall be irrevocable.

(11) Nonapplication of installment sales treatment

Section 453 shall not apply to any qualifying electric transmission transaction with respect to which an election to apply this subsection is made.

(Aug. 16, 1954, ch. 736, 68A Stat. 152; Pub. L. 89–97, title III, §313(b), July 30, 1965, 79 Stat. 382; Pub. L. 91–172, title II, §215(a), Dec. 30, 1969, 83 Stat. 573; Pub. L. 94–455, title XIX, §1906(b)(13)(A), title XXI, §§2102(a), (b), 2141(a), Oct. 4, 1976, 90 Stat. 1834, 1900, 1933; Pub. L. 99–514, title VIII, §821(a), title IX, §905(b), Oct. 22, 1986, 100 Stat. 2372, 2386; Pub. L. 100–647, title I, §1009(d)(3), title VI, §§6030(a), 6033(a), Nov. 10, 1988, 102 Stat. 3450, 3694, 3695; Pub. L. 105–34, title IX, §913(a), Aug. 5, 1997, 111 Stat. 878; Pub. L. 105–277, div. J, title V, §5301(a), Oct. 21, 1998, 112 Stat. 2681–918; Pub. L. 108–357, title III, §311(c), title VIII, §909(a), Oct. 22, 2004, 118 Stat. 1467, 1657; Pub. L. 109–58, title XIII, §1305(a), (b), Aug. 8, 2005, 119 Stat. 997;

Pub. L. 110–343, div. B, title I, §109(a)–(c), Oct. 3, 2008, 122 Stat. 3821; Pub. L. 111–312, title VII, §705(a), Dec. 17, 2010, 124 Stat. 3311; Pub. L. 112–240, title IV, §411(a), Jan. 2, 2013, 126 Stat. 2343.)

REFERENCES IN TEXT

The Agricultural Act of 1949, as amended, referred to in subsec. (d), is act Oct. 31, 1949, ch. 792, 63 Stat. 1051, as amended, which is classified principally to chapter 35A (§1421 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1421 of Title 7 and Tables.

The Disaster Assistance Act of 1988, referred to in subsec. (d), is Pub. L. 100–387, Aug. 11, 1988, 102 Stat. 924. Title II of the Disaster Assistance Act of 1988 is set out as a note under section 1421 of Title 7. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2013—Subsec. (i)(3). Pub. L. 112–240 substituted "January 1, 2014" for "January 1, 2012" in introductory provisions.

2010—Subsec. (i)(3). Pub. L. 111–312 substituted "January 1, 2012" for "January 1, 2010" in introductory provisions.

2008—Subsec. (i)(3). Pub. L. 110–343, §109(a)(1), inserted "(before January 1, 2010, in the case of a qualified electric utility)" after "January 1, 2008" in introductory provisions.

Subsec. (i)(4)(B)(ii). Pub. L. 110–343, §109(b), substituted "the date which is 4 years after the close of the taxable year in which the transaction occurs" for "December 31, 2007".

Subsec. (i)(5)(C). Pub. L. 110–343, §109(c), added subpar. (C).

Subsec. (i)(6) to (11). Pub. L. 110–343, §109(a)(2), added par. (6) and redesignated former pars. (6) to (10) as (7) to (11), respectively.

2005—Subsec. (i)(3). Pub. L. 109–58, §1305(a), substituted "2008" for "2007" in introductory provisions.

Subsec. (i)(4)(B)(ii). Pub. L. 109–58, §1305(b), substituted "December 31, 2007" for "the close of the period applicable under subsection (a)(2)(B) as extended under paragraph (2)".

2004—Subsec. (e)(3). Pub. L. 108–357, §311(c), added par. (3).

Subsec. (i). Pub. L. 108–357, §909(a), added subsec. (i).

1998—Subsec. (h). Pub. L. 105–277 added subsec. (h).

1997—Subsec. (e). Pub. L. 105–34 inserted ", flood, or other weather-related conditions" after "drought" in heading and substituted "drought, flood, or other weather-related conditions, and that such conditions" for "drought conditions, and that these drought conditions" in par. (1).

1988—Subsec. (d). Pub. L. 100–647, §6033(a), inserted "or title II of the Disaster Assistance Act of 1988," after "the Agricultural Act of 1949, as amended,".

Subsec. (e)(1). Pub. L. 100–647, §6030(a), struck out "(other than livestock described in section 1231(b)(3))" after "exchange of livestock".

Subsecs. (f), (g). Pub. L. 100–647, §1009(d)(3), redesignated subsec. (f), relating to treatment of interest on frozen deposits in certain financial institutions, as (g).

1986—Subsec. (f). Pub. L. 99–514, §905(b), added subsec. (f) relating to treatment of interest on frozen deposits in certain financial institutions.

Pub. L. 99–514, §821(a), added subsec. (f) relating to special rule for utility services.

1976—Subsec. (d). Pub. L. 94–455, §§1906(b)(13)(A), 2102(a), (b), inserted reference to disaster payments in heading, provided that payments received under the Agricultural Act of 1949, as amended, be treated as insurance proceeds received as a result of destruction or damage to crops if the payments are received as the result of destruction or damage from drought, flood, or other natural disaster, or as the result of inability to plant crops because of drought, flood, or other natural disaster, and struck out "or his delegate" after "Secretary".

Subsec. (e). Pub. L. 94–455, §2141(a), added subsec. (e).

1969—Subsec. (d). Pub. L. 91–172 added subsec. (d).

1965—Subsec. (c). Pub. L. 89–97 added subsec. (c).

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title IV, §411(b), Jan. 2, 2013, 126 Stat. 2343, provided that: "The amendment made by this section [amending this section] shall apply to dispositions after December 31, 2011."

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–58, title XIII, §1305(c), Aug. 8, 2005, 119 Stat. 997, provided that:

"(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to transactions occurring after the date of the enactment of this Act [Aug. 8, 2005].

"(2) TECHNICAL AMENDMENT.—The amendment made by subsection (b) [amending this section] shall take effect as if included in the amendments made by section 909 of the American Jobs Creation Act of 2004 [Pub. L. 108–357, amending this section]."

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §705(b), Dec. 17, 2010, 124 Stat. 3311, provided that: "The amendment made by this section [amending this section] shall apply to dispositions after December 31, 2009."

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title I, §109(d), Oct. 3, 2008, 122 Stat. 3822, provided that:

"(1) EXTENSION.—The amendments made by subsection (a) [amending this section] shall apply to transactions after December 31, 2007.

"(2) TRANSFERS OF OPERATIONAL CONTROL.—The amendment made by subsection (b) [amending this section] shall take effect as if included in section 909 of the American Jobs Creation Act of 2004 [Pub. L. 108–357].

"(3) EXCEPTION FOR PROPERTY LOCATED OUTSIDE THE UNITED STATES.—The amendment made by subsection (c) [amending this section] shall apply to transactions after the date of the enactment of this Act [Oct. 3, 2008]."

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title III, §311(d), Oct. 22, 2004, 118 Stat. 1467, provided that: "The amendments made by this section [amending this section and section 1033 of this title] shall apply to any taxable year with respect to which the due date (without regard to extensions) for the return is after December 31, 2002."

Pub. L. 108–357, title VIII, §909(b), Oct. 22, 2004, 118 Stat. 1659, provided that: "The amendments made by this section [amending this section] shall apply to transactions occurring after the date of the enactment of this Act [Oct. 22, 2004], in taxable years ending after such date."

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–277, div. J, title V, §5301(b), Oct. 21, 1998, 112 Stat. 2681–918, provided that:

"(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to any prize to which a person first becomes entitled after the date of enactment of this Act [Oct. 21, 1998].

"(2) TRANSITION RULE.—The amendment made by this section shall apply to any prize to which a person first becomes entitled on or before the date of enactment of this Act, except that in determining whether an option is a qualified prize option as defined in section 451(h)(2)(A) of the Internal Revenue Code of 1986 (as added by such amendment)—

"(A) clause (ii) of such section 451(h)(2)(A) shall not apply, and

"(B) such option shall be treated as a qualified prize option if it is exercisable only during all or part of the 18-month period beginning on July 1, 1999."

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title IX, §913(c), Aug. 5, 1997, 111 Stat. 878, provided that: "The amendments made by this section [amending this section and section 1033 of this title] shall apply to sales and exchanges after December 31, 1996."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1009(d)(3) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title VI, §6030(b), Nov. 10, 1988, 102 Stat. 3694, provided that: "The amendment made by subsection (a) [amending this section] shall apply to sales or exchanges occurring after December 31, 1987."

Pub. L. 100–647, title VI, §6033(b), Nov. 10, 1988, 102 Stat. 3695, as amended by Pub. L. 101–239, title VII, §7816(g), Dec. 19, 1989, 103 Stat. 2421, provided that: "The amendment made by subsection (a) [amending this section] shall apply to payments received before, on, or after the date of enactment of this Act [Nov. 10, 1988]."

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title VIII, §821(b), Oct. 22, 1986, 100 Stat. 2373, as amended by Pub. L. 100–647, title I, §1008(h), Nov. 10, 1988, 102 Stat. 3444, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1986.

"(2) CHANGE IN METHOD OF ACCOUNTING.—If a taxpayer is required by the amendments made by this section to change its method of accounting for any taxable year—

"(A) such change shall be treated as initiated by the taxpayer,

"(B) such change shall be treated as having been made with the consent of the Secretary, and

"(C) the adjustments under section 481 of the Internal Revenue Code of 1954 [now 1986] by reason of such change shall be taken into account ratably over a period no longer than the first 4 taxable years beginning after December 31, 1986.

"(3) SPECIAL RULE FOR CERTAIN CYCLE BILLING.—If a taxpayer for any taxable year beginning before August 16, 1986, for purposes of chapter 1 of the Internal Revenue Code of 1986 took into account income from services described in section 451(f) of such Code (as added by subsection (a)) on the basis of the period in which the customers' meters were read, then such treatment for such year shall be deemed to be proper. The preceding sentence shall also apply to any taxable year beginning after August 16, 1986, and before January 1, 1987, if the taxpayer treated such income in the same manner for the taxable year preceding such taxable year."

Pub. L. 99–514, title IX, §905(c), Oct. 22, 1986, 100 Stat. 2387, as amended by Pub. L. 100–647, title I, §1009(d)(2), Nov. 10, 1988, 102 Stat. 3450, provided that:

"(1) IN GENERAL.—The amendment made by subsection (a) [amending section 165 of this title] shall apply to taxable years beginning after December 31, 1981, and, except as provided in paragraph (2), the amendment made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 1982.

"(2) SPECIAL RULES FOR SUBSECTION (b).—

"(A) The amendment made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 1982, and before January 1, 1987, only if the qualified individual elects to have such amendment apply for all such taxable years.

"(B) In the case of interest attributable to the period beginning January 1, 1983, and ending December 31, 1987, the interest deduction of financial institutions shall be determined without regard to paragraph (3) of section 451(f) of the Internal Revenue Code of 1986 (as added by subsection (b))."

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XXI, §2102(c), Oct. 4, 1976, 90 Stat. 1900, provided that: "The amendments made by this section [amending this section] shall apply to payments received after December 31, 1973, in taxable years ending after such date."

Pub. L. 94–455, title XXI, §2141(b), Oct. 4, 1976, 90 Stat. 1933, provided that: "The amendment made by this section [amending this section] applies to taxable years beginning after December 31, 1975."

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title II, §215(b), Dec. 30, 1969, 83 Stat. 573, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Dec. 30, 1969]."

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–97 applicable only with respect to tips received by employees after 1965, see section 313(f) of Pub. L. 89–97, set out as an Effective Date note under section 6053 of this title.

TAX TREATMENT OF INCENTIVE PAYMENT

Voluntary separation incentives paid to members of Armed Forces under 10 U.S.C. 1175 as includable in gross income only for taxable year in which incentive is paid, see section 662(b) of Pub. L. 102–190, set out as a note under section 1175 of Title 10, Armed Forces.

OVERPAYMENTS OR UNDERPAYMENTS OF TAX ATTRIBUTABLE TO CERTAIN AMENDMENTS BY PUB. L. 99–514 OR PUB. L. 100–647

For provisions relating to credit or refund of overpayments of tax, and assessment of underpayments of tax, due to amendments by section 905 of Pub. L. 99–514 or section 1009(d) of Pub. L. 100–647, see section 1009(d)(4) of Pub. L. 100–647, set out as a note under section 165 of this title.

MODIFICATION OF REGULATIONS ON THE COMPLETED CONTRACT METHOD OF ACCOUNTING

Pub. L. 97–248, title II, §229, Sept. 3, 1982, 96 Stat. 493, as amended by Pub. L. 98–369, div. A, title VII, §712(m), July 18, 1984, 98 Stat. 955, provided that:

"(a) IN GENERAL.—The Secretary of the Treasury shall modify the income tax regulations relating to accounting for long-term contracts to—

"(1) clarify the time at which a contract is to be considered completed,

"(2) clarify when—

"(A) one agreement will be treated as more than one contract, and

"(B) two or more agreements will be treated as one contract, and

"(3) properly allocate all costs which directly benefit, or are incurred by reason of, the extended period long-term contract activities of the taxpayer.

"(b) EXTENDED PERIOD LONG-TERM CONTRACTS DEFINED.—For purposes of this section—

"(1) IN GENERAL.—The term 'extended period long-term contract' means any long-term contract which the taxpayer estimates (at the time such contract is entered into) will not be completed within the 2-year period beginning on the contract commencement date of such contract.

"(2) CERTAIN CONSTRUCTION CONTRACTS.—

"(A) IN GENERAL.—The term 'extended period long-term contract' does not include any construction contract entered into by a taxpayer—

"(i) who estimates (at the time such contract is entered into) that such contract will be completed within the 3-year period beginning on the contract commencement date of such contract, or

"(ii) whose average annual gross receipts over the 3 taxable years preceding the taxable year in which such contract is entered into do not exceed $25,000,000.

"(B) DETERMINATION OF TAXPAYER'S GROSS RECEIPTS.—For purposes of subparagraph (A), the gross receipts of—

"(i) all trades or businesses (whether or not incorporated) which are under common control with the taxpayer (within the meaning of section 52(b)), and

"(ii) all members of any controlled group of corporations of which the taxpayer is a member,

for the 3 taxable years of such persons preceding the taxable year in which the contract described in subparagraph (A) is entered into shall be included in the gross receipts of the taxpayer for the period described in subparagraph (A). The Secretary shall prescribe regulations which provide attribution rules that take into account, in addition to the persons and entities described in the preceding sentence, taxpayers who engage in construction contracts through partnerships, joint ventures, and corporations.

"(C) CONTROLLED GROUP OF CORPORATIONS.—The term 'controlled group of corporations' has the meaning given to such term by section 1563(a), except that—

"(i) 'more than 50 percent' shall be substituted for 'at least 80 percent' each place it appears in section 1563(a)(1), and

"(ii) the determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of section 1563.

"(3) CONSTRUCTION CONTRACT.—The term 'construction contract' means any contract for the building, construction, reconstruction, or rehabilitation of, or the installation of any integral component to, improvements to real property.

"(4) CONTRACT COMMENCEMENT DATE.—The term 'contract commencement date' means, with respect to any contract, the first date on which any costs (other than costs such as bidding expenses or expenses incurred in connection with negotiating the contract) allocable to such contract are incurred.

"(c) EFFECTIVE DATES; SPECIAL RULES.—

"(1) IN GENERAL.—The modifications to regulations which are required to be made under paragraphs (1) and (2) of subsection (a) shall apply with respect to taxable years ending after December 31, 1982.

"(2) COST ALLOCATION.—

"(A) IN GENERAL.—Any modification to Income Tax Regulation 1.451–3 made under subsection (a)(3) which requires additional costs to be allocated to a contract shall apply only to the applicable percentage of such additional costs incurred in taxable years beginning after December 31, 1982, with respect to contracts entered into after such date.

"(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the applicable percentage shall be determined in accordance with the following table:

"If the taxable year begins in calendar year:	The applicable percentage is:
1983	331/3
1984	662/3
1985 or thereafter	100.

"(3) SPECIAL RULES.—

"(A) TIME OF COMPLETION.—Any contract of a taxpayer which would (but for this paragraph) be treated as having been completed prior to the first taxable year of such taxpayer ending after December 31, 1982, solely by reason of any modification to regulations made under subsection (a)(1), shall be treated as having been completed on the first day of such taxable year.

"(B) AGGREGATION AND SEVERANCE.—Any contract of a taxpayer which would (but for this paragraph) be treated as having been completed prior to the first taxable year of such taxpayer ending after December 31, 1982—

"(i) solely by reason of any modification to regulations made under subsection (a)(2), or

"(ii) solely by reason of any modifications to regulations made under both paragraphs (1) and (2) of subsection (a),

shall be treated as having been completed on the first day after December 31, 1982, on which any contract which was severed from such contract (by reason of the modifications made by subsection (a)(2)) is completed (determined after the application of any modifications to regulations made under subsection (a)(1)).

"(4) UNDERPAYMENTS OF ESTIMATED TAX FOR 1982.—To the extent provided in regulations, no addition to tax shall be made under section 6654 or 6655 of the Internal Revenue Code of 1954 for the taxpayer's first taxable year ending after December 31, 1982, by reason of a long-term contract, but only with respect to installments required to be paid before April 13, 1983."

PRIVATE DEFERRED COMPENSATION PLANS; TAXABLE YEARS ENDING ON OR AFTER FEBRUARY 1, 1978

Pub. L. 95–600, title I, §132, Nov. 6, 1978, 92 Stat. 2782, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) GENERAL RULE.—The taxable year of inclusion in gross income of any amount covered by a private deferred compensation plan shall be determined in accordance with the principles set forth in regulations, rulings, and judicial decisions relating to deferred compensation which were in effect on February 1, 1978.

"(b) PRIVATE DEFERRED COMPENSATION PLAN DEFINED.—

"(1) IN GENERAL.—For purposes of this section, the term 'private deferred compensation plan' means a plan, agreement, or arrangement—

"(A) where the person for whom the service is performed is not a State (within the meaning of paragraph (1) of section 457(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) and not an organization which is exempt from tax under section 501 of such Code, and

"(B) under which the payment or otherwise making available of compensation is deferred.

"(2) CERTAIN PLANS EXCLUDED.—Paragraph (1) shall not apply to—

"(A) a plan described in section 401(a) of the Internal Revenue Code of 1986 which includes a trust, exempt from tax under section 501(a) of such Code,

"(B) an annuity plan or contract described in section 403 of such Code,

"(C) a qualified bond purchase plan described in section 405(a) of such Code,

"(D) that portion of any plan which consists of a transfer of property described in section 83 (determined without regard to subsection (e) thereof of such Code, and

"(E) that portion of any plan which consists of a trust to which section 402(b) of such Code applies.

"(c) EFFECTIVE DATE.—This section shall apply to taxable years ending on or after February 1, 1978."

YEAR OF INCLUSION FOR DISASTER OR DEFICIENCY PAYMENTS RECEIVED IN 1978; ELECTION

Pub. L. 95–258, §1, Apr. 7, 1978, 92 Stat. 195, provided that:

"(a) IN GENERAL.—In the case of a taxpayer reporting on the cash receipts and disbursements method of accounting, if—

"(1)(A) the taxpayer receives in his first taxable year beginning in 1978 payments under the Agricultural Act of 1949, as amended, [see Short Title note set out under section 1421 of Title 7, Agriculture], as a result of—

"(i) the destruction or damage to crops caused by drought, flood, or any other natural disaster, or

"(ii) the inability to plant crops because of such a natural disaster, and

"(B) the taxpayer establishes that, under his practice, income from such crops could have been reported for his last taxable year beginning in 1977, or

"(2)(A) the taxpayer receives in his first taxable year beginning in 1978 deficiency (or 'target price') payments under the Agricultural Act of 1949, as amended, for any 1977 crop, and

"(B) the fifth month of such crop's marketing year ends before December 1, 1977,

then the taxpayer may elect to include such proceeds in income for his last taxable year beginning in 1977.

"(b) MAKING AND EFFECT OF ELECTION—An election under this section for any taxable year shall be made at such time and in such manner as the Secretary of the Treasury may by regulations prescribe and shall apply with respect to all proceeds described in subsection (a) which were received by the taxpayer."

[§452. Repealed. June 15, 1955, ch. 143, §1(a), 69 Stat. 134]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 152, related to prepaid income.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 3 of act June 15, 1955, set out as an Effective Date of 1955 Amendment note under section 381 of this title.

SAVINGS PROVISION

For provisions concerning increase in tax in any taxable year ending on or before June 15, 1955 by reason of enactment of act June 15, 1955, see section 4 of act June 15, 1955, set out as a note under section 381 of this title.

§453. Installment method

(a) General rule

Except as otherwise provided in this section, income from an installment sale shall be taken into account for purposes of this title under the installment method.

(b) Installment sale defined

For purposes of this section—

(1) In general

The term "installment sale" means a disposition of property where at least 1 payment is to be received after the close of the taxable year in which the disposition occurs.

(2) Exceptions

The term "installment sale" does not include—

(A) Dealer dispositions

Any dealer disposition (as defined in subsection (l)).

(B) Inventories of personal property

A disposition of personal property of a kind which is required to be included in the inventory of the taxpayer if on hand at the close of the taxable year.

(c) Installment method defined

For purposes of this section, the term "installment method" means a method under which the income recognized for any taxable year from a disposition is that proportion of the payments

received in that year which the gross profit (realized or to be realized when payment is completed) bears to the total contract price.

(d) Election out

(1) In general

Subsection (a) shall not apply to any disposition if the taxpayer elects to have subsection (a) not apply to such disposition.

(2) Time and manner for making election

Except as otherwise provided by regulations, an election under paragraph (1) with respect to a disposition may be made only on or before the due date prescribed by law (including extensions) for filing the taxpayer's return of the tax imposed by this chapter for the taxable year in which the disposition occurs. Such an election shall be made in the manner prescribed by regulations.

(3) Election revocable only with consent

An election under paragraph (1) with respect to any disposition may be revoked only with the consent of the Secretary.

(e) Second dispositions by related persons

(1) In general

If—

(A) any person disposes of property to a related person (hereinafter in this subsection referred to as the "first disposition"), and

(B) before the person making the first disposition receives all payments with respect to such disposition, the related person disposes of the property (hereinafter in this subsection referred to as the "second disposition"),

then, for purposes of this section, the amount realized with respect to such second disposition shall be treated as received at the time of the second disposition by the person making the first disposition.

(2) 2-Year cutoff for property other than marketable securities

(A) In general

Except in the case of marketable securities, paragraph (1) shall apply only if the date of the second disposition is not more than 2 years after the date of the first disposition.

(B) Substantial diminishing of risk of ownership

The running of the 2-year period set forth in subparagraph (A) shall be suspended with respect to any property for any period during which the related person's risk of loss with respect to the property is substantially diminished by—

(i) the holding of a put with respect to such property (or similar property),

(ii) the holding by another person of a right to acquire the property, or

(iii) a short sale or any other transaction.

(3) Limitation on amount treated as received

The amount treated for any taxable year as received by the person making the first disposition by reason of paragraph (1) shall not exceed the excess of—

(A) the lesser of—

(i) the total amount realized with respect to any second disposition of the property occurring before the close of the taxable year, or

(ii) the total contract price for the first disposition, over

(B) the sum of—

(i) the aggregate amount of payments received with respect to the first disposition before the close of such year, plus

(ii) the aggregate amount treated as received with respect to the first disposition for prior taxable years by reason of this subsection.

(4) Fair market value where disposition is not sale or exchange

For purposes of this subsection, if the second disposition is not a sale or exchange, an amount equal to the fair market value of the property disposed of shall be substituted for the amount realized.

(5) Later payments treated as receipt of tax paid amounts

If paragraph (1) applies for any taxable year, payments received in subsequent taxable years by the person making the first disposition shall not be treated as the receipt of payments with respect to the first disposition to the extent that the aggregate of such payments does not exceed the amount treated as received by reason of paragraph (1).

(6) Exception for certain dispositions

For purposes of this subsection—

(A) Reacquisitions of stock by issuing corporation not treated as first dispositions

Any sale or exchange of stock to the issuing corporation shall not be treated as a first disposition.

(B) Involuntary conversions not treated as second dispositions

A compulsory or involuntary conversion (within the meaning of section 1033) and any transfer thereafter shall not be treated as a second disposition if the first disposition occurred before the threat or imminence of the conversion.

(C) Dispositions after death

Any transfer after the earlier of—

(i) the death of the person making the first disposition, or

(ii) the death of the person acquiring the property in the first disposition,

and any transfer thereafter shall not be treated as a second disposition.

(7) Exception where tax avoidance not a principal purpose

This subsection shall not apply to a second disposition (and any transfer thereafter) if it is established to the satisfaction of the Secretary that neither the first disposition nor the second disposition had as one of its principal purposes the avoidance of Federal income tax.

(8) Extension of statute of limitations

The period for assessing a deficiency with respect to a first disposition (to the extent such deficiency is attributable to the application of this subsection) shall not expire before the day which is 2 years after the date on which the person making the first disposition furnishes (in such manner as the Secretary may by regulations prescribe) a notice that there was a second disposition of the property to which this subsection may have applied. Such deficiency may be assessed notwithstanding the provisions of any law or rule of law which would otherwise prevent such assessment.

(f) Definitions and special rules

For purposes of this section—

(1) Related person

Except for purposes of subsections (g) and (h), the term "related person" means—

(A) a person whose stock would be attributed under section 318(a) (other than paragraph (4) thereof) to the person first disposing of the property, or

(B) a person who bears a relationship described in section 267(b) to the person first disposing of the property.

(2) Marketable securities

The term "marketable securities" means any security for which, as of the date of the disposition, there was a market on an established securities market or otherwise.

(3) Payment

Except as provided in paragraph (4), the term "payment" does not include the receipt of evidences of indebtedness of the person acquiring the property (whether or not payment of such indebtedness is guaranteed by another person).

(4) Purchaser evidences of indebtedness payable on demand or readily tradable

Receipt of a bond or other evidence of indebtedness which—

(A) is payable on demand, or

(B) is readily tradable,

shall be treated as receipt of payment.

(5) Readily tradable defined

For purposes of paragraph (4), the term "readily tradable" means a bond or other evidence of indebtedness which is issued—

(A) with interest coupons attached or in registered form (other than one in registered form which the taxpayer establishes will not be readily tradable in an established securities market), or

(B) in any other form designed to render such bond or other evidence of indebtedness readily tradable in an established securities market.

(6) Like-kind exchanges

In the case of any exchange described in section 1031(b)—

(A) the total contract price shall be reduced to take into account the amount of any property permitted to be received in such exchange without recognition of gain,

(B) the gross profit from such exchange shall be reduced to take into account any amount not recognized by reason of section 1031(b), and

(C) the term "payment", when used in any provision of this section other than subsection (b)(1), shall not include any property permitted to be received in such exchange without recognition of gain.

Similar rules shall apply in the case of an exchange which is described in section 356(a) and is not treated as a dividend.

(7) Depreciable property

The term "depreciable property" means property of a character which (in the hands of the transferee) is subject to the allowance for depreciation provided in section 167.

(8) Payments to be received defined

The term "payments to be received" includes—

(A) the aggregate amount of all payments which are not contingent as to amount, and

(B) the fair market value of any payments which are contingent as to amount.

(g) Sale of depreciable property to controlled entity

(1) In general

In the case of an installment sale of depreciable property between related persons—

(A) subsection (a) shall not apply,

(B) for purposes of this title—

(i) except as provided in clause (ii), all payments to be received shall be treated as received in the year of the disposition, and

(ii) in the case of any payments which are contingent as to the amount but with respect to which the fair market value may not be reasonably ascertained, the basis shall be recovered ratably, and

(C) the purchaser may not increase the basis of any property acquired in such sale by any amount before the time such amount is includible in the gross income of the seller.

(2) Exception where tax avoidance not a principal purpose

Paragraph (1) shall not apply if it is established to the satisfaction of the Secretary that the disposition did not have as one of its principal purposes the avoidance of Federal income tax.

(3) Related persons

For purposes of this subsection, the term "related persons" has the meaning given to such term by section 1239(b), except that such term shall include 2 or more partnerships having a relationship to each other described in section 707(b)(1)(B).

(h) Use of installment method by shareholders in certain liquidations

(1) Receipt of obligations not treated as receipt of payment

(A) In general

If, in a liquidation to which section 331 applies, the shareholder receives (in exchange for the shareholder's stock) an installment obligation acquired in respect of a sale or exchange by the corporation during the 12-month period beginning on the date a plan of complete liquidation is adopted and the liquidation is completed during such 12-month period, then, for purposes of this section, the receipt of payments under such obligation (but not the receipt of such obligation) by the shareholder shall be treated as the receipt of payment for the stock.

(B) Obligations attributable to sale of inventory must result from bulk sale

Subparagraph (A) shall not apply to an installment obligation acquired in respect of a sale or exchange of—

(i) stock in trade of the corporation,

(ii) other property of a kind which would properly be included in the inventory of the corporation if on hand at the close of the taxable year, and

(iii) property held by the corporation primarily for sale to customers in the ordinary course of its trade or business,

unless such sale or exchange is to 1 person in 1 transaction and involves substantially all of such property attributable to a trade or business of the corporation.

(C) Special rule where obligor and shareholder are related persons

If the obligor of any installment obligation and the shareholder are married to each other or are related persons (within the meaning of section 1239(b)), to the extent such installment obligation is attributable to the disposition by the corporation of depreciable property—

(i) subparagraph (A) shall not apply to such obligation, and

(ii) for purposes of this title, all payments to be received by the shareholder shall be deemed received in the year the shareholder receives the obligation.

(D) Coordination with subsection (e)(1)(A)

For purposes of subsection (e)(1)(A), disposition of property by the corporation shall be treated also as disposition of such property by the shareholder.

(E) Sales by liquidating subsidiaries

For purposes of subparagraph (A), in the case of a controlling corporate shareholder (within the meaning of section 368(c)) of a selling corporation, an obligation acquired in respect of a sale or exchange by the selling corporation shall be treated as so acquired by such controlling corporate shareholder. The preceding sentence shall be applied successively to each controlling corporate shareholder above such controlling corporate shareholder.

(2) Distributions received in more than 1 taxable year of shareholder

If—

(A) paragraph (1) applies with respect to any installment obligation received by a shareholder from a corporation, and

(B) by reason of the liquidation such shareholder receives property in more than 1 taxable year,

then, on completion of the liquidation, basis previously allocated to property so received shall be reallocated for all such taxable years so that the shareholder's basis in the stock of the corporation is properly allocated among all property received by such shareholder in such liquidation.

(i) Recognition of recapture income in year of disposition

(1) In general

In the case of any installment sale of property to which subsection (a) applies—

(A) notwithstanding subsection (a), any recapture income shall be recognized in the year of the disposition, and

(B) any gain in excess of the recapture income shall be taken into account under the installment method.

(2) Recapture income

For purposes of paragraph (1), the term "recapture income" means, with respect to any installment sale, the aggregate amount which would be treated as ordinary income under (or so much of section 751 as relates to section 1245 or 1250) for the taxable year of the disposition if all payments to be received were received in the taxable year of disposition.

(j) Regulations

(1) In general

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the provisions of this section.

(2) Selling price not readily ascertainable

The regulations prescribed under paragraph (1) shall include regulations providing for ratable basis recovery in transactions where the gross profit or the total contract price (or both) cannot be readily ascertained.

(k) Current inclusion in case of revolving credit plans, etc.

In the case of—

(1) any disposition of personal property under a revolving credit plan, or

(2) any installment obligation arising out of a sale of—

(A) stock or securities which are traded on an established securities market, or

(B) to the extent provided in regulations, property (other than stock or securities) of a kind regularly traded on an established market,

subsection (a) shall not apply, and, for purposes of this title, all payments to be received shall be treated as received in the year of disposition. The Secretary may provide for the application of this subsection in whole or in part for transactions in which the rules of this subsection otherwise would be avoided through the use of related parties, pass-thru entities, or intermediaries.

(l) Dealer dispositions

For purposes of subsection (b)(2)(A)—

(1) In general

The term "dealer disposition" means any of the following dispositions:

(A) Personal property

Any disposition of personal property by a person who regularly sells or otherwise disposes of personal property of the same type on the installment plan.

(B) Real property

Any disposition of real property which is held by the taxpayer for sale to customers in the ordinary course of the taxpayer's trade or business.

(2) Exceptions

The term "dealer disposition" does not include—

(A) Farm property

The disposition on the installment plan of any property used or produced in the trade or business of farming (within the meaning of section 2032A(e)(4) or (5)).

(B) Timeshares and residential lots

(i) In general

Any dispositions described in clause (ii) on the installment plan if the taxpayer elects to have paragraph (3) apply to any installment obligations which arise from such dispositions. An election under this paragraph shall not apply with respect to an installment obligation which is guaranteed by any person other than an individual.

(ii) Dispositions to which subparagraph applies

A disposition is described in this clause if it is a disposition in the ordinary course of the taxpayer's trade or business to an individual of—

(I) a timeshare right to use or a timeshare ownership interest in residential real property for not more than 6 weeks per year, or a right to use specified campgrounds for recreational purposes, or

(II) any residential lot, but only if the taxpayer (or any related person) is not to make any improvements with respect to such lot.

For purposes of subclause (I), a timeshare right to use (or timeshare ownership interest in) property held by the spouse, children, grandchildren, or parents of an individual shall be treated as held by such individual.

(C) Carrying charges or interest

Any carrying charges or interest with respect to a disposition described in subparagraph (A) or (B) which are added on the books of account of the seller to the established cash selling price of the property shall be included in the total contract price of the property and, if such charges or interest are not so included, any payments received shall be treated as applying first against such carrying charges or interest.

(3) Payment of interest on timeshares and residential lots

(A) In general

In the case of any installment obligation to which paragraph (2)(B) applies, the tax imposed by this chapter for any taxable year for which payment is received on such obligation shall be increased by the amount of interest determined in the manner provided under subparagraph (B).

(B) Computation of interest

(i) In general

The amount of interest referred to in subparagraph (A) for any taxable year shall be determined—

(I) on the amount of the tax for such taxable year which is attributable to the payments received during such taxable year on installment obligations to which this subsection applies,

(II) for the period beginning on the date of sale, and ending on the date such payment is received, and

(III) by using the applicable Federal rate under section 1274 (without regard to subsection (d)(2) thereof) in effect at the time of the sale compounded semiannually.

(ii) Interest not taken into account

For purposes of clause (i), the portion of any tax attributable to the receipt of any payment shall be determined without regard to any interest imposed under subparagraph (A).

(iii) Taxable year of sale

No interest shall be determined for any payment received in the taxable year of the disposition from which the installment obligation arises.

(C) Treatment as interest

Any amount payable under this paragraph shall be taken into account in computing the amount of any deduction allowable to the taxpayer for interest paid or accrued during such taxable year.

(Added Pub. L. 96–471, §2(a), Oct. 19, 1980, 94 Stat. 2247; amended Pub. L. 97–34, title II, §202(c), Aug. 13, 1981, 95 Stat. 221; Pub. L. 97–448, title III, §303, Jan. 12, 1983, 96 Stat. 2398; Pub. L. 98–369, div. A, title I, §112(a), title IV, §421(b)(6)(B), (C), July 18, 1984, 98 Stat. 635, 794; Pub. L. 99–514, title VI, §§631(e)(8), 642(a)(1)(D), (3), (b), title VIII, §812(a), title XVIII, §1809(c), Oct. 22, 1986, 100 Stat. 2274, 2284, 2371, 2821; Pub. L. 100–203, title X, §10202(b), Dec. 22, 1987, 101 Stat. 1330–388; Pub. L. 100–647, title I, §§1006(e)(7), (i)(1), (2), 1008(g)(1), 1018(u)(25), (26), title II, §2004(d)(1), (5), Nov. 10, 1988, 102 Stat. 3401, 3410, 3442, 3591, 3599; Pub. L. 106–170, title V, §536(a), Dec. 17, 1999, 113 Stat. 1936; Pub. L. 106–573, §2(a), Dec. 28, 2000, 114 Stat. 3061; Pub. L. 108–357, title VIII, §897(a), Oct. 22, 2004, 118 Stat. 1649.)

PRIOR PROVISIONS

A prior section 453, acts Aug. 16, 1954, ch. 736, 68A Stat. 154; Sept. 2, 1958, Pub. L. 85–866, title I, §27(a), 72 Stat. 1624; Oct. 16, 1962, Pub. L. 87–834, §13(f)(5), 76 Stat. 1035; Feb. 26, 1964, Pub. L. 88–272, title II, §§222(a), 231(b)(5), 78 Stat. 75, 105; Aug. 22, 1964, Pub. L. 88–484, §1(b)(2), 78 Stat. 597; Aug. 31, 1964, Pub. L. 88–539, §3(a), (b), 78 Stat. 746; Sept. 12, 1966, Pub. L. 89–570, §1(b)(5), 80 Stat. 762; Nov. 13, 1966, Pub. L. 89–809, title II, §202(c), 80 Stat. 1576; Dec. 30, 1969, Pub. L. 91–172, title II, §211(b)(5), title III, §301(b)(7), title IV, §412(a), title IX, §916(a), 83 Stat. 570, 585, 608, 723; Oct. 4, 1976, Pub. L. 94–455, title II, §205(c)(1)(E), title XIX, §§1901(a)(66), 1906(b)(13)(A), 1951(b)(7)(A), 90 Stat. 1535, 1775, 1834, 1838; Nov. 6, 1978, Pub. L. 95–600, title VII, §703(j)(3), 92 Stat. 2941; Apr. 1, 1980, Pub. L. 96–222, title I, §104(a)(4)(H)(iv), 94 Stat. 217; Apr. 2, 1980, Pub. L. 96–223, title IV, §403(b)(2)(B), 94 Stat. 305; Oct. 19, 1980, Pub. L. 96–471, §2(c)(4), 94 Stat. 2254, related to installment method in general, installment method for dealers in personal property, and gain or loss dispositions of installment obligations, prior to repeal by Pub. L. 96–471, §2(a), Oct. 19, 1980, 94 Stat. 2247. See sections 453A and 453B of this title.

AMENDMENTS

2004—Subsec. (f)(4)(B). Pub. L. 108–357 struck out "is issued by a corporation or a government or political subdivision thereof and" before "is readily tradable".

2000—Subsecs. (a), (d)(1), (i)(1), (k). Pub. L. 106–573 repealed Pub. L. 106–170, §536(a). See 1999 Amendment notes below.

1999—Subsec. (a). Pub. L. 106–170, §536(a)(1), which substituted "Use of installment method" for "General rule" in subsec. heading, designated existing provisions as par. (1) and inserted heading, and added heading and text of par. (2), text of which read as follows: "(2) ACCRUAL METHOD TAXPAYER.—The installment method shall not apply to income from an installment sale if such income would be reported under an accrual method of accounting without regard to this section. The preceding sentence shall not apply to a disposition described in subparagraph (A) or (B) of subsection (l)(2).", was repealed by Pub. L. 106–573, §2(a). See Effective Date and Construction of 2000 Amendment note below.

Subsecs. (d)(1), (i)(1), (k). Pub. L. 106–170, §536(a)(2), which substituted "(a)(1)" for "(a)" wherever appearing, was repealed by Pub. L. 106–573. See Effective Date and Construction of 2000 Amendment note below.

1988—Subsec. (f)(1). Pub. L. 100–647, §1018(u)(25), substituted "subsections (g)" for "subsection (g)".

Subsec. (f)(8). Pub. L. 100–647, §1018(u)(26), substituted "payments to be" for "payment to be".

Subsec. (g)(1). Pub. L. 100–647, §1006(i)(2)(B), struck out "(within the meaning of section 1239(b))" after "between related persons".

Pub. L. 100–647, §1006(i)(1), added subpars. (A) to (C) and struck out former subpars. (A) and (B) which read as follows:

"(A) subsection (a) shall not apply, and

"(B) for purposes of this title—

"(i) except as provided in clause (ii), all payments to be received shall be treated as received in the year of the disposition, and

"(ii) in the case of any payments which are contingent as to amount but with respect to which the fair market value may not be reasonably ascertained—

"(I) the basis shall be recovered ratably, and

"(II) the purchaser may not increase the basis of any property acquired in such sale by any amount before such time as the seller includes such amount in income."

Subsec. (g)(3). Pub. L. 100–647, §1006(i)(2)(A), added par. (3).

Subsec. (h)(1)(B). Pub. L. 100–647, §1006(e)(7)(A), substituted "to 1 person in 1 transaction" for "to one person" in concluding provisions.

Subsec. (h)(1)(E). Pub. L. 100–647, §1006(e)(7)(B), substituted "section 368(c)" for "section 368(c)(1)".

Subsec. (j). Pub. L. 100–647, §1008(g)(1), redesignated subsec. (j), relating to current inclusion in case of revolving credit plans, etc., as (k).

Subsec. (k). Pub. L. 100–647, §2004(d)(5), struck out "and section 453A" after "subsection (a)" in second sentence.

Pub. L. 100–647, §1008(g)(1), redesignated subsec. (j), relating to current inclusion in case of revolving credit plans, etc., as (k).

Subsec. (l)(1)(A). Pub. L. 100–647, §2004(d)(1), inserted "of the same type" after "disposes of personal property".

1987—Subsec. (b)(2)(A). Pub. L. 100–203, §10202(b)(1), substituted "Dealer dispositions" for "Dealer disposition of personal property" in heading and amended text generally. Prior to amendment, text read as follows: "A disposition of personal property on the installment plan by a person who regularly sells or otherwise disposes of personal property on the installment plan."

Subsec. (l). Pub. L. 100–203, §10202(b)(2), added subsec. (l).

1986—Subsec. (f)(1). Pub. L. 99–514, §642(a)(3), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "Except for purposes of subsections (g) and (h), the term 'related person' means a person whose stock would be attributed under section 318(a) (other than paragraph (4) thereof) to the person first disposing of the property."

Subsec. (f)(8). Pub. L. 99–514, §642(b)(1), added par. (8).

Subsec. (g). Pub. L. 99–514, §642(a)(1)(D), substituted "controlled entity" for "80-percent owned entity" in heading.

Subsec. (g)(1). Pub. L. 99–514, §642(b)(2), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "In the case of an installment sale of depreciable property between related persons within the meaning of section 1239(b), subsection (a) shall not apply, and, for purposes of this title, all payments to be received shall be deemed received in the year of the disposition."

Subsec. (h). Pub. L. 99–514, §631(e)(8)(C), substituted "certain liquidations" for "section 337 liquidations" in heading.

Subsec. (h)(1)(A). Pub. L. 99–514, §631(e)(8)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "If, in connection with a liquidation to which section 337 applies, in a transaction to which section 331 applies the shareholder receives (in exchange for the shareholder's stock) an installment obligation acquired in respect of a sale or exchange by the corporation during the 12-month period set forth in section 337(a), then, for purposes of this section, the receipt of payments under such obligation (but not the receipt of such obligation) by the shareholder shall be treated as the receipt of payment for the stock."

Subsec. (h)(1)(B). Pub. L. 99–514, §631(e)(8)(A), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "Subparagraph (A) shall not apply to an installment obligation described in section 337(b)(1)(B) unless such obligation is also described in section 337(b)(2)(B)."

Subsec. (h)(1)(E). Pub. L. 99–514, §631(e)(8)(B), substituted "subsidiaries" for "subsidiary" in heading and amended text generally. Prior to amendment, subpar. (E) read as follows: "For purposes of subparagraph (A), in any case to which section 337(c)(3) applies, an obligation acquired in respect of a sale or exchange by the selling corporation shall be treated as so acquired by the corporation distributing the obligation to the shareholder."

Subsec. (i)(2). Pub. L. 99–514, §1809(c), substituted "(or so much of section 751 as relates to section 1245 or 1250)" for "section 1245 or 1250".

Subsec. (j). Pub. L. 99–514, §812(a), added subsec. (j) relating to current inclusion in case of revolving credit plans, etc.

1984—Subsec. (g). Pub. L. 98–369, §421(b)(6)(C), struck out "spouse or" after "property to" in heading.

Subsec. (h)(1)(C). Pub. L. 98–369, §421(b)(6)(B), inserted "married to each other or are".

Subsec. (i). Pub. L. 98–369, §112(a), amended subsec. (i) generally, substituting provisions relating to recognition of recapture income in year of disposition for provisions relating to application of subsec. (a) in the case of an installment sale of section 179 property.

1983—Subsec. (f)(6)(C). Pub. L. 97–448 inserted ", when used in any provision of this section other than subsection (b)(1)," after "the term 'payment' ".

1981—Subsecs. (i), (j). Pub. L. 97–34 added subsec. (i) and redesignated former subsec. (i) as (j).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §897(b), Oct. 22, 2004, 118 Stat. 1649, provided that: "The amendment made by this section [amending this section] shall apply to sales occurring on or after the date of the enactment of this Act [Oct. 22, 2004]."

EFFECTIVE DATE AND CONSTRUCTION OF 2000 AMENDMENT

Pub. L. 106–573, §2, Dec. 28, 2000, 114 Stat. 3061, provided that:

"(a) IN GENERAL.—Subsection (a) of section 536 of the Ticket to Work and Work Incentives Improvement Act of 1999 (relating to modification of installment method and repeal of installment method for accrual method taxpayers) [Pub. L. 106–170, amending this section] is repealed effective with respect to sales and other dispositions occurring on or after the date of the enactment of such Act [Dec. 17, 1999].

"(b) APPLICABILITY.—The Internal Revenue Code of 1986 shall be applied and administered as if that subsection (and the amendments made by that subsection) had not been enacted."

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title V, §536(c), Dec. 17, 1999, 113 Stat. 1936, provided that: "The amendments made by this section [amending this section and section 453A of this title] shall apply to sales or other dispositions occurring on or after the date of the enactment of this Act [Dec. 17, 1999]."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 1006(e)(7), (i)(1), (2), 1008(g)(1), and 1018(u)(25), (26) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 2004(d)(1), (5) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title X, §10202(e), Dec. 22, 1987, 101 Stat. 1330–392, as amended by Pub. L. 100–647, title II, §2004(d)(3), (4), (6), Nov. 10, 1988, 102 Stat. 3599, 3600, provided that:

"(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section and sections 56, 381, 453A, and 691 of this title and repealing section 453C of this title] shall apply to dispositions in taxable years beginning after December 31, 1987.

"(2) SPECIAL RULES FOR DEALERS.—

"(A) IN GENERAL.—In the case of dealer dispositions (within the meaning of section 453(l)(1) of the Internal Revenue Code of 1986 as added by this section), the amendments made by subsections (a) and (b) [amending this section and repealing section 453C of this title] shall apply to installment obligations arising from dispositions after December 31, 1987.

"(B) SPECIAL RULES FOR OBLIGATIONS ARISING FROM DEALER DISPOSITIONS AFTER FEBRUARY 28, 1986, AND BEFORE JANUARY 1, 1988.—

"(i) IN GENERAL.—In the case of an applicable installment obligation arising from a disposition described in subclause (I) or (II) of section 453C(e)(1)(A)(i) of the Internal Revenue Code of 1986 (as in effect before the amendments made by this section) before January 1, 1988, the amendments made by subsections (a) and (b) shall apply to taxable years beginning after December 31, 1987.

"(ii) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer who is required by clause (i) to change its method of accounting for any taxable year with respect to obligations described in clause (i)—

"(I) such change shall be treated as initiated by the taxpayer,

"(II) such change shall be treated as made with the consent of the Secretary of the Treasury or his delegate, and

"(III) the net amount of adjustments required by section 481 of the Internal Revenue Code of 1986 shall be taken into account over a period not longer than 4 taxable years.

"(C) CERTAIN RULES MADE APPLICABLE.—For purposes of this paragraph, rules similar to the rules of paragraphs (4) and (5) of section 812(c) of the Tax Reform Act of 1986 [Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note below] (as added by the Technical and Miscellaneous Revenue Act of 1988 [Pub. L. 100–647]) shall apply.

"(3) SPECIAL RULE FOR NONDEALERS.—

"(A) ELECTION.—A taxpayer may elect, at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe, to have the amendments made by subsections (a) and (c) [amending sections 381, 453A, and 691 of this title and repealing section 453C of this title] apply to taxable years ending after December 31, 1986, with respect to dispositions and pledges occurring after August 16, 1986.

"(B) PLEDGING RULES.—Except as provided in subparagraph (A)—

"(i) IN GENERAL.—Section 453A(d) of the Internal Revenue Code of 1986 shall apply to any installment obligation which is pledged to secure any secured indebtedness (within the meaning of section 453A(d)(4) of such Code) after December 17, 1987, in taxable years ending after such date.

"(ii) COORDINATION WITH SECTION 453C.—For purposes of section 453C of such Code (as in effect before its repeal), the face amount of any obligation to which section 453A(d) of such Code applies shall be reduced by the amount treated as payments on such obligation under section 453A(d) of such Code and the amount of any indebtedness secured by it shall not be taken into account.

"(C) CERTAIN DISPOSITIONS DEEMED MADE ON 1ST DAY OF TAXABLE YEAR.—If the taxpayer makes an election under subparagraph (A), in the case of the taxpayer's 1st taxable year ending after December 31, 1986—

"(i) dispositions after August 16, 1986, and before the 1st day of such taxable year shall be treated as made on such 1st day, and

"(ii) subsections (b)(2)(B) and (c)(4) of section 453A of such Code shall be applied separately with respect to such dispositions by substituting for '$5,000,000' the amount which bears the same ratio to $5,000,000 as the number of days after August 16, 1986, and before such 1st day bears to 365.

"(4) MINIMUM TAX.—The amendment made by subsection (d) [amending section 56 of this title] shall apply to dispositions in taxable years beginning after December 31, 1986.

"(5) COORDINATION WITH TAX REFORM ACT OF 1986.—The amendments made by this section shall not apply to any installment obligation or to any taxpayer during any period to the extent the amendments made by section 811 of the Tax Reform Act of 1986 [section 811 of Pub. L. 99–514, amending former section 453C of this title and enacting provisions set out as a note under former section 453C of this title] do not apply to such obligation or during such period."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 631(e)(8) of Pub. L. 99–514 applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, set out as an Effective Date note under section 336 of this title.

Amendment by section 642(a)(1)(D), (3), (b) of Pub. L. 99–514 applicable to sales after Oct. 22, 1986, in taxable years ending after such date, but not applicable to sales made after Aug. 14, 1986, which are made pursuant to a binding contract in effect on Aug. 14, 1986, and at all times thereafter, see section 642(c) of Pub. L. 99–514, set out as a note under section 1239 of this title.

Pub. L. 99–514, title VIII, §812(c), Oct. 22, 1986, 100 Stat. 2372, as amended by Pub. L. 100–647, title I, §1008(g)(3)–(6), Nov. 10, 1988, 102 Stat. 3443, provided that:

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1986.

"(2) SALES OF STOCK, ETC.—Section 453(k)(2) of the Internal Revenue Code of 1986, as added by subsection (a), shall apply to sales after December 31, 1986, in taxable years ending after such date.

"(3) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer who made sales under a revolving credit plan and was on the installment method under section 453 or 453A of the Internal Revenue Code of 1986 for such taxpayer's last taxable year beginning before January 1, 1987, the amendments made by this section [amending this section and section 453A of this title] shall be treated as a change in method of accounting for its 1st taxable year beginning after December 31, 1986, and—

"(A) such change shall be treated as initiated by the taxpayer,

"(B) such change shall be treated as having been made with the consent of the Secretary,

"(C) the period for taking into account adjustments under section 481 of such Code by reason of such change shall be equal to 4 years, and

"(D) except as provided in paragraph (4), the amount taken into account in each of such 4 years shall be the applicable percentage (determined in accordance with the following table) of the net adjustment:

"In the case of the:	The applicable percentage is:
1st taxable year	15
2nd taxable year	25
3rd taxable year	30
4th taxable year	30.

If the taxpayer's last taxable year beginning before January 1, 1987, was the taxpayer's 1st taxable year in which sales were made under a revolving credit plan, all adjustments under section 481 of such Code shall be taken into account in the taxpayer's 1st taxable year beginning after December 31, 1986.

"(4) ACCELERATION OF ADJUSTMENTS WHERE CONTRACTION IN AMOUNT OF INSTALLMENT OBLIGATIONS.—

"(A) IN GENERAL.—If the percentage determined under subparagraph (B) for any taxable year in the adjustment period exceeds the percentage which would otherwise apply under paragraph (3)(D) for such taxable year (determined after the application of this paragraph for prior taxable years in the adjustment period)—

"(i) the percentage determined under subparagraph (B) shall be substituted for the applicable percentage which would otherwise apply under paragraph (3)(D), and

"(ii) any increase in the applicable percentage by reason of clause (i) shall be applied to reduce the applicable percentage determined under paragraph (3)(D) for subsequent taxable years in the adjustment period (beginning with the 1st of such subsequent taxable years).

"(B) DETERMINATION OF PERCENTAGE.—For purposes of subparagraph (A), the percentage determined under this subparagraph for any taxable year in the adjustment period is the excess (if any) of—

"(i) the percentage determined by dividing the aggregate contraction in revolving installment obligations by the aggregate face amount of such obligations outstanding as of the close of the taxpayer's last taxable year beginning before January 1, 1987, over

"(ii) the sum of the applicable percentages under paragraph (3)(D) (as modified by this paragraph) for prior taxable years in the adjustment period.

"(C) AGGREGATE CONTRACTION IN REVOLVING INSTALLMENT OBLIGATIONS.—For purposes of subparagraph (B), the aggregate contraction in revolving installment obligations is the amount by which—

"(i) the aggregate face amount of the revolving installment obligations outstanding as of the close of the taxpayer's last taxable year beginning before January 1, 1987, exceeds

"(ii) the aggregate face amount of the revolving installment obligations outstanding as of the close of the taxable year involved.

"(D) REVOLVING INSTALLMENT OBLIGATIONS.—For purposes of this paragraph, the term 'revolving installment obligations' means installment obligations arising under a revolving credit plan.

"(E) TREATMENT OF CERTAIN OBLIGATIONS DISPOSED OF ON OR BEFORE OCTOBER 26, 1987.—For purposes of subparagraphs (B)(i) and (C)(i), in determining the aggregate face amount of revolving installment obligations outstanding as of the close of the taxpayer's last taxable year beginning before January 1, 1987, there shall not be taken into account any obligation—

"(i) which was disposed of to an unrelated person on or before October 26, 1987, or

"(ii) was disposed of to an unrelated person on or after such date pursuant to a binding written contract in effect on October 26, 1987, and at all times thereafter before such disposition.

For purposes of the preceding sentence, the term 'unrelated person' means any person who is not a related person (as defined in section 453(g) of the Internal Revenue Code of 1986).

"(5) LIMITATION ON LOSSES FROM SALES OF OBLIGATIONS UNDER REVOLVING CREDIT PLANS.—If 1 or more obligations arising under a revolving credit plan and taken into account under paragraph (3) are disposed of during the adjustment period, then, notwithstanding any other provision of

law—

"(A) no losses from such dispositions shall be recognized, and

"(B) the aggregate amount of the adjustment for taxable years in the adjustment period (in reverse order of time) shall be reduced by the amount of such losses.

"(6) ADJUSTMENT PERIOD.—For purposes of paragraphs (4) and (5), the adjustment period is the 4-year period under paragraph (3)."

Amendment by section 1809(c) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §112(b), July 18, 1984, 98 Stat. 635, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section] shall apply with respect to dispositions made after June 6, 1984.

"(2) EXCEPTION.—The amendments made by this section shall not apply with respect to any disposition conducted pursuant to a contract which was binding on March 22, 1984, and at all times thereafter.

"(3) SPECIAL RULE FOR CERTAIN DISPOSITIONS BEFORE OCTOBER 1, 1984.—The amendments made by this section shall not apply to any disposition before October 1, 1984, of all or substantially all of the personal property of a cable television business pursuant to a written offer delivered by the seller on June 20, 1984, but only if the last payment under the installment contract is due no later than October 1, 1989."

Amendment by section 421(b)(6)(B), (C) of Pub. L. 98–369 applicable to transfers after July 18, 1984, in taxable years ending after such date, subject to election to have amendment apply to transfers after 1983 or to transfers pursuant to existing decrees, see section 421(d) of Pub. L. 98–369, set out as an Effective Date note under section 1041 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 97–448, title III, §311(a), Jan. 12, 1983, 96 Stat. 2411, provided that: "The amendments made by sections 301, 302, and 303 [amending this section and sections 453B and 1239 of this title] shall apply to dispositions made after October 19, 1980, in taxable years ending after such date."

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to property placed in service after Dec. 31, 1980, in taxable years ending after that date, see section 209(a) of Pub. L. 97–34, set out as an Effective Date note under section 168 of this title.

EFFECTIVE DATE; APPLICATION OF FORMER SECTION 453(B) TO CERTAIN DISPOSITIONS

Pub. L. 96–471, §6(a), Oct. 19, 1980, 94 Stat. 2256, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by sections 2 [enacting this section and sections 453A and 453B of this title and amending sections 311, 336, 337, 381, former section 453, and sections 453B, 481, 644, 691, and 1255 of this title] and 5 [amending section 1239 of this title] shall apply to dispositions made after the date of the enactment of this Act [Oct. 19, 1980] in taxable years ending after such date.

"(2) FOR SECTION 453(e).—Section 453(e) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by section 2) shall apply to first dispositions made after May 14, 1980.

"(3) FOR SECTION 453(h).—Paragraphs (1) and (2) of section 453(h) of such Code (as amended by section 2) shall apply in the case of distributions of installment obligations after March 31, 1980.

"(4) FOR SECTION 453a.—Section 453A of the Internal Revenue Code of 1986 (as amended by section 2) shall apply to taxable years ending after the date of enactment of this Act [Oct. 19, 1980].

"(5) FOR SECTION 453b(f).—Section 453B(f) of the Internal Revenue Code of 1986 (as amended by section 2) shall apply to installment obligations becoming unenforceable after the date of the enactment of this Act [Oct. 19, 1980].

"(6) FOR SECTION 2(c).—The amendments made by section 2(c) [amending sections 336, 337, 453B, and former section 453 of this title] shall take effect as if included in the amendments made by section 403(b) of the Crude Oil Windfall Profit Tax Act of 1980 [see section 403(b)(3) of Pub. L. 96–223, set out as an Effective Date of 1980 Amendments note under section 337 of this title].

"(7) SPECIAL RULE FOR APPLICATION OF FORMER SECTION 453 TO CERTAIN DISPOSITIONS .—In the case of any disposition made on or before the date of the enactment of this Act [Oct. 19, 1980] in

any taxable year ending after such date, the provisions of section 453(b) of the Internal Revenue Code of 1986 [see subsec. (b) of former section 453 of this title, set out below] as in effect before such date, shall be applied with respect to such disposition without regard to—

"(A) paragraph (2) of such section 453(b), and

"(B) any requirement that more than 1 payment be received."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§453A. Special rules for nondealers

(a) General rule

In the case of an installment obligation to which this section applies—

(1) interest shall be paid on the deferred tax liability with respect to such obligation in the manner provided under subsection (c), and

(2) the pledging rules under subsection (d) shall apply.

(b) Installment obligations to which section applies

(1) In general

This section shall apply to any obligation which arises from the disposition of any property under the installment method, but only if the sales price of such property exceeds $150,000.

(2) Special rule for interest payments

For purposes of subsection (a)(1), this section shall apply to an obligation described in paragraph (1) arising during a taxable year only if—

(A) such obligation is outstanding as of the close of such taxable year, and

(B) the face amount of all such obligations held by the taxpayer which arose during, and are outstanding as of the close of, such taxable year exceeds $5,000,000.

Except as provided in regulations, all persons treated as a single employer under subsection (a) or (b) of section 52 shall be treated as one person for purposes of this paragraph and subsection (c)(4).

(3) Exception for personal use and farm property

An installment obligation shall not be treated as described in paragraph (1) if it arises from the disposition—

(A) by an individual of personal use property (within the meaning of section 1275(b)(3)), or

(B) of any property used or produced in the trade or business of farming (within the meaning of section 2032A(e)(4) or (5)).

(4) Special rule for timeshares and residential lots

An installment obligation shall not be treated as described in paragraph (1) if it arises from a disposition described in section 453(l)(2)(B), but the provisions of section 453(l)(3) (relating to interest payments on timeshares and residential lots) shall apply to such obligation.

(5) Sales price

For purposes of paragraph (1), all sales or exchanges which are part of the same transaction (or a series of related transactions) shall be treated as 1 sale or exchange.

(c) Interest on deferred tax liability

(1) In general

If an obligation to which this section applies is outstanding as of the close of any taxable year,

the tax imposed by this chapter for such taxable year shall be increased by the amount of interest determined in the manner provided under paragraph (2).

(2) Computation of interest

For purposes of paragraph (1), the interest for any taxable year shall be an amount equal to the product of—

(A) the applicable percentage of the deferred tax liability with respect to such obligation, multiplied by

(B) the underpayment rate in effect under section 6621(a)(2) for the month with or within which the taxable year ends.

(3) Deferred tax liability

For purposes of this section, the term "deferred tax liability" means, with respect to any taxable year, the product of—

(A) the amount of gain with respect to an obligation which has not been recognized as of the close of such taxable year, multiplied by

(B) the maximum rate of tax in effect under section 1 or 11, whichever is appropriate, for such taxable year.

For purposes of applying the preceding sentence with respect to so much of the gain which, when recognized, will be treated as long-term capital gain, the maximum rate on net capital gain under section 1(h) or 1201 (whichever is appropriate) shall be taken into account.

(4) Applicable percentage

For purposes of this subsection, the term "applicable percentage" means, with respect to obligations arising in any taxable year, the percentage determined by dividing—

(A) the portion of the aggregate face amount of such obligations outstanding as of the close of such taxable year in excess of $5,000,000, by

(B) the aggregate face amount of such obligations outstanding as of the close of such taxable year.

(5) Treatment as interest

Any amount payable under this subsection shall be taken into account in computing the amount of any deduction allowable to the taxpayer for interest paid or accrued during the taxable year.

(6) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this subsection including regulations providing for the application of this subsection in the case of contingent payments, short taxable years, and pass-thru entities.

(d) Pledges, etc., of installment obligations

(1) In general

For purposes of section 453, if any indebtedness (hereinafter in this subsection referred to as "secured indebtedness") is secured by an installment obligation to which this section applies, the net proceeds of the secured indebtedness shall be treated as a payment received on such installment obligation as of the later of—

(A) the time the indebtedness becomes secured indebtedness, or

(B) the time the proceeds of such indebtedness are received by the taxpayer.

(2) Limitation based on total contract price

The amount treated as received under paragraph (1) by reason of any secured indebtedness shall not exceed the excess (if any) of—

(A) the total contract price, over

(B) any portion of the total contract price received under the contract before the later of the times referred to in subparagraph (A) or (B) of paragraph (1) (including amounts previously treated as received under paragraph (1) but not including amounts not taken into account by

reason of paragraph (3)).

(3) Later payments treated as receipt of tax paid amounts

If any amount is treated as received under paragraph (1) with respect to any installment obligation, subsequent payments received on such obligation shall not be taken into account for purposes of section 453 to the extent that the aggregate of such subsequent payments does not exceed the aggregate amount treated as received under paragraph (1).

(4) Secured indebtedness

For purposes of this subsection indebtedness is secured by an installment obligation to the extent that payment of principal or interest on such indebtedness is directly secured (under the terms of the indebtedness or any underlying arrangements) by any interest in such installment obligation. A payment shall be treated as directly secured by an interest in an installment obligation to the extent an arrangement allows the taxpayer to satisfy all or a portion of the indebtedness with the installment obligation.

(e) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section, including regulations—

(1) disallowing the use of the installment method in whole or in part for transactions in which the rules of this section otherwise would be avoided through the use of related persons, pass-thru entities, or intermediaries, and

(2) providing that the sale of an interest in a partnership or other pass-thru entity will be treated as a sale of the proportionate share of the assets of the partnership or other entity.

(Added Pub. L. 96–471, §2(a), Oct. 19, 1980, 94 Stat. 2251; amended Pub. L. 99–514, title VIII, §812(b), Oct. 22, 1986, 100 Stat. 2371; Pub. L. 100–203, title X, §10202(c)[(1)], Dec. 22, 1987, 101 Stat. 1330–390; Pub. L. 100–647, title I, §1008(g)(2), title II, §2004(d)(2), (7), (8), title V, §5076(a), (b)(1), Nov. 10, 1988, 102 Stat. 3442, 3599, 3600, 3682; Pub. L. 101–239, title VII, §§7812(c)(2), 7815(g), 7821(a)(1)–(3), (4)(B), Dec. 19, 1989, 103 Stat. 2412, 2420, 2423, 2424; Pub. L. 103–66, title XIII, §13201(b)(4), Aug. 10, 1993, 107 Stat. 459; Pub. L. 106–170, title V, §536(b), Dec. 17, 1999, 113 Stat. 1936.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in former section 453 of this title.

AMENDMENTS

1999—Subsec. (d)(4). Pub. L. 106–170 inserted at end "A payment shall be treated as directly secured by an interest in an installment obligation to the extent an arrangement allows the taxpayer to satisfy all or a portion of the indebtedness with the installment obligation."

1993—Subsec. (c)(3). Pub. L. 103–66 inserted at end "For purposes of applying the preceding sentence with respect to so much of the gain which, when recognized, will be treated as long-term capital gain, the maximum rate on net capital gain under section 1(h) or 1201 (whichever is appropriate) shall be taken into account."

1989—Subsec. (b)(2)(B). Pub. L. 101–239, §7821(a)(1), substituted "such obligations held by the taxpayer" for "obligations of the taxpayer described in paragraph (1)".

Subsec. (b)(3). Pub. L. 101–239, §7815(g), substituted "Exception for personal use and farm property" for "Exception for farm property" in heading and amended text generally. Prior to amendment, text read as follows: "An installment obligation shall not be treated as described in paragraph (1) if it arises from the disposition of any property used or produced in the trade or business of farming (within the meaning of section 2032A(e)(4) or (5)."

Pub. L. 101–239, §7812(c)(2), substituted "(5))." for "(5)."

Subsec. (c)(5), (6). Pub. L. 101–239, §7821(a)(4)(B), added par. (5) and redesignated former par. (5) as (6).

Subsec. (d)(1)(B). Pub. L. 101–239, §7821(a)(3), substituted "the time the proceeds" for "the proceeds".

Subsec. (d)(2)(B). Pub. L. 101–239, §7821(a)(2), substituted "the later of the times referred to in subparagraph (A) or (B) of paragraph (1)" for "such secured indebtedness was incurred".

1988—Pub. L. 100–647, §5076(b)(1), struck out "of real property" after "rules for nondealers" in section catchline.

Subsec. (b)(1). Pub. L. 100–647, §5076(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "This section shall apply to any obligation which arises from the disposition of real property under the installment method which is property used in the taxpayer's trade or business or property held for the production of rental income, but only if the sales price of such property exceeds $150,000."

Subsec. (b)(2). Pub. L. 100–647, §2004(d)(7), inserted "and subsection (c)(4)" after "of this paragraph" in last sentence.

Subsec. (b)(3). Pub. L. 100–647, §2004(d)(8), substituted "farm property" for "personal use and farm property" in heading and amended text generally. Prior to amendment, text read as follows: "An installment obligation shall not be treated as described in paragraph (1) if it arises from the disposition—

"(A) by an individual of personal use property (within the meaning of section 1275(b)(3)), or

"(B) of any property used or produced in the trade or business of farming (within the meaning of section 2032A(e)(4) or (5))."

Subsec. (c). Pub. L. 100–647, §1008(g)(2), substituted "453(k)" for "453(j)" in subsec. (c) as in effect on date before the date of enactment of Pub. L. 100–203 (Dec. 22, 1987).

Subsec. (e). Pub. L. 100–647, §2004(d)(2), added subsec. (e).

1987—Pub. L. 100–203 substituted "Special rules for nondealers of real property" for "Installment method for dealers in personal property" in section catchline and amended text generally, revising and restating as subsecs. (a) to (d) provisions of former subsecs. (a) to (c).

1986—Subsec. (a)(2). Pub. L. 99–514, §812(b)(1), struck out last sentence which read as follows: "This paragraph shall not apply with respect to sales of personal property under a revolving credit type plan."

Subsec. (c). Pub. L. 99–514, §812(b)(2), added subsec. (c).

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to sales or other dispositions occurring on or after Dec. 17, 1999, see section 536(c) of Pub. L. 106–170, set out as a note under section 453 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to taxable years beginning after Dec. 31, 1992, see section 13201(c) of Pub. L. 103–66, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by sections 7812(c)(2) and 7815(g) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

Amendment by section 7821(a)(1)–(3), (4)(B) of Pub. L. 101–239 effective as if included in the provision of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 7823 of Pub. L. 101–239, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1008(g)(2) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 2004(d)(2), (7), (8) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

Pub. L. 100–647, title V, §5076(c), Nov. 10, 1988, 102 Stat. 3683, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to sales after December 31, 1988.

"(2) BINDING CONTRACT, ETC.—The amendments made by this section shall not apply to any sale on or before December 31, 1990, if—

"(A) such sale is pursuant to a written binding contract in effect on October 21, 1988, and at all times thereafter before such sale,

"(B) such sale is pursuant to a letter of intent in effect on October 21, 1988, or

"(C) there is a board of directors or shareholder approval for such sale on or before October 21, 1988."

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to dispositions in taxable years beginning after Dec. 31, 1987, with special rules for non-dealers and coordination with Tax Reform Act of 1986, see section 10202(e)(1), (3),

(5) of Pub. L. 100–203, set out as a note under section 453 of this title.

EFFECTIVE DATE

For effective date, see section 6(a)(4) of Pub. L. 96–471, set out as a note under section 453 of this title.

CERTAIN REPLEDGES PERMITTED

Pub. L. 100–647, title VI, §6031, Nov. 10, 1988, 102 Stat. 3695, provided that:

"(a) GENERAL RULE.—Section 453A(d) of the 1986 Code (relating to pledges, etc., of installment obligations) shall not apply to any pledge after December 17, 1987, of an installment obligation to secure any indebtedness if such indebtedness is incurred to refinance indebtedness which was outstanding on December 17, 1987, and which was secured on such date and all times thereafter before such refinancing by a pledge of such installment obligation.

"(b) LIMITATION.—Subsection (a) shall not apply to the extent that the principal amount of the indebtedness resulting from the refinancing exceeds the principal amount of the refinanced indebtedness immediately before the refinancing.

"(c) CERTAIN REFINANCINGS PERMITTED.—For purposes of subsection (a), if—

"(1) a refinancing is attributable to the calling of indebtedness by the creditor, and

"(2) such refinancing is not with the creditor under the refinanced indebtedness or a person related to such creditor,

such refinancing shall, to the extent the refinanced indebtedness qualifies under subsections (a) and (b), be treated as a continuation of such refinanced indebtedness."

AMENDMENT BY PUB. L. 99–514 TREATED AS CHANGE IN METHOD OF ACCOUNTING

For provisions requiring change in accounting method in the case of any taxpayer who made sales under revolving credit plan and was on installment method under this section for such taxpayer's last taxable year beginning before Jan. 1, 1987, see section 812(c)(2) of Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note under section 453 of this title.

§453B. Gain or loss disposition of installment obligations

(a) General rule

If an installment obligation is satisfied at other than its face value or distributed, transmitted, sold, or otherwise disposed of, gain or loss shall result to the extent of the difference between the basis of the obligation and—

(1) the amount realized, in the case of satisfaction at other than face value or a sale or exchange, or

(2) the fair market value of the obligation at the time of distribution, transmission, or disposition, in the case of the distribution, transmission, or disposition otherwise than by sale or exchange.

any gain or loss so resulting shall be considered as resulting from the sale or exchange of the property in respect of which the installment obligation was received.

(b) Basis of obligation

The basis of an installment obligation shall be the excess of the face value of the obligation over an amount equal to the income which would be returnable were the obligation satisfied in full.

(c) Special rule for transmission at death

Except as provided in section 691 (relating to recipients of income in respect of decedents), this section shall not apply to the transmission of installment obligations at death.

(d) Exception for distributions to which section 337(a) applies

Subsection (a) shall not apply to any distribution to which section 337(a) applies.

(e) Life insurance companies

(1) In general

In the case of a disposition of an installment obligation by any person other than a life insurance company (as defined in section 816(a)) to such an insurance company or to a partnership of which such an insurance company is a partner, no provision of this subtitle providing for the nonrecognition of gain shall apply with respect to any gain resulting under subsection (a). If a corporation which is a life insurance company for the taxable year was (for the preceding taxable year) a corporation which was not a life insurance company, such corporation shall, for purposes of this subsection and subsection (a), be treated as having transferred to a life insurance company, on the last day of the preceding taxable year, all installment obligations which it held on such last day. A partnership of which a life insurance company becomes a partner shall, for purposes of this subsection and subsection (a), be treated as having transferred to a life insurance company, on the last day of the preceding taxable year of such partnership, all installment obligations which it holds at the time such insurance company becomes a partner.

(2) Special rule where life insurance company elects to treat income as not related to insurance business

Paragraph (1) shall not apply to any transfer or deemed transfer of an installment obligation if the life insurance company elects (at such time and in such manner as the Secretary may by regulations prescribe) to determine its life insurance company taxable income—

(A) by returning the income on such installment obligation under the installment method prescribed in section 453, and

(B) as if such income were an item attributable to a noninsurance business (as defined in section 806(b)(3)).

(f) Obligation becomes unenforceable

For purposes of this section, if any installment obligation is canceled or otherwise becomes unenforceable—

(1) the obligation shall be treated as if it were disposed of in a transaction other than a sale or exchange, and

(2) if the obligor and obligee are related persons (within the meaning of section 453(f)(1)), the fair market value of the obligation shall be treated as not less than its face amount.

(g) Transfers between spouses or incident to divorce

In the case of any transfer described in subsection (a) of section 1041 (other than a transfer in trust)—

(1) subsection (a) of this section shall not apply, and

(2) the same tax treatment with respect to the transferred installment obligation shall apply to the transferee as would have applied to the transferor.

(h) Certain liquidating distributions by S corporations

If—

(1) an installment obligation is distributed by an S corporation in a complete liquidation, and

(2) receipt of the obligation is not treated as payment for the stock by reason of section 453(h)(1),

then, except for purposes of any tax imposed by subchapter S, no gain or loss with respect to the distribution of the obligation shall be recognized by the distributing corporation. Under regulations prescribed by the Secretary, the character of the gain or loss to the shareholder shall be determined in accordance with the principles of section 1366(b).

(Added Pub. L. 96–471, §2(a), Oct. 19, 1980, 94 Stat. 2252; amended Pub. L. 96–471, §2(c)(3), Oct. 19, 1980, 94 Stat. 2254; Pub. L. 97–448, title III, §302, Jan. 12, 1983, 96 Stat. 2398; Pub. L. 98–369, div. A, title I, §43(c)(2), title II, §211(b)(6), title IV, §§421(b)(3), 492(b)(3), July 18, 1984, 98 Stat. 558, 754, 794, 854; Pub. L. 99–514, title VI, §631(e)(9), title X, §1011(b)(1), title XVIII, §1842(c), Oct. 22, 1986, 100 Stat. 2274, 2389, 2853; Pub. L. 100–647, title I, §1006(e)(22), Nov. 10, 1988, 102 Stat. 3403; Pub. L. 101–508, title XI, §11702(a)(2), Nov. 5, 1990, 104 Stat. 1388–514.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in former section 453 of this title.

AMENDMENTS

1990—Subsec. (d). Pub. L. 101–508 substituted heading for one which read: "Effect of distribution in liquidations to which section 332 applies" and amended text generally. Prior to amendment, text read as follows: "If—

"(1) an installment obligation is distributed in a liquidation to which section 332 (relating to complete liquidations of subsidiaries) applies, and

"(2) the basis of such obligation in the hands of the distributee is determined under section 334(b)(1), then no gain or loss with respect to the distribution of such obligation shall be recognized by the distributing corporation."

1988—Subsec. (h). Pub. L. 100–647 added subsec. (h).

1986—Subsec. (d). Pub. L. 99–514, §631(e)(9), amended subsec. (d) generally, substituting "liquidations to which section 332 applies" for "certain liquidations" in heading, striking out par. (1) designation, redesignating subpars. (A) and (B) as pars. (1) and (2), and striking out former par. (2) relating to liquidations to which section 337 applies.

Subsec. (e)(2)(B). Pub. L. 99–514, §1011(b)(1), substituted "section 806(b)(3)" for "section 806(c)(3)".

Subsec. (g). Pub. L. 99–514, §1842(c), inserted "(other than a transfer in trust)".

1984—Subsec. (d)(2). Pub. L. 98–369, §492(b)(3), struck out "1251(c)," after "1250(a)," in provision following subpar. (B).

Pub. L. 98–369, §43(c)(2), substituted "1254(a), or 1276(a)" for "or 1254(a)".

Subsec. (e)(1). Pub. L. 98–369, §211(b)(6)(A), substituted "section 816(a)" for "section 801(a)".

Subsec. (e)(2). Pub. L. 98–369, §211(b)(6)(B), substituted "as not related to insurance business" for "as investment income" in heading, and in text substituted "as if such income were an item attributable to a noninsurance business (as defined in section 806(c)(3))" for "if such income would not otherwise be returnable as an item referred to in section 804(b) or as long-term capital gain, as if the income on such obligations were income specified in section 804(b)".

Subsec. (g). Pub. L. 98–369, §421(b)(3), added subsec. (g).

1983—Subsec. (d)(2). Pub. L. 97–448 substituted "under subsection (a)" for "under paragraph (1)" in second sentence.

1980—Subsec. (d). Pub. L. 96–471, §2(c)(3), inserted last sentence providing that in the case of any installment obligation which would have met the requirements of subpars. (A) and (B) of par. (2) but for sections 337(f), gain shall be recognized to such corporation by reason of such distribution only to the extent gain would have been recognized under sections 337(f) if such corporation had sold or exchanged such installment obligation on the date of such distribution.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 11702(j) of Pub. L. 101–508, set out as a note under section 59 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 631(e)(9) of Pub. L. 99–514 applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, set out as an Effective Date note under section 336 of this title.

Pub. L. 99–514, title X, §1011(c)(1), Oct. 22, 1986, 100 Stat. 2389, provided that: "The amendments made by this section [amending this section and sections 465, 801, 804 to 806, 813, and 815 of this title, enacting provisions set out as a note under section 801 of this title, and amending provisions set out as a note under section 806 of this title] shall apply to taxable years beginning after December 31, 1986."

Amendment by section 1842(c) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 43(c)(2) of Pub. L. 98–369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98–369, set out as an Effective Date note under section 1271 of this title.

Amendment by section 211(b)(6) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

Amendment by section 421(b)(3) of Pub. L. 98–369 applicable to transfers after July 18, 1984, in taxable years ending after such date, subject to election to have amendment apply to transfers after 1983 or to transfers pursuant to existing decrees, see section 421(d) of Pub. L. 98–369, set out as an Effective Date note under section 1041 of this title.

Amendment by section 492(b)(3) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 492(d) of Pub. L. 98–369, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 applicable to dispositions made after Oct. 19, 1980, in taxable years ending after such date, see section 311(a) of Pub. L. 97–448, set out as a note under section 453 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

For effective date of amendment by Pub. L. 96–471, see section 6(a)(6) of Pub. L. 96–471, set out as an Effective Date note under section 453 of this title.

EFFECTIVE DATE

For effective date, see section 6(a)(1), (5) of Pub. L. 96–471, set out as a note under section 453 of this title.

REPEAL OF MODIFICATION OF INSTALLMENT METHOD

Pub. L. 106–573, §2, Dec. 28, 2000, 114 Stat. 3061, provided that:

"(a) IN GENERAL.—Subsection (a) of section 536 of the Ticket to Work and Work Incentives Improvement Act of 1999 (relating to modification of installment method and repeal of installment method for accrual method taxpayers) [Pub. L. 106–170, amending this section] is repealed effective with respect to sales and other dispositions occurring on or after the date of the enactment of such Act[Dec. 17, 1999].

"(b) APPLICABILITY.—The Internal Revenue Code of 1986 shall be applied and administered as if that subsection (and the amendments made by that subsection) had not been enacted."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TREATMENT OF ELECTIONS UNDER SECTION 453B(E)(2)

Pub. L. 98–369, div. A, title II, §217(b), July 18, 1984, 98 Stat. 762, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "If an election is made under section 453B(e)(2) before January 1, 1984, with respect to any installment obligation, any income from such obligation shall be treated as attributable to a noninsurance business (as defined in section 806(c)(3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954])."

[§453C. Repealed. Pub. L. 100–203, title X, §10202(a)(1), Dec. 22, 1987, 101 Stat. 1330–388]

Section, added Pub. L. 99–514, title VIII, §811(a), Oct. 22, 1986, 100 Stat. 2365; amended Pub. L. 100–647, title I, §1008(f)(1)–(5), Nov. 10, 1988, 102 Stat. 3441, 3442, related to treatment of certain indebtedness as payment on installment obligations.

EFFECTIVE DATE OF REPEAL

Repeal applicable to dispositions in taxable years beginning after Dec. 31, 1987, with special rules for

dealers and non-dealers, and coordination with Tax Reform Act of 1986, see section 10202(e)(1)–(3), (5) of Pub. L. 100–203, set out as a note under section 453 of this title.

APPLICABILITY OF AMENDMENTS BY PUB. L. 100–203 AND PUB. L. 100–647

Pub. L. 100–647, title I, §1008(f)(9), Nov. 10, 1988, 102 Stat. 3442, provided that: "For purposes of applying the amendments made by this subsection [amending this section and provisions set out below] and the amendments made by section 10202 of the Revenue Act of 1987 [Pub. L. 100–203, amending sections 56, 381, 453, 453A, and 691 of this title and repealing this section], the provisions of this subsection shall be treated as having been enacted immediately before the enactment of the Revenue Act of 1987 [Dec. 22, 1987]."

EFFECTIVE DATE; ALLOCATION OF INDEBTEDNESS AS PAYMENT ON INSTALLMENT OBLIGATION

Pub. L. 99–514, title VIII, §811(c), Oct. 22, 1986, 100 Stat. 2368, as amended by Pub. L. 100–647, title I, §1008(f)(6)–(8), Nov. 10, 1988, 102 Stat. 3442; Pub. L. 105–34, title X, §1088(a), Aug. 5, 1997, 111 Stat. 959, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this section, the amendments made by this section [enacting this section] shall apply to taxable years ending after December 31, 1986, with respect to dispositions after February 28, 1986.

"[(2) Repealed. Pub. L. 105–34, title X, §1088(a), Aug. 5, 1997, 111 Stat. 959.]

"(3) EXCEPTION FOR CERTAIN OBLIGATIONS.—In applying the amendments made by this section to any installment obligation of a corporation incorporated on January 13, 1928, the following indebtedness shall not be taken into account in determining the allocable installment indebtedness of such corporation under section 453C of the Internal Revenue Code of 1986 (as added by this section):

"(A) 125/8 percent subordinated debentures with a total face amount of $175,000,000 issued pursuant to a trust indenture dated as of September 1, 1985.

"(B) A revolving credit term loan in the maximum amount of $130,000,000 made pursuant to a revolving credit and security agreement dated as of September 6, 1985, payable in various stages with final payment due on August 31, 1992.

This paragraph shall also apply to indebtedness which replaces indebtedness described in this paragraph if such indebtedness does not exceed the amount and maturity of the indebtedness it replaces.

"(4) SPECIAL RULE FOR RESIDENTIAL CONDOMINIUM PROJECT.—For purposes of applying the amendments made by this section, the term applicable installment obligation (within the meaning of section 453C(e)(1) of the Internal Revenue Code of 1986) shall not include any obligation arising in connection with sales from a residential condominium project—

"(A) for which a contract to purchase land for the project was entered into at least 5 years before the date of the enactment of this Act,

"(B) with respect to which land for the project was purchased before September 26, 1985,

"(C) with respect to which building permits for the project were obtained, and construction commenced, before September 26, 1985,

"(D) in conjunction with which not less than 80 units of low-income housing are deeded to a tax-exempt organization designated by a local government, and

"(E) with respect to which at least $1,000,000 of expenses were incurred before September 26, 1985.

"(5) SPECIAL RULE FOR QUALIFIED BUYOUT.—The amendments made by this section shall apply for taxable years ending after December 31, 1991, to a corporation if—

"(A) such corporation was incorporated on May 25, 1984, for the purpose of acquiring all of the stock of another corporation,

"(B) such acquisition took place on October 23, 1984,

"(C) in connection with such acquisition, the corporation incurred indebtedness of approximately $151,000,000, and

"(D) substantially all of the stock of the corporation is owned directly or indirectly by employees of the corporation the stock of which was acquired on October 23, 1984.

"(6) SPECIAL RULE FOR SALES OF REAL PROPERTY BY DEALERS.—In the case of installment obligations arising from the sale of real property in the ordinary course of the trade or business of the taxpayer, any gain attributable to allocable installment indebtedness allocated to any such installment obligations which arise (or are deemed to arise)—

"(A) in the 1st taxable year of the taxpayer ending after December 31, 1986, shall be taken into account ratably over the 3 taxable years beginning with such 1st taxable year, and

"(B) in the 2nd taxable year of the taxpayer ending after December 31, 1986, shall be taken into

account ratably over the 2 taxable years beginning with such 2nd taxable year.

"(7) SPECIAL RULE FOR SALES OF PERSONAL PROPERTY BY DEALERS.—In the case of installment obligations arising from the sale of personal property in the ordinary course of the trade or business of the taxpayer, solely for purposes of determining the time for payment of tax and interest payable with respect to such tax—

"(A) any increase in tax imposed by chapter 1 of the Internal Revenue Code of 1986 for the 1st taxable year of the taxpayer ending after December 31, 1986, by reason of the amendments made by this section shall be treated as imposed ratably over the 3 taxable years beginning with such 1st taxable year, and

"(B) any increase in tax imposed by such chapter 1 for the 2nd taxable year of the taxpayer ending after December 31, 1986 (determined without regard to subparagraph (A)), by reason of the amendments made by this section shall be treated as imposed ratably over the 2 taxable years beginning with such 2nd taxable year.

"(8) TREATMENT OF CERTAIN INSTALLMENT OBLIGATIONS.—Notwithstanding the amendments made by subtitle B of title III [section 311 of Pub. L. 99–514, amending sections 593, 631, 852, 1201, and 1445 of this title and enacting provisions set out as notes under sections 631 and 1201 of this title], gain with respect to installment payments received pursuant to notes issued in accordance with a note agreement dated as of August 29, 1980, where—

"(A) such note agreement was executed pursuant to an agreement of purchase and sale dated April 25, 1980,

"(B) more than ½ of the installment payments of the aggregate principal of such notes have been received by August 29, 1986, and

"(C) the last installment payment of the principal of such notes is due August 29, 1989,

shall be taxed at a rate of 28 percent.

"(9) SPECIAL RULES.—For purposes of section 453C of the 1986 Code (as added by subsection (a))—

"(A) REVOLVING CREDIT PLANS, ETC.—The term 'applicable installment obligation' shall not include any obligation arising out of any disposition or sale described in paragraph (1) or (2) of section 453(k) of such Code (as added by section 812(a)).

"(B) CERTAIN DISPOSITIONS DEEMED MADE ON FIRST DAY OF TAXABLE YEAR.—In the case of a taxpayer's 1st taxable year ending after December 31, 1986, dispositions after February 28, 1986, and before the 1st day of such taxable year shall be treated as made on such 1st day."

[Pub. L. 105–34, title X, §1088(b), Aug. 5, 1997, 111 Stat. 959, as amended by Pub. L. 105–206, title VI, §6010(q), July 22, 1998, 112 Stat. 817, provided that:

["(1) IN GENERAL.—The amendment made by this section [amending section 811(c) of Pub. L. 99–514, set out above] shall apply to taxable years beginning more than 1 year after the date of the enactment of this Act [Aug. 5, 1997].

["(2) COORDINATION WITH SECTION 481.—In the case of any taxpayer required by this section to change its method of accounting for any taxable year—

["(A) such changes shall be treated as initiated by the taxpayer,

["(B) such changes shall be treated as made with the consent of the Secretary of the Treasury, and

["(C) the net amount of the adjustments required to be taken into account under section 481(a) of the Internal Revenue Code of 1986 shall be taken into account ratably over the 4 taxable year period beginning with the first taxable year beginning more than 1 year after the date of the enactment of this Act."]

§454. Obligations issued at discount

(a) Non-interest-bearing obligations issued at a discount

If, in the case of a taxpayer owning any non-interest-bearing obligation issued at a discount and redeemable for fixed amounts increasing at stated intervals or owning an obligation described in paragraph (2) of subsection (c), the increase in the redemption price of such obligation occurring in the taxable year does not (under the method of accounting used in computing his taxable income) constitute income to him in such year, such taxpayer may, at his election made in his return for any taxable year, treat such increase as income received in such taxable year. If any such election is made with respect to any such obligation, it shall apply also to all such obligations owned by the taxpayer at the beginning of the first taxable year to which it applies and to all such obligations thereafter acquired by him and shall be binding for all subsequent taxable years, unless on application by the taxpayer the Secretary permits him, subject to such conditions as the Secretary deems necessary, to

change to a different method. In the case of any such obligations owned by the taxpayer at the beginning of the first taxable year to which his election applies, the increase in the redemption price of such obligations occurring between the date of acquisition (or, in the case of an obligation described in paragraph (2) of subsection (c), the date of acquisition of the series E bond involved) and the first day of such taxable year shall also be treated as income received in such taxable year.

(b) Short-term obligations issued on discount basis

In the case of any obligation—

(1) of the United States; or

(2) of a State or a possession of the United States, or any political subdivision of any of the foregoing, or of the District of Columbia,

which is issued on a discount basis and payable without interest at a fixed maturity date not exceeding 1 year from the date of issue, the amount of discount at which such obligation is originally sold shall not be considered to accrue until the date on which such obligation is paid at maturity, sold, or otherwise disposed of.

(c) Matured United States savings bonds

In the case of a taxpayer who—

(1) holds a series E United States savings bond at the date of maturity, and

(2) pursuant to regulations prescribed under chapter 31 of title 31 (A) retains his investment in such series E bond in an obligation of the United States, other than a current income obligation, or (B) exchanges such series E bond for another nontransferable obligation of the United States in an exchange upon which gain or loss is not recognized because of section 1037 (or so much of section 1031 as relates to section 1037),

the increase in redemption value (to the extent not previously includible in gross income) in excess of the amount paid for such series E bond shall be includible in gross income in the taxable year in which the obligation is finally redeemed or in the taxable year of final maturity, whichever is earlier. This subsection shall not apply to a corporation, and shall not apply in the case of any taxable year for which the taxpayer's taxable income is computed under an accrual method of accounting or for which an election made by the taxpayer under subsection (a) applies.

(Aug. 16, 1954, ch. 736, 68A Stat. 156; Pub. L. 86–346, title I, §102, Sept. 22, 1959, 73 Stat. 621; Pub. L. 94–455, title XIX, §§1901(c)(2), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1803, 1834; Pub. L. 97–452, §2(c)(2), Jan. 12, 1983, 96 Stat. 2478.)

AMENDMENTS

1983—Subsec. (c)(2). Pub. L. 97–452 substituted "chapter 31 of title 31" for "the Second Liberty Bond Act".

1976—Subsec. (a). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary" in two places.

Subsec. (b)(2). Pub. L. 94–455, §1901(c)(2), struck out ", a Territory," after "a State".

1959—Subsec. (c)(2). Pub. L. 86–346 designated existing provisions as cl. (A), inserted "of the United States" after "an obligation" and struck out "the maturity value of" before "such series E bond" and "which matures not more than 10 years from the date of maturity of such series E bond" after "income obligation" in such cl. (A), and added cl. (B).

§455. Prepaid subscription income

(a) Year in which included

Prepaid subscription income to which this section applies shall be included in gross income for the taxable years during which the liability described in subsection (d)(2) exists.

(b) Where taxpayer's liability ceases

In the case of any prepaid subscription income to which this section applies—

(1) If the liability described in subsection (d)(2) ends, then so much of such income as was not includible in gross income under subsection (a) for preceding taxable years shall be included in gross income for the taxable year in which the liability ends.

(2) If the taxpayer dies or ceases to exist, then so much of such income as was not includible in gross income under subsection (a) for preceding taxable years shall be included in gross income for the taxable year in which such death, or such cessation of existence, occurs.

(c) Prepaid subscription income to which this section applies

(1) Election of benefits

This section shall apply to prepaid subscription income if and only if the taxpayer makes an election under this section with respect to the trade or business in connection with which such income is received. The election shall be made in such manner as the Secretary may by regulations prescribe. No election may be made with respect to a trade or business if in computing taxable income the cash receipts and disbursements method of accounting is used with respect to such trade or business.

(2) Scope of election

An election made under this section shall apply to all prepaid subscription income received in connection with the trade or business with respect to which the taxpayer has made the election; except that the taxpayer may, to the extent permitted under regulations prescribed by the Secretary, include in gross income for the taxable year of receipt the entire amount of any prepaid subscription income if the liability from which it arose is to end within 12 months after the date of receipt. An election made under this section shall not apply to any prepaid subscription income received before the first taxable year for which the election is made.

(3) When election may be made

(A) With consent

A taxpayer may, with the consent of the Secretary, make an election under this section at any time.

(B) Without consent

A taxpayer may, without the consent of the Secretary, make an election under this section for his first taxable year in which he receives prepaid subscription income in the trade or business. Such election shall be made not later than the time prescribed by law for filing the return for the taxable year (including extensions thereof) with respect to which such election is made.

(4) Period to which election applies

An election under this section shall be effective for the taxable year with respect to which it is first made and for all subsequent taxable years, unless the taxpayer secures the consent of the Secretary to the revocation of such election. For purposes of this title, the computation of taxable income under an election made under this section shall be treated as a method of accounting.

(d) Definitions

For purposes of this section—

(1) Prepaid subscription income

The term "prepaid subscription income" means any amount (includible in gross income) which is received in connection with, and is directly attributable to, a liability which extends beyond the close of the taxable year in which such amount is received, and which is income from a subscription to a newspaper, magazine, or other periodical.

(2) Liability

The term "liability" means a liability to furnish or deliver a newspaper, magazine, or other periodical.

(3) Receipt of prepaid subscription income

Prepaid subscription income shall be treated as received during the taxable year for which it is includible in gross income under section 451 (without regard to this section).

(e) Deferral of income under established accounting procedures

Notwithstanding the provisions of this section, any taxpayer who has, for taxable years prior to the first taxable year to which this section applies, reported his income under an established and consistent method or practice of accounting for prepaid subscription income (to which this section would apply if an election were made) may continue to report his income for taxable years to which this title applies in accordance with such method or practice.

(Added Pub. L. 85–866, title I, §28(a), Sept. 2, 1958, 72 Stat. 1625; amended Pub. L. 94–455, title XIX, §§1901(a)(67), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1775, 1834.)

AMENDMENTS

1976—Subsec. (c). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary" wherever appearing.

Subsec. (c)(3)(B). Pub. L. 94–455, §1901(a)(67), substituted "for his first taxable year in which he receives prepaid subscription income in the trade or business" for "for his first taxable year (i) which begins after December 31, 1957, and (ii) in which he receives prepaid subscription income in the trade or business".

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(67) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE

Pub. L. 85–866, title I, §28(c), Sept. 2, 1958, 72 Stat. 1626, provided that: "The amendments made by subsections (a) and (b) [enacting this section] shall apply with respect to taxable years beginning after December 31, 1957."

§456. Prepaid dues income of certain membership organizations

(a) Year in which included

Prepaid dues income to which this section applies shall be included in gross income for the taxable years during which the liability described in subsection (e)(2) exists.

(b) Where taxpayer's liability ceases

In the case of any prepaid dues income to which this section applies—

(1) If the liability described in subsection (e)(2) ends, then so much of such income as was not includible in gross income under subsection (a) for preceding taxable years shall be included in gross income for the taxable year in which the liability ends.

(2) If the taxpayer ceases to exist, then so much of such income as was not includible in gross income under subsection (a) for preceding taxable years shall be included in gross income for the taxable year in which such cessation of existence occurs.

(c) Prepaid dues income to which this section applies

(1) Election of benefits

This section shall apply to prepaid dues income if and only if the taxpayer makes an election under this section with respect to the trade or business in connection with which such income is received. The election shall be made in such manner as the Secretary may by regulations prescribe. No election may be made with respect to a trade or business if in computing taxable income the cash receipts and disbursements method of accounting is used with respect to such trade or business.

(2) Scope of election

An election made under this section shall apply to all prepaid dues income received in

connection with the trade or business with respect to which the taxpayer has made the election; except that the taxpayer may, to the extent permitted under regulations prescribed by the Secretary, include in gross income for the taxable year of receipt the entire amount of any prepaid dues income if the liability from which it arose is to end within 12 months after the date of receipt. Except as provided in subsection (d), and election made under this section shall not apply to any prepaid dues income received before the first taxable year for which the election is made.

(3) When election may be made

(A) With consent

A taxpayer may, with the consent of the Secretary, make an election under this section at any time.

(B) Without consent

A taxpayer may, without the consent of the Secretary, make an election under this section for its first taxable year in which it receives prepaid dues income in the trade or business. Such election shall be made not later than the time prescribed by law for filing the return for the taxable year (including extensions thereof) with respect to which such election is made.

(4) Period to which election applies

An election under this section shall be effective for the taxable year with respect to which it is first made and for all subsequent taxable years, unless the taxpayer secures the consent of the Secretary to the revocation of such election. For purposes of this title, the computation of taxable income under an election made under this section shall be treated as a method of accounting.

(d) Transitional rule

(1) Amount includible in gross income for election years

If a taxpayer makes an election under this section with respect to prepaid dues income, such taxpayer shall include in gross income, for each taxable year to which such election applies, not only that portion of prepaid dues income received in such year otherwise includible in gross income for such year under this section, but shall also include in gross income for such year an additional amount equal to the amount of prepaid dues income received in the 3 taxable years preceding the first taxable year to which such election applies which would have been included in gross income in the taxable year had the election been effective 3 years earlier.

(2) Deductions of amounts included in income more than once

A taxpayer who makes an election with respect to prepaid dues income, and who includes in gross income for any taxable year to which the election applies an additional amount computed under paragraph (1), shall be permitted to deduct, for such taxable year and for each of the 4 succeeding taxable years, an amount equal to one-fifth of such additional amount, but only to the extent that such additional amount was also included in the taxpayer's gross income during any of the 3 taxable years preceding the first taxable year to which such election applies.

(e) Definitions

For purposes of this section—

(1) Prepaid dues income

The term "prepaid dues income" means any amount (includible in gross income) which is received by a membership organization in connection with, and is directly attributable to, a liability to render services or make available membership privileges over a period of time which extends beyond the close of the taxable year in which such amount is received.

(2) Liability

The term "liability" means a liability to render services or make available membership privileges over a period of time which does not exceed 36 months, which liability shall be deemed to exist ratably over the period of time that such services are required to be rendered, or that such membership privileges are required to be made available.

(3) Membership organization

The term "membership organization" means a corporation, association, federation, or other organization—

(A) organized without capital stock of any kind, and

(B) no part of the net earnings of which is distributable to any member.

(4) Receipt of prepaid dues income

Prepaid dues income shall be treated as received during the taxable year for which it is includible in gross income under section 451 (without regard to this section).

(Added Pub. L. 87–109, §1(a), July 26, 1961, 75 Stat. 222; amended Pub. L. 94–455, title XIX, §§1901(a)(68), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1775, 1834.)

AMENDMENTS

1976—Subsec. (c). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary" wherever appearing.

Subsec. (c)(3)(B). Pub. L. 94–455, §1901(a)(68), substituted "for its first taxable year" for "for its first taxable year (i) which begins after December 31, 1960, and (ii)".

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(68) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE

Pub. L. 87–109, §2, July 26, 1961, 75 Stat. 224, provided that: "The amendments made by this Act [enacting this section] shall apply with respect to taxable years beginning after December 31, 1960."

§457. Deferred compensation plans of State and local governments and tax-exempt organizations

(a) Year of inclusion in gross income

(1) In general

Any amount of compensation deferred under an eligible deferred compensation plan, and any income attributable to the amounts so deferred, shall be includible in gross income only for the taxable year in which such compensation or other income—

(A) is paid to the participant or other beneficiary, in the case of a plan of an eligible employer described in subsection (e)(1)(A), and

(B) is paid or otherwise made available to the participant or other beneficiary, in the case of a plan of an eligible employer described in subsection (e)(1)(B).

(2) Special rule for rollover amounts

To the extent provided in section 72(t)(9), section 72(t) shall apply to any amount includible in gross income under this subsection.

(3) Special rule for health and long-term care insurance

In the case of a plan of an eligible employer described in subsection (e)(1)(A), to the extent provided in section 402(l), paragraph (1) shall not apply to amounts otherwise includible in gross income under this subsection.

(b) Eligible deferred compensation plan defined

For purposes of this section, the term "eligible deferred compensation plan" means a plan established and maintained by an eligible employer—

(1) in which only individuals who perform service for the employer may be participants,

(2) which provides that (except as provided in paragraph (3)) the maximum amount which may be deferred under the plan for the taxable year (other than rollover amounts) shall not exceed the

lesser of—

(A) the applicable dollar amount, or

(B) 100 percent of the participant's includible compensation,

(3) which may provide that, for 1 or more of the participant's last 3 taxable years ending before he attains normal retirement age under the plan, the ceiling set forth in paragraph (2) shall be the lesser of—

(A) twice the dollar amount in effect under subsection (b)(2)(A), or

(B) the sum of—

(i) the plan ceiling established for purposes of paragraph (2) for the taxable year (determined without regard to this paragraph), plus

(ii) so much of the plan ceiling established for purposes of paragraph (2) for taxable years before the taxable year as has not previously been used under paragraph (2) or this paragraph,

(4) which provides that compensation will be deferred for any calendar month only if an agreement providing for such deferral has been entered into before the beginning of such month,

(5) which meets the distribution requirements of subsection (d), and

(6) except as provided in subsection (g), which provides that—

(A) all amounts of compensation deferred under the plan,

(B) all property and rights purchased with such amounts, and

(C) all income attributable to such amounts, property, or rights,

shall remain (until made available to the participant or other beneficiary) solely the property and rights of the employer (without being restricted to the provision of benefits under the plan), subject only to the claims of the employer's general creditors.

A plan which is established and maintained by an employer which is described in subsection (e)(1)(A) and which is administered in a manner which is inconsistent with the requirements of any of the preceding paragraphs shall be treated as not meeting the requirements of such paragraph as of the 1st plan year beginning more than 180 days after the date of notification by the Secretary of the inconsistency unless the employer corrects the inconsistency before the 1st day of such plan year.

(c) Limitation

The maximum amount of the compensation of any one individual which may be deferred under subsection (a) during any taxable year shall not exceed the amount in effect under subsection (b)(2)(A) (as modified by any adjustment provided under subsection (b)(3)).

(d) Distribution requirements

(1) In general

For purposes of subsection (b)(5), a plan meets the distribution requirements of this subsection if—

(A) under the plan amounts will not be made available to participants or beneficiaries earlier than—

(i) the calendar year in which the participant attains age 70½,

(ii) when the participant has a severance from employment with the employer, or

(iii) when the participant is faced with an unforeseeable emergency (determined in the manner prescribed by the Secretary in regulations),

(B) the plan meets the minimum distribution requirements of paragraph (2), and

(C) in the case of a plan maintained by an employer described in subsection (e)(1)(A), the plan meets requirements similar to the requirements of section 401(a)(31).

Any amount transferred in a direct trustee-to-trustee transfer in accordance with section 401(a)(31) shall not be includible in gross income for the taxable year of transfer.

(2) Minimum distribution requirements

A plan meets the minimum distribution requirements of this paragraph if such plan meets the requirements of section 401(a)(9).

(3) Special rule for government plan

An eligible deferred compensation plan of an employer described in subsection (e)(1)(A) shall not be treated as failing to meet the requirements of this subsection solely by reason of making a distribution described in subsection (e)(9)(A).

(e) Other definitions and special rules

For purposes of this section—

(1) Eligible employer

The term "eligible employer" means—

(A) a State, political subdivision of a State, and any agency or instrumentality of a State or political subdivision of a State, and

(B) any other organization (other than a governmental unit) exempt from tax under this subtitle.

(2) Performance of service

The performance of service includes performance of service as an independent contractor and the person (or governmental unit) for whom such services are performed shall be treated as the employer.

(3) Participant

The term "participant" means an individual who is eligible to defer compensation under the plan.

(4) Beneficiary

The term "beneficiary" means a beneficiary of the participant, his estate, or any other person whose interest in the plan is derived from the participant.

(5) Includible compensation

The term "includible compensation" has the meaning given to the term "participant's compensation" by section 415(c)(3).

(6) Compensation taken into account at present value

Compensation shall be taken into account at its present value.

(7) Community property laws

The amount of includible compensation shall be determined without regard to any community property laws.

(8) Income attributable

Gains from the disposition of property shall be treated as income attributable to such property.

(9) Benefits of tax exempt organization plans not treated as made available by reason of certain elections, etc.

In the case of an eligible deferred compensation plan of an employer described in subsection (e)(1)(B)—

(A) Total amount payable is dollar limit or less

The total amount payable to a participant under the plan shall not be treated as made available merely because the participant may elect to receive such amount (or the plan may distribute such amount without the participant's consent) if—

(i) the portion of such amount which is not attributable to rollover contributions (as defined in section 411(a)(11)(D)) does not exceed the dollar limit under section 411(a)(11)(A), and

(ii) such amount may be distributed only if—

(I) no amount has been deferred under the plan with respect to such participant during the 2-year period ending on the date of the distribution, and

(II) there has been no prior distribution under the plan to such participant to which this subparagraph applied.

A plan shall not be treated as failing to meet the distribution requirements of subsection (d) by reason of a distribution to which this subparagraph applies.

(B) Election to defer commencement of distributions

The total amount payable to a participant under the plan shall not be treated as made available merely because the participant may elect to defer commencement of distributions under the plan if—

(i) such election is made after amounts may be available under the plan in accordance with subsection (d)(1)(A) and before commencement of such distributions, and

(ii) the participant may make only 1 such election.

(10) Transfers between plans

A participant shall not be required to include in gross income any portion of the entire amount payable to such participant solely by reason of the transfer of such portion from 1 eligible deferred compensation plan to another eligible deferred compensation plan.

(11) Certain plans excluded

(A) In general

The following plans shall be treated as not providing for the deferral of compensation:

(i) Any bona fide vacation leave, sick leave, compensatory time, severance pay, disability pay, or death benefit plan.

(ii) Any plan paying solely length of service awards to bona fide volunteers (or their beneficiaries) on account of qualified services performed by such volunteers.

(B) Special rules applicable to length of service award plans

(i) Bona fide volunteer

An individual shall be treated as a bona fide volunteer for purposes of subparagraph (A)(ii) if the only compensation received by such individual for performing qualified services is in the form of—

(I) reimbursement for (or a reasonable allowance for) reasonable expenses incurred in the performance of such services, or

(II) reasonable benefits (including length of service awards), and nominal fees for such services, customarily paid by eligible employers in connection with the performance of such services by volunteers.

(ii) Limitation on accruals

A plan shall not be treated as described in subparagraph (A)(ii) if the aggregate amount of length of service awards accruing with respect to any year of service for any bona fide volunteer exceeds $3,000.

(C) Qualified services

For purposes of this paragraph, the term "qualified services" means fire fighting and prevention services, emergency medical services, and ambulance services.

(D) Certain voluntary early retirement incentive plans

(i) In general

If an applicable voluntary early retirement incentive plan—

(I) makes payments or supplements as an early retirement benefit, a retirement-type subsidy, or a benefit described in the last sentence of section 411(a)(9), and

(II) such payments or supplements are made in coordination with a defined benefit plan

which is described in section 401(a) and includes a trust exempt from tax under section 501(a) and which is maintained by an eligible employer described in paragraph (1)(A) or by an education association described in clause (ii)(II),

such applicable plan shall be treated for purposes of subparagraph (A)(i) as a bona fide severance pay plan with respect to such payments or supplements to the extent such payments or supplements could otherwise have been provided under such defined benefit plan (determined as if section 411 applied to such defined benefit plan).

(ii) Applicable voluntary early retirement incentive plan

For purposes of this subparagraph, the term "applicable voluntary early retirement incentive plan" means a voluntary early retirement incentive plan maintained by—

(I) a local educational agency (as defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801)), or

(II) an education association which principally represents employees of 1 or more agencies described in subclause (I) and which is described in section 501(c)(5) or (6) and exempt from tax under section 501(a).

(12) Exception for nonelective deferred compensation of nonemployees

(A) In general

This section shall not apply to nonelective deferred compensation attributable to services not performed as an employee.

(B) Nonelective deferred compensation

For purposes of subparagraph (A), deferred compensation shall be treated as nonelective only if all individuals (other than those who have not satisfied any applicable initial service requirement) with the same relationship to the payor are covered under the same plan with no individual variations or options under the plan.

(13) Special rule for churches

The term "eligible employer" shall not include a church (as defined in section 3121(w)(3)(A)) or qualified church-controlled organization (as defined in section 3121(w)(3)(B)).

(14) Treatment of qualified governmental excess benefit arrangements

Subsections (b)(2) and (c)(1) shall not apply to any qualified governmental excess benefit arrangement (as defined in section 415(m)(3)), and benefits provided under such an arrangement shall not be taken into account in determining whether any other plan is an eligible deferred compensation plan.

(15) Applicable dollar amount

(A) In general

The applicable dollar amount shall be the amount determined in accordance with the following table:

For taxable years beginning in calendar year:	The applicable dollar amount:
2002	$11,000
2003	$12,000
2004	$13,000
2005	$14,000
2006 or thereafter	$15,000.

(B) Cost-of-living adjustments

In the case of taxable years beginning after December 31, 2006, the Secretary shall adjust the $15,000 amount under subparagraph (A) at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter beginning July 1, 2005, and any increase under this paragraph which is not a multiple of $500 shall be rounded to the next lowest multiple of $500.

(16) Rollover amounts

(A) General rule

In the case of an eligible deferred compensation plan established and maintained by an employer described in subsection (e)(1)(A), if—

(i) any portion of the balance to the credit of an employee in such plan is paid to such employee in an eligible rollover distribution (within the meaning of section 402(c)(4)),

(ii) the employee transfers any portion of the property such employee receives in such distribution to an eligible retirement plan described in section 402(c)(8)(B), and

(iii) in the case of a distribution of property other than money, the amount so transferred consists of the property distributed,

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

(B) Certain rules made applicable

The rules of paragraphs (2) through (7), (9), and (11) of section 402(c) and section 402(f) shall apply for purposes of subparagraph (A).

(C) Reporting

Rollovers under this paragraph shall be reported to the Secretary in the same manner as rollovers from qualified retirement plans (as defined in section 4974(c)).

(17) Trustee-to-trustee transfers to purchase permissive service credit

No amount shall be includible in gross income by reason of a direct trustee-to-trustee transfer to a defined benefit governmental plan (as defined in section 414(d)) if such transfer is—

(A) for the purchase of permissive service credit (as defined in section 415(n)(3)(A)) under such plan, or

(B) a repayment to which section 415 does not apply by reason of subsection (k)(3) thereof.

(18) Coordination with catch-up contributions for individuals age 50 or older

In the case of an individual who is an eligible participant (as defined by section 414(v)) and who is a participant in an eligible deferred compensation plan of an employer described in paragraph (1)(A), subsections (b)(3) and (c) shall be applied by substituting for the amount otherwise determined under the applicable subsection the greater of—

(A) the sum of—

(i) the plan ceiling established for purposes of subsection (b)(2) (without regard to subsection (b)(3)), plus

(ii) the applicable dollar amount for the taxable year determined under section 414(v)(2)(B)(i), or

(B) the amount determined under the applicable subsection (without regard to this paragraph).

(f) Tax treatment of participants where plan or arrangement of employer is not eligible

(1) In general

In the case of a plan of an eligible employer providing for a deferral of compensation, if such plan is not an eligible deferred compensation plan, then—

(A) the compensation shall be included in the gross income of the participant or beneficiary

for the 1st taxable year in which there is no substantial risk of forfeiture of the rights to such compensation, and

(B) the tax treatment of any amount made available under the plan to a participant or beneficiary shall be determined under section 72 (relating to annuities, etc.).

(2) Exceptions

Paragraph (1) shall not apply to—

(A) a plan described in section 401(a) which includes a trust exempt from tax under section 501(a),

(B) an annuity plan or contract described in section 403,

(C) that portion of any plan which consists of a transfer of property described in section 83,

(D) that portion of any plan which consists of a trust to which section 402(b) applies,

(E) a qualified governmental excess benefit arrangement described in section 415(m), and

(F) that portion of any applicable employment retention plan described in paragraph (4) with respect to any participant.

(3) Definitions

For purposes of this subsection—

(A) Plan includes arrangements, etc.

The term "plan" includes any agreement or arrangement.

(B) Substantial risk of forfeiture

The rights of a person to compensation are subject to a substantial risk of forfeiture if such person's rights to such compensation are conditioned upon the future performance of substantial services by any individual.

(4) Employment retention plans

For purposes of paragraph (2)(F)—

(A) In general

The portion of an applicable employment retention plan described in this paragraph with respect to any participant is that portion of the plan which provides benefits payable to the participant not in excess of twice the applicable dollar limit determined under subsection (e)(15).

(B) Other rules

(i) Limitation

Paragraph (2)(F) shall only apply to the portion of the plan described in subparagraph (A) for years preceding the year in which such portion is paid or otherwise made available to the participant.

(ii) Treatment

A plan shall not be treated for purposes of this title as providing for the deferral of compensation for any year with respect to the portion of the plan described in subparagraph (A).

(C) Applicable employment retention plan

The term "applicable employment retention plan" means an employment retention plan maintained by—

(i) a local educational agency (as defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801),[1] or

(ii) an education association which principally represents employees of 1 or more agencies described in clause (i) and which is described in section 501(c)(5) or (6) and exempt from taxation under section 501(a).

(D) Employment retention plan

The term "employment retention plan" means a plan to pay, upon termination of employment, compensation to an employee of a local educational agency or education association described in subparagraph (C) for purposes of—

(i) retaining the services of the employee, or

(ii) rewarding such employee for the employee's service with 1 or more such agencies or associations.

(g) Governmental plans must maintain set-asides for exclusive benefit of participants

(1) In general

A plan maintained by an eligible employer described in subsection (e)(1)(A) shall not be treated as an eligible deferred compensation plan unless all assets and income of the plan described in subsection (b)(6) are held in trust for the exclusive benefit of participants and their beneficiaries.

(2) Taxability of trusts and participants

For purposes of this title—

(A) a trust described in paragraph (1) shall be treated as an organization exempt from taxation under section 501(a), and

(B) notwithstanding any other provision of this title, amounts in the trust shall be includible in the gross income of participants and beneficiaries only to the extent, and at the time, provided in this section.

(3) Custodial accounts and contracts

For purposes of this subsection, custodial accounts and contracts described in section 401(f) shall be treated as trusts under rules similar to the rules under section 401(f).

(4) Death benefits under USERRA-qualified active military service

A plan described in paragraph (1) shall not be treated as an eligible deferred compensation plan unless such plan meets the requirements of section 401(a)(37).

(Added Pub. L. 95–600, title I, §131(a), Nov. 6, 1978, 92 Stat. 2779; amended Pub. L. 96–222, title I, §101(a)(4), Apr. 1, 1980, 94 Stat. 196; Pub. L. 98–369, div. A, title IV, §491(d)(33), July 18, 1984, 98 Stat. 851; Pub. L. 99–514, title XI, §1107(a), Oct. 22, 1986, 100 Stat. 2426; Pub. L. 100–647, title I, §1011(e)(1), (2), (9), (10), title VI, §§6064(a)–(c), 6071(c), Nov. 10, 1988, 102 Stat. 3460, 3461, 3700, 3701, 3705; Pub. L. 101–239, title VII, §§7811(g)(4), (5), 7816(j), Dec. 19, 1989, 103 Stat. 2409, 2421; Pub. L. 102–318, title V, §521(b)(26), July 3, 1992, 106 Stat. 312; Pub. L. 104–188, title I, §§1421(b)(3)(C), 1444(b)(2), (3), 1447(a), (b), 1448(a), (b), 1458(a), Aug. 20, 1996, 110 Stat. 1796, 1810, 1812, 1813, 1819; Pub. L. 105–34, title X, §1071(a)(2), Aug. 5, 1997, 111 Stat. 948; Pub. L. 107–16, title VI, §§611(d)(3)(B), (e), 615(a), 632(c)(1), 641(a)(1)(A)–(C), 646(a)(3), 647(b), 648(b), 649(a), (b), June 7, 2001, 115 Stat. 98, 102, 115, 118, 119, 126–128; Pub. L. 107–147, title IV, §411(o)(9), (p)(5), Mar. 9, 2002, 116 Stat. 49, 51; Pub. L. 109–280, title VIII, §§829(a)(4), 845(b)(3), title XI, §1104(a)(1), (b), Aug. 17, 2006, 120 Stat. 1002, 1015, 1058, 1059; Pub. L. 110–245, title I, §104(c)(3), June 17, 2008, 122 Stat. 1627.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table under section 401 of this title.

AMENDMENTS

2008—Subsec. (g)(4). Pub. L. 110–245 added par. (4).

2006—Subsec. (a)(3). Pub. L. 109–280, §845(b)(3), added par. (3).

Subsec. (e)(11)(D). Pub. L. 109–280, §1104(a)(1), added subpar. (D).

Subsec. (e)(16)(B). Pub. L. 109–280, §829(a)(4), substituted ", (9), and (11)" for "and (9)".

Subsec. (f)(2)(F). Pub. L. 109–280, §1104(b)(1), added subpar. (F).

Subsec. (f)(4). Pub. L. 109–280, §1104(b)(2), added par. (4).

2002—Subsec. (e)(5). Pub. L. 107–147, §411(p)(5), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "The term 'includible compensation' means compensation

for service performed for the employer which (taking into account the provisions of this section and other provisions of this chapter) is currently includible in gross income."

Subsec. (e)(18). Pub. L. 107–147, §411(o)(9), added par. (18).

2001—Subsec. (a). Pub. L. 107–16, §649(b)(1), reenacted heading without change and amended text of subsec. (a) generally. Prior to amendment, text read as follows: "In the case of a participant in an eligible deferred compensation plan, any amount of compensation deferred under the plan, and any income attributable to the amounts so deferred, shall be includible in gross income only for the taxable year in which such compensation or other income is paid or otherwise made available to the participant or other beneficiary."

Subsec. (b)(2). Pub. L. 107–16, §641(a)(1)(B), inserted "(other than rollover amounts)" after "taxable year" in introductory provisions.

Subsec. (b)(2)(A). Pub. L. 107–16, §611(e)(1)(A), substituted "the applicable dollar amount" for "$7,500".

Subsec. (b)(2)(B). Pub. L. 107–16, §632(c)(1), substituted "100 percent" for "331/3 percent".

Subsec. (b)(3)(A). Pub. L. 107–16, §611(e)(1)(B), substituted "twice the dollar amount in effect under subsection (b)(2)(A)" for "$15,000".

Subsec. (c). Pub. L. 107–16, §615(a), amended heading and text of subsec. (c) generally, substituting present provisions for provisions which stated that the maximum amount of compensation that an individual could defer under subsec. (a) during any taxable year could not exceed the applicable dollar amount, as modified by any adjustment provided under subsec. (b)(3), and provided for coordination with certain other deferrals.

Subsec. (c)(1). Pub. L. 107–16, §611(e)(1)(A), substituted "the applicable dollar amount" for "$7,500".

Subsec. (c)(2). Pub. L. 107–16, §611(d)(3)(B), substituted "402(g)(7)(A)(iii)" for "402(g)(8)(A)(iii)" in concluding provisions.

Subsec. (d)(1). Pub. L. 107–16, §641(a)(1)(C), added subpar. (C) and concluding provisions.

Subsec. (d)(1)(A)(ii). Pub. L. 107–16, §646(a)(3), substituted "has a severance from employment" for "is separated from service".

Subsec. (d)(2). Pub. L. 107–16, §649(a), reenacted heading without change and amended text of par. (2) generally, substituting present provisions for provisions which stated that a plan would meet the minimum distribution requirements of this par. if plan met the requirements of section 401(a)(9), if plan met additional distribution requirements in the case of a deceased participant, and if any distribution payable over a period of more than 1 year would only be made in substantially nonincreasing amounts.

Subsec. (d)(3). Pub. L. 107–16, §649(b)(2)(B), added par. (3).

Subsec. (e)(9). Pub. L. 107–16, §649(b)(2)(A), in heading substituted "Benefits of tax exempt organization plans not treated as made available by reason of certain elections, etc." for "Benefits not treated as made available by reason of certain elections, etc." and inserted introductory provisions.

Subsec. (e)(9)(A)(i). Pub. L. 107–16, §648(b), substituted "the portion of such amount which is not attributable to rollover contributions (as defined in section 411(a)(11)(D))" for "such amount".

Subsec. (e)(15). Pub. L. 107–16, §611(e)(2), amended heading and text of par. (15) generally. Prior to amendment, text read as follows: "The Secretary shall adjust the $7,500 amount specified in subsections (b)(2) and (c)(1) at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter ending September 30, 1994, and any increase under this paragraph which is not a multiple of $500 shall be rounded to the next lowest multiple of $500."

Subsec. (e)(16). Pub. L. 107–16, §641(a)(1)(A), added par. (16).

Subsec. (e)(17). Pub. L. 107–16, §647(b), added par. (17).

1997—Subsec. (e)(9)(A). Pub. L. 105–34 substituted "dollar limit" for "$3,500" in heading and "the dollar limit under section 411(a)(11)(A)" for "$3,500" in cl. (i).

1996—Subsec. (b)(6). Pub. L. 104–188, §1448(b), inserted "except as provided in subsection (g)," before "which provides that" in introductory provisions.

Subsec. (c)(2)(B)(i). Pub. L. 104–188, §1421(b)(3)(C), substituted "section 402(h)(1)(B) or (k)" for "section 402(h)(1)(B)".

Subsec. (e)(9). Pub. L. 104–188, §1447(a), amended par. (9) generally. Prior to amendment, par. (9) read as follows: "BENEFITS NOT TREATED AS MADE AVAILABLE BY REASON OF CERTAIN ELECTIONS .—If—

"(A) the total amount payable to a participant under the plan does not exceed $3,500, and

"(B) no additional amounts may be deferred under the plan with respect to the participant,

the amount payable to the participant under the plan shall not be treated as made available merely because such participant may elect to receive a lump sum payable after separation from service and within 60 days of the election."

Subsec. (e)(11). Pub. L. 104–188, §1458(a), amended par. (11) generally. Prior to amendment, par. (11) read as follows: "CERTAIN PLANS EXCEPTED.—Any bona fide vacation leave, sick leave, compensatory time, severance pay, disability pay, or death benefit plan shall be treated as a plan not providing for the deferral of compensation."

Subsec. (e)(14). Pub. L. 104–188, §1444(b)(2), added par. (14).

Subsec. (e)(15). Pub. L. 104–188, §1447(b), added par. (15).

Subsec. (f)(2)(E). Pub. L. 104–188, §1444(b)(3), added subpar. (E).

Subsec. (g). Pub. L. 104–188, §1448(a), added subsec. (g).

1992—Subsec. (c)(2)(B)(i). Pub. L. 102–318 substituted "402(e)(3)" for "402(a)(8)".

1989—Subsec. (d)(1)(A)(iii). Pub. L. 101–239, §7811(g)(4), substituted ", and" for period at end.

Subsec. (d)(2)(B)(i)(I). Pub. L. 101–239, §7811(g)(5), inserted "and" at end.

Subsec. (e)(13). Pub. L. 101–239, §7816(j), substituted "Special rule for churches" for "Exception for church plans" in heading and amended text generally. Prior to amendment, text read as follows: "The term 'eligible deferred compensation plan' shall not include a plan maintained by a church for church employees. For purposes of this paragraph, the term 'church' has the meaning given such term by section 3121(w)(3)(A), including a qualified church-controlled organization (as defined in section 3121(w)(3)(B))."

1988—Subsec. (c)(2). Pub. L. 100–647, §1011(e)(1), struck out "and paragraphs (2) and (3) of subsection (b)" after "of this subsection".

Pub. L. 100–647, §6071(c), substituted "rural cooperative plan" for "rural electric cooperative plan" in last sentence.

Subsec. (d)(1)(A). Pub. L. 100–647, §1011(e)(2), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "the plan provides that amounts payable under the plan will be made available to participants or other beneficiaries not earlier than when the participant is separated from service with the employer or is faced with an unforeseeable emergency (determined in the manner prescribed by the Secretary by regulation), and".

Subsec. (d)(2)(B)(i)(I). Pub. L. 100–647, §1011(e)(10), amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: "at least 2/3 of the total amount payable with respect to the participant will be paid during the life expectancy of such participant (determined as of the commencement of the distribution), and".

Subsec. (d)(10). Pub. L. 100–647, §6064(a)(2), amended subsec. (d), as in effect on the day before the date of enactment of Pub. L. 99–514 (Oct. 22, 1986), by adding par. (10) reading as follows: "CERTAIN PLANS EXCEPTED.—Any bona fide vacation leave, sick leave, compensatory time, severance pay, disability pay, or death benefit plan shall be treated as a plan not providing for the deferral of compensation."

Subsec. (d)(11). Pub. L. 100–647, §6064(b)(2), amended subsec. (d), as in effect on the day before the date of enactment of Pub. L. 99–514 (Oct. 22, 1986), by adding par. (11) reading as follows: "EXCEPTION FOR NONELECTIVE DEFERRED COMPENSATION OF NONEMPLOYEES.—

"(A) IN GENERAL.—This section shall not apply to nonelective deferred compensation attributable to services not performed as an employee.

"(B) NONELECTIVE DEFERRED COMPENSATION.—For purposes of subparagraph (a), deferred compensation shall be treated as nonelective only if all individuals (other than those who have not satisfied any applicable initial service requirement) with the same relationship to the payor are covered under the same plan with no individual variations or options under the plan."

Subsec. (e)(9). Pub. L. 100–647, §1011(e)(9), inserted "after separation from service and" after "lump sum payable" in concluding provisions.

Subsec. (e)(11). Pub. L. 100–647, §6064(a)(1), added par. (11).

Subsec. (e)(12). Pub. L. 100–647, §6064(b)(1), added par. (12).

Subsec. (e)(13). Pub. L. 100–647, §6064(c), added par. (13).

1986—Pub. L. 99–514 amended section generally, substituting "Deferred compensation plans of State and local governments and tax-exempt organizations" for "Deferred compensation plans with respect to service for State and local governments" as section catchline and revising and restating as subsecs. (a) to (c), (e), and (f) provisions formerly contained in subsecs. (a) to (e) and adding provisions comprising subsec. (d).

1984—Subsec. (e)(2). Pub. L. 98–369, §491(d)(33), struck out subpar. (C) which provided that par. (1) of this subsection not apply to a qualified bond purchase plan described in section 405(a), and redesignated subpars. (D) and (E) as (C) and (D), respectively.

1980—Subsec. (d)(9)(B). Pub. L. 96–222 in cl. (i) struck out "described in section 501(c)(12)" after "any organization" and substituted "electric service on a mutual or cooperative basis" for "electric service" and in cl. (ii) substituted "paragraph (4) or (6) of section 501(a)" for "section 501(c)(6)" and "at least 80 percent of the members" for "all the members".

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–245 applicable with respect to deaths and disabilities occurring on or after Jan. 1, 2007, see section 104(d)(1) of Pub. L. 110–245, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 829(a)(4) of Pub. L. 109–280 applicable to distributions after Dec. 31, 2006, see section 829(b) of Pub. L. 109–280, set out as a note under section 402 of this title.

Amendment by section 845(b)(3) of Pub. L. 109–280 applicable to distributions in taxable years beginning after Dec. 31, 2006, see section 845(c) of Pub. L. 109–280, set out as a note under section 402 of this title.

Pub. L. 109–280, title XI, §1104(d), Aug. 17, 2006, 120 Stat. 1060, as amended by Pub. L. 110–458, title I, §111(a), Dec. 23, 2008, 122 Stat. 5113, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and sections 623 and 1002 of Title 29, Labor] shall take effect on the date of the enactment of this Act [Aug. 17, 2006].

"(2) TAX AMENDMENTS.—The amendments made by subsections (a)(1) and (b) [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Aug. 17, 2006].

"(3) ERISA AMENDMENTS.—The amendment made by subsection (c) [amending section 1002 of Title 29, Labor] shall apply to plan years ending after the date of the enactment of this Act [Aug. 17, 2006].

"(4) CONSTRUCTION.—Nothing in the amendments made by this section [amending this section and sections 623 and 1002 of Title 29, Labor] shall alter or affect the construction of the Internal Revenue Code of 1986, the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq.], or the Age Discrimination in Employment Act of 1967 [29 U.S.C. 621 et seq.] as applied to any plan, arrangement, or conduct to which such amendments do not apply."

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 611(d)(3)(B), (e) of Pub. L. 107–16 applicable to years beginning after Dec. 31, 2001, see section 611(i)(1) of Pub. L. 107–16, set out as a note under section 415 of this title.

Pub. L. 107–16, title VI, §615(b), June 7, 2001, 115 Stat. 102, provided that: "The amendment made by subsection (a) [amending this section] shall apply to years beginning after December 31, 2001."

Pub. L. 107–16, title VI, §632(c)(2), June 7, 2001, 115 Stat. 115, provided that: "The amendment made by this subsection [amending this section] shall apply to years beginning after December 31, 2001."

Amendment by section 641(a)(1)(A)–(C) of Pub. L. 107–16 applicable to distributions after Dec. 31, 2001, see section 641(f)(1) of Pub. L. 107–16, set out as a note under section 402 of this title.

Amendment by section 646(a)(3) of Pub. L. 107–16 applicable to distributions after Dec. 31, 2001, see section 646(b) of Pub. L. 107–16, set out as a note under section 401 of this title.

Amendment by section 647(b) of Pub. L. 107–16 applicable to trustee-to-trustee transfers after Dec. 31, 2001, see section 647(c) of Pub. L. 107–16, set out as a note under section 403 of this title.

Amendment by section 648(b) of Pub. L. 107–16 applicable to distributions after Dec. 31, 2001, see section 648(c) of Pub. L. 107–16, set out as a note under section 411 of this title.

Pub. L. 107–16, title VI, §649(c), June 7, 2001, 115 Stat. 128, provided that: "The amendments made by subsections (a) and (b) [amending this section] shall apply to distributions after December 31, 2001."

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to plan years beginning after Aug. 5, 1997, see section 1071(c) of Pub. L. 105–34, set out as a note under section 411 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1421(b)(3)(C) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1421(e) of Pub. L. 104–188, set out as a note under section 72 of this title.

Amendment by section 1444(b)(2), (3) of Pub. L. 104–188 applicable to years beginning after Dec. 31, 1994, see section 1444(e) of Pub. L. 104–188, set out as a note under section 415 of this title.

Pub. L. 104–188, title I, §1447(c), Aug. 20, 1996, 110 Stat. 1812, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1996."

Pub. L. 104–188, title I, §1448(c), Aug. 20, 1996, 110 Stat. 1813, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section

[amending this section] shall apply to assets and income described in section 457(b)(6) of the Internal Revenue Code of 1986 held by a plan on and after the date of the enactment of this Act [Aug. 20, 1996].

"(2) TRANSITION RULE.—In the case of a plan in existence on the date of the enactment of this Act, a trust need not be established by reason of the amendments made by this section before January 1, 1999."

Pub. L. 104–188, title I, §1458(c)(1), Aug. 20, 1996, 110 Stat. 1820, provided that: "The amendment made by subsection (a) [amending this section] shall apply to accruals of length of service awards after December 31, 1996."

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102–318, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1011(e)(9), Nov. 10, 1988, 102 Stat. 3461, provided that the amendment made by that section is effective for years beginning after Dec. 31, 1988.

Amendment by section 1011(e)(1), (2), (10) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title VI, §6064(d), Nov. 10, 1988, 102 Stat. 3701, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1987.

"(2) EXCEPTION FOR CERTAIN COLLECTIVELY BARGAINED PLANS.—

"(A) IN GENERAL.—Section 457 of the 1986 Code (as in effect before and after the amendments made by section 1107 of the Reform Act [Pub. L. 99–514]) shall not apply to nonelective deferred compensation provided under a plan in existence on December 31, 1987, and maintained pursuant to a collective bargaining agreement.

"(B) NONELECTIVE PLAN.—For purposes of this paragraph, a nonelective plan is a plan which covers a broad group of employees and under which the covered employees earn nonelective deferred compensation under a definite, fixed and uniform benefit formula.

"(C) TERMINATION.—This paragraph shall cease to apply to a plan as of the effective date of the first material modification of the plan agreed to after December 31, 1987.

"(3) TREATMENT OF CERTAIN NONELECTIVE DEFERRED COMPENSATION.—Section 457 of the 1986 Code shall not apply to amounts deferred under a nonelective deferred compensation plan maintained by an eligible employer described in section 457(e)(1)(A) of the 1986 Code (as in effect after the Reform Act [Pub. L. 99–514])—

"(A) if such amounts were deferred from periods before July 14, 1988, or

"(B) if—

"(i) such amounts are deferred from periods on or after such date pursuant to an agreement which—

"(I) was in writing on such date, and

"(II) on such date provides for a deferral for each taxable year covered by the agreement of a fixed amount or of an amount determined pursuant to a fixed formula, and

"(ii) the individual with respect to whom the deferral is made was covered under such agreement on such date.

Subparagraph (B) shall not apply to any taxable year ending after the date on which any modification of the amount or formula described in subparagraph (B)(i)(II) agreed to in writing before January 1, 1989, is effective. The preceding sentence shall not apply to a modification agreed to in writing before January 1, 1989, which does not increase any benefit of a participant. Amounts described in the first sentence of this paragraph shall be taken into account for purposes of applying section 457 of the 1986 Code to other amounts deferred under any eligible deferred compensation plan.

"(4) STUDY.—The Secretary of the Treasury or his delegate shall conduct a study on the tax treatment of deferred compensation paid by State and local governments and tax-exempt organizations (including deferred compensation paid to independent contractors). Not later than January 1, 1990, the Secretary shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the

Senate a report on the study conducted under this paragraph together with such recommendations as he may deem advisable."

[The due date for the report on the study referred to in section 6064(d)(4) of Pub. L. 100–647, set out above, extended to Jan. 1, 1992, by Pub. L. 101–508, title XI, §11831(b), Nov. 5, 1990, 104 Stat. 1388–559.]

Amendment by section 6071(c) of Pub. L. 100–647 applicable to taxable years beginning after Nov. 10, 1988, see section 6071(d) of Pub. L. 100–647, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XI, §1107(c), Oct. 22, 1986, 100 Stat. 2430, as amended by Pub. L. 100–647, title I, §1011(e)(6), (7), Nov. 10, 1988, 102 Stat. 3461, provided that:

"(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1988.

"(2) TRANSFERS AND CASH-OUTS.—Paragraphs (9) and (10) of section 457(e) of the Internal Revenue Code of 1986 (as amended by this section) shall apply to taxable years beginning after December 31, 1986.

"(3) APPLICATION TO TAX-EXEMPT ORGANIZATIONS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the application of section 457 of the Internal Revenue Code of 1986 by reason of the amendments made by this section to deferred compensation plans established and maintained by organizations exempt from tax shall apply to taxable years beginning after December 31, 1986.

"(B) EXISTING DEFERRALS AND ARRANGEMENTS.—Section 457 of such Code shall not apply to amounts deferred under a plan described in subparagraph (A) which—

"(i) were deferred from taxable years beginning before January 1, 1987, or

"(ii) are deferred from taxable years beginning after December 31, 1986, pursuant to an agreement which—

"(I) was in writing on August 16, 1986,

"(II) on such date provides for a deferral for each taxable year covered by the agreement of a fixed amount or of an amount determined pursuant to a fixed formula.

Clause (ii) shall not apply to any taxable year ending after the date on which any modification to the amount or formula described in subclause (II) is effective. Amounts described in the first sentence shall be taken into account for applying section 457 to other amounts deferred under any deferred compensation plan. This subparagraph shall only apply to individuals who were covered under the plan and agreement on August 16, 1986.

"(4) DEFERRED COMPENSATION PLANS FOR STATE JUDGES.—The amendments made by this section shall not apply to any qualified State judicial plan (as defined in section 131(c)(3)(B) of the Revenue Act of 1978 [set out as a note below] as amended by section 252 of the Tax Equity and Fiscal Responsibility Act of 1982).

"(5) SPECIAL RULE FOR CERTAIN DEFERRED COMPENSATION PLANS.—The amendments made by this section shall not apply—

"(A) to employees on August 16, 1986, of a nonprofit corporation organized under the laws of the State of Alabama maintaining a deferred compensation plan with respect to which the Internal Revenue Service issued a ruling dated March 17, 1976, that the plan would not affect the tax-exempt status of the corporation, or

"(B) to to [sic] individuals eligible to participate on August 16, 1986, in a deferred compensation plan with respect to which a letter dated November 6, 1975, submitted the original plan to the Internal Revenue Service, an amendment was submitted on November 19, 1975, and the Internal Revenue Service responded with a letter dated December 24, 1975,

but only with respect to deferrals under such plan."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE

Pub. L. 95–600, title I, §131(c)(1), Nov. 6, 1978, 92 Stat. 2782, provided that: "The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1978."

ELIGIBILITY FOR PARTICIPATION IN RETIREMENT PLANS

Pub. L. 109–280, title VIII, §825, Aug. 17, 2006, 120 Stat. 999, provided that: "An individual shall not be precluded from participating in an eligible deferred compensation plan by reason of having received a distribution under section 457(e)(9) of the Internal Revenue Code of 1986, as in effect prior to the enactment of the Small Business Job Protection Act of 1996 [Pub. L. 104–188, Aug. 20, 1996]."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§1401–1465] of title I of Pub. L. 104–188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1100–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TRANSITIONAL RULES

Pub. L. 95–600, title I, §131(c)(2), Nov. 6, 1978, 92 Stat. 2782, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(A) IN GENERAL.—In the case of any taxable year beginning after December 31, 1978, and before January 1, 1982—

"(i) any amount of compensation deferred under a plan of a State providing for a deferral of compensation (other than a plan described in section 457(e)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]), and any income attributable to the amounts so deferred, shall be includible in gross income only for the taxable year in which such compensation or other income is paid or otherwise made available to the participant or other beneficiary, but

"(ii) the maximum amount of the compensation of any one individual which may be excluded from gross income by reason of clause (i) and by reason of section 457(a) of such Code during any such taxable year shall not exceed the lesser of—

"(I) $7,500, or

"(II) 331/3 percent of the participant's includible compensation.

"(B) APPLICATION OF CATCH-UP PROVISIONS IN CERTAIN CASES.—If, in the case of any participant for any taxable year, all of the plans are eligible State deferred compensation plans, then clause (ii) of subparagraph (A) of this paragraph shall be applied with the modification provided by paragraph (3) of section 457(b) of such Code.

"(C) APPLICATIONS OF CERTAIN COORDINATION PROVISIONS.—In applying clause (ii) of subparagraph (A) of this paragraph and section 403(b)(2)(A)(ii) of such Code, rules similar to the rules of section 457(c)(2) of such Code shall apply.

"(D) MEANING OF TERMS.—Except as otherwise provided in this paragraph, terms used in this paragraph shall have the same meaning as when used in section 457 of such Code."

DEFERRED COMPENSATION PLANS FOR STATE JUDGES

Pub. L. 95–600, title I, §131(c)(3), as added by Pub. L. 97–248, title II, §252, Sept. 3, 1982, 96 Stat. 532, and amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(A) IN GENERAL.—The amendments made by this section [enacting this section and provisions set out as notes under this section] shall not apply to any qualified State judicial plan.

"(B) QUALIFIED STATE JUDICIAL PLAN.—For purposes of subparagraph (A), the term 'qualified State judicial plan' means any retirement plan of a State for the exclusive benefit of judges or their beneficiaries if—

"(i) such plan has been continuously in existence since December 31, 1978,

"(ii) under such plan, all judges eligible to benefit under the plan—

"(I) are required to participate, and

"(II) are required to contribute the same fixed percentage of their basic or regular rate of compensation as judge,

"(iii) under such plan, no judge has an option as to contributions or benefits the exercise of which would affect the amount of includible compensation,

"(iv) the retirement payments of a judge under the plan are a percentage of the compensation of judges of that State holding similar positions, and

"(v) the plan during any year does not pay benefits with respect to any participant which exceed the limitations of section 415(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]."

[1] So in original. A second closing parenthesis probably should precede the comma.

§457A. Nonqualified deferred compensation from certain tax indifferent parties

(a) In general

Any compensation which is deferred under a nonqualified deferred compensation plan of a nonqualified entity shall be includible in gross income when there is no substantial risk of forfeiture of the rights to such compensation.

(b) Nonqualified entity

For purposes of this section, the term "nonqualified entity" means—

(1) any foreign corporation unless substantially all of its income is—

(A) effectively connected with the conduct of a trade or business in the United States, or

(B) subject to a comprehensive foreign income tax, and

(2) any partnership unless substantially all of its income is allocated to persons other than—

(A) foreign persons with respect to whom such income is not subject to a comprehensive foreign income tax, and

(B) organizations which are exempt from tax under this title.

(c) Determinability of amounts of compensation

(1) In general

If the amount of any compensation is not determinable at the time that such compensation is otherwise includible in gross income under subsection (a)—

(A) such amount shall be so includible in gross income when determinable, and

(B) the tax imposed under this chapter for the taxable year in which such compensation is includible in gross income shall be increased by the sum of—

(i) the amount of interest determined under paragraph (2), and

(ii) an amount equal to 20 percent of the amount of such compensation.

(2) Interest

For purposes of paragraph (1)(B)(i), the interest determined under this paragraph for any taxable year is the amount of interest at the underpayment rate under section 6621 plus 1 percentage point on the underpayments that would have occurred had the deferred compensation been includible in gross income for the taxable year in which first deferred or, if later, the first taxable year in which such deferred compensation is not subject to a substantial risk of forfeiture.

(d) Other definitions and special rules

For purposes of this section—

(1) Substantial risk of forfeiture

(A) In general

The rights of a person to compensation shall be treated as subject to a substantial risk of forfeiture only if such person's rights to such compensation are conditioned upon the future performance of substantial services by any individual.

(B) Exception for compensation based on gain recognized on an investment asset

(i) In general

To the extent provided in regulations prescribed by the Secretary, if compensation is determined solely by reference to the amount of gain recognized on the disposition of an investment asset, such compensation shall be treated as subject to a substantial risk of forfeiture until the date of such disposition.

(ii) Investment asset

For purposes of clause (i), the term "investment asset" means any single asset (other than an investment fund or similar entity)—

(I) acquired directly by an investment fund or similar entity,

(II) with respect to which such entity does not (nor does any person related to such entity) participate in the active management of such asset (or if such asset is an interest in an entity, in the active management of the activities of such entity), and

(III) substantially all of any gain on the disposition of which (other than such deferred compensation) is allocated to investors in such entity.

(iii) Coordination with special rule

Paragraph (3)(B) shall not apply to any compensation to which clause (i) applies.

(2) Comprehensive foreign income tax

The term "comprehensive foreign income tax" means, with respect to any foreign person, the income tax of a foreign country if—

(A) such person is eligible for the benefits of a comprehensive income tax treaty between such foreign country and the United States, or

(B) such person demonstrates to the satisfaction of the Secretary that such foreign country has a comprehensive income tax.

(3) Nonqualified deferred compensation plan

(A) In general

The term "nonqualified deferred compensation plan" has the meaning given such term under section 409A(d), except that such term shall include any plan that provides a right to compensation based on the appreciation in value of a specified number of equity units of the service recipient.

(B) Exception

Compensation shall not be treated as deferred for purposes of this section if the service provider receives payment of such compensation not later than 12 months after the end of the taxable year of the service recipient during which the right to the payment of such compensation is no longer subject to a substantial risk of forfeiture.

(4) Exception for certain compensation with respect to effectively connected income

In the case [1] a foreign corporation with income which is taxable under section 882, this section shall not apply to compensation which, had such compensation had [2] been paid in cash on the date that such compensation ceased to be subject to a substantial risk of forfeiture, would have been deductible by such foreign corporation against such income.

(5) Application of rules

Rules similar to the rules of paragraphs (5) and (6) of section 409A(d) shall apply.

(e) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the

purposes of this section, including regulations disregarding a substantial risk of forfeiture in cases where necessary to carry out the purposes of this section.

(Added Pub. L. 110–343, div. C, title VIII, §801(a), Oct. 3, 2008, 122 Stat. 3929.)

EFFECTIVE DATE

Pub. L. 110–343, div. C, title VIII, §801(d), Oct. 3, 2008, 122 Stat. 3931, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting this section and amending section 26 of this title] shall apply to amounts deferred which are attributable to services performed after December 31, 2008.

"(2) APPLICATION TO EXISTING DEFERRALS.—In the case of any amount deferred to which the amendments made by this section do not apply solely by reason of the fact that the amount is attributable to services performed before January 1, 2009, to the extent such amount is not includible in gross income in a taxable year beginning before 2018, such amounts shall be includible in gross income in the later of—

"(A) the last taxable year beginning before 2018, or

"(B) the taxable year in which there is no substantial risk of forfeiture of the rights to such compensation (determined in the same manner as determined for purposes of section 457A of the Internal Revenue Code of 1986, as added by this section).

"(3) ACCELERATED PAYMENTS.—No later than 120 days after the date of the enactment of this Act [Oct. 3, 2008], the Secretary shall issue guidance providing a limited period of time during which a nonqualified deferred compensation arrangement attributable to services performed on or before December 31, 2008, may, without violating the requirements of section 409A(a) of the Internal Revenue Code of 1986, be amended to conform the date of distribution to the date the amounts are required to be included in income.

"(4) CERTAIN BACK-TO-BACK ARRANGEMENTS.—If the taxpayer is also a service recipient and maintains one or more nonqualified deferred compensation arrangements for its service providers under which any amount is attributable to services performed on or before December 31, 2008, the guidance issued under paragraph (4) shall permit such arrangements to be amended to conform the dates of distribution under such arrangement to the date amounts are required to be included in the income of such taxpayer under this subsection.

"(5) ACCELERATED PAYMENT NOT TREATED AS MATERIAL MODIFICATION.—Any amendment to a nonqualified deferred compensation arrangement made pursuant to paragraph (4) or (5) shall not be treated as a material modification of the arrangement for purposes of section 409A of the Internal Revenue Code of 1986."

[1] So in original. Probably should be followed by "of".

[2] So in original. The word "had" probably should not appear.

§458. Magazines, paperbacks, and records returned after the close of the taxable year

(a) Exclusion from gross income

A taxpayer who is on an accrual method of accounting may elect not to include in the gross income for the taxable year the income attributable to the qualified sale of any magazine, paperback, or record which is returned to the taxpayer before the close of the merchandise return period.

(b) Definitions and special rules

For purposes of this section—

(1) Magazine

The term "magazine" includes any other periodical.

(2) Paperback

The term "paperback" means any book which has a flexible outer cover and the pages of which are affixed directly to such outer cover. Such term does not include a magazine.

(3) Record

The term "record" means a disc, tape, or similar object on which musical, spoken, or other sounds are recorded.

(4) Separate application with respect to magazines, paperbacks, and records

If a taxpayer makes qualified sales of more than one category of merchandise in connection with the same trade or business, this section shall be applied as if the qualified sales of each such category were made in connection with a separate trade or business. For purposes of the preceding sentence, magazines, paperbacks, and records shall each be treated as a separate category of merchandise.

(5) Qualified sale

A sale of a magazine, paperback, or record is a qualified sale if—

(A) at the time of sale, the taxpayer has a legal obligation to adjust the sales price of such magazine, paperback, or record if it is not resold, and

(B) the sales price of such magazine, paperback, or record is adjusted by the taxpayer because of a failure to resell it.

(6) Amount excluded

The amount excluded under this section with respect to any qualified sale shall be the lesser of—

(A) the amount covered by the legal obligation described in paragraph (5)(A), or

(B) the amount of the adjustment agreed to by the taxpayer before the close of the merchandise return period.

(7) Merchandise return period

(A) Except as provided in subparagraph (B), the term "merchandise return period" means, with respect to any taxable year—

(i) in the case of magazines, the period of 2 months and 15 days first occurring after the close of taxable year, or

(ii) in the case of paperbacks and records, the period of 4 months and 15 days first occurring after the close of the taxable year.

(B) The taxpayer may select a shorter period than the applicable period set forth in subparagraph (A).

(C) Any change in the merchandise return period shall be treated as a change in the method of accounting.

(8) Certain evidence may be substituted for physical return of merchandise

Under regulations prescribed by the Secretary, the taxpayer may substitute, for the physical return of magazines, paperbacks, or records required by subsection (a), certification or other evidence that the magazine, paperback, or record has not been resold and will not be resold if such evidence—

(A) is in the possession of the taxpayer at the close of the merchandise return period, and

(B) is satisfactory to the Secretary.

(9) Repurchased [1] by the taxpayer not treated as resale

A repurchase by the taxpayer shall be treated as an adjustment of the sales price rather than as a resale.

(c) Qualified sales to which section applies

(1) Election of benefits

This section shall apply to qualified sales of magazines, paperbacks, or records, as the case may be, if and only if the taxpayer makes an election under this section with respect to the trade or business in connection with which such sales are made. An election under this section may be made without the consent of the Secretary. The election shall be made in such manner as the

Secretary may by regulations prescribed [2] and shall be made for any taxable year not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof).

(2) Scope of election

An election made under this section shall apply to all qualified sales of magazines, paperbacks, or records, as the case may be, made in connection with the trade or business with respect to which the taxpayer has made the election.

(3) Period to which election applies

An election under this section shall be effective for the taxable year for which it is made and for all subsequent taxable years, unless the taxpayer secures the consent of the Secretary to the revocation of such election.

(4) Treatment as method of accounting

Except to the extent inconsistent with the provisions of this section, for purposes of this subtitle, the computation of taxable income under an election made under this section shall be treated as a method of accounting.

(d) 5-year spread of transitional adjustments for magazines

In applying section 481(c) with respect to any election under this section which applies to magazines, the period for taking into account any decrease in taxable income resulting from the application of section 481(a)(2) shall be the taxable year for which the election is made and the 4 succeeding taxable years.

(e) Suspense account for paperbacks and records

(1) In general

In the case of any election under this section which applies to paperbacks or records, in lieu of applying section 481, the taxpayer shall establish a suspense account for the trade or business for the taxable year for which the election is made.

(2) Initial opening balance

The opening balance of the account described in paragraph (1) for the first taxable year to which the election applies shall be the largest dollar amount of returned merchandise which would have been taken into account under this section for any of the 3 immediately preceding taxable years if this section had applied to such preceding 3 taxable years. This paragraph and paragraph (3) shall be applied by taking into account only amounts attributable to the trade or business for which such account is established.

(3) Adjustments in suspense account

At the close of each taxable year the suspense account shall be—

(A) reduced the excess (if any) of—

(i) the opening balance of the suspense account for the taxable year, over

(ii) the amount excluded from gross income for the taxable year under subsection (a), or

(B) increased (but not in excess of the initial opening balance) by the excess (if any) of—

(i) the amount excluded from gross income for the taxable year under subsection (a), over

(ii) the opening balance of the account for the taxable year.

(4) Gross income adjustments

(A) Reductions excluded from gross income

In the case of any reduction under paragraph (3)(A) in the account for the taxable year, an amount equal to such reduction shall be excluded from gross income for such taxable year.

(B) Increases added to gross income

In the case of any increase under paragraph (3)(B) in the account for the taxable year, an amount equal to such increase shall be included in gross income for such taxable year.

If the initial opening balance exceeds the dollar amount of returned merchandise which would have been taken into account under subsection (a) for the taxable year preceding the first taxable year for which the election is effective if this section had applied to such preceding taxable year, then an amount equal to the amount of such excess shall be included in gross income for such first taxable year.

(5) Subchapter C transactions

The application of this subsection with respect to a taxpayer which is a party to any transaction with respect to which there is nonrecognition of gain or loss to any party to the transaction by reason of subchapter C shall be determined under regulations prescribed by the Secretary.

(Added Pub. L. 95–600, title III, §372(a), Nov. 6, 1978, 92 Stat. 2860.)

EFFECTIVE DATE

Pub. L. 95–600, title III, §372(c), Nov. 6, 1978, 92 Stat. 2862, provided that: "The amendments made by this section [enacting this section] shall apply to taxable years beginning after September 30, 1979."

[1] So in original. Probably should be "Repurchase".

[2] So in original. Probably should be "prescribe".

§460. Special rules for long-term contracts

(a) Requirement that percentage of completion method be used

In the case of any long-term contract, the taxable income from such contract shall be determined under the percentage of completion method (as modified by subsection (b)).

(b) Percentage of completion method

(1) Requirements of percentage of completion method

Except as provided in paragraph (3), in the case of any long-term contract with respect to which the percentage of completion method is used—

(A) the percentage of completion shall be determined by comparing costs allocated to the contract under subsection (c) and incurred before the close of the taxable year with the estimated total contract costs, and

(B) upon completion of the contract (or, with respect to any amount properly taken into account after completion of the contract, when such amount is so properly taken into account), the taxpayer shall pay (or shall be entitled to receive) interest computed under the look-back method of paragraph (2).

In the case of any long-term contract with respect to which the percentage of completion method is used, except for purposes of applying the look-back method of paragraph (2), any income under the contract (to the extent not previously includible in gross income) shall be included in gross income for the taxable year following the taxable year in which the contract was completed. For purposes of subtitle F (other than sections 6654 and 6655), any interest required to be paid by the taxpayer under subparagraph (B) shall be treated as an increase in the tax imposed by this chapter for the taxable year in which the contract is completed (or, in the case of interest payable with respect to any amount properly taken into account after completion of the contract, for the taxable year in which the amount is so properly taken into account).

(2) Look-back method

The interest computed under the look-back method of this paragraph shall be determined by—

(A) first [1] allocating income under the contract among taxable years before the year in which the contract is completed on the basis of the actual contract price and costs instead of the

estimated contract price and costs,

(B) second, determining (solely for purposes of computing such interest) the overpayment or underpayment of tax for each taxable year referred to in subparagraph (A) which would result solely from the application of subparagraph (A), and

(C) then using the adjusted overpayment rate (as defined in paragraph (7)), compounded daily, on the overpayment or underpayment determined under subparagraph (B).

For purposes of the preceding sentence, any amount properly taken into account after completion of the contract shall be taken into account by discounting (using the Federal mid-term rate determined under section 1274(d) as of the time such amount was properly taken into account) such amount to its value as of the completion of the contract. The taxpayer may elect with respect to any contract to have the preceding sentence not apply to such contract.

(3) Special rules

(A) Simplified method of cost allocation

In the case of any long-term contract, the Secretary may prescribe a simplified procedure for allocation of costs to such contract in lieu of the method of allocation under subsection (c).

(B) Look-back method not to apply to certain contracts

Paragraph (1)(B) shall not apply to any contract—

(i) the gross price of which (as of the completion of the contract) does not exceed the lesser of—

(I) $1,000,000, or

(II) 1 percent of the average annual gross receipts of the taxpayer for the 3 taxable years preceding the taxable year in which the contract was completed, and

(ii) which is completed within 2 years of the contract commencement date.

For purposes of this subparagraph, rules similar to the rules of subsections (e)(2) and (f)(3) shall apply.

(4) Simplified look-back method for pass-thru entities

(A) In general

In the case of a pass-thru entity—

(i) the look-back method of paragraph (2) shall be applied at the entity level,

(ii) in determining overpayments and underpayments for purposes of applying paragraph (2)(B)—

(I) any increase in the income under the contract for any taxable year by reason of the allocation under paragraph (2)(A) shall be treated as giving rise to an underpayment determined by applying the highest rate for such year to such increase, and

(II) any decrease in such income for any taxable year by reason of such allocation shall be treated as giving rise to an overpayment determined by applying the highest rate for such year to such decrease, and

(iii) any interest required to be paid by the taxpayer under paragraph (2) shall be paid by such entity (and any interest entitled to be received by the taxpayer under paragraph (2) shall be paid to such entity).

(B) Exceptions

(i) Closely held pass-thru entities

This paragraph shall not apply to any closely held pass-thru entity.

(ii) Foreign contracts

This paragraph shall not apply to any contract unless substantially all of the income from

such contract is from sources in the United States.

(C) Other definitions

For purposes of this paragraph—

(i) Highest rate

The term "highest rate" means—

(I) the highest rate of tax specified in section 11, or

(II) if at all times during the year involved more than 50 percent of the interests in the entity are held by individuals directly or through 1 or more other pass-thru entities, the highest rate of tax specified in section 1.

(ii) Pass-thru entity

The term "pass-thru entity" means any—

(I) partnership,

(II) S corporation, or

(III) trust.

(iii) Closely held pass-thru entity

The term "closely held pass-thru entity" means any pass-thru entity if, at any time during any taxable year for which there is income under the contract, 50 percent or more (by value) of the beneficial interests in such entity are held (directly or indirectly) by or for 5 or fewer persons. For purposes of the preceding sentence, rules similar to the constructive ownership rules of section 1563(e) shall apply.

(5) Election to use 10-percent method

(A) General rule

In the case of any long-term contract with respect to which an election under this paragraph is in effect, the 10-percent method shall apply in determining the taxable income from such contract.

(B) 10-percent method

For purposes of this paragraph—

(i) In general

The 10-percent method is the percentage of completion method, modified so that any item which would otherwise be taken into account in computing taxable income with respect to a contract for any taxable year before the 10-percent year is taken into account in the 10-percent year.

(ii) 10-percent year

The term "10-percent year" means the 1st taxable year as of the close of which at least 10 percent of the estimated total contract costs have been incurred.

(C) Election

An election under this paragraph shall apply to all long-term contracts of the taxpayer which are entered into during the taxable year in which the election is made or any subsequent taxable year.

(D) Coordination with other provisions

(i) Simplified method of cost allocation

This paragraph shall not apply to any taxpayer which uses a simplified procedure for allocation of costs under paragraph (3)(A).

(ii) Look-back method

The 10-percent method shall be taken into account for purposes of applying the look-back method of paragraph (2) to any taxpayer making an election under this paragraph.

(6) Election to have look-back method not apply in de minimis cases

(A) Amounts taken into account after completion of contract

Paragraph (1)(B) shall not apply with respect to any taxable year (beginning after the taxable year in which the contract is completed) if—

(i) the cumulative taxable income (or loss) under the contract as of the close of such taxable year, is within

(ii) 10 percent of the cumulative look-back taxable income (or loss) under the contract as of the close of the most recent taxable year to which paragraph (1)(B) applied (or would have applied but for subparagraph (B)).

(B) De minimis discrepancies

Paragraph (1)(B) shall not apply in any case to which it would otherwise apply if—

(i) the cumulative taxable income (or loss) under the contract as of the close of each prior contract year, is within

(ii) 10 percent of the cumulative look-back income (or loss) under the contract as of the close of such prior contract year.

(C) Definitions

For purposes of this paragraph—

(i) Contract year

The term "contract year" means any taxable year for which income is taken into account under the contract.

(ii) Look-back income or loss

The look-back income (or loss) is the amount which would be the taxable income (or loss) under the contract if the allocation method set forth in paragraph (2)(A) were used in determining taxable income.

(iii) Discounting not applicable

The amounts taken into account after the completion of the contract shall be determined without regard to any discounting under the 2nd sentence of paragraph (2).

(D) Contracts to which paragraph applies

This paragraph shall only apply if the taxpayer makes an election under this subparagraph. Unless revoked with the consent of the Secretary, such an election shall apply to all long-term contracts completed during the taxable year for which election is made or during any subsequent taxable year.

(7) Adjusted overpayment rate

(A) In general

The adjusted overpayment rate for any interest accrual period is the overpayment rate in effect under section 6621 for the calendar quarter in which such interest accrual period begins.

(B) Interest accrual period

For purposes of subparagraph (A), the term "interest accrual period" means the period—

(i) beginning on the day after the return due date for any taxable year of the taxpayer, and

(ii) ending on the return due date for the following taxable year.

For purposes of the preceding sentence, the term "return due date" means the date prescribed for filing the return of the tax imposed by this chapter (determined without regard to extensions).

(c) Allocation of costs to contract

(1) Direct and certain indirect costs

In the case of a long-term contract, all costs (including research and experimental costs) which

directly benefit, or are incurred by reason of, the long-term contract activities of the taxpayer shall be allocated to such contract in the same manner as costs are allocated to extended period long-term contracts under section 451 and the regulations thereunder.

(2) Costs identified under cost-plus and certain Federal contracts

In the case of a cost-plus long-term contract or a Federal long-term contract, any cost not allocated to such contract under paragraph (1) shall be allocated to such contract if such cost is identified by the taxpayer (or a related person), pursuant to the contract or Federal, State, or local law or regulation, as being attributable to such contract.

(3) Allocation of production period interest to contract

(A) In general

Except as provided in subparagraphs (B) and (C), in the case of a long-term contract, interest costs shall be allocated to the contract in the same manner as interest costs are allocated to property produced by the taxpayer under section 263A(f).

(B) Production period

In applying section 263A(f) for purposes of subparagraph (A), the production period shall be the period—

(i) beginning on the later of—

(I) the contract commencement date, or

(II) in the case of a taxpayer who uses an accrual method with respect to long-term contracts, the date by which at least 5 percent of the total estimated costs (including design and planning costs) under the contract have been incurred, and

(ii) ending on the contract completion date.

(C) Application of de minimis rule

In applying section 263A(f) for purposes of subparagraph (A), paragraph (1)(B)(iii) of such section shall be applied on a contract-by-contract basis; except that, in the case of a taxpayer described in subparagraph (B)(i)(II) of this paragraph, paragraph (1)(B)(iii) of section 263A(f) shall be applied on a property-by-property basis.

(4) Certain costs not included

This subsection shall not apply to any—

(A) independent research and development expenses,

(B) expenses for unsuccessful bids and proposals, and

(C) marketing, selling, and advertising expenses.

(5) Independent research and development expenses

For purposes of paragraph (4), the term "independent research and development expenses" means any expenses incurred in the performance of research or development, except that such term shall not include—

(A) any expenses which are directly attributable to a long-term contract in existence when such expenses are incurred, or

(B) any expenses under an agreement to perform research or development.

(6) Special rule for allocation of bonus depreciation with respect to certain property

(A) In general

Solely for purposes of determining the percentage of completion under subsection (b)(1)(A), the cost of qualified property shall be taken into account as a cost allocated to the contract as if subsection (k) of section 168 had not been enacted.

(B) Qualified property

For purposes of this paragraph, the term "qualified property" means property described in section 168(k)(2) which—

(i) has a recovery period of 7 years or less, and

(ii) is placed in service after December 31, 2009, and before January 1, 2011 (January 1, 2012, in the case of property described in section 168(k)(2)(B)), or after December 31, 2012, and before January 1, 2014 (January 1, 2015, in the case of property described in section 168(k)(2)(B)).

(d) Federal long-term contract

For purposes of this section—

(1) In general

The term "Federal long-term contract" means any long-term contract—

(A) to which the United States (or any agency or instrumentality thereof) is a party, or

(B) which is a subcontract under a contract described in subparagraph (A).

(2) Special rules for certain taxable entities

For purposes of paragraph (1), the rules of section 168(h)(2)(D) (relating to certain taxable entities not treated as instrumentalities) shall apply.

(e) Exception for certain construction contracts

(1) In general

Subsections (a), (b), and (c)(1) and (2) shall not apply to—

(A) any home construction contract, or

(B) any other construction contract entered into by a taxpayer—

(i) who estimates (at the time such contract is entered into) that such contract will be completed within the 2-year period beginning on the contract commencement date of such contract, and

(ii) whose average annual gross receipts for the 3 taxable years preceding the taxable year in which such contract is entered into do not exceed $10,000,000.

In the case of a home construction contract with respect to which the requirements of clauses (i) and (ii) of subparagraph (B) are not met, section 263A shall apply notwithstanding subsection (c)(4) thereof.

(2) Determination of taxpayer's gross receipts

For purposes of paragraph (1), the gross receipts of—

(A) all trades or businesses (whether or not incorporated) which are under common control with the taxpayer (within the meaning of section 52(b)),

(B) all members of any controlled group of corporations of which the taxpayer is a member, and

(C) any predecessor of the taxpayer or a person described in subparagraph (A) or (B),

for the 3 taxable years of such persons preceding the taxable year in which the contract described in paragraph (1) is entered into shall be included in the gross receipts of the taxpayer for the period described in paragraph (1)(B). The Secretary shall prescribe regulations which provide attribution rules that take into account, in addition to the persons and entities described in the preceding sentence, taxpayers who engage in construction contracts through partnerships, joint ventures, and corporations.

(3) Controlled group of corporations

For purposes of this subsection, the term "controlled group of corporations" has the meaning given to such term by section 1563(a), except that—

(A) "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears in section 1563(a)(1), and

(B) the determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of section 1563.

(4) Construction contract

For purposes of this subsection, the term "construction contract" means any contract for the building, construction, reconstruction, or rehabilitation of, or the installation of any integral component to, or improvements of, real property.

(5) Special rule for residential construction contracts which are not home construction contracts

In the case of any residential construction contract which is not a home construction contract, subsection (a) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1989) shall apply except that such subsection shall be applied—

(A) by substituting "70 percent" for "90 percent" each place it appears, and

(B) by substituting "30 percent" for "10 percent".

(6) Definitions relating to residential construction contracts

For purposes of this subsection—

(A) Home construction contract

The term "home construction contract" means any construction contract if 80 percent or more of the estimated total contract costs (as of the close of the taxable year in which the contract was entered into) are reasonably expected to be attributable to activities referred to in paragraph (4) with respect to—

(i) dwelling units (as defined in section 168(e)(2)(A)(ii)) contained in buildings containing 4 or fewer dwelling units (as so defined), and

(ii) improvements to real property directly related to such dwelling units and located on the site of such dwelling units.

For purposes of clause (i), each townhouse or rowhouse shall be treated as a separate building.

(B) Residential construction contract

The term "residential construction contract" means any contract which would be described in subparagraph (A) if clause (i) of such subparagraph reads as follows:

"(i) dwelling units (as defined in section 168(e)(2)(A)(ii)), and".

(f) Long-term contract

For purposes of this section—

(1) In general

The term "long-term contract" means any contract for the manufacture, building, installation, or construction of property if such contract is not completed within the taxable year in which such contract is entered into.

(2) Special rule for manufacturing contracts

A contract for the manufacture of property shall not be treated as a long-term contract unless such contract involves the manufacture of—

(A) any unique item of a type which is not normally included in the finished goods inventory of the taxpayer, or

(B) any item which normally requires more than 12 calendar months to complete (without regard to the period of the contract).

(3) Aggregation, etc.

For purposes of this subsection, under regulations prescribed by the Secretary—

(A) 2 or more contracts which are interdependent (by reason of pricing or otherwise) may be treated as 1 contract, and

(B) a contract which is properly treated as an aggregation of separate contracts may be so treated.

(g) Contract commencement date

For purposes of this section, the term "contract commencement date" means, with respect to any contract, the first date on which any costs (other than bidding expenses or expenses incurred in connection with negotiating the contract) allocable to such contract are incurred.

(h) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations to prevent the use of related parties, pass-thru entities, intermediaries, options, or other similar arrangements to avoid the application of this section.

(Added Pub. L. 99–514, title VIII, §804(a), Oct. 22, 1986, 100 Stat. 2358; amended Pub. L. 100–203, title X, §10203(a), Dec. 22, 1987, 101 Stat. 1330–394; Pub. L. 100–647, title I, §1008(c)(1), (2), (4), title V, §5041(a)–(b)(3), (c), (d), Nov. 10, 1988, 102 Stat. 3438, 3439, 3673, 3674; Pub. L. 101–239, title VII, §§7621(a)–(c), 7811(e), 7815(e)(1), Dec. 19, 1989, 103 Stat. 2375, 2376, 2408, 2419; Pub. L. 101–508, title XI, §11812(b)(8), Nov. 5, 1990, 104 Stat. 1388–535; Pub. L. 104–188, title I, §§1702(h)(15), 1704(t)(28), Aug. 20, 1996, 110 Stat. 1874, 1888; Pub. L. 105–34, title XII, §1211(a), (b), Aug. 5, 1997, 111 Stat. 998, 999; Pub. L. 111–240, title II, §2023(a), Sept. 27, 2010, 124 Stat. 2559; Pub. L. 112–240, title III, §331(b), Jan. 2, 2013, 126 Stat. 2336.)

REFERENCES IN TEXT

The date of the enactment of the Revenue Reconciliation Act of 1989, referred to in subsec. (e)(5), is the date of enactment of title VII of Pub. L. 101–239, which was approved Dec. 19, 1989.

AMENDMENTS

2013—Subsec. (c)(6)(B)(ii). Pub. L. 112–240 inserted ", or after December 31, 2012, and before January 1, 2014 (January 1, 2015, in the case of property described in section 168(k)(2)(B))" before period at end.

2010—Subsec. (c)(6). Pub. L. 111–240 added par. (6).

1997—Subsec. (b)(2)(C). Pub. L. 105–34, §1211(b)(1), substituted "the adjusted overpayment rate (as defined in paragraph (7))" for "the overpayment rate established by section 6621".

Subsec. (b)(6). Pub. L. 105–34, §1211(a), added par. (6).

Subsec. (b)(7). Pub. L. 105–34, §1211(b)(2), added par. (7).

1996—Subsec. (b)(1). Pub. L. 104–188, §1704(t)(28), which directed that par. (1) be amended by substituting "the look-back method of paragraph (2)" for "the look-back method of paragraph (3)", could not be executed, because that phrase does not appear in text. See 1989 Amendment note below.

Subsec. (e)(6)(B). Pub. L. 104–188, §1702(h)(15), substituted "section 168(e)(2)(A)(ii)" for "section 167(k)".

1990—Subsec. (e)(6)(A)(i). Pub. L. 101–508 substituted "section 168(e)(2)(A)(ii)" for "section 167(k)".

1989—Subsec. (a). Pub. L. 101–239, §7621(a), substituted "Requirement that percentage of completion method be used" for "Percentage of completion-capitalized cost method" in heading and amended text generally. Prior to amendment, text read as follows:

"(1) IN GENERAL.—In the case of any long-term contract—

"(A) 90 percent of the items with respect to such contract shall be taken into account under the percentage of completion method (as modified by subsection (b)), and

"(B) 10 percent of the items with respect to such contract shall be taken into account under the taxpayer's normal method of accounting.

"(2) 90 PERCENT LOOK-BACK METHOD TO APPLY.—Upon completion of any long-term contract (or, with respect to any amount properly taken into account after completion of the contract, when such amount is so properly taken into account), the taxpayer shall pay (or shall be entitled to receive) interest determined by applying the look-back method of subsection (b)(3) to 90 percent of the items with respect to the contract."

Subsec. (a)(2). Pub. L. 101–239, §7811(e)(1), inserted "(or, with respect to any amount properly taken into account after completion of the contract, when such amount is so properly taken into account)" after "any long-term contract".

Subsec. (b)(1). Pub. L. 101–239, §7621(c)(2)(A), substituted "paragraph (3)" for "paragraph (4)".

Pub. L. 101–239, §7621(c)(2)(B), which directed the amendment of par. (1) by substituting "paragraph (2)" for "paragraph (3)", was executed by making the substitution in subpar. (B) and concluding provisions to reflect the probable intent of Congress.

Pub. L. 101–239, §7621(c)(1), redesignated par. (2) as (1) and struck out former par. (1) which read as follows: "SUBSECTION (a) NOT TO APPLY WHERE PERCENTAGE OF COMPLETION METHOD

USED.—Subsection (a) shall not apply to any long-term contract with respect to which amounts includible in gross income are determined under the percentage of completion method."

Subsec. (b)(2). Pub. L. 101–239, §7621(c)(1), redesignated par. (3) as (2). Former par. (2) redesignated (1).

Pub. L. 101–239, §7811(e)(4), (6), inserted two sentences at end.

Subsec. (b)(2)(B). Pub. L. 101–239, §7811(e)(2), substituted "any amount properly taken into account" for "any amount received or accrued" and "is so properly taken into account" for "is so received or accrued".

Subsec. (b)(3). Pub. L. 101–239, §7621(c)(1), redesignated par. (4) as (3). Former par. (3) redesignated (2).

Pub. L. 101–239, §7811(e)(3), in concluding provisions, substituted "any amount properly taken into account" for "any amount received or accrued" and "such amount was properly taken into account" for "such amount was received or accrued".

Subsec. (b)(3)(B). Pub. L. 101–239, §7621(c)(3), substituted "Paragraph (1)(B)" for "Paragraph (2)(B) and subsection (a)(2)" in introductory provisions.

Subsec. (b)(4). Pub. L. 101–239, §7621(c)(1), redesignated par. (5) as (4). Former par. (4) redesignated (3).

Subsec. (b)(4)(A)(i). Pub. L. 101–239, §7621(c)(4)(A), substituted "paragraph (2)" for "paragraph (3)".

Subsec. (b)(4)(A)(ii). Pub. L. 101–239, §7621(c)(4)(B), substituted "paragraph (2)(B)" for "paragraph (3)(B)" in introductory provisions.

Subsec. (b)(4)(A)(ii)(I). Pub. L. 101–239, §7621(c)(4)(C), substituted "paragraph (2)(A)" for "paragraph (3)(A)".

Subsec. (b)(4)(A)(iii). Pub. L. 101–239, §7621(c)(4)(A), substituted "paragraph (2)" for "paragraph (3)" in two places.

Subsec. (b)(5). Pub. L. 101–239, §7621(b), added par. (5).

Pub. L. 101–239, §7621(c)(1), redesignated former par. (5) as (4).

Subsec. (e)(2)(C). Pub. L. 101–239, §7811(e)(5), added subpar. (C).

Subsec. (e)(5). Pub. L. 101–239, §7621(c)(5), inserted introductory provisions and struck out former introductory provisions which read as follows: "In the case of any residential construction contract which is not a home construction contract, subsection (a) shall be applied—".

Subsec. (e)(6)(A). Pub. L. 101–239, §7815(e)(1)(A), substituted "activities referred to in paragraph (4) with respect to" for "the building, construction, reconstruction, or rehabilitation of".

Subsec. (e)(6)(A)(i). Pub. L. 101–239, §7815(e)(1)(B), added cl. (i) and struck out former cl. (i) which read as follows: "dwelling units contained in buildings containing 4 or fewer dwelling units, and".

1988—Subsec. (a)(1)(A). Pub. L. 100–647, §5041(a)(1), substituted "90" for "70".

Subsec. (a)(1)(B). Pub. L. 100–647, §5041(a)(2), substituted "10" for "30".

Subsec. (a)(2). Pub. L. 100–647, §5041(a)(1), substituted "90" for "70" in heading and in text.

Subsec. (b)(2). Pub. L. 100–647, §1008(c)(2)(B), substituted "Except as provided in paragraph (4), in" for "In".

Subsec. (b)(2)(B). Pub. L. 100–647, §1008(c)(4)(B), inserted "(or, with respect to any amount received or accrued after completion of the contract, when such amount is so received or accrued)" after "contract".

Subsec. (b)(3). Pub. L. 100–647, §1008(c)(4)(A), inserted at end "For purposes of the preceding sentence, any amount received or accrued after completion of the contract shall be taken into account by discounting (using the Federal mid-term rate determined under section 1274(d) as of the time such amount was received or accrued) such amount to its value as of the completion of the contract. The taxpayer may elect with respect to any contract to have the preceding sentence not apply to such contract."

Pub. L. 100–647, §1008(c)(1)(A), substituted "paragraph" for "subparagraph".

Subsec. (b)(3)(B). Pub. L. 100–647, §1008(c)(1)(B), substituted "subparagraph (A)" for "paragraph (1)" in two places.

Subsec. (b)(3)(C). Pub. L. 100–647, §1008(c)(1)(C), substituted "subparagraph (B)" for "paragraph (1)".

Subsec. (b)(4). Pub. L. 100–647, §1008(c)(2)(A), added par. (4).

Subsec. (b)(5). Pub. L. 100–647, §5041(d), added par. (5).

Subsec. (e)(1). Pub. L. 100–647, §5041(b)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "Subsections (a), (b), and (c)(1) and (2) shall not apply to any construction contract entered into by a taxpayer—

"(A) who estimates (at the time such contract is entered into) that such contract will be completed within the 2-year period beginning on the contract commencement date of such contract, and

"(B) whose average annual gross receipts for the 3 taxable years preceding the taxable year in which such contract is entered into do not exceed $10,000,000."

Subsec. (e)(5). Pub. L. 100–647, §5041(b)(2), added par. (5).

Subsec. (e)(6). Pub. L. 100–647, §5041(b)(3), added par. (6).

Subsec. (h). Pub. L. 100–647, §5041(c), added subsec. (h).

1987—Subsec. (a). Pub. L. 100–203 substituted "70 percent" for "40 percent" in par. (1)(A) and in heading and text of par. (2), and "30 percent" for "60 percent" in par. (1)(B).

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112–240 applicable to property placed in service after Dec. 31, 2012, in taxable years ending after such date, see section 331(f) of Pub. L. 112–240, set out as a note under section 168 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–240, title II, §2023(b), Sept. 27, 2010, 124 Stat. 2559, provided that: "The amendment made by this section [amending this section] shall apply to property placed in service after December 31, 2009."

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XII, §1211(c), Aug. 5, 1997, 111 Stat. 1000, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to contracts completed in taxable years ending after the date of the enactment of this Act [Aug. 5, 1997].

"(2) SUBSECTION (b).—The amendments made by subsection (b) [amending this section] shall apply for purposes of section 167(g) of the Internal Revenue Code of 1986 to property placed in service after September 13, 1995."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1702(h)(15) of Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to property placed in service after Nov. 5, 1990, but not applicable to any property to which section 168 of this title does not apply by reason of subsec. (f)(5) of section 168, and not applicable to rehabilitation expenditures described in section 252(f)(5) of Pub. L. 99–514, see section 11812(c) of Pub. L. 101–508, set out as a note under section 42 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7621(d), Dec. 19, 1989, 103 Stat. 2376, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to contracts entered into on or after July 11, 1989.

"(2) BINDING BIDS.—The amendments made by this section shall not apply to any contract resulting from the acceptance of a bid made before July 11, 1989. The preceding sentence shall apply only if the bid could not have been revoked or altered at any time on or after July 11, 1989.

"(3) SPECIAL RULE FOR CERTAIN SHIP CONTRACTS.—The amendments made by this section shall not apply in the case of a qualified ship contract (as defined in section 10203(b)(2)(B) of the Revenue Act of 1987 [Pub. L. 100–203, set out below])."

Amendment by sections 7811(e) and 7815(e)(1) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1008(c)(1), (2), (4) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title V, §5041(e), Nov. 10, 1988, 102 Stat. 3675, as amended by Pub. L. 101–239, title VII, §7815(e)(3), Dec. 19, 1989, 103 Stat. 2419, provided that:

"(1) SUBSECTIONS (a), (b), AND (c).—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendments made by subsections (a), (b), and (c) [amending this section and section 56 of this title] shall apply to contracts entered into on or after June 21, 1988.

"(B) BINDING BIDS.—The amendments made by subsections (a), (b), and (c) shall not apply to any contract resulting from the acceptance of a bid made before June 21, 1988. The preceding sentence shall

apply only if the bid could not have been revoked or altered at any time on or after June 21, 1988.

"(C) SPECIAL RULE FOR CERTAIN SHIP CONTRACTS.—The amendments made by subsections (a) and (b) [amending this section and section 56 of this title] shall not apply in the case of a qualified ship contract (as defined in section 10203(b)(2)(B) of the Revenue Act of 1987 [Pub. L. 100–203, set out below]).

"(2) SUBSECTION (d).—The amendment made by subsection (d) [amending this section] shall apply as if included in the amendments made by section 804 of the Reform Act [Pub. L. 99–514]; except that such amendment shall not apply to any contract completed in a taxable year ending before the date of the enactment of this Act [Nov. 10, 1988], if the due date (determined with regard to extensions) for the return for such year is before such date of enactment."

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title X, §10203(b), Dec. 22, 1987, 101 Stat. 1330–394, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to contracts entered into after October 13, 1987.

"(2) SPECIAL RULE FOR CERTAIN SHIP CONTRACTS.—

"(A) IN GENERAL.—The amendments made by this section shall not apply in the case of a qualified ship contract.

"(B) QUALIFIED SHIP CONTRACT.—For purposes of subparagraph (A), the term 'qualified ship contract' means any contract for the construction in the United States of not more than 5 ships if—

"(i) such ships will not be constructed (directly or indirectly) for the Federal Government, and

"(ii) the taxpayer reasonably expects to complete such contract within 5 years of the contract commencement date (as defined in section 460(g) of the Internal Revenue Code of 1986)."

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title VIII, §804(d), Oct. 22, 1986, 100 Stat. 2361, as amended by Pub. L. 100–647, title I, §1008(c)(3), Nov. 10, 1988, 102 Stat. 3439, provided that:

"(1) IN GENERAL.—The amendments made by this section [enacting this section] shall apply to any contract entered into after February 28, 1986.

"(2) CLARIFICATION OF TREATMENT OF INDEPENDENT RESEARCH AND DEVELOPMENT EXPENSES.—

"(A) IN GENERAL.—For periods before, on, or after the date of enactment of this Act [Oct. 22, 1986]—

"(i) any independent research and development expenses taken into account in determining the total contract price shall not be severable from the contract, and

"(ii) any independent research and development expenses shall not be treated as amounts chargeable to capital account.

"(B) INDEPENDENT RESEARCH AND DEVELOPMENT EXPENSES.—For purposes of subparagraph (A), the term 'independent research and development expenses' has the meaning given to such term by section 460(c)(5) of the Internal Revenue Code of 1986, as added by this section."

REGULATIONS

Pub. L. 99–514, title VIII, §804(b), Oct. 22, 1986, 100 Stat. 2361, provided that: "The Secretary of the Treasury or his delegate shall modify the income tax regulations relating to accounting for long-term contracts to carry out the provisions of section 460 of the Internal Revenue Code of 1986 (as added by subsection (a))."

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

METHOD OF ACCOUNTING FOR NAVAL SHIPBUILDERS

Pub. L. 108–357, title VII, §708, Oct. 22, 2004, 118 Stat. 1550, as amended by Pub. L. 109–135, title IV, §403(s), Dec. 21, 2005, 119 Stat. 2628, provided that:

"(a) IN GENERAL.—In the case of a qualified naval ship contract, the taxable income of such contract during the 5-taxable year period beginning with the taxable year in which the construction commencement

date occurs shall be determined under a method identical to the method used in the case of a qualified ship contract (as defined in section 10203(b)(2)(B) of the Revenue Act of 1987 [Pub. L. 100–203, set out as an Effective Date of 1987 Amendment note above]).

"(b) RECAPTURE OF TAX BENEFIT.—In the case of a qualified naval ship contract to which subsection (a) applies, the taxpayer's tax imposed by chapter 1 of the Internal Revenue Code of 1986 for the first taxable year following the 5-taxable year period described in subsection (a) shall be increased by the excess (if any) of—

"(1) the amount of tax which would have been imposed during such period if this section had not been enacted, over

"(2) the amount of tax so imposed during such period.

"(c) QUALIFIED NAVAL SHIP CONTRACT.—For purposes of this section:

"(1) IN GENERAL.—The term 'qualified naval ship contract' means any contract or portion thereof that is for the construction in the United States of 1 ship or submarine for the Federal Government if the taxpayer reasonably expects the acceptance date will occur no later than 9 years after the construction commencement date.

"(2) ACCEPTANCE DATE.—The term 'acceptance date' means the date 1 year after the date on which the Federal Government issues a letter of acceptance or other similar document for the ship or submarine.

"(3) CONSTRUCTION COMMENCEMENT DATE.—The term 'construction commencement date' means the date on which the physical fabrication of any section or component of the ship or submarine begins in the taxpayer's shipyard.

"(d) CERTAIN ADJUSTMENTS NOT TO APPLY.—Section 481 of the Internal Revenue Code of 1986 shall not apply with respect to any change in the method of accounting which is required by this section.

"(e) EFFECTIVE DATE.—This section shall apply to contracts for ships or submarines with respect to which the construction commencement date occurs after the date of the enactment of this Act [Oct. 22, 2004]."

AMORTIZATION OF PAST SERVICE PENSION COSTS

Allocable costs (within the meaning of subsec. (c) of this section) with respect to any property to include contributions paid to or under a pension or annuity plan whether or not such contributions represent past service costs, see section 10204 of Pub. L. 100–203, set out as a note under section 263A of this title.

[1] *So in original. Probably should be followed by a comma.*

SUBPART C—TAXABLE YEAR FOR WHICH DEDUCTIONS TAKEN

Sec.

461. General rule for taxable year of deduction.

[462, 463. Repealed.]

464. Limitations on deductions for certain farming expenses.[1]

465. Deductions limited to amount at risk.

[466. Repealed.]

467. Certain payments for the use of property or services.

468. Special rules for mining and solid waste reclamation and closing costs.

468A. Special rules for nuclear decommissioning costs.

468B. Special rules for designated settlement funds.

469. Passive activity losses and credits limited.

470. Limitation on deductions allocable to property used by governments or other tax-exempt entities.

AMENDMENTS

2004—Pub. L. 108–357, title VIII, §848(b), Oct. 22, 2004, 118 Stat. 1606, added item 470.

1987—Pub. L. 100–203, title X, §10201(b)(7), Dec. 22, 1987, 101 Stat. 1330–387, struck out item 463 "Accrual of vacation pay".

1986—Pub. L. 99–514, title IV, §404(b)(2), title V, §501(b), title VIII, §823(b)(2), title XVIII, §§1807(a)(7)(B), 1899A(71), Oct. 22, 1986, 100 Stat. 2224, 2241, 2374, 2815, 2963, substituted "for certain

farming expenses" for "in case of farming syndicates" in item 464, struck out item 466 "Qualified discount coupons redeemed after close of taxable year", inserted "the" before "use" in item 467, and added items 468B and 469.

1984—Pub. L. 98–369, div. A, title I, §§91(b)(2), (c)(2), 92(b), July 18, 1984, 98 Stat. 604, 606, 612, added items 467, 468, and 468A.

1978—Pub. L. 95–600, title II, §201(c)(2), title III, §373(b), Nov. 6, 1978, 92 Stat. 2816, 2865, struck out "in case of certain activities" after "amount at risk" in item 465 and added item 466.

1976—Pub. L. 94–455, title II, §§204(b), 207(a)(2), Oct. 4, 1976, 90 Stat. 1532, 1537, added items 464 and 465.

1975—Pub. L. 93–625, §4(b), Jan. 3, 1975, 88 Stat. 2111, added item 463.

1955—Act June 15, 1955, ch. 143, §2(3), 69 Stat. 135, struck out item 462 "Reserves for estimated expenses, etc."

[1] So in original. Does not conform to section catchline.

§461. General rule for taxable year of deduction

(a) General rule

The amount of any deduction or credit allowed by this subtitle shall be taken for the taxable year which is the proper taxable year under the method of accounting used in computing taxable income.

(b) Special rule in case of death

In the case of the death of a taxpayer whose taxable income is computed under an accrual method of accounting, any amount accrued as a deduction or credit only by reason of the death of the taxpayer shall not be allowed in computing taxable income for the period in which falls the date of the taxpayer's death.

(c) Accrual of real property taxes

(1) In general

If the taxable income is computed under an accrual method of accounting, then, at the election of the taxpayer, any real property tax which is related to a definite period of time shall be accrued ratably over that period.

(2) When election may be made

(A) Without consent

A taxpayer may, without the consent of the Secretary, make an election under this subsection for his first taxable year in which he incurs real property taxes. Such an election shall be made not later than the time prescribed by law for filing the return for such year (including extensions thereof).

(B) With consent

A taxpayer may, with the consent of the Secretary, make an election under this subsection at any time.

(d) Limitation on acceleration of accrual of taxes

(1) General rule

In the case of a taxpayer whose taxable income is computed under an accrual method of accounting, to the extent that the time for accruing taxes is earlier than it would be but for any action of any taxing jurisdiction taken after December 31, 1960, then, under regulations prescribed by the Secretary, such taxes shall be treated as accruing at the time they would have accrued but for such action by such taxing jurisdiction.

(2) Limitation

Under regulations prescribed by the Secretary, paragraph (1) shall be inapplicable to any item of

tax to the extent that its application would (but for this paragraph) prevent all persons (including successors in interest) from ever taking such item into account.

(e) Dividends or interest paid on certain deposits or withdrawable accounts

Except as provided in regulations prescribed by the Secretary, amounts paid to, or credited to the accounts of, depositors or holders of accounts as dividends or interest on their deposits or withdrawable accounts (if such amounts paid or credited are withdrawable on demand subject only to customary notice to withdraw) by a mutual savings bank not having capital stock represented by shares, a domestic building and loan association, or a cooperative bank shall not be allowed as a deduction for the taxable year to the extent such amounts are paid or credited for periods representing more than 12 months. Any such amount not allowed as a deduction as the result of the application of the preceding sentence shall be allowed as a deduction for such other taxable year as the Secretary determines to be consistent with the preceding sentence.

(f) Contested liabilities

If—

(1) the taxpayer contests an asserted liability,

(2) the taxpayer transfers money or other property to provide for the satisfaction of the asserted liability,

(3) the contest with respect to the asserted liability exists after the time of the transfer, and

(4) but for the fact that the asserted liability is contested, a deduction would be allowed for the taxable year of the transfer (or for an earlier taxable year) determined after application of subsection (h),

then the deduction shall be allowed for the taxable year of the transfer. This subsection shall not apply in respect of the deduction for income, war profits, and excess profits taxes imposed by the authority of any foreign country or possession of the United States.

(g) Prepaid interest

(1) In general

If the taxable income of the taxpayer is computed under the cash receipts and disbursements method of accounting, interest paid by the taxpayer which, under regulations prescribed by the Secretary, is properly allocable to any period—

(A) with respect to which the interest represents a charge for the use or forbearance of money, and

(B) which is after the close of the taxable year in which paid,

shall be charged to capital account and shall be treated as paid in the period to which so allocable.

(2) Exception

This subsection shall not apply to points paid in respect of any indebtedness incurred in connection with the purchase or improvement of, and secured by, the principal residence of the taxpayer to the extent that, under regulations prescribed by the Secretary, such payment of points is an established business practice in the area in which such indebtedness is incurred, and the amount of such payment does not exceed the amount generally charged in such area.

(h) Certain liabilities not incurred before economic performance

(1) In general

For purposes of this title, in determining whether an amount has been incurred with respect to any item during any taxable year, the all events test shall not be treated as met any earlier than when economic performance with respect to such item occurs.

(2) Time when economic performance occurs

Except as provided in regulations prescribed by the Secretary, the time when economic performance occurs shall be determined under the following principles:

(A) Services and property provided to the taxpayer

If the liability of the taxpayer arises out of—

(i) the providing of services to the taxpayer by another person, economic performance occurs as such person provides such services,

(ii) the providing of property to the taxpayer by another person, economic performance occurs as the person provides such property, or

(iii) the use of property by the taxpayer, economic performance occurs as the taxpayer uses such property.

(B) Services and property provided by the taxpayer

If the liability of the taxpayer requires the taxpayer to provide property or services, economic performance occurs as the taxpayer provides such property or services.

(C) Workers compensation and tort liabilities of the taxpayer

If the liability of the taxpayer requires a payment to another person and—

(i) arises under any workers compensation act, or

(ii) arises out of any tort,

economic performance occurs as the payments to such person are made. Subparagraphs (A) and (B) shall not apply to any liability described in the preceding sentence.

(D) Other items

In the case of any other liability of the taxpayer, economic performance occurs at the time determined under regulations prescribed by the Secretary.

(3) Exception for certain recurring items

(A) In general

Notwithstanding paragraph (1) an item shall be treated as incurred during any taxable year if—

(i) the all events test with respect to such item is met during such taxable year (determined without regard to paragraph (1)),

(ii) economic performance with respect to such item occurs within the shorter of—

(I) a reasonable period after the close of such taxable year, or

(II) 8½ months after the close of such taxable year,

(iii) such item is recurring in nature and the taxpayer consistently treats items of such kind as incurred in the taxable year in which the requirements of clause (i) are met, and

(iv) either—

(I) such item is not a material item, or

(II) the accrual of such item in the taxable year in which the requirements of clause (i) are met results in a more proper match against income than accruing such item in the taxable year in which economic performance occurs.

(B) Financial statements considered under subparagraph (A)(iv)

In making a determination under subparagraph (A)(iv), the treatment of such item on financial statements shall be taken into account.

(C) Paragraph not to apply to workers compensation and tort liabilities

This paragraph shall not apply to any item described in subparagraph (C) of paragraph (2).

(4) All events test

For purposes of this subsection, the all events test is met with respect to any item if all events have occurred which determine the fact of liability and the amount of such liability can be determined with reasonable accuracy.

(5) Subsection not to apply to certain items

This subsection shall not apply to any item for which a deduction is allowable under a provision of this title which specifically provides for a deduction for a reserve for estimated expenses.

(i) Special rules for tax shelters

(1) Recurring item exception not to apply

In the case of a tax shelter, economic performance shall be determined without regard to paragraph (3) of subsection (h).

(2) Special rule for spudding of oil or gas wells

(A) In general

In the case of a tax shelter, economic performance with respect to amounts paid during the taxable year for drilling an oil or gas well shall be treated as having occurred within a taxable year if drilling of the well commences before the close of the 90th day after the close of the taxable year.

(B) Deduction limited to cash basis

(i) Tax shelter partnerships

In the case of a tax shelter which is a partnership, in applying section 704(d) to a deduction or loss for any taxable year attributable to an item which is deductible by reason of subparagraph (A), the term "cash basis" shall be substituted for the term "adjusted basis".

(ii) Other tax shelters

Under regulations prescribed by the Secretary, in the case of a tax shelter other than a partnership, the aggregate amount of the deductions allowable by reason of subparagraph (A) for any taxable year shall be limited in a manner similar to the limitation under clause (i).

(C) Cash basis defined

For purposes of subparagraph (B), a partner's cash basis in a partnership shall be equal to the adjusted basis of such partner's interest in the partnership, determined without regard to—

(i) any liability of the partnership, and

(ii) any amount borrowed by the partner with respect to such partnership which—

(I) was arranged by the partnership or by any person who participated in the organization, sale, or management of the partnership (or any person related to such person within the meaning of section 465(b)(3)(C)), or

(II) was secured by any asset of the partnership.

(3) Tax shelter defined

For purposes of this subsection, the term "tax shelter" means—

(A) any enterprise (other than a C corporation) if at any time interests in such enterprise have been offered for sale in any offering required to be registered with any Federal or State agency having the authority to regulate the offering of securities for sale,

(B) any syndicate (within the meaning of section 1256(e)(3)(B)), and

(C) any tax shelter (as defined in section 6662(d)(2)(C)(ii)).

(4) Special rules for farming

In the case of the trade or business of farming (as defined in section 464(e)), in determining whether an entity is a tax shelter, the definition of farming syndicate in section 464(c) shall be substituted for subparagraphs (A) and (B) of paragraph (3).

(5) Economic performance

For purposes of this subsection, the term "economic performance" has the meaning given such term by subsection (h).

(j) Limitation on excess farm losses of certain taxpayers

(1) Limitation

If a taxpayer other than a C corporation receives any applicable subsidy for any taxable year, any excess farm loss of the taxpayer for the taxable year shall not be allowed.

(2) Disallowed loss carried to next taxable year

Any loss which is disallowed under paragraph (1) shall be treated as a deduction of the taxpayer attributable to farming businesses in the next taxable year.

(3) Applicable subsidy

For purposes of this subsection, the term "applicable subsidy" means—

(A) any direct or counter-cyclical payment under title I of the Food, Conservation, and Energy Act of 2008, or any payment elected to be received in lieu of any such payment, or

(B) any Commodity Credit Corporation loan.

(4) Excess farm loss

For purposes of this subsection—

(A) In general

The term "excess farm loss" means the excess of—

(i) the aggregate deductions of the taxpayer for the taxable year which are attributable to farming businesses of such taxpayer (determined without regard to whether or not such deductions are disallowed for such taxable year under paragraph (1)), over

(ii) the sum of—

(I) the aggregate gross income or gain of such taxpayer for the taxable year which is attributable to such farming businesses, plus

(II) the threshold amount for the taxable year.

(B) Threshold amount

(i) In general

The term "threshold amount" means, with respect to any taxable year, the greater of—

(I) $300,000 ($150,000 in the case of married individuals filing separately), or

(II) the excess (if any) of the aggregate amounts described in subparagraph (A)(ii)(I) for the 5-consecutive taxable year period preceding the taxable year over the aggregate amounts described in subparagraph (A)(i) for such period.

(ii) Special rules for determining aggregate amounts

For purposes of clause (i)(II)—

(I) notwithstanding the disregard in subparagraph (A)(i) of any disallowance under paragraph (1), in the case of any loss which is carried forward under paragraph (2) from any taxable year, such loss (or any portion thereof) shall be taken into account for the first taxable year in which a deduction for such loss (or portion) is not disallowed by reason of this subsection, and

(II) the Secretary shall prescribe rules for the computation of the aggregate amounts described in such clause in cases where the filing status of the taxpayer is not the same for the taxable year and each of the taxable years in the period described in such clause.

(C) Farming business

(i) In general

The term "farming business" has the meaning given such term in section 263A(e)(4).

(ii) Certain trades and businesses included

If, without regard to this clause, a taxpayer is engaged in a farming business with respect to any agricultural or horticultural commodity—

(I) the term "farming business" shall include any trade or business of the taxpayer of the processing of such commodity (without regard to whether the processing is incidental to the growing, raising, or harvesting of such commodity), and

(II) if the taxpayer is a member of a cooperative to which subchapter T applies, any

trade or business of the cooperative described in subclause (I) shall be treated as the trade or business of the taxpayer.

(D) Certain losses disregarded

For purposes of subparagraph (A)(i), there shall not be taken into account any deduction for any loss arising by reason of fire, storm, or other casualty, or by reason of disease or drought, involving any farming business.

(5) Application of subsection in case of partnerships and S corporations

In the case of a partnership or S corporation—

(A) this subsection shall be applied at the partner or shareholder level, and

(B) each partner's or shareholder's proportionate share of the items of income, gain, or deduction of the partnership or S corporation for any taxable year from farming businesses attributable to the partnership or S corporation, and of any applicable subsidies received by the partnership or S corporation during the taxable year, shall be taken into account by the partner or shareholder in applying this subsection to the taxable year of such partner or shareholder with or within which the taxable year of the partnership or S corporation ends.

The Secretary may provide rules for the application of this paragraph to any other pass-thru entity to the extent necessary to carry out the provisions of this subsection.

(6) Additional reporting

The Secretary may prescribe such additional reporting requirements as the Secretary determines appropriate to carry out the purposes of this subsection.

(7) Coordination with section 469

This subsection shall be applied before the application of section 469.

(Aug. 16, 1954, ch. 736, 68A Stat. 157; Pub. L. 86–781, §6(a), Sept. 14, 1960, 74 Stat. 1020; Pub. L. 87–876, §3(a), Oct. 24, 1962, 76 Stat. 1199; Pub. L. 88–272, title II, §223(a)(1), Feb. 26, 1964, 78 Stat. 76; Pub. L. 94–455, title II, §208(a), title XIX, §§1901(a)(69), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1541, 1775, 1834; Pub. L. 98–369, div. A, title I, §91(a), (e), July 18, 1984,98 Stat. 598, 607; Pub. L. 99–514, title VIII, §§801(b), 805(c)(5), 823(b)(1), title XVIII, §1807(a)(1), (2), Oct. 22, 1986, 100 Stat. 2347, 2362, 2374, 2811; Pub. L. 100–203, title X, §10201(b)(5), Dec. 22, 1987, 101 Stat. 1330–387; Pub. L. 100–647, title I, §§1008(a)(3), 1018(u)(5), Nov. 10, 1988, 102 Stat. 3436, 3590; Pub. L. 101–239, title VII, §7721(c)(10), Dec. 19, 1989, 103 Stat. 2400; Pub. L. 101–508, title XI, §11704(a)(5), Nov. 5, 1990, 104 Stat. 1388–518; Pub. L. 104–188, title I, §1704(t)(24), (78), Aug. 20, 1996, 110 Stat. 1888, 1891; Pub. L. 109–135, title IV, §412(aa), Dec. 21, 2005, 119 Stat. 2638; Pub. L. 110–234, title XV, §15351(a), May 22, 2008, 122 Stat. 1523; Pub. L. 110–246, §4(a), title XV, §15351(a), June 18, 2008, 122 Stat. 1664, 2285.)

REFERENCES IN TEXT

The Food, Conservation, and Energy Act of 2008, referred to in subsec. (j)(3)(A), is Pub. L. 110–246, June 18, 2008, 122 Stat. 1651. Title I of the Act is classified principally to chapter 113 (§8701 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 8701 of Title 7 and Tables.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2008—Subsec. (j). Pub. L. 110–246, §15351(a), added subsec. (j).

2005—Subsec. (i)(3)(C). Pub. L. 109–135 substituted "section 6662(d)(2)(C)(ii)" for "section 6662(d)(2)(C)(iii)".

1996—Subsec. (i)(3)(C). Pub. L. 104–188, §1704(t)(78), substituted "section 6662(d)(2)(C)(iii)" for "section 6662(d)(2)(C)(ii)".

Pub. L. 104–188, §1704(t)(24), amended directory language of Pub. L. 101–239. See 1989 Amendment

note below.

1990—Subsec. (i)(3)(C). Pub. L. 101–508 amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: "any tax shelter (within the meaning of section 6662(d)(2)(C)(ii))."

1989—Subsec. (i)(3)(C). Pub. L. 101–239, as amended by Pub. L. 104–188, §1704(t)(24), substituted "section 6662(d)(2)(C)(ii)" for "section 6661(b)(2)(C)(ii)".

1988—Subsec. (h)(5)(B), (C). Pub. L. 100–647, §1018(u)(5), amended Pub. L. 99–514, §823(b)(1). See 1986 Amendment note below.

Subsec. (i)(2). Pub. L. 100–647, §1008(a)(3), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "In the case of a tax shelter, economic performance with respect to the act of drilling an oil or gas well shall be treated as having occurred within a taxable year if drilling of the well commences before the close of the 90th day after the close of the taxable year."

1987—Subsec. (h)(5). Pub. L. 100–203 substituted "items" for "cases to which other provisions of this title specifically apply" in heading and amended text generally. Prior to amendment, text read as follows: "This subsection shall not apply to any item to which any of the following provisions apply:

"(A) Section 463 (relating to vacation pay).

"(B) Any other provisions of this title which specifically provides for a deduction for a reserve for estimated expenses."

1986—Subsec. (h)(5)(A). Pub. L. 99–514, §805(c)(5), redesignated subpar. (B) as (A) and struck out former subpar. (A) which referred to subsec. (c) or (f) of section 166.

Subsec. (h)(5)(B). Pub. L. 99–514, §823(b)(1), as amended by Pub. L. 100–647, §1018(u)(5), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: "Section 466 (relating to discount coupons)."

Pub. L. 99–514, §805(c)(5), redesignated subpar. (C) as (B). Former subpar. (B) redesignated (A).

Subsec. (h)(5)(C). Pub. L. 99–514, §823(b)(1), as amended by Pub. L. 100–647, §1018(u)(5), redesignated subpar. (C) as (B).

Pub. L. 99–514, §805(c)(5), redesignated subpar. (D) as (C). Former subpar. (C) redesignated (B).

Subsec. (h)(5)(D). Pub. L. 99–514, §805(c)(5), redesignated subpar. (D) as (C).

Subsec. (i). Pub. L. 99–514, §801(b)(1), substituted "Special rules for tax shelters" for "Tax shelters may not deduct items earlier than when economic performance occurs" in heading.

Subsec. (i)(1). Pub. L. 99–514, §801(b)(1), substituted "Recurring item exception not to apply" for "In general" in heading and amended par. (1) generally. Prior to amendment, par. (1) read as follows: "In the case of a tax shelter computing taxable income under the cash receipts and disbursements method of accounting, such tax shelter shall not be allowed a deduction under this chapter with respect to any item any earlier than the time when such item would be treated as incurred under subsection (h) (determined without regard to paragraph (3) thereof)."

Subsec. (i)(2). Pub. L. 99–514, §801(b)(1), amended par. (2) generally, substituting provisions relating to special rule for spudding of oil or gas wells for former provisions consisting of subpars. (A) to (D) which related to deduction of items when economic performance occurs on or before 90th day after close of the taxable year to the extent of cash basis.

Pub. L. 99–514, §1807(a)(1), substituted "on or before the 90th day" for "within 90 days" in heading and substituted "before the close of the 90th day after the close of the taxable year" for "within 90 days after the close of the taxable year" in subpar. (A).

Subsec. (i)(4). Pub. L. 99–514, §801(b)(2), amended par. (4) generally. Prior to amendment, par. (4) read as follows: "In the case of the trade or business of farming (as defined in section 464(e))—

"(A) any tax shelter described in paragraph (3)(C) shall be treated as a farming syndicate for purposes of section 464; except that this subparagraph shall not apply for purposes of determining the income of an individual meeting the requirements of section 464(c)(2),

"(B) section 464 shall be applied before this subsection, and

"(C) in determining whether an entity is a tax shelter, the definition of farming syndicate in section 464(c) shall be substituted for subparagraphs (A) and (B) of paragraph (3)."

Subsec. (i)(4)(A). Pub. L. 99–514, §1807(a)(2), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "section 464 shall be applied to any tax shelter described in paragraph (3)(C),".

1984—Subsec. (f)(4). Pub. L. 98–369, §91(e), inserted "determined after application of subsection (h)".

Subsecs. (h), (i). Pub. L. 98–369, §91(a), added subsecs. (h) and (i).

1976—Subsec. (c)(2), (3). Pub. L. 94–455, §§1901(a)(69)(A), (B), 1906(b)(13)(A), redesignated par. (3) as (2), substituted "in which he" for "which begins after December 31, 1953, and ends after the date of the enactment of this title in which the taxpayer", and struck out "or his delegate" after "Secretary" wherever appearing. Former par. (2), which related to special limitations on the applicability of par. (1), was struck out.

Subsecs. (d), (e). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary" wherever appearing.

Subsec. (g). Pub. L. 94–455, §208(a), added subsec. (g).

1964—Subsec. (f). Pub. L. 88–272 added subsec. (f).

1962—Subsec. (e). Pub. L. 87–876 added subsec. (e).

1960—Subsec. (d). Pub. L. 86–781 added subsec. (d).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Pub. L. 110–234, title XV, §15351(b), May 22, 2008, 122 Stat. 1525, and Pub. L. 110–246, §4(a), title XV, §15351(b), June 18, 2008, 122 Stat. 1664, 2287, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2009."

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.]

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7721(d), Dec. 19, 1989, 103 Stat. 2400, provided that: "The amendments made by this section [enacting sections 6662 to 6665 of this title, amending this section and sections 1274, 5684, 5761, 6013, 6222, 6601, 6621, 6653, 6672, and 7519 of this title, and repealing sections 6659, 6659A, 6660, 6661, and former section 6662 of this title] shall apply to returns the due date for which (determined without regard to extensions) is after December 31, 1989."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to taxable years beginning after Dec. 31, 1987, see section 10201(c)(1) of Pub. L. 100–203, set out as a note under section 404 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 801(b) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 801(d) of Pub. L. 99–514, set out as an Effective Date note under section 448 of this title.

Amendment by section 805(c)(5) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain changes required in method of accounting, see section 805(d) of Pub. L. 99–514, set out as a note under section 166 of this title.

Amendment by section 823 of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with changes required in the method of accounting, see section 823(c) of Pub. L. 99–514, set out as an Effective Date of Repeal note under section 466 of this title.

Amendment by section 1807(a)(1), (2) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §91(g)–(i), July 18, 1984, 98 Stat. 608, 609, as amended by Pub. L. 99–514, §2, title XVIII, §1807(a)(3)(B), (4)(F), (5), (6), Oct. 22, 1986, 100 Stat. 2095, 2811, 2813, 2814, provided that:

"(g) EFFECTIVE DATES.—

"(1) IN GENERAL.—Except as provided in this subsection and subsections (h) and (i), the amendments made by this section [enacting sections 88, 468, and 468A of this title and amending this section and section 172 of this title] shall apply to amounts with respect to which a deduction would be allowable under chapter 1 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (determined without regard to such amendments) after—

"(A) in the case of amounts to which section 461(h) of such Code (as added by such amendments) applies, the date of the enactment of this Act [July 18, 1984], and

"(B) in the case of amounts to which section 461(i) of such Code (as so added) applies, after March 31, 1984.

"(2) TAXPAYER MAY ELECT EARLIER APPLICATION.—

"(A) IN GENERAL.—In the case of amounts described in paragraph (1)(A), a taxpayer may elect to have the amendments made by this section apply to amounts which—

"(i) are incurred on or before the date of the enactment of this Act [July 18, 1984] (determined without regard to such amendments), and

"(ii) are incurred after the date of the enactment of this Act (determined with regard to such amendments).

The Secretary of the Treasury or his delegate may by regulations provide that (in lieu of an election under the preceding sentence) a taxpayer may (subject to such conditions as such regulations may provide) elect to have subsection (h) of section 461 of such Code apply to the taxpayer's entire taxable year in which occurs July 19, 1984.

"(B) ELECTION TREATED AS CHANGE IN THE METHOD OF ACCOUNTING.—For purposes of section 481 of the Internal Revenue Code of 1986, if an election is made under subparagraph (A) with respect to any amount, the application of the amendments made by this section shall be treated as a change in method of accounting—

"(i) initiated by the taxpayer,

"(ii) made with the consent of the Secretary of the Treasury, and

"(iii) with respect to which section 481 of such Code shall be applied by substituting a 3-year adjustment period for a 10-year adjustment period.

"(3) SECTION 461(h) TO APPLY IN CERTAIN CASES.—Notwithstanding paragraph (1), section 461(h) of the Internal Revenue Code of 1986 (as added by this section) shall be treated as being in effect to the extent necessary to carry out any amendments made by this section which take effect before section 461(h).

"(4) EFFECTIVE DATE FOR TREATMENT OF MINING AND SOLID WASTE RECLAMATION AND CLOSING COSTS.—Except as otherwise provided in subsection (h), the amendments made by subsection (b) [enacting section 468 of this title] shall take effect on the date of the enactment of this Act [July 18, 1984] with respect to taxable years ending after such date.

"(5) RULES FOR NUCLEAR DECOMMISSIONING COSTS.—The amendments made by subsections (c) and (f) [enacting sections 88 and 468A of this title] shall take effect on the date of the enactment of this Act [July 18, 1984] with respect to taxable years ending after such date.

"(6) MODIFICATION OF NET OPERATING LOSS CARRYBACK PERIOD.—The amendments made by subsection (d) [amending section 172 of this title] shall apply to losses for taxable years beginning after December 31, 1983.

"(h) EXCEPTION FOR CERTAIN EXISTING ACTIVITIES AND CONTRACTS.—If—

"(1) EXISTING ACCOUNTING PRACTICES.—If, on March 1, 1984, any taxpayer was regularly computing his deduction for mining reclamation activities under a current cost method of accounting (as determined by the Secretary of the Treasury or his delegate), the liability for reclamation activities—

"(A) for land disturbed before the date of the enactment of this Act [July 18, 1984], or

"(B) to which paragraph (2) applies,

shall be treated as having been incurred when the land was disturbed.

"(2) FIXED PRICE SUPPLY CONTRACT.—

"(A) IN GENERAL.—In the case of any fixed price supply contract entered into before March 1, 1984, the amendments made by subsection (b) [enacting section 468 of this title] shall not apply to any minerals extracted from such property which are sold pursuant to such contract.

"(B) NO EXTENSION OR RENEGOTIATION.—Subparagraph (A) shall not apply—

"(i) to any extension of any contract beyond the period such contract was in effect on March 1, 1984, or

"(ii) to any renegotiation of, or other change in, the terms and conditions of such contract in effect on March 1, 1984.

"(i) TRANSITIONAL RULE FOR ACCRUED VACATION PAY.—

"(1) IN GENERAL.—In the case of any taxpayer—

"(A) with respect to whom a deduction was allowable (other than under section 463 of the Internal Revenue Code of 1986) for vested accrued vacation pay for the last taxable year ending before the date of the enactment of this Act [July 18, 1984], and

"(B) who elects the application of section 463 of such Code for the first taxable year ending after the date of the enactment of this Act,

then, for purposes of section 463(b) of such Code, the opening balance of the taxpayer with respect to any vested accrued vacation pay shall be determined under section 463(b)(1) of such Code.

"(2) VESTED ACCRUED VACATION PAY.—For purposes of this subsection, the term 'vested accrued vacation pay' means any amount allowable under section 162(a) of such Code with respect to vacation pay of employees of the taxpayer (determined without regard to section 463 of such Code)."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(69) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Pub. L. 94–455, title II, §208(b), Oct. 4, 1976, 90 Stat. 1542, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to amounts paid after December 31, 1975, in taxable years ending after such date.

"(2) CERTAIN AMOUNTS PAID BEFORE 1977.—The amendment made by subsection (a) [amending this section] shall not apply to amounts paid before January 1, 1977, pursuant to a binding contract or written loan commitment which existed on September 16, 1975 (and at all times thereafter), and which required prepayment of such amounts by the taxpayer."

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88–272, title II, §223(b), Feb. 26, 1964, 78 Stat. 76, provided that: "Except as provided in subsections (c) and (d) [set out below]—

"(1) the amendment made by subsection (a)(1) [amending this section] shall apply to taxable years beginning after December 31, 1953, and ending after August 16, 1954, and

"(2) the amendment made by subsection (a)(2) [amending section 43 of the Internal Revenue Code of 1939] shall apply to taxable years to which the Internal Revenue Code of 1939 applies."

EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87–876, §3(b), Oct. 24, 1962, 76 Stat. 1199, provided that: "The amendment made by subsection (a) [amending this section] shall apply only with respect to taxable years ending after December 31, 1962."

EFFECTIVE DATE OF 1960 AMENDMENT

Pub. L. 86–781, §6(b), Sept. 14, 1960, 74 Stat. 1021, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after December 31, 1960."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TRANSITIONAL RULE FOR CERTAIN AMOUNTS

Pub. L. 99–514, title XVIII, §1807(a)(8), Oct. 22, 1986, 100 Stat. 2816, provided that: "For purposes of section 461(h) of the Internal Revenue Code of 1954 [now 1986], economic performance shall be treated as occurring on the date of a payment to an insurance company if—

"(A) such payment was made before November 23, 1985, for indemnification against a tort liability relating to personal injury or death caused by inhalation or ingestion of dust from asbestos-containing insulation products,

"(B) such insurance company is unrelated to taxpayer,

"(C) such payment is not refundable, and

"(D) the taxpayer is not engaged in the mining of asbestos nor is any member of any affiliated group which includes the taxpayer so engaged."

TRANSITION RULE

Pub. L. 99–514, title XVIII, §1807(c), Oct. 22, 1986, 100 Stat. 2817, provided that: "A taxpayer shall be allowed to use the cash receipts and disbursements method of accounting for taxable years ending after January 1, 1982, if such taxpayer—

"(1) is a partnership which was founded in 1936,

"(2) has over 1,000 professional employees,

"(3) used a long-term contract method of accounting for a substantial part of its income from the performance of architectural and engineering services, and

"(4) is headquartered in Chicago, Illinois."

ELECTION AS TO TRANSFERS IN TAXABLE YEARS BEGINNING BEFORE JAN. 1, 1964

Pub. L. 88–272, title II, §223(c), Feb. 26, 1964, 78 Stat. 76, provided that:

"(1) The amendments made by subsection (a) [amending this section and section 43 of the Internal Revenue Code of 1939] shall not apply to any transfer of money or other property described in subsection (a) made in a taxable year beginning before January 1, 1964, if the taxpayer elects, in the manner provided by regulations prescribed by the Secretary of the Treasury or his delegate, to have this paragraph apply. Such an election—

"(A) must be made within one year after the date of the enactment of this Act [Feb. 26, 1964],

"(B) may not be revoked after the expiration of such one-year period, and

"(C) shall apply to all transfers described in the first sentence of this paragraph (other than transfers described in paragraph (2)).

In the case of any transfer to which this paragraph applies, the deduction shall be allowed only for the taxable year in which the contest with respect to such transfer is settled.

"(2) Paragraph (1) shall not apply to any transfer if the assessment of any deficiency which would result from the application of the election in respect of such transfer is, on the date of the election under paragraph (1), prevented by the operation of any law or rule of law.

"(3) If the taxpayer makes an election under paragraph (1), and if, on the date of such election, the assessment of any deficiency which results from the application of the election in respect of any transfer is not prevented by the operation of any law or rule of law, the period within which assessment of such deficiency may be made shall not expire earlier than 2 years after the date of the enactment of this Act [Feb. 26, 1964]."

CERTAIN OTHER TRANSFERS IN TAXABLE YEARS BEGINNING BEFORE JAN. 1, 1964

Pub. L. 88–272, title II, §223(d), Feb. 26, 1964, 78 Stat. 77, provided that: "The amendments made by subsection (a) [amending this section and section 43 of the Internal Revenue Code of 1939] shall not apply to any transfer of money or other property described in subsection (a) made in a taxable year beginning before January 1, 1964, if—

"(1) no deduction has been allowed in respect of such transfer for any taxable year before the taxable year in which the contest with respect to such transfer is settled, and

"(2) refund or credit of any overpayment which would result from the application of such amendments to such transfer is prevented by the operation of any law or rule of law.

In the case of any transfer to which this subsection applies, the deduction shall be allowed for the taxable year in which the contest with respect to such transfer is settled."

[§462. Repealed. June 15, 1955, ch. 143, §1(b), 69 Stat. 134]

Section, act Aug. 16, 1954, ch. 736 68A Stat. 158, related to reserves for estimated expenses.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 3 of Act June 15, 1955, set out as an Effective Date of 1955 Amendment note under section 381 of this title.

SAVINGS PROVISION

For provisions concerning increase in tax in any taxable year ending on or before June 15, 1955 by reason of enactment of act June 15, 1955, see section 4 of act June 15, 1955, set out as a note under section 381 of this title.

[§463. Repealed. Pub. L. 100–203, title X, §10201(a), Dec. 22, 1987, 101 Stat. 1330–387]

Section, added Pub. L. 93–625, §4(a), Jan. 3, 1974, 88 Stat. 2109; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–369, div. A, title V, §561(a), July 18, 1984, 98 Stat. 901; Pub. L. 99–514, title XI, §1165(a), Oct. 22, 1986, 100 Stat. 2511, related to deduction allowable for accrual basis taxpayers under section 162(a) of this title with respect to vacation pay.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 1987, see section 10201(c)(1) of Pub. L. 100–203, set out as an Effective Date of 1987 Amendment note under section 404 of this title.

CHANGE IN METHOD OF ACCOUNTING REQUIRED BY PUB. L. 100–203

Pub. L. 100–203, title X, §10201(c)(2), Dec. 22, 1987, 101 Stat. 1330–388, provided that: "In the case of any taxpayer who elected to have section 463 of the Internal Revenue Code of 1986 apply for such taxpayer's last taxable year beginning before January 1, 1988, and who is required to change his method of accounting by reason of the amendments made by this section [amending sections 404, 419, and 461 of this title, repealing sections 81 and 463 of this title, and enacting provisions set out as a note under section 404 of this title]—

"(A) such change shall be treated as initiated by the taxpayer,

"(B) such change shall be treated as having been made with the consent of the Secretary, and

"(C) the net amount of adjustments required by section 481 of such Code to be taken into account by the taxpayer—

"(i) shall be reduced by the balance in the suspense account under section 463(c) of such Code as of the close of such last taxable year, and

"(ii) shall be taken into account over the 4-taxable year period beginning with the taxable year following such last taxable year as follows:

"In the case of the:	The percentage taken into account is:
1st year	25
2nd year	5
3rd year	35
4th year	35.

Notwithstanding subparagraph (C)(ii), if the period the adjustments are required to be taken into account under section 481 of such Code is less than 4 years, such adjustments shall be taken into account ratably over such shorter period."

§464. Limitations on deductions for certain farming

(a) General rule

In the case of any farming syndicate (as defined in subsection (c)), a deduction (otherwise allowable under this chapter) for amounts paid for feed, seed, fertilizer, or other similar farm supplies shall only be allowed for the taxable year in which such feed, seed, fertilizer, or other supplies are actually used or consumed, or, if later, for the taxable year for which allowable as a deduction (determined without regard to this section).

(b) Certain poultry expenses

In the case of any farming syndicate (as defined in subsection (c))—

(1) the cost of poultry (including egg-laying hens and baby chicks) purchased for use in a trade or business (or both for use in a trade or business and for sale) shall be capitalized and deducted ratably over the lesser of 12 months or their useful life in the trade or business, and

(2) the cost of poultry purchased for sale shall be deducted for the taxable year in which the poultry is sold or otherwise disposed of.

(c) Farming syndicate defined

(1) In general

For purposes of this section, the term "farming syndicate" means—

(A) a partnership or any other enterprise other than a corporation which is not an S

corporation engaged in the trade or business of farming, if at any time interests in such partnership or enterprise have been offered for sale in any offering required to be registered with any Federal or State agency having authority to regulate the offering of securities for sale, or

(B) a partnership or any other enterprise other than a corporation which is not an S corporation engaged in the trade or business of farming, if more than 35 percent of the losses during any period are allocable to limited partners or limited entrepreneurs.

(2) Holdings attributable to active management

For purposes of paragraph (1)(B), the following shall be treated as an interest which is not held by a limited partner or a limited entrepreneur:

(A) in the case of any individual who has actively participated (for a period of not less than 5 years) in the management of any trade or business of farming, any interest in a partnership or other enterprise which is attributable to such active participation,

(B) in the case of any individual whose principal residence is on a farm, any partnership or other enterprise engaged in the trade or business of farming such farm,

(C) in the case of any individual who is actively participating in the management of any trade or business of farming or who is an individual who is described in subparagraph (A) or (B), any participation in the further processing of livestock which was raised in such trade or business (or in the trade or business referred to in subparagraph (A) or (B)),

(D) in the case of an individual whose principal business activity involves active participation in the management of a trade or business of farming, any interest in any other trade or business of farming, and,

(E) any interest held by a member of the family (or a spouse of any such member) of a grandparent of an individual described in subparagraph (A), (B), (C), or (D) if the interest in the partnership or the enterprise is attributable to the active participation of the individual described in subparagraph (A), (B), (C), or (D).

For purposes of subparagraph (A), where one farm is substituted for or added to another farm, both farms shall be treated as one farm. For purposes of subparagraph (E), the term "family" has the meaning given to such term by section 267(c)(4).

(d) Exception

Subsection (a) shall not apply to any amount paid for supplies which are on hand at the close of the taxable year on account of fire, storm, or other casualty, or on account of disease or drought.

(e) Definitions

For purposes of this section—

(1) Farming

The term "farming" means the cultivation of land or the raising or harvesting of any agricultural or horticultural commodity including the raising, shearing, feeding, caring for, training, and management of animals. For purposes of the preceding sentence, trees (other than trees bearing fruit or nuts) shall not be treated as an agricultural or horticultural commodity.

(2) Limited entrepreneur

The term "limited entrepreneur" means a person who—

(A) has an interest in an enterprise other than as a limited partner, and

(B) does not actively participate in the management of such enterprise.

(f) Subsections (a) and (b) to apply to certain persons prepaying 50 percent or more of certain farming expenses

(1) In general

In the case of a taxpayer to whom this subsection applies, subsections (a) and (b) shall apply to the excess prepaid farm supplies of such taxpayer in the same manner as if such taxpayer were a

farming syndicate.

(2) Taxpayer to whom subsection applies

This subsection applies to any taxpayer for any taxable year if such taxpayer—

(A) does not use an accrual method of accounting,

(B) has excess prepaid farm supplies for the taxable year, and

(C) is not a qualified farm-related taxpayer.

(3) Qualified farm-related taxpayer

(A) In general

For purposes of this subsection, the term "qualified farm-related taxpayer" means any farm-related taxpayer if—

(i)(I) the aggregate prepaid farm supplies for the 3 taxable years preceding the taxable year are less than 50 percent of,

(II) the aggregate deductible farming expenses (other than prepaid farm supplies) for such 3 taxable years, or

(ii) the taxpayer has excess prepaid farm supplies for the taxable year by reason of any change in business operation directly attributable to extraordinary circumstances.

(B) Farm-related taxpayer

For purposes of this paragraph, the term "farm-related taxpayer" means any taxpayer—

(i) whose principal residence (within the meaning of section 121) is on a farm,

(ii) who has a principal occupation of farming, or

(iii) who is a member of the family (within the meaning of subsection (c)(2)(E)) of a taxpayer described in clause (i) or (ii).

(4) Definitions

For purposes of this subsection—

(A) Excess prepaid farm supplies

The term "excess prepaid farm supplies" means the prepaid farm supplies for the taxable year to the extent the amount of such supplies exceeds 50 percent of the deductible farming expenses for the taxable year (other than prepaid farm supplies).

(B) Prepaid farm supplies

The term "prepaid farm supplies" means any amounts which are described in subsection (a) or (b) and would be allowable for a subsequent taxable year under the rules of subsections (a) and (b).

(C) Deductible farming expenses

The term "deductible farming expenses" means any amount allowable as a deduction under this chapter (including any amount allowable as a deduction for depreciation or amortization) which is properly allocable to the trade or business of farming.

(g) Termination

Except as provided in subsection (f), subsections (a) and (b) shall not apply to any taxable year beginning after December 31, 1986.

(Added Pub. L. 94–455, title II, §207(a)(1), Oct. 4, 1976, 90 Stat. 1536; amended Pub. L. 95–600, title VII, §701(l)(3), Nov. 6, 1978, 92 Stat. 2907; Pub. L. 97–354, §5(a)(30), Oct. 19, 1982, 96 Stat. 1695; Pub. L. 99–514, title IV, §404(a), (b)(1), title VIII, §803(b)(8), Oct. 22, 1986, 100 Stat. 2223, 2224, 2356; Pub. L. 100–647, title I, §1008(a)(4), Nov. 10, 1988, 102 Stat. 3437; Pub. L. 105–34, title III, §312(d)(1), Aug. 5, 1997, 111 Stat. 839.)

AMENDMENTS

1997—Subsec. (f)(3)(B)(i). Pub. L. 105–34 substituted "section 121" for "section 1034".

1988—Subsec. (g). Pub. L. 100–647 added subsec. (g).

1986—Pub. L. 99–514, §404(b)(1), substituted "for certain farming" for "in case of farming syndicates" in section catchline.

Subsec. (d). Pub. L. 99–514, §803(b)(8), substituted "Exception" for "Exceptions" as heading and amended text generally. Prior to amendment, text read as follows: "Subsection (a) shall not apply to—

"(1) any amount paid for supplies which are on hand at the close of the taxable year on account of fire, storm, flood, or other casualty or on account of disease or drought, or

"(2) any amount required to be charged to capital account under section 278."

Subsec. (f). Pub. L. 99–514, §404(a), added subsec. (f).

1982—Subsec. (c)(1)(A), (B). Pub. L. 97–354 substituted "an S corporation" for "an electing small business corporation (as defined in section 1371(b))".

1978—Subsec. (c)(2). Pub. L. 95–600 substituted in subpar. (E) "(or a spouse of any such member)" for "(within the meaning of section 267(c)(4))" and provided that for purposes of subpar. (E) the term "family" has the meaning given to such term by section 267(c)(4).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d) of Pub. L. 105–34, set out as a note under section 121 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

If any interest costs incurred after Dec. 31, 1986, are attributable to costs incurred before Jan. 1, 1987, the amendment by section 803(b)(8) of Pub. L. 99–514 is applicable to such interest costs only to the extent such interest costs are attributable to costs which were required to be capitalized under section 263 of the Internal Revenue Code of 1954 and which would have been taken into account in applying section 189 of the Internal Revenue Code of 1954 (as in effect before its repeal by section 803 of Pub. L. 99–514) or, if applicable, section 266 of such Code, see section 7831(d)(2) of Pub. L. 101–239, set out as an Effective Date note under section 263A of this title.

Pub. L. 99–514, title IV, §404(c), Oct. 22, 1986, 100 Stat. 2224, provided that: "The amendments made by this section [amending this section] shall apply to amounts paid or incurred after March 1, 1986, in taxable years beginning after such date."

Amendment by section 803(b)(8) of Pub. L. 99–514 applicable to costs incurred after Dec. 31, 1986, in taxable years ending after such date, except as otherwise provided, see section 803(d) of Pub. L. 99–514, set out as an Effective Date note under section 263A of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 effective as if included in this section or section 447 of this title at the time of their enactment, Oct. 4, 1976, see section 701(l)(4) of Pub. L. 95–600, set out as a note under section 447 of this title.

EFFECTIVE DATE

Pub. L. 94–455, title II, §207(a)(3), Oct. 4, 1976, 90 Stat. 1537, provided that:

"(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection [enacting this section] shall apply to taxable years beginning after December 31, 1975.

"(B) TRANSITIONAL RULE.—In the case of a farming syndicate in existence on December 31, 1975, and for which there was no change of membership throughout its taxable year beginning in 1976, the amendments made by this subsection shall apply to taxable years beginning after December 31, 1976."

§465. Deductions limited to amount at risk

(a) Limitation to amount at risk

(1) In general

In the case of—

(A) an individual, and

(B) a C corporation with respect to which the stock ownership requirement of paragraph (2) of section 542(a) is met,

engaged in an activity to which this section applies, any loss from such activity for the taxable year shall be allowed only to the extent of the aggregate amount with respect to which the taxpayer is at risk (within the meaning of subsection (b)) for such activity at the close of the taxable year.

(2) Deduction in succeeding year

Any loss from an activity to which this section applies not allowed under this section for the taxable year shall be treated as a deduction allocable to such activity in the first succeeding taxable year.

(3) Special rules for applying paragraph (1)(B)

For purposes of paragraph (1)(B)—

(A) section 544(a)(2) shall be applied as if such section did not contain the phrase "or by or for his partner"; and

(B) sections 544(a)(4)(A) and 544(b)(1) shall be applied by substituting "the corporation meet the stock ownership requirements of section 542(a)(2)" for "the corporation a personal holding company".

(b) Amounts considered at risk

(1) In general

For purposes of this section, a taxpayer shall be considered at risk for an activity with respect to amounts including—

(A) the amount of money and the adjusted basis of other property contributed by the taxpayer to the activity, and

(B) amounts borrowed with respect to such activity (as determined under paragraph (2)).

(2) Borrowed amounts

For purposes of this section, a taxpayer shall be considered at risk with respect to amounts borrowed for use in an activity to the extent that he—

(A) is personally liable for the repayment of such amounts, or

(B) has pledged property, other than property used in such activity, as security for such borrowed amount (to the extent of the net fair market value of the taxpayer's interest in such property).

No property shall be taken into account as security if such property is directly or indirectly financed by indebtedness which is secured by property described in paragraph (1).

(3) Certain borrowed amounts excluded

(A) In general

Except to the extent provided in regulations, for purposes of paragraph (1)(B), amounts borrowed shall not be considered to be at risk with respect to an activity if such amounts are borrowed from any person who has an interest in such activity or from a related person to a person (other than the taxpayer) having such an interest.

(B) Exceptions

(i) Interest as creditor

Subparagraph (A) shall not apply to an interest as a creditor in the activity.

(ii) Interest as shareholder with respect to amounts borrowed by corporation

In the case of amounts borrowed by a corporation from a shareholder, subparagraph (A) shall not apply to an interest as a shareholder.

(C) Related person

For purposes of this subsection, a person (hereinafter in this paragraph referred to as the "related person") is related to any person if—

(i) the related person bears a relationship to such person specified in section 267(b) or section 707(b)(1), or

(ii) the related person and such person are engaged in trades or business under common control (within the meaning of subsections (a) and (b) of section 52).

For purposes of clause (i), in applying section 267(b) or 707(b)(1), "10 percent" shall be substituted for "50 percent".

(4) Exception

Notwithstanding any other provision of this section, a taxpayer shall not be considered at risk with respect to amounts protected against loss through nonrecourse financing, guarantees, stop loss agreements, or other similar arrangements.

(5) Amounts at risk in subsequent years

If in any taxable year the taxpayer has a loss from an activity to which subsection (a) applies, the amount with respect to which a taxpayer is considered to be at risk (within the meaning of subsection (b)) in subsequent taxable years with respect to that activity shall be reduced by that portion of the loss which (after the application of subsection (a)) is allowable as a deduction.

(6) Qualified nonrecourse financing treated as amount at risk

For purposes of this section—

(A) In general

Notwithstanding any other provision of this subsection, in the case of an activity of holding real property, a taxpayer shall be considered at risk with respect to the taxpayer's share of any qualified nonrecourse financing which is secured by real property used in such activity.

(B) Qualified nonrecourse financing

For purposes of this paragraph, the term "qualified nonrecourse financing" means any financing—

(i) which is borrowed by the taxpayer with respect to the activity of holding real property,

(ii) which is borrowed by the taxpayer from a qualified person or represents a loan from any Federal, State, or local government or instrumentality thereof, or is guaranteed by any Federal, State, or local government,

(iii) except to the extent provided in regulations, with respect to which no person is personally liable for repayment, and

(iv) which is not convertible debt.

(C) Special rule for partnerships

In the case of a partnership, a partner's share of any qualified nonrecourse financing of such partnership shall be determined on the basis of the partner's share of liabilities of such partnership incurred in connection with such financing (within the meaning of section 752).

(D) Qualified person defined

For purposes of this paragraph—

(i) In general

The term "qualified person" has the meaning given such term by section 49(a)(1)(D)(iv).

(ii) Certain commercially reasonable financing from related persons

For purposes of clause (i), section 49(a)(1)(D)(iv) shall be applied without regard to

subclause (I) thereof (relating to financing from related persons) if the financing from the related person is commercially reasonable and on substantially the same terms as loans involving unrelated persons.

(E) Activity of holding real property

For purposes of this paragraph—

(i) Incidental personal property and services

The activity of holding real property includes the holding of personal property and the providing of services which are incidental to making real property available as living accommodations.

(ii) Mineral property

The activity of holding real property shall not include the holding of mineral property.

(c) Activities to which section applies

(1) Types of activities

This section applies to any taxpayer engaged in the activity of—

(A) holding, producing, or distributing motion picture films or video tapes,

(B) farming (as defined in section 464(e)),

(C) leasing any section 1245 property (as defined in section 1245(a)(3)),

(D) exploring for, or exploiting, oil and gas resources as a trade or business or for the production of income, or

(E) exploring for, or exploiting, geothermal deposits (as defined in section 613(e)(2)).

(2) Separate activities

For purposes of this section—

(A) In general

Except as provided in subparagraph (B), a taxpayer's activity with respect to each—

(i) film or video tape,

(ii) section 1245 property which is leased or held for leasing,

(iii) farm,

(iv) oil and gas property (as defined under section 614), or

(v) geothermal property (as defined under section 614),

shall be treated as a separate activity.

(B) Aggregation rules

(i) Special rule for leases of section 1245 property by partnerships or S corporations

In the case of any partnership or S corporation, all activities with respect to section 1245 properties which—

(I) are leased or held for lease, and

(II) are placed in service in any taxable year of the partnership or S corporation,

shall be treated as a single activity.

(ii) Other aggregation rules

Rules similar to the rules of subparagraphs (B) and (C) of paragraph (3) shall apply for purposes of this paragraph.

(3) Extension to other activities

(A) In general

In the case of taxable years beginning after December 31, 1978, this section also applies to each activity—

(i) engaged in by the taxpayer in carrying on a trade or business or for the production of

income, and

(ii) which is not described in paragraph (1).

(B) Aggregation of activities where taxpayer actively participates in management of trade or business

Except as provided in subparagraph (C), for purposes of this section, activities described in subparagraph (A) which constitute a trade or business shall be treated as one activity if—

(i) the taxpayer actively participates in the management of such trade or business, or

(ii) such trade or business is carried on by a partnership or an S corporation and 65 percent or more of the losses for the taxable year is allocable to persons who actively participate in the management of the trade or business.

(C) Aggregation or separation of activities under regulations

The Secretary shall prescribe regulations under which activities described in subparagraph (A) shall be aggregated or treated as separate activities.

(D) Application of subsection (b)(3)

In the case of an activity described in subparagraph (A), subsection (b)(3) shall apply only to the extent provided in regulations prescribed by the Secretary.

(4) Exclusion for certain equipment leasing by closely-held corporations

(A) In general

In the case of a corporation described in subsection (a)(1)(B) actively engaged in equipment leasing—

(i) the activity of equipment leasing shall be treated as a separate activity, and

(ii) subsection (a) shall not apply to losses from such activity.

(B) 50-percent gross receipts test

For purposes of subparagraph (A), a corporation shall not be considered to be actively engaged in equipment leasing unless 50 percent or more of the gross receipts of the corporation for the taxable year is attributable, under regulations prescribed by the Secretary, to equipment leasing.

(C) Component members of controlled group treated as a single corporation

For purposes of subparagraph (A), the component members of a controlled group of corporations shall be treated as a single corporation.

(5) Waiver of controlled group rule where there is substantial leasing activity

(A) In general

In the case of the component members of a qualified leasing group, paragraph (4) shall be applied—

(i) by substituting "80 percent" for "50 percent" in subparagraph (B) thereof, and

(ii) as if paragraph (4) did not include subparagraph (C) thereof.

(B) Qualified leasing group

For purposes of this paragraph, the term "qualified leasing group" means a controlled group of corporations which, for the taxable year and each of the 2 immediately preceding taxable years, satisfied each of the following 3 requirements:

(i) At least 3 employees

During the entire year, the group had at least 3 full-time employees substantially all of the services of whom were services directly related to the equipment leasing activity of the qualified leasing members.

(ii) At least 5 separate leasing transactions

During the year, the qualified leasing members in the aggregate entered into at least 5

separate equipment leasing transactions.

(iii) At least $1,000,000 equipment leasing receipts

During the year, the qualified leasing members in the aggregate had at least $1,000,000 in gross receipts from equipment leasing.

The term "qualified leasing group" does not include any controlled group of corporations to which, without regard to this paragraph, paragraph (4) applies.

(C) Qualified leasing member

For purposes of this paragraph, a corporation shall be treated as a qualified leasing member for the taxable year only if for each of the taxable years referred to in subparagraph (B)—

(i) it is a component member of the controlled group of corporations, and

(ii) it meets the requirements of paragraph (4)(B) (as modified by subparagraph (A)(i) of this paragraph).

(6) Definitions relating to paragraphs (4) and (5)

For purposes of paragraphs (4) and (5)—

(A) Equipment leasing

The term "equipment leasing" means—

(i) the leasing of equipment which is section 1245 property, and

(ii) the purchasing, servicing, and selling of such equipment.

(B) Leasing of master sound recordings, etc., excluded

The term "equipment leasing" does not include the leasing of master sound recordings, and other similar contractual arrangements with respect to tangible or intangible assets associated with literary, artistic, or musical properties.

(C) Controlled group of corporations; component member

The terms "controlled group of corporations" and "component members" have the same meanings as when used in section 1563. The determination of the taxable years taken into account with respect to any controlled group of corporations shall be made in a manner consistent with the manner set forth in section 1563.

(7) Exclusion of active businesses of qualified C corporations

(A) In general

In the case of a taxpayer which is a qualified C corporation—

(i) each qualifying business carried on by such taxpayer shall be treated as a separate activity, and

(ii) subsection (a) shall not apply to losses from such business.

(B) Qualified C corporation

For purposes of subparagraph (A), the term "qualified C corporation" means any corporation described in subparagraph (B) of subsection (a)(1) which is not—

(i) a personal holding company (as defined in section 542(a)), or

(ii) a personal service corporation (as defined in section 269A(b) but determined by substituting "5 percent" for "10 percent" in section 269A(b)(2)).

(C) Qualifying business

For purposes of this paragraph, the term "qualifying business" means any active business if—

(i) during the entire 12-month period ending on the last day of the taxable year, such corporation had at least 1 full-time employee substantially all the services of whom were in the active management of such business,

(ii) during the entire 12-month period ending on the last day of the taxable year, such corporation had at least 3 full-time, nonowner employees substantially all of the services of whom were services directly related to such business,

(iii) the amount of the deductions attributable to such business which are allowable to the taxpayer solely by reason of sections 162 and 404 for the taxable year exceeds 15 percent of the gross income from such business for such year, and

(iv) such business is not an excluded business.

(D) Special rules for application of subparagraph (C)

(i) Partnerships in which taxpayer is a qualified corporate partner

In the case of an active business of a partnership, if—

(I) the taxpayer is a qualified corporate partner in the partnership, and

(II) during the entire 12-month period ending on the last day of the partnership's taxable year, there was at least 1 full-time employee of the partnership (or of a qualified corporate partner) substantially all the services of whom were in the active management of such business,

then the taxpayer's proportionate share (determined on the basis of its profits interest) of the activities of the partnership in such business shall be treated as activities of the taxpayer (and clause (i) of subparagraph (C) shall not apply in determining whether such business is a qualifying business of the taxpayer).

(ii) Qualified corporate partner

For purposes of clause (i), the term "qualified corporate partner" means any corporation if—

(I) such corporation is a general partner in the partnership,

(II) such corporation has an interest of 10 percent or more in the profits and losses of the partnership, and

(III) such corporation has contributed property to the partnership in an amount not less than the lesser of $500,000 or 10 percent of the net worth of the corporation.

For purposes of subclause (III), any contribution of property other than money shall be taken into account at its fair market value.

(iii) Deduction for owner employee compensation not taken into account

For purposes of clause (iii) of subparagraph (C), there shall not be taken into account any deduction in respect of compensation for personal services rendered by any employee (other than a non-owner employee) of the taxpayer or any member of such employee's family (within the meaning of section 318(a)(1)).

(iv) Special rule for banks

For purposes of clause (iii) of subparagraph (C), in the case of a bank (as defined in section 581) or a financial institution to which section 591 applies—

(I) gross income shall be determined without regard to the exclusion of interest from gross income under section 103, and

(II) in addition to the deductions described in such clause, there shall also be taken into account the amount of the deductions which are allowable for amounts paid or credited to the accounts of depositors or holders of accounts as dividends or interest on their deposits or withdrawable accounts under section 163 or 591.

(v) Special rule for life insurance companies

(I) In general

Clause (iii) of subparagraph (C) shall not apply to any insurance business of a qualified life insurance company.

(II) Insurance business

For purposes of subclause (I), the term "insurance business" means any business which is not a noninsurance business (within the meaning of section 806(b)(3)).

(III) Qualified life insurance company

For purposes of subclause (I), the term "qualified life insurance company" means any company which would be a life insurance company as defined in section 816 if unearned premiums were not taken into account under subsections (a)(2) and (c)(2) of section 816.

(E) Definitions

For purposes of this paragraph—

(i) Non-owner employee

The term "non-owner employee" means any employee who does not own, at any time during the taxable year, more than 5 percent in value of the outstanding stock of the taxpayer. For purposes of the preceding sentence, section 318 shall apply, except that "5 percent" shall be substituted for "50 percent" in section 318(a)(2)(C).

(ii) Excluded business

The term "excluded business" means—

(I) equipment leasing (as defined in paragraph (6)), and

(II) any business involving the use, exploitation, sale, lease, or other disposition of master sound recordings, motion picture films, video tapes, or tangible or intangible assets associated with literary, artistic, musical, or similar properties.

(iii) Special rules relating to communications industry, etc.

(I) Business not excluded where taxpayer not completely at risk

A business involving the use, exploitation, sale, lease, or other disposition of property described in subclause (II) of clause (ii) shall not constitute an excluded business by reason of such subclause if the taxpayer is at risk with respect to all amounts paid or incurred (or chargeable to capital account) in such business.

(II) Certain licensed businesses not excluded

For purposes of subclause (II) of clause (ii), the provision of radio, television, cable television, or similar services pursuant to a license or franchise granted by the Federal Communications Commission or any other Federal, State, or local authority shall not constitute an excluded business by reason of such subclause.

(F) Affiliated group treated as 1 taxpayer

For purposes of this paragraph—

(i) In general

Except as provided in subparagraph (G), the component members of an affiliated group of corporations shall be treated as a single taxpayer.

(ii) Affiliated group of corporations

The term "affiliated group of corporations" means an affiliated group (as defined in section 1504(a)) which files or is required to file consolidated income tax returns.

(iii) Component member

The term "component member" means an includible corporation (as defined in section 1504) which is a member of the affiliated group.

(G) Loss of 1 member of affiliated group may not offset income of personal holding company or personal service corporation

Nothing in this paragraph shall permit any loss of a member of an affiliated group to be used as an offset against the income of any other member of such group which is a personal holding company (as defined in section 542(a)) or a personal service corporation (as defined in section 269A(b) but determined by substituting "5 percent" for "10 percent" in section 269A(b)(2)).

(d) Definition of loss

For purposes of this section, the term "loss" means the excess of the deductions allowable under this chapter for the taxable year (determined without regard to the first sentence of subsection (a)) and allocable to an activity to which this section applies over the income received or accrued by the taxpayer during the taxable year from such activity (determined without regard to subsection (e)(1)(A)).

(e) Recapture of losses where amount at risk is less than zero

(1) In general

If zero exceeds the amount for which the taxpayer is at risk in any activity at the close of any taxable year—

(A) the taxpayer shall include in his gross income for such taxable year (as income from such activity) an amount equal to such excess, and

(B) an amount equal to the amount so included in gross income shall be treated as a deduction allocable to such activity for the first succeeding taxable year.

(2) Limitation

The excess referred to in paragraph (1) shall not exceed—

(A) the aggregate amount of the reductions required by subsection (b)(5) with respect to the activity by reason of losses for all prior taxable years beginning after December 31, 1978, reduced by

(B) the amounts previously included in gross income with respect to such activity under this subsection.

(Added Pub. L. 94–455, title II, §204(a), Oct. 4, 1976, 90 Stat. 1531; amended Pub. L. 95–600, title II, §§201(a), (c)(1), 202, 203, title VII, §701(k)(2), Nov. 6, 1978, 92 Stat. 2814, 2816, 2906; Pub. L. 95–618, title IV, §402(d), Nov. 9, 1978, 92 Stat. 3202; Pub. L. 96–222, title I, §102(a)(1)(A)–(D), Apr. 1, 1980, 94 Stat. 206; Pub. L. 97–354, §5(a)(31), Oct. 19, 1982, 96 Stat. 1695; Pub. L. 98–369, div. A, title IV, §432(a)–(c), title VII, §721(x)(2), July 18, 1984, 98 Stat. 811–814, 971; Pub. L. 99–514, title II, §201(d)(7)(A), title V, §503(a), (b), title X, §1011(b)(1), Oct. 22, 1986, 100 Stat. 2141, 2243, 2389; Pub. L. 101–508, title XI, §§11813(b)(15), 11815(b)(3), Nov. 5, 1990, 104 Stat. 1388–555, 1388–558; Pub. L. 108–357, title IV, §413(c)(7), Oct. 22, 2004, 118 Stat. 1507.)

AMENDMENTS

2004—Subsec. (c)(7)(B). Pub. L. 108–357 inserted "or" at end of cl. (i), redesignated cl. (iii) as (ii), and struck out former cl. (ii) which read as follows: "a foreign personal holding company (as defined in section 552(a)), or".

1990—Subsec. (b)(6)(D). Pub. L. 101–508, §11813(b)(15), substituted "49(a)(1)(D)(iv)" for "46(c)(8)(D)(iv)" wherever appearing.

Subsec. (c)(1)(E). Pub. L. 101–508, §11815(b)(3), substituted "section 613(e)(2)" for "section 613(e)(3)".

1986—Subsec. (b)(3)(C). Pub. L. 99–514, §201(d)(7)(A), struck out "defined" after "person" in heading and amended text generally. Prior to amendment, text read as follows: "For purposes of subparagraph (A), the term 'related person' has the meaning given such term by section 168(e)(4)."

Subsec. (b)(6). Pub. L. 99–514, §503(b), added par. (6).

Subsec. (c)(3)(D), (E). Pub. L. 99–514, §503(a), redesignated subpar. (E) as (D) and struck out former subpar. (D) which read as follows: "In the case of activities described in subparagraph (A), the holding of real property (other than mineral property) shall be treated as a separate activity, and subsection (a) shall not apply to losses from such activity. For purposes of the preceding sentence, personal property and services which are incidental to making real property available as living accommodations shall be treated as part of the activity of holding such real property."

Subsec. (c)(7)(D)(v)(II). Pub. L. 99–514, §1011(b)(1), substituted "section 806(b)(3)" for "section 806(c)(3)".

1984—Subsec. (a)(1)(B). Pub. L. 98–369, §721(x)(2), substituted "a C corporation" for "a corporation".

Subsec. (b)(3). Pub. L. 98–369, §432(c), designated existing provisions as subpar. (A), in subpar. (A) as so designated struck out subpar. designations "(A)" and "(B)" and substituted provisions that, except as provided by regulation, amounts borrowed shall not be considered to be at risk if such amounts are borrowed from any person who has an interest in the activity or from a related person to a person (other than the taxpayer) having such an interest for provision that such amounts would not be considered to be at risk if borrowed from a

person who had an interest (other than as a creditor) in such activity or who had a relationship to the taxpayer specified in section 267(b) of this title, and added subpars. (B) and (C).

Subsec. (c)(2). Pub. L. 98–369, §432(b), designated existing provisions as subpar. (A), in subpar. (A) as so designated, redesignated former subpars. (A) to (E) as cls. (i) to (v), respectively, struck out provision that a partner's interest in a partnership or a shareholder's interest in an S corporation had to be treated as a single activity to the extent that the partnership or the S corporation was engaged in activities described in any subparagraph of this paragraph, and added subpar. (B).

Subsec. (c)(7). Pub. L. 98–369, §432(a), added par. (7).

1982—Subsec. (a)(1). Pub. L. 97–354, §5(a)(31)(A), redesignated subpar. (C) as (B). Former subpar. (B), relating to an electing small business corporation, was struck out.

Subsec. (a)(3). Pub. L. 97–354, §5(a)(31)(B), substituted "paragraph (1)(B)" for "paragraph (1)(C)" in heading and text.

Subsec. (c)(2). Pub. L. 97–354, §5(a)(31)(C), substituted "an S corporation" for "an electing small business corporation" the first place appearing and "the S corporation" for "an electing small business corporation" the second place appearing.

Subsec. (c)(3)(B)(ii). Pub. L. 97–354, §5(a)(31)(D), substituted "an S corporation" for "electing small business corporation (as defined in section 1371(b))".

Subsec. (c)(4)(A). Pub. L. 97–354, §5(a)(31)(E), substituted "subsection (a)(1)(B)" for "subsection (a)(1)(C)".

1980—Subsec. (a)(1)(C), (3). Pub. L. 96–222, §102(a)(1)(A), struck out in par. (1)(C) "(determined by reference to the rules contained in section 318 rather than under section 544)" after "of section 542(a)" and added par. (3).

Subsec. (b)(5). Pub. L. 96–222, §102(a)(1)(D)(iii), substituted "to which subsection (a) applies" for "to which this section applies".

Subsec. (c)(3)(D). Pub. L. 96–222, §102(a)(1)(D)(ii), struck out provisions relating to equipment leasing by closely-held corporations.

Subsec. (c)(4) to (6). Pub. L. 96–222, §102(a)(1)(D)(i), added pars. (4) to (6).

Subsec. (d). Pub. L. 96–222, §102(a)(1)(B), inserted "(determined without regard to subsection (e)(1)(A)" after "from such activity".

Subsec. (e)(2)(A). Pub. L. 96–222, §102(a)(1)(C), inserted "by reason of losses" after "with respect to the activity".

1978—Pub. L. 95–600, §201(c)(1), substituted "Deductions limited to amount at risk" for "Deductions limited to amount at risk in case of certain activities" in section catchline.

Subsec. (a). Pub. L. 95–600, §202, redesignated existing provisions as par. (1), substituted provisions relating to limitations with respect to an individual, an electing small business corporation defined under section 1371(b) of this title, and a corporation meeting the stock ownership requirements of section 542(a)(2) of this title and the rules of section 318 of this title, for provisions relating to limitations with respect to a taxpayer other than a corporation which is neither an electing small business corporation defined under section 1371(b) of this title, nor a personal holding company defined under section 542 of this title, and added par. (2).

Subsec. (c)(1)(E). Pub. L. 95–618, §402(d)(1), added subpar. (E).

Subsec. (c)(2)(E). Pub. L. 95–618, §402(d)(2), added subpar. (E).

Subsec. (c)(3). Pub. L. 95–600, §201(a), added par. (3).

Subsec. (d). Pub. L. 95–600, §701(k)(2), substituted "(determined without regard to the first sentence of subsection (a))" for "(determined without regard to this section)".

Subsec. (e). Pub. L. 95–600, §203, added subsec. (e).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11813(b)(15) of Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property

with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 201(d)(7)(A) of Pub. L. 99–514 applicable to property placed in service after Dec. 31, 1986, in taxable years ending after such date, with exceptions, see sections 203 and 204 of Pub. L. 99–514, set out as a note under section 168 of this title.

Amendment by section 201(d)(7)(A) of Pub. L. 99–514 not applicable to any property placed in service before Jan. 1, 1994, if such property placed in service as part of specified rehabilitations, and not applicable to certain additional rehabilitations, see section 251(d)(2), (3) of Pub. L. 99–514, set out as a note under section 46 of this title.

Pub. L. 99–514, title V, §503(c), Oct. 22, 1986, 100 Stat. 2244, provided that:

"(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section] shall apply to losses incurred after December 31, 1986, with respect to property placed in service by the taxpayer after December 31, 1986.

"(2) SPECIAL RULE FOR LOSSES OF S CORPORATION, PARTNERSHIP, OR PASS-THRU ENTITY .—In the case of an interest in an S corporation, a partnership, or other pass-thru entity acquired after December 31, 1986, the amendments made by this section shall apply to losses after December 31, 1986, which are attributable to property placed in service by the S corporation, partnership, or pass-thru entity on, before, or after January 1, 1986.

"(3) SPECIAL RULE FOR ATHLETIC STADIUM.—The amendments made by this section shall not apply to any losses incurred by a taxpayer with respect to the holding of a multi-use athletic stadium in Pittsburgh, Pennsylvania, which the taxpayer acquired in a sale for which a letter of understanding was entered into before April 16, 1986."

Amendment by section 1011(b)(1) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1011(c)(1) of Pub. L. 99–514, set out as a note under section 453B of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title IV, §432(d), July 18, 1984, 98 Stat. 815, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1983; except that any loss from an activity described in section 465(c)(7)(A) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by this section) which (but for the amendments made by this section) would have been treated as a deduction for the taxpayer's first taxable year beginning after December 31, 1983, under section 465(a)(2) of such Code shall be allowed as a deduction for such first taxable year notwithstanding such amendments."

Amendment by section 721(x)(2) of Pub. L. 98–369 effective as if included in the Subchapter S Revision Act of 1982, Pub. L. 97–354, see section 721(y)(1) of Pub. L. 98–369, set out as a note under section 1361 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–618 applicable with respect to wells commenced on or after Oct. 1, 1978, in taxable years ending on or after such date, see section 402(e) of Pub. L. 95–618, set out as a note under section 263 of this title.

Pub. L. 95–600, title II, §204(a), Nov. 6, 1978, 92 Stat. 2817, provided that: "The amendments made by this subtitle [amending this section and section 704 of this title and enacting provisions set out as notes under this section and section 704 of this title] shall apply to taxable years beginning after December 31, 1978."

Pub. L. 95–600, title VII, §701(k)(3), Nov. 6, 1978, 92 Stat. 2906, provided that: "The amendments made by this subsection [amending this section and provisions set out below] shall take effect on October 4, 1976."

EFFECTIVE DATE AND TRANSITIONAL RULES

Pub. L. 94–455, title II, §204(c), Oct. 4, 1976, 90 Stat. 1532, as amended by Pub. L. 95–600, title VII, §701(k)(1), Nov. 6, 1978, 92 Stat. 2906; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section [enacting this section] shall apply to losses attributable to amounts paid or incurred in taxable years beginning after December 31, 1975. For purposes of this subsection, any amount allowed or allowable for depreciation or amortization for any period shall be treated as an amount paid or incurred in such period.

"(2) SPECIAL TRANSITIONAL RULES FOR MOVIES AND VIDEO TAPES.—

"(A) IN GENERAL.—In the case of any activity described in section 465(c)(1)(A) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the amendments made by this section shall not apply to—

"(i) deductions for depreciation or amortization with respect to property the principal production of which began before September 11, 1975, and for the purchase of which there was on September 11, 1975, and at all times thereafter a binding contract, and

"(ii) deductions attributable to producing or distributing property the principal production of which began before September 11, 1975.

"(B) EXCEPTION FOR CERTAIN AGREEMENTS WHERE PRINCIPAL PHOTOGRAPHY BEGIN BEFORE 1976.—In the case of any activity described in section 465(c)(1)(A) of the Internal Revenue Code of 1986, the amendments made by this section shall not apply to deductions attributable to the producing of a film the principal photography of which began on or before December 31, 1975, if—

"(i) on September 10, 1975, there was an agreement with the director or a principal motion picture star, or on or before September 10, 1975, there had been expended (or committed to the production) an amount not less than the lower of $100,000 or 10 percent of the estimated costs of producing the film, and

"(ii) the production takes place in the United States.

Subparagraph (A) shall apply only to taxpayers who held their interests on September 10, 1975. Subparagraph (B) shall apply only to taxpayers who held their interests on December 31, 1975.

"(3) SPECIAL TRANSITIONAL RULES FOR LEASING ACTIVITIES.—

"(A) RULE FOR LEASES OTHER THAN OPERATING LEASES.—In the case of any activity described in section 465(c)(1)(C) of the Internal Revenue Code of 1986, the amendments made by this section shall not apply with respect to—

"(i) leases entered into before January 1, 1976, and

"(ii) leases where the property was ordered by the lessor or lessee before January 1, 1976.

"(B) HOLDING OF INTERESTS FOR PURPOSES OF SUBPARAGRAPH (A).—Subparagraph (A) shall apply only to taxpayers who held their interests in the property on December 31, 1975.

"(C) SPECIAL RULE FOR OPERATING LEASES.—In the case of a lease described in section 46(e)(3)(B) of the Internal Revenue Code of 1986—

"(i) subparagraph (A) shall be applied by substituting 'May 1, 1976' for 'January 1, 1976' each place it appears therein, and

"(ii) subparagraph (B) shall be applied by substituting 'April 30, 1976' for 'December 31, 1975'."

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

TRANSITIONAL RULES FOR RECAPTURE PROVISIONS AND LEASING ACTIVITIES

Pub. L. 95–600, title II, §204(b), Nov. 6, 1978, 92 Stat. 2817, as amended by Pub. L. 96–222, title I, §102(a)(1)(E), Apr. 1, 1980, 94 Stat. 208; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) RECAPTURE PROVISIONS.—If the amount for which the taxpayer is at risk in any activity as of the close of the taxpayer's last taxable year beginning before January 1, 1979, is less than zero, section 465(e)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by section 203 of this Act) shall be applied with respect to such activity of the taxpayer by substituting such negative amount for zero.

"(2) SPECIAL TRANSITIONAL RULES FOR LEASING ACTIVITIES.—

"(A) RULE FOR LEASES.—In the case of any activity described in section 465(c)(1)(C) of such Code in which a corporation described in section 465(a)(1)(C) of such Code is engaged, the amendments made by this subtitle [amending sections 465 and 704 of this title and enacting provisions set out as notes

under sections 465 and 704 of this title] shall not apply with respect to—

"(i) leases entered into before November 1, 1978, and

"(ii) leases where the property was ordered by the lessor or lessee before November 1, 1978.

"(B) HOLDING OF INTERESTS FOR PURPOSES OF SUBPARAGRAPH (A).—Subparagraph (A) shall apply only to taxpayers who held their interests in the property on October 31, 1978."

[§466. Repealed. Pub. L. 99–514, title VIII, §823(a), Oct. 22, 1986, 100 Stat. 2373]

Section, added Pub. L. 95–600, title III, §373(a), Nov. 6, 1978, 92 Stat. 2863; amended Pub. L. 96–222, title I, §103(a)(16), Apr. 1, 1980, 94 Stat. 214, related to qualified discount coupons redeemed after close of taxable year.

EFFECTIVE DATE OF REPEAL

Pub. L. 99–514, title VIII, §823(c), Oct. 22, 1986, 100 Stat. 2374, provided:

"(1) IN GENERAL.—The amendments made by this section [amending section 461 of this title and repealing this section] shall apply to taxable years beginning after December 31, 1986.

"(2) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer who elected to have section 466 of the Internal Revenue Code of 1954 [now 1986] apply for such taxpayer's last taxable year beginning before January 1, 1987, and is required to change its method of accounting by reason of the amendments made by this section for any taxable year—

"(A) such change shall be treated as initiated by the taxpayer,

"(B) such change shall be treated as having been made with the consent of the Secretary, and

"(C) the net amount of adjustments required by section 481 of the Internal Revenue Code of 1986 to be taken into account by the taxpayer shall—

"(i) be reduced by the balance in the suspense account under section 466(e) of such Code as of the close of such last taxable year, and

"(ii) be taken into account over a period not longer than 4 years."

§467. Certain payments for the use of property or services

(a) Accrual method on present value basis

In the case of the lessor or lessee under any section 467 rental agreement, there shall be taken into account for purposes of this title for any taxable year the sum of—

(1) the amount of the rent which accrues during such taxable year as determined under subsection (b), and

(2) interest for the year on the amounts which were taken into account under this subsection for prior taxable years and which are unpaid.

(b) Accrual of rental payments

(1) Allocation follows agreement

Except as provided in paragraph (2), the determination of the amount of the rent under any section 467 rental agreement which accrues during any taxable year shall be made—

(A) by allocating rents in accordance with the agreement, and

(B) by taking into account any rent to be paid after the close of the period in an amount determined under regulations which shall be based on present value concepts.

(2) Constant rental accrual in case of certain tax avoidance transactions, etc.

In the case of any section 467 rental agreement to which this paragraph applies, the portion of the rent which accrues during any taxable year shall be that portion of the constant rental amount with respect to such agreement which is allocable to such taxable year.

(3) Agreements to which paragraph (2) applies

Paragraph (2) applies to any rental payment agreement if—

(A) such agreement is a disqualified leaseback or long-term agreement, or

(B) such agreement does not provide for the allocation referred to in paragraph (1)(A).

(4) Disqualified leaseback or long-term agreement

For purposes of this subsection, the term "disqualified leaseback or long-term agreement" means any section 467 rental agreement if—

(A) such agreement is part of a leaseback transaction or such agreement is for a term in excess of 75 percent of the statutory recovery period for the property, and

(B) a principal purpose for providing increasing rents under the agreement is the avoidance of tax imposed by this subtitle.

(5) Exceptions to disqualification in certain cases

The Secretary shall prescribe regulations setting forth circumstances under which agreements will not be treated as disqualified leaseback or long-term agreements, including circumstances relating to—

(A) changes in amounts paid determined by reference to price indices,

(B) rents based on a fixed percentage of lessee receipts or similar amounts,

(C) reasonable rent holidays, or

(D) changes in amounts paid to unrelated 3rd parties.

(c) Recapture of prior understated inclusions under leaseback or long-term agreements

(1) In general

If—

(A) the lessor under any section 467 rental agreement disposes of any property subject to such agreement during the term of such agreement, and

(B) such agreement is a leaseback or long-term agreement to which paragraph (2) of subsection (b) did not apply,

the recapture amount shall be treated as ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle.

(2) Recapture amount

For purposes of paragraph (1), the term "recapture amount" means the lesser of—

(A) the prior understated inclusions, or

(B) the excess of the amount realized (or in the case of a disposition other than a sale, exchange, or involuntary conversion, the fair market value of the property) over the adjusted basis of such property.

The amount determined under subparagraph (B) shall be reduced by the amount of any gain treated as ordinary income on the disposition under any other provision of this subtitle.

(3) Prior understated inclusions

For purposes of this subsection, the term "prior understated inclusion" means the excess (if any) of—

(A) the amount which would have been taken into account by the lessor under subsection (a) for periods before the disposition if subsection (b)(2) had applied to the agreement, over

(B) the amount taken into account under subsection (a) by the lessor for periods before the disposition.

(4) Leaseback or long-term agreement

For purposes of this subsection, the term "leaseback or long-term agreement" means any agreement described in subsection (b)(4)(A).

(5) Special rules

Under regulations prescribed by the Secretary—

(A) exceptions similar to the exceptions applicable under section 1245 or 1250 (whichever is appropriate) shall apply for purposes of this subsection,

(B) any transferee in a disposition excepted by reason of subparagraph (A) who has a

transferred basis in the property shall be treated in the same manner as the transferor, and

(C) for purposes of sections 170(e) and 751(c), amounts treated as ordinary income under this section shall be treated in the same manner as amounts treated as ordinary income under section 1245 or 1250.

(d) Section 467 rental agreements

(1) In general

Except as otherwise provided in this subsection, the term "section 467 rental agreements" means any rental agreement for the use of tangible property under which—

(A) there is at least one amount allocable to the use of property during a calendar year which is to be paid after the close of the calendar year following the calendar year in which such use occurs, or

(B) there are increases in the amount to be paid as rent under the agreement.

(2) Section not to apply to agreements involving payments of $250,000 or less

This section shall not apply to any amount to be paid for the use of property if the sum of the following amounts does not exceed $250,000—

(A) the aggregate amount of payments received as consideration for such use of property, and

(B) the aggregate value of any other consideration to be received for such use of property.

For purposes of the preceding sentence, rules similar to the rules of clauses (ii) and (iii) of section 1274(c)(4)(C) shall apply.

(e) Definitions

For purposes of this section—

(1) Constant rental amount

The term "constant rental amount" means, with respect to any section 467 rental agreement, the amount which, if paid as of the close of each lease period under the agreement, would result in an aggregate present value equal to the present value of the aggregate payments required under the agreement.

(2) Leaseback transaction

A transaction is a leaseback transaction if it involves a leaseback to any person who had an interest in such property at any time within 2 years before such leaseback (or to a related person).

(3) Statutory recovery period

(A) In general

In the case of:	The statutory recovery period is:
3-year property	3 years
5-year property	5 years
7-year property	7 years
10-year property	10 years
15-year and 20-year property	15 years
Residential rental property and nonresidential real property	19 years
Any railroad grading or tunnel bore	50 years.

(B) Special rule for property not depreciable under section 168

In the case of property to which section 168 does not apply, subparagraph (A) shall be applied as if section 168 applies to such property.

(4) Discount and interest rate

For purposes of computing present value and interest under subsection (a)(2), the rate used shall be equal to 110 percent of the applicable Federal rate determined under section 1274(d) (compounded semiannually) which is in effect at the time the agreement is entered into with respect to debt instruments having a maturity equal to the term of the agreement.

(5) Related person

The term "related person" has the meaning given to such term by section 465(b)(3)(C).

(6) Certain options of lessee to renew not taken into account

Except as provided in regulations prescribed by the Secretary, there shall not be taken into account in computing the term of any agreement for purposes of this section any extension which is solely at the option of the lessee.

(f) Comparable rules where agreement for decreasing payments

Under regulations prescribed by the Secretary, rules comparable to the rules of this section shall also apply in the case of any agreement where the amount paid under the agreement for the use of property decreases during the term of the agreement.

(g) Comparable rules for services

Under regulations prescribed by the Secretary, rules comparable to the rules of subsection (a)(2) shall also apply in the case of payments for services which meet requirements comparable to the requirements of subsection (d). The preceding sentence shall not apply to any amount to which section 404 or 404A (or any other provision specified in regulations) applies.

(h) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this section, including regulations providing for the application of this section in the case of contingent payments.

(Added Pub. L. 98–369, div. A, title I, §92(a), July 18, 1984, 98 Stat. 609; amended Pub. L. 99–514, title II, §201(d)(8), title V, §511(d)(2)(A), title VI, §631(e)(10), title XVIII, §§1807(b), 1879(f)(1), Oct. 22, 1986, 100 Stat. 2141, 2248, 2274, 2816, 2906; Pub. L. 100–647, title I, §§1002(i)(2)(H), 1005(c)(10), Nov. 10, 1988, 102 Stat. 3371, 3392; Pub. L. 108–27, title III, §302(e)(4)(B)(ii), May 28, 2003, 117 Stat. 764.)

AMENDMENTS

2003—Subsec. (c)(5)(C). Pub. L. 108–27 struck out ", 341(e)(12)," after "170(e)".

1988—Subsec. (c)(5)(C). Pub. L. 100–647, §1005(c)(10), made technical correction to directory language of Pub. L. 99–514, §511(d)(2)(A). See 1986 Amendment note below.

Subsec. (e)(3)(A). Pub. L. 100–647, §1002(i)(2)(H), at end of table inserted item relating to any railroad grading or tunnel bore.

1986—Subsec. (b)(4)(A). Pub. L. 99–514, §1807(b)(2)(A), substituted "statutory recovery period" for "statutory recover period".

Subsec. (c)(4). Pub. L. 99–514, §1807(b)(2)(B), substituted "subsection (b)(4)(A)" for "subsection (b)(3)(A)".

Subsec. (c)(5)(C). Pub. L. 99–514, §631(e)(10), struck out "453B(d)(2)," after "341(e)(12),".

Pub. L. 99–514, §511(d)(2)(A), as amended by Pub. L. 100–647, §1005(c)(10), struck out "163(d)," after "sections".

Subsec. (d)(2). Pub. L. 99–514, §1807(b)(2)(C), substituted "section 1274(c)(4)(C)" for "section 1274(c)(2)(C)".

Subsec. (e)(3)(A). Pub. L. 99–514, §201(d)(8)(A), in amending subpar. (A) generally, included in table 7-year property, 15-year and 20-year property, and residential rental property and nonresidential real property having recovery periods of 7, 15, and 19 years, respectively, and struck out from table low-income housing, 15-year public utility property, and 19-year real property having recovery periods of 15, 15, and 19 years, respectively.

Pub. L. 99–514, §1879(f)(1), substituted "19-year real property" and "19 years" for "18-year real property" and "18 years", respectively.

Subsec. (e)(3)(B). Pub. L. 99–514, §201(d)(8)(A), in amending subpar. (B) generally, substituted in heading "not depreciable under section 168" for "which is not recovery property" and in text "In the case of property to which section 168 does not apply, subparagraph (A) shall be applied as if section 168 applies to such property." for "In the case of any property, which is not recovery property, subparagraph (A) shall be applied as if such property were recovery property."

Subsec. (e)(5). Pub. L. 99–514, §201(d)(8)(B), substituted "section 465(b)(3)(C)" for "section 168(e)(4)(D)".

Pub. L. 99–514, §1807(b)(2)(D), substituted "section 168(e)(4)(D)" for "section 168(d)(4)(D)".

Subsec. (g). Pub. L. 99–514, §1807(b)(1), inserted at end "The preceding sentence shall not apply to any amount to which section 404 or 404A (or any other provision specified in regulations) applies."

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–27 applicable, except as otherwise provided, to taxable years beginning after Dec. 31, 2002, see section 302(f) of Pub. L. 108–27, set out as an Effective and Termination Dates of 2003 Amendment note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 201(d)(8) of Pub. L. 99–514 applicable to property placed in service after Dec. 31, 1986, in taxable years ending after such date, with exceptions, see sections 203 and 204 of Pub. L. 99–514, set out as a note under section 168 of this title.

Amendment by section 201(d)(8) of Pub. L. 99–514 not applicable to any property placed in service before Jan. 1, 1994, if such property placed in service as part of specified rehabilitations, and not applicable to certain additional rehabilitations, see section 251(d)(2), (3) of Pub. L. 99–514, set out as a note under section 46 of this title.

Amendment by section 511(d)(2)(A) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 511(e) of Pub. L. 99–514, set out as a note under section 163 of this title.

Amendment by section 631(e)(10) of Pub. L. 99–514 applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, set out as an Effective Date note under section 336 of this title.

Amendment by section 1807(b) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Pub. L. 99–514, title XVIII, §1879(f)(2), Oct. 22, 1986, 100 Stat. 2906, provided that: "The amendments made by paragraph (1) [amending this section] shall take effect as if included in the amendments made by section 103 of Public Law 99–121."

EFFECTIVE DATE

Pub. L. 98–369, div. A, title I, §92(c), July 18, 1984, 98 Stat. 612, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting this section] shall apply with respect to agreements entered into after June 8, 1984.

"(2) EXCEPTIONS.—The amendments made by this section shall not apply—

"(A) to any agreement entered into pursuant to a written agreement which was binding on June 8, 1984, and at all times thereafter,

"(B) subject to the provisions of paragraph (3), to any agreement to lease property if—

"(i) there was in effect a firm plan, evidenced by a board of directors' resolution, memorandum of agreement, or letter of intent on March 15, 1984, to enter into such an agreement, and

"(ii) construction of the property was commenced (but such property was not placed in service) on or before March 15, 1984, and

"(C) to any agreement to lease property if—

"(i) the lessee of such property adopted a firm plan to lease the property, evidenced by a

resolution of the Finance Committee of the Board of Directors of such lessee, on February 10, 1984,

"(ii) the sum of the present values of the rents payable by the lessee under the lease at the inception thereof equals at least $91,223,034, assuming for purposes of this clause—

"(I) the annual discount rate is 12.6 percent,

"(II) the initial payment of rent occurs 12 months after the commencement of the lease, and

"(III) subsequent payments of rents occur on the anniversary date of the initial payment, and

"(iii) during—

"(I) the first 5 years of the lease, at least 9 percent of the rents payable by the lessee under the agreement are paid, and

"(II) the second 5 years of the lease, at least 16.25 percent of the rents payable by the lessee under the agreement are paid.

Paragraph (3)(B)(ii)(II) shall apply for purposes of clauses (ii) and (iii) of subparagraph (C), as if, as of the beginning of the last stage, the separate agreements were treated as 1 single agreement relating to all property covered by the agreements, including any property placed in service before the property to which the agreement for the last stage relates. If the lessor under the agreement described in subparagraph (C) leases the property from another person, this exception shall also apply to any agreement between the lessor and such person which is integrally related to, and entered into at the same time as, such agreement, and which calls for comparable payments of rent over the primary term of the agreement.

"(3) SCHEDULE OF DEEMED RENTAL PAYMENTS.—

"(A) IN GENERAL.—In any case to which paragraph (2)(B) applies, for purposes of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the lessor shall be treated as having received or accrued (and the lessee shall be treated as having paid or incurred) rents equal to the greater of—

"(i) the amount of rents actually paid under the agreement during the taxable year, or

"(ii) the amount of rents determined in accordance with the schedule under subparagraph (B) for such taxable year.

"(B) SCHEDULE.—

"(i) IN GENERAL.—The schedule under this subparagraph is as follows:

"Portion of lease term:	Cumulative percentage of total rent deemed paid:
1st 1/5	10
2nd 1/5	25
3rd 1/5	45
4th 1/5	70
Last 1/5	100.

"(ii) OPERATING RULES.—For purposes of this schedule—

"(I) the rent allocable to each taxable year within any portion of a lease term described in such schedule shall be a level pro rata amount properly allocable to such taxable year, and

"(II) any agreement relating to property which is to be placed in service in 2 or more stages shall be treated as 2 or more separate agreements.

"(C) PARAGRAPH NOT TO APPLY.—This paragraph shall not apply to any agreement if the sum of the present values of all payments under the agreement is greater than the sum of the present value of all the payments deemed to be paid or received under the schedule under subparagraph (B). For purposes of computing any present value under this subparagraph, the annual discount rate shall be equal to 12 percent, compounded semiannually."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§468. Special rules for mining and solid waste reclamation and closing costs

(a) Establishment of reserves for reclamation and closing costs

(1) Allowance of deduction

If a taxpayer elects the application of this section with respect to any mining or solid waste disposal property, the amount of any deduction for qualified reclamation or closing costs for any taxable year to which such election applies shall be equal to the current reclamation or closing costs allocable to—

(A) in the case of qualified reclamation costs, the portion of the reserve property which was disturbed during such taxable year, and

(B) in the case of qualified closing costs, the production from the reserve property during such taxable year.

(2) Opening balance and adjustments to reserve

(A) Opening balance

The opening balance of any reserve for its first taxable year shall be zero.

(B) Increase for interest

A reserve shall be increased each taxable year by an amount equal to the amount of interest which would have been earned during such taxable year on the opening balance of such reserve for such taxable year if such interest were computed—

(i) at the Federal short-term rate or rates (determined under section 1274) in effect, and

(ii) by compounding semiannually.

(C) Reserve to be charged for amounts paid

Any amount paid by the taxpayer during any taxable year for qualified reclamation or closing costs allocable to portions of the reserve property for which the election under paragraph (1) was in effect shall be charged to the appropriate reserve as of the close of the taxable year.

(D) Reserve increased by amount deducted

A reserve shall be increased each taxable year by the amount allowable as a deduction under paragraph (1) for such taxable year which is allocable to such reserve.

(3) Allowance of deduction for excess amounts paid

There shall be allowed as a deduction for any taxable year the excess of—

(A) the amounts described in paragraph (2)(C) paid during such taxable year, over

(B) the closing balance of the reserve for such taxable year (determined without regard to paragraph (2)(C)).

(4) Limitation on balance as of the close of any taxable year

(A) Reclamation reserves

In the case of any reserve for qualified reclamation costs, there shall be included in gross income for any taxable year an amount equal to the excess of—

(i) the closing balance of the reserve for such taxable year, over

(ii) the current reclamation costs of the taxpayer for all portions of the reserve property disturbed during any taxable year to which the election under paragraph (1) applies.

(B) Closing costs reserves

In the case of any reserve for qualified closing costs, there shall be included in gross income for any taxable year an amount equal to the excess of—

(i) the closing balance of the reserve for such taxable year, over

(ii) the current closing cost of the taxpayer with respect to the reserve property, determined as if all production with respect to the reserve property for any taxable year to which the election under paragraph (1) applies had occurred in such taxable year.

(C) Order of application

This paragraph shall be applied after all adjustments to the reserve have been made for the taxable year.

(5) Income inclusions on completion or disposition

Proper inclusion in income shall be made upon—

(A) the revocation of an election under paragraph (1), or

(B) completion of the closing, or disposition of any portion, of a reserve property.

(b) Allocation for property where election not in effect for all taxable years

If the election under subsection (a)(1) is not in effect for 1 or more taxable years in which the reserved property is disturbed (or production occurs), items with respect to the reserve property shall be allocated to the reserve in such manner as the Secretary may prescribe by regulations.

(c) Revocation of election; separate reserves

(1) Revocation of election

(A) In general

The taxpayer may revoke an election under subsection (a)(1) with respect to any property. Such revocation, once made, shall be irrevocable.

(B) Time and manner of revocation

Any revocation under subparagraph (A) shall be made at such time and in such manner as the Secretary may prescribe.

(2) Separate reserves required

If a taxpayer makes an election under subsection (a)(1), the taxpayer shall establish with respect to the property for which the election was made—

(A) a separate reserve for qualified reclamation costs, and

(B) a separate reserve for qualified closing costs.

(d) Definitions and special rules relating to reclamation and closing costs

For purposes of this section—

(1) Current reclamation and closing costs

(A) Current reclamation costs

The term "current reclamation costs" means the amount which the taxpayer would be required to pay for qualified reclamation costs if the reclamation activities were performed currently.

(B) Current closing costs

(i) In general

The term "current closing costs" means the amount which the taxpayer would be required to pay for qualified closing costs if the closing activities were performed currently.

(ii) Costs computed on unit-of-production or capacity method

Estimated closing costs shall—

(I) in the case of the closing of any mine site, be computed on the unit-of-production method of accounting, and

(II) in the case of the closing of any solid waste disposal site, be computed on the unit-of-capacity method.

(2) Qualified reclamation or closing costs

The term "qualified reclamation or closing costs" means any of the following expenses:

(A) Mining reclamation and closing costs

Any expenses incurred for any land reclamation or closing activity which is conducted in

accordance with a reclamation plan (including an amendment or modification thereof)—

(i) which—

(I) is submitted pursuant to the provisions of section 511 or 528 of the Surface Mining Control and Reclamation Act of 1977 (as in effect on January 1, 1984), and

(II) is part of a surface mining and reclamation permit granted under the provisions of title V of such Act (as so in effect), or

(ii) which is submitted pursuant to any other Federal or State law which imposes surface mining reclamation and permit requirements substantially similar to the requirements imposed by title V of such Act (as so in effect).

(B) Solid waste disposal and closing costs

(i) In general

Any expenses incurred for any land reclamation or closing activity in connection with any solid waste disposal site which is conducted in accordance with any permit issued pursuant to—

(I) any provision of the Solid Waste Disposal Act (as in effect on January 1, 1984) requiring such activity, or

(II) any other Federal, State, or local law which imposes requirements substantially similar to the requirements imposed by the Solid Waste Disposal Act (as so in effect).

(ii) Exception for certain hazardous waste sites

Clause (i) shall not apply to that portion of any property which is disturbed after the property is listed in the national contingency plan established under section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

(3) Property

The term "property" has the meaning given such term by section 614.

(4) Reserve property

The term "reserve property" means any property with respect to which a reserve is established under subsection (a)(1).

(Added Pub. L. 98–369, div. A, title I, §91(b)(1), July 18, 1984, 98 Stat. 601; amended Pub. L. 99–514, title XVIII, §§1807(a)(3)(A), (C), 1899A(14), Oct. 22, 1986, 100 Stat. 2811, 2959; Pub. L. 101–508, title XI, §11802(c), Nov. 5, 1990, 104 Stat. 1388–529.)

REFERENCES IN TEXT

The Surface Mining Control and Reclamation Act of 1977, referred to in subsec. (d)(2)(A), is Pub. L. 95–87, Aug. 3, 1977, 91 Stat. 445, as amended. Title V of that Act is classified generally to subchapter V (§1251 et seq.) of chapter 25 of Title 30, Mineral Lands and Mining. Sections 511 and 528 of that Act are classified to sections 1261 and 1278, respectively, of Title 30. For complete classification of this Act to the Code, see Short Title note set out under section 1201 of Title 30 and Tables.

The Solid Waste Disposal Act, referred to in subsec. (d)(2)(B)(i), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§6901 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of Title 42 and Tables.

Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, referred to in subsec. (d)(2)(B)(ii), is classified to section 9605 of Title 42.

AMENDMENTS

1990—Subsec. (a)(2)(B). Pub. L. 101–508 amended subpar. (B) generally, substituting present provisions for provisions providing for increase for interest and a phase-in of interest rates for taxable years ending before 1987.

1986—Subsec. (a)(1). Pub. L. 99–514, §1807(a)(3)(C), substituted "this section" for "this subsection".

Subsec. (a)(2)(D). Pub. L. 99–514, §1807(a)(3)(A), added subpar. (D).

Subsec. (d)(2)(B)(ii). Pub. L. 99–514, §1899A(14), substituted "Comprehensive Environmental Response,

Compensation, and Liability Act of 1980" for "Comprehensive Environmental, Compensation, and Liability Act of 1980".

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1807(a)(3)(A), (C) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section effective July 18, 1984, with respect to taxable years ending after such date, except as otherwise provided, see section 91(g)(4) of Pub. L. 98–369, as amended, set out as an Effective Date of 1984 Amendment note under section 461 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§468A. Special rules for nuclear decommissioning costs

(a) In general

If the taxpayer elects the application of this section, there shall be allowed as a deduction for any taxable year the amount of payments made by the taxpayer to a Nuclear Decommissioning Reserve Fund (hereinafter referred to as the "Fund") during such taxable year.

(b) Limitation on amounts paid into Fund

The amount which a taxpayer may pay into the Fund for any taxable year shall not exceed the ruling amount applicable to such taxable year.

(c) Income and deductions of the taxpayer

(1) Inclusion of amounts distributed

There shall be includible in the gross income of the taxpayer for any taxable year—

(A) any amount distributed from the Fund during such taxable year, other than any amount distributed to pay costs described in subsection (e)(4)(B), and

(B) except to the extent provided in regulations, amounts properly includible in gross income in the case of any deemed distribution under subsection (e)(6), any termination under subsection (e)(7), or the disposition of any interest in the nuclear powerplant.

(2) Deduction when economic performance occurs

In addition to any deduction under subsection (a), there shall be allowable as a deduction for any taxable year the amount of the nuclear decommissioning costs with respect to which economic performance (within the meaning of section 461(h)(2)) occurs during such taxable year.

(d) Ruling amount

For purposes of this section—

(1) Request required

No deduction shall be allowed for any payment to the Fund unless the taxpayer requests, and receives, from the Secretary a schedule of ruling amounts. For purposes of the preceding sentence, the taxpayer shall request a schedule of ruling amounts upon each renewal of the operating license

of the nuclear powerplant.

(2) Ruling amount

The term "ruling amount" means, with respect to any taxable year, the amount which the Secretary determines under paragraph (1) to be necessary to—

(A) fund the total nuclear decommissioning costs with respect to such power plant over the estimated useful life of such power plant, and

(B) prevent any excessive funding of such costs or the funding of such costs at a rate more rapid than level funding, taking into account such discount rates as the Secretary deems appropriate.

(3) Review of amount

The Secretary shall at least once during the useful life of the nuclear powerplant (or, more frequently, upon the request of the taxpayer) review, and revise if necessary, the schedule of ruling amounts determined under paragraph (1).

(e) Nuclear Decommissioning Reserve Fund

(1) In general

Each taxpayer who elects the application of this section shall establish a Nuclear Decommissioning Reserve Fund with respect to each nuclear powerplant to which such election applies.

(2) Taxation of Fund

(A) In general

There is hereby imposed on the gross income of the Fund for any taxable year a tax at the rate of 20 percent, except that—

(i) there shall not be included in the gross income of the Fund any payment to the Fund with respect to which a deduction is allowable under subsection (a), and

(ii) there shall be allowed as a deduction to the Fund any amount paid by the Fund which is described in paragraph (4)(B) (other than an amount paid to the taxpayer) and which would be deductible under this chapter for purposes of determining the taxable income of a corporation.

(B) Tax in lieu of other taxation

The tax imposed by subparagraph (A) shall be in lieu of any other taxation under this subtitle of the income from assets in the Fund.

(C) Fund treated as corporation

For purposes of subtitle F—

(i) the Fund shall be treated as if it were a corporation, and

(ii) any tax imposed by this paragraph shall be treated as a tax imposed by section 11.

(3) Contributions to Fund

Except as provided in subsection (f), the Fund shall not accept any payments (or other amounts) other than payments with respect to which a deduction is allowable under subsection (a).

(4) Use of Fund

The Fund shall be used exclusively for—

(A) satisfying, in whole or in part, any liability of any person contributing to the Fund for the decommissioning of a nuclear powerplant (or unit thereof),

(B) to pay administrative costs (including taxes) and other incidental expenses of the Fund (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the Fund, and

(C) to the extent that a portion of the Fund is not currently needed for purposes described in subparagraph (A) or (B), making investments.

(5) Prohibitions against self-dealing

Under regulations prescribed by the Secretary, for purposes of section 4951 (and so much of this title as relates to such section), the Fund shall be treated in the same manner as a trust described in section 501(c)(21).

(6) Disqualification of Fund

In any case in which the Fund violates any provision of this section or section 4951, the Secretary may disqualify such Fund from the application of this section. In any case to which this paragraph applies, the Fund shall be treated as having distributed all of its funds on the date such determination takes effect.

(7) Termination upon completion

Upon substantial completion of the nuclear decommissioning of the nuclear powerplant with respect to which a Fund relates, the taxpayer shall terminate such Fund.

(f) Transfers into qualified funds

(1) In general

Notwithstanding subsection (b), any taxpayer maintaining a Fund to which this section applies with respect to a nuclear power plant may transfer into such Fund not more than an amount equal to the present value of the portion of the total nuclear decommissioning costs with respect to such nuclear power plant previously excluded for such nuclear power plant under subsection (d)(2)(A) as in effect immediately before the date of the enactment of this subsection.

(2) Deduction for amounts transferred

(A) In general

Except as provided in subparagraph (C), the deduction allowed by subsection (a) for any transfer permitted by this subsection shall be allowed ratably over the remaining estimated useful life (within the meaning of subsection (d)(2)(A)) of the nuclear power plant beginning with the taxable year during which the transfer is made.

(B) Denial of deduction for previously deducted amounts

No deduction shall be allowed for any transfer under this subsection of an amount for which a deduction was previously allowed to the taxpayer (or a predecessor) or a corresponding amount was not included in gross income of the taxpayer (or a predecessor). For purposes of the preceding sentence, a ratable portion of each transfer shall be treated as being from previously deducted or excluded amounts to the extent thereof.

(C) Transfers of qualified funds

If—

(i) any transfer permitted by this subsection is made to any Fund to which this section applies, and

(ii) such Fund is transferred thereafter,

any deduction under this subsection for taxable years ending after the date that such Fund is transferred shall be allowed to the transferor for the taxable year which includes such date.

(D) Special rules

(i) Gain or loss not recognized on transfers to Fund

No gain or loss shall be recognized on any transfer described in paragraph (1).

(ii) Transfers of appreciated property to Fund

If appreciated property is transferred in a transfer described in paragraph (1), the amount of the deduction shall not exceed the adjusted basis of such property.

(3) New ruling amount required

Paragraph (1) shall not apply to any transfer unless the taxpayer requests from the Secretary a new schedule of ruling amounts in connection with such transfer.

(4) No basis in qualified funds

Notwithstanding any other provision of law, the taxpayer's basis in any Fund to which this section applies shall not be increased by reason of any transfer permitted by this subsection.

(g) Nuclear powerplant

For purposes of this section, the term "nuclear powerplant" includes any unit thereof.

(h) Time when payments deemed made

For purposes of this section, a taxpayer shall be deemed to have made a payment to the Fund on the last day of a taxable year if such payment is made on account of such taxable year and is made within 2½ months after the close of such taxable year.

(Added Pub. L. 98–369, div. A, title I, §91(c)(1), July 18, 1984, 98 Stat. 604; amended Pub. L. 99–514, title XVIII, §1807(a)(4)(A)(i), (B)–(E)(vi), Oct. 22, 1986, 100 Stat. 2812, 2813; Pub. L. 102–486, title XIX, §1917(a), (b), Oct. 24, 1992, 106 Stat. 3024, 3025; Pub. L. 104–188, title I, §1704(j)(6), Aug. 20, 1996, 110 Stat. 1882; Pub. L. 109–58, title XIII, §1310(a)–(e), Aug. 8, 2005, 119 Stat. 1007–1009.)

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (f)(1), is the date of enactment of Pub. L. 109–58, which was approved Aug. 8, 2005.

AMENDMENTS

2005—Subsec. (b). Pub. L. 109–58, §1310(a), reenacted heading without change and amended text of subsec. (b) generally. Prior to amendment, text read as follows: "The amount which a taxpayer may pay into the Fund for any taxable year shall not exceed the lesser of—

"(1) the amount of nuclear decommissioning costs allocable to the Fund which is included in the taxpayer's cost of service for ratemaking purposes for such taxable year, or

"(2) the ruling amount applicable to such taxable year."

Subsec. (d)(1). Pub. L. 109–58, §1310(c), inserted at end "For purposes of the preceding sentence, the taxpayer shall request a schedule of ruling amounts upon each renewal of the operating license of the nuclear powerplant."

Subsec. (d)(2)(A). Pub. L. 109–58, §1310(b)(2), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "fund that portion of the nuclear decommissioning costs of the taxpayer with respect to the nuclear powerplant which bears the same ratio to the total nuclear decommissioning costs with respect to such nuclear powerplant as the period for which the Fund is in effect bears to the estimated useful life of such nuclear powerplant, and".

Subsec. (e)(2)(A). Pub. L. 109–58, §1310(e)(1), substituted "rate of 20 percent" for "rate set forth in subparagraph (B)" in introductory provisions.

Subsec. (e)(2)(B) to (D). Pub. L. 109–58, §1310(e)(2), (3), redesignated subpars. (C) and (D) as (B) and (C), respectively, and struck out heading and text of former subpar. (B). Text read as follows: "For purposes of subparagraph (A), the rate set forth in this subparagraph is—

"(i) 22 percent in the case of taxable years beginning in calendar year 1994 or 1995, and

"(ii) 20 percent in the case of taxable years beginning after December 31, 1995."

Subsec. (e)(3). Pub. L. 109–58, §1310(d), substituted "Except as provided in subsection (f), the Fund" for "The Fund".

Subsecs. (f) to (h). Pub. L. 109–58, §1310(b)(1), added subsec. (f) and redesignated former subsecs. (f) and (g) as (g) and (h), respectively.

1996—Subsec. (e)(2)(A). Pub. L. 104–188 provided that the amendment made by section 1917(b)(1) of Pub. L. 102–486 shall be applied as if "at a rate" appeared instead of "at the rate" in the material proposed to be stricken. See 1992 Amendment note below.

1992—Subsec. (e)(2)(A). Pub. L. 102–486, §1917(b)(1), which directed that subpar. (A) be amended by striking "at the rate equal to the highest rate of tax specified in section 11(b)" and inserting "at the rate set forth in subparagraph (B)", was executed by making the substitution for "at a rate equal to the highest rate of tax specified in section 11(b)". See 1996 Amendment note above.

Subsec. (e)(2)(B) to (D). Pub. L. 102–486, §1917(b)(2), added subpar. (B) and redesignated former subpars.

(B) and (C) as (C) and (D), respectively.

Subsec. (e)(4)(C). Pub. L. 102–486, §1917(a), struck out before period at end "described in section 501(c)(21)(B)(ii)".

1986—Subsec. (a). Pub. L. 99–514, §1807(a)(4)(E)(i), substituted "this section" for "this subsection".

Subsec. (c)(1)(A). Pub. L. 99–514, §1807(a)(4)(B), substituted "subsection (e)(4)(B)" for "subsection (e)(2)(B)".

Subsec. (d). Pub. L. 99–514, §1807(a)(4)(E)(ii), substituted "this section" for "this subsection" in introductory text.

Subsec. (e). Pub. L. 99–514, §1807(a)(4)(E)(iii), substituted "Reserve Fund" for "Trust Fund" in heading.

Subsec. (e)(1). Pub. L. 99–514, §1807(a)(4)(E)(iv), substituted "this section" for "this subsection" and "Reserve Fund" for "Trust Fund".

Subsec. (e)(2). Pub. L. 99–514, §1807(a)(4)(C), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "There is imposed on the gross income of the Fund for any taxable year a tax at a rate equal to the maximum rate in effect under section 11(b), except that—

"(A) there shall not be included in the gross income of the Fund any payment to the Fund with respect to which a deduction is allowable under subsection (a), and

"(B) there shall be allowed as a deduction any amount paid by the Fund described in paragraph (4)(B) (other than to the taxpayer)."

Subsec. (e)(4)(C). Pub. L. 99–514, §1807(a)(4)(D), added subpar. (C).

Subsec. (e)(6). Pub. L. 99–514, §1807(a)(4)(E)(v), substituted "this section" for "this subsection" in two places and "this paragraph" for "this subparagraph".

Subsec. (f). Pub. L. 99–514, §1807(a)(4)(E)(vi), substituted "For purposes of this section, the" for "The".

Subsec. (g). Pub. L. 99–514, §1807(a)(4)(A)(i), added subsec. (g).

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–58, title XIII, §1310(f), Aug. 8, 2005, 119 Stat. 1009, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2005."

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–486, title XIX, §1917(c), Oct. 24, 1992, 106 Stat. 3025, provided that:

"(1) SUBSECTION (a).—The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1992.

"(2) SUBSECTION (b).—The amendments made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 1993. Section 15 of the Internal Revenue Code of 1986 shall not apply to any change in rate resulting from the amendment made by subsection (b)."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section effective July 18, 1984, with respect to taxable years ending after such date, see section 91(g)(5) of Pub. L. 98–369, as amended, set out as an Effective Date of 1984 Amendment note under section 461 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TRANSITIONAL RULE

Pub. L. 99–514, title XVIII, §1807(a)(4)(A)(ii), Oct. 22, 1986, 100 Stat. 2812, provided that: "To the extent provided in regulations prescribed by the Secretary of the Treasury or his delegate, subsection (g) of section 468A of the Internal Revenue Code of 1954 [now 1986] (as added by clause (i)) shall be applied with respect to any payment on account of a taxable year beginning before January 1, 1987, as if it did not contain the requirement that the payment be made within 2½ months after the close of the taxable year. Such regulations may provide that, to the extent such payment to the Fund is made more than 2½ months after the close of the

taxable year, any adjustment to the tax attributable to such payment shall not affect the amount of interest payable with respect to periods before the payment is made. Such regulations may provide appropriate adjustments to the deduction allowed under such section 468A for any such taxable year to take into account the fact that the payment to the Fund is made more than 2½ months after the close of the taxable year."

§468B. Special rules for designated settlement funds

(a) In general

For purposes of section 461(h), economic performance shall be deemed to occur as qualified payments are made by the taxpayer to a designated settlement fund.

(b) Taxation of designated settlement fund

(1) In general

There is imposed on the gross income of any designated settlement fund for any taxable year a tax at a rate equal to the maximum rate in effect for such taxable year under section 1(e).

(2) Certain expenses allowed

For purposes of paragraph (1), gross income for any taxable year shall be reduced by the amount of any administrative costs (including State and local taxes) and other incidental expenses of the designated settlement fund (including legal, accounting, and actuarial expenses)—

(A) which are incurred in connection with the operation of the fund, and

(B) which would be deductible under this chapter for purposes of determining the taxable income of a corporation.

No other deduction shall be allowed to the fund.

(3) Transfers to the fund

In the case of any qualified payment made to the fund—

(A) the amount of such payment shall not be treated as income of the designated settlement fund,

(B) the basis of the fund in any property which constitutes a qualified payment shall be equal to the fair market value of such property at the time of payment, and

(C) the fund shall be treated as the owner of the property in the fund (and any earnings thereon).

(4) Tax in lieu of other taxation

The tax imposed by paragraph (1) shall be in lieu of any other taxation under this subtitle of income from assets in the designated settlement fund.

(5) Coordination with subtitle F

For purposes of subtitle F—

(A) a designated settlement fund shall be treated as a corporation, and

(B) any tax imposed by this subsection shall be treated as a tax imposed by section 11.

(c) Deductions not allowed for transfer of insurance amounts

No deduction shall be allowable for any qualified payment by the taxpayer of any amounts received from the settlement of any insurance claim to the extent such amounts are excluded from the gross income of the taxpayer.

(d) Definitions

For purposes of this section—

(1) Qualified payment

The term "qualified payment" means any money or property which is transferred to any designated settlement fund pursuant to a court order, other than—

(A) any amount which may be transferred from the fund to the taxpayer (or any related

person), or

(B) the transfer of any stock or indebtedness of the taxpayer (or any related person).

(2) Designated settlement fund

The term "designated settlement fund" means any fund—

(A) which is established pursuant to a court order and which extinguishes completely the taxpayer's tort liability with respect to claims described in subparagraph (D),

(B) with respect to which no amounts may be transferred other than in the form of qualified payments,

(C) which is administered by persons a majority of whom are independent of the taxpayer,

(D) which is established for the principal purpose of resolving and satisfying present and future claims against the taxpayer (or any related person or formerly related person) arising out of personal injury, death, or property damage,

(E) under the terms of which the taxpayer (or any related person) may not hold any beneficial interest in the income or corpus of the fund, and

(F) with respect to which an election is made under this section by the taxpayer.

An election under this section shall be made at such time and in such manner as the Secretary shall by regulation prescribe. Such an election, once made, may be revoked only with the consent of the Secretary.

(3) Related person

The term "related person" means a person related to the taxpayer within the meaning of section 267(b).

(e) Nonapplicability of section

This section (other than subsection (g)) shall not apply with respect to any liability of the taxpayer arising under any workers' compensation Act or any contested liability of the taxpayer within the meaning of section 461(f).

(f) Other funds

Except as provided in regulations, any payment in respect of a liability described in subsection (d)(2)(D) (and not described in subsection (e)) to a trust fund or escrow fund which is not a designated settlement fund shall not be treated as constituting economic performance.

(g) Clarification of taxation of certain funds

(1) In general

Except as provided in paragraph (2), nothing in any provision of law shall be construed as providing that an escrow account, settlement fund, or similar fund is not subject to current income tax. The Secretary shall prescribe regulations providing for the taxation of any such account or fund whether as a grantor trust or otherwise.

(2) Exemption from tax for certain settlement funds

An escrow account, settlement fund, or similar fund shall be treated as beneficially owned by the United States and shall be exempt from taxation under this subtitle if—

(A) it is established pursuant to a consent decree entered by a judge of a United States District Court,

(B) it is created for the receipt of settlement payments as directed by a government entity for the sole purpose of resolving or satisfying one or more claims asserting liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980,

(C) the authority and control over the expenditure of funds therein (including the expenditure of contributions thereto and any net earnings thereon) is with such government entity, and

(D) upon termination, any remaining funds will be disbursed to such government entity for use in accordance with applicable law.

For purposes of this paragraph, the term "government entity" means the United States, any State or political subdivision thereof, the District of Columbia, any possession of the United States, and any agency or instrumentality of any of the foregoing.

(Added Pub. L. 99–514, title XVIII, §1807(a)(7)(A), Oct. 22, 1986, 100 Stat. 2814; amended Pub. L. 100–647, title I, §1018(f)(1), (2), (4), (5)(A), Nov. 10, 1988, 102 Stat. 3582; Pub. L. 101–508, title XI, §11702(e)(1), Nov. 5, 1990, 104 Stat. 1388–515; Pub. L. 109–222, title II, §201(a), May 17, 2006, 120 Stat. 347; Pub. L. 109–432, div. A, title IV, §409(a), Dec. 20, 2006, 120 Stat. 2963.)

REFERENCES IN TEXT

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, referred to in subsec. (g)(2)(B), is Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2767, as amended, which is classified principally to chapter 103 (§9601 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of Title 42 and Tables.

AMENDMENTS

2006—Subsec. (g). Pub. L. 109–222 reenacted heading without change and amended text of subsec. (g) generally. Prior to amendment, text read as follows: "Nothing in any provision of law shall be construed as providing that an escrow account, settlement fund, or similar fund is not subject to current income tax. The Secretary shall prescribe regulations providing for the taxation of any such account or fund whether as a grantor trust or otherwise."

Subsec. (g)(3). Pub. L. 109–432 struck out heading and text of par. (3). Text read as follows: "Paragraph (2) shall not apply to accounts and funds established after December 31, 2010."

1990—Subsec. (e). Pub. L. 101–508 substituted "This section (other than subsection (g))" for "This section".

1988—Subsec. (b)(2). Pub. L. 100–647, §1018(f)(4)(B), substituted "No other" for "no other" in concluding provisions.

Subsec. (b)(2)(B). Pub. L. 100–647, §1018(f)(4)(A), substituted "a corporation." for "the corporation,".

Subsec. (d)(1)(A). Pub. L. 100–647, §1018(f)(1), inserted "(or any related person)" after "taxpayer".

Subsec. (d)(2)(A). Pub. L. 100–647, §1018(f)(2), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "which is established pursuant to a court order,".

Subsec. (d)(2)(E). Pub. L. 100–647, §1018(f)(1), inserted "(or any related person)" after "taxpayer".

Subsec. (g). Pub. L. 100–647, §1018(f)(5)(A), added subsec. (g).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title IV, §409(b), Dec. 20, 2006, 120 Stat. 2963, provided that: "The amendment made by this section [amending this section] shall take effect as if included in section 201 of the Tax Increase Prevention and Reconciliation Act of 2005 [Pub. L. 109–222]."

Pub. L. 109–222, title II, §201(b), May 17, 2006, 120 Stat. 348, provided that: "The amendment made by subsection (a) [amending this section] shall apply to accounts and funds established after the date of the enactment of this Act [May 17, 2006]."

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 11702(j) of Pub. L. 101–508, set out as a note under section 59 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note under section 48 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147

and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

SPECIAL RULE FOR TAXPAYER IN BANKRUPTCY REORGANIZATION

Pub. L. 99–514, title XVIII, §1807(a)(7)(C), Oct. 22, 1986, 100 Stat. 2816, as amended by Pub. L. 100–647, title I, §1018(f)(3), Nov. 10, 1988, 102 Stat. 3582, provided that: "In the case of any settlement fund which is established for claimants against a corporation which filed a petition for reorganization under chapter 11 of title 11, United States Code, on August 26, 1982, and which filed with a United States district court a first amended and restated plan of reorganization before March 1, 1986—

"(i) any portion of such fund which is established pursuant to a court order and with qualified payments, which meets the requirements of subparagraphs (C) and (D) of section 468B(d)(2) of the Internal Revenue Code of 1954 [now 1986] (as added by this paragraph), and with respect to which an election is made under subparagraph (F) thereof, shall be treated as a designated settlement fund for purposes of section 468B of such Code,

"(ii) such corporation (or any successor thereof) shall be liable for the tax imposed by section 468B of such Code on such portion of the fund (and the fund shall not be liable for such tax), such tax shall be deductible by the corporation, and the rate of tax under section 468B of such Code for any taxable year shall be equal to 15 percent, and

"(iii) any transaction by any portion of the fund not described in clause (i) shall be treated as a transaction made by the corporation."

CLARIFICATION OF LAW WITH RESPECT TO CERTAIN FUNDS

Pub. L. 99–514, title XVIII, §1807(a)(7)(D), Oct. 22, 1986, 100 Stat. 2816, provided that nothing in any provision of law be construed as providing that an escrow account, settlement fund, or similar fund established after Aug. 16, 1986, not be subject to current income tax and that if contributions to such account or fund are not deductible then the account or fund be taxed as a grantor trust, prior to repeal by Pub. L. 100–647, title I, §1018(f)(5)(B), Nov. 10, 1988, 102 Stat. 3582.

§469. Passive activity losses and credits limited

(a) Disallowance

(1) In general

If for any taxable year the taxpayer is described in paragraph (2), neither—

(A) the passive activity loss, nor

(B) the passive activity credit,

for the taxable year shall be allowed.

(2) Persons described

The following are described in this paragraph:

(A) any individual, estate, or trust,

(B) any closely held C corporation, and

(C) any personal service corporation.

(b) Disallowed loss or credit carried to next year

Except as otherwise provided in this section, any loss or credit from an activity which is disallowed under subsection (a) shall be treated as a deduction or credit allocable to such activity in the next taxable year.

(c) Passive activity defined

For purposes of this section—

(1) In general

The term "passive activity" means any activity—

(A) which involves the conduct of any trade or business, and

(B) in which the taxpayer does not materially participate.

(2) Passive activity includes any rental activity

Except as provided in paragraph (7), the term "passive activity" includes any rental activity.

(3) Working interests in oil and gas property

(A) In general

The term "passive activity" shall not include any working interest in any oil or gas property which the taxpayer holds directly or through an entity which does not limit the liability of the taxpayer with respect to such interest.

(B) Income in subsequent years

If any taxpayer has any loss for any taxable year from a working interest in any oil or gas property which is treated as a loss which is not from a passive activity, then any net income from such property (or any property the basis of which is determined in whole or in part by reference to the basis of such property) for any succeeding taxable year shall be treated as income of the taxpayer which is not from a passive activity. If the preceding sentence applies to the net income from any property for any taxable year, any credits allowable under subpart B (other than section 27(a)) or D of part IV of subchapter A for such taxable year which are attributable to such property shall be treated as credits not from a passive activity to the extent the amount of such credits does not exceed the regular tax liability of the taxpayer for the taxable year which is allocable to such net income.

(4) Material participation not required for paragraphs (2) and (3)

Paragraphs (2) and (3) shall be applied without regard to whether or not the taxpayer materially participates in the activity.

(5) Trade or business includes research and experimentation activity

For purposes of paragraph (1)(A), the term "trade or business" includes any activity involving research or experimentation (within the meaning of section 174).

(6) Activity in connection with trade or business or production of income

To the extent provided in regulations, for purposes of paragraph (1)(A), the term "trade or business" includes—

(A) any activity in connection with a trade or business, or

(B) any activity with respect to which expenses are allowable as a deduction under section 212.

(7) Special rules for taxpayers in real property business

(A) In general

If this paragraph applies to any taxpayer for a taxable year—

(i) paragraph (2) shall not apply to any rental real estate activity of such taxpayer for such taxable year, and

(ii) this section shall be applied as if each interest of the taxpayer in rental real estate were a separate activity.

Notwithstanding clause (ii), a taxpayer may elect to treat all interests in rental real estate as one activity. Nothing in the preceding provisions of this subparagraph shall be construed as affecting the determination of whether the taxpayer materially participates with respect to any interest in a limited partnership as a limited partner.

(B) Taxpayers to whom paragraph applies

This paragraph shall apply to a taxpayer for a taxable year if—

(i) more than one-half of the personal services performed in trades or businesses by the taxpayer during such taxable year are performed in real property trades or businesses in which the taxpayer materially participates, and

(ii) such taxpayer performs more than 750 hours of services during the taxable year in real property trades or businesses in which the taxpayer materially participates.

In the case of a joint return, the requirements of the preceding sentence are satisfied if and only if either spouse separately satisfies such requirements. For purposes of the preceding sentence, activities in which a spouse materially participates shall be determined under subsection (h).

(C) Real property trade or business

For purposes of this paragraph, the term "real property trade or business" means any real property development, redevelopment, construction, reconstruction, acquisition, conversion, rental, operation, management, leasing, or brokerage trade or business.

(D) Special rules for subparagraph (B)

(i) Closely held C corporations

In the case of a closely held C corporation, the requirements of subparagraph (B) shall be treated as met for any taxable year if more than 50 percent of the gross receipts of such corporation for such taxable year are derived from real property trades or businesses in which the corporation materially participates.

(ii) Personal services as an employee

For purposes of subparagraph (B), personal services performed as an employee shall not be treated as performed in real property trades or businesses. The preceding sentence shall not apply if such employee is a 5-percent owner (as defined in section 416(i)(1)(B)) in the employer.

(d) Passive activity loss and credit defined

For purposes of this section—

(1) Passive activity loss

The term "passive activity loss" means the amount (if any) by which—

(A) the aggregate losses from all passive activities for the taxable year, exceed

(B) the aggregate income from all passive activities for such year.

(2) Passive activity credit

The term "passive activity credit" means the amount (if any) by which—

(A) the sum of the credits from all passive activities allowable for the taxable year under—

(i) subpart D of part IV of subchapter A, or

(ii) subpart B (other than section 27(a)) of such part IV, exceeds

(B) the regular tax liability of the taxpayer for the taxable year allocable to all passive activities.

(e) Special rules for determining income or loss from a passive activity

For purposes of this section—

(1) Certain income not treated as income from passive activity

In determining the income or loss from any activity—

(A) In general

There shall not be taken into account—

(i) any—

(I) gross income from interest, dividends, annuities, or royalties not derived in the ordinary course of a trade or business,

(II) expenses (other than interest) which are clearly and directly allocable to such gross income, and

(III) interest expense properly allocable to such gross income, and

(ii) gain or loss not derived in the ordinary course of a trade or business which is attributable to the disposition of property—

(I) producing income of a type described in clause (i), or

(II) held for investment.

For purposes of clause (ii), any interest in a passive activity shall not be treated as property held for investment.

(B) Return on working capital

For purposes of subparagraph (A), any income, gain, or loss which is attributable to an investment of working capital shall be treated as not derived in the ordinary course of a trade or business.

(2) Passive losses of certain closely held corporations may offset active income

(A) In general

If a closely held C corporation (other than a personal service corporation) has net active income for any taxable year, the passive activity loss of such taxpayer for such taxable year (determined without regard to this paragraph)—

(i) shall be allowable as a deduction against net active income, and

(ii) shall not be taken into account under subsection (a) to the extent so allowable as a deduction.

A similar rule shall apply in the case of any passive activity credit of the taxpayer.

(B) Net active income

For purposes of this paragraph, the term "net active income" means the taxable income of the taxpayer for the taxable year determined without regard to—

(i) any income or loss from a passive activity, and

(ii) any item of gross income, expense, gain, or loss described in paragraph (1)(A).

(3) Compensation for personal services

Earned income (within the meaning of section 911(d)(2)(A)) shall not be taken into account in computing the income or loss from a passive activity for any taxable year.

(4) Dividends reduced by dividends received deduction

For purposes of paragraphs (1) and (2), income from dividends shall be reduced by the amount of any dividends received deduction under section 243, 244, or 245.

(f) Treatment of former passive activities

For purposes of this section—

(1) In general

If an activity is a former passive activity for any taxable year—

(A) any unused deduction allocable to such activity under subsection (b) shall be offset against the income from such activity for the taxable year,

(B) any unused credit allocable to such activity under subsection (b) shall be offset against the regular tax liability (computed after the application of paragraph (1)) allocable to such activity for the taxable year, and

(C) any such deduction or credit remaining after the application of subparagraphs (A) and (B) shall continue to be treated as arising from a passive activity.

(2) Change in status of closely held C corporation or personal service corporation

If a taxpayer ceases for any taxable year to be a closely held C corporation or personal service corporation, this section shall continue to apply to losses and credits to which this section applied for any preceding taxable year in the same manner as if such taxpayer continued to be a closely held C corporation or personal service corporation, whichever is applicable.

(3) Former passive activity

The term "former passive activity" means any activity which, with respect to the taxpayer—

(A) is not a passive activity for the taxable year, but

(B) was a passive activity for any prior taxable year.

(g) Dispositions of entire interest in passive activity

If during the taxable year a taxpayer disposes of his entire interest in any passive activity (or former passive activity), the following rules shall apply:

(1) Fully taxable transaction

(A) In general

If all gain or loss realized on such disposition is recognized, the excess of—

(i) any loss from such activity for such taxable year (determined after the application of subsection (b)), over

(ii) any net income or gain for such taxable year from all other passive activities (determined after the application of subsection (b)),

shall be treated as a loss which is not from a passive activity.

(B) Subparagraph (A) not to apply to disposition involving related party

If the taxpayer and the person acquiring the interest bear a relationship to each other described in section 267(b) or section 707(b)(1), then subparagraph (A) shall not apply to any loss of the taxpayer until the taxable year in which such interest is acquired (in a transaction described in subparagraph (A)) by another person who does not bear such a relationship to the taxpayer.

(C) Income from prior years

To the extent provided in regulations, income or gain from the activity for preceding taxable years shall be taken into account under subparagraph (A)(ii) for the taxable year to the extent necessary to prevent the avoidance of this section.

(2) Disposition by death

If an interest in the activity is transferred by reason of the death of the taxpayer—

(A) paragraph (1)(A) shall apply to losses described in paragraph (1)(A) to the extent such losses are greater than the excess (if any) of—

(i) the basis of such property in the hands of the transferee, over

(ii) the adjusted basis of such property immediately before the death of the taxpayer, and

(B) any losses to the extent of the excess described in subparagraph (A) shall not be allowed as a deduction for any taxable year.

(3) Installment sale of entire interest

In the case of an installment sale of an entire interest in an activity to which section 453 applies, paragraph (1) shall apply to the portion of such losses for each taxable year which bears the same ratio to all such losses as the gain recognized on such sale during such taxable year bears to the gross profit from such sale (realized or to be realized when payment is completed).

(h) Material participation defined

For purposes of this section—

(1) In general

A taxpayer shall be treated as materially participating in an activity only if the taxpayer is involved in the operations of the activity on a basis which is—

(A) regular,

(B) continuous, and

(C) substantial.

(2) Interests in limited partnerships

Except as provided in regulations, no interest in a limited partnership as a limited partner shall be treated as an interest with respect to which a taxpayer materially participates.

(3) Treatment of certain retired individuals and surviving spouses

A taxpayer shall be treated as materially participating in any farming activity for a taxable year if paragraph (4) or (5) of section 2032A(b) would cause the requirements of section 2032A(b)(1)(C)(ii) to be met with respect to real property used in such activity if such taxpayer had died during the taxable year.

(4) Certain closely held C corporations and personal service corporations

A closely held C corporation or personal service corporation shall be treated as materially participating in an activity only if—

(A) 1 or more shareholders holding stock representing more than 50 percent (by value) of the outstanding stock of such corporation materially participate in such activity, or

(B) in the case of a closely held C corporation (other than a personal service corporation), the requirements of section 465(c)(7)(C) (without regard to clause (iv)) are met with respect to such activity.

(5) Participation by spouse

In determining whether a taxpayer materially participates, the participation of the spouse of the taxpayer shall be taken into account.

(i) $25,000 offset for rental real estate activities

(1) In general

In the case of any natural person, subsection (a) shall not apply to that portion of the passive activity loss or the deduction equivalent (within the meaning of subsection (j)(5)) of the passive activity credit for any taxable year which is attributable to all rental real estate activities with respect to which such individual actively participated in such taxable year (and if any portion of such loss or credit arose in another taxable year, in such other taxable year).

(2) Dollar limitation

The aggregate amount to which paragraph (1) applies for any taxable year shall not exceed $25,000.

(3) Phase-out of exemption

(A) In general

In the case of any taxpayer, the $25,000 amount under paragraph (2) shall be reduced (but not below zero) by 50 percent of the amount by which the adjusted gross income of the taxpayer for the taxable year exceeds $100,000.

(B) Special phase-out of rehabilitation credit

In the case of any portion of the passive activity credit for any taxable year which is attributable to the rehabilitation credit determined under section 47, subparagraph (A) shall be applied by substituting "$200,000" for "$100,000".

(C) Exception for commercial revitalization deduction

Subparagraph (A) shall not apply to any portion of the passive activity loss for any taxable year which is attributable to the commercial revitalization deduction under section 1400I.

(D) Exception for low-income housing credit

Subparagraph (A) shall not apply to any portion of the passive activity credit for any taxable year which is attributable to any credit determined under section 42.

(E) Ordering rules to reflect exceptions and separate phase-outs

If subparagraph (B), (C), or (D) applies for a taxable year, paragraph (1) shall be applied—

(i) first to the portion of the passive activity loss to which subparagraph (C) does not apply,
(ii) second to the portion of such loss to which subparagraph (C) applies,
(iii) third to the portion of the passive activity credit to which subparagraph (B) or (D) does not apply,
(iv) fourth to the portion of such credit to which subparagraph (B) applies, and
(v) then to the portion of such credit to which subparagraph (D) applies.

(F) Adjusted gross income

For purposes of this paragraph, adjusted gross income shall be determined without regard to—
(i) any amount includible in gross income under section 86,
(ii) the amounts excludable from gross income under sections 135 and 137,
(iii) the amounts allowable as a deduction under sections 199, 219, 221, and 222, and
(iv) any passive activity loss or any loss allowable by reason of subsection (c)(7).

(4) Special rule for estates

(A) In general

In the case of taxable years of an estate ending less than 2 years after the date of the death of the decedent, this subsection shall apply to all rental real estate activities with respect to which such decedent actively participated before his death.

(B) Reduction for surviving spouse's exemption

For purposes of subparagraph (A), the $25,000 amount under paragraph (2) shall be reduced by the amount of the exemption under paragraph (1) (without regard to paragraph (3)) allowable to the surviving spouse of the decedent for the taxable year ending with or within the taxable year of the estate.

(5) Married individuals filing separately

(A) In general

Except as provided in subparagraph (B), in the case of any married individual filing a separate return, this subsection shall be applied by substituting—
(i) "$12,500" for "$25,000" each place it appears,
(ii) "$50,000" for "$100,000" in paragraph (3)(A), and
(iii) "$100,000" for "$200,000" in paragraph (3)(B).

(B) Taxpayers not living apart

This subsection shall not apply to a taxpayer who—
(i) is a married individual filing a separate return for any taxable year, and
(ii) does not live apart from his spouse at all times during such taxable year.

(6) Active participation

(A) In general

An individual shall not be treated as actively participating with respect to any interest in any rental real estate activity for any period if, at any time during such period, such interest (including any interest of the spouse of the individual) is less than 10 percent (by value) of all interests in such activity.

(B) No participation requirement for low-income housing, rehabilitation credit, or commercial revitalization deduction

Paragraphs (1) and (4)(A) shall be applied without regard to the active participation requirement in the case of—
(i) any credit determined under section 42 for any taxable year,
(ii) any rehabilitation credit determined under section 47, or
(iii) any deduction under section 1400I (relating to commercial revitalization deduction).

(C) Interest as a limited partner

Except as provided in regulations, no interest as a limited partner in a limited partnership shall be treated as an interest with respect to which the taxpayer actively participates.

(D) Participation by spouse

In determining whether a taxpayer actively participates, the participation of the spouse of the taxpayer shall be taken into account.

(j) Other definitions and special rules

For purposes of this section—

(1) Closely held C corporation

The term "closely held C corporation" means any C corporation described in section 465(a)(1)(B).

(2) Personal service corporation

The term "personal service corporation" has the meaning given such term by section 269A(b)(1), except that section 269A(b)(2) shall be applied—

(A) by substituting "any" for "more than 10 percent", and

(B) by substituting "any" for "50 percent or more in value" in section 318(a)(2)(C).

A corporation shall not be treated as a personal service corporation unless more than 10 percent of the stock (by value) in such corporation is held by employee-owners (within the meaning of section 269A(b)(2), as modified by the preceding sentence).

(3) Regular tax liability

The term "regular tax liability" has the meaning given such term by section 26(b).

(4) Allocation of passive activity loss and credit

The passive activity loss and the passive activity credit (and the $25,000 amount under subsection (i)) shall be allocated to activities, and within activities, on a pro rata basis in such manner as the Secretary may prescribe.

(5) Deduction equivalent

The deduction equivalent of credits from a passive activity for any taxable year is the amount which (if allowed as a deduction) would reduce the regular tax liability for such taxable year by an amount equal to such credits.

(6) Special rule for gifts

In the case of a disposition of any interest in a passive activity by gift—

(A) the basis of such interest immediately before the transfer shall be increased by the amount of any passive activity losses allocable to such interest with respect to which a deduction has not been allowed by reason of subsection (a), and

(B) such losses shall not be allowable as a deduction for any taxable year.

(7) Qualified residence interest

The passive activity loss of a taxpayer shall be computed without regard to qualified residence interest (within the meaning of section 163(h)(3)).

(8) Rental activity

The term "rental activity" means any activity where payments are principally for the use of tangible property.

(9) Election to increase basis of property by amount of disallowed credit

For purposes of determining gain or loss from a disposition of any property to which subsection (g)(1) applies, the transferor may elect to increase the basis of such property immediately before the transfer by an amount equal to the portion of any unused credit allowable under this chapter which reduced the basis of such property for the taxable year in which such credit arose. If the

taxpayer elects the application of this paragraph, such portion of the passive activity credit of such taxpayer shall not be allowed for any taxable year.

(10) Coordination with section 280A

If a passive activity involves the use of a dwelling unit to which section 280A(c)(5) applies for any taxable year, any income, deduction, gain, or loss allocable to such use shall not be taken into account for purposes of this section for such taxable year.

(11) Aggregation of members of affiliated groups

Except as provided in regulations, all members of an affiliated group which files a consolidated return shall be treated as 1 corporation.

(12) Special rule for distributions by estates or trusts

If any interest in a passive activity is distributed by an estate or trust—

(A) the basis of such interest immediately before such distribution shall be increased by the amount of any passive activity losses allocable to such interest, and

(B) such losses shall not be allowable as a deduction for any taxable year.

(k) Separate application of section in case of publicly traded partnerships

(1) In general

This section shall be applied separately with respect to items attributable to each publicly traded partnership (and subsection (i) shall not apply with respect to items attributable to any such partnership). The preceding sentence shall not apply to any credit determined under section 42, or any rehabilitation credit determined under section 47, attributable to a publicly traded partnership to the extent the amount of any such credits exceeds the regular tax liability attributable to income from such partnership.

(2) Publicly traded partnership

For purposes of this section, the term "publicly traded partnership" means any partnership if—

(A) interests in such partnership are traded on an established securities market, or

(B) interests in such partnership are readily tradable on a secondary market (or the substantial equivalent thereof).

(3) Coordination with subsection (g)

For purposes of subsection (g), a taxpayer shall not be treated as having disposed of his entire interest in an activity of a publicly traded partnership until he disposes of his entire interest in such partnership.

(4) Application to regulated investment companies

For purposes of this section, a regulated investment company (as defined in section 851) holding an interest in a qualified publicly traded partnership (as defined in section 851(h)) shall be treated as a taxpayer described in subsection (a)(2) with respect to items attributable to such interest.

(l) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out provisions of this section, including regulations—

(1) which specify what constitutes an activity, material participation, or active participation for purposes of this section,

(2) which provide that certain items of gross income will not be taken into account in determining income or loss from any activity (and the treatment of expenses allocable to such income),

(3) requiring net income or gain from a limited partnership or other passive activity to be treated as not from a passive activity,

(4) which provide for the determination of the allocation of interest expense for purposes of this section, and

(5) which deal with changes in marital status and changes between joint returns and separate returns.

(m) Phase-in of disallowance of losses and credits for interest held before date of enactment

(1) In general

In the case of any passive activity loss or passive activity credit for any taxable year beginning in calendar years 1987 through 1990, subsection (a) shall not apply to the applicable percentage of that portion of such loss (or such credit) which is attributable to pre-enactment interests.

(2) Applicable percentage

For purposes of this subsection, the applicable percentage shall be determined in accordance with the following table:

In the case of taxable years beginning in:	**The applicable** percentage is:
1987	65
1988	40
1989	20
1990	10.

(3) Portion of loss or credit attributable to pre-enactment interests

For purposes of this subsection—

(A) In general

The portion of the passive activity loss (or passive activity credit) for any taxable year which is attributable to pre-enactment interests is the lesser of—

(i) the amount of the passive activity loss (or passive activity credit) which is disallowed for the taxable year under subsection (a) (without regard to this subsection), or

(ii) the amount of the passive activity loss (or passive activity credit) which would be disallowed for the taxable year (without regard to this subsection and without regard to any amount allocable to an activity for the taxable year under subsection (b)) taking into account only pre-enactment interests.

(B) Pre-enactment interest

(i) In general

The term "pre-enactment interest" means any interest in a passive activity held by a taxpayer on the date of the enactment of the Tax Reform Act of 1986, and at all times thereafter.

(ii) Binding contract exception

For purposes of clause (i), any interest acquired after such date of enactment pursuant to a written binding contract in effect on such date, and at all times thereafter, shall be treated as held on such date.

(iii) Interest in activities

The term "pre-enactment interest" shall not include an interest in a passive activity unless such activity was being conducted on such date of enactment. The preceding sentence shall not apply to an activity commencing after such date if—

(I) the property used in such activity is acquired pursuant to a written binding contract in effect on August 16, 1986, and at all times thereafter, or

(II) construction of property used in such activity began on or before August 16, 1986.

(Added Pub. L. 99–514, title V, §501(a), Oct. 22, 1986, 100 Stat. 2233; amended Pub. L. 100–203, title X, §10212(a), Dec. 22, 1987, 101 Stat. 1330–405; Pub. L. 100–647, title I, §1005(a)(1)–(9), (11), (12), title II, §2004(g), title VI, §6009(c)(3), Nov. 10, 1988, 102 Stat. 3387–3389, 3603, 3690; Pub. L. 101–239, title VII, §7109(a), Dec. 19, 1989, 103 Stat. 2322; Pub. L. 101–508, title XI, §§11704(a)(6), 11813(b)(16), Nov. 5, 1990, 104 Stat. 1388–518, 1388–555; Pub. L. 103–66, title XIII, §13143(a), (b), Aug. 10, 1993, 107 Stat. 440, 441; Pub. L. 104–188, title I, §§1704(d)(1), (e)(1), 1807(c)(4), Aug. 20, 1996, 110 Stat. 1878, 1902; Pub. L. 105–277, div. J, title IV, §4003(a)(2)(D), Oct. 21, 1998, 112 Stat. 2681–908; Pub. L. 106–554, §1(a)(7) [title I, §101(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–599; Pub. L. 107–16, title IV, §431(c)(3), June 7, 2001, 115 Stat. 68; Pub. L. 107–147, title IV, §412(a), Mar. 9, 2002, 116 Stat. 53; Pub. L. 108–357, title I, §102(d)(5), title III, §331(g), Oct. 22, 2004, 118 Stat. 1429, 1477.)

REFERENCES IN TEXT

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (m)(3)(B), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

AMENDMENTS

2004—Subsec. (i)(3)(F)(iii). Pub. L. 108–357, §102(d)(5), inserted "199," before "219,".

Subsec. (k)(4). Pub. L. 108–357, §331(g), added par. (4).

2002—Subsec. (i)(3)(E)(ii) to (iv). Pub. L. 107–147 added cls. (ii) to (iv) and struck out former cls. (ii) to (iv) which read as follows:

"(ii) second to the portion of the passive activity credit to which subparagraph (B) or (D) does not apply,

"(iii) third to the portion of such credit to which subparagraph (B) applies,

"(iv) fourth to the portion of such loss to which subparagraph (C) applies, and".

2001—Subsec. (i)(3)(F)(iii). Pub. L. 107–16 substituted ", 221, and 222" for "and 221".

2000—Subsec. (i)(3)(C) to (F). Pub. L. 106–554, §1(a)(7) [title I, §101(b)(1), (2)], added subpar. (C), redesignated former subpars. (C) to (E) as (D) to (F), respectively, and generally amended heading and text of subpar. (E), as redesignated. Prior to amendment, text read as follows: "If subparagraph (B) or (C) applies for any taxable year, paragraph (1) shall be applied—

"(i) first to the passive activity loss,

"(ii) second to the portion of the passive activity credit to which subparagraph (B) or (C) does not apply,

"(iii) third to the portion of such credit to which subparagraph (B) applies, and

"(iv) then to the portion of such credit to which subparagraph (C) applies."

Subsec. (i)(6)(B). Pub. L. 106–554, §1(a)(7) [title I, §101(b)(3)(B)], substituted ", rehabilitation credit, or commercial revitalization deduction" for "or rehabilitation credit" in heading.

Subsec. (i)(6)(B)(iii). Pub. L. 106–554, §1(a)(7) [title I, §101(b)(3)(A)], added cl. (iii).

1998—Subsec. (i)(3)(E)(iii). Pub. L. 105–277 amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: "any amount allowable as a deduction under section 219, and".

1996—Subsec. (c)(3)(B). Pub. L. 104–188, §1704(d)(1), inserted at end "If the preceding sentence applies to the net income from any property for any taxable year, any credits allowable under subpart B (other than section 27(a)) or D of part IV of subchapter A for such taxable year which are attributable to such property shall be treated as credits not from a passive activity to the extent the amount of such credits does not exceed the regular tax liability of the taxpayer for the taxable year which is allocable to such net income."

Subsec. (g)(1)(A). Pub. L. 104–188, §1704(e)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "If all gain or loss realized on such disposition is recognized, the excess of—

"(i) the sum of—

"(I) any loss from such activity for such taxable year (determined after application of subsection (b)), plus

"(II) any loss realized on such disposition, over

"(ii) net income or gain for such taxable year from all passive activities (determined without regard to losses described in clause (i)),

shall be treated as a loss which is not from a passive activity."

Subsec. (i)(3)(E)(ii). Pub. L. 104–188, §1807(c)(4), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: "the amount excludable from gross income under section 135,".

1993—Subsec. (c)(2). Pub. L. 103–66, §13143(b)(1), substituted "Except as provided in paragraph (7), the"

for "The".

Subsec. (c)(7). Pub. L. 103–66, §13143(a), added par. (7).

Subsec. (i)(3)(E)(iv). Pub. L. 103–66, §13143(b)(2), inserted "or any loss allowable by reason of subsection (c)(7)" after "loss".

1990—Subsec. (i)(3)(B), (6)(B)(ii). Pub. L. 101–508, §11813(b)(16)(A), substituted "rehabilitation credit determined under section 47" for "rehabilitation investment credit (within the meaning of section 48(o))".

Subsec. (k)(1). Pub. L. 101–508, §11813(b)(16)(B), substituted "rehabilitation credit determined under section 47" for "rehabilitation investment credit (within the meaning of section 48(o))".

Subsec. (m)(3)(A). Pub. L. 101–508, §11704(a)(6), substituted "pre-enactment" for "preenactment".

1989—Subsec. (i)(3)(B), (C). Pub. L. 101–239 added subpars. (B) and (C) and struck out former subpars. (B) and (C) which read as follows:

"(B) SPECIAL PHASE-OUT OF LOW-INCOME HOUSING AND REHABILITATION CREDITS.—In the case of any portion of the passive activity credit for any taxable year which is attributable to any credit to which paragraph (6)(B) applies, subparagraph (A) shall be applied by substituting '$200,000' for '$100,000'.

"(C) ORDERING RULE TO REFLECT SEPARATE PHASE-OUTS.—If subparagraph (B) applies for any taxable year, paragraph (1) shall be applied—

"(i) first to the passive activity loss,

"(ii) second to the portion of the passive activity credit to which subparagraph (B) does not apply, and

"(iii) then to the portion of such credit to which subparagraph (B) applies."

Subsec. (i)(3)(D), (E). Pub. L. 101–239 added subpar. (D) and redesignated former subpar. (D) as (E).

1988—Subsec. (e)(1)(A)(ii). Pub. L. 100–647, §1005(a)(1), inserted "not derived in the ordinary course of a trade or business which is" after "gain or loss".

Subsec. (g)(1)(A). Pub. L. 100–647, §1005(a)(2)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "If all gain or loss realized on such disposition is recognized, any loss from such activity which has not previously been allowed as a deduction (and in the case of a passive activity for the taxable year, any loss realized on such disposition) shall not be treated as a passive activity loss and shall be allowable as a deduction against income in the following order:

"(i) Income or gain from the passive activity for the taxable year (including any gain recognized on the disposition).

"(ii) Net income or gain for the taxable year from all passive activities.

"(iii) Any other income or gain."

Subsec. (g)(1)(C). Pub. L. 100–647, §1005(a)(2)(B), substituted "Income from prior years" for "Coordination with section 1211" in heading and amended text generally. Prior to amendment, text read as follows: "In the case of any loss realized on the disposition of an interest in a passive activity, section 1211 shall be applied before subparagraph (A) is applied."

Subsec. (g)(2)(A). Pub. L. 100–647, §1005(a)(3), substituted "paragraph (1)(A)" for "paragraph (1)" and "to losses described in paragraph (1)(A)" for "to such losses".

Subsec. (g)(3). Pub. L. 100–647, §1005(a)(4), substituted "(realized or to be realized" for "realized (or to be realized)" and "is completed)" for "is completed".

Subsec. (h)(4). Pub. L. 100–647, §1005(a)(5), inserted "only" before "if".

Subsec. (i)(1). Pub. L. 100–647, §1005(a)(6), substituted "in such taxable year (and if any portion of such loss or credit arose in another taxable year, in such other taxable year)" for "in the taxable year in which such portion of such loss or credit arose".

Subsec. (i)(3)(D). Pub. L. 100–647, §6009(c)(3), added cl. (ii) and redesignated former cls. (ii) and (iii) as (iii) and (iv), respectively.

Subsec. (i)(6)(C). Pub. L. 100–647, §1005(a)(7), substituted "Except as provided in regulations, no" for "No".

Subsec. (j)(6)(A). Pub. L. 100–647, §1005(a)(8), inserted "with respect to which a deduction has not been allowed by reason of subsection (a)" after "to such interest".

Subsec. (j)(10), (11). Pub. L. 100–647, §1005(a)(9), added pars. (10) and (11).

Subsec. (j)(12). Pub. L. 100–647, §1005(a)(11), added par. (12).

Subsec. (k)(3). Pub. L. 100–647, §2004(g), added par. (3).

Subsec. (m). Pub. L. 100–647, §1005(a)(12), substituted "interest" for "interests" in heading.

Subsec. (m)(1). Pub. L. 100–647, §1005(a)(12), added par. (1) and struck out former par. (1) which read as follows: "In the case of any passive activity loss or credit for any taxable year beginning in calendar years 1987 through 1990 which—

"(A) is attributable to a pre-enactment interest, but

"(B) is not attributable to a carryforward to such taxable year of any loss or credit which was

disallowed under this section for a preceding taxable year,

there shall be disallowed under subsection (a) only the applicable percentage of the amount which (but for this subsection) would have been disallowed under subsection (a) for such taxable year."

Subsec. (m)(2). Pub. L. 100–647, §1005(a)(12), added par. (2) and struck out former par. (2) which resulted in substituting "65", "40", "20", and "10" for "35", "60", "80", and "90" respectively, in second column.

Subsec. (m)(3)(A). Pub. L. 100–647, §1005(a)(12), added subpar. (A) and struck out former subpar. (A) which read as follows: "The portion of the passive activity loss for any taxable year which is attributable to pre-enactment interests shall be equal to the lesser of—

"(i) the passive activity loss for such taxable year, or

"(ii) the passive activity loss for such taxable year determined by taking into account only pre-enactment interests.

For purposes of this subparagraph, the deduction equivalent (within the meaning of subsection (j)(5)) of a passive activity credit shall be taken into account."

1987—Subsecs. (k) to (m). Pub. L. 100–203 added subsec. (k) and redesignated former subsecs. (k) and (l) as (l) and (m), respectively.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 102(d)(5) of Pub. L. 108–357 applicable to taxable years beginning after Dec. 31, 2004, see section 102(e) of Pub. L. 108–357, set out as a note under section 56 of this title.

Pub. L. 108–357, title III, §331(h), Oct. 22, 2004, 118 Stat. 1477, provided that: "The amendments made by this section [amending this section and sections 851 and 7704 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 22, 2004]."

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Community Renewal Tax Relief Act of 2000 [H.R. 5662, as enacted by Pub. L. 106–554], to which such amendment relates, see section 412(e) of Pub. L. 107–147, set out as a note under section 151 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to payments made in taxable years beginning after Dec. 31, 2001, see section 431(d) of Pub. L. 107–16, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–277 effective as if included in the provision of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 4003(l) of Pub. L. 105–277, set out as a note under section 86 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title XVII, §1704(d)(2), Aug. 20, 1996, 110 Stat. 1878, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after December 31, 1986."

Pub. L. 104–188, title XVII, §1704(e)(2), Aug. 20, 1996, 110 Stat. 1879, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after December 31, 1986."

Amendment by section 1807(c)(4) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1807(e) of Pub. L. 104–188, set out as an Effective Date note under section 23 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13143(c), Aug. 10, 1993, 107 Stat. 441, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1993."

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11813(b)(16) of Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7109(b), Dec. 19, 1989, 103 Stat. 2322, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to property placed in service after December 31, 1989, in taxable years ending after such date.

"(2) SPECIAL RULE WHERE INTEREST HELD IN PASS-THRU ENTITY.—In the case of a taxpayer who holds an indirect interest in property described in paragraph (1), the amendments made by this section shall apply only if such interest is acquired after December 31, 1989."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1005(a)(1)–(9), (11), (12) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 2004(g) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

Amendment by section 6009(c)(3) of Pub. L. 100–647 applicable to taxable years beginning after Dec. 31, 1989, see section 6009(d) of Pub. L. 100–647, set out as a note under section 86 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 effective as if included in the amendments made by section 501 of the Tax Reform Act of 1986, Pub. L. 99–514, see section 10212(c) of Pub. L. 100–203, set out as a note under section 58 of this title.

EFFECTIVE DATE

Pub. L. 99–514, title V, §501(c), Oct. 22, 1986, 100 Stat. 2241, as amended by Pub. L. 100–647, title I, §1005(a)(10), title IV, §4003(b)(2), Nov. 10, 1988, 102 Stat. 3388, 3644, provided that:

"(1) IN GENERAL.—The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1986.

"(2) SPECIAL RULE FOR CARRYOVERS.—The amendments made by this section shall not apply to any loss, deduction, or credit carried to a taxable year beginning after December 31, 1986, from a taxable year beginning before January 1, 1987.

"[(3) Repealed. Pub. L. 100–647, title IV, §4003(b)(2), Nov. 10, 1988, 102 Stat. 3644.]

"(4) INCOME FROM SALES OF PASSIVE ACTIVITIES IN TAXABLE YEARS BEGINNING BEFORE JANUARY 1, 1987.—If—

"(A) gain is recognized in a taxable year beginning after December 31, 1986, from a sale or exchange of an interest in an activity in a taxable year beginning before January 1, 1987, and

"(B) such gain would have been treated as gain from a passive activity had section 469 of the Internal Revenue Code of 1986 (as added by this section) been in effect for the taxable year in which the sale or exchange occurred and for all succeeding taxable years,

then such gain shall be treated as gain from a passive activity for purposes of such section."

SAVINGS PROVISION

For provisions that nothing in amendment by section 11813(b)(16) of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

AMOUNTS ATTRIBUTABLE TO ACTIVITIES SUBJECT TO LIMITATIONS UNDER SECTION 469 TREATED AS DEDUCTION ALLOCABLE TO SUCH ACTIVITY

Pub. L. 100–647, title I, §1005(c)(11), Nov. 10, 1988, 102 Stat. 3392, provided that: "If—

"(A) any amount was disallowed as a deduction under section 163(d) of the Internal Revenue Code of 1954 [now 1986] (as in effect on the day before the date of the enactment of the Reform Act [Oct. 22, 1986]),

"(B) such amount would (but for this paragraph) be treated as investment interest paid or accrued by the taxpayer in the taxpayer's first taxable year beginning after December 31, 1986, and

"(C) the taxpayer makes an election under this paragraph at such time and in such manner as the Secretary of the Treasury or his delegate shall prescribe,

to the extent such amount is attributable to an activity subject to the limitations of section 469 of the 1986 Code, such amount shall not be treated as investment interest but shall be treated as a deduction allocable to such activity for such first taxable year. Subsection (m) of section 469 of the 1986 Code and section 501(c)(2)

of the Reform Act [Pub. L. 99–514, set out as an Effective Date note above] shall not apply to any amount so treated."

TRANSITIONAL RULE FOR LOW-INCOME HOUSING

Pub. L. 99–514, title V, §502, Oct. 22, 1986, 100 Stat. 2241, as amended by Pub. L. 99–509, title VIII, §8073(a), Oct. 21, 1986, 100 Stat. 1965; Pub. L. 100–647, title I, §1005(b), Nov. 10, 1988, 102 Stat. 3389, provided that:

"(a) GENERAL RULE.—Any loss sustained by a qualified investor with respect to an interest in a qualified low-income housing project for any taxable year in the relief period shall not be treated as a loss from a passive activity for purposes of section 469 of the Internal Revenue Code of 1986.

"(b) RELIEF PERIOD.—For purposes of subsection (a), the term 'relief period' means the period beginning with the taxable year in which the investor made his initial investment in the qualified low-income housing project and ending with whichever of the following is the earliest—

"(1) the 6th taxable year after the taxable year in which the investor made his initial investment,

"(2) the 1st taxable year after the taxable year in which the investor is obligated to make his last investment, or

"(3) the taxable year preceding the 1st taxable year for which such project ceased to be a qualified low-income housing project.

"(c) QUALIFIED LOW-INCOME HOUSING PROJECT.—For purposes of this section, the term 'qualified low-income housing project' means any project if—

"(1) such project meets the requirements of clause (i), (ii), (iii), or (iv) of section 1250(a)(1)(B) [of the Internal Revenue Code of 1986] as of the date placed in service and for each taxable year thereafter which begins after 1986 and for which a passive loss may be allowable with respect to such project,

"(2) the operator certifies to the Secretary of the Treasury or his delegate that such project met the requirements of paragraph (1) on the date of the enactment of this Act [Oct. 22, 1986] (or, if later, when placed in service) and annually thereafter,

"(3) such project is constructed or acquired pursuant to a binding written contract entered into on or before August 16, 1986, and

"(4) such project is placed in service before January 1, 1989.

"(d) QUALIFIED INVESTOR.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified investor' means any natural person who holds (directly or through 1 or more entities) an interest in a qualified low-income housing project—

"(A) if—

"(i) in the case of a project placed in service on or before August 16, 1986, such person held an interest in such project on August 16, 1986, and such person made his initial investment after December 31, 1983, or

"(ii) in the case of a project placed in service after August 16, 1986, such person made his initial investment after December 31, 1983, and such person held an interest in such project on December 31, 1986, and

"(B) if such investor is required to make payments after December 31, 1986, of 50 percent or more of the total original obligated investment for such interest.

For purposes of subparagraph (A), a person shall be treated as holding an interest on August 16, 1986, or December 31, 1986, if on such date such person had a binding contract to acquire such interest.

"(2) TREATMENT OF ESTATES.—The estate of a decedent shall succeed to the treatment under this section of the decedent but only with respect to the 1st 2 taxable years of such estate ending after the date of the decedent's death.

"(3) SPECIAL RULE FOR CERTAIN PARTNERSHIPS.—In the case of any property which is held by a partnership—

"(A) which placed such property in service on or after December 31, 1985, and before August 17, 1986, and continuously held such property through the close of the taxable year for which the determination is being made, and

"(B) which was not treated as a new partnership or as terminated at any time on or after the date on which such property was placed in service and through the close of the taxable year for which the determination is being made,

paragraph (1)(A)(i) shall be applied by substituting 'December 31, 1988' for 'August 16, 1986' the 2nd place it appears.

"(4) SPECIAL RULE FOR CERTAIN RURAL HOUSING.—In the case of any interest in a qualified

low-income housing project which—

"(A) is assisted under section 515 of the Housing Act of 1949 [42 U.S.C. 1485] (relating to the Farmers' Home Administration Program), and

"(B) is located in a town with a population of less than 10,000 and which is not part of a metropolitan statistical area,

paragraph (1)(B) shall be applied by substituting '35 percent' for '50 percent' and subsection (b)(1) shall be applied by substituting '5th taxable year' for '6th taxable year'. The preceding sentence shall not apply to any interest unless, on December 31, 1986, at least one-half of the number of payments required with respect to such interest remain to be paid.

"(e) SPECIAL RULES.—

"(1) WHERE MORE THAN 1 BUILDING IN PROJECT.—If there is more than 1 building in any project, the determination of when such project is placed in service shall be based on when the 1st building in such project is placed in service.

"(2) ONLY CASH AND OTHER PROPERTY TAKEN INTO ACCOUNT.—In determining the amount any person invests in (or is obligated to invest in) any interest, only cash and other property shall be taken into account.

"(3) COORDINATION WITH CREDIT.—No low-income housing credit shall be determined under section 42 of the Internal Revenue Code of 1986 with respect to any project with respect to which any person has been allowed any benefit under this section."

[Pub. L. 99–509, title VIII, §8073(b), Oct. 21, 1986, 100 Stat. 1965, provided that: "The amendment made by subsection (a) [amending section 502 of Pub. L. 99–514, set out above] shall take effect as if included in section 502 of the Tax Reform Act of 1986 on the date of its enactment [Oct. 22, 1986]."]

§470. Limitation on deductions allocable to property used by governments or other tax-exempt entities

(a) Limitation on losses

Except as otherwise provided in this section, a tax-exempt use loss for any taxable year shall not be allowed.

(b) Disallowed loss carried to next year

Any tax-exempt use loss with respect to any tax-exempt use property which is disallowed under subsection (a) for any taxable year shall be treated as a deduction with respect to such property in the next taxable year.

(c) Definitions

For purposes of this section—

(1) Tax-exempt use loss

The term "tax-exempt use loss" means, with respect to any taxable year, the amount (if any) by which—

(A) the sum of—

(i) the aggregate deductions (other than interest) directly allocable to a tax-exempt use property, plus

(ii) the aggregate deductions for interest properly allocable to such property, exceed

(B) the aggregate income from such property.

(2) Tax-exempt use property

(A) In general

The term "tax-exempt use property" has the meaning given to such term by section 168(h), except that such section shall be applied—

(i) without regard to paragraphs (1)(C) and (3) thereof, and

(ii) as if section 197 intangible property (as defined in section 197), and property described in paragraph (1)(B) or (2) of section 167(f), were tangible property.

(B) Exception for partnerships

Such term shall not include any property which would (but for this subparagraph) be tax-exempt use property solely by reason of section 168(h)(6).

(C) Cross reference

For treatment of partnerships as leases to which section 168(h) applies, see section 7701(e).

(d) Exception for certain leases

This section shall not apply to any lease of property which meets the requirements of all of the following paragraphs:

(1) Availability of funds

(A) In general

A lease of property meets the requirements of this paragraph if (at all times during the lease term) not more than an allowable amount of funds are—

(i) subject to any arrangement referred to in subparagraph (B), or

(ii) set aside or expected to be set aside,

to or for the benefit of the lessor or any lender, or to or for the benefit of the lessee to satisfy the lessee's obligations or options under the lease. For purposes of clause (ii), funds shall be treated as set aside or expected to be set aside only if a reasonable person would conclude, based on the facts and circumstances, that such funds are set aside or expected to be set aside.

(B) Arrangements

The arrangements referred to in this subparagraph include a defeasance arrangement, a loan by the lessee to the lessor or any lender, a deposit arrangement, a letter of credit collateralized with cash or cash equivalents, a payment undertaking agreement, prepaid rent (within the meaning of the regulations under section 467), a sinking fund arrangement, a guaranteed investment contract, financial guaranty insurance, and any similar arrangement (whether or not such arrangement provides credit support).

(C) Allowable amount

(i) In general

Except as otherwise provided in this subparagraph, the term "allowable amount" means an amount equal to 20 percent of the lessor's adjusted basis in the property at the time the lease is entered into.

(ii) Higher amount permitted in certain cases

To the extent provided in regulations, a higher percentage shall be permitted under clause (i) where necessary because of the credit-worthiness of the lessee. In no event may such regulations permit a percentage of more than 50 percent.

(iii) Option to purchase

If under the lease the lessee has the option to purchase the property for a fixed price or for other than the fair market value of the property (determined at the time of exercise), the allowable amount at the time such option may be exercised may not exceed 50 percent of the price at which such option may be exercised.

(iv) No allowable amount for certain arrangements

The allowable amount shall be zero with respect to any arrangement which involves—

(I) a loan from the lessee to the lessor or a lender,

(II) any deposit received, letter of credit issued, or payment undertaking agreement entered into by a lender otherwise involved in the transaction, or

(III) in the case of a transaction which involves a lender, any credit support made available to the lessor in which any such lender does not have a claim that is senior to the

lessor.

For purposes of subclause (I), the term "loan" shall not include any amount treated as a loan under section 467 with respect to a section 467 rental agreement.

(2) Lessor must make substantial equity investment

(A) In general

A lease of property meets the requirements of this paragraph if—

(i) the lessor—

(I) has at the time the lease is entered into an unconditional at-risk equity investment (as determined by the Secretary) in the property of at least 20 percent of the lessor's adjusted basis in the property as of that time, and

(II) maintains such investment throughout the term of the lease, and

(ii) the fair market value of the property at the end of the lease term is reasonably expected to be equal to at least 20 percent of such basis.

(B) Risk of loss

For purposes of clause (ii),[1] the fair market value at the end of the lease term shall be reduced to the extent that a person other than the lessor bears a risk of loss in the value of the property.

(C) Paragraph not to apply to short-term leases

This paragraph shall not apply to any lease with a lease term of 5 years or less.

(3) Lessee may not bear more than minimal risk of loss

(A) In general

A lease of property meets the requirements of this paragraph if there is no arrangement under which the lessee bears—

(i) any portion of the loss that would occur if the fair market value of the leased property were 25 percent less than its reasonably expected fair market value at the time the lease is terminated, or

(ii) more than 50 percent of the loss that would occur if the fair market value of the leased property at the time the lease is terminated were zero.

(B) Exception

The Secretary may by regulations provide that the requirements of this paragraph are not met where the lessee bears more than a minimal risk of loss.

(C) Paragraph not to apply to short-term leases

This paragraph shall not apply to any lease with a lease term of 5 years or less.

(4) Property with more than 7-year class life

In the case of a lease—

(A) of property with a class life (as defined in section 168(i)(1)) of more than 7 years, other than fixed-wing aircraft and vessels, and

(B) under which the lessee has the option to purchase the property,

the lease meets the requirements of this paragraph only if the purchase price under the option equals the fair market value of the property (determined at the time of exercise).

(e) Special rules

(1) Treatment of former tax-exempt use property

(A) In general

In the case of any former tax-exempt use property—

(i) any deduction allowable under subsection (b) with respect to such property for any

taxable year shall be allowed only to the extent of any net income (without regard to such deduction) from such property for such taxable year, and

(ii) any portion of such unused deduction remaining after application of clause (i) shall be treated as a deduction allowable under subsection (b) with respect to such property in the next taxable year.

(B) Former tax-exempt use property

For purposes of this subsection, the term "former tax-exempt use property" means any property which—

(i) is not tax-exempt use property for the taxable year, but

(ii) was tax-exempt use property for any prior taxable year.

(2) Disposition of entire interest in property

If during the taxable year a taxpayer disposes of the taxpayer's entire interest in tax-exempt use property (or former tax-exempt use property), rules similar to the rules of section 469(g) shall apply for purposes of this section.

(3) Coordination with section 469

This section shall be applied before the application of section 469.

(4) Coordination with sections 1031 and 1033

(A) In general

Sections 1031(a) and 1033(a) shall not apply if—

(i) the exchanged or converted property is tax-exempt use property subject to a lease which was entered into before March 13, 2004, and which would not have met the requirements of subsection (d) had such requirements been in effect when the lease was entered into, or

(ii) the replacement property is tax-exempt use property subject to a lease which does not meet the requirements of subsection (d).

(B) Adjusted basis

In the case of property acquired by the lessor in a transaction to which section 1031 or 1033 applies, the adjusted basis of such property for purposes of this section shall be equal to the lesser of—

(i) the fair market value of the property as of the beginning of the lease term, or

(ii) the amount which would be the lessor's adjusted basis if such sections did not apply to such transaction.

(f) Other definitions

For purposes of this section—

(1) Related parties

The terms "lessor", "lessee", and "lender" each include any related party (within the meaning of section 197(f)(9)(C)(i)).

(2) Lease term

The term "lease term" has the meaning given to such term by section 168(i)(3).

(3) Lender

The term "lender" means, with respect to any lease, a person that makes a loan to the lessor which is secured (or economically similar to being secured) by the lease or the leased property.

(4) Loan

The term "loan" includes any similar arrangement.

(g) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations which—

(1) allow in appropriate cases the aggregation of property subject to the same lease, and

(2) provide for the determination of the allocation of interest expense for purposes of this section.

(Added Pub. L. 108–357, title VIII, §848(a), Oct. 22, 2004, 118 Stat. 1602; amended Pub. L. 110–172, §7(c), Dec. 29, 2007, 121 Stat. 2482.)

AMENDMENTS

2007—Subsec. (c)(2). Pub. L. 110–172, §7(c)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "The term 'tax-exempt use property' has the meaning given to such term by section 168(h), except that such section shall be applied—

"(A) without regard to paragraphs (1)(C) and (3) thereof, and

"(B) as if property described in—

"(i) section 167(f)(1)(B),

"(ii) section 167(f)(2), and

"(iii) section 197 intangible,

were tangible property.

Such term shall not include property which would (but for this sentence) be tax-exempt use property solely by reason of section 168(h)(6) if any credit is allowable under section 42 or 47 with respect to such property."

Subsec. (d)(1)(A). Pub. L. 110–172, §7(c)(2), in introductory provisions, substituted "(at all times during the lease term)" for "(at any time during the lease term)".

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–172 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 7(e) of Pub. L. 110–172, set out as a note under section 1092 of this title.

EFFECTIVE DATE

Pub. L. 108–357, title VIII, §849, Oct. 22, 2004, 118 Stat. 1606, as amended by Pub. L. 109–135, title IV, §403(ff), Dec. 21, 2005, 119 Stat. 2631, provided that:

"(a) IN GENERAL.—Except as provided in this section, the amendments made by this part [part III (§§847–849) of subtitle B of title VIII of Pub. L. 108–357, enacting this section and amending sections 167, 168, and 197 of this title] shall apply to leases entered into after March 12, 2004, and in the case of property treated as tax-exempt use property other than by reason of a lease, to property acquired after March 12, 2004.

"(b) EXCEPTION.—

"(1) IN GENERAL.—The amendments made by this part shall not apply to qualified transportation property.

"(2) QUALIFIED TRANSPORTATION PROPERTY.—For purposes of paragraph (1), the term 'qualified transportation property' means domestic property subject to a lease with respect to which a formal application—

"(A) was submitted for approval to the Federal Transit Administration (an agency of the Department of Transportation) after June 30, 2003, and before March 13, 2004,

"(B) is approved by the Federal Transit Administration before January 1, 2006, and

"(C) includes a description of such property and the value of such property.

"(3) EXCHANGES AND CONVERSION OF TAX-EXEMPT USE PROPERTY.—Section 470(e)(4) of the Internal Revenue Code of 1986, as added by section 848, shall apply to property exchanged or converted after the date of the enactment of this Act [Oct. 22, 2004].

"(4) INTANGIBLES AND INDIAN TRIBAL GOVERNMENTS.—The amendments made subsections (b)(2), (b)(3), and (e) of section 847 [amending sections 167, 168, and 197 of this title], and the treatment of property described in clauses (ii) and (iii) of section 470(c)(2)(B) of the Internal Revenue Code of 1986 (as added by section 848) as tangible property, shall apply to leases entered into after October 3, 2004."

[1] So in original. Probably should be "subparagraph (A)(ii)".

SUBPART D—INVENTORIES

Sec.
471. General rule for inventories.
472. Last-in, first-out inventories.
473. Qualified liquidations of LIFO inventories.
474. Simplified dollar-value LIFO method for certain small businesses.
475. Mark to market accounting method for dealers in securities.

AMENDMENTS

1993—Pub. L. 103–66, title XIII, §13223(b)(2), Aug. 10, 1993, 107 Stat. 484, added item 475.

1986—Pub. L. 99–514, title VIII, §802(b), Oct. 22, 1986, 100 Stat. 2350, substituted "Simplified dollar-value LIFO method for certain small businesses" for "Election by certain small businesses to use one inventory pool" in item 474.

1981—Pub. L. 97–34, title II, §237(b), Aug. 13, 1981, 95 Stat. 253, added item 474.

1980—Pub. L. 96–223, title IV, §403(a)(2), Apr. 2, 1980, 94 Stat. 304, added item 473.

§471. General rule for inventories

(a) General rule

Whenever in the opinion of the Secretary the use of inventories is necessary in order clearly to determine the income of any taxpayer, inventories shall be taken by such taxpayer on such basis as the Secretary may prescribe as conforming as nearly as may be to the best accounting practice in the trade or business and as most clearly reflecting the income.

(b) Estimates of inventory shrinkage permitted

A method of determining inventories shall not be treated as failing to clearly reflect income solely because it utilizes estimates of inventory shrinkage that are confirmed by a physical count only after the last day of the taxable year if—

(1) the taxpayer normally does a physical count of inventories at each location on a regular and consistent basis, and

(2) the taxpayer makes proper adjustments to such inventories and to its estimating methods to the extent such estimates are greater than or less than the actual shrinkage.

(c) Cross reference

For rules relating to capitalization of direct and indirect costs of property, see section 263A.

(Aug. 16, 1954, ch. 736, 68A Stat. 159; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 99–514, title VIII, §803(b)(4), Oct. 22, 1986, 100 Stat. 2356; Pub. L. 105–34, title IX, §961(a), Aug. 5, 1997, 111 Stat. 891.)

AMENDMENTS

1997—Subsecs. (b), (c). Pub. L. 105–34 added subsec. (b) and redesignated former subsec. (b) as (c).

1986—Pub. L. 99–514 designated existing provisions as subsec. (a) and added subsec. (b).

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title IX, §961(b)(1), Aug. 5, 1997, 111 Stat. 891, provided that: "The amendment made by this section [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1986 AMENDMENT

If any interest costs incurred after Dec. 31, 1986, are attributable to costs incurred before Jan. 1, 1987, the amendment by Pub. L. 99–514 is applicable to such interest costs only to the extent such interest costs are attributable to costs which were required to be capitalized under section 263 of the Internal Revenue Code of 1954 and which would have been taken into account in applying section 189 of the Internal Revenue Code of 1954 (as in effect before its repeal by section 803 of Pub. L. 99–514) or, if applicable, section 266 of such Code, see section 7831(d)(2) of Pub. L. 101–239, set out as an Effective Date note under section 263A of this title.

Amendment by Pub. L. 99–514 applicable to costs incurred after Dec. 31, 1986, in taxable years ending after such date, except as otherwise provided, see section 803(d) of Pub. L. 99–514, set out as an Effective Date note under section 263A of this title.

COORDINATION WITH SECTION 481

Pub. L. 105–34, title IX, §961(b)(2), Aug. 5, 1997, 111 Stat. 891, provided that: "In the case of any taxpayer permitted by this section [amending this section and enacting provisions set out as a note above] to change its method of accounting to a permissible method for any taxable year—

"(A) such changes shall be treated as initiated by the taxpayer,

"(B) such changes shall be treated as made with the consent of the Secretary of the Treasury, and

"(C) the period for taking into account the adjustments under section 481 [26 U.S.C. 481] by reason of such change shall be 4 years."

STUDY OF ACCOUNTING METHODS FOR INVENTORY; REPORT NOT LATER THAN DECEMBER 31, 1982

Pub. L. 97–34, title II, §238, Aug. 13, 1981, 95 Stat. 254, directed Secretary of the Treasury to conduct a study of methods of tax accounting for inventory with a view towards development of simplified methods and to report to Congress, not later than Dec. 31, 1982, prior to repeal by Pub. L. 100–647, title VI, §6252(a)(2), Nov. 10, 1988, 102 Stat. 3752.

§472. Last-in, first-out inventories

(a) Authorization

A taxpayer may use the method provided in subsection (b) (whether or not such method has been prescribed under section 471) in inventorying goods specified in an application to use such method filed at such time and in such manner as the Secretary may prescribe. The change to, and the use of, such method shall be in accordance with such regulations as the Secretary may prescribe as necessary in order that the use of such method may clearly reflect income.

(b) Method applicable

In inventorying goods specified in the application described in subsection (a), the taxpayer shall:

(1) Treat those remaining on hand at the close of the taxable year as being: First, those included in the opening inventory of the taxable year (in the order of acquisition) to the extent thereof; and second, those acquired in the taxable year;

(2) Inventory them at cost; and

(3) Treat those included in the opening inventory of the taxable year in which such method is first used as having been acquired at the same time and determine their cost by the average cost method.

(c) Condition

Subsection (a) shall apply only if the taxpayer establishes to the satisfaction of the Secretary that the taxpayer has used no procedure other than that specified in paragraphs (1) and (3) of subsection (b) in inventorying such goods to ascertain the income, profit, or loss of the first taxable year for which the method described in subsection (b) is to be used, for the purpose of a report or statement covering such taxable year—

(1) to shareholders, partners, or other proprietors, or to beneficiaries, or

(2) for credit purposes.

(d) 3-year averaging for increases in inventory value

The beginning inventory for the first taxable year for which the method described in subsection (b) is used shall be valued at cost. Any change in the inventory amount resulting from the application of the preceding sentence shall be taken into account ratably in each of the 3 taxable years beginning with the first taxable year for which the method described in subsection (b) is first used.

(e) Subsequent inventories

If a taxpayer, having complied with subsection (a), uses the method described in subsection (b) for

any taxable year, then such method shall be used in all subsequent taxable years unless—

(1) with the approval of the Secretary a change to a different method is authorized; or,

(2) the Secretary determines that the taxpayer has used for any such subsequent taxable year some procedure other than that specified in paragraph (1) of subsection (b) in inventorying the goods specified in the application to ascertain the income, profit, or loss of such subsequent taxable year for the purpose of a report or statement covering such taxable year (A) to shareholders, partners, or other proprietors, or beneficiaries, or (B) for credit purposes; and requires a change to a method different from that prescribed in subsection (b) beginning with such subsequent taxable year or any taxable year thereafter.

If paragraph (1) or (2) of this subsection applies, the change to, and the use of, the different method shall be in accordance with such regulations as the Secretary may prescribe as necessary in order that the use of such method may clearly reflect income.

(f) Use of government price indexes in pricing inventory

The Secretary shall prescribe regulations permitting the use of suitable published governmental indexes in such manner and circumstances as determined by the Secretary for purposes of the method described in subsection (b).

(g) Conformity rules applied on controlled group basis

(1) In general

Except as otherwise provided in regulations, all members of the same group of financially related corporations shall be treated as 1 taxpayer for purposes of subsections (c) and (e)(2).

(2) Group of financially related corporations

For purposes of paragraph (1), the term "group of financially related corporations" means—

(A) any affiliated group as defined in section 1504 determined by substituting "50 percent" for "80 percent" each place it appears in section 1504(a) and without regard to section 1504(b), and

(B) any other group of corporations which consolidate or combine for purposes of financial statements.

(Aug. 16, 1954, ch. 736, 68A Stat. 159; Pub. L. 94–455, title XIX, §§1901(b)(36)(A), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1802, 1834; Pub. L. 97–34, title II, §§235, 236(a), Aug. 13, 1981, 95 Stat. 252; Pub. L. 98–369, div. A, title I, §95(a), July 18, 1984, 98 Stat. 616.)

AMENDMENTS

1984—Subsec. (g). Pub. L. 98–369 added subsec. (g).

1981—Subsec. (d). Pub. L. 97–34, §236(a), substituted "3-year averaging for increases in inventory value" for "Preceding closing inventory" in heading, substituted first sentence reading "The beginning inventory for the first taxable year for which the method described in subsection (b) is used shall be valued at cost." for "In determining income for the taxable year preceding the taxable year for which the method described in subsection (b) is first used, the closing inventory of such preceding year of the goods specified in the application referred to in subsection (a) shall be at cost." and inserted "Any change in the inventory amount resulting from the application of the preceding sentence shall be taken into account ratably in each of the 3 taxable years beginning with the first taxable year for which the method described in subsection (b) is first used."

Subsec. (f). Pub. L. 97–34, §235, added subsec. (f).

1976—Subsecs. (a), (c), (e). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary" wherever appearing.

Subsec. (f). Pub. L. 94–455, §1901(b)(36)(A), struck out subsec. (f) which provided for a cross reference relating to involuntary liquidation and replacement of LIFO inventories.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §95(b), July 18, 1984, 98 Stat. 616, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [July 18, 1984]."

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title II, §236(b), Aug. 13, 1981, 95 Stat. 252, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1981."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(b)(36)(A) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

§473. Qualified liquidations of LIFO inventories

(a) General rule

If, for any liquidation year—

(1) there is a qualified liquidation of goods which the taxpayer inventories under the LIFO method, and

(2) the taxpayer elects to have the provisions of this section apply with respect to such liquidation,

then the gross income of the taxpayer for such taxable year shall be adjusted as provided in subsection (b).

(b) Adjustment for replacements

If the liquidated goods are replaced (in whole or in part) during any replacement year and such replacement is reflected in the closing inventory for such year, then the gross income for the liquidation year shall be—

(1) decreased by an amount equal to the excess of—

(A) the aggregate replacement cost of the liquidated goods so replaced during such year, over

(B) the aggregate cost of such goods reflected in the opening inventory of the liquidation year, or

(2) increased by an amount equal to the excess of—

(A) the aggregate cost reflected in such opening inventory of the liquidated goods so replaced during such year, over

(B) such aggregate replacement cost.

(c) Qualified liquidation defined

For purposes of this section—

(1) In general

The term "qualified liquidation" means—

(A) a decrease in the closing inventory of the liquidation year from the opening inventory of such year, but only if

(B) the taxpayer establishes to the satisfaction of the Secretary that such decrease is directly and primarily attributable to a qualified inventory interruption.

(2) Qualified inventory interruption defined

(A) In general

The term "qualified inventory interruption" means a regulation, request, or interruption described in subparagraph (B) but only to the extent provided in the notice published pursuant to subparagraph (B).

(B) Determination by Secretary

Whenever the Secretary, after consultation with the appropriate Federal officers, determines—

(i) that—

(I) any Department of Energy regulation or request with respect to energy supplies, or
(II) any embargo, international boycott, or other major foreign trade interruption,

has made difficult or impossible the replacement during the liquidation year of any class of goods for any class of taxpayers, and

(ii) that the application of this section to that class of goods and taxpayers is necessary to carry out the purposes of this section,

he shall publish a notice of such determinations in the Federal Register, together with the period to be affected by such notice.

(d) Other definitions and special rules

For purposes of this section—

(1) Liquidation year

The term "liquidation year" means the taxable year in which occurs the qualified liquidation to which this section applies.

(2) Replacement year

The term "replacement year" means any taxable year in the replacement period; except that such term shall not include any taxable year after the taxable year in which replacement of the liquidated goods is completed.

(3) Replacement period

The term "replacement period" means the shorter of—

(A) the period of the 3 taxable years following the liquidation year, or

(B) the period specified by the Secretary in a notice published in the Federal Register with respect to that qualified inventory interruption.

Any period specified by the Secretary under subparagraph (B) may be modified by the Secretary in a subsequent notice published in the Federal Register.

(4) LIFO method

The term "LIFO method" means the method of inventorying goods described in section 472.

(5) Election

(A) In general

An election under subsection (a) shall be made subject to such conditions, and in such manner and form and at such time, as the Secretary may prescribe by regulation.

(B) Irrevocable election

An election under this section shall be irrevocable and shall be binding for the liquidation year and for all determinations for prior and subsequent taxable years insofar as such determinations are affected by the adjustments under this section.

(e) Replacement; inventory basis

For purposes of this chapter—

(1) Replacements

If the closing inventory of the taxpayer for any replacement year reflects an increase over the opening inventory of such goods for such year, the goods reflecting such increase shall be considered, in the order of their acquisition, as having been acquired in replacement of the goods most recently liquidated (whether or not in a qualified liquidation) and not previously replaced.

(2) Amount at which replacement goods taken into account

In the case of any qualified liquidation, any goods considered under paragraph (1) as having been acquired in replacement of the goods liquidated in such liquidation shall be taken into

purchases and included in the closing inventory of the taxpayer for the replacement year at the inventory cost basis of the goods replaced.

(f) Special rules for application of adjustments

(1) Period of limitations

If—

(A) an adjustment is required under this section for any taxable year by reason of the replacement of liquidated goods during any replacement year, and

(B) the assessment of a deficiency, or the allowance of a credit or refund of an overpayment of tax attributable to such adjustment, for any taxable year, is otherwise prevented by the operation of any law or rule of law (other than section 7122, relating to compromises),

then such deficiency may be assessed, or credit or refund allowed, within the period prescribed for assessing a deficiency or allowing a credit or refund for the replacement year if a notice for deficiency is mailed, or claim for refund is filed, within such period.

(2) Interest

Solely for purposes of determining interest on any overpayment or underpayment attributable to an adjustment made under this section, such overpayment or underpayment shall be treated as an overpayment or underpayment (as the case may be) for the replacement year.

(g) Coordination with section 472

The Secretary shall prescribe such regulations as may be necessary to coordinate the provisions of this section with the provisions of section 472.

(Added Pub. L. 96–223, title IV, §403(a)(1), Apr. 2, 1980, 94 Stat. 302.)

EFFECTIVE DATE

Pub. L. 96–223, title IV, §403(a)(3), Apr. 2, 1980, 94 Stat. 304, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by paragraphs (1) and (2) [enacting this section] shall apply to qualified liquidations (within the meaning of section 473(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) in taxable years ending after October 31, 1979."

§474. Simplified dollar-value LIFO method for certain small businesses

(a) General rule

An eligible small business may elect to use the simplified dollar-value method of pricing inventories for purposes of the LIFO method.

(b) Simplified dollar-value method of pricing inventories

For purposes of this section—

(1) In general

The simplified dollar-value method of pricing inventories is a dollar-value method of pricing inventories under which—

(A) the taxpayer maintains a separate inventory pool for items in each major category in the applicable Government price index, and

(B) the adjustment for each such separate pool is based on the change from the preceding taxable year in the component of such index for the major category.

(2) Applicable Government price index

The term "applicable Government price index" means—

(A) except as provided in subparagraph (B), the Producer Price Index published by the Bureau of Labor Statistics, or

(B) in the case of a retailer using the retail method, the Consumer Price Index published by the Bureau of Labor Statistics.

(3) Major category

The term "major category" means—

(A) in the case of the Producer Price Index, any of the 2-digit standard industrial classifications in the Producer Prices Data Report, or

(B) in the case of the Consumer Price Index, any of the general expenditure categories in the Consumer Price Index Detailed Report.

(c) Eligible small business

For purposes of this section, a taxpayer is an eligible small business for any taxable year if the average annual gross receipts of the taxpayer for the 3 preceding taxable years do not exceed $5,000,000. For purposes of the preceding sentence, rules similar to the rules of section 448(c)(3) shall apply.

(d) Special rules

For purposes of this section—

(1) Controlled groups

(A) In general

In the case of a taxpayer which is a member of a controlled group, all persons which are component members of such group shall be treated as 1 taxpayer for purposes of determining the gross receipts of the taxpayer.

(B) Controlled group defined

For purposes of subparagraph (A), persons shall be treated as being component members of a controlled group if such persons would be treated as a single employer under section 52.

(2) Election

(A) In general

The election under this section may be made without the consent of the Secretary.

(B) Period to which election applies

The election under this section shall apply—

(i) to the taxable year for which it is made, and

(ii) to all subsequent taxable years for which the taxpayer is an eligible small business,

unless the taxpayer secures the consent of the Secretary to the revocation of such election.

(3) LIFO method

The term "LIFO method" means the method provided by section 472(b).

(4) Transitional rules

(A) In general

In the case of a year of change under this section—

(i) the inventory pools shall—

(I) in the case of the 1st taxable year to which such an election applies, be established in accordance with the major categories in the applicable Government price index, or

(II) in the case of the 1st taxable year after such election ceases to apply, be established in the manner provided by regulations under section 472;

(ii) the aggregate dollar amount of the taxpayer's inventory as of the beginning of the year of change shall be the same as the aggregate dollar value as of the close of the taxable year preceding the year of change, and

(iii) the year of change shall be treated as a new base year in accordance with procedures provided by regulations under section 472.

(B) Year of change

For purposes of this paragraph, the year of change under this section is—

(i) the 1st taxable year to which an election under this section applies, or

(ii) in the case of a cessation of such an election, the 1st taxable year after such election ceases to apply.

(Added Pub. L. 97–34, title II, §237(a), Aug. 13, 1981, 95 Stat. 252; amended Pub. L. 99–514, title VIII, §802(a), Oct. 22, 1986, 100 Stat. 2348.)

AMENDMENTS

1986—Pub. L. 99–514 amended section generally, substituting provisions relating to election by eligible small business to use simplified dollar-value method of pricing inventories for purposes of LIFO method for provisions relating to election by eligible small business which uses dollar-value method of pricing inventories under method provided by section 472(b) of this title to use one inventory pool for any trade or business of such eligible small business.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title VIII, §802(c), Oct. 22, 1986, 100 Stat. 2350, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1986.

"(2) TREATMENT OF TAXPAYERS WHO MADE ELECTIONS UNDER EXISTING SECTION 474 .—The amendments made by this section shall not apply to any taxpayer who made an election under section 474 of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]) for any period during which such election is in effect. Notwithstanding any provision of such section 474 (as so in effect), an election under such section may be revoked without the consent of the Secretary."

EFFECTIVE DATE

Pub. L. 97–34, title II, §237(c), Aug. 13, 1981, 95 Stat. 253, provided that: "The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1981."

§475. Mark to market accounting method for dealers in securities

(a) General rule

Notwithstanding any other provision of this subpart, the following rules shall apply to securities held by a dealer in securities:

(1) Any security which is inventory in the hands of the dealer shall be included in inventory at its fair market value.

(2) In the case of any security which is not inventory in the hands of the dealer and which is held at the close of any taxable year—

(A) the dealer shall recognize gain or loss as if such security were sold for its fair market value on the last business day of such taxable year, and

(B) any gain or loss shall be taken into account for such taxable year.

Proper adjustment shall be made in the amount of any gain or loss subsequently realized for gain or loss taken into account under the preceding sentence. The Secretary may provide by regulations for the application of this paragraph at times other than the times provided in this paragraph.

(b) Exceptions

(1) In general

Subsection (a) shall not apply to—

(A) any security held for investment,

(B)(i) any security described in subsection (c)(2)(C) which is acquired (including originated) by the taxpayer in the ordinary course of a trade or business of the taxpayer and which is not held for sale, and (ii) any obligation to acquire a security described in clause (i) if such

obligation is entered into in the ordinary course of such trade or business and is not held for sale, and

(C) any security which is a hedge with respect to—

(i) a security to which subsection (a) does not apply, or

(ii) a position, right to income, or a liability which is not a security in the hands of the taxpayer.

To the extent provided in regulations, subparagraph (C) shall not apply to any security held by a person in its capacity as a dealer in securities.

(2) Identification required

A security shall not be treated as described in subparagraph (A), (B), or (C) of paragraph (1), as the case may be, unless such security is clearly identified in the dealer's records as being described in such subparagraph before the close of the day on which it was acquired, originated, or entered into (or such other time as the Secretary may by regulations prescribe).

(3) Securities subsequently not exempt

If a security ceases to be described in paragraph (1) at any time after it was identified as such under paragraph (2), subsection (a) shall apply to any changes in value of the security occurring after the cessation.

(4) Special rule for property held for investment

To the extent provided in regulations, subparagraph (A) of paragraph (1) shall not apply to any security described in subparagraph (D) or (E) of subsection (c)(2) which is held by a dealer in such securities.

(c) Definitions

For purposes of this section—

(1) Dealer in securities defined

The term "dealer in securities" means a taxpayer who—

(A) regularly purchases securities from or sells securities to customers in the ordinary course of a trade or business; or

(B) regularly offers to enter into, assume, offset, assign or otherwise terminate positions in securities with customers in the ordinary course of a trade or business.

(2) Security defined

The term "security" means any—

(A) share of stock in a corporation;

(B) partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust;

(C) note, bond, debenture, or other evidence of indebtedness;

(D) interest rate, currency, or equity notional principal contract;

(E) evidence of an interest in, or a derivative financial instrument in, any security described in subparagraph (A), (B), (C), or (D), or any currency, including any option, forward contract, short position, and any similar financial instrument in such a security or currency; and

(F) position which—

(i) is not a security described in subparagraph (A), (B), (C), (D), or (E),

(ii) is a hedge with respect to such a security, and

(iii) is clearly identified in the dealer's records as being described in this subparagraph before the close of the day on which it was acquired or entered into (or such other time as the Secretary may by regulations prescribe).

Subparagraph (E) shall not include any contract to which section 1256(a) applies.

(3) Hedge

The term "hedge" means any position which manages the dealer's risk of interest rate or price changes or currency fluctuations, including any position which is reasonably expected to become a hedge within 60 days after the acquisition of the position.

(4) Special rules for certain receivables

(A) In general

Paragraph (2)(C) shall not include any nonfinancial customer paper.

(B) Nonfinancial customer paper

For purposes of subparagraph (A), the term "nonfinancial customer paper" means any receivable which—

(i) is a note, bond, debenture, or other evidence of indebtedness;

(ii) arises out of the sale of nonfinancial goods or services by a person the principal activity of which is the selling or providing of nonfinancial goods or services; and

(iii) is held by such person (or a person who bears a relationship to such person described in section 267(b) or 707(b)) at all times since issue.

(d) Special rules

For purposes of this section—

(1) Coordination with certain rules

The rules of sections 263(g), 263A, and 1256(a) shall not apply to securities to which subsection (a) applies, and section 1091 shall not apply (and section 1092 shall apply) to any loss recognized under subsection (a).

(2) Improper identification

If a taxpayer—

(A) identifies any security under subsection (b)(2) as being described in subsection (b)(1) and such security is not so described, or

(B) fails under subsection (c)(2)(F)(iii) to identify any position which is described in subsection (c)(2)(F) (without regard to clause (iii) thereof) at the time such identification is required,

the provisions of subsection (a) shall apply to such security or position, except that any loss under this section prior to the disposition of the security or position shall be recognized only to the extent of gain previously recognized under this section (and not previously taken into account under this paragraph) with respect to such security or position.

(3) Character of gain or loss

(A) In general

Except as provided in subparagraph (B) or section 1236(b)—

(i) In general

Any gain or loss with respect to a security under subsection (a)(2) shall be treated as ordinary income or loss.

(ii) Special rule for dispositions

If—

(I) gain or loss is recognized with respect to a security before the close of the taxable year, and

(II) subsection (a)(2) would have applied if the security were held as of the close of the taxable year,

such gain or loss shall be treated as ordinary income or loss.

(B) Exception

Subparagraph (A) shall not apply to any gain or loss which is allocable to a period during which—

(i) the security is described in subsection (b)(1)(C) (without regard to subsection (b)(2)),

(ii) the security is held by a person other than in connection with its activities as a dealer in securities, or

(iii) the security is improperly identified (within the meaning of subparagraph (A) or (B) of paragraph (2)).

(e) Election of mark to market for dealers in commodities

(1) In general

In the case of a dealer in commodities who elects the application of this subsection, this section shall apply to commodities held by such dealer in the same manner as this section applies to securities held by a dealer in securities.

(2) Commodity

For purposes of this subsection and subsection (f), the term "commodity" means—

(A) any commodity which is actively traded (within the meaning of section 1092(d)(1));

(B) any notional principal contract with respect to any commodity described in subparagraph (A);

(C) any evidence of an interest in, or a derivative instrument in, any commodity described in subparagraph (A) or (B), including any option, forward contract, futures contract, short position, and any similar instrument in such a commodity; and

(D) any position which—

(i) is not a commodity described in subparagraph (A), (B), or (C),

(ii) is a hedge with respect to such a commodity, and

(iii) is clearly identified in the taxpayer's records as being described in this subparagraph before the close of the day on which it was acquired or entered into (or such other time as the Secretary may by regulations prescribe).

(3) Election

An election under this subsection may be made without the consent of the Secretary. Such an election, once made, shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

(f) Election of mark to market for traders in securities or commodities

(1) Traders in securities

(A) In general

In the case of a person who is engaged in a trade or business as a trader in securities and who elects to have this paragraph apply to such trade or business—

(i) such person shall recognize gain or loss on any security held in connection with such trade or business at the close of any taxable year as if such security were sold for its fair market value on the last business day of such taxable year, and

(ii) any gain or loss shall be taken into account for such taxable year.

Proper adjustment shall be made in the amount of any gain or loss subsequently realized for gain or loss taken into account under the preceding sentence. The Secretary may provide by regulations for the application of this subparagraph at times other than the times provided in this subparagraph.

(B) Exception

Subparagraph (A) shall not apply to any security—

(i) which is established to the satisfaction of the Secretary as having no connection to the activities of such person as a trader, and

(ii) which is clearly identified in such person's records as being described in clause (i)

before the close of the day on which it was acquired, originated, or entered into (or such other time as the Secretary may by regulations prescribe).

If a security ceases to be described in clause (i) at any time after it was identified as such under clause (ii), subparagraph (A) shall apply to any changes in value of the security occurring after the cessation.

(C) Coordination with section 1259

Any security to which subparagraph (A) applies and which was acquired in the normal course of the taxpayer's activities as a trader in securities shall not be taken into account in applying section 1259 to any position to which subparagraph (A) does not apply.

(D) Other rules to apply

Rules similar to the rules of subsections (b)(4) and (d) shall apply to securities held by a person in any trade or business with respect to which an election under this paragraph is in effect. Subsection (d)(3) shall not apply under the preceding sentence for purposes of applying sections 1402 and 7704.

(2) Traders in commodities

In the case of a person who is engaged in a trade or business as a trader in commodities and who elects to have this paragraph apply to such trade or business, paragraph (1) shall apply to commodities held by such trader in connection with such trade or business in the same manner as paragraph (1) applies to securities held by a trader in securities.

(3) Election

The elections under paragraphs (1) and (2) may be made separately for each trade or business and without the consent of the Secretary. Such an election, once made, shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

(g) Regulatory authority

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including rules—

(1) to prevent the use of year-end transfers, related parties, or other arrangements to avoid the provisions of this section,

(2) to provide for the application of this section to any security which is a hedge which cannot be identified with a specific security, position, right to income, or liability, and

(3) to prevent the use by taxpayers of subsection (c)(4) to avoid the application of this section to a receivable that is inventory in the hands of the taxpayer (or a person who bears a relationship to the taxpayer described in section 267(b) or 707(b)).

(Added Pub. L. 103–66, title XIII, §13223(a), Aug. 10, 1993, 107 Stat. 481; amended Pub. L. 105–34, title X, §1001(b), Aug. 5, 1997, 111 Stat. 906; Pub. L. 105–206, title VI, §6010(a)(3), title VII, §7003(a), (b), July 22, 1998, 112 Stat. 813, 832; Pub. L. 106–170, title V, §532(b)(1), Dec. 17, 1999, 113 Stat. 1930; Pub. L. 106–554, §1(a)(7) [title III, §319(4)], Dec. 21, 2000, 114 Stat. 2763, 2763A–646; Pub. L. 107–147, title IV, §417(10), Mar. 9, 2002, 116 Stat. 56.)

AMENDMENTS

2002—Subsec. (g)(3). Pub. L. 107–147 substituted "described in section" for "described in sections".

2000—Subsec. (g)(3). Pub. L. 106–554 substituted "267(b) or" for "267(b) of".

1999—Subsec. (c)(3). Pub. L. 106–170 substituted "manages" for "reduces".

1998—Subsec. (c)(4). Pub. L. 105–206, §7003(a), added par. (4).

Subsec. (f)(1)(D). Pub. L. 105–206, §6010(a)(3), inserted at end "Subsection (d)(3) shall not apply under the preceding sentence for purposes of applying sections 1402 and 7704."

Subsec. (g)(3). Pub. L. 105–206, §7003(b), added par. (3).

1997—Subsecs. (e) to (g). Pub. L. 105–34 added subsecs. (e) and (f) and redesignated former subsec. (e) as (g).

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 6010(a)(3) of Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

Pub. L. 105–206, title VII, §7003(c), July 22, 1998, 112 Stat. 833, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [July 22, 1998].

"(2) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer required by the amendments made by this section to change its method of accounting for its first taxable year ending after the date of the enactment of this Act—

"(A) such change shall be treated as initiated by the taxpayer;

"(B) such change shall be treated as made with the consent of the Secretary of the Treasury; and

"(C) the net amount of the adjustments required to be taken into account by the taxpayer under section 481 of the Internal Revenue Code of 1986 shall be taken into account ratably over the 4-taxable-year period beginning with such first taxable year."

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title X, §1001(d), Aug. 5, 1997, 111 Stat. 907, as amended by Pub. L. 105–206, title VI, §6010(a)(4), July 22, 1998, 112 Stat. 813, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting section 1259 of this title and amending this section] shall apply to any constructive sale after June 8, 1997.

"(2) EXCEPTION FOR SALES OF POSITIONS, ETC. HELD BEFORE JUNE 9, 1997.—If—

"(A) before June 9, 1997, the taxpayer entered into any transaction which is a constructive sale of any appreciated financial position, and

"(B) before the close of the 30-day period beginning on the date of the enactment of this Act [Aug. 5, 1997] or before such later date as may be specified by the Secretary of the Treasury, such transaction and position are clearly identified in the taxpayer's records as offsetting,

such transaction and position shall not be taken into account in determining whether any other constructive sale after June 8, 1997, has occurred. The preceding sentence shall cease to apply as of the date such transaction is closed or the taxpayer ceases to hold such position.

"(3) SPECIAL RULE.—In the case of a decedent dying after June 8, 1997, if—

"(A) there was a constructive sale on or before such date of any appreciated financial position,

"(B) the transaction resulting in such constructive sale of such position remains open (with respect to the decedent or any related person)—

"(i) for not less than 2 years after the date of such transaction (whether such period is before or after June 8, 1997), and

"(ii) at any time during the 3-year period ending on the date of the decedent's death, and

"(C) such transaction is not closed before the close of the 30th day after the date of the enactment of this Act,

then, for purposes of such Code [probably means the Internal Revenue Code of 1986], such position (and the transaction resulting in such constructive sale) shall be treated as property constituting rights to receive an item of income in respect of a decedent under section 691 of such Code. Section 1014(c) of such Code shall not apply to so much of such position's or property's value (as included in the decedent's estate for purposes of chapter 11 of such Code) as exceeds its fair market value as of the date such transaction is closed.

"(4) ELECTION OF MARK TO MARKET BY SECURITIES TRADERS AND TRADERS AND DEALERS IN COMMODITIES.—

"(A) IN GENERAL.—The amendments made by subsection (b) [amending this section] shall apply to taxable years ending after the date of the enactment of this Act.

"(B) 4-YEAR SPREAD OF ADJUSTMENTS.—In the case of a taxpayer who elects under subsection (e) or (f) of section 475 of the Internal Revenue Code of 1986 (as added by this section) to change its method of accounting for the taxable year which includes the date of the enactment of this Act—

"(i) any identification required under such subsection with respect to securities and commodities

held on the date of the enactment of this Act shall be treated as timely made if made on or before the 30th day after such date of enactment, and

"(ii) the net amount of the adjustments required to be taken into account by the taxpayer under section 481 of such Code shall be taken into account ratably over the 4-taxable year period beginning with such first taxable year."

EFFECTIVE DATE

Pub. L. 103–66, title XIII, §13223(c), Aug. 10, 1993, 107 Stat. 484, provided that:

"(1) IN GENERAL.—The amendments made by this section [enacting this section and amending section 988 of this title] shall apply to all taxable years ending on or after December 31, 1993.

"(2) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer required by this section to change its method of accounting for any taxable year—

"(A) such change shall be treated as initiated by the taxpayer,

"(B) such change shall be treated as made with the consent of the Secretary, and

"(C) except as provided in paragraph (3), the net amount of the adjustments required to be taken into account by the taxpayer under section 481 of the Internal Revenue Code of 1986 shall be taken into account ratably over the 5-taxable year period beginning with the first taxable year ending on or after December 31, 1993.

"(3) SPECIAL RULE FOR FLOOR SPECIALISTS AND MARKET MAKERS.—

"(A) IN GENERAL.—If—

"(i) a taxpayer (or any predecessor) used the last-in first-out (LIFO) method of accounting with respect to any qualified securities for the 5-taxable year period ending with its last taxable year ending before December 31, 1993, and

"(ii) any portion of the net amount described in paragraph (2)(C) is attributable to the use of such method of accounting,

then paragraph (2)(C) shall be applied by taking such portion into account ratably over the 15-taxable year period beginning with the first taxable year ending on or after December 31, 1993.

"(B) QUALIFIED SECURITY.—For purposes of this paragraph, the term 'qualified security' means any security acquired—

"(i) by a floor specialist (as defined in section 1236(d)(2) of the Internal Revenue Code of 1986) in connection with the specialist's duties as a specialist on an exchange, but only if the security is one in which the specialist is registered with the exchange, or

"(ii) by a taxpayer who is a market maker in connection with the taxpayer's duties as a market maker, but only if—

"(I) the security is included on the National Association of Security Dealers Automated Quotation System,

"(II) the taxpayer is registered as a market maker in such security with the National Association of Security Dealers, and

"(III) as of the last day of the taxable year preceding the taxpayer's first taxable year ending on or after December 31, 1993, the taxpayer (or any predecessor) has been actively and regularly engaged as a market maker in such security for the 2-year period ending on such date (or, if shorter, the period beginning 61 days after the security was listed in such quotation system and ending on such date)."

PART III—ADJUSTMENTS

Sec.
481. Adjustments required by changes in method of accounting.
482. Allocation of income and deductions among taxpayers.
483. Interest on certain deferred payments.

AMENDMENTS

1964—Pub. L. 88–272, title II, §224(b), Feb. 26, 1964, 78 Stat. 79, added item 483.

§481. Adjustments required by changes in method of accounting

(a) General rule

In computing the taxpayer's taxable income for any taxable year (referred to in this section as the "year of the change")—

(1) if such computation is under a method of accounting different from the method under which the taxpayer's taxable income for the preceding taxable year was computed, then

(2) there shall be taken into account those adjustments which are determined to be necessary solely by reason of the change in order to prevent amounts from being duplicated or omitted, except there shall not be taken into account any adjustment in respect of any taxable year to which this section does not apply unless the adjustment is attributable to a change in the method of accounting initiated by the taxpayer.

(b) Limitation on tax where adjustments are substantial

(1) Three year allocation

If—

(A) the method of accounting from which the change is made was used by the taxpayer in computing his taxable income for the 2 taxable years preceding the year of the change, and

(B) the increase in taxable income for the year of the change which results solely by reason of the adjustments required by subsection (a)(2) exceeds $3,000,

then the tax under this chapter attributable to such increase in taxable income shall not be greater than the aggregate increase in the taxes under this chapter (or under the corresponding provisions of prior revenue laws) which would result if one-third of such increase in taxable income were included in taxable income for the year of the change and one-third of such increase were included for each of the 2 preceding taxable years.

(2) Allocation under new method of accounting

If—

(A) the increase in taxable income for the year of the change which results solely by reason of the adjustments required by subsection (a)(2) exceeds $3,000, and

(B) the taxpayer establishes his taxable income (under the new method of accounting) for one or more taxable years consecutively preceding the taxable year of the change for which the taxpayer in computing taxable income used the method of accounting from which the change is made,

then the tax under this chapter attributable to such increase in taxable income shall not be greater than the net increase in the taxes under this chapter (or under the corresponding provisions of prior revenue laws) which would result if the adjustments required by subsection (a)(2) were allocated to the taxable year or years specified in subparagraph (B) to which they are properly allocable under the new method of accounting and the balance of the adjustments required by subsection (a)(2) was allocated to the taxable year of the change.

(3) Special rules for computations under paragraphs (1) and (2)

For purposes of this subsection—

(A) There shall be taken into account the increase or decrease in tax for any taxable year preceding the year of the change to which no adjustment is allocated under paragraph (1) or (2) but which is affected by a net operating loss (as defined in section 172) or by a capital loss carryback or carryover (as defined in section 1212), determined with reference to taxable years with respect to which adjustments under paragraph (1) or (2) are allocated.

(B) The increase or decrease in the tax for any taxable year for which an assessment of any deficiency, or a credit or refund of any overpayment, is prevented by any law or rule of law, shall be determined by reference to the tax previously determined (within the meaning of section 1314(a)) for such year.

(C) In applying section 7807(b)(1), the provisions of chapter 1 (other than subchapter E, relating to self-employment income) and chapter 2 of the Internal Revenue Code of 1939 shall

be treated as the corresponding provisions of the Internal Revenue Code of 1939.

(c) Adjustments under regulations

In the case of any change described in subsection (a), the taxpayer may, in such manner and subject to such conditions as the Secretary may by regulations prescribe, take the adjustments required by subsection (a)(2) into account in computing the tax imposed by this chapter for the taxable year or years permitted under such regulations.

(Aug. 16, 1954, ch. 736, 68A Stat. 160; Pub. L. 85–866, title I, §29(a), (b), Sept. 2, 1958, 72 Stat. 1626–1628; Pub. L. 91–172, title V, §512(f)(4), Dec. 30, 1969, 83 Stat. 641; Pub. L. 94–455, title XIX, §§1901(a)(70), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1776, 1834; Pub. L. 96–471, §2(b)(3), Oct. 19, 1980, 94 Stat. 2254.)

REFERENCES IN TEXT

The Internal Revenue Code of 1939, referred to in subsec. (b)(3)(C), is act Feb. 10, 1939, ch. 2, 53 Stat. 1, as amended. Prior to the enactment of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the 1939 Code was classified to former Title 26, Internal Revenue Code. Chapters 1 and 2 of the Internal Revenue Code of 1939 were comprised of sections 1 to 482 and 500 to 784, respectively, of former Title 26. Chapters 1 (except sections 143 and 144) and 2 were repealed by section 7851(a)(1) of this title. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of this title. See, also, section 7851(e) of this title for provision that references in the 1986 Code to a provision of the 1939 Code, not then applicable, shall be deemed a reference to the corresponding provision of the 1986 Code, which is then applicable.

AMENDMENTS

1980—Subsec. (d). Pub. L. 96–471 struck out subsec. (d) which provided that this section was not to apply to a change to which section 453 of this title, relating to change to installment method, applied.

1976—Subsecs. (b)(1), (2). Pub. L. 94–455, §1901(a)(70)(B), struck out ", other than the amount of such adjustments to which paragraph (4) or (5) applies," after "required by subsection (a)(2)".

Subsec. (b)(4), (5), (6). Pub. L. 94–455, §1901(a)(70)(A), struck out par. (4) which related to special rule for pre-1954 general adjustments, par. (5) which related to special rule for pre-1954 adjustments in case of certain decedents, and par. (6) which related to the application of the special rule for pre-1954 general adjustments.

Subsec. (c). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

1969—Subsec. (b)(3)(A). Pub. L. 91–172 substituted "loss carryback or carryover" for "loss carryover".

1958—Subsec. (a)(2). Pub. L. 85–866, §29(a)(1), inserted "unless the adjustment is attributable to a change in the method of accounting initiated by the taxpayer", after "does not apply".

Subsec. (b)(1). Pub. L. 85–866, §29(b)(1)–(3), inserted ", other than the amount of such adjustments to which paragraph (4) or (5) applies," after "subsection (a)(2)" and substituted "the aggregate increase in the taxes" for "the aggregate of the taxes" and "which would result if one-third of such increase in taxable income" for "which would result if one-third of such increase".

Subsec. (b)(2). Pub. L. 85–866, §29(b)(1), (4), inserted "other than the amount of such adjustments to which paragraph (4) or (5) applies," after "subsection (a)(2)", wherever appearing and "(or under the corresponding provisions of prior revenue laws)" after "the net increase in the taxes under this Chapter".

Subsec. (b)(3)(A). Pub. L. 85–866, §29(b)(5), substituted "paragraph (1) or (2)" for "paragraph (2)", wherever appearing.

Subsec. (b)(4) to (6). Pub. L. 85–866, §29(a)(2), added pars. (4) to (6).

EFFECTIVE DATE OF 1980 AMENDMENT

For effective date of amendment by Pub. L. 96–471, see section 6(a)(1) of Pub. L. 96–471, set out as an Effective Date note under section 453 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(70) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable with respect to net capital losses sustained in taxable years beginning after Dec. 31, 1969, see section 512(g) of Pub. L. 91–172, set out as a note under section 1212 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85–866, title I, §29(d), Sept. 2, 1958, 72 Stat. 1629, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and section 381 of this title] shall apply with respect to any change in a method of accounting where the year of the change (within the meaning of section 481 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) is a taxable year beginning after December 31, 1953, and ending after August 16, 1954.

"(2) EXCEPTION FOR CERTAIN AGREEMENTS.—The amendments made by subsections (a), (b)(I), and (c) [amending this section and section 381 of this title] shall not apply if before the date of the enactment of this Act [Sept. 2, 1958]—

"(A) the taxpayer applied for a change in the method of accounting in the manner provided by regulations prescribed by the Secretary of the Treasury or his delegate, and

"(B) the taxpayer and the Secretary of the Treasury or his delegate agreed to the terms and conditions for making the change."

CHANGES IN TREATMENT OF POLICYHOLDER DIVIDENDS BY QUALIFIED GROUP SELF-INSURERS' FUNDS

Pub. L. 101–239, title VII, §7816(m), Dec. 19, 1989, 103 Stat. 2421, provided that: "If, for the 1st taxable year beginning on or after January 1, 1987, a qualified group self-insurers' fund changes its treatment of policyholder dividends to take into account such dividends no earlier than the date that the State regulatory authority determines the amount of the policyholder dividend that may be paid, then such change shall be treated as a change in a method of accounting and no adjustment under section 481(a) of the Internal Revenue Code of 1986 shall be made with respect to such change in method of accounting."

TRANSITIONAL PROVISIONS FOR INCOME TAX TREATMENT OF DEALER RESERVE INCOME

Pub. L. 86–459, May 13, 1960, 74 Stat. 124, authorized any person who computed taxable income under the accrual method of accounting for his most recent taxable year ending on or before June 22, 1959, and who treated dealer reserve income for such taxable year as accruable for a subsequent taxable year, to elect before Sept. 1, 1960, to have section 481 of this title apply to the treatment for income tax purposes of dealer reserve income.

ELECTION TO RETURN TO FORMER METHOD OF ACCOUNTING

Pub. L. 85–866, title I, §29(e), Sept. 2, 1958, 72 Stat. 1629, authorized an election by certain taxpayers, who, for any taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, and before Sept. 2, 1958, computed their taxable incomes using different accounting methods in succeeding taxable years, to return to their first method of accounting, where the election was made within six months after Sept. 2, 1958. Claims for refunds of overpayments of tax resulting from the election were to be filed within one year after the date of the election. Such an election was to be considered a consent to an assessment of a deficiency resulting from the election, where the assessment is made within one year after the date of the election.

§482. Allocation of income and deductions among taxpayers

In any case of two or more organizations, trades, or businesses (whether or not incorporated, whether or not organized in the United States, and whether or not affiliated) owned or controlled directly or indirectly by the same interests, the Secretary may distribute, apportion, or allocate gross income, deductions, credits, or allowances between or among such organizations, trades, or businesses, if he determines that such distribution, apportionment, or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any of such organizations, trades, or businesses. In the case of any transfer (or license) of intangible property (within the meaning of section 936(h)(3)(B)), the income with respect to such transfer or license shall be commensurate with the income attributable to the intangible.

(Aug. 16, 1954, ch. 736, 68A Stat. 162; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 99–514, title XII, §1231(e)(1), Oct. 22, 1986, 100 Stat. 2562.)

AMENDMENTS

1986—Pub. L. 99–514 inserted at end "In the case of any transfer (or license) of intangible property (within the meaning of section 936(h)(3)(B)), the income with respect to such transfer or license shall be commensurate with the income attributable to the intangible."

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, but only with respect to transfers after Nov. 16, 1985, or licenses granted after such date, or before such date with respect to property not in existence or owned by the taxpayer on such date, except that for purposes of section 936(h)(5)(C) of this title, such amendment applicable to taxable years beginning after Dec. 31, 1986, without regard to when the transfer or license was made, see section 1231(g)(2) of Pub. L. 99–514, set out as a note under section 936 of this title.

REGULATIONS

For requirement that, not later than 180 days after July 18, 1984, the Secretary of the Treasury modify the safe harbor interest rates applicable under the regulations prescribed under this section so that such rates are consistent with the rates applicable under section 483 of this title by reason of the amendments made by Pub. L. 98–369, see section 44(b)(2) of Pub. L. 98–369, set out as an Effective Date note under section 1271 of this title.

STUDY OF APPLICATION AND ADMINISTRATION OF THIS SECTION

Pub. L. 101–508, title XI, §11316, Nov. 5, 1990, 104 Stat. 1388–458, directed Secretary of the Treasury or his delegate to conduct a study of the application and administration of section 482 of the Internal Revenue Code of 1986 and not later than Mar. 1, 1992, submit to Committee on Ways and Means of House of Representatives and Committee on Finance of Senate a report on the study, together with such recommendations as he deemed advisable.

§483. Interest on certain deferred payments

(a) Amount constituting interest

For purposes of this title, in the case of any payment—

(1) under any contract for the sale or exchange of any property, and

(2) to which this section applies,

there shall be treated as interest that portion of the total unstated interest under such contract which, as determined in a manner consistent with the method of computing interest under section 1272(a), is properly allocable to such payment.

(b) Total unstated interest

For purposes of this section, the term "total unstated interest" means, with respect to a contract for the sale or exchange of property, an amount equal to the excess of—

(1) the sum of the payments to which this section applies which are due under the contract, over

(2) the sum of the present values of such payments and the present values of any interest payments due under the contract.

For purposes of the preceding sentence, the present value of a payment shall be determined under the rules of section 1274(b)(2) using a discount rate equal to the applicable Federal rate determined under section 1274(d).

(c) Payments to which subsection (a) applies

(1) In general

Except as provided in subsection (d), this section shall apply to any payment on account of the sale or exchange of property which constitutes part or all of the sales price and which is due more than 6 months after the date of such sale or exchange under a contract—

(A) under which some or all of the payments are due more than 1 year after the date of such

sale or exchange, and

(B) under which there is total unstated interest.

(2) Treatment of other debt instruments

For purposes of this section, a debt instrument of the purchaser which is given in consideration for the sale or exchange of property shall not be treated as a payment, and any payment due under such debt instrument shall be treated as due under the contract for the sale or exchange.

(3) Debt instrument defined

For purposes of this subsection, the term "debt instrument" has the meaning given such term by section 1275(a)(1).

(d) Exceptions and limitations

(1) Coordination with original issue discount rules

This section shall not apply to any debt instrument for which an issue price is determined under section 1273(b) (other than paragraph (4) thereof) or section 1274.

(2) Sales prices of $3,000 or less

This section shall not apply to any payment on account of the sale or exchange of property if it can be determined at the time of such sale or exchange that the sales price cannot exceed $3,000.

(3) Carrying charges

In the case of the purchaser, the tax treatment of amounts paid on account of the sale or exchange of property shall be made without regard to this section if any such amounts are treated under section 163(b) as if they included interest.

(4) Certain sales of patents

In the case of any transfer described in section 1235(a) (relating to sale or exchange of patents), this section shall not apply to any amount contingent on the productivity, use, or disposition of the property transferred.

(e) Maximum rate of interest on certain transfers of land between related parties

(1) In general

In the case of any qualified sale, the discount rate used in determining the total unstated interest rate under subsection (b) shall not exceed 6 percent, compounded semiannually.

(2) Qualified sale

For purposes of this subsection, the term "qualified sale" means any sale or exchange of land by an individual to a member of such individual's family (within the meaning of section 267(c)(4)).

(3) $500,000 limitation

Paragraph (1) shall not apply to any qualified sale between individuals made during any calendar year to the extent that the sales price for such sale (when added to the aggregate sales price for prior qualified sales between such individuals during the calendar year) exceeds $500,000.

(4) Nonresident alien individuals

Paragraph (1) shall not apply to any sale or exchange if any party to such sale or exchange is a nonresident alien individual.

(f) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section including regulations providing for the application of this section in the case of—

(1) any contract for the sale or exchange of property under which the liability for, or the amount or due date of, a payment cannot be determined at the time of the sale or exchange, or

(2) any change in the liability for, or the amount or due date of, any payment (including interest)

under a contract for the sale or exchange of property.

(g) Cross references

(1) For treatment of assumptions, see section l274(c)(4).

(2) For special rules for certain transactions where stated principal amount does not exceed $2,800,000, see section 1274A.

(3) For special rules in case of the borrower under certain loans for personal use, see section 1275(b).

(Added Pub. L. 88–272, title II, §224(a), Feb. 26, 1964, 78 Stat. 77; amended Pub. L. 94–455, title XIX, §§1901(b)(3)(B), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1792, 1834; Pub. L. 97–34, title I, §126(a), Aug. 13, 1981, 95 Stat. 202; Pub. L. 97–448, title I, §101(g), Jan. 12, 1983, 96 Stat. 2367; Pub. L. 98–369, div. A, title I, §41(b), July 18, 1984, 98 Stat. 553; Pub. L. 99–121, title I, §§101(a)(2), 102(c)(1)–(3), Oct. 11, 1985, 99 Stat. 505, 508; Pub. L. 99–514, title XVIII, §1803(a)(14)(B), Oct. 22, 1986, 100 Stat. 2797.)

AMENDMENTS

1986—Subsec. (d)(3). Pub. L. 99–514 substituted "for which an issue price is determined under section 1273(b) (other than paragraph (4) thereof) or section 1274" for "to which section 1272 applies".

1985—Subsec. (b). Pub. L. 99–121, §101(a)(2)(A), struck out "120 percent of" after "discount rate equal to" in closing provisions.

Subsec. (c)(1)(B). Pub. L. 99–121, §101(a)(2)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "under which, using a discount rate equal to 110 percent of the applicable Federal rate determined under section 1274(d), there is total unstated interest."

Subsec. (e). Pub. L. 99–121, §102(c)(1), (2), redesignated subsec. (f) as (e), and as so redesignated substituted "6 percent" for "7 percent" in par. (1). Former subsec. (e), which related to the interest rates in the case of the sales of principal residences or farm lands, was struck out.

Subsec. (f). Pub. L. 99–121, §102(c)(1), redesignated subsec. (g) as (f). Former subsec. (f) redesignated (e).

Subsecs. (g), (h). Pub. L. 99–121, §102(c)(1), (3), redesignated subsec. (h) as (g) and amended it generally, designating existing undesignated cross reference as par. (3), and adding pars. (1) and (2). Former subsec. (g) redesignated (f).

1984—Subsec. (a). Pub. L. 98–369 amended subsec. (a) generally, substituting "For purposes of this title, in the case of any payment (1) under any contract for the sale or exchange of any property, and (2) to which this section applies, there shall be treated as interest that portion of the total unstated interest under such contract which, as determined in a manner consistent with the method of computing interest under section 1272(a), is properly allocable to such payment" for "For purposes of this title, in the case of any contract for the sale or exchange of property there shall be treated as interest that part of a payment to which this section applies which bears the same ratio to the amount of such payment as the total unstated interest under such contract bears to the total of the payments to which this section applies which are due under such contract".

Subsec. (b). Pub. L. 98–369 amended subsec. (b) generally, substituting provisions directing that the present value of a payment be determined under the rules of section 1274(b)(2) using a discount rate equal to 120 percent of the applicable Federal rate determined under section 1274(d) for provisions which had directed that the present value of a payment be determined, as of the date of the sale or exchange, by discounting such payment at the rate, and in the manner, provided in regulations prescribed by the Secretary and that such regulations provide for discounting on the basis of 6-month brackets and provide that the present value of any interest payment due not more than 6 months after the date of the sale or exchange was to have been an amount equal to 100 percent of such payment.

Subsec. (c). Pub. L. 98–369 substituted "subsection (a) applies" for "section applies" in heading.

Subsec. (c)(1). Pub. L. 98–369 substituted "under which, using a discount rate equal to 110 percent of the applicable Federal rate determined under section 1274(d), there is total unstated interest" for "under which, using a rate provided by regulations prescribed by the Secretary for purposes of this subparagraph, there is total unstated interest", in subpar. (B), and struck out provision formerly set out following subpar. (B) which had directed that any rate prescribed for determining whether there was total unstated interest for purposes of subpar. (B) be at least one percentage point lower than the rate prescribed for purposes of subsec. (b)(2).

Subsec. (c)(2). Pub. L. 98–369 substituted "Treatment of other debt instruments" for "Treatment of other evidence of indebtedness" in heading and, in text, substituted "a debt instrument of the purchaser which is given in consideration for the sale or exchange of property shall not be treated as a payment, and any payment due under such debt instrument" for "an evidence of indebtedness of the purchaser given in consideration for

the sale or exchange of property shall not be considered a payment, and any payment due under such evidence of indebtedness".

Subsec. (c)(3). Pub. L. 98–369 added par. (3).

Subsec. (d). Pub. L. 98–369 amended subsec. (d) generally, substituting provisions relating to exceptions and limitations for provisions which related to payments indefinite as to time, liability, or amount.

Subsec. (e). Pub. L. 98–369 amended subsec. (e) generally, substituting provisions relating to interest rates in case of sale of principal residence or farm land for provision relating to changes in terms of contract.

Subsec. (f). Pub. L. 98–369 amended subsec. (f) generally, substituting provisions relating to maximum rate of interest on certain transfers of land between related parties for provisions which related to exceptions and limitations now covered in subsec. (d) of this section.

Subsec. (g). Pub. L. 98–369 amended subsec. (g) generally, substituting provisions which related to calling for the promulgation of regulations by the Secretary for provisions which related to the maximum rate of interest on certain transfers of land between related parties now covered in subsec. (f) of this section.

Subsec. (h). Pub. L. 98–369 added subsec. (h).

1983—Subsec. (g)(4). Pub. L. 97–448 substituted "Paragraph (1)" for "This section".

1981—Subsec. (g). Pub. L. 97–34 added subsec. (g).

1976—Subsecs. (b), (c)(1)(B), (e). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (f)(3). Pub. L. 94–455, §1901(b)(3)(B), substituted "all of the gain, if any, on such" for "no part of any gain on such" and "ordinary income" for gain from the sale or exchange of property other than a capital asset".

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–121 applicable to sales and exchanges after June 30, 1985, in taxable years ending after such date, see section 105(a)(1) of Pub. L. 99–121, set out as a note under section 1274 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years ending after July 18, 1984, and applicable to sales or exchanges after Dec. 31, 1984, but not applicable to any sale or exchange pursuant to a written contract which was binding on Mar. 1, 1984, and at all times thereafter before the sale or exchange, see section 44 of Pub. L. 98–369, set out as an Effective Date note under section 1271 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title I, §126(b), Aug. 13, 1981, 95 Stat. 202, provided that: "The amendment made by subsection (a) [amending this section] shall apply to payments made after June 30, 1981, pursuant to sales or exchanges after such date."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(b)(3)(B) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE

Section applicable to payments made after Dec. 31, 1963, on account of sales or exchanges of property after June 30, 1963, other than a sale or exchange pursuant to written contract, including an irrevocable written option, entered into before July 1, 1963, see section 224(d) of Pub. L. 88–272, set out as an Effective Date of 1964 Amendment note under section 163 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TREATMENT OF TRANSFERS OF LAND BETWEEN RELATED PARTIES

Pub. L. 99–514, title XVIII, §1803(a)(9), Oct. 22, 1986, 100 Stat. 2794, provided that: "In the case of any sale or exchange before July 1, 1985, to which section 483(f) of the Internal Revenue Code of 1954 [now 1986] (as in effect on the day before the date of the enactment of Public Law 99–121 [Oct. 11, 1985]) applies, such section shall be treated as providing that the discount rate to be used for purposes of section 483(c)(1) of such Code shall be 6 percent, compounded semiannually."

TRANSITIONAL RULE FOR PURPOSES OF IMPUTED INTEREST RULES

Provisions, respecting treatment of debt instruments received in exchange for property, relating to special rules for sales after Dec. 31, 1984, and before July 1, 1985, general rule for assumptions of loans, exception for assumptions of loans made on or before Oct. 15, 1984, and exception for assumptions of loans with respect to certain property, see section 44(b)(4)–(7) of Pub. L. 98–369, as amended, set out as an Effective Date note under section 1271 of this title.

Subchapter F—Exempt Organizations

Part

I. General rule.
II. Private foundations.
III. Taxation of business income of certain exempt organizations.
IV. Farmers' cooperatives.
V. Shipowners' protection and indemnity associations.
VI. Political organizations.
VII. Certain homeowners associations.
VIII. Higher education savings entities.

AMENDMENTS

1997—Pub. L. 105–34, title II, §211(e)(1)(B), Aug. 5, 1997, 111 Stat. 812, substituted "Higher education savings entities" for "Qualified State tuition programs" in part VIII heading.

1996—Pub. L. 104–188, title I, §1806(b)(2), Aug. 20, 1996, 110 Stat. 1898, added part VIII heading.

1976—Pub. L. 94–455, title XXI, §2101(d), Oct. 4, 1976, 90 Stat. 1899, added part VII heading.

1975—Pub. L. 93–625, §10(d), Jan. 3, 1975, 88 Stat. 2119, added part VI heading.

1969—Pub. L. 91–172, title I, §101(j)(58), Dec. 30, 1969, 83 Stat. 532, added part II heading, and redesignated former parts II, III and IV as parts III, IV and V, respectively.

PART I—GENERAL RULE

Sec.

501. Exemption from tax on corporations, certain trusts, etc.
502. Feeder organizations.
503. Requirements for exemption.
504. Status after organization ceases to qualify for exemption under section 501(c)(3) because of substantial lobbying or because of political activities.
505. Additional requirements for organizations described in paragraph (9), (17), or (20) of section 501(c).

AMENDMENTS

1987—Pub. L. 100–203, title X, §10711(b)(2)(B), Dec. 22, 1987, 101 Stat. 1330–464, substituted "substantial lobbying or because of political activities" for "substantial lobbying" in item 504.

1984—Pub. L. 98–369, div. A, title V, §513(b), July 18, 1984, 98 Stat. 865, added item 505.

1976—Pub. L. 94–455, title XIII, §1307(d)(3)(B), Oct. 4, 1976, 90 Stat. 1728, added item 504.

1969—Pub. L. 91–172, title I, §101(j)(61), Dec. 30, 1969, 83 Stat. 532, struck out item 504 "Denial of exemption".

§501. Exemption from tax on corporations, certain trusts, etc.

(a) Exemption from taxation

An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503.

(b) Tax on unrelated business income and certain other activities

An organization exempt from taxation under subsection (a) shall be subject to tax to the extent provided in parts II, III, and VI of this subchapter, but (notwithstanding parts II, III, and VI of this subchapter) shall be considered an organization exempt from income taxes for the purpose of any law which refers to organizations exempt from income taxes.

(c) List of exempt organizations

The following organizations are referred to in subsection (a):

(1) Any corporation organized under Act of Congress which is an instrumentality of the United States but only if such corporation—

(A) is exempt from Federal income taxes—

(i) under such Act as amended and supplemented before July 18, 1984, or

(ii) under this title without regard to any provision of law which is not contained in this title and which is not contained in a revenue Act, or

(B) is described in subsection (l).

(2) Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt under this section. Rules similar to the rules of subparagraph (G) of paragraph (25) shall apply for purposes of this paragraph.

(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

(4)(A) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.

(B) Subparagraph (A) shall not apply to an entity unless no part of the net earnings of such entity inures to the benefit of any private shareholder or individual.

(5) Labor, agricultural, or horticultural organizations.

(6) Business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players), not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(7) Clubs organized for pleasure, recreation, and other nonprofitable purposes, substantially all of the activities of which are for such purposes and no part of the net earnings of which inures to

the benefit of any private shareholder.

(8) Fraternal beneficiary societies, orders, or associations—

(A) operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and

(B) providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association or their dependents.

(9) Voluntary employees' beneficiary associations providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or designated beneficiaries, if no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual. For purposes of providing for the payment of sick and accident benefits to members of such an association and their dependents, the term "dependent" shall include any individual who is a child (as defined in section 152(f)(1)) of a member who as of the end of the calendar year has not attained age 27.

(10) Domestic fraternal societies, orders, or associations, operating under the lodge system—

(A) the net earnings of which are devoted exclusively to religious, charitable, scientific, literary, educational, and fraternal purposes, and

(B) which do not provide for the payment of life, sick, accident, or other benefits.

(11) Teachers' retirement fund associations of a purely local character, if—

(A) no part of their net earnings inures (other than through payment of retirement benefits) to the benefit of any private shareholder or individual, and

(B) the income consists solely of amounts received from public taxation, amounts received from assessments on the teaching salaries of members, and income in respect of investments.

(12)(A) Benevolent life insurance associations of a purely local character, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations; but only if 85 percent or more of the income consists of amounts collected from members for the sole purpose of meeting losses and expenses.

(B) In the case of a mutual or cooperative telephone company, subparagraph (A) shall be applied without taking into account any income received or accrued—

(i) from a nonmember telephone company for the performance of communication services which involve members of the mutual or cooperative telephone company,

(ii) from qualified pole rentals,

(iii) from the sale of display listings in a directory furnished to the members of the mutual or cooperative telephone company, or

(iv) from the prepayment of a loan under section 306A, 306B, or 311 [1] of the Rural Electrification Act of 1936 (as in effect on January 1, 1987).

(C) In the case of a mutual or cooperative electric company, subparagraph (A) shall be applied without taking into account any income received or accrued—

(i) from qualified pole rentals, or

(ii) from any provision or sale of electric energy transmission services or ancillary services if such services are provided on a nondiscriminatory open access basis under an open access transmission tariff approved or accepted by FERC or under an independent transmission provider agreement approved or accepted by FERC (other than income received or accrued directly or indirectly from a member),

(iii) from the provision or sale of electric energy distribution services or ancillary services if such services are provided on a nondiscriminatory open access basis to distribute electric energy not owned by the mutual or electric cooperative company—

(I) to end-users who are served by distribution facilities not owned by such company or any of its members (other than income received or accrued directly or indirectly from a member), or

(II) generated by a generation facility not owned or leased by such company or any of its members and which is directly connected to distribution facilities owned by such company or any of its members (other than income received or accrued directly or indirectly from a member),

(iv) from any nuclear decommissioning transaction, or
(v) from any asset exchange or conversion transaction.

(D) For purposes of this paragraph, the term "qualified pole rental" means any rental of a pole (or other structure used to support wires) if such pole (or other structure)—
(i) is used by the telephone or electric company to support one or more wires which are used by such company in providing telephone or electric services to its members, and
(ii) is used pursuant to the rental to support one or more wires (in addition to the wires described in clause (i)) for use in connection with the transmission by wire of electricity or of telephone or other communications.

For purposes of the preceding sentence, the term "rental" includes any sale of the right to use the pole (or other structure).
(E) For purposes of subparagraph (C)(ii), the term "FERC" means the Federal Energy Regulatory Commission and references to such term shall be treated as including the Public Utility Commission of Texas with respect to any ERCOT utility (as defined in section 212(k)(2)(B) of the Federal Power Act (16 U.S.C. 824k(k)(2)(B))).
(F) For purposes of subparagraph (C)(iv), the term "nuclear decommissioning transaction" means—
(i) any transfer into a trust, fund, or instrument established to pay any nuclear decommissioning costs if the transfer is in connection with the transfer of the mutual or cooperative electric company's interest in a nuclear power plant or nuclear power plant unit,
(ii) any distribution from any trust, fund, or instrument established to pay any nuclear decommissioning costs, or
(iii) any earnings from any trust, fund, or instrument established to pay any nuclear decommissioning costs.

(G) For purposes of subparagraph (C)(v), the term "asset exchange or conversion transaction" means any voluntary exchange or involuntary conversion of any property related to generating, transmitting, distributing, or selling electric energy by a mutual or cooperative electric company, the gain from which qualifies for deferred recognition under section 1031 or 1033, but only if the replacement property acquired by such company pursuant to such section constitutes property which is used, or to be used, for—
(i) generating, transmitting, distributing, or selling electric energy, or
(ii) producing, transmitting, distributing, or selling natural gas.

(H)(i) In the case of a mutual or cooperative electric company described in this paragraph or an organization described in section 1381(a)(2)(C), income received or accrued from a load loss transaction shall be treated as an amount collected from members for the sole purpose of meeting losses and expenses.
(ii) For purposes of clause (i), the term "load loss transaction" means any wholesale or retail sale of electric energy (other than to members) to the extent that the aggregate sales during the recovery period do not exceed the load loss mitigation sales limit for such period.
(iii) For purposes of clause (ii), the load loss mitigation sales limit for the recovery period is the sum of the annual load losses for each year of such period.
(iv) For purposes of clause (iii), a mutual or cooperative electric company's annual load loss for each year of the recovery period is the amount (if any) by which—
(I) the megawatt hours of electric energy sold during such year to members of such electric

company are less than

(II) the megawatt hours of electric energy sold during the base year to such members.

(v) For purposes of clause (iv)(II), the term "base year" means—

(I) the calendar year preceding the start-up year, or

(II) at the election of the mutual or cooperative electric company, the second or third calendar years preceding the start-up year.

(vi) For purposes of this subparagraph, the recovery period is the 7-year period beginning with the start-up year.

(vii) For purposes of this subparagraph, the start-up year is the first year that the mutual or cooperative electric company offers nondiscriminatory open access or the calendar year which includes the date of the enactment of this subparagraph, if later, at the election of such company.

(viii) A company shall not fail to be treated as a mutual or cooperative electric company for purposes of this paragraph or as a corporation operating on a cooperative basis for purposes of section 1381(a)(2)(C) by reason of the treatment under clause (i).

(ix) For purposes of subparagraph (A), in the case of a mutual or cooperative electric company, income received, or accrued, indirectly from a member shall be treated as an amount collected from members for the sole purpose of meeting losses and expenses.

(13) Cemetery companies owned and operated exclusively for the benefit of their members or which are not operated for profit; and any corporation chartered solely for the purpose of the disposal of bodies by burial or cremation which is not permitted by its charter to engage in any business not necessarily incident to that purpose and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(14)(A) Credit unions without capital stock organized and operated for mutual purposes and without profit.

(B) Corporations or associations without capital stock organized before September 1, 1957, and operated for mutual purposes and without profit for the purpose of providing reserve funds for, and insurance of shares or deposits in—

(i) domestic building and loan associations,

(ii) cooperative banks without capital stock organized and operated for mutual purposes and without profit,

(iii) mutual savings banks not having capital stock represented by shares, or

(iv) mutual savings banks described in section 591(b) [2]

(C) Corporations or associations organized before September 1, 1957, and operated for mutual purposes and without profit for the purpose of providing reserve funds for associations or banks described in clause (i), (ii), or (iii) of subparagraph (B); but only if 85 percent or more of the income is attributable to providing such reserve funds and to investments. This subparagraph shall not apply to any corporation or association entitled to exemption under subparagraph (B).

(15)(A) Insurance companies (as defined in section 816(a)) other than life (including interinsurers and reciprocal underwriters) if—

(i)(I) the gross receipts for the taxable year do not exceed $600,000, and

(II) more than 50 percent of such gross receipts consist of premiums, or

(ii) in the case of a mutual insurance company—

(I) the gross receipts of which for the taxable year do not exceed $150,000, and

(II) more than 35 percent of such gross receipts consist of premiums.

Clause (ii) shall not apply to a company if any employee of the company, or a member of the employee's family (as defined in section 2032A(e)(2)), is an employee of another company exempt from taxation by reason of this paragraph (or would be so exempt but for this sentence).

(B) For purposes of subparagraph (A), in determining whether any company or association is described in subparagraph (A), such company or association shall be treated as receiving during

the taxable year amounts described in subparagraph (A) which are received during such year by all other companies or associations which are members of the same controlled group as the insurance company or association for which the determination is being made.

(C) For purposes of subparagraph (B), the term "controlled group" has the meaning given such term by section 831(b)(2)(B)(ii), except that in applying section 831(b)(2)(B)(ii) for purposes of this subparagraph, subparagraphs (B) and (C) of section 1563(b)(2) shall be disregarded.

(16) Corporations organized by an association subject to part IV of this subchapter or members thereof, for the purpose of financing the ordinary crop operations of such members or other producers, and operated in conjunction with such association. Exemption shall not be denied any such corporation because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the State of incorporation or 8 percent per annum, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all such stock (other than nonvoting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the corporation, on dissolution or otherwise, beyond the fixed dividends) is owned by such association, or members thereof; nor shall exemption be denied any such corporation because there is accumulated and maintained by it a reserve required by State law or a reasonable reserve for any necessary purpose.

(17)(A) A trust or trusts forming part of a plan providing for the payment of supplemental unemployment compensation benefits, if—

(i) under the plan, it is impossible, at any time prior to the satisfaction of all liabilities, with respect to employees under the plan, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of supplemental unemployment compensation benefits,

(ii) such benefits are payable to employees under a classification which is set forth in the plan and which is found by the Secretary not to be discriminatory in favor of employees who are highly compensated employees (within the meaning of section 414(q)), and

(iii) such benefits do not discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q)). A plan shall not be considered discriminatory within the meaning of this clause merely because the benefits received under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of the employees covered by the plan.

(B) In determining whether a plan meets the requirements of subparagraph (A), any benefits provided under any other plan shall not be taken into consideration, except that a plan shall not be considered discriminatory—

(i) merely because the benefits under the plan which are first determined in a nondiscriminatory manner within the meaning of subparagraph (A) are then reduced by any sick, accident, or unemployment compensation benefits received under State or Federal law (or reduced by a portion of such benefits if determined in a nondiscriminatory manner), or

(ii) merely because the plan provides only for employees who are not eligible to receive sick, accident, or unemployment compensation benefits under State or Federal law the same benefits (or a portion of such benefits if determined in a nondiscriminatory manner) which such employees would receive under such laws if such employees were eligible for such benefits, or

(iii) merely because the plan provides only for employees who are not eligible under another plan (which meets the requirements of subparagraph (A)) of supplemental unemployment compensation benefits provided wholly by the employer the same benefits (or a portion of such benefits if determined in a nondiscriminatory manner) which such employees would receive under such other plan if such employees were eligible under such other plan, but only if the employees eligible under both plans would make a classification which would be nondiscriminatory within the meaning of subparagraph (A).

(C) A plan shall be considered to meet the requirements of subparagraph (A) during the whole of any year of the plan if on one day in each quarter it satisfies such requirements.

(D) The term "supplemental unemployment compensation benefits" means only—

(i) benefits which are paid to an employee because of his involuntary separation from the employment of the employer (whether or not such separation is temporary) resulting directly from a reduction in force, the discontinuance of a plant or operation, or other similar conditions, and

(ii) sick and accident benefits subordinate to the benefits described in clause (i).

(E) Exemption shall not be denied under subsection (a) to any organization entitled to such exemption as an association described in paragraph (9) of this subsection merely because such organization provides for the payment of supplemental unemployment benefits (as defined in subparagraph (D)(i)).

(18) A trust or trusts created before June 25, 1959, forming part of a plan providing for the payment of benefits under a pension plan funded only by contributions of employees, if—

(A) under the plan, it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees under the plan, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of benefits under the plan,

(B) such benefits are payable to employees under a classification which is set forth in the plan and which is found by the Secretary not to be discriminatory in favor of employees who are highly compensated employees (within the meaning of section 414(q)),

(C) such benefits do not discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q)). A plan shall not be considered discriminatory within the meaning of this subparagraph merely because the benefits received under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of the employees covered by the plan, and

(D) in the case of a plan under which an employee may designate certain contributions as deductible—

(i) such contributions do not exceed the amount with respect to which a deduction is allowable under section 219(b)(3),

(ii) requirements similar to the requirements of section 401(k)(3)(A)(ii) are met with respect to such elective contributions,

(iii) such contributions are treated as elective deferrals for purposes of section 402(g), and

(iv) the requirements of section 401(a)(30) are met.

For purposes of subparagraph (D)(ii), rules similar to the rules of section 401(k)(8) shall apply. For purposes of section 4979, any excess contribution under clause (ii) shall be treated as an excess contribution under a cash or deferred arrangement.

(19) A post or organization of past or present members of the Armed Forces of the United States, or an auxiliary unit or society of, or a trust or foundation for, any such post or organization—

(A) organized in the United States or any of its possessions,

(B) at least 75 percent of the members of which are past or present members of the Armed Forces of the United States and substantially all of the other members of which are individuals who are cadets or are spouses, widows,,[3] widowers, ancestors, or lineal descendants of past or present members of the Armed Forces of the United States or of cadets, and

(C) no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(20) an [4] organization or trust created or organized in the United States, the exclusive function of which is to form part of a qualified group legal services plan or plans, within the meaning of section 120. An organization or trust which receives contributions because of section 120(c)(5)(C)

shall not be prevented from qualifying as an organization described in this paragraph merely because it provides legal services or indemnification against the cost of legal services unassociated with a qualified group legal services plan.

(21)(A) A trust or trusts established in writing, created or organized in the United States, and contributed to by any person (except an insurance company) if—

(i) the purpose of such trust or trusts is exclusively—

(I) to satisfy, in whole or in part, the liability of such person for, or with respect to, claims for compensation for disability or death due to pneumoconiosis under Black Lung Acts,

(II) to pay premiums for insurance exclusively covering such liability,

(III) to pay administrative and other incidental expenses of such trust in connection with the operation of the trust and the processing of claims against such person under Black Lung Acts, and

(IV) to pay accident or health benefits for retired miners and their spouses and dependents (including administrative and other incidental expenses of such trust in connection therewith) or premiums for insurance exclusively covering such benefits; and

(ii) no part of the assets of the trust may be used for, or diverted to, any purpose other than—

(I) the purposes described in clause (i),

(II) investment (but only to the extent that the trustee determines that a portion of the assets is not currently needed for the purposes described in clause (i)) in qualified investments, or

(III) payment into the Black Lung Disability Trust Fund established under section 9501, or into the general fund of the United States Treasury (other than in satisfaction of any tax or other civil or criminal liability of the person who established or contributed to the trust).

(B) No deduction shall be allowed under this chapter for any payment described in subparagraph (A)(i)(IV) from such trust.

(C) Payments described in subparagraph (A)(i)(IV) may be made from such trust during a taxable year only to the extent that the aggregate amount of such payments during such taxable year does not exceed the excess (if any), as of the close of the preceding taxable year, of—

(i) the fair market value of the assets of the trust, over

(ii) 110 percent of the present value of the liability described in subparagraph (A)(i)(I) of such person.

The determinations under the preceding sentence shall be made by an independent actuary using actuarial methods and assumptions (not inconsistent with the regulations prescribed under section 192(c)(1)(A)) each of which is reasonable and which are reasonable in the aggregate.

(D) For purposes of this paragraph:

(i) The term "Black Lung Acts" means part C of title IV of the Federal Mine Safety and Health Act of 1977, and any State law providing compensation for disability or death due to that pneumoconiosis.

(ii) The term "qualified investments" means—

(I) public debt securities of the United States,

(II) obligations of a State or local government which are not in default as to principal or interest, and

(III) time or demand deposits in a bank (as defined in section 581) or an insured credit union (within the meaning of section 101(7) of the Federal Credit Union Act, 12 U.S.C. 1752(7)) located in the United States.

(iii) The term "miner" has the same meaning as such term has when used in section 402(d) of the Black Lung Benefits Act (30 U.S.C. 902(d)).

(iv) The term "incidental expenses" includes legal, accounting, actuarial, and trustee expenses.

(22) A trust created or organized in the United States and established in writing by the plan sponsors of multiemployer plans if—

(A) the purpose of such trust is exclusively—

(i) to pay any amount described in section 4223(c) or (h) of the Employee Retirement Income Security Act of 1974, and

(ii) to pay reasonable and necessary administrative expenses in connection with the establishment and operation of the trust and the processing of claims against the trust,

(B) no part of the assets of the trust may be used for, or diverted to, any purpose other than—

(i) the purposes described in subparagraph (A), or

(ii) the investment in securities, obligations, or time or demand deposits described in clause (ii) of paragraph (21)(D),

(C) such trust meets the requirements of paragraphs (2), (3), and (4) of section 4223(b), 4223(h), or, if applicable, section 4223(c) of the Employee Retirement Income Security Act of 1974, and

(D) the trust instrument provides that, on dissolution of the trust, assets of the trust may not be paid other than to plans which have participated in the plan or, in the case of a trust established under section 4223(h) of such Act, to plans with respect to which employers have participated in the fund.

(23) Any association organized before 1880 more than 75 percent of the members of which are present or past members of the Armed Forces and a principal purpose of which is to provide insurance and other benefits to veterans or their dependents.

(24) A trust described in section 4049 of the Employee Retirement Income Security Act of 1974 (as in effect on the date of the enactment of the Single-Employer Pension Plan Amendments Act of 1986).

(25)(A) Any corporation or trust which—

(i) has no more than 35 shareholders or beneficiaries,

(ii) has only 1 class of stock or beneficial interest, and

(iii) is organized for the exclusive purposes of—

(I) acquiring real property and holding title to, and collecting income from, such property, and

(II) remitting the entire amount of income from such property (less expenses) to 1 or more organizations described in subparagraph (C) which are shareholders of such corporation or beneficiaries of such trust.

For purposes of clause (iii), the term "real property" shall not include any interest as a tenant in common (or similar interest) and shall not include any indirect interest.

(B) A corporation or trust shall be described in subparagraph (A) without regard to whether the corporation or trust is organized by 1 or more organizations described in subparagraph (C).

(C) An organization is described in this subparagraph if such organization is—

(i) a qualified pension, profit sharing, or stock bonus plan that meets the requirements of section 401(a),

(ii) a governmental plan (within the meaning of section 414(d)),

(iii) the United States, any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing, or

(iv) any organization described in paragraph (3).

(D) A corporation or trust shall in no event be treated as described in subparagraph (A) unless such corporation or trust permits its shareholders or beneficiaries—

(i) to dismiss the corporation's or trust's investment adviser, following reasonable notice, upon a vote of the shareholders or beneficiaries holding a majority of interest in the corporation

or trust, and

(ii) to terminate their interest in the corporation or trust by either, or both, of the following alternatives, as determined by the corporation or trust:

(I) by selling or exchanging their stock in the corporation or interest in the trust (subject to any Federal or State securities law) to any organization described in subparagraph (C) so long as the sale or exchange does not increase the number of shareholders or beneficiaries in such corporation or trust above 35, or

(II) by having their stock or interest redeemed by the corporation or trust after the shareholder or beneficiary has provided 90 days notice to such corporation or trust.

(E)(i) For purposes of this title—

(I) a corporation which is a qualified subsidiary shall not be treated as a separate corporation, and

(II) all assets, liabilities, and items of income, deduction, and credit of a qualified subsidiary shall be treated as assets, liabilities, and such items (as the case may be) of the corporation or trust described in subparagraph (A).

(ii) For purposes of this subparagraph, the term "qualified subsidiary" means any corporation if, at all times during the period such corporation was in existence, 100 percent of the stock of such corporation is held by the corporation or trust described in subparagraph (A).

(iii) For purposes of this subtitle, if any corporation which was a qualified subsidiary ceases to meet the requirements of clause (ii), such corporation shall be treated as a new corporation acquiring all of its assets (and assuming all of its liabilities) immediately before such cessation from the corporation or trust described in subparagraph (A) in exchange for its stock.

(F) For purposes of subparagraph (A), the term "real property" includes any personal property which is leased under, or in connection with, a lease of real property, but only if the rent attributable to such personal property (determined under the rules of section 856(d)(1)) for the taxable year does not exceed 15 percent of the total rent for the taxable year attributable to both the real and personal property leased under, or in connection with, such lease.

(G)(i) An organization shall not be treated as failing to be described in this paragraph merely by reason of the receipt of any otherwise disqualifying income which is incidentally derived from the holding of real property.

(ii) Clause (i) shall not apply if the amount of gross income described in such clause exceeds 10 percent of the organization's gross income for the taxable year unless the organization establishes to the satisfaction of the Secretary that the receipt of gross income described in clause (i) in excess of such limitation was inadvertent and reasonable steps are being taken to correct the circumstances giving rise to such income.

(26) Any membership organization if—

(A) such organization is established by a State exclusively to provide coverage for medical care (as defined in section 213(d)) on a not-for-profit basis to individuals described in subparagraph (B) through—

(i) insurance issued by the organization, or

(ii) a health maintenance organization under an arrangement with the organization,

(B) the only individuals receiving such coverage through the organization are individuals—

(i) who are residents of such State, and

(ii) who, by reason of the existence or history of a medical condition—

(I) are unable to acquire medical care coverage for such condition through insurance or from a health maintenance organization, or

(II) are able to acquire such coverage only at a rate which is substantially in excess of the rate for such coverage through the membership organization,

(C) the composition of the membership in such organization is specified by such State, and

(D) no part of the net earnings of the organization inures to the benefit of any private shareholder or individual.

A spouse and any qualifying child (as defined in section 24(c)) of an individual described in subparagraph (B) (without regard to this sentence) shall be treated as described in subparagraph (B).

(27)(A) Any membership organization if—

(i) such organization is established before June 1, 1996, by a State exclusively to reimburse its members for losses arising under workmen's compensation acts,

(ii) such State requires that the membership of such organization consist of—

(I) all persons who issue insurance covering workmen's compensation losses in such State, and

(II) all persons and governmental entities who self-insure against such losses, and

(iii) such organization operates as a non-profit organization by—

(I) returning surplus income to its members or workmen's compensation policyholders on a periodic basis, and

(II) reducing initial premiums in anticipation of investment income.

(B) Any organization (including a mutual insurance company) if—

(i) such organization is created by State law and is organized and operated under State law exclusively to—

(I) provide workmen's compensation insurance which is required by State law or with respect to which State law provides significant disincentives if such insurance is not purchased by an employer, and

(II) provide related coverage which is incidental to workmen's compensation insurance,

(ii) such organization must provide workmen's compensation insurance to any employer in the State (for employees in the State or temporarily assigned out-of-State) which seeks such insurance and meets other reasonable requirements relating thereto,

(iii)(I) the State makes a financial commitment with respect to such organization either by extending the full faith and credit of the State to the initial debt of such organization or by providing the initial operating capital of such organization, and (II) in the case of periods after the date of enactment of this subparagraph, the assets of such organization revert to the State upon dissolution or State law does not permit the dissolution of such organization, and

(iv) the majority of the board of directors or oversight body of such organization are appointed by the chief executive officer or other executive branch official of the State, by the State legislature, or by both.

(28) The National Railroad Retirement Investment Trust established under section 15(j) of the Railroad Retirement Act of 1974.

(29) CO–OP HEALTH INSURANCE ISSUERS.—

(A) IN GENERAL.—A qualified nonprofit health insurance issuer (within the meaning of section 1322 of the Patient Protection and Affordable Care Act) which has received a loan or grant under the CO–OP program under such section, but only with respect to periods for which the issuer is in compliance with the requirements of such section and any agreement with respect to the loan or grant.

(B) CONDITIONS FOR EXEMPTION.—Subparagraph (A) shall apply to an organization only if—

(i) the organization has given notice to the Secretary, in such manner as the Secretary may by regulations prescribe, that it is applying for recognition of its status under this paragraph,

(ii) except as provided in section 1322(c)(4) of the Patient Protection and Affordable Care Act, no part of the net earnings of which inures to the benefit of any private shareholder or

individual,

(iii) no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and

(iv) the organization does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

(d) Religious and apostolic organizations

The following organizations are referred to in subsection (a): Religious or apostolic associations or corporations, if such associations or corporations have a common treasury or community treasury, even if such associations or corporations engage in business for the common benefit of the members, but only if the members thereof include (at the time of filing their returns) in their gross income their entire pro rata shares, whether distributed or not, of the taxable income of the association or corporation for such year. Any amount so included in the gross income of a member shall be treated as a dividend received.

(e) Cooperative hospital service organizations

For purposes of this title, an organization shall be treated as an organization organized and operated exclusively for charitable purposes, if—

(1) such organization is organized and operated solely—

(A) to perform, on a centralized basis, one or more of the following services which, if performed on its own behalf by a hospital which is an organization described in subsection (c)(3) and exempt from taxation under subsection (a), would constitute activities in exercising or performing the purpose or function constituting the basis for its exemption: data processing, purchasing (including the purchasing of insurance on a group basis), warehousing, billing and collection (including the purchase of patron accounts receivable on a recourse basis), food, clinical, industrial engineering, laboratory, printing, communications, record center, and personnel (including selection, testing, training, and education of personnel) services; and

(B) to perform such services solely for two or more hospitals each of which is—

(i) an organization described in subsection (c)(3) which is exempt from taxation under subsection (a),

(ii) a constituent part of an organization described in subsection (c)(3) which is exempt from taxation under subsection (a) and which, if organized and operated as a separate entity, would constitute an organization described in subsection (c)(3), or

(iii) owned and operated by the United States, a State, the District of Columbia, or a possession of the United States, or a political subdivision or an agency or instrumentality of any of the foregoing;

(2) such organization is organized and operated on a cooperative basis and allocates or pays, within 8½ months after the close of its taxable year, all net earnings to patrons on the basis of services performed for them; and

(3) if such organization has capital stock, all of such stock outstanding is owned by its patrons.

For purposes of this title, any organization which, by reason of the preceding sentence, is an organization described in subsection (c)(3) and exempt from taxation under subsection (a), shall be treated as a hospital and as an organization referred to in section 170(b)(1)(A)(iii).

(f) Cooperative service organizations of operating educational organizations

For purposes of this title, if an organization is—

(1) organized and operated solely to hold, commingle, and collectively invest and reinvest (including arranging for and supervising the performance by independent contractors of investment services related thereto) in stocks and securities, the moneys contributed thereto by each of the members of such organization, and to collect income therefrom and turn over the entire amount thereof, less expenses, to such members,

(2) organized and controlled by one or more such members, and

(3) comprised solely of members that are organizations described in clause (ii) or (iv) of section 170(b)(1)(A)—

(A) which are exempt from taxation under subsection (a), or

(B) the income of which is excluded from taxation under section 115(a),

then such organization shall be treated as an organization organized and operated exclusively for charitable purposes.

(g) Definition of agricultural

For purposes of subsection (c)(5), the term "agricultural" includes the art or science of cultivating land, harvesting crops or aquatic resources, or raising livestock.

(h) Expenditures by public charities to influence legislation

(1) General rule

In the case of an organization to which this subsection applies, exemption from taxation under subsection (a) shall be denied because a substantial part of the activities of such organization consists of carrying on propaganda, or otherwise attempting, to influence legislation, but only if such organization normally—

(A) makes lobbying expenditures in excess of the lobbying ceiling amount for such organization for each taxable year, or

(B) makes grass roots expenditures in excess of the grass roots ceiling amount for such organization for each taxable year.

(2) Definitions

For purposes of this subsection—

(A) Lobbying expenditures

The term "lobbying expenditures" means expenditures for the purpose of influencing legislation (as defined in section 4911(d)).

(B) Lobbying ceiling amount

The lobbying ceiling amount for any organization for any taxable year is 150 percent of the lobbying nontaxable amount for such organization for such taxable year, determined under section 4911.

(C) Grass roots expenditures

The term "grass roots expenditures" means expenditures for the purpose of influencing legislation (as defined in section 4911(d) without regard to paragraph (1)(B) thereof).

(D) Grass roots ceiling amount

The grass roots ceiling amount for any organization for any taxable year is 150 percent of the grass roots nontaxable amount for such organization for such taxable year, determined under section 4911.

(3) Organizations to which this subsection applies

This subsection shall apply to any organization which has elected (in such manner and at such time as the Secretary may prescribe) to have the provisions of this subsection apply to such organization and which, for the taxable year which includes the date the election is made, is described in subsection (c)(3) and—

(A) is described in paragraph (4), and

(B) is not a disqualified organization under paragraph (5).

(4) Organizations permitted to elect to have this subsection apply

An organization is described in this paragraph if it is described in—

(A) section 170(b)(1)(A)(ii) (relating to educational institutions),

(B) section 170(b)(1)(A)(iii) (relating to hospitals and medical research organizations),

(C) section 170(b)(1)(A)(iv) (relating to organizations supporting government schools),

(D) section 170(b)(1)(A)(vi) (relating to organizations publicly supported by charitable contributions),

(E) section 509(a)(2) (relating to organizations publicly supported by admissions, sales, etc.), or

(F) section 509(a)(3) (relating to organizations supporting certain types of public charities) except that for purposes of this subparagraph, section 509(a)(3) shall be applied without regard to the last sentence of section 509(a).

(5) Disqualified organizations

For purposes of paragraph (3) an organization is a disqualified organization if it is—

(A) described in section 170(b)(1)(A)(i) (relating to churches),

(B) an integrated auxiliary of a church or of a convention or association of churches, or

(C) a member of an affiliated group of organizations (within the meaning of section 4911(f)(2)) if one or more members of such group is described in subparagraph (A) or (B).

(6) Years for which election is effective

An election by an organization under this subsection shall be effective for all taxable years of such organization which—

(A) end after the date the election is made, and

(B) begin before the date the election is revoked by such organization (under regulations prescribed by the Secretary).

(7) No effect on certain organizations

With respect to any organization for a taxable year for which—

(A) such organization is a disqualified organization (within the meaning of paragraph (5)), or

(B) an election under this subsection is not in effect for such organization,

nothing in this subsection or in section 4911 shall be construed to affect the interpretation of the phrase, "no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation," under subsection (c)(3).

(8) Affiliated organizations

For rules regarding affiliated organizations, see section 4911(f).

(i) Prohibition of discrimination by certain social clubs

Notwithstanding subsection (a), an organization which is described in subsection (c)(7) shall not be exempt from taxation under subsection (a) for any taxable year if, at any time during such taxable year, the charter, bylaws, or other governing instrument, of such organization or any written policy statement of such organization contains a provision which provides for discrimination against any person on the basis of race, color, or religion. The preceding sentence to the extent it relates to discrimination on the basis of religion shall not apply to—

(1) an auxiliary of a fraternal beneficiary society if such society—

(A) is described in subsection (c)(8) and exempt from tax under subsection (a), and

(B) limits its membership to the members of a particular religion, or

(2) a club which in good faith limits its membership to the members of a particular religion in order to further the teachings or principles of that religion, and not to exclude individuals of a particular race or color.

(j) Special rules for certain amateur sports organizations

(1) In general

In the case of a qualified amateur sports organization—

(A) the requirement of subsection (c)(3) that no part of its activities involve the provision of athletic facilities or equipment shall not apply, and

(B) such organization shall not fail to meet the requirements of subsection (c)(3) merely because its membership is local or regional in nature.

(2) Qualified amateur sports organization defined

For purposes of this subsection, the term "qualified amateur sports organization" means any organization organized and operated exclusively to foster national or international amateur sports competition if such organization is also organized and operated primarily to conduct national or international competition in sports or to support and develop amateur athletes for national or international competition in sports.

(k) Treatment of certain organizations providing child care

For purposes of subsection (c)(3) of this section and sections 170(c)(2), 2055(a)(2), and 2522(a)(2), the term "educational purposes" includes the providing of care of children away from their homes if—

(1) substantially all of the care provided by the organization is for purposes of enabling individuals to be gainfully employed, and

(2) the services provided by the organization are available to the general public.

(l) Government corporations exempt under subsection (c)(1)

For purposes of subsection (c)(1), the following organizations are described in this subsection:

(1) The Central Liquidity Facility established under title III of the Federal Credit Union Act (12 U.S.C. 1795 et seq.).

(2) The Resolution Trust Corporation established under section 21A [1] of the Federal Home Loan Bank Act.

(3) The Resolution Funding Corporation established under section 21B of the Federal Home Loan Bank Act.

(4) The Patient-Centered Outcomes Research Institute established under section 1181(b) of the Social Security Act.

(m) Certain organizations providing commercial-type insurance not exempt from tax

(1) Denial of tax exemption where providing commercial-type insurance is substantial part of activities

An organization described in paragraph (3) or (4) of subsection (c) shall be exempt from tax under subsection (a) only if no substantial part of its activities consists of providing commercial-type insurance.

(2) Other organizations taxed as insurance companies on insurance business

In the case of an organization described in paragraph (3) or (4) of subsection (c) which is exempt from tax under subsection (a) after the application of paragraph (1) of this subsection—

(A) the activity of providing commercial-type insurance shall be treated as an unrelated trade or business (as defined in section 513), and

(B) in lieu of the tax imposed by section 511 with respect to such activity, such organization shall be treated as an insurance company for purposes of applying subchapter L with respect to such activity.

(3) Commercial-type insurance

For purposes of this subsection, the term "commercial-type insurance" shall not include—

(A) insurance provided at substantially below cost to a class of charitable recipients,

(B) incidental health insurance provided by a health maintenance organization of a kind customarily provided by such organizations,

(C) property or casualty insurance provided (directly or through an organization described in section 414(e)(3)(B)(ii)) by a church or convention or association of churches for such church or convention or association of churches,

(D) providing retirement or welfare benefits (or both) by a church or a convention or association of churches (directly or through an organization described in section 414(e)(3)(A) or

414(e)(3)(B)(ii)) for the employees (including employees described in section 414(e)(3)(B)) of such church or convention or association of churches or the beneficiaries of such employees, and

(E) charitable gift annuities.

(4) Insurance includes annuities

For purposes of this subsection, the issuance of annuity contracts shall be treated as providing insurance.

(5) Charitable gift annuity

For purposes of paragraph (3)(E), the term "charitable gift annuity" means an annuity if—

(A) a portion of the amount paid in connection with the issuance of the annuity is allowable as a deduction under section 170 or 2055, and

(B) the annuity is described in section 514(c)(5) (determined as if any amount paid in cash in connection with such issuance were property).

(n) Charitable risk pools

(1) In general

For purposes of this title—

(A) a qualified charitable risk pool shall be treated as an organization organized and operated exclusively for charitable purposes, and

(B) subsection (m) shall not apply to a qualified charitable risk pool.

(2) Qualified charitable risk pool

For purposes of this subsection, the term "qualified charitable risk pool" means any organization—

(A) which is organized and operated solely to pool insurable risks of its members (other than risks related to medical malpractice) and to provide information to its members with respect to loss control and risk management,

(B) which is comprised solely of members that are organizations described in subsection (c)(3) and exempt from tax under subsection (a), and

(C) which meets the organizational requirements of paragraph (3).

(3) Organizational requirements

An organization (hereinafter in this subsection referred to as the "risk pool") meets the organizational requirements of this paragraph if—

(A) such risk pool is organized as a nonprofit organization under State law provisions authorizing risk pooling arrangements for charitable organizations,

(B) such risk pool is exempt from any income tax imposed by the State (or will be so exempt after such pool qualifies as an organization exempt from tax under this title),

(C) such risk pool has obtained at least $1,000,000 in startup capital from nonmember charitable organizations,

(D) such risk pool is controlled by a board of directors elected by its members, and

(E) the organizational documents of such risk pool require that—

(i) each member of such pool shall at all times be an organization described in subsection (c)(3) and exempt from tax under subsection (a),

(ii) any member which receives a final determination that it no longer qualifies as an organization described in subsection (c)(3) shall immediately notify the pool of such determination and the effective date of such determination, and

(iii) each policy of insurance issued by the risk pool shall provide that such policy will not cover the insured with respect to events occurring after the date such final determination was issued to the insured.

An organization shall not cease to qualify as a qualified charitable risk pool solely by reason of the failure of any of its members to continue to be an organization described in subsection (c)(3) if,

within a reasonable period of time after such pool is notified as required under subparagraph (E)(ii), such pool takes such action as may be reasonably necessary to remove such member from such pool.

(4) Other definitions

For purposes of this subsection—

(A) Startup capital

The term "startup capital" means any capital contributed to, and any program-related investments (within the meaning of section 4944(c)) made in, the risk pool before such pool commences operations.

(B) Nonmember charitable organization

The term "nonmember charitable organization" means any organization which is described in subsection (c)(3) and exempt from tax under subsection (a) and which is not a member of the risk pool and does not benefit (directly or indirectly) from the insurance coverage provided by the pool to its members.

(o) Treatment of hospitals participating in provider-sponsored organizations

An organization shall not fail to be treated as organized and operated exclusively for a charitable purpose for purposes of subsection (c)(3) solely because a hospital which is owned and operated by such organization participates in a provider-sponsored organization (as defined in section 1855(d) of the Social Security Act), whether or not the provider-sponsored organization is exempt from tax. For purposes of subsection (c)(3), any person with a material financial interest in such a provider-sponsored organization shall be treated as a private shareholder or individual with respect to the hospital.

(p) Suspension of tax-exempt status of terrorist organizations

(1) In general

The exemption from tax under subsection (a) with respect to any organization described in paragraph (2), and the eligibility of any organization described in paragraph (2) to apply for recognition of exemption under subsection (a), shall be suspended during the period described in paragraph (3).

(2) Terrorist organizations

An organization is described in this paragraph if such organization is designated or otherwise individually identified—

(A) under section 212(a)(3)(B)(vi)(II) or 219 of the Immigration and Nationality Act as a terrorist organization or foreign terrorist organization,

(B) in or pursuant to an Executive order which is related to terrorism and issued under the authority of the International Emergency Economic Powers Act or section 5 of the United Nations Participation Act of 1945 for the purpose of imposing on such organization an economic or other sanction, or

(C) in or pursuant to an Executive order issued under the authority of any Federal law if—

(i) the organization is designated or otherwise individually identified in or pursuant to such Executive order as supporting or engaging in terrorist activity (as defined in section 212(a)(3)(B) of the Immigration and Nationality Act) or supporting terrorism (as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989); and

(ii) such Executive order refers to this subsection.

(3) Period of suspension

With respect to any organization described in paragraph (2), the period of suspension—

(A) begins on the later of—

(i) the date of the first publication of a designation or identification described in paragraph (2) with respect to such organization, or

(ii) the date of the enactment of this subsection, and

(B) ends on the first date that all designations and identifications described in paragraph (2) with respect to such organization are rescinded pursuant to the law or Executive order under which such designation or identification was made.

(4) Denial of deduction

No deduction shall be allowed under any provision of this title, including sections 170, 545(b)(2), 556(b)(2),[1] 642(c), 2055, 2106(a)(2), and 2522, with respect to any contribution to an organization described in paragraph (2) during the period described in paragraph (3).

(5) Denial of administrative or judicial challenge of suspension or denial of deduction

Notwithstanding section 7428 or any other provision of law, no organization or other person may challenge a suspension under paragraph (1), a designation or identification described in paragraph (2), the period of suspension described in paragraph (3), or a denial of a deduction under paragraph (4) in any administrative or judicial proceeding relating to the Federal tax liability of such organization or other person.

(6) Erroneous designation

(A) In general

If—

(i) the tax exemption of any organization described in paragraph (2) is suspended under paragraph (1),

(ii) each designation and identification described in paragraph (2) which has been made with respect to such organization is determined to be erroneous pursuant to the law or Executive order under which such designation or identification was made, and

(iii) the erroneous designations and identifications result in an overpayment of income tax for any taxable year by such organization,

credit or refund (with interest) with respect to such overpayment shall be made.

(B) Waiver of limitations

If the credit or refund of any overpayment of tax described in subparagraph (A)(iii) is prevented at any time by the operation of any law or rule of law (including res judicata), such credit or refund may nevertheless be allowed or made if the claim therefor is filed before the close of the 1-year period beginning on the date of the last determination described in subparagraph (A)(ii).

(7) Notice of suspensions

If the tax exemption of any organization is suspended under this subsection, the Internal Revenue Service shall update the listings of tax-exempt organizations and shall publish appropriate notice to taxpayers of such suspension and of the fact that contributions to such organization are not deductible during the period of such suspension.

(q) Special rules for credit counseling organizations

(1) In general

An organization with respect to which the provision of credit counseling services is a substantial purpose shall not be exempt from tax under subsection (a) unless such organization is described in paragraph (3) or (4) of subsection (c) and such organization is organized and operated in accordance with the following requirements:

(A) The organization—

(i) provides credit counseling services tailored to the specific needs and circumstances of consumers,

(ii) makes no loans to debtors (other than loans with no fees or interest) and does not negotiate the making of loans on behalf of debtors,

(iii) provides services for the purpose of improving a consumer's credit record, credit history, or credit rating only to the extent that such services are incidental to providing credit counseling services, and

(iv) does not charge any separately stated fee for services for the purpose of improving any consumer's credit record, credit history, or credit rating.

(B) The organization does not refuse to provide credit counseling services to a consumer due to the inability of the consumer to pay, the ineligibility of the consumer for debt management plan enrollment, or the unwillingness of the consumer to enroll in a debt management plan.

(C) The organization establishes and implements a fee policy which—

(i) requires that any fees charged to a consumer for services are reasonable,

(ii) allows for the waiver of fees if the consumer is unable to pay, and

(iii) except to the extent allowed by State law, prohibits charging any fee based in whole or in part on a percentage of the consumer's debt, the consumer's payments to be made pursuant to a debt management plan, or the projected or actual savings to the consumer resulting from enrolling in a debt management plan.

(D) At all times the organization has a board of directors or other governing body—

(i) which is controlled by persons who represent the broad interests of the public, such as public officials acting in their capacities as such, persons having special knowledge or expertise in credit or financial education, and community leaders,

(ii) not more than 20 percent of the voting power of which is vested in persons who are employed by the organization or who will benefit financially, directly or indirectly, from the organization's activities (other than through the receipt of reasonable directors' fees or the repayment of consumer debt to creditors other than the credit counseling organization or its affiliates), and

(iii) not more than 49 percent of the voting power of which is vested in persons who are employed by the organization or who will benefit financially, directly or indirectly, from the organization's activities (other than through the receipt of reasonable directors' fees).

(E) The organization does not own more than 35 percent of—

(i) the total combined voting power of any corporation (other than a corporation which is an organization described in subsection (c)(3) and exempt from tax under subsection (a)) which is in the trade or business of lending money, repairing credit, or providing debt management plan services, payment processing, or similar services,

(ii) the profits interest of any partnership (other than a partnership which is an organization described in subsection (c)(3) and exempt from tax under subsection (a)) which is in the trade or business of lending money, repairing credit, or providing debt management plan services, payment processing, or similar services, and

(iii) the beneficial interest of any trust or estate (other than a trust which is an organization described in subsection (c)(3) and exempt from tax under subsection (a)) which is in the trade or business of lending money, repairing credit, or providing debt management plan services, payment processing, or similar services.

(F) The organization receives no amount for providing referrals to others for debt management plan services, and pays no amount to others for obtaining referrals of consumers.

(2) Additional requirements for organizations described in subsection (c)(3)

(A) In general

In addition to the requirements under paragraph (1), an organization with respect to which the provision of credit counseling services is a substantial purpose and which is described in paragraph (3) of subsection (c) shall not be exempt from tax under subsection (a) unless such organization is organized and operated in accordance with the following requirements:

(i) The organization does not solicit contributions from consumers during the initial counseling process or while the consumer is receiving services from the organization.

(ii) The aggregate revenues of the organization which are from payments of creditors of consumers of the organization and which are attributable to debt management plan services do not exceed the applicable percentage of the total revenues of the organization.

(B) Applicable percentage

(i) In general

For purposes of subparagraph (A)(ii), the applicable percentage is 50 percent.

(ii) Transition rule

Notwithstanding clause (i), in the case of an organization with respect to which the provision of credit counseling services is a substantial purpose and which is described in paragraph (3) of subsection (c) and exempt from tax under subsection (a) on the date of the enactment of this subsection, the applicable percentage is—

(I) 80 percent for the first taxable year of such organization beginning after the date which is 1 year after the date of the enactment of this subsection, and

(II) 70 percent for the second such taxable year beginning after such date, and

(III) 60 percent for the third such taxable year beginning after such date.

(3) Additional requirement for organizations described in subsection (c)(4)

In addition to the requirements under paragraph (1), an organization with respect to which the provision of credit counseling services is a substantial purpose and which is described in paragraph (4) of subsection (c) shall not be exempt from tax under subsection (a) unless such organization notifies the Secretary, in such manner as the Secretary may by regulations prescribe, that it is applying for recognition as a credit counseling organization.

(4) Credit counseling services; debt management plan services

For purposes of this subsection—

(A) Credit counseling services

The term "credit counseling services" means—

(i) the providing of educational information to the general public on budgeting, personal finance, financial literacy, saving and spending practices, and the sound use of consumer credit,

(ii) the assisting of individuals and families with financial problems by providing them with counseling, or

(iii) a combination of the activities described in clauses (i) and (ii).

(B) Debt management plan services

The term "debt management plan services" means services related to the repayment, consolidation, or restructuring of a consumer's debt, and includes the negotiation with creditors of lower interest rates, the waiver or reduction of fees, and the marketing and processing of debt management plans.

(r) Additional requirements for certain hospitals

(1) In general

A hospital organization to which this subsection applies shall not be treated as described in subsection (c)(3) unless the organization—

(A) meets the community health needs assessment requirements described in paragraph (3),

(B) meets the financial assistance policy requirements described in paragraph (4),

(C) meets the requirements on charges described in paragraph (5), and

(D) meets the billing and collection requirement described in paragraph (6).

(2) Hospital organizations to which subsection applies

(A) In general

This subsection shall apply to—

(i) an organization which operates a facility which is required by a State to be licensed, registered, or similarly recognized as a hospital, and

(ii) any other organization which the Secretary determines has the provision of hospital care as its principal function or purpose constituting the basis for its exemption under subsection (c)(3) (determined without regard to this subsection).

(B) Organizations with more than 1 hospital facility

If a hospital organization operates more than 1 hospital facility—

(i) the organization shall meet the requirements of this subsection separately with respect to each such facility, and

(ii) the organization shall not be treated as described in subsection (c)(3) with respect to any such facility for which such requirements are not separately met.

(3) Community health needs assessments

(A) In general

An organization meets the requirements of this paragraph with respect to any taxable year only if the organization—

(i) has conducted a community health needs assessment which meets the requirements of subparagraph (B) in such taxable year or in either of the 2 taxable years immediately preceding such taxable year, and

(ii) has adopted an implementation strategy to meet the community health needs identified through such assessment.

(B) Community health needs assessment

A community health needs assessment meets the requirements of this paragraph if such community health needs assessment—

(i) takes into account input from persons who represent the broad interests of the community served by the hospital facility, including those with special knowledge of or expertise in public health, and

(ii) is made widely available to the public.

(4) Financial assistance policy

An organization meets the requirements of this paragraph if the organization establishes the following policies:

(A) Financial assistance policy

A written financial assistance policy which includes—

(i) eligibility criteria for financial assistance, and whether such assistance includes free or discounted care,

(ii) the basis for calculating amounts charged to patients,

(iii) the method for applying for financial assistance,

(iv) in the case of an organization which does not have a separate billing and collections policy, the actions the organization may take in the event of non-payment, including collections action and reporting to credit agencies, and

(v) measures to widely publicize the policy within the community to be served by the organization.

(B) Policy relating to emergency medical care

A written policy requiring the organization to provide, without discrimination, care for emergency medical conditions (within the meaning of section 1867 of the Social Security Act (42 U.S.C. 1395dd)) to individuals regardless of their eligibility under the financial assistance policy described in subparagraph (A).

(5) Limitation on charges

An organization meets the requirements of this paragraph if the organization—

(A) limits amounts charged for emergency or other medically necessary care provided to individuals eligible for assistance under the financial assistance policy described in paragraph (4)(A) to not more than the amounts generally billed to individuals who have insurance covering such care, and

(B) prohibits the use of gross charges.

(6) Billing and collection requirements

An organization meets the requirement of this paragraph only if the organization does not engage in extraordinary collection actions before the organization has made reasonable efforts to determine whether the individual is eligible for assistance under the financial assistance policy described in paragraph (4)(A).

(7) Regulatory authority

The Secretary shall issue such regulations and guidance as may be necessary to carry out the provisions of this subsection, including guidance relating to what constitutes reasonable efforts to determine the eligibility of a patient under a financial assistance policy for purposes of paragraph (6).

(s) Cross reference

For nonexemption of Communist-controlled organizations, see section 11(b) of the Internal Security Act of 1950 (64 Stat. 997; 50 U.S.C. 790(b)).

(Aug. 16, 1954, ch. 736, 68A Stat. 163; Mar. 13, 1956, ch. 83, §5(2), 70 Stat. 49; Pub. L. 86–428, §1, Apr. 22, 1960, 74 Stat. 54; Pub. L. 86–667, §1, July 14, 1960, 74 Stat. 534; Pub. L. 87–834, §8(d), Oct. 16, 1962, 76 Stat. 997; Pub. L. 89–352, §1, Feb. 2, 1966, 80 Stat. 4; Pub. L. 89–800, §6(a), Nov. 8, 1966, 80 Stat. 1515; Pub. L. 90–364, title I, §109(a), June 28, 1968, 82 Stat. 269; Pub. L. 91–172, title I, §§101(j)(3)–(6), 121(b)(5)(A), (6)(A), Dec. 30, 1969, 83 Stat. 526, 527, 541; Pub. L. 91–618, §1, Dec. 31, 1970, 84 Stat. 1855; Pub. L. 92–418, §1(a), Aug. 29, 1972, 86 Stat. 656; Pub. L. 93–310, §3(a), June 8, 1974, 88 Stat. 235; Pub. L. 93–625, §10(c), Jan. 3, 1975, 88 Stat. 2119; Pub. L. 94–455, title XIII, §§1307(a)(1), (d)(1)(A), 1312(a), 1313(a), title XIX, §1906(b)(13)(A), title XXI, §§2113(a), 2134(b), Oct. 4, 1976, 90 Stat. 1720, 1727, 1730, 1834, 1907, 1927; Pub. L. 94–568, §§1(a), 2(a), Oct. 20, 1976, 90 Stat. 2697; Pub. L. 95–227, §4(a), Feb. 10, 1978, 92 Stat. 15; Pub. L. 95–345, §1(a), Aug. 15, 1978, 92 Stat. 481; Pub. L. 95–600, title VII, §703(b)(2), (g)(2)(A), (B), Nov. 6, 1978, 92 Stat. 2939, 2940; Pub. L. 96–222, title I, §108(b)(2)(B), Apr. 1, 1980, 94 Stat. 226; Pub. L. 96–364, title II, §209(a), Sept. 26, 1980, 94 Stat. 1290; Pub. L. 96–601, §3(a), Dec. 24, 1980, 94 Stat. 3496; Pub. L. 96–605, title I, §106(a), Dec. 28, 1980, 94 Stat. 3523; Pub. L. 97–119, title I, §103(c)(1), Dec. 29, 1981, 95 Stat. 1638; Pub. L. 97–248, title II, §286(a), title III, §354(a), (b), Sept. 3, 1982, 96 Stat. 569, 640, 641; Pub. L. 97–448, title III, §306(b)(5), Jan. 12, 1983, 96 Stat. 2406; Pub. L. 98–369, div. A, title X, §§1032(a), 1079, div. B, title VIII, §2813(b), July 18, 1984, 98 Stat. 1033, 1056, 1206; Pub. L. 99–272, title XI, §11012(b), Apr. 7, 1986, 100 Stat. 260; Pub. L. 99–514, title X, §§1012(a), 1024(b), title XI, §§1109(a), 1114(b)(14), title XVI, §1603(a), title XVIII, §§1879(k)(1), 1899A(15), Oct. 22, 1986, 100 Stat. 2390, 2406, 2435, 2451, 2768, 2909, 2959; Pub. L. 100–203, title X, §10711(a)(2), Dec. 22, 1987, 101 Stat. 1330–464; Pub. L. 100–647, title I, §§1010(b)(4), 1011(c)(7)(D), 1016(a)(1)(A), (2)–(4), 1018(u)(14), (15), (34), title II, §2003(a)(1), (2), title VI, §6202(a), Nov. 10, 1988, 102 Stat. 3451, 3458, 3573, 3574, 3590, 3592, 3597, 3598, 3730; Pub. L. 101–73, title XIV, §1402(a), Aug. 9, 1989, 103 Stat. 550; Pub. L. 102–486, title XIX, §1940(a), Oct. 24, 1992, 106 Stat. 3034; Pub. L. 103–66, title XIII, §13146(a), (b), Aug. 10, 1993, 107 Stat. 443; Pub. L. 104–168, title XIII, §1311(b)(1), July 30, 1996, 110 Stat. 1477; Pub. L. 104–188, title I, §§1114(a), 1704(j)(5), Aug. 20, 1996, 110 Stat. 1759, 1882; Pub. L. 104–191, title III, §§341(a), 342(a), Aug. 21, 1996, 110 Stat. 2070; Pub. L. 105–33, title IV, §4041(a), Aug. 5, 1997, 111 Stat. 360; Pub. L. 105–34, title I, §101(c), title IX, §§963(a), (b), 974(a), Aug. 5, 1997, 111 Stat. 799, 892, 898; Pub. L. 105–206, title VI, §6023(6), (7), July 22, 1998, 112 Stat. 825; Pub. L. 107–16, title VI, §611(d)(3)(C), June 7, 2001, 115 Stat. 98; Pub. L. 107–90, title II, §202, Dec. 21, 2001, 115 Stat. 890; Pub. L. 108–121, title I, §§105(a), 108(a), Nov. 11, 2003, 117

Stat. 1338, 1339; Pub. L. 108–218, title II, §206(a), (b), Apr. 10, 2004, 118 Stat. 610, 611; Pub. L. 108–357, title III, §319(a), (b), Oct. 22, 2004, 118 Stat. 1470, 1471; Pub. L. 109–58, title XIII, §1304(a), (b), Aug. 8, 2005, 119 Stat. 997; Pub. L. 109–135, title IV, §412(bb), (cc), Dec. 21, 2005, 119 Stat. 2639; Pub. L. 109–280, title VIII, §862(a), title XII, §1220(a), Aug. 17, 2006, 120 Stat. 1021, 1086; Pub. L. 111–148, title I, §1322(h)(1), title VI, §6301(f), title IX, §9007(a), title X, §10903(a), Mar. 23, 2010, 124 Stat. 191, 747, 855, 1016; Pub. L. 111–152, title I, §1004(d)(4), Mar. 30, 2010, 124 Stat. 1035.)

REFERENCES IN TEXT

Sections 306A and 306B of the Rural Electrification Act of 1936, referred to in subsec. (c)(12)(B)(iv), are classified to sections 936a and 936b, respectively, of Title 7, Agriculture. Section 311 of the Act was classified to section 940a of Title 7 prior to repeal by Pub. L. 104–127, title VII, §780, Apr. 4, 1996, 110 Stat. 1151.

The date of the enactment of this subparagraph, referred to in subsec. (c)(12)(H)(vii), is the date of enactment of Pub. L. 108–357, which was approved Oct. 22, 2004.

The Federal Mine Safety and Health Act of 1977, referred to in subsec. (c)(21)(D)(i), is Pub. L. 91–173, Dec. 30, 1969, 83 Stat. 742, as amended by Pub. L. 95–164, Nov. 9, 1977, 91 Stat. 1290. Part C of title IV of the Act is classified generally to part C (§931 et seq.) of subchapter IV of chapter 22 of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 30 and Tables.

Section 4223 of the Employee Retirement Income Security Act of 1974, referred to in subsec. (c)(22)(A)(i), (C), (D), is classified to section 1403 of Title 29, Labor.

Section 4049 of the Employee Retirement Income Security Act of 1974, referred to in subsec. (c)(24), was classified to section 1349 of Title 29, prior to its repeal by Pub. L. 100–203, title IX, §9312(a), Dec. 22, 1987, 101 Stat. 1330–361.

The date of the enactment of the Single-Employer Pension Plan Amendments Act of 1986, referred to in subsec. (c)(24), is the date of enactment of title XI of Pub. L. 99–272, which was approved Apr. 7, 1986.

The date of enactment of this subparagraph, referred to in subsec. (c)(27)(B)(iii)(I), is the date of enactment of Pub. L. 105–34, which was approved Aug. 5, 1997.

Section 15(j) of the Railroad Retirement Act of 1974, referred to in subsec. (c)(28), is classified to section 231n(j) of Title 45, Railroads.

Section 1322 of the Patient Protection and Affordable Care Act, referred to in subsec. (c)(29)(A), (B)(ii), is classified to section 18042 of Title 42, The Public Health and Welfare.

The provisions of subsec. (a) of section 115, referred to in subsec. (f)(3)(B), now comprise section 115 in its entirety, following the deletion therefrom of the subsec. (a) designation by section 1901(a)(19) of Pub. L. 94–455.

The Federal Credit Union Act, referred to in subsec. (l)(1), is act June 26, 1934, ch. 750, 48 Stat. 1216, as amended. Title III of the Federal Credit Union Act is classified generally to subchapter III (§1795 et seq.) of chapter 14 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1751 of Title 12 and Tables.

Sections 21A and 21B of the Federal Home Loan Bank Act, referred to in subsec. (l)(2), (3), are classified to former section 1441a and section 1441b, respectively, of Title 12, Banks and Banking. Section 21A of the Act was repealed by Pub. L. 111–203, title III, §364(b), July 21, 2010, 124 Stat. 1555.

Sections 1181(b) and 1855(d) of the Social Security Act, referred to in subsecs. (l)(4) and (o), are classified to sections 1320e(b) and 1395w–25(d), respectively, of Title 42, The Public Health and Welfare.

Sections 212(a)(3)(B) and 219 of the Immigration and Nationality Act, referred to in subsec. (p)(2)(A), (C)(i), are classified to sections 1182(a)(3)(B) and 1189, respectively, of Title 8, Aliens and Nationality.

The International Emergency Economic Powers Act, referred to in subsec. (p)(2)(B), is title II of Pub. L. 95–223, Dec. 28, 1977, 91 Stat. 1626, as amended, which is classified generally to chapter 35 (§1701 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 50 and Tables.

Section 5 of the United Nations Participation Act of 1945, referred to in subsec. (p)(2)(B), is classified to section 287c of Title 22, Foreign Relations and Intercourse.

Section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, referred to in subsec. (p)(2)(C)(i), is classified to section 2656f(d)(2) of Title 22, Foreign Relations and Intercourse.

The date of the enactment of this subsection, referred to in subsec. (p)(3)(A)(ii), is the date of enactment of Pub. L. 108–121, which was approved Nov. 11, 2003.

Section 556(b)(2), referred to in subsec. (p)(4), was repealed by Pub. L. 108–357, title IV, §413(a)(1), Oct.

22, 2004, 118 Stat. 1506.

The date of the enactment of this subsection, referred to in subsec. (q)(2)(B)(ii), is the date of enactment of Pub. L. 109–280, which was approved Aug. 17, 2006.

Section 11(b) of the Internal Security Act of 1950 (64 Stat. 997; 50 U.S.C. 790(b)), referred to in subsec. (s), was repealed by Pub. L. 103–199, title VIII, §803(1), Dec. 17, 1993, 107 Stat. 2329.

AMENDMENTS

2010—Subsec. (c)(9). Pub. L. 111–152 inserted at end "For purposes of providing for the payment of sick and accident benefits to members of such an association and their dependents, the term 'dependent' shall include any individual who is a child (as defined in section 152(f)(1)) of a member who as of the end of the calendar year has not attained age 27."

Subsec. (c)(29). Pub. L. 111–148, §1322(h)(1), added par. (29).

Subsec. (l)(4). Pub. L. 111–148, §6301(f), added par. (4).

Subsec. (r). Pub. L. 111–148, §9007(a), added subsec. (r). Former subsec. (r) redesignated (s).

Subsec. (r)(5)(A). Pub. L. 111–148, §10903(a), substituted "the amounts generally billed" for "the lowest amounts charged".

Subsec. (s). Pub. L. 111–148, §9007(a), redesignated subsec. (r) as (s).

2006—Subsec. (c)(21)(C). Pub. L. 109–280, §862(a), amended introductory provisions and cls. (i) and (ii) generally. Prior to amendment, introductory provisions and cls. (i) and (ii) read as follows: "Payments described in subparagraph (A)(i)(IV) may be made from such trust during a taxable year only to the extent that the aggregate amount of such payments during such taxable year does not exceed the lesser of—

"(i) the excess (if any) (as of the close of the preceding taxable year) of—

"(I) the fair market value of the assets of the trust, over

"(II) 110 percent of the present value of the liability described in subparagraph (A)(i)(I) of such person, or

"(ii) the excess (if any) of—

"(I) the sum of a similar excess determined as of the close of the last taxable year ending before the date of the enactment of this subparagraph plus earnings thereon as of the close of the taxable year preceding the taxable year involved, over

"(II) the aggregate payments described in subparagraph (A)(i)(IV) made from the trust during all taxable years beginning after the date of the enactment of this subparagraph."

Subsecs. (q), (r). Pub. L. 109–280, §1220(a), which directed the amendment of section 501 by adding subsec. (q) and redesignating former subsec. (q) as (r), without specifying the act to be amended, was executed by making the amendments to this section, which is section 501 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

2005—Subsec. (c)(12)(C). Pub. L. 109–58, §1304(a), struck out concluding provisions which read as follows: "Clauses (ii) through (v) shall not apply to taxable years beginning after December 31, 2006."

Subsec. (c)(12)(F). Pub. L. 109–135, §412(bb)(1), substituted "subparagraph (C)(iv)" for "subparagraph (C)(iii)".

Subsec. (c)(12)(G). Pub. L. 109–135, §412(bb)(2), substituted "subparagraph (C)(v)" for "subparagraph (C)(iv)".

Subsec. (c)(12)(H)(x). Pub. L. 109–58, §1304(b), struck out cl. (x) which read as follows: "This subparagraph shall not apply to taxable years beginning after December 31, 2006."

Subsec. (c)(22)(B)(ii). Pub. L. 109–135, §412(cc), substituted "clause (ii) of paragraph (21)(D)" for "clause (ii) of paragraph (21)(B)".

2004—Subsec. (c)(12)(C). Pub. L. 108–357, §319(a)(1), added cls. (ii) to (v) and concluding provisions and struck out former cl. (ii) which read as follows: "from the prepayment of a loan under section 306A, 306B, or 311 of the Rural Electrification Act of 1936 (as in effect on January 1, 1987)."

Subsec. (c)(12)(E) to (G). Pub. L. 108–357, §319(a)(2), added subpars. (E) to (G).

Subsec. (c)(12)(H). Pub. L. 108–357, §319(b), added subpar. (H).

Subsec. (c)(15)(A). Pub. L. 108–218, §206(a), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "Insurance companies or associations other than life (including interinsurers and reciprocal underwriters) if the net written premiums (or, if greater, direct written premiums) for the taxable year do not exceed $350,000."

Subsec. (c)(15)(C). Pub. L. 108–218, §206(b), inserted before period at end ", except that in applying section 831(b)(2)(B)(ii) for purposes of this subparagraph, subparagraphs (B) and (C) of section 1563(b)(2) shall be disregarded".

2003—Subsec. (c)(19)(B). Pub. L. 108–121, §105(a), substituted ", widowers, ancestors, or lineal

descendants" for "or widowers".

Subsecs. (p), (q). Pub. L. 108–121, §108(a), added subsec. (p) and redesignated former subsec. (p) as (q).

2001—Subsec. (c)(18)(D)(iii). Pub. L. 107–16, §611(d)(3)(C), struck out "(other than paragraph (4) thereof)" after "section 402(g)".

Subsec. (c)(28). Pub. L. 107–90 added par. (28).

1998—Subsec. (n)(3). Pub. L. 105–206, §6023(6), substituted "subparagraph (E)(ii)" for "subparagraph (C)(ii)" in concluding provisions.

Subsec. (o). Pub. L. 105–206, §6023(7), substituted "section 1855(d)" for "section 1853(e)".

1997—Subsec. (c)(26). Pub. L. 105–34, §101(c), inserted concluding provisions "A spouse and any qualifying child (as defined in section 24(c)) of an individual described in subparagraph (B) (without regard to this sentence) shall be treated as described in subparagraph (B)."

Subsec. (c)(27). Pub. L. 105–34, §963(a), (b), designated existing provisions as subpar. (A), redesignated former subpar. (A) as cl. (i), redesignated subpar. (B) as cl. (ii) and former cls. (i) and (ii) of subpar. (B) as subcls. (I) and (II), respectively, of cl. (ii), redesignated subpar. (C) as cl. (iii) and former cls. (i) and (ii) of subpar. (C) as subcls. (I) and (II), respectively, of cl. (iii), and added subpar. (B).

Subsec. (e)(1)(A). Pub. L. 105–34, §974(a), inserted "(including the purchase of patron accounts receivable on a recourse basis)" after "billing and collection".

Subsecs. (o), (p). Pub. L. 105–33 added subsec. (o) and redesignated former subsec. (o) as (p).

1996—Subsec. (c)(4). Pub. L. 104–168 designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (c)(21)(D)(ii)(III). Pub. L. 104–188, §1704(j)(5), substituted "section 101(7)" for "section 101(6)" and "1752(7)" for "1752(6)".

Subsec. (c)(26). Pub. L. 104–191, §341(a), added par. (26).

Subsec. (c)(27). Pub. L. 104–191, §342(a), added par. (27).

Subsecs. (n), (o). Pub. L. 104–188, §1114(a), added subsec. (n) and redesignated former subsec. (n) as (o).

1993—Subsec. (c)(2). Pub. L. 103–66, §13146(b), inserted at end "Rules similar to the rules of subparagraph (G) of paragraph (25) shall apply for purposes of this paragraph."

Subsec. (c)(25)(G). Pub. L. 103–66, §13146(a), added subpar. (G).

1992—Subsec. (c)(21). Pub. L. 102–486 amended par. (21) generally, substituting present provisions consisting of subpars. (A) to (D) for former provisions consisting of subpars. (A) and (B).

1989—Subsec. (l). Pub. L. 101–73 amended subsec. (l) generally. Prior to amendment, subsec. (l) read as follows: "The organization described in this subsection is the Central Liquidity Facility established under title III of the Federal Credit Union Act (12 U.S.C. 1795 et seq.)."

1988—Subsec. (c)(1). Pub. L. 100–647, §1018(u)(15), substituted "Any" for "any".

Subsec. (c)(12)(B)(iv). Pub. L. 100–647, §2003(a)(1), added cl. (iv).

Subsec. (c)(12)(C). Pub. L. 100–647, §2003(a)(2), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: "In the case of a mutual or cooperative electric company, subparagraph (A) shall be applied without taking into account any income received or accrued from qualified pole rentals."

Subsec. (c)(17)(A)(ii), (iii), (18)(B), (C). Pub. L. 100–647, §1018(u)(34), made technical amendments to Pub. L. 99–154, §1114(b)(14). See 1986 Amendment note below.

Subsec. (c)(18)(D)(iv). Pub. L. 100–647, §1011(c)(7)(D), added cl. (iv).

Subsec. (c)(23). Pub. L. 100–647, §1018(u)(14), substituted "Any" for "any".

Subsec. (c)(25)(A). Pub. L. 100–647, §1016(a)(1)(A), inserted at end "For purposes of clause (iii), the term 'real property' shall not include any interest as a tenant in common (or similar interest) and shall not include any indirect interest."

Subsec. (c)(25)(C)(v). Pub. L. 100–647, §1016(a)(3)(B), struck out cl. (v) which read as follows: "any organization described in this paragraph."

Subsec. (c)(25)(D). Pub. L. 100–647, §1016(a)(2), substituted "A corporation or trust shall in no event be treated as described in subparagraph (A) unless such corporation or trust permits its shareholders or beneficiaries" for "A corporation or trust described in this paragraph must permit its shareholders or beneficiaries" in introductory text.

Subsec. (c)(25)(E), (F). Pub. L. 100–647, §1016(a)(3)(A), (4), added subpars. (E) and (F).

Subsec. (e)(1)(A). Pub. L. 100–647, §6202(a), inserted "(including the purchasing of insurance on a group basis)" after "purchasing".

Subsec. (m)(3)(E). Pub. L. 100–647, §1010(b)(4)(A), added subpar. (E).

Subsec. (m)(5). Pub. L. 100–647, §1010(b)(4)(B), added par. (5).

1987—Subsec. (c)(3). Pub. L. 100–203 inserted "(or in opposition to)" after "in behalf of".

1986—Subsec. (c)(1)(A)(i). Pub. L. 99–514, §1899A(15), substituted "July 18, 1984" for "the date of the

enactment of the Tax Reform Act of 1984".

Subsec. (c)(14)(B)(iv). Pub. L. 99–514, §1879(k)(1), added cl. (iv).

Subsec. (c)(15). Pub. L. 99–514, §1024(b), amended par. (15) generally. Prior to amendment, par. (15) read as follows: "Mutual insurance companies or associations other than life or marine (including inter-insurers and reciprocal underwriters) if the gross amount received during the taxable year from the items described in section 822(b) (other than paragraph (1)(D) thereof) and premiums (including deposits and assessments) does not exceed $150,000."

Subsec. (c)(17)(A)(ii), (iii), (18)(B), (C). Pub. L. 99–514, §1114(b)(14), as amended by Pub. L. 100–647, §1018(u)(34), substituted "highly compensated employees (within the meaning of section 414(q))" for "officers, shareholders, persons whose principal duties consist of supervising the work of other employees, or highly compensated employees".

Subsec. (c)(18)(D). Pub. L. 99–514, §1109(a), added subpar. (D).

Subsec. (c)(24). Pub. L. 99–272 added par. (24).

Subsec. (c)(25). Pub. L. 99–514, §1603(a), added par. (25).

Subsecs. (m), (n). Pub. L. 99–514, §1012(a), added subsec. (m) and redesignated former subsec. (m) as (n).

1984—Subsec. (c)(1). Pub. L. 98–369, §2813(b)(2), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (c)(1)(A). Pub. L. 98–369, §1079, substituted provisions referring to corporations exempt from Federal income taxes under any Act of Congress as amended and supplemented before July 18, 1984, or under this title without regard to any provision of law not contained in this title and not contained in a revenue Act for provisions referring to corporations exempt from Federal income taxes under any Act of Congress as amended and supplemented.

Subsec. (k). Pub. L. 98–369, §1032(a), added subsec. (k). Former subsec. (k) redesignated (l).

Subsec. (l). Pub. L. 98–369, §2813(b)(1), added subsec. (l). Former subsec. (l) redesignated (m).

Pub. L. 98–369, §1032(a), redesignated former subsec. (k) as (l).

Subsec. (m). Pub. L. 98–369, §2813(b)(1), redesignated former subsec. (l) as (m).

1983—Subsec. (c)(23). Pub. L. 97–448 substituted "75 percent" for "25 percent".

1982—Subsec. (c)(19). Pub. L. 97–248, §354(a)(1), substituted "past or present members of the Armed Forces of the United States" for "war veterans" after "A post or organization of".

Subsec. (c)(19)(B). Pub. L. 97–248, §354(a)(2), substituted "past or present members of the Armed Forces of the United States" for "war veterans" wherever appearing, struck out "veterans (but not war veterans), or are" after "individuals who are", and substituted "or of cadets" for "or such individuals" before ", and".

Subsec. (c)(23). Pub. L. 97–248, §354(b), added par. (23).

Subsecs. (j), (k). Pub. L. 97–248, §286(a), added subsec. (j) and redesignated former subsec. (j) as (k).

1981—Subsec. (c)(21)(B)(iii). Pub. L. 97–119 substituted "established under section 9501" for "established under section 3 of the Black Lung Benefits Revenue Act of 1977".

1980—Subsec. (c)(12). Pub. L. 96–605 designated existing provision as subpar. (A), struck out provision that, in the case of any mutual or cooperative telephone company, the 85 per cent or more income requirement be applied without taking into account any income received or accrued from a nonmember telephone company for the performance of communication services which involve members of such mutual or cooperative telephone company, and added subpars. (B) to (D).

Subsec. (c)(21). Pub. L. 96–222 substituted "Federal Mine Safety and Health Act of 1977" for "Federal Coal Mine Health and Safety Act of 1969".

Subsec. (c)(22). Pub. L. 96–364 added par. (22).

Subsec. (i). Pub. L. 96–601 inserted provision that the restriction on religious discrimination not apply to an auxiliary of a fraternal beneficiary society if the society is described in subsec. (c)(8) of this section, is exempt from income tax under subsec. (a) of this section, and limits its membership to the members of a particular religion or to a club which in good faith limits its membership to the members of a particular religion in order to further the teachings or principles of that religion, and not to exclude individuals of a particular race or color.

1978—Subsec. (c)(12). Pub. L. 95–345 inserted provision relating to applicability of statutory provisions to mutual or cooperative telephone company of income received or accrued from a nonmember telephone company.

Subsec. (c)(20). Pub. L. 95–600, §703(b)(2), substituted "this paragraph" for "section 501(c)(20)".

Subsec. (c)(21). Pub. L. 95–227 added par. (21).

Subsecs. (g), (i). Pub. L. 95–600, §703(g)(2)(B), redesignated subsec. (g), which was added by section 2(a) of Pub. L. 94–568, as subsec. (i). Former subsec. (i), relating to cross reference, redesignated (j).

Subsecs. (i), (j). Pub. L. 95–600, §703(g)(2)(A), amended Pub. L. 95–600, §2(a). See 1976 Amendment

note below.

1976—Subsec. (c)(3). Pub. L. 94–455, §§1313(a), 1307(d)(1)(A), inserted "or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment)" after "educational purposes" and inserted "(except as otherwise provided in subsection (h))" after "influence legislation".

Subsec. (c)(7). Pub. L. 94–568, §1(a), struck out requirement that clubs be "operated exclusively" for specified purposes but required that substantially all of club activities be for specified purposes.

Subsec. (c)(17), (18). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (c)(20). Pub. L. 94–455, §2134(b), added par. (20).

Subsec. (e)(1)(A). Pub. L. 94–455, §1312(a), inserted "clinical" after "food".

Subsec. (g). Pub. L. 94–568, §2(a), added subsec. (g) relating to prohibition of discrimination by certain social clubs.

Pub. L. 94–455, §2113(a), added subsec. (g) defining agricultural. Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 94–455, §§1307(a)(1), 2113(a), added subsec. (h). Former subsec. (g), relating to cross reference, redesignated (h) and further redesignated (i).

Subsec. (i). Pub. L. 94–568, §2(a), as amended by Pub. L. 95–600, §703(g)(2)(A), added subsec. (i). Former subsec. (i) redesignated (j).

Pub. L. 94–455, §1307(a)(1), redesignated subsec. (h), relating to cross reference, as (i).

Subsec. (j). Pub. L. 94–568, §2(a), as amended by Pub. L. 95–600, §703(g)(2)(A), redesignated subsec. (i), relating to cross reference, as (j).

1975—Subsec. (b). Pub. L. 93–625 inserted references to part VI of this subchapter.

1974—Subsecs. (f), (g). Pub. L. 93–310 added subsec. (f) and redesignated former subsec. (f) as (g).

1972—Subsec. (c)(19). Pub. L. 92–418 added par. (19).

1970—Subsec. (c)(13). Pub. L., 91–618 substituted "corporation chartered solely for the purpose of disposal of bodies by burial or cremation which is not permitted" for "corporation chartered solely for burial purposes as a cemetery corporation and is not permitted".

1969—Subsec. (a). Pub. L. 91–172, §101(j)(3), struck out reference to section 504.

Subsec. (b). Pub. L. 91–172, §101(j)(4), inserted reference to certain other activities in heading and to part III in text, and struck out reference to tax on unrelated income.

Subsec. (c). Pub. L. 91–172, §§101(j)(5), 121(b)(6)(A), substituted "part IV" for "part III" after "Corporations organized by an association subject to" and added par. 18.

Subsec. (c)(9). Pub. L. 91–172, §121(b)(5)(A), inserted reference to designated beneficiaries and struck out reference to 85 percent or more income of voluntary employees' beneficiary associations.

Subsec. (c)(10). Pub. L. 91–172, §121(b)(5)(A), substituted provisions concerning domestic fraternal societies, orders, or associations, operating under the lodge system, for provisions covering voluntary employees' beneficiary associations which would pay benefits to designated beneficiaries of members.

Subsec. (e). Pub. L. 91–172, §101(j)(6), substituted "section 170(b)(1)(A)(iii)" for "section 503(b)(5)" in last sentence.

1968—Subsecs. (e), (f). Pub. L. 90–364 added subsec. (e) and redesignated former subsec. (e) as (f).

1966—Subsec. (c)(6). Pub. L. 89–800 inserted reference to professional football leagues (whether or not administering a pension fund for football players).

Subsec. (c)(14). Pub. L. 89–352 designated as subpar. (A) provisions covering credit unions which were formerly set out preceding subpar. (A), designated as subpar. (B) and clauses (i), (ii), and (iii) thereunder provisions covering corporation or associations without capital stock organized before Sept. 1, 1957, which formerly were set out as provisions preceding subpar. (A) and as subpars. (A), (B), and (C) respectively, and added subpar. (C).

1962—Subsec. (c)(15). Pub. L. 87–834 substituted "$150,000" for "$75,000".

1960—Subsec. (c)(14). Pub. L. 86–428 substituted "September 1, 1957" for "September 1, 1951".

Subsec. (c)(17). Pub. L. 86–667 added par. (17).

1956—Subsec. (c)(15). Act Mar. 13, 1956, substituted "the items described in section 822(b) (other than paragraph (1)(D) thereof)" for "interest, dividends, rents,".

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–148, title IX, §9007(f), Mar. 23, 2010, 124 Stat. 858, provided that:

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section [enacting section 4959 of this title and amending this section and section 6033 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Mar. 23, 2010].

"(2) COMMUNITY HEALTH NEEDS ASSESSMENT.—The requirements of section 501(r)(3) of the

Internal Revenue Code of 1986, as added by subsection (a), shall apply to taxable years beginning after the date which is 2 years after the date of the enactment of this Act.

"(3) EXCISE TAX.—The amendments made by subsection (b) [enacting section 4959 of this title] shall apply to failures occurring after the date of the enactment of this Act."

Pub. L. 111–148, title X, §10903(b), Mar. 23, 2010, 124 Stat. 1016, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Mar. 23, 2010]."

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title VIII, §862(b), Aug. 17, 2006, 120 Stat. 1021, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2006."

Pub. L. 109–280, title XII, §1220(c), Aug. 17, 2006, 120 Stat. 1089, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 513 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 17, 2006].

"(2) TRANSITION RULE FOR EXISTING ORGANIZATIONS.—In the case of any organization described in paragraph (3) or (4) of section 501(c) of the Internal Revenue Code of 1986 and with respect to which the provision of credit counseling services is a substantial purpose on the date of the enactment of this Act, the amendments made by this section shall apply to taxable years beginning after the date which is 1 year after the date of the enactment of this Act."

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–58, title XIII, §1304(c), Aug. 8, 2005, 119 Stat. 997, provided that: "The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Aug. 8, 2005]."

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title III, §319(e), Oct. 22, 2004, 118 Stat. 1473, provided that: "The amendments made by this section [amending this section and sections 512 and 1381 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 22, 2004]."

Pub. L. 108–218, title II, §206(e), Apr. 10, 2004, 118 Stat. 611, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 831 of this title] shall apply to taxable years beginning after December 31, 2003.

"(2) TRANSITION RULE FOR COMPANIES IN RECEIVERSHIP OR LIQUIDATION.—In the case of a company or association which—

"(A) for the taxable year which includes April 1, 2004, meets the requirements of section 501(c)(15)(A) of the Internal Revenue Code of 1986, as in effect for the last taxable year beginning before January 1, 2004, and

"(B) on April 1, 2004, is in a receivership, liquidation, or similar proceeding under the supervision of a State court,

the amendments made by this section shall apply to taxable years beginning after the earlier of the date such proceeding ends or December 31, 2007."

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–121, title I, §105(b), Nov. 11, 2003, 117 Stat. 1338, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Nov. 11, 2003]."

Pub. L. 108–121, title I, §108(b), Nov. 11, 2003, 117 Stat. 1341, provided that: "The amendments made by this section [amending this section] shall apply to designations made before, on, or after the date of the enactment of this Act [Nov. 11, 2003]."

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to years beginning after Dec. 31, 2001, see section 611(i)(1) of Pub. L. 107–16, set out as a note under section 415 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 101(c) of Pub. L. 105–34 applicable to taxable years beginning after Dec. 31, 1997, see section 101(e) of Pub. L. 105–34, set out as an Effective Date note under section 24 of this title.

Pub. L. 105–34, title IX, §963(c), Aug. 5, 1997, 111 Stat. 892, provided that: "The amendments made by

this section [amending this section] shall apply to taxable years beginning after December 31, 1997."

Pub. L. 105–34, title IX, §974(b), Aug. 5, 1997, 111 Stat. 898, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1996."

Pub. L. 105–33, title IV, §4041(b), Aug. 5, 1997, 111 Stat. 360, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–191, title III, §341(b), Aug. 21, 1996, 110 Stat. 2070, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1996."

Pub. L. 104–191, title III, §342(b), Aug. 21, 1996, 110 Stat. 2071, provided that: "The amendment made by this section [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Aug. 21, 1996]."

Pub. L. 104–188, title I, §1114(b), Aug. 20, 1996, 110 Stat. 1760, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 20, 1996]."

Pub. L. 104–168, title XIII, §1311(d)(3), July 30, 1996, 110 Stat. 1478, provided that:

"(A) IN GENERAL.—The amendment made by subsection (b) [amending this section] shall apply to inurement occurring on or after September 14, 1995.

"(B) BINDING CONTRACTS.—The amendment made by subsection (b) shall not apply to any inurement occurring before January 1, 1997, pursuant to a written contract which was binding on September 13, 1995, and at all times thereafter before such inurement occurred."

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13146(c), Aug. 10, 1993, 107 Stat. 443, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning on or after January 1, 1994."

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–486 applicable to taxable years beginning after Dec. 31, 1991, see section 1940(d) of Pub. L. 102–486, set out as a note under section 192 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–73, title XIV, §1402(b), Aug. 9, 1989, 103 Stat. 551, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Aug. 9, 1989]."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011(c)(7)(D) of Pub. L. 100–647 applicable to plan years beginning after Dec. 31, 1987, with exception in case of a plan described in section 1105(c)(2) of Pub. L. 99–514, see section 1011(c)(7)(E) of Pub. L. 100–647, set out as a note under section 401 of this title.

Pub. L. 100–647, title I, §1016(a)(1)(B), Nov. 10, 1988, 102 Stat. 3573, provided that: "The amendment made by subparagraph (A) [amending this section] shall apply with respect to property acquired by the organization after June 10, 1987, except that such amendment shall not apply to any property acquired after June 10, 1987, pursuant to a binding written contract in effect on June 10, 1987, and at all times thereafter before such acquisition."

Amendment by sections 1010(b)(4), 1016(a)(2)–(4), and 1018(u)(14), (15), (34) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title II, §2003(a)(3), Nov. 10, 1988, 102 Stat. 3598, provided that: "The amendments made by this subsection [amending this section] shall apply to taxable years ending after the date of the enactment of the Omnibus Budget Reconciliation Act of 1986 [Oct. 21, 1986]."

Pub. L. 100–647, title VI, §6202(b), Nov. 10, 1988, 102 Stat. 3730, provided that: "The amendment made by subsection (a) [amending this section] shall apply to purchases before, on, or after the date of the enactment of this Act [Nov. 10, 1988]."

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable with respect to activities after Dec. 22, 1987, see section 10711(c) of Pub. L. 100–203, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1012(a) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1012(c) of Pub. L. 99–514, set out as an Effective Date note under section 833 of this title.

Amendment by section 1024(b) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1024(e) of Pub. L. 99–514, set out as a note under section 831 of this title.

Amendment by section 1109(a) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1109(c) of Pub. L. 99–514, set out as a note under section 219 of this title.

Amendment by section 1114(b)(14) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1986, see section 1114(c)(1) of Pub. L. 99–514, set out as a note under section 414 of this title.

Pub. L. 99–514, title XVI, §1603(c), Oct. 22, 1986, 100 Stat. 2769, provided that: "The amendments made by this section [amending this section and section 514 of this title] shall apply to taxable years beginning after December 31, 1986."

Pub. L. 99–514, title XVIII, §1879(k)(2), Oct. 22, 1986, 100 Stat. 2909, provided that: "The amendments made by this subsection [amending this section] shall apply to taxable years ending after August 13, 1981."

Amendment by Pub. L. 99–272 effective Jan. 1, 1986, with certain exceptions, see section 11019 of Pub. L. 99–272, set out as a note under section 1341 of Title 29, Labor.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 1032 of Pub. L. 98–369 applicable to taxable years beginning after July 18, 1984, see section 1032(c) of Pub. L. 98–369, set out as a note under section 170 of this title.

Amendment by section 2813(b) of Pub. L. 98–369 effective Oct. 1, 1979, see section 2813(c) of Pub. L. 98–369, set out as an Effective Date note under section 1795k of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective as if included in the provisions of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 311(d) of Pub. L. 97–448, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title II, §286(c), Sept. 3, 1982, 96 Stat. 570, provided that: "The amendments made by this section [amending this section and sections 170, 2055, and 2522 of this title] shall take effect on October 5, 1976."

Pub. L. 97–248, title III, §354(c), Sept. 3, 1982, 96 Stat. 641, provided that: "The amendments made by subsections (a) and (b) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Sept. 3, 1982]."

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–119 effective Jan. 1, 1982, see section 103(d)(1) of Pub. L. 97–119, set out as an Effective Date note under section 9501 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–605, title I, §106(c)(1), Dec. 28, 1980, 94 Stat. 3524, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by subsection (a) [amending this section] shall apply to all taxable years to which the Internal Revenue Code of 1986 [formerly I.R.C. 1954] applies."

Pub. L. 96–601, §3(b), Dec. 24, 1980, 94 Stat. 3496, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after October 20, 1976."

Amendment by Pub. L. 96–364 applicable to taxable years ending after Sept. 26, 1980, see section 210(c) of Pub. L. 96–364, set out as an Effective Date note under section 418 of this title.

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as an Effective Date of 1980 Amendment note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 703(b)(2), (g)(2)(B) of Pub. L. 95–600 effective on Oct. 4, 1976, see section 703(r) of Pub. L. 95–600, set out as a note under section 46 of this title.

Pub. L. 95–600, title VII, §703(g)(2)(C), Nov. 6, 1978, 92 Stat. 2940, provided that: "The amendments made by this paragraph [amending this section] shall take effect on October 20, 1976, as if included in Public Law 94–568."

Pub. L. 95–345, §1(b), Aug. 15, 1978, 92 Stat. 481, provided that: "The amendment made by subsection (a)

[amending this section] shall apply to taxable years beginning after December 31, 1974."

Amendment by Pub. L. 95–227 applicable with respect to contributions, acts, and expenditures made after Dec. 31, 1977, in and for taxable years beginning after such date, see section 4(f) of Pub. L. 95–227, set out as a note under section 192 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–568, §1(d), Oct. 20, 1976, 90 Stat. 2697, provided that: "The amendments made by this section [amending this section and sections 277 and 512 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 20, 1976]."

Pub. L. 94–568, §2(b), Oct. 20, 1976, 90 Stat. 2697, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 20, 1976]."

Pub. L. 94–455, title XIII, §1307(e), Oct. 4, 1976, 90 Stat. 1728, provided that: "The amendments made by this section [amending this section and sections 170, 275, 2055, 2106, 2522, 6104, 6161, 6201, 6211, 6212, 6213, 6214, 6344, 6501, 6512, 6601, and 7422 of this title and enacting sections 504 and 4911 of this title] shall apply—

"(1) except as otherwise specified in paragraph (2), in the case of amendments to subtitle A, to taxable years beginning after December 31, 1976;

"(2) in the case of the amendments made by subsection (a)(2) [enacting section 504 of this title], to activities occurring after the date of the enactment of this Act [Oct. 4, 1976];

"(3) in the case of amendments to chapter 11, to the estates of decedents dying after December 31, 1976;

"(4) in the case of amendments to chapter 12, to gifts in calendar years beginning after December 31, 1976;

"(5) in the case of amendments to subtitle D, to taxable years beginning after December 31, 1976; and

"(6) in the case of amendments to subtitle F, on and after the date of the enactment of this Act [Oct. 4, 1976]."

Pub. L. 94–455, title XIII, §1312(b), Oct. 4, 1976, 90 Stat. 1730, provided that: "The amendment made by this section [amending this section] shall apply to taxable years ending after December 31, 1976."

Pub. L. 94–455, title XIII, §1313(d), Oct. 4, 1976, 90 Stat. 1730, provided that: "The amendments made by this section [amending this section and sections 170, 2055, and 2522 of this title] shall apply on the day following the date of the enactment of this Act [Oct. 4, 1976]."

Pub. L. 94–455, title XXI, §2113(b), Oct. 4, 1976, 90 Stat. 1907, provided that: "The amendment made by this section [amending this section] applies to taxable years ending after December 31, 1975."

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–625 applicable to taxable years beginning after Dec. 31, 1974, see section 10(e) of Pub. L. 93–625, set out as an Effective Date note under section 527 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Pub. L. 93–310, §3(b), June 8, 1974, 88 Stat. 235, provided that: "The amendments made by this section [amending this section] shall apply to taxable years ending after December 31, 1973."

EFFECTIVE DATE OF 1972 AMENDMENT

Pub. L. 92–418, §1(c), Aug. 29, 1972, 86 Stat. 656, provided that: "The amendments made by this section [amending this section and section 512 of this title] shall apply to taxable years beginning after December 31, 1969."

EFFECTIVE DATE OF 1970 AMENDMENT

Pub L. 91–618, §2, Dec. 31, 1970, 84 Stat. 1855, provided that: "The amendment made by the first section of this Act [amending this section] shall apply to taxable years ending after the date of enactment of this Act [Dec. 31, 1970]."

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 101(j)(3) of Pub. L. 91–172 effective Jan. 1, 1970, except that amendment of subsec. (a) of this section applicable to taxable years beginning after Dec. 31, 1969, see section 101(k)(1), (2)(B) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

Amendment by section 121(b)(5)(A), (6)(A) of Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 121(g) of Pub. L. 91–172, set out as a note under section 511 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Pub. L. 90–364, title I, §109(b), June 28, 1968, 82 Stat. 270, provided that: "The amendments made by subsection (a) [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [June 28, 1968]."

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89–800, §6(c), Nov. 8, 1966, 80 Stat. 1516, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Nov. 8, 1966]."

Pub. 89–352, §3, Feb. 2, 1966, 80 Stat. 4, provided in part that: "The amendment made by the first section of this Act [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Feb. 2, 1966]."

EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87–834, §8(h), Oct. 16, 1962, 76 Stat. 999, provided that: "The amendments made by this section [enacting sections 823 to 826 of this title, amending this section and sections 821, 822, 832, 841, 1016, and 1201 of this title, and redesignating former section 823 as section 822(f) of this title] (other than by subsection (f) [amending section 831 of this title]) shall apply with respect to taxable years beginning after December 31, 1962."

EFFECTIVE DATE OF 1960 AMENDMENT

Pub. L. 86–667, §6, July 14, 1960, 74 Stat. 536, provided that:

"(a) Except as provided in subsection (b), the amendments made by this Act [amending this section and sections 503, 511, 513, and 514 of this title] shall apply to taxable years beginning after December 31, 1959.

"(b) In the case of loans, the amendments made by section 2 of this Act [amending section 503 of this title] shall apply only to loans made, renewed, or continued after December 31, 1959."

Pub. L. 86–428, §2, Apr. 22, 1960, 74 Stat. 54, provided that: "The amendment made by this Act [amending this section] shall apply only with respect to taxable years beginning after December 31, 1959."

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Mar. 13, 1956, applicable only to taxable years beginning after Dec. 31, 1954, see section 6 of act Mar. 13, 1956, set out as a note under section 316 of this title.

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1114 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

MANDATORY REVIEW OF TAX EXEMPTION FOR HOSPITALS

Pub. L. 111–148, title IX, §9007(c), Mar. 23, 2010, 124 Stat. 857, provided that: "The Secretary of the Treasury or the Secretary's delegate shall review at least once every 3 years the community benefit activities of each hospital organization to which section 501(r) of the Internal Revenue Code of 1986 (as added by this section) applies."

REPORTS

Pub. L. 111–148, title IX, §9007(e), Mar. 23, 2010, 124 Stat. 858, provided that:

"(1) REPORT ON LEVELS OF CHARITY CARE.—The Secretary of the Treasury, in consultation with the Secretary of Health and Human Services, shall submit to the Committees on Ways and Means, Education and Labor [now Education and the Workforce], and Energy and Commerce of the House of Representatives and to the Committees on Finance and Health, Education, Labor, and Pensions of the Senate an annual report on the following:

"(A) Information with respect to private tax-exempt, taxable, and government-owned hospitals regarding—

"(i) levels of charity care provided,

"(ii) bad debt expenses,

"(iii) unreimbursed costs for services provided with respect to means-tested government programs, and

"(iv) unreimbursed costs for services provided with respect to non-means tested government programs.

"(B) Information with respect to private tax-exempt hospitals regarding costs incurred for community benefit activities.

"(2) REPORT ON TRENDS.—

"(A) STUDY.—The Secretary of the Treasury, in consultation with the Secretary of Health and Human Services, shall conduct a study on trends in the information required to be reported under paragraph (1).

"(B) REPORT.—Not later than 5 years after the date of the enactment of this Act [Mar. 23, 2010], the Secretary of the Treasury, in consultation with the Secretary of Health and Human Services, shall submit a report on the study conducted under subparagraph (A) to the Committees on Ways and Means, Education and Labor [now Education and the Workforce], and Energy and Commerce of the House of Representatives and to the Committees on Finance and Health, Education, Labor, and Pensions of the Senate."

PAYMENTS BY CHARITABLE ORGANIZATIONS TREATED AS EXEMPT PAYMENTS

Pub. L. 107–134, title I, §104, Jan. 23, 2002, 115 Stat. 2431, provided that:

"(a) IN GENERAL.—For purposes of the Internal Revenue Code of 1986—

"(1) payments made by an organization described in section 501(c)(3) of such Code by reason of the death, injury, wounding, or illness of an individual incurred as the result of the terrorist attacks against the United States on September 11, 2001, or an attack involving anthrax occurring on or after September 11, 2001, and before January 1, 2002, shall be treated as related to the purpose or function constituting the basis for such organization's exemption under section 501 of such Code if such payments are made in good faith using a reasonable and objective formula which is consistently applied; and

"(2) in the case of a private foundation (as defined in section 509 of such Code), any payment described in paragraph (1) shall not be treated as made to a disqualified person for purposes of section 4941 of such Code.

"(b) EFFECTIVE DATE.—This section shall apply to payments made on or after September 11, 2001."

SPECIAL RULE FOR CERTAIN COOPERATIVES

Pub. L. 104–168, title XIII, §1311(b)(2), July 30, 1996, 110 Stat. 1478, provided that: "In the case of an organization operating on a cooperative basis which, before the date of the enactment of this Act [July 30, 1996], was determined by the Secretary of the Treasury or his delegate, to be described in section 501(c)(4) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code, the allocation or return of net margins or capital to the members of such organization in accordance with its incorporating statute and bylaws shall not be treated for purposes of such Code as the inurement of the net earnings of such organization to the benefit of any private shareholder or individual. The preceding sentence shall apply only if such statute and bylaws are substantially as such statute and bylaws were in existence on the date of the enactment of this Act."

APPLICATION OF PUB. L. 100–647 TO SECTION 501(C)(3) BONDS

Pub. L. 100–647, title I, §1013(i), Nov. 10, 1988, 102 Stat. 3559, provided that: "In accordance with section 1302 of the Reform Act [Pub. L. 99–514, set out as a note below], each amendment and other provision of this Act [see Tables for classification] which applies to private activity bonds shall, unless otherwise expressly provided, apply to qualified 501(c)(3) bonds."

CANCELLATION OF CERTAIN DEBTS ORIGINATED BY OR GUARANTEED BY UNITED STATES NOT TAKEN INTO ACCOUNT IN DETERMINING TAX EXEMPT STATUS OF CERTAIN ORGANIZATIONS

Pub. L. 100–647, title VI, §6203, Nov. 10, 1988, 102 Stat. 3730, provided that: "Subparagraph (A) of section 501(c)(12) of the 1986 Code shall be applied without taking into account any income attributable to the cancellation of any loan originally made or guaranteed by the United States (or any agency or instrumentality thereof) if such cancellation occurs after 1986 and before 1990."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TREATMENT OF SECTION 501(C)(3) BONDS

Pub. L. 99–514, title XIII, §1302, Oct. 22, 1986, 100 Stat. 2658, provided that: "Nothing in the treatment of

section 501(c)(3) bonds as private activity bonds under the amendments made by this title [enacting sections 141 to 150 and 7703 of this title, amending sections 2, 22, 25, 32, 86, 103, 105, 152, 153, 163, 172, 194, 269A, 414, 879, 1016, 1398, 3402, 4701, 4940, 4942, 4988, 6362, 6652, and 7871 of this title, repealing sections 103A, 1391 to 1397, and 6039B of this title, enacting provisions set out as notes under sections 141 and 148 of this title, and amending provisions set out as a note under section 103A of this title] shall be construed as indicating how section 501(c)(3) bonds will be treated in future legislation, and any change in future legislation applicable to private activity bonds shall apply to section 501(c)(3) bonds only if expressly provided in such legislation."

TAX-EXEMPT STATUS FOR ORGANIZATION INTRODUCING INTO PUBLIC USE TECHNOLOGY DEVELOPED BY QUALIFIED ORGANIZATIONS

Pub. L. 99–514, title XVI, §1605, Oct. 22, 1986, 100 Stat. 2769, provided that:

"(a) IN GENERAL.—For purposes of the Internal Revenue Code of 1986, an organization shall be treated as an organization organized and operated exclusively for charitable purposes if such organization—

"(1) is organized and operated exclusively—

"(A) to provide for (directly or by arranging for and supervising the performance by independent contractors)—

"(i) reviewing technology disclosures from qualified organizations,

"(ii) obtaining protection for such technology through patents, copyrights, or other means, and

"(iii) licensing, sale, or other exploitation of such technology,

"(B) to distribute the income therefrom, to such qualified organizations after paying expenses and other amounts as agreed with the originating qualified organizations, and

"(C) to make research grants to such qualified organizations,

"(2) regularly provides the services and research grants described in paragraph (1) exclusively to 1 or more qualified organizations, except that research grants may be made to such qualified organizations through an organization which is controlled by 1 or more organizations each of which—

"(A) is an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 or the income of which is excluded from taxation under section 115 of such Code, and

"(B) may be a recipient of the services or research grants described in paragraph (1),

"(3) derives at least 80 percent of its gross revenues from providing services to qualified organizations located in the same State as the State in which such organization has its principal office, and

"(4) was incorporated on July 20, 1981.

"(b) QUALIFIED ORGANIZATIONS.—For purposes of this section, the term 'qualified organization' has the same meaning given to such term by subparagraphs (A) and (B) of section 41(e)(6) (as redesignated by section 231(d)(2)) of the Internal Revenue Code of 1986.

"(c) TREATMENT OF INVESTMENT IN A TECHNOLOGY TRANSFER SERVICE ORGANIZATION.—

"(1) IN GENERAL.—A qualified investment made by a private foundation in an organization described in subparagraph (C) shall be treated as an investment described in section 4944(c) of the Internal Revenue Code of 1986 and shall not result in imposition of taxes under section 4941, 4943, 4944, 4945, or 507(c) of such Code.

"(2) DEFINITIONS.—For purposes of this subsection—

"(A) QUALIFIED INVESTMENT.—The term 'qualified investment' means a transfer by a private foundation of—

"(i) all of the patents, copyrights, know-how, and other technology or rights thereto of the private foundation, and

"(ii) investment assets, net receivables, and cash not exceeding $35,000,000,

to such organization in exchange for debt.

"(B) PRIVATE FOUNDATION.—The term 'private foundation' means—

"(i) a nonprofit corporation which was incorporated before 1913 which is described in sections 501(c)(3) and 509(a) of such Code, and which is exempt from taxation under section 501(a) of such Code, and

"(ii) the principal purposes of which are to support research by and to provide technology transfer services to organizations described in section 170(b)(1)(A) of such Code—

"(I) which are exempt from taxation under section 501(a) of such Code, or

"(II) the income of which is excluded from taxation under section 115 of such Code.

"(C) TECHNOLOGY TRANSFER ORGANIZATION.—The term 'technology transfer

organization' means a corporation established after the date of the enactment of this Act [Oct. 22, 1986]—

"(i) which is organized and operated to advance the public welfare through the provision of technology transfer services to research organizations,

"(ii) no part of the net earnings of which inures to the benefit of, or is distributable to, any private shareholder, individual, or entity, other than a private foundation or research organization,

"(iii) which does not participate in, or intervene in (including the publishing or distributing of statements) any political campaign on behalf of any candidate for public office,

"(iv) no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and

"(v) upon liquidation or dissolution of which all of its net assets can be distributed only to research organizations.

"(d) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this Act [Oct. 22, 1986]."

APPLICABILITY OF 1976 AMENDMENT TO CERTAIN ORGANIZATIONS

Pub. L. 94–455, title XIII, §1313(c), Oct. 4, 1976, 90 Stat. 1730, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "An organization which (without regard to the amendments made by this section [amending this section and sections 170, 2055, and 2522 of this title]) is an organization described in section 170(c)(2)(B), 501(c)(3), 2055(a)(2), or 2522(a)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall not be treated as an organization not so described as a result of the amendments made by this section."

TAX EXEMPTION FOR CERTAIN PUERTO RICAN PENSION, ETC., PLANS

Pub. L. 93–406, title II, §1022(i), Sept. 2, 1974, 88 Stat. 942, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) GENERAL RULE.—Effective for taxable years beginning after December 31, 1973, for purposes of section 501(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to exemption from tax), any trust forming part of a pension, profit-sharing, or stock bonus plan all of the participants of which are residents of the Commonwealth of Puerto Rico shall be treated as an organization described in section 401(a) of such Code if such trust—

"(A) forms part of a pension, profit-sharing, or stock bonus plan, and

"(B) is exempt from income tax under the laws of the Commonwealth of Puerto Rico.

"(2) ELECTION TO HAVE PROVISIONS OF, AND AMENDMENTS MADE BY, TITLE II OF THIS ACT APPLY.—

"(A) If the administrator of a pension, profit-sharing, or stock bonus plan which is created or organized in Puerto Rico elects, at such time and in such manner as the Secretary of the Treasury may require, to have the provisions of this paragraph apply, for plan years beginning after the date of election any trust forming a part of such plan shall be treated as a trust created or organized in the United States for purposes of section 401(a) of the Internal Revenue Code of 1986.

"(B) An election under subparagraph (A), once made, is irrevocable.

"(C) This paragraph applies to plan years beginning after the date of enactment of this Act [Sept. 2, 1974]

"(D) The source of any distributions made under a plan which makes an election under this paragraph to participants and beneficiaries residing outside of the United States shall be determined, for purposes of subchapter N of chapter 1 of the Internal Revenue Code of 1986 by the Secretary of the Treasury in accordance with regulations prescribed by him. For purposes of this subparagraph the United States means the United States as defined in section 7701(a)(9) of the Internal Revenue Code of 1986."

EXCHANGES FOR SALE OF POULTRY

Pub. L. 89–44, title VIII, §811, June 21, 1965, 79 Stat. 169, provided that certain corporations, associations, or organizations organized and operated exclusively for the purpose of providing an exchange for the sale of poultry growers of a particular locality shall be treated for purposes of this title as an exempt organization and that such exemption shall apply to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, which begin before Jan. 1, 1966.

[1] *See References in Text note below.*

[2] *So in original. Probably should be followed by a period.*

[3] *So in original.*

[4] *So in original. Probably should be capitalized.*

§502. Feeder organizations

(a) General rule

An organization operated for the primary purpose of carrying on a trade or business for profit shall not be exempt from taxation under section 501 on the ground that all of its profits are payable to one or more organizations exempt from taxation under section 501.

(b) Special rule

For purposes of this section, the term "trade or business" shall not include—

(1) the deriving of rents which would be excluded under section 512(b)(3), if section 512 applied to the organization,

(2) any trade or business in which substantially all the work in carrying on such trade or business is performed for the organization without compensation, or

(3) any trade or business which is the selling of merchandise, substantially all of which has been received by the organization as gifts or contributions.

(Aug. 16, 1954, ch. 736, 68A Stat. 166; Pub. L. 91–172, title I, §121(b)(7), Dec. 30, 1969, 83 Stat. 542.)

AMENDMENTS

1969—Pub. L. 91–172 redesignated first sentence of existing provisions as subsec. (a), and substantial portion of second sentence as subsec. (b)(1), and, in subsec. (b)(1) as so redesignated, inserted reference to section 512 of this title, and added pars. (2) and (3).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 121(g) of Pub. L. 91–172, set out as a note under section 511 of this title.

§503. Requirements for exemption

(a) Denial of exemption to organizations engaged in prohibited transactions

(1) General rule

(A) An organization described in section 501(c)(17) shall not be exempt from taxation under section 501(a) if it has engaged in a prohibited transaction after December 31, 1959.

(B) An organization described in section 401(a) which is referred to in section 4975(g) (2) or (3) shall not be exempt from taxation under section 501(a) if it has engaged in a prohibited transaction after March 1, 1954.

(C) An organization described in section 501(c)(18) shall not be exempt from taxation under section 501(a) if it has engaged in a prohibited transaction after December 31, 1969.

(2) Taxable years affected

An organization described in section 501(c) (17) or (18) or paragraph (1)(B) shall be denied exemption from taxation under section 501(a) by reason of paragraph (1) only for taxable years after the taxable year during which it is notified by the Secretary that it has engaged in a prohibited transaction, unless such organization entered into such prohibited transaction with the purpose of diverting corpus or income of the organization from its exempt purposes, and such transaction involved a substantial part of the corpus or income of such organization.

(b) Prohibited transactions

For purposes of this section, the term "prohibited transaction" means any transaction in which an organization subject to the provisions of this section—

(1) lends any part of its income or corpus, without the receipt of adequate security and a reasonable rate of interest, to;

(2) pays any compensation, in excess of a reasonable allowance for salaries or other compensation for personal services actually rendered, to;

(3) makes any part of its services available on a preferential basis to;

(4) makes any substantial purchase of securities or any other property, for more than adequate consideration in money or money's worth, from;

(5) sells any substantial part of its securities or other property, for less than an adequate consideration in money or money's worth, to; or

(6) engages in any other transaction which results in a substantial diversion of its income or corpus to;

the creator of such organization (if a trust); a person who has made a substantial contribution to such organization; a member of the family (as defined in section 267(c)(4)) of an individual who is the creator of such trust or who has made a substantial contribution to such organization; or a corporation controlled by such creator or person through the ownership, directly or indirectly, of 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock of the corporation.

(c) Future status of organizations denied exemption

Any organization described in section 501(c) (17) or (18) or subsection (a)(1)(B) which is denied exemption under section 501(a) by reason of subsection (a) of this section, with respect to any taxable year following the taxable year in which notice of denial of exemption was received, may, under regulations prescribed by the Secretary, file claim for exemption, and if the Secretary, pursuant to such regulations, is satisfied that such organization will not knowingly again engage in a prohibited transaction, such organization shall be exempt with respect to taxable years after the year in which such claim is filed.

[(d) Repealed. Pub. L. 101–508, title XI, §11801(a)(22), Nov. 5, 1990, 104 Stat. 1388–521]

(e) Special rules

For purposes of subsection (b)(1), a bond, debenture, note, or certificate or other evidence of indebtedness (hereinafter in this subsection referred to as "obligation") shall not be treated as a loan made without the receipt of adequate security if—

(1) such obligation is acquired—

(A) on the market, either (i) at the price of the obligation prevailing on a national securities exchange which is registered with the Securities and Exchange Commission, or (ii) if the obligation is not traded on such a national securities exchange, at a price not less favorable to the trust than the offering price for the obligation as established by current bid and asked prices quoted by persons independent of the issuer;

(B) from an underwriter, at a price (i) not in excess of the public offering price for the obligation as set forth in a prospectus or offering circular filed with the Securities and Exchange Commission, and (ii) at which a substantial portion of the same issue is acquired by persons independent of the issuer; or

(C) directly from the issuer, at a price not less favorable to the trust than the price paid currently for a substantial portion of the same issue by persons independent of the issuer;

(2) immediately following acquisition of such obligation—

(A) not more than 25 percent of the aggregate amount of obligations issued in such issue and outstanding at the time of acquisition is held by the trust, and

(B) at least 50 percent of the aggregate amount referred to in subparagraph (A) is held by

persons independent of the issuer; and

(3) immediately following acquisition of the obligation, not more than 25 percent of the assets of the trust is invested in obligations of persons described in subsection (b).

(f) Loans with respect to which employers are prohibited from pledging certain assets

Subsection (b)(1) shall not apply to a loan made by a trust described in section 401(a) to the employer (or to a renewal of such a loan or, if the loan is repayable upon demand, to a continuation of such a loan) if the loan bears a reasonable rate of interest, and if (in the case of a making or renewal)—

(1) the employer is prohibited (at the time of such making or renewal) by any law of the United States or regulation thereunder from directly or indirectly pledging, as security for such a loan, a particular class or classes of his assets the value of which (at such time) represents more than one-half of the value of all his assets;

(2) the making or renewal, as the case may be, is approved in writing as an investment which is consistent with the exempt purposes of the trust by a trustee who is independent of the employer, and no other such trustee had previously refused to give such written approval; and

(3) immediately following the making or renewal, as the case may be, the aggregate amount loaned by the trust to the employer, without the receipt of adequate security, does not exceed 25 percent of the value of all the assets of the trust.

For purposes of paragraph (2), the term "trustee" means, with respect to any trust for which there is more than one trustee who is independent of the employer, a majority of such independent trustees. For purposes of paragraph (3), the determination as to whether any amount loaned by the trust to the employer is loaned without the receipt of adequate security shall be made without regard to subsection (e).

(Aug. 16, 1954, ch. 736, 68A Stat. 166; Pub. L. 85–866, title I, §30(a), (b), Sept. 2, 1958, 72 Stat. 1629, 1630; Pub. L. 86–667, §2, July 14, 1960, 74 Stat. 535; Pub. L. 87–792, §6, Oct. 10, 1962, 76 Stat. 827; Pub. L. 91–172, title I, §§101(j)(7)–(14), 121(b)(6)(B), Dec. 30, 1969, 83 Stat. 527, 542; Pub. L. 93–406, title II, §2003(b), Sept. 2, 1974, 88 Stat. 978; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 101–508, title XI, §11801(a)(22), Nov. 5, 1990, 104 Stat. 1388–521.)

AMENDMENTS

1990—Subsec. (d). Pub. L. 101–508 struck out subsec. (d) "Special rule for loans" which read as follows: "For purposes of the application of subsection (b)(1), in the case of a loan by a trust described in section 401(a), the following rules shall apply with respect to a loan made before March 1, 1954, which would constitute a prohibited transaction if made on or after March 1, 1954:

"(1) If any part of the loan is repayable prior to December 31, 1955, the renewal of such part of the loan for a period not extending beyond December 31, 1955, on the same terms, shall not be considered a prohibited transaction.

"(2) If the loan is repayable on demand, the continuation of the loan without the receipt of adequate security and a reasonable rate of interest beyond December 31, 1955, shall be considered a prohibited transaction."

1976—Subsecs. (a)(2), (c). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

1974—Subsec. (a)(1)(A). Pub. L. 93–406, §2003(b)(1), substituted "section 501(c)(17)" for "section 501(c)(17) or (18)".

Subsec. (a)(1)(B). Pub. L. 93–406, §2003(b)(2), inserted "which is referred to in section 4975(g)(2) or (3)".

Subsec. (a)(2). Pub. L. 93–406, §2003(b)(3), substituted "or paragraph (1)(B)" for "or section 401".

Subsec. (c). Pub. L. 93–406, §2003(b)(4), substituted "or subsection (a)(1)(B)" for "or section 401".

Subsec. (g). Pub. L. 93–406, §2003(b)(5), struck out subsec. (g) which covered trusts benefiting certain owner-employees.

1969—Subsec. (a)(1)(A). Pub. L. 91–172, §§101(j)(7), 121(b)(6)(B)(ii), redesignated subpar. (B) as (A) and inserted reference to section 501(c)(18). Former subpar. (A), referring to organizations described in section 501(c)(3) and to prohibited transactions engaged in after July 1, 1950, was struck out.

Subsec. (a)(1)(B). Pub. L. 91–172, §101(j)(7), redesignated subpar. (C) as (B). Former subpar. (B), referring to organizations described in section 501(c)(17) was amended by addition of a reference to section 501(c)(18), and redesignated as subpar. (A).

Subsec. (a)(1)(C). Pub. L. 91–172, §§101(j)(7), 121(b)(6)(B)(i), added subpar. (C). Former subpar. (C), dealing with organizations described in section 401(a) and with prohibited transactions engaged in after Mar. 1, 1954, was redesignated as subpar. (B).

Subsec. (a)(2). Pub. L. 91–172, §§101(j)(8), 121(b)(6)(B)(ii), struck out reference to organizations described in section 501(c)(3), and inserted references to organizations described in section 501(c)(18).

Subsec. (b). Pub. L. 91–172, §101(j)(14), redesignated subsec. (c) as (b). Former subsec. (b), setting out the organizations to which section applied, was struck out.

Subsec. (c). Pub. L. 91–172, §§101(j)(9), (14), 121(b)(6)(B)(ii), redesignated subsec. (d) as (c), struck out reference to organizations described in section 501(c)(3), and inserted reference to organizations described in section 501(c)(17). Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 91–172, §101(j)(10), (14), redesignated subsec. (g) as (d) and substituted "subsection (b)(1)" for "subsection (c)(1)." Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 91–172, §101(j)(11), (14), redesignated subsec. (h) as (e), modified heading to read: "Special rules", substituted "subsection (b)(1)" for "subsection (c)(1)" in text preceding par. (1) and in par. (3), and in text preceding par. (1) struck out "acquired by a trust described in section 401(a) or section 501(c)(17)". Former subsec. (e), covering the disallowance of certain charitable deductions, was struck out.

Subsec. (f). Pub. L. 91–172, §101(j)(12), (14), redesignated subsec. (i) as (f) and substituted "Subsection (b)(1)" for "Subsection (c)(1)" and "subsection (e)" for "subsection (h)". Former subsec. (f), defining "gift or bequest", was struck out.

Subsec. (g). Pub. L. 91–172, §101(j)(13), (14), redesignated subsec. (j) as (g) and substituted "subsection (b)" for "subsection (c)" in par. (1). Former subsec. (g) redesignated (d).

Subsecs. (h) to (j). Pub. L. 91–172, §101(j)(14), redesignated subsecs. (h), (i), and (j) as (e), (f), and (g), respectively. Former subsecs. (e) and (f) were struck out and former subsec. (g) was redesignated (d).

1962—Subsec. (j). Pub. L. 87–792 added subsec. (j).

1960—Subsec. (a)(1). Pub. L. 86–667, §2(a)(1), denied exemption to an organization described in section 501(c)(17) if it has engaged in a prohibited transaction after Dec. 31, 1959.

Subsecs. (a)(2), (b), (d). Pub. L. 86–667, §2(a)(2), (b), (c), included organizations described in section 501(c)(17).

Subsec. (h). Pub. L. 86–667, §2(d), included trusts described in section 501(c)(17).

1958—Subsec. (h). Pub. L. 85–866, §30(a), added subsec. (h).

Subsec. (i). Pub. L. 85–866, §30(b), added subsec. (i).

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–406 effective Jan. 1, 1975, but with provision for an election to be exercised by an organization so as to constitute a savings clause with reference to the amendment, see section 2003(c) of Pub. L. 93–406, set out as an Effective Date; Savings Provisions note under section 4975 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 101(j)(7)–(14) of Pub. L. 91–172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

Amendment by section 121(b)(6)(B) of Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 121(g) of Pub. L. 91–172, set out as a note under section 511 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87–792, set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–667 applicable to taxable years beginning after Dec. 31, 1959, and in the case of loans, the amendments to this section made by Pub. L. 86–667 are applicable only to loans made, renewed, or continued after Dec. 31, 1959, see section 6 of Pub. L. 86–667, set out as a note under section 501 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85–866, title I, §30(c), Sept. 2, 1958, 72 Stat. 1631, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a)

[amending this section] shall apply with respect to taxable years ending after March 15, 1956. The amendment made by subsection (b) [amending this section] shall apply with respect to taxable years ending after the date of the enactment of this Act [Sept. 2, 1958], but only with respect to periods after such date.

"(2) EXCEPTIONS.—Nothing in subsection (a) [amending this section] shall be construed to make any transaction a prohibited transaction which, under announcements of the Internal Revenue Service made with respect to section 503(c)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] before the date of the enactment of this Act [Sept. 2, 1958], would not constitute a prohibited transaction. In the case of any bond, debenture, note, or certificate or other evidence of indebtedness acquired before the date of the enactment of this Act [Sept. 2, 1958], by a trust described in section 401(a) of such Code which is held on such date, paragraphs (2) and (3) of section 503(h) of such Code shall be treated as satisfied if such requirements would have been satisfied if such obligation had been acquired on such date of enactment [Sept. 2, 1958]."

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

§504. Status after organization ceases to qualify for exemption under section 501(c)(3) because of substantial lobbying or because of political activities

(a) General rule

An organization which—

(1) was exempt (or was determined by the Secretary to be exempt) from taxation under section 501(a) by reason of being an organization described in section 501(c)(3), and

(2) is not an organization described in section 501(c)(3)—

(A) by reason of carrying on propaganda, or otherwise attempting, to influence legislation, or

(B) by reason of participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for public office,

shall not at any time thereafter be treated as an organization described in section 501(c)(4).

(b) Regulations to prevent avoidance

The Secretary shall prescribe such regulations as may be necessary or appropriate to prevent the avoidance of subsection (a), including regulations relating to a direct or indirect transfer of all or part of the assets of an organization to an organization controlled (directly or indirectly) by the same person or persons who control the transferor organization.

(c) Churches, etc.

Subsection (a) shall not apply to any organization which is a disqualified organization within the meaning of section 501(h)(5) (relating to churches, etc.) for the taxable year immediately preceding the first taxable year for which such organization is described in paragraph (2) of subsection (a).

(Added Pub. L. 94–455, title XIII, §1307(a)(2), Oct. 4, 1976, 90 Stat. 1721; amended Pub. L. 100–203, title X, §10711(b)(1), (2)(A), Dec. 22, 1987, 101 Stat. 1330–464.)

PRIOR PROVISIONS

A prior section 504, acts Aug. 16, 1954, ch. 736, 68A Stat. 168; Oct. 22, 1968, Pub. L. 90–630, §6(a), 82 Stat. 1330, related to denial of exemption, prior to repeal by Pub. L. 91–172, title I, §101(j)(15), Dec. 30, 1969, 83 Stat. 527. For effective date of repeal, see section 101(k)(2)(B) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

AMENDMENTS

1987—Pub. L. 100–203, §10711(b)(2)(A), substituted "substantial lobbying or because of political activities" for "substantial lobbying" in section catchline.

Subsec. (a)(2). Pub. L. 100–203, §10711(b)(1), amended par. (2) generally. Prior to amendment, par. (2)

read as follows: "is not an organization described in section 501(c)(3) by reason of carrying on propaganda, or otherwise attempting, to influence legislation,".

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable with respect to activities after Dec. 22, 1987, see section 10711(c) of Pub. L. 100–203, set out as a note under section 170 of this title.

CONSTRUCTION OF AMENDMENT

Pub. L. 94–455, title XIII, §1307(a)(3), Oct. 4, 1976, 90 Stat. 1722, provided that: "It is the intent of Congress that enactment of this section [amending section 501 and enacting section 504 of this title] is not to be regarded in any way as an approval or disapproval of the decision of the Court of Appeals for the Tenth Circuit in Christian Echoes National Ministry, Inc. versus United States, 470 F.2d 849 (1972), or of the reasoning in any of the opinions leading to that decision."

§505. Additional requirements for organizations described in paragraph (9), (17), or (20) of section 501(c)

(a) Certain requirements must be met in the case of organizations described in paragraph (9) or (20) of section 501(c)

(1) Voluntary employees' beneficiary associations, etc.

An organization described in paragraph (9) or (20) of subsection (c) of section 501 which is part of a plan shall not be exempt from tax under section 501(a) unless such plan meets the requirements of subsection (b) of this section.

(2) Exception for collective bargaining agreements

Paragraph (1) shall not apply to any organization which is part of a plan maintained pursuant to an agreement between employee representatives and 1 or more employers if the Secretary finds that such agreement is a collective bargaining agreement and that such plan was the subject of good faith bargaining between such employee representatives and such employer or employers.

(b) Nondiscrimination requirements

(1) In general

Except as otherwise provided in this subsection, a plan meets the requirements of this subsection only if—

(A) each class of benefits under the plan is provided under a classification of employees which is set forth in the plan and which is found by the Secretary not to be discriminatory in favor of employees who are highly compensated individuals, and

(B) in the case of each class of benefits, such benefits do not discriminate in favor of employees who are highly compensated individuals.

A life insurance, disability, severance pay, or supplemental unemployment compensation benefit shall not be considered to fail to meet the requirements of subparagraph (B) merely because the benefits available bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of employees covered by the plan.

(2) Exclusion of certain employees

For purposes of paragraph (1), there may be excluded from consideration—

(A) employees who have not completed 3 years of service,

(B) employees who have not attained age 21,

(C) seasonal employees or less than half-time employees,

(D) employees not included in the plan who are included in a unit of employees covered by an agreement between employee representatives and 1 or more employers which the Secretary

finds to be a collective bargaining agreement if the class of benefits involved was the subject of good faith bargaining between such employee representatives and such employer or employers, and

(E) employees who are nonresident aliens and who receive no earned income (within the meaning of section 911(d)(2)) from the employer which constitutes income from sources within the United States (within the meaning of section 861(a)(3)).

(3) Application of subsection where other nondiscrimination rules provided

In the case of any benefit for which a provision of this chapter other than this subsection provides nondiscrimination rules, paragraph (1) shall not apply but the requirements of this subsection shall be met only if the nondiscrimination rules so provided are satisfied with respect to such benefit.

(4) Aggregation rules

At the election of the employer, 2 or more plans of such employer may be treated as 1 plan for purposes of this subsection.

(5) Highly compensated individual

For purposes of this subsection, the determination as to whether an individual is a highly compensated individual shall be made under rules similar to the rules for determining whether an individual is a highly compensated employee (within the meaning of section 414(q)).

(6) Compensation

For purposes of this subsection, the term "compensation" has the meaning given such term by section 414(s).

(7) Compensation limit

A plan shall not be treated as meeting the requirements of this subsection unless under the plan the annual compensation of each employee taken into account for any year does not exceed $200,000. The Secretary shall adjust the $200,000 amount at the same time, and by the same amount, as any adjustment under section 401(a)(17)(B). This paragraph shall not apply in determining whether the requirements of section 79(d) are met.

(c) Requirement that organization notify Secretary that it is applying for tax-exempt status

(1) In general

An organization shall not be treated as an organization described in paragraph (9), (17), or (20) of section 501(c)—

(A) unless it has given notice to the Secretary, in such manner as the Secretary may by regulations prescribe, that it is applying for recognition of such status, or

(B) for any period before the giving of such notice, if such notice is given after the time prescribed by the Secretary by regulations for giving notice under this subsection.

(2) Special rule for existing organizations

In the case of any organization in existence on July 18, 1984, the time for giving notice under paragraph (1) shall not expire before the date 1 year after such date of the enactment.

(Added Pub. L. 98–369, div. A, title V, §513(a), July 18, 1984, 98 Stat. 863; amended Pub. L. 99–514, title XI, §§1114(b)(16), 1151(e)(2)(B), (g)(6), (j)(3), title XVIII, §§1851(c), 1899A(16), Oct. 22, 1986, 100 Stat. 2452, 2506–2508, 2863, 2959; Pub. L. 100–647, title I, §1011B(a)(27)(C), (31)(B), (32), Nov. 10, 1988, 102 Stat. 3487, 3488; Pub. L. 101–140, title II, §§203(a)(1), (2), 204(c), Nov. 8, 1989, 103 Stat. 830, 833; Pub. L. 103–66, title XIII, §13212(c), Aug. 10, 1993, 107 Stat. 472; Pub. L. 107–16, title VI, §611(c)(1), June 7, 2001, 115 Stat. 97.)

AMENDMENTS

2001—Subsec. (b)(7). Pub. L. 107–16 substituted "$200,000" for "$150,000" in two places.

1993—Subsec. (b)(7). Pub. L. 103–66 substituted "Compensation limit" for "$200,000 compensation limit" in heading and "exceed $150,000. The Secretary shall adjust the $150,000 amount at the same time, and by

the same amount, as any adjustment under section 401(a)(17)(B)." for "exceed $200,000. The Secretary shall adjust the $200,000 amount at the same time and in the same manner as under section 415(d)." in text.

1989—Subsec. (a)(1). Pub. L. 101–140, §203(a)(2), amended par. (1) to read as if amendments by Pub. L. 100–647, §1011B(a)(27)(C), had not been enacted, see 1988 Amendment note below.

Subsec. (b)(2). Pub. L. 101–140, §203(a)(2), amended par. (2) to read as if amendments by Pub. L. 100–647, §1011B(a)(31)(B), had not been enacted, see 1988 Amendment note below.

Pub. L. 101–140, §203(a)(1), amended par. (2) to read as if amendments by Pub. L. 99–514, §1151(g)(6), had not been enacted, see 1986 Amendment note below.

Subsec. (b)(7). Pub. L. 101–140, §204(c), inserted at end "This paragraph shall not apply in determining whether the requirements of section 79(d) are met."

1988—Subsec. (a)(1). Pub. L. 100–647, §1011B(a)(27)(C), inserted at end "This paragraph shall not apply to any organization by reason of a failure to meet the requirements of subsection (b) with respect to a benefit to which section 89 applies."

Subsec. (b)(2). Pub. L. 100–647, §1011B(a)(31)(B), substituted "there shall be" for "there may be" and "who are" for "who may be".

Subsec. (b)(7). Pub. L. 100–647, §1011B(a)(32), added par. (7).

1986—Subsec. (a)(1). Pub. L. 99–514, §1851(c)(1), struck out "of an employer" before "shall".

Subsec. (a)(2). Pub. L. 99–514, §1851(c)(4), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "Paragraph (1) shall not apply to any organization which is part of a plan maintained pursuant to 1 or more collective bargaining agreements between 1 or more employee organizations and 1 or more employers."

Subsec. (b)(1). Pub. L. 99–514, §1851(c)(2), (3), substituted "as otherwise provided in this subsection" for "as provided in paragraph (2)" in introductory provision, and in subpar. (B) substituted "highly compensated individuals" for "highly compensated employees".

Subsec. (b)(2). Pub. L. 99–514, §1151(g)(6), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "For purposes of paragraph (1), there may be excluded from consideration—

"(A) employees who have not completed 3 years of service,

"(B) employees who have not attained age 21,

"(C) seasonal employees or less than half-time employees,

"(D) employees not included in the plan who are included in a unit of employees covered by an agreement between employee representatives and 1 or more employers which the Secretary finds to be a collective bargaining agreement if the class of benefits involved was the subject of good faith bargaining between such employee representatives and such employer or employers, and

"(E) employees who are nonresident aliens and who receive no earned income (within the meaning of section 911(d)(2)) from the employer which constitutes income from sources within the United States (within the meaning of section 861(a)(3))."

Subsec. (b)(4). Pub. L. 99–514, §1151(e)(2)(B), amended par. (4) generally. Prior to amendment, par. (4) read as follows: "For purposes of this subsection—

"(A) AGGREGATION OF PLANS.—At the election of the employer, 2 or more plans of such employer may be treated as 1 plan.

"(B) TREATMENT OF RELATED EMPLOYERS.—Rules similar to the rules of subsections (b), (c), (m), and (n) of section 414 shall apply. For purposes of the preceding sentence, section 414(n) shall be applied without regard to paragraph (5)."

Subsec. (b)(5). Pub. L. 99–514, §1114(b)(16), amended par. (5) generally. Prior to amendment, par. (5) read as follows: "For purposes of this subsection, the term 'highly compensated individual' has the meaning given such term by section 105(h)(5). For purposes of the preceding sentence, section 105(h)(5) shall be applied by substituting '10 percent' for '25 percent'."

Subsec. (b)(6). Pub. L. 99–514, §1151(j)(3), added par. (6).

Subsec. (c)(2). Pub. L. 99–514, §1899A(16), substituted "July 18, 1984" for "the date of the enactment of the Tax Reform Act of 1984".

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to years beginning after Dec. 31, 2001, see section 611(i)(1) of Pub. L. 107–16, set out as a note under section 415 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable, except as otherwise provided, to benefits accruing in plan years beginning after Dec. 31, 1993, see section 13212(d) of Pub. L. 103–66, set out as a note under section 401 of

this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 203(a)(1), (2) of Pub. L. 101–140 effective as if included in section 1151 of Pub. L. 99–514, see section 203(c) of Pub. L. 101–140, set out as a note under section 79 of this title.

Pub. L. 101–140, title II, §204(d)(4), Nov. 8, 1989, 103 Stat. 833, provided that: "The amendment made by subsection (c) [amending this section] shall take effect as if included in the amendment made by section 1011B(a)(32) of the Technical and Miscellaneous Revenue Act of 1988 [Pub. L. 100–647]."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1114(b)(16) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1987, see section 1114(c)(2) of Pub. L. 99–514, set out as a note under section 414 of this title.

Amendment by section 1151(e)(2)(B), (g)(6), (j)(3) of Pub. L. 99–514 applicable, with certain qualifications and exceptions, to years beginning after Dec. 31, 1988, see section 1151(k) of Pub. L. 99–514, as amended, set out as a note under section 79 of this title.

Amendment by section 1851(c) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Pub. L. 98–369, div. A, title V, §513(c), July 18, 1984, 98 Stat. 865, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—The amendments made by this section [enacting this section] shall apply to years beginning after December 31, 1984.

"(2) TREATMENT OF CERTAIN BENEFITS IN PAY STATUS AS OF JANUARY 1, 1985.—For purposes of determining whether a plan meets the requirements of section 505(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)), there may (at the election of the employer) be excluded from consideration all disability or severance payments payable to individuals who are in pay status as of January 1, 1985. The preceding sentence shall not apply to any payment to the extent such payment is increased by any plan amendment adopted after June 22, 1984."

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1114 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

NONENFORCEMENT OF AMENDMENT MADE BY SECTION 1151 OF PUB. L. 99–514 FOR FISCAL YEAR 1990

No monies appropriated by Pub. L. 101–136 to be used to implement or enforce section 1151 of Pub. L. 99–514 or the amendments made by such section, see section 528 of Pub. L. 101–136, set out as a note under section 89 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

PART II—PRIVATE FOUNDATIONS

Sec.
507. Termination of private foundation status.
508. Special rules with respect to section 501(c)(3) organizations.

509. Private foundation defined.

AMENDMENTS

1969—Pub. L. 91–172, title I, §101(a), Dec. 30, 1969, 83 Stat. 492, added part heading and analysis for part II.

§507. Termination of private foundation status

(a) General rule

Except as provided in subsection (b), the status of any organization as a private foundation shall be terminated only if—

(1) such organization notifies the Secretary (at such time and in such manner as the Secretary may by regulations prescribe) of its intent to accomplish such termination, or

(2)(A) with respect to such organization, there have been either willful repeated acts (or failures to act), or a willful and flagrant act (or failure to act), giving rise to liability for tax under chapter 42, and

(B) the Secretary notifies such organization that, by reason of subparagraph (A), such organization is liable for the tax imposed by subsection (c),

and either such organization pays the tax imposed by subsection (c) (or any portion not abated under subsection (g)) or the entire amount of such tax is abated under subsection (g).

(b) Special rules

(1) Transfer to, or operation as, public charity

The status as a private foundation of any organization, with respect to which there have not been either willful repeated acts (or failures to act) or a willful and flagrant act (or failure to act) giving rise to liability for tax under chapter 42, shall be terminated if—

(A) such organization distributes all of its net assets to one or more organizations described in section 170(b)(1)(A) (other than in clauses (vii) and (viii)) each of which has been in existence and so described for a continuous period of at least 60 calendar months immediately preceding such distribution, or

(B)(i) such organization meets the requirements of paragraph (1), (2), or (3) of section 509(a) by the end of the 12-month period beginning with its first taxable year which begins after December 31, 1969, or for a continuous period of 60 calendar months beginning with the first day of any taxable year which begins after December 31, 1969,

(ii) such organization notifies the Secretary (in such manner as the Secretary may by regulations prescribe) before the commencement of such 12-month or 60-month period (or before the 90th day after the day on which regulations first prescribed under this subsection become final) that it is terminating its private foundation status, and

(iii) such organization establishes to the satisfaction of the Secretary (in such manner as the Secretary may by regulations prescribe) immediately after the expiration of such 12-month or 60-month period that such organization has complied with clause (i).

If an organization gives notice under subparagraph (B)(ii) of the commencement of a 60-month period and such organization fails to meet the requirements of paragraph (1), (2), or (3) of section 509(a) for the entire 60-month period, this part and chapter 42 shall not apply to such organization for any taxable year within such 60-month period for which it does meet such requirements.

(2) Transferee foundations

For purposes of this part, in the case of a transfer of assets of any private foundation to another private foundation pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization, or reorganization, the transferee foundation shall not be treated as a newly created organization.

(c) Imposition of tax

There is hereby imposed on each organization which is referred to in subsection (a) a tax equal to the lower of—

(1) the amount which the private foundation substantiates by adequate records or other corroborating evidence as the aggregate tax benefit resulting from the section 501(c)(3) status of such foundation, or

(2) the value of the net assets of such foundation.

(d) Aggregate tax benefit

(1) In general

For purposes of subsection (c), the aggregate tax benefit resulting from the section 501(c)(3) status of any private foundation is the sum of—

(A) the aggregate increases in tax under chapters 1, 11, and 12 (or the corresponding provisions of prior law) which would have been imposed with respect to all substantial contributors to the foundation if deductions for all contributions made by such contributors to the foundation after February 28, 1913, had been disallowed, and

(B) the aggregate increases in tax under chapter 1 (or the corresponding provisions of prior law) which would have been imposed with respect to the income of the private foundation for taxable years beginning after December 31, 1912, if (i) it had not been exempt from tax under section 501(a) (or the corresponding provisions of prior law), and (ii) in the case of a trust, deductions under section 642(c) (or the corresponding provisions of prior law) had been limited to 20 percent of the taxable income of the trust (computed without the benefit of section 642(c) but with the benefit of section 170(b)(1)(A)), and

(C) interest on the increases in tax determined under subparagraphs (A) and (B) from the first date on which each such increase would have been due and payable to the date on which the organization ceases to be a private foundation.

(2) Substantial contributor

(A) Definition

For purposes of paragraph (1), the term "substantial contributor" means any person who contributed or bequeathed an aggregate amount of more than $5,000 to the private foundation, if such amount is more than 2 percent of the total contributions and bequests received by the foundation before the close of the taxable year of the foundation in which the contribution or bequest is received by the foundation from such person. In the case of a trust, the term "substantial contributor" also means the creator of the trust.

(B) Special rules

For purposes of subparagraph (A)—

(i) each contribution or bequest shall be valued at fair market value on the date it was received,

(ii) in the case of a foundation which is in existence on October 9, 1969, all contributions and bequests received on or before such date shall be treated (except for purposes of clause (i)) as if received on such date,

(iii) an individual shall be treated as making all contributions and bequests made by his spouse, and

(iv) any person who is a substantial contributor on any date shall remain a substantial contributor for all subsequent periods.

(C) Person ceases to be substantial contributor in certain cases

(i) In general

A person shall cease to be treated as a substantial contributor with respect to any private foundation as of the close of any taxable year of such foundation if—

(I) during the 10-year period ending at the close of such taxable year such person (and

all related persons) have not made any contribution to such private foundation,

(II) at no time during such 10-year period was such person (or any related person) a foundation manager of such private foundation, and

(III) the aggregate contributions made by such person (and related persons) are determined by the Secretary to be insignificant when compared to the aggregate amount of contributions to such foundation by one other person.

For purposes of subclause (III), appreciation on contributions while held by the foundation shall be taken into account.

(ii) Related person

For purposes of clause (i), the term "related person" means, with respect to any person, any other person who would be a disqualified person (within the meaning of section 4946) by reason of his relationship to such person. In the case of a contributor which is a corporation, the term also includes any officer or director of such corporation.

(3) Regulations

For purposes of this section, the determination as to whether and to what extent there would have been any increase in tax shall be made in accordance with regulations prescribed by the Secretary.

(e) Value of assets

For purposes of subsection (c), the value of the net assets shall be determined at whichever time such value is higher: (1) the first day on which action is taken by the organization which culminates in its ceasing to be a private foundation, or (2) the date on which it ceases to be a private foundation.

(f) Liability in case of transfers of assets from private foundation

For purposes of determining liability for the tax imposed by subsection (c) in the case of assets transferred by the private foundation, such tax shall be deemed to have been imposed on the first day on which action is taken by the organization which culminates in its ceasing to be a private foundation.

(g) Abatement of taxes

The Secretary may abate the unpaid portion of the assessment of any tax imposed by subsection (c), or any liability in respect thereof, if—

(1) the private foundation distributes all of its net assets to one or more organizations described in section 170(b)(1)(A) (other than in clauses (vii) and (viii)) each of which has been in existence and so described for a continuous period of at least 60 calendar months, or

(2) following the notification prescribed in section 6104(c) to the appropriate State officer, such State officer within one year notifies the Secretary, in such manner as the Secretary may by regulations prescribe, that corrective action has been initiated pursuant to State law to insure that the assets of such private foundation are preserved for such charitable or other purposes specified in section 501(c)(3) as may be ordered or approved by a court of competent jurisdiction, and upon completion of the corrective action, the Secretary receives certification from the appropriate State officer that such action has resulted in such preservation of assets.

(Added Pub. L. 91–172, title I, §101(a), Dec. 30, 1969, 83 Stat. 492; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–369, div. A, title III, §313(a), July 18, 1984, 98 Stat. 786.)

AMENDMENTS

1984—Subsec. (d)(2)(C). Pub. L. 98–369 added subpar. (C).

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title III, §313(b), July 18, 1984, 98 Stat. 787, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1984."

EFFECTIVE DATE

Section effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as a note under section 4940 of this title.

APPLICABILITY TO DETERMINATION OF STATUS AS SUBSTANTIAL CONTRIBUTOR FOR PURPOSES OF TAXES ON SELF-DEALING OF CONTRIBUTIONS MADE PRIOR TO OCTOBER 9, 1969

Pub. L. 95–170, §3, Nov. 12, 1977, 91 Stat. 1352, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "In determining whether a person is a substantial contributor within the meaning of section 507(d)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for purposes of applying section 4941 of such Code (relating to taxes on self-dealing), contributions made before October 9, 1969, which—

"(1) were made on account of or in lieu of payments required under a lease in effect before such date, and

"(2) were coincident with or by reason of the reduction in the required payments under such lease, shall not be taken into account. For purposes of applying section 507(d)(2)(B)(iv) of such Code, the preceding sentence shall be treated as having taken effect on January 1, 1970."

§508. Special rules with respect to section 501(c)(3) organizations

(a) New organizations must notify Secretary that they are applying for recognition of section 501(c)(3) status

Except as provided in subsection (c), an organization organized after October 9, 1969, shall not be treated as an organization described in section 501(c)(3)—

(1) unless it has given notice to the Secretary in such manner as the Secretary may by regulations prescribe, that it is applying for recognition of such status, or

(2) for any period before the giving of such notice, if such notice is given after the time prescribed by the Secretary by regulations for giving notice under this subsection.

(b) Presumption that organizations are private foundations

Except as provided in subsection (c), any organization (including an organization in existence on October 9, 1969) which is described in section 501(c)(3) and which does not notify the Secretary, at such time and in such manner as the Secretary may by regulations prescribe, that it is not a private foundation shall be presumed to be a private foundation.

(c) Exceptions

(1) Mandatory exceptions

Subsections (a) and (b) shall not apply to—

(A) churches, their integrated auxiliaries, and conventions or associations of churches, or

(B) any organization which is not a private foundation (as defined in section 509(a)) and the gross receipts of which in each taxable year are normally not more than $5,000.

(2) Exceptions by regulations

The Secretary may by regulations exempt (to the extent and subject to such conditions as may be prescribed in such regulations) from the provisions of subsection (a) or (b) or both—

(A) educational organizations described in section 170(b)(1)(A)(ii), and

(B) any other class of organizations with respect to which the Secretary determines that full compliance with the provisions of subsections (a) and (b) is not necessary to the efficient administration of the provisions of this title relating to private foundations.

(d) Disallowance of certain charitable, etc., deductions

(1) Gift or bequest to organizations subject to section 507(c) tax

No gift or bequest made to an organization upon which the tax provided by section 507(c) has been imposed shall be allowed as a deduction under section 170, 545(b)(2), 642(c), 2055,

2106(a)(2), or 2522, if such gift or bequest is made—

(A) by any person after notification is made under section 507(a), or

(B) by a substantial contributor (as defined in section 507(d)(2)) in his taxable year which includes the first day on which action is taken by such organization which culminates in the imposition of tax under section 507(c) and any subsequent taxable year.

(2) Gift or bequest to taxable private foundation, section 4947 trust, etc.

No gift or bequest made to an organization shall be allowed as a deduction under section 170, 545(b)(2), 642(c), 2055, 2106(a)(2), or 2522, if such gift or bequest is made—

(A) to a private foundation or a trust described in section 4947 in a taxable year for which it fails to meet the requirements of subsection (e) (determined without regard to subsection (e)(2)), or

(B) to any organization in a period for which it is not treated as an organization described in section 501(c)(3) by reason of subsection (a).

(3) Exception

Paragraph (1) shall not apply if the entire amount of the unpaid portion of the tax imposed by section 507(c) is abated by the Secretary under section 507(g).

(e) Governing instruments

(1) General rule

A private foundation shall not be exempt from taxation under section 501(a) unless its governing instrument includes provisions the effects of which are—

(A) to require its income for each taxable year to be distributed at such time and in such manner as not to subject the foundation to tax under section 4942, and

(B) to prohibit the foundation from engaging in any act of self-dealing (as defined in section 4941(d)), from retaining any excess business holdings (as defined in section 4943(c)), from making any investments in such manner as to subject the foundation to tax under section 4944, and from making any taxable expenditures (as defined in section 4945(d)).

(2) Special rules for existing private foundations

In the case of any organization organized before January 1, 1970, paragraph (1) shall not apply—

(A) to any period after December 31, 1971, during the pendency of any judicial proceeding begun before January 1, 1972, by the private foundation which is necessary to reform, or to excuse such foundation from compliance with, its governing instrument or any other instrument in order to meet the requirements of paragraph (1), and

(B) to any period after the termination of any judicial proceeding described in subparagraph (A) during which its governing instrument or any other instrument does not permit it to meet the requirements of paragraph (1).

(f) Additional provisions relating to sponsoring organizations

A sponsoring organization (as defined in section 4966(d)(1)) shall give notice to the Secretary (in such manner as the Secretary may provide) whether such organization maintains or intends to maintain donor advised funds (as defined in section 4966(d)(2)) and the manner in which such organization plans to operate such funds.

(Added Pub. L. 91–172, title I, §101(a), Dec. 30, 1969, 83 Stat. 494; amended Pub. L. 94–455, title XIX, §§1901(a)(71), (b)(8)(E), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1776, 1794, 1834; Pub. L. 108–357, title IV, §413(c)(30), Oct. 22, 2004, 118 Stat. 1509; Pub. L. 109–280, title XII, §1235(b)(1), Aug. 17, 2006, 120 Stat. 1101.)

AMENDMENTS

2006—Subsec. (f). Pub. L. 109–280, which directed the addition of subsec. (f) to section 508, without specifying the act to be amended, was executed by making the addition to this section, which is section 508 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

2004—Subsec. (d)(1), (2). Pub. L. 108–357 struck out "556(b)(2)," after "545(b)(2),".

1976—Subsec. (a). Pub. L. 94–455, §1901(a)(71)(A), struck out last sentence providing that for purposes of paragraph (2), the time prescribed for giving notice under this subsection shall not expire before the 90th day after the day on which regulations first prescribed under this subsection become final.

Subsec. (a)(1), (2). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" in three places after "Secretary".

Subsec. (b). Pub. L. 94–455, §§1901(a)(71)(A), 1906(b)(13)(A), struck out "or his delegate" in two places after "Secretary" and "The time prescribed for giving notice under this subsection shall not expire before the 90th day after the day on which regulations first prescribed under this subsection become final" after "a private foundation".

Subsec. (c)(2). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (c)(2)(A). Pub. L. 94–455, §1901(b)(8)(E), substituted "(A) educational organizations described in section 170(b)(1)(A)(ii), and" for "(A) educational organizations which normally maintain a regular faculty and curriculum and normally have a regularly enrolled body of pupils or students in attendance at the place where their educational activities are regularly carried on; and" after "(b) or both—".

Subsec. (c)(2)(B). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (d)(2)(A). Pub. L. 94–455, §1901(a)(71)(C), substituted "(e)(2)" for "(e)(2)(B) and (C)" after "regard to subsection".

Subsec. (d)(3). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (e)(2)(A). Pub. L. 94–455, §1901(a)(71)(B), struck out subpar. (A) relating to taxable years beginning before 1972, and redesignated subpars. (B) and (C) as (A) and (B), respectively.

Subsec. (e)(2)(B). Pub. L. 94–455, §1901(a)(71)(B), redesignated subpar. (C) as (B) and substituted "(A)" for "(B)" after "described in subparagraph".

Subsec. (e)(2)(C). Pub. L. 94–455, §1901(a)(71)(B), redesignated subpar. (C) as (B).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title XII, §1235(b)(2), Aug. 17, 2006, 120 Stat. 1102, provided that: "The amendment made by this subsection [amending this section] shall apply to organizations applying for tax-exempt status after the date of the enactment of this Act [Aug. 17, 2006]."

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(71)(A)–(C), (b)(8)(E) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1970, except that subsecs. (a), (b), and (c) effective Oct. 9, 1969, see section 101(k)(1), (3) of Pub. L. 91–172, set out as a note under section 4940 of this title.

SAVINGS PROVISION

Limits on inclusion of provisions inconsistent with subsec. (e) of this section in governing instruments, see section 101(l)(6) of Pub. L. 91–172, set out as a note under section 4940 of this title.

§509. Private foundation defined

(a) General rule

For purposes of this title, the term "private foundation" means a domestic or foreign organization described in section 501(c)(3) other than—

(1) an organization described in section 170(b)(1)(A) (other than in clauses (vii) and (viii));

(2) an organization which—

(A) normally receives more than one-third of its support in each taxable year from any

combination of—

(i) gifts, grants, contributions, or membership fees, and

(ii) gross receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities, in an activity which is not an unrelated trade or business (within the meaning of section 513), not including such receipts from any person, or from any bureau or similar agency of a governmental unit (as described in section 170(c)(1)), in any taxable year to the extent such receipts exceed the greater of $5,000 or 1 percent of the organization's support in such taxable year,

from persons other than disqualified persons (as defined in section 4946) with respect to the organization, from governmental units described in section 170(c)(1), or from organizations described in section 170(b)(1)(A) (other than in clauses (vii) and (viii)), and

(B) normally receives not more than one-third of its support in each taxable year from the sum of—

(i) gross investment income (as defined in subsection (e)) and

(ii) the excess (if any) of the amount of the unrelated business taxable income (as defined in section 512) over the amount of the tax imposed by section 511;

(3) an organization which—

(A) is organized, and at all times thereafter is operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more specified organizations described in paragraph (1) or (2),

(B) is—

(i) operated, supervised, or controlled by one or more organizations described in paragraph (1) or (2),

(ii) supervised or controlled in connection with one or more such organizations, or

(iii) operated in connection with one or more such organizations, and

(C) is not controlled directly or indirectly by one or more disqualified persons (as defined in section 4946) other than foundation managers and other than one or more organizations described in paragraph (1) or (2); and

(4) an organization which is organized and operated exclusively for testing for public safety.

For purposes of paragraph (3), an organization described in paragraph (2) shall be deemed to include an organization described in section 501(c)(4), (5), or (6) which would be described in paragraph (2) if it were an organization described in section 501(c)(3).

(b) Continuation of private foundation status

For purposes of this title, if an organization is a private foundation (within the meaning of subsection (a)) on October 9, 1969, or becomes a private foundation on any subsequent date, such organization shall be treated as a private foundation for all periods after October 9, 1969, or after such subsequent date, unless its status as such is terminated under section 507.

(c) Status of organization after termination of private foundation status

For purposes of this part, an organization the status of which as a private foundation is terminated under section 507 shall (except as provided in section 507(b)(2)) be treated as an organization created on the day after the date of such termination.

(d) Definition of support

For purposes of this part and chapter 42, the term "support" includes (but is not limited to)—

(1) gifts, grants, contributions, or membership fees,

(2) gross receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities in any activity which is not an unrelated trade or business (within the meaning of

section 513),

(3) net income from unrelated business activities, whether or not such activities are carried on regularly as a trade or business,

(4) gross investment income (as defined in subsection (e)),

(5) tax revenues levied for the benefit of an organization and either paid to or expended on behalf of such organization, and

(6) the value of services or facilities (exclusive of services or facilities generally furnished to the public without charge) furnished by a governmental unit referred to in section 170(c)(1) to an organization without charge.

Such term does not include any gain from the sale or other disposition of property which would be considered as gain from the sale or exchange of a capital asset, or the value of exemption from any Federal, State, or local tax or any similar benefit.

(e) Definition of gross investment income

For purposes of subsection (d), the term "gross investment income" means the gross amount of income from interest, dividends, payments with respect to securities loans (as defined in section 512(a)(5)), rents, and royalties, but not including any such income to the extent included in computing the tax imposed by section 511. Such term shall also include income from sources similar to those in the preceding sentence.

(f) Requirements for supporting organizations

(1) Type III supporting organizations

For purposes of subsection (a)(3)(B)(iii), an organization shall not be considered to be operated in connection with any organization described in paragraph (1) or (2) of subsection (a) unless such organization meets the following requirements:

(A) Responsiveness

For each taxable year beginning after the date of the enactment of this subsection, the organization provides to each supported organization such information as the Secretary may require to ensure that such organization is responsive to the needs or demands of the supported organization.

(B) Foreign supported organizations

(i) In general

The organization is not operated in connection with any supported organization that is not organized in the United States.

(ii) Transition rule for existing organizations

If the organization is operated in connection with an organization that is not organized in the United States on the date of the enactment of this subsection, clause (i) shall not apply until the first day of the third taxable year of the organization beginning after the date of the enactment of this subsection.

(2) Organizations controlled by donors

(A) In general

For purposes of subsection (a)(3)(B), an organization shall not be considered to be—

(i) operated, supervised, or controlled by any organization described in paragraph (1) or (2) of subsection (a), or

(ii) operated in connection with any organization described in paragraph (1) or (2) of subsection (a),

if such organization accepts any gift or contribution from any person described in subparagraph (B).

(B) Person described

A person is described in this subparagraph if, with respect to a supported organization of an organization described in subparagraph (A), such person is—

(i) a person (other than an organization described in paragraph (1), (2), or (4) of section 509(a)) who directly or indirectly controls, either alone or together with persons described in clauses (ii) and (iii), the governing body of such supported organization,

(ii) a member of the family (determined under section 4958(f)(4)) of an individual described in clause (i), or

(iii) a 35-percent controlled entity (as defined in section 4958(f)(3) by substituting "persons described in clause (i) or (ii) of section 509(f)(2)(B)" for "persons described in subparagraph (A) or (B) of paragraph (1)" in subparagraph (A)(i) thereof).

(3) Supported organization

For purposes of this subsection, the term "supported organization" means, with respect to an organization described in subsection (a)(3), an organization described in paragraph (1) or (2) of subsection (a)—

(A) for whose benefit the organization described in subsection (a)(3) is organized and operated, or

(B) with respect to which the organization performs the functions of, or carries out the purposes of.

(Added Pub. L. 91–172, title I, §101(a), Dec. 30, 1969, 83 Stat. 496; amended Pub. L. 94–81, §3(a), Aug. 9, 1975, 89 Stat. 418; Pub. L. 95–345, §2(a)(1), Aug. 15, 1978, 92 Stat. 481; Pub. L. 109–280, title XII, §§1221(a)(2), 1241(a), (b), Aug. 17, 2006, 120 Stat. 1089, 1102.)

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (f)(1)(A), (B)(ii), is the date of enactment of Pub. L. 109–280, which was approved Aug. 17, 2006.

CODIFICATION

Sections 1221(a)(2) and 1241(a), (b) of Pub. L. 109–280, which directed the amendment of section 509 without specifying the act to be amended, were executed to this section, which is section 509 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

AMENDMENTS

2006—Subsec. (a)(3)(B). Pub. L. 109–280, §1241(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "is operated, supervised, or controlled by or in connection with one or more organizations described in paragraph (1) or (2), and". See Codification note above.

Subsec. (e). Pub. L. 109–280, §1221(a)(2), inserted at end "Such term shall also include income from sources similar to those in the preceding sentence." See Codification note above.

Subsec. (f). Pub. L. 109–280, §1241(b), added subsec. (f). See Codification note above.

1978—Subsec. (e). Pub. L. 95–345 inserted provision relating to payments with respect to securities loans.

1975—Subsec. (a)(2)(B). Pub. L. 94–81 designated existing provisions as cl. (i) and added cl. (ii).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title XII, §1221(c), Aug. 17, 2006, 120 Stat. 1089, provided that: "The amendments made by this section [amending this section and section 4940 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 17, 2006]."

Pub. L. 109–280, title XII, §1241(e), Aug. 17, 2006, 120 Stat. 1103, provided that:

"(1) IN GENERAL.—The amendments made by subsections (a) and (b) [amending this section] shall take effect on the date of the enactment of this Act [Aug. 17, 2006].

"(2) CHARITABLE TRUSTS WHICH ARE TYPE III SUPPORTING ORGANIZATIONS.—Subsection (c) [enacting provisions set out as a note below] shall take effect—

"(A) in the case of trusts operated in connection with an organization described in paragraph (1) or (2) of section 509(a) of the Internal Revenue Code of 1986 on the date of the enactment of this Act, on the date that is one year after the date of the enactment of this Act, and

"(B) in the case of any other trust, on the date of the enactment of this Act."

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–345, §2(e), Aug. 15, 1978, 92 Stat. 483, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by this section [enacting section 1058 of this title and amending sections 509, 512, 514, 851, and 4940 of this title] apply with respect to—

"(1) amounts received after December 31, 1976, as payments with respect to securities loans (as defined in section 512(a)(5) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]), and

"(2) transfers of securities, under agreements described in section 1058 of such Code, occurring after such date."

EFFECTIVE DATE OF 1975 AMENDMENT

Pub. L. 94–81, §3(b), Aug. 9, 1975, 89 Stat. 418, provided that: "The amendment made by this section [amending this section] shall apply to unrelated business taxable income derived from trades and businesses which are acquired by the organization after June 30, 1975."

EFFECTIVE DATE

Section effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as a note under section 4940 of this title.

SAVINGS PROVISION

Applicability of subsec. (a) of this section to testamentary trusts, see section 101(l)(7) of Pub. L. 91–172, set out as a note under section 4940 of this title.

CHARITABLE TRUSTS WHICH ARE TYPE III SUPPORTING ORGANIZATIONS

Pub. L. 109–280, title XII, §1241(c), Aug. 17, 2006, 120 Stat. 1103, provided that: "For purposes of section 509(a)(3)(B)(iii) of the Internal Revenue Code of 1986, an organization which is a trust shall not be considered to be operated in connection with any organization described in paragraph (1) or (2) of section 509(a) of such Code solely because—

"(1) it is a charitable trust under State law,

"(2) the supported organization (as defined in section 509(f)(3) of such Code) is a beneficiary of such trust, and

"(3) the supported organization (as so defined) has the power to enforce the trust and compel an accounting."

PAYOUT REQUIREMENTS FOR TYPE III SUPPORTING ORGANIZATIONS

Pub. L. 109–280, title XII, §1241(d), Aug. 17, 2006, 120 Stat. 1103, provided that:

"(1) IN GENERAL.—The Secretary of the Treasury shall promulgate new regulations under section 509 of the Internal Revenue Code of 1986 on payments required by type III supporting organizations which are not functionally integrated type III supporting organizations. Such regulations shall require such organizations to make distributions of a percentage of either income or assets to supported organizations (as defined in section 509(f)(3) of such Code) in order to ensure that a significant amount is paid to such organizations.

"(2) TYPE III SUPPORTING ORGANIZATION; FUNCTIONALLY INTEGRATED TYPE III SUPPORTING ORGANIZATION.—For purposes of paragraph (1), the terms 'type III supporting organization' and 'functionally integrated type III supporting organization' have the meanings given such terms under subparagraphs (A) and (B) section 4943(f)(5) of the Internal Revenue Code of 1986 (as added by this Act), respectively."

PART III—TAXATION OF BUSINESS INCOME OF CERTAIN EXEMPT ORGANIZATIONS

Sec.

511. Imposition of tax on unrelated business income of charitable organizations, etc.[1]

512. Unrelated business taxable income.

513. Unrelated trade or business.

514. Unrelated debt-financed income.

515. Taxes of foreign countries and possessions of the United States.

AMENDMENTS

1969—Pub. L. 91–172, title I, §§101(a), 121(d)(3)(C), Dec. 30, 1969, 83 Stat. 492, 548, substituted "PART III" for "PART II" as part designation and substituted "Unrelated debt-financed income" for "Business leases" in item 514.

[1] *So in original. Does not conform to section catchline.*

§511. Imposition of tax on unrelated business income of charitable, etc., organizations

(a) Charitable, etc., organizations taxable at corporation rates

(1) Imposition of tax

There is hereby imposed for each taxable year on the unrelated business taxable income (as defined in section 512) of every organization described in paragraph (2) a tax computed as provided in section 11. In making such computation for purposes of this section, the term "taxable income" as used in section 11 shall be read as "unrelated business taxable income".

(2) Organizations subject to tax

(A) Organizations described in sections 401(a) and 501(c)

The tax imposed by paragraph (1) shall apply in the case of any organization (other than a trust described in subsection (b) or an organization described in section 501(c)(1)) which is exempt, except as provided in this part or part II (relating to private foundations), from taxation under this subtitle by reason of section 501(a).

(B) State colleges and universities

The tax imposed by paragraph (1) shall apply in the case of any college or university which is an agency or instrumentality of any government or any political subdivision thereof, or which is owned or operated by a government or any political subdivision thereof, or by any agency or instrumentality of one or more governments or political subdivisions. Such tax shall also apply in the case of any corporation wholly owned by one or more such colleges or universities.

(b) Tax on charitable, etc., trusts

(1) Imposition of tax

There is hereby imposed for each taxable year on the unrelated business taxable income of every trust described in paragraph (2) a tax computed as provided in section 1(e). In making such computation for purposes of this section, the term "taxable income" as used in section 1 shall be read as "unrelated business taxable income" as defined in section 512.

(2) Charitable, etc., trusts subject to tax

The tax imposed by paragraph (1) shall apply in the case of any trust which is exempt, except as provided in this part or part II (relating to private foundations), from taxation under this subtitle by reason of section 501(a) and which, if it were not for such exemption, would be subject to subchapter J (sec. 641 and following, relating to estates, trusts, beneficiaries, and decedents).

(c) Special rule for section 501(c)(2) corporations

If a corporation described in section 501(c)(2)—

(1) pays any amount of its net income for a taxable year to an organization exempt from taxation under section 501(a) (or which would pay such an amount but for the fact that the expenses of collecting its income exceed its income), and

(2) such corporation and such organization file a consolidated return for the taxable year,

such corporation shall be treated, for purposes of the tax imposed by subsection (a), as being organized and operated for the same purposes as such organization, in addition to the purposes described in section 501(c)(2).

(Aug. 16, 1954, ch. 736, 68A Stat. 169; Pub. L. 86–667, §3, July 14, 1960, 74 Stat. 535; Pub. L. 89–352, §2, Feb. 2, 1966, 80 Stat. 4; Pub. L. 91–172, title I, §121(a)(1)–(3), title III, §301(b)(8), title VIII, §803(d)(2), Dec. 30, 1969, 83 Stat. 536, 585, 684; Pub. L. 95–30, title I, §101(d)(6), May 23, 1977, 91 Stat. 133; Pub. L. 95–600, title III, §301(b)(5), title IV, §421(e)(3), Nov. 6, 1978, 92 Stat. 2821, 2876; Pub. L. 97–248, title II, §201(d)(5), formerly §201(c)(5), Sept. 3, 1982, 96 Stat. 419, renumbered §201(d)(5), Pub. L. 97–448, title III, §306(a)(1)(A)(i), Jan. 12, 1983, 96 Stat. 2400; Pub. L. 100–647, title I, §1007(g)(6), Nov. 10, 1988, 102 Stat. 3435.)

AMENDMENTS

1988—Subsec. (d). Pub. L. 100–647 struck out subsec. (d) which read as follows: "TAX PREFERENCES .—

"(1) ORGANIZATIONS TAXABLE AT CORPORATE RATES.—If an organization is subject to tax on unrelated business taxable income pursuant to subsection (a), the tax imposed by section 56 shall apply to such organizations with respect to items of tax preference which enter into the computation of unrelated business taxable income in the same manner as section 56 applies to corporations.

"(2) ORGANIZATIONS TAXABLE AS TRUSTS.—If an organization is subject to tax on unrelated business taxable income pursuant to subsection (b), the taxes imposed by section 55 shall apply to such organization with respect to items of tax preference which enter into the computation of unrelated business taxable income."

1982—Subsec. (d)(2). Pub. L. 97–248 substituted "section 55" for "section 55 and section 56 (as the case may be)".

1978—Subsec. (a)(1). Pub. L. 95–600, §301(b)(5)(A), substituted "a tax" for "a normal tax and a surtax".

Subsec. (a)(2). Pub. L. 95–600, §301(b)(5)(B), substituted "tax" for "taxes" wherever appearing.

Subsec. (d). Pub. L. 95–600, §421(e)(3), substituted provisions relating to organizations taxable at corporate rates and organizations taxable as trusts, for provisions relating to imposition of the tax imposed by section 56 of this title to an organization subject to tax under this section for tax preferences computed in unrelated business taxable income.

1977—Subsec. (b)(1). Pub. L. 95–30 substituted "section 1(e)" for "section 1(d)".

1969—Subsec. (a)(2)(A). Pub. L. 91–172, §121(a)(1), removed reference, in heading, to pars. (2), (3), (5), (6), (14)(B), (C), and (17) of section 501(c) of this title, and, in text, struck out exemptions to churches, conventions, or associations of churches, from the imposition of tax on their unrelated business income, made corporations organized under section 501(c)(1) of this title (i.e. organized under Acts of Congress), exempt from such tax, but made all such exemptions subservient to the exceptions in part II and section 501(a) of this title.

Subsec. (b)(1). Pub. L. 91–172, §803(d)(2), substituted section 1(d) for section 1 in reference to section under which the computation of the tax dealing with the imposition of tax on the unrelated business taxable income of trusts, is computed.

Subsec. (b)(2). Pub. L. 91–172, §121(a)(2), pluralized "trust" in heading and in text made the imposition of tax on the unrelated business income of exempt trusts subject to provisions of part II, and, for purposes of determining trusts exempt from taxation, substituted reference to section 501(a) for reference to "section 501(c)(3) or (17) or section 401(a)".

Subsec. (c). Pub. L. 91–172, §121(a)(3), added subsec. (c). Former subsec. (c), covering the effective date, was struck out.

Subsec. (d). Pub. L. 91–172, §301(b)(8), added subsec. (d).

1966—Subsec. (a)(2)(A). Pub. L. 89–352 inserted "(14)(B) or (C)," after "(6)," in heading and in text.

1960—Subsec. (a)(2). Pub. L. 86–667, §3(a), included organizations described in section 501(c)(17) within subpar. (A).

Subsec. (b). Pub. L. 86–667, §3(b), inserted a reference to section 501(c)(17).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to taxable years beginning after Dec. 31, 1982, see section 201(e)(1) of Pub. L. 97–248, set out as a note under section 5 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 301(b)(5)(A), (B) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95–600, set out as a note under section 11 of this title.

Amendment by section 421(e)(3) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 421(g) of Pub. L. 95–600, set out as a note under section 5 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title I, §121(g), Dec. 30, 1969, 83 Stat. 549, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by this section [amending this section and sections 48, 501, 502, 503, 512 to 514, 681, 801, 810, 1443, 1504, and 7605 of this title] (other than by subsections (b)(3) and (e) [enacting sections 277 and 6050 of this title]) shall apply to taxable years beginning after December 31, 1969. The amendments made by subsection (b)(3) [enacting section 277 of this title] shall apply to taxable years beginning after December 31, 1970. The amendments made by subsection (e) [enacting section 6050 of this title] shall apply with respect to transfers of property after December 31, 1969. Where an organization makes a bargain purchase of property before October 9, 1969, which is subject to a mortgage which was placed on the property more than 5 years before the purchase, and the organization paid the seller a total amount no greater than the amount of the seller's cost (including attorneys' fees) directly related to the transfer of such property to the organization (but in any event no more than 10 percent of the value of the seller's equity in the property), the indebtedness secured by such mortgage shall not be treated, notwithstanding the amendments made by subsection (d)(1) [amending section 514 of this title], as acquisition indebtedness for purposes of section 514(c)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] during a period of 10 years following the date of the transaction."

Amendment by section 301(b)(8) of Pub. L. 91–172 applicable to taxable years ending after Dec. 31, 1969, see section 301(c) of Pub. L. 91–172, set out as a note under section 5 of this title.

Amendment by section 803(d)(2) of Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1970, see section 803(f) of Pub. L. 91–172, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89–352, §3, Feb. 2, 1966, 80 Stat. 4, provided in part that: "The amendment made by section 2 [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Feb. 2, 1966]."

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–667 applicable to taxable years beginning after Dec. 31, 1959, see section 6 of Pub. L. 86–667, set out as a note under section 501 of this title.

§512. Unrelated business taxable income

(a) Definition

For purposes of this title—

(1) General rule

Except as otherwise provided in this subsection, the term "unrelated business taxable income" means the gross income derived by any organization from any unrelated trade or business (as defined in section 513) regularly carried on by it, less the deductions allowed by this chapter which are directly connected with the carrying on of such trade or business, both computed with the modifications provided in subsection (b).

(2) Special rule for foreign organizations

In the case of an organization described in section 511 which is a foreign organization, the unrelated business taxable income shall be—

(A) its unrelated business taxable income which is derived from sources within the United States and which is not effectively connected with the conduct of a trade or business within the

United States, plus

(B) its unrelated business taxable income which is effectively connected with the conduct of a trade or business within the United States.

(3) Special rules applicable to organizations described in paragraph (7), (9), (17), or (20) of section 501(c)

(A) General rule

In the case of an organization described in paragraph (7), (9), (17), or (20) of section 501(c), the term "unrelated business taxable income" means the gross income (excluding any exempt function income), less the deductions allowed by this chapter which are directly connected with the production of the gross income (excluding exempt function income), both computed with the modifications provided in paragraphs (6), (10), (11), and (12) of subsection (b). For purposes of the preceding sentence, the deductions provided by sections 243, 244, and 245 (relating to dividends received by corporations) shall be treated as not directly connected with the production of gross income.

(B) Exempt function income

For purposes of subparagraph (A), the term "exempt function income" means the gross income from dues, fees, charges, or similar amounts paid by members of the organization as consideration for providing such members or their dependents or guests goods, facilities, or services in furtherance of the purposes constituting the basis for the exemption of the organization to which such income is paid. Such term also means all income (other than an amount equal to the gross income derived from any unrelated trade or business regularly carried on by such organization computed as if the organization were subject to paragraph (1)), which is set aside—

(i) for a purpose specified in section 170(c)(4), or

(ii) in the case of an organization described in paragraph (9), (17), or (20) of section 501(c), to provide for the payment of life, sick, accident, or other benefits,

including reasonable costs of administration directly connected with a purpose described in clause (i) or (ii). If during the taxable year, an amount which is attributable to income so set aside is used for a purpose other than that described in clause (i) or (ii), such amount shall be included, under subparagraph (A), in unrelated business taxable income for the taxable year.

(C) Applicability to certain corporations described in section 501(c)(2)

In the case of a corporation described in section 501(c)(2), the income of which is payable to an organization described in paragraph (7), (9), (17), or (20) of section 501(c), subparagraph (A) shall apply as if such corporation were the organization to which the income is payable. For purposes of the preceding sentence, such corporation shall be treated as having exempt function income for a taxable year only if it files a consolidated return with such organization for such year.

(D) Nonrecognition of gain

If property used directly in the performance of the exempt function of an organization described in paragraph (7), (9), (17), or (20) of section 501(c) is sold by such organization, and within a period beginning 1 year before the date of such sale, and ending 3 years after such date, other property is purchased and used by such organization directly in the performance of its exempt function, gain (if any) from such sale shall be recognized only to the extent that such organization's sales price of the old property exceeds the organization's cost of purchasing the other property. For purposes of this subparagraph, the destruction in whole or in part, theft, seizure, requisition, or condemnation of property, shall be treated as the sale of such property, and rules similar to the rules provided by subsections (b), (c), (e), and (j) of section 1034 (as in effect on the day before the date of the enactment of the Taxpayer Relief Act of 1997) shall apply.

(E) Limitation on amount of setaside in the case of organizations described in paragraph (9), (17), or (20) of section 501(c)

(i) In general

In the case of any organization described in paragraph (9), (17), or (20) of section 501(c), a set-aside for any purpose specified in clause (ii) of subparagraph (B) may be taken into account under subparagraph (B) only to the extent that such set-aside does not result in an amount of assets set aside for such purpose in excess of the account limit determined under section 419A (without regard to subsection (f)(6) thereof) for the taxable year (not taking into account any reserve described in section 419A(c)(2)(A) for post-retirement medical benefits).

(ii) Treatment of existing reserves for post-retirement medical or life insurance benefits

(I) Clause (i) shall not apply to any income attributable to an existing reserve for post-retirement medical or life insurance benefits.

(II) For purposes of subclause (I), the term "reserve for post-retirement medical or life insurance benefits" means the greater of the amount of assets set aside for purposes of post-retirement medical or life insurance benefits to be provided to covered employees as of the close of the last plan year ending before the date of the enactment of the Tax Reform Act of 1984 or on July 18, 1984.

(III) All payments during plan years ending on or after the date of the enactment of the Tax Reform Act of 1984 of post-retirement medical benefits or life insurance benefits shall be charged against the reserve referred to in subclause (II). Except to the extent provided in regulations prescribed by the Secretary, all plans of an employer shall be treated as 1 plan for purposes of the preceding sentence.

(iii) Treatment of tax exempt organizations

This subparagraph shall not apply to any organization if substantially all of the contributions to such organization are made by employers who were exempt from tax under this chapter throughout the 5-taxable year period ending with the taxable year in which the contributions are made.

(4) Special rule applicable to organizations described in section 501(c)(19)

In the case of an organization described in section 501(c)(19), the term "unrelated business taxable income" does not include any amount attributable to payments for life, sick, accident, or health insurance with respect to members of such organizations or their dependents which is set aside for the purpose of providing for the payment of insurance benefits or for a purpose specified in section 170(c)(4). If an amount set aside under the preceding sentence is used during the taxable year for a purpose other than a purpose described in the preceding sentence, such amount shall be included, under paragraph (1), in unrelated business taxable income for the taxable year.

(5) Definition of payments with respect to securities loans

(A) The term "payments with respect to securities loans" includes all amounts received in respect of a security (as defined in section 1236(c)) transferred by the owner to another person in a transaction to which section 1058 applies (whether or not title to the security remains in the name of the lender) including—

(i) amounts in respect of dividends, interest, or other distributions,

(ii) fees computed by reference to the period beginning with the transfer of securities by the owner and ending with the transfer of identical securities back to the transferor by the transferee and the fair market value of the security during such period,

(iii) income from collateral security for such loan, and

(iv) income from the investment of collateral security.

(B) Subparagraph (A) shall apply only with respect to securities transferred pursuant to an agreement between the transferor and the transferee which provides for—

(i) reasonable procedures to implement the obligation of the transferee to furnish to the

transferor, for each business day during such period, collateral with a fair market value not less than the fair market value of the security at the close of business on the preceding business day,

(ii) termination of the loan by the transferor upon notice of not more than 5 business days, and

(iii) return to the transferor of securities identical to the transferred securities upon termination of the loan.

(b) Modifications

The modifications referred to in subsection (a) are the following:

(1) There shall be excluded all dividends, interest, payments with respect to securities loans (as defined in subsection (a)(5)), amounts received or accrued as consideration for entering into agreements to make loans, and annuities, and all deductions directly connected with such income.

(2) There shall be excluded all royalties (including overriding royalties) whether measured by production or by gross or taxable income from the property, and all deductions directly connected with such income.

(3) In the case of rents—

(A) Except as provided in subparagraph (B), there shall be excluded—

(i) all rents from real property (including property described in section 1245(a)(3)(C)), and

(ii) all rents from personal property (including for purposes of this paragraph as personal property any property described in section 1245(a)(3)(B)) leased with such real property, if the rents attributable to such personal property are an incidental amount of the total rents received or accrued under the lease, determined at the time the personal property is placed in service.

(B) Subparagraph (A) shall not apply—

(i) if more than 50 percent of the total rent received or accrued under the lease is attributable to personal property described in subparagraph (A)(ii), or

(ii) if the determination of the amount of such rent depends in whole or in part on the income or profits derived by any person from the property leased (other than an amount based on a fixed percentage or percentages of receipts or sales).

(C) There shall be excluded all deductions directly connected with rents excluded under subparagraph (A).

(4) Notwithstanding paragraph (1), (2), (3), or (5), in the case of debt-financed property (as defined in section 514) there shall be included, as an item of gross income derived from an unrelated trade or business, the amount ascertained under section 514(a)(1), and there shall be allowed, as a deduction, the amount ascertained under section 514(a)(2).

(5) There shall be excluded all gains or losses from the sale, exchange, or other disposition of property other than—

(A) stock in trade or other property of a kind which would properly be includible in inventory if on hand at the close of the taxable year, or

(B) property held primarily for sale to customers in the ordinary course of the trade or business.

There shall also be excluded all gains or losses recognized, in connection with the organization's investment activities, from the lapse or termination of options to buy or sell securities (as defined in section 1236(c)) or real property and all gains or losses from the forfeiture of good-faith deposits (that are consistent with established business practice) for the purchase, sale, or lease of real property in connection with the organization's investment activities. This paragraph shall not apply with respect to the cutting of timber which is considered, on the application of section 631, as a sale or exchange of such timber.

(6) The net operating loss deduction provided in section 172 shall be allowed, except that—

(A) the net operating loss for any taxable year, the amount of the net operating loss carryback or carryover to any taxable year, and the net operating loss deduction for any taxable year shall be determined under section 172 without taking into account any amount of income or deduction which is excluded under this part in computing the unrelated business taxable income; and

(B) the terms "preceding taxable year" and "preceding taxable years" as used in section 172 shall not include any taxable year for which the organization was not subject to the provisions of this part.

(7) There shall be excluded all income derived from research for (A) the United States, or any of its agencies or instrumentalities, or (B) any State or political subdivision thereof; and there shall be excluded all deductions directly connected with such income.

(8) In the case of a college, university, or hospital, there shall be excluded all income derived from research performed for any person, and all deductions directly connected with such income.

(9) In the case of an organization operated primarily for purposes of carrying on fundamental research the results of which are freely available to the general public, there shall be excluded all income derived from research performed for any person, and all deductions directly connected with such income.

(10) In the case of any organization described in section 511(a), the deduction allowed by section 170 (relating to charitable etc. contributions and gifts) shall be allowed (whether or not directly connected with the carrying on of the trade or business), but shall not exceed 10 percent of the unrelated business taxable income computed without the benefit of this paragraph.

(11) In the case of any trust described in section 511(b), the deduction allowed by section 170 (relating to charitable etc. contributions and gifts) shall be allowed (whether or not directly connected with the carrying on of the trade or business), and for such purpose a distribution made by the trust to a beneficiary described in section 170 shall be considered as a gift or contribution. The deduction allowed by this paragraph shall be allowed with the limitations prescribed in section 170(b)(1)(A) and (B) determined with reference to the unrelated business taxable income computed without the benefit of this paragraph (in lieu of with reference to adjusted gross income).

(12) Except for purposes of computing the net operating loss under section 172 and paragraph (6), there shall be allowed a specific deduction of $1,000. In the case of a diocese, province of a religious order, or a convention or association of churches, there shall also be allowed, with respect to each parish, individual church, district, or other local unit, a specific deduction equal to the lower of—

(A) $1,000, or

(B) the gross income derived from any unrelated trade or business regularly carried on by such local unit.

(13) SPECIAL RULES FOR CERTAIN AMOUNTS RECEIVED FROM CONTROLLED ENTITIES.—

(A) IN GENERAL.—If an organization (in this paragraph referred to as the "controlling organization") receives or accrues (directly or indirectly) a specified payment from another entity which it controls (in this paragraph referred to as the "controlled entity"), notwithstanding paragraphs (1), (2), and (3), the controlling organization shall include such payment as an item of gross income derived from an unrelated trade or business to the extent such payment reduces the net unrelated income of the controlled entity (or increases any net unrelated loss of the controlled entity). There shall be allowed all deductions of the controlling organization directly connected with amounts treated as derived from an unrelated trade or business under the preceding sentence.

(B) NET UNRELATED INCOME OR LOSS.—For purposes of this paragraph—

(i) NET UNRELATED INCOME.—The term "net unrelated income" means—

(I) in the case of a controlled entity which is not exempt from tax under section 501(a),

the portion of such entity's taxable income which would be unrelated business taxable income if such entity were exempt from tax under section 501(a) and had the same exempt purposes as the controlling organization, or

(II) in the case of a controlled entity which is exempt from tax under section 501(a), the amount of the unrelated business taxable income of the controlled entity.

(ii) NET UNRELATED LOSS.—The term "net unrelated loss" means the net operating loss adjusted under rules similar to the rules of clause (i).

(C) SPECIFIED PAYMENT.—For purposes of this paragraph, the term "specified payment" means any interest, annuity, royalty, or rent.

(D) DEFINITION OF CONTROL.—For purposes of this paragraph—

(i) CONTROL.—The term "control" means—

(I) in the case of a corporation, ownership (by vote or value) of more than 50 percent of the stock in such corporation,

(II) in the case of a partnership, ownership of more than 50 percent of the profits interests or capital interests in such partnership, or

(III) in any other case, ownership of more than 50 percent of the beneficial interests in the entity.

(ii) CONSTRUCTIVE OWNERSHIP.—Section 318 (relating to constructive ownership of stock) shall apply for purposes of determining ownership of stock in a corporation. Similar principles shall apply for purposes of determining ownership of interests in any other entity.

(E) PARAGRAPH TO APPLY ONLY TO CERTAIN EXCESS PAYMENTS.—

(i) IN GENERAL.—Subparagraph (A) shall apply only to the portion of a qualifying specified payment received or accrued by the controlling organization that exceeds the amount which would have been paid or accrued if such payment met the requirements prescribed under section 482.

(ii) ADDITION TO TAX FOR VALUATION MISSTATEMENTS.—The tax imposed by this chapter on the controlling organization shall be increased by an amount equal to 20 percent of the larger of—

(I) such excess determined without regard to any amendment or supplement to a return of tax, or

(II) such excess determined with regard to all such amendments and supplements.

(iii) QUALIFYING SPECIFIED PAYMENT.—The term "qualifying specified payment" means a specified payment which is made pursuant to—

(I) a binding written contract in effect on the date of the enactment of this subparagraph, or

(II) a contract which is a renewal, under substantially similar terms, of a contract described in subclause (I).

(iv) TERMINATION.—This subparagraph shall not apply to payments received or accrued after December 31, 2013.

(F) RELATED PERSONS.—The Secretary shall prescribe such rules as may be necessary or appropriate to prevent avoidance of the purposes of this paragraph through the use of related persons.

[(14) Repealed. Pub. L. 101–508, title XI, §11801(a)(23), Nov. 5, 1990, 104 Stat. 1388–521.]

(15) Except as provided in paragraph (4), in the case of a trade or business—

(A) which consists of providing services under license issued by a Federal regulatory agency,

(B) which is carried on by a religious order or by an educational organization described in section 170(b)(1)(A)(ii) maintained by such religious order, and which was so carried on before May 27, 1959, and

(C) less than 10 percent of the net income of which for each taxable year is used for activities which are not related to the purpose constituting the basis for the religious order's exemption,

there shall be excluded all gross income derived from such trade or business and all deductions directly connected with the carrying on of such trade or business, so long as it is established to the satisfaction of the Secretary that the rates or other charges for such services are competitive with rates or other charges charged for similar services by persons not exempt from taxation.

(16)(A) Notwithstanding paragraph (5)(B), there shall be excluded all gains or losses from the sale, exchange, or other disposition of any real property described in subparagraph (B) if—

(i) such property was acquired by the organization from—

(I) a financial institution described in section 581 or 591(a) which is in conservatorship or receivership, or

(II) the conservator or receiver of such an institution (or any government agency or corporation succeeding to the rights or interests of the conservator or receiver),

(ii) such property is designated by the organization within the 9-month period beginning on the date of its acquisition as property held for sale, except that not more than one-half (by value determined as of such date) of property acquired in a single transaction may be so designated,

(iii) such sale, exchange, or disposition occurs before the later of—

(I) the date which is 30 months after the date of the acquisition of such property, or

(II) the date specified by the Secretary in order to assure an orderly disposition of property held by persons described in subparagraph (A), and

(iv) while such property was held by the organization, the aggregate expenditures on improvements and development activities included in the basis of the property are (or were) not in excess of 20 percent of the net selling price of such property.

(B) Property is described in this subparagraph if it is real property which—

(i) was held by the financial institution at the time it entered into conservatorship or receivership, or

(ii) was foreclosure property (as defined in section 514(c)(9)(H)(v)) which secured indebtedness held by the financial institution at such time.

For purposes of this subparagraph, real property includes an interest in a mortgage.

(17) TREATMENT OF CERTAIN AMOUNTS DERIVED FROM FOREIGN CORPORATIONS.—

(A) IN GENERAL.—Notwithstanding paragraph (1), any amount included in gross income under section 951(a)(1)(A) shall be included as an item of gross income derived from an unrelated trade or business to the extent the amount so included is attributable to insurance income (as defined in section 953) which, if derived directly by the organization, would be treated as gross income from an unrelated trade or business. There shall be allowed all deductions directly connected with amounts included in gross income under the preceding sentence.

(B) EXCEPTION.—

(i) IN GENERAL.—Subparagraph (A) shall not apply to income attributable to a policy of insurance or reinsurance with respect to which the person (directly or indirectly) insured is—

(I) such organization,

(II) an affiliate of such organization which is exempt from tax under section 501(a), or

(III) a director or officer of, or an individual who (directly or indirectly) performs services for, such organization or affiliate but only if the insurance covers primarily risks

associated with the performance of services in connection with such organization or affiliate.

(ii) AFFILIATE.—For purposes of this subparagraph—

(I) IN GENERAL.—The determination as to whether an entity is an affiliate of an organization shall be made under rules similar to the rules of section 168(h)(4)(B).

(II) SPECIAL RULE.—Two or more organizations (and any affiliates of such organizations) shall be treated as affiliates if such organizations are colleges or universities described in section 170(b)(1)(A)(ii) or organizations described in section 170(b)(1)(A)(iii) and participate in an insurance arrangement that provides for any profits from such arrangement to be returned to the policyholders in their capacity as such.

(C) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this paragraph, including regulations for the application of this paragraph in the case of income paid through 1 or more entities or between 2 or more chains of entities.

(18) TREATMENT OF MUTUAL OR COOPERATIVE ELECTRIC COMPANIES.—In the case of a mutual or cooperative electric company described in section 501(c)(12), there shall be excluded income which is treated as member income under subparagraph (H) thereof.

(19) TREATMENT OF GAIN OR LOSS ON SALE OR EXCHANGE OF CERTAIN BROWNFIELD SITES.—

(A) IN GENERAL.—Notwithstanding paragraph (5)(B), there shall be excluded any gain or loss from the qualified sale, exchange, or other disposition of any qualifying brownfield property by an eligible taxpayer.

(B) ELIGIBLE TAXPAYER.—For purposes of this paragraph—

(i) IN GENERAL.—The term "eligible taxpayer" means, with respect to a property, any organization exempt from tax under section 501(a) which—

(I) acquires from an unrelated person a qualifying brownfield property, and

(II) pays or incurs eligible remediation expenditures with respect to such property in an amount which exceeds the greater of $550,000 or 12 percent of the fair market value of the property at the time such property was acquired by the eligible taxpayer, determined as if there was not a presence of a hazardous substance, pollutant, or contaminant on the property which is complicating the expansion, redevelopment, or reuse of the property.

(ii) EXCEPTION.—Such term shall not include any organization which is—

(I) potentially liable under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 with respect to the qualifying brownfield property,

(II) affiliated with any other person which is so potentially liable through any direct or indirect familial relationship or any contractual, corporate, or financial relationship (other than a contractual, corporate, or financial relationship which is created by the instruments by which title to any qualifying brownfield property is conveyed or financed or by a contract of sale of goods or services), or

(III) the result of a reorganization of a business entity which was so potentially liable.

(C) QUALIFYING BROWNFIELD PROPERTY.—For purposes of this paragraph—

(i) IN GENERAL.—The term "qualifying brownfield property" means any real property which is certified, before the taxpayer incurs any eligible remediation expenditures (other than to obtain a Phase I environmental site assessment), by an appropriate State agency (within the meaning of section 198(c)(4)) in the State in which such property is located as a

brownfield site within the meaning of section 101(39) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (as in effect on the date of the enactment of this paragraph).

(ii) REQUEST FOR CERTIFICATION.—Any request by an eligible taxpayer for a certification described in clause (i) shall include a sworn statement by the eligible taxpayer and supporting documentation of the presence of a hazardous substance, pollutant, or contaminant on the property which is complicating the expansion, redevelopment, or reuse of the property given the property's reasonably anticipated future land uses or capacity for uses of the property (including a Phase I environmental site assessment and, if applicable, evidence of the property's presence on a local, State, or Federal list of brownfields or contaminated property) and other environmental assessments prepared or obtained by the taxpayer.

(D) QUALIFIED SALE, EXCHANGE, OR OTHER DISPOSITION.—For purposes of this paragraph—

(i) IN GENERAL.—A sale, exchange, or other disposition of property shall be considered as qualified if—

(I) such property is transferred by the eligible taxpayer to an unrelated person, and

(II) within 1 year of such transfer the eligible taxpayer has received a certification from the Environmental Protection Agency or an appropriate State agency (within the meaning of section 198(c)(4)) in the State in which such property is located that, as a result of the eligible taxpayer's remediation actions, such property would not be treated as a qualifying brownfield property in the hands of the transferee.

For purposes of subclause (II), before issuing such certification, the Environmental Protection Agency or appropriate State agency shall respond to comments received pursuant to clause (ii)(V) in the same form and manner as required under section 117(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (as in effect on the date of the enactment of this paragraph).

(ii) REQUEST FOR CERTIFICATION.—Any request by an eligible taxpayer for a certification described in clause (i) shall be made not later than the date of the transfer and shall include a sworn statement by the eligible taxpayer certifying the following:

(I) Remedial actions which comply with all applicable or relevant and appropriate requirements (consistent with section 121(d) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980) have been substantially completed, such that there are no hazardous substances, pollutants, or contaminants which complicate the expansion, redevelopment, or reuse of the property given the property's reasonably anticipated future land uses or capacity for uses of the property.

(II) The reasonably anticipated future land uses or capacity for uses of the property are more economically productive or environmentally beneficial than the uses of the property in existence on the date of the certification described in subparagraph (C)(i). For purposes of the preceding sentence, use of property as a landfill or other hazardous waste facility shall not be considered more economically productive or environmentally beneficial.

(III) A remediation plan has been implemented to bring the property into compliance with all applicable local, State, and Federal environmental laws, regulations, and standards and to ensure that the remediation protects human health and the environment.

(IV) The remediation plan described in subclause (III), including any physical improvements required to remediate the property, is either complete or substantially complete, and, if substantially complete, sufficient monitoring, funding, institutional controls, and financial assurances have been put in place to ensure the complete remediation of the property in accordance with the remediation plan as soon as is reasonably practicable after the sale, exchange, or other disposition of such property.

(V) Public notice and the opportunity for comment on the request for certification was

completed before the date of such request. Such notice and opportunity for comment shall be in the same form and manner as required for public participation required under section 117(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (as in effect on the date of the enactment of this paragraph). For purposes of this subclause, public notice shall include, at a minimum, publication in a major local newspaper of general circulation.

(iii) ATTACHMENT TO TAX RETURNS.—A copy of each of the requests for certification described in clause (ii) of subparagraph (C) and this subparagraph shall be included in the tax return of the eligible taxpayer (and, where applicable, of the qualifying partnership) for the taxable year during which the transfer occurs.

(iv) SUBSTANTIAL COMPLETION.—For purposes of this subparagraph, a remedial action is substantially complete when any necessary physical construction is complete, all immediate threats have been eliminated, and all long-term threats are under control.

(E) ELIGIBLE REMEDIATION EXPENDITURES.—For purposes of this paragraph—

(i) IN GENERAL.—The term "eligible remediation expenditures" means, with respect to any qualifying brownfield property, any amount paid or incurred by the eligible taxpayer to an unrelated third person to obtain a Phase I environmental site assessment of the property, and any amount so paid or incurred after the date of the certification described in subparagraph (C)(i) for goods and services necessary to obtain a certification described in subparagraph (D)(i) with respect to such property, including expenditures—

(I) to manage, remove, control, contain, abate, or otherwise remediate a hazardous substance, pollutant, or contaminant on the property,

(II) to obtain a Phase II environmental site assessment of the property, including any expenditure to monitor, sample, study, assess, or otherwise evaluate the release, threat of release, or presence of a hazardous substance, pollutant, or contaminant on the property,

(III) to obtain environmental regulatory certifications and approvals required to manage the remediation and monitoring of the hazardous substance, pollutant, or contaminant on the property, and

(IV) regardless of whether it is necessary to obtain a certification described in subparagraph (D)(i)(II), to obtain remediation cost-cap or stop-loss coverage, re-opener or regulatory action coverage, or similar coverage under environmental insurance policies, or financial guarantees required to manage such remediation and monitoring.

(ii) EXCEPTIONS.—Such term shall not include—

(I) any portion of the purchase price paid or incurred by the eligible taxpayer to acquire the qualifying brownfield property,

(II) environmental insurance costs paid or incurred to obtain legal defense coverage, owner/operator liability coverage, lender liability coverage, professional liability coverage, or similar types of coverage,

(III) any amount paid or incurred to the extent such amount is reimbursed, funded, or otherwise subsidized by grants provided by the United States, a State, or a political subdivision of a State for use in connection with the property, proceeds of an issue of State or local government obligations used to provide financing for the property the interest of which is exempt from tax under section 103, or subsidized financing provided (directly or indirectly) under a Federal, State, or local program provided in connection with the property, or

(IV) any expenditure paid or incurred before the date of the enactment of this paragraph.

For purposes of subclause (III), the Secretary may issue guidance regarding the treatment of government-provided funds for purposes of determining eligible remediation expenditures.

(F) DETERMINATION OF GAIN OR LOSS.—For purposes of this paragraph, the determination of gain or loss shall not include an amount treated as gain which is ordinary income with respect to section 1245 or section 1250 property, including amounts deducted as section 198 expenses which are subject to the recapture rules of section 198(e), if the taxpayer had deducted such amounts in the computation of its unrelated business taxable income.

(G) SPECIAL RULES FOR PARTNERSHIPS.—

(i) IN GENERAL.—In the case of an eligible taxpayer which is a partner of a qualifying partnership which acquires, remediates, and sells, exchanges, or otherwise disposes of a qualifying brownfield property, this paragraph shall apply to the eligible taxpayer's distributive share of the qualifying partnership's gain or loss from the sale, exchange, or other disposition of such property.

(ii) QUALIFYING PARTNERSHIP.—The term "qualifying partnership" means a partnership which—

(I) has a partnership agreement which satisfies the requirements of section 514(c)(9)(B)(vi) at all times beginning on the date of the first certification received by the partnership under subparagraph (C)(i),

(II) satisfies the requirements of subparagraphs (B)(i), (C), (D), and (E), if "qualified partnership" is substituted for "eligible taxpayer" each place it appears therein (except subparagraph (D)(iii)), and

(III) is not an organization which would be prevented from constituting an eligible taxpayer by reason of subparagraph (B)(ii).

(iii) REQUIREMENT THAT TAX-EXEMPT PARTNER BE A PARTNER SINCE FIRST CERTIFICATION.—This paragraph shall apply with respect to any eligible taxpayer which is a partner of a partnership which acquires, remediates, and sells, exchanges, or otherwise disposes of a qualifying brownfield property only if such eligible taxpayer was a partner of the qualifying partnership at all times beginning on the date of the first certification received by the partnership under subparagraph (C)(i) and ending on the date of the sale, exchange, or other disposition of the property by the partnership.

(iv) REGULATIONS.—The Secretary shall prescribe such regulations as are necessary to prevent abuse of the requirements of this subparagraph, including abuse through—

(I) the use of special allocations of gains or losses, or

(II) changes in ownership of partnership interests held by eligible taxpayers.

(H) SPECIAL RULES FOR MULTIPLE PROPERTIES.—

(i) IN GENERAL.—An eligible taxpayer or a qualifying partnership of which the eligible taxpayer is a partner may make a 1-time election to apply this paragraph to more than 1 qualifying brownfield property by averaging the eligible remediation expenditures for all such properties acquired during the election period. If the eligible taxpayer or qualifying partnership makes such an election, the election shall apply to all qualified sales, exchanges, or other dispositions of qualifying brownfield properties the acquisition and transfer of which occur during the period for which the election remains in effect.

(ii) ELECTION.—An election under clause (i) shall be made with the eligible taxpayer's or qualifying partnership's timely filed tax return (including extensions) for the first taxable year for which the taxpayer or qualifying partnership intends to have the election apply. An election under clause (i) is effective for the period—

(I) beginning on the date which is the first day of the taxable year of the return in which the election is included or a later day in such taxable year selected by the eligible taxpayer or qualifying partnership, and

(II) ending on the date which is the earliest of a date of revocation selected by the eligible taxpayer or qualifying partnership, the date which is 8 years after the date

described in subclause (I), or, in the case of an election by a qualifying partnership of which the eligible taxpayer is a partner, the date of the termination of the qualifying partnership.

(iii) REVOCATION.—An eligible taxpayer or qualifying partnership may revoke an election under clause (i)(II) [1] by filing a statement of revocation with a timely filed tax return (including extensions). A revocation is effective as of the first day of the taxable year of the return in which the revocation is included or a later day in such taxable year selected by the eligible taxpayer or qualifying partnership. Once an eligible taxpayer or qualifying partnership revokes the election, the eligible taxpayer or qualifying partnership is ineligible to make another election under clause (i) with respect to any qualifying brownfield property subject to the revoked election.

(I) RECAPTURE.—If an eligible taxpayer excludes gain or loss from a sale, exchange, or other disposition of property to which an election under subparagraph (H) applies, and such property fails to satisfy the requirements of this paragraph, the unrelated business taxable income of the eligible taxpayer for the taxable year in which such failure occurs shall be determined by including any previously excluded gain or loss from such sale, exchange, or other disposition allocable to such taxpayer, and interest shall be determined at the overpayment rate established under section 6621 on any resulting tax for the period beginning with the due date of the return for the taxable year during which such sale, exchange, or other disposition occurred, and ending on the date of payment of the tax.

(J) RELATED PERSONS.—For purposes of this paragraph, a person shall be treated as related to another person if—

(i) such person bears a relationship to such other person described in section 267(b) (determined without regard to paragraph (9) thereof), or section 707(b)(1), determined by substituting "25 percent" for "50 percent" each place it appears therein, and

(ii) in the case such other person is a nonprofit organization, if such person controls directly or indirectly more than 25 percent of the governing body of such organization.

(K) TERMINATION.—Except for purposes of determining the average eligible remediation expenditures for properties acquired during the election period under subparagraph (H), this paragraph shall not apply to any property acquired by the eligible taxpayer or qualifying partnership after December 31, 2009.

(c) Special rules for partnerships

(1) In general

If a trade or business regularly carried on by a partnership of which an organization is a member is an unrelated trade or business with respect to such organization, such organization in computing its unrelated business taxable income shall, subject to the exceptions, additions, and limitations contained in subsection (b), include its share (whether or not distributed) of the gross income of the partnership from such unrelated trade or business and its share of the partnership deductions directly connected with such gross income.

(2) Special rule where partnership year is different from organization's year

If the taxable year of the organization is different from that of the partnership, the amounts to be included or deducted in computing the unrelated business taxable income under paragraph (1) shall be based upon the income and deductions of the partnership for any taxable year of the partnership ending within or with the taxable year of the organization.

(d) Treatment of dues of agricultural or horticultural organizations

(1) In general

If—

(A) an agricultural or horticultural organization described in section 501(c)(5) requires annual dues to be paid in order to be a member of such organization, and

(B) the amount of such required annual dues does not exceed $100,

in no event shall any portion of such dues be treated as derived by such organization from an unrelated trade or business by reason of any benefits or privileges to which members of such organization are entitled.

(2) Indexation of $100 amount

In the case of any taxable year beginning in a calendar year after 1995, the $100 amount in paragraph (1) shall be increased by an amount equal to—

(A) $100, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting "calendar year 1994" for "calendar year 1992" in subparagraph (B) thereof.

(3) Dues

For purposes of this subsection, the term "dues" means any payment (whether or not designated as dues) which is required to be made in order to be recognized by the organization as a member of the organization.

(e) Special rules applicable to S corporations

(1) In general

If an organization described in section 1361(c)(2)(A)(vi) or 1361(c)(6) holds stock in an S corporation—

(A) such interest shall be treated as an interest in an unrelated trade or business, and

(B) notwithstanding any other provision of this part—

(i) all items of income, loss, or deduction taken into account under section 1366(a), and

(ii) any gain or loss on the disposition of the stock in the S corporation,

shall be taken into account in computing the unrelated business taxable income of such organization.

(2) Basis reduction

Except as provided in regulations, for purposes of paragraph (1), the basis of any stock acquired by purchase (as defined in section 1361(e)(1)(C)) shall be reduced by the amount of any dividends received by the organization with respect to the stock.

(3) Exception for ESOPs

This subsection shall not apply to employer securities (within the meaning of section 409(l)) held by an employee stock ownership plan described in section 4975(e)(7).

(Aug. 16, 1954, ch. 736, 68A Stat. 170; Pub. L. 85–367, §1(a), Apr. 7, 1958, 72 Stat. 80; Pub. L. 88–380, §1, July 17, 1964, 78 Stat. 333; Pub. L. 89–809, title I, §104(g), Nov. 13, 1966, 80 Stat. 1559; Pub. L. 91–172, title I, §121(b)(1), (2), Dec. 30, 1969, 83 Stat. 537, 538; Pub. L. 92–418, §1(b), Aug. 29, 1972, 86 Stat. 656; Pub. L. 94–396, §1(a), Sept. 3, 1976, 90 Stat. 1201; Pub. L. 94–455, title XIX, §§1901(b)(8)(F), 1906(b)(13)(A), 1951(b)(8)(A), Oct. 4, 1976, 90 Stat. 1794, 1834, 1839; Pub. L. 94–568, §1(b), Oct. 20, 1976, 90 Stat. 2697; Pub. L. 95–345, §2(a)(2), (b), Aug. 15, 1978, 92 Stat. 481; Pub. L. 97–448, title I, §102(m)(3), Jan. 12, 1983, 96 Stat. 2374; Pub. L. 98–369, div. A, title V, §511(b), July 18, 1984, 98 Stat. 860; Pub. L. 99–514, title XVIII, §1851(a)(10), Oct. 22, 1986, 100 Stat. 2861; Pub. L. 100–203, title X, §10213(a), Dec. 22, 1987, 101 Stat. 1330–406; Pub. L. 100–647, title I, §1018(t)(2)(B), Nov. 10, 1988, 102 Stat. 3587; Pub. L. 101–508, title XI, §11801(a)(23), Nov. 5, 1990, 104 Stat. 1388–521; Pub. L. 103–66, title XIII, §§13145(a), 13147(a), 13148(a), (b), Aug. 10, 1993, 107 Stat. 443, 444; Pub. L. 104–188, title I, §§1115(a), 1316(c), 1603(a), Aug. 20, 1996, 110 Stat. 1761, 1786, 1835; Pub. L. 105–34, title III, §312(d)(5), title X, §1041(a), title XV, §1523(a), title XVI, §1601(c)(4)(A), (D), Aug. 5, 1997, 111

Stat. 840, 938, 1070, 1087; Pub. L. 105–206, title VI, §§6010(j)(1), (2), 6023(8), July 22, 1998, 112 Stat. 815, 825; Pub. L. 108–357, title II, §233(d), title III, §319(c), title VII, §702(a), Oct. 22, 2004, 118 Stat. 1434, 1472, 1540; Pub. L. 109–135, title IV, §412(dd), (ee)(1), Dec. 21, 2005, 119 Stat. 2639; Pub. L. 109–280, title XII, §1205(a), Aug. 17, 2006, 120 Stat. 1066; Pub. L. 110–343, div. C, title III, §306(a), Oct. 3, 2008, 122 Stat. 3868; Pub. L. 111–312, title VII, §747(a), Dec. 17, 2010, 124 Stat. 3320; Pub. L. 112–240, title III, §319(a), Jan. 2, 2013, 126 Stat. 2331.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

REFERENCES IN TEXT

The date of the enactment of the Taxpayer Relief Act of 1997, referred to in subsec. (a)(3)(D), is the date of enactment of Pub. L. 105–34, which was approved Aug. 5, 1997.

The date of the enactment of the Tax Reform Act of 1984, referred to in subsec. (a)(3)(E)(ii)(II), (III), is the date of enactment of division A of Pub. L. 98–369, which was approved July 18, 1984.

The date of the enactment of this subparagraph, referred to in subsec. (b)(13)(E)(iii)(I), is the date of enactment of Pub. L. 109–280, which was approved Aug. 17, 2006.

Sections 101(39), 107, 117(a), (b), and 121(d) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, referred to in subsec. (b)(19)(B)(ii)(I), (C)(i), (D)(i), (ii)(I), (V), are classified to sections 9601(39), 9607, 9617(a), (b), and 9621(d), respectively, of Title 42, The Public Health and Welfare.

The date of the enactment of this paragraph, referred to in subsec. (b)(19)(C)(i), (D)(i), (ii)(V), (E)(ii)(IV), is the date of enactment of Pub. L. 108–357, which was approved Oct. 22, 2004.

AMENDMENTS

2013—Subsec. (b)(13)(E)(iv). Pub. L. 112–240 substituted "December 31, 2013" for "December 31, 2011".

2010—Subsec. (b)(13)(E)(iv). Pub. L. 111–312 substituted "December 31, 2011" for "December 31, 2009".

2008—Subsec. (b)(13)(E)(iv). Pub. L. 110–343 substituted "December 31, 2009" for "December 31, 2007".

2006—Subsec. (b)(13)(E), (F). Pub. L. 109–280, which directed the amendment of section 512(b)(13) by adding subpar. (E) and redesignating former subpar. (E) as (F), without specifying the act to be amended, was executed by making the amendments to this section, which is section 512 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

2005—Subsec. (b)(1). Pub. L. 109–135, §412(dd), substituted "subsection (a)(5)" for "section 512(a)(5)".

Subsec. (b)(18), (19). Pub. L. 109–135, §412(ee)(1), redesignated par. (18), relating to treatment of gain or loss on sale or exchange of certain brownfield sites, as (19).

2004—Subsec. (b)(18). Pub. L. 108–357, §702(a), added par. (18) relating to treatment of gain or loss on sale or exchange of certain brownfield sites.

Pub. L. 108–357, §319(c), added par. (18) relating to treatment of mutual or cooperative electric companies.

Subsec. (e)(1). Pub. L. 108–357, §233(d), inserted "1361(c)(2)(A)(vi) or" before "1361(c)(6)" in introductory provisions.

1998—Subsec. (b)(13)(A). Pub. L. 105–206, §6010(j)(1), inserted "or accrues" after "receives" in first sentence.

Subsec. (b)(13)(B)(i)(I). Pub. L. 105–206, §6010(j)(2), struck out "(as defined in section 513A(a)(5)(A))" after "exempt purposes".

Subsec. (b)(17)(B)(ii)(II). Pub. L. 105–206, §6023(8), substituted "rule" for "Rule" in subcl. heading.

1997—Subsec. (a)(3)(D). Pub. L. 105–34, §312(d)(5), inserted "(as in effect on the day before the date of the enactment of the Taxpayer Relief Act of 1997)" after "1034".

Subsec. (b)(13). Pub. L. 105–34, §1041(a), amended par. (13) generally. Prior to amendment, par. (13) related to inclusion in gross income of controlling organization of amounts of interest, annuities, royalties, and rents derived from a controlled organization.

Subsec. (e)(1). Pub. L. 105–34, §1601(c)(4)(D), substituted "section 1361(c)(6)" for "section 1361(c)(7)".

Subsec. (e)(2). Pub. L. 105–34, §1601(c)(4)(A), substituted "as defined in section 1361(e)(1)(C)" for "within the meaning of section 1012".

Subsec. (e)(3). Pub. L. 105–34, §1523(a), added par. (3).

1996—Subsec. (b)(17). Pub. L. 104–188, §1603(a), added par. (17).

Subsec. (d). Pub. L. 104–188, §1115(a), added subsec. (d).

Subsec. (e). Pub. L. 104–188, §1316(c), added subsec. (e).

1993—Subsec. (b)(1). Pub. L. 103–66, §13148(a), inserted "amounts received or accrued as consideration for entering into agreements to make loans," before "and annuities".

Subsec. (b)(5). Pub. L. 103–66, §13148(b), in second sentence, substituted "all gains or losses recognized, in connection with the organization's investment activities, from" for "all gains on", struck out ", written by the organization in connection with its investment activities," after "termination of options", and inserted before period at end "or real property and all gains or losses from the forfeiture of good-faith deposits (that are consistent with established business practice) for the purchase, sale, or lease of real property in connection with the organization's investment activities".

Subsec. (b)(16). Pub. L. 103–66, §13147(a), added par. (16).

Subsec. (c)(2), (3). Pub. L. 103–66, §13145(a), redesignated par. (3) as (2), substituted "paragraph (1)" for "paragraph (1) or (2)", and struck out heading and text of former par. (2). Text read as follows: "Notwithstanding any other provision of this section—

"(A) any organization's share (whether or not distributed) of the gross income of a publicly traded partnership (as defined in section 469(k)(2)) shall be treated as gross income derived from an unrelated trade or business, and

"(B) such organization's share of the partnership deductions shall be allowed in computing unrelated business taxable income."

1990—Subsec. (b)(14). Pub. L. 101–508 struck out par. (14) which read as follows: "Except as provided in paragraph (4), in the case of a church, or convention or association of churches, for taxable years beginning before January 1, 1976, there shall be excluded all gross income derived from a trade or business and all deductions directly connected with the carrying on of such trade or business if such trade or business was carried on by such organization or its predecessor before May 27, 1969."

1988—Subsec. (a)(3)(E)(ii)(II). Pub. L. 100–647 substituted "subclause (I)" for "subclause (II)" and a period for comma at end.

1987—Subsec. (c). Pub. L. 100–203 substituted "for partnerships" for "applicable to partnerships" in heading and amended text generally. Prior to amendment, text read as follows: "If a trade or business regularly carried on by a partnership of which an organization is a member is an unrelated trade or business with respect to such organization, such organization in computing its unrelated business taxable income shall, subject to the exceptions, additions, and limitations contained in subsection (b), include its share (whether or not distributed) of the gross income of the partnership from such unrelated trade or business and its share of the partnership deductions directly connected with such gross income. If the taxable year of the organization is different from that of the partnership, the amounts to be so included or deducted in computing the unrelated business taxable income shall be based upon the income and deductions of the partnership for any taxable year of the partnership ending within or with the taxable year of the organization."

1986—Subsec. (a)(3)(E)(i). Pub. L. 99–514, §1851(a)(10)(A), substituted "determined under section 419A (without regard to subsection (f)(6) thereof)" for "determined under section 419A(c)".

Subsec. (a)(3)(E)(ii). Pub. L. 99–514, §1851(a)(10)(B), (C), redesignated cl. (iii) as (ii), in subcl. I substituted "an existing reserve" for "a existing reserve", and substituted new subcl. (II) for former subcl. (II) which read as follows: "For purposes of subclause (I), the term 'existing reserve or post-retirement medical or life insurance benefit' means the amount of assets set aside as of the close of the last plan year ending before the date of the enactment of the Tax Reform Act of 1984 for purposes of post-retirement medical benefits or life insurance benefits to be provided to covered employees." Former cl. (ii), which provided that no set aside for assets used in the provision of benefits described in cl. (ii) of subpar. (B), could be taken into account, was struck out.

Subsec. (a)(3)(E)(iii), (iv). Pub. L. 99–514, §1851(a)(10)(B), (D), redesignated former cl. (iv) as (iii) and substituted "subparagraph shall not" for "paragraph shall not". Former cl. (iii) redesignated (ii).

1984—Subsec. (a)(3). Pub. L. 98–369, §511(b)(1)(A), substituted "paragraph (7), (9), (17), or (20) of section 501(c)" for "section 501(c)(7) or (9)" wherever appearing in heading and in text.

Subsec. (a)(3)(B)(ii). Pub. L. 98–369, §511(b)(1)(B), substituted "paragraph (9), (17), or (20) of section 501(c)" for "section 501(c)(9)".

Subsec. (a)(3)(C), (D). Pub. L. 98–369, §511(b)(1)(A), substituted in subpars. (C) and (D) "paragraph (7), (9), (17), or (20) of section 501(c)" for "section 501(c)(7) or (9)" wherever appearing.

Subsec. (a)(3)(E). Pub. L. 98–369, §511(b)(2), added subpar. (E).

1983—Subsec. (b)(10). Pub. L. 97–448 substituted "10 percent" for "5 percent".

1978—Subsec. (a)(5). Pub. L. 95–345, §2(b), added par. (5).

Subsec. (b)(1). Pub. L. 95–345, §2(a)(2), inserted provision relating to payments with respect to securities loans.

1976—Subsec. (a)(3)(A). Pub. L. 94–568 provided that for purposes of the general rule, the deductions

provided by sections 243, 244, and 245 (relating to dividends received by corporations) shall be treated as not directly connected with the production of gross income.

Subsec. (b). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (b)(5). Pub. L. 94–396 inserted provision relating to exclusion of gains on the lapse or termination of options to buy or sell securities.

Subsec. (b)(13), (14). Pub. L. 94–455, §1951(b)(8)(A), redesignated pars. (15) and (16) as (13) and (14), respectively. Former pars. (13) and (14), relating to exceptions, additions, and limitations applicable in determining unrelated business taxable income, were struck out.

Subsec. (b)(15). Pub. L. 94–455, §§1901(b)(8)(F), 1906(b)(13)(A), 1951(b)(8)(A), redesignated par. (17) as (15) and substituted in subpar. (B) "educational organization described in section 170(b)(1)(A)(ii)" for "educational institution (as defined in section 151(e)(4))" after "order or by an", and struck out "or his delegate" after "Secretary". Former par. (15) redesignated (13).

Subsec. (b)(16), (17). Pub. L. 94–455, §1951(b)(8)(A), redesignated pars. (16) and (17) as (14) and (15), respectively.

1972—Subsec. (a)(4). Pub. L. 92–418 added par. (4).

1969—Subsec. (a). Pub. L. 91–172, §121(b)(1), designated existing provisions as pars. (1) and (2)(B) and added pars. (2)(A) and (3).

Subsec. (b). Pub. L. 91–172, §121(b)(2)(D), substituted "Modifications" for "Exceptions, additions, and limitations", in heading, and, in text preceding par. (1) substituted "The modifications referred to in subsection (a)" for "The exceptions, additions, and limitations applicable in determining unrelated business taxable income".

Subsec. (b)(3)(A). Pub. L. 91–172, §121(b)(2)(A), inserted reference to exceptions set out in subsec. (b)(3)(B) in text preceding cl. (i), substituted "property described in section 1245(a)(3)(C)" for "personal property leased with the real property" in parenthetical of cl. (i), and added cl. (ii).

Subsec. (b)(3)(B). Pub. L. 91–172, §121(b)(2)(A), added subpar. (B).

Subsec. (b)(3)(C). Pub. L. 91–172, §121(b)(2)(A), substituted "rents excluded under subparagraph (A)" for "such rents".

Subsec. (b)(4). Pub. L. 91–172, §121(b)(2)(A), inserted reference to pars. (1), (3) and (5) of this subsec., and substituted "debt financed property" for "a business lease".

Subsec. (b)(12). Pub. L. 91–172, §121(b)(2)(B), made the allowance of the specific $1,000 deduction inapplicable for the purposes of computing the net operating loss under section 172 of this title and par. (6) of this subsec., and provided for the allowance of specific deductions equal to the lower of $1,000 or the gross income derived from any unrelated trade or business carried on by a parish, individual church, district, or other local unit.

Subsec. (b)(15) to (17). Pub. L. 91–172, §121(b)(2)(C), added pars. (15) to (17).

1966—Subsec. (a). Pub. L. 89–809 substituted ", the unrelated business taxable income shall be its unrelated business taxable income which is effectively connected with the conduct of a trade or business within the United States" for ", the unrelated business taxable income shall be its unrelated business taxable income derived from sources within the United States determined under subchapter N (sec. 861 and following), relating to tax based on income from sources within or without the United States".

1964—Subsec. (b)(14). Pub. L. 88–380 added par. (14).

1958—Subsec. (b)(13). Pub. L. 85–367 added par. (13).

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title III, §319(b), Jan. 2, 2013, 126 Stat. 2332, provided that: "The amendment made by this section [amending this section] shall apply to payments received or accrued after December 31, 2011."

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §747(b), Dec. 17, 2010, 124 Stat. 3320, provided that: "The amendment made by this section [amending this section] shall apply to payments received or accrued after December 31, 2009."

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title III, §306(b), Oct. 3, 2008, 122 Stat. 3868, provided that: "The amendment made by this section [amending this section] shall apply to payments received or accrued after December 31, 2007."

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title XII, §1205(c)(1), Aug. 17, 2006, 120 Stat. 1067, provided that: "The amendments made by subsection (a) [amending this section] shall apply to payments received or accrued after December

31, 2005."

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title II, §233(e), Oct. 22, 2004, 118 Stat. 1435, provided that: "The amendments made by this section [amending this section and sections 1361 and 4975 of this title] shall take effect on the date of the enactment of this Act [Oct. 22, 2004]."

Amendment by section 319(c) of Pub. L. 108–357 applicable to taxable years beginning after Oct. 22, 2004, see section 319(e) of Pub. L. 108–357, set out as a note under section 501 of this title.

Pub. L. 108–357, title VII, §702(d), Oct. 22, 2004, 118 Stat. 1546, provided that: "The amendments made by this section [amending this section and section 514 of this title] shall apply to any gain or loss on the sale, exchange, or other disposition of any property acquired by the taxpayer after December 31, 2004."

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 6023(8) of Pub. L. 105–206 effective July 22, 1998, see section 6023(32) of Pub. L. 105–206, set out as a note under section 34 of this title.

Amendment by section 6010(j)(1), (2) of Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 312(d)(5) of Pub. L. 105–34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d)[(e)] of Pub. L. 105–34, set out as a note under section 121 of this title.

Pub. L. 105–34, title X, §1041(b), Aug. 5, 1997, 111 Stat. 939, as amended by Pub. L. 105–206, title VI, §6010(j)(3), July 22, 1998, 112 Stat. 815, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 5, 1997].

"(2) BINDING CONTRACTS.—The amendments made by this section shall not apply to any amount received or accrued during the first 2 taxable years beginning on or after the date of the enactment of this Act if such amount is received or accrued pursuant to a written binding contract in effect on June 8, 1997, and at all times thereafter before such amount is received or accrued. The preceding sentence shall not apply to any amount which would (but for the exercise of an option to accelerate payment of such amount) be received or accrued after such 2 taxable years."

Pub. L. 105–34, title XV, §1523(b), Aug. 5, 1997, 111 Stat. 1071, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1997."

Amendment by section 1601(c)(4)(A), (D) of Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 23 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, §1115(b), Aug. 20, 1996, 110 Stat. 1761, provided that:

"(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1986.

"(2) TRANSITIONAL RULE.—If—

"(A) for purposes of applying part III of subchapter F of chapter 1 of the Internal Revenue Code of 1986 to any taxable year beginning before January 1, 1987, an agricultural or horticultural organization did not treat any portion of membership dues received by it as income derived in an unrelated trade or business, and

"(B) such organization had a reasonable basis for not treating such dues as income derived in an unrelated trade or business,

then, for purposes of applying such part III to any such taxable year, in no event shall any portion of such dues be treated as derived in an unrelated trade or business.

"(3) REASONABLE BASIS.—For purposes of paragraph (2), an organization shall be treated as having a reasonable basis for not treating membership dues as income derived in an unrelated trade or business if the taxpayer's treatment of such dues was in reasonable reliance on any of the following:

"(A) Judicial precedent, published rulings, technical advice with respect to the organization, or a letter ruling to the organization.

"(B) A past Internal Revenue Service audit of the organization in which there was no assessment

attributable to the reclassification of membership dues for purposes of the tax on unrelated business income.

"(C) Long-standing recognized practice of agricultural or horticultural organizations."

Amendment by section 1316(c) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1997, see section 1316(f) of Pub. L. 104–188, set out as a note under section 170 of this title.

Pub. L. 104–188, title I, §1603(b), Aug. 20, 1996, 110 Stat. 1836, provided that: "The amendment made by this section [amending this section] shall apply to amounts included in gross income in any taxable year beginning after December 31, 1995."

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13145(b), Aug. 10, 1993, 107 Stat. 443, provided that: "The amendments made by subsection (a) [amending this section] shall apply to partnership years beginning on or after January 1, 1994."

Pub. L. 103–66, title XIII, §13147(b), Aug. 10, 1993, 107 Stat. 444, provided that: "The amendment made by subsection (a) [amending this section] shall apply to property acquired on or after January 1, 1994."

Pub. L. 103–66, title XIII, §13148(c), Aug. 10, 1993, 107 Stat. 444, provided that: "The amendments made by this section [amending this section] shall apply to amounts received on or after January 1, 1994."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title X, §10213(b), Dec. 22, 1987, 101 Stat. 1330–407, provided that: "The amendment made by subsection (a) [amending this section] shall apply to partnership interests acquired after December 17, 1987."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years ending after Dec. 31, 1985, with such amendments treated as a change in the rate of tax imposed by chapter 1 of this title for purposes of section 15 of this title, see section 511(e)(6) of Pub. L. 98–369, set out as an Effective Date note under section 419 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–345 applicable with respect to amounts received after Dec. 31, 1976, as payments with respect to securities loans (as defined in subsec. (a)(5) of this section), and transfers of securities, under agreements described in section 1058 of this title, occurring after such date, see section 2(e) of Pub. L. 95–345, set out as a note under section 509 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–568 applicable to taxable years beginning after Oct. 20, 1976, see section 1(d) of Pub. L. 94–568, set out as a note under section 501 of this title.

Amendment by section 1901(b)(8)(F) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by section 1951(b)(8)(A) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1951(d) of Pub. L. 94–455, set out as a note under section 72 of this title.

Pub. L. 94–396, §1(b), Sept. 3, 1976, 90 Stat. 1201, provided that: "The amendment made by subsection (a) [amending this section] shall apply to gain from options which lapse or terminate on or after January 1, 1976, in taxable years ending on or after such date."

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–418 applicable to taxable years beginning after Dec. 31, 1969, see section 1(c) of Pub. L. 92–418, set out as a note under section 501 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 121(g) of Pub. L. 91–172, set out as a note under section 511 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88–380, §2, July 17, 1964, 78 Stat. 333, provided that: "The amendment made by the first section of this Act [amending this section] shall apply with respect to taxable years beginning after December 31, 1963."

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85–367, §1(b), Apr. 7, 1958, 72 Stat. 80, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years of trusts beginning after December 31, 1955."

SAVINGS PROVISION

Pub. L. 108–357, title VII, §702(c), Oct. 22, 2004, 118 Stat. 1546, provided that: "Nothing in the amendments made by this section [amending this section and section 514 of this title] shall affect any duty, liability, or other requirement imposed under any other Federal or State law. Notwithstanding section 128(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [42 U.S.C. 9628(b)], a certification provided by the Environmental Protection Agency or an appropriate State agency (within the meaning of section 198(c)(4) of the Internal Revenue Code of 1986) shall not affect the liability of any person under section 107(a) of such Act [42 U.S.C. 9607(a)]."

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

Pub. L. 94–455, title XIX, §1951(b)(8)(B), Oct. 4, 1976, 90 Stat. 1839, provided that: "Notwithstanding subparagraph (A) [amending this section], income received in a taxable year beginning after December 31, 1975, shall be excluded from gross income in determining unrelated business taxable income, if such income would have been excluded by paragraph (13) or (14) of section 512(b) if received in a taxable year beginning before such date. Any deductions directly connected with income excluded under the preceding sentence in determining unrelated business taxable income shall also be excluded for such purpose."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[1] *So in original.*

§513. Unrelated trade or business

(a) General rule

The term "unrelated trade or business" means, in the case of any organization subject to the tax imposed by section 511, any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or

function constituting the basis for its exemption under section 501 (or, in the case of an organization described in section 511(a)(2)(B), to the exercise or performance of any purpose or function described in section 501(c)(3)), except that such term does not include any trade or business—

(1) in which substantially all the work in carrying on such trade or business is performed for the organization without compensation; or

(2) which is carried on, in the case of an organization described in section 501(c)(3) or in the case of a college or university described in section 511(a)(2)(B), by the organization primarily for the convenience of its members, students, patients, officers, or employees, or, in the case of a local association of employees described in section 501(c)(4) organized before May 27, 1969, which is the selling by the organization of items of work-related clothes and equipment and items normally sold through vending machines, through food dispensing facilities, or by snack bars, for the convenience of its members at their usual places of employment; or

(3) which is the selling of merchandise, substantially all of which has been received by the organization as gifts or contributions.

(b) Special rule for trusts

The term "unrelated trade or business" means, in the case of—

(1) a trust computing its unrelated business taxable income under section 512 for purposes of section 681; or

(2) a trust described in section 401(a), or section 501(c)(17), which is exempt from tax under section 501(a);

any trade or business regularly carried on by such trust or by a partnership of which it is a member.

(c) Advertising, etc., activities

For purposes of this section, the term "trade or business" includes any activity which is carried on for the production of income from the sale of goods or the performance of services. For purposes of the preceding sentence, an activity does not lose identity as a trade or business merely because it is carried on within a larger aggregate of similar activities or within a larger complex of other endeavors which may, or may not, be related to the exempt purposes of the organization. Where an activity carried on for profit constitutes an unrelated trade or business, no part of such trade or business shall be excluded from such classification merely because it does not result in profit.

(d) Certain activities of trade shows, State fairs, etc.

(1) General rule

The term "unrelated trade or business" does not include qualified public entertainment activities of an organization described in paragraph (2)(C), or qualified convention and trade show activities of an organization described in paragraph (3)(C).

(2) Qualified public entertainment activities

For purposes of this subsection—

(A) Public entertainment activity

The term "public entertainment activity" means any entertainment or recreational activity of a kind traditionally conducted at fairs or expositions promoting agricultural and educational purposes, including, but not limited to, any activity one of the purposes of which is to attract the public to fairs or expositions or to promote the breeding of animals or the development of products or equipment.

(B) Qualified public entertainment activity

The term "qualified public entertainment activity" means a public entertainment activity which is conducted by a qualifying organization described in subparagraph (C) in—

(i) conjunction with an international, national, State, regional, or local fair or exposition,

(ii) accordance with the provisions of State law which permit the activity to be operated or

conducted solely by such an organization, or by an agency, instrumentality, or political subdivision of such State, or

(iii) accordance with the provisions of State law which permit such an organization to be granted a license to conduct not more than 20 days of such activity on payment to the State of a lower percentage of the revenue from such licensed activity than the State requires from organizations not described in section 501(c)(3), (4), or (5).

(C) Qualifying organization

For purposes of this paragraph, the term "qualifying organization" means an organization which is described in section 501(c) (3), (4), or (5) which regularly conducts, as one of its substantial exempt purposes, an agricultural and educational fair or exposition.

(3) Qualified convention and trade show activities

(A) Convention and trade show activities

The term "convention and trade show activity" means any activity of a kind traditionally conducted at conventions, annual meetings, or trade shows, including, but not limited to, any activity one of the purposes of which is to attract persons in an industry generally (without regard to membership in the sponsoring organization) as well as members of the public to the show for the purpose of displaying industry products or to stimulate interest in, and demand for, industry products or services, or to educate persons engaged in the industry in the development of new products and services or new rules and regulations affecting the industry.

(B) Qualified convention and trade show activity

The term "qualified convention and trade show activity" means a convention and trade show activity carried out by a qualifying organization described in subparagraph (C) in conjunction with an international, national, State, regional, or local convention, annual meeting, or show conducted by an organization described in subparagraph (C) if one of the purposes of such organization in sponsoring the activity is the promotion and stimulation of interest in, and demand for, the products and services of that industry in general or to educate persons in attendance regarding new developments or products and services related to the exempt activities of the organization, and the show is designed to achieve such purpose through the character of the exhibits and the extent of the industry products displayed.

(C) Qualifying organization

For purposes of this paragraph, the term "qualifying organization" means an organization described in section 501(c)(3), (4), (5), or (6) which regularly conducts as one of its substantial exempt purposes a show which stimulates interest in, and demand for, the products of a particular industry or segment of such industry or which educates persons in attendance regarding new developments or products and services related to the exempt activities of the organization.

(4) Such activities not to affect exempt status

An organization described in section 501(c) (3), (4), or (5) shall not be considered as not entitled to the exemption allowed under section 501(a) solely because of qualified public entertainment activities conducted by it.

(e) Certain hospital services

In the case of a hospital described in section 170(b)(1)(A)(iii), the term "unrelated trade or business" does not include the furnishing of one or more of the services described in section 501(e)(1)(A) to one or more hospitals described in section 170(b)(1)(A)(iii) if—

(1) such services are furnished solely to such hospitals which have facilities to serve not more than 100 inpatients;

(2) such services, if performed on its own behalf by the recipient hospital, would constitute activities in exercising or performing the purpose or function constituting the basis for its exemption; and

(3) such services are provided at a fee or cost which does not exceed the actual cost of providing such services, such cost including straight line depreciation and a reasonable amount for return on capital goods used to provide such services.

(f) Certain bingo games

(1) In general

The term "unrelated trade or business" does not include any trade or business which consists of conducting bingo games.

(2) Bingo game defined

For purposes of paragraph (1), the term "bingo game" means any game of bingo—

(A) of a type in which usually—

(i) the wagers are placed,

(ii) the winners are determined, and

(iii) the distribution of prizes or other property is made,

in the presence of all persons placing wagers in such game,

(B) the conducting of which is not an activity ordinarily carried out on a commercial basis, and

(C) the conducting of which does not violate any State or local law.

(g) Certain pole rentals

In the case of a mutual or cooperative telephone or electric company, the term "unrelated trade or business" does not include engaging in qualified pole rentals (as defined in section 501(c)(12)(D)).

(h) Certain distributions of low cost articles without obligation to purchase and exchanges and rentals of member lists

(1) In general

In the case of an organization which is described in section 501 and contributions to which are deductible under paragraph (2) or (3) of section 170(c), the term "unrelated trade or business" does not include—

(A) activities relating to the distribution of low cost articles if the distribution of such articles is incidental to the solicitation of charitable contributions, or

(B) any trade or business which consists of—

(i) exchanging with another such organization names and addresses of donors to (or members of) such organization, or

(ii) renting such names and addresses to another such organization.

(2) Low cost article defined

For purposes of this subsection—

(A) In general

The term "low cost article" means any article which has a cost not in excess of $5 to the organization which distributes such item (or on whose behalf such item is distributed).

(B) Aggregation rule

If more than 1 item is distributed by or on behalf of an organization to a single distributee in any calendar year, the aggregate of the items so distributed in such calendar year to such distributee shall be treated as 1 article for purposes of subparagraph (A).

(C) Indexation of $5 amount

In the case of any taxable year beginning in a calendar year after 1987, the $5 amount in subparagraph (A) shall be increased by an amount equal to—

(i) $5, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting "calendar year 1987" for "calendar year 1992"

in subparagraph (B) thereof.

(3) Distribution which is incidental to the solicitation of charitable contributions described

For purposes of this subsection, any distribution of low cost articles by an organization shall be treated as a distribution incidental to the solicitation of charitable contributions only if—

(A) such distribution is not made at the request of the distributee,

(B) such distribution is made without the express consent of the distributee, and

(C) the articles so distributed are accompanied by—

(i) a request for a charitable contribution (as defined in section 170(c)) by the distributee to such organization, and

(ii) a statement that the distributee may retain the low cost article regardless of whether such distributee makes a charitable contribution to such organization.

(i) Treatment of certain sponsorship payments

(1) In general

The term "unrelated trade or business" does not include the activity of soliciting and receiving qualified sponsorship payments.

(2) Qualified sponsorship payments

For purposes of this subsection—

(A) In general

The term "qualified sponsorship payment" means any payment made by any person engaged in a trade or business with respect to which there is no arrangement or expectation that such person will receive any substantial return benefit other than the use or acknowledgement of the name or logo (or product lines) of such person's trade or business in connection with the activities of the organization that receives such payment. Such a use or acknowledgement does not include advertising such person's products or services (including messages containing qualitative or comparative language, price information, or other indications of savings or value, an endorsement, or an inducement to purchase, sell, or use such products or services).

(B) Limitations

(i) Contingent payments

The term "qualified sponsorship payment" does not include any payment if the amount of such payment is contingent upon the level of attendance at one or more events, broadcast ratings, or other factors indicating the degree of public exposure to one or more events.

(ii) Safe harbor does not apply to periodicals and qualified convention and trade show activities

The term "qualified sponsorship payment" does not include—

(I) any payment which entitles the payor to the use or acknowledgement of the name or logo (or product lines) of the payor's trade or business in regularly scheduled and printed material published by or on behalf of the payee organization that is not related to and primarily distributed in connection with a specific event conducted by the payee organization, or

(II) any payment made in connection with any qualified convention or trade show activity (as defined in subsection (d)(3)(B)).

(3) Allocation of portions of single payment

For purposes of this subsection, to the extent that a portion of a payment would (if made as a separate payment) be a qualified sponsorship payment, such portion of such payment and the other portion of such payment shall be treated as separate payments.

(j) Debt management plan services

The term "unrelated trade or business" includes the provision of debt management plan services (as defined in section 501(q)(4)(B)) by any organization other than an organization which meets the

requirements of section 501(q).

(Aug. 16, 1954, ch. 736, 68A Stat. 172; Pub. L. 86–667, §4, July 14, 1960, 74 Stat. 536; Pub. L. 91–172, title I, §121(b)(4), (c), Dec. 30, 1969, 83 Stat. 541, 542; Pub. L. 94–455, title XIII, §§1305(a), 1311(a), Oct. 4, 1976, 90 Stat. 1716, 1729; Pub. L. 95–502, title III, §301(a), Oct. 21, 1978, 92 Stat. 1702; Pub. L. 96–605, title I, §106(b), Dec. 28, 1980, 94 Stat. 3524; Pub. L. 99–514, title XVI, §§1601(a), 1602(a), (b), Oct. 22, 1986, 100 Stat. 2766, 2767; Pub. L. 101–508, title XI, §11101(d)(1)(G), Nov. 5, 1990, 104 Stat. 1388–405; Pub. L. 103–66, title XIII, §13201(b)(3)(H), Aug. 10, 1993, 107 Stat. 459; Pub. L. 105–34, title IX, §965(a), Aug. 5, 1997, 111 Stat. 893; Pub. L. 109–280, title XII, §1220(b), Aug. 17, 2006, 120 Stat. 1088.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

AMENDMENTS

2006—Subsec. (j). Pub. L. 109–280, which directed the addition of subsec. (j) to section 513, without specifying the act to be amended, was executed by making the addition to this section, which is section 513 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

1997—Subsec. (i). Pub. L. 105–34 added subsec. (i).

1993—Subsec. (h)(2)(C)(ii). Pub. L. 103–66 substituted "calendar year 1992" for "calendar year 1989".

1990—Subsec. (h)(2)(C)(ii). Pub. L. 101–508 inserted before period at end ", by substituting 'calendar year 1987' for 'calendar year 1989' in subparagraph (B) thereof".

1986—Subsec. (d)(3)(B). Pub. L. 99–514, §1602(a), inserted "or to educate persons in attendance regarding new developments or products and services related to the exempt activities of the organization".

Subsec. (d)(3)(C). Pub. L. 99–514, §1602(b), substituted "section 501(c)(3), (4), (5), or (6)" for "section 501(c)(5) or (6)" and inserted "or which educates persons in attendance regarding new developments or products and services related to the exempt activities of the organization".

Subsec. (h). Pub. L. 99–514, §1601(a), added subsec. (h).

1980—Subsec. (g). Pub. L. 96–605 added subsec. (g).

1978—Subsec. (f). Pub. L. 95–502 added subsec. (f).

1976—Subsec. (d). Pub. L. 94–455, §1305(a), added subsec. (d).

Subsec. (e). Pub. L. 94–455, §1311(a), added subsec. (e).

1969—Subsec. (a)(2). Pub. L. 91–172, §121(b)(4), inserted reference to local associations of employees described in section 501(c)(4) of this title and organized before May 27, 1969.

Subsec. (c). Pub. L. 91–172, §121(c), substituted "Advertising, etc., activities" for "Special rule for certain publishing businesses", in heading, and, in text, substituted provisions extending definition of trade or business to include any activity carried on for the production of income from the sale of goods or the performance of services, for provisions referring to publishing businesses carried on by an organization during a taxable year beginning before Jan. 1, 1953.

1960—Subsec. (b)(2). Pub. L. 86–667 included trusts described in section 501(c)(17).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 applicable to taxable years beginning after Aug. 17, 2006, with transition rule for existing organizations, see section 1220(c) of Pub. L. 109–280, set out as a note under section 501 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title IX, §965(b), Aug. 5, 1997, 111 Stat. 894, provided that: "The amendment made by this section [amending this section] shall apply to payments solicited or received after December 31, 1997."

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to taxable years beginning after Dec. 31, 1992, see section 13201(c) of Pub. L. 103–66, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, see section 11101(e) of Pub. L. 101–508, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XVI, §1601(b), Oct. 22, 1986, 100 Stat. 2767, provided that: "The amendment made by this section [amending this section] shall apply to distributions of low cost articles and exchanges and rentals of member lists after the date of the enactment of this Act [Oct. 22, 1986]."

Pub. L. 99–514, title XVI, §1602(c), Oct. 22, 1986, 100 Stat. 2768, provided that: "The amendments made by this section [amending this section] shall apply to activities in taxable years beginning after the date of the enactment of this Act [Oct. 22, 1986]."

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–605, title I, §106(c)(2), Dec. 29, 1980, 94 Stat. 3524, provided that: "The amendment made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 1969."

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–502, title III, §301(b), Oct. 21, 1978, 92 Stat. 1702, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1969."

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XIII, §1305(b), Oct. 4, 1976, 90 Stat. 1717, provided that: "The amendments made by subsection (a) [amending this section] apply to qualified public entertainment activities in taxable years beginning after December 31, 1962, and to qualified convention and trade show activities in taxable years beginning after the date of enactment of this Act [Oct. 4, 1976]."

Pub. L. 94–455, title XIII, §1311(b), Oct. 4, 1976, 90 Stat. 1730, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendment made by this section [amending this section] shall apply to all taxable years to which the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [this title] applies."

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 121(g) of Pub. L. 91–172, set out as a note under section 511 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–667 applicable to taxable years beginning after Dec. 31, 1959, see section 6 of Pub. L. 86–667, set out as a note under section 501 of this title.

CONDUCTING OF CERTAIN GAMES OF CHANCE NOT TREATED AS UNRELATED TRADE OR BUSINESS

Pub. L. 98–369, div. A, title III, §311, July 18, 1984, 98 Stat. 786, as amended by Pub. L. 99–514, §2, title XVIII, §1834, Oct. 22, 1986, 100 Stat. 2095, 2852, provided that:

"(a) GENERAL RULE.—For purposes of section 513 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (defining unrelated trade or business), the term 'unrelated trade or business' does not include any trade or business which consists of conducting any game of chance if—

"(1) such game of chance is conducted by a nonprofit organization,

"(2) the conducting of such game by such organization does not violate any State or local law, and

"(3) as of October 5, 1983—

"(A) there was a State law (originally enacted on April 22, 1977) in effect which permitted the conducting of such game of chance by such nonprofit organization, but

"(B) the conducting of such game of chance by organizations which were not nonprofit organizations would have violated such law.

"(b) EFFECTIVE DATE.—Subsection (a) shall apply to games of chance conducted after June 30, 1981, in taxable years ending after such date."

[Pub. L. 99–514, title XVIII, §1834, Oct. 22, 1986, 100 Stat. 2852, as amended by Pub. L. 100–647, title VI, §6201, Nov. 10, 1988, 102 Stat. 3730, provided in part that: "The amendment made by this section [amending section 311 of Pub. L. 98–369, set out above] shall apply to games of chance conducted after October 22, 1986, in taxable years ending after such date".]

§514. Unrelated debt-financed income

(a) Unrelated debt-financed income and deductions

In computing under section 512 the unrelated business taxable income for any taxable year—

(1) Percentage of income taken into account

There shall be included with respect to each debt-financed property as an item of gross income derived from an unrelated trade or business an amount which is the same percentage (but not in excess of 100 percent) of the total gross income derived during the taxable year from or on account of such property as (A) the average acquisition indebtedness (as defined in subsection (c)(7)) for the taxable year with respect to the property is of (B) the average amount (determined under regulations prescribed by the Secretary) of the adjusted basis of such property during the period it is held by the organization during such taxable year.

(2) Percentage of deductions taken into account

There shall be allowed as a deduction with respect to each debt-financed property an amount determined by applying (except as provided in the last sentence of this paragraph) the percentage derived under paragraph (1) to the sum determined under paragraph (3). The percentage derived under this paragraph shall not be applied with respect to the deduction of any capital loss resulting from the carryback or carryover of net capital losses under section 1212.

(3) Deductions allowable

The sum referred to in paragraph (2) is the sum of the deductions under this chapter which are directly connected with the debt-financed property or the income therefrom, except that if the debt-financed property is of a character which is subject to the allowance for depreciation provided in section 167, the allowance shall be computed only by use of the straight-line method.

(b) Definition of debt-financed property

(1) In general

For purposes of this section, the term "debt-financed property" means any property which is held to produce income and with respect to which there is an acquisition indebtedness (as defined in subsection (c)) at any time during the taxable year (or, if the property was disposed of during the taxable year, with respect to which there was an acquisition indebtedness at any time during the 12-month period ending with the date of such disposition), except that such term does not include—

(A)(i) any property substantially all the use of which is substantially related (aside from the need of the organization for income or funds) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501 (or, in the case of an organization described in section 511(a)(2)(B), to the exercise or performance of any purpose or function designated in section 501(c)(3)), or (ii) any property to which clause (i) does not apply, to the extent that its use is so substantially related;

(B) except in the case of income excluded under section 512(b)(5), any property to the extent that the income from such property is taken into account in computing the gross income of any unrelated trade or business;

(C) any property to the extent that the income from such property is excluded by reason of the provisions of paragraph (7), (8), or (9) of section 512(b) in computing the gross income of any unrelated trade or business;

(D) any property to the extent that it is used in any trade or business described in paragraph (1), (2), or (3) of section 513(a); or

(E) any property the gain or loss from the sale, exchange, or other disposition of which would be excluded by reason of the provisions of section 512(b)(19) in computing the gross income of any unrelated trade or business.

For purposes of subparagraph (A), substantially all the use of a property shall be considered to be substantially related to the exercise or performance by an organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501

if such property is real property subject to a lease to a medical clinic entered into primarily for purposes which are substantially related (aside from the need of such organization for income or funds or the use it makes of the rents derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501.

(2) Special rule for related uses

For purposes of applying paragraphs (1) (A), (C), and (D), the use of any property by an exempt organization which is related to an organization shall be treated as use by such organization.

(3) Special rules when land is acquired for exempt use within 10 years

(A) Neighborhood land

If an organization acquires real property for the principal purpose of using the land (commencing within 10 years of the time of acquisition) in the manner described in paragraph (1)(A) and at the time of acquisition the property is in the neighborhood of other property owned by the organization which is used in such manner, the real property acquired for such future use shall not be treated as debt-financed property so long as the organization does not abandon its intent to so use the land within the 10-year period. The preceding sentence shall not apply for any period after the expiration of the 10-year period, and shall apply after the first 5 years of the 10-year period only if the organization establishes to the satisfaction of the Secretary that it is reasonably certain that the land will be used in the described manner before the expiration of the 10-year period.

(B) Other cases

If the first sentence of subparagraph (A) is inapplicable only because—

(i) the acquired land is not in the neighborhood referred to in subparagraph (A), or

(ii) the organization (for the period after the first 5 years of the 10-year period) is unable to establish to the satisfaction of the Secretary that it is reasonably certain that the land will be used in the manner described in paragraph (1)(A) before the expiration of the 10-year period,

but the land is converted to such use by the organization within the 10-year period, the real property (subject to the provisions of subparagraph (D)) shall not be treated as debt-financed property for any period before such conversion. For purposes of this subparagraph, land shall not be treated as used in the manner described in paragraph (1)(A) by reason of the use made of any structure which was on the land when acquired by the organization.

(C) Limitations

Subparagraphs (A) and (B)—

(i) shall apply with respect to any structure on the land when acquired by the organization, or to the land occupied by the structure, only if (and so long as) the intended future use of the land in the manner described in paragraph (1)(A) requires that the structure be demolished or removed in order to use the land in such manner;

(ii) shall not apply to structures erected on the land after the acquisition of the land; and

(iii) shall not apply to property subject to a lease which is a business lease (as defined in this section immediately before the enactment of the Tax Reform Act of 1976).

(D) Refund of taxes when subparagraph (B) applies

If an organization for any taxable year has not used land in the manner to satisfy the actual use condition of subparagraph (B) before the time prescribed by law (including extensions thereof) for filing the return for such taxable year, the tax for such year shall be computed without regard to the application of subparagraph (B), but if and when such use condition is satisfied, the provisions of subparagraph (B) shall then be applied to such taxable year. If the actual use condition of subparagraph (B) is satisfied for any taxable year after such time for filing the return, and if credit or refund of any overpayment for the taxable year resulting from the satisfaction of such use condition is prevented at the close of the taxable year in which the

use condition is satisfied, by the operation of any law or rule of law (other than chapter 74, relating to closing agreements and compromises), credit or refund of such overpayment may nevertheless be allowed or made if claim therefor is filed before the expiration of 1 year after the close of the taxable year in which the use condition is satisfied.

(E) Special rule for churches

In applying this paragraph to a church or convention or association of churches, in lieu of the 10-year period referred to in subparagraphs (A) and (B) a 15-year period shall be applied, and subparagraphs (A) and (B)(ii) shall apply whether or not the acquired land meets the neighborhood test.

(c) Acquisition indebtedness

(1) General rule

For purposes of this section, the term "acquisition indebtedness" means, with respect to any debt-financed property, the unpaid amount of—

(A) the indebtedness incurred by the organization in acquiring or improving such property;

(B) the indebtedness incurred before the acquisition or improvement of such property if such indebtedness would not have been incurred but for such acquisition or improvement; and

(C) the indebtedness incurred after the acquisition or improvement of such property if such indebtedness would not have been incurred but for such acquisition or improvement and the incurrence of such indebtedness was reasonably foreseeable at the time of such acquisition or improvement.

(2) Property acquired subject to mortgage, etc.

For purposes of this subsection—

(A) General rule

Where property (no matter how acquired) is acquired subject to a mortgage or other similar lien, the amount of the indebtedness secured by such mortgage or lien shall be considered as an indebtedness of the organization incurred in acquiring such property even though the organization did not assume or agree to pay such indebtedness.

(B) Exceptions

Where property subject to a mortgage is acquired by an organization by bequest or devise, the indebtedness secured by the mortgage shall not be treated as acquisition indebtedness during a period of 10 years following the date of the acquisition. If an organization acquires property by gift subject to a mortgage which was placed on the property more than 5 years before the gift, which property was held by the donor more than 5 years before the gift, the indebtedness secured by such mortgage shall not be treated as acquisition indebtedness during a period of 10 years following the date of such gift. This subparagraph shall not apply if the organization, in order to acquire the equity in the property by bequest, devise, or gift, assumes and agrees to pay the indebtedness secured by the mortgage, or if the organization makes any payment for the equity in the property owned by the decedent or the donor.

(C) Liens for taxes or assessments

Where State law provides that—

(i) a lien for taxes, or

(ii) a lien for assessments,

made by a State or a political subdivision thereof attaches to property prior to the time when such taxes or assessments become due and payable, then such lien shall be treated as similar to a mortgage (within the meaning of subparagraph (A)) but only after such taxes or assessments become due and payable and the organization has had an opportunity to pay such taxes or assessments in accordance with State law.

(3) Extension of obligations

For purposes of this section, an extension, renewal, or refinancing of an obligation evidencing a pre-existing indebtedness shall not be treated as the creation of a new indebtedness.

(4) Indebtedness incurred in performing exempt purpose

For purposes of this section, the term "acquisition indebtedness" does not include indebtedness the incurrence of which is inherent in the performance or exercise of the purpose or function constituting the basis of the organization's exemption, such as the indebtedness incurred by a credit union described in section 501(c)(14) in accepting deposits from its members.

(5) Annuities

For purposes of this section, the term "acquisition indebtedness" does not include an obligation to pay an annuity which—

(A) is the sole consideration (other than a mortgage to which paragraph (2)(B) applies) issued in exchange for property if, at the time of the exchange, the value of the annuity is less than 90 percent of the value of the property received in the exchange,

(B) is payable over the life of one individual in being at the time the annuity is issued, or over the lives of two individuals in being at such time, and

(C) is payable under a contract which—

(i) does not guarantee a minimum amount of payments or specify a maximum amount of payments, and

(ii) does not provide for any adjustment of the amount of the annuity payments by reference to the income received from the transferred property or any other property.

(6) Certain Federal financing

(A) In general

For purposes of this section, the term "acquisition indebtedness" does not include—

(i) an obligation, to the extent that it is insured by the Federal Housing Administration, to finance the purchase, rehabilitation, or construction of housing for low and moderate income persons, or

(ii) indebtedness incurred by a small business investment company licensed after the date of the enactment of the American Jobs Creation Act of 2004 under the Small Business Investment Act of 1958 if such indebtedness is evidenced by a debenture—

(I) issued by such company under section 303(a) of such Act, and

(II) held or guaranteed by the Small Business Administration.

(B) Limitation

Subparagraph (A)(ii) shall not apply with respect to any small business investment company during any period that—

(i) any organization which is exempt from tax under this title (other than a governmental unit) owns more than 25 percent of the capital or profits interest in such company, or

(ii) organizations which are exempt from tax under this title (including governmental units other than any agency or instrumentality of the United States) own, in the aggregate, 50 percent or more of the capital or profits interest in such company.

(7) Average acquisition indebtedness

For purposes of this section, the term "average acquisition indebtedness" for any taxable year with respect to a debt-financed property means the average amount, determined under regulations prescribed by the Secretary of the acquisition indebtedness during the period the property is held by the organization during the taxable year, except that for the purpose of computing the percentage of any gain or loss to be taken into account on a sale or other disposition of debt-financed property, such term means the highest amount of the acquisition indebtedness with respect to such property during the 12-month period ending with the date of the sale or other disposition.

(8) Securities subject to loans

For purposes of this section—

(A) payments with respect to securities loans (as defined in section 512(a)(5)) shall be deemed to be derived from the securities loaned and not from collateral security or the investment of collateral security from such loans,

(B) any deductions which are directly connected with collateral security for such loan, or with the investment of collateral security, shall be deemed to be deductions which are directly connected with the securities loaned, and

(C) an obligation to return collateral security shall not be treated as acquisition indebtedness (as defined in paragraph (1)).

(9) Real property acquired by a qualified organization

(A) In general

Except as provided in subparagraph (B), the term "acquisition indebtedness" does not, for purposes of this section, include indebtedness incurred by a qualified organization in acquiring or improving any real property. For purposes of this paragraph, an interest in a mortgage shall in no event be treated as real property.

(B) Exceptions

The provisions of subparagraph (A) shall not apply in any case in which—

(i) the price for the acquisition or improvement is not a fixed amount determined as of the date of the acquisition or the completion of the improvement;

(ii) the amount of any indebtedness or any other amount payable with respect to such indebtedness, or the time for making any payment of any such amount, is dependent, in whole or in part, upon any revenue, income, or profits derived from such real property;

(iii) the real property is at any time after the acquisition leased by the qualified organization to the person selling such property to such organization or to any person who bears a relationship described in section 267(b) or 707(b) to such person;

(iv) the real property is acquired by a qualified trust from, or is at any time after the acquisition leased by such trust to, any person who—

(I) bears a relationship which is described in subparagraph (C), (E), or (G) of section 4975(e)(2) to any plan with respect to which such trust was formed, or

(II) bears a relationship which is described in subparagraph (F) or (H) of section 4975(e)(2) to any person described in subclause (I);

(v) any person described in clause (iii) or (iv) provides the qualified organization with financing in connection with the acquisition or improvement; or

(vi) the real property is held by a partnership unless the partnership meets the requirements of clauses (i) through (v) and unless—

(I) all of the partners of the partnership are qualified organizations,

(II) each allocation to a partner of the partnership which is a qualified organization is a qualified allocation (within the meaning of section 168(h)(6)), or

(III) such partnership meets the requirements of subparagraph (E).

For purposes of subclause (I) of clause (vi), an organization shall not be treated as a qualified organization if any income of such organization is unrelated business taxable income.

(C) Qualified organization

For purposes of this paragraph, the term "qualified organization" means—

(i) an organization described in section 170(b)(1)(A)(ii) and its affiliated support organizations described in section 509(a)(3);

(ii) any trust which constitutes a qualified trust under section 401;

(iii) an organization described in section 501(c)(25); or

(iv) a retirement income account described in section 403(b)(9).

(D) Other pass-thru entities; tiered entities

Rules similar to the rules of subparagraph (B)(vi) shall also apply in the case of any pass-thru entity other than a partnership and in the case of tiered partnerships and other entities.

(E) Certain allocations permitted

(i) In general

A partnership meets the requirements of this subparagraph if—

(I) the allocation of items to any partner which is a qualified organization cannot result in such partner having a share of the overall partnership income for any taxable year greater than such partner's share of the overall partnership loss for the taxable year for which such partner's loss share will be the smallest, and

(II) each allocation with respect to the partnership has substantial economic effect within the meaning of section 704(b)(2).

For purposes of this clause, items allocated under section 704(c) shall not be taken into account.

(ii) Special rules

(I) Chargebacks

Except as provided in regulations, a partnership may without violating the requirements of this subparagraph provide for chargebacks with respect to disproportionate losses previously allocated to qualified organizations and disproportionate income previously allocated to other partners. Any chargeback referred to in the preceding sentence shall not be at a ratio in excess of the ratio under which the loss or income (as the case may be) was allocated.

(II) Preferred rates of return, etc.

To the extent provided in regulations, a partnership may without violating the requirements of this subparagraph provide for reasonable preferred returns or reasonable guaranteed payments.

(iii) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subparagraph, including regulations which may provide for exclusion or segregation of items.

(F) Special rules for organizations described in section 501(c)(25)

(i) In general

In computing under section 512 the unrelated business taxable income of a disqualified holder of an interest in an organization described in section 501(c)(25), there shall be taken into account—

(I) as gross income derived from an unrelated trade or business, such holder's pro rata share of the items of income described in clause (ii)(I) of such organization, and

(II) as deductions allowable in computing unrelated business taxable income, such holder's pro rata share of the items of deduction described in clause (ii)(II) of such organization.

Such amounts shall be taken into account for the taxable year of the holder in which (or with which) the taxable year of such organization ends.

(ii) Description of amounts

For purposes of clause (i)—

(I) gross income is described in this clause to the extent such income would (but for this paragraph) be treated under subsection (a) as derived from an unrelated trade or business, and

(II) any deduction is described in this clause to the extent it would (but for this paragraph) be allowable under subsection (a)(2) in computing unrelated business taxable income.

(iii) Disqualified holder

For purposes of this subparagraph, the term "disqualified holder" means any shareholder (or beneficiary) which is not described in clause (i) or (ii) of subparagraph (C).

(G) Special rules for purposes of the exceptions

Except as otherwise provided by regulations—

(i) Small leases disregarded

For purposes of clauses (iii) and (iv) of subparagraph (B), a lease to a person described in such clause (iii) or (iv) shall be disregarded if no more than 25 percent of the leasable floor space in a building (or complex of buildings) is covered by the lease and if the lease is on commercially reasonable terms.

(ii) Commercially reasonable financing

Clause (v) of subparagraph (B) shall not apply if the financing is on commercially reasonable terms.

(H) Qualifying sales by financial institutions

(i) In general

In the case of a qualifying sale by a financial institution, except as provided in regulations, clauses (i) and (ii) of subparagraph (B) shall not apply with respect to financing provided by such institution for such sale.

(ii) Qualifying sale

For purposes of this clause, there is a qualifying sale by a financial institution if—

(I) a qualified organization acquires property described in clause (iii) from a financial institution and any gain recognized by the financial institution with respect to the property is ordinary income,

(II) the stated principal amount of the financing provided by the financial institution does not exceed the amount of the outstanding indebtedness (including accrued but unpaid interest) of the financial institution with respect to the property described in clause (iii) immediately before the acquisition referred to in clause (iii) or (v), whichever is applicable, and

(III) the present value (determined as of the time of the sale and by using the applicable Federal rate determined under section 1274(d)) of the maximum amount payable pursuant to the financing that is determined by reference to the revenue, income, or profits derived from the property cannot exceed 30 percent of the total purchase price of the property (including the contingent payments).

(iii) Property to which subparagraph applies

Property is described in this clause if such property is foreclosure property, or is real property which—

(I) was acquired by the qualified organization from a financial institution which is in conservatorship or receivership, or from the conservator or receiver of such an institution, and

(II) was held by the financial institution at the time it entered into conservatorship or receivership.

(iv) Financial institution

For purposes of this subparagraph, the term "financial institution" means—

(I) any financial institution described in section 581 or 591(a),

(II) any other corporation which is a direct or indirect subsidiary of an institution

referred to in subclause (I) but only if, by virtue of being affiliated with such institution, such other corporation is subject to supervision and examination by a Federal or State agency which regulates institutions referred to in subclause (I), and

(III) any person acting as a conservator or receiver of an entity referred to in subclause (I) or (II) (or any government agency or corporation succeeding to the rights or interest of such person).

(v) Foreclosure property

For purposes of this subparagraph, the term "foreclosure property" means any real property acquired by the financial institution as the result of having bid on such property at foreclosure, or by operation of an agreement or process of law, after there was a default (or a default was imminent) on indebtedness which such property secured.

(d) Basis of debt-financed property acquired in corporate liquidation

For purposes of this subtitle, if the property was acquired in a complete or partial liquidation of a corporation in exchange for its stock, the basis of the property shall be the same as it would be in the hands of the transferor corporation, increased by the amount of gain recognized to the transferor corporation upon such distribution and by the amount of any gain to the organization which was included, on account of such distribution, in unrelated business taxable income under subsection (a).

(e) Allocation rules

Where debt-financed property is held for purposes described in subsection (b)(1)(A), (B), (C), or (D) as well as for other purposes, proper allocation shall be made with respect to basis, indebtedness, and income and deductions. The allocations required by this section shall be made in accordance with regulations prescribed by the Secretary to the extent proper to carry out the purposes of this section.

(f) Personal property leased with real property

For purposes of this section, the term "real property" includes personal property of the lessor leased by it to a lessee of its real estate if the lease of such personal property is made under, or in connection with, the lease of such real estate.

(g) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations to prevent the circumvention of any provision of this section through the use of segregated asset accounts.

(Aug. 16, 1954, ch. 736, 68A Stat. 172; Pub. L. 86–667, §5, July 14, 1960, 74 Stat. 536; Pub. L. 91–172, title I, §121(d)(1), (3)(A), (B), Dec. 30, 1969, 83 Stat. 543, 548; Pub. L. 93–625, §7(b)(2), Jan. 3, 1975, 88 Stat. 2115; Pub. L. 94–455, title XIII, §1308(a), title XIX, §§1901(a)(72), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1729, 1776, 1834; Pub. L. 95–345, §2(c), Aug. 15, 1978, 92 Stat. 482; Pub. L. 96–605, title I, §110(a), Dec. 28, 1980, 94 Stat. 3525; Pub. L. 98–369, div. A, title I, §174(b)(5)(B), title X, §1034(a), (b), July 18, 1984, 98 Stat. 707, 1039, 1040; Pub. L. 99–514, title II, §201(d)(9), title XVI, §1603(b), title XVIII, §1878(e), Oct. 22, 1986, 100 Stat. 2141, 2768, 2903; Pub. L. 100–203, title X, §10214(a), (b), Dec. 22, 1987, 101 Stat. 1330–407; Pub. L. 100–647, title I, §§1016(a)(5)(A), (6), 1018(u)(13), title II, §2004(h), Nov. 10, 1988, 102 Stat. 3574, 3575, 3590, 3603; Pub. L. 101–239, title VII, §7811(l), Dec. 19, 1989, 103 Stat. 2412; Pub. L. 103–66, title XIII, §13144(a), (b), Aug. 10, 1993, 107 Stat. 441, 442; Pub. L. 108–357, title II, §247(a), title VII, §702(b), Oct. 22, 2004, 118 Stat. 1449, 1546; Pub. L. 109–135, title IV, §412(ee)(2), Dec. 21, 2005, 119 Stat. 2639; Pub. L. 109–280, title VIII, §866(a), Aug. 17, 2006, 120 Stat. 1025.)

REFERENCES IN TEXT

The Tax Reform Act of 1976, referred to in subsec. (b)(3)(C)(iii), is Pub. L. 94–455, Oct. 4, 1976, 90 Stat. 1520, as amended, which was enacted Oct. 4, 1976. For complete classification of this Act to the Code, see Tables.

The date of the enactment of the American Jobs Creation Act of 2004, referred to in subsec. (c)(6)(A)(ii), is the date of enactment of Pub. L. 108–357, which was approved Oct. 22, 2004.

The Small Business Investment Act of 1958, referred to in subsec. (c)(6)(A)(ii), is Pub. L. 85–699, Aug. 21, 1958, 72 Stat. 689, as amended, which is classified principally to chapter 14B (§661 et seq.) of Title 15, Commerce and Trade. Section 303(a) of the Act is classified to section 683(a) of Title 15. For complete classification of this Act to the Code, see Short Title note set out under section 661 of Title 15 and Tables.

AMENDMENTS

2006—Subsec. (c)(9)(C)(iv). Pub. L. 109–280 added cl. (iv).

2005—Subsec. (b)(1)(E). Pub. L. 109–135 substituted "section 512(b)(19)" for "section 512(b)(18)".

2004—Subsec. (b)(1)(E). Pub. L. 108–357, §702(b), added subpar. (E).

Subsec. (c)(6). Pub. L. 108–357, §247(a), reenacted heading without change and amended text of par. (6) generally. Prior to amendment, text read as follows: "For purposes of this section, the term 'acquisition indebtedness' does not include an obligation, to the extent that it is insured by the Federal Housing Administration, to finance the purchase, rehabilitation, or construction of housing for low and moderate income persons."

1993—Subsec. (c)(9)(A). Pub. L. 103–66, §13144(b)(1), inserted at end "For purposes of this paragraph, an interest in a mortgage shall in no event be treated as real property."

Subsec. (c)(9)(B). Pub. L. 103–66, §13144(b)(2), struck out at end "For purposes of this paragraph, an interest in a mortgage shall in no event be treated as real property."

Subsec. (c)(9)(G), (H). Pub. L. 103–66, §13144(a), added subpars. (G) and (H).

1989—Subsec. (c)(9)(E), (F). Pub. L. 101–239 redesignated the subpar. (E), relating to special rules for organizations described in section 501(c)(25), as (F).

1988—Subsec. (c)(9)(B). Pub. L. 100–647, §1016(a)(6), substituted "this paragraph" for "clause (vi)" in last sentence.

Pub. L. 100–647, §1018(u)(13)(A), amended directory language of Pub. L. 99–514, §1878(e)(1), (3), to clarify that general amendment by section 1878(e)(3) included concluding provision as well as cl. (vi) and that amendment by section 1878(e)(1) should have been to the concluding provisions as amended by section 1878(e)(3).

Subsec. (c)(9)(E). Pub. L. 100–647, §1016(a)(5)(A), added subpar. (E) relating to special rules for organizations described in section 501(c)(25).

Subsec. (c)(9)(E)(i). Pub. L. 100–647, §2004(h)(2), in subsec. (c)(9)(E), relating to certain allocations permitted, redesignated subcls. (II) and (III) as (I) and (II), respectively, and struck out former subcl. (I) which read as follows: "the allocation of items to any partner other than a qualified organization cannot result in such partner having a share of the overall partnership loss for any taxable year greater than such partner's share of the overall partnership income for the taxable year for which such partner's income share will be the smallest,".

Subsec. (c)(9)(E)(iii). Pub. L. 100–647, §2004(h)(1), in subsec. (c)(9)(E) relating to certain allocations permitted, added cl. (iii).

1987—Subsec. (c)(9)(B)(vi). Pub. L. 100–203, §10214(a), amended cl. (vi) generally. Prior to amendment, cl. (vi) read as follows: "the real property is held by a partnership (which does not fail to meet the requirements of clauses (i) through (v)), and—

"(I) any partner of the partnership is not a qualified organization, and

"(II) the principal purpose of any allocation to any partner of the partnership which is a qualified organization which is not a qualified allocation (within the meaning of section 168(h)(6)) is the avoidance of income tax."

Subsec. (c)(9)(E). Pub. L. 100–203, §10214(b), added subpar. (E).

1986—Subsec. (c)(9)(B). Pub. L. 99–514, §1878(e)(1), as amended by Pub. L. 100–647, §1018(u)(13)(A), which directed amendment of penultimate sentence by substituting "is unrelated business taxable income" for "would be unrelated business taxable income (determined without regard to this paragraph)", was executed by making the substitution for "would be unrelated business taxable income (determined without regard to this paragraph", as the probable intent of Congress.

Pub. L. 99–514, §1878(e)(3), as amended by Pub. L. 100–647, §1018(u)(13)(B), amended concluding provisions generally. Prior to amendment, concluding provisions read as follows: "For purposes of clause (vi)(I), an organization shall not be treated as a qualified organization if any income of such organization would be unrelated business taxable income (determined without regard to this paragraph)."

Subsec. (c)(9)(B)(vi). Pub. L. 99–514, §1878(e)(3), as amended by Pub. L. 100–647, §1018(u)(13)(B), amended cl. (vi) generally. Prior to amendment, cl. (vi) read as follows: "the real property is held by a partnership unless the partnership meets the requirements of clauses (i) through (v) and unless—

"(I) all of the partners of the partnership are qualified organizations, or

"(II) each allocation to a partner of the partnership which is a qualified organization is a qualified allocation (within the meaning of section 168(j)(9))."

Subsec. (c)(9)(B)(vi)(II). Pub. L. 99–514, §201(d)(9), substituted "section 168(h)(6)" for "section 168(j)(9)".

Subsec. (c)(9)(C)(i). Pub. L. 99–514, §1878(e)(2), substituted "section 509(a)(3)" for "section 509(a)".

Subsec. (c)(9)(C)(iii). Pub. L. 99–514, §1603(b), added cl. (iii).

1984—Subsec. (c)(9). Pub. L. 98–369, §1034(a), amended par. (9) generally, substituting provisions relating to real property acquired by a qualified organization for provisions relating to real property acquired by a qualified trust, with "qualified organization" expanded to include trusts constituting qualified trusts under section 401 of this title as well as organizations described in section 170(b)(1)(A)(ii) of this title and their affiliated support organizations described in section 509(a) of this title.

Subsec. (c)(9)(B)(iii). Pub. L. 98–369, §174(b)(5)(B), inserted reference to section 707(b).

Subsec. (g). Pub. L. 98–369, §1034(b), added subsec. (g).

1980—Subsec. (c)(9). Pub. L. 96–605 added par. (9).

1978—Subsec. (c)(8). Pub. L. 95–345 added par. (8).

1976—Subsecs. (a)(1), (b)(3)(A), (B)(ii). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (b)(3)(C)(iii). Pub. L. 94–455, §1901(a)(72)(C), substituted "(as defined in this section immediately before the enactment of the Tax Reform Act of 1976)" for "as (defined in subsection (f))" after "is a business lease".

Subsec. (c)(1). Pub. L. 94–455, §1901(a)(72)(A), struck out exception following subpar. (C) that in any taxable year beginning before January 1, 1972, any acquisition indebtedness incurred prior to June 28, 1966, would not be taken into account except for business lease indebtedness of certain organizations.

Subsec. (c)(2)(C). Pub. L. 94–455, §1308(a), added subpar. (C).

Subsecs. (c)(7), (e). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (f). Pub. L. 94–455, §1901(a)(72(B), struck out subsec. (f) relating to definition of business lease, special rules applicable to such leases, and exceptions to the definition and applicable rules, and redesignated subsec. (h) as (f).

Subsec. (g). Pub. L. 94–455, §1901(a)(72)(B), struck out subsec. (g) relating to definition and special rules applicable to business lease indebtedness.

Subsec. (h). Pub. L. 94–455, §1901(a)(72)(B), redesignated subsec. (h) as (f).

1975—Subsec. (b)(3)(D). Pub. L. 93–625 struck out last sentence providing for allowance and payment of interest on any overpayment for a taxable year resulting from application of subpar. (B) after actual use condition was satisfied at rate of 4 in lieu of 6 percent per annum.

1969—Subsec. (a). Pub. L. 91–172, §121(d)(1), substituted "Unrelated debt-financed income" for "Business leases" in heading and substituted in text material covering unrelated debt-financed income and deductions for material covering business lease rents and deductions.

Subsecs. (b) to (e). Pub. L. 91–172, §121(d)(1), (3)(A), added subsecs. (b), (c), (d) and (e). Former subsecs. (b), (c), and (d) redesignated (f), (g), and (h), respectively.

Subsec. (f). Pub. L. 91–172, §121(d)(3)(A), (B), redesignated subsec. (b) as subsec. (f), and, in par. (1) of subsec. (f) as so redesignated, substituted reference to subsec. (g) for reference to subsec. (c).

Subsecs. (g), (h). Pub. L. 91–172, §121(d)(3)(A), redesignated subsecs. (c) and (d) as (g) and (h), respectively.

1960—Subsec. (c)(8). Pub. L. 86–667 added par. (8).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title VIII, §866(b), Aug. 17, 2006, 120 Stat. 1025, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning on or after the date of enactment of this Act [Aug. 17, 2006]."

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title II, §247(b), Oct. 22, 2004, 118 Stat. 1449, provided that: "The amendment made by this section [amending this section] shall apply to indebtedness incurred after the date of the enactment of this Act [Oct. 22, 2004] by a small business investment company licensed after the date of the enactment of this Act."

Amendment by section 702(b) of Pub. L. 108–357 applicable to any gain or loss on the sale, exchange, or other disposition of any property acquired by the taxpayer after Dec. 31, 2004, see section 702(d) of Pub. L. 108–357, set out as a note under section 512 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13144(c), Aug. 10, 1993, 107 Stat. 442, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to acquisitions on or after January 1, 1994.

"(2) SMALL LEASES.—The provisions of section 514(c)(9)(G)(i) of the Internal Revenue Code of 1986 shall, in addition to any leases to which the provisions apply by reason of paragraph (1), apply to leases entered into on or after January 1, 1994."

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1016(a)(5)(B), Nov. 10, 1988, 102 Stat. 3575, provided that: "The amendment made by subparagraph (A) [amending this section] shall apply with respect to interests in the organization acquired after June 10, 1987, except that such amendment shall not apply to any such interest acquired after June 10, 1987, pursuant to a binding written contract in effect on June 10, 1987, and at all times thereafter before such acquisition."

Amendment by sections 1016(a)(6) and 1018(u)(13) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 2004(h) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title X, §10214(c), Dec. 22, 1987, 101 Stat. 1330–408, provided that: "The amendments made by this section [amending this section] shall apply to—

"(1) property acquired by the partnership after October 13, 1987, and

"(2) partnership interests acquired after October 13, 1987,

except that such amendments shall not apply in the case of any property (or partnership interest) acquired pursuant to a written binding contract in effect on October 13, 1987, and at all times thereafter before such property (or interest) is acquired."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 201(d)(9) of Pub. L. 99–514 applicable to property placed in service after Dec. 31, 1986, in taxable years ending after such date, with exceptions, see sections 203 and 204 of Pub. L. 99–514, set out as a note under section 168 of this title.

Amendment by section 201(d)(9) of Pub. L. 99–514 not applicable to any property placed in service before Jan. 1, 1994, if such property placed in service as part of specified rehabilitations, and not applicable to certain additional rehabilitations, see section 251(d)(2), (3) of Pub. L. 99–514, set out as a note under section 46 of this title.

Amendment by section 1603(b) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1603(c) of Pub. L. 99–514, set out as a note under section 501 of this title.

Amendment by section 1878(e) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 174(b)(5)(B) of Pub. L. 98–369 applicable to transactions after Dec. 31, 1983, in taxable years ending after that date, see section 174(c)(2)(A) of Pub. L. 98–369, set out as a note under section 267 of this title.

Pub. L. 98–369, div. A, title X, §1034(c), July 18, 1984, 98 Stat. 1040, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to indebtedness incurred after the date of the enactment of this Act [July 18, 1984].

"(2) EXCEPTION FOR INDEBTEDNESS ON CERTAIN PROPERTY ACQUIRED BEFORE JANUARY 1, 1985.—

"(A) The amendment made by subsection (a) [amending this section] shall not apply to any

indebtedness incurred before January 1, 1985, by a partnership described in subparagraph (B) if such indebtedness is incurred with respect to property acquired (directly or indirectly) by such partnership before such date.

"(B) A partnership is described in this subparagraph if—

"(i) before October 21, 1983, the partnership was organized, a request for exemption with respect to such partnership was filed with the Department of Labor, and a private placement memorandum stating the maximum number of units in the partnership that would be offered had been circulated,

"(ii) the interest in the property to be acquired, directly or indirectly (including through acquiring an interest in another partnership) by such partnership was described in such private placement memorandum, and

"(iii) the marketing of partnership interests in such partnership is completed not later than 2 years after the later of the date of enactment of this Act [July 18, 1984] or the date of publication in the Federal Register of such exemption by the Department of Labor and the aggregate number of units in such partnership sold does not exceed the amount described in clause (i).

"(3) EXCEPTION FOR INDEBTEDNESS ON CERTAIN PROPERTY ACQUIRED BEFORE JANUARY 1, 1986.—

"(A) The amendment made by subsection (a) [amending this section] shall not apply to any indebtedness incurred before January 1, 1986, by a partnership described in subparagraph (B) if such indebtedness is incurred with respect to property acquired (directly or indirectly) by such partnership before such date.

"(B) A partnership is described in this paragraph if—

"(i) before March 6, 1984, the partnership was organized and publicly announced, the maximum amount of interests which would be sold in such partnership, and

"(ii) the marketing of partnership interests in such partnership is completed not later than the 90th day after the date of the enactment of this Act [July 18, 1984] and the aggregate amount of interests in such partnership sold does not exceed the maximum amount described in clause (i).

For purposes of clause (i), the maximum amount taken into account shall be the greatest of the amounts shown in the registration statement, prospectus, or partnership agreement.

"(C) BINDING CONTRACTS.—For purposes of this paragraph, property shall be deemed to have been acquired before January 1, 1986, if such property is acquired pursuant to a written contract which, on January 1, 1986, and at all times thereafter, required the acquisition of such property and such property is placed in service not later than 6 months after the date such contract was entered into."

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–605, title I, §110(c), Dec. 28, 1980, 94 Stat. 3526, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1980."

EXTENSION OF 1980 AMENDMENT OF THIS SECTION TO OTHER PERSONS

Pub. L. 96–605, title I, §110(b), Dec. 28, 1980, 94 Stat. 3526, provided that: "The amendment made by subsection (a) [amending this section] shall not be considered a precedent with respect to extending such amendment (or similar rules) to any other person."

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–345 applicable with respect to amounts received after Dec. 31, 1976, as payments with respect to securities loans (as defined in section 512(a)(5) of this title), and transfers of securities, under agreements described in section 1058 of this title, occurring after such date, see section 2(e) of Pub. L. 95–345, set out as a note under section 509 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XIII, §1308(b), Oct. 4, 1976, 90 Stat. 1729, provided that: "The amendment made by this section [amending this section] shall apply to taxable years ending after December 31, 1969."

Amendment by section 1901(a)(72) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–625 effective July 1, 1975, and applicable to amounts outstanding on such date or arising thereafter, see section 7(e) of Pub. L. 93–625, set out as an Effective Date note under section 6621 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, and to the manner of treatment to be accorded indebtednesses secured by certain mortgages on properties bargain-purchased before Oct. 9, 1969, see section 121(g) of Pub. L. 91–172, set out as a note under section 511 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–667 applicable to taxable years beginning after Dec. 31, 1959, see section 6 of Pub. L. 86–667, set out as a note under section 501 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TRANSITION RULE FOR ACQUISITION INDEBTEDNESS WITH RESPECT TO CERTAIN LAND

Pub. L. 99–514, title XVI, §1607, Oct. 22, 1986, 100 Stat. 2771, provided that: "For purposes of applying section 514(c) of the Internal Revenue Code of 1986, with respect to a disposition during calendar year 1986 or calendar year 1987 of land acquired during calendar year 1984, the term 'acquisition indebtedness' does not include indebtedness incurred in connection with bonds issued after January 1, 1984, and before July 19, 1984, on behalf of an organization which is a community college and which is described in section 511(a)(2)(B) of such Code."

§515. Taxes of foreign countries and possessions of the United States

The amount of taxes imposed by foreign countries and possessions of the United States shall be allowed as a credit against the tax of an organization subject to the tax imposed by section 511 to the extent provided in section 901; and in the case of the tax imposed by section 511, the term "taxable income" as used in section 901 shall be read as "unrelated business taxable income".

(Aug. 16, 1954, ch. 736, 68A Stat. 176.)

PART IV—FARMERS' COOPERATIVES

Sec.
521. Exemption of farmers' cooperatives from tax.
[522. Repealed.]

AMENDMENTS

1969—Pub. L. 91–172, title I, §101(a), Dec. 30, 1969, 83 Stat. 492, substituted "PART IV" for "PART III" as part designation.

1962—Pub. L. 87–834, §17(b)(5), Oct. 16, 1962, 76 Stat. 1051, struck out item 522 "Tax on farmers' cooperatives".

§521. Exemption of farmers' cooperatives from tax

(a) Exemption from tax

A farmers' cooperative organization described in subsection (b)(1) shall be exempt from taxation under this subtitle except as otherwise provided in part I of subchapter T (sec. 1381 and following). Notwithstanding part I of subchapter T (sec. 1381 and following), such an organization shall be considered an organization exempt from income taxes for purposes of any law which refers to organizations exempt from income taxes.

(b) Applicable rules

(1) Exempt farmers' cooperatives

The farmers' cooperatives exempt from taxation to the extent provided in subsection (a) are farmers', fruit growers', or like associations organized and operated on a cooperative basis (A) for the purpose of marketing the products of members or other producers, and turning back to them the proceeds of sales, less the necessary marketing expenses, on the basis of either the quantity or the value of the products furnished by them, or (B) for the purpose of purchasing supplies and equipment for the use of members or other persons, and turning over such supplies and equipment to them at actual cost, plus necessary expenses.

(2) Organizations having capital stock

Exemption shall not be denied any such association because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the State of incorporation or 8 percent per annum, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all such stock (other than nonvoting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the association, upon dissolution or otherwise, beyond the fixed dividends) is owned by producers who market their products or purchase their supplies and equipment through the association.

(3) Organizations maintaining reserve

Exemption shall not be denied any such association because there is accumulated and maintained by it a reserve required by State law or a reasonable reserve for any necessary purpose.

(4) Transactions with nonmembers

Exemption shall not be denied any such association which markets the products of nonmembers in an amount the value of which does not exceed the value of the products marketed for members, or which purchases supplies and equipment for nonmembers in an amount the value of which does not exceed the value of the supplies and equipment purchased for members, provided the value of the purchases made for persons who are neither members nor producers does not exceed 15 percent of the value of all its purchases.

(5) Business for the United States

Business done for the United States or any of its agencies shall be disregarded in determining the right to exemption under this section.

(6) Netting of losses

Exemption shall not be denied any such association because such association computes its net earnings for purposes of determining any amount available for distribution to patrons in the manner described in paragraph (1) of section 1388(j).

(7) Cross reference

For treatment of value-added processing involving animals, see section 1388(k).

(Aug. 16, 1954, ch. 736, 68A Stat. 176; Pub. L. 87–834, §17(b)(1), Oct. 16, 1962, 76 Stat. 1051; Pub. L. 99–272, title XIII, §13210(b), Apr. 7, 1986, 100 Stat. 324; Pub. L. 108–357, title III, §316(b), Oct. 22, 2004, 118 Stat. 1469.)

AMENDMENTS

2004—Subsec. (b)(7). Pub. L. 108–357 added par. (7).

1986—Subsec. (b)(6). Pub. L. 99–272 added par. (6).

1962—Subsec. (a). Pub. L. 87–834 substituted "part I of subchapter T (sec. 1381 and following)" for "section 522" in two places.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title III, §316(c), Oct. 22, 2004, 118 Stat. 1469, provided that: "The amendments made by this section [amending this section and section 1388 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 22, 2004]."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 applicable to taxable years beginning after Dec. 31, 1962, see section 13210(c) of Pub. L. 99–272, set out as a note under section 1388 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable, except as otherwise provided, to taxable years of organizations described in section 1381(a) of this title beginning after Dec. 31, 1962, see section 17(c) of Pub. L. 87–834, set out as an Effective Date note under section 1381 of this title.

[§522. Repealed. Pub. L. 87–834, §17(b)(2), Oct. 16, 1962, 76 Stat. 1051]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 177, related to tax on farmers' cooperatives.

EFFECTIVE DATE OF REPEAL

Repeal applicable, except as otherwise provided, to taxable years of organizations described in section 1381(a) of this title beginning after Dec. 31, 1962, see section 17(c) of Pub. L. 87–834, set out as an Effective Date note under section 1381 of this title.

PART V—SHIPOWNERS' PROTECTION AND INDEMNITY ASSOCIATIONS

Sec.
526. Shipowners' protection and indemnity associations.

AMENDMENTS

1969—Pub. L. 91–172, title I, §101(a), Dec. 30, 1969, 83 Stat. 492, substituted "PART V" for "PART IV" as part designation.

§526. Shipowners' protection and indemnity associations

There shall not be included in gross income the receipts of shipowners' mutual protection and indemnity associations not organized for profit, and no part of the net earnings of which inures to the benefit of any private shareholder; but such corporations shall be subject as other persons to the tax on their taxable income from interest, dividends, and rents.

(Aug. 16, 1954, ch. 736, 68A Stat. 178.)

PART VI—POLITICAL ORGANIZATIONS

Sec.
527. Political organizations.

§527. Political organizations

(a) General rule

A political organization shall be subject to taxation under this subtitle only to the extent provided in this section. A political organization shall be considered an organization exempt from income taxes for the purpose of any law which refers to organizations exempt from income taxes.

(b) Tax imposed

(1) In general

A tax is hereby imposed for each taxable year on the political organization taxable income of every political organization. Such tax shall be computed by multiplying the political organization taxable income by the highest rate of tax specified in section 11(b).

(2) Alternative tax in case of capital gains

If for any taxable year any political organization has a net capital gain, then, in lieu of the tax imposed by paragraph (1), there is hereby imposed a tax (if such a tax is less than the tax imposed by paragraph (1)) which shall consist of the sum of—

(A) a partial tax, computed as provided by paragraph (1), on the political organization taxable income determined by reducing such income by the amount of such gain, and

(B) an amount determined as provided in section 1201(a) on such gain.

(c) Political organization taxable income defined

(1) Taxable income defined

For purposes of this section, the political organization taxable income of any organization for any taxable year is an amount equal to the excess (if any) of—

(A) the gross income for the taxable year (excluding any exempt function income), over

(B) the deductions allowed by this chapter which are directly connected with the production of the gross income (excluding exempt function income), computed with the modifications provided in paragraph (2).

(2) Modifications

For purposes of this subsection—

(A) there shall be allowed a specific deduction of $100,

(B) no net operating loss deduction shall be allowed under section 172, and

(C) no deduction shall be allowed under part VIII of subchapter B (relating to special deductions for corporations).

(3) Exempt function income

For purposes of this subsection, the term "exempt function income" means any amount received as—

(A) a contribution of money or other property,

(B) membership dues, a membership fee or assessment from a member of the political organization,

(C) proceeds from a political fundraising or entertainment event, or proceeds from the sale of political campaign materials, which are not received in the ordinary course of any trade or business, or

(D) proceeds from the conducting of any bingo game (as defined in section 513(f)(2)),

to the extent such amount is segregated for use only for the exempt function of the political organization.

(d) Certain uses not treated as income to candidate

For purposes of this title, if any political organization—

(1) contributes any amount to or for the use of any political organization which is treated as exempt from tax under subsection (a) of this section,

(2) contributes any amount to or for the use of any organization described in paragraph (1) or (2) of section 509(a) which is exempt from tax under section 501(a), or

(3) deposits any amount in the general fund of the Treasury or in the general fund of any State or local government,

such amount shall be treated as an amount not diverted for the personal use of the candidate or any other person. No deduction shall be allowed under this title for the contribution or deposit of any amount described in the preceding sentence.

(e) Other definitions

For purposes of this section—

(1) Political organization

The term "political organization" means a party, committee, association, fund, or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for an exempt function.

(2) Exempt function

The term "exempt function" means the function of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office or office in a political organization, or the election of Presidential or Vice-Presidential electors, whether or not such individual or electors are selected, nominated, elected, or appointed. Such term includes the making of expenditures relating to an office described in the preceding sentence which, if incurred by the individual, would be allowable as a deduction under section 162(a).

(3) Contributions

The term "contributions" has the meaning given to such term by section 271(b)(2).

(4) Expenditures

The term "expenditures" has the meaning given to such term by section 271(b)(3).

(5) Qualified State or local political organization

(A) In general

The term "qualified State or local political organization" means a political organization—

(i) all the exempt functions of which are solely for the purposes of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any State or local public office or office in a State or local political organization,

(ii) which is subject to State law that requires the organization to report (and it so reports)—

(I) information regarding each separate expenditure from and contribution to such organization, and

(II) information regarding the person who makes such contribution or receives such expenditure,

which would otherwise be required to be reported under this section, and

(iii) with respect to which the reports referred to in clause (ii) are (I) made public by the agency with which such reports are filed, and (II) made publicly available for inspection by the organization in the manner described in section 6104(d).

(B) Certain State law differences disregarded

An organization shall not be treated as failing to meet the requirements of subparagraph (A)(ii) solely by reason of 1 or more of the following:

(i) The minimum amount of any expenditure or contribution required to be reported under State law is not more than $300 greater than the minimum amount required to be reported under subsection (j).

(ii) The State law does not require the organization to identify 1 or more of the following:

(I) The employer of any person who makes contributions to the organization.

(II) The occupation of any person who makes contributions to the organization.

(III) The employer of any person who receives expenditures from the organization.

(IV) The occupation of any person who receives expenditures from the organization.

(V) The purpose of any expenditure of the organization.

(VI) The date any contribution was made to the organization.

(VII) The date of any expenditure of the organization.

(C) De minimis errors

An organization shall not fail to be treated as a qualified State or local political organization

solely because such organization makes de minimis errors in complying with the State reporting requirements and the public inspection requirements described in subparagraph (A) as long as the organization corrects such errors within a reasonable period after the organization becomes aware of such errors.

(D) Participation of Federal candidate or office holder

The term "qualified State or local political organization" shall not include any organization otherwise described in subparagraph (A) if a candidate for nomination or election to Federal elective public office or an individual who holds such office—

(i) controls or materially participates in the direction of the organization,

(ii) solicits contributions to the organization (unless the Secretary determines that such solicitations resulted in de minimis contributions and were made without the prior knowledge and consent, whether explicit or implicit, of the organization or its officers, directors, agents, or employees), or

(iii) directs, in whole or in part, disbursements by the organization.

(f) Exempt organization, which is not political organization, must include certain amounts in gross income

(1) In general

If an organization described in section 501(c) which is exempt from tax under section 501(a) expends any amount during the taxable year directly (or through another organization) for an exempt function (within the meaning of subsection (e)(2)), then, notwithstanding any other provision of law, there shall be included in the gross income of such organization for the taxable year, and shall be subject to tax under subsection (b) as if it constituted political organization taxable income, an amount equal to the lesser of—

(A) the net investment income of such organization for the taxable year, or

(B) the aggregate amount so expended during the taxable year for such an exempt function.

(2) Net investment income

For purposes of this subsection, the term "net investment income" means the excess of—

(A) the gross amount of income from interest, dividends, rents, and royalties, plus the excess (if any) of gains from the sale or exchange of assets over the losses from the sale or exchange of assets, over

(B) the deductions allowed by this chapter which are directly connected with the production of the income referred to in subparagraph (A).

For purposes of the preceding sentence, there shall not be taken into account items taken into account for purposes of the tax imposed by section 511 (relating to tax on unrelated business income).

(3) Certain separate segregated funds

For purposes of this subsection and subsection (e)(1), a separate segregated fund (within the meaning of section 610 of title 18) or of any similar State statute, or within the meaning of any State statute which permits the segregation of dues moneys for exempt functions (within the meaning of subsection (e)(2)) which is maintained by an organization described in section 501(c) which is exempt from tax under section 501(a) shall be treated as a separate organization.

(g) Treatment of newsletter funds

(1) In general

For purposes of this section, a fund established and maintained by an individual who holds, has been elected to, or is a candidate (within the meaning of paragraph (3)) for nomination or election to, any Federal, State, or local elective public office, for use by such individual exclusively for the preparation and circulation of such individual's newsletter shall, except as provided in paragraph (2), be treated as if such fund constituted a political organization.

(2) Additional modifications

In the case of any fund described in paragraph (1)—

(A) the exempt function shall be only the preparation and circulation of the newsletter, and

(B) the specific deduction provided by subsection (c)(2)(A) shall not be allowed.

(3) Candidate

For purposes of paragraph (1), the term "candidate" means, with respect to any Federal, State, or local elective public office, an individual who—

(A) publicly announces that he is a candidate for nomination or election to such office, and

(B) meets the qualifications prescribed by law to hold such office.

(h) Special rule for principal campaign committees

(1) In general

In the case of a political organization, which is a principal campaign committee, paragraph (1) of subsection (b) shall be applied by substituting "the appropriate rates" for "the highest rate".

(2) Principal campaign committee defined

(A) In general

For purposes of this subsection, the term "principal campaign committee" means the political committee designated by a candidate for Congress as his principal campaign committee for purposes of—

(i) section 302(e) of the Federal Election Campaign Act of 1971 (2 U.S.C. 432(e)),[1] and

(ii) this subsection.

(B) Designation

A candidate may have only 1 designation in effect under subparagraph (A)(ii) at any time and such designation—

(i) shall be made at such time and in such manner as the Secretary may prescribed by regulations, and

(ii) once made, may be revoked only with the consent of the Secretary.

Nothing in this subsection shall be construed to require any designation where there is only one political committee with respect to a candidate.

(i) Organizations must notify Secretary that they are section 527 organizations

(1) In general

Except as provided in paragraph (5), an organization shall not be treated as an organization described in this section—

(A) unless it has given notice to the Secretary electronically that it is to be so treated, or

(B) if the notice is given after the time required under paragraph (2), the organization shall not be so treated for any period before such notice is given or, in the case of any material change in the information required under paragraph (3), for the period beginning on the date on which the material change occurs and ending on the date on which such notice is given.

(2) Time to give notice

The notice required under paragraph (1) shall be transmitted not later than 24 hours after the date on which the organization is established or, in the case of any material change in the information required under paragraph (3), not later than 30 days after such material change.

(3) Contents of notice

The notice required under paragraph (1) shall include information regarding—

(A) the name and address of the organization (including any business address, if different) and its electronic mailing address,

(B) the purpose of the organization,

(C) the names and addresses of its officers, highly compensated employees, contact person, custodian of records, and members of its Board of Directors,

(D) the name and address of, and relationship to, any related entities (within the meaning of section 168(h)(4)),

(E) whether the organization intends to claim an exemption from the requirements of subsection (j) or section 6033, and

(F) such other information as the Secretary may require to carry out the internal revenue laws.

(4) Effect of failure

In the case of an organization failing to meet the requirements of paragraph (1) for any period, the taxable income of such organization shall be computed by taking into account any exempt function income (and any deductions directly connected with the production of such income) or, in the case of a failure relating to a material change, by taking into account such income and deductions only during the period beginning on the date on which the material change occurs and ending on the date on which notice is given under this subsection. For purposes of the preceding sentence, the term "exempt function income" means any amount described in a subparagraph of subsection (c)(3), whether or not segregated for use for an exempt function.

(5) Exceptions

This subsection shall not apply to any organization—

(A) to which this section applies solely by reason of subsection (f)(1),

(B) which reasonably anticipates that it will not have gross receipts of $25,000 or more for any taxable year, or

(C) which is a political committee of a State or local candidate or which is a State or local committee of a political party.

(6) Coordination with other requirements

This subsection shall not apply to any person required (without regard to this subsection) to report under the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.) [1] as a political committee.

(j) Required disclosure of expenditures and contributions

(1) Penalty for failure

In the case of—

(A) a failure to make the required disclosures under paragraph (2) at the time and in the manner prescribed therefor, or

(B) a failure to include any of the information required to be shown by such disclosures or to show the correct information,

there shall be paid by the organization an amount equal to the rate of tax specified in subsection (b)(1) multiplied by the amount to which the failure relates. For purposes of subtitle F, the amount imposed by this paragraph shall be assessed and collected in the same manner as penalties imposed by section 6652(c).

(2) Required disclosure

A political organization which accepts a contribution, or makes an expenditure, for an exempt function during any calendar year shall file with the Secretary either—

(A)(i) in the case of a calendar year in which a regularly scheduled election is held—

(I) quarterly reports, beginning with the first quarter of the calendar year in which a contribution is accepted or expenditure is made, which shall be filed not later than the fifteenth day after the last day of each calendar quarter, except that the report for the quarter ending on December 31 of such calendar year shall be filed not later than January 31 of the following calendar year,

(II) a pre-election report, which shall be filed not later than the twelfth day before (or

posted by registered or certified mail not later than the fifteenth day before) any election with respect to which the organization makes a contribution or expenditure, and which shall be complete as of the twentieth day before the election, and

(III) a post-general election report, which shall be filed not later than the thirtieth day after the general election and which shall be complete as of the twentieth day after such general election, and

(ii) in the case of any other calendar year, a report covering the period beginning January 1 and ending June 30, which shall be filed no later than July 31 and a report covering the period beginning July 1 and ending December 31, which shall be filed no later than January 31 of the following calendar year, or

(B) monthly reports for the calendar year, beginning with the first month of the calendar year in which a contribution is accepted or expenditure is made, which shall be filed not later than the twentieth day after the last day of the month and shall be complete as if the last day of the month, except that, in lieu of filing the reports otherwise due in November and December of any year in which a regularly scheduled general election is held, a pre-general election report shall be filed in accordance with subparagraph (A)(i)(II), a post-general election report shall be filed in accordance with subparagraph (A)(i)(III), and a year end report shall be filed not later than January 31 of the following calendar year.

(3) Contents of report

A report required under paragraph (2) shall contain the following information:

(A) The amount, date, and purpose of each expenditure made to a person if the aggregate amount of expenditures to such person during the calendar year equals or exceeds $500 and the name and address of the person (in the case of an individual, including the occupation and name of employer of such individual).

(B) The name and address (in the case of an individual, including the occupation and name of employer of such individual) of all contributors which contributed an aggregate amount of $200 or more to the organization during the calendar year and the amount and date of the contribution.

Any expenditure or contribution disclosed in a previous reporting period is not required to be included in the current reporting period.

(4) Contracts to spend or contribute

For purposes of this subsection, a person shall be treated as having made an expenditure or contribution if the person has contracted or is otherwise obligated to make the expenditure or contribution.

(5) Coordination with other requirements

This subsection shall not apply—

(A) to any person required (without regard to this subsection) to report under the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.) [1] as a political committee,

(B) to any State or local committee of a political party or political committee of a State or local candidate,

(C) to any organization which is a qualified State or local political organization,

(D) to any organization which reasonably anticipates that it will not have gross receipts of $25,000 or more for any taxable year,

(E) to any organization to which this section applies solely by reason of subsection (f)(1), or

(F) with respect to any expenditure which is an independent expenditure (as defined in section 301 of such Act).

(6) Election

For purposes of this subsection, the term "election" means—

(A) a general, special, primary, or runoff election for a Federal office,

(B) a convention or caucus of a political party which has authority to nominate a candidate for Federal office,

(C) a primary election held for the selection of delegates to a national nominating convention of a political party, or

(D) a primary election held for the expression of a preference for the nomination of individuals for election to the office of President.

(7) Electronic filing

Any report required under paragraph (2) with respect to any calendar year shall be filed in electronic form if the organization has, or has reason to expect to have, contributions exceeding $50,000 or expenditures exceeding $50,000 in such calendar year.

(k) Public availability of notices and reports

(1) In general

The Secretary shall make any notice described in subsection (i)(1) or report described in subsection (j)(7) available for public inspection on the Internet not later than 48 hours after such notice or report has been filed (in addition to such public availability as may be made under section 6104(d)(7)).

(2) Access

The Secretary shall make the entire database of notices and reports which are made available to the public under paragraph (1) searchable by the following items (to the extent the items are required to be included in the notices and reports):

(A) Names, States, zip codes, custodians of records, directors, and general purposes of the organizations.

(B) Entities related to the organizations.

(C) Contributors to the organizations.

(D) Employers of such contributors.

(E) Recipients of expenditures by the organizations.

(F) Ranges of contributions and expenditures.

(G) Time periods of the notices and reports.

Such database shall be downloadable.

(l) Authority to waive

The Secretary may waive all or any portion of the—

(1) tax assessed on an organization by reason of the failure of the organization to comply with the requirements of subsection (i), or

(2) amount imposed under subsection (j) for a failure to comply with the requirements thereof,

on a showing that such failure was due to reasonable cause and not due to willful neglect.

(Added Pub. L. 93–625, §10(a), Jan. 3, 1975, 88 Stat. 2116; amended Pub. L. 94–455, title XIX, §1901(b)(33)(C), Oct. 4, 1976, 90 Stat. 1801; Pub. L. 95–502, title III, §302(a), Oct. 21, 1978, 92 Stat. 1702; Pub. L. 95–600, title III, §301(b)(6), Nov. 6, 1978, 92 Stat. 2821; Pub. L. 97–34, title I, §128(a), Aug. 13, 1981, 95 Stat. 203; Pub. L. 98–369, div. A, title IV, §474(r)(16), title VII, §722(c), July 18, 1984, 98 Stat. 843, 973; Pub. L. 99–514, title I, §112(b)(1), Oct. 22, 1986, 100 Stat. 2108; Pub. L. 100–647, title I, §1001(b)(3)(B), Nov. 10, 1988, 102 Stat. 3349; Pub. L. 106–230, §§1(a), 2(a), July 1, 2000, 114 Stat. 477, 479; Pub. L. 107–276, §§1(a), 2(a), (b), 5(a), 6(a)–(c), (e)–(g), Nov. 2, 2002, 116 Stat. 1929, 1932–1934.)

REFERENCES IN TEXT

Section 610 of title 18, referred to in subsec. (f)(3), was repealed by Pub. L. 94–283, title II, §201(a), May 11, 1976, 90 Stat. 496.

The Federal Election Campaign Act of 1971, referred to in subsecs. (h)(2)(A)(i), (i)(6), and (j)(5)(A), is Pub. L. 92–225, Feb. 7, 1972, 86 Stat. 3, which was formerly classified principally to chapter 14 (§431 et seq.)

of Title 2, The Congress, prior to editorial reclassification and renumbering in Title 52, Voting and Elections, and is now classified principally to chapter 301 (§30101 et seq.) of Title 52. Sections 301 and 302 of the Act are now classified to sections 30101 and 30102 of Title 52, respectively. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2002—Subsec. (e)(5). Pub. L. 107–276, §2(b), added par. (5).

Subsec. (i)(1)(A). Pub. L. 107–276, §6(c), substituted "electronically" for ", electronically and in writing,".

Subsec. (i)(1)(B). Pub. L. 107–276, §6(g)(1), which directed the insertion of "or, in the case of any material change in the information required under paragraph (3), for the period beginning on the date on which the material change occurs and ending on the date on which such notice is given" after "given", was executed by making the insertion after "given" the second time appearing, to reflect the probable intent of Congress.

Subsec. (i)(2). Pub. L. 107–276, §6(g)(2), inserted "or, in the case of any material change in the information required under paragraph (3), not later than 30 days after such material change" after "established".

Subsec. (i)(3)(E), (F). Pub. L. 107–276, §6(f), added subpar. (E) and redesignated former subpar. (E) as (F).

Subsec. (i)(4). Pub. L. 107–276, §6(g)(3), which directed the insertion of "or, in the case of a failure relating to a material change, by taking into account such income and deductions only during the period beginning on the date on which the material change occurs and ending on the date on which notice is given under this subsection" before period at end, was executed by making the insertion before period at end of first sentence, to reflect the probable intent of Congress.

Pub. L. 107–276, §6(a), inserted at end "For purposes of the preceding sentence, the term 'exempt function income' means any amount described in a subparagraph of subsection (c)(3), whether or not segregated for use for an exempt function."

Subsec. (i)(5)(C). Pub. L. 107–276, §1(a), added subpar. (C).

Subsec. (j)(1). Pub. L. 107–276, §6(b), inserted at end "For purposes of subtitle F, the amount imposed by this paragraph shall be assessed and collected in the same manner as penalties imposed by section 6652(c)."

Subsec. (j)(3)(A). Pub. L. 107–276, §6(e)(1)(A), inserted ", date, and purpose" after "The amount".

Subsec. (j)(3)(B). Pub. L. 107–276, §6(e)(1)(B), inserted "and date" after "the amount".

Subsec. (j)(5)(C) to (F). Pub. L. 107–276, §2(a), added subpar. (C) and redesignated former subpars. (C) to (E) as (D) to (F), respectively.

Subsec. (j)(7). Pub. L. 107–276, §6(e)(2), added par. (7).

Subsec. (k). Pub. L. 107–276, §6(e)(3), added subsec. (k). Former subsec. (k) redesignated (l).

Pub. L. 107–276, §5(a), added subsec. (k).

Subsec. (l). Pub. L. 107–276, §6(e)(3), redesignated subsec. (k) as (l).

2000—Subsec. (i). Pub. L. 106–230, §1(a), added subsec. (i).

Subsec. (j). Pub. L. 106–230, §2(a), added subsec. (j).

1988—Subsec. (e)(2). Pub. L. 100–647 inserted at end "Such term includes the making of expenditures relating to an office described in the preceding sentence which, if incurred by the individual, would be allowable as a deduction under section 162(a)."

1986—Subsec. (g)(1). Pub. L. 99–514, §112(b)(1)(A), substituted "paragraph (3)" for "section 24(c)(2)".

Subsec. (g)(3). Pub. L. 99–514, §112(b)(1)(B), added par. (3).

1984—Subsec. (g)(1). Pub. L. 98–369, §474(r)(16), substituted "section 24(c)(2)" for "section 41(c)(2)".

Subsec. (h)(2)(B). Pub. L. 98–369, §722(c), inserted "Nothing in this subsection shall be construed to require any designation where there is only one political committee with respect to a candidate."

1981—Subsec. (h). Pub. L. 97–34 added subsec. (h).

1978—Subsec. (b)(1). Pub. L. 95–600 substituted "Such tax shall be computed by multiplying the political organization taxable income by the highest rate of tax specified in section 11(b)" for "Such tax shall consist of a normal tax and a surtax computed as provided in section 11 as though the political organization were a corporation and as though the political organization taxable income were the taxable income referred to in section 11" and struck out provision that for purposes of this subsection, the surtax exemption provided by section 11(d) not be allowed.

Subsec. (c)(3)(D). Pub. L. 95–502 added subpar. (D).

1976—Subsec. (b)(2). Pub. L. 94–455 substituted "net capital gain" for "net section 1201 gain" after "organization has a".

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–276, §1(b), Nov. 2, 2002, 116 Stat. 1929, provided that: "The amendments made by subsection (a) [amending this section] shall take effect as if included in the amendments made by Public Law 106–230."

Pub. L. 107–276, §2(c), Nov. 2, 2002, 116 Stat. 1931, provided that: "The amendments made by this section [amending this section] shall take effect as if included in the amendments made by Public Law 106–230."

Pub. L. 107–276, §5(b), Nov. 2, 2002, 116 Stat. 1932, provided that: "The amendment made by subsection (a) [amending this section] shall apply to any tax assessed or amount imposed after June 30, 2000."

Pub. L. 107–276, §6(h)(1), (2), Nov. 2, 2002, 116 Stat. 1934, provided that:

"(1) SUBSECTIONS (a) AND (b).—The amendments made by subsections (a) and (b) [amending this section] shall apply to failures occurring on or after the date of the enactment of this Act [Nov. 2, 2002].

"(2) SUBSECTION (c).—The amendments made by subsection (c) [amending this section] shall take effect as if included in the amendments made by Public Law 106–230."

Pub. L. 107–276, §6(h)(4)–(6), Nov. 2, 2002, 116 Stat. 1934, provided that:

"(4) SUBSECTIONS (e)(1) AND (f).—The amendments made by subsections (e)(1) and (f) [amending this section] shall apply to reports and notices required to be filed more than 30 days after the date of the enactment of this Act [Nov. 2, 2002].

"(5) SUBSECTIONS (e)(2) AND (e)(3).—The amendments made by subsections (e)(2) and (e)(3) [amending this section] shall apply to reports required to be filed on or after June 30, 2003.

"(6) SUBSECTION (g).—

"(A) IN GENERAL.—The amendments made by subsection (g) [amending this section] shall apply to material changes on or after the date of the enactment of this Act.

"(B) TRANSITION RULE.—In the case of a material change occurring during the 30-day period beginning on the date of the enactment of this Act, a notice under section 527(i) of the Internal Revenue Code of 1986 (as amended by this Act) shall not be required to be filed under such section before the later of—

"(i) 30 days after the date of such material change, or

"(ii) 45 days after the date of the enactment of this Act [Nov. 2, 2002]."

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–230, §1(d), July 1, 2000, 114 Stat. 479, provided that:

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section [amending this section and sections 6104 and 6652 of this title] shall take effect on the date of the enactment of this section [July 1, 2000].

"(2) ORGANIZATIONS ALREADY IN EXISTENCE.—In the case of an organization established before the date of the enactment of this section, the time to file the notice under section 527(i)(2) of the Internal Revenue Code of 1986, as added by this section, shall be 30 days after the date of the enactment of this section.

"(3) INFORMATION AVAILABILITY.—The amendment made by subsection (b)(2) [amending section 6104 of this title] shall take effect on the date that is 45 days after the date of the enactment of this section."

Pub. L. 106–230, §2(d), July 1, 2000, 114 Stat. 482, provided that: "The amendment made by subsection (a) [amending this section] shall apply to expenditures made and contributions received after the date of the enactment of this Act [July 1, 2000], except that such amendment shall not apply to expenditures made, or contributions received, after such date pursuant to a contract entered into on or before such date."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(16) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Pub. L. 98–369, div. A, title VII, §722(c), July 18, 1984, 98 Stat. 973, provided that the amendment made by that section is effective for taxable years beginning after Dec. 31, 1981.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title I, §128(b), Aug. 13, 1981, 95 Stat. 203, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1981."

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 301(b)(6) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95–600, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT; ELECTION CAMPAIGN CONTRIBUTIONS; COLLATERAL

Pub. L. 95–502, title III, §302(b), Oct. 21, 1978, 92 Stat. 1703, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1974, except that notwithstanding any other provision of law to the contrary, no amounts held at the date of enactment of this bill [Oct. 21, 1978] by an organization described in section 527(e)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] in escrow, in separate accounts for the payment of Federal taxes, or in any other fund which are proceeds described in section 527(c)(3)(D) of such Code may be used, directly or indirectly, to make a contribution or expenditure (as defined in section 301(e) and (f) of the Federal Election Campaign Act of 1971; 2 U.S.C. 431[(e) and] (f) [now 52 U.S.C. 30101(8) and (9)]) in connection with any election held before January 1, 1979.

"(2) Such amounts as described in (1) above shall not be considered as security or collateral for any loan by any State or national bank or any other person or organization."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE

Pub. L. 93–625, §10(e), Jan. 3, 1975, 88 Stat. 2119, provided that: "The amendments made by subsections (a), (b), (c), and (d) [enacting this section and amending sections 501 and 6012 of this title] shall apply to taxable years beginning after December 31, 1974."

NOTIFICATION OF INTERACTION OF REPORTING REQUIREMENTS

Pub. L. 107–276, §4, Nov. 2, 2002, 116 Stat. 1932, provided that:

"(a) IN GENERAL.—The Secretary of the Treasury, in consultation with the Federal Election Commission, shall publicize—

"(1) the effect of the amendments made by this Act [amending this section and sections 6012, 6033, 6104, and 7207 of this title], and

"(2) the interaction of requirements to file a notification or report under section 527 of the Internal Revenue Code of 1986 and reports under the Federal Election Campaign Act of 1971 [52 U.S.C. 30101 et seq.].

"(b) INFORMATION.—Information provided under subsection (a) shall be included in any appropriate form, instruction, notice, or other guidance issued to the public by the Secretary of the Treasury or the Federal Election Commission regarding reporting requirements of political organizations (as defined in section 527 of the Internal Revenue Code of 1986) or reporting requirements under the Federal Election Campaign Act of 1971 [52 U.S.C. 30101 et seq.]."

[1] *See References in Text note below.*

PART VII—CERTAIN HOMEOWNERS ASSOCIATIONS

Sec.
528. Certain homeowners associations.

AMENDMENTS

1976—Pub. L. 94–455, title XXI, §2101(a), Oct. 4, 1976, 90 Stat. 1897, added part heading and analysis for part VII.

§528. Certain homeowners associations

(a) General rule

A homeowners association (as defined in subsection (c)) shall be subject to taxation under this subtitle only to the extent provided in this section. A homeowners association shall be considered an organization exempt from income taxes for the purpose of any law which refers to organizations exempt from income taxes.

(b) Tax imposed

A tax is hereby imposed for each taxable year on the homeowners association taxable income of every homeowners association. Such tax shall be equal to 30 percent of the homeowners association taxable income (32 percent of such income in the case of a timeshare association).

(c) Homeowners association defined

For purposes of this section—

(1) Homeowners association

The term "homeowners association" means an organization which is a condominium management association, a residential real estate management association, or a timeshare association if—

(A) such organization is organized and operated to provide for the acquisition, construction, management, maintenance, and care of association property,

(B) 60 percent or more of the gross income of such organization for the taxable year consists solely of amounts received as membership dues, fees, or assessments from—

(i) owners of residential units in the case of a condominium management association,

(ii) owners of residences or residential lots in the case of a residential real estate management association, or

(iii) owners of timeshare rights to use, or timeshare ownership interests in, association property in the case of a timeshare association,

(C) 90 percent or more of the expenditures of the organization for the taxable year are expenditures for the acquisition, construction, management, maintenance, and care of association property and, in the case of a timeshare association, for activities provided to or on behalf of members of the association,

(D) no part of the net earnings of such organization inures (other than by acquiring, constructing, or providing management, maintenance, and care of association property, and other than by a rebate of excess membership dues, fees, or assessments) to the benefit of any private shareholder or individual, and

(E) such organization elects (at such time and in such manner as the Secretary by regulations prescribes) to have this section apply for the taxable year.

(2) Condominium management association

The term "condominium management association" means any organization meeting the requirement of subparagraph (A) of paragraph (1) with respect to a condominium project substantially all of the units of which are used by individuals for residences.

(3) Residential real estate management association

The term "residential real estate management association" means any organization meeting the requirements of subparagraph (A) of paragraph (1) with respect to a subdivision, development, or similar area substantially all the lots or buildings of which may only be used by individuals for residences.

(4) Timeshare association

The term "timeshare association" means any organization (other than a condominium management association) meeting the requirement of subparagraph (A) of paragraph (1) if any member thereof holds a timeshare right to use, or a timeshare ownership interest in, real property

constituting association property.

(5) Association property

The term "association property" means—

(A) property held by the organization,

(B) property commonly held by the members of the organization,

(C) property within the organization privately held by the members of the organization, and

(D) property owned by a governmental unit and used for the benefit of residents of such unit.

In the case of a timeshare association, such term includes property in which the timeshare association, or members of the association, have rights arising out of recorded easements, covenants, or other recorded instruments to use property related to the timeshare project.

(d) Homeowners association taxable income defined

(1) Taxable income defined

For purposes of this section, the homeowners association taxable income of any organization for any taxable year is an amount equal to the excess (if any) of—

(A) the gross income for the taxable year (excluding any exempt function income), over

(B) the deductions allowed by this chapter which are directly connected with the production of the gross income (excluding exempt function income), computed with the modifications provided in paragraph (2).

(2) Modifications

For purposes of this subsection—

(A) there shall be allowed a specific deduction of $100,

(B) no net operating loss deduction shall be allowed under section 172, and

(C) no deduction shall be allowed under part VIII of subchapter B (relating to special deductions for corporations).

(3) Exempt function income

For purposes of this subsection, the term "exempt function income" means any amount received as membership dues, fees, or assessments from—

(A) owners of condominium housing units in the case of a condominium management association,

(B) owners of real property in the case of a residential real estate management association, or

(C) owners of timeshare rights to use, or timeshare ownership interests in, real property in the case of a timeshare association.

(Added Pub. L. 94–455, title XXI, §2101(a), Oct. 4, 1976, 90 Stat. 1897; amended Pub. L. 95–600, title III, §301(b)(7), title IV, §403(c)(2), title VII, §701(n)(1), Nov. 6, 1978, 92 Stat. 2821, 2868, 2907; Pub. L. 96–605, title I, §105(a), Dec. 28, 1980, 94 Stat. 3523; Pub. L. 105–34, title IX, §966(a)–(d), Aug. 5, 1997, 111 Stat. 894, 895.)

AMENDMENTS

1997—Subsec. (b). Pub. L. 105–34, §966(d), which directed amendment of subsec. (b) by inserting before the period "(32 percent of such income in the case of a timeshare association)", was executed by making the insertion before the period at end to reflect the probable intent of Congress.

Subsec. (c)(1). Pub. L. 105–34, §966(a)(1)(A), substituted ", a residential real estate management association, or a timeshare association" for "or a residential real estate management association" in introductory provisions.

Subsec. (c)(1)(B)(iii). Pub. L. 105–34, §966(a)(1)(B), added cl. (iii).

Subsec. (c)(1)(C). Pub. L. 105–34, §966(a)(1)(C), inserted before comma at end "and, in the case of a timeshare association, for activities provided to or on behalf of members of the association".

Subsec. (c)(4). Pub. L. 105–34, §966(a)(2), added par. (4). Former par. (4) redesignated (5).

Subsec. (c)(5). Pub. L. 105–34, §966(c), inserted concluding provisions "In the case of a timeshare association, such term includes property in which the timeshare association, or members of the association, have rights arising out of recorded easements, covenants, or other recorded instruments to use property related

to the timeshare project."

Pub. L. 105–34, §966(a)(2), redesignated par. (4) as (5).

Subsec. (d)(3)(C). Pub. L. 105–34, §966(b), added subpar. (C).

1980—Subsec. (b). Pub. L. 96–605 substituted provision that all income of a homeowners association be taxed at a rate of 30 per cent for provision that all income of a homeowners association be taxed a sum computed by multiplying the homeowners association taxable income by the highest rate of tax specified in section 11(b) of this title and struck out provision providing for alternative tax in case of capital gains.

1978—Subsec. (b)(1). Pub. L. 95–600, §301(b)(7), substituted "Such tax shall be computed by multiplying the homeowners association taxable income by the highest rate of tax specified in section 11(b)" for "Such tax shall consist of a normal tax and a surtax computed as provided in section 11 as though the homeowners association were a corporation and as though the homeowners association taxable income were the taxable income referred to in section 11" and struck out provision that for purposes of this subsection, the surtax exemption provided by section 11(d) not be allowed.

Subsec. (b)(2)(B). Pub. L. 95–600, §403(c)(2), substituted provision related to amount being determined according to section 1201(a) for provision requiring an amount of 30 percent.

Subsec. (c)(2). Pub. L. 95–600, §701(n)(1), substituted "by individuals for residences" for "as residences".

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title IX, §966(e), Aug. 5, 1997, 111 Stat. 895, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1996."

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–605, title I, §105(b), Dec. 28, 1980, 94 Stat. 3523, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1980."

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 301(b)(7) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95–600, set out as a note under section 11 of this title.

Pub. L. 95–600, title IV, §403(d)(3), Nov. 6, 1978, 92 Stat. 2869, provided that: "The amendments made by paragraphs (2), (3), and (4) of subsection (c) [amending this section and sections 857 and 904 of this title] shall take effect on the date of the enactment of this Act [Nov. 6, 1978]."

Pub. L. 95–600, title VII, §701(n)(2), Nov. 6, 1978, 92 Stat. 2907, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after December 31, 1973."

EFFECTIVE DATE

Pub. L. 94–455, title XXI, §2101(e), Oct. 4, 1976, 90 Stat. 1899, provided that: "Except as provided in subsection (f)(2) [set out as a note under section 216 of this title], the amendments made by this section [enacting this section and amending sections 216 and 6012 of this title] shall apply to taxable years beginning after December 31, 1973."

PART VIII—HIGHER EDUCATION SAVINGS ENTITIES

Sec.
529. Qualified tuition programs.
530. Coverdell education savings accounts.

AMENDMENTS

2004—Pub. L. 108–311, title IV, §408(b)(2), Oct. 4, 2004, 118 Stat. 1192, amended directory language of Pub. L. 107–22, §1(a)(6). See 2001 Amendment note below.

2001—Pub. L. 107–22, §1(a)(6), July 26, 2001, 115 Stat. 196, as amended by Pub. L. 108–311, title IV, §408(b)(2), Oct. 4, 2004, 118 Stat. 1192, substituted "Coverdell education savings accounts" for "Education individual retirement accounts" in item 530.

Pub. L. 107–16, title IV, §402(a)(4)(E), June 7, 2001, 115 Stat. 61, struck out "State" before "tuition" in item 529.

1997—Pub. L. 105–34, title II, §§211(e)(1)(A), 213(e)(3), Aug. 5, 1997, 111 Stat. 812, 817, substituted "HIGHER EDUCATION SAVINGS ENTITIES" for "QUALIFIED STATE TUITION PROGRAMS" in heading and added item 530.

§529. Qualified tuition programs

(a) General rule

A qualified tuition program shall be exempt from taxation under this subtitle. Notwithstanding the preceding sentence, such program shall be subject to the taxes imposed by section 511 (relating to imposition of tax on unrelated business income of charitable organizations).

(b) Qualified tuition program

For purposes of this section—

(1) In general

The term "qualified tuition program" means a program established and maintained by a State or agency or instrumentality thereof or by 1 or more eligible educational institutions—

(A) under which a person—

(i) may purchase tuition credits or certificates on behalf of a designated beneficiary which entitle the beneficiary to the waiver or payment of qualified higher education expenses of the beneficiary, or

(ii) in the case of a program established and maintained by a State or agency or instrumentality thereof, may make contributions to an account which is established for the purpose of meeting the qualified higher education expenses of the designated beneficiary of the account, and

(B) which meets the other requirements of this subsection.

Except to the extent provided in regulations, a program established and maintained by 1 or more eligible educational institutions shall not be treated as a qualified tuition program unless such program provides that amounts are held in a qualified trust and such program has received a ruling or determination that such program meets the applicable requirements for a qualified tuition program. For purposes of the preceding sentence, the term "qualified trust" means a trust which is created or organized in the United States for the exclusive benefit of designated beneficiaries and with respect to which the requirements of paragraphs (2) and (5) of section 408(a) are met.

(2) Cash contributions

A program shall not be treated as a qualified tuition program unless it provides that purchases or contributions may only be made in cash.

(3) Separate accounting

A program shall not be treated as a qualified tuition program unless it provides separate accounting for each designated beneficiary.

(4) No investment direction

A program shall not be treated as a qualified tuition program unless it provides that any contributor to, or designated beneficiary under, such program may not directly or indirectly direct the investment of any contributions to the program (or any earnings thereon).

(5) No pledging of interest as security

A program shall not be treated as a qualified tuition program if it allows any interest in the program or any portion thereof to be used as security for a loan.

(6) Prohibition on excess contributions

A program shall not be treated as a qualified tuition program unless it provides adequate safeguards to prevent contributions on behalf of a designated beneficiary in excess of those necessary to provide for the qualified higher education expenses of the beneficiary.

(c) Tax treatment of designated beneficiaries and contributors

(1) In general

Except as otherwise provided in this subsection, no amount shall be includible in gross income of—

(A) a designated beneficiary under a qualified tuition program, or

(B) a contributor to such program on behalf of a designated beneficiary,

with respect to any distribution or earnings under such program.

(2) Gift tax treatment of contributions

For purposes of chapters 12 and 13—

(A) In general

Any contribution to a qualified tuition program on behalf of any designated beneficiary—

(i) shall be treated as a completed gift to such beneficiary which is not a future interest in property, and

(ii) shall not be treated as a qualified transfer under section 2503(e).

(B) Treatment of excess contributions

If the aggregate amount of contributions described in subparagraph (A) during the calendar year by a donor exceeds the limitation for such year under section 2503(b), such aggregate amount shall, at the election of the donor, be taken into account for purposes of such section ratably over the 5-year period beginning with such calendar year.

(3) Distributions

(A) In general

Any distribution under a qualified tuition program shall be includible in the gross income of the distributee in the manner as provided under section 72 to the extent not excluded from gross income under any other provision of this chapter.

(B) Distributions for qualified higher education expenses

For purposes of this paragraph—

(i) In-kind distributions

No amount shall be includible in gross income under subparagraph (A) by reason of a distribution which consists of providing a benefit to the distributee which, if paid for by the distributee, would constitute payment of a qualified higher education expense.

(ii) Cash distributions

In the case of distributions not described in clause (i), if—

(I) such distributions do not exceed the qualified higher education expenses (reduced by expenses described in clause (i)), no amount shall be includible in gross income, and

(II) in any other case, the amount otherwise includible in gross income shall be reduced by an amount which bears the same ratio to such amount as such expenses bear to such distributions.

(iii) Exception for institutional programs

In the case of any taxable year beginning before January 1, 2004, clauses (i) and (ii) shall not apply with respect to any distribution during such taxable year under a qualified tuition program established and maintained by 1 or more eligible educational institutions.

(iv) Treatment as distributions

Any benefit furnished to a designated beneficiary under a qualified tuition program shall be treated as a distribution to the beneficiary for purposes of this paragraph.

(v) Coordination with Hope and Lifetime Learning credits

The total amount of qualified higher education expenses with respect to an individual for the taxable year shall be reduced—

(I) as provided in section 25A(g)(2), and

(II) by the amount of such expenses which were taken into account in determining the credit allowed to the taxpayer or any other person under section 25A.

(vi) Coordination with Coverdell education savings accounts

If, with respect to an individual for any taxable year—

(I) the aggregate distributions to which clauses (i) and (ii) and section 530(d)(2)(A) apply, exceed

(II) the total amount of qualified higher education expenses otherwise taken into account under clauses (i) and (ii) (after the application of clause (v)) for such year,

the taxpayer shall allocate such expenses among such distributions for purposes of determining the amount of the exclusion under clauses (i) and (ii) and section 530(d)(2)(A).

(C) Change in beneficiaries or programs

(i) Rollovers

Subparagraph (A) shall not apply to that portion of any distribution which, within 60 days of such distribution, is transferred—

(I) to another qualified tuition program for the benefit of the designated beneficiary, or

(II) to the credit of another designated beneficiary under a qualified tuition program who is a member of the family of the designated beneficiary with respect to which the distribution was made.

(ii) Change in designated beneficiaries

Any change in the designated beneficiary of an interest in a qualified tuition program shall not be treated as a distribution for purposes of subparagraph (A) if the new beneficiary is a member of the family of the old beneficiary.

(iii) Limitation on certain rollovers

Clause (i)(I) shall not apply to any transfer if such transfer occurs within 12 months from the date of a previous transfer to any qualified tuition program for the benefit of the designated beneficiary.

(D) Operating rules

For purposes of applying section 72—

(i) to the extent provided by the Secretary, all qualified tuition programs of which an individual is a designated beneficiary shall be treated as one program,

(ii) except to the extent provided by the Secretary, all distributions during a taxable year shall be treated as one distribution, and

(iii) except to the extent provided by the Secretary, the value of the contract, income on the contract, and investment in the contract shall be computed as of the close of the calendar year in which the taxable year begins.

(4) Estate tax treatment

(A) In general

No amount shall be includible in the gross estate of any individual for purposes of chapter 11 by reason of an interest in a qualified tuition program.

(B) Amounts includible in estate of designated beneficiary in certain cases

Subparagraph (A) shall not apply to amounts distributed on account of the death of a beneficiary.

(C) Amounts includible in estate of donor making excess contributions

In the case of a donor who makes the election described in paragraph (2)(B) and who dies before the close of the 5-year period referred to in such paragraph, notwithstanding subparagraph (A), the gross estate of the donor shall include the portion of such contributions properly allocable to periods after the date of death of the donor.

(5) Other gift tax rules

For purposes of chapters 12 and 13—

(A) Treatment of distributions

Except as provided in subparagraph (B), in no event shall a distribution from a qualified tuition program be treated as a taxable gift.

(B) Treatment of designation of new beneficiary

The taxes imposed by chapters 12 and 13 shall apply to a transfer by reason of a change in the designated beneficiary under the program (or a rollover to the account of a new beneficiary) unless the new beneficiary is—

(i) assigned to the same generation as (or a higher generation than) the old beneficiary (determined in accordance with section 2651), and

(ii) a member of the family of the old beneficiary.

(6) Additional tax

The tax imposed by section 530(d)(4) shall apply to any payment or distribution from a qualified tuition program in the same manner as such tax applies to a payment or distribution from an [1] Coverdell education savings account. This paragraph shall not apply to any payment or distribution in any taxable year beginning before January 1, 2004, which is includible in gross income but used for qualified higher education expenses of the designated beneficiary.

(d) Reports

Each officer or employee having control of the qualified tuition program or their designee shall make such reports regarding such program to the Secretary and to designated beneficiaries with respect to contributions, distributions, and such other matters as the Secretary may require. The reports required by this subsection shall be filed at such time and in such manner and furnished to such individuals at such time and in such manner as may be required by the Secretary.

(e) Other definitions and special rules

For purposes of this section—

(1) Designated beneficiary

The term "designated beneficiary" means—

(A) the individual designated at the commencement of participation in the qualified tuition program as the beneficiary of amounts paid (or to be paid) to the program,

(B) in the case of a change in beneficiaries described in subsection (c)(3)(C), the individual who is the new beneficiary, and

(C) in the case of an interest in a qualified tuition program purchased by a State or local government (or agency or instrumentality thereof) or an organization described in section 501(c)(3) and exempt from taxation under section 501(a) as part of a scholarship program operated by such government or organization, the individual receiving such interest as a scholarship.

(2) Member of family

The term "member of the family" means, with respect to any designated beneficiary—

(A) the spouse of such beneficiary;

(B) an individual who bears a relationship to such beneficiary which is described in subparagraphs (A) through (G) of section 152(d)(2);

(C) the spouse of any individual described in subparagraph (B); and

(D) any first cousin of such beneficiary.

(3) Qualified higher education expenses

(A) In general

The term "qualified higher education expenses" means—

(i) tuition, fees, books, supplies, and equipment required for the enrollment or attendance of a designated beneficiary at an eligible educational institution;

(ii) expenses for special needs services in the case of a special needs beneficiary which are incurred in connection with such enrollment or attendance [2]

(iii) expenses paid or incurred in 2009 or 2010 for the purchase of any computer technology or equipment (as defined in section 170(e)(6)(F)(i)) or Internet access and related services, if such technology, equipment, or services are to be used by the beneficiary and the beneficiary's family during any of the years the beneficiary is enrolled at an eligible educational institution.

Clause (iii) shall not include expenses for computer software designed for sports, games, or hobbies unless the software is predominantly educational in nature.

(B) Room and board included for students who are at least half-time

(i) In general

In the case of an individual who is an eligible student (as defined in section 25A(b)(3)) for any academic period, such term shall also include reasonable costs for such period (as determined under the qualified tuition program) incurred by the designated beneficiary for room and board while attending such institution. For purposes of subsection (b)(6), a designated beneficiary shall be treated as meeting the requirements of this clause.

(ii) Limitation

The amount treated as qualified higher education expenses by reason of clause (i) shall not exceed—

(I) the allowance (applicable to the student) for room and board included in the cost of attendance (as defined in section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087ll), as in effect on the date of the enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001) as determined by the eligible educational institution for such period, or

(II) if greater, the actual invoice amount the student residing in housing owned or operated by the eligible educational institution is charged by such institution for room and board costs for such period.

(4) Application of section 514

An interest in a qualified tuition program shall not be treated as debt for purposes of section 514.

(5) Eligible educational institution

The term "eligible educational institution" means an institution—

(A) which is described in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088), as in effect on the date of the enactment of this paragraph, and

(B) which is eligible to participate in a program under title IV of such Act.

(f) Regulations

Notwithstanding any other provision of this section, the Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section and to prevent abuse of such purposes, including regulations under chapters 11, 12, and 13 of this title.

(Added Pub. L. 104–188, title I, §1806(a), Aug. 20, 1996, 110 Stat. 1895; amended Pub. L. 105–34, title II, §211(a), (b), (d), (e)(2)(A), title XVI, §1601(h)(1)(A), (B), Aug. 5, 1997, 111 Stat. 810, 812, 1092; Pub. L. 105–206, title VI, §6004(c)(2), (3), July 22, 1998, 112 Stat. 793; Pub. L. 106–554, §1(a)(7) [title III, §319(5)], Dec. 21, 2000, 114 Stat. 2763, 2763A–646; Pub. L. 107–16, title IV, §402(a)(1)–(3), (4)(A), (C), (D), (b)(1), (c)–(g), June 7, 2001, 115 Stat. 60–63; Pub. L. 107–22, §1(b)(3)(C), July 26, 2001, 115 Stat. 197; Pub. L. 107–147, title IV, §417(11), Mar. 9, 2002, 116 Stat. 56; Pub. L. 108–311, title II, §207(21), title IV, §406(a), Oct. 4, 2004, 118 Stat. 1178, 1189;

Pub. L. 109–135, title IV, §412(ee)(3), Dec. 21, 2005, 119 Stat. 2639; Pub. L. 109–280, title XIII, §1304(b), Aug. 17, 2006, 120 Stat. 1110; Pub. L. 111–5, div. B, title I, §1005(a), Feb. 17, 2009, 123 Stat. 316.)

REFERENCES IN TEXT

The date of the enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001, referred to in subsec. (e)(3)(B)(ii)(I), is the date of enactment of Pub. L. 107–16, which was approved June 7, 2001.

The date of the enactment of this paragraph, referred to in subsec. (e)(5)(A), probably means the date of enactment of Pub. L. 105–34, which enacted subsec. (e)(5) and which was approved Aug. 5, 1997.

The Higher Education Act of 1965, referred to in subsec. (e)(5), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, as amended. Title IV of the Act is classified generally to subchapter IV (§1070 et seq.) of chapter 28 of Title 20, Education, and part C (§2751 et seq.) of subchapter I of chapter 34 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

AMENDMENTS

2009—Subsec. (e)(3)(A). Pub. L. 111–5 added cl. (iii) and concluding provisions.

2006—Subsec. (f). Pub. L. 109–280, which directed the addition of subsec. (f) to section 529, without specifying the act to be amended, was executed by making the addition to this section, which is section 529 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

2005—Subsec. (c)(6). Pub. L. 109–135 substituted "Coverdell education savings account" for "education individual retirement account".

2004—Subsec. (c)(5)(B). Pub. L. 108–311, §406(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "The taxes imposed by chapters 12 and 13 shall apply to a transfer by reason of a change in the designated beneficiary under the program (or a rollover to the account of a new beneficiary) only if the new beneficiary is a generation below the generation of the old beneficiary (determined in accordance with section 2651)."

Subsec. (e)(2)(B). Pub. L. 108–311, §207(21), substituted "subparagraphs (A) through (G) of section 152(d)(2)" for "paragraphs (1) through (8) of section 152(a)".

2002—Subsec. (e)(3)(B)(i). Pub. L. 107–147 substituted "subsection (b)(6)" for "subsection (b)(7)".

2001—Pub. L. 107–16, §402(a)(4)(D), struck out "State" before "tuition" in section catchline.

Subsec. (a). Pub. L. 107–16, §402(a)(4)(A), substituted "qualified tuition" for "qualified State tuition".

Subsec. (b). Pub. L. 107–16, §402(a)(4)(C), substituted "Qualified tuition" for "Qualified State tuition" in heading.

Subsec. (b)(1). Pub. L. 107–16, §402(a)(1), (4)(A), in introductory provisions, substituted "qualified tuition" for "qualified State tuition" and inserted "or by 1 or more eligible educational institutions" after "thereof", and added concluding provisions.

Subsec. (b)(1)(A)(ii). Pub. L. 107–16, §402(a)(2), inserted "in the case of a program established and maintained by a State or agency or instrumentality thereof," before "may make".

Subsec. (b)(2). Pub. L. 107–16, §402(a)(4)(A), substituted "qualified tuition" for "qualified State tuition".

Subsec. (b)(3) to (7). Pub. L. 107–16, §402(a)(3)(A), (4)(A), redesignated pars. (4) to (7) as (3) to (6), respectively, substituted "qualified tuition" for "qualified State tuition" wherever appearing, and struck out heading and text of former par. (3). Text read as follows: "A program shall not be treated as a qualified State tuition program unless it imposes a more than de minimis penalty on any refund of earnings from the account which are not—

"(A) used for qualified higher education expenses of the designated beneficiary,

"(B) made on account of the death or disability of the designated beneficiary, or

"(C) made on account of a scholarship (or allowance or payment described in section 135(d)(1)(B) or (C)) received by the designated beneficiary to the extent the amount of the refund does not exceed the amount of the scholarship, allowance, or payment."

Subsec. (c)(1)(A), (3)(A). Pub. L. 107–16, §402(a)(4)(A), substituted "qualified tuition" for "qualified State tuition".

Subsec. (c)(3)(B). Pub. L. 107–16, §402(b)(1), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: "Any benefit furnished to a designated beneficiary under a qualified tuition program shall be treated as a distribution to the beneficiary."

Pub. L. 107–16, §402(a)(4)(A), substituted "qualified tuition" for "qualified State tuition".

Subsec. (c)(3)(B)(vi). Pub. L. 107–22 substituted "Coverdell education savings" for "education individual retirement" in heading.

Subsec. (c)(3)(C). Pub. L. 107–16, §402(c)(3), inserted "or programs" after "beneficiaries" in heading.

Subsec. (c)(3)(C)(i). Pub. L. 107–16, §402(c)(1), substituted "transferred—" for "transferred", added subcl. (I), and designated existing provisions "to the credit" as subcl. (II).

Pub. L. 107–16, §402(a)(4)(A), substituted "qualified tuition" for "qualified State tuition".

Subsec. (c)(3)(C)(ii). Pub. L. 107–16, §402(a)(4)(A), substituted "qualified tuition" for "qualified State tuition".

Subsec. (c)(3)(C)(iii). Pub. L. 107–16, §402(c)(2), added cl. (iii).

Subsec. (c)(3)(D)(i). Pub. L. 107–16, §402(a)(4)(A), substituted "qualified tuition" for "qualified State tuition".

Subsec. (c)(3)(D)(ii). Pub. L. 107–16, §402(g)(1), inserted "except to the extent provided by the Secretary," before "all distributions".

Subsec. (c)(3)(D)(iii). Pub. L. 107–16, §402(g)(2), inserted "except to the extent provided by the Secretary," before "the value".

Subsec. (c)(6). Pub. L. 107–16, §402(a)(3)(B), added par. (6).

Subsecs. (d), (e)(1)(A), (C). Pub. L. 107–16, §402(a)(4)(A), substituted "qualified tuition" for "qualified State tuition".

Subsec. (e)(2)(D). Pub. L. 107–16, §402(d), added subpar. (D).

Subsec. (e)(3)(A). Pub. L. 107–16, §402(f), reenacted heading without change and amended text of subpar. (A) generally. Prior to amendment, text read as follows: "The term 'qualified higher education expenses' means tuition, fees, books, supplies, and equipment required for the enrollment or attendance of a designated beneficiary at an eligible educational institution."

Subsec. (e)(3)(B)(i). Pub. L. 107–16, §402(a)(4)(A), substituted "qualified tuition" for "qualified State tuition".

Subsec. (e)(3)(B)(ii). Pub. L. 107–16, §402(e), reenacted heading without change and amended text of cl. (ii) generally. Prior to amendment, text read as follows: "The amount treated as qualified higher education expenses by reason of the preceding sentence shall not exceed the minimum amount (applicable to the student) included for room and board for such period in the cost of attendance (as defined in section 472 of the Higher Education Act of 1965, 20 U.S.C. 1087ll, as in effect on the date of the enactment of this paragraph) for the eligible educational institution for such period."

Subsec. (e)(4). Pub. L. 107–16, §402(a)(4)(A), substituted "qualified tuition" for "qualified State tuition".

2000—Subsec. (e)(3)(B). Pub. L. 106–554 struck out "under guaranteed plans" after "students" in heading.

1998—Subsec. (c)(3)(A). Pub. L. 105–206, §6004(c)(2), substituted "section 72" for "section 72(b)".

Subsec. (e)(2). Pub. L. 105–206, §6004(c)(3), reenacted heading without change and amended text of par. (2) generally. Prior to amendment, text read as follows: "The term 'member of the family' means—

"(A) an individual who bears a relationship to another individual which is a relationship described in paragraphs (1) through (8) of section 152(a), and

"(B) the spouse of any individual described in subparagraph (A)."

1997—Subsec. (b)(5). Pub. L. 105–34, §211(b)(4), inserted "directly or indirectly" after "may not".

Subsec. (c)(2). Pub. L. 105–34, §211(b)(3)(A)(i), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: "In no event shall a contribution to a qualified State tuition program on behalf of a designated beneficiary be treated as a taxable gift for purposes of chapter 12."

Subsec. (c)(3)(A). Pub. L. 105–34, §211(d), substituted "section 72(b)" for "section 72".

Subsec. (c)(4). Pub. L. 105–34, §211(b)(3)(B), amended heading and text of par. (4) generally. Prior to amendment, text read as follows: "The value of any interest in any qualified State tuition program which is attributable to contributions made by an individual to such program on behalf of any designated beneficiary shall be includible in the gross estate of the contributor for purposes of chapter 11."

Subsec. (c)(5). Pub. L. 105–34, §211(b)(3)(A)(ii), amended heading and text of par. (5) generally. Prior to amendment, text read as follows: "For purposes of section 2503(e), the waiver (or payment to an educational institution) of qualified higher education expenses of a designated beneficiary under a qualified State tuition program shall be treated as a qualified transfer."

Subsec. (d). Pub. L. 105–34, §211(e)(2)(A), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows:

"(d) REPORTING REQUIREMENTS.—

"(1) IN GENERAL.—If there is a distribution to any individual with respect to an interest in a qualified State tuition program during any calendar year, each officer or employee having control of the qualified State tuition program or their designee shall make such reports as the Secretary may require regarding such distribution to the Secretary and to the designated beneficiary or the individual to whom the distribution was made. Any such report shall include such information as the Secretary may prescribe.

"(2) Timing of reports.—Any report required by this subsection—

"(A) shall be filed at such time and in such matter as the Secretary prescribes, and

"(B) shall be furnished to individuals not later than January 31 of the calendar year following the calendar year to which such report relates."

Subsec. (e)(1)(B). Pub. L. 105–34, §1601(h)(1)(A), substituted "subsection (c)(3)(C)" for "subsection (c)(2)(C)".

Subsec. (e)(1)(C). Pub. L. 105–34, §1601(h)(1)(B), inserted "(or agency or instrumentality thereof)" after "local government".

Subsec. (e)(2). Pub. L. 105–34, §211(b)(1), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: "The term 'member of the family' has the same meaning given such term as section 2032A(e)(2)."

Subsec. (e)(3). Pub. L. 105–34, §211(a), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: "The term 'qualified higher education expenses' means tuition, fees, books, supplies, and equipment required for the enrollment or attendance of a designated beneficiary at an eligible educational institution (as defined in section 135(c)(3))."

Subsec. (e)(5). Pub. L. 105–34, §211(b)(2), added par. (5).

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, §1005(b), Feb. 17, 2009, 123 Stat. 316, provided that: "The amendments made by this section [amending this section] shall apply to expenses paid or incurred after December 31, 2008."

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 207(21) of Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

Amendment by section 406(a) of Pub. L. 108–311 effective as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 406(h) of Pub. L. 108–311, set out as a note under section 55 of this title.

EFFECTIVE DATE OF 2001 AMENDMENTS

Amendment by Pub. L. 107–22 effective July 26, 2001, see section 1(c) of Pub. L. 107–22, set out as a note under section 26 of this title.

Amendment by Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 402(h) of Pub. L. 107–16, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title II, §211(f), Aug. 5, 1997, 111 Stat. 812, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 135 and 6693 of this title] shall take effect on January 1, 1998.

"(2) EXPENSES TO INCLUDE ROOM AND BOARD.—The amendment made by subsection (a) shall take effect as if included in the amendments made by section 1806 of the Small Business Job Protection Act of 1996 [Pub. L. 104–188].

"(3) ELIGIBLE EDUCATIONAL INSTITUTION.—The amendment made by subsection (b)(2) [amending this section] shall apply to distributions after December 31, 1997, with respect to expenses paid after such date (in taxable years ending after such date), for education furnished in academic periods beginning after such date.

"(4) COORDINATION WITH EDUCATION SAVINGS BONDS.—The amendment made by subsection (c) [amending section 135 of this title] shall apply to taxable years beginning after December 31, 1997.

"(5) ESTATE AND GIFT TAX CHANGES.—

"(A) GIFT TAX CHANGES.—Paragraphs (2) and (5) of section 529(c) of the Internal Revenue Code of 1986, as amended by this section, shall apply to transfers (including designations of new beneficiaries) made after the date of the enactment of this Act [Aug. 5, 1997].

"(B) ESTATE TAX CHANGES.—Paragraph (4) of such section 529(c) shall apply to estates of decedents dying after June 8, 1997.

"(6) TRANSITION RULE FOR PRE-AUGUST 20, 1996 CONTRACTS.—In the case of any contract

issued prior to August 20, 1996, section 529(c)(3)(C) of the Internal Revenue Code of 1986 shall be applied for taxable years ending after August 20, 1996, without regard to the requirement that a distribution be transferred to a member of the family or the requirement that a change in beneficiaries may be made only to a member of the family."

Amendment by section 1601(h)(1)(A), (B) of Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 23 of this title.

EFFECTIVE DATE

Pub. L. 104–188, title I, §1806(c), Aug. 20, 1996, 110 Stat. 1898, as amended by Pub. L. 105–34, title XVI, §1601(h)(1)(C), Aug. 5, 1997, 111 Stat. 1092, provided that:

"(1) IN GENERAL.—The amendments made by this section [enacting this section and amending section 135 of this title] shall apply to taxable years ending after the date of the enactment of this Act [Aug. 20, 1996].

"(2) TRANSITION RULE.—If—

"(A) a State or agency or instrumentality thereof maintains, on the date of the enactment of this Act, a program under which persons may purchase tuition credits or certificates on behalf of, or make contributions for education expenses of, a designated beneficiary, and

"(B) such program meets the requirements of a qualified State tuition program before the later of—

"(i) the date which is 1 year after such date of enactment, or

"(ii) the first day of the first calendar quarter after the close of the first regular session of the State legislature that begins after such date of enactment,

then such program (as in effect on August 20, 1996) shall be treated as a qualified State tuition program with respect to contributions (and earnings allocable thereto) pursuant to contracts entered into under such program before the first date on which such program meets such requirements (determined without regard to this paragraph) and the provisions of such program (as so in effect) shall apply in lieu of section 529(b) of the Internal Revenue Code of 1986 with respect to such contributions and earnings.

For purposes of subparagraph (B)(ii), if a State has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature."

[1] So in original. Probably should be "a".

[2] So in original. Probably should be followed by "; and".

§530. Coverdell education savings accounts

(a) General rule

A Coverdell education savings account shall be exempt from taxation under this subtitle. Notwithstanding the preceding sentence, the Coverdell education savings account shall be subject to the taxes imposed by section 511 (relating to imposition of tax on unrelated business income of charitable organizations).

(b) Definitions and special rules

For purposes of this section—

(1) Coverdell education savings account

The term "Coverdell education savings account" means a trust created or organized in the United States exclusively for the purpose of paying the qualified education expenses of an individual who is the designated beneficiary of the trust (and designated as a Coverdell education savings account at the time created or organized), but only if the written governing instrument creating the trust meets the following requirements:

(A) No contribution will be accepted—

(i) unless it is in cash,

(ii) after the date on which such beneficiary attains age 18, or

(iii) except in the case of rollover contributions, if such contribution would result in

aggregate contributions for the taxable year exceeding $2,000.

(B) The trustee is a bank (as defined in section 408(n)) or another person who demonstrates to the satisfaction of the Secretary that the manner in which that person will administer the trust will be consistent with the requirements of this section or who has so demonstrated with respect to any individual retirement plan.

(C) No part of the trust assets will be invested in life insurance contracts.

(D) The assets of the trust shall not be commingled with other property except in a common trust fund or common investment fund.

(E) Except as provided in subsection (d)(7), any balance to the credit of the designated beneficiary on the date on which the beneficiary attains age 30 shall be distributed within 30 days after such date to the beneficiary or, if the beneficiary dies before attaining age 30, shall be distributed within 30 days after the date of death of such beneficiary.

The age limitations in subparagraphs (A)(ii) and (E), and paragraphs (5) and (6) of subsection (d), shall not apply to any designated beneficiary with special needs (as determined under regulations prescribed by the Secretary).

(2) Qualified education expenses

(A) In general

The term "qualified education expenses" means—

(i) qualified higher education expenses (as defined in section 529(e)(3)), and

(ii) qualified elementary and secondary education expenses (as defined in paragraph (3)).

(B) Qualified tuition programs

Such term shall include any contribution to a qualified tuition program (as defined in section 529(b)) on behalf of the designated beneficiary (as defined in section 529(e)(1)); but there shall be no increase in the investment in the contract for purposes of applying section 72 by reason of any portion of such contribution which is not includible in gross income by reason of subsection (d)(2).

(3) Qualified elementary and secondary education expenses

(A) In general

The term "qualified elementary and secondary education expenses" means—

(i) expenses for tuition, fees, academic tutoring, special needs services in the case of a special needs beneficiary, books, supplies, and other equipment which are incurred in connection with the enrollment or attendance of the designated beneficiary of the trust as an elementary or secondary school student at a public, private, or religious school,

(ii) expenses for room and board, uniforms, transportation, and supplementary items and services (including extended day programs) which are required or provided by a public, private, or religious school in connection with such enrollment or attendance, and

(iii) expenses for the purchase of any computer technology or equipment (as defined in section 170(e)(6)(F)(i)) or Internet access and related services, if such technology, equipment, or services are to be used by the beneficiary and the beneficiary's family during any of the years the beneficiary is in school.

Clause (iii) shall not include expenses for computer software designed for sports, games, or hobbies unless the software is predominantly educational in nature.

(B) School

The term "school" means any school which provides elementary education or secondary education (kindergarten through grade 12), as determined under State law.

(4) Time when contributions deemed made

An individual shall be deemed to have made a contribution to an education individual retirement account on the last day of the preceding taxable year if the contribution is made on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (not including extensions thereof).

(c) Reduction in permitted contributions based on adjusted gross income

(1) In general

In the case of a contributor who is an individual, the maximum amount the contributor could otherwise make to an account under this section shall be reduced by an amount which bears the same ratio to such maximum amount as—

(A) the excess of—

(i) the contributor's modified adjusted gross income for such taxable year, over

(ii) $95,000 ($190,000 in the case of a joint return), bears to

(B) $15,000 ($30,000 in the case of a joint return).

(2) Modified adjusted gross income

For purposes of paragraph (1), the term "modified adjusted gross income" means the adjusted gross income of the taxpayer for the taxable year increased by any amount excluded from gross income under section 911, 931, or 933.

(d) Tax treatment of distributions

(1) In general

Any distribution shall be includible in the gross income of the distributee in the manner as provided in section 72.

(2) Distributions for qualified education expenses

(A) In general

No amount shall be includible in gross income under paragraph (1) if the qualified education expenses of the designated beneficiary during the taxable year are not less than the aggregate distributions during the taxable year.

(B) Distributions in excess of expenses

If such aggregate distributions exceed such expenses during the taxable year, the amount otherwise includible in gross income under paragraph (1) shall be reduced by the amount which bears the same ratio to the amount which would be includible in gross income under paragraph (1) (without regard to this subparagraph) as the qualified education expenses bear to such aggregate distributions.

(C) Coordination with Hope and Lifetime Learning credits and qualified tuition programs

For purposes of subparagraph (A)—

(i) Credit coordination

The total amount of qualified education expenses with respect to an individual for the taxable year shall be reduced—

(I) as provided in section 25A(g)(2), and

(II) by the amount of such expenses which were taken into account in determining the credit allowed to the taxpayer or any other person under section 25A.

(ii) Coordination with qualified tuition programs

If, with respect to an individual for any taxable year—

(I) the aggregate distributions during such year to which subparagraph (A) and section 529(c)(3)(B) apply, exceed

(II) the total amount of qualified education expenses (after the application of clause (i)) for such year,

the taxpayer shall allocate such expenses among such distributions for purposes of determining the amount of the exclusion under subparagraph (A) and section 529(c)(3)(B).

(D) Disallowance of excluded amounts as deduction, credit, or exclusion

No deduction, credit, or exclusion shall be allowed to the taxpayer under any other section of this chapter for any qualified education expenses to the extent taken into account in determining the amount of the exclusion under this paragraph.

(3) Special rules for applying estate and gift taxes with respect to account

Rules similar to the rules of paragraphs (2), (4), and (5) of section 529(c) shall apply for purposes of this section.

(4) Additional tax for distributions not used for educational expenses

(A) In general

The tax imposed by this chapter for any taxable year on any taxpayer who receives a payment or distribution from a Coverdell education savings account which is includible in gross income shall be increased by 10 percent of the amount which is so includible.

(B) Exceptions

Subparagraph (A) shall not apply if the payment or distribution is—

(i) made to a beneficiary (or to the estate of the designated beneficiary) on or after the death of the designated beneficiary,

(ii) attributable to the designated beneficiary's being disabled (within the meaning of section 72(m)(7)),

(iii) made on account of a scholarship, allowance, or payment described in section 25A(g)(2) received by the designated beneficiary to the extent the amount of the payment or distribution does not exceed the amount of the scholarship, allowance, or payment,

(iv) made on account of the attendance of the designated beneficiary at the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, the United States Coast Guard Academy, or the United States Merchant Marine Academy, to the extent that the amount of the payment or distribution does not exceed the costs of advanced education (as defined by section 2005(e)(3) of title 10, United States Code, as in effect on the date of the enactment of this section) attributable to such attendance, or

(v) an amount which is includible in gross income solely by application of paragraph (2)(C)(i)(II) for the taxable year.

(C) Contributions returned before certain date

Subparagraph (A) shall not apply to the distribution of any contribution made during a taxable year on behalf of the designated beneficiary if—

(i) such distribution is made before the first day of the sixth month of the taxable year following the taxable year, and

(ii) such distribution is accompanied by the amount of net income attributable to such excess contribution.

Any net income described in clause (ii) shall be included in gross income for the taxable year in which such excess contribution was made.

(5) Rollover contributions

Paragraph (1) shall not apply to any amount paid or distributed from a Coverdell education savings account to the extent that the amount received is paid, not later than the 60th day after the date of such payment or distribution, into another Coverdell education savings account for the benefit of the same beneficiary or a member of the family (within the meaning of section

529(e)(2)) of such beneficiary who has not attained age 30 as of such date. The preceding sentence shall not apply to any payment or distribution if it applied to any prior payment or distribution during the 12-month period ending on the date of the payment or distribution.

(6) Change in beneficiary

Any change in the beneficiary of a Coverdell education savings account shall not be treated as a distribution for purposes of paragraph (1) if the new beneficiary is a member of the family (as so defined) of the old beneficiary and has not attained age 30 as of the date of such change.

(7) Special rules for death and divorce

Rules similar to the rules of paragraphs (7) and (8) of section 220(f) shall apply. In applying the preceding sentence, members of the family (as so defined) of the designated beneficiary shall be treated in the same manner as the spouse under such paragraph (8).

(8) Deemed distribution on required distribution date

In any case in which a distribution is required under subsection (b)(1)(E), any balance to the credit of a designated beneficiary as of the close of the 30-day period referred to in such subsection for making such distribution shall be deemed distributed at the close of such period.

(9) Military death gratuity

(A) In general

For purposes of this section, the term "rollover contribution" includes a contribution to a Coverdell education savings account made before the end of the 1-year period beginning on the date on which the contributor receives an amount under section 1477 of title 10, United States Code, or section 1967 of title 38 of such Code, with respect to a person, to the extent that such contribution does not exceed—

(i) the sum of the amounts received during such period by such contributor under such sections with respect to such person, reduced by

(ii) the amounts so received which were contributed to a Roth IRA under section 408A(e)(2) or to another Coverdell education savings account.

(B) Annual limit on number of rollovers not to apply

The last sentence of paragraph (5) shall not apply with respect to amounts treated as a rollover by the [1] subparagraph (A).

(C) Application of section 72

For purposes of applying section 72 in the case of a distribution which is includible in gross income under paragraph (1), the amount treated as a rollover by reason of subparagraph (A) shall be treated as investment in the contract.

(e) Tax treatment of accounts

Rules similar to the rules of paragraphs (2) and (4) of section 408(e) shall apply to any Coverdell education savings account.

(f) Community property laws

This section shall be applied without regard to any community property laws.

(g) Custodial accounts

For purposes of this section, a custodial account shall be treated as a trust if the assets of such account are held by a bank (as defined in section 408(n)) or another person who demonstrates, to the satisfaction of the Secretary, that the manner in which he will administer the account will be consistent with the requirements of this section, and if the custodial account would, except for the fact that it is not a trust, constitute an account described in subsection (b)(1). For purposes of this title, in the case of a custodial account treated as a trust by reason of the preceding sentence, the custodian of such account shall be treated as the trustee thereof.

(h) Reports

The trustee of a Coverdell education savings account shall make such reports regarding such account to the Secretary and to the beneficiary of the account with respect to contributions, distributions, and such other matters as the Secretary may require. The reports required by this subsection shall be filed at such time and in such manner and furnished to such individuals at such time and in such manner as may be required.

(Added Pub. L. 105–34, title II, §213(a), Aug. 5, 1997, 111 Stat. 813; amended Pub. L. 105–206, title VI, §6004(d)(1)–(3)(A), (5)–(8), July 22, 1998, 112 Stat. 793, 794; Pub. L. 106–554, §1(a)(7) [title III, §319(6)], Dec. 21, 2000, 114 Stat. 2763, 2763A–646; Pub. L. 107–16, title IV, §§401(a)(1), (b)–(g)(1), (2)(C), 402(a)(4)(A), (C), June 7, 2001, 115 Stat. 57–61; Pub. L. 107–22, §1(a)(1)–(5), July 26, 2001, 115 Stat. 196; Pub. L. 107–147, title IV, §411(f), Mar. 9, 2002, 116 Stat. 46; Pub. L. 108–121, title I, §107(a), Nov. 11, 2003, 117 Stat. 1339; Pub. L. 108–311, title IV, §§404(a), 406(b), Oct. 4, 2004, 118 Stat. 1188, 1189; Pub. L. 109–135, title IV, §412(ff), Dec. 21, 2005, 119 Stat. 2639; Pub. L. 110–245, title I, §109(c), June 17, 2008, 122 Stat. 1632.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (d)(4)(B)(iv), is the date of enactment of Pub. L. 105–34, which enacted this section and was approved Aug. 5, 1997.

AMENDMENTS

2008—Subsec. (d)(9). Pub. L. 110–245 added par. (9).

2005—Subsec. (b)(2)(A)(ii). Pub. L. 109–135, §412(ff)(2), substituted "paragraph (3)" for "paragraph (4)".

Subsec. (b)(3) to (5). Pub. L. 109–135, §412(ff)(1), redesignated pars. (4) and (5) as (3) and (4), respectively, and struck out former par. (3) which read as follows: "The term 'eligible educational institution' has the meaning given such term by section 529(e)(5)."

2004—Subsec. (d)(2)(C)(i). Pub. L. 108–311, §404(a), struck out "higher" after "qualified" in introductory provisions.

Subsec. (d)(4)(B)(iii). Pub. L. 108–311, §406(b), substituted "designated beneficiary" for "account holder".

2003—Subsec. (d)(4)(B)(iv), (v). Pub. L. 108–121 added cl. (iv) and redesignated former cl. (iv) as (v).

2002—Subsec. (d)(4)(B)(iv). Pub. L. 107–147 substituted "by application of paragraph (2)(C)(i)(II)" for "because the taxpayer elected under paragraph (2)(C) to waive the application of paragraph (2)".

2001—Pub. L. 107–22, §1(a)(5), amended section catchline generally, substituting "Coverdell education savings" for "Education individual retirement".

Subsec. (a). Pub. L. 107–22, §1(a)(2), substituted "A Coverdell education savings account" for "An education individual retirement account" and "the Coverdell education savings account" for "the education individual retirement account".

Subsec. (b)(1). Pub. L. 107–22, §1(a)(1), (3), in heading, substituted "Coverdell education savings account" for "Education individual retirement account" and, in introductory provisions, substituted " 'Coverdell education savings account' " for " 'education individual retirement account' " and "designated as a Coverdell education savings account" for "designated as an education individual retirement account".

Pub. L. 107–16, §401(d), inserted concluding provisions.

Pub. L. 107–16, §401(c)(3)(A), struck out "higher" before "education expenses" in introductory provisions.

Subsec. (b)(1)(A)(iii). Pub. L. 107–16, §401(a)(1), substituted "$2,000" for "$500".

Subsec. (b)(2). Pub. L. 107–16, §401(c)(1), amended heading and text of par. (2) generally, substituting present provisions for provisions which defined "qualified higher education expenses" as having the meaning given such term by section 529(e)(3), reduced as provided in section 25A(g)(2), and including amounts paid or incurred to purchase tuition credits or certificates, or to make contributions to an account, under a qualified State tuition program for the benefit of the beneficiary of the account.

Subsec. (b)(2)(B). Pub. L. 107–16, §402(a)(4)(A), (C), in heading, substituted "Qualified tuition" for "Qualified State tuition" and in text, substituted "qualified tuition" for "qualified State tuition".

Subsec. (b)(4). Pub. L. 107–16, §401(c)(2), added par. (4).

Subsec. (b)(5). Pub. L. 107–16, §401(f)(1), added par. (5).

Subsec. (c)(1). Pub. L. 107–16, §401(e), substituted "In the case of a contributor who is an individual, the maximum amount the contributor" for "The maximum amount which a contributor" in introductory provisions.

Subsec. (c)(1)(A)(ii). Pub. L. 107–16, §401(b)(1), substituted "$190,000" for "$150,000".

Subsec. (c)(1)(B). Pub. L. 107–16, §401(b)(2), substituted "$30,000" for "$10,000".

Subsec. (d)(2). Pub. L. 107–16, §401(c)(3)(B), struck out "higher" before "education" in heading.

Subsec. (d)(2)(A), (B). Pub. L. 107–16, §401(c)(3)(A), struck out "higher" before "education".

Subsec. (d)(2)(C). Pub. L. 107–16, §401(g)(1), amended heading and text of subpar. (C) generally. Prior to amendment, text read as follows: "A taxpayer may elect to waive the application of this paragraph for any taxable year."

Subsec. (d)(2)(D). Pub. L. 107–16, §401(g)(2)(C), in heading, substituted "deduction, credit, or exclusion" for "credit or deduction" and in text, substituted ", credit, or exclusion" for "or credit".

Subsec. (d)(4)(A). Pub. L. 107–22, §1(a)(1), substituted "a Coverdell education savings account" for "an education individual retirement account".

Subsec. (d)(4)(C). Pub. L. 107–16, §401(f)(2)(B), substituted "certain date" for "due date of return" in heading.

Subsec. (d)(4)(C)(i). Pub. L. 107–16, §401(f)(2)(A), added cl. (i) and struck out former cl. (i) which read as follows: "such distribution is made on or before the day prescribed by law (including extensions of time) for filing the beneficiary's return of tax for the taxable year or, if the beneficiary is not required to file such a return, the 15th day of the 4th month of the taxable year following the taxable year; and".

Subsec. (d)(5). Pub. L. 107–22, §1(a)(1), (4), substituted "distributed from a Coverdell education savings account" for "distributed from an education individual retirement account" and "another Coverdell education savings account" for "another education individual retirement account".

Subsec. (d)(6). Pub. L. 107–22, §1(a)(1), substituted "a Coverdell education savings account" for "an education individual retirement account".

Subsec. (e). Pub. L. 107–22, §1(a)(4), substituted "Coverdell education savings account" for "education individual retirement account".

Subsec. (h). Pub. L. 107–22, §1(a)(1), substituted "a Coverdell education savings account" for "an education individual retirement account".

2000—Subsec. (d)(4)(B)(iii). Pub. L. 106–554 substituted a comma for a semicolon before "or" at end.

1998—Subsec. (b)(1). Pub. L. 105–206, §6004(d)(1), inserted "an individual who is" before "the designated beneficiary" in introductory provisions.

Subsec. (b)(1)(E). Pub. L. 105–206, §6004(d)(2)(A), amended subpar. (E) generally. Prior to amendment, subpar. (E) read as follows: "Upon the death of the designated beneficiary, any balance to the credit of the beneficiary shall be distributed within 30 days after the date of death to the estate of such beneficiary."

Subsec. (d)(1). Pub. L. 105–206, §6004(d)(3)(A), substituted "section 72" for "section 72(b)".

Subsec. (d)(2)(D). Pub. L. 105–206, §6004(d)(5), added subpar. (D).

Subsec. (d)(4)(B)(iv). Pub. L. 105–206, §6004(d)(6), added cl. (iv).

Subsec. (d)(4)(C). Pub. L. 105–206, §6004(d)(7), substituted "Contributions" for "Excess contributions" in heading and amended text of introductory provisions and cl. (i) generally. Prior to amendment, text read as follows: "Subparagraph (A) shall not apply to the distribution of any contribution made during a taxable year on behalf of a designated beneficiary to the extent that such contribution exceeds $500 if—

"(i) such distribution is received on or before the day prescribed by law (including extensions of time) for filing such contributor's return for such taxable year, and".

Subsec. (d)(5). Pub. L. 105–206, §6004(d)(8)(A), added first sentence and struck out former first sentence which read as follows: "Paragraph (1) shall not apply to any amount paid or distributed from an education individual retirement account to the extent that the amount received is paid into another education individual retirement account for the benefit of the same beneficiary or a member of the family (within the meaning of section 529(e)(2)) of such beneficiary not later than the 60th day after the date of such payment or distribution."

Subsec. (d)(6). Pub. L. 105–206, §6004(d)(8)(B), inserted before period at end "and has not attained age 30 as of the date of such change".

Subsec. (d)(7). Pub. L. 105–206, §6004(d)(2)(B), inserted at end "In applying the preceding sentence, members of the family (as so defined) of the designated beneficiary shall be treated in the same manner as the spouse under such paragraph (8)."

Subsec. (d)(8). Pub. L. 105–206, §6004(d)(2)(C), added par. (8).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–245 applicable with respect to deaths from injuries occurring on or after June 17, 2008, with provision for application of amendment to deaths from injuries occurring on or after Oct. 7, 2001, and before June 17, 2008, see section 109(d)(1), (2) of Pub. L. 110–245, set out as a note under section 408A of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 404(a) of Pub. L. 108–311 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 404(f) of Pub. L. 108–311, set out as a note under section 45A of this title.

Amendment by section 406(b) of Pub. L. 108–311 effective as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 406(h) of Pub. L. 108–311, set out as a note under section 55 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–121, title I, §107(b), Nov. 11, 2003, 117 Stat. 1339, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2002."

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–22 effective July 26, 2001, see section 1(c) of Pub. L. 107–22, set out as a note under section 26 of this title.

Amendment by section 401(a)(1), (b)–(g)(1), (2)(C) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 401(h) of Pub. L. 107–16, set out as a note under section 25A of this title.

Amendment by section 402(a)(4)(A), (C) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 402(h) of Pub. L. 107–16, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1997, see section 213(f) of Pub. L. 105–34, set out as an Effective Date of 1997 Amendment note under section 26 of this title.

[1] *So in original. The word "the" probably should not appear.*

Subchapter G—Corporations Used to Avoid Income Tax on Shareholders

Part

I. Corporations improperly accumulating surplus.

II. Personal holding companies.

[III. Repealed.]

IV. Deduction for dividends paid.

AMENDMENTS

2004—Pub. L. 108–357, title IV, §413(c)(31), Oct. 22, 2004, 118 Stat. 1509, struck out item for part III "Foreign personal holding companies".

PART I—CORPORATIONS IMPROPERLY ACCUMULATING SURPLUS

Sec.

531. Imposition of accumulated earnings tax.

532. Corporations subject to accumulated earnings tax.

533. Evidence of purpose to avoid income tax.

534. Burden of proof.

535. Accumulated taxable income.

536. Income not placed on annual basis.
537. Reasonable needs of the business.

§531. Imposition of accumulated earnings tax

In addition to other taxes imposed by this chapter, there is hereby imposed for each taxable year on the accumulated taxable income (as defined in section 535) of each corporation described in section 532, an accumulated earnings tax equal to 20 percent of the accumulated taxable income.

(Aug. 16, 1954, ch. 736, 68A Stat. 179; Pub. L. 100–647, title I, §1001(a)(2)(A), Nov. 10, 1988, 102 Stat. 3349; Pub. L. 103–66, title XIII, §§13201(b)(1), 13202(b), Aug. 10, 1993, 107 Stat. 459, 461; Pub. L. 107–16, title I, §101(c)(4), June 7, 2001, 115 Stat. 43; Pub. L. 108–27, title III, §302(e)(5), May 28, 2003, 117 Stat. 764; Pub. L. 112–240, title I, §102(c)(1)(A), Jan. 2, 2013, 126 Stat. 2319.)

AMENDMENTS

2013—Pub. L. 112–240 substituted "20 percent" for "15 percent".

2003—Pub. L. 108–27 substituted "equal to 15 percent of the accumulated taxable income." for "equal to the product of the highest rate of tax under section 1(c) and the accumulated taxable income."

2001—Pub. L. 107–16 substituted "equal to the product of the highest rate of tax under section 1(c) and the accumulated taxable income." for "equal to 39.6 percent of the accumulated taxable income."

1993—Pub. L. 103–66, §13202(b), substituted "39.6 percent" for "36 percent".

Pub. L. 103–66, §13201(b)(1), substituted "36 percent" for "28 percent".

1988—Pub. L. 100–647 amended section generally. Prior to amendment, section read as follows: "In addition to other taxes imposed by this chapter, there is hereby imposed for each taxable year on the accumulated taxable income (as defined in section 535) of every corporation described in section 532, an accumulated earnings tax equal to the sum of—

"(1) 27½ percent of the accumulated taxable income not in excess of $100,000, plus

"(2) 38½ percent of the accumulated taxable income in excess of $100,000."

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112–240 applicable to taxable years beginning after Dec. 31, 2012, see section 102(d)(1) of Pub. L. 112–240, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–27 applicable, except as otherwise provided, to taxable years beginning after Dec. 31, 2002, see section 302(f) of Pub. L. 108–27, set out as an Effective and Termination Dates of 2003 Amendment note under section 1 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2000, see section 101(d)(1) of Pub. L. 107–16, set out as an Effective and Termination Dates of 2001 Amendment note under section 1 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to taxable years beginning after Dec. 31, 1992, see sections 13201(c) and 13202(c) of Pub. L. 103–66, set out as notes under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1001(a)(2)(B), Nov. 10, 1988, 102 Stat. 3349, provided that: "The amendment made by subparagraph (A) [amending this section] shall apply to taxable years beginning after December 31, 1987. Such amendment shall not be treated as a change in a rate of tax for purposes of section 15 of the 1986 Code."

§532. Corporations subject to accumulated earnings tax

(a) General rule

The accumulated earnings tax imposed by section 531 shall apply to every corporation (other than

those described in subsection (b)) formed or availed of for the purpose of avoiding the income tax with respect to its shareholders or the shareholders of any other corporation, by permitting earnings and profits to accumulate instead of being divided or distributed.

(b) Exceptions

The accumulated earnings tax imposed by section 531 shall not apply to—

(1) a personal holding company (as defined in section 542),

(2) a corporation exempt from tax under subchapter F (section 501 and following), or

(3) a passive foreign investment company (as defined in section 1297).

(c) Application determined without regard to number of shareholders

The application of this part to a corporation shall be determined without regard to the number of shareholders of such corporation.

(Aug. 16, 1954, ch. 736, 68A Stat. 179; Pub. L. 98–369, div. A, title I, §58(a), July 18, 1984, 98 Stat. 574; Pub. L. 99–514, title XII, §1235(f)(1), Oct. 22, 1986, 100 Stat. 2575; Pub. L. 105–34, title XI, §1122(d)(1), Aug. 5, 1997, 111 Stat. 977; Pub. L. 109–135, title IV, §403(n)(1), Dec. 21, 2005, 119 Stat. 2626.)

AMENDMENTS

2005—Subsec. (b)(2) to (4). Pub. L. 109–135 redesignated pars. (3) and (4) as (2) and (3), respectively, and struck out former par. (2) which read as follow: "a foreign personal holding company (as defined in section 552),".

1997—Subsec. (b)(4). Pub. L. 105–34 substituted "section 1297" for "section 1296".

1986—Subsec. (b)(4). Pub. L. 99–514 added par. (4).

1984—Subsec. (c). Pub. L. 98–369 added subsec. (c).

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XI, §1124, Aug. 5, 1997, 111 Stat. 978, provided that: "The amendments made by this subtitle [subtitle C (§§1121–1124) of title XI of Pub. L. 105–34, enacting section 1296 of this title, amending this section and sections 542, 551, 852, 1291, 1293, 1296 to 1298, and 4982 of this title, redesignating subpart C of part VI of subchapter P of this chapter as subpart D of part VI of subchapter P of this chapter, and renumbering sections 1296 and 1297 of this title as sections 1297 and 1298, respectively, of this title] shall apply to—

"(1) taxable years of United States persons beginning after December 31, 1997, and

"(2) taxable years of foreign corporations ending with or within such taxable years of United States persons."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years of foreign corporations beginning after Dec. 31, 1986, see section 1235(h) of Pub. L. 99–514, set out as an Effective Date note under section 1291 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §58(c), July 18, 1984, 98 Stat. 576, provided that: "The amendments made by this section [amending this section and section 535 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [July 18, 1984]."

§533. Evidence of purpose to avoid income tax

(a) Unreasonable accumulation determinative of purpose

For purposes of section 532, the fact that the earnings and profits of a corporation are permitted to accumulate beyond the reasonable needs of the business shall be determinative of the purpose to

avoid the income tax with respect to shareholders, unless the corporation by the preponderance of the evidence shall prove to the contrary.

(b) Holding or investment company

The fact that any corporation is a mere holding or investment company shall be prima facie evidence of the purpose to avoid the income tax with respect to shareholders.

(Aug. 16, 1954, ch. 736, 68A Stat. 179.)

§534. Burden of proof

(a) General rule

In any proceeding before the Tax Court involving a notice of deficiency based in whole or in part on the allegation that all or any part of the earnings and profits have been permitted to accumulate beyond the reasonable needs of the business, the burden of proof with respect to such allegation shall—

(1) if notification has not been sent in accordance with subsection (b), be on the Secretary, or

(2) if the taxpayer has submitted the statement described in subsection (c), be on the Secretary with respect to the grounds set forth in such statement in accordance with the provisions of such subsection.

(b) Notification by Secretary

Before mailing the notice of deficiency referred to in subsection (a), the Secretary may send by certified mail or registered mail a notification informing the taxpayer that the proposed notice of deficiency includes an amount with respect to the accumulated earnings tax imposed by section 531.

(c) Statement by taxpayer

Within such time (but not less than 30 days) after the mailing of the notification described in subsection (b) as the Secretary may prescribe by regulations, the taxpayer may submit a statement on the grounds (together with facts sufficient to show the basis thereof) on which the taxpayer relies to establish that all or any part of the earnings and profits have not been permitted to accumulate beyond the reasonable needs of the business.

(d) Jeopardy assessment

If pursuant to section 6861(a) a jeopardy assessment is made before the mailing of the notice of deficiency referred to in subsection (a), for purposes of this section such notice of deficiency shall, to the extent that it informs the taxpayer that such deficiency includes the accumulated earnings tax imposed by section 531, constitute the notification described in subsection (b), and in that event the statement described in subsection (c) may be included in the taxpayer's petition to the Tax Court.

(Aug. 16, 1954, ch. 736, 68A Stat. 180; Aug. 11, 1955, ch. 805, §§4, 5, 69 Stat. 690, 691; Pub. L. 85–866, title I, §89(b), Sept. 2, 1958, 72 Stat. 1665; Pub. L. 94–455, title XIX, §§1901(a)(73), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1776, 1834.)

AMENDMENTS

1976—Subsec. (a)(1), (2). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (b). Pub. L. 94–455, §§1901(a)(73)(A), 1906(b)(13)(A), struck out "In the case of a notice of deficiency to which subsection (e)(2) applies and which is mailed on or before the 30th day after the date of enactment of this sentence, the notification referred to in the preceding sentence may be mailed at any time on or before such 30th day" after "section 531", and "or his delegate" after "Secretary".

Subsec. (c). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (e). Pub. L. 94–455, §1901(a)(73)(B), struck out subsec. (e) relating to application of provisions of section.

1958—Subsec. (b). Pub. L. 85–866 inserted "certified mail or" before "registered mail".

1955—Subsec. (b). Act Aug. 11, 1955, §5, inserted second sentence relating to notice of deficiency to which subsec. (e)(2) applies.

Subsec. (e). Act Aug. 11, 1955, §4, permitted, in certain instances, application of this section to cases

involving taxable years to which prior revenue laws apply.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(73) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable only if mailing occurred after Sept. 2, 1958, see section 89(d) of Pub. L. 85–866, set out as a note under section 7502 of this title.

§535. Accumulated taxable income

(a) Definition

For purposes of this subtitle, the term "accumulated taxable income" means the taxable income, adjusted in the manner provided in subsection (b), minus the sum of the dividends paid deduction (as defined in section 561) and the accumulated earnings credit (as defined in subsection (c)).

(b) Adjustments to taxable income

For purposes of subsection (a), taxable income shall be adjusted as follows:

(1) Taxes

There shall be allowed as a deduction Federal income and excess profits taxes and income, war profits, and excess profits taxes of foreign countries and possessions of the United States (to the extent not allowable as a deduction under section 275(a)(4)), accrued during the taxable year or deemed to be paid by a domestic corporation under section 902(a) or 960(a)(1) for the taxable year, but not including the accumulated earnings tax imposed by section 531, the personal holding company tax imposed by section 541, or the taxes imposed by corresponding sections of a prior income tax law.

(2) Charitable contributions

The deduction for charitable contributions provided under section 170 shall be allowed without regard to section 170(b)(2).

(3) Special deductions disallowed

The special deductions for corporations provided in part VIII (except section 248) of subchapter B (section 241 and following, relating to the deduction for dividends received by corporations, etc.) shall not be allowed.

(4) Net operating loss

The net operating loss deduction provided in section 172 shall not be allowed.

(5) Capital losses

(A) In general

Except as provided in subparagraph (B), there shall be allowed as a deduction an amount equal to the net capital loss for the taxable year (determined without regard to paragraph (7)(A)).

(B) Recapture of previous deductions for capital gains

The aggregate amount allowable as a deduction under subparagraph (A) for any taxable year shall be reduced by the lesser of—

(i) the nonrecaptured capital gains deductions, or

(ii) the amount of the accumulated earnings and profits of the corporation as of the close of the preceding taxable year.

(C) Nonrecaptured capital gains deductions

For purposes of subparagraph (B), the term "nonrecaptured capital gains deductions" means

the excess of—

(i) the aggregate amount allowable as a deduction under paragraph (6) for preceding taxable years beginning after July 18, 1984, over

(ii) the aggregate of the reductions under subparagraph (B) for preceding taxable years.

(6) Net capital gains

(A) In general

There shall be allowed as a deduction—

(i) the net capital gain for the taxable year (determined with the application of paragraph (7)), reduced by

(ii) the taxes attributable to such net capital gain.

(B) Attributable taxes

For purposes of subparagraph (A), the taxes attributable to the net capital gain shall be an amount equal to the difference between—

(i) the taxes imposed by this subtitle (except the tax imposed by this part) for the taxable year, and

(ii) such taxes computed for such year without including in taxable income the net capital gain for the taxable year (determined without the application of paragraph (7)).

(7) Capital loss carryovers

(A) Unlimited carryforward

The net capital loss for any taxable year shall be treated as a short-term capital loss in the next taxable year.

(B) Section 1212 inapplicable

No allowance shall be made for the capital loss carryback or carryforward provided in section 1212.

(8) Special rules for mere holding or investment companies

In the case of a mere holding or investment company—

(A) Capital loss deduction, etc., not allowed

Paragraphs (5) and (7)(A) shall not apply.

(B) Deduction for certain offsets

There shall be allowed as a deduction the net short-term capital gain for the taxable year to the extent such gain does not exceed the amount of any capital loss carryover to such taxable year under section 1212 (determined without regard to paragraph (7)(B)).

(C) Earnings and profits

For purposes of subchapter C, the accumulated earnings and profits at any time shall not be less than they would be if this subsection had applied to the computation of earnings and profits for all taxable years beginning after July 18, 1984.

(9) Special rule for capital gains and losses of foreign corporations

In the case of a foreign corporation, paragraph (6) shall be applied by taking into account only gains and losses which are effectively connected with the conduct of a trade or business within the United States and are not exempt from tax under treaty.

(10) Controlled foreign corporations

There shall be allowed as a deduction the amount of the corporation's income for the taxable year which is included in the gross income of a United States shareholder under section 951(a). In the case of any corporation the accumulated taxable income of which would (but for this sentence)

be determined without allowance of any deductions, the deduction under this paragraph shall be allowed and shall be appropriately adjusted to take into account any deductions which reduced such inclusion.

(c) Accumulated earnings credit

(1) General rule

For purposes of subsection (a), in the case of a corporation other than a mere holding or investment company the accumulated earnings credit is (A) an amount equal to such part of the earnings and profits for the taxable year as are retained for the reasonable needs of the business, minus (B) the deduction allowed by subsection (b)(6). For purposes of this paragraph, the amount of the earnings and profits for the taxable year which are retained is the amount by which the earnings and profits for the taxable year exceed the dividends paid deduction (as defined in section 561) for such year.

(2) Minimum credit

(A) In general

The credit allowable under paragraph (1) shall in no case be less than the amount by which $250,000 exceeds the accumulated earnings and profits of the corporation at the close of the preceding taxable year.

(B) Certain service corporations

In the case of a corporation the principal function of which is the performance of services in the field of health, law, engineering, architecture, accounting, actuarial science, performing arts, or consulting, subparagraph (A) shall be applied by substituting "$150,000" for "$250,000".

(3) Holding and investment companies

In the case of a corporation which is a mere holding or investment company, the accumulated earnings credit is the amount (if any) by which $250,000 exceeds the accumulated earnings and profits of the corporation at the close of the preceding taxable year.

(4) Accumulated earnings and profits

For purposes of paragraphs (2) and (3), the accumulated earnings and profits at the close of the preceding taxable year shall be reduced by the dividends which under section 563(a) (relating to dividends paid after the close of the taxable year) are considered as paid during such taxable year.

(5) Cross reference

For denial of credit provided in paragraph (2) or (3) where multiple corporations are formed to avoid tax, see section 1551, and for limitation on such credit in the case of certain controlled corporations, see section 1561.

(d) Income distributed to United States-owned foreign corporation retains United States connection

(1) In general

For purposes of this part, if 10 percent or more of the earnings and profits of any foreign corporation for any taxable year—

(A) is derived from sources within the United States, or

(B) is effectively connected with the conduct of a trade or business within the United States,

any distribution out of such earnings and profits (and any interest payment) received (directly or through 1 or more other entities) by a United States-owned foreign corporation shall be treated as derived by such corporation from sources within the United States.

(2) United States-owned foreign corporation

The term "United States-owned foreign corporation" has the meaning given to such term by section 904(h)(6).

(Aug. 16, 1954, ch. 736, 68A Stat. 180; Pub. L. 85–866, title I, §31, title II, §205(a), Sept. 2, 1958, 72 Stat. 1631, 1680; Pub. L. 87–403, §3(b), Feb. 2, 1962, 76 Stat. 6; Pub. L. 87–834, §9(d)(2), Oct. 16, 1962, 76 Stat. 1001; Pub. L. 88–272, title II, §207(b)(4), Feb. 26, 1964, 78 Stat. 42; Pub. L. 91–172, title IV, §401(b)(2)(C), title V, §512(f)(5), (6), Dec. 30, 1969, 83 Stat. 602, 641; Pub. L. 94–12, title III, §304(a), Mar. 29, 1975, 89 Stat. 45; Pub. L. 94–455, title X, §1033(b)(3), title XIX, §§1901(a)(74), (b)(20)(A), (32)(C), (33)(D), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1628, 1777, 1797, 1800, 1801, 1834; Pub. L. 97–34, title II, §232(a), (b)(1), Aug. 13, 1981, 95 Stat. 250; Pub. L. 98–369, div. A, title I, §§58(b), 125(a), July 18, 1984, 98 Stat. 575, 647; Pub. L. 99–514, title XII, §1225(a), title XVIII, §1899A(17), Oct. 22, 1986, 100 Stat. 2558, 2959; Pub. L. 101–508, title XI, §11801(c)(18), Nov. 5, 1990, 104 Stat. 1388–528; Pub. L. 108–357, title IV, §402(b)(1), Oct. 22, 2004, 118 Stat. 1492; Pub. L. 109–135, title IV, §403(n)(2), Dec. 21, 2005, 119 Stat. 2626.)

AMENDMENTS

2005—Subsec. (b)(10). Pub. L. 109–135 added par. (10).

2004—Subsec. (d)(2). Pub. L. 108–357 substituted "section 904(h)(6)" for "section 904(g)(6)".

1990—Subsec. (c)(5). Pub. L. 101–508 substituted "section 1561" for "sections 1561 and 1564".

1986—Subsec. (b)(5)(C)(i), (8)(C). Pub. L. 99–514, §1899A(17), substituted "July 18, 1984" for "the date of the enactment of the Tax Reform Act of 1984".

Subsec. (b)(9). Pub. L. 99–514, §1225(a), added par. (9).

1984—Subsec. (b)(5). Pub. L. 98–369, §58(b), designated existing provisions as subpar. (A), substituted "Except as provided in subparagraph (B), there shall be allowed as a deduction an amount equal to the net capital loss for the taxable year (determined without regard to paragraph (7)(A)" for "There shall be allowed as deductions losses from sales or exchanges of capital assets during the taxable year which are disallowed as deductions under section 1211(a) in subpar. (A) as so redesignated, and added subpars. (B) and (C).

Subsec. (b)(6). Pub. L. 98–369, §58(b), divided existing par. (6) into subpars. (A) and (B) and substituted references to the application of paragraph (7) for references to capital loss carryback and carryover provided in section 1212.

Subsec. (b)(7). Pub. L. 98–369, §58(b), substituted "Capital loss carryovers" for "Capital loss" in heading, redesignated existing provisions as subpar. (B), and added subpar. (A).

Subsec. (b)(8). Pub. L. 98–369, §58(b), added par. (8).

Subsec. (d). Pub. L. 98–369, §125(a), added subsec. (d).

1981—Subsec. (c)(2). Pub. L. 97–34, §232(a), designated existing provisions as subpar. (A), substituted "$250,000" for "$150,000", and added subpar. (B).

Subsec. (c)(3). Pub. L. 97–34, §232(b)(1), substituted "$250,000" for "$150,000".

1976—Subsec. (b)(1). Pub. L. 94–455, §§1033(b)(3), 1901(a)(74), struck out "(other than the excess profits tax imposed by subchapter E of chapter 2 of the Internal Revenue Code of 1939 for taxable years beginning after December 31, 1940)" after "income and excess profits taxes", and substituted "section 902(a) or 960(a)(1)" for "section 902(a)(1) or 960(a)(1)(C)" after "domestic corporation under".

Subsec. (b)(6). Pub. L. 94–455, §1901(b)(33)(D), substituted "Net" for "Long-term" after "(6)".

Subsec. (b)(8). Pub. L. 94–455, §1901(b)(20)(A), struck out par. (8) relating to allowance of deduction by bank affiliates.

Subsec. (b)(9), (10). Pub. L. 94–455, §1901(b)(32)(C), struck out par. (9) relating to allowance of deduction for distributions of divested stock, and struck out par. (10) relating to special adjustment on disposition of antitrust stock received as a dividend.

1975—Subsec. (c)(2), (3). Pub. L. 94–12 substituted "$150,000" for "$100,000".

1969—Subsec. (b)(6). Pub. L. 91–172, §512(f)(5), substituted "capital loss carryback or carryover" for "capital loss carryover" and "capital loss carryback and carryover" for "capital loss carryover" in subpar. (B).

Subsec. (b)(7). Pub. L. 91–172, §512(f)(6), substituted "Capital loss" for "Capital loss carryover" in heading and "capital loss carryback or carryover" for "capital loss carryover" in text.

Subsec. (c)(5). Pub. L. 91–172, §401(b)(2)(C), substituted "section 1551, and for limitation on such credit in the case of certain controlled corporations, see sections 1561 and 1564" for "section 1551".

1964—Subsec. (b)(1). Pub. L. 88–272 substituted "section 275(a)(4)" for "section 164(b)(6)".

1962—Subsec. (b)(1). Pub. L. 87–834 substituted "accrued during the taxable year or deemed to be paid by a domestic corporation under section 902(a)(1) or 960(a)(1)(C) for the taxable year" for "accrued during the taxable year".

Subsec. (b)(9), (10). Pub. L. 87–403 added pars. (9) and (10).

1958—Subsec. (b)(2). Pub. L. 85–866, §31(a), struck out "the limitation in" after "without regard to".

Subsec. (b)(6)(B). Pub. L. 85–866, §31(a), substituted "in taxable income the excess of the net long-term capital gain for the taxable year over the net short-term capital loss for such year (determined without regard to the capital loss carryover provided in section 1212)" for "such excess in taxable income".

Subsec. (c)(2), (3). Pub. L. 85–866, §205(a), substituted "$100,000" for "$60,000".

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title IV, §402(c), Oct. 22, 2004, 118 Stat. 1492, provided that: "The amendments made by this section [amending this section and sections 904 and 936 of this title] shall apply to losses for taxable years beginning after December 31, 2006."

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XII, §1225(c), Oct. 22, 1986, 100 Stat. 2559, as amended by Pub. L. 100–647, title I, §1012(k), Nov. 10, 1988, 102 Stat. 3513, provided that: "The amendments made by this section [amending this section and section 545 of this title] shall apply to gains and losses realized on or after January 1, 1986."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 58(b) of Pub. L. 98–369 applicable to taxable years beginning after July 18, 1984, see section 58(c) of Pub. L. 98–369, set out as a note under section 532 of this title.

Pub. L. 98–369, div. A, title I, §125(b), July 18, 1984, 98 Stat. 647, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to distributions and interest payments received by a United States-owned foreign corporation (within the meaning of section 535(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) on or after May 23, 1983, in taxable years ending on or after such date.

"(2) CORPORATIONS IN EXISTENCE ON MAY 23, 1983.—In the case of a United States-owned foreign corporation (as so defined) in existence on May 23, 1983, the amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1984."

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title II, §232(c), Aug. 13, 1981, 95 Stat. 250, provided that: "The amendments made by this section [amending this section and sections 243, 1551, and 1561 of this title] shall apply to taxable years beginning after December 31, 1981."

EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment by section 1033(b)(3) of Pub. L. 94–455, see section 1033(c) of Pub. L. 94–455, set out as a note under section 902 of this title.

Amendment by section 1901(a)(74), (b)(20)(A), (32)(C), (33)(D) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Pub. L. 94–12, title III, §305(c), Mar. 29, 1975, 89 Stat. 45, provided that: "The amendments made by section 304 [amending this section and sections 243, 1551, and 1561 of this title] apply to taxable years beginning after December 31, 1974."

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 401(b)(2)(C) of Pub. L. 91–172 applicable with respect to taxable years beginning after Dec. 31, 1969, see section 401(h)(2) of Pub. L. 91–172, set out as a note under section 1561 of this title.

Amendment by section 512(f)(5), (6) of Pub. L. 91–172 applicable with respect to net capital losses sustained in taxable years beginning after Dec. 31, 1969, see section 512(g) of Pub. L. 91–172, set out as a note under section 1212 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 207(c) of Pub. L. 88–272, set out as a note under section 164 of this title.

EFFECTIVE DATE OF 1962 AMENDMENTS

Amendment by Pub. L. 87–834 applicable in respect of any distribution received by a domestic corporation after Dec. 31, 1964, and in respect of any distribution received by a domestic corporation before Jan. 1, 1965, in a taxable year of such corporation beginning after Dec. 31, 1962, but only to the extent that such distribution is made out of the accumulated profits of a foreign corporation for a taxable year (of such foreign corporation) beginning after Dec. 31, 1962, see section 9(e) of Pub. L. 87–834, set out as a note under section 902 of this title.

Amendment by Pub. L. 87–403 applicable only with respect to distributions made after Feb. 2, 1962, see section 3(g) of Pub. L. 87–403, set out as a note under section 312 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 31 of Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

Pub. L. 85–866, title II, §205(b), Sept. 2, 1958, 72 Stat. 1680, provided that: "The amendments made by subsection (a) [amending this section and section 1551 of this title] shall apply with respect to taxable years beginning after December 31, 1957."

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§536. Income not placed on annual basis

Section 443(b) (relating to computation of tax on change of annual accounting period) shall not apply in the computation of the accumulated earnings tax imposed by section 531.

(Aug. 16, 1954, ch. 736, 68A Stat. 182.)

§537. Reasonable needs of the business

(a) General rule

For purposes of this part, the term "reasonable needs of the business" includes—

(1) the reasonably anticipated needs of the business,

(2) the section 303 redemption needs of the business, and

(3) the excess business holdings redemption needs of the business.

(b) Special rules

For purposes of subsection (a)—

(1) Section 303 redemption needs

The term "section 303 redemption needs" means, with respect to the taxable year of the corporation in which a shareholder of the corporation died or any taxable year thereafter, the amount needed (or reasonably anticipated to be needed) to make a redemption of stock included in the gross estate of the decedent (but not in excess of the maximum amount of stock to which section 303(a) may apply).

(2) Excess business holdings redemption needs

The term "excess business holdings redemption needs" means the amount needed (or reasonably anticipated to be needed) to redeem from a private foundation stock which—

(A) such foundation held on May 26, 1969 (or which was received by such foundation pursuant to a will or irrevocable trust to which section 4943(c)(5) applies), and

(B) constituted excess business holdings on May 26, 1969, or would have constituted excess business holdings as of such date if there were taken into account (i) stock received pursuant to a will or trust described in subparagraph (A), and (ii) the reduction in the total outstanding stock of the corporation which would have resulted solely from the redemption of stock held by the private foundation.

(3) Obligations incurred to make redemptions

In applying paragraphs (1) and (2), the discharge of any obligation incurred to make a redemption described in such paragraphs shall be treated as the making of such redemption.

(4) Product liability loss reserves

The accumulation of reasonable amounts for the payment of reasonably anticipated product liability losses (as defined in section 172(f)), as determined under regulations prescribed by the Secretary, shall be treated as accumulated for the reasonably anticipated needs of the business.

(5) No inference as to prior taxable years

The application of this part to any taxable year before the first taxable year specified in paragraph (1) shall be made without regard to the fact that distributions in redemption coming within the terms of such paragraphs were subsequently made.

(Aug. 16, 1954, ch. 736, 68A Stat. 182; Pub. L. 91–172, title IX, §906(a), Dec. 30, 1969, 83 Stat. 714; Pub. L. 94–455, title XIX, §1901(a)(75), Oct. 4, 1976, 90 Stat. 1777; Pub. L. 95–600, title III, §371(c), Nov. 6, 1978, 92 Stat. 2859; Pub. L. 104–188, title I, §1704(t)(33), Aug. 20, 1996, 110 Stat. 1889.)

AMENDMENTS

1996—Subsec. (b)(4). Pub. L. 104–188 substituted "section 172(f)" for "section 172(i)".

1978—Subsec. (b)(4), (5). Pub. L. 95–600 added par. (4) and redesignated former par. (4) as (5).

1976—Subsec. (b)(2). Pub. L. 94–455, §1901(a)(75)(A), struck out "with respect to taxable years of the corporation ending after May 26, 1969" after " 'redemption needs' means".

Subsec. (b)(4). Pub. L. 94–455, §1901(a)(75)(B), struck out "or (2)" after "paragraph (1)".

1969—Pub. L. 91–172 designated existing provisions as subsec. (a)(1) and added subsecs. (a)(2), (3) and (b).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable with respect to taxable years beginning after Sept. 30, 1979, see section 371(d) of Pub. L. 95–600, set out as a note under section 172 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title IX, §906(b), Dec. 30, 1969, 83 Stat. 715, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendment made by subsection (a) [amending this section] shall apply to the tax imposed under section 531 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] with respect to taxable years ending after May 26, 1969."

PART II—PERSONAL HOLDING COMPANIES

Sec.
541. Imposition of personal holding company tax.
542. Definition of personal holding company.

543. Personal holding company income.
544. Rules for determining stock ownership.
545. Undistributed personal holding company income.
546. Income not placed on annual basis.
547. Deduction for deficiency dividends.

§541. Imposition of personal holding company tax

In addition to other taxes imposed by this chapter, there is hereby imposed for each taxable year on the undistributed personal holding company income (as defined in section 545) of every personal holding company (as defined in section 542) a personal holding company tax equal to 20 percent of the undistributed personal holding company income.

(Aug. 16, 1954, ch. 736, 68A Stat. 182; Pub. L. 88–272, title II, §225(a), Feb. 26, 1964, 78 Stat. 79; Pub. L. 97–34, title I, §101(d)(2), Aug. 13, 1981, 95 Stat. 184; Pub. L. 99–514, title I, §104(b)(8), Oct. 22, 1986, 100 Stat. 2105; Pub. L. 101–508, title XI, §11802(f)(1), Nov. 5, 1990, 104 Stat. 1388–530; Pub. L. 103–66, title XIII, §§13201(b)(2), 13202(b), Aug. 10, 1993, 107 Stat. 459, 461; Pub. L. 107–16, title I, §101(c)(5), June 7, 2001, 115 Stat. 43; Pub. L. 108–27, title III, §302(e)(6), May 28, 2003, 117 Stat. 764; Pub. L. 112–240, title I, §102(c)(1)(B), Jan. 2, 2013, 126 Stat. 2319.)

AMENDMENTS

2013—Pub. L. 112–240 substituted "20 percent" for "15 percent".

2003—Pub. L. 108–27 substituted "equal to 15 percent of the undistributed personal holding company income." for "equal to the product of the highest rate of tax under section 1(c) and the undistributed personal holding company income."

2001—Pub. L. 107–16 substituted "equal to the product of the highest rate of tax under section 1(c) and the undistributed personal holding company income." for "equal to 39.6 percent of the undistributed personal holding company income."

1993—Pub. L. 103–66, §13202(b), substituted "39.6 percent" for "36 percent".

Pub. L. 103–66, §13201(b)(2), substituted "36 percent" for "28 percent".

1990—Pub. L. 101–508 struck out "(38.5 percent in the case of taxable years beginning in 1987)" after "28 percent".

1986—Pub. L. 99–514 substituted "28 percent (38.5 percent in the case of taxable years beginning in 1987)" for "50 percent".

1981—Pub. L. 97–34 substituted "50 percent" for "70 percent".

1964—Pub. L. 88–272 reduced the tax from 75 percent of undistributed income not in excess of $2,000, and 85 percent when in excess of $2,000, to 70 percent.

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112–240 applicable to taxable years beginning after Dec. 31, 2012, see section 102(d)(1) of Pub. L. 112–240, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–27 applicable, except as otherwise provided, to taxable years beginning after Dec. 31, 2002, see section 302(f) of Pub. L. 108–27, set out as an Effective and Termination Dates of 2003 Amendment note under section 1 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2000, see section 101(d) of Pub. L. 107–16, set out as an Effective and Termination Dates of 2001 Amendment note under section 1 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to taxable years beginning after Dec. 31, 1992, see sections 13201(c) and 13202(c) of Pub. L. 103–66, set out as notes under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section

151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 101(f)(1) of Pub. L. 97–34, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 225(l) of Pub. L. 88–272 set out as a note under section 316 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

§542. Definition of personal holding company

(a) General rule

For purposes of this subtitle, the term "personal holding company" means any corporation (other than a corporation described in subsection (c)) if—

(1) Adjusted ordinary gross income requirement

At least 60 percent of its adjusted ordinary gross income (as defined in section 543(b)(2)) for the taxable year is personal holding company income (as defined in section 543(a)), and

(2) Stock ownership requirement

At any time during the last half of the taxable year more than 50 percent in value of its outstanding stock is owned, directly or indirectly, by or for not more than 5 individuals. For purposes of this paragraph, an organization described in section 401(a), 501(c)(17), or 509(a) or a portion of a trust permanently set aside or to be used exclusively for the purposes described in section 642(c) or a corresponding provision of a prior income tax law shall be considered an individual.

(b) Corporations filing consolidated returns

(1) General rule

In the case of an affiliated group of corporations filing or required to file a consolidated return under section 1501 for any taxable year, the adjusted ordinary gross income requirement of subsection (a)(1) of this section shall, except as provided in paragraphs (2) and (3), be applied for such year with respect to the consolidated adjusted ordinary gross income and the consolidated personal holding company income of the affiliated group. No member of such an affiliated group shall be considered to meet such adjusted ordinary gross income requirement unless the affiliated group meets such requirement.

(2) Ineligible affiliated group

Paragraph (1) shall not apply to an affiliated group of corporations if—

(A) any member of the affiliated group of corporations (including the common parent corporation) derived 10 percent or more of its adjusted ordinary gross income for the taxable year from sources outside the affiliated group, and

(B) 80 percent or more of the amount described in subparagraph (A) consists of personal holding company income (as defined in section 543).

For purposes of this paragraph, section 543 shall be applied as if the amount described in subparagraph (A) were the adjusted ordinary gross income of the corporation.

(3) Excluded corporations

Paragraph (1) shall not apply to an affiliated group of corporations if any member of the affiliated group (including the common parent corporation) is a corporation excluded from the definition of personal holding company under subsection (c).

(4) Certain dividend income received by a common parent

In applying paragraph (2) (A) and (B), personal holding company income and adjusted ordinary gross income shall not include dividends received by a common parent corporation from another corporation if—

(A) the common parent corporation owns, directly or indirectly, more than 50 percent of the outstanding voting stock of such other corporation, and

(B) such other corporation is not a personal holding company for the taxable year in which the dividends are paid.

(5) Certain dividend income received from a nonincludible life insurance company

In the case of an affiliated group of corporations filing or required to file a consolidated return under section 1501 for any taxable year, there shall be excluded from consolidated personal holding company income and consolidated adjusted ordinary gross income for purposes of this part dividends received by a member of the affiliated group from a life insurance company taxable under section 801 that is not a member of the affiliated group solely by reason of the application of paragraph (2) of subsection (b) of section 1504.

(c) Exceptions

The term "personal holding company" as defined in subsection (a) does not include—

(1) a corporation exempt from tax under subchapter F (sec. 501 and following);

(2) a bank as defined in section 581, or a domestic building and loan association within the meaning of section 7701(a)(19);

(3) a life insurance company;

(4) a surety company;

(5) a foreign corporation,[1]

(6) a lending or finance company if—

(A) 60 percent or more of its ordinary gross income (as defined in section 543(b)(1)) is derived directly from the active and regular conduct of a lending or finance business;

(B) the personal holding company income for the taxable year (computed without regard to income described in subsection (d)(3) and income derived directly from the active and regular conduct of a lending or finance business, and computed by including as personal holding company income the entire amount of the gross income from rents, royalties, produced film rents, and compensation for use of corporate property by shareholders) is not more than 20 percent of the ordinary gross income;

(C) the sum of the deductions which are directly allocable to the active and regular conduct of its lending or finance business equals or exceeds the sum of—

(i) 15 percent of so much of the ordinary gross income derived therefrom as does not exceed $500,000, plus

(ii) 5 percent of so much of the ordinary gross income derived therefrom as exceeds $500,000; and

(D) the loans to a person who is a shareholder in such company during the taxable year by or for whom 10 percent or more in value of its outstanding stock is owned directly or indirectly (including, in the case of an individual, stock owned by members of his family as defined in section 544(a)(2)), outstanding at any time during such year do not exceed $5,000 in principal amount;

(7) A [2] small business investment company which is licensed by the Small Business Administration and operating under the Small Business Investment Act of 1958 (15 U.S.C. 661 and following) and which is actively engaged in the business of providing funds to small business

concerns under that Act. This paragraph shall not apply if any shareholder of the small business investment company owns at any time during the taxable year directly or indirectly (including, in the case of an individual, ownership by the members of his family as defined in section 544(a)(2)) a 5 per centum or more proprietary interest in a small business concern to which funds are provided by the investment company or 5 per centum or more in value of the outstanding stock of such concern; and

(8) a corporation which is subject to the jurisdiction of the court in a title 11 or similar case (within the meaning of section 368(a)(3)(A)) unless a major purpose of instituting or continuing such case is the avoidance of the tax imposed by section 541.

(d) Special rules for applying subsection (c)(6)

(1) Lending or finance business defined

(A) In general

Except as provided in subparagraph (B), for purposes of subsection (c)(6), the term "lending or finance business" means a business of—

(i) making loans,

(ii) purchasing or discounting accounts receivable, notes, or installment obligations,

(iii) rendering services or making facilities available in connection with activities described in clauses (i) and (ii) carried on by the corporation rendering services or making facilities available, or

(iv) rendering services or making facilities available to another corporation which is engaged in the lending or finance business (within the meaning of this paragraph), if such services or facilities are related to the lending or finance business (within such meaning) of such other corporation and such other corporation and the corporation rendering services or making facilities available are members of the same affiliated group (as defined in section 1504).

(B) Exceptions

For purposes of subparagraph (A), the term "lending or finance business" does not include the business of—

(i) making loans, or purchasing or discounting accounts receivable, notes, or installment obligations, if (at the time of the loan, purchase, or discount) the remaining maturity exceeds 144 months; unless—

(I) the loans, notes, or installment obligations are evidenced or secured by contracts of conditional sale, chattel mortgages, or chattel lease agreements arising out of the sale of goods or services in the course of the borrower's or transferor's trade or business, or

(II) the loans, notes, or installment obligations are made or acquired by the taxpayer and meet the requirements of subparagraph (C), or

(ii) making loans evidenced by, or purchasing, certificates of indebtedness issued in a series, under a trust indenture, and in registered form or with interest coupons attached.

For purposes of clause (i), the remaining maturity shall be treated as including any period for which there may be a renewal or extension under the terms of an option exercisable by the borrower.

(C) Indefinite maturity credit transactions

For purposes of subparagraph (B)(i), a loan, note, or installment obligation meets the requirements of this subparagraph if it is made under an agreement—

(i) under which the creditor agrees to make loans or advances (not in excess of an agreed upon maximum amount) from time to time to or for the account of the debtor upon request, and

(ii) under which the debtor may repay the loan or advance in full or in installments.

(2) Business deductions

For purposes of subsection (c)(6)(C), the deductions which may be taken into account shall include only—

(A) deductions which are allowable only by reason of section 162 or section 404, except there shall not be included any such deduction in respect of compensation for personal services rendered by shareholders (including members of the shareholder's family as described in section 544(a)(2)), and

(B) deductions allowable under section 167, and deductions allowable under section 164 for real property taxes, but in either case only to the extent that the property with respect to which such deductions are allowable is used directly in the active and regular conduct of the lending or finance business.

(3) Income received from certain affiliated corporations

For purposes of subsection (c)(6)(B), in the case of a lending or finance company which meets the requirements of subsection (c)(6)(A), there shall not be treated as personal holding company income the lawful income received from a corporation which meets the requirements of subsection (c)(6) and which is a member of the same affiliated group (as defined in section 1504) of which such company is a member.

(Aug. 16, 1954, ch. 736, 68A Stat. 182; ch. 871, §3, Aug. 12, 1955, 69 Stat. 718; Pub. L. 86–376, §3(a), Sept. 23, 1959, 73 Stat. 700; Pub. L. 87–768, §1, Oct. 9, 1962, 76 Stat. 766; Pub. L. 88–272, title II, §225(b), (c), (k)(1), Feb. 26, 1964, 78 Stat. 79, 93; Pub. L. 89–809, title I, §104(h)(1), Nov. 13, 1966, 80 Stat. 1559; Pub. L. 91–172, title I, §101(j)(16), Dec. 30, 1969, 83 Stat. 528; Pub. L. 93–480, §3(a), Oct. 26, 1974, 88 Stat. 1454; Pub. L. 94–455, title XIX, §1901(a)(76), Oct. 4, 1976, 90 Stat. 1777; Pub. L. 96–589, §5(a), Dec. 24, 1980, 94 Stat. 3405; Pub. L. 97–248, title II, §293(a)–(c), Sept. 3, 1982, 96 Stat. 575; Pub. L. 98–369, div. A, title II, §211(b)(7), July 18, 1984, 98 Stat. 755; Pub. L. 99–514, title XII, §1235(f)(2), Oct. 22, 1986, 100 Stat. 2575; Pub. L. 105–34, title XI, §1122(d)(1), Aug. 5, 1997, 111 Stat. 977; Pub. L. 108–357, title IV, §413(b)(1), Oct. 22, 2004, 118 Stat. 1506.)

REFERENCES IN TEXT

The Small Business Investment Act of 1958, referred to in subsec. (c)(7), is Pub. L. 85–699, Aug. 21, 1958, 72 Stat. 689, as amended, which is classified principally to chapter 14B (§661 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to this Code, see Short Title note set out under section 661 of Title 15 and Tables.

AMENDMENTS

2004—Subsec. (c)(5). Pub. L. 108–357, §413(b)(1)(A), amended par. (5) generally. Prior to amendment, par. (5) read as follows: "a foreign personal holding company as defined in section 552;".

Subsec. (c)(7) to (10). Pub. L. 108–357, §413(b)(1)(B)–(D), redesignated pars. (8) and (9) as (7) and (8), respectively, inserted "and" at end of par. (7), substituted period for "; and" at end of par. (8), and struck out former pars. (7) and (10) relating to foreign corporations whose outstanding stock during the last half of the taxable year is owned, directly or indirectly, by nonresident aliens and passive foreign investment companies, respectively.

1997—Subsec. (c)(10). Pub. L. 105–34 substituted "section 1297" for "section 1296".

1986—Subsec. (c)(10). Pub. L. 99–514 added par. (10).

1984—Subsec. (b)(5). Pub. L. 98–369 substituted "section 801" for "section 802".

1982—Subsec. (c)(6)(C)(ii). Pub. L. 97–248, §293(a), struck out "but not $1,000,000" after "exceeds $500,000".

Subsec. (d)(1)(B)(i). Pub. L. 97–248, §293(b), substituted "144 months" for "60 months" after "remaining maturity exceeds", designated existing provisions from "the loans" through "transferor's trade or business, or" as subcl. (I), and added subcl. (II).

Subsec. (d)(1)(C). Pub. L. 97–248, §293(c), added subpar. (C).

1980—Subsec. (c)(9). Pub. L. 96–589, added par. (9).

1976—Subsec. (a)(2). Pub. L. 94–455, §1901(a)(76)(A), struck out last sentence providing that the preceding sentence shall not apply in the case of an organization or trust organized or created before July 1, 1950, if at all times on or after July 1, 1950, and before the close of the taxable year such organization or trust

has owned all of the common stock and at least 80 percent of the total number of shares of all other classes of stock of the corporation.

Subsec. (b)(2). Pub. L. 94–455, §1901(a)(76)(B), struck out "other than an affiliated group of railroad corporations the common parent of which would be eligible to file a consolidated return under section 141 of the Internal Revenue Act of 1942" after "group of corporations".

Subsec. (c)(2). Pub. L. 94–455, §1901(a)(76)(C), struck out "without regard to subparagraphs (D) and (E) thereof" after "meaning of section 7701(a)(19)".

Subsec. (c)(8). Pub. L. 94–455, §1901(a)(76)(D), inserted "(15 U.S.C. 661 and following)" after "Small Business Investment Act of 1958".

1974—Subsec. (b)(5). Pub. L. 93–480 added par. (5).

1969—Subsec. (a)(2). Pub. L. 91–172 substituted "section 401(a), 501(c)(17), or 509(a)" for "section 503(b)" in the list of sections that contain the description of organizations that may be considered as individuals for the purpose of establishing stock ownership, and struck out provisions which would have kept an organization or trust created before July 1, 1950, from being so designated if it had been denied exemption under section 504 or an unlimited charitable deduction under section 681(c) of this title.

1966—Subsec. (c)(7). Pub. L. 89–809 substituted requirement that the foreign corporation be other than a corporation which has income to which section 543(a)(7) applies for the taxable year for requirement that the foreign corporation's gross income from sources within the United States for the period specified in section 861(a)(2)(B) be less than 50 percent of its total gross income from all sources, and expanded the devices included in methods of indirect ownership to encompass foreign estates, foreign trusts, and foreign partnerships.

1964—Subsec. (a)(1). Pub. L. 88–272, §225(b), substituted "60 percent of its adjusted ordinary gross income (as defined in section 543(b)(2)) for the taxable year is personal holding company income (as defined in section 543(a))" for "80 percent of its gross income for the taxable year is personal holding company income as defined in section 543".

Subsec. (b). Pub. L. 88–272, §225(k)(1), substituted "adjusted ordinary gross income" for "gross income", wherever appearing.

Subsec. (c)(2), (6) to (11). Pub. L. 88–272, §225(c)(1), (2), inserted among the exceptions, domestic building and loan associations within section 7701(a)(19) without regard to subpars. (D) and (E) thereof, added par. (6), redesignated former pars. (10) and (11) as (7) and (8), respectively, and omitted former pars. (6) to (9) which related to licensed personal finance companies, lending companies, loan or investment corporations, and finance companies, respectively.

Subsec. (d). Pub. L. 88–272, §225(c)(3), added subsec. (d).

1962—Subsec. (c)(7). Pub. L. 87–768 substituted "authorized to engage in and actively and regularly engaged in the small loan business (consumer finance business)" for "authorized to engage in the small loan business", inserted provisions excepting from the definition of "personal holding company" a lending company that received 80 percent or more of its gross income from lawful income from domestic subsidiary corporations (of which stock possessing at least 80 percent of the voting power of all classes of stock and of which at least 80 percent of each class of the nonvoting stock is owned directly by such lending company), which are themselves excepted under pars. (6), (7), (8), or (9) of this subsection, increased the maximum amount of the loan where no limit is prescribed from $500 to $1,500, and eliminated provisions which required loans to mature in not more than 36 months, and which limited interest, discount and other charges to not more than an amount equal to simple interest at 3 percent per month payable in advance and computed only on unpaid balances.

1959—Subsec. (c)(11). Pub. L. 86–376 added par. (11).

1955—Subsec. (a)(2). Act Aug. 12, 1955, §3, inserted sentence at end excepting from consideration as "individuals" certain charitable foundations created before July 1, 1950.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to taxable years of United States persons beginning after Dec. 31, 1997, and to taxable years of foreign corporations ending with or within such taxable years of United States persons, see section 1124 of Pub. L. 105–34, set out as a note under section 532 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years of foreign corporations beginning after Dec. 31, 1986, see section 1235(h) of Pub. L. 99–514, set out as an Effective Date note under section 1291 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title II, §293(d), Sept. 3, 1982, 96 Stat. 575, provided that:

"(1) SUBSECTION (a).—The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1981.

"(2) SUBSECTIONS (b) AND (c).—The amendments made by subsections (b) and (c) [amending this section] shall apply to taxable years beginning after December 31, 1980."

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–589 applicable to bankruptcy cases or similar judicial proceedings commenced after Dec. 31, 1980, with exception permitting the debtor to make the amendment applicable to such cases or judicial proceedings commenced after Sept. 30, 1979, see section 7(d)(1), (f) of Pub. L. 96–589, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Pub. L. 93–480, §3(b), Oct. 26, 1974, 88 Stat. 1454, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1973."

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 101(k)(2)(B) of Pub. L. 91–172, set out as a note under section 4940 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by section 225(b), (c)(2), (3), (k)(1) of Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, and amendment by section 225(c)(1) of Pub. L. 88–272 applicable to taxable years beginning after Oct. 16, 1962, see section 225(l) of Pub. L. 88–272, set out as a note under section 316 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87–768, §2, Oct. 9, 1962, 76 Stat. 766, provided that: "The amendment made by the first section of this Act [amending this section] shall apply with respect to taxable years beginning after December 31, 1961."

EFFECTIVE DATE OF 1959 AMENDMENT

Pub. L. 86–376, §3(b), Sept. 23, 1959, 73 Stat. 700, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1958."

EFFECTIVE DATE OF 1955 AMENDMENT

Act Aug. 12, 1955, ch. 871, §4, 69 Stat. 718, provided that: "The amendment made by section 3 of this Act [amending this section] shall apply only with respect to taxable years beginning after December 31, 1954."

STOCK OWNERSHIP REQUIREMENT; ORGANIZATION OR TRUST ORGANIZED OR CREATED BEFORE JULY 1, 1950

Pub. L. 95–600, title VII, §701(o), Nov. 6, 1978, 92 Stat. 2907, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—The last sentence of section 542(a)(2) of the Internal Revenue Code of 1986

[formerly I.R.C. 1954] (relating to stock ownership requirement) shall not apply in the case of an organization or trust organized or created before July 1, 1950, if at all times on or after July 1, 1950, and before the close of the taxable year such organization or trust has owned all of the common stock and at least 80 percent of the total number of shares of all other classes of stock of the corporation.

"(2) EFFECTIVE DATE.—The provisions of paragraph (1) shall apply with respect to taxable years beginning after December 31, 1976."

[1] So in original. The comma probably should be a semicolon.

[2] So in original. Probably should not be capitalized.

§543. Personal holding company income

(a) General rule

For purposes of this subtitle, the term "personal holding company income" means the portion of the adjusted ordinary gross income which consists of:

(1) Dividends, etc.

Dividends, interest, royalties (other than mineral, oil, or gas royalties or copyright royalties), and annuities. This paragraph shall not apply to—

(A) interest constituting rent (as defined in subsection (b)(3)),

(B) interest on amounts set aside in a reserve fund under chapter 533 or 535 of title 46, United States Code,

(C) active business computer software royalties (within the meaning of subsection (d)), and

(D) interest received by a broker or dealer (within the meaning of section 3(a)(4) or (5) of the Securities and Exchange Act of 1934) in connection with—

(i) any securities or money market instruments held as property described in section 1221(a)(1),

(ii) margin accounts, or

(iii) any financing for a customer secured by securities or money market instruments.

(2) Rents

The adjusted income from rents; except that such adjusted income shall not be included if—

(A) such adjusted income constitutes 50 percent or more of the adjusted ordinary gross income, and

(B) the sum of—

(i) the dividends paid during the taxable year (determined under section 562),

(ii) the dividends considered as paid on the last day of the taxable year under section 563(d) [1] (as limited by the second sentence of section 563(b)), and

(iii) the consent dividends for the taxable year (determined under section 565),

equals or exceeds the amount, if any, by which the personal holding company income for the taxable year (computed without regard to this paragraph and paragraph (6), and computed by including as personal holding company income copyright royalties and the adjusted income from mineral, oil, and gas royalties) exceeds 10 percent of the ordinary gross income.

(3) Mineral, oil, and gas royalties

The adjusted income from mineral, oil, and gas royalties; except that such adjusted income shall not be included if—

(A) such adjusted income constitutes 50 percent or more of the adjusted ordinary gross income,

(B) the personal holding company income for the taxable year (computed without regard to this paragraph, and computed by including as personal holding company income copyright

royalties and the adjusted income from rents) is not more than 10 percent of the ordinary gross income, and

(C) the sum of the deductions which are allowable under section 162 (relating to trade or business expenses) other than—

(i) deductions for compensation for personal services rendered by the shareholders, and

(ii) deductions which are specifically allowable under sections other than section 162,

equals or exceeds 15 percent of the adjusted ordinary gross income.

(4) Copyright royalties

Copyright royalties; except that copyright royalties shall not be included if—

(A) such royalties (exclusive of royalties received for the use of, or right to use, copyrights or interests in copyrights on works created in whole, or in part, by any shareholder) constitute 50 percent or more of the ordinary gross income,

(B) the personal holding company income for the taxable year computed—

(i) without regard to copyright royalties, other than royalties received for the use of, or right to use, copyrights or interests in copyrights in works created in whole, or in part, by any shareholder owning more than 10 percent of the total outstanding capital stock of the corporation,

(ii) without regard to dividends from any corporation in which the taxpayer owns at least 50 percent of all classes of stock entitled to vote and at least 50 percent of the total value of all classes of stock and which corporation meets the requirements of this subparagraph and subparagraphs (A) and (C), and

(iii) by including as personal holding company income the adjusted income from rents and the adjusted income from mineral, oil, and gas royalties,

is not more than 10 percent of the ordinary gross income, and

(C) the sum of the deductions which are properly allocable to such royalties and which are allowable under section 162, other than—

(i) deductions for compensation for personal services rendered by the shareholders,

(ii) deductions for royalties paid or accrued, and

(iii) deductions which are specifically allowable under sections other than section 162,

equals or exceeds 25 percent of the amount by which the ordinary gross income exceeds the sum of the royalties paid or accrued and the amounts allowable as deductions under section 167 (relating to depreciation) with respect to copyright royalties.

For purposes of this subsection, the term "copyright royalties" means compensation, however designated, for the use of, or the right to use, copyrights in works protected by copyright issued under title 17 of the United States Code and to which copyright protection is also extended by the laws of any country other than the United States of America by virtue of any international treaty, convention, or agreement, or interests in any such copyrighted works, and includes payments from any person for performing rights in any such copyrighted work and payments (other than produced film rents as defined in paragraph (5)(B)) received for the use of, or right to use, films. For purposes of this paragraph, the term "shareholder" shall include any person who owns stock within the meaning of section 544. This paragraph shall not apply to active business computer software royalties.

(5) Produced film rents

(A) Produced film rents; except that such rents shall not be included if such rents constitute 50 percent or more of the ordinary gross income.

(B) For purposes of this section, the term "produced film rents" means payments received with respect to an interest in a film for the use of, or right to use, such film, but only to the extent that such interest was acquired before substantial completion of production of such film.

In the case of a producer who actively participates in the production of the film, such term includes an interest in the proceeds or profits from the film, but only to the extent such interest is attributable to such active participation.

(6) Use of corporate property by shareholder

(A) Amounts received as compensation (however designated and from whomever received) for the use of, or the right to use, tangible property of the corporation in any case where, at any time during the taxable year, 25 percent or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for an individual entitled to the use of the property (whether such right is obtained directly from the corporation or by means of a sublease or other arrangement).

(B) Subparagraph (A) shall apply only to a corporation which has personal holding company income in excess of 10 percent of its ordinary gross income.

(C) For purposes of the limitation in subparagraph (B), personal holding company income shall be computed—

(i) without regard to subparagraph (A) or paragraph (2),

(ii) by excluding amounts received as compensation for the use of (or right to use) intangible property (other than mineral, oil, or gas royalties or copyright royalties) if a substantial part of the tangible property used in connection with such intangible property is owned by the corporation and all such tangible and intangible property is used in the active conduct of a trade or business by an individual or individuals described in subparagraph (A), and

(iii) by including copyright royalties and adjusted income from mineral, oil, and gas royalties.

(7) Personal service contracts

(A) Amounts received under a contract under which the corporation is to furnish personal services; if some person other than the corporation has the right to designate (by name or by description) the individual who is to perform the services, or if the individual who is to perform the services is designated (by name or by description) in the contract; and

(B) amounts received from the sale or other disposition of such a contract.

This paragraph shall apply with respect to amounts received for services under a particular contract only if at some time during the taxable year 25 percent or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for the individual who has performed, is to perform, or may be designated (by name or by description) as the one to perform, such services.

(8) Estates and trusts

Amounts includible in computing the taxable income of the corporation under part I of subchapter J (sec. 641 and following, relating to estates, trusts, and beneficiaries).

(b) Definitions

For purposes of this part—

(1) Ordinary gross income

The term "ordinary gross income" means the gross income determined by excluding—

(A) all gains from the sale or other disposition of capital assets, and

(B) all gains (other than those referred to in subparagraph (A)) from the sale or other disposition of property described in section 1231(b).

(2) Adjusted ordinary gross income

The term "adjusted ordinary gross income" means the ordinary gross income adjusted as follows:

(A) Rents

From the gross income from rents (as defined in the second sentence of paragraph (3) of this subsection) subtract the amount allowable as deductions for—

(i) exhaustion, wear and tear, obsolescence, and amortization of property other than tangible personal property which is not customarily retained by any one lessee for more than three years,

(ii) property taxes,

(iii) interest, and

(iv) rent,

to the extent allocable, under regulations prescribed by the Secretary, to such gross income from rents. The amount subtracted under this subparagraph shall not exceed such gross income from rents.

(B) Mineral royalties, etc.

From the gross income from mineral, oil, and gas royalties described in paragraph (4), and from the gross income from working interests in an oil or gas well, subtract the amount allowable as deductions for—

(i) exhaustion, wear and tear, obsolescence, amortization, and depletion,

(ii) property and severance taxes,

(iii) interest, and

(iv) rent,

to the extent allocable, under regulations prescribed by the Secretary, to such gross income from royalties or such gross income from working interests in oil or gas wells. The amount subtracted under this subparagraph with respect to royalties shall not exceed the gross income from such royalties, and the amount subtracted under this subparagraph with respect to working interests shall not exceed the gross income from such working interests.

(C) Interest

There shall be excluded—

(i) interest received on a direct obligation of the United States held for sale to customers in the ordinary course of trade or business by a regular dealer who is making a primary market in such obligations, and

(ii) interest on a condemnation award, a judgment, and a tax refund.

(D) Certain excluded rents

From the gross income consisting of compensation described in subparagraph (D) of paragraph (3) subtract the amount allowable as deductions for the items described in clauses (i), (ii), (iii), and (iv) of subparagraph (A) to the extent allocable, under regulations prescribed by the Secretary, to such gross income. The amount subtracted under this subparagraph shall not exceed such gross income.

(3) Adjusted income from rents

The term "adjusted income from rents" means the gross income from rents, reduced by the amount subtracted under paragraph (2)(A) of this subsection. For purposes of the preceding sentence, the term "rents" means compensation, however designated, for the use of, or right to use, property, and the interest on debts owed to the corporation, to the extent such debts represent the price for which real property held primarily for sale to customers in the ordinary course of its trade or business was sold or exchanged by the corporation; but such term does not include—

(A) amounts constituting personal holding company income under subsection (a)(6),

(B) copyright royalties (as defined in subsection (a)(4)),

(C) produced film rents (as defined in subsection (a)(5)(B)),

(D) compensation, however designated, for the use of, or the right to use, any tangible personal property manufactured or produced by the taxpayer, if during the taxable year the taxpayer is engaged in substantial manufacturing or production of tangible personal property of

the same type, or

(E) active business computer software royalties (as defined in subsection (d)).

(4) Adjusted income from mineral, oil, and gas royalties

The term "adjusted income from mineral, oil, and gas royalties" means the gross income from mineral, oil, and gas royalties (including production payments and overriding royalties), reduced by the amount subtracted under paragraph (2)(B) of this subsection in respect of such royalties.

(c) Gross income of insurance companies other than life insurance companies

In the case of an insurance company other than a life insurance company, the term "gross income" as used in this part means the gross income, as defined in section 832(b)(1), increased by the amount of losses incurred, as defined in section 832(b)(5), and the amount of expenses incurred, as defined in section 832(b)(6), and decreased by the amount deductible under section 832(c)(7) (relating to tax-free interest).

(d) Active business computer software royalties

(1) In general

For purposes of this section, the term "active business computer software royalties" means any royalties—

(A) received by any corporation during the taxable year in connection with the licensing of computer software, and

(B) with respect to which the requirements of paragraphs (2), (3), (4), and (5) are met.

(2) Royalties must be received by corporation actively engaged in computer software business

The requirements of this paragraph are met if the royalties described in paragraph (1)—

(A) are received by a corporation engaged in the active conduct of the trade or business of developing, manufacturing, or producing computer software, and

(B) are attributable to computer software which—

(i) is developed, manufactured, or produced by such corporation (or its predecessor) in connection with the trade or business described in subparagraph (A), or

(ii) is directly related to such trade or business.

(3) Royalties must constitute at least 50 percent of income

The requirements of this paragraph are met if the royalties described in paragraph (1) constitute at least 50 percent of the ordinary gross income of the corporation for the taxable year.

(4) Deductions under sections 162 and 174 relating to royalties must equal or exceed 25 percent of ordinary gross income

(A) In general

The requirements of this paragraph are met if—

(i) the sum of the deductions allowable to the corporation under sections 162, 174, and 195 for the taxable year which are properly allocable to the trade or business described in paragraph (2) equals or exceeds 25 percent of the ordinary gross income of such corporation for such taxable year, or

(ii) the average of such deductions for the 5-taxable year period ending with such taxable year equals or exceeds 25 percent of the average ordinary gross income of such corporation for such period.

If a corporation has not been in existence during the 5-taxable year period described in clause (ii), then the period of existence of such corporation shall be substituted for such 5-taxable year period.

(B) Deductions allowable under section 162

For purposes of subparagraph (A), a deduction shall not be treated as allowable under section

162 if it is specifically allowable under another section.

(C) Limitation on allowable deductions

For purposes of subparagraph (A), no deduction shall be taken into account with respect to compensation for personal services rendered by the 5 individual shareholders holding the largest percentage (by value) of the outstanding stock of the corporation. For purposes of the preceding sentence—

(i) individuals holding less than 5 percent (by value) of the stock of such corporation shall not be taken into account, and

(ii) stock deemed to be owned by a shareholder solely by attribution from a partner under section 544(a)(2) shall be disregarded.

(5) Dividends must equal or exceed excess of personal holding company income over 10 percent of ordinary gross income

(A) In general

The requirements of this paragraph are met if the sum of—

(i) the dividends paid during the taxable year (determined under section 562),

(ii) the dividends considered as paid on the last day of the taxable year under section 563(d) [1] (as limited by the second sentence of section 563(b)), and

(iii) the consent dividends for the taxable year (determined under section 565),

equals or exceeds the amount, if any, by which the personal holding company income for the taxable year exceeds 10 percent of the ordinary gross income of such corporation for such taxable year.

(B) Computation of personal holding company income

For purposes of this paragraph, personal holding company income shall be computed—

(i) without regard to amounts described in subsection (a)(1)(C),

(ii) without regard to interest income during any taxable year—

(I) which is in the 5-taxable year period beginning with the later of the 1st taxable year of the corporation or the 1st taxable year in which the corporation conducted the trade or business described in paragraph (2)(A), and

(II) during which the corporation meets the requirements of paragraphs (2), (3), and (4), and

(iii) by including adjusted income from rents and adjusted income from mineral, oil, and gas royalties (within the meaning of paragraphs (2) and (3) of subsection (a)).

(6) Special rules for affiliated group members

(A) In general

In any case in which—

(i) the taxpayer receives royalties in connection with the licensing of computer software, and

(ii) another corporation which is a member of the same affiliated group as the taxpayer meets the requirements of paragraphs (2), (3), (4), and (5) with respect to such computer software,

the taxpayer shall be treated as having met such requirements.

(B) Affiliated group

For purposes of this paragraph, the term "affiliated group" has the meaning given such term by section 1504(a).

(Aug. 16, 1954, ch. 736, 68A Stat. 186; Pub. L. 86–435, §1(a), (b), Apr. 22, 1960, 74 Stat. 77; Pub. L. 87–403, §3(c), Feb. 2, 1962, 76 Stat. 6; Pub. L. 88–272, title II, §225(d), (k)(2), Feb. 26, 1964, 78

Stat. 81, 93; Pub. L. 88–484, §3(a), Aug. 22, 1964, 78 Stat. 598; Pub. L. 89–809, title I, §104(h)(2), title II, §206(a), (b), Nov. 13, 1966, 80 Stat. 1559, 1578, 1579; Pub. L. 94–455, title II, §211(a), title XIX, §§1901(b)(32)(D), 1906(b)(13)(A), title XXI, §2106(a), Oct. 4, 1976, 90 Stat. 1544, 1800, 1834, 1902; Pub. L. 94–553, §105(d), Oct. 19, 1976, 90 Stat. 2599; Pub. L. 97–248, title II, §222(e)(6), Sept. 3, 1982, 96 Stat. 480; Pub. L. 98–369, div. A, title VII, §712(i)(3), July 18, 1984, 98 Stat. 948; Pub. L. 99–514, title VI, §645(a)(1), (2), (4), title XVIII, §1899A(18), Oct. 22, 1986, 100 Stat. 2289, 2291, 2959; Pub. L. 100–647, title I, §1010(f)(5), title VI, §6279(a), Nov. 10, 1988, 102 Stat. 3454, 3754; Pub. L. 104–188, title I, §1704(t)(6), Aug. 20, 1996, 110 Stat. 1887; Pub. L. 105–206, title VI, §6023(9), July 22, 1998, 112 Stat. 825; Pub. L. 106–170, title V, §532(c)(2)(E), Dec. 17, 1999, 113 Stat. 1930; Pub. L. 108–357, title IV, §413(c)(8), Oct. 22, 2004, 118 Stat. 1507; Pub. L. 109–304, §17(e)(3), Oct. 6, 2006, 120 Stat. 1708.)

REFERENCES IN TEXT

Section 3(a)(4) and (5) of the Securities and Exchange Act of 1934, referred to in subsec. (a)(1)(D), is classified to section 78c(a)(4) and (5) of Title 15, Commerce and Trade.

Section 563(d), referred to in subsecs. (a)(2)(B)(ii) and (d)(5)(A)(ii), was redesignated section 563(c) by Pub. L. 108–357, title IV, §413(c)(10)(B), Oct. 22, 2004, 118 Stat. 1507.

AMENDMENTS

2006—Subsec. (a)(1)(B). Pub. L. 109–304 substituted "chapter 533 or 535 of title 46, United States Code" for "section 511 or 607 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1161 or 1177)".

2004—Subsec. (b)(1). Pub. L. 108–357 inserted "and" at end of subpar. (A), substituted a period for ", and" at end of subpar. (B), and struck out subpar. (C) which read as follows: "in the case of a foreign corporation all of the outstanding stock of which during the last half of the taxable year is owned by nonresident alien individuals (whether directly or indirectly through foreign estates, foreign trusts, foreign partnerships, or other foreign corporations), all items of income which would, but for this subparagraph, constitute personal holding company income under any paragraph of subsection (a) other than paragraph (7) thereof:".

1999—Subsec. (a)(1)(D)(i). Pub. L. 106–170 substituted "1221(a)(1)" for "1221(1)".

1998—Subsec. (d)(5)(A)(ii). Pub. L. 105–206 substituted "section 563(d)" for "section 563(c)".

1996—Subsec. (a)(2)(B)(ii). Pub. L. 104–188 substituted "563(d)" for "563(c)".

1988—Subsec. (a)(1)(D). Pub. L. 100–647, §6279(a), added subpar. (D).

Subsec. (c). Pub. L. 100–647, §1010(f)(5), substituted "other than life insurance companies" for "other than life or mutual" in heading and "other than a life insurance company" for "other than life or mutual" in text.

1986—Subsec. (a)(1)(B). Pub. L. 99–514, §1899A(18), substituted "46 U.S.C. App." for "46 U.S.C.".

Subsec. (a)(1)(C). Pub. L. 99–514, §645(a)(1), added subpar. (C).

Subsec. (a)(4). Pub. L. 99–514, §645(a)(4)(A), inserted "This paragraph shall not apply to active business computer software royalties."

Subsec. (b)(3)(E). Pub. L. 99–514, §645(a)(4)(B), added subpar. (E).

Subsec. (d). Pub. L. 99–514, §645(a)(2), added subsec. (d).

1984—Subsec. (a)(1)(C). Pub. L. 98–369 struck out subpar. (C) providing for nonapplication of par. (1) to dividends to which section 302(b)(4) would apply if the corporation were an individual.

1982—(a)(1)(C). Pub. L. 97–248 added subpar. (C).

1976—Subsec. (a)(1). Pub. L. 94–455, §1901(b)(32)(D), inserted in subpar. (B) "(46 U.S.C. 1161 or 1177)" after "Merchant Marine Act, 1936", and struck out subpar. (C) relating to a dividend distribution of divested stock.

Subsec. (a)(4). Pub. L. 94–553 struck out "(other than by reason of section 2 or 6 thereof)" after "title 17 of the United States Code".

Subsec. (a)(5)(B). Pub. L. 94–455, §211(a), inserted "In the case of a producer who actually participates in the production of the film, such term includes an interest in the proceeds or profits from the film, but only to the extent such interest is attributable to such active participation".

Subsec. (a)(6). Pub. L. 94–455, §2106(a), redesignated existing provisions as subpars. (A), (B), and (C) and, as redesignated, inserted in subpar. (A) "tangible" after "right to use" and in subpar. (C) inserted exclusions from income embodied in cl. (ii).

Subsec. (b)(2)(A), (B), (D). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

1966—Subsec. (a)(2). Pub. L. 89–809, §206(b)(1), struck out provision that royalties received for the use of, or for the privilege of using, a patent, invention, model, or design, secret formula, process, or other similar property right be treated as rent if such property right is also used by the corporation receiving such royalties

in the manufacture or production of tangible personal property held for lease to customers and if the amount constituting rent from such leases to customers meets the requirement of subparagraph (A).

Subsec. (b)(1)(C). Pub. L. 89–809, §104(h)(2), added subpar. (C).

Subsec. (b)(2)(D). Pub. L. 89–809, §206(b)(2), added subpar. (D).

Subsec. (b)(3). Pub. L. 89–809, §206(a), struck out "amounts constituting personal holding company income under subsection (a)(6), nor copyright royalties (as defined in subsection (a)(4)), nor produced film rents (as defined in subsection (a)(5)(B))." after "but does not include", and added subpars. (A) to (D).

1964—Subsec. (a). Pub. L. 88–272, §225(d), amended subsec. (a) generally, and among other changes, substituted "adjusted ordinary gross income" for "gross income", provided, relative to rental income, that in addition to the 50-percent test of par. (2)(A), now applied on the basis of adjusted income from rents and adjusted ordinary gross income, a second test for exclusion shall be whether the sum on the dividends paid during the taxable year, the dividends paid on the last day of the year, and the consent dividends for the taxable year, equals or exceeds the amount by which the personal holding company income for the year exceeds 10 percent of the ordinary gross income, relative to mineral, oil, and gas royalties, that in addition to the 50-percent test of par. (3)(A), now applied on the basis of adjusted ordinary gross income, and the 15-percent test of par. (3)(C), from which test have been excluded deductions "specifically allowable under sections other than section 162" and is also now applied on the basis of adjusted gross income, the royalties shall be excluded if the personal holding company income for the taxable year is not more than 10 percent of the ordinary gross income, relative to copyright royalties, retained the 50-percent test as in par. (4)(A), making it applicable to ordinary gross income, included in the computation of the income for the taxable year the adjusted income from rents and the adjusted income from mineral, oil, and gas royalties, excluded from the sum of deductions allocable to royalties, deductions specifically allowable under sections other than 162, and changed the requirement that deductions constitute 50 percent or more of gross income to provide that they must equal 25 percent of ordinary gross income reduced by royalties paid and by depreciation deductions with respect to copyrights, relative to produced film rents, that they be treated on their own basis and not as rentals, and defined "produced film rents", relative to use of corporation property by shareholders, that personal holding company income includes copyright royalties and the adjusted income from mineral, oil, and gas royalties, eliminated gains from the sale or other disposition of any interest in an estate or trust, from the sale or exchange of stock or securities, and from futures transactions in any commodity, and also definition of "rents". See subsec. (b)(3).

Subsec. (a)(2). Pub. L. 88–484 inserted sentence requiring royalties received for the use of, or for the privilege of using, a patent, invention, model, or design (whether or not patented), secret formula or process, or any other similar property right to be treated as rent, if such property right is also used by the corporation receiving such royalties in the manufacture or production of tangible personal property held for lease to customers, and if the amount (computed without regard to this sentence) constituting rent from such leases to customers meets the requirements of subparagraph (A).

Subsec. (b). Pub. L. 88–272, §225(d), added subsec. (b). Former subsec. (b), which provided that gross income and personal holding company income determined with respect to transactions relating to gains from stock and security transactions, and with respect to transactions relating to gains from commodity transactions, should include only the excess of gains over losses from such transactions, was struck out.

Subsec. (d). Pub. L. 88–272, §225(k)(2), struck out subsec. (d) which related to special adjustment on disposition of antitrust stock received as a dividend.

1962—Subsec. (a)(1). Pub. L. 87–403 prescribed conditions making inapplicable the provisions of the paragraph to dividend distribution of divested stock.

Subsec. (d). Pub. L. 87–403 added subsec. (d).

1960—Subsec. (a)(1). Pub. L. 86–435, §1(b)(1), excluded copyright royalties.

Subsec. (a)(6). Pub. L. 86–435, §1(b)(2), inserted sentence providing that copyright royalties constitute personal holding company income.

Subsec. (a)(9). Pub. L. 86–435, §1(a), added par. (9).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any

transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1010(f)(5) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title VI, §6279(b), Nov. 10, 1988, 102 Stat. 3754, provided that: "The amendments made by this section [amending this section] shall apply to interest received after the date of the enactment of this Act [Nov. 10, 1988], in taxable years ending after such date."

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title VI, §645(e), Oct. 22, 1986, 100 Stat. 2292, provided that: "The amendments made by subsection (a) [amending this section and section 553 of this title] shall apply to royalties received before, on, and after December 31, 1986."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to distributions after Aug. 31, 1982, with exceptions for certain partial liquidations, see section 222(f) of Pub. L. 97–248, set out as a note under section 302 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–553 effective Jan. 1, 1978, see section 102 of Pub. L. 94–553, set out as an Effective Date note preceding section 101 of Title 17, Copyrights.

Pub. L. 94–455, title II, §211(b), Oct. 4, 1976, 90 Stat. 1545, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years ending on or after December 31, 1975."

Amendment by section 1901(b)(32)(D) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Pub. L. 94–455, title XXI, §2106(b), Oct. 4, 1976, 90 Stat. 1903, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1976."

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by section 104(h)(2) of Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

Pub. L. 89–809, title II, §206(c), Nov. 13, 1966, 80 Stat. 1579, provided that: "The amendments made by subsections (a) and (b) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Nov. 13, 1966]. Such amendments shall also apply, at the election of the taxpayer (made at such time and in such manner as the Secretary or his delegate may prescribe), to taxable years beginning on or before such date and ending after December 31, 1965."

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88–484, §3(b), Aug. 22, 1964, 78 Stat. 598, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1963."

Amendment by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 225(l) of Pub. L. 88–272, set out as a note under section 316 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–403 applicable only with respect to distributions made after Feb. 2, 1962, see section 3(g) of Pub. L. 87–403, set out as a note under section 312 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Pub. L. 86–435, §2, Apr. 22, 1960, 74 Stat. 78, provided that: "The amendments made by the first section of this Act [amending this section and sections 544 and 553 of this title] shall apply only with respect to taxable years beginning after December 31, 1959."

TREATMENT OF CERTAIN BANK HOLDING COMPANIES

Pub. L. 100–647, title VI, §6280, Nov. 10, 1988, 102 Stat. 3754, provided that:

"(a) GENERAL RULE.—For purposes of subtitle A of the 1986 Code, the term 'personal holding company income' shall not include any dividend received by a qualified bank holding company from a 25-percent owned bank during any taxable year ending in 1989 or 1990.

"(b) $3,000,000 LIMITATION.—The aggregate amount excluded from the personal holding company income of any qualified bank holding company under subsection (a) for the taxable year shall not exceed $3,000,000.

"(c) QUALIFIED BANK HOLDING COMPANY.—For purposes of this section, the term 'qualified bank holding company' means any bank holding company (as defined in section 2(a) of the Bank Holding Company Act of 1956 [12 U.S.C. 1841(a)]) if 80 percent or more (by value) of the assets of such company at all times during the taxable year consist of stock in 1 or more 25-percent owned banks.

"(d) 25-PERCENT OWNED BANK.—For purposes of this section, the term '25-percent owned bank' means any bank (as defined in section 581 of the 1986 Code) if at least 25 percent of the stock of such bank (by vote and value) is owned by the bank holding company."

SPECIAL RULES FOR BROKER-DEALERS, ROYALTIES RECEIVED BY QUALIFIED TAXPAYER, AND TREATMENT OF ACTIVE BUSINESS COMPUTER ROYALTIES FOR S CORPORATION PURPOSES

Pub. L. 99–514, title VI, §645(b)–(d), Oct. 22, 1986, 100 Stat. 2292, provided that:

"(b) SPECIAL RULES FOR BROKER-DEALERS.—In the case of a broker-dealer which is part of an affiliated group which files a consolidated Federal income tax return, the common parent of which was incorporated in Nevada on January 27, 1972, the personal holding company income (within the meaning of section 543 of the Internal Revenue Code of 1986) of such broker-dealer, shall not include any interest received after the date of the enactment of this Act [Oct. 22, 1986] with respect to—

"(1) any securities or money market instruments held as inventory,

"(2) margin accounts, or

"(3) any financing for a customer secured by securities or money market instruments.

"(c) SPECIAL RULE FOR ROYALTIES RECEIVED BY QUALIFIED TAXPAYER.—

"(1) IN GENERAL.—Any qualified royalty received or accrued in taxable years beginning after December 31, 1981, by a qualified taxpayer shall be treated in the same manner as a royalty with respect to software is treated under the amendments made by this section [amending this section and section 553 of this title].

"(2) QUALIFIED TAXPAYER.—For purposes of this subsection, a qualified taxpayer is any taxpayer incorporated on September 7, 1978, which is engaged in the trade or business of manufacturing dolls and accessories.

"(3) QUALIFIED ROYALTY.—For purposes of this subsection, the term 'qualified royalty' means any royalty arising from an agreement entered into in 1982 which permits the licensee to manufacture and sell dolls and accessories.

"(d) SPECIAL RULE FOR TREATMENT OF ACTIVE BUSINESS COMPUTER ROYALTIES FOR S CORPORATION PURPOSES.—In the case of a taxpayer which was incorporated on May 3, 1977, in California and which elected to be taxed as an S corporation for its taxable year ending on December 31, 1985, any active business computer royalties (within the meaning of section 543(d) of the Internal Revenue Code of 1986 as added by this Act) which are received by the taxpayer in taxable years beginning after December 31, 1984, shall not be treated as passive investment income (within the meaning of section 1362(d)(3)(D) [now section 1362(d)(3)(C)]) for purposes of subchapter S of chapter 1 of such Code."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[1] *See References in Text note below.*

§544. Rules for determining stock ownership

(a) Constructive ownership

For purposes of determining whether a corporation is a personal holding company, insofar as such determination is based on stock ownership under section 542(a)(2), section 543(a)(7), section 543(a)(6), or section 543(a)(4)—

(1) Stock not owned by individual

Stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust shall be considered as being owned proportionately by its shareholders, partners, or beneficiaries.

(2) Family and partnership ownership

An individual shall be considered as owning the stock owned, directly or indirectly, by or for his family or by or for his partner. For purposes of this paragraph, the family of an individual includes only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

(3) Options

If any person has an option to acquire stock, such stock shall be considered as owned by such person. For purposes of this paragraph, an option to acquire such an option, and each one of a series of such options, shall be considered as an option to acquire such stock.

(4) Application of family-partnership and option rules

Paragraphs (2) and (3) shall be applied—

(A) for purposes of the stock ownership requirement provided in section 542(a)(2), if, but only if, the effect is to make the corporation a personal holding company;

(B) for purposes of section 543(a)(7) (relating to personal service contracts), of section 543(a)(6) (relating to use of property by shareholders), or of section 543(a)(4) (relating to copyright royalties), if, but only if, the effect is to make the amounts therein referred to includible under such paragraph as personal holding company income.

(5) Constructive ownership as actual ownership

Stock constructively owned by a person by reason of the application of paragraph (1) or (3), shall, for purposes of applying paragraph (1) or (2), be treated as actually owned by such person; but stock constructively owned by an individual by reason of the application of paragraph (2) shall not be treated as owned by him for purposes of again applying such paragraph in order to make another the constructive owner of such stock.

(6) Option rule in lieu of family and partnership rule

If stock may be considered as owned by an individual under either paragraph (2) or (3) it shall be considered as owned by him under paragraph (3).

(b) Convertible securities

Outstanding securities convertible into stock (whether or not convertible during the taxable year) shall be considered as outstanding stock—

(1) for purposes of the stock ownership requirement provided in section 542(a)(2), but only if the effect of the inclusion of all such securities is to make the corporation a personal holding company;

(2) for purposes of section 543(a)(7) (relating to personal service contracts), but only if the effect of the inclusion of all such securities is to make the amounts therein referred to includible under such paragraph as personal holding company income;

(3) for purposes of section 543(a)(6) (relating to the use of property by shareholders), but only if the effect of the inclusion of all such securities is to make the amounts therein referred to includible under such paragraphs as personal holding company income; and

(4) for purposes of section 543(a)(4) (relating to copyright royalties), but only if the effect of the inclusion of all such securities is to make the amounts therein referred to includible under such paragraph as personal holding company income.

The requirement in paragraphs (1), (2), (3), and (4) that all convertible securities must be included if any are to be included shall be subject to the exception that, where some of the outstanding securities are convertible only after a later date than in the case of others, the class having the earlier conversion date may be included although the others are not included, but no convertible securities shall be included unless all outstanding securities having a prior conversion date are also included.

(Aug. 16, 1954, ch. 736, 68A Stat. 188; Pub. L. 86–435, §1(c), (d), Apr. 22, 1960, 74 Stat. 78; Pub. L. 88–272, title II, §225(k)(3), Feb. 26, 1964, 78 Stat. 93.)

AMENDMENTS

1964—Pub. L. 88–272 substituted "section 543(a)(7)" for "section 543(a)(5)", and "section 543(a)(4)" for "section 543(a)(9)," wherever appearing.

1960—Subsec. (a). Pub. L. 86–435, §1(c)(1), inserted reference to section 543(a)(9) in introductory provisions.

Subsec. (a)(4)(B). Pub. L. 86–435, §1(c)(2), included reference to section 543(a)(9).

Subsec. (b). Pub. L. 86–435, §1(d), added par. (4), and inserted reference to par. (4) in last sentence.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 225(l)(1) of Pub. L. 88–272 set out as a note under section 316 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–435 applicable only with respect to taxable years beginning after Dec. 31, 1959, see section 2 of Pub. L. 86–435, set out as a note under section 543 of this title.

§545. Undistributed personal holding company income

(a) Definition

For purposes of this part, the term "undistributed personal holding company income" means the taxable income of a personal holding company adjusted in the manner provided in subsections (b), (c), and (d), minus the dividends paid deduction as defined in section 561. In the case of a personal holding company which is a foreign corporation, not more than 10 percent in value of the outstanding stock of which is owned (within the meaning of section 958(a)) during the last half of the taxable year by United States persons, the term "undistributed personal holding company income" means the amount determined by multiplying the undistributed personal holding company income (determined without regard to this sentence) by the percentage in value of its outstanding stock which is the greatest percentage in value of its outstanding stock so owned by United States persons on any one day during such period.

(b) Adjustments to taxable income

For the purposes of subsection (a), the taxable income shall be adjusted as follows:

(1) Taxes

There shall be allowed as a deduction Federal income and excess profits taxes and income, war profits and excess profits taxes of foreign countries and possessions of the United States (to the extent not allowable as a deduction under section 275(a)(4)), accrued during the taxable year or deemed to be paid by a domestic corporation under section 902(a) or 960(a)(1) for the taxable year, but not including the accumulated earnings tax imposed by section 531, the personal holding company tax imposed by section 541, or the taxes imposed by corresponding sections of a prior income tax law.

(2) Charitable contributions

The deduction for charitable contributions provided under section 170 shall be allowed, but in computing such deduction the limitations in section 170(b)(1)(A), (B), (D), and (E) shall apply, and section 170(b)(2) and (d)(1) shall not apply. For purposes of this paragraph, the term "contribution base" when used in section 170(b)(1) means the taxable income computed with the

adjustments (other than the 10-percent limitation) provided in section 170(b)(2) and (d)(1) and without deduction of the amount disallowed under paragraph (6) of this subsection.

(3) Special deductions disallowed

The special deductions for corporations provided in part VIII (except section 248) of subchapter B (section 241 and following, relating to the deduction for dividends received by corporations, etc.) shall not be allowed.

(4) Net operating loss

The net operating loss deduction provided in section 172 shall not be allowed, but there shall be allowed as a deduction the amount of the net operating loss (as defined in section 172(c)) for the preceding taxable year computed without the deductions provided in part VIII (except section 248) of subchapter B.

(5) Net capital gains

There shall be allowed as a deduction the net capital gain for the taxable year, minus the taxes imposed by this subtitle attributable to such net capital gain. The taxes attributable to such net capital gain shall be an amount equal to the difference between—

(A) the taxes imposed by this subtitle (except the tax imposed by this part) for such year, and

(B) such taxes computed for such year without including such excess in taxable income.

(6) Expenses and depreciation applicable to property of the taxpayer

The aggregate of the deductions allowed under section 162 (relating to trade or business expenses) and section 167 (relating to depreciation), which are allocable to the operation and maintenance of property owned or operated by the corporation, shall be allowed only in an amount equal to the rent or other compensation received for the use of, or the right to use, the property, unless it is established (under regulations prescribed by the Secretary) to the satisfaction of the Secretary—

(A) that the rent or other compensation received was the highest obtainable, or, if none was received, that none was obtainable;

(B) that the property was held in the course of a business carried on bona fide for profit; and

(C) either that there was reasonable expectation that the operation of the property would result in a profit, or that the property was necessary to the conduct of the business.

(7) Special rule for capital gains and losses of foreign corporations

In the case of a foreign corporation, paragraph (5) shall be applied by taking into account only gains and losses which are effectively connected with the conduct of a trade or business within the United States and are not exempt from tax under treaty.

(c) Certain foreign corporations

In the case of a foreign corporation all of the outstanding stock of which during the last half of the taxable year is owned by nonresident alien individuals (whether directly or indirectly through foreign estates, foreign trusts, foreign partnerships, or other foreign corporations), the taxable income for purposes of subsection (a) shall be the income which constitutes personal holding company income under section 543(a)(7), reduced by the deductions attributable to such income, and adjusted, with respect to such income, in the manner provided in subsection (b).

(Aug. 16, 1954, ch. 736, 68A Stat. 189; Pub. L. 85–866, title I, §32(a), (b), Sept. 2, 1958, 72 Stat. 1631; Pub. L. 87–403, §3(d), Feb. 2, 1962, 76 Stat. 7; Pub. L. 87–834, §9(d)(2), Oct. 16, 1962, 76 Stat. 1001; Pub. L. 88–272, title II, §§207(b)(5), 209(c)(2), 225(i)(1), (2), Feb. 26, 1964, 78 Stat. 42, 46, 90; Pub. L. 89–719, title I, §101(b)(2), Nov. 2, 1966, 80 Stat. 1132; Pub. L. 89–809, title I, §104(h)(3), Nov. 13, 1966, 80 Stat. 1560; Pub. L. 91–172, title II, §201(a)(2)(B), Dec. 30, 1969, 83 Stat. 558; Pub. L. 94–455, title X, §1033(b)(4), title XIX, §§1901(a)(77), (b)(20)(B), (32)(E), (33)(D), 1906(b)(13)(A), 1951(b)(9)(A), Oct. 4, 1976, 90 Stat. 1628, 1777, 1797, 1800, 1801, 1834, 1839; Pub. L. 97–448, title I, §102(m)(2), Jan. 12, 1983, 96 Stat. 2374; Pub. L. 99–514, title XII, §1225(b), Oct. 22, 1986, 100 Stat. 2559; Pub. L. 101–508, title XI, §11801(a)(24), (c)(10)(B), Nov.

5, 1990, 104 Stat. 1388–521, 1388–527; Pub. L. 109–280, title XII, §1206(b)(2), Aug. 17, 2006, 120 Stat. 1070.)

AMENDMENTS

2006—Subsec. (b)(2). Pub. L. 109–280, which directed the substitution of "(D), and (E)" for "and (D)" in section 545(b)(2), without specifying the act to be amended, was executed by making the substitution in subsec. (b)(2) of this section, which is section 545 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

1990—Subsecs. (c), (d). Pub. L. 101–508 redesignated subsec. (d) as (c) and struck out former subsec. (c) which related to a special adjustment to taxable income for amounts used or set aside to pay or retire qualified indebtedness.

1986—Subsec. (b)(7). Pub. L. 99–514 added par. (7).

1983—Subsec. (b)(2). Pub. L. 97–448 substituted "10-percent" for "5-percent".

1976—Subsec. (b)(1). Pub. L. 94–455, §§1033(b)(4), 1901(a)(77)(A), struck out "(other than excess profits tax imposed by subchapter E of chapter 2 of the Internal Revenue Code of 1939 for taxable years beginning after December 31, 1940)" after "Federal income and excess profits taxes"; substituted "902(a) or 960(a)(1)" for "902(a)(1) or 960(a)(1)(C)" after "corporation under section"; and struck out provisions after "prior income tax law" relating to election by taxpayer who paid Federal income and excess profits taxes to deduct payments, when made, for purposes of computing subchapter A net income or, for a taxable year ending after June 30, 1954, to deduct such taxes when accrued, such election being irrevocable and applied to taxable year for which election was made and to all subsequent taxable years.

Subsec. (b)(2). Pub. L. 94–455, §1901(b)(20)(B)(ii), substituted "paragraph (6)" for "paragraph (8)" after "amount disallowed under".

Subsec. (b)(5). Pub. L. 94–455, §1901(b)(33)(D), substituted "Net" for "Long-term" after "(5)".

Subsec. (b)(6). Pub. L. 94–455, §§1901(b)(20)(B)(i), 1906(b)(13)(A), struck out par. (6) relating to deduction allowed to bank affiliates, redesignated former par. (8) as (6) and, as redesignated, struck out "or his delegate" in two places after "Secretary".

Subsec. (b)(7). Pub. L. 94–455, §1901(a)(77)(B), struck out par. (7) relating to payment of indebtedness incurred prior to January 1, 1934.

Subsec. (b)(8). Pub. L. 94–455, §1901(b)(20)(B)(i), redesignated par. (8) as (6).

Subsec. (b)(9). Pub. L. 94–455, §1951(b)(9)(A), struck out par. (9) relating to the deduction of the amount of a lien in favor of the United States.

Subsec. (b)(10), (11). Pub. L. 94–455, §1901(b)(32)(E), struck out par. (10) relating to deduction for distributions of divested stock, and struck out par. (11) relating to special adjustment on the disposition of antitrust stock received as a dividend.

Subsec. (c)(2)(A). Pub. L. 94–455, §1901(a)(77)(C), substituted "February 26, 1964" for "the date of enactment of this subsection" after "years ending before".

Subsec. (c)(4). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (c)(5). Pub. L. 94–455, §1901(b)(20)(B)(iii), substituted "subsection (b)(6)" for "subsection (b)(8)" after "company income under".

1969—Subsec. (b)(2). Pub. L. 91–172 substituted "section 170(b)(1)(A), (B), and (D)", "section 170(b)(2) and (d)(1)" for "section 170(b)(1)(A) and (B)" and "section 170(b)(2) and (5)", respectively, in provisions of first sentence setting out the sections appropriate to the computation of the deduction, and in provisions of second sentence describing applicability of terms for purposes of this paragraph, substituted "contribution base" and "section 170(b)(2) and (d)(1)" for "adjusted gross income" and "the first sentence of section 170(b)(2) and (5)," respectively.

1966—Subsec. (a). Pub. L. 89–809, §104(h)(3)(A), substituted "in the manner provided in subsections (b), (c), and (d)" for "in the manner provided in subsection (b) and (c)" and inserted provisions governing the case of a personal holding company which is a foreign corporation, not more than 10 percent in value of the outstanding stock of which is owned (within the meaning of section 958(a)) during the last half of the taxable year by United States persons.

Subsec. (b)(9). Pub. L. 89–719 substituted "section 6323(f)" for "section 6323(a)(1), (2), or (3)".

Subsec. (d). Pub. L. 89–809, §104(h)(3)(B), added subsec. (d).

1964—Subsec. (a). Pub. L. 88–272, §225(i)(1), inserted reference to subsection (c).

Subsec. (b)(1), (2). Pub. L. 88–272, §§207(b)(5), 209(c)(2), substituted "section 275(a)(4)" for "section 164(b)(6)" in par. (1), and inserted reference to section 170(b)(5) in par. (2).

Subsec. (c). Pub. L. 88–272, §225(i)(2), added subsec. (c).

1962—Subsec. (b)(1). Pub. L. 87–834 substituted "accrued during the taxable year or deemed to be paid by

a domestic corporation under section 902(a)(1) or 960(a)(1)(C) for the taxable year" for "accrued during the taxable year".

Subsec. (b)(10), (11). Pub. L. 87–403 added pars. (10) and (11).

1958—Subsec. (b)(2). Pub. L. 85–866, §32(a), substituted in first sentence ", but in computing such deduction the limitations in section 170(b)(1)(A) and (B) shall apply, and section 170(b) shall not apply" for "but with the limitations in section 170(b)(1)(A) and (B) (in lieu of the limitation in section 170(b)(2)", and inserted in second sentence "(other than the 5-percent limitation)" and "the first sentence" after "with the adjustments" and "provided in", respectively.

Subsec. (b)(4). Pub. L. 85–866, §32(b), inserted "computed without the deductions provided in part VIII (except section 248) of subchapter B".

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 applicable to contributions made in taxable years beginning after Dec. 31, 2005, see section 1206(c) of Pub. L. 109–280, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to gains and losses realized on or after Jan. 1, 1986, see section 1225(c) of Pub. L. 99–514, as amended, set out as a note under section 535 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment by section 1033(b)(4) of Pub. L. 94–455, see section 1033(c) of Pub. L. 94–455, set out as a note under section 902 of this title.

Amendment by section 1901(a)(77), (b)(20)(B), (32)(E), (33)(D) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by section 1951(b)(9)(A) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1951(d) of Pub. L. 94–455 set out as a note under section 72 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 201(g) of Pub. L. 91–172, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1966 AMENDMENTS

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

Amendment by Pub. L. 89–719 applicable after Nov. 2, 1966, regardless of when the title or lien of the United States arose or when the lien or interest of another person was acquired, except in a case in which a lien or title derived from enforcement of a lien held by the United States has been enforced by a civil action or suit which has become final by judgment, sale, or agreement before Nov. 2, 1966, or in a case in which the amendment would impair a priority held by any person other than the United States holding a lien or interest prior to Nov. 2, 1966, operate to increase the liability of such person, or shorten the time for bringing suit with respect to transactions occurring before Nov. 2, 1966, see section 114(a)–(e) of Pub. L. 89–719, set out as a note under section 6323 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by section 207(b)(5) of Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 207(c) of Pub. L. 88–272, set out as a note under section 164 of this title.

Amendment by section 209(c)(2) of Pub. L. 88–272 applicable to contributions paid in taxable years beginning after Dec. 31, 1963, see section 209(f)(1) of Pub. L. 88–272, set out as a note under section 170 of this title.

Amendment by section 225(i)(1), (2) of Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 225(l)(1) of Pub. L. 88–272 set out as a note under section 316 of this title.

EFFECTIVE DATE OF 1962 AMENDMENTS

Amendment by Pub. L. 87–834 applicable in respect of any distribution received by a domestic corporation

after Dec. 31, 1964, and in respect of any distribution received by a domestic corporation before Jan. 1, 1965, in a taxable year of such corporation beginning after Dec. 31, 1962, but only to the extent that such distribution is made out of the accumulated profits of a foreign corporation for a taxable year (of such foreign corporation) beginning after Dec. 31, 1962, see section 9(e) of Pub. L. 87–834, set out as a note under section 902 of this title.

Amendment by Pub. L. 87–403 applicable only with respect to distributions made after Feb. 2, 1962, see section 3(g) of Pub. L. 87–403, set out as a note under section 312 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 32(a) of Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

Pub. L. 85–866, title I, §32(c), Sept. 2, 1958, 72 Stat. 1632, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendment made by subsection (b) of this section [amending this section] shall apply with respect to adjustments under section 545(b)(4) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for taxable years beginning after December 31, 1957."

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

Pub. L. 94–455, title XIX, §1951(b)(9)(B), Oct. 4, 1976, 90 Stat. 1839, provided that: "Notwithstanding subparagraph (A) [amending this section], if any amount was deducted under paragraph (9) of section 545(b) in a taxable year beginning before January 1, 1977, on account of a lien which is satisfied or released in a taxable year beginning on or after such date, the amount so deducted shall be included in income, for purposes of section 545, as provided in the second sentence of such paragraph. Shareholders of any corporation which has amounts included in its income by reason of the preceding sentence may elect to compute the income tax on dividends attributable to amounts so included as provided in the third sentence of such paragraph."

§546. Income not placed on annual basis

Section 443(b) (relating to computation of tax on change of annual accounting period) shall not apply in the computation of the personal holding company tax imposed by section 541.

(Aug. 16, 1954, ch. 736, 68A Stat. 191.)

§547. Deduction for deficiency dividends

(a) General rule

If a determination (as defined in subsection (c)) with respect to a taxpayer establishes liability for personal holding company tax imposed by section 541 (or by a corresponding provision of a prior income tax law) for any taxable year, a deduction shall be allowed to the taxpayer for the amount of deficiency dividends (as defined in subsection (d)) for the purpose of determining the personal holding company tax for such year, but not for the purpose of determining interest, additional amounts, or assessable penalties computed with respect to such personal holding company tax.

(b) Rules for application of section

(1) Allowance of deduction

The deficiency dividend deduction shall be allowed as of the date the claim for the deficiency dividend deduction is filed.

(2) Credit or refund

If the allowance of a deficiency dividend deduction results in an overpayment of personal holding company tax for any taxable year, credit or refund with respect to such overpayment shall be made as if on the date of the determination 2 years remained before the expiration of the period

of limitation on the filing of claim for refund for the taxable year to which the overpayment relates. No interest shall be allowed on a credit or refund arising from the application of this section.

(c) Determination

For purposes of this section, the term "determination" means—

(1) a decision by the Tax Court or a judgment, decree, or other order by any court of competent jurisdiction, which has become final;

(2) a closing agreement made under section 7121; or

(3) under regulations prescribed by the Secretary, an agreement signed by the Secretary and by, or on behalf of, the taxpayer relating to the liability of such taxpayer for personal holding company tax.

(d) Deficiency dividends

(1) Definition

For purposes of this section, the term "deficiency dividends" means the amount of the dividends paid by the corporation on or after the date of the determination and before filing claim under subsection (e), which would have been includible in the computation of the deduction for dividends paid under section 561 for the taxable year with respect to which the liability for personal holding company tax exists, if distributed during such taxable year. No dividends shall be considered as deficiency dividends for purposes of subsection (a) unless distributed within 90 days after the determination.

(2) Effect on dividends paid deduction

(A) For taxable year in which paid

Deficiency dividends paid in any taxable year (to the extent of the portion thereof taken into account under subsection (a) in determining personal holding company tax) shall not be included in the amount of dividends paid for such year for purposes of computing the dividends paid deduction for such year and succeeding years.

(B) For prior taxable year

Deficiency dividends paid in any taxable year (to the extent of the portion thereof taken into account under subsection (a) in determining personal holding company tax) shall not be allowed for purposes of section 563(b) in the computation of the dividends paid deduction for the taxable year preceding the taxable year in which paid.

(e) Claim required

No deficiency dividend deduction shall be allowed under subsection (a) unless (under regulations prescribed by the Secretary) claim therefor is filed within 120 days after the determination.

(f) Suspension of statute of limitations and stay of collection

(1) Suspension of running of statute

If the corporation files a claim, as provided in subsection (e), the running of the statute of limitations provided in section 6501 on the making of assessments, and the bringing of distraint or a proceeding in court for collection, in respect of the deficiency and all interest, additional amounts, or assessable penalties, shall be suspended for a period of 2 years after the date of the determination.

(2) Stay of collection

In the case of any deficiency with respect to the tax imposed by section 541 established by a determination under this section—

(A) the collection of the deficiency and all interest, additional amounts, and assessable penalties shall, except in cases of jeopardy, be stayed until the expiration of 120 days after the date of the determination, and

(B) if claim for deficiency dividend deduction is filed under subsection (e), the collection of

such part of the deficiency as is not reduced by the deduction for deficiency dividends provided in subsection (a) shall be stayed until the date the claim is disallowed (in whole or in part) and if disallowed in part collection shall be made only with respect to the part disallowed.

No distraint or proceeding in court shall be begun for the collection of an amount the collection of which is stayed under subparagraph (A) or (B) during the period for which the collection of such amount is stayed.

(g) Deduction denied in case of fraud, etc.

No deficiency dividend deduction shall be allowed under subsection (a) if the determination contains a finding that any part of the deficiency is due to fraud with intent to evade tax, or to wilful failure to file an income tax return within the time prescribed by law or prescribed by the Secretary in pursuance of law.

(Aug. 16, 1954, ch. 736, 68A Stat. 191; Pub. L. 94–455, title XIX, §§1901(a)(78), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1777, 1834.)

AMENDMENTS

1976—Subsecs. (c)(3), (e), (g). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary" wherever appearing.

Subsec. (h). Pub. L. 94–455, §1901(a)(78), struck out subsec. (h) relating to the effective date of provisions concerning deduction of deficiency dividends.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(78) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

[PART III—REPEALED]

[§§551 to 558. Repealed. Pub. L. 108–357, title IV, §413(a)(1), Oct. 22, 2004, 118 Stat. 1506]

Section 551, acts Aug. 16, 1954, ch. 736, 68A Stat. 193; Pub. L. 88–272, title II, §225(f)(4), Feb. 26, 1964, 78 Stat. 88; Pub. L. 94–455, title XIX, §1901(a)(79), (b)(1)(F)(i), (12)(A), Oct. 4, 1976, 90 Stat. 1777, 1790, 1795; Pub. L. 98–369, div. A, title I, §132(b), July 18, 1984, 98 Stat. 666; Pub. L. 99–514, title XII, §1235(e), title XVIII, §1810(h)(2), Oct. 22, 1986, 100 Stat. 2575, 2829; Pub. L. 100–647, title I, §1012(bb)(1)(A), (B), Nov. 10, 1988, 102 Stat. 3533; Pub. L. 105–34, title XI, §1122(d)(2), Aug. 5, 1997, 111 Stat. 977, provided for taxation of foreign personal holding company income to United States shareholders.

Section 552, acts Aug. 16, 1954, ch. 736, 68A Stat. 195; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–369, div. A, title I, §132(c)(2), July 18, 1984, 98 Stat. 666; Pub. L. 99–514, title XII, §1222(b), title XVIII, §1810(h)(1), Oct. 22, 1986, 100 Stat. 2557, 2829; Pub. L. 100–647, title I, §1012(bb)(1)(C), Nov. 10, 1988, 102 Stat. 3533, defined "foreign personal holding company".

Section 553, acts Aug. 16, 1954, ch. 736, 68A Stat. 195; Pub. L. 86–435, §1(e), Apr. 22, 1960, 74 Stat. 78; Pub. L. 88–272, title II, §225(e), Feb. 26, 1964, 78 Stat. 85; Pub. L. 94–455, title XIX, §1901(b)(32)(F), Oct. 4, 1976, 90 Stat. 1800; Pub. L. 99–514, title VI, §645(a)(3), Oct. 22, 1986, 100 Stat. 2291, related to determination of foreign personal holding company income.

Section 554, acts Aug. 16, 1954, ch. 736, 68A Stat. 196; Pub. L. 88–272, title II, §225(e), Feb. 26, 1964, 78 Stat. 86; Pub. L. 98–369, div. A, title I, §132(a), July 18, 1984, 98 Stat. 665, related to constructive ownership of stock and treatment of convertible securities as outstanding stock.

Section 555, act Aug. 16, 1954, ch. 736, 68A Stat. 196, related to determination of gross income of foreign personal holding companies.

Section 556, acts Aug. 16, 1954, ch. 736, 68A Stat. 196; Pub. L. 85–866, title I, §33(a), (b)(1), (c)(1), Sept. 2, 1958, 72 Stat. 1632; Pub. L. 87–403, §3(e), Feb. 2, 1962, 76 Stat. 7; Pub. L. 88–272, title II, §§207(b)(6), 209(c)(2), Feb. 26, 1964, 78 Stat. 42, 46; Pub. L. 91–172, title II, §201(a)(2)(B), Dec. 30, 1969, 83 Stat. 558; Pub. L. 94–455, title XIX, §§1901(a)(80), (b)(32)(G), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1778, 1800,

1834; Pub. L. 97–448, title I, §102(m)(2), Jan. 12, 1983, 96 Stat. 2374; Pub. L. 101–508, title XI, §11802(d)(1), Nov. 5, 1990, 104 Stat. 1388–529, related to undistributed foreign personal holding company income.

Section 557, act Aug. 16, 1954, ch. 736, 68A Stat. 198, related to inapplicability of section 443(b) of this title in the computation of income.

Section 558, added Pub. L. 85–866, title I, §33(d)(1), Sept. 2, 1958, 72 Stat. 1632, related to returns of officers, directors, and shareholders of foreign personal holding companies.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

PART IV—DEDUCTION FOR DIVIDENDS PAID

Sec.

561. Definition of deduction for dividends paid.

562. Rules applicable in determining dividends eligible for dividends paid deduction.

563. Rules relating to dividends paid after close of taxable year.

564. Dividend carryover.

565. Consent dividends.

§561. Definition of deduction for dividends paid

(a) General rule

The deduction for dividends paid shall be the sum of—

(1) the dividends paid during the taxable year,

(2) the consent dividends for the taxable year (determined under section 565), and

(3) in the case of a personal holding company, the dividend carryover described in section 564.

(b) Special rules applicable

In determining the deduction for dividends paid, the rules provided in section 562 (relating to rules applicable in determining dividends eligible for dividends paid deduction) and section 563 (relating to dividends paid after the close of the taxable year) shall be applicable.

(Aug. 16, 1954, ch. 736, 68A Stat. 198; Pub. L. 87–403, §3(f), Feb. 2, 1962, 76 Stat. 8; Pub. L. 94–455, title XIX, §1901(b)(32)(H), Oct. 4, 1976, 90 Stat. 1800.)

AMENDMENTS

1976—Subsec. (b). Pub. L. 94–455 redesignated existing provisions of par. (1) as subsec. (b) and struck out par. (2) relating to special adjustment on disposition of antitrust stock as a dividend.

1962—Subsec. (b). Pub. L. 87–403 designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–403 applicable only with respect to distributions made after Feb. 2, 1962, see section 3(g) of Pub. L. 87–403, set out as a note under section 312 of this title.

§562. Rules applicable in determining dividends eligible for dividends paid deduction

(a) General rule

For purposes of this part, the term "dividend" shall, except as otherwise provided in this section, include only dividends described in section 316 (relating to definition of dividends for purposes of corporate distributions).

(b) Distributions in liquidation

(1) Except in the case of a personal holding company described in section 542—

(A) in the case of amounts distributed in liquidation, the part of such distribution which is properly chargeable to earnings and profits accumulated after February 28, 1913, shall be treated as a dividend for purposes of computing the dividends paid deduction, and

(B) in the case of a complete liquidation occurring within 24 months after the adoption of a plan of liquidation, any distribution within such period pursuant to such plan shall, to the extent of the earnings and profits (computed without regard to capital losses) of the corporation for the taxable year in which such distribution is made, be treated as a dividend for purposes of computing the dividends paid deduction.

For purposes of subparagraph (A), a liquidation includes a redemption of stock to which section 302 applies. Except to the extent provided in regulations, the preceding sentence shall not apply in the case of any mere holding or investment company which is not a regulated investment company.

(2) In the case of a complete liquidation of a personal holding company, occurring within 24 months after the adoption of a plan of liquidation, the amount of any distribution within such period pursuant to such plan shall be treated as a dividend for purposes of computing the dividends paid deduction, to the extent that such amount is distributed to corporate distributees and represents such corporate distributees' allocable share of the undistributed personal holding company income for the taxable year of such distribution computed without regard to this paragraph and without regard to subparagraph (B) of section 316(b)(2).

(c) Preferential dividends

Except in the case of a publicly offered regulated investment company (as defined in section 67(c)(2)(B)), the amount of any distribution shall not be considered as a dividend for purposes of computing the dividends paid deduction, unless such distribution is pro rata, with no preference to any share of stock as compared with other shares of the same class, and with no preference to one class of stock as compared with another class except to the extent that the former is entitled (without reference to waivers of their rights by shareholders) to such preference. In the case of a distribution by a regulated investment company (other than a publicly offered regulated investment company (as so defined)) to a shareholder who made an initial investment of at least $10,000,000 in such company, such distribution shall not be treated as not being pro rata or as being preferential solely by reason of an increase in the distribution by reason of reductions in administrative expenses of the company.

(d) Distributions by a member of an affiliated group

In the case where a corporation which is a member of an affiliated group of corporations filing or required to file a consolidated return for a taxable year is required to file a separate personal holding company schedule for such taxable year, a distribution by such corporation to another member of the affiliated group shall be considered as a dividend for purposes of computing the dividends paid deduction if such distribution would constitute a dividend under the other provisions of this section to a recipient which is not a member of an affiliated group.

(e) Special rules for real estate investment trusts

In the case of a real estate investment trust, in determining the amount of dividends under section 316 for purposes of computing the dividends paid deduction, the earnings and profits of such trust for any taxable year beginning after December 31, 1980, shall be increased by the total amount of gain (if any) on the sale or exchange of real property by such trust during such taxable year.

(Aug. 16, 1954, ch. 736, 68A Stat. 198; Pub. L. 88–272, title II, §225(f)(3), Feb. 26, 1964, 78 Stat. 88; Pub. L. 97–248, title II, §222(e)(7), Sept. 3, 1982, 96 Stat. 480; Pub. L. 97–448, title I, §102(c)(2), Jan. 12, 1983, 96 Stat. 2370; Pub. L. 99–514, title VI, §657(a), title XVIII, §1804(d)(1), Oct. 22, 1986, 100 Stat. 2299, 2800; Pub. L. 108–357, title IV, §413(c)(9), Oct. 22, 2004, 118 Stat. 1507; Pub. L. 111–325, title III, §307(a), (b), Dec. 22, 2010, 124 Stat. 3550.)

AMENDMENTS

2010—Subsec. (c). Pub. L. 111–325 substituted "Except in the case of a publicly offered regulated investment company (as defined in section 67(c)(2)(B)), the amount" for "The amount" in first sentence and inserted "(other than a publicly offered regulated investment company (as so defined))" after "regulated investment company" in second sentence.

2004—Subsec. (b)(1). Pub. L. 108–357 struck out "or a foreign personal holding company described in section 552" after "section 542" in introductory provisions.

1986—Subsec. (b)(1). Pub. L. 99–514, §1804(d)(1), inserted at end "Except to the extent provided in regulations, the preceding sentence shall not apply in the case of any mere holding or investment company which is not a regulated investment company."

Subsec. (c). Pub. L. 99–514, §657(a), inserted at end "In the case of a distribution by a regulated investment company to a shareholder who made an initial investment of at least $10,000,000 in such company, such distribution shall not be treated as not being pro rata or as being preferential solely by reason of an increase in the distribution by reason of reductions in administrative expenses of the company."

1983—Subsec. (e). Pub. L. 97–448 added subsec. (e).

1982—Subsec. (b)(1). Pub. L. 97–248 inserted sentence at end providing that, for purposes of subpar. (A), a liquidation includes a redemption of stock to which section 302 applies.

1964—Subsec. (b). Pub. L. 88–272 designated existing provisions as subpars. (A) and (B) of par. (1), excepted personal holding companies in section 542, and foreign personal holding companies in section 552 therefrom, and added par. (2).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–325, title III, §307(c), Dec. 22, 2010, 124 Stat. 3550, provided that: "The amendments made by this section [amending this section] shall apply to distributions in taxable years beginning after the date of the enactment of this Act [Dec. 22, 2010]."

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title VI, §657(b), Oct. 22, 1986, 100 Stat. 2299, provided that: "The amendment made by subsection (a) [amending this section] shall apply to distributions after the date of the enactment of this Act [Oct. 22, 1986]."

Pub. L. 99–514, title XVIII, §1804(d)(2), Oct. 22, 1986, 100 Stat. 2800, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to distributions after September 27, 1985."

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to distributions after Aug. 31, 1982, with exceptions for certain partial liquidations, see section 222(f) of Pub. L. 97–248, set out as a note under section 302 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment Pub. L. 88–272 applicable to distributions made in any taxable year of the distributing corporation beginning after Dec. 31, 1963, see section 225(l) of Pub. L. 88–272, set out as a note under section 316 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§563. Rules relating to dividends paid after close of taxable year

(a) Accumulated earnings tax

In the determination of the dividends paid deduction for purposes of the accumulated earnings tax imposed by section 531, a dividend paid after the close of any taxable year and on or before the 15th day of the third month following the close of such taxable year shall be considered as paid during such taxable year.

(b) Personal holding company tax

In the determination of the dividends paid deduction for purposes of the personal holding company tax imposed by section 541, a dividend paid after the close of any taxable year and on or before the 15th day of the third month following the close of such taxable year shall, to the extent the taxpayer elects in its return for the taxable year, be considered as paid during such taxable year. The amount allowed as a dividend by reason of the application of this subsection with respect to any taxable year shall not exceed either—

(1) The undistributed personal holding company income of the corporation for the taxable year, computed without regard to this subsection, or

(2) 20 percent of the sum of the dividends paid during the taxable year, computed without regard to this subsection.

(c) Dividends considered as paid on last day of taxable year

For the purpose of applying section 562(a), with respect to distributions under subsection (a) or (b) of this section, a distribution made after the close of a taxable year and on or before the 15th day of the third month following the close of the taxable year shall be considered as made on the last day of such taxable year.

(Aug. 16, 1954, ch. 736, 68A Stat. 199; Pub. L. 91–172, title IX, §914(a), Dec. 30, 1969, 83 Stat. 723; Pub. L. 101–239, title VII, §7401(b), Dec. 19, 1989, 103 Stat. 2356; Pub. L. 108–357, title IV, §413(c)(10), Oct. 22, 2004, 118 Stat. 1507.)

AMENDMENTS

2004—Subsecs. (c), (d). Pub. L. 108–357 redesignated subsec. (d) as (c), substituted "subsection (a) or (b)" for "subsection (a), (b), or (c)", and struck out former subsec. (c) which related to foreign personal holding company tax.

1989—Subsec. (c). Pub. L. 101–239, §7401(b)(1), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 101–239, §7401(b)(2), substituted "subsection (a), (b), or (c)" for "subsection (a) or (b)".

Pub. L. 101–239, §7401(b)(1), redesignated former subsec. (c) as (d).

1969—Subsec. (b)(2). Pub. L. 91–172 substituted "20 percent" for "10 percent".

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable to taxable years of foreign corporations beginning after July 10, 1989, with special rules for any foreign corporation required by the amendments made by section 7401 of Pub. L. 101–239 to change its taxable year for its first taxable year beginning after July 10, 1989, see section

7401(d) of Pub. L. 101–239, set out as an Effective Date note under section 898 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title IX, §914(b), Dec. 30, 1969, 83 Stat. 723, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1969."

§564. Dividend carryover

(a) General rule

For purposes of computing the dividends paid deduction under section 561, in the case of a personal holding company the dividend carryover for any taxable year shall be the dividend carryover to such taxable year, computed as provided in subsection (b), from the two preceding taxable years.

(b) Computation of dividend carryover

The dividend carryover to the taxable year shall be determined as follows:

(1) For each of the 2 preceding taxable years there shall be determined the taxable income computed with the adjustments provided in section 545 (whether or not the taxpayer was a personal holding company for either of such preceding taxable years), and there shall also be determined for each such year the deduction for dividends paid during such year as provided in section 561 (but determined without regard to the dividend carryover to such year).

(2) There shall be determined for each such taxable year whether there is an excess of such taxable income over such deduction for dividends paid or an excess of such deduction for dividends paid over such taxable income, and the amount of each such excess.

(3) If there is an excess of such deductions for dividends paid over such taxable income for the first preceding taxable year, such excess shall be allowed as a dividend carryover to the taxable year.

(4) If there is an excess of such deduction for dividends paid over such taxable income for the second preceding taxable year, such excess shall be reduced by the amount determined in paragraph (5), and the remainder of such excess shall be allowed as a dividend carryover to the taxable year.

(5) The amount of the reduction specified in paragraph (4) shall be the amount of the excess of the taxable income, if any, for the first preceding taxable year over such deduction for dividends paid, if any, for the first preceding taxable year.

(Aug. 16, 1954, ch. 736, 68A Stat. 200; Pub. L. 94–455, title XIX, §1901(a)(81), Oct. 4, 1976, 90 Stat. 1778.)

AMENDMENTS

1976—Subsec. (c). Pub. L. 94–455 struck out subsec. (c) which related to the determination of dividend carryover from taxable years to which this subtitle does not apply.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

§565. Consent dividends

(a) General rule

If any person owns consent stock (as defined in subsection (f)(1)) in a corporation on the last day of the taxable year of such corporation, and such person agrees, in a consent filed with the return of such corporation in accordance with regulations prescribed by the Secretary, to treat as a dividend

the amount specified in such consent, the amount so specified shall, except as provided in subsection (b), constitute a consent dividend for purposes of section 561 (relating to the deduction for dividends paid).

(b) Limitations

A consent dividend shall not include—

(1) an amount specified in a consent which, if distributed in money, would constitute, or be part of, a distribution which would be disqualified for purposes of the dividends paid deduction under section 562(c) (relating to preferential dividends), or

(2) an amount specified in a consent which would not constitute a dividend (as defined in section 316) if the total amounts specified in consents filed by the corporation had been distributed in money to shareholders on the last day of the taxable year of such corporation.

(c) Effect of consent

The amount of a consent dividend shall be considered, for purposes of this title—

(1) as distributed in money by the corporation to the shareholder on the last day of the taxable year of the corporation, and

(2) as contributed to the capital of the corporation by the shareholder on such day.

(d) Consent dividends and other distributions

If a distribution by a corporation consists in part of consent dividends and in part of money or other property, the entire amount specified in the consents and the amount of such money or other property shall be considered together for purposes of applying this title.

(e) Nonresident aliens and foreign corporations

In the case of a consent dividend which, if paid in money would be subject to the provisions of section 1441 (relating to withholding of tax on nonresident aliens) or section 1442 (relating to withholding of tax on foreign corporations), this section shall not apply unless the consent is accompanied by money, or such other medium of payment as the Secretary may by regulations authorize, in an amount equal to the amount that would be required to be deducted and withheld under sections 1441 or 1442 if the consent dividend had been, on the last day of the taxable year of the corporation, paid to the shareholder in money as a dividend. The amount accompanying the consent shall be credited against the tax imposed by this subtitle on the shareholder.

(f) Definitions

(1) Consent stock

Consent stock, for purposes of this section, means the class or classes of stock entitled, after the payment of preferred dividends, to a share in the distribution (other than in complete or partial liquidation) within the taxable year of all the remaining earnings and profits, which share constitutes the same proportion of such distribution regardless of the amount of such distribution.

(2) Preferred dividends

Preferred dividends, for purposes of this section, means a distribution (other than in complete or partial liquidation), limited in amount, which must be made on any class of stock before a further distribution (other than in complete or partial liquidation) of earnings and profits may be made within the taxable year.

(Aug. 16, 1954, ch. 736, 68A Stat. 200; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsecs. (a), (e). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

Subchapter H—Banking Institutions

Part
I. Rules of general application to banking institutions.
II. Mutual savings banks, etc.

AMENDMENTS

1976—Pub. L. 94–455, title XIX, §1901(b)(20)(C), Oct. 4, 1976, 90 Stat. 1797, struck out item for part III "Bank affiliates".

PART I—RULES OF GENERAL APPLICATION TO BANKING INSTITUTIONS

Sec.
581. Definition of bank.
582. Bad debts, losses, and gains with respect to securities held by financial institutions.
[583. Repealed.]
584. Common trust funds.
585. Reserves for losses on loans of banks.
[586. Repealed.]

AMENDMENTS

1986—Pub. L. 99–514, title IX, §901(d)(4)(H), Oct. 22, 1986, 100 Stat. 2380, struck out item 586 "Reserves for losses on loans of small business investment companies, etc."

1976—Pub. L. 94–455, title XIX, §1901(b)(18), Oct. 4, 1976, 90 Stat. 1796, struck out item 583 "Deductions of dividends paid on certain preferred stock".

1969—Pub. L. 91–172, title IV, §431(c)(2), Dec. 30, 1969, 83 Stat. 620, substituted "Bad debts, losses, and gains with respect to securities held by financial institutions", for "Bad debt and loss deduction with respect to securities held by banks" in item 582, and added items 585 and 586.

§581. Definition of bank

For purposes of sections 582 and 584, the term "bank" means a bank or trust company incorporated and doing business under the laws of the United States (including laws relating to the District of Columbia) or of any State, a substantial part of the business of which consists of receiving deposits and making loans and discounts, or of exercising fiduciary powers similar to those permitted to national banks under authority of the Comptroller of the Currency, and which is subject by law to supervision and examination by State, Territorial, or Federal authority having supervision over banking institutions. Such term also means a domestic building and loan association.

(Aug. 16, 1954, ch. 736, 68A Stat. 202; Pub. L. 87–722, §5, Sept. 28, 1962, 76 Stat. 670; Pub. L. 94–455, title XIX, §1901(c)(5), Oct. 4, 1976, 90 Stat. 1803.)

AMENDMENTS

1976—Pub. L. 94–455 substituted "or of any State" for "of any State, or of any Territory" after "District of Columbia)" and struck out "Territorial" after "examination by State".

1962—Pub. L. 87–722 substituted "authority of the Comptroller of the Currency" for "section 11(k) of the Federal Reserve Act (38 Stat. 262; 12 U.S.C. 248(k))".

§582. Bad debts, losses, and gains with respect to securities held by financial institutions

(a) Securities

Notwithstanding sections 165(g)(1) and 166(e), subsections (a) and (b) of section 166 (relating to allowance of deduction for bad debts) shall apply in the case of a bank to a debt which is evidenced by a security as defined in section 165(g)(2)(C).

(b) Worthless stock in affiliated bank

For purposes of section 165(g)(1), where the taxpayer is a bank and owns directly at least 80 percent of each class of stock of another bank, stock in such other bank shall not be treated as a capital asset.

(c) Bond, etc., losses and gains of financial institutions

(1) General rule

For purposes of this subtitle, in the case of a financial institution referred to in paragraph (2), the sale or exchange of a bond, debenture, note, or certificate or other evidence of indebtedness shall not be considered a sale or exchange of a capital asset. For purposes of the preceding sentence, any regular or residual interest in a REMIC shall be treated as an evidence of indebtedness.

(2) Financial institutions to which paragraph (1) applies

(A) In general

For purposes of paragraph (1), the financial institutions referred to in this paragraph are—

(i) any bank (and any corporation which would be a bank except for the fact it is a foreign corporation),

(ii) any financial institution referred to in section 591,

(iii) any small business investment company operating under the Small Business Investment Act of 1958, and

(iv) any business development corporation.

(B) Business development corporation

For purposes of subparagraph (A), the term "business development corporation" means a corporation which was created by or pursuant to an act of a State legislature for purposes of promoting, maintaining, and assisting the economy and industry within such State on a regional or statewide basis by making loans to be used in trades and businesses which would generally not be made by banks within such region or State in the ordinary course of their business (except on the basis of a partial participation), and which is operated primarily for such purposes.

(C) Limitations on foreign banks

In the case of a foreign corporation referred to in subparagraph (A)(i), paragraph (1) shall only apply to gains and losses which are effectively connected with the conduct of a banking business in the United States.

(Aug. 16, 1954, ch. 736, 68A Stat. 202; Pub. L. 85–866, title I, §34, Sept. 2, 1958, 72 Stat. 1632; Pub. L. 91–172, title IV, §433(a), (c), Dec. 30, 1969, 83 Stat. 623, 624; Pub. L. 94–455, title X, §1044(a), title XIV, §1402(b)(1)(G), (2), Oct. 4, 1976, 90 Stat. 1642, 1732; Pub. L. 98–369, div. A, title X, §1001(b)(6), (e), July 18, 1984, 98 Stat. 1011, 1012; Pub. L. 99–514, title VI, §671(b)(4), title IX, §901(d)(3), Oct. 22, 1986, 100 Stat. 2318, 2379; Pub. L. 100–647, title I, §1008(d)(3), Nov. 10, 1988, 102 Stat. 3439; Pub. L. 101–508, title XI, §11801(a)(25), (c)(11), Nov. 5, 1990, 104 Stat. 1388–521, 1388–527; Pub. L. 104–188, title I, §1621(b)(4), Aug. 20, 1996, 110 Stat. 1867; Pub. L. 108–357, title VIII, §835(b)(3), Oct. 22, 2004, 118 Stat. 1593.)

REFERENCES IN TEXT

The Small Business Investment Act of 1958, referred to in subsec. (c)(2)(A)(iii), is Pub. L. 85–699, Aug. 21, 1958, 72 Stat. 689, as amended, which is classified principally to chapter 14B (§661 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 661 of Title 15 and Tables.

AMENDMENTS

2004—Subsec. (c)(1). Pub. L. 108–357 struck out ", and any regular interest in a FASIT," before "shall be treated".

1996—Subsec. (c)(1). Pub. L. 104–188 inserted ", and any regular interest in a FASIT," after "REMIC".

1990—Subsec. (c)(1). Pub. L. 101–508, §11801(c)(11)(A), substituted "paragraph (2)" for "paragraph (5)".

Subsec. (c)(2). Pub. L. 101–508, §11801(a)(25), (c)(11)(B), redesignated par. (5) as (2) and struck out former par. (2) "Transitional rule for banks" which read as follows: "In the case of a bank, if the net long-term capital gains of the taxable year from sales or exchanges of qualifying securities exceed the net short-term capital losses of the taxable year from such sales or exchanges, such excess shall be considered as gain from the sale of a capital asset held for more than 6 months to the extent it does not exceed the net gain on sales and exchanges described in paragraph (1)."

Subsec. (c)(3). Pub. L. 101–508, §11801(a)(25), struck out par. (3) "Special rules" which read as follows: "For purposes of this subsection—

"(A) The term 'qualifying security' means a bond, debenture, note, or certificate or other evidence of indebtedness held by a bank on July 11, 1969.

"(B) The amount treated as capital gain or loss from the sale or exchange of a qualifying security shall be determined by multiplying the amount of capital gain or loss from the sale or exchange of such security (determined without regard to this subsection) by a fraction, the numerator of which is the number of days before July 12, 1969, that such security was held by the bank, and the denominator of which is the number of days the security was held by the bank."

Subsec. (c)(4). Pub. L. 101–508, §11801(a)(25), struck out par. (4) "Transitional rule for banks" which read as follows: "In the case of a corporation which would be a bank except for the fact that it is a foreign corporation, the net gain, if any, for the taxable year on sales and exchanges described in paragraph (1) shall be considered as gain from the sale or exchange of a capital asset to the extent such net gain does not exceed the portion of any capital loss carryover to such taxable year which is attributable to capital losses on sales or exchanges described in paragraph (1) for a taxable year beginning before July 12, 1969. For purposes of the preceding sentence, the portion of a net capital loss for a taxable year which is attributable to capital losses on sales or exchanges described in paragraph (1) is the amount of the net capital loss on such sales or exchanges for such taxable year (but not in excess of the net capital loss for such taxable year)."

Subsec. (c)(5). Pub. L. 101–508, §11801(c)(11)(B), redesignated par. (5) as (2).

1988—Subsec. (a). Pub. L. 100–647 substituted "subsections (a) and (b) of section 166" for "subsections (a), (b), and (c) of section 166".

1986—Subsec. (c)(1). Pub. L. 99–514, §901(d)(3)(A), substituted "referred to in paragraph (5)" for "to which section 585, 586, or 593 applies".

Pub. L. 99–514, §671(b)(4), inserted "For purposes of the preceding sentence, any regular or residual interest in a REMIC shall be treated as an evidence of indebtedness."

Subsec. (c)(5). Pub. L. 99–514, §901(d)(3)(B), added par. (5).

1984—Subsec. (c)(2). Pub. L. 98–369 substituted "6 months" for "1 year", applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

1976—Subsec. (c)(2). Pub. L. 94–455, §1402(b)(2), provided that "9 months" would be changed to "1 year".

Pub. L. 94–455, §1402(b)(1)(G), (2), provided that "6 months" would be changed to "9 months" for taxable years beginning in 1977.

Subsec. (c)(4). Pub. L. 94–455, §1044(a), added par. (4).

1969—Pub. L. 91–172, §433(c), substituted "Bad debts, losses, and gains with respect to securities held by financial institutions" for "Bad debt and loss deduction with respect to securities held by banks" in section catchline.

Subsec. (c). Pub. L. 91–172, §433(a), redesignated existing provisions as par. (1), inserted reference to sections 585, 586 and 593, and added pars. (2) and (3).

1958—Subsec. (c). Pub. L. 85–866 struck out "with interest coupons or in registered form," before "exceed the gains".

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 effective Jan. 1, 2005, with exception for any FASIT in existence on Oct. 22, 2004, to the extent that regular interests issued by the FASIT before such date continue to remain outstanding in accordance with the original terms of issuance, see section 835(c) of Pub. L. 108–357, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective Sept. 1, 1997, see section 1621(d) of Pub. L. 104–188, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of

the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 671(b)(4) of Pub. L. 99–514 effective Jan. 1, 1987, see section 675(a) of Pub. L. 99–514, as amended, set out as an Effective Date note under section 860A of this title.

Amendment by section 901(d)(3) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 901(e) of Pub. L. 99–514, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title X, §1044(b), Oct. 4, 1976, 90 Stat. 1643, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after July 11, 1969.

"(2) If the refund or credit of any overpayment attributable to the application of the amendment made by subsection (a) to any taxable year is otherwise prevented by the operation of any law or rule of law (other than section 7122 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], relating to compromises) on the day which is one year after the date of the enactment of this Act [Oct. 4, 1976], such credit or refund shall be nevertheless allowed or made if claim therefor is filed on or before such day."

Pub. L. 94–455, title XIV, §1402(b)(1), Oct. 4, 1976, 90 Stat. 1731, provided that amendment made by that section is effective with respect to taxable years beginning in 1977.

Pub. L. 94–455, title XIV, §1402(b)(2), Oct. 4, 1976, 90 Stat. 1732, provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title IV, §433(d), Dec. 30, 1969, 83 Stat. 624, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and section 1243 of this title] shall apply to taxable years beginning after July 11, 1969.

"(2) ELECTION FOR SMALL BUSINESS INVESTMENT COMPANIES AND BUSINESS DEVELOPMENT CORPORATIONS.—Notwithstanding paragraph (1), in the case of a financial institution described in section 586(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the amendments made by this section [amending this section and section 1243 of this title] shall not apply for its taxable years beginning after July 11, 1969, and before July 11, 1974, unless the taxpayer so elects at such time and in such manner as shall be prescribed by the Secretary of the Treasury or his delegate. Such election shall be irrevocable and shall apply to all such taxable years."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

[§583. Repealed. Pub. L. 94–455, title XIX, §1901(a)(82), Oct. 4, 1976, 90 Stat. 1778]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 202, related to deductions by certain taxpayers of dividends paid to the United States or any instrumentality thereof exempt from Federal income taxes on the preferred stock of the corporation owned by the United States or such instrumentality.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 2 of this title.

§584. Common trust funds

(a) Definitions

For purposes of this subtitle, the term "common trust fund" means a fund maintained by a bank—

(1) exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank in its capacity—

(A) as a trustee, executor, administrator, or guardian, or

(B) as a custodian of accounts—

(i) which the Secretary determines are established pursuant to a State law which is substantially similar to the Uniform Gifts to Minors Act as published by the American Law Institute, and

(ii) with respect to which the bank establishes, to the satisfaction of the Secretary, that it has duties and responsibilities similar to duties and responsibilities of a trustee or guardian; and

(2) in conformity with the rules and regulations, prevailing from time to time, of the Board of Governors of the Federal Reserve System or the Comptroller of the Currency pertaining to the collective investment of trust funds by national banks.

For purposes of this subsection, two or more banks which are members of the same affiliated group (within the meaning of section 1504) shall be treated as one bank for the period of affiliation with respect to any fund of which any of the member banks is trustee or two or more of the member banks are cotrustees.

(b) Taxation of common trust funds

A common trust fund shall not be subject to taxation under this chapter and for purposes of this chapter shall not be considered a corporation.

(c) Income of participants in fund

Each participant in the common trust fund in computing its taxable income shall include, whether or not distributed and whether or not distributable—

(1) as part of its gains and losses from sales or exchanges of capital assets held for not more than 1 year, its proportionate share of the gains and losses of the common trust fund from sales or exchanges of capital assets held for not more than 1 year,

(2) as part of its gains and losses from sales or exchanges of capital assets held for more than 1 year, its proportionate share of the gains and losses of the common trust fund from sales or exchanges of capital assets held for more than 1 year, and

(3) its proportionate share of the ordinary taxable income or the ordinary net loss of the common trust fund, computed as provided in subsection (d).

The proportionate share of each participant in the amount of dividends received by the common trust fund and to which section 1(h)(11) applies shall be considered for purposes of such paragraph as having been received by such participant.

(d) Computation of common trust fund income

The taxable income of a common trust fund shall be computed in the same manner and on the same basis as in the case of an individual, except that—

(1) there shall be segregated the gains and losses from sales or exchanges of capital assets;

(2) after excluding all items of gain and loss from sales or exchanges of capital assets, there shall be computed—

(A) an ordinary taxable income which shall consist of the excess of the gross income over deductions; or

(B) an ordinary net loss which shall consist of the excess of the deductions over the gross income; and

(3) the deduction provided by section 170 (relating to charitable, etc., contributions and gifts) shall not be allowed.

(e) Admission and withdrawal

No gain or loss shall be realized by the common trust fund by the admission or withdrawal of a participant. The admission of a participant shall be treated with respect to the participant as the purchase of, or an exchange for, the participating interest. The withdrawal of any participating interest by a participant shall be treated as a sale or exchange of such interest by the participant.

(f) Different taxable years of common trust fund and participant

If the taxable year of the common trust fund is different from that of a participant, the inclusions with respect to the taxable income of the common trust fund, in computing the taxable income of the participant for its taxable year, shall be based upon the taxable income of the common trust fund for any taxable year of the common trust fund ending within or with the taxable year of the participant.

(g) Net operating loss deduction

The benefit of the deduction for net operating losses provided by section 172 shall not be allowed to a common trust fund, but shall be allowed to the participants in the common trust fund under regulations prescribed by the Secretary.

(h) Nonrecognition treatment for certain transfers to regulated investment companies

(1) In general

If—

(A) a common trust fund transfers substantially all of its assets to one or more regulated investment companies in exchange solely for stock in the company or companies to which such assets are so transferred, and

(B) such stock is distributed by such common trust fund to participants in such common trust fund in exchange solely for their interests in such common trust fund,

no gain or loss shall be recognized by such common trust fund by reason of such transfer or distribution, and no gain or loss shall be recognized by any participant in such common trust fund by reason of such exchange.

(2) Basis rules

(A) Regulated investment company

The basis of any asset received by a regulated investment company in a transfer referred to in paragraph (1)(A) shall be the same as it would be in the hands of the common trust fund.

(B) Participants

The basis of the stock which is received in an exchange referred to in paragraph (1)(B) shall be the same as that of the property exchanged. If stock in more than one regulated investment company is received in such exchange, the basis determined under the preceding sentence shall be allocated among the stock in each such company on the basis of respective fair market values.

(3) Treatment of assumptions of liability

(A) In general

In determining whether the transfer referred to in paragraph (1)(A) is in exchange solely for stock in one or more regulated investment companies, the assumption by any such company of a liability of the common trust fund shall be disregarded.

(B) Special rule where assumed liabilities exceed basis

(i) In general

If, in any transfer referred to in paragraph (1)(A), the assumed liabilities exceed the aggregate adjusted bases (in the hands of the common trust fund) of the assets transferred to the regulated investment company or companies—

(I) notwithstanding paragraph (1), gain shall be recognized to the common trust fund on such transfer in an amount equal to such excess,

(II) the basis of the assets received by the regulated investment company or companies in such transfer shall be increased by the amount so recognized, and

(III) any adjustment to the basis of a participant's interest in the common trust fund as a result of the gain so recognized shall be treated as occurring immediately before the exchange referred to in paragraph (1)(B).

If the transfer referred to in paragraph (1)(A) is to two or more regulated investment companies, the basis increase under subclause (II) shall be allocated among such companies on the basis of the respective fair market values of the assets received by each of such companies.

(ii) Assumed liabilities

For purposes of clause (i), the term "assumed liabilities" means any liability of the common trust fund assumed by any regulated investment company in connection with the transfer referred to in paragraph (1)(A).

(C) Assumption

For purposes of this paragraph, in determining the amount of any liability assumed, the rules of section 357(d) shall apply.

(4) Common trust fund must meet diversification rules

This subsection shall not apply to any common trust fund which would not meet the requirements of section 368(a)(2)(F)(ii) if it were a corporation. For purposes of the preceding sentence, Government securities shall not be treated as securities of an issuer in applying the 25-percent and 50-percent test and such securities shall not be excluded for purposes of determining total assets under clause (iv) of section 368(a)(2)(F).

(i) Taxable year of common trust fund

For purposes of this subtitle, the taxable year of any common trust fund shall be the calendar year.

(Aug. 16, 1954, ch. 736, 68A Stat. 203; Pub. L. 87–722, §4, Sept. 28, 1962, 76 Stat. 670; Pub. L. 88–272, title II, §201(d)(5), Feb. 26, 1964, 78 Stat. 32; Pub. L. 94–414, §1, Sept. 17, 1976, 90 Stat. 1273; Pub. L. 94–455, title XIV, §1402(b)(1)(H), (2), title XIX, §§1901(b)(1)(G), 1906(b)(13)(A), title XXI, §§2131(d), 2138, Oct. 4, 1976, 90 Stat. 1732, 1790, 1834, 1924, 1932; Pub. L. 95–30, title I, §101(d)(7), May 23, 1977, 91 Stat. 133; Pub. L. 96–223, title IV, §404(b)(3), Apr. 2, 1980, 94 Stat. 306; Pub. L. 97–34, title III, §301(b)(3), (6)(A), Aug. 13, 1981, 95 Stat. 270; Pub. L. 97–448, title I, §103(a)(2), Jan. 12, 1983, 96 Stat. 2375; Pub. L. 98–369, div. A, title X, §1001(b)(7), (e), July 18, 1984, 98 Stat. 1011, 1012; Pub. L. 99–514, title VI, §612(b)(2), Oct. 22, 1986, 100 Stat. 2250; Pub. L. 100–647, title I, §1008(e)(5)(A), Nov. 10, 1988, 102 Stat. 3440; Pub. L. 104–188, title I, §1805(a), Aug. 20, 1996, 110 Stat. 1894; Pub. L. 106–36, title III, §3001(c)(1), June 25, 1999, 113 Stat. 183; Pub. L. 108–27, title III, §302(e)(7), May 28, 2003, 117 Stat. 764.)

AMENDMENTS

2003—Subsec. (c). Pub. L. 108–27 inserted concluding provisions.

1999—Subsec. (h)(3)(A). Pub. L. 106–36, §3001(c)(1)(A), struck out ", and the fact that any property transferred by the common trust fund is subject to a liability," before "shall be disregarded".

Subsec. (h)(3)(B)(ii). Pub. L. 106–36, §3001(c)(1)(B), added cl. (ii) and struck out heading and text of former cl. (ii). Text read as follows: "For purposes of clause (i), the term 'assumed liabilities' means the aggregate of—

"(I) any liability of the common trust fund assumed by any regulated investment company in connection with the transfer referred to in paragraph (1)(A), and

"(II) any liability to which property so transferred is subject."

Subsec. (h)(3)(C). Pub. L. 106–36, §3001(c)(1)(B), added subpar. (C).

1996—Subsecs. (h), (i). Pub. L. 104–188 added subsec. (h) and redesignated former subsec. (h) as (i).

1988—Subsec. (h). Pub. L. 100–647 added subsec. (h).

1986—Subsec. (c). Pub. L. 99–514, §612(b)(2)(B), substituted "1 year" for "6 months" wherever appearing in pars. (1) and (2).

Pub. L. 99–514, §612(b)(2)(A), amended subsec. (c) generally, restating subpars. (A) to (C) of former par. (1) as pars. (1) to (3) and striking out former par. (2) which read as follows: "The proportionate share of each participant in the amount of dividends or interest received by the common trust fund and to which section 116 or 128 applies shall be considered for purposes of such section as having been received by such participant."

1984—Subsec. (c)(1)(A), (B). Pub. L. 98–369 substituted "6 months" for "1 year", wherever appearing, applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

1983—Subsec. (c)(2). Pub. L. 97–448 reenacted par. (2) without change.

1981—Subsec. (c)(2). Pub. L. 97–34, §301(b)(6)(A), inserted reference to "interest" in heading and text, which continued the amendment made by Pub. L. 96–223.

Pub. L. 97–34, §301(b)(3), inserted "or 128" after "section 116".

1980—Subsec. (c)(2). Pub. L. 96–223 inserted "or interest" after "dividends" in heading and text.

1977—Subsec. (d)(4). Pub. L. 95–30 struck out par. (4) relating to standard deduction.

1976—Subsec. (a). Pub. L. 94–414 inserted provision relating to treatment of two or more bank members of same affiliated group.

Subsec. (a)(1). Pub. L. 94–455, §2138, designated existing provisions relating to trustee, executor, administrator and guardian as subpar. (A) and added subpar. (B).

Subsec. (c)(1)(A), (B). Pub. L. 94–455, §1402(b)(2), provided that "9 months" would be changed to "1 year" wherever appearing.

Pub. L. 94–455, §1402(b)(1)(H), provided that "6 months" would be changed to "9 months" for taxable years beginning in 1977.

Subsec. (c)(2). Pub. L. 94–455, §1901(b)(1)(G), struck out provisions relating to partially tax exempt interest and election of a common trust fund to amortize premiums on bonds and other obligations.

Subsec. (e). Pub. L. 94–455, §2131(d), inserted "The admission of a participant shall be treated with respect to the participant as the purchase of, or exchange for, the participating interest".

Subsec. (g). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

1964—Subsec. (c)(2). Pub. L. 88–272 struck out "section 34 or" before "section 116 applies".

1962—Subsec. (a)(2). Pub. L. 87–722 inserted "or the Comptroller of the Currency" after "the Board of Governors of the Federal Reserve System".

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–27 applicable, except as otherwise provided, to taxable years beginning after Dec. 31, 2002, see section 302(f) of Pub. L. 108–27, set out as an Effective and Termination Dates of 2003 Amendment note under section 1 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–36 applicable to transfers after Oct. 18, 1998, see section 3001(e) of Pub. L. 106–36, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, §1805(b), Aug. 20, 1996, 110 Stat. 1895, provided that: "The amendment made by subsection (a) [amending this section] shall apply to transfers after December 31, 1995."

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1008(e)(5)(B), Nov. 10, 1988, 102 Stat. 3440, provided that: "The amendment made by subparagraph (A) [amending this section] shall take effect as if included in the amendments made by section 806 of the Reform Act [Pub. L. 99–514], except that section 806(e)(1) [set out as a note under section 1378 of this title] shall be applied by substituting 'December 31, 1987' for 'December 31, 1986'. For purposes of section 806(e)(2) of the Reform Act [set out as a note under section 1378 of this title]—

"(i) a participant in a common trust fund shall be treated in the same manner as a partner, and

"(ii) subparagraph (C) thereof shall be applied by substituting 'December 31, 1987' for 'December 31,

1986' and as if it did not contain the election to include all income in the short taxable year."

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title VI, §612(b)(2)(B), Oct. 22, 1986, 100 Stat. 2250, provided that: "If the amendments made by section 1001 of the Tax Reform Act of 1984 [Pub. L. 98–369, amending this section and sections 166, 341, 402, 403, 423, 582, 631, 642, 702, 818, 852, 856, 857, 1222, 1223, 1231, 1232, 1233, 1234, 1235, 1246, 1247, and 1248 of this title] cease to apply [see Effective Date of 1984 Amendment note below], effective with respect to property to which such amendments do not apply, subsection (c) of section 584 is amended by striking out '6 months' each place it appears and inserting in lieu thereof '1 year'."

Amendment by section 612(b)(2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 612(c) of Pub. L. 99–514, set out as a note under section 301 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 301(b)(3) of Pub. L. 97–34 applicable to taxable years ending after Sept. 30, 1981, and amendment by section 301(b)(6)(A) of Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 301(d) of Pub. L. 97–34, set out as a note under section 265 of this title.

EFFECTIVE AND TERMINATION DATES OF 1980 AMENDMENT

Amendment by Pub. L. 96–223 applicable with respect to taxable years beginning after Dec. 31, 1980, and before Jan. 1, 1982, see section 404(c) of Pub. L. 96–223, set out as a note under section 265 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XXI, §2131(f)(6), Oct. 4, 1976, 90 Stat. 1925, provided that: "The amendments made by subsections (d) and (e) [amending this section and section 683 of this title] shall take effect on April 8, 1976, in taxable years ending on or after such date."

Pub. L. 94–455, title XIV, §1402(b)(1), Oct. 4, 1976, 90 Stat. 1731, provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Pub. L. 94–455, title XIV, §1402(b)(2), Oct. 4, 1976, 90 Stat. 1732, provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

Amendment by section 1901(b)(1)(G) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 2 of this title.

Pub. L. 94–414, §2, Sept. 17, 1976, 90 Stat. 1273, provided that: "The amendment made by the first section of this Act [amending this section] shall apply to taxable years beginning after December 31, 1975."

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable with respect to dividends received after Dec. 31, 1964, in taxable years ending after such date, see section 201(e) of Pub. L. 88–272, set out as a note under section 22 of this title.

§585. Reserves for losses on loans of banks

(a) Reserve for bad debts

(1) In general

Except as provided in subsection (c), a bank shall be allowed a deduction for a reasonable

addition to a reserve for bad debts. Such deduction shall be in lieu of any deduction under section 166(a).

(2) Bank

For purposes of this section—

(A) In general

The term "bank" means any bank (as defined in section 581).

(B) Banking business of United States branch of foreign corporation

The term "bank" also includes any corporation to which subparagraph (A) would apply except for the fact that it is a foreign corporation. In the case of any such foreign corporation, this section shall apply only with respect to loans outstanding the interest on which is effectively connected with the conduct of a banking business within the United States.

(b) Addition to reserves for bad debts

(1) General rule

For purposes of subsection (a), the reasonable addition to the reserve for bad debts of any financial institution to which this section applies shall be an amount determined by the taxpayer which shall not exceed the addition to the reserve for losses on loans determined under the experience method as provided in paragraph (2).

(2) Experience method

The amount determined under this paragraph for a taxable year shall be the amount necessary to increase the balance of the reserve for losses on loans (at the close of the taxable year) to the greater of—

(A) the amount which bears the same ratio to loans outstanding at the close of the taxable year as (i) the total bad debts sustained during the taxable year and the 5 preceding taxable years (or, with the approval of the Secretary, a shorter period), adjusted for recoveries of bad debts during such period, bears to (ii) the sum of the loans outstanding at the close of such 6 or fewer taxable years, or

(B) the lower of—

(i) the balance of the reserve at the close of the base year, or

(ii) if the amount of loans outstanding at the close of the taxable year is less than the amount of loans outstanding at the close of the base year, the amount which bears the same ratio to loans outstanding at the close of the taxable year as the balance of the reserve at the close of the base year bears to the amount of loans outstanding at the close of the base year.

For purposes of this paragraph, the base year shall be the last taxable year before the most recent adoption of the experience method, except that for taxable years beginning after 1987 the base year shall be the last taxable year beginning before 1988.

(3) Regulations; definition of loan

The Secretary shall define the term loan and prescribe such regulations as may be necessary to carry out the purposes of this section.

(c) Section not to apply to large banks

(1) In general

In the case of a large bank, this section shall not apply (and no deduction shall be allowed under any other provision of this subtitle for any addition to a reserve for bad debts).

(2) Large banks

For purposes of this subsection, a bank is a large bank if, for the taxable year (or for any preceding taxable year beginning after December 31, 1986)—

(A) the average adjusted bases of all assets of such bank exceeded $500,000,000, or

(B) such bank was a member of a parent-subsidiary controlled group and the average

adjusted bases of all assets of such group exceeded $500,000,000.

(3) 4-year spread of adjustments

(A) In general

Except as provided in paragraph (4), in the case of any bank which for its last taxable year before the disqualification year maintained a reserve for bad debts—

(i) the provisions of this subsection shall be treated as a change in the method of accounting of such bank for the disqualification year,

(ii) such change shall be treated as having been made with the consent of the Secretary, and

(iii) the net amount of adjustments required by section 481(a) to be taken into account by the taxpayer shall be taken into account in each of the 4 taxable years beginning with the disqualification year with—

(I) the amount taken into account for the 1st of such taxable years being the greater of 10 percent of such net amount or such higher percentage of such net amount as the taxpayer may elect, and

(II) the amount taken into account in each of the 3 succeeding taxable years being equal to the applicable fraction (determined in accordance with the following table for the taxable year involved) of the portion of such net amount not taken into account under subclause (I).

If the case of the—	The applicable fraction is—
1st succeeding year	2/9
2nd succeeding year	1/3
3rd succeeding year	4/9.

(B) Suspension of recapture for taxable year for which bank is financially troubled

(i) In general

In the case of a bank which is a financially troubled bank for any taxable year—

(I) no adjustment shall be taken into account under subparagraph (A) for such taxable year, and

(II) such taxable year shall be disregarded in determining whether any other taxable year is a taxable year for which an adjustment is required to be taken into account under subparagraph (A) or the amount of such adjustment.

(ii) Exception for elective recapture for 1st year

Clause (i) shall not apply to the 1st taxable year referred to in subparagraph (A)(iii)(I) if the taxpayer elects a higher percentage in accordance with such subparagraph.

(iii) Financially troubled bank

For purposes of clause (i), the term "financially troubled bank" means any bank if, for the taxable year, the nonperforming loan percentage of such bank exceeds 75 percent.

(iv) Nonperforming loan percentage

For purposes of clause (iii), the term "nonperforming loan percentage" means the percentage determined by dividing—

(I) the sum of the outstanding balances of nonperforming loans of the bank as of the close of each quarter of the taxable year, by

(II) the sum of the amounts of equity of the bank as of the close of each such quarter.

In the case of a bank which is a member of a parent-subsidiary controlled group for the taxable year, the preceding sentence shall be applied with respect to such group.

(v) Other definitions

For purposes of this subparagraph—

(I) Nonperforming loans

The term "nonperforming loan" means any loan which is considered to be nonperforming by the primary Federal regulatory agency with respect to the bank.

(II) Equity

The term "equity" means the equity of the bank as determined for Federal regulatory purposes.

(C) Coordination with estimated tax payments

For purposes of applying section 6655(e)(2)(A)(i) with respect to any installment, the determination under subparagraph (B) of whether an adjustment is required to be taken into account under subparagraph (A) shall be made as of the last day prescribed for payment of such installment.

(4) Elective cut-off method

If a bank makes an election under this paragraph for the disqualification year—

(A) the provisions of this subsection shall not be treated as a change in the method of accounting of the taxpayer for purposes of section 481,

(B) the taxpayer shall continue to maintain its reserve for loans held by the bank as of the 1st day of the disqualification year and charge against such reserve any losses resulting from loans held by the bank as of such 1st day, and

(C) no deduction shall be allowed under this section (or any other provision of this subtitle) for any addition to such reserve for the disqualification year or any subsequent taxable year.

If the amount of the reserve referred to in subparagraph (B) as of the close of any taxable year exceeds the outstanding balance (as of such time) of the loans referred to in subparagraph (B), such excess shall be included in gross income for such taxable year.

(5) Definitions

For purposes of this subsection—

(A) Parent-subsidiary controlled group

The term "parent-subsidiary controlled group" means any controlled group of corporations described in section 1563(a)(1). In determining the average adjusted bases of assets held by such a group, interests held by one member of such group in another member of such group shall be disregarded.

(B) Disqualification year

The term "disqualification year" means, with respect to any bank, the 1st taxable year beginning after December 31, 1986, for which such bank was a large bank if such bank maintained a reserve for bad debts for the preceding taxable year.

(C) Election made by each member

In the case of a parent-subsidiary controlled group, any election under this section shall be made separately by each member of such group.

(Added Pub. L. 91–172, title IV, §431(a), Dec. 30, 1969, 83 Stat. 616; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–34, title II, §267(a), Aug. 13, 1981, 95 Stat. 266; Pub. L. 99–514, title IX, §901(a), (d)(1), Oct. 22, 1986, 100 Stat. 2375, 2378; Pub. L. 100–203, title X, §10301(b)(2), Dec. 22, 1987, 101 Stat. 1330–429; Pub. L. 100–647, title I,

§1009(a)(2), (3), Nov. 10, 1988, 102 Stat. 3445; Pub. L. 101–508, title XI, §11801(a)(26), (c)(12)(C)–(E), Nov. 5, 1990, 104 Stat. 1388–521, 1388–527; Pub. L. 104–188, title I, §1616(b)(6), Aug. 20, 1996, 110 Stat. 1856.)

AMENDMENTS

1996—Subsec. (a)(2)(A). Pub. L. 104–188 struck out "other than an organization to which section 593 applies" after "section 581)".

1990—Subsec. (b)(1). Pub. L. 101–508, §11801(c)(12)(C), substituted "shall not exceed the addition to the reserve for losses on loans determined under the experience method as provided in paragraph (2)." for "shall not exceed the greater of—

"(A) for taxable years beginning before 1988 the addition to the reserve for losses on loans determined under the percentage method as provided in paragraph (2), or

"(B) the addition to the reserve for losses on loans determined under the experience method as provided in paragraph (3)."

Subsec. (b)(2). Pub. L. 101–508, §11801(a)(26), (c)(12)(D), redesignated par. (3) as (2) and struck out former par. (2) which related to use of percentage method for determining amount to add to reserve for bad debts.

Subsec. (b)(3). Pub. L. 101–508, §11801(c)(12)(D), (E), redesignated par. (4) as (3), substituted heading for one which read: "Regulations; definition of eligible loan, etc.", and amended text generally. Prior to amendment, text read as follows: "The Secretary shall define the terms 'loan' and 'eligible loan' and prescribe such regulations as may be necessary to carry out the purposes of this section; except that the term 'eligible loan' shall not include—

"(A) a loan to a bank (as defined in section 581),

"(B) a loan to a domestic branch of a foreign corporation to which subsection (a)(2) applies,

"(C) a loan secured by a deposit (i) in the lending bank, or (ii) in an institution described in subparagraph (A) or (B) if the lending bank has control over withdrawal of such deposit,

"(D) a loan to or guaranteed by the United States, a possession or instrumentality thereof, or a State or a political subdivision thereof,

"(E) a loan evidenced by a security as defined in section 165(g)(2)(C),

"(F) a loan of Federal funds, and

"(G) commercial paper, including short-term promissory notes which may be purchased on the open market." Former par. (3) redesignated (2).

Subsec. (b)(4). Pub. L. 101–508, §11801(c)(12)(D), redesignated par. (4) as (3).

1988—Subsec. (c)(3)(A)(iii)(I). Pub. L. 100–647, §1009(a)(2)(B), substituted "such higher percentage of such net amount as the taxpayer may elect" for "such greater amount as the taxpayer may designate".

Subsec. (c)(3)(B)(ii). Pub. L. 100–647, §1009(a)(2)(C), substituted "elects a higher percentage" for "designates an amount".

Subsec. (c)(4). Pub. L. 100–647, §1009(a)(3), inserted at end "If the amount of the reserve referred to in subparagraph (B) as of the close of any taxable year exceeds the outstanding balance (as of such time) of the loans referred to in subparagraph (B), such excess shall be included in gross income for such taxable year."

Subsec. (c)(5)(C). Pub. L. 100–647, §1009(a)(2)(A), added subpar. (C).

1987—Subsec. (c)(3)(C). Pub. L. 100–203 substituted "section 6655(e)(2)(A)(i)" for "section 6655(d)(3)".

1986—Subsec. (a). Pub. L. 99–514, §901(a)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "This section shall apply to the following financial institutions:

"(1) any bank (as defined in section 581) other than an organization to which section 593 applies, and

"(2) any corporation to which paragraph (1) would apply except for the fact that it is a foreign corporation, and in the case of any such foreign corporation this section shall apply only with respect to loans outstanding the interest on which is effectively connected with the conduct of a banking business within the United States."

Subsec. (b)(1). Pub. L. 99–514, §901(d)(1), substituted "subsection (a)" for "section 166(c)".

Subsec. (c). Pub. L. 99–514, §901(a)(2), added subsec. (c).

1981—Subsec. (b)(2). Pub. L. 97–34 defined "allowable percentage" to mean 1.0 percent for taxable years beginning in 1982 and 0.6 percent for taxable years beginning after 1982, previously so applicable for taxable years beginning after 1981 and redefined "base year" by substituting the last taxable year beginning before 1976 for taxable years beginning after 1975 but before 1983, for the last taxable year beginning before 1976 for taxable years after 1975 but before 1982; and the last taxable year beginning before 1983 for taxable years beginning after 1982, for the last taxable year beginning before 1982 for taxable years beginning after 1981.

1976—Subsec. (b)(3), (4). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1995, see section 1616(c) of Pub. L. 104–188, set out as a note under section 593 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title X, §10301(c), Dec. 22, 1987, 101 Stat. 1330–429, provided that: "The amendments made by this section [amending this section and sections 6201, 6425, 6601, 6651, and 6655 of this title and repealing section 6154 of this title] shall apply to taxable years beginning after December 31, 1987."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 901(e) of Pub. L. 99–514, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title II, §267(b), Aug. 13, 1981, 95 Stat. 267, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after 1981."

EFFECTIVE DATE

Pub. L. 91–172, title IV, §431(d), Dec. 30, 1969, 83 Stat. 620, provided that: "The amendments made by subsections (a) [enacting this section and section 586 of this title] and (c) [amending section 166 of this title] shall apply to taxable years beginning after July 11, 1969."

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

[§586. Repealed. Pub. L. 99–514, title IX, §901(c), Oct. 22, 1986, 100 Stat. 2378]

Section, added Pub. L. 91–172, title IV, §431(a), Dec. 30, 1969, 83 Stat. 618; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, related to reserves for losses on loans of small business investment companies, etc.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 1986, see section 901(e) of Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note under section 166 of this title.

PART II—MUTUAL SAVINGS BANKS, ETC.

Sec.

591. Deduction for dividends paid on deposits.

[592. Repealed.]

593. Reserves for losses on loans.

594. Alternative tax for mutual savings banks conducting life insurance business.

[595, 596. Repealed.]

597. Treatment of transactions in which Federal financial assistance provided.

AMENDMENTS

1996—Pub. L. 104–188, title I, §1616(b)(16), Aug. 20, 1996, 110 Stat. 1857, struck out items 595 "Foreclosure on property securing loans" and 596 "Limitation on dividends received deduction".

1989—Pub. L. 101–73, title XIV, §1401(b)(1), Aug. 9, 1989, 103 Stat. 549, repealed amendment made by

Pub. L. 99–514, §904(b)(2), see 1986 Amendment note below.

Pub. L. 101–73, title XIV, §1401(a)(3)(C), Aug. 9, 1989, 103 Stat. 549, substituted "Treatment of transactions in which Federal financial assistance provided" for "FSLIC or FDIC financial assistance" in item 597.

1988—Pub. L. 100–647, title IV, §4012(b)(2)(D)(ii), Nov. 10, 1988, 102 Stat. 3658, substituted "FSLIC or FDIC" for "FSLIC" in item 597.

1986—Pub. L. 99–514, title IX, §904(b)(2), (c)(2)(A), Oct. 22, 1986, 100 Stat. 2385, as amended by Pub. L. 100–647, title IV, §4012(a)(2), Nov. 10, 1988, 102 Stat. 3656, which, applicable to transfers after Dec. 31, 1989, in taxable years ending after that date, directed amendment of analysis by striking out item 597, was repealed by Pub. L. 101–73, title XIV, §1401(b)(1), (c)(4), Aug. 9, 1989, 103 Stat. 549, 550, eff. Oct. 22, 1986, and applicable as if the amendments made by such section had not been enacted.

1981—Pub. L. 97–34, title II, §244(b), Aug. 13, 1981, 95 Stat. 255, added item 597.

1976—Pub. L. 94–455, title XIX, §1901(b)(19), Oct. 4, 1976, 90 Stat. 1796, struck out item 592 "Deduction for repayment of certain loans".

1969—Pub. L. 91–172, title IV, §434(b)(2), Dec. 30, 1969, 83 Stat. 625, added item 596.

1962—Pub. L. 87–834, §6(d), Oct. 16, 1962, 76 Stat. 984, substituted "Reserves for losses on loans" for "Additions to reserve for bad debts" in item 593, and added item 595.

§591. Deduction for dividends paid on deposits

(a) In general

In the case of mutual savings banks, cooperative banks, and domestic building and loan associations and other savings institutions chartered and supervised as savings and loan or similar associations under Federal or State law, there shall be allowed as deductions in computing taxable income amounts paid to, or credited to the accounts of, depositors or holders of accounts as dividends or interest on their deposits or withdrawable accounts, if such amounts paid or credited are withdrawable on demand subject only to customary notice of intention to withdraw.

(b) Mutual savings bank to include certain banks with capital stock

For purposes of this part, the term "mutual savings bank" includes any bank—

(1) which has capital stock represented by shares, and

(2) which is subject to, and operates under, Federal or State laws relating to mutual savings bank.

(Aug. 16, 1954, ch. 736, 68A Stat. 204; Pub. L. 87–834, §6(f), Oct. 16, 1962, 76 Stat. 984; Pub. L. 97–34, title II, §245(a), Aug. 13, 1981, 95 Stat. 255.)

AMENDMENTS

1981—Pub. L. 97–34 designated existing provisions as subsec. (a), inserted heading "In general", and added subsec. (b).

1962—Pub. L. 87–834 included other savings institutions chartered and supervised as savings and loan or similar associations under Federal or State law, and authorized amounts paid as interest as a deduction.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title II, §246(d), Aug. 13, 1981, 95 Stat. 256, provided that: "The amendments made by section 245 [amending this section and section 593 of this title] shall apply with respect to taxable years ending after the date of the enactment of this Act [Aug. 13, 1981]."

[§592. Repealed. Pub. L. 94–455, title XIX, §1901(a)(83), Oct. 4, 1976, 90 Stat. 1778]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 205, authorized a deduction by mutual savings banks for repayment of loans made before Sept. 1, 1951, by the United States or any agency or instrumentality thereof, or any mutual fund established under the authority of the laws of any State.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 2 of this title.

§593. Reserves for losses on loans

(a) Reserve for bad debts

(1) In general

Except as provided in paragraph (2), in the case of—

(A) any domestic building and loan association,

(B) any mutual savings bank, or

(C) any cooperative bank without capital stock organized and operated for mutual purposes and without profit,

there shall be allowed a deduction for a reasonable addition to a reserve for bad debts. Such deduction shall be in lieu of any deduction under section 166(a).

(2) Organization must meet 60-percent asset test of section 7701(a)(19)

This section shall apply to an association or bank referred to in paragraph (1) only if it meets the requirements of section 7701(a)(19)(C).

(b) Addition to reserves for bad debts

(1) In general

For purposes of subsection (a), the reasonable addition for the taxable year to the reserve for bad debts of any taxpayer described in subsection (a) shall be an amount equal to the sum of—

(A) the amount determined to be a reasonable addition to the reserve for losses on nonqualifying loans, computed in the same manner as is provided with respect to additions to the reserves for losses on loans of banks under section 585(b)(2), plus

(B) the amount determined by the taxpayer to be a reasonable addition to the reserve for losses on qualifying real property loans, but such amount shall not exceed the amount determined under paragraph (2) or (3), whichever is the larger, but the amount determined under this subparagraph shall in no case be greater than the larger of—

(i) the amount determined under paragraph (3), or

(ii) the amount which, when added to the amount determined under subparagraph (A), equals the amount by which 12 percent of the total deposits or withdrawable accounts of depositors of the taxpayer at the close of such year exceeds the sum of its surplus, undivided profits, and reserves at the beginning of such year (taking into account any portion thereof attributable to the period before the first taxable year beginning after December 31, 1951).

(2) Percentage of taxable income method

(A) In general

Subject to subparagraphs (B) and (C), the amount determined under this paragraph for the taxable year shall be an amount equal to 8 percent of the taxable income for such year.

(B) Reduction for amounts referred to in paragraph (1)(A)

The amount determined under subparagraph (A) shall be reduced (but not below 0) by the amount determined under paragraph (1)(A).

(C) Overall limitation on paragraph

The amount determined under this paragraph shall not exceed the amount necessary to increase the balance at the close of the taxable year of the reserve for losses on qualifying real property loans to 6 percent of such loans outstanding at such time.

(D) Computation of taxable income

For purposes of this paragraph, taxable income shall be computed—

(i) by excluding from gross income any amount included therein by reason of subsection (e),

(ii) without regard to any deduction allowable for any addition to the reserve for bad debts,

(iii) by excluding from gross income an amount equal to the net gain for the taxable year arising from the sale or exchange of stock of a corporation or of obligations the interest on which is excludable from gross income under section 103,

(iv) by excluding from gross income dividends with respect to which a deduction is allowable by part VIII of subchapter B, reduced by an amount equal to 8 percent of the dividends received deduction (determined without regard to section 596) [1] for the taxable year, and

(v) if there is a capital gain rate differential (as defined in section 904(b)(3)(D)) for the taxable year, by excluding from gross income the rate differential portion (within the meaning of section 904(b)(3)(E)) of the lesser of—

(I) the net long-term capital gain for the taxable year, or

(II) the net long-term capital gain for the taxable year from the sale or exchange of property other than property described in clause (iii).

(3) Experience method

The amount determined under this paragraph for the taxable year shall be computed in the same manner as is provided with respect to additions to the reserves for losses on loans of banks under section 585(b)(2).

(c) Treatment of reserve for bad debts

(1) Establishment of reserves

Each taxpayer described in subsection (a) which uses the reserve method of accounting for bad debts shall establish and maintain a reserve for losses on qualifying real property loans, a reserve for losses on nonqualifying loans, and a supplemental reserve for losses on loans. For purposes of this title, such reserves shall be treated as reserves for bad debts, but no deduction shall be allowed for any addition to the supplemental reserve for losses on loans.

(2) Certain pre-1963 reserves

Notwithstanding the second sentence of paragraph (1), any amount allocated pursuant to paragraph (5) (as in effect immediately before the enactment of the Tax Reform Act of 1976) during a taxable year beginning before January 1, 1977, to the reserve for losses on qualifying real property loans out of the surplus, undivided profits, and bad debt reserves (determined as of December 31, 1962) attributable to the period before the first taxable year beginning after December 31, 1951, shall not be treated as a reserve for bad debts for any purpose other than determining the amount referred to in subsection (b)(1)(B), and for such purpose such amount shall be treated as remaining in such reserve.

(3) Charging of bad debts to reserves

Any debt becoming worthless or partially worthless in respect of a qualifying real property loan shall be charged to the reserve for losses on such loans, and any debt becoming worthless or partially worthless in respect of a nonqualifying loan shall be charged to the reserve for losses on nonqualifying loans; except that any such debt may, at the election of the taxpayer, be charged in whole or in part to the supplemental reserve for losses on loans.

(d) Loans defined

For purposes of this section—

(1) Qualifying real property loans

The term "qualifying real property loan" means any loan secured by an interest in improved real property or secured by an interest in real property which is to be improved out of the proceeds of the loan, but such term does not include—

(A) any loan evidenced by a security (as defined in section 165(g)(2)(C));

(B) any loan, whether or not evidenced by a security (as defined in section 165(g)(2)(C)), the primary obligor on which is—

(i) a government or political subdivision or instrumentality thereof;

(ii) a bank (as defined in section 581); or

(iii) another member of the same affiliated group;

(C) any loan, to the extent secured by a deposit in or share of the taxpayer; or

(D) any loan which, within a 60-day period beginning in one taxable year of the creditor and ending in its next taxable year, is made or acquired and then repaid or disposed of, unless the transactions by which such loan was made or acquired and then repaid or disposed of are established to be for bona fide business purposes. For purposes of subparagraph (B)(iii), the term "affiliated group" has the meaning assigned to such term by section 1504(a); except that (i) the phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent" each place it appears in section 1504(a), and (ii) all corporations shall be treated as includible corporations (without any exclusion under section 1504(b)).

(2) Nonqualifying loans

The term "nonqualifying loan" means any loan which is not a qualifying real property loan.

(3) Loan

The term "loan" means debt, as the term "debt" is used in section 166.

(4) Treatment of interests in REMIC's

A regular or residual interest in a REMIC shall be treated as a qualifying real property loan; except that, if less than 95 percent of the assets of such REMIC are qualifying real property loans (determined as if the taxpayer held the assets of the REMIC), such interest shall be so treated only in the proportion which the assets of such REMIC consist of such loans. For purposes of determining whether any interest in a REMIC qualifies under the preceding sentence, any interest in another REMIC held by such REMIC shall be treated as a qualifying real property loan under principles similar to the principles of the preceding sentence, except that if such REMIC's are part of a tiered structure, they shall be treated as 1 REMIC for purposes of this paragraph.

(e) Distributions to shareholders

(1) In general

For purposes of this chapter, any distribution of property (as defined in section 317(a)) by a taxpayer having a balance described in subsection (g)(2)(A)(ii) to a shareholder with respect to its stock, if such distribution is not allowable as a deduction under section 591, shall be treated as made—

(A) first out of its earnings and profits accumulated in taxable years beginning after December 31, 1951, (and, in the case of an S corporation, the accumulated adjustments account, as defined in section 1368(e)(1)) to the extent thereof,

(B) then out of the balance taken into account under subsection (g)(2)(A)(ii) (properly adjusted for amounts charged against such reserves for taxable years beginning after December 31, 1987),

(C) then out of the supplemental reserve for losses on loans, to the extent thereof,

(D) then out of such other accounts as may be proper.

This paragraph shall apply in the case of any distribution in redemption of stock or in partial or complete liquidation of a taxpayer having a balance described in subsection (g)(2)(A)(ii), except that any such distribution shall be treated as made first out of the amount referred to in subparagraph (B), second out of the amount referred to in subparagraph (C), third out of the amount referred to in subparagraph (A), and then out of such other accounts as may be proper. This paragraph shall not apply to any transaction to which section 381 applies, or to any distribution to the Federal Savings and Loan Insurance Corporation (or any successor thereof) or

the Federal Deposit Insurance Corporation in redemption of an interest in a taxpayer having a balance described in subsection (g)(2)(A)(ii), if such interest was originally received by any such entity in exchange for assistance provided under a provision of law referred to in section 597(c). This paragraph shall not apply to any distribution of all of the stock of a bank (as defined in section 581) to another corporation if, immediately after the distribution, such bank and such other corporation are members of the same affiliated group (as defined in section 1504) and the provisions of section 5(e) of the Federal Deposit Insurance Act (as in effect on December 31, 1995) or similar provisions are in effect.

(2) Amounts charged to reserve accounts and included in gross income

If any distribution is treated under paragraph (1) as having been made out of the reserves described in subparagraphs (B) and (C) of such paragraph, the amount charged against such reserve shall be the amount which, when reduced by the amount of tax imposed under this chapter and attributable to the inclusion of such amount in gross income, is equal to the amount of such distribution; and the amount so charged against such reserve shall be included in gross income of the taxpayer.

(3) Special rules

(A) For purposes of paragraph (1)(B), additions to the reserve for losses on qualifying real property loans for the taxable year in which the distribution occurs shall be taken into account.

(B) For purposes of computing under this section the amount of a reasonable addition to the reserve for losses on qualifying real property loans for any taxable year, any amount charged during any year to such reserve pursuant to the provisions of paragraph (2) shall not be taken into account.

(f) Termination of reserve method

Subsections (a), (b), (c), and (d) shall not apply to any taxable year beginning after December 31, 1995.

(g) 6-year spread of adjustments

(1) In general

In the case of any taxpayer who is required by reason of subsection (f) to change its method of computing reserves for bad debts—

(A) such change shall be treated as a change in a method of accounting,

(B) such change shall be treated as initiated by the taxpayer and as having been made with the consent of the Secretary, and

(C) the net amount of the adjustments required to be taken into account by the taxpayer under section 481(a)—

(i) shall be determined by taking into account only applicable excess reserves, and

(ii) as so determined, shall be taken into account ratably over the 6-taxable year period beginning with the first taxable year beginning after December 31, 1995.

(2) Applicable excess reserves

(A) In general

For purposes of paragraph (1), the term "applicable excess reserves" means the excess (if any) of—

(i) the balance of the reserves described in subsection (c)(1) (other than the supplemental reserve) as of the close of the taxpayer's last taxable year beginning before January 1, 1996, over

(ii) the lesser of—

(I) the balance of such reserves as of the close of the taxpayer's last taxable year beginning before January 1, 1988, or

(II) the balance of the reserves described in subclause (I), reduced in the same manner as under section 585(b)(2)(B)(ii) on the basis of the taxable years described in clause (i) and

this clause.

(B) Special rule for thrifts which become small banks

In the case of a bank (as defined in section 581) which was not a large bank (as defined in section 585(c)(2)) for its first taxable year beginning after December 31, 1995—

(i) the balance taken into account under subparagraph (A)(ii) shall not be less than the amount which would be the balance of such reserves as of the close of its last taxable year beginning before such date if the additions to such reserves for all taxable years had been determined under section 585(b)(2)(A), and

(ii) the opening balance of the reserve for bad debts as of the beginning of such first taxable year shall be the balance taken into account under subparagraph (A)(ii) (determined after the application of clause (i) of this subparagraph).

The preceding sentence shall not apply for purposes of paragraphs (5) and (6) or subsection (e)(1).

(3) Recapture of pre-1988 reserves where taxpayer ceases to be bank

If, during any taxable year beginning after December 31, 1995, a taxpayer to which paragraph (1) applied is not a bank (as defined in section 581), paragraph (1) shall apply to the reserves described in paragraph (2)(A)(ii) and the supplemental reserve; except that such reserves shall be taken into account ratably over the 6-taxable year period beginning with such taxable year.

(4) Suspension of recapture if residential loan requirement met

(A) In general

In the case of a bank which meets the residential loan requirement of subparagraph (B) for the first taxable year beginning after December 31, 1995, or for the following taxable year—

(i) no adjustment shall be taken into account under paragraph (1) for such taxable year, and

(ii) such taxable year shall be disregarded in determining—

(I) whether any other taxable year is a taxable year for which an adjustment is required to be taken into account under paragraph (1), and

(II) the amount of such adjustment.

(B) Residential loan requirement

A taxpayer meets the residential loan requirement of this subparagraph for any taxable year if the principal amount of the residential loans made by the taxpayer during such year is not less than the base amount for such year.

(C) Residential loan

For purposes of this paragraph, the term "residential loan" means any loan described in clause (v) of section 7701(a)(19)(C) but only if such loan is incurred in acquiring, constructing, or improving the property described in such clause.

(D) Base amount

For purposes of subparagraph (B), the base amount is the average of the principal amounts of the residential loans made by the taxpayer during the 6 most recent taxable years beginning on or before December 31, 1995. At the election of the taxpayer who made such loans during each of such 6 taxable years, the preceding sentence shall be applied without regard to the taxable year in which such principal amount was the highest and the taxable year in such principal amount was the lowest. Such an election may be made only for the first taxable year beginning after such date, and, if made for such taxable year, shall apply to the succeeding taxable year unless revoked with the consent of the Secretary.

(E) Controlled groups

In the case of a taxpayer which is a member of any controlled group of corporations described in section 1563(a)(1), subparagraph (B) shall be applied with respect to such group.

(5) Continued application of fresh start under section 585 transitional rules

In the case of a taxpayer to which paragraph (1) applied and which was not a large bank (as defined in section 585(c)(2)) for its first taxable year beginning after December 31, 1995:

(A) In general

For purposes of determining the net amount of adjustments referred to in section 585(c)(3)(A)(iii), there shall be taken into account only the excess (if any) of the reserve for bad debts as of the close of the last taxable year before the disqualification year over the balance taken into account by such taxpayer under paragraph (2)(A)(ii) of this subsection.

(B) Treatment under elective cut-off method

For purposes of applying section 585(c)(4)—

(i) the balance of the reserve taken into account under subparagraph (B) thereof shall be reduced by the balance taken into account by such taxpayer under paragraph (2)(A)(ii) of this subsection, and

(ii) no amount shall be includible in gross income by reason of such reduction.

(6) Suspended reserve included as section 381(c) items

The balance taken into account by a taxpayer under paragraph (2)(A)(ii) of this subsection and the supplemental reserve shall be treated as items described in section 381(c).

(7) Conversions to credit unions

In the case of a taxpayer to which paragraph (1) applied which becomes a credit union described in section 501(c) and exempt from taxation under section 501(a)—

(A) any amount required to be included in the gross income of the credit union by reason of this subsection shall be treated as derived from an unrelated trade or business (as defined in section 513), and

(B) for purposes of paragraph (3), the credit union shall not be treated as if it were a bank.

(8) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out this subsection and subsection (e), including regulations providing for the application of such subsections in the case of acquisitions, mergers, spin-offs, and other reorganizations.

(Aug. 16, 1954, ch. 736, 68A Stat. 205; Pub. L. 87–834, §6(a), Oct. 16, 1962, 76 Stat. 977; Pub. L. 91–172, title IV, §432(a), (b), Dec. 30, 1969, 83 Stat. 620, 622; Pub. L. 94–455, title XIX, §1901(a)(84), Oct. 4, 1976, 90 Stat. 1778; Pub. L. 96–222, title I, §104(a)(3)(C), Apr. 1, 1980, 94 Stat. 215; Pub. L. 97–34, title II, §§243, 245(b), (c), Aug. 13, 1981, 95 Stat. 255, 256; Pub. L. 99–514, title III, §311(b)(2), title VI, §671(b)(2), title IX, §901(b)(1)–(3), (d)(2), Oct. 22, 1986, 100 Stat. 2219, 2317, 2378; Pub. L. 100–647, title I, §§1003(c)(3), 1006(t)(25)(B), Nov. 10, 1988, 102 Stat. 3384, 3426; Pub. L. 101–73, title XIV, §1401(b)(3), Aug. 9, 1989, 103 Stat. 550; Pub. L. 101–508, title XI, §11801(c)(12)(F), Nov. 5, 1990, 104 Stat. 1388–527; Pub. L. 104–188, title I, §§1616(a), (b)(7), 1704(t)(51), Aug. 20, 1996, 110 Stat. 1854, 1857, 1890; Pub. L. 105–34, title XVI, §1601(f)(5)(A), Aug. 5, 1997, 111 Stat. 1091.)

REFERENCES IN TEXT

Section 596, referred to in subsec. (b)(2)(D)(iv), was repealed by Pub. L. 104–188, title I, §1616(b)(9), Aug. 20, 1996, 110 Stat. 1857.

The Tax Reform Act of 1976, referred to in subsec. (c)(2), is Pub. L. 94–455, Oct. 4, 1976, 90 Stat. 1520, as amended, which was enacted Oct. 4, 1976. For complete classification of this Act to the Code, see Tables.

Section 5(e) of the Federal Deposit Insurance Act, referred to in subsec. (e)(1), is classified to section 1815(e) of Title 12, Banks and Banking.

AMENDMENTS

1997—Subsec. (e)(1)(A). Pub. L. 105–34 inserted "(and, in the case of an S corporation, the accumulated adjustments account, as defined in section 1368(e)(1))" after "1951,".

1996—Subsec. (b)(1)(A), (3). Pub. L. 104–188, §1704(t)(51), provided that the amendment made by

section 11801(c)(12)(F) of Pub. L. 101–508 shall be applied as if "and (3)" appeared instead of "and (E)". See 1990 Amendment note below.

Subsec. (e)(1). Pub. L. 104–188, §1616(b)(7)(A), substituted "by a taxpayer having a balance described in subsection (g)(2)(A)(ii)" for "by a domestic building and loan association or an institution that is treated as a mutual savings bank under section 591(b)" in introductory provisions.

Pub. L. 104–188, §1616(b)(7)(C)–(E), in closing provisions, substituted "a taxpayer having a balance described in subsection (g)(2)(A)(ii)" for "the association or an institution that is treated as a mutual savings bank under section 591(b)" after "complete liquidation of" and for "an association" after "an interest in" and inserted at end "This paragraph shall not apply to any distribution of all of the stock of a bank (as defined in section 581) to another corporation if, immediately after the distribution, such bank and such other corporation are members of the same affiliated group (as defined in section 1504) and the provisions of section 5(e) of the Federal Deposit Insurance Act (as in effect on December 31, 1995) or similar provisions are in effect."

Subsec. (e)(1)(B). Pub. L. 104–188, §1616(b)(7)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "then out of the reserve for losses on qualifying real property loans, to the extent additions to such reserve exceed the additions which would have been allowed under subsection (b)(3),".

Subsecs. (f), (g). Pub. L. 104–188, §1616(a), added subsecs. (f) and (g).

1990—Subsec. (b). Pub. L. 101–508, §11801(c)(12)(F), which directed the amendment of pars. (1)(A) and (E) by substituting "section 585(b)(2)" for "section 585(b)(3)", was executed to pars. (1)(A) and (3). See 1996 Amendment note above.

1989—Subsec. (e)(1). Pub. L. 101–73 amended last sentence generally. Prior to amendment, last sentence read as follows: "This paragraph shall not apply to any transaction to which section 381 (relating to carryovers in certain corporate acquisitions) applies, or to any distribution to the Federal Savings and Loan Insurance Corporation in redemption of an interest in an association, if such interest was originally received by the Federal Savings and Loan Insurance Corporation in exchange for financial assistance pursuant to section 406(f) of the National Housing Act (12 U.S.C. sec. 1729(f))."

1988—Subsec. (b)(2)(D)(v). Pub. L. 100–647, §1003(c)(3), added cl. (v).

Subsec. (d)(4). Pub. L. 100–647, §1006(t)(25)(B), inserted at end "For purposes of determining whether any interest in a REMIC qualifies under the preceding sentence, any interest in another REMIC held by such REMIC shall be treated as a qualifying real property loan under principles similar to the principles of the preceding sentence, except that if such REMIC's are part of a tiered structure, they shall be treated as 1 REMIC for purposes of this paragraph."

1986—Subsec. (a). Pub. L. 99–514, §901(b)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "This section shall apply to any mutual savings bank, domestic building and loan association, or cooperative bank without capital stock organized and operated for mutual purposes and without profit."

Subsec. (b)(1). Pub. L. 99–514, §901(d)(2)(A), (B), in introductory provisions, substituted "subsection (a)" for "section 166(c)" and in subpar. (B), substituted "paragraph (2) or (3), whichever is the larger" for "paragraph (2), (3), or (4), whichever amount is the largest" in introductory provisions and "paragraph (3)" for "paragraph (4)" in cl. (i).

Subsec. (b)(2)(A). Pub. L. 99–514, §901(b)(2)(A), added subpar. (A) and struck out former subpar. (A) which provided that subject to subpars. (B), (C), and (D), the amount determined under par. (2) was to be an amount equal to applicable percentage of taxable income for such year determined under a table which fixed specific percentages for taxable years 1976, 1977, 1978, and 1979 or thereafter.

Subpar. (b)(2)(B). Pub. L. 99–514, §901(b)(2)(A), added subpar. (B), which incorporated provisions of former subpar. (C), relating to reducing amounts referred to in par. (1)(A), and struck out former subpar. (B) which provided for reduction of applicable percentage in certain cases.

Subsec. (b)(2)(C). Pub. L. 99–514, §901(b)(2)(A), (B), redesignated former subpar. (D) as (C) and struck out former subpar. (C) which related to reduction for amounts referred to in par. (1)(A). See par. (1)(B).

Subsec. (b)(2)(D). Pub. L. 99–514, §901(b)(2)(B), (d)(2)(B), redesignated subpar. (E) as (D) and substituted in cl. (iv) "8 percent" for "the applicable percentage (determined under subparagraphs (A) and (B))". Former subpar. (D) redesignated (C).

Subsec. (b)(2)(E). Pub. L. 99–514, §901(b)(2)(B), redesignated subpar. (E) as (D).

Pub. L. 99–514, §311(b)(2), redesignated former cl. (v) as (iv), and struck out former cl. (iv) which read as follows: "by excluding from gross income an amount equal to the lesser of 18/46 of the net long-term capital gain for the taxable year or 18/46 of the net long-term capital gain for the taxable year from the sale or exchange of property other than property described in clause (iii), and".

Subsec. (b)(3), (4). Pub. L. 99–514, §901(b)(3), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: "The amount determined under this paragraph to be a reasonable addition to the reserve

for losses on qualifying real property loans shall be computed in the same manner as is provided with respect to additions to the reserves for losses on loans of banks under section 585(b)(2), reduced by the amount referred to in paragraph (1)(A) for the taxable year."

Subsec. (b)(5). Pub. L. 99–514, §901(b)(3), struck out par. (5) which read as follows: "For purposes of paragraph (3), the amount deemed to be the balance of the reserve for losses on loans at the beginning of the taxable year shall be the total of the balances at such time of the reserve for losses on nonqualifying loans, the reserve for losses on qualifying real property loans, and the supplemental reserve for losses on loans."

Subsec. (d)(4). Pub. L. 99–514, §671(b)(2), added par. (4).

Subsec. (e)(1)(B). Pub. L. 99–514, §901(d)(2)(C), substituted "subsection (b)(3)" for "subsection (B)(4)".

1981—Subsec. (a). Pub. L. 97–34, §245(c)(1), struck out "not having capital stock represented by shares" after "mutual savings bank".

Subsec. (b)(2)(B). Pub. L. 97–34, §245(b)(1), inserted "which is not described in section 591(b)" after "mutual savings bank" in cls. (i) and (ii) and in last sentence.

Subsec. (b)(2)(C). Pub. L. 97–34, §245(b)(2), inserted "which are not described in section 591(b)" after "mutual savings banks" in cl. (i).

Subsec. (e)(1). Pub. L. 97–34, §245(c)(2), inserted "or an institution that is treated as a mutual savings bank under section 591(b)" after "domestic building and loan association" and "liquidation of the association".

Pub. L. 97–34, §243, inserted provisions making par. (1) inapplicable to any distribution to the Federal Savings and Loan Insurance Corporation in redemption of an interest in an association, if such interest was originally received by the Corporation in exchange for financial assistance pursuant to section 1729(f) of title 12.

1980—Subsec. (b)(2)(E)(iv). Pub. L. 96–222 substituted "18/46" for "3/8" in two places.

1976—Subsec. (b)(2)(A). Pub. L. 94–455, §1901(a)(84)(A), struck from the percentage table the years 1969 to 1975, inclusive.

Subsec. (b)(2)(E)(i). Pub. L. 94–455, §1901(a)(84)(D), substituted "subsection (e)" for "subsection (f)" after "by reason of".

Subsec. (c)(2). Pub. L. 94–455, §1901(a)(84)(B), added par. (2). Former par. (2), relating to allocation of pre-1963 reserves for bad debts, was struck out.

Subsec. (c)(3). Pub. L. 94–455, §1901(a)(84)(B), redesignated par. (6) as par. (3). Former par. (3), relating to the method of allocation to reserves for bad debts, was struck out.

Subsec. (c)(4), (5). Pub. L. 94–455, §1901(a)(84)(B), struck out par. (4) which defined "pre-1963 reserves", and struck out par. (5) which related to certain pre-1952 surplus.

Subsec. (c)(6). Pub. L. 94–455, §1901(a)(84)(B), redesignated par. (6) as (3).

Subsecs. (d) to (f). Pub. L. 94–455, §1901(a)(84)(C), struck out subsec. (d) relating to the determination of taxable income for taxpayer which uses the reserve method of accounting for bad debts for taxable years beginning in 1962 and ending in 1963, and redesignated subsecs. (e) and (f) as (d) and (e), respectively.

Subsecs. (e), (f). Pub. L. 94–455, §1901(a)(84)(C), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

1969—Subsec. (b)(1)(A). Pub. L. 91–172, §432(a)(1), inserted provisions for the method of computing the amount of the reasonable addition to the reserve for losses on nonqualifying loans.

Subsec. (b)(2). Pub. L. 91–172, §432(a)(2), substituted a table of applicable percentages of the taxable income for each year up to 1979 and thereafter for the amount in excess of 60 percent over the amount referred to in former subsec. (b)(1)(A), transferred the remaining provisions of former subsec. (b)(2) to subpart (D), and added subpars. (B) to (E).

Subsec. (b)(3). Pub. L. 91–172, §432(a)(2), substantially changed method of computation of the amount by conforming it to the method of determining the additions to the reserves for losses on loans of banks under section 585(b)(2).

Subsec. (b)(4). Pub. L. 91–172, §432(a)(2), changed method of computation of the amount by conforming it to the method of determining the additions to the reserves for losses on loans of banks under section 585(b)(3).

Subsec. (b)(5). Pub. L. 91–172, §432(a)(2), substituted provisions relating to determination of reserve for percentage method for provisions relating to limitation in case of certain domestic building and loan associations.

Subsec. (f). Pub. L. 91–172, §432(b), excepted the application of par. (1) to any transaction to which section 381 of this title applied.

1962—Pub. L. 87–834 amended section generally. Prior to such amendment, section read as follows:

"§593. ADDITIONS TO RESERVE FOR BAD DEBTS

"In the case of a mutual savings bank not having capital stock represented by shares, a domestic building and loan association, and a cooperative bank without capital stock organized and operated for mutual purposes and without profit, the reasonable addition to a reserve for bad debts under section 166(c) shall be determined with due regard to the amount of the taxpayer's surplus or bad debt reserves existing at the close of December 31, 1951. In the case of a taxpayer described in the preceding sentence, the reasonable addition to a reserve for bad debts for any taxable year shall in no case be less than the amount determined by the taxpayer as the reasonable addition for such year; except that the amount determined by the taxpayer under this sentence shall not be greater than the lesser of—

"(1) the amount of its taxable income for the taxable year, computed without regard to this section, or

"(2) the amount by which 12 percent of the total deposits or withdrawable accounts of its depositors at the close of such year exceeds the sum of its surplus, undivided profits, and reserves at the beginning of the taxable year."

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 23 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, §1616(c), Aug. 20, 1996, 110 Stat. 1857, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 50, 52, 57, 246, 291, 585, 860E, 992, 1038, 1042, 1277, and 1361 of this title and repealing sections 595 and 596 of this title] shall apply to taxable years beginning after December 31, 1995.

"(2) SUBSECTION (b)(7)(B).—The amendments made by subsection (b)(7)(B) [amending this section] shall not apply to any distribution with respect to preferred stock if—

"(A) such stock is outstanding at all times after October 31, 1995, and before the distribution, and

"(B) such distribution is made before the date which is 1 year after the date of the enactment of this Act [Aug. 20, 1996] (or, in the case of stock which may be redeemed, if later, the date which is 30 days after the earliest date that such stock may be redeemed).

"(3) SUBSECTION (b)(8).—The amendment made by subsection (b)(8) [repealing section 595 of this title] shall apply to property acquired in taxable years beginning after December 31, 1995.

"(4) SUBSECTION (b)(10).—The amendments made by subsection (b)(10) [amending section 860E of this title] shall not apply to any residual interest held by a taxpayer if such interest has been held by such taxpayer at all times after October 31, 1995."

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–73, title XIV, §1401(c)(6), Aug. 9, 1989, 103 Stat. 550, provided that: "The amendment made by subsection (b)(3) [amending this section] shall take effect on the date of the enactment of this Act [Aug. 9, 1989]."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 311(b)(2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 311(c) of Pub. L. 99–514, set out as a note under section 1201 of this title.

Amendment by section 671(b)(2) of Pub. L. 99–514 effective Jan. 1, 1987, see section 675(a) of Pub. L. 99–514, as amended, set out as an Effective Date note under section 860A of this title.

Amendment by section 901(b)(1)–(3), (d)(2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 901(e) of Pub. L. 99–514, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title II, §246(b), Aug. 13, 1981, 95 Stat. 256, provided that: "The amendment made by section 243 [amending this section] shall apply to any distribution made on or after January 1, 1981."

Amendment by section 245(b), (c) of Pub. L. 97–34 applicable with respect to taxable years ending after Aug. 13, 1981, see section 246(d) of Pub. L. 97–34, set out as a note under section 591 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title IV, §432(e), Dec. 30, 1969, 83 Stat. 623, provided that: "The amendments made by this section [amending this section and section 7701 of this title] shall be effective for taxable years beginning after July 11, 1969."

EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87–834, §6(g)(1), Oct. 16, 1962, 76 Stat. 984, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after December 31, 1962, except that section 593(f) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall apply to distributions after December 31, 1962, in taxable years ending after such date."

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

TRANSFER OF FUNCTIONS

Federal Savings and Loan Insurance Corporation abolished and its functions transferred, see sections 401 to 406 of Pub. L. 101–73, set out as a note under section 1437 of Title 12, Banks and Banking.

[1] *See References in Text note below.*

§594. Alternative tax for mutual savings banks conducting life insurance business

(a) Alternative tax

In the case of a mutual savings bank not having capital stock represented by shares, authorized under State law to engage in the business of issuing life insurance contracts, and which conducts a life insurance business in a separate department the accounts of which are maintained separately from the other accounts of the mutual savings bank, there shall be imposed in lieu of the taxes imposed by section 11 or section 1201(a), a tax consisting of the sum of the partial taxes determined under paragraphs (1) and (2):

(1) A partial tax computed on the taxable income determined without regard to any items of gross income or deductions properly allocable to the business of the life insurance department, at the rates and in the manner as if this section had not been enacted; and

(2) a partial tax computed on the income of the life insurance department determined without regard to any items of gross income or deductions not properly allocable to such department, at the rates and in the manner provided in subchapter L (sec. 801 and following) with respect to life insurance companies.

(b) Limitations of section

Subsection (a) shall apply only if the life insurance department would, if it were treated as a separate corporation, qualify as a life insurance company under section 816.

(Aug. 16, 1954, ch. 736, 68A Stat. 205; Mar. 13, 1956, ch. 83, §5(3), 70 Stat. 49; Pub. L. 98–369, div. A, title II, §211(b)(8), July 18, 1984, 98 Stat. 755.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98–369 substituted "section 816" for "section 801".

1956—Subsec. (a)(2). Act Mar. 13, 1956, substituted "the income" for "the taxable income (as defined in section 803)".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Mar. 13, 1956, applicable only to taxable years beginning after Dec. 31, 1954, see section 6 of act Mar. 13, 1956, set out as a note under section 821 of this title.

[§§595, 596. Repealed. Pub. L. 104–188, title I, §1616(b)(8), (9), Aug. 20, 1996, 110 Stat. 1857]

Section 595, added Pub. L. 87–834, §6(b), Oct. 16, 1962, 76 Stat. 982; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, related to foreclosure on property securing loans, including provisions relating to nonrecognition of gain or loss as result of foreclosure, character of property, basis, and regulatory authority.

Section 596, added Pub. L. 91–172, title IV, §434(a), Dec. 30, 1969, 83 Stat. 624; amended Pub. L. 99–514, title IX, §901(d)(4)(D), Oct. 22, 1986, 100 Stat. 2380, provided that in case of organization to which section 593 of this title applied and which computed additions to reserve for losses on loans for taxable year under section 593(b)(2) of this title, total amount allowed under sections 243, 244, and 245 of this title for taxable year as deduction with respect to dividends received was to be reduced by amount equal to 8 percent of such total amount.

EFFECTIVE DATE OF REPEAL

Repeal of section 595 applicable to property acquired in taxable years beginning after Dec. 31, 1995, and repeal of section 596 applicable to taxable years beginning after Dec. 31, 1995, see section 1616(c)(1), (3) of Pub. L. 104–188, set out as an Effective Date of 1996 Amendment note under section 593 of this title.

§597. Treatment of transactions in which Federal financial assistance provided

(a) General rule

The treatment for purposes of this chapter of any transaction in which Federal financial assistance is provided with respect to a bank or domestic building and loan association shall be determined under regulations prescribed by the Secretary.

(b) Principles used in prescribing regulations

(1) Treatment of taxable asset acquisitions

In the case of any acquisition of assets to which section 381(a) does not apply, the regulations prescribed under subsection (a) shall—

(A) provide that Federal financial assistance shall be properly taken into account by the institution from which the assets were acquired, and

(B) provide the proper method of allocating basis among the assets so acquired (including rights to receive Federal financial assistance).

(2) Other transactions

In the case of any transaction not described in paragraph (1), the regulations prescribed under subsection (a) shall provide for the proper treatment of Federal financial assistance and appropriate adjustments to basis or other tax attributes in connection with such assistance.

(3) Denial of double benefit

No regulations prescribed under this section shall permit the utilization of any deduction (or

other tax benefit) if such amount was in effect reimbursed by nontaxable Federal financial assistance.

(c) Federal financial assistance

For purposes of this section, the term "Federal financial assistance" means—

(1) any money or other property provided with respect to a domestic building and loan association by the Federal Savings and Loan Insurance Corporation or the Resolution Trust Corporation pursuant to section 406(f) of the National Housing Act or section 21A [1] of the Federal Home Loan Bank Act (or under any other similar provision of law), and

(2) any money or other property provided with respect to a bank or domestic building and loan association by the Federal Deposit Insurance Corporation pursuant to section 11(f) or 13(c) of the Federal Deposit Insurance Act (or under any other similar provision of law),

regardless of whether any note or other instrument is issued in exchange therefor.

(d) Domestic building and loan association

For purposes of this section, the term "domestic building and loan association" has the meaning given such term by section 7701(a)(19) without regard to subparagraph (C) thereof.

(Added Pub. L. 97–34, title II, §244(a), Aug. 13, 1981, 95 Stat. 255; amended Pub. L. 99–514, title IX, §904(b)(1), Oct. 22, 1986, 100 Stat. 2385; Pub. L. 100–647, title IV, §4012(b)(2)(A)–(D)(i), (c)(1), Nov. 10, 1988, 102 Stat. 3657, 3658; Pub. L. 101–73, title XIV, §1401(a)(3)(A), (b)(1), Aug. 9, 1989, 103 Stat. 548, 549; Pub. L. 101–239, title VII, §7841(e)(1), Dec. 19, 1989, 103 Stat. 2429; Pub. L. 101–508, title XI, §11704(a)(7), Nov. 5, 1990, 104 Stat. 1388–518.)

REFERENCES IN TEXT

Section 406 of the National Housing Act, referred to in subsec. (c)(1), which was classified to section 1729 of Title 12, Banks and Banking, was repealed by Pub. L. 101–73, title IV, §407, Aug. 9, 1989, 103 Stat. 363.

Section 21A of the Federal Home Loan Bank Act, referred to in subsec. (c)(1), was classified to former section 1441a of Title 12, Banks and Banking, prior to repeal by Pub. L. 111–203, title III, §364(b), July 21, 2010, 124 Stat. 1555.

Sections 11(f) and 13(c) of the Federal Deposit Insurance Act, referred to in subsec. (c)(2), are classified to sections 1821(f) and 1823(c), respectively, of Title 12.

AMENDMENTS

1990—Subsec. (c). Pub. L. 101–508 substituted "For purposes of" for "The purposes of".

1989—Pub. L. 101–73, §1401(b)(1), repealed amendment made by Pub. L. 99–514, §904(b)(1), see 1986 Amendment note below.

Pub. L. 101–73, §1401(a)(3)(A), amended section generally, substituting present provisions for former provisions which contained section catchline that read "FSLIC or FDIC financial assistance" and which provided: in subsec. (a) for an exclusion from gross income; in subsec. (b) for no reduction in basis of assets; in subsec. (c) for a reduction of tax attributes by 50 percent of amounts excludable under subsection (a); and in subsec. (d) for a definition of "domestic building and loan association".

Subsec. (b)(2). Pub. L. 101–239 substituted "in connection with such assistance" for "to reflect such treatment".

1988—Pub. L. 100–647, §4012(b)(2)(D)(i), substituted "FSLIC or FDIC" for "FSLIC" in section catchline.

Subsec. (a). Pub. L. 100–647, §4012(b)(2)(A), inserted at end "Gross income of a bank does not include any amount of money or other property received from the Federal Deposit Insurance Corporation pursuant to sections 13(c), 15(c)(1), and 15(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1821(f) and 1823(c)(1) and (c)(2)), regardless of whether any note or other instrument is issued in exchange therefor."

Subsec. (b). Pub. L. 100–647, §4012(b)(2)(C), substituted "association or bank" for "association".

Subsec. (c). Pub. L. 100–647, §4012(c)(1), added subsec. (c).

Subsec. (d). Pub. L. 100–647, §4012(b)(2)(B), which directed amendment of section 597(b), as amended by section 4012(c)(1) of Pub. L. 100–647, by adding at the end thereof subsec. (d), was executed by adding subsec. (d) at the end of section 597, as amended by section 4012(c)(1) of Pub. L. 100–647, as the probable intent of Congress.

1986—Pub. L. 99–514, §904(b)(1), (c)(2)(A), as amended by Pub. L. 100–647, title IV, §4012(a)(2), which (applicable to transfers after Dec. 31, 1989, in taxable years ending after such date, with exceptions) directed

repeal of this section, was repealed by Pub. L. 101–73, §1401(b)(1), (c)(4), eff. Oct. 22, 1986, and I.R.C. of 1986 applicable as if the amendments made by such section had not been enacted.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7841(e)(2), Dec. 19, 1989, 103 Stat. 2429, provided that: "The amendment made by this subsection [amending this section] shall apply as if included in the amendments made by section 1401 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 [Pub. L. 101–73]."

Pub. L. 101–73, title XIV, §1401(c)(3)–(5), Aug. 9, 1989, 103 Stat. 550, provided that:

"(3) SUBSECTION (a)(3).—

"(A) IN GENERAL.—The amendments made by subsection (a)(3) [amending this section and repealing provisions set out below] shall apply to any amount received or accrued by the financial institution on or after May 10, 1989, except that such amendments shall not apply to transfers on or after such date pursuant to an acquisition to which the amendment made by subsection (a)(1) [amending section 368 of this title] does not apply.

"(B) INTERIM RULE.—In the case of any payment pursuant to a transaction on or after May 10, 1989, and before the date on which the Secretary of the Treasury (or his delegate) takes action in exercise of his regulatory authority under section 597 of the Internal Revenue Code of 1986 (as amended by subsection (a)(3)), the taxpayer may rely on the legislative history for the amendments made by subsection (a)(3) in determining the proper treatment of such payment.

"(4) SUBSECTION (b)(1).—The provisions of subsection (b)(1) [set out below] shall take effect on the date of the enactment of the Tax Reform Act of 1986 [Oct. 22, 1986].

"(5) SUBSECTION (b)(2).—The amendment made by subsection (b)(2) [amending provisions set out below] shall take effect on the date of the enactment of the Technical and Miscellaneous Revenue Act of 1988 [Nov. 10, 1988]."

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title IV, §4012(b)(2)(E), Nov. 10, 1988, 102 Stat. 3658, provided that: "The amendments made by this paragraph [amending this section] shall apply to any transfer—

"(i) after the date of the enactment of this Act [Nov. 10, 1988], and before January 1, 1990, unless such transfer is pursuant to an acquisition occurring on or before such date of enactment, and

"(ii) after December 31, 1989, if such transfer is pursuant to an acquisition occurring after such date of enactment and before January 1, 1990."

Pub. L. 100–647, title IV, §4012(c)(3), Nov. 10, 1988, 102 Stat. 3660, as amended by Pub. L. 101–73, title XIV, §1401(b)(2), Aug. 9, 1989, 103 Stat. 549, provided that: "The amendments made by this subsection [amending this section and provisions set out below] shall apply to any transfer—

"(A) after December 31, 1988, and before January 1, 1990, unless such transfer is pursuant to an acquisition occurring before January 1, 1989, and

"(B) after December 31, 1989, if such transfer is pursuant to an acquisition occurring after December 31, 1988, and before January 1, 1990.

In the case of any bank or any institution treated as a domestic building and loan association for purposes of section 597 of the 1986 Code by reason of the amendment made by subsection (b)(2)(B), the amendments made by this subsection shall also apply to any transfer before January 1, 1989, to which the amendments made by subsection (b)(2) [amending this section] apply."

EFFECTIVE DATE OF REPEAL

Pub. L. 99–514, title IX, §904(c)(2), Oct. 22, 1986, 100 Stat. 2385, as amended by Pub. L. 100–647, title IV, §4012(a)(2), (c)(2), Nov. 10, 1988, 102 Stat. 3656, 3660, which provided that repeal of this section was to be applicable to transfers after Dec. 31, 1989, in taxable years ending after such date, with exceptions, and which related to clarification of treatment of amounts excluded under this section, was repealed by Pub. L. 101–73, title XIV, §1401(a)(3)(B), (b)(1), Aug. 9, 1989, 103 Stat. 549.

EFFECTIVE DATE

Pub. L. 97–34, title II, §246(c), Aug. 13, 1981, 95 Stat. 256, provided that: "The amendment made by section 244 [enacting this section] shall apply to any payment made on or after January 1, 1981."

TRANSFER OF FUNCTIONS

Federal Savings and Loan Insurance Corporation abolished and its functions transferred, see sections 401 to 406 of Pub. L. 101–73, set out as a note under section 1437 of Title 12, Banks and Banking.

REPEAL OF PROVISIONS RELATING TO REPEAL OF SPECIAL REORGANIZATION RULES FOR FINANCIAL INSTITUTIONS

Pub. L. 101–73, title XIV, §1401(b)(1), Aug. 9, 1989, 103 Stat. 549, provided that: "Section 904 of the Tax Reform Act of 1986 [Pub. L. 99–514, amending section 368 of this title, repealing this section and enacting provisions set out as notes under sections 368 and 597 of this title] (other than subsection (c)(2)(B) thereof [section 904(c)(2)(B) of Pub. L. 99–514, formerly set out as a note above]) is hereby repealed and the Internal Revenue Code of 1986 shall be applied as if the amendments made by such section had not been enacted."

REFERENCES TO FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

Pub. L. 101–73, title XIV, §1401(c)(7), Aug. 9, 1989, 103 Stat. 550, provided that: "Any reference to the Federal Savings and Loan Insurance Corporation in section 597 of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act [Aug. 9, 1989]) shall be treated as including a reference to the Resolution Trust Corporation and the FSLIC Resolution Fund."

ANNUAL REPORTS ON TRANSACTIONS IN WHICH FEDERAL FINANCIAL ASSISTANCE PROVIDED

Pub. L. 101–73, title XIV, §1403, Aug. 9, 1989, 103 Stat. 551, which required the Secretary of the Treasury to submit annual reports to the Senate and to the Committee on Ways and Means of the House of Representatives on transactions with respect to which Federal financial assistance subject to this section was provided, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 142 of House Document No. 103–7.

[1] *See References in Text note below.*

[§601. Repealed. Pub. L. 94–455, title XIX, §1901(a)(85), Oct. 4, 1976, 90 Stat. 1778]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 206, related to a special deduction for bank affiliates.

EFFECTIVE DATE OF REPEAL

Repeal effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 2 of this title.

Subchapter I—Natural Resources

Part

I. Deductions.
[II. Repealed.]
III. Sales and exchanges.
IV. Mineral production payments.
V. Continental shelf areas.

PART I—DEDUCTIONS

Sec.

611. Allowance of deduction for depletion.
612. Basis for cost depletion.
613. Percentage depletion.
613A. Limitations on percentage depletion in case of oil and gas wells.[1]
614. Definition of property.
[615. Repealed.]
616. Development expenditures.
617. Deduction and recapture of certain mining exploration expenditures.

AMENDMENTS

1990—Pub. L. 101–508, title XI, §11801(b)(7), Nov. 5, 1990, 104 Stat. 1388–522, struck out item for part II "Exclusions from gross income".

1976—Pub. L. 94–455, title XIX, §1901(b)(21)(H), Oct. 4, 1976, 90 Stat. 1798, struck out item 615 "Exploration expenditures".

1969—Pub. L. 91–172, title V, §§503(b), 505(c), Dec. 30, 1969, 83 Stat. 631, 634, added items for parts IV and V.

Pub. L. 91–172, title V, §504(c)(5), Dec. 30, 1969, 83 Stat. 633, substituted "Pre-1970 exploration expenditures" for "Exploration expenditures" in item 615 and substituted "Deduction and recapture of certain mining exploration expenditures" for "Additional exploration expenditures in the case of domestic mining" in item 617.

1966—Pub. L. 89–570, §1(d), Sept. 12, 1966, 80 Stat. 762, added item 617.

[1] Editorially supplied. Section 613A added by Pub. L. 94–12 without corresponding amendment of part analysis.

§611. Allowance of deduction for depletion

(a) General rule

In the case of mines, oil and gas wells, other natural deposits, and timber, there shall be allowed as a deduction in computing taxable income a reasonable allowance for depletion and for depreciation of improvements, according to the peculiar conditions in each case; such reasonable allowance in all cases to be made under regulations prescribed by the Secretary. For purposes of this part, the term "mines" includes deposits of waste or residue, the extraction of ores or minerals from which is treated as mining under section 613(c). In any case in which it is ascertained as a result of operations or of development work that the recoverable units are greater or less than the prior estimate thereof, then such prior estimate (but not the basis for depletion) shall be revised and the allowance under this section for subsequent taxable years shall be based on such revised estimate.

(b) Special rules

(1) Leases

In the case of a lease, the deduction under this section shall be equitably apportioned between the lessor and lessee.

(2) Life tenant and remainderman

In the case of property held by one person for life with remainder to another person, the deduction under this section shall be computed as if the life tenant were the absolute owner of the property and shall be allowed to the life tenant.

(3) Property held in trust

In the case of property held in trust, the deduction under this section shall be apportioned between the income beneficiaries and the trustee in accordance with the pertinent provisions of the instrument creating the trust, or, in the absence of such provisions, on the basis of the trust income allocable to each.

(4) Property held by estate

In the case of an estate, the deduction under this section shall be apportioned between the estate and the heirs, legatees, and devisees on the basis of the income of the estate allocable to each.

(c) Cross reference

For other rules applicable to depreciation of improvements, see section 167.

(Aug. 16, 1954, ch. 736, 68A Stat. 207; Pub. L. 85–866, title I, §35, Sept. 2, 1958, 72 Stat. 1632; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

1958—Subsec. (d)(4). Pub. L. 85–866 substituted "devisees" for "devises".

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

§612. Basis for cost depletion

Except as otherwise provided in this subchapter, the basis on which depletion is to be allowed in respect of any property shall be the adjusted basis provided in section 1011 for the purpose of determining the gain upon the sale or other disposition of such property.

(Aug. 16, 1954, ch. 736, 68A Stat. 208.)

§613. Percentage depletion

(a) General rule

In the case of the mines, wells, and other natural deposits listed in subsection (b), the allowance for depletion under section 611 shall be the percentage, specified in subsection (b), of the gross income from the property excluding from such gross income an amount equal to any rents or royalties paid or incurred by the taxpayer in respect of the property. Such allowance shall not exceed 50 percent (100 percent in the case of oil and gas properties) of the taxpayer's taxable income from the property (computed without allowance for depletion and without the deduction under section 199). For purposes of the preceding sentence, the allowable deductions taken into account with respect to expenses of mining in computing the taxable income from the property shall be decreased by an amount equal to so much of any gain which (1) is treated under section 1245 (relating to gain from disposition of certain depreciable property) as ordinary income, and (2) is properly allocable to the property. In no case shall the allowance for depletion under section 611 be less than it would be if computed without reference to this section.

(b) Percentage depletion rates

The mines, wells, and other natural deposits, and the percentages, referred to in subsection (a) are as follows:

(1) 22 percent

(A) sulphur and uranium; and

(B) if from deposits in the United States—anorthosite, clay, laterite, and nephelite syenite (to the extent that alumina and aluminum compounds are extracted therefrom), asbestos, bauxite, celestite, chromite, corundum, fluorspar, graphite, ilmenite, kyanite, mica, olivine, quartz crystals (radio grade), rutile, block steatite talc, and zircon, and ores of the following metals: antimony, beryllium, bismuth, cadmium, cobalt, columbium, lead, lithium, manganese, mercury, molybdenum, nickel, platinum and platinum group metals, tantalum, thorium, tin, titanium, tungsten, vanadium, and zinc.

(2) 15 percent

If from deposits in the United States—

(A) gold, silver, copper, and iron ore, and

(B) oil shale (except shale described in paragraph (5)).

(3) 14 percent

(A) metal mines (if paragraph (1)(B) or (2)(A) does not apply), rock asphalt, and vermiculite; and

(B) if paragraph (1)(B), (5), or (6)(B) does not apply, ball clay, bentonite, china clay, sagger clay, and clay used or sold for use for purposes dependent on its refractory properties.

(4) 10 percent

Asbestos (if paragraph (1)(B) does not apply), brucite, coal, lignite, perlite, sodium chloride, and wollastonite.

(5) 7½ percent

Clay and shale used or sold for use in the manufacture of sewer pipe or brick, and clay, shale, and slate used or sold for use as sintered or burned lightweight aggregates.

(6) 5 percent

(A) gravel, peat, pumice, sand, scoria, shale (except shale described in paragraph (2)(B) or (5)), and stone (except stone described in paragraph (7));

(B) clay used, or sold for use, in the manufacture of drainage and roofing tile, flower pots, and kindred products; and

(C) if from brine wells—bromine, calcium chloride, and magnesium chloride.

(7) 14 percent

All other minerals, including, but not limited to, aplite, barite, borax, calcium carbonates, diatomaceous earth, dolomite, feldspar, fullers earth, garnet, gilsonite, granite, limestone, magnesite, magnesium carbonates, marble, mollusk shells (including clam shells and oyster shells), phosphate rock, potash, quartzite, slate, soapstone, stone (used or sold for use by the mine owner or operator as dimension stone or ornamental stone), thenardite, tripoli, trona, and (if paragraph (1)(B) does not apply) bauxite, flake graphite, fluorspar, lepidolite, mica, spodumene, and talc (including pyrophyllite), except that, unless sold on bid in direct competition with a bona fide bid to sell a mineral listed in paragraph (3), the percentage shall be 5 percent for any such other mineral (other than slate to which paragraph (5) applies) when used, or sold for use, by the mine owner or operator as rip rap, ballast, road material, rubble, concrete aggregates, or for similar purposes. For purposes of this paragraph, the term "all other minerals" does not include—

(A) soil, sod, dirt, turf, water, or mosses;

(B) minerals from sea water, the air, or similar inexhaustible sources; or

(C) oil and gas wells.

For the purposes of this subsection, minerals (other than sodium chloride) extracted from brines pumped from a saline perennial lake within the United States shall not be considered minerals from an inexhaustible source.

(c) Definition of gross income from property

For purposes of this section—

(1) Gross income from the property

The term "gross income from the property" means, in the case of a property other than an oil or gas well and other than a geothermal deposit, the gross income from mining.

(2) Mining

The term "mining" includes not merely the extraction of the ores or minerals from the ground but also the treatment processes considered as mining described in paragraph (4) (and the treatment processes necessary or incidental thereto), and so much of the transportation of ores or minerals (whether or not by common carrier) from the point of extraction from the ground to the plants or mills in which such treatment processes are applied thereto as is not in excess of 50 miles unless the Secretary finds that the physical and other requirements are such that the ore or mineral must be transported a greater distance to such plants or mills.

(3) Extraction of the ores or minerals from the ground

The term "extraction of the ores or minerals from the ground" includes the extraction by mine owners or operators of ores or minerals from the waste or residue of prior mining. The preceding sentence shall not apply to any such extraction of the mineral or ore by a purchaser of such waste or residue or of the rights to extract ores or minerals therefrom.

(4) Treatment processes considered as mining

The following treatment processes where applied by the mine owner or operator shall be considered as mining to the extent they are applied to the ore or mineral in respect of which he is entitled to a deduction for depletion under section 611:

(A) In the case of coal—cleaning, breaking, sizing, dust allaying, treating to prevent freezing, and loading for shipment;

(B) in the case of sulfur recovered by the Frasch process—cleaning, pumping to vats, cooling, breaking, and loading for shipment;

(C) in the case of iron ore, bauxite, ball and sagger clay, rock asphalt, and ores or minerals which are customarily sold in the form of a crude mineral product—sorting, concentrating, sintering, and substantially equivalent processes to bring to shipping grade and form, and loading for shipment;

(D) in the case of lead, zinc, copper, gold, silver, uranium, or fluorspar ores, potash, and ores or minerals which are not customarily sold in the form of the crude mineral product—crushing, grinding, and beneficiation by concentration (gravity, flotation, amalgamation, electrostatic, or magnetic), cyanidation, leaching, crystallization, precipitation (but not including electrolytic deposition, roasting, thermal or electric smelting, or refining), or by substantially equivalent processes or combination of processes used in the separation or extraction of the product or products from the ore or the mineral or minerals from other material from the mine or other natural deposit;

(E) the pulverization of talc, the burning of magnesite, the sintering and nodulizing of phosphate rock, the decarbonation of trona, and the furnacing of quicksilver ores;

(F) in the case of calcium carbonates and other minerals when used in making cement—all processes (other than preheating of the kiln feed) applied prior to the introduction of the kiln feed into the kiln, but not including any subsequent process;

(G) in the case of clay to which paragraph (5) or (6)(B) of subsection (b) applies—crushing, grinding, and separating the mineral from waste, but not including any subsequent process;

(H) in the case of oil shale—extraction from the ground, crushing, loading into the retort, and retorting (including in situ retorting), but not hydrogenation, refining, or any other process subsequent to retorting; and

(I) any other treatment process provided for by regulations prescribed by the Secretary which, with respect to the particular ore or mineral, is not inconsistent with the preceding provisions of this paragraph.

(5) Treatment processes not considered as mining

Unless such processes are otherwise provided for in paragraph (4) (or are necessary or incidental to processes so provided for), the following treatment processes shall not be considered as "mining": electrolytic deposition, roasting, calcining, thermal or electric smelting, refining, polishing, fine pulverization, blending with other materials, treatment effecting a chemical change, thermal action, and molding or shaping.

(d) Denial of percentage depletion in case of oil and gas wells

Except as provided in section 613A, in the case of any oil or gas well, the allowance for depletion shall be computed without reference to this section.

(e) Percentage depletion for geothermal deposits

(1) In general

In the case of geothermal deposits located in the United States or in a possession of the United States, for purposes of subsection (a)—

(A) such deposits shall be treated as listed in subsection (b), and

(B) 15 percent shall be deemed to be the percentage specified in subsection (b).

(2) Geothermal deposit defined

For purposes of paragraph (1), the term "geothermal deposit" means a geothermal reservoir

consisting of natural heat which is stored in rocks or in an aqueous liquid or vapor (whether or not under pressure). Such a deposit shall in no case be treated as a gas well for purposes of this section or section 613A, and this section shall not apply to a geothermal deposit which is located outside the United States or its possessions.

(3) Percentage depletion not to include lease bonuses, etc.

In the case of any geothermal deposit, the term "gross income from the property" shall, for purposes of this section, not include any amount described in section 613A(d)(5).

(Aug. 16, 1954, ch. 736, 68A Stat. 208; Pub. L. 85–866, title I, §36(a), Sept. 2, 1958, 72 Stat. 1633; Pub. L. 86–564, title III, §302(a), (b), June 30, 1960, 74 Stat. 291, 292; Pub. L. 87–834, §13(e), Oct. 16, 1962, 76 Stat. 1034; Pub. L. 88–571, §6(a), Sept. 2, 1964, 78 Stat. 860; Pub. L. 89–809, title II, §§207(a), 208(a), 209(a), (b), Nov. 13, 1966, 80 Stat. 1579, 1580; Pub. L. 91–172, title V, §§501(a), 502(a), Dec. 30, 1969, 83 Stat. 629, 630; Pub. L. 93–499, §2(a), Oct. 29, 1974, 88 Stat. 1550; Pub. L. 94–12, title V, §501(b)(1), (2), Mar. 29, 1975, 89 Stat. 53; Pub. L. 94–455, title XIX, §§1901(b)(3)(K), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1793, 1834; Pub. L. 95–618, title IV, §403(a)(1), (2)(A), Nov. 9, 1978, 92 Stat. 3203; Pub. L. 99–514, title IV, §412(a)(2), Oct. 22, 1986, 100 Stat. 2227; Pub. L. 101–508, title XI, §§11522(a), 11815(b)(1), (2), Nov. 5, 1990, 104 Stat. 1388–486, 1388–557, 1388–558; Pub. L. 104–188, title I, §1704(t)(34), Aug. 20, 1996, 110 Stat. 1889; Pub. L. 108–357, title I, §102(d)(6), Oct. 22, 2004, 118 Stat. 1429; Pub. L. 109–135, title IV, §412(gg), Dec. 21, 2005, 119 Stat. 2639.)

AMENDMENTS

2005—Subsec. (c)(4)(H). Pub. L. 109–135 inserted "(including in situ retorting)" after "and retorting".

2004—Subsec. (a). Pub. L. 108–357, which directed the insertion of "and without the deduction under section 199" after "without allowances for depletion", was executed by making the insertion after "without allowance for depletion", to reflect the probable intent of Congress.

1996—Subsec. (e)(1)(B). Pub. L. 104–188 substituted "subsection (b)." for "subsection (b),".

1990—Subsec. (a). Pub. L. 101–508, §11522(a), inserted "(100 percent in the case of oil and gas properties)" after "50 percent".

Subsec. (e)(1)(B). Pub. L. 101–508, §11815(b)(2), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "the applicable percentage (determined under the table contained in paragraph (2)) shall be deemed to be the percentage specified in subsection (b)."

Subsec. (e)(2) to (4). Pub. L. 101–508, §11815(b)(1), redesignated pars. (3) and (4) as (2) and (3), respectively, and struck out former par. (2) which related to the applicable percentage depletion for geothermal deposits.

1986—Subsec. (e)(4). Pub. L. 99–514 added par. (4).

1978—Subsec. (c)(1). Pub. L. 95–618, §403(a)(2)(A), inserted "and other than a geothermal deposit" after "oil or gas well".

Subsec. (e). Pub. L. 95–618, §403(a)(1), added subsec. (e).

1976—Subsec. (a). Pub. L. 94–455, §1901(b)(3)(K), substituted "ordinary income" for "gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231".

Subsec. (c)(2), (4)(I). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

1975—Subsec. (b)(1). Pub. L. 94–12, §501(b)(2)(A), struck out subpar. (A) "oil and gas wells" and redesignated former subpars. (B) and (C) as (A) and (B), respectively.

Subsec. (b)(3), (4). Pub. L. 94–12, §501(b)(2)(B), substituted "(1)(B)" for "(1)(C)" wherever appearing.

Subsec. (b)(7). Pub. L. 94–12, §501(b)(2) (B), (C), substituted "(1)(B)" for "(1)(C)" in provisions preceding subpar. (A) and added subpar. (C).

Subsec. (d). Pub. L. 94–12, §501(b)(1), substituted provisions denying the percentage depletion allowance in the case of oil and gas wells except as provided in section 613A for provisions governing the application of percentage depletion rates to certain taxable years ending in 1954.

1974—Subsec. (c)(4)(E). Pub. L. 93–499 inserted reference to decarbonation of trona.

1969—Subsec. (b). Pub. L. 91–172, §501(a), reduced the percentage depletion rate on oil and gas wells from 27½ percent to 22 percent, reduced to 22 percent other minerals formerly receiving percentage depletion at a rate of 23 percent, added molybdenum in the category of minerals subject to the 22 percent depletion rate, reduced to 14 percent the rate on minerals formerly receiving depletion at a 15 percent rate except in the case of domestic gold, silver, oil shale, copper, and iron ore, and inserted provision that for percentage depletion

purposes, minerals other than sodium chloride, extracted from brine pumped from a saline perennial lake within the United States are not to be considered minerals from an inexhaustible source.

Subsec. (c)(4)(H), (I). Pub. L. 91–172, §502(a), added subpar. (H) and redesignated former subpar. (H) as (I).

1966—Subsec. (b)(2)(B). Pub. L. 89–809, §207(a)(1), inserted "clay, laterite, and nephelite syenite" after "anorthosite".

Subsec. (b)(3)(B). Pub. L. 89–809, §§207(a)(2), 209(a)(2), substituted "if neither paragraph (2)(B), (5), or (6)(B) applies" for "if paragraph (5)(B) does not apply".

Subsec. (b)(5). Pub. L. 89–809, §209(a)(1), added par. (5). Former par. (5) redesignated (6).

Subsec. (b)(6). Pub. L. 89–809, §§208(a)(1), 209(a)(1), (3), (4), redesignated par. (5) as (6), struck out "mollusk shells (including clam shells and oyster shells),", substituted "shale (except shale described in paragraph (5)), and stone (except stone described in paragraph (7))" for "shale, and stone, except stone described in paragraph (6)" in subpar. (A), and struck out "building or paving brick," and "sewer pipe," in subpar. (B). Former par. (6) redesignated (7).

Subsec. (b)(7). Pub. L. 89–809, §§208(a)(2), 209(a)(1), (5), redesignated par. (6) as (7) and inserted "mollusk shells (including clam shells and oyster shells)," after "marble," and "(other than slate to which paragraph (5) applies)" after "any other such mineral".

Subsec. (c)(4)(G). Pub. L. 89–809, §209(b), substituted "paragraph (5) or (6)(B)" for "paragraph (5)(B)".

1964—Subsec. (b)(2)(B), (6). Pub. L. 88–571 inserted "beryllium" after "antimony" in par. (2)(B), and deleted "beryl" after "bauxite" in pars. (2)(B) and (6).

1962—Subsec. (a). Pub. L. 87–834 inserted provisions requiring the allowable deductions taken into account with respect to expenses of mining in computing the taxable income from the property to be decreased by an amount equal to so much of any gain which is treated under section 1245 as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231, and is properly allocable to the property.

1960—Subsec. (b)(3). Pub. L. 86–564, §302(a)(1), limited the 15 percent allowance for ball clay, bentonite, china clay, and sagger clay to cases where paragraph (5)(B) does not apply, and authorized a 15 percent allowance, if paragraph (5)(B) does not apply, for clay used or sold for use for purposes dependent on its refractory properties.

Subsec. (b)(5). Pub. L. 86–564, §302(a)(2), substituted provisions authorizing a 5 percent allowance for clay used, or sold for use, in the manufacture of building or paving brick, drainage and roofing tile, sewer pipe, flower pots, and kindred products for provisions which authorized a 5 percent allowance for brick and tile clay.

Subsec. (b)(6). Pub. L. 86–564, §302(a)(3), struck out provisions which authorized a 15 percent allowance for refractory and fire clay. See subsec. (b)(3) of this section.

Subsec. (c)(2). Pub. L. 86–564, §302(b)(1), substituted "the treatment processes considered as mining described in paragraph (4) (and the treatment processes necessary or incidental thereto)" for "the ordinary treatment processes normally applied by mine owners or operators in order to obtain the commercially marketable mineral product or products", and "such treatment processes" for "the ordinary treatment processes".

Subsec. (c)(4). Pub. L. 86–564, §302(b)(2), substituted "The following treatment processes where applied by the mine owner or operator shall be considered as mining to the extent they are applied to the ore or mineral in respect of which he is entitled to a deduction for depletion under section 611" for "The term 'ordinary treatment processes' includes the following" in opening provisions, included cleaning in subpar. (B), substituted "ores or minerals which" for "minerals which" and included substantially equivalent processes in subpar. (C), included uranium and minerals which are not customarily sold in the form of the crude mineral product and substituted "from the ore or the mineral or minerals from other material from the mine or other natural deposit" for "from the ore, including the furnacing of quicksilver ores" in subpar. (D), included the furnacing of quicksilver ores in subpar. (E), and added subpars. (F) to (H).

Subsec. (c)(5). Pub. L. 86–564, §302(b)(2), added par. (5).

1958—Subsec. (d). Pub. L. 85–866 added subsec. (d).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years beginning after Dec. 31, 2004, see section 102(e) of Pub. L. 108–357, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, §11522(c), Nov. 5, 1990, 104 Stat. 1388–486, provided that: "The amendments

made by this section [amending this section and sections 613A and 614 of this title] shall apply to taxable years beginning after December 31, 1990."

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title IV, §412(a)(3), Oct. 22, 1986, 100 Stat. 2227, provided that: "The amendment made by this subsection [amending this section and section 613A of this title] shall apply to amounts received or accrued after August 16, 1986, in taxable years ending after such date."

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–618, title IV, §403(c), Nov. 9, 1978, 92 Stat. 3204, provided that: "The amendments made by this section [amending this section and sections 613A and 614 of this title] shall take effect on October 1, 1978, and shall apply to taxable years ending on or after such date."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(b)(3)(K) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–12 effective Jan. 1, 1975, applicable to taxable years ending after Dec. 31, 1974, see section 501(c) of Pub. L. 94–12, set out as an Effective Note under section 613A of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Pub. L. 93–499, §2(b), Oct. 29, 1974, 88 Stat. 1550, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1970."

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title V, §501(b), Dec. 30, 1969, 83 Stat. 630, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after October 9, 1969."

Pub. L. 91–172, title V, §502(b), Dec. 30, 1969, 83 Stat. 630, provided that: "The amendments made by subsection (a) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Dec. 30, 1969]."

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89–809, title II, §207(b), Nov. 13, 1966, 80 Stat. 1579, provided that: "The amendments made by subsection (a) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Nov. 13, 1966]."

Pub. L. 89–809, title II, §208(b), Nov. 13, 1966, 80 Stat. 1579, provided that: "The amendments made by subsection (a) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Nov. 13, 1966]."

Pub. L. 89–809, title II, §209(c), Nov. 13, 1966, 80 Stat. 1580, provided that: "The amendments made by subsections (a) and (b) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Nov. 13, 1966]."

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88–571, §6(b), Sept. 2, 1964, 78 Stat. 860, provided that: "The amendments made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1963."

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable to taxable years beginning after Dec. 31, 1962, see section 13(g) of Pub. L. 87–834, set out as an Effective Date note under section 1245 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Pub. L. 86–564, title III, §302(c), June 30, 1960, 74 Stat. 293, as amended by Pub. L. 86–781, §4, Sept. 14, 1960, 74 Stat. 1018; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(c) EFFECTIVE DATE.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by subsections (a) and (b) [amending this section] shall be applicable only with respect to taxable years beginning after December 31, 1960.

"(2) CALCIUM CARBONATES, ETC.—

"(A) ELECTION FOR PAST YEARS.—In the case of calcium carbonates or other minerals

when used in making cement, if an election is made by the taxpayer under subparagraph (C)—

"(i) the amendments made by subsection (b) [amending this section] shall apply to taxable years with respect to which such election is effective and

"(ii) provisions having the same effect as the amendments made by subsection (b) [amending this section] shall be deemed to be included in the Internal Revenue Code of 1939 and shall apply to taxable years with respect to which such election is effective in lieu of the corresponding provisions of such Code.

"(B) YEARS TO WHICH APPLICABLE.—An election made under subparagraph (C) to have the provisions of this paragraph apply shall be effective for all taxable years beginning before January 1, 1961, in respect of which—

"(i) the assessment of a deficiency,

"(ii) the refund or credit of an overpayment, or

"(iii) the commencement of a suit for recovery of a refund under section 7405 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [section 7405 of this title],

is not prevented on the date of the enactment of this paragraph [Sept. 14, 1960] by the operation of any law or rule of law. Such election shall also be effective for any taxable year beginning before January 1, 1961, in respect of which an assessment of a deficiency has been made but not collected on or before the date of the enactment of this paragraph.

"(C) TIME AND MANNER OF ELECTION.—An election to have the provisions of this paragraph apply shall be made by the taxpayer on or before the 60th day after the date of publication in the Federal Register of final regulations issued under authority of subparagraph (F), and shall be made in such form and manner as the Secretary of the Treasury or his delegate shall prescribe by regulations. Such election, if made, may not be revoked.

"(D) STATUTES OF LIMITATION.—Notwithstanding any other law, the period within which an assessment of a deficiency attributable to the application of the amendments made by subsection (b) [amending this section] may be made with respect to any taxable year to which such amendments apply under an election made under subparagraph (C), and the period within which a claim for refund or credit of an overpayment attributable to the application of such amendments may be made with respect to any such taxable year, shall not expire prior to one year after the last day for making an election under subparagraph (C). An election by a taxpayer under subparagraph (C) shall be considered as a consent to the application of the provisions of this subparagraph.

"(E) TERMS; APPLICABILITY OF OTHER LAWS.—Except where otherwise distinctly expressed or manifestly intended, terms used in this paragraph shall have the same meaning as when used in the Internal Revenue Code of 1986 [this title] (or corresponding provisions of the Internal Revenue Code of 1939) and all provisions of law shall apply with respect to this paragraph as if this paragraph were a part of such Code (or corresponding provisions of the Internal Revenue Code of 1939).

"(F) REGULATIONS.—The Secretary of the Treasury or his delegate shall prescribe such regulations as may be necessary to carry out the provisions of this paragraph."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by section 11815(b)(1), (2) of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

ELECTION FOR CLAY AND SHALE USED IN MANUFACTURE OF CLAY PRODUCTS

Pub. L. 87–312, Sept. 26, 1961, 75 Stat. 674, provided for the election of, and procedure for, a differing rate of depletion for clay and shale used in the manufacture of clay products, such election to be effective for all taxable years beginning before Jan. 1, 1961, in respect of which the assessment of a deficiency, a refund or credit of overpayment, or the commencement of a suit for recovery is not prevented on Sept. 26, 1961, by operation of any law or rule of law, and also effective for any taxable year beginning before Jan. 1961, in respect of which an assessment of a deficiency has been made but not collected on or before Sept. 26, 1961.

ELECTION FOR QUARTZITE AND CLAY USED IN PRODUCTION OF REFRACTORY PRODUCTS

Pub. L. 87–321, §2, Sept. 26, 1961, 75 Stat. 683, provided for an election of, and procedures for, a differing rate of depletion for quartzite and clay used in production of refractory products, such election to be effective on and after Jan. 1, 1951, for all taxable years beginning before Jan. 1, 1961, in respect of which the assessment of a deficiency, the refund or credit of an overpayment, or the commencement of a suit for recovery is not prevented on Sept. 26, 1961, by the operation of any law or rule of law, and also effective on and after Jan. 1, 1951, for any taxable year beginning before Jan. 1, 1961, in respect of which an assessment of a deficiency has been made but not collected on or before Sept. 26, 1961.

REFUND OR CREDIT OF OVERPAYMENTS; LIMITATIONS; INTEREST

Pub. L. 85–866, title I, §36(b), Sept. 2, 1958, 72 Stat. 1633, provided for the filing of a claim within 6 months of Sept. 2, 1958, and for the refund or credit of any overpayment, without interest, if such refund or credit, resulting from the addition of subsec. (d) of this section, was prevented on Sept. 2, 1958, or within 6 months thereof, by the operation of any law or rule of law other than certain specified sections of the Internal Revenue Codes of 1939 and 1954.

§613A. Limitations on percentage depletion in case of oil and gas wells

(a) General rule

Except as otherwise provided in this section, the allowance for depletion under section 611 with respect to any oil or gas well shall be computed without regard to section 613.

(b) Exemption for certain domestic gas wells

(1) In general

The allowance for depletion under section 611 shall be computed in accordance with section 613 with respect to—

(A) regulated natural gas, and

(B) natural gas sold under a fixed contract,

and 22 percent shall be deemed to be specified in subsection (b) of section 613 for purposes of subsection (a) of that section.

(2) Natural gas from geopressured brine

The allowance for depletion under section 611 shall be computed in accordance with section 613 with respect to any qualified natural gas from geopressured brine, and 10 percent shall be deemed to be specified in subsection (b) of section 613 for purposes of subsection (a) of such section.

(3) Definitions

For purposes of this subsection—

(A) Natural gas sold under a fixed contract

The term "natural gas sold under a fixed contract" means domestic natural gas sold by the producer under a contract, in effect on February 1, 1975, and at all times thereafter before such sale, under which the price for such gas cannot be adjusted to reflect to any extent the increase in liabilities of the seller for tax under this chapter by reason of the repeal of percentage depletion for gas. Price increases after February 1, 1975, shall be presumed to take increases in tax liabilities into account unless the taxpayer demonstrates to the contrary by clear and convincing evidence.

(B) Regulated natural gas

The term "regulated natural gas" means domestic natural gas produced and sold by the producer, before July 1, 1976, subject to the jurisdiction of the Federal Power Commission, the price for which has not been adjusted to reflect to any extent the increase in liability of the seller

for tax under this chapter by reason of the repeal of percentage depletion for gas. Price increases after February 1, 1975, shall be presumed to take increases in tax liabilities into account unless the taxpayer demonstrates the contrary by clear and convincing evidence.

(C) Qualified natural gas from geopressured brine

The term "qualified natural gas from geopressured brine" means any natural gas—

(i) which is determined in accordance with section 503 of the Natural Gas Policy Act of 1978 to be produced from geopressured brine, and

(ii) which is produced from any well the drilling of which began after September 30, 1978, and before January 1, 1984.

(c) Exemption for independent producers and royalty owners

(1) In general

Except as provided in subsection (d), the allowance for depletion under section 611 shall be computed in accordance with section 613 with respect to—

(A) so much of the taxpayer's average daily production of domestic crude oil as does not exceed the taxpayer's depletable oil quantity; and

(B) so much of the taxpayer's average daily production of domestic natural gas as does not exceed the taxpayer's depletable natural gas quantity;

and 15 percent shall be deemed to be specified in subsection (b) of section 613 for purposes of subsection (a) of that section.

(2) Average daily production

For purposes of paragraph (1)—

(A) the taxpayer's average daily production of domestic crude oil or natural gas for any taxable year, shall be determined by dividing his aggregate production of domestic crude oil or natural gas, as the case may be, during the taxable year by the number of days in such taxable year, and

(B) in the case of a taxpayer holding a partial interest in the production from any property (including an interest held in a partnership) such taxpayer's production shall be considered to be that amount of such production determined by multiplying the total production of such property by the taxpayer's percentage participation in the revenues from such property.

(3) Depletable oil quantity

(A) In general

For purposes of paragraph (1), the taxpayer's depletable oil quantity shall be equal to—

(i) the tentative quantity determined under subparagraph (B), reduced (but not below zero) by

(ii) except in the case of a taxpayer making an election under paragraph (6)(B), the taxpayer's average daily marginal production for the taxable year.

(B) Tentative quantity

For purposes of subparagraph (A), the tentative quantity is 1,000 barrels.

(4) Daily depletable natural gas quantity

For purposes of paragraph (1), the depletable natural gas quantity of any taxpayer for any taxable year shall be equal to 6,000 cubic feet multiplied by the number of barrels of the taxpayer's depletable oil quantity to which the taxpayer elects to have this paragraph apply. The taxpayer's depletable oil quantity for any taxable year shall be reduced by the number of barrels with respect to which an election under this paragraph applies. Such election shall be made at such time and in such manner as the Secretary shall by regulations prescribe.

[(5) Repealed. Pub. L. 101–508, title XI, §11815(a)(1)(C), Nov. 5, 1990, 104 Stat. 1388–557]

(6) Oil and natural gas produced from marginal properties

(A) In general

Except as provided in subsection (d) and subparagraph (B), the allowance for depletion under section 611 shall be computed in accordance with section 613 with respect to—

(i) so much of the taxpayer's average daily marginal production of domestic crude oil as does not exceed the taxpayer's depletable oil quantity (determined without regard to paragraph (3)(A)(ii)), and

(ii) so much of the taxpayer's average daily marginal production of domestic natural gas as does not exceed the taxpayer's depletable natural gas quantity (determined without regard to paragraph (3)(A)(ii)),

and the applicable percentage shall be deemed to be specified in subsection (b) of section 613 for purposes of subsection (a) of that section.

(B) Election to have paragraph apply to pro rata portion of marginal production

If the taxpayer elects to have this subparagraph apply for any taxable year, the rules of subparagraph (A) shall apply to the average daily marginal production of domestic crude oil or domestic natural gas of the taxpayer to which paragraph (1) would have applied without regard to this paragraph.

(C) Applicable percentage

For purposes of subparagraph (A), the term "applicable percentage" means the percentage (not greater than 25 percent) equal to the sum of—

(i) 15 percent, plus

(ii) 1 percentage point for each whole dollar by which $20 exceeds the reference price for crude oil for the calendar year preceding the calendar year in which the taxable year begins.

For purposes of this paragraph, the term "reference price" means, with respect to any calendar year, the reference price determined for such calendar year under section 45K(d)(2)(C).

(D) Marginal production

The term "marginal production" means domestic crude oil or domestic natural gas which is produced during any taxable year from a property which—

(i) is a stripper well property for the calendar year in which the taxable year begins, or

(ii) is a property substantially all of the production of which during such calendar year is heavy oil.

(E) Stripper well property

For purposes of this paragraph, the term "stripper well property" means, with respect to any calendar year, any property with respect to which the amount determined by dividing—

(i) the average daily production of domestic crude oil and domestic natural gas from producing wells on such property for such calendar year, by

(ii) the number of such wells,

is 15 barrel equivalents or less.

(F) Heavy oil

For purposes of this paragraph, the term "heavy oil" means domestic crude oil produced from any property if such crude oil had a weighted average gravity of 20 degrees API or less (corrected to 60 degrees Fahrenheit).

(G) Average daily marginal production

For purposes of this subsection—

(i) the taxpayer's average daily marginal production of domestic crude oil or natural gas for any taxable year shall be determined by dividing the taxpayer's aggregate marginal production of domestic crude oil or natural gas, as the case may be, during the taxable year by the number of days in such taxable year, and

(ii) in the case of a taxpayer holding a partial interest in the production from any property (including any interest held in any partnership), such taxpayer's production shall be considered to be that amount of such production determined by multiplying the total production of such property by the taxpayer's percentage participation in the revenues from such property.

(H) Temporary suspension of taxable income limit with respect to marginal production

The second sentence of subsection (a) of section 613 shall not apply to so much of the allowance for depletion as is determined under subparagraph (A) for any taxable year—

(i) beginning after December 31, 1997, and before January 1, 2008, or

(ii) beginning after December 31, 2008, and before January 1, 2012.

(7) Special rules

(A) Production of crude oil in excess of depletable oil quantity

If the taxpayer's average daily production of domestic crude oil exceeds his depletable oil quantity, the allowance under paragraph (1)(A) with respect to oil produced during the taxable year from each property in the United States shall be that amount which bears the same ratio to the amount of depletion which would have been allowable under section 613(a) for all of the taxpayer's oil produced from such property during the taxable year (computed as if section 613 applied to all of such production at the rate specified in paragraph (1) or (6), as the case may be) as his depletable oil quantity bears to the aggregate number of barrels representing the average daily production of domestic crude oil of the taxpayer for such year.

(B) Production of natural gas in excess of depletable natural gas quantity

If the taxpayer's average daily production of domestic natural gas exceeds his depletable natural gas quantity, the allowance under paragraph (1)(B) with respect to natural gas produced during the taxable year from each property in the United States shall be that amount which bears the same ratio to the amount of depletion which would have been allowable under section 613(a) for all of the taxpayers [1] natural gas produced from such property during the taxable year (computed as if section 613 applied to all of such production at the rate specified in paragraph (1) or (6), as the case may be) as the amount of his depletable natural gas quantity in cubic feet bears to the aggregate number of cubic feet representing the average daily production of domestic natural gas of the taxpayer for such year.

(C) Taxable income from the property

If both oil and gas are produced from the property during the taxable year, for purposes of subparagraphs (A) and (B) the taxable income from the property, in applying the taxable income limitation in section 613(a), shall be allocated between the oil production and the gas production in proportion to the gross income during the taxable year from each.

(D) Partnerships

In the case of a partnership, the depletion allowance shall be computed separately by the partners and not by the partnership. The partnership shall allocate to each partner his proportionate share of the adjusted basis of each partnership oil or gas property. The allocation is to be made as of the later of the date of acquisition of the oil or gas property by the partnership, or January 1, 1975. A partner's proportionate share of the adjusted basis of partnership property shall be determined in accordance with his interest in partnership capital or income and, in the case of property contributed to the partnership by a partner, section 704(c) (relating to contributed property) shall apply in determining such share. Each partner shall separately keep records of his share of the adjusted basis in each oil and gas property of the partnership, adjust such share of the adjusted basis for any depletion taken on such property, and use such adjusted basis each year in the computation of his cost depletion or in the computation of his gain or loss on the disposition of such property by the partnership. For

purposes of section 732 (relating to basis of distributed property other than money), the partnership's adjusted basis in mineral property shall be an amount equal to the sum of the partners' adjusted basis in such property as determined under this paragraph.

(8) Business under common control; members of the same family

(A) Component members of controlled group treated as one taxpayer

For purposes of this subsection, persons who are members of the same controlled group of corporations shall be treated as one taxpayer.

(B) Aggregation of business entities under common control

If 50 percent or more of the beneficial interest in two or more corporations, trusts, or estates is owned by the same or related persons (taking into account only persons who own at least 5 percent of such beneficial interest), the tentative quantity determined under paragraph (3)(B) shall be allocated among all such entities in proportion to the respective production of domestic crude oil during the period in question by such entities.

(C) Allocation among members of the same family

In the case of individuals who are members of the same family, the tentative quantity determined under paragraph (3)(B) shall be allocated among such individuals in proportion to the respective production of domestic crude oil during the period in question by such individuals.

(D) Definition and special rules

For purposes of this paragraph—

(i) the term "controlled group of corporations" has the meaning given to such term by section 1563(a), except that section 1563(b)(2) shall not apply and except that "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears in section 1563(a),

(ii) a person is a related person to another person if such persons are members of the same controlled group of corporations or if the relationship between such persons would result in a disallowance of losses under section 267 or 707(b), except that for this purpose the family of an individual includes only his spouse and minor children.

(iii) the family of an individual includes only his spouse and minor children, and

(iv) each 6,000 cubic feet of domestic natural gas shall be treated as 1 barrel of domestic crude oil.

(9) Special rule for fiscal year taxpayers

In applying this subsection to a taxable year which is not a calendar year, each portion of such taxable year which occurs during a single calendar year shall be treated as if it were a short taxable year.

(10) Certain production not taken into account

In applying this subsection, there shall not be taken into account the production of natural gas with respect to which subsection (b) applies.

(11) Subchapter S corporations

(A) Computation of depletion allowance at shareholder level

In the case of an S corporation, the allowance for depletion with respect to any oil or gas property shall be computed separately by each shareholder.

(B) Allocation of basis

The S corporation shall allocate to each shareholder his pro rata share of the adjusted basis of the S corporation in each oil or gas property held by the S corporation. The allocation shall be made as of the later of the date of acquisition of the property by the S corporation, or the first day of the first taxable year of the S corporation to which the Subchapter S Revision Act of 1982 applies. Each shareholder shall separately keep records of his share of the adjusted basis in each oil and gas property of the S corporation, adjust such share of the adjusted basis for any

depletion taken on such property, and use such adjusted basis each year in the computation of his cost depletion or in the computation of his gain or loss on the disposition of such property by the S corporation. In the case of any distribution of oil or gas property to its shareholders by the S corporation, the corporation's adjusted basis in the property shall be an amount equal to the sum of the shareholders' adjusted bases in such property, as determined under this subparagraph.

(d) Limitations on application of subsection (c)

(1) Limitation based on taxable income

The deduction for the taxable year attributable to the application of subsection (c) shall not exceed 65 percent of the taxpayer's taxable income for the year computed without regard to—

(A) any depletion on production from an oil or gas property which is subject to the provisions of subsection (c),

(B) any deduction allowable under section 199,

(C) any net operating loss carryback to the taxable year under section 172,

(D) any capital loss carryback to the taxable year under section 1212, and

(E) in the case of a trust, any distributions to its beneficiary, except in the case of any trust where any beneficiary of such trust is a member of the family (as defined in section 267(c)(4)) of a settlor who created inter vivos and testamentary trusts for members of the family and such settlor died within the last six days of the fifth month in 1970, and the law in the jurisdiction in which such trust was created requires all or a portion of the gross or net proceeds of any royalty or other interest in oil, gas, or other mineral representing any percentage depletion allowance to be allocated to the principal of the trust.

If an amount is disallowed as a deduction for the taxable year by reason of application of the preceding sentence, the disallowed amount shall be treated as an amount allowable as a deduction under subsection (c) for the following taxable year, subject to the application of the preceding sentence to such taxable year. For purposes of basis adjustments and determining whether cost depletion exceeds percentage depletion with respect to the production from a property, any amount disallowed as a deduction on the application of this paragraph shall be allocated to the respective properties from which the oil or gas was produced in proportion to the percentage depletion otherwise allowable to such properties under subsection (c).

(2) Retailers excluded

Subsection (c) shall not apply in the case of any taxpayer who directly, or through a related person, sells oil or natural gas (excluding bulk sales of such items to commercial or industrial users), or any product derived from oil or natural gas (excluding bulk sales of aviation fuels to the Department of Defense)—

(A) through any retail outlet operated by the taxpayer or a related person, or

(B) to any person—

(i) obligated under an agreement or contract with the taxpayer or a related person to use a trademark, trade name, or service mark or name owned by such taxpayer or a related person, in marketing or distributing oil or natural gas or any product derived from oil or natural gas, or

(ii) given authority, pursuant to an agreement or contract with the taxpayer or a related person, to occupy any retail outlet owned, leased, or in any way controlled by the taxpayer or a related person.

Notwithstanding the preceding sentence this paragraph shall not apply in any case where the combined gross receipts from the sale of such oil, natural gas, or any product derived therefrom, for the taxable year of all retail outlets taken into account for purposes of this paragraph do not exceed $5,000,000. For purposes of this paragraph, sales of oil, natural gas, or any product derived

from oil or natural gas shall not include sales made of such items outside the United States, if no domestic production of the taxpayer or a related person is exported during the taxable year or the immediately preceding taxable year.

(3) Related person

For purposes of this subsection, a person is a related person with respect to the taxpayer if a significant ownership interest in either the taxpayer or such person is held by the other, or if a third person has a significant ownership interest in both the taxpayer and such person. For purposes of the preceding sentence, the term "significant ownership interest" means—

(A) with respect to any corporation, 5 percent or more in value of the outstanding stock of such corporation,

(B) with respect to a partnership, 5 percent or more interest in the profits or capital of such partnership, and

(C) with respect to an estate or trust, 5 percent or more of the beneficial interests in such estate or trust.

For purposes of determining a significant ownership interest, an interest owned by or for a corporation, partnership, trust, or estate shall be considered as owned directly both by itself and proportionately by its shareholders, partners, or beneficiaries, as the case may be.

(4) Certain refiners excluded

If the taxpayer or one or more related persons engages in the refining of crude oil, subsection (c) shall not apply to the taxpayer for a taxable year if the average daily refinery runs of the taxpayer and such persons for the taxable year exceed 75,000 barrels. For purposes of this paragraph, the average daily refinery runs for any taxable year shall be determined by dividing the aggregate refinery runs for the taxable year by the number of days in the taxable year.

(5) Percentage depletion not allowed for lease bonuses, etc.

In the case of any oil or gas property to which subsection (c) applies, for purposes of section 613, the term "gross income from the property" shall not include any lease bonus, advance royalty, or other amount payable without regard to production from property.

(e) Definitions

For purposes of this section—

(1) Crude oil

The term "crude oil" includes a natural gas liquid recovered from a gas well in lease separators or field facilities.

(2) Natural gas

The term "natural gas" means any product (other than crude oil) of an oil or gas well if a deduction for depletion is allowable under section 611 with respect to such product.

(3) Domestic

The term "domestic" refers to production from an oil or gas well located in the United States or in a possession of the United States.

(4) Barrel

The term "barrel" means 42 United States gallons.

(Added Pub. L. 94–12, title V, §501(a), Mar. 29, 1975, 89 Stat. 47; amended Pub. L. 94–455, title XIX, §§1901(a)(86), 1906(b)(13)(A), title XXI, §2115(a)–(c)(1), (d), (e), Oct. 4, 1976, 90 Stat. 1779, 1834, 1907–1909; Pub. L. 95–30, title I, §102(b)(7), May 23, 1977, 91 Stat. 138; Pub. L. 95–618, title IV, §403(a)(2)(B), (b), Nov. 9, 1978, 92 Stat. 3204; Pub. L. 96–603, §3(a), Dec. 28, 1980, 94 Stat. 3511; Pub. L. 97–354, §3(a), Oct. 19, 1982, 96 Stat. 1687; Pub. L. 97–448, title II, §202(d), Jan. 12, 1983, 96 Stat. 2396; Pub. L. 98–369, div. A, title I, §§25(b), 71(b), July 18, 1984, 98 Stat. 506, 589; Pub. L. 99–514, title I, §104(b)(9), title IV, §412(a)(1), Oct. 22, 1986, 100 Stat. 2105, 2227;

Pub. L. 101–508, title XI, §§11521(a), (b), 11522(b)(1), 11523(a), (b), 11815(a), Nov. 5, 1990, 104 Stat. 1388–485 to 1388–487, 1388–557; Pub. L. 104–188, title I, §1702(e)(2), Aug. 20, 1996, 110 Stat. 1870; Pub. L. 105–34, title IX, §972(a), Aug. 5, 1997, 111 Stat. 897; Pub. L. 106–170, title V, §504(a), Dec. 17, 1999, 113 Stat. 1921; Pub. L. 107–147, title VI, §607(a), Mar. 9, 2002, 116 Stat. 60; Pub. L. 108–311, title III, §314(a), Oct. 4, 2004, 118 Stat. 1181; Pub. L. 109–58, title XIII, §§1322(a)(3)(B), 1328(a), Aug. 8, 2005, 119 Stat. 1011, 1019; Pub. L. 109–135, title IV, §403(a)(18), Dec. 21, 2005, 119 Stat. 2619; Pub. L. 109–432, div. A, title I, §118(a), Dec. 20, 2006, 120 Stat. 2942; Pub. L. 110–343, div. B, title II, §210, Oct. 3, 2008, 122 Stat. 3840; Pub. L. 111–312, title VII, §706(a), Dec. 17, 2010, 124 Stat. 3311.)

REFERENCES IN TEXT

Section 503 of the Natural Gas Policy Act of 1978, referred to in subsec. (b)(3)(C)(i), which was classified to section 3413 of Title 15, Commerce and Trade, was repealed by Pub. L. 101–60, §3(b)(5), July 26, 1989, 103 Stat. 159, effective Jan. 1, 1993.

The Subchapter S Revision Act of 1982, referred to in subsec. (c)(11)(B), is Pub. L. 97–354, Oct. 19, 1982, 96 Stat. 1669, which is classified principally to subchapter S (§1361 et seq.) of chapter 1 of this title. For complete classification of this Act to the Code, see Short Title of 1982 Amendments note set out under section 1 of this title and Tables.

AMENDMENTS

2010—Subsec. (c)(6)(H)(ii). Pub. L. 111–312 substituted "January 1, 2012" for "January 1, 2010".

2008—Subsec. (c)(6)(H). Pub. L. 110–343 substituted "for any taxable year—" for "for any taxable year beginning after December 31, 1997, and before January 1, 2008." and added cls. (i) and (ii).

2006—Subsec. (c)(6)(H). Pub. L. 109–432 substituted "2008" for "2006".

2005—Subsec. (c)(6)(C). Pub. L. 109–58, §1322(a)(3)(B), substituted "section 45K(d)(2)(C)" for "section 29(d)(2)(C)" in concluding provisions.

Subsec. (d)(1)(B) to (E). Pub. L. 109–135 added subpar. (B) and redesignated former subpars. (B) to (D) as (C) to (E), respectively.

Subsec. (d)(4). Pub. L. 109–58, §1328(a), reenacted heading without change and amended text of par. (4) generally. Prior to amendment, text read as follows: "If the taxpayer or a related person engages in the refining of crude oil, subsection (c) shall not apply to such taxpayer if on any day during the taxable year the refinery runs of the taxpayer and such person exceed 50,000 barrels."

2004—Subsec. (c)(6)(H). Pub. L. 108–311 substituted "2006" for "2004".

2002—Subsec. (c)(6)(H). Pub. L. 107–147 substituted "2004" for "2002".

1999—Subsec. (c)(6)(H). Pub. L. 106–170 substituted "January 1, 2002" for "January 1, 2000".

1997—Subsec. (c)(6)(H). Pub. L. 105–34 added subpar. (H).

1996—Subsec. (c)(3)(A)(i). Pub. L. 104–188 struck out "the table contained in" before "subparagraph (B)".

1990—Subsec. (c)(1). Pub. L. 101–508, §11815(a)(1)(A), substituted "15 percent" for "the applicable percentage (determined in accordance with the table contained in paragraph (5))" in concluding provisions.

Subsec. (c)(3)(A). Pub. L. 101–508, §11523(b)(2), struck out at end "Clause (ii) shall not apply after December 31, 1983."

Subsec. (c)(3)(A)(ii). Pub. L. 101–508, §11523(b)(1), added cl. (ii) and struck out former cl. (ii) which read as follows: "the taxpayer's average daily secondary or tertiary production for the taxable year."

Subsec. (c)(3)(B). Pub. L. 101–508, §11815(a)(1)(B), amended subpar. (B) generally, substituting present provisions for provisions which set out a phase-out table for determining tentative quantity in barrels.

Subsec. (c)(5). Pub. L. 101–508, §11815(a)(1)(C), struck out par. (5) which provided table of applicable percentages for purposes of par. (1).

Subsec. (c)(6). Pub. L. 101–508, §11523(a), amended par. (6) generally, providing for an increase in percentage depletion allowance for marginal production, and substituting provisions relating to oil and gas produced from marginal properties for former provisions which related to oil and gas resulting from secondary or tertiary processes.

Subsec. (c)(7)(A), (B). Pub. L. 101–508, §11815(a)(2)(A), substituted "specified in paragraph (1)" for "specified in paragraph (5)".

Subsec. (c)(7)(C). Pub. L. 101–508, §11522(b)(1), substituted "taxable income" for "50-percent" before "limitation".

Subsec. (c)(7)(E). Pub. L. 101–508, §11815(a)(1)(C), struck out subpar. (E) which provided special rules relating to production from secondary or tertiary recovery processes.

Subsec. (c)(8)(B), (C). Pub. L. 101–508, §11815(a)(2)(B), which directed amendment of subpars. (B) and (C) by substituting "determined under paragraph (3)(B)" for "determined under the table contained in paragraph (3)(B)", was executed by making the substitution for "determined under the table in paragraph (3)(B)" as the probable intent of Congress.

Subsec. (c)(9). Pub. L. 101–508, §11815(a)(2)(B), which directed amendment of par. (9) by substituting "determined under paragraph (3)(B)" for "determined under the table contained in paragraph (3)(B)", could not be executed because that phrase did not appear after execution of amendment by Pub. L. 101–508, §11521(a). See below.

Pub. L. 101–508, §11521(a), redesignated par. (11) as (9) and struck out former par. (9) which related to transfer of oil or gas property.

Subsec. (c)(10). Pub. L. 101–508, §11521(a), redesignated par. (12) as (10) and struck out former par. (10) which related to transfers by individuals to corporations.

Subsec. (c)(11). Pub. L. 101–508, §11521(a), redesignated par. (13) as (11). Former par. (11) redesignated (9).

Subsec. (c)(11)(C), (D). Pub. L. 101–508, §11521(b), struck out subpars. (C) and (D) which related to coordination with the transfer rules of former pars. (9) and (10).

Subsec. (c)(12), (13). Pub. L. 101–508, §11521(a), redesignated pars. (12) and (13) as (10) and (11), respectively.

1986—Subsec. (d)(1). Pub. L. 99–514, §104(b)(9), struck out "(reduced in the case of an individual by the zero bracket amount)" after "taxable income" in introductory provisions.

Subsec. (d)(5). Pub. L. 99–514, §412(a)(1), added par. (5).

1984—Subsec. (c)(2). Pub. L. 98–369, §25(b)(1), struck out last sentence providing that in applying this paragraph, there shall not be taken into account any production of crude oil or natural gas resulting from secondary or tertiary processes (as defined in regulations prescribed by the Secretary).

Subsec. (c)(3)(A). Pub. L. 98–369, §25(b)(2), inserted at end "Clause (ii) shall not apply after December 31, 1983."

Subsec. (c)(7)(D). Pub. L. 98–369, §71(b), substituted "property contributed to the partnership by a partner, section 704(c) (relating to contributed property) shall apply in determining such share" for "an agreement described in section 704(c)(2) (relating to effect of partnership agreement on contributed property), such share shall be determined by taking such agreement into account" in fourth sentence.

Subsec. (c)(7)(E). Pub. L. 98–369, §25(b)(3), inserted at end "This subparagraph shall not apply after December 31, 1983."

Subsec. (c)(9)(A). Pub. L. 98–369, §25(b)(4), substituted "this subsection" for "paragraph (1)".

1983—Subsec. (c)(10)(E). Pub. L. 97–448, §202(d)(1), inserted provision that "oil and gas property" includes, in the case of any property, necessary production equipment for such property which is in place when the property is transferred.

Subsec. (d)(2). Pub. L. 97–448, §202(d)(2), inserted "(excluding bulk sales of aviation fuels to the Department of Defense)" after "any product derived from oil or natural gas".

1982—Subsec. (c)(13). Pub. L. 97–354 added par. (13).

1980—Subsec. (c)(10) to (12). Pub. L. 96–603 added par. (10) and redesignated former pars. (10) and (11) as (11) and (12), respectively.

1978—Subsec. (b)(1)(C). Pub. L. 95–618, §403(a)(2)(B), struck out subpar. (C) which related to a computation in accordance with section 613 with respect to any geothermal deposit in the United States or in a possession of the United States which is determined to be a gas well.

Subsec. (b)(2), (3). Pub. L. 95–618, §403(b)(1), (2), added par. (2), redesignated former par. (2) as (3) and, as so redesignated, added subpar. (C).

1977—Subsec. (d)(1). Pub. L. 95–30 inserted "(reduced in the case of an individual by the zero bracket amount)" after "the taxpayer's taxable income" in introductory provisions.

1976—Subsec. (b)(1)(C). Pub. L. 94–455, §1901(a)(86)(A), struck out "within the meaning of section 613(b)(1)(A)" after "determined to be a gas well".

Subsec. (c)(2), (4). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (c)(6)(A)(i). Pub. L. 94–455, §1901(a)(86)(B), substituted "determined without" for "determined with".

Subsec. (c)(7)(D). Pub. L. 94–455, §2115(c)(1), inserted provision relating to the method to be employed by the partners in computing the depletion allowance.

Subsec. (c)(7)(E). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (c)(9)(B). Pub. L. 94–455, §2115(b)(1), (e), added cls. (iii) to (vi) and provision following cl. (vi).

Subsec. (d)(1). Pub. L. 94–455, §2115(b)(2), substituted in subpar. (A) reference to any depletion on

production from an oil or gas property which is subject to the provisions of subsection (c) for reference to depletion with respect to production of oil and gas subject to the provisions of subsection (c), and added subpar. (D).

Subsec. (d)(2). Pub. L. 94–455, §2115(a), inserted "(excluding bulk sales of such items to commercial or industrial users)" before ", or any product derived" and inserted provisions following subpar. (B) relating to the application of this paragraph where combined gross receipts from the sale of oil, natural gas, or any product derived therefrom, for the taxable year of all retail outlets taken into account do not exceed $5,000,000 and relating to the exclusion of sales made outside the United States.

Subsec. (d)(3). Pub. L. 94–455, §2115(d), inserted provision following subpar. (C) relating to the determination of a significant ownership interest of a corporation, partnership, trust, or estate.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §706(b), Dec. 17, 2010, 124 Stat. 3312, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2009."

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title I, §118(b), Dec. 20, 2006, 120 Stat. 2942, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 2005."

EFFECTIVE DATE OF 2005 AMENDMENTS

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

Amendment by section 1322(a)(3)(B) of Pub. L. 109–58 applicable to credits determined under the Internal Revenue Code of 1986 for taxable years ending after Dec. 31, 2005, see section 1322(c)(1) of Pub. L. 109–58, set out as a note under section 45K of this title.

Pub. L. 109–58, title XIII, §1328(b), Aug. 8, 2005, 119 Stat. 1020, provided that: "The amendment made by this section [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Aug. 8, 2005]."

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–311, title III, §314(b), Oct. 4, 2004, 118 Stat. 1181, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 2003."

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title VI, §607(b), Mar. 9, 2002, 116 Stat. 60, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 2001."

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title V, §504(b), Dec. 17, 1999, 113 Stat. 1921, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1999."

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title IX, §972(b), Aug. 5, 1997, 111 Stat. 898, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1997."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, §11521(c), Nov. 5, 1990, 104 Stat. 1388–486, provided that: "The amendments made by this section [amending this section] shall apply to transfers after October 11, 1990."

Amendment by section 11522(b)(1) of Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, see section 11522(c) of Pub. L. 101–508, set out as a note under section 613 of this title.

Pub. L. 101–508, title XI, §11523(c), Nov. 5, 1990, 104 Stat. 1388–487, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1990."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 104(b)(9) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 412(a)(1) of Pub. L. 99–514 applicable to amounts received or accrued after Aug. 16, 1986, in taxable years ending after such date, see section 412(a)(3) of Pub. L. 99–514, set out as a note under section 613 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §25(c)(2), July 18, 1984, 98 Stat. 507, provided that: "The amendments made by subsection (b) [amending this section] shall take effect on January 1, 1984."

Amendment by section 71(b) of Pub. L. 98–369 applicable with respect to property contributed to the partnership after Mar. 31, 1984, in taxable years ending after such date, see section 71(c) of Pub. L. 98–369, set out as a note under section 704 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 202(d)(1) of Pub. L. 97–448 applicable to transfers in taxable years ending after Dec. 31, 1974, but only for purposes of applying this section to periods after Dec. 31, 1979, and amendment by section 202(d)(2) of Pub. L. 97–448 applicable to bulk sales after Sept. 18, 1982, see section 203(b)(3) of Pub. L. 97–448, set out as a note under section 6652 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–603, §3(b), Dec. 28, 1980, 94 Stat. 3513, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by subsection (a) [amending this section] shall apply to transfers in taxable years ending after December 31, 1974, but only for purposes of applying section 613A of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] to periods after December 31, 1979."

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–618 effective on Oct. 1, 1978, and applicable to taxable years ending on or after such date, see section 403(c) of Pub. L. 95–618, set out as a note under section 613 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(86) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Pub. L. 94–455, title XXI, §2115(f), Oct. 4, 1976, 90 Stat. 1910, provided that: "The amendments made by this section [amending this section and sections 703 and 705 of this title] shall take effect on January 1, 1975, and shall apply to taxable years ending after December 31, 1974."

EFFECTIVE DATE

Pub. L. 94–12, title V, §501(c), Mar. 29, 1975, 89 Stat. 53, provided that: "The amendments made by this section [enacting this section and amending sections 613 and 703 of this title] shall take effect on January 1, 1975, and shall apply to taxable years ending after December 31, 1974."

SAVINGS PROVISION

For provisions that nothing in amendment by section 11815(a) of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

TRANSFER OF FUNCTIONS

Federal Power Commission terminated and its functions, personnel, property, funds, etc., transferred to Secretary of Energy (except for certain functions which were transferred to Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a), 7291, and 7293 of Title 42, The Public Health and

Welfare.

COORDINATION WITH OTHER PROVISION

Pub. L. 95–618, title IV, §403(d), Nov. 9, 1978, 92 Stat. 3204, provided that: "Any allowance for depletion allowed by reason of the amendments made by subsection (b) [amending this section] shall not be treated as a credit, exemption, deduction, or comparable adjustment applicable to the computation of any Federal tax which is specifically allowable with respect to any high-cost natural gas (or category thereof) for purposes of section 107(d) of the Natural Gas Policy Act of 1978 [section 3317(d) of Title 15, Commerce and Trade]."

[1] So in original. Probably should be "taxpayer's".

§614. Definition of property

(a) General rule

For the purpose of computing the depletion allowance in the case of mines, wells, and other natural deposits, the term "property" means each separate interest owned by the taxpayer in each mineral deposit in each separate tract or parcel of land.

(b) Special rules as to operating mineral interests in oil and gas wells or geothermal deposits

In the case of oil and gas wells or geothermal deposits—

(1) In general

Except as otherwise provided in this subsection—

(A) all of the taxpayer's operating mineral interests in a separate tract or parcel of land shall be combined and treated as one property, and

(B) the taxpayer may not combine an operating mineral interest in one tract or parcel of land with an operating mineral interest in another tract or parcel of land.

(2) Election to treat operating mineral interests as separate properties

If the taxpayer has more than one operating mineral interest in a single tract or parcel of land, he may elect to treat one or more of such operating mineral interests as separate properties. The taxpayer may not have more than one combination of operating mineral interests in a single tract or parcel of land. If the taxpayer makes the election provided in this paragraph with respect to any interest in a tract or parcel of land, each operating mineral interest which is discovered or acquired by the taxpayer in such tract or parcel of land after the taxable year for which the election is made shall be treated—

(A) if there is no combination of interests in such tract or parcel, as a separate property unless the taxpayer elects to combine it with another interest, or

(B) if there is a combination of interests in such tract or parcel, as part of such combination unless the taxpayer elects to treat it as a separate property.

(3) Certain unitization or pooling arrangements

(A) In general

Under regulations prescribed by the Secretary, if one or more of the taxpayer's operating mineral interests participate, under a voluntary or compulsory unitization or pooling agreement, in a single cooperative or unit plan of operation, then for the period of such participation—

(i) they shall be treated for all purposes of this subtitle as one property, and

(ii) the application of paragraphs (1), (2), and (4) in respect of such interests shall be suspended.

(B) Limitation

Subparagraph (A) shall apply to a voluntary agreement only if all the operating mineral interests covered by such agreement—

(i) are in the same deposit, or are in 2 or more deposits the joint development or production

of which is logical from the standpoint of geology, convenience, economy, or conservation, and

(ii) are in tracts or parcels of land which are contiguous or in close proximity.

(C) Special rule in the case of arrangements entered into a taxable years beginning before January 1, 1964

If—

(i) two or more of the taxpayer's operating mineral interests participate under a voluntary or compulsory unitization or pooling agreement entered into in any taxable year beginning before January 1, 1964, in a single cooperative or unit plan of operation,

(ii) the taxpayer, for the last taxable year beginning before January 1, 1964, treated such interests as two or more separate properties, and

(iii) it is determined that such treatment was proper under the law applicable to such taxable year,

such taxpayer may continue to treat such interests in a consistent manner for the period of such participation.

(4) Manner, time, and scope of election

(A) Manner and time

Any election provided in paragraph (2) shall be made for each operating mineral interest, in the manner prescribed by the Secretary by regulations, not later than the time prescribed by law for filing the return (including extensions thereof) for whichever of the following taxable years is the later: The first taxable year beginning after December 31, 1963, or the first taxable year in which any expenditure for development or operation in respect of such operating mineral interest is made by the taxpayer after the acquisition of such interest.

(B) Scope

Any election under paragraph (2) shall be for all purposes of this subtitle and shall be binding on the taxpayer for all subsequent taxable years.

(5) Treatment of certain properties

If, on the day preceding the first day of the first taxable year beginning after December 31, 1963, the taxpayer has any operating mineral interests which he treats under subsection (d) of this section (as in effect before the amendments made by the Revenue Act of 1964), such treatment shall be continued and shall be deemed to have been adopted pursuant to paragraphs (1) and (2) of this subsection (as amended by such Act).

(c) Special rules as to operating mineral interests in mines

(1) Election to aggregate separate interests

Except in the case of oil and gas wells and geothermal deposits, if a taxpayer owns two or more separate operating mineral interests which constitute part or all of an operating unit, he may elect (for all purposes of this subtitle)—

(A) to form an aggregation of, and to treat as one property, all such interests owned by him which comprise any one mine or any two or more mines; and

(B) to treat as a separate property each such interest which is not included within an aggregation referred to in subparagraph (A).

For purposes of this paragraph, separate operating mineral interests which constitute part or all of an operating unit may be aggregated whether or not they are included in a single tract or parcel of land and whether or not they are included in contiguous tracts or parcels. For purposes of this paragraph, a taxpayer may elect to form more than one aggregation of operating mineral interests within any one operating unit; but no aggregation may include any operating mineral interest which is a part of a mine without including all of the operating mineral interests which are a part

of such mine in the first taxable year for which the election to aggregate is effective, and any operating mineral interest which thereafter becomes a part of such mine shall be included in such aggregation.

(2) Election to treat a single interest as more than one property

Except in the case of oil and gas wells and geothermal deposits, if a single tract or parcel of land contains a mineral deposit which is being extracted, or will be extracted by means of two or more mines for which expenditures for development or operation have been made by the taxpayer, then the taxpayer may elect to allocate to such mines, under regulations prescribed by the Secretary, all of the tract or parcel of land and of the mineral deposit contained therein, and to treat as a separate property that portion of the tract or parcel of land and of the mineral deposit so allocated to each mine. A separate property formed pursuant to an election under this paragraph shall be treated as a separate property for all purposes of this subtitle (including this paragraph). A separate property so formed may, under regulations prescribed by the Secretary, be included as a part of an aggregation in accordance with paragraphs (1) and (3). The election provided by this paragraph may not be made with respect to any property which is a part of an aggregation formed by the taxpayer under paragraph (1) except with the consent of the Secretary.

(3) Manner and scope of election

The elections provided by paragraphs (1) and (2) shall be made, in accordance with regulations prescribed by the Secretary, not later than the time prescribed for filing the return (including extensions thereof) for the first taxable year—

(A) in which, in the case of an election under paragraph (1), any expenditure for development or operation in respect of the separate operating mineral interest is made by the taxpayer after the acquisition of such interest, or

(B) in which, in the case of an election under paragraph (2), expenditures for development or operation of more than one mine in respect of a property are made by the taxpayer after the acquisition of the property.

An election made under paragraph (1) or (2) for a taxable year shall be binding upon the taxpayer for such year and all subsequent taxable years, except that the Secretary may consent to a different treatment of any interest with respect to which an election has been made.

(d) Operating mineral interests defined

For purposes of this section, the term "operating mineral interest" includes only an interest in respect of which the costs of production of the mineral are required to be taken into account by the taxpayer for purposes of computing the taxable income limitation provided for in section 613, or would be so required if the mine, well, or other natural deposit were in the production stage.

(e) Special rule as to nonoperating mineral interests

(1) Aggregation of separate interests

If a taxpayer owns two or more separate nonoperating mineral interests in a single tract or parcel of land or in two or more adjacent tracts or parcels of land, the Secretary shall, on showing by the taxpayer that a principal purpose is not the avoidance of tax, permit the taxpayer to treat (for all purposes of this subtitle) all such mineral interests in each separate kind of mineral deposit as one property. If such permission is granted for any taxable year, the taxpayer shall treat such interests as one property for all subsequent taxable years unless the Secretary consents to a different treatment.

(2) Nonoperating mineral interests defined

For purposes of this subsection, the term "nonoperating mineral interests" includes only interests which are not operating mineral interests.

(Aug. 16, 1954, ch. 736, 68A Stat. 210; Pub. L. 85–866, title I, §37(a)–(d), Sept. 2, 1958, 72 Stat. 1633–1637; Pub. L. 88–272, title II, §226(a), (b), Feb. 26, 1964, 78 Stat. 94, 96; Pub. L. 94–455, title XIX, §§1901(a)(87)(A)(i), (B), (C), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1779, 1834; Pub. L.

95–618, title IV, §403(a)(2)(C), (D), Nov. 9, 1978, 92 Stat. 3204; Pub. L. 101–508, title XI, §11522(b)(2), Nov. 5, 1990, 104 Stat. 1388–486.)

REFERENCES IN TEXT

The Revenue Act of 1964, referred to in subsec. (b)(5), is Pub. L. 88–272, Feb. 26, 1964, 78 Stat. 19. For complete classification of this Act to the Code, see Short Title of 1964 Amendments note set out under section 1 of this title and Tables.

AMENDMENTS

1990—Subsec. (d). Pub. L. 101–508 substituted "taxable income" for "50 percent".

1978—Subsec. (b). Pub. L. 95–618, §403(a)(2)(C), inserted "or geothermal deposits" after "gas wells" in heading and introductory provisions.

Subsec. (c). Pub. L. 95–618, §403(a)(2)(D), substituted "oil and gas wells and geothermal deposits" for "oil and gas wells" wherever appearing.

1976—Subsecs. (b)(3)(A), (4)(A), (e). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (c)(2). Pub. L. 94–455, §§1901(a)(87)(B), 1906(b)(13)(A), struck out "or his delegate" after "Secretary" wherever appearing and ", but the provisions of paragraph (4) shall not apply with respect to such separate property" after "in accordance with paragraphs (1) and (3)".

Subsec. (c)(3). Pub. L. 94–455, §1901(a)(87)(C), among other changes, struck out references to the first taxable year beginning after Dec. 31, 1957, and provisions relating to elections for taxable years beginning before Jan. 1, 1958, relating to election after final regulations, and relating to statute of limitations.

Subsec. (c)(4). Pub. L. 94–455, §1901(a)(87)(A)(i), struck out par. (4) which related to a special rule as to deductions under section 615(a) of this title prior to aggregation.

1964—Subsec. (b). Pub. L. 88–272, §226(a), amended subsec. (b) generally, and among other changes, substituted provisions stating that except as otherwise provided, all of the taxpayer's operating mineral interests in a separate tract or parcel of land will be combined and treated as one property, that the taxpayer may not combine any operating mineral interest in one tract or parcel of land with an operating mineral interest in another tract or parcel of land, that if he has more than one operating mineral interest in a single tract of land he may elect to treat one or more of such interests as separate properties, limited, however, to one combination of interests in a single tract of land, and providing, in the event the election in par. (2) is made with respect to any tract of land, for the treatment of interests discovered or acquired by the taxpayer in such a tract after the taxable year for which the election is made, for provisions which permitted a taxpayer who owned two or more separate operating mineral interests which constituted all or a part of an operating unit, to elect to form one aggregation and treat as one property any two or more of these interests, treating as separate properties any interests which he did not include in the one aggregation, to aggregate separate interests whether or not in a single tract of land, or contiguous tracts of land, and which forbade him to form more than one aggregation within a single operating unit, inserted provisions in par. (3) relating to unitization or pooling arrangements, and in par (5), providing that if the taxpayer has operating mineral interests on the day preceding the first day of the first taxable year beginning after Dec. 31, 1963, which he treats under subsec. (d) of this section as in effect before amendment by Pub. L. 88–272, he shall continue such treatment and it shall be deemed adopted pursuant to pars. (1) and (2) of this subsection, and struck out provisions defining "operating mineral interests", and providing for termination of election with respect to mines, excepting oil and gas wells. For definition of "operating mineral interests", see subsec. (d) of this section.

Subsec. (c). Pub. L. 88–272, §226(b)(1), (2), struck out par. (5) which defined operating mineral interests, and "1958" before "Special rules" in heading.

Subsec. (d). Pub. L. 88–272, §226(b)(3), amended subsec. (d) generally, substituting the definition of operating mineral interests, for provisions relating to the 1939 Code treatment respecting operating mineral interest in case of oil and gas wells.

Subsec. (e)(2). Pub. L. 88–272, §226(b)(4), struck out "within the meaning of subsection (b)(3)" at end.

1958—Subsec. (b)(4). Pub. L. 85–866, §37(a), added par. (4).

Subsecs. (c) to (e). Pub. L. 85–866, §37(b)–(d), added subsecs. (c) and (d), redesignated former subsec. (c) as (e), and substituted in first sentence of par. (1) "or in two or more adjacent tracts" for "or in two or more contiguous tracts" and "shall, on showing by the taxpayer that a principal purpose is not the avoidance of tax, permit the taxpayer to treat (for all purposes of this subtitle) all such mineral interests in each separate kind of mineral deposit as one property" for "may, on showing of undue hardship, permit the taxpayer to treat (for all purposes of this subtitle) all such mineral interests as one property".

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, see section 11522(c) of Pub. L. 101–508, set out as a note under section 613 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–618 effective Oct. 1, 1978, and applicable to taxable years ending on or after such date, see section 403(c) of Pub. L. 95–618, set out as a note under section 613 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XIX, §1901(a)(87)(A)(ii), Oct. 4, 1976, 90 Stat. 1779, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendment made by clause (i) [amending this section] shall apply with respect to elections to form aggregations of operating mineral interests made under section 614(c)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for taxable years beginning after December 31, 1976."

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88–272, title II, §226(d), Feb. 26, 1964, 78 Stat. 97, provided that: "The amendments made by subsections (a) and (b) [amending this section] shall apply to taxable years beginning after December 31, 1963."

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85–866, title I, §37(e), Sept. 2, 1958, 72 Stat. 1638, provided that: "The amendments made by subsections (a) and (c) [amending this section] shall apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954. The amendments made by subsection (b) [amending this section] shall apply with respect to taxable years beginning after December 31, 1957, except that such amendments shall, at the election of the taxpayer made in conformity with such amendments, apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954. The amendment made by subsection (d) [amending this section] shall apply with respect to taxable years beginning after December 31, 1957, except that with respect to any taxpayer such amendment shall, at the election of the taxpayer, apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954."

ALLOCATION OF BASIS IN CERTAIN CASES

Pub. L. 88–272, title II, §226(c), Feb. 26, 1964, 78 Stat. 96, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "For purposes of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]—

"(1) FAIR MARKET VALUE RULE.—Except as provided in paragraph (2), if a taxpayer has a section 614(b) aggregation, then the adjusted basis (as of the first day of the first taxable year beginning after December 31, 1963) of each property included in such aggregation shall be determined by multiplying the adjusted basis of the aggregation by a fraction—

"(A) the numerator of which is the fair market value of such property, and

"(B) the denominator of which is the fair market value of such aggregation.

For purposes of this paragraph, the adjusted basis and the fair market value of the aggregation, and the fair market value of each property included therein, shall be determined as of the day preceding the first day of the first taxable year which begins after December 31, 1963.

"(2) ALLOCATION OF ADJUSTMENTS, ETC.—If the taxpayer makes an election under this paragraph with respect to any section 614(b) aggregation, then the adjusted basis (as of the first day of the first taxable year beginning December 31, 1963) of each property included in such aggregation shall be the adjusted basis of such property at the time it was first included in the aggregation by the taxpayer, adjusted for that portion of those adjustments to the basis of the aggregation which are reasonably attributable to such property. If, under the preceding sentence, the total of the adjusted bases of the interests included in the aggregation exceeds the adjusted basis of the aggregation (as of the day preceding the first day of the first taxable year which begins after December 31, 1963), the adjusted bases of the properties which include such interests shall be adjusted, under regulations prescribed by the Secretary of the Treasury or his delegate, so that the total of the adjusted bases of such interests equals the adjusted basis of the aggregation. An election under this paragraph shall be made at such time and in such manner as the Secretary of the Treasury or his delegate shall by regulations prescribe.

"(3) DEFINITIONS.—For purposes of this subsection—

"(A) SECTION 614(b) AGGREGATION.—The term 'section 614(b) aggregation' means any aggregation to which section 614(b)(1)(A) of the Internal Revenue Code of 1986 (as in effect before the

amendments made by subsection (a) of this section) applied for the day preceding the first day of the first taxable year beginning after December 31, 1963.

"(B) PROPERTY.—The term 'property' has the same meaning as is applicable, under section 614 of the Internal Revenue Code of 1986, to the taxpayer for the first taxable year beginning after December 31, 1963."

[§615. Repealed. Pub. L. 94–455, title XIX, §1901(a)(88), Oct. 4, 1976, 90 Stat. 1779]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 211; July 6, 1960, Pub. L. 86–594, §1, 74 Stat. 333; Sept. 12, 1966, Pub. L. 89–570, §2(a), 80 Stat. 763; Dec. 30, 1969, Pub. L. 91–172, title V, §504(a), 83 Stat. 632, related to pre-1970 exploration expenditures.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 2 of this title.

§616. Development expenditures

(a) In general

Except as provided in subsections (b) and (d), there shall be allowed as a deduction in computing taxable income all expenditures paid or incurred during the taxable year for the development of a mine or other natural deposit (other than an oil or gas well) if paid or incurred after the existence of ores or minerals in commercially marketable quantities has been disclosed. This section shall not apply to expenditures for the acquisition or improvement of property of a character which is subject to the allowance for depreciation provided in section 167, but allowances for depreciation shall be considered, for purposes of this section, as expenditures.

(b) Election of taxpayer

At the election of the taxpayer, made in accordance with regulations prescribed by the Secretary, expenditures described in subsection (a) paid or incurred during the taxable year shall be treated as deferred expenses and shall be deductible on a ratable basis as the units of produced ores or minerals benefited by such expenditures are sold. In the case of such expenditures paid or incurred during the development stage of the mine or deposit, the election shall apply only with respect to the excess of such expenditures during the taxable year over the net receipts during the taxable year from the ores or minerals produced from such mine or deposit. The election under this subsection, if made, must be for the total amount of such expenditures, or the total amount of such excess, as the case may be, with respect to the mine or deposit, and shall be binding for such taxable year.

(c) Adjusted basis of mine or deposit

The amount of expenditures which are treated under subsection (b) as deferred expenses shall be taken into account in computing the adjusted basis of the mine or deposit, except that such amount, and the adjustments to basis provided in section 1016(a)(9), shall be disregarded in determining the adjusted basis of the property for the purpose of computing a deduction for depletion under section 611.

(d) Special rules for foreign development

In the case of any expenditures paid or incurred with respect to the development of a mine or other natural deposit (other than an oil, gas, or geothermal well) located outside of the United States—

(1) subsections (a) and (b) shall not apply, and

(2) such expenditures shall—

(A) at the election of the taxpayer, be included in adjusted basis for purposes of computing the amount of any deduction allowable under section 611 (without regard to section 613), or

(B) if subparagraph (A) does not apply, be allowed as a deduction ratably over the 10-taxable

year period beginning with the taxable year in which such expenditures were paid or incurred.

(e) Cross reference

For election of 10-year amortization of expenditures allowable as a deduction under subsection (a), see section 59(e).

(Aug. 16, 1954, ch. 736, 68A Stat. 212; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–248, title II, §201(d)(9)(C), formerly §201(c)(9)(C), Sept. 3, 1982, 96 Stat. 420, renumbered §201(d)(9)(C), Pub. L. 97–448, title III, §306(a)(1)(A)(i), Jan. 12, 1983, 96 Stat. 2400; Pub. L. 99–514, title IV, §411(b)(2)(A), (C)(i), Oct. 22, 1986, 100 Stat. 2226; Pub. L. 100–647, title I, §1007(g)(7), Nov. 10, 1988, 102 Stat. 3435.)

AMENDMENTS

1988—Subsec. (e). Pub. L. 100–647 substituted "section 59(e)" for "section 58(i)".

1986—Subsec. (a). Pub. L. 99–514, §411(b)(2)(C)(i), inserted reference to subsec. (d).

Subsecs. (d), (e). Pub. L. 99–514, §411(b)(2)(A), added subsec. (d) and redesignated former subsec. (d) as (e).

1982—Subsec. (d). Pub. L. 97–248 added subsec. (d).

1976—Subsec. (b). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to costs paid or incurred after Dec. 31, 1986, in taxable years ending after such date, with transition rule, see section 411(c) of Pub. L. 99–514 set out as a note under section 263 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to taxable years beginning after Dec. 31, 1982, see section 201(e)(1) of Pub. L. 97–248, set out as a note under section 5 of this title.

§617. Deduction and recapture of certain mining exploration expenditures

(a) Allowance of deduction

(1) General rule

At the election of the taxpayer, expenditures paid or incurred during the taxable year for the purpose of ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral, and paid or incurred before the beginning of the development stage of the mine, shall be allowed as a deduction in computing taxable income. This subsection shall apply only with respect to the amount of such expenditures which, but for this subsection, would not be allowable as a deduction for the taxable year. This subsection shall not apply to expenditures for the acquisition or improvement of property of a character which is subject to the allowance for depreciation provided in section 167, but allowances for depreciation shall be considered, for purposes of this subsection, as expenditures paid or incurred. In no case shall this subsection apply with respect to amounts paid or incurred for the purpose of ascertaining the existence, location, extent, or quality of any deposit of oil or gas or of any mineral with respect to which a deduction for percentage depletion is not allowable under section 613.

(2) Elections

(A) Method

Any election under this subsection shall be made in such manner as the Secretary may by regulations prescribe.

(B) Time and scope

The election provided by paragraph (1) for the taxable year may be made at any time before the expiration of the period prescribed for making a claim for credit or refund of the tax imposed by this chapter for the taxable year. Such an election for the taxable year shall apply to all expenditures described in paragraph (1) paid or incurred by the taxpayer during the taxable year or during any subsequent taxable year. Such an election may not be revoked unless the Secretary consents to such revocation.

(C) Deficiencies

The statutory period for the assessment of any deficiency for any taxable year, to the extent such deficiency is attributable to an election or revocation of an election under this subsection, shall not expire before the last day of the 2-year period beginning on the day after the date on which such election or revocation of election is made; and such deficiency may be assessed at any time before the expiration of such 2-year period, notwithstanding any law or rule of law which would otherwise prevent such assessment.

(b) Recapture on reaching producing stage

(1) Recapture

If, in any taxable year, any mine with respect to which expenditures were deducted pursuant to subsection (a) reaches the producing stage, then—

(A) If the taxpayer so elects with respect to all such mines reaching the producing stage during the taxable year, he shall include in gross income for the taxable year an amount equal to the adjusted exploration expenditures with respect to such mines, and the amount so included in income shall be treated for purposes of this subtitle as expenditures which (i) are paid or incurred on the respective dates on which the mines reach the producing stage, and (ii) are properly chargeable to capital account.

(B) If subparagraph (A) does not apply with respect to any such mine, then the deduction for depletion under section 611 with respect to the property shall be disallowed until the amount of depletion which would be allowable but for this subparagraph equals the amount of the adjusted exploration expenditures with respect to such mine.

(2) Elections

(A) Method

Any election under this subsection shall be made in such manner as the Secretary may by regulations prescribe.

(B) Time and scope

The election provided by paragraph (1) for any taxable year may be made or changed not later than the time prescribed by law for filing the return (including extensions thereof) for such taxable year.

(c) Recapture in case of bonus or royalty

If an election has been made under subsection (a) with respect to expenditures relating to a mining property and the taxpayer receives or accrues a bonus or a royalty with respect to such property, then the deduction for depletion under section 611 with respect to the bonus or royalty shall be disallowed until the amount of depletion which would be allowable but for this subsection equals the amount of the adjusted exploration expenditures with respect to the property to which the bonus or royalty relates.

(d) Gain from dispositions of certain mining property

(1) General rule

Except as otherwise provided in this subsection, if mining property is disposed of the lower of—

(A) the adjusted exploration expenditures with respect to such property, or

(B) the excess of—

(i) the amount realized (in the case of a sale, exchange, or involuntary conversion), or the fair market value (in the case of any other disposition), over

(ii) the adjusted basis of such property,

shall be treated as ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle.

(2) Disposition of portion of property

For purposes of paragraph (1)—

(A) In the case of the disposition of a portion of a mining property (other than an undivided interest), the entire amount of the adjusted exploration expenditures with respect to such property shall be treated as attributable to such portion to the extent of the amount of the gain to which paragraph (1) applies.

(B) In the case of the disposition of an undivided interest in a mining property (or a portion thereof), a proportionate part of the adjusted exploration expenditures with respect to such property shall be treated as attributable to such undivided interest to the extent of the amount of the gain to which paragraph (1) applies.

This paragraph shall not apply to any expenditure to the extent the taxpayer establishes to the satisfaction of the Secretary that such expenditure relates neither to the portion (or interest therein) disposed of nor to any mine, in the property held by the taxpayer before the disposition, which has reached the producing stage.

(3) Exceptions and limitations

Paragraphs (1), (2), and (3) of section 1245(b) (relating to exceptions and limitations with respect to gain from disposition of certain depreciable property) shall apply in respect of this subsection in the same manner and with the same effect as if references in section 1245(b) to section 1245 or any provision thereof were references to this subsection or the corresponding provisions of this subsection and as if references to section 1245 property were references to mining property.

(4) Application of subsection

This subsection shall apply notwithstanding any other provision of this subtitle.

(5) Coordination with section 1254

This subsection shall not apply to any disposition to which section 1254 applies.

(e) Basis of property

(1) Basis

The basis of any property shall not be reduced by the amount of any depletion which would be allowable but for the application of this section.

(2) Adjustments

The Secretary shall prescribe such regulations as he may deem necessary to provide for adjustments to the basis of property to reflect gain recognized under subsection (d)(1).

(f) Definitions

For purposes of this section

(1) Adjusted exploration expenditures

The term "adjusted exploration expenditures" means, with respect to any property or mine—

(A) the amount of the expenditures allowed for the taxable year and all preceding taxable years as deductions under subsection (a) to the taxpayer or any other person which are properly chargeable to such property or mine and which (but for the election under subsection (a)) would be reflected in the adjusted basis of such property or mine, reduced by

(B) for the taxable year and for each preceding taxable year, the amount (if any) by which (i) the amount which would have been allowable for percentage depletion under section 613 but for the deduction of such expenditures, exceeds (ii) the amount allowable for depletion under section 611,

properly adjusted for any amounts included in gross income under subsection (b) or (c) and for any amounts of gain to which subsection (d) applied.

(2) Mining property

The term "mining property" means any property (within the meaning of section 614 after the application of subsections (c) and (e) thereof) with respect to which any expenditures allowed as a deduction under subsection (a)(1) are properly chargeable.

(3) Disposal of coal or domestic iron ore with a retained economic interest

A transaction which constitutes a disposal of coal or iron ore under section 631(c) shall be treated as a disposition. In such a case, the excess referred to in subsection (d)(1)(B) shall be treated as equal to the gain (if any) referred to in section 631(c).

(g) Special rules relating to partnership property

(1) Property distributed to partner

In the case of any property or mine received by the taxpayer in a distribution with respect to part or all of his interest in a partnership, the adjusted exploration expenditures with respect to such property or mine include the adjusted exploration expenditures (not otherwise included under subsection (f)(1)) with respect to such property or mine immediately prior to such distribution, but the adjusted exploration expenditures with respect to any such property or mine shall be reduced by the amount of gain to which section 751(b) applied realized by the partnership (as constituted after the distribution) on the distribution of such property or mine.

(2) Property retained by partnership

In the case of any property or mine held by a partnership after a distribution to a partner to which section 751(b) applied, the adjusted exploration expenditures with respect to such property or mine shall, under regulations prescribed by the Secretary, be reduced by the amount of gain to which section 751(b) applied realized by such partner with respect to such distribution on account of such property or mine.

(h) Special rules for foreign exploration

In the case of any expenditures paid or incurred before the development stage for the purpose of ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral (other than an oil, gas, or geothermal well) located outside the United States—

(1) subsection (a) shall not apply, and

(2) such expenditures shall—

(A) at the election of the taxpayer, be included in adjusted basis for purposes of computing the amount of any deduction allowable under section 611 (without regard to section 613), or

(B) if subparagraph (A) does not apply, be allowed as a deduction ratably over the 10-taxable year period beginning with the taxable year in which such expenditures were paid or incurred.

(i) Cross reference

For election of 10-year amortization of expenditures allowable as a deduction under this section, see section 59(e).

(Added Pub. L. 89–570, §1(a), Sept. 12, 1966, 80 Stat. 759; amended Pub. L. 91–172, title V, §504(b), Dec. 30, 1969, 83 Stat. 632; Pub. L. 94–455, title XIX, §§1901(a)(89), (b)(3)(K), (21)(C)–(E), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1779, 1793, 1797, 1834; Pub. L. 97–248, title II, §201(d)(9)(D), formerly §201(c)(9)(D), §224(c)(8), Sept. 3, 1982, 96 Stat. 420, 489, renumbered §201(d)(9)(D), Pub. L. 97–448, title III, §306(a)(1)(A)(i), Jan. 12, 1983, 96 Stat. 2400; Pub. L. 99–514, title IV, §§411(b)(2)(B), 413(b), Oct. 22, 1986, 100 Stat. 2226, 2228; Pub. L. 100–647, title

I, §1007(g)(7), Nov. 10, 1988, 102 Stat. 3435; Pub. L. 101–508, title XI, §11801(a)(27), (c)(13), Nov. 5, 1990, 104 Stat. 1388–521, 1388–527.)

AMENDMENTS

1990—Subsecs. (i), (j). Pub. L. 101–508 redesignated subsec. (j) as (i) and struck out former subsec. (i) which related to deduction of certain pre-1970 exploration expenditures.

1988—Subsec. (j). Pub. L. 100–647 substituted "section 59(e)" for "section 58(i)".

1986—Subsec. (d)(5). Pub. L. 99–514, §413(b), added par. (5).

Subsec. (h). Pub. L. 99–514, §411(b)(2)(B), amended subsec. (h) generally, substituting provisions relating to special rules for foreign exploration for provisions relating to limitations.

1982—Subsec. (h)(3)(B). Pub. L. 97–248, §224(c)(8), inserted "338," after "334(b),".

Subsec. (j). Pub. L. 97–248, §201(d)(9)(D), formerly §201(c)(9)(D), added subsec. (j).

1976—Subsec. (a)(2)(A). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (a)(2)(B). Pub. L. 94–455, §§1901(a)(89), 1906(b)(13)(A), substituted "may not be revoked unless" for "may not be revoked after the last day of the third month following the month in which the final regulations issued under the authority of this subsection are published in the Federal Register, unless", and struck out "or his delegate" after "Secretary".

Subsec. (b)(2)(A). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (d)(1). Pub. L. 94–455, §1901(b)(3)(K), substituted "ordinary income" for "gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231".

Subsecs. (d)(2), (e)(2), (g)(2). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (h)(1). Pub. L. 94–455, §1901(b)(21)(C), substituted "and subsection (a) of section 615 (as in effect before the enactment of the Tax Reform Act of 1976)" for "and section 615(a) and the amounts which are or have been treated as deferred expenses under section 615(b)".

Subsec. (h)(3). Pub. L. 94–455, §1901(b)(21)(D), struck out "and all amounts treated as deferred expenses which were paid or incurred" after "amounts deducted" in introductory provisions, redesignated subpar. (C) as (B), and in subpar. (B) as so redesignated, substituted "374(b)(1)" for "373(b)(1)". Former subpar. (B), which related to the application of par. (2)(B) where the taxpayer would be entitled under section 381(c)(10) to deduct expenses deferred under section 615(b) had the distributor or transferor corporation elected to defer such expenses, was struck out.

Subsec. (i). Pub. L. 94–455, §1901(b)(21)(E), added subsec. (i).

1969—Pub. L. 91–172, §504(b)(1), substituted "Deduction and recapture of certain mining exploration expenditures" for "Additional exploration expenditures in the case of domestic mining" in heading.

Subsec. (a)(1). Pub. L. 91–172, §504(b)(2), struck out reference to United States, the Outer Continental Shelf and the Outer Continental Shelf Lands Act from general rule dealing with allowance of deductions for expenditures in ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral.

Subsec. (h). Pub. L. 91–172, §504(b)(3), substituted provisions imposing limitations on the operation of this section for provision making cross reference to subsecs. (f) and (g) of section 615.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 411(b)(2)(B) of Pub. L. 99–514 applicable to costs paid or incurred after Dec. 31, 1986, in taxable years ending after such date, with transition rule, see section 411(c) of Pub. L. 99–514 set out as a note under section 263 of this title.

Amendment by section 413(b) of Pub. L. 99–514 applicable to any disposition of property placed in service by taxpayer after Dec. 31, 1986, but inapplicable if such property was acquired pursuant to written contract entered into before Sept. 26, 1985, and binding at all times thereafter, see section 413(c) of Pub. L. 99–514, set out as a note under section 1254 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 201(d)(9)(D) of Pub. L. 97–248 applicable to taxable years beginning after Dec. 31, 1982, see section 201(e)(1) of Pub. L. 97–248, set out as a note under section 5 of this title.

Amendment by section 224(c)(8) of Pub. L. 97–248 applicable to any target corporation with respect to which the acquisition date occurs after Aug. 31, 1982, with special rules for certain acquisitions before Sept.

1, 1982, and certain acquisitions of financial institutions in which there was a binding contract on July 22, 1982, to acquire control, see section 224(d) of Pub. L. 97–248, set out as an Effective Date note under section 338 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(89), (b)(3)(K), (21)(C)–(E) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable with respect to exploration expenditures paid or incurred after Dec. 31, 1969, and for purposes of this section, elections under section 615(e) of this title, effective with respect to exploration expenditures paid or incurred before Jan. 1, 1970, to be treated as an election under subsec. (a) of this section with respect to exploration expenditures paid or incurred after Dec. 31, 1969, see section 504(d) of Pub. L. 91–172, set out as a note under section 243 of this title.

EFFECTIVE DATE

Pub. L. 89–570, §3, Sept. 12, 1966, 80 Stat. 764, provided that: "The amendments made by this Act [enacting this section and amending sections 170, 301, 312, 341, 453, 615, 703, and 751 of this title] shall apply to taxable years ending after the date of the enactment of this Act [Sept. 12, 1966] but only in respect of expenditures paid or incurred after such date."

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

[PART II—REPEALED]

[§621. Repealed. Pub. L. 101–508, title XI, §11801(a)(28), Nov. 5, 1990, 104 Stat. 1388–521]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 212, related to payments to encourage exploration, development, and mining for defense purposes.

SAVINGS PROVISION

For provisions that nothing in repeal by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

PART III—SALES AND EXCHANGES

Sec.
631. Gain or loss in the case of timber, coal, or domestic iron ore.
[632. Repealed.]

AMENDMENTS

1976—Pub. L. 94–455, title XIX, §1901(b)(22)(A), Oct. 4, 1976, 90 Stat. 1798, struck out item 632 "Sale of oil or gas properties".

1964—Pub. L. 88–272, title II, §227(b)(2), Feb. 26, 1964, 78 Stat. 98, inserted reference to domestic iron ore in item 631.

§631. Gain or loss in the case of timber, coal, or domestic iron ore

(a) Election to consider cutting as sale or exchange

If the taxpayer so elects on his return for a taxable year, the cutting of timber (for sale or for use in the taxpayer's trade or business) during such year by the taxpayer who owns, or has a contract right to cut, such timber (providing he has owned such timber or has held such contract right for a period of more than 1 year) shall be considered as a sale or exchange of such timber cut during such year. If such election has been made, gain or loss to the taxpayer shall be recognized in an amount equal to the difference between the fair market value of such timber, and the adjusted basis for depletion of such timber in the hands of the taxpayer. Such fair market value shall be the fair market value as of the first day of the taxable year in which such timber is cut, and shall thereafter be considered as the cost of such cut timber to the taxpayer for all purposes for which such cost is a necessary factor. If a taxpayer makes an election under this subsection, such election shall apply with respect to all timber which is owned by the taxpayer or which the taxpayer has a contract right to cut and shall be binding on the taxpayer for the taxable year for which the election is made and for all subsequent years, unless the Secretary, on showing of undue hardship, permits the taxpayer to revoke his election; such revocation, however, shall preclude any further elections under this subsection except with the consent of the Secretary. For purposes of this subsection and subsection (b), the term "timber" includes evergreen trees which are more than 6 years old at the time severed from the roots and are sold for ornamental purposes.

(b) Disposal of timber

In the case of the disposal of timber held for more than 1 year before such disposal, by the owner thereof under any form or type of contract by virtue of which such owner either retains an economic interest in such timber or makes an outright sale of such timber, the difference between the amount realized from the disposal of such timber and the adjusted depletion basis thereof, shall be considered as though it were a gain or loss, as the case may be, on the sale of such timber. In determining the gross income, the adjusted gross income, or the taxable income of the lessee, the deductions allowable with respect to rents and royalties shall be determined without regard to the provisions of this subsection. In the case of disposal of timber with a retained economic interest, the date of disposal of such timber shall be deemed to be the date such timber is cut, but if payment is made to the owner under the contract before such timber is cut the owner may elect to treat the date of such payment as the date of disposal of such timber. For purposes of this subsection, the term "owner" means any person who owns an interest in such timber, including a sublessor and a holder of a contract to cut timber.

(c) Disposal of coal or domestic iron ore with a retained economic interest

In the case of the disposal of coal (including lignite), or iron ore mined in the United States, held for more than 1 year before such disposal, by the owner thereof under any form of contract by virtue of which such owner retains an economic interest in such coal or iron ore, the difference between the amount realized from the disposal of such coal or iron ore and the adjusted depletion basis thereof plus the deductions disallowed for the taxable year under section 272 shall be considered as though it were a gain or loss, as the case may be, on the sale of such coal or iron ore. If for the taxable year of such gain or loss the maximum rate of tax imposed by this chapter on any net capital gain is less than such maximum rate for ordinary income, such owner shall not be entitled to the allowance for percentage depletion provided in section 613 with respect to such coal or iron ore. This subsection shall not apply to income realized by any owner as a co-adventurer, partner, or principal in the mining of such coal or iron ore, and the word "owner" means any person who owns an economic interest in coal or iron ore in place, including a sublessor. The date of disposal of such coal or iron ore shall be deemed to be the date such coal or iron ore is mined. In determining the gross income, the adjusted gross income, or the taxable income of the lessee, the deductions allowable with respect to rents and royalties shall be determined without regard to the provisions of this subsection. This subsection shall have no application, for purposes of applying subchapter G, relating to corporations used to avoid income tax on shareholders (including the determinations of the amount of the

deductions under section 535(b)(6) or section 545(b)(5)). This subsection shall not apply to any disposal of iron ore or coal—

(1) to a person whose relationship to the person disposing of such iron ore or coal would result in the disallowance of losses under section 267 or 707(b), or

(2) to a person owned or controlled directly or indirectly by the same interests which own or control the person disposing of such iron ore or coal.

(Aug. 16, 1954, ch. 736, 68A Stat. 213; Pub. L. 88–272, title II, §227(a)(1), (b)(1), Feb. 26, 1964, 78 Stat. 97, 98; Pub. L. 94–455, title XIV, §1402(b)(1)(I), (2), (3), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1732, 1733, 1834; Pub. L. 98–369, div. A, title I, §178(a), title X, §1001(c), (e), July 18, 1984, 98 Stat. 712, 1012; Pub. L. 99–514, title III, §311(b)(3), Oct. 22, 1986, 100 Stat. 2219; Pub. L. 108–357, title III, §315(a), (b), Oct. 22, 2004, 118 Stat. 1469.)

AMENDMENTS

2004—Subsec. (b). Pub. L. 108–357, in heading, struck out "with a retained economic interest" after "timber", in first sentence, substituted "either retains an economic interest in such timber or makes an outright sale of such timber" for "retains an economic interest in such timber", and, in third sentence, substituted "In the case of disposal of timber with a retained economic interest, the date of disposal" for "The date of disposal".

1986—Subsec. (c). Pub. L. 99–514 substituted "If for the taxable year of such gain or loss the maximum rate of tax imposed by this chapter on any net capital gain is less than such maximum rate for ordinary income, such owner" for "Such owner".

1984—Subsec. (a). Pub. L. 98–369, §1001(c)(1), (e), substituted "on the first day of such year and for a period of more than 6 months before such cutting" for "for a period of more than 1 year", applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

Subsecs. (b), (c). Pub. L. 98–369, §1001(c)(2), (e), substituted "6 months" for "1 year", applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

Pub. L. 98–369, §178(a), inserted "or coal" after "iron ore" wherever appearing in last sentence of subsec. (c).

1976—Subsec. (a). Pub. L. 94–455, §1402(b)(2), provided that "9 months" would be changed to "1 year".

Pub. L. 94–455, §§1402(b)(1)(I), (3), 1906(b)(13)(A), provided that "6 months" would be changed to "9 months" for taxable years beginning in 1977 and struck out "before the beginning of such year" before ") shall be considered as a sale" effective for taxable years beginning after Dec. 31, 1976, and "or his delegate" after "Secretary" wherever appearing.

Subsec. (b). Pub. L. 94–455, §1402(b)(2), provided that "9 months" would be changed to "1 year".

Pub. L. 94–455, §1402(b)(1)(I), provided that "6 months" would be changed to "9 months" for taxable years beginning in 1977.

Subsec. (c). Pub. L. 94–455, §1402(b)(2), provided that "9 months" would be changed to "1 year".

Pub. L. 94–455, §1402(b)(1)(I), provided that "6 months" would be changed to "9 months" for taxable years beginning in 1977.

1964—Pub. L. 88–272, §227(b)(1), inserted reference to domestic iron ore in heading.

Subsec. (c). Pub. L. 88–272, §227(a)(1), inserted "or domestic iron ore" in heading, "or iron ore mined in the United States" after "coal (including lignite)", "or iron ore" after "coal" wherever appearing, and provided that the subsection shall not apply to any disposal of iron ore to a person whose relationship to the person disposing of such ore would result in the disallowance of losses under section 267 of 717(b), or to a person owned or controlled by the same interests which own or control the person disposing of such iron ore.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title III, §315(c), Oct. 22, 2004, 118 Stat. 1469, provided that: "The amendments made by this section [amending this section] shall apply to sales after December 31, 2004."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 311(c) of Pub. L. 99–514, set out as a note under section 1201 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §178(b), July 18, 1984, 98 Stat. 712, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to dispositions after September 30, 1985.

"(2) SPECIAL RULE FOR FIXED CONTRACTS.—

"(A) IN GENERAL.—The amendment made by subsection (a) shall not apply to any disposition of an interest in coal by a person to a related person if such coal is subsequently sold before January 1, 1990, by either such person—

"(i) to a person who is not a related person with respect to either such person, and

"(ii) pursuant to a qualified fixed contract.

"(B) ALLOCATION WHERE MORE THAN 1 CONTRACT.—If, for any taxable year, there is a disposition described in subparagraph (A) which is not specifically allocable to a qualified fixed contract or to a contract which is not a qualified fixed contract, such disposition shall be treated as first allocable to the qualified fixed contract.

"(C) QUALIFIED FIXED CONTRACT DEFINED.—The term 'qualified fixed contract' means any contract for the sale of coal which—

"(i) was entered into before June 12, 1984,

"(ii) is binding at all times thereafter, and

"(iii) cannot be adjusted to reflect to any extent the increase in liabilities of the person disposing of the coal for tax under chapter 1 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] by reason of the amendment made by subsection (a).

"(D) RELATED PERSON.—For purposes of this paragraph, the term 'related person' means a person who bears a relationship to another person described in the last sentence of section 631(c). "

Amendment by section 1001(c) of Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XIV, §1402(b)(1), Oct. 4, 1976, 90 Stat. 1731, provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Pub. L. 94–455, title XIV, §1402(b)(2), Oct. 4, 1976, 90 Stat. 1732, provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

Pub. L. 94–455, title XIV, §1402(b)(3), Oct. 4, 1976, 90 Stat. 1733, provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1976.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable with respect to amounts received or accrued in taxable years beginning after Dec. 31, 1963, attributable to iron ore mined in such years, see section 227(c) of Pub. L. 88–272, set out as a note under section 272 of this title.

REVOCATION OF ELECTIONS UNDER SECTION 631(A)

Pub. L. 108–357, title I, §102(c), Oct. 22, 2004, 118 Stat. 1428, provided that: "Any election under section 631(a) of the Internal Revenue Code of 1986 made for a taxable year ending on or before the date of the enactment of this Act [Oct. 22, 2004] may be revoked by the taxpayer for any taxable year ending after such date. For purposes of determining whether such taxpayer may make a further election under such section, such election (and any revocation under this section) shall not be taken into account."

Pub. L. 99–514, title III, §311(d)(2), Oct. 22, 1986, 100 Stat. 2220, provided that: "Any election under section 631(a) of the Internal Revenue Code of 1954 made (whether by a corporation or a person other than a corporation) for a taxable year beginning before January 1, 1987, may be revoked by the taxpayer for any taxable year ending after December 31, 1986. For purposes of determining whether the taxpayer may make a further election under such section, such election (and any revocation under this paragraph) shall not be taken into account."

[§632. Repealed. Pub. L. 94–455, title XIX, §1901(a)(90), Oct. 4, 1976, 90 Stat. 1779]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 214; Dec. 30, 1969, Pub. L. 91–172, title VIII, §803(d)(4), 83 Stat. 684, related to tax in case of sale of oil and gas properties.

EFFECTIVE DATE OF REPEAL

Repeal effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 2 of this title.

PART IV—MINERAL PRODUCTION PAYMENTS

Sec.
636. Income tax treatment of mineral production payments.

AMENDMENTS

1969—Pub. L. 91–172, title V, §503(a), Dec. 30, 1969, 83 Stat. 630, added part heading and section analysis.

§636. Income tax treatment of mineral production payments

(a) Carved-out production payments

A production payment carved out of mineral property shall be treated, for purposes of this subtitle, as if it were a mortgage loan on the property, and shall not qualify as an economic interest in the mineral property. In the case of a production payment carved out for exploration or development of a mineral property, the preceding sentence shall apply only if and to the extent gross income from the property (for purposes of section 613) would be realized, in the absence of the application of such sentence, by the person creating the production payment.

(b) Retained production payment on sale of mineral property

A production payment retained on the sale of a mineral property shall be treated, for purposes of this subtitle, as if it were a purchase money mortgage loan and shall not qualify as an economic interest in the mineral property.

(c) Retained production payment on lease of mineral property

A production payment retained in a mineral property by the lessor in a leasing transaction shall be treated, for purposes of this subtitle, insofar as the lessee (or his successors in interest) is concerned, as if it were a bonus granted by the lessee to the lessor payable in installments. The treatment of the production payment in the hands of the lessor shall be determined without regard to the provisions of this subsection.

(d) Definition

As used in this section, the term "mineral property" has the meaning assigned to the term "property" in section 614(a).

(e) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section.

(Added Pub. L. 91–172, title V, §503(a), Dec. 30, 1969, 83 Stat. 630; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsec. (e). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE

Pub. L. 91–172, title V, §503(c), Dec. 30, 1969, 83 Stat. 631, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) GENERAL RULE.—The amendments made by this section [enacting this section] shall apply with respect to mineral production payments created on or after August 7, 1969, other than mineral production payments created before January 1, 1971, pursuant to a binding contract entered into before August 7, 1969.

"(2) ELECTION.—At the election of the taxpayer (made at such time and in such manner as the Secretary

of the Treasury or his delegate prescribes by regulations), the amendments made by this section shall apply with respect to all mineral production payments which the taxpayer carved out of mineral properties after the beginning of his last taxable year ending before August 7, 1969. No interest shall be allowed on any refund or credit of any overpayment resulting from such election for any taxable year ending before August 7, 1969.

"(3) SPECIAL RULE.—With respect to a taxpayer who does not elect the treatment provided in paragraph (2) and who carves out one or more mineral production payments on or after August 7, 1969, during the taxable year which includes such date, the amendments made by this section shall apply to such production payments only to the extent the aggregate amount of such production payments exceeds the lesser of—

"(A) the excess of

"(i) the aggregate amount of production payments carved out and sold by the taxpayer during the 12-month period immediately preceding his taxable year which includes August 7, 1969, over

"(ii) the aggregate amount of production payments carved out before August 7, 1969, by the taxpayer during his taxable year which includes such date, or

"(B) the amount necessary to increase the amount of the taxpayer's gross income, within the meaning of chapter 1 of subtitle A of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [this title], for the taxable year which includes August 7, 1969, to an amount equal to the amount of deductions (other than any deduction under section 172 of such Code) allowable for such year under such chapter.

The preceding sentence shall not apply for purposes of determining the amount of any deduction allowable under section 611 or the amount of foreign tax credit allowable under section 904 of such Code."

PART V—CONTINENTAL SHELF AREAS

Sec.
638. Continental shelf areas.

AMENDMENTS

1969—Pub. L. 91–172, title V, §505(a), Dec. 30, 1969, 83 Stat. 634, added part heading and section analysis.

§638. Continental shelf areas

For purposes of applying the provisions of this chapter (including sections 861(a)(3) and 862(a)(3) in the case of the performance of personal services) with respect to mines, oil and gas wells, and other natural deposits—

(1) the term "United States" when used in a geographical sense includes the seabed and subsoil of those submarine areas which are adjacent to the territorial waters of the United States and over which the United States has exclusive rights, in accordance with international law, with respect to the exploration and exploitation of natural resources; and

(2) the terms "foreign country" and "possession of the United States" when used in a geographical sense include the seabed and subsoil of those submarine areas which are adjacent to the territorial waters of the foreign country or such possession and over which the foreign country (or the United States in case of such possession) has exclusive rights, in accordance with international law, with respect to the exploration and exploitation of natural resources, but this paragraph shall apply in the case of a foreign country only if it exercises, directly or indirectly, taxing jurisdiction with respect to such exploration or exploitation.

No foreign country shall, by reason of the application of this section, be treated as a country contiguous to the United States.

(Added Pub. L. 91–172, title V, §505(a), Dec. 30, 1969, 83 Stat. 634.)

Subchapter J—Estates, Trusts, Beneficiaries, and Decedents

Part

I. Estates, trusts, and beneficiaries.
II. Income in respect of decedents.

PART I—ESTATES, TRUSTS, AND BENEFICIARIES

Subpart
A. General rules for taxation of estates and trusts.
B. Trusts which distribute current income only.
C. Estates and trusts which may accumulate income or which distribute corpus.
D. Treatment of excess distributions by trusts.
E. Grantors and others treated as substantial owners.
F. Miscellaneous.

SUBPART A—GENERAL RULES FOR TAXATION OF ESTATES AND TRUSTS

Sec.
641. Imposition of tax.
642. Special rules for credits and deductions.
643. Definitions applicable to subparts A, B, C, and D.
644. Taxable year of trusts.
645. Certain revocable trusts treated as part of estate.
646. Tax treatment of electing Alaska Native Settlement Trusts.

AMENDMENTS

2001—Pub. L. 107–16, title VI, §671(c)(1), June 7, 2001, 115 Stat. 147, added item 646.

1998—Pub. L. 105–206, title VI, §6013(a)(2), July 22, 1998, 112 Stat. 819, renumbered item 646 as 645.

1997—Pub. L. 105–34, title V, §507(b)(3), title XIII, §1305(c), Aug. 5, 1997, 111 Stat. 857, 1041, added items 644 and 646 and struck out former items 644 "Special rule for gain on property transferred to trust at less than fair market value" and 645 "Taxable year of trusts".

1986—Pub. L. 99–514, title XIV, §1403(b), Oct. 22, 1986, 100 Stat. 2713, added item 645.

1976—Pub. L. 94–455, title VII, §701(g)(2), Oct. 4, 1976, 90 Stat. 1580, added item 644.

§641. Imposition of tax

(a) Application of tax

The tax imposed by section 1(e) shall apply to the taxable income of estates or of any kind of property held in trust, including—

(1) income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests, and income accumulated or held for future distribution under the terms of the will or trust;

(2) income which is to be distributed currently by the fiduciary to the beneficiaries, and income collected by a guardian of an infant which is to be held or distributed as the court may direct;

(3) income received by estates of deceased persons during the period of administration or settlement of the estate; and

(4) income which, in the discretion of the fiduciary, may be either distributed to the beneficiaries or accumulated.

(b) Computation and payment

The taxable income of an estate or trust shall be computed in the same manner as in the case of an individual, except as otherwise provided in this part. The tax shall be computed on such taxable income and shall be paid by the fiduciary. For purposes of this subsection, a foreign trust or foreign estate shall be treated as a nonresident alien individual who is not present in the United States at any time.

(c) Special rules for taxation of electing small business trusts

(1) In general

For purposes of this chapter—

(A) the portion of any electing small business trust which consists of stock in 1 or more S corporations shall be treated as a separate trust, and

(B) the amount of the tax imposed by this chapter on such separate trust shall be determined with the modifications of paragraph (2).

(2) Modifications

For purposes of paragraph (1), the modifications of this paragraph are the following:

(A) Except as provided in section 1(h), the amount of the tax imposed by section 1(e) shall be determined by using the highest rate of tax set forth in section 1(e).

(B) The exemption amount under section 55(d) shall be zero.

(C) The only items of income, loss, deduction, or credit to be taken into account are the following:

(i) The items required to be taken into account under section 1366.

(ii) Any gain or loss from the disposition of stock in an S corporation.

(iii) To the extent provided in regulations, State or local income taxes or administrative expenses to the extent allocable to items described in clauses (i) and (ii).

(iv) Any interest expense paid or accrued on indebtedness incurred to acquire stock in an S corporation.

No deduction or credit shall be allowed for any amount not described in this paragraph, and no item described in this paragraph shall be apportioned to any beneficiary.

(D) No amount shall be allowed under paragraph (1) or (2) of section 1211(b).

(3) Treatment of remainder of trust and distributions

For purposes of determining—

(A) the amount of the tax imposed by this chapter on the portion of any electing small business trust not treated as a separate trust under paragraph (1), and

(B) the distributable net income of the entire trust,

the items referred to in paragraph (2)(C) shall be excluded. Except as provided in the preceding sentence, this subsection shall not affect the taxation of any distribution from the trust.

(4) Treatment of unused deductions where termination of separate trust

If a portion of an electing small business trust ceases to be treated as a separate trust under paragraph (1), any carryover or excess deduction of the separate trust which is referred to in section 642(h) shall be taken into account by the entire trust.

(5) Electing small business trust

For purposes of this subsection, the term "electing small business trust" has the meaning given such term by section 1361(e)(1).

(Aug. 16, 1954, ch. 736, 68A Stat. 215; Pub. L. 91–172, title VIII, §803(d)(3), Dec. 30, 1969, 83 Stat. 684; Pub. L. 94–455, title VII, §701(e)(2), Oct. 4, 1976, 90 Stat. 1579; Pub. L. 95–30, title I, §101(d)(8), May 23, 1977, 91 Stat. 134; Pub. L. 104–188, title I, §1302(d), Aug. 20, 1996, 110 Stat. 1778; Pub. L. 105–34, title XVI, §1601(i)(3)(B), Aug. 5, 1997, 111 Stat. 1093; Pub. L. 105–206, title VI, §6007(f)(2), July 22, 1998, 112 Stat. 810; Pub. L. 110–28, title VIII, §8236(a), May 25, 2007, 121 Stat. 199.)

AMENDMENTS

2007—Subsec. (c)(2)(C)(iv). Pub. L. 110–28 added cl. (iv).

1998—Subsecs. (c), (d). Pub. L. 105–206 redesignated subsec. (d) as (c) and struck out heading and text of former subsec. (c). Text read as follows:

"(1) GENERAL RULE.—For purposes of this part, the taxable income of a trust does not include the amount of any includible gain as defined in section 644(b) reduced by any deductions properly allocable thereto.

"(2) CROSS REFERENCE.—

"For the taxation of any includible gain, see section 644."

1997—Subsec. (b). Pub. L. 105–34 inserted at end "For purposes of this subsection, a foreign trust or foreign estate shall be treated as a nonresident alien individual who is not present in the United States at any time."

1996—Subsec. (d). Pub. L. 104–188 added subsec. (d).

1977—Subsec. (a). Pub. L. 95–30 substituted "section 1(e)" for "section 1(d)" in introductory provisions.

1976—Subsec. (c). Pub. L. 94–455 added subsec. (c).

1969—Subsec. (a). Pub. L. 91–172 substituted "The tax imposed by section 1(d)" for "The taxes imposed by this chapter on individuals".

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–28, title VIII, §8236(b), May 25, 2007, 121 Stat. 199, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2006."

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 23 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, §1317(a), Aug. 20, 1996, 110 Stat. 1787, provided that: "Except as otherwise provided in this subtitle [subtitle C (§§1301–1317) of title I of Pub. L. 104–188], the amendments made by this subtitle [amending this section and sections 170, 404, 512, 1042, 1237, 1361, 1362, 1366 to 1368, 1371, 1375, 1377, 1504, 6037, and 6233 of this title and repealing sections 6241 to 6245 of this title] shall apply to taxable years beginning after December 31, 1996."

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable to transfers in trust made after May 21, 1976, see section 701(h) of Pub. L. 94–455, set out as a note under section 667 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1970, see section 803(f) of Pub. L. 91–172, set out as a note under section 1 of this title.

§642. Special rules for credits and deductions

(a) Foreign tax credit allowed

An estate or trust shall be allowed the credit against tax for taxes imposed by foreign countries and possessions of the United States, to the extent allowed by section 901, only in respect of so much of the taxes described in such section as is not properly allocable under such section to the beneficiaries.

(b) Deduction for personal exemption

(1) Estates

An estate shall be allowed a deduction of $600.

(2) Trusts

(A) In general

Except as otherwise provided in this paragraph, a trust shall be allowed a deduction of $100.

(B) Trusts distributing income currently

A trust which, under its governing instrument, is required to distribute all of its income currently shall be allowed a deduction of $300.

(C) Disability trusts

(i) In general

A qualified disability trust shall be allowed a deduction equal to the exemption amount under section 151(d), determined—

(I) by treating such trust as an individual described in section 151(d)(3)(C)(iii),[1] and

(II) by applying section 67(e) (without the reference to section 642(b)) for purposes of determining the adjusted gross income of the trust.

(ii) Qualified disability trust

For purposes of clause (i), the term "qualified disability trust" means any trust if—

(I) such trust is a disability trust described in subsection (c)(2)(B)(iv) of section 1917 of the Social Security Act (42 U.S.C. 1396p), and

(II) all of the beneficiaries of the trust as of the close of the taxable year are determined by the Commissioner of Social Security to have been disabled (within the meaning of section 1614(a)(3) of the Social Security Act, 42 U.S.C. 1382c(a)(3)) for some portion of such year.

A trust shall not fail to meet the requirements of subclause (II) merely because the corpus of the trust may revert to a person who is not so disabled after the trust ceases to have any beneficiary who is so disabled.

(3) Deductions in lieu of personal exemption

The deductions allowed by this subsection shall be in lieu of the deductions allowed under section 151 (relating to deduction for personal exemption).

(c) Deduction for amounts paid or permanently set aside for a charitable purpose

(1) General rule

In the case of an estate or trust (other then [2] a trust meeting the specifications of subpart B), there shall be allowed as a deduction in computing its taxable income (in lieu of the deduction allowed by section 170(a), relating to deduction for charitable, etc., contributions and gifts) any amount of the gross income, without limitation, which pursuant to the terms of the governing instrument is, during the taxable year, paid for a purpose specified in section 170(c) (determined without regard to section 170(c)(2)(A)). If a charitable contribution is paid after the close of such taxable year and on or before the last day of the year following the close of such taxable year, then the trustee or administrator may elect to treat such contribution as paid during such taxable year. The election shall be made at such time and in such manner as the Secretary prescribes by regulations.

(2) Amounts permanently set aside

In the case of an estate, and in the case of a trust (other than a trust meeting the specifications of subpart B) required by the terms of its governing instrument to set aside amounts which was—

(A) created on or before October 9, 1969, if—

(i) an irrevocable remainder interest is transferred to or for the use of an organization described in section 170(c), or

(ii) the grantor is at all times after October 9, 1969, under a mental disability to change the terms of the trust; or

(B) established by a will executed on or before October 9, 1969, if—

(i) the testator dies before October 9, 1972, without having republished the will after October 9, 1969, by codicil or otherwise,

(ii) the testator at no time after October 9, 1969, had the right to change the portions of the will which pertain to the trust, or

(iii) the will is not republished by codicil or otherwise before October 9, 1972, and the testator is on such date and at all times thereafter under a mental disability to republish the will by codicil or otherwise,

there shall also be allowed as a deduction in computing its taxable income any amount of the gross income, without limitation, which pursuant to the terms of the governing instrument is, during the taxable year, permanently set aside for a purpose specified in section 170(c), or is to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, or for the establishment, acquisition, maintenance, or operation of a public cemetery not operated for profit. In the case of a trust, the preceding sentence shall apply only to gross income earned with respect to amounts transferred to the trust before October 9, 1969, or transferred under a will to which subparagraph (B) applies.

(3) Pooled income funds

In the case of a pooled income fund (as defined in paragraph (5)), there shall also be allowed as a deduction in computing its taxable income any amount of the gross income attributable to gain from the sale of a capital asset held for more than 1 year, without limitation, which pursuant to the terms of the governing instrument is, during the taxable year, permanently set aside for a purpose specified in section 170(c).

(4) Adjustments

To the extent that the amount otherwise allowable as a deduction under this subsection consists of gain described in section 1202(a), proper adjustment shall be made for any exclusion allowable to the estate or trust under section 1202. In the case of a trust, the deduction allowed by this subsection shall be subject to section 681 (relating to unrelated business income).

(5) Definition of pooled income fund

For purposes of paragraph (3), a pooled income fund is a trust—

(A) to which each donor transfers property, contributing an irrevocable remainder interest in such property to or for the use of an organization described in section 170(b)(1)(A) (other than in clauses (vii) or (viii)), and retaining an income interest for the life of one or more beneficiaries (living at the time of such transfer),

(B) in which the property transferred by each donor is commingled with property transferred by other donors who have made or make similar transfers,

(C) which cannot have investments in securities which are exempt from the taxes imposed by this subtitle,

(D) which includes only amounts received from transfers which meet the requirements of this paragraph,

(E) which is maintained by the organization to which the remainder interest is contributed and of which no donor or beneficiary of an income interest is a trustee, and

(F) from which each beneficiary of an income interest receives income, for each year for which he is entitled to receive the income interest referred to in subparagraph (A), determined by the rate of return earned by the trust for such year.

For purposes of determining the amount of any charitable contribution allowable by reason of a transfer of property to a pooled fund, the value of the income interest shall be determined on the basis of the highest rate of return earned by the fund for any of the 3 taxable years immediately preceding the taxable year of the fund in which the transfer is made. In the case of funds in existence less than 3 taxable years preceding the taxable year of the fund in which a transfer is

made the rate of return shall be deemed to be 6 percent per annum, except that the Secretary may prescribe a different rate of return.

(6) Taxable private foundations

In the case of a private foundation which is not exempt from taxation under section 501(a) for the taxable year, the provisions of this subsection shall not apply and the provisions of section 170 shall apply.

(d) Net operating loss deduction

The benefit of the deduction for net operating losses provided by section 172 shall be allowed to estates and trusts under regulations prescribed by the Secretary.

(e) Deduction for depreciation and depletion

An estate or trust shall be allowed the deduction for depreciation and depletion only to the extent not allowable to beneficiaries under section 167(d) and 611(b).

(f) Amortization deductions

The benefit of the deductions for amortization provided by sections 169 and 197 shall be allowed to estates and trusts in the same manner as in the case of an individual. The allowable deduction shall be apportioned between the income beneficiaries and the fiduciary under regulations prescribed by the Secretary.

(g) Disallowance of double deductions

Amounts allowable under section 2053 or 2054 as a deduction in computing the taxable estate of a decedent shall not be allowed as a deduction (or as an offset against the sales price of property in determining gain or loss) in computing the taxable income of the estate or of any other person, unless there is filed, within the time and in the manner and form prescribed by the Secretary, a statement that the amounts have not been allowed as deductions under section 2053 or 2054 and a waiver of the right to have such amounts allowed at any time as deductions under section 2053 or 2054. Rules similar to the rules of the preceding sentence shall apply to amounts which may be taken into account under section 2621(a)(2) or 2622(b). This subsection shall not apply with respect to deductions allowed under part II (relating to income in respect of decedents).

(h) Unused loss carryovers and excess deductions on termination available to beneficiaries

If on the termination of an estate or trust, the estate or trust has—

(1) a net operating loss carryover under section 172 or a capital loss carryover under section 1212, or

(2) for the last taxable year of the estate or trust deductions (other than the deductions allowed under subsections (b) or (c)) in excess of gross income for such year,

then such carryover or such excess shall be allowed as a deduction, in accordance with regulations prescribed by the Secretary, to the beneficiaries succeeding to the property of the estate or trust.

(i) Certain distributions by cemetery perpetual care funds

In the case of a cemetery perpetual care fund which—

(1) was created pursuant to local law by a taxable cemetery corporation for the care and maintenance of cemetery property, and

(2) is treated for the taxable year as a trust for purposes of this subchapter,

any amount distributed by such fund for the care and maintenance of gravesites which have been purchased from the cemetery corporation before the beginning of the taxable year of the trust and with respect to which there is an obligation to furnish care and maintenance shall be considered to be a distribution solely for purposes of sections 651 and 661, but only to the extent that the aggregate amount so distributed during the taxable year does not exceed $5 multiplied by the aggregate number of such gravesites.

(Aug. 16, 1954, ch. 736, 68A Stat. 215; Pub. L. 87–834, §13(c)(2)(A), Oct. 16, 1962, 76 Stat. 1034;

Pub. L. 88–272, title II, §201(d)(6)(A), (B), Feb. 26, 1964, 78 Stat. 32; Pub. L. 89–621, §2(a), Oct. 4, 1966, 80 Stat. 872; Pub. L. 91–172, title II, §201(b), title VII, §704(b)(2), Dec. 30, 1969, 83 Stat. 558, 669; Pub. L. 92–178, title III, §303(c)(4), title VII, §§701(b), 702(b), Dec. 10, 1971, 85 Stat. 522, 561, 562; Pub. L. 94–455, title XIV, §1402(b)(1)(J), (2), title XIX, §§1901(b)(1)(H)(i), 1906(b)(13)(A), 1951(c)(2)(B), title XX, §2009(d), title XXI, §2124(a)(3)(B), Oct. 4, 1976, 90 Stat. 1732, 1791, 1834, 1840, 1896, 1917; Pub. L. 94–528, §1(a), Oct. 17, 1976, 90 Stat. 2483; Pub. L. 95–30, title I, §101(d)(9), May 23, 1977, 91 Stat. 134; Pub. L. 95–600, title I, §113(a)(2)(B), Nov. 6, 1978, 92 Stat. 2778; Pub. L. 97–34, title II, §212(d)(2)(D), Aug. 13, 1981, 95 Stat. 239; Pub. L. 98–369, div. A, title IV, §474(r)(17), title X, §1001(b)(8), (e), July 18, 1984, 98 Stat. 843, 1011, 1012; Pub. L. 99–514, title I, §112(b)(2), title III, §301(b)(6), title VI, §612(b)(3), Oct. 22, 1986, 100 Stat. 2108, 2217, 2250; Pub. L. 101–239, title VII, §7811(j)(3), Dec. 19, 1989, 103 Stat. 2411; Pub. L. 101–508, title XI, §§11801(c)(6)(B), 11812(b)(9), Nov. 5, 1990, 104 Stat. 1388–524, 1388–535; Pub. L. 103–66, title XIII, §§13113(d)(2), 13261(f)(2), Aug. 10, 1993, 107 Stat. 429, 539; Pub. L. 104–188, title I, §1704(t)(8), Aug. 20, 1996, 110 Stat. 1887; Pub. L. 107–134, title I, §116(a), Jan. 23, 2002, 115 Stat. 2439.)

REFERENCES IN TEXT

Section 151(d)(3)(C), referred to in subsec. (b)(2)(C)(i)(I), was repealed and subpar. (D) of section 151(d)(3) was redesignated as (C) by Pub. L. 112–240, title I, §101(b)(2)(B)(i)(II), Jan. 2, 2013, 126 Stat. 2317.

AMENDMENTS

2002—Subsec. (b). Pub. L. 107–134 reenacted heading without change and amended text of subsec. (b) generally. Prior to amendment, text read as follows: "An estate shall be allowed a deduction of $600. A trust which, under its governing instrument, is required to distribute all of its income currently shall be allowed a deduction of $300. All other trusts shall be allowed a deduction of $100. The deductions allowed by this subsection shall be in lieu of the deductions allowed under section 151 (relating to deduction for personal exemption)."

1996—Subsec. (g). Pub. L. 104–188 substituted "under section 2621(a)(2)" for "under 2621(a)(2)".

1993—Subsec. (c)(4). Pub. L. 103–66, §13113(d)(2), amended heading and text of par. (4) generally. Prior to amendment, text read as follows: "In the case of a trust, the deduction allowed by this subsection shall be subject to section 681 (relating to unrelated business income)."

Subsec. (f). Pub. L. 103–66, §13261(f)(2), substituted "sections 169 and 197" for "section 169".

1990—Subsec. (e). Pub. L. 101–508, §11812(b)(9), substituted "167(d)" for "167(h)".

Subsec. (f). Pub. L. 101–508, §11801(c)(6)(B), substituted "section 169" for "sections 169, 184, 187, and 188".

1989—Subsec. (g). Pub. L. 101–239 inserted after first sentence "Rules similar to the rules of the preceding sentence shall apply to amounts which may be taken into account under 2621(a)(2) or 2622(b)."

1986—Subsec. (a). Pub. L. 99–514, §112(b)(2), amended subsec. (a) generally, substituting "Foreign tax credit allowed" for "Credits against tax" in heading, striking out designation and heading for par. (1), and striking out par. (2) which read as follows: "An estate or trust shall not be allowed the credit against tax for political contributions provided by section 24."

Subsec. (c)(4). Pub. L. 99–514, §301(b)(6), in heading, substituted "Coordination with section 681" for "Adjustments", and in text struck out first sentence which read as follows: "To the extent that the amount otherwise allowable as a deduction under this subsection consists of gain from the sale or exchange of capital assets held for more than 6 months, proper adjustment shall be made for any deduction allowable to the estate or trust under section 1202 (relating to deduction for excess of capital gains over capital losses)."

Subsec. (j). Pub. L. 99–514, §612(b)(3), struck out subsec. (j) which provided a cross reference to section 116(c)(3).

1984—Subsec. (a)(2). Pub. L. 98–369, §474(r)(17), substituted "section 24" for "section 41".

Subsec. (c)(3), (4). Pub. L. 98–369, §1001(b)(8), (e), substituted "6 months" for "1 year", applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

1981—Subsec. (f). Pub. L. 97–34 substituted "and 188" for "188, and 191".

1978—Subsecs. (i) to (k). Pub. L. 95–600 redesignated subsecs. (j) and (k) as (i) and (j), respectively. Former subsec. (i), which did not allow estates or trusts the deduction for contributions to candidates for public office provided by section 218, was struck out.

1977—Subsec. (k). Pub. L. 95–30 struck out par. (1) which made a cross reference to section 142(b)(4) for disallowance of the standard deduction in the case of estates and trusts and struck out "(2)" at beginning of single remaining cross reference.

1976—Subsec. (a). Pub. L. 94–455, §1901(b)(1)(H)(i), redesignated former pars. (2) and (3) as (1) and (2), respectively. Former par. (1), relating to the credit against tax for partially tax-exempt interest, was struck out.

Subsec. (c)(1). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (c)(3), (4). Pub. L. 94–455, §1402(b)(2), provided that "9 months" would be changed to "1 year".

Subsec. (c)(3), (4). Pub. L. 94–455, §1402(b)(1)(J), provided that "6 months" would be changed to "9 months" for taxable years beginning in 1977.

Subsecs. (c)(5), (d). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (f). Pub. L. 94–455, §§1906(b)(13)(A), 1951(c)(2)(B), 2124(a)(3)(B), substituted "sections 169, 184, 187, 188, and 191" for "sections 168, 169, 184, 187, and 188", and struck out "or his delegate" after "Secretary".

Subsec. (g). Pub. L. 94–455, §§1906(b)(13)(A), 2009(d), inserted "(or as an offset against the sales price of property in determining gain or loss)" after "shall not be allowed as a deduction", and struck out "or his delegate" after "Secretary".

Subsec. (h). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsecs. (j), (k). Pub. L. 94–528 added subsec. (j) and redesignated former subsec. (j) as (k).

1971—Subsec. (a)(3). Pub. L. 92–178, §701(b), added par. (3).

Subsec. (f). Pub. L. 92–178, §303(c)(4), inserted reference to section 188.

Subsecs. (i), (j). Pub. L. 92–178, §702(b), added subsec. (i) and redesignated former subsec. (i) as (j).

1969—Subsec. (c). Pub. L. 91–172, §201(b), designated existing provisions, with minor changes, as par. (1) and added pars. (2) to (6).

Subsec. (f). Pub. L. 91–172, §704(b)(2), struck out reference to emergency or grain storage facilities both in heading and in text, and inserted reference to sections 184 and 187 in text.

1966—Subsec. (g). Pub. L. 89–621 inserted "or of any other person" after "shall not be allowed as a deduction in computing the taxable income of the estate".

1964—Subsec. (a)(3). Pub. L. 88–272, §201(d)(6)(A), struck out par. (3) which related to dividends received by individuals.

Subsec. (i). Pub. L. 88–272, §201(d)(6)(B), designated existing provisions as par. (1) and added par. (2).

1962—Subsec. (e). Pub. L. 87–834 substituted a reference to section 167(h) for a reference to section 167(g).

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–134, title I, §116(b), Jan. 23, 2002, 115 Stat. 2440, provided that: "The amendment made by this section [amending this section] shall apply to taxable years ending on or after September 11, 2001."

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13113(d)(2) of Pub. L. 103–66 applicable to stock issued after Aug. 10, 1993, see section 13113(e) of Pub. L. 103–66, set out as a note under section 53 of this title.

Amendment by section 13261(f)(2) of Pub. L. 103–66 applicable, except as otherwise provided, with respect to property acquired after Aug. 10, 1993, see section 13261(g) of Pub. L. 103–66, set out as an Effective Date note under section 197 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11812(b)(9) of Pub. L. 101–508 applicable to property placed in service after Nov. 5, 1990, but not applicable to any property to which section 168 of this title does not apply by reason of subsec. (f)(5) of section 168, and not applicable to rehabilitation expenditures described in section 252(f)(5) of Pub. L. 99–514, see section 11812(c) of Pub. L. 101–508, set out as a note under section 42 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 112(b)(2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 301(b)(6) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31,

1986, see section 301(c) of Pub. L. 99–514, set out as a note under section 62 of this title.

Amendment by section 612(b)(3) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 612(c) of Pub. L. 99–514, set out as a note under section 301 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(17) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 1001(b)(8) of Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to expenditures incurred after Dec. 31, 1981, in taxable years ending after such date, see section 212(e) of Pub. L. 97–34, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title I, §113(d), Nov. 6, 1978, 92 Stat. 2778, provided that: "The amendments made by this section [amending this section and section 24 of this title and repealing section 218 of this title] shall apply with respect to contributions the payment of which is made after December 31, 1978, in taxable years beginning after such date."

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XIV, §1402(b)(1), Oct. 4, 1976, 90 Stat. 1731, provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Pub. L. 94–455, title XIV, §1402(b)(2), Oct. 4, 1976, 90 Stat. 1732, provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

Amendment by section 1901(b)(1)(H)(i) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by section 1951(c)(2)(B) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1952(d) of Pub. L. 94–455, set out as a note under section 72 of this title.

Pub. L. 94–455, title XX, §2009(e)(4), Oct. 4, 1976, 90 Stat. 1896, provided that: "The amendment made by subsection (d) [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Oct. 4, 1976]."

Pub. L. 94–455, title XXI, §2124(a)(4), Oct. 4, 1976, 90 Stat. 1918, provided that: "The amendments made by this subsection [enacting section 191 of this title and amending this section and sections 1082, 1245, and 1250 of this title] shall apply with respect to additions to capital account made after June 14, 1976 and before June 15, 1981."

Pub. L. 94–528, §1(b), Oct. 17, 1976, 90 Stat. 2483, provided that: "The amendments made by subsection (a) [amending this section] shall take effect on October 1, 1977, and shall apply to amounts distributed during taxable years ending after December 31, 1963."

EFFECTIVE DATE OF 1971 AMENDMENT

Pub. L. 92–178, title III, §303(d), Dec. 10, 1971, 85 Stat. 522, provided that: "The amendments made by this section [enacting section 188 of this title and amending this section and sections 57, 1082, 1245, and 1250 of this title] shall apply to taxable years ending after December 31, 1971."

Pub. L. 92–178, title VII, §703, Dec. 10, 1971, 85 Stat. 562, provided that: "The amendments made by this title [enacting sections 24 and 218 of this title and amending this section] shall apply to taxable years ending after December 31, 1971, but only with respect to political contributions, payment of which is made after such date."

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 201(b) of Pub. L. 91–172 applicable with respect to amounts paid, permanently set aside, or to be used for a charitable purpose in taxable years beginning after Dec. 31, 1969, except that subsec. (c)(5) applicable to transfers in trust made after July 31, 1969, see section 201(g) of Pub. L. 91–172, set out as a note under section 170 of this title.

Amendment by section 704(b)(2) of Pub. L. 91–172 applicable to taxable years ending after Dec. 31, 1968, see section 704(c) of Pub. L. 91–172, set out as an Effective Date note under section 169 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89–621, §2(b), Oct. 4, 1966, 80 Stat. 873, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Oct. 4, 1966], but only with respect to amounts paid or incurred, and losses sustained, after such date."

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to dividends received after December 31, 1964, in taxable years ending after such date, see section 201(e) of Pub. L. 88–272, set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable to taxable years beginning after Dec. 31, 1961, and ending after Oct. 16, 1962, see section 13(g) of Pub. L. 87–834, set out as an Effective Date note under section 1245 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

[1] See References in Text note below.

[2] So in original. Probably should be "than".

§643. Definitions applicable to subparts A, B, C, and D

(a) Distributable net income

For purposes of this part, the term "distributable net income" means, with respect to any taxable year, the taxable income of the estate or trust computed with the following modifications—

(1) Deduction for distributions

No deduction shall be taken under sections 651 and 661 (relating to additional deductions).

(2) Deduction for personal exemption

No deduction shall be taken under section 642(b) (relating to deduction for personal exemptions).

(3) Capital gains and losses

Gains from the sale or exchange of capital assets shall be excluded to the extent that such gains are allocated to corpus and are not (A) paid, credited, or required to be distributed to any beneficiary during the taxable year, or (B) paid, permanently set aside, or to be used for the purposes specified in section 642(c). Losses from the sale or exchange of capital assets shall be excluded, except to the extent such losses are taken into account in determining the amount of gains from the sale or exchange of capital assets which are paid, credited, or required to be distributed to any beneficiary during the taxable year. The exclusion under section 1202 shall not be taken into account.

(4) Extraordinary dividends and taxable stock dividends

For purposes only of subpart B (relating to trusts which distribute current income only), there shall be excluded those items of gross income constituting extraordinary dividends or taxable stock dividends which the fiduciary, acting in good faith, does not pay or credit to any beneficiary by reason of his determination that such dividends are allocable to corpus under the terms of the governing instrument and applicable local law.

(5) Tax-exempt interest

There shall be included any tax-exempt interest to which section 103 applies, reduced by any amounts which would be deductible in respect of disbursements allocable to such interest but for the provisions of section 265 (relating to disallowance of certain deductions).

(6) Income of foreign trust

In the case of a foreign trust—

(A) There shall be included the amounts of gross income from sources without the United States, reduced by any amounts which would be deductible in respect of disbursements allocable to such income but for the provisions of section 265(a)(1) (relating to disallowance of certain deductions).

(B) Gross income from sources within the United States shall be determined without regard to section 894 (relating to income exempt under treaty).

(C) Paragraph (3) shall not apply to a foreign trust. In the case of such a trust, there shall be included gains from the sale or exchange of capital assets, reduced by losses from such sales or exchanges to the extent such losses do not exceed gains from such sales or exchanges.

(7) Abusive transactions

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this part, including regulations to prevent avoidance of such purposes.

If the estate or trust is allowed a deduction under section 642(c), the amount of the modifications specified in paragraphs (5) and (6) shall be reduced to the extent that the amount of income which is paid, permanently set aside, or to be used for the purposes specified in section 642(c) is deemed to consist of items specified in those paragraphs. For this purpose, such amount shall (in the absence of specific provisions in the governing instrument) be deemed to consist of the same proportion of each class of items of income of the estate or trust as the total of each class bears to the total of all classes.

(b) Income

For purposes of this subpart and subparts B, C, and D, the term "income", when not preceded by the words "taxable", "distributable net", "undistributed net", or "gross", means the amount of income of the estate or trust for the taxable year determined under the terms of the governing instrument and applicable local law. Items of gross income constituting extraordinary dividends or taxable stock dividends which the fiduciary, acting in good faith, determines to be allocable to corpus under the terms of the governing instrument and applicable local law shall not be considered income.

(c) Beneficiary

For purposes of this part, the term "beneficiary" includes heir, legatee, devisee.

(d) Coordination with back-up withholding

Except to the extent otherwise provided in regulations, this subchapter shall be applied with respect to payments subject to withholding under section 3406—

(1) by allocating between the estate or trust and its beneficiaries any credit allowable under section 31(c) (on the basis of their respective shares of any such payment taken into account under this subchapter),

(2) by treating each beneficiary to whom such credit is allocated as if an amount equal to such credit has been paid to him by the estate or trust, and

(3) by allowing the estate or trust a deduction in an amount equal to the credit so allocated to beneficiaries.

(e) Treatment of property distributed in kind

(1) Basis of beneficiary

The basis of any property received by a beneficiary in a distribution from an estate or trust shall be—

(A) the adjusted basis of such property in the hands of the estate or trust immediately before

the distribution, adjusted for

(B) any gain or loss recognized to the estate or trust on the distribution.

(2) Amount of distribution

In the case of any distribution of property (other than cash), the amount taken into account under sections 661(a)(2) and 662(a)(2) shall be the lesser of—

(A) the basis of such property in the hands of the beneficiary (as determined under paragraph (1)), or

(B) the fair market value of such property.

(3) Election to recognize gain

(A) In general

In the case of any distribution of property (other than cash) to which an election under this paragraph applies—

(i) paragraph (2) shall not apply,

(ii) gain or loss shall be recognized by the estate or trust in the same manner as if such property had been sold to the distributee at its fair market value, and

(iii) the amount taken into account under sections 661(a)(2) and 662(a)(2) shall be the fair market value of such property.

(B) Election

Any election under this paragraph shall apply to all distributions made by the estate or trust during a taxable year and shall be made on the return of such estate or trust for such taxable year.

Any such election, once made, may be revoked only with the consent of the Secretary.

(4) Exception for distributions described in section 663(a)

This subsection shall not apply to any distribution described in section 663(a).

(f) Treatment of multiple trusts

For purposes of this subchapter, under regulations prescribed by the Secretary, 2 or more trusts shall be treated as 1 trust if—

(1) such trusts have substantially the same grantor or grantors and substantially the same primary beneficiary or beneficiaries, and

(2) a principal purpose of such trusts is the avoidance of the tax imposed by this chapter.

For purposes of the preceding sentence, a husband and wife shall be treated as 1 person.

(g) Certain payments of estimated tax treated as paid by beneficiary

(1) In general

In the case of a trust—

(A) the trustee may elect to treat any portion of a payment of estimated tax made by such trust for any taxable year of the trust as a payment made by a beneficiary of such trust,

(B) any amount so treated shall be treated as paid or credited to the beneficiary on the last day of such taxable year, and

(C) for purposes of subtitle F, the amount so treated—

(i) shall not be treated as a payment of estimated tax made by the trust, but

(ii) shall be treated as a payment of estimated tax made by such beneficiary on January 15 following the taxable year.

(2) Time for making election

An election under paragraph (1) shall be made on or before the 65th day after the close of the taxable year of the trust and in such manner as the Secretary may prescribe.

(3) Extension to last year of estate

In the case of a taxable year reasonably expected to be the last taxable year of an estate—

(A) any reference in this subsection to a trust shall be treated as including a reference to an estate, and

(B) the fiduciary of the estate shall be treated as the trustee.

(h) Distributions by certain foreign trusts through nominees

For purposes of this part, any amount paid to a United States person which is derived directly or indirectly from a foreign trust of which the payor is not the grantor shall be deemed in the year of payment to have been directly paid by the foreign trust to such United States person.

(i) Loans from foreign trusts

For purposes of subparts B, C, and D—

(1) General rule

Except as provided in regulations, if a foreign trust makes a loan of cash or marketable securities (or permits the use of any other trust property) directly or indirectly to or by—

(A) any grantor or beneficiary of such trust who is a United States person, or

(B) any United States person not described in subparagraph (A) who is related to such grantor or beneficiary,

the amount of such loan (or the fair market value of the use of such property) shall be treated as a distribution by such trust to such grantor or beneficiary (as the case may be).

(2) Definitions and special rules

For purposes of this subsection—

(A) Cash

The term "cash" includes foreign currencies and cash equivalents.

(B) Related person

(i) In general

A person is related to another person if the relationship between such persons would result in a disallowance of losses under section 267 or 707(b). In applying section 267 for purposes of the preceding sentence, section 267(c)(4) shall be applied as if the family of an individual includes the spouses of the members of the family.

(ii) Allocation

If any person described in paragraph (1)(B) is related to more than one person, the grantor or beneficiary to whom the treatment under this subsection applies shall be determined under regulations prescribed by the Secretary.

(C) Exclusion of tax-exempts

The term "United States person" does not include any entity exempt from tax under this chapter.

(D) Trust not treated as simple trust

Any trust which is treated under this subsection as making a distribution shall be treated as not described in section 651.

(E) Exception for compensated use of property

In the case of the use of any trust property other than a loan of cash or marketable securities, paragraph (1) shall not apply to the extent that the trust is paid the fair market value of such use within a reasonable period of time of such use.

(3) Subsequent transactions

If any loan (or use of property) is taken into account under paragraph (1), any subsequent transaction between the trust and the original borrower regarding the principal of the loan (by way

of complete or partial repayment, satisfaction, cancellation, discharge, or otherwise) or the return of such property shall be disregarded for purposes of this title.

(Aug. 16, 1954, ch. 736, 68A Stat. 217; Pub. L. 87–834, §7(a), Oct. 16, 1962, 76 Stat. 985; Pub. L. 94–455, title X, §1013(c), (e)(2), Oct. 4, 1976, 90 Stat. 1615, 1616; Pub. L. 96–223, title IV, §404(b)(4), Apr. 2, 1980, 94 Stat. 306; Pub. L. 97–34, title III, §301(b)(4), (6)(B), Aug. 13, 1981, 95 Stat. 270; Pub. L. 97–248, title III, §§302(b)(1), 308(a), Sept. 3, 1982, 96 Stat. 586, 591; Pub. L. 97–448, title I, §103(a)(3), Jan. 12, 1983, 96 Stat. 2375; Pub. L. 98–67, title I, §102(a), Aug. 5, 1983, 97 Stat. 369; Pub. L. 98–369, div. A, title I, §§81(a), 82(a), title VII, §722(h)(3), July 18, 1984, 98 Stat. 597, 598, 975; Pub. L. 99–514, title III, §301(b)(7), title VI, §612(b)(4), title XIV, §1404(b), title XVIII, §1806(a), (c), Oct. 22, 1986, 100 Stat. 2217, 2250, 2713, 2810, 2811; Pub. L. 100–647, title I, §1014(d)(3), (4), Nov. 10, 1988, 102 Stat. 3561; Pub. L. 101–239, title VII, §7811(b), (f)(1), Dec. 19, 1989, 103 Stat. 2406, 2409; Pub. L. 103–66, title XIII, §13113(d)(3), Aug. 10, 1993, 107 Stat. 430; Pub. L. 104–188, title I, §§1904(c)(1), 1906(b), (c)(1), Aug. 20, 1996, 110 Stat. 1912, 1915; Pub. L. 111–147, title V, §533(a), (b), (d), Mar. 18, 2010, 124 Stat. 114.)

AMENDMENTS

2010—Subsec. (i)(1). Pub. L. 111–147, §533(a), substituted "(or permits the use of any other trust property) directly or indirectly to or by" for "directly or indirectly to" in introductory provisions and inserted "(or the fair market value of the use of such property)" after "the amount of such loan" in concluding provisions.

Subsec. (i)(2)(E). Pub. L. 111–147, §533(b), added subpar. (E).

Subsec. (i)(3). Pub. L. 111–147, §533(d), struck out "regarding loan principal" after "transactions" in heading and inserted "(or use of property)" after "If any loan" and "or the return of such property" after "otherwise)".

1996—Subsec. (a)(7). Pub. L. 104–188, §1906(b), added par. (7).

Subsec. (h). Pub. L. 104–188, §1904(c)(1), added subsec. (h).

Subsec. (i). Pub. L. 104–188, §1906(c)(1), added subsec. (i).

1993—Subsec. (a)(3). Pub. L. 103–66 inserted at end "The exclusion under section 1202 shall not be taken into account."

1989—Subsec. (a)(6)(A). Pub. L. 101–239, §7811(f)(1), substituted "section 265(a)(1)" for "section 265(1)".

Subsec. (a)(6)(C). Pub. L. 101–239, §7811(b)(1), struck out "(i)" after "such a trust," and ", and (ii) the deduction under section 1202 (relating to deduction for excess of capital gains over capital losses) shall not be taken into account" before period at end.

Subsec. (a)(6)(D). Pub. L. 101–239, §7811(b)(2), struck out subpar. (D) which read as follows: "Effective for distributions made in taxable years beginning after December 31, 1975, the undistributed net income of each foreign trust for each taxable year beginning on or before December 31, 1975, remaining undistributed at the close of the last taxable year beginning on or before December 31, 1975, shall be redetermined by taking into account the deduction allowed by section 1202."

1988—Subsec. (g)(1). Pub. L. 100–647, §1014(d)(3)(A), struck out at end "The preceding sentence shall apply only to the extent the payments of estimated tax made by the trust for the taxable year exceed the tax imposed by this chapter shown on its return for the taxable year."

Subsec. (g)(2). Pub. L. 100–647, §1014(d)(3)(B), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "An election under paragraph (1) may be made—

"(A) only on the trust's return of the tax imposed by this chapter for the taxable year, and

"(B) only if such return is filed on or before the 65th day after the close of the taxable year."

Subsec. (g)(3). Pub. L. 100–647, §1014(d)(4), added par. (3).

1986—Subsec. (a)(3). Pub. L. 99–514, §301(b)(7), struck out "The deduction under section 1202 (relating to deduction for excess of capital gains over capital losses) shall not be taken into account."

Subsec. (a)(7). Pub. L. 99–514, §612(b)(4), struck out par. (7), dividends or interest, which read as follows: "There shall be included the amount of any dividends or interest excluded from gross income pursuant to section 116 (relating to partial exclusion of dividends) or section 128 (relating to certain interest)."

Subsec. (d). Pub. L. 99–514, §1806(c)(1), redesignated subsec. (d), relating to treatment of property distributed in kind, as (e). Former subsec. (e) redesignated (f).

Subsec. (e). Pub. L. 99–514, §1806(a), (c)(1), redesignated subsec. (d) relating to treatment of property distributed in kind as (e) and amended par. (3)(B) generally, substituting "shall apply to all distributions made

by the estate or trust during a taxable year and shall be made on the return of such estate or trust for such taxable year" for "shall be made by the estate or trust on its return for the taxable year for which the distribution was made". Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 99–514, §1806(c)(2), redesignated subsec. (e) as (f).

Subsec. (g). Pub. L. 99–514, §1404(b), added subsec. (g).

1984—Subsec. (d). Pub. L. 98–369, §81(a), added subsec. (d) relating to treatment of property distributed in kind.

Pub. L. 98–369, §722(h)(3), added subsec. (d) relating to coordination with back-up withholding.

Subsec. (e). Pub. L. 98–369, §82(a), added subsec. (e).

1983—Subsec. (a)(7). Pub. L. 97–448 substituted "section 116 (relating to partial exclusion of dividends) or section 128 (relating to certain interest)" for "section 116 (relating to partial exclusion of dividends or interest received) or section 128 (relating to interest on certain savings certificates)".

Subsec. (d). Pub. L. 98–67 repealed amendments made by Pub. L. 97–248. See 1982 Amendment note below.

1982—Subsec. (d). Pub. L. 97–248 provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, this section is amended by adding subsec. (d) relating to coordination with withholding on interest and dividends. Section 102(a), (b) of Pub. L. 98–67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§301–308) of title III of Pub. L. 97–248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 (this title) shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

1981—Subsec. (a)(7). Pub. L. 97–34, §301(b)(6)(A), inserted reference to "interest" in heading and text, which continued the amendment made by Pub. L. 96–223.

Pub. L. 97–34, §301(b)(4), inserted "or section 128 (relating to interest on certain savings certificates)" after "received)".

1980—Subsec. (a)(7). Pub. L. 96–223 inserted "or interest" after "dividends" in heading and text.

1976—Subsec. (a)(6)(C). Pub. L. 94–455, §1013(c)(1), struck out "created by a United States person" after "foreign trust".

Subsec. (a)(6)(D). Pub. L. 94–455, §1013(c)(2), added subpar. (D).

Subsec. (d). Pub. L. 94–455, §1013(e)(2), struck out subsec. (a) which defined a foreign trust created by a United States person.

1962—Subsec. (a)(6). Pub. L. 87–834, §7(a)(1), substituted "Income of foreign trust" for "Foreign income" in heading, designated existing provisions as subpar. (A), and added subpars. (B) and (C).

Subsec. (d). Pub. L. 87–834, §7(a)(2), added subsec. (d).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–147, title V, §533(e), Mar. 18, 2010, 124 Stat. 114, provided that: "The amendments made by this section [amending this section and section 679 of this title] shall apply to loans made, and uses of property, after the date of the enactment of this Act [Mar. 18, 2010]."

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, §1904(d), Aug. 20, 1996, 110 Stat. 1912, provided that:

"(1) IN GENERAL.—Except as provided by paragraph (2), the amendments made by this section [amending this section and sections 665, 672, and 901 of this title] shall take effect on the date of the enactment of this Act [Aug. 20, 1996].

"(2) EXCEPTION FOR CERTAIN TRUSTS.—The amendments made by this section shall not apply to any trust—

"(A) which is treated as owned by the grantor under section 676 or 677 (other than subsection (a)(3) thereof) of the Internal Revenue Code of 1986, and

"(B) which is in existence on September 19, 1995.

The preceding sentence shall not apply to the portion of any such trust attributable to any transfer to such trust after September 19, 1995."

Pub. L. 104–188, title I, §1906(d)(2), (3), Aug. 20, 1996, 110 Stat. 1916, provided that:

"(2) ABUSIVE TRANSACTIONS.—The amendment made by subsection (b) [amending this section] shall take effect on the date of the enactment of this Act [Aug. 20, 1996].

"(3) LOANS FROM TRUSTS.—The amendment made by subsection (c) [amending this section and section 7872 of this title] shall apply to loans of cash or marketable securities made after September 19, 1995."

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to stock issued after Aug. 10, 1993, see section 13113(e) of Pub. L. 103–66, set out as a note under section 53 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 301(b)(7) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 301(c) of Pub. L. 99–514, set out as a note under section 62 of this title.

Amendment by section 612(b)(4) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 612(c) of Pub. L. 99–514, set out as a note under section 301 of this title.

Pub. L. 99–514, title XIV, §1404(d), Oct. 22, 1986, 100 Stat. 2714, provided that: "The amendments made by this section [amending this section and sections 6215, 6601, and 6654 of this title and repealing section 6152 of this title] shall apply to taxable years beginning after December 31, 1986."

Amendment by section 1806(a), (c) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §81(b), July 18, 1984, 98 Stat. 598, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to distributions after June 1, 1984, in taxable years ending after such date.

"(2) TIME FOR MAKING ELECTION.—In the case of any distribution before the date of the enactment of this Act [July 18, 1984]—

"(A) the time for making an election under section 643(d)(3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this section) shall not expire before January 1, 1985, and

"(B) the requirement that such election be made on the return of the estate or trust shall not apply."

Pub. L. 98–369, div. A, title I, §82(b), July 18, 1984, 98 Stat. 598, as amended by Pub. L. 99–514, title XVIII, §1806(b), Oct. 22, 1986, 100 Stat. 2811, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after March 1, 1984; except that, in the case of a trust which was irrevocable on March 1, 1984, such amendment shall so apply only to that portion of the trust which is attributable to contributions to corpus after March 1, 1984."

Pub. L. 98–369, div. A, title VII, §722(h)(5), July 18, 1984, 98 Stat. 976, provided that:

"(A) Except as provided in this paragraph, the amendments made by this subsection [amending this section and sections 3405, 3406, and 6041 of this title] shall apply as if included in the amendments made by the Interest and Dividend Tax Compliance Act of 1983 [Pub. L. 98–67].

"(B) The amendments made by paragraph (4) [amending sections 3405 and 6041 of this title] shall apply to payments or distributions after December 31, 1984, unless the payor elects to have such amendments apply to payments or distributions before January 1, 1985."

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 301(b)(4) of Pub. L. 97–34 applicable to taxable years ending after Sept. 30, 1981, and amendment by section 301(b)(6)(A) of Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 301(d) of Pub. L. 97–34, set out as a note under section 265 of this title.

EFFECTIVE AND TERMINATION DATES OF 1980 AMENDMENT

Amendment by Pub. L. 96–223 applicable with respect to taxable years beginning after Dec. 31, 1980, and before Jan. 1, 1982, see section 404(c) of Pub. L. 96–223, set out as a note under section 265 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment by section 1013(e)(2) of Pub. L. 94–455, see section 1013(f)(1) of Pub. L. 94–455, set out as an Effective Date note under section 679 of this title.

Pub. L. 94–455, title X, §1013(f)(2), Oct. 4, 1976, 90 Stat. 1617, provided that: "The amendments made by subsection (c) [amending this section] shall apply to taxable years beginning after December 31, 1975."

EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87–834, §7(j), Oct. 16, 1962, 76 Stat. 989, provided that: "The amendments made by this section [amending this section and sections 665, 666, and 668 of this title and enacting section 669 of this title] (other than by subsections (f), (g) and (h) [enacting sections 6048 and 6677 of this title and amending section 7701 of this title]), shall apply with respect to distributions made after December 31, 1962."

TREATMENT AS SINGLE TRUST

Pub. L. 100–647, title X, §1018(e), Nov. 10, 1988, 102 Stat. 3581, provided that: "If—

"(1) on a return for the 1st taxable year of the trusts involved beginning after March 1, 1984, 2 or more trusts were treated as a single trust for purposes of the tax imposed by chapter 1 of the Internal Revenue Code of 1954 [now 1986],

"(2) such trusts would have been required to be so treated but for the amendment made by section 1806(b) of the Reform Act [Pub. L. 99–514, which amended provisions set out as an Effective Date of 1984 Amendment note above], and

"(3) such trusts did not accumulate any income during such taxable year and did not make any accumulation distributions during such taxable year,

then, notwithstanding the amendment made by section 1806(b) of the Reform Act, such trusts shall be treated as one trust for purposes of such taxable year."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§644. Taxable year of trusts

(a) In general

For purposes of this subtitle, the taxable year of any trust shall be the calendar year.

(b) Exception for trusts exempt from tax and charitable trusts

Subsection (a) shall not apply to a trust exempt from taxation under section 501(a) or to a trust described in section 4947(a)(1).

(Added Pub. L. 99–514, title XIV, §1403(a), Oct. 22, 1986, 100 Stat. 2713, §645; renumbered §644, Pub. L. 105–34, title V, §507(b)(1), Aug. 5, 1997, 111 Stat. 856.)

PRIOR PROVISIONS

A prior section 644, added Pub. L. 94–455, title VII, §701(e)(1), Oct. 4, 1976, 90 Stat. 1578; amended Pub. L. 95–600, title VII, §701(p)(1)–(3), Nov. 6, 1978, 92 Stat. 2908; Pub. L. 96–471, §2(b)(4), Oct. 19, 1980, 94 Stat. 2254; Pub. L. 99–514, title XV, §1511(c)(5), Oct. 22, 1986, 100 Stat. 2745, related to special rule for gain on property transferred to trust at less than fair market value, prior to repeal by Pub. L. 105–34, title V, §507(b)(1), Aug. 5, 1997, 111 Stat. 856.

AMENDMENTS

1997—Pub. L. 105–34 renumbered section 645 of this title as this section.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title V, §507(c)(2), Aug. 5, 1997, 111 Stat. 857, provided that: "The amendments made by subsection (b) [amending section 706 of this title, repealing section 644 of this title, and renumbering section 645 of this title as this section] shall apply to sales or exchanges after the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE; TRANSITION RULE

Pub. L. 99–514, title XIV, §1403(c), Oct. 22, 1986, 100 Stat. 2713, provided that:

"(1) EFFECTIVE DATE.—The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1986.

"(2) TRANSITION RULE.—With respect to any trust beneficiary who is required to include in gross income amounts under sections 652(a) or 662(a) of the Internal Revenue Code of 1986 in the 1st taxable year of the beneficiary beginning after December 31, 1986, by reason of any short taxable year of the trust required by the amendments made by this section, such income shall be ratably included in the income of the trust beneficiary over the 4-taxable year period beginning with such taxable year."

APPLICATION OF TRANSITION RULES TO TRUST BENEFICIARIES TO WHICH SECTION 664 APPLIES

Pub. L. 100–647, title I, §1014(c), Nov. 10, 1988, 102 Stat. 3559, provided that:

"(1) If a beneficiary of a trust to which section 664 of the 1986 Code applies elects (at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe) to have this paragraph apply, such beneficiary shall be entitled to the benefits of section 1403(c)(2) of the Reform Act [Pub. L. 99–514, set out as an Effective Date; Transition Rule note above] with respect to amounts included in gross income under section 664(b) of the 1986 Code in the same manner as if such amounts were included in gross income under section 652(a) of the 1986 Code.

"(2) Any trust beneficiary may elect (at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe) to waive the benefits of section 1403(c)(2) of the Reform Act.

"(3)(A) For purposes of determining the gross income of any pass-thru entity, such pass-thru entity shall not be allowed the benefits of section 806(e)(2)(C) [Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note under section 1378 of this title] (other than with respect to income from a common trust fund) or 1403(c)(2) of the Reform Act if such pass-thru entity is required to change its taxable year by reason of the amendments made by section 806 or 1403 of the Reform Act [Pub. L. 99–514, which enacted this section and amended sections 267, 441, 706, and 1378 of this title].

"(B) For purposes of subparagraph (A), the term 'pass-thru entity' means any trust, partnership, S corporation, or common trust fund.

"(4) If any trust was required to change its taxable year by the amendments made by section 1403 of the Reform Act [Pub. L. 99–514, which enacted this section], such change shall be treated as initiated by such trust and approved by the Secretary of the Treasury or his delegate."

§645. Certain revocable trusts treated as part of estate

(a) General rule

For purposes of this subtitle, if both the executor (if any) of an estate and the trustee of a qualified revocable trust elect the treatment provided in this section, such trust shall be treated and taxed as part of such estate (and not as a separate trust) for all taxable years of the estate ending after the date of the decedent's death and before the applicable date.

(b) Definitions

For purposes of subsection (a)—

(1) Qualified revocable trust

The term "qualified revocable trust" means any trust (or portion thereof) which was treated under section 676 as owned by the decedent of the estate referred to in subsection (a) by reason of a power in the grantor (determined without regard to section 672(e)).

(2) Applicable date

The term "applicable date" means—

(A) if no return of tax imposed by chapter 11 is required to be filed, the date which is 2 years

after the date of the decedent's death, and

(B) if such a return is required to be filed, the date which is 6 months after the date of the final determination of the liability for tax imposed by chapter 11.

(c) Election

The election under subsection (a) shall be made not later than the time prescribed for filing the return of tax imposed by this chapter for the first taxable year of the estate (determined with regard to extensions) and, once made, shall be irrevocable.

(Added Pub. L. 105–34, title XIII, §1305(a), Aug. 5, 1997, 111 Stat. 1040, §646; renumbered §645, Pub. L. 105–206, title VI, §6013(a)(1), July 22, 1998, 112 Stat. 819.)

PRIOR PROVISIONS

A prior section 645 was renumbered section 644 of this title.

AMENDMENTS

1998—Pub. L. 105–206 renumbered section 646 of this title as this section.

EFFECTIVE DATE

Pub. L. 105–34, title XIII, §1305(d), Aug. 5, 1997, 111 Stat. 1041, provided that: "The amendments made by this section [enacting this section and amending section 2652 of this title] shall apply with respect to estates of decedents dying after the date of the enactment of this Act [Aug. 5, 1997]."

§646. Tax treatment of electing Alaska Native Settlement Trusts

(a) In general

If an election under this section is in effect with respect to any Settlement Trust, the provisions of this section shall apply in determining the income tax treatment of the Settlement Trust and its beneficiaries with respect to the Settlement Trust.

(b) Taxation of income of trust

Except as provided in subsection (f)(1)(B)(ii)—

(1) In general

There is hereby imposed on the taxable income of an electing Settlement Trust, other than its net capital gain, a tax at the lowest rate specified in section 1(c).

(2) Capital gain

In the case of an electing Settlement Trust with a net capital gain for the taxable year, a tax is hereby imposed on such gain at the rate of tax which would apply to such gain if the taxpayer were subject to a tax on its other taxable income at only the lowest rate specified in section 1(c).

Any such tax shall be in lieu of the income tax otherwise imposed by this chapter on such income or gain.

(c) One-time election

(1) In general

A Settlement Trust may elect to have the provisions of this section apply to the trust and its beneficiaries.

(2) Time and method of election

An election under paragraph (1) shall be made by the trustee of such trust—

(A) on or before the due date (including extensions) for filing the Settlement Trust's return of tax for the first taxable year of such trust ending after the date of the enactment of this section, and

(B) by attaching to such return of tax a statement specifically providing for such election.

(3) Period election in effect

Except as provided in subsection (f), an election under this subsection—

(A) shall apply to the first taxable year described in paragraph (2)(A) and all subsequent taxable years, and

(B) may not be revoked once it is made.

(d) Contributions to trust

(1) Beneficiaries of electing trust not taxed on contributions

In the case of an electing Settlement Trust, no amount shall be includible in the gross income of a beneficiary of such trust by reason of a contribution to such trust.

(2) Earnings and profits

The earnings and profits of the sponsoring Native Corporation shall not be reduced on account of any contribution to such Settlement Trust.

(e) Tax treatment of distributions to beneficiaries

Amounts distributed by an electing Settlement Trust during any taxable year shall be considered as having the following characteristics in the hands of the recipient beneficiary:

(1) First, as amounts excludable from gross income for the taxable year to the extent of the taxable income of such trust for such taxable year (decreased by any income tax paid by the trust with respect to the income) plus any amount excluded from gross income of the trust under section 103.

(2) Second, as amounts excludable from gross income to the extent of the amount described in paragraph (1) for all taxable years for which an election is in effect under subsection (c) with respect to the trust, and not previously taken into account under paragraph (1).

(3) Third, as amounts distributed by the sponsoring Native Corporation with respect to its stock (within the meaning of section 301(a)) during such taxable year and taxable to the recipient beneficiary as amounts described in section 301(c)(1), to the extent of current or accumulated earnings and profits of the sponsoring Native Corporation as of the close of such taxable year after proper adjustment is made for all distributions made by the sponsoring Native Corporation during such taxable year.

(4) Fourth, as amounts distributed by the trust in excess of the distributable net income of such trust for such taxable year.

Amounts distributed to which paragraph (3) applies shall not be treated as a corporate distribution subject to section 311(b), and for purposes of determining the amount of a distribution for purposes of paragraph (3) and the basis to the recipients, section 643(e) and not section 301(b) or (d) shall apply.

(f) Special rules where transfer restrictions modified

(1) Transfer of beneficial interests

If, at any time, a beneficial interest in an electing Settlement Trust may be disposed of to a person in a manner which would not be permitted by section 7(h) of the Alaska Native Claims Settlement Act (43 U.S.C. 1606(h)) if such interest were Settlement Common Stock—

(A) no election may be made under subsection (c) with respect to such trust, and

(B) if such an election is in effect as of such time—

(i) such election shall cease to apply as of the first day of the taxable year in which such disposition is first permitted,

(ii) the provisions of this section shall not apply to such trust for such taxable year and all taxable years thereafter, and

(iii) the distributable net income of such trust shall be increased by the current or accumulated earnings and profits of the sponsoring Native Corporation as of the close of such taxable year after proper adjustment is made for all distributions made by the sponsoring Native Corporation during such taxable year.

In no event shall the increase under clause (iii) exceed the fair market value of the trust's assets as of the date the beneficial interest of the trust first becomes so disposable. The earnings and profits of the sponsoring Native Corporation shall be adjusted as of the last day of such taxable year by the amount of earnings and profits so included in the distributable net income of the trust.

(2) Stock in corporation

If—

(A) stock in the sponsoring Native Corporation may be disposed of to a person in a manner which would not be permitted by section 7(h) of the Alaska Native Claims Settlement Act (43 U.S.C. 1606(h)) if such stock were Settlement Common Stock, and

(B) at any time after such disposition of stock is first permitted, such corporation transfers assets to a Settlement Trust,

paragraph (1)(B) shall be applied to such trust on and after the date of the transfer in the same manner as if the trust permitted dispositions of beneficial interests in the trust in a manner not permitted by such section 7(h).

(3) Certain distributions

For purposes of this section, the surrender of an interest in a Native Corporation or an electing Settlement Trust in order to accomplish the whole or partial redemption of the interest of a shareholder or beneficiary in such corporation or trust, or to accomplish the whole or partial liquidation of such corporation or trust, shall be deemed to be a transfer permitted by section 7(h) of the Alaska Native Claims Settlement Act.

(g) Taxable income

For purposes of this title, the taxable income of an electing Settlement Trust shall be determined under section 641(b) without regard to any deduction under section 651 or 661.

(h) Definitions

For purposes of this section—

(1) Electing Settlement Trust

The term "electing Settlement Trust" means a Settlement Trust which has made the election, effective for a taxable year, described in subsection (c).

(2) Native Corporation

The term "Native Corporation" has the meaning given such term by section 3(m) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(m)).

(3) Settlement Common Stock

The term "Settlement Common Stock" has the meaning given such term by section 3(p) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(p)).

(4) Settlement Trust

The term "Settlement Trust" means a trust that constitutes a settlement trust under section 3(t) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(t)).

(5) Sponsoring Native Corporation

The term "sponsoring Native Corporation" means the Native Corporation which transfers assets to an electing Settlement Trust.

(i) Special loss disallowance rule

Any loss that would otherwise be recognized by a shareholder upon a disposition of a share of stock of a sponsoring Native Corporation shall be reduced (but not below zero) by the per share loss adjustment factor. The per share loss adjustment factor shall be the aggregate of all contributions to all electing Settlement Trusts sponsored by such Native Corporation made on or after the first day

each trust is treated as an electing Settlement Trust expressed on a per share basis and determined as of the day of each such contribution.

(j) Cross reference

For information required with respect to electing Settlement Trusts and sponsoring Native Corporations, see section 6039H.

(Added Pub. L. 107–16, title VI, §671(a), June 7, 2001, 115 Stat. 144.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (c)(2)(A), is the date of enactment of Pub. L. 107–16, which was approved June 7, 2001.

PRIOR PROVISIONS

A prior section 646 was renumbered section 645 of this title.

EFFECTIVE DATE

Pub. L. 107–16, title VI, §671(d), June 7, 2001, 115 Stat. 148, provided that: "The amendments made by this section [enacting this section and section 6039H of this title] shall apply to taxable years ending after the date of the enactment of this Act [June 7, 2001] and to contributions made to electing Settlement Trusts for such year or any subsequent year."

SUBPART B—TRUSTS WHICH DISTRIBUTE CURRENT INCOME ONLY

Sec.
651. Deduction for trusts distributing current income only.
652. Inclusion of amounts in gross income of beneficiaries of trusts distributing current income only.

§651. Deduction for trusts distributing current income only

(a) Deduction

In the case of any trust the terms of which—

(1) provide that all of its income is required to be distributed currently, and

(2) do not provide that any amounts are to be paid, permanently set aside, or used for the purposes specified in section 642(c) (relating to deduction for charitable, etc., purposes),

there shall be allowed as a deduction in computing the taxable income of the trust the amount of the income for the taxable year which is required to be distributed currently. This section shall not apply in any taxable year in which the trust distributes amounts other than amounts of income described in paragraph (1).

(b) Limitation on deduction

If the amount of income required to be distributed currently exceeds the distributable net income of the trust for the taxable year, the deduction shall be limited to the amount of the distributable net income. For this purpose, the computation of distributable net income shall not include items of income which are not included in the gross income of the trust and the deductions allocable thereto.

(Aug. 16, 1954, ch. 736, 68A Stat. 219.)

§652. Inclusion of amounts in gross income of beneficiaries of trusts distributing current income only

(a) Inclusion

Subject to subsection (b), the amount of income for the taxable year required to be distributed

currently by a trust described in section 651 shall be included in the gross income of the beneficiaries to whom the income is required to be distributed, whether distributed or not. If such amount exceeds the distributable net income, there shall be included in the gross income of each beneficiary an amount which bears the same ratio to distributable net income as the amount of income required to be distributed to such beneficiary bears to the amount of income required to be distributed to all beneficiaries.

(b) Character of amounts

The amounts specified in subsection (a) shall have the same character in the hands of the beneficiary as in the hands of the trust. For this purpose, the amounts shall be treated as consisting of the same proportion of each class of items entering into the computation of distributable net income of the trust as the total of each class bears to the total distributable net income of the trust, unless the terms of the trust specifically allocate different classes of income to different beneficiaries. In the application of the preceding sentence, the items of deduction entering into the computation of distributable net income shall be allocated among the items of distributable net income in accordance with regulations prescribed by the Secretary.

(c) Different taxable years

If the taxable year of a beneficiary is different from that of the trust, the amount which the beneficiary is required to include in gross income in accordance with the provisions of this section shall be based upon the amount of income of the trust for any taxable year or years of the trust ending within or with his taxable year.

(Aug. 16, 1954, ch. 736, 68A Stat. 219; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsec. (b). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

SUBPART C—ESTATES AND TRUSTS WHICH MAY ACCUMULATE INCOME OR WHICH DISTRIBUTE CORPUS

Sec.

661. Deductions for estates and trusts accumulating income or distributing corpus.[1]

662. Inclusion of amounts in gross income of beneficiaries of estates and trusts accumulating income or distributing corpus.

663. Special rules applicable to sections 661 and 662.

664. Charitable remainder trusts.

AMENDMENTS

1969—Pub. L. 91–172, title II, §201(e)(2), Dec. 30, 1969, 83 Stat. 564, added item 664.

[1] *So in original. Does not conform to section catchline.*

§661. Deduction for estates and trusts accumulating income or distributing corpus

(a) Deduction

In any taxable year there shall be allowed as a deduction in computing the taxable income of an estate or trust (other than a trust to which subpart B applies), the sum of—

(1) any amount of income for such taxable year required to be distributed currently (including any amount required to be distributed which may be paid out of income or corpus to the extent such amount is paid out of income for such taxable year); and

(2) any other amounts properly paid or credited or required to be distributed for such taxable year;

but such deduction shall not exceed the distributable net income of the estate or trust.

(b) Character of amounts distributed

The amount determined under subsection (a) shall be treated as consisting of the same proportion of each class of items entering into the computation of distributable net income of the estate or trust as the total of each class bears to the total distributable net income of the estate or trust in the absence of the allocation of different classes of income under the specific terms of the governing instrument. In the application of the preceding sentence, the items of deduction entering into the computation of distributable net income (including the deduction allowed under section 642(c)) shall be allocated among the items of distributable net income in accordance with regulations prescribed by the Secretary.

(c) Limitation on deduction

No deduction shall be allowed under subsection (a) in respect of any portion of the amount allowed as a deduction under that subsection (without regard to this subsection) which is treated under subsection (b) as consisting of any item of distributable net income which is not included in the gross income of the estate or trust.

(Aug. 16, 1954, ch. 736, 68A Stat. 220; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–248, title III, §§302(b)(2), 308(a), Sept. 3, 1982, 96 Stat. 586, 591; Pub. L. 98–67, title I, §102(a), Aug. 5, 1983, 97 Stat. 369.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98–67 repealed amendments made by Pub. L. 97–248. See 1982 Amendment note below.

1982—Subsec. (a). Pub. L. 97–248 provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, subsec. (a) is amended by inserting at end "For purposes of paragraph (1), the amount of distributable net income shall be computed without the deduction allowed by section 642(c).". Section 102(a), (b) of Pub. L. 98–67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§301–308) of title III of Pub. L. 97–248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 (this title) shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

1976—Subsec. (b). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

§662. Inclusion of amounts in gross income of beneficiaries of estates and trusts accumulating income or distributing corpus

(a) Inclusion

Subject to subsection (b), there shall be included in the gross income of a beneficiary to whom an amount specified in section 661(a) is paid, credited, or required to be distributed (by an estate or trust described in section 661), the sum of the following amounts:

(1) Amounts required to be distributed currently

The amount of income for the taxable year required to be distributed currently to such beneficiary, whether distributed or not. If the amount of income required to be distributed currently to all beneficiaries exceeds the distributable net income (computed without the deduction allowed by section 642(c), relating to deduction for charitable, etc., purposes) of the estate or trust, then, in lieu of the amount provided in the preceding sentence, there shall be included in the gross income of the beneficiary an amount which bears the same ratio to distributable net income (as so computed) as the amount of income required to be distributed currently to such beneficiary bears to the amount required to be distributed currently to all beneficiaries. For purposes of this section, the phrase "the amount of income for the taxable year required to be distributed currently"

includes any amount required to be paid out of income or corpus to the extent such amount is paid out of income for such taxable year.

(2) Other amounts distributed

All other amounts properly paid, credited, or required to be distributed to such beneficiary for the taxable year. If the sum of—

(A) the amount of income for the taxable year required to be distributed currently to all beneficiaries, and

(B) all other amounts properly paid, credited, or required to be distributed to all beneficiaries

exceeds the distributable net income of the estate or trust, then, in lieu of the amount provided in the preceding sentence, there shall be included in the gross income of the beneficiary an amount which bears the same ratio to distributable net income (reduced by the amounts specified in (A)) as the other amounts properly paid, credited or required to be distributed to the beneficiary bear to the other amounts properly paid, credited, or required to be distributed to all beneficiaries.

(b) Character of amounts

The amounts determined under subsection (a) shall have the same character in the hands of the beneficiary as in the hands of the estate or trust. For this purpose, the amounts shall be treated as consisting of the same proportion of each class of items entering into the computation of distributable net income as the total of each class bears to the total distributable net income of the estate or trust unless the terms of the governing instrument specifically allocate different classes of income to different beneficiaries. In the application of the preceding sentence, the items of deduction entering into the computation of distributable net income (including the deduction allowed under section 642(c)) shall be allocated among the items of distributable net income in accordance with regulations prescribed by the Secretary. In the application of this subsection to the amount determined under paragraph (1) of subsection (a), distributable net income shall be computed without regard to any portion of the deduction under section 642(c) which is not attributable to income of the taxable year.

(c) Different taxable years

If the taxable year of a beneficiary is different from that of the estate or trust, the amount to be included in the gross income of the beneficiary shall be based on the distributable net income of the estate or trust and the amounts properly paid, credited, or required to be distributed to the beneficiary during any taxable year or years of the estate or trust ending within or with his taxable year.

(Aug. 16, 1954, ch. 736, 68A Stat. 220; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsec. (b). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

§663. Special rules applicable to sections 661 and 662

(a) Exclusions

There shall not be included as amounts falling within section 661(a) or 662(a)—

(1) Gifts, bequests, etc.

Any amount which, under the terms of the governing instrument, is properly paid or credited as a gift or bequest of a specific sum of money or of specific property and which is paid or credited all at once or in not more than 3 installments. For this purpose an amount which can be paid or credited only from the income of the estate or trust shall not be considered as a gift or bequest of a specific sum of money.

(2) Charitable, etc., distributions

Any amount paid or permanently set aside or otherwise qualifying for the deduction provided in section 642(c) (computed without regard to sections 508(d), 681, and 4948(c)(4)).

(3) Denial of double deduction

Any amount paid, credited, or distributed in the taxable year, if section 651 or section 661 applied to such amount for a preceding taxable year of an estate or trust because credited or required to be distributed in such preceding taxable year.

(b) Distributions in first sixty-five days of taxable year

(1) General rule

If within the first 65 days of any taxable year of an estate or a trust, an amount is properly paid or credited, such amount shall be considered paid or credited on the last day of the preceding taxable year.

(2) Limitation

Paragraph (1) shall apply with respect to any taxable year of an estate or a trust only if the executor of such estate or the fiduciary of such trust (as the case may be) elects, in such manner and at such time as the Secretary prescribes by regulations, to have paragraph (1) apply for such taxable year.

(c) Separate shares treated as separate estates or trusts

For the sole purpose of determining the amount of distributable net income in the application of sections 661 and 662, in the case of a single trust having more than one beneficiary, substantially separate and independent shares of different beneficiaries in the trust shall be treated as separate trusts. Rules similar to the rules of the preceding provisions of this subsection shall apply to treat substantially separate and independent shares of different beneficiaries in an estate having more than 1 beneficiary as separate estates. The existence of such substantially separate and independent shares and the manner of treatment as separate trusts or estates, including the application of subpart D, shall be determined in accordance with regulations prescribed by the Secretary.

(Aug. 16, 1954, ch. 736, 68A Stat. 222; Pub. L. 91–172, title I, §101(j)(17), title III, §331(b), Dec. 30, 1969, 83 Stat. 528, 598; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 105–34, title XIII, §§1306(a), (b), 1307(a), (b), Aug. 5, 1997, 111 Stat. 1041.)

AMENDMENTS

1997—Subsec. (b). Pub. L. 105–34, §1306(a), inserted "an estate or" before "a trust" in pars. (1) and (2).

Subsec. (b)(2). Pub. L. 105–34, §1306(b), substituted "the executor of such estate or the fiduciary of such trust (as the case may be)" for "the fiduciary of such trust".

Subsec. (c). Pub. L. 105–34, §1307(a), (b), inserted "estates or" before "trusts" in heading, "Rules similar to the rules of the preceding provisions of this subsection shall apply to treat substantially separate and independent shares of different beneficiaries in an estate having more than 1 beneficiary as separate estates." before last sentence, and "or estates" after "trusts" in last sentence.

1976—Subsecs. (b)(2), (c). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

1969—Subsec. (a)(2). Pub. L. 91–172, §101(j)(17), substituted "sections 508(d), 681, and 4948(c)(4)" for "section 681".

Subsec. (b)(2). Pub. L. 91–172, §331(b), incorporated existing provisions of subpar. (C) of former first sentence making subsec. (b) applicable only to a trust where the fiduciary elected to have the subsec. apply and part of former second sentence making the election applicable in accordance with prescribed regulations; substituted provisions for regulations to spell out manner and time of election for part of former second sentence requiring the election to be made not later than the time prescribed by law for filing the return for the year, including any extension; and omitted: subpars. (A) and (B) of former first sentence which had provided for application of subsec. (b) only to a trust "(A) which was in existence prior to January 1, 1954" and "(B) which, under the terms of its governing instrument, may not distribute in any taxable year amounts in excess of the income of the preceding taxable year"; part of former second sentence which required the election to be made for first taxable year to which this part is applicable; and third sentence that "If such election is made with respect to a taxable year, this subsection shall apply to all amounts properly paid or credited within the first 65 days of all subsequent taxable years of such trust."

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XIII, §1306(c), Aug. 5, 1997, 111 Stat. 1041, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 5, 1997]."

Pub. L. 105–34, title XIII, §1307(c), Aug. 5, 1997, 111 Stat. 1041, provided that: "The amendments made by this section [amending this section] shall apply to estates of decedents dying after the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 101(j)(17) of Pub. L. 91–172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

Amendment by section 331(b) of Pub. L. 91–172 applicable to taxable years beginning before Jan. 1, 1970, see section 331(d) of Pub. L. 91–172, set out as a note under section 665 of this title.

§664. Charitable remainder trusts

(a) General rule

Notwithstanding any other provision of this subchapter, the provisions of this section shall, in accordance with regulations prescribed by the Secretary, apply in the case of a charitable remainder annuity trust and a charitable remainder unitrust.

(b) Character of distributions

Amounts distributed by a charitable remainder annuity trust or by a charitable remainder unitrust shall be considered as having the following characteristics in the hands of a beneficiary to whom is paid the annuity described in subsection (d)(1)(A) or the payment described in subsection (d)(2)(A):

(1) First, as amounts of income (other than gains, and amounts treated as gains, from the sale or other disposition of capital assets) includible in gross income to the extent of such income of the trust for the year and such undistributed income of the trust for prior years;

(2) Second, as a capital gain to the extent of the capital gain of the trust for the year and the undistributed capital gain of the trust for prior years;

(3) Third, as other income to the extent of such income of the trust for the year and such undistributed income of the trust for prior years; and

(4) Fourth, as a distribution of trust corpus.

For purposes of this section, the trust shall determine the amount of its undistributed capital gain on a cumulative net basis.

(c) Taxation of trusts

(1) Income tax

A charitable remainder annuity trust and a charitable remainder unitrust shall, for any taxable year, not be subject to any tax imposed by this subtitle.

(2) Excise tax

(A) In general

In the case of a charitable remainder annuity trust or a charitable remainder unitrust which has unrelated business taxable income (within the meaning of section 512, determined as if part III of subchapter F applied to such trust) for a taxable year, there is hereby imposed on such trust or unitrust an excise tax equal to the amount of such unrelated business taxable income.

(B) Certain rules to apply

The tax imposed by subparagraph (A) shall be treated as imposed by chapter 42 for purposes of this title other than subchapter E of chapter 42.

(C) Tax court proceedings

For purposes of this paragraph, the references in section 6212(c)(1) to section 4940 shall be

deemed to include references to this paragraph.

(d) Definitions

(1) Charitable remainder annuity trust

For purposes of this section, a charitable remainder annuity trust is a trust—

(A) from which a sum certain (which is not less than 5 percent nor more than 50 percent of the initial net fair market value of all property placed in trust) is to be paid, not less often than annually, to one or more persons (at least one of which is not an organization described in section 170(c) and, in the case of individuals, only to an individual who is living at the time of the creation of the trust) for a term of years (not in excess of 20 years) or for the life or lives of such individual or individuals,

(B) from which no amount other than the payments described in subparagraph (A) and other than qualified gratuitous transfers described in subparagraph (C) may be paid to or for the use of any person other than an organization described in section 170(c),

(C) following the termination of the payments described in subparagraph (A), the remainder interest in the trust is to be transferred to, or for the use of, an organization described in section 170(c) or is to be retained by the trust for such a use or, to the extent the remainder interest is in qualified employer securities (as defined in subsection (g)(4)), all or part of such securities are to be transferred to an employee stock ownership plan (as defined in section 4975(e)(7)) in a qualified gratuitous transfer (as defined by subsection (g)), and

(D) the value (determined under section 7520) of such remainder interest is at least 10 percent of the initial net fair market value of all property placed in the trust.

(2) Charitable remainder unitrust

For purposes of this section, a charitable remainder unitrust is a trust—

(A) from which a fixed percentage (which is not less than 5 percent nor more than 50 percent) of the net fair market value of its assets, valued annually, is to be paid, not less often than annually, to one or more persons (at least one of which is not an organization described in section 170(c) and, in the case of individuals, only to an individual who is living at the time of the creation of the trust) for a term of years (not in excess of 20 years) or for the life or lives of such individual or individuals,

(B) from which no amount other than the payments described in subparagraph (A) and other than qualified gratuitous transfers described in subparagraph (C) may be paid to or for the use of any person other than an organization described in section 170(c),

(C) following the termination of the payments described in subparagraph (A), the remainder interest in the trust is to be transferred to, or for the use of, an organization described in section 170(c) or is to be retained by the trust for such a use or, to the extent the remainder interest is in qualified employer securities (as defined in subsection (g)(4)), all or part of such securities are to be transferred to an employee stock ownership plan (as defined in section 4975(e)(7)) in a qualified gratuitous transfer (as defined by subsection (g)), and

(D) with respect to each contribution of property to the trust, the value (determined under section 7520) of such remainder interest in such property is at least 10 percent of the net fair market value of such property as of the date such property is contributed to the trust.

(3) Exception

Notwithstanding the provisions of paragraphs (2)(A) and (B), the trust instrument may provide that the trustee shall pay the income beneficiary for any year—

(A) the amount of the trust income, if such amount is less than the amount required to be distributed under paragraph (2)(A), and

(B) any amount of the trust income which is in excess of the amount required to be distributed under paragraph (2)(A), to the extent that (by reason of subparagraph (A)) the aggregate of the amounts paid in prior years was less than the aggregate of such required amounts.

(4) Severance of certain additional contributions

If—

(A) any contribution is made to a trust which before the contribution is a charitable remainder unitrust, and

(B) such contribution would (but for this paragraph) result in such trust ceasing to be a charitable unitrust by reason of paragraph (2)(D),

such contribution shall be treated as a transfer to a separate trust under regulations prescribed by the Secretary.

(e) Valuation for purposes of charitable contribution

For purposes of determining the amount of any charitable contribution, the remainder interest of a charitable remainder annuity trust or charitable remainder unitrust shall be computed on the basis that an amount equal to 5 percent of the net fair market value of its assets (or a greater amount, if required under the terms of the trust instrument) is to be distributed each year.

(f) Certain contingencies permitted

(1) General rule

If a trust would, but for a qualified contingency, meet the requirements of paragraph (1)(A) or (2)(A) of subsection (d), such trust shall be treated as meeting such requirements.

(2) Value determined without regard to qualified contingency

For purposes of determining the amount of any charitable contribution (or the actuarial value of any interest), a qualified contingency shall not be taken into account.

(3) Qualified contingency

For purposes of this subsection, the term "qualified contingency" means any provision of a trust which provides that, upon the happening of a contingency, the payments described in paragraph (1)(A) or (2)(A) of subsection (d) (as the case may be) will terminate not later than such payments would otherwise terminate under the trust.

(g) Qualified gratuitous transfer of qualified employer securities

(1) In general

For purposes of this section, the term "qualified gratuitous transfer" means a transfer of qualified employer securities to an employee stock ownership plan (as defined in section 4975(e)(7)) but only to the extent that—

(A) the securities transferred previously passed from a decedent dying before January 1, 1999, to a trust described in paragraph (1) or (2) of subsection (d),

(B) no deduction under section 404 is allowable with respect to such transfer,

(C) such plan contains the provisions required by paragraph (3),

(D) such plan treats such securities as being attributable to employer contributions but without regard to the limitations otherwise applicable to such contributions under section 404, and

(E) the employer whose employees are covered by the plan described in this paragraph files with the Secretary a verified written statement consenting to the application of sections 4978 and 4979A with respect to such employer.

(2) Exception

The term "qualified gratuitous transfer" shall not include a transfer of qualified employer securities to an employee stock ownership plan unless—

(A) such plan was in existence on August 1, 1996,

(B) at the time of the transfer, the decedent and members of the decedent's family (within the meaning of section 2032A(e)(2)) own (directly or through the application of section 318(a)) no more than 10 percent of the value of the stock of the corporation referred to in paragraph (4), and

(C) immediately after the transfer, such plan owns (after the application of section 318(a)(4))

at least 60 percent of the value of the outstanding stock of the corporation.

(3) Plan requirements

A plan contains the provisions required by this paragraph if such plan provides that—

(A) the qualified employer securities so transferred are allocated to plan participants in a manner consistent with section 401(a)(4),

(B) plan participants are entitled to direct the plan as to the manner in which such securities which are entitled to vote and are allocated to the account of such participant are to be voted,

(C) an independent trustee votes the securities so transferred which are not allocated to plan participants,

(D) each participant who is entitled to a distribution from the plan has the rights described in subparagraphs (A) and (B) of section 409(h)(1),

(E) such securities are held in a suspense account under the plan to be allocated each year, up to the applicable limitation under paragraph (7) (determined on the basis of fair market value of securities when allocated to participants), after first allocating all other annual additions for the limitation year, up to the limitations under sections 415(c) and (e),[1] and

(F) on termination of the plan, all securities so transferred which are not allocated to plan participants as of such termination are to be transferred to, or for the use of, an organization described in section 170(c).

For purposes of the preceding sentence, the term "independent trustee" means any trustee who is not a member of the family (within the meaning of section 2032A(e)(2)) of the decedent or a 5-percent shareholder. A plan shall not fail to be treated as meeting the requirements of section 401(a) by reason of meeting the requirements of this subsection.

(4) Qualified employer securities

For purposes of this section, the term "qualified employer securities" means employer securities (as defined in section 409(l)) which are issued by a domestic corporation—

(A) which has no outstanding stock which is readily tradable on an established securities market, and

(B) which has only 1 class of stock.

(5) Treatment of securities allocated by employee stock ownership plan to persons related to decedent or 5-percent shareholders

(A) In general

If any portion of the assets of the plan attributable to securities acquired by the plan in a qualified gratuitous transfer are allocated to the account of—

(i) any person who is related to the decedent (within the meaning of section 267(b)) or a member of the decedent's family (within the meaning of section 2032A(e)(2)), or

(ii) any person who, at the time of such allocation or at any time during the 1-year period ending on the date of the acquisition of qualified employer securities by the plan, is a 5-percent shareholder of the employer maintaining the plan,

the plan shall be treated as having distributed (at the time of such allocation) to such person or shareholder the amount so allocated.

(B) 5-percent shareholder

For purposes of subparagraph (A), the term "5-percent shareholder" means any person who owns (directly or through the application of section 318(a)) more than 5 percent of the outstanding stock of the corporation which issued such qualified employer securities or of any corporation which is a member of the same controlled group of corporations (within the meaning of section 409(l)(4)) as such corporation. For purposes of the preceding sentence, section 318(a) shall be applied without regard to the exception in paragraph (2)(B)(i) thereof.

(C) Cross reference

For excise tax on allocations described in subparagraph (A), see section 4979A.

(6) Tax on failure to transfer unallocated securities to charity on termination of plan

If the requirements of paragraph (3)(F) are not met with respect to any securities, there is hereby imposed a tax on the employer maintaining the plan in an amount equal to the sum of—

(A) the amount of the increase in the tax which would be imposed by chapter 11 if such securities were not transferred as described in paragraph (1), and

(B) interest on such amount at the underpayment rate under section 6621 (and compounded daily) from the due date for filing the return of the tax imposed by chapter 11.

(7) Applicable limitation

(A) In general

For purposes of paragraph (3)(E), the applicable limitation under this paragraph with respect to a participant is an amount equal to the lesser of—

(i) $30,000, or

(ii) 25 percent of the participant's compensation (as defined in section 415(c)(3)).

(B) Cost-of-living adjustment

The Secretary shall adjust annually the $30,000 amount under subparagraph (A)(i) at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter beginning October 1, 1993, and any increase under this subparagraph which is not a multiple of $5,000 shall be rounded to the next lowest multiple of $5,000.

(Added Pub. L. 91–172, title II, §201(e)(1), Dec. 30, 1969, 83 Stat. 562; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–369, div. A, title X, §1022(d), July 18, 1984, 98 Stat. 1029; Pub. L. 105–34, title X, §1089(a)(1), (b)(1), (2), (4), title XV, §1530(a), (b), (c)(5), 111 Stat. 960, 1075, 1078; Pub. L. 105–206, title VI, §6010(r), July 22, 1998, 112 Stat. 817; Pub. L. 106–554, §1(a)(7) [title III, §319(7)], Dec. 21, 2000, 114 Stat. 2763, 2763A–646; Pub. L. 107–16, title VI, §632(a)(3)(H), June 7, 2001, 115 Stat. 114; Pub. L. 109–280, title VIII, §868(a), Aug. 17, 2006, 120 Stat. 1025; Pub. L. 109–432, div. A, title IV, §424(a), Dec. 20, 2006, 120 Stat. 2974.)

REFERENCES IN TEXT

Section 415(e) of this title, referred to in subsec. (g)(3)(E), was repealed by Pub. L. 104–188, title I, §1452(a), Aug. 20, 1996, 110 Stat. 1816.

AMENDMENTS

2006—Subsec. (c). Pub. L. 109–432 amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: "A charitable remainder annuity trust and a charitable remainder unitrust shall, for any taxable year, not be subject to any tax imposed by this subtitle, unless such trust, for such year, has unrelated business taxable income (within the meaning of section 512, determined as if part III of subchapter F applied to such trust)."

Subsec. (g)(3)(E). Pub. L. 109–280 inserted "(determined on the basis of fair market value of securities when allocated to participants)" after "paragraph (7)".

2001—Subsec. (g)(3)(E). Pub. L. 107–16, §632(a)(3)(H)(i), substituted "applicable limitation under paragraph (7)" for "limitations under section 415(c)".

Subsec. (g)(7). Pub. L. 107–16, §632(a)(3)(H)(ii), added par. (7).

2000—Subsec. (d)(1)(C), (2)(C). Pub. L. 106–554 struck out period after "(as defined by subsection (g))". See 1997 Amendment notes below.

1998—Subsec. (d)(1)(C), (2)(C). Pub. L. 105–206 inserted ", and" at end.

1997—Subsec. (d)(1)(A). Pub. L. 105–34, §1089(a)(1), inserted "nor more than 50 percent" after "not less than 5 percent".

Subsec. (d)(1)(B). Pub. L. 105–34, §1530(c)(5), inserted "and other than qualified gratuitous transfers described in subparagraph (C)" after "subparagraph (A)".

Pub. L. 105–34, §1089(b)(1), struck out "and" at end.

Subsec. (d)(1)(C). Pub. L. 105–34, §1530(a), which directed amendment of subpar. (C) by striking period at end and inserting "or, to the extent the remainder interest is in qualified employer securities (as defined in

subsection (g)(4)), all or part of such securities are to be transferred to an employee stock ownership plan (as defined in section 4975(e)(7)) in a qualified gratuitous transfer (as defined by subsection (g)).", was executed by making the insertion after "for such a use" to reflect the probable intent of Congress. Subpar. (C) did not contain a period after amendment by Pub. L. 105–34, §1089(b)(1). See below.

Pub. L. 105–34, §1089(b)(1), struck out period after "for such a use".

Subsec. (d)(1)(D). Pub. L. 105–34, §1089(b)(1), added subpar. (D).

Subsec. (d)(2)(A). Pub. L. 105–34, §1089(a)(1), inserted "nor more than 50 percent" after "not less than 5 percent".

Subsec. (d)(2)(B). Pub. L. 105–34, §1530(c)(5), inserted "and other than qualified gratuitous transfers described in subparagraph (C)" after "subparagraph (A)".

Pub. L. 105–34, §1089(b)(2), struck out "and" at end.

Subsec. (d)(2)(C). Pub. L. 105–34, §1530(a), which directed amendment of subpar. (C) by striking period at end and inserting "or, to the extent the remainder interest is in qualified employer securities (as defined in subsection (g)(4)), all or part of such securities are to be transferred to an employee stock ownership plan (as defined in section 4975(e)(7)) in a qualified gratuitous transfer (as defined by subsection (g)).", was executed by making the insertion after "for such a use" to reflect the probable intent of Congress. Subpar. (C) did not contain a period after amendment by Pub. L. 105–34, §1089(b)(2). See below.

Pub. L. 105–34, §1089(b)(2), struck out period after "for such a use".

Subsec. (d)(2)(D). Pub. L. 105–34, §1089(b)(2), added subpar. (D).

Subsec. (d)(4). Pub. L. 105–34, §1089(b)(4), added par. (4).

Subsec. (g). Pub. L. 105–34, §1530(b), added subsec. (g).

1984—Subsec. (f). Pub. L. 98–369 added subsec. (f).

1976—Subsec. (a). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title IV, §424(b), Dec. 20, 2006, 120 Stat. 2974, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2006."

Pub. L. 109–280, title VIII, §868(b), Aug. 17, 2006, 120 Stat. 1025, provided that: "The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Aug. 17, 2006]."

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to years beginning after Dec. 31, 2001, see section 632(a)(4) of Pub. L. 107–16, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title X, §1089(a)(2), Aug. 5, 1997, 111 Stat. 960, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to transfers in trust after June 18, 1997."

Pub. L. 105–34, title X, §1089(b)(6), Aug. 5, 1997, 111 Stat. 961, provided that:

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendments made by this subsection [amending this section and section 2055 of this title] shall apply to transfers in trust after July 28, 1997.

"(B) SPECIAL RULE FOR CERTAIN DECEDENTS.—The amendments made by this subsection shall not apply to transfers in trust under the terms of a will (or other testamentary instrument) executed on or before July 28, 1997, if the decedent—

"(i) dies before January 1, 1999, without having republished the will (or amended such instrument) by codicil or otherwise, or

"(ii) was on July 28, 1997, under a mental disability to change the disposition of his property and did not regain his competence to dispose of such property before the date of his death."

Amendment by section 1530(a), (b), (c)(5) of Pub. L. 105–34 applicable to transfers made by trusts to, or for the use of, an employee stock ownership plan after Aug. 5, 1997, see section 1530(d) of Pub. L. 105–34, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369, applicable to transfers after Dec. 31, 1978, see section 1022(e)(2) of Pub. L. 98–369, set out as a note under section 2055 of this title.

EFFECTIVE DATE

Section applicable to transfers in trust made after July 31, 1969, see section 201(g)(5), set out as an Effective Date of 1969 Amendment note under section 170 of this title.

[1] *See References in Text note below.*

SUBPART D—TREATMENT OF EXCESS DISTRIBUTIONS BY TRUSTS

Sec.
665. Definitions applicable to subpart D.
666. Accumulation distribution allocated to preceding years.
667. Treatment of amounts deemed distributed by trust in preceding years.
668. Interest charge on accumulation distributions from foreign trusts.
[669. Repealed.]

AMENDMENTS

1976—Pub. L. 94–455, title VII, §701(g)(1), title X, §1014(c), Oct. 4, 1976, 90 Stat. 1580, 1617, substituted in item 667 "Treatment of amounts deemed distributed by trust in preceding years" for "Denial of refund to trusts; authorization of credit to beneficiaries", in item 668 "Interest charge on accumulation distributions from foreign trusts" for "Treatment of amounts deemed distributed in preceding years", and struck out item 669 "Treatment of capital gain deemed distributed in preceding years".

1969—Pub. L. 91–172, title III, §331(a), Dec. 30, 1969, 83 Stat. 592, struck out "5" after "allocated to" in item 666, inserted "authorization of credit to beneficiaries" in item 667, and substituted "Treatment of capital gain deemed distributed in preceding years" for "Special rules applicable to certain foreign trusts" in item 669.

1962—Pub. L. 87–834, §7(i)(1), Oct. 16, 1962, 76 Stat. 988, added item 669.

§665. Definitions applicable to subpart D

(a) Undistributed net income

For purposes of this subpart, the term "undistributed net income" for any taxable year means the amount by which distributable net income of the trust for such taxable year exceeds the sum of—

(1) the amounts for such taxable year specified in paragraphs (1) and (2) of section 661(a), and

(2) the amount of taxes imposed on the trust attributable to such distributable net income.

(b) Accumulation distribution

For purposes of this subpart, except as provided in subsection (c), the term "accumulation distribution" means, for any taxable year of the trust, the amount by which—

(1) the amounts specified in paragraph (2) of section 661(a) for such taxable year, exceed

(2) distributable net income for such year reduced (but not below zero) by the amounts specified in paragraph (1) of section 661(a).

For purposes of section 667 (other than subsection (c) thereof, relating to multiple trusts), the amounts specified in paragraph (2) of section 661(a) shall not include amounts properly paid, credited, or required to be distributed to a beneficiary from a trust (other than a foreign trust) as income accumulated before the birth of such beneficiary or before such beneficiary attains the age of 21. If the amounts properly paid, credited, or required to be distributed by the trust for the taxable year do not exceed the income of the trust for such year, there shall be no accumulation distribution for such year.

(c) Exception for accumulation distributions from certain domestic trusts

For purposes of this subpart—

(1) In general

In the case of a qualified trust, any distribution in any taxable year beginning after the date of the enactment of this subsection shall be computed without regard to any undistributed net income.

(2) Qualified trust

For purposes of this subsection, the term "qualified trust" means any trust other than—

(A) a foreign trust (or, except as provided in regulations, a domestic trust which at any time was a foreign trust), or

(B) a trust created before March 1, 1984, unless it is established that the trust would not be aggregated with other trusts under section 643(f) if such section applied to such trust.

(d) Taxes imposed on the trust

For purposes of this subpart—

(1) In general

The term "taxes imposed on the trust" means the amount of the taxes which are imposed for any taxable year of the trust under this chapter (without regard to this subpart or part IV of subchapter A) and which, under regulations prescribed by the Secretary, are properly allocable to the undistributed portions of distributable net income and gains in excess of losses from sales or exchanges of capital assets. The amount determined in the preceding sentence shall be reduced by any amount of such taxes deemed distributed under section 666(b) and (c) to any beneficiary.

(2) Foreign trusts

In the case of any foreign trust, the term "taxes imposed on the trust" includes the amount, reduced as provided in the last sentence of paragraph (1), of any income, war profits, and excess profits taxes imposed by any foreign country or possession of the United States on such foreign trust which, as determined under paragraph (1), are so properly allocable. Under rules or regulations prescribed by the Secretary, in the case of any foreign trust of which the settlor or another person would be treated as owner of any portion of the trust under subpart E but for section 672(f), the term "taxes imposed on the trust" includes the allocable amount of any income, war profits, and excess profits taxes imposed by any foreign country or possession of the United States on the settlor or such other person in respect of trust income.

(e) Preceding taxable year

For purposes of this subpart—

(1) In the case of a foreign trust created by a United States person, the term "preceding taxable year" does not include any taxable year of the trust to which this part does not apply.

(2) In the case of a preceding taxable year with respect to which a trust qualified, without regard to this subpart, under the provisions of subpart B, for purposes of the application of this subpart to such trust for such taxable year, such trust shall, in accordance with regulations prescribed by the Secretary, be treated as a trust to which subpart C applies.

(Aug. 16, 1954, ch. 736, 68A Stat. 223; Pub. L. 87–834, §7(b), Oct. 16, 1962, 76 Stat. 985; Pub. L. 91–172, title III, §331(a), Dec. 30, 1969, 83 Stat. 592; Pub. L. 92–178, title III, §306(a), Dec. 10, 1971, 85 Stat. 524; Pub. L. 94–455, title VII, §§701(b), (c), (d)(2), (3), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1577, 1578, 1834; Pub. L. 95–600, title VII, §701(q)(1)(A), Nov. 6, 1978, 92 Stat. 2909; Pub. L. 99–514, title XVIII, §1847(b)(16), Oct. 22, 1986, 100 Stat. 2857; Pub. L. 101–508, title XI, §11802(f)(2), Nov. 5, 1990, 104 Stat. 1388–530; Pub. L. 104–188, title I, §1904(b)(1), (c)(2), Aug. 20, 1996, 110 Stat. 1912; Pub. L. 105–34, title V, §507(a), title XVI, §1604(g)(2), Aug. 5, 1997, 111 Stat. 856, 1099.)

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (c)(1), is the date of enactment of Pub. L. 105–34, which was approved Aug. 5, 1997.

AMENDMENTS

1997—Subsec. (b). Pub. L. 105–34, §507(a)(2), inserted "except as provided in subsection (c)," after "subpart," in introductory provisions.

Subsec. (c). Pub. L. 105–34, §507(a)(1), added subsec. (c).

Subsec. (d)(1). Pub. L. 105–34, §1604(g)(2), struck out "or 669(d) and (e)" after "666(b) and (c)".

1996—Subsec. (c). Pub. L. 104–188, §1904(c)(2), struck out subsec. (c) which read as follows: "SPECIAL RULE APPLICABLE TO DISTRIBUTIONS BY CERTAIN FOREIGN TRUSTS.—For purposes of this subpart, any amount paid to a United States person which is from a payor who is not a United States person and which is derived directly or indirectly from a foreign trust created by a United States person shall be deemed in the year of payment to have been directly paid by the foreign trust."

Subsec. (d)(2). Pub. L. 104–188, §1904(b)(1), inserted at end "Under rules or regulations prescribed by the Secretary, in the case of any foreign trust of which the settlor or another person would be treated as owner of any portion of the trust under subpart E but for section 672(f), the term 'taxes imposed on the trust' includes the allocable amount of any income, war profits, and excess profits taxes imposed by any foreign country or possession of the United States on the settlor or such other person in respect of trust income."

1990—Subsec. (e). Pub. L. 101–508 amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: "For purposes of this subpart—

"(1) in the case of a trust (other than a foreign trust created by a United States person), the term 'preceding taxable year' does not include any taxable year of the trust—

"(A) which precedes by more than 5 years the taxable year of the trust in which an accumulation distribution is made, if it is made in a taxable year beginning before January 1, 1974, or

"(B) which begins before January 1, 1969, in the case of an accumulation distribution made during a taxable year beginning after December 31, 1973, and

"(2) in the case of a foreign trust created by a United States person, such term does not include any taxable year of the trust to which this part does not apply.

In the case of a preceding taxable year with respect to which a trust qualifies (without regard to this subpart) under the provisions of subpart B, for purposes of the application of this subpart to such trust for such taxable year, such trust shall, in accordance with regulations prescribed by the Secretary, be treated as a trust to which subpart C applies."

1986—Subsec. (d)(1). Pub. L. 99–514 substituted "part IV" for "subpart A of part IV".

1978—Subsec. (d). Pub. L. 95–600 designated existing provisions as par. (1), defined "taxes imposed on the trust" to mean imposition of taxes without regard to subpart A of part IV of subchapter (A), and added par. (2).

1976—Subsec. (b). Pub. L. 94–455, §701(b), (c), inserted provisions that for purposes of sec. 667 the amounts specified in par. (2) of sec. 661(a) not include amounts paid, credited, or required to be distributed to a beneficiary from a trust as income accumulated before the birth of such beneficiary or before such beneficiary reaches 21, and that if the amounts paid, credited, or required to be distributed by the trust for the taxable year do not exceed the income of the trust for such year, there be no accumulation distribution for such year.

Subsecs. (d), (e). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (e)(1). Pub. L. 94–455, §701(d)(2), struck out provision that preceding taxable year does not include any taxable year of the trust which begins before Jan. 1, 1969, in the case of a capital gain distribution made during a taxable year beginning after Dec. 31, 1968.

Subsecs. (f), (g). Pub. L. 94–455, §701(d)(3), struck out subsec. (f) which related to undistributed capital gains, and subsec. (g) which related to capital gain distribution.

1971—Subsec. (g). Pub. L. 92–178 struck out "for such taxable year" after "undistributed capital gain" in introductory text.

1969—Subsec. (a)(2). Pub. L. 91–172 inserted "attributable to such distributable net income" after "on the trust".

Subsec. (b). Pub. L. 91–172 substituted "Accumulation distribution" for "Accumulation distributions of trusts other than certain foreign trusts" in heading, combined existing provisions of subsecs. (b) and (c) defining "accumulation distribution" in the case of a trust (other than a foreign trust created by a United States person) and of a foreign trust created by a United States person, respectively, in provisions now designated as pars. (1) and (2), deleting "the amount (if in excess of $2,000)" before "by which" in introductory text and inserting "(but not below zero)" in par. (2), and deleted second sentence providing that for purposes of this subsection, the amount specified in par. (2) of section 661(a) shall be determined without regard to section 666 and excepting from "accumulation distributions": accumulations before birth or attainment of age 21;

distributions for emergency needs; distributions, where beneficiary attained specified age or ages and there were not more than 4 distributions, at intervals of 4 or more years; and final distribution of trust was made more than 9 years after date of last transfer to the trust.

Subsec. (c). Pub. L. 91–172 substituted "Special rule applicable to distributions by certain foreign trusts" for "Accumulation distribution of certain foreign trusts" in heading, inserted introductory phrase "For purposes of this subpart", reenacted provisions of former third sentence as the subsection, struck out first sentence which defined in the case of a foreign trust created by a United States person the term "accumulation distribution", (see subsec. (b) of this section), and deleted second sentence which stated that "For purposes of this subsection, the amount specified in paragraph (2) of section 661(a) shall be determined without regard to section 666."

Subsec. (d). Pub. L. 91–172 substituted "taxable year of the trust" for "taxable year on the trust", "allocable to the undistributed portions of distributable net income and gains to excess of losses from sales or exchanges of capital assets" for "allocable to the undistributed portion of the distributable net income", and "reduced by any amount of such taxes deemed distributed under section 666(b) and (c) or 669(d) and (e) to any beneficiary" for "reduced by any amount of such taxes allowed, under sections 667 and 668, as a credit to any beneficiary on account of any accumulation distribution determined for any taxable year".

Subsec. (e). Pub. L. 91–172 substituted provisions of first sentence contained in pars. 1(A) to (C) and (2) for prior first sentence which read "For purposes of this subpart, the term 'preceding taxable year' does not include any taxable year of the trust to which this part does not apply" and reenacted provisions of second sentence.

Subsecs. (f), (g). Pub. L. 91–172 added subsecs. (f) and (g).

1962—Subsec. (b). Pub. L. 87–834, §7(b)(1), substituted "Accumulation distributions of trusts other than certain foreign trusts" for "Accumulation distribution" in heading, and inserted "in the case of a trust (other than a foreign trust created by a United States person)," after "purposes of this subpart,".

Subsecs. (c) to (e). Pub. L. 87–834, §7(b)(2), added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title V, §507(c)(1), Aug. 5, 1997, 111 Stat. 857, provided that: "The amendments made by subsection (a) [amending this section] shall apply to distributions in taxable years beginning after the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective Aug. 20, 1996, with exception for certain trusts, see section 1904(d) of Pub. L. 104–188, set out as a note under section 643 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title VII, §701(q)(3)(A), Nov. 6, 1978, 92 Stat. 2910, provided that: "The amendments made by paragraph (1) [amending this section and section 667 of this title] shall apply to distributions made in taxable years beginning after December 31, 1975."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 701(b), (c), (d)(2), (3) of Pub. L. 94–455 applicable to distributions made in taxable years beginning after Dec. 31, 1975, see section 701(h), set out as a note under section 667 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Pub. L. 92–178, title III, §306(a), Dec. 10, 1971, 85 Stat. 524, provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1968.

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title III, §331(d), Dec. 30, 1969, 83 Stat. 598, as amended by Pub. L. 92–178, title III, §306(b), Dec. 10, 1971, 85 Stat. 524; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) GENERAL RULE.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 663, 666 to 669, and 6401 of this title] shall apply to taxable years

beginning after December 31, 1968.

"(2) EXCEPTIONS.—

"(A) Amounts paid, credited, or required to be distributed by a trust (other than a foreign trust created by a United States person) on or before the last day of a taxable year of the trust beginning before January 1, 1974, shall not be deemed to be accumulation distributions to the extent that such amounts were accumulated by a trust in taxable years of such trust beginning before January 1, 1969, and would have been excepted from the definition of an accumulation distribution by reason of paragraph (1), (2), (3), or (4) of section 665(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as in effect on December 31, 1968, if they had been distributed on the last day of the last taxable year of the trust beginning before January 1, 1969.

"(B) For taxable years of a trust beginning before January 1, 1970, the first sentence of section 666(a) of the Internal Revenue Code of 1986 (as amended by this section) shall not apply, and the amount of the accumulation distribution of the trust for such taxable years shall be deemed to be an amount within the meaning of paragraph (2) of section 661(a) distributed on the last day of each of the preceding taxable years to the extent that such amount exceeds the total of any undistributed net income for any taxable years intervening between the taxable year with respect of which the accumulation distribution is determined and such preceding taxable year.

"(C) In the case of a trust which was in existence on December 31, 1969, section 669 of the Internal Revenue Code of 1986, as amended by this section, shall not apply to capital gain distributions made to a beneficiary before January 1, 1973. If the beneficiary receives capital gain distributions from more than one such trust before January 1, 1973, the preceding sentence shall apply to capital gain distributions from only one such trust, such one to be designated by the taxpayer in accordance with regulations prescribed by the Secretary or his delegate. For purposes of the preceding sentence, capital gain distributions received from a trust qualifying under section 2056(b)(5) of the Internal Revenue Code of 1986 by a surviving spouse (who is the beneficiary of only one such trust) shall be disregarded."

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87–834 applicable with respect to distributions made after Dec. 31, 1962, see section 7(j) of Pub. L. 87–834, set out as a note under section 643 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§666. Accumulation distribution allocated to preceding years

(a) Amount allocated

In the case of a trust which is subject to subpart C, the amount of the accumulation distribution of such trust for a taxable year shall be deemed to be an amount within the meaning of paragraph (2) of section 661(a) distributed on the last day of each of the preceding taxable years, commencing with the earliest of such years, to the extent that such amount exceeds the total of any undistributed net income for all earlier preceding taxable years. The amount deemed to be distributed in any such preceding taxable year under the preceding sentence shall not exceed the undistributed net income for such preceding taxable year. For purposes of this subsection, undistributed net income for each of such preceding taxable years shall be computed without regard to such accumulation distribution and without regard to any accumulation distribution determined for any succeeding taxable year.

(b) Total taxes deemed distributed

If any portion of an accumulation distribution for any taxable year is deemed under subsection (a)

to be an amount within the meaning of paragraph (2) of section 661(a) distributed on the last day of any preceding taxable year, and such portion of such distribution is not less than the undistributed net income for such preceding taxable year, the trust shall be deemed to have distributed on the last day of such preceding taxable year an additional amount within the meaning of paragraph (2) of section 661(a). Such additional amount shall be equal to the taxes (other than the tax imposed by section 55) imposed on the trust for such preceding taxable year attributable to the undistributed net income. For purposes of this subsection, the undistributed net income and the taxes imposed on the trust for such preceding taxable year attributable to such undistributed net income shall be computed without regard to such accumulation distribution and without regard to any accumulation distribution determined for any succeeding taxable year.

(c) Pro rata portion of taxes deemed distributed

If any portion of an accumulation distribution for any taxable year is deemed under subsection (a) to be an amount within the meaning of paragraph (2) of section 661(a) distributed on the last day of any preceding taxable year and such portion of the accumulation distribution is less than the undistributed net income for such preceding taxable year, the trust shall be deemed to have distributed on the last day of such preceding taxable year an additional amount within the meaning of paragraph (2) of section 661(a). Such additional amount shall be equal to the taxes (other than the tax imposed by section 55) imposed on the trust for such taxable year attributable to the undistributed net income multiplied by the ratio of the portion of the accumulation distribution to the undistributed net income of the trust for such year. For purposes of this subsection, the undistributed net income and the taxes imposed on the trust for such preceding taxable year attributable to such undistributed net income shall be computed without regard to the accumulation distribution and without regard to any accumulation distribution determined for any succeeding taxable year.

(d) Rule when information is not available

If adequate records are not available to determine the proper application of this subpart to an amount distributed by a trust, such amount shall be deemed to be an accumulation distribution consisting of undistributed net income earned during the earliest preceding taxable year of the trust in which it can be established that the trust was in existence.

(e) Denial of refund to trusts and beneficiaries

No refund or credit shall be allowed to a trust or a beneficiary of such trust for any preceding taxable year by reason of a distribution deemed to have been made by such trust in such year under this section.

(Aug. 16, 1954, ch. 736, 68A Stat. 224; Pub. L. 87–834, §7(c), Oct. 16, 1962, 76 Stat. 986; Pub. L. 91–172, title III, §331(a), Dec. 30, 1969, 83 Stat. 593; Pub. L. 94–455, title VII, §701(a)(2), Oct. 4, 1976, 90 Stat. 1577; Pub. L. 95–600, title IV, §421(d), Nov. 6, 1978, 92 Stat. 2875; Pub. L. 96–222, title I, §104(a)(4)(H)(vi), Apr. 1, 1980, 94 Stat. 218.)

AMENDMENTS

1980—Subsec. (c). Pub. L. 96–222 inserted "(other than the tax imposed by section 55)" after "equal to the taxes".

1978—Subsec. (b). Pub. L. 95–600 inserted "(other than the tax imposed by section 55)" after "equal to the taxes".

1976—Subsec. (e). Pub. L. 94–455 added subsec. (e).

1969—Subsec. (a). Pub. L. 91–172 substituted in first sentence "In the case of a trust which is subject to subpart (C)" for "In the case of a trust (other than a foreign trust created by a United States person) which for a taxable year beginning after December 31, 1953, is subject to subpart (C)", "for a taxable year" for "for such taxable year", and "undistributed net income for all earlier preceding taxable years" for "undistributed net incomes for any taxable years intervening between the taxable year with respect to which the accumulation distribution is determined and such preceding taxable year" and in second sentence "for such" for "of such", inserted in first sentence ", commencing with the earliest of such years," after "preceding taxable years", struck out "5" before "preceding taxable years" in first and third sentences and last sentence which read as

follows: "In the case of a foreign trust created by a United States person, this subsection shall apply to the preceding taxable years of the trust without regard to any provision of the preceding sentences which would (but for this sentence) limit its application to the 5 preceding taxable years."

Subsec. (b). Pub. L. 91–172 inserted "attributable to the undistributed net income" after "taxable year" in second sentence and "attributable to such undistributed net income" before "shall be computed" in third sentence.

Subsec. (c). Pub. L. 91–172 inserted "attributable to the undistributed net income" before "multiplied by the ratio" in second sentence and "attributable to such undistributed net income" before "shall be computed" in third sentence.

Subsec. (d). Pub. L. 91–172 added subsec. (d).

1962—Subsec. (a). Pub. L. 87–834 inserted "(other than a foreign trust created by a United States person)" after "In the case of a trust", and inserted sentence making this subsection applicable, in the case of a foreign trust created by a United States person, to the preceding taxable years of the trust without regard to any provision of the preceding sentences of this subsection which would (but for this sentence) limit its application to the 5 preceding taxable years.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 421(g) of Pub. L. 95–600, set out as a note under section 5 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable to distributions made in taxable years beginning after Dec. 31, 1975, see section 701(h) of Pub. L. 94–455, set out as a note under section 667 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1968, except that for taxable years of a trust beginning before Jan. 1, 1970, first sentence of subsec. (a) not applicable and amount of accumulation distribution stated, see section 331(d)(1), (2)(B) of Pub. L. 91–172, set out as a note under section 665 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable with respect to distributions made after Dec. 31, 1962, see section 7(j) of Pub. L. 87–834, set out as a note under section 643 of this title.

§667. Treatment of amounts deemed distributed by trust in preceding years

(a) General rule

The total of the amounts which are treated under section 666 as having been distributed by a trust in a preceding taxable year shall be included in the income of a beneficiary of the trust when paid, credited, or required to be distributed to the extent that such total would have been included in the income of such beneficiary under section 662(a)(2) (and, with respect to any tax-exempt interest to which section 103 applies, under section 662(b)) if such total had been paid to such beneficiary on the last day of such preceding taxable year. The tax imposed by this subtitle on a beneficiary for a taxable year in which any such amount is included in his income shall be determined only as provided in this section and shall consist of the sum of—

(1) a partial tax computed on the taxable income reduced by an amount equal to the total of such amounts, at the rate and in the manner as if this section had not been enacted,

(2) a partial tax determined as provided in subsection (b) of this section, and

(3) in the case of a foreign trust, the interest charge determined as provided in section 668.

(b) Tax on distribution

(1) In general

The partial tax imposed by subsection (a)(2) shall be determined.

(A) by determining the number of preceding taxable years of the trust on the last day of which an amount is deemed under section 666(a) to have been distributed,

(B) by taking from the 5 taxable years immediately preceding the year of the accumulation distribution the 1 taxable year for which the beneficiary's taxable income was the highest and the 1 taxable year for which his taxable income was the lowest,

(C) by adding to the beneficiary's taxable income for each of the 3 taxable years remaining after the application of subparagraph (B) an amount determined by dividing the amount deemed distributed under section 666 and required to be included in income under subsection (a) by the number of preceding taxable years determined under subparagraph (A), and

(D) by determining the average increase in tax for the 3 taxable years referred to in subparagraph (C) resulting from the application of such subparagraph.

The partial tax imposed by subsection (a)(2) shall be the excess (if any) of the average increase in tax determined under subparagraph (D), multiplied by the number of preceding taxable years determined under subparagraph (A), over the amount of taxes (other than the amount of taxes described in section 665(d)(2)) deemed distributed to the beneficiary under sections 666(b) and (c).

(2) Treatment of loss years

For purposes of paragraph (1), the taxable income of the beneficiary for any taxable year shall be deemed to be not less than zero.

(3) Certain preceding taxable years not taken into account

For purposes of paragraph (1), if the amount of the undistributed net income deemed distributed in any preceding taxable year of the trust is less than 25 percent of the amount of the accumulation distribution divided by the number of preceding taxable years to which the accumulation distribution is allocated under section 666(a), the number of preceding taxable years of the trust with respect to which an amount is deemed distributed to a beneficiary under section 666(a) shall be determined without regard to such year.

(4) Effect of other accumulation distributions

In computing the partial tax under paragraph (1) for any beneficiary, the income of such beneficiary for each of his prior taxable years shall include amounts previously deemed distributed to such beneficiary in such year under section 666 as a result of prior accumulation distributions (whether from the same or another trust).

(5) Multiple distributions in the same taxable year

In the case of accumulation distributions made from more than one trust which are includible in the income of a beneficiary in the same taxable year, the distributions shall be deemed to have been made consecutively in whichever order the beneficiary shall determine.

(6) Adjustment in partial tax for estate and generation-skipping transfer taxes attributable to partial tax

(A) In general

The partial tax shall be reduced by an amount which is equal to the pre-death portion of the partial tax multiplied by a fraction—

(i) the numerator of which is that portion of the tax imposed by chapter 11 or 13, as the case may be, which is attributable (on a proportionate basis) to amounts included in the accumulation distribution, and

(ii) the denominator of which is the amount of the accumulation distribution which is subject to the tax imposed by chapter 11 or 13, as the case may be.

(B) Partial tax determined without regard to this paragraph

For purposes of this paragraph, the term "partial tax" means the partial tax imposed by subsection (a)(2) determined under this subsection without regard to this paragraph.

(C) Pre-death portion

For purposes of this paragraph, the pre-death portion of the partial tax shall be an amount which bears the same ratio to the partial tax as the portion of the accumulation distribution which is attributable to the period before the date of the death of the decedent or the date of the generation-skipping transfer bears to the total accumulation distribution.

(c) Special rule for multiple trusts

(1) In general

If, in the same prior taxable year of the beneficiary in which any part of the accumulation distribution from a trust (hereinafter in this paragraph referred to as "third trust") is deemed under section 666(a) to have been distributed to such beneficiary, some part of prior distributions by each of 2 or more other trusts is deemed under section 666(a) to have been distributed to such beneficiary, then subsections (b) and (c) of section 666 shall not apply with respect to such part of the accumulation distribution from such third trust.

(2) Accumulation distributions from trust not taken into account unless they equal or exceed $1,000

For purposes of paragraph (1), an accumulation distribution from a trust to a beneficiary shall be taken into account only if such distribution, when added to any prior accumulation distributions from such trust which are deemed under section 666(a) to have been distributed to such beneficiary for the same prior taxable year of the beneficiary, equals or exceeds $1,000.

(d) Special rules for foreign trust

(1) Foreign tax deemed paid by beneficiary

(A) In general

In determining the increase in tax under subsection (b)(1)(D) for any computation year, the taxes described in section 665(d)(2) which are deemed distributed under section 666(b) or (c) and added under subsection (b)(1)(C) to the taxable income of the beneficiary for any computation year shall, except as provided in subparagraphs (B) and (C), be treated as a credit against the increase in tax for such computation year under subsection (b)(1)(D).

(B) Deduction in lieu of credit

If the beneficiary did not choose the benefits of subpart A of part III of subchapter N with respect to the computation year, the beneficiary may in lieu of treating the amounts described in subparagraph (A) (without regard to subparagraph (C)) as a credit may treat such amounts as a deduction in computing the beneficiary's taxable income under subsection (b)(1)(C) for the computation year.

(C) Limitation on credit; retention of character

(i) Limitation on credit

For purposes of determining under subparagraph (A) the amount treated as a credit for any computation year, the limitations under subpart A of part III of subchapter N shall be applied separately with respect to amounts added under subsection (b)(1)(C) to the taxable income of the beneficiary for such computation year. For purposes of computing the increase in tax under subsection (b)(1)(D) for any computation year for which the beneficiary did not choose the benefits of subpart A of part III of subchapter N, the beneficiary shall be treated as having chosen such benefits for such computation year.

(ii) Retention of character

The items of income, deduction, and credit of the Trust shall retain their character (subject to the application of section 904(f)(5)) to the extent necessary to apply this paragraph.

(D) Computation year

For purposes of this paragraph, the term "computation year" means any of the three taxable years remaining after application of subsection (b)(1)(B).

(e) Retention of character of amounts distributed from accumulation trust to nonresident aliens and foreign corporations

In the case of a distribution from a trust to a nonresident alien individual or to a foreign corporation, the first sentence of subsection (a) shall be applied as if the reference to the determination of character under section 662(b) applied to all amounts instead of just to tax-exempt interest.

(Aug. 16, 1954, ch. 736, 68A Stat. 225; Pub. L. 91–172, title III, §331(a), Dec. 30, 1969, 83 Stat. 594; Pub. L. 94–455, title VII, §701(a)(1), title X, §1014(a), Oct. 4, 1976, 90 Stat. 1575, 1617; Pub. L. 95–30, title I, §102(b)(8), May 23, 1977, 91 Stat. 138; Pub. L. 95–600, title VII, §§701(q)(1)(B), (C), (r)(1), 702(o)(1), Nov. 6, 1978, 92 Stat. 2909, 2910, 2936; Pub. L. 99–514, title I, §104(b)(10), Oct. 22, 1986, 100 Stat. 2105.)

AMENDMENTS

1986—Subsec. (b)(2). Pub. L. 99–514 amended par. (2) generally. Prior to amendment, par. (2) read as follows: "For purposes of paragraph (1), the taxable income of the beneficiary for any taxable year shall be deemed to be not less than—

"(A) in the case of a beneficiary who is an individual, the zero bracket amount for such year, or

"(B) in the case of a beneficiary who is a corporation, zero."

1978—Subsec. (b)(1). Pub. L. 95–600, §701(q)(1)(C), inserted in last sentence "(other than the amount of taxes described in section 665(d)(2))" after "taxes".

Subsec. (b)(6). Pub. L. 95–600, §702(o)(1), added par. (6).

Subsec. (d). Pub. L. 95–600, §701(q)(1)(B), added subsec. (d).

Subsec. (e). Pub. L. 95–600, §701(r)(1), added subsec. (e).

1977—Subsec. (b)(2). Pub. L. 95–30 substituted "not less than (A) in the case of a beneficiary who is an individual, the zero bracket amount for such year, or (B) in the case of a beneficiary who is a corporation, zero" for "not less than zero".

1976—Pub. L. 94–455, §§701(a)(1), 1014(a), substituted provisions relating to the treatment of amounts deemed distributed by trust in preceding years for provisions that no refund or credit be allowed to a trust for any preceding taxable year by reason of a distribution deemed to have been made by such trust in such year under section 666 or 669 and that there be allowed as a credit against the tax imposed by this subtitle on the beneficiary an amount equal to the amount of the taxes deemed distributed to such beneficiary by the trust under sections 666(b) and (c) and 669(d) and (e) during preceding taxable years of the trust on the last day of which the beneficiary was in being, reduced by the amount of the taxes deemed distributed to such beneficiary for such preceding taxable years to the extent that such taxes are taken into account under sections 668(b)(1) and 669(b) in determining the amount of the tax imposed by section 668. See section 666(e) of this title.

1969—Subsec. (a). Pub. L. 91–172 incorporated existing provisions of first sentence in provisions designated as subsec. (a), included distributions made under section 669 of this title, and struck out provisions for credit of taxes imposed on the trust against tax of beneficiary. See subsec. (b) of this section.

Subsec. (b). Pub. L. 91–172 incorporated provision of first sentence for credit of taxes imposed on the trust against tax of beneficiary, and provided for interest free credit and method of computation of its amount. The second sentence had provided that the amount of taxes which may not be refunded or credited to the trust shall be an amount equal to the excess of (1) the taxes imposed on the trust for any preceding taxable year (computed without regard to the accumulation distribution for the taxable year) over (2) the amount of taxes for such preceding taxable year imposed on the undistributed portion of distributable net income of the trust for such preceding taxable year after the application of this subpart on account of the accumulation distribution determined for such taxable year.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 701(q)(1)(B), (C) of Pub. L. 95–600 applicable to distributions made in taxable

years beginning after Dec. 31, 1975, see section 701(q)(3)(A) of Pub. L. 95–600, set out as a note under section 665 of this title.

Pub. L. 95–600, title VII, §702(o)(2), Nov. 6, 1978, 92 Stat. 2937, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendment made by paragraph (1) [amending this section] shall apply—

"(A) in the case of the tax imposed by chapter 11 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954, section 2001 et seq. of this title], to the estates of decedents dying after December 31, 1979, and

"(B) in the case of the tax imposed by chapter 13 [section 2601 et seq. of this title], to any generation-skipping transfer (within the meaning of section 2611(a) of such Code) made after June 11, 1976."

Pub. L. 95–600, title VII, §701(r)(2), Nov. 6, 1978, 92 Stat. 2911, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to distributions made in taxable years beginning after December 31, 1975."

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title VII, §701(h), Oct. 4, 1976, 90 Stat. 1580, provided that: "The amendments made by subsections (a), (b), (c), (d), and (f) of this section [amending this section and sections 665, 666, 1302, and 6401 of this title and repealing sections 668 and 669 of this title] shall apply to distributions made in taxable years beginning after December 31, 1975. The amendments made by subsection (e) of this section [enacting section 644 of this title and amending section 641 of this title] shall apply to transfers in trust made after May 21, 1976."

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1968, see section 331(d) of Pub. L. 91–172, set out as a note under section 665 of this title.

§668. Interest charge on accumulation distributions from foreign trusts

(a) General rule

For purposes of the tax determined under section 667(a)—

(1) Interest determined using underpayment rates

The interest charge determined under this section with respect to any distribution is the amount of interest which would be determined on the partial tax computed under section 667(b) for the period described in paragraph (2) using the rates and the method under section 6621 applicable to underpayments of tax.

(2) Period

For purposes of paragraph (1), the period described in this paragraph is the period which begins on the date which is the applicable number of years before the date of the distribution and which ends on the date of the distribution.

(3) Applicable number of years

For purposes of paragraph (2)—

(A) In general

The applicable number of years with respect to a distribution is the number determined by dividing—

(i) the sum of the products described in subparagraph (B) with respect to each undistributed income year, by

(ii) the aggregate undistributed net income.

The quotient determined under the preceding sentence shall be rounded under procedures prescribed by the Secretary.

(B) Product described

For purposes of subparagraph (A), the product described in this subparagraph with respect to any undistributed income year is the product of—

(i) the undistributed net income for such year, and

(ii) the sum of the number of taxable years between such year and the taxable year of the distribution (counting in each case the undistributed income year but not counting the taxable year of the distribution).

(4) Undistributed income year

For purposes of this subsection, the term "undistributed income year" means any prior taxable year of the trust for which there is undistributed net income, other than a taxable year during all of which the beneficiary receiving the distribution was not a citizen or resident of the United States.

(5) Determination of undistributed net income

Notwithstanding section 666, for purposes of this subsection, an accumulation distribution from the trust shall be treated as reducing proportionately the undistributed net income for undistributed income years.

(6) Periods before 1996

Interest for the portion of the period described in paragraph (2) which occurs before January 1, 1996, shall be determined—

(A) by using an interest rate of 6 percent, and

(B) without compounding until January 1, 1996.

(b) Limitation

The total amount of the interest charge shall not, when added to the total partial tax computed under section 667(b), exceed the amount of the accumulation distribution (other than the amount of tax deemed distributed by section 666(b) or (c)) in respect of which such partial tax was determined.

(c) Interest charge not deductible

The interest charge determined under this section shall not be allowed as a deduction for purposes of any tax imposed by this title.

(Added Pub. L. 94–455, title X, §1014(b), Oct. 4, 1976, 90 Stat. 1617; amended Pub. L. 101–508, title XI, §11802(f)(3), Nov. 5, 1990, 104 Stat. 1388–530; Pub. L. 104–188, title I, §1906(a), Aug. 20, 1996, 110 Stat. 1914.)

PRIOR PROVISIONS

A prior section 668, acts Aug. 16, 1954, ch. 736, 68A Stat. 225; Oct. 16, 1962, Pub. L. 87–834, §7(d), 76 Stat. 986; Dec. 30, 1969, Pub. L. 91–172, title III, §331(a), 83 Stat. 594, related to treatment of amounts deemed distributed in preceding years, prior to repeal by Pub. L. 94–455, title VII, §701(a)(3), Oct. 4, 1976, 90 Stat. 1577. See section 667 of this title.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–188 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "For purposes of the tax determined under section 667(a), the interest charge is an amount equal to 6 percent of the partial tax computed under section 667(b) multiplied by a fraction—

"(1) the numerator of which is the sum of the number of taxable years between each taxable year to which the distribution is allocated under section 666(a) and the taxable year of the distribution (counting in each case the taxable year to which the distribution is allocated but not counting the taxable year of the distribution), and

"(2) the denominator of which is the number of taxable years to which the distribution is allocated under section 666(a)."

1990—Subsec. (c). Pub. L. 101–508 substituted heading for one which read "Special rules" and amended text generally, restating provisions of former par. (1) as entire subsection and striking out former par. (2)

which provided that for purposes of this section, undistributed net income existing in a trust as of January 1, 1977, would be treated as allocated under section 666(a) to the first taxable year beginning after December 31, 1976.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, §1906(d)(1), Aug. 20, 1996, 110 Stat. 1916, provided that: "The amendment made by subsection (a) [amending this section] shall apply to distributions after the date of the enactment of this Act [Nov. 20, 1996]."

EFFECTIVE DATE

Pub. L. 94–455, title X, §1014(d), Oct. 4, 1976, 90 Stat. 1617, provided that: "The amendments made by this section [enacting this section and amending section 667 of this title] shall apply to taxable years beginning after December 31, 1976."

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

[§669. Repealed. Pub. L. 94–455, title VII, §701(d)(1), Oct. 4, 1976, 90 Stat. 1578]

Section, acts Oct. 16, 1962, Pub. L. 87–834, §7(e), 76 Stat. 986; Dec. 30, 1969, Pub. L. 91–172, title III, §331(a), 83 Stat. 596, related to the treatment of capital gain deemed distributed in preceding years.

EFFECTIVE DATE OF REPEAL

Repeal applicable to distributions made in taxable years beginning after Dec. 31, 1975, see section 701(h) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 667 of this title.

SUBPART E—GRANTORS AND OTHERS TREATED AS SUBSTANTIAL OWNERS

Sec.

671. Trust income, deductions, and credits attributable to grantors and others as substantial owners.
672. Definitions and rules.
673. Reversionary interests.
674. Power to control beneficial enjoyment.
675. Administrative powers.
676. Power to revoke.
677. Income for benefit of grantor.
678. Person other than grantor treated as substantial owner.
679. Foreign trusts having one or more United States beneficiaries.

AMENDMENTS

1976—Pub. L. 94–455, title X, §1013(e)(1), Oct. 4, 1976, 90 Stat. 1616, added item 679.

§671. Trust income, deductions, and credits attributable to grantors and others as substantial owners

Where it is specified in this subpart that the grantor or another person shall be treated as the owner of any portion of a trust, there shall then be included in computing the taxable income and credits of the grantor or the other person those items of income, deductions, and credits against tax of the trust which are attributable to that portion of the trust to the extent that such items would be taken into account under this chapter in computing taxable income or credits against the tax of an individual.

Any remaining portion of the trust shall be subject to subparts A through D. No items of a trust shall be included in computing the taxable income and credits of the grantor or of any other person solely on the grounds of his dominion and control over the trust under section 61 (relating to definition of gross income) or any other provision of this title, except as specified in this subpart.

(Aug. 16, 1954, ch. 736, 68A Stat. 226.)

CERTAIN ENTITIES NOT TREATED AS CORPORATIONS

Pub. L. 99–514, title VI, §646, Oct. 22, 1986, 100 Stat. 2292, as amended by Pub. L. 100–647, title I, §1006(k), Nov. 10, 1988, 102 Stat. 3411, provided that:

"(a) GENERAL RULE.—For purposes of the Internal Revenue Code of 1986, if the entity described in subsection (b) makes an election under subsection (c), such entity shall be treated as a trust to which subpart E of part 1 of subchapter J of chapter 1 of such Code applies.

"(b) ENTITY.—An entity is described in this subsection if—

"(1) such entity was created in 1906 as a common law trust and is governed by the trust laws of the State of Minnesota,

"(2) such entity is exclusively engaged in the leasing of mineral property and activities incidental thereto, and

"(3) income interests in such entity are publicly traded as of October 22, 1986, on a national stock exchange.

"(c) ELECTION.—

"(1) IN GENERAL.—An election under this subsection to have the provisions of this section apply—

"(A) shall be made by the board of trustees of the entity before January 1, 1991, and

"(B) shall not be valid unless accompanied by an agreement described in paragraph (2).

"(2) AGREEMENT.—

"(A) IN GENERAL.—The agreement described in this paragraph is a written agreement signed by the board of trustees of the entity which provides that the entity will not acquire any additional property other than property described in subparagraph (B).

"(B) PERMISSIBLE ACQUISITIONS.—Property is described in this paragraph if it is—

"(i) surface rights to property the acquisition of which—

"(I) is necessary to mine mineral rights held on October 22, 1986, and

"(II) is required by a written binding agreement between the entity and an unrelated person entered into on or before October 22, 1986,

"(ii) surface rights to property which are not described in clause (i) and which—

"(I) are acquired in an exchange to which section 1031 [probably means section 1031 of this title] applies, and

"(II) are necessary to mine mineral rights held on October 22, 1986,

"(iii) tangible personal property incidental to the leasing of mineral property and activities incidental thereto, or

"(iv) part of any required reserves of the entity.

"(3) BEGINNING OF PERIOD FOR WHICH ELECTION IS IN EFFECT.—The period during which an election is in effect under this subsection shall begin on the 1st day of the 1st taxable year beginning after the date of the enactment of this Act [Oct. 22, 1986] and following the taxable year in which the election is made.

"(4) MANNER OF ELECTION.—Any election under this subsection shall be made in such manner as the Secretary of the Treasury or his delegate may prescribe.

"(d) SPECIAL RULES FOR TAXATION OF TRUST.—

"(1) ELECTION TREATED AS A LIQUIDATION.—If an election is made under subsection (c) with respect to any entity—

"(A) such entity shall be treated as having been liquidated into a trust immediately before the period described in subsection (c)(3) in a liquidation to which section 333 of the Internal Revenue Code of 1954 (as in effect before the amendments made by this Act) applies, and

"(B) for purposes of section 333 of such Code (as so in effect)—

"(i) any person holding an income interest in such entity as of such time shall be treated as a qualified electing shareholder, and

"(ii) the earnings and profits, and the value of money or stock or securities, of such entity shall be apportioned ratably among persons described in clause (i).

The amendments made by subtitle D of this title [subtitle D (§§631–634) of title VI of Pub. L.

99–514, see Tables for classification] and section 1804 of this Act [see Tables for classification] shall not apply to any liquidation under this paragraph.

"(2) TERMINATION OF ELECTION.—If an entity ceases to be described in subsection (b) or violates any term of the agreement described in subsection (c)(2), the entity shall, for purposes of the Internal Revenue Code of 1986, be treated as a corporation for the taxable year in which such cessation or violation occurs and for all subsequent taxable years.

"(3) TRUST CEASING TO EXIST.—Paragraph (2) shall not apply if the trust ceases to be described in subsection (b) or violates the agreement in subsection (c)(2) because the trust ceases to exist.

"(e) SPECIAL RULE FOR PERSONS HOLDING INCOME INTERESTS.—In applying subpart E of part I of subchapter J of chapter 1 of the Internal Revenue Code of 1986 to any entity to which this section applies—

"(1) a reversionary interest shall not be taken into account until it comes into possession, and

"(2) all items of income, gain, loss, deduction, and credit shall be allocated to persons holding income interests for the period of the allocation."

§672. Definitions and rules

(a) Adverse party

For purposes of this subpart, the term "adverse party" means any person having a substantial beneficial interest in the trust which would be adversely affected by the exercise or nonexercise of the power which he possesses respecting the trust. A person having a general power of appointment over the trust property shall be deemed to have a beneficial interest in the trust.

(b) Nonadverse party

For purposes of this subpart, the term "nonadverse party" means any person who is not an adverse party.

(c) Related or subordinate party

For purposes of this subpart, the term "related or subordinate party" means any nonadverse party who is—

(1) the grantor's spouse if living with the grantor;

(2) any one of the following: The grantor's father, mother, issue, brother or sister; an employee of the grantor; a corporation or any employee of a corporation in which the stock holdings of the grantor and the trust are significant from the viewpoint of voting control; a subordinate employee of a corporation in which the grantor is an executive.

For purposes of subsection (f) and sections 674 and 675, a related or subordinate party shall be presumed to be subservient to the grantor in respect of the exercise or nonexercise of the powers conferred on him unless such party is shown not to be subservient by a preponderance of the evidence.

(d) Rule where power is subject to condition precedent

A person shall be considered to have a power described in this subpart even though the exercise of the power is subject to a precedent giving of notice or takes effect only on the expiration of a certain period after the exercise of the power.

(e) Grantor treated as holding any power or interest of grantor's spouse

(1) In general

For purposes of this subpart, a grantor shall be treated as holding any power or interest held by—

(A) any individual who was the spouse of the grantor at the time of the creation of such power or interest, or

(B) any individual who became the spouse of the grantor after the creation of such power or interest, but only with respect to periods after such individual became the spouse of the grantor.

(2) Marital status

For purposes of paragraph (1)(A), an individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married.

(f) Subpart not to result in foreign ownership

(1) In general

Notwithstanding any other provision of this subpart, this subpart shall apply only to the extent such application results in an amount (if any) being currently taken into account (directly or through 1 or more entities) under this chapter in computing the income of a citizen or resident of the United States or a domestic corporation.

(2) Exceptions

(A) Certain revocable and irrevocable trusts

Paragraph (1) shall not apply to any portion of a trust if—

(i) the power to revest absolutely in the grantor title to the trust property to which such portion is attributable is exercisable solely by the grantor without the approval or consent of any other person or with the consent of a related or subordinate party who is subservient to the grantor, or

(ii) the only amounts distributable from such portion (whether income or corpus) during the lifetime of the grantor are amounts distributable to the grantor or the spouse of the grantor.

(B) Compensatory trusts

Except as provided in regulations, paragraph (1) shall not apply to any portion of a trust distributions from which are taxable as compensation for services rendered.

(3) Special rules

Except as otherwise provided in regulations prescribed by the Secretary—

(A) a controlled foreign corporation (as defined in section 957) shall be treated as a domestic corporation for purposes of paragraph (1), and

(B) paragraph (1) shall not apply for purposes of applying section 1297.

(4) Recharacterization of purported gifts

In the case of any transfer directly or indirectly from a partnership or foreign corporation which the transferee treats as a gift or bequest, the Secretary may recharacterize such transfer in such circumstances as the Secretary determines to be appropriate to prevent the avoidance of the purposes of this subsection.

(5) Special rule where grantor is foreign person

If—

(A) but for this subsection, a foreign person would be treated as the owner of any portion of a trust, and

(B) such trust has a beneficiary who is a United States person,

such beneficiary shall be treated as the grantor of such portion to the extent such beneficiary has made (directly or indirectly) transfers of property (other than in a sale for full and adequate consideration) to such foreign person. For purposes of the preceding sentence, any gift shall not be taken into account to the extent such gift would be excluded from taxable gifts under section 2503(b).

(6) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection, including regulations providing that paragraph (1) shall not apply in appropriate cases.

(Aug. 16, 1954, ch. 736, 68A Stat. 226; Pub. L. 99–514, title XIV, §1401(a), Oct. 22, 1986, 100 Stat.

2711; Pub. L. 100–647, title I, §1014(a)(1), Nov. 10, 1988, 102 Stat. 3559; Pub. L. 101–508, title XI, §11343(a), Nov. 5, 1990, 104 Stat. 1388–472; Pub. L. 104–188, title I, §1904(a), Aug. 20, 1996, 110 Stat. 1910; Pub. L. 105–206, title VI, §6011(c)(1), July 22, 1998, 112 Stat. 818.)

AMENDMENTS

1998—Subsec. (f)(3)(B). Pub. L. 105–206 substituted "section 1297" for "section 1296".

1996—Subsec. (c). Pub. L. 104–188, §1904(a)(2), inserted "subsection (f) and" before "sections 674" in closing provisions.

Subsec. (f). Pub. L. 104–188, §1904(a)(1), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: "SPECIAL RULE WHERE GRANTOR IS FOREIGN PERSON.—

"(1) IN GENERAL.—If—

"(A) but for this subsection, a foreign person would be treated as the owner of any portion of a trust, and

"(B) such trust has a beneficiary who is a United States person,

such beneficiary shall be treated as the grantor of such portion to the extent such beneficiary has made transfers of property by gift (directly or indirectly) to such foreign person. For purposes of the preceding sentence, any gift shall not be taken into account to the extent such gift would be excluded from taxable gifts under section 2503(b).

"(2) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection."

1990—Subsec. (f). Pub. L. 101–508 added subsec. (f).

1988—Subsec. (e). Pub. L. 100–647 amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: "For purposes of this subpart, if a grantor's spouse is living with the grantor at the time of the creation of any power or interest held by such spouse, the grantor shall be treated as holding such power or interest."

1986—Subsec. (e). Pub. L. 99–514 added subsec. (e).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective Aug. 20, 1996, with exception for certain trusts, see section 1904(d) of Pub. L. 104–188, set out as a note under section 643 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, §11343(b), Nov. 5, 1990, 104 Stat. 1388–472, provided that: "The amendments made by this section [amending this section] shall apply to—

"(1) any trust created after the date of the enactment of this Act [Nov. 5, 1990], and

"(2) any portion of a trust created on or before such date which is attributable to amounts contributed to the trust after such date."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XIV, §1401(b), Oct. 22, 1986, 100 Stat. 2711, provided that: "The amendment made by this section [amending this section] shall apply with respect to transfers in trust made after March 1, 1986."

§673. Reversionary interests

(a) General rule

The grantor shall be treated as the owner of any portion of a trust in which he has a reversionary interest in either the corpus or the income therefrom, if, as of the inception of that portion of the trust, the value of such interest exceeds 5 percent of the value of such portion.

(b) Reversionary interest taking effect at death of minor lineal descendant beneficiary

In the case of any beneficiary who—

(1) is a lineal descendant of the grantor, and

(2) holds all of the present interests in any portion of a trust,

the grantor shall not be treated under subsection (a) as the owner of such portion solely by reason of a reversionary interest in such portion which takes effect upon the death of such beneficiary before such beneficiary attains age 21.

(c) Special rule for determining value of reversionary interest

For purposes of subsection (a), the value of the grantor's reversionary interest shall be determined by assuming the maximum exercise of discretion in favor of the grantor.

(d) Postponement of date specified for reacquisition

Any postponement of the date specified for the reacquisition of possession or enjoyment of the reversionary interest shall be treated as a new transfer in trust commencing with the date on which the postponement is effective and terminating with the date prescribed by the postponement. However, income for any period shall not be included in the income of the grantor by reason of the preceding sentence if such income would not be so includible in the absence of such postponement.

(Aug. 16, 1954, ch. 736, 68A Stat. 227; Pub. L. 91–172, title II, §201(c), Dec. 30, 1969, 83 Stat. 560; Pub. L. 99–514, title XIV, §1402(a), Oct. 22, 1986, 100 Stat. 2711; Pub. L. 100–647, title I, §1014(b), Nov. 10, 1988, 102 Stat. 3559.)

AMENDMENTS

1988—Subsecs. (c), (d). Pub. L. 100–647 added subsecs. (c) and (d).

1986—Pub. L. 99–514 amended section generally, substituting "the value of such interest exceeds 5 percent of the value of such portion" for "the interest will or may reasonably be expected to take effect in possession or enjoyment within 10 years commencing with the date of the transfer of that portion of the trust" in subsec. (a), adding subsec. (b), striking out subsec. (c) which provided that the grantor not be treated under subsec. (a) as the owner of any portion of a trust where his reversionary interest in such portion was not to take effect in possession or enjoyment until the death of the persons to whom the income therefrom was payable, and subsec. (d) which provided that any postponement of the date specified for the reacquisition of possession or enjoyment of the reversionary interest be treated as a new transfer in trust commencing with the date on which the postponement was effected and terminating with the date prescribed by the postponement.

1969—Subsec. (b). Pub. L. 91–172 struck out provisions relating to trusts where the income was payable to a charitable beneficiary for at least a two-year period.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XIV, §1402(c), Oct. 22, 1986, 100 Stat. 2712, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 674, 676, and 677 of this title] shall apply with respect to transfers in trust made after March 1, 1986.

"(2) TRANSFERS PURSUANT TO PROPERTY SETTLEMENT AGREEMENT.—The amendments made by this section shall not apply to any transfer in trust made after March 1, 1986, pursuant to a binding property settlement agreement entered into on or before March 1, 1986, which required the taxpayer to establish a grantor trust and for the transfer of a specified sum of money or property to the trust by the taxpayer. This paragraph shall apply only to the extent of the amount required to be transferred under the agreement described in the preceding sentence."

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to transfers in trust made after April 22, 1969, see section 201(g)(3) of Pub. L. 91–172, set out as a note under section 170 of this title.

§674. Power to control beneficial enjoyment

(a) General rule

The grantor shall be treated as the owner of any portion of a trust in respect of which the beneficial enjoyment of the corpus or the income therefrom is subject to a power of disposition, exercisable by the grantor or a nonadverse party, or both, without the approval or consent of any adverse party.

(b) Exceptions for certain powers

Subsection (a) shall not apply to the following powers regardless of by whom held:

(1) Power to apply income to support of a dependent

A power described in section 677(b) to the extent that the grantor would not be subject to tax under that section.

(2) Power affecting beneficial enjoyment only after occurrence of event

A power, the exercise of which can only affect the beneficial enjoyment of the income for a period commencing after the occurrence of an event such that a grantor would not be treated as the owner under section 673 if the power were a reversionary interest; but the grantor may be treated as the owner after the occurrence of the event unless the power is relinquished.

(3) Power exercisable only by will

A power exercisable only by will, other than a power in the grantor to appoint by will the income of the trust where the income is accumulated for such disposition by the grantor or may be so accumulated in the discretion of the grantor or a nonadverse party, or both, without the approval or consent of any adverse party.

(4) Power to allocate among charitable beneficiaries

A power to determine the beneficial enjoyment of the corpus or the income therefrom if the corpus or income is irrevocably payable for a purpose specified in section 170(c) (relating to definition of charitable contributions) or to an employee stock ownership plan (as defined in section 4975(e)(7)) in a qualified gratuitous transfer (as defined in section 664(g)(1)).

(5) Power to distribute corpus

A power to distribute corpus either—

(A) to or for a beneficiary or beneficiaries or to or for a class of beneficiaries (whether or not income beneficiaries) provided that the power is limited by a reasonably definite standard which is set forth in the trust instrument; or

(B) to or for any current income beneficiary, provided that the distribution of corpus must be chargeable against the proportionate share of corpus held in trust for the payment of income to the beneficiary as if the corpus constituted a separate trust.

A power does not fall within the powers described in this paragraph if any person has a power to add to the beneficiary or beneficiaries or to a class of beneficiaries designated to receive the income or corpus, except where such action is to provide for after-born or after-adopted children.

(6) Power to withhold income temporarily

A power to distribute or apply income to or for any current income beneficiary or to accumulate the income for him, provided that any accumulated income must ultimately be payable—

(A) to the beneficiary from whom distribution or application is withheld, to his estate, or to his appointees (or persons named as alternate takers in default of appointment) provided that such beneficiary possesses a power of appointment which does not exclude from the class of possible appointees any person other than the beneficiary, his estate, his creditors, or the creditors of his estate, or

(B) on termination of the trust, or in conjunction with a distribution of corpus which is augmented by such accumulated income, to the current income beneficiaries in shares which

have been irrevocably specified in the trust instrument.

Accumulated income shall be considered so payable although it is provided that if any beneficiary does not survive a date of distribution which could reasonably have been expected to occur within the beneficiary's lifetime, the share of the deceased beneficiary is to be paid to his appointees or to one or more designated alternate takers (other than the grantor or the grantor's estate) whose shares have been irrevocably specified. A power does not fall within the powers described in this paragraph if any person has a power to add to the beneficiary or beneficiaries or to a class of beneficiaries designated to receive the income or corpus except where such action is to provide for after-born or after-adopted children.

(7) Power to withhold income during disability of a beneficiary

A power exercisable only during—

(A) the existence of a legal disability of any current income beneficiary, or

(B) the period during which any income beneficiary shall be under the age of 21 years,

to distribute or apply income to or for such beneficiary or to accumulate and add the income to corpus. A power does not fall within the powers described in this paragraph if any person has a power to add to the beneficiary or beneficiaries or to a class of beneficiaries designated to receive the income or corpus, except where such action is to provide for after-born or after-adopted children.

(8) Power to allocate between corpus and income

A power to allocate receipts and disbursements as between corpus and income, even though expressed in broad language.

(c) Exception for certain powers of independent trustees

Subsection (a) shall not apply to a power solely exercisable (without the approval or consent of any other person) by a trustee or trustees, none of whom is the grantor, and no more than half of whom are related or subordinate parties who are subservient to the wishes of the grantor—

(1) to distribute, apportion, or accumulate income to or for a beneficiary or beneficiaries, or to, for, or within a class of beneficiaries; or

(2) to pay out corpus to or for a beneficiary or beneficiaries or to or for a class of beneficiaries (whether or not income beneficiaries).

A power does not fall within the powers described in this subsection if any person has a power to add to the beneficiary or beneficiaries or to a class of beneficiaries designated to receive the income or corpus, except where such action is to provide for after-born or after-adopted children. For periods during which an individual is the spouse of the grantor (within the meaning of section 672(e)(2)), any reference in this subsection to the grantor shall be treated as including a reference to such individual.

(d) Power to allocate income if limited by a standard

Subsection (a) shall not apply to a power solely exercisable (without the approval or consent of any other person) by a trustee or trustees, none of whom is the grantor or spouse living with the grantor, to distribute, apportion, or accumulate income to or for a beneficiary or beneficiaries, or to, for, or within a class of beneficiaries, whether or not the conditions of paragraph (6) or (7) of subsection (b) are satisfied, if such power is limited by a reasonably definite external standard which is set forth in the trust instrument. A power does not fall within the powers described in this subsection if any person has a power to add to the beneficiary or beneficiaries or to a class of beneficiaries designated to receive the income or corpus except where such action is to provide for after-born or after-adopted children.

(Aug. 16, 1954, ch. 736, 68A Stat. 227; Pub. L. 99–514, title XIV, §1402(b)(1), Oct. 22, 1986, 100 Stat. 2712; Pub. L. 100–647, title I, §1014(a)(3), Nov. 10, 1988, 102 Stat. 3559; Pub. L. 105–34, title XV, §1530(c)(6), Aug. 5, 1997, 111 Stat. 1078.)

AMENDMENTS

1997—Subsec. (b)(4). Pub. L. 105–34 inserted before period "or to an employee stock ownership plan (as defined in section 4975(e)(7)) in a qualified gratuitous transfer (as defined in section 664(g)(1))".

1988—Subsec. (c). Pub. L. 100–647 inserted at end "For periods during which an individual is the spouse of the grantor (within the meaning of section 672(e)(2)), any reference in this subsection to the grantor shall be treated as including a reference to such individual."

1986—Subsec. (b)(2). Pub. L. 99–514 substituted "occurrence of event" for "expiration of 10-year period" in heading and in text substituted "the occurrence of an event" for "the expiration of a period" and "the occurrence of the event" for "the expiration of the period".

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to transfers made by trusts to, or for the use of, an employee stock ownership plan after Aug. 5, 1997, see section 1530(d) of Pub. L. 105–34, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable with respect to transfers in trust made after Mar. 1, 1986, except for transfers pursuant to a certain binding property settlement agreement, see section 1402(c) of Pub. L. 99–514, set out as a note under section 673 of this title.

§675. Administrative powers

The grantor shall be treated as the owner of any portion of a trust in respect of which—

(1) Power to deal for less than adequate and full consideration

A power exercisable by the grantor or a nonadverse party, or both, without the approval or consent of any adverse party enables the grantor or any person to purchase, exchange, or otherwise deal with or dispose of the corpus or the income therefrom for less than an adequate consideration in money or money's worth.

(2) Power to borrow without adequate interest or security

A power exercisable by the grantor or a nonadverse party, or both, enables the grantor to borrow the corpus or income, directly or indirectly, without adequate interest or without adequate security except where a trustee (other than the grantor) is authorized under a general lending power to make loans to any person without regard to interest or security.

(3) Borrowing of the trust funds

The grantor has directly or indirectly borrowed the corpus or income and has not completely repaid the loan, including any interest, before the beginning of the taxable year. The preceding sentence shall not apply to a loan which provides for adequate interest and adequate security, if such loan is made by a trustee other than the grantor and other than a related or subordinate trustee subservient to the grantor. For periods during which an individual is the spouse of the grantor (within the meaning of section 672(e)(2)), any reference in this paragraph to the grantor shall be treated as including a reference to such individual.

(4) General powers of administration

A power of administration is exercisable in a nonfiduciary capacity by any person without the approval or consent of any person in a fiduciary capacity. For purposes of this paragraph, the term "power of administration" means any one or more of the following powers: (A) a power to vote or direct the voting of stock or other securities of a corporation in which the holdings of the grantor and the trust are significant from the viewpoint of voting control; (B) a power to control the

investment of the trust funds either by directing investments or reinvestments, or by vetoing proposed investments or reinvestments, to the extent that the trust funds consist of stocks or securities of corporations in which the holdings of the grantor and the trust are significant from the viewpoint of voting control; or (C) a power to reacquire the trust corpus by substituting other property of an equivalent value.

(Aug. 16, 1954, ch. 736, 68A Stat. 229; Pub. L. 100–647, title I, §1014(a)(2), Nov. 10, 1988, 102 Stat. 3559.)

AMENDMENTS

1988—Par. (3). Pub. L. 100–647 inserted at end "For periods during which an individual is the spouse of the grantor (within the meaning of section 672(e)(2)), any reference in this paragraph to the grantor shall be treated as including a reference to such individual."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

§676. Power to revoke

(a) General rule

The grantor shall be treated as the owner of any portion of a trust, whether or not he is treated as such owner under any other provision of this part, where at any time the power to revest in the grantor title to such portion is exercisable by the grantor or a non-adverse party, or both.

(b) Power affecting beneficial enjoyment only after occurrence of event

Subsection (a) shall not apply to a power the exercise of which can only affect the beneficial enjoyment of the income for a period commencing after the occurrence of an event such that a grantor would not be treated as the owner under section 673 if the power were a reversionary interest. But the grantor may be treated as the owner after the occurrence of such event unless the power is relinquished.

(Aug. 16, 1954, ch. 736, 68A Stat. 230; Pub. L. 99–514, title XIV, §1402(b)(2), Oct. 22, 1986, 100 Stat. 2712.)

AMENDMENTS

1986—Subsec. (b)(2). Pub. L. 99–514 substituted "occurrence of event" for "expiration of 10-year period" in heading and in text substituted "the occurrence of an event" for "the expiration of a period" and "the occurrence of such event" for "the expiration of such period".

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable with respect to transfers in trust made after Mar. 1, 1986, except for transfers pursuant to a certain binding property settlement agreement, see section 1402(c) of Pub. L. 99–514, set out as a note under section 673 of this title.

§677. Income for benefit of grantor

(a) General rule

The grantor shall be treated as the owner of any portion of a trust, whether or not he is treated as such owner under section 674, whose income without the approval or consent of any adverse party is, or, in the discretion of the grantor or a nonadverse party, or both, may be—

(1) distributed to the grantor or the grantor's spouse;

(2) held or accumulated for future distribution to the grantor or the grantor's spouse; or

(3) applied to the payment of premiums on policies of insurance on the life of the grantor or the grantor's spouse (except policies of insurance irrevocably payable for a purpose specified in

section 170(c) (relating to definition of charitable contributions)).

This subsection shall not apply to a power the exercise of which can only affect the beneficial enjoyment of the income for a period commencing after the occurrence of an event such that the grantor would not be treated as the owner under section 673 if the power were a reversionary interest; but the grantor may be treated as the owner after the occurrence of the event unless the power is relinquished.

(b) Obligations of support

Income of a trust shall not be considered taxable to the grantor under subsection (a) or any other provision of this chapter merely because such income in the discretion of another person, the trustee, or the grantor acting as trustee or co-trustee, may be applied or distributed for the support or maintenance of a beneficiary (other than the grantor's spouse) whom the grantor is legally obligated to support or maintain, except to the extent that such income is so applied or distributed. In cases where the amounts so applied or distributed are paid out of corpus or out of other than income for the taxable year, such amounts shall be considered to be an amount paid or credited within the meaning of paragraph (2) of section 661(a) and shall be taxed to the grantor under section 662.

(Aug. 16, 1954, ch. 736, 68A Stat. 230; Pub. L. 91–172, title III, §332(a), Dec. 30, 1969, 83 Stat. 599; Pub. L. 99–514, title XIV, §1402(b)(3), Oct. 22, 1986, 100 Stat. 2712.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–514 substituted "the occurrence of an event" for "the expiration of a period" and "the occurrence of the event" for "the expiration of the period" in last sentence.

1969—Subsec. (a)(1) to (3). Pub. L. 91–172, §332(a)(1), inserted "or the grantor's spouse" after "the grantor" in pars. (1), (2), and (3).

Subsec. (b). Pub. L. 91–172, §332(a)(2), inserted "(other than the grantor's spouse)" after "beneficiary".

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable with respect to transfers in trust made after Mar. 1, 1986, except for transfers pursuant to a certain binding property settlement agreement, see section 1402(c) of Pub. L. 99–514, set out as a note under section 673 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title III, §332(b), Dec. 30, 1969, 83 Stat. 599, provided that: "The amendments made by subsection (a) [amending this section] shall apply in respect of property transferred in trust after October 9, 1969."

§678. Person other than grantor treated as substantial owner

(a) General rule

A person other than the grantor shall be treated as the owner of any portion of a trust with respect to which:

(1) such person has a power exercisable solely by himself to vest the corpus or the income therefrom in himself, or

(2) such person has previously partially released or otherwise modified such a power and after the release or modification retains such control as would, within the principles of sections 671 to 677, inclusive, subject to grantor of a trust to treatment as the owner thereof.

(b) Exception where grantor is taxable

Subsection (a) shall not apply with respect to a power over income, as originally granted or thereafter modified, if the grantor of the trust or a transferor (to whom section 679 applies) is otherwise treated as the owner under the provisions of this subpart other than this section.

(c) Obligations of support

Subsection (a) shall not apply to a power which enables such person, in the capacity of trustee or

cotrustee, merely to apply the income of the trust to the support or maintenance of a person whom the holder of the power is obligated to support or maintain except to the extent that such income is so applied. In cases where the amounts so applied or distributed are paid out of corpus or out of other than income of the taxable year, such amounts shall be considered to be an amount paid or credited within the meaning of paragraph (2) of section 661(a) and shall be taxed to the holder of the power under section 662.

(d) Effect of renunciation or disclaimer

Subsection (a) shall not apply with respect to a power which has been renounced or disclaimed within a reasonable time after the holder of the power first became aware of its existence.

(e) Cross reference

For provision under which beneficiary of trust is treated as owner of the portion of the trust which consists of stock in an S corporation, see section 1361(d).

(Aug. 16, 1954, ch. 736, 68A Stat. 231; Pub. L. 94–455, title X, §1013(b), Oct. 4, 1976, 90 Stat. 1615; Pub. L. 97–448, title I, §102(i)(2), Jan. 12, 1983, 96 Stat. 2373; Pub. L. 106–554, §1(a)(7) [title III, §319(8)(A)], Dec. 21, 2000, 114 Stat. 2763, 2763A–646.)

AMENDMENTS

2000—Subsec. (e). Pub. L. 106–554 substituted "an S corporation" for "an electing small business corporation".

1983—Subsec. (e). Pub. L. 97–448 added subsec. (e).

1976—Subsec. (b). Pub. L. 94–455 substituted "if the grantor of the trust or a transferor (to whom section 679 applies) is otherwise treated as the owner under the provisions of this subpart other than this section" for "if the grantor of the trust is otherwise treated as the owner under sections 671 to 677, inclusive".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment by Pub. L. 94–455, see section 1013(f)(1) of Pub. L. 94–455, set out as an Effective Date note under section 679 of this title.

§679. Foreign trusts having one or more United States beneficiaries

(a) Transferor treated as owner

(1) In general

A United States person who directly or indirectly transfers property to a foreign trust (other than a trust described in section 6048(a)(3)(B)(ii)) shall be treated as the owner for his taxable year of the portion of such trust attributable to such property if for such year there is a United States beneficiary of any portion of such trust.

(2) Exceptions

Paragraph (1) shall not apply—

(A) Transfers by reason of death

To any transfer by reason of the death of the transferor.

(B) Transfers at fair market value

To any transfer of property to a trust in exchange for consideration of at least the fair market value of the transferred property. For purposes of the preceding sentence, consideration other than cash shall be taken into account at its fair market value.

(3) Certain obligations not taken into account under fair market value exception

(A) In general

In determining whether paragraph (2)(B) applies to any transfer by a person described in clause (ii) or (iii) of subparagraph (C), there shall not be taken into account—

(i) except as provided in regulations, any obligation of a person described in subparagraph (C), and

(ii) to the extent provided in regulations, any obligation which is guaranteed by a person described in subparagraph (C).

(B) Treatment of principal payments on obligation

Principal payments by the trust on any obligation referred to in subparagraph (A) shall be taken into account on and after the date of the payment in determining the portion of the trust attributable to the property transferred.

(C) Persons described

The persons described in this subparagraph are—

(i) the trust,

(ii) any grantor, owner, or beneficiary of the trust, and

(iii) any person who is related (within the meaning of section 643(i)(2)(B)) to any grantor, owner, or beneficiary of the trust.

(4) Special rules applicable to foreign grantor who later becomes a United States person

(A) In general

If a nonresident alien individual has a residency starting date within 5 years after directly or indirectly transferring property to a foreign trust, this section and section 6048 shall be applied as if such individual transferred to such trust on the residency starting date an amount equal to the portion of such trust attributable to the property transferred by such individual to such trust in such transfer.

(B) Treatment of undistributed income

For purposes of this section, undistributed net income for periods before such individual's residency starting date shall be taken into account in determining the portion of the trust which is attributable to property transferred by such individual to such trust but shall not otherwise be taken into account.

(C) Residency starting date

For purposes of this paragraph, an individual's residency starting date is the residency starting date determined under section 7701(b)(2)(A).

(5) Outbound trust migrations

If—

(A) an individual who is a citizen or resident of the United States transferred property to a trust which was not a foreign trust, and

(B) such trust becomes a foreign trust while such individual is alive,

then this section and section 6048 shall be applied as if such individual transferred to such trust on the date such trust becomes a foreign trust an amount equal to the portion of such trust attributable to the property previously transferred by such individual to such trust. A rule similar to the rule of paragraph (4)(B) shall apply for purposes of this paragraph.

(b) Trusts acquiring United States beneficiaries

If—

(1) subsection (a) applies to a trust for the transferor's taxable year, and

(2) subsection (a) would have applied to the trust for his immediately preceding taxable year but for the fact that for such preceding taxable year there was no United States beneficiary for any portion of the trust,

then, for purposes of this subtitle, the transferor shall be treated as having income for the taxable year (in addition to his other income for such year) equal to the undistributed net income (at the close of such immediately preceding taxable year) attributable to the portion of the trust referred to in subsection (a).

(c) Trusts treated as having a United States beneficiary

(1) In general

For purposes of this section, a trust shall be treated as having a United States beneficiary for the taxable year unless—

(A) under the terms of the trust, no part of the income or corpus of the trust may be paid or accumulated during the taxable year to or for the benefit of a United States person, and

(B) if the trust were terminated at any time during the taxable year, no part of the income or corpus of such trust could be paid to or for the benefit of a United States person.

For purposes of subparagraph (A), an amount shall be treated as accumulated for the benefit of a United States person even if the United States person's interest in the trust is contingent on a future event.

(2) Attribution of ownership

For purposes of paragraph (1), an amount shall be treated as paid or accumulated to or for the benefit of a United States person if such amount is paid to or accumulated for a foreign corporation, foreign partnership, or foreign trust or estate, and—

(A) in the case of a foreign corporation, such corporation is a controlled foreign corporation (as defined in section 957(a)),

(B) in the case of a foreign partnership, a United States person is a partner of such partnership, or

(C) in the case of a foreign trust or estate, such trust or estate has a United States beneficiary (within the meaning of paragraph (1)).

(3) Certain United States beneficiaries disregarded

A beneficiary shall not be treated as a United States person in applying this section with respect to any transfer of property to foreign trust if such beneficiary first became a United States person more than 5 years after the date of such transfer.

(4) Special rule in case of discretion to identify beneficiaries

For purposes of paragraph (1)(A), if any person has the discretion (by authority given in the trust agreement, by power of appointment, or otherwise) of making a distribution from the trust to, or for the benefit of, any person, such trust shall be treated as having a beneficiary who is a United States person unless—

(A) the terms of the trust specifically identify the class of persons to whom such distributions may be made, and

(B) none of those persons are United States persons during the taxable year.

(5) Certain agreements and understandings treated as terms of the trust

For purposes of paragraph (1)(A), if any United States person who directly or indirectly transfers property to the trust is directly or indirectly involved in any agreement or understanding (whether written, oral, or otherwise) that may result in the income or corpus of the trust being paid or accumulated to or for the benefit of a United States person, such agreement or understanding shall be treated as a term of the trust.

(6) Uncompensated use of trust property treated as a payment

For purposes of this subsection, a loan of cash or marketable securities (or the use of any other trust property) directly or indirectly to or by any United States person (whether or not a beneficiary under the terms of the trust) shall be treated as paid or accumulated for the benefit of a

United States person. The preceding sentence shall not apply to the extent that the United States person repays the loan at a market rate of interest (or pays the fair market value of the use of such property) within a reasonable period of time.

(d) Presumption that foreign trust has United States beneficiary

If a United States person directly or indirectly transfers property to a foreign trust (other than a trust described in section 6048(a)(3)(B)(ii)), the Secretary may treat such trust as having a United States beneficiary for purposes of applying this section to such transfer unless such person—

(1) submits such information to the Secretary as the Secretary may require with respect to such transfer, and

(2) demonstrates to the satisfaction of the Secretary that such trust satisfies the requirements of subparagraphs (A) and (B) of subsection (c)(1).

(e) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.

(Added Pub. L. 94–455, title X, §1013(a), Oct. 4, 1976, 90 Stat. 1614; amended Pub. L. 96–603, §2(b), Dec. 28, 1980, 94 Stat. 3509; Pub. L. 104–188, title I, §1903(a)–(f), Aug. 20, 1996, 110 Stat. 1909, 1910; Pub. L. 105–34, title XVI, §1601(i)(2), Aug. 5, 1997, 111 Stat. 1093; Pub. L. 105–206, title VI, §6018(g), July 22, 1998, 112 Stat. 823; Pub. L. 111–147, title V, §§531, 532(a), 533(c), Mar. 18, 2010, 124 Stat. 113, 114.)

AMENDMENTS

2010—Subsec. (c)(1). Pub. L. 111–147, §531(a), inserted concluding provisions.

Subsec. (c)(4), (5). Pub. L. 111–147, §531(b), (c), added pars. (4) and (5).

Subsec. (c)(6). Pub. L. 111–147, §533(c), added par. (6).

Subsecs. (d), (e). Pub. L. 111–147, §532(a), added subsec. (d) and redesignated former subsec. (d) as (e).

1998—Subsec. (a)(1). Pub. L. 105–206 provided that the amendment made by section 1903(b) of Pub. L. 104–188 shall be applied as if "or" in the material proposed to be stricken were capitalized. See 1996 Amendment note below.

1997—Subsec. (a)(3)(C)(ii), (iii). Pub. L. 105–34 inserted ", owner," after "grantor".

1996—Subsec. (a)(1). Pub. L. 104–188, §1903(b), which directed that subsec. (a) of this section be amended by substituting "section 6048(a)(3)(B)(ii)" for "section 404(a)(4) or 404A", was executed to par. (1) by making the substitution for "section 404(a)(4) Or section 404A" to reflect the probable intent of Congress. See 1998 Amendment note above.

Subsec. (a)(2)(B). Pub. L. 104–188, §1903(a)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "TRANSFERS WHERE GAIN IS RECOGNIZED TO TRANSFEROR.—To any sale or exchange of the property at its fair market value in a transaction in which all of the gain to the transferor is realized at the time of the transfer and is recognized either at such time or is returned as provided in section 453."

Subsec. (a)(3). Pub. L. 104–188, §1903(a)(2), added par. (3).

Subsec. (a)(4), (5). Pub. L. 104–188, §1903(c), added pars. (4) and (5).

Subsec. (c)(2)(A). Pub. L. 104–188, §1903(e), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "in the case of a foreign corporation, more than 50 percent of the total combined voting power of all classes of stock entitled to vote of such corporation is owned (within the meaning of section 958(a)) or is considered to be owned (within the meaning of section 958(b)) by United States shareholders (as defined in section 951(b)),".

Subsec. (c)(3). Pub. L. 104–188, §1903(d), added par. (3).

Subsec. (d). Pub. L. 104–188, §1903(f), added subsec. (d).

1980—Subsec. (a)(1). Pub. L. 96–603 inserted "Or section 404A" after "section 404(a)(4)".

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–147, title V, §532(b), Mar. 18, 2010, 124 Stat. 114, provided that: "The amendments made by this section [amending this section] shall apply to transfers of property after the date of the enactment of this Act [Mar. 18, 2010]."

Amendment by section 533(c) of Pub. L. 111–147 applicable to loans made, and uses of property, after Mar. 18, 2010, see section 533(e) of Pub. L. 111–147, set out as a note under section 643 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 6018 of Pub. L. 105–206 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which such amendment relates, see section 6018(h) of Pub. L. 105–206, set out as a note under section 23 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 23 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, §1903(g), Aug. 20, 1996, 110 Stat. 1910, provided that: "The amendments made by this section [amending this section] shall apply to transfers of property after February 6, 1995."

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–603 applicable with respect to employer contributions or accruals for taxable years beginning after Dec. 31, 1979, election to apply amendments retroactively with respect to foreign subsidiaries, allowance or prior deductions in case of certain funded branch plans, and time and manner for making elections, see section 2(e) of Pub. L. 96–603, set out as an Effective Date note under section 404A of this title.

EFFECTIVE DATE

Pub. L. 94–455, title X, §1013(f)(1), Oct. 4, 1976, 90 Stat. 1616, provided that: "The amendments made by this section (other than subsection (c)) [enacting this section and amending sections 643, 678, 6048, and 6678 of this title] shall apply to taxable years ending after December 31, 1975, but only in the case of—

"(A) foreign trusts created after May 21, 1974, and

"(B) transfers of property to foreign trusts after May 21, 1974."

SUBPART F—MISCELLANEOUS

Sec.

681. Limitation on charitable deduction.

682. Income of an estate or trust in case of divorce, etc.

683. Use of trust as an exchange fund.

684. Recognition of gain on certain transfers to certain foreign trusts and estates.

685. Treatment of funeral trusts.

AMENDMENTS

2010—Pub. L. 111–312, title III, §301(a), Dec. 17, 2010, 124 Stat. 3300, amended analysis to read as if amendment by Pub. L. 107–16, §542(e)(1)(D), had never been enacted. See 2001 Amendment note below.

2001—Pub. L. 107–16, title V, §542(e)(1)(D), June 7, 2001, 115 Stat. 85, inserted "and nonresident aliens" after "estates" in item 684.

1997—Pub. L. 105–34, title XI, §1131(c)(6), title XIII, §1309(b), Aug. 5, 1997, 111 Stat. 980, 1043, added items 684 and 685.

1976—Pub. L. 94–455, title XXI, §2131(e)(2), Oct. 4, 1976, 90 Stat. 1924, substituted "Use of trust as an exchange fund" for "Applicability of provisions" in item 683.

§681. Limitation on charitable deduction

(a) Trade or business income

In computing the deduction allowable under section 642(c) to a trust, no amount otherwise allowable under section 642(c) as a deduction shall be allowed as a deduction with respect to income of the taxable year which is allocable to its unrelated business income for such year. For purposes of the preceding sentence, the term "unrelated business income" means an amount equal to the amount which, if such trust were exempt from tax under section 501(a) by reason of section 501(c)(3), would

be computed as its unrelated business taxable income under section 512 (relating to income derived from certain business activities and from certain property acquired with borrowed funds).

(b) Cross reference

For disallowance of certain charitable, etc., deductions otherwise allowable under section 642(c), see sections 508(d) and 4948(c)(4).

(Aug. 16, 1954, ch. 736, 68A Stat. 232; Pub. L. 90–630, §6(b), Oct. 22, 1968, 82 Stat. 1330; Pub. L. 91–172, title I, §§101(j)(18), (19), 121(d)(2)(B), Dec. 30, 1969, 83 Stat. 528, 547.)

AMENDMENTS

1969—Subsec. (a). Pub. L. 91–172, §121(d)(2)(B), substituted reference to certain property acquired with borrowed funds for reference to certain leases.

Subsec. (b). Pub. L. 91–172, §101(j)(18), (19), redesignated subsec. (d) as (b) and substituted "sections 518(d) and 4948(c)(4)" for "section 503(e)". Former subsec. (b), dealing generally with the operation of trusts, was struck out.

Subsec. (c). Pub. L. 91–172, §101(j)(18), struck out subsec. (c) dealing with accumulated income.

Subsec. (d). Pub. L. 91–172, §101(j)(19), redesignated subsec. (d) as (b).

1968—Subsec. (c). Pub. L. 90–630 inserted provision that par. (1) does not apply to income attributable to property transferred to a trust before January 1, 1951, by the creator thereof if the trust was irrevocable on such date and if the income is required to be accumulated pursuant to the mandatory terms of the instrument creating the trust.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 101(j)(18), (19) of Pub. L. 91–172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

Amendment by section 121(d)(2)(B) of Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 121(g) of Pub. L. 91–172, set out as a note under section 511 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Pub. L. 90–630, §6(c), Oct. 22, 1968, 82 Stat. 1330, provided that: "The amendments made by subsection (a) [amending section 504 of this title] and (b) [amending this section] shall apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954. For purposes of sections 3814 and 162(g)(4) of the Internal Revenue Code of 1939, provisions having the same effect as such amendments shall be treated as included in such sections effective with respect to taxable years beginning after December 31, 1950."

§682. Income of an estate or trust in case of divorce, etc.

(a) Inclusion in gross income of wife

There shall be included in the gross income of a wife who is divorced or legally separated under a decree of divorce or of separate maintenance (or who is separated from her husband under a written separation agreement) the amount of the income of any trust which such wife is entitled to receive and which, except for this section, would be includible in the gross income of her husband, and such amount shall not, despite any other provision of this subtitle, be includible in the gross income of such husband. This subsection shall not apply to that part of any such income of the trust which the terms of the decree, written separation agreement, or trust instrument fix, in terms of an amount of money or a portion of such income, as a sum which is payable for the support of minor children of such husband. In case such income is less than the amount specified in the decree, agreement, or instrument, for the purpose of applying the preceding sentence, such income, to the extent of such sum payable for such support, shall be considered a payment for such support.

(b) Wife considered a beneficiary

For purposes of computing the taxable income of the estate or trust and the taxable income of a wife to whom subsection (a) applies, such wife shall be considered as the beneficiary specified in this part.

(c) Cross reference

For definitions of "husband" and "wife", as used in this section, see section 7701(a)(17).

(Aug. 16, 1954, ch. 736, 68A Stat. 234; Pub. L. 98–369, div. A, title IV, §422(d)(2), July 18, 1984, 98 Stat. 798.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98–369 struck out "or section 71" after "subsection (a)" and struck out provision that a periodic payment under section 71 to any portion of which this part applied shall be included in the gross income of the beneficiary in the taxable year in which under this part such portion is required to be included.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable with respect to divorce or separation instruments executed after Dec. 31, 1984, or executed before Jan. 1, 1985, but modified on or after Jan. 1, 1985, with express provision for application of amendment to modification, see section 422(e)(1), (2) of Pub. L. 98–369, set out as a note under section 71 of this title.

§683. Use of trust as an exchange fund

(a) General rule

Except as provided in subsection (b), if property is transferred to a trust in exchange for an interest in other trust property and if the trust would be an investment company (within the meaning of section 351) if it were a corporation, then gain shall be recognized to the transferor.

(b) Exception for pooled income funds

Subsection (a) shall not apply to any transfer to a pooled income fund (within the meaning of section 642(c)(5)).

(Aug. 16, 1954, ch. 736, 68A Stat. 235; Pub. L. 94–455, title XXI, §2131(e)(1), Oct. 4, 1976, 90 Stat. 1924.)

AMENDMENTS

1976—Pub. L. 94–455 substituted provisions relating to use of trust as an exchange fund for provisions setting forth rule that this part applies only to taxable years beginning after Dec. 31, 1953, and ending after the date of the enactment of this title and exceptions thereto.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment of section by Pub. L. 94–455 effective on Apr. 8, 1976, in taxable years ending on or after such date, see section 2131(f)(6) of Pub. L. 94–455, set out as a note under section 584 of this title.

§684. Recognition of gain on certain transfers to certain foreign trusts and estates

(a) In general

Except as provided in regulations, in the case of any transfer of property by a United States person to a foreign estate or trust, for purposes of this subtitle, such transfer shall be treated as a sale or exchange for an amount equal to the fair market value of the property transferred, and the transferor shall recognize as gain the excess of—

(1) the fair market value of the property so transferred, over

(2) the adjusted basis (for purposes of determining gain) of such property in the hands of the transferor.

(b) Exception

Subsection (a) shall not apply to a transfer to a trust by a United States person to the extent that any person is treated as the owner of such trust under section 671.

(c) Treatment of trusts which become foreign trusts

If a trust which is not a foreign trust becomes a foreign trust, such trust shall be treated for purposes of this section as having transferred, immediately before becoming a foreign trust, all of its assets to a foreign trust.

(Added Pub. L. 105–34, title XI, §1131(b), Aug. 5, 1997, 111 Stat. 978; amended Pub. L. 107–16, title V, §542(e)(1)(A)–(C), June 7, 2001, 115 Stat. 84, 85; Pub. L. 111–312, title III, §301(a), Dec. 17, 2010, 124 Stat. 3300.)

CODIFICATION

Another section 1131(b) of Pub. L. 105–34 amended sections 367, 721, and 1035 of this title.

AMENDMENTS

2010—Pub. L. 111–312 amended catchline, introductory provisions of subsec. (a), and subsec. (b) to read as if amendment by Pub. L. 107–16, §542(e)(1)(A)–(C), had never been enacted. See 2001 Amendment note below. Prior to amendment, subsec. (b) read as follows: "EXCEPTIONS.—

"(1) TRANSFERS TO CERTAIN TRUSTS.—Subsection (a) shall not apply to a transfer to a trust by a United States person to the extent that any United States person is treated as the owner of such trust under section 671.

"(2) LIFETIME TRANSFERS TO NONRESIDENT ALIENS.—Subsection (a) shall not apply to a lifetime transfer to a nonresident alien."

2001—Pub. L. 107–16, §542(e)(1)(A)–(C), amended section by inserting "and nonresident aliens" after "estates" in section catchline and "or to a nonresident alien" after "or trust" in introductory provisions of subsec. (a) and amending subsec. (b) generally. Prior to amendment, text of subsec. (b) read as follows: "Subsection (a) shall not apply to a transfer to a trust by a United States person to the extent that any person is treated as the owner of such trust under section 671."

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–312 applicable to estates of decedents dying, and transfers made after Dec. 31, 2009, except as otherwise provided, see section 301(e) of Pub. L. 111–312, set out as an Effective and Termination Dates of 2010 Amendment note under section 121 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to transfers after Dec. 31, 2009, see section 542(f)(2) of Pub. L. 107–16, set out as a note under section 121 of this title.

§685. Treatment of funeral trusts

(a) In general

In the case of a qualified funeral trust—

(1) subparts B, C, D, and E shall not apply, and

(2) no deduction shall be allowed by section 642(b).

(b) Qualified funeral trust

For purposes of this subsection, the term "qualified funeral trust" means any trust (other than a foreign trust) if—

(1) the trust arises as a result of a contract with a person engaged in the trade or business of providing funeral or burial services or property necessary to provide such services,

(2) the sole purpose of the trust is to hold, invest, and reinvest funds in the trust and to use such funds solely to make payments for such services or property for the benefit of the beneficiaries of the trust,

(3) the only beneficiaries of such trust are individuals with respect to whom such services or property are to be provided at their death under contracts described in paragraph (1),

(4) the only contributions to the trust are contributions by or for the benefit of such beneficiaries,

(5) the trustee elects the application of this subsection, and

(6) the trust would (but for the election described in paragraph (5)) be treated as owned under subpart E by the purchasers of the contracts described in paragraph (1).

A trust shall not fail to be treated as meeting the requirement of paragraph (6) by reason of the death of an individual but only during the 60-day period beginning on the date of such death.

(c) Application of rate schedule

Section 1(e) shall be applied to each qualified funeral trust by treating each beneficiary's interest in each such trust as a separate trust.

(d) Treatment of amounts refunded to purchaser on cancellation

No gain or loss shall be recognized to a purchaser of a contract described in subsection (b)(1) by reason of any payment from such trust to such purchaser by reason of cancellation of such contract. If any payment referred to in the preceding sentence consists of property other than money, the basis of such property in the hands of such purchaser shall be the same as the trust's basis in such property immediately before the payment.

(e) Simplified reporting

The Secretary may prescribe rules for simplified reporting of all trusts having a single trustee and of trusts terminated during the year.

(Added Pub. L. 105–34, title XIII, §1309(a), Aug. 5, 1997, 111 Stat. 1042; amended Pub. L. 105–206, title VI, §6013(b), July 22, 1998, 112 Stat. 820; Pub. L. 110–317, §9(a), (b), Aug. 29, 2008, 122 Stat. 3530.)

AMENDMENTS

2008—Subsecs. (c) to (f). Pub. L. 110–317 redesignated subsecs. (d) to (f) as (c) to (e), respectively, and struck out former subsec. (c), which related to dollar limitation on contributions to qualified funeral trusts.

1998—Subsec. (b). Pub. L. 105–206, §6013(b)(1), inserted concluding provisions.

Subsec. (f). Pub. L. 105–206, §6013(b)(2), inserted "and of trusts terminated during the year" before period at end.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–317, §9(c), Aug. 29, 2008, 122 Stat. 3530, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 29, 2008]."

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE

Pub. L. 105–34, title XIII, §1309(c), Aug. 5, 1997, 111 Stat. 1043, provided that: "The amendments made by this section [enacting this section] shall apply to taxable years ending after the date of the enactment of this Act [Aug. 5, 1997]."

PART II—INCOME IN RESPECT OF DECEDENTS

Sec.
691. Recipients of income in respect of decedents.
692. Income taxes of members of Armed Forces, astronauts, and victims of certain terrorist attacks on death.

AMENDMENTS

2003—Pub. L. 108–121, title I, §110(a)(3)(B), Nov. 11, 2003, 117 Stat. 1342, inserted ", astronauts," after "Forces" in item 692.

2002—Pub. L. 107–134, title I, §101(c)(2), Jan. 23, 2002, 115 Stat. 2429, substituted "Income taxes of

members of Armed Forces and victims of certain terrorist attacks on death" for "Income taxes of members of Armed Forces on death" in item 692.

§691. Recipients of income in respect of decedents

(a) Inclusion in gross income

(1) General rule

The amount of all items of gross income in respect of a decedent which are not properly includible in respect of the taxable period in which falls the date of his death or a prior period (including the amount of all items of gross income in respect of a prior decedent, if the right to receive such amount was acquired by reason of the death of the prior decedent or by bequest, devise, or inheritance from the prior decedent) shall be included in the gross income, for the taxable year when received, of:

(A) the estate of the decedent, if the right to receive the amount is acquired by the decedent's estate from the decedent;

(B) the person who, by reason of the death of the decedent, acquires the right to receive the amount, if the right to receive the amount is not acquired by the decedent's estate from the decedent; or

(C) the person who acquires from the decedent the right to receive the amount by bequest, devise, or inheritance, if the amount is received after a distribution by the decedent's estate of such right.

(2) Income in case of sale, etc.

If a right, described in paragraph (1), to receive an amount is transferred by the estate of the decedent or a person who received such right by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent, there shall be included in the gross income of the estate or such person, as the case may be, for the taxable period in which the transfer occurs, the fair market value of such right at the time of such transfer plus the amount by which any consideration for the transfer exceeds such fair market value. For purposes of this paragraph, the term "transfer" includes sale, exchange, or other disposition, or the satisfaction of an installment obligation at other than face value, but does not include transmission at death to the estate of the decedent or a transfer to a person pursuant to the right of such person to receive such amount by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent.

(3) Character of income determined by reference to decedent

The right, described in paragraph (1), to receive an amount shall be treated, in the hands of the estate of the decedent or any person who acquired such right by reason of the death of the decedent, or by bequest, devise, or inheritance from the decedent, as if it had been acquired by the estate or such person in the transaction in which the right to receive the income was originally derived and the amount includible in gross income under paragraph (1) or (2) shall be considered in the hands of the estate or such person to have the character which it would have had in the hands of the decedent if the decedent had lived and received such amount.

(4) Installment obligations acquired from decedent

In the case of an installment obligation reportable by the decedent on the installment method under section 453, if such obligation is acquired by the decedent's estate from the decedent or by any person by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent—

(A) an amount equal to the excess of the face amount of such obligation over the basis of the obligation in the hands of the decedent (determined under section 453B) shall, for the purpose of paragraph (1), be considered as an item of gross income in respect of the decedent; and

(B) such obligation shall, for purposes of paragraphs (2) and (3), be considered a right to receive an item of gross income in respect of the decedent, but the amount includible in gross

income under paragraph (2) shall be reduced by an amount equal to the basis of the obligation in the hands of the decedent (determined under section 453B).

(5) Other rules relating to installment obligations

(A) In general

In the case of an installment obligation reportable by the decedent on the installment method under section 453, for purposes of paragraph (2)—

(i) the second sentence of paragraph (2) shall be applied by inserting "(other than the obligor)" after "or a transfer to a person",

(ii) any cancellation of such an obligation shall be treated as a transfer, and

(iii) any cancellation of such an obligation occurring at the death of the decedent shall be treated as a transfer by the estate of the decedent (or, if held by a person other than the decedent before the death of the decedent, by such person).

(B) Face amount treated as fair market value in certain cases

In any case to which the first sentence of paragraph (2) applies by reason of subparagraph (A), if the decedent and the obligor were related persons (within the meaning of section 453(f)(1)), the fair market value of the installment obligation shall be treated as not less than its face amount.

(C) Cancellation includes becoming unenforceable

For purposes of subparagraph (A), an installment obligation which becomes unenforceable shall be treated as if it were canceled.

(b) Allowance of deductions and credit

The amount of any deduction specified in section 162, 163, 164, 212, or 611 (relating to deductions for expenses, interest, taxes, and depletion) or credit specified in section 27 (relating to foreign tax credit), in respect of a decedent which is not properly allowable to the decedent in respect of the taxable period in which falls the date of his death, or a prior period, shall be allowed:

(1) Expenses, interest, and taxes

In the case of a deduction specified in sections 162, 163, 164, or 212 and a credit specified in section 27, in the taxable year when paid—

(A) to the estate of the decedent; except that

(B) if the estate of the decedent is not liable to discharge the obligation to which the deduction or credit relates, to the person who, by reason of the death of the decedent or by bequest, devise, or inheritance acquires, subject to such obligation, from the decedent an interest in property of the decedent.

(2) Depletion

In the case of the deduction specified in section 611, to the person described in subsection (a)(1)(A), (B), or (C) who, in the manner described therein, receives the income to which the deduction relates, in the taxable year when such income is received.

(c) Deduction for estate tax

(1) Allowance of deduction

(A) General rule

A person who includes an amount in gross income under subsection (a) shall be allowed, for the same taxable year, as a deduction an amount which bears the same ratio to the estate tax attributable to the net value for estate tax purposes of all the items described in subsection (a)(1) as the value for estate tax purposes of the items of gross income or portions thereof in respect of which such person included the amount in gross income (or the amount included in gross income, whichever is lower) bears to the value for estate tax purposes of all the items described in subsection (a)(1).

(B) Estates and trusts

In the case of an estate or trust, the amount allowed as a deduction under subparagraph (A) shall be computed by excluding from the gross income of the estate or trust the portion (if any) of the items described in subsection (a)(1) which is properly paid, credited, or to be distributed to the beneficiaries during the taxable year.

(2) Method of computing deduction

For purposes of paragraph (1)—

(A) The term "estate tax" means the tax imposed on the estate of the decedent or any prior decedent under section 2001 or 2101, reduced by the credits against such tax.

(B) The net value for estate tax purposes of all the items described in subsection (a)(1) shall be the excess of the value for estate tax purposes of all the items described in subsection (a)(1) over the deductions from the gross estate in respect of claims which represent the deductions and credit described in subsection (b). Such net value shall be determined with respect to the provisions of section 421(c)(2), relating to the deduction for estate tax with respect to stock options to which part II of subchapter D applies.

(C) The estate tax attributable to such net value shall be an amount equal to the excess of the estate tax over the estate tax computed without including in the gross estate such net value.

(3) Special rule for generation-skipping transfers

In the case of any tax imposed by chapter 13 on a taxable termination or a direct skip occurring as a result of the death of the transferor, there shall be allowed a deduction (under principles similar to the principles of this subsection) for the portion of such tax attributable to items of gross income of the trust which were not properly includible in the gross income of the trust for periods before the date of such termination.

(4) Coordination with capital gain provisions

For purposes of sections 1(h), 1201, 1202, and 1211, the amount taken into account with respect to any item described in subsection (a)(1) shall be reduced (but not below zero) by the amount of the deduction allowable under paragraph (1) of this subsection with respect to such item.

(d) Amounts received by surviving annuitant under joint and survivor annuity contract

(1) Deduction for estate tax

For purposes of computing the deduction under subsection (c)(1)(A), amounts received by a surviving annuitant—

(A) as an annuity under a joint and survivor annuity contract where the decedent annuitant died after December 31, 1953, and after the annuity starting date (as defined in section 72(c)(4)), and

(B) during the surviving annuitant's life expectancy period, shall, to the extent included in gross income under section 72, be considered as amounts included in gross income under subsection (a).

(2) Net value for estate tax purposes

In determining the net value for estate tax purposes under subsection (c)(2)(B) for purposes of this subsection, the value for estate tax purposes of the items described in paragraph (1) of this subsection shall be computed—

(A) by determining the excess of the value of the annuity at the date of the death of the deceased annuitant over the total amount excludable from the gross income of the surviving annuitant under section 72 during the surviving annuitant's life expectancy period, and

(B) by multiplying the figure so obtained by the ratio which the value of the annuity for estate tax purposes bears to the value of the annuity at the date of the death of the deceased.

(3) Definitions

For purposes of this subsection—

(A) The term "life expectancy period" means the period beginning with the first day of the

first period for which an amount is received by the surviving annuitant under the contract and ending with the close of the taxable year with or in which falls the termination of the life expectancy of the surviving annuitant. For purposes of this subparagraph, the life expectancy of the surviving annuitant shall be determined, as of the date of the death of the deceased annuitant, with reference to actuarial tables prescribed by the Secretary.

(B) The surviving annuitant's expected return under the contract shall be computed, as of the death of the deceased annuitant, with reference to actuarial tables prescribed by the Secretary.

(e) Cross reference

For application of this section to income in respect of a deceased partner, see section 753.

(Aug. 16, 1954, ch. 736, 68A Stat. 235; Pub. L. 88–272, title II, §221(c)(2), Feb. 26, 1964, 78 Stat. 75; Pub. L. 88–570, §1, Sept. 2, 1964, 78 Stat. 854; Pub. L. 94–455, title XIX, §§1901(a)(91), 1906(b)(13)(A), 1951(b)(10)(A), title XX, §§2005(a)(4), 2006(b)(3), Oct. 4, 1976, 90 Stat. 1779, 1834, 1839, 1876, 1889; Pub. L. 95–600, title VII, §702(b)(1), Nov. 6, 1978, 92 Stat. 2925; Pub. L. 96–222, title I, §101(a)(8)(A), Apr. 1, 1980, 94 Stat. 201; Pub. L. 96–223, title IV, §401(a), Apr. 2, 1980, 94 Stat. 299; Pub. L. 96–471, §§2(b)(5), 3, Oct. 19, 1980, 94 Stat. 2254; Pub. L. 97–34, title IV, §403(a)(2)(C), Aug. 13, 1981, 95 Stat. 301; Pub. L. 98–369, div. A, title IV, §474(r)(18), July 18, 1984, 98 Stat. 843; Pub. L. 99–514, title III, §301(b)(8), title XIV, §1432(a)(3), Oct. 22, 1986, 100 Stat. 2217, 2729; Pub. L. 100–203, title X, §10202(c)(3), Dec. 22, 1987, 101 Stat. 1330–392; Pub. L. 100–647, title I, §1011A(g)(10), Nov. 10, 1988, 102 Stat. 3482; Pub. L. 101–239, title VII, §7841(d)(3), Dec. 19, 1989, 103 Stat. 2428; Pub. L. 101–508, title XI, §11101(d)(4), Nov. 5, 1990, 104 Stat. 1388–405; Pub. L. 102–318, title V, §521(b)(27), July 3, 1992, 106 Stat. 312; Pub. L. 103–66, title XIII, §13113(d)(4), Aug. 10, 1993, 107 Stat. 430; Pub. L. 104–188, title I, §§1401(b)(9), 1704(t)(73), Aug. 20, 1996, 110 Stat. 1789, 1891; Pub. L. 105–34, title X, §1073(b)(1), Aug. 5, 1997, 111 Stat. 948; Pub. L. 108–311, title IV, §402(a)(4), Oct. 4, 2004, 118 Stat. 1184.)

AMENDMENTS

2004—Subsec. (c)(4). Pub. L. 108–311 struck out "of any gain" before "taken into account".

1997—Subsec. (c)(1)(C). Pub. L. 105–34 struck out heading and text of subpar. (C). Text read as follows: "For purposes of this subsection, no deduction shall be allowed for the portion of the estate tax attributable to the increase in such tax under section 4980A(d)."

1996—Subsec. (c)(5). Pub. L. 104–188, §1704(t)(73), provided that section 521(b)(27) of Pub. L. 102–318 shall be applied as if "Section 691(c)(5)" appeared instead of "Section 691(c)". See 1992 Amendment note below.

Pub. L. 104–188, §1401(b)(9), struck out par. (5) which read as follows:

"(5) COORDINATION WITH SECTION 402(d).—For purposes of section 402(d) (other than paragraph (1)(C) thereof), the total taxable amount of any lump sum distribution shall be reduced by the amount of the deduction allowable under paragraph (1) of this subsection which is attributable to the total taxable amount (determined without regard to this paragraph)."

1993—Subsec. (c)(4). Pub. L. 103–66 inserted "1202," after "1201,".

1992—Subsec. (c)(5). Pub. L. 102–318, which directed that section 691(c) be amended "in the text and heading" by substituting "402(d)" for "402(e)", was executed by making the substitution in subsec. (c)(5). See 1996 Amendment note above.

1990—Subsec. (c)(4). Pub. L. 101–508 substituted "1(h)" for "1(j)".

1989—Subsec. (c)(5). Pub. L. 101–239 substituted "paragraph (1)(C)" for "paragraph (1)(D)".

1988—Subsec. (c)(1)(C). Pub. L. 100–647 added subpar. (C).

1987—Subsec. (a)(4), (5)(A). Pub. L. 100–203 struck out "or 453A" after "section 453".

1986—Subsec. (c)(3). Pub. L. 99–514, §1432(a)(3), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "For purposes of this section—

"(A) the tax imposed by section 2601 or any State inheritance tax described in section 2602(c)(5)(B) on any generation-skipping transfer shall be treated as a tax imposed by section 2001 on the estate of the deemed transferor (as defined in section 2612(a));

"(B) any property transferred in such a transfer shall be treated as if it were included in the gross estate of the deemed transferor at the value of such property taken into account for purposes of the tax imposed by section 2601; and

"(C) under regulations prescribed by the Secretary, any item of gross income subject to the tax imposed under section 2601 shall be treated as income described in subsection (a) if such item is not properly includible in the gross income of the trust on or before the date of the generation-skipping transfer (within the meaning of section 2611(a)) and if such transfer occurs at or after the death of the deemed transferor (as so defined)."

Subsec. (c)(4). Pub. L. 99–514, §301(b)(8), substituted "capital gain provisions" for "capital gain deduction, etc." in heading and in text substituted "1(j), 1201, and 1211" for "1201, 1202, and 1211, and for purposes of section 57(a)(9)".

1984—Subsec. (b). Pub. L. 98–369 substituted "section 27" for "section 33" in provisions preceding par. (1) and in provisions of par. (1) preceding subpar. (A).

1981—Subsec. (c)(3)(A). Pub. L. 97–34 substituted "section 2602(c)(5)(B)" for "section 2602(c)(5)(C)".

1980—Subsec. (a)(4). Pub. L. 96–471, §2(b)(5), substituted "reportable by the decedent on the installment method under section 453 or 453A" for "received by a decedent on the sale or other disposition of property, the income from which was properly reportable by the decedent on the installment basis under section 453" in text preceding subpar. (A) and "section 453B" for "section 453(d)" in subpars. (A) and (B).

Subsec. (a)(5). Pub. L. 96–471, §3, added par. (5).

Subsec. (c)(2)(A), (C). Pub. L. 96–223 repealed the amendments made by Pub. L. 94–455, §2005(a)(4). See 1976 Amendment notes below.

Subsec. (c)(5). Pub. L. 96–222 added par. (5).

1978—Subsec. (c)(4). Pub. L. 95–600 added par. (4).

1976—Subsec. (c)(1)(B). Pub. L. 94–455, §1901(a)(91), struck out provision that this subparagraph applies to same taxable years, and to same extent, as is provided in section 683 of this title.

Subsec. (c)(2)(A). Pub. L. 94–455, §2005(a)(4)(A), substituted "Federal and State estate taxes (within the meaning of section 1023(f)(3))" for "the tax imposed on the estate of the decedent or any prior decedent under section 2001 or 2101, reduced by the credits against such tax". See Repeals note below.

Subsec. (c)(2)(C). Pub. L. 94–455, §2005(a)(4)(B), substituted "which bears the same ratio to the estate tax as such net value bears to the value of the gross estate" for "equal to the excess of the estate tax over the estate tax computed without including in the gross estate such net value". See Repeals note below.

Subsec. (c)(3). Pub. L. 94–455, §2006(b)(3), added par. (3).

Subsec. (d)(3)(A), (B). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsecs. (e), (f). Pub. L. 94–455, §1951(b)(10)(A), redesignated subsec. (f) as (e) and struck out former subsec. (e) relating to certain installment obligations transmitted at death.

1964—Subsec. (c)(2)(B). Pub. L. 88–272 substituted "421(c)(2), relating to the deduction for estate tax with respect to stock options to which part II of subchapter D applies" for "421(d)(6)(B), relating to the deduction for estate tax with respect to restricted stock options".

Subsecs. (e), (f). Pub. L. 88–570 added subsec. (e) and redesignated former subsec. (e) as (f).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 effective as if included in section 302 of the Jobs and Growth Tax Relief Reconciliation Act of 2003, Pub. L. 108–27, see section 402(b) of Pub. L. 108–311, set out a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to estates of decedents dying after Dec. 31, 1996, see section 1073(c) of Pub. L. 105–34, set out as an Effective Date of Repeal note under section 4980A of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1401(b)(9) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1999, with retention of certain transition rules, see section 1401(c) of Pub. L. 104–188, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to stock issued after Aug. 10, 1993, see section 13113(e) of Pub. L. 103–66, set out as a note under section 53 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102–318, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, see section 11101(e) of Pub. L. 101–508, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to dispositions in taxable years beginning after Dec. 31, 1987, with special rules for non-dealers and coordination with Tax Reform Act of 1986, see section 10202(e)(1), (3), (5) of Pub. L. 100–203, set out as a note under section 453 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 301(b)(8) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 301(c) of Pub. L. 99–514, set out as a note under section 62 of this title.

Amendment by section 1432(a)(3) of Pub. L. 99–514 applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99–514, set out as an Effective Date note under section 2601 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to estates of decedents dying after Dec. 31, 1981, but inapplicable under certain conditions under will executed before date which is 30 days after Aug. 13, 1981, or under trust created by such date, see section 403(e) of Pub. L. 97–34, set out as a note under section 2056 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS AND REVIVAL OF PRIOR LAW

For effective date of amendment by section 2(b)(5) of Pub. L. 96–471, see section 6(a)(1) of Pub. L. 96–471, set out as an Effective Date note under section 453 of this title.

Pub. L. 96–471, §6(b), Oct. 19, 1980, 94 Stat. 2256, provided: "The amendment made by section 3 [amending this section] shall apply in the case of decedents dying after the date of the enactment of this Act [Oct. 19, 1980]."

Amendment by Pub. L. 96–223 (repealing section 2005(a)(4) of Pub. L. 94–455 and the amendments made thereby, which had amended this section) applicable in respect of decedents dying after Dec. 31, 1976, and except for certain elections, this title to be applied and administered as if those repealed provisions had not been enacted, see section 401(b), (e) of Pub. L. 96–223, set out as a note under section 1023 of this title.

Pub. L. 96–222, title I, §101(b)(1)(D), Apr. 1, 1980, 94 Stat. 205, provided that: "The amendment made by subsection (a)(7) [probably means subsection (a)(8), which amended this section and section 2039 of this title] shall apply with respect to the estates of decedents dying after the date of the enactment of this Act [Apr. 1, 1980]."

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title VII, §702(b)(2), Nov. 6, 1978, 92 Stat. 2925, provided that: "The amendment made by paragraph (1) [amending this section] shall apply with respect to decedents dying after the date of the enactment of this Act [Nov. 6, 1978]."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(91) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by section 1951(b)(10)(A) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1951(d) of Pub. L. 94–455, set out as a note under section 72 of this title.

Amendment by section 2005(a)(4)(A), (B) of Pub. L. 94–455 applicable in respect of decedents dying after Dec. 31, 1979, see section 2005(f)(1) of Pub. L. 94–455, set out as a note under section 1015 of this title.

For effective date of amendment by section 2006(b)(3) of Pub. L. 94–455, see section 2006(c) of Pub. L. 94–455, set out as an Effective Date note under section 2601 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to taxable years ending after Dec. 31, 1963, see section 221(e) of Pub. L. 88–272, set out as a note under section 421 of this title.

REPEALS

Pub. L. 94–455, §2005(a)(4), cited as a credit to this section, and the amendments made thereby, were repealed by Pub. L. 96–223, title IV, §401(a), 94 Stat. 299, resulting in the text of this section reading as it read prior to enactment of section 2005(a)(4). See Effective Date of 1980 Amendments and Revival of Prior Law note above.

SAVINGS PROVISION

Pub. L. 94–455, title XIX, §1951(b)(10)(B), Oct. 4, 1976, 90 Stat. 1839, provided that: "Notwithstanding subparagraph (A) [amending this section], any election made under section 691(e) to have subsection (a)(4) of such section apply in the case of an installment obligation shall continue to be effective with respect to taxable years beginning after December 31, 1976. Section 691(c) shall not apply in respect of any amount included in gross income by reason of the preceding sentence. The liability under bond filed under section 44(d) of the Internal Revenue Code of 1939 (or corresponding provisions of prior law) in respect of which such an election applies is hereby released with respect to taxable years to which such election applies."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§1401–1465] of title I of Pub. L. 104–188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

§692. Income taxes of members of Armed Forces, astronauts, and victims of certain terrorist attacks on death

(a) General rule

In the case of any individual who dies while in active service as a member of the Armed Forces of the United States, if such death occurred while serving in a combat zone (as determined under section 112) or as a result of wounds, disease, or injury incurred while so serving—

(1) any tax imposed by this subtitle shall not apply with respect to the taxable year in which falls the date of his death, or with respect to any prior taxable year ending on or after the first day he so served in a combat zone after June 24, 1950; and

(2) any tax under this subtitle and under the corresponding provisions of prior revenue laws for taxable years preceding those specified in paragraph (1) which is unpaid at the date of his death (including interest, additions to the tax, and additional amounts) shall not be assessed, and if assessed the assessment shall be abated, and if collected shall be credited or refunded as an overpayment.

(b) Individuals in missing status

For purposes of this section, in the case of an individual who was in a missing status within the meaning of section 6013(f)(3)(A), the date of his death shall be treated as being not earlier than the date on which a determination of his death is made under section 556 of title 37 of the United States Code. Except in the case of the combat zone designated for purposes of the Vietnam conflict, the preceding sentence shall not cause subsection (a)(1) to apply for any taxable year beginning more than 2 years after the date designated under section 112 as the date of termination of combatant activities in a combat zone.

(c) Certain military or civilian employees of the United States dying as a result of injuries

(1) In general

In the case of any individual who dies while a military or civilian employee of the United States, if such death occurs as a result of wounds or injury which was incurred while the individual was a military or civilian employee of the United States and which was incurred in a terroristic or military action, any tax imposed by this subtitle shall not apply—

(A) with respect to the taxable year in which falls the date of his death, and

(B) with respect to any prior taxable year in the period beginning with the last taxable year ending before the taxable year in which the wounds or injury were incurred.

(2) Terroristic or military action

For purposes of paragraph (1), the term "terroristic or military action" means—

(A) any terroristic activity which a preponderance of the evidence indicates was directed against the United States or any of its allies, and

(B) any military action involving the Armed Forces of the United States and resulting from violence or aggression against the United States or any of its allies (or threat thereof).

For purposes of the preceding sentence, the term "military action" does not include training exercises.

(3) Treatment of multinational forces

For purposes of paragraph (2), any multinational force in which the United States is participating shall be treated as an ally of the United States.

(d) Individuals dying as a result of certain attacks

(1) In general

In the case of a specified terrorist victim, any tax imposed by this chapter shall not apply—

(A) with respect to the taxable year in which falls the date of death, and

(B) with respect to any prior taxable year in the period beginning with the last taxable year ending before the taxable year in which the wounds, injury, or illness referred to in paragraph (3) were incurred.

(2) $10,000 minimum benefit

If, but for this paragraph, the amount of tax not imposed by paragraph (1) with respect to a specified terrorist victim is less than $10,000, then such victim shall be treated as having made a payment against the tax imposed by this chapter for such victim's last taxable year in an amount equal to the excess of $10,000 over the amount of tax not so imposed.

(3) Taxation of certain benefits

Subject to such rules as the Secretary may prescribe, paragraph (1) shall not apply to the amount of any tax imposed by this chapter which would be computed by only taking into account the items of income, gain, or other amounts attributable to—

(A) deferred compensation which would have been payable after death if the individual had died other than as a specified terrorist victim, or

(B) amounts payable in the taxable year which would not have been payable in such taxable year but for an action taken after September 11, 2001.

(4) Specified terrorist victim

For purposes of this subsection, the term "specified terrorist victim" means any decedent—

(A) who dies as a result of wounds or injury incurred as a result of the terrorist attacks against the United States on April 19, 1995, or September 11, 2001, or

(B) who dies as a result of illness incurred as a result of an attack involving anthrax occurring on or after September 11, 2001, and before January 1, 2002.

Such term shall not include any individual identified by the Attorney General to have been a

participant or conspirator in any such attack or a representative of such an individual.

(5) Relief with respect to astronauts

The provisions of this subsection shall apply to any astronaut whose death occurs in the line of duty, except that paragraph (3)(B) shall be applied by using the date of the death of the astronaut rather than September 11, 2001.

(Aug. 16, 1954, ch. 736, 68A Stat. 238; Pub. L. 93–597, §4(a), Jan. 2, 1975, 88 Stat. 1952; Pub. L. 94–455, title XIX, §1901(a)(92), Oct. 4, 1976, 90 Stat. 1780; Pub. L. 94–569, §3(c), Oct. 20, 1976, 90 Stat. 2699; Pub. L. 97–448, title III, §307(b), Jan. 12, 1983, 96 Stat. 2407; Pub. L. 98–259, §1(a), Apr. 10, 1984, 98 Stat. 142; Pub. L. 98–369, div. A, title VII, §722(g)(2), (3), July 18, 1984, 98 Stat. 974; Pub. L. 99–514, title XVII, §1708(a)(2), Oct. 22, 1986, 100 Stat. 2782; Pub. L. 107–134, title I, §§101(a), (c)(1), 113(b), Jan. 23, 2002, 115 Stat. 2428, 2435; Pub. L. 108–121, title I, §110(a)(1), (3)(A), Nov. 11, 2003, 117 Stat. 1342.)

AMENDMENTS

2003—Pub. L. 108–121, §110(a)(3)(A), inserted ", astronauts," after "Forces" in section catchline.

Subsec. (d)(5). Pub. L. 108–121, §110(a)(1), added par. (5).

2002—Pub. L. 107–134, §101(c)(1), amended section catchline generally. Prior to amendment, catchline read as follows: "Income taxes on members of Armed Forces on death".

Subsec. (c). Pub. L. 107–134, §113(b)(2), struck out "sustained overseas" after "injuries" in heading.

Subsec. (c)(1). Pub. L. 107–134, §113(b)(1), struck out "outside the United States" before "in a terroristic or military action" in introductory provisions.

Subsec. (d). Pub. L. 107–134, §101(a), added subsec. (d).

1986—Subsec. (b). Pub. L. 99–514 amended last sentence generally. Prior to amendment, sentence read as follows: "The preceding sentence shall not cause subsection (a)(1) to apply for any taxable year beginning—

"(1) after December 31, 1982, in the case of service in the combat zone designated for purposes of the Vietnam conflict, or

"(2) more than 2 years after the date designated under section 112 as the date of termination of combatant activities in that zone, in the case of any combat zone other than that referred to in paragraph (1)."

1984—Subsec. (c). Pub. L. 98–259 added subsec. (c).

Subsec. (c)(1). Pub. L. 98–369, §722(g)(2), which directed amendment of par. (1) of this section by substituting "as a result of wounds or injury which was incurred while the individual was a military or civilian employee of the United States and which was incurred" for "as a result of wounds or injury incurred" was executed to par. (1) of subsec. (c) to reflect the probable intent of Congress.

Subsec. (c)(2)(A). Pub. L. 98–369, §722(g)(3), inserted "which a preponderance of the evidence indicates was".

1983—Subsec. (b)(1). Pub. L. 97–448 substituted "December 31, 1982" for "January 2, 1978".

1976—Subsec. (b). Pub. L. 94–569 substituted "to apply for any taxable year beginning" for "to apply for any taxable year beginning more than 2 years after" in provisions preceding par. (1), substituted "after January 2, 1978" for "the date of enactment of this subsection" in par. (1), and substituted "more than 2 years after the date designated" for "the date designated" in par. (2).

Pub. L. 94–455 substituted "of members" for "on members" in heading.

1975—Subsec. (a). Pub. L. 93–597, §4(a)(1), (2), designated existing provisions as subsec. (a), added heading, and in subsec. (a) as so designated, struck out "during an induction period (as defined in section 112(c)(5))", respectively.

Subsec. (b). Pub. L. 93–597, §4(a)(3), added subsec. (b).

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–121 applicable with respect to any astronaut whose death occurs after Dec. 31, 2002, see section 110(a)(4) of Pub. L. 108–121, set out as a note under section 5 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–134, title I, §101(d), Jan. 23, 2002, 115 Stat. 2429, provided that:

"(1) EFFECTIVE DATE.—The amendments made by this section [amending this section and sections 5 and 6013 of this title] shall apply to taxable years ending before, on, or after September 11, 2001.

"(2) WAIVER OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from the

amendments made by this section is prevented at any time before the close of the 1-year period beginning on the date of the enactment of this Act [Jan. 23, 2002] by the operation of any law or rule of law (including res judicata), such refund or credit may nevertheless be made or allowed if claim therefor is filed before the close of such period."

Amendment by section 113(b) of Pub. L. 107–134 applicable to taxable years ending on or after Sept. 11, 2001, see section 113(c) of Pub. L. 107–134, set out as a note under section 104 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1982, see section 1708(b) of Pub. L. 99–514, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title VII, §722(g)(5), July 18, 1984, 98 Stat. 975, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(A) IN GENERAL.—The amendments made by this subsection [amending this section and enacting and amending provisions set out below] shall take effect as if they were included in the amendments made by section 1 of Public Law 98–259 [amending this section and enacting provisions set out below].

"(B) STATUTE OF LIMITATIONS WAIVED.—Notwithstanding section 6511 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the time for filing a claim for credit or refund of any overpayment of tax resulting from the amendments made by this subsection shall not expire before the date 1 year after the date of the enactment of this Act [July 18, 1984]."

Pub. L. 98–259, §1(b), Apr. 10, 1984, 98 Stat. 143, as amended by Pub. L. 98–369, div. A, title VII, §722(g)(1), July 18, 1984, 98 Stat. 974; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply with respect to all taxable years (whether beginning before, on, or after the date of enactment of this Act [Apr. 10, 1984]) of individuals dying after November 17, 1978, as a result of wounds or injuries incurred after such date.

"(2) STATUTE OF LIMITATIONS WAIVED.—Notwithstanding section 6511 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the time for filing a claim for credit or refund of any overpayment of tax resulting from the amendment made by subsection (a) shall not expire before the date 1 year after the date of the enactment of this Act."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Pub. L. 93–597, §4(b), Jan. 2, 1975, 88 Stat. 1952, provided that: "The amendments made by subsection (a) [amending this section] shall apply to taxable years ending on or after February 28, 1961."

REFUNDS AND CREDITS OF OVERPAYMENTS FOR TAXABLE YEARS ENDING ON OR AFTER FEBRUARY 28, 1961, RESULTING FROM APPLICATION OF PROVISIONS

Pub. L. 93–597, §4(c), Jan. 2, 1975, 88 Stat. 1952, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "If the refund or credit of any overpayment for any taxable year ending on or after February 28, 1961, resulting from the application of section 692 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by subsection (a) of this section) is prevented at any time before the expiration of one year after the date of the enactment of this Act [Jan. 2, 1975] by the operation of any law or rule of law, but would not have been so prevented if claim for refund or credit therefor were made on the due date for the return for the taxable year of his death (or any later year), refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed before the expiration of such one-year period."

TREATMENT OF DIRECTOR GENERAL OF MULTINATIONAL FORCE IN SINAI

Pub. L. 98–369, div. A, title VII, §722(g)(4), July 18, 1984, 98 Stat. 974, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "For purposes of section 692(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the Director General of the Multinational Force and Observers in the Sinai who died on February 15, 1984, shall be treated as if he were a civilian employee of the United States while he served as such Director General."

Subchapter K—Partners and Partnerships

Part
I. Determination of tax liability.
II. Contributions, distributions, and transfers.
III. Definitions.
IV. Special rules for electing large partnerships.

AMENDMENTS

1997—Pub. L. 105–34, title XII, §1221(b), Aug. 5, 1997, 111 Stat. 1008, added item for part IV.

PART I—DETERMINATION OF TAX LIABILITY

Sec.
701. Partners, not partnership, subject to tax.
702. Income and credits of partner.
703. Partnership computations.
704. Partner's distributive share.
705. Determination of basis of partner's interest.
706. Taxable years of partner and partnership.
707. Transactions between partner and partnership.
708. Continuation of partnership.
709. Treatment of organization and syndication fees.

AMENDMENTS

1976—Pub. L. 94–455, title II, §213(b)(2), title XIX, §1901(b)(23), Oct. 4, 1976, 90 Stat. 1547, 1798, struck out part IV "Effective date for subchapter" in table of parts of subchapter K of chapter 1 and added item 709.

§701. Partners, not partnership, subject to tax

A partnership as such shall not be subject to the income tax imposed by this chapter. Persons carrying on business as partners shall be liable for income tax only in their separate or individual capacities.

(Aug. 16, 1954, ch. 736, 68A Stat. 239.)

§702. Income and credits of partner

(a) General rule

In determining his income tax, each partner shall take into account separately his distributive share of the partnership's—

(1) gains and losses from sales or exchanges of capital assets held for not more than 1 year,

(2) gains and losses from sales or exchanges of capital assets held for more than 1 year,

(3) gains and losses from sales or exchanges of property described in section 1231 (relating to certain property used in a trade or business and involuntary conversions),

(4) charitable contributions (as defined in section 170(c)),

(5) dividends with respect to which section 1(h)(11) or part VIII of subchapter B applies,

(6) taxes, described in section 901, paid or accrued to foreign countries and to possessions of the United States,

(7) other items of income, gain, loss, deduction, or credit, to the extent provided by regulations prescribed by the Secretary, and

(8) taxable income or loss, exclusive of items requiring separate computation under other paragraphs of this subsection.

(b) Character of items constituting distributive share

The character of any item of income, gain, loss, deduction, or credit included in a partner's distributive share under paragraphs (1) through (7) of subsection (a) shall be determined as if such item were realized directly from the source from which realized by the partnership, or incurred in the same manner as incurred by the partnership.

(c) Gross income of a partner

In any case where it is necessary to determine the gross income of a partner for purposes of this title, such amount shall include his distributive share of the gross income of the partnership.

(d) Cross reference

For rules relating to procedures for determining the tax treatment of partnership items see subchapter C of chapter 63 (section 6221 and following).

(Aug. 16, 1954, ch. 736, 68A Stat. 239; Pub. L. 88–272, title II, §201(d)(7), Feb. 26, 1964, 78 Stat. 32; Pub. L. 94–455, title XIV, §1402(b)(1)(L), (2), title XIX, §§1901(b)(1)(I)(i), (ii), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1732, 1791, 1834; Pub. L. 96–223, title IV, §404(b)(5), Apr. 2, 1980, 94 Stat. 307; Pub. L. 97–34, title III, §301(b)(5), (6)(C), Aug. 13, 1981, 95 Stat. 270; Pub. L. 97–248, title IV, §402(c)(1), Sept. 3, 1982, 96 Stat. 667; Pub. L. 97–448, title I, §103(a)(4), Jan. 12, 1983, 96 Stat. 2375; Pub. L. 98–369, div. A, title X, §1001(b)(9), (e), July 18, 1984, 98 Stat. 1011, 1012; Pub. L. 99–514, title VI, §612(b)(5), Oct. 22, 1986, 100 Stat. 2250; Pub. L. 108–27, title III, §302(e)(8), May 28, 2003, 117 Stat. 764.)

AMENDMENTS

2003—Subsec. (a)(5). Pub. L. 108–27 amended par. (5) generally. Prior to amendment, par. (5) read as follows: "dividends with respect to which there is a deduction under part VIII of subchapter B,".

1986—Subsec. (a)(5). Pub. L. 99–514 amended par. (5) generally. Prior to amendment, par. (5) read as follows: "dividends or interest with respect to which there is an exclusion under section 116 or 128, or a deduction under part VIII of subchapter B,".

1984—Subsec. (a)(1), (2). Pub. L. 98–369 substituted "6 months" for "1 year", applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

1983—Subsec. (a)(5). Pub. L. 97–448 substituted "an exclusion under section 116 or 128," for "provided an exclusion under section 116 or 128".

1982—Subsec. (d). Pub. L. 97–248 added subsec. (d).

1981—Subsec. (a)(5). Pub. L. 97–34, §301(b)(6)(C), inserted reference to "interest" in heading and text which continued the amendment made by Pub. L. 96–223.

Pub. L. 97–34, §301(b)(5), inserted "or 128" after "section 116".

1980—Subsec. (a)(5). Pub. L. 96–223 inserted "or interest" after "dividends".

1976—Subsec. (a)(1), (2). Pub. L. 94–455, §1402(b)(2), provided that "9 months" would be changed to "1 year".

Pub. L. 94–455, §1402(b)(1)(L), provided that "6 months" would be changed to "9 months" for taxable years beginning in 1977.

Subsec. (a)(7) to (9). Pub. L. 94–455, §§1901(b)(1)(I)(i), 1906(b)(13)(A), redesignated pars. (8) and (9) as (7) and (8), respectively, and in par. (7), as so redesignated, struck out "or his delegate" after "Secretary". Former par. (7), which related partially tax-exempt interest on obligations of the United States or its instrumentalities, was struck out.

Subsec. (b). Pub. L. 94–455, §1901(b)(1)(I)(ii), substituted "paragraphs (1) through (7)" for "paragraphs (1) through (8)".

1964—Subsec. (a)(5). Pub. L. 88–272 struck out "a credit under section 34," before "an exclusion".

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–27 applicable, except as otherwise provided, to taxable years beginning after Dec. 31, 2002, see section 302(f) of Pub. L. 108–27, set out as an Effective and Termination Dates of 2003 Amendment note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 612(c) of Pub. L. 99–514, set out as a note under section 301 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to partnership taxable years beginning after Sept. 3, 1982, with provision for the applicability of the amendment to any partnership taxable year ending after Sept. 3, 1982, if the partnership, each partner, and each indirect partner requests such application and the Secretary of the Treasury or his delegate consents to such application, see section 407(a)(1), (3) of Pub. L. 97–248, set out as an Effective Date note under section 6221 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 301(b)(5) of Pub. L. 97–34 applicable to taxable years ending after Sept. 30, 1981, and amendment by section 301(b)(6)(C) of Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 301(d) of Pub. L. 97–34, set out as a note under section 265 of this title.

EFFECTIVE AND TERMINATION DATES OF 1980 AMENDMENT

Amendment by Pub. L. 96–223 applicable with respect to taxable years beginning after Dec. 31, 1980, and before Jan. 1, 1982, see section 404(c) of Pub. L. 96–223, set out as a note under section 265 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XIV, §1402(b)(1), Oct. 4, 1976, 90 Stat. 1731, provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Pub. L. 94–455, title XIV, §1402(b)(2), Oct. 4, 1976, 90 Stat. 1732, provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

Amendment by section 1901(b)(1)(I)(i), (ii) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable with respect to dividends received after Dec. 31, 1964, in taxable years ending after such date, see section 201(e) of Pub. L. 88–272, set out as a note under section 22 of this title.

§703. Partnership computations

(a) Income and deductions

The taxable income of a partnership shall be computed in the same manner as in the case of an individual except that—

(1) the items described in section 702(a) shall be separately stated, and

(2) the following deductions shall not be allowed to the partnership:

(A) the deductions for personal exemptions provided in section 151,

(B) the deduction for taxes provided in section 164(a) with respect to taxes, described in section 901, paid or accrued to foreign countries and to possessions of the United States,

(C) the deduction for charitable contributions provided in section 170,

(D) the net operating loss deduction provided in section 172,

(E) the additional itemized deductions for individuals provided in part VII of subchapter B (sec. 211 and following), and

(F) the deduction for depletion under section 611 with respect to oil and gas wells.

(b) Elections of the partnership

Any election affecting the computation of taxable income derived from a partnership shall be

made by the partnership, except that any election under—

(1) subsection (b)(5) or (c)(3) of section 108 (relating to income from discharge of indebtedness),

(2) section 617 (relating to deduction and recapture of certain mining exploration expenditures), or

(3) section 901 (relating to taxes of foreign countries and possessions of the United States),

shall be made by each partner separately.

(Aug. 16, 1954, ch. 736, 68A Stat. 240; Pub. L. 89–570, §2(b), Sept. 12, 1966, 80 Stat. 764; Pub. L. 91–172, title V, §504(c)(3), Dec. 30, 1969, 83 Stat. 633; Pub. L. 92–178, title III, §304(c), Dec. 10, 1971, 85 Stat. 523; Pub. L. 94–12, title V, §501(b)(3), Mar. 29, 1975, 89 Stat. 53; Pub. L. 94–455, title XIX, §1901(b)(21)(F), title XXI, §2115(c)(2), Oct. 4, 1976, 90 Stat. 1798, 1909; Pub. L. 95–30, title I, §101(d)(10), May 23, 1977, 91 Stat. 134; Pub. L. 96–589, §2(e)(1), Dec. 24, 1980, 94 Stat. 3396; Pub. L. 99–514, title V, §511(d)(2)(B), title VII, §701(e)(4)(E), Oct. 22, 1986, 100 Stat. 2249, 2343; Pub. L. 100–647, title I, §1008(i), Nov. 10, 1988, 102 Stat. 3445; Pub. L. 103–66, title XIII, §13150(c)(9), Aug. 10, 1993, 107 Stat. 448.)

AMENDMENTS

1993—Subsec. (b)(1). Pub. L. 103–66 substituted "subsection (b)(5) or (c)(3)" for "subsection (b)(5)".

1988—Subsec. (b)(1). Pub. L. 100–647 substituted "subsection (b)(5)" for "subsection (b)(5) or (d)(4)".

1986—Subsec. (b). Pub. L. 99–514 struck out former pars. (1) and (3) which related to elections under sections 57(c) and 163(d), respectively, and redesignated former pars. (2), (4), and (5), as pars. (1), (2), and (3), respectively.

1980—Subsec. (b). Pub. L. 96–589 inserted reference to section 108(b)(5) and (d)(4).

1977—Subsec. (a)(2). Pub. L. 95–30 struck out subpar. (A) which made reference to the standard deduction provided in section 141, and redesignated subpars. (B) to (G) as (A) to (F), respectively.

1976—Subsec. (a)(2)(G). Pub. L. 94–455, §2115(c)(2), substituted "wells" for "production subject to the provisions of section 613A(c)".

Subsec. (b). Pub. L. 94–455, §1901(b)(21)(F), struck out "under section 615 (relating to pre-1970 exploration expenditures)," after "of the United States, and any election".

1975—Subsec. (a)(2)(G). Pub. L. 94–12 added subpar. (G).

1971—Subsec. (b). Pub. L. 92–178 substituted "," for "or" after "(relating to pre-1970 exploration expenditures)" and inserted "under section 57(c) (relating to definition of net lease), or under section 163(d) (relating to limitation on interest on investment indebtedness)" after "(relating to deduction and recapture of certain mining exploration expenditures)".

1969—Subsec. (b). Pub. L. 91–172 substituted "(relating to pre-1970 exploration expenditures) or under section 617 (relating to deduction and recapture of certain mining exploration expenditures)" for "(relating to exploration expenditures) or under section 617 (relating to additional exploration expenditures in the case of domestic mining)".

1966—Subsec. (b). Pub. L. 89–570 provided for election under section 615 (relating to exploration expenditures) or under section 617 (relating to additional exploration expenditures in the case of domestic mining).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to discharges after Dec. 31, 1992, in taxable years ending after such date, see section 13150(d) of Pub. L. 103–66, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 511(d)(2)(B) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 511(e) of Pub. L. 99–514, set out as a note under section 163 of this title.

Amendment by section 701(e)(4)(E) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective

Date note under section 55 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–589 applicable to transactions which occur after Dec. 31, 1980, other than transactions which occur in a proceeding in a bankruptcy case or similar judicial proceeding or in a proceeding under Title 11 commencing on or after Dec. 31, 1980, with an exception permitting the debtor to make the amendment applicable to transactions occurring after Sept. 30, 1979; in a specified manner, see section 7(a)(1), (f) of Pub. L. 96–589, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(b)(21)(F) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by section 2115(c)(2) of Pub. L. 94–455 effective on Jan. 1, 1975 and applicable to taxable years ending after Dec. 31, 1974, see section 2115(f) of Pub. L. 94–455, set out as a note under section 613A of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–12 effective Jan. 1, 1975, to apply to taxable years ending after Dec. 31, 1974, see section 501(c) of Pub. L. 94–12, set out as an Effective Date note under section 613A of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable with respect to exploration expenditures paid or incurred after Dec. 31, 1969, see section 504(d)(1) of Pub. L. 91–172, set out as an Effective Date note under section 243 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–570 applicable to taxable years ending after Sept. 12, 1966, but only in respect of expenditures paid or incurred after such date, see section 3 of Pub. L. 89–570, set out as an Effective Date note under section 617 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(e)(4)(E) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

§704. Partner's distributive share

(a) Effect of partnership agreement

A partner's distributive share of income, gain, loss, deduction, or credit shall, except as otherwise provided in this chapter, be determined by the partnership agreement.

(b) Determination of distributive share

A partner's distributive share of income, gain, loss, deduction, or credit (or item thereof) shall be determined in accordance with the partner's interest in the partnership (determined by taking into account all facts and circumstances), if—

(1) the partnership agreement does not provide as to the partner's distributive share of income, gain, loss, deduction, or credit (or item thereof), or

(2) the allocation to a partner under the agreement of income, gain, loss, deduction, or credit (or item thereof) does not have substantial economic effect.

(c) Contributed property

(1) In general

Under regulations prescribed by the Secretary—

(A) income, gain, loss, and deduction with respect to property contributed to the partnership by a partner shall be shared among the partners so as to take account of the variation between the basis of the property to the partnership and its fair market value at the time of contribution,

(B) if any property so contributed is distributed (directly or indirectly) by the partnership (other than to the contributing partner) within 7 years of being contributed—

(i) the contributing partner shall be treated as recognizing gain or loss (as the case may be) from the sale of such property in an amount equal to the gain or loss which would have been allocated to such partner under subparagraph (A) by reason of the variation described in subparagraph (A) if the property had been sold at its fair market value at the time of the distribution,

(ii) the character of such gain or loss shall be determined by reference to the character of the gain or loss which would have resulted if such property had been sold by the partnership to the distributee, and

(iii) appropriate adjustments shall be made to the adjusted basis of the contributing partner's interest in the partnership and to the adjusted basis of the property distributed to reflect any gain or loss recognized under this subparagraph, and

(C) if any property so contributed has a built-in loss—

(i) such built-in loss shall be taken into account only in determining the amount of items allocated to the contributing partner, and

(ii) except as provided in regulations, in determining the amount of items allocated to other partners, the basis of the contributed property in the hands of the partnership shall be treated as being equal to its fair market value at the time of contribution.

For purposes of subparagraph (C), the term "built-in loss" means the excess of the adjusted basis of the property (determined without regard to subparagraph (C)(ii)) over its fair market value at the time of contribution.

(2) Special rule for distributions where gain or loss would not be recognized outside partnerships

Under regulations prescribed by the Secretary, if—

(A) property contributed by a partner (hereinafter referred to as the "contributing partner") is distributed by the partnership to another partner, and

(B) other property of a like kind (within the meaning of section 1031) is distributed by the partnership to the contributing partner not later than the earlier of—

(i) the 180th day after the date of the distribution described in subparagraph (A), or

(ii) the due date (determined with regard to extensions) for the contributing partner's return of the tax imposed by this chapter for the taxable year in which the distribution described in subparagraph (A) occurs,

then to the extent of the value of the property described in subparagraph (B), paragraph (1)(B) shall be applied as if the contributing partner had contributed to the partnership the property described in subparagraph (B).

(3) Other rules

Under regulations prescribed by the Secretary, rules similar to the rules of paragraph (1) shall apply to contributions by a partner (using the cash receipts and disbursements method of accounting) of accounts payable and other accrued but unpaid items. Any reference in paragraph (1) or (2) to the contributing partner shall be treated as including a reference to any successor of such partner.

(d) Limitation on allowance of losses

A partner's distributive share of partnership loss (including capital loss) shall be allowed only to the extent of the adjusted basis of such partner's interest in the partnership at the end of the partnership year in which such loss occurred. Any excess of such loss over such basis shall be allowed as a deduction at the end of the partnership year in which such excess is repaid to the partnership.

(e) Family partnerships

(1) Recognition of interest created by purchase or gift

A person shall be recognized as a partner for purposes of this subtitle if he owns a capital interest in a partnership in which capital is a material income-producing factor, whether or not such interest was derived by purchase or gift from any other person.

(2) Distributive share of donee includible in gross income

In the case of any partnership interest created by gift, the distributive share of the donee under the partnership agreement shall be includible in his gross income, except to the extent that such share is determined without allowance of reasonable compensation for services rendered to the partnership by the donor, and except to the extent that the portion of such share attributable to donated capital is proportionately greater than the share of the donor attributable to the donor's capital. The distributive share of a partner in the earnings of the partnership shall not be diminished because of absence due to military service.

(3) Purchase of interest by member of family

For purposes of this section, an interest purchased by one member of a family from another shall be considered to be created by gift from the seller, and the fair market value of the purchased interest shall be considered to be donated capital. The "family" of any individual shall include only his spouse, ancestors, and lineal descendants, and any trusts for the primary benefit of such persons.

(f) Cross reference

For rules in the case of the sale, exchange, liquidation, or reduction of a partner's interest, see section 706(c)(2).

(Aug. 16, 1954, ch. 736, 68A Stat. 240; Pub. L. 94–455, title II, §213(c)(2), (3)(A), (d), (e), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1548, 1834; Pub. L. 95–600, title II, §201(b)(1), Nov. 6, 1978, 92 Stat. 2816; Pub. L. 98–369, div. A, title I, §71(a), July 18, 1984, 98 Stat. 589; Pub. L. 101–239, title VII, §7642(a), Dec. 19, 1989, 103 Stat. 2379; Pub. L. 102–486, title XIX, §1937(b)(1), Oct. 24, 1992, 106 Stat. 3033; Pub. L. 105–34, title X, §1063(a), Aug. 5, 1997, 111 Stat. 947; Pub. L. 108–357, title VIII, §833(a), Oct. 22, 2004, 118 Stat. 1589.)

AMENDMENTS

2004—Subsec. (c)(1)(C). Pub. L. 108–357 added subpar. (C).

1997—Subsec. (c)(1)(B). Pub. L. 105–34 substituted "7 years" for "5 years" in introductory provisions.

1992—Subsec. (c)(1)(B). Pub. L. 102–486 substituted "is distributed (directly or indirectly)" for "is distributed".

1989—Subsec. (c). Pub. L. 101–239 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "Under regulations prescribed by the Secretary, income, gain, loss, and deduction with respect to property contributed to the partnership by a partner shall be shared among partners so as to take account of the variation between the basis of the property to the partnership and its fair market value at the time of contribution. Under regulations prescribed by the Secretary, rules similar to the rules of the preceding sentence shall apply to contributions by a partner (using the cash receipts and disbursements method of accounting) of accounts payable and other accrued but unpaid items."

1984—Subsec. (c). Pub. L. 98–369 amended subsec. (c) generally, substituting provisions directing that, under regulations prescribed by the Secretary, income, gain, loss, and deduction with respect to property contributed to the partnership by a partner be shared among partners so as to take account of the variation between the basis of the property to the partnership and its fair market value at the time of contribution, and that similar rules apply to contributions by a partner (using the cash receipts and disbursements method of accounting) of accounts payable and other accrued but unpaid items for provisions which had directed that, if

the partnership agreement so provided, depreciation, depletion, or gain or loss with respect to property contributed to the partnership by a partner would under regulations prescribed by the Secretary, be shared among the partners so as to take account of the variation between the basis of the property to the partnership and its fair market value at the time of contribution, and struck out provisions which had directed that in determining a partner's distributive share of items described in section 702(a), depreciation, depletion, or gain or loss with respect to property contributed to the partnership by a partner would, except to the extent otherwise provided, be allocated among the partners in the same manner as if such property had been purchased by the partnership and that if the partnership agreement did not provide otherwise, depreciation, depletion, or gain or loss with respect to undivided interests in property contributed to a partnership would be determined as though such undivided interests had not been contributed to the partnership.

1978—Subsec. (d). Pub. L. 95–600 struck out provisions relating to adjusted basis of a partner's interest.

1976—Subsec. (a). Pub. L. 94–455, §213(c)(2), substituted "except as otherwise provided in this chapter" for "except as otherwise provided in this section".

Subsec. (b). Pub. L. 94–455, §213(d), among other changes, substituted "Determination of distributive share" for "Distributive share determined by income or loss ratio" in heading, in provisions preceding par. (1) "the partner's interest in the partnership (determined by taking into account all facts and circumstances)" for "his distributive share of taxable income or loss of the partnership, as described in section 702(a)(9), for the taxable year", and in par. (2) provision relating to a lack of substantial economic effect in a partnership agreement for provisions relating to the partnership agreement's purpose being the avoidance or evasion of taxes.

Subsec. (c)(2). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (d). Pub. L. 94–455, §213(e), inserted provision relating to the determination of the adjusted basis of a partner's liability where there is no personal liability and the applicability of such determination where section 465 of this title applies or the principal activity of the partnership is real estate investment.

Subsec. (f). Pub. L. 94–455, §213(c)(3)(A), added subsec. (f).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §833(d)(1), Oct. 22, 2004, 118 Stat. 1592, provided that: "The amendment made by subsection (a) [amending this section] shall apply to contributions made after the date of the enactment of this Act [Oct. 22, 2004]."

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title X, §1063(b), Aug. 5, 1997, 111 Stat. 947, provided that:

"(1) IN GENERAL.—The amendment made by subsection (a) [amending this section and section 737 of this title] shall apply to property contributed to a partnership after June 8, 1997.

"(2) BINDING CONTRACTS.—The amendment made by subsection (a) shall not apply to any property contributed pursuant to a written binding contract in effect on June 8, 1997, and at all times thereafter before such contribution if such contract provides for the contribution of a fixed amount of property."

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–486, title XIX, §1937(c), Oct. 24, 1992, 106 Stat. 3033, provided that: "The amendments made by this section [enacting section 737 of this title and amending this section and section 731 of this title] shall apply to distributions on or after June 25, 1992."

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7642(b), Dec. 19, 1989, 103 Stat. 2381, provided that: "The amendment made by subsection (a) [amending this section] shall apply in the case of property contributed to the partnership after October 3, 1989, in taxable years ending after such date."

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §71(c), July 18, 1984, 98 Stat. 589, provided that: "The amendments made by this section [amending this section and sections 613A and 743 of this title] shall apply with respect to property contributed to the partnership after March 31, 1984, in taxable years ending after such date."

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 and enactment of provision set out as a note under this section by section 201(b)(2) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 204(a) of Pub. L. 95–600, set out as a note under section 465 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 213(c)(2), (c)(3)(A), (d) of Pub. L. 94–455 applicable in the case of partnership taxable years beginning after Dec. 31, 1975, see section 213(f)(1) of Pub. L. 94–455, set out as an Effective Date note under section 709 of this title.

Amendment by section 213(e) of Pub. L. 94–455 applicable to liabilities incurred after Dec. 31, 1976, see section 213(f)(2) of Pub. L. 94–455, set out as an Effective Date note under section 709 of this title.

TRANSITIONAL RULE FOR LIMITATION ON ALLOWANCE OF LOSSES

Pub. L. 95–600, title II, §201(b)(2), Nov. 6, 1978, 92 Stat. 2816, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "In the case of a loss which was not allowed for any taxable year by reason of the last 2 sentences of section 704(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect before the date of the enactment of this Act [Nov. 6, 1978]), such loss shall be treated as a deduction (subject to section 465(a) of such Code) for the first taxable year beginning after December 31, 1978. Section 465(a) of such Code (as amended by this section) shall not apply with respect to partnership liabilities to which the last 2 sentences of section 704(d) of such Code (as in effect on the day before the date of enactment of this Act) did not apply because of the provisions of section 213(f)(2) of the Tax Reform Act of 1976 [set out as a note under section 709 of this title]."

§705. Determination of basis of partner's interest

(a) General rule

The adjusted basis of a partner's interest in a partnership shall, except as provided in subsection (b), be the basis of such interest determined under section 722 (relating to contributions to a partnership) or section 742 (relating to transfers of partnership interests)—

(1) increased by the sum of his distributive share for the taxable year and prior taxable years of—

(A) taxable income of the partnership as determined under section 703(a),

(B) income of the partnership exempt from tax under this title, and

(C) the excess of the deductions for depletion over the basis of the property subject to depletion;

(2) decreased (but not below zero) by distributions by the partnership as provided in section 733 and by the sum of his distributive share for the taxable year and prior taxable years of—

(A) losses of the partnership, and

(B) expenditures of the partnership not deductible in computing its taxable income and not properly chargeable to capital account; and

(3) decreased (but not below zero) by the amount of the partner's deduction for depletion for any partnership oil and gas property to the extent such deduction does not exceed the proportionate share of the adjusted basis of such property allocated to such partner under section 613A(c)(7)(D).

(b) Alternative rule

The Secretary shall prescribe by regulations the circumstances under which the adjusted basis of a partner's interest in a partnership may be determined by reference to his proportionate share of the adjusted basis of partnership property upon a termination of the partnership.

(Aug. 16, 1954, ch. 736, 68A Stat. 242; Pub. L. 94–455, title XIX, §1906(b)(13)(A), title XXI, §2115(c)(3), Oct. 4, 1976, 90 Stat. 1834, 1909; Pub. L. 98–369, div. A, title VII, §722(e)(1), July 18, 1984, 98 Stat. 974.)

AMENDMENTS

1984—Subsec. (a)(3). Pub. L. 98–369 substituted "for any partnership oil and gas property to the extent such deduction does not exceed the proportionate share of the adjusted basis of such property allocated to such partner under section 613A(c)(7)(D)" for "under section 611 with respect to oil and gas wells".

1976—Subsec. (a)(3). Pub. L. 94–455, §2115(c)(3), added par. (3).

Subsec. (b). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title VII, §722(e)(3)(A), July 18, 1984, 98 Stat. 974, provided that: "The amendment made by paragraph (1) [amending this section] shall take effect on January 1, 1975."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 2115(c)(3) of Pub. L. 94–455 effective on Jan. 1, 1975, and applicable to taxable years ending after Dec. 31, 1974, see section 2115(f) of Pub. L. 94–455, set out as a note under section 613A of this title.

§706. Taxable years of partner and partnership

(a) Year in which partnership income is includible

In computing the taxable income of a partner for a taxable year, the inclusions required by section 702 and section 707(c) with respect to a partnership shall be based on the income, gain, loss, deduction, or credit of the partnership for any taxable year of the partnership ending within or with the taxable year of the partner.

(b) Taxable year

(1) Partnership's taxable year

(A) Partnership treated as taxpayer

The taxable year of a partnership shall be determined as though the partnership were a taxpayer.

(B) Taxable year determined by reference to partners

Except as provided in subparagraph (C), a partnership shall not have a taxable year other than—

(i) the majority interest taxable year (as defined in paragraph (4)),

(ii) if there is no taxable year described in clause (i), the taxable year of all the principal partners of the partnership, or

(iii) if there is no taxable year described in clause (i) or (ii), the calendar year unless the Secretary by regulations prescribes another period.

(C) Business purpose

A partnership may have a taxable year not described in subparagraph (B) if it establishes, to the satisfaction of the Secretary, a business purpose therefor. For purposes of this subparagraph, any deferral of income to partners shall not be treated as a business purpose.

(2) Partner's taxable year

A partner may not change to a taxable year other than that of a partnership in which he is a principal partner unless he establishes, to the satisfaction of the Secretary, a business purpose therefor.

(3) Principal partner

For the purpose of this subsection, a principal partner is a partner having an interest of 5 percent or more in partnership profits or capital.

(4) Majority interest taxable year; limitation on required changes

(A) Majority interest taxable year defined

For purposes of paragraph (1)(B)(i)—

(i) In general

The term "majority interest taxable year" means the taxable year (if any) which, on each testing day, constituted the taxable year of 1 or more partners having (on such day) an aggregate interest in partnership profits and capital of more than 50 percent.

(ii) Testing days

The testing days shall be—

(I) the 1st day of the partnership taxable year (determined without regard to clause (i)), or

(II) the days during such representative period as the Secretary may prescribe.

(B) Further change not required for 3 years

Except as provided in regulations necessary to prevent the avoidance of this section, if, by reason of paragraph (1)(B)(i), the taxable year of a partnership is changed, such partnership shall not be required to change to another taxable year for either of the 2 taxable years following the year of change.

(5) Application with other sections

Except as provided in regulations, for purposes of determining the taxable year to which a partnership is required to change by reason of this subsection, changes in taxable years of other persons required by this subsection, section 441(i), section 584(h),[1] section 644, or section 1378(a) shall be taken into account.

(c) Closing of partnership year

(1) General rule

Except in the case of a termination of a partnership and except as provided in paragraph (2) of this subsection, the taxable year of a partnership shall not close as the result of the death of a partner, the entry of a new partner, the liquidation of a partner's interest in the partnership, or the sale or exchange of a partner's interest in the partnership.

(2) Treatment of dispositions

(A) Disposition of entire interest

The taxable year of a partnership shall close with respect to a partner whose entire interest in the partnership terminates (whether by reason of death, liquidation, or otherwise).

(B) Disposition of less than entire interest

The taxable year of a partnership shall not close (other than at the end of a partnership's taxable year as determined under subsection (b)(1)) with respect to a partner who sells or exchanges less than his entire interest in the partnership or with respect to a partner whose interest is reduced (whether by entry of a new partner, partial liquidation of a partner's interest, gift, or otherwise).

(d) Determination of distributive share when partner's interest changes

(1) In general

Except as provided in paragraphs (2) and (3), if during any taxable year of the partnership there is a change in any partner's interest in the partnership, each partner's distributive share of any item of income, gain, loss, deduction, or credit of the partnership for such taxable year shall be determined by the use of any method prescribed by the Secretary by regulations which takes into account the varying interests of the partners in the partnership during such taxable year.

(2) Certain cash basis items prorated over period to which attributable

(A) In general

If during any taxable year of the partnership there is a change in any partner's interest in the partnership, then (except to the extent provided in regulations) each partner's distributive share of any allocable cash basis item shall be determined—

(i) by assigning the appropriate portion of such item to each day in the period to which it is attributable, and

(ii) by allocating the portion assigned to any such day among the partners in proportion to their interests in the partnership at the close of such day.

(B) Allocable cash basis item

For purposes of this paragraph, the term "allocable cash basis item" means any of the following items with respect to which the partnership uses the cash receipts and disbursements method of accounting:

(i) Interest.

(ii) Taxes.

(iii) Payments for services or for the use of property.

(iv) Any other item of a kind specified in regulations prescribed by the Secretary as being an item with respect to which the application of this paragraph is appropriate to avoid significant misstatements of the income of the partners.

(C) Items attributable to periods not within taxable year

If any portion of any allocable cash basis item is attributable to—

(i) any period before the beginning of the taxable year, such portion shall be assigned under subparagraph (A)(i) to the first day of the taxable year, or

(ii) any period after the close of the taxable year, such portion shall be assigned under subparagraph (A)(i) to the last day of the taxable year.

(D) Treatment of deductible items attributable to prior periods

If any portion of a deductible cash basis item is assigned under subparagraph (C)(i) to the first day of any taxable year—

(i) such portion shall be allocated among persons who are partners in the partnership during the period to which such portion is attributable in accordance with their varying interests in the partnership during such period, and

(ii) any amount allocated under clause (i) to a person who is not a partner in the partnership on such first day shall be capitalized by the partnership and treated in the manner provided for in section 755.

(3) Items attributable to interest in lower tier partnership prorated over entire taxable year

If—

(A) during any taxable year of the partnership there is a change in any partner's interest in the partnership (hereinafter in this paragraph referred to as the "upper tier partnership"), and

(B) such partnership is a partner in another partnership (hereinafter in this paragraph referred to as the "lower tier partnership"),

then (except to the extent provided in regulations) each partner's distributive share of any item of the upper tier partnership attributable to the lower tier partnership shall be determined by assigning the appropriate portion (determined by applying principles similar to the principles of subparagraphs (C) and (D) of paragraph (2)) of each such item to the appropriate days during which the upper tier partnership is a partner in the lower tier partnership and by allocating the portion assigned to any such day among the partners in proportion to their interests in the upper tier partnership at the close of such day.

(4) Taxable year determined without regard to subsection (c)(2)(A)

For purposes of this subsection, the taxable year of a partnership shall be determined without regard to subsection (c)(2)(A).

(Aug. 16, 1954, ch. 736, 68A Stat. 242; Pub. L. 94–455, title II, §213(c)(1), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1547, 1834; Pub. L. 98–369, div. A, title I, §72(a), (b), July 18, 1984, 98 Stat. 589, 591; Pub. L. 99–514, title VIII, §806(a), title XVIII, §1805(a), Oct. 22, 1986, 100 Stat. 2362, 2810; Pub. L. 100–647, title I, §1008(e)(1)–(3), Nov. 10, 1988, 102 Stat. 3439, 3440; Pub. L. 105–34, title V, §507(b)(2), title XII, §1246(a), (b), Aug. 5, 1997, 111 Stat. 857, 1030.)

REFERENCES IN TEXT

Section 584(h), referred to in subsec. (b)(5), was redesignated section 584(i) by Pub. L. 104–188, title I, §1805(a), 110 Stat. 1894.

AMENDMENTS

1997—Subsec. (b)(5). Pub. L. 105–34, §507(b)(2), substituted "section 644" for "section 645".

Subsec. (c)(2). Pub. L. 105–34, §1246(b), substituted "Treatment of dispositions" for "Partner who retires or sells interest in partnership" as heading.

Subsec. (c)(2)(A). Pub. L. 105–34, §1246(a), amended heading and text of subpar. (A) generally. Prior to amendment, text read as follows: "The taxable year of a partnership shall close—

"(i) with respect to a partner who sells or exchanges his entire interest in a partnership, and

"(ii) with respect to a partner whose interest is liquidated, except that the taxable year of a partnership with respect to a partner who dies shall not close prior to the end of the partnership's taxable year."

1988—Subsec. (b)(1)(B)(i). Pub. L. 100–647, §1008(e)(1)(A), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: "the taxable year of 1 or more of its partners who have an aggregate interest in partnership profits and capital of greater than 50 percent,".

Subsec. (b)(1)(B)(iii). Pub. L. 100–647, §1008(e)(2), substituted "unless the Secretary by regulations prescribes another period" for "or such other period as the Secretary may prescribe in regulations".

Subsec. (b)(4). Pub. L. 100–647, §1008(e)(1)(B), substituted "Majority interest taxable year; limitation on required changes" for "Application of majority interest rule" in heading and amended text generally. Prior to amendment, text read as follows: "Clause (i) of paragraph (1)(B) shall not apply to any taxable year of a partnership unless the period which constitutes the taxable year of 1 or more of its partners who have an aggregate interest in partnership profits and capital of greater than 50 percent has been the same for—

"(A) the 3-taxable year period of such partner or partners ending on or before the beginning of such taxable year of the partnership, or

"(B) if the partnership has not been in existence during all of such 3-taxable year period, the taxable years of such partner or partners ending with or within the period of existence.

This paragraph shall apply without regard to whether the same partners or interests are taken into account in determining the 50 percent interest during any period."

Subsec. (b)(5). Pub. L. 100–647, §1008(e)(3), added par. (5).

1986—Subsec. (b). Pub. L. 99–514, §806(a)(3), struck out "Adoption of" before "taxable year" in heading.

Subsec. (b)(1). Pub. L. 99–514, §806(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "The taxable year of a partnership shall be determined as though the partnership were a taxpayer. A partnership may not change to, or adopt, a taxable year other than that of all its principal partners unless it establishes, to the satisfaction of the Secretary, a business purpose therefor."

Subsec. (b)(4). Pub. L. 99–514, §806(a)(2), added par. (4).

Subsec. (d)(2)(A)(i). Pub. L. 99–514, §1805(a)(1)(A), substituted "such item" for "each such item".

Subsec. (d)(2)(B). Pub. L. 99–514, §1805(a)(1)(B), in introductory provisions, struck out "which are described in paragraph (1) and" after "the following items".

Subsec. (d)(2)(C)(i). Pub. L. 99–514, §1805(a)(2), substituted "the first day of the taxable year" for "the first day of such taxable year".

1984—Subsec. (c)(2)(A). Pub. L. 98–369, §72(b)(1), struck out last sentence providing that such partner's distributive share of item described in section 702(a) for such year shall be determined, under regulations prescribed by the Secretary, for the period ending with such sale, exchange, or liquidation.

Subsec. (c)(2)(B). Pub. L. 98–369, §72(b)(2), struck out ", but such partner's distributive share of items described in section 702(a) shall be determined by taking into account his varying interests in the partnership during the taxable year" after "otherwise)".

Subsec. (d). Pub. L. 98–369, §72(a), added subsec. (d).

1976—Subsec. (b)(1), (2). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (c)(2). Pub. L. 94–455, §§213(c)(1), 1906(b)(13)(A), substituted "or with respect to a partner whose interest is reduced (whether by entry of a new partner, partial liquidation of a partner's interest, gift, or otherwise)" for "or with respect to a partner whose interest is reduced", in par. (B), and struck out "or his delegate" after "Secretary" in par. (A).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 507(b)(2) of Pub. L. 105–34 applicable to sales or exchanges after Aug. 5, 1997, see section 507(c)(2) of Pub. L. 105–34, set out as a note under section 644 of this title.

Pub. L. 105–34, title XII, §1246(c), Aug. 5, 1997, 111 Stat. 1030, provided that: "The amendments made by this section [amending this section] shall apply to partnership taxable years beginning after December 31, 1997."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 806(a) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with special provisions applicable to taxpayers who are required to change their accounting periods, see section 806(e) of Pub. L. 99–514, set out as a note under section 1378 of this title.

Amendment by section 1805(a) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §72(c), July 18, 1984, 98 Stat. 591, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by this section [amending this section] shall apply—

"(1) in the case of items described in section 706(d)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)), to amounts attributable to periods after March 31, 1984, and

"(2) in the case of items described in section 706(d)(3) of such Code (as added by subsection (a)), to amounts paid or accrued by the other partnership after March 31, 1984."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 213(c)(1) of Pub. L. 94–455 applicable in the case of partnership taxable years beginning after Dec. 31, 1975, see section 213(f) of Pub. L. 94–455, set out as an Effective Date note under section 709 of this title.

CONSTRUCTION OF SECTION 806 OF PUB. L. 99–514

Nothing in section 806 of Pub. L. 99–514 or in any legislative history relating thereto to be construed as requiring the Secretary of the Treasury or his delegate to permit an automatic change of a taxable year, see section 1008(e)(9) of Pub. L. 100–647, set out as a note under section 1378 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[1] *See References in Text note below.*

§707. Transactions between partner and partnership

(a) Partner not acting in capacity as partner

(1) In general

If a partner engages in a transaction with a partnership other than in his capacity as a member of such partnership, the transaction shall, except as otherwise provided in this section, be considered as occurring between the partnership and one who is not a partner.

(2) Treatment of payments to partners for property or services

Under regulations prescribed by the Secretary—

(A) Treatment of certain services and transfers of property

If—

(i) a partner performs services for a partnership or transfers property to a partnership,

(ii) there is a related direct or indirect allocation and distribution to such partner, and

(iii) the performance of such services (or such transfer) and the allocation and distribution, when viewed together, are properly characterized as a transaction occurring between the

partnership and a partner acting other than in his capacity as a member of the partnership,

such allocation and distribution shall be treated as a transaction described in paragraph (1).

(B) Treatment of certain property transfers

If—

(i) there is a direct or indirect transfer of money or other property by a partner to a partnership,

(ii) there is a related direct or indirect transfer of money or other property by the partnership to such partner (or another partner), and

(iii) the transfers described in clauses (i) and (ii), when viewed together, are properly characterized as a sale or exchange of property,

such transfers shall be treated either as a transaction described in paragraph (1) or as a transaction between 2 or more partners acting other than in their capacity as members of the partnership.

(b) Certain sales or exchanges of property with respect to controlled partnerships

(1) Losses disallowed

No deduction shall be allowed in respect of losses from sales or exchanges of property (other than an interest in the partnership), directly or indirectly, between—

(A) a partnership and a person owning, directly or indirectly, more than 50 percent of the capital interest, or the profits interest, in such partnership, or

(B) two partnerships in which the same persons own, directly or indirectly, more than 50 percent of the capital interests or profits interests.

In the case of a subsequent sale or exchange by a transferee described in this paragraph, section 267(d) shall be applicable as if the loss were disallowed under section 267(a)(1). For purposes of section 267(a)(2), partnerships described in subparagraph (B) of this paragraph shall be treated as persons specified in section 267(b).

(2) Gains treated as ordinary income

In the case of a sale or exchange, directly or indirectly, of property, which in the hands of the transferee, is property other than a capital asset as defined in section 1221—

(A) between a partnership and a person owning, directly or indirectly, more than 50 percent of the capital interest, or profits interest, in such partnership, or

(B) between two partnerships in which the same persons own, directly or indirectly, more than 50 percent of the capital interest or profits interests,

any gain recognized shall be considered as ordinary income.

(3) Ownership of a capital or profits interest

For purposes of paragraphs (1) and (2) of this subsection, the ownership of a capital or profits interest in a partnership shall be determined in accordance with the rules for constructive ownership of stock provided in section 267(c) other than paragraph (3) of such section.

(c) Guaranteed payments

To the extent determined without regard to the income of the partnership, payments to a partner for services or the use of capital shall be considered as made to one who is not a member of the partnership, but only for the purposes of section 61(a) (relating to gross income) and, subject to section 263, for purposes of section 162(a) (relating to trade or business expenses).

(Aug. 16, 1954, ch. 736, 68A Stat. 243; Pub. L. 94–455, title II, §213(b)(3), title XIX, §1901(b)(3)(C), Oct. 4, 1976, 90 Stat. 1547, 1792; Pub. L. 98–369, div. A, title I, §73(a), July 18, 1984, 98 Stat. 591; Pub. L. 99–514, title VI, §642(a)(2), title XVIII, §§1805(b), 1812(c)(3)(A), (B), Oct. 22, 1986, 100 Stat. 2284, 2810, 2834.)

AMENDMENTS

1986—Subsec. (a)(2)(B)(iii). Pub. L. 99–514, §1805(b), substituted "sale or exchange of property" for "sale of property".

Subsec. (b)(1). Pub. L. 99–514, §1812(c)(3)(B), inserted at end "For purposes of section 267(a)(2), partnerships described in subparagraph (B) of this paragraph shall be treated as persons specified in section 267(b)."

Subsec. (b)(1)(A). Pub. L. 99–514, §1812(c)(3)(A), substituted "a person" for "a partner".

Subsec. (b)(2)(A). Pub. L. 99–514, §1812(c)(3)(A), substituted "a person" for "a partner".

Pub. L. 99–514, §642(a)(2), substituted "50 percent" for "80 percent".

Subsec. (b)(2)(B). Pub. L. 99–514, §642(a)(2), substituted "50 percent" for "80 percent".

1984—Subsec. (a). Pub. L. 98–369 designated existing provisions as par. (1) and added par. (2).

1976—Subsec. (b)(2). Pub. L. 94–455, §1901(b)(3)(C), substituted "as ordinary income" for "as gain from the sale or exchange of property other than a capital asset".

Subsec. (c). Pub. L. 94–455, §213(b)(3), substituted "and, subject to section 263, for purposes of section 162(a)" for "and section 162(a)".

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 642(a)(2) of Pub. L. 99–514 applicable to sales after Oct. 22, 1986, in taxable years ending after such date, but not applicable to sales made after Aug. 14, 1986, which are made pursuant to a binding contract in effect on Aug. 14, 1986, and at all times thereafter, see section 642(c) of Pub. L. 99–514, set out as a note under section 1239 of this title.

Amendment by sections 1805(b) and 1812(c)(3)(B) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Pub. L. 99–514, title XVIII, §1812(c)(3)(A), Oct. 22, 1986, 100 Stat. 2834, provided that the amendment made by that section is effective with respect to sales or exchanges after Sept. 27, 1985.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §73(b), July 18, 1984, 98 Stat. 592, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply—

"(A) in the case of arrangements described in section 707(a)(2)(A) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by subsection (a)), to services performed or property transferred after February 29, 1984, and

"(B) in the case of transfers described in section 707(a)(2)(B) of such Code (as so amended), to property transferred after March 31, 1984.

"(2) BINDING CONTRACT EXCEPTION.—The amendment made by subsection (a) shall not apply to a transfer of property described in section 707(a)(2)(B)(i) if such transfer is pursuant to a binding contract in effect on March 31, 1984, and at all times thereafter before the transfer.

"(3) EXCEPTION FOR CERTAIN TRANSFERS.—The amendment made by subsection (a) shall not apply to a transfer of property described in section 707(a)(2)(B)(i) that is made before December 31, 1984, if—

"(A) such transfer was proposed in a written private offering memorandum circulated before February 28, 1984;

"(B) the out-of-pocket costs incurred with respect to such offering exceeded $250,000 as of February 28, 1984;

"(C) the encumbrances placed on such property in anticipation of such transfer all constitute obligations for which neither the partnership nor any partner is liable; and

"(D) the transferor of such property is the sole general partner of the partnership."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 213(b)(3) of Pub. L. 94–455 applicable in the case of partnership taxable years beginning after Dec. 31, 1975, see section 213(f)(1) of Pub. L. 94–455, set out as an Effective Date note under section 709 of this title.

Amendment by section 1901(b)(3)(C) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§708. Continuation of partnership

(a) General rule

For purposes of this subchapter, an existing partnership shall be considered as continuing if it is not terminated.

(b) Termination

(1) General rule

For purposes of subsection (a), a partnership shall be considered as terminated only if—

(A) no part of any business, financial operation, or venture of the partnership continues to be carried on by any of its partners in a partnership, or

(B) within a 12-month period there is a sale or exchange of 50 percent or more of the total interest in partnership capital and profits.

(2) Special rules

(A) Merger or consolidation

In the case of the merger or consolidation of two or more partnerships, the resulting partnership shall, for purposes of this section, be considered the continuation of any merging or consolidating partnership whose members own an interest of more than 50 percent in the capital and profits of the resulting partnership.

(B) Division of a partnership

In the case of a division of a partnership into two or more partnerships, the resulting partnerships (other than any resulting partnership the members of which had an interest of 50 percent or less in the capital and profits of the prior partnership) shall, for purposes of this section, be considered a continuation of the prior partnership.

(Aug. 16, 1954, ch. 736, 68A Stat. 244.)

§709. Treatment of organization and syndication fees

(a) General rule

Except as provided in subsection (b), no deduction shall be allowed under this chapter to the partnership or to any partner for any amounts paid or incurred to organize a partnership or to promote the sale of (or to sell) an interest in such partnership.

(b) Deduction of organization fees

(1) Allowance of deduction

If a partnership elects the application of this subsection (in accordance with regulations prescribed by the Secretary) with respect to any organizational expenses—

(A) the partnership shall be allowed a deduction for the taxable year in which the partnership begins business in an amount equal to the lesser of—

(i) the amount of organizational expenses with respect to the partnership, or

(ii) $5,000, reduced (but not below zero) by the amount by which such organizational expenses exceed $50,000, and

(B) the remainder of such organizational expenses shall be allowed as a deduction ratably over the 180-month period beginning with the month in which the partnership begins business.

(2) Dispositions before close of amortization period

In any case in which a partnership is liquidated before the end of the period to which paragraph (1)(B) applies, any deferred expenses attributable to the partnership which were not allowed as a deduction by reason of this section may be deducted to the extent allowable under section 165.

(3) Organizational expenses defined

The organizational expenses to which paragraph (1) applies, are expenditures which—

(A) are incident to the creation of the partnership;

(B) are chargeable to capital account; and

(C) are of a character which, if expended incident to the creation of a partnership having an ascertainable life, would be amortized over such life.

(Added Pub. L. 94–455, title II, §213(b)(1), Oct. 4, 1976, 90 Stat. 1547; amended Pub. L. 108–357, title VIII, §902(c), Oct. 22, 2004, 118 Stat. 1651; Pub. L. 109–135, title IV, §403(ll), Dec. 21, 2005, 119 Stat. 2632.)

AMENDMENTS

2005—Subsec. (b)(1). Pub. L. 109–135 substituted "partnership" for "taxpayer" in introductory provisions and before "shall be allowed" in subpar. (A).

2004—Subsec. (b). Pub. L. 108–357 substituted "Deduction" for "Amortization" in heading, added par. (2), redesignated former par. (2) as (3), and amended heading and text of par. (1) generally. Prior to amendment, text of par. (1) read as follows: "Amounts paid or incurred to organize a partnership may, at the election of the partnership (made in accordance with regulations prescribed by the Secretary), be treated as deferred expenses. Such deferred expenses shall be allowed as a deduction ratably over such period of not less than 60 months as may be selected by the partnership (beginning with the month in which the partnership begins business), or if the partnership is liquidated before the end of such 60-month period, such deferred expenses (to the extent not deducted under this section) may be deducted to the extent provided in section 165."

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to amounts paid or incurred after Oct. 22, 2004, see section 902(d) of Pub. L. 108–357, set out as a note under section 195 of this title.

EFFECTIVE DATE

Pub. L. 94–455, title II, §213(f), Oct. 4, 1976, 90 Stat. 1548, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting this section and amending sections 179, 704, 706, 707, and 761 of this title] shall apply in the case of partnership taxable years beginning after December 31, 1975.

"(2) SUBSECTION (e).—The amendment made by subsection (e) [amending section 704 of this title] shall apply to liabilities incurred after December 31, 1976.

"(3) SECTION 709(b) OF THE CODE.—Section 709(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by the amendment made by subsection (b)(1) of this section) shall apply in the case of amounts paid or incurred in taxable years beginning after December 31, 1976."

PART II—CONTRIBUTIONS, DISTRIBUTIONS, AND TRANSFERS

Subpart

A. Contributions to a partnership.
B. Distributions by a partnership.
C. Transfers of interests in a partnership.
D. Provisions common to other subparts.

SUBPART A—CONTRIBUTIONS TO A PARTNERSHIP

Sec.
721. Nonrecognition of gain or loss on contribution.
722. Basis of contributing partner's interest.
723. Basis of property contributed to partnership.
724. Character of gain or loss on contributed unrealized receivables, inventory items, and capital loss property.

AMENDMENTS

1984—Pub. L. 98–369, div. A, title I, §74(c), July 18, 1984, 98 Stat. 593, added item 724.

§721. Nonrecognition of gain or loss on contribution

(a) General rule

No gain or loss shall be recognized to a partnership or to any of its partners in the case of a contribution of property to the partnership in exchange for an interest in the partnership.

(b) Special rule

Subsection (a) shall not apply to gain realized on a transfer of property to a partnership which would be treated as an investment company (within the meaning of section 351) if the partnership were incorporated.

(c) Regulations relating to certain transfers to partnerships

The Secretary may provide by regulations that subsection (a) shall not apply to gain realized on the transfer of property to a partnership if such gain, when recognized, will be includible in the gross income of a person other than a United States person.

(d) Transfers of intangibles

For regulatory authority to treat intangibles transferred to a partnership as sold, see section 367(d)(3).

(Aug. 16, 1954, ch. 736, 68A Stat. 245; Pub. L. 94–455, title XXI, §2131(b), Oct. 4, 1976, 90 Stat. 1924; Pub. L. 105–34, title XI, §1131(b)(3), (5)(B), Aug. 5, 1997, 111 Stat. 979, 980.)

CODIFICATION

Another section 1131(b) of Pub. L. 105–34 enacted section 684 of this title.

AMENDMENTS

1997—Subsec. (c). Pub. L. 105–34, §1131(b)(3), added subsec. (c).
Subsec. (d). Pub. L. 105–34, §1131(b)(5)(B), added subsec. (d).
1976—Pub. L. 94–455 designated existing provisions as subsec. (a), added subsec. (a) heading "General rule", and added subsec. (b).

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XXI, §2131(f)(3)–(5), Oct. 4, 1976, 90 Stat. 1924, 1925, provided that:
"(3) Except as provided in paragraph (4), the amendments made by subsections (b) and (c) [amending this section and sections 722 and 723 of this title] shall apply to transfers made after February 17, 1976, in taxable years ending after such date.
"(4) The amendments made by subsections (b) and (c) shall not apply to transfers to a partnership made on or before the 90th day after the date of the enactment of this Act [Oct. 4, 1976] if—
"(A) either—
"(i) a ruling request with respect to such transfers was filed with the Internal Revenue Service before March 27, 1976, or
"(ii) a registration statement with respect to such transfers was filed with the Securities and Exchange Commission before March 27, 1976,
"(B) the securities transferred were deposited on or before the 60th day after the date of the enactment of this Act [Oct. 4, 1976], and
"(C) either—

"(i) the aggregate value (determined as of the close of the 60th day referred to in subparagraph (B), or, if earlier, the close of the deposit period) of the securities so transferred does not exceed $100,000,000, or

"(ii) the securities transferred were all on deposit on February 29, 1976, pursuant to a registration statement referred to in subparagraph (A)(ii).

"(5) If no registration statement was required to be filed with the Securities and Exchange Commission with respect to the transfer of securities to any partnership, then paragraph (4) shall be applied to such transfers—

"(A) as if paragraph (4) did not contain subparagraph (A)(ii) thereof, and

"(B) by substituting '$25,000,000' for '$100,000,000' in subparagraph (C)(i) thereof."

§722. Basis of contributing partner's interest

The basis of an interest in a partnership acquired by a contribution of property, including money, to the partnership shall be the amount of such money and the adjusted basis of such property to the contributing partner at the time of the contribution increased by the amount (if any) of gain recognized under section 721(b) to the contributing partner at such time.

(Aug. 16, 1954, ch. 736, 68A Stat. 245; Pub. L. 94–455, title XXI, §2131(c), Oct. 4, 1976, 90 Stat. 1924; Pub. L. 98–369, div. A, title VII, §722(f)(1), July 18, 1984, 98 Stat. 974.)

AMENDMENTS

1984—Pub. L. 98–369 inserted "under section 721(b)" after "gain recognized".

1976—Pub. L. 94–455 inserted "increased by the amount (if any) of gain recognized to the contributing partner at such time" after "at the time of the contribution".

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title VII, §722(f)(2), July 18, 1984, 98 Stat. 974, provided that: "The amendments made by paragraph (1) [amending this section and section 723 of this title] shall take effect as if included in the amendments made by section 2131 of the Tax Reform Act of 1976 [Pub. L. 94–455]."

EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment made by Pub. L. 94–455, see section 2131(f)(3)–(5) of Pub. L. 94–455, set out as a note under section 721 of this title.

§723. Basis of property contributed to partnership

The basis of property contributed to a partnership by a partner shall be the adjusted basis of such property to the contributing partner at the time of the contribution increased by the amount (if any) of gain recognized under section 721(b) to the contributing partner at such time.

(Aug. 16, 1954, ch. 736, 68A Stat. 245; Pub. L. 94–455, title XXI, §2131(c), Oct. 4, 1976, 90 Stat. 1924; Pub. L. 98–369, div. A, title VII, §722(f)(1), July 18, 1984, 98 Stat. 974.)

AMENDMENTS

1984—Pub. L. 98–369 inserted "under section 721(b)" after "gain recognized".

1976—Pub. L. 94–455 inserted "increased by the amount (if any) of gain recognized to the contributing partner at such time" after "at the time of the contribution".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective as if included in amendments made by section 2131 of the Tax Reform Act of 1976, Pub. L. 94–455, see section 722(f)(2) of Pub. L. 98–369, set out as a note under section 722 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment made by Pub. L. 94–455, see section 2131(f)(3)–(5) of Pub. L. 94–455, set out as a note under section 721 of this title.

§724. Character of gain or loss on contributed unrealized receivables, inventory items, and capital loss property

(a) Contributions of unrealized receivables

In the case of any property which—

(1) was contributed to the partnership by a partner, and

(2) was an unrealized receivable in the hands of such partner immediately before such contribution,

any gain or loss recognized by the partnership on the disposition of such property shall be treated as ordinary income or ordinary loss, as the case may be.

(b) Contributions of inventory items

In the case of any property which—

(1) was contributed to the partnership by a partner, and

(2) was an inventory item in the hands of such partner immediately before such contribution,

any gain or loss recognized by the partnership on the disposition of such property during the 5-year period beginning on the date of such contribution shall be treated as ordinary income or ordinary loss, as the case may be.

(c) Contributions of capital loss property

In the case of any property which—

(1) was contributed by a partner to the partnership, and

(2) was a capital asset in the hands of such partner immediately before such contribution,

any loss recognized by the partnership on the disposition of such property during the 5-year period beginning on the date of such contribution shall be treated as a loss from the sale of a capital asset to the extent that, immediately before such contribution, the adjusted basis of such property in the hands of the partner exceeded the fair market value of such property.

(d) Definitions

For purposes of this section—

(1) Unrealized receivable

The term "unrealized receivable" has the meaning given such term by section 751(c) (determined by treating any reference to the partnership as referring to the partner).

(2) Inventory item

The term "inventory item" has the meaning given such term by section 751(d) (determined by treating any reference to the partnership as referring to the partner and by applying section 1231 without regard to any holding period therein provided).

(3) Substituted basis property

(A) In general

If any property described in subsection (a), (b), or (c) is disposed of in a nonrecognition transaction, the tax treatment which applies to such property under such subsection shall also apply to any substituted basis property resulting from such transaction. A similar rule shall also apply in the case of a series of non-recognition transactions.

(B) Exception for stock in C corporation

Subparagraph (A) shall not apply to any stock in a C corporation received in an exchange described in section 351.

(Added Pub. L. 98–369, div. A, title I, §74(a), July 18, 1984, 98 Stat. 592; amended Pub. L. 104–188, title I, §1704(t)(63), Aug. 20, 1996, 110 Stat. 1890; Pub. L. 105–34, title X, §1062(b)(3),

Aug. 5, 1997, 111 Stat. 947.)

AMENDMENTS

1997—Subsec. (d)(2). Pub. L. 105–34 substituted "section 751(d)" for "section 751(d)(2)".

1996—Subsec. (d)(3)(B). Pub. L. 104–188 substituted "Subparagraph" for "Subparagaph".

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title X, §1062(c), Aug. 5, 1997, 111 Stat. 947, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and sections 731, 732, 735, and 751 of this title] shall apply to sales, exchanges, and distributions after the date of the enactment of this Act [Aug. 5, 1997].

"(2) BINDING CONTRACTS.—The amendments made by this section shall not apply to any sale or exchange pursuant to a written binding contract in effect on June 8, 1997, and at all times thereafter before such sale or exchange."

EFFECTIVE DATE

Pub. L. 98–369, div. A, title I, §74(d)(1), July 18, 1984, 98 Stat. 594, provided that: "The amendment made by subsection (a) [enacting this section] shall apply to property contributed to a partnership after March 31, 1984, in taxable years ending after such date."

SUBPART B—DISTRIBUTIONS BY A PARTNERSHIP

Sec.

731. Extent of recognition of gain or loss on distribution.

732. Basis of distributed property other than money.

733. Basis of distributee partner's interest.

734. Adjustment to basis of undistributed partnership property where section 754 election or substantial basis reduction.

735. Character of gain or loss on disposition of distributed property.

736. Payments to a retiring partner or a deceased partner's successor in interest.

737. Recognition of precontribution gain in case of certain distributions to contributing partner.

AMENDMENTS

2004—Pub. L. 108–357, title VIII, §833(c)(5)(B), Oct. 22, 2004, 118 Stat. 1592, substituted "Adjustment to basis of undistributed partnership property where section 754 election or substantial basis reduction" for "Optional adjustment to basis of undistributed partnership property" in item 734.

1992—Pub. L. 102–486, title XIX, §1937(b)(3), Oct. 24, 1992, 106 Stat. 3033, added item 737.

§731. Extent of recognition of gain or loss on distribution

(a) Partners

In the case of a distribution by a partnership to a partner—

(1) gain shall not be recognized to such partner, except to the extent that any money distributed exceeds the adjusted basis of such partner's interest in the partnership immediately before the distribution, and

(2) loss shall not be recognized to such partner, except that upon a distribution in liquidation of a partner's interest in a partnership where no property other than that described in subparagraph (A) or (B) is distributed to such partner, loss shall be recognized to the extent of the excess of the adjusted basis of such partner's interest in the partnership over the sum of—

(A) any money distributed, and

(B) the basis to the distributee, as determined under section 732, of any unrealized receivables (as defined in section 751(c)) and inventory (as defined in section 751(d)).

Any gain or loss recognized under this subsection shall be considered as gain or loss from the sale or exchange of the partnership interest of the distributee partner.

(b) Partnerships

No gain or loss shall be recognized to a partnership on a distribution to a partner of property, including money.

(c) Treatment of marketable securities

(1) In general

For purposes of subsection (a)(1) and section 737—

(A) the term "money" includes marketable securities, and

(B) such securities shall be taken into account at their fair market value as of the date of the distribution.

(2) Marketable securities

For purposes of this subsection:

(A) In general

The term "marketable securities" means financial instruments and foreign currencies which are, as of the date of the distribution, actively traded (within the meaning of section 1092(d)(1)).

(B) Other property

Such term includes—

(i) any interest in—

(I) a common trust fund, or

(II) a regulated investment company which is offering for sale or has outstanding any redeemable security (as defined in section 2(a)(32) of the Investment Company Act of 1940) of which it is the issuer,

(ii) any financial instrument which, pursuant to its terms or any other arrangement, is readily convertible into, or exchangeable for, money or marketable securities,

(iii) any financial instrument the value of which is determined substantially by reference to marketable securities,

(iv) except to the extent provided in regulations prescribed by the Secretary, any interest in a precious metal which, as of the date of the distribution, is actively traded (within the meaning of section 1092(d)(1)) unless such metal was produced, used, or held in the active conduct of a trade or business by the partnership,

(v) except as otherwise provided in regulations prescribed by the Secretary, interests in any entity if substantially all of the assets of such entity consist (directly or indirectly) of marketable securities, money, or both, and

(vi) to the extent provided in regulations prescribed by the Secretary, any interest in an entity not described in clause (v) but only to the extent of the value of such interest which is attributable to marketable securities, money, or both.

(C) Financial instrument

The term "financial instrument" includes stocks and other equity interests, evidences of indebtedness, options, forward or futures contracts, notional principal contracts, and derivatives.

(3) Exceptions

(A) In general

Paragraph (1) shall not apply to the distribution from a partnership of a marketable security to a partner if—

(i) the security was contributed to the partnership by such partner, except to the extent that the value of the distributed security is attributable to marketable securities or money contributed (directly or indirectly) to the entity to which the distributed security relates,

(ii) to the extent provided in regulations prescribed by the Secretary, the property was not a marketable security when acquired by such partnership, or

(iii) such partnership is an investment partnership and such partner is an eligible partner thereof.

(B) Limitation on gain recognized

In the case of a distribution of marketable securities to a partner, the amount taken into account under paragraph (1) shall be reduced (but not below zero) by the excess (if any) of—

(i) such partner's distributive share of the net gain which would be recognized if all of the marketable securities of the same class and issuer as the distributed securities held by the partnership were sold (immediately before the transaction to which the distribution relates) by the partnership for fair market value, over

(ii) such partner's distributive share of the net gain which is attributable to the marketable securities of the same class and issuer as the distributed securities held by the partnership immediately after the transaction, determined by using the same fair market value as used under clause (i).

Under regulations prescribed by the Secretary, all marketable securities held by the partnership may be treated as marketable securities of the same class and issuer as the distributed securities.

(C) Definitions relating to investment partnerships

For purposes of subparagraph (A)(iii):

(i) Investment partnership

The term "investment partnership" means any partnership which has never been engaged in a trade or business and substantially all of the assets (by value) of which have always consisted of—

(I) money,

(II) stock in a corporation,

(III) notes, bonds, debentures, or other evidences of indebtedness,

(IV) interest rate, currency, or equity notional principal contracts,

(V) foreign currencies,

(VI) interests in or derivative financial instruments (including options, forward or futures contracts, short positions, and similar financial instruments) in any asset described in any other subclause of this clause or in any commodity traded on or subject to the rules of a board of trade or commodity exchange,

(VII) other assets specified in regulations prescribed by the Secretary, or

(VIII) any combination of the foregoing.

(ii) Exception for certain activities

A partnership shall not be treated as engaged in a trade or business by reason of—

(I) any activity undertaken as an investor, trader, or dealer in any asset described in clause (i), or

(II) any other activity specified in regulations prescribed by the Secretary.

(iii) Eligible partner

(I) In general

The term "eligible partner" means any partner who, before the date of the distribution, did not contribute to the partnership any property other than assets described in clause (i).

(II) Exception for certain nonrecognition transactions

The term "eligible partner" shall not include the transferor or transferee in a nonrecognition transaction involving a transfer of any portion of an interest in a partnership with respect to which the transferor was not an eligible partner.

(iv) Look-thru of partnership tiers

Except as otherwise provided in regulations prescribed by the Secretary—

(I) a partnership shall be treated as engaged in any trade or business engaged in by, and as holding (instead of a partnership interest) a proportionate share of the assets of, any other partnership in which the partnership holds a partnership interest, and

(II) a partner who contributes to a partnership an interest in another partnership shall be treated as contributing a proportionate share of the assets of the other partnership.

If the preceding sentence does not apply under such regulations with respect to any interest held by a partnership in another partnership, the interest in such other partnership shall be treated as if it were specified in a subclause of clause (i).

(4) Basis of securities distributed

(A) In general

The basis of marketable securities with respect to which gain is recognized by reason of this subsection shall be—

(i) their basis determined under section 732, increased by

(ii) the amount of such gain.

(B) Allocation of basis increase

Any increase in basis attributable to the gain described in subparagraph (A)(ii) shall be allocated to marketable securities in proportion to their respective amounts of unrealized appreciation before such increase.

(5) Subsection disregarded in determining basis of partner's interest in partnership and of basis of partnership property

Sections 733 and 734 shall be applied as if no gain were recognized, and no adjustment were made to the basis of property, under this subsection.

(6) Character of gain recognized

In the case of a distribution of a marketable security which is an unrealized receivable (as defined in section 751(c)) or an inventory item (as defined in section 751(d)), any gain recognized under this subsection shall be treated as ordinary income to the extent of any increase in the basis of such security attributable to the gain described in paragraph (4)(A)(ii).

(7) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection, including regulations to prevent the avoidance of such purposes.

(d) Exceptions

This section shall not apply to the extent otherwise provided by section 736 (relating to payments to a retiring partner or a deceased partner's successor in interest), section 751 (relating to unrealized receivables and inventory items), and section 737 (relating to recognition of precontribution gain in case of certain distributions).

(Aug. 16, 1954, ch. 736, 68A Stat. 245; Pub. L. 102–486, title XIX, §1937(b)(2), Oct. 24, 1992, 106 Stat. 3033; Pub. L. 103–465, title VII, §741(a), Dec. 8, 1994, 108 Stat. 5006; Pub. L. 105–34, title X, §1062(b)(3), Aug. 5, 1997, 111 Stat. 947.)

REFERENCES IN TEXT

Section 2(a)(32) of the Investment Company Act of 1940, referred to in subsec. (c)(2)(B)(i)(II), is classified to section 80a–2(a)(32) of Title 15, Commerce and Trade.

AMENDMENTS

1997—Subsecs. (a)(2)(B), (c)(6). Pub. L. 105–34 substituted "section 751(d)" for "section 751(d)(2)".

1994—Subsecs. (c), (d). Pub. L. 103–465 added subsec. (c) and redesignated former subsec. (c) as (d).

1992—Subsec. (c). Pub. L. 102–486 substituted ", section 751" for "and section 751" and inserted before period at end ", and section 737 (relating to recognition of precontribution gain in case of certain

distributions)".

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to sales, exchanges, and distributions after Aug. 5, 1997, but not applicable to any sale or exchange pursuant to a written binding contract in effect on June 8, 1997, and at all times thereafter before such sale or exchange, see section 1062(c) of Pub. L. 105–34, set out as a note under section 724 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103–465, title VII, §741(c), Dec. 8, 1994, 108 Stat. 5009, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and section 737 of this title] shall apply to distributions after the date of the enactment of this Act [Dec. 8, 1994].

"(2) CERTAIN DISTRIBUTIONS BEFORE JANUARY 1, 1995.—The amendments made by this section shall not apply to any marketable security distributed before January 1, 1995, by the partnership which held such security on July 27, 1994.

"(3) DISTRIBUTIONS IN LIQUIDATION OF PARTNER'S INTEREST.—The amendments made by this section shall not apply to the distribution of a marketable security in liquidation of a partner's interest in a partnership if—

"(A) such liquidation is pursuant to a written contract which was binding on July 15, 1994, and at all times thereafter before the distribution, and

"(B) such contract provides for the purchase of such interest not later than a date certain for—

"(i) a fixed value of marketable securities that are specified in the contract, or

"(ii) other property.

The preceding sentence shall not apply if the partner has the right to elect that such distribution be made other than in marketable securities.

"(4) DISTRIBUTIONS IN COMPLETE LIQUIDATION OF PUBLICLY TRADED PARTNERSHIPS.—

"(A) IN GENERAL.—The amendments made by this section shall not apply to the distribution of a marketable security in a qualified partnership liquidation if—

"(i) the marketable securities were received by the partnership in a nonrecognition transaction in exchange for substantially all of the assets of the partnership,

"(ii) the marketable securities are distributed by the partnership within 90 days after their receipt by the partnership, and

"(iii) the partnership is liquidated before the beginning of the 1st taxable year of the partnership beginning after December 31, 1997.

"(B) QUALIFIED PARTNERSHIP LIQUIDATION.—For purposes of subparagraph (A), the term 'qualified partnership liquidation' means—

"(i) a complete liquidation of a publicly traded partnership (as defined in section 7704(b) of the Internal Revenue Code of 1986) which is an existing partnership (as defined in section 10211(c)(2) of the Revenue Act of 1987 [Pub. L. 100–203, set out as an Effective Date note under section 7704 of this title]), and

"(ii) a complete liquidation of a partnership which is related to a partnership described in clause (i) if such liquidation is related to a complete liquidation of the partnership described in clause (i).

"(5) MARKETABLE SECURITIES.—For purposes of this subsection, the term 'marketable securities' has the meaning given such term by section 731(c) of the Internal Revenue Code of 1986, as added by this section."

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–486 applicable to distributions on or after June 25, 1992, see section 1937(c) of Pub. L. 102–486, set out as a note under section 704 of this title.

§732. Basis of distributed property other than money

(a) Distributions other than in liquidation of a partner's interest

(1) General rule

The basis of property (other than money) distributed by a partnership to a partner other than in liquidation of the partner's interest shall, except as provided in paragraph (2), be its adjusted basis

to the partnership immediately before such distribution.

(2) Limitation

The basis to the distributee partner of property to which paragraph (1) is applicable shall not exceed the adjusted basis of such partner's interest in the partnership reduced by any money distributed in the same transaction.

(b) Distributions in liquidation

The basis of property (other than money) distributed by a partnership to a partner in liquidation of the partner's interest shall be an amount equal to the adjusted basis of such partner's interest in the partnership reduced by any money distributed in the same transaction.

(c) Allocation of basis

(1) In general

The basis of distributed properties to which subsection (a)(2) or (b) is applicable shall be allocated—

(A)(i) first to any unrealized receivables (as defined in section 751(c)) and inventory items (as defined in section 751(d)) in an amount equal to the adjusted basis of each such property to the partnership, and

(ii) if the basis to be allocated is less than the sum of the adjusted bases of such properties to the partnership, then, to the extent any decrease is required in order to have the adjusted bases of such properties equal the basis to be allocated, in the manner provided in paragraph (3), and

(B) to the extent of any basis remaining after the allocation under subparagraph (A), to other distributed properties—

(i) first by assigning to each such other property such other property's adjusted basis to the partnership, and

(ii) then, to the extent any increase or decrease in basis is required in order to have the adjusted bases of such other distributed properties equal such remaining basis, in the manner provided in paragraph (2) or (3), whichever is appropriate.

(2) Method of allocating increase

Any increase required under paragraph (1)(B) shall be allocated among the properties—

(A) first to properties with unrealized appreciation in proportion to their respective amounts of unrealized appreciation before such increase (but only to the extent of each property's unrealized appreciation), and

(B) then, to the extent such increase is not allocated under subparagraph (A), in proportion to their respective fair market values.

(3) Method of allocating decrease

Any decrease required under paragraph (1)(A) or (1)(B) shall be allocated—

(A) first to properties with unrealized depreciation in proportion to their respective amounts of unrealized depreciation before such decrease (but only to the extent of each property's unrealized depreciation), and

(B) then, to the extent such decrease is not allocated under subparagraph (A), in proportion to their respective adjusted bases (as adjusted under subparagraph (A)).

(d) Special partnership basis to transferee

For purposes of subsections (a), (b), and (c), a partner who acquired all or a part of his interest by a transfer with respect to which the election provided in section 754 is not in effect, and to whom a distribution of property (other than money) is made with respect to the transferred interest within 2 years after such transfer, may elect, under regulations prescribed by the Secretary, to treat as the adjusted partnership basis of such property the adjusted basis such property would have if the adjustment provided in section 743(b) were in effect with respect to the partnership property. The Secretary may by regulations require the application of this subsection in the case of a distribution to a transferee partner, whether or not made within 2 years after the transfer, if at the time of the

transfer the fair market value of the partnership property (other than money) exceeded 110 percent of its adjusted basis to the partnership.

(e) Exception

This section shall not apply to the extent that a distribution is treated as a sale or exchange of property under section 751(b) (relating to unrealized receivables and inventory items).

(f) Corresponding adjustment to basis of assets of a distributed corporation controlled by a corporate partner

(1) In general

If—

(A) a corporation (hereafter in this subsection referred to as the "corporate partner") receives a distribution from a partnership of stock in another corporation (hereafter in this subsection referred to as the "distributed corporation"),

(B) the corporate partner has control of the distributed corporation immediately after the distribution or at any time thereafter, and

(C) the partnership's adjusted basis in such stock immediately before the distribution exceeded the corporate partner's adjusted basis in such stock immediately after the distribution,

then an amount equal to such excess shall be applied to reduce (in accordance with subsection (c)) the basis of property held by the distributed corporation at such time (or, if the corporate partner does not control the distributed corporation at such time, at the time the corporate partner first has such control).

(2) Exception for certain distributions before control acquired

Paragraph (1) shall not apply to any distribution of stock in the distributed corporation if—

(A) the corporate partner does not have control of such corporation immediately after such distribution, and

(B) the corporate partner establishes to the satisfaction of the Secretary that such distribution was not part of a plan or arrangement to acquire control of the distributed corporation.

(3) Limitations on basis reduction

(A) In general

The amount of the reduction under paragraph (1) shall not exceed the amount by which the sum of the aggregate adjusted bases of the property and the amount of money of the distributed corporation exceeds the corporate partner's adjusted basis in the stock of the distributed corporation.

(B) Reduction not to exceed adjusted basis of property

No reduction under paragraph (1) in the basis of any property shall exceed the adjusted basis of such property (determined without regard to such reduction).

(4) Gain recognition where reduction limited

If the amount of any reduction under paragraph (1) (determined after the application of paragraph (3)(A)) exceeds the aggregate adjusted bases of the property of the distributed corporation—

(A) such excess shall be recognized by the corporate partner as long-term capital gain, and

(B) the corporate partner's adjusted basis in the stock of the distributed corporation shall be increased by such excess.

(5) Control

For purposes of this subsection, the term "control" means ownership of stock meeting the requirements of section 1504(a)(2).

(6) Indirect distributions

For purposes of paragraph (1), if a corporation acquires (other than in a distribution from a

partnership) stock the basis of which is determined (by reason of being distributed from a partnership) in whole or in part by reference to subsection (a)(2) or (b), the corporation shall be treated as receiving a distribution of such stock from a partnership.

(7) Special rule for stock in controlled corporation

If the property held by a distributed corporation is stock in a corporation which the distributed corporation controls, this subsection shall be applied to reduce the basis of the property of such controlled corporation. This subsection shall be reapplied to any property of any controlled corporation which is stock in a corporation which it controls.

(8) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including regulations to avoid double counting and to prevent the abuse of such purposes.

(Aug. 16, 1954, ch. 736, 68A Stat. 246; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 105–34, title X, §§1061(a), 1062(b)(3), Aug. 5, 1997, 111 Stat. 945, 947; Pub. L. 106–170, title V, §538(a), Dec. 17, 1999, 113 Stat. 1939.)

AMENDMENTS

1999—Subsec. (f). Pub. L. 106–170 added subsec. (f).

1997—Subsec. (c). Pub. L. 105–34, §1061(a), amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: "The basis of distributed properties to which subsection (a)(2) or subsection (b) is applicable shall be allocated—

"(1) first to any unrealized receivables (as defined in section 751(c)) and inventory items (as defined in section 751(d)(2)) in an amount equal to the adjusted basis of each such property to the partnership (or if the basis to be allocated is less than the sum of the adjusted bases of such properties to the partnership, in proportion to such bases), and

"(2) to the extent of any remaining basis, to any other distributed properties in proportion to their adjusted bases to the partnership."

Subsec. (c)(1)(A)(i). Pub. L. 105–34, §1062(b)(3), substituted "section 751(d)" for "section 751(d)(2)".

1976—Subsec. (d). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title V, §538(b), Dec. 17, 1999, 113 Stat. 1940, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by this section [amending this section] shall apply to distributions made after July 14, 1999.

"(2) PARTNERSHIPS IN EXISTENCE ON JULY 14, 1999.—In the case of a corporation which is a partner in a partnership as of July 14, 1999, the amendment made by this section shall apply to any distribution made (or treated as made) to such partner from such partnership after June 30, 2001, except that this paragraph shall not apply to any distribution after the date of the enactment of this Act [Dec. 17, 1999] unless the partner makes an election to have this paragraph apply to such distribution on the partner's return of Federal income tax for the taxable year in which such distribution occurs."

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title X, §1061(b), Aug. 5, 1997, 111 Stat. 946, provided that: "The amendment made by subsection (a) [amending this section] shall apply to distributions after the date of the enactment of this Act [Aug. 5, 1997]."

Amendment by section 1062(b)(3) of Pub. L. 105–34 applicable to sales, exchanges, and distributions after Aug. 5, 1997, but not applicable to any sale or exchange pursuant to a written binding contract in effect on June 8, 1997, and at all times thereafter before such sale or exchange, see section 1062(c) of Pub. L. 105–34, set out as a note under section 724 of this title.

§733. Basis of distributee partner's interest

In the case of a distribution by a partnership to a partner other than in liquidation of a partner's interest, the adjusted basis to such partner of his interest in the partnership shall be reduced (but not below zero) by—

(1) the amount of any money distributed to such partner, and

(2) the amount of the basis to such partner of distributed property other than money, as determined under section 732.

(Aug. 16, 1954, ch. 736, 68A Stat. 247.)

§734. Adjustment to basis of undistributed partnership property where section 754 election or substantial basis reduction

(a) General rule

The basis of partnership property shall not be adjusted as the result of a distribution of property to a partner unless the election, provided in section 754 (relating to optional adjustment to basis of partnership property), is in effect with respect to such partnership or unless there is a substantial basis reduction with respect to such distribution.

(b) Method of adjustment

In the case of a distribution of property to a partner by a partnership with respect to which the election provided in section 754 is in effect or with respect to which there is a substantial basis reduction, the partnership shall—

(1) increase the adjusted basis of partnership property by—

(A) the amount of any gain recognized to the distributee partner with respect to such distribution under section 731(a)(1), and

(B) in the case of distributed property to which section 732(a)(2) or (b) applies, the excess of the adjusted basis of the distributed property to the partnership immediately before the distribution (as adjusted by section 732(d)) over the basis of the distributed property to the distributee, as determined under section 732, or

(2) decrease the adjusted basis of partnership property by—

(A) the amount of any loss recognized to the distributee partner with respect to such distribution under section 731(a)(2), and

(B) in the case of distributed property to which section 732(b) applies, the excess of the basis of the distributed property to the distributee, as determined under section 732, over the adjusted basis of the distributed property to the partnership immediately before such distribution (as adjusted by section 732(d)).

Paragraph (1)(B) shall not apply to any distributed property which is an interest in another partnership with respect to which the election provided in section 754 is not in effect.

(c) Allocation of basis

The allocation of basis among partnership properties where subsection (b) is applicable shall be made in accordance with the rules provided in section 755.

(d) Substantial basis reduction

(1) In general

For purposes of this section, there is a substantial basis reduction with respect to a distribution if the sum of the amounts described in subparagraphs (A) and (B) of subsection (b)(2) exceeds $250,000.

(2) Regulations

For regulations to carry out this subsection, see section 743(d)(2).

(e) Exception for securitization partnerships

For purposes of this section, a securitization partnership (as defined in section 743(f)) shall not be treated as having a substantial basis reduction with respect to any distribution of property to a partner.

(Aug. 16, 1954, ch. 736, 68A Stat. 247; Pub. L. 98–369, div. A, title I, §78(a), July 18, 1984, 98 Stat. 597; Pub. L. 108–357, title VIII, §833(c)(1)–(5)(A), Oct. 22, 2004, 118 Stat. 1591, 1592; Pub. L. 109–135, title IV, §403(bb), Dec. 21, 2005, 119 Stat. 2630.)

AMENDMENTS

2005—Subsec. (a). Pub. L. 109–135, §403(bb)(1), inserted "with respect to such distribution" before period at end.

Subsec. (b). Pub. L. 109–135, §403(bb)(2), reenacted heading without change and amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: "In the case of a distribution of property to a partner, a partnership, with respect to which the election provided in section 754 is in effect or unless there is a substantial basis reduction, shall—".

2004—Pub. L. 108–357, §833(c)(5)(A), substituted "Adjustment to basis of undistributed partnership property where section 754 election or substantial basis reduction" for "Optional adjustment to basis of undistributed partnership property" in section catchline.

Subsec. (a). Pub. L. 108–357, §833(c)(1), inserted "or unless there is a substantial basis reduction" before period at end.

Subsec. (b). Pub. L. 108–357, §833(c)(2), inserted "or unless there is a substantial basis reduction" after "section 754 is in effect" in introductory provisions.

Subsec. (d). Pub. L. 108–357, §833(c)(3), added subsec. (d).

Subsec. (e). Pub. L. 108–357, §833(c)(4), added subsec. (e).

1984—Subsec. (b). Pub. L. 98–369 inserted at end "Paragraph (1)(B) shall not apply to any distributed property which is an interest in another partnership with respect to which the election provided in section 754 is not in effect."

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §833(d)(3), Oct. 22, 2004, 118 Stat. 1592, provided that: "The amendments made by subsection (c) [amending this section] shall apply to distributions after the date of the enactment of this Act [Oct. 22, 2004]."

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §78(b), July 18, 1984, 98 Stat. 597, provided that: "The amendment made by subsection (a) [amending this section] shall apply to distributions after March 1, 1984, in taxable years ending after such date."

§735. Character of gain or loss on disposition of distributed property

(a) Sale or exchange of certain distributed property

(1) Unrealized receivables

Gain or loss on the disposition by a distributee partner of unrealized receivables (as defined in section 751(c)) distributed by a partnership, shall be considered as ordinary income or as ordinary loss, as the case may be.

(2) Inventory items

Gain or loss on the sale or exchange by a distributee partner of inventory items (as defined in section 751(d)) distributed by a partnership shall, if sold or exchanged within 5 years from the date of the distribution, be considered as ordinary income or as ordinary loss, as the case may be.

(b) Holding period for distributed property

In determining the period for which a partner has held property received in a distribution from a partnership (other than for purposes of subsection (a)(2)), there shall be included the holding period of the partnership, as determined under section 1223, with respect to such property.

(c) Special rules

(1) Waiver of holding periods contained in section 1231

For purposes of this section, section 751(d) (defining inventory item) shall be applied without regard to any holding period in section 1231(b).

(2) Substituted basis property

(A) In general

If any property described in subsection (a) is disposed of in a nonrecognition transaction, the tax treatment which applies to such property under such subsection shall also apply to any substituted basis property resulting from such transaction. A similar rule shall also apply in the case of a series of nonrecognition transactions.

(B) Exception for stock in C corporation

Subparagraph (A) shall not apply to any stock in a C corporation received in an exchange described in section 351.

(Aug. 16, 1954, ch. 763, 68A Stat. 247; Pub. L. 94–455, title XIX, §1901(b)(3)(D), Oct. 4, 1976, 90 Stat. 1792; Pub. L. 98–369, div. A, title I, §74(b), July 18, 1984, 98 Stat. 593; Pub. L. 105–34, title X, §1062(b)(3), Aug. 5, 1997, 111 Stat. 947.)

AMENDMENTS

1997—Subsecs. (a)(2), (c)(1). Pub. L. 105–34 substituted "section 751(d)" for "section 751(d)(2)".

1984—Subsec. (c). Pub. L. 98–369 added subsec. (c).

1976—Subsec. (a)(1), (2). Pub. L. 94–455 substituted "as ordinary income or as ordinary loss, as the case may be" for "gain or loss from the sale or exchange of property other than a capital asset".

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to sales, exchanges, and distributions after Aug. 5, 1997, but not applicable to any sale or exchange pursuant to a written binding contract in effect on June 8, 1997, and at all times thereafter before such sale or exchange, see section 1062(c) of Pub. L. 105–34, set out as a note under section 724 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §74(d)(2), July 18, 1984, 98 Stat. 594, provided that: "The amendment made by subsection (b) [amending this section] shall apply to property distributed after March 31, 1984, in taxable years ending after such date."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

§736. Payments to a retiring partner or a deceased partner's successor in interest

(a) Payments considered as distributive share or guaranteed payment

Payments made in liquidation of the interest of a retiring partner or a deceased partner shall, except as provided in subsection (b), be considered—

(1) as a distributive share to the recipient of partnership income if the amount thereof is determined with regard to the income of the partnership, or

(2) as a guaranteed payment described in section 707(c) if the amount thereof is determined without regard to the income of the partnership.

(b) Payments for interest in partnership

(1) General rule

Payments made in liquidation of the interest of a retiring partner or a deceased partner shall, to the extent such payments (other than payments described in paragraph (2)) are determined, under

regulations prescribed by the Secretary, to be made in exchange for the interest of such partner in partnership property, be considered as a distribution by the partnership and not as a distributive share or guaranteed payment under subsection (a).

(2) Special rules

For purposes of this subsection, payments in exchange for an interest in partnership property shall not include amounts paid for—

(A) unrealized receivables of the partnership (as defined in section 751(c)), or

(B) good will of the partnership, except to the extent that the partnership agreement provides for a payment with respect to good will.

(3) Limitation on application of paragraph (2)

Paragraph (2) shall apply only if—

(A) capital is not a material income-producing factor for the partnership, and

(B) the retiring or deceased partner was a general partner in the partnership.

(Aug. 16, 1954, ch. 736, 68A Stat. 248; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–600, title VII, §701(u)(13)(B), Nov. 6, 1978, 92 Stat. 2918; Pub. L. 103–66, title XIII, §13262(a), (b)(2)(B), Aug. 10, 1993, 107 Stat. 541.)

AMENDMENTS

1993—Subsec. (b)(3). Pub. L. 103–66, §13262(a), added par. (3).

Subsec. (c). Pub. L. 103–66, §13262(b)(2)(B), struck out heading and text of subsec. (c). Text read as follows: "For limitation on the tax attributable to certain gain connected with section 1248 stock, see section 751(e)."

1978—Subsec. (c). Pub. L. 95–600 added subsec. (c).

1976—Subsec. (b)(1). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13262(c), Aug. 10, 1993, 107 Stat. 541, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and section 751 of this title] shall apply in the case of partners retiring or dying on or after January 5, 1993.

"(2) BINDING CONTRACT EXCEPTION.—The amendments made by this section shall not apply to any partner retiring on or after January 5, 1993, if a written contract to purchase such partner's interest in the partnership was binding on January 4, 1993, and at all times thereafter before such purchase."

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable to transfers beginning after Oct. 9, 1975, and to sales, exchanges, and distributions taking place after Oct. 9, 1975, see section 701(u)(13)(C) of Pub. L. 95–600, set out as a note under section 751 of this title.

§737. Recognition of precontribution gain in case of certain distributions to contributing partner

(a) General rule

In the case of any distribution by a partnership to a partner, such partner shall be treated as recognizing gain in an amount equal to the lesser of—

(1) the excess (if any) of (A) the fair market value of property (other than money) received in the distribution over (B) the adjusted basis of such partner's interest in the partnership immediately before the distribution reduced (but not below zero) by the amount of money received in the distribution, or

(2) the net precontribution gain of the partner.

Gain recognized under the preceding sentence shall be in addition to any gain recognized under section 731. The character of such gain shall be determined by reference to the proportionate character of the net precontribution gain.

(b) Net precontribution gain

For purposes of this section, the term "net precontribution gain" means the net gain (if any) which would have been recognized by the distributee partner under section 704(c)(1)(B) if all property which—

(1) had been contributed to the partnership by the distributee partner within 7 years of the distribution, and

(2) is held by such partnership immediately before the distribution,

had been distributed by such partnership to another partner.

(c) Basis rules

(1) Partner's interest

The adjusted basis of a partner's interest in a partnership shall be increased by the amount of any gain recognized by such partner under subsection (a). For purposes of determining the basis of the distributed property (other than money), such increase shall be treated as occurring immediately before the distribution.

(2) Partnership's basis in contributed property

Appropriate adjustments shall be made to the adjusted basis of the partnership in the contributed property referred to in subsection (b) to reflect gain recognized under subsection (a).

(d) Exceptions

(1) Distributions of previously contributed property

If any portion of the property distributed consists of property which had been contributed by the distributee partner to the partnership, such property shall not be taken into account under subsection (a)(1) and shall not be taken into account in determining the amount of the net precontribution gain. If the property distributed consists of an interest in an entity, the preceding sentence shall not apply to the extent that the value of such interest is attributable to property contributed to such entity after such interest had been contributed to the partnership.

(2) Coordination with section 751

This section shall not apply to the extent section 751(b) applies to such distribution.

(e) Marketable securities treated as money

For treatment of marketable securities as money for purposes of this section, see section 731(c).

(Added Pub. L. 102–486, title XIX, §1937(a), Oct. 24, 1992, 106 Stat. 3032; amended Pub. L. 103–465, title VII, §741(b), Dec. 8, 1994, 108 Stat. 5009; Pub. L. 104–188, title I, §1704(j)(8), Aug. 20, 1996, 110 Stat. 1882; Pub. L. 105–34, title X, §1063(a), Aug. 5, 1997, 111 Stat. 947.)

AMENDMENTS

1997—Subsec. (b)(1). Pub. L. 105–34 substituted "7 years" for "5 years".

1996—Pub. L. 104–188 provided that section 1937(a) of Pub. L. 102–486, shall be applied as if "Subpart B" appeared instead of "Subpart C". Section 1937(a) of Pub. L. 102–486 directed amendment of subpart C of this part by adding this section at the end thereof.

1994—Subsec. (c)(1). Pub. L. 103–465, §741(b)(1), amended last sentence generally. Prior to amendment, last sentence read as follows: "Except for purposes of determining the amount recognized under subsection (a), such increase shall be treated as occurring immediately before the distribution."

Subsec. (e). Pub. L. 103–465, §741(b)(2), added subsec. (e).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to property contributed to a partnership after June 8, 1997, but not applicable to any property contributed pursuant to a written binding contract in effect on June 8, 1997, and at all times thereafter before such contribution if such contract provides for the contribution of a fixed amount of property, see section 1063(b) of Pub. L. 105–34, set out as a note under section 704 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 applicable to distributions after Dec. 8, 1994, and not applicable to certain distributions before Jan. 1, 1995, distributions in liquidation of partner's interest, or distributions in complete liquidation of publicly traded partnerships, see section 741(c) of Pub. L. 103–465, set out as a note under section 731 of this title.

EFFECTIVE DATE

Section applicable to distributions on or after June 25, 1992, see section 1937(c) of Pub. L. 102–486, set out as an Effective Date of 1992 Amendment note under section 704 of this title.

SUBPART C—TRANSFERS OF INTERESTS IN A PARTNERSHIP

Sec.
741. Recognition and character of gain or loss on sale or exchange.
742. Basis of transferee partner's interest.
743. Special rules where section 754 election or substantial built-in loss.

AMENDMENTS

2004—Pub. L. 108–357, title VIII, §833(b)(6)(B), Oct. 22, 2004, 118 Stat. 1591, substituted "Special rules where section 754 election or substantial built-in loss" for "Optional adjustment to basis of partnership property" in item 743.

§741. Recognition and character of gain or loss on sale or exchange

In the case of a sale or exchange of an interest in a partnership, gain or loss shall be recognized to the transferor partner. Such gain or loss shall be considered as gain or loss from the sale or exchange of a capital asset, except as otherwise provided in section 751 (relating to unrealized receivables and inventory items).

(Aug. 16, 1954, ch. 736, 68A Stat. 248; Pub. L. 107–147, title IV, §417(12), Mar. 9, 2002, 116 Stat. 56.)

AMENDMENTS

2002—Pub. L. 107–147 struck out "which have appreciated substantially in value" after "inventory items".

§742. Basis of transferee partner's interest

The basis of an interest in a partnership acquired other than by contribution shall be determined under part II of subchapter O (sec. 1011 and following).

(Aug. 16, 1954, ch. 736, 68A Stat. 249.)

§743. Special rules where section 754 election or substantial built-in loss

(a) General rule

The basis of partnership property shall not be adjusted as the result of a transfer of an interest in a partnership by sale or exchange or on the death of a partner unless the election provided by section 754 (relating to optional adjustment to basis of partnership property) is in effect with respect to such partnership or unless the partnership has a substantial built-in loss immediately after such transfer.

(b) Adjustment to basis of partnership property

In the case of a transfer of an interest in a partnership by sale or exchange or upon the death of a partner, a partnership with respect to which the election provided in section 754 is in effect or which has a substantial built-in loss immediately after such transfer shall—

(1) increase the adjusted basis of the partnership property by the excess of the basis to the transferee partner of his interest in the partnership over his proportionate share of the adjusted basis of the partnership property, or

(2) decrease the adjusted basis of the partnership property by the excess of the transferee partner's proportionate share of the adjusted basis of the partnership property over the basis of his interest in the partnership.

Under regulations prescribed by the Secretary, such increase or decrease shall constitute an adjustment to the basis of partnership property with respect to the transferee partner only. A partner's proportionate share of the adjusted basis of partnership property shall be determined in accordance with his interest in partnership capital and, in the case of property contributed to the partnership by a partner, section 704(c) (relating to contributed property) shall apply in determining such share. In the case of an adjustment under this subsection to the basis of partnership property subject to depletion, any depletion allowable shall be determined separately for the transferee partner with respect to his interest in such property.

(c) Allocation of basis

The allocation of basis among partnership properties where subsection (b) is applicable shall be made in accordance with the rules provided in section 755.

(d) Substantial built-in loss

(1) In general

For purposes of this section, a partnership has a substantial built-in loss with respect to a transfer of an interest in a partnership if the partnership's adjusted basis in the partnership property exceeds by more than $250,000 the fair market value of such property.

(2) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of paragraph (1) and section 734(d), including regulations aggregating related partnerships and disregarding property acquired by the partnership in an attempt to avoid such purposes.

(e) Alternative rules for electing investment partnerships

(1) No adjustment of partnership basis

For purposes of this section, an electing investment partnership shall not be treated as having a substantial built-in loss with respect to any transfer occurring while the election under paragraph (6)(A) is in effect.

(2) Loss deferral for transferee partner

In the case of a transfer of an interest in an electing investment partnership, the transferee partner's distributive share of losses (without regard to gains) from the sale or exchange of partnership property shall not be allowed except to the extent that it is established that such losses exceed the loss (if any) recognized by the transferor (or any prior transferor to the extent not fully offset by a prior disallowance under this paragraph) on the transfer of the partnership interest.

(3) No reduction in partnership basis

Losses disallowed under paragraph (2) shall not decrease the transferee partner's basis in the partnership interest.

(4) Effect of termination of partnership

This subsection shall be applied without regard to any termination of a partnership under section 708(b)(1)(B).

(5) Certain basis reductions treated as losses

In the case of a transferee partner whose basis in property distributed by the partnership is reduced under section 732(a)(2), the amount of the loss recognized by the transferor on the transfer of the partnership interest which is taken into account under paragraph (2) shall be

reduced by the amount of such basis reduction.

(6) Electing investment partnership

For purposes of this subsection, the term "electing investment partnership" means any partnership if—

(A) the partnership makes an election to have this subsection apply,

(B) the partnership would be an investment company under section 3(a)(1)(A) of the Investment Company Act of 1940 but for an exemption under paragraph (1) or (7) of section 3(c) of such Act,

(C) such partnership has never been engaged in a trade or business,

(D) substantially all of the assets of such partnership are held for investment,

(E) at least 95 percent of the assets contributed to such partnership consist of money,

(F) no assets contributed to such partnership had an adjusted basis in excess of fair market value at the time of contribution,

(G) all partnership interests of such partnership are issued by such partnership pursuant to a private offering before the date which is 24 months after the date of the first capital contribution to such partnership,

(H) the partnership agreement of such partnership has substantive restrictions on each partner's ability to cause a redemption of the partner's interest, and

(I) the partnership agreement of such partnership provides for a term that is not in excess of 15 years.

The election described in subparagraph (A), once made, shall be irrevocable except with the consent of the Secretary.

(7) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this subsection, including regulations for applying this subsection to tiered partnerships.

(f) Exception for securitization partnerships

(1) No adjustment of partnership basis

For purposes of this section, a securitization partnership shall not be treated as having a substantial built-in loss with respect to any transfer.

(2) Securitization partnership

For purposes of paragraph (1), the term "securitization partnership" means any partnership the sole business activity of which is to issue securities which provide for a fixed principal (or similar) amount and which are primarily serviced by the cash flows of a discrete pool (either fixed or revolving) of receivables or other financial assets that by their terms convert into cash in a finite period, but only if the sponsor of the pool reasonably believes that the receivables and other financial assets comprising the pool are not acquired so as to be disposed of.

(Aug. 16, 1954, ch. 736, 68A Stat. 249; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–369, div. A, title I, §71(b), July 18, 1984, 98 Stat. 589; Pub. L. 108–357, title VIII, §833(b)(1)–(4)(A), (5), (6)(A), Oct. 22, 2004, 118 Stat. 1589, 1591.)

REFERENCES IN TEXT

Section 3(a)(1)(A), (c)(1), (7) of the Investment Company Act of 1940, referred to in subsec. (e)(6)(B), is classified to section 80a–3(a)(1)(A), (c)(1), (7) of Title 15, Commerce and Trade.

AMENDMENTS

2004—Pub. L. 108–357, §833(b)(6)(A), substituted "Special rules where section 754 election or substantial built-in loss" for "Optional adjustment to basis of partnership property" in section catchline.

Subsec. (a). Pub. L. 108–357, §833(b)(1), inserted "or unless the partnership has a substantial built-in loss immediately after such transfer" before period at end.

Subsec. (b). Pub. L. 108–357, §833(b)(2), inserted "or which has a substantial built-in loss immediately

after such transfer" after "section 754 is in effect" in introductory provisions.

Subsec. (d). Pub. L. 108–357, §833(b)(3), added subsec. (d).

Subsec. (e). Pub. L. 108–357, §833(b)(4)(A), added subsec. (e).

Subsec. (f). Pub. L. 108–357, §833(b)(5), added subsec. (f).

1984—Subsec. (b). Pub. L. 98–369 substituted "property contributed to the partnership by a partner, section 704(c) (relating to contributed property) shall apply in determining such share" for "an agreement described in section 704(c)(2) (relating to effect of partnership agreement on contributed property), such share shall be determined by taking such agreement into account" in penultimate sentence.

1976—Subsec. (b). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §833(d)(2), Oct. 22, 2004, 118 Stat. 1592, provided that:

"(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by subsection (b) [amending this section and section 6031 of this title] shall apply to transfers after the date of the enactment of this Act [Oct. 22, 2004].

"(B) TRANSITION RULE.—In the case of an electing investment partnership which is in existence on June 4, 2004, section 743(e)(6)(H) of the Internal Revenue Code of 1986, as added by this section, shall not apply to such partnership and section 743(e)(6)(I) of such Code, as so added, shall be applied by substituting '20 years' for '15 years'."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable with respect to property contributed to the partnership after Mar. 31, 1984, in taxable years ending after such date, see section 71(c) of Pub. L. 98–369, set out as a note under section 704 of this title.

SUBPART D—PROVISIONS COMMON TO OTHER SUBPARTS

Sec.

751. Unrealized receivables and inventory items.

752. Treatment of certain liabilities.

753. Partner receiving income in respect of decedent.

754. Manner of electing optional adjustment to basis of partnership property.

755. Rules for allocation of basis.

§751. Unrealized receivables and inventory items

(a) Sale or exchange of interest in partnership

The amount of any money, or the fair market value of any property, received by a transferor partner in exchange for all or a part of his interest in the partnership attributable to—

(1) unrealized receivables of the partnership, or

(2) inventory items of the partnership,

shall be considered as an amount realized from the sale or exchange of property other than a capital asset.

(b) Certain distributions treated as sales or exchanges

(1) General rule

To the extent a partner receives in a distribution—

(A) partnership property which is—

(i) unrealized receivables, or

(ii) inventory items which have appreciated substantially in value,

in exchange for all or a part of his interest in other partnership property (including money), or

(B) partnership property (including money) other than property described in subparagraph

(A)(i) or (ii) in exchange for all or a part of his interest in partnership property described in subparagraph (A)(i) or (ii),

such transactions shall, under regulations prescribed by the Secretary, be considered as a sale or exchange of such property between the distributee and the partnership (as constituted after the distribution).

(2) Exceptions

Paragraph (1) shall not apply to—

(A) a distribution of property which the distributee contributed to the partnership, or

(B) payments, described in section 736(a), to a retiring partner or successor in interest of a deceased partner.

(3) Substantial appreciation

For purposes of paragraph (1)—

(A) In general

Inventory items of the partnership shall be considered to have appreciated substantially in value if their fair market value exceeds 120 percent of the adjusted basis to the partnership of such property.

(B) Certain property excluded

For purposes of subparagraph (A), there shall be excluded any inventory property if a principal purpose for acquiring such property was to avoid the provisions of this subsection relating to inventory items.

(c) Unrealized receivables

For purposes of this subchapter, the term "unrealized receivables" includes, to the extent not previously includible in income under the method of accounting used by the partnership, any rights (contractual or otherwise) to payment for—

(1) goods delivered, or to be delivered, to the extent the proceeds therefrom would be treated as amounts received from the sale or exchange of property other than a capital asset, or

(2) services rendered, or to be rendered.

For purposes of this section and,[1] sections 731, 732, and 741 (but not for purposes of section 736), such term also includes mining property (as defined in section 617(f)(2)), stock in a DISC (as described in section 992(a)), section 1245 property (as defined in section 1245(a)(3)), stock in certain foreign corporations (as described in section 1248), section 1250 property (as defined in section 1250(c)), farm land (as defined in section 1252(a)), franchises, trademarks, or trade names (referred to in section 1253(a)), and an oil, gas, or geothermal property (described in section 1254) but only to the extent of the amount which would be treated as gain to which section 617(d)(1), 995(c), 1245(a), 1248(a), 1250(a), 1252(a), 1253(a), or 1254(a) would apply if (at the time of the transaction described in this section or section 731, 732, or 741, as the case may be) such property had been sold by the partnership at its fair market value. For purposes of this section and,[1] sections 731, 732, and 741 (but not for purposes of section 736), such term also includes any market discount bond (as defined in section 1278) and any short-term obligation (as defined in section 1283) but only to the extent of the amount which would be treated as ordinary income if (at the time of the transaction described in this section or section 731, 732, or 741, as the case may be) such property had been sold by the partnership.

(d) Inventory items

For purposes of this subchapter, the term "inventory items" means—

(1) property of the partnership of the kind described in section 1221(a)(1),

(2) any other property of the partnership which, on sale or exchange by the partnership, would be considered property other than a capital asset and other than property described in section 1231,

and

(3) any other property held by the partnership which, if held by the selling or distributee partner, would be considered property of the type described in paragraph (1) or (2).

(e) Limitation on tax attributable to deemed sales of section 1248 stock

For purposes of applying this section and sections 731 and 741 to any amount resulting from the reference to section 1248(a) in the second sentence of subsection (c), in the case of an individual, the tax attributable to such amount shall be limited in the manner provided by subsection (b) of section 1248 (relating to gain from certain sales or exchanges of stock in certain foreign corporation).

(f) Special rules in the case of tiered partnerships, etc.

In determining whether property of a partnership is—

(1) an unrealized receivable, or

(2) an inventory item,

such partnership shall be treated as owning its proportionate share of the property of any other partnership in which it is a partner. Under regulations, rules similar to the rules of the preceding sentence shall also apply in the case of interests in trusts.

(Aug. 16, 1954, ch. 736, 68A Stat. 250; Pub. L. 87–834, §§13(f)(1), 14(b)(2), Oct. 16, 1962, 76 Stat. 1035, 1041; Pub. L. 88–272, title II, §231(b)(6), Feb. 26, 1964, 78 Stat. 105; Pub. L. 89–570, §1(c), Sept. 12, 1966, 80 Stat. 762; Pub. L. 91–172, title II, §211(b)(6), Dec. 30, 1969, 83 Stat. 570; Pub. L. 94–455, title II, §205(b), title X, §1042(c)(2), title XI, §1101(d)(2), title XIX, §§1901(a)(93), 1906(b)(13)(A), title XXI, §2110(a), Oct. 4, 1976, 90 Stat. 1535, 1637, 1658, 1780, 1834, 1905; Pub. L. 95–600, title VII, §701(u)(13)(A), Nov. 6, 1978, 92 Stat. 2918; Pub. L. 95–618, title IV, §402(c)(5), Nov. 9, 1978, 92 Stat. 3202; Pub. L. 97–448, title I, §102(a)(6), Jan. 12, 1983, 96 Stat. 2368; Pub. L. 98–369, div. A, title I, §§43(c)(3), 76(a), title IV, §492(b)(4), July 18, 1984, 98 Stat. 558, 595, 854; Pub. L. 99–514, title II, §201(d)(10), title XVIII, §1899A(19), Oct. 22, 1986, 100 Stat. 2141, 2959; Pub. L. 103–66, title XIII, §§13206(e)(1), 13262(b)(1), (2)(A), Aug. 10, 1993, 107 Stat. 467, 541; Pub. L. 105–34, title X, §1062(a)–(b)(2), Aug. 5, 1997, 111 Stat. 946, 947; Pub. L. 105–206, title VI, §6010(m), July 22, 1998, 112 Stat. 816; Pub. L. 106–170, title V, §532(c)(2)(F), Dec. 17, 1999, 113 Stat. 1930; Pub. L. 108–357, title IV, §413(c)(11), Oct. 22, 2004, 118 Stat. 1507.)

AMENDMENTS

2004—Subsec. (d)(2) to (4). Pub. L. 108–357 inserted "and" at end of par. (2), redesignated par. (4) as (3) and substituted "paragraph (1) or (2)" for "paragraph (1), (2), or (3)", and struck out former par. (3) which read as follows: "any other property of the partnership which, if sold or exchanged by the partnership, would result in a gain taxable under subsection (a) of section 1246 (relating to gain on foreign investment company stock), and".

1999—Subsec. (d)(1). Pub. L. 106–170 substituted "section 1221(a)(1)" for "section 1221(1)".

1998—Subsec. (c). Pub. L. 105–206 substituted "731, 732," for "731" wherever appearing in concluding provisions.

1997—Subsec. (a)(2). Pub. L. 105–34, §1062(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "inventory items of the partnership which have appreciated substantially in value,".

Subsec. (b)(1). Pub. L. 105–34, §1062(b)(1)(A), added subpars. (A) and (B) and struck out former subpars. (A) and (B) which read as follows:

"(A) partnership property described in subsection (a)(1) or (2) in exchange for all or a part of his interest in other partnership property (including money), or

"(B) partnership property (including money) other than property described in subsection (a)(1) or (2) in exchange for all or a part of his interest in partnership property described in subsection (a)(1) or (2),".

Subsec. (b)(3). Pub. L. 105–34, §1062(b)(1)(B), added par. (3).

Subsec. (d). Pub. L. 105–34, §1062(b)(2), amended heading and text of subsec. (d) generally. Prior to amendment, subsec. (d) consisted of pars. (1) and (2) relating to inventory items which have appreciated substantially in value.

1993—Subsec. (c). Pub. L. 103–66, §13262(b)(1), in concluding provisions, substituted "section 731 or 741" for "section 731, 736, or 741" in two places and ", sections 731 and 741 (but not for purposes of section 736)" for "sections 731, 736, and 741" in two places.

Subsec. (d)(1). Pub. L. 103–66, §13206(e)(1), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: "Inventory items of the partnership shall be considered to have appreciated substantially in value if their fair market value exceeds—

"(A) 120 percent of the adjusted basis to the partnership of such property, and

"(B) 10 percent of the fair market value of all partnership property, other than money."

Subsec. (e). Pub. L. 103–66, §13262(b)(2)(A), substituted "sections 731 and 741" for "sections 731, 736, and 741".

1986—Subsec. (c). Pub. L. 99–514, §1899A(19), substituted "section 617(f)(2)), stock" for "section 617(f)(2), stock" in second sentence.

Pub. L. 99–514, §201(d)(10), struck out "section 1245 recovery property (as defined in section 1245(a)(5))," before "stock in certain foreign corporations" in second sentence.

1984—Subsec. (c). Pub. L. 98–369, §492(b)(4), struck out "farm recapture property (as defined in section 1251(e)(1))," before "farm land", and "1251(c)," after "1250(a)," in second sentence.

Pub. L. 98–369, §43(c)(3), inserted last sentence.

Subsec. (f). Pub. L. 98–369, §76(a), added subsec. (f).

1983—Subsec. (c). Pub. L. 97–448 inserted reference to section 1245 recovery property (as defined in section 1245(a)(5)) in second sentence.

1978—Subsec. (c). Pub. L. 95–618 substituted "oil, gas, or geothermal property" for "oil or gas property" in second sentence.

Subsec. (e). Pub. L. 95–600 added subsec. (e).

1976—Subsec. (b)(1). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (c). Pub. L. 94–455, §§205(b), 1042(c)(2), 1101(d)(2), 1901(a)(93), 2110(a), in second sentence, inserted reference to stock in a DISC (as described in section 992(a)), reference to stock in certain foreign corporations (as described in section 1248), and reference to farm land (as defined in section 1252(a)), franchises, trademarks or trade names (referred to in section 1253(a)), and an oil or gas property (described in section 1254), substituted "1252(a), 1253(a), or 1254(a)" for "or 1252(a)", and inserted "1248(a)," after "1245(a)," and "995(c)," after "617(d)(1),".

1969—Subsec. (c). Pub. L. 91–172, in second sentence, substituted "section 1250 property (as defined in section 1250(c)), farm recapture property (as defined in section 1251(e)(1)), and farm land (as defined in section 1252(a))", and "1250(a), 1251(c), or 1252(a)", for "and section 1250 property (as defined in section 1250(c))" and "1250(a)", respectively.

1966—Subsec. (c). Pub. L. 89–570, in second sentence, inserted reference to mining property (as defined in section 617(f)(2)) and to section 617(d)(1).

1964—Subsec. (c). Pub. L. 88–272, in second sentence, inserted reference to section 1250.

1962—Subsec. (c). Pub. L. 87–834, §13(f)(1), defined "unrealized receivables" for purposes of this section and section 731, 736, and 741, as including section 1245 property, but only to the extent of the amount which would be treated as gain to which section 1245(a) would apply if (at the time of the transaction described in this section or section 731, 736, or 741, as the case may be) such property had been sold by the partnership at its fair market value.

Subsec. (d)(2). Pub. L. 87–834, §14(b)(2), added subpar. (C), redesignated former subpar. (C) as (D), and substituted "subparagraph (A), (B), or (C)" for "subparagraph (A) or (B)".

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to sales, exchanges, and distributions after Aug. 5, 1997, but not applicable to any sale or exchange pursuant to a written binding contract in effect on June 8, 1997, and at all times thereafter before such sale or exchange, see section 1062(c) of Pub. L. 105–34, set out as a note under section 724 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13206(e)(2), Aug. 10, 1993, 107 Stat. 467, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to sales, exchanges, and distributions after April 30, 1993."

Amendment by section 13262(b)(1) and (2)(A) of Pub. L. 103–66 applicable in the case of partners retiring or dying on or after Jan. 5, 1993, with a binding contract exception, see section 13262(c) of Pub. L. 103–66, set out as a note under section 736 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 201(d)(10) of Pub. L. 99–514 applicable to property placed in service after Dec. 31, 1986, in taxable years ending after such date, with exceptions, see sections 203 and 204 of Pub. L. 99–514, set out as a note under section 168 of this title.

Amendment by section 201(d)(10) of Pub. L. 99–514 not applicable to any property placed in service before Jan. 1, 1994, if such property placed in service as part of specified rehabilitations, and not applicable to certain additional rehabilitations, see section 251(d)(2), (3) of Pub. L. 99–514, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 43(c)(3) of Pub. L. 98–369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98–369, set out as an Effective Date note under section 1271 of this title.

Pub. L. 98–369, div. A, title I, §76(b), July 18, 1984, 98 Stat. 595, provided that: "The amendment made by subsection (a) [amending this section] shall apply to distributions, sales, and exchanges made after March 31, 1984, in taxable years ending after such date."

Amendment by section 492(b)(4) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 492(d) of Pub. L. 98–369, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95–618 applicable with respect to wells commenced on or after Oct. 1, 1978, in taxable years ending on or after such date, see section 402(e) of Pub. L. 95–618, set out as a note under section 263 of this title.

Pub. L. 95–600, title VII, §701(u)(13)(C), Nov. 6, 1978, 92 Stat. 2918, provided that: "The amendments made by this paragraph [amending this section and section 736 of this title] shall apply to transfers beginning after October 9, 1975, and to sales, exchanges, and distributions taking place after such date."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 205(b) of Pub. L. 94–455 effective for taxable years ending after Dec. 31, 1975, see section 205(e) of Pub. L. 94–455, set out as an Effective Date note under section 1254 of this title.

Amendment by section 1042(c)(2) of Pub. L. 94–455 applicable to transfers beginning after Oct. 9, 1975, and to sales, exchanges and distributions taking place after that date, see section 1042(e)(1) of Pub. L. 94–455, set out as a note under section 367 of this title.

Amendment by section 1101(d)(2) of Pub. L. 94–455 applicable to sales, exchanges, or other dispositions after Dec. 31, 1975, in taxable years ending after such date, see section 1101(g)(4) of Pub. L. 94–455, set out as a note under section 995 of this title.

Amendment by section 1901(a)(93) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Pub. L. 94–455, title XXI, §2110(b), Oct. 4, 1976, 90 Stat. 1905, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Subsection (a) [amending this section] shall apply to transactions described in sections 731, 736, 741, or 751 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] which occur after December 31, 1976, in taxable years ending after that date."

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 211(c) of Pub. L. 91–172, set out as a note under section 301 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–570 applicable to taxable years ending after Sept. 12, 1966, but only in respect of expenditures paid or incurred after such date see section 3 of Pub. L. 89–570, set out as an Effective Date note under section 617 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to dispositions after Dec. 31, 1963, in taxable years ending after such date, see section 231(c) of Pub. L. 88–272, set out as an Effective Date note under section 1250 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by section 13(f)(1) of Pub. L. 87–834 applicable to taxable years beginning after Dec. 31, 1962, see section 13(g) of Pub. L. 87–834, set out as an Effective Date note under section 1245 of this title.

Amendment by section 14(b)(2) of Pub. L. 87–834 applicable with respect to taxable years beginning after Dec. 31, 1962, see section 14(c) of Pub. L. 87–834, set out as a note under section 312 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[1] *So in original. The comma probably should not appear.*

§752. Treatment of certain liabilities

(a) Increase in partner's liabilities

Any increase in a partner's share of the liabilities of a partnership, or any increase in a partner's individual liabilities by reason of the assumption by such partner of partnership liabilities, shall be considered as a contribution of money by such partner to the partnership.

(b) Decrease in partner's liabilities

Any decrease in a partner's share of the liabilities of a partnership, or any decrease in a partner's individual liabilities by reason of the assumption by the partnership of such individual liabilities, shall be considered as a distribution of money to the partner by the partnership.

(c) Liability to which property is subject

For purposes of this section, a liability to which property is subject shall, to the extent of the fair market value of such property, be considered as a liability of the owner of the property.

(d) Sale or exchange of an interest

In the case of a sale or exchange of an interest in a partnership, liabilities shall be treated in the same manner as liabilities in connection with the sale or exchange of property not associated with partnerships.

(Aug. 16, 1954, ch. 736, 68A Stat. 251.)

OVERRULING OF RAPHAN CASE

Pub. L. 98–369, div. A, title I, §79, July 18, 1984, 98 Stat. 597, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) GENERAL RULE.—Section 752 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (and the regulations prescribed thereunder) shall be applied without regard to the result reached in the case of Raphan vs the United States, 3 Cl. Ct. 457 (1983).

"(b) REGULATIONS.—In amending the regulations prescribed under section 752 of such Code to reflect subsection (a), the Secretary of the Treasury or his delegate shall prescribe regulations relating to liabilities, including the treatment of guarantees, assumptions, indemnity agreements, and similar arrangements."

§753. Partner receiving income in respect of decedent

The amount includible in the gross income of a successor in interest of a deceased partner under section 736(a) shall be considered income in respect of a decedent under section 691.

(Aug. 16, 1954, ch. 736, 68A Stat. 251.)

§754. Manner of electing optional adjustment to basis of partnership property

If a partnership files an election, in accordance with regulations prescribed by the Secretary, the basis of partnership property shall be adjusted, in the case of a distribution of property, in the manner provided in section 734 and, in the case of a transfer of a partnership interest, in the manner provided in section 743. Such an election shall apply with respect to all distributions of property by the partnership and to all transfers of interests in the partnership during the taxable year with respect to which such election was filed and all subsequent taxable years. Such election may be revoked by the partnership, subject to such limitations as may be provided by regulations prescribed by the Secretary.

(Aug. 16, 1954, ch. 736, 68A Stat. 251; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

§755. Rules for allocation of basis

(a) General rule

Any increase or decrease in the adjusted basis of partnership property under section 734(b) (relating to the optional adjustment to the basis of undistributed partnership property) or section 743(b) (relating to the optional adjustment to the basis of partnership property in the case of a transfer of an interest in a partnership) shall, except as provided in subsection (b), be allocated—

(1) in a manner which has the effect of reducing the difference between the fair market value and the adjusted basis of partnership properties, or

(2) in any other manner permitted by regulations prescribed by the Secretary.

(b) Special rule

In applying the allocation rules provided in subsection (a), increases or decreases in the adjusted basis of partnership property arising from a distribution of, or a transfer of an interest attributable to, property consisting of—

(1) capital assets and property described in section 1231(b), or

(2) any other property of the partnership,

shall be allocated to partnership property of a like character except that the basis of any such partnership property shall not be reduced below zero. If, in the case of a distribution, the adjustment to basis of property described in paragraph (1) or (2) is prevented by the absence of such property or by insufficient adjusted basis for such property, such adjustment shall be applied to subsequently acquired property of a like character in accordance with regulations prescribed by the Secretary.

(c) No allocation of basis decrease to stock of corporate partner

In making an allocation under subsection (a) of any decrease in the adjusted basis of partnership

property under section 734(b)—

(1) no allocation may be made to stock in a corporation (or any person related (within the meaning of sections 267(b) and 707(b)(1)) to such corporation) which is a partner in the partnership, and

(2) any amount not allocable to stock by reason of paragraph (1) shall be allocated under subsection (a) to other partnership property.

Gain shall be recognized to the partnership to the extent that the amount required to be allocated under paragraph (2) to other partnership property exceeds the aggregate adjusted basis of such other property immediately before the allocation required by paragraph (2).

(Aug. 16, 1954, ch. 736, 68A Stat. 252; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 108–357, title VIII, §834(a), Oct. 22, 2004, 118 Stat. 1592.)

AMENDMENTS

2004—Subsec. (c). Pub. L. 108–357 added subsec. (c).

1976—Subsecs. (a), (b). Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §834(b), Oct. 22, 2004, 118 Stat. 1592, provided that: "The amendment made by this section [amending this section] shall apply to distributions after the date of the enactment of this Act [Oct. 22, 2004]."

PART III—DEFINITIONS

Sec.
761. Terms defined.

§761. Terms defined

(a) Partnership

For purposes of this subtitle, the term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title, a corporation or a trust or estate. Under regulations the Secretary may, at the election of all the members of an unincorporated organization, exclude such organization from the application of all or part of this subchapter, if it is availed of—

(1) for investment purposes only and not for the active conduct of a business,

(2) for the joint production, extraction, or use of property, but not for the purpose of selling services or property produced or extracted, or

(3) by dealers in securities for a short period for the purpose of underwriting, selling, or distributing a particular issue of securities,

if the income of the members of the organization may be adequately determined without the computation of partnership taxable income.

(b) Partner

For purposes of this subtitle, the term "partner" means a member of a partnership.

(c) Partnership agreement

For purposes of this subchapter, a partnership agreement includes any modifications of the partnership agreement made prior to, or at, the time prescribed by law for the filing of the partnership return for the taxable year (not including extensions) which are agreed to by all the partners, or which are adopted in such other manner as may be provided by the partnership agreement.

(d) Liquidation of a partner's interest

For purposes of this subchapter, the term "liquidation of a partner's interest" means the termination of a partner's entire interest in a partnership by means of a distribution, or a series of distributions, to the partner by the partnership.

(e) Distributions of partnership interests treated as exchanges

Except as otherwise provided in regulations, for purposes of—

(1) section 708 (relating to continuation of partnership),

(2) section 743 (relating to optional adjustment to basis of partnership property), and

(3) any other provision of this subchapter specified in regulations prescribed by the Secretary,

any distribution of an interest in a partnership (not otherwise treated as an exchange) shall be treated as an exchange.

(f) Qualified joint venture

(1) In general

In the case of a qualified joint venture conducted by a husband and wife who file a joint return for the taxable year, for purposes of this title—

(A) such joint venture shall not be treated as a partnership,

(B) all items of income, gain, loss, deduction, and credit shall be divided between the spouses in accordance with their respective interests in the venture, and

(C) each spouse shall take into account such spouse's respective share of such items as if they were attributable to a trade or business conducted by such spouse as a sole proprietor.

(2) Qualified joint venture

For purposes of paragraph (1), the term "qualified joint venture" means any joint venture involving the conduct of a trade or business if—

(A) the only members of such joint venture are a husband and wife,

(B) both spouses materially participate (within the meaning of section 469(h) without regard to paragraph (5) thereof) in such trade or business, and

(C) both spouses elect the application of this subsection.

(g) Cross reference

For rules in the case of the sale, exchange, liquidation, or reduction of a partner's interest, see sections 704(b) and 706(c)(2).

(Aug. 16, 1954, ch. 736, 68A Stat. 252; Pub. L. 94–455, title II, §213(c)(3)(B), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1548, 1834; Pub. L. 96–222, title I, §102(a)(2)(C), Apr. 1, 1980, 94 Stat. 208; Pub. L. 98–369, div. A, title I, §75(b), July 18, 1984, 98 Stat. 594; Pub. L. 99–514, title XVIII, §1805(c)(2), Oct. 22, 1986, 100 Stat. 2810; Pub. L. 110–28, title VIII, §8215(a), May 25, 2007, 121 Stat. 193.)

AMENDMENTS

2007—Subsecs. (f), (g). Pub. L. 110–28 added subsec. (f) and redesignated former subsec. (f) as (g).

1986—Subsec. (e). Pub. L. 99–514 substituted "Distributions of partnership interests" for "Distributions" in heading, substituted "Except as otherwise provided in regulations, for purposes of" for "For purposes of" in introductory provision, and "any distribution of an interest in a partnership" for "any distribution" in closing provisions.

1984—Subsecs. (e), (f). Pub. L. 98–369 added subsec. (e) and redesignated former subsec. (e) as (f).

1980—Subsec. (a)(3). Pub. L. 96–222 added par. (3).

1976—Subsec. (a). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (e). Pub. L. 94–455, §213(c)(3)(B), added subsec. (e).

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–28, title VIII, §8215(c), May 25, 2007, 121 Stat. 194, provided that: "The amendments made by this section [amending this section, section 1402 of this title, and section 411 of Title 42, The Public Health and Welfare] shall apply to taxable years beginning after December 31, 2006."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to distributions, sales, and exchanges made after Mar. 31, 1984, in taxable years ending after such date, see section 75(e) of Pub. L. 98–369, set out as an Effective Date note under section 386 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 213(c)(3)(B) of Pub. L. 94–455 applicable in the case of partnership taxable years beginning after Dec. 31, 1975, see section 213(f)(1) of Pub. L. 94–455, set out as a note under section 709 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

PART IV—SPECIAL RULES FOR ELECTING LARGE PARTNERSHIPS

Sec.
771. Application of subchapter to electing large partnerships.
772. Simplified flow-through.
773. Computations at partnership level.
774. Other modifications.
775. Electing large partnership defined.
776. Special rules for partnerships holding oil and gas properties.
777. Regulations.

PRIOR PROVISIONS

A prior part IV, relating to effective date for subchapter, consisted of section 771 of this title, prior to repeal by Pub. L. 94–455, title XIX, §1901(a)(94), Oct. 4, 1976, 90 Stat. 1780.

AMENDMENTS

1997—Pub. L. 105–34, title XII, §1221(a), Aug. 5, 1997, 111 Stat. 1001, added part heading and section analysis.

§771. Application of subchapter to electing large partnerships

The preceding provisions of this subchapter to the extent inconsistent with the provisions of this part shall not apply to an electing large partnership and its partners.

(Added Pub. L. 105–34, title XII, §1221(a), Aug. 5, 1997, 111 Stat. 1002.)

PRIOR PROVISIONS

A prior section 771, act Aug. 16, 1954, ch. 736, 68A Stat. 253, related to the effective date for this subchapter, prior to repeal by Pub. L. 94–455, title XIX, §1901(a)(94), Oct. 4, 1976, 90 Stat. 1780.

EFFECTIVE DATE

Pub. L. 105–34, title XII, §1221(c), Aug. 5, 1997, 111 Stat. 1008, provided that: "The amendments made by this section [enacting this part] shall apply to partnership taxable years beginning after December 31, 1997."

This part applicable to partnership taxable years beginning after Dec. 31, 1997, see section 1226 of Pub. L. 105–34, as amended, set out as an Effective Date of 1997 Amendment note under section 6011 of this title.

§772. Simplified flow-through

(a) General rule

In determining the income tax of a partner of an electing large partnership, such partner shall take into account separately such partner's distributive share of the partnership's—

(1) taxable income or loss from passive loss limitation activities,

(2) taxable income or loss from other activities,

(3) net capital gain (or net capital loss)—

(A) to the extent allocable to passive loss limitation activities, and

(B) to the extent allocable to other activities,

(4) tax-exempt interest,

(5) applicable net AMT adjustment separately computed for—

(A) passive loss limitation activities, and

(B) other activities,

(6) general credits,

(7) low-income housing credit determined under section 42,

(8) rehabilitation credit determined under section 47,

(9) foreign income taxes, and

(10) other items to the extent that the Secretary determines that the separate treatment of such items is appropriate.

(b) Separate computations

In determining the amounts required under subsection (a) to be separately taken into account by any partner, this section and section 773 shall be applied separately with respect to such partner by taking into account such partner's distributive share of the items of income, gain, loss, deduction, or credit of the partnership.

(c) Treatment at partner level

(1) In general

Except as provided in this subsection, rules similar to the rules of section 702(b) shall apply to any partner's distributive share of the amounts referred to in subsection (a).

(2) Income or loss from passive loss limitation activities

For purposes of this chapter, any partner's distributive share of any income or loss described in subsection (a)(1) shall be treated as an item of income or loss (as the case may be) from the conduct of a trade or business which is a single passive activity (as defined in section 469). A similar rule shall apply to a partner's distributive share of amounts referred to in paragraphs (3)(A) and (5)(A) of subsection (a).

(3) Income or loss from other activities

(A) In general

For purposes of this chapter, any partner's distributive share of any income or loss described in subsection (a)(2) shall be treated as an item of income or expense (as the case may be) with respect to property held for investment.

(B) Deductions for loss not subject to section 67

The deduction under section 212 for any loss described in subparagraph (A) shall not be

treated as a miscellaneous itemized deduction for purposes of section 67.

(4) Treatment of net capital gain or loss

For purposes of this chapter, any partner's distributive share of any gain or loss described in subsection (a)(3) shall be treated as a long-term capital gain or loss, as the case may be.

(5) Minimum tax treatment

In determining the alternative minimum taxable income of any partner, such partner's distributive share of any applicable net AMT adjustment shall be taken into account in lieu of making the separate adjustments provided in sections 56, 57, and 58 with respect to the items of the partnership. Except as provided in regulations, the applicable net AMT adjustment shall be treated, for purposes of section 53, as an adjustment or item of tax preference not specified in section 53(d)(1)(B)(ii).

(6) General credits

A partner's distributive share of the amount referred to in paragraph (6) of subsection (a) shall be taken into account as a current year business credit.

(d) Operating rules

For purposes of this section—

(1) Passive loss limitation activity

The term "passive loss limitation activity" means—

(A) any activity which involves the conduct of a trade or business, and

(B) any rental activity.

For purposes of the preceding sentence, the term "trade or business" includes any activity treated as a trade or business under paragraph (5) or (6) of section 469(c).

(2) Tax-exempt interest

The term "tax-exempt interest" means interest excludable from gross income under section 103.

(3) Applicable net AMT adjustment

(A) In general

The applicable net AMT adjustment is—

(i) with respect to taxpayers other than corporations, the net adjustment determined by using the adjustments applicable to individuals, and

(ii) with respect to corporations, the net adjustment determined by using the adjustments applicable to corporations.

(B) Net adjustment

The term "net adjustment" means the net adjustment in the items attributable to passive loss activities or other activities (as the case may be) which would result if such items were determined with the adjustments of sections 56, 57, and 58.

(4) Treatment of certain separately stated items

(A) Exclusion for certain purposes

In determining the amounts referred to in paragraphs (1) and (2) of subsection (a), any net capital gain or net capital loss (as the case may be), and any item referred to in subsection (a)(11), shall be excluded.

(B) Allocation rules

The net capital gain shall be treated—

(i) as allocable to passive loss limitation activities to the extent the net capital gain does not exceed the net capital gain determined by only taking into account gains and losses from sales and exchanges of property used in connection with such activities, and

(ii) as allocable to other activities to the extent such gain exceeds the amount allocated under clause (i).

A similar rule shall apply for purposes of allocating any net capital loss.

(C) Net capital loss

The term "net capital loss" means the excess of the losses from sales or exchanges of capital assets over the gains from sales or exchange of capital assets.

(5) General credits

The term "general credits" means any credit other than the low-income housing credit, the rehabilitation credit, and the foreign tax credit.

(6) Foreign income taxes

The term "foreign income taxes" means taxes described in section 901 which are paid or accrued to foreign countries and to possessions of the United States.

(e) Special rule for unrelated business tax

In the case of a partner which is an organization subject to tax under section 511, such partner's distributive share of any items shall be taken into account separately to the extent necessary to comply with the provisions of section 512(c)(1).

(f) Special rules for applying passive loss limitations

If any person holds an interest in an electing large partnership other than as a limited partner—

(1) paragraph (2) of subsection (c) shall not apply to such partner, and

(2) such partner's distributive share of the partnership items allocable to passive loss limitation activities shall be taken into account separately to the extent necessary to comply with the provisions of section 469.

The preceding sentence shall not apply to any items allocable to an interest held as a limited partner.

(Added Pub. L. 105–34, title XII, §1221(a), Aug. 5, 1997, 111 Stat. 1002; amended Pub. L. 109–58, title XIII, §1322(a)(3)(I), (J), Aug. 8, 2005, 119 Stat. 1012.)

AMENDMENTS

2005—Subsec. (a)(9) to (11). Pub. L. 109–58, §1322(a)(3)(I), inserted "and" at end of par. (9), redesignated par. (11) as (10), and struck out former par. (10) which read as follows: "the credit allowable under section 29, and".

Subsec. (d)(5). Pub. L. 109–58, §1322(a)(3)(J), substituted "and the foreign tax credit" for "the foreign tax credit, and the credit allowable under section 29".

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–58 applicable to credits determined under the Internal Revenue Code of 1986 for taxable years ending after Dec. 31, 2005, see section 1322(c)(1) of Pub. L. 109–58, set out as a note under section 45K of this title.

§773. Computations at partnership level

(a) General rule

(1) Taxable income

The taxable income of an electing large partnership shall be computed in the same manner as in the case of an individual except that—

(A) the items described in section 772(a) shall be separately stated, and

(B) the modifications of subsection (b) shall apply.

(2) Elections

All elections affecting the computation of the taxable income of an electing large partnership or the computation of any credit of an electing large partnership shall be made by the partnership; except that the election under section 901, and any election under section 108, shall be made by each partner separately.

(3) Limitations, etc.

(A) In general

Except as provided in subparagraph (B), all limitations and other provisions affecting the computation of the taxable income of an electing large partnership or the computation of any credit of an electing large partnership shall be applied at the partnership level (and not at the partner level).

(B) Certain limitations applied at partner level

The following provisions shall be applied at the partner level (and not at the partnership level):

(i) Section 68 (relating to overall limitation on itemized deductions).
(ii) Sections 49 and 465 (relating to at risk limitations).
(iii) Section 469 (relating to limitation on passive activity losses and credits).
(iv) Any other provision specified in regulations.

(4) Coordination with other provisions

Paragraphs (2) and (3) shall apply notwithstanding any other provision of this chapter other than this part.

(b) Modifications to determination of taxable income

In determining the taxable income of an electing large partnership—

(1) Certain deductions not allowed

The following deductions shall not be allowed:

(A) The deduction for personal exemptions provided in section 151.
(B) The net operating loss deduction provided in section 172.
(C) The additional itemized deductions for individuals provided in part VII of subchapter B (other than section 212 thereof).

(2) Charitable deductions

In determining the amount allowable under section 170, the limitation of section 170(b)(2) shall apply.

(3) Coordination with section 67

In lieu of applying section 67, 70 percent of the amount of the miscellaneous itemized deductions shall be disallowed.

(c) Special rules for income from discharge of indebtedness

If an electing large partnership has income from the discharge of any indebtedness—

(1) such income shall be excluded in determining the amounts referred to in section 772(a), and
(2) in determining the income tax of any partner of such partnership—
(A) such income shall be treated as an item required to be separately taken into account under section 772(a), and
(B) the provisions of section 108 shall be applied without regard to this part.

(Added Pub. L. 105–34, title XII, §1221(a), Aug. 5, 1997, 111 Stat. 1004.)

§774. Other modifications

(a) Treatment of certain optional adjustments, etc.

In the case of an electing large partnership—

(1) computations under section 773 shall be made without regard to any adjustment under section 743(b) or 108(b), but

(2) a partner's distributive share of any amount referred to in section 772(a) shall be appropriately adjusted to take into account any adjustment under section 743(b) or 108(b) with respect to such partner.

(b) Credit recapture determined at partnership level

(1) In general

In the case of an electing large partnership—

(A) any credit recapture shall be taken into account by the partnership, and

(B) the amount of such recapture shall be determined as if the credit with respect to which the recapture is made had been fully utilized to reduce tax.

(2) Method of taking recapture into account

An electing large partnership shall take into account a credit recapture by reducing the amount of the appropriate current year credit to the extent thereof, and if such recapture exceeds the amount of such current year credit, the partnership shall be liable to pay such excess.

(3) Dispositions not to trigger recapture

No credit recapture shall be required by reason of any transfer of an interest in an electing large partnership.

(4) Credit recapture

For purposes of this subsection, the term "credit recapture" means any increase in tax under section 42(j) or 50(a).

(c) Partnership not terminated by reason of change in ownership

Subparagraph (B) of section 708(b)(1) shall not apply to an electing large partnership.

(d) Partnership entitled to certain credits

The following shall be allowed to an electing large partnership and shall not be taken into account by the partners of such partnership:

(1) The credit provided by section 34.

(2) Any credit or refund under section 852(b)(3)(D) or 857(b)(3)(D).

(e) Treatment of REMIC residuals

For purposes of applying section 860E(e)(6) to any electing large partnership—

(1) all interests in such partnership shall be treated as held by disqualified organizations,

(2) in lieu of applying subparagraph (C) of section 860E(e)(6), the amount subject to tax under section 860E(e)(6) shall be excluded from the gross income of such partnership, and

(3) subparagraph (D) of section 860E(e)(6) shall not apply.

(f) Special rules for applying certain installment sale rules

In the case of an electing large partnership—

(1) the provisions of sections 453(l)(3) and 453A shall be applied at the partnership level, and

(2) in determining the amount of interest payable under such sections, such partnership shall be treated as subject to tax under this chapter at the highest rate of tax in effect under section 1 or 11.

(Added Pub. L. 105–34, title XII, §1221(a), Aug. 5, 1997, 111 Stat. 1005; amended Pub. L. 105–206, title VI, §6012(c), July 22, 1998, 112 Stat. 819.)

AMENDMENTS

1998—Subsec. (d)(2). Pub. L. 105–206 inserted "or 857(b)(3)(D)" before period at end.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

§775. Electing large partnership defined

(a) General rule

For purposes of this part—

(1) In general

The term "electing large partnership" means, with respect to any partnership taxable year, any partnership if—

(A) the number of persons who were partners in such partnership in the preceding partnership taxable year equaled or exceeded 100, and

(B) such partnership elects the application of this part.

To the extent provided in regulations, a partnership shall cease to be treated as an electing large partnership for any partnership taxable year if in such taxable year fewer than 100 persons were partners in such partnership.

(2) Election

The election under this subsection shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

(b) Special rules for certain service partnerships

(1) Certain partners not counted

For purposes of this section, the term "partner" does not include any individual performing substantial services in connection with the activities of the partnership and holding an interest in such partnership, or an individual who formerly performed substantial services in connection with such activities and who held an interest in such partnership at the time the individual performed such services.

(2) Exclusion

For purposes of this part, an election under subsection (a) shall not be effective with respect to any partnership if substantially all the partners of such partnership—

(A) are individuals performing substantial services in connection with the activities of such partnership or are personal service corporations (as defined in section 269A(b)) the owner-employees (as defined in section 269A(b)) of which perform such substantial services,

(B) are retired partners who had performed such substantial services, or

(C) are spouses of partners who are performing (or had previously performed) such substantial services.

(3) Special rule for lower tier partnerships

For purposes of this subsection, the activities of a partnership shall include the activities of any other partnership in which the partnership owns directly an interest in the capital and profits of at least 80 percent.

(c) Exclusion of commodity pools

For purposes of this part, an election under subsection (a) shall not be effective with respect to any partnership the principal activity of which is the buying and selling of commodities (not described in section 1221(a)(1)), or options, futures, or forwards with respect to such commodities.

(d) Secretary may rely on treatment on return

If, on the partnership return of any partnership, such partnership is treated as an electing large partnership, such treatment shall be binding on such partnership and all partners of such partnership but not on the Secretary.

(Added Pub. L. 105–34, title XII, §1221(a), Aug. 5, 1997, 111 Stat. 1006; amended Pub. L. 106–170, title V, §532(c)(2)(G), Dec. 17, 1999, 113 Stat. 1930.)

AMENDMENTS

1999—Subsec. (c). Pub. L. 106–170 substituted "section 1221(a)(1)" for "section 1221(1)".

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

§776. Special rules for partnerships holding oil and gas properties

(a) Computation of percentage depletion

In the case of an electing large partnership, except as provided in subsection (b)—

(1) the allowance for depletion under section 611 with respect to any partnership oil or gas property shall be computed at the partnership level without regard to any provision of section 613A requiring such allowance to be computed separately by each partner,

(2) such allowance shall be determined without regard to the provisions of section 613A(c) limiting the amount of production for which percentage depletion is allowable and without regard to paragraph (1) of section 613A(d), and

(3) paragraph (3) of section 705(a) shall not apply.

(b) Treatment of certain partners

(1) In general

In the case of a disqualified person, the treatment under this chapter of such person's distributive share of any item of income, gain, loss, deduction, or credit attributable to any partnership oil or gas property shall be determined without regard to this part. Such person's distributive share of any such items shall be excluded for purposes of making determinations under sections 772 and 773.

(2) Disqualified person

For purposes of paragraph (1), the term "disqualified person" means, with respect to any partnership taxable year—

(A) any person referred to in paragraph (2) or (4) of section 613A(d) for such person's taxable year in which such partnership taxable year ends, and

(B) any other person if such person's average daily production of domestic crude oil and natural gas for such person's taxable year in which such partnership taxable year ends exceeds 500 barrels.

(3) Average daily production

For purposes of paragraph (2), a person's average daily production of domestic crude oil and natural gas for any taxable year shall be computed as provided in section 613A(c)(2)—

(A) by taking into account all production of domestic crude oil and natural gas (including such person's proportionate share of any production of a partnership),

(B) by treating 6,000 cubic feet of natural gas as a barrel of crude oil, and

(C) by treating as 1 person all persons treated as 1 taxpayer under section 613A(c)(8) or among whom allocations are required under such section.

(Added Pub. L. 105–34, title XII, §1221(a), Aug. 5, 1997, 111 Stat. 1007.)

§777. Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this part.

(Added Pub. L. 105–34, title XII, §1221(a), Aug. 5, 1997, 111 Stat. 1008.)

Subchapter L—Insurance Companies

Part
I. Life insurance companies.
II. Other insurance companies.
III. Provisions of general application.

AMENDMENTS

1988—Pub. L. 100–647, title I, §1018(u)(32), Nov. 10, 1988, 102 Stat. 3592, redesignated parts III and IV as II and III, respectively, and struck out former Part II "Mutual insurance companies (other than life and certain marine insurance companies and other than fire or flood insurance companies which operate on basis of perpetual policies of premium deposits)."

1962—Pub. L. 87–834, §8(g)(4)(A), Oct. 16, 1962, 76 Stat. 999, substituted "and certain marine insurance companies and other than fire or flood insurance companies which operate on basis of perpetual policies or premium deposits" for "or marine or fire insurance companies issuing perpetual policies" in heading of part II.

PART I—LIFE INSURANCE COMPANIES

Subpart
A. Tax imposed.
B. Life insurance gross income.
C. Life insurance deductions.
D. Accounting, allocation, and foreign provisions.
E. Definitions and special rules.

SUBPART A—TAX IMPOSED

Sec.
801. Tax imposed.

§801. Tax imposed

(a) Tax imposed

(1) In general

A tax is hereby imposed for each taxable year on the life insurance company taxable income of every life insurance company. Such tax shall consist of a tax computed as provided in section 11 as though the life insurance company taxable income were the taxable income referred to in section 11.

(2) Alternative tax in case of capital gains

(A) In general

If a life insurance company has a net capital gain for the taxable year, then (in lieu of the tax imposed by paragraph (1)), there is hereby imposed a tax (if such tax is less than the tax imposed by paragraph (1)).

(B) Amount of tax

The amount of the tax imposed by this paragraph shall be the sum of—

(i) a partial tax, computed as provided by paragraph (1), on the life insurance company taxable income reduced by the amount of the net capital gain, and

(ii) an amount determined as provided in section 1201(a) on such net capital gain.

(C) Net capital gain not taken into account in determining small life insurance company deduction

For purposes of subparagraph (B)(i), the amount allowable as a deduction under paragraph

(2) of section 804 shall be determined by reducing the tentative LICTI by the amount of the net capital gain (determined without regard to items attributable to noninsurance businesses).

(b) Life insurance company taxable income

For purposes of this part, the term "life insurance company taxable income" means—

(1) life insurance gross income, reduced by

(2) life insurance deductions.

(c) Taxation of distributions from pre-1984 policyholders surplus account

For provision taxing distributions to shareholders from pre-1984 policyholders surplus account, see section 815.

(Added Pub. L. 98–369, div. A, title II, §211(a), July 18, 1984, 98 Stat. 720; amended Pub. L. 99–514, title X, §1011(b)(3), Oct. 22, 1986, 100 Stat. 2389.)

PRIOR PROVISIONS

A prior section 801, added Pub. L. 86–69, §2(a), June 25, 1959, 73 Stat. 112; amended Pub. L. 87–858, §3(a), Oct. 23, 1962, 76 Stat. 1134; Pub. L. 91–172, title I, §121(b)(5)(B), Dec. 30, 1969, 83 Stat. 541; Pub. L. 93–406, title II, §2002(g)(11), Sept. 2, 1974, 88 Stat. 970; Pub. L. 94–455, title XV, §1505(a), title XIX, §§1901(c)(6), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1738, 1803, 1834; Pub. L. 95–600, title VII, §703(j)(4), Nov. 6, 1978, 92 Stat. 2941, defined "life insurance company" and related terms, prior to the general revision of this part by Pub. L. 98–369, §211(a). See section 816 of this title.

Another prior section 801, acts Aug. 16, 1954, ch. 736, 68A Stat. 255; Mar. 13, 1956, ch. 83, §2, 70 Stat. 36, contained provisions similar to this section, prior to the the general revision of this part by Pub. L. 86–69, §2(a).

A prior section 802, added Pub. L. 86–69, §2(a), June 25, 1959, 73 Stat. 115; amended Pub. L. 87–858, §3(b)(1), Oct. 23, 1962, 76 Stat. 1136; Pub. L. 88–272, title II, §235(c)(1), Feb. 26, 1964, 78 Stat. 126; Pub. L. 91–172, title V, §511(c)(1), Dec. 30, 1969, 83 Stat. 637; Pub. L. 94–455, title XIX, §1901(a)(95), (b)(33)(E), Oct. 4, 1976, 90 Stat. 1780, 1801; Pub. L. 95–600, title III, §301(b)(8), Nov. 6, 1978, 92 Stat. 2821, contained provisions similar to this section, prior to the general revision of this part by Pub. L. 98–369, §211(a).

Another prior section 802, acts Aug. 16, 1954, ch. 736, 68A Stat. 255; Mar. 13, 1956, ch. 83, §2, 70 Stat. 38; July 24, 1956, ch. 696, §§1, 2(b), 70 Stat. 633; Mar. 17, 1958, Pub. L. 85–345, §§1, 2(a), 72 Stat. 36, contained provision similar to this section, prior to the general revision of this part by Pub. L. 86–69, §2(a).

AMENDMENTS

1986—Subsec. (a)(2)(C). Pub. L. 99–514 substituted "the amount allowable as a deduction under paragraph (2)" for "the amounts allowable as deductions under paragraphs (2) and (3)" in text and struck from heading "special life insurance company deduction and" before "small".

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1011(c)(1) of Pub. L. 99–514, set out as a note under section 453B of this title.

EFFECTIVE DATE

Pub. L. 98–369, div. A, title II, §215, July 18, 1984, 98 Stat. 758, provided that: "The amendments made by this subtitle [subtitle A (§§211–219) of title II of div. A of Pub. L. 98–369, amending this part, enacting section 845 of this title, amending sections 72, 80, 243, 381, 401, 453B, 542, 594, 832, 841, 844, 891, 953, 1016, 1035, 1201, 1232A, 1351, 1503, 1504, 1561, 1563, 4371, 6501, 6511, 6601, and 6611 of this title, and enacting provisions set out as notes under this section and sections 453B, 806, 807, 809, 814, 816, 845, and 6655 of this title] shall apply to taxable years beginning after December 31, 1983."

TREATMENT OF CERTAIN WORKERS' COMPENSATION FUNDS

Pub. L. 100–647, title VI, §6076, Nov. 10, 1988, 102 Stat. 3706, provided that:

"(a) TREATMENT FOR TAXABLE YEARS BEGINNING BEFORE 1987.—In the case of any taxable year beginning before January 1, 1987, a deficiency shall not be assessed against (and if assessed, shall not be collected from) any qualified group self-insurers' fund to the extent such deficiency is attributable to the timing of policyholder dividend deductions.

"(b) QUALIFIED GROUP SELF-INSURERS' FUND.—For purposes of this section, the term 'qualified group self-insurers' fund' means any group of 2 or more employers which has been in existence for not less than 2 years, and who enter into agreements to pool their liabilities under the State workers' disability

compensation laws for the purpose of qualifying as a self-insurer under such laws, if—

"(1) the group has received a certificate of approval from, and is subject to regulation by, the State board or agency that is responsible for administering the State workers' disability compensation laws,

"(2) each employer who is a member of the group, by written agreement, is jointly and severally bound to assume and discharge, by payment, any lawful judgment or award entered by a court of competent jurisdiction or by the State agency responsible for administering the State workers' disability compensation laws against a member of the group,

"(3) the group is prohibited by State law or regulation from using the monies collected for a purpose other than to pay, or to reserve against, claims under the State workers' disability compensation laws and expenses,

"(4) the group is prohibited by State law or regulation from taking projected investment income into account in determining members' premiums,

"(5) the group is required by State law or regulation to submit to the State board or agency that is responsible for administering the State workers' disability compensation laws an audited financial statement,

"(6) the group's investments are limited by State law or regulation to bonds, notes, or other evidences of indebtedness issued, assumed or guaranteed by the United States of America, or by an agency or instrumentality thereof, certificates of deposit in a federally insured bank, shares or savings deposits in a federally insured savings and loan association or credit union, and certificates of deposit issued by a commercial bank duly chartered under State law, and other investments which are approved by the State board or agency that is responsible for administering the State workers' disability compensation laws, and

"(7) the group exclusively covers workers' compensation liability, is not a commercial insurance carrier or company licensed by the State board, agency, or commissioner responsible for regulating and licensing insurance carriers and companies; and is not subject to filing under the regulatory statements of the National Association of Insurance Commissioners."

TREATMENT OF CERTAIN MARKET DISCOUNT BONDS

Pub. L. 99–514, title X, §1011(d), Oct. 22, 1986, 100 Stat. 2390, as amended by Pub. L. 100–647, title I, §1010(a)(2), (3), Nov. 10, 1988, 102 Stat. 3450, 3451, provided that:

"(1) IN GENERAL.—Notwithstanding the amendments made by subtitle B of title III [amending sections 593, 631, 852, 1201, and 1445 of this title and enacting provisions set out as notes under sections 631 and 1201 of this title], any gain recognized by a qualified life insurance company on the redemption at maturity of any market discount bond (as defined in section 1278 of the Internal Revenue Code of 1986) which was issued before July 19, 1984, and acquired by such company on or before September 25, 1985, shall be subject to tax at the rate of 31.6 percent. The preceding sentence shall apply only if the tax determined under the preceding sentence is less than the tax which would otherwise be imposed.

"(2) QUALIFIED LIFE INSURANCE COMPANY.—For purposes of paragraph (1), the term 'qualified life insurance company' means any life insurance company subject to tax under part I of subchapter L of chapter 1 of the Internal Revenue Code of 1986."

WAIVER OF INTEREST ON CERTAIN UNDERPAYMENTS OF TAX

Pub. L. 99–514, title XVIII, §1829, Oct. 22, 1986, 100 Stat. 2851, provided that: "No interest shall be payable for any period before July 19, 1984, on any underpayment of a tax imposed by the Internal Revenue Code of 1954 [now 1986], to the extent such underpayment was created or increased by any provision of subtitle A of title II of the Tax Reform Act of 1984 [see Effective Date note above] (relating to taxation of life insurance companies)."

SCOPE OF SECTION 255 OF THE TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982

Pub. L. 99–514, title XVIII, §1830, Oct. 22, 1986, 100 Stat. 2851, provided that: "In the case of any taxable year beginning before January 1, 1982, in applying the provisions of section 255(c)(2) of the Tax Equity and Fiscal Responsibility Act of 1982 [section 255(c)(2) of Pub. L. 97–248, 96 Stat. 534, formerly set out as a note under section 809 of this title], the Internal Revenue Service shall give full and complete effect to the terms of any modified coinsurance contract. The terms to be given effect within the meaning of this provision shall include, but are not limited to, the effective date and investment income rate as stated in such contract."

TREATMENT OF CERTAIN SELF-INSURED WORKERS' COMPENSATION FUNDS

Pub. L. 99–514, title XVIII, §1879(q), Oct. 22, 1986, 100 Stat. 2911, provided that:

"(1) MORATORIUM ON COLLECTION ACTIVITIES.—During the period beginning on the date of the enactment of this Act [Oct. 22, 1986] and ending on August 16, 1987, the Secretary of the Treasury or his

delegate—

"(A) shall suspend any pending audit of any self-insured workers' compensation fund where the audit involves the issue of whether such fund is a mutual insurance company,

"(B) shall not initiate any audit of any such fund involving such issue, and

"(C) shall take no steps to collect from such fund any underpayment, interest, or penalty involving such issue.

"(2) SUSPENSION OF RUNNING OF INTEREST.—No interest shall be payable under chapter 67 of the Internal Revenue Code of 1986 on any underpayment by a self-insured workers' compensation fund involving such issue for the period beginning on August 16, 1986, and ending on August 16, 1987.

"(3) ADDITIONAL TIME TO FILE TAX COURT PROCEEDING.—If the period during which a petition involving such issue could have been filed with the Tax Court by any self-insured workers' compensation fund had not expired before August 16, 1986, such period shall not expire before August 16, 1987.

"(4) SELF-INSURED WORKERS' COMPENSATION FUND.—For purposes of this subsection, the term 'self-insured workers' compensation fund' means any self-insured workers' compensation fund established pursuant to applicable State law regulating self-insured workers' compensation funds."

RESERVES COMPUTED ON NEW BASIS; FRESH START

Pub. L. 98–369, title II, §216, July 18, 1984, 98 Stat. 758, as amended by Pub. L. 99–514, §2, title XVIII, §1822, Oct. 22, 1986, 100 Stat. 2095, 2844; Pub. L. 100–647, title I, §1018(i), Nov. 10, 1988, 102 Stat. 3583, provided that:

"(a) RECOMPUTATION OF RESERVES.—

"(1) IN GENERAL.—As of the beginning of the first taxable year beginning after December 31, 1983, for purposes of subchapter L of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (other than section 816 thereof), the reserve for any contract shall be recomputed as if the amendments made by this subtitle [see Effective Date note above] had applied to such contract when it was issued.

"(2) PREMIUMS EARNED.—For the first taxable year beginning after December 31, 1983, in determining 'premiums earned on insurance contracts during the taxable year' as provided in section 832(b)(4) of the Internal Revenue Code of 1986, life insurance reserves which are included in unearned premiums on outstanding business at the end of the preceding taxable year shall be determined as provided in section 807 of the Internal Revenue Code of 1986, as amended by this subtitle, as though section 807 was applicable to such reserves in such preceding taxable year.

"(3) ISSUANCE DATE FOR GROUP CONTRACTS.—For purposes of this subsection, the issuance date of any group contract shall be determined under section 807(e)(2) of the Internal Revenue Code of 1986 (as added by this subtitle), except that if such issuance date cannot be determined, the issuance date shall be determined on the basis prescribed by the Secretary of the Treasury or his delegate for purposes of this subsection.

"(b) FRESH START.—

"(1) IN GENERAL.—Except as provided in paragraph (2), in the case of any insurance company, any change in the method of accounting (and any change in the method of computing reserves) between such company's first taxable year beginning after December 31, 1983, and the preceding taxable year which is required solely by the amendments made by this subtitle [see Effective Date note above] shall be treated as not being a change in the method of accounting (or change in the method of computing reserves) for purposes of the Internal Revenue Code of 1986. The preceding sentence shall apply for purposes of computing the earnings and profits of any insurance company for its 1st taxable year beginning in 1984. The preceding sentence shall be applied by substituting '1985' for '1984' in the case of an insurance company which is a member of a controlled group (as defined in section 806(d)(3)), the common parent of which is

"(A) a company having its principal place of business in Alabama and incorporated in Delaware on November 29, 1979, or

"(B) a company having its principal place of business in Houston, Texas, and incorporated in Delaware on June 9, 1947.

"(2) TREATMENT OF ADJUSTMENTS FROM YEARS BEFORE 1984.—

"(A) ADJUSTMENTS ATTRIBUTABLE TO DECREASES IN RESERVES.—No adjustment under section 810(d) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act [July 18, 1984]) attributable to any decrease in reserves as a result of a change in a taxable year beginning before 1984 shall be taken into account in any taxable year beginning after 1983.

"(B) ADJUSTMENTS ATTRIBUTABLE TO INCREASES IN RESERVES.—

"(i) IN GENERAL.—Any adjustment under section 810(d) of the Internal Revenue Code of

1986 (as so in effect) attributable to an increase in reserves as a result of a change in a taxable year beginning before 1984 shall be taken into account in taxable years beginning after 1983 to the extent that—

"(I) the amount of the adjustments which would be taken into account under such section in taxable years beginning after 1983 without regard to this subparagraph, exceeds

"(II) the amount of any fresh start adjustment attributable to contracts for which there was such an increase in reserves as a result of such change.

"(ii) FRESH START ADJUSTMENT.—For purposes of clause (i), the fresh start adjustment with respect to any contract is the excess (if any) of—

"(I) the reserve attributable to such contract as of the close of the taxpayer's last taxable year beginning before January 1, 1984, over

"(II) the reserve for such contract as of the beginning of the taxpayer's first taxable year beginning after 1983 as recomputed under subsection (a) of this section.

"(C) RELATED INCOME INCLUSIONS NOT TAKEN INTO ACCOUNT TO THE EXTENT DEDUCTION DISALLOWED UNDER SUBPARAGRAPH (b).—No premium shall be included in income to the extent such premium is directly related to an increase in a reserve for which a deduction is disallowed by subparagraph (B).

"(3) REINSURANCE TRANSACTIONS, AND RESERVE STRENGTHENING, AFTER SEPTEMBER 27, 1983.—

"(A) IN GENERAL.—Paragraph (1) shall not apply (and section 807(f) of the Internal Revenue Code of 1986 as amended by this subtitle shall apply)—

"(i) to any reserve transferred pursuant to—

"(I) a reinsurance agreement entered into after September 27, 1983, and before January 1, 1984, or

"(II) a modification of a reinsurance agreement made after September 27, 1983, and before January 1, 1984, and

"(ii) to any reserve strengthening reported for Federal income tax purposes after September 27, 1983, for a taxable year ending before January 1, 1984.

Clause (ii) shall not apply to the computation of reserves on any contract issued if such computation employs the reserve practice used for purposes of the most recent annual statement filed before September 27, 1983, for the type of contract with respect to which such reserves are set up. For purposes of this subparagraph, if the reinsurer's taxable year is not a calendar year, the first day of the reinsurer's first taxable year beginning after December 31, 1983, shall be substituted for 'January 1, 1984' each place it appears.

"(B) TREATMENT OF RESERVE ATTRIBUTABLE TO SECTION 818(c) ELECTION.—In the case of any reserve described in subparagraph (A), for purposes of section 807(f) of the Internal Revenue Code of 1986, any change in the treatment of any contract to which an election under section 818(c) of such Code (as in effect on the day before the date of the enactment of this Act) applied shall be treated as a change in the basis for determining the amount of any reserve.

"(C) 10-YEAR SPREAD INAPPLICABLE WHERE NO 10-YEAR SPREAD UNDER PRIOR LAW.—In the case of any item to which section 807(f) of such Code applies by reason of subparagraph (A) or (B), such item shall be taken into account for the first taxable year beginning after December 31, 1983 (in lieu of over the 10-year period otherwise provided in such section) unless the item would have been required to be taken into account over a period of 10 taxable years under section 810(d) of such Code (as in effect on the day before the date of the enactment of this Act).

"(D) DISALLOWANCE OF SPECIAL LIFE INSURANCE COMPANY DEDUCTION AND SMALL LIFE INSURANCE COMPANY DEDUCTION.—Any amount included in income under section 807(f) of such Code by reason of subparagraph (A) or (B) (and any income attributable to expenses transferred in connection with the transfer of reserves described in subparagraph (A)) shall not be taken into account for purposes of determining the amount of special life insurance company deduction and the small life insurance company deduction.

"(E) DISALLOWANCE OF DEDUCTIONS UNDER [FORMER] SECTION 809(d).—No deduction shall be allowed under paragraph (5) or (6) of [former] section 809(d) of such Code (as in effect before the amendments made by this subtitle) with respect to any amount described in either such paragraph which is transferred in connection with the transfer of reserves described in subparagraph (A).

"(4) ELECTIONS UNDER SECTION 818(c) AFTER SEPTEMBER 27, 1983, NOT TO TAKE EFFECT.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), any election after September 27, 1983, under section 818(c) of the Internal Revenue Code of 1986 (as in effect on the day before the date

of the enactment of this Act) shall not take effect.

"(B) EXCEPTION FOR CERTAIN CONTRACTS ISSUED UNDER PLAN OF INSURANCE FIRST FILED AFTER MARCH 1, 1982, AND BEFORE SEPTEMBER 28, 1983.—Paragraph (3) and subparagraph (A) of this paragraph shall not apply to any election under such section 818(c) if more than 95 percent of the reserves computed in accordance with such election are attributable to risks under life insurance contracts issued by the taxpayer under a plan of insurance first filed after March 1, 1982, and before September 28, 1983.

"(C) SECTION 818(c) ELECTIONS MADE BY CERTAIN ACQUIRED COMPANIES.—

"(i) IN GENERAL.—If the case of any corporation—

"(I) which made an election under such section 818(c) BEFORE SEPTEMBER 28, 1983, AND

"(II) which was acquired in a qualified stock purchase (as defined in section 338(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) before December 31, 1983,

the fact that such corporation is treated as a new corporation under section 338 of such Code shall not result in the election described in subclause (I) not applying to such new corporation.

"(ii) TIME FOR MAKING SECTION 818(c) OR 338 ELECTION.—In the case of any corporation described in clause (i), the time for making an election under section 818(c) of such Code (with respect to the first taxable year of the corporation beginning in 1983 and ending after September 28, 1983), or making an election under section 338 of such Code with respect to the qualified stock purchase described in clause (i)(II), shall not expire before the close of the 60th day after the date of the enactment of the Tax Reform Act of 1986 [Oct. 22, 1986].

"(iii) STATUTE OF LIMITATIONS.—In the case of any such election under section 818(c) or 338 of such Code which would not have been timely made but for clause (ii), the period for assessing any deficiency attributable to such election (or for filing claim for credit or refund of any overpayment attributable to such election) shall not expire before the date 2 years after the date of the enactment of this Act [July 18, 1984].

"(5) RECAPTURE OF REINSURANCE AFTER DECEMBER 31, 1983.—If (A) insurance or annuity contracts in force on December 31, 1983, are subject to a conventional coinsurance agreement entered into after December 31, 1981, and before January 1, 1984, and (B) such contracts are recaptured by the reinsured in any taxable year beginning after December 31, 1983, then—

"(i) if the amount of the reserves with respect to the recaptured contracts, computed at the date of recapture, that the reinsurer would have taken into account under section 810(c) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act) exceeds the amount of the reserves with respect to the recaptured contracts, computed at the date of recapture, taken into account by the reinsurer under section 807(c) of the Internal Revenue Code of 1986 (as amended by this subtitle), such excess (but not greater than the amount of such excess if computed on January 1, 1984) shall be taken into account by the reinsurer under the method described in section 807(f)(1)(B)(ii) of the Internal Revenue Code of 1986 (as amended by this subtitle) commencing with the taxable year of recapture, and

"(ii) the amount, if any, taken into account by the reinsurer under clause (i) for purposes of part I of subchapter L of chapter 1 of the Internal Revenue Code of 1986 shall be taken into account by the reinsured under the method described in section 807(f)(1)(B)(i) of the Internal Revenue Code of 1986 (as amended by this subtitle) commencing with the taxable year of recapture.

The excess described in clause (i) shall be reduced by any portion of such excess to which section 807(f) of the Internal Revenue Code of 1986 applies by reason of paragraph (3) of this subsection. For purposes of this paragraph, the term 'reinsurer' refers to the taxpayer that held reserves with respect to the recaptured contracts as of the end of the taxable year preceding the first taxable year beginning after December 31, 1983, and the term 'reinsured' refers to the taxpayer to which such reserves are ultimately transferred upon termination.

"(c) ELECTION NOT TO HAVE RESERVES RECOMPUTED.—

"(1) IN GENERAL.—If a qualified life insurance company makes an election under this paragraph—

"(A) subsection (a) shall not apply to such company, and

"(B) as of the beginning of the first taxable year beginning after December 31, 1983, and thereafter, the reserve for any contract issued before the first day of such taxable year by such company shall be the statutory reserve for such contract (within the meaning of [former] section 809(b)(4)(B)(i) of the Internal Revenue Code of 1986).

"(2) ELECTION WITH RESPECT TO CONTRACTS ISSUED AFTER 1983 AND BEFORE 1989.—

"(A) IN GENERAL.—If—

"(i) a qualified life insurance company makes an election under paragraph (1), and

"(ii) the tentative LICTI (within the meaning of section 806(c) of such Code) of such company for its first taxable year beginning after December 31, 1983, does not exceed $3,000,000 (determined with regard to this paragraph),

such company may elect under this paragraph to have the reserve for any contract issued on or after the first day of such first taxable year and before January 1, 1989, be equal to the greater of the statutory reserve for such contract (adjusted as provided in subparagraph (B)) or the net surrender value of such contract (as defined in section 807(e)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]).

"(B) ADJUSTMENT TO RESERVES.—If this paragraph applies to any contract, the opening and closing statutory reserves for such contract shall be adjusted as provided under the principles of section 805(c)(1) of such Code (as in effect for taxable years beginning in 1982 and 1983), except that section 805(c)(1)(B)(ii) of such Code (as so in effect) shall be applied by substituting—

"(i) the prevailing State assumed interest rate (within the meaning of section 807(c)(4) of such Code), for

"(ii) the adjusted reserves rate.

"(3) QUALIFIED LIFE INSURANCE COMPANY.—For purposes of this subsection, the term 'qualified life insurance company' means any life insurance company which, as of December 31, 1983, had assets of less than $100,000,000 (determined in the same manner as under section 806(b)(3) of such Code).

"(4) SPECIAL RULES FOR CONTROLLED GROUPS.—For purposes of applying the dollar limitations of paragraphs (2) and (3), rules similar to the rules of section 806(d) of such Code shall apply.

"(5) ELECTIONS.—Any election under paragraph (1) or (2)—

"(A) shall be made at such time and in such manner as the Secretary of the Treasury may prescribe, and

"(B) once made, shall be irrevocable."

TREATMENT OF CERTAIN COMPANIES OPERATING BOTH AS STOCK AND MUTUAL COMPANY

Pub. L. 98–369, div. A, title II, §217(e), July 18, 1984, 98 Stat. 762, provided that: "If, during the 10-year period ending on December 31, 1983, a company has, as authorized by the law of the State in which the company is domiciled, been operating as a mutual life insurance company with shareholders, such company shall be treated as a stock life insurance company."

TREATMENT OF REINSURANCE AGREEMENTS REQUIRED BY NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

Pub. L. 98–369, div. A, title II, §217(g), July 18, 1984, 98 Stat. 763, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Effective for taxable years beginning after December 31, 1981, and before January 1, 1984, subsections (c)(1)(F) and (d)(12) of section 809 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect on the day before the date of the enactment of this Act [July 18, 1984]) shall not apply to dividends to policyholders reimbursed to the taxpayer by a reinsurer in respect of accident and health policies reinsured under a reinsurance agreement entered into before June 30, 1955, pursuant to the direction of the National Association of Insurance Commissioners and approved by the State insurance commissioner of the taxpayer's State of domicile. For purposes of subchapter L of chapter 1 of such Code (as in effect on the day before the date of the enactment of this Act) any such dividends shall be treated as dividends of the reinsurer and not the taxpayer."

REPORTS TO CONGRESS ON REVENUE, SEGMENT BALANCE, ETC.

Pub. L. 98–369, div. A, title II, §231, July 18, 1984, 98 Stat. 776, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) REVENUE REPORTS.—Not later than July 1, 1985, and July 1 of each calendar year thereafter, the Secretary of the Treasury shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on—

"(1) the aggregate amount of revenue received under part I of subchapter L of chapter 1 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for the most recent taxable years for which data are available,

"(2) a comparison between the amount of such revenue and the amount anticipated by reason of changes made by the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97–248] or the Life Insurance Tax Act of 1984 [probably means title II of div. A of Pub. L. 98–369], and

"(3) the reasons for any difference between such aggregate revenues and anticipated revenues.

"(b) REPORT WITH RESPECT TO SEGMENT BALANCE, ETC.—

"(1) IN GENERAL.—The Secretary of the Treasury (in consultation with the Joint Committee on Taxation, the Committee on Ways and Means of the House of Representatives, and the Committee on Finance of the Senate) shall conduct a full and complete study of the operation of part I of subchapter L of chapter 1 of the Internal Revenue Code of 1986 during 1984, 1985, and 1986. Such study shall also include an analysis of life insurance products and the taxation thereof. Such study shall also include an analysis of whether part I of such subchapter L operates as a disincentive to growing companies.

"(2) ITEMS TO BE INCLUDED.—The study conducted under paragraph (1) shall include—

"(A) an analysis of the portion of the taxes paid by mutual life insurance companies and stock life insurance companies, and

"(B) any other data considered relevant by either stock life insurance companies or mutual life insurance companies in determining appropriate segment balance, such as the respective amounts of the following items held by each segment of the industry—

"(i) equity,

"(ii) life insurance reserves,

"(iii) other types of reserves,

"(iv) dividends paid to policyholders and shareholders,

"(v) pension business,

"(vi) total assets, and

"(vii) gross receipts.

Such report shall also include an analysis of the extent to which taxes paid by stockholders of life insurance companies shall be included in analyzing segment balance.

"(3) REPORTS.—

"(A) INTERIM REPORTS.—The Secretary of the Treasury shall submit interim reports on the study conducted under this subsection to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than July 1, 1986, 1987, and 1988.

"(B) FINAL REPORT.—Not later than January 1, 1989, the Secretary of the Treasury shall submit a final report on the study conducted under this subsection to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

"(c) AUTHORITY TO REQUIRE DATA.—The Secretary of the Treasury shall have authority to require reporting of such data with respect to life insurance companies and their products as may be necessary to carry out the purposes of this section."

SUBPART B—LIFE INSURANCE GROSS INCOME

Sec.
803. Life insurance gross income.

§803. Life insurance gross income

(a) In general

For purposes of this part, the term "life insurance gross income" means the sum of the following amounts:

(1) Premiums

(A) The gross amount of premiums and other consideration on insurance and annuity contracts, less

(B) return premiums, and premiums and other consideration arising out of indemnity reinsurance.

(2) Decreases in certain reserves

Each net decrease in reserves which is required by section 807(a) to be taken into account under this paragraph.

(3) Other amounts

All amounts not includible under paragraph (1) or (2) which under this subtitle are includible in gross income.

(b) Special rules for premiums

(1) Certain items included

For purposes of subsection (a)(1)(A), the term "gross amount of premiums and other consideration" includes—

(A) advance premiums,

(B) deposits,

(C) fees,

(D) assessments,

(E) consideration in respect of assuming liabilities under contracts not issued by the taxpayer, and

(F) the amount of policyholder dividends reimbursable to the taxpayer by a reinsurer in respect of reinsured policies,

on insurance and annuity contracts.

(2) Policyholder dividends excluded from return premiums

For purposes of subsection (a)(1)(B)—

(A) In general

Except as provided in subparagraph (B), the term "return premiums" does not include any policyholder dividends.

(B) Exception for indemnity reinsurance

Subparagraph (A) shall not apply to amounts of premiums or other consideration returned to another life insurance company in respect of indemnity reinsurance.

(Added Pub. L. 98–369, div. A, title II, §211(a), July 18, 1984, 98 Stat. 721.)

PRIOR PROVISIONS

A prior section 803, acts Aug. 16, 1954, ch. 736, 68A Stat. 256; Mar. 13, 1956, ch. 83, §2, 70 Stat. 39, related to income and deductions in the case of life insurance companies, prior to the general revision of this part by Pub. L. 86–69, §2(a), June 25, 1959, 73 Stat. 112.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as a note under section 801 of this title.

SUBPART C—LIFE INSURANCE DEDUCTIONS

Sec.

804. Life insurance deductions.

805. General deductions.

806. Small life insurance company deduction.

807. Rules for certain reserves.

808. Policyholder dividends deduction.

[809. Repealed.]

810. Operations loss deduction.

AMENDMENTS

2004—Pub. L. 108–218, title II, §205(b)(7), Apr. 10, 2004, 118 Stat. 610, struck out item 809 "Reduction in certain deductions of mutual life insurance companies".

1986—Pub. L. 99–514, title X, §1011(b)(11)(B), Oct. 22, 1986, 100 Stat. 2389, substituted "Small life insurance company deduction" for "Special deductions" in item 806.

§804. Life insurance deductions

For purposes of this part, the term "life insurance deductions" means—

(1) the general deductions provided in section 805, and

(2) the small life insurance company deduction (if any) determined under section 806(a).

(Added Pub. L. 98–369, div. A, title II, §211(a), July 18, 1984, 98 Stat. 722; amended Pub. L. 99–514, title X, §1011(b)(2), Oct. 22, 1986, 100 Stat. 2389.)

PRIOR PROVISIONS

A prior section 804, added Pub. L. 86–69, §2(a), June 25, 1959, 73 Stat. 115; amended Pub. L. 87–858, §3(b)(2), Oct. 23, 1962, 76 Stat. 1137; Pub. L. 88–272, title II, §214(b)(3), Feb. 26, 1964, 78 Stat. 55; Pub. L. 91–172, title IV, §401(b)(2)(D), Dec. 30, 1969, 83 Stat. 602; Pub. L. 94–455, title XIX, §1901(a)(96), (b)(1)(J)(i), (iii), (K), (M), (33)(F), Oct. 4, 1976, 90 Stat. 1780, 1791, 1801, defined the term "taxable investment income" and provided for the computation of such income, prior to the general revision of this part by Pub. L. 98–369, §211(a).

Another prior section 804, acts Aug. 16, 1954, ch. 736, 68A Stat. 258; Mar. 13, 1956, ch. 83, §2, 70 Stat. 41, related to reserve and other policy liability deductions, prior to the general revision of this part by Pub. L. 86–69, §2(a).

AMENDMENTS

1986—Pars. (2), (3). Pub. L. 99–514 redesignated par. (3) as (2), substituted "section 806(a)" for "section 806(b)", and struck out former par. (2), which read as follows: "the special life insurance company deduction determined under section 806(a), and".

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1011(c)(1) of Pub. L. 99–514, set out as a note under section 453B of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as a note under section 801 of this title.

§805. General deductions

(a) General rule

For purposes of this part, there shall be allowed the following deductions:

(1) Death benefits, etc.

All claims and benefits accrued, and all losses incurred (whether or not ascertained), during the taxable year on insurance and annuity contracts.

(2) Increases in certain reserves

The net increase in reserves which is required by section 807(b) to be taken into account under this paragraph.

(3) Policyholder dividends

The deduction for policyholder dividends (determined under section 808(c)).

(4) Dividends received by company

(A) In general

The deductions provided by sections 243, 244, and 245 (as modified by subparagraph (B))—

(i) for 100 percent dividends received, and

(ii) for the life insurance company's share of the dividends (other than 100 percent dividends) received.

(B) Application of section 246(b)

In applying section 246(b) (relating to limitation on aggregate amount of deductions for dividends received) for purposes of subparagraph (A), the limit on the aggregate amount of the deductions allowed by sections 243(a)(1), 244(a), and 245 shall be the percentage determined under section 246(b)(3) of the life insurance company taxable income (and such limitation shall be applied as provided in section 246(b)(3)), computed without regard to—

(i) the small life insurance company deduction,

(ii) the operations loss deduction provided by section 810,

(iii) the deductions allowed by sections 243(a)(1), 244(a), and 245, and

(iv) any capital loss carryback to the taxable year under section 1212(a)(1),

but such limit shall not apply for any taxable year for which there is a loss from operations.

(C) 100 percent dividend

For purposes of subparagraph (A)—

(i) In general

Except as provided in clause (ii), the term "100 percent dividend" means any dividend if the percentage used for purposes of determining the deduction allowable under section 243, 244, or 245(b) is 100 percent.

(ii) Treatment of dividends from noninsurance companies

The term "100 percent dividend" does not include any distribution by a corporation which is not an insurance company to the extent such distribution is out of tax-exempt interest, or out of the increase for the taxable year in policy cash values (within the meaning of subparagraph (F)) of life insurance policies and annuity and endowment contracts to which section 264(f) applies, or out of dividends which are not 100 percent dividends (determined with the application of this clause as if it applies to distributions by all corporations including insurance companies).

(D) Special rules for certain dividends from insurance companies

(i) In general

In the case of any 100 percent dividend paid to any life insurance company out of the earnings and profits for any taxable year beginning after December 31, 1983, of another life insurance company if—

(I) the paying company's share determined under section 812 for such taxable year, exceeds

(II) the receiving company's share determined under section 812 for its taxable year in which the dividend is received or accrued,

the deduction allowed under section 243, 244, or 245(b) (as the case may be) shall be reduced as provided in clause (ii).

(ii) Amount of reduction

The reduction under this clause for a dividend is an amount equal to—

(I) the portion of such dividend attributable to prorated amounts, multiplied by

(II) the percentage obtained by subtracting the share described in subclause (II) of clause (i) from the share described in subclause (I) of such clause.

(iii) Prorated amounts

For purposes of this subparagraph, the term "prorated amounts" means tax-exempt interest, the increase for the taxable year in policy cash values (within the meaning of subparagraph (F)) of life insurance policies and annuity and endowment contracts to which section 264(f) applies, and dividends other than 100 percent dividends.

(iv) Portion of dividend attributable to prorated amounts

For purposes of this subparagraph, in determining the portion of any dividend attributable

to prorated amounts—

(I) any dividend by the paying corporation shall be treated as paid first out of earnings and profits for taxable years beginning after December 31, 1983, attributable to prorated amounts (to the extent thereof), and

(II) by determining the portion of earnings and profits so attributable without any reduction for the tax imposed by this chapter.

(v) Subparagraph to apply to dividends from other insurance companies

Rules similar to the rules of this subsection shall apply in the case of 100 percent dividends paid by an insurance company which is not a life insurance company.

(E) Certain dividends received by foreign corporations

Subparagraph (A)(i) (and not subparagraph (A)(ii)) shall apply to any dividend received by a foreign corporation from a domestic corporation which would be a 100 percent dividend if section 1504(b)(3) did not apply for purposes of applying section 243(b)(2).

(F) Increase in policy cash values

For purposes of subparagraphs (C) and (D)—

(i) In general

The increase in the policy cash value for any taxable year with respect to policy or contract is the amount of the increase in the adjusted cash value during such taxable year determined without regard to—

(I) gross premiums paid during such taxable year, and

(II) distributions (other than amounts includible in the policyholder's gross income) during such taxable year to which section 72(e) applies.

(ii) Adjusted cash value

For purposes of clause (i), the term "adjusted cash value" means the cash surrender value of the policy or contract increased by the sum of—

(I) commissions payable with respect to such policy or contract for the taxable year, and

(II) asset management fees, surrender charges, mortality and expense charges, and any other fees or charges specified in regulations prescribed by the Secretary which are imposed (or which would be imposed were the policy or contract canceled) with respect to such policy or contract for the taxable year.

(5) Operations loss deduction

The operations loss deduction (determined under section 810).

(6) Assumption by another person of liabilities under insurance, etc., contracts

The consideration (other than consideration arising out of indemnity reinsurance) in respect of the assumption by another person of liabilities under insurance and annuity contracts.

(7) Reimbursable dividends

The amount of policyholder dividends which—

(A) are paid or accrued by another insurance company in respect of policies the taxpayer has reinsured, and

(B) are reimbursable by the taxpayer under the terms of the reinsurance contract.

(8) Other deductions

Subject to the modifications provided by subsection (b), all other deductions allowed under this subtitle for purposes of computing taxable income.

Except as provided in paragraph (3), no amount shall be allowed as a deduction under this part in respect of policyholder dividends.

(b) Modifications

The modifications referred to in subsection (a)(8) are as follows:

(1) Interest

In applying section 163 (relating to deduction for interest), no deduction shall be allowed for interest in respect of items described in section 807(c).

(2) Charitable, etc., contributions and gifts

In applying section 170—

(A) the limit on the total deductions under such section provided by section 170(b)(2) shall be 10 percent of the life insurance company taxable income computed without regard to—

(i) the deduction provided by section 170,

(ii) the deductions provided by paragraphs (3) and (4) of subsection (a),

(iii) the small life insurance company deduction,

(iv) any operations loss carryback to the taxable year under section 810, and

(v) any capital loss carryback to the taxable year under section 1212(a)(1), and

(B) under regulations prescribed by the Secretary, a rule similar to the rule contained in section 170(d)(2)(B) (relating to special rule for net operating loss carryovers) shall be applied.

(3) Amortizable bond premium

(A) In general

Section 171 shall not apply.

(B) Cross reference

For rules relating to amortizable bond premium, see section 811(b).

(4) Net operating loss deduction

Except as provided by section 844, the deduction for net operating losses provided in section 172 shall not be allowed.

(5) Dividends received deduction

Except as provided in subsection (a)(4), the deductions for dividends received provided by sections 243, 244, and 245 shall not be allowed.

(Added Pub. L. 98–369, div. A, title II, §211(a), July 18, 1984, 98 Stat. 722; amended Pub. L. 99–514, title VI, §611(a)(5), title VIII, §805(c)(6), title X, §1011(b)(4), title XVIII, §1821(p), Oct. 22, 1986, 100 Stat. 2249, 2362, 2389, 2842; Pub. L. 100–203, title X, §10221(c)(2), Dec. 22, 1987, 101 Stat. 1330–409; Pub. L. 104–188, title I, §1702(h)(3), Aug. 20, 1996, 110 Stat. 1873; Pub. L. 105–34, title X, §1084(b)(1), Aug. 5, 1997, 111 Stat. 954.)

CODIFICATION

Another section 1084(b) of Pub. L. 105–34 amended sections 101 and 264 of this title.

PRIOR PROVISIONS

A prior section 805, added Pub. L. 86–69, §2(a), June 25, 1959, 73 Stat. 118; amended Pub. L. 87–792, §7(g), Oct. 10, 1962, 76 Stat. 829; Pub. L. 88–571, §5(a), Sept. 2, 1964, 78 Stat. 860; Pub. L. 91–172, title IX, §907(a)(1), Dec. 30, 1969, 83 Stat. 715; Pub. L. 93–406, title II, §§1016(a)(6), 2002(g)(9), 2004(c)(3), Sept. 2, 1974, 88 Stat. 929, 970, 986; Pub. L. 94–267, §(1)(c)(4), Apr. 15, 1976, 90 Stat. 367; Pub. L. 94–455, title XIX, §1901(a)(97), Oct. 4, 1976, 90 Stat. 1780; Pub. L. 95–600, title I, §§141(f)(9), 155(a), Nov. 6, 1978, 92 Stat. 2795, 2801; Pub. L. 97–248, title II, §§257(a), 260(b), 261, 264(a)–(c)(1), Sept. 3, 1982, 96 Stat. 537, 540, 543, 544, related to policy and other contract liability requirements, prior to general revision of this part by Pub. L. 98–369, §211(a).

Another prior section 805, acts Aug. 16, 1954, ch. 736, 68A Stat. 258; Mar. 13, 1956, ch. 83, §2, 70 Stat. 43, authorized a special interest deduction, prior to the general revision of this part by Pub. L. 86–69, §2(a).

AMENDMENTS

1997—Subsec. (a)(4)(C)(ii). Pub. L. 105–34, §1084(b)(1)(A), inserted ", or out of the increase for the taxable year in policy cash values (within the meaning of subparagraph (F)) of life insurance policies and

annuity and endowment contracts to which section 264(f) applies," after "tax-exempt interest".

Subsec. (a)(4)(D)(iii). Pub. L. 105–34, §1084(b)(1)(B), substituted ", the increase for the taxable year in policy cash values (within the meaning of subparagraph (F)) of life insurance policies and annuity and endowment contracts to which section 264(f) applies, and" for "and".

Subsec. (a)(4)(F). Pub. L. 105–34, §1084(b)(1)(C), added subpar. (F).

1996—Subsec. (a)(4)(E). Pub. L. 104–188 substituted "243(b)(2)" for "243(b)(5)".

1987—Subsec. (a)(4)(B). Pub. L. 100–203 substituted "shall be the percentage determined under section 246(b)(3) of the life insurance company taxable income (and such limitation shall be applied as provided in section 246(b)(3))" for "shall be 80 percent of the life insurance company taxable income".

1986—Subsec. (a)(4)(B). Pub. L. 99–514, §611(a)(5), substituted "80 percent" for "85 percent" in introductory provisions.

Subsec. (a)(4)(B)(i). Pub. L. 99–514, §1011(b)(4), struck out "the special life insurance company deduction and" before "the small life".

Subsec. (a)(4)(C) to (E). Pub. L. 99–514, §1821(p), added subpars. (C) and (D), redesignated former subpar. (D) as (E), and struck out former subpar. (C) which read as follows: "For purposes of subparagraph (A), the term '100 percent dividend' means any dividend if the percentage used for purposes of determining the deduction allowable under section 243 or 244 is 100 percent. Such term does not include any dividend to the extent it is a distribution out of tax-exempt interest or out of dividends which are not 100 percent dividends (determined with the application of this sentence)."

Subsec. (b)(2). Pub. L. 99–514, §805(c)(6), redesignated par. (3) as (2). Former par. (2), which provided that section 166(c) (relating to reserve for bad debts) shall not apply, was struck out.

Subsec. (b)(2)(A)(iii). Pub. L. 99–514, §1011(b)(4), which directed that subsec. (b)(3)(A)(iii) be amended by striking out "the special life insurance company deduction and" before "the small life", was executed to subsec. (b)(2)(A)(iii) to reflect the probable intent of Congress and the redesignation of subsec. (b)(3) as (b)(2) by Pub. L. 99–514, §805(c)(6).

Subsec. (b)(3) to (6). Pub. L. 99–514, §805(c)(6), redesignated pars. (3) to (6) as (2) to (5), respectively.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to contracts issued after June 8, 1997, in taxable years ending after such date, with special provisions relating to changes in contracts to be treated as new contracts, see section 1084(d) of Pub. L. 105–34, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to taxable years beginning after Dec. 31, 1987, see section 10221(e)(2) of Pub. L. 100–203, as amended, set out as a note under section 243 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 611(a)(5) of Pub. L. 99–514 applicable to dividends received or accrued after Dec. 31, 1986, in taxable years ending after such date, see section 611(b)(1) of Pub. L. 99–514, set out as a note under section 246 of this title.

Amendment by section 805(c)(6) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain changes required in method of accounting, see section 805(d) of Pub. L. 99–514, set out as a note under section 166 of this title.

Amendment by section 1011(b)(4) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1011(c)(1) of Pub. L. 99–514, set out as a note under section 453B of this title.

Amendment by section 1821(p) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as a note under section 801 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§806. Small life insurance company deduction

(a) Small life insurance company deduction

(1) In general

For purposes of section 804, the small life insurance company deduction for any taxable year is 60 percent of so much of the tentative LICTI for such taxable year as does not exceed $3,000,000.

(2) Phaseout between $3,000,000 and $15,000,000

The amount of the small life insurance company deduction determined under paragraph (1) for any taxable year shall be reduced (but not below zero) by 15 percent of so much of the tentative LICTI for such taxable year as exceeds $3,000,000.

(3) Small life insurance company deduction not allowable to company with assets of $500,000,000 or more

(A) In general

The small life insurance company deduction shall not be allowed for any taxable year to any life insurance company which, at the close of such taxable year, has assets equal to or greater than $500,000,000.

(B) Assets

For purposes of this paragraph, the term "assets" means all assets of the company.

(C) Valuation of assets

For purposes of this paragraph, the amount attributable to—

(i) real property and stock shall be the fair market value thereof, and

(ii) any other asset shall be the adjusted basis of such asset for purposes of determining gain on sale or other disposition.

(D) Special rule for interests in partnerships and trusts

For purposes of this paragraph—

(i) an interest in a partnership or trust shall not be treated as an asset of the company, but

(ii) the company shall be treated as actually owning its proportionate share of the assets held by the partnership or trust (as the case may be).

(b) Tentative LICTI

For purposes of this part—

(1) In general

The term "tentative LICTI" means life insurance company taxable income determined without regard to the small life insurance company deduction.

(2) Exclusion of items attributable to noninsurance businesses

The amount of the tentative LICTI for any taxable year shall be determined without regard to all items attributable to noninsurance businesses.

(3) Noninsurance business

(A) In general

The term "noninsurance business" means any activity which is not an insurance business.

(B) Certain activities treated as insurance businesses

For purposes of subparagraph (A), any activity which is not an insurance business shall be treated as an insurance business if—

(i) it is of a type traditionally carried on by life insurance companies for investment purposes, but only if the carrying on of such activity (other than in the case of real estate) does not constitute the active conduct of a trade or business, or

(ii) it involves the performance of administrative services in connection with plans providing life insurance, pension, or accident and health benefits.

(C) Limitation on amount of loss from noninsurance business which may offset income from insurance business

In computing the life insurance company taxable income of any life insurance company, any loss from a noninsurance business shall be limited under the principles of section 1503(c).

(c) Special rule for controlled groups

(1) Small life insurance company deduction determined on controlled group basis

For purposes of subsection (a)—

(A) all life insurance companies which are members of the same controlled group shall be treated as 1 life insurance company, and

(B) any small life insurance company deduction determined with respect to such group shall be allocated among the life insurance companies which are members of such group in proportion to their respective tentative LICTI's.

(2) Nonlife insurance members included for asset test

For purposes of subsection (a)(3), all members of the same controlled group (whether or not life insurance companies) shall be treated as 1 company.

(3) Controlled group

For purposes of this subsection, the term "controlled group" means any controlled group of corporations (as defined in section 1563(a)); except that subsections (a)(4) and (b)(2)(D) of section 1563 shall not apply.

(4) Adjustments to prevent excess detriment or benefit

Under regulations prescribed by the Secretary, proper adjustments shall be made in the application of this subsection to prevent any excess detriment or benefit (whether from year-to-year or otherwise) arising from the application of this subsection.

(Added Pub. L. 98–369, div. A, title II, §211(a), July 18, 1984, 98 Stat. 724; amended Pub. L. 99–514, title X, §1011(a), (b)(5)–(8), (11)(A), Oct. 22, 1986, 100 Stat. 2388, 2389.)

PRIOR PROVISIONS

A prior section 806, added Pub. L. 86–69, §2(a), June 25, 1959, 73 Stat. 120; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, related to certain changes in reserves and assets, prior to the general revision of this part by Pub. L. 98–369, §211(a).

Another prior section 806, act Aug. 16, 1954, ch. 736, 68A Stat. 258, related to adjustment for certain reserves, prior to the general revision of this part by act Mar. 13, 1956, ch. 83, §2, 70 Stat. 36.

AMENDMENTS

1986—Pub. L. 99–514, §1011(b)(11)(A), substituted "Small life insurance company deduction" for "Special deductions" in section catchline.

Subsec. (a). Pub. L. 99–514, §1011(a), redesignated subsec. (b) as (a) and struck out former subsec. (a), special life insurance company deduction, which read as follows: "For purposes of section 804, the special life insurance company deduction for any taxable year is 20 percent of the excess of the tentative LICTI for such taxable year over the small life insurance company deduction (if any)."

Subsec. (b). Pub. L. 99–514, §1011(a), (b)(5), redesignated subsec. (c) as (b), and in par. (1), substituted "without regard to the small life insurance company deduction" for "without regard to— (A) the special life insurance company deduction, and (B) the small life insurance company deduction". Former subsec. (b) redesignated (a).

Subsecs. (c), (d). Pub. L. 99–514, §1011(a), (b)(6)–(8), redesignated subsec. (d) as (c), in par. (1), in

heading, substituted "Small" for "Special life insurance company deduction and small", in introductory provisions, substituted "subsection (a)" for "subsections (a) and (b)", and in subpar. (B), struck out "any special life insurance company deduction and", in par. (2), substituted "subsection (a)(3)" for "subsection (b)(3)", redesignated par. (5) as (4), and struck out former par. (4) which provided for election with respect to loss from operations of member of group. Former subsec. (c) redesignated (b).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1011(c)(1) of Pub. L. 99–514, set out as a note under section 453B of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as a note under section 801 of this title.

DETERMINATION OF TENTATIVE LICTI WHERE CORPORATION MADE CERTAIN ACQUISITIONS IN 1980, 1981, 1982, AND 1983

Pub. L. 98–369, div. A, title II, §217(c), July 18, 1984, 98 Stat. 762, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "If—

"(1) a corporation domiciled or having its principal place of business in Alabama, Arkansas, Oklahoma, or Texas acquired the assets of 1 or more insurance companies after 1979 and before April 1, 1983, and

"(2) the bases of such assets in the hands of the corporation were determined under section 334(b)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] or such corporation made an election under section 338 of such Code with respect to such assets,

then the tentative LICTI of the corporation holding such assets for taxable years beginning after December 31, 1983, shall, for purposes of determining the amount of the special deductions under section 806 of such Code, be increased by the deduction allowable under chapter 1 of such Code for the amortization of the cost of insurance contracts acquired in such asset acquisition (and any portion of any operations loss deduction attributable to such amortization)."

DETERMINATION OF ASSETS OF CONTROLLED GROUP FOR PURPOSES OF SMALL LIFE INSURANCE COMPANY DEDUCTION FOR 1984

Pub. L. 98–369, div. A, title II, §217(h), July 18, 1984, 98 Stat. 763, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—For purposes of applying paragraph (2) of section 806(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to nonlife insurance members included for asset test) for the first taxable year beginning after December 31, 1983, the members of the controlled group referred to in such paragraph shall be treated as including only those members of such group which are described in paragraph (2) of this subsection if—

"(A) an election under section 1504(c)(2) of such Code is not in effect for the controlled group for such taxable year,

"(B) during such taxable year, the controlled group does not include a member which is taxable under part I of subchapter L of chapter 1 of such Code and which became a member of such group after September 27, 1983, and

"(C) the sum of the contributions to capital received by members of the controlled group which are taxable under such part I during such taxable year from the members of the controlled group which are not taxable under such part does not exceed the aggregate dividends paid during such taxable year by the members of such group which are taxable under such part I.

"(2) MEMBERS OF GROUP TAKEN INTO ACCOUNT.—For purposes of paragraph (1), the members of the controlled group which are described in this paragraph are—

"(A) any financial institution to which section 585 or 593 of such Code applies,

"(B) any lending or finance business (as defined by section 542(d)),

"(C) any insurance company subject to tax imposed by subchapter L of chapter 1 of such Code, and

"(D) any securities broker."

SPECIAL RULE FOR CERTAIN DEBT-FINANCED ACQUISITION OF STOCK

Pub. L. 98–369, div. A, title II, §217(k), July 18, 1984, 98 Stat. 765, as amended by Pub. L. 99–514, §2, title X, §1011(c)(2), Oct. 22, 1986, 100 Stat. 2095, 2389, provided that: "If—

"(1) a life insurance company owns the stock of another corporation through a partnership of which it

is a partner,

"(2) the stock of the corporation was acquired on January 14, 1981, and

"(3) such stock was acquired by debt financing,

then, for purposes of determining the small life insurance company deduction under section 806a of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by this subtitle [subtitle A (§§211–219) of title II of div. A of Pub. L. 98–369, see Tables for classifications]), the amount of tentative LICTI of such life insurance company shall be computed without taking into account any income, gain, loss, or deduction attributable to the ownership of such stock. For purposes of determining taxable income, the amount of any income, gain, loss, or deduction attributable to the ownership of such stock shall be an amount equal to 46 times the amount of such income, gain, loss, or deduction, divided by 36.8."

TREATMENT OF LOSSES FROM CERTAIN GUARANTEED INTEREST CONTRACTS

Pub. L. 98–369, div. A, title II, §217(l), July 18, 1984, 98 Stat. 765, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—For purposes of determining the amount of the special deductions under section 806 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by this subtitle [subtitle A (§§211–219) of title II of div. A of Pub. L. 98–369, see Tables for classification]), for any taxable year beginning before January 1, 1988, the amount of tentative LICTI of any qualified life insurance company shall be computed without taking into account any income, gain, loss, or deduction attributable to a qualified GIC.

"(2) QUALIFIED LIFE INSURANCE COMPANY.—For purposes of this subsection, the term 'qualified life insurance company' means any life insurance company if—

"(A) the accrual of discount less amortization of premium for bonds and short-term investments (as shown in the first footnote to Exhibit 3 of its 1983 annual statement for life insurance companies approved by the National Association of Insurance Commissioners (but excluding separate accounts) filed in its State of domicile) exceeds $72,000,000 but does not exceed $73,000,000, and

"(B) such life insurance company makes an election under this subsection on its return for its first taxable year beginning after December 31, 1983.

"(3) QUALIFIED GIC.—The term 'qualified GIC' means any group contract—

"(A) which is issued before January 1, 1984,

"(B) which specifies the contract maturity or renewal date,

"(C) under which funds deposited by the contract holder plus interest guaranteed at the inception of the contract for the term of the contract and net of any specified expenses are paid as directed by the contract holder, and

"(D) which is a pension plan contract (as defined in section 818(a) of the Internal Revenue Code of 1986).

"(4) SCOPE OF ELECTION.—An election under this subsection shall apply to all qualified GIC's of a qualified life insurance company. Any such election, once made, shall be irrevocable.

"(5) INCOME ON UNDERLYING ASSETS TAKEN INTO ACCOUNT.—In determining the amount of any income attributable to a qualified GIC, income on any asset attributable to such contract (as determined in the manner provided by the Secretary of the Treasury or his delegate) shall be taken into account.

"(6) LIMITATION ON TAX BENEFIT.—The amount of any reduction in tax for any taxable year by reason of this subsection for any qualified life insurance company (or controlled group within the meaning of section 806(d)(3) of the Internal Revenue Code of 1986) shall not exceed the applicable amount set forth in the following table:

"In the case of taxable years beginning in:	The reduction may not exceed:
1984	$4,500,000
1985	$4,500,000
1986	$3,000,000
1987	$2,000,000"

SPECIAL RULE FOR CERTAIN INTERESTS IN OIL AND GAS PROPERTIES

Pub. L. 98–369, div. A, title II, §217(m), July 18, 1984, 98 Stat. 766, as amended by Pub. L. 99–514, §2,

Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—For purposes of section 806 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the ownership by a qualified life insurance company of any undivided interest in operating mineral interests with respect to any oil or gas properties held on December 31, 1983, shall be treated as an insurance business.

"(2) QUALIFIED LIFE INSURANCE COMPANY.—For purposes of paragraph (1), the term 'qualified life insurance company' means a mutual life insurance company which—

"(A) was originally incorporated in March of 1857, and

"(B) has a cost to such company (as of December 31, 1983) in the operating mineral interests described in paragraph (1) in excess of $250,000,000."

§807. Rules for certain reserves

(a) Decrease treated as gross income

If for any taxable year—

(1) the opening balance for the items described in subsection (c), exceeds

(2)(A) the closing balance for such items, reduced by

(B) the amount of the policyholders' share of tax-exempt interest and the amount of the policyholder's share of the increase for the taxable year in policy cash values (within the meaning of section 805(a)(4)(F)) of life insurance policies and annuity and endowment contracts to which section 264(f) applies,

such excess shall be included in gross income under section 803(a)(2).

(b) Increase treated as deduction

If for any taxable year—

(1)(A) the closing balance for the items described in subsection (c), reduced by

(B) the amount of the policyholders' share of tax-exempt interest and the amount of the policyholder's share of the increase for the taxable year in policy cash values (within the meaning of section 805(a)(4)(F)) of life insurance policies and annuity and endowment contracts to which section 264(f) applies, exceeds

(2) the opening balance for such items,

such excess shall be taken into account as a deduction under section 805(a)(2).

(c) Items taken into account

The items referred to in subsections (a) and (b) are as follows:

(1) The life insurance reserves (as defined in section 816(b)).

(2) The unearned premiums and unpaid losses included in total reserves under section 816(c)(2).

(3) The amounts (discounted at the appropriate rate of interest) necessary to satisfy the obligations under insurance and annuity contracts, but only if such obligations do not involve (at the time with respect to which the computation is made under this paragraph) life, accident, or health contingencies.

(4) Dividend accumulations, and other amounts, held at interest in connection with insurance and annuity contracts.

(5) Premiums received in advance, and liabilities for premium deposit funds.

(6) Reasonable special contingency reserves under contracts of group term life insurance or group accident and health insurance which are established and maintained for the provision of insurance on retired lives, for premium stabilization, or for a combination thereof.

For purposes of paragraph (3), the appropriate rate of interest for any obligation is whichever of the following rates is the highest as of the time such obligation first did not involve life, accident, or health contingencies: the applicable Federal interest rate under subsection (d)(2)(B)(i), the prevailing State assumed interest rate under subsection (d)(2)(B)(ii), or the rate of interest assumed by the

company in determining the guaranteed benefit. In no case shall the amount determined under paragraph (3) for any contract be less than the net surrender value of such contract. For purposes of paragraph (2) and section 805(a)(1), the amount of the unpaid losses (other than losses on life insurance contracts) shall be the amount of the discounted unpaid losses as defined in section 846.

(d) Method of computing reserves for purposes of determining income

(1) In general

For purposes of this part (other than section 816), the amount of the life insurance reserves for any contract shall be the greater of—

(A) the net surrender value of such contract, or

(B) the reserve determined under paragraph (2).

In no event shall the reserve determined under the preceding sentence for any contract as of any time exceed the amount which would be taken into account with respect to such contract as of such time in determining statutory reserves (as defined in paragraph (6)).

(2) Amount of reserve

The amount of the reserve determined under this paragraph with respect to any contract shall be determined by using—

(A) the tax reserve method applicable to such contract,

(B) the greater of—

(i) the applicable Federal interest rate, or

(ii) the prevailing State assumed interest rate, and

(C) the prevailing commissioners' standard tables for mortality and morbidity adjusted as appropriate to reflect the risks (such as substandard risks) incurred under the contract which are not otherwise taken into account.

(3) Tax reserve method

For purposes of this subsection—

(A) In general

The term "tax reserve method" means—

(i) Life insurance contracts

The CRVM in the case of a contract covered by the CRVM.

(ii) Annuity contracts

The CARVM in the case of a contract covered by the CARVM.

(iii) Noncancellable accident and health insurance contracts

In the case of any noncancellable accident and health insurance contract (other than a qualified long-term care insurance contract, as defined in section 7702B(b)), a 2-year full preliminary term method.

(iv) Other contracts

In the case of any contract not described in clause (i), (ii), or (iii)—

(I) the reserve method prescribed by the National Association of Insurance Commissioners which covers such contract (as of the date of issuance), or

(II) if no reserve method has been prescribed by the National Association of Insurance Commissioners which covers such contract, a reserve method which is consistent with the reserve method required under clause (i), (ii), or (iii) or under subclause (I) of this clause as of the date of the issuance of such contract (whichever is most appropriate).

(B) Definition of CRVM and CARVM

For purposes of this paragraph—

(i) CRVM

The term "CRVM" means the Commissioners' Reserve Valuation Method prescribed by the National Association of Insurance Commissioners which is in effect on the date of the issuance of the contract.

(ii) CARVM

The term "CARVM" means the Commissioners' Annuities Reserve Valuation Method prescribed by the National Association of Insurance Commissioners which is in effect on the date of the issuance of the contract.

(C) No additional reserve deduction allowed for deficiency reserves

Nothing in any reserve method described under this paragraph shall permit any increase in the reserve because the net premium (computed on the basis of assumptions required under this subsection) exceeds the actual premiums or other consideration charged for the benefit.

(4) Applicable Federal interest rate; prevailing State assumed interest rate

For purposes of this subsection—

(A) Applicable Federal interest rate

(i) In general

Except as provided in clause (ii), the term "applicable Federal interest rate" means the annual rate determined by the Secretary under section 846(c)(2) for the calendar year in which the contract was issued.

(ii) Election to recompute Federal interest rate every 5 years

(I) In general

In computing the amount of the reserve with respect to any contract to which an election under this clause applies for periods during any recomputation period, the applicable Federal interest rate shall be the annual rate determined by the Secretary under section 846(c)(2) for the 1st year of such period. No change in the applicable Federal interest rate shall be made under the preceding sentence unless such change would equal or exceed ½ of 1 percentage point.

(II) Recomputation period

For purposes of subclause (I), the term "recomputation period" means, with respect to any contract, the 5 calendar year period beginning with the 5th calendar year beginning after the calendar year in which the contract was issued (and each subsequent 5 calendar year period).

(III) Election

An election under this clause shall apply to all contracts issued during the calendar year for which the election was made or during any subsequent calendar year unless such election is revoked with the consent of the Secretary.

(IV) Spread not available

Subsection (f) shall not apply to any adjustment required under this clause.

(B) Prevailing State assumed interest rate

(i) In general

The term "prevailing State assumed interest rate" means, with respect to any contract, the highest assumed interest rate permitted to be used in computing life insurance reserves for insurance contracts or annuity contracts (as the case may be) under the insurance laws of at least 26 States. For purposes of the preceding sentence, the effect of nonforfeiture laws of a State on interest rates for reserves shall not be taken into account.

(ii) When rate determined

The prevailing State assumed interest rate with respect to any contract shall be determined as of the beginning of the calendar year in which the contract was issued.

(5) Prevailing commissioners' standard tables

For purposes of this subsection—

(A) In general

The term "prevailing commissioners' standard tables" means, with respect to any contract, the most recent commissioners' standard tables prescribed by the National Association of Insurance Commissioners which are permitted to be used in computing reserves for that type of contract under the insurance laws of at least 26 States when the contract was issued.

(B) Insurer may use old tables for 3 years when tables change

If the prevailing commissioners' standard tables as of the beginning of any calendar year (hereinafter in this subparagraph referred to as the "year of change") is different from the prevailing commissioners' standard tables as of the beginning of the preceding calendar year, the issuer may use the prevailing commissioners' standard tables as of the beginning of the preceding calendar year with respect to any contract issued after the change and before the close of the 3-year period beginning on the first day of the year of change.

(C) Special rule for contracts for which there are no commissioners' standard tables

If there are no commissioners' standard tables applicable to any contract when it is issued, the mortality and morbidity tables used for purposes of paragraph (2)(C) shall be determined under regulations prescribed by the Secretary. When the Secretary by regulation changes the table applicable to a type of contract, the new table shall be treated (for purposes of subparagraph (B) and for purposes of determining the issue dates of contracts for which it shall be used) as if it were a new prevailing commissioner's standard table adopted by the twenty-sixth State as of a date (no earlier than the date the regulation is issued) specified by the Secretary.

(D) Special rule for contracts issued before 1948

If—

(i) a contract was issued before 1948, and

(ii) there were no commissioners' standard tables applicable to such contract when it was issued,

the mortality and morbidity tables used in computing statutory reserves for such contracts shall be used for purposes of paragraph (2)(C).

(E) Special rule where more than 1 table or option applicable

If, with respect to any category of risks, there are 2 or more tables (or options under 1 or more tables) which meet the requirements of subparagraph (A) (or, where applicable, subparagraph (B) or (C)), the table (and option thereunder) which generally yields the lowest reserves shall be used for purposes of paragraph (2)(C).

(6) Statutory reserves

The term "statutory reserves" means the aggregate amount set forth in the annual statement with respect to items described in section 807(c). Such term shall not include any reserve attributable to a deferred and uncollected premium if the establishment of such reserve is not permitted under section 811(c).

(e) Special rules for computing reserves

(1) Net surrender value

For purposes of this section—

(A) In general

The net surrender value of any contract shall be determined—

(i) with regard to any penalty or charge which would be imposed on surrender, but

(ii) without regard to any market value adjustment on surrender.

(B) Special rule for pension plan contracts

In the case of a pension plan contract, the balance in the policyholder's fund shall be treated as the net surrender value of such contract. For purposes of the preceding sentence, such balance shall be determined with regard to any penalty or forfeiture which would be imposed on surrender but without regard to any market value adjustment.

(2) Issuance date in case of group contracts

For purposes of this section, in the case of a group contract, the date on which such contract is issued shall be the date as of which the master plan is issued (or, with respect to a benefit guaranteed to a participant after such date, the date as of which such benefit is guaranteed).

(3) Supplemental benefits

(A) Qualified supplemental benefits treated separately

For purposes of this part, the amount of the life insurance reserve for any qualified supplemental benefit—

(i) shall be computed separately as though such benefit were under a separate contract, and

(ii) shall, except to the extent otherwise provided in regulations, be the reserve taken into account for purposes of the annual statement approved by the National Association of Insurance Commissioners.

(B) Supplemental benefits which are not qualified supplemental benefits

In the case of any supplemental benefit described in subparagraph (D) which is not a qualified supplemental benefit, the amount of the reserve determined under paragraph (2) of subsection (d) shall, except to the extent otherwise provided in regulations, be the reserve taken into account for purposes of the annual statement approved by the National Association of Insurance Commissioners.

(C) Qualified supplemental benefit

For purposes of this paragraph, the term "qualified supplemental benefit" means any supplemental benefit described in subparagraph (D) if—

(i) there is a separately identified premium or charge for such benefit, and

(ii) any net surrender value under the contract attributable to any other benefit is not available to fund such benefit.

(D) Supplemental benefits

For purposes of this paragraph, the supplemental benefits described in this subparagraph are any—

(i) guaranteed insurability,

(ii) accidental death or disability benefit,

(iii) convertibility,

(iv) disability waiver benefit, or

(v) other benefit prescribed by regulations,

which is supplemental to a contract for which there is a reserve described in subsection (c).

(4) Certain contracts issued by foreign branches of domestic life insurance companies

(A) In general

In the case of any qualified foreign contract, the amount of the reserve shall be not less than the minimum reserve required by the laws, regulations, or administrative guidance of the regulatory authority of the foreign country referred to in subparagraph (B) (but not to exceed the net level reserves for such contract).

(B) Qualified foreign contract

For purposes of subparagraph (A), the term "qualified foreign contract" means any contract

issued by a foreign life insurance branch (which has its principal place of business in a foreign country) of a domestic life insurance company if—

(i) such contract is issued on the life or health of a resident of such country,

(ii) such domestic life insurance company was required by such foreign country (as of the time it began operations in such country) to operate in such country through a branch, and

(iii) such foreign country is not contiguous to the United States.

(5) Treatment of substandard risks

(A) Separate computation

Except to the extent provided in regulations, the amount of the life insurance reserve for any qualified substandard risk shall be computed separately under subsection (d)(1) from any other reserve under the contract.

(B) Qualified substandard risk

For purposes of subparagraph (A), the term "qualified substandard risk" means any substandard risk if—

(i) the insurance company maintains a separate reserve for such risk,

(ii) there is a separately identified premium or charge for such risk,

(iii) the amount of the net surrender value under the contract is not increased or decreased by reason of such risk, and

(iv) the net surrender value under the contract is not regularly used to pay premium charges for such risk.

(C) Limitation on amount of life insurance reserve

The amount of the life insurance reserve determined for any qualified substandard risk shall in no event exceed the sum of the separately identified premiums charged for such risk plus interest less mortality charges for such risk.

(D) Limitation on amount of contracts to which paragraph applies

The aggregate amount of insurance in force under contracts to which this paragraph applies shall not exceed 10 percent of the insurance in force (other than term insurance) under life insurance contracts of the company.

(6) Special rules for contracts issued before January 1, 1989, under existing plans of insurance, with term insurance or annuity benefits

For purposes of this part—

(A) In general

In the case of a life insurance contract issued before January 1, 1989, under an existing plan of insurance, the life insurance reserve for any benefit to which this paragraph applies shall be computed separately under subsection (d)(1) from any other reserve under the contract.

(B) Benefits to which this paragraph applies

This paragraph applies to any term insurance or annuity benefit with respect to which the requirements of clauses (i) and (ii) of paragraph (3)(C) are met.

(C) Existing plan of insurance

For purposes of this paragraph, the term "existing plan of insurance" means, with respect to any contract, any plan of insurance which was filed by the company using such contract in one or more States before January 1, 1984, and is on file in the appropriate State for such contract.

(7) Special rules for treatment of certain nonlife reserves

(A) In general

The amount taken into account for purposes of subsections (a) and (b) as—

(i) the opening balance of the items referred to in subparagraph (C), and

(ii) the closing balance of such items,

shall be 80 percent of the amount which (without regard to this subparagraph) would have been taken into account as such opening or closing balance, as the case may be.

(B) Transitional rule

(i) In general

In the case of any taxable year beginning on or after September 30, 1990, and before September 30, 1996, there shall be included in the gross income of any life insurance company an amount equal to 31/3 percent of such company's closing balance of the items referred to in subparagraph (C) for its most recent taxable year beginning before September 30, 1990.

(ii) Termination as life insurance company

Except as provided in section 381(c)(22), if, for any taxable year beginning on or before September 30, 1996, the taxpayer ceases to be a life insurance company, the aggregate inclusions which would have been made under clause (i) for such taxable year and subsequent taxable years but for such cessation shall be taken into account for the taxable year preceding such cessation year.

(C) Description of items

For purposes of this paragraph, the items referred to in this subparagraph are the items described in subsection (c) which consist of unearned premiums and premiums received in advance under insurance contracts not described in section 816(b)(1)(B).

(f) Adjustment for change in computing reserves

(1) 10-year spread

(A) In general

For purposes of this part, if the basis for determining any item referred to in subsection (c) as of the close of any taxable year differs from the basis for such determination as of the close of the preceding taxable year, then so much of the difference between—

(i) the amount of the item at the close of the taxable year, computed on the new basis, and

(ii) the amount of the item at the close of the taxable year, computed on the old basis,

as is attributable to contracts issued before the taxable year shall be taken into account under the method provided in subparagraph (B).

(B) Method

The method provided in this subparagraph is as follows:

(i) if the amount determined under subparagraph (A)(i) exceeds the amount determined under subparagraph (A)(ii), 1/10 of such excess shall be taken into account, for each of the succeeding 10 taxable years, as a deduction under section 805(a)(2); or

(ii) if the amount determined under subparagraph (A)(ii) exceeds the amount determined under subparagraph (A)(i), 1/10 of such excess shall be included in gross income, for each of the 10 succeeding taxable years, under section 803(a)(2).

(2) Termination as life insurance company

Except as provided in section 381(c)(22) (relating to carryovers in certain corporate readjustments), if for any taxable year the taxpayer is not a life insurance company, the balance of any adjustments under this subsection shall be taken into account for the preceding taxable year.

(Added Pub. L. 98–369, div. A, title II, §211(a), July 18, 1984, 98 Stat. 726; amended Pub. L. 99–514, title X, §1023(b), title XVIII, §1821(a), (s), Oct. 22, 1986, 100 Stat. 2399, 2837, 2843; Pub. L. 100–203, title X, §10241(a)–(b)(2)(A), Dec. 22, 1987, 101 Stat. 1330–419, 1330–420; Pub. L. 101–508, title XI, §11302(a), Nov. 5, 1990, 104 Stat. 1388–449; Pub. L. 104–188, title I, §1704(t)(61), Aug. 20, 1996, 110 Stat. 1890; Pub. L. 104–191, title III, §321(b), Aug. 21, 1996, 110

Stat. 2058; Pub. L. 105–34, title X, §1084(b)(2), Aug. 5, 1997, 111 Stat. 954; Pub. L. 108–218, title II, §205(b)(1), (2), Apr. 10, 2004, 118 Stat. 610.)

CODIFICATION

Another section 1084(b) of Pub. L. 105–34 amended sections 101 and 264 of this title.

PRIOR PROVISIONS

A prior section 807, act Aug. 16, 1954, ch. 736, 68A Stat. 259, related to adjustment for certain reserves, prior to the general revision of this part by act Mar. 13, 1956, ch. 83, §2, 70 Stat. 36.

AMENDMENTS

2004—Subsecs. (a)(2)(B), (b)(1)(B). Pub. L. 108–218, §205(b)(1), struck out "the sum of (i)" before "the amount" and struck out "plus (ii) any excess described in section 809(a)(2) for the taxable year," after "to which section 264(f) applies,".

Subsec. (d)(1). Pub. L. 108–218, §205(b)(2)(A), substituted "paragraph (6)" for "section 809(b)(4)(B)" in concluding provisions.

Subsec. (d)(6). Pub. L. 108–218, §205(b)(2)(B), added par. (6).

1997—Subsec. (a)(2)(B). Pub. L. 105–34, §1084(b)(2)(A), substituted "interest and the amount of the policyholder's share of the increase for the taxable year in policy cash values (within the meaning of section 805(a)(4)(F)) of life insurance policies and annuity and endowment contracts to which section 264(f) applies," for "interest,".

Subsec. (b)(1)(B). Pub. L. 105–34, §1084(b)(2)(B), substituted "interest and the amount of the policyholder's share of the increase for the taxable year in policy cash values (within the meaning of section 805(a)(4)(F)) of life insurance policies and annuity and endowment contracts to which section 264(f) applies," for "interest,".

1996—Subsec. (d)(3)(A)(iii). Pub. L. 104–191 inserted "(other than a qualified long-term care insurance contract, as defined in section 7702B(b))" after "insurance contract".

Subsec. (d)(3)(B)(ii). Pub. L. 104–188 substituted "Commissioners' Annuities" for "Commissoners' Annuities".

1990—Subsec. (e)(7). Pub. L. 101–508 added par. (7).

1987—Subsec. (c). Pub. L. 100–203, §10241(b)(2)(A), substituted "whichever of the following rates is the highest as of the time such obligation first did not involve life, accident, or health contingencies: the applicable Federal interest rate under subsection (d)(2)(B)(i), the prevailing State assumed interest rate under subsection (d)(2)(B)(ii), or the rate of interest assumed by the company in determining the guaranteed benefit." for "the higher of the prevailing State assumed interest rate as of the time such obligation first did not involve life, accident, or health contingencies or the rate of interest assumed by the company (as of such time) in determining the guaranteed benefit." in third to last sentence.

Subsec. (d)(2)(B). Pub. L. 100–203, §10241(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "the prevailing State assumed interest rate, and".

Subsec. (d)(4). Pub. L. 100–203, §10241(b)(1), substituted "Applicable Federal interest rate; prevailing State assumed interest rate" for "Prevailing State assumed interest rate" in heading and amended text generally, revising and restating as subpars. (A) and (B) provisions of former subpars. (A) to (D).

1986—Subsec. (c). Pub. L. 99–514, §1023(b), inserted at end "For purposes of paragraph (2) and section 805(a)(1), the amount of the unpaid losses (other than losses on life insurance contracts) shall be the amount of the discounted unpaid losses as defined in section 846."

Pub. L. 99–514, §1821(a), inserted at end "In no case shall the amount determined under paragraph (3) for any contract be less than the net surrender value of such contract."

Subsec. (d)(5)(C). Pub. L. 99–514, §1821(s), inserted at end "When the Secretary by regulation changes the table applicable to a type of contract, the new table shall be treated (for purposes of subparagraph (B) and for purposes of determining the issue dates of contracts for which it shall be used) as if it were a new prevailing commissioner's standard table adopted by the twenty-sixth State as of a date (no earlier than the date the regulation is issued) specified by the Secretary."

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–218, title II, §205(c), Apr. 10, 2004, 118 Stat. 610, provided that: "The amendments made by this section [amending this section and sections 808, 812, 817, and 842 of this title and repealing section 809 of this title] shall apply to taxable years beginning after December 31, 2004."

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to contracts issued after June 8, 1997, in taxable years ending after such date, with special provisions relating to changes in contracts to be treated as new contracts, see section 1084(d) of Pub. L. 105–34, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–191 applicable to contracts issued after Dec. 31, 1997, see section 321(f) of Pub. L. 104–191, set out as an Effective Date note under section 7702B of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, §11302(b), Nov. 5, 1990, 104 Stat. 1388–450, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning on or after September 30, 1990."

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title X, §10241(c), Dec. 22, 1987, 101 Stat. 1330–420, provided that: "The amendments made by this section [amending this section and section 812 of this title] shall apply to contracts issued in taxable years beginning after December 31, 1987."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1023(b) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, except as otherwise provided, see section 1023(e) of Pub. L. 99–514, set out as an Effective Date note under section 846 of this title.

Amendment by section 1821(a), (s) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as a note under section 801 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TREATMENT OF CERTAIN ASSESSMENT LIFE INSURANCE COMPANIES

Pub. L. 98–369, div. A, title II, §217(f), July 18, 1984, 98 Stat. 763, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) MORTALITY AND MORBIDITY TABLES.—In the case of a contract issued by an assessment life insurance company, the mortality and morbidity tables used in computing statutory reserves for such contract shall be used for purposes of paragraph (2)(C) of section 807(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by this subtitle [subtitle A (§§211–219) of title II of div. A of Pub. L. 98–369]) if such tables were—

"(A) in use since 1965, and

"(B) developed on the basis of the experience of assessment life insurance companies in the State in which such assessment life insurance company is domiciled.

"(2) TREATMENT OF CERTAIN MUTUAL ASSESSMENT LIFE INSURANCE COMPANIES.—In the case of any contract issued by a mutual assessment life insurance company which—

"(A) has been in existence since 1965, and

"(B) operates under chapter 13 or 14 of the Texas Insurance Code,

for purposes of part I of subchapter L of chapter 1 of the Internal Revenue Code of 1986, the amount of the life insurance reserves for such contract shall be equal to the amount taken into account with respect to such contract in determining statutory reserves.

"(3) STATUTORY RESERVES.—For purposes of this subsection, the term 'statutory reserves' has the meaning given to such term by [former] section 809(b)(4)(B) of such Code."

SPECIAL RULE FOR COMPANIES USING NET LEVEL RESERVE METHOD FOR NONCANCELLABLE ACCIDENT AND HEALTH INSURANCE CONTRACTS

Pub. L. 98–369, div. A, title II, §217(n), July 18, 1984, 98 Stat. 766, as amended by Pub. L. 99–514, §2,

title XVIII, §1823, Oct. 22, 1986, 100 Stat. 2095, 2845, provided that: "A company shall be treated as meeting the requirements of section 807(d)(3)(A)(iii) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as amended by this Act, with respect to any directly-written noncancellable accident and health insurance contract (whether under existing or new plans of insurance) for any taxable year if—

"(1) such company—

"(A) was using the net level reserve method to compute at least 99 percent of its statutory reserves on such contracts as of December 31, 1982, and

"(B) received more than half its total direct premiums in 1982 from directly-written noncancellable accident and health insurance,

"(2) after December 31, 1983, and through such taxable year, such company has continuously used the net level reserve method for computing at least 99 percent of its tax and statutory reserves on such contracts, and

"(3) for any such contract for which the company does not use the net level reserve method, such company uses the same method for computing tax reserves as such company uses for computing its statutory reserves."

§808. Policyholder dividends deduction

(a) Policyholder dividend defined

For purposes of this part, the term "policyholder dividend" means any dividend or similar distribution to policyholders in their capacity as such.

(b) Certain amounts included

For purposes of this part, the term "policyholder dividend" includes—

(1) any amount paid or credited (including as an increase in benefits) where the amount is not fixed in the contract but depends on the experience of the company or the discretion of the management,

(2) excess interest,

(3) premium adjustments, and

(4) experience-rated refunds.

(c) Amount of deduction

The deduction for policyholder dividends for any taxable year shall be an amount equal to the policyholder dividends paid or accrued during the taxable year.

(d) Definitions

For purposes of this section—

(1) Excess interest

The term "excess interest" means any amount in the nature of interest—

(A) paid or credited to a policyholder in his capacity as such, and

(B) in excess of interest determined at the prevailing State assumed rate for such contract.

(2) Premium adjustment

The term "premium adjustment" means any reduction in the premium under an insurance or annuity contract which (but for the reduction) would have been required to be paid under the contract.

(3) Experience-rated refund

The term "experience-rated refund" means any refund or credit based on the experience of the contract or group involved.

(e) Treatment of policyholder dividends

For purposes of this part, any policyholder dividend which—

(1) increases the cash surrender value of the contract or other benefits payable under the contract, or

(2) reduces the premium otherwise required to be paid,

shall be treated as paid to the policyholder and returned by the policyholder to the company as a premium.

(f) Coordination of 1984 fresh-start adjustment with acceleration of policyholder dividends deduction through change in business practice

(1) In general

The amount determined under paragraph (1) of subsection (c) for the year of change shall (before any reduction under paragraph (2) of subsection (c)) be reduced by so much of the accelerated policyholder dividends deduction for such year as does not exceed the 1984 fresh-start adjustment for policyholder dividends (to the extent such adjustment was not previously taken into account under this subsection).

(2) Year of change

For purposes of this subsection, the term "year of change" means the taxable year in which the change in business practices which results in the accelerated policyholder dividends deduction takes effect.

(3) Accelerated policyholder dividends deduction defined

For purposes of this subsection, the term "accelerated policyholder dividends deduction" means the amount which (but for this subsection) would be determined for the taxable year under paragraph (1) of subsection (c) but which would have been determined (under such paragraph) for a later taxable year under the business practices of the taxpayer as in effect at the close of the preceding taxable year.

(4) 1984 fresh-start adjustment for policyholder dividends

For purposes of this subsection, the term "1984 fresh-start adjustment for policyholder dividends" means the amounts held as of December 31, 1983, by the taxpayer as reserves for dividends to policyholders under section 811(b) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1984) other than for dividends which accrued before January 1, 1984. Such amounts shall be properly reduced to reflect the amount of previously nondeductible policyholder dividends (as determined under section 809(f) as in effect on the day before the date of the enactment of the Tax Reform Act of 1984).

(5) Separate application with respect to lines of business

This subsection shall be applied separately with respect to each line of business of the taxpayer.

(6) Subsection not to apply to mere change in dividend amount

This subsection shall not apply to a mere change in the amount of policyholder dividends.

(7) Subsection not to apply to policies issued after December 31, 1983

(A) In general

This subsection shall not apply to any policyholder dividend paid or accrued with respect to a policy issued after December 31, 1983.

(B) Exchanges of substantially similar policies

For purposes of subparagraph (A), any policy issued after December 31, 1983, in exchange for a substantially similar policy issued on or before such date shall be treated as issued before January 1, 1984. A similar rule shall apply in the case of a series of exchanges.

(8) Subsection to apply to policies provided under employee benefit plans

This subsection shall not apply to any policyholder dividend paid or accrued with respect to a group policy issued in connection with a plan to provide welfare benefits to employees (within the meaning of section 419(e)(2)).

(Added Pub. L. 98–369, div. A, title II, §211(a), July 18, 1984, 98 Stat. 732; amended Pub. L.

99–514, title XVIII, §1821(b), (c), Oct. 22, 1986, 100 Stat. 2838; Pub. L. 108–218, title II, §205(b)(3), Apr. 10, 2004, 118 Stat. 610.)

REFERENCES IN TEXT

The date of enactment of the Tax Reform Act of 1984, referred to in subsec. (f)(4), is the date of enactment of Pub. L. 98–369, div. A, which was approved July 18, 1984.

AMENDMENTS

2004—Subsec. (c). Pub. L. 108–218 reenacted heading without change and amended text generally. Prior to amendment, text read as follows:

"(1) IN GENERAL.—Except as limited by paragraph (2), the deduction for policyholder dividends for any taxable year shall be an amount equal to the policyholder dividends paid or accrued during the taxable year.

"(2) REDUCTION IN CASE OF MUTUAL COMPANIES.—In the case of a mutual life insurance company, the deduction for policyholder dividends for any taxable year shall be reduced by the amount determined under section 809."

1986—Subsec. (d)(1)(B). Pub. L. 99–514, §1821(b), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "determined at a rate in excess of the prevailing State assumed interest rate for such contract."

Subsec. (f). Pub. L. 99–514, §1821(c), added subsec. (f).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–218 applicable to taxable years beginning after Dec. 31, 2004, see section 205(c) of Pub. L. 108–218, set out as a note under section 807 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as a note under section 801 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[§809. Repealed. Pub. L. 108–218, title II, §205(a), Apr. 10, 2004, 118 Stat. 610]

Section, added Pub. L. 98–369, div. A, title II, §211(a), July 18, 1984, 98 Stat. 733; amended Pub. L. 99–514, title XVIII, §1821(d)–(h), (r), Oct. 22, 1986, 100 Stat. 2839, 2840, 2843; Pub. L. 100–647, title I, §1018(u)(47), Nov. 10, 1988, 102 Stat. 3593; Pub. L. 107–147, title VI, §611(a), Mar. 9, 2002, 116 Stat. 61, related to reduction in certain deductions of mutual life insurance companies.

A prior section 809, added Pub. L. 86–69, §2(a), June 25, 1959, 73 Stat. 121; amended Pub. L. 87–59, §2(a), (b), June 27, 1961, 75 Stat. 120; Pub. L. 87–790, §3(a), Oct. 10, 1962, 76 Stat. 808; Pub. L. 87–858, §3(b)(3), (c), Oct. 23, 1962, 76 Stat. 1137; Pub. L. 88–272, title II, §§214(b)(4), 228(a), Feb. 26, 1964, 78 Stat. 55, 98; Pub. L. 91–172, title II, §201(a)(2)(C), title IX, §907(c)(2)(B), Dec. 30, 1969, 83 Stat. 558, 717; Pub. L. 94–455, title XV, §1508(a), title XIX, §§1901(a)(98), (b)(1)(J)(iv), (L)–(N), 33(G), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1741, 1781, 1791, 1801, 1834; Pub. L. 97–248, title II, §§255(b)(2)–(4), 259(a), 264(c)(2), (3), Sept. 3, 1982, 96 Stat. 534, 538, 544; Pub. L. 97–448, title I, §102(m)(1), Jan. 12, 1983, 96 Stat. 2374, related to general provisions regarding gain and loss from operations, prior to the general revision of this part by Pub. L. 98–369, §211(a).

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 2004, see section 205(c) of Pub. L. 108–218, set out as an Effective Date of 2004 Amendment note under section 807 of this title.

§810. Operations loss deduction

(a) Deduction allowed

There shall be allowed as a deduction for the taxable year an amount equal to the aggregate of—

(1) the operations loss carryovers to such year, plus

(2) the operations loss carrybacks to such year.

For purposes of this part, the term "operations loss deduction" means the deduction allowed by this subsection.

(b) Operations loss carrybacks and carryovers

(1) Years to which loss may be carried

The loss from operations for any taxable year (hereinafter in this section referred to as the "loss year") shall be—

(A) an operations loss carryback to each of the 3 taxable years preceding the loss year,

(B) an operations loss carryover to each of the 15 taxable years following the loss year, and

(C) if the life insurance company is a new company for the loss year, an operations loss carryover to each of the 3 taxable years following the 15 taxable years described in subparagraph (B).

(2) Amount of carrybacks and carryovers

The entire amount of the loss from operations for any loss year shall be carried to the earliest of the taxable years to which (by reason of paragraph (1)) such loss may be carried. The portion of such loss which shall be carried to each of the other taxable years shall be the excess (if any) of the amount of such loss over the sum of the offsets (as defined in subsection (d)) for each of the prior taxable years to which such loss may be carried.

(3) Election for operations loss carrybacks

In the case of a loss from operations for any taxable year, the taxpayer may elect to relinquish the entire carryback period for such loss. Such election shall be made by the due date (including extensions of time) for filing the return for the taxable year of the loss from operations for which the election is to be in effect, and, once made for any taxable year, such election shall be irrevocable for that taxable year.

(4) Carryback for 2008 or 2009 losses

(A) In general

In the case of an applicable loss from operations with respect to which the taxpayer has elected the application of this paragraph, paragraph (1)(A) shall be applied by substituting any whole number elected by the taxpayer which is more than 3 and less than 6 for "3".

(B) Applicable loss from operations

For purposes of this paragraph, the term "applicable loss from operations" means the taxpayer's loss from operations for a taxable year ending after December 31, 2007, and beginning before January 1, 2010.

(C) Election

(i) In general

Any election under this paragraph may be made only with respect to 1 taxable year.

(ii) Procedure

Any election under this paragraph shall be made in such manner as may be prescribed by the Secretary, and shall be made by the due date (including extension of time) for filing the return for the taxpayer's last taxable year beginning in 2009. Any such election, once made, shall be irrevocable.

(D) Limitation on amount of loss carryback to 5th preceding taxable year

(i) In general

The amount of any loss from operations which may be carried back to the 5th taxable year preceding the taxable year of such loss under subparagraph (A) shall not exceed 50 percent of the taxpayer's taxable income (computed without regard to the loss from operations for the loss year or any taxable year thereafter) for such preceding taxable year.

(ii) Carrybacks and carryovers to other taxable years

Appropriate adjustments in the application of the second sentence of paragraph (2) shall be made to take into account the limitation of clause (i).

(c) Computation of loss from operations

For purposes of this section—

(1) In general

The term "loss from operations" means the excess of the life insurance deductions for any taxable year over the life insurance gross income for such taxable year.

(2) Modifications

For purposes of paragraph (1)—

(A) the operations loss deduction shall not be allowed, and

(B) the deductions allowed by sections 243 (relating to dividends received by corporations), 244 (relating to dividends received on certain preferred stock of public utilities), and 245 (relating to dividends received from certain foreign corporations) shall be computed without regard to section 246(b) as modified by section 805(a)(4).

(d) Offset defined

(1) In general

For purposes of subsection (b)(2), the term "offset" means, with respect to any taxable year, an amount equal to that increase in the operations loss deduction for the taxable year which reduces the life insurance company taxable income (computed without regard to paragraphs (2) and (3) of section 804) [1] or such year to zero.

(2) Operations loss deduction

For purposes of paragraph (1), the operations loss deduction for any taxable year shall be computed without regard to the loss from operations for the loss year or for any taxable year thereafter.

(e) New company defined

For purposes of this part, a life insurance company is a new company for any taxable year only if such taxable year begins not more than 5 years after the first day on which it (or any predecessor, if section 381(c)(22) applies) was authorized to do business as an insurance company.

(f) Application of subtitles A and F in respect of operation losses

Except as provided in section 805(b)(5),[1] subtitles A and F shall apply in respect of operation loss carrybacks, operation loss carryovers, and the operations loss deduction under this part, in the same manner and to the same extent as such subtitles apply in respect of net operating loss carrybacks, net operating loss carryovers, and the net operating loss deduction.

(g) Transitional rule

For purposes of this section and section 812 (as in effect before the enactment of the Life Insurance Tax Act of 1984), this section shall be treated as a continuation of such section 812.

(Added Pub. L. 98–369, div. A, title II, §211(a), July 18, 1984, 98 Stat. 738; amended Pub. L. 111–92, §13(c), Nov. 6, 2009, 123 Stat. 2994.)

REFERENCES IN TEXT

Paragraphs (2) and (3) of section 804, referred to in subsec. (d)(1), were repealed and a new paragraph (2) enacted by Pub. L. 99–514, title X, §1011(b)(2), Oct. 22, 1986, 100 Stat. 2389.

Section 805(b)(5) of this title, referred to in subsec. (f), was redesignated section 805(b)(4) of this title by Pub. L. 99–514, title VIII, §805(c)(6), Oct. 22, 1986, 100 Stat. 2362.

The Life Insurance Tax Act of 1984, referred to in subsec. (g), probably means title II of div. A of Pub. L. 98–369, which amended this part generally and was approved July 18, 1984.

PRIOR PROVISIONS

A prior section 810, added Pub. L. 86–69, §2(a), June 25, 1959, 73 Stat. 125; amended Pub. L. 91–172, title I, §121(b)(5)(B), title IX, §907(a)(2), Dec. 30, 1969, 83 Stat. 541, 715, related to rules for certain reserves, prior to the general revision of this part by Pub. L. 98–369, §211(a).

AMENDMENTS

2009—Subsec. (b)(4). Pub. L. 111–92 added par. (4).

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–92 applicable to losses arising in taxable years ending after Dec. 31, 2007, with transition provisions and exception for TARP recipients, see section 13(e), (f) of Pub. L. 111–92, set out as a note under section 56 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as a note under section 801 of this title.

[1] *See References in Text note below.*

SUBPART D—ACCOUNTING, ALLOCATION, AND FOREIGN PROVISIONS

Sec.

811. Accounting provisions.

812. Definition of company's share and policyholders' share.

[813. Repealed.]

814. Contiguous country branches of domestic life insurance companies.

815. Distributions to shareholders from pre-1984 policyholders surplus account.

AMENDMENTS

1987—Pub. L. 100–203, title X, §10242(c)(4), Dec. 22, 1987, 101 Stat. 1330–423, struck out item 813 "Foreign life insurance companies".

§811. Accounting provisions

(a) Method of accounting

All computations entering into the determination of the taxes imposed by this part shall be made—

(1) under an accrual method of accounting, or

(2) to the extent permitted under regulations prescribed by the Secretary, under a combination of an accrual method of accounting with any other method permitted by this chapter (other than the cash receipts and disbursements method).

To the extent not inconsistent with the preceding sentence or any other provision of this part, all such computations shall be made in a manner consistent with the manner required for purposes of the annual statement approved by the National Association of Insurance Commissioners.

(b) Amortization of premium and accrual of discount

(1) In general

The appropriate items of income, deductions, and adjustments under this part shall be adjusted to reflect the appropriate amortization of premium and the appropriate accrual of discount attributable to the taxable year on bonds, notes, debentures, or other evidences of indebtedness held by a life insurance company. Such amortization and accrual shall be determined—

(A) in accordance with the method regularly employed by such company, if such method is reasonable, and

(B) in all other cases, in accordance with regulations prescribed by the Secretary.

(2) Special rules

(A) Amortization of bond premium

In the case of any bond (as defined in section 171(d)), the amount of bond premium, and the amortizable bond premium for the taxable year, shall be determined under section 171(b) as if the election set forth in section 171(c) had been made.

(B) Convertible evidence of indebtedness

In no case shall the amount of premium on a convertible evidence of indebtedness include any amount attributable to the conversion features of the evidence of indebtedness.

(3) Exception

No accrual of discount shall be required under paragraph (1) on any bond (as defined in section 171(d)), except in the case of discount which is—

(A) interest to which section 103 applies, or

(B) original issue discount (as defined in section 1273).

(c) No double counting

Nothing in this part shall permit—

(1) a reserve to be established for any item unless the gross amount of premiums and other consideration attributable to such item are required to be included in life insurance gross income,

(2) the same item to be counted more than once for reserve purposes, or

(3) any item to be deducted (either directly or as an increase in reserves) more than once.

(d) Method of computing reserves on contract where interest is guaranteed beyond end of taxable year

For purposes of this part (other than section 816), amounts in the nature of interest to be paid or credited under any contract for any period which is computed at a rate which—

(1) exceeds the greater of the prevailing State assumed interest rate or applicable Federal interest rate in effect under section 807 for the contract for such period, and

(2) is guaranteed beyond the end of the taxable year on which the reserves are being computed,

shall be taken into account in computing the reserves with respect to such contract as if such interest were guaranteed only up to the end of the taxable year.

(e) Short taxable years

If any return of a corporation made under this part is for a period of less than the entire calendar year (referred to in this subsection as "short period"), then section 443 shall not apply in respect to such period, but life insurance company taxable income shall be determined, under regulations prescribed by the Secretary, on an annual basis by a ratable daily projection of the appropriate figures for the short period.

(Added and amended Pub. L. 98–369, div. A, title I, §42(a)(8), title II, §211(a), July 18, 1984, 98 Stat. 557, 740; Pub. L. 100–647, title II, §2004(p)(1), Nov. 10, 1988, 102 Stat. 3608.)

PRIOR PROVISIONS

A prior section 811, added Pub. L. 86–69, §2(a), June 25, 1959, 73 Stat. 126; amended Pub. L. 97–248, title II, §255(b)(1), Sept. 3, 1982, 96 Stat. 533; Pub. L. 98–369, div. A, title VII, §714(a), July 18, 1984, 98 Stat.

960, related to dividends to policyholders, prior to the general revision of this part by Pub. L. 98–369, §211(a).

Another prior section 811, act Aug. 16, 1954, ch. 736, §811, as added Mar. 13, 1956, ch. 83, §2, 70 Stat. 44; amended July 24, 1956, ch. 696, §2(c), 70 Stat. 633; Mar. 17, 1958, Pub. L. 85–345, §2(c), 72 Stat. 37, imposed a tax on the life insurance company taxable income of all life insurance companies for taxable years beginning after Dec. 31, 1957, prior to the general revision of this part by Pub. L. 86–69, §2(a).

AMENDMENTS

1988—Subsec. (d)(1). Pub. L. 100–647 substituted "the greater of the prevailing State assumed interest rate or applicable Federal interest rate in effect under section 807 for the contract" for "the prevailing State assumed interest rate for the contract".

1984—Subsec. (b)(3). Pub. L. 98–369, §42(a)(8), substituted "section 1273" for "section 1232(b)".

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 42(a)(8) of Pub. L. 98–369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98–369, set out as an Effective Date note under section 1271 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as a note under section 801 of this title.

§812. Definition of company's share and policyholders' share

(a) General rule

(1) Company's share

For purposes of section 805(a)(4), the term "company's share" means, with respect to any taxable year, the percentage obtained by dividing—

(A) the company's share of the net investment income for the taxable year, by

(B) the net investment income for the taxable year.

(2) Policyholders' share

For purposes of section 807, the term "policyholders' share" means, with respect to any taxable year, the excess of 100 percent over the percentage determined under paragraph (1).

(b) Company's share of net investment income

(1) In general

For purposes of this section, the company's share of net investment income is the excess (if any) of—

(A) the net investment income for the taxable year, over

(B) the sum of—

(i) the policy interest, for the taxable year, plus

(ii) the gross investment income's proportionate share of policyholder dividends for the taxable year.

(2) Policy interest

For purposes of this subsection, the term "policy interest" means—

(A) required interest (at the greater of the prevailing State assumed rate or the applicable Federal interest rate) on reserves under section 807(c) (other than paragraph (2) thereof),

(B) the deductible portion of excess interest,

(C) the deductible portion of any amount (whether or not a policyholder dividend), and not taken into account under subparagraph (A) or (B), credited to—

(i) a policyholder's fund under a pension plan contract for employees (other than retired employees), or

(ii) a deferred annuity contract before the annuity starting date, and

(D) interest on amounts left on deposit with the company.

In any case where neither the prevailing State assumed interest rate nor the applicable Federal interest rate is used, another appropriate rate shall be used for purposes of subparagraph (A).

(3) Gross investment income's proportionate share of policyholder dividends

For purposes of paragraph (1), the gross investment income's proportionate share of policyholder dividends is—

(A) the deduction for policyholders' dividends determined under section 808 for the taxable year, but not including—

(i) the deductible portion of excess interest,

(ii) the deductible portion of policyholder dividends on contracts referred to in clauses (i) and (ii) of paragraph (2)(C), and

(iii) the deductible portion of the premium and mortality charge adjustments with respect to contracts paying excess interest for such year,

multiplied by

(B) the fraction—

(i) the numerator of which is gross investment income for the taxable year (reduced by the policy interest for such year), and

(ii) the denominator of which is life insurance gross income reduced by the excess (if any) of the closing balance for the items described in section 807(c) over the opening balance for such items for the taxable year.

For purposes of subparagraph (B)(ii), life insurance gross income shall be determined by including tax-exempt interest and by applying section 807(a)(2)(B) as if it did not contain clause (i) thereof.

(c) Net investment income

For purposes of this section, the term "net investment income" means—

(1) except as provided in paragraph (2), 90 percent of gross investment income; or

(2) in the case of gross investment income attributable to assets held in segregated asset accounts under variable contracts, 95 percent of gross investment income.

(d) Gross investment income

For purposes of this section, the term "gross investment income" means the sum of the following:

(1) Interest, etc.

The gross amount of income from—

(A) interest (including tax-exempt interest), dividends, rents, and royalties,

(B) the entering into of any lease, mortgage, or other instrument or agreement from which the life insurance company derives interest, rents, or royalties,

(C) the alteration or termination of any instrument or agreement described in subparagraph (B), and

(D) the increase for any taxable year in the policy cash values (within the meaning of section 805(a)(4)(F)) of life insurance policies and annuity and endowment contracts to which section 264(f) applies.

(2) Short-term capital gain

The amount (if any) by which the net short-term capital gain exceeds the net long-term capital loss.

(3) Trade or business income

The gross income from any trade or business (other than an insurance business) carried on by the life insurance company, or by a partnership of which the life insurance company is a partner. In computing gross income under this paragraph, there shall be excluded any item described in paragraph (1).

Except as provided in paragraph (2), in computing gross investment income under this subsection, there shall be excluded any gain from the sale or exchange of a capital asset, and any gain considered as gain from the sale or exchange of a capital asset.

(e) Dividends from certain subsidiaries not included in gross investment income

(1) In general

For purposes of this section, the term "gross investment income" shall not include any dividend received by the life insurance company which is a 100 percent dividend.

(2) 100 percent dividend defined

(A) In general

Except as provided in subparagraphs (B) and (C), the term "100 percent dividend" means any dividend if the percentage used for purposes of determining the deduction allowable under section 243, 244, or 245(b) is 100 percent.

(B) Certain dividends out of tax-exempt interest, etc.

The term "100 percent dividend" does not include any distribution by a corporation to the extent such distribution is out of tax-exempt interest or out of dividends which are not 100 percent dividends (determined with the application of this subparagraph).

(C) Certain dividends received by foreign corporations

The term "100 percent dividends" does not include any dividend described in section 805(a)(4)(E) (relating to certain dividends in the case of foreign corporations).

(f) No double counting

Under regulations, proper adjustments shall be made in the application of this section to prevent an item from being counted more than once.

(Added Pub. L. 98–369, div. A, title II, §211(a), July 18, 1984, 98 Stat. 741; amended Pub. L. 99–514, title XVIII, §1821(i), Oct. 22, 1986, 100 Stat. 2840; Pub. L. 100–203, title X, §10241(b)(2)(B), Dec. 22, 1987, 101 Stat. 1330–420; Pub. L. 100–647, title I, §1018(h)(1), title II, §2004(p)(2), Nov. 10, 1988, 102 Stat. 3583, 3608; Pub. L. 104–188, title I, §1602(b)(2), Aug. 20, 1996, 110 Stat. 1833; Pub. L. 105–34, title X, §1084(b)(3), Aug. 5, 1997, 111 Stat. 955; Pub. L. 108–218, title II, §205(b)(4), Apr. 10, 2004, 118 Stat. 610.)

CODIFICATION

Another section 1084(b) of Pub. L. 105–34 amended sections 101 and 264 of this title.

PRIOR PROVISIONS

A prior section 812, added Pub. L. 86–69, §2(a), June 25, 1959, 73 Stat. 127; amended Pub. L. 87–858, §3(d)(1), Oct. 23, 1962, 76 Stat. 1137; Pub. L. 88–571, §1(a), Sept. 2, 1964, 78 Stat. 857; Pub. L. 94–455, title VIII, §806(d)(1), title XIX, §1901(a)(99), Oct. 4, 1976, 90 Stat. 1598, 1781; Pub. L. 97–34, title II, §207(b), Aug. 13, 1981, 95 Stat. 225, related to operations loss deductions, prior to the general revision of this part by Pub. L. 98–369, §211(a).

Another prior section 812, act Aug. 16, 1954, ch. 736, §812, as added Mar. 13, 1956, ch. 83, §2, 70 Stat. 45, related to reserve and other policy liability deduction, prior to the general revision of this part by Pub. L. 86–69, §2(a).

AMENDMENTS

2004—Subsec. (b)(3)(A). Pub. L. 108–218 substituted "section 808" for "sections 808 and 809".

1997—Subsec. (d)(1)(D). Pub. L. 105–34 added subpar. (D).

1996—Subsec. (g). Pub. L. 104–188 struck out subsec. (g) which read as follows: "TREATMENT OF INTEREST PARTIALLY TAX-EXEMPT UNDER SECTION 133.—For purposes of this section and subsections (a) and (b) of section 807, the terms 'gross investment income' and 'tax-exempt interest' shall not include any interest received with respect to a securities acquisition loan (as defined in section 133(b)). Such interest shall not be included in life insurance gross income for purposes of subsection (b)(3)."

1988—Subsec. (b)(2). Pub. L. 100–647, §2004(p)(2), substituted "In any case where neither the prevailing State assumed interest rate nor the applicable Federal interest rate is used, another appropriate rate shall be used for purposes of subparagraph (A)." for "In any case where the prevailing State assumed rate is not used, another appropriate rate shall be treated as the prevailing State assumed rate for purposes of subparagraph (A)."

Subsec. (e). Pub. L. 100–647, §1018(h)(1), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: "For purposes of this section, the term 'gross investment income' shall not include any dividend received by the life insurance company which is a 100-percent dividend (as defined in section 805(a)(4)(C)). Such term also shall not include any dividend described in section 805(a)(4)(D) (relating to certain dividends in the case of foreign corporations)."

1987—Subsec. (b)(2). Pub. L. 100–203 substituted "at the greater of the prevailing State assumed rate or the applicable Federal interest rate" for "at the prevailing State assumed rate or, where such rate is not used, another appropriate rate" in subpar. (A), and inserted provision at end that in any case where the prevailing State assumed rate is not used, another appropriate rate be treated as the prevailing State assumed rate for purposes of subpar. (A).

1986—Subsec. (b)(2). Pub. L. 99–514, §1821(i)(1), inserted "or, where such rate is not used, another appropriate rate" after "assumed rate", in subpar. (A) and added subpar. (D).

Subsec. (b)(3)(B). Pub. L. 99–514, §1821(i)(2), struck out "(including tax-exempt interest)" after "insurance gross income" in cl. (ii) and inserted at end "For purposes of subparagraph (B)(ii), life insurance gross income shall be determined by including tax-exempt interest and by applying section 807(a)(2)(B) as if it did not contain clause (i) thereof."

Subsec. (c). Pub. L. 99–514, §1821(i)(3), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "For purposes of this section, the term 'net investment income' means 90 percent of gross investment income."

Subsec. (g). Pub. L. 99–514, §1821(i)(4), added subsec. (g).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–218 applicable to taxable years beginning after Dec. 31, 2004, see section 205(c) of Pub. L. 108–218, set out as a note under section 807 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to contracts issued after June 8, 1997, in taxable years ending after such date, with special provisions relating to changes in contracts to be treated as new contracts, see section 1084(d) of Pub. L. 105–34, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1602(b)(1) of Pub. L. 104–188 applicable to loans made after Aug. 20, 1996, with exception, and provisions relating to certain refinancings, see section 1602(c) of Pub. L. 104–188, set out as an Effective Date of Repeal note under former section 133 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1018(h)(2), Nov. 10, 1988, 102 Stat. 3583, provided that: "The amendment made by paragraph (1) [amending this section] shall take effect as if included in the amendments made by section 211 of the Tax Reform Act of 1984 [Pub. L. 98–369]."

Amendment by section 2004(p)(2) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to contracts issued in taxable years beginning after Dec. 31, 1987, see section 10241(c) of Pub. L. 100–203, set out as a note under section 807 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of

the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as a note under section 801 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[§813. Repealed. Pub. L. 100–203, title X, §10242(c)(1), Dec. 22, 1987, 101 Stat. 1330–423]

Section, added Pub. L. 98–369, div. A, title II, §211(a), July 18, 1984, 98 Stat. 743; amended Pub. L. 99–514, title X, §1011(b)(9), title XVIII, §1821(j), Oct. 22, 1986, 100 Stat. 2389, 2841; Pub. L. 100–647, title I, §1010(a)(1), Nov. 10, 1988, 102 Stat. 3450, related to foreign life insurance companies.

A prior section 813, act Aug. 16, 1954, ch. 736, §813, as added Mar. 13, 1956, ch. 83, §2, 70 Stat. 46, related to adjustment for certain reserves, prior to the general revision of this part by Pub. L. 86–69, §2(a).

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 1987, see section 10242(d) of Pub. L. 100–203, set out as an Effective Date of 1987 Amendment note under section 816 of this title.

§814. Contiguous country branches of domestic life insurance companies

(a) Exclusion of items

In the case of a domestic mutual insurance company which—

(1) is a life insurance company,

(2) has a contiguous country life insurance branch, and

(3) makes the election provided by subsection (g) with respect to such branch,

there shall be excluded from each item involved in the determination of life insurance company taxable income the items separately accounted for in accordance with subsection (c).

(b) Contiguous country life insurance branch

For purposes of this section, the term contiguous country life insurance branch means a branch which—

(1) issues insurance contracts insuring risks in connection with the lives or health of residents of a country which is contiguous to the United States,

(2) has its principal place of business in such contiguous country, and

(3) would constitute a mutual life insurance company if such branch were a separate domestic insurance company.

For purposes of this section, the term "insurance contract" means any life, health, accident, or annuity contract or reinsurance contract or any contract relating thereto.

(c) Separate accounting required

Any taxpayer which makes the election provided by subsection (g) shall establish and maintain a separate account for the various income, exclusion, deduction, asset, reserve, liability, and surplus items properly attributable to the contracts described in subsection (b). Such separate accounting shall be made—

(1) in accordance with the method regularly employed by such company, if such method clearly

reflects income derived from, and the other items attributable to, the contracts described in subsection (b), and

(2) in all other cases, in accordance with regulations prescribed by the Secretary.

(d) Recognition of gain on assets in branch account

If the aggregate fair market value of all the invested assets and tangible property which are separately accounted for by the domestic life insurance company in the branch account established pursuant to subsection (c) exceeds the aggregate adjusted basis of such assets for purposes of determining gain, then the domestic life insurance company shall be treated as having sold all such assets on the first day of the first taxable year for which the election is in effect at their fair market value on such first day. Notwithstanding any other provision of this chapter, the net gain shall be recognized to the domestic life insurance company on the deemed sale described in the preceding sentence.

(e) Transactions between contiguous country branch and domestic life insurance company

(1) Reimbursement for home office services, etc.

Any payment, transfer, reimbursement, credit, or allowance which is made from a separate account established pursuant to subsection (c) to one or more other accounts of a domestic life insurance company as reimbursement for costs incurred for or with respect to the insurance (or reinsurance) of risks accounted for in such separate account shall be taken into account by the domestic life insurance company in the same manner as if such payment, transfer, reimbursement, credit, or allowance had been received from a separate person.

(2) Repatriation of income

(A) In general

Except as provided in subparagraph (B), any amount directly or indirectly transferred or credited from a branch account established pursuant to subsection (c) to one or more other accounts of such company shall, unless such transfer or credit is a reimbursement to which paragraph (1) applies, be added to the income of the domestic life insurance company.

(B) Limitation

The addition provided by subparagraph (A) for the taxable year with respect to any contiguous country life insurance branch shall not exceed the amount by which—

(i) the aggregate decrease in the tentative LICTI of the domestic life insurance company for the taxable year and for all prior taxable years resulting solely from the application of subsection (a) of this section with respect to such branch, exceeds

(ii) the amount of additions to tentative LICTI pursuant to subparagraph (A) with respect to such contiguous country branch for all prior taxable years.

(C) Transitional rule

For purposes of this paragraph, in the case of a prior taxable year beginning before January 1, 1984, the term "tentative LICTI" means life insurance company taxable income determined under this part (as in effect for such year) without regard to this paragraph.

(f) Other rules

(1) Treatment of foreign taxes

(A) In general

No income, war profits, or excess profits taxes paid or accrued to any foreign country or possession of the United States which is attributable to income excluded under subsection (a) shall be taken into account for purposes of subpart A of part III of subchapter N (relating to foreign tax credit) or allowable as a deduction.

(B) Treatment of repatriated amounts

For purposes of sections 78 and 902, where any amount is added to the life insurance

company taxable income of the domestic life insurance company by reason of subsection (e)(2), the contiguous country life insurance branch shall be treated as a foreign corporation. Any amount so added shall be treated as a dividend paid by a foreign corporation, and the taxes paid to any foreign country or possession of the United States with respect to such amount shall be deemed to have been paid by such branch.

(2) United States source income allocable to contiguous country branch

For purposes of sections 881, 882, and 1442, each contiguous country life insurance branch shall be treated as a foreign corporation. Such sections shall be applied to each such branch in the same manner as if such sections contained the provisions of any treaty to which the United States and the contiguous country are parties, to the same extent such provisions would apply if such branch were incorporated in such contiguous country.

(g) Election

A taxpayer may make the election provided by this subsection with respect to any contiguous country for any taxable year. An election made under this subsection for any taxable year shall remain in effect for all subsequent taxable years, except that it may be revoked with the consent of the Secretary. The election provided by this subsection shall be made not later than the time prescribed by law for filing the return for the taxable year (including extensions thereof) with respect to which such election is made, and such election and any approved revocation thereof shall be made in the manner provided by the Secretary.

(h) Special rule for domestic stock life insurance companies

At the election of a domestic stock life insurance company which has a contiguous country life insurance branch described in subsection (b) (without regard to the mutual requirement in subsection (b)(3)), the assets of such branch may be transferred to a foreign corporation organized under the laws of the contiguous country without the application of section 367. Subsection (a) shall apply to the stock of such foreign corporation as if such domestic company were a mutual company and as if the stock were an item described in subsection (c). Subsection (e)(2) shall apply to amounts transferred or credited to such domestic company as if such domestic company and such foreign corporation constituted one domestic mutual life insurance company. The insurance contracts which may be transferred pursuant to this subsection shall include only those which are similar to the types of insurance contracts issued by a mutual life insurance company. Notwithstanding the first sentence of this subsection, if the aggregate fair market value of the invested assets and tangible property which are separately accounted for by the domestic life insurance company in the branch account exceeds the aggregate adjusted basis of such assets for purposes of determining gain, the domestic life insurance company shall be deemed to have sold all such assets on the first day of the taxable year for which the election under this subsection applies and the net gain shall be recognized to the domestic life insurance company on the deemed sale, but not in excess of the proportion of such net gain which equals the proportion which the aggregate fair market value of such assets which are transferred pursuant to this subsection is of the aggregate fair market value of all such assets.

(Added Pub. L. 98–369, div. A, title II, §211(a), July 18, 1984, 98 Stat. 744; amended Pub. L. 105–34, title XI, §1131(c)(1), Aug. 5, 1997, 111 Stat. 980.)

AMENDMENTS

1997—Subsec. (h). Pub. L. 105–34 struck out "or 1491" after "section 367".

NEW SECTION 814 TREATED AS CONTINUATION OF SECTION 819A

Pub. L. 98–369, div. A, title II, §217(a), July 18, 1984, 98 Stat. 762, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "For purposes of section 814 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to contiguous country branches of domestic life insurance companies)—

"(1) any election under section 819A of such Code (as in effect on the day before the date of the enactment of this Act [July 18, 1984]) shall be treated as an election under such section 814, and

"(2) any reference to a provision of such section 814 shall be treated as including a reference to the corresponding provision of such section 819A."

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as a note under section 801 of this title.

§815. Distributions to shareholders from pre-1984 policyholders surplus account

(a) General rule

In the case of a stock life insurance company which has an existing policyholders surplus account, the tax imposed by section 801 for any taxable year shall be the amount which would be imposed by such section for such year on the sum of—

(1) life insurance company taxable income for such year (but not less than zero), plus

(2) the amount of direct and indirect distributions during such year to shareholders from such account.

For purposes of the preceding sentence, the term "indirect distribution" shall not include any bona fide loan with arms-length terms and conditions.

(b) Ordering rule

For purposes of this section, any distribution to shareholders shall be treated as made—

(1) first out of the shareholders surplus account, to the extent thereof,

(2) then out of the policyholders surplus account, to the extent thereof, and

(3) finally, out of other accounts.

(c) Shareholders surplus account

(1) In general

Each stock life insurance company which has an existing policyholders surplus account shall continue its shareholders surplus account for purposes of this part.

(2) Additions to account

The amount added to the shareholders surplus account for any taxable year beginning after December 31, 1983, shall be the excess of—

(A) the sum of—

(i) the life insurance company's taxable income (but not below zero),

(ii) the small life insurance company deduction provided by section 806, and

(iii) the deductions for dividends received provided by sections 243, 244, and 245 (as modified by section 805(a)(4)) and the amount of interest excluded from gross income under section 103, over

(B) the taxes imposed for the taxable year by section 801 (determined without regard to this section).

If for any taxable year a tax is imposed by section 55, under regulations proper adjustments shall be made for such year and all subsequent taxable years in the amounts taken into account under subparagraphs (A) and (B) of this paragraph and subparagraph (B) of subsection (d)(3).

(3) Subtractions from account

There shall be subtracted from the shareholders surplus account for any taxable year the amount which is treated under this section as distributed out of such account.

(d) Policyholders surplus account

(1) In general

Each stock life insurance company which has an existing policyholders surplus account shall continue such account.

(2) No additions to account

No amount shall be added to the policyholders surplus account for any taxable year beginning after December 31, 1983.

(3) Subtractions from account

There shall be subtracted from the policyholders surplus account for any taxable year an amount equal to the sum of—

(A) the amount which (without regard to subparagraph (B)) is treated under this section as distributed out of the policyholders surplus account, and

(B) the amount by which the tax imposed for the taxable year by section 801 is increased by reason of this section.

(e) Existing policyholders surplus account

For purposes of this section, the term "existing policyholders surplus account" means any policyholders surplus account which has a balance as of the close of December 31, 1983.

(f) Other rules applicable to policyholders surplus account continued

Except to the extent inconsistent with the provisions of this part, the provisions of subsections (d), (e), (f), and (g) of section 815 (and of sections 819(b), 6501(c)(6), 6501(k), 6511(d)(6), 6601(d)(3), and 6611(f)(4)) as in effect before the enactment of the Tax Reform Act of 1984 are hereby made applicable in respect of any policyholders surplus account for which there was a balance as of December 31, 1983.

(g) Special rules applicable during 2005 and 2006

In the case of any taxable year of a stock life insurance company beginning after December 31, 2004, and before January 1, 2007—

(1) the amount under subsection (a)(2) for such taxable year shall be treated as zero, and

(2) notwithstanding subsection (b), in determining any subtractions from an account under subsections (c)(3) and (d)(3), any distribution to shareholders during such taxable year shall be treated as made first out of the policyholders surplus account, then out of the shareholders surplus account, and finally out of other accounts.

(Added Pub. L. 98–369, div. A, title II, §211(a), July 18, 1984, 98 Stat. 747; amended Pub. L. 99–514, title X, §1011(b)(10), title XVIII, §1821(k)(1), (2), Oct. 22, 1986, 100 Stat. 2389, 2841; Pub. L. 100–647, title I, §1010(j)(1), Nov. 10, 1988, 102 Stat. 3456; Pub. L. 108–357, title VII, §705(a), Oct. 22, 2004, 118 Stat. 1549.)

REFERENCES IN TEXT

The enactment of the Tax Reform Act of 1984, referred to in subsec. (f), means the enactment of division A of Pub. L. 98–369, which was approved July 18, 1984.

PRIOR PROVISIONS

A prior section 815, added Pub. L. 86–69, §2(a), June 25, 1959, 73 Stat. 129; amended Pub. L. 87–790, §3(b), Oct. 10, 1962, 76 Stat. 808; Pub. L. 87–858, §3(b)(4), (e), Oct. 23, 1962, 76 Stat. 1137; Pub. L. 88–571, §§2, 3(a), 4(a), Sept. 2, 1964, 78 Stat. 857, 859; Pub. L. 90–225, §4(a), (b), Dec. 27, 1967, 81 Stat. 733, 734; Pub. L. 91–172, title IX, §907(b), Dec. 30, 1969, 83 Stat. 715; Pub. L. 94–331, §1(a), June 30, 1976, 90 Stat. 781; Pub. L. 94–455, title XIX, §§1901(b)(1)(O), (24), (33)(H), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1791, 1798, 1801, 1834, contained provisions similar to this section, prior to the general revision of this part by Pub. L. 98–369, §211(a).

AMENDMENTS

2004—Subsec. (g). Pub. L. 108–357 added subsec. (g).

1988—Subsec. (c)(2). Pub. L. 100–647 inserted at end "If for any taxable year a tax is imposed by section 55, under regulations proper adjustments shall be made for such year and all subsequent taxable years in the amounts taken into account under subparagraphs (A) and (B) of this paragraph and subparagraph (B) of subsection (d)(3)."

1986—Subsec. (a). Pub. L. 99–514, §1821(k)(2), inserted at end "For purposes of the preceding sentence, the term 'indirect distribution' shall not include any bona fide loan with arms-length terms and conditions."

Subsec. (c)(2)(A)(ii). Pub. L. 99–514, §1011(b)(10), substituted "small life insurance company deduction" for "special deductions".

Subsec. (f). Pub. L. 99–514, §1821(k)(1), inserted reference to section 819(b).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VII, §705(b), Oct. 22, 2004, 118 Stat. 1549, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2004."

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1010(j)(2), Nov. 10, 1988, 102 Stat. 3456, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after December 31, 1986."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1011(b)(10) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1011(c)(1) of Pub. L. 99–514, set out as a note under section 453B of this title.

Amendment by section 1821(k)(1), (2) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as a note under section 801 of this title.

OPERATIONS LOSS DEDUCTION OF INSOLVENT COMPANIES MAY OFFSET DISTRIBUTIONS FROM POLICYHOLDERS SURPLUS ACCOUNT

Pub. L. 99–514, title X, §1013, Oct. 22, 1986, 100 Stat. 2395, provided that:

"(a) IN GENERAL.—If—

"(1) on November 15, 1985, a life insurance company was insolvent,

"(2) pursuant to the order of any court of competent jurisdiction in a title 11 or similar case (as defined in section 368(a)(3) of the Internal Revenue Code of 1954 [now 1986]), such company is liquidated, and

"(3) as a result of such liquidation, the tax imposed by section 801 of such Code for any taxable year (hereinafter in this subsection referred to as the 'liquidation year') would (but for this subsection) be increased under section 815(a) of such Code,

then the amount described in section 815(a)(2) of such Code shall be reduced by the loss from operations (if any) for the liquidation year, and by the unused operations loss carryovers (if any) to the liquidation year (determined after the application of section 810 of such Code for such year). No carryover of any loss from operations of such company arising during the liquidation year (or any prior taxable year) shall be allowable for any taxable year succeeding the liquidation year.

"(b) DEFINITIONS.—For purposes of subsection (a)—

"(1) INSOLVENT.—The term 'insolvent' means the excess of liabilities over the fair market value of assets.

"(2) LOSS FROM OPERATIONS.—The term 'loss from operations' has the meaning given such term by section 810(c) of such Code.

"(c) EFFECTIVE DATE.—This section shall apply to liquidations on or after November 15, 1985, in taxable years ending after such date."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

AMOUNT OF INDIRECT DISTRIBUTION FOR LOANS BEFORE MARCH 1, 1986; DETERMINATION; EXCEPTION

Pub. L. 99–514, title XVIII, §1821(k)(3), Oct. 22, 1986, 100 Stat. 2841, provided that: "In the case of any loan made before March 1, 1986 (other than a loan which is renegotiated, extended, renewed, or revised after February 28, 1986), which does not meet the requirements of the last sentence of section 815(a) of the Internal

Revenue Code of 1954 [now 1986] (as added by paragraph (2)), the amount of the indirect distribution for purposes of such section 815(a) shall be the foregone interest on the loan (determined by using the lowest rate which would have met the arms-length requirements of such sentence for such a loan)."

SUBPART E—DEFINITIONS AND SPECIAL RULES

Sec.
816. Life insurance company defined.
817. Treatment of variable contracts.
817A. Special rules for modified guaranteed contracts.
818. Other definitions and special rules.

AMENDMENTS

1996—Pub. L. 104–188, title I, §1612(b), Aug. 20, 1996, 110 Stat. 1847, added item 817A.

§816. Life insurance company defined

(a) Life insurance company defined

For purposes of this subtitle, the term "life insurance company" means an insurance company which is engaged in the business of issuing life insurance and annuity contracts (either separately or combined with accident and health insurance), or noncancellable contracts of health and accident insurance, if—

(1) its life insurance reserves (as defined in subsection (b)), plus

(2) unearned premiums, and unpaid losses (whether or not ascertained), on noncancellable life, accident, or health policies not included in life insurance reserves,

comprise more than 50 percent of its total reserves (as defined in subsection (c)). For purposes of the preceding sentence, the term "insurance company" means any company more than half of the business of which during the taxable year is the issuing of insurance or annuity contracts or the reinsuring of risks underwritten by insurance companies.

(b) Life insurance reserves defined

(1) In general

For purposes of this part, the term "life insurance reserves" means amounts—

(A) which are computed or estimated on the basis of recognized mortality or morbidity tables and assumed rates of interest, and

(B) which are set aside to mature or liquidate, either by payment or reinsurance, future unaccrued claims arising from life insurance, annuity, and noncancellable accident and health insurance contracts (including life insurance or annuity contracts combined with noncancellable accident and health insurance) involving, at the time with respect to which the reserve is computed, life, accident, or health contingencies.

(2) Reserves must be required by law

Except—

(A) in the case of policies covering life, accident, and health insurance combined in one policy issued on the weekly premium payment plan, continuing for life and not subject to cancellation, and

(B) as provided in paragraph (3),

in addition to the requirements set forth in paragraph (1), life insurance reserves must be required by law.

(3) Assessment companies

In the case of an assessment life insurance company or association, the term "life insurance reserves" includes—

(A) sums actually deposited by such company or association with State officers pursuant to law as guaranty or reserve funds, and

(B) any funds maintained, under the charter or articles of incorporation or association (or bylaws approved by a State insurance commissioner) of such company or association, exclusively for the payment of claims arising under certificates of membership or policies issued on the assessment plan and not subject to any other use.

(4) Amount of reserves

For purposes of this subsection, subsection (a), and subsection (c), the amount of any reserve (or portion thereof) for any taxable year shall be the mean of such reserve (or portion thereof) at the beginning and end of the taxable year.

(c) Total reserves defined

For purposes of subsection (a), the term "total reserves" means—

(1) life insurance reserves,

(2) unearned premiums, and unpaid losses (whether or not ascertained), not included in life insurance reserves, and

(3) all other insurance reserves required by law.

(d) Adjustments in reserves for policy loans

For purposes only of determining under subsection (a) whether or not an insurance company is a life insurance company, the life insurance reserves, and the total reserves, shall each be reduced by an amount equal to the mean of the aggregates, at the beginning and end of the taxable year, of the policy loans outstanding with respect to contracts for which life insurance reserves are maintained.

(e) Guaranteed renewable contracts

For purposes of this part, guaranteed renewable life, accident, and health insurance shall be treated in the same manner as noncancellable life, accident, and health insurance.

(f) Amounts not involving life, accident, or health contingencies

For purposes only of determining under subsection (a) whether or not an insurance company is a life insurance company, amounts set aside and held at interest to satisfy obligations under contracts which do not contain permanent guarantees with respect to life, accident, or health contingencies shall not be included in reserves described in paragraph (1) or (3) of subsection (c).

(g) Burial and funeral benefit insurance companies

A burial or funeral benefit insurance company engaged directly in the manufacture of funeral supplies or the performance of funeral services shall not be taxable under this part but shall be taxable under section 831.

(h) Treatment of deficiency reserves

For purposes of this section and section 842(b)(2)(B)(i), the terms "life insurance reserves" and "total reserves" shall not include deficiency reserves.

(Added Pub. L. 98–369, div. A, title II, §211(a), July 18, 1984, 98 Stat. 748; amended Pub. L. 99–514, title XVIII, §1821(l), Oct. 22, 1986, 100 Stat. 2841; Pub. L. 100–203, title X, §10242(c)(2), Dec. 22, 1987, 101 Stat. 1330–423; Pub. L. 100–647, title I, §1010(f)(6), title II, §2004(q)(1), Nov. 10, 1988, 102 Stat. 3454, 3608.)

PRIOR PROVISIONS

A prior section 816, act Aug. 16, 1954, ch. 736, §816, as added Mar. 13, 1956, ch. 83, §2, 70 Stat. 46, related to taxation of foreign life insurance companies, prior to the general revision of this part by Pub. L. 86–69, §2(a).

AMENDMENTS

1988—Subsec. (g). Pub. L. 100–647, §1010(f)(6), substituted "section 831" for "section 821 or section

831".

Subsec. (h). Pub. L. 100–647, §2004(q)(1), substituted "section 842(b)(2)(B)(i)" for "section 842(c)(1)(A)".

1987—Subsec. (h). Pub. L. 100–203 substituted "section 842(c)(1)(A)" for "section 813(a)(4)(B)".

1986—Subsec. (h). Pub. L. 99–514 added subsec. (h).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1010(f)(6) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 2004(q)(1) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title X, §10242(d), Dec. 22, 1987, 101 Stat. 1330–423, provided that: "The amendments made by this section [amending this section and sections 842, 864, and 4371 of this title and repealing section 813 of this title] shall apply to taxable years beginning after December 31, 1987."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as a note under section 801 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

SPECIAL ELECTION TO TREAT INDIVIDUAL NONCANCELLABLE ACCIDENT AND HEALTH CONTRACTS AS CANCELLABLE

Pub. L. 98–369, div. A, title II, §217(i), July 18, 1984, 98 Stat. 764, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–647, title I, §1010(h)(1), Nov. 10, 1988, 102 Stat. 3455, provided that:

"(1) IN GENERAL.—A mutual life insurance company may elect to treat all individual noncancellable (or guaranteed renewable) accident and health insurance contracts as though they were cancellable for purposes of section 816 of subchapter L of chapter 1 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].

"(2) EFFECT OF ELECTION ON SUBSIDIARIES OF ELECTING PARENT.—For purposes of determining the amount of the small life insurance company deduction of any controlled group which includes a mutual company which made an election under paragraph (1), the taxable income of such electing company shall be taken into account under section 806(b)(2) of the Internal Revenue Code of 1986 (relating to phaseout of small life insurance company deduction).

"(3) ELECTION.—An election under paragraph (1) shall apply to the company's first taxable year beginning after December 31, 1983, and all taxable years thereafter.

"(4) TIME AND MANNER.—An election under paragraph (1) shall be made—

"(A) on the return of the taxpayer for its first taxable year beginning after December 31, 1983, and

"(B) in such manner as the Secretary of the Treasury or his delegate may prescribe."

[Pub. L. 100–647, title I, §1010(h)(2), (3), Nov. 10, 1988, 102 Stat. 3455, provided that:

["(2) EFFECTIVE DATE.—The amendment made by this subsection [amending section 217(i) of Pub. L. 98–369, set out above] shall apply to taxable years beginning after December 31, 1986, and before January 1, 1992.

["(3) REVENUE LOSS LIMITED.—The decrease in the amount of Federal revenue by reason of the amendment made by this subsection shall not exceed $300,000 per taxable year."]

§817. Treatment of variable contracts

(a) Increases and decreases in reserves

For purposes of subsections (a) and (b) of section 807, the sum of the items described in section 807(c) taken into account as of the close of the taxable year with respect to any variable contract shall, under regulations prescribed by the Secretary, be adjusted—

(1) by subtracting therefrom an amount equal to the sum of the amounts added from time to time (for the taxable year) to the reserves separately accounted for in accordance with subsection (c) by reason of appreciation in value of assets (whether or not the assets have been disposed of), and

(2) by adding thereto an amount equal to the sum of the amounts subtracted from time to time (for the taxable year) from such reserves by reason of depreciation in value of assets (whether or not the assets have been disposed of).

The deduction allowable for items described in paragraphs (1) and (6) of section 805(a) with respect to variable contracts shall be reduced to the extent that the amount of such items is increased for the taxable year by appreciation (or increased to the extent that the amount of such items is decreased for the taxable year by depreciation) not reflected in adjustments under the preceding sentence.

(b) Adjustment to basis of assets held in segregated asset account

In the case of variable contracts, the basis of each asset in a segregated asset account shall (in addition to all other adjustments to basis) be—

(1) increased by the amount of any appreciation in value, and

(2) decreased by the amount of any depreciation in value,

to the extent such appreciation and depreciation are from time to time reflected in the increases and decreases in reserves or other items referred to in subsection (a) with respect to such contracts.

(c) Separate accounting

For purposes of this part, a life insurance company which issues variable contracts shall separately account for the various income, exclusion, deduction, asset, reserve, and other liability items properly attributable to such variable contracts. For such items as are not accounted for directly, separate accounting shall be made—

(1) in accordance with the method regularly employed by such company, if such method is reasonable, and

(2) in all other cases, in accordance with regulations prescribed by the Secretary.

(d) Variable contract defined

For purposes of this part, the term "variable contract" means a contract—

(1) which provides for the allocation of all or part of the amounts received under the contract to an account which, pursuant to State law or regulation, is segregated from the general asset accounts of the company,

(2) which—

(A) provides for the payment of annuities,

(B) is a life insurance contract, or

(C) provides for funding of insurance on retired lives as described in section 807(c)(6), and

(3) under which—

(A) in the case of an annuity contract, the amounts paid in, or the amount paid out, reflect the investment return and the market value of the segregated asset account,

(B) in the case of a life insurance contract, the amount of the death benefit (or the period of coverage) is adjusted on the basis of the investment return and the market value of the segregated asset account, or

(C) in the case of funds held under a contract described in paragraph (2)(C), the amounts paid

in, or the amounts paid out, reflect the investment return and the market value of the segregated asset account.

If a contract ceases to reflect current investment return and current market value, such contract shall not be considered as meeting the requirements of paragraph (3) after such cessation. Paragraph (3) shall be applied without regard to whether there is a guarantee, and obligations under such guarantee which exceed obligations under the contract without regard to such guarantee shall be accounted for as part of the company's general account.

(e) Pension plan contracts treated as paying annuity

A pension plan contract which is not a life, accident, or health, property, casualty, or liability insurance contract shall be treated as a contract which provides for the payments of annuities for purposes of subsection (d).

(f) Other special rules

(1) Life insurance reserves

For purposes of subsection (b)(1)(A) of section 816, the reflection of the investment return and the market value of the segregated asset account shall be considered an assumed rate of interest.

(2) Additional separate computations

Under regulations prescribed by the Secretary, such additional separate computations shall be made, with respect to the items separately accounted for in accordance with subsection (c), as may be necessary to carry out the purposes of this section and this part.

(g) Variable annuity contracts treated as annuity contracts

For purposes of this part, the term "annuity contract" includes a contract which provides for the payment of a variable annuity computed on the basis of—

(1) recognized mortality tables, and

(2)(A) the investment experience of a segregated asset account, or

(B) the company-wide investment experience of the company.

Paragraph (2)(B) shall not apply to any company which issues contracts which are not variable contracts.

(h) Treatment of certain nondiversified contracts

(1) In general

For purposes of subchapter L, section 72 (relating to annuities), and section 7702(a) (relating to definition of life insurance contract), a variable contract (other than a pension plan contract) which is otherwise described in this section and which is based on a segregated asset account shall not be treated as an annuity, endowment, or life insurance contract for any period (and any subsequent period) for which the investments made by such account are not, in accordance with regulations prescribed by the Secretary, adequately diversified.

(2) Safe harbor for diversification

A segregated asset account shall be treated as meeting the requirements of paragraph (1) for any quarter of a taxable year if as of the close of such quarter—

(A) it meets the requirements of section 851(b)(3), and

(B) no more than 55 percent of the value of the total assets of the account are assets described in section 851(b)(3)(A)(i).

(3) Special rule for investments in United States obligations

To the extent that any segregated asset account with respect to a variable life insurance contract is invested in securities issued by the United States Treasury, the investments made by such account shall be treated as adequately diversified for purposes of paragraph (1).

(4) Look-through in certain cases

For purposes of this subsection, if all of the beneficial interests in a regulated investment company or in a trust are held by 1 or more—

(A) insurance companies (or affiliated companies) in their general account or in segregated asset accounts, or

(B) fund managers (or affiliated companies) in connection with the creation or management of the regulated investment company or trust,

the diversification requirements of paragraph (1) shall be applied by taking into account the assets held by such regulated investment company or trust.

(5) Independent investment advisors permitted

Nothing in this subsection shall be construed as prohibiting the use of independent investment advisors.

(6) Government securities funds

In determining whether a segregated asset account is adequately diversified for purposes of paragraph (1), each United States Government agency or instrumentality shall be treated as a separate issuer.

(Added Pub. L. 98–369, div. A, title II, §211(a), July 18, 1984, 98 Stat. 750; amended Pub. L. 99–514, title XVIII, §1821(m), (t)(1), Oct. 22, 1986, 100 Stat. 2841, 2844; Pub. L. 100–647, title VI, §6080(a), Nov. 10, 1988, 102 Stat. 3710; Pub. L. 104–188, title I, §1611(a), Aug. 20, 1996, 110 Stat. 1845; Pub. L. 105–34, title XII, §1271(b)(8), Aug. 5, 1997, 111 Stat. 1037; Pub. L. 108–218, title II, §205(b)(5), Apr. 10, 2004, 118 Stat. 610.)

PRIOR PROVISIONS

A prior section 817, added Pub. L. 86–69, §2(a), June 25, 1959, 73 Stat. 132; amended Pub. L. 94–455, title XIV, §1402(b)(1)(M), (2), title XIX, §§1901(a)(100), 1951(b)(11)(A), Oct. 4, 1976, 90 Stat. 1732, 1781, 1839, related to rules regarding certain gains and losses, prior to the general revision of this part by Pub. L. 98–369, §211(a).

Another prior section 817, act Aug. 16, 1954, ch. 736, §817, as added Mar. 13, 1956, ch. 83, §2, 70 Stat. 46, related to denial of double deductions, prior to the general revision of this part by Pub. L. 86–69, §2(a).

AMENDMENTS

2004—Subsec. (c). Pub. L. 108–218, in introductory provisions, struck out "(other than section 809)" after "For purposes of this part".

1997—Subsec. (h)(2)(A). Pub. L. 105–34, §1271(b)(8)(A), substituted "851(b)(3)" for "851(b)(4)".

Subsec. (h)(2)(B). Pub. L. 105–34, §1271(b)(8)(B), substituted "851(b)(3)(A)(i)" for "851(b)(4)(A)(i)".

1996—Subsec. (d)(2)(C). Pub. L. 104–188, §1611(a)(1), added subpar. (C).

Subsec. (d)(3)(C). Pub. L. 104–188, §1611(a)(2), added subpar. (C).

1988—Subsec. (h)(6). Pub. L. 100–647 added par. (6).

1986—Subsec. (d). Pub. L. 99–514, §1821(t)(1), inserted at end "Paragraph (3) shall be applied without regard to whether there is a guarantee, and obligations under such guarantee which exceed obligations under the contract without regard to such guarantee shall be accounted for as part of the company's general account."

Subsec. (h)(1). Pub. L. 99–514, §1821(m)(2), struck out last sentence which read as follows: "For purposes of this paragraph and paragraph (2), beneficial interests in a regulated investment company or in a trust shall not be treated as 1 investment if all of the beneficial interests in such company or trust are held by 1 or more segregated asset accounts of 1 or more insurance companies."

Subsec. (h)(3) to (5). Pub. L. 99–514, §1821(m)(1), added pars. (3) and (4), redesignated former par. (4) as (5), and struck out former par. (3) which read as follows: "In the case of a segregated asset account with respect to variable life insurance contracts, paragraph (1) shall not apply in the case of securities issued by the United States Treasury which are owned by a regulated investment company or by a trust all the beneficial interests in which are held by 1 or more segregated asset accounts of the company issuing the contract."

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–218 applicable to taxable years beginning after Dec. 31, 2004, see section 205(c) of Pub. L. 108–218, set out as a note under section 807 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XII, §1271(c), Aug. 5, 1997, 111 Stat. 1037, provided that: "The amendments made by this section [amending this section and sections 851 and 1092 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, §1611(b), Aug. 20, 1996, 110 Stat. 1846, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1995."

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title VI, §6080(b), Nov. 10, 1988, 102 Stat. 3710, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1987."

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XVIII, §1821(t)(2), Oct. 22, 1986, 100 Stat. 2844, provided that: "The amendment made by paragraph (1) [amending this section] shall apply—

"(A) to contracts issued after December 31, 1986, and

"(B) to contracts issued before January 1, 1987, if such contract was treated as a variable contract on the taxpayer's return."

Amendment by section 1821(m) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as a note under section 801 of this title.

DELAY IN EFFECTIVE DATE FOR DIVERSIFICATION REQUIREMENTS WITH RESPECT TO ACCOUNTS FOR CERTAIN IMMEDIATE ANNUITIES

Pub. L. 100–647, title I, §1010(i), Nov. 10, 1988, 102 Stat. 3455, provided that: "Section 817(h) of the 1986 Code shall not apply until January 1, 1989, with respect to a variable contract (as defined in section 817(d) of the 1986 Code) if—

"(1) such contract provides for the payment of an immediate annuity (as defined in section 72(u)(4) of the 1986 Code),

"(2) such contract was outstanding on September 12, 1986, and

"(3) the segregated asset account on which such contract is based was, on September 12, 1986, wholly invested in deposits insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§817A. Special rules for modified guaranteed contracts

(a) Computation of reserves

In the case of a modified guaranteed contract, clause (ii) of section 807(e)(1)(A) shall not apply.

(b) Segregated assets under modified guaranteed contracts marked to market

(1) In general

In the case of any life insurance company, for purposes of this subtitle—

(A) Any gain or loss with respect to a segregated asset shall be treated as ordinary income or loss, as the case may be.

(B) If any segregated asset is held by such company as of the close of any taxable year—

(i) such company shall recognize gain or loss as if such asset were sold for its fair market

value on the last business day of such taxable year, and

(ii) any such gain or loss shall be taken into account for such taxable year.

Proper adjustment shall be made in the amount of any gain or loss subsequently realized for gain or loss taken into account under the preceding sentence. The Secretary may provide by regulations for the application of this subparagraph at times other than the times provided in this subparagraph.

(2) Segregated asset

For purposes of paragraph (1), the term "segregated asset" means any asset held as part of a segregated account referred to in subsection (d)(1) under a modified guaranteed contract.

(c) Special rule in computing life insurance reserves

For purposes of applying section 816(b)(1)(A) to any modified guaranteed contract, an assumed rate of interest shall include a rate of interest determined, from time to time, with reference to a market rate of interest.

(d) Modified guaranteed contract defined

For purposes of this section, the term "modified guaranteed contract" means a contract not described in section 817—

(1) all or part of the amounts received under which are allocated to an account which, pursuant to State law or regulation, is segregated from the general asset accounts of the company and is valued from time to time with reference to market values,

(2) which—

(A) provides for the payment of annuities,

(B) is a life insurance contract, or

(C) is a pension plan contract which is not a life, accident, or health, property, casualty, or liability contract,

(3) for which reserves are valued at market for annual statement purposes, and

(4) which provides for a net surrender value or a policyholder's fund (as defined in section 807(e)(1)).

If only a portion of a contract is not described in section 817, such portion shall be treated for purposes of this section as a separate contract.

(e) Regulations

The Secretary may prescribe regulations—

(1) to provide for the treatment of market value adjustments under sections 72, 7702, 7702A, and 807(e)(1)(B),

(2) to determine the interest rates applicable under sections 807(c)(3), 807(d)(2)(B), and 812 with respect to a modified guaranteed contract annually, in a manner appropriate for modified guaranteed contracts and, to the extent appropriate for such a contract, to modify or waive the applicability of section 811(d),

(3) to provide rules to limit ordinary gain or loss treatment to assets constituting reserves for modified guaranteed contracts (and not other assets) of the company,

(4) to provide appropriate treatment of transfers of assets to and from the segregated account, and

(5) as may be necessary or appropriate to carry out the purposes of this section.

(Added Pub. L. 104–188, title I, §1612(a), Aug. 20, 1996, 110 Stat. 1846.)

EFFECTIVE DATE

Pub. L. 104–188, title I, §1612(c), Aug. 20, 1996, 110 Stat. 1847, provided that:

"(1) IN GENERAL.—The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1995.

"(2) TREATMENT OF NET ADJUSTMENTS.—Except as provided in paragraph (3), in the case of any taxpayer required by the amendments made by this section to change its calculation of reserves to take into account market value adjustments and to mark segregated assets to market for any taxable year—

"(A) such changes shall be treated as a change in method of accounting initiated by the taxpayer,

"(B) such changes shall be treated as made with the consent of the Secretary, and

"(C) the adjustments required by reason of section 481 of the Internal Revenue Code of 1986, shall be taken into account as ordinary income by the taxpayer for the taxpayer's first taxable year beginning after December 31, 1995.

"(3) LIMITATION ON LOSS RECOGNITION AND ON DEDUCTION FOR RESERVE INCREASES.—

"(A) LIMITATION ON LOSS RECOGNITION.—

"(i) IN GENERAL.—The aggregate loss recognized by reason of the application of section 481 of the Internal Revenue Code of 1986 with respect to section 817A(b) of such Code (as added by this section) for the first taxable year of the taxpayer beginning after December 31, 1995, shall not exceed the amount included in the taxpayer's gross income for such year by reason of the excess (if any) of—

"(I) the amount of life insurance reserves as of the close of the prior taxable year, over

"(II) the amount of such reserves as of the beginning of such first taxable year,

to the extent such excess is attributable to subsection (a) of such section 817A. Notwithstanding the preceding sentence, the adjusted basis of each segregated asset shall be determined as if all such losses were recognized.

"(ii) DISALLOWED LOSS ALLOWED OVER PERIOD.—The amount of the loss which is not allowed under clause (i) shall be allowed ratably over the period of 7 taxable years beginning with the taxpayer's first taxable year beginning after December 31, 1995.

"(B) LIMITATION ON DEDUCTION FOR INCREASE IN RESERVES.—

"(i) IN GENERAL.—The deduction allowed for the first taxable year of the taxpayer beginning after December 31, 1995, by reason of the application of section 481 of such Code with respect to section 817A(a) of such Code (as added by this section) shall not exceed the aggregate built-in gain recognized by reason of the application of such section 481 with respect to section 817A(b) of such Code (as added by this section) for such first taxable year.

"(ii) DISALLOWED DEDUCTION ALLOWED OVER PERIOD.—The amount of the deduction which is disallowed under clause (i) shall be allowed ratably over the period of 7 taxable years beginning with the taxpayer's first taxable year beginning after December 31, 1995.

"(iii) BUILT-IN GAIN.—For purposes of this subparagraph, the built-in gain on an asset is the amount equal to the excess of—

"(I) the fair market value of the asset as of the beginning of the first taxable year of the taxpayer beginning after December 31, 1995, over

"(II) the adjusted basis of such asset as of such time."

§818. Other definitions and special rules

(a) Pension plan contracts

For purposes of this part, the term "pension plan contract" means any contract—

(1) entered into with trusts which (as of the time the contracts were entered into) were deemed to be trusts described in section 401(a) and exempt from tax under section 501(a) (or trusts exempt from tax under section 165 of the Internal Revenue Code of 1939 or the corresponding provisions of prior revenue laws);

(2) entered into under plans which (as of the time the contracts were entered into) were deemed to be plans described in section 403(a), or plans meeting the requirements of paragraphs (3), (4), (5), and (6) of section 165(a) of the Internal Revenue Code of 1939;

(3) provided for employees of the life insurance company under a plan which, for the taxable year, meets the requirements of paragraphs (3), (4), (5), (6), (7), (8), (11), (12), (13), (14), (15), (16), (17), (19), (20), (22), (26), and (27) of section 401(a);

(4) purchased to provide retirement annuities for its employees by an organization which (as of the time the contracts were purchased) was an organization described in section 501(c)(3) which was exempt from tax under section 501(a) (or was an organization exempt from tax under section 101(6) of the Internal Revenue Code of 1939 or the corresponding provisions of prior revenue

laws), or purchased to provide retirement annuities for employees described in section 403(b)(1)(A)(ii) by an employer which is a State, a political subdivision of a State, or an agency or instrumentality of any one or more of the foregoing;

(5) entered into with trusts which (at the time the contracts were entered into) were individual retirement accounts described in section 408(a) or under contracts entered into with individual retirement annuities described in section 408(b); or

(6) purchased by—

(A) a governmental plan (within the meaning of section 414(d)) or an eligible deferred compensation plan (within the meaning of section 457(b)), or

(B) the Government of the United States, the government of any State or political subdivision thereof, or by any agency or instrumentality of the foregoing, or any organization (other than a governmental unit) exempt from tax under this subtitle, for use in satisfying an obligation of such government, political subdivision, agency or instrumentality, or organization to provide a benefit under a plan described in subparagraph (A).

(b) Treatment of capital gains and losses, etc.

In the case of a life insurance company—

(1) in applying section 1231(a), the term "property used in the trade or business" shall be treated as including only—

(A) property used in carrying on an insurance business, of a character which is subject to the allowance for depreciation provided in section 167, held for more than 1 year, and real property used in carrying on an insurance business, held for more than 1 year, which is not described in section 1231(b)(1)(A), (B), or (C), and

(B) property described in section 1231(b)(2), and

(2) in applying section 1221(a)(2), the reference to property used in trade or business shall be treated as including only property used in carrying on an insurance business.

(c) Gain on property held on December 31, 1958 and certain substituted property acquired after 1958

(1) Property held on December 31, 1958

In the case of property held by the taxpayer on December 31, 1958, if—

(A) the fair market value of such property on such date exceeds the adjusted basis for determining gain as of such date, and

(B) the taxpayer has been a life insurance company at all times on and after December 31, 1958,

the gain on the sale or other disposition of such property shall be treated as an amount (not less than zero) equal to the amount by which the gain (determined without regard to this subsection) exceeds the difference between the fair market value on December 31, 1958, and the adjusted basis for determining gain as of such date.

(2) Certain property acquired after December 31, 1958

In the case of property acquired after December 31, 1958, and having a substituted basis (within the meaning of section 1016(b))—

(A) for purposes of paragraph (1), such property shall be deemed held continuously by the taxpayer since the beginning of the holding period thereof, determined with reference to section 1223,

(B) the fair market value and adjusted basis referred to in paragraph (1) shall be that of that property for which the holding period taken into account includes December 31, 1958,

(C) paragraph (1) shall apply only if the property or properties the holding periods of which are taken into account were held only by life insurance companies after December 31, 1958, during the holding periods so taken into account,

(D) the difference between the fair market value and adjusted basis referred to in paragraph

(1) shall be reduced (to not less than zero) by the excess of (i) the gain that would have been recognized but for this subsection on all prior sales or dispositions after December 31, 1958, of properties referred to in subparagraph (C), over (ii) the gain which was recognized on such sales or other dispositions, and

(E) the basis of such property shall be determined as if the gain which would have been recognized but for this subsection were recognized gain.

(3) Property defined

For purposes of paragraphs (1) and (2), the term "property" does not include insurance and annuity contracts and property described in paragraph (1) of section 1221(a).

(d) Insurance or annuity contract includes contracts supplementary thereto

For purposes of this part, the term "insurance or annuity contract" includes any contract supplementary thereto.

(e) Special rules for consolidated returns

(1) Items of companies other than life insurance companies

If an election under section 1504(c)(2) is in effect with respect to an affiliated group for the taxable year, all items of the members of such group which are not life insurance companies shall not be taken into account in determining the amount of the tentative LICTI of members of such group which are life insurance companies.

(2) Dividends within group

In the case of a life insurance company filing or required to file a consolidated return under section 1501 with respect to any affiliated group for any taxable year, any determination under this part with respect to any dividend paid by one member of such group to another member of such group shall be made as if such group was not filing a consolidated return.

(f) Allocation of certain items for purposes of foreign tax credit, etc.

(1) In general

Under regulations, in applying sections 861, 862, and 863 to a life insurance company, the deduction for policyholder dividends (determined under section 808(c)), reserve adjustments under subsections (a) and (b) of section 807, and death benefits and other amounts described in section 805(a)(1) shall be treated as items which cannot definitely be allocated to an item or class of gross income.

(2) Election of alternative allocation

(A) In general

On or before September 15, 1985, any life insurance company may elect to treat items described in paragraph (1) as properly apportioned or allocated among items of gross income to the extent (and in the manner) prescribed in regulations.

(B) Election irrevocable

Any election under subparagraph (A), once made, may be revoked only with the consent of the Secretary.

(3) Items described in section 807(c) treated as not interest for source rules, etc.

For purposes of part I of subchapter N, items described in any paragraph of section 807(c) shall be treated as amounts which are not interest.

(g) Qualified accelerated death benefit riders treated as life insurance

For purposes of this part—

(1) In general

Any reference to a life insurance contract shall be treated as including a reference to a qualified accelerated death benefit rider on such contract.

(2) Qualified accelerated death benefit riders

For purposes of this subsection, the term "qualified accelerated death benefit rider" means any rider on a life insurance contract if the only payments under the rider are payments meeting the requirements of section 101(g).

(3) Exception for long-term care riders

Paragraph (1) shall not apply to any rider which is treated as a long-term care insurance contract under section 7702B.

(Added and amended Pub. L. 98–369, div. A, title II, §211(a), title X, §1001(b)(10), (e), July 18, 1984, 98 Stat. 752, 1011, 1012; Pub. L. 99–514, title XI, §§1106(d)(3)(C), 1112(d)(4), 1136(b), title XVIII, §1821(n), (o), Oct. 22, 1986, 100 Stat. 2424, 2445, 2486, 2842; Pub. L. 100–647, title I, §§1010(k), 1011(e)(5)(A), Nov. 10, 1988, 102 Stat. 3456, 3461; Pub. L. 104–191, title III, §332(a), Aug. 21, 1996, 110 Stat. 2069; Pub. L. 106–170, title V, §532(c)(1)(D), (3), Dec. 17, 1999, 113 Stat. 1930, 1931.)

REFERENCES IN TEXT

Section 165 of the Internal Revenue Code of 1939, referred to in subsec. (a)(1), (2), was classified to section 165 of former Title 26, Internal Revenue Code. Section 101 of the Internal Revenue Code of 1939, referred to in subsec. (a)(4) was classified to section 101 of former Title 26, Internal Revenue Code. Sections 101 and 165 were repealed by section 7851(a)(1)(A) of this title. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of this title. See, also, section 7851(e) of this title for provision that references in the 1986 Code to a provision of the 1939 Code, not then applicable, shall be deemed a reference to the corresponding provision of the 1986 Code, which is then applicable.

PRIOR PROVISIONS

A prior section 818, added Pub. L. 86–69, §2(a), June 25, 1959, 73 Stat. 133; amended Pub. L. 88–272, title II, §228(b)(1), Feb. 26, 1964, 78 Stat. 98; Pub. L. 91–688, §1(a), Jan. 12, 1971, 84 Stat. 2072; Pub. L. 94–455, title XIX, §§1901(a)(101), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1781, 1834; Pub. L. 97–248, title II, §§258(a), 260(a), 262, 267(a), Sept. 3, 1982, 96 Stat. 538–540, 550, related to accounting provisions generally, prior to the general revision of this part by Pub. L. 98–369, §211(a).

Another prior section 818, act Aug. 16, 1954, ch. 736, §818, as added Mar. 13, 1956, ch. 83, §2, 70 Stat. 46, related to certain new insurance companies, prior to the general revision of this part by Pub. L. 86–69, §2(a).

A prior section 819, added Pub. L. 86–69, §2(a), June 25, 1959, 73 Stat. 136; amended Pub. L. 89–809, title I, §104(i)(3), Nov. 13, 1966, 80 Stat. 1561; Pub. L. 94–455, title XIX, §§1901(a)(102), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1781, 1834, related to foreign life insurance companies, prior to the general revision of this part by Pub. L. 98–369, §211(a). See section 813 of this title.

A prior section 819A, added Pub. L. 94–455, title X, §1043(a), Oct. 4, 1976, 90 Stat. 1639, related to contiguous country branches of domestic life insurance companies, prior to the general revision of this part by Pub. L. 98–369, §211(a). See section 814 of this title.

A prior section 820, added Pub. L. 86–69, §2(a), June 25, 1959, 73 Stat. 137; amended Pub. L. 94–455, title XIX, §§1901(a)(103), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1782, 1834, related to optional treatment of policies reinsured under modified coinsurance contracts, prior to repeal by Pub. L. 97–248, title II, §255(a), (c), Sept. 3, 1982, 96 Stat. 533, 534, applicable to taxable years beginning after Dec. 31, 1981, with exception.

A prior section 821, acts Aug. 16, 1954, ch. 736, 68A Stat. 260; Mar. 30, 1955, ch. 18, §2, 69 Stat. 14; Mar. 13, 1956, ch. 83, §3(a)(1), (2), 70 Stat. 47; Mar. 29, 1956, ch. 115, §2, 70 Stat. 66; Mar. 29, 1957, Pub. L. 85–12, §2, 71 Stat. 9; June 30, 1958, Pub. L. 85–475, §2, 72 Stat. 259; June 30, 1959, Pub. L. 86–75, §2, 73 Stat. 157; June 30, 1960, Pub. L. 86–564, title II, §201, 74 Stat. 290; June 30, 1961, Pub. L. 87–72, §2, 75 Stat. 193; June 28, 1962, Pub. L. 87–508, §2, 76 Stat. 114; Oct. 16, 1962, Pub. L. 87–834, §8(a), 76 Stat. 989; June 29, 1963 Pub. L. 88–52, §2, 77 Stat. 72; Feb. 26, 1964, Pub. L. 88–272, title I, §123(a), 78 Stat. 29; Nov. 13, 1966, Pub. L. 89–809, title I, §104(i)(4), 80 Stat. 1562; Oct. 4, 1976, Pub. L. 94–455, title IX, §901(b), title XV, §1507(b)(1), title XIX, §§1901(a)(104), 1906(b)(13)(A), 90 Stat. 1607, 1739, 1782, 1834; May 23, 1977, Pub. L. 95–30, title II, §201(3), (4), 91 Stat. 141; Nov. 6, 1978, Pub. L. 95–600, title III, §301(b)(9), 92 Stat. 2821; Aug. 13, 1981, Pub. L. 97–34, title II, §231(b)(1), (2), 95 Stat. 249, related to tax on mutual insurance companies to which former part II applied, prior to repeal by Pub. L. 99–514, title X, §1024(a)(1), Oct. 22, 1986, 100 Stat. 2405, effective for taxable years beginning after Dec. 31, 1986.

A prior section 822 was renumbered section 834 of this title by Pub. L. 99–514, title X, §1024(a)(3), Oct. 22, 1986, 100 Stat. 2405.

A prior section 823, added Pub. L. 87–834, §8(c), Oct. 16, 1962, 76 Stat. 992; amended Pub. L. 91–172, title IX, §907(c)(2)(B), Dec. 30, 1969, 83 Stat. 717, related to determination of statutory underwriting income or loss, prior to repeal by Pub. L. 99–514, title X, §1024(a)(1), Oct. 22, 1986, 100 Stat. 2405, effective for taxable years beginning after Dec. 31, 1986.

Another prior section 823, act Aug. 16, 1954, ch. 736, 68A Stat. 263, which defined "net premiums" and "dividends to policyholders", was redesignated section 822(f) of this title by section 8(b)(4) of Pub. L. 87–834.

A prior section 824, added Pub. L. 87–834, §8(c), Oct. 16, 1962, 76 Stat. 993; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, related to adjustments to provide protection against losses, prior to repeal by Pub. L. 99–514, title X, §1024(a)(1), Oct. 22, 1986, 100 Stat. 2405, effective for taxable years beginning after Dec. 31, 1986.

A prior section 825, added Pub. L. 87–834, §8(c), Oct. 16, 1962, 76 Stat. 995; amended Pub. L. 91–172 title IX, §907(c)(2)(C), (D), Dec. 30, 1969, 83 Stat. 717; Pub. L. 94–455, title VIII, §806(d)(2), title XIX, §1901(a)(106), Oct. 4, 1976, 90 Stat. 1599, 1782; Pub. L. 97–34, title II, §207(b), Aug. 13, 1981, 95 Stat. 225, related to unused loss deduction, prior to repeal by Pub. L. 99–514, title X, §1024(a)(1), Oct. 22, 1986, 100 Stat. 2405, effective for taxable years beginning after Dec. 31, 1986.

A prior section 826 was renumbered section 835 of this title by Pub. L. 99–514, title X, §1024(a)(3), Oct. 22, 1986, 100 Stat. 2405.

AMENDMENTS

1999—Subsec. (b)(2). Pub. L. 106–170, §532(c)(3), substituted "section 1221(a)(2)" for "section 1221(2)".

Subsec. (c)(3). Pub. L. 106–170, §532(c)(1)(D), substituted "section 1221(a)" for "section 1221".

1996—Subsec. (g). Pub. L. 104–191 added subsec. (g).

1988—Subsec. (a)(6). Pub. L. 100–647, §1011(e)(5)(A), in subpar. (A) substituted "eligible deferred compensation plan" for "eligible State deferred compensation plan", and in subpar. (B), inserted "or any organization (other than a governmental unit) exempt from tax under this subtitle," after "foregoing," and substituted "agency or instrumentality, or organization" for "or agency or instrumentality".

Subsec. (f)(3). Pub. L. 100–647, §1010(k), added par. (3).

1986—Subsec. (a)(3). Pub. L. 99–514, §1136(b), substituted "(26), and (27)" for "and (26)".

Pub. L. 99–514, §1112(d)(4), substituted "(22), and (26)" for "and (22)".

Pub. L. 99–514, §1106(d)(3)(C), inserted "(17)," after "(16),".

Subsec. (a)(6)(A). Pub. L. 99–514, §1821(n), in amending subpar. (A) generally, inserted "an eligible State deferred compensation plan (within the meaning of section 457(b)), or".

Subsec. (e). Pub. L. 99–514, §1821(o), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: "If an election under section 1504(c)(2) is in effect with respect to an affiliated group for the taxable year, all items of the members of such group which are not life insurance companies shall not be taken into account in determining the amount of the tentative LICTI of members of such group which are life insurance companies."

1984—Subsec. (b)(1)(A). Pub. L. 98–369, §1001(b)(10), (e), substituted "6 months" for "1 year" in two places, applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–191, title III, §332(b), Aug. 21, 1996, 110 Stat. 2069, provided that:

"(1) IN GENERAL.—The amendment made by this section [amending this section] shall take effect on January 1, 1997.

"(2) ISSUANCE OF RIDER NOT TREATED AS MATERIAL CHANGE.—For purposes of applying sections 101(f), 7702, and 7702A of the Internal Revenue Code of 1986 to any contract—

"(A) the issuance of a qualified accelerated death benefit rider (as defined in section 818(g) of such Code (as added by this Act)), and

"(B) the addition of any provision required to conform an accelerated death benefit rider to the requirements of such section 818(g),

shall not be treated as a modification or material change of such contract."

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1011(e)(5)(B), Nov. 10, 1988, 102 Stat. 3461, provided that: "The amendments made by this paragraph [amending this section] shall apply to contracts issued after December 31, 1986."

Amendment by section 1010(k) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1106(d)(3)(C) of Pub. L. 99–514 applicable to benefits accruing in years beginning after Dec. 31, 1988, except as otherwise provided, see section 1106(i)(5) of Pub. L. 99–514 set out as a note under section 415 of this title.

Amendment by section 1112(d)(4) of Pub. L. 99–514 applicable to plan years beginning after Dec. 31, 1988, with special rule regarding collective bargaining agreements ratified before Mar. 1, 1986, and with provision for waiver of the excise tax on reversions, see section 1112(e) of Pub. L. 99–514, set out as a note under section 401 of this title.

Amendment by section 1821(n), (o) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1112 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

PART II—OTHER INSURANCE COMPANIES

Sec.

831. Tax on insurance companies other than life insurance companies.

832. Insurance company taxable income.

833. Treatment of Blue Cross and Blue Shield organizations, etc.

834. Determination of taxable investment income.

835. Election by reciprocal.

PRIOR PROVISIONS

A prior part II (§§821 to 826) related to mutual insurance companies other than life and certain marine insurance companies and other than fire and flood insurance companies which operated on the basis of perpetual policies or premium deposits, consisted of sections 821–826, prior to repeal (except for sections 822 and 826 which were renumbered sections 834 and 835, respectively, by Pub. L. 99–514, title X, §1024(a)(1)–(3), Oct. 22, 1986, 100 Stat. 2405. See Prior Provisions note set out under section 818 of this title.

AMENDMENTS

1988—Pub. L. 100–647, title I, §1010(f)(7), Nov. 10, 1988, 102 Stat. 3454, substituted "Tax on insurance companies other than life insurance companies" for "Tax on insurance companies (other than life or mutual), mutual marine insurance companies, and certain mutual fire or flood insurance companies" in item 831.

1986—Pub. L. 99–514, title X, §§1012(b)(2), 1024(a)(2), (c)(18), Oct. 22, 1986, 100 Stat. 2393, 2405, 2408, redesignated part III (§831 et seq.) as II and added items 833, 834, and 835. Former part II (§821 et seq.) was repealed.

1962—Pub. L. 87–834, §8(g)(4)(C), Oct. 16, 1962, 76 Stat. 999, substituted "and certain mutual fire or flood insurance companies" for "and mutual fire insurance companies issuing perpetual policies" in item 831.

§831. Tax on insurance companies other than life insurance companies

(a) General rule

Taxes computed as provided in section 11 shall be imposed for each taxable year on the taxable income of every insurance company other than a life insurance company.

(b) Alternative tax for certain small companies

(1) In general

In lieu of the tax otherwise applicable under subsection (a), there is hereby imposed for each taxable year on the income of every insurance company to which this subsection applies a tax computed by multiplying the taxable investment income of such company for such taxable year by the rates provided in section 11(b).

(2) Companies to which this subsection applies

(A) In general

This subsection shall apply to every insurance company other than life (including interinsurers and reciprocal underwriters) if—

(i) the net written premiums (or, if greater, direct written premiums) for the taxable year do not exceed $1,200,000, and

(ii) such company elects the application of this subsection for such taxable year.

The election under clause (ii) shall apply to the taxable year for which made and for all subsequent taxable years for which the requirements of clause (i) are met. Such an election, once made, may be revoked only with the consent of the Secretary.

(B) Controlled group rules

(i) In general

For purposes of subparagraph (A), in determining whether any company is described in clause (i) of subparagraph (A), such company shall be treated as receiving during the taxable year amounts described in such clause (i) which are received during such year by all other companies which are members of the same controlled group as the insurance company for which the determination is being made.

(ii) Controlled group

For purposes of clause (i), the term "controlled group" means any controlled group of corporations (as defined in section 1563(a)); except that—

(I) "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears in section 1563(a), and

(II) subsections (a)(4) and (b)(2)(D) of section 1563 shall not apply.

(3) Limitation on use of net operating losses

For purposes of this part, except as provided in section 844, a net operating loss (as defined in section 172) shall not be carried—

(A) to or from any taxable year for which the insurance company is not subject to the tax imposed by subsection (a), or

(B) to any taxable year if, between the taxable year from which such loss is being carried and such taxable year, there is an intervening taxable year for which the insurance company was not subject to the tax imposed by subsection (a).

(c) Insurance company defined

For purposes of this section, the term "insurance company" has the meaning given to such term by

section 816(a)).[1]

(d) Cross references

(1) For alternative tax in case of capital gains, see section 1201(a).

(2) For taxation of foreign corporations carrying on an insurance business within the United States, see section 842.

(3) For exemption from tax for certain insurance companies other than life, see section 501(c)(15).

(Aug. 16, 1954, ch. 736, 68A Stat. 264; Pub. L. 87–834, §8(e)(1), (f), (g)(4)(B), Oct. 16, 1962, 76 Stat. 997–999; Pub. L. 89–809, title I, §104(i)(6), Nov. 13, 1966, 80 Stat. 1562; Pub. L. 94–455, title XIX, §§1901(a)(107), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1782, 1834; Pub. L. 99–514, title X, §1024(a)(4), Oct. 22, 1986, 100 Stat. 2405; Pub. L. 100–647, title I, §1010(f)(1), (9), Nov. 10, 1988, 102 Stat. 3454, 3455; Pub. L. 108–218, title II, §206(c), (d), Apr. 10, 2004, 118 Stat. 611.)

AMENDMENTS

2004—Subsec. (b)(2)(A)(i). Pub. L. 108–218, §206(d), struck out "exceed $350,000 but" after "taxable year".

Subsecs. (c), (d). Pub. L. 108–218, §206(c), added subsec. (c) and redesignated former subsec. (c) as (d).

1988—Subsec. (b)(2)(A). Pub. L. 100–647, §1010(f)(1), inserted at end "The election under clause (ii) shall apply to the taxable year for which made and for all subsequent taxable years for which the requirements of clause (i) are met. Such an election, once made, may be revoked only with the consent of the Secretary."

Subsec. (b)(3). Pub. L. 100–647, §1010(f)(9), added par. (3).

1986—Pub. L. 99–514 amended section generally, substituting provisions imposing taxes on insurance companies other than life insurance companies, with an alternative tax on certain small companies, for provisions imposing taxes on insurance companies (other than life or mutual), mutual marine insurance companies, and certain mutual fire or flood insurance companies, with an election for multiple line companies to be taxed on total income.

1976—Subsec. (a). Pub. L. 94–455, §1901(a)(107), substituted "on the taxable income" for "or the taxable income".

Subsec. (b). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary" wherever appearing.

1966—Subsec. (b). Pub. L. 89–809, §104(i)(6)(A), redesignated subsec. (c) as (b). Former subsec. (b), which excepted foreign insurance companies other than life or mutual insurance companies, foreign mutual marine insurance companies, and foreign mutual fire insurance companies not carrying on an insurance business within the United States and provided that they would be taxable as other foreign corporations, was struck out.

Subsecs. (c), (d). Pub. L. 89–809, §104(i)(6)(B), redesignated subsec. (d) as (c) and added item (2). Former subsec. (c) redesignated (b).

1962—Pub. L. 87–834, §8(g)(4)(B), substituted "and certain mutual fire or flood insurance companies" for "and mutual fire insurance companies issuing perpetual policies" in section catchline.

Subsec. (a). Pub. L. 87–834, §8(e)(1), included flood insurance companies, and substituted provisions authorizing imposition of the tax on those companies whose principal business is the issuance of policies for which the premium deposits are the same, regardless of the length of the term for which the policies are written, if the unabsorbed portion of such premium deposits not required for losses, expenses, or establishment of reserves is returned or credited to the policyholder on cancellation or expiration of the policy for provisions which authorized imposition of tax on those companies which issued policies for which the sole premium charged is a single deposit which (except for such deduction of underwriting costs as may be provided) is refundable on cancellation or expiration of the policy.

Subsecs. (c), (d). Pub. L. 87–834, §8(f), added subsec. (c) and redesignated former subsec. (c) as (d).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–218 applicable to taxable years beginning after Dec. 31, 2003, with exception for companies in receivership or liquidation, see section 206(e) of Pub. L. 108–218, set out as a note under section 501 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L.

100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title X, §1024(e), Oct. 22, 1986, 100 Stat. 2409, provided that: "The amendments made by this section [amending this section and sections 501, 832, 834, 835, 841, 842, 844, 891, 1201, 1504, and 1563 of this title, redesignating former sections 822 and 826 of this title as sections 834 and 835 of this title, respectively, and repealing sections 821, 823, 824, and 825 of this title] (and the provisions of subsection (d) [set out below]) shall apply to taxable years beginning after December 31, 1986."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(107) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable with respect to taxable years beginning after Dec. 31, 1962, see section 8(h) of Pub. L. 87–834, set out as a note under section 501 of this title.

TRANSITIONAL RULES FOR 1984 AMENDMENT

Pub. L. 99–514, title X, §1024(d), Oct. 22, 1986, 100 Stat. 2408, as amended by Pub. L. 100–647, title I, §1010(f)(8), Nov. 10, 1988, 102 Stat. 3454, provided that:

"(1) TREATMENT OF AMOUNTS IN PROTECTION AGAINST LOSS ACCOUNT.—In the case of any insurance company which had a protection against loss account for its last taxable year beginning before January 1, 1987, there shall be included in the gross income of such company for any taxable year beginning after December 31, 1986, the amount which would have been included in gross income for such taxable year under section 824 of the Internal Revenue Code of 1954 [now 1986] (as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]). For purposes of the preceding sentence, no addition to such account shall be made for any taxable year beginning after December 31, 1986. In the case of a company taxable under section 831(b) of the Internal Revenue Code of 1986 (as amended by subsection (a)), any amount included in gross income under this paragraph shall be treated as gross investment income.

"(2) TRANSITIONAL RULE FOR UNUSED LOSS CARRYOVER UNDER SECTION 825.—Any unused loss carryover under section 825 of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]) which—

"(A) is from a taxable year beginning before January 1, 1987, and

"(B) could have been carried under such section to a taxable year beginning after December 31, 1986,

but for the repeal made by subsection (a)(1) [repealing sections 821 and 823 to 825 of this title], shall be included in the net operating loss deduction under section 832(c)(10) of such Code without regard to the limitations of section 844(b) of such Code."

[1] *So in original. Second closing parenthesis probably should not appear.*

§832. Insurance company taxable income

(a) Definition of taxable income

In the case of an insurance company subject to the tax imposed by section 831, the term "taxable income" means the gross income as defined in subsection (b)(1) less the deductions allowed by subsection (c).

(b) Definitions

In the case of an insurance company subject to the tax imposed by section 831—

(1) Gross income

The term "gross income" means the sum of—

(A) the combined gross amount earned during the taxable year, from investment income and

from underwriting income as provided in this subsection, computed on the basis of the underwriting and investment exhibit of the annual statement approved by the National Association of Insurance Commissioners,

(B) gain during the taxable year from the sale or other disposition of property, and

(C) all other items constituting gross income under subchapter B, except that, in the case of a mutual fire insurance company exclusively issuing perpetual policies, the amount of single deposit premiums paid to such company shall not be included in gross income,

(D) in the case of a mutual fire or flood insurance company whose principal business is the issuance of policies—

(i) for which the premium deposits are the same (regardless of the length of the term for which the policies are written), and

(ii) under which the unabsorbed portion of such premium deposits not required for losses, expenses, or establishment of reserves is returned or credited to the policyholder on cancellation or expiration of the policy,

an amount equal to 2 percent of the premiums earned on insurance contracts during the taxable year with respect to such policies after deduction of premium deposits returned or credited during the same taxable year, and

(E) in the case of a company which writes mortgage guaranty insurance, the amount required by subsection (e)(5) to be subtracted from the mortgage guaranty account.

(2) Investment income

The term "investment income" means the gross amount of income earned during the taxable year from interest, dividends, and rents, computed as follows: To all interest, dividends, and rents received during the taxable year, add interest, dividends, and rents due and accrued at the end of the taxable year, and deduct all interest, dividends, and rents due and accrued at the end of the preceding taxable year.

(3) Underwriting income

The term "underwriting income" means the premiums earned on insurance contracts during the taxable year less losses incurred and expenses incurred.

(4) Premiums earned

The term "premiums earned on insurance contracts during the taxable year" means an amount computed as follows:

(A) From the amount of gross premiums written on insurance contracts during the taxable year, deduct return premiums and premiums paid for reinsurance.

(B) To the result so obtained, add 80 percent of the unearned premiums on outstanding business at the end of the preceding taxable year and deduct 80 percent of the unearned premiums on outstanding business at the end of the taxable year.

(C) To the result so obtained, in the case of a taxable year beginning after December 31, 1986, and before January 1, 1993, add an amount equal to 31/3 percent of unearned premiums on outstanding business at the end of the most recent taxable year beginning before January 1, 1987.

For purposes of this subsection, unearned premiums shall include life insurance reserves, as defined in section 816(b) but determined as provided in section 807. For purposes of this subsection, unearned premiums of mutual fire or flood insurance companies described in paragraph (1)(D) means (with respect to the policies described in paragraph (1)(D)) the amount of unabsorbed premium deposits which the company would be obligated to return to its policyholders at the close of the taxable year if all of its policies were terminated at such time; and the determination of such amount shall be based on the schedule of unabsorbed premium deposit returns for each such company then in effect. Premiums paid by the subscriber of a mutual flood insurance company described in paragraph (1)(D) or issuing exclusively perpetual policies shall be

treated, for purposes of computing the taxable income of such subscriber, in the same manner as premiums paid by a policyholder to a mutual fire insurance company described in subparagraph (C) or (D) of paragraph (1).

(5) Losses incurred

(A) In general

The term "losses incurred" means losses incurred during the taxable year on insurance contracts computed as follows:

(i) To losses paid during the taxable year, deduct salvage and reinsurance recovered during the taxable year.

(ii) To the result so obtained, add all unpaid losses on life insurance contracts plus all discounted unpaid losses (as defined in section 846) outstanding at the end of the taxable year and deduct all unpaid losses on life insurance contracts plus all discounted unpaid losses outstanding at the end of the preceding taxable year.

(iii) To the results so obtained, add estimated salvage and reinsurance recoverable as of the end of the preceding taxable year and deduct estimated salvage and reinsurance recoverable as of the end of the taxable year.

The amount of estimated salvage recoverable shall be determined on a discounted basis in accordance with procedures established by the Secretary.

(B) Reduction of deduction

The amount which would (but for this subparagraph) be taken into account under subparagraph (A) shall be reduced by an amount equal to 15 percent of the sum of—

(i) tax-exempt interest received or accrued during such taxable year,

(ii) the aggregate amount of deductions provided by sections 243, 244, and 245 for—

(I) dividends (other than 100 percent dividends) received during the taxable year, and

(II) 100 percent dividends received during the taxable year to the extent attributable (directly or indirectly) to prorated amounts, and

(iii) the increase for the taxable year in policy cash values (within the meaning of section 805(a)(4)(F)) of life insurance policies and annuity and endowment contracts to which section 264(f) applies.

In the case of a 100 percent dividend paid by an insurance company, the portion attributable to prorated amounts shall be determined under subparagraph (E)(ii).

(C) Exception for investments made before August 8, 1986

(i) In general

Except as provided in clause (ii), subparagraph (B) shall not apply to any dividend or interest received or accrued on any stock or obligation acquired before August 8, 1986.

(ii) Special rule for 100 percent dividends

For purposes of clause (i), the portion of any 100 percent dividend which is attributable to prorated amounts shall be treated as received with respect to stock acquired on the later of—

(I) the date the payor acquired the stock or obligation to which the prorated amounts are attributable, or

(II) the 1st day on which the payor and payee were members of the same affiliated group (as defined in section 243(b)(2)).

(D) Definitions

For purposes of this paragraph—

(i) Prorated amounts

The term "prorated amounts" means tax-exempt interest and dividends with respect to

which a deduction is allowable under section 243, 244, or 245 (other than 100 percent dividends).

(ii) 100 percent dividend

(I) In general

The term "100 percent dividend" means any dividend if the percentage used for purposes of determining the deduction allowable under section 243, 244, or 245(b) is 100 percent.

(II) Certain dividends received by foreign corporations

A dividend received by a foreign corporation from a domestic corporation which would be a 100 percent dividend if section 1504(b)(3) did not apply for purposes of applying section 243(b)(2) shall be treated as a 100 percent dividend.

(E) Special rules for dividends subject to proration at subsidiary level

(i) In general

In the case of any 100 percent dividend paid to an insurance company to which this part applies by any insurance company, the amount of the decrease in the deductions of the payee company by reason of the portion of such dividend attributable to prorated amounts shall be reduced (but not below zero) by the amount of the decrease in the deductions (or increase in income) of the payor company attributable to the application of this section or section 805(a)(4)(A) to such amounts.

(ii) Portion of dividend attributable to prorated amounts

For purposes of this subparagraph, in determining the portion of any dividend attributable to prorated amounts—

(I) any dividend by the paying corporation shall be treated as paid first out of earnings and profits attributable to prorated amounts (to the extent thereof), and

(II) by determining the portion of earnings and profits so attributable without any reduction for the tax imposed by this chapter.

(6) Expenses incurred

The term "expenses incurred" means all expenses shown on the annual statement approved by the National Association of Insurance Commissioners, and shall be computed as follows: To all expenses paid during the taxable year, add expenses unpaid at the end of the taxable year and deduct expenses unpaid at the end of the preceding taxable year. For purposes of this subchapter, the term "expenses unpaid" shall not include any unpaid loss adjustment expenses shown on the annual statement, but such unpaid loss adjustment expenses shall be included in unpaid losses. For the purpose of computing the taxable income subject to the tax imposed by section 831, there shall be deducted from expenses incurred (as defined in this paragraph) all expenses incurred which are not allowed as deductions by subsection (c).

(7) Special rules for applying paragraph (4)

(A) Reduction not to apply to life insurance reserves

Subparagraph (B) of paragraph (4) shall be applied with respect to insurance contracts described in section 816(b)(1)(B) by substituting "100 percent" for "80 percent" each place it appears in such subparagraph (B), and subparagraph (C) of paragraph (4) shall be applied by not taking such contracts into account.

(B) Special treatment of premiums attributable to insuring certain securities

In the case of premiums attributable to insurance against default in the payment of principal or interest on securities described in section 165(g)(2)(C) with maturities of more than 5 years—

(i) subparagraph (B) of paragraph (4) shall be applied by substituting "90 percent" for "80 percent" each place it appears, and

(ii) subparagraph (C) of paragraph (4) shall be applied by substituting "12/3 percent" for "31/3 percent".

(C) Termination as insurance company taxable under section 831(a)

Except as provided in section 381(c)(22) (relating to carryovers in certain corporate readjustments), if, for any taxable year beginning before January 1, 1993, the taxpayer ceases to be an insurance company taxable under section 831(a), the aggregate adjustments which would be made under paragraph (4)(C) for such taxable year and subsequent taxable years but for such cessation shall be made for the taxable year preceding such cessation year.

(D) Treatment of companies which become taxable under section 831(a)

(i) Exception to phase-in for companies which were not taxable, etc., before 1987

Subparagraph (C) of paragraph (4) shall not apply to any insurance company which, for each taxable year beginning before January 1, 1987, was not subject to the tax imposed by section 821(a) [1] or 831(a) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) by reason of being—

(I) subject to tax under section 821(c) [1] (as so in effect), or

(II) described in section 501(c) (as so in effect) and exempt from tax under section 501(a).

(ii) Phase-in beginning at later date for companies not 1st taxable under section 831(a) in 1987

In the case of an insurance company—

(I) which was not subject to the tax imposed by section 831(a) for its 1st taxable year beginning after December 31, 1986, by reason of being subject to tax under section 831(b), or described in section 501(c) and exempt from tax under section 501(a), and

(II) which, for any taxable year beginning before January 1, 1987, was subject to the tax imposed by section 821(a) [1] or 831(a) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986),

subparagraph (C) of paragraph (4) shall apply beginning with the 1st taxable year beginning after December 31, 1986, for which such company is subject to the tax imposed by section 831(a) and shall be applied by substituting the last day of the preceding taxable year for "December 31, 1986" and the 1st day of the 7th succeeding taxable year for "January 1, 1993".

(E) Treatment of certain reciprocal insurers

In the case of a reciprocal (within the meaning of section 835(a)) which reports (as required by State law) on its annual statement reserves on unearned premiums net of premium acquisition expenses—

(i) subparagraph (B) of paragraph (4) shall be applied by treating unearned premiums as including an amount equal to such expenses, and

(ii) appropriate adjustments shall be made under subparagraph (c) of paragraph (4) to reflect the amount by which—

(I) such reserves at the close of the most recent taxable year beginning before January 1, 1987, are greater or less than,

(II) 80 percent of the sum of the amount under subclause (I) plus such premium acquisition expenses,[2]

(8) Special rules for applying paragraph (4) to title insurance premiums

(A) In general

In the case of premiums attributable to title insurance—

(i) subparagraph (B) of paragraph (4) shall be applied by substituting "the discounted unearned premiums" for "80 percent of the unearned premiums" each place it appears, and

(ii) subparagraph (C) of paragraph (4) shall not apply.

(B) Method of discounting

For purposes of subparagraph (A), the amount of the discounted unearned premiums as of the end of any taxable year shall be the present value of such premiums (as of such time and separately with respect to premiums received in each calendar year) determined by using—

(i) the amount of the undiscounted unearned premiums at such time,

(ii) the applicable interest rate, and

(iii) the applicable statutory premium recognition pattern.

(C) Determination of applicable factors

In determining the amount of the discounted unearned premiums as of the end of any taxable year—

(i) Undiscounted unearned premiums

The term "undiscounted unearned premiums" means the unearned premiums shown in the yearly statement filed by the taxpayer for the year ending with or within such taxable year.

(ii) Applicable interest rate

The term "applicable interest rate" means the annual rate determined under 846(c)(2) for the calendar year in which the premiums are received.

(iii) Applicable statutory premium recognition pattern

The term "applicable statutory premium recognition pattern" means the statutory premium recognition pattern—

(I) which is in effect for the calendar year in which the premiums are received, and

(II) which is based on the statutory premium recognition pattern which applies to premiums received by the taxpayer in such calendar year.

For purposes of the preceding sentence, premiums received during any calendar year shall be treated as received in the middle of such year.

(c) Deductions allowed

In computing the taxable income of an insurance company subject to the tax imposed by section 831, there shall be allowed as deductions:

(1) all ordinary and necessary expenses incurred, as provided in section 162 (relating to trade or business expenses);

(2) all interest, as provided in section 163;

(3) taxes, as provided in section 164;

(4) losses incurred, as defined in subsection (b)(5) of this section;

(5) capital losses to the extent provided in subchapter P (sec. 1201 and following, relating to capital gains and losses) plus losses from capital assets sold or exchanged in order to obtain funds to meet abnormal insurance losses and to provide for the payment of dividends and similar distributions to policyholders. Capital assets shall be considered as sold or exchanged in order to obtain funds to meet abnormal insurance losses and to provide for the payment of dividends and similar distributions to policyholders to the extent that the gross receipts from their sale or exchange are not greater than the excess, if any, for the taxable year of the sum of dividends and similar distributions paid to policyholders in their capacity as such, losses paid, and expenses paid over the sum of the items described in section 834(b) (other than paragraph (1)(D) thereof) and net premiums received. In the application of section 1212 for purposes of this section, the net capital loss for the taxable year shall be the amount by which losses for such year from sales or exchanges of capital assets exceeds the sum of the gains from such sales or exchanges and whichever of the following amounts is the lesser:

(A) the taxable income (computed without regard to gains or losses from sales or exchanges of capital assets; or

(B) losses from the sale or exchange of capital assets sold or exchanged to obtain funds to

meet abnormal insurance losses and to provide for the payment of dividends and similar distributions to policyholders;

(6) debts in the nature of agency balances and bills receivable which become worthless within the taxable year;

(7) the amount of interest earned during the taxable year which under section 103 is excluded from gross income;

(8) the depreciation deduction allowed by section 167 and the deduction allowed by section 611 (relating to depletion);

(9) charitable, etc., contributions, as provided in section 170;

(10) deductions (other than those specified in this subsection) as provided in part VI of subchapter B (sec. 161 and following, relating to itemized deductions for individuals and corporations) and in part I of subchapter D (sec. 401 and following, relating to pension, profit-sharing, stock bonus plans, etc.);

(11) dividends and similar distributions paid or declared to policyholders in their capacity as such, except in the case of a mutual fire insurance company described in subsection (b)(1)(C). For purposes of the preceding sentence, the term "dividends and similar distributions" includes amounts returned or credited to policyholders on cancellation or expiration of policies described in subsection (b)(1)(D). For purposes of this paragraph, the term "paid or declared" shall be construed according to the method of accounting regularly employed in keeping the books of the insurance company;

(12) the special deductions allowed by part VIII of subchapter B (sec. 241 and following, relating to dividends received); and

(13) in the case of a company which writes mortgage guaranty insurance, the deduction allowed by subsection (e).

(d) Double deductions

Nothing in this section shall permit the same item to be deducted more than once.

(e) Special deduction and income account

In the case of taxable years beginning after December 31, 1966, of a company which writes mortgage guaranty insurance—

(1) Additional deduction

There shall be allowed as a deduction for the taxable year, if bonds are purchased as required by paragraph (2), the sum of—

(A) an amount representing the amount required by State law or regulation to be set aside in a reserve for mortgage guaranty insurance losses resulting from adverse economic cycles; and

(B) an amount representing the aggregate of amounts so set aside in such reserve for the 8 preceding taxable years to the extent such amounts were not deducted under this paragraph in such preceding taxable years,

except that the deduction allowable for the taxable year under this paragraph shall not exceed the taxable income for the taxable year computed without regard to this paragraph or to any carryback of a net operating loss. For purposes of this paragraph, the amount required by State law or regulation to be so set aside in any taxable year shall not exceed 50 percent of premiums earned on insurance contracts (as defined in subsection (b)(4)) with respect to mortgage guaranty insurance for such year. For purposes of this subsection, all amounts shall be taken into account on a first-in-time basis. The computation and deduction under this section of losses incurred (including losses resulting from adverse economic cycles) shall not be affected by the provisions of this subsection. For purposes of this subsection, the terms "preceding taxable years" and "preceding taxable year" shall not include taxable years which began before January 1, 1967.

(2) Purchase of bonds

The deduction under paragraph (1) shall be allowed only to the extent that tax and loss bonds

are purchased in an amount equal to the tax benefit attributable to such deduction, as determined under regulations prescribed by the Secretary, on or before the date that any taxes (determined without regard to this subsection) due for the taxable year for which the deduction is allowed are due to be paid. If a deduction would be allowed but for the fact that tax and loss bonds were not timely purchased, such deduction shall be allowed to the extent such purchases are made within a reasonable time, as determined by the Secretary, if all interest and penalties, computed as if this sentence did not apply, are paid.

(3) Mortgage guaranty account

Each company which writes mortgage guaranty insurance shall, for purposes of this part, establish and maintain a mortgage guaranty account.

(4) Additions to account

There shall be added to the mortgage guaranty account for each taxable year an amount equal to the amount allowed as a deduction for the taxable year under paragraph (1).

(5) Subtractions from account and inclusion in gross income

After applying paragraph (4), there shall be subtracted for the taxable year from the mortgage guaranty account and included in gross income—

(A) the amount (if any) remaining which was added to the account for the tenth preceding taxable year,

(B) the excess (if any) of the aggregate amount in the mortgage guaranty account over the aggregate amount in the reserve referred to in paragraph (1)(A). For purposes of determining such excess, the aggregate amount in the mortgage guaranty account shall be determined after applying subparagraph (A), and the aggregate amount in the reserve referred to in paragraph (1)(A) shall be determined by disregarding any amounts remaining in such reserve added for taxable years beginning before January 1, 1967,

(C) an amount (if any) equal to the net operating loss for the taxable year computed without regard to this subparagraph, and

(D) any amount improperly subtracted from the account under subparagraph (A), (B), or (C) to the extent that tax and loss bonds were redeemed with respect to such amount.

If a company liquidates or otherwise terminates its mortgage guaranty insurance business and does not transfer or distribute such business in an acquisition of assets referred to in section 381(a), the entire amount remaining in such account shall be subtracted. Except in the case where a company transfers or distributes its mortgage guaranty insurance in an acquisition of assets referred to in section 381(a), if the company is not subject to the tax imposed by section 831 for any taxable year, the entire amount in the account at the close of the preceding taxable year shall be subtracted from the account in such preceding taxable year.

(6) Lease guaranty insurance; insurance of State and local obligations

In the case of any taxable year beginning after December 31, 1970, the provisions of this subsection shall also apply in all respects to a company which writes lease guaranty insurance or insurance on obligations the interest on which is excludable from gross income under section 103. In applying this subsection to such a company, any reference to mortgage guaranty insurance contained in this section shall be deemed to be a reference also to lease guaranty insurance and to insurance on obligations the interest on which is excludable from gross income under section 103; and in the case of insurance on obligations the interest on which is excludable from gross income under section 103, the references in paragraph (1) to "losses resulting from adverse economic cycles" include losses from declining revenues related to such obligations (as well as losses resulting from adverse economic cycles), and the time specified in subparagraph (A) of paragraph (5) shall be the twentieth preceding taxable year.

(f) Interinsurers

In the case of a mutual insurance company which is an interinsurer or reciprocal underwriter—

(1) there shall be allowed as a deduction the increase for the taxable year in savings credited to subscriber accounts, or

(2) there shall be included as an item of gross income the decrease for the taxable year in savings credited to subscriber accounts.

For purposes of the preceding sentence, the term "savings credited to subscriber accounts" means such portion of the surplus as is credited to the individual accounts of subscribers before the 16th day of the 3rd month following the close of the taxable year, but only if the company would be obligated to pay such amount promptly to such subscriber if he terminated his contract at the close of the company's taxable year. For purposes of determining his taxable income, the subscriber shall treat any such savings credited to his account as a dividend paid or declared.

(g) Dividends within group

In the case of an insurance company subject to tax under section 831(a) filing or required to file a consolidated return under section 1501 with respect to any affiliated group for any taxable year, any determination under this part with respect to any dividend paid by one member of such group to another member of such group shall be made as if such group were not filing a consolidated return.

(Aug. 16, 1954, ch. 736, 68A Stat. 264; Mar. 13, 1956, ch. 83, §3(b), 70 Stat. 48; Pub. L. 87–834, §8(e)(2)–(5), Oct. 16, 1962, 76 Stat. 997, 998; Pub. L. 88–272, title II, §228(c), Feb. 26, 1964, 78 Stat. 99; Pub. L. 89–809, title I, §104(i)(7), Nov. 13, 1966, 80 Stat. 1562; Pub. L. 90–240, §5(a)–(c), Jan. 2, 1968, 81 Stat. 776, 777; Pub. L. 93–483, §5, Oct. 26, 1974, 88 Stat. 1458; Pub. L. 94–455, title XIX, §§1901(a)(108), (b)(1)(T), (U), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1782, 1792, 1834; Pub. L. 97–248, title II, §234(b)(2)(A), Sept. 3, 1982, 96 Stat. 503; Pub. L. 98–369, div. A, title II, §211(b)(9), July 18, 1984, 98 Stat. 755; Pub. L. 99–514, title X, §§1021(a), (b), 1022(a), 1023(a), 1024(c)(1)–(6), Oct. 22, 1986, 100 Stat. 2395, 2397, 2399, 2406, 2407; Pub. L. 100–647, title I, §1010(c), (d)(1), (2), Nov. 10, 1988, 102 Stat. 3451–3453; Pub. L. 101–508, title XI, §§11303(a), (b), 11305(a), Nov. 5, 1990, 104 Stat. 1388–450, 1388–451; Pub. L. 104–188, title I, §§1702(h)(3), 1704(t)(45), Aug. 20, 1996, 110 Stat. 1873, 1889; Pub. L. 105–34, title X, §1084(b)(4), Aug. 5, 1997, 111 Stat. 955.)

REFERENCES IN TEXT

Section 821, referred to in subsec. (b)(7)(D), was repealed by Pub. L. 99–514, title X, §1024(a)(1), Oct. 22, 1986, 100 Stat. 2405.

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (b)(7)(D), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

CODIFICATION

Another section 1084(b) of Pub. L. 105–34 amended sections 101 and 264 of this title.

AMENDMENTS

1997—Subsec. (b)(5)(B)(iii). Pub. L. 105–34, which directed amendment of subpar. (B) by adding cl. (iii) at the end, was executed by adding cl. (iii) after cl. (ii) to reflect the probable intent of Congress.

1996—Subsec. (b)(5)(C)(ii)(II), (D)(ii)(II). Pub. L. 104–188, §1702(h)(3), substituted "243(b)(2)" for "243(b)(5)".

Subsec. (b)(7)(A). Pub. L. 104–188, §1704(t)(45), provided that section 11303(b)(1) of Pub. L. 101–508 shall be applied as if "paragraph" appeared instead of "subparagraph" in the material proposed to be stricken. See 1990 Amendment note below.

1990—Subsec. (b)(4). Pub. L. 101–508, §11303(a), substituted "section 807." for "section 807, pertaining to the life, burial, or funeral insurance, or annuity business of an insurance company subject to the tax imposed by section 831 and not qualifying as a life insurance company under section 816." in first sentence after subpar. (C).

Subsec. (b)(5)(A). Pub. L. 101–508, §11305(a), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "The term 'losses incurred' means losses incurred during the taxable year on insurance contracts, computed as follows:

"(i) To losses paid during the taxable year, add salvage and reinsurance recoverable outstanding at the end of the preceding taxable year and deduct salvage and reinsurance recoverable outstanding at the end of

the taxable year.

"(ii) To the result so obtained, add all unpaid losses on life insurance contracts plus all discounted unpaid losses (as defined in section 846) outstanding at the end of the taxable year and deduct unpaid losses on life insurance contracts plus all discounted unpaid losses outstanding at the end of the preceding taxable year."

Subsec. (b)(7)(A). Pub. L. 101–508, §11303(b)(2), substituted "such contracts into account" for "such amounts into account".

Pub. L. 101–508, §11303(b)(1), which directed the substitution of "insurance contracts described in section 816(b)(1)(B)" for "amounts included in unearned premiums under the 2nd sentence of such subparagraph", was executed by making the substitution for "amounts included in unearned premiums under the 2nd sentence of such paragraph". See 1996 Amendment note above.

1988—Subsec. (b)(5)(B)(ii)(II). Pub. L. 100–647, §1010(d)(2), inserted "(directly or indirectly)" after "attributable".

Subsec. (b)(7)(C). Pub. L. 100–647, §1010(c)(1), substituted "insurance company taxable under section 831(a)" for "nonlife insurance company" in heading and "section 831(a)" for "this part" in text.

Subsec. (b)(7)(D), (E). Pub. L. 100–647, §1010(c)(2), added subpars. (D) and (E).

Subsec. (e)(5)(A). Pub. L. 100–647, §1010(c)(3), struck out "and" after "preceding taxable year,".

Subsec. (e)(5)(B). Pub. L. 100–647, §1010(c)(3), which directed amendment of subpar. (B) by substituting a comma for the period at end, could not be executed because there was no period at end of subpar. (B).

Subsec. (g). Pub. L. 100–647, §1010(d)(1), added subsec. (g).

1986—Subsec. (b)(1)(C). Pub. L. 99–514, §1024(c)(1), substituted "exclusively issuing perpetual policies" for "described in section 831(a)(3)(A)".

Subsec. (b)(1)(D). Pub. L. 99–514, §1024(c)(2), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: "in the case of a mutual fire or flood insurance company described in section 831(a)(3)(B), an amount equal to 2 percent of the premiums earned on insurance contracts during the taxable year with respect to policies described in section 831(a)(3)(B) after deduction of premium deposits returned or credited during the same taxable year, and".

Subsec. (b)(4). Pub. L. 99–514, §1024(c)(3), substituted "paragraph (1)(D)" for "section 831(a)(3)(B)" in two places and amended last sentence generally, substituting "described in paragraph (1)(D) or issuing exclusively perpetual policies" for "referred to in paragraph (3) of section 831(a)" and "described in subparagraph (C) or (D) of paragraph (1)" for "referred to in such paragraph (3)".

Subsec. (b)(4)(B), (C). Pub. L. 99–514, §1021(a), added subpars. (B) and (C) and struck out former subpar. (B) which read as follows: "To the result so obtained, add unearned premiums on outstanding business at the end of the preceding taxable year and deduct unearned premiums on outstanding business at the end of the taxable year."

Subsec. (b)(5)(A). Pub. L. 99–514, §1022(a), in amending par. (5) generally, designated existing provisions of par. (5) as subpar. (A), inserted subpar. heading "In general", and redesignated former subpars. (A) and (B) as cls. (i) and (ii).

Subsec. (b)(5)(A)(ii). Pub. L. 99–514, §1023(a)(1), amended cl. (ii) generally, inserting "on life insurance contracts plus all discounted unpaid losses (as defined in section 846)" and "on life insurance contracts plus all discounted unpaid losses".

Subsec. (b)(5)(B) to (E). Pub. L. 99–514, §1022(a), in amending par. (5) generally, added subpars. (B) to (E). Former subpar. (B) redesignated (A)(ii).

Subsec. (b)(6). Pub. L. 99–514, §1023(a)(2), inserted second sentence defining "expenses unpaid".

Subsec. (b)(7), (8). Pub. L. 99–514, §1021(b), added pars. (7) and (8).

Subsec. (c)(5). Pub. L. 99–514, §1024(c)(4), substituted "section 834(b)" for "section 822(b)".

Subsec. (c)(11). Pub. L. 99–514, §1024(c)(5), substituted "subsection (b)(1)(C)" for "section 831(a)(3)(A)" and "subsection (b)(1)(D)" for "section 831(a)(3)(B)".

Subsec. (f). Pub. L. 99–514, §1024(c)(6), added subsec. (f).

1984—Subsec. (b)(4). Pub. L. 98–369, in provisions following subpar. (B), substituted "section 816(b) but determined as provided in section 807" and "section 816" for "section 801(b)" and "section 801", respectively.

1982—Subsec. (e)(2). Pub. L. 97–248 struck out ", as if no election to make installment payments under section 6152 is made" after "due to be paid".

1976—Subsec. (b)(1), (6). Pub. L. 94–455, §1901(a)(108), substituted "Association" for "Convention".

Subsec. (c)(5)(A). Pub. L. 94–455, §1901(b)(1)(T), struck out "or to the deductions provided in section 242 for partially tax-exempt interest" after "exchanges of capital assets".

Subsec. (c)(12). Pub. L. 94–455, §1901(b)(1)(U), struck out "partially tax-exempt interest and to" after "and following, relating to".

Subsec. (e)(2). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

1974—Subsec. (e)(6). Pub. L. 93–483 added par. (6).

1968—Subsec. (b)(1)(E). Pub. L. 90–240, §5(a), added subpar. (E).

Subsec. (c)(13). Pub. L. 90–240, §5(b), added par. (13).

Subsec. (e). Pub. L. 90–240, §5(c), added subsec. (e).

1966—Subsec. (d). Pub. L. 89–809 redesignated subsec. (e) as (d). Former subsec. (d), having reference to the taxable income of foreign insurance companies other than life or mutual and foreign mutual marine, was struck out.

Subsec. (e). Pub. L. 89–809 redesignated subsec. (e) as (d).

1964—Subsec. (c)(10). Pub. L. 88–272 inserted reference to part I of subchapter D.

1962—Subsec. (b)(1)(C). Pub. L. 87–834, §8(e)(3), (5), substituted "section 831(a)(3)(A)" for "section 831(a)".

Subsec. (b)(1)(D). Pub. L. 87–834, §8(e)(5), added subpar. (D).

Subsec. (b)(4). Pub. L. 87–834, §8(e)(2), inserted provisions defining unearned premiums of mutual fire or flood insurance companies, and which require premiums paid by the subscriber of a mutual flood insurance company to be treated, for purposes of computing the taxable income of such subscriber, in the same manner as premiums paid by a policyholder to a mutual fire insurance company referred to in par. (3) of section 831(a) of this title.

Subsec. (c)(11). Pub. L. 87–834, §8(e)(4), substituted "section 831(a)(3)(A)" for "section 831(a)", and inserted definition of "dividends and similar distributions".

1956—Subsec. (b)(4). Act Mar. 13, 1956, §3(b)(1), substituted "section 801(b)" for "section 806".

Subsec. (c). Act Mar. 13, 1956, §3(b)(2), (3), substituted "the items described in section 822(b) (other than paragraph (1)(D) thereof) and net premiums received. In the application of section 1212" for "interest, dividends, rents, and net premiums received. In the application of section 1211" in par. (5), and authorized the deduction for depletion in par. (8).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to contracts issued after June 8, 1997, in taxable years ending after such date, with special provisions relating to changes in contracts to be treated as new contracts, see section 1084(d) of Pub. L. 105–34, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1702(h)(3) of Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, §11303(c), Nov. 5, 1990, 104 Stat. 1388–450, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to taxable years beginning on or after September 30, 1990.

"(2) AMENDMENTS TREATED AS CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer who is required by reason of the amendments made by this section to change his method of computing reserves—

"(A) such change shall be treated as a change in a method of accounting,

"(B) such change shall be treated as initiated by the taxpayer,

"(C) such change shall be treated as having been made with the consent of the Secretary, and

"(D) the net adjustments which are required by section 481 of the Internal Revenue Code of 1986 to be taken into account by the taxpayer shall be taken into account over a period not to exceed 4 taxable years beginning with the taxpayer's first taxable year beginning on or after September 30, 1990.

"(3) COORDINATION WITH SECTION 832(b)(4)(C).—The amendments made by this section shall not affect the application of section 832(b)(4)(C) of the Internal Revenue Code of 1986."

Pub. L. 101–508, title XI, §11305(c), Nov. 5, 1990, 104 Stat. 1388–451, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and section 846 of this title] shall apply to taxable years beginning after December 31, 1989.

"(2) AMENDMENTS TREATED AS CHANGE IN METHOD OF ACCOUNTING.—

"(A) IN GENERAL.—In the case of any taxpayer who is required by reason of the amendments made by this section to change his method of computing losses incurred—

"(i) such change shall be treated as a change in a method of accounting,

"(ii) such change shall be treated as initiated by the taxpayer, and

"(iii) such change shall be treated as having been made with the consent of the Secretary.

"(B) ADJUSTMENTS.—In applying section 481 of the Internal Revenue Code of 1986 with respect to the change referred to in subparagraph (A)—

"(i) only 13 percent of the net amount of adjustments (otherwise required by such section 481 to be taken into account by the taxpayer) shall be taken into account, and

"(ii) the portion of such net adjustments which is required to be taken into account by the taxpayer (after the application of clause (i)) shall be taken into account over a period not to exceed 4 taxable years beginning with the taxpayer's 1st taxable year beginning after December 31, 1989.

"(3) TREATMENT OF COMPANIES WHICH TOOK INTO ACCOUNT SALVAGE RECOVERABLE .—In the case of any insurance company which took into account salvage recoverable in determining losses incurred for its last taxable year beginning before January 1, 1990, 87 percent of the discounted amount of estimated salvage recoverable as of the close of such last taxable year shall be allowed as a deduction ratably over its 1st 4 taxable years beginning after December 31, 1989.

"(4) SPECIAL RULE FOR OVERESTIMATES.—If for any taxable year beginning after December 31, 1989—

"(A) the amount of the section 481 adjustment which would have been required without regard to paragraph (2) and any discounting, exceeds

"(B) the sum of the amount of salvage recovered taken into account under section 832(b)(5)(A)(i) for the taxable year and any preceding taxable year beginning after December 31, 1989, attributable to losses incurred with respect to any accident year beginning before 1990 and the undiscounted amount of estimated salvage recoverable as of the close of the taxable year on account of such losses,

87 percent of such excess (adjusted for discounting used in determining the amount of salvage recoverable as of the close of the last taxable year of the taxpayer beginning before January 1, 1990) shall be included in gross income for such taxable year.

"(5) EFFECT ON EARNINGS AND PROFITS.—The earnings and profits of any insurance company for its 1st taxable year beginning after December 31, 1989, shall be increased by the amount of the section 481 adjustment which would have been required but for paragraph (2). For purposes of applying sections 56, 902, 952(c)(1), and 960 of the Internal Revenue Code of 1986, earnings and profits of a corporation shall be determined by applying the principles of paragraph (2)(B)."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title X, §1021(c), Oct. 22, 1986, 100 Stat. 2397, provided that:

"(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1986.

"(2) SPECIAL TRANSITIONAL RULE FOR TITLE INSURANCE COMPANIES.—For the 1st taxable year beginning after December 31, 1986, in the case of premiums attributable to title insurance—

"(A) IN GENERAL.—The unearned premiums at the end of the preceding taxable year as defined in paragraph (4) of section 832(b) [of the Internal Revenue Code of 1986] shall be determined as if the amendments made by this section had applied to such unearned premiums in the preceding taxable year and by using the interest rate and premium recognition pattern applicable to years ending in calendar year 1987.

"(B) FRESH START.—Except as provided in subparagraph (C), any difference between—

"(i) the amount determined to be unearned premiums for the year preceding the first taxable year of a title insurance company beginning after December 31, 1986, determined without regard to subparagraph (A), and

"(ii) such amount determined with regard to subparagraph (A),

shall not be taken into account for purposes of the Internal Revenue Code of 1986.

"(C) EFFECT ON EARNINGS AND PROFITS.—The earnings and profits of any insurance company for its 1st taxable year beginning after December 31, 1986, shall be increased by the amount of the difference determined under subparagraph (A) with respect to such company."

Pub. L. 99–514, title X, §1022(b), Oct. 22, 1986, 100 Stat. 2399, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1986."

Amendment by section 1023(a) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, except as otherwise provided, see section 1023(e) of Pub. L. 99–514, set out as an Effective Date note

under section 846 of this title.

Amendment by section 1024(c)(1)–(6) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1024(e) of Pub. L. 99–514, set out as a note under section 831 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to taxable years beginning after Dec. 31, 1982, see section 234(e) of Pub. L. 97–248, set out as a note under section 6655 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(108), (b)(1)(T), (U) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Pub. L. 90–240, §5(e), Jan. 2, 1968, 81 Stat. 778, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by subsections (a), (b), (c), and (d) [amending this section and section 381 of this title] shall apply to taxable years beginning after December 31, 1966, except that so much of section 832(e)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by the amendment made by subsection (c)) as provides for payment of interest and penalties for failure to make a timely purchase of tax and loss bonds shall not apply with respect to any period during which such bonds are not available for purchase."

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88–272, title II, §228(d), Feb. 26, 1964, 78 Stat. 99, provided that: "The amendment made by subsection (a) [amending former section 809 of this title] shall apply to taxable years beginning after December 31, 1961. The amendment made by subsection (c) [amending this section] shall apply to taxable years beginning after December 31, 1953, and ending after August 16, 1954."

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable with respect to taxable years beginning after Dec. 31, 1962, see section 8(h) of Pub. L. 87–834, set out as a note under section 501 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Mar. 13, 1956, applicable only to taxable years beginning after Dec. 31, 1954, see section 6 of act Mar. 13, 1956, set out as a note under section 316 of this title.

DEDUCTION FROM EARNINGS AND PROFITS OF INSURANCE COMPANIES TO WHICH SECTION 11305(C)(3) OF PUB. L. 101–508 APPLIES

Pub. L. 104–188, title I, §1702(c)(4), Aug. 20, 1996, 110 Stat. 1869, provided that: "The earnings and profits of any insurance company to which section 11305(c)(3) of the Revenue Reconciliation Act of 1990 [Pub. L. 101–508, set out above] applies shall be determined without regard to any deduction allowed under such section; except that, for purposes of applying sections 56 and 902, and subpart F of part III of subchapter N of chapter 1 of the Internal Revenue Code of 1986, such deduction shall be taken into account."

ACQUISITION DATE OF CERTAIN STOCKS OR OBLIGATIONS FOR PURPOSES OF SUBSECTION (B)(5)(C)(I)

Pub. L. 100–647, title I, §1010(d)(3), Nov. 10, 1988, 102 Stat. 3453, provided that: "For purposes of section 832(b)(5)(C)(i) of the 1986 Code, any stock or obligation acquired on or after August 8, 1986, by an insurance company subject to the tax imposed by section 831 of the 1986 Code (hereinafter in this paragraph referred to as the 'acquiring company') from another insurance company so subject (hereinafter in this paragraph referred to as the 'transferor company') shall be treated as acquired on the date on which such stock or obligation was acquired by the transferor company if—

"(A) the transferor company acquired such stock or obligation before August 8, 1986, and

"(B) at all times after the date on which such stock or obligation was acquired by the transferor company and before the date of the acquisition by the acquiring company, the transferor company and the acquiring company were members of the same affiliated group filing a consolidated return.

For purposes of the preceding sentence, the date on which the stock or obligation was acquired by the transferor company shall be determined with regard to any prior application of the preceding sentence. For purposes of this paragraph, if the acquiring corporation or transferor corporation was a party to a reorganization described in section 368(a)(1)(F) of the 1986 Code, any reference to such corporation shall include a reference to any predecessor thereof involved in such reorganization."

STUDY OF TREATMENT OF PROPERTY AND CASUALTY INSURANCE COMPANIES

Pub. L. 99–514, title X, §1025, Oct. 22, 1986, 100 Stat. 2409, directed Secretary of the Treasury or his delegate to conduct a study of the treatment of policyholder dividends by mutual property and casualty insurance companies, the treatment of property and casualty insurance companies under the minimum tax, and the operation and effect of, and revenue raised by, the amendments made by this subtitle, and not later than Jan. 1, 1989 (due date extended to Jan. 1, 1992, by Pub. L. 101–508, title XI, §11831(b), Nov. 5, 1990, 104 Stat. 1388–559), such Secretary to submit to Committee on Ways and Means of House of Representatives, Committee on Finance of Senate, and Joint Committee on Taxation, the results of such study, together with such recommendations as he determined to be appropriate.

PHYSICIANS' AND SURGEONS' MUTUAL PROTECTION AND INTERINDEMNITY ARRANGEMENTS OR ASSOCIATIONS

Pub. L. 99–514, title X, §1031, Oct. 22, 1986, 100 Stat. 2409, as amended by Pub. L. 100–647, title I, §1010(g), Nov. 10, 1988, 102 Stat. 3455, provided that:

"(a) CERTAIN PHYSICIANS' AND SURGEONS' MUTUAL PROTECTION AND INTERINDEMNITY ARRANGEMENTS OR ASSOCIATIONS.—

"(1) TREATMENT OF ARRANGEMENTS OR ASSOCIATIONS.—

"(A) CAPITAL CONTRIBUTIONS.—There shall not be included in the gross income of any eligible physicians' and surgeons' mutual protection and interindemnity arrangement or association any initial payment (whether made in a lump sum or a series of substantially equal payments over a period of not more than 6 years) made during any taxable year to such arrangement or association by a member joining such arrangement or association which—

"(i) does not release such member from obligations to pay current or future dues, assessments, or premiums; and

"(ii) is a condition precedent to receiving benefits of membership.

Such initial payment shall be included in the gross income of such arrangement or association for such taxable year if it is reasonable to expect that such payment will be deductible pursuant to paragraph (2) by any member of such arrangement or association.

"(B) RETURN OF CONTRIBUTIONS.—

"(i) IN GENERAL.—The repayment to any member of any amount of any payment excluded under subparagraph (A) shall not be treated as policyholder dividend, and is not deductible by the arrangement or association.

"(ii) SOURCE OF RETURNS.—Except in the case of the termination of a member's interest in the arrangement or association, any amount distributed to any member shall be treated as paid out of surplus in excess of amounts excluded under subparagraph (A).

"(2) DEDUCTION FOR MEMBERS OF ELIGIBLE ARRANGEMENTS OR ASSOCIATIONS.—

"(A) PAYMENT AS TRADE OR BUSINESS EXPENSES.—To the extent not otherwise allowable under the Internal Revenue Code of 1986, any member of any eligible arrangement or association may treat any initial payment referred to in paragraph (1) made during a taxable year to such arrangement or association as an ordinary and necessary expense incurred in connection with a trade or business for purposes of the deduction allowable under section 162, to the extent such payment does not exceed the amount which would be payable to an independent insurance company for similar annual insurance coverage (as determined by the Secretary), and further reduced by any annual dues, assessments, or premiums paid during such taxable year. Such deduction shall not be allowable as to any initial payment referred to in paragraph (1) made to an eligible arrangement or association by any person who is a member of any other eligible arrangement or association on or after the effective date of the Tax Reform Act of 1986. Any excess amount not allowed as a deduction for the taxable year in which such

payment was made pursuant to the limitation contained in the 1st sentence of this subparagraph shall, subject to such limitation, be allowable as a deduction in any of the 5 succeeding taxable years, in order of time, to the extent not previously allowed as a deduction under this sentence.

"(B) REFUNDS OF INITIAL PAYMENTS.—Any amount attributable to any initial payment referred to in paragraph (1) to such arrangement or association described in paragraph (1) which is later refunded for any reason shall be included in the gross income of the recipient in the taxable year received, to the extent a deduction for such payment was allowed. Any amount refunded in excess of such payment shall be included in gross income except to the extent otherwise excluded from income by the Internal Revenue Code of 1986.

"(3) ELIGIBLE ARRANGEMENTS OR ASSOCIATIONS.—The terms 'eligible physicans' [sic] and surgeons' mutual protection and interindemnity arrangement or association' and 'eligible arrangement or association' mean and are limited to any mutual protection and interindemnity arrangement or association that provides only medical malpractice liability protection for its members or medical malpractice liability protection in conjunction with protection against other liability claims incurred in the course of, or related to, the professional practice of a physician or surgeon and which—

"(A) was operative and was providing such protection, or had received a permit for the offer and sale of memberships, under the laws of any State before January 1, 1984,

"(B) is not subject to regulation by any State insurance department,

"(C) has a right to make unlimited assessments against all members to cover current claims and losses, and

"(D) is not a member of, nor subject to protection by, any insurance guaranty plan or association of any State.

"(b) EFFECTIVE DATE.—The provisions of subsection (a) shall apply to payments made to and receipts of physicians' and surgeons' mutual protection and interindemnity arrangements or associations, and refunds of payments by such arrangements or associations, after the date of the enactment of this Act [Oct. 22, 1986], in taxable years ending after such date."

TREATMENT AS UNEARNED PREMIUMS OF ADDITIONS TO RESERVES REQUIRED BY STATE LAW OR REGULATIONS FOR MORTGAGE GUARANTY INSURANCE LOSSES

Pub. L. 90–240, §5(g), Jan. 2, 1968, 81 Stat. 779, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) In the case of taxable years beginning before 1967, a company shall treat additions to a reserve, required by State law or regulations for mortgage guaranty insurance losses resulting from adverse economic cycles, as unearned premiums for purposes of section 832(b)(4) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], but the amount so treated as unearned premiums in a taxable year shall not exceed 50 percent of premiums earned on insurance contracts (as defined in section 832(b)(4) of such Code), determined without regard to amounts added to the reserve, with respect to mortgage guaranty insurance for such year. The amount of unearned premiums at the close of 1966 shall be determined without regard to the preceding sentence for the purpose of applying section 832(b)(4) of such Code to 1967. Additions to such a reserve shall not be treated as unearned premiums for any taxable year beginning after 1966.

"(2) If a mortgage guaranty insurance company made additions to a reserve which were so treated as unearned premiums described in paragraph (1), such company, in taxable years beginning after 1966, shall include in gross income (in addition to the items specified in section 832(b)(1) of such Code) the sum of the following amounts until there is included in gross income an amount equal to the aggregate additions to the reserve described in paragraph (1) for taxable years beginning before 1967:

"(A) an amount (if any) equal to the excess of losses incurred (as defined in section 832(b)(5) of such Code) for the taxable year over 35 percent of premiums earned on insurance contracts during the taxable year (as defined in section 832(b)(4) of such Code), determined without regard to amounts added to the reserve referred to in paragraph (1), with respect to mortgage guaranty insurance,

"(B) the amount (if any) remaining which was added to the reserve for the tenth preceding taxable year, and

"(C) the excess (if any) of—

"(i) the aggregate of amounts so treated as unearned premiums for all taxable years beginning before 1967 less the total of the amounts included in gross income under this paragraph for prior taxable years and the amounts included in gross income under subparagraphs (A) and (B) for the taxable year, over

"(ii) the aggregate of the additions made for taxable years beginning before 1967 which remain in the reserve at the close of the taxable year.

Amounts shall be taken into account on a first-in-time basis. For purposes of section 832(e) of such Code and this paragraph, if part of the reserve is reduced under State law or regulation, such reduction shall first apply to the extent of amounts added to the reserve for taxable years beginning before 1967, and only then to amounts added thereafter.

"(3) The provisions of this subsection shall apply to taxable years beginning after December 31, 1956."

[1] *See References in Text note below.*

[2] *So in original. The comma probably should be a period.*

§833. Treatment of Blue Cross and Blue Shield organizations, etc.

(a) General rule

In the case of any organization to which this section applies—

(1) Treated as stock company

Such organization shall be taxable under this part in the same manner as if it were a stock insurance company.

(2) Special deduction allowed

The deduction determined under subsection (b) for any taxable year shall be allowed.

(3) Reductions in unearned premium reserves not to apply

Subparagraph (B) of paragraph (4) of section 832(b) shall be applied by substituting "100 percent" for "80 percent", and subparagraph (C) of such paragraph (4) shall not apply.

(b) Amount of deduction

(1) In general

Except as provided in paragraph (2), the deduction determined under this subsection for any taxable year is the excess (if any) of—

(A) 25 percent of the sum of—

(i) the claims incurred during the taxable year and liabilities incurred during the taxable year under cost-plus contracts, and

(ii) the expenses incurred during the taxable year in connection with the administration, adjustment, or settlement of claims or in connection with the administration of cost-plus contracts, over

(B) the adjusted surplus as of the beginning of the taxable year.

(2) Limitation

The deduction determined under paragraph (1) for any taxable year shall not exceed taxable income for such taxable year (determined without regard to such deduction).

(3) Adjusted surplus

For purposes of this subsection—

(A) In general

The adjusted surplus as of the beginning of any taxable year is an amount equal to the adjusted surplus as of the beginning of the preceding taxable year—

(i) increased by the amount of any adjusted taxable income for such preceding taxable year, or

(ii) decreased by the amount of any adjusted net operating loss for such preceding taxable year.

(B) Special rule

The adjusted surplus as of the beginning of the organization's 1st taxable year beginning after December 31, 1986, shall be its surplus as of such time. For purposes of the preceding sentence and subsection (c)(3)(C), the term "surplus" means the excess of the total assets over total liabilities as shown on the annual statement.

(C) Adjusted taxable income

The term "adjusted taxable income" means taxable income determined—

(i) without regard to the deduction determined under this subsection,

(ii) without regard to any carryforward or carryback to such taxable year, and

(iii) by increasing gross income by an amount equal to the net exempt income for the taxable year.

(D) Adjusted net operating loss

The term "adjusted net operating loss" means the net operating loss for any taxable year determined with the adjustments set forth in subparagraph (C).

(E) Net exempt income

The term "net exempt income" means—

(i) any tax-exempt interest received or accrued during the taxable year, reduced by any amount (not otherwise deductible) which would have been allowable as a deduction for the taxable year if such interest were not tax-exempt, and

(ii) the aggregate amount allowed as a deduction for the taxable year under sections 243, 244, and 245.

The amount determined under clause (ii) shall be reduced by the amount of any decrease in deductions allowable for the taxable year by reason of section 832(b)(5)(B) to the extent such decrease is attributable to deductions under sections 243, 244, and 245.

(4) Only health-related items taken into account

Any determination under this subsection shall be made by only taking into account items attributable to the health-related business of the taxpayer.

(c) Organizations to which section applies

(1) In general

This section shall apply to—

(A) any existing Blue Cross or Blue Shield organization, and

(B) any other organization meeting the requirements of paragraph (3).

(2) Existing Blue Cross or Blue Shield organization

The term "existing Blue Cross or Blue Shield organization" means any Blue Cross or Blue Shield organization if—

(A) such organization was in existence on August 16, 1986,

(B) such organization is determined to be exempt from tax for its last taxable year beginning before January 1, 1987, and

(C) no material change has occurred in the operations of such organization or in its structure after August 16, 1986, and before the close of the taxable year.

To the extent permitted by the Secretary, any successor to an organization meeting the requirements of the preceding sentence, and any organization resulting from the merger or consolidation of organizations each of which met such requirements, shall be treated as an existing Blue Cross or Blue Shield organization.

(3) Other organizations

(A) In general

An organization meets the requirements of this paragraph for any taxable year if—

(i) substantially all the activities of such organization involve the providing of health insurance,

(ii) at least 10 percent of the health insurance provided by such organization is provided to individuals and small groups (not taking into account any medicare supplemental coverage),

(iii) such organization provides continuous full-year open enrollment (including conversions) for individuals and small groups,

(iv) such organization's policies covering individuals provide full coverage of pre-existing conditions of high-risk individuals without a price differential (with a reasonable waiting period), and coverage is provided without regard to age, income, or employment status of individuals under age 65,

(v) at least 35 percent of its premiums are determined on a community rated basis, and

(vi) no part of its net earnings inures to the benefit of any private shareholder or individual.

(B) Small group defined

For purposes of subparagraph (A), the term "small group" means the lesser of—

(i) 15 individuals, or

(ii) the number of individuals required for a small group under applicable State law.

(C) Special rule for determining adjusted surplus

For purposes of subsection (b), the adjusted surplus of any organization meeting the requirements of this paragraph as of the beginning of the 1st taxable year for which it meets such requirements shall be its surplus as of such time.

(4) Treatment as existing Blue Cross or Blue Shield organization

(A) In general

Paragraph (2) shall be applied to an organization described in subparagraph (B) as if it were a Blue Cross or Blue Shield organization.

(B) Applicable organization

An organization is described in this subparagraph if it—

(i) is organized under, and governed by, State laws which are specifically and exclusively applicable to not-for-profit health insurance or health service type organizations, and

(ii) is not a Blue Cross or Blue Shield organization or health maintenance organization.

(5) Nonapplication of section in case of low medical loss ratio

Notwithstanding the preceding paragraphs, this section shall not apply to any organization unless such organization's percentage of total premium revenue expended on reimbursement for clinical services provided to enrollees under its policies during such taxable year (as reported under section 2718 of the Public Health Service Act) is not less than 85 percent.

(Added Pub. L. 99–514, title X, §1012(b)(1), Oct. 22, 1986, 100 Stat. 2391; amended Pub. L. 104–191, title III, §351(a), Aug. 21, 1996, 110 Stat. 2071; Pub. L. 105–34, title XVI, §1604(d)(2)(A), Aug. 5, 1997, 111 Stat. 1098; Pub. L. 111–148, title IX, §9016(a), Mar. 23, 2010, 124 Stat. 872.)

REFERENCES IN TEXT

Section 2718 of the Public Health Service Act, referred to in subsec. (c)(5), is classified to section 300gg–18 of Title 42, The Public Health and Welfare.

AMENDMENTS

2010—Subsec. (c)(5). Pub. L. 111–148 added par. (5).

1997—Subsec. (b)(1)(A)(i). Pub. L. 105–34, §1604(d)(2)(A)(i), inserted "and liabilities incurred during the taxable year under cost-plus contracts" before the comma.

Subsec. (b)(1)(A)(ii). Pub. L. 105–34, §1604(d)(2)(A)(ii), inserted "or in connection with the administration of cost-plus contracts" before the last comma.

1996—Subsec. (c)(4). Pub. L. 104–191 added par. (4).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–148, title IX, §9016(b), Mar. 23, 2010, 124 Stat. 872, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2009."

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XVI, §1604(d)(2)(B), Aug. 5, 1997, 111 Stat. 1098, provided that: "The amendment made by subparagraph (A) [amending this section] shall take effect as if included in the amendments made by section 1012 of the Tax Reform Act of 1986 [Pub. L. 99–514]."

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–191, title III, §351(b), Aug. 21, 1996, 110 Stat. 2071, provided that: "The amendment made by this section [amending this section] shall apply to taxable years ending after December 31, 1996."

EFFECTIVE DATE

Pub. L. 99–514, title X, §1012(c), Oct. 22, 1986, 100 Stat. 2393, as amended by Pub. L. 100–647, title I, §1010(b)(1), (2), Nov. 10, 1988, 102 Stat. 3451, provided that:

"(1) IN GENERAL.—The amendments made by this section [enacting this section and amending section 501 of this title] shall apply to taxable years beginning after December 31, 1986.

"(2) STUDY OF FRATERNAL BENEFICIARY ASSOCIATIONS.—The Secretary of the Treasury or his delegate shall conduct a study of organizations described in section 501(c)(8) of the Internal Revenue Code of 1986 and which received gross annual insurance premiums in excess of $25,000,000 for the taxable years of such organizations which ended during 1984. Not later than January 1, 1988, the Secretary of the Treasury shall submit to the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, and the Joint Committee on Taxation the results of such study, together with such recommendations as he determines to be appropriate. The Secretary of the Treasury shall have authority to require the furnishing of such information as may be necessary to carry out the purposes of this paragraph.

"(3) SPECIAL RULES FOR EXISTING BLUE CROSS OR BLUE SHIELD ORGANIZATIONS.—

"(A) IN GENERAL.—In the case of any existing Blue Cross or Blue Shield organization (as defined in section 833(c)(2) of the Internal Revenue Code of 1986 as added by this section)—

"(i) no adjustment shall be made under section 481 (or any other provision) of such Code on account of a change in its method of accounting for its 1st taxable year beginning after December 31, 1986, and

"(ii) for purposes of determining gain or loss, the adjusted basis of any asset held on the 1st day of such taxable year shall be treated as equal to its fair market value as of such day.

"(B) TREATMENT OF CERTAIN DISTRIBUTIONS.—For purposes of section 833(b)(3)(B), the surplus of any organization as of the beginning of its 1st taxable year beginning after December 31, 1986, shall be increased by the amount of any distribution (other than to policyholders) made by such organization after August 16, 1986, and before the beginning of such taxable year.

"(C) RESERVE WEAKENING AFTER AUGUST 16, 1986.—Any reserve weakening after August 16, 1986, by an existing Blue Cross or Blue Shield organization shall be treated as occurring in such organization's 1st taxable year beginning after December 31, 1986.

"(4) OTHER SPECIAL RULES.—

"(A) The amendments made by this section shall not apply with respect to that portion of the business of Mutual of America which is attributable to pension business.

"(B) The amendments made by this section shall not apply to that portion of the business of the Teachers Insurance Annuity Association-College Retirement Equities Fund which is attributable to pension business.

"(C) The amendments made by this section shall not apply to—

"(i) the retirement fund of the YMCA,

"(ii) the Missouri Hospital Plan,

"(iii) administrative services performed by municipal leagues, and

"(iv) dental benefit coverage provided by a Delta Dental Plans Association organization through contracts with independent professional service providers so long as the provision of such coverage is the principal activity of such organization.

"(D) For purposes of this paragraph, the term 'pension business' means the administration of any plan described in section 401(a) of the Internal Revenue Code of 1954 [now 1986] which includes a trust exempt from tax under section 501(a), any plan under which amounts are contributed by an individual's employer

for an annuity contract described in section 403(b) of such Code, any individual retirement plan described in section 408 of such Code, and any eligible deferred compensation plan to which section 457(a) of such Code applies."

[The due date for the report referred to in section 1012(c)(2) of Pub. L. 99–514, set out above, extended to July 1, 1992, by Pub. L. 101–508, title XI, §11831(b), Nov. 5, 1990, 104 Stat. 1388–559.]

TERMINATION OF CERTAIN EXCEPTIONS FROM RULES RELATING TO EXEMPT ORGANIZATIONS WHICH PROVIDE COMMERCIAL-TYPE INSURANCE

Pub. L. 105–277, div. J, title IV, §4003(g), Oct. 21, 1998, 112 Stat. 2681–910, provided that: "Rules similar to the rules of section 1.1502–75(d)(5) of the Treasury Regulations shall apply with respect to any organization described in section 1042(b) of the 1997 Act [section 1042(b) of Pub. L. 105–34, set out below]."

Pub. L. 105–34, title X, §1042, Aug. 5, 1997, 111 Stat. 939, provided that:

"(a) IN GENERAL.—Subparagraphs (A) and (B) of section 1012(c)(4) of the Tax Reform Act of 1986 [Pub. L. 99–514, set out as an Effective Date note above] shall not apply to any taxable year beginning after December 31, 1997.

"(b) SPECIAL RULES.—In the case of an organization to which section 501(m) of the Internal Revenue Code of 1986 applies solely by reason of the amendment made by subsection (a)—

"(1) no adjustment shall be made under section 481 (or any other provision) of such Code on account of a change in its method of accounting for its first taxable year beginning after December 31, 1997, and

"(2) for purposes of determining gain or loss, the adjusted basis of any asset held on the 1st day of such taxable year shall be treated as equal to its fair market value as of such day.

"(c) RESERVE WEAKENING AFTER JUNE 8, 1997.—Any reserve weakening after June 8, 1997, by an organization described in subsection (b) shall be treated as occurring in such organization's 1st taxable year beginning after December 31, 1997.

"(d) REGULATIONS.—The Secretary of the Treasury or his delegate may prescribe rules for providing proper adjustments for organizations described in subsection (b) with respect to short taxable years which begin during 1998 by reason of section 843 of the Internal Revenue Code of 1986."

RULES PROVIDING ADJUSTMENTS FOR CERTAIN TAXPAYERS AFFECTED BY SECTION 1012 OF PUB. L. 99–514

Pub. L. 100–647, title I, §1010(b)(3), Nov. 10, 1988, 102 Stat. 3451, provided that: "The Secretary of the Treasury or his delegate may prescribe rules providing proper adjustments for taxpayers which become subject to subchapter L of chapter 1 of the 1986 Code by reason of the amendments made by section 1012 of the Reform Act [Pub. L. 99–514, enacting this section and amending section 501 of this title] with respect to short taxable years which begin during 1987 by reason of section 843 of such Code."

§834. Determination of taxable investment income

(a) General rule

For purposes of section 831(b), the term "taxable investment income" means the gross investment income, minus the deductions provided in subsection (c).

(b) Gross investment income

For purposes of subsection (a), the term "gross investment income" means the sum of the following:

(1) The gross amount of income during the taxable year from—

(A) interest, dividends, rents, and royalties,

(B) the entering into of any lease, mortgage, or other instrument or agreement from which the insurance company derives interest, rents, or royalties,

(C) the alteration or termination of any instrument or agreement described in subparagraph (B), and

(D) gains from sales or exchanges of capital assets to the extent provided in subchapter P (sec. 1201 and following, relating to capital gains and losses).

(2) The gross income during the taxable year from any trade or business (other than an insurance business) carried on by the insurance company, or by a partnership of which the

insurance company is a partner. In computing gross income under this paragraph, there shall be excluded any item described in paragraph (1).

(c) Deductions

In computing taxable investment income, the following deductions shall be allowed:

(1) Tax-free interest

The amount of interest which under section 103 is excluded for the taxable year from gross income.

(2) Investment expenses

Investment expenses paid or accrued during the taxable year. If any general expenses are in part assigned to or included in the investment expenses, the total deduction under this paragraph shall not exceed one-fourth of 1 percent of the mean of the book value of the invested assets held at the beginning and end of the taxable year plus one-fourth of the amount by which taxable investment income (computed without any deduction for investment expenses allowed by this paragraph, for tax-free interest allowed by paragraph (1), or for dividends received allowed by paragraph (7)), exceeds 3¾ percent of the book value of the mean of the invested assets held at the beginning and end of the taxable year.

(3) Real estate expenses

Taxes (as provided in section 164), and other expenses, paid or accrued during the taxable year exclusively on or with respect to the real estate owned by the company. No deduction shall be allowed under this paragraph for any amount paid out for new buildings, or for permanent improvements or betterments made to increase the value of any property.

(4) Depreciation

The depreciation deduction allowed by section 167.

(5) Interest paid or accrued

All interest paid or accrued within the taxable year on indebtedness, except on indebtedness incurred or continued to purchase or carry obligations the interest on which is wholly exempt from taxation under this subtitle.

(6) Capital losses

Capital losses to the extent provided in subchapter P (sec. 1201 and following) plus losses from capital assets sold or exchanged in order to obtain funds to meet abnormal insurance losses and to provide for the payment of dividends and similar distributions to policyholders. Capital assets shall be considered as sold or exchanged in order to obtain funds to meet abnormal insurance losses and to provide for the payment of dividends and similar distributions to policyholders to the extent that the gross receipts from their sale or exchange are not greater than the excess, if any, for the taxable year of the sum of dividends and similar distributions paid to policyholders, losses paid, and expenses paid over the sum of the items described in subsection (b) (other than paragraph (1)(D) thereof) and net premiums received. In the application of section 1212 for purposes of this section, the net capital loss for the taxable year shall be the amount by which losses for such year from sales or exchanges of capital assets exceeds the sum of the gains from such sales or exchanges and whichever of the following amounts is the lesser:

(A) the taxable investment income (computed without regard to gains or losses from sales or exchanges of capital assets); or

(B) losses from the sale or exchange of capital assets sold or exchanged to obtain funds to meet abnormal insurance losses and to provide for the payment of dividends and similar distributions to policyholders.

(7) Special deductions

The special deductions allowed by part VIII (except section 248) of subchapter B (sec. 241 and following, relating to dividends received). In applying section 246(b) (relating to limitation on aggregate amount of deductions for dividends received) for purposes of this paragraph, the

reference in such section to "taxable income" shall be treated as a reference to "taxable investment income".

(8) Trade or business deductions

The deductions allowed by this subtitle (without regard to this part) which are attributable to any trade or business (other than an insurance business) carried on by the insurance company, or by a partnership of which the insurance company is a partner; except that for purposes of this paragraph—

(A) any item, to the extent attributable to the carrying on of the insurance business, shall not be taken into account, and

(B) the deduction for net operating losses provided in section 172 shall not be allowed.

(9) Depletion

The deduction allowed by section 611 (relating to depletion).

(d) Other applicable rules

(1) Rental value of real estate

The deduction under subsection (c)(3) or (4) on account of any real estate owned and occupied in whole or in part by a mutual insurance company subject to the tax imposed by section 831 shall be limited to an amount which bears the same ratio to such deduction (computed without regard to this paragraph) as the rental value of the space not so occupied bears to the rental value of the entire property.

(2) Amortization of premium and accrual of discount

The gross amount of income during the taxable year from interest and the deduction provided in subsection (c)(1) shall each be decreased to reflect the appropriate amortization of premium and increased to reflect the appropriate accrual of discount attributable to the taxable year on bonds, notes, debentures, or other evidences of indebtedness held by a mutual insurance company subject to the tax imposed by section 831. Such amortization and accrual shall be determined—

(A) in accordance with the method regularly employed by such company, if such method is reasonable, and

(B) in all other cases, in accordance with regulations prescribed by the Secretary.

No accrual of discount shall be required under this paragraph on any bond (as defined in section 171(d)) except in the case of discount which is original issue discount (as defined in section 1273).

(3) Double deductions

Nothing in this part shall permit the same item to be deducted more than once.

(e) Definitions

For purposes of this part—

(1) Net premiums

The term "net premiums" means gross premiums (including deposits and assessments) written or received on insurance contracts during the taxable year less return premiums and premiums paid or incurred for reinsurance. Amounts returned where the amount is not fixed in the insurance contract but depends on the experience of the company or the discretion of the management shall not be included in return premiums but shall be treated as dividends to policyholders under paragraph (2).

(2) Dividends to policyholders

The term "dividends to policyholders" means dividends and similar distributions paid or declared to policyholders. For purposes of the preceding sentence, the term "paid or declared" shall be construed according to the method regularly employed in keeping the books of the insurance company.

(Aug. 16, 1954, ch. 736, 68A Stat. 261, §822; Mar. 13, 1956, ch. 83, §3(a)(3)–(8), 70 Stat. 47, 48;

Pub. L. 87–834, §8(b), Oct. 16, 1962, 76 Stat. 991; Pub. L. 88–272, title II, §228(b)(2), Feb. 26, 1964, 78 Stat. 99; Pub. L. 89–809, title I, §104(i)(5), Nov. 13, 1966, 80 Stat. 1562; Pub. L. 94–455, title XIX, §§1901(a)(105), (b)(1)(P)–(S), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1782, 1792, 1834; renumbered §834 and amended Pub. L. 99–514, title X, §1024(a)(3), (c)(7), (8), Oct. 22, 1986, 100 Stat. 2405, 2407.)

AMENDMENTS

1986—Pub. L. 99–514, §1024(a)(3), renumbered section 822 of this title as this section.

Subsec. (a). Pub. L. 99–514, §1024(c)(7), amended subsec. (a) generally. Prior to amendment, subsec. (a), definitions, read as follows: "For purposes of this part—

"(1) The term 'taxable investment income' means the gross investment income, minus the deductions provided in subsection (c).

"(2) The term 'investment loss' means the amount by which the deductions provided in subsection (c) exceed the gross investment income."

Subsec. (d). Pub. L. 99–514, §1024(c)(8), substituted "section 831" for "section 821" in pars. (1) and (2), and inserted "except in the case of discount which is original issue discount (as defined in section 1273)" at end of last sentence in par.

1976—Subsec. (c)(2). Pub. L. 94–455, §1901(b)(1)(P), struck out "partially tax-exempt interest and" before "dividends received allowed by".

Subsec. (c)(5). Pub. L. 94–455, §1901(a)(105)(A), struck out "(other than obligations of the United States issued after September 24, 1917, and originally subscribed for by the taxpayer)" after "purchase or carry obligations".

Subsec. (c)(6)(A). Pub. L. 94–455, §1901(b)(1)(Q), struck out "or to the deduction provided in section 242 for partially tax-exempt interest" after "exchanges of capital assets".

Subsec. (c)(7). Pub. L. 94–455, §1901(b)(1)(R), struck out "partially tax-exempt interest and to" after "and following, relating to".

Subsec. (d)(2). Pub. L. 94–455, §§1901(a)(105)(B), (b)(1)(S), 1906(b)(13)(A), struck out in subpar. (B) "or his delegate" after "Secretary" and substituted in provisions preceding subpar. (A) "and the deduction provided in subsection (c)(1)" for ", the deduction provided in subsection (c)(1), and the deduction allowed by section 242 (relating to partially tax-exempt interest)" and in provisions following subpar. (B) "No accrual" for "For taxable years beginning after December 31, 1962, no accrual".

1966—Subsecs. (e), (f). Pub. L. 89–809 redesignated subsec. (f) as (e). Former subsec. (e), dealing with foreign mutual insurance companies other than life or marine, was struck out.

1964—Subsec. (d)(2). Pub. L. 88–272 provided that for taxable years beginning after Dec. 31, 1962, no accrual of discount shall be required under par. (2) on any bond.

1962—Pub. L. 87–834, §8(b)(1), substituted "Determination of taxable investment income" for "Determination of mutual insurance company taxable income" in section catchline.

Subsec. (a). Pub. L. 87–834, §8(b)(1), defined "taxable investment income" and "investment loss" for purposes of this part, and struck out provisions which defined "mutual insurance company taxable income" for purposes of section 821 of this title, which provisions are now contained in section 821(b) of this title.

Subsec. (c). Pub. L. 87–834, §8(b)(2), (3), substituted "taxable investment income" for "mutual insurance company taxable income" in opening provisions and in pars. (2) and (6)(A), and inserted sentence in par. (7) providing that in applying section 246(b) (relating to limitations on aggregate amount of deductions for dividends received) for purposes of par. (7), reference in such section to "taxable income" shall be treated as a reference to "taxable investment income".

Subsec. (e). Pub. L. 87–834, §8(b)(2), substituted "taxable investment income" for "mutual insurance company taxable income".

Subsec. (f). Pub. L. 87–834, §8(b)(4), added subsec. (f). Provisions of subsec. (f) were formerly contained in section 823 of this title.

1956—Subsec. (b). Act Mar. 13, 1956, §3(a)(3), principally included royalties, and the income from a trade or business other than the insurance business carried on by the insurance company in "gross investment income".

Subsec. (c). Act Mar. 13, 1956, §3(a)(4), (5), (6), clarified the deduction for real estate expenses in par. (3), substituted in par. (6) "the sum of the items described in subsection (b) (other than paragraph (1)(D) thereof) and net premiums received. In the application of section 1212" for "the sum of interest, dividends, rents, and net premiums received. In the application of section 1211", and inserted pars. (8) and (9).

Subsec. (d)(1). Act Mar. 13, 1956, §3(a)(7), substituted "subsection (c)(3) or (4)" for "subsection (e)(3) or (4)".

Subsec. (e). Act Mar. 13, 1956, §3(a)(8), substituted "items described in subsection (b) (other than paragraph (1)(D) thereof" for "interest, dividends, rents,".

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1024(e) of Pub. L. 99–514, set out as a note under section 831 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(105), (b)(1)(P)–(S) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable with respect to taxable years beginning after Dec. 31, 1962, see section 8(h) of Pub. L. 87–834, set out as a note under section 501 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Mar. 13, 1956, applicable only to taxable years beginning after Dec. 31, 1954, see section 6 of act Mar. 13, 1956, set out as a note set out under section 316 of this title.

§835. Election by reciprocal

(a) In general

Except as otherwise provided in this section, any mutual insurance company which is an interinsurer or reciprocal underwriter (hereinafter in this section referred to as a "reciprocal") subject to the taxes imposed by section 831(a) may, under regulations prescribed by the Secretary, elect to be subject to the limitation provided in subsection (b). Such election shall be effective for the taxable year for which made and for all succeeding taxable years, and shall not be revoked except with the consent of the Secretary.

(b) Limitation

The deduction for amounts paid or incurred in the taxable year to the attorney-in-fact by a reciprocal making the election provided in subsection (a) shall be limited to, but in no case increased by, the deductions of the attorney-in-fact allocable, in accordance with regulations prescribed by the Secretary, to the income received by the attorney-in-fact from the reciprocal.

(c) Exception

An election may not be made by a reciprocal under subsection (a) unless the attorney-in-fact of such reciprocal—

(1) is subject to the tax imposed by section 11;

(2) consents in such manner as the Secretary shall prescribe by regulations to make available such information as may be required during the period in which the election provided in subsection (a) is in effect, under regulations prescribed by the Secretary;

(3) reports the income received from the reciprocal and the deductions allocable thereto under the same method of accounting under which the reciprocal reports deductions for amounts paid to the attorney-in-fact; and

(4) files its return on the calendar year basis.

(d) Credit

Any reciprocal electing to be subject to the limitation provided in subsection (b) shall be credited with so much of the tax paid by the attorney-in-fact as is attributable, under regulations prescribed by the Secretary, to the income received by the attorney-in-fact from the reciprocal in such taxable year.

(e) Benefits of graduated rates denied

Any increase in the taxable income of a reciprocal attributable to the limits provided in subsection (b) shall be taxed at the highest rate of tax specified in section 11(b).

(f) Adjustment for refund

If for any taxable year an attorney-in-fact is allowed a credit or refund for taxes paid with respect to which credit or refund to the reciprocal resulted under subsection (d), the taxes of such reciprocal for such taxable year shall be properly adjusted under regulations prescribed by the Secretary.

(g) Taxes of attorney-in-fact unaffected

Nothing in this section shall increase or decrease the taxes imposed by this chapter on the income of the attorney-in-fact.

(Added Pub. L. 87–834, §8(c), Oct. 16, 1962, 76 Stat. 996, §826; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–600, title III, §301(b)(10), Nov. 6, 1978, 92 Stat. 2822; renumbered §835 and amended Pub. L. 99–514, title X, §1024(a)(3), (c)(9), Oct. 22, 1986, 100 Stat. 2405, 2407; Pub. L. 100–647, title I, §1010(f)(2), (3), Nov. 10, 1988, 102 Stat. 3454.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–647, §1010(f)(2), substituted "section 831(a)" for "section 821(a)".

Subsec. (f). Pub. L. 100–647, §1010(f)(3), substituted "subsection (d)" for "subsection (e)".

1986—Pub. L. 99–514, §1024(a)(3), renumbered section 826 of this title as this section.

Subsec. (d). Pub. L. 99–514, §1024(c)(9)(A), redesignated subsec. (e) as (d) and struck out former subsec. (d), special rule, which read as follows: "In applying section 824(d)(1)(D), any amount which was added to the protection against loss account by reason of an election under this section shall be treated as having been added by reason of section 824(a)(1)(A)."

Subsec. (e). Pub. L. 99–514, §1024(c)(9), redesignated subsec. (f) as (e), substituted "Benefits of graduated rates" for "Surtax exemption" in heading, and amended text generally. Prior to amendment, text read as follows: "Any increase in taxable income of a reciprocal attributable to the limitation provided in subsection (b) shall be taxed without regard to the surtax exemption provided in section 821(a)(2)." Former subsec. (e) redesignated (d).

Subsecs. (f) to (h). Pub. L. 99–514, §1024(c)(9)(A), redesignated subsecs. (f) to (h) as (e) to (g), respectively.

1978—Subsec. (c)(1). Pub. L. 95–600 substituted "the tax imposed by section 11" for "the taxes imposed by section 11(b) and (c)".

1976—Subsecs. (a), (b), (c)(2), (e), (g). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1024(e) of Pub. L. 99–514, set out as a note under section 831 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95–600, set out as a note under section 11 of this title.

EFFECTIVE DATE

Section applicable with respect to taxable years beginning after Dec. 31, 1962, see section 8(h) of Pub. L. 87–834, set out as an Effective Date of 1962 Amendment note under section 501 of this title.

PART III—PROVISIONS OF GENERAL APPLICATION

Sec.

841. Credit for foreign taxes.

842. Foreign companies carrying on insurance business.
843. Annual accounting period.
844. Special loss carryover rules.
845. Certain reinsurance agreements.
846. Discounted unpaid losses defined.
847. Special estimated tax payments.
848. Capitalization of certain policy acquisition expenses.

AMENDMENTS

1990—Pub. L. 101–508, title XI, §11301(c), Nov. 5, 1990, 104 Stat. 1388–449, added item 848.

1989—Pub. L. 101–239, title VII, §7821(d)(1), Dec. 19, 1989, 103 Stat. 2424, substituted "companies" for "corporations" in item 842.

1988—Pub. L. 100–647, title VI, §6077(b), Nov. 10, 1988, 102 Stat. 3709, added item 847.

1986—Pub. L. 99–514, title X, §§1023(d), 1024(a)(2), Oct. 22, 1986, 100 Stat. 2404, 2405, redesignated part IV as III and added item 846. Former part III redesignated II.

1984—Pub. L. 98–369, div. A, title II, §212(b), July 18, 1984, 98 Stat. 758, added item 845.

1969—Pub. L. 91–172, title IX, §907(c)(2)(A), Dec. 30, 1969, 83 Stat. 717, added item 844.

1966—Pub. L. 89–809, title I, §104(i)(2), Nov. 13, 1966, 80 Stat. 1561, substituted "Foreign corporations carrying on insurance business" for "Computation of gross income" in item 842.

1956—Act Mar. 13, 1956, ch. 83, §4(b), 70 Stat. 49, added item 843.

§841. Credit for foreign taxes

The taxes imposed by foreign countries or possessions of the United States shall be allowed as a credit against the tax of a domestic insurance company subject to the tax imposed by section 801 or 831, to the extent provided in the case of a domestic corporation in section 901 (relating to foreign tax credit). For purposes of the preceding sentence (and for purposes of applying section 906 with respect to a foreign corporation subject to tax under this subchapter), the term "taxable income" as used in section 904 means—

(1) in the case of the tax imposed by section 801, the life insurance company taxable income (as defined in section 801(b)), and

(2) in the case of the tax imposed by section 831, the taxable income (as defined in section 832(a)).

(Aug. 16, 1954, ch. 736, 68A Stat. 267; Mar. 13, 1956, ch. 83, §5(4), 70 Stat. 49; Pub. L. 86–69, §3(b), June 25, 1959, 73 Stat. 139; Pub. L. 87–834, §8(g)(1), Oct. 16, 1962, 76 Stat. 998; Pub. L. 89–809, title I, §104(i)(8), Nov. 13, 1966, 80 Stat. 1562; Pub. L. 98–369, div. A, title II, §211(b)(10), July 18, 1984, 98 Stat. 755; Pub. L. 99–514, title X, §1024(c)(10), Oct. 22, 1986, 100 Stat. 2407.)

AMENDMENTS

1986—Pub. L. 99–514 substituted "section 801 or 831" for "section 801, 821, or 831" in introductory provisions, redesignated par. (3) as (2), and struck out former par. (2) which read as follows: "in the case of the tax imposed by section 821(a), the mutual insurance company taxable income (as defined in section 821(b)); and in the case of the tax imposed by section 821(c), the taxable investment income (as defined in section 822(a)), and".

1984—Pub. L. 98–369 substituted "section 801" for "section 802", wherever appearing, and "section 801(b)" for "section 802(b)".

1966—Pub. L. 89–809 substituted "For purposes of the preceding sentence (and for purposes of applying section 906 with respect to a foreign corporation subject to tax under this subchapter), the term 'taxable income' as used in section 904" for "For purposes of the preceding sentence, the term 'taxable income' as used in section 904".

1962—Pub. L. 87–834 added par. (2) and redesignated former par. (2) as (3).

1959—Pub. L. 86–69 struck out reference to section 811 of this title in first sentence, and substituted "section 802, the life insurance company taxable income (as defined in section 802(b)), and" for "section 802 or 811, the net investment income (as defined in section 803(c))" in par. (1).

1956—Act Mar. 13, 1956, inserted references to section 811.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1024(e) of Pub. L. 99–514, set out as a note under section 831 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable with respect to taxable years beginning after Dec. 31, 1962, see section 8(h) of Pub. L. 87–834, set out as a note under section 501 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–69 applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 4 of Pub. L. 86–69, set out as a note under section 381 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Mar. 13, 1956, applicable only to taxable years beginning after Dec. 31, 1954, see section 6 of act Mar. 13, 1956, set out as a note under section 316 of this title.

§842. Foreign companies carrying on insurance business

(a) Taxation under this subchapter

If a foreign company carrying on an insurance business within the United States would qualify under part I or II of this subchapter for the taxable year if (without regard to income not effectively connected with the conduct of any trade or business within the United States) it were a domestic corporation, such company shall be taxable under such part on its income effectively connected with its conduct of any trade or business within the United States. With respect to the remainder of its income which is from sources within the United States, such a foreign company shall be taxable as provided in section 881.

(b) Minimum effectively connected net investment income

(1) In general

In the case of a foreign company taxable under part I or II of this subchapter for the taxable year, its net investment income for such year which is effectively connected with the conduct of an insurance business within the United States shall be not less than the product of—

(A) the required United States assets of such company, and

(B) the domestic investment yield applicable to such company for such year.

(2) Required U.S. assets

(A) In general

For purposes of paragraph (1), the required United States assets of any foreign company for any taxable year is an amount equal to the product of—

(i) the mean of such foreign company's total insurance liabilities on United States business, and

(ii) the domestic asset/liability percentage applicable to such foreign company for such year.

(B) Total insurance liabilities

For purposes of this paragraph—

(i) Companies taxable under part I

In the case of a company taxable under part I, the term "total insurance liabilities" means the sum of the total reserves (as defined in section 816(c)) plus (to the extent not included in total reserves) the items referred to in paragraphs (3), (4), (5), and (6) of section 807(c).

(ii) Companies taxable under part II

In the case of a company taxable under part II, the term "total insurance liabilities" means the sum of unearned premiums and unpaid losses.

(C) Domestic asset/liability percentage

The domestic asset/liability percentage applicable for purposes of subparagraph (A)(ii) to any foreign company for any taxable year is a percentage determined by the Secretary on the basis of a ratio—

(i) the numerator of which is the mean of the assets of domestic insurance companies taxable under the same part of this subchapter as such foreign company, and

(ii) the denominator of which is the mean of the total insurance liabilities of the same companies.

(3) Domestic investment yield

The domestic investment yield applicable for purposes of paragraph (1)(B) to any foreign company for any taxable year is the percentage determined by the Secretary on the basis of a ratio—

(A) the numerator of which is the net investment income of domestic insurance companies taxable under the same part of this subchapter as such foreign company, and

(B) the denominator of which is the mean of the assets of the same companies.

(4) Election to use worldwide yield

(A) In general

If the foreign company makes an election under this paragraph, such company's worldwide current investment yield shall be taken into account in lieu of the domestic investment yield for purposes of paragraph (1)(B).

(B) Worldwide current investment yield

For purposes of subparagraph (A), the term "worldwide current investment yield" means the percentage obtained by dividing—

(i) the net investment income of the company from all sources, by

(ii) the mean of all assets of the company (whether or not held in the United States).

(C) Election

An election under this paragraph shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

(5) Net investment income

For purposes of this subsection, the term "net investment income" means—

(A) gross investment income (within the meaning of section 834(b)), reduced by

(B) expenses allocable to such income.

(c) Special rules for purposes of subsection (b)

(1) Coordination with small life insurance company deduction

In the case of a foreign company taxable under part I, subsection (b) shall be applied before computing the small life insurance company deduction.

(2) Reduction in section 881 taxes

(A) In general

The tax under section 881 (determined without regard to this paragraph) shall be reduced (but not below zero) by an amount which bears the same ratio to such tax as—

(i) the amount of the increase in effectively connected income of the company resulting

from subsection (b), bears to

(ii) the amount which would be subject to tax under section 881 if the amount taxable under such section were determined without regard to sections 103 and 894.

(B) Limitation on reduction

The reduction under subparagraph (A) shall not exceed the increase in taxes under part I or II (as the case may be) by reason of the increase in effectively connected income of the company resulting from subsection (b).

(3) Data used in determining domestic asset/liability percentages and domestic investment yields

Each domestic asset/liability percentage, and each domestic investment yield, for any taxable year shall be based on such representative data with respect to domestic insurance companies for the second preceding taxable year as the Secretary considers appropriate.

(d) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations—

(1) providing for the proper treatment of segregated asset accounts,

(2) providing for proper adjustments in succeeding taxable years where the company's actual net investment income for any taxable year which is effectively connected with the conduct of an insurance business within the United States exceeds the amount required under subsection (b)(1),

(3) providing for the proper treatment of investments in domestic subsidiaries, and

(4) which may provide that, in the case of companies taxable under part II of this subchapter, determinations under subsection (b) will be made separately for categories of such companies established in such regulations.

(Aug. 16, 1954, ch. 736, 68A Stat. 267; Mar. 13, 1956, ch. 83, §5(5), 70 Stat. 49; Pub. L. 86–69, §3(f)(1), June 25, 1959, 73 Stat. 140; Pub. L. 89–809, title I, §104(i)(1), Nov. 13, 1966, 80 Stat. 1561; Pub. L. 99–514, title X, §1024(c)(11), Oct. 22, 1986, 100 Stat. 2408; Pub. L. 100–203, title X, §10242(a), Dec. 22, 1987, 101 Stat. 1330–420; Pub. L. 100–647, title II, §2004(q)(2), (3), Nov. 10, 1988, 102 Stat. 3609; Pub. L. 101–239, title VII, §7821(d)(2), Dec. 19, 1989, 103 Stat. 2424; Pub. L. 108–218, title II, §205(b)(6), Apr. 10, 2004, 118 Stat. 610.)

AMENDMENTS

2004—Subsec. (c)(3), (4). Pub. L. 108–218 redesignated par. (4) as (3) and struck out heading and text of former par. (3). Text read as follows: "For purposes of section 809, the equity base of any foreign mutual life insurance company as of the close of any taxable year shall be increased by the excess of—

"(A) the required United States assets of the company (determined under subsection (b)(2)), over

"(B) the mean of the assets held in the United States during the taxable year."

1989—Subsec. (c)(4). Pub. L. 101–239 substituted "yields" for "yeilds" in heading.

1988—Subsec. (b)(3)(B). Pub. L. 100–647, §2004(q)(2)(A), struck out "held for the production of such income" after "same companies".

Subsec. (b)(4)(B)(ii). Pub. L. 100–647, §2004(q)(2)(B), struck out "held for the production of investment income" after "United States)".

Subsec. (d)(4). Pub. L. 100–647, §2004(q)(3), added par. (4).

1987—Pub. L. 100–203 substituted "companies" for "corporations" in section catchline and amended text generally. Prior to amendment, text read as follows: "If a foreign corporation carrying on an insurance business within the United States would qualify under part I or II of this subchapter for the taxable year if (without regard to income not effectively connected with the conduct of any trade or business within the United States) it were a domestic corporation, such corporation shall be taxable under such part on its income effectively connected with its conduct of any trade or business within the United States. With respect to the remainder of its income, which is from sources within the United States, such a foreign corporation shall be taxable as provided in section 881."

1986—Pub. L. 99–514 struck out reference to part III of this subchapter.

1966—Pub. L. 89–809 substituted provisions covering the taxability of foreign corporations that are carrying on an insurance business within the United States which would qualify under part I, II, or III of this

subchapter for the taxable year if (without regard to income not effectively connected with the conduct of any trade or business within the United States) it were a domestic corporation for provisions that the gross income of insurance companies subject to the tax imposed by section 802 or 831 shall not be determined in the manner provided in part I of subchapter N (relating to determination of sources of income).

1959—Pub. L. 86–69 struck out reference to section 811.

1956—Act Mar. 13, 1956, inserted reference to section 811.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–218 applicable to taxable years beginning after Dec. 31, 2004, see section 205(c) of Pub. L. 108–218, set out as a note under section 807 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective as if included in the provision of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 7823 of Pub. L. 101–239, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to taxable years beginning after Dec. 31, 1987, see section 10242(d) of Pub. L. 100–203, set out as a note under section 816 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1024(e) of Pub. L. 99–514, set out as a note under section 831 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–69 applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 4 of Pub. L. 86–69, set out as a note under section 381 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Mar. 13, 1956, applicable only to taxable years beginning after Dec. 31, 1954, see section 6 of act Mar. 13, 1956, set out as a note under section 316 of this title.

STUDY OF UNITED STATES REINSURANCE INDUSTRY

Pub. L. 99–514, title XII, §1244, Oct. 22, 1986, 100 Stat. 2581, directed Secretary of the Treasury or his delegate to conduct a study to determine whether United States reinsurance corporations are placed at a significant competitive disadvantage with foreign reinsurance corporations by existing treaties between the United States and foreign countries, and to report before Jan. 1, 1988, the results of such study to Committee on Finance of United States Senate and Committee on Ways and Means of House of Representatives.

§843. Annual accounting period

For purposes of this subtitle, the annual accounting period for each insurance company subject to a tax imposed by this subchapter shall be the calendar year. Under regulations prescribed by the Secretary, an insurance company which joins in the filing of a consolidated return (or is required to so file) may adopt the taxable year of the common parent corporation even though such year is not a calendar year.

(Added Mar. 13, 1956, ch. 83, §4(a), 70 Stat. 48; amended Pub. L. 94–455, title XV, §1507(b)(2), Oct. 4, 1976, 90 Stat. 1740.)

AMENDMENTS

1976—Pub. L. 94–455 inserted provision permitting an insurance company which joins in the filing of a consolidated return to adopt the taxable year of the common parent corporation even though such year is not a calendar year.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1980, see section 1507(c)(1) of Pub. L. 94–455, set out as a note under section 1504 of this title.

EFFECTIVE DATE

Section applicable only to taxable years beginning after Dec. 31, 1954, see Effective Date of 1956 Amendment note set out under section 316 of this title.

§844. Special loss carryover rules

(a) General rule

If an insurance company—

(1) is subject to the tax imposed by part I or II of this subchapter for the taxable year, and

(2) was subject to the tax imposed by a different part of this subchapter for a prior taxable year,

then any operations loss carryover under section 810 (or the corresponding provisions of prior law) or net operating loss carryover under section 172 (as the case may be) arising in such prior taxable year shall be included in its operations loss deduction under section 810(a) or net operating loss deduction under section 832(c)(10), as the case may be.

(b) Limitation

The amount included under section 810(a) or 832(c)(10) (as the case may be) by reason of the application of subsection (a) shall not exceed the amount that would have constituted the loss carryover under such section if for all relevant taxable years the company had been subject to the tax imposed by the part referred to in subsection (a)(1) rather than the part referred to in subsection (a)(2). For purposes of applying the preceding sentence, section 810(b)(1)(C) (relating to additional years to which losses may be carried by new life insurance companies) shall not apply.

(c) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section.

(Added Pub. L. 91–172, title IX, §907(c)(1), Dec. 30, 1969, 83 Stat. 716; amended Pub. L. 94–455, title XIX, §§1901(b)(25), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1798, 1834; Pub. L. 98–369, div. A, title II, §211(b)(11), July 18, 1984, 98 Stat. 755; Pub. L. 99–514, title X, §1024(c)(12), title XVIII, §1899A(20), Oct. 22, 1986, 100 Stat. 2408, 2959; Pub. L. 101–239, title VII, §7841(d)(16), Dec. 19, 1989, 103 Stat. 2429.)

AMENDMENTS

1989—Subsec. (a)(2). Pub. L. 101–239 substituted "a prior taxable year" for "the taxable year".

1986—Subsec. (a). Pub. L. 99–514, §1024(c)(12), added subsec. (a) and struck out former subsec. (a) which read as follows: "If an insurance company—

"(1) is subject to the tax imposed by part I, II, or III of this subchapter for the taxable year, and

"(2) was subject to the tax imposed by a different part of this subchapter for a prior taxable year beginning after December 31, 1962,

then any operations loss carryover under section 810 (or the corresponding provisions of prior law), unused loss carryover under section 825, or net operating loss carryover under section 172, as the case may be, arising in such prior taxable year shall be included in its operations loss deduction under section 810(a), unused loss deduction under section 825(a), or net operating loss deduction under section 832(c)(10), as the case may be."

Pub. L. 99–514, §1899A(20), substituted "prior law), unused loss" for "prior law),, unused loss" in concluding provisions.

Subsec. (b). Pub. L. 99–514, §1024(c)(12), added subsec. (b) and struck out former subsec. (b) which read as follows: "The amount included under section 810(a), 825(a), or 832(c)(10), as the case may be, by reason of the application of subsection (a) shall not exceed the amount that would have constituted the loss carryover under such section if for all relevant taxable years such company had been subject to the tax imposed by the part referred to in subsection (a)(1) rather than the part referred to in subsection (a)(2). For purposes of applying the preceding sentence—

"(1) in the case of a mutual insurance company which becomes a stock insurance company, an amount equal to 25 percent of the deduction under section 832(c)(11) (relating to dividends to policyholders) shall not be allowed, and

"(2) section 810(b)(1)(C) (relating to additional years to which losses may be carried by new life insurance companies) shall not apply."

1984—Subsec. (a). Pub. L. 98–369, §211(b)(11)(A), substituted "section 810 (or the corresponding provisions of prior law)," for "section 812" and "section 810(a)" for "section 812(a)" in provisions following par. (2).

Subsec. (b). Pub. L. 98–369, §211(b)(11)(B), substituted "section 810(a)" for "section 812(a)" in introductory provisions, and "section 810(b)(1)(C)" for "section 812(b)(1)(C)" in par. (2).

1976—Subsec. (b)(2). Pub. L. 94–455, §1901(b)(25), substituted "section 812(b)(1)(C)" for "section 812(b)(1)(A)(iii)".

Subsec. (c). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1024(c)(12) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1024(e) of Pub. L. 99–514, set out as a note under section 831 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(b)(25) of Pub. L. 94–455, effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE

Pub. L. 91–172, title IX, §907(d), Dec. 30, 1969, 83 Stat. 717, provided that: "The amendments made by subsection (a) [amending sections 805 and 810 of this title] shall apply to taxable years beginning after December 31, 1957. The amendments made by subsection (b) [amending section 815 of this title] shall apply to taxable years beginning after December 31, 1968. The amendments made by subsection (c) [enacting this section and amending sections 809, 823, and 825 of this title] shall apply with respect to losses incurred in taxable years beginning after December 31, 1962, but shall not affect any tax liability for any taxable year beginning before January 1, 1967."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§845. Certain reinsurance agreements

(a) Allocation in case of reinsurance agreement involving tax avoidance or evasion

In the case of 2 or more related persons (within the meaning of section 482) who are parties to a reinsurance agreement (or where one of the parties to a reinsurance agreement is, with respect to any contract covered by the agreement, in effect an agent of another party to such agreement or a conduit between related persons), the Secretary may—

(1) allocate between or among such persons income (whether investment income, premium, or otherwise), deductions, assets, reserves, credits, and other items related to such agreement,

(2) recharacterize any such items, or

(3) make any other adjustment,

if he determines that such allocation, recharacterization, or adjustment is necessary to reflect the proper amount, source, or character of the taxable income (or any item described in paragraph (1) relating to such taxable income) of each such person.

(b) Reinsurance contract having significant tax avoidance effect

If the Secretary determines that any reinsurance contract has a significant tax avoidance effect on any party to such contract, the Secretary may make proper adjustments with respect to such party to eliminate such tax avoidance effect (including treating such contract with respect to such party as terminated on December 31 of each year and reinstated on January 1 of the next year).

(Added Pub. L. 98–369, div. A, title II, §212(a), July 18, 1984, 98 Stat. 757; amended Pub. L. 108–357, title VIII, §803(a), Oct. 22, 2004, 118 Stat. 1569.)

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–357 substituted "amount, source, or character" for "source and character" in concluding provisions.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §803(b), Oct. 22, 2004, 118 Stat. 1569, provided that: "The amendments made by this section [amending this section] shall apply to any risk reinsured after the date of the enactment of this Act [Oct. 22, 2004]."

EFFECTIVE DATE

Pub. L. 98–369, div. A, title II, §217(d), July 18, 1984, 98 Stat. 762, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) Subsection (a) of section 845 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this title) shall apply with respect to any risk reinsured on or after September 27, 1983.

"(2) Subsection (b) of section 845 of such Code (as so added) shall apply with respect to risks reinsured after December 31, 1984."

§846. Discounted unpaid losses defined

(a) Discounted losses determined

(1) Separately computed for each accident year

The amount of the discounted unpaid losses as of the end of any taxable year shall be the sum of the discounted unpaid losses (as of such time) separately computed under this section with respect to unpaid losses in each line of business attributable to each accident year.

(2) Method of discounting

The amount of the discounted unpaid losses as of the end of any taxable year attributable to any accident year shall be the present value of such losses (as of such time) determined by using—

(A) the amount of the undiscounted unpaid losses as of such time,

(B) the applicable interest rate, and

(C) the applicable loss payment pattern.

(3) Limitation on amount of discounted losses

In no event shall the amount of the discounted unpaid losses with respect to any line of business attributable to any accident year exceed the aggregate amount of unpaid losses with respect to such line of business for such accident year included on the annual statement filed by the taxpayer for the year ending with or within the taxable year.

(4) Determination of applicable factors

In determining the amount of the discounted unpaid losses attributable to any accident year—

(A) the applicable interest rate shall be the interest rate determined under subsection (c) for

the calendar year with which such accident year ends, and

(B) the applicable loss payment pattern shall be the loss payment pattern determined under subsection (d) which is in effect for the calendar year with which such accident year ends.

(b) Determination of undiscounted unpaid losses

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, the term "undiscounted unpaid losses" means the unpaid losses shown in the annual statement filed by the taxpayer for the year ending with or within the taxable year of the taxpayer.

(2) Adjustment if losses discounted on annual statement

If—

(A) the amount of unpaid losses shown in the annual statement is determined on a discounted basis, and

(B) the extent to which the losses were discounted can be determined on the basis of information disclosed on or with the annual statement,

the amount of the unpaid losses shall be determined without regard to any reduction attributable to such discounting.

(c) Rate of interest

(1) In general

For purposes of this section, the rate of interest determined under this subsection shall be the annual rate determined by the Secretary under paragraph (2).

(2) Determination of annual rate

(A) In general

The annual rate determined by the Secretary under this paragraph for any calendar year shall be a rate equal to the average of the applicable Federal mid-term rates (as defined in section 1274(d) but based on annual compounding) effective as of the beginning of each of the calendar months in the test period.

(B) Test period

For purposes of subparagraph (A), the test period is the most recent 60-calendar-month period ending before the beginning of the calendar year for which the determination is made; except that there shall be excluded from the test period any month beginning before August 1, 1986.

(d) Loss payment pattern

(1) In general

For each determination year, the Secretary shall determine a loss payment pattern for each line of business by reference to the historical loss payment pattern applicable to such line of business. Any loss payment pattern determined by the Secretary shall apply to the accident year ending with the determination year and to each of the 4 succeeding accident years.

(2) Method of determination

Determinations under paragraph (1) for any determination year shall be made by the Secretary—

(A) by using the aggregate experience reported on the annual statements of insurance companies,

(B) on the basis of the most recent published aggregate data from such annual statements relating to loss payment patterns available on the 1st day of the determination year,

(C) as if all losses paid or treated as paid during any year are paid in the middle of such year,

and

(D) in accordance with the computational rules prescribed in paragraph (3).

(3) Computational rules

For purposes of this subsection—

(A) In general

Except as otherwise provided in this paragraph, the loss payment pattern for any line of business shall be based on the assumption that all losses are paid—

(i) during the accident year and the 3 calendar years following the accident year, or

(ii) in the case of any line of business reported in the schedule or schedules of the annual statement relating to auto liability, other liability, medical malpractice, workers' compensation, and multiple peril lines, during the accident year and the 10 calendar years following the accident year.

(B) Treatment of certain losses

Except as otherwise provided in this paragraph—

(i) in the case of any line of business not described in subparagraph (A)(ii), losses paid after the 1st year following the accident year shall be treated as paid equally in the 2nd and 3rd year following the accident year, and

(ii) in the case of a line of business described in subparagraph (A)(ii), losses paid after the close of the period applicable under subparagraph (A)(ii) shall be treated as paid in the last year of such period.

(C) Special rule for certain long-tail lines

In the case of any long-tail line of business—

(i) the period taken into account under subparagraph (A)(ii) shall be extended (but not by more than 5 years) to the extent required under clause (ii), and

(ii) the amount of losses which would have been treated as paid in the 10th year after the accident year shall be treated as paid in such 10th year and each subsequent year in an amount equal to the amount of the losses treated as paid in the 9th year after the accident year (or, if lesser, the portion of the unpaid losses not theretofore taken into account).

Notwithstanding clause (ii), to the extent such unpaid losses have not been treated as paid before the last year of the extension, they shall be treated as paid in such last year.

(D) Long-tail line of business

For purposes of subparagraph (C), the term "long-tail line of business" means any line of business described in subparagraph (A)(ii) if the amount of losses which (without regard to subparagraph (C)) would be treated as paid in the 10th year after the accident year exceeds the losses treated as paid in the 9th year after the accident year.

(E) Special rule for international and reinsurance lines of business

Except as otherwise provided by regulations, any determination made under subsection (a) with respect to unpaid losses relating to the international or reinsurance lines of business shall be made using, in lieu of the loss payment pattern applicable to the respective lines of business, a pattern determined by the Secretary under paragraphs (1) and (2) based on the combined losses for all lines of business described in subparagraph (A)(ii).

(F) Adjustments if loss experience information available for longer periods

The Secretary shall make appropriate adjustments in the application of this paragraph if annual statement data with respect to payment of losses is available for longer periods after the accident year than the periods assumed under the rules of this paragraph.

(G) Special rule for 9th year if negative or zero

If the amount of the losses treated as paid in the 9th year after the accident year is zero or a negative amount, subparagraphs (C)(ii) and (D) shall be applied by substituting the average of

the losses treated as paid in the 7th, 8th, and 9th years after the accident year for the losses treated as paid in the 9th year after the accident year.

(4) Determination year

For purposes of this section, the term "determination year" means calendar year 1987 and each 5th calendar year thereafter.

(e) Election to use company's historical payment pattern

(1) In general

The taxpayer may elect to apply subsection (a)(2)(C) with respect to all lines of business by using a loss payment pattern determined by reference to the taxpayer's loss payment pattern for the most recent calendar year for which an annual statement was filed before the beginning of the accident year. Any such determination shall be made with the application of the rules of paragraphs (2)(C) and (3) of subsection (d).

(2) Election

(A) In general

An election under paragraph (1) shall be made separately with respect to each determination year under subsection (d).

(B) Period for which election in effect

Unless revoked with the consent of the Secretary, an election under paragraph (1) with respect to any determination year shall apply to accident years ending with the determination year and to each of the 4 succeeding accident years.

(C) Time for making election

An election under paragraph (1) with respect to any determination year shall be made on the taxpayer's return for the taxable year in which (or with which) the determination year ends.

(3) No election for international or reinsurance business

No election under this subsection shall apply to any international or reinsurance line of business.

(4) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection including—

(A) regulations providing that a taxpayer may not make an election under this subsection if such taxpayer does not have sufficient historical experience for the line of business to determine a loss payment pattern, and

(B) regulations to prevent the avoidance (through the use of separate corporations or otherwise) of the requirement of this subsection that an election under this subsection applies to all lines of business of the taxpayer.

(f) Other definitions and special rules

For purposes of this section—

(1) Accident year

The term "accident year" means the calendar year in which the incident occurs which gives rise to the related unpaid loss.

(2) Unpaid loss adjustment expenses

The term "unpaid losses" includes any unpaid loss adjustment expenses shown on the annual statement.

(3) Annual statement

The term "annual statement" means the annual statement approved by the National Association of Insurance Commissioners which the taxpayer is required to file with insurance regulatory

authorities of a State.

(4) Line of business

The term "line of business" means a category for the reporting of loss payment patterns determined on the basis of the annual statement for fire and casualty insurance companies for the calendar year ending with or within the taxable year, except that the multiple peril lines shall be treated as a single line of business.

(5) Multiple peril lines

The term "multiple peril lines" means the lines of business relating to farmowners multiple peril, homeowners multiple peril, commercial multiple peril, ocean marine, aircraft (all perils) and boiler and machinery.

(6) Special rule for certain accident and health insurance lines of business

Any determination under subsection (a) with respect to unpaid losses relating to accident and health insurance lines of businesses (other than credit disability insurance) shall be made—

(A) in the case of unpaid losses relating to disability income, by using the general rules prescribed under section 807(d) applicable to noncancellable accident and health insurance contracts and using a mortality or morbidity table reflecting the taxpayer's experience; except that—

(i) the prevailing State assumed interest rate shall be the rate in effect for the year in which the loss occurred rather than the year in which the contract was issued, and

(ii) the limitation of subsection (a)(3) shall apply in lieu of the limitation of the last sentence of section 807(d)(1), and

(B) in all other cases, by using an assumption (in lieu of a loss payment pattern) that unpaid losses are paid in the middle of the year following the accident year.

(g) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including—

(1) regulations providing proper treatment of allocated reinsurance, and

(2) regulations providing appropriate adjustments in the application of this section to a taxpayer having a taxable year which is not the calendar year.

(Added Pub. L. 99–514, title X, §1023(c), Oct. 22, 1986, 100 Stat. 2399; amended Pub. L. 100–647, title I, §1010(e)(1), (2), Nov. 10, 1988, 102 Stat. 3453; Pub. L. 101–508, title XI, §11305(b), Nov. 5, 1990, 104 Stat. 1388–451.)

AMENDMENTS

1990—Subsec. (g). Pub. L. 101–508 inserted "and" at end of par. (1), redesignated par. (3) as (2), and struck out former par. (2) which required regulations providing proper treatment of salvage and reinsurance recoverable attributable to unpaid losses.

1988—Subsec. (f)(6)(B). Pub. L. 100–647, §1010(e)(1), substituted "paid in the middle of the year" for "paid during the year".

Subsec. (g)(3). Pub. L. 100–647, §1010(e)(2), added par. (3).

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1989, see section 11305(c)(1) of Pub. L. 101–508, set out as a note under section 832 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Pub. L. 99–514, title X, §1023(e), Oct. 22, 1986, 100 Stat. 2404, as amended by Pub. L. 100–647, title I,

§1010(e)(3), Nov. 10, 1988, 102 Stat. 3453, provided that:

"(1) IN GENERAL.—The amendments made by this section [enacting this section and amending sections 807 and 832 of this title] shall apply to taxable years beginning after December 31, 1986.

"(2) TRANSITIONAL RULE.—For the first taxable year beginning after December 31, 1986—

"(A) the unpaid losses and the expenses unpaid (as defined in paragraphs (5)(B) and (6) of section 832(b) of the Internal Revenue Code of 1986) at the end of the preceding taxable year, and

"(B) the unpaid losses as defined in sections 807(c)(2) and 805(a)(1) of such Code at the end of the preceding taxable year,

shall be determined as if the amendments made by this section had applied to such unpaid losses and expenses unpaid in the preceding taxable year and by using the interest rate and loss payment patterns applicable to accident years ending with calendar year 1987. For subsequent taxable years, such amendments shall be applied with respect to such unpaid losses and expenses unpaid by using the interest rate and loss payment patterns applicable to accident years ending with calendar year 1987.

"(3) FRESH START.—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, any difference between—

"(i) the amount determined to be the unpaid losses and expenses unpaid for the year preceding the 1st taxable year of an insurance company beginning after December 31, 1986, determined without regard to paragraph (2), and

"(ii) such amount determined with regard to paragraph (2),

shall not be taken into account for purposes of the Internal Revenue Code of 1986.

"(B) RESERVE STRENGTHENING IN YEARS AFTER 1985.—Subparagraph (A) shall not apply to any reserve strengthening in a taxable year beginning in 1986, and such strengthening shall be treated as occurring in the taxpayer's 1st taxable year beginning after December 31, 1986.

"(C) EFFECT ON EARNINGS AND PROFITS.—The earnings and profits of any insurance company for its 1st taxable year beginning after December 31, 1986, shall be increased by the amount of the difference determined under subparagraph (A) with respect to such company.

"(4) APPLICATION OF FRESH START TO COMPANIES WHICH BECOME SUBJECT TO SECTION 831(a) TAX IN LATER TAXABLE YEAR.—If—

"(A) an insurance company was not subject to tax under section 831(a) of the Internal Revenue Code of 1986 for its 1st taxable year beginning after December 31, 1986, by reason of being—

"(i) subject to tax under section 831(b) of such Code, or

"(ii) described in section 501(c) of such Code and exempt from tax under section 501(a) of such Code, and

"(B) such company becomes subject to tax under such section 831(a) for any later taxable year, paragraph (2) and subparagraphs (A) and (C) of paragraph (3) shall be applied by treating such later taxable year as its 1st taxable year beginning after December 31, 1986, and by treating the calendar year in which such later taxable year begins as 1987; and paragraph (3)(B) shall not apply."

§847. Special estimated tax payments

In the case of taxable years beginning after December 31, 1987, of an insurance company required to discount unpaid losses (as defined in section 846)—

(1) Additional deduction

There shall be allowed as a deduction for the taxable year, if special estimated tax payments are made as required by paragraph (2), an amount not to exceed the excess of—

(A) the amount of the undiscounted, unpaid losses (as defined in section 846(b)) attributable to losses incurred in taxable years beginning after December 31, 1986, over

(B) the amount of the related discounted, unpaid losses determined under section 846,

to the extent such amount was not deducted under this paragraph in a preceding taxable year. Section 6655 shall be applied to any taxable year without regard to the deduction allowed under the preceding sentence.

(2) Special estimated tax payments

The deduction under paragraph (1) shall be allowed only to the extent that such deduction would result in a tax benefit for the taxable year for which such deduction is allowed or any

carryback year and only to the extent that special estimated tax payments are made in an amount equal to the tax benefit attributable to such deduction on or before the due date (determined without regard to extensions) for filing the return for the taxable year for which the deduction is allowed. If a deduction would be allowed but for the fact that special estimated tax payments were not timely made, such deduction shall be allowed to the extent such payments are made within a reasonable time, as determined by the Secretary, if all interest and penalties, computed as if this sentence did not apply, are paid. If amounts are included in gross income under paragraph (5) or (6) for any taxable year and an additional tax is due for such year (or any other year) as a result of such inclusion, an amount of special estimated tax payments equal to such additional tax shall be applied against such additional tax. If, after any such payment is so applied, there is an adjustment reducing the amount of such additional tax, in lieu of any credit or refund for such reduction, a special estimated tax payment shall be treated as made in an amount equal to the amount otherwise allowable as a credit or refund. To the extent that a special estimated tax payment is not used to offset additional tax due for any of the first 15 taxable years beginning after the year for which the payment was made, such special estimated tax payment shall be treated as an estimated tax payment made under section 6655 for the 16th year after the year for which the payment was made.

(3) Special loss discount account

Each company which is allowed a deduction under paragraph (1) shall, for purposes of this part, establish and maintain a special loss discount account.

(4) Additions to special loss discount account

There shall be added to the special loss discount account for each taxable year an amount equal to the amount allowed as a deduction for the taxable year under paragraph (1).

(5) Subtractions from special loss discount account and inclusion in gross income

After applying paragraph (4), there shall be subtracted for the taxable year from the special loss discount account and included in gross income:

(A) The excess (if any) of the amount in the special loss discount account with respect to losses incurred in each taxable year over the amount of the excess referred to in paragraph (1) with respect to losses incurred in that year, and

(B) Any amount improperly subtracted from the special loss discount account under subparagraph (A) to the extent special estimated tax payments were used with respect to such amount.

To the extent that any amount added to the special loss discount account is not subtracted from such account before the 15th year after the year for which the amount was so added, such amount shall be subtracted from such account for such 15th year and included in gross income for such 15th year.

(6) Rules in the case of liquidation or termination of taxpayer's insurance business

(A) In general

If a company liquidates or otherwise terminates its insurance business and does not transfer or distribute such business in an acquisition of assets referred to in section 381(a), the entire amount remaining in such special loss discount account shall be subtracted and included in gross income. Except in the case where a company transfers or distributes its insurance business in an acquisition of assets, referred to in section 381(a), if the company is not subject to the tax imposed by section 801 or section 831 for any taxable year, the entire amount in the account at the close of the preceding taxable year shall be subtracted from the account in such preceding taxable year and included in gross income.

(B) Elimination of balance of payments

In any case to which subparagraph (A) applies, any special estimated tax payment remaining after the credit attributable to the inclusion under subparagraph (A) shall be voided.

(7) Modification of the amount of special estimated tax payments in the event of subsequent marginal rate reduction or increase

In the event of a reduction in any tax rate provided under section 11 for any tax year after the enactment of this section, the Secretary shall prescribe regulations providing for a reduction in the amount of any special estimated tax payments made for years before the effective date of such section 11 rate reductions. Such reduction in the amount of such payments shall reduce the amount of such payments to the amount that they would have been if the special deduction permitted under paragraph (1) had occurred during a year that the lower marginal rate under section 11 applied. Similar rules shall be applied in the event of a marginal rate increase.

(8) Tax benefit determination

The tax benefit attributable to the deduction under paragraph (1) shall be determined under regulations prescribed by the Secretary, by taking into account tax benefits that would arise from the carryback of any net operating loss for the year, as well as current year tax benefits. Tax benefits for the current year and carryback years shall include those that would arise from the filing of a consolidated return with another insurance company required to determine discounted, unpaid losses under section 846 without regard to the limitations on consolidation contained in section 1503(c). The limitations on consolidation contained in section 1503(c) shall not apply to the deduction allowed under paragraph (1).

(9) Effect on earnings and profits

In determining the earnings and profits—

(A) any special estimated tax payment made for any taxable year shall be treated as a payment of income tax imposed by this title for such taxable year, and

(B) any deduction or inclusion under this section shall not be taken into account.

Nothing in the preceding sentence shall be construed to affect the application of section 56(g) (relating to adjustments based on adjusted current earnings).

(10) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations—

(A) providing for the separate application of this section with respect to each accident year,

(B) such adjustments in the application of this section as may be necessary to take into account the tax imposed by section 55, and

(C) providing for the application of this section in cases where the deduction allowed under paragraph (1) for any taxable year is less than the excess referred to in paragraph (1) for such year.

(Added Pub. L. 100–647, title VI, §6077(a), Nov. 10, 1988, 102 Stat. 3707; amended Pub. L. 101–239, title VII, §7816(n), Dec. 19, 1989, 103 Stat. 2422.)

REFERENCES IN TEXT

Enactment of this section, referred to in par. (7), means enactment of Pub. L. 100–647, which enacted this section and was approved Nov. 10, 1988.

AMENDMENTS

1989—Par. (1). Pub. L. 101–239, §7816(n)(1), substituted "special estimated tax" for "separate estimated tax" in introductory provisions and inserted "in taxable years beginning" after "attributable to losses incurred" in subpar. (A).

Par. (2). Pub. L. 101–239, §7816(n)(2), amended first sentence generally. Prior to amendment, first sentence read as follows: "The deduction under paragraph (1) shall be allowed only to the extent that special estimated tax payments are made in an amount equal to the tax benefit attributable to such deduction, on or before the date that any taxes (determined without regard to this section) for the taxable year for which the deduction is allowed are due to be paid."

Par. (5). Pub. L. 101–239, §7816(n)(3), inserted at end "To the extent that any amount added to the special loss discount account is not subtracted from such account before the 15th year after the year for which the

amount was so added, such amount shall be subtracted from such account for such 15th year and included in gross income for such 15th year."

Par. (8). Pub. L. 101–239, §7816(n)(6), inserted at end "The limitations on consolidation contained in section 1503(c) shall not apply to the deduction allowed under paragraph (1)."

Par. (9). Pub. L. 101–239, §7816(n)(5), added par. (9). Former par. (9) redesignated (10).

Pub. L. 101–239, §7816(n)(4), added subpar. (C).

Par. (10). Pub. L. 101–239, §7816(n)(5), redesignated par. (9) as (10).

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE

Pub. L. 100–647, title VI, §6077(c), Nov. 10, 1988, 102 Stat. 3709, provided that: "The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1987."

§848. Capitalization of certain policy acquisition expenses

(a) General rule

In the case of an insurance company—

(1) specified policy acquisition expenses for any taxable year shall be capitalized, and

(2) such expenses shall be allowed as a deduction ratably over the 120-month period beginning with the first month in the second half of such taxable year.

(b) 5-year amortization for first $5,000,000 of specified policy acquisition expenses

(1) In general

Paragraph (2) of subsection (a) shall be applied with respect to so much of the specified policy acquisition expenses of an insurance company for any taxable year as does not exceed $5,000,000 by substituting "60-month" for "120-month".

(2) Phase-out

If the specified policy acquisition expenses of an insurance company exceed $10,000,000 for any taxable year, the $5,000,000 amount under paragraph (1) shall be reduced (but not below zero) by the amount of such excess.

(3) Special rule for members of controlled group

In the case of any controlled group—

(A) all insurance companies which are members of such group shall be treated as 1 company for purposes of this subsection, and

(B) the amount to which paragraph (1) applies shall be allocated among such companies in such manner as the Secretary may prescribe.

For purposes of the preceding sentence, the term "controlled group" means any controlled group of corporations as defined in section 1563(a); except that subsections (a)(4) and (b)(2)(D) of section 1563 shall not apply, and subsection (b)(2)(C) of section 1563 shall not apply to the extent it excludes a foreign corporation to which section 842 applies.

(4) Exception for acquisition expenses attributable to certain reinsurance contracts

Paragraph (1) shall not apply to any specified policy acquisition expenses for any taxable year which are attributable to premiums or other consideration under any reinsurance contract.

(c) Specified policy acquisition expenses

For purposes of this section—

(1) In general

The term "specified policy acquisition expenses" means, with respect to any taxable year, so much of the general deductions for such taxable year as does not exceed the sum of—

(A) 1.75 percent of the net premiums for such taxable year on specified insurance contracts which are annuity contracts,

(B) 2.05 percent of the net premiums for such taxable year on specified insurance contracts which are group life insurance contracts, and

(C) 7.7 percent of the net premiums for such taxable year on specified insurance contracts not described in subparagraph (A) or (B).

(2) General deductions

The term "general deductions" means the deductions provided in part VI of subchapter B (sec. 161 and following, relating to itemized deductions) and in part I of subchapter D (sec. 401 and following, relating to pension, profit sharing, stock bonus plans, etc.).

(d) Net premiums

For purposes of this section—

(1) In general

The term "net premiums" means, with respect to any category of specified insurance contracts set forth in subsection (c)(1), the excess (if any) of—

(A) the gross amount of premiums and other consideration on such contracts, over

(B) return premiums on such contracts and premiums and other consideration incurred for reinsurance of such contracts.

The rules of section 803(b) shall apply for purposes of the preceding sentence.

(2) Amounts determined on accrual basis

In the case of an insurance company subject to tax under part II of this subchapter, all computations entering into determinations of net premiums for any taxable year shall be made in the manner required under section 811(a) for life insurance companies.

(3) Treatment of certain policyholder dividends and similar amounts

Net premiums shall be determined without regard to section 808(e) and without regard to other similar amounts treated as paid to, and returned by, the policyholder.

(4) Special rules for reinsurance

(A) Premiums and other consideration incurred for reinsurance shall be taken into account under paragraph (1)(B) only to the extent such premiums and other consideration are includible in the gross income of an insurance company taxable under this subchapter or are subject to tax under this chapter by reason of subpart F of part III of subchapter N.

(B) The Secretary shall prescribe such regulations as may be necessary to ensure that premiums and other consideration with respect to reinsurance are treated consistently by the ceding company and the reinsurer.

(e) Classification of contracts

For purposes of this section—

(1) Specified insurance contract

(A) In general

Except as otherwise provided in this paragraph, the term "specified insurance contract" means any life insurance, annuity, or noncancellable accident and health insurance contract (or any combination thereof).

(B) Exceptions

The term "specified insurance contract" shall not include—

(i) any pension plan contract (as defined in section 818(a)),

(ii) any flight insurance or similar contract,

(iii) any qualified foreign contract (as defined in section 807(e)(4) without regard to paragraph (5) of this subsection),

(iv) any contract which is an Archer MSA (as defined in section 220(d)), and

(v) any contract which is a health savings account (as defined in section 223(d)).

(2) Group life insurance contract

The term "group life insurance contract" means any life insurance contract—

(A) which covers a group of individuals defined by reference to employment relationship, membership in an organization, or similar factor,

(B) the premiums for which are determined on a group basis, and

(C) the proceeds of which are payable to (or for the benefit of) persons other than the employer of the insured, an organization to which the insured belongs, or other similar person.

(3) Treatment of annuity contracts combined with noncancellable accident and health insurance

Any annuity contract combined with noncancellable accident and health insurance shall be treated as a noncancellable accident and health insurance contract and not as an annuity contract.

(4) Treatment of guaranteed renewable contracts

The rules of section 816(e) shall apply for purposes of this section.

(5) Treatment of reinsurance contract

A contract which reinsures another contract shall be treated in the same manner as the reinsured contract.

(6) Treatment of certain qualified long-term care insurance contract arrangements

An annuity or life insurance contract which includes a qualified long-term care insurance contract as a part of or a rider on such annuity or life insurance contract shall be treated as a specified insurance contract not described in subparagraph (A) or (B) of subsection (c)(1).

(f) Special rule where negative net premiums

(1) In general

If for any taxable year there is a negative capitalization amount with respect to any category of specified insurance contracts set forth in subsection (c)(1)—

(A) the amount otherwise required to be capitalized under this section for such taxable year with respect to any other category of specified insurance contracts shall be reduced (but not below zero) by such negative capitalization amount, and

(B) such negative capitalization amount (to the extent not taken into account under subparagraph (A))—

(i) shall reduce (but not below zero) the unamortized balance (as of the beginning of such taxable year) of the amounts previously capitalized under subsection (a) (beginning with the amount capitalized for the most recent taxable year), and

(ii) to the extent taken into account as such a reduction, shall be allowed as a deduction for such taxable year.

(2) Negative capitalization amount

For purposes of paragraph (1), the term "negative capitalization amount" means, with respect to any category of specified insurance contracts, the percentage (applicable under subsection (c)(1) to such category) of the amount (if any) by which—

(A) the amount determined under subparagraph (B) of subsection (d)(1) with respect to such category, exceeds

(B) the amount determined under subparagraph (A) of subsection (d)(1) with respect to such category.

(g) Treatment of certain ceding commissions

Nothing in any provision of law (other than this section or section 197) shall require the

capitalization of any ceding commission incurred on or after September 30, 1990, under any contract which reinsures a specified insurance contract.

(h) Secretarial authority to adjust capitalization amounts

(1) In general

Except as provided in paragraph (2), the Secretary may provide that a type of insurance contract will be treated as a separate category for purposes of this section (and prescribe a percentage applicable to such category) if the Secretary determines that the deferral of acquisition expenses for such type of contract which would otherwise result under this section is substantially greater than the deferral of acquisition expenses which would have resulted if actual acquisition expenses (including indirect expenses) and the actual useful life for such type of contract had been used.

(2) Adjustment to other contracts

If the Secretary exercises his authority with respect to any type of contract under paragraph (1), the Secretary shall adjust the percentage which would otherwise have applied under subsection (c)(1) to the category which includes such type of contract so that the exercise of such authority does not result in a decrease in the amount of revenue received under this chapter by reason of this section for any fiscal year.

(i) Treatment of qualified foreign contracts under adjusted current earnings preference

For purposes of determining adjusted current earnings under section 56(g), acquisition expenses with respect to contracts described in clause (iii) of subsection (e)(1)(B) shall be capitalized and amortized in accordance with the treatment generally required under generally accepted accounting principles as if this subsection applied to such contracts for all taxable years.

(j) Transitional rule

In the case of any taxable year which includes September 30, 1990, the amount taken into account as the net premiums (or negative capitalization amount) with respect to any category of specified insurance contracts shall be the amount which bears the same ratio to the amount which (but for this subsection) would be so taken into account as the number of days in such taxable year on or after September 30, 1990, bears to the total number of days in such taxable year.

(Added Pub. L. 101–508, title XI, §11301(a), Nov. 5, 1990, 104 Stat. 1388–445; amended Pub. L. 103–66, title XIII, §13261(d), Aug. 10, 1993, 107 Stat. 539; Pub. L. 104–191, title III, §301(h), Aug. 21, 1996, 110 Stat. 2052; Pub. L. 106–554, §1(a)(7) [title II, §202(a)(5), (b)(10)], Dec. 21, 2000, 114 Stat. 2763, 2763A–628, 2763A–629; Pub. L. 108–173, title XII, §1201(h), Dec. 8, 2003, 117 Stat. 2479; Pub. L. 109–280, title VIII, §844(e), Aug. 17, 2006, 120 Stat. 1013.)

AMENDMENTS

2006—Subsec. (e)(6). Pub. L. 109–280 added par. (6).

2003—Subsec. (e)(1)(B)(v). Pub. L. 108–173 added cl. (v).

2000—Subsec. (e)(1)(B)(iv). Pub. L. 106–554, §1(a)(7) [title II, §202(b)(10)], substituted "an Archer MSA" for "a Archer MSA".

Pub. L. 106–554, §1(a)(7) [title II, §202(a)(5)], substituted "Archer MSA" for "medical savings account".

1996—Subsec. (e)(1)(B)(iv). Pub. L. 104–191 added cl. (iv).

1993—Subsec. (g). Pub. L. 103–66 substituted "this section or section 197" for "this section".

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 applicable to contracts issued after Dec. 31, 1996, but only with respect to taxable years beginning after Dec. 31, 2009, and to specified policy acquisition expenses determined for taxable years beginning after Dec. 31, 2009, see section 844(g)(1), (4) of Pub. L. 109–280, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–173 applicable to taxable years beginning after Dec. 31, 2003, see section 1201(k) of Pub. L. 108–173, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–191 applicable to taxable years beginning after Dec. 31, 1996, see section 301(j) of Pub. L. 104–191, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable, except as otherwise provided, with respect to property acquired after Aug. 10, 1993, see section 13261(g) of Pub. L. 103–66, set out as an Effective Date note under section 197 of this title.

EFFECTIVE DATE

Pub. L. 101–508, title XI, §11301(d)(1), Nov. 5, 1990, 104 Stat. 1388–449, provided that: "The amendments made by subsections (a) and (c) [enacting this section] shall apply to taxable years ending on or after September 30, 1990. Any capitalization required by reason of such amendments shall not be treated as a change in method of accounting for purposes of the Internal Revenue Code of 1986."

Subchapter M—Regulated Investment Companies and Real Estate Investment Trusts

Part

I. Regulated investment companies.

II. Real estate investment trusts.

III. Provisions which apply to both regulated investment companies and real estate investment trusts.

IV. Real estate mortgage investment conduits.

[V. Repealed.]

AMENDMENTS

2004—Pub. L. 108–357, title VIII, §835(b)(12), Oct. 22, 2004, 118 Stat. 1594, struck out item for part V "Financial asset securitization investment trusts".

1996—Pub. L. 104–188, title I, §1621(c), Aug. 20, 1996, 110 Stat. 1867, added item for part V.

1988—Pub. L. 100–647, title I, §1018(u)(30), Nov. 10, 1988, 102 Stat. 3591, added item for part IV.

1978—Pub. L. 95–600, title III, §362(d)(8), Nov. 6, 1978, 92 Stat. 2852, added item for part III.

PART I—REGULATED INVESTMENT COMPANIES

Sec.

851. Definition of regulated investment company.

852. Taxation of regulated investment companies and their shareholders.

853. Foreign tax credit allowed to shareholders.

853A. Credits from tax credit bonds allowed to shareholders.

854. Limitations applicable to dividends received from regulated investment company.

855. Dividends paid by regulated investment company after close of taxable year.

AMENDMENTS

2009—Pub. L. 111–5, div. B, title I, §1541(b)(3), Feb. 17, 2009, 123 Stat. 362, added item 853A.

1980—Pub. L. 96–223, title IV, §404(b)(7), Apr. 2, 1980, 94 Stat. 307, inserted "and taxable interest" after "dividends" in item 854 for taxable years after Dec. 31, 1980, and before Jan. 1, 1982.

1960—Pub. L. 86–779, §10(b)(1), Sept. 14, 1960, 74 Stat. 1008, inserted "and Real Estate Investment Trusts" in subchapter M heading, part I and part II designations thereunder and part I designation preceding table of sections numbered 851 to 855.

§851. Definition of regulated investment company

(a) General rule

For purposes of this subtitle, the term "regulated investment company" means any domestic

corporation—

(1) which, at all times during the taxable year—

(A) is registered under the Investment Company Act of 1940, as amended (15 U.S.C. 80a–1 to 80b–2) as a management company or unit investment trust, or

(B) has in effect an election under such Act to be treated as a business development company, or

(2) which is a common trust fund or similar fund excluded by section 3(c)(3) of such Act (15 U.S.C. 80a–3(c)) from the definition of "investment company" and is not included in the definition of "common trust fund" by section 584(a).

(b) Limitations

A corporation shall not be considered a regulated investment company for any taxable year unless—

(1) it files with its return for the taxable year an election to be a regulated investment company or has made such election for a previous taxable year;

(2) at least 90 percent of its gross income is derived from—

(A) dividends, interest, payments with respect to securities loans (as defined in section 512(a)(5)), and gains from the sale or other disposition of stock or securities (as defined in section 2(a)(36) of the Investment Company Act of 1940, as amended) or foreign currencies, or other income (including but not limited to gains from options, futures or forward contracts) derived with respect to its business of investing in such stock, securities, or currencies, and

(B) net income derived from an interest in a qualified publicly traded partnership (as defined in subsection (h)); and

(3) at the close of each quarter of the taxable year—

(A) at least 50 percent of the value of its total assets is represented by—

(i) cash and cash items (including receivables), Government securities and securities of other regulated investment companies, and

(ii) other securities for purposes of this calculation limited, except and to the extent provided in subsection (e), in respect of any one issuer to an amount not greater in value than 5 percent of the value of the total assets of the taxpayer and to not more than 10 percent of the outstanding voting securities of such issuer, and

(B) not more than 25 percent of the value of its total assets is invested in—

(i) the securities (other than Government securities or the securities of other regulated investment companies) of any one issuer,

(ii) the securities (other than the securities of other regulated investment companies) of two or more issuers which the taxpayer controls and which are determined, under regulations prescribed by the Secretary, to be engaged in the same or similar trades or businesses or related trades or businesses, or

(iii) the securities of one or more qualified publicly traded partnerships (as defined in subsection (h)).

For purposes of paragraph (2), there shall be treated as dividends amounts included in gross income under section 951(a)(1)(A)(i) or 1293(a) for the taxable year to the extent that, under section 959(a)(1) or 1293(c) (as the case may be), there is a distribution out of the earnings and profits of the taxable year which are attributable to the amounts so included. For purposes of paragraph (2), the Secretary may by regulation exclude from qualifying income foreign currency gains which are not directly related to the company's principal business of investing in stock or securities (or options and futures with respect to stock or securities). For purposes of paragraph (2), amounts excludable from gross income under section 103(a) shall be treated as included in gross income. Income derived from a partnership (other than a qualified publicly traded partnership as defined in subsection (h)) or trust shall be treated as described in paragraph (2) only to the extent such income is attributable to items

of income of the partnership or trust (as the case may be) which would be described in paragraph (2) if realized by the regulated investment company in the same manner as realized by the partnership or trust.

(c) Rules applicable to subsection (b)(3)

For purposes of subsection (b)(3) and this subsection—

(1) In ascertaining the value of the taxpayer's investment in the securities of an issuer, for the purposes of subparagraph (B), there shall be included its proper proportion of the investment of any other corporation, a member of a controlled group, in the securities of such issuer, as determined under regulations prescribed by the Secretary.

(2) The term "controls" means the ownership in a corporation of 20 percent or more of the total combined voting power of all classes of stock entitled to vote.

(3) The term "controlled group" means one or more chains of corporations connected through stock ownership with the taxpayer if—

(A) 20 percent or more of the total combined voting power of all classes of stock entitled to vote of each of the corporations (except the taxpayer) is owned directly by one or more of the other corporations, and

(B) the taxpayer owns directly 20 percent or more of the total combined voting power of all classes of stock entitled to vote, of at least one of the other corporations.

(4) The term "value" means, with respect to securities (other than those of majority-owned subsidiaries) for which market quotations are readily available, the market value of such securities; and with respect to other securities and assets, fair value as determined in good faith by the board of directors, except that in the case of securities of majority-owned subsidiaries which are investment companies such fair value shall not exceed market value or asset value, whichever is higher.

(5) The term "outstanding voting securities of such issuer" shall include the equity securities of a qualified publicly traded partnership (as defined in subsection (h)).

(6) All other terms shall have the same meaning as when used in the Investment Company Act of 1940, as amended.

(d) Determination of status

(1) In general

A corporation which meets the requirements of subsections (b)(3) and (c) at the close of any quarter shall not lose its status as a regulated investment company because of a discrepancy during a subsequent quarter between the value of its various investments and such requirements unless such discrepancy exists immediately after the acquisition of any security or other property and is wholly or partly the result of such acquisition. A corporation which does not meet such requirements at the close of any quarter by reason of a discrepancy existing immediately after the acquisition of any security or other property which is wholly or partly the result of such acquisition during such quarter shall not lose its status for such quarter as a regulated investment company if such discrepancy is eliminated within 30 days after the close of such quarter and in such cases it shall be considered to have met such requirements at the close of such quarter for purposes of applying the preceding sentence.

(2) Special rules regarding failure to satisfy requirements

If paragraph (1) does not preserve a corporation's status as a regulated investment company for any particular quarter—

(A) In general

A corporation that fails to meet the requirements of subsection (b)(3) (other than a failure described in subparagraph (B)(i)) for such quarter shall nevertheless be considered to have satisfied the requirements of such subsection for such quarter if—

(i) following the corporation's identification of the failure to satisfy the requirements of

such subsection for such quarter, a description of each asset that causes the corporation to fail to satisfy the requirements of such subsection at the close of such quarter is set forth in a schedule for such quarter filed in the manner provided by the Secretary,

(ii) the failure to meet the requirements of such subsection for such quarter is due to reasonable cause and not due to willful neglect, and

(iii)(I) the corporation disposes of the assets set forth on the schedule specified in clause (i) within 6 months after the last day of the quarter in which the corporation's identification of the failure to satisfy the requirements of such subsection occurred or such other time period prescribed by the Secretary and in the manner prescribed by the Secretary, or

(II) the requirements of such subsection are otherwise met within the time period specified in subclause (I).

(B) Rule for certain de minimis failures

A corporation that fails to meet the requirements of subsection (b)(3) for such quarter shall nevertheless be considered to have satisfied the requirements of such subsection for such quarter if—

(i) such failure is due to the ownership of assets the total value of which does not exceed the lesser of—

(I) 1 percent of the total value of the corporation's assets at the end of the quarter for which such measurement is done, or

(II) $10,000,000, and

(ii)(I) the corporation, following the identification of such failure, disposes of assets in order to meet the requirements of such subsection within 6 months after the last day of the quarter in which the corporation's identification of the failure to satisfy the requirements of such subsection occurred or such other time period prescribed by the Secretary and in the manner prescribed by the Secretary, or

(II) the requirements of such subsection are otherwise met within the time period specified in subclause (I).

(C) Tax

(i) Tax imposed

If subparagraph (A) applies to a corporation for any quarter, there is hereby imposed on such corporation a tax in an amount equal to the greater of—

(I) $50,000, or

(II) the amount determined (pursuant to regulations promulgated by the Secretary) by multiplying the net income generated by the assets described in the schedule specified in subparagraph (A)(i) for the period specified in clause (ii) by the highest rate of tax specified in section 11.

(ii) Period

For purposes of clause (i)(II), the period described in this clause is the period beginning on the first date that the failure to satisfy the requirements of subsection (b)(3) occurs as a result of the ownership of such assets and ending on the earlier of the date on which the corporation disposes of such assets or the end of the first quarter when there is no longer a failure to satisfy such subsection.

(iii) Administrative provisions

For purposes of subtitle F, a tax imposed by this subparagraph shall be treated as an excise tax with respect to which the deficiency procedures of such subtitle apply.

(e) Investment companies furnishing capital to development corporations

(1) General rule

If the Securities and Exchange Commission determines, in accordance with regulations issued

by it, and certifies to the Secretary not earlier than 60 days prior to the close of the taxable year of a management company or a business development company described in subsection (a)(1), that such investment company is principally engaged in the furnishing of capital to other corporations which are principally engaged in the development or exploitation of inventions, technological improvements, new processes, or products not previously generally available, such investment company may, in the computation of 50 percent of the value of its assets under subparagraph (A) of subsection (b)(3) for any quarter of such taxable year, include the value of any securities of an issuer, whether or not the investment company owns more than 10 percent of the outstanding voting securities of such issuer, the basis of which, when added to the basis of the investment company for securities of such issuer previously acquired, did not exceed 5 percent of the value of the total assets of the investment company at the time of the subsequent acquisition of securities. The preceding sentence shall not apply to the securities of an issuer if the investment company has continuously held any security of such issuer (or of any predecessor company of such issuer as determined under regulations prescribed by the Secretary) for 10 or more years preceding such quarter of such taxable year.

(2) Limitation

The provisions of this subsection shall not apply at the close of any quarter of a taxable year to an investment company if at the close of such quarter more than 25 percent of the value of its total assets is represented by securities of issuers with respect to each of which the investment company holds more than 10 percent of the outstanding voting securities of such issuer and in respect of each of which or any predecessor thereof the investment company has continuously held any security for 10 or more years preceding such quarter unless the value of its total assets so represented is reduced to 25 percent or less within 30 days after the close of such quarter.

(3) Determination of status

For purposes of this subsection, unless the Securities and Exchange Commission determines otherwise, a corporation shall be considered to be principally engaged in the development or exploitation of inventions, technological improvements, new processes, or products not previously generally available, for at least 10 years after the date of the first acquisition of any security in such corporation or any predecessor thereof by such investment company if at the date of such acquisition the corporation or its predecessor was principally so engaged, and an investment company shall be considered at any date to be furnishing capital to any company whose securities it holds if within 10 years prior to such date it has acquired any of such securities, or any securities surrendered in exchange therefor, from such other company or predecessor thereof. For purposes of the certification under this subsection, the Securities and Exchange Commission shall have authority to issue such rules, regulations and orders, and to conduct such investigations and hearings, either public or private, as it may deem appropriate.

(4) Definitions

The terms used in this subsection shall have the same meaning as in subsections (b)(3) and (c) of this section.

(f) Certain unit investment trusts

For purposes of this title—

(1) A unit investment trust (as defined in the Investment Company Act of 1940)—

(A) which is registered under such Act and issues periodic payment plan certificates (as defined in such Act) in one or more series,

(B) substantially all of the assets of which, as to all such series, consist of (i) securities issued by a single management company (as defined in such Act) and securities acquired pursuant to subparagraph (C), or (ii) securities issued by a single other corporation, and

(C) which has no power to invest in any other securities except securities issued by a single other management company, when permitted by such Act or the rules and regulations of the Securities and Exchange Commission,

shall not be treated as a person.

(2) In the case of a unit investment trust described in paragraph (1)—

(A) each holder of an interest in such trust shall, to the extent of such interest, be treated as owning a proportionate share of the assets of such trust;

(B) the basis of the assets of such trust which are treated under subparagraph (A) as being owned by a holder of an interest in such trust shall be the same as the basis of his interest in such trust; and

(C) in determining the period for which the holder of an interest in such trust has held the assets of the trust which are treated under subparagraph (A) as being owned by him, there shall be included the period for which such holder has held his interest in such trust.

This subsection shall not apply in the case of a unit investment trust which is a segregated asset account under the insurance laws or regulations of a State.

(g) Special rule for series funds

(1) In general

In the case of a regulated investment company (within the meaning of subsection (a)) having more than one fund, each fund of such regulated investment company shall be treated as a separate corporation for purposes of this title (except with respect to the definitional requirement of subsection (a)).

(2) Fund defined

For purposes of paragraph (1) the term "fund" means a segregated portfolio of assets, the beneficial interests in which are owned by the holders of a class or series of stock of the regulated investment company that is preferred over all other classes or series in respect of such portfolio of assets.

(h) Qualified publicly traded partnership

For purposes of this section, the term "qualified publicly traded partnership" means a publicly traded partnership described in section 7704(b) other than a partnership which would satisfy the gross income requirements of section 7704(c)(2) if qualifying income included only income described in subsection (b)(2)(A).

(i) Failure to satisfy gross income test

(1) Disclosure requirement

A corporation that fails to meet the requirement of paragraph (2) of subsection (b) for any taxable year shall nevertheless be considered to have satisfied the requirement of such paragraph for such taxable year if—

(A) following the corporation's identification of the failure to meet such requirement for such taxable year, a description of each item of its gross income described in such paragraph is set forth in a schedule for such taxable year filed in the manner provided by the Secretary, and

(B) the failure to meet such requirement is due to reasonable cause and not due to willful neglect.

(2) Imposition of tax on failures

If paragraph (1) applies to a regulated investment company for any taxable year, there is hereby imposed on such company a tax in an amount equal to the excess of—

(A) the gross income of such company which is not derived from sources referred to in subsection (b)(2), over

(B) 1/9 of the gross income of such company which is derived from such sources.

(Aug. 16, 1954, ch. 736, 68A Stat. 268; Pub. L. 85–866, title I, §38, Sept. 2, 1958, 72 Stat. 1638; Pub. L. 91–172, title IX, §908(a), Dec. 30, 1969, 83 Stat. 717; Pub. L. 94–12, title VI, §602(a)(2), Mar. 29, 1975, 89 Stat. 58; Pub. L. 94–455, title XIX, §§1901(a)(109), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1783, 1834; Pub. L. 95–345, §2(a)(3), Aug. 15, 1978, 92 Stat. 481; Pub. L. 95–600, title VII,

§701(s)(1), Nov. 6, 1978, 92 Stat. 2911; Pub. L. 97–424, title V, §547(b)(1), Jan. 6, 1983, 96 Stat. 2199; Pub. L. 98–369, div. A, title X, §1071(a)(1), July 18, 1984, 98 Stat. 1049; Pub. L. 99–514, title VI, §§652(a), (b), 653(a)–(c), 654(a), title XII, §1235(f)(3), Oct. 22, 1986, 100 Stat. 2297, 2298, 2575; Pub. L. 100–647, title I, §1006(m), (n)(1), (2)(A), (B), (4), (5), (o), Nov. 10, 1988, 102 Stat. 3415, 3416; Pub. L. 105–34, title XII, §1271(a)–(b)(7), Aug. 5, 1997, 111 Stat. 1036, 1037; Pub. L. 108–357, title III, §331(a)–(d), (f), Oct. 22, 2004, 118 Stat. 1476; Pub. L. 111–325, title II, §201(a), (b), Dec. 22, 2010, 124 Stat. 3539, 3540.)

REFERENCES IN TEXT

The Investment Company Act of 1940, as amended, referred to in subsecs. (a)(1), (b)(2)(A), (c)(6), and (f)(1), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§80a–1 et seq.) of chapter 2D of Title 15, Commerce and Trade. Section 2(a)(36) of the Act is classified to section 80a–2(a)(36) of Title 15. For complete classification of this Act to the Code, see section 80a–51 of Title 15 and Tables.

AMENDMENTS

2010—Subsec. (d). Pub. L. 111–325, §201(a), designated existing provisions as par. (1), inserted heading, and added par. (2).

Subsec. (i). Pub. L. 111–325, §201(b), added subsec. (i).

2004—Subsec. (b). Pub. L. 108–357, §331(b), inserted "(other than a qualified publicly traded partnership as defined in subsection (h))" after "derived from a partnership" in concluding provisions.

Subsec. (b)(2). Pub. L. 108–357, §331(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "at least 90 percent of its gross income is derived from dividends, interest, payments with respect to securities loans (as defined in section 512(a)(5)), and gains from the sale or other disposition of stock or securities (as defined in section 2(a)(36) of the Investment Company Act of 1940, as amended) or foreign currencies, or other income (including but not limited to gains from options, futures, or forward contracts) derived with respect to its business of investing in such stock, securities, or currencies; and".

Subsec. (b)(3)(B). Pub. L. 108–357, §331(f), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "not more than 25 percent of the value of its total assets is invested in the securities (other than Government securities or the securities of other regulated investment companies) of any one issuer, or of two or more issuers which the taxpayer controls and which are determined, under regulations prescribed by the Secretary, to be engaged in the same or similar trades or businesses or related trades or businesses."

Subsec. (c)(5), (6). Pub. L. 108–357, §331(c), added par. (5) and redesignated former par. (5) as (6).

Subsec. (h). Pub. L. 108–357, §331(d), added subsec. (h).

1997—Subsec. (b). Pub. L. 105–34, §1271(b)(1), in concluding provisions, substituted "paragraph (2), amounts excludable" for "paragraphs (2) and (3), amounts excludable" and struck out "In the case of the taxable year in which a regulated investment company is completely liquidated, there shall not be taken into account under paragraph (3) any gain from the sale, exchange, or distribution of any property after the adoption of the plan of complete liquidation." at end.

Subsec. (b)(2). Pub. L. 105–34, §1271(a), inserted "and" at end.

Subsec. (b)(3), (4). Pub. L. 105–34, §1271(a), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: "less than 30 percent of its gross income is derived from the sale or disposition of any of the following which was held for less than 3 months:

"(A) stock or securities (as defined in section 2(a)(36) of the Investment Company Act of 1940, as amended),

"(B) options, futures, or forward contracts (other than options, futures, or forward contracts on foreign currencies), or

"(C) foreign currencies (or options, futures, or forward contracts on foreign currencies) but only if such currencies (or options, futures, or forward contracts) are not directly related to the company's principal business of investing in stock or securities (or options and futures with respect to stocks or securities), and".

Subsec. (c). Pub. L. 105–34, §1271(b)(2), substituted "subsection (b)(3)" for "subsection (b)(4)" in heading and introductory provisions.

Subsec. (d). Pub. L. 105–34, §1271(b)(3), substituted "subsections (b)(3)" for "subsections (b)(4)".

Subsec. (e)(1). Pub. L. 105–34, §1271(b)(4), substituted "subsection (b)(3)" for "subsection (b)(4)".

Subsec. (e)(4). Pub. L. 105–34, §1271(b)(5), substituted "subsections (b)(3)" for "subsections (b)(4)".

Subsec. (g). Pub. L. 105–34, §1271(b)(6), redesignated subsec. (h) as (g) and struck out former subsec. (g) which provided for treatment of certain hedging transactions.

Subsec. (g)(3). Pub. L. 105–34, §1271(b)(7), struck out par. (3) which provided special rule for abnormal

redemptions.

Subsec. (h). Pub. L. 105–34, §1271(b)(6), redesignated subsec. (h) as (g).

1988—Subsec. (a)(1). Pub. L. 100–647, §1006(m)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "which, at all times during the taxable year, is registered under the Investment Company Act of 1940, as amended (15 U.S.C. 80a–1 to 80b–2), as a management company, business development company, or unit investment trust, or".

Subsec. (b). Pub. L. 100–647, §1006(n)(1), (5), inserted at end "Income derived from a partnership or trust shall be treated as described in paragraph (2) only to the extent such income is attributable to items of income of the partnership or trust (as the case may be) which would be described in paragraph (2) if realized by the regulated investment company in the same manner as realized by the partnership or trust. In the case of the taxable year in which a regulated investment company is completely liquidated, there shall not be taken into account under paragraph (3) any gain from the sale, exchange, or distribution of any property after the adoption of the plan of complete liquidation."

Pub. L. 100–647, §1006(n)(2)(B), substituted "which are not directly related" for "which are not ancillary" in last sentence.

Subsec. (b)(3). Pub. L. 100–647, §1006(n)(2)(A), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "less than 30 percent of its gross income is derived from the sale or other disposition of stock or securities held for less than 3 months; and".

Subsec. (e)(1). Pub. L. 100–647, §1006(m)(2), substituted "a management company or a business development company described in subsection (a)(1)" for "a registered management company or registered business development company".

Subsec. (g)(2)(A)(i). Pub. L. 100–647, §1006(n)(4), substituted "contractual obligation" for "contractual option".

Subsec. (h). Pub. L. 100–647, §1006(o)(1), redesignated subsec. (q) as (h).

Subsec. (h)(3). Pub. L. 100–647, §1006(o)(2), added par. (3).

Subsec. (q). Pub. L. 100–647, §1006(o)(1), redesignated subsec. (q) as (h).

1986—Subsec. (a)(1). Pub. L. 99–514, §652(a), substituted "as a management company, business development company, or unit investment trust" for "either as a management company or as a unit investment trust".

Subsec. (b). Pub. L. 99–514, §1235(f)(3), inserted "or 1293(a)" and "or 1293(c) (as the case may be)", in concluding provision.

Pub. L. 99–514, §653(c), inserted before last sentence "For purposes of paragraph (2), the Secretary may by regulation exclude from qualifying income foreign currency gains which are not ancillary to the company's principal business of investing in stock or securities (or options and futures with respect to stock or securities)."

Subsec. (b)(2). Pub. L. 99–514, §653(b), inserted "(as defined in section 2(a)(36) of the Investment Company Act of 1940, as amended) or foreign currencies, or other income (including but not limited to gains from options, futures, or forward contracts) derived with respect to its business of investing in such stock, securities, or currencies".

Subsec. (e)(1). Pub. L. 99–514, §652(b), substituted "registered management company or registered business development company" for "registered management company".

Subsec. (g). Pub. L. 99–514, §653(a), added subsec. (g).

Subsec. (q). Pub. L. 99–514, §654(a), added subsec. (q).

1984—Subsec. (a). Pub. L. 98–369 struck out "(other than a personal holding company as defined in section 542)" after "any domestic corporation" in introductory provisions.

1983—Subsec. (b). Pub. L. 97–424 substituted "section 103(a)" for "section 103(a)(1)" after "gross income under".

1978—Subsec. (b). Pub. L. 95–600 required that for purposes of pars. (2) and (3), amounts excludable from gross income under section 103(a)(1) shall be treated as included in gross income.

Subsec. (b)(2). Pub. L. 95–345 inserted provision relating to payments with respect to securities loans.

1976—Subsec. (a)(1). Pub. L. 94–455, §1901(a)(109)(A), struck out "54 Stat. 789;" before "15 U.S.C. 80a–1 to 80b–2)".

Subsec. (b)(1), (4)(B). Pub. L. 94–455, §1901(a)(109)(B), struck out "which began after December 31, 1941" after "previous taxable year" in par. (1), and "or his delegate" after "Secretary" in par. (4)(B).

Subsecs. (c), (d). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary" wherever appearing.

1975—Subsec. (b). Pub. L. 94–12 inserted provisions directing that, for purposes of par. (2), there shall be treated as dividends amounts included in gross income under section 951(a)(1)(A)(i) for the taxable year to the

extent that, under section 959(a)(1), there is a distribution out of earnings and profits of the taxable year which are attributable to the amounts so included.

1969—Subsec. (f). Pub. L. 91–172 added subsec. (f).

1958—Subsec. (e)(1). Pub. L. 85–866, §38(a), substituted "not earlier than 60 days" for "not less than 60 days" in first sentence.

Subsec. (e)(2). Pub. L. 85–866, §38(b), substituted "issuer" for "issues".

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–325, title II, §201(d), Dec. 22, 2010, 124 Stat. 3541, provided that: "The amendments made by this section [amending this section and section 852 of this title] shall apply to taxable years with respect to which the due date (determined with regard to any extensions) of the return of tax for such taxable year is after the date of the enactment of this Act [Dec. 22, 2010]."

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years beginning after Oct. 22, 2004, see section 331(h) of Pub. L. 108–357, set out as a note under section 469 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to taxable years beginning after Aug. 5, 1997, see section 1271(c) of Pub. L. 105–34, set out as a note under section 817 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1006(n)(2)(C), Nov. 10, 1988, 102 Stat. 3415, provided that: "Subparagraph (C) of section 851(b)(3) of the 1986 Code (as amended by subparagraph (A)), and the amendment made by subparagraph (B) [amending this section], shall apply to taxable years beginning after the date of the enactment of this Act [Nov. 10, 1988]."

Amendment by section 1006(m), (n)(1), (2)(A), (4), (5), (o) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title VI, §652(c), Oct. 22, 1986, 100 Stat. 2297, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1986."

Pub. L. 99–514, title VI, §653(d), Oct. 22, 1986, 100 Stat. 2298, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 22, 1986]."

Pub. L. 99–514, title VI, §654(b), Oct. 22, 1986, 100 Stat. 2298, provided that:

"(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 22, 1986].

"(2) TREATMENT OF CERTAIN EXISTING SERIES FUNDS.—In the case of a regulated investment company which has more than one fund on the date of the enactment of this act, and has before such date been treated for Federal income tax purposes as a single corporation—

"(A) the amendment made by subsection (a), and the resulting treatment of each fund as a separate corporation, shall not give rise to the realization or recognition of income or loss by such regulated investment company, its funds, or its shareholders, and

"(B) the tax attributes of such regulated investment company shall be appropriately allocated among its funds."

Amendment by section 1235(f)(3) of Pub. L. 99–514 applicable to taxable years of foreign corporations beginning after Dec. 31, 1986, see section 1235(h) of Pub. L. 99–514, set out as an Effective Date note under section 1291 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1982, with certain exceptions, see section 1071(a)(5) of Pub. L. 98–369, set out as a note under section 852 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title VII, §701(s)(3), Nov. 6, 1978, 92 Stat. 2911, provided that: "The amendments made by this section [amending this section and section 852 of this title] shall apply to taxable years beginning after December 31, 1975."

Amendment by Pub. L. 95–345 applicable with respect to amounts received after Dec. 31, 1976, as payments with respect to securities loans (as defined in section 512(a)(5) of this title), and transfers of securities, under agreements described in section 1058 of this title, occurring after such date, see section 2(e) of Pub. L. 95–345, set out as a note under section 509 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(109) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–12 applicable to taxable years of foreign corporations beginning after Dec. 31, 1975, and to taxable years of United States shareholders (within the meaning of section 951(b) of this title) within which or with which such taxable years of such foreign corporations end, see section 602(f) of Pub. L. 94–12, set out as an Effective Date note under section 955 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title IX, §908(b), Dec. 30, 1969, 83 Stat. 718, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years of unit investment trusts ending after December 31, 1968, and to taxable years of holders of interests in such trusts ending with or within such taxable years of such trusts. The enactment of this section shall not be construed to result in the realization of gain or loss by any unit investment trust or by any holder of an interest in a unit investment trust."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

§852. Taxation of regulated investment companies and their shareholders

(a) Requirements applicable to regulated investment companies

The provisions of this part (other than subsection (c) of this section) shall not be applicable to a regulated investment company for a taxable year unless—

(1) the deduction for dividends paid during the taxable year (as defined in section 561, but without regard to capital gain dividends) equals or exceeds the sum of—

(A) 90 percent of its investment company taxable income for the taxable year determined without regard to subsection (b)(2)(D); and

(B) 90 percent of the excess of (i) its interest income excludable from gross income under section 103(a) over (ii) its deductions disallowed under sections 265, 171(a)(2), and

(2) either—

(A) the provisions of this part applied to the investment company for all taxable years ending on or after November 8, 1983, or

(B) as of the close of the taxable year, the investment company has no earnings and profits accumulated in any taxable year to which the provisions of this part (or the corresponding provisions of prior law) did not apply to it.

The Secretary may waive the requirements of paragraph (1) for any taxable year if the regulated investment company establishes to the satisfaction of the Secretary that it was unable to meet such requirements by reason of distributions previously made to meet the requirements of section 4982.

(b) Method of taxation of companies and shareholders

(1) Imposition of tax on regulated investment companies

There is hereby imposed for each taxable year upon the investment company taxable income of every regulated investment company a tax computed as provided in section 11, as though the investment company taxable income were the taxable income referred to in section 11. In the case of a regulated investment company which is a personal holding company (as defined in section

542) or which fails to comply for the taxable year with regulations prescribed by the Secretary for the purpose of ascertaining the actual ownership of its stock, such tax shall be computed at the highest rate of tax specified in section 11(b).

(2) Investment company taxable income

The investment company taxable income shall be the taxable income of the regulated investment company adjusted as follows:

(A) There shall be excluded the amount of the net capital gain, if any.

(B) The net operating loss deduction provided in section 172 shall not be allowed.

(C) The deductions for corporations provided in part VIII (except section 248) in subchapter B (section 241 and following, relating to the deduction for dividends received, etc.) shall not be allowed.

(D) the [1] deduction for dividends paid (as defined in section 561) shall be allowed, but shall be computed without regard to capital gain dividends and exempt-interest dividends.

(E) The taxable income shall be computed without regard to section 443(b) (relating to computation of tax on change of annual accounting period).

(F) The taxable income shall be computed without regard to section 454(b) (relating to short-term obligations issued on a discount basis) if the company so elects in a manner prescribed by the Secretary.

(G) There shall be deducted an amount equal to the tax imposed by subsections (d)(2) and (i) of section 851 for the taxable year.

(3) Capital gains

(A) Imposition of tax

There is hereby imposed for each taxable year in the case of every regulated investment company a tax, determined as provided in section 1201(a), on the excess, if any, of the net capital gain over the deduction for dividends paid (as defined in section 561) determined with reference to capital gain dividends only.

(B) Treatment of capital gain dividends by shareholders

A capital gain dividend shall be treated by the shareholders as a gain from the sale or exchange of a capital asset held for more than 1 year.

(C) Definition of capital gain dividend

For purposes of this part—

(i) In general

Except as provided in clause (ii), a capital gain dividend is any dividend, or part thereof, which is reported by the company as a capital gain dividend in written statements furnished to its shareholders.

(ii) Excess reported amounts

If the aggregate reported amount with respect to the company for any taxable year exceeds the net capital gain of the company for such taxable year, a capital gain dividend is the excess of—

(I) the reported capital gain dividend amount, over

(II) the excess reported amount which is allocable to such reported capital gain dividend amount.

(iii) Allocation of excess reported amount

(I) In general

Except as provided in subclause (II), the excess reported amount (if any) which is allocable to the reported capital gain dividend amount is that portion of the excess reported amount which bears the same ratio to the excess reported amount as the reported capital gain dividend amount bears to the aggregate reported amount.

(II) Special rule for noncalendar year taxpayers

In the case of any taxable year which does not begin and end in the same calendar year, if the post-December reported amount equals or exceeds the excess reported amount for such taxable year, subclause (I) shall be applied by substituting "post-December reported amount" for "aggregate reported amount" and no excess reported amount shall be allocated to any dividend paid on or before December 31 of such taxable year.

(iv) Definitions

For purposes of this subparagraph—

(I) Reported capital gain dividend amount

The term "reported capital gain dividend amount" means the amount reported to its shareholders under clause (i) as a capital gain dividend.

(II) Excess reported amount

The term "excess reported amount" means the excess of the aggregate reported amount over the net capital gain of the company for the taxable year.

(III) Aggregate reported amount

The term "aggregate reported amount" means the aggregate amount of dividends reported by the company under clause (i) as capital gain dividends for the taxable year (including capital gain dividends paid after the close of the taxable year described in section 855).

(IV) Post-December reported amount

The term "post-December reported amount" means the aggregate reported amount determined by taking into account only dividends paid after December 31 of the taxable year.

(v) Adjustment for determinations

If there is an increase in the excess described in subparagraph (A) for the taxable year which results from a determination (as defined in section 860(e)), the company may, subject to the limitations of this subparagraph, increase the amount of capital gain dividends reported under clause (i).

(vi) Special rule for losses late in the calendar year

For special rule for certain losses after October 31, see paragraph (8).

(D) Treatment by shareholders of undistributed capital gains

(i) Every shareholder of a regulated investment company at the close of the company's taxable year shall include, in computing his long-term capital gains in his return for his taxable year in which the last day of the company's taxable year falls, such amount as the company shall designate in respect of such shares in a written notice mailed to its shareholders at any time prior to the expiration of 60 days after close of its taxable year, but the amount so includible by any shareholder shall not exceed that part of the amount subjected to tax in subparagraph (A) which he would have received if all of such amount had been distributed as capital gain dividends by the company to the holders of such shares at the close of its taxable year.

(ii) For purposes of this title, every such shareholder shall be deemed to have paid, for his taxable year under clause (i), the tax imposed by subparagraph (A) on the amounts required by this subparagraph to be included in respect of such shares in computing his long-term capital gains for that year; and such shareholder shall be allowed credit or refund, as the case may be, for the tax so deemed to have been paid by him.

(iii) The adjusted basis of such shares in the hands of the shareholder shall be increased, with respect to the amounts required by this subparagraph to be included in computing his long-term capital gains, by the difference between the amount of such includible gains and the tax deemed paid by such shareholder in respect of such shares under clause (ii).

(iv) In the event of such designation the tax imposed by subparagraph (A) shall be paid by the regulated investment company within 30 days after close of its taxable year.

(v) The earnings and profits of such regulated investment company, and the earnings and profits of any such shareholder which is a corporation, shall be appropriately adjusted in accordance with regulations prescribed by the Secretary.

(E) Certain distributions

In the case of a distribution to which section 897 does not apply by reason of the second sentence of section 897(h)(1), the amount of such distribution which would be included in computing long-term capital gains for the shareholder under subparagraph (B) or (D) (without regard to this subparagraph)—

(i) shall not be included in computing such shareholder's long-term capital gains, and

(ii) shall be included in such shareholder's gross income as a dividend from the regulated investment company.

(4) Loss on sale or exchange of stock held 6 months or less

(A) Loss attributable to capital gain dividend

If—

(i) subparagraph (B) or (D) of paragraph (3) provides that any amount with respect to any share is to be treated as long-term capital gain, and

(ii) such share is held by the taxpayer for 6 months or less,

then any loss (to the extent not disallowed under subparagraph (B)) on the sale or exchange of such share shall, to the extent of the amount described in clause (i), be treated as a long-term capital loss.

(B) Loss attributable to exempt-interest dividend

If—

(i) a shareholder of a regulated investment company receives an exempt-interest dividend with respect to any share, and

(ii) such share is held by the taxpayer for 6 months or less,

then any loss on the sale or exchange of such share shall, to the extent of the amount of such exempt-interest dividend, be disallowed.

(C) Determination of holding periods

For purposes of this paragraph, in determining the period for which the taxpayer has held any share of stock—

(i) the rules of paragraphs (3) and (4) of section 246(c) shall apply, and

(ii) there shall not be taken into account any day which is more than 6 months after the date on which such share becomes ex-dividend.

(D) Losses incurred under a periodic liquidation plan

To the extent provided in regulations, subparagraphs (A) and (B) shall not apply to losses incurred on the sale or exchange of shares of stock in a regulated investment company pursuant to a plan which provides for the periodic liquidation of such shares.

(E) Exception to holding period requirement for certain regularly declared exempt-interest dividends

(i) Daily dividend companies

Except as otherwise provided by regulations, subparagraph (B) shall not apply with respect to a regular dividend paid by a regulated investment company which declares exempt-interest dividends on a daily basis in an amount equal to at least 90 percent of its net tax-exempt interest and distributes such dividends on a monthly or more frequent basis.

(ii) Authority to shorten required holding period with respect to other companies

In the case of a regulated investment company (other than a company described in clause (i)) which regularly distributes at least 90 percent of its net tax-exempt interest, the Secretary may by regulations prescribe that subparagraph (B) (and subparagraph (C) to the extent it relates to subparagraph (B)) shall be applied on the basis of a holding period requirement shorter than 6 months; except that such shorter holding period requirement shall not be shorter than the greater of 31 days or the period between regular distributions of exempt-interest dividends.

(5) Exempt-interest dividends

If, at the close of each quarter of its taxable year, at least 50 percent of the value (as defined in section 851(c)(4)) of the total assets of the regulated investment company consists of obligations described in section 103(a), such company shall be qualified to pay exempt-interest dividends, as defined herein, to its shareholders.

(A) Definition of exempt-interest dividend

(i) In general

Except as provided in clause (ii), an exempt-interest dividend is any dividend or part thereof (other than a capital gain dividend) paid by a regulated investment company and reported by the company as an exempt-interest dividend in written statements furnished to its shareholders.

(ii) Excess reported amounts

If the aggregate reported amount with respect to the company for any taxable year exceeds the exempt interest of the company for such taxable year, an exempt-interest dividend is the excess of—

(I) the reported exempt-interest dividend amount, over

(II) the excess reported amount which is allocable to such reported exempt-interest dividend amount.

(iii) Allocation of excess reported amount

(I) In general

Except as provided in subclause (II), the excess reported amount (if any) which is allocable to the reported exempt-interest dividend amount is that portion of the excess reported amount which bears the same ratio to the excess reported amount as the reported exempt-interest dividend amount bears to the aggregate reported amount.

(II) Special rule for noncalendar year taxpayers

In the case of any taxable year which does not begin and end in the same calendar year, if the post-December reported amount equals or exceeds the excess reported amount for such taxable year, subclause (I) shall be applied by substituting "post-December reported amount" for "aggregate reported amount" and no excess reported amount shall be allocated to any dividend paid on or before December 31 of such taxable year.

(iv) Definitions

For purposes of this subparagraph—

(I) Reported exempt-interest dividend amount

The term "reported exempt-interest dividend amount" means the amount reported to its shareholders under clause (i) as an exempt-interest dividend.

(II) Excess reported amount

The term "excess reported amount" means the excess of the aggregate reported amount over the exempt interest of the company for the taxable year.

(III) Aggregate reported amount

The term "aggregate reported amount" means the aggregate amount of dividends reported by the company under clause (i) as exempt-interest dividends for the taxable year (including exempt-interest dividends paid after the close of the taxable year described in section 855).

(IV) Post-December reported amount

The term "post-December reported amount" means the aggregate reported amount determined by taking into account only dividends paid after December 31 of the taxable year.

(V) Exempt interest

The term "exempt interest" means, with respect to any regulated investment company, the excess of the amount of interest excludable from gross income under section 103(a) over the amounts disallowed as deductions under sections 265 and 171(a)(2).

(B) Treatment of exempt-interest dividends by shareholders

An exempt-interest dividend shall be treated by the shareholders for all purposes of this subtitle as an item of interest excludable from gross income under section 103(a). Such purposes include but are not limited to—

(i) the determination of gross income and taxable income,

(ii) the determination of distributable net income under subchapter J,

(iii) the allowance of, or calculation of the amount of, any credit or deduction, and

(iv) the determination of the basis in the hands of any shareholder of any share of stock of the company.

(6) Section 311(b) not to apply to certain distributions

Section 311(b) shall not apply to any distribution by a regulated investment company to which this part applies, if such distribution is in redemption of its stock upon the demand of the shareholder.

(7) Time certain dividends taken into account

For purposes of this title, any dividend declared by a regulated investment company in October, November, or December of any calendar year and payable to shareholders of record on a specified date in such a month shall be deemed—

(A) to have been received by each shareholder on December 31 of such calendar year, and

(B) to have been paid by such company on December 31 of such calendar year (or, if earlier, as provided in section 855).

The preceding sentence shall apply only if such dividend is actually paid by the company during January of the following calendar year.

(8) Elective deferral of certain late-year losses

(A) In general

Except as otherwise provided by the Secretary, a regulated investment company may elect for any taxable year to treat any portion of any qualified late-year loss for such taxable year as arising on the first day of the following taxable year for purposes of this title.

(B) Qualified late-year loss

For purposes of this paragraph, the term "qualified late-year loss" means—

(i) any post-October capital loss, and

(ii) any late-year ordinary loss.

(C) Post-October capital loss

For purposes of this paragraph, the term "post-October capital loss" means the greatest of—

(i) the net capital loss attributable to the portion of the taxable year after October 31,

(ii) the net long-term capital loss attributable to such portion of the taxable year, or

(iii) the net short-term capital loss attributable to such portion of the taxable year.

(D) Late-year ordinary loss

For purposes of this paragraph, the term "late-year ordinary loss" means the excess (if any) of—

(i) the sum of—

(I) the specified losses (as defined in section 4982(e)(5)(B)(ii)) attributable to the portion of the taxable year after October 31, plus

(II) the ordinary losses not described in subclause (I) attributable to the portion of the taxable year after December 31, over

(ii) the sum of—

(I) the specified gains (as defined in section 4982(e)(5)(B)(i)) attributable to the portion of the taxable year after October 31, plus

(II) the ordinary income not described in subclause (I) attributable to the portion of the taxable year after December 31.

(E) Special rule for companies determining required capital gain distributions on taxable year basis

In the case of a company to which an election under section 4982(e)(4) applies—

(i) if such company's taxable year ends with the month of November, the amount of qualified late-year losses (if any) shall be computed without regard to any income, gain, or loss described in subparagraphs (C), (D)(i)(I), and (D)(ii)(I), and

(ii) if such company's taxable year ends with the month of December, subparagraph (A) shall not apply.

(9) Dividends treated as received by company on ex-dividend date

For purposes of this title, if a regulated investment company is the holder of record of any share of stock on the record date for any dividend payable with respect to such stock, such dividend shall be included in gross income by such company as of the later of—

(A) the date such share became ex-dividend with respect to such dividend, or

(B) the date such company acquired such share.

(c) Earnings and profits

(1) Treatment of nondeductible items

(A) Net capital loss

If a regulated investment company has a net capital loss for any taxable year—

(i) such net capital loss shall not be taken into account for purposes of determining the company's earnings and profits, and

(ii) any capital loss arising on the first day of the next taxable year by reason of clause (ii) or (iii) of section 1212(a)(3)(A) shall be treated as so arising for purposes of determining earnings and profits.

(B) Other nondeductible items

(i) In general

The earnings and profits of a regulated investment company for any taxable year (but not its accumulated earnings and profits) shall not be reduced by any amount which is not allowable as a deduction (other than by reason of section 265 or 171(a)(2)) in computing its taxable income for such taxable year.

(ii) Coordination with treatment of net capital losses

Clause (i) shall not apply to a net capital loss to which subparagraph (A) applies.

(2) Coordination with tax on undistributed income

For purposes of applying this chapter to distributions made by a regulated investment company

with respect to any calendar year, the earnings and profits of such company shall be determined without regard to any net capital loss attributable to the portion of the taxable year after October 31 and without regard to any late-year ordinary loss (as defined in subsection (b)(8)(D)). The preceding sentence shall apply—

(A) only to the extent that the amount distributed by the company with respect to the calendar year does not exceed the required distribution for such calendar year (as determined under section 4982 by substituting "100 percent" for each percentage set forth in section 4982(b)(1)), and

(B) except as provided in regulations, only if an election under section 4982(e)(4) is not in effect with respect to such company.

(3) Distributions to meet requirements of subsection (a)(2)(B)

Any distribution which is made in order to comply with the requirements of subsection (a)(2)(B)—

(A) shall be treated for purposes of this subsection and subsection (a)(2)(B) as made from earnings and profits which, but for the distribution, would result in a failure to meet such requirements (and allocated to such earnings on a first-in, first-out basis), and

(B) to the extent treated under subparagraph (A) as made from accumulated earnings and profits, shall not be treated as a distribution for purposes of subsection (b)(2)(D) and section 855.

(4) Regulated investment company

For purposes of this subsection, the term "regulated investment company" includes a domestic corporation which is a regulated investment company determined without regard to the requirements of subsection (a).

(d) Distributions in redemption of interests in unit investment trusts

In the case of a unit investment trust—

(1) which is registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 and following) and issues periodic payment plan certificates (as defined in such Act), and

(2) substantially all of the assets of which consist of securities issued by a management company (as defined in such Act),

section 562(c) (relating to preferential dividends) shall not apply to a distribution by such trust to a holder of an interest in such trust in redemption of part or all of such interest, with respect to the capital gain net income of such trust attributable to such redemption.

(e) Procedures similar to deficiency dividend procedures made applicable

(1) In general

If—

(A) there is a determination that the provisions of this part do not apply to an investment company for any taxable year (hereinafter in this subsection referred to as the "non-RIC year"), and

(B) such investment company meets the distribution requirements of paragraph (2) with respect to the non-RIC year,

for purposes of applying subsection (a)(2) to subsequent taxable years, the provisions of this part shall be treated as applying to such investment company for the non-RIC year. If the determination under subparagraph (A) is solely as a result of the failure to meet the requirements of subsection (a)(2), the preceding sentence shall also apply for purposes of applying subsection (a)(2) to the non-RIC year and the amount referred to in paragraph (2)(A)(i) shall be the portion of the accumulated earnings and profits which resulted in such failure.

(2) Distribution requirements

(A) In general

The distribution requirements of this paragraph are met with respect to any non-RIC year if, within the 90-day period beginning on the date of the determination (or within such longer period as the Secretary may permit), the investment company makes 1 or more qualified designated distributions and the amount of such distributions is not less than the excess of—

(i) the portion of the accumulated earnings and profits of the investment company (as of the date of the determination) which are attributable to the non-RIC year, over

(ii) any interest payable under paragraph (3).

(B) Qualified designated distribution

For purposes of this paragraph, the term "qualified designated distribution" means any distribution made by the investment company if—

(i) section 301 applies to such distribution, and

(ii) such distribution is designated (at such time and in such manner as the Secretary shall by regulations prescribe) as being taken into account under this paragraph with respect to the non-RIC year.

(C) Effect on dividends paid deduction

Any qualified designated distribution shall not be included in the amount of dividends paid for purposes of computing the dividends paid deduction for any taxable year.

(3) Interest charge

(A) In general

If paragraph (1) applies to any non-RIC year of an investment company, such investment company shall pay interest at the underpayment rate established under section 6621—

(i) on an amount equal to 50 percent of the amount referred to in paragraph (2)(A)(i),

(ii) for the period—

(I) which begins on the last day prescribed for payment of the tax imposed for the non-RIC year (determined without regard to extensions), and

(II) which ends on the date the determination is made.

(B) Coordination with subtitle F

Any interest payable under subparagraph (A) may be assessed and collected at any time during the period during which any tax imposed for the taxable year in which the determination is made may be assessed and collected.

(4) Provision not to apply in the case of fraud

The provisions of this subsection shall not apply if the determination contains a finding that the failure to meet any requirement of this part was due to fraud with intent to evade tax.

(5) Determination

For purposes of this subsection, the term "determination" has the meaning given to such term by section 860(e). Such term also includes a determination by the investment company filed with the Secretary that the provisions of this part do not apply to the investment company for a taxable year.

(f) Treatment of certain load charges

(1) In general

If—

(A) the taxpayer incurs a load charge in acquiring stock in a regulated investment company and, by reason of incurring such charge or making such acquisition, the taxpayer acquires a reinvestment right,

(B) such stock is disposed of before the 91st day after the date on which such stock was acquired, and

(C) the taxpayer acquires, during the period beginning on the date of the disposition referred to in subparagraph (B) and ending on January 31 of the calendar year following the calendar

year that includes the date of such disposition, stock in such regulated investment company or in another regulated investment company and the otherwise applicable load charge is reduced by reason of the reinvestment right,

the load charge referred to in subparagraph (A) (to the extent it does not exceed the reduction referred to in subparagraph (C)) shall not be taken into account for purposes of determining the amount of gain or loss on the disposition referred to in subparagraph (B). To the extent such charge is not taken into account in determining the amount of such gain or loss, such charge shall be treated as incurred in connection with the acquisition referred to in subparagraph (C) (including for purposes of reapplying this paragraph).

(2) Definitions and special rules

For purposes of this subsection—

(A) Load charge

The term "load charge" means any sales or similar charge incurred by a person in acquiring stock of a regulated investment company. Such term does not include any charge incurred by reason of the reinvestment of a dividend.

(B) Reinvestment right

The term "reinvestment right" means any right to acquire stock of 1 or more regulated investment companies without the payment of a load charge or with the payment of a reduced charge.

(C) Nonrecognition transactions

If the taxpayer acquires stock in a regulated investment company from another person in a transaction in which gain or loss is not recognized, the taxpayer shall succeed to the treatment of such other person under this subsection.

(g) Special rules for fund of funds

(1) In general

In the case of a qualified fund of funds—

(A) such fund shall be qualified to pay exempt-interest dividends to its shareholders without regard to whether such fund satisfies the requirements of the first sentence of subsection (b)(5), and

(B) such fund may elect the application of section 853 (relating to foreign tax credit allowed to shareholders) without regard to the requirement of subsection (a)(1) thereof.

(2) Qualified fund of funds

For purposes of this subsection, the term "qualified fund of funds" means a regulated investment company if (at the close of each quarter of the taxable year) at least 50 percent of the value of its total assets is represented by interests in other regulated investment companies.

(Aug. 16, 1954, ch. 736, 68A Stat. 271; July 11, 1956, ch. 573, §2(a), 70 Stat. 530; Pub. L. 85–866, title I, §§39(a), 101(a), (b), Sept. 2, 1958, 72 Stat. 1638, 1674; Pub. L. 86–779, §10(b)(2), (3), Sept. 14, 1960, 74 Stat. 1009; Pub. L. 88–272, title II, §229(a)(1), (2), (b), Feb. 26, 1964, 78 Stat. 99; Pub. L. 91–172, title V, §511(c)(2), Dec. 30, 1969, 83 Stat. 637; Pub. L. 94–455, title XIV, §1402(b)(1)(N), (2), title XIX, §§1901(a)(110)(A), (B)(i), (C), (b)(1)(V), (6)(B), (33)(I), (J), (N), 1906(b)(13)(A), title XXI, §2137(a)–(c), Oct. 4, 1976, 90 Stat. 1732, 1783, 1792, 1794, 1801, 1802, 1834, 1930, 1931; Pub. L. 95–600, title III, §§301(b)(11), 362(c), title VII, §701(s)(2), Nov. 6, 1978, 92 Stat. 2822, 2851, 2911; Pub. L. 96–222, title I, §104(a)(3)(B), Apr. 1, 1980, 94 Stat. 215; Pub. L. 97–424, title V, §547(b)(2), Jan. 6, 1983, 96 Stat. 2199; Pub. L. 98–369, div. A, title I, §55(a), title X, §§1001(b)(11), (e), 1071(a)(2)–(4), (b)(1), July 18, 1984, 98 Stat. 571, 1011, 1012, 1049, 1050, 1052; Pub. L. 99–514, title III, §311(b)(1), title VI, §§631(e)(11), 651(b)(1)(A), (2), (3), 655(a)(1), (2), title XI, §1173(b)(1)(B), title XV, §1511(c)(6), title XVIII, §§1804(c)(1)–(5), 1878(j), Oct. 22, 1986, 100 Stat. 2219, 2274, 2296, 2298, 2299, 2515, 2745, 2799, 2800, 2905; Pub. L. 100–647, title

I, §§1006(l)(1)(A), (3), (4), (7)–(10), 1011B(h)(4), 1018(p), Nov. 10, 1988, 102 Stat. 3413–3415, 3491, 3585; Pub. L. 101–239, title VII, §7204(b)(1), (c)(1), Dec. 19, 1989, 103 Stat. 2334, 2335; Pub. L. 103–66, title XIII, §13221(c)(1), Aug. 10, 1993, 107 Stat. 477; Pub. L. 104–188, title I, §1602(b)(3), Aug. 20, 1996, 110 Stat. 1833; Pub. L. 105–34, title XI, §1122(c)(2), (3), title XII, §1254(b)(2), Aug. 5, 1997, 111 Stat. 977, 1033; Pub. L. 106–170, title V, §566(a)(1), (c), Dec. 17, 1999, 113 Stat. 1950; Pub. L. 109–222, title V, §505(c)(1), May 17, 2006, 120 Stat. 356; Pub. L. 110–172, §11(a)(17)(A), Dec. 29, 2007, 121 Stat. 2486; Pub. L. 111–325, title II, §201(c), title III, §§301(a)(1), (b), 302(a), (b)(1), 303(a), 308(a)–(b)(2), 309(a), (b), title V, §502(a), Dec. 22, 2010, 124 Stat. 3541, 3542, 3547, 3548, 3550–3552, 3554.)

REFERENCES IN TEXT

The Investment Company Act of 1940, referred to in subsec. (d), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§80a–1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80a–51 of Title 15 and Tables.

AMENDMENTS

2010—Subsec. (b)(2)(G). Pub. L. 111–325, §201(c), added subpar. (G).

Subsec. (b)(3)(C). Pub. L. 111–325, §301(a)(1), amended subpar. (C) generally. Prior to amendment, subpar. (C) related to definition of capital gain dividend.

Subsec. (b)(4)(E). Pub. L. 111–325, §309(a), (b), substituted "Exception to holding period requirement for certain regularly declared exempt-interest dividends" for "Authority to shorten required holding period" in heading, added cl. (i), inserted cl. (ii) designation and heading before "In the case of", and inserted "(other than a company described in clause (i))" after "regulated investment company".

Subsec. (b)(5)(A). Pub. L. 111–325, §301(b), amended subpar. (A) generally. Prior to amendment, text read as follows: "An exempt-interest dividend means any dividend or part thereof (other than a capital gain dividend) paid by a regulated investment company and designated by it as an exempt-interest dividend in a written notice mailed to its shareholders not later than 60 days after the close of its taxable year. If the aggregate amount so designated with respect to a taxable year of the company (including exempt-interest dividends paid after the close of the taxable year as described in section 855) is greater than the excess of—

"(i) the amount of interest excludable from gross income under section 103(a), over

"(ii) the amounts disallowed as deductions under sections 265 and 171(a)(2),

the portion of such distribution which shall constitute an exempt-interest dividend shall be only that proportion of the amount so designated as the amount of such excess for such taxable year bears to the amount so designated."

Subsec. (b)(8). Pub. L. 111–325, §308(a), amended par. (8) generally. Prior to amendment, text read as follows: "To the extent provided in regulations, the taxable income of a regulated investment company (other than a company to which an election under section 4982(e)(4) applies) shall be computed without regard to any net foreign currency loss attributable to transactions after October 31 of such year, and any such net foreign currency loss shall be treated as arising on the 1st day of the following taxable year."

Subsec. (b)(10). Pub. L. 111–325, §308(b)(1), struck out par. (10). Text read as follows: "To the extent provided in regulations, the taxable income of a regulated investment company (other than a company to which an election under section 4982(e)(4) applies) shall be computed without regard to any net reduction in the value of any stock of a passive foreign investment company with respect to which an election under section 1296(k) is in effect occurring after October 31 of the taxable year, and any such reduction shall be treated as occurring on the first day of the following taxable year."

Subsec. (c)(1). Pub. L. 111–325, §302(a), amended par. (1) generally. Prior to amendment, text read as follows: "The earnings and profits of a regulated investment company for any taxable year (but not its accumulated earnings and profits) shall not be reduced by any amount which is not allowable as a deduction in computing its taxable income for such taxable year. For purposes of this subsection, the term 'regulated investment company' includes a domestic corporation which is a regulated investment company determined without regard to the requirements of subsection (a)."

Subsec. (c)(2). Pub. L. 111–325, §308(b)(2), in introductory provisions, substituted "For purposes of applying this chapter to distributions made by a regulated investment company with respect to any calendar year, the earnings and profits of such company shall be determined without regard to any net capital loss attributable to the portion of the taxable year after October 31 and without regard to any late-year ordinary loss (as defined in subsection (b)(8)(D))." for "For purposes of applying this chapter to distributions made by a regulated investment company with respect to any calendar year, the earnings and profits of such company

shall be determined without regard to any net capital loss (or net foreign currency loss) attributable to transactions after October 31 of such year, without regard to any net reduction in the value of any stock of a passive foreign investment company with respect to which an election under section 1296(k) is in effect occurring after October 31 of such year, and with such other adjustments as the Secretary may by regulations prescribe."

Subsec. (c)(4). Pub. L. 111–325, §302(b)(1), added par. (4).

Subsec. (f)(1)(C). Pub. L. 111–325, §502(a), substituted "acquires, during the period beginning on the date of the disposition referred to in subparagraph (B) and ending on January 31 of the calendar year following the calendar year that includes the date of such disposition," for "subsequently acquires".

Subsec. (g). Pub. L. 111–325, §303(a), added subsec. (g).

2007—Subsec. (b)(4)(C). Pub. L. 110–172 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "For purposes of this paragraph, the rules of paragraphs (3) and (4) of section 246(c) shall apply in determining the period for which the taxpayer has held any share of stock; except that '6 months' shall be substituted for each number of days specified in subparagraph (B) of section 246(c)(3)."

2006—Subsec. (b)(3)(E). Pub. L. 109–222 added subpar. (E).

1999—Subsec. (c)(3). Pub. L. 106–170, §566(a)(1), added par. (3).

Subsec. (e)(1). Pub. L. 106–170, §566(c), inserted at end "If the determination under subparagraph (A) is solely as a result of the failure to meet the requirements of subsection (a)(2), the preceding sentence shall also apply for purposes of applying subsection (a)(2) to the non-RIC year and the amount referred to in paragraph (2)(A)(i) shall be the portion of the accumulated earnings and profits which resulted in such failure."

1997—Subsec. (b)(3)(D)(iii). Pub. L. 105–34, §1254(b)(2), substituted "by the difference between the amount of such includible gains and the tax deemed paid by such shareholder in respect of such shares under clause (ii)." for "by 65 percent of so much of such amounts as equals the amount subject to tax in accordance with section 1201(a)."

Subsec. (b)(10). Pub. L. 105–34, §1122(c)(2), added par. (10).

Subsec. (c)(2). Pub. L. 105–34, §1122(c)(3), inserted ", without regard to any net reduction in the value of any stock of a passive foreign investment company with respect to which an election under section 1296(k) is in effect occurring after October 31 of such year," after "October 31 of such year".

1996—Subsec. (b)(5)(C). Pub. L. 104–188 struck out subpar. (C). Prior to amendment, subpar. (C) read as follows:

"(C) INTEREST ON CERTAIN LOANS USED TO ACQUIRE EMPLOYER SECURITIES.—For purposes of this section—

"(i) 50 percent of the amount of any loan of the regulated investment company which qualifies as a securities acquisition loan (as defined in section 133) shall be treated as an obligation described in section 103(a), and

"(ii) 50 percent of the interest received on such loan shall be treated as interest excludable from gross income under section 103."

1993—Subsec. (b)(3)(D)(iii). Pub. L. 103–66 substituted "65 percent" for "66 percent".

1989—Subsec. (b)(9). Pub. L. 101–239, §7204(c)(1), added par. (9).

Subsec. (f). Pub. L. 101–239, §7204(b)(1), added subsec. (f).

1988—Subsec. (a). Pub. L. 100–647, §1006(l)(8), inserted at end "The Secretary may waive the requirements of paragraph (1) for any taxable year if the regulated investment company establishes to the satisfaction of the Secretary that it was unable to meet such requirements by reason of distributions previously made to meet the requirements of section 4982."

Subsec. (b)(3)(C). Pub. L. 100–647, §1006(l)(4), substituted "net capital loss or net long-term capital loss" for "net capital loss" in two places in third sentence, and "computing the taxable income of the regulated investment company" for "computing regulated investment company taxable income" in fourth sentence.

Subsec. (b)(5)(C). Pub. L. 100–647, §1011B(h)(4), substituted "section" for "paragraph".

Subsec. (b)(6). Pub. L. 100–647, §1006(l)(1)(A), redesignated par. (6), relating to time certain dividends are taken into account, as (7).

Subsec. (b)(7). Pub. L. 100–647, §1006(l)(9), substituted "in October, November, or December" for "in December" and "in such a month" for "in such month", in introductory text, "on December 31 of such calendar year" for "on such date" in subpars. (A) an (B), and "during January" for "before February 1" in last sentence.

Pub. L. 100–647, §1006(l)(1)(A), redesignated par. (6), relating to time certain dividends are taken into account, as (7).

Subsec. (b)(8). Pub. L. 100–647, §1006(l)(7), added par. (8).

Subsec. (c)(2). Pub. L. 100–647, §1006(l)(3), amended par. (2) generally. Prior to amendment, par. (2) read

as follows: "A regulated investment company shall be treated as having sufficient earnings and profits to treat as a dividend any distribution (other than in a redemption to which section 302(a) applies) which is treated as a dividend by such company. The preceding sentence shall not apply to the extent that the amount distributed during any calendar year by the company exceeds the required distribution for such calendar year (as determined under section 4982)."

Subsec. (e)(1). Pub. L. 100–647, §§1006(l)(10), 1018(p), amended par. (1) identically, substituting "subsection (a)(2)" for "subsection (a)(3)" in last sentence.

1986—Subsec. (a)(2), (3). Pub. L. 99–514, §1878(j)(1), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: "the investment company complies for such year with regulations prescribed by the Secretary for the purpose of ascertaining the actual ownership of its outstanding stock, and".

Subsec. (b)(1). Pub. L. 99–514, §1878(j)(2), substituted last sentence for former last sentence which read as follows: "In the case of a regulated investment company which is a personal holding company (as defined in section 542), that tax shall be computed at the highest rate of tax specified in section 11(b)."

Subsec. (b)(3)(C). Pub. L. 99–514, §655(a)(1), substituted "60 days" for "45 days".

Pub. L. 99–514, §651(b)(3), inserted provision for determination of the amount of the net capital gain for a taxable year (to which an election under section 4982(e)(4) does not apply) and made such provision applicable also for purposes of computing regulated investment company taxable income.

Subsec. (b)(3)(D)(i). Pub. L. 99–514, §655(a)(1), substituted "60 days" for "45 days".

Subsec. (b)(3)(D)(iii). Pub. L. 99–514, §311(b)(1), substituted "66 percent" for "72 percent".

Subsec. (b)(4). Pub. L. 99–514, §1804(c)(5), substituted "6 months or less" for "less than 31 days" in heading.

Subsec. (b)(4)(B)(ii). Pub. L. 99–514, §1804(c)(1), substituted "6 months or less" for "less than 31 days".

Subsec. (b)(4)(C). Pub. L. 99–514, §1804(c)(2), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: "For purposes of this paragraph, the rules of paragraphs (3) and (4) of section 246(c) shall apply in determining the period for which the taxpayer held any share of stock; except that for the number of days specified in subparagraph (B) of section 246(c)(3) there shall be substituted—

"(i) '6 months' for purposes of subparagraph (A), and

"(ii) '30 days' for purposes of subparagraph (B)."

Subsec. (b)(4)(D). Pub. L. 99–514, §1804(c)(3), substituted "subparagraphs (A) and (B)" for "subparagraph (A)".

Subsec. (b)(4)(E). Pub. L. 99–514, §1804(c)(4), added subpar. (E).

Subsec. (b)(5)(A). Pub. L. 99–514, §655(a)(2), substituted "60 days" for "45 days".

Subsec. (b)(5)(C). Pub. L. 99–514, §1173(b)(1)(B), added subpar. (C).

Subsec. (b)(6). Pub. L. 99–514, §651(b)(1)(A), added par. (6) relating to time certain dividends are taken into account.

Pub. L. 99–514, §631(e)(11), added par. (6) relating to inapplicability of section 311(b) to certain distributions.

Subsec. (c). Pub. L. 99–514, §651(b)(2), amended subsec. (c) generally, designating existing provisions as par. (1), inserting heading, and adding par. (2).

Subsec. (e)(3)(A). Pub. L. 99–514, §1511(c)(6), substituted "the underpayment rate established under section 6621" for "the annual rate established under section 6621".

1984—Subsec. (a)(3). Pub. L. 98–369, §1071(a)(3), added par. (3).

Subsec. (b)(1). Pub. L. 98–369, §1071(a)(2), inserted provision that in the case of a regulated investment company which is a personal holding company (as defined in section 542), that tax shall be computed at the highest rate of tax specified in section 11.

Subsec. (b)(2)(F). Pub. L. 98–369, §1071(b)(1), added subpar. (F).

Subsec. (b)(3)(B). Pub. L. 98–369, §1001(b)(11), (e), substituted "6 months" for "1 year", applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

Subsec. (b)(4)(A)(i). Pub. L. 98–369, §55(a)(1), substituted "subparagraph (B) or (D) of paragraph (3) provides that any amount with respect to any share is to be treated as long-term capital gain" for "under subparagraph (B) or (D) of paragraph (3) a shareholder of a regulated investment company is required, with respect to any share, to treat any amount as a long-term capital gain".

Subsec. (b)(4)(A)(ii). Pub. L. 98–369, §55(a)(1), substituted "6 months or less" for "less than 31 days".

Subsec. (b)(4)(C). Pub. L. 98–369, §55(a)(2), substituted "the rules of paragraphs (3) and (4) of section 246(c) shall apply in determining the period for which the taxpayer held any share of stock;" for "the rules of

section 246(c)(3) shall apply in determining whether any share of stock has been held for less than 31 days;" and substituted provisions dealing with the applicable number of days for former provisions which set forth different applicable days.

Subsec. (b)(4)(D). Pub. L. 98–369, §55(a)(3), added subpar. (D).

Subsec. (e). Pub. L. 98–369, §1071(a)(4), added subsec. (e).

1983—Subsec. (b)(5). Pub. L. 97–424 substituted "section 103(a)" for "section 103(a)(1)" wherever appearing.

1980—Subsec. (b)(3)(D)(iii). Pub. L. 96–222 substituted "72 percent" for "70 percent".

1978—Subsec. (b)(1). Pub. L. 95–600, §301(b)(11), substituted "a tax" for "a normal tax and surtax".

Subsec. (b)(3)(C). Pub. L. 95–600, §362(c), inserted ", except that, if there is an increase in the excess described in subparagraph (A) of this paragraph for such year which results from a determination (as defined in section 860(e)), such designation may be made with respect to such increase at any time before the expiration of 120 days after the date of such determination" after "amount so designated".

Subsec. (b)(4). Pub. L. 95–600, §701(s)(2), designated first sentence, including subpars. (A) and (B), as subpar. (A), cls. (i) and (ii); added subpar. (A) heading and substituted "shall, to the extent of the amount described in clause (i), be treated as a long-term capital loss" for "shall, to the extent of the amount described in subparagraph (A) of this paragraph, be treated as loss from the sale or exchange of a capital asset held for more than 1 year"; added subpar. (B); and designated second sentence as subpar. (C).

1976—Subsec. (a)(1). Pub. L. 94–455, §§1901(b)(6)(B), 2137(a), designated existing provisions as introductory material and subpar. (A) and added subpar. (B).

Subsec. (a)(2). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (b)(1). Pub. L. 94–455, §1901(b)(1)(V), struck out provision relating to the computation of the normal tax under section 11 of this title.

Subsec. (b)(2)(A). Pub. L. 94–455, §1901(b)(33)(I), substituted "the amount of the net capital gain, if any" for "the excess, if any, of the net long-term capital gain over the short-term capital loss".

Subsec. (b)(2)(D). Pub. L. 94–455, §2137(b), inserted reference to exempt-interest dividends.

Subsec. (b)(3)(A). Pub. L. 94–455, §1901(b)(33)(J)(i), among other changes, struck out reference to the sum of the net short-term capital loss.

Subsec. (b)(3)(B). Pub. L. 94–455, §1402(b)(2), provided that "9 months" would be changed to "1 year".

Pub. L. 94–455, §1402(b)(1)(N), provided that "6 months" would be changed to "9 months" for taxable years beginning in 1977.

Subsec. (b)(3)(C). Pub. L. 94–455, §1901(a)(110)(A), (b)(33)(J)(ii), substituted "net capital gain" for "excess of the net long-term capital gain over the net short-term capital loss" in two places and struck out provision requiring for purpose of the deduction for capital gains dividends paid, the deductions shall in the case of a taxable year beginning before Jan. 1, 1975, first be made from the amount subject to tax in accordance with section 1201(a)(1)(B), to the extent thereof, and then from the amount subject to tax in accordance with section 1201(a)(1)(A).

Subsec. (b)(3)(D)(iii). Pub. L. 94–455, §1901(a)(110)(B)(i), struck out "by 75 percent of so much of such amounts as equals the amount subject to tax in accordance with section 1201(a)(1)(A) and" after "his long term capital gains," and "(72 percent in the case of a taxable year beginning after December 31, 1969, and before January 1, 1971)" after "by 70 percent" and substituted "section 1201(a)" for "section 1201(a)(1)(B) or (2)".

Subsec. (b)(3)(D)(v). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (b)(4). Pub. L. 94–455, §1402(b)(2), provided that "9 months" would be changed to "1 year".

Pub. L. 94–455, §1402(b)(1)(N), provided that "6 months" would be changed to "9 months" for taxable years beginning in 1977.

Subsec. (b)(5). Pub. L. 94–455, §2137(c), added par. (5).

Subsec. (d). Pub. L. 94–455, §1901(a)(110)(C), (b)(33)(N), inserted in par. (1) "(15 U.S.C. 80a–1 and following)" after "Investment company Act of 1940" and substituted in provision following par. (2) "capital gain net income" for "net capital gain".

1969—Subsec. (b)(3)(A). Pub. L. 91–172, §511(c)(2)(A), substituted "determined as provided in section 1201(a), on" for "of 25 percent of".

Subsec. (b)(3)(C). Pub. L. 91–172, §511(c)(2)(B), inserted provision requiring for the purposes of the deduction for capital gains dividends paid the deduction shall, in the case of a taxable year beginning before Jan. 1, 1975, first be made from the amount subject to tax in accordance with section 1201(a)(1)(B), to the extent thereof, and then from the amount subject to tax in accordance with section 1201(a)(1)(A).

Subsec. (b)(3)(D). Pub. L. 91–172, §511(c)(2)(C), (D), struck out "of 25 percent" in cl. (ii), substituted reference in cl. (iii) to the increase of the adjusted basis of shares in the hands of the shareholder, with respect

to the amounts required by this subpar., by 75 percent of so much of such amounts as equals the amount subject to tax in accordance with section 1201(a)(1)(A) and by 70 percent (72 percent in the case of a taxable year beginning after Dec. 31, 1969, and before Jan. 1, 1971) of so much of such amounts as equals the amount subject to tax in accordance with section 1201(a)(1)(B) or (2), for reference to the increase of the adjusted basis of shares in the hand of the shareholder by 75 percent of the amounts required by this subpar. to be included in computing his long-term capital gains.

1964—Subsec. (b)(3)(C), (D)(i). Pub. L. 88–272, §229(a)(1), (2), substituted "45 days" for "30 days".

Subsec. (d). Pub. L. 88–272, §229(b), added subsec. (d).

1960—Subsec. (a). Pub. L. 86–779, §10(b)(2), substituted "this part" for "this subchapter".

Subsec. (b)(3)(C). Pub. L. 86–779, §10(b)(3), substituted "For purposes of this part, a capital gain dividend is" for "A capital gain dividend means".

1958—Subsec. (a). Pub. L. 85–866, §101(a), inserted "(other than subsection (c) of this section)".

Subsec. (b)(4). Pub. L. 85–866, §39(a), added par. (4).

Subsec. (c). Pub. L. 85–866, §101(b), inserted sentence defining regulated investment company.

1956—Subsec. (b)(3)(D). Act July 11, 1956, added subpar. (D).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 201(c) of Pub. L. 111–325 applicable to taxable years with respect to which the due date (determined with regard to any extensions) of the return of tax for such taxable year is after Dec. 22, 2010, see section 201(d) of Pub. L. 111–325, set out as a note under section 851 of this title.

Pub. L. 111–325, title III, §301(h), Dec. 22, 2010, 124 Stat. 3547, provided that: "The amendments made by this section [amending this section and sections 853, 853A, 854, 855, 860, and 871 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Dec. 22, 2010]."

Pub. L. 111–325, title III, §302(c), Dec. 22, 2010, 124 Stat. 3548, provided that: "The amendments made by this section [amending this section and section 871 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Dec. 22, 2010]."

Pub. L. 111–325, title III, §303(b), Dec. 22, 2010, 124 Stat. 3548, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Dec. 22, 2010]."

Pub. L. 111–325, title III, §308(c), Dec. 22, 2010, 124 Stat. 3551, provided that: "The amendments made by this section [amending this section and section 871 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Dec. 22, 2010]."

Pub. L. 111–325, title III, §309(c), Dec. 22, 2010, 124 Stat. 3552, provided that: "The amendments made by this section [amending this section] shall apply to losses incurred on shares of stock for which the taxpayer's holding period begins after the date of the enactment of this Act [Dec. 22, 2010]."

Pub. L. 111–325, title V, §502(b), Dec. 22, 2010, 124 Stat. 3555, provided that: "The amendment made by this section [amending this section] shall apply to charges incurred in taxable years beginning after the date of the enactment of this Act [Dec. 22, 2010]."

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–222, title V, §505(d), May 17, 2006, 120 Stat. 357, provided that: "The amendments made by this section [amending this section and sections 871, 897, and 1445 of this title] shall apply to taxable years of qualified investment entities beginning after December 31, 2005, except that no amount shall be required to be withheld under section 1441, 1442, or 1445 of the Internal Revenue Code of 1986 with respect to any distribution before the date of the enactment of this Act [May 17, 2006] if such amount was not otherwise required to be withheld under any such section as in effect before such amendments."

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title V, §566(d), Dec. 17, 1999, 113 Stat. 1950, provided that: "The amendments made by this section [amending this section and section 857 of this title] shall apply to distributions after December 31, 2000."

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 1122(c)(2), (3) of Pub. L. 105–34 applicable to taxable years of United States persons beginning after Dec. 31, 1997, and to taxable years of foreign corporations ending with or within such taxable years of United States persons, see section 1124 of Pub. L. 105–34, set out as a note under section 532 of this title.

Pub. L. 105–34, title XII, §1263, Aug. 5, 1997, 111 Stat. 1036, provided that: "The amendments made by this part [probably means subtitle D (§§1251–1263) of title XII of Pub. L. 105–34, amending this section and

sections 856 and 857 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1602(b)(1) of Pub. L. 104–188 applicable to loans made after Aug. 20, 1996, with exception and provisions relating to certain refinancings, see section 1602(c) of Pub. L. 104–188, set out as an Effective Date of Repeal note under former section 133 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to taxable years beginning on or after Jan. 1, 1993, see section 13221(d) of Pub. L. 103–66 set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7204(b)(2), Dec. 19, 1989, 103 Stat. 2335, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to charges incurred after October 3, 1989, in taxable years ending after such date."

Pub. L. 101–239, title VII, §7204(c)(2), Dec. 19, 1989, 103 Stat. 2335, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to dividends in cases where the stock becomes ex-dividend after the date of the enactment of this Act [Dec. 19, 1989]."

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1006(l)(9), Nov. 10, 1988, 102 Stat. 3414, provided that the amendment made by that section is effective with respect to dividends declared in 1988 and subsequent calendar years.

Amendment by sections 1006(l)(1)(A), (3), (4), (7), (8), (10), 1011B(h)(4), and 1018(p) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 311(b)(1) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 311(c) of Pub. L. 99–514, set out as a note under section 1201 of this title.

Amendment by section 631(e)(11) of Pub. L. 99–514 applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, set out as an Effective Date note under section 336 of this title.

Amendment by section 651(b)(1)(A), (2), (3) of Pub. L. 99–514 applicable to calendar years beginning after Dec. 31, 1986, see section 651(d) of Pub. L. 99–514, set out as an Effective Date note under section 4982 of this title.

Pub. L. 99–514, title VI, §655(b), Oct. 22, 1986, 100 Stat. 2299, provided that: "The amendments made by subsection (a) [amending this section and sections 853 to 855 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 22, 1986]."

Pub. L. 99–514, title XI, §1173(c)(2)(A), Oct. 22, 1986, 100 Stat. 2516, provided that: "The amendments made by subsection (b)(1) [amending this section and former section 133 of this title] shall apply to loans used to acquire employer securities after the date of the enactment of this Act [Oct. 22, 1986], including loans used to refinance loans used to acquire employer securities before such date if such loans were used to acquire employer securities after May 23, 1984."

Amendment by section 1511(c)(6) of Pub. L. 99–514 applicable for purposes of determining interest for periods after Dec. 31, 1986, see section 1511(d) of Pub. L. 99–514, set out as a note under section 47 of this title.

Pub. L. 99–514, title XVIII, §1804(c)(6), Oct. 22, 1986, 100 Stat. 2800, provided that: "The amendments made by this subsection [amending this section] shall apply to stock with respect to which the taxpayer's holding period begins after March 28, 1985."

Amendment by section 1878(j) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §55(c), July 18, 1984, 98 Stat. 572, provided that: "The amendments made by this section [amending this section and section 857 of this title] shall apply to losses incurred with respect to shares of stock and beneficial interests with respect to which the taxpayer's holding period begins after the date of the enactment of this Act [July 18, 1984]."

Amendment by section 1001(b)(11) of Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

Pub. L. 98–369, div. A, title X, §1071(a)(5), July 18, 1984, 98 Stat. 1051, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendments made by this subsection [amending this section and section 851 of this title] shall apply to taxable years beginning after December 31, 1982.

"(B) INVESTMENT COMPANIES WHICH WERE REGULATED INVESTMENT COMPANIES FOR YEARS ENDING BEFORE NOVEMBER 8, 1983.—In the case of any investment company to which the provisions of part I of subchapter M of chapter 1 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] applied for any taxable year ending before November 8, 1983, for purposes of section 852(a)(3)(B) of the Internal Revenue Code of 1986 (as amended by this subsection), no earnings and profits accumulated in any taxable year ending before January 1, 1984, shall be taken into account.

"(C) INVESTMENT COMPANIES BEGINNING BUSINESS IN 1983.—In the case of an investment company which began business in 1983 (and was not a successor corporation), earnings and profits accumulated during its first taxable year shall not be taken into account for purposes of section 852(a)(3)(B) of such Code (as so amended).

"(D) INVESTMENT COMPANIES REGISTERING BEFORE NOVEMBER 8, 1983.—In the case of any investment company—

"(i) which, during the period after December 31, 1981, and before November 8, 1983—

"(I) was engaged in the active conduct of a trade or business,

"(II) sold substantially all of its operating assets, and

"(III) registered under the Investment Company Act of 1940 [15 U.S.C. §80a–1 et seq.] as either a management company or a unit investment trust, and

"(ii) to which the provisions of part I of subchapter M of chapter 1 of the Internal Revenue Code of 1986 applied for its first taxable year beginning after November 8, 1983,

for purposes of section 852(a)(3)(A) of such Code (as amended by paragraph (3)), the provisions of part I of subchapter M of chapter 1 of such Code shall be treated as applying to such investment company for its first taxable year ending after November 8, 1983. For purposes of the preceding sentence, all members of an affiliated group (as defined in section 1504(a) of such Code) filing a consolidated return shall be treated as 1 taxpayer."

Pub. L. 98–369, div. A, title X, §1071(b)(2), July 18, 1984, 98 Stat. 1052 provided that: "The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after December 31, 1978."

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 301(b)(11) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95–600, set out as a note under section 11 of this title.

Amendment by section 362(c) of Pub. L. 95–600 applicable with respect to determinations (as defined in section 860(e) of this title) after Nov. 6, 1978, see section 362(e) of Pub. L. 95–600, set out as an Effective Date note under section 860 of this title.

Amendment by section 701(s)(2) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1975, see section 701(s)(3) of Pub. L. 95–600, set out as a note under section 851 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XIV, §1402(b)(1), Oct. 4, 1976, 90 Stat. 1731, provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Pub. L. 94–455, title XIV, §1402(b)(2), Oct. 4, 1976, 90 Stat. 1732, provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

Amendment by section 1901(a)(110)(A), (C), (b)(1)(V), (6)(B), (33)(I), (J), (N) of Pub. L. 94–455 effective

for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 2 of this title.

Pub. L. 94–455, title XIX, §1901(a)(110)(B)(ii), Oct. 4, 1976, 90 Stat. 1783, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendment made by clause (i) [amending this section] shall not be considered to affect the amount of any increase in the basis of stock under the provisions of section 852(b)(3)(D)(iii) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] which is based upon amounts subject to tax under section 1201 of such Code [section 1201 of this title] in taxable years beginning before January 1, 1975."

Pub. L. 94–455, title XXI, §2137(e), Oct. 4, 1976, 90 Stat. 1931, provided that: "The amendments made by this section [amending this section and sections 103 and 265 of this title] shall apply to taxable years beginning after December 31, 1975."

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable with respect to taxable years beginning after Dec. 31, 1969, see section 511(d) of Pub. L. 91–172, set out as an Effective Date note under section 1201 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88–272, title II, §229(c), Feb. 26, 1964, 78 Stat. 99, provided that: "The amendments made by subsection (a) [amending this section and sections 853, 854, and 855 of this title] shall apply to taxable years of regulated investment companies ending on or after the date of the enactment of this Act [Feb. 26, 1964]. The amendment made by subsection (b) [amending this section] shall apply to taxable years of regulated investment companies ending after December 31, 1963."

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment of section by Pub. L. 86–779 applicable with respect to taxable years of real estate investment trusts beginning after Dec. 31, 1960, see section 10(k) of Pub. L. 86–779, set out as an Effective Date note under section 856 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85–866, title I, §39(b), Sept. 2, 1958, 72 Stat. 1638, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years ending after December 31, 1957, but only with respect to shares of stock acquired after December 31, 1957."

Pub. L. 85–866, title I, §101(c), Sept. 2, 1958, 72 Stat. 1674, provided that: "The amendments made by this section [amending this section] shall apply with respect to taxable years of regulated investment companies beginning on or after March 1, 1958."

EFFECTIVE DATE OF 1956 AMENDMENT

Act July 11, 1956, ch. 573, §2(b), 70 Stat. 530, provided that: "The amendment made by this section [amending this section] shall apply only with respect to taxable years of regulated investment companies beginning after December 31, 1956."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[1] *So in original. Probably should be capitalized.*

§853. Foreign tax credit allowed to shareholders

(a) General rule

A regulated investment company—

(1) more than 50 percent of the value (as defined in section 851(c)(4)) of whose total assets at the close of the taxable year consists of stock or securities in foreign corporations, and

(2) which meets the requirements of section 852(a) for the taxable year,

may, for such taxable year, elect the application of this section with respect to income, war profits, and excess profits taxes described in section 901(b)(1), which are paid by the investment company during such taxable year to foreign countries and possessions of the United States.

(b) Effect of election

If the election provided in subsection (a) is effective for a taxable year—

(1) the regulated investment company—

(A) shall not, with respect to such taxable year, be allowed a deduction under section 164(a) or a credit under section 901 for taxes to which subsection (a) is applicable, and

(B) shall be allowed as an addition to the dividends paid deduction for such taxable year the amount of such taxes;

(2) each shareholder of such investment company shall—

(A) include in gross income and treat as paid by him his proportionate share of such taxes, and

(B) treat as gross income from sources within the respective foreign countries and possessions of the United States, for purposes of applying subpart A of part III of subchapter N, the sum of his proportionate share of such taxes and the portion of any dividend paid by such investment company which represents income derived from sources within foreign countries or possessions of the United States.

(c) Statements to shareholders

The amounts to be treated by the shareholder, for purposes of subsection (b)(2), as his proportionate share of—

(1) taxes paid to any foreign country or possession of the United States, and

(2) gross income derived from sources within any foreign country or possession of the United States,

shall not exceed the amounts so reported by the company in a written statement furnished to such shareholder.

(d) Manner of making election

The election provided in subsection (a) shall be made in such manner as the Secretary may prescribe by regulations.

(e) Treatment of certain taxes not allowed as a credit under section 901

This section shall not apply to any tax with respect to which the regulated investment company is not allowed a credit under section 901 by reason of subsection (k) or (l) of such section.

(f) Cross references

(1) For treatment by shareholders of taxes paid to foreign countries and possessions of the United States, see section 164(a) and section 901.

(2) For definition of foreign corporation, see section 7701(a)(5).

(Aug. 16, 1954, ch. 736, 68A Stat. 272; Pub. L. 88–272, title II, §229(a)(3), Feb. 26, 1964, 78 Stat. 99; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 99–514, title VI, §655(a)(3), Oct. 22, 1986, 100 Stat. 2299; Pub. L. 105–34, title X, §1053(b), Aug. 5, 1997, 111 Stat. 943; Pub. L. 105–206, title VI, §6010(k)(1), (2), July 22, 1998, 112 Stat. 815; Pub. L. 109–135, title IV, §403(aa)(1), Dec. 21, 2005, 119 Stat. 2630; Pub. L. 111–325, title III, §301(c), Dec. 22, 2010, 124 Stat. 3544.)

AMENDMENTS

2010—Subsec. (c). Pub. L. 111–325, §301(c)(1)(B), substituted "Statements" for "Notice" in heading.

Pub. L. 111–325, §301(c)(1)(A), which directed amendment by substituting "so reported by the company in a written statement furnished to such shareholder" for "so designated by the company in a written notice

mailed to its shareholders not later than 60 days after the close of the taxable year", was executed by making the substitution for "so designated by the company in a written notice mailed to its shareholders not later than 60 days after the close of its taxable year" in concluding provisions to reflect the probable intent of Congress.

Subsec. (d). Pub. L. 111–325, §301(c)(2), struck out "and notifying shareholders" after "election" in heading and "and the notice to shareholders required by subsection (c)" after "subsection (a)" in text.

2005—Subsec. (e). Pub. L. 109–135 amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows: "This section shall not apply to any tax with respect to which the regulated investment company is not allowed a credit under section 901 by reason of section 901(k)."

1998—Subsec. (c). Pub. L. 105–206, §6010(k)(2), struck out at end "Such notice shall also include the amount of such taxes which (without regard to the election under this section) would not be allowable as a credit under section 901(a) to the regulated investment company by reason of section 901(k)."

Subsecs. (e), (f). Pub. L. 105–206, §6010(k)(1), added subsec. (e) and redesignated former subsec. (e) as (f).

1997—Subsec. (c). Pub. L. 105–34 inserted at end "Such notice shall also include the amount of such taxes which (without regard to the election under this section) would not be allowable as a credit under section 901(a) to the regulated investment company by reason of section 901(k)."

1986—Subsec. (c). Pub. L. 99–514 substituted "60 days" for "45 days".

1976—Subsec. (d). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

1964—Subsec. (c). Pub. L. 88–272 substituted "45 days" for "30 days".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–325 applicable to taxable years beginning after Dec. 22, 2010, see section 301(h) of Pub. L. 111–325, set out as a note under section 852 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title X, §1053(c), Aug. 5, 1997, 111 Stat. 943, provided that: "The amendments made by this section [amending this section and section 901 of this title] shall apply to dividends paid or accrued more than 30 days after the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Oct. 22, 1986, see section 655(b) of Pub. L. 99–514, set out as a note under section 852 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to taxable years of regulated investment companies ending on or after Feb. 26, 1964, see section 229(c) of Pub. L. 88–272, set out as a note under section 852 of this title.

§853A. Credits from tax credit bonds allowed to shareholders

(a) General rule

A regulated investment company—

(1) which holds (directly or indirectly) one or more tax credit bonds on one or more applicable dates during the taxable year, and

(2) which meets the requirements of section 852(a) for the taxable year,

may elect the application of this section with respect to credits allowable to the investment company during such taxable year with respect to such bonds.

(b) Effect of election

If the election provided in subsection (a) is in effect for any taxable year—

(1) the regulated investment company shall not be allowed any credits to which subsection (a) applies for such taxable year,

(2) the regulated investment company shall—

(A) include in gross income (as interest) for such taxable year an amount equal to the amount that such investment company would have included in gross income with respect to such credits if this section did not apply, and

(B) increase the amount of the dividends paid deduction for such taxable year by the amount of such income, and

(3) each shareholder of such investment company shall—

(A) include in gross income an amount equal to such shareholder's proportionate share of the interest income attributable to such credits, and

(B) be allowed the shareholder's proportionate share of such credits against the tax imposed by this chapter.

(c) Statements to shareholders

For purposes of subsection (b)(3), the shareholder's proportionate share of—

(1) credits described in subsection (a), and

(2) gross income in respect of such credits,

shall not exceed the amounts so reported by the regulated investment company in a written statement furnished to such shareholder.

(d) Manner of making election

The election provided in subsection (a) shall be made in such manner as the Secretary may prescribe.

(e) Definitions and special rules

(1) Definitions

For purposes of this subsection—

(A) Tax credit bond

The term "tax credit bond" means—

(i) a qualified tax credit bond (as defined in section 54A(d)),

(ii) a build America bond (as defined in section 54AA(d)), and

(iii) any bond for which a credit is allowable under subpart H of part IV of subchapter A of this chapter.

(B) Applicable date

The term "applicable date" means—

(i) in the case of a qualified tax credit bond or a bond described in subparagraph (A)(iii), any credit allowance date (as defined in section 54A(e)(1)), and

(ii) in the case of a build America bond (as defined in section 54AA(d)), any interest payment date (as defined in section 54AA(e)).

(2) Stripped tax credit bonds

If the ownership of a tax credit bond is separated from the credit with respect to such bond, subsection (a) shall be applied by reference to the instruments evidencing the entitlement to the credit rather than the tax credit bond.

(f) Regulations, etc.

The Secretary shall prescribe such regulations or other guidance as may be necessary or appropriate to carry out the purposes of this section, including methods for determining a

shareholder's proportionate share of credits.

(Added Pub. L. 111–5, div. B, title I, §1541(a), Feb. 17, 2009, 123 Stat. 360; amended Pub. L. 111–325, title III, §301(d), Dec. 22, 2010, 124 Stat. 3544.)

AMENDMENTS

2010—Subsec. (c). Pub. L. 111–325, §301(d)(1), substituted "Statements" for "Notice" in heading and "so reported by the regulated investment company in a written statement furnished to such shareholder" for "so designated by the regulated investment company in a written notice mailed to its shareholders not later than 60 days after the close of its taxable year" in concluding provisions.

Subsec. (d). Pub. L. 111–325, §301(d)(2), struck out "and notifying shareholders" after "election" in heading and "and the notice to shareholders required by subsection (c)" after "subsection (a)" in text.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–325 applicable to taxable years beginning after Dec. 22, 2010, see section 301(h) of Pub. L. 111–325, set out as a note under section 852 of this title.

EFFECTIVE DATE

Section applicable to taxable years ending after Feb. 17, 2009, see section 1541(c) of Pub. L. 111–5, set out as an Effective Date of 2009 Amendment note under section 54 of this title.

§854. Limitations applicable to dividends received from regulated investment company

(a) Capital gain dividend

For purposes of section 1(h)(11) (relating to maximum rate of tax on dividends) and section 243 (relating to deductions for dividends received by corporations), a capital gain dividend (as defined in section 852(b)(3)) received from a regulated investment company shall not be considered as a dividend.

(b) Other dividends

(1) Amount treated as dividend

(A) Deduction under section 243

In any case in which—

(i) a dividend is received from a regulated investment company (other than a dividend to which subsection (a) applies), and

(ii) such investment company meets the requirements of section 852(a) for the taxable year during which it paid such dividend,

then, in computing any deduction under section 243, there shall be taken into account only that portion of such dividend reported by the regulated investment company as eligible for such deduction in written statements furnished to its shareholders and such dividend shall be treated as received from a corporation which is not a 20-percent owned corporation.

(B) Maximum rate under section 1(h)

(i) In general

In any case in which—

(I) a dividend is received from a regulated investment company (other than a dividend to which subsection (a) applies),

(II) such investment company meets the requirements of section 852(a) for the taxable year during which it paid such dividend, and

(III) the qualified dividend income of such investment company for such taxable year is less than 95 percent of its gross income,

then, in computing qualified dividend income, there shall be taken into account only that portion of such dividend reported by the regulated investment company as qualified dividend income in written statements furnished to its shareholders.

(ii) Gross income

For purposes of clause (i), in the case of 1 or more sales or other dispositions of stock or securities, the term "gross income" includes only the excess of—

(I) the net short-term capital gain from such sales or dispositions, over

(II) the net long-term capital loss from such sales or dispositions.

(C) Limitations

(i) Subparagraph (a)

The aggregate amount which may be reported as dividends under subparagraph (A) shall not exceed the aggregate dividends received by the company for the taxable year.

(ii) Subparagraph (b)

The aggregate amount which may be reported as qualified dividend income under subparagraph (B) shall not exceed the sum of—

(I) the qualified dividend income of the company for the taxable year, and

(II) the amount of any earnings and profits which were distributed by the company for such taxable year and accumulated in a taxable year with respect to which this part did not apply.

(2) Aggregate dividends

For purposes of this subsection—

(A) In general

In computing the amount of aggregate dividends received, there shall only be taken into account dividends received from domestic corporations.

(B) Dividends

For purposes of subparagraph (A), the term "dividend" shall not include any distribution from—

(i) a corporation which, for the taxable year of the corporation in which the distribution is made, or for the next preceding taxable year of the corporation, is a corporation exempt from tax under section 501 (relating to certain charitable, etc., organizations) or section 521 (relating to farmers' cooperative associations), or

(ii) a real estate investment trust which, for the taxable year of the trust in which the dividend is paid, qualifies under part II of subchapter M (section 856 and following).

(C) Limitations on dividends from regulated investment companies

In determining the amount of any dividend for purposes of this paragraph, a dividend received from a regulated investment company shall be subject to the limitations prescribed in this section.

(3) Special rule for computing deduction under section 243

For purposes of subparagraph (A) of paragraph (1), an amount shall be treated as a dividend for the purpose of paragraph (1) only if a deduction would have been allowable under section 243 to the regulated investment company determined—

(A) as if section 243 applied to dividends received by a regulated investment company,

(B) after the application of section 246 (but without regard to subsection (b) thereof), and

(C) after the application of section 246A.

(4) Qualified dividend income

For purposes of this subsection, the term "qualified dividend income" has the meaning given such term by section 1(h)(11)(B).

(Aug. 16, 1954, ch. 736, 68A Stat. 273; Pub. L. 88–272, title II, §§201(d)(8)–(10), 229(a)(4), Feb. 26, 1964, 78 Stat. 32, 99; Pub. L. 96–223, title IV, §404(b)(6), Apr. 2, 1980, 94 Stat. 307; Pub. L. 97–34, title III, §302(c)(4), (d)(1), Aug. 13, 1981, 95 Stat. 272, 274; Pub. L. 98–369, div. A, title I, §§16(a), 52(a)–(c), July 18, 1984, 98 Stat. 505, 564, 565; Pub. L. 99–514, title VI, §§612(b)(6), 655(a)(4), Oct. 22, 1986, 100 Stat. 2250, 2299; Pub. L. 100–203, title X, §10221(d)(3), Dec. 22, 1987, 101 Stat. 1330–409; Pub. L. 100–647, title I, §1006(b)(2), Nov. 10, 1988, 102 Stat. 3393; Pub. L. 108–27, title III, §302(c), May 28, 2003, 117 Stat. 762; Pub. L. 108–311, title IV, §402(a)(5)(A)–(D), Oct. 4, 2004, 118 Stat. 1184; Pub. L. 111–325, title III, §301(e), Dec. 22, 2010, 124 Stat. 3544.)

AMENDMENTS

2010—Subsec. (b)(1)(A). Pub. L. 111–325, §301(e)(1)(A), in concluding provisions, substituted "reported by the regulated investment company as eligible for such deduction in written statements furnished to its shareholders" for "designated under this subparagraph by the regulated investment company".

Subsec. (b)(1)(B)(i). Pub. L. 111–325, §301(e)(1)(B), in concluding provisions, substituted "reported by the regulated investment company as qualified dividend income in written statements furnished to its shareholders" for "designated by the regulated investment company".

Subsec. (b)(1)(C)(i). Pub. L. 111–325, §301(e)(1)(C), substituted "reported" for "designated".

Subsec. (b)(1)(C)(ii). Pub. L. 111–325, §301(e)(1)(D), substituted "reported" for "designated" in introductory provisions.

Subsec. (b)(2) to (5). Pub. L. 111–325, §301(e)(2), redesignated pars. (3) to (5) as (2) to (4), respectively, and struck out former par. (2). Prior to amendment, text read as follows: "The amount of any distribution by a regulated investment company which may be taken into account as qualified dividend income for purposes of section 1(h)(11) and as dividends for purposes of the deduction under section 243 shall not exceed the amount so designated by the company in a written notice to its shareholders mailed not later than 60 days after the close of its taxable year."

2004—Subsec. (b)(1)(B)(i). Pub. L. 108–311, §402(a)(5)(A)(ii), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "If the aggregate dividends received by a regulated investment company during any taxable year are less than 95 percent of its gross income, then, in computing the maximum rate under section 1(h)(11), rules similar to the rules of subparagraph (A) shall apply."

Subsec. (b)(1)(B)(iii), (iv). Pub. L. 108–311, §402(a)(5)(A)(i), struck out cls. (iii) and (iv) which related to dividends from real estate investment trusts and dividends from qualified foreign corporations, respectively.

Subsec. (b)(1)(C). Pub. L. 108–311, §402(a)(5)(B), amended heading and text of subpar. (C) generally. Prior to amendment, text read as follows: "The aggregate amount which may be designated as dividends under subparagraph (A) or (B) shall not exceed the aggregate dividends received by the company for the taxable year."

Subsec. (b)(2). Pub. L. 108–311, §402(a)(5)(C), substituted "as qualified dividend income for purposes of section 1(h)(11) and as dividends for purposes of" for "as a dividend for purposes of the maximum rate under section 1(h)(11) and".

Subsec. (b)(5). Pub. L. 108–311, §402(a)(5)(D), amended heading and text of par. (5) generally. Prior to amendment, text read as follows: "For purposes of paragraph (1)(B), an amount shall be treated as a dividend only if the amount is qualified dividend income (within the meaning of section 1(h)(11)(B))."

2003—Subsec. (a). Pub. L. 108–27, §302(c)(1), inserted "section 1(h)(11) (relating to maximum rate of tax on dividends) and" after "For purposes of".

Subsec. (b)(1)(B). Pub. L. 108–27, §302(c)(2), added subpar. (B). Former subpar. (B) redesignated (C).

Subsec. (b)(1)(C). Pub. L. 108–27, §302(c)(2), (3), redesignated subpar. (B) as (C) and substituted "subparagraph (A) or (B)" for "subparagraph (A)".

Subsec. (b)(2). Pub. L. 108–27, §302(c)(4), inserted "the maximum rate under section 1(h)(11) and" after "for purposes of".

Subsec. (b)(5). Pub. L. 108–27, §302(c)(5), added par. (5).

1988—Subsec. (b)(3). Pub. L. 100–647 substituted "Aggregate dividends" for "Definitions" in heading and amended text generally, substituting subpars. (A) to (C) for former subpars. (A) and (B).

1987—Subsec. (b)(1)(A). Pub. L. 100–203 inserted "and such dividend shall be treated as received from a corporation which is not a 20-percent owned corporation" before period at end.

1986—Subsec. (a). Pub. L. 99–514, §612(b)(6)(A), which directed that "section 116 (relating to an exclusion for dividends received by individuals), and" be struck out, was executed by striking out "section 116

(relating to an exclusion for dividends received by individuals) and" before "section 243" as the probable intent of Congress.

Subsec. (b)(1)(B), (C). Pub. L. 99–514, §612(b)(6)(B)(i), (ii), redesignated subpar. (C) as (B), struck out "or (B)" before "shall not exceed", and struck out former subpar. (B), exclusion under section 116, which read as follows: "If the aggregate dividends received by a regulated investment company during any taxable year are less than 95 percent of its gross income, then, in computing the exclusion under section 116, rules similar to the rules of subparagraph (A) shall apply."

Subsec. (b)(2). Pub. L. 99–514, §655(a)(4), substituted "60 days" for "45 days".

Pub. L. 99–514, §612(b)(6)(B)(iii), struck out "the exclusion under section 116 and" before "the deduction under section 243".

Subsec. (b)(3)(B). Pub. L. 99–514, §612(b)(6)(B)(iv), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "The term 'aggregate dividends received' includes only dividends received from domestic corporations other than dividends described in section 116(b) (relating to dividends excluded from gross income). In determining the amount of any dividend for purposes of this subparagraph, the rules provided in section 116(c) (relating to certain distributions) shall apply."

1984—Subsec. (b). Pub. L. 98–369, §16(a), repealed amendments made by Pub. L. 97–34, §302(c). See 1981 Amendment note below.

Subsec. (b)(1). Pub. L. 98–369, §52(a), increased the required amount of dividends by substituting provisions directing that in any case in which (i) a dividend is received from a regulated investment company (other than a dividend to which subsection (a) applies), and (ii) such investment company meets the requirements of section 852(a) for the taxable year during which it paid such dividend, then, in computing any deduction under section 243, there shall be taken into account only that portion of such dividend thus designated by the regulated investment company, that if the aggregate dividends received by a regulated investment company during any taxable year are less than 95 percent of its gross income, then, in computing the exclusion under section 116, similar rules applied, and that the aggregate amount which may be designated thus dividends shall not exceed the aggregate dividends received by the company for the taxable year for provisions which had directed that in the case of a dividend received from a regulated investment company (other than a dividend to which subsection (a) applied) (A) if such investment company met the requirements of section 852(a) for the taxable year during which it paid such dividend; and (B) the aggregate dividends received by such company during such taxable year were less than 75 percent of its gross income, then, in computing the exclusion under section 116 and the deduction under section 243, there was taken into account only that portion of the dividend which bore the same ratio to the amount of such dividend as the aggregate dividends received by such company during such taxable year to its gross income for such taxable year.

Subsec. (b)(3)(A). Pub. L. 98–369, §52(c), substituted provisions directing that in the case of 1 or more sales or other dispositions of stock and securities, the term "gross income" include only the excess of (i) the net short-term capital gain from such sales or dispositions, over (ii) the net long-term capital loss from such sales or dispositions for provisions which had directed that the term "gross income" not include gain from the sale or other disposition of stock or securities.

Subsec. (b)(4). Pub. L. 98–369, §52(b), added par. (4).

1981—Subsec. (b). Pub. L. 97–34, §302(c)(4), (d)(1), provided for general amendment of subsec. (b) so as to include provisions relating to taxable interest described in section 128 of this title, applicable to taxable years beginning after Dec. 31, 1984. Section 16(a) of Pub. L. 98–369, repealed section 302(c) of Pub. L. 97–34, and provided that this title shall be applied and administered as if section 302(c), and the amendments made by section 302(c), had not been enacted.

1980—Subsec. (b). Pub. L. 96–223, §404(b)(6), temporarily substituted "Other dividends and taxable interest" for "Other dividends" in heading, substituted "Deduction under section 243" for "General rule" in heading for par. (1), struck out "the exclusion under section 116 and" after "in computing" in text of par. (1) following subpar. (B), added par. (2), redesignated former pars. (2) and (3) as (3) and (4), respectively, and, in par. (4) as so redesignated, substituted "116(b)(2)" for "116(b)" and "116(c)(2)" for "116(c)" in subpar. (B) and added subpar. (C).

1964—Subsec. (a). Pub. L. 88–272, §201(d)(8), struck out "section 34(a) (relating to credit for dividends received by individuals)," before "section 116" and the comma before "and".

Subsec. (b). Pub. L. 88–272, §§201(d)(9), (10), 229(a)(4), substituted "45 days" for "30 days" in par. (2), and struck out "the credit under section 34(a)," before "the exclusion" in par. (1), and "the credit under section 34," before "the exclusion" in par. (2).

EFFECTIVE AND TERMINATION DATES OF 2010 AMENDMENT

Amendment by Pub. L. 111–325 applicable to taxable years beginning after Dec. 22, 2010, see section

301(h) of Pub. L. 111–325, set out as an Effective Date of 2010 Amendment note under section 852 of this title.

Pub. L. 111–325, title III, §301(i), Dec. 22, 2010, 124 Stat. 3547, provided that: "Section 303 of the Jobs and Growth Tax Relief Reconciliation Act of 2003 [Pub. L. 108–27, which was repealed by Pub. L. 112–240, title I, §102(a), Jan. 2, 2013, 126 Stat. 2318, was formerly set out as an Effective and Termination Dates of 2003 Amendment note under section 1 of this title] shall apply to the amendments made by subparagraphs (B) and (D) of subsection (e)(1) [amending this section] to the same extent and in the same manner as section 303 of such Act applies to the amendments made by section 302 of such Act [amending this section and sections 1, 163, 301, 306, 338, 467, 531, 541, 584, 702, 857, 1255, and 1257 of this title and repealing section 341 of this title]."

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 effective as if included in section 302 of the Jobs and Growth Tax Relief Reconciliation Act of 2003, Pub. L. 108–27, see section 402(b) of Pub. L. 108–311, set out a note under section 1 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–27 applicable, except as otherwise provided, to taxable years beginning after Dec. 31, 2002, see section 302(f) of Pub. L. 108–27, set out as an Effective and Termination Dates of 2003 Amendment note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to dividends received or accrued after Dec. 31, 1987, in taxable years ending after such date, see section 10221(e)(1) of Pub. L. 100–203, set out as a note under section 243 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 612(b)(6) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 612(c) of Pub. L. 99–514, set out as a note under section 301 of this title.

Amendment by section 655(a)(4) of Pub. L. 99–514 applicable to taxable years beginning after Oct. 22, 1986, see section 655(b) of Pub. L. 99–514, set out as a note under section 852 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 16(a) of Pub. L. 98–369 applicable to taxable years ending after Dec. 31, 1983, see section 18(a) of Pub. L. 98–369, set out as a note under section 48 of this title.

Pub. L. 98–369, div. A, title I, §52(d), July 18, 1984, 98 Stat. 565, provided that: "The amendments made by this section [amending this section] shall apply to taxable years of regulated investment companies beginning after the date of the enactment of this Act [July 18, 1984]."

EFFECTIVE AND TERMINATION DATES OF 1980 AMENDMENT

Amendment by Pub. L. 96–223 applicable with respect to taxable years beginning after Dec. 31, 1980, and before Jan. 1, 1982, see section 404(c) of Pub. L. 96–223, set out as a note under section 265 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by section 201(d)(8)–(10) of Pub. L. 88–272 applicable to dividends received after Dec. 31, 1964, in taxable years ending after such date, see section 201(e) of Pub. L. 88–272, set out as a note under section 22 of this title.

Amendment by section 229(a)(4) of Pub. L. 88–272 applicable to taxable years of regulated investment companies ending on or after Feb. 26, 1964, see section 229(c) of Pub. L. 88–272, set out as a note under section 852 of this title.

QUALIFIED DIVIDEND NOTICE PERIOD

Pub. L. 108–311, title IV, §402(a)(5)(F), Oct. 4, 2004, 118 Stat. 1185, provided that: "With respect to any taxable year of a regulated investment company or real estate investment trust ending on or before November 30, 2003, the period for providing notice of the qualified dividend amount to shareholders under [former, as to

854(b)(2)] sections 854(b)(2) and 857(c)(2)(C) of the Internal Revenue Code of 1986, as amended by this section, shall not expire before the date on which the statement under section 6042(c) of such Code is required to be furnished with respect to the last calendar year beginning in such taxable year."

§855. Dividends paid by regulated investment company after close of taxable year

(a) General rule

For purposes of this chapter, if a regulated investment company—

(1) declares a dividend before the later of—

(A) the 15th day of the 9th month following the close of the taxable year, or

(B) in the case of an extension of time for filing the company's return for the taxable year, the due date for filing such return taking into account such extension, and

(2) distributes the amount of such dividend to shareholders in the 12-month period following the close of such taxable year and not later than the date of the first dividend payment of the same type of dividend made after such declaration,

the amount so declared and distributed shall, to the extent the company elects in such return in accordance with regulations prescribed by the Secretary, be considered as having been paid during such taxable year, except as provided in subsections (b) and (c). For purposes of paragraph (2), a dividend attributable to any short-term capital gain with respect to which a notice is required under the Investment Company Act of 1940 shall be treated as the same type of dividend as a capital gain dividend.

(b) Receipt by shareholder

Except as provided in section 852(b)(7), amounts to which subsection (a) is applicable shall be treated as received by the shareholder in the taxable year in which the distribution is made.

(c) Foreign tax election

If an investment company to which section 853 is applicable for the taxable year makes a distribution as provided in subsection (a) of this section, the shareholders shall consider the amounts described in section 853(b)(2) allocable to such distribution as paid or received, as the case may be, in the taxable year in which the distribution is made.

(Aug. 16, 1954, ch. 736, 68A Stat. 274; Pub. L. 86–779, §10(b)(2), Sept. 14, 1960, 74 Stat. 1009; Pub. L. 88–272, title II, §229(a)(5), Feb. 26, 1964, 78 Stat. 99; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 99–514, title VI, §§651(b)(1)(B), 655(a)(5), Oct. 22, 1986, 100 Stat. 2296, 2299; Pub. L. 100–647, title I, §1006(l)(1)(B), Nov. 10, 1988, 102 Stat. 3413; Pub. L. 111–325, title III, §§301(g), 304(a)–(c), Dec. 22, 2010, 124 Stat. 3547–3549.)

REFERENCES IN TEXT

The Investment Company Act of 1940, referred to in subsec. (a), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, which is classified generally to subchapter I (§80a–1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80a–51 of Title 15 and Tables.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–325, §304(c), in concluding provisions, inserted at end "For purposes of paragraph (2), a dividend attributable to any short-term capital gain with respect to which a notice is required under the Investment Company Act of 1940 shall be treated as the same type of dividend as a capital gain dividend."

Pub. L. 111–325, §301(g)(2), substituted "and (c)" for ", (c) and (d)" in concluding provisions.

Subsec. (a)(1). Pub. L. 111–325, §304(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "declares a dividend prior to the time prescribed by law for the filing of its return for a taxable year (including the period of any extension of time granted for filing such return), and".

Subsec. (a)(2). Pub. L. 111–325, §304(b), substituted "the first dividend payment of the same type of

dividend" for "the first regular dividend payment".

Subsecs. (c), (d). Pub. L. 111–325, §301(g)(1), redesignated subsec. (d) as (c) and struck out former subsec. (c). Text of former subsec. (c) read as follows: "In the case of amounts to which subsection (a) is applicable, any notice to shareholders required under this part with respect to such amounts shall be made not later than 60 days after the close of the taxable year in which the distribution is made."

1988—Subsec. (b). Pub. L. 100–647 substituted "section 852(b)(7)" for "section 852(b)(6)".

1986—Subsec. (b). Pub. L. 99–514, §651(b)(1)(B), substituted "Except as provided in section 852(b)(6), amounts" for "Amounts".

Subsec. (c). Pub. L. 99–514, §655(a)(5), substituted "60 days" for "45 days".

1976—Subsec. (a). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

1964—Subsec. (c). Pub. L. 88–272 substituted "45 days" for "30 days".

1960—Subsec. (c). Pub. L. 86–779 substituted "this part" for "this subchapter".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 301(g) of Pub. L. 111–325 applicable to taxable years beginning after Dec. 22, 2010, see section 301(h) of Pub. L. 111–325, set out as a note under section 852 of this title.

Pub. L. 111–325, title III, §304(d), Dec. 22, 2010, 124 Stat. 3549, provided that: "The amendments made by this section [amending this section] shall apply to distributions in taxable years beginning after the date of the enactment of this Act [Dec. 22, 2010]."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 651(b)(1)(B) of Pub. L. 99–514 applicable to calendar years beginning after Dec. 31, 1986, see section 651(d) of Pub. L. 99–514, set out as an Effective Date note under section 4982 of this title.

Amendment by section 655(a)(5) of Pub. L. 99–514 applicable to taxable years beginning after Oct. 22, 1986, see section 655(b) of Pub. L. 99–514, set out as a note under section 852 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to taxable years of regulated investment companies ending on or after Feb. 26, 1964, see section 229(c) of Pub. L. 88–272, set out as a note under section 852 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–779 applicable with respect to taxable years of real estate investment trusts beginning after Dec. 31, 1960, see section 10(k) of Pub. L. 86–779, set out as an Effective Date note under section 856 of this title.

PART II—REAL ESTATE INVESTMENT TRUSTS

Sec.
856. Definition of real estate investment trust.
857. Taxation of real estate investment trusts and their beneficiaries.
858. Dividends paid by real estate investment trust after close of taxable year.
859. Adoption of annual accounting period.

AMENDMENTS

1978—Pub. L. 95–600, title III, §362(d)(7), Nov. 6, 1978, 92 Stat. 2852, substituted in item 859 "Adoption of annual accounting period" for "Deduction of deficiency dividends" and struck out item 860 "Adoption of annual accounting period".

1976—Pub. L. 94–455, title XVI, §§1601(a)(2), 1604(i)(2), Oct. 4, 1976, 90 Stat. 1745, 1752, added items 859 and 860.

1960—Pub. L. 86–779, §10(a), Sept. 14, 1960, 74 Stat. 1003, added part II analysis.

§856. Definition of real estate investment trust

(a) In general

For purposes of this title, the term "real estate investment trust" means a corporation, trust, or association—

(1) which is managed by one or more trustees or directors;

(2) the beneficial ownership of which is evidenced by transferable shares, or by transferable certificates of beneficial interest;

(3) which (but for the provisions of this part) would be taxable as a domestic corporation;

(4) which is neither (A) a financial institution referred to in section 582(c)(2), nor (B) an insurance company to which subchapter L applies;

(5) the beneficial ownership of which is held by 100 or more persons;

(6) subject to the provisions of subsection (k), which is not closely held (as determined under subsection (h)); and

(7) which meets the requirements of subsection (c).

(b) Determination of status

The conditions described in paragraphs (1) to (4), inclusive, of subsection (a) must be met during the entire taxable year, and the condition described in paragraph (5) must exist during at least 335 days of a taxable year of 12 months, or during a proportionate part of a taxable year of less than 12 months.

(c) Limitations

A corporation, trust, or association shall not be considered a real estate investment trust for any taxable year unless—

(1) it files with its return for the taxable year an election to be a real estate investment trust or has made such election for a previous taxable year, and such election has not been terminated or revoked under subsection (g);

(2) at least 95 percent (90 percent for taxable years beginning before January 1, 1980) of its gross income (excluding gross income from prohibited transactions) is derived from—

(A) dividends;

(B) interest;

(C) rents from real property;

(D) gain from the sale or other disposition of stock, securities, and real property (including interests in real property and interests in mortgages on real property) which is not property described in section 1221(a)(1);

(E) abatements and refunds of taxes on real property;

(F) income and gain derived from foreclosure property (as defined in subsection (e));

(G) amounts (other than amounts the determination of which depends in whole or in part on the income or profits of any person) received or accrued as consideration for entering into agreements (i) to make loans secured by mortgages on real property or on interests in real property or (ii) to purchase or lease real property (including interests in real property and interests in mortgages on real property);

(H) gain from the sale or other disposition of a real estate asset which is not a prohibited transaction solely by reason of section 857(b)(6); and

(I) mineral royalty income earned in the first taxable year beginning after the date of the enactment of this subparagraph from real property owned by a timber real estate investment trust and held, or once held, in connection with the trade or business of producing timber by such real estate investment trust;

(3) at least 75 percent of its gross income (excluding gross income from prohibited transactions) is derived from—

(A) rents from real property;

(B) interest on obligations secured by mortgages on real property or on interests in real

property;

(C) gain from the sale or other disposition of real property (including interests in real property and interests in mortgages on real property) which is not property described in section 1221(a)(1);

(D) dividends or other distributions on, and gain (other than gain from prohibited transactions) from the sale or other disposition of, transferable shares (or transferable certificates of beneficial interest) in other real estate investment trusts which meet the requirements of this part;

(E) abatements and refunds of taxes on real property;

(F) income and gain derived from foreclosure property (as defined in subsection (e));

(G) amounts (other than amounts the determination of which depends in whole or in part on the income or profits of any person) received or accrued as consideration for entering into agreements (i) to make loans secured by mortgages on real property or on interests in real property or (ii) to purchase or lease real property (including interests in real property and interests in mortgages on real property);

(H) gain from the sale or other disposition of a real estate asset which is not a prohibited transaction solely by reason of section 857(b)(6); and

(I) qualified temporary investment income; and

(4) at the close of each quarter of the taxable year—

(A) at least 75 percent of the value of its total assets is represented by real estate assets, cash and cash items (including receivables), and Government securities; and

(B)(i) not more than 25 percent of the value of its total assets is represented by securities (other than those includible under subparagraph (A)),

(ii) not more than 25 percent of the value of its total assets is represented by securities of one or more taxable REIT subsidiaries,[1]

(iii) except with respect to a taxable REIT subsidiary and securities includible under subparagraph (A)—

(I) not more than 5 percent of the value of its total assets is represented by securities of any one issuer,

(II) the trust does not hold securities possessing more than 10 percent of the total voting power of the outstanding securities of any one issuer, and

(III) the trust does not hold securities having a value of more than 10 percent of the total value of the outstanding securities of any one issuer.

A real estate investment trust which meets the requirements of this paragraph at the close of any quarter shall not lose its status as a real estate investment trust because of a discrepancy during a subsequent quarter between the value of its various investments and such requirements (including a discrepancy caused solely by the change in the foreign currency exchange rate used to value a foreign asset) unless such discrepancy exists immediately after the acquisition of any security or other property and is wholly or partly the result of such acquisition. A real estate investment trust which does not meet such requirements at the close of any quarter by reason of a discrepancy existing immediately after the acquisition of any security or other property which is wholly or partly the result of such acquisition during such quarter shall not lose its status for such quarter as a real estate investment trust if such discrepancy is eliminated within 30 days after the close of such quarter and in such cases it shall be considered to have met such requirements at the close of such quarter for purposes of applying the preceding sentence.

(5) For purposes of this part—

(A) The term "value" means, with respect to securities for which market quotations are readily available, the market value of such securities; and with respect to other securities and assets, fair value as determined in good faith by the trustees, except that in the case of securities of real estate investment trusts such fair value shall not exceed market value or asset value, whichever is higher.

(B) The term "real estate assets" means real property (including interests in real property and interests in mortgages on real property) and shares (or transferable certificates of beneficial interest) in other real estate investment trusts which meet the requirements of this part. Such term also includes any property (not otherwise a real estate asset) attributable to the temporary investment of new capital, but only if such property is stock or a debt instrument, and only for the 1-year period beginning on the date the real estate trust receives such capital.

(C) The term "interests in real property" includes fee ownership and co-ownership of land or improvements thereon, leaseholds of land or improvements thereon, options to acquire land or improvements thereon, and options to acquire leaseholds of land or improvements thereon, but does not include mineral, oil, or gas royalty interests.

(D) QUALIFIED TEMPORARY INVESTMENT INCOME.—

(i) IN GENERAL.—The term "qualified temporary investment income" means any income which—

(I) is attributable to stock or a debt instrument (within the meaning of section 1275(a)(1)),

(II) is attributable to the temporary investment of new capital, and

(III) is received or accrued during the 1-year period beginning on the date on which the real estate investment trust receives such capital.

(ii) NEW CAPITAL.—The term "new capital" means any amount received by the real estate investment trust—

(I) in exchange for stock (or certificates of beneficial interests) in such trust (other than amounts received pursuant to a dividend reinvestment plan), or

(II) in a public offering of debt obligations of such trust which have maturities of at least 5 years.

(E) A regular or residual interest in a REMIC shall be treated as a real estate asset, and any amount includible in gross income with respect to such an interest shall be treated as interest on an obligation secured by a mortgage on real property; except that, if less than 95 percent of the assets of such REMIC are real estate assets (determined as if the real estate investment trust held such assets), such real estate investment trust shall be treated as holding directly (and as receiving directly) its proportionate share of the assets and income of the REMIC. For purposes of determining whether any interest in a REMIC qualifies under the preceding sentence, any interest held by such REMIC in another REMIC shall be treated as a real estate asset under principles similar to the principles of the preceding sentence, except that, if such REMIC's are part of a tiered structure, they shall be treated as one REMIC for purposes of this subparagraph.

(F) All other terms shall have the same meaning as when used in the Investment Company Act of 1940, as amended (15 U.S.C. 80a–1 and following).

(G) TREATMENT OF CERTAIN HEDGING INSTRUMENTS.—Except to the extent as determined by the Secretary—

(i) any income of a real estate investment trust from a hedging transaction (as defined in clause (ii) or (iii) of section 1221(b)(2)(A)) which is clearly identified pursuant to section 1221(a)(7), including gain from the sale or disposition of such a transaction, shall not constitute gross income under paragraphs (2) and (3) to the extent that the transaction hedges any indebtedness incurred or to be incurred by the trust to acquire or carry real estate assets, and

(ii) any income of a real estate investment trust from a transaction entered into by the trust primarily to manage risk of currency fluctuations with respect to any item of income or gain described in paragraph (2) or (3) (or any property which generates such income or gain), including gain from the termination of such a transaction, shall not constitute gross income under paragraphs (2) and (3), but only if such transaction is clearly identified as such before the close of the day on which it was acquired, originated, or entered into (or such other time as the Secretary may prescribe).

(H) TREATMENT OF TIMBER GAINS.—

(i) IN GENERAL.—Gain from the sale of real property described in paragraph (2)(D) and (3)(C) shall include gain which is—

(I) recognized by an election under section 631(a) from timber owned by the real estate investment trust, the cutting of which is provided by a taxable REIT subsidiary of the real estate investment trust;

(II) recognized under section 631(b); or

(III) income which would constitute gain under subclause (I) or (II) but for the failure to meet the 1-year holding period requirement.

(ii) SPECIAL RULES.—

(I) For purposes of this subtitle, cut timber, the gain from which is recognized by a real estate investment trust pursuant to an election under section 631(a) described in clause (i)(I) or so much of clause (i)(III) as relates to clause (i)(I), shall be deemed to be sold to the taxable REIT subsidiary of the real estate investment trust on the first day of the taxable year.

(II) For purposes of this subtitle, income described in this subparagraph shall not be treated as gain from the sale of property described in section 1221(a)(1).

(iii) TERMINATION.—This subparagraph shall not apply to dispositions after the termination date.

(I) TIMBER REAL ESTATE INVESTMENT TRUST.—The term "timber real estate investment trust" means a real estate investment trust in which more than 50 percent in value of its total assets consists of real property held in connection with the trade or business of producing timber.

(J) SECRETARIAL AUTHORITY TO EXCLUDE OTHER ITEMS OF INCOME.—To the extent necessary to carry out the purposes of this part, the Secretary is authorized to determine, solely for purposes of this part, whether any item of income or gain which—

(i) does not otherwise qualify under paragraph (2) or (3) may be considered as not constituting gross income for purposes of paragraphs (2) or (3), or

(ii) otherwise constitutes gross income not qualifying under paragraph (2) or (3) may be considered as gross income which qualifies under paragraph (2) or (3).

(K) CASH.—If the real estate investment trust or its qualified business unit (as defined in section 989) uses any foreign currency as its functional currency (as defined in section 985(b)), the term "cash" includes such foreign currency but only to the extent such foreign currency—

(i) is held for use in the normal course of the activities of the trust or qualified business unit which give rise to items of income or gain described in paragraph (2) or (3) of subsection (c) or are directly related to acquiring or holding assets described in subsection (c)(4), and

(ii) is not held in connection with an activity described in subsection (n)(4).

(6) A corporation, trust, or association which fails to meet the requirements of paragraph (2) or (3), or of both such paragraphs, for any taxable year shall nevertheless be considered to have satisfied the requirements of such paragraphs for such taxable year if—

(A) following the corporation, trust, or association's identification of the failure to meet the requirements of paragraph (2) or (3), or of both such paragraphs, for any taxable year, a description of each item of its gross income described in such paragraphs is set forth in a schedule for such taxable year filed in accordance with regulations prescribed by the Secretary, and

(B) the failure to meet the requirements of paragraph (2) or (3), or of both such paragraphs, is due to reasonable cause and not due to willful neglect.

(7) RULES OF APPLICATION FOR FAILURE TO SATISFY PARAGRAPH (4).—

(A) IN GENERAL.—A corporation, trust, or association that fails to meet the requirements of paragraph (4) (other than a failure to meet the requirements of paragraph (4)(B)(iii) which is described in subparagraph (B)(i) of this paragraph) for a particular quarter shall nevertheless be considered to have satisfied the requirements of such paragraph for such quarter if—

(i) following the corporation, trust, or association's identification of the failure to satisfy the requirements of such paragraph for a particular quarter, a description of each asset that causes the corporation, trust, or association to fail to satisfy the requirements of such paragraph at the close of such quarter of any taxable year is set forth in a schedule for such quarter filed in accordance with regulations prescribed by the Secretary,

(ii) the failure to meet the requirements of such paragraph for a particular quarter is due to reasonable cause and not due to willful neglect, and

(iii)(I) the corporation, trust, or association disposes of the assets set forth on the schedule specified in clause (i) within 6 months after the last day of the quarter in which the corporation, trust or association's identification of the failure to satisfy the requirements of such paragraph occurred or such other time period prescribed by the Secretary and in the manner prescribed by the Secretary, or

(II) the requirements of such paragraph are otherwise met within the time period specified in subclause (I).

(B) RULE FOR CERTAIN DE MINIMIS FAILURES.—A corporation, trust, or association that fails to meet the requirements of paragraph (4)(B)(iii) for a particular quarter shall nevertheless be considered to have satisfied the requirements of such paragraph for such quarter if—

(i) such failure is due to the ownership of assets the total value of which does not exceed the lesser of—

(I) 1 percent of the total value of the trust's assets at the end of the quarter for which such measurement is done, and

(II) $10,000,000, and

(ii)(I) the corporation, trust, or association, following the identification of such failure, disposes of assets in order to meet the requirements of such paragraph within 6 months after the last day of the quarter in which the corporation, trust or association's identification of the failure to satisfy the requirements of such paragraph occurred or such other time period prescribed by the Secretary and in the manner prescribed by the Secretary, or

(II) the requirements of such paragraph are otherwise met within the time period specified in subclause (I).

(C) TAX.—

(i) TAX IMPOSED.—If subparagraph (A) applies to a corporation, trust, or association for any taxable year, there is hereby imposed on such corporation, trust, or association a tax in an amount equal to the greater of—

(I) $50,000, or

(II) the amount determined (pursuant to regulations promulgated by the Secretary) by multiplying the net income generated by the assets described in the schedule specified in subparagraph (A)(i) for the period specified in clause (ii) by the highest rate of tax specified in section 11.

(ii) PERIOD.—For purposes of clause (i)(II), the period described in this clause is the period beginning on the first date that the failure to satisfy the requirements of such

paragraph (4) occurs as a result of the ownership of such assets and ending on the earlier of the date on which the trust disposes of such assets or the end of the first quarter when there is no longer a failure to satisfy such paragraph (4).

(iii) ADMINISTRATIVE PROVISIONS.—For purposes of subtitle F, the taxes imposed by this subparagraph shall be treated as excise taxes with respect to which the deficiency procedures of such subtitle apply.

(8) TERMINATION DATE.—For purposes of this subsection, the term "termination date" means, with respect to any taxpayer, the last day of the taxpayer's first taxable year beginning after the date of the enactment of this paragraph and before the date that is 1 year after such date of enactment.

(d) Rents from real property defined

(1) Amounts included

For purposes of paragraphs (2) and (3) of subsection (c), the term "rents from real property" includes (subject to paragraph (2))—

(A) rents from interests in real property,

(B) charges for services customarily furnished or rendered in connection with the rental of real property, whether or not such charges are separately stated, and

(C) rent attributable to personal property which is leased under, or in connection with, a lease of real property, but only if the rent attributable to such personal property for the taxable year does not exceed 15 percent of the total rent for the taxable year attributable to both the real and personal property leased under, or in connection with, such lease.

For purposes of subparagraph (C), with respect to each lease of real property, rent attributable to personal property for the taxable year is that amount which bears the same ratio to total rent for the taxable year as the average of the fair market values of the personal property at the beginning and at the end of the taxable year bears to the average of the aggregate fair market values of both the real property and the personal property at the beginning and at the end of such taxable year.

(2) Amounts excluded

For purposes of paragraphs (2) and (3) of subsection (c), the term "rents from real property" does not include—

(A) except as provided in paragraphs (4) and (6), any amount received or accrued, directly or indirectly, with respect to any real or personal property, if the determination of such amount depends in whole or in part on the income or profits derived by any person from such property (except that any amount so received or accrued shall not be excluded from the term "rents from real property" solely by reason of being based on a fixed percentage or percentages of receipts or sales);

(B) except as provided in paragraph (8), any amount received or accrued directly or indirectly from any person if the real estate investment trust owns, directly or indirectly—

(i) in the case of any person which is a corporation, stock of such person possessing 10 percent or more of the total combined voting power of all classes of stock entitled to vote, or 10 percent or more of the total value of shares of all classes of stock of such person; or

(ii) in the case of any person which is not a corporation, an interest of 10 percent or more in the assets or net profits of such person; and

(C) any impermissible tenant service income (as defined in paragraph (7)).

(3) Independent contractor defined

For purposes of this subsection and subsection (e), the term "independent contractor" means any person—

(A) who does not own, directly or indirectly, more than 35 percent of the shares, or certificates of beneficial interest, in the real estate investment trust; and

(B) if such person is a corporation, not more than 35 percent of the total combined voting power of whose stock (or 35 percent of the total shares of all classes of whose stock), or, if such person is not a corporation, not more than 35 percent of the interest in whose assets or net profits is owned, directly or indirectly, by one or more persons owning 35 percent or more of the shares or certificates of beneficial interest in the trust.

In the event that any class of stock of either the real estate investment trust or such person is regularly traded on an established securities market, only persons who own, directly or indirectly, more than 5 percent of such class of stock shall be taken into account as owning any of the stock of such class for purposes of applying the 35 percent limitation set forth in subparagraph (B) (but all of the outstanding stock of such class shall be considered outstanding in order to compute the denominator for purpose of determining the applicable percentage of ownership).

(4) Special rule for certain contingent rents

Where a real estate investment trust receives or accrues, with respect to real or personal property, any amount which would be excluded from the term "rents from real property" solely because the tenant of the real estate investment trust receives or accrues, directly or indirectly, from subtenants any amount the determination of which depends in whole or in part on the income or profits derived by any person from such property, only a proportionate part (determined pursuant to regulations prescribed by the Secretary) of the amount received or accrued by the real estate investment trust from that tenant will be excluded from the term "rents from real property".

(5) Constructive ownership of stock

For purposes of this subsection, the rules prescribed by section 318(a) for determining the ownership of stock shall apply in determining the ownership of stock, assets, or net profits of any person; except that—

(A) "10 percent" shall be substituted for "50 percent" in subparagraph (C) of paragraphs (2) and (3) of section 318(a), and

(B) section 318(a)(3)(A) shall be applied in the case of a partnership by taking into account only partners who own (directly or indirectly) 25 percent or more of the capital interest, or the profits interest, in the partnership.

(6) Special rule for certain property subleased by tenant of real estate investment trusts

(A) In general

If—

(i) a real estate investment trust receives or accrues, with respect to real or personal property, amounts from a tenant which derives substantially all of its income with respect to such property from the subleasing of substantially all of such property, and

(ii) a portion of the amount such tenant receives or accrues, directly or indirectly, from subtenants consists of qualified rents,

then the amounts which the trust receives or accrues from the tenant shall not be excluded from the term "rents from real property" by reason of being based on the income or profits of such tenant to the extent the amounts so received or accrued are attributable to qualified rents received or accrued by such tenant.

(B) Qualified rents

For purposes of subparagraph (A), the term "qualified rents" means any amount which would be treated as rents from real property if received by the real estate investment trust.

(7) Impermissible tenant service income

For purposes of paragraph (2)(C)—

(A) In general

The term "impermissible tenant service income" means, with respect to any real or personal

property, any amount received or accrued directly or indirectly by the real estate investment trust for—

(i) services furnished or rendered by the trust to the tenants of such property, or

(ii) managing or operating such property.

(B) Disqualification of all amounts where more than de minimis amount

If the amount described in subparagraph (A) with respect to a property for any taxable year exceeds 1 percent of all amounts received or accrued during such taxable year directly or indirectly by the real estate investment trust with respect to such property, the impermissible tenant service income of the trust with respect to the property shall include all such amounts.

(C) Exceptions

For purposes of subparagraph (A)—

(i) services furnished or rendered, or management or operation provided, through an independent contractor from whom the trust itself does not derive or receive any income or through a taxable REIT subsidiary of such trust shall not be treated as furnished, rendered, or provided by the trust, and

(ii) there shall not be taken into account any amount which would be excluded from unrelated business taxable income under section 512(b)(3) if received by an organization described in section 511(a)(2).

(D) Amount attributable to impermissible services

For purposes of subparagraph (A), the amount treated as received for any service (or management or operation) shall not be less than 150 percent of the direct cost of the trust in furnishing or rendering the service (or providing the management or operation).

(E) Coordination with limitations

For purposes of paragraphs (2) and (3) of subsection (c), amounts described in subparagraph (A) shall be included in the gross income of the corporation, trust, or association.

(8) Special rule for taxable REIT subsidiaries

For purposes of this subsection, amounts paid to a real estate investment trust by a taxable REIT subsidiary of such trust shall not be excluded from rents from real property by reason of paragraph (2)(B) if the requirements of either of the following subparagraphs are met:

(A) Limited rental exception

(i) In general

The requirements of this subparagraph are met with respect to any property if at least 90 percent of the leased space of the property is rented to persons other than taxable REIT subsidiaries of such trust and other than persons described in paragraph (2)(B).

(ii) Rents must be substantially comparable

Clause (i) shall apply only to the extent that the amounts paid to the trust as rents from real property (as defined in paragraph (1) without regard to paragraph (2)(B)) from such property are substantially comparable to such rents paid by the other tenants of the trust's property for comparable space.

(iii) Times for testing rent comparability

The substantial comparability requirement of clause (ii) shall be treated as met with respect to a lease to a taxable REIT subsidiary of the trust if such requirement is met under the terms of the lease—

(I) at the time such lease is entered into,

(II) at the time of each extension of the lease, including a failure to exercise a right to terminate, and

(III) at the time of any modification of the lease between the trust and the taxable REIT subsidiary if the rent under such lease is effectively increased pursuant to such

modification.

With respect to subclause (III), if the taxable REIT subsidiary of the trust is a controlled taxable REIT subsidiary of the trust, the term "rents from real property" shall not in any event include rent under such lease to the extent of the increase in such rent on account of such modification.

(iv) Controlled taxable REIT subsidiary

For purposes of clause (iii), the term "controlled taxable REIT subsidiary" means, with respect to any real estate investment trust, any taxable REIT subsidiary of such trust if such trust owns directly or indirectly—

(I) stock possessing more than 50 percent of the total voting power of the outstanding stock of such subsidiary, or

(II) stock having a value of more than 50 percent of the total value of the outstanding stock of such subsidiary.

(v) Continuing qualification based on third party actions

If the requirements of clause (i) are met at a time referred to in clause (iii), such requirements shall continue to be treated as met so long as there is no increase in the space leased to any taxable REIT subsidiary of such trust or to any person described in paragraph (2)(B).

(vi) Correction period

If there is an increase referred to in clause (v) during any calendar quarter with respect to any property, the requirements of clause (iii) shall be treated as met during the quarter and the succeeding quarter if such requirements are met at the close of such succeeding quarter.

(B) Exception for certain lodging facilities and health care property

The requirements of this subparagraph are met with respect to an interest in real property which is a qualified lodging facility (as defined in paragraph (9)(D)) or a qualified health care property (as defined in subsection (e)(6)(D)(i)) leased by the trust to a taxable REIT subsidiary of the trust if the property is operated on behalf of such subsidiary by a person who is an eligible independent contractor. For purposes of this section, a taxable REIT subsidiary is not considered to be operating or managing a qualified health care property or qualified lodging facility solely because it—

(i) directly or indirectly possesses a license, permit, or similar instrument enabling it to do so, or

(ii) employs individuals working at such facility or property located outside the United States, but only if an eligible independent contractor is responsible for the daily supervision and direction of such individuals on behalf of the taxable REIT subsidiary pursuant to a management agreement or similar service contract.

(9) Eligible independent contractor

For purposes of paragraph (8)(B)—

(A) In general

The term "eligible independent contractor" means, with respect to any qualified lodging facility or qualified health care property (as defined in subsection (e)(6)(D)(i)), any independent contractor if, at the time such contractor enters into a management agreement or other similar service contract with the taxable REIT subsidiary to operate such qualified lodging facility or qualified health care property, such contractor (or any related person) is actively engaged in the trade or business of operating qualified lodging facilities or qualified health care properties, respectively, for any person who is not a related person with respect to the real estate investment trust or the taxable REIT subsidiary.

(B) Special rules

Solely for purposes of this paragraph and paragraph (8)(B), a person shall not fail to be treated as an independent contractor with respect to any qualified lodging facility or qualified health care property (as so defined) by reason of the following:

(i) The taxable REIT subsidiary bears the expenses for the operation of such qualified lodging facility or qualified health care property pursuant to the management agreement or other similar service contract.

(ii) The taxable REIT subsidiary receives the revenues from the operation of such qualified lodging facility or qualified health care property, net of expenses for such operation and fees payable to the operator pursuant to such agreement or contract.

(iii) The real estate investment trust receives income from such person with respect to another property that is attributable to a lease of such other property to such person that was in effect as of the later of—

(I) January 1, 1999, or

(II) the earliest date that any taxable REIT subsidiary of such trust entered into a management agreement or other similar service contract with such person with respect to such qualified lodging facility or qualified health care property.

(C) Renewals, etc., of existing leases

For purposes of subparagraph (B)(iii)—

(i) a lease shall be treated as in effect on January 1, 1999, without regard to its renewal after such date, so long as such renewal is pursuant to the terms of such lease as in effect on whichever of the dates under subparagraph (B)(iii) is the latest, and

(ii) a lease of a property entered into after whichever of the dates under subparagraph (B)(iii) is the latest shall be treated as in effect on such date if—

(I) on such date, a lease of such property from the trust was in effect, and

(II) under the terms of the new lease, such trust receives a substantially similar or lesser benefit in comparison to the lease referred to in subclause (I).

(D) Qualified lodging facility

For purposes of this paragraph—

(i) In general

The term "qualified lodging facility" means any lodging facility unless wagering activities are conducted at or in connection with such facility by any person who is engaged in the business of accepting wagers and who is legally authorized to engage in such business at or in connection with such facility.

(ii) Lodging facility

The term "lodging facility" means a—

(I) hotel,

(II) motel, or

(III) other establishment more than one-half of the dwelling units in which are used on a transient basis.

(iii) Customary amenities and facilities

The term "lodging facility" includes customary amenities and facilities operated as part of, or associated with, the lodging facility so long as such amenities and facilities are customary for other properties of a comparable size and class owned by other owners unrelated to such real estate investment trust.

(E) Operate includes manage

References in this paragraph to operating a property shall be treated as including a reference to managing the property.

(F) Related person

Persons shall be treated as related to each other if such persons are treated as a single

employer under subsection (a) or (b) of section 52.

(e) Special rules for foreclosure property

(1) Foreclosure property defined

For purposes of this part, the term "foreclosure property" means any real property (including interests in real property), and any personal property incident to such real property, acquired by the real estate investment trust as the result of such trust having bid in such property at foreclosure, or having otherwise reduced such property to ownership or possession by agreement or process of law, after there was default (or default was imminent) on a lease of such property or on an indebtedness which such property secured. Such term does not include property acquired by the real estate investment trust as a result of indebtedness arising from the sale or other disposition of property of the trust described in section 1221(a)(1) which was not originally acquired as foreclosure property.

(2) Grace period

Except as provided in paragraph (3), property shall cease to be foreclosure property with respect to the real estate investment trust as of the close of the 3d taxable year following the taxable year in which the trust acquired such property.

(3) Extensions

If the real estate investment trust establishes to the satisfaction of the Secretary that an extension of the grace period is necessary for the orderly liquidation of the trust's interests in such property, the Secretary may grant one extension of the grace period for such property. Any such extension shall not extend the grace period beyond the close of the 3d taxable year following the last taxable year in the period under paragraph (2).

(4) Termination of grace period in certain cases

Any foreclosure property shall cease to be such on the first day (occurring on or after the day on which the real estate investment trust acquired the property) on which—

(A) a lease is entered into with respect to such property which, by its terms, will give rise to income which is not described in subsection (c)(3) (other than subparagraph (F) of such subsection), or any amount is received or accrued, directly or indirectly, pursuant to a lease entered into on or after such day which is not described in such subsection,

(B) any construction takes place on such property (other than completion of a building, or completion of any other improvement, where more than 10 percent of the construction of such building or other improvement was completed before default became imminent), or

(C) if such day is more than 90 days after the day on which such property was acquired by the real estate investment trust and the property is used in a trade or business which is conducted by the trust (other than through an independent contractor (within the meaning of section (d)(3)) from whom the trust itself does not derive or receive any income).

For purposes of subparagraph (C), property shall not be treated as used in a trade or business by reason of any activities of the real estate investment trust with respect to such property to the extent that such activities would not result in amounts received or accrued, directly or indirectly, with respect to such property being treated as other than rents from real property.

(5) Taxpayer must make election

Property shall be treated as foreclosure property for purposes of this part only if the real estate investment trust so elects (in the manner provided in regulations prescribed by the Secretary) on or before the due date (including any extensions of time) for filing its return of tax under this chapter for the taxable year in which such trust acquires such property. A real estate investment trust may revoke any such election for a taxable year by filing the revocation (in the manner provided by the Secretary) on or before the due date (including any extension of time) for filing its return of tax

under this chapter for the taxable year. If a trust revokes an election for any property, no election may be made by the trust under this paragraph with respect to the property for any subsequent taxable year.

(6) Special rule for qualified health care properties

For purposes of this subsection—

(A) Acquisition at expiration of lease

The term "foreclosure property" shall include any qualified health care property acquired by a real estate investment trust as the result of the termination of a lease of such property (other than a termination by reason of a default, or the imminence of a default, on the lease).

(B) Grace period

In the case of a qualified health care property which is foreclosure property solely by reason of subparagraph (A), in lieu of applying paragraphs (2) and (3)—

(i) the qualified health care property shall cease to be foreclosure property as of the close of the second taxable year after the taxable year in which such trust acquired such property, and

(ii) if the real estate investment trust establishes to the satisfaction of the Secretary that an extension of the grace period in clause (i) is necessary to the orderly leasing or liquidation of the trust's interest in such qualified health care property, the Secretary may grant one or more extensions of the grace period for such qualified health care property.

Any such extension shall not extend the grace period beyond the close of the 6th year after the taxable year in which such trust acquired such qualified health care property.

(C) Income from independent contractors

For purposes of applying paragraph (4)(C) with respect to qualified health care property which is foreclosure property by reason of subparagraph (A) or paragraph (1), income derived or received by the trust from an independent contractor shall be disregarded to the extent such income is attributable to—

(i) any lease of property in effect on the date the real estate investment trust acquired the qualified health care property (without regard to its renewal after such date so long as such renewal is pursuant to the terms of such lease as in effect on such date), or

(ii) any lease of property entered into after such date if—

(I) on such date, a lease of such property from the trust was in effect, and

(II) under the terms of the new lease, such trust receives a substantially similar or lesser benefit in comparison to the lease referred to in subclause (I).

(D) Qualified health care property

(i) In general

The term "qualified health care property" means any real property (including interests therein), and any personal property incident to such real property, which—

(I) is a health care facility, or

(II) is necessary or incidental to the use of a health care facility.

(ii) Health care facility

For purposes of clause (i), the term "health care facility" means a hospital, nursing facility, assisted living facility, congregate care facility, qualified continuing care facility (as defined in section 7872(g)(4)), or other licensed facility which extends medical or nursing or ancillary services to patients and which, immediately before the termination, expiration, default, or breach of the lease of or mortgage secured by such facility, was operated by a provider of such services which was eligible for participation in the medicare program under title XVIII of the Social Security Act with respect to such facility.

(f) Interest

(1) In general

For purposes of paragraphs (2)(B) and (3)(B) of subsection (c), the term "interest" does not include any amount received or accrued, directly or indirectly, if the determination of such amount depends in whole or in part on the income or profits of any person except that—

(A) any amount so received or accrued shall not be excluded from the term "interest" solely by reason of being based on a fixed percentage or percentages of receipts or sales, and

(B) where a real estate investment trust receives any amount which would be excluded from the term "interest" solely because the debtor of the real estate investment trust receives or accrues any amount the determination of which depends in whole or in part on the income or profits of any person, only a proportionate part (determined pursuant to regulations prescribed by the Secretary) of the amount received or accrued by the real estate investment trust from the debtor will be excluded from the term "interest".

(2) Special rule

If—

(A) a real estate investment trust receives or accrues with respect to an obligation secured by a mortgage on real property or an interest in real property amounts from a debtor which derives substantially all of its gross income with respect to such property (not taking into account any gain on any disposition) from the leasing of substantially all of its interests in such property to tenants, and

(B) a portion of the amount which such debtor receives or accrues, directly or indirectly, from tenants consists of qualified rents (as defined in subsection (d)(6)(B)),

then the amounts which the trust receives or accrues from such debtor shall not be excluded from the term "interest" by reason of being based on the income or profits of such debtor to the extent the amounts so received are attributable to qualified rents received or accrued by such debtor.

(g) Termination of election

(1) Failure to qualify

An election under subsection (c)(1) made by a corporation, trust, or association shall terminate if the corporation, trust, or association is not a real estate investment trust to which the provisions of this part apply for the taxable year with respect to which the election is made, or for any succeeding taxable year unless paragraph (5) applies. Such termination shall be effective for the taxable year for which the corporation, trust, or association is not a real estate investment trust to which the provisions of this part apply, and for all succeeding taxable years.

(2) Revocation

An election under subsection (c)(1) made by a corporation, trust, or association may be revoked by it for any taxable year after the first taxable year for which the election is effective. A revocation under this paragraph shall be effective for the taxable year in which made and for all succeeding taxable years. Such revocation must be made on or before the 90th day after the first day of the first taxable year for which the revocation is to be effective. Such revocation shall be made in such manner as the Secretary shall prescribe by regulations.

(3) Election after termination or revocation

Except as provided in paragraph (4), if a corporation, trust, or association has made an election under subsection (c)(1) and such election has been terminated or revoked under paragraph (1) or paragraph (2), such corporation, trust, or association (and any successor corporation, trust, or association) shall not be eligible to make an election under subsection (c)(1) for any taxable year prior to the fifth taxable year which begins after the first taxable year for which such termination or revocation is effective.

(4) Exception

If the election of a corporation, trust, or association has been terminated under paragraph (1), paragraph (3) shall not apply if—

(A) the corporation, trust, or association does not willfully fail to file within the time prescribed by law an income tax return for the taxable year with respect to which the termination of the election under subsection (c)(1) occurs;

(B) the inclusion of any incorrect information in the return referred to in subparagraph (A) is not due to fraud with intent to evade tax; and

(C) the corporation, trust, or association establishes to the satisfaction of the Secretary that its failure to qualify as a real estate investment trust to which the provisions of this part apply is due to reasonable cause and not due to willful neglect.

(5) Entities to which paragraph applies

This paragraph applies to a corporation, trust, or association—

(A) which is not a real estate investment trust to which the provisions of this part apply for the taxable year due to one or more failures to comply with one or more of the provisions of this part (other than paragraph (2), (3), or (4) of subsection (c)),

(B) such failures are due to reasonable cause and not due to willful neglect, and

(C) if such corporation, trust, or association pays (as prescribed by the Secretary in regulations and in the same manner as tax) a penalty of $50,000 for each failure to satisfy a provision of this part due to reasonable cause and not willful neglect.

(h) Closely held determinations

(1) Section 542(a)(2) applied

(A) In general

For purposes of subsection (a)(6), a corporation, trust, or association is closely held if the stock ownership requirement of section 542(a)(2) is met.

(B) Waiver of partnership attribution, etc.

For purposes of subparagraph (A)—

(i) paragraph (2) of section 544(a) shall be applied as if such paragraph did not contain the phrase "or by or for his partner", and

(ii) sections 544(a)(4)(A) and 544(b)(1) shall be applied by substituting "the entity meet the stock ownership requirement of section 542(a)(2)" for "the corporation a personal holding company".

(2) Subsections (a)(5) and (6) not to apply to 1st year

Paragraphs (5) and (6) of subsection (a) shall not apply to the 1st taxable year for which an election is made under subsection (c)(1) by any corporation, trust, or association.

(3) Treatment of trusts described in section 401(a)

(A) Look-thru treatment

(i) In general

Except as provided in clause (ii), in determining whether the stock ownership requirement of section 542(a)(2) is met for purposes of paragraph (1)(A), any stock held by a qualified trust shall be treated as held directly by its beneficiaries in proportion to their actuarial interests in such trust and shall not be treated as held by such trust.

(ii) Certain related trusts not eligible

Clause (i) shall not apply to any qualified trust if one or more disqualified persons (as defined in section 4975(e)(2), without regard to subparagraphs (B) and (I) thereof) with respect to such qualified trust hold in the aggregate 5 percent or more in value of the interests in the real estate investment trust and such real estate investment trust has accumulated earnings and profits attributable to any period for which it did not qualify as a real estate investment trust.

(B) Coordination with personal holding company rules

If any entity qualifies as a real estate investment trust for any taxable year by reason of subparagraph (A), such entity shall not be treated as a personal holding company for such taxable year for purposes of part II of subchapter G of this chapter.

(C) Treatment for purposes of unrelated business tax

If any qualified trust holds more than 10 percent (by value) of the interests in any pension-held REIT at any time during a taxable year, the trust shall be treated as having for such taxable year gross income from an unrelated trade or business in an amount which bears the same ratio to the aggregate dividends paid (or treated as paid) by the REIT to the trust for the taxable year of the REIT with or within which the taxable year of the trust ends (the "REIT year") as—

(i) the gross income (less direct expenses related thereto) of the REIT for the REIT year from unrelated trades or businesses (determined as if the REIT were a qualified trust), bears to

(ii) the gross income (less direct expenses related thereto) of the REIT for the REIT year.

This subparagraph shall apply only if the ratio determined under the preceding sentence is at least 5 percent.

(D) Pension-held REIT

The purposes of subparagraph (C)—

(i) In general

A real estate investment trust is a pension-held REIT if such trust would not have qualified as a real estate investment trust but for the provisions of this paragraph and if such trust is predominantly held by qualified trusts.

(ii) Predominantly held

For purposes of clause (i), a real estate investment trust is predominantly held by qualified trusts if—

(I) at least 1 qualified trust holds more than 25 percent (by value) of the interests in such real estate investment trust, or

(II) 1 or more qualified trusts (each of whom own more than 10 percent by value of the interests in such real estate investment trust) hold in the aggregate more than 50 percent (by value) of the interests in such real estate investment trust.

(E) Qualified trust

For purposes of this paragraph, the term "qualified trust" means any trust described in section 401(a) and exempt from tax under section 501(a).

(i) Treatment of certain wholly owned subsidiaries

(1) In general

For purposes of this title—

(A) a corporation which is a qualified REIT subsidiary shall not be treated as a separate corporation, and

(B) all assets, liabilities, and items of income, deduction, and credit of a qualified REIT subsidiary shall be treated as assets, liabilities, and such items (as the case may be) of the real estate investment trust.

(2) Qualified REIT subsidiary

For purposes of this subsection, the term "qualified REIT subsidiary" means any corporation if 100 percent of the stock of such corporation is held by the real estate investment trust. Such term shall not include a taxable REIT subsidiary.

(3) Treatment of termination of qualified subsidiary status

For purposes of this subtitle, if any corporation which was a qualified REIT subsidiary ceases to

meet the requirements of paragraph (2), such corporation shall be treated as a new corporation acquiring all of its assets (and assuming all of its liabilities) immediately before such cessation from the real estate investment trust in exchange for its stock.

(j) Treatment of shared appreciation mortgages

(1) In general

Solely for purposes of subsection (c) of this section and section 857(b)(6), any income derived from a shared appreciation provision shall be treated as gain recognized on the sale of the secured property.

(2) Treatment of income

For purposes of applying subsection (c) of this section and section 857(b)(6) to any income described in paragraph (1)—

(A) the real estate investment trust shall be treated as holding the secured property for the period during which it held the shared appreciation provision (or, if shorter, for the period during which the secured property was held by the person holding such property), and

(B) the secured property shall be treated as property described in section 1221(a)(1) if it is so described in the hands of the person holding the secured property (or it would be so described if held by the real estate investment trust).

(3) Coordination with prohibited transactions safe harbor

For purposes of section 857(b)(6)(C)—

(A) the real estate investment trust shall be treated as having sold the secured property when it recognizes any income described in paragraph (1), and

(B) any expenditures made by any holder of the secured property shall be treated as made by the real estate investment trust.

(4) Coordination with 4-year holding period

(A) In general

For purposes of section 857(b)(6)(C), if a real estate investment trust is treated as having sold secured property under paragraph (3)(A), the trust shall be treated as having held such property for at least 4 years if—

(i) the secured property is sold or otherwise disposed of pursuant to a case under title 11 of the United States Code,

(ii) the seller is under the jurisdiction of the court in such case, and

(iii) the disposition is required by the court or is pursuant to a plan approved by the court.

(B) Exception

Subparagraph (A) shall not apply if—

(i) the secured property was acquired by the seller with the intent to evict or foreclose, or

(ii) the trust knew or had reason to know that default on the obligation described in paragraph (5)(A) would occur.

(5) Definitions

For purposes of this subsection—

(A) Shared appreciation provision

The term "shared appreciation provision" means any provision—

(i) which is in connection with an obligation which is held by the real estate investment trust and is secured by an interest in real property, and

(ii) which entitles the real estate investment trust to receive a specified portion of any gain realized on the sale or exchange of such real property (or of any gain which would be realized if the property were sold on a specified date) or appreciation in value as of any specified date.

(B) Secured property

The term "secured property" means the real property referred to in subparagraph (A).

(k) Requirement that entity not be closely held treated as met in certain cases

A corporation, trust, or association—

(1) which for a taxable year meets the requirements of section 857(f)(1), and

(2) which does not know, or exercising reasonable diligence would not have known, whether the entity failed to meet the requirement of subsection (a)(6),

shall be treated as having met the requirement of subsection (a)(6) for the taxable year.

(l) Taxable REIT subsidiary

For purposes of this part—

(1) In general

The term "taxable REIT subsidiary" means, with respect to a real estate investment trust, a corporation (other than a real estate investment trust) if—

(A) such trust directly or indirectly owns stock in such corporation, and

(B) such trust and such corporation jointly elect that such corporation shall be treated as a taxable REIT subsidiary of such trust for purposes of this part.

Such an election, once made, shall be irrevocable unless both such trust and corporation consent to its revocation. Such election, and any revocation thereof, may be made without the consent of the Secretary.

(2) Thirty-five percent ownership in another taxable REIT subsidiary

The term "taxable REIT subsidiary" includes, with respect to any real estate investment trust, any corporation (other than a real estate investment trust) with respect to which a taxable REIT subsidiary of such trust owns directly or indirectly—

(A) securities possessing more than 35 percent of the total voting power of the outstanding securities of such corporation, or

(B) securities having a value of more than 35 percent of the total value of the outstanding securities of such corporation.

The preceding sentence shall not apply to a qualified REIT subsidiary (as defined in subsection (i)(2)). For purposes of subparagraph (B), securities described in subsection (m)(2)(A) shall not be taken into account.

(3) Exceptions

The term "taxable REIT subsidiary" shall not include—

(A) any corporation which directly or indirectly operates or manages a lodging facility or a health care facility, and

(B) any corporation which directly or indirectly provides to any other person (under a franchise, license, or otherwise) rights to any brand name under which any lodging facility or health care facility is operated.

Subparagraph (B) shall not apply to rights provided to an eligible independent contractor to operate or manage a lodging facility or a health care facility if such rights are held by such corporation as a franchisee, licensee, or in a similar capacity and such lodging facility or health care facility is either owned by such corporation or is leased to such corporation from the real estate investment trust.

(4) Definitions

For purposes of paragraph (3)—

(A) Lodging facility

The term "lodging facility" has the meaning given to such term by subsection (d)(9)(D)(ii).

(B) Health care facility

The term "health care facility" has the meaning given to such term by subsection (e)(6)(D)(ii).

(m) Safe harbor in applying subsection (c)(4)

(1) In general

In applying subclause (III) of subsection (c)(4)(B)(iii), except as otherwise determined by the Secretary in regulations, the following shall not be considered securities held by the trust:

(A) Straight debt securities of an issuer which meet the requirements of paragraph (2).

(B) Any loan to an individual or an estate.

(C) Any section 467 rental agreement (as defined in section 467(d)), other than with a person described in subsection (d)(2)(B).

(D) Any obligation to pay rents from real property (as defined in subsection (d)(1)).

(E) Any security issued by a State or any political subdivision thereof, the District of Columbia, a foreign government or any political subdivision thereof, or the Commonwealth of Puerto Rico, but only if the determination of any payment received or accrued under such security does not depend in whole or in part on the profits of any entity not described in this subparagraph or payments on any obligation issued by such an entity,

(F) Any security issued by a real estate investment trust.

(G) Any other arrangement as determined by the Secretary.

(2) Special rules relating to straight debt securities

(A) In general

For purposes of paragraph (1)(A), securities meet the requirements of this paragraph if such securities are straight debt, as defined in section 1361(c)(5) (without regard to subparagraph (B)(iii) thereof).

(B) Special rules relating to certain contingencies

For purposes of subparagraph (A), any interest or principal shall not be treated as failing to satisfy section 1361(c)(5)(B)(i) solely by reason of the fact that—

(i) the time of payment of such interest or principal is subject to a contingency, but only if—

(I) any such contingency does not have the effect of changing the effective yield to maturity, as determined under section 1272, other than a change in the annual yield to maturity which does not exceed the greater of ¼ of 1 percent or 5 percent of the annual yield to maturity, or

(II) neither the aggregate issue price nor the aggregate face amount of the issuer's debt instruments held by the trust exceeds $1,000,000 and not more than 12 months of unaccrued interest can be required to be prepaid thereunder, or

(ii) the time or amount of payment is subject to a contingency upon a default or the exercise of a prepayment right by the issuer of the debt, but only if such contingency is consistent with customary commercial practice.

(C) Special rules relating to corporate or partnership issuers

In the case of an issuer which is a corporation or a partnership, securities that otherwise would be described in paragraph (1)(A) shall be considered not to be so described if the trust holding such securities and any of its controlled taxable REIT subsidiaries (as defined in subsection (d)(8)(A)(iv)) hold any securities of the issuer which—

(i) are not described in paragraph (1) (prior to the application of this subparagraph), and

(ii) have an aggregate value greater than 1 percent of the issuer's outstanding securities determined without regard to paragraph (3)(A)(i).

(3) Look-through rule for partnership securities

(A) In general

For purposes of applying subclause (III) of subsection (c)(4)(B)(iii)—

(i) a trust's interest as a partner in a partnership (as defined in section 7701(a)(2)) shall not be considered a security, and

(ii) the trust shall be deemed to own its proportionate share of each of the assets of the partnership.

(B) Determination of trust's interest in partnership assets

For purposes of subparagraph (A), with respect to any taxable year beginning after the date of the enactment of this subparagraph—

(i) the trust's interest in the partnership assets shall be the trust's proportionate interest in any securities issued by the partnership (determined without regard to subparagraph (A)(i) and paragraph (4), but not including securities described in paragraph (1)), and

(ii) the value of any debt instrument shall be the adjusted issue price thereof, as defined in section 1272(a)(4).

(4) Certain partnership debt instruments not treated as a security

For purposes of applying subclause (III) of subsection (c)(4)(B)(iii)—

(A) any debt instrument issued by a partnership and not described in paragraph (1) shall not be considered a security to the extent of the trust's interest as a partner in the partnership, and

(B) any debt instrument issued by a partnership and not described in paragraph (1) shall not be considered a security if at least 75 percent of the partnership's gross income (excluding gross income from prohibited transactions) is derived from sources referred to in subsection (c)(3).

(5) Secretarial guidance

The Secretary is authorized to provide guidance (including through the issuance of a written determination, as defined in section 6110(b)) that an arrangement shall not be considered a security held by the trust for purposes of applying subclause (III) of subsection (c)(4)(B)(iii) notwithstanding that such arrangement otherwise could be considered a security under subparagraph (F) of subsection (c)(5).

(6) Transition rule

(A) In general

Notwithstanding paragraph (2)(C), securities held by a trust shall not be considered securities held by the trust for purposes of subsection (c)(4)(B)(iii)(III) during any period beginning on or before October 22, 2004, if such securities—

(i) are held by such trust continuously during such period, and

(ii) would not be taken into account for purposes of such subsection by reason of paragraph (7)(C) of subsection (c) (as in effect on October 22, 2004) if the amendments made by section 243 of the American Jobs Creation Act of 2004 had never been enacted.

(B) Rule not to apply to securities held after maturity date

Subparagraph (A) shall not apply with respect to any security after the later of October 22, 2004, or the latest maturity date under the contract (as in effect on October 22, 2004) taking into account any renewal or extension permitted under the contract if such renewal or extension does not significantly modify any other terms of the contract.

(C) Successors

If the successor of a trust to which this paragraph applies acquires securities in a transaction to which section 381 applies, such trusts shall be treated as a single entity for purposes of determining the holding period of such securities under subparagraph (A).

(n) Rules regarding foreign currency transactions

(1) In general

For purposes of this part—

(A) passive foreign exchange gain for any taxable year shall not constitute gross income for

purposes of subsection (c)(2), and

(B) real estate foreign exchange gain for any taxable year shall not constitute gross income for purposes of subsection (c)(3).

(2) Real estate foreign exchange gain

For purposes of this subsection, the term "real estate foreign exchange gain" means—

(A) foreign currency gain (as defined in section 988(b)(1)) which is attributable to—

(i) any item of income or gain described in subsection (c)(3),

(ii) the acquisition or ownership of obligations secured by mortgages on real property or on interests in real property (other than foreign currency gain attributable to any item of income or gain described in clause (i)), or

(iii) becoming or being the obligor under obligations secured by mortgages on real property or on interests in real property (other than foreign currency gain attributable to any item of income or gain described in clause (i)),

(B) section 987 gain attributable to a qualified business unit (as defined by section 989) of the real estate investment trust, but only if such qualified business unit meets the requirements under—

(i) subsection (c)(3) for the taxable year, and

(ii) subsection (c)(4)(A) at the close of each quarter that the real estate investment trust has directly or indirectly held the qualified business unit, and

(C) any other foreign currency gain as determined by the Secretary.

(3) Passive foreign exchange gain

For purposes of this subsection, the term "passive foreign exchange gain" means—

(A) real estate foreign exchange gain,

(B) foreign currency gain (as defined in section 988(b)(1)) which is not described in subparagraph (A) and which is attributable to—

(i) any item of income or gain described in subsection (c)(2),

(ii) the acquisition or ownership of obligations (other than foreign currency gain attributable to any item of income or gain described in clause (i)), or

(iii) becoming or being the obligor under obligations (other than foreign currency gain attributable to any item of income or gain described in clause (i)), and

(C) any other foreign currency gain as determined by the Secretary.

(4) Exception for income from substantial and regular trading

Notwithstanding this subsection or any other provision of this part, any section 988 gain derived by a corporation, trust, or association from dealing, or engaging in substantial and regular trading, in securities (as defined in section 475(c)(2)) shall constitute gross income which does not qualify under paragraph (2) or (3) of subsection (c). This paragraph shall not apply to income which does not constitute gross income by reason of subsection (c)(5)(G).

(Added Pub. L. 86–779, §10(a), Sept. 14, 1960, 74 Stat. 1004; amended Pub. L. 88–272, title II, §225(k)(4), Feb. 26, 1964, 78 Stat. 94; Pub. L. 88–554, §4(b)(4), Aug. 31, 1964, 78 Stat. 763; Pub. L. 93–625, §6(a), (b), (d)(1), Jan. 3, 1975, 88 Stat. 2112–2114; Pub. L. 94–455, title XIV, §1402(b)(1)(O), (2), title XVI, §§1602(a), 1603(a), (c)(1)–(4), 1604(a)–(c)(1), (d)–(f)(3)(A), (g), (k)(1), (2)(A), title XIX, §§1901(a)(111), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1732, 1746, 1748–1753, 1783, 1834; Pub. L. 95–600, title III, §363(a), (c), title VII, §701(t)(2), Nov. 6, 1978, 92 Stat. 2852, 2853, 2912; Pub. L. 98–369, div. A, title X, §1001(b)(12), (e), July 18, 1984, 98 Stat. 1011, 1012; Pub. L. 99–514, title VI, §§661(a), 662, 663, 671(b)(1), title IX, §901(d)(4)(E), Oct. 22, 1986, 100 Stat. 2299, 2300, 2302, 2317, 2380; Pub. L. 100–647, title I, §1006(p)(1), (3), (4)(A), (5), (q), (t)(11), Nov. 10, 1988, 102 Stat. 3416, 3417, 3422; Pub. L. 103–66, title XIII, §13149(a), Aug. 10, 1993, 107 Stat. 445; Pub. L. 104–188, title I, §§1621(b)(5), 1704(t)(35), Aug. 20, 1996, 110 Stat.

1867, 1889; Pub. L. 105–34, title XII, §§1251(b)–1253, 1255(a), (b)(1), 1257, 1258, 1261, 1262, Aug. 5, 1997, 111 Stat. 1031–1036; Pub. L. 106–170, title V, §§532(c)(2)(H)–(K), 541–542(b)(3)(A)(i), (B)(i), 543, 551(a), 561(a), Dec. 17, 1999, 113 Stat. 1930, 1940–1943, 1948, 1949; Pub. L. 106–554, §1(a)(7) [title III, §319(9), (10)], Dec. 21, 2000, 114 Stat. 2763, 2763A–646; Pub. L. 108–357, title II, §243(a), (b), (d), (f)(1)–(3), title VIII, §835(b)(4), Oct. 22, 2004, 118 Stat. 1439, 1441–1444, 1593; Pub. L. 109–135, title IV, §§403(d)(1), (2), 412(hh), Dec. 21, 2005, 119 Stat. 2620, 2622, 2639; Pub. L. 110–172, §§9(b), 11(a)(18), Dec. 29, 2007, 121 Stat. 2484, 2486; Pub. L. 110–234, title XV, §§15312(a), (b), 15313(a), (b), 15314(a), May 22, 2008, 122 Stat. 1503, 1504; Pub. L. 110–246, §4(a), title XV, §§15312(a), (b), 15313(a), (b), 15314(a), June 18, 2008, 122 Stat. 1664, 2265, 2266; Pub. L. 110–289, div. C, title II, §§3031, 3032, 3041, 3061, July 30, 2008, 122 Stat. 2897, 2899–2901.)

REFERENCES IN TEXT

The date of the enactment of this subparagraph, referred to in subsec. (c)(2)(I), is the date of enactment of Pub. L. 110–246, which was approved June 18, 2008.

The Investment Company Act of 1940, referred to in subsec. (c)(5)(F), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§80a–1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80a–51 of Title 15 and Tables.

The date of the enactment of this paragraph and such date of enactment, referred to in subsec. (c)(8), is the date of enactment of Pub. L. 110–246, which was approved June 18, 2008.

The Social Security Act, referred to in subsec. (e)(6)(D)(ii), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Act is classified generally to subchapter XVIII (§1395 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The date of the enactment of this subparagraph, referred to in subsec. (m)(3)(B), is the date of enactment of Pub. L. 108–357, which was approved Oct. 22, 2004.

Section 243 of the American Jobs Creation Act of 2004, referred to in subsec. (m)(6)(A)(ii), is section 243 of Pub. L. 108–357, which amended this section and sections 857 and 860 of this title and enacted provisions set out as a note under this section.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2008—Subsec. (c)(2)(I). Pub. L. 110–246, §15313(a), added subpar. (I).

Subsec. (c)(4). Pub. L. 110–289, §3032(a), inserted "(including a discrepancy caused solely by the change in the foreign currency exchange rate used to value a foreign asset)" after "such requirements" in first sentence of concluding provisions.

Subsec. (c)(4)(B)(ii). Pub. L. 110–289, §3041, substituted "than 25 percent" for "than 20 percent" and "REIT subsidiaries," for "REIT subsidiaries (in the case of a quarter which closes on or before the termination date, 25 percent in the case of a timber real estate investment trust), and".

Pub. L. 110–246, §15314(a), inserted "(in the case of a quarter which closes on or before the termination date, 25 percent in the case of a timber real estate investment trust)" after "REIT subsidiaries".

Subsec. (c)(5)(G). Pub. L. 110–289, §3031(b), amended subpar. (G) generally. Prior to amendment, text read as follows: "Except to the extent provided by regulations, any income of a real estate investment trust from a hedging transaction (as defined in clause (ii) or (iii) of section 1221(b)(2)(A)) which is clearly identified pursuant to section 1221(a)(7), including gain from the sale or disposition of such a transaction, shall not constitute gross income under paragraph (2) to the extent that the transaction hedges any indebtedness incurred or to be incurred by the trust to acquire or carry real estate assets."

Subsec. (c)(5)(H). Pub. L. 110–246, §15312(a), added subpar. (H).

Subsec. (c)(5)(I). Pub. L. 110–246, §15313(b), added subpar. (I).

Subsec. (c)(5)(J). Pub. L. 110–289, §3031(c), added subpar. (J).

Subsec. (c)(5)(K). Pub. L. 110–289, §3032(b), added subpar. (K).

Subsec. (c)(8). Pub. L. 110–246, §15312(b), added par. (8).

Subsec. (d)(8)(B). Pub. L. 110–289, §3061(a), amended subpar. (B) generally. Prior to amendment, text read as follows: "The requirements of this subparagraph are met with respect to an interest in real property

which is a qualified lodging facility leased by the trust to a taxable REIT subsidiary of the trust if the property is operated on behalf of such subsidiary by a person who is an eligible independent contractor."

Subsec. (d)(9)(A), (B). Pub. L. 110–289, §3061(b), amended subpars. (A) and (B) generally. Prior to amendment, subpar. (A) defined "eligible independent contractor" with respect to any qualified lodging facility and subpar. (B) set forth reasons by which a person would not fail to be treated as an independent contractor with respect to any qualified lodging facility.

Subsec. (l)(3). Pub. L. 110–289, §3061(c), inserted "or a health care facility" after "a lodging facility" and "or health care facility" after "such lodging facility" in concluding provisions.

Subsec. (n). Pub. L. 110–289, §3031(a), added subsec. (n).

2007—Subsec. (d)(9)(D)(ii). Pub. L. 110–172, §9(b), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "The term 'lodging facility' means a hotel, motel, or other establishment more than one-half of the dwelling units in which are used on a transient basis."

Subsec. (l)(2). Pub. L. 110–172, §11(a)(18), in concluding provisions, inserted last sentence and struck out former last sentence which read as follows: "The rule of section 856(c)(7) shall apply for purposes of subparagraph (B)."

2005—Subsec. (c)(7). Pub. L. 109–135, §403(d)(1), reenacted heading without change and amended text generally. Prior to amendment, text consisted of subpars. (A) to (C) relating to rules of application for a corporation, trust, or association that fails to satisfy the requirements of paragraph (4) of this subsection.

Subsec. (g)(5)(A). Pub. L. 109–135, §412(hh), substituted "paragraph (2), (3), or (4) of subsection (c)" for "subsection (c)(6) or (c)(7) of section 856".

Subsec. (m)(6). Pub. L. 109–135, §403(d)(2), added par. (6).

2004—Subsec. (c)(5)(E). Pub. L. 108–357, §835(b)(4), struck out last sentence which read as follows: "The principles of the preceding provisions of this subparagraph shall apply to regular interests in a FASIT."

Subsec. (c)(5)(G). Pub. L. 108–357, §243(d), reenacted heading without change and amended text of subpar. (G) generally. Prior to amendment, subpar. (G) provided that, except to the extent provided by regulations, payment to a real estate investment trust under an interest rate swap or cap agreement, option, futures contract, forward rate agreement, or any similar financial instrument, entered into by the trust in a transaction to reduce the interest rate risks with respect to any indebtedness incurred or to be incurred by the trust to acquire or carry real estate assets, and gain from the sale or other disposition of any such investment, would be treated as income qualifying under par. (2).

Subsec. (c)(6)(A). Pub. L. 108–357, §243(f)(2), added subpar. (A) and struck out former subpar. (A) which read as follows: "the nature and amount of each item of its gross income described in such paragraphs is set forth in a schedule attached to its income tax return for such taxable year;".

Subsec. (c)(6)(B), (C). Pub. L. 108–357, §243(f)(2), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: "the inclusion of any incorrect information in the schedule referred to in subparagraph (A) is not due to fraud with intent to evade tax; and".

Subsec. (c)(7). Pub. L. 108–357, §243(f)(1), added par. (7).

Pub. L. 108–357, §243(a)(1), struck out par. (7) which provided that securities of an issuer which were straight debt would not be taken into account in applying paragraph (4)(B)(iii)(III), if the issuer was an individual, if the only securities of such issuer which were held by the trust or a taxable REIT subsidiary of the trust were straight debt, or if the issuer was a partnership and the trust held at least a 20 percent profits interest in the partnership.

Subsec. (d)(8)(A). Pub. L. 108–357, §243(b), reenacted heading without change and amended text of subpar. (A) generally. Prior to amendment, text read as follows: "The requirements of this subparagraph are met with respect to any property if at least 90 percent of the leased space of the property is rented to persons other than taxable REIT subsidiaries of such trust and other than persons described in section 856(d)(2)(B). The preceding sentence shall apply only to the extent that the amounts paid to the trust as rents from real property (as defined in paragraph (1) without regard to paragraph (2)(B)) from such property are substantially comparable to such rents made by the other tenants of the trust's property for comparable space."

Subsec. (g)(1). Pub. L. 108–357, §243(f)(3)(A), inserted "unless paragraph (5) applies" before ". Such termination".

Subsec. (g)(5). Pub. L. 108–357, §243(f)(3)(B), added par. (5).

Subsec. (m). Pub. L. 108–357, §243(a)(2), added subsec. (m).

2000—Subsec. (c)(7). Pub. L. 106–554, §1(a)(7) [title III, §319(9)], substituted "paragraph (4)(B)(iii)(III)" for "paragraph (4)(B)(ii)(III)" in introductory provisions.

Subsec. (l)(4)(A). Pub. L. 106–554, §1(a)(7) [title III, §319(10)], substituted "subsection (d)(9)(D)(ii)" for "paragraph (9)(D)(ii)".

1999—Subsec. (c)(2)(D), (3)(C). Pub. L. 106–170, §532(c)(2)(H), (I), substituted "section 1221(a)(1)" for

"section 1221(1)".

Subsec. (c)(4)(B). Pub. L. 106–170, §541(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "not more than 25 percent of the value of its total assets is represented by securities (other than those includible under subparagraph (A)) for purposes of this calculation limited in respect of any one issuer to an amount not greater in value than 5 percent of the value of the total assets of the trust and to not more than 10 percent of the outstanding voting securities of such issuer."

Subsec. (c)(7). Pub. L. 106–170, §541(b), added par. (7).

Subsec. (d)(1). Pub. L. 106–170, §542(b)(3)(A)(i), substituted "fair market values" for "adjusted bases" in two places in concluding provisions.

Subsec. (d)(2)(B). Pub. L. 106–170, §542(b)(2), inserted "except as provided in paragraph (8)," after "(B)" in introductory provisions.

Subsec. (d)(2)(B)(i). Pub. L. 106–170, §542(b)(3)(B)(i), substituted "value" for "number".

Subsec. (d)(3). Pub. L. 106–170, §561(a), inserted concluding provisions.

Subsec. (d)(7)(C)(i). Pub. L. 106–170, §542(a), inserted "or through a taxable REIT subsidiary of such trust" after "income".

Subsec. (d)(8), (9). Pub. L. 106–170, §542(b)(1), added pars. (8) and (9).

Subsec. (e)(1). Pub. L. 106–170, §532(c)(2)(J), substituted "section 1221(a)(1)" for "section 1221(1)".

Subsec. (e)(6). Pub. L. 106–170, §551(a), added par. (6).

Subsec. (i)(2). Pub. L. 106–170, §543(b), inserted at end "Such term shall not include a taxable REIT subsidiary."

Subsec. (j)(2)(B). Pub. L. 106–170, §532(c)(2)(K), substituted "section 1221(a)(1)" for "section 1221(1)".

Subsec. (l). Pub. L. 106–170, §543(a), added subsec. (l).

1997—Subsec. (a)(6). Pub. L. 105–34, §1251(b)(2), inserted "subject to the provisions of subsection (k)," before "which is not".

Subsec. (c)(3)(I). Pub. L. 105–34, §1255(a)(1), inserted "and" at end.

Subsec. (c)(4). Pub. L. 105–34, §1255(a)(2), (3), redesignated par. (5) as (4) and struck out former par. (4) which read as follows: "less than 30 percent of its gross income is derived from the sale or other disposition of—

"(A) stock or securities held for less than 1 year;

"(B) property in a transaction which is a prohibited transaction; and

"(C) real property (including interests in real property and interests in mortgages on real property) held for less than 4 years other than—

"(i) property compulsorily or involuntarily converted within the meaning of section 1033, and

"(ii) property which is foreclosure property within the definition of section 856(e); and".

Subsec. (c)(5). Pub. L. 105–34, §1255(a)(3), redesignated par. (6) as (5). Former par. (5) redesignated (4).

Subsec. (c)(5)(G). Pub. L. 105–34, §1258, amended heading and text of subpar. (G) generally. Prior to amendment, text read as follows: "Except to the extent provided by regulations, any—

"(i) payment to a real estate investment trust under a bona fide interest rate swap or cap agreement entered into by the real estate investment trust to hedge any variable rate indebtedness of such trust incurred or to be incurred to acquire or carry real estate assets, and

"(ii) any gain from the sale or other disposition of such agreement,

shall be treated as income qualifying under paragraph (2)."

Pub. L. 105–34, §1255(b)(1), struck out "and such agreement shall be treated as a security for purposes of paragraph (4)(A)" after "under paragraph (2)" in concluding provisions.

Subsec. (c)(6), (7). Pub. L. 105–34, §1255(a)(3), redesignated par. (7) as (6). Former par. (6) redesignated (5).

Subsec. (c)(8). Pub. L. 105–34, §1255(a)(2), struck out heading and text of par. (8). Text read as follows: "In the case of the taxable year in which a real estate investment trust is completely liquidated, there shall not be taken into account under paragraph (4) any gain from the sale, exchange, or distribution of any property after the adoption of the plan of complete liquidation."

Subsec. (d)(2). Pub. L. 105–34, §1252(a), added subpar. (C) and struck out former subpar. (C) and concluding provisions which read as follows:

"(C) any amount received or accrued, directly or indirectly, with respect to any real or personal property if the real estate investment trust furnishes or renders services to the tenants of such property, or manages or operates such property, other than through an independent contractor from whom the trust itself does not derive or receive any income.

Subparagraph (C) shall not apply with respect to any amount if such amount would be excluded from unrelated business taxable income under section 512(b)(3) if received by an organization described in section

511(a)(2)."

Subsec. (d)(5). Pub. L. 105–34, §1253, substituted "except that—" and subpars. (A) and (B) for "except that '10 percent' shall be substituted for '50 percent' in subparagraph (C) of section 318(a)(2) and 318(a)(3)."

Subsec. (d)(7). Pub. L. 105–34, §1252(b), added par. (7).

Subsec. (e)(2). Pub. L. 105–34, §1257(a)(1), which directed amendment of par. (2) by substituting "as of the close of the 3d taxable year following the taxable year in which the trust acquired such property" for "on the date which is 2 years after the date the trust acquired such property", was executed by making the substitution for "on the date which is 2 years after the date such trust acquired such property" to reflect the probable intent of Congress.

Subsec. (e)(3). Pub. L. 105–34, §1257(a)(2), substituted "grant one extension" for "grant one or more extensions" and "Any such extension shall not extend the grace period beyond the close of the 3d taxable year following the last taxable year in the period under paragraph (2)." for "Any such extension shall not extend the grace period beyond the date which is 6 years after the date such trust acquired such property."

Subsec. (e)(4). Pub. L. 105–34, §1257(c), inserted concluding provisions "For purposes of subparagraph (C), property shall not be treated as used in a trade or business by reason of any activities of the real estate investment trust with respect to such property to the extent that such activities would not result in amounts received or accrued, directly or indirectly, with respect to such property being treated as other than rents from real property."

Subsec. (e)(5). Pub. L. 105–34, §1257(b), substituted "A real estate investment trust may revoke any such election for a taxable year by filing the revocation (in the manner provided by the Secretary) on or before the due date (including any extension of time) for filing its return of tax under this chapter for the taxable year. If a trust revokes an election for any property, no election may be made by the trust under this paragraph with respect to the property for any subsequent taxable year." for "Any such election shall be irrevocable."

Subsec. (i)(2). Pub. L. 105–34, §1262, struck out "at all times during the period such corporation was in existence" after "real estate investment trust".

Subsec. (j)(4). Pub. L. 105–34, §1261(a), added par. (4). Former par. (4) redesignated (5).

Subsec. (j)(5). Pub. L. 105–34, §1261(a), redesignated par. (4) as (5).

Subsec. (j)(5)(A)(ii). Pub. L. 105–34, §1261(b), inserted before period at end "or appreciation in value as of any specified date".

Subsec. (k). Pub. L. 105–34, §1251(b)(1), added subsec. (k).

1996—Subsec. (a)(4). Pub. L. 104–188, §1704(t)(35), substituted "section 582(c)(2)" for "section 582(c)(5)".

Subsec. (c)(6)(E). Pub. L. 104–188, §1621(b)(5), inserted at end "The principles of the preceding provisions of this subparagraph shall apply to regular interests in a FASIT."

1993—Subsec. (h)(3). Pub. L. 103–66 added par. (3).

1988—Subsec. (c)(6)(D). Pub. L. 100–647, §1006(t)(11), struck out subpar. (D), as added by Pub. L. 99–514, §671(b)(1), which read as follows: "A regular or residual interest in a REMIC shall be treated as an interest in real property, and any amount includible in gross income with respect to such an interest shall be treated as interest; except that, if less than 95 percent of the assets of such REMIC are interests in real property (determined as if the taxpayer held such assets), such interest shall be so treated only in the proportion which the assets of the REMIC consist of such interests."

Subsec. (c)(6)(D)(i)(I). Pub. L. 100–647, §1006(p)(1), substituted "debt instrument (within the meaning of section 1275(a)(1))" for "debt instrument".

Subsec. (c)(6)(D)(ii)(I). Pub. L. 100–647, §1006(p)(5), substituted "stock (or certificates of beneficial interests) in such trust" for "stock in such trust".

Subsec. (c)(6)(E), (F). Pub. L. 100–647, §1006(t)(11), added subpar. (E) and redesignated former subpar. (E) as (F).

Subsec. (c)(6)(G). Pub. L. 100–647, §1006(p)(4)(A), added subpar. (G).

Subsec. (c)(8). Pub. L. 100–647, §1006(p)(3), added par. (8).

Subsec. (d)(6)(A). Pub. L. 100–647, §1006(q)(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "If—

"(i) a real estate investment trust receives or accrues, with respect to real or personal property, amounts from a tenant which derives substantially all of its income with respect to such property from the subleasing of substantially all of such property, and

"(ii) such tenant receives or accrues, directly or indirectly, from subtenants only amounts which are qualified rents,

then the amounts that the trust receives or accrues from the tenant shall not be excluded from the term 'rents from real property' solely by reason of being based on the income or profits of such tenant."

Subsec. (f). Pub. L. 100–647, §1006(q)(2), amended subsec. (f) generally, making changes in content and structure.

1986—Subsec. (a)(4). Pub. L. 99–514, §901(d)(4)(E), substituted "referred to in section 582(c)(5)" for "to which section 585, 586, or 593 applies".

Subsec. (a)(6). Pub. L. 99–514, §661(a)(1), amended par. (6) generally. Prior to amendment, par. (6) read as follows: "which would not be a personal holding company (as defined in section 542) if all of its adjusted ordinary gross income (as defined in section 543(b)(2)) constituted personal holding company income (as defined in section 543); and".

Subsec. (c)(3)(I). Pub. L. 99–514, §662(b)(1), added subpar. (I).

Subsec. (c)(6)(B). Pub. L. 99–514, §662(b)(2), inserted "Such term also includes any property (not otherwise a real estate asset) attributable to the temporary investment of new capital, but only if such property is stock or a debt instrument, and only for the 1-year period beginning on the date the real estate trust receives such capital."

Subsec. (c)(6)(D). Pub. L. 99–514, §671(b)(1), added subpar. (D) relating to REMIC interest. Former subpar. (D) redesignated (E).

Pub. L. 99–514, §662(b)(3), added subpar. (D) relating to qualified temporary investment income. Former subpar. (D) redesignated (E).

Subsec. (c)(6)(E). Pub. L. 99–514, §§662(b)(3), 671(b)(1), made identical redesignations of former subpar. (D) as (E).

Subsec. (d)(2). Pub. L. 99–514, §663(a), (b)(3), inserted reference to par. (6) in subpar. (A) and inserted at end "Subparagraph (C) shall not apply with respect to any amount if such amount would be excluded from unrelated business taxable income under section 512(b)(3) if received by an organization described in section 511(a)(2)."

Subsec. (d)(6). Pub. L. 99–514, §663(b)(1), added par. (6).

Subsec. (f). Pub. L. 99–514, §663(b)(2), amended subsec. (f) generally, restating former introductory provisions and par. (1) as introductory provisions of par. (1) and as subpar. (A), restating provisions of par. (2), adding subpar. (1)(B), and striking out former concluding provisions which read as follows: "The provisions of this subsection shall apply only with respect to amounts received or accrued pursuant to loans made after May 27, 1976. For purposes of the preceding sentence, a loan is considered to be made before May 28, 1976, if such loan is made pursuant to a binding commitment entered into before May 28, 1976."

Subsec. (h). Pub. L. 99–514, §661(a)(2), added subsec. (h).

Subsec. (i). Pub. L. 99–514, §662(a), added subsec. (i).

Subsec. (j). Pub. L. 99–514, §662(c), added subsec. (j).

1984—Subsec. (c)(4)(A). Pub. L. 98–369 substituted "6 months" for "1 year", applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

1978—Subsec. (c)(2)(H). Pub. L. 95–600, §363(a)(1), added subpar. (H).

Subsec. (c)(3)(D). Pub. L. 95–600, §701(t)(2), inserted "(other than gain from prohibited transactions)" after "on, and gain".

Subsec. (c)(3)(H). Pub. L. 95–600, §363(a)(2), added subpar. (H).

Subsec. (c)(4)(B). Pub. L. 95–600, §363(a)(3), substituted "property in a transaction which is a prohibited transaction" for "section 1221(1) property (other than foreclosure property)".

Subsec. (e)(3). Pub. L. 95–600, §363(c), substituted "the Secretary may grant one or more extensions of the grace period for such property" for "the Secretary may extend the grace period for such property" and "shall not extend the grace period beyond the date which is 6 years after the date such trust acquired such property" for "shall be for a period of not more than one year, and not more than two extensions shall be granted with respect to any property".

1976—Subsec. (a). Pub. L. 94–455, §§1603(a), 1604(f)(1), (2), in introductory provisions substituted "this title" for "this subtitle" and "a corporation, trust, or association" for "an unincorporated trust or an unincorporated association", in par. (1) inserted "or directors" after "trustees", and in par. (4) substituted reference to which is neither (A) a financial institution to which section 585, 586, or 593 applies, nor (B) an insurance company to which subchapter L applies for reference to which does not hold any property primarily for sale to customers in the ordinary course of its trade or business.

Subsec. (c). Pub. L. 94–455, §1604(f)(3)(A), in introductory provision substituted "A corporation, trust, or association" for "A trust or association".

Subsec. (c)(1). Pub. L. 94–455, §§1604(k)(2)(A), 1901(a)(111)(A), struck out reference to which began after Dec. 31, 1960 and inserted reference to such election has not been terminated or revoked under subsec. (g).

Subsec. (c)(2). Pub. L. 94–455, §§1603(c)(2), 1604(a), (c)(1), in introductory provision substituted "95

percent (90 percent for taxable years beginning before January 1, 1980) of its gross income (excluding gross income from prohibited transactions)" for "90 percent of its gross income", in subpar. (D) inserted reference to which is not property not described in section 1221(1), and added subpar. (G).

Subsec. (c)(3). Pub. L. 94–455, §§1603(c)(1), (3), 1604(c)(1), in introductory provision inserted "(excluding gross income from prohibited transactions) 75 percent of its gross income", in subpar. (C) inserted reference to which is not property described in section 1221(1), and added subpar. (G).

Subsec. (c)(4). Pub. L. 94–455, §1402(b)(2), provided that "9 months" would be changed to "1 year".

Pub. L. 94–455, §§1402(b)(1)(O), 1604(d), in subpar. (A) provided that "6 months" would be changed to "9 months" for taxable years beginning in 1977, added subpar. (B), and redesignated former subpar. (B) as (C), and in subpar. (C) as so redesignated, substituted "(including interest in real property and interest in mortgages on real property" for "(including interest in real property)" and inserted reference to property which is foreclosure property within the definition of section 856(e).

Subsec. (c)(6)(C). Pub. L. 94–455, §1604(e), inserted reference to options to acquire land or improvements thereon, and options to acquire leaseholds of land or improvements thereon.

Subsec. (c)(6)(D). Pub. L. 94–455, §1901(a)(111)(B), inserted "(15 U.S.C. 80a–1 and following)" after ", as amended".

Subsec. (c)(7). Pub. L. 94–455, §1602(a), added par. (7).

Subsec. (d). Pub. L. 94–455, §1604(b), among other changes, inserted provisions including in definition of rents from real property charges for services customarily furnished or rendered in connection with rental of real property and rent attributable to personal property which is leased under, or in connection with, a lease of real property, provisions relating to the computation of the amount of rent attributable to personal property, and provisions relating to the special rule for certain contingent rents.

Subsec. (e)(1). Pub. L. 94–455, §1603(c)(4), inserted provision relating to the exclusion, from definition of foreclosure property, of property acquired by the real estate investment trust or other disposition of property of the trust described in section 1221(1) of this title.

Subsec. (e)(3), (5). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary" each time appearing.

Subsec. (f). Pub. L. 94–455, §1604(g), added subsec. (f).

Subsec. (g). Pub. L. 94–455, §1604(k)(1), added subsec. (g).

1975—Subsec. (a)(4). Pub. L. 93–625, §6(b), inserted "(other than foreclosure property, as defined in subsection (e))" after "property".

Subsec. (c)(2)(F), (3)(F). Pub. L. 93–625, §6(d)(1), added subpar. (F) to pars. (2) and (3).

Subsec. (e). Pub. L. 93–625, §6(a), added subsec. (e).

1964—Subsec. (a)(6). Pub. L. 88–272 substituted "adjusted ordinary gross income (as defined in section 543(b)(2))" for "gross income".

Subsec. (d). Pub. L. 88–554 inserted reference to subparagraph (C) of section 318(a)(3) of this title.

EFFECTIVE DATES OF 2008 AMENDMENT

Pub. L. 110–289, div. C, title II, §3071, July 30, 2008, 122 Stat. 2902, provided that:

"(a) IN GENERAL.—Except as otherwise provided in this section, the amendments made by this title [amending this section and section 857 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [July 30, 2008].

"(b) REIT INCOME TESTS.—

"(1) The amendments made by section 3031(a) and (c) [amending this section] shall apply to gains and items of income recognized after the date of the enactment of this Act [July 30, 2008].

"(2) The amendment made by section 3031(b) [amending this section] shall apply to transactions entered into after the date of the enactment of this Act [July 30, 2008].

"(c) CONFORMING FOREIGN CURRENCY REVISIONS.—

"(1) The amendment made by section 3033(a) [amending section 857 of this title] shall apply to gains recognized after the date of the enactment of this Act [July 30, 2008].

"(2) The amendment made by section 3033(b) [amending section 857 of this title] shall apply to gains and deductions recognized after the date of the enactment of this Act [July 30, 2008].

"(d) DEALER SALES.—The amendments made by subtitle C [subtitle C (§§3051, 3052) of title II of div. C of Pub. L. 110–289, amending section 857 of this title] shall apply to sales made after the date of the enactment of this Act [July 30, 2008]."

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Pub. L. 110–234, title XV, §15312(c), May 22, 2008, 122 Stat. 1504, and Pub. L. 110–246, §4(a), title XV, §15312(c), June 18, 2008, 122 Stat. 1664, 2266, provided that: "The amendments made by subsection (a) [amending this section] shall apply to dispositions in taxable years beginning after the date of the enactment of this Act [June 18, 2008]."

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.]

Pub. L. 110–234, title XV, §15313(c), May 22, 2008, 122 Stat. 1504, and Pub. L. 110–246, §4(a), title XV, §15313(c), June 18, 2008, 122 Stat. 1664, 2266, provided that: "The amendments by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [June 18, 2008]."

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.]

Pub. L. 110–234, title XV, §15314(b), May 22, 2008, 122 Stat. 1504, and Pub. L. 110–246, §4(a), title XV, §15314(b), June 18, 2008, 122 Stat. 1664, 2266, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [June 18, 2008]."

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.]

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by section 9(b) of Pub. L. 110–172 effective as if included in the provision of the Tax Relief Extension Act of 1999, Pub. L. 106–170, to which such amendment relates, see section 9(c) of Pub. L. 110–172, set out as a note under section 45 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendments by section 403(d)(1), (2) of Pub. L. 109–135 effective as if included in the provisions of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which they relate, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title II, §243(g), Oct. 22, 2004, 118 Stat. 1445, as amended by Pub. L. 109–135, title IV, §403(d)(4), Dec. 21, 2005, 119 Stat. 2622, provided that:

"(1) SUBSECTIONS (a) AND (b).—The amendments made by subsections (a) and (b) [amending this section] shall apply to taxable years beginning after December 31, 2000.

"(2) SUBSECTIONS (c) AND (e).—The amendments made by subsections (c) and (e) [amending section 857 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 22, 2004].

"(3) SUBSECTION (d).—The amendment made by subsection (d) [amending this section] shall apply to transactions entered into after December 31, 2004.

"(4) SUBSECTION (f).—

"(A) The amendment made by paragraph (1) of subsection (f) [amending this section] shall apply to failures with respect to which the requirements of subparagraph (A) or (B) of section 856(c)(7) of the Internal Revenue Code of 1986 (as added by such paragraph) are satisfied after the date of the enactment of this Act [Oct. 22, 2004].

"(B) The amendment made by paragraph (2) of subsection (f) [amending this section] shall apply to failures with respect to which the requirements of paragraph (6) of section 856(c) of the Internal Revenue Code of 1986 (as amended by such paragraph) are satisfied after the date of the enactment of this Act.

"(C) The amendments made by paragraph (3) of subsection (f) [amending this section] shall apply to failures with respect to which the requirements of paragraph (5) of section 856(g) of the Internal Revenue Code of 1986 (as added by such paragraph) are satisfied after the date of the enactment of this Act.

"(D) The amendment made by paragraph (4) of subsection (f) [amending section 857 of this title] shall apply to taxable years ending after the date of the enactment of this Act.

"(E) The amendments made by paragraph (5) of subsection (f) [amending section 860 of this title] shall apply to statements filed after the date of the enactment of this Act."

Amendment by section 835(b)(4) of Pub. L. 108–357 effective Jan. 1, 2005, with exception for any FASIT in existence on Oct. 22, 2004, to the extent that regular interests issued by the FASIT before such date continue to remain outstanding in accordance with the original terms of issuance, see section 835(c) of Pub. L. 108–357, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 532(c)(2)(H)–(K) of Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

Pub. L. 106–170, title V, §542(b)(3)(A)(ii), Dec. 17, 1999, 113 Stat. 1943, provided that: "The amendment made by this subparagraph [amending this section] shall apply to taxable years beginning after December 31, 2000."

Pub. L. 106–170, title V, §542(b)(3)(B)(ii), Dec. 17, 1999, 113 Stat. 1943, provided that: "The amendment made by this subparagraph [amending this section] shall apply to amounts received or accrued in taxable years beginning after December 31, 2000, except for amounts paid pursuant to leases in effect on July 12, 1999, or pursuant to a binding contract in effect on such date and at all times thereafter."

Pub. L. 106–170, title V, §546, Dec. 17, 1999, 113 Stat. 1946, provided that:

"(a) IN GENERAL.—The amendments made by this subpart [subpart A (§§541–547) of title V of Pub. L. 106–170, amending this section and sections 163 and 857 of this title] shall apply to taxable years beginning after December 31, 2000.

"(b) TRANSITIONAL RULES RELATED TO SECTION 541.—

"(1) EXISTING ARRANGEMENTS.—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendment made by section 541 [amending this section] shall not apply to a real estate investment trust with respect to—

"(i) securities of a corporation held directly or indirectly by such trust on July 12, 1999;

"(ii) securities of a corporation held by an entity on July 12, 1999, if such trust acquires control of such entity pursuant to a written binding contract in effect on such date and at all times thereafter before such acquisition;

"(iii) securities received by such trust (or a successor) in exchange for, or with respect to, securities described in clause (i) or (ii) in a transaction in which gain or loss is not recognized; and

"(iv) securities acquired directly or indirectly by such trust as part of a reorganization (as defined in section 368(a)(1) of the Internal Revenue Code of 1986) with respect to such trust if such securities are described in clause (i), (ii), or (iii) with respect to any other real estate investment trust.

"(B) NEW TRADE OR BUSINESS OR SUBSTANTIAL NEW ASSETS.—Subparagraph (A) shall cease to apply to securities of a corporation as of the first day after July 12, 1999, on which such corporation engages in a substantial new line of business, or acquires any substantial asset, other than—

"(i) pursuant to a binding contract in effect on such date and at all times thereafter before the acquisition of such asset;

"(ii) in a transaction in which gain or loss is not recognized by reason of section 1031 or 1033 of the Internal Revenue Code of 1986; or

"(iii) in a reorganization (as so defined) with another corporation the securities of which are described in paragraph (1)(A) of this subsection.

"(C) LIMITATION ON TRANSITION RULES.—Subparagraph (A) shall cease to apply to securities of a corporation held, acquired, or received, directly or indirectly, by a real estate investment trust as of the first day after July 12, 1999, on which such trust acquires any additional securities of such corporation other than—

"(i) pursuant to a binding contract in effect on July 12, 1999, and at all times thereafter; or

"(ii) in a reorganization (as so defined) with another corporation the securities of which are described in paragraph (1)(A) of this subsection.

"(2) TAX-FREE CONVERSION.—If—

"(A) at the time of an election for a corporation to become a taxable REIT subsidiary, the amendment made by section 541 does not apply to such corporation by reason of paragraph (1); and

"(B) such election first takes effect before January 1, 2004,

such election shall be treated as a reorganization qualifying under section 368(a)(1)(A) of such Code."

Pub. L. 106–170, title V, §551(b), Dec. 17, 1999, 113 Stat. 1949, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2000."

Pub. L. 106–170, title V, §561(b), Dec. 17, 1999, 113 Stat. 1950, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2000."

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to taxable years beginning after Aug. 5, 1997, see section 1263 of Pub. L. 105–34, set out as a note under section 852 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1621(b)(5) of Pub. L. 104–188 effective Sept. 1, 1997, see section 1621(d) of Pub. L. 104–188, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13149(b), Aug. 10, 1993, 107 Stat. 446, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1993."

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1006(p)(2), Nov. 10, 1988, 102 Stat. 3416, provided that: "Notwithstanding section 669 of the Reform Act [Pub. L. 99–514, set out below], the amendment made by section 662(c) of the Reform Act [amending this section] shall apply to taxable years beginning after December 31, 1986, but only in the case of obligations acquired after October 22, 1986."

Pub. L. 100–647, title I, §1006(p)(4)(B), Nov. 10, 1988, 102 Stat. 3417, provided that: "The amendment made by subparagraph (A) [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Nov. 10, 1988]."

Amendment by section 1006(p)(1), (3), (5), (q), (t)(11) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title VI, §669, Oct. 22, 1986, 100 Stat. 2308, as amended by Pub. L. 100–647, title I, §1018(u)(29), Nov. 10, 1988, 102 Stat. 3591, provided that:

"(a) GENERAL RULE.—Except as otherwise provided in this section, the amendments made by this subtitle [subtitle G (§§661–668) of title VI of Pub. L. 99–514, amending this section and sections 857 to 860, 4981, and 6697 of this title] shall apply to taxable years beginning after December 31, 1986.

"(b) SECTION 668.—The amendments made by section 668 [amending sections 857, 858, and 4981 of this title] shall apply to calendar years beginning after December 31, 1986.

"(c) RETENTION OF EXISTING TRANSITIONAL RULE.—The amendment made by section 663(b)(2) [amending this section] shall not apply with respect to amounts received or accrued pursuant to loans made before May 28, 1976. For purposes of the preceding sentence, a loan is considered to be made before May 28, 1976, if such loan is made pursuant to a binding commitment entered into before May 28, 1976."

Amendment by section 671(b)(1) of Pub. L. 99–514 effective Jan. 1, 1987, see section 675(a) of Pub. L. 99–514, as amended, set out as an Effective Date note under section 860A of this title.

Amendment by section 901(d)(4)(E) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 901(e) of Pub. L. 99–514, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title II, §363(d), Nov. 6, 1978, 92 Stat. 2854, provided that: "The amendments made by subsections (a) [amending this section] and (b) [amending section 857 of this title] shall apply to taxable years ending after the date of the enactment of this Act [Nov. 6, 1978]. The amendment made by subsection (c) [amending this section] shall apply to extensions granted after the date of the enactment of this Act with respect to periods beginning after December 31, 1977."

Amendment by section 701(t)(2) of Pub. L. 95–600 effective Oct. 4, 1976, see section 701(t)(5) of Pub. L. 95–600, set out as a note under section 859 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XIV, §1402(b)(1), Oct. 4, 1976, 90 Stat. 1731, provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Pub. L. 94–455, title XIV, §1402(b)(2), Oct. 4, 1976, 90 Stat. 1732, provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

Pub. L. 94–455, title XVI, §1608(d), Oct. 4, 1976, 90 Stat. 1758, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) Except as provided in paragraphs (2) and (3), the amendments made by sections 1603, 1604, and 1605 [enacting sections 860 and 4981 of this title and amending this section and sections 275, 857, 858, 6161, 6211 to 6214, 6344, 6512, 6601, and 7422 of this title] shall apply to taxable years of real estate investment trusts

beginning after the date of the enactment of this Act [Oct. 4, 1976].

"(2) If, as a result of a determination (as defined in section 859(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]), occurring after the date of enactment of this Act [Oct. 4, 1976], with respect to the real estate investment trust, such trust does not meet the requirement of section 856(a)(4) of the Internal Revenue Code of 1986 (as in effect before the amendment of such section by this Act) for any taxable year beginning on or before the date of the enactment of this Act, such trust may elect, within 60 days after such determination in the manner provided in regulations prescribed by the Secretary of the Treasury or his delegate, to have the provisions of section 1603 (other than paragraphs (1), (2), (3), and (4) of section 1603(c)) apply with respect to such taxable year. Where the provisions of section 1603 apply to a real estate investment trust with respect to any taxable year beginning on or before the date of the enactment of this Act—

"(A) credit or refund of any overpayment of tax which results from the application of section 1603 to such taxable year shall be made as if on the date of the determination (as defined in section 859(c) of the Internal Revenue Code of 1986) 2 years remained before the expiration of the period of limitation prescribed by section 6511 of such Code on the filing of claim for refund for the taxable year to which the overpayment relates,

"(B) the running of the statute of limitations provided in section 6501 of such Code on the making of assessments, and the bringing of distraint or a proceeding in court for collection, in respect of any deficiency (as defined in section 6211 of such Code) established by such a determination, and all interest, additions to tax, additional amounts, or assessable penalties in respect thereof, shall be suspended for a period of 2 years after the date of such determination, and

"(C) the collection of any deficiency (as defined in section 6211 of such Code) established by such determination and all interest, additions to tax, additional amounts, and assessable penalties in respect thereof shall, except in cases of jeopardy, be stayed until the expiration of 60 days after the date of such determination.

No distraint or proceeding in court shall be begun for the collection of an amount the collection of which is stayed under subparagraph (C) during the period for which the collection of such amount is stayed.

"(3) Section 856(g)(3) of the Internal Revenue Code of 1986, as added by section 1604 of this Act, shall not apply with respect to a termination of an election, filed by a taxpayer under section 856(c)(1) of such Code on or before the date of the enactment of this Act [Oct. 4, 1976], unless the provisions of part II of subchapter M of chapter 1 of subtitle A of such Code apply to such taxpayer for a taxable year ending after the date of the enactment of this Act for which such election is in effect."

EFFECTIVE DATE OF 1975 AMENDMENT

Pub. L. 93–625, §6(e), Jan. 3, 1975, 88 Stat. 2114, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by this section [amending this section and section 857 of this title] apply to foreclosure property acquired after December 31, 1973. Notwithstanding the provisions of section 856(e)(5) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a) of this section) any taxpayer required to make an election with respect to foreclosure property sooner than 90 days after the date of enactment of this Act [Jan. 3, 1975], may make that election at any time before the 91st day after the date of enactment of this Act."

EFFECTIVE DATE OF 1964 AMENDMENTS

Amendment by Pub. L. 88–554 effective Aug. 31, 1964, except that for purposes of sections 302 and 304 of this title, such amendments shall not apply to distributions in payment for stock acquisitions or redemptions, if such acquisitions or redemptions occurred before Aug. 31, 1964, see section 4(c) of Pub. L. 88–554, set out as a note under section 318 of this title.

Amendment by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 225(l) of Pub. L. 88–272, set out as a note under section 316 of this title.

EFFECTIVE DATE

Pub. L. 86–779, §10(k), Sept. 14, 1960, 74 Stat. 1009, provided that: "The amendments made by this section [enacting this section and sections 857 and 858 and amending sections 11, 34, 116, 243, 318, 443, 852, 855, and 1504 of this title] shall apply with respect to taxable years of real estate investment trusts beginning after December 31, 1960."

STUDY RELATING TO TAXABLE REIT SUBSIDIARIES

Pub. L. 106–170, title V, §547, Dec. 17, 1999, 113 Stat. 1947, provided that: "The Secretary of the Treasury shall conduct a study to determine how many taxable REIT subsidiaries are in existence and the aggregate amount of taxes paid by such subsidiaries. The Secretary shall submit a report to the Congress describing the

results of such study."

TRUST NOT DISQUALIFIED IN CERTAIN CASES WHERE INCOME TESTS NOT MET

Pub. L. 94–455, title XVI, §1608(b), Oct. 4, 1976, 90 Stat. 1757, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendment made by section 1602 [amending this section and section 857 of this title] shall apply to taxable years of real estate investment trusts beginning after the date of the enactment of this Act [Oct. 4, 1976]. In addition, the amendments made by section 1602 shall apply to a taxable year of a real estate investment trust beginning before the date of the enactment of this Act if, as the result of a determination (as defined in section 859(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) with respect to such trust occurring after the date of the enactment of this Act, such trust for such taxable years does not meet the requirements of section 856(c)(2) or section 856(c)(3), or of both such sections, of such Code as in effect for such taxable year. In any case, the amendment made by section 1602(a) requiring a schedule to be attached to the income tax return of certain real estate investment trusts shall apply only to taxable years of such trusts beginning after the date of the enactment of this Act. If the amendments made by section 1602 apply to a taxable year ending on or before the date of enactment of this Act, the reference to paragraph (2)(B) in section 857(b)(5) of such Code, as amended, shall be considered to be a reference to paragraph (2)(C) of section 857(b) of such Code, as in effect immediately before the enactment of this Act."

[1] So in original. Probably should be followed by "and".

§857. Taxation of real estate investment trusts and their beneficiaries

(a) Requirements applicable to real estate investment trusts

The provisions of this part (other than subsection (d) of this section and subsection (g) of section 856) shall not apply to a real estate investment trust for a taxable year unless—

(1) the deduction for dividends paid during the taxable year (as defined in section 561, but determined without regard to capital gains dividends) equals or exceeds—

(A) the sum of—

(i) 90 percent of the real estate investment trust taxable income for the taxable year (determined without regard to the deduction for dividends paid (as defined in section 561) and by excluding any net capital gain); and

(ii) 90 percent of the excess of the net income from foreclosure property over the tax imposed on such income by subsection (b)(4)(A); minus

(B) any excess noncash income (as determined under subsection (e)); and

(2) either—

(A) the provisions of this part apply to the real estate investment trust for all taxable years beginning after February 28, 1986, or

(B) as of the close of the taxable year, the real estate investment trust has no earnings and profits accumulated in any non-REIT year.

For purposes of the preceding sentence, the term "non-REIT year" means any taxable year to which the provisions of this part did not apply with respect to the entity. The Secretary may waive the requirements of paragraph (1) for any taxable year if the real estate investment trust establishes to the satisfaction of the Secretary that it was unable to meet such requirements by reason of distributions previously made to meet the requirements of section 4981.

(b) Method of taxation of real estate investment trusts and holders of shares or certificates of beneficial interest

(1) Imposition of tax on real estate investment trusts

There is hereby imposed for each taxable year on the real estate investment trust taxable income of every real estate investment trust a tax computed as provided in section 11, as though the real

estate investment trust taxable income were the taxable income referred to in section 11.

(2) Real estate investment trust taxable income

For purposes of this part, the term "real estate investment trust taxable income" means the taxable income of the real estate investment trust, adjusted as follows:

(A) The deductions for corporations provided in part VIII (except section 248) of subchapter B (section 241 and following, relating to the deduction for dividends received, etc.) shall not be allowed.

(B) The deduction for dividends paid (as defined in section 561) shall be allowed, but shall be computed without regard to that portion of such deduction which is attributable to the amount excluded under subparagraph (D).

(C) The taxable income shall be computed without regard to section 443(b) (relating to computation of tax on change of annual accounting period).

(D) There shall be excluded an amount equal to the net income from foreclosure property.

(E) There shall be deducted an amount equal to the tax imposed by paragraphs (5) and (7) of this subsection, section 856(c)(7)(C), and section 856(g)(5) for the taxable year.

(F) There shall be excluded an amount equal to any net income derived from prohibited transactions.

(3) Capital gains

(A) Alternative tax in case of capital gains

If for any taxable year a real estate investment trust has a net capital gain, then, in lieu of the tax imposed by subsection (b)(1), there is hereby imposed a tax (if such tax is less than the tax imposed by such subsection) which shall consist of the sum of—

(i) a tax, computed as provided in subsection (b)(1), on the real estate investment trust taxable income (determined by excluding such net capital gain and by computing the deduction for dividends paid without regard to capital gain dividends), and

(ii) a tax determined at the rates provided in section 1201(a) on the excess of the net capital gain over the deduction for dividends paid (as defined in section 561) determined with reference to capital gains dividends only.

(B) Treatment of capital gain dividends by shareholders

A capital gain dividend shall be treated by the shareholders or holders of beneficial interests as a gain from the sale or exchange of a capital asset held for more than 1 year.

(C) Definition of capital gain dividend

For purposes of this part, a capital gain dividend is any dividend, or part thereof, which is designated by the real estate investment trust as a capital gain dividend in a written notice mailed to its shareholders or holders of beneficial interests at any time before the expiration of 30 days after the close of its taxable year (or mailed to its shareholders or holders of beneficial interests with its annual report for the taxable year); except that, if there is an increase in the excess described in subparagraph (A)(ii) of this paragraph for such year which results from a determination (as defined in section 860(e)), such designation may be made with respect to such increase at any time before the expiration of 120 days after the date of such determination. If the aggregate amount so designated with respect to a taxable year of the trust (including capital gain dividends paid after the close of the taxable year described in section 858) is greater than the net capital gain of the taxable year, the portion of each distribution which shall be a capital gain dividend shall be only that proportion of the amount so designated which such net capital gain bears to the aggregate amount so designated. For purposes of this subparagraph, the amount of the net capital gain for any taxable year which is not a calendar year shall be determined without regard to any net capital loss attributable to transactions after December 31 of such year, and any such net capital loss shall be treated as arising on the 1st day of the next taxable year. To the extent provided in regulations, the preceding sentence shall apply also for purposes of computing the taxable income of the real estate investment trust.

(D) Treatment by shareholders of undistributed capital gains

(i) Every shareholder of a real estate investment trust at the close of the trust's taxable year shall include, in computing his long-term capital gains in his return for his taxable year in which the last day of the trust's taxable year falls, such amount as the trust shall designate in respect of such shares in a written notice mailed to its shareholders at any time prior to the expiration of 60 days after the close of its taxable year (or mailed to its shareholders or holders of beneficial interests with its annual report for the taxable year), but the amount so includible by any shareholder shall not exceed that part of the amount subjected to tax in subparagraph (A)(ii) which he would have received if all of such amount had been distributed as capital gain dividends by the trust to the holders of such shares at the close of its taxable year.

(ii) For purposes of this title, every such shareholder shall be deemed to have paid, for his taxable year under clause (i), the tax imposed by subparagraph (A)(ii) on the amounts required by this subparagraph to be included in respect of such shares in computing his long-term capital gains for that year; and such shareholders shall be allowed credit or refund as the case may be, for the tax so deemed to have been paid by him.

(iii) The adjusted basis of such shares in the hands of the holder shall be increased with respect to the amounts required by this subparagraph to be included in computing his long-term capital gains, by the difference between the amount of such includible gains and the tax deemed paid by such shareholder in respect of such shares under clause (ii).

(iv) In the event of such designation, the tax imposed by subparagraph (A)(ii) shall be paid by the real estate investment trust within 30 days after the close of its taxable year.

(v) The earnings and profits of such real estate investment trust, and the earnings and profits of any such shareholder which is a corporation, shall be appropriately adjusted in accordance with regulations prescribed by the Secretary.

(vi) As used in this subparagraph, the terms "shares" and "shareholders" shall include beneficial interests and holders of beneficial interests, respectively.

(E) Coordination with net operating loss provisions

For purposes of section 172, if a real estate investment trust pays capital gain dividends during any taxable year, the amount of the net capital gain for such taxable year (to the extent such gain does not exceed the amount of such capital gain dividends) shall be excluded in determining—

(i) the net operating loss for the taxable year, and

(ii) the amount of the net operating loss of any prior taxable year which may be carried through such taxable year under section 172(b)(2) to a succeeding taxable year.

(F) Certain distributions

In the case of a shareholder of a real estate investment trust to whom section 897 does not apply by reason of the second sentence of section 897(h)(1), the amount which would be included in computing long-term capital gains for such shareholder under subparagraph (B) or (D) (without regard to this subparagraph)—

(i) shall not be included in computing such shareholder's long-term capital gains, and

(ii) shall be included in such shareholder's gross income as a dividend from the real estate investment trust.

(4) Income from foreclosure property

(A) Imposition of tax

A tax is hereby imposed for each taxable year on the net income from foreclosure property of every real estate investment trust. Such tax shall be computed by multiplying the net income from foreclosure property by the highest rate of tax specified in section 11(b).

(B) Net income from foreclosure property

For purposes of this part, the term "net income from foreclosure property" means the excess of—

(i) gain (including any foreign currency gain, as defined in section 988(b)(1)) from the sale or other disposition of foreclosure property described in section 1221(a)(1) and the gross income for the taxable year derived from foreclosure property (as defined in section 856(e)), but only to the extent such gross income is not described in (or, in the case of foreign currency gain, not attributable to gross income described in) section 856(c)(3) other than subparagraph (F) thereof, over

(ii) the deductions allowed by this chapter which are directly connected with the production of the income referred to in clause (i).

(5) Imposition of tax in case of failure to meet certain requirements

If section 856(c)(6) applies to a real estate investment trust for any taxable year, there is hereby imposed on such trust a tax in an amount equal to the greater of—

(A) the excess of—

(i) 95 percent of the gross income (excluding gross income from prohibited transactions) of the real estate investment trust, over

(ii) the amount of such gross income which is derived from sources referred to in section 856(c)(2); or

(B) the excess of—

(i) 75 percent of the gross income (excluding gross income from prohibited transactions) of the real estate investment trust, over

(ii) the amount of such gross income which is derived from sources referred to in section 856(c)(3),

multiplied by a fraction the numerator of which is the real estate investment trust taxable income for the taxable year (determined without regard to the deductions provided in paragraphs (2)(B) and (2)(E), without regard to any net operating loss deduction, and by excluding any net capital gain) and the denominator of which is the gross income for the taxable year (excluding gross income from prohibited transactions; gross income and gain from foreclosure property (as defined in section 856(e), but only to the extent such gross income and gain is not described in subparagraph (A), (B), (C), (D), (E), or (G) of section 856(c)(3)); long-term capital gain; and short-term capital gain to the extent of any short-term capital loss).

(6) Income from prohibited transactions

(A) Imposition of tax

There is hereby imposed for each taxable year of every real estate investment trust a tax equal to 100 percent of the net income derived from prohibited transactions.

(B) Definitions

For purposes of this part—

(i) the term "net income derived from prohibited transactions" means the excess of the gain (including any foreign currency gain, as defined in section 988(b)(1)) from prohibited transactions over the deductions (including any foreign currency loss, as defined in section 988(b)(2)) allowed by this chapter which are directly connected with prohibited transactions;

(ii) in determining the amount of the net income derived from prohibited transactions, there shall not be taken into account any item attributable to any prohibited transaction for which there was a loss; and

(iii) the term "prohibited transaction" means a sale or other disposition of property described in section 1221(a)(1) which is not foreclosure property.

(C) Certain sales not to constitute prohibited transactions

For purposes of this part, the term "prohibited transaction" does not include a sale of property which is a real estate asset (as defined in section 856(c)(5)(B)) and which is described in section 1221(a)(1) if—

(i) the trust has held the property for not less than 2 years;

(ii) aggregate expenditures made by the trust, or any partner of the trust, during the 2-year period preceding the date of sale which are includible in the basis of the property do not exceed 30 percent of the net selling price of the property;

(iii)(I) during the taxable year the trust does not make more than 7 sales of property (other than sales of foreclosure property or sales to which section 1033 applies), or (II) the aggregate adjusted bases (as determined for purposes of computing earnings and profits) of property (other than sales of foreclosure property or sales to which section 1033 applies) sold during the taxable year does not exceed 10 percent of the aggregate bases (as so determined) of all of the assets of the trust as of the beginning of the taxable year, or (III) the fair market value of property (other than sales of foreclosure property or sales to which section 1033 applies) sold during the taxable year does not exceed 10 percent of the fair market value of all of the assets of the trust as of the beginning of the taxable year;

(iv) in the case of property, which consists of land or improvements, not acquired through foreclosure (or deed in lieu of foreclosure), or lease termination, the trust has held the property for not less than 2 years for production of rental income; and

(v) if the requirement of clause (iii)(I) is not satisfied, substantially all of the marketing and development expenditures with respect to the property were made through an independent contractor (as defined in section 856(d)(3)) from whom the trust itself does not derive or receive any income.

(D) Certain sales not to constitute prohibited transactions

For purposes of this part, the term "prohibited transaction" does not include a sale of property which is a real estate asset (as defined in section 856(c)(5)(B)) and which is described in section 1221(a)(1) if—

(i) the trust held the property for not less than 2 years in connection with the trade or business of producing timber,

(ii) the aggregate expenditures made by the trust, or a partner of the trust, during the 2-year period preceding the date of sale which—

(I) are includible in the basis of the property (other than timberland acquisition expenditures), and

(II) are directly related to operation of the property for the production of timber or for the preservation of the property for use as timberland,

do not exceed 30 percent of the net selling price of the property,

(iii) the aggregate expenditures made by the trust, or a partner of the trust, during the 2-year period preceding the date of sale which—

(I) are includible in the basis of the property (other than timberland acquisition expenditures), and

(II) are not directly related to operation of the property for the production of timber, or for the preservation of the property for use as timberland,

do not exceed 5 percent of the net selling price of the property,

(iv)(I) during the taxable year the trust does not make more than 7 sales of property (other than sales of foreclosure property or sales to which section 1033 applies), or

(II) the aggregate adjusted bases (as determined for purposes of computing earnings and profits) of property (other than sales of foreclosure property or sales to which section 1033 applies) sold during the taxable year does not exceed 10 percent of the aggregate bases (as so determined) of all of the assets of the trust as of the beginning of the taxable year, or

(III) the fair market value of property (other than sales of foreclosure property or sales to which section 1033 applies) sold during the taxable year does not exceed 10 percent of the fair market value of all of the assets of the trust as of the beginning of the taxable year,

(v) in the case that the requirement of clause (iv)(I) is not satisfied, substantially all of the marketing expenditures with respect to the property were made through an independent

contractor (as defined in section 856(d)(3)) from whom the trust itself does not derive or receive any income, or, in the case of a sale on or before the termination date, a taxable REIT subsidiary, and

(vi) the sales price of the property sold by the trust is not based in whole or in part on income or profits, including income or profits derived from the sale or operation of such property.

(E) Special rules

In applying subparagraphs (C) and (D) the following special rules apply:

(i) The holding period of property acquired through foreclosure (or deed in lieu of foreclosure), or termination of the lease, includes the period for which the trust held the loan which such property secured, or the lease of such property.

(ii) In the case of a property acquired through foreclosure (or deed in lieu of foreclosure), or termination of a lease, expenditures made by, or for the account of, the mortgagor or lessee after default became imminent will be regarded as made by the trust.

(iii) Expenditures (including expenditures regarded as made directly by the trust, or indirectly by any partner of the trust, under clause (ii)) will not be taken into account if they relate to foreclosure property and did not cause the property to lose its status as foreclosure property.

(iv) Expenditures will not be taken into account if they are made solely to comply with standards or requirements of any government or governmental authority having relevant jurisdiction, or if they are made to restore the property as a result of losses arising from fire, storm or other casualty.

(v) The term "expenditures" does not include advances on a loan made by the trust.

(vi) The sale of more than one property to one buyer as part of one transaction constitutes one sale.

(vii) The term "sale" does not include any transaction in which the net selling price is less than $10,000.

(F) Sales not meeting requirements

In determining whether or not any sale constitutes a "prohibited transaction" for purposes of subparagraph (A), the fact that such sale does not meet the requirements of subparagraph (C) or (D) shall not be taken into account; and such determination, in the case of a sale not meeting such requirements, shall be made as if subparagraphs (C), (D), and (E) had not been enacted.

(G) Sales of property that are not a prohibited transaction

In the case of a sale on or before the termination date, the sale of property which is not a prohibited transaction through the application of subparagraph (D) shall be considered property held for investment or for use in a trade or business and not property described in section 1221(a)(1) for all purposes of this subtitle. For purposes of the preceding sentence, the reference to subparagraph (D) shall be a reference to such subparagraph as in effect on the day before the enactment of the Housing Assistance Tax Act of 2008, as modified by subparagraph (G) as so in effect.

(H) Termination date

For purposes of this paragraph, the term "termination date" has the meaning given such term by section 856(c)(8).

(7) Income from redetermined rents, redetermined deductions, and excess interest

(A) Imposition of tax

There is hereby imposed for each taxable year of the real estate investment trust a tax equal to 100 percent of redetermined rents, redetermined deductions, and excess interest.

(B) Redetermined rents

(i) In general

The term "redetermined rents" means rents from real property (as defined in section 856(d)) to the extent the amount of the rents would (but for subparagraph (E)) be reduced on distribution, apportionment, or allocation under section 482 to clearly reflect income as a result of services furnished or rendered by a taxable REIT subsidiary of the real estate investment trust to a tenant of such trust.

(ii) Exception for de minimis amounts

Clause (i) shall not apply to amounts described in section 856(d)(7)(A) with respect to a property to the extent such amounts do not exceed the one percent threshold described in section 856(d)(7)(B) with respect to such property.

(iii) Exception for comparably priced services

Clause (i) shall not apply to any service rendered by a taxable REIT subsidiary of a real estate investment trust to a tenant of such trust if—

(I) such subsidiary renders a significant amount of similar services to persons other than such trust and tenants of such trust who are unrelated (within the meaning of section 856(d)(8)(F)) to such subsidiary, trust, and tenants, but

(II) only to the extent the charge for such service so rendered is substantially comparable to the charge for the similar services rendered to persons referred to in subclause (I).

(iv) Exception for certain separately charged services

Clause (i) shall not apply to any service rendered by a taxable REIT subsidiary of a real estate investment trust to a tenant of such trust if—

(I) the rents paid to the trust by tenants (leasing at least 25 percent of the net leasable space in the trust's property) who are not receiving such service from such subsidiary are substantially comparable to the rents paid by tenants leasing comparable space who are receiving such service from such subsidiary, and

(II) the charge for such service from such subsidiary is separately stated.

(v) Exception for certain services based on subsidiary's income from the services

Clause (i) shall not apply to any service rendered by a taxable REIT subsidiary of a real estate investment trust to a tenant of such trust if the gross income of such subsidiary from such service is not less than 150 percent of such subsidiary's direct cost in furnishing or rendering the service.

(vi) Exceptions granted by Secretary

The Secretary may waive the tax otherwise imposed by subparagraph (A) if the trust establishes to the satisfaction of the Secretary that rents charged to tenants were established on an arms' length basis even though a taxable REIT subsidiary of the trust provided services to such tenants.

(C) Redetermined deductions

The term "redetermined deductions" means deductions (other than redetermined rents) of a taxable REIT subsidiary of a real estate investment trust to the extent the amount of such deductions would (but for subparagraph (E)) be decreased on distribution, apportionment, or allocation under section 482 to clearly reflect income as between such subsidiary and such trust.

(D) Excess interest

The term "excess interest" means any deductions for interest payments by a taxable REIT subsidiary of a real estate investment trust to such trust to the extent that the interest payments are in excess of a rate that is commercially reasonable.

(E) Coordination with section 482

The imposition of tax under subparagraph (A) shall be in lieu of any distribution, apportionment, or allocation under section 482.

(F) Regulatory authority

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this paragraph. Until the Secretary prescribes such regulations, real estate investment trusts and their taxable REIT subsidiaries may base their allocations on any reasonable method.

(8) Loss on sale or exchange of stock held 6 months or less

(A) In general

If—

(i) subparagraph (B) or (D) of paragraph (3) provides that any amount with respect to any share or beneficial interest is to be treated as a long-term capital gain, and

(ii) the taxpayer has held such share or interest for 6 months or less,

then any loss on the sale or exchange of such share or interest shall, to the extent of the amount described in clause (i), be treated as a long-term capital loss.

(B) Determination of holding periods

For purposes of this paragraph, in determining the period for which the taxpayer has held any share of stock or beneficial interest—

(i) the rules of paragraphs (3) and (4) of section 246(c) shall apply, and

(ii) there shall not be taken into account any day which is more than 6 months after the date on which such share or interest becomes ex-dividend.

(C) Exception for losses incurred under periodic liquidation plans

To the extent provided in regulations, subparagraph (A) shall not apply to any loss incurred on the sale or exchange of shares of stock of, or beneficial interest in, a real estate investment trust pursuant to a plan which provides for the periodic liquidation of such shares or interests.

(9) Time certain dividends taken into account

For purposes of this title, any dividend declared by a real estate investment trust in October, November, or December of any calendar year and payable to shareholders of record on a specified date in such a month shall be deemed—

(A) to have been received by each shareholder on December 31 of such calendar year, and

(B) to have been paid by such trust on December 31 of such calendar year (or, if earlier, as provided in section 858).

The preceding sentence shall apply only if such dividend is actually paid by the company during January of the following calendar year.

(c) Restrictions applicable to dividends received from real estate investment trusts

(1) Section 243

For purposes of section 243 (relating to deductions for dividends received by corporations), a dividend received from a real estate investment trust which meets the requirements of this part shall not be considered a dividend.

(2) Section (1)(h)(11)

(A) In general

In any case in which—

(i) a dividend is received from a real estate investment trust (other than a capital gain dividend), and

(ii) such trust meets the requirements of section 856(a) for the taxable year during which it paid such dividend,

then, in computing qualified dividend income, there shall be taken into account only that portion of such dividend designated by the real estate investment trust.

(B) Limitation

The aggregate amount which may be designated as qualified dividend income under subparagraph (A) shall not exceed the sum of—

(i) the qualified dividend income of the trust for the taxable year,

(ii) the excess of—

(I) the sum of the real estate investment trust taxable income computed under section 857(b)(2) for the preceding taxable year and the income subject to tax by reason of the application of the regulations under section 337(d) for such preceding taxable year, over

(II) the sum of the taxes imposed on the trust for such preceding taxable year under section 857(b)(1) and by reason of the application of such regulations, and

(iii) the amount of any earnings and profits which were distributed by the trust for such taxable year and accumulated in a taxable year with respect to which this part did not apply.

(C) Notice to shareholders

The amount of any distribution by a real estate investment trust which may be taken into account as qualified dividend income shall not exceed the amount so designated by the trust in a written notice to its shareholders mailed not later than 60 days after the close of its taxable year.

(D) Qualified dividend income

For purposes of this paragraph, the term "qualified dividend income" has the meaning given such term by section 1(h)(11)(B).

(d) Earnings and profits

(1) In general

The earnings and profits of a real estate investment trust for any taxable year (but not its accumulated earnings) shall not be reduced by any amount which is not allowable in computing its taxable income for such taxable year. For purposes of this subsection, the term "real estate investment trust" includes a domestic corporation, trust, or association which is a real estate investment trust determined without regard to the requirements of subsection (a).

(2) Coordination with tax on undistributed income

A real estate investment trust shall be treated as having sufficient earnings and profits to treat as a dividend any distribution (other than in a redemption to which section 302(a) applies) which is treated as a dividend by such trust. The preceding sentence shall not apply to the extent that the amount distributed during any calendar year by the trust exceeds the required distribution for such calendar year (as determined under section 4981).

(3) Distributions to meet requirements of subsection (a)(2)(B)

Any distribution which is made in order to comply with the requirements of subsection (a)(2)(B)—

(A) shall be treated for purposes of this subsection and subsection (a)(2)(B) as made from earnings and profits which, but for the distribution, would result in a failure to meet such requirements (and allocated to such earnings on a first-in, first-out basis), and

(B) to the extent treated under subparagraph (A) as made from accumulated earnings and profits, shall not be treated as a distribution for purposes of subsection (b)(2)(B) and section 858.

(e) Excess noncash income

(1) In general

For purposes of subsection (a)(1)(B), the term "excess noncash income" means the excess (if any) of—

(A) the amount determined under paragraph (2) for the taxable year, over

(B) 5 percent of the real estate investment trust taxable income for the taxable year determined without regard to the deduction for dividends paid (as defined in section 561) and

by excluding any net capital gain.

(2) Determination of amount

The amount determined under this paragraph for the taxable year is the sum of—

(A) the amount (if any) by which—

(i) the amounts includible in gross income under section 467 (relating to certain payments for the use of property or services), exceed

(ii) the amounts which would have been includible in gross income without regard to such section,

(B) any income on the disposition of a real estate asset if—

(i) there is a determination (as defined in section 860(e)) that such income is not eligible for nonrecognition under section 1031, and

(ii) failure to meet the requirements of section 1031 was due to reasonable cause and not to willful neglect,

(C) the amount (if any) by which—

(i) the amounts includible in gross income with respect to instruments to which section 860E(a) or 1272 applies, exceed

(ii) the amount of money and the fair market value of other property received during the taxable year under such instruments, and

(D) amounts includible in income by reason of cancellation of indebtedness.

(f) Real estate investment trusts to ascertain ownership

(1) In general

Each real estate investment trust shall each taxable year comply with regulations prescribed by the Secretary for the purposes of ascertaining the actual ownership of the outstanding shares, or certificates of beneficial interest, of such trust.

(2) Failure to comply

(A) In general

If a real estate investment trust fails to comply with the requirements of paragraph (1) for a taxable year, such trust shall pay (on notice and demand by the Secretary and in the same manner as tax) a penalty of $25,000.

(B) Intentional disregard

If any failure under paragraph (1) is due to intentional disregard of the requirement under paragraph (1), the penalty under subparagraph (A) shall be $50,000.

(C) Failure to comply after notice

The Secretary may require a real estate investment trust to take such actions as the Secretary determines appropriate to ascertain actual ownership if the trust fails to meet the requirements of paragraph (1). If the trust fails to take such actions, the trust shall pay (on notice and demand by the Secretary and in the same manner as tax) an additional penalty equal to the penalty determined under subparagraph (A) or (B), whichever is applicable.

(D) Reasonable cause

No penalty shall be imposed under this paragraph with respect to any failure if it is shown that such failure is due to reasonable cause and not to willful neglect.

(g) Cross reference

For provisions relating to excise tax based on certain real estate investment trust taxable income not distributed during the taxable year, see section 4981.

(Added Pub. L. 86–779, §10(a), Sept. 14, 1960, 74 Stat. 1006; amended Pub. L. 88–272, title II,

§201(d)(11), Feb. 26, 1964, 78 Stat. 32; Pub. L. 91–172, title V, §511(c)(3), Dec. 30, 1969, 83 Stat. 637; Pub. L. 93–625, §6(c), (d)(2)–(4), Jan. 3, 1975, 88 Stat. 2113, 2114; Pub. L. 94–455, title XIV, §1402(b)(1)(P), (2), title XVI, §§1601(c), 1602(b), 1603(b), (c)(5), 1604(c)(2), (f)(3)(B), (j), (k)(2)(B), 1605(b)(2), 1606(a), (d), 1607(a), (b)(1)(A), (2), (3), title XIX, §§1901(a)(112), (b)(1)(V), (33)(K), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1732, 1746–1748, 1750–1757, 1783, 1792, 1801, 1834; Pub. L. 95–600, title III, §§301(b)(12), 362(d)(3), 363(b), title IV, §403(c)(3), Nov. 6, 1978, 92 Stat. 2822, 2851, 2852, 2868; Pub. L. 96–222, title I, §103(a)(1), Apr. 1, 1980, 94 Stat. 208; Pub. L. 96–223, title IV, §404(b)(8), Apr. 2, 1980, 94 Stat. 307; Pub. L. 97–34, title III, §302(c)(5), (d)(1), Aug. 13, 1981, 95 Stat. 273, 274; Pub. L. 98–369, div. A, title I, §§16(a), 55(b), title X, §1001(b)(13), (e), July 18, 1984, 98 Stat. 505, 572, 1011, 1012; Pub. L. 99–514, title VI, §§612(b)(7), 661(b), 664, 665(a), (b)(1), 666, 668(b)(1)(A), (2), (3), Oct. 22, 1986, 100 Stat. 2251, 2300, 2303–2305, 2307, 2308; Pub. L. 100–647, title I, §§1006(r), (s)(2), (4), (5), 1018(u)(28), Nov. 10, 1988, 102 Stat. 3418, 3419, 3591; Pub. L. 101–508, title XI, §11704(a)(37), Nov. 5, 1990, 104 Stat. 1388–520; Pub. L. 105–34, title XII, §§1251(a), 1254(a), (b)(1), 1255(b)(2), (3), 1256, 1259, 1260, Aug. 5, 1997, 111 Stat. 1030, 1032–1035; Pub. L. 105–206, title VI, §6012(g), July 22, 1998, 112 Stat. 819; Pub. L. 106–170, title V, §§532(c)(2)(L), (M), 545, 556(a), (b), 566(a)(2), (b), Dec. 17, 1999, 113 Stat. 1930, 1944, 1949, 1950; Pub. L. 106–554, §1(a)(7) [title III, §311(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–640; Pub. L. 107–147, title IV, §§413(a), 417(13), Mar. 9, 2002, 116 Stat. 54, 56; Pub. L. 108–27, title III, §302(d), May 28, 2003, 117 Stat. 763; Pub. L. 108–311, title IV, §402(a)(5)(E), Oct. 4, 2004, 118 Stat. 1185; Pub. L. 108–357, title II, §243(c), (e), (f)(4), title III, §321(a), title IV, §418(b), Oct. 22, 2004, 118 Stat. 1442, 1445, 1473, 1512; Pub. L. 109–135, title IV, §§403(d)(3), 412(ii), Dec. 21, 2005, 119 Stat. 2622, 2639; Pub. L. 110–172, §11(a)(17)(B), Dec. 29, 2007, 121 Stat. 2486; Pub. L. 110–234, title XV, §§15311(c), 15315(a)–(d), May 22, 2008, 122 Stat. 1503–1505; Pub. L. 110–246, §4(a), title XV, §§15311(c), 15315(a)–(d), June 18, 2008, 122 Stat. 1664, 2265–2267; Pub. L. 110–289, div. C, title II, §§3033, 3051, 3052, July 30, 2008, 122 Stat. 2900, 2901.)

REFERENCES IN TEXT

The date of enactment of the Housing Assistance Tax Act of 2008, referred to in subsec. (b)(6)(G), is the date of enactment of div. C of Pub. L. 110–289, which was approved July 30, 2008.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2008—Subsec. (b)(3)(A)(ii). Pub. L. 110–246, §15311(c), substituted "rates" for "rate".

Subsec. (b)(4)(B)(i). Pub. L. 110–289, §3033(a), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: "gain from the sale or other disposition of foreclosure property described in section 1221(a)(1) and the gross income for the taxable year derived from foreclosure property (as defined in section 856(e)), but only to the extent such gross income is not described in subparagraph (A), (B), (C), (D), (E), or (G) of section 856(c)(3), over".

Subsec. (b)(6)(B)(i). Pub. L. 110–289, §3033(b), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: "the term 'net income derived from prohibited transactions' means the excess of the gain from prohibited transactions over the deductions allowed by this chapter which are directly connected with prohibited transactions;".

Subsec. (b)(6)(C). Pub. L. 110–289, §3051(a)(3), substituted "real estate asset (as defined in section 856(c)(5)(B)) and which is described in section 1221(a)(1) if" for "real estate asset as defined in section 856(c)(5)(B) if" in introductory provisions.

Subsec. (b)(6)(C)(i). Pub. L. 110–289, §3051(a)(1), substituted "2 years" for "4 years".

Subsec. (b)(6)(C)(ii). Pub. L. 110–289, §3051(a)(2), substituted "2-year period" for "4-year period".

Subsec. (b)(6)(C)(iii)(III). Pub. L. 110–289, §3052(1), added subcl. (III).

Subsec. (b)(6)(C)(iv). Pub. L. 110–289, §3051(a)(1), substituted "2 years" for "4 years".

Subsec. (b)(6)(D). Pub. L. 110–289, §3051(a)(3), substituted "real estate asset (as defined in section 856(c)(5)(B)) and which is described in section 1221(a)(1) if" for "real estate asset (as defined in section 856(c)(5)(B)) if" in introductory provisions.

Subsec. (b)(6)(D)(i). Pub. L. 110–289, §3051(a)(1), substituted "2 years" for "4 years".

Subsec. (b)(6)(D)(ii), (iii). Pub. L. 110–289, §3051(a)(2), substituted "2-year period" for "4-year period" in introductory provisions.

Subsec. (b)(6)(D)(iv)(III). Pub. L. 110–289, §3052(2), added subcl. (III).

Subsec. (b)(6)(D)(v). Pub. L. 110–246, §15315(b), inserted ", or, in the case of a sale on or before the termination date, a taxable REIT subsidiary" after "any income".

Subsec. (b)(6)(G). Pub. L. 110–289, §3051(b), redesignated subpar. (H) as (G), inserted at end "For purposes of the preceding sentence, the reference to subparagraph (D) shall be a reference to such subparagraph as in effect on the day before the enactment of the Housing Assistance Tax Act of 2008, as modified by subparagraph (G) as so in effect.", and struck out former subpar. (G). Prior to amendment, text of subpar. (G) read as follows:

"(i) IN GENERAL.—In the case of the sale of a real estate asset (as defined in section 856(c)(5)(B)) to a qualified organization (as defined in section 170(h)(3)) exclusively for conservation purposes (within the meaning of section 170(h)(1)(C)), subparagraph (D) shall be applied—

"(I) by substituting '2 years' for '4 years' in clause (i), and

"(II) by substituting '2-year period' for '4-year period' in clauses (ii) and (iii).

"(ii) TERMINATION.—This subparagraph shall not apply to sales after the termination date."

Pub. L. 110–246, §15315(a), added subpar. (G).

Subsec. (b)(6)(H), (I). Pub. L. 110–289, §3051(b)(1), redesignated subpar. (I) as (H). Former subpar. (H) redesignated (G).

Pub. L. 110–246, §15315(c), (d), added subpars. (H) and (I).

2007—Subsec. (b)(8)(B). Pub. L. 110–172 amended heading and text generally. Prior to amendment, text read as follows: "For purposes of this paragraph, the rules of paragraphs (3) and (4) of section 246(c) shall apply in determining the period for which the taxpayer has held any share of stock or beneficial interest; except that '6 months' shall be substituted for the number of days specified in subparagraph (B) of section 246(c)(3)."

2005—Subsec. (b)(2)(E). Pub. L. 109–135, §403(d)(3), substituted "section 856(c)(7)(C), and section 856(g)(5)" for "section 856(c)(7)(B)(iii), and section 856(g)(1)."

Subsec. (b)(6)(E). Pub. L. 109–135, §412(ii)(1), substituted "subparagraphs (C) and (D)" for "subparagraph (C)" in introductory provisions.

Subsec. (b)(6)(F). Pub. L. 109–135, §412(ii)(2), substituted "subparagraph (C) or (D)" for "subparagraph (C) of this paragraph" and "subparagraphs (C), (D), and (E)" for "subparagraphs (C) and (D)".

2004—Subsec. (b)(2)(E). Pub. L. 108–357, §243(f)(4), substituted "(7) of this subsection, section 856(c)(7)(B)(iii), and section 856(g)(1)." for "(7)".

Subsec. (b)(3)(F). Pub. L. 108–357, §418(b), added subpar. (F).

Subsec. (b)(5)(A)(i). Pub. L. 108–357, §243(e), substituted "95 percent" for "90 percent".

Subsec. (b)(6)(D) to (F). Pub. L. 108–357, §321(a), added subpar. (D) and redesignated former subpars. (D) and (E) as (E) and (F), respectively.

Subsec. (b)(7)(B)(ii) to (vii). Pub. L. 108–357, §243(c), redesignated cls. (iii) to (vii) as (ii) to (vi), respectively, and struck out former cl. (ii), which related to exception for amounts received by a REIT for services furnished or rendered by a taxable REIT subsidiary that were described in section 856(d)(1)(B) of this title, or from a taxable REIT subsidiary that were described in par. (7)(C)(ii) of such section.

Subsec. (c)(2). Pub. L. 108–311, §402(a)(5)(E), reenacted heading without change and amended text generally. Prior to amendment, text related to rules applicable to dividends received from real estate investment trusts for purposes of section 1(h)(11) of this title.

2003—Subsec. (c). Pub. L. 108–27 reenacted subsec. heading without change and amended text generally. Prior to amendment, text read as follows: "For purposes of section 243 (relating to deductions for dividends received by corporations), a dividend received from a real estate investment trust which meets the requirements of this part shall not be considered as a dividend."

2002—Subsec. (b)(7)(B)(i). Pub. L. 107–147, §417(13), substituted "section 856(d)" for "subsection 856(d)".

Pub. L. 107–147, §413(a)(1), substituted "to the extent the amount of the rents" for "the amount of which".

Subsec. (b)(7)(C). Pub. L. 107–147, §413(a)(2), substituted "to the extent the amount" for "if the amount".

2000—Subsec. (b)(7)(B)(ii). Pub. L. 106–554 amended heading and text of cl. (ii) generally. Prior to amendment, text read as follows: "Clause (i) shall not apply to amounts received directly or indirectly by a real estate investment trust for services described in paragraph (1)(B) or (7)(C)(i) of section 856(d)."

1999—Subsec. (a)(1)(A)(i), (ii). Pub. L. 106–170, §556(a), substituted "90 percent" for "95 percent (90 percent for taxable years beginning before January 1, 1980)".

Subsec. (b)(2)(E). Pub. L. 106–170, §545(b), substituted "paragraphs (5) and (7)" for "paragraph (5)".

Subsec. (b)(4)(B)(i). Pub. L. 106–170, §532(c)(2)(L), substituted "section 1221(a)(1)" for "section 1221(1)".

Subsec. (b)(5)(A)(i). Pub. L. 106–170, §556(b), substituted "90 percent" for "95 percent (90 percent in the case of taxable years beginning before January 1, 1980)".

Subsec. (b)(6)(B)(iii). Pub. L. 106–170, §532(c)(2)(M), substituted "section 1221(a)(1)" for "section 1221(1)".

Subsec. (b)(7) to (9). Pub. L. 106–170, §545(a), added par. (7) and redesignated former pars. (7) and (8) as (8) and (9), respectively.

Subsec. (d)(3)(A). Pub. L. 106–170, §566(a)(2), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "shall be treated for purposes of this subsection and subsection (a)(2)(B) as made from the earliest earnings and profits accumulated in any taxable year to which the provisions of this part did not apply rather than the most recently accumulated earnings and profits, and".

Subsec. (d)(3)(B). Pub. L. 106–170, §566(b), inserted "and section 858" before period at end.

1998—Subsec. (d)(3)(A). Pub. L. 105–206 substituted "earliest earnings and profits accumulated in any taxable year to which the provisions of this part did not apply" for "earliest accumulated earnings and profits (other than earnings and profits to which subsection (a)(2)(A) applies)".

1997—Subsec. (a)(2), (3). Pub. L. 105–34, §1251(a)(1), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: "the real estate investment trust complies for such year with regulations prescribed by the Secretary for the purpose of ascertaining the actual ownership of the outstanding shares, or certificates of beneficial interest, of such trust, and".

Subsec. (b)(3)(D), (E). Pub. L. 105–34, §1254(a), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (b)(5). Pub. L. 105–34, §1255(b)(2), substituted "section 856(c)(6)" for "section 856(c)(7)" in introductory provisions.

Subsec. (b)(6)(C). Pub. L. 105–34, §1255(b)(3), substituted "section 856(c)(5)(B)" for "section 856(c)(6)(B)" in introductory provisions.

Subsec. (b)(6)(C)(iii). Pub. L. 105–34, §1260, substituted "(other than sales of foreclosure property or sales to which section 1033 applies)" for "(other than foreclosure property)" in subcls. (I) and (II).

Subsec. (b)(7)(A)(i). Pub. L. 105–34, §1254(b)(1), substituted "subparagraph (B) or (D)" for "subparagraph (B)".

Subsec. (d)(3). Pub. L. 105–34, §1256, added par. (3).

Subsec. (e)(2)(B) to (D). Pub. L. 105–34, §1259, redesignated subpar. (C) as (B) and substituted a comma for period at end, added subpars. (C) and (D), and struck out former subpar. (B) which read as follows: "in the case of a real estate investment trust using the cash receipts and disbursements method of accounting, the amount (if any) by which—

"(i) the amounts includible in gross income with respect to instruments to which section 1274 (relating to certain debt instruments issued for property) applies, exceed

"(ii) the amount of money and the fair market value of other property received during the taxable year under such instruments; plus".

Subsecs. (f), (g). Pub. L. 105–34, §1251(a)(2), added subsec. (f) and redesignated former subsec. (f) as (g).

1990—Subsec. (b)(3)(C). Pub. L. 101–508 amended Pub. L. 100–647, §1018(u)(28). See 1988 Amendment note below.

1988—Subsec. (a). Pub. L. 100–647, §1006(s)(4), inserted at end "The Secretary may waive the requirements of paragraph (1) for any taxable year if the real estate investment trust establishes to the satisfaction of the Secretary that it was unable to meet such requirements by reason of distributions previously made to meet the requirements of section 4981."

Subsec. (b)(3)(C). Pub. L. 100–647, §1018(u)(28), as amended by Pub. L. 101–508, substituted "such net capital loss shall" for "such net capital loss such".

Pub. L. 100–647, §1006(s)(2), substituted "the taxable income of the real estate investment trust" for "real estate investment trust taxable income".

Subsec. (b)(8). Pub. L. 100–647, §1006(s)(5), substituted "in October, November, or December" for "in December" and "in such a month" for "in such month" in introductory text, "on December 31 of such calendar year" for "on such date", in subpars. (A) and (B), and "during January" for "before February 1" in last sentence.

Subsec. (e)(2)(B)(i). Pub. L. 100–647, §1006(r), substituted "with respect to instruments" for "as original issue discount on instruments".

1986—Subsec. (a). Pub. L. 99–514, §661(b), struck out "and" at end of par. (1), substituted ", and" for the

period at end of par. (2), and added par. (3) and last sentence.

Subsec. (a)(1)(B). Pub. L. 99–514, §664(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "the sum of—

"(i) the amount of any penalty imposed on the real estate investment trust by section 6697 which is paid by such trust during the taxable year; and

"(ii) the net loss derived from prohibited transactions,".

Subsec. (b)(2)(F). Pub. L. 99–514, §666(b)(2), struck out "and there shall be included an amount equal to any net loss derived from prohibited transactions" after "prohibited transactions".

Subsec. (b)(3)(C). Pub. L. 99–514, §668(b)(3), inserted at end "For purposes of this subparagraph, the amount of the net capital gain for any taxable year which is not a calendar year shall be determined without regard to any net capital loss attributable to transactions after December 31 of such year, and any such net capital loss such be treated as arising on the 1st day of the next taxable year. To the extent provided in regulations, the preceding sentence shall apply also for purposes of computing real estate investment trust taxable income."

Pub. L. 99–514, §665(a)(2), (b)(1), inserted "(or mailed to its shareholders or holders of beneficial interests with its annual report for the taxable year)", struck out last sentence which read as follows: "For purposes of this subparagraph, the net capital gain shall be deemed not to exceed the real estate investment trust taxable income (determined without regard to the deduction for dividends paid (as defined in section 561) for the taxable year)."

Subsec. (b)(3)(D). Pub. L. 99–514, §665(a)(1), added subpar. (D).

Subsec. (b)(6)(B)(ii). Pub. L. 99–514, §666(b)(1), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: "the term 'net loss derived from prohibited transactions' means the excess of the deductions allowed by this chapter which are directly connected with prohibited transactions over the gain from prohibited transactions; and".

Subsec. (b)(6)(C)(ii). Pub. L. 99–514, §666(a)(2), substituted "30 percent" for "20 percent".

Subsec. (b)(6)(C)(iii). Pub. L. 99–514, §666(a)(1), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: "during the taxable year the trust does not make more than 5 sales of property (other than foreclosure property); and".

Subsec. (b)(6)(C)(v). Pub. L. 99–514, §666(a)(3), added cl. (v).

Subsec. (b)(8). Pub. L. 99–514, §668(b)(1)(A), added par. (8).

Subsec. (c). Pub. L. 99–514, §612(b)(7), which directed that "section 116 (relating to an exclusion for dividends received by individuals), and" be struck out, was executed by striking out "section 116 (relating to an exclusion for dividends received by individuals) and" before "section 243" as the probable intent of Congress.

Subsec. (d). Pub. L. 99–514, §668(b)(2), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "The earnings and profits of a real estate investment trust for any taxable year (but not its accumulated earnings and profits) shall not be reduced by any amount which is not allowable as a deduction in computing its taxable income for such taxable year. For purposes of this subsection, the term 'real estate investment trust' includes a domestic corporation, trust, or association which is a real estate investment trust determined without regard to the requirements of subsection (a)."

Subsecs. (e), (f). Pub. L. 99–514, §664(b), added subsec. (e) and redesignated former subsec. (e) as (f).

1984—Subsec. (b)(3)(B). Pub. L. 98–369, §1001(b)(13), (e), substituted "6 months" for "1 year", applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

Subsec. (b)(7). Pub. L. 98–369, §55(b), substituted provisions relating to loss on sale or exchange of stock held 6 months or less for provisions which related to loss on sale or exchange of stock held 31 days or less.

Pub. L. 98–369, §1001(b)(13), (e), substituted "6 months" for "1 year", applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

Subsec. (c). Pub. L. 98–369, §16(a), repealed amendments made by Pub. L. 97–34, §302(c). See 1981 Amendment note below.

1981—Subsec. (c). Pub. L. 97–34, §302(c)(5), (d)(1), provided for general amendment of subsec. (c) so as to include provisions relating to treatment for section 128 of this title, adjustments to gross income and aggregate interest received, and notice to shareholders, applicable to taxable years beginning after Dec. 31, 1984. Section 16(a) of Pub. L. 98–369, repealed section 302(c) of Pub. L. 97–34, and provided that this title shall be applied and administered as if section 302(c), and the amendments made by section 302(c), had not been enacted.

1980—Subsec. (b)(4)(A). Pub. L. 96–222 substituted provisions computing the tax on the net income from foreclosure property of every real estate investment trust by multiplying the net income from foreclosure

property by the highest rate of tax specified in section 11(b) for provisions determining the tax on the net income from foreclosure of property of every real estate investment trust by applying section 11 to such income as if such income constituted the taxable income of a corporation taxable under section 11 and struck out provisions requiring that for purposes of the preceding sentence, the surtax exemption be zero.

Subsec. (c). Pub. L. 96–223 temporarily substituted "Limitations applicable to dividends received from real estate investment trusts" for "Restrictions applicable to dividends received from real estate investment trusts" in heading, designated existing provisions as par. (1), substituted "(1) CAPITAL GAIN DIVIDEND.—For purposes of section 116 (relating to exclusion for dividends and interest received by individuals), a capital gain dividend (as defined in subsection (b)(3)(C)) received from a real estate investment trust shall not be considered a dividend" for "For purposes of section 116 (relating to an exclusion for dividends received by individuals) and section 243 (relating to deductions for dividends received by corporations), a dividend received from a real estate investment trust which meets the requirements of this part shall not be considered as a dividend" in par. (1) as so designated, and added pars. (2) to (6).

1978—Subsec. (b)(1). Pub. L. 95–600, §301(b)(12), substituted "a tax" for "a normal tax and surtax".

Subsec. (b)(3)(A)(ii). Pub. L. 95–600, §403(c)(3), substituted "a tax determined at the rate provided in section 1201(a) on" for "a tax of 30 percent of".

Subsec. (b)(3)(C). Pub. L. 95–600, §362(d)(3), substituted "section 860(e)" for "section 859(c)".

Subsec. (b)(6)(C) to (E). Pub. L. 95–600, §363(b), added subpars. (C) to (E).

1976—Subsec. (a). Pub. L. 94–455, §§1604(j), (k)(2)(B), 1906(b)(13)(A), substituted "(other than subsection (d) of this section and subsection (g) of section 856)" for "(other than subsection (d) of this section)" in provisions preceding par. (1), in par. (1) redesignated existing subpars. (A) and (B) as cls. (i) and (ii), respectively, of subpar. (A), added subpar. (B), in both cls. (i) and (ii) of subpar. (A) as redesignated raised the percentage to 95 percent for taxable years beginning on and after Jan. 1, 1980, and, in cl. (i) of subpar. (A) as redesignated, inserted provision for the exclusion of net capital gain, and struck out "or his delegate" after "Secretary" in par. (2).

Subsec. (b)(1). Pub. L. 94–455, §1901(b)(1)(V), struck out provision that, for purposes of computing the normal tax under section 11, the taxable income and the dividends paid deduction of such real estate investment trust for the taxable year (computed without regard to capital gains dividends) would be reduced by the deduction provided by section 22 (relating to partially tax-exempt interest.

Subsec. (b)(2). Pub. L. 94–455, §§1602(b)(2), 1603(c)(5), 1606(a), (d), 1607(b)(1)(A), (2), struck out subpar. (A) which provided for the exclusion of the excess, if any, of the net long-term capital gain over the net short-term capital loss, and subpar. (E) which prohibited the allowance of the net operating loss deduction provided in section 172, redesignated subpars. (B), (C), (D), and (F) as subpars. (A), (B), (C), and (D), respectively, added subpars. (E) and (F), and in subpar. (B) as redesignated substituted "subparagraph (D)" for "paragraph (F)" and struck out "shall be computed without regard to capital gains dividends and" after "shall be allowed, but".

Subsec. (b)(3)(A). Pub. L. 94–455, §1607(a), substituted provisions setting an alternative tax in case of capital gains under which, if for any taxable year, a real estate investment trust has a net capital gain, then, in lieu of the tax imposed by subsection (b)(1), there is imposed a tax (if such tax is less than the tax imposed by such subsection) to consist of the sum of a tax, computed as provided in subsection (b)(1), on the real estate investment trust taxable income (determined by excluding such net capital gain and by computing the deduction for dividends paid without regard to capital gain dividends), and a tax of 30 percent of the excess of the net capital gain over the deduction for dividends paid (as defined in section 561) determined with reference to capital gains dividends only, for provisions posing a tax for each taxable year determined as provided in section 1201(a), on the excess, if any, of the net long-term capital gain over the sum of the net short-term capital loss and the deduction for dividends paid (as defined in section 561) determined with reference to capital gains dividends only.

Subsec. (b)(3)(B). Pub. L. 94–455, §1402(b)(2), provided that "9 months" would be changed to "1 year".

Pub. L. 94–455, §1402(b)(1)(P), provided that "6 months" would be changed to "9 months" for taxable years beginning in 1977.

Subsec. (b)(3)(C). Pub. L. 94–455, §§1601(c), 1607(b)(3), 1901(a)(112), (b)(33)(K), inserted "; except that, if there is an increase in the excess described in subparagraph (A)(ii) of this paragraph for such year which results from a determination (as defined in section 859(c)), such designation may be made with respect to such increase at any time before the expiration of 120 days after the date of such determination" after "30 days after the close of its taxable year", substituted "net capital gain" for "excess of the net long-term capital gain over the net short-term capital loss" in provision covering the portion of distributions which shall be capital gain

dividends, inserted provision that the net capital gain be deemed not to exceed the real estate investment trust taxable income, and struck out provision which specified the source of deductions for dividends paid in the case of taxable years beginning before Jan. 1, 1975.

Subsec. (b)(4)(B)(i). Pub. L. 94–455, §1604(c)(2), inserted reference to subparagraph (G) of section 856(c)(3).

Subsec. (b)(5). Pub. L. 94–455, §1602(b)(1), added par. (5). Former par. (5) redesignated (7) and amended.

Subsec. (b)(6). Pub. L. 94–455, §1603(b), added par. (6).

Subsec. (b)(7). Pub. L. 94–455, §1402(b)(2), provided that "9 months" would be changed to "1 year".

Pub. L. 94–455, §§1402(b)(1)(P), 1602(b)(1), redesignated par. (5) as (7) and provided that "6 months" would be changed to "9 months" for taxable years beginning in 1977.

Subsec. (d). Pub. L. 94–455, §1604(f)(3)(B), substituted "a domestic corporation, trust," for "a domestic unincorporated trust".

Subsec. (e). Pub. L. 94–455, §1605(b)(2), added subsec. (e).

1975—Subsec. (a)(1). Pub. L. 93–625, §6(d)(2), incorporated existing par. (1) provisions in par. (1) introductory text and provisions designated as subpar. (A), substituted in subpar. (A) "(determined without regard to the deduction for dividends paid (as defined in section 561))" for "(determined without regard to subsection (b)(2)(C))", and added subpar. (B).

Subsec. (b)(2)(C). Pub. L. 93–625, §6(d)(4), provided for computation of deduction for dividends paid without regard to that portion of such deduction which is attributable to the amount excluded under subparagraph (F).

Subsec. (b)(2)(F). Pub. L. 93–625, §6(d)(3), added subpar. (F).

Subsec. (b)(4), (5). Pub. L. 93–625, §6(c), added par. (4) and redesignated former par. (4) as (5).

1969—Subsec. (b)(3)(A). Pub. L. 91–172, §511(c)(3)(A), substituted "determined as provided in section 1201(a), on" for "of 25 percent of."

Subsec. (b)(3)(C). Pub. L. 91–172, §511(c)(3)(B), inserted provision requiring for the purposes of the deduction for capital gains dividends paid, in the case of a taxable year beginning before Jan. 1, 1975, the deduction for dividends paid shall first be made from the amount subject to tax in accordance with section 1201(a)(1)(B), to the extent thereof, and then from the amount subject to tax in accordance with section 1201(a)(1)(A).

1964—Subsec. (c). Pub. L. 88–272 struck out "section 34(a) (relating to credit for dividends received by individuals)," before "section 116" and the comma before "and".

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by section 3033(a) of Pub. L. 110–289 applicable to gains recognized after July 30, 2008, and amendment by section 3033(b) of Pub. L. 110–289 applicable to gains and deductions recognized after July 30, 2008, see section 3071(c) of Pub. L. 110–289, set out as a note under section 856 of this title.

Amendment by sections 3051 and 3052 of Pub. L. 110–289 applicable to sales made after July 30, 2008, see section 3071(d) of Pub. L. 110–289, set out as a note under section 856 of this title.

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by section 15311(c) of Pub. L. 110–246 applicable to taxable years ending after June 18, 2008, see section 15311(d) of Pub. L. 110–246, set out as a note under section 55 of this title.

Pub. L. 110–234, title XV, §15315(e), May 22, 2008, 122 Stat. 1505, and Pub. L. 110–246, §4(a), title XV, §15315(e), June 18, 2008, 122 Stat. 1664, 2267, provided that: "The amendments made by this section [amending this section] shall apply to dispositions in taxable years beginning after the date of the enactment of this Act [June 18, 2008]."

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.]

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 403(d)(3) of Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENTS

Amendment by section 243(c), (e) of Pub. L. 108–357 applicable to taxable years beginning after Oct. 22, 2004, and amendment by section 243(f)(4) of Pub. L. 108–357 applicable to taxable years ending after Oct. 22, 2004, see section 243(g)(2), (4)(D) of Pub. L. 108–357, set out as a note under section 856 of this title.

Pub. L. 108–357, title III, §321(b), Oct. 22, 2004, 118 Stat. 1474, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 22, 2004]."

Pub. L. 108–357, title IV, §418(c), Oct. 22, 2004, 118 Stat. 1513, as amended by Pub. L. 109–135, title IV, §403(p)(2), Dec. 21, 2005, 119 Stat. 2626, provided that: "The amendments made by this section [amending this section and section 897 of this title] shall apply to—

"(1) any distribution by a real estate investment trust which is treated as a deduction for a taxable year of such trust beginning after the date of the enactment of this Act [Oct. 22, 2004], and

"(2) any distribution by a real estate investment trust made after such date which is treated as a deduction under section 860 [probably means section 860 of the Internal Revenue Code of 1986] for a taxable year of such trust beginning on or before such date."

Amendment by Pub. L. 108–311 effective as if included in section 302 of the Jobs and Growth Tax Relief Reconciliation Act of 2003, Pub. L. 108–27, see section 402(b) of Pub. L. 108–311, set out a note under section 1 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–27 applicable, except as otherwise provided, to taxable years beginning after Dec. 31, 2002, see section 302(f) of Pub. L. 108–27, set out as an Effective and Termination Dates of 2003 Amendment note under section 1 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title IV, §413(b), Mar. 9, 2002, 116 Stat. 54, provided that: "The amendments made by this section [amending this section] shall take effect as if included in section 545 of the Tax Relief Extension Act of 1999 [Pub. L. 106–170]."

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 effective as if included in the provisions of the Ticket to Work and Work Incentives Improvement Act of 1999, Pub. L. 106–170, to which such amendment relates, see section 1(a)(7) [title III, §311(d)] of Pub. L. 106–554, set out as a note under section 30A of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 532(c)(2)(L), (M) of Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

Amendment by section 545 of Pub. L. 106–170 applicable to taxable years beginning after Dec. 31, 2000, see section 546(a) of Pub. L. 106–170, set out as a note under section 856 of this title.

Pub. L. 106–170, title V, §556(c), Dec. 17, 1999, 113 Stat. 1949, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2000."

Amendment by section 566(a)(2), (b) of Pub. L. 106–170 applicable to distributions after Dec. 31, 2000, see section 566(d) of Pub. L. 106–170, set out as a note under section 852 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to taxable years beginning after Aug. 5, 1997, see section 1263 of Pub. L. 105–34, set out as a note under section 852 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1006(s)(5), Nov. 10, 1988, 102 Stat. 3419, provided that the amendment made by that section is effective with respect to dividends declared in 1988 and subsequent calendar years.

Amendment by sections 1006(r), (s)(2), (4) and 1018(u)(28) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 612(b)(7) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 612(c) of Pub. L. 99–514, set out as a note under section 301 of this title.

Amendments by sections 661(b), 664, 665(a), (b)(1), and 666 of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 669(a) of Pub. L. 99–514, set out as a note under section 856 of this title.

Amendment by section 668(b)(1)(A), (2), (3) of Pub. L. 99–514 applicable to calendar years beginning after Dec. 31, 1986, see section 669(b) of Pub. L. 99–514, set out as a note under section 856 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 16(a) of Pub. L. 98–369 applicable to taxable years ending after Dec. 31, 1983, see section 18(a) of Pub. L. 98–369, set out as a note under section 48 of this title.

Amendment by section 55(b) of Pub. L. 98–369 applicable to losses incurred with respect to shares of stock and beneficial interest with respect to which the taxpayer's holding period begins after July 18, 1984, see section 55(c) of Pub. L. 98–369, set out as a note under section 852 of this title.

Amendment by section 1001(b)(13) of Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE AND TERMINATION DATES OF 1980 AMENDMENT

Amendment by Pub. L. 96–223 applicable with respect to taxable years beginning after Dec. 31, 1980, and before Jan. 1, 1982, see section 404(c) of Pub. L. 96–223, set out as a note under section 265 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 301(b)(12) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95–600, set out as a note under section 11 of this title.

Amendment by section 362(d)(3) of Pub. L. 95–600 applicable with respect to determinations (as defined in section 860(e) of this title) after Nov. 6, 1978, see section 362(e) of Pub. L. 95–600, set out as an Effective Date note under section 860 of this title.

Amendment by section 363(b) of Pub. L. 95–600 applicable to taxable years ending after Nov. 6, 1978, see section 363(d) of Pub. L. 95–600, set out as a note under section 856 of this title.

Amendment by section 403(c)(3) of Pub. L. 95–600 effective on Nov. 6, 1978, see section 403(d)(3) of Pub. L. 95–600, set out as a note under section 528 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XIV, §1402(b)(1), Oct. 4, 1976, 90 Stat. 1731, provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Pub. L. 94–455, title XIV, §1402(b)(2), Oct. 4, 1976, 90 Stat. 1732, provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

Pub. L. 94–455, title XVI, §1608(a), Oct. 4, 1976, 90 Stat. 1757, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by section 1601 [enacting sections 859 and 6697 of this title and amending this section and sections 316, 381, 6422, 6503, and 6515 of this title] shall apply with respect to determinations (as defined in section 859(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) occurring after the date of the enactment of this Act [Oct. 4, 1976]. If the amendments made by section 1601 apply to a taxable year ending on or before the date of enactment of this Act:

"(1) the reference to section 857(b)(3)(A)(ii) in sections 857(b)(3)(C) and 859(b)(1)(B) of such Code as amended, shall be considered to be a reference to section 857(b)(3)(A) of such Code, as in effect immediately before the enactment of this Act [Oct. 4, 1976], and

"(2) the reference to section 857(b)(2)(B) in section 859(a) of such Code, as amended, shall be considered to be a reference to section 857(b)(2)(C) of such Code, as in effect immediately before the enactment of this Act [Oct. 4, 1976]."

For effective date of amendment by section 1602(b)(1), (2) of Pub. L. 94–455, see section 1608(b) of Pub. L. 94–455, set out as a Trust Not Disqualified in Certain Cases Where Income Tests Not Met note under section 856 of this title.

For effective date of amendment by sections 1603, 1604, and 1605 of Pub. L. 94–455, see section 1608(d) of Pub. L. 94–455, set out as a note under section 856 of this title.

Pub. L. 94–455, title XVI, §1608(c), Oct. 4, 1976, 90 Stat. 1757, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by sections 1606 and 1607 [amending this

section and sections 46, 172, and 443 of this title] shall apply to taxable years ending after the date of the enactment of this Act [Oct. 4, 1976]; except that in the case of a taxpayer which has a net operating loss (as defined in section 172(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) for any taxable year ending after the date of enactment of this Act [Oct. 4, 1976] for which the provisions of part II of subchapter M of chapter 1 of subtitle A of such Code apply to such taxpayer, such loss shall not be a net operating loss carryback under section 172 of such Code to any taxable year ending on or before the date of enactment of this Act [Oct. 4, 1976]."

Amendment by section 1901(a)(112), (b)(1)(V), (33)(K) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–625 applicable to foreclosure property acquired after Dec. 31, 1973, see section 6(e) of Pub. L. 93–625, set out as a note under section 856 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable with respect to taxable years beginning after Dec. 31, 1969, see section 511(d) of Pub. L. 91–172, set out as an Effective Date note under section 1201 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable with respect to dividends received after Dec. 31, 1964, in taxable years ending after such date, see section 201(e) of Pub. L. 88–272, set out as a note under section 22 of this title.

EFFECTIVE DATE

Section applicable with respect to taxable years of real estate investment trusts beginning after Dec. 31, 1960, see section 10(k) of Pub. L. 86–779, set out as a note under section 856 of this title.

§858. Dividends paid by real estate investment trust after close of taxable year

(a) General rule

For purposes of this part, if a real estate investment trust—

(1) declares a dividend before the time prescribed by law for the filing of its return for a taxable year (including the period of any extension of time granted for filing such return), and

(2) distributes the amount of such dividend to shareholders or holders of beneficial interests in the 12-month period following the close of such taxable year and not later than the date of the first regular dividend payment made after such declaration,

the amount so declared and distributed shall, to the extent the trust elects in such return (and specifies in dollar amounts) in accordance with regulations prescribed by the Secretary, be considered as having been paid only during such taxable year, except as provided in subsections (b) and (c).

(b) Receipt by shareholder

Except as provided in section 857(b)(8), amounts to which subsection (a) applies shall be treated as received by the shareholder or holder of a beneficial interest in the taxable year in which the distribution is made.

(c) Notice to shareholders

In the case of amounts to which subsection (a) applies, any notice to shareholders or holders of beneficial interests required under this part with respect to such amounts shall be made not later than 30 days after the close of the taxable year in which the distribution is made (or mailed to its shareholders or holders of beneficial interests with its annual report for the taxable year).

(Added Pub. L. 86–779, §10(a), Sept. 14, 1960, 74 Stat. 1008; amended Pub. L. 94–455, title XVI, §§1604(h), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1752, 1834; Pub. L. 99–514, title VI, §§665(b)(2), 668(b)(1)(B), Oct. 22, 1986, 100 Stat. 2304, 2307; Pub. L. 100–647, title I,

§1018(u)(27), Nov. 10, 1988, 102 Stat. 3591.)

AMENDMENTS

1988—Subsec. (b). Pub. L. 100–647, §1018(u)(27), made technical correction to directory language of Pub. L. 99–514, see 1986 Amendment note below.

1986—Subsec. (b). Pub. L. 99–514, §668(b)(1)(B), as amended by Pub. L. 100–647, §1018(u)(27), substituted "Except as provided in section 857(b)(8), amounts" for "Amounts".

Subsec. (c). Pub. L. 99–514, §665(b)(2), inserted "(or mailed to its shareholders or holders of beneficial interests with its annual report for the taxable year)".

1976—Subsec. (a). Pub. L. 94–455, §§1604(h), 1906(b)(13)(A), inserted "(and specifies in dollar amounts)" after "to the extent the trust elects in such return" and substituted "paid only during such taxable year" for "paid during such taxable year", and struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 665(b)(2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, and by section 668(b)(1)(B) of Pub. L. 99–514 applicable to calendar years beginning after Dec. 31, 1986, see section 669 of Pub. L. 99–514, set out as a note under section 856 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment by section 1604(h) of Pub. L. 94–455, see section 1608(d) of Pub. L. 94–455, set out as a note under section 856 of this title.

EFFECTIVE DATE

Section applicable with respect to taxable years of real estate investment trusts beginning after Dec. 31, 1960, see section 10(k) of Pub. L. 86–779, set out as a note under section 856 of this title.

§859. Adoption of annual accounting period

(a) General rule

For purposes of this subtitle—

(1) a real estate investment trust shall not change to any accounting period other than the calendar year, and

(2) a corporation, trust, or association may not elect to be a real estate investment trust for any taxable year beginning after October 4, 1976, unless its accounting period is the calendar year.

Paragraph (2) shall not apply to a corporation, trust, or association which was considered to be a real estate investment trust for any taxable year beginning on or before October 4, 1976.

(b) Change of accounting period without approval

Notwithstanding section 442, an entity which has not engaged in any active trade or business may change its accounting period to a calendar year without the approval of the Secretary if such change is in connection with an election under section 856(c).

(Added Pub. L. 94–455, title XVI, §1604(i)(1), Oct. 4, 1976, 90 Stat. 1752, §860; renumbered §859 and amended Pub. L. 95–600, title III, §362(d)(6), title VII, §701(t)(1), Nov. 6, 1978, 92 Stat. 2852, 2911; Pub. L. 99–514, title VI, §661(c), Oct. 22, 1986, 100 Stat. 2300.)

PRIOR PROVISIONS

A prior section 859, added Pub. L. 94–455, title XVI, §1601(a)(1), Oct. 4, 1976, 90 Stat. 1742; amended Pub. L. 95–600, title VII, §701(t)(4), Nov. 6, 1978, 92 Stat. 2912, related to a deduction for deficiency dividends, prior to repeal by Pub. L. 95–600, title III, §362(d)(6), Nov. 6, 1978, 92 Stat. 2852. See section 860 of this title.

AMENDMENTS

1986—Pub. L. 99–514 designated existing provisions as subsec. (a) and added subsec. (b).

1978—Pub. L. 95–600, §701(t)(1), designated existing provisions as par. (1), substituted "change to any accounting period" for "change to or adopt any annual accounting period", and added par. (2) and provision for nonapplicability of par. (2) to a real estate investment trust for any taxable year beginning on or before Oct. 4, 1976.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 669 of Pub. L. 99–514, set out as a note under section 856 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Repeal of prior section 859 of this title and redesignation of section 860 of this title as this section by section 362(d)(6) of Pub. L. 95–600 applicable with respect to determinations (as defined in section 860(e) of this title) after Nov. 6, 1978, see section 362(e) of Pub. L. 95–600, set out as an Effective Date note under section 860 of this title.

Pub. L. 95–600, title VII, §701(t)(5), Nov. 6, 1978, 92 Stat. 2912, provided that: "The amendments made by this subsection [amending this section and sections 275, 856, 6212, and 6501 of this title] shall take effect on October 4, 1976."

PART III—PROVISIONS WHICH APPLY TO BOTH REGULATED INVESTMENT COMPANIES AND REAL ESTATE INVESTMENT TRUSTS

Sec.
860. Deduction for deficiency dividends.

§860. Deduction for deficiency dividends

(a) General rule

If a determination with respect to any qualified investment entity results in any adjustment for any taxable year, a deduction shall be allowed to such entity for the amount of deficiency dividends for purposes of determining the deduction for dividends paid (for purposes of section 852 or 857, whichever applies) for such year.

(b) Qualified investment entity defined

For purposes of this section, the term "qualified investment entity" means—

(1) a regulated investment company, and

(2) a real estate investment trust.

(c) Rules for application of section

(1) Interest and additions to tax determined with respect to the amount of deficiency dividend deduction allowed

For purposes of determining interest, additions to tax, and additional amounts—

(A) the tax imposed by this chapter (after taking into account the deduction allowed by subsection (a)) on the qualified investment entity for the taxable year with respect to which the determination is made shall be deemed to be increased by an amount equal to the deduction allowed by subsection (a) with respect to such taxable year,

(B) the last date prescribed for payment of such increase in tax shall be deemed to have been the last date prescribed for the payment of tax (determined in the manner provided by section 6601(b)) for the taxable year with respect to which the determination is made, and

(C) such increase in tax shall be deemed to be paid as of the date the claim for the deficiency dividend deduction is filed.

(2) Credit or refund

If the allowance of a deficiency dividend deduction results in an overpayment of tax for any taxable year, credit or refund with respect to such overpayment shall be made as if on the date of the determination 2 years remained before the expiration of the period of limitations on the filing of claim for refund for the taxable year to which the overpayment relates.

(d) Adjustment

For purposes of this section—

(1) Adjustment in the case of regulated investment company

In the case of any regulated investment company, the term "adjustment" means—

(A) any increase in the investment company taxable income of the regulated investment company (determined without regard to the deduction for dividends paid (as defined in section 561)),

(B) any increase in the amount of the excess described in section 852(b)(3)(A) (relating to the excess of the net capital gain over the deduction for capital gain dividends paid), and

(C) any decrease in the deduction for dividends paid (as defined in section 561) determined without regard to capital gains dividends.

(2) Adjustment in the case of real estate investment trust

In the case of any real estate investment trust, the term "adjustment" means—

(A) any increase in the sum of—

(i) the real estate investment trust taxable income of the real estate investment trust (determined without regard to the deduction for dividends paid (as defined in section 561) and by excluding any net capital gain), and

(ii) the excess of the net income from foreclosure property (as defined in section 857(b)(4)(B)) over the tax on such income imposed by section 857(b)(4)(A),

(B) any increase in the amount of the excess described in section 857(b)(3)(A)(ii) (relating to the excess of the net capital gain over the deduction for capital gains dividends paid), and

(C) any decrease in the deduction for dividends paid (as defined in section 561) determined without regard to capital gains dividends.

(e) Determination

For purposes of this section, the term "determination" means—

(1) a decision by the Tax Court, or a judgment, decree, or other order by any court of competent jurisdiction, which has become final;

(2) a closing agreement made under section 7121;

(3) under regulations prescribed by the Secretary, an agreement signed by the Secretary and by, or on behalf of, the qualified investment entity relating to the liability of such entity for tax; or

(4) a statement by the taxpayer attached to its amendment or supplement to a return of tax for the relevant tax year.

(f) Deficiency dividends

(1) Definition

For purposes of this section, the term "deficiency dividends" means a distribution of property made by the qualified investment entity on or after the date of the determination and before filing claim under subsection (g), which would have been includible in the computation of the deduction for dividends paid under section 561 for the taxable year with respect to which the liability for tax resulting from the determination exists if distributed during such taxable year. No distribution of property shall be considered as deficiency dividends for purposes of subsection (a) unless distributed within 90 days after the determination, and unless a claim for a deficiency dividend deduction with respect to such distribution is filed pursuant to subsection (g).

(2) Limitations

(A) Ordinary dividends

The amount of deficiency dividends (other than deficiency dividends qualifying as capital gain dividends) paid by a qualified investment entity for the taxable year with respect to which the liability for tax resulting from the determination exists shall not exceed the sum of—

(i) the excess of the amount of increase referred to in subparagraph (A) of paragraph (1) or (2) of subsection (d) (whichever applies) over the amount of any increase in the deduction for dividends paid (computed without regard to capital gain dividends) for such taxable year which results from such determination, and

(ii) the amount of decreased [1] referred to in subparagraph (C) of paragraph (1) or (2) of subsection (d) (whichever applies).

(B) Capital gain dividends

The amount of deficiency dividends qualifying as capital gain dividends paid by a qualified investment entity for the taxable year with respect to which the liability for tax resulting from the determination exists shall not exceed the amount by which (i) the increase referred to in subparagraph (B) of paragraph (1) or (2) of subsection (d) (whichever applies), exceeds (ii) the amount of any dividends paid during such taxable year which are designated or reported (as the case may be) as capital gain dividends after such determination.

(3) Effect on dividends paid deduction

(A) For taxable year in which paid

Deficiency dividends paid in any taxable year shall not be included in the amount of dividends paid for such year for purposes of computing the dividends paid deduction for such year.

(B) For prior taxable year

Deficiency dividends paid in any taxable year shall not be allowed for purposes of section 855(a) or 858(a) in the computation of the dividends paid deduction for the taxable year preceding the taxable year in which paid.

(g) Claim required

No deficiency dividend deduction shall be allowed under subsection (a) unless (under regulations prescribed by the Secretary) claim therefore is filed within 120 days after the date of the determination.

(h) Suspension of statute of limitations and stay of collection

(1) Suspension of running of statute

If the qualified investment entity files a claim as provided in subsection (g), the running of the statute of limitations provided in section 6501 on the making of assessments, and the bringing of distraint or a proceeding in court for collection, in respect of the deficiency established by a determination under this section, and all interest, additions to tax, additional amounts, or assessable penalties in respect thereof, shall be suspended for a period of 2 years after the date of the determination.

(2) Stay of collection

In the case of any deficiency established by a determination under this section—

(A) the collection of the deficiency, and all interest, additions to tax, additional amounts, and assessable penalties in respect thereof, shall, except in cases of jeopardy, be stayed until the expiration of 120 days after the date of the determination, and

(B) if claim for a deficiency dividend deduction is filed under subsection (g), the collection of such part of the deficiency as is not reduced by the deduction for deficiency dividends provided in subsection (a) shall be stayed until the date the claim is disallowed (in whole or in part), and if disallowed in part collection shall be made only with respect to the part disallowed.

No distraint or proceeding in court shall be begun for the collection of an amount the collection of which is stayed under subparagraph (A) or (B) during the period for which the collection of such amount is stayed.

(i) Deduction denied in case of fraud

No deficiency dividend deduction shall be allowed under subsection (a) if the determination contains a finding that any part of any deficiency attributable to an adjustment with respect to the taxable year is due to fraud with intent to evade tax or to willfull [2] failure to file an income tax return within the time prescribed by law or prescribed by the Secretary in pursuance of law.

(Added Pub. L. 95–600, title III, §362(a), Nov. 6, 1978, 92 Stat. 2848; amended Pub. L. 96–222, title I, §103(a)(11)(B), (C), Apr. 1, 1980, 94 Stat. 213; Pub. L. 99–514, title VI, §667(b)(1), Oct. 22, 1986, 100 Stat. 2306; Pub. L. 108–357, title II, §243(f)(5), Oct. 22, 2004, 118 Stat. 1445; Pub. L. 111–325, title III, §301(a)(2), title V, §501(b), Dec. 22, 2010, 124 Stat. 3542, 3554.)

PRIOR PROVISIONS

A prior section 860 was renumbered section 859 of this title.

AMENDMENTS

2010—Subsec. (f)(2)(B). Pub. L. 111–325, §301(a)(2), inserted "or reported (as the case may be)" after "designated".

Subsec. (j). Pub. L. 111–325, §501(b), struck out subsec. (j). Text read as follows: "For assessable penalty with respect to liability for tax of a regulated investment company which is allowed a deduction under subsection (a), see section 6697."

2004—Subsec. (e)(4). Pub. L. 108–357 added par. (4).

1986—Subsec. (j). Pub. L. 99–514 substituted "regulated investment company" for "qualified investment entity".

1980—Subsec. (f). Pub. L. 96–222 substituted in heading "Deficiency" for "Efficiency" and in par. (2)(A)(i) "(computed without regard" for "computed without regard".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 301(a)(2) of Pub. L. 111–325 applicable to taxable years beginning after Dec. 22, 2010, see section 301(h) of Pub. L. 111–325, set out as a note under section 852 of this title.

Pub. L. 111–325, title V, §501(c), Dec. 22, 2010, 124 Stat. 3554, provided that: "The amendments made by this section [amending this section and repealing section 6697 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Dec. 22, 2010]."

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to statements filed after Oct. 22, 2004, see section 243(g)(4)(E) of Pub. L. 108–357, set out as a note under section 856 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 669 of Pub. L. 99–514, set out as a note under section 856 of this title.

EFFECTIVE DATE

Pub. L. 95–600, title III, §362(e), Nov. 6, 1978, 92 Stat. 2852, as amended by Pub. L. 96–222, title I, §103(a)(11)(A), Apr. 1, 1980, 94 Stat. 212; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by this section [enacting this section, amending sections 316, 381, 852, 857, 6422, 6503, 6515, and 6697 of this title, repealing section 859 of this title, and redesignating prior section 860 as 859 of this title] shall apply with respect to determinations (as defined in section 860(e) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) after the date of the enactment of this Act [Nov. 6, 1978]."

[1] So in original. Probably should be "decrease".

[2] So in original. Probably should be "willful".

PART IV—REAL ESTATE MORTGAGE INVESTMENT CONDUITS

Sec.
860A. Taxation of REMIC's.
860B. Taxation of holders of regular interests.
860C. Taxation of residual interests.
860D. REMIC defined.
860E. Treatment of income in excess of daily accruals on residual interests.
860F. Other rules.
860G. Other definitions and special rules.

§860A. Taxation of REMIC's

(a) General rule

Except as otherwise provided in this part, a REMIC shall not be subject to taxation under this subtitle (and shall not be treated as a corporation, partnership, or trust for purposes of this subtitle).

(b) Income taxable to holders

The income of any REMIC shall be taxable to the holders of interests in such REMIC as provided in this part.

(Added Pub. L. 99–514, title VI, §671(a), Oct. 22, 1986, 100 Stat. 2309; amended Pub. L. 100–647, title I, §1006(t)(20), Nov. 10, 1988, 102 Stat. 3426.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–647 substituted "this subtitle" for "this chapter" in two places.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Pub. L. 99–514, title VI, §675(a)–(c), Oct. 22, 1986, 100 Stat. 2320, as amended by Pub. L. 100–647, title I, §1006(w)(1), Nov. 10, 1988, 102 Stat. 3427, provided that:

"(a) GENERAL RULE.—Except as otherwise provided in this section, the amendments made by this subtitle [subtitle H (§§671–675) of title VI of Pub. L. 99–514, enacting this part and amending sections 582, 593, 856, 1272, 6049, and 7701 of this title] shall take effect on January 1, 1987.

"(b) RULES FOR ACCRUING ORIGINAL ISSUE DISCOUNT.—The amendment made by section 672 [amending section 1272 of this title] shall apply to debt instruments issued after December 31, 1986, in taxable years ending after such date.

"(c) TREATMENT OF TAXABLE MORTGAGE POOLS.—

"(1) IN GENERAL.—The amendment made by section 673 [amending section 7701 of this title] shall take effect on January 1, 1992.

"(2) TREATMENT OF EXISTING ENTITIES.—The amendment made by section 673 shall not apply to any entity in existence on December 31, 1991. The preceding sentence shall cease to apply with respect to any entity as of the 1st day after December 31, 1991, on which there is a substantial transfer of cash or other property to such entity.

"(3) SPECIAL RULE FOR COORDINATION WITH WASH-SALE RULES.—Notwithstanding paragraphs (1) and (2), for purposes of applying section 860F(d) of the Internal Revenue Code of 1986 (as added by this part [this subtitle]), the amendment made by section 673 shall apply to taxable years beginning after December 31, 1986."

STUDY OF AMENDMENTS BY PUB. L. 99–514

Pub. L. 99–514, title VI, §675(d), as added by Pub. L. 100–647, title I, §1006(w)(2), Nov. 10, 1988, 102 Stat. 3427, directed Secretary of the Treasury to conduct a study of the operation of the amendments made by

this part [this subtitle] and their competitive impact on savings and loan institutions and similar financial institutions and, not later than Jan. 1, 1990, report to Congress, prior to repeal by Pub. L. 101–508, title XI, §11832(5), Nov. 5, 1990, 104 Stat. 1388–559.

§860B. Taxation of holders of regular interests

(a) General rule

In determining the tax under this chapter of any holder of a regular interest in a REMIC, such interest (if not otherwise a debt instrument) shall be treated as a debt instrument.

(b) Holders must use accrual method

The amounts includible in gross income with respect to any regular interest in a REMIC shall be determined under the accrual method of accounting.

(c) Portion of gain treated as ordinary income

Gain on the disposition of a regular interest shall be treated as ordinary income to the extent such gain does not exceed the excess (if any) of—

(1) the amount which would have been includible in the gross income of the taxpayer with respect to such interest if the yield on such interest were 110 percent of the applicable Federal rate (as defined in section 1274(d) without regard to paragraph (2) thereof) as of the beginning of the taxpayer's holding period, over

(2) the amount actually includible in gross income with respect to such interest by the taxpayer.

(d) Cross reference

For special rules in determining inclusion of original issue discount on regular interests, see section 1272(a)(6).

(Added Pub. L. 99–514, title VI, §671(a), Oct. 22, 1986, 100 Stat. 2309.)

§860C. Taxation of residual interests

(a) Pass-thru of income or loss

(1) In general

In determining the tax under this chapter of any holder of a residual interest in a REMIC, such holder shall take into account his daily portion of the taxable income or net loss of such REMIC for each day during the taxable year on which such holder held such interest.

(2) Daily portion

The daily portion referred to in paragraph (1) shall be determined—

(A) by allocating to each day in any calendar quarter its ratable portion of the taxable income (or net loss) for such quarter, and

(B) by allocating the amount so allocated to any day among the holders (on such day) of residual interests in proportion to their respective holdings on such day.

(b) Determination of taxable income or net loss

For purposes of this section—

(1) Taxable income

The taxable income of a REMIC shall be determined under an accrual method of accounting and, except as provided in regulations, in the same manner as in the case of an individual, except that—

(A) regular interests in such REMIC (if not otherwise debt instruments) shall be treated as indebtedness of such REMIC,

(B) market discount on any market discount bond shall be included in gross income for the

taxable years to which it is attributable as determined under the rules of section 1276(b)(2) (and sections 1276(a) and 1277 shall not apply),

(C) there shall not be taken into account any item of income, gain, loss, or deduction allocable to a prohibited transaction,

(D) the deductions referred to in section 703(a)(2) (other than any deduction under section 212) shall not be allowed, and

(E) the amount of the net income from foreclosure property (if any) shall be reduced by the amount of the tax imposed by section 860G(c).

(2) Net loss

The net loss of any REMIC is the excess of—

(A) the deductions allowable in computing the taxable income of such REMIC, over

(B) its gross income.

Such amount shall be determined with the modifications set forth in paragraph (1).

(c) Distributions

Any distribution by a REMIC—

(1) shall not be included in gross income to the extent it does not exceed the adjusted basis of the interest, and

(2) to the extent it exceeds the adjusted basis of the interest, shall be treated as gain from the sale or exchange of such interest.

(d) Basis rules

(1) Increase in basis

The basis of any person's residual interest in a REMIC shall be increased by the amount of the taxable income of such REMIC taken into account under subsection (a) by such person with respect to such interest.

(2) Decreases in basis

The basis of any person's residual interest in a REMIC shall be decreased (but not below zero) by the sum of the following amounts:

(A) any distributions to such person with respect to such interest, and

(B) any net loss of such REMIC taken into account under subsection (a) by such person with respect to such interest.

(e) Special rules

(1) Amounts treated as ordinary

Any amount taken into account under subsection (a) by any holder of a residual interest in a REMIC shall be treated as ordinary income or ordinary loss, as the case may be.

(2) Limitation on losses

(A) In general

The amount of the net loss of any REMIC taken into account by a holder under subsection (a) with respect to any calendar quarter shall not exceed the adjusted basis of such holder's residual interest in such REMIC as of the close of such calendar quarter (determined without regard to the adjustment under subsection (d)(2)(B) for such calendar quarter).

(B) Indefinite carryforward

Any loss disallowed by reason of subparagraph (A) shall be treated as incurred by the REMIC in the succeeding calendar quarter with respect to such holder.

(3) Cross reference

For special treatment of income in excess of daily accruals, see section 860E.

(Added Pub. L. 99–514, title VI, §671(a), Oct. 22, 1986, 100 Stat. 2309; amended Pub. L. 100–647,

title I, §1006(t)(1), (8)(C), (21), Nov. 10, 1988, 102 Stat. 3419, 3421, 3426.)

AMENDMENTS

1988—Subsec. (b)(1). Pub. L. 100–647, §1006(t)(21), substituted "and, except as provided in regulations, in the same manner" for "and in the same manner" in introductory provisions.

Subsec. (b)(1)(E). Pub. L. 100–647, §1006(t)(8)(C), added subpar. (E).

Subsec. (e)(1). Pub. L. 100–647, §1006(t)(1), substituted "ordinary" for "ordinary income" in heading and amended text generally. Prior to amendment, text read as follows: "Any amount included in the gross income of any holder of a residual interest in a REMIC by reason of subsection (a) shall be treated as ordinary income."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

§860D. REMIC defined

(a) General rule

For purposes of this title, the terms "real estate mortgage investment conduit" and "REMIC" mean any entity—

(1) to which an election to be treated as a REMIC applies for the taxable year and all prior taxable years,

(2) all of the interests in which are regular interests or residual interests,

(3) which has 1 (and only 1) class of residual interests (and all distributions, if any, with respect to such interests are pro rata),

(4) as of the close of the 3rd month beginning after the startup day and at all times thereafter, substantially all of the assets of which consist of qualified mortgages and permitted investments,

(5) which has a taxable year which is a calendar year, and

(6) with respect to which there are reasonable arrangements designed to ensure that—

(A) residual interests in such entity are not held by disqualified organizations (as defined in section 860E(e)(5)), and

(B) information necessary for the application of section 860E(e) will be made available by the entity.

In the case of a qualified liquidation (as defined in section 860F(a)(4)(A)), paragraph (4) shall not apply during the liquidation period (as defined in section 860F(a)(4)(B)).

(b) Election

(1) In general

An entity (otherwise meeting the requirements of subsection (a)) may elect to be treated as a REMIC for its 1st taxable year. Such an election shall be made on its return for such 1st taxable year. Except as provided in paragraph (2), such an election shall apply to the taxable year for which made and all subsequent taxable years.

(2) Termination

(A) In general

If any entity ceases to be a REMIC at any time during the taxable year, such entity shall not be treated as a REMIC for such taxable year or any succeeding taxable year.

(B) Inadvertent terminations

If—

(i) an entity ceases to be a REMIC,

(ii) the Secretary determines that such cessation was inadvertent,

(iii) no later than a reasonable time after the discovery of the event resulting in such cessation, steps are taken so that such entity is once more a REMIC, and

(iv) such entity, and each person holding an interest in such entity at any time during the period specified pursuant to this subsection, agrees to make such adjustments (consistent with the treatment of such entity as a REMIC or a C corporation) as may be required by the Secretary with respect to such period,

then, notwithstanding such terminating event, such entity shall be treated as continuing to be a REMIC (or such cessation shall be disregarded for purposes of subparagraph (A)) whichever the Secretary determines to be appropriate.

(Added Pub. L. 99–514, title VI, §671(a), Oct. 22, 1986, 100 Stat. 2311; amended Pub. L. 100–647, title I, §1006(t)(2)(A), (16)(A), (19), Nov. 10, 1988, 102 Stat. 3419, 3423, 3426; Pub. L. 101–508, title XI, §11704(a)(8), Nov. 5, 1990, 104 Stat. 1388–518.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–508 inserted closing parenthesis before period at end.

1988—Subsec. (a). Pub. L. 100–647, §1006(t)(19), inserted at end "In the case of a qualified liquidation (as defined in section 860F(a)(4)(A)), paragraph (4) shall not apply during the liquidation period (as defined in section 860F(a)(4)(B)."

Subsec. (a)(4). Pub. L. 100–647, §1006(t)(2)(A)(i), substituted "3rd month beginning after" for "4th month ending after".

Pub. L. 100–647, §1006(t)(2)(A)(ii), substituted "and at all times thereafter" for "and each quarter ending thereafter".

Subsec. (a)(6). Pub. L. 100–647, §1006(t)(16)(A), added par. (6).

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1006(t)(2)(B), Nov. 10, 1988, 102 Stat. 3419, provided that: "The amendment made by subparagraph (A)(ii) [amending this section] shall take effect on January 1, 1988."

Pub. L. 100–647, title I, §1006(t)(16)(D)(i), Nov. 10, 1988, 102 Stat. 3425, provided that: "The amendments made by subparagraph (A) [amending this section] shall apply in the case of any REMIC where the start-up day (as defined in section 860G(a)(9) of the 1986 Code, as in effect on the day before the date of the enactment of this Act [Nov. 10, 1988]) is after March 31, 1988; except that such amendments shall not apply in the case of a REMIC formed pursuant to a binding written contract in effect on such date."

Amendment by section 1006(t)(2)(A)(i), (19) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

§860E. Treatment of income in excess of daily accruals on residual interests

(a) Excess inclusions may not be offset by net operating losses

(1) In general

The taxable income of any holder of a residual interest in a REMIC for any taxable year shall in no event be less than the excess inclusion for such taxable year.

(2) Special rule for affiliated groups

All members of an affiliated group filing a consolidated return shall be treated as 1 taxpayer for purposes of this subsection.

(3) Coordination with section 172

Any excess inclusion for any taxable year shall not be taken into account—

(A) in determining under section 172 the amount of any net operating loss for such taxable year, and

(B) in determining taxable income for such taxable year for purposes of the 2nd sentence of section 172(b)(2).

(4) Coordination with minimum tax

For purposes of part VI of subchapter A of this chapter—

(A) the reference in section 55(b)(2) to taxable income shall be treated as a reference to taxable income determined without regard to this subsection,

(B) the alternative minimum taxable income of any holder of a residual interest in a REMIC for any taxable year shall in no event be less than the excess inclusion for such taxable year, and

(C) any excess inclusion shall be disregarded for purposes of computing the alternative tax net operating loss deduction.

(b) Organizations subject to unrelated business tax

If the holder of any residual interest in a REMIC is an organization subject to the tax imposed by section 511, the excess inclusion of such holder for any taxable year shall be treated as unrelated business taxable income of such holder for purposes of section 511.

(c) Excess inclusion

For purposes of this section—

(1) In general

The term "excess inclusion" means, with respect to any residual interest in a REMIC for any calendar quarter, the excess (if any) of—

(A) the amount taken into account with respect to such interest by the holder under section 860C(a), over

(B) the sum of the daily accruals with respect to such interest for days during such calendar quarter while held by such holder.

To the extent provided in regulations, if residual interests in a REMIC do not have significant value, the excess inclusions with respect to such interests shall be the amount determined under subparagraph (A) without regard to subparagraph (B).

(2) Determination of daily accruals

(A) In general

For purposes of this subsection, the daily accrual with respect to any residual interest for any day in any calendar quarter shall be determined by allocating to each day in such quarter its ratable portion of the product of—

(i) the adjusted issue price of such interest at the beginning of such quarter, and

(ii) 120 percent of the long-term Federal rate (determined on the basis of compounding at the close of each calendar quarter and properly adjusted for the length of such quarter).

(B) Adjusted issue price

For purposes of this paragraph, the adjusted issue price of any residual interest at the beginning of any calendar quarter is the issue price of the residual interest (adjusted for contributions)—

(i) increased by the amount of daily accruals for prior quarters, and

(ii) decreased (but not below zero) by any distribution made with respect to such interest before the beginning of such quarter.

(C) Federal long-term rate

For purposes of this paragraph, the term "Federal long-term rate" means the Federal long-term rate which would have applied to the residual interest under section 1274(d) (determined without regard to paragraph (2) thereof) if it were a debt instrument.

(d) Treatment of residual interests held by real estate investment trusts

If a residual interest in a REMIC is held by a real estate investment trust, under regulations prescribed by the Secretary—

(1) any excess of—

(A) the aggregate excess inclusions determined with respect to such interests, over

(B) the real estate investment trust taxable income (within the meaning of section 857(b)(2), excluding any net capital gain),

shall be allocated among the shareholders of such trust in proportion to the dividends received by such shareholders from such trust, and

(2) any amount allocated to a shareholder under paragraph (1) shall be treated as an excess inclusion with respect to a residual interest held by such shareholder.

Rules similar to the rules of the preceding sentence shall apply also in the case of regulated investment companies, common trust funds, and organizations to which part I of subchapter T applies.

(e) Tax on transfers of residual interests to certain organizations, etc.

(1) In general

A tax is hereby imposed on any transfer of a residual interest in a REMIC to a disqualified organization.

(2) Amount of tax

The amount of the tax imposed by paragraph (1) on any transfer of a residual interest shall be equal to the product of—

(A) the amount (determined under regulations) equal to the present value of the total anticipated excess inclusions with respect to such interest for periods after such transfer, multiplied by

(B) the highest rate of tax specified in section 11(b)(1).

(3) Liability

The tax imposed by paragraph (1) on any transfer shall be paid by the transferor; except that, where such transfer is through an agent for a disqualified organization, such tax shall be paid by such agent.

(4) Transferee furnishes affidavit

The person (otherwise liable for any tax imposed by paragraph (1)) shall be relieved of liability for the tax imposed by paragraph (1) with respect to any transfer if—

(A) the transferee furnishes to such person an affidavit that the transferee is not a disqualified organization, and

(B) as of the time of the transfer, such person does not have actual knowledge that such affidavit is false.

(5) Disqualified organization

For purposes of this section, the term "disqualified organization" means—

(A) the United States, any State or political subdivision thereof, any foreign government, any international organization, or any agency or instrumentality of any of the foregoing,

(B) any organization (other than a cooperative described in section 521) which is exempt from tax imposed by this chapter unless such organization is subject to the tax imposed by section 511, and

(C) any organization described in section 1381(a)(2)(C).

For purposes of subparagraph (A), the rules of section 168(h)(2)(D) (relating to treatment of certain taxable instrumentalities) shall apply; except that, in the case of the Federal Home Loan Mortgage Corporation, clause (ii) of such section shall not apply.

(6) Treatment of pass-thru entities

(A) Imposition of tax

If, at any time during any taxable year of a pass-thru entity, a disqualified organization is the

record holder of an interest in such entity, there is hereby imposed on such entity for such taxable year a tax equal to the product of—

(i) the amount of excess inclusions for such taxable year allocable to the interest held by such disqualified organization, multiplied by

(ii) the highest rate of tax specified in section 11(b)(1).

(B) Pass-thru entity

For purposes of this paragraph, the term "pass-thru entity" means—

(i) any regulated investment company, real estate investment trust, or common trust fund,

(ii) any partnership, trust, or estate, and

(iii) any organization to which part I of subchapter T applies.

Except as provided in regulations, a person holding an interest in a pass-thru entity as a nominee for another person shall, with respect to such interest, be treated as a pass-thru entity.

(C) Tax to be deductible

Any tax imposed by this paragraph with respect to any excess inclusion of any pass-thru entity for any taxable year shall, for purposes of this title (other than this subsection), be applied against (and operate to reduce) the amount included in gross income with respect to the residual interest involved.

(D) Exception where holder furnishes affidavit

No tax shall be imposed by subparagraph (A) with respect to any interest in a pass-thru entity for any period if—

(i) the record holder of such interest furnishes to such pass-thru entity an affidavit that such record holder is not a disqualified organization, and

(ii) during such period, the pass-thru entity does not have actual knowledge that such affidavit is false.

(7) Waiver

The Secretary may waive the tax imposed by paragraph (1) on any transfer if—

(A) within a reasonable time after discovery that the transfer was subject to tax under paragraph (1), steps are taken so that the interest is no longer held by the disqualified organization, and

(B) there is paid to the Secretary such amounts as the Secretary may require.

(8) Administrative provisions

For purposes of subtitle F, the taxes imposed by this subsection shall be treated as excise taxes with respect to which the deficiency procedures of such subtitle apply.

(f) Treatment of variable insurance contracts

Except as provided in regulations, with respect to any variable contract (as defined in section 817), there shall be no adjustment in the reserve to the extent of any excess inclusion.

(Added Pub. L. 99–514, title VI, §671(a), Oct. 22, 1986, 100 Stat. 2311; amended Pub. L. 100–647, title I, §1006(t)(13), (15), (16)(B), (17), (23), (26), (27), Nov. 10, 1988, 102 Stat. 3423, 3426, 3427; Pub. L. 104–188, title I, §§1616(b)(10), 1704(h)(1), Aug. 20, 1996, 110 Stat. 1857, 1881.)

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–188, §1616(b)(10)(A), substituted "The" for "Except as provided in paragraph (2), the".

Subsec. (a)(2). Pub. L. 104–188, §1616(b)(10)(B), (C), redesignated par. (3) as (2), struck out ", except that paragraph (2) shall be applied separately with respect to each corporation which is a member of such group and to which section 593 applies" after "of this subsection", and struck out former par. (2) which read as follows: "EXCEPTION FOR CERTAIN FINANCIAL INSTITUTIONS.—Paragraph (1) shall not apply to any organization to which section 593 applies. The Secretary may by regulations provide that the preceding sentence shall not apply where necessary or appropriate to prevent avoidance of tax imposed by this chapter."

Subsec. (a)(3). Pub. L. 104–188, §1616(b)(10)(B), redesignated par. (5) as (3). Former par. (3) redesignated (2).

Subsec. (a)(4). Pub. L. 104–188, §1616(b)(10)(B), (D), redesignated par. (6) as (4), struck out at end "The preceding sentence shall not apply to any organization to which section 593 applies, except to the extent provided in regulations prescribed by the Secretary under paragraph (2).", and struck out former par. (4) which related to certain subsidiaries being treated as single corporations to which section 593 applied.

Subsec. (a)(5). Pub. L. 104–188, §1616(b)(10)(B), redesignated par. (5) as (3).

Subsec. (a)(6). Pub. L. 104–188, §1616(b)(10)(B), redesignated par. (6) as (4).

Pub. L. 104–188, §1704(h)(1), added par. (6).

1988—Subsec. (a)(3), (4). Pub. L. 100–647, §1006(t)(15), added pars. (3) and (4).

Subsec. (a)(5). Pub. L. 100–647, §1006(t)(27), added par. (5).

Subsec. (c)(2)(B). Pub. L. 100–647, §1006(t)(13), (17), substituted "issue price of the residual interest (adjusted for contributions)" for "issue price of residual interest" in introductory text, and in cl. (ii) inserted "(but not below zero)" after "decreased".

Subsec. (d). Pub. L. 100–647, §1006(t)(23), inserted at end "Rules similar to the rules of the preceding sentence shall apply also in the case of regulated investment companies, common trust funds, and organizations to which part I of subchapter T applies."

Subsec. (e). Pub. L. 100–647, §1006(t)(16)(B), added subsec. (e).

Subsec. (f). Pub. L. 100–647, §1006(t)(26), added subsec. (f).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1616(b)(10) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1995, but not applicable to any residual interest held by a taxpayer if such interest has been held by such taxpayer at all times since Oct. 31, 1995, see section 1616(c)(1), (4) of Pub. L. 104–188, set out as a note under section 593 of this title.

Pub. L. 104–188, title I, §1704(h)(2), Aug. 20, 1996, 110 Stat. 1881, provided that: "The amendment made by paragraph (1) [amending this section] shall take effect as if included in the amendments made by section 671 of the Tax Reform Act of 1986 [Pub. L. 99–514] unless the taxpayer elects to apply such amendment only to taxable years beginning after the date of the enactment of this Act [Aug. 20, 1996]."

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1006(t)(16)(D)(ii)–(iv), Nov. 10, 1988, 102 Stat. 3425, provided that:

"(ii) The amendments made by subparagraphs (B) and (C) [amending this section and section 26 of this title] (except to the extent they relate to paragraph (6) of section 860E(e) of the 1986 Code as added by such amendments) shall apply to transfers after March 31, 1988; except that such amendments shall not apply to any transfer pursuant to a binding written contract in effect on such date.

"(iii) Except as provided in clause (iv), the amendments made by subparagraphs (B) and (C) (to the extent they relate to paragraph (6) of section 860E(e) of the 1986 Code as so added) shall apply to excess inclusions for periods after March 31, 1988 but only to the extent such inclusions are—

"(I) allocable to an interest in a pass-thru entity acquired after March 31, 1988, or

"(II) allocable to an interest in a pass-thru entity acquired on or before March 31, 1988, but attributable to a residual interest acquired by the pass-thru entity after March 31, 1988.

For purposes of the preceding sentence, any interest in a pass-thru entity (or residual interest) acquired after March 31, 1988, pursuant to a binding written contract in effect on such date shall be treated as acquired before such date.

"(iv) In the case of any real estate investment trust, regulated investment company, common trust fund, or publicly traded partnership, no tax shall be imposed under section 860E(e)(6) of the 1986 Code (as added by the amendment made by subparagraph (B)) for any taxable year beginning before January 1, 1989."

Amendment by section 1006(t)(13), (15), (17), (23), (26), (27) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

§860F. Other rules

(a) 100 percent tax on prohibited transactions

(1) Tax imposed

There is hereby imposed for each taxable year of a REMIC a tax equal to 100 percent of the net income derived from prohibited transactions.

(2) Prohibited transaction

For purposes of this part, the term "prohibited transaction" means—

(A) Disposition of qualified mortgage

The disposition of any qualified mortgage transferred to the REMIC other than a disposition pursuant to—

(i) the substitution of a qualified replacement mortgage for a qualified mortgage (or the repurchase in lieu of substitution of a defective obligation),

(ii) a disposition incident to the foreclosure, default, or imminent default of the mortgage,

(iii) the bankruptcy or insolvency of the REMIC, or

(iv) a qualified liquidation.

(B) Income from nonpermitted assets

The receipt of any income attributable to any asset which is neither a qualified mortgage nor a permitted investment.

(C) Compensation for services

The receipt by the REMIC of any amount representing a fee or other compensation for services.

(D) Gain from disposition of cash flow investments

Gain from the disposition of any cash flow investment other than pursuant to any qualified liquidation.

(3) Determination of net income

For purposes of paragraph (1), the term "net income derived from prohibited transactions" means the excess of the gross income from prohibited transactions over the deductions allowed by this chapter which are directly connected with such transactions; except that there shall not be taken into account any item attributable to any prohibited transaction for which there was a loss.

(4) Qualified liquidation

For purposes of this part—

(A) In general

The term "qualified liquidation" means a transaction in which—

(i) the REMIC adopts a plan of complete liquidation,

(ii) such REMIC sells all its assets (other than cash) within the liquidation period, and

(iii) all proceeds of the liquidation (plus the cash), less assets retained to meet claims, are credited or distributed to holders of regular or residual interests on or before the last day of the liquidation period.

(B) Liquidation period

The term "liquidation period" means the period—

(i) beginning on the date of the adoption of the plan of liquidation, and

(ii) ending at the close of the 90th day after such date.

(5) Exceptions

Notwithstanding subparagraphs (A) and (D) of paragraph (2), the term "prohibited transaction" shall not include any disposition—

(A) required to prevent default on a regular interest where the threatened default resulted from a default on 1 or more qualified mortgages, or

(B) to facilitate a clean-up call (as defined in regulations).

(b) Treatment of transfers to the REMIC

(1) Treatment of transferor

(A) Nonrecognition gain or loss

No gain or loss shall be recognized to the transferor on the transfer of any property to a REMIC in exchange for regular or residual interests in such REMIC.

(B) Adjusted bases of interests

The adjusted bases of the regular and residual interests received in a transfer described in subparagraph (A) shall be equal to the aggregate adjusted bases of the property transferred in such transfer. Such amount shall be allocated among such interests in proportion to their respective fair market values.

(C) Treatment of nonrecognized gain

If the issue price of any regular or residual interest exceeds its adjusted basis as determined under subparagraph (B), for periods during which such interest is held by the transferor (or by any other person whose basis is determined in whole or in part by reference to the basis of such interest in the hand of the transferor)—

(i) in the case of a regular interest, such excess shall be included in gross income (as determined under rules similar to rules of section 1276(b)), and

(ii) in the case of a residual interest, such excess shall be included in gross income ratably over the anticipated period during which the REMIC will be in existence.

(D) Treatment of nonrecognized loss

If the adjusted basis of any regular or residual interest received in a transfer described in subparagraph (A) exceeds its issue price, for periods during which such interest is held by the transferor (or by any other person whose basis is determined in whole or in part by reference to the basis of such interest in the hand of the transferor)—

(i) in the case of a regular interest, such excess shall be allowable as a deduction under rules similar to the rules of section 171, and

(ii) in the case of a residual interest, such excess shall be allowable as a deduction ratably over the anticipated period during which the REMIC will be in existence.

(2) Basis to REMIC

The basis of any property received by a REMIC in a transfer described in paragraph (1)(A) shall be its fair market value immediately after such transfer.

(c) Distributions of property

If a REMIC makes a distribution of property with respect to any regular or residual interest—

(1) notwithstanding any other provision of this subtitle, gain shall be recognized to such REMIC on the distribution in the same manner as if it had sold such property to the distributee at its fair market value, and

(2) the basis of the distributee in such property shall be its fair market value.

(d) Coordination with wash sale rules

For purposes of section 1091—

(1) any residual interest in a REMIC shall be treated as a security, and

(2) in applying such section to any loss claimed to have been sustained on the sale or other disposition of a residual interest in a REMIC—

(A) except as provided in regulations, any residual interest in any REMIC and any interest in a taxable mortgage pool (as defined in section 7701(i)) comparable to a residual interest in a REMIC shall be treated as substantially identical stock or securities, and

(B) subsections (a) and (e) of such section shall be applied by substituting "6 months" for "30 days" each place it appears.

(e) Treatment under subtitle F

For purposes of subtitle F, a REMIC shall be treated as a partnership (and holders of residual

interests in such REMIC shall be treated as partners). Any return required by reason of the preceding sentence shall include the amount of the daily accruals determined under section 860E(c). Such return shall be filed by the REMIC. The determination of who may sign such return shall be made without regard to the first sentence of this subsection.

(Added Pub. L. 99–514, title VI, §671(a), Oct. 22, 1986, 100 Stat. 2313; amended Pub. L. 100–647, title I, §1006(t)(3), (4), (14), (18)(A), (22)(B)–(E), Nov. 10, 1988, 102 Stat. 3419, 3420, 3423, 3426; Pub. L. 104–188, title I, §1704(t)(74), Aug. 20, 1996, 110 Stat. 1891.)

AMENDMENTS

1996—Subsec. (a)(5). Pub. L. 104–188 substituted "paragraph (2)" for "paragraph (1)" in introductory provisions.

1988—Subsec. (a)(2)(A). Pub. L. 100–647, §1006(t)(3)(B)(i), struck out at end "Notwithstanding the preceding sentence, the term 'prohibited transaction' shall not include any disposition required to prevent default on a regular interest where the threatened default resulted from a default on 1 or more qualified mortgages."

Subsec. (a)(2)(A)(i). Pub. L. 100–647, §1006(t)(3)(A), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: "the substitution of a qualified replacement mortgage for a qualified mortgage,".

Subsec. (a)(2)(A)(iii), (C). Pub. L. 100–647, §1006(t)(22)(B), (C), substituted "REMIC" for "real estate mortgage pool".

Subsec. (a)(2)(D). Pub. L. 100–647, §1006(t)(3)(C), struck out "described in subsection (b)" before period at end.

Subsec. (a)(5). Pub. L. 100–647, §1006(t)(3)(B)(ii), added par. (5).

Subsec. (b)(1)(A). Pub. L. 100–647, §1006(t)(4), substituted "the transfer of any property to a REMIC in exchange for regular or residual interests in such REMIC" for "the transfer of any property to a REMIC".

Subsec. (b)(1)(C)(ii). Pub. L. 100–647, §1006(t)(22)(D), substituted "REMIC" for "real estate mortgage pool".

Subsec. (b)(1)(D)(ii). Pub. L. 100–647, §1006(t)(14), (22)(E), amended cl. (ii) identically, substituting "REMIC" for "real estate mortgage pool".

Subsec. (e). Pub. L. 100–647, §1006(t)(18)(A), inserted at end "Such return shall be filed by the REMIC. The determination of who may sign such return shall be made without regard to the first sentence of this subsection."

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1006(t)(18)(B), Nov. 10, 1988, 102 Stat. 3426, provided that: "Unless the REMIC otherwise elects, the amendment made by subparagraph (A) [amending this section] shall not apply to any REMIC where the start-up day (as defined in section 860G(a)(9) of the 1986 Code as in effect on the day before the date of the enactment of this Act [Nov. 10, 1988]) is before the date of the enactment of this Act."

Amendment by section 1006(t)(3), (4), (14), (22)(B)–(E) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

§860G. Other definitions and special rules

(a) Definitions

For purposes of this part—

(1) Regular interest

The term "regular interest" means any interest in a REMIC which is issued on the startup day with fixed terms and which is designated as a regular interest if—

(A) such interest unconditionally entitles the holder to receive a specified principal amount (or other similar amount), and

(B) interest payments (or other similar amount), if any, with respect to such interest at or before maturity—

(i) are payable based on a fixed rate (or to the extent provided in regulations, at a variable rate), or

(ii) consist of a specified portion of the interest payments on qualified mortgages and such portion does not vary during the period such interest is outstanding.

The interest shall not fail to meet the requirements of subparagraph (A) merely because the timing (but not the amount) of the principal payments (or other similar amounts) may be contingent on the extent of prepayments on qualified mortgages and the amount of income from permitted investments. An interest shall not fail to qualify as a regular interest solely because the specified principal amount of the regular interest (or the amount of interest accrued on the regular interest) can be reduced as a result of the nonoccurrence of 1 or more contingent payments with respect to any reverse mortgage loan held by the REMIC if, on the startup day for the REMIC, the sponsor reasonably believes that all principal and interest due under the regular interest will be paid at or prior to the liquidation of the REMIC.

(2) Residual interest

The term "residual interest" means an interest in a REMIC which is issued on the startup day, which is not a regular interest, and which is designated as a residual interest.

(3) Qualified mortgage

The term "qualified mortgage" means—

(A) any obligation (including any participation or certificate of beneficial ownership therein) which is principally secured by an interest in real property and which—

(i) is transferred to the REMIC on the startup day in exchange for regular or residual interests in the REMIC,

(ii) is purchased by the REMIC within the 3-month period beginning on the startup day if, except as provided in regulations, such purchase is pursuant to a fixed-price contract in effect on the startup day, or

(iii) represents an increase in the principal amount under the original terms of an obligation described in clause (i) or (ii) if such increase—

(I) is attributable to an advance made to the obligor pursuant to the original terms of a reverse mortgage loan or other obligation,

(II) occurs after the startup day, and

(III) is purchased by the REMIC pursuant to a fixed price contract in effect on the startup day.[1]

(B) any qualified replacement mortgage, and

(C) any regular interest in another REMIC transferred to the REMIC on the startup day in exchange for regular or residual interests in the REMIC.

For purposes of subparagraph (A), any obligation secured by stock held by a person as a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as so defined) shall be treated as secured by an interest in real property. For purposes of subparagraph (A), any obligation originated by the United States or any State (or any political subdivision, agency, or instrumentality of the United States or any State) shall be treated as principally secured by an interest in real property if more than 50 percent of such obligations which are transferred to, or purchased by, the REMIC are principally secured by an interest in real property (determined without regard to this sentence).

(4) Qualified replacement mortgage

The term "qualified replacement mortgage" means any obligation—

(A) which would be a qualified mortgage if transferred on the startup day in exchange for regular or residual interests in the REMIC, and

(B) which is received for—

(i) another obligation within the 3-month period beginning on the startup day, or

(ii) a defective obligation within the 2-year period beginning on the startup day.

(5) Permitted investments

The term "permitted investments" means any—

(A) cash flow investment,

(B) qualified reserve asset, or

(C) foreclosure property.

(6) Cash flow investment

The term "cash flow investment" means any investment of amounts received under qualified mortgages for a temporary period before distribution to holders of interests in the REMIC.

(7) Qualified reserve asset

(A) In general

The term "qualified reserve asset" means any intangible property which is held for investment and as part of a qualified reserve fund.

(B) Qualified reserve fund

For purposes of subparagraph (A), the term "qualified reserve fund" means any reasonably required reserve to—

(i) provide for full payment of expenses of the REMIC or amounts due on regular interests in the event of defaults on qualified mortgages or lower than expected returns on cash flow investments, or

(ii) provide a source of funds for the purchase of obligations described in clause (ii) or (iii) of paragraph (3)(A).

The aggregate fair market value of the assets held in any such reserve shall not exceed 50 percent of the aggregate fair market value of all of the assets of the REMIC on the startup day, and the amount of any such reserve shall be promptly and appropriately reduced to the extent the amount held in such reserve is no longer reasonably required for purposes specified in clause (i) or (ii) of this subparagraph.

(C) Special rule

A reserve shall not be treated as a qualified reserve for any taxable year (and all subsequent taxable years) if more than 30 percent of the gross income from the assets in such fund for the taxable year is derived from the sale or other disposition of property held for less than 3 months. For purposes of the preceding sentence, gain on the disposition of a qualified reserve asset shall not be taken into account if the disposition giving rise to such gain is required to prevent default on a regular interest where the threatened default resulted from a default on 1 or more qualified mortgages.

(8) Foreclosure property

The term "foreclosure property" means property—

(A) which would be foreclosure property under section 856(e) (without regard to paragraph (5) thereof) if acquired by a real estate investment trust, and

(B) which is acquired in connection with the default or imminent default of a qualified mortgage held by the REMIC.

Solely for purposes of section 860D(a), the determination of whether any property is foreclosure property shall be made without regard to section 856(e)(4).

(9) Startup day

The term "startup day" means the day on which the REMIC issues all of its regular and residual interests. To the extent provided in regulations, all interests issued (and all transfers to the REMIC) during any period (not exceeding 10 days) permitted in such regulations shall be treated as occurring on the day during such period selected by the REMIC for purposes of this paragraph.

(10) Issue price

The issue price of any regular or residual interest in a REMIC shall be determined under section 1273(b) in the same manner as if such interest were a debt instrument; except that if the interest is issued for property, paragraph (3) of section 1273(b) shall apply whether or not the requirements of such paragraph are met.

(b) Treatment of nonresident aliens and foreign corporations

If the holder of a residual interest in a REMIC is a nonresident alien individual or a foreign corporation, for purposes of sections 871(a), 881, 1441, and 1442—

(1) amounts includible in the gross income of such holder under this part shall be taken into account when paid or distributed (or when the interest is disposed of), and

(2) no exemption from the taxes imposed by such sections (and no reduction in the rates of such taxes) shall apply to any excess inclusion.

The Secretary may by regulations provide that such amounts shall be taken into account earlier than as provided in paragraph (1) where necessary or appropriate to prevent the avoidance of tax imposed by this chapter.

(c) Tax on income from foreclosure property

(1) In general

A tax is hereby imposed for each taxable year on the net income from foreclosure property of each REMIC. Such tax shall be computed by multiplying the net income from foreclosure property by the highest rate of tax specified in section 11(b).

(2) Net income from foreclosure property

For purposes of this part, the term "net income from foreclosure property" means the amount which would be the REMIC's net income from foreclosure property under section 857(b)(4)(B) if the REMIC were a real estate investment trust.

(d) Tax on contributions after startup date

(1) In general

Except as provided in paragraph (2), if any amount is contributed to a REMIC after the startup day, there is hereby imposed a tax for the taxable year of the REMIC in which the contribution is received equal to 100 percent of the amount of such contribution.

(2) Exceptions

Paragraph (1) shall not apply to any contribution which is made in cash and is described in any of the following subparagraphs:

(A) Any contribution to facilitate a clean-up call (as defined in regulations) or a qualified liquidation.

(B) Any payment in the nature of a guarantee.

(C) Any contribution during the 3-month period beginning on the startup day.

(D) Any contribution to a qualified reserve fund by any holder of a residual interest in the REMIC.

(E) Any other contribution permitted in regulations.

(e) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this part, including regulations—

(1) to prevent unreasonable accumulations of assets in a REMIC,

(2) permitting determinations of the fair market value of property transferred to a REMIC and issue price of interests in a REMIC to be made earlier than otherwise provided,

(3) requiring reporting to holders of residual interests of such information as frequently as is necessary or appropriate to permit such holders to compute their taxable income accurately,

(4) providing appropriate rules for treatment of transfers of qualified replacement mortgages to the REMIC where the transferor holds any interest in the REMIC, and

(5) providing that a mortgage will be treated as a qualified replacement mortgage only if it is part of a bona fide replacement (and not part of a swap of mortgages).

(Added Pub. L. 99–514, title VI, §671(a), Oct. 22, 1986, 100 Stat. 2315; amended Pub. L. 100–647, title I, §1006(t)(5)(A)–(E), (6)–(8)(B), (9)(A), (10), Nov. 10, 1988, 102 Stat. 3420–3422; Pub. L. 101–239, title VII, §7811(c)(9), Dec. 19, 1989, 103 Stat. 2408; Pub. L. 101–508, title XI, §11704(a)(9), Nov. 5, 1990, 104 Stat. 1388–518; Pub. L. 104–188, title I, §1621(b)(6), Aug. 20, 1996, 110 Stat. 1867; Pub. L. 108–357, title VIII, §835(b)(5)–(8), Oct. 22, 2004, 118 Stat. 1593; Pub. L. 109–135, title IV, §403(cc), Dec. 21, 2005, 119 Stat. 2630.)

AMENDMENTS

2005—Subsec. (a)(3). Pub. L. 109–135, §403(cc)(2), inserted concluding provisions and struck out former concluding provisions which read as follows: "For purposes of subparagraph (A), any obligation secured by stock held by a person as a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as so defined) shall be treated as secured by an interest in real property, and any reverse mortgage loan (and each balance increase on such loan meeting the requirements of subparagraph (A)(iii)) shall be treated as an obligation secured by an interest in real property. For purposes of subparagraph (A), if more than 50 percent of the obligations transferred to, or purchased by, the REMIC are originated by the United States or any State (or any political subdivision, agency, or instrumentality of the United States or any State) and are principally secured by an interest in real property, then each obligation transferred to, or purchased by, the REMIC shall be treated as secured by an interest in real property."

Subsec. (a)(3)(A)(iii)(I). Pub. L. 109–135, §403(cc)(1), substituted "a reverse mortgage loan or other obligation" for "the obligation".

2004—Subsec. (a)(1). Pub. L. 108–357, §835(b)(5)(A), inserted at end of concluding provisions "An interest shall not fail to qualify as a regular interest solely because the specified principal amount of the regular interest (or the amount of interest accrued on the regular interest) can be reduced as a result of the nonoccurrence of 1 or more contingent payments with respect to any reverse mortgage loan held by the REMIC if, on the startup day for the REMIC, the sponsor reasonably believes that all principal and interest due under the regular interest will be paid at or prior to the liquidation of the REMIC."

Subsec. (a)(3). Pub. L. 108–357, §835(b)(7), inserted at end of concluding provisions "For purposes of subparagraph (A), if more than 50 percent of the obligations transferred to, or purchased by, the REMIC are originated by the United States or any State (or any political subdivision, agency, or instrumentality of the United States or any State) and are principally secured by an interest in real property, then each obligation transferred to, or purchased by, the REMIC shall be treated as secured by an interest in real property."

Pub. L. 108–357, §835(b)(5)(B), inserted before period at end of concluding provisions ", and any reverse mortgage loan (and each balance increase on such loan meeting the requirements of subparagraph (A)(iii)) shall be treated as an obligation secured by an interest in real property".

Subsec. (a)(3)(A)(iii). Pub. L. 108–357, §835(b)(8)(A), added cl. (iii).

Subsec. (a)(3)(B) to (D). Pub. L. 108–357, §835(b)(6), inserted "and" at end of subpar. (B), substituted period for ", and" at end of subpar. (C), and struck out subpar. (D) which read as follows: "any regular interest in a FASIT which is transferred to, or purchased by, the REMIC as described in clauses (i) and (ii) of subparagraph (A) but only if 95 percent or more of the value of the assets of such FASIT is at all times attributable to obligations described in subparagraph (A) (without regard to such clauses)."

Subsec. (a)(7)(B). Pub. L. 108–357, §835(b)(8)(B), reenacted heading without change and amended text of subpar. (B) generally. Prior to amendment, text read as follows: "For purposes of subparagraph (A), the term 'qualified reserve fund' means any reasonably required reserve to provide for full payment of expenses of the REMIC or amounts due on regular interests in the event of defaults on qualified mortgages or lower than expected returns on cash flow investments. The amount of any such reserve shall be promptly and appropriately reduced as payments of qualified mortgages are received."

1996—Subsec. (a)(3)(D). Pub. L. 104–188 added subpar. (D).

1990—Subsec. (a)(3)(A). Pub. L. 101–508 struck out comma after "secured" in introductory provisions.

1989—Subsec. (a)(3). Pub. L. 101–239 substituted "subparagraph (A)" for "this subparagraph" in last sentence.

1988—Subsec. (a)(1). Pub. L. 100–647, §1006(t)(5)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "The term 'regular interest' means an interest in a REMIC the terms of which are fixed on the startup day, and which—

"(A) unconditionally entitles the holder to receive a specified principal amount (or other similar amount), and

"(B) provides that interest payments (or other similar amounts), if any, at or before maturity are payable based on a fixed rate (or to the extent provided in regulations, at a variable rate).

An interest shall not fail to meet the requirements of subparagraph (A) merely because the timing (but not the amount) of the principal payments (or other similar amounts) may be contingent on the extent of prepayments on qualified mortgages and the amount of income from permitted investments."

Subsec. (a)(2). Pub. L. 100–647, §1006(t)(5)(B), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "The term 'residual interest' means an interest in a REMIC which is not a regular interest and is designated as a residual interest."

Subsec. (a)(3). Pub. L. 100–647, §1006(t)(6)(B), inserted at end "For purposes of this subparagraph, any obligation secured by stock held by a person as a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as so defined) shall be treated as secured by an interest in real property."

Subsec. (a)(3)(A). Pub. L. 100–647, §1006(t)(6)(A), struck out "directly or indirectly,".

Subsec. (a)(3)(A)(i). Pub. L. 100–647, §1006(t)(5)(C)(i), substituted "on the startup day in exchange for regular or residual interests in the REMIC" for "on or before the startup day".

Subsec. (a)(3)(A)(ii). Pub. L. 100–647, §1006(t)(5)(C)(ii), inserted before comma at end "if, except as provided in regulations, such purchase is pursuant to a fixed-price contract in effect on the startup day".

Subsec. (a)(3)(C). Pub. L. 100–647, §1006(t)(5)(C)(iii), substituted "on the startup day in exchange for regular or residual interests in the REMIC" for "on or before the startup day".

Subsec. (a)(4)(A). Pub. L. 100–647, §1006(t)(5)(D), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "which would be described in paragraph (3)(A) if it were transferred to the REMIC on or before the startup day, and".

Subsec. (a)(7)(B). Pub. L. 100–647, §1006(t)(7), inserted before period at end of first sentence "or lower than expected returns on cash flow investments".

Subsec. (a)(8). Pub. L. 100–647, §1006(t)(8)(A), substituted "section 856(e) (without regard to paragraph (5) thereof)" for "section 856(e)" in subpar. (A) and amended last sentence generally. Prior to amendment, last sentence read as follows: "Property shall cease to be foreclosure property with respect to the REMIC on the date which is 1 year after the date such real estate mortgage pool acquired such property."

Subsec. (a)(9). Pub. L. 100–647, §1006(t)(5)(E), amended par. (9) generally. Prior to amendment, par. (9) read as follows: "The term 'startup day' means any day selected by a REMIC which is on or before the 1st day on which interests in such REMIC are issued."

Subsec. (c). Pub. L. 100–647, §1006(t)(8)(B), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 100–647, §1006(t)(9)(A), added subsec. (d). Former subsec. (d) redesignated (e).

Pub. L. 100–647, §1006(t)(8)(B), redesignated former subsec. (c) as (d).

Subsec. (e). Pub. L. 100–647, §1006(t)(9)(A), redesignated former subsec. (d) as (e).

Subsec. (e)(4), (5). Pub. L. 100–647, §1006(t)(10), added pars. (4) and (5).

EFFECTIVE DATE OF 2005 AMENDMENT

Amendments by Pub. L. 109–135 effective as if included in the provisions of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which they relate, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 effective Jan. 1, 2005, with exception for any FASIT in existence on Oct. 22, 2004, to the extent that regular interests issued by the FASIT before such date continue to remain outstanding in accordance with the original terms of issuance, see section 835(c) of Pub. L. 108–357, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective Sept. 1, 1997, see section 1621(d) of Pub. L. 104–188, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1006(t)(5)(F), Nov. 10, 1988, 102 Stat. 3421, provided that: "The amendments made by this paragraph [amending this section] shall not apply to any REMIC where the startup day (as

defined in section 860G(a)(9) of the 1986 Code as in effect on the day before the date of the enactment of this Act [Nov. 10, 1988]) is before July 1, 1987."

Pub. L. 100–647, title I, §1006(t)(9)(B), Nov. 10, 1988, 102 Stat. 3422, provided that: "The amendment made by subparagraph (A) [amending this section] shall not apply to any REMIC where the startup day (as defined in section 860G(a)(9) of the 1986 Code as in effect on the day before the date of the enactment of this Act [Nov. 10, 1988]) is before July 1, 1987."

Amendment by section 1006(t)(6)–(8)(B), (10) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

[1] So in original. The period probably should be a comma.

[PART V—REPEALED]

[§§860H to 860L. Repealed. Pub. L. 108–357, title VIII, §835(a), Oct. 22, 2004, 118 Stat. 1593]

Section 860H, added Pub. L. 104–188, title I, §1621(a), Aug. 20, 1996, 110 Stat. 1858, set forth general rules relating to taxation of a FASIT.

Section 860I, added Pub. L. 104–188, title I, §1621(a), Aug. 20, 1996, 110 Stat. 1859, related to gain recognition on contributions to a FASIT and in other cases.

Section 860J, added Pub. L. 104–188, title I, §1621(a), Aug. 20, 1996, 110 Stat. 1860, prohibited offset of certain FASIT inclusions by non-FASIT losses.

Section 860K, added Pub. L. 104–188, title I, §1621(a), Aug. 20, 1996, 110 Stat. 1861, related to treatment of transfers of high-yield interests to disqualified holders.

Section 860L, added Pub. L. 104–188, title I, §1621(a), Aug. 20, 1996, 110 Stat. 1862; amended Pub. L. 105–34, title XVI, §1601(f)(6), Aug. 5, 1997, 111 Stat. 1091, defined terms and set forth special rules relating to FASITs.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 2005, with exception for any FASIT in existence on Oct. 22, 2004, to the extent that regular interests issued by the FASIT before such date continue to remain outstanding in accordance with the original terms of issuance, see section 835(c) of Pub. L. 108–357, set out as an Effective Date of 2004 Amendments note under section 56 of this title.

Subchapter N—Tax Based on Income From Sources Within or Without the United States

Part

I. Source rules and other general rules relating to foreign income.

II. Nonresident aliens and foreign corporations.

III. Income from sources without the United States.

IV. Domestic international sales corporations.[1]

V. International boycott determinations.

AMENDMENTS

1988—Pub. L. 100–647, title I, §1012(h)(2)(D), Nov. 10, 1988, 102 Stat. 3503, substituted "Source rules and other general rules relating to foreign income" for "Determination of sources of income" in item for part I.

1976—Pub. L. 94–455, title X, §1064(b), Oct. 4, 1976, 90 Stat. 1653, added item V.

[1] Editorially supplied. Part IV added by Pub. L. 92–178 without corresponding amendment of subchapter analysis.

PART I—SOURCE RULES AND OTHER GENERAL RULES RELATING TO FOREIGN INCOME

Sec.
861. Income from sources within the United States.
862. Income from sources without the United States.
863. Special rules for determining source.
864. Definitions and special rules.
865. Source rules for personal property sales.

AMENDMENTS

1988—Pub. L. 100–647, title I, §§1012(e)(3)(B), (h)(2)(C), 1018(u)(37), Nov. 10, 1988, 102 Stat. 3500, 3502, 3592, substituted "SOURCE RULES AND OTHER GENERAL RULES RELATING TO FOREIGN INCOME" for "DETERMINATION OF SOURCES OF INCOME" as part I heading, substituted "Special rules for determining source" for "Items not specified in section 861 or 862" in item 863, and added item 865.

1986—Pub. L. 99–514, title XII, §1215(b)(2), Oct. 22, 1986, 100 Stat. 2545, substituted "Definitions and special rules" for "Definitions" in item 864.

§861. Income from sources within the United States

(a) Gross income from sources within United States

The following items of gross income shall be treated as income from sources within the United States:

(1) Interest

Interest from the United States or the District of Columbia, and interest on bonds, notes, or other interest-bearing obligations of noncorporate residents or domestic corporations not including—

(A) interest—

(i) on deposits with a foreign branch of a domestic corporation or a domestic partnership if such branch is engaged in the commercial banking business, and

(ii) on amounts satisfying the requirements of subparagraph (B) of section 871(i)(3) which are paid by a foreign branch of a domestic corporation or a domestic partnership, and

(B) in the case of a foreign partnership, which is predominantly engaged in the active conduct of a trade or business outside the United States, any interest not paid by a trade or business engaged in by the partnership in the United States and not allocable to income which is effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States.

(2) Dividends

The amount received as dividends—

(A) from a domestic corporation other than a corporation which has an election in effect under section 936, or

(B) from a foreign corporation unless less than 25 percent of the gross income from all sources of such foreign corporation for the 3-year period ending with the close of its taxable year preceding the declaration of such dividends (or for such part of such period as the corporation has been in existence) was effectively connected (or treated as effectively connected other than income described in section 884(d)(2)) with the conduct of a trade or business within the United States; but only in an amount which bears the same ratio to such dividends as the gross income of the corporation for such period which was effectively connected (or treated as effectively connected other than income described in section 884(d)(2)) with the conduct of a trade or business within the United States bears to its gross income from all sources; but

dividends (other than dividends for which a deduction is allowable under section 245(b)) from a foreign corporation shall, for purposes of subpart A of part III (relating to foreign tax credit), be treated as income from sources without the United States to the extent (and only to the extent) exceeding the amount which is 100/70th of the amount of the deduction allowable under section 245 in respect of such dividends, or

(C) from a foreign corporation to the extent that such amount is required by section 243(e) (relating to certain dividends from foreign corporations) to be treated as dividends from a domestic corporation which is subject to taxation under this chapter, and to such extent subparagraph (B) shall not apply to such amount, or

(D) from a DISC or former DISC (as defined in section 992(a)) except to the extent attributable (as determined under regulations prescribed by the Secretary) to qualified export receipts described in section 993(a)(1) (other than interest and gains described in section 995(b)(1)).

In the case of any dividend from a 20-percent owned corporation (as defined in section 243(c)(2)), subparagraph (B) shall be applied by substituting "100/80th" for "100/70th".

(3) Personal services

Compensation for labor or personal services performed in the United States; except that compensation for labor or services performed in the United States shall not be deemed to be income from sources within the United States if—

(A) the labor or services are performed by a nonresident alien individual temporarily present in the United States for a period or periods not exceeding a total of 90 days during the taxable year,

(B) such compensation does not exceed $3,000 in the aggregate, and

(C) the compensation is for labor or services performed as an employee of or under a contract with—

(i) a nonresident alien, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, or

(ii) an individual who is a citizen or resident of the United States, a domestic partnership, or a domestic corporation, if such labor or services are performed for an office or place of business maintained in a foreign country or in a possession of the United States by such individual, partnership, or corporation.

In addition, compensation for labor or services performed in the United States shall not be deemed to be income from sources within the United States if the labor or services are performed by a nonresident alien individual in connection with the individual's temporary presence in the United States as a regular member of the crew of a foreign vessel engaged in transportation between the United States and a foreign country or a possession of the United States.

(4) Rentals and royalties

Rentals or royalties from property located in the United States or from any interest in such property, including rentals or royalties for the use of or for the privilege of using in the United States patents, copyrights, secret processes and formulas, good will, trade-marks, trade brands, franchises, and other like property.

(5) Disposition of United States real property interest

Gains, profits, and income from the disposition of a United States real property interest (as defined in section 897(c)).

(6) Sale or exchange of inventory property

Gains, profits, and income derived from the purchase of inventory property (within the meaning of section 865(i)(1)) without the United States (other than within a possession of the United States) and its sale or exchange within the United States.

(7) Amounts received as underwriting income (as defined in section 832(b)(3)) derived from the issuing (or reinsuring) of any insurance or annuity contract—

(A) in connection with property in, liability arising out of an activity in, or in connection with the lives or health of residents of, the United States, or

(B) in connection with risks not described in subparagraph (A) as a result of any arrangement whereby another corporation receives a substantially equal amount of premiums or other consideration in respect to issuing (or reinsuring) any insurance or annuity contract in connection with property in, liability arising out of activity in, or in connection with the lives or health of residents of, the United States.

(8) Social security benefits

Any social security benefit (as defined in section 86(d)).

(9) Guarantees

Amounts received, directly or indirectly, from—

(A) a noncorporate resident or domestic corporation for the provision of a guarantee of any indebtedness of such resident or corporation, or

(B) any foreign person for the provision of a guarantee of any indebtedness of such person, if such amount is connected with income which is effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States.

(b) Taxable income from sources within United States

From the items of gross income specified in subsection (a) as being income from sources within the United States there shall be deducted the expenses, losses, and other deductions properly apportioned or allocated thereto and a ratable part of any expenses, losses, or other deductions which cannot definitely be allocated to some item or class of gross income. The remainder, if any, shall be included in full as taxable income from sources within the United States. In the case of an individual who does not itemize deductions, an amount equal to the standard deduction shall be considered a deduction which cannot definitely be allocated to some item or class of gross income.

(c) Special rule for application of subsection (a)(2)(B)

For purposes of subsection (a)(2)(B), if the foreign corporation has no gross income from any source for the 3-year period (or part thereof) specified, the requirements of such subsection shall be applied with respect to the taxable year of such corporation in which the payment of the dividend is made.

(d) Income from certain railroad rolling stock treated as income from sources within the United States

(1) General rule

For purposes of subsection (a) and section 862(a), if—

(A) a taxpayer leases railroad rolling stock which is section 1245 property (as defined in section 1245(a)(3)) to a domestic common carrier by railroad or a corporation which is controlled, directly or indirectly, by one or more such common carriers, and

(B) the use under such lease is expected to be use within the United States,

all amounts includible in gross income by the taxpayer with respect to such railroad rolling stock (including gain from sale or other disposition of such railroad rolling stock) shall be treated as income from sources within the United States. The requirements of subparagraph (B) of the preceding sentence shall be treated as satisfied if the only expected use outside the United States is use by a person (whether or not a United States person) in Canada or Mexico on a temporary basis which is not expected to exceed a total of 90 days in any taxable year.

(2) Paragraph (1) not to apply where lessor is a member of controlled group which includes a railroad

Paragraph (1) shall not apply to a lease between two members of the same controlled group of

corporations (as defined in section 1563) if any member of such group is a domestic common carrier by railroad or a switching or terminal company all of whose stock is owned by one or more domestic common carriers by railroad.

(3) Denial of foreign tax credit

No credit shall be allowed under section 901 for any payments to foreign countries with respect to any amount received by the taxpayer with respect to railroad rolling stock which is subject to paragraph (1).

(e) Cross reference

For treatment of interest paid by the branch of a foreign corporation, see section 884(f).

(Aug. 16, 1954, ch. 736, 68A Stat. 275; Pub. L. 86–779, §3(b), Sept. 14, 1960, 74 Stat. 998; Pub. L. 87–834, §9(c), Oct. 16, 1962, 76 Stat. 1001; Pub. L. 89–809, title I, §102(a)(1)–(3), (b), (c), Nov. 13, 1966, 80 Stat. 1541–1543; Pub. L. 91–172, title IV, §435(a), Dec. 30, 1969, 83 Stat. 625; Pub. L. 92–9, §3(a)(2), Apr. 1, 1971, 85 Stat. 15; Pub. L. 92–178, title III, §314(a), title V, §503, Dec. 10, 1971, 85 Stat. 528, 550; Pub. L. 93–625, §§8, 9(a), Jan. 3, 1975, 88 Stat. 2116; Pub. L. 94–455, title X, §§1036(a), 1041, 1051(h)(3), title XIX, §§1901(b)(26)(A), (B), (c)(7), 1904(b)(10)(B), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1633, 1634, 1647, 1798, 1803, 1817, 1834; Pub. L. 95–30, title I, §102(b)(9), May 23, 1977, 91 Stat. 138; Pub. L. 95–600, title III, §370(a), title V, §540(a), Nov. 6, 1978, 92 Stat. 2858, 2887; Pub. L. 96–499, title XI, §1124, Dec. 5, 1980, 94 Stat. 2690; Pub. L. 96–605, title I, §104(a), Dec. 28, 1980, 94 Stat. 3523; Pub. L. 98–21, title I, §121(d), Apr. 20, 1983, 97 Stat. 83; Pub. L. 99–514, title I, §104(b)(11), title XII, §§1211(b)(1)(B), 1212(d), 1214(a), (b), (c)(5), 1241(b), Oct. 22, 1986, 100 Stat. 2105, 2536, 2539, 2541–2543, 2579; Pub. L. 100–203, title X, §10221(d)(4), Dec. 22, 1987, 101 Stat. 1330–409; Pub. L. 100–647, title I, §§1012(g)(3), (i)(10), (14)(B), (q)(7), (9), (15), 1018(u)(39), Nov. 10, 1988, 102 Stat. 3501, 3509, 3510, 3524, 3525, 3592; Pub. L. 101–239, title VII, §§7811(i)(2), 7841(d)(9), Dec. 19, 1989, 103 Stat. 2409, 2428; Pub. L. 101–508, title XI, §§11801(a)(29), (c)(6)(C), (14), 11813(b)(17), Nov. 5, 1990, 104 Stat. 1388–521, 1388–524, 1388–527, 1388–555; Pub. L. 104–188, title I, §1702(h)(9), Aug. 20, 1996, 110 Stat. 1874; Pub. L. 105–34, title XI, §1174(a)(1), Aug. 5, 1997, 111 Stat. 989; Pub. L. 107–16, title VI, §621(a), June 7, 2001, 115 Stat. 111; Pub. L. 108–357, title IV, §410(a), Oct. 22, 2004, 118 Stat. 1500; Pub. L. 111–226, title II, §217(a), (c)(1), Aug. 10, 2010, 124 Stat. 2400, 2402; Pub. L. 111–240, title II, §2122(a), Sept. 27, 2010, 124 Stat. 2567.)

AMENDMENTS

2010—Subsec. (a)(1). Pub. L. 111–226, §217(a), redesignated subpars. (B) and (C) as (A) and (B), respectively, and struck out former subpar. (A) which read as follows: "interest from a resident alien individual or domestic corporation, if such individual or corporation meets the 80-percent foreign business requirements of subsection (c)(1),".

Subsec. (a)(9). Pub. L. 111–240 added par. (9).

Subsecs. (c) to (f). Pub. L. 111–226, §217(c)(1), redesignated subsecs. (d) to (f) as (c) to (e), respectively, and struck out former subsec. (c) which related to foreign business requirements.

2004—Subsec. (a)(1)(C). Pub. L. 108–357 added subpar. (C).

2001—Subsec. (a)(3). Pub. L. 107–16 struck out "except for purposes of sections 79 and 105 and subchapter D," after "In addition," in concluding provisions.

1997—Subsec. (a)(3). Pub. L. 105–34 inserted concluding provisions "In addition, except for purposes of sections 79 and 105 and subchapter D, compensation for labor or services performed in the United States shall not be deemed to be income from sources within the United States if the labor or services are performed by a nonresident alien individual in connection with the individual's temporary presence in the United States as a regular member of the crew of a foreign vessel engaged in transportation between the United States and a foreign country or a possession of the United States."

1996—Subsec. (e)(1)(A). Pub. L. 104–188 provided that the amendment made by section 11813(b)(17) of Pub. L. 101–508 shall be applied as if the material stricken by such amendment included the closing parenthesis after "section 48(a)(5)". See 1990 Amendment note below.

1990—Subsec. (a)(1)(A), (B). Pub. L. 101–508, §11801(a)(29), (c)(14), inserted "and" at end of subpar. (A), substituted a period for a comma at end of subpar. (B), and struck out subpars. (C) and (D) which read as follows:

"(C) interest on a debt obligation which was part of an issue with respect to which an election has been made under subsection (c) of section 4912 (as in effect before July 1, 1974) and which, when issued (or treated as issued under subsection (c)(2) of such section), had a maturity not exceeding 15 years and, when issued, was purchased by one or more underwriters with a view to distribution through resale, but only with respect to interest attributable to periods after the date of such election, and

"(D) interest on a debt obligation which was part of an issue which—

"(i) was part of an issue outstanding on April 1, 1971,

"(ii) was guaranteed by a United States person,

"(iii) was treated under chapter 41 as a debt obligation of a foreign obligor,

"(iv) as of June 30, 1974, had a maturity of not more than 15 years, and

"(v) when issued, was purchased by one or more underwriters for the purpose of distribution through resale."

Subsec. (e)(1)(A). Pub. L. 101–508, §11813(b)(17), which directed the substitution of "which is section 1245 property (as defined in section 1245(a)(3))" for "which is section 38 property (or would be section 38 property but for section 48(a)(5)", was executed by making the substitution for "which is section 38 property (or would be section 38 property but for section 48(a)(5))". See 1996 Amendment note above.

Subsec. (e)(2). Pub. L. 101–508, §11801(c)(6)(C), substituted "all of whose stock is owned by one or more domestic common carriers by railroad" for "referred to in subparagraph (B) of section 184(d)(1)".

1989—Subsec. (a)(6). Pub. L. 101–239, §7811(i)(2), substituted "865(i)(1)" for "865(h)(1)".

Subsec. (e)(1). Pub. L. 101–239, §7841(d)(9), substituted "section 862(a)" for "section 826(a)" in introductory provisions.

1988—Subsec. (a)(2)(B). Pub. L. 100–647, §1012(q)(7), substituted "other than income described in section 884(d)(2)" for "other than under section 884(d)(2)" in two places.

Subsec. (a)(2)(C). Pub. L. 100–647, §1012(q)(15), substituted "section 243(e)" for "section 243(d)".

Subsec. (a)(6). Pub. L. 100–647, §1018(u)(39), substituted "inventory property" for "personal property" in heading.

Subsec. (a)(7). Pub. L. 100–647, §1012(i)(10), amended par. (7) generally. Prior to amendment, par. (7) read as follows: "Amounts received as underwriting income (as defined in section 832(b)(3)) derived from the insurance of United States risks (as defined in section 953(a))."

Subsec. (c)(1)(B). Pub. L. 100–647, §1012(g)(3), inserted "or, in the case of a corporation, is attributable to income so derived by a subsidiary of such corporation" after parenthetical in cl. (i), struck out "or chain of subsidiaries of such corporation" after "by a subsidiary" in cl. (ii), and inserted sentence at end defining "subsidiary".

Subsec. (c)(2)(B)(ii). Pub. L. 100–647, §1012(i)(14)(B), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: "such section shall be applied by substituting '10 percent' for '50 percent' each place it appears."

Subsec. (f). Pub. L. 100–647, §1012(g)(9), added subsec. (f).

1987—Subsec. (a)(2). Pub. L. 100–203, §10221(d)(4)(B), inserted at end "In the case of any dividend from a 20-percent owned corporation (as defined in section 243(c)(2)), subparagraph (B) shall be applied by substituting '100/80th' for '100/70th'."

Subsec. (a)(2)(B). Pub. L. 100–203, §10221(d)(4)(A), which directed that subpar. (B) be amended by substituting "100/70th" for "100/85th", was executed by substituting "100/70th" for "100/85ths" to reflect the probable intent of Congress.

1986—Subsec. (a)(1). Pub. L. 99–514, §1241(b)(1)(A), substituted "noncorporate residents or domestic corporations" for "residents, corporate or otherwise," in introductory text.

Subsec. (a)(1)(A). Pub. L. 99–514, §1214(a)(1), (c)(5)(A), amended subpar. (B) generally and redesignated it as (A). Prior to amendment and redesignation, former subpar. (B) read as follows: "interest received from a resident alien individual or a domestic corporation, when it is shown to the satisfaction of the Secretary that less than 20 percent of the gross income from all sources of such individual or such corporation has been derived from sources within the United States, as determined under the provisions of this part, for the 3-year period ending with the close of the taxable year of such individual or such corporation preceding the payment of such interest, or for such part of such period as may be applicable,". Former subpar. (A), which read "interest on amounts described in subsection (c) received by a nonresident alien individual or a foreign corporation, if such interest is not effectively connected with the conduct of a trade or business within the United States,", was struck out.

Subsec. (a)(1)(B). Pub. L. 99–514, §1241(b)(1)(B), redesignated subpar. (D), as previously redesignated and amended by §1214(c)(5)(A), (B) of Pub. L. 99–514, as (B) and struck out former subpar. (B) [previously (C)] which read as follows: "interest received from a foreign corporation (other than interest paid or credited

by a domestic branch of a foreign corporation, if such branch is engaged in the commercial banking business), when it is shown to the satisfaction of the Secretary that less than 50 percent of the gross income from all sources of such foreign corporation for the 3-year period ending with the close of its taxable year preceding the payment of such interest (or for such part of such period as the corporation has been in existence) was effectively connected with the conduct of a trade or business within the United States,".

Pub. L. 99–514, §1214(c)(5)(A), (B), redesignated former subpar. (F) as (D), substituted in cl. (ii), "subparagraph (B) of section 871(i)(3)" for "paragraph (2) of subsection (c)", and redesignated former subpar. (C) as (B). Former subpar. (B) redesignated (A).

Subsec. (a)(1)(C). Pub. L. 99–514, §1241(b)(1)(B), redesignated subpar. (E), as previously redesignated by §1214(c)(5)(A) of Pub. L. 99–514, as (C) and struck out former subpar. (C) [previously (D)] which read as follows: "in the case of interest received from a foreign corporation (other than interest paid or credited by a domestic branch of a foreign corporation, if such branch is engaged in the commercial banking business), 50 percent or more of the gross income of which from all sources for the 3-year period ending with the close of its taxable year preceding the payment of such interest (or for such part of such period as the corporation has been in existence) was effectively connected with the conduct of a trade or business within the United States, an amount of such interest which bears the same ratio to such interest as the gross income of such foreign corporation for such period which was not effectively connected with the conduct of a trade or business within the United States bears to its gross income from all sources,".

Pub. L. 99–514, §1214(c)(5)(A), redesignated subpar. (D) as (C). Former subpar. (C) redesignated (B).

Subsec. (a)(1)(D). Pub. L. 99–514, §1214(c)(5)(A), redesignated subpar. (H) as (F). Pub. L. 99–514, §1241(b)(1)(B), then redesignated such subpar. (F) as (D). The original subpar. (D) was redesignated (C) and struck out, and the original subpar. (F) was redesignated (D), then (B).

Subsec. (a)(1)(E). Pub. L. 99–514, §1241(b)(1)(B), redesignated subpar. (E), as previously redesignated by §1214(c)(5)(A) of Pub. L. 99–514, as (C).

Pub. L. 99–514, §1214(c)(5)(A), redesignated subpar. (G) as (E) and struck out former subpar. (E) which read as follows: "income derived by a foreign central bank of issue from bankers' acceptances,".

Subsec. (a)(1)(F). Pub. L. 99–514, §§1214(c)(5)(A), 1241(b)(1)(B), redesignated successively former subpar. (F) as (D) and (B), respectively.

Subsec. (a)(1)(G). Pub. L. 99–514, §§1214(c)(5)(A), 1241(b)(1)(B), redesignated successively former subpar. (G) as (E) and (C), respectively.

Subsec. (a)(1)(H). Pub. L. 99–514, §§1214(c)(5)(A), 1241(b)(1)(B), redesignated successively former subpar. (H) as (F) and (D), respectively.

Subsec. (a)(2)(A). Pub. L. 99–514, §1214(b), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "from a domestic corporation other than a corporation which has an election in effect under section 936, and other than a corporation less than 20 percent of whose gross income is shown to the satisfaction of the Secretary to have been derived from sources within the United States, as determined under the provisions of this part, for the 3-year period ending with the close of the taxable year of such corporation preceding the declaration of such dividends (or for such part of such period as the corporation has been in existence), or".

Subsec. (a)(2)(B). Pub. L. 99–514, §1241(b)(2), substituted "25 percent" for "50 percent" and inserted "(or treated as effectively connected other than under section 884(d)(2))" in two places.

Subsec. (a)(6). Pub. L. 99–514, §1211(b)(1)(B), substituted "inventory property (within the meaning of section 865(h)(1))" for "personal property".

Subsec. (b). Pub. L. 99–514, §104(b)(11), substituted "the standard deduction" for "the zero bracket amount".

Subsec. (c). Pub. L. 99–514, §1214(a)(2), amended subsec. (c) generally, substituting provisions relating to foreign business requirements for provisions relating to interest on deposits.

Subsec. (d). Pub. L. 99–514, §1214(c)(5)(C), amended subsec. (d) generally, substituting provision for special rule for application of subsec. (a)(2)(B) for former provision for special rules for application of subsec. (a), pars. (1)(B) to (1)(D) and (2)(B), pars. (1) and (2) thereof relating to new entities and transition rule provisions.

Subsecs. (e), (f). Pub. L. 99–514, §1212(d), redesignated subsec. (f) as (e) and struck out former subsec. (e) relating to treatment of income from certain leased aircraft, vessels, and spacecraft as income from sources within the United States.

1983—Subsec. (a)(8). Pub. L. 98–21 added par. (8).

1980—Subsec. (a)(5). Pub. L. 96–499 substituted "Disposition of United States real property interest" for "Sale or exchange of real property" in heading and "disposition of a United States real property interest (as defined in section 897(c))" for "sale or exchange of real property located in the United States" in text.

Subsec. (e). Pub. L. 96–605 substituted provision directing that income from certain leased aircraft, vessels, and spacecraft be treated as income from sources within the United States for provision permitting the taxpayer to elect to treat income from certain aircraft and vessels as income from sources within the United States and prescribing the manner of revocating such an election.

1978—Subsec. (a)(1)(F). Pub. L. 95–600, §540(a), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (f). Pub. L. 95–600, §370(a), added subsec. (f).

1977—Subsec. (b). Pub. L. 95–30 provided that, in the case of an individual who does not itemize deductions, an amount equal to the zero bracket amount shall be considered a deduction which cannot definitely be allocated to some item or class of gross income.

1976—Subsec. (a)(1). Pub. L. 94–455, §§1901(c)(7), 1904(b)(10)(B), struck out ", any Territory, any political subdivision of a Territory," after "United States" in provisions preceding subpar. (A) and, in subpar. (G), substituted "subsection (c) of section 4912 (as in effect before July 1, 1974)" for "section 4912(c)" and "subsection (c)(2) of such section" for "section 4912(c)(2)".

Subsec. (a)(2)(A). Pub. L. 94–455, §§1051(h)(3), 1906(b)(13)(A), substituted "other than a corporation which has an election in effect under section 936" for "other than a corporation entitled to the benefits of section 931" and struck out "or his delegate" after "Secretary".

Subsec. (a)(2)(D). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (a)(5), (6). Pub. L. 94–455, §1901(b)(26)(A), substituted "sale or exchange" for "sale" in headings and text.

Subsec. (a)(7). Pub. L. 94–455, §1036(a), added par. (7).

Subsec. (c)(3). Pub. L. 94–455, §1041, struck out provision that subsecs. (a)(1)(A) and (c) would cease to apply effective with respect to amounts paid or credited after Dec. 31, 1976.

Subsec. (e)(1). Pub. L. 94–455, §1901(b)(26)(B), substituted "sale, exchange, or other disposition" for "sale or other disposition".

Subsecs. (e)(2), (3). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

1975—Subsec. (a)(1)(H). Pub. L. 93–625, §9(a), added subpar. (H).

Subsec. (c)(3). Pub. L. 93–625, §8, substituted "1976" for "1975".

1971—Subsec. (a)(1)(G). Pub. L. 92–9 added subpar. (G).

Subsec. (a)(2)(D). Pub. L. 92–178, §503, added subpar. (D).

Subsec. (e). Pub. L. 92–178, §314(a), added subsec. (e).

1969—Subsec. (a)(1)(C), (D). Pub. L. 91–172, §435(a)(1), struck out "after December 31, 1972," after "interest paid or credited" in parenthetical after "interest received from a foreign corporation".

Subsec. (c)(3). Pub. L. 91–172, §435(a)(2), substituted "1975" for "1972".

1966—Subsec. (a)(1)(A). Pub. L. 89–809, §102(a)(1)(A), substituted "interest on amounts described in subsection (c) received by a nonresident alien individual or a foreign corporation, if such interest is not effectively connected with the conduct of a trade or business within the United States" for "interest on deposits with persons carrying on the banking business paid to persons not engaged in business within the United States".

Subsec. (a)(1)(B). Pub. L. 89–809, §102(a)(2), struck out interest received from a resident foreign corporation, and substituted "gross income from all sources of such individual or such corporation" for "gross income of such resident payor or domestic corporation", and "taxable year of such individual or such corporation" for "taxable year of such payor".

Subsec. (a)(1)(C) to (F). Pub. L. 89–809, §102(a)(2), added subpars. (C), (D), and (F), and redesignated former subpar. (C) as (E).

Subsec. (a)(2)(B). Pub. L. 89–809, §102(b), substituted "50 percent of the gross income from all sources" for "50 percent of the gross income", "effectively connected with the conduct of a trade or business within the United States" for "derived from sources within the United States as determined from the provisions of this part", and "ratio to such dividends as the gross income of the corporation for such period which was effectively connected with the conduct of a trade or business within the United States bears to its gross income from all sources" for "ratio to such dividends as the gross income of the corporation for such period derived from sources within the United States bears to its gross income from all sources" and inserted "(other than dividends for which a deduction is allowable under section 245(b))" after "dividends" and "(and only to the extent)" after "extent".

Subsec. (a)(3)(C)(ii). Pub. L. 89–809, §102(c), inserted "an individual who is a citizen or resident of the United States, a domestic partnership, or" before "a domestic corporation" and "individual, partnership, or" after "United States by such".

Subsecs. (c), (d). Pub. L. 89–809, §102(a)(1)(B), (3), added subsecs. (c) and (d).

1962—Subsec. (a)(2)(B). Pub. L. 87–834 substituted "to the extent exceeding the amount which is 100/85ths of the amount of the deduction allowable under section 245 in respect of such dividends" for "to the extent exceeding the amount of the deduction allowable under section 245 in respect of such dividends."

1960—Subsec. (a)(2)(C). Pub. L. 86–779 added subpar. (C).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–240, title II, §2122(d), Sept. 27, 2010, 124 Stat. 2568, provided that: "The amendments made by this section [amending this section and sections 862 and 864 of this title] shall apply to guarantees issued after the date of the enactment of this Act [Sept. 27, 2010]."

Pub. L. 111–226, title II, §217(d), Aug. 10, 2010, 124 Stat. 2402, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 871, 904, and 2104 of this title] shall apply to taxable years beginning after December 31, 2010.

"(2) GRANDFATHER RULE FOR OUTSTANDING DEBT OBLIGATIONS.—

"(A) IN GENERAL.—The amendments made by this section shall not apply to payments of interest on obligations issued before the date of the enactment of this Act [Aug. 10, 2010].

"(B) EXCEPTION FOR RELATED PARTY DEBT.—Subparagraph (A) shall not apply to any interest which is payable to a related person (determined under rules similar to the rules of section 954(d)(3)).

"(C) SIGNIFICANT MODIFICATIONS TREATED AS NEW ISSUES.—For purposes of subparagraph (A), a significant modification of the terms of any obligation (including any extension of the term of such obligation) shall be treated as a new issue."

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title IV, §410(b), Oct. 22, 2004, 118 Stat. 1500, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2003."

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–16, title VI, §621(b), June 7, 2001, 115 Stat. 111, provided that: "The amendment made by subsection (a) [amending this section] shall apply to remuneration for services performed in plan years beginning after December 31, 2001."

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to remuneration for services performed in taxable years beginning after Dec. 31, 1997, see section 1174(c) of Pub. L. 105–34, set out as a note under section 7701 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11813(b)(17) of Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7811(i)(2) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to dividends received or accrued after Dec. 31, 1987, in taxable years ending after such date, see section 10221(e)(1) of Pub. L. 100–203, set out as a note under section 243 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 104(b)(11) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 1211(b)(1)(B) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, except as otherwise provided, see section 1211(c) of Pub. L. 99–514, set out as an Effective Date note under section 865 of this title.

Amendment by section 1212(d) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with special rules for certain leased property and for certain ships leased by United States Navy, see section 1212(f) of Pub. L. 99–514, set out as a note under section 863 of this title.

Pub. L. 99–514, title XII, §1214(d), Oct. 22, 1986, 100 Stat. 2543, as amended by Pub. L. 100–647, title I, §1012(g)(1)(A), (2), Nov. 10, 1988, 102 Stat. 3500, 3501, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and sections 871, 881, 1441, and 6049 of this title] shall apply to payments made in a taxable year of the payor beginning after December 31, 1986.

"(2) TREATMENT OF CERTAIN INTEREST.—

"(A) IN GENERAL.—The amendments made by this section shall not apply to any interest paid or accrued on any obligation outstanding on December 31, 1985. The preceding sentence shall not apply to any interest paid pursuant to any extension or renewal of such an obligation agreed to after December 31, 1985.

"(B) SPECIAL RULE FOR RELATED PAYEE.—If the payee of any interest to which subparagraph (A) applies is related (within the meaning of section 904(d)(2)(H) of the Internal Revenue Code of 1986) to the payor, such interest shall be treated for purposes of section 904 of such Code as if the payor were a controlled foreign corporation (within the meaning of section 957(a) of such Code).

"(3) TRANSITIONAL RULE.—

"(A) YEARS BEFORE 1988.—In applying the amendments made by this section to any payment made by a corporation in a taxable year of such corporation beginning before January 1, 1988, the requirements of clause (ii) of [former] section 861(c)(1)(B) of the Internal Revenue Code of 1986 (relating to active business requirements), as amended by this section, shall not apply to gross income of such corporation for taxable years beginning before January 1, 1987.

"(B) YEARS AFTER 1987.—In applying the amendments made by this section to any payment made by a corporation in a taxable year of such corporation beginning after December 31, 1987, the testing period for purposes of [former] section 861(c) of such Code (as so amended) shall not include any taxable year beginning before January 1, 1987.

"(4) CERTAIN DIVIDENDS.—

"(A) IN GENERAL.—The amendments made by this section shall not apply to any dividend paid before January 1, 1991, by a qualified corporation with respect to stock which was outstanding on May 31, 1985.

"(B) QUALIFIED CORPORATION.—For purposes of subparagraph (A), the term 'qualified corporation' means any business systems corporation which—

"(i) was incorporated in Delaware in February, 1979,

"(ii) is headquartered in Garden City, New York, and

"(iii) the parent corporation of which is a resident of Sweden."

[Pub. L. 100–647, title I, §1012(g)(1)(B), Nov. 10, 1988, 102 Stat. 3500, provided that: "A taxpayer may elect not to have the amendment made by subparagraph (A) [amending section 1214(d)(1) of Pub. L. 99–514, set out above] apply and to have section 1214(d)(1) of the Reform Act [section 1214(d)(1) of Pub. L. 99–514, set out above] apply as in effect before such amendment. Such election shall be made at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe."]

Amendment by section 1241(b) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1241(e) of Pub. L. 99–514, set out as an Effective Date note under section 884 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable to benefits received after Dec. 31, 1983, in taxable years ending after such date, except for any portion of a lump-sum payment of social security benefits received after Dec.

31, 1983, if the generally applicable payment date for such portion was before Jan. 1, 1984, see section 121(g) of Pub. L. 98–21, set out as an Effective Date note under section 86 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–605, title I, §104(b), Dec. 28, 1980, 94 Stat. 3523, provided that: "The amendment made by subsection (a) [amending this section] shall apply to property first leased after the date of the enactment of this Act [Dec. 28, 1980]."

Amendment by Pub. L. 96–499 applicable to dispositions after June 18, 1980, see section 1125(a) of Pub. L. 96–499, set out as an Effective Date note under section 897 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title III, §370(b), Nov. 6, 1978, 92 Stat. 2858, provided that:

"(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to all railroad rolling stock placed in service with respect to the taxpayer after the date of the enactment of this Act [Nov. 6, 1978].

"(2) ELECTION TO EXTEND SECTION 861(f) [now 861(e)] TO RAILROAD ROLLING STOCK PLACED IN SERVICE BEFORE DATE OF ENACTMENT.

"(A) IN GENERAL.—At the election of the taxpayer, the amendment made by subsection (a) shall also apply, for taxable years beginning after the date of the enactment of this Act, to all railroad rolling stock placed in service with respect to the taxpayer on or before such date of enactment. Such an election may not be revoked except with the consent of the Secretary of the Treasury or his delegate.

"(B) MANNER AND TIME OF ELECTION AND REVOCATION.—An election under subparagraph (A), and any revocation of such an election, shall be made in such manner and at such time as the Secretary of the Treasury or his delegate may by regulations prescribe."

Pub. L. 95–600, title V, §540(b), Nov. 6, 1978, 92 Stat. 2887, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Nov. 6, 1978]."

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title I, §1036(c), Oct. 4, 1976, 90 Stat. 1633, provided that: "The amendments made by this section [amending this section and section 862 of this title] shall apply to taxable years beginning after December 31, 1976."

For effective date of amendment by section 1051(h)(3) of Pub. L. 94–455, see section 1051(i)(1) of Pub. L. 94–455, set out as a note under section 27 of this title.

Amendment by section 1901(b)(26)(A), (B), (c)(7) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by section 1904(b)(10)(B) of Pub. L. 94–455 effective on first day of first month which begins more than 90 days after date of enactment of this Act [Oct. 4, 1976], see section 1904(d) of Pub. L. 94–455, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Pub. L. 93–625, §9(c), Jan. 3, 1975, 88 Stat. 2116, provided that: "The amendment made by subsection (a) [amending this section] applies to interest paid after the date of enactment of this Act [Jan. 3, 1975], and the amendment made by subsection (b) [amending section 2104 of this title] applies with respect to estates of decedents dying after such date."

EFFECTIVE DATE OF 1971 AMENDMENTS

Pub. L. 92–9, §3(a)(3), Apr. 1, 1971, 85 Stat. 15, provided that: "The amendments made by this subsection [amending this section and section 4912 of this title] shall take effect on the date of the enactment of this Act [Apr. 1, 1971]."

Pub. L. 92–178, title III, §314(c), Dec. 10, 1971, 85 Stat. 528, provided that: "The amendments made by this section [amending this section and section 862 of this title] shall apply to taxable years ending after August 15, 1971, but only with respect to leases entered into after such date."

Amendment by section 503 of Pub. L. 92–178 applicable with respect to taxable years ending after Dec. 31, 1971, except that a corporation may not be a DISC for any taxable year beginning before Jan. 1, 1972, see

section 507 of Pub. L. 92–178, set out as an Effective Date note under section 991 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title IV, §435(a)(1), Dec. 30, 1969, 83 Stat. 625, provided that the amendment made by that section is effective with respect to amounts paid or credited after Dec. 31, 1969.

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89–809, title I, §102(e), Nov. 13, 1966, 80 Stat. 1547, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) The amendments made by subsections (a), (c), and (d) [amending this section and sections 864 and 895 of this title] shall apply with respect to taxable years beginning after December 31, 1966; except that in applying section 864(c)(4)(B)(iii) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (d)) with respect to a binding contract entered into on or before February 24, 1966, activities in the United States on or before such date in negotiating or carrying out such contract shall not be taken into account.

"(2) The amendments made by subsection (b) [amending this section] shall apply with respect to amounts received after December 31, 1966."

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable in respect of any distribution received by a domestic corporation after Dec. 31, 1964, and in respect of any distribution received by a domestic corporation before Jan. 1, 1965, in a taxable year of such corporation beginning after Dec. 31, 1962, but only to the extent that such distribution is made out of the accumulated profits of a foreign corporation for a taxable year (of such foreign corporation) beginning after Dec. 31, 1962, see section 9(e) of Pub. L. 87–834, set out as a note under section 902 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–779 applicable to dividends received after Dec. 31, 1959, in taxable years ending after such date, see section 3(c) of Pub. L. 86–779, set out as a note under section 243 of this title.

SHORT TITLE OF 1971 AMENDMENT

Pub. L. 92–9, §1(a), Apr. 1, 1971, 85 Stat. 13, provided that: "This Act [amending this section and sections 4911, 4912, 4914 to 4916, 4919 to 4921, 6651, 6680, and 6681 of this title and enacting provisions set out as notes under this section and sections 6680 and 6681 of this title] may be cited as the 'Interest Equalization Tax Extension Act of 1971'."

SHORT TITLE OF 1966 AMENDMENT

Pub. L. 89–809, title I, §101, Nov. 13, 1966, 80 Stat. 1541, provided that: "This title [enacting sections 877, 896, 906, 981, 2107, 2108, and 6683 of this title, amending this section and sections 1, 11, 116, 154, 245, 301, 512, 542, 543, 545, 819, 821, 822, 831, 832, 841, 842, 864, 871, 872, 873, 874, 875, 881, 882, 884, 894, 895, 901, 904, 911, 931, 932, 952, 953, 1248, 1249, 1441, 1442, 1461, 2014, 2101, 2102, 2104, 2105, 2106, 2501, 2511, 3401, 6015, 6016, 6018, 6501, 6513, and 7701 of this title, redesignating former section 877 as 878, repealing section 1493, and enacting provisions set out as notes under this section and sections 11, 871, 874, 894, 901, 904, 931, 2101, 2501, and 6501 of this title] may be cited as the 'Foreign Investors Tax Act of 1966'."

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

DIVIDENDS RECEIVED OR ACCRUED DURING 1987

Subsec. (a)(2)(B) of this section to be applied by substituting "100/80ths" for the fraction specified therein with regard to dividends received or accrued during 1987, see section 1006(b)(1)(B) of Pub. L. 100–647 set out as a note under section 245 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

Pub. L. 100–647, title I, §1012(aa)(2)–(4), Nov. 10, 1988, 102 Stat. 3531, 3532, provided that:

"(2) CERTAIN AMENDMENTS TO APPLY NOTWITHSTANDING TREATIES.—The following amendments made by the Reform Act [Pub. L. 99–514] shall apply notwithstanding any treaty obligation of the United States in effect on the date of the enactment of the Reform Act [Oct. 22, 1986]:

"(A) The amendments made by section 1201 of the Reform Act [amending sections 864, 904, and 954 of this title].

"(B) The amendments made by title VII of the Reform Act [enacting sections 53 and 55 to 59 of this title and amending sections 5, 12, 26, 28, 29, 38, 48, 173, 174, 263, 381, 443, 703, 882, 897, 904, 936, 1016, 1363, 1366, 1561, 6154, 6425, and 6655 of this title] to the extent such amendments relate to the alternative minimum tax foreign tax credit.

"(3) CERTAIN AMENDMENTS NOT TO APPLY TO THE EXTENT INCONSISTENT WITH TREATIES.—The following amendments made by the Reform Act [Pub. L. 99–514] shall not apply to the extent the application of such amendments would be contrary to any treaty obligation of the United States in effect on the date of the enactment of the Reform Act [Oct. 22, 1986]:

"(A) The amendments made by section 1211 of the Reform Act [enacting section 865 of this title and amending this section and sections 862 to 864, 871, 881, and 904 of this title] to the extent—

"(i) such amendments apply in the case of an individual treated as a resident of a foreign country under a treaty obligation of the United States as so in effect, or

"(ii) such amendments relate to income of a nonresident from the sale or exchange of inventory property which would otherwise be sourced under section 865(e)(2) of the 1986 Code.

"(B) The amendments made by section 1212(a) of the Reform Act [amending section 863 of this title]; except for purposes of determining the amount of the foreign tax credit.

"(C) The amendments made by subsections (b) and (c) of section 1212 of the Reform Act [enacting section 887 of this title and amending sections 872 and 883 of this title].

"(D) The amendments made by section 1214 of the Reform Act [amending this section and sections 871, 881, 1441, and 6049 of this title]; except for purposes of determining the amount of the foreign tax credit.

"(E) The amendment made by section 1241(a) of the Reform Act [enacting section 884 of this title and renumbering former section 884 as 885] to the extent that, under a treaty obligation of the United States, interest described in section 884(f)(1)(A) of the 1986 Code (as added by such amendment) which is in excess of amounts deducted would be treated as other than United States source.

"(F) The amendment made by section 1241(b)(2)(A) of the Reform Act [amending this section].

"(G) The amendment made by section 1241(a) of the Reform Act [enacting section 884 of this title and renumbering former section 884 as 885] to the extent such amendment relates to section 884(f)(1)(B) of the 1986 Code.

"(H) The amendments made by section 1242 of the Reform Act [amending section 864 of this title] to the extent they relate to paragraph (7) of section 864(c) of the 1986 Code.

"(I) The amendment made by section 1247(a) of the Reform Act [amending section 892 of this title].

"(J) The amendments made by section 123 of the Reform Act [amending sections 74, 117, 1441, and 7871 of this title].

"(4) TREATMENT OF TECHNICAL CORRECTIONS.—For purposes of paragraphs (2) and (3), any amendment made by this title [see Tables for classification] shall be treated as if it had been included in the provision of the Reform Act [Pub. L. 99–514] to which such amendment relates."

QUALIFIED RESEARCH AND EXPERIMENTAL EXPENDITURES; ALLOCATION AND APPORTIONMENT; DEFINITIONS; SPECIAL RULES; EFFECTIVE DATES

Pub. L. 100–647, title IV, §4009, Nov. 10, 1988, 102 Stat. 3653, provided that:

"(a) GENERAL RULE.—For purposes of sections 861(b), 862(b), and 863(b) of the 1986 Code, qualified research and experimental expenditures shall be allocated and apportioned as follows:

"(1) Any qualified research and experimental expenditures expended solely to meet legal requirements imposed by a political entity with respect to the improvement or marketing of specific products or processes for purposes not reasonably expected to generate gross income (beyond de minimis amounts) outside the jurisdiction of the political entity shall be allocated only to gross income from sources within such jurisdiction.

"(2) In the case of any qualified research and experimental expenditures (not allocated under paragraph (1)) to the extent—

"(A) that such expenditures are attributable to activities conducted in the United States, 64 percent of such expenditures shall be allocated and apportioned to income from sources within the United States and deducted from such income in determining the amount of taxable income from sources within the

United States, and

"(B) that such expenditures are attributable to activities conducted outside the United States, 64 percent of such expenditures shall be allocated and apportioned to income from sources outside the United States and deducted from such income in determining the amount of taxable income from sources outside the United States.

"(3) The remaining portion of qualified research and experimental expenditures (not allocated under paragraphs (1) and (2)) shall be apportioned, at the annual election of the taxpayer, on the basis of gross sales or gross income, except that, if the taxpayer elects to apportion on the basis of gross income, the amount apportioned to income from sources outside the United States shall be at least 30 percent of the amount which would be so apportioned on the basis of gross sales.

"(b) QUALIFIED RESEARCH AND EXPERIMENTAL EXPENDITURES.—For purposes of this section, the term 'qualified research and experimental expenditures' means amounts which are research and experimental expenditures within the meaning of section 174 of the 1986 Code. For purposes of this subsection, rules similar to the rules of subsection (c) of section 174 of the 1986 Code shall apply.

"(c) SPECIAL RULES FOR EXPENDITURES ATTRIBUTABLE TO ACTIVITIES CONDUCTED IN SPACE, ETC.—

"(1) IN GENERAL.—Any qualified research and experimental expenditures described in paragraph (2)—

"(A) if incurred by a United States person, shall be allocated and apportioned under this section in the same manner as if they were attributable to activities conducted in the United States, and

"(B) if incurred by a person other than a United States person, shall be allocated and apportioned under this section in the same manner as if they were attributable to activities conducted outside the United States.

"(2) DESCRIPTION OF EXPENDITURES.—For purposes of paragraph (1), qualified research and experimental expenditures are described in this paragraph if such expenditures are attributable to activities conducted—

"(A) in space,

"(B) on or under water not within the jurisdiction (as recognized by the United States) of a foreign country, possession of the United States, or the United States, or

"(C) in Antarctica.

"(d) AFFILIATED GROUP.—

"(1) Except as provided in paragraph (2), the allocation and apportionment required by subsection (a) shall be determined as if all members of the affiliated group (as defined in subsection (e)(5) of section 864 of the 1986 Code) were a single corporation.

"(2) For purposes of the allocation and apportionment required by subsection (a)—

"(A) sales and gross income from products produced in whole or in part in a possession by an electing corporation (within the meaning of section 936(h)(5)(E) of the 1986 Code); and

"(B) dividends from an electing corporation,

shall not be taken into account, except that this paragraph shall not apply to sales of (and gross income and dividends attributable to sales of) products with respect to which an election under section 936(h)(5)(F) of the 1986 Code is not in effect.

"(3) The qualified research and experimental expenditures taken into account for purposes of subsection (a) shall be adjusted to reflect the amount of such expenditures included in computing the cost-sharing amount (determined under section 936(h)(5)(C)(i)(I) of the 1986 Code).

"(4) The Secretary of the Treasury or his delegate may prescribe such regulations as may be necessary to carry out the purposes of this subsection, including regulations providing for the source of gross income and the allocation and apportionment of deductions to take into account the adjustments required by paragraph (3).

"(5) Paragraph (6) of section 864(e) of the 1986 Code shall not apply to qualified research and experimental expenditures.

"(e) YEARS TO WHICH SECTION APPLIES.—

"(1) IN GENERAL.—Except as provided in this subsection, this section shall apply to the taxpayer's 1st taxable year beginning after August 1, 1987.

"(2) REDUCTION IN AMOUNTS TO WHICH SECTION APPLIES.—Notwithstanding paragraph (1), this section shall only apply to that portion of the qualified research and experimental expenditures for the taxable year referred to in paragraph (1) which bears the same ratio to the total amount of such expenditures as—

"(A) the lesser of 4 months or the number of months in the taxable year, bears to

"(B) the number of months in the taxable year."

1-YEAR MODIFICATION IN REGULATIONS PROVIDING FOR ALLOCATION OF RESEARCH AND EXPERIMENTAL EXPENDITURES

Pub. L. 99–514, title XII, §1216, Oct. 22, 1986, 100 Stat. 2549, provided that:

"(a) GENERAL RULE.—For purposes of section 861(b), section 862(b), and section 863(b) of the Internal Revenue Code of 1954 [now 1986], notwithstanding section 864(e) of such Code—

"(1) 50 percent of all amounts allowable as a deduction for qualified research and experimental expenditures shall be apportioned to income from sources within the United States and deducted from such income in determining the amount of taxable income from sources within the United States, and

"(2) the remaining portion of such amounts shall be apportioned on the basis of gross sales or gross income.

The preceding sentence shall not apply to any expenditures described in section 1.861–8(e)(3)(i)(B) of the Income Tax Regulations.

"(b) QUALIFIED RESEARCH AND EXPERIMENTAL EXPENDITURES.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified research and experimental expenditures' means amounts—

"(A) which are research and experimental expenditures within the meaning of section 174 of such Code, and

"(B) which are attributable to activities conducted in the United States.

"(2) TREATMENT OF DEPRECIATION, ETC.—Rules similar to the rules of section 174(c) of such Code shall apply.

"(c) EFFECTIVE DATE.—This section shall apply to taxable years beginning after August 1, 1986, and on or before August 1, 1987."

ALLOCATION UNDER SECTION 861 OF RESEARCH AND EXPERIMENTAL EXPENDITURES

Pub. L. 98–369, div. A, title I, §126, July 18, 1984, 98 Stat. 648, as amended by Pub. L. 99–272, title XIII, §13211, Apr. 7, 1986, 100 Stat. 324; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) IN GENERAL.—For purposes of section 861(b), section 862(b), and section 863(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], all amounts allowable as a deduction for qualified research and experimental expenditures shall be allocated to income from sources within the United States and deducted from such income in determining the amount of taxable income from sources within the United States.

"(b) QUALIFIED RESEARCH AND EXPERIMENTAL EXPENDITURES.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified research and experimental expenditures' means amounts—

"(A) which are research and experimental expenditures within the meaning of section 174 of such Code, and

"(B) which are attributable to activities conducted in the United States.

"(2) TREATMENT OF DEPRECIATION, ETC.—Rules similar to the rules of subsection (c) of section 174 of such Code shall apply.

"(c) EFFECTIVE DATES.—

"(1) IN GENERAL.—This section shall apply to taxable years beginning after August 13, 1983, and on or before August 1, 1986.

"(2) SPECIAL RULE.—If the taxpayer's 4th taxable year beginning after August 13, 1981, is not described in paragraph (1), this section shall apply also to such 4th taxable year."

CONFORMITY OF AMENDMENTS MADE BY FOREIGN INVESTORS TAX ACT OF 1966 WITH TREATY OBLIGATIONS OF THE UNITED STATES

Pub. L. 89–809, title I, §110, Nov. 13, 1966, 80 Stat. 1575, provided that: "No amendment made by this title [see Short Title note above] shall apply in any case where its application would be contrary to any treaty obligation of the United States. For purposes of the preceding sentence, the extension of a benefit provided by any amendment made by this title shall not be deemed to be contrary to a treaty obligation of the United States."

§862. Income from sources without the United States

(a) Gross income from sources without United States

The following items of gross income shall be treated as income from sources without the United States:

(1) interest other than that derived from sources within the United States as provided in section 861(a)(1);

(2) dividends other than those derived from sources within the United States as provided in section 861(a)(2);

(3) compensation for labor or personal services performed without the United States;

(4) rentals or royalties from property located without the United States or from any interest in such property, including rentals or royalties for the use of or for the privilege of using without the United States patents, copyrights, secret processes and formulas, good will, trade-marks, trade brands, franchises, and other like properties;

(5) gains, profits, and income from the sale or exchange of real property located without the United States;

(6) gains, profits, and income derived from the purchase of inventory property (within the meaning of section 865(i)(1)) within the United States and its sale or exchange without the United States;

(7) underwriting income other than that derived from sources within the United States as provided in section 861(a)(7);

(8) gains, profits, and income from the disposition of a United States real property interest (as defined in section 897(c)) when the real property is located in the Virgin Islands; and

(9) amounts received, directly or indirectly, from a foreign person for the provision of a guarantee of indebtedness of such person other than amounts which are derived from sources within the United States as provided in section 861(a)(9).

(b) Taxable income from sources without United States

From the items of gross income specified in subsection (a) there shall be deducted the expenses, losses, and other deductions properly apportioned or allocated thereto, and a ratable part of any expenses, losses, or other deductions which cannot definitely be allocated to some item or class of gross income. The remainder, if any, shall be treated in full as taxable income from sources without the United States. In the case of an individual who does not itemize deductions, an amount equal to the standard deduction shall be considered a deduction which cannot definitely be allocated to some item or class of gross income.

(Aug. 16, 1954, ch. 736, 68A Stat. 276; Pub. L. 92–178, title III, §314(b), Dec. 10, 1971, 85 Stat. 528; Pub. L. 94–455, title X, §1036(b), title XIX, §1901(b)(26)(C), Oct. 4, 1976, 90 Stat. 1633, 1798; Pub. L. 95–30, title I, §102(b)(10), May 23, 1977, 91 Stat. 138; Pub. L. 97–34, title VIII, §831(a)(2), Aug. 13, 1981, 95 Stat. 352; Pub. L. 99–514, title I, §104(b)(12), title XII, §1211(b)(1)(C), Oct. 22, 1986, 100 Stat. 2105, 2536; Pub. L. 100–647, title I, §1012(e)(4), Nov. 10, 1988, 102 Stat. 3500; Pub. L. 101–239, title VII, §7811(i)(2), Dec. 19, 1989, 103 Stat. 2409; Pub. L. 111–240, title II, §2122(b), Sept. 27, 2010, 124 Stat. 2568.)

AMENDMENTS

2010—Subsec. (a)(9). Pub. L. 111–240 added par. (9).

1989—Subsec. (a)(6). Pub. L. 101–239 substituted "865(i)(1)" for "865(h)(1)".

1988—Subsec. (c). Pub. L. 100–647 repealed subsec. (c) which read as follows:

"(c) CROSS REFERENCE.—For source of amounts attributable to certain aircraft and vessels, see section 861(e)."

1986—Subsec. (a)(6). Pub. L. 99–514, §1211(b)(1)(C), substituted "inventory property (within the meaning of section 865(h)(1))" for "personal property".

Subsec. (b). Pub. L. 99–514, §104(b)(12), substituted "the standard deduction" for "the zero bracket amount".

1981—Subsec. (a)(8). Pub. L. 97–34 added par. (8).

1977—Subsec. (b). Pub. L. 95–30 provided that, in the case of an individual who does not itemize deductions, an amount equal to the zero bracket amount shall be considered a deduction which cannot definitely be allocated to some item or class of gross income.

1976—Subsec. (a)(5), (6). Pub. L. 94–455, §1901(b)(26)(C), inserted "or exchange" after "sale".

Subsec. (a)(7). Pub. L. 94–455, §1036(b), added par. (7).

1971—Subsec. (c). Pub. L. 92–178 added subsec. (c).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–240 applicable to guarantees issued after Sept. 27, 2010, see section 2122(d) of Pub. L. 111–240, set out as a note under section 861 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 104(b)(12) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 1211(b)(1)(C) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, except as otherwise provided, see section 1211(c) of Pub. L. 99–514, set out as an Effective Date note under section 865 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to dispositions after June 18, 1980, in taxable years ending after such date, see section 831(i) of Pub. L. 97–34, set out as a note under section 897 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1036(b) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1976, see section 1036(c) of Pub. L. 94–455, set out as a note under section 861 of this title.

Amendment by section 1901(b)(26)(C) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–178 applicable to taxable years ending after Aug. 15, 1971, but only with respect to leases entered into after such date, see section 314(c) of Pub. L. 92–178, set out as a note under section 861 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendment by section 1211(b)(1)(C) of Pub. L. 99–514 to the extent application of such amendment would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(3), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

QUALIFIED RESEARCH AND EXPERIMENTAL EXPENDITURES; ALLOCATION AND APPORTIONMENT; DEFINITIONS; SPECIAL RULES; EFFECTIVE DATES

For allocation and apportionment of qualified research and experimental expenditures for purposes of sections 861 to 863 of this title, see section 4009 of Pub. L. 100–647, set out as a note under section 861 of this title.

1-YEAR MODIFICATION IN REGULATIONS PROVIDING FOR ALLOCATION OF RESEARCH AND EXPERIMENTAL EXPENDITURES

For rule governing allocation under subsec. (b) of this section of amounts allowable as a deduction for

qualified research and experimental expenditures during taxable years beginning after Aug. 1, 1986, and on or before Aug. 1, 1987, see section 1216 of Pub. L. 99–514, set out as a note under section 861 of this title.

ALLOCATION UNDER SECTION 861 OF RESEARCH AND EXPERIMENTAL EXPENDITURES

For purposes of subsec. (b) of this section, all amounts allowable as a deduction for qualified research and experimental expenditures are to be allocated to income from sources within the United States and deducted from such income in determining the amount of taxable income from sources within the United States for taxable years beginning after Aug. 13, 1983, and on or before Aug. 1, 1986, see section 126 of Pub. L. 98–369, set out as a note under section 861 of this title.

§863. Special rules for determining source

(a) Allocation under regulations

Items of gross income, expenses, losses, and deductions, other than those specified in sections 861(a) and 862(a), shall be allocated or apportioned to sources within or without the United States, under regulations prescribed by the Secretary. Where items of gross income are separately allocated to sources within the United States, there shall be deducted (for the purpose of computing the taxable income therefrom) the expenses, losses, and other deductions properly apportioned or allocated thereto and a ratable part of other expenses, losses, or other deductions which cannot definitely be allocated to some item or class of gross income. The remainder, if any, shall be included in full as taxable income from sources within the United States.

(b) Income partly from within and partly from without the United States

In the case of gross income derived from sources partly within and partly without the United States, the taxable income may first be computed by deducting the expenses, losses, or other deductions apportioned or allocated thereto and a ratable part of any expenses, losses, or other deductions which cannot definitely be allocated to some item or class of gross income; and the portion of such taxable income attributable to sources within the United States may be determined by processes or formulas of general apportionment prescribed by the Secretary. Gains, profits, and income—

(1) from services rendered partly within and partly without the United States,

(2) from the sale or exchange of inventory property (within the meaning of section 865(i)(1)) produced (in whole or in part) by the taxpayer within and sold or exchanged without the United States, or produced (in whole or in part) by the taxpayer without and sold or exchanged within the United States, or

(3) derived from the purchase of inventory property (within the meaning of section 865(i)(1)) within a possession of the United States and its sale or exchange within the United States,

shall be treated as derived partly from sources within and partly from sources without the United States.

(c) Source rule for certain transportation income

(1) Transportation beginning and ending in the United States

All transportation income attributable to transportation which begins and ends in the United States shall be treated as derived from sources within the United States.

(2) Other transportation having United States connection

(A) In general

50 percent of all transportation income attributable to transportation which—

(i) is not described in paragraph (1), and

(ii) begins or ends in the United States,

shall be treated as from sources in the United States.

(B) Special rule for personal service income

Subparagraph (A) shall not apply to any transportation income which is income derived from personal services performed by the taxpayer, unless such income is attributable to transportation which—

(i) begins in the United States and ends in a possession of the United States, or

(ii) begins in a possession of the United States and ends in the United States.

In the case of transportation income derived from, or in connection with, a vessel, this subparagraph shall only apply if the taxpayer is a citizen or resident alien.

(3) Transportation income

For purposes of this subsection, the term "transportation income" means any income derived from, or in connection with—

(A) the use (or hiring or leasing for use) of a vessel or aircraft, or

(B) the performance of services directly related to the use of a vessel or aircraft.

For purposes of the preceding sentence, the term "vessel or aircraft" includes any container used in connection with a vessel or aircraft.

(d) Source rules for space and certain ocean activities

(1) In general

Except as provided in regulations, any income derived from a space or ocean activity—

(A) if derived by a United States person, shall be sourced in the United States, and

(B) if derived by a person other than a United States person, shall be sourced outside the United States.

(2) Space or ocean activity

For purposes of paragraph (1)—

(A) In general

The term "space or ocean activity" means—

(i) any activity conducted in space, and

(ii) any activity conducted on or under water not within the jurisdiction (as recognized by the United States) of a foreign country, possession of the United States, or the United States.

Such term includes any activity conducted in Antarctica.

(B) Exception for certain activities

The term "space or ocean activity" shall not include—

(i) any activity giving rise to transportation income (as defined in section 863(c)),

(ii) any activity giving rise to international communications income (as defined in subsection (e)(2)), and

(iii) any activity with respect to mines, oil and gas wells, or other natural deposits to the extent within the United States or any foreign country or possession of the United States (as defined in section 638).

For purposes of applying section 638, the jurisdiction of any foreign country shall not include any jurisdiction not recognized by the United States.

(e) International communications income

(1) Source rules

(A) United States persons

In the case of any United States person, 50 percent of any international communications income shall be sourced in the United States and 50 percent of such income shall be sourced

outside the United States.

(B) Foreign persons

(i) In general

Except as provided in regulations or clause (ii), in the case of any person other than a United States person, any international communications income shall be sourced outside the United States.

(ii) Special rule for income attributable to office or fixed place of business in the United States

In the case of any person (other than a United States person) who maintains an office or other fixed place of business in the United States, any international communications income attributable to such office or other fixed place of business shall be sourced in the United States.

(2) Definition

For purposes of this section, the term "international communications income" includes all income derived from the transmission of communications or data from the United States to any foreign country (or possession of the United States) or from any foreign country (or possession of the United States) to the United States.

(Aug. 16, 1954, ch. 736, 68A Stat. 277; Pub. L. 94–455, title XIX, §§1901(b)(26)(C), (D), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1798, 1799, 1834; Pub. L. 98–369, div. A, title I, §124(a), July 18, 1984, 98 Stat. 646; Pub. L. 99–514, title XII, §§1211(b)(1)(A), 1212(a), (e), 1213(a), Oct. 22, 1986, 100 Stat. 2536, 2539, 2540; Pub. L. 100–647, title I, §1012(e)(3)(A), (f), Nov. 10, 1988, 102 Stat. 3500; Pub. L. 101–239, title VII, §7811(i)(2), Dec. 19, 1989, 103 Stat. 2409; Pub. L. 105–34, title XI, §1174(a)(2), Aug. 5, 1997, 111 Stat. 989.)

AMENDMENTS

1997—Subsec. (c)(2)(B). Pub. L. 105–34 inserted concluding provisions "In the case of transportation income derived from, or in connection with, a vessel, this subparagraph shall only apply if the taxpayer is a citizen or resident alien."

1989—Subsec. (b)(2), (3). Pub. L. 101–239 substituted "865(i)(1)" for "865(h)(1)".

1988—Pub. L. 100–647, §1012(e)(3)(A), substituted "Special rules for determining source" for "Item not specified in section 861 or 862" in section catchline.

Subsec. (e)(2). Pub. L. 100–647, §1012(f), substituted "foreign country (or possession of the United States)" for "foreign country" in two places.

1986—Subsec. (b)(1). Pub. L. 99–514, §1212(e), substituted "services" for "transportation or other services".

Subsec. (b)(2), (3). Pub. L. 99–514, §1211(b)(1)(A), substituted "inventory property (within the meaning of section 865(h)(1))" for "personal property".

Subsec. (c)(2). Pub. L. 99–514, §1212(a), amended par. (2) generally, in subpar. (A) substituting provisions relating to other transportation having United States connections for provisions relating to transportation between United States and any possession, and in subpar. (B) substituting provisions relating to special rule for personal service income for provisions relating to special rule for certain lessors of aircraft.

Subsecs. (d), (e). Pub. L. 99–514, §1213(a), added subsecs. (d) and (e).

1984—Subsec. (c). Pub. L. 98–369 added subsec. (c).

1976—Subsec. (a). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (b). Pub. L. 94–455, §§1901(b)(26)(C), (D), 1906(b)(13)(A), struck out "or his delegate" after "Secretary" in introductory provisions, and inserted "or exchange" after "sale" in pars. (2) and (3), and "or exchanged" after "sold" in par. (2) wherever appearing.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to remuneration for services performed in taxable years beginning after Dec. 31, 1997, see section 1174(c) of Pub. L. 105–34, set out as a note under section 7701 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1211(b)(1)(A) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, except as otherwise provided, see section 1211(c) of Pub. L. 99–514, set out as an Effective Date note under section 865 of this title.

Pub. L. 99–514, title XII, §1212(f), Oct. 22, 1986, 100 Stat. 2539, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting section 887 of this title and amending this section and sections 861, 872, and 883 of this title] shall apply to taxable years beginning after December 31, 1986.

"(2) SPECIAL RULE FOR CERTAIN LEASED PROPERTY.—The amendments made by subsections (a) and (d) [amending this section and section 861 of this title] shall not apply to any income attributable to property held by the taxpayer on January 1, 1986, if such property was first leased by the taxpayer before January 1, 1986, in a lease to which section 863(c)(2)(B) or 861(e) of the Internal Revenue Code of 1954 [now 1986] (as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]) applied.

"(3) SPECIAL RULE FOR CERTAIN SHIPS LEASED BY THE UNITED STATES NAVY.—

"(A) IN GENERAL.—In the case of any property described in subparagraph (B), paragraph (2) shall be applied by substituting '1987' for '1986' each place it appears.

"(B) PROPERTY TO WHICH PARAGRAPH APPLIES.—Property described in this subparagraph consists of 4 ships which are to be leased by the United States Navy and which are the subject of Internal Revenue Service rulings bearing the following dates and which involved the following amount of financing, respectively:

"March 5, 1986	$176,844,000
February 5, 1986	64,567,000
April 22, 1986	64,598,000
May 22, 1986	175,300,000."

Pub. L. 99–514, title XII, §1213(b), Oct. 22, 1986, 100 Stat. 2541, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1986."

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §124(b), July 18, 1984, 98 Stat. 647, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to transportation beginning after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(b)(26)(C), (D) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendments by sections 1211(b)(1)(A) and 1212(a) of Pub. L. 99–514 to the extent application of such amendments would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(3), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

QUALIFIED RESEARCH AND EXPERIMENTAL EXPENDITURES; ALLOCATION AND APPOINTMENT; DEFINITIONS; SPECIAL RULES; EFFECTIVE DATES

For allocation and apportionment of qualified research and experimental expenditures for purposes of sections 861 to 863 of this title, see section 4009 of Pub. L. 100–647, set out as a note under section 861 of this title.

1-YEAR MODIFICATION IN REGULATIONS PROVIDING FOR ALLOCATION OF RESEARCH AND EXPERIMENTAL EXPENDITURES

For rule governing allocation under subsec. (b) of this section of amounts allowable as a deduction for qualified research and experimental expenditures during taxable years beginning after Aug. 1, 1986, and on or before Aug. 1, 1987, see section 1216 of Pub. L. 99–514, set out as a note under section 861 of this title.

ALLOCATION UNDER SECTION 861 OF RESEARCH AND EXPERIMENTAL EXPENDITURES

For purposes of subsec. (b) of this section, all amounts allowable as a deduction for qualified research and experimental expenditures are to be allocated to income from sources within the United States and deducted from such income in determining the amount of taxable income from sources within the United States for taxable years beginning after Aug. 13, 1983, and on or before Aug. 1, 1986, see section 126 of Pub. L. 98–369, set out as a note under section 861 of this title.

§864. Definitions and special rules

(a) Produced

For purposes of this part, the term "produced" includes created, fabricated, manufactured, extracted, processed, cured, or aged.

(b) Trade or business within the United States

For purposes of this part, part II, and chapter 3, the term "trade or business within the United States" includes the performance of personal services within the United States at any time within the taxable year, but does not include—

(1) Performance of personal services for foreign employer

The performance of personal services—

(A) for a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, or

(B) for an office or place of business maintained in a foreign country or in a possession of the United States by an individual who is a citizen or resident of the United States or by a domestic partnership or a domestic corporation,

by a nonresident alien individual temporarily present in the United States for a period or periods not exceeding a total of 90 days during the taxable year and whose compensation for such services does not exceed in the aggregate $3,000.

(2) Trading in securities or commodities

(A) Stocks and securities

(i) In general

Trading in stocks or securities through a resident broker, commission agent, custodian, or other independent agent.

(ii) Trading for taxpayer's own account

Trading in stocks or securities for the taxpayer's own account, whether by the taxpayer or his employees or through a resident broker, commission agent, custodian, or other agent, and whether or not any such employee or agent has discretionary authority to make decisions in effecting the transactions. This clause shall not apply in the case of a dealer in stocks or securities.

(B) Commodities

(i) In general

Trading in commodities through a resident broker, commission agent, custodian, or other independent agent.

(ii) Trading for taxpayer's own account

Trading in commodities for the taxpayer's own account, whether by the taxpayer or his employees or through a resident broker, commission agent, custodian, or other agent, and whether or not any such employee or agent has discretionary authority to make decisions in effecting the transactions. This clause shall not apply in the case of a dealer in commodities.

(iii) Limitation

Clauses (i) and (ii) shall apply only if the commodities are of a kind customarily dealt in on an organized commodity exchange and if the transaction is of a kind customarily consummated at such place.

(C) Limitation

Subparagraphs (A)(i) and (B)(i) shall apply only if, at no time during the taxable year, the taxpayer has an office or other fixed place of business in the United States through which or by the direction of which the transactions in stocks or securities, or in commodities, as the case may be, are effected.

(c) Effectively connected income, etc.

(1) General rule

For purposes of this title—

(A) In the case of a nonresident alien individual or a foreign corporation engaged in trade or business within the United States during the taxable year, the rules set forth in paragraphs (2), (3), (4), (6), and (7) shall apply in determining the income, gain, or loss which shall be treated as effectively connected with the conduct of a trade or business within the United States.

(B) Except as provided in paragraph (6) or (7) or in section 871(d) or sections 882(d) and (e), in the case of a nonresident alien individual or a foreign corporation not engaged in trade or business within the United States during the taxable year, no income, gain, or loss shall be treated as effectively connected with the conduct of a trade or business within the United States.

(2) Periodical, etc., income from sources within United States—factors

In determining whether income from sources within the United States of the types described in section 871(a)(1), section 871(h), section 881(a), or section 881(c), or whether gain or loss from sources within the United States from the sale or exchange of capital assets, is effectively connected with the conduct of a trade or business within the United States, the factors taken into account shall include whether—

(A) the income, gain, or loss is derived from assets used in or held for use in the conduct of such trade or business, or

(B) the activities of such trade or business were a material factor in the realization of the income, gain, or loss.

In determining whether an asset is used in or held for use in the conduct of such trade or business or whether the activities of such trade or business were a material factor in realizing an item of income, gain, or loss, due regard shall be given to whether or not such asset or such income, gain, or loss was accounted for through such trade or business.

(3) Other income from sources within United States

All income, gain, or loss from sources within the United States (other than income, gain, or loss to which paragraph (2) applies) shall be treated as effectively connected with the conduct of a trade or business within the United States.

(4) Income from sources without United States

(A) Except as provided in subparagraphs (B) and (C), no income, gain, or loss from sources without the United States shall be treated as effectively connected with the conduct of a trade or business within the United States.

(B) Income, gain, or loss from sources without the United States shall be treated as effectively connected with the conduct of a trade or business within the United States by a nonresident alien individual or a foreign corporation if such person has an office or other fixed place of business within the United States to which such income, gain, or loss is attributable and such income, gain, or loss—

(i) consists of rents or royalties for the use of or for the privilege of using intangible property described in section 862(a)(4) derived in the active conduct of such trade or business;

(ii) consists of dividends, interest, or amounts received for the provision of guarantees of indebtedness, and either is derived in the active conduct of a banking, financing, or similar business within the United States or is received by a corporation the principal business of which is trading in stocks or securities for its own account; or

(iii) is derived from the sale or exchange (outside the United States) through such office or other fixed place of business of personal property described in section 1221(a)(1), except that this clause shall not apply if the property is sold or exchanged for use, consumption, or disposition outside the United States and an office or other fixed place of business of the taxpayer in a foreign country participated materially in such sale.

Any income or gain which is equivalent to any item of income or gain described in clause (i), (ii), or (iii) shall be treated in the same manner as such item for purposes of this subparagraph.

(C) In the case of a foreign corporation taxable under part I or part II of subchapter L, any income from sources without the United States which is attributable to its United States business shall be treated as effectively connected with the conduct of a trade or business within the United States.

(D) No income from sources without the United States shall be treated as effectively connected with the conduct of a trade or business within the United States if it either—

(i) consists of dividends, interest, or royalties paid by a foreign corporation in which the taxpayer owns (within the meaning of section 958(a)), or is considered as owning (by applying the ownership rules of section 958(b)), more than 50 percent of the total combined voting power of all classes of stock entitled to vote, or

(ii) is subpart F income within the meaning of section 952(a).

(5) Rules for application of paragraph (4)(B)

For purposes of subparagraph (B) of paragraph (4)—

(A) in determining whether a nonresident alien individual or a foreign corporation has an office or other fixed place of business, an office or other fixed place of business of an agent shall be disregarded unless such agent (i) has the authority to negotiate and conclude contracts in the name of the nonresident alien individual or foreign corporation and regularly exercises that authority or has a stock of merchandise from which he regularly fills orders on behalf of such individual or foreign corporation, and (ii) is not a general commission agent, broker, or other agent of independent status acting in the ordinary course of his business,

(B) income, gain, or loss shall not be considered as attributable to an office or other fixed place of business within the United States unless such office or fixed place of business is a material factor in the production of such income, gain, or loss and such office or fixed place of business regularly carries on activities of the type from which such income, gain, or loss is derived, and

(C) the income, gain, or loss which shall be attributable to an office or other fixed place of business within the United States shall be the income, gain, or loss property allocable thereto, but, in the case of a sale or exchange described in clause (iii) of such subparagraph, the income

which shall be treated as attributable to an office or other fixed place of business within the United States shall not exceed the income which would be derived from sources within the United States if the sale or exchange were made in the United States.

(6) Treatment of certain deferred payments, etc.

For purposes of this title, in the case of any income or gain of a nonresident alien individual or a foreign corporation which—

(A) is taken into account for any taxable year, but

(B) is attributable to a sale or exchange of property or the performance of services (or any other transaction) in any other taxable year,

the determination of whether such income or gain is taxable under section 871(b) or 882 (as the case may be) shall be made as if such income or gain were taken into account in such other taxable year and without regard to the requirement that the taxpayer be engaged in a trade or business within the United States during the taxable year referred to in subparagraph (A).

(7) Treatment of certain property transactions

For purposes of this title, if—

(A) any property ceases to be used or held for use in connection with the conduct of a trade or business within the United States, and

(B) such property is disposed of within 10 years after such cessation,

the determination of whether any income or gain attributable to such disposition is taxable under section 871(b) or 882 (as the case may be) shall be made as if such sale or exchange occurred immediately before such cessation and without regard to the requirement that the taxpayer be engaged in a trade or business within the United States during the taxable year for which such income or gain is taken into account.

(d) Treatment of related person factoring income

(1) In general

For purposes of the provisions set forth in paragraph (2), if any person acquires (directly or indirectly) a trade or service receivable from a related person, any income of such person from the trade or service receivable so acquired shall be treated as if it were interest on a loan to the obligor under the receivable.

(2) Provisions to which paragraph (1) applies

The provisions set forth in this paragraph are as follows:

(A) Section 904 (relating to limitation on foreign tax credit).

(B) Subpart F of part III of this subchapter (relating to controlled foreign corporations).

(3) Trade or service receivable

For purposes of this subsection, the term "trade or service receivable" means any account receivable or evidence of indebtedness arising out of—

(A) the disposition by a related person of property described in section 1221(a)(1), or

(B) the performance of services by a related person.

(4) Related person

For purposes of this subsection, the term "related person" means—

(A) any person who is a related person (within the meaning of section 267(b)), and

(B) any United States shareholder (as defined in section 951(b)) and any person who is a related person (within the meaning of section 267(b)) to such a shareholder.

(5) Certain provisions not to apply

(A) Certain exceptions

The following provisions shall not apply to any amount treated as interest under paragraph

(1) or (6):

(i) Subparagraphs (A)(iii)(II), (B)(ii), and (C)(iii)(II) of section 904(d)(2) (relating to exceptions for export financing interest).

(ii) Subparagraph (A) of section 954(b)(3) (relating to exception where foreign base company income is less than 5 percent or $1,000,000).

(iii) Subparagraph (B) of section 954(c)(2) (relating to certain export financing).

(iv) Clause (i) of section 954(c)(3)(A) (relating to certain income received from related persons).

(B) Special rules for possessions

An amount treated as interest under paragraph (1) shall not be treated as income described in subparagraph (A) or (B) of section 936(a)(1) unless such amount is from sources within a possession of the United States (determined after the application of paragraph (1)).

(6) Special rule for certain income from loans of a controlled foreign corporation

Any income of a controlled foreign corporation (within the meaning of section 957(a)) from a loan to a person for the purpose of financing—

(A) the purchase of property described in section 1221(a)(1) of a related person, or

(B) the payment for the performance of services by a related person,

shall be treated as interest described in paragraph (1).

(7) Exception for certain related persons doing business in same foreign country

Paragraph (1) shall not apply to any trade or service receivable acquired by any person from a related person if—

(A) the person acquiring such receivable and such related person are created or organized under the laws of the same foreign country and such related person has a substantial part of its assets used in its trade or business located in such same foreign country, and

(B) such related person would not have derived any foreign base company income (as defined in section 954(a), determined without regard to section 954(b)(3)(A)), or any income effectively connected with the conduct of a trade or business within the United States, from such receivable if it had been collected by such related person.

(8) Regulations

The Secretary shall prescribe such regulations as may be necessary to prevent the avoidance of the provisions of this subsection or section 956(b)(3).[1]

(e) Rules for allocating interest, etc.

For purposes of this subchapter—

(1) Treatment of affiliated groups

The taxable income of each member of an affiliated group shall be determined by allocating and apportioning interest expense of each member as if all members of such group were a single corporation.

(2) Gross income method may not be used for interest

All allocations and apportionments of interest expense shall be made on the basis of assets rather than gross income.

(3) Tax-exempt assets not taken into account

For purposes of allocating and apportioning any deductible expense, any tax-exempt asset (and any income from such an asset) shall not be taken into account. A similar rule shall apply in the case of the portion of any dividend (other than a qualifying dividend as defined in section 243(b)) equal to the deduction allowable under section 243 or 245(a) with respect to such dividend and in the case of a like portion of any stock the dividends on which would be so deductible and would not be qualifying dividends (as so defined).

(4) Basis of stock in nonaffiliated 10-percent owned corporations adjusted for earnings and profits changes

(A) In general

For purposes of allocating and apportioning expenses on the basis of assets, the adjusted basis of any stock in a nonaffiliated 10-percent owned corporation shall be—

(i) increased by the amount of the earnings and profits of such corporation attributable to such stock and accumulated during the period the taxpayer held such stock, or

(ii) reduced (but not below zero) by any deficit in earnings and profits of such corporation attributable to such stock for such period.

(B) Nonaffiliated 10-percent owned corporation

For purposes of this paragraph, the term "nonaffiliated 10-percent owned corporation" means any corporation if—

(i) such corporation is not included in the taxpayer's affiliated group, and

(ii) members of such affiliated group own 10 percent or more of the total combined voting power of all classes of stock of such corporation entitled to vote.

(C) Earnings and profits of lower tier corporations taken into account

(i) In general

If, by reason of holding stock in a nonaffiliated 10-percent owned corporation, the taxpayer is treated under clause (iii) as owning stock in another corporation with respect to which the stock ownership requirements of clause (ii) are met, the adjustment under subparagraph (A) shall include an adjustment for the amount of the earnings and profits (or deficit therein) of such other corporation which are attributable to the stock the taxpayer is so treated as owning and to the period during which the taxpayer is treated as owning such stock.

(ii) Stock ownership requirements

The stock ownership requirements of this clause are met with respect to any corporation if members of the taxpayer's affiliated group own (directly or through the application of clause (iii)) 10 percent or more of the total combined voting power of all classes of stock of such corporation entitled to vote.

(iii) Stock owned through entities

For purposes of this subparagraph, stock owned (directly or indirectly) by a corporation, partnership, or trust shall be treated as being owned proportionately by its shareholders, partners, or beneficiaries. Stock considered to be owned by a person by reason of the application of the preceding sentence, shall, for purposes of applying such sentence, be treated as actually owned by such person.

(D) Coordination with subpart F, etc.

For purposes of this paragraph, proper adjustment shall be made to the earnings and profits of any corporation to take into account any earnings and profits included in gross income under section 951 or under any other provision of this title and reflected in the adjusted basis of the stock.

(5) Affiliated group

For purposes of this subsection—

(A) In general

Except as provided in subparagraph (B), the term "affiliated group" has the meaning given such term by section 1504 (determined without regard to paragraph (4) of section 1504(b)). Notwithstanding the preceding sentence, a foreign corporation shall be treated as a member of the affiliated group if—

(i) more than 50 percent of the gross income of such foreign corporation for the taxable year is effectively connected with the conduct of a trade or business within the United States,

and

(ii) at least 80 percent of either the vote or value of all outstanding stock of such foreign corporation is owned directly or indirectly by members of the affiliated group (determined with regard to this sentence).

(B) Treatment of certain financial institutions

For purposes of subparagraph (A), any corporation described in subparagraph (C) shall be treated as an includible corporation for purposes of section 1504 only for purposes of applying such section separately to corporations so described. This subparagraph shall not apply for purposes of paragraph (6).

(C) Description

A corporation is described in this subparagraph if—

(i) such corporation is a financial institution described in section 581 or 591,

(ii) the business of such financial institution is predominantly with persons other than related persons (within the meaning of subsection (d)(4)) or their customers, and

(iii) such financial institution is required by State or Federal law to be operated separately from any other entity which is not such an institution.

(D) Treatment of bank holding companies

To the extent provided in regulations—

(i) a bank holding company (within the meaning of section 2(a) of the Bank Holding Company Act of 1956), and

(ii) any subsidiary of a financial institution described in section 581 or 591 or of any bank holding company if such subsidiary is predominantly engaged (directly or indirectly) in the active conduct of a banking, financing, or similar business,

shall be treated as a corporation described in subparagraph (C).

(6) Allocation and apportionment of other expenses

Expenses other than interest which are not directly allocable or apportioned to any specific income producing activity shall be allocated and apportioned as if all members of the affiliated group were a single corporation.

(7) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations providing—

(A) for the resourcing of income of any member of an affiliated group or modifications to the consolidated return regulations to the extent such resourcing or modification is necessary to carry out the purposes of this section,

(B) for direct allocation of interest expense incurred to carry out an integrated financial transaction to any interest (or interest-type income) derived from such transaction and in other circumstances where such allocation would be appropriate to carry out the purposes of this subsection,

(C) for the apportionment of expenses allocated to foreign source income among the members of the affiliated group and various categories of income described in section 904(d)(1),

(D) for direct allocation of interest expense in the case of indebtedness resulting in a disallowance under section 246A,

(E) for appropriate adjustments in the application of paragraph (3) in the case of an insurance company,

(F) preventing assets or interest expense from being taken into account more than once, and

(G) that this subsection shall not apply for purposes of any provision of this subchapter to the extent the Secretary determines that the application of this subsection for such purposes would not be appropriate.

(f) Election to allocate interest, etc. on worldwide basis

For purposes of this subchapter, at the election of the worldwide affiliated group—

(1) Allocation and apportionment of interest expense

(A) In general

The taxable income of each domestic corporation which is a member of a worldwide affiliated group shall be determined by allocating and apportioning interest expense of each member as if all members of such group were a single corporation.

(B) Treatment of worldwide affiliated group

The taxable income of the domestic members of a worldwide affiliated group from sources outside the United States shall be determined by allocating and apportioning the interest expense of such domestic members to such income in an amount equal to the excess (if any) of—

(i) the total interest expense of the worldwide affiliated group multiplied by the ratio which the foreign assets of the worldwide affiliated group bears to all the assets of the worldwide affiliated group, over

(ii) the interest expense of all foreign corporations which are members of the worldwide affiliated group to the extent such interest expense of such foreign corporations would have been allocated and apportioned to foreign source income if this subsection were applied to a group consisting of all the foreign corporations in such worldwide affiliated group.

(C) Worldwide affiliated group

For purposes of this paragraph, the term "worldwide affiliated group" means a group consisting of—

(i) the includible members of an affiliated group (as defined in section 1504(a), determined without regard to paragraphs (2) and (4) of section 1504(b)), and

(ii) all controlled foreign corporations in which such members in the aggregate meet the ownership requirements of section 1504(a)(2) either directly or indirectly through applying paragraph (2) of section 958(a) or through applying rules similar to the rules of such paragraph to stock owned directly or indirectly by domestic partnerships, trusts, or estates.

(2) Allocation and apportionment of other expenses

Expenses other than interest which are not directly allocable or apportioned to any specific income producing activity shall be allocated and apportioned as if all members of the affiliated group were a single corporation. For purposes of the preceding sentence, the term "affiliated group" has the meaning given such term by section 1504 (determined without regard to paragraph (4) of section 1504(b)).

(3) Treatment of tax-exempt assets; basis of stock in nonaffiliated 10-percent owned corporations

The rules of paragraphs (3) and (4) of subsection (e) shall apply for purposes of this subsection, except that paragraph (4) shall be applied on a worldwide affiliated group basis.

(4) Treatment of certain financial institutions

(A) In general

For purposes of paragraph (1), any corporation described in subparagraph (B) shall be treated as an includible corporation for purposes of section 1504 only for purposes of applying this subsection separately to corporations so described.

(B) Description

A corporation is described in this subparagraph if—

(i) such corporation is a financial institution described in section 581 or 591,

(ii) the business of such financial institution is predominantly with persons other than related persons (within the meaning of subsection (d)(4)) or their customers, and

(iii) such financial institution is required by State or Federal law to be operated separately from any other entity which is not such an institution.

(C) Treatment of bank and financial holding companies

To the extent provided in regulations—

(i) a bank holding company (within the meaning of section 2(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a)),

(ii) a financial holding company (within the meaning of section 2(p) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(p)), and

(iii) any subsidiary of a financial institution described in section 581 or 591, or of any such bank or financial holding company, if such subsidiary is predominantly engaged (directly or indirectly) in the active conduct of a banking, financing, or similar business,

shall be treated as a corporation described in subparagraph (B).

(5) Election to expand financial institution group of worldwide group

(A) In general

If a worldwide affiliated group elects the application of this subsection, all financial corporations which—

(i) are members of such worldwide affiliated group, but

(ii) are not corporations described in paragraph (4)(B),

shall be treated as described in paragraph (4)(B) for purposes of applying paragraph (4)(A). This subsection (other than this paragraph) shall apply to any such group in the same manner as this subsection (other than this paragraph) applies to the pre-election worldwide affiliated group of which such group is a part.

(B) Financial corporation

For purposes of this paragraph, the term "financial corporation" means any corporation if at least 80 percent of its gross income is income described in section 904(d)(2)(D)(ii) and the regulations thereunder which is derived from transactions with persons who are not related (within the meaning of section 267(b) or 707(b)(1)) to the corporation. For purposes of the preceding sentence, there shall be disregarded any item of income or gain from a transaction or series of transactions a principal purpose of which is the qualification of any corporation as a financial corporation.

(C) Anti-abuse rules

In the case of a corporation which is a member of an electing financial institution group, to the extent that such corporation—

(i) distributes dividends or makes other distributions with respect to its stock after the date of the enactment of this paragraph to any member of the pre-election worldwide affiliated group (other than to a member of the electing financial institution group) in excess of the greater of—

(I) its average annual dividend (expressed as a percentage of current earnings and profits) during the 5-taxable-year period ending with the taxable year preceding the taxable year, or

(II) 25 percent of its average annual earnings and profits for such 5-taxable-year period, or

(ii) deals with any person in any manner not clearly reflecting the income of the corporation (as determined under principles similar to the principles of section 482),

an amount of indebtedness of the electing financial institution group equal to the excess distribution or the understatement or overstatement of income, as the case may be, shall be

recharacterized (for the taxable year and subsequent taxable years) for purposes of this paragraph as indebtedness of the worldwide affiliated group (excluding the electing financial institution group). If a corporation has not been in existence for 5 taxable years, this subparagraph shall be applied with respect to the period it was in existence.

(D) Election

An election under this paragraph with respect to any financial institution group may be made only by the common parent of the pre-election worldwide affiliated group and may be made only for the first taxable year beginning after December 31, 2020, in which such affiliated group includes 1 or more financial corporations. Such an election, once made, shall apply to all financial corporations which are members of the electing financial institution group for such taxable year and all subsequent years unless revoked with the consent of the Secretary.

(E) Definitions relating to groups

For purposes of this paragraph—

(i) Pre-election worldwide affiliated group

The term "pre-election worldwide affiliated group" means, with respect to a corporation, the worldwide affiliated group of which such corporation would (but for an election under this paragraph) be a member for purposes of applying paragraph (1).

(ii) Electing financial institution group

The term "electing financial institution group" means the group of corporations to which this subsection applies separately by reason of the application of paragraph (4)(A) and which includes financial corporations by reason of an election under subparagraph (A).

(F) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out this subsection, including regulations—

(i) providing for the direct allocation of interest expense in other circumstances where such allocation would be appropriate to carry out the purposes of this subsection,

(ii) preventing assets or interest expense from being taken into account more than once, and

(iii) dealing with changes in members of any group (through acquisitions or otherwise) treated under this paragraph as an affiliated group for purposes of this subsection.

(6) Election

An election to have this subsection apply with respect to any worldwide affiliated group may be made only by the common parent of the domestic affiliated group referred to in paragraph (1)(C) and may be made only for the first taxable year beginning after December 31, 2020, in which a worldwide affiliated group exists which includes such affiliated group and at least 1 foreign corporation. Such an election, once made, shall apply to such common parent and all other corporations which are members of such worldwide affiliated group for such taxable year and all subsequent years unless revoked with the consent of the Secretary.

(g) Allocation of research and experimental expenditures

(1) In general

For purposes of sections 861(b), 862(b), and 863(b), qualified research and experimental expenditures shall be allocated and apportioned as follows:

(A) Any qualified research and experimental expenditures expended solely to meet legal requirements imposed by a political entity with respect to the improvement or marketing of specific products or processes for purposes not reasonably expected to generate gross income (beyond de minimis amounts) outside the jurisdiction of the political entity shall be allocated only to gross income from sources within such jurisdiction.

(B) In the case of any qualified research and experimental expenditures (not allocated under subparagraph (A)) to the extent—

(i) that such expenditures are attributable to activities conducted in the United States, 50 percent of such expenditures shall be allocated and apportioned to income from sources within the United States and deducted from such income in determining the amount of taxable income from sources within the United States, and

(ii) that such expenditures are attributable to activities conducted outside the United States, 50 percent of such expenditures shall be allocated and apportioned to income from sources outside the United States and deducted from such income in determining the amount of taxable income from sources outside the United States.

(C) The remaining portion of qualified research and experimental expenditures (not allocated under subparagraphs (A) and (B)) shall be apportioned, at the annual election of the taxpayer, on the basis of gross sales or gross income, except that, if the taxpayer elects to apportion on the basis of gross income, the amount apportioned to income from sources outside the United States shall at least be 30 percent of the amount which would be so apportioned on the basis of gross sales.

(2) Qualified research and experimental expenditures

For purposes of this section, the term "qualified research and experimental expenditures" means amounts which are research and experimental expenditures within the meaning of section 174. For purposes of this paragraph, rules similar to the rules of subsection (c) of section 174 shall apply. Any qualified research and experimental expenditures treated as deferred expenses under subsection (b) of section 174 shall be taken into account under this subsection for the taxable year for which such expenditures are allowed as a deduction under such subsection.

(3) Special rules for expenditures attributable to activities conducted in space, etc.

(A) In general

Any qualified research and experimental expenditures described in subparagraph (B)—

(i) if incurred by a United States person, shall be allocated and apportioned under this section in the same manner as if they were attributable to activities conducted in the United States, and

(ii) if incurred by a person other than a United States person, shall be allocated and apportioned under this section in the same manner as if they were attributable to activities conducted outside the United States.

(B) Description of expenditures

For purposes of subparagraph (A), qualified research and experimental expenditures are described in this subparagraph if such expenditures are attributable to activities conducted—

(i) in space,

(ii) on or under water not within the jurisdiction (as recognized by the United States) of a foreign country, possession of the United States, or the United States, or

(iii) in Antarctica.

(4) Affiliated group

(A) Except as provided in subparagraph (B), the allocation and apportionment required by paragraph (1) shall be determined as if all members of the affiliated group (as defined in subsection (e)(5)) were a single corporation.

(B) For purposes of the allocation and apportionment required by paragraph (1)—

(i) sales and gross income from products produced in whole or in part in a possession by an electing corporation (within the meaning of section 936(h)(5)(E)), and

(ii) dividends from an electing corporation,

shall not be taken into account, except that this subparagraph shall not apply to sales of (and gross income and dividends attributable to sales of) products with respect to which an election under section 936(h)(5)(F) is not in effect.

(C) The qualified research and experimental expenditures taken into account for purposes of paragraph (1) shall be adjusted to reflect the amount of such expenditures included in computing the cost-sharing amount (determined under section 936(h)(5)(C)(i)(I)).

(D) The Secretary may prescribe such regulations as may be necessary to carry out the purposes of this paragraph, including regulations providing for the source of gross income and the allocation and apportionment of deductions to take into account the adjustments required by subparagraph (B) or (C).

(E) Paragraph (6) of subsection (e) shall not apply to qualified research and experimental expenditures.

(5) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this subsection, including regulations relating to the determination of whether any expenses are attributable to activities conducted in the United States or outside the United States and regulations providing such adjustments to the provisions of this subsection as may be appropriate in the case of cost-sharing arrangements and contract research.

(6) Applicability

This subsection shall apply to the taxpayer's first taxable year (beginning on or before August 1, 1994) following the taxpayer's last taxable year to which Revenue Procedure 92–56 applies or would apply if the taxpayer elected the benefits of such Revenue Procedure.

(Aug. 16, 1954, ch. 736, 68A Stat. 278; Pub. L. 89–809, title I, §102(d), Nov. 13, 1966, 80 Stat. 1544; Pub. L. 94–455, title XIX, §1901(a)(113), Oct. 4, 1976, 90 Stat. 1783; Pub. L. 98–369, div. A, title I, §§123(a), 127(c), July 18, 1984, 98 Stat. 644, 651; Pub. L. 99–514, title XII, §§1201(d)(4), 1211(b)(2), 1215(a), (b)(1), 1221(a)(2), 1223(b)(1), 1242(a), (b), 1275(c)(7), title XVIII, §§1810(c)(2), (3), 1899A(21), Oct. 22, 1986, 100 Stat. 2525, 2536, 2544, 2545, 2550, 2558, 2580, 2599, 2824, 2959; Pub. L. 100–203, title X, §10242(b), Dec. 22, 1987, 101 Stat. 1330–423; Pub. L. 100–647, title I, §1012(a)(1)(B), (d)(7), (10), (g)(5), (h)(1), (2)(A), (3)–(6), (p)(30), (r), Nov. 10, 1988, 102 Stat. 3494, 3498, 3499, 3501–3503, 3521, 3525; Pub. L. 101–239, title VII, §7111, Dec. 19, 1989, 103 Stat. 2326; Pub. L. 101–508, title XI, §11401(a), Nov. 5, 1990, 104 Stat. 1388–472; Pub. L. 102–227, title I, §101(a), Dec. 11, 1991, 105 Stat. 1686; Pub. L. 103–66, title XIII, §13234, Aug. 10, 1993, 107 Stat. 504; Pub. L. 105–34, title XI, §1162(a), Aug. 5, 1997, 111 Stat. 987; Pub. L. 106–170, title V, §532(c)(2)(N)–(P), Dec. 17, 1999, 113 Stat. 1931; Pub. L. 106–519, §4(3), Nov. 15, 2000, 114 Stat. 2432; Pub. L. 108–357, title I, §101(b)(6), title IV, §§401(a), (b), 403(b)(6), 413(c)(12), title VIII, §894(a), Oct. 22, 2004, 118 Stat. 1423, 1488, 1491, 1494, 1507, 1647; Pub. L. 110–289, div. C, title III, §3093(a), (b), July 30, 2008, 122 Stat. 2912; Pub. L. 111–92, §15(a), (b), Nov. 6, 2009, 123 Stat. 2996; Pub. L. 111–147, title V, §551(a), Mar. 18, 2010, 124 Stat. 117; Pub. L. 111–226, title II, §216(a), Aug. 10, 2010, 124 Stat. 2400; Pub. L. 111–240, title II, §2122(c), Sept. 27, 2010, 124 Stat. 2568.)

REFERENCES IN TEXT

Section 956(b)(3), referred to in subsec. (d)(8), was redesignated section 956(c)(3) by Pub. L. 103–66, title XIII, §13232(a)(1), Aug. 10, 1993, 107 Stat. 501.

Section 2(a) of the Bank Holding Company Act of 1956, referred to in subsec. (e)(5)(D)(i), is classified to section 1841(a) of Title 12, Banks and Banking.

The date of the enactment of this paragraph, referred to in subsec. (f)(5)(C)(i), is the date of enactment of Pub. L. 108–357, which was approved Oct. 22, 2004.

AMENDMENTS

2010—Subsec. (c)(4)(B)(ii). Pub. L. 111–240 substituted "dividends, interest, or amounts received for the provision of guarantees of indebtedness" for "dividends or interest".

Subsec. (e)(5)(A). Pub. L. 111–226 inserted at end "Notwithstanding the preceding sentence, a foreign corporation shall be treated as a member of the affiliated group if—" and added cls. (i) and (ii).

Subsec. (f)(5)(D), (6). Pub. L. 111–147 substituted "December 31, 2020" for "December 31, 2017".

2009—Subsec. (f)(5)(D), (6). Pub. L. 111–92, §15(a), substituted "December 31, 2017" for "December 31,

2010".

Subsec. (f)(7). Pub. L. 111–92, §15(b), struck out par. (7). Text read as follows: "In the case of the first taxable year to which this subsection applies, the increase (if any) in the amount of the interest expense allocable to sources within the United States by reason of the application of this subsection shall be 30 percent of the amount of such increase determined without regard to this paragraph."

2008—Subsec. (f)(5)(D), (6). Pub. L. 110–289, §3093(a), substituted "December 31, 2010" for "December 31, 2008".

Subsec. (f)(7). Pub. L. 110–289, §3093(b), added par. (7).

2004—Subsec. (c)(4)(B). Pub. L. 108–357, §894(a), added concluding provisions.

Subsec. (d)(2). Pub. L. 108–357, §413(c)(12), redesignated subpars. (B) and (C) as (A) and (B), respectively, and struck out former subpar. (A) which read as follows: "Part III of subchapter G of this chapter (relating to foreign personal holding companies)."

Subsec. (d)(5)(A)(i). Pub. L. 108–357, §403(b)(6), substituted "(C)(iii)(II)" for "(C)(iii)(III)".

Subsec. (e)(3). Pub. L. 108–357, §101(b)(6), struck out "(A) In general" before "For purposes" and struck out heading and text of subpar. (B). Text read as follows: "For purposes of allocating and apportioning any interest expense, there shall not be taken into account any qualifying foreign trade property (as defined in section 943(a)) which is held by the taxpayer for lease or rental in the ordinary course of trade or business for use by the lessee outside the United States (as defined in section 943(b)(2))."

Subsec. (e)(7)(B). Pub. L. 108–357, §401(b)(1), inserted "and in other circumstances where such allocation would be appropriate to carry out the purposes of this subsection" before comma at end.

Subsec. (e)(7)(F), (G). Pub. L. 108–357, §401(b)(2), added subpar. (F) and redesignated former subpar. (F) as (G).

Subsecs. (f), (g). Pub. L. 108–357, §401(a), added subsec. (f) and redesignated former subsec. (f) as (g).

2000—Subsec. (e)(3). Pub. L. 106–519 designated existing provisions as subpar. (A), inserted heading, and added subpar. (B).

1999—Subsecs. (c)(4)(B)(iii), (d)(3)(A), (6)(A). Pub. L. 106–170 substituted "section 1221(a)(1)" for "section 1221(1)".

1997—Subsec. (b)(2)(A)(ii). Pub. L. 105–34 struck out ", or in the case of a corporation (other than a corporation which is, or but for section 542(c)(7), 542(c)(10), or 543(b)(1)(C) would be, a personal holding company) the principal business of which is trading in stocks or securities for its own account, if its principal office is in the United States" after "dealer in stocks or securities".

1993—Subsec. (f)(1)(B). Pub. L. 103–66, §13234(a), substituted "50 percent" for "64 percent" in cls. (i) and (ii).

Subsec. (f)(4)(D). Pub. L. 103–66, §13234(b)(2), substituted "subparagraph (B) or (C)" for "subparagraph (C)".

Subsec. (f)(5), (6). Pub. L. 103–66, §13234(b)(1), added pars. (5) and (6) and struck out heading and text of former par. (5). Text read as follows:

"(A) IN GENERAL.—This subsection shall apply to the taxpayer's first 3 taxable years beginning after August 1, 1989, and on or before August 1, 1992.

"(B) REDUCTION.—Notwithstanding subparagraph (A), in the case of the taxpayer's first taxable year beginning after August 1, 1991, this subsection shall only apply to qualified research and experimental expenditures incurred during the first 6 months of such taxable year."

1991—Subsec. (f)(5). Pub. L. 102–227 amended par. (5) generally. Prior to amendment, par. (5) read as follows: "This subsection shall apply to the taxpayer's first 2 taxable years beginning after August 1, 1989, and on or before August 1, 1991."

1990—Subsec. (f)(5). Pub. L. 101–508 substituted "Years" for "Year" in heading and amended text generally. Prior to amendment, text read as follows:

"(A) IN GENERAL.—Except as provided in this paragraph, this subsection shall apply to the taxpayer's first taxable year beginning after August 1, 1989, and before August 2, 1990.

"(B) REDUCTION.—Notwithstanding subparagraph (A), this subsection shall only apply to that portion of the qualified research and experimental expenditures for the taxable year referred to in subparagraph (A) which bears the same ratio to the total amount of such expenditures as—

"(i) the lesser of 9 months or the number of months in the taxable year, bears to

"(ii) the number of months in the taxable year."

1989—Subsec. (f). Pub. L. 101–239 added subsec. (f).

1988—Subsec. (b)(2)(A)(ii). Pub. L. 100–647, §1012(p)(30), substituted "section 542(c)(7), 542(c)(10)," for "section 542(c)(7)".

Subsec. (c)(2). Pub. L. 100–647, §1012(g)(5), struck out at end "In applying this paragraph and paragraph

(4), interest referred to in section 861(a)(1)(A) shall be considered income from sources within the United States."

Subsec. (c)(4)(B)(i), (ii). Pub. L. 100–647, §1012(d)(10), struck out "(including any gain or loss realized on the sale or exchange of such property)" after "section 862(a)(4)" in cl. (i) and ", or gain or loss from the sale or exchange of stock or notes, bonds, or other evidences of indebtedness" after "dividends or interest" in cl. (ii).

Subsec. (c)(4)(B)(iii). Pub. L. 100–647, §1012(d)(7), added cl. (iii).

Subsec. (c)(6). Pub. L. 100–647, §1012(r)(2), amended par. (6) generally. Prior to amendment, par. (6) read as follows: "For purposes of this title, any income or gain of a nonresident alien individual or a foreign corporation for any taxable year which is attributable to a sale or exchange of property or the performance of services (or any other transaction) in any other taxable year shall be treated as effectively connected with the conduct of a trade or business within the United States if it would have been so treated if such income or gain were taken into account in such other taxable year."

Subsec. (c)(7). Pub. L. 100–647, §1012(r)(1), amended par. (7) generally. Prior to amendment, par. (7) read as follows: "For purposes of this title, if any property ceases to be used or held for use in connection with the conduct of a trade or business within the United States, the determination of whether any income or gain attributable to a sale or exchange of such property occurring within 10 years after such cessation is effectively connected with the conduct of a trade or business within the United States shall be made as if such sale or exchange occurred immediately before such cessation."

Subsec. (d)(5)(A)(i). Pub. L. 100–647, §1012(a)(1)(B), substituted "(C)(iii)(III)" for "(C)(iii)".

Subsec. (e). Pub. L. 100–647, §1012(h)(6)(B), struck out "(except as provided in regulations)" after "subchapter".

Subsec. (e)(1). Pub. L. 100–647, §1012(h)(2)(A), struck out "from sources outside the United States" after "affiliated group".

Subsec. (e)(3). Pub. L. 100–647, §1012(h)(3), inserted sentence at end and struck out former last sentence which read as follows: "A similar rule shall apply in the case of any dividend (other than a qualifying dividend as defined in section 243(b)) for which a deduction is allowable under section 243 or 245(a) and any stock the dividends on which would be so deductible and would not be qualifying dividends (as so defined)."

Subsec. (e)(4). Pub. L. 100–647, §1012(h)(1), substituted "nonaffiliated 10-percent owned corporations" for "certain corporations" in heading and amended text generally. Prior to amendment, text read as follows: "For purposes of allocating and apportioning expenses on the basis of assets, the adjusted basis of any asset which is stock in a corporation which is not included in the affiliated group and in which members of the affiliated group own 10 percent or more of the total combined voting power of all classes of stock entitled to vote in such corporation shall be—

"(A) increased by the amount of the earnings and profits of such corporation attributable to such stock and accumulated during the period the taxpayer held such stock, or

"(B) reduced (but not below zero) by any deficit in earnings and profits of such corporation attributable to such stock for such period."

Subsec. (e)(5)(B). Pub. L. 100–647, §1012(h)(4)(B), inserted at end "This subparagraph shall not apply for purposes of paragraph (6)."

Subsec. (e)(5)(D). Pub. L. 100–647, §1012(h)(4)(A), added subpar. (D).

Subsec. (e)(6). Pub. L. 100–647, §1012(h)(5), substituted "directly allocable or apportioned" for "directly allocable and apportioned".

Subsec. (e)(7)(D) to (F). Pub. L. 100–647, §1012(h)(6)(A), added subpars. (D) to (F).

1987—Subsec. (c)(4)(C). Pub. L. 100–203 inserted "or part II" after "part I".

1986—Pub. L. 99–514, §1215(b)(1), inserted "and special rules" in section catchline.

Subsec. (c)(1)(A). Pub. L. 99–514, §1242(b)(1), inserted reference to pars. (6) and (7).

Subsec. (c)(1)(B). Pub. L. 99–514, §1242(b)(2), inserted "paragraph (6) or (7) or in".

Subsec. (c)(2). Pub. L. 99–514, §1899A(21), inserted a comma between "section 871(h)" and "section 881(a)".

Subsec. (c)(4)(B)(iii). Pub. L. 99–514, §1211(b)(2), struck out cl. (iii), which read as follows: "is derived from the sale or exchange (without the United States) through such office or other fixed place of business of personal property described in section 1221(1), except that this clause shall not apply if the property is sold or exchanged for use, consumption, or disposition outside the United States and an office or other fixed place of business of the taxpayer outside the United States participated materially in such sale or exchange."

Subsec. (c)(6), (7). Pub. L. 99–514, §1242(a), added pars. (6) and (7).

Subsec. (d)(5)(A)(i). Pub. L. 99–514, §1201(d)(4), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: "Subparagraphs (A), (B), (C), and (D) of section 904(d)(2) (relating to interest income to which separate limitation applies) and subparagraph (J) of section 904(d)(3) (relating to interest from

members of same affiliated group)."

Pub. L. 99–514, §1810(c)(3), inserted "and subparagraph (J) of section 904(d)(3) (relating to interest from members of same affiliated group)".

Subsec. (d)(5)(A)(ii). Pub. L. 99–514, §1223(b)(1), substituted "less than 5 percent or $1,000,000" for "less than 10 percent".

Subsec. (d)(5)(A)(iii). Pub. L. 99–514, §1221(a)(2), amended cl. (iii) generally, substituting "section 954(c)(2) (relating to certain export financing)" for "section 954(c)(3) (relating to certain income derived in active conduct of trade or business)".

Subsec. (d)(5)(A)(iv). Pub. L. 99–514, §1221(a)(2), amended cl. (iv) generally, substituting "Clause (i) of section 954(c)(3)(A) (relating to" for "Subparagraphs (A) and (B) of section 954(c)(4) (relating to exception for".

Subsec. (d)(5)(B). Pub. L. 99–514, §1275(c)(7), amended subpar. (B) generally, striking out cl. (i) heading, substituting "An amount" for "Any amount", and striking out cl. (ii), Virgin Islands corporations, which read as follows: "Subsection (b) of section 934 shall not apply to any amount treated as interest under paragraph (1) unless such amount is from sources within the Virgin Islands (determined after the application of paragraph (1))."

Subsec. (d)(7), (8). Pub. L. 99–514, §1810(c)(2), added par. (7) and redesignated former par. (7) as (8).

Subsec. (e). Pub. L. 99–514, §1215(a), added subsec. (e).

1984—Subsec. (c)(2). Pub. L. 98–369, §127(c), substituted "section 871(a)(1), section 871(h) section 881(a), or section 881(c)" for "section 871(a)(1) or section 881(a)".

Subsec. (d). Pub. L. 98–369, §123(a), added subsec. (d).

1976—Subsec. (a). Pub. L. 94–455, §1901(a)(113)(A), substituted in heading "Produced" for "Sale, etc." and struck out in text provisions relating to the definition of sale and sold.

Subsec. (c)(4)(B)(i). Pub. L. 94–455, §1901(a)(113)(B), substituted "sale or exchange" for "sale".

Subsec. (c)(4)(B)(iii). Pub. L. 94–455, §1901(a)(113)(B), (C), substituted "sold or exchanged" for "sold" and "sale or exchange" for "sale" wherever appearing.

Subsec. (c)(5)(C). Pub. L. 94–455, §1901(a)(113)(B), substituted "sale or exchange" for "sale" wherever appearing.

1966—Pub. L. 89–809 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–240 applicable to guarantees issued after Sept. 27, 2010, see section 2122(d) of Pub. L. 111–240, set out as a note under section 861 of this title.

Pub. L. 111–226, title II, §216(b), Aug. 10, 2010, 124 Stat. 2400, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 10, 2010]."

Pub. L. 111–147, title V, §551(b), Mar. 18, 2010, 124 Stat. 117, provided that: "The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Mar. 18, 2010]."

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–92, §15(c), Nov. 6, 2009, 123 Stat. 2996, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2010."

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–289, div. C, title III, §3093(c), July 30, 2008, 122 Stat. 2912, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2008."

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 101(b)(6) of Pub. L. 108–357 applicable to transactions after Dec. 31, 2004, see section 101(c) of Pub. L. 108–357, set out as a note under section 56 of this title.

Pub. L. 108–357, title IV, §401(c), Oct. 22, 2004, 118 Stat. 1491, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2008."

Pub. L. 108–357, title IV, §403(c), Oct. 22, 2004, 118 Stat. 1494, provided that: "The amendments made by this section [amending this section and section 904 of this title] shall apply to taxable years beginning after December 31, 2002."

Pub. L. 108–357, title IV, §403(d), as added by Pub. L. 109–135, title IV, §403(l), Dec. 21, 2005, 119 Stat. 2625, provided that: "If the taxpayer elects (at such time and in such form and manner as the Secretary of the Treasury may prescribe) to have the rules of this subsection apply—

"(1) the amendments made by this section [amending this section and section 904 of this title] shall not

apply to taxable years beginning after December 31, 2002, and before January 1, 2005, and

"(2) in the case of taxable years beginning after December 31, 2004, clause (iv) of section 904(d)(4)(C) of the Internal Revenue Code of 1986 (as amended by this section) shall be applied by substituting 'January 1, 2005' for 'January 1, 2003' both places it appears."

[Amendment by Pub. L. 109–135 adding section 403(d) of Pub. L. 108–357, set out above, effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as an Effective Date of 2005 Amendment note under section 26 of this title.]

Amendment by section 413(c)(12) of Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

Pub. L. 108–357, title VIII, §894(b), Oct. 22, 2004, 118 Stat. 1647, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 22, 2004]."

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–519 applicable to transactions after Sept. 30, 2000, with special rules relating to existing foreign sales corporations, see section 5 of Pub. L. 106–519, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XI, §1162(b), Aug. 5, 1997, 111 Stat. 987, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1997."

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102–227, title I, §101(b), Dec. 11, 1991, 105 Stat. 1686, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after August 1, 1989."

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, §11401(b), Nov. 5, 1990, 104 Stat. 1388–472, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after August 1, 1989."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to taxable years beginning after Dec. 31, 1987, see section 10242(d) of Pub. L. 100–203, set out as a note under section 816 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1201(d)(4) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, except as otherwise provided, see section 1201(e) of Pub. L. 99–514, set out as a note under section 904 of this title.

Amendment by section 1211(b)(2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, except as otherwise provided, see section 1211(c) of Pub. L. 99–514, set out as an Effective Date note under section 865 of this title.

Pub. L. 99–514, title XII, §1215(c), Oct. 22, 1986, 100 Stat. 2545, as amended by Pub. L. 100–647, title I, §1012(h)(7), Nov. 10, 1988, 102 Stat. 3504; Pub. L. 104–191, title V, §521(a), Aug. 21, 1996, 110 Stat. 2103, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1986.

"(2) TRANSITIONAL RULES.—

"(A) GENERAL PHASE-IN.—

"(i) IN GENERAL.—In the case of the 1st 3 taxable years of the taxpayer beginning after December 31, 1986, the amendments made by this section shall not apply to interest expenses paid or accrued by the taxpayer during the taxable year with respect to an aggregate amount of indebtedness which does not exceed the general phase-in amount.

"(ii) GENERAL PHASE-IN AMOUNT.—Except as provided in clause (iii), the general phase-in amount for purposes of clause (i) is the applicable percentage (determined under the following table) of the aggregate amount of indebtedness of the taxpayer outstanding on November 16, 1985:

"In the case of the:	**The applicable percentage is:**
1st taxable year	75
2nd taxable year	50
3rd taxable year	25.

"(iii) LOWER LIMIT WHERE TAXPAYER REDUCES INDEBTEDNESS.—For purposes of applying this subparagraph to interest expenses attributable to any month, the general phase-in amount shall in no event exceed the lowest amount of indebtedness of the taxpayer outstanding as of the close of any preceding month beginning after November 16, 1985. To the extent provided in regulations, the average amount of indebtedness outstanding during any month shall be used (in lieu of the amount outstanding as of the close of such month) for purposes of the preceding sentence.

"(B) CONSOLIDATION RULE NOT TO APPLY TO CERTAIN INTEREST.—

"(i) IN GENERAL.—In the case of the 1st 5 taxable years of the taxpayer beginning after December 31, 1986—

"(I) subparagraph (A) shall not apply for purposes of paragraph (1) of section 864(e) of the Internal Revenue Code of 1986 (as added by this section), but

"(II) such paragraph (1) shall not apply to interest expenses paid or accrued by the taxpayer during the taxable year with respect to an aggregate amount of indebtedness which does not exceed the special phase-in amount.

"(ii) SPECIAL PHASE-IN AMOUNT.—The special phase-in amount for purposes of clause (i) is the sum of—

"(I) the general phase-in amount as determined for purposes of subparagraph (A),

"(II) the 5-year phase-in amount, and

"(III) the 4-year phase-in amount.

For purposes of applying this subparagraph to interest expense attributable to any month, the special phase-in amount shall in no event exceed the limitation determined under subparagraph (A)(iii).

"(iii) 5-YEAR PHASE-IN AMOUNT.—The 5-year phase-in amount is the lesser of—

"(I) the applicable percentage (determined under the following table for purposes of this subclause) of the 5-year debt amount, or

"(II) the applicable percentage (determined under the following table for purposes of this subclause) of the 5-year debt amount reduced by paydowns:

"In the case of the:	**The applicable percentage for purposes of subclause (I) is:**	**The applicable percentage for purposes of subclause (II) is:**
1st taxable year	81/3	10
2nd taxable year	162/3	25
3rd taxable year	25	50

4th taxable year	331/3	100
5th taxable year	162/3	100.

"(iv) 4-YEAR PHASE-IN AMOUNT.—The 4-year phase-in amount is the lesser of—

"(I) the applicable percentage (determined under the following table for purposes of this subclause) of the 4-year debt amount, or

"(II) the applicable percentage (determined under the following table for purposes of this subclause) of the 4-year debt amount reduced by paydowns to the extent such paydowns exceed the 5-year debt amount:

"In the case of the:	The applicable percentage for purposes of subclause (I) is:	The applicable percentage for purposes of subclause (II) is:
1st taxable year	5	6¼
2nd taxable year	10	162/3
3rd taxable year	15	37½
4th taxable year	20	100
5th taxable year	0	0.

"(v) 5-YEAR DEBT AMOUNT.—The term '5-year debt amount' means the excess (if any) of—

"(I) the amount of the outstanding indebtedness of the taxpayer on May 29, 1985, over

"(II) the amount of the outstanding indebtedness of the taxpayer as of the close of December 31, 1983.

The 5-year debt amount shall not exceed the aggregate amount of indebtedness of the taxpayer outstanding on November 16, 1985.

"(vi) 4-YEAR DEBT AMOUNT.—The term '4-year debt amount' means the excess (if any) of—

"(I) the amount referred to in clause (v)(II), over

"(II) the amount of the outstanding indebtedness of the taxpayer as of the close of December 31, 1982.

The 4-year debt amount shall not exceed the aggregate amount of indebtedness of the taxpayer outstanding on November 16, 1985, reduced by the 5-year debt amount.

"(vii) PAYDOWNS.—For purposes of applying this subparagraph to interest expenses attributable to any month, the term 'paydowns' means the excess (if any) of—

"(I) the aggregate amount of indebtedness of the taxpayer outstanding on November 16, 1985, over

"(II) the lowest amount of indebtedness of the taxpayer outstanding as of the close of any preceding month beginning after November 16, 1985 (or, to the extent provided in regulations under subparagraph (A)(iii), the average amount of indebtedness outstanding during any such month).

"(C) COORDINATION OF SUBPARAGRAPHS (A) AND (B).—In applying subparagraph (B), there shall first be taken into account indebtedness to which subparagraph (A) applies.

"(D) SPECIAL RULES.—

"(i) In the case of the 1st 9 taxable years of the taxpayer beginning after December 31, 1986, the amendments made by this section shall not apply to interest expenses paid or accrued by the taxpayer during the taxable year with respect to an aggregate amount of indebtedness which does not exceed the applicable percentage (determined under the following table) of the indebtedness described in clause (iii) or (iv):

"In the case of the:	**The applicable percentage is:**
1st taxable year	90
2nd taxable year	80
3rd taxable year	70
4th taxable year	60
5th taxable year	50
6th taxable year	40
7th taxable year	30
8th taxable year	20
9th taxable year	10.

"(ii) The provisions of this subparagraph shall apply in lieu of the provisions of subparagraphs (A) and (B).

"(iii) INDEBTEDNESS OUTSTANDING ON MAY 29, 1985.—Indebtedness is described in this clause if it is indebtedness (which was outstanding on May 29, 1985) of a corporation incorporated on June 13, 1917, which has its principal place of business in Bartlesville, Oklahoma.

"(iv) INDEBTEDNESS OUTSTANDING ON MAY 29, 1985.—Indebtedness is described in this clause if it is indebtedness (which was outstanding on May 29, 1985) of a member of an affiliated group (as defined in section 1504(a) [of the Internal Revenue Code of 1986]), the common parent of which was incorporated on August 26, 1926, and has its principal place of business in Harrison, New York.

"(E) TREATMENT OF AFFILIATED GROUP.—For purposes of this paragraph, all members of the same affiliated group of corporations (as defined in section 864(e)(5)(A) of the Internal Revenue Code of 1986, as added by this section) shall be treated as 1 taxpayer whether or not such members filed a consolidated return.

"(F) ELECTION TO HAVE PARAGRAPH NOT APPLY.—A taxpayer may elect (at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe) to have this paragraph not apply. In the case of members of the same affiliated group (as so defined), such an election may be made only if each member consents to such election.

"(3) SPECIAL RULE.—

"(A) IN GENERAL.—In the case of a qualified corporation, in lieu of applying paragraph (2), the amendments made by this section shall not apply to interest expenses allocable to any indebtedness to the extent such indebtedness does not exceed $500,000,000 if—

"(i) the indebtedness was incurred to develop or improve existing property that is owned by the taxpayer on November 16, 1985, and was acquired with the intent to develop or improve the property,

"(ii) the loan agreement with respect to the indebtedness provides that the funds are to be utilized for purposes of developing or improving the above property, and

"(iii) the debt to equity ratio of the companies that join in the filing of the consolidated return is less than 15 percent.

"(B) QUALIFIED CORPORATION.—For purposes of subparagraph (A), the term 'qualified corporation' means a corporation—

"(i) which was incorporated in Delaware on June 29, 1964,

"(ii) the principal subsidiary of which is a resident of Arkansas, and

"(iii) which is a member of an affiliated group the average daily United States production of oil of which is less than 50,000 barrels and the average daily United States refining of which is less than 150,000 barrels.

"(4) SPECIAL RULES FOR SUBSIDIARY.—The amendments made by this section shall not apply to interest on up to the applicable dollar amount of indebtedness of a subsidiary incorporated on February 11, 1975, the indebtedness of which on May 6, 1986, included—

"(A) $100,000,000 face amount of 11¾ percent notes due in 1990,

"(B) $100,000,000 of 8¾ percent notes due in 1989,

"(C) 6¾ percent Japanese yen notes due in 1991, and

"(D) 53/8 percent Swiss franc bonds due in 1994.

For purposes of this paragraph, the term 'applicable dollar amount' means $600,000,000 in the case of taxable

years beginning in 1987 through 1991, $500,000,000 in the case of the taxable year beginning in 1992, $400,000,000 in the case of the taxable year beginning in 1993, $300,000,000 in the case of the taxable year beginning in 1994, $200,000,000 in the case of the taxable year beginning in 1995, $100,000,000 in the case of the taxable year beginning in 1996, and zero in the case of taxable years beginning after 1996.

"[(5) Repealed. Pub. L. 104–191, title V, §521(a), Aug. 21, 1996, 110 Stat. 2103.]

"(6) SPECIAL RULES FOR ALLOCATING GENERAL AND ADMINISTRATIVE EXPENSES.—

"(A) IN GENERAL.—In the case of an affiliated group of domestic corporations the common parent of which has its principal office in New Brunswick, New Jersey, and has a certificate of organization which was filed with the Secretary of the State of New Jersey on November 10, 1887, the amendments made by this section shall not apply to the phase-in percentage of general and administrative expenses paid or incurred in its 1st 3 taxable years beginning after December 31, 1986.

"(B) PHASE-IN PERCENTAGE.—For purposes of subparagraph (A):

"In the case of taxable years beginning in:	**The phase-in percentage is:**
1987	75
1988	50
1989	25."

[Pub. L. 104–191, title V, §521(b), Aug. 21, 1996, 110 Stat. 2103, provided that:

["(1) IN GENERAL.—The amendment made by this section [amending section 1215(c) of Pub. L. 99–514, set out above] shall apply to taxable years beginning after December 31, 1995.

["(2) SPECIAL RULE.—In the case of the first taxable year beginning after December 31, 1995, the pre-effective date portion of the interest expense of the corporation referred to in such paragraph (5) of such section 1215(c) [of Pub. L. 99–514] for such taxable year shall be allocated and apportioned without regard to such amendment. For purposes of the preceding sentence, the pre-effective date portion is the amount which bears the same ratio to the interest expense for such taxable year as the number of days during such taxable year before the date of the enactment of this Act [Aug. 21, 1996] bears to 366."]

Amendment by section 1221(a)(2) of Pub. L. 99–514 applicable to taxable years of foreign corporations beginning after Dec. 31, 1986, except as otherwise provided, see section 1221(g) of Pub. L. 99–514, set out as a note under section 954 of this title.

Pub. L. 99–514, title XII, §1223(c), Oct. 22, 1986, 100 Stat. 2558, provided that: "The amendments made by this section [amending this section and sections 881 and 954 of this title] shall apply to taxable years beginning after December 31, 1986."

Pub. L. 99–514, title XII, §1242(c), Oct. 22, 1986, 100 Stat. 2580, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1986."

Amendment by section 1275(c)(7) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99–514, set out as a note under section 931 of this title.

Amendment by section 1810(c)(2), (3) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §123(c), July 18, 1984, 98 Stat. 646, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 956 of this title] shall apply to accounts receivable and evidences of indebtedness transferred after March 1, 1984, in taxable years ending after such date.

"(2) TRANSITIONAL RULE.—The amendments made by this section shall not apply to accounts receivable and evidences of indebtedness acquired after March 1, 1984, and before March 1, 1994, by a Belgian corporation in existence on March 1, 1984, in any taxable year ending after such date, but only to the extent that the amount includible in gross income by reason of section 956 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] with respect to such corporation for all such taxable years is not reduced by reason of this paragraph by more than the lesser of—

"(A) $15,000,000 or

"(B) the amount of the Belgian corporation's adjusted basis on March 1, 1984, in stock of a foreign corporation formed to issue bonds outside the United States to the public."

Amendment by section 127(c) of Pub. L. 98–369 applicable to interest received after July 18, 1984, with respect to obligations issued after such date, in taxable years ending after such date, see section 127(g)(1) of Pub. L. 98–369, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, except that in applying section 864(c)(4)(B)(iii) of this title with respect to a binding contract entered into on or before Feb. 24, 1966, activities in the United States on or before such date in negotiating or carrying out such contract shall not be taken into account, see section 102(e)(1) of Pub. L. 89–809, set out as a note under section 861 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 1201(d)(4) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, and for nonapplication of amendments by sections 1211(b)(2) and 1242(a) of Pub. L. 99–514 to the extent application of such amendments would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2) to (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[1] *See References in Text note below.*

§865. Source rules for personal property sales

(a) General rule

Except as otherwise provided in this section, income from the sale of personal property—

(1) by a United States resident shall be sourced in the United States, or

(2) by a nonresident shall be sourced outside the United States.

(b) Exception for inventory property

In the case of income derived from the sale of inventory property—

(1) this section shall not apply, and

(2) such income shall be sourced under the rules of sections 861(a)(6), 862(a)(6), and 863.

Notwithstanding the preceding sentence, any income from the sale of any unprocessed timber which is a softwood and was cut from an area in the United States shall be sourced in the United States and the rules of sections 862(a)(6) and 863(b) shall not apply to any such income. For purposes of the preceding sentence, the term "unprocessed timber" means any log, cant, or similar form of timber.

(c) Exception for depreciable personal property

(1) In general

Gain (not in excess of the depreciation adjustments) from the sale of depreciable personal property shall be allocated between sources in the United States and sources outside the United States—

(A) by treating the same proportion of such gain as sourced in the United States as the United States depreciation adjustments with respect to such property bear to the total depreciation adjustments, and

(B) by treating the remaining portion of such gain as sourced outside the United States.

(2) Gain in excess of depreciation

Gain (in excess of the depreciation adjustments) from the sale of depreciable personal property shall be sourced as if such property were inventory property.

(3) United States depreciation adjustments

For purposes of this subsection—

(A) In general

The term "United States depreciation adjustments" means the portion of the depreciation adjustments to the adjusted basis of the property which are attributable to the depreciation deductions allowable in computing taxable income from sources in the United States.

(B) Special rule for certain property

Except in the case of property of a kind described in section 168(g)(4), if, for any taxable year—

(i) such property is used predominantly in the United States, or

(ii) such property is used predominantly outside the United States,

all of the depreciation deductions allowable for such year shall be treated as having been allocated to income from sources in the United States (or, where clause (ii) applies, from sources outside the United States).

(4) Other definitions

For purposes of this subsection—

(A) Depreciable personal property

The term "depreciable personal property" means any personal property if the adjusted basis of such property includes depreciation adjustments.

(B) Depreciation adjustments

The term "depreciation adjustments" means adjustments reflected in the adjusted basis of any property on account of depreciation deductions (whether allowed with respect to such property or other property and whether allowed to the taxpayer or to any other person).

(C) Depreciation deductions

The term "depreciation deductions" means any deductions for depreciation or amortization or any other deduction allowable under any provision of this chapter which treats an otherwise capital expenditure as a deductible expense.

(d) Exception for intangibles

(1) In general

In the case of any sale of an intangible—

(A) this section shall apply only to the extent the payments in consideration of such sale are not contingent on the productivity, use, or disposition of the intangible, and

(B) to the extent such payments are so contingent, the source of such payments shall be determined under this part in the same manner as if such payments were royalties.

(2) Intangible

For purposes of paragraph (1), the term "intangible" means any patent, copyright, secret process

or formula, goodwill, trademark, trade brand, franchise, or other like property.

(3) Special rule in the case of goodwill

To the extent this section applies to the sale of goodwill, payments in consideration of such sale shall be treated as from sources in the country in which such goodwill was generated.

(4) Coordination with subsection (c)

(A) Gain not in excess of depreciation adjustments sourced under subsection (c)

Notwithstanding paragraph (1), any gain from the sale of an intangible shall be sourced under subsection (c) to the extent such gain does not exceed the depreciation adjustments with respect to such intangible.

(B) Subsection (c)(2) not to apply to intangibles

Paragraph (2) of subsection (c) shall not apply to any gain from the sale of an intangible.

(e) Special rules for sales through offices or fixed places of business

(1) Sales by residents

(A) In general

In the case of income not sourced under subsection (b), (c), (d)(1)(B) or (3), or (f), if a United States resident maintains an office or other fixed place of business in a foreign country, income from sales of personal property attributable to such office or other fixed place of business shall be sourced outside the United States.

(B) Tax must be imposed

Subparagraph (A) shall not apply unless an income tax equal to at least 10 percent of the income from the sale is actually paid to a foreign country with respect to such income.

(2) Sales by nonresidents

(A) In general

Notwithstanding any other provisions of this part, if a nonresident maintains an office or other fixed place of business in the United States, income from any sale of personal property (including inventory property) attributable to such office or other fixed place of business shall be sourced in the United States. The preceding sentence shall not apply for purposes of section 971 (defining export trade corporation).

(B) Exception

Subparagraph (A) shall not apply to any sale of inventory property which is sold for use, disposition, or consumption outside the United States if an office or other fixed place of business of the taxpayer in a foreign country materially participated in the sale.

(3) Sales attributable to an office or other fixed place of business

The principles of section 864(c)(5) shall apply in determining whether a taxpayer has an office or other fixed place of business and whether a sale is attributable to such an office or other fixed place of business.

(f) Stock of affiliates

If—

(1) a United States resident sells stock in an affiliate which is a foreign corporation,

(2) such sale occurs in a foreign country in which such affiliate is engaged in the active conduct of a trade or business, and

(3) more than 50 percent of the gross income of such affiliate for the 3-year period ending with the close of such affiliate's taxable year immediately preceding the year in which the sale occurred was derived from the active conduct of a trade or business in such foreign country,

any gain from such sale shall be sourced outside the United States. For purposes of paragraphs (2)

and (3), the United States resident may elect to treat an affiliate and all other corporations which are wholly owned (directly or indirectly) by the affiliate as one corporation.

(g) United States resident; nonresident

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection—

(A) United States resident

The term "United States resident" means—

(i) any individual who—

(I) is a United States citizen or a resident alien and does not have a tax home (as defined in section 911(d)(3)) in a foreign country, or

(II) is a nonresident alien and has a tax home (as so defined) in the United States, and

(ii) any corporation, trust, or estate which is a United States person (as defined in section 7701(a)(30)).

(B) Nonresident

The term "nonresident" means any person other than a United States resident.

(2) Special rules for United States citizens and resident aliens

For purposes of this section, a United States citizen or resident alien shall not be treated as a nonresident with respect to any sale of personal property unless an income tax equal to at least 10 percent of the gain derived from such sale is actually paid to a foreign country with respect to that gain.

(3) Special rule for certain stock sales by residents of Puerto Rico

Paragraph (2) shall not apply to the sale by an individual who was a bona fide resident of Puerto Rico during the entire taxable year of stock in a corporation if—

(A) such corporation is engaged in the active conduct of a trade or business in Puerto Rico, and

(B) more than 50 percent of its gross income for the 3-year period ending with the close of such corporation's taxable year immediately preceding the year in which such sale occurred was derived from the active conduct of a trade or business in Puerto Rico.

For purposes of the preceding sentence, the taxpayer may elect to treat a corporation and all other corporations which are wholly owned (directly or indirectly) by such corporation as one corporation.

(h) Treatment of gains from sale of certain stock or intangibles and from certain liquidations

(1) In general

In the case of gain to which this subsection applies—

(A) such gain shall be sourced outside the United States, but

(B) subsections (a), (b), and (c) of section 904 and sections 902, 907, and 960 shall be applied separately with respect to such gain.

(2) Gain to which subsection applies

This subsection shall apply to—

(A) Gain from sale of certain stock or intangibles

Any gain—

(i) which is from the sale of stock in a foreign corporation or an intangible (as defined in subsection (d)(2)) and which would otherwise be sourced in the United States under this section,

(ii) which, under a treaty obligation of the United States (applied without regard to this

section), would be sourced outside the United States, and

(iii) with respect to which the taxpayer chooses the benefits of this subsection.

(B) Gain from liquidation in possession

Any gain which is derived from the receipt of any distribution in liquidation of a corporation—

(i) which is organized in a possession of the United States, and

(ii) more than 50 percent of the gross income of which during the 3-taxable year period ending with the close of the taxable year immediately preceding the taxable year in which the distribution is received is from the active conduct of a trade or business in such possession.

(i) Other definitions

For purposes of this section—

(1) Inventory property

The term "inventory property" means personal property described in paragraph (1) of section 1221(a).

(2) Sale includes exchange

The term "sale" includes an exchange or any other disposition.

(3) Treatment of possessions

Any possession of the United States shall be treated as a foreign country.

(4) Affiliate

The term "affiliate" means a member of the same affiliated group (within the meaning of section 1504(a) without regard to section 1504(b)).

(5) Treatment of partnerships

In the case of a partnership, except as provided in regulations, this section shall be applied at the partner level.

(j) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purpose of this section, including regulations—

(1) relating to the treatment of losses from sales of personal property,

(2) applying the rules of this section to income derived from trading in futures contracts, forward contracts, options contracts, and other instruments, and

(3) providing that, subject to such conditions (which may include provisions comparable to section 877) as may be provided in such regulations, subsections (e)(1)(B) and (g)(2) shall not apply for purposes of sections 931, 933, and 936.

(k) Cross references

(1) For provisions relating to the characterization as dividends for source purposes of gains from the sale of stock in certain foreign corporations, see section 1248.

(2) For sourcing of income from certain foreign currency transactions, see section 988.

(Added Pub. L. 99–514, title XII, §1211(a), Oct. 22, 1986, 100 Stat. 2533; amended Pub. L. 100–647, title I, §1012(d)(1)–(6), (8), (9), (11), (12), Nov. 10, 1988, 102 Stat. 3497–3499; Pub. L. 101–508, title XI, §11813(b)(18), Nov. 5, 1990, 104 Stat. 1388–555; Pub. L. 103–66, title XIII, §13239(c), Aug. 10, 1993, 107 Stat. 509; Pub. L. 104–188, title I, §1704(f)(4)(A), Aug. 20, 1996, 110 Stat. 1880; Pub. L. 106–170, title V, §532(c)(1)(E), Dec. 17, 1999, 113 Stat. 1930.)

AMENDMENTS

1999—Subsec. (i)(1). Pub. L. 106–170 substituted "section 1221(a)" for "section 1221".

1996—Subsec. (b)(2). Pub. L. 104–188 substituted "863" for "863(b)".

1993—Subsec. (b). Pub. L. 103–66 inserted at end "Notwithstanding the preceding sentence, any income from the sale of any unprocessed timber which is a softwood and was cut from an area in the United States

shall be sourced in the United States and the rules of sections 862(a)(6) and 863(b) shall not apply to any such income. For purposes of the preceding sentence, the term 'unprocessed timber' means any log, cant, or similar form of timber."

1990—Subsec. (c)(3)(B). Pub. L. 101–508 substituted "section 168(g)(4)" for "section 48(a)(2)(B)".

1988—Subsec. (d)(2). Pub. L. 100–647, §1012(d)(12), inserted "franchise," after "trade brand,".

Subsec. (d)(4). Pub. L. 100–647, §1012(d)(1), added par. (4).

Subsec. (e)(1)(A). Pub. L. 100–647, §1012(d)(2), (9), substituted "(d)(1)(B) or (3)" for "(d)" and "in a foreign country" for first reference to "outside the United States".

Subsec. (e)(2)(B). Pub. L. 100–647, §1012(d)(5), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "Subparagraph (A) shall not apply to—

"(i) any sale of inventory property which is sold for use, disposition, or consumption outside the United States if an office or other fixed place of business of the taxpayer outside the United States materially participated in the sale, or

"(ii) any amount included in gross income under section 951(a)(1)(A)."

Subsec. (f). Pub. L. 100–647, §1012(d)(4), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: "If—

"(1) a United States resident sells stock in an affiliate which is a foreign corporation,

"(2) such affiliate is engaged in the active conduct of a trade or business, and

"(3) such sale occurs in the foreign country in which the affiliate derived more than 50 percent of its gross income for the 3-year period ending with the close of the affiliate's taxable year immediately preceding the year during which such sale occurred,

any gain from such sale shall be sourced outside the United States."

Subsec. (g)(1)(A)(i). Pub. L. 100–647, §1012(d)(11), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: "any individual who has a tax home (as defined in section 911(d)(3)) in the United States, and".

Subsec. (g)(1)(A)(ii). Pub. L. 100–647, §1012(d)(3)(A), struck out "partnership," after "corporation,".

Subsec. (g)(3). Pub. L. 100–647, §1012(d)(6)(A), added par. (3).

Subsec. (h). Pub. L. 100–647, §1012(d)(8), added subsec. (h) and redesignated former subsec. (h) as (i).

Pub. L. 100–647, §1012(d)(3)(B), added par. (5) to subsec. (h) prior to redesignation as subsec. (i).

Subsec. (i). Pub. L. 100–647, §1012(d)(8), redesignated former subsec. (h) as (i). Former subsec. (i) redesignated (j).

Pub. L. 100–647, §1012(d)(6)(B), added par. (3) to subsec. (i) prior to redesignation as subsec. (j).

Subsec. (i)(5). Pub. L. 100–647, §1012(d)(3)(B), added par. (5) to subsec. (h) prior to redesignation as subsec. (i).

Subsec. (j). Pub. L. 100–647, §1012(d)(8), redesignated former subsec. (i) as (j). Former subsec. (j) redesignated (k).

Subsec. (j)(3). Pub. L. 100–647, §1012(d)(6)(B), added par. (3) to subsec. (i) prior to redesignation as subsec. (j).

Subsec. (k). Pub. L. 100–647, §1012(d)(8), redesignated former subsec. (j) as (k).

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, §1704(f)(4)(B), Aug. 20, 1996, 110 Stat. 1880, provided that: "The amendment made by subparagraph (A) [amending this section] shall take effect as if included in the amendments made by section 1211 of the Tax Reform Act of 1986 [Pub. L. 99–514]."

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13239(e), Aug. 10, 1993, 107 Stat. 509, provided that: "The amendments made by this section [amending this section and sections 927, 954, and 993 of this title] shall apply to sales, exchanges, or other dispositions after the date of the enactment of this Act [Aug. 10, 1993]."

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and

any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1012(d)(5), Nov. 10, 1988, 102 Stat. 3497, provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1987.

Amendment by section 1012(d)(1)–(4), (6), (8), (9), (11), (12) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Pub. L. 99–514, title XII, §1211(c), Oct. 22, 1986, 100 Stat. 2536, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this section, amending sections 861 to 864, 871, 881, and 904 of this title, and enacting provisions set out below] shall apply to taxable years beginning after December 31, 1986.

"(2) SPECIAL RULE FOR FOREIGN PERSONS.—In the case of any foreign person other than any controlled foreign corporations (within the meaning of section 957(a) of the Internal Revenue Code of 1954 [now 1986]), the amendments made by this section shall apply to transactions entered into after March 18, 1986."

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendment by section 1211(a) of Pub. L. 99–514 (enacting this section) to the extent application of such amendment would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(3), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

STUDY OF SOURCE RULES FOR SALES OF INVENTORY PROPERTY

Pub. L. 99–514, title XII, §1211(d), Oct. 22, 1986, 100 Stat. 2536, directed Secretary of the Treasury or his delegate to conduct a study of source rules for sales of inventory property and, not later than Sept. 30, 1987 (due date extended to Jan. 1, 1992, by Pub. L. 101–508, title XI, §11831(b), Nov. 5, 1990, 104 Stat. 1388–559), to submit to Committee on Ways and Means of House of Representatives and Committee on Finance of Senate a report of such study (together with recommendations he deemed advisable).

PART II—NONRESIDENT ALIENS AND FOREIGN CORPORATIONS

Subpart

A. Nonresident alien individuals.

B. Foreign corporations.

C. Tax on gross transportation income.

D. Miscellaneous provisions.

AMENDMENTS

1986—Pub. L. 99–514, title XII, §1212(b)(2), Oct. 22, 1986, 100 Stat. 2538, added item for subpart C and redesignated item for former subpart C as D.

SUBPART A—NONRESIDENT ALIEN INDIVIDUALS

Sec.

871. Tax on nonresident alien individuals.
872. Gross income.
873. Deductions.
874. Allowance of deductions and credits.
875. Partnerships; beneficiaries of estates and trusts.
876. Alien residents of Puerto Rico, Guam, American Samoa, or the Northern Mariana Islands.
877. Expatriation to avoid tax.
877A. Tax responsibilities of expatriation.
878. Foreign educational, charitable, and certain other exempt organizations.
879. Tax treatment of certain community income in the case of nonresident alien individuals.

AMENDMENTS

2008—Pub. L. 110–245, title III, §301(f), June 17, 2008, 122 Stat. 1647, added item 877A.

1986—Pub. L. 99–514, title XII, §1272(d)(13), Oct. 22, 1986, 100 Stat. 2595, inserted ", Guam, American Samoa, or the Northern Mariana Islands" in item 876.

1984—Pub. L. 98–369, div. A, title I, §139(b)(2), July 18, 1984, 98 Stat. 677, substituted "nonresident alien individuals" for "a resident or citizen of the United States who is married to a nonresident alien individual" in item 879.

1976—Pub. L. 94–455, title X, §1012(b)(3)(A), Oct. 4, 1976, 90 Stat. 1614, added item 879.

1966—Pub. L. 89–809, title I, §103(e)(2), (f)(2), Nov. 13, 1966, 80 Stat. 1551, 1552, inserted "; beneficiaries of estates and trusts" in item 875, added item 877, and redesignated former item 877 as 878.

§871. Tax on nonresident alien individuals

(a) Income not connected with United States business—30 percent tax

(1) Income other than capital gains

Except as provided in subsection (h), there is hereby imposed for each taxable year a tax of 30 percent of the amount received from sources within the United States by a nonresident alien individual as—

(A) interest (other than original issue discount as defined in section 1273), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other fixed or determinable annual or periodical gains, profits, and income,

(B) gains described in section 631(b) or (c), and gains on transfers described in section 1235 made on or before October 4, 1966,

(C) in the case of—

(i) a sale or exchange of an original issue discount obligation, the amount of the original issue discount accruing while such obligation was held by the nonresident alien individual (to the extent such discount was not theretofore taken into account under clause (ii)), and

(ii) a payment on an original issue discount obligation, an amount equal to the original issue discount accruing while such obligation was held by the nonresident alien individual (except that such original issue discount shall be taken into account under this clause only to the extent such discount was not theretofore taken into account under this clause and only to the extent that the tax thereon does not exceed the payment less the tax imposed by subparagraph (A) thereon), and

(D) gains from the sale or exchange after October 4, 1966, of patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other like property, or of any interest in any such property, to the extent such gains are from payments which are contingent on the productivity, use, or disposition of the property or interest sold or exchanged,

but only to the extent the amount so received is not effectively connected with the conduct of a trade or business within the United States.

(2) Capital gains of aliens present in the United States 183 days or more

In the case of a nonresident alien individual present in the United States for a period or periods aggregating 183 days or more during the taxable year, there is hereby imposed for such year a tax of 30 percent of the amount by which his gains, derived from sources within the United States, from the sale or exchange at any time during such year of capital assets exceed his losses, allocable to sources within the United States, from the sale or exchange at any time during such year of capital assets. For purposes of this paragraph, gains and losses shall be taken into account only if, and to the extent that, they would be recognized and taken into account if such gains and losses were effectively connected with the conduct of a trade or business within the United States, except that such gains and losses shall be determined without regard to section 1202 and such losses shall be determined without the benefits of the capital loss carryover provided in section 1212. Any gain or loss which is taken into account in determining the tax under paragraph (1) or subsection (b) shall not be taken into account in determining the tax under this paragraph. For purposes of the 183-day requirement of this paragraph, a nonresident alien individual not engaged in trade or business within the United States who has not established a taxable year for any prior period shall be treated as having a taxable year which is the calendar year.

(3) Taxation of social security benefits

For purposes of this section and section 1441—

(A) 85 percent of any social security benefit (as defined in section 86(d)) shall be included in gross income (notwithstanding section 207 of the Social Security Act), and

(B) section 86 shall not apply.

For treatment of certain citizens of possessions of the United States, see section 932(c).[1]

(b) Income connected with United States business—graduated rate of tax

(1) Imposition of tax

A nonresident alien individual engaged in trade or business within the United States during the taxable year shall be taxable as provided in section 1 or 55 on his taxable income which is effectively connected with the conduct of a trade or business within the United States.

(2) Determination of taxable income

In determining taxable income for purposes of paragraph (1), gross income includes only gross income which is effectively connected with the conduct of a trade or business within the United States.

(c) Participants in certain exchange or training programs

For purposes of this section, a nonresident alien individual who (without regard to this subsection) is not engaged in trade or business within the United States and who is temporarily present in the United States as a nonimmigrant under subparagraph (F), (J), (M), or (Q) of section 101(a)(15) of the Immigration and Nationality Act, as amended (8 U.S.C. 1101(a)(15)(F), (J), (M), or (Q)), shall be treated as a nonresident alien individual engaged in trade or business within the United States, and any income described in the second sentence of section 1441(b) which is received by such individual shall, to the extent derived from sources within the United States, be treated as effectively connected with the conduct of a trade or business within the United States.

(d) Election to treat real property income as income connected with United States business

(1) In general

A nonresident alien individual who during the taxable year derives any income—

(A) from real property held for the production of income and located in the United States, or from any interest in such real property, including (i) gains from the sale or exchange of such real property or an interest therein, (ii) rents or royalties from mines, wells, or other natural deposits, and (iii) gains described in section 631(b) or (c), and

(B) which, but for this subsection, would not be treated as income which is effectively

connected with the conduct of a trade or business within the United States,

may elect for such taxable year to treat all such income as income which is effectively connected with the conduct of a trade or business within the United States. In such case, such income shall be taxable as provided in subsection (b)(1) whether or not such individual is engaged in trade or business within the United States during the taxable year. An election under this paragraph for any taxable year shall remain in effect for all subsequent taxable years, except that it may be revoked with the consent of the Secretary with respect to any taxable year.

(2) Election after revocation

If an election has been made under paragraph (1) and such election has been revoked, a new election may not be made under such paragraph for any taxable year before the 5th taxable year which begins after the first taxable year for which such revocation is effective, unless the Secretary consents to such new election.

(3) Form and time of election and revocation

An election under paragraph (1), and any revocation of such an election, may be made only in such manner and at such time as the Secretary may by regulations prescribe.

[(e) Repealed. Pub. L. 99–514, title XII, §1211(b)(5), Oct. 22, 1986, 100 Stat. 2536]

(f) Certain annuities received under qualified plans

(1) In general

For purposes of this section, gross income does not include any amount received as an annuity under a qualified annuity plan described in section 403(a)(1), or from a qualified trust described in section 401(a) which is exempt from tax under section 501(a), if—

(A) all of the personal services by reason of which the annuity is payable were either—

(i) personal services performed outside the United States by an individual who, at the time of performance of such personal services, was a nonresident alien, or

(ii) personal services described in section 864(b)(1) performed within the United States by such individual, and

(B) at the time the first amount is paid as an annuity under the annuity plan or by the trust, 90 percent or more of the employees for whom contributions or benefits are provided under such annuity plan, or under the plan or plans of which the trust is a part, are citizens or residents of the United States.

(2) Exclusion

Income received during the taxable year which would be excluded from gross income under this subsection but for the requirement of paragraph (1)(B) shall not be included in gross income if—

(A) the recipient's country of residence grants a substantially equivalent exclusion to residents and citizens of the United States; or

(B) the recipient's country of residence is a beneficiary developing country under title V of the Trade Act of 1974 (19 U.S.C. 2461 et seq.).

(g) Special rules for original issue discount

For purposes of this section and section 881—

(1) Original issue discount obligation

(A) In general

Except as provided in subparagraph (B), the term "original issue discount obligation" means any bond or other evidence of indebtedness having original issue discount (within the meaning of section 1273).

(B) Exceptions

The term "original issue discount obligation" shall not include—

(i) Certain short-term obligations

Any obligation payable 183 days or less from the date of original issue (without regard to the period held by the taxpayer).

(ii) Tax-exempt obligations

Any obligation the interest on which is exempt from tax under section 103 or under any other provision of law without regard to the identity of the holder.

(2) Determination of portion of original issue discount accruing during any period

The determination of the amount of the original issue discount which accrues during any period shall be made under the rules of section 1272 (or the corresponding provisions of prior law) without regard to any exception for short-term obligations.

(3) Source of original issue discount

Except to the extent provided in regulations prescribed by the Secretary, the determination of whether any amount described in subsection (a)(1)(C) is from sources within the United States shall be made at the time of the payment (or sale or exchange) as if such payment (or sale or exchange) involved the payment of interest.

(4) Stripped bonds

The provisions of section 1286 (relating to the treatment of stripped bonds and stripped coupons as obligations with original issue discount) shall apply for purposes of this section.

(h) Repeal of tax on interest of nonresident alien individuals received from certain portfolio debt investments

(1) In general

In the case of any portfolio interest received by a nonresident individual from sources within the United States, no tax shall be imposed under paragraph (1)(A) or (1)(C) of subsection (a).

(2) Portfolio interest

For purposes of this subsection, the term "portfolio interest" means any interest (including original issue discount) which—

(A) would be subject to tax under subsection (a) but for this subsection, and

(B) is paid on an obligation—

(i) which is in registered form, and

(ii) with respect to which—

(I) the United States person who would otherwise be required to deduct and withhold tax from such interest under section 1441(a) receives a statement (which meets the requirements of paragraph (5)) that the beneficial owner of the obligation is not a United States person, or

(II) the Secretary has determined that such a statement is not required in order to carry out the purposes of this subsection.

(3) Portfolio interest not to include interest received by 10-percent shareholders

For purposes of this subsection—

(A) In general

The term "portfolio interest" shall not include any interest described in paragraph (2) which is received by a 10-percent shareholder.

(B) 10-Percent shareholder

The term "10-percent shareholder" means—

(i) in the case of an obligation issued by a corporation, any person who owns 10 percent or more of the total combined voting power of all classes of stock of such corporation entitled to vote, or

(ii) in the case of an obligation issued by a partnership, any person who owns 10 percent or

more of the capital or profits interest in such partnership.

(C) Attribution rules

For purposes of determining ownership of stock under subparagraph (B)(i) the rules of section 318(a) shall apply, except that—

(i) section 318(a)(2)(C) shall be applied without regard to the 50-percent limitation therein,

(ii) section 318(a)(3)(C) shall be applied—

(I) without regard to the 50-percent limitation therein; and

(II) in any case where such section would not apply but for subclause (I), by considering a corporation as owning the stock (other than stock in such corporation) which is owned by or for any shareholder of such corporation in that proportion which the value of the stock which such shareholder owns in such corporation bears to the value of all stock in such corporation, and

(iii) any stock which a person is treated as owning after application of section 318(a)(4) shall not, for purposes of applying paragraphs (2) and (3) of section 318(a), be treated as actually owned by such person.

Under regulations prescribed by the Secretary, rules similar to the rules of the preceding sentence shall be applied in determining the ownership of the capital or profits interest in a partnership for purposes of subparagraph (B)(ii).

(4) Portfolio interest not to include certain contingent interest

For purposes of this subsection—

(A) In general

Except as otherwise provided in this paragraph, the term "portfolio interest" shall not include—

(i) any interest if the amount of such interest is determined by reference to—

(I) any receipts, sales or other cash flow of the debtor or a related person,

(II) any income or profits of the debtor or a related person,

(III) any change in value of any property of the debtor or a related person, or

(IV) any dividend, partnership distributions, or similar payments made by the debtor or a related person, or

(ii) any other type of contingent interest that is identified by the Secretary by regulation, where a denial of the portfolio interest exemption is necessary or appropriate to prevent avoidance of Federal income tax.

(B) Related person

The term "related person" means any person who is related to the debtor within the meaning of section 267(b) or 707(b)(1), or who is a party to any arrangement undertaken for a purpose of avoiding the application of this paragraph.

(C) Exceptions

Subparagraph (A)(i) shall not apply to—

(i) any amount of interest solely by reason of the fact that the timing of any interest or principal payment is subject to a contingency,

(ii) any amount of interest solely by reason of the fact that the interest is paid with respect to nonrecourse or limited recourse indebtedness,

(iii) any amount of interest all or substantially all of which is determined by reference to any other amount of interest not described in subparagraph (A) (or by reference to the principal amount of indebtedness on which such other interest is paid),

(iv) any amount of interest solely by reason of the fact that the debtor or a related person enters into a hedging transaction to manage the risk of interest rate or currency fluctuations

with respect to such interest,

(v) any amount of interest determined by reference to—

(I) changes in the value of property (including stock) that is actively traded (within the meaning of section 1092(d)) other than property described in section 897(c)(1) or (g),

(II) the yield on property described in subclause (I), other than a debt instrument that pays interest described in subparagraph (A), or stock or other property that represents a beneficial interest in the debtor or a related person, or

(III) changes in any index of the value of property described in subclause (I) or of the yield on property described in subclause (II), and

(vi) any other type of interest identified by the Secretary by regulation.

(D) Exception for certain existing indebtedness

Subparagraph (A) shall not apply to any interest paid or accrued with respect to any indebtedness with a fixed term—

(i) which was issued on or before April 7, 1993, or

(ii) which was issued after such date pursuant to a written binding contract in effect on such date and at all times thereafter before such indebtedness was issued.

(5) Certain statements

A statement with respect to any obligation meets the requirements of this paragraph if such statement is made by—

(A) the beneficial owner of such obligation, or

(B) a securities clearing organization, a bank, or other financial institution that holds customers' securities in the ordinary course of its trade or business.

The preceding sentence shall not apply to any statement with respect to payment of interest on any obligation by any person if, at least one month before such payment, the Secretary has published a determination that any statement from such person (or any class including such person) does not meet the requirements of this paragraph.

(6) Secretary may provide subsection not to apply in cases of inadequate information exchange

(A) In general

If the Secretary determines that the exchange of information between the United States and a foreign country is inadequate to prevent evasion of the United States income tax by United States persons, the Secretary may provide in writing (and publish a statement) that the provisions of this subsection shall not apply to payments of interest to any person within such foreign country (or payments addressed to, or for the account of, persons within such foreign country) during the period—

(i) beginning on the date specified by the Secretary, and

(ii) ending on the date that the Secretary determines that the exchange of information between the United States and the foreign country is adequate to prevent the evasion of United States income tax by United States persons.

(B) Exception for certain obligations

Subparagraph (A) shall not apply to the payment of interest on any obligation which is issued on or before the date of the publication of the Secretary's determination under such subparagraph.

(7) Registered form

For purposes of this subsection, the term "registered form" has the same meaning given such term by section 163(f).

(i) Tax not to apply to certain interest and dividends

(1) In general

No tax shall be imposed under paragraph (1)(A) or (1)(C) of subsection (a) on any amount described in paragraph (2).

(2) Amounts to which paragraph (1) applies

The amounts described in this paragraph are as follows:

(A) Interest on deposits, if such interest is not effectively connected with the conduct of a trade or business within the United States.

(B) The active foreign business percentage of—

(i) any dividend paid by an existing 80/20 company, and

(ii) any interest paid by an existing 80/20 company.

(C) Income derived by a foreign central bank of issue from bankers' acceptances.

(D) Dividends paid by a foreign corporation which are treated under section 861(a)(2)(B) as income from sources within the United States.

(3) Deposits

For purposes of paragraph (2), the term "deposits" means amounts which are—

(A) deposits with persons carrying on the banking business,

(B) deposits or withdrawable accounts with savings institutions chartered and supervised as savings and loan or similar associations under Federal or State law, but only to the extent that amounts paid or credited on such deposits or accounts are deductible under section 591 (determined without regard to sections 265 and 291) in computing the taxable income of such institutions, and

(C) amounts held by an insurance company under an agreement to pay interest thereon.

(j) Exemption for certain gambling winnings

No tax shall be imposed under paragraph (1)(A) of subsection (a) on the proceeds from a wager placed in any of the following games: blackjack, baccarat, craps, roulette, or big-6 wheel. The preceding sentence shall not apply in any case where the Secretary determines by regulation that the collection of the tax is administratively feasible.

(k) Exemption for certain dividends of regulated investment companies

(1) Interest-related dividends

(A) In general

Except as provided in subparagraph (B), no tax shall be imposed under paragraph (1)(A) of subsection (a) on any interest-related dividend received from a regulated investment company which meets the requirements of section 852(a) for the taxable year with respect to which the dividend is paid.

(B) Exceptions

Subparagraph (A) shall not apply—

(i) to any interest-related dividend received from a regulated investment company by a person to the extent such dividend is attributable to interest (other than interest described in subparagraph (E)(i) or (iii)) received by such company on indebtedness issued by such person or by any corporation or partnership with respect to which such person is a 10-percent shareholder,

(ii) to any interest-related dividend with respect to stock of a regulated investment company unless the person who would otherwise be required to deduct and withhold tax from such dividend under chapter 3 receives a statement (which meets requirements similar to the requirements of subsection (h)(5)) that the beneficial owner of such stock is not a United States person, and

(iii) to any interest-related dividend paid to any person within a foreign country (or any interest-related dividend payment addressed to, or for the account of, persons within such

foreign country) during any period described in subsection (h)(6) with respect to such country.

Clause (iii) shall not apply to any dividend with respect to any stock which was acquired on or before the date of the publication of the Secretary's determination under subsection (h)(6).

(C) Interest-related dividend

For purposes of this paragraph—

(i) In general

Except as provided in clause (ii), an interest related dividend is any dividend, or part thereof, which is reported by the company as an interest related dividend in written statements furnished to its shareholders.

(ii) Excess reported amounts

If the aggregate reported amount with respect to the company for any taxable year exceeds the qualified net interest income of the company for such taxable year, an interest related dividend is the excess of—

(I) the reported interest related dividend amount, over

(II) the excess reported amount which is allocable to such reported interest related dividend amount.

(iii) Allocation of excess reported amount

(I) In general

Except as provided in subclause (II), the excess reported amount (if any) which is allocable to the reported interest related dividend amount is that portion of the excess reported amount which bears the same ratio to the excess reported amount as the reported interest related dividend amount bears to the aggregate reported amount.

(II) Special rule for noncalendar year taxpayers

In the case of any taxable year which does not begin and end in the same calendar year, if the post-December reported amount equals or exceeds the excess reported amount for such taxable year, subclause (I) shall be applied by substituting "post-December reported amount" for "aggregate reported amount" and no excess reported amount shall be allocated to any dividend paid on or before December 31 of such taxable year.

(iv) Definitions

For purposes of this subparagraph—

(I) Reported interest related dividend amount

The term "reported interest related dividend amount" means the amount reported to its shareholders under clause (i) as an interest related dividend.

(II) Excess reported amount

The term "excess reported amount" means the excess of the aggregate reported amount over the qualified net interest income of the company for the taxable year.

(III) Aggregate reported amount

The term "aggregate reported amount" means the aggregate amount of dividends reported by the company under clause (i) as interest related dividends for the taxable year (including interest related dividends paid after the close of the taxable year described in section 855).

(IV) Post-December reported amount

The term "post-December reported amount" means the aggregate reported amount determined by taking into account only dividends paid after December 31 of the taxable year.

(v) Termination

The term "interest related dividend" shall not include any dividend with respect to any taxable year of the company beginning after December 31, 2013.

(D) Qualified net interest income

For purposes of subparagraph (C), the term "qualified net interest income" means the qualified interest income of the regulated investment company reduced by the deductions properly allocable to such income.

(E) Qualified interest income

For purposes of subparagraph (D), the term "qualified interest income" means the sum of the following amounts derived by the regulated investment company from sources within the United States:

(i) Any amount includible in gross income as original issue discount (within the meaning of section 1273) on an obligation payable 183 days or less from the date of original issue (without regard to the period held by the company).

(ii) Any interest includible in gross income (including amounts recognized as ordinary income in respect of original issue discount or market discount or acquisition discount under part V of subchapter P and such other amounts as regulations may provide) on an obligation which is in registered form; except that this clause shall not apply to—

(I) any interest on an obligation issued by a corporation or partnership if the regulated investment company is a 10-percent shareholder in such corporation or partnership, and

(II) any interest which is treated as not being portfolio interest under the rules of subsection (h)(4).

(iii) Any interest referred to in subsection (i)(2)(A) (without regard to the trade or business of the regulated investment company).

(iv) Any interest-related dividend includable in gross income with respect to stock of another regulated investment company.

(F) 10-percent shareholder

For purposes of this paragraph, the term "10-percent shareholder" has the meaning given such term by subsection (h)(3)(B).

(2) Short-term capital gain dividends

(A) In general

Except as provided in subparagraph (B), no tax shall be imposed under paragraph (1)(A) of subsection (a) on any short-term capital gain dividend received from a regulated investment company which meets the requirements of section 852(a) for the taxable year with respect to which the dividend is paid.

(B) Exception for aliens taxable under subsection (a)(2)

Subparagraph (A) shall not apply in the case of any nonresident alien individual subject to tax under subsection (a)(2).

(C) Short-term capital gain dividend

For purposes of this paragraph—

(i) In general

Except as provided in clause (ii), the term "short-term capital gain dividend" means any dividend, or part thereof, which is reported by the company as a short-term capital gain dividend in written statements furnished to its shareholders.

(ii) Excess reported amounts

If the aggregate reported amount with respect to the company for any taxable year exceeds the qualified short-term gain of the company for such taxable year, the term "short-term

capital gain dividend" means the excess of—

(I) the reported short-term capital gain dividend amount, over

(II) the excess reported amount which is allocable to such reported short-term capital gain dividend amount.

(iii) Allocation of excess reported amount

(I) In general

Except as provided in subclause (II), the excess reported amount (if any) which is allocable to the reported short-term capital gain dividend amount is that portion of the excess reported amount which bears the same ratio to the excess reported amount as the reported short-term capital gain dividend amount bears to the aggregate reported amount.

(II) Special rule for noncalendar year taxpayers

In the case of any taxable year which does not begin and end in the same calendar year, if the post-December reported amount equals or exceeds the excess reported amount for such taxable year, subclause (I) shall be applied by substituting "post-December reported amount" for "aggregate reported amount" and no excess reported amount shall be allocated to any dividend paid on or before December 31 of such taxable year.

(iv) Definitions

For purposes of this subparagraph—

(I) Reported short-term capital gain dividend amount

The term "reported short-term capital gain dividend amount" means the amount reported to its shareholders under clause (i) as a short-term capital gain dividend.

(II) Excess reported amount

The term "excess reported amount" means the excess of the aggregate reported amount over the qualified short-term gain of the company for the taxable year.

(III) Aggregate reported amount

The term "aggregate reported amount" means the aggregate amount of dividends reported by the company under clause (i) as short-term capital gain dividends for the taxable year (including short-term capital gain dividends paid after the close of the taxable year described in section 855).

(IV) Post-December reported amount

The term "post-December reported amount" means the aggregate reported amount determined by taking into account only dividends paid after December 31 of the taxable year.

(v) Termination

The term "short-term capital gain dividend" shall not include any dividend with respect to any taxable year of the company beginning after December 31, 2013.

(D) Qualified short-term gain

For purposes of subparagraph (C), the term "qualified short-term gain" means the excess of the net short-term capital gain of the regulated investment company for the taxable year over the net long-term capital loss (if any) of such company for such taxable year. For purposes of this subparagraph, the net short-term capital gain of the regulated investment company shall be computed by treating any short-term capital gain dividend includible in gross income with respect to stock of another regulated investment company as a short-term capital gain.

(E) Certain distributions

In the case of a distribution to which section 897 does not apply by reason of the second sentence of section 897(h)(1), the amount which would be treated as a short-term capital gain dividend to the shareholder (without regard to this subparagraph)—

(i) shall not be treated as a short-term capital gain dividend, and

(ii) shall be included in such shareholder's gross income as a dividend from the regulated investment company.

(l) Rules relating to existing 80/20 companies

For purposes of this subsection and subsection (i)(2)(B)—

(1) Existing 80/20 company

(A) In general

The term "existing 80/20 company" means any corporation if—

(i) such corporation met the 80-percent foreign business requirements of section 861(c)(1) (as in effect before the date of the enactment of this subsection) for such corporation's last taxable year beginning before January 1, 2011,

(ii) such corporation meets the 80-percent foreign business requirements of subparagraph (B) with respect to each taxable year after the taxable year referred to in clause (i), and

(iii) there has not been an addition of a substantial line of business with respect to such corporation after the date of the enactment of this subsection.

(B) Foreign business requirements

(i) In general

Except as provided in clause (iv), a corporation meets the 80-percent foreign business requirements of this subparagraph if it is shown to the satisfaction of the Secretary that at least 80 percent of the gross income from all sources of such corporation for the testing period is active foreign business income.

(ii) Active foreign business income

For purposes of clause (i), the term "active foreign business income" means gross income which—

(I) is derived from sources outside the United States (as determined under this subchapter), and

(II) is attributable to the active conduct of a trade or business in a foreign country or possession of the United States.

(iii) Testing period

For purposes of this subsection, the term "testing period" means the 3-year period ending with the close of the taxable year of the corporation preceding the payment (or such part of such period as may be applicable). If the corporation has no gross income for such 3-year period (or part thereof), the testing period shall be the taxable year in which the payment is made.

(iv) Transition rule

In the case of a taxable year for which the testing period includes 1 or more taxable years beginning before January 1, 2011—

(I) a corporation meets the 80-percent foreign business requirements of this subparagraph if and only if the weighted average of—

(aa) the percentage of the corporation's gross income from all sources that is active foreign business income (as defined in subparagraph (B) of section 861(c)(1) (as in effect before the date of the enactment of this subsection)) for the portion of the testing period that includes taxable years beginning before January 1, 2011, and

(bb) the percentage of the corporation's gross income from all sources that is active foreign business income (as defined in clause (ii) of this subparagraph) for the portion of the testing period, if any, that includes taxable years beginning on or after January 1, 2011,

is at least 80 percent, and

(II) the active foreign business percentage for such taxable year shall equal the weighted average percentage determined under subclause (I).

(2) Active foreign business percentage

Except as provided in paragraph (1)(B)(iv), the term "active foreign business percentage" means, with respect to any existing 80/20 company, the percentage which—

(A) the active foreign business income of such company for the testing period, is of

(B) the gross income of such company for the testing period from all sources.

(3) Aggregation rules

For purposes of applying paragraph (1) (other than subparagraphs (A)(i) and (B)(iv) thereof) and paragraph (2)—

(A) In general

The corporation referred to in paragraph (1)(A) and all of such corporation's subsidiaries shall be treated as one corporation.

(B) Subsidiaries

For purposes of subparagraph (A), the term "subsidiary" means any corporation in which the corporation referred to in subparagraph (A) owns (directly or indirectly) stock meeting the requirements of section 1504(a)(2) (determined by substituting "50 percent" for "80 percent" each place it appears and without regard to section 1504(b)(3)).

(4) Regulations

The Secretary may issue such regulations or other guidance as is necessary or appropriate to carry out the purposes of this section, including regulations or other guidance which provide for the proper application of the aggregation rules described in paragraph (3).

(m) Treatment of dividend equivalent payments

(1) In general

For purposes of subsection (a), sections 881 and 4948(a), and chapters 3 and 4, a dividend equivalent shall be treated as a dividend from sources within the United States.

(2) Dividend equivalent

For purposes of this subsection, the term "dividend equivalent" means—

(A) any substitute dividend made pursuant to a securities lending or a sale-repurchase transaction that (directly or indirectly) is contingent upon, or determined by reference to, the payment of a dividend from sources within the United States,

(B) any payment made pursuant to a specified notional principal contract that (directly or indirectly) is contingent upon, or determined by reference to, the payment of a dividend from sources within the United States, and

(C) any other payment determined by the Secretary to be substantially similar to a payment described in subparagraph (A) or (B).

(3) Specified notional principal contract

For purposes of this subsection, the term "specified notional principal contract" means—

(A) any notional principal contract if—

(i) in connection with entering into such contract, any long party to the contract transfers the underlying security to any short party to the contract,

(ii) in connection with the termination of such contract, any short party to the contract transfers the underlying security to any long party to the contract,

(iii) the underlying security is not readily tradable on an established securities market,

(iv) in connection with entering into such contract, the underlying security is posted as collateral by any short party to the contract with any long party to the contract, or

(v) such contract is identified by the Secretary as a specified notional principal contract,

(B) in the case of payments made after the date which is 2 years after the date of the enactment of this subsection, any notional principal contract unless the Secretary determines that such contract is of a type which does not have the potential for tax avoidance.

(4) Definitions

For purposes of paragraph (3)(A)—

(A) Long party

The term "long party" means, with respect to any underlying security of any notional principal contract, any party to the contract which is entitled to receive any payment pursuant to such contract which is contingent upon, or determined by reference to, the payment of a dividend from sources within the United States with respect to such underlying security.

(B) Short party

The term "short party" means, with respect to any underlying security of any notional principal contract, any party to the contract which is not a long party with respect to such underlying security.

(C) Underlying security

The term "underlying security" means, with respect to any notional principal contract, the security with respect to which the dividend referred to in paragraph (2)(B) is paid. For purposes of this paragraph, any index or fixed basket of securities shall be treated as a single security.

(5) Payments determined on gross basis

For purposes of this subsection, the term "payment" includes any gross amount which is used in computing any net amount which is transferred to or from the taxpayer.

(6) Prevention of over-withholding

In the case of any chain of dividend equivalents one or more of which is subject to tax under subsection (a) or section 881, the Secretary may reduce such tax, but only to the extent that the taxpayer can establish that such tax has been paid with respect to another dividend equivalent in such chain, or is not otherwise due, or as the Secretary determines is appropriate to address the role of financial intermediaries in such chain. For purposes of this paragraph, a dividend shall be treated as a dividend equivalent.

(7) Coordination with chapters 3 and 4

For purposes of chapters 3 and 4, each person that is a party to any contract or other arrangement that provides for the payment of a dividend equivalent shall be treated as having control of such payment.

(n) Cross references

(1) For tax treatment of certain amounts distributed by the United States to nonresident alien individuals, see section 402(e)(2).

(2) For taxation of nonresident alien individuals who are expatriate United States citizens, see section 877.

(3) For doubling of tax on citizens of certain foreign countries, see section 891.

(4) For adjustment of tax in case of nationals or residents of certain foreign countries, see section 896.

(5) For withholding of tax at source on nonresident alien individuals, see section 1441.

(6) For election to treat married nonresident alien individual as resident of United States in certain cases, see subsections (g) and (h) of section 6013.

(7) For special tax treatment of gain or loss from the disposition by a nonresident alien individual of a United States real property interest, see section 897.

(Aug. 16, 1954, ch. 736, 68A Stat. 278; Pub. L. 85–866, title I, §§40(a), 41(a), Sept. 2, 1958, 72 Stat. 1638, 1639; Pub. L. 86–437, §2(b), Apr. 22, 1960, 74 Stat. 79; Pub. L. 87–256, §110(b), Sept. 21, 1961, 75 Stat. 535; Pub. L. 88–272, title I, §113(b), title II, §201(d)(12), Feb. 26, 1964, 78 Stat. 24, 32; Pub. L. 89–809, title I, §103(a)(1), Nov. 13, 1966, 80 Stat. 1547; Pub. L. 92–178, title III,

§313(a), (b), Dec. 10, 1971, 85 Stat. 526, 527; Pub. L. 93–406, title II, §2005(c)(8), Sept. 2, 1974, 88 Stat. 992; Pub. L. 94–455, title X, §1012(a)(2), title XIX, §§1901(b)(3)(I), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1613, 1793, 1834; Pub. L. 95–600, title IV, §§401(b)(3), 421(e)(4), Nov. 6, 1978, 92 Stat. 2867, 2876; Pub. L. 96–222, title I, §104(a)(4)(H)(v), Apr. 1, 1980, 94 Stat. 217; Pub. L. 96–499, title XI, §1122(c)(1), Dec. 5, 1980, 94 Stat. 2687; Pub. L. 96–605, title II, §227(a), Dec. 28, 1980, 94 Stat. 3530; Pub. L. 97–34, title VII, §725(c)(1), Aug. 13, 1981, 95 Stat. 346; Pub. L. 98–21, title I, §121(c)(1), title III, §335(b)(2)(B), Apr. 20, 1983, 97 Stat. 82, 130; Pub. L. 98–369, div. A, title I, §§42(a)(9), 127(a), 128(a), title IV, §412(b)(1), July 18, 1984, 98 Stat. 557, 648, 653, 792; Pub. L. 99–272, title XII, §12103(b), Apr. 7, 1986, 100 Stat. 285; Pub. L. 99–514, title III, §301(b)(9), title XII, §§1211(b)(4), (5), 1214(c)(1), title XVIII, §1810(d)(1)(A), (2), (3)(A), (B), (e)(2)(A), Oct. 22, 1986, 100 Stat. 2217, 2536, 2542, 2825, 2826; Pub. L. 100–647, title I, §1001(d)(2)(B), title VI, §6134(a)(1), Nov. 10, 1988, 102 Stat. 3350, 3721; Pub. L. 102–318, title V, §521(b)(28)–(30), July 3, 1992, 106 Stat. 312; Pub. L. 103–66, title XIII, §§13113(d)(5), 13237(a)(1), (c)(1), Aug. 10, 1993, 107 Stat. 430, 506, 508; Pub. L. 103–296, title III, §320(a)(1)(A), Aug. 15, 1994, 108 Stat. 1535; Pub. L. 103–465, title VII, §733(a), Dec. 8, 1994, 108 Stat. 5006; Pub. L. 104–188, title I, §§1401(b)(10), 1954(b)(1), Aug. 20, 1996, 110 Stat. 1789, 1928; Pub. L. 105–206, title VI, §6023(10), July 22, 1998, 112 Stat. 825; Pub. L. 106–170, title V, §532(b)(2), Dec. 17, 1999, 113 Stat. 1930; Pub. L. 106–554, §1(a)(7) [title III, §319(11)], Dec. 21, 2000, 114 Stat. 2763, 2763A–646; Pub. L. 108–357, title IV, §§409(a), 411(a)(1), Oct. 22, 2004, 118 Stat. 1500; Pub. L. 109–222, title V, §505(c)(2), May 17, 2006, 120 Stat. 356; Pub. L. 110–343, div. C, title II, §206(a), (b), Oct. 3, 2008, 122 Stat. 3865; Pub. L. 111–147, title V, §§502(b)(1), (2)(A), 541(a), Mar. 18, 2010, 124 Stat. 107, 115; Pub. L. 111–226, title II, §217(b), Aug. 10, 2010, 124 Stat. 2400; Pub. L. 111–312, title VII, §748(a), Dec. 17, 2010, 124 Stat. 3320; Pub. L. 111–325, title III, §§301(f), 302(b)(2), 308(b)(3), Dec. 22, 2010, 124 Stat. 3544, 3548, 3551; Pub. L. 112–240, title III, §320(a), Jan. 2, 2013, 126 Stat. 2332.)

REFERENCES IN TEXT

Section 207 of the Social Security Act, referred to in subsec. (a)(3)(A), is classified to section 407 of Title 42, The Public Health and Welfare.

Section 932(c), referred to in subsec. (a)(3), was repealed and a new section 932(c) of this title, which does not relate to taxation of social security benefits, was enacted by Pub. L. 99–514, title XII, §§1272(d)(1), 1274(a), Oct. 22, 1986, 100 Stat. 2594, 2596.

The Trade Act of 1974, referred to in subsec. (f)(2)(B), is Pub. L. 93–618, Jan. 3, 1975, 88 Stat. 1978, as amended. Title V of the Trade Act of 1974 is classified generally to subchapter V (§2461 et seq.) of chapter 12 of Title 19, Customs Duties. For complete classification of this Act to the Code, see section 2101 of Title 19 and Tables.

The date of the enactment of this subsection, referred to in subsec. (l)(1)(A)(i), (iii), (B)(iv)(I)(aa), is the date of enactment of Pub. L. 111–226, which was approved Aug. 10, 2010.

The date of the enactment of this subsection, referred to in subsec. (m)(3)(B), is the date of enactment of Pub. L. 111–147, which was approved Mar. 18, 2010.

AMENDMENTS

2013—Subsec. (k)(1)(C)(v), (2)(C)(v). Pub. L. 112–240 substituted "December 31, 2013" for "December 31, 2011".

2010—Subsec. (h)(2). Pub. L. 111–147, §502(b)(1), amended par. (2) generally. Prior to amendment, par. (2) defined portfolio interest to also include interest on certain obligations not in registered form.

Subsec. (h)(3)(A). Pub. L. 111–147, §502(b)(2)(A), struck out "subparagraph (A) or (B) of" before "paragraph (2)".

Subsec. (i)(2)(B). Pub. L. 111–226, §217(b)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "A percentage of any dividend paid by a domestic corporation meeting the 80-percent foreign business requirements of section 861(c)(1) equal to the percentage determined for purposes of section 861(c)(2)(A)."

Subsec. (k)(1)(A). Pub. L. 111–325, §302(b)(2), inserted "which meets the requirements of section 852(a) for the taxable year with respect to which the dividend is paid" before period at end.

Subsec. (k)(1)(C). Pub. L. 111–325, §301(f)(1), substituted introductory provisions, cls. (i) to (iv), and cl. (v) heading and "The term 'interest related dividend' shall not include any dividend with respect to" for "For

purposes of this paragraph, the term 'interest-related dividend' means any dividend (or part thereof) which is designated by the regulated investment company as an interest-related dividend in a written notice mailed to its shareholders not later than 60 days after the close of its taxable year. If the aggregate amount so designated with respect to a taxable year of the company (including amounts so designated with respect to dividends paid after the close of the taxable year described in section 855) is greater than the qualified net interest income of the company for such taxable year, the portion of each distribution which shall be an interest-related dividend shall be only that portion of the amounts so designated which such qualified net interest income bears to the aggregate amount so designated. Such term shall not include any dividend with respect to".

Pub. L. 111–312, §748(a), substituted "December 31, 2011" for "December 31, 2009".

Subsec. (k)(2)(A). Pub. L. 111–325, §302(b)(2), inserted "which meets the requirements of section 852(a) for the taxable year with respect to which the dividend is paid" before period at end.

Subsec. (k)(2)(C). Pub. L. 111–325, §301(f)(2), substituted introductory provisions, cls. (i) to (iv), and cl. (v) heading and "The term 'short-term capital gain dividend' shall not include any dividend with respect to" for "For purposes of this paragraph, the term 'short-term capital gain dividend' means any dividend (or part thereof) which is designated by the regulated investment company as a short-term capital gain dividend in a written notice mailed to its shareholders not later than 60 days after the close of its taxable year. If the aggregate amount so designated with respect to a taxable year of the company (including amounts so designated with respect to dividends paid after the close of the taxable year described in section 855) is greater than the qualified short-term gain of the company for such taxable year, the portion of each distribution which shall be a short-term capital gain dividend shall be only that portion of the amounts so designated which such qualified short-term gain bears to the aggregate amount so designated. Such term shall not include any dividend with respect to".

Pub. L. 111–312, §748(a), substituted "December 31, 2011" for "December 31, 2009".

Subsec. (k)(2)(D). Pub. L. 111–325, §308(b)(3), substituted "For purposes of this subparagraph, the net short-term capital gain of the regulated investment company shall be computed by treating any short-term capital gain dividend includible in gross income with respect to stock of another regulated investment company as a short-term capital gain." for "For purposes of this subparagraph—

"(i) the net short-term capital gain of the regulated investment company shall be computed by treating any short-term capital gain dividend includible in gross income with respect to stock of another regulated investment company as a short-term capital gain, and

"(ii) the excess of the net short-term capital gain for a taxable year over the net long-term capital loss for a taxable year (to which an election under section 4982(e)(4) does not apply) shall be determined without regard to any net capital loss or net short-term capital loss attributable to transactions after October 31 of such year, and any such net capital loss or net short-term capital loss shall be treated as arising on the 1st day of the next taxable year.

To the extent provided in regulations, clause (ii) shall apply also for purposes of computing the taxable income of the regulated investment company."

Subsec. (l). Pub. L. 111–226, §217(b)(2), added subsec. (l). Former subsec. (l) redesignated (m).

Pub. L. 111–147, §541(a), added subsec. (l). Former subsec. (l) redesignated (m).

Subsec. (m). Pub. L. 111–226, §217(b)(2), redesignated subsec. (l) as (m). Former subsec. (m) redesignated (n).

Pub. L. 111–147, §541(a), redesignated subsec. (l) as (m).

Subsec. (n). Pub. L. 111–226, §217(b)(2), redesignated subsec. (m) as (n).

2008—Subsec. (k)(1)(C), (2)(C). Pub. L. 110–343 substituted "December 31, 2009" for "December 31, 2007".

2006—Subsec. (k)(2)(E). Pub. L. 109–222 added subpar. (E).

2004—Subsec. (i)(2)(D). Pub. L. 108–357, §409(a), added subpar. (D).

Subsecs. (k), (l). Pub. L. 108–357, §411(a)(1), added subsec. (k) and redesignated former subsec. (k) as (l).

2000—Subsec. (f)(2)(B). Pub. L. 106–554 inserted opening parenthesis before "19 U.S.C.".

1999—Subsec. (h)(4)(C)(iv). Pub. L. 106–170 substituted "to manage" for "to reduce".

1998—Subsec. (f)(2)(B). Pub. L. 105–206 substituted "19 U.S.C. 2461 et seq.)" for "(19 U.S.C. 2462)".

1996—Subsec. (b)(1). Pub. L. 104–188, §1401(b)(10), substituted "section 1 or 55" for "section 1, 55, or 402(d)(1)".

Subsec. (f)(2)(B). Pub. L. 104–188, §1954(b)(1), substituted "under title V" for "within the meaning of section 502".

1994—Subsec. (a)(3)(A). Pub. L. 103–465 substituted "85 percent" for "one-half".

Subsec. (c). Pub. L. 103–296 substituted "(J), (M), or (Q)" for "(J), or (M)" in two places.

1993—Subsec. (a)(2). Pub. L. 103–66, §13113(d)(5), inserted "such gains and losses shall be determined

without regard to section 1202 and" after "except that" in second sentence.

Subsec. (h)(2)(B)(ii). Pub. L. 103–66, §13237(c)(1), substituted "paragraph (5)" for "paragraph (4)".

Subsec. (h)(4) to (7). Pub. L. 103–66, §13237(a)(1), added par. (4) and redesignated former pars. (4) to (6) as (5) to (7), respectively.

1992—Subsec. (a)(1)(B). Pub. L. 102–318, §521(b)(28), struck out "402(a)(2), 403(a)(2), or" before "631(b)".

Subsec. (b)(1). Pub. L. 102–318, §521(b)(29), substituted "402(d)(1)" for "402(e)(1)".

Subsec. (k)(1). Pub. L. 102–318, §521(b)(30), substituted "402(e)(2)" for "402(a)(4)".

1988—Subsec. (c). Pub. L. 100–647, §1001(d)(2)(B), substituted "the second sentence of section 1441(b)" for "section 1441(b)(1) or (2)", and "(F), (J), or (M)" for "(F) or (J)" in two places.

Subsecs. (j), (k). Pub. L. 100–647, §6134(a)(1), added subsec. (j) and redesignated former subsec. (j) as (k).

1986—Subsec. (a)(1). Pub. L. 99–514, §1810(d)(3)(A), substituted "subsection (h)" for "subsection (i)" in introductory provisions.

Subsec. (a)(1)(C). Pub. L. 99–514, §1810(e)(2)(A), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: "in the case of—

"(i) a sale or exchange of an original issue discount obligation, the amount of any gain not in excess of the original issue discount accruing while such obligation was held by the nonresident alien individual (to the extent such discount was not theretofore taken into account under clause (ii)), and

"(ii) the payment of interest on an original issue discount obligation, an amount equal to the original issue discount accrued on such obligation since the last payment of interest thereon (except that such original issue discount shall be taken into account under this clause only to the extent that the tax thereon does not exceed the interest payment less the tax imposed by subparagraph (A) thereon), and".

Subsec. (a)(1)(D). Pub. L. 99–514, §1211(b)(4), struck out "or from payments which are treated as being so contingent under subsection (e)," after "sold or exchanged,".

Subsec. (a)(2). Pub. L. 99–514, §301(b)(9), struck out "such gains and losses shall be determined without regard to section 1202 (relating to deduction for capital gains) and" after "United States, except that".

Subsec. (a)(3). Pub. L. 99–272 inserted at end "For treatment of certain citizens of possessions of the United States, see section 932(c)."

Subsec. (e). Pub. L. 99–514, §1211(b)(5), struck out subsec. (e) which related to gains from sale or exchange of certain intangible property, par. (1) treating payments as contingent on use, etc., and par. (2) containing source rule.

Subsec. (h)(2). Pub. L. 99–514, §1810(d)(1)(A), (3)(B), inserted "which would be subject to tax under subsection (a) but for this subsection and" in introductory provisions and substituted "receives a statement" for "has received a statement" in subpar. (B)(ii).

Subsec. (h)(3)(C)(ii), (iii). Pub. L. 99–514, §1810(d)(2), added cl. (ii) and redesignated former cl. (ii) as (iii).

Subsecs. (i), (j). Pub. L. 99–514, §1214(c)(1), added subsec. (i) and redesignated former subsec. (i) as (j).

1984—Subsec. (a)(1). Pub. L. 98–369, §127(a)(2), substituted "Except as provided in subsection (i), there" for "There".

Subsec. (a)(1)(A). Pub. L. 98–369, §42(a)(9), substituted "section 1273" for "section 1232(b)".

Subsec. (a)(1)(C). Pub. L. 98–369, §128(a)(1), amended subpar. (C) generally, substituting in cl. (i), "a sale or exchange of an original issue discount obligation, the amount of any gain not in excess of the original issue discount accruing while such obligation was held by the nonresident alien individual (to the extent such discount was not theretofore taken into account under clause (ii)), and" for "bonds or other evidences of indebtedness issued after September 28, 1965, and before April 1, 1972, amounts which under section 1232(a)(2)(B) are considered as ordinary income, and, in the case of corporate obligations issued after May 27, 1969, and before April 1, 1972, amounts which would be so considered but for the fact the obligations were issued after May 27, 1969,", substituting in cl. (ii), "the payment of interest on an original issue discount obligation, an amount equal to the original issue discount accrued on such obligation since the last payment of interest thereon (except that such original issue discount shall be taken into account under this clause only to the extent that the tax thereon does not exceed the interest payment less the tax imposed by subparagraph (A) thereon), and" for "bonds or other evidences of indebtedness issued after March 31, 1972, and payable more than 6 months from the date of original issue (without regard to the period held by the taxpayer), amounts which under section 1232(a)(2)(B) would be considered as ordinary income but for the fact such obligations were issued after May 27, 1969, and", and striking out cl. (iii) which required that in the case of the payment of interest on an obligation described in cl. (ii), an amount equal to the original issue discount, but not in excess of such interest less the tax imposed by subpar. (A) thereon, accrued on such obligation since the last payment of interest thereon, be included for purpose of the 30 percent tax.

Subsec. (g). Pub. L. 98–369, §128(a)(2), added subsec. (g). Former subsec. (g), relating to cross references, redesignated (h).

Subsec. (g)(6) to (8). Pub. L. 98–369, §412(b)(1), amended subsec. (g), relating to cross references, by striking out par. (6) referring to section 6015(j) for the requirement of making a declaration of estimated tax by certain nonresident alien individuals and redesignating pars. (7) and (8) as (6) and (7), respectively.

Subsec. (h). Pub. L. 98–369, §127(a), added subsec. (h). Former subsec. (h), relating to cross references, redesignated (i).

Pub. L. 98–369, §128(a)(2), redesignated subsec. (g), relating to cross references, as (h).

Subsec. (i). Pub. L. 98–369, §127(a)(1), redesignated subsec. (h), relating to cross references, as (i).

1983—Subsec. (a)(3). Pub. L. 98–21, §121(c)(1), added par. (3).

Subsec. (a)(3)(A). Pub. L. 98–21, §335(b)(2)(B), inserted "(notwithstanding section 207 of the Social Security Act)" after "income".

1981—Subsec. (g)(6). Pub. L. 97–34 substituted "6015(j)" for "6015(i)".

1980—Subsec. (b)(1). Pub. L. 96–222 substituted "55" for "section 55".

Subsec. (f). Pub. L. 96–605 designated existing provision as par. (1), inserted heading "In general" and redesignated par. (1) as subpar. (A), cls. (A) and (B) of subpar. (A) as so redesignated as cls. (i) and (ii), and par. (2) as subpar. (B), and added par. (2).

Subsec. (g)(8). Pub. L. 96–499 added par. (8).

1978—Subsec. (b)(1). Pub. L. 95–600, §§401(b)(3), 421(e)(4), substituted "section 1, section 55, or 402(e)(1)" for "section 1, 402(e)(1), or 1201(b)".

1976—Subsec. (a)(1)(C)(i), (ii). Pub. L. 94–455, §1901(b)(3)(I), substituted "ordinary income" for "gain from the sale or exchange of property which is not a capital asset".

Subsec. (d). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary", each time appearing.

Subsec. (g)(7). Pub. L. 94–455, §1012(a)(2), added par. (7).

1974—Subsec. (b)(1). Pub. L. 93–406 inserted reference to section 402(e)(1).

1971—Subsec. (a)(1)(A). Pub. L. 92–178, §313(a), inserted "(other than original issue discount as defined in section 1232(b))" after "interest".

Subsec. (a)(1)(C). Pub. L. 92–178, §313(b), designated existing provisions as cl. (i), inserted "and before April 1, 1972," after "September 28, 1965,", substituted "section 1232(a)(2)(B)" for "section 1232", and inserted ", in the case of corporate obligations issued after May 27, 1969, and before April 1, 1972, amounts which would be so considered but for the fact the obligations were issued after May 27, 1969,", and added cls. (ii) and (iii).

1966—Subsecs. (a), (b). Pub. L. 89–809 consolidated the substance of former subsecs. (a) to (c) and, as part of the consolidation, revised the overall income tax treatment of nonresident alien individuals by substituting provisions dividing their income for tax purposes into two basic groups according to whether or not the income is effectively connected with a United States trade or business for provisions calling for different tax treatment based upon whether or not they are, or are not, engaged in a trade or business in the United States, with a further breakdown of those not engaged in trade or business in the United States as to whether their income is over or under $21,200.

Subsec. (c). Pub. L. 89–809 redesignated subsec. (d) as (c) and inserted provisions that any income described in section 1441(b)(1) or (2) which is received by such individual shall, to the extent derived from sources within the United States, be treated as effectively connected with the conduct of a trade or business within the United States. Substance of former subsec. (c) revised and incorporated into subsecs. (a) and (b).

Subsecs. (d) to (f). Pub. L. 89–809 added subsecs. (d) to (f) and redesignated former subsecs. (d) and (e) as (c) and (g), respectively.

Subsec. (g). Pub. L. 89–809 redesignated former subsec. (e) as (g), added pars. (2) and (4) to (6), and redesignated former pars. (1) and (2) as (3) and (1), respectively.

1964—Subsec. (a). Pub. L. 88–272, §113(b)(2), substituted "30 percent tax" for "and gross income of not more than $15,400" in heading.

Subsec. (b). Pub. L. 88–272, §§113(b)(1), (3), 201(d)(12), substituted "$19,000 in the case of a taxable year beginning in 1964 or more than $21,200 in the case of a taxable year beginning after 1964" for "$15,400", "the credit under section 35" for "the sum of the credits under sections 34 and 35" in text, and "Regular tax" for "and gross income of more than $15,400" in heading.

1961—Subsecs. (d), (e). Pub. L. 87–256 added subsec. (d) and redesignated former subsec. (d) as (e).

1960—Subsec. (d). Pub. L. 86–437 substituted "Cross references" for "Doubling of tax" in heading, and inserted cross reference to section 402(a)(4).

1958—Subsec. (a)(1). Pub. L. 85–866, §40(a), inserted "section 403(a)(2)," after "section 402(a)(2),".

Subsec. (b). Pub. L. 85–866, §41(a), inserted last par. covering former provisions of par. (3), which was struck out by the amendment, and containing new provisions with references to credits under section 34 and 35 and exclusion under section 116 of this title.

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title III, §320(b), Jan. 2, 2013, 126 Stat. 2332, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2011."

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 301(f) of Pub. L. 111–325 applicable to taxable years beginning after Dec. 22, 2010, see section 301(h) of Pub. L. 111–325, set out as a note under section 852 of this title.

Amendment by section 302(b)(2) of Pub. L. 111–325 applicable to taxable years beginning after Dec. 22, 2010, see section 302(c) of Pub. L. 111–325, set out as a note under section 852 of this title.

Amendment by section 308(b)(3) of Pub. L. 111–325 applicable to taxable years beginning after Dec. 22, 2010, see section 308(c) of Pub. L. 111–325, set out as a note under section 852 of this title.

Pub. L. 111–312, title VII, §748(b), Dec. 17, 2010, 124 Stat. 3320, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2009."

Amendment by Pub. L. 111–226 applicable to taxable years beginning after Dec. 31, 2010, with certain exceptions, see section 217(d) of Pub. L. 111–226, set out as a note under section 861 of this title.

Amendment by section 502(b)(1), (2)(A) of Pub. L. 111–147 applicable to obligations issued after the date which is 2 years after Mar. 18, 2010, see section 502(f) of Pub. L. 111–147, set out as a note under section 149 of this title.

Pub. L. 111–147, title V, §541(b), Mar. 18, 2010, 124 Stat. 117, provided that: "The amendments made by this section [amending this section] shall apply to payments made on or after the date that is 180 days after the date of the enactment of this Act [Mar. 18, 2010]."

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title II, §206(c), Oct. 3, 2008, 122 Stat. 3865, provided that: "The amendments made by this section [amending this section] shall apply to dividends with respect to taxable years of regulated investment companies beginning after December 31, 2007."

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–222 applicable to taxable years of qualified investment entities beginning after December 31, 2005, except that no amount shall be required to be withheld under section 1441, 1442, or 1445 of the Internal Revenue Code of 1986 with respect to any distribution before May 17, 2006 if such amount was not otherwise required to be withheld under any such section as in effect before such amendments, see section 505(d) of Pub. L. 109–222, set out as a note under section 852 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title IV, §409(b), Oct. 22, 2004, 118 Stat. 1500, provided that: "The amendment made by this section [amending this section] shall apply to payments made after December 31, 2004."

Pub. L. 108–357, title IV, §411(d), Oct. 22, 2004, 118 Stat. 1505, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 881, 897, 1441, 1442, and 2105 of this title] shall apply to dividends with respect to taxable years of regulated investment companies beginning after December 31, 2004.

"(2) ESTATE TAX TREATMENT.—The amendment made by subsection (b) [amending section 2105 of this title] shall apply to estates of decedents dying after December 31, 2004.

"(3) CERTAIN OTHER PROVISIONS.—The amendments made by subsection (c) [amending section 897 of this title] (other than paragraph (1) thereof) shall take effect after December 31, 2004."

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1401(b)(10) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1999, with retention of certain transition rules, see section 1401(c) of Pub. L. 104–188, set out as a note under

section 402 of this title.

Amendment by section 1954(b)(1) of Pub. L. 104–188 applicable to articles entered on or after Oct. 1, 1996, with provisions relating to retroactive application, see section 1953 of Pub. L. 104–188, set out as an Effective Date note under section 2461 of Title 19, Customs Duties.

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103–465, title VII, §733(b), Dec. 8, 1994, 108 Stat. 5006, provided that: "The amendment made by subsection (a) [amending this section] shall apply to benefits paid after December 31, 1994, in taxable years ending after such date."

Pub. L. 103–296, title III, §320(c), Aug. 15, 1994, 108 Stat. 1535, provided that: "The amendments made by this subsection [probably means this section, which amended this section, sections 872, 1441, 3121, 3231, 3306, and 7701 of this title, and section 410 of Title 42, The Public Health and Welfare] shall take effect with the calendar quarter following the date of the enactment of this Act [Aug. 15, 1994]."

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13113(d)(5) of Pub. L. 103–66 applicable to stock issued after Aug. 10, 1993, see section 13113(e) of Pub. L. 103–66, set out as a note under section 53 of this title.

Pub. L. 103–66, title XIII, §13237(d), Aug. 10, 1993, 107 Stat. 508, provided that: "The amendments made by this section [amending this section and sections 881, 1441, 1442, and 2105 of this title] shall apply to interest received after December 31, 1993; except that the amendments made by subsection (b) [amending section 2105 of this title] shall apply to the estates of decedents dying after December 31, 1993."

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102–318, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1001(d)(2)(B) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title VI, §6134(b), Nov. 10, 1988, 102 Stat. 3721, provided that: "The amendments made by subsection (a) [amending this section and section 1441 of this title] shall take effect on the date of the enactment of this Act [Nov. 10, 1988]."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 301(b)(9) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 301(c) of Pub. L. 99–514, set out as a note under section 62 of this title.

Amendment by section 1211(b)(4), (5) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, except as otherwise provided, see section 1211(c) of Pub. L. 99–514, set out as an Effective Date note under section 865 of this title.

Amendment by section 1214(c)(1) of Pub. L. 99–514 applicable to payments made in taxable year of payor beginning after Dec. 31, 1986, except as otherwise provided, see section 1214(d) of Pub. L. 99–514, as amended, set out as a note under section 861 of this title.

Amendment by section 1810(d)(1)(A), (2), (3)(A), (B), (e)(2)(A) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Pub. L. 99–272, title XII, §12103(c), Apr. 7, 1986, 100 Stat. 285, provided that: "The amendments made by this section [amending this section and section 932 of this title] shall apply to benefits received after December 31, 1983, in taxable years ending after such date."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 42(a)(9) of Pub. L. 98–369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98–369, set out as an Effective Date note under section 1271 of this title.

Pub. L. 98–369, div. A, title I, §127(g), July 18, 1984, 98 Stat. 652, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–647, title VI, §6128(a), Nov. 10, 1988, 102 Stat. 3716, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 163, 864, 881, 1441, 1442, and 2105 of this title] shall apply to interest received after the date of the enactment of this Act [July 18, 1984] with respect to obligations issued

after such date, in taxable years ending after such date.

"(2) SUBSECTION (d).—The amendment made by subsection (d) [amending section 2105 of this title] shall apply to obligations issued after the date of the enactment of this Act [July 18, 1984] with respect to the estates of decedents dying after such date.

"(3) SPECIAL RULE FOR CERTAIN UNITED STATES AFFILIATE OBLIGATIONS.—

"(A) IN GENERAL.—For purposes of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], payments of interest on a United States affiliate obligation to an applicable CFC in existence on or before June 22, 1984, shall be treated as payments to a resident of the country in which the applicable CFC is incorporated.

"(B) EXCEPTION.—Subparagraph (A) shall not apply to any applicable CFC which did not meet requirements which are based on the principles set forth in Revenue Rulings 69–501, 69–377, 70–645, and 73–110 as such principles are applied in Revenue Ruling 86–6, except that the maximum debt-to-equity ratio described in such Revenue Rulings shall be increased from 5-to-1 to 25-to-1.

"(C) DEFINITIONS.—

"(i) The term 'applicable CFC' has the meaning given such term by section 121(b)(2)(D) of this Act [set out as a note under section 904 of this title], except that such section shall be applied by substituting 'the date of interest payment' for 'March 31, 1984,' in clause (i) thereof.

"(ii) The term 'United States affiliate obligation' means an obligation described in section 121(b)(2)(F) of this Act [set out as a note under section 904 of this title] which was issued before June 22, 1984."

[Pub. L. 100–647, title VI, §6128(b), Nov. 10, 1988, 102 Stat. 3716, provided that: "The amendment made by subsection (a) [amending section 127(g) of Pub. L. 98–369, set out above] shall apply to taxable years ending after the date of the enactment of this Act [Nov. 10, 1988]."]

Pub. L. 98–369, div. A, title I, §128(d), July 18, 1984, 98 Stat. 655, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 163 and 881 of this title] shall apply to payments made on or after the 60th day after the date of the enactment of this Act [July 18, 1984] with respect to obligations issued after March 31, 1972.

"(2) SUBSECTION (c).—The amendment made by subsection (c) [amending section 163 of this title] shall apply to obligations issued after June 9, 1984."

Amendment by section 412(b)(1) of Pub. L. 98–369 applicable with respect to taxable years beginning after Dec. 31, 1984, see section 414(a)(1) of Pub. L. 98–369, set out as a note under section 6654 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 121(c)(1) of Pub. L. 98–21 applicable to benefits received after Dec. 31, 1983, in taxable years ending after such date, except for any portion of a lump-sum payment of social security benefits received after Dec. 31, 1983, if the generally applicable payment date for such portion was before Jan. 1, 1984, see section 121(g) of Pub. L. 98–21, set out as an Effective Date note under section 86 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title VII, §725(d), Aug. 13, 1981, 95 Stat. 346, provided that: "The amendments made by this section [amending this section and sections 6015, 6153, 6654, and 7701 of this title] shall apply to estimated tax for taxable years beginning after December 31, 1980."

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–605, title II, §227(b), Dec. 28, 1980, 94 Stat. 3530, provided that: "The amendment made by subsection (a) [amending this section] shall apply to amounts received after July 1, 1979."

Amendment by Pub. L. 96–499 applicable to dispositions after June 18, 1980, see section 1125(a) of Pub. L. 96–499, set out as an Effective Date note under section 897 of this title.

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 401(b)(3) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 401(c) of Pub. L. 95–600, set out as a note under section 1201 of this title.

Amendment by section 421(e)(4) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 421(g) of Pub. L. 95–600, set out as a note under section 5 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1012(a)(2) of Pub. L. 94–455 applicable to taxable years ending on or after Dec. 31, 1975, see section 1012(d) of Pub. L. 94–455, set out as a note under section 6013 of this title.

Amendment by section 1901(b)(3)(I) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–406 applicable only with respect to distributions or payments made after Dec. 31, 1973, in taxable years beginning after Dec. 31, 1973, see section 2005(d) of Pub. L. 93–406, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Pub. L. 92–178, title III, §313(f), Dec. 10, 1971, 85 Stat. 528, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments to section 871 and 881 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] made by this section shall apply with respect to taxable years beginning after December 31, 1966. The amendments to sections 1441 and 1442 of such Code made by this section shall apply with respect to payments occurring on or after April 1, 1972."

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89–809, title I, §103(n), Nov. 13, 1966, 80 Stat. 1555, provided that:

"(1) The amendments made by this section (other than the amendments made by subsections (h), (i), and (k)) [amending this section and sections 1, 116, 154, 872 to 874, 875, 932, 6015, and 7701 of this title, redesignating section 877 as 878, enacting section 877 of this title, and repealing section 1493 of this title] shall apply with respect to taxable years beginning after December 31, 1966.

"(2) The amendments made by subsection (h) [amending section 1441 of this title] shall apply with respect to payments made in taxable years of recipients beginning after December 31, 1966.

"(3) The amendments made by subsection (i) [amending section 1461 of this title] shall apply with respect to payments occurring after December 31, 1966.

"(4) The amendments made by subsection (k) [amending section 3401 of this title] shall apply with respect to remuneration paid after December 31, 1966."

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by section 113(b)(1) of Pub. L. 88–272 effective, except for purposes of section 21 of this title, with respect to taxable years beginning after Dec. 31, 1963, see section 131 of Pub. L. 88–272, set out as a note under section 1 of this title.

Amendment by section 201(d)(12) of Pub. L. 88–272 applicable with respect to dividends received after Dec. 31, 1964, in taxable years ending after such date, see section 201(e) of Pub. L. 88–272, set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–256 applicable to taxable years beginning after Dec. 31, 1961, see section 110(h)(1) of Pub. L. 87–256, set out as a note under section 117 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–437 applicable only with respect to taxable years beginning after Dec. 31, 1959, see section 3 of Pub. L. 86–437, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85–866, title I, §40(c), Sept. 2, 1958, 72 Stat. 1639, provided that: "The amendment made by subsection (a) [amending this section] shall apply only with respect to taxable years ending after the date of the enactment of this Act [Sept. 2, 1958]. The amendments made by subsection (b) [amending section 1441 of this title] shall take effect on the day following the date of the enactment of this Act [Sept. 2, 1958]."

Pub. L. 85–866, title I, §41(c), Sept. 2, 1958, 72 Stat. 1639, provided that: "The amendments made by this section [amending this section and section 35 of this title] shall apply only with respect to taxable years beginning after December 31, 1957."

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendments by sections 1211(b)(4), (5) and 1214(c)(1) of Pub. L. 99–514 to the

extent application of such amendments would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(3), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§1401–1465] of title I of Pub. L. 104–188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[1] *See References in Text note below.*

§872. Gross income

(a) General rule

In the case of a nonresident alien individual, except where the context clearly indicates otherwise, gross income includes only—

(1) gross income which is derived from sources within the United States and which is not effectively connected with the conduct of a trade or business within the United States, and

(2) gross income which is effectively connected with the conduct of a trade or business within the United States.

(b) Exclusions

The following items shall not be included in gross income of a nonresident alien individual, and shall be exempt from taxation under this subtitle:

(1) Ships operated by certain nonresidents

Gross income derived by an individual resident of a foreign country from the international operation of a ship or ships if such foreign country grants an equivalent exemption to individual residents of the United States.

(2) Aircraft operated by certain nonresidents

Gross income derived by an individual resident of a foreign country from the international operation of aircraft if such foreign country grants an equivalent exemption to individual residents of the United States.

(3) Compensation of participants in certain exchange or training programs

Compensation paid by a foreign employer to a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F), (J), or (Q) of section 101(a)(15) of the Immigration and Nationality Act, as amended. For purposes of this paragraph, the term "foreign employer" means—

(A) a nonresident alien individual, foreign partnership, or foreign corporation, or

(B) an office or place of business maintained in a foreign country or in a possession of the

United States by a domestic corporation, a domestic partnership, or an individual who is a citizen or resident of the United States.

(4) Certain bond income of residents of the Ryukyu Islands or the Trust Territory of the Pacific Islands

Income derived by a nonresident alien individual from a series E or series H United States savings bond, if such individual acquired such bond while a resident of the Ryukyu Islands or the Trust Territory of the Pacific Islands.

(5) Income derived from wagering transactions in certain parimutuel pools

Gross income derived by a nonresident alien individual from a legal wagering transaction initiated outside the United States in a parimutuel pool with respect to a live horse race or dog race in the United States.

(6) Certain rental income

Income to which paragraphs (1) and (2) apply shall include income which is derived from the rental on a full or bareboat basis of a ship or ships or aircraft, as the case may be.

(7) Application to different types of transportation

The Secretary may provide that this subsection be applied separately with respect to income from different types of transportation.

(8) Treatment of possessions

To the extent provided in regulations, a possession of the United States shall be treated as a foreign country for purposes of this subsection.

(Aug. 16, 1954, ch. 736, 68A Stat. 280; Pub. L. 87–256, §110(c), Sept. 21, 1961, 75 Stat. 536; Pub. L. 89–809, title I, §103(b), Nov. 13, 1966, 80 Stat. 1550; Pub. L. 99–514, title XII, §1212(c)(1), (2), Oct. 22, 1986, 100 Stat. 2538; Pub. L. 100–647, title I, §1012(e)(2)(B), (5), (s)(2)(A), Nov. 10, 1988, 102 Stat. 3500, 3527; Pub. L. 101–239, title VII, §7811(i)(8)(C), Dec. 19, 1989, 103 Stat. 2411; Pub. L. 103–296, title III, §320(a)(2), Aug. 15, 1994, 108 Stat. 1535; Pub. L. 108–357, title IV, §419(a), Oct. 22, 2004, 118 Stat. 1513.)

REFERENCES IN TEXT

Section 101 of the Immigration and Nationality Act, referred to in subsec. (b)(3), is classified to section 1101 of Title 8, Aliens and Nationality.

AMENDMENTS

2004—Subsec. (b)(5) to (8). Pub. L. 108–357 added par. (5) and redesignated former pars. (5) to (7) as (6) to (8), respectively.

1994—Subsec. (b)(3). Pub. L. 103–296 substituted "(F), (J), or (Q)" for "(F) or (J)".

1989—Subsec. (b)(7). Pub. L. 101–239 added par. (7).

1988—Subsec. (a). Pub. L. 100–647, §1012(s)(2)(A), inserted ", except where the context clearly indicates otherwise" after "individual".

Subsec. (b)(1), (2). Pub. L. 100–647, §1012(e)(2)(B), (5), substituted "to individual residents of the United States" for "to citizens of the United States and to corporations organized in the United States" and "international operation" for "operation".

1986—Subsec. (b)(1). Pub. L. 99–514, §1212(c)(1), added par. (1) and struck out former par. (1), ships under foreign flag, which read as follows: "Earnings derived from the operation of a ship or ships documented under the laws of a foreign country which grants an equivalent exemption to citizens of the United States and to corporations organized in the United States."

Subsec. (b)(2). Pub. L. 99–514, §1212(c)(1), added par. (2) and struck out former par. (2), aircraft of foreign registry, which read as follows: "Earnings derived from the operation of aircraft registered under the laws of a foreign country which grants an equivalent exemption to citizens of the United States and to corporations organized in the United States."

Subsec. (b)(5), (6). Pub. L. 99–514, §1212(c)(2), added pars. (5) and (6).

1966—Subsec. (a). Pub. L. 89–809, §103(b)(1), limited the inclusion of gross income which is derived from sources within the United States to such income which is not effectively connected with the conduct of a

trade or business within the United States and inserted provision including gross income without the limitation as to source which is effectively connected with the conduct of a trade or business within the United States.

Subsec. (b)(3)(B). Pub. L. 89–809, §103(b)(2), substituted "by a domestic corporation, a domestic partnership, or an individual who is a citizen or resident of the United States" for "by a domestic corporation".

Subsec. (b)(4). Pub. L. 89–809, §102(b)(3), added par. (4).

1961—Subsec. (b)(3). Pub. L. 87–256 added par. (3).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title IV, §419(c), Oct. 22, 2004, 118 Stat. 1513, provided that: "The amendments made by this section [amending this section and section 883 of this title] shall apply to wagers made after the date of the enactment of this Act [Oct. 22, 2004]."

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective with calendar quarter following Aug. 15, 1994, see section 320(c) of Pub. L. 103–296, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1212(f) of Pub. L. 99–514, set out as a note under section 863 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 103(n)(1) of Pub. L. 89–809, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–256 applicable to taxable years beginning after Dec. 31, 1961, see section 110(h)(1) of Pub. L. 87–256, set out as a note under section 117 of this title.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendment by section 1212(c)(1), (2) of Pub. L. 99–514 to the extent application of such amendment would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(3), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

§873. Deductions

(a) General rule

In the case of a nonresident alien individual, the deductions shall be allowed only for purposes of section 871(b) and (except as provided by subsection (b)) only if and to the extent that they are connected with income which is effectively connected with the conduct of a trade or business within the United States; and the proper apportionment and allocation of the deductions for this purpose shall be determined as provided in regulations prescribed by the Secretary.

(b) Exceptions

The following deductions shall be allowed whether or not they are connected with income which is effectively connected with the conduct of a trade or business within the United States:

(1) Losses

The deduction allowed by section 165 for casualty or theft losses described in paragraph (2) or (3) of section 165(c), but only if the loss is of property located within the United States.

(2) Charitable contributions

The deduction for charitable contributions and gifts allowed by section 170.

(3) Personal exemption

The deduction for personal exemptions allowed by section 151, except that only one exemption shall be allowed under section 151 unless the taxpayer is a resident of a contiguous country or is a national of the United States.

(c) Cross reference

For rule that certain foreign taxes are not to be taken into account in determining deduction or credit, see section 906(b)(1).

(Aug. 16, 1954, ch. 736, 68A Stat. 280; Pub. L. 89–809, title I, §103(c)(1), Nov. 13, 1966, 80 Stat. 1550; Pub. L. 92–580, §1(b), Oct. 27, 1972, 86 Stat. 1276; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–30, title I, §101(d)(11), May 23, 1977, 91 Stat. 134; Pub. L. 98–369, div. A, title VII, §711(c)(2)(A)(iv), July 18, 1984, 98 Stat. 945; Pub. L. 105–277, div. J, title IV, §4004(b)(3), Oct. 21, 1998, 112 Stat. 2681–911.)

AMENDMENTS

1998—Subsec. (b)(1). Pub. L. 105–277 amended heading and text of par. (1) generally. Prior to amendment, text read as follows: "The deduction for losses allowed by section 165(c)(3), but only if the loss is of property located within the United States."

1984—Subsec. (b)(1). Pub. L. 98–369 substituted "for losses" for ", for losses of property not connected with the trade or business if arising from certain casualties or theft,".

1977—Subsec. (c). Pub. L. 95–30 struck out par. (1) which made a cross reference to section 142(b)(1) for disallowance of the standard deduction and struck out "(2)" at beginning of single remaining cross reference.

1976—Subsec. (a). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

1972—Subsec. (b)(3). Pub. L. 92–580 substituted exception that only one exemption be allowed under section 151 unless the taxpayer is a resident of a contiguous country or is a national of the United States, for exception that in the case of a non-resident alien individual who is not a resident of a contiguous country only one exception be allowed under section 151.

1966—Pub. L. 89–809 amended section generally, substituting "connected with income which is effectively connected with the conduct of a trade or business within the United States" for "connected with income from sources within the United States" in subsec. (a), striking out provisions relating to the deduction of losses not connected with a trade or business but incurred in transactions entered into for profit in subsec. (b), making the casualty loss deduction available even if the property giving rise to the loss is not effectively connected with the conduct of a trade or business in the United States if the property is located in this country, making the charitable contribution deduction available even though not related to the trade or business, and adding subsec. (c)(2) making a cross reference to section 906(b)(1) for rule that certain foreign taxes are not to be taken into account in determining deduction or credit.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–277 applicable to taxable years beginning after Dec. 31, 1983, see section 4004(c)(1) of Pub. L. 105–277, set out as a note under section 172 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 711(c)(2)(A)(v) of Pub. L. 98–369, set out as a note under section 165 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a)

of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–580 applicable to taxable years beginning after Dec. 31, 1971, see section 1(c) of Pub. L. 92–580, set out as a note under section 152 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 103(n)(1) of Pub. L. 89–809, set out as a note under section 871 of this title.

§874. Allowance of deductions and credits

(a) Return prerequisite to allowance

A nonresident alien individual shall receive the benefit of the deductions and credits allowed to him in this subtitle only by filing or causing to be filed with the Secretary a true and accurate return, in the manner prescribed in subtitle F (sec. 6001 and following, relating to procedure and administration), including therein all the information which the Secretary may deem necessary for the calculation of such deductions and credits. This subsection shall not be construed to deny the credits provided by sections 31 and 33 for tax withheld at source or the credit provided by section 34 for certain uses of gasoline and special fuels.

(b) Tax withheld at source

The benefit of the deduction for exemptions under section 151 may, in the discretion of the Secretary, and under regulations prescribed by the Secretary, be received by a non-resident alien individual entitled thereto, by filing a claim therefor with the withholding agent.

(c) Foreign tax credit

Except as provided in section 906, a nonresident alien individual shall not be allowed the credits against the tax for taxes of foreign countries and possessions of the United States allowed by section 901.

(Aug. 16, 1954, ch. 736, 68A Stat. 281; Pub. L. 89–44, title VIII, §809(d)(3), June 21, 1965, 79 Stat. 167; Pub. L. 89–809, title I, §§103(d), 106(a)(3), Nov. 13, 1966, 80 Stat. 1551, 1569; Pub. L. 91–258, title II, §207(d)(1), May 21, 1970, 84 Stat. 248; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–424, title V, §515(b)(6)(E), Jan. 6, 1983, 96 Stat. 2182; Pub. L. 98–369, div. A, title IV, §474(r)(19), July 18, 1984, 98 Stat. 843.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–369 substituted reference to section "33" for "32" and "34" for "39".

1983—Subsec. (a). Pub. L. 97–424 substituted "and special fuels" for ", special fuels, and lubricating oil".

1976—Subsecs. (a), (b). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

1970—Subsec. (a). Pub. L. 91–258 included provision against construction of subsec. (a) to deny credit provided by section 39 for certain uses of special fuels.

1966—Subsec. (a). Pub. L. 89–809, §103(d), struck out "of his total income received from all sources in the United States" after "true and accurate return".

Subsec. (c). Pub. L. 89–809, §106(a)(3), substituted "Foreign tax credit" for "Foreign tax credit not allowed" in heading and inserted reference to an exception provided in section 906.

1965—Subsec. (a). Pub. L. 89–44 inserted "or the credit provided by section 39 for certain uses of gasoline and lubricating oil".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–424 applicable with respect to articles sold after Jan. 6, 1983, see section 515(c) of Pub. L. 97–424, set out as a note under section 34 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–258 effective July 1, 1970, see section 211(a) of Pub. L. 91–258, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by section 103(d) of Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 103(n)(1) of Pub. L. 89–809, set out as a note under section 871 of this title.

Pub. L. 89–809, title I, §106(a)(6), Nov. 13, 1966, 80 Stat. 1569, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by this subsection [enacting section 906 of this title and amending this section and section 901 of this title] shall apply with respect to taxable years beginning after Dec. 31, 1966. In applying section 904 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] with respect to section 906 of such Code, no amount may be carried from or to any taxable year beginning before Jan. 1, 1967, and no such year shall be taken into account."

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 applicable to taxable years beginning on or after July 1, 1965, see section 809(f) of Pub. L. 89–44, set out as a note under section 6420 of this title.

§875. Partnerships; beneficiaries of estates and trusts

For purposes of this subtitle—

(1) a nonresident alien individual or foreign corporation shall be considered as being engaged in a trade or business within the United States if the partnership of which such individual or corporation is a member is so engaged, and

(2) a nonresident alien individual or foreign corporation which is a beneficiary of an estate or trust which is engaged in any trade or business within the United States shall be treated as being engaged in such trade or business within the United States.

(Aug. 16, 1954, ch. 736, 68A Stat. 281; Pub. L. 89–809, title I, §103(e)(1), Nov. 13, 1966, 80 Stat. 1551.)

AMENDMENTS

1966—Pub. L. 89–809 designated existing provisions as par. (1), substituted reference to nonresident alien individuals or foreign corporations for reference simply to nonresident alien individuals, and added par. (2).

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 103(n)(1) of Pub. L. 89–809, set out as a note under section 871 of this title.

§876. Alien residents of Puerto Rico, Guam, American Samoa, or the Northern Mariana Islands

(a) General rule

This subpart shall not apply to any alien individual who is a bona fide resident of Puerto Rico, Guam, American Samoa, or the Northern Mariana Islands during the entire taxable year and such alien shall be subject to the tax imposed by section 1.

(b) Cross references

For exclusion from gross income of income derived from sources within—

(1) Guam, American Samoa, and the Northern Mariana Islands, see section 931, and

(2) Puerto Rico, see section 933.

(Aug. 16, 1954, ch. 736, 68A Stat. 281; Pub. L. 99–514, title XII, §1272(b), Oct. 22, 1986, 100 Stat. 2593.)

AMENDMENTS

1986—Pub. L. 99–514, §1272(b), inserted ", Guam, American Samoa, or the Northern Mariana Islands" in section catchline.

Subsec. (a). Pub. L. 99–514, §1272(b), amended subsec. (a) generally, substituting "General rule" for "No application to certain alien residents of Puerto Rico" in heading and inserting references to residents of Guam, American Samoa, and the Northern Mariana Islands in text.

Subsec. (b). Pub. L. 99–514, §1272(b), amended subsec. (b) generally, inserting references to Guam, American Samoa, and the Northern Mariana Islands.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99–514, set out as a note under section 931 of this title.

§877. Expatriation to avoid tax

(a) Treatment of expatriates

(1) In general

Every nonresident alien individual to whom this section applies and who, within the 10-year period immediately preceding the close of the taxable year, lost United States citizenship shall be taxable for such taxable year in the manner provided in subsection (b) if the tax imposed pursuant to such subsection (after any reduction in such tax under the last sentence of such subsection) exceeds the tax which, without regard to this section, is imposed pursuant to section 871.

(2) Individuals subject to this section

This section shall apply to any individual if—

(A) the average annual net income tax (as defined in section 38(c)(1)) of such individual for the period of 5 taxable years ending before the date of the loss of United States citizenship is greater than $124,000,

(B) the net worth of the individual as of such date is $2,000,000 or more, or

(C) such individual fails to certify under penalty of perjury that he has met the requirements of this title for the 5 preceding taxable years or fails to submit such evidence of such compliance as the Secretary may require.

In the case of the loss of United States citizenship in any calendar year after 2004, such $124,000 amount shall be increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting "2003" for "1992" in subparagraph (B) thereof. Any increase under the preceding sentence shall be rounded to the nearest multiple of $1,000.

(b) Alternative tax

A nonresident alien individual described in subsection (a) shall be taxable for the taxable year as provided in section 1 or 55, except that—

(1) the gross income shall include only the gross income described in section 872(a) (as modified by subsection (d) of this section), and

(2) the deductions shall be allowed if and to the extent that they are connected with the gross income included under this section, except that the capital loss carryover provided by section 1212(b) shall not be allowed; and the proper allocation and apportionment of the deductions for this purpose shall be determined as provided under regulations prescribed by the Secretary.

For purposes of paragraph (2), the deductions allowed by section 873(b) shall be allowed; and the deduction (for losses not connected with the trade or business if incurred in transactions entered into for profit) allowed by section 165(c)(2) shall be allowed, but only if the profit, if such transaction had resulted in a profit, would be included in gross income under this section. The tax imposed solely by reason of this section shall be reduced (but not below zero) by the amount of any income,

war profits, and excess profits taxes (within the meaning of section 903) paid to any foreign country or possession of the United States on any income of the taxpayer on which tax is imposed solely by reason of this section.

(c) Exceptions

(1) In general

Subparagraphs (A) and (B) of subsection (a)(2) shall not apply to an individual described in paragraph (2) or (3).

(2) Dual citizens

(A) In general

An individual is described in this paragraph if—

(i) the individual became at birth a citizen of the United States and a citizen of another country and continues to be a citizen of such other country, and

(ii) the individual has had no substantial contacts with the United States.

(B) Substantial contacts

An individual shall be treated as having no substantial contacts with the United States only if the individual—

(i) was never a resident of the United States (as defined in section 7701(b)),

(ii) has never held a United States passport, and

(iii) was not present in the United States for more than 30 days during any calendar year which is 1 of the 10 calendar years preceding the individual's loss of United States citizenship.

(3) Certain minors

An individual is described in this paragraph if—

(A) the individual became at birth a citizen of the United States,

(B) neither parent of such individual was a citizen of the United States at the time of such birth,

(C) the individual's loss of United States citizenship occurs before such individual attains age 18½, and

(D) the individual was not present in the United States for more than 30 days during any calendar year which is 1 of the 10 calendar years preceding the individual's loss of United States citizenship.

(d) Special rules for source, etc.

For purposes of subsection (b)—

(1) Source rules

The following items of gross income shall be treated as income from sources within the United States:

(A) Sale of property

Gains on the sale or exchange of property (other than stock or debt obligations) located in the United States.

(B) Stock or debt obligations

Gains on the sale or exchange of stock issued by a domestic corporation or debt obligations of United States persons or of the United States, a State or political subdivision thereof, or the District of Columbia.

(C) Income or gain derived from controlled foreign corporation

Any income or gain derived from stock in a foreign corporation but only—

(i) if the individual losing United States citizenship owned (within the meaning of section 958(a)), or is considered as owning (by applying the ownership rules of section 958(b)), at

any time during the 2-year period ending on the date of the loss of United States citizenship, more than 50 percent of—

(I) the total combined voting power of all classes of stock entitled to vote of such corporation, or

(II) the total value of the stock of such corporation, and

(ii) to the extent such income or gain does not exceed the earnings and profits attributable to such stock which were earned or accumulated before the loss of citizenship and during periods that the ownership requirements of clause (i) are met.

(2) Gain recognition on certain exchanges

(A) In general

In the case of any exchange of property to which this paragraph applies, notwithstanding any other provision of this title, such property shall be treated as sold for its fair market value on the date of such exchange, and any gain shall be recognized for the taxable year which includes such date.

(B) Exchanges to which paragraph applies

This paragraph shall apply to any exchange during the 10-year period beginning on the date the individual loses United States citizenship if—

(i) gain would not (but for this paragraph) be recognized on such exchange in whole or in part for purposes of this subtitle,

(ii) income derived from such property was from sources within the United States (or, if no income was so derived, would have been from such sources), and

(iii) income derived from the property acquired in the exchange would be from sources outside the United States.

(C) Exception

Subparagraph (A) shall not apply if the individual enters into an agreement with the Secretary which specifies that any income or gain derived from the property acquired in the exchange (or any other property which has a basis determined in whole or part by reference to such property) during such 10-year period shall be treated as from sources within the United States. If the property transferred in the exchange is disposed of by the person acquiring such property, such agreement shall terminate and any gain which was not recognized by reason of such agreement shall be recognized as of the date of such disposition.

(D) Secretary may extend period

To the extent provided in regulations prescribed by the Secretary, subparagraph (B) shall be applied by substituting the 15-year period beginning 5 years before the loss of United States citizenship for the 10-year period referred to therein. In the case of any exchange occurring during such 5 years, any gain recognized under this subparagraph shall be recognized immediately after such loss of citizenship.

(E) Secretary may require recognition of gain in certain cases

To the extent provided in regulations prescribed by the Secretary—

(i) the removal of appreciated tangible personal property from the United States, and

(ii) any other occurrence which (without recognition of gain) results in a change in the source of the income or gain from property from sources within the United States to sources outside the United States,

shall be treated as an exchange to which this paragraph applies.

(3) Substantial diminishing of risks of ownership

For purposes of determining whether this section applies to any gain on the sale or exchange of any property, the running of the 10-year period described in subsection (a) and the period

applicable under paragraph (2) shall be suspended for any period during which the individual's risk of loss with respect to the property is substantially diminished by—

(A) the holding of a put with respect to such property (or similar property),

(B) the holding by another person of a right to acquire the property, or

(C) a short sale or any other transaction.

(4) Treatment of property contributed to controlled foreign corporations

(A) In general

If—

(i) an individual losing United States citizenship contributes property during the 10-year period beginning on the date the individual loses United States citizenship to any corporation which, at the time of the contribution, is described in subparagraph (B), and

(ii) income derived from such property immediately before such contribution was from sources within the United States (or, if no income was so derived, would have been from such sources),

any income or gain on such property (or any other property which has a basis determined in whole or part by reference to such property) received or accrued by the corporation shall be treated as received or accrued directly by such individual and not by such corporation. The preceding sentence shall not apply to the extent the property has been treated under subparagraph (C) as having been sold by such corporation.

(B) Corporation described

A corporation is described in this subparagraph with respect to an individual if, were such individual a United States citizen—

(i) such corporation would be a controlled foreign corporation (as defined in [1] 957), and

(ii) such individual would be a United States shareholder (as defined in section 951(b)) with respect to such corporation.

(C) Disposition of stock in corporation

If stock in the corporation referred to in subparagraph (A) (or any other stock which has a basis determined in whole or part by reference to such stock) is disposed of during the 10-year period referred to in subsection (a) and while the property referred to in subparagraph (A) is held by such corporation, a pro rata share of such property (determined on the basis of the value of such stock) shall be treated as sold by the corporation immediately before such disposition.

(D) Anti-abuse rules

The Secretary shall prescribe such regulations as may be necessary to prevent the avoidance of the purposes of this paragraph, including where—

(i) the property is sold to the corporation, and

(ii) the property taken into account under subparagraph (A) is sold by the corporation.

(E) Information reporting

The Secretary shall require such information reporting as is necessary to carry out the purposes of this paragraph.

(e) Comparable treatment of lawful permanent residents who cease to be taxed as residents

(1) In general

Any long-term resident of the United States who ceases to be a lawful permanent resident of the United States (within the meaning of section 7701(b)(6)) shall be treated for purposes of this section and sections 2107, 2501, and 6039G in the same manner as if such resident were a citizen of the United States who lost United States citizenship on the date of such cessation or commencement.

(2) Long-term resident

For purposes of this subsection, the term "long-term resident" means any individual (other than a citizen of the United States) who is a lawful permanent resident of the United States in at least 8 taxable years during the period of 15 taxable years ending with the taxable year during which the event described in subparagraph (A) or (B) of paragraph (1) occurs. For purposes of the preceding sentence, an individual shall not be treated as a lawful permanent resident for any taxable year if such individual is treated as a resident of a foreign country for the taxable year under the provisions of a tax treaty between the United States and the foreign country and does not waive the benefits of such treaty applicable to residents of the foreign country.

(3) Special rules

(A) Exceptions not to apply

Subsection (c) shall not apply to an individual who is treated as provided in paragraph (1).

(B) Step-up in basis

Solely for purposes of determining any tax imposed by reason of this subsection, property which was held by the long-term resident on the date the individual first became a resident of the United States shall be treated as having a basis on such date of not less than the fair market value of such property on such date. The preceding sentence shall not apply if the individual elects not to have such sentence apply. Such an election, once made, shall be irrevocable.

(4) Authority to exempt individuals

This subsection shall not apply to an individual who is described in a category of individuals prescribed by regulation by the Secretary.

(5) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out this subsection, including regulations providing for the application of this subsection in cases where an alien individual becomes a resident of the United States during the 10-year period after being treated as provided in paragraph (1).

(f) Burden of proof

If the Secretary establishes that it is reasonable to believe that an individual's loss of United States citizenship would, but for this section, result in a substantial reduction for the taxable year in the taxes on his probable income for such year, the burden of proving for such taxable year that such loss of citizenship did not have for one of its principal purposes the avoidance of taxes under this subtitle or subtitle B shall be on such individual.

(g) Physical presence

(1) In general

This section shall not apply to any individual to whom this section would otherwise apply for any taxable year during the 10-year period referred to in subsection (a) in which such individual is physically present in the United States at any time on more than 30 days in the calendar year ending in such taxable year, and such individual shall be treated for purposes of this title as a citizen or resident of the United States, as the case may be, for such taxable year.

(2) Exception

(A) In general

In the case of an individual described in any of the following subparagraphs of this paragraph, a day of physical presence in the United States shall be disregarded if the individual is performing services in the United States on such day for an employer. The preceding sentence shall not apply if—

(i) such employer is related (within the meaning of section 267 and 707) to such individual, or

(ii) such employer fails to meet such requirements as the Secretary may prescribe by regulations to prevent the avoidance of the purposes of this paragraph.

Not more than 30 days during any calendar year may be disregarded under this subparagraph.

(B) Individuals with ties to other countries

An individual is described in this subparagraph if—

(i) the individual becomes (not later than the close of a reasonable period after loss of United States citizenship or termination of residency) a citizen or resident of the country in which—

(I) such individual was born,

(II) if such individual is married, such individual's spouse was born, or

(III) either of such individual's parents were born, and

(ii) the individual becomes fully liable for income tax in such country.

(C) Minimal prior physical presence in the United States

An individual is described in this subparagraph if, for each year in the 10-year period ending on the date of loss of United States citizenship or termination of residency, the individual was physically present in the United States for 30 days or less. The rule of section 7701(b)(3)(D) shall apply for purposes of this subparagraph.

(h) Termination

This section shall not apply to any individual whose expatriation date (as defined in section 877A(g)(3)) is on or after the date of the enactment of this subsection.

(Added Pub. L. 89–809, title I, §103(f)(1), Nov. 13, 1966, 80 Stat. 1551; amended Pub. L. 93–406, title II, §2005(c)(8), Sept. 2, 1974, 88 Stat. 992; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–600, title IV, §421(e)(5), Nov. 6, 1978, 92 Stat. 2876; Pub. L. 96–222, title I, §104(a)(1), (4)(H)(v), Apr. 1, 1980, 94 Stat. 214, 217; Pub. L. 99–514, title XII, §1243(a), Oct. 22, 1986, 100 Stat. 2580; Pub. L. 102–318, title V, §521(b)(31), July 3, 1992, 106 Stat. 312; Pub. L. 104–188, title I, §1401(b)(11), Aug. 20, 1996, 110 Stat. 1789; Pub. L. 104–191, title V, §511(a)–(d), (f)(1), Aug. 21, 1996, 110 Stat. 2093–2098; Pub. L. 105–34, title XVI, §1602(g)(1)–(4), (h)(3), Aug. 5, 1997, 111 Stat. 1095, 1096; Pub. L. 108–357, title VIII, §804(a)(1), (2), (c), Oct. 22, 2004, 118 Stat. 1569, 1570; Pub. L. 109–135, title IV, §403(v)(1), Dec. 21, 2005, 119 Stat. 2628; Pub. L. 110–245, title III, §301(c)(2)(A), (d), June 17, 2008, 122 Stat. 1646.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (h), is the date of enactment of Pub. L. 110–245, which was approved June 17, 2008.

PRIOR PROVISIONS

A prior section 877 was renumbered section 878 of this title.

AMENDMENTS

2008—Subsec. (e)(1). Pub. L. 110–245, §301(c)(2)(A), amended par. (1) generally. Prior to amendment, text read as follows: "Any long-term resident of the United States who—

"(A) ceases to be a lawful permanent resident of the United States (within the meaning of section 7701(b)(6)), or

"(B) commences to be treated as a resident of a foreign country under the provisions of a tax treaty between the United States and the foreign country and who does not waive the benefits of such treaty applicable to residents of the foreign country,

shall be treated for purposes of this section and sections 2107, 2501, and 6039G in the same manner as if such resident were a citizen of the United States who lost United States citizenship on the date of such cessation or commencement."

Subsec. (h). Pub. L. 110–245, §301(d), added subsec. (h).

2005—Subsec. (g)(2)(C). Pub. L. 109–135 substituted "section 7701(b)(3)(D)" for "section 7701(b)(3)(D)(ii)".

2004—Subsec. (a). Pub. L. 108–357, §804(a)(1), reenacted heading without change and amended text of subsec. (a) generally. Prior to amendment, subsec. (a) stated general rule on taxation of nonresident alien individuals who lost United States citizenship and provided that an individual would be treated as having a tax avoidance purpose if the average annual net income tax was greater than $100,000 or the net worth of the individual was $500,000 or more.

Subsec. (c). Pub. L. 108–357, §804(a)(2), amended heading and text of subsec. (c) generally, substituting provisions setting forth exceptions for dual citizens and certain minors for provisions relating to inapplicability of presumption of tax avoidance to dual citizens, long-term foreign residents, minors who renounced citizenship upon reaching age of majority, and individuals specified in regulations.

Subsec. (g). Pub. L. 108–357, §804(c), added subsec. (g).

1997—Subsec. (d)(2)(B). Pub. L. 105–34, §1602(g)(1), substituted "the 10-year period beginning on the date the individual loses United States citizenship" for "the 10-year period described in subsection (a)" in introductory provisions.

Subsec. (d)(2)(D). Pub. L. 105–34, §1602(g)(2), inserted at end "In the case of any exchange occurring during such 5 years, any gain recognized under this subparagraph shall be recognized immediately after such loss of citizenship."

Subsec. (d)(3). Pub. L. 105–34, §1602(g)(3), inserted "and the period applicable under paragraph (2)" after "subsection (a)" in introductory provisions.

Subsec. (d)(4)(A). Pub. L. 105–34, §1602(g)(4)(C), struck out "during the 10-year period referred to in subsection (a)," before "any income or gain" in concluding provisions.

Subsec. (d)(4)(A)(i). Pub. L. 105–34, §1602(g)(4)(A), inserted "during the 10-year period beginning on the date the individual loses United States citizenship" after "contributes property".

Subsec. (d)(4)(A)(ii). Pub. L. 105–34, §1602(g)(4)(B), inserted "immediately before such contribution" after "from such property".

Subsec. (e)(1). Pub. L. 105–34, §1602(h)(3), substituted "6039G" for "6039F" in concluding provisions.

1996—Subsec. (a). Pub. L. 104–191, §511(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows:

"(a) IN GENERAL.—Every nonresident alien individual who at any time after March 8, 1965, and within the 10-year period immediately preceding the close of the taxable year lost United States citizenship, unless such loss did not have for one of its principal purposes the avoidance of taxes under this subtitle or subtitle B, shall be taxable for such taxable year in the manner provided in subsection (b) if the tax imposed pursuant to such subsection exceeds the tax which, without regard to this section, is imposed pursuant to section 871."

Subsec. (a)(1). Pub. L. 104–191, §511(d)(2), inserted "(after any reduction in such tax under the last sentence of such subsection)" after "such subsection".

Subsec. (b). Pub. L. 104–191, §511(d)(1), inserted at end "The tax imposed solely by reason of this section shall be reduced (but not below zero) by the amount of any income, war profits, and excess profits taxes (within the meaning of section 903) paid to any foreign country or possession of the United States on any income of the taxpayer on which tax is imposed solely by reason of this section."

Pub. L. 104–188 substituted "section 1 or 55" for "section 1, 55, or 402(d)(1)".

Subsec. (b)(1). Pub. L. 104–191, §511(b)(2), substituted "subsection (d)" for "subsection (c)".

Subsec. (c). Pub. L. 104–191, §511(b)(1), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 104–191, §511(c), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows:

"(d) SPECIAL RULES OF SOURCE.—For purposes of subsection (b), the following items of gross income shall be treated as income from sources within the United States:

"(1) SALE OF PROPERTY.—Gains on the sale or exchange of property (other than stock or debt obligations) located in the United States.

"(2) STOCK OR DEBT OBLIGATIONS.—Gains on the sale or exchange of stock issued by a domestic corporation or debt obligations of United States persons or of the United States, a State or political subdivision thereof, or the District of Columbia.

For purposes of this section, gain on the sale or exchange of property which has a basis determined in whole or in part by reference to property described in paragraph (1) or (2) shall be treated as gain described in paragraph (1) or (2)."

Pub. L. 104–191, §511(b)(1), redesignated subsec. (c) as (d) and struck out former subsec. (d) which read as follows:

"(d) EXCEPTION FOR LOSS OF CITIZENSHIP FOR CERTAIN CAUSES.—Subsection (a) shall not

apply to a nonresident alien individual whose loss of United States citizenship resulted from the application of section 301(b), 350, or 355 of the Immigration and Nationality Act, as amended (8 U.S.C. 1401(b), 1482, or 1487)."

Subsecs. (e), (f). Pub. L. 104–191, §511(f)(1), added subsec. (e) and redesignated former subsec. (e) as (f).

1992—Subsec. (b). Pub. L. 102–318 substituted "402(d)(1)" for "402(e)(1)".

1986—Subsec. (c). Pub. L. 99–514 inserted at end "For purposes of this section, gain on the sale or exchange of property which has a basis determined in whole or in part by reference to property described in paragraph (1) or (2) shall be treated as gain described in paragraph (1) or (2)."

1980—Subsec. (b). Pub. L. 96–222 substituted "55, or 402(e)(1)" for "section 55, 402(e)(1), or section 1201(b)".

1978—Subsec. (b). Pub. L. 95–600 substituted "section 1, section 55," for "section 1".

1976—Subsecs. (b)(2), (e). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

1974—Subsec. (b). Pub. L. 93–406 inserted reference to section 402(e)(1).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–245 applicable to any individual whose expatriation date is on or after June 17, 2008, see section 301(g)(1) of Pub. L. 110–245, set out as an Effective Date note under section 2801 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §804(f), Oct. 22, 2004, 118 Stat. 1573, provided that: "The amendments made by this section [amending this section and sections 2107, 2501, 6039G, and 7701 of this title] shall apply to individuals who expatriate after June 3, 2004."

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 effective as if included in the provisions of the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104–191, to which such amendment relates, see section 1602(i) of Pub. L. 105–34, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–191, title V, §511(g), Aug. 21, 1996, 110 Stat. 2100, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and sections 2107 and 2501 of this title] shall apply to—

"(A) individuals losing United States citizenship (within the meaning of section 877 of the Internal Revenue Code of 1986) on or after February 6, 1995, and

"(B) long-term residents of the United States with respect to whom an event described in [former] subparagraph (A) or (B) of section 877(e)(1) of such Code occurs on or after February 6, 1995.

"(2) RULING REQUESTS.—In no event shall the 1-year period referred to in section 877(c)(1)(B) of such Code, as amended by this section, expire before the date which is 90 days after the date of the enactment of this Act [Aug. 21, 1996].

"(3) SPECIAL RULE.—

"(A) IN GENERAL.—In the case of an individual who performed an act of expatriation specified in paragraph (1), (2), (3), or (4) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(1)–(4)) before February 6, 1995, but who did not, on or before such date, furnish to the United States Department of State a signed statement of voluntary relinquishment of United States nationality confirming the performance of such act, the amendments made by this section and section 512 [enacting section 6039F of this title] shall apply to such individual except that the 10-year period described in section 877(a) of such Code shall not expire before the end of the 10-year period beginning on the date such statement is so furnished.

"(B) EXCEPTION.—Subparagraph (A) shall not apply if the individual establishes to the satisfaction of the Secretary of the Treasury that such loss of United States citizenship occurred before February 6, 1994."

Amendment by Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1999, with retention of certain transition rules, see section 1401(c) of Pub. L. 104–188, set out as a note under section 402 of this

title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102–318, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XII, §1243(b), Oct. 22, 1986, 100 Stat. 2581, provided that: "The amendment made by subsection (a) [amending this section] shall apply to sales or exchanges of property received in exchanges after September 25, 1985."

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 421(g) of Pub. L. 95–600, set out as a note under section 5 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–406 applicable only with respect to distributions or payments made after Dec. 31, 1973, in taxable years beginning after Dec. 31, 1973, see section 2005(d) of Pub. L. 93–406, set out as a note under section 402 of this title.

EFFECTIVE DATE

Section applicable with respect to taxable years beginning after Dec. 31, 1966, see section 103(n)(1) of Pub. L. 89–809, set out as an Effective Date of 1966 Amendment note under section 871 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§1401–1465] of title I of Pub. L. 104–188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

[1] *So in original. Probably should be followed by "section".*

§877A. Tax responsibilities of expatriation

(a) General rules

For purposes of this subtitle—

(1) Mark to market

All property of a covered expatriate shall be treated as sold on the day before the expatriation date for its fair market value.

(2) Recognition of gain or loss

In the case of any sale under paragraph (1)—

(A) notwithstanding any other provision of this title, any gain arising from such sale shall be taken into account for the taxable year of the sale, and

(B) any loss arising from such sale shall be taken into account for the taxable year of the sale

to the extent otherwise provided by this title, except that section 1091 shall not apply to any such loss.

Proper adjustment shall be made in the amount of any gain or loss subsequently realized for gain or loss taken into account under the preceding sentence, determined without regard to paragraph (3).

(3) Exclusion for certain gain

(A) In general

The amount which would (but for this paragraph) be includible in the gross income of any individual by reason of paragraph (1) shall be reduced (but not below zero) by $600,000.

(B) Adjustment for inflation

(i) In general

In the case of any taxable year beginning in a calendar year after 2008, the dollar amount in subparagraph (A) shall be increased by an amount equal to—

(I) such dollar amount, multiplied by

(II) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting "calendar year 2007" for "calendar year 1992" in subparagraph (B) thereof.

(ii) Rounding

If any amount as adjusted under clause (i) is not a multiple of $1,000, such amount shall be rounded to the nearest multiple of $1,000.

(b) Election to defer tax

(1) In general

If the taxpayer elects the application of this subsection with respect to any property treated as sold by reason of subsection (a), the time for payment of the additional tax attributable to such property shall be extended until the due date of the return for the taxable year in which such property is disposed of (or, in the case of property disposed of in a transaction in which gain is not recognized in whole or in part, until such other date as the Secretary may prescribe).

(2) Determination of tax with respect to property

For purposes of paragraph (1), the additional tax attributable to any property is an amount which bears the same ratio to the additional tax imposed by this chapter for the taxable year solely by reason of subsection (a) as the gain taken into account under subsection (a) with respect to such property bears to the total gain taken into account under subsection (a) with respect to all property to which subsection (a) applies.

(3) Termination of extension

The due date for payment of tax may not be extended under this subsection later than the due date for the return of tax imposed by this chapter for the taxable year which includes the date of death of the expatriate (or, if earlier, the time that the security provided with respect to the property fails to meet the requirements of paragraph (4), unless the taxpayer corrects such failure within the time specified by the Secretary).

(4) Security

(A) In general

No election may be made under paragraph (1) with respect to any property unless adequate security is provided with respect to such property.

(B) Adequate security

For purposes of subparagraph (A), security with respect to any property shall be treated as adequate security if—

(i) it is a bond which is furnished to, and accepted by, the Secretary, which is conditioned on the payment of tax (and interest thereon), and which meets the requirements of section 6325, or

(ii) it is another form of security for such payment (including letters of credit) that meets such requirements as the Secretary may prescribe.

(5) Waiver of certain rights

No election may be made under paragraph (1) unless the taxpayer makes an irrevocable waiver of any right under any treaty of the United States which would preclude assessment or collection of any tax imposed by reason of this section.

(6) Elections

An election under paragraph (1) shall only apply to property described in the election and, once made, is irrevocable.

(7) Interest

For purposes of section 6601, the last date for the payment of tax shall be determined without regard to the election under this subsection.

(c) Exception for certain property

Subsection (a) shall not apply to—

(1) any deferred compensation item (as defined in subsection (d)(4)),

(2) any specified tax deferred account (as defined in subsection (e)(2)), and

(3) any interest in a nongrantor trust (as defined in subsection (f)(3)).

(d) Treatment of deferred compensation items

(1) Withholding on eligible deferred compensation items

(A) In general

In the case of any eligible deferred compensation item, the payor shall deduct and withhold from any taxable payment to a covered expatriate with respect to such item a tax equal to 30 percent thereof.

(B) Taxable payment

For purposes of subparagraph (A), the term "taxable payment" means with respect to a covered expatriate any payment to the extent it would be includible in the gross income of the covered expatriate if such expatriate continued to be subject to tax as a citizen or resident of the United States. A deferred compensation item shall be taken into account as a payment under the preceding sentence when such item would be so includible.

(2) Other deferred compensation items

In the case of any deferred compensation item which is not an eligible deferred compensation item—

(A)(i) with respect to any deferred compensation item to which clause (ii) does not apply, an amount equal to the present value of the covered expatriate's accrued benefit shall be treated as having been received by such individual on the day before the expatriation date as a distribution under the plan, and

(ii) with respect to any deferred compensation item referred to in paragraph (4)(D), the rights of the covered expatriate to such item shall be treated as becoming transferable and not subject to a substantial risk of forfeiture on the day before the expatriation date,

(B) no early distribution tax shall apply by reason of such treatment, and

(C) appropriate adjustments shall be made to subsequent distributions from the plan to reflect such treatment.

(3) Eligible deferred compensation items

For purposes of this subsection, the term "eligible deferred compensation item" means any deferred compensation item with respect to which—

(A) the payor of such item is—

(i) a United States person, or

(ii) a person who is not a United States person but who elects to be treated as a United States person for purposes of paragraph (1) and meets such requirements as the Secretary may provide to ensure that the payor will meet the requirements of paragraph (1), and

(B) the covered expatriate—

(i) notifies the payor of his status as a covered expatriate, and

(ii) makes an irrevocable waiver of any right to claim any reduction under any treaty with the United States in withholding on such item.

(4) Deferred compensation item

For purposes of this subsection, the term "deferred compensation item" means—

(A) any interest in a plan or arrangement described in section 219(g)(5),

(B) any interest in a foreign pension plan or similar retirement arrangement or program,

(C) any item of deferred compensation, and

(D) any property, or right to property, which the individual is entitled to receive in connection with the performance of services to the extent not previously taken into account under section 83 or in accordance with section 83.

(5) Exception

Paragraphs (1) and (2) shall not apply to any deferred compensation item to the extent attributable to services performed outside the United States while the covered expatriate was not a citizen or resident of the United States.

(6) Special rules

(A) Application of withholding rules

Rules similar to the rules of subchapter B of chapter 3 shall apply for purposes of this subsection.

(B) Application of tax

Any item subject to the withholding tax imposed under paragraph (1) shall be subject to tax under section 871.

(C) Coordination with other withholding requirements

Any item subject to withholding under paragraph (1) shall not be subject to withholding under section 1441 or chapter 24.

(e) Treatment of specified tax deferred accounts

(1) Account treated as distributed

In the case of any interest in a specified tax deferred account held by a covered expatriate on the day before the expatriation date—

(A) the covered expatriate shall be treated as receiving a distribution of his entire interest in such account on the day before the expatriation date,

(B) no early distribution tax shall apply by reason of such treatment, and

(C) appropriate adjustments shall be made to subsequent distributions from the account to reflect such treatment.

(2) Specified tax deferred account

For purposes of paragraph (1), the term "specified tax deferred account" means an individual retirement plan (as defined in section 7701(a)(37)) other than any arrangement described in subsection (k) or (p) of section 408, a qualified tuition program (as defined in section 529), a Coverdell education savings account (as defined in section 530), a health savings account (as defined in section 223), and an Archer MSA (as defined in section 220).

(f) Special rules for nongrantor trusts

(1) In general

In the case of a distribution (directly or indirectly) of any property from a nongrantor trust to a covered expatriate—

(A) the trustee shall deduct and withhold from such distribution an amount equal to 30 percent of the taxable portion of the distribution, and

(B) if the fair market value of such property exceeds its adjusted basis in the hands of the trust, gain shall be recognized to the trust as if such property were sold to the expatriate at its fair market value.

(2) Taxable portion

For purposes of this subsection, the term "taxable portion" means, with respect to any distribution, that portion of the distribution which would be includible in the gross income of the covered expatriate if such expatriate continued to be subject to tax as a citizen or resident of the United States.

(3) Nongrantor trust

For purposes of this subsection, the term "nongrantor trust" means the portion of any trust that the individual is not considered the owner of under subpart E of part I of subchapter J. The determination under the preceding sentence shall be made immediately before the expatriation date.

(4) Special rules relating to withholding

For purposes of this subsection—

(A) rules similar to the rules of subsection (d)(6) shall apply, and

(B) the covered expatriate shall be treated as having waived any right to claim any reduction under any treaty with the United States in withholding on any distribution to which paragraph (1)(A) applies unless the covered expatriate agrees to such other treatment as the Secretary determines appropriate.

(5) Application

This subsection shall apply to a nongrantor trust only if the covered expatriate was a beneficiary of the trust on the day before the expatriation date.

(g) Definitions and special rules relating to expatriation

For purposes of this section—

(1) Covered expatriate

(A) In general

The term "covered expatriate" means an expatriate who meets the requirements of subparagraph (A), (B), or (C) of section 877(a)(2).

(B) Exceptions

An individual shall not be treated as meeting the requirements of subparagraph (A) or (B) of section 877(a)(2) if—

(i) the individual—

(I) became at birth a citizen of the United States and a citizen of another country and, as of the expatriation date, continues to be a citizen of, and is taxed as a resident of, such other country, and

(II) has been a resident of the United States (as defined in section 7701(b)(1)(A)(ii)) for not more than 10 taxable years during the 15-taxable year period ending with the taxable year during which the expatriation date occurs, or

(ii)(I) the individual's relinquishment of United States citizenship occurs before such individual attains age 18½, and

(II) the individual has been a resident of the United States (as so defined) for not more than

10 taxable years before the date of relinquishment.

(C) Covered expatriates also subject to tax as citizens or residents

In the case of any covered expatriate who is subject to tax as a citizen or resident of the United States for any period beginning after the expatriation date, such individual shall not be treated as a covered expatriate during such period for purposes of subsections (d)(1) and (f) and section 2801.

(2) Expatriate

The term "expatriate" means—

(A) any United States citizen who relinquishes his citizenship, and

(B) any long-term resident of the United States who ceases to be a lawful permanent resident of the United States (within the meaning of section 7701(b)(6)).

(3) Expatriation date

The term "expatriation date" means—

(A) the date an individual relinquishes United States citizenship, or

(B) in the case of a long-term resident of the United States, the date on which the individual ceases to be a lawful permanent resident of the United States (within the meaning of section 7701(b)(6)).

(4) Relinquishment of citizenship

A citizen shall be treated as relinquishing his United States citizenship on the earliest of—

(A) the date the individual renounces his United States nationality before a diplomatic or consular officer of the United States pursuant to paragraph (5) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(5)),

(B) the date the individual furnishes to the United States Department of State a signed statement of voluntary relinquishment of United States nationality confirming the performance of an act of expatriation specified in paragraph (1), (2), (3), or (4) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(1)–(4)),

(C) the date the United States Department of State issues to the individual a certificate of loss of nationality, or

(D) the date a court of the United States cancels a naturalized citizen's certificate of naturalization.

Subparagraph (A) or (B) shall not apply to any individual unless the renunciation or voluntary relinquishment is subsequently approved by the issuance to the individual of a certificate of loss of nationality by the United States Department of State.

(5) Long-term resident

The term "long-term resident" has the meaning given to such term by section 877(e)(2).

(6) Early distribution tax

The term "early distribution tax" means any increase in tax imposed under section 72(t), 220(e)(4),[1] 223(f)(4), 409A(a)(1)(B), 529(c)(6), or 530(d)(4).

(h) Other rules

(1) Termination of deferrals, etc.

In the case of any covered expatriate, notwithstanding any other provision of this title—

(A) any time period for acquiring property which would result in the reduction in the amount of gain recognized with respect to property disposed of by the taxpayer shall terminate on the day before the expatriation date, and

(B) any extension of time for payment of tax shall cease to apply on the day before the expatriation date and the unpaid portion of such tax shall be due and payable at the time and in the manner prescribed by the Secretary.

(2) Step-up in basis

Solely for purposes of determining any tax imposed by reason of subsection (a), property which was held by an individual on the date the individual first became a resident of the United States (within the meaning of section 7701(b)) shall be treated as having a basis on such date of not less than the fair market value of such property on such date. The preceding sentence shall not apply if the individual elects not to have such sentence apply. Such an election, once made, shall be irrevocable.

(3) Coordination with section 684

If the expatriation of any individual would result in the recognition of gain under section 684, this section shall be applied after the application of section 684.

(i) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.

(Added Pub. L. 110–245, title III, §301(a), June 17, 2008, 122 Stat. 1638.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

REFERENCES IN TEXT

Section 220(e), referred to in subsec. (g)(6), does not contain a par. (4).

EFFECTIVE DATE

Section applicable to any individual whose expatriation date is on or after June 17, 2008, see section 301(g)(1) of Pub. L. 110–245, set out as a note under section 2801 of this title.

[1] *See References in Text note below.*

§878. Foreign educational, charitable, and certain other exempt organizations

For special provisions relating to foreign educational, charitable, and other exempt organizations, see sections 512(a) and 4948.

(Aug. 16, 1954, ch. 736, 68A Stat. 282, §877; renumbered §878, Pub. L. 89–809, title I, §103(f)(1), Nov. 13, 1966, 80 Stat. 1551; amended Pub. L. 91–172, title I, §101(j)(20), Dec. 30, 1969, 83 Stat. 528.)

AMENDMENTS

1969—Pub. L. 91–172 substituted provisions requiring reference to organizations in sections 512(a) and 4948 for provisions requiring reference to trusts in section 512(a), and struck out reference to unrelated business income.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 101(k)(2)(B) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

§879. Tax treatment of certain community income in the case of nonresident alien individuals

(a) General rule

In the case of a married couple 1 or both of whom are nonresident alien individuals and who have community income for the taxable year, such community income shall be treated as follows:

(1) Earned income (within the meaning of section 911(d)(2)), other than trade or business

income and a partner's distributive share of partnership income, shall be treated as the income of the spouse who rendered the personal services,

(2) Trade or business income, and a partner's distributive share of partnership income, shall be treated as provided in section 1402(a)(5),

(3) Community income not described in paragraph (1) or (2) which is derived from the separate property (as determined under the applicable community property law) of one spouse shall be treated as the income of such spouse, and

(4) All other such community income shall be treated as provided in the applicable community property law.

(b) Exception where election under section 6013(g) is in effect

Subsection (a) shall not apply for any taxable year for which an election under subsection (g) or (h) of section 6013 (relating to election to treat nonresident alien individual as resident of the United States) is in effect.

(c) Definitions and special rules

For purposes of this section—

(1) Community income

The term "community income" means income which, under applicable community property laws, is treated as community income.

(2) Community property laws

The term "community property laws" means the community property laws of a State, a foreign country, or a possession of the United States.

(3) Determination of marital status

The determination of marital status shall be made under section 7703(a).

(Added Pub. L. 94–455, title X, §1012(b)(1), Oct. 4, 1976, 90 Stat. 1613; amended Pub. L. 97–34, title I, §111(b)(4), Aug. 13, 1981, 95 Stat. 194; Pub. L. 98–369, div. A, title I, §139(a), (b)(1), July 18, 1984, 98 Stat. 677; Pub. L. 99–514, title XIII, §1301(j)(9), Oct. 22, 1986, 100 Stat. 2658.)

AMENDMENTS

1986—Subsec. (c)(3). Pub. L. 99–514 substituted "section 7703(a)" for "section 143(a)".

1984—Pub. L. 98–369, §139(b)(1), substituted "nonresident alien individuals" for "a resident or citizen of the United States who is married to a nonresident alien individual" in section catchline.

Subsec. (a). Pub. L. 98–369, §139(a), substituted in provision preceding par. (1) "married couple 1 or both of whom are nonresident alien individuals" for "citizen or resident of the United States who is married to a nonresident alien individual".

1981—Subsec. (a)(1). Pub. L. 97–34 substituted "section 911(d)(2)" for "section 911(b)".

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99–514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §139(c), July 18, 1984, 98 Stat. 677, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1984."

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable with respect to taxable years beginning after Dec. 31, 1981, see section 115 of Pub. L. 97–34, set out as a note under section 911 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1976, see section 1012(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 6013 of this title.

SUBPART B—FOREIGN CORPORATIONS

Sec.
881. Tax on income of foreign corporations not connected with United States business.
882. Tax on income of foreign corporations connected with United States business.
883. Exclusions from gross income.
884. Branch profits tax.
885. Cross references.

AMENDMENTS

1986—Pub. L. 99–514, title XII, §1241(d), Oct. 22, 1986, 100 Stat. 2580, added item 884 and redesignated former item 884 as 885.

1966—Pub. L. 89–809, title I, §104(b)(3), Nov. 13, 1966, 80 Stat. 1557, substituted "Tax on income of foreign corporations not connected with United States business" for "Tax on foreign corporations not engaged in business in United States" in item 881, and "Tax on income of foreign corporations connected with United States business" for "Tax on resident foreign corporations" in item 882.

§881. Tax on income of foreign corporations not connected with United States business

(a) Imposition of tax

Except as provided in subsection (c), there is hereby imposed for each taxable year a tax of 30 percent of the amount received from sources within the United States by a foreign corporation as—

(1) interest (other than original issue discount as defined in section 1273), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other fixed or determinable annual or periodical gains, profits, and income,

(2) gains described in section 631(b) or (c),

(3) in the case of—

(A) a sale or exchange of an original issue discount obligation, the amount of the original issue discount accruing while such obligation was held by the foreign corporation (to the extent such discount was not theretofore taken into account under subparagraph (B)), and

(B) a payment on an original issue discount obligation, an amount equal to the original issue discount accruing while such obligation was held by the foreign corporation (except that such original issue discount shall be taken into account under this subparagraph only to the extent such discount was not theretofore taken into account under this subparagraph and only to the extent that the tax thereon does not exceed the payment less the tax imposed by paragraph (1) thereon), and

(4) gains from the sale or exchange after October 4, 1966, of patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other like property, or of any interest in any such property, to the extent such gains are from payments which are contingent on the productivity, use, or disposition of the property or interest sold or exchanged,

but only to the extent the amount so received is not effectively connected with the conduct of a trade or business within the United States.

(b) Exception for certain possessions

(1) Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands

For purposes of this section and section 884, a corporation created or organized in Guam, American Samoa, the Northern Mariana Islands, or the Virgin Islands or under the law of any such possession shall not be treated as a foreign corporation for any taxable year if—

(A) at all times during such taxable year less than 25 percent in value of the stock of such corporation is beneficially owned (directly or indirectly) by foreign persons,

(B) at least 65 percent of the gross income of such corporation is shown to the satisfaction of the Secretary to be effectively connected with the conduct of a trade or business in such a possession or the United States for the 3-year period ending with the close of the taxable year of such corporation (or for such part of such period as the corporation or any predecessor has been in existence), and

(C) no substantial part of the income of such corporation is used (directly or indirectly) to satisfy obligations to persons who are not bona fide residents of such a possession or the United States.

(2) Commonwealth of Puerto Rico

(A) In general

If dividends are received during a taxable year by a corporation—

(i) created or organized in, or under the law of, the Commonwealth of Puerto Rico, and

(ii) with respect to which the requirements of subparagraphs (A), (B), and (C) of paragraph (1) are met for the taxable year,

subsection (a) shall be applied for such taxable year by substituting "10 percent" for "30 percent".

(B) Applicability

If, on or after the date of the enactment of this paragraph, an increase in the rate of the Commonwealth of Puerto Rico's withholding tax which is generally applicable to dividends paid to United States corporations not engaged in a trade or business in the Commonwealth to a rate greater than 10 percent takes effect, this paragraph shall not apply to dividends received on or after the effective date of the increase.

(3) Definitions

(A) Foreign person

For purposes of paragraph (1), the term "foreign person" means any person other than—

(i) a United States person, or

(ii) a person who would be a United States person if references to the United States in section 7701 included references to a possession of the United States.

(B) Indirect ownership rules

For purposes of paragraph (1), the rules of section 318(a)(2) shall apply except that "5 percent" shall be substituted for "50 percent" in subparagraph (C) thereof.

(c) Repeal of tax on interest of foreign corporations received from certain portfolio debt investments

(1) In general

In the case of any portfolio interest received by a foreign corporation from sources within the United States, no tax shall be imposed under paragraph (1) or (3) of subsection (a).

(2) Portfolio interest

For purposes of this subsection, the term "portfolio interest" means any interest (including original issue discount) which—

(A) would be subject to tax under subsection (a) but for this subsection, and

(B) is paid on an obligation—

(i) which is in registered form, and

(ii) with respect to which—

(I) the person who would otherwise be required to deduct and withhold tax from such interest under section 1442(a) receives a statement which meets the requirements of section 871(h)(5) that the beneficial owner of the obligation is not a United States person, or

(II) the Secretary has determined that such a statement is not required in order to carry out the purposes of this subsection.

(3) Portfolio interest shall not include interest received by certain persons

For purposes of this subsection, the term "portfolio interest" shall not include any portfolio interest which—

(A) except in the case of interest paid on an obligation of the United States, is received by a bank on an extension of credit made pursuant to a loan agreement entered into in the ordinary course of its trade or business,

(B) is received by a 10-percent shareholder (within the meaning of section 871(h)(3)(B)), or

(C) is received by a controlled foreign corporation from a related person (within the meaning of section 864(d)(4)).

(4) Portfolio interest not to include certain contingent interest

For purposes of this subsection, the term "portfolio interest" shall not include any interest which is treated as not being portfolio interest under the rules of section 871(h)(4).

(5) Special rules for controlled foreign corporations

(A) In general

In the case of any portfolio interest received by a controlled foreign corporation, the following provisions shall not apply:

(i) Subparagraph (A) of section 954(b)(3) (relating to exception where foreign base company income is less than 5 percent or $1,000,000).

(ii) Paragraph (4) of section 954(b) (relating to exception for certain income subject to high foreign taxes).

(iii) Clause (i) of section 954(c)(3)(A) (relating to certain income received from related persons).

(B) Controlled foreign corporation

For purposes of this subsection, the term "controlled foreign corporation" has the meaning given to such term by section 957(a).

(6) Secretary may cease application of this subsection

Under rules similar to the rules of section 871(h)(6), the Secretary may provide that this subsection shall not apply to payments of interest described in section 871(h)(6).

(7) Registered form

For purposes of this subsection, the term "registered form" has the meaning given such term by section 163(f).

(d) Tax not to apply to certain interest and dividends

No tax shall be imposed under paragraph (1) or (3) of subsection (a) on any amount described in section 871(i)(2).

(e) Tax not to apply to certain dividends of regulated investment companies

(1) Interest-related dividends

(A) In general

Except as provided in subparagraph (B), no tax shall be imposed under paragraph (1) of subsection (a) on any interest-related dividend (as defined in section 871(k)(1)) received from a regulated investment company.

(B) Exception

Subparagraph (A) shall not apply—

(i) to any dividend referred to in section 871(k)(1)(B), and

(ii) to any interest-related dividend received by a controlled foreign corporation (within the meaning of section 957(a)) to the extent such dividend is attributable to interest received by

the regulated investment company from a person who is a related person (within the meaning of section 864(d)(4)) with respect to such controlled foreign corporation.

(C) Treatment of dividends received by controlled foreign corporations

The rules of subsection (c)(5)(A) shall apply to any interest-related dividend received by a controlled foreign corporation (within the meaning of section 957(a)) to the extent such dividend is attributable to interest received by the regulated investment company which is described in clause (ii) of section 871(k)(1)(E) (and not described in clause (i) or (iii) of such section).

(2) Short-term capital gain dividends

No tax shall be imposed under paragraph (1) of subsection (a) on any short-term capital gain dividend (as defined in section 871(k)(2)) received from a regulated investment company.

(f) Cross reference

For doubling of tax on corporations of certain foreign countries, see section 891.
For special rules for original issue discount, see section 871(g).

(Aug. 16, 1954, ch. 736, 68A Stat. 282; Pub. L. 89–809, title I, §104(a), Nov. 13, 1966, 80 Stat. 1555; Pub. L. 92–178, title III, §313(a), (c), Dec. 10, 1971, 85 Stat. 526, 527; Pub. L. 92–606, §1(e)(1), Oct. 31, 1972, 86 Stat. 1497; Pub. L. 94–455, title XIX, §1901(b)(3)(I), Oct. 4, 1976, 90 Stat. 1793; Pub. L. 98–369, div. A, title I, §§42(a)(10), 127(b), 128(b), 130(a), July 18, 1984, 98 Stat. 557, 650, 654, 660; Pub. L. 99–514, title XII, §§1211(b)(6), 1214(c)(2), 1223(b)(2), 1273(b)(1), (2)(A), title XVIII, §§1810(d)(1)(B), (3)(C), (e)(2)(B), 1899A(22), (23), (68), Oct. 22, 1986, 100 Stat. 2536, 2542, 2558, 2595, 2596, 2825, 2826, 2959, 2962; Pub. L. 100–647, title I, §1012(i)(17), Nov. 10, 1988, 102 Stat. 3510; Pub. L. 103–66, title XIII, §13237(a)(2), (c)(2), (3), Aug. 10, 1993, 107 Stat. 507, 508; Pub. L. 108–357, title IV, §§411(a)(2), 420(a), (c), Oct. 22, 2004, 118 Stat. 1503, 1513, 1514; Pub. L. 109–135, title IV, §412(jj), Dec. 21, 2005, 119 Stat. 2639; Pub. L. 111–147, title V, §502(b)(2)(B), Mar. 18, 2010, 124 Stat. 107.)

REFERENCES IN TEXT

The date of the enactment of this paragraph, referred to in subsec. (b)(2)(B), is the date of enactment of Pub. L. 108–357, which was approved Oct. 22, 2004.

AMENDMENTS

2010—Subsec. (c)(2). Pub. L. 111–147 amended par. (2) generally. Prior to amendment, par. (2) defined portfolio interest to also include interest on certain obligations not in registered form.

2005—Subsec. (e)(1)(C). Pub. L. 109–135 inserted "interest-related dividend received by a controlled foreign corporation" after "shall apply to any".

2004—Subsec. (b). Pub. L. 108–357, §420(c)(1), substituted "possessions" for "Guam and Virgin Islands corporations" in heading.

Subsec. (b)(1). Pub. L. 108–357, §420(c)(2), substituted "Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands" for "In general" in heading.

Subsec. (b)(2), (3). Pub. L. 108–357, §420(a), added par. (2) and redesignated former par. (2) as (3).

Subsec. (e), (f). Pub. L. 108–357, §411(a)(2), added subsec. (e) and redesignated former subsec. (e) as (f).

1993—Subsec. (c)(2)(B)(ii). Pub. L. 103–66, §13237(c)(2), substituted "section 871(h)(5)" for "section 871(h)(4)".

Subsec. (c)(4), (5). Pub. L. 103–66, §13237(a)(2), added par. (4) and redesignated former par. (4) as (5). Former par. (5) redesignated (6).

Subsec. (c)(6). Pub. L. 103–66, §13237(a)(2), (c)(3), redesignated par. (5) as (6) and substituted "section 871(h)(6)" for "section 871(h)(5)" in two places. Former par. (6) redesignated (7).

Subsec. (c)(7). Pub. L. 103–66, §13237(a)(2), redesignated par. (6) as (7).

1988—Subsec. (c)(4)(A)(ii) to (v). Pub. L. 100–647 added cls. (ii) and (iii) and struck out former cls. (ii) to (v), which read as follows:

"(ii) Paragraph (4) of section 954(b) (relating to corporations not formed or availed of to avoid tax).

"(iii) Subparagraph (B) of section 954(c)(3) (relating to certain income derived in active conduct of trade or business).

"(iv) Subparagraph (C) of section 954(c)(3) (relating to certain income derived by an insurance company).

"(v) Subparagraphs (A) and (B) of section 954(c)(4) (relating to exception for certain income received from related persons)."

1986—Subsec. (a)(3)(A). Pub. L. 99–514, §1810(e)(2)(B), amended subpar. (A) generally, striking out "any gain not in excess of" before "the original issue discount".

Subsec. (a)(3)(B). Pub. L. 99–514, §1810(e)(2)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "the payment of interest on an original issue discount obligation, an amount equal to the original issue discount accrued on such obligation since the last payment of interest thereon (except that such original issue discount shall be taken into account under this subparagraph only to the extent that the tax thereon does not exceed the interest payment less the tax imposed by paragraph (1) thereon), and".

Subsec. (a)(4). Pub. L. 99–514, §1211(b)(6), struck out "or from payments which are treated as being so contingent under section 871(e)," after "sold or exchanged,".

Subsec. (b)(1). Pub. L. 99–514, §1273(b)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "For purposes of this section, a corporation created or organized in Guam or the Virgin Islands or under the law of Guam or the Virgin Islands shall not be treated as a foreign corporation for any taxable year if—

"(A) at all times during such taxable year less than 25 percent in value of the stock of such corporation is owned (directly or indirectly) by foreign persons, and

"(B) at least 20 percent of the gross income of such corporation is shown to the satisfaction of the Secretary to have been derived from sources within Guam or the Virgin Islands (as the case may be) for the 3-year period ending with the close of the preceding taxable year of such corporation (or for such part of such period as the corporation has been in existence)."

Subsec. (b)(2). Pub. L. 99–514, §1273(b)(1), (2)(A), redesignated par. (3) as (2) and struck out former par. (2) which provided that par. (1) of this subsection not apply with respect to income tax liability incurred to Guam.

Subsec. (b)(2)(A). Pub. L. 99–514, §1899A(22), substituted "paragraph" for "Paragraph".

Subsec. (b)(3), (4). Pub. L. 99–514, §1273(b)(2)(A), redesignated par. (3) as (2) and struck out par. (4) which provided a cross reference to sections 934 and 934A.

Subsec. (c). Pub. L. 99–514, §1899A(68), made clarifying amendment to directory language of Pub. L. 98–369, §127(b)(1). See 1984 Amendment note below.

Subsec. (c)(2). Pub. L. 99–514, §1810(d)(1)(B), (3)(C), inserted "which would be subject to tax under subsection (a) but for this subsection and" in introductory provisions and substituted "receives a statement" for "has received a statement" in subpar. (B)(ii).

Subsec. (c)(3)(C). Pub. L. 99–514, §1899A(23), inserted a closing parenthesis following "section 864(d)(4)".

Subsec. (c)(4)(A)(i). Pub. L. 99–514, §1223(b)(2), substituted "less than 5 percent or $1,000,000" for "less than 10 percent".

Subsecs. (d), (e). Pub. L. 99–514, §1214(c)(2), added subsec. (d) and redesignated former subsec. (d) as (e).

1984—Subsec. (a). Pub. L. 98–369, §127(b)(2), substituted "Except as provided in subsection (c), there" for "There" in introductory provision.

Subsec. (a)(1). Pub. L. 98–369, §42(a)(10), substituted "section 1273" for "section 1232(b)".

Subsec. (a)(3). Pub. L. 98–369, §128(b)(1), amended par. (3) generally, substituting in subpar. (A), "a sale or exchange of an original issue discount obligation, the amount of any gain not in excess of the original issue discount accruing while such obligation was held by the foreign corporation (to the extent such discount was not theretofore taken into account under subparagraph (B)), and" for "bonds or other evidences of indebtedness issued after September 28, 1965, and before April 1, 1972, amounts which under section 1232(a)(2)(B) are considered as ordinary income, and, in the case of corporate obligations issued after May 27, 1969, and before April 1, 1972, amounts which would be so considered but for the fact the obligations were issued after May 27, 1969,", substituting in subpar. (B), "the payment of interest on an original issue discount obligation, an amount equal to the original issue discount accrued on such obligation since the last payment of interest thereon (except that such original issue discount shall be taken into account under this subparagraph only to the extent that the tax thereon does not exceed the interest payment less the tax imposed by paragraph (1) thereon), and" for "bonds or other evidences of indebtedness issued after March 31, 1972, and payable more than 6 months from the date of original issue (without regard to the period held by the taxpayer), amounts which under section 1232(a)(2)(B) would be considered as ordinary income but for the fact such obligations were issued after May 27, 1969, and", and striking out subpar. (C) which required that in the case of the payment of interest on an obligation described in subpar. (B), an amount equal to the original issue discount, but not in excess of such interest less the tax imposed by par. (1) thereon, accrued on such obligation since the last payment of interest thereon, be included for purpose of the 30 percent tax.

Subsec. (b). Pub. L. 98–369, §130(a), amended subsec. (b) generally, substituting provision establishing an exception for certain Guam and Virgin Islands corporations for provision establishing an exception for Guam corporations.

Subsec. (c). Pub. L. 98–369, §127(b)(1), as amended by Pub. L. 99–514, §1899A(68), added subsec. (c). Former subsec. (c) redesignated (d).

Pub. L. 98–369, §128(b)(2), amended subsec. (c) generally, substituting in heading "Cross reference" for "Doubling of tax" and inserting provision directing that for special rules for original issue discount, see section 871(g).

Subsec. (d). Pub. L. 98–369, §127(b)(1), as amended by Pub. L. 99–514, §1899A(68), redesignated subsec. (c) as (d).

1976—Subsec. (a)(3)(A), (B). Pub. L. 94–455 substituted "ordinary income" for "gain from the sale or exchange of property which is not a capital asset".

1972—Subsecs. (b), (c). Pub. L. 92–606 added subsec. (b) and redesignated former subsec. (b) as (c).

1971—Subsec. (a)(1). Pub. L. 92–178, §313(a), inserted "(other than original issue discount as defined in section 1232(b))" after "interest".

Subsec. (a)(3). Pub. L. 92–178, §313(c), designated existing provisions as subpar. (A), inserted "and before April 1, 1972," after "September 28, 1965,", substituted "section 1232(a)(2)(B)" for "section 1232", and inserted ", in the case of corporate obligations issued after May 27, 1969, and before April 1, 1972, amounts which would be so considered but for the fact that the obligations were issued after May 27, 1969,", and added subpars. (B) and (C).

1966—Subsec. (a). Pub. L. 89–809 substantially revised the income tax treatment of foreign corporations, substituted the concept of amounts received from sources within the United States by foreign corporations but not effectively connected with the conduct of a trade or business within the United States for the concept of amounts received from sources within the United States by foreign corporations not engaged in trade or business within the United States as the amount upon which the existing 30 percent levy should be imposed, and added contingent income received from the sale of patents and other intangibles and amounts of original issue discount which are treated as ordinary income received on retirement or sale or exchange of bonds or other evidences of indebtedness issued after Sept. 28, 1965, to the specified types of fixed or determinable income.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–147 applicable to obligations issued after the date which is 2 years after Mar. 18, 2010, see section 502(f) of Pub. L. 111–147, set out as a note under section 149 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 411(a)(2) of Pub. L. 108–357 applicable to dividends with respect to taxable years of regulated investment companies beginning after Dec. 31, 2004, see section 411(d)(1) of Pub. L. 108–357, set out as a note under section 871 of this title.

Pub. L. 108–357, title IV, §420(d), Oct. 22, 2004, 118 Stat. 1514, provided that: "The amendments made by this section [amending this section and section 1442 of this title] shall apply to dividends paid after the date of the enactment of this Act [Oct. 22, 2004]."

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to interest received after Dec. 31, 1993, see section 13237(d) of Pub. L. 103–66, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1211(b)(6) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, except as otherwise provided, see section 1211(c) of Pub. L. 99–514, set out as an Effective Date note under section 865 of this title.

Amendment by section 1214(c)(2) of Pub. L. 99–514 applicable to payments made in taxable year of payor beginning after Dec. 31, 1986, except as otherwise provided, see section 1214(d) of Pub. L. 99–514, as amended, set out as a note under section 861 of this title.

Amendment by section 1223(b)(2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31,

1986, see section 1223(c) of Pub. L. 99–514, set out as a note under section 864 of this title.

Amendment by section 1273(b)(1), (2)(A) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99–514, set out as a note under section 931 of this title.

Amendment by section 1810(d)(1)(B), (3)(C), (e)(2)(B) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 42(a)(10) of Pub. L. 98–369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98–369, set out as an Effective Date note under section 1271 of this title.

Amendment by section 127(b) of Pub. L. 98–369 applicable to interest received after July 18, 1984, with respect to obligations issued after such date, in taxable years after such date, see section 127(g)(1) of Pub. L. 98–369, set out as a note under section 871 of this title.

Amendment by section 128(b) of Pub. L. 98–369 applicable to payments made on or after the 60th day after July 18, 1984, with respect to obligations issued after Mar. 31, 1972, see section 128(d)(1) of Pub. L. 98–369, set out as a note under section 871 of this title.

Pub. L. 98–369, div. A, title I, §130(d), July 18, 1984, 98 Stat. 661, provided that: "The amendments made by this section [amending this section and sections 1442 and 7651 of this title] shall apply to payments made after March 1, 1984, in taxable years ending after such date."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Pub. L. 92–606, §2, Oct. 31, 1972, 86 Stat. 1497, provided in part that: "The amendments made by section 1(e)(1) [amending this section] shall apply with respect to taxable years beginning after December 31, 1971."

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–178 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 313(f) of Pub. L. 92–178, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendments by sections 1211(b)(6) and 1214(c)(2) of Pub. L. 99–514 to the extent application of such amendments would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(3), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§882. Tax on income of foreign corporations connected with United States business

(a) Imposition of tax

(1) In general

A foreign corporation engaged in trade or business within the United States during the taxable

year shall be taxable as provided in section 11, 55, 59A, or 1201(a) on its taxable income which is effectively connected with the conduct of a trade or business within the United States.

(2) Determination of taxable income

In determining taxable income for purposes of paragraph (1), gross income includes only gross income which is effectively connected with the conduct of a trade or business within the United States.

(3) [Cross reference [1]]

For special tax treatment of gain or loss from the disposition by a foreign corporation of a United States real property interest, see section 897.

(b) Gross income

In the case of a foreign corporation, except where the context clearly indicates otherwise, gross income includes only—

(1) gross income which is derived from sources within the United States and which is not effectively connected with the conduct of a trade or business within the United States, and

(2) gross income which is effectively connected with the conduct of a trade or business within the United States.

(c) Allowance of deductions and credits

(1) Allocation of deductions

(A) General rule

In the case of a foreign corporation, the deductions shall be allowed only for purposes of subsection (a) and (except as provided by subparagraph (B)) only if and to the extent that they are connected with income which is effectively connected with the conduct of a trade or business within the United States; and the proper apportionment and allocation of the deductions for this purpose shall be determined as provided in regulations prescribed by the Secretary.

(B) Charitable contributions

The deduction for charitable contributions and gifts provided by section 170 shall be allowed whether or not connected with income which is effectively connected with the conduct of a trade or business within the United States.

(2) Deductions and credits allowed only if return filed

A foreign corporation shall receive the benefit of the deductions and credits allowed to it in this subtitle only by filing or causing to be filed with the Secretary a true and accurate return, in the manner prescribed in subtitle F, including therein all the information which the Secretary may deem necessary for the calculation of such deductions and credits. The preceding sentence shall not apply for purposes of the tax imposed by section 541 (relating to personal holding company tax), and shall not be construed to deny the credit provided by section 33 for tax withheld at source or the credit provided by section 34 for certain uses of gasoline.

(3) Foreign tax credit

Except as provided by section 906, foreign corporations shall not be allowed the credit against the tax for taxes of foreign countries and possessions of the United States allowed by section 901.

(4) Cross reference

For rule that certain foreign taxes are not to be taken into account in determining deduction or credit, see section 906(b)(1).

(d) Election to treat real property income as income connected with United States business

(1) In general

A foreign corporation which during the taxable year derives any income—

(A) from real property located in the United States, or from any interest in such real property,

including (i) gains from the sale or exchange of real property or an interest therein, (ii) rents or royalties from mines, wells, or other natural deposits, and (iii) gains described in section 631(b) or (c), and

(B) which, but for this subsection, would not be treated as income effectively connected with the conduct of a trade or business within the United States,

may elect for such taxable year to treat all such income as income which is effectively connected with the conduct of a trade or business within the United States. In such case, such income shall be taxable as provided in subsection (a)(1) whether or not such corporation is engaged in trade or business within the United States during the taxable year. An election under this paragraph for any taxable year shall remain in effect for all subsequent taxable years, except that it may be revoked with the consent of the Secretary with respect to any taxable year.

(2) Election after revocation, etc.

Paragraphs (2) and (3) of section 871(d) shall apply in respect of elections under this subsection in the same manner and to the same extent as they apply in respect of elections under section 871(d).

(e) Interest on United States obligations received by banks organized in possessions

In the case of a corporation created or organized in, or under the law of, a possession of the United States which is carrying on the banking business in a possession of the United States, interest on obligations of the United States which is not portfolio interest (as defined in section 881(c)(2)) shall—

(1) for purposes of this subpart, be treated as income which is effectively connected with the conduct of a trade or business within the United States, and

(2) shall be taxable as provided in subsection (a)(1) whether or not such corporation is engaged in trade or business within the United States during the taxable year.

(f) Returns of tax by agent

If any foreign corporation has no office or place of business in the United States but has an agent in the United States, the return required under section 6012 shall be made by the agent.

(Aug. 16, 1954, ch. 736, 68A Stat. 282; Pub. L. 89–809, title I, §104(b)(1), Nov. 13, 1966, 80 Stat. 1555; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–600, title III, §301(b)(13), Nov. 6, 1978, 92 Stat. 2822; Pub. L. 96–499, title XI, §1122(c)(2), Dec. 5, 1980, 94 Stat. 2687; Pub. L. 97–424, title V, §515(b)(6)(F), Jan. 6, 1983, 96 Stat. 2182; Pub. L. 98–369, div. A, title IV, §474(r)(19), July 18, 1984, 98 Stat. 843; Pub. L. 99–514, title VII, §701(e)(4)(F), title XII, §1236(a), Oct. 22, 1986, 100 Stat. 2343, 2576; Pub. L. 100–647, title I, §1012(s)(2)(B), title II, §2001(c)(2), title VI, §6133(a), Nov. 10, 1988, 102 Stat. 3527, 3594, 3721.)

AMENDMENTS

1988—Subsec. (a)(1). Pub. L. 100–647, §2001(c)(2), inserted reference to section 59A.

Subsec. (b). Pub. L. 100–647, §1012(s)(2)(B), inserted ", except where the context clearly indicates otherwise" after "foreign corporation".

Subsec. (e). Pub. L. 100–647, §6133(a), substituted "interest on obligations of the United States which is not portfolio interest (as defined in section 881(c)(2))" for "interest on obligations of the United States", and struck out at end "The preceding sentence shall not apply to any Guam corporation which is treated as not being a foreign corporation by section 881(b)(1) for the taxable year."

1986—Subsec. (a)(1). Pub. L. 99–514, §701(e)(4)(F), inserted reference to section 55.

Subsec. (e). Pub. L. 99–514, §1236(a), inserted "The preceding sentence shall not apply to any Guam corporation which is treated as not being a foreign corporation by section 881(b)(1) for the taxable year."

1984—Subsec. (c)(2). Pub. L. 98–369 substituted reference to section "33" for "32" and "34" for "39".

1983—Subsec. (c)(2). Pub. L. 97–424 struck out "and lubricating oil" after "gasoline".

1980—Subsec. (a)(3). Pub. L. 96–499 added par. (3).

1978—Subsec. (a). Pub. L. 95–600 substituted in subsec. (a) heading "Imposition of tax" for "Normal tax and surtax" and in par. (1) heading "In general" for "Imposition of tax".

1976—Subsecs. (c)(1)(A), (2), (d). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

1966—Pub. L. 89–809 substantially revised the income tax treatment of foreign corporations, introduced the concept of taxable income effectively connected with the conduct of a trade or business within the United States into provisions dealing with the imposition of tax, substituted a concept of gross income that included gross income derived from sources within the United States not effectively connected with the conduct of a trade or business within the United States and gross income effectively connected with the conduct of a trade or business within the United States for a concept of gross income that included only gross income from sources within the United States, and inserted provisions for an election to treat real property income as income connected with United States business, treatment of interest on United States obligations received by banks organized in possessions, and the returns of tax by agents, and inserted cross reference to section 906(b)(1).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 701(e)(4)(F) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Superfund Revenue Act of 1986, Pub. L. 99–499, title V, to which it relates, see section 2001(e) of Pub. L. 100–647, set out as a note under section 56 of this title.

Pub. L. 100–647, title VI, §6133(c), Nov. 10, 1988, 102 Stat. 3721, provided that: "The amendments made by this subsection [probably means 'this section', which amended sections 882 and 884 of this title] shall apply to taxable years beginning after December 31, 1988."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 701(e)(4)(F) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date note under section 55 of this title.

Pub. L. 99–514, title XII, §1236(b), Oct. 22, 1986, 100 Stat. 2576, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after November 16, 1985."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–424 applicable with respect to articles sold after Jan. 6, 1983, see section 515(c) of Pub. L. 97–424, set out as a note under section 34 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–499 applicable to disposition after June 18, 1980, see section 1125(a) of Pub. L. 96–499, set out as an Effective Date note under section 897 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95–600, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(e)(4)(F) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

[1] *Par. (3) heading editorially supplied.*

§883. Exclusions from gross income

(a) Income of foreign corporations from ships and aircraft

The following items shall not be included in gross income of a foreign corporation, and shall be exempt from taxation under this subtitle:

(1) Ships operated by certain foreign corporations

Gross income derived by a corporation organized in a foreign country from the international operation of a ship or ships if such foreign country grants an equivalent exemption to corporations organized in the United States.

(2) Aircraft operated by certain foreign corporations

Gross income derived by a corporation organized in a foreign country from the international operation of aircraft if such foreign country grants an equivalent exemption to corporations organized in the United States.

(3) Railroad rolling stock of foreign corporations

Earnings derived from payments by a common carrier for the use on a temporary basis (not expected to exceed a total of 90 days in any taxable year) of railroad rolling stock owned by a corporation of a foreign country which grants an equivalent exemption to corporations organized in the United States.

(4) Special rules

The rules of paragraphs (6), (7), and (8) of section 872(b) shall apply for purposes of this subsection.

(5) Special rule for countries which tax on residence basis

For purposes of this subsection, there shall not be taken into account any failure of a foreign country to grant an exemption to a corporation organized in the United States if such corporation is subject to tax by such foreign country on a residence basis pursuant to provisions of foreign law which meets such standards (if any) as the Secretary may prescribe.

(b) Earnings derived from communications satellite system

The earnings derived from the ownership or operation of a communications satellite system by a foreign entity designated by a foreign government to participate in such ownership or operation shall be exempt from taxation under this subtitle, if the United States, through its designated entity, participates in such system pursuant to the Communications Satellite Act of 1962 (47 U.S.C. 701 and following).

(c) Treatment of certain foreign corporations

(1) In general

Paragraph (1) or (2) of subsection (a) (as the case may be) shall not apply to any foreign corporation if 50 percent or more of the value of the stock of such corporation is owned by individuals who are not residents of such foreign country or another foreign country meeting the requirements of such paragraph.

(2) Treatment of controlled foreign corporations

Paragraph (1) shall not apply to any foreign corporation which is a controlled foreign corporation (as defined in section 957(a)).

(3) Special rules for publicly traded corporations

(A) Exception

Paragraph (1) shall not apply to any corporation which is organized in a foreign country meeting the requirements of paragraph (1) or (2) of subsection (a) (as the case may be) and the stock of which is primarily and regularly traded on an established securities market in such

foreign country, another foreign country meeting the requirements of such paragraph, or the United States.

(B) Treatment of stock owned by publicly traded corporation

Any stock in another corporation which is owned (directly or indirectly) by a corporation meeting the requirements of subparagraph (A) shall be treated as owned by individuals who are residents of the foreign country in which the corporation meeting the requirements of subparagraph (A) is organized.

(4) Stock ownership through entities

For purposes of paragraph (1), stock owned (directly or indirectly) by or for a corporation, partnership, trust, or estate shall be treated as being owned proportionately by its shareholders, partners, or beneficiaries. Stock considered to be owned by a person by reason of the application of the preceding sentence shall, for purposes of applying such sentence, be treated as actually owned by such person.

(Aug. 16, 1954, ch. 736, 68A Stat. 283; Pub. L. 90–622, §1(a), Oct. 22, 1968, 82 Stat. 1311; Pub. L. 94–164, §6(a), Dec. 23, 1975, 89 Stat. 975; Pub. L. 99–514, title XII, §1212(c)(3)–(5), Oct. 22, 1986, 100 Stat. 2538; Pub. L. 100–647, title I, §1012(e)(1), (2)(A), (5), Nov. 10, 1988, 102 Stat. 3499, 3500; Pub. L. 101–239, title VII, §7811(i)(8)(D), (10), Dec. 19, 1989, 103 Stat. 2411; Pub. L. 108–357, title IV, §419(b), Oct. 22, 2004, 118 Stat. 1513.)

REFERENCES IN TEXT

The Communications Satellite Act of 1962, referred to in subsec. (b), is Pub. L. 87–624, Aug. 31, 1962, 76 Stat. 419, as amended, which is classified generally to chapter 6 (§701 et seq.) of Title 47, Telecommunications. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 47 and Tables.

AMENDMENTS

2004—Subsec. (a)(4). Pub. L. 108–357 substituted "(6), (7), and (8)" for "(5), (6), and (7)".

1989—Subsec. (a)(4). Pub. L. 101–239, §7811(i)(8)(D), substituted "(5), (6), and (7)" for "(5) and (6)".

Subsec. (a)(5). Pub. L. 101–239, §7811(i)(10), added par. (5).

1988—Subsec. (a)(1), (2). Pub. L. 100–647, §1012(e)(2)(A), (5), struck out "to citizens of the United States and" after "exemption" and substituted "international operation" for "operation".

Subsec. (c)(1). Pub. L. 100–647, §1012(e)(1)(B), substituted "Paragraph (1) or (2) of subsection (a) (as the case may be)" for "Paragraphs (1) and (2) of subsection (a)" and "such paragraph" for "such paragraphs (1) and (2)".

Subsec. (c)(3). Pub. L. 100–647, §1012(e)(1)(A), substituted "Special rules" for "Exception" in heading and amended text generally. Prior to amendment, text read as follows: "Paragraph (1) shall not apply to any foreign corporation—

"(A) the stock of which is primarily and regularly traded on an established securities market in the foreign country in which such corporation is organized, or

"(B) which is wholly owned (either directly or indirectly) by another corporation meeting the requirements of subparagraph (A) and is organized in the same foreign country as such other corporation."

1986—Subsec. (a)(1). Pub. L. 99–514, §1212(c)(3), added par. (1) and struck out former par. (1), ships under foreign flag, which read as follows: "Earnings derived from the operation of a ship or ships documented under the laws of a foreign country which grants an equivalent exemption to citizens of the United States and to corporations organized in the United States."

Subsec. (a)(2). Pub. L. 99–514, §1212(c)(3), added par. (2) and struck out former par. (2), aircraft of foreign registry, which read as follows: "Earnings derived from the operation of aircraft registered under the laws of a foreign country which grants an equivalent exemption to citizens of the United States and to corporations organized in the United States."

Subsec. (a)(4). Pub. L. 99–514, §1212(c)(4), added par. (4).

Subsec. (c). Pub. L. 99–514, §1212(c)(5), added subsec. (c).

1975—Subsec. (a)(3). Pub. L. 94–164 added par. (3).

1968—Pub. L. 90–622 designated existing provisions as subsec. (a), added subsec. (a) heading, and added subsec. (b).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to wagers made after Oct. 22, 2004, see section 419(c) of Pub. L. 108–357, set out as a note under section 872 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1212(f) of Pub. L. 99–514, set out as a note under section 863 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Pub. L. 94–164, §6(b), Dec. 23, 1975, 89 Stat. 976, provided that: "The amendment made by this section [amending this section] shall apply to payments made after November 18, 1974."

EFFECTIVE DATE OF 1968 AMENDMENT

Pub. L. 90–622, §1(b), Oct. 22, 1968, 82 Stat. 1311, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1966."

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendment by section 1212(c)(3)–(5) of Pub. L. 99–514 to the extent application of such amendment would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(3), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

§884. Branch profits tax

(a) Imposition of tax

In addition to the tax imposed by section 882 for any taxable year, there is hereby imposed on any foreign corporation a tax equal to 30 percent of the dividend equivalent amount for the taxable year.

(b) Dividend equivalent amount

For purposes of subsection (a), the term "dividend equivalent amount" means the foreign corporation's effectively connected earnings and profits for the taxable year adjusted as provided in this subsection:

(1) Reduction for increase in U.S. net equity

If—

(A) the U.S. net equity of the foreign corporation as of the close of the taxable year, exceeds

(B) the U.S. net equity of the foreign corporation as of the close of the preceding taxable year,

the effectively connected earnings and profits for the taxable year shall be reduced (but not below zero) by the amount of such excess.

(2) Increase for decrease in net equity

(A) In general

If—

(i) the U.S. net equity of the foreign corporation as of the close of the preceding taxable year, exceeds

(ii) the U.S. net equity of the foreign corporation as of the close of the taxable year,

the effectively connected earnings and profits for the taxable year shall be increased by the amount of such excess.

(B) Limitation

(i) In general

The increase under subparagraph (A) for any taxable year shall not exceed the accumulated effectively connected earnings and profits as of the close of the preceding taxable year.

(ii) Accumulated effectively connected earnings and profits

For purposes of clause (i), the term "accumulated effectively connected earnings and profits" means the excess of—

(I) the aggregate effectively connected earnings and profits for preceding taxable years beginning after December 31, 1986, over

(II) the aggregate dividend equivalent amounts determined for such preceding taxable years.

(c) U.S. net equity

For purposes of this section—

(1) In general

The term "U.S. net equity" means—

(A) U.S. assets, reduced (including below zero) by

(B) U.S. liabilities.

(2) U.S. assets and U.S. liabilities

For purposes of paragraph (1)—

(A) U.S. assets

The term "U.S. assets" means the money and aggregate adjusted bases of property of the foreign corporation treated as connected with the conduct of a trade or business in the United States under regulations prescribed by the Secretary. For purposes of the preceding sentence, the adjusted basis of any property shall be its adjusted basis for purposes of computing earnings and profits.

(B) U.S. liabilities

The term "U.S. liabilities" means the liabilities of the foreign corporation treated as connected with the conduct of a trade or business in the United States under regulations prescribed by the Secretary.

(C) Regulations to be consistent with allocation of deductions

The regulations prescribed under subparagraphs (A) and (B) shall be consistent with the allocation of deductions under section 882(c)(1).

(d) Effectively connected earnings and profits

For purposes of this section—

(1) In general

The term "effectively connected earnings and profits" means earnings and profits (without diminution by reason of any distributions made during the taxable year) which are attributable to income which is effectively connected (or treated as effectively connected) with the conduct of a trade or business within the United States.

(2) Exception for certain income

The term "effectively connected earnings and profits" shall not include any earnings and profits attributable to—

(A) income not includible in gross income under paragraph (1) or (2) of section 883(a),

(B) income treated as effectively connected with the conduct of a trade or business within the United States under section 921(d) or 926(b) (as in effect before their repeal by the FSC Repeal and Extraterritorial Income Exclusion Act of 2000),

(C) gain on the disposition of a United States real property interest described in section 897(c)(1)(A)(ii),

(D) income treated as effectively connected with the conduct of a trade or business within the United States under section 953(c)(3)(C), or

(E) income treated as effectively connected with the conduct of a trade or business within the United States under section 882(e).

Property and liabilities of the foreign corporation treated as connected with such income under regulations prescribed by the Secretary shall not be taken into account in determining the U.S. assets or U.S. liabilities of the foreign corporation.

(e) Coordination with income tax treaties; etc.

(1) Limitation on treaty exemption

No treaty between the United States and a foreign country shall exempt any foreign corporation from the tax imposed by subsection (a) (or reduce the amount thereof) unless—

(A) such treaty is an income tax treaty, and

(B) such foreign corporation is a qualified resident of such foreign country.

(2) Treaty modifications

If a foreign corporation is a qualified resident of a foreign country with which the United States has an income tax treaty—

(A) the rate of tax under subsection (a) shall be the rate of tax specified in such treaty—

(i) on branch profits if so specified, or

(ii) if not so specified, on dividends paid by a domestic corporation to a corporation resident in such country which wholly owns such domestic corporation, and

(B) any other limitations under such treaty on the tax imposed by subsection (a) shall apply.

(3) Coordination with withholding tax

(A) In general

If a foreign corporation is subject to the tax imposed by subsection (a) for any taxable year (determined after the application of any treaty), no tax shall be imposed by section 871(a), 881(a), 1441, or 1442 on any dividends paid by such corporation out of its earnings and profits for such taxable year.

(B) Limitation on certain treaty benefits

If—

(i) any dividend described in section 861(a)(2)(B) is received by a foreign corporation, and

(ii) subparagraph (A) does not apply to such dividend,

rules similar to the rules of subparagraphs (A) and (B) of subsection (f)(3) shall apply to such dividend.

(4) Qualified resident

For purposes of this subsection—

(A) In general

Except as otherwise provided in this paragraph, the term "qualified resident" means, with respect to any foreign country, any foreign corporation which is a resident of such foreign

country unless—

(i) 50 percent or more (by value) of the stock of such foreign corporation is owned (within the meaning of section 883(c)(4)) by individuals who are not residents of such foreign country and who are not United States citizens or resident aliens, or

(ii) 50 percent or more of its income is used (directly or indirectly) to meet liabilities to persons who are not residents of such foreign country or citizens or residents of the United States.

(B) Special rule for publicly traded corporations

A foreign corporation which is a resident of a foreign country shall be treated as a qualified resident of such foreign country if—

(i) the stock of such corporation is primarily and regularly traded on an established securities market in such foreign country, or

(ii) such corporation is wholly owned (either directly or indirectly) by another foreign corporation which is organized in such foreign country and the stock of which is so traded.

(C) Corporations owned by publicly traded domestic corporations

A foreign corporation which is a resident of a foreign country shall be treated as a qualified resident of such foreign country if—

(i) such corporation is wholly owned (directly or indirectly) by a domestic corporation, and

(ii) the stock of such domestic corporation is primarily and regularly traded on an established securities market in the United States.

(D) Secretarial authority

The Secretary may, in his sole discretion, treat a foreign corporation as being a qualified resident of a foreign country if such corporation establishes to the satisfaction of the Secretary that such corporation meets such requirements as the Secretary may establish to ensure that individuals who are not residents of such foreign country do not use the treaty between such foreign country and the United States in a manner inconsistent with the purposes of this subsection.

(5) Exception for international organizations

This section shall not apply to an international organization (as defined in section 7701(a)(18)).

(f) Treatment of interest allocable to effectively connected income

(1) In general

In the case of a foreign corporation engaged in a trade or business in the United States (or having gross income treated as effectively connected with the conduct of a trade or business in the United States), for purposes of this subtitle—

(A) any interest paid by such trade or business in the United States shall be treated as if it were paid by a domestic corporation, and

(B) to the extent that the allocable interest exceeds the interest described in subparagraph (A), such foreign corporation shall be liable for tax under section 881(a) in the same manner as if such excess were interest paid to such foreign corporation by a wholly owned domestic corporation on the last day of such foreign corporation's taxable year.

To the extent provided in regulations, subparagraph (A) shall not apply to interest in excess of the amounts reasonably expected to be allocable interest.

(2) Allocable interest

For purposes of this subsection, the term "allocable interest" means any interest which is allocable to income which is effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States.

(3) Coordination with treaties

(A) Payor must be qualified resident

In the case of any interest described in paragraph (1) which is paid or accrued by a foreign corporation, no benefit under any treaty between the United States and the foreign country of which such corporation is a resident shall apply unless—

(i) such treaty is an income tax treaty, and

(ii) such foreign corporation is a qualified resident of such foreign country.

(B) Recipient must be qualified resident

In the case of any interest described in paragraph (1) which is received or accrued by any corporation, no benefit under any treaty between the United States and the foreign country of which such corporation is a resident shall apply unless—

(i) such treaty is an income tax treaty, and

(ii) such foreign corporation is a qualified resident of such foreign country.

(g) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations providing for appropriate adjustments in the determination of the dividend equivalent amount in connection with the distribution to shareholders or transfer to a controlled corporation of the taxpayer's U.S. assets and other adjustments in such determination as are necessary or appropriate to carry out the purposes of this section.

(Added Pub. L. 99–514, title XII, §1241(a), Oct. 22, 1986, 100 Stat. 2576; amended Pub. L. 100–647, title I, §1012(q)(1)(A), (2)–(6), (14), title VI, §6133(b), Nov. 10, 1988, 102 Stat. 3522–3525, 3721; Pub. L. 104–188, title I, §1704(f)(3)(A), Aug. 20, 1996, 110 Stat. 1879; Pub. L. 110–172, §11(g)(8), Dec. 29, 2007, 121 Stat. 2490.)

REFERENCES IN TEXT

The FSC Repeal and Extraterritorial Income Exclusion Act of 2000, referred to in subsec. (d)(2)(B), is Pub. L. 106–519, Nov. 15, 2000, 114 Stat. 2423. For complete classification of this Act to the Code, see Short Title of 2000 Amendments note set out under section 1 of this title and Tables.

PRIOR PROVISIONS

A prior section 884 was renumbered section 885 of this title.

AMENDMENTS

2007—Subsec. (d)(2)(B). Pub. L. 110–172 inserted "(as in effect before their repeal by the FSC Repeal and Extraterritorial Income Exclusion Act of 2000)" before comma at end.

1996—Subsec. (f)(1). Pub. L. 104–188, §1704(f)(3)(A)(ii), substituted "reasonably expected to be allocable interest" for "reasonably expected to be deductible under section 882 in computing the effectively connected taxable income of such foreign corporation" in closing provisions.

Subsec. (f)(1)(B). Pub. L. 104–188, §1704(f)(3)(A)(i), substituted "to the extent that the allocable interest exceeds the interest described in subparagraph (A)" for "to the extent the amount of interest allowable as a deduction under section 882 in computing the effectively connected taxable income of such foreign corporation exceeds the interest described in subparagraph (A)".

Subsec. (f)(2). Pub. L. 104–188, §1704(f)(3)(A)(iii), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "EFFECTIVELY CONNECTED TAXABLE INCOME.—For purposes of this subsection, the term 'effectively connected taxable income' means taxable income which is effectively connected (or treated as effectively connected) with the conduct of a trade or business within the United States."

1988—Subsec. (b)(2)(B). Pub. L. 100–647, §1012(q)(1)(A), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "The increase under subparagraph (A) for any taxable year shall not exceed the aggregate reductions under paragraph (1) for prior taxable years to the extent not previously taken into account under subparagraph (A)."

Subsec. (d)(2)(E). Pub. L. 100–647, §6133(b), added subpar. (E).

Subsec. (e)(1). Pub. L. 100–647, §1012(q)(2)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "No income tax treaty between the United States and a foreign country shall exempt any foreign corporation from the tax imposed by subsection (a) (or reduce the amount thereof) unless—

"(A) such foreign corporation is a qualified resident of such foreign country, or

"(B) such foreign corporation is not a qualified resident of such foreign country but such income tax treaty permits a withholding tax on dividends described in section 861(a)(2)(B) which are paid by such foreign corporation."

Subsec. (e)(3). Pub. L. 100–647, §1012(q)(2)(B), substituted "withholding tax" for "2nd tier withholding tax" in heading and amended text generally. Prior to amendment, text read as follows:

"(A) IN GENERAL.—If a foreign corporation is not exempt for any taxable year from the tax imposed by subsection (a) by reason of a treaty, no tax shall be imposed by section 871(a), 881(a), 1441, or 1442 on any dividends paid by such corporation during the taxable year.

"(B) LIMITATION ON CERTAIN TREATY BENEFITS.—No foreign corporation which is not a qualified resident of a foreign country shall be entitled to claim benefits under any income tax treaty between the United States and such foreign country with respect to dividends—

"(i) which are paid by such foreign corporation and with respect to which such foreign corporation is otherwise required to deduct and withhold tax under section 1441 or 1442, or

"(ii) which are received by such foreign corporation and are described in section 861(a)(2)(B)."

Subsec. (e)(4)(A)(i), (ii). Pub. L. 100–647, §1012(q)(5), substituted "50 percent or more" for "more than 50 percent" in cl. (i) and "citizens or residents of the United States" for "the United States" in cl. (ii).

Subsec. (e)(4)(C), (D). Pub. L. 100–647, §1012(q)(4), added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (e)(5). Pub. L. 100–647, §1012(q)(6), added par. (5).

Subsec. (f)(1). Pub. L. 100–647, §1012(f)(3)(A), (14), substituted "this subtitle" for "sections 871, 881, 1441, and 1442" and inserted "(or having gross income treated as effectively connected with the conduct of a trade or business in the United States)" after "United States".

Pub. L. 100–647, §1012(q)(2)(C)(i), (3)(B), inserted sentence at end and struck out former last sentence which read as follows: "Rules similar to the rules of subsection (e)(3)(B) shall apply to interest described in the preceding sentence."

Subsec. (f)(3). Pub. L. 100–647, §1012(q)(2)(C)(ii), added par. (3).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1704(f)(3)(B) of Pub. L. 104–188 provided that: "The amendments made by subparagraph (A) [amending this section] shall take effect as if included in the amendments made by section 1241(a) of the Tax Reform Act of 1986 [Pub. L. 99–514]."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1012(q)(1)(A), (2)–(6), (14) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 6133(b) of Pub. L. 100–647 applicable to taxable years beginning after Dec. 31, 1988, see section 6133(c) of Pub. L. 100–647, set out as a note under section 882 of this title.

EFFECTIVE DATE

Section 1241(e) of Pub. L. 99–514 provided that: "The amendments made by this section [enacting section 884 of this title, renumbering former section 884 as section 885 of this title, and amending sections 861 and 906 of this title] shall apply to taxable years beginning after December 31, 1986."

DETERMINATION OF EARNINGS AND PROFITS OF FOREIGN CORPORATIONS

Section 1012(q)(1)(B) of Pub. L. 100–647, as amended by Pub. L. 101–239, title VII, §7811(i)(5), Dec. 19, 1989, 103 Stat. 2410, provided that: "For purposes of applying section 884 of the 1986 Code, the earnings and profits of any corporation shall be determined without regard to any increase in earnings and profits under sections 1023(e)(3)(C) [section 1023(e)(3)(C) of Pub. L. 99–514, set out as an Effective Date note under section 846 of this title] and 1021(c)(2)(C) of the Reform Act [Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note under section 832 of this title] or arising from section 832(b)(4)(C) of the 1986 Code."

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendment by section 1241(a) of Pub. L. 99–514 (enacting this section) to the extent application of such amendment would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(3), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

§885. Cross references

(1) For special provisions relating to foreign corporations carrying on an insurance business within the United States, see section 842.

(2) For rules applicable in determining whether any foreign corporation is engaged in trade or business within the United States, see section 864(b).

(3) For adjustment of tax in case of corporations of certain foreign countries, see section 896.

(4) For allowance of credit against the tax in case of a foreign corporation having income effectively connected with the conduct of a trade or business within the United States, see section 906.

(5) For withholding at source of tax on income of foreign corporations, see section 1442.

(Aug. 16, 1954, ch. 736, 68A Stat. 283, §884; Pub. L. 89–809, title I, §104(m)(1), Nov. 13, 1966, 80 Stat. 1563; Pub. L. 91–172, title I, §101(j)(21), Dec. 30, 1969, 83 Stat. 528; renumbered §885, Pub. L. 99–514, title XII, §1241(a), Oct. 22, 1986, 100 Stat. 2576.)

AMENDMENTS

1986—Pub. L. 99–514 renumbered section 884 of this title as this section.

1969—Pub. L. 91–172 redesignated pars. (2) to (6) as (1) to (5), respectively. Former par. (1), referring to section 512(a), was struck out.

1966—Par. (1). Pub. L. 89–809 redesignated par. (4) as (1). Former par. (1) redesignated (6).

Par. (2). Pub. L. 89–809 redesignated par. (3) as (2) and substituted "foreign corporations carrying on an insurance business within the United States, see section 842" for "foreign insurance companies, see subchapter L (sec. 801 and following)". Former par. (2) redesignated (3).

Par. (3). Pub. L. 89–809 redesignated former par. (2) as (3) and, in par. (3) as so redesignated, substituted "section 864(b)" for "section 871(c)". Former par. (3) redesignated (2).

Pars. (4), (5). Pub. L. 89–809 added pars. (4) and (5). Former par. (4) redesignated (1).

Par. (6). Pub. L. 89–809 redesignated former par. (1) as (6).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 101(k)(2)(B) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

SUBPART C—TAX ON GROSS TRANSPORTATION INCOME

Sec.

887. Imposition of tax on gross transportation income of nonresident aliens and foreign corporations.

§887. Imposition of tax on gross transportation income of nonresident aliens and foreign corporations

(a) Imposition of tax

In the case of any nonresident alien individual or foreign corporation, there is hereby imposed for each taxable year a tax equal to 4 percent of such individual's or corporation's United States source gross transportation income for such taxable year.

(b) United States source gross transportation income

(1) In general

Except as provided in paragraphs (2) and (3), the term "United States source gross transportation income" means any gross income which is transportation income (as defined in section 863(c)(3)) to the extent such income is treated as from sources in the United States under section 863(c)(2). To the extent provided in regulations, such term does not include any income of a kind to which an exemption under paragraph (1) or (2) of section 883(a) would not apply.

(2) Exception for certain income effectively connected with business in the United States

The term "United States source gross transportation income" shall not include any income taxable under section 871(b) or 882.

(3) Exception for certain income taxable in possessions

The term "United States source gross transportation income" does not include any income taxable in a possession of the United States under the provisions of this title as made applicable in such possession.

(4) Determination of effectively connected income

For purposes of this chapter, United States source gross transportation income of any taxpayer shall not be treated as effectively connected with the conduct of a trade or business in the United States unless—

(A) the taxpayer has a fixed place of business in the United States involved in the earning of United States source gross transportation income, and

(B) substantially all of the United States source gross transportation income (determined without regard to paragraph (2)) of the taxpayer is attributable to regularly scheduled transportation (or, in the case of income from the leasing of a vessel or aircraft, is attributable to a fixed place of business in the United States).

(c) Coordination with other provisions

Any income taxable under this section shall not be taxable under section 871, 881, or 882.

(Added Pub. L. 99–514, title XII, §1212(b)(1), Oct. 22, 1986, 100 Stat. 2537; amended Pub. L. 100–647, title I, §1012(e)(6), Nov. 10, 1988, 102 Stat. 3500; Pub. L. 101–239, title VII, §7811(i)(8)(A), (B), (9), Dec. 19, 1989, 103 Stat. 2410, 2411.)

AMENDMENTS

1989—Subsec. (b)(1). Pub. L. 101–239, §7811(i)(8)(B), substituted "paragraphs (2) and (3)" for "paragraph (2)".

Subsec. (b)(3). Pub. L. 101–239, §7811(i)(8)(A), added par. (3). Former par. (3) redesignated (4).

Subsec. (b)(4). Pub. L. 101–239, §7811(i)(8)(A), (9), redesignated former par. (3) as (4) and substituted "United States source gross transportation income" for "transportation income" in introductory provisions and in subpar. (A).

1988—Subsec. (b)(1). Pub. L. 100–647 substituted "under section 863(c)(2)" for "under section 863(c)" and inserted at end "To the extent provided in regulations, such term does not include any income of a kind to which an exemption under paragraph (1) or (2) of section 883(a) would not apply."

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1986, see section 1212(f) of Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note under section 863 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY

OBLIGATIONS OF UNITED STATES

For nonapplication of amendment by section 1212(b)(1) of Pub. L. 99–514 (enacting this section) to the extent application of such amendment would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(3), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

SUBPART D—MISCELLANEOUS PROVISIONS

Sec.

891. Doubling of rates of tax on citizens and corporations of certain foreign countries.
892. Income of foreign governments and of international organizations.
893. Compensation of employees of foreign governments or international organizations.
894. Income affected by treaty.
895. Income derived by a foreign central bank of issue from obligations of the United States or from bank deposits.
896. Adjustment of tax on nationals, residents, and corporations of certain foreign countries.
897. Disposition of investment in United States real property.
898. Taxable year of certain foreign corporations.

AMENDMENTS

1989—Pub. L. 101–239, title VII, §7401(c), Dec. 19, 1989, 103 Stat. 2357, added item 898.

1986—Pub. L. 99–514, title XII, §1212(b)(1), Oct. 22, 1986, 100 Stat. 2537, redesignated former subpart (C) as (D).

1980—Pub. L. 96–499, title XI, §1122(b), Dec. 5, 1980, 94 Stat. 2687, added item 897.

1966—Pub. L. 89–809, title I, §§102(a)(4)(B), 105(c), Nov. 13, 1966, 80 Stat. 1543, 1565, substituted "affected by treaty" for "exempt under treaty" in item 894, inserted "or from bank deposits" in item 895, and added item 896.

1961—Pub. L. 87–29, §1(b), May 4, 1961, 75 Stat. 64, added item 895.

§891. Doubling of rates of tax on citizens and corporations of certain foreign countries

Whenever the President finds that, under the laws of any foreign country, citizens or corporations of the United States are being subjected to discriminatory or extraterritorial taxes, the President shall so proclaim and the rates of tax imposed by sections 1, 3, 11, 801, 831, 852, 871, and 881 shall, for the taxable year during which such proclamation is made and for each taxable year thereafter, be doubled in the case of each citizen and corporation of such foreign country; but the tax at such doubled rate shall be considered as imposed by such sections as the case may be. In no case shall this section operate to increase the taxes imposed by such sections (computed without regard to this section) to an amount in excess of 80 percent of the taxable income of the taxpayer (computed without regard to the deductions allowable under section 151 and under part VIII of subchapter B). Whenever the President finds that the laws of any foreign country with respect to which the President has made a proclamation under the preceding provisions of this section have been modified so that discriminatory and extraterritorial taxes applicable to citizens and corporations of the United States have been removed, he shall so proclaim, and the provisions of this section providing for doubled rates of tax shall not apply to any citizen or corporation of such foreign country with respect to any taxable year beginning after such proclamation is made.

(Aug. 16, 1954, ch. 736, 68A Stat. 283; Mar. 13, 1956, ch. 83, §5(6), 70 Stat. 49; Pub. L. 86–69, §3(f)(1), June 25, 1959, 73 Stat. 140; Pub. L. 98–369, div. A, title II, §211(b)(12), July 18, 1984, 98 Stat. 755; Pub. L. 99–514, title X, §1024(c)(13), Oct. 22, 1986, 100 Stat. 2408.)

AMENDMENTS

1986—Pub. L. 99–514 struck out reference to section 821.
1984—Pub. L. 98–369 substituted "801" for "802".
1959—Pub. L. 86–69 struck out reference to section 811.
1956—Act Mar. 13, 1956, inserted reference to section 811.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1024(e) of Pub. L. 99–514, set out as a note under section 831 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–69 applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 4 of Pub. L. 86–69, set out an Effective Date note under section 381 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Mar. 13, 1956, applicable only to taxable years beginning after Dec. 31, 1954, see section 6 of act Mar. 13, 1956, set out as a note under section 316 of this title.

§892. Income of foreign governments and of international organizations

(a) Foreign governments

(1) In general

The income of foreign governments received from—

(A) investments in the United States in—

(i) stocks, bonds, or other domestic securities owned by such foreign governments, or

(ii) financial instruments held in the execution of governmental financial or monetary policy, or

(B) interest on deposits in banks in the United States of moneys belonging to such foreign governments,

shall not be included in gross income and shall be exempt from taxation under this subtitle.

(2) Income received directly or indirectly from commercial activities

(A) In general

Paragraph (1) shall not apply to any income—

(i) derived from the conduct of any commercial activity (whether within or outside the United States),

(ii) received by a controlled commercial entity or received (directly or indirectly) from a controlled commercial entity, or

(iii) derived from the disposition of any interest in a controlled commercial entity.

(B) Controlled commercial entity

For purposes of subparagraph (A), the term "controlled commercial entity" means any entity engaged in commercial activities (whether within or outside the United States) if the government—

(i) holds (directly or indirectly) any interest in such entity which (by value or voting interest) is 50 percent or more of the total of such interests in such entity, or

(ii) holds (directly or indirectly) any other interest in such entity which provides the foreign government with effective control of such entity.

For purposes of the preceding sentence, a central bank of issue shall be treated as a controlled commercial entity only if engaged in commercial activities within the United States.

(3) Treatment as resident

For purposes of this title, a foreign government shall be treated as a corporate resident of its country. A foreign government shall be so treated for purposes of any income tax treaty obligation of the United States if such government grants equivalent treatment to the Government of the United States.

(b) International organizations

The income of international organizations received from investments in the United States in stocks, bonds, or other domestic securities owned by such international organizations, or from interest on deposits in banks in the United States of moneys belonging to such international organizations, or from any other source within the United States, shall not be included in gross income and shall be exempt from taxation under this subtitle.

(c) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.

(Aug. 16, 1954, ch. 736, 68A Stat. 284; Pub. L. 99–514, title XII, §1247(a), Oct. 22, 1986, 100 Stat. 2583; Pub. L. 100–647, title I, §1012(t)(1)–(3), Nov. 10, 1988, 102 Stat. 3527; Pub. L. 101–508, title XI, §11704(a)(35), Nov. 5, 1990, 104 Stat. 1388–519.)

AMENDMENTS

1990—Subsec. (a)(2)(A). Pub. L. 101–508 made clarifying amendment to Pub. L. 100–647, §1012(t)(1). See 1988 Amendment note below.

1988—Subsec. (a)(2)(A). Pub. L. 100–647, §1012(t)(1), (2), as amended by Pub. L. 101–508, amended cl. (ii) generally and added cl. (iii). Prior to amendment, cl. (ii) read as follows: "received from or by a controlled commercial entity."

Subsec. (a)(3). Pub. L. 100–647, §1012(t)(3), added par. (3).

1986—Pub. L. 99–514 amended section generally. Prior to amendment, section read as follows: "The income of foreign governments or international organizations received from investments in the United States in stocks, bonds, or other domestic securities, owned by such foreign governments or by international organizations, or from interest on deposits in banks in the United States of moneys belonging to such foreign governments or international organizations, or from any other source within the United States, shall not be included in gross income and shall be exempt from taxation under this subtitle."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XII, §1247(b), Oct. 22, 1986, 100 Stat. 2584, provided that: "The amendment made by subsection (a) [amending this section] shall apply to amounts received on or after July 1, 1986, except that no amount shall be required to be deducted and withheld by reason of the amendment made by subsection (a) from any payment made before the date of the enactment of this Act [Oct. 22, 1986]."

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendment by section 1247(a) of Pub. L. 99–514 to the extent application of such amendment would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(3), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

§893. Compensation of employees of foreign governments or international organizations

(a) Rule for exclusion

Wages, fees, or salary of any employee of a foreign government or of an international organization (including a consular or other officer, or a nondiplomatic representative), received as compensation for official services to such government or international organization shall not be included in gross income and shall be exempt from taxation under this subtitle if—

(1) such employee is not a citizen of the United States, or is a citizen of the Republic of the Philippines (whether or not a citizen of the United States); and

(2) in the case of an employee of a foreign government, the services are of a character similar to those performed by employees of the Government of the United States in foreign countries; and

(3) in the case of an employee of a foreign government, the foreign government grants an equivalent exemption to employees of the Government of the United States performing similar services in such foreign country.

(b) Certificate by Secretary of State

The Secretary of State shall certify to the Secretary of the Treasury the names of the foreign countries which grant an equivalent exemption to the employees of the Government of the United States performing services in such foreign countries, and the character of the services performed by employees of the Government of the United States in foreign countries.

(c) Limitation on exclusion

Subsection (a) shall not apply to—

(1) any employee of a controlled commercial entity (as defined in section 892(a)(2)(B)), or

(2) any employee of a foreign government whose services are primarily in connection with a commercial activity (whether within or outside the United States) of the foreign government.

(Aug. 16, 1954, ch. 736, 68A Stat. 284; Pub. L. 100–647, title I, §1012(t)(4), Nov. 10, 1988, 102 Stat. 3527.)

AMENDMENTS

1988—Subsec. (c). Pub. L. 100–647 added subsec. (c).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

§894. Income affected by treaty

(a) Treaty provisions

(1) In general

The provisions of this title shall be applied to any taxpayer with due regard to any treaty obligation of the United States which applies to such taxpayer.

(2) Cross reference

For relationship between treaties and this title, see section 7852(d).

(b) Permanent establishment in United States

For purposes of applying any exemption from, or reduction of, any tax provided by any treaty to which the United States is a party with respect to income which is not effectively connected with the conduct of a trade or business within the United States, a nonresident alien individual or a foreign

corporation shall be deemed not to have a permanent establishment in the United States at any time during the taxable year. This subsection shall not apply in respect of the tax computed under section 877(b).

(c) Denial of treaty benefits for certain payments through hybrid entities

(1) Application to certain payments

A foreign person shall not be entitled under any income tax treaty of the United States with a foreign country to any reduced rate of any withholding tax imposed by this title on an item of income derived through an entity which is treated as a partnership (or is otherwise treated as fiscally transparent) for purposes of this title if—

(A) such item is not treated for purposes of the taxation laws of such foreign country as an item of income of such person,

(B) the treaty does not contain a provision addressing the applicability of the treaty in the case of an item of income derived through a partnership, and

(C) the foreign country does not impose tax on a distribution of such item of income from such entity to such person.

(2) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to determine the extent to which a taxpayer to which paragraph (1) does not apply shall not be entitled to benefits under any income tax treaty of the United States with respect to any payment received by, or income attributable to any activities of, an entity organized in any jurisdiction (including the United States) that is treated as a partnership or is otherwise treated as fiscally transparent for purposes of this title (including a common investment trust under section 584, a grantor trust, or an entity that is disregarded for purposes of this title) and is treated as fiscally nontransparent for purposes of the tax laws of the jurisdiction of residence of the taxpayer.

(Aug. 16, 1954, ch. 736, 68A Stat. 284; Pub. L. 89–809, title I, §105(a), Nov. 13, 1966, 80 Stat. 1563; Pub. L. 100–647, title I, §1012(aa)(6), Nov. 10, 1988, 102 Stat. 3533; Pub. L. 105–34, title X, §1054(a), Aug. 5, 1997, 111 Stat. 943.)

AMENDMENTS

1997—Subsec. (c). Pub. L. 105–34 added subsec. (c).

1988—Subsec. (a). Pub. L. 100–647 substituted "Treaty provisions" for "Income affected by treaty" in heading and amended text generally. Prior to amendment, text read as follows: "Income of any kind, to the extent required by any treaty obligation of the United States, shall not be included in gross income and shall be exempt from taxation under this subtitle."

1966—Pub. L. 89–809 designated existing provisions as subsec. (a), added subsec. (b), and substituted "affected by treaty" for "exempt under treaty" in section catchline.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title X, §1054(b), Aug. 5, 1997, 111 Stat. 944, provided that: "The amendments made by this section [amending this section] shall apply upon the date of enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89–809, title I, §105(d), Nov. 13, 1966, 80 Stat. 1565, provided that: "The amendments made by this section (other than subsections (d) and (f)) [amending this section and enacting section 896 of this title] shall apply with respect to taxable years beginning after December 31, 1966."

§895. Income derived by a foreign central bank of issue from obligations of the

United States or from bank deposits

Income derived by a foreign central bank of issue from obligations of the United States or of any agency or instrumentality thereof (including beneficial interests, participations, and other instruments issued under section 302(c) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717)) which are owned by such foreign central bank of issue, or derived from interest on deposits with persons carrying on the banking business, shall not be included in gross income and shall be exempt from taxation under this subtitle unless such obligations or deposits are held for, or used in connection with, the conduct of commercial banking functions or other commercial activities. For purposes of the preceding sentence the Bank for International Settlements shall be treated as a foreign central bank of issue.

(Added Pub. L. 87–29, §1(a), May 4, 1961, 75 Stat. 64; amended Pub. L. 89–809, title I, §102(a)(4)(A), Nov. 13, 1966, 80 Stat. 1543.)

AMENDMENTS

1966—Pub. L. 89–809 exempted income derived from obligations of agencies or instrumentalities of the United States and income derived from interest on deposits with persons carrying on the banking business, inserted "(including beneficial interests, participations, and other instruments issued under section 302(c) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717))," and inserted sentence requiring the Bank for International Settlements to be treated as a foreign central bank of issue.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, except that in applying section 864(c)(4)(B)(iii) of this title with respect to a binding contract entered into on or before Feb. 24, 1966, activities in the United States on or before such date in negotiating or carrying out such contract shall not be taken into account, see section 102(e)(1) of Pub. L. 89–809, set out as a note under section 861 of this title.

EFFECTIVE DATE

Pub. L. 87–29, §1(c), May 4, 1961, 75 Stat. 64, provided that: "The amendments made by subsections (a) and (b) [enacting this section and amending analysis preceding section 891 of this title] shall be effective with respect to income received in taxable years beginning after December 31, 1960."

§896. Adjustment of tax on nationals, residents, and corporations of certain foreign countries

(a) Imposition of more burdensome taxes by foreign country

Whenever the President finds that—

(1) under the laws of any foreign country, considering the tax system of such foreign country, citizens of the United States not residents of such foreign country or domestic corporations are being subjected to more burdensome taxes, on any item of income received by such citizens or corporations from sources within such foreign country, than taxes imposed by the provisions of this subtitle on similar income derived from sources within the United States by residents or corporations of such foreign country,

(2) such foreign country, when requested by the United States to do so, has not acted to revise or reduce such taxes so that they are no more burdensome than taxes imposed by the provisions of this subtitle on similar income derived from sources within the United States by residents or corporations of such foreign country, and

(3) it is in the public interest to apply pre-1967 tax provisions in accordance with the provisions of this subsection to residents or corporations of such foreign country,

the President shall proclaim that the tax on such similar income derived from sources within the United States by residents or corporations of such foreign country shall, for taxable years beginning after such proclamation, be determined under this subtitle without regard to amendments made to this subchapter and chapter 3 on or after the date of enactment of this section.

(b) Imposition of discriminatory taxes by foreign country

Whenever the President finds that—

(1) under the laws of any foreign country, citizens of the United States or domestic corporations (or any class of such citizens or corporations) are, with respect to any item of income, being subjected to a higher effective rate of tax than are nationals, residents, or corporations of such foreign country (or a similar class of such nationals, residents, or corporations) under similar circumstances;

(2) such foreign country, when requested by the United States to do so, has not acted to eliminate such higher effective rate of tax; and

(3) it is in the public interest to adjust, in accordance with the provisions of this subsection, the effective rate of tax imposed by this subtitle on similar income of nationals, residents, or corporations of such foreign country (or such similar class of such nationals, residents, or corporations),

the President shall proclaim that the tax on similar income of nationals, residents, or corporations of such foreign country (or such similar class of such nationals, residents, or corporations) shall, for taxable years beginning after such proclamation, be adjusted so as to cause the effective rate of tax imposed by this subtitle on such similar income to be substantially equal to the effective rate of tax imposed by such foreign country on such item of income of citizens of the United States or domestic corporations (or such class of citizens or corporations). In implementing a proclamation made under this subsection, the effective rate of tax imposed by this subtitle on an item of income may be adjusted by the disallowance, in whole or in part, of any deduction, credit, or exemption which would otherwise be allowed with respect to that item of income or by increasing the rate of tax otherwise applicable to that item of income.

(c) Alleviation of more burdensome or discriminatory taxes

Whenever the President finds that—

(1) the laws of any foreign country with respect to which the President has made a proclamation under subsection (a) have been modified so that citizens of the United States not residents of such foreign country or domestic corporations are no longer subject to more burdensome taxes on the item of income derived by such citizens or corporations from sources within such foreign country, or

(2) the laws of any foreign country with respect to which the President has made a proclamation under subsection (b) have been modified so that citizens of the United States or domestic corporations (or any class of such citizens or corporations) are no longer subject to a higher effective rate of tax on the item of income,

he shall proclaim that the tax imposed by this subtitle on the similar income of nationals, residents, or corporations of such foreign country shall, for any taxable year beginning after such proclamation, be determined under this subtitle without regard to such subsection.

(d) Notification of Congress required

No proclamation shall be issued by the President pursuant to this section unless, at least 30 days prior to such proclamation, he has notified the Senate and the House of Representatives of his intention to issue such proclamation.

(e) Implementation by regulations

The Secretary shall prescribe such regulations as he deems necessary or appropriate to implement this section.

(Added Pub. L. 89–809, title I, §105(b), Nov. 13, 1966, 80 Stat. 1563; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

REFERENCES IN TEXT

The date of enactment of this section, referred to in the provisions following subsec. (a)(3), is the date of

enactment of Pub. L. 89–809, which was approved Nov. 13, 1966.

AMENDMENTS

1976—Subsec. (e). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE

Section applicable with respect to taxable years beginning after Dec. 31, 1966, see section 105(d) of Pub. L. 89–809, set out as an Effective Date of 1966 Amendment note under section 894 of this title.

§897. Disposition of investment in United States real property

(a) General rule

(1) Treatment as effectively connected with United States trade or business

For purposes of this title, gain or loss of a nonresident alien individual or a foreign corporation from the disposition of a United States real property interest shall be taken into account—

(A) in the case of a nonresident alien individual, under section 871(B)(1), or

(B) in the case of a foreign corporation, under section 882(a)(1),

as if the taxpayer were engaged in a trade or business within the United States during the taxable year and as if such gain or loss were effectively connected with such trade or business.

(2) Minimum tax on nonresident alien individuals

(A) In general

In the case of any nonresident alien individual, the taxable excess for purposes of section 55(b)(1)(A) shall not be less than the lesser of—

(i) the individual's alternative minimum taxable income (as defined in section 55(b)(2)) for the taxable year, or

(ii) the individual's net United States real property gain for the taxable year.

(B) Net United States real property gain

For purposes of subparagraph (A), the term "net United States real property gain" means the excess of—

(i) the aggregate of the gains for the taxable year from dispositions of United States real property interests, over

(ii) the aggregate of the losses for the taxable year from dispositions of such interests.

(b) Limitation on losses of individuals

In the case of an individual, a loss shall be taken into account under subsection (a) only to the extent such loss would be taken into account under section 165(c) (determined without regard to subsection (a) of this section).

(c) United States real property interest

For purposes of this section—

(1) United States real property interest

(A) In general

Except as provided in subparagraph (B), the term "United States real property interest" means—

(i) an interest in real property (including an interest in a mine, well, or other natural deposit) located in the United States or the Virgin Islands, and

(ii) any interest (other than an interest solely as a creditor) in any domestic corporation unless the taxpayer establishes (at such time and in such manner as the Secretary by regulations prescribes) that such corporation was at no time a United States real property holding corporation during the shorter of—

(I) the period after June 18, 1980, during which the taxpayer held such interest, or
(II) the 5-year period ending on the date of the disposition of such interest.

(B) Exclusion for interest in certain corporations

The term "United States real property interest" does not include any interest in a corporation if—

(i) as of the date of the disposition of such interest, such corporation did not hold any United States real property interests, and

(ii) all of the United States real property interests held by such corporation at any time during the shorter of the periods described in subparagraph (A)(ii)—

(I) were disposed of in transactions in which the full amount of the gain (if any) was recognized, or

(II) ceased to be United States real property interests by reason of the application of this subparagraph to 1 or more other corporations.

(2) United States real property holding corporation

The term "United States real property holding corporation" means any corporation if—

(A) the fair market value of its United States real property interests equals or exceeds 50 percent of

(B) the fair market value of—

(i) its United States real property interests,

(ii) its interests in real property located outside the United States, plus

(iii) any other of its assets which are used or held for use in a trade or business.

(3) Exception for stock regularly traded on established securities markets

If any class of stock of a corporation is regularly traded on an established securities market, stock of such class shall be treated as a United States real property interest only in the case of a person who, at some time during the shorter of the periods described in paragraph (1)(A)(ii), held more than 5 percent of such class of stock.

(4) Interests held by foreign corporations and by partnerships, trusts, and estates

For purposes of determining whether any corporation is a United States real property holding corporation—

(A) Foreign corporations

Paragraph (1)(A)(ii) shall be applied by substituting "any corporation (whether foreign or domestic)" for "any domestic corporation".

(B) Interests held by partnerships, etc.

Under regulations prescribed by the Secretary, assets held by a partnership, trust, or estate shall be treated as held proportionately by its partners or beneficiaries. Any asset treated as held by a partner or beneficiary by reason of this subparagraph which is used or held for use by the partnership, trust, or estate in a trade or business shall be treated as so used or held by the partner or beneficiary. Any asset treated as held by a partner or beneficiary by reason of this subparagraph shall be so treated for purposes of applying this subparagraph successively to partnerships, trusts, or estates which are above the first partnership, trust, or estate in a chain thereof.

(5) Treatment of controlling interests

(A) In general

Under regulations, for purposes of determining whether any corporation is a United States real property holding corporation, if any corporation (hereinafter in this paragraph referred to as the "first corporation") holds a controlling interest in a second corporation—

(i) the stock which the first corporation holds in the second corporation shall not be taken into account,

(ii) the first corporation shall be treated as holding a portion of each asset of the second

corporation equal to the percentage of the fair market value of the stock of the second corporation represented by the stock held by the first corporation, and

(iii) any asset treated as held by the first corporation by reason of clause (ii) which is used or held for use by the second corporation in a trade or business shall be treated as so used or held by the first corporation.

Any asset treated as held by the first corporation by reason of the preceding sentence shall be so treated for purposes of applying the preceding sentence successively to corporations which are above the first corporation in a chain of corporations.

(B) Controlling interest

For purposes of subparagraph (A), the term "controlling interest" means 50 percent or more of the fair market value of all classes of stock of a corporation.

(6) Other special rules

(A) Interest in real property

The term "interest in real property" includes fee ownership and co-ownership of land or improvements thereon, leaseholds of land or improvements thereon, options to acquire land or improvements thereon, and options to acquire leaseholds of land or improvements thereon.

(B) Real property includes associated personal property

The term "real property" includes movable walls, furnishings, and other personal property associated with the use of the real property.

(C) Constructive ownership rules

For purposes of determining under paragraph (3) whether any person holds more than 5 percent of any class of stock and of determining under paragraph (5) whether a person holds a controlling interest in any corporation, section 318(a) shall apply (except that paragraphs (2)(C) and (3)(C) of section 318(a) shall be applied by substituting "5 percent" for "50 percent").

(d) Treatment of distributions by foreign corporations

(1) In general

Except to the extent otherwise provided in regulations, notwithstanding any other provision of this chapter, gain shall be recognized by a foreign corporation on the distribution (including a distribution in liquidation or redemption) of a United States real property interest in an amount equal to the excess of the fair market value of such interest (as of the time of the distribution) over its adjusted basis.

(2) Exceptions

Gain shall not be recognized under paragraph (1)—

(A) if—

(i) at the time of the receipt of the distributed property, the distributee would be subject to taxation under this chapter on a subsequent disposition of the distributed property, and

(ii) the basis of the distributed property in the hands of the distributee is no greater than the adjusted basis of such property before the distribution, increased by the amount of gain (if any) recognized by the distributing corporation, or

(B) if such nonrecognition is provided in regulations prescribed by the Secretary under subsection (e)(2).

(e) Coordination with nonrecognition provisions

(1) In general

Except to the extent otherwise provided in subsection (d) and paragraph (2) of this subsection, any nonrecognition provision shall apply for purposes of this section to a transaction only in the case of an exchange of a United States real property interest for an interest the sale of which

would be subject to taxation under this chapter.

(2) Regulations

The Secretary shall prescribe regulations (which are necessary or appropriate to prevent the avoidance of Federal income taxes) providing—

(A) the extent to which nonrecognition provisions shall, and shall not, apply for purposes of this section, and

(B) the extent to which—

(i) transfers of property in reorganization, and

(ii) changes in interests in, or distributions from, a partnership, trust, or estate,

shall be treated as sales of property at fair market value.

(3) Nonrecognition provision defined

For purposes of this subsection, the term "nonrecognition provision" means any provision of this title for not recognizing gain or loss.

[(f) Repealed. Pub. L. 104–188, title I, §1702(g)(2), Aug. 20, 1996, 110 Stat. 1873]

(g) Special rule for sales of interest in partnerships, trusts, and estates

Under regulations prescribed by the Secretary, the amount of any money, and the fair market value of any property, received by a nonresident alien individual or foreign corporation in exchange for all or part of its interest in a partnership, trust, or estate shall, to the extent attributable to United States real property interests, be considered as an amount received from the sale or exchange in the United States of such property.

(h) Special rules for certain investment entities

For purposes of this section—

(1) Look-through of distributions

Any distribution by a qualified investment entity to a nonresident alien individual, a foreign corporation, or other qualified investment entity shall, to the extent attributable to gain from sales or exchanges by the qualified investment entity of United States real property interests, be treated as gain recognized by such nonresident alien individual, foreign corporation, or other qualified investment entity from the sale or exchange of a United States real property interest. Notwithstanding the preceding sentence, any distribution by a qualified investment entity to a nonresident alien individual or a foreign corporation with respect to any class of stock which is regularly traded on an established securities market located in the United States shall not be treated as gain recognized from the sale or exchange of a United States real property interest if such individual or corporation did not own more than 5 percent of such class of stock at any time during the 1-year period ending on the date of such distribution.

(2) Sale of stock in domestically controlled entity not taxed

The term "United States real property interest" does not include any interest in a domestically controlled qualified investment entity.

(3) Distributions by domestically controlled qualified investment entities

In the case of a domestically controlled qualified investment entity, rules similar to the rules of subsection (d) shall apply to the foreign ownership percentage of any gain.

(4) Definitions

(A) Qualified investment entity

(i) In general

The term "qualified investment entity" means—

(I) any real estate investment trust, and

(II) any regulated investment company which is a United States real property holding

corporation or which would be a United States real property holding corporation if the exceptions provided in subsections (c)(3) and (h)(2) did not apply to interests in any real estate investment trust or regulated investment company.

(ii) Termination

Clause (i)(II) shall not apply after December 31, 2013. Notwithstanding the preceding sentence, an entity described in clause (i)(II) shall be treated as a qualified investment entity for purposes of applying paragraphs (1) and (5) and section 1445 with respect to any distribution by the entity to a nonresident alien individual or a foreign corporation which is attributable directly or indirectly to a distribution to the entity from a real estate investment trust.

(B) Domestically controlled

The term "domestically controlled qualified investment entity" means any qualified investment entity in which at all times during the testing period less than 50 percent in value of the stock was held directly or indirectly by foreign persons.

(C) Foreign ownership percentage

The term "foreign ownership percentage" means that percentage of the stock of the qualified investment entity which was held (directly or indirectly) by foreign persons at the time during the testing period during which the direct and indirect ownership of stock by foreign persons was greatest.

(D) Testing period

The term "testing period" means whichever of the following periods is the shortest:

(i) the period beginning on June 19, 1980, and ending on the date of the disposition or of the distribution, as the case may be,

(ii) the 5-year period ending on the date of the disposition or of the distribution, as the case may be, or

(iii) the period during which the qualified investment entity was in existence.

(5) Treatment of certain wash sale transactions

(A) In general

If an interest in a domestically controlled qualified investment entity is disposed of in an applicable wash sale transaction, the taxpayer shall, for purposes of this section, be treated as having gain from the sale or exchange of a United States real property interest in an amount equal to the portion of the distribution described in subparagraph (B) with respect to such interest which, but for the disposition, would have been treated by the taxpayer as gain from the sale or exchange of a United States real property interest under paragraph (1).

(B) Applicable wash sales transaction

For purposes of this paragraph—

(i) In general

The term "applicable wash sales transaction" means any transaction (or series of transactions) under which a nonresident alien individual, foreign corporation, or qualified investment entity—

(I) disposes of an interest in a domestically controlled qualified investment entity during the 30-day period preceding the ex-dividend date of a distribution which is to be made with respect to the interest and any portion of which, but for the disposition, would have been treated by the taxpayer as gain from the sale or exchange of a United States real property interest under paragraph (1), and

(II) acquires, or enters into a contract or option to acquire, a substantially identical interest in such entity during the 61-day period beginning with the 1st day of the 30-day period described in subclause (I).

For purposes of subclause (II), a nonresident alien individual, foreign corporation, or qualified investment entity shall be treated as having acquired any interest acquired by a person related (within the meaning of section 267(b) or 707(b)(1)) to the individual, corporation, or entity, and any interest which such person has entered into any contract or option to acquire.

(ii) Application to substitute dividend and similar payments

Subparagraph (A) shall apply to—

(I) any substitute dividend payment (within the meaning of section 861), or

(II) any other similar payment specified in regulations which the Secretary determines necessary to prevent avoidance of the purposes of this paragraph.

The portion of any such payment treated by the taxpayer as gain from the sale or exchange of a United States real property interest under subparagraph (A) by reason of this clause shall be equal to the portion of the distribution such payment is in lieu of which would have been so treated but for the transaction giving rise to such payment.

(iii) Exception where distribution actually received

A transaction shall not be treated as an applicable wash sales transaction if the nonresident alien individual, foreign corporation, or qualified investment entity receives the distribution described in clause (i)(I) with respect to either the interest which was disposed of, or acquired, in the transaction.

(iv) Exception for certain publicly traded stock

A transaction shall not be treated as an applicable wash sales transaction if it involves the disposition of any class of stock in a qualified investment entity which is regularly traded on an established securities market within the United States but only if the nonresident alien individual, foreign corporation, or qualified investment entity did not own more than 5 percent of such class of stock at any time during the 1-year period ending on the date of the distribution described in clause (i)(I).

(i) Election by foreign corporation to be treated as domestic corporation

(1) In general

If—

(A) a foreign corporation holds a United States real property interest, and

(B) under any treaty obligation of the United States the foreign corporation is entitled to nondiscriminatory treatment with respect to that interest,

then such foreign corporation may make an election to be treated as a domestic corporation for purposes of this section, section 1445, and section 6039C.

(2) Revocation only with consent

Any election under paragraph (1), once made, may be revoked only with the consent of the Secretary.

(3) Making of election

An election under paragraph (1) may be made only—

(A) if all of the owners of all classes of interests (other than interests solely as a creditor) in the foreign corporation at the time of the election consent to the making of the election and agree that gain, if any, from the disposition of such interest after June 18, 1980, which would be taken into account under subsection (a) shall be taxable notwithstanding any provision to the contrary in a treaty to which the United States is a party, and

(B) subject to such other conditions as the Secretary may prescribe by regulations with respect to the corporation or its shareholders.

In the case of a class of interest (other than an interest solely as a creditor) which is regularly

traded on an established securities market, the consent described in subparagraph (A) need only be made by any person if such person held more than 5 percent of such class of interest at some time during the shorter of the periods described in subsection (c)(1)(A)(ii). The constructive ownership rules of subsection (c)(6)(C) shall apply in determining whether a person held more than 5 percent of a class of interest.

(4) Exclusive method of claiming nondiscrimination

The election provided by paragraph (1) shall be the exclusive remedy for any person claiming discriminatory treatment with respect to this section, section 1145, and section 6039C.

(j) Certain contributions to capital

Except to the extent otherwise provided in regulations, gain shall be recognized by a nonresident alien individual or foreign corporation on the transfer of a United States real property interest to a foreign corporation if the transfer is made as paid in surplus or as a contribution to capital, in the amount of the excess of—

(1) the fair market value of such property transferred, over

(2) the sum of—

(A) the adjusted basis of such property in the hands of the transferor, plus

(B) the amount of gain, if any, recognized to the transferor under any other provision at the time of the transfer.

(Added Pub. L. 96–499, title XI, §1122(a), Dec. 5, 1980, 94 Stat. 2682; amended Pub. L. 97–34, title VIII, §831(a)(1), (b)–(d), (f), (g), Aug. 13, 1981, 95 Stat. 352–354; Pub. L. 97–248, title II, §201(d)(6), formerly §201(c)(6), Sept. 3, 1982, 96 Stat. 419, renumbered §201(d)(6), Pub. L. 97–448, title III, §306(a)(1)(A)(i), Jan. 12, 1983, 96 Stat. 2400; Pub. L. 99–514, title VI, §631(e)(12), title VII, §701(e)(4)(G), title XVIII, §1810(f)(1), Oct. 22, 1986, 100 Stat. 2275, 2343, 2826; Pub. L. 100–647, title I, §1006(e)(19), Nov. 10, 1988, 102 Stat. 3403; Pub. L. 101–508, title XI, §11801(a)(30), Nov. 5, 1990, 104 Stat. 1388–521; Pub. L. 103–66, title XIII, §13203(c)(2), Aug. 10, 1993, 107 Stat. 462; Pub. L. 104–188, title I, §1702(g)(2), Aug. 20, 1996, 110 Stat. 1873; Pub. L. 108–357, title IV, §§411(c), 418(a), Oct. 22, 2004, 118 Stat. 1504, 1512; Pub. L. 109–135, title IV, §403(p)(1), Dec. 21, 2005, 119 Stat. 2626; Pub. L. 109–222, title V, §§504(a), 505(a), 506(a), May 17, 2006, 120 Stat. 355, 357; Pub. L. 110–343, div. C, title II, §208(a), Oct. 3, 2008, 122 Stat. 3865; Pub. L. 111–312, title VII, §749(a), Dec. 17, 2010, 124 Stat. 3320; Pub. L. 112–240, title III, §321(a), Jan. 2, 2013, 126 Stat. 2332.)

AMENDMENTS

2013—Subsec. (h)(4)(A)(ii). Pub. L. 112–240 substituted "December 31, 2013" for "December 31, 2011".

2010—Subsec. (h)(4)(A)(ii). Pub. L. 111–312 substituted "December 31, 2011" for "December 31, 2009".

2008—Subsec. (h)(4)(A)(ii). Pub. L. 110–343 substituted "December 31, 2009" for "December 31, 2007".

2006—Subsec. (h)(1). Pub. L. 109–222, §505(a)(1), in first sentence, substituted "a nonresident alien individual, a foreign corporation, or other qualified investment entity" for "a nonresident alien individual or a foreign corporation" and "such nonresident alien individual, foreign corporation, or other qualified investment entity" for "such nonresident alien individual or foreign corporation" and inserted second sentence and struck out former second sentence which read as follows: "Notwithstanding the preceding sentence, any distribution by a real estate investment trust with respect to any class of stock which is regularly traded on an established securities market located in the United States shall not be treated as gain recognized from the sale or exchange of a United States real property interest if the shareholder did not own more than 5 percent of such class of stock at any time during the 1-year period ending on the date of the distribution."

Subsec. (h)(4)(A)(i)(II). Pub. L. 109–222, §504(a), inserted "which is a United States real property holding corporation or which would be a United States real property holding corporation if the exceptions provided in subsections (c)(3) and (h)(2) did not apply to interests in any real estate investment trust or regulated investment company" after "any regulated investment company".

Subsec. (h)(4)(A)(ii). Pub. L. 109–222, §505(a)(2), inserted at end "Notwithstanding the preceding sentence, an entity described in clause (i)(II) shall be treated as a qualified investment entity for purposes of applying paragraphs (1) and (5) and section 1445 with respect to any distribution by the entity to a nonresident alien individual or a foreign corporation which is attributable directly or indirectly to a distribution to the entity from a real estate investment trust."

Subsec. (h)(5). Pub. L. 109–222, §506(a), added par. (5).

2005—Subsec. (h)(1). Pub. L. 109–135 substituted "any distribution by a real estate investment trust with respect to any class of stock" for "any distribution by a REIT with respect to any class of stock" and "the 1-year period ending on the date of the distribution" for "the taxable year".

2004—Subsec. (h). Pub. L. 108–357, §411(c)(5), substituted "certain investment entities" for "REITS" in heading.

Subsec. (h)(1). Pub. L. 108–357, §418(a), inserted at end "Notwithstanding the preceding sentence, any distribution by a REIT with respect to any class of stock which is regularly traded on an established securities market located in the United States shall not be treated as gain recognized from the sale or exchange of a United States real property interest if the shareholder did not own more than 5 percent of such class of stock at any time during the taxable year."

Pub. L. 108–357, §411(c)(1), substituted "qualified investment entity" for "REIT" in two places.

Subsec. (h)(2). Pub. L. 108–357, §411(c)(2), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: "The term 'United States real property interest' does not include any interest in a domestically-controlled REIT."

Subsec. (h)(3). Pub. L. 108–357, §411(c)(2), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: "In the case of a domestically-controlled REIT, rules similar to the rules of subsection (d) shall apply to the foreign ownership percentage of any gain."

Subsec. (h)(4)(A). Pub. L. 108–357, §411(c)(3), amended heading and text of subpar. (A) generally. Prior to amendment, text read as follows: "The term 'REIT' means a real estate investment trust."

Subsec. (h)(4)(B). Pub. L. 108–357, §411(c)(3), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: "The term 'domestically-controlled REIT' means a REIT in which at all times during the testing period less than 50 percent in value of the stock was held directly or indirectly by foreign persons."

Subsec. (h)(4)(C), (D)(iii). Pub. L. 108–357, §411(c)(4), substituted "qualified investment entity" for "REIT".

1996—Subsec. (f). Pub. L. 104–188 struck out subsec. (f) which read as follows:

"(f) DISTRIBUTIONS BY DOMESTIC CORPORATIONS TO FOREIGN SHAREHOLDERS.—If a domestic corporation distributes a United States real property interest to a nonresident alien individual or a foreign corporation in a distribution to which section 301 applies, notwithstanding any other provision of this chapter, the basis of such United States real property interest in the hands of such nonresident alien individual or foreign corporation shall not exceed—

"(1) the adjusted basis of such property before the distribution, increased by

"(2) the sum of—

"(A) any gain recognized by the distributing corporation on the distribution, and

"(B) any tax paid under this chapter by the distributee on such distribution."

1993—Subsec. (a)(2). Pub. L. 103–66 substituted "Minimum" for "21-percent minimum" in heading and "the taxable excess for purposes of section 55(b)(1)(A) shall not be less than" for "the amount determined under section 55(b)(1)(A) shall not be less than 21 percent of" in subpar. (A).

1990—Subsec. (k). Pub. L. 101–508 struck out subsec. (k) which read as follows: "If—

"(1) a foreign corporation adopts, or has adopted, a plan of liquidation described in section 334(b)(2)(A), and

"(2) the 12-month period described in section 334(b)(2)(B) for the acquisition by purchase of the stock of the foreign corporation, began after December 31, 1979, and before November 26, 1980,

then such foreign corporation may make an election to be treated, for the period following June 18, 1980, as a domestic corporation pursuant to section 897(i)(1). Notwithstanding an election under the preceding sentence, any selling shareholder of such corporation shall be considered to have sold the stock of a foreign corporation."

1988—Subsec. (l). Pub. L. 100–647 struck out subsec. (l) which provided special rule for certain United States shareholders of liquidating foreign corporations.

1986—Subsec. (a)(2). Pub. L. 99–514, §701(e)(4)(G), substituted "21-percent" for "20-percent" in heading and amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "In the case of any nonresident alien individual, the amount determined under section 55(a)(1) for the taxable year shall not be less than 20 percent of the lesser of—

"(i) the individual's alternative minimum taxable income (as defined in section 55(b)) for the taxable year, or

"(ii) the individual's net United States real property gain for the taxable year."

Subsec. (d). Pub. L. 99–514, §631(e)(12), in heading, struck out ", etc.," after "distributions", and in text,

struck out heading and designation for par. (1), redesignated subpar. (A) as par. (1), redesignated subpar. (B) as par. (2) and substituted "paragraph (1)" for "subparagraph (A)" in introductory provisions, redesignated cl. (i) and its subcls. (I) and (II) as subpar. (A) and cls. (i) and (ii), respectively, redesignated cl. (ii) as subpar. (B), and struck out former par. (2) which provided that section 337 not apply to any sale or exchange of a United States real property interest by a foreign corporation.

Subsec. (i)(1), (4). Pub. L. 99–514, §1810(f)(1), inserted reference to section 1445.

1982—Subsec. (a)(2)(A). Pub. L. 97–248 substituted "section 55(a)(1) for the taxable year shall not be less than 20 percent of the lesser of—" for "section 55(a)(1)(A) for the taxable year shall not be less than 20 percent of whichever of the following is the least:" in introductory provisions, in cl. (i) struck out "(1)" after "section 55(b)" and inserted "or" at the end, in cl. (ii) substituted a period for a comma and struck out "or" at the end, and struck out former cl. (iii), which had provided for the amount of $60,000 as a third alternative.

1981—Subsec. (c)(1)(A)(i). Pub. L. 97–34, §831(a)(1), defined "United States real property interest" to also mean an interest in real property located in the Virgin Islands.

Subsec. (c)(4)(B). Pub. L. 97–34, §831(b), substituted "Assets" for "Interests" in heading and in first sentence "Under regulations prescribed by the Secretary, assets held by a partnership, trust or estate shall be treated as held" for "United States real property interests held by a partnership, trust, or estate shall be treated as owned" before "proportionately by its partners or beneficiaries", and inserted provisions respecting treatment of an asset as used or held for use in a trade or business by a partner or beneficiary when used or held by the partnership, trust, or estate in a trade or business and attributing chain treatment of such trade or business to partnership, trust, or estate which are above the first such entity.

Subsec. (d)(1)(B). Pub. L. 97–34, §831(c), substituted "Exceptions" for "Exception where there is a carryover basis" in heading, inserted introductory text "Gain shall not be recognized under subparagraph (A)", inserted cls. (i)(I) and (ii), and substituted cl. (i)(II) the basis of the distributed property in the hands of the distributee is no greater than the adjusted basis of such property before the distribution, increased by the amount of gain (if any) recognized by the distributing corporation" for subpar. (B) provision "Subparagraph (A) shall not apply if the basis of the distributed property in the hands of the distributee is the same as the adjusted basis of such property before the distribution increased by the amount of any gain recognized by the distributing corporation."

Subsec. (i). Pub. L. 97–34, §831(d), in par. (1)(A) substituted "holds a United States real property interest" for "has a permanent establishment in the United States", in par. (1)(B) substituted "treaty obligation of the United States the foreign corporation is entitled to nondiscriminatory treatment with respect to that interest" for "treaty, such permanent establishment may not be treated less favorably than domestic corporations carrying on the same activities", in par. (3) inserted subpar. (A), designated existing provisions as subpar. (B), in subpar. (B) substituted "such other conditions as the Secretary may prescribe by regulations with respect to the corporation or its shareholders" for "such conditions as may be prescribed by the Secretary", and prescribed percentage interest required for making the requisite election and application of constructive ownership rules in determining existence of the required percentage of a class of interest.

Subsecs. (j) to (l). Pub. L. 97–34, §831(f), (g), added subsecs. (j) to (l).

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title III, §321(b), Jan. 2, 2013, 126 Stat. 2332, provided that:

"(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall take effect on January 1, 2012. Notwithstanding the preceding sentence, such amendment shall not apply with respect to the withholding requirement under section 1445 of the Internal Revenue Code of 1986 for any payment made before the date of the enactment of this Act [Jan. 2, 2013].

"(2) AMOUNTS WITHHELD ON OR BEFORE DATE OF ENACTMENT.—In the case of a regulated investment company—

"(A) which makes a distribution after December 31, 2011, and before the date of the enactment of this Act; and

"(B) which would (but for the second sentence of paragraph (1)) have been required to withhold with respect to such distribution under section 1445 of such Code,

such investment company shall not be liable to any person to whom such distribution was made for any amount so withheld and paid over to the Secretary of the Treasury."

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §749(b), Dec. 17, 2010, 124 Stat. 3320, provided that:

"(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall take effect on January 1, 2010. Notwithstanding the preceding sentence, such amendment shall not apply with respect to the

withholding requirement under section 1445 of the Internal Revenue Code of 1986 for any payment made before the date of the enactment of this Act [Dec. 17, 2010].

"(2) AMOUNTS WITHHELD ON OR BEFORE DATE OF ENACTMENT.—In the case of a regulated investment company—

"(A) which makes a distribution after December 31, 2009, and before the date of the enactment of this Act [Dec. 17, 2010]; and

"(B) which would (but for the second sentence of paragraph (1)) have been required to withhold with respect to such distribution under section 1445 of such Code,

such investment company shall not be liable to any person to whom such distribution was made for any amount so withheld and paid over to the Secretary of the Treasury."

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title II, §208(b), Oct. 3, 2008, 122 Stat. 3865, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on January 1, 2008."

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–222, title V, §504(b), May 17, 2006, 120 Stat. 355, provided that: "The amendment made by this section [amending this section] shall take effect as if included in the provisions of section 411 of the American Jobs Creation Act of 2004 [Pub. L. 108–357] to which it relates."

Amendment by section 505(a) of Pub. L. 109–222 applicable to taxable years of qualified investment entities beginning after Dec. 31, 2005, except that no amount shall be required to be withheld under section 1441, 1442, or 1445 of the Internal Revenue Code of 1986 with respect to any distribution before May 17, 2006 if such amount was not otherwise required to be withheld under any such section as in effect before such amendments, see section 505(d) of Pub. L. 109–222, set out as a note under section 852 of this title.

Pub. L. 109–222, title V, §506(c), May 17, 2006, 120 Stat. 358, provided that: "The amendments made by this section [amending this section and section 1445 of this title] shall apply to taxable years beginning after December 31, 2005, except that such amendments shall not apply to any distribution, or substitute dividend payment, occurring before the date that is 30 days after the date of the enactment of this Act [May 17, 2006]."

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 411(c)(1) of Pub. L. 108–357 applicable to dividends with respect to taxable years of regulated investment companies beginning after Dec. 31, 2004, and amendment by section 411(c)(2)–(5) of Pub. L. 108–357 effective after Dec. 31, 2004, see section 411(d)(1), (3) of Pub. L. 108–357, set out as a note under section 871 of this title.

Amendment by section 418(a) of Pub. L. 108–357 applicable to any distribution by a real estate investment trust which is either treated as a deduction for a taxable year of such trust beginning after Oct. 22, 2004, or made after Oct. 22, 2004, and treated as a deduction under section 860 of this title for a taxable year of such trust beginning on or before Oct. 22, 2004, see section 418(c) of Pub. L. 108–357, as amended, set out as a note under section 857 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to taxable years beginning after Dec. 31, 1992, see section 13203(d) of Pub. L. 103–66, set out as a note under section 55 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 631(e)(12) of Pub. L. 99–514 applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, set out as an Effective Date note under section 336 of this title.

Amendment by section 701(e)(4)(G) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date note under section 55 of this title.

Amendment by section 1810(f)(1) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to taxable years beginning after Dec. 31, 1982, see section 201(e)(1) of Pub. L. 97–248, set out as a note under section 5 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title VIII, §831(i), Aug. 13, 1981, 95 Stat. 355, provided that: "The amendments made by this section [amending this section and sections 862 and 6039C of this title and provisions set out as a note below] shall apply to dispositions after June 18, 1980, in taxable years ending after such date."

EFFECTIVE DATE

Pub. L. 96–499, title XI, §1125(a), (b), Dec. 5, 1980, 94 Stat. 2690, provided that:

"(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this subtitle [subtitle C (§§1121–1125) of title XI of Pub. L. 96–499, enacting this section and provisions set out as notes under this section, and amending sections 861, 871, 882 of this title] shall apply to dispositions after June 18, 1980.

"(b) REPORTING.—The amendments made by section 1123 [enacting section 6039C of this title and amending section 6652 of this title] shall apply to 1980 and subsequent calendar years. In applying such amendments to 1980, such calendar year shall be treated as beginning on June 19, 1980, and ending on December 31, 1980."

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(e)(4)(G) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

SPECIAL RULE FOR APPLYING SECTION 897

Pub. L. 99–514, title XII, §1228, Oct. 22, 1986, 100 Stat. 2560, as amended by Pub. L. 100–647, title I, §1012(m), Nov. 10, 1988, 102 Stat. 3513, provided that:

"(a) IN GENERAL.—For purposes of section 897 of the Internal Revenue Code of 1986, gain shall not be recognized on the transfer, sale, exchange, or other disposition, of shares of stock of a United States real property holding company, if—

"(1) such United States real property holding company is a Delaware corporation incorporated on

January 17, 1984,

"(2) the transfer, sale, exchange, or other disposition is to any member of a qualified ownership group,

"(3) the recipient of the share of stock elects, for purposes of such section 897, a carryover basis in the transferred shares,

"(4) the transfer, sale, exchange, or other disposition is part of a single integrated plan, whereby the stock of the corporation described in paragraph (1) becomes owned directly by the 2 corporations specifically referred to in subsection (b) or by such 2 corporations and by 1 or both of their jointly owned direct subsidiaries,

"(5) within 20 days after each transfer, sale, exchange, or other disposition, the person making such transfer, sale, exchange, or other disposition notifies the Internal Revenue Service of the transaction, the date of the transaction, the basis of the stock involved, the holding period for such stock, and such other information as the Internal Revenue Service may require, and

"(6) the integrated plan is completed before the date 4 years after the date of the enactment of the Technical and Miscellaneous Revenue Act of 1988 [Nov. 10, 1988].

In the case of any underpayment attributable to a failure to meet any requirement of this subsection, the period during which such underpayment may be assessed shall in no event expire before the date 5 years after the date of the enactment of the Technical and Miscellaneous Revenue Act of 1988.

"(b) MEMBER OF A QUALIFIED OWNERSHIP GROUP.—For purposes of this section, the term 'member of a qualified ownership group' means a corporation incorporated on June 16, 1890, under the laws of the Netherlands or a corporation incorporated on October 18, 1897, under the laws of the United Kingdom or any corporation owned directly or indirectly by either or both such corporations.

"(c) [Repealed. Pub. L. 100–647, title I, §1012(m)(2), Nov. 10, 1988, 102 Stat. 3513.]

"(d) EFFECTIVE DATE.—The provisions of this section shall take effect on the date of the enactment of this section [Oct. 22, 1986]."

GAIN FROM DISPOSITION OF INVESTMENT IN UNITED STATES REAL PROPERTY BY NONRESIDENT ALIEN INDIVIDUALS AND FOREIGN CORPORATIONS

Pub. L. 96–499, title XI, §1125(c), Dec. 5, 1980, 94 Stat. 2690, as amended by Pub. L. 97–34, title VIII, §831(h), Aug. 13, 1981, 95 Stat. 355; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), after December 31, 1984, nothing in section 894(a) or 7852(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] or in any other provision of law shall be treated as requiring, by reason of any treaty obligation of the United States, an exemption from (or reduction of) any tax imposed by section 871 or 882 of such Code on a gain described in section 897 of such Code.

"(2) SPECIAL RULE FOR TREATIES RENEGOTIATED BEFORE 1985.—If—

"(A) any treaty (hereinafter in this paragraph referred to as the 'old treaty') is renegotiated to resolve conflicts between such treaty and the provisions of section 897 of the Internal Revenue Code of 1986, and

"(B) the new treaty is signed on or after January 1, 1981, and before January 1, 1985,

then paragraph (1) shall be applied with respect to obligations under the old treaty by substituting for 'December 31, 1984' the date (not later than 2 years after the new treaty was signed) specified in the new treaty (or accompanying exchange of notes)."

ADJUSTMENT IN BASIS FOR CERTAIN TRANSACTIONS BETWEEN RELATED PERSONS

Pub. L. 96–499, title XI, §1125(d), Dec. 5, 1980, 94 Stat. 2691, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—In the case of any disposition after December 31, 1979, of a United States real property interest (as defined in section 897(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) to a related person (within the meaning of section 453(f)(1) of such Code), the basis of the interest in the hands of the person acquiring it shall be reduced by the amount of any nontaxed gain.

"(2) NONTAXED GAIN.—For purposes of paragraph (1), the term 'nontaxed gain' means any gain which is not subject to tax under section 871(b)(1) or 882(a)(1) of such Code—

"(A) because the disposition occurred before June 19, 1980, or

"(B) because of any treaty obligation of the United States."

§898. Taxable year of certain foreign corporations

(a) General rule

For purposes of this title, the taxable year of any specified foreign corporation shall be the required year determined under subsection (c).

(b) Specified foreign corporation

For purposes of this section—

(1) In general

The term "specified foreign corporation" means any foreign corporation—

(A) which is treated as a controlled foreign corporation for any purpose under subpart F of part III of this subchapter, and

(B) with respect to which the ownership requirements of paragraph (2) are met.

(2) Ownership requirements

(A) In general

The ownership requirements of this paragraph are met with respect to any foreign corporation if a United States shareholder owns, on each testing day, more than 50 percent of—

(i) the total voting power of all classes of stock of such corporation entitled to vote, or

(ii) the total value of all classes of stock of such corporation.

(B) Ownership

For purposes of subparagraph (A), the rules of subsections (a) and (b) of section 958 shall apply in determining ownership.

(3) United States shareholder

The term "United States shareholder" has the meaning given to such term by section 951(b), except that, in the case of a foreign corporation having related person insurance income (as defined in section 953(c)(2)), the Secretary may treat any person as a United States shareholder for purposes of this section if such person is treated as a United States shareholder under section 953(c)(1).

(c) Determination of required year

(1) In general

The required year is—

(A) the majority U.S. shareholder year, or

(B) if there is no majority U.S. shareholder year, the taxable year prescribed under regulations.

(2) 1-month deferral allowed

A specified foreign corporation may elect, in lieu of the taxable year under paragraph (1)(A), a taxable year beginning 1 month earlier than the majority U.S. shareholder year.

(3) Majority U.S. shareholder year

(A) In general

For purposes of this subsection, the term "majority U.S. shareholder year" means the taxable year (if any) which, on each testing day, constituted the taxable year of—

(i) each United States shareholder described in subsection (b)(2)(A), and

(ii) each United States shareholder not described in clause (i) whose stock was treated as owned under subsection (b)(2)(B) by any shareholder described in such clause.

(B) Testing day

The testing days shall be—

(i) the first day of the corporation's taxable year (determined without regard to this section), or

(ii) the days during such representative period as the Secretary may prescribe.

(Added Pub. L. 101–239, title VII, §7401(a), Dec. 19, 1989, 103 Stat. 2355; amended Pub. L.

108–357, title IV, §413(c)(13), Oct. 22, 2004, 118 Stat. 1507.)

AMENDMENTS

2004—Subsec. (b)(1)(A). Pub. L. 108–357, §413(c)(13)(A), amended subpar. (A) generally. Prior to amendment, subpar (A) read as follows:

"(A) which is—

"(i) treated as a controlled foreign corporation for any purpose under subpart F of part III of this subchapter, or

"(ii) a foreign personal holding company (as defined in section 552), and".

Subsec. (b)(2)(B). Pub. L. 108–357, §413(c)(13)(B), struck out "and sections 551(f) and 554, whichever are applicable," after "section 958".

Subsec. (b)(3). Pub. L. 108–357, §413(c)(13)(C), reenacted heading without change, struck out "(A) In general" before "The term", and struck out heading and text of subpar. (B). Text read as follows: "In the case of any foreign personal holding company (as defined in section 552) which is not a specified foreign corporation by reason of paragraph (1)(A)(i), the term 'United States shareholder' means any person who is treated as a United States shareholder under section 551."

Subsec. (c). Pub. L. 108–357, §413(c)(13)(D), reenacted heading without change and amended text of subsec. (c) generally, substituting provisions stating general rule and relating to 1-month deferral and majority U.S. shareholder year, consisting of pars. (1) to (3), for provisions stating general rule and relating to 1-month deferral and majority U.S. shareholder year, consisting of par. (1), and provisions relating to required year in the case of a foreign personal holding company, consisting of par. (2).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE

Pub. L. 101–239, title VII, §7401(d), Dec. 19, 1989, 103 Stat. 2357, provided that:

"(1) IN GENERAL.—The amendments made by this section [enacting this section and amending section 563 of this title] shall apply to taxable years of foreign corporations beginning after July 10, 1989.

"(2) SPECIAL RULES.—If any foreign corporation is required by the amendments made by this section to change its taxable year for its first taxable year beginning after July 10, 1989—

"(A) such change shall be treated as initiated by the taxpayer,

"(B) such change shall be treated as having been made with the consent of the Secretary of the Treasury or his delegate, and

"(C) if, by reason of such change, any United States person is required to include in gross income for 1 taxable year amounts attributable to 2 taxable years of such foreign corporation, the amount which would otherwise be required to be included in gross income for such 1 taxable year by reason of the short taxable year of the foreign corporation resulting from such change shall be included in gross income ratably over the 4-taxable-year period beginning with such 1 taxable year."

PART III—INCOME FROM SOURCES WITHOUT THE UNITED STATES

Subpart

A. Foreign tax credit.

B. Earned income of citizens or residents of United States.

[C. Repealed.]

D. Possessions of the United States.

[E. Repealed.]

F. Controlled foreign corporations.

[G. Repealed.] [1]

H. Income of certain nonresident United States citizens subject to foreign community property laws.[1]

I. Admissibility of documentation maintained in foreign countries.

J. Foreign currency transactions.

AMENDMENTS

2004—Pub. L. 108–357, title I, §101(b)(2), Oct. 22, 2004, 118 Stat. 1423, struck out item for subpart E "Qualifying foreign trade income".

2000—Pub. L. 106–519, §4(8), Nov. 15, 2000, 114 Stat. 2433, struck out item for subpart C "Taxation of foreign sales corporations".

Pub. L. 106–519, §4(7), Nov. 15, 2000, 114 Stat. 2433, added item for subpart E and directed that former item for subpart E be struck out, which could not be executed because the item for subpart E had previously been struck out by Pub. L. 94–455, §1053(d)(5). See 1976 Amendment note below.

1986—Pub. L. 99–514, title XII, §1261(d), Oct. 22, 1986, 100 Stat. 2591, added item for subpart J.

1984—Pub. L. 98–369, div. A, title VIII, §802(c)(4), July 18, 1984, 98 Stat. 999, added item for subpart C.

1982—Pub. L. 97–248, title III, §337(b), Sept. 3, 1982, 96 Stat. 630, added item for subpart I.

1978—Pub. L. 95–615, §202(g)(4), formerly §202(f)(4), Nov. 8, 1978, 92 Stat. 3100, renumbered Pub. L. 96–222, title I, §108(a)(1)(A), Apr. 1, 1980, 94 Stat. 223, inserted in item for subpart B "or residents" after "citizens."

1976—Pub. L. 94–455, title X, §1012(b)(3)(B), Oct. 4, 1976, 90 Stat. 1614, struck out item for subpart G "Export Trade Corporation" from analysis without a corresponding repeal of text in such subpart. The amendment probably should have struck out item for subpart H.

Pub. L. 94–455, title X, §§1052(c)(7), 1053(d)(5), Oct. 4, 1976, 90 Stat. 1648, 1649, struck out item for subpart C, relating to Western Hemisphere trade corporations, effective for taxable years beginning after Dec. 31, 1979, and item for subpart E, relating to China Trade Act corporations, effective for taxable years beginning after Dec. 31, 1977.

1966—Pub. L. 89–809, title I, §105(e)(2), Nov. 13, 1966, 80 Stat. 1567, added item for subpart H.

1962—Pub. L. 87–834, §12(b)(3), Oct. 16, 1962, 76 Stat. 1031, added items for subparts F and G.

[1] *See 1976 Amendment note below.*

SUBPART A—FOREIGN TAX CREDIT

Sec.

901. Taxes of foreign countries and of possessions of United States.

902. Deemed paid credit where domestic corporation owns 10 percent or more of voting stock of foreign corporation.

903. Credit for taxes in lieu of income, etc., taxes.

904. Limitation on credit.

905. Applicable rules.

906. Nonresident alien individuals and foreign corporations.

907. Special rules in case of foreign oil and gas income.

908. Reduction of credit for participation in or cooperation with an international boycott.

909. Suspension of taxes and credits until related income taken into account.

AMENDMENTS

2010—Pub. L. 111–226, title II, §211(b), Aug. 10, 2010, 124 Stat. 2395, added item 909.

1986—Pub. L. 99–514, title XII, §1202(d), Oct. 22, 1986, 100 Stat. 2531, substituted "Deemed paid credit where domestic corporation owns 10 percent or more of voting stock of foreign corporation" for "Credit for corporate stockholder in foreign corporation" in item 902.

1976—Pub. L. 94–455, title X, §1061(b), Oct. 4, 1976, 90 Stat. 1650, added item 908.

1975—Pub. L. 94–12, title VI, §601(c), Mar. 29, 1975, 89 Stat. 57, added item 907.

1966—Pub. L. 89–809, title I, §106(a)(2), Nov. 13, 1966, 80 Stat. 1569, added item 906.

§901. Taxes of foreign countries and of possessions of United States

(a) Allowance of credit

If the taxpayer chooses to have the benefits of this subpart, the tax imposed by this chapter shall,

subject to the limitation of section 904, be credited with the amounts provided in the applicable paragraph of subsection (b) plus, in the case of a corporation, the taxes deemed to have been paid under sections 902 and 960. Such choice for any taxable year may be made or changed at any time before the expiration of the period prescribed for making a claim for credit or refund of the tax imposed by this chapter for such taxable year. The credit shall not be allowed against any tax treated as a tax not imposed by this chapter under section 26(b).

(b) Amount allowed

Subject to the limitation of section 904, the following amounts shall be allowed as the credit under subsection (a):

(1) Citizens and domestic corporations

In the case of a citizen of the United States and of a domestic corporation, the amount of any income, war profits, and excess profits taxes paid or accrued during the taxable year to any foreign country or to any possession of the United States; and

(2) Resident of the United States or Puerto Rico

In the case of a resident of the United States and in the case of an individual who is a bona fide resident of Puerto Rico during the entire taxable year, the amount of any such taxes paid or accrued during the taxable year to any possession of the United States; and

(3) Alien resident of the United States or Puerto Rico

In the case of an alien resident of the United States and in the case of an alien individual who is a bona fide resident of Puerto Rico during the entire taxable year, the amount of any such taxes paid or accrued during the taxable year to any foreign country; and

(4) Nonresident alien individuals and foreign corporations

In the case of any nonresident alien individual not described in section 876 and in the case of any foreign corporation, the amount determined pursuant to section 906; and

(5) Partnerships and estates

In the case of any person described in paragraph (1), (2), (3), or (4), who is a member of a partnership or a beneficiary of an estate or trust, the amount of his proportionate share of the taxes (described in such paragraph) of the partnership or the estate or trust paid or accrued during the taxable year to a foreign country or to any possession of the United States, as the case may be. Under rules or regulations prescribed by the Secretary, in the case of any foreign trust of which the settlor or another person would be treated as owner of any portion of the trust under subpart E but for section 672(f), the allocable amount of any income, war profits, and excess profits taxes imposed by any foreign country or possession of the United States on the settlor or such other person in respect of trust income.

(c) Similar credit required for certain alien residents

Whenever the President finds that—

(1) a foreign country, in imposing income, war profits, and excess profits taxes, does not allow to citizens of the United States residing in such foreign country a credit for any such taxes paid or accrued to the United States or any foreign country, as the case may be, similar to the credit allowed under subsection (b)(3),

(2) such foreign country, when requested by the United States to do so, has not acted to provide such a similar credit to citizens of the United States residing in such foreign country, and

(3) it is in the public interest to allow the credit under subsection (b)(3) to citizens or subjects of such foreign country only if it allows such a similar credit to citizens of the United States residing in such foreign country,

the President shall proclaim that, for taxable years beginning while the proclamation remains in effect, the credit under subsection (b)(3) shall be allowed to citizens or subjects of such foreign country only if such foreign country, in imposing income, war profits, and excess profits taxes,

allows to citizens of the United States residing in such foreign country such a similar credit.

(d) Treatment of dividends from a DISC or former DISC

For purposes of this subpart, dividends from a DISC or former DISC (as defined in section 992(a)) shall be treated as dividends from a foreign corporation to the extent such dividends are treated under part I as income from sources without the United States.

(e) Foreign taxes on mineral income

(1) Reduction in amount allowed

Notwithstanding subsection (b), the amount of any income, war profits, and excess profits taxes paid or accrued during the taxable year to any foreign country or possession of the United States with respect to foreign mineral income from sources within such country or possession which would (but for this paragraph) be allowed under such subsection shall be reduced by the amount (if any) by which—

(A) the amount of such taxes (or, if smaller, the amount of the tax which would be computed under this chapter with respect to such income determined without the deduction allowed under section 613), exceeds

(B) the amount of the tax computed under this chapter with respect to such income.

(2) Foreign mineral income defined

For purposes of paragraph (1), the term "foreign mineral income" means income derived from the extraction of minerals from mines, wells, or other natural deposits, the processing of such minerals into their primary products, and the transportation, distribution, or sale of such minerals or primary products. Such term includes, but is not limited to—

(A) dividends received from a foreign corporation in respect of which taxes are deemed paid by the taxpayer under section 902, to the extent such dividends are attributable to foreign mineral income, and

(B) that portion of the taxpayer's distributive share of the income of partnerships attributable to foreign mineral income.

(f) Certain payments for oil or gas not considered as taxes

Notwithstanding subsection (b) and sections 902 and 960, the amount of any income, or profits, and excess profits taxes paid or accrued during the taxable year to any foreign country in connection with the purchase and sale of oil or gas extracted in such country is not to be considered as tax for purposes of section 275(a) and this section if—

(1) the taxpayer has no economic interest in the oil or gas to which section 611(a) applies, and

(2) either such purchase or sale is at a price which differs from the fair market value for such oil or gas at the time of such purchase or sale.

(g) Certain taxes paid with respect to distributions from possessions corporations

(1) In general

For purposes of this chapter, any tax of a foreign country or possession of the United States which is paid or accrued with respect to any distribution from a corporation—

(A) to the extent that such distribution is attributable to periods during which such corporation is a possessions corporation, and

(B)(i) if a dividends received deduction is allowable with respect to such distribution under part VIII of subchapter B, or

(ii) to the extent that such distribution is received in connection with a liquidation or other transaction with respect to which gain or loss is not recognized,

shall not be treated as income, war profits, or excess profits taxes paid or accrued to a foreign country or possession of the United States, and no deduction shall be allowed under this title with respect to any amount so paid or accrued.

(2) Possessions corporation

For purposes of paragraph (1), a corporation shall be treated as a possessions corporation for any period during which an election under section 936 applied to such corporation, during which section 931 (as in effect on the day before the date of the enactment of the Tax Reform Act of 1976) applied to such corporation, or during which section 957(c) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) applied to such corporation.

[(h) Repealed. Pub. L. 110–172, §11(g)(9), Dec. 29, 2007, 121 Stat. 2490]

(i) Taxes used to provide subsidies

Any income, war profits, or excess profits tax shall not be treated as a tax for purposes of this title to the extent—

(1) the amount of such tax is used (directly or indirectly) by the country imposing such tax to provide a subsidy by any means to the taxpayer, a related person (within the meaning of section 482), or any party to the transaction or to a related transaction, and

(2) such subsidy is determined (directly or indirectly) by reference to the amount of such tax, or the base used to compute the amount of such tax.

(j) Denial of foreign tax credit, etc., with respect to certain foreign countries

(1) In general

Notwithstanding any other provision of this part—

(A) no credit shall be allowed under subsection (a) for any income, war profits, or excess profits taxes paid or accrued (or deemed paid under section 902 or 960) to any country if such taxes are with respect to income attributable to a period during which this subsection applies to such country, and

(B) subsections (a), (b), and (c) of section 904 and sections 902 and 960 shall be applied separately with respect to income attributable to such a period from sources within such country.

(2) Countries to which subsection applies

(A) In general

This subsection shall apply to any foreign country—

(i) the government of which the United States does not recognize, unless such government is otherwise eligible to purchase defense articles or services under the Arms Export Control Act,

(ii) with respect to which the United States has severed diplomatic relations,

(iii) with respect to which the United States has not severed diplomatic relations but does not conduct such relations, or

(iv) which the Secretary of State has, pursuant to section 6(j) of the Export Administration Act of 1979, as amended, designated as a foreign country which repeatedly provides support for acts of international terrorisms.

(B) Period for which subsection applies

This subsection shall apply to any foreign country described in subparagraph (A) during the period—

(i) beginning on the later of—

(I) January 1, 1987, or

(II) 6 months after such country becomes a country described in subparagraph (A), and

(ii) ending on the date the Secretary of State certifies to the Secretary of the Treasury that such country is no longer described in subparagraph (A).

(3) Taxes allowed as a deduction, etc.

Sections 275 and 78 shall not apply to any tax which is not allowable as a credit under subsection (a) by reason of this subsection.

(4) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection, including regulations which treat income paid through 1 or more entities as derived from a foreign country to which this subsection applies if such income was, without regard to such entities, derived from such country.

(5) Waiver of denial

(A) In general

Paragraph (1) shall not apply with respect to taxes paid or accrued to a country if the President—

(i) determines that a waiver of the application of such paragraph is in the national interest of the United States and will expand trade and investment opportunities for United States companies in such country; and

(ii) reports such waiver under subparagraph (B).

(B) Report

Not less than 30 days before the date on which a waiver is granted under this paragraph, the President shall report to Congress—

(i) the intention to grant such waiver; and

(ii) the reason for the determination under subparagraph (A)(i).

(k) Minimum holding period for certain taxes on dividends

(1) Withholding taxes

(A) In general

In no event shall a credit be allowed under subsection (a) for any withholding tax on a dividend with respect to stock in a corporation if—

(i) such stock is held by the recipient of the dividend for 15 days or less during the 31-day period beginning on the date which is 15 days before the date on which such share becomes ex-dividend with respect to such dividend, or

(ii) to the extent that the recipient of the dividend is under an obligation (whether pursuant to a short sale or otherwise) to make related payments with respect to positions in substantially similar or related property.

(B) Withholding tax

For purposes of this paragraph, the term "withholding tax" includes any tax determined on a gross basis; but does not include any tax which is in the nature of a prepayment of a tax imposed on a net basis.

(2) Deemed paid taxes

In the case of income, war profits, or excess profits taxes deemed paid under section 853, 902, or 960 through a chain of ownership of stock in 1 or more corporations, no credit shall be allowed under subsection (a) for such taxes if—

(A) any stock of any corporation in such chain (the ownership of which is required to obtain credit under subsection (a) for such taxes) is held for less than the period described in paragraph (1)(A)(i), or

(B) the corporation holding the stock is under an obligation referred to in paragraph (1)(A)(ii).

(3) 45-day rule in the case of certain preference dividends

In the case of stock having preference in dividends and dividends with respect to such stock which are attributable to a period or periods aggregating in excess of 366 days, paragraph (1)(A)(i) shall be applied—

(A) by substituting "45 days" for "15 days" each place it appears, and

(B) by substituting "91-day period" for "31-day period".

(4) Exception for certain taxes paid by securities dealers

(A) In general

Paragraphs (1) and (2) shall not apply to any qualified tax with respect to any security held in the active conduct in a foreign country of a business as a securities dealer of any person—

(i) who is registered as a securities broker or dealer under section 15(a) of the Securities Exchange Act of 1934,

(ii) who is registered as a Government securities broker or dealer under section 15C(a) of such Act, or

(iii) who is licensed or authorized in such foreign country to conduct securities activities in such country and is subject to bona fide regulation by a securities regulating authority of such country.

(B) Qualified tax

For purposes of subparagraph (A), the term "qualified tax" means a tax paid to a foreign country (other than the foreign country referred to in subparagraph (A)) if—

(i) the dividend to which such tax is attributable is subject to taxation on a net basis by the country referred to in subparagraph (A), and

(ii) such country allows a credit against its net basis tax for the full amount of the tax paid to such other foreign country.

(C) Regulations

The Secretary may prescribe such regulations as may be appropriate to carry out this paragraph, including regulations to prevent the abuse of the exception provided by this paragraph and to treat other taxes as qualified taxes.

(5) Certain rules to apply

For purposes of this subsection, the rules of paragraphs (3) and (4) of section 246(c) shall apply.

(6) Treatment of bona fide sales

If a person's holding period is reduced by reason of the application of the rules of section 246(c)(4) to any contract for the bona fide sale of stock, the determination of whether such person's holding period meets the requirements of paragraph (2) with respect to taxes deemed paid under section 902 or 960 shall be made as of the date such contract is entered into.

(7) Taxes allowed as deduction, etc.

Sections 275 and 78 shall not apply to any tax which is not allowable as a credit under subsection (a) by reason of this subsection.

(l) Minimum holding period for withholding taxes on gain and income other than dividends etc.

(1) In general

In no event shall a credit be allowed under subsection (a) for any withholding tax (as defined in subsection (k)) on any item of income or gain with respect to any property if—

(A) such property is held by the recipient of the item for 15 days or less during the 31-day period beginning on the date which is 15 days before the date on which the right to receive payment of such item arises, or

(B) to the extent that the recipient of the item is under an obligation (whether pursuant to a short sale or otherwise) to make related payments with respect to positions in substantially similar or related property.

This paragraph shall not apply to any dividend to which subsection (k) applies.

(2) Exception for taxes paid by dealers

(A) In general

Paragraph (1) shall not apply to any qualified tax with respect to any property held in the active conduct in a foreign country of a business as a dealer in such property.

(B) Qualified tax

For purposes of subparagraph (A), the term "qualified tax" means a tax paid to a foreign country (other than the foreign country referred to in subparagraph (A)) if—

(i) the item to which such tax is attributable is subject to taxation on a net basis by the country referred to in subparagraph (A), and

(ii) such country allows a credit against its net basis tax for the full amount of the tax paid to such other foreign country.

(C) Dealer

For purposes of subparagraph (A), the term "dealer" means—

(i) with respect to a security, any person to whom paragraphs (1) and (2) of subsection (k) would not apply by reason of paragraph (4) thereof, and

(ii) with respect to any other property, any person with respect to whom such property is described in section 1221(a)(1).

(D) Regulations

The Secretary may prescribe such regulations as may be appropriate to carry out this paragraph, including regulations to prevent the abuse of the exception provided by this paragraph and to treat other taxes as qualified taxes.

(3) Exceptions

The Secretary may by regulation provide that paragraph (1) shall not apply to property where the Secretary determines that the application of paragraph (1) to such property is not necessary to carry out the purposes of this subsection.

(4) Certain rules to apply

Rules similar to the rules of paragraphs (5), (6), and (7) of subsection (k) shall apply for purposes of this subsection.

(5) Determination of holding period

Holding periods shall be determined for purposes of this subsection without regard to section 1235 or any similar rule.

(m) Denial of foreign tax credit with respect to foreign income not subject to United States taxation by reason of covered asset acquisitions

(1) In general

In the case of a covered asset acquisition, the disqualified portion of any foreign income tax determined with respect to the income or gain attributable to the relevant foreign assets—

(A) shall not be taken into account in determining the credit allowed under subsection (a), and

(B) in the case of a foreign income tax paid by a section 902 corporation (as defined in section 909(d)(5)), shall not be taken into account for purposes of section 902 or 960.

(2) Covered asset acquisition

For purposes of this section, the term "covered asset acquisition" means—

(A) a qualified stock purchase (as defined in section 338(d)(3)) to which section 338(a) applies,

(B) any transaction which—

(i) is treated as an acquisition of assets for purposes of this chapter, and

(ii) is treated as the acquisition of stock of a corporation (or is disregarded) for purposes of the foreign income taxes of the relevant jurisdiction,

(C) any acquisition of an interest in a partnership which has an election in effect under section 754, and

(D) to the extent provided by the Secretary, any other similar transaction.

(3) Disqualified portion

For purposes of this section—

(A) In general

The term "disqualified portion" means, with respect to any covered asset acquisition, for any taxable year, the ratio (expressed as a percentage) of—

(i) the aggregate basis differences (but not below zero) allocable to such taxable year under subparagraph (B) with respect to all relevant foreign assets, divided by

(ii) the income on which the foreign income tax referred to in paragraph (1) is determined (or, if the taxpayer fails to substantiate such income to the satisfaction of the Secretary, such income shall be determined by dividing the amount of such foreign income tax by the highest marginal tax rate applicable to such income in the relevant jurisdiction).

(B) Allocation of basis difference

For purposes of subparagraph (A)(i)—

(i) In general

The basis difference with respect to any relevant foreign asset shall be allocated to taxable years using the applicable cost recovery method under this chapter.

(ii) Special rule for disposition of assets

Except as otherwise provided by the Secretary, in the case of the disposition of any relevant foreign asset—

(I) the basis difference allocated to the taxable year which includes the date of such disposition shall be the excess of the basis difference with respect to such asset over the aggregate basis difference with respect to such asset which has been allocated under clause (i) to all prior taxable years, and

(II) no basis difference with respect to such asset shall be allocated under clause (i) to any taxable year thereafter.

(C) Basis difference

(i) In general

The term "basis difference" means, with respect to any relevant foreign asset, the excess of—

(I) the adjusted basis of such asset immediately after the covered asset acquisition, over

(II) the adjusted basis of such asset immediately before the covered asset acquisition.

(ii) Built-in loss assets

In the case of a relevant foreign asset with respect to which the amount described in clause (i)(II) exceeds the amount described in clause (i)(I), such excess shall be taken into account under this subsection as a basis difference of a negative amount.

(iii) Special rule for section 338 elections

In the case of a covered asset acquisition described in paragraph (2)(A), the covered asset acquisition shall be treated for purposes of this subparagraph as occurring at the close of the acquisition date (as defined in section 338(h)(2)).

(4) Relevant foreign assets

For purposes of this section, the term "relevant foreign asset" means, with respect to any covered asset acquisition, any asset (including any goodwill, going concern value, or other intangible) with respect to such acquisition if income, deduction, gain, or loss attributable to such asset is taken into account in determining the foreign income tax referred to in paragraph (1).

(5) Foreign income tax

For purposes of this section, the term "foreign income tax" means any income, war profits, or excess profits tax paid or accrued to any foreign country or to any possession of the United States.

(6) Taxes allowed as a deduction, etc.

Sections 275 and 78 shall not apply to any tax which is not allowable as a credit under subsection (a) by reason of this subsection.

(7) Regulations

The Secretary may issue such regulations or other guidance as is necessary or appropriate to carry out the purposes of this subsection, including to exempt from the application of this subsection certain covered asset acquisitions, and relevant foreign assets with respect to which the basis difference is de minimis.

(n) Cross reference

(1) For deductions of income, war profits, and excess profits taxes paid to a foreign country or a possession of the United States, see sections 164 and 275.

(2) For right of each partner to make election under this section, see section 703(b).

(3) For right of estate or trust to the credit for taxes imposed by foreign countries and possessions of the United States under this section, see section 642(a).

(4) For reduction of credit for failure of a United States person to furnish certain information with respect to a foreign corporation or partnership controlled by him, see section 6038.

(Aug. 16, 1954, ch. 736, 68A Stat. 285; Pub. L. 86–780, §3(a), (b), Sept. 14, 1960, 74 Stat. 1013; Pub. L. 87–834, §§9(d)(3), 12(b)(1), Oct. 16, 1962, 76 Stat. 1001, 1031; Pub. L. 88–272, title II, §207(b)(7), Feb. 26, 1964, 78 Stat. 42; Pub. L. 89–384, §1(c)(2), Apr. 8, 1966, 80 Stat. 102; Pub. L. 89–809, title I, §106(a)(4), (5), (b)(1), (2), Nov. 13, 1966, 80 Stat. 1569; Pub. L. 91–172, title III, §301(b)(9), title V, §506(a), Dec. 30, 1969, 83 Stat. 585, 634; Pub. L. 92–178, title V, §502(b)(1), Dec. 10, 1971, 85 Stat. 549; Pub. L. 93–406, title II, §§2001(g)(2)(C), 2002(g)(3), 2005(c)(5), Sept. 2, 1974, 88 Stat. 957, 968, 991; Pub. L. 94–12, title VI, §601(b), Mar. 29, 1975, 89 Stat. 57; Pub. L. 94–455, title X, §§1031(b)(1), 1051(d), title XIX, §1901(b)(1)(H)(iii), (37)(A), Oct. 4, 1976, 90 Stat. 1622, 1645, 1791, 1803; Pub. L. 95–600, title VII, §701(u)(1)(A), (B), Nov. 6, 1978, 92 Stat. 2912; Pub. L. 97–248, title II, §201(d)(8)(A), formerly §201(c)(8)(A), §265(b)(2)(A)(iv), Sept. 3, 1982, 96 Stat. 420, 547, renumbered §201(d)(8)(A), Pub. L. 97–448, title III, §306(a)(1)(A)(i), Jan. 12, 1983, 96 Stat. 2400; Pub. L. 98–369, div. A, title IV, §474(r)(20), title VI, §612(e)(1), title VII, §713(c)(1)(C), title VIII, §801(d)(1), July 18, 1984, 98 Stat. 843, 912, 957, 995; Pub. L. 99–509, title VIII, §8041(a), Oct. 21, 1986, 100 Stat. 1962; Pub. L. 99–514, title I, §112(b)(3), title XII, §1204(a), title XVIII, §1876(p)(2), Oct. 22, 1986, 100 Stat. 2109, 2532, 2902; Pub. L. 100–203, title X, §10231(a), (b), Dec. 22, 1987, 101 Stat. 1330–418, 1330–419; Pub. L. 100–647, title I, §1012(j), title II, §2003(c)(1), Nov. 10, 1988, 102 Stat. 3512, 3598; Pub. L. 103–149, §4(b)(8)(A), Nov. 23, 1993, 107 Stat. 1505; Pub. L. 104–188, title I, §1904(b)(2), Aug. 20, 1996, 110 Stat. 1912; Pub. L. 105–34, title X, §1053(a), title XI, §1142(e)(4), Aug. 5, 1997, 111 Stat. 941, 983; Pub. L. 105–206, title VI, §6010(k)(3), July 22, 1998, 112 Stat. 815; Pub. L. 106–200, title VI, §601(a), May 18, 2000, 114 Stat. 305; Pub. L. 108–311, title IV, §406(g), Oct. 4, 2004, 118 Stat. 1190; Pub. L. 108–357, title IV, §405(b), title VIII, §832(a), (b), Oct. 22, 2004, 118 Stat. 1498, 1587, 1588; Pub. L. 109–135, title IV, §403(aa)(2), Dec. 21, 2005, 119 Stat. 2630; Pub. L. 110–172, §11(g)(9), Dec. 29, 2007, 121 Stat. 2490; Pub. L. 111–226, title II, §212(a), Aug. 10, 2010, 124 Stat. 2396.)

REFERENCES IN TEXT

The date of the enactment of the Tax Reform Act of 1976, referred to in subsec. (g)(2), is the date of enactment of Pub. L. 94–455, which was approved Oct. 4, 1976.

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (g)(2), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

The Arms Export Control Act, referred to in subsec. (j)(2)(A)(i), is Pub. L. 90–269, Oct. 22, 1968, 82 Stat. 1320, as amended, which is classified principally to chapter 39 (§2751 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of Title 22 and Tables.

Section 6(j) of the Export Administration Act of 1979, referred to in subsec. (j)(2)(A)(iv), is classified to section 2405(j) of Title 50, Appendix, War and National Defense.

Sections 15(a) and 15C(a) of the Securities Exchange Act of 1934, referred to in subsec. (k)(4)(A)(i), (ii), are classified to sections 78o(a) and 78o–5(a), respectively, of Title 15, Commerce and Trade.

AMENDMENTS

2010—Subsecs. (m), (n). Pub. L. 111–226 added subsec. (m) and redesignated former subsec. (m) as (n).

2007—Subsec. (h). Pub. L. 110–172 struck out subsec. (h), which read as follows: "No credit shall be allowed under this section for any income, war profits, and excess profits taxes paid or accrued with respect to the foreign trade income (within the meaning of section 923(b)) of a FSC, other than section 923(a)(2) non-exempt income (within the meaning of section 927(d)(6))."

2005—Subsec. (l)(2)(C)(i). Pub. L. 109–135 struck out "if such security were stock" after "paragraph (4) thereof".

2004—Subsec. (b)(5). Pub. L. 108–357, §405(b), substituted "any person" for "any individual".

Subsec. (k). Pub. L. 108–357, §832(b), inserted "on dividends" after "taxes" in heading.

Subsec. (k)(1)(A)(i). Pub. L. 108–311, §406(g)(1), substituted "31-day period" for "30-day period".

Subsec. (k)(3)(B). Pub. L. 108–311, §406(g)(2), substituted "91-day period" for "90-day period" and "31-day period" for "30-day period".

Subsecs. (l), (m). Pub. L. 108–357, §832(a), added subsec. (l) and redesignated former subsec. (l) as (m).

2000—Subsec. (j)(5). Pub. L. 106–200 added par. (5).

1998—Subsec. (k)(4)(A). Pub. L. 105–206 substituted "business as a securities dealer" for "securities business" in introductory provisions.

1997—Subsec. (k). Pub. L. 105–34, §1053(a), added subsec. (k). Former subsec. (k) redesignated (l).

Subsec. (l). Pub. L. 105–34, §1053(a), redesignated subsec. (k) as (l).

Subsec. (l)(4). Pub. L. 105–34, §1142(e)(4), which directed amendment of subsec. (k)(4) by substituting "foreign corporation or partnership" for "foreign corporation", was executed to subsec. (l)(4) to reflect the probable intent of Congress and the redesignation of subsec. (k) as (l) by Pub. L. 105–34, §1053(a). See above.

1996—Subsec. (b)(5). Pub. L. 104–188 inserted at end "Under rules or regulations prescribed by the Secretary, in the case of any foreign trust of which the settlor or another person would be treated as owner of any portion of the trust under subpart E but for section 672(f), the allocable amount of any income, war profits, and excess profits taxes imposed by any foreign country or possession of the United States on the settlor or such other person in respect of trust income."

1993—Subsec. (j)(2)(C). Pub. L. 103–149 struck out heading and text of subpar. (C). Text read as follows:

"(i) IN GENERAL.—In addition to any period during which this subsection would otherwise apply to South Africa, this subsection shall apply to South Africa during the period—

"(I) beginning on January 1, 1988, and

"(II) ending on the date the Secretary of State certifies to the Secretary of the Treasury that South Africa meets the requirements of section 311(a) of the Comprehensive Anti-Apartheid Act of 1986 (as in effect on the date of the enactment of this subparagraph).

"(ii) SOUTH AFRICA DEFINED.—For purposes of clause (i), the term 'South Africa' has the meaning given to such term by paragraph (6) of section 3 of the Comprehensive Anti-Apartheid Act of 1986 (as so in effect)."

1988—Subsec. (g)(2). Pub. L. 100–647, §1012(j), inserted "(as in effect on the day before the date of the enactment of the Tax Reform Act of 1986)" after "section 957(c)".

Subsec. (j)(3). Pub. L. 100–647, §2003(c)(1), inserted ", etc." at end of heading and substituted "Sections 275 and 78" for "Section 275" in text.

1987—Subsec. (j)(1). Pub. L. 100–203, §10231(b), substituted "during which" for "to which" in subpar. (A) and "such country" for "any country so identified" in subpar. (B).

Subsec. (j)(2)(C). Pub. L. 100–203, §10231(a), added subpar. (C).

1986—Subsec. (h). Pub. L. 99–514, §1876(p)(2), inserted closing parenthesis after "section 927(d)(6)".

Subsec. (i). Pub. L. 99–514, §1204(a), added subsec. (i). Former subsec. (i) redesignated (j).

Subsec. (i)(3). Pub. L. 99–514, §112(b)(3), substituted "section 642(a)" for "section 642(a)(1)".

Subsec. (j). Pub. L. 99–509 added subsec. (j). Former subsec. (j) redesignated (k).

Pub. L. 99–514, §1204(a), redesignated former subsec. (i) as (j).

Subsec. (k). Pub. L. 99–509 redesignated former subsec. (j) as (k).

1984—Subsec. (a). Pub. L. 98–369, §612(e)(1), substituted "section 26(b)" for "section 25(b)".

Pub. L. 98–369, §474(r)(20), substituted "The credit shall not be allowed against any tax treated as a tax not imposed by this chapter under section 25(b)" for "The credit shall not be allowed against the tax imposed by section 56 (relating to corporate minimum tax), against the tax imposed for the taxable year under section

72(m)(5)(B) (relating to 10 percent tax on premature distributions to owner-employees) section 72(q)(1) (relating to 5-percent tax on premature distributions under annuity contracts),, against the tax imposed by section 402(e) (relating to tax on lump sum distributions), against the tax imposed for the taxable year by section 408(f) (relating to additional tax on income from certain retirement accounts), against the tax imposed by section 531 (relating to the tax on accumulated earnings), against the additional tax imposed for the taxable year under section 1351 (relating to recoveries of foreign expropriation losses), or against the personal holding company tax imposed by section 541".

Pub. L. 98–369, §713(c)(1)(C), substituted "premature distributions to key employees" for "premature distributions to owner-employees".

Subsecs. (h), (i). Pub. L. 98–369, §801(d)(1), added subsec. (h) and redesignated former subsec. (h) as (i).

1982—Subsec. (a). Pub. L. 97–248 substituted "(relating to corporate minimum tax)" for "(relating to minimum tax for tax preferences)" after "section 56", and inserted "section 72(q)(1) (relating to 5-percent tax on premature distributions under annuity contracts)," after "owner employees)".

1978—Subsec. (g)(1). Pub. L. 95–600, §701(u)(1)(A), inserted provisions prohibiting a deduction for any tax of a foreign country or possession of the United States which is paid or accrued with respect to any distribution from a corporation if a dividends received deduction is allowable with respect to that distribution from a corporation under part VIII of subchapter B.

Subsec. (g)(2). Pub. L. 95–600, §701(u)(1)(B), inserted provision relating to application of section 957(c) of this title.

1976—Subsec. (a). Pub. L. 94–455, §§1031(b)(1), 1901(b)(37)(A), struck out "under section 1333 (relating to war loss recoveries) or" after "imposed for the taxable year" and "applicable" after "subject to the".

Subsec. (b). Pub. L. 94–455, §1031(b)(1), struck out "applicable" after "Subject to the".

Subsec. (d). Pub. L. 94–455, §1051(d)(1), struck out provisions relating to corporations receiving a large percentage of their gross receipts from sources within a possession of the United States and a corporation organized under the China Trade Act, 1922 (15 U.S.C. chapter 4).

Subsecs. (g), (h). Pub. L. 94–455, §§1051(d)(2), 1901(b)(1)(H)(iii), added subsec. (g), redesignated former subsec. (g) as (h), and, as redesignated, substituted "section 642(a)(1)" for "section 642(a)(2)" in par. (3).

1975—Subsecs. (f), (g). Pub. L. 94–12 added subsec. (f) and redesignated former subsec. (f) as (g).

1974—Subsec. (a). Pub. L. 93–460 inserted references to the tax imposed for the taxable year under section 72(m)(5)(B) (relating to 10 percent tax on premature distributions to owner-employees), the tax imposed for the taxable year by section 408(f) (relating to additional tax on income from certain retirement accounts), and the tax imposed by section 402(e) (relating to tax on lump sum distributions).

1971—Subsec. (d). Pub. L. 92–178 inserted provision for treatment of dividends from a DISC or former DISC as dividends from a foreign corporation to the extent such dividends are treated under part I as income from sources without the United States.

1969—Subsec. (a). Pub. L. 91–172, §301(b)(9), inserted "against the tax imposed by section 56 (relating to minimum tax for tax preferences)," after "not be allowed" in last sentence.

Subsecs. (e), (f). Pub. L. 91–172, §506(a), added subsec. (e) and redesignated former subsec. (e) as (f).

1966—Subsec. (a). Pub. L. 89–384 added the additional tax imposed under section 1351 (relating to recoveries of foreign expropriation losses) to the list of taxes against which the foreign tax credit may not be allowed.

Subsec. (b)(3). Pub. L. 89–809, §106(b)(1), struck out provisions which made the allowance of the credit dependent upon whether the foreign country of which the alien resident was a citizen or subject, in imposing such taxes, allowed a similar credit to citizens of the United States residing in such country.

Subsec. (b)(4), (5). Pub. L. 89–809, §106(a)(4), (5), added par. (4), redesignated former par. (4) as (5) and inserted reference to par. (4).

Subsecs. (c) to (e). Pub. L. 89–809, §106(b)(2), added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

1964—Subsec. (d)(1). Pub. L. 88–272 inserted reference to section 275.

1962—Subsec. (a). Pub. L. 87–834, §12(b)(1), substituted "sections 902 and 960" for "section 902".

Subsec. (d)(4). Pub. L. 87–834, §9(d)(3), added par. (4).

1960—Subsec. (a). Pub. L. 86–780, §3(a), (b), inserted "applicable" before "limitation" and substituted "Such choice for any taxable year may be made or changed at any time before the expiration of the period prescribed for making a claim for credit or refund of the tax imposed by this chapter for such taxable year" for "Such choice may be made or changed at any time prior to the expiration of the period prescribed for making a claim for credit or refund of the tax against which the credit is allowable."

Subsec. (b). Pub. L. 86–780, §3(b), inserted "applicable" before "limitation".

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–226, title II, §212(b), Aug. 10, 2010, 124 Stat. 2398, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to covered asset acquisitions (as defined in section 901(m)(2) of the Internal Revenue Code of 1986, as added by this section) after December 31, 2010.

"(2) TRANSITION RULE.—The amendments made by this section shall not apply to any covered asset acquisition (as so defined) with respect to which the transferor and the transferee are not related if such acquisition is—

"(A) made pursuant to a written agreement which was binding on January 1, 2011, and at all times thereafter,

"(B) described in a ruling request submitted to the Internal Revenue Service on or before July 29, 2010, or

"(C) described on or before January 1, 2011, in a public announcement or in a filing with the Securities and Exchange Commission.

"(3) RELATED PERSONS.—For purposes of this subsection, a person shall be treated as related to another person if the relationship between such persons is described in section 267 or 707(b) of the Internal Revenue Code of 1986."

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENTS

Pub. L. 108–357, title IV, §405(c), Oct. 22, 2004, 118 Stat. 1498, provided that: "The amendments made by this section [amending this section and section 902 of this title] shall apply to taxes of foreign corporations for taxable years of such corporations beginning after the date of the enactment of this Act [Oct. 22, 2004]."

Pub. L. 108–357, title VIII, §832(c), Oct. 22, 2004, 118 Stat. 1588, provided that: "The amendments made by this section [amending this section] shall apply to amounts paid or accrued more than 30 days after the date of the enactment of this Act [Oct. 22, 2004]."

Amendment by Pub. L. 108–311 effective as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 406(h) of Pub. L. 108–311, set out as a note under section 55 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–200, title VI, §601(b), May 18, 2000, 114 Stat. 305, provided that: "The amendment made by this section [amending this section] shall apply on or after February 1, 2001."

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 1053(a) of Pub. L. 105–34 applicable to dividends paid or accrued more than 30 days after Aug. 5, 1997, see section 1053(c) of Pub. L. 105–34, set out as a note under section 853 of this title.

Amendment by section 1142(e)(4) of Pub. L. 105–34 applicable to annual accounting periods beginning after Aug. 5, 1997, see section 1142(f) of Pub. L. 105–34, set out as a note under section 318 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective Aug. 20, 1996, with exception for certain trusts, see section 1904(d) of Pub. L. 104–188, set out as a note under section 643 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1012(j) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title II, §2003(c)(2), Nov. 10, 1988, 102 Stat. 3598, provided that: "The amendments made by paragraph (1) [amending this section] shall take effect on January 1, 1987."

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title X, §10231(c), Dec. 22, 1987, 101 Stat. 1330–419, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1987."

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 112(b)(3) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Pub. L. 99–514, title XII, §1204(b), Oct. 22, 1986, 100 Stat. 2532, provided that: "The amendment made by subsection (a) [amending this section] shall apply to foreign taxes paid or accrued in taxable years beginning after December 31, 1986."

Amendment by section 1876(p)(2) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Pub. L. 99–509, title VIII, §8041(c), Oct. 21, 1986, 100 Stat. 1963, provided that: "The amendments made by this section [amending this section and section 952 of this title] shall take effect on January 1, 1987."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(20) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 612(e)(1) of Pub. L. 98–369 applicable to interest paid or accrued after Dec. 31, 1984, on indebtedness incurred after Dec. 31, 1984, see section 612(g) of Pub. L. 98–369, set out as an Effective Date note under section 25 of this title.

Amendment by section 713(c)(1)(C) of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

Amendment by section 801(d)(1) of Pub. L. 98–369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 201(d)(8)(A) of Pub. L. 97–248 applicable to taxable years beginning after Dec. 31, 1982, see section 201(e)(1) of Pub. L. 97–248, set out as a note under section 5 of this title.

Amendment by section 265(b)(2)(A)(iv) of Pub. L. 97–248 applicable to distributions after Dec. 31, 1982, see section 265(c)(2) of Pub. L. 97–248, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title VII, §701(u)(1)(C), Nov. 6, 1978, 92 Stat. 2913, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendment made by subparagraph (A) [amending this section] shall apply as if included in section 901(g) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] as added by section 1051(d)(2) of the Tax Reform Act of 1976 [section 1051(d)(2) of Pub. L. 94–455]. The amendments made by subparagraph (B) [amending this section] shall apply to distributions made after the date of the enactment of this Act [Nov. 6, 1978] in taxable years ending after such date."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1031(b)(1) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, with certain exceptions, see section 1031(c) of Pub. L. 94–455, set out as a note under section 904 of this title.

Amendment by section 1051(d)(1) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, with certain exceptions, and the provisions of subsec. (g) not to apply to any tax imposed by a possession of the United States with respect to the complete liquidation occurring before Jan. 1, 1979, of a corporation to the extent that such tax is attributable to earnings and profits accumulated by such corporation during periods ending before Jan. 1, 1976, see section 1051(i) of Pub. L. 94–455, set out as a note under section 27 of this title.

Amendment by section 1901(b)(1)(H)(iii), (37)(A) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–12 applicable to taxable years ending after Dec. 31, 1974, see section 601(d) of Pub. L. 94–12, set out as an Effective Date note under section 907 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by section 2001(g)(2)(C) of Pub. L. 93–406, which inserted reference to the tax imposed for the taxable year under section 72(m)(5)(B) (relating to 10 percent tax on premature distributions to owner-employees), applicable to distributions made in taxable years beginning after Dec. 31, 1975, see section 2001(i)(4) of Pub. L. 93–406, set out as a note under section 72 of this title.

Amendment by section 2002(g)(3) of Pub. L. 93–406, which inserted reference to the tax imposed for the taxable year by section 408(f) (relating to additional tax on income from certain retirement accounts), effective on Jan. 1, 1975, see section 2002(i)(2) of Pub. L. 93–406, set out as an Effective Date note under section 4973 of this title.

Amendment by section 2005(c)(5) of Pub. L. 93–406, which inserted reference to the tax imposed for the taxable year under section 402(e) (relating to tax on lump sum distributions), applicable only with respect to distributions or payments made after Dec. 31, 1973, in taxable years beginning after Dec. 31, 1973, see section 2005(d) of Pub. L. 93–406, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–178 applicable with respect to taxable years ending after Dec. 31, 1971, except that a corporation may not be a DISC for any taxable year beginning before Jan. 1, 1972, see section 507 of Pub. L. 92–178, set out as an Effective Date note under section 991 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 301(b)(9) of Pub. L. 91–172 applicable to taxable years ending after Dec. 31, 1969, see section 301(c) of Pub. L. 91–172, set out as a note under section 5 of this title.

Pub. L. 91–172, title V, §506(c), Dec. 30, 1969, 83 Stat. 635, provided that: "The amendments made by this section [amending this section and section 904 of this title] shall apply with respect to taxable years beginning after December 31, 1969."

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by section 106(a)(4), (5) of Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 106(a)(6) of Pub. L. 89–809, set out as a note under section 874 of this title.

Pub. L. 89–809, title I, §106(b)(4), Nov. 13, 1966, 80 Stat. 1570, provided that: "The amendments made by this subsection (other than paragraph (3)) [amending this section] shall apply with respect to taxable years beginning after December 31, 1966. The amendment made by paragraph (3) [amending section 2014 of this title] shall apply with respect to estates of decedents dying after the date of enactment of this Act [Nov. 13, 1966]."

Amendment by Pub. L. 89–384 applicable with respect to amounts received after December 31, 1964, in respect of foreign expropriation losses (as defined in section 1351(b) of this title) sustained after December 31, 1958, see section 2 of Pub. L. 89–384, set out as an Effective Date note under section 1351 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 207(c) of Pub. L. 88–272, set out as a note under section 164 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by section 12(b)(1) of Pub. L. 87–834 applicable with respect to taxable years of foreign corporations beginning after Dec. 31, 1962, and to taxable years of United States shareholders within which or with which such taxable years of such foreign corporations end, see section 12(c) of Pub. L. 87–834, set out as an Effective Date note under section 951 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by section 3(a) of Pub. L. 86–780 applicable to taxable years beginning after Dec. 31, 1960, and amendment by section 3(b) of Pub. L. 86–780 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 4 of Pub. L. 86–780, set out as a note under section 904 of this title.

EFFECT OF AMENDMENT BY PUB. L. 103–149 ON REVENUE RULING 92–62

Amendment by section 4(b)(8)(A) of Pub. L. 103–149 not to be construed as affecting any of the transitional rules contained in Revenue Ruling 92–62 which apply by reason of the termination of the period

for which subsec. (j) of this section was applicable to South Africa, see section 4(b)(8)(B) of Pub. L. 103–149 set out in a Repeal of Chapter; South African Democratic Transition Support note under section 5001 of Title 22, Foreign Relations and Intercourse.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§902. Deemed paid credit where domestic corporation owns 10 percent or more of voting stock of foreign corporation

(a) Taxes paid by foreign corporation treated as paid by domestic corporation

For purposes of this subpart, a domestic corporation which owns 10 percent or more of the voting stock of a foreign corporation from which it receives dividends in any taxable year shall be deemed to have paid the same proportion of such foreign corporation's post-1986 foreign income taxes as—

(1) the amount of such dividends (determined without regard to section 78), bears to

(2) such foreign corporation's post-1986 undistributed earnings.

(b) Deemed taxes increased in case of certain lower tier corporations

(1) In general

If—

(A) any foreign corporation is a member of a qualified group, and

(B) such foreign corporation owns 10 percent or more of the voting stock of another member of such group from which it receives dividends in any taxable year,

such foreign corporation shall be deemed to have paid the same proportion of such other member's post-1986 foreign income taxes as would be determined under subsection (a) if such foreign corporation were a domestic corporation.

(2) Qualified group

For purposes of paragraph (1), the term "qualified group" means—

(A) the foreign corporation described in subsection (a), and

(B) any other foreign corporation if—

(i) the domestic corporation owns at least 5 percent of the voting stock of such other foreign corporation indirectly through a chain of foreign corporations connected through stock ownership of at least 10 percent of their voting stock,

(ii) the foreign corporation described in subsection (a) is the first tier corporation in such chain, and

(iii) such other corporation is not below the sixth tier in such chain.

The term "qualified group" shall not include any foreign corporation below the third tier in the chain referred to in clause (i) unless such foreign corporation is a controlled foreign corporation (as defined in section 957) and the domestic corporation is a United States shareholder (as defined in section 951(b)) in such foreign corporation. Paragraph (1) shall apply to those taxes paid by a member of the qualified group below the third tier only with respect to periods during which it was a controlled foreign corporation.

(c) Definitions and special rules

For purposes of this section—

(1) Post-1986 undistributed earnings

The term "post-1986 undistributed earnings" means the amount of the earnings and profits of

the foreign corporation (computed in accordance with sections 964(a) and 986) accumulated in taxable years beginning after December 31, 1986—

(A) as of the close of the taxable year of the foreign corporation in which the dividend is distributed, and

(B) without diminution by reason of dividends distributed during such taxable year.

(2) Post-1986 foreign income taxes

The term "post-1986 foreign income taxes" means the sum of—

(A) the foreign income taxes with respect to the taxable year of the foreign corporation in which the dividend is distributed, and

(B) the foreign income taxes with respect to prior taxable years beginning after December 31, 1986, to the extent such foreign taxes were not attributable to dividends distributed by the foreign corporation in prior taxable years.

(3) Special rule where foreign corporation first qualifies after December 31, 1986

(A) In general

If the 1st day on which the requirements of subparagraph (B) are met with respect to any foreign corporation is in a taxable year of such corporation beginning after December 31, 1986, the post-1986 undistributed earnings and the post-1986 foreign income taxes of such foreign corporation shall be determined by taking into account only periods beginning on and after the 1st day of the 1st taxable year in which such requirements are met.

(B) Ownership requirements

The requirements of this subparagraph are met with respect to any foreign corporation if—

(i) 10 percent or more of the voting stock of such foreign corporation is owned by a domestic corporation, or

(ii) the requirements of subsection (b)(2) are met with respect to such foreign corporation.

(4) Foreign income taxes

(A) In general

The term "foreign income taxes" means any income, war profits, or excess profits taxes paid by the foreign corporation to any foreign country or possession of the United States.

(B) Treatment of deemed taxes

Except for purposes of determining the amount of the post-1986 foreign income taxes of a sixth tier foreign corporation referred to in subsection (b)(2), the term "foreign income taxes" includes any such taxes deemed to be paid by the foreign corporation under this section.

(5) Accounting periods

In the case of a foreign corporation the income, war profits, and excess profits taxes of which are determined on the basis of an accounting period of less than 1 year, the word "year" as used in this subsection shall be construed to mean such accounting period.

(6) Treatment of distributions from earnings before 1987

(A) In general

In the case of any dividend paid by a foreign corporation out of accumulated profits (as defined in this section as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) for taxable years beginning before the 1st taxable year taken into account in determining the post-1986 undistributed earnings of such corporation—

(i) this section (as amended by the Tax Reform Act of 1986) shall not apply, but

(ii) this section (as in effect on the day before the date of the enactment of such Act) shall apply.

(B) Dividends paid first out of post-1986 earnings

Any dividend in a taxable year beginning after December 31, 1986, shall be treated as made

out of post-1986 undistributed earnings to the extent thereof.

(7) Constructive ownership through partnerships

Stock owned, directly or indirectly, by or for a partnership shall be considered as being owned proportionately by its partners. Stock considered to be owned by a person by reason of the preceding sentence shall, for purposes of applying such sentence, be treated as actually owned by such person. The Secretary may prescribe such regulations as may be necessary to carry out the purposes of this paragraph, including rules to account for special partnership allocations of dividends, credits, and other incidents of ownership of stock in determining proportionate ownership.

(8) Regulations

The Secretary shall provide such regulations as may be necessary or appropriate to carry out the provisions of this section and section 960, including provisions which provide for the separate application of this section and section 960 to reflect the separate application of section 904 to separate types of income and loss.

(d) Cross references

(1) For inclusion in gross income of an amount equal to taxes deemed paid under subsection (a), see section 78.

(2) For application of subsections (a) and (b) with respect to taxes deemed paid in a prior taxable year by a United States shareholder with respect to a controlled foreign corporation, see section 960.

(3) For reduction of credit with respect to dividends paid out of post-1986 undistributed earnings for years for which certain information is not furnished, see section 6038.

(Aug. 16, 1954, ch. 736, 68A Stat. 286; Pub. L. 86–780, §6(b)(2), Sept. 14, 1960, 74 Stat. 1016; Pub. L. 87–834, §9(a), Oct. 16, 1962, 76 Stat. 999; Pub. L. 91–684, §§1, 2, Jan. 12, 1971, 84 Stat. 2068, 2069; Pub. L. 94–12, title VI, §602(c)(6), Mar. 29, 1975, 89 Stat. 59; Pub. L. 94–455, title X, §1033(a), Oct. 4, 1976, 90 Stat. 1626; Pub. L. 99–514, title XII, §1202(a), Oct. 22, 1986, 100 Stat. 2528; Pub. L. 100–647, title I, §1012(b)(1), (2), Nov. 10, 1988, 102 Stat. 3496; Pub. L. 105–34, title XI, §§1113(a), 1163(a), Aug. 5, 1997, 111 Stat. 970, 987; Pub. L. 108–357, title IV, §405(a), Oct. 22, 2004, 118 Stat. 1498.)

REFERENCES IN TEXT

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (c)(6)(A), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

The Tax Reform Act of 1986, referred to in subsec. (c)(6)(A)(i), is Pub. L. 99–514, Oct. 22, 1986, 100 Stat. 2085. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2004—Subsec. (c)(7), (8). Pub. L. 108–357 added par. (7) and redesignated former par. (7) as (8).

1997—Subsec. (b). Pub. L. 105–34, §1113(a)(1), amended subsec. (b) generally. Prior to amendment, subsec. (b) consisted of pars. (1) to (3) relating to deemed taxes increased in case of certain 2nd and 3rd tier foreign corporations.

Subsec. (c)(2)(B). Pub. L. 105–34, §1163(a), substituted "attributable to" for "deemed paid with respect to".

Subsec. (c)(3). Pub. L. 105–34, §1113(a)(2)(C), substituted "where foreign corporation first qualifies" for "where domestic corporation acquires 10 percent of foreign corporation" in heading.

Pub. L. 105–34, §1113(a)(2)(D), struck out "ownership" after "on which the" and "in which such" in subpar. (A) and before "requirements of this subparagraph" in introductory provisions of subpar. (B).

Subsec. (c)(3)(B). Pub. L. 105–34, §1113(a)(2)(A), inserted "or" at end of cl. (i), added cl. (ii), and struck out former cls. (ii) and (iii) which read as follows:

"(ii) the requirements of subsection (b)(3)(A) are met with respect to such foreign corporation and 10 percent or more of the voting stock of such foreign corporation is owned by another foreign corporation described in clause (i), or

"(iii) the requirements of subsection (b)(3)(B) are met with respect to such foreign corporation and 10 percent or more of the voting stock of such foreign corporation is owned by another foreign corporation described in clause (ii)."

Subsec. (c)(4)(B). Pub. L. 105–34, §1113(a)(2)(B), substituted "sixth tier foreign corporation" for "3rd foreign corporation".

1988—Subsec. (c)(1). Pub. L. 100–647, §1012(b)(2), substituted "sections 964(a) and 986" for "sections 964 and 986".

Subsec. (c)(7). Pub. L. 100–647, §1012(b)(1), substituted "section 960" for "secton 960" and "this section and section 960" for second reference to "this section".

1986—Pub. L. 99–514 amended section generally, substituting "Deemed paid credit where domestic corporation owns 10 percent or more of voting stock of foreign corporation" for "Credit for corporate stockholder in foreign corporation" as section catchline and substituting present provisions generally relating to post-1986 earnings and taxes for former provisions which had provided in subsec. (a) for a general rule with respect to treatment of taxes paid by foreign corporations, in subsec. (b) for treatment of taxes by a foreign subsidiary of first and second foreign corporations, in subsec. (c) for rules defining accumulated profits and determining accounting periods, and in subsec. (d) for cross references.

1976—Pub. L. 94–455, §1033(a), struck out provisions by which dividends from less developed country corporations are not grossed-up by the amount of foreign taxes paid on the underlying income and the deemed-paid foreign tax credits attributable to those dividends are reduced proportionately, struck out subsec. (d) which defined less developed country corporations, and redesignated subsec. (e) as (d).

1975—Subsec. (d). Pub. L. 94–12 substituted "paragraph (3) or (4)", "paragraph (3)", "paragraph (3)(A)", and "paragraph (3)(B)" for "section 955(c)(1) or (2)", "section 955(c)(1)", "section 955(c)(1)(A)", and "section 955(c)(1)(B)", respectively, in existing provisions and added pars. (3), (4), and (5) and provisions following par. (5).

1971—Subsec. (b). Pub. L. 91–684, §1, substituted "Foreign subsidiary of first and second foreign corporation" for "Foreign subsidiary of foreign corporation" in heading, designated existing provisions as par. (1) and inserted terminology denominating corporations involved as first foreign corporation and second foreign corporation, and reduced the ownership percentage requirement in voting stock from 50 percent to 10 percent between the first and second foreign corporations, and added pars. (2) and (3).

Subsec. (c)(1)(A). Pub. L. 91–684, §2(1), substituted "(b)(1)(A), and (b)(2)(A)" for "and (b)(1)".

Subsec. (c)(1)(B). Pub. L. 91–684, §2(2), substituted "(b)(1)(B), and (b)(2)(B)" for "and (b)(2)".

1962—Subsec. (a). Pub. L. 87–834 limited provisions which required a domestic corporation owning at least 10 per cent of the voting stock of a foreign corporation from which it receives dividends in any taxable year to be deemed to have paid the same proportion of any income, war profits, or excess profits taxes paid or deemed to be paid by such foreign corporation to any foreign country or to any possession of the United States which the amount of such dividends bears to the amount of accumulated profits to those cases where a foreign corporation paid such dividends out of accumulated profits of a year for which such foreign corporation is a less developed country corporation, and inserted provisions requiring, in the case of a domestic corporation which owns at least 10 percent of the voting stock of a foreign corporation from which it receives dividends in a taxable year, to the extent such dividends are paid by such foreign corporation out of accumulated profits of a year for which such foreign corporation is not a less developed country corporation, to be deemed to have paid the same proportion of any income, war profits, or excess profits taxes paid or deemed to be paid by such foreign corporation to any foreign country or to any possession of the United States on or with respect to such accumulated profits, which the amount of such dividends (determined without regard to section 78) bears to the amount of such accumulated profits in excess of such income, war profits, and excess profits taxes (other than those deemed paid).

Subsec. (b). Pub. L. 87–834 substituted "from which such dividends were paid which—

> "(1) for purposes of applying subsection (a)(1), the amount of such dividends bears to the amount of the accumulated profits (as defined in subsection (c)(1)(A)) of such other foreign corporation from which such dividends were paid in excess of such income, war profits, and excess profits taxes, or
>
> "(2) for purposes of applying subsection (a)(2), the amount of such dividends bears to the amount of the accumulated profits (as defined in subsection (c)(1)(B)) of such other foreign corporation from which such dividends were paid"

for "from which such dividends were paid, which the amount of such dividends bears to the amount of such accumulated profits".

Subsec. (c). Pub. L. 87–834 defined "accumulated profits" for purposes of subsecs. (a)(1) and (b)(1) as meaning the amount of its gains, profits, or income computed without reduction by the amount of the income, war profits, and excess profits taxes imposed on or with respect to such profits or income by and foreign country or any possession of the United States, and limited provisions defining "accumulated profits" as the amount of its gains, profits, or income in excess of the income, war profits, and excess profits taxes imposed on or with respect to such profits or income to subsecs. (a)(2) and (b)(2).

Subsec. (d). Pub. L. 87–834 substituted provisions defining "less developed country corporation" for provisions which established special rules for certain wholly-owned foreign corporations.

Subsec. (e). Pub. L. 87–834 designated existing provisions as par. (3) and added pars. (1) and (2).

1960—Subsec. (e). Pub. L. 86–780 added subsec. (e).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxes of foreign corporations for taxable years of such corporations beginning after Oct. 22, 2004, see section 405(c) of Pub. L. 108–357, set out as a note under section 901 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XI, §1113(c), Aug. 5, 1997, 111 Stat. 971, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and section 960 of this title] shall apply to taxes of foreign corporations for taxable years of such corporations beginning after the date of enactment of this Act [Aug. 5, 1997].

"(2) SPECIAL RULE.—In the case of any chain of foreign corporations described in clauses (i) and (ii) of section 902(b)(2)(B) of the Internal Revenue Code of 1986 (as amended by this section), no liquidation, reorganization, or similar transaction in a taxable year beginning after the date of the enactment of this Act shall have the effect of permitting taxes to be taken into account under section 902 of the Internal Revenue Code of 1986 which could not have been taken into account under such section but for such transaction."

Pub. L. 105–34, title XI, §1163(c), Aug. 5, 1997, 111 Stat. 987, provided that: "The amendments made by this section [amending this section and section 904 of this title] shall take effect on the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XII, §1202(e), Oct. 22, 1986, 100 Stat. 2531, provided that: "The amendments made by this section [amending this section and sections 960 and 6038 of this title] shall apply to distributions by foreign corporations out of, and to inclusions under section 951(a) of the Internal Revenue Code of 1986 attributable to, earnings and profits for taxable years beginning after December 31, 1986."

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title X, §1033(c), Oct. 4, 1976, 90 Stat. 1628, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by this section [amending this section and sections 78, 535, 545, and 960 of this title] shall apply—

"(1) in respect of any distribution received by a domestic corporation after December 31, 1977, and

"(2) in respect of any distribution received by a domestic corporation before January 1, 1978, in a taxable year of such corporation beginning after December 31, 1975, but only to the extent that such distribution is made out of the accumulated profits of a foreign corporation for a taxable year (of such foreign corporation) beginning after December 31, 1975.

For purposes of paragraph (2), a distribution made by a foreign corporation out of its profits which are attributable to a distribution received from a foreign corporation to which section 902(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] applies shall be treated as made out of the accumulated profits of a foreign corporation for a taxable year beginning before January 1, 1976, to the extent that such distribution was paid out of the accumulated profits of such foreign corporation for a taxable year beginning before January 1, 1976."

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–12 applicable to taxable years of foreign corporations beginning after Dec. 31, 1975, and to taxable years of United States shareholders (within the meaning of section 951(b) of this title) within which or with which such taxable years of such foreign corporations end, see section 602(f) of Pub. L. 94–12, set out as an Effective Date note under section 955 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Pub. L. 91–684, §3, Jan. 12, 1971, 84 Stat. 2069, provided that: "The amendments made by this Act

[amending this section] shall apply with respect to all taxable years of domestic corporations, ending after the date of enactment of this Act [Jan. 12, 1971], but only in respect of dividends paid by one corporation to another corporation after the date of the enactment of this Act."

EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87–834, §9(e), Oct. 16, 1962, 76 Stat. 1001, provided that: "The amendments made by this section [enacting section 78 of this title and amending this section and sections 535, 545, 861, and 901 of this title] shall apply—

"(1) in respect of any distribution received by a domestic corporation after December 31, 1964, and

"(2) in respect of any distribution received by a domestic corporation before January 1, 1965, in a taxable year of such corporation beginning after December 31, 1962, but only to the extent that such distribution is made out of the accumulated profits of a foreign corporation for a taxable year (of such foreign corporation) beginning after December 31, 1962.

For purposes of paragraph (2), a distribution made by a foreign corporation out of its profits which are attributable to a distribution received from a foreign subsidiary to which section 902(b) applies shall be treated as made out of the accumulated profits of a foreign corporation for a taxable year beginning before January 1, 1963, to the extent that such distribution was paid out of the accumulated profits of such foreign subsidiary for a taxable year beginning before January 1, 1963."

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–780 applicable to taxable years beginning after Dec. 31, 1960, see section 6(c) of Pub. L. 86–780), set out as an Effective Date note under section 6038 of this title.

INCREASE IN EARNINGS AND PROFITS OF FOREIGN CORPORATIONS UNDER SECTION 1023(E)(3)(C) OF PUB. L. 99–514

Pub. L. 100–647, title I, §1012(b)(3), Nov. 10, 1988, 102 Stat. 3496, provided that: "For purposes of sections 902 and 960 of the 1986 Code, the increase in earnings and profits of any foreign corporation under section 1023(e)(3)(C) of the Reform Act [Pub. L. 99–514, set out as an Effective Date note under section 846 of this title] shall be taken into account ratably over the 10-year period beginning with the corporation's first taxable year beginning after December 31, 1986."

§903. Credit for taxes in lieu of income, etc., taxes

For purposes of this part and of sections 164(a) and 275(a), the term "income, war profits, and excess profits taxes" shall include a tax paid in lieu of a tax on income, war profits, or excess profits otherwise generally imposed by any foreign country or by any possession of the United States.

(Aug. 16, 1954, ch. 736, 68A Stat. 287; Pub. L. 88–272, title II, §207(b)(8), Feb. 26, 1964, 78 Stat. 42; Pub. L. 100–647, title I, §1012(v)(9), Nov. 10, 1988, 102 Stat. 3530; Pub. L. 106–519, §4(4), Nov. 15, 2000, 114 Stat. 2433; Pub. L. 108–357, title I, §101(b)(7), Oct. 22, 2004, 118 Stat. 1423.)

AMENDMENTS

2004—Pub. L. 108–357 substituted "164(a)" for "114, 164(a),".
2000—Pub. L. 106–519 substituted "114, 164(a)," for "164(a)".
1988—Pub. L. 100–647 substituted "this part" for "this subpart".
1964—Pub. L. 88–272 substituted "sections 164(a) and 275(a)" for "section 164(b)".

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to transactions after Dec. 31, 2004, see section 101(c) of Pub. L. 108–357, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–519 applicable to transactions after Sept. 30, 2000, with special rules relating to existing foreign sales corporations, see section 5 of Pub. L. 106–519, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L.

100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 207(c) of Pub. L. 88–272, set out as a note under section 164 of this title.

§904. Limitation on credit

(a) Limitation

The total amount of the credit taken under section 901(a) shall not exceed the same proportion of the tax against which such credit is taken which the taxpayer's taxable income from sources without the United States (but not in excess of the taxpayer's entire taxable income) bears to his entire taxable income for the same taxable year.

(b) Taxable income for purpose of computing limitation

(1) Personal exemptions

For purposes of subsection (a), the taxable income in the case of an individual, estate, or trust shall be computed without any deduction for personal exemptions under section 151 or 642(b).

(2) Capital gains

For purposes of this section—

(A) In general

Taxable income from sources outside the United States shall include gain from the sale or exchange of capital assets only to the extent of foreign source capital gain net income.

(B) Special rules where capital gain rate differential

In the case of any taxable year for which there is a capital gain rate differential—

(i) in lieu of applying subparagraph (A), the taxable income from sources outside the United States shall include gain from the sale or exchange of capital assets only in an amount equal to foreign source capital gain net income reduced by the rate differential portion of foreign source net capital gain,

(ii) the entire taxable income shall include gain from the sale or exchange of capital assets only in an amount equal to capital gain net income reduced by the rate differential portion of net capital gain, and

(iii) for purposes of determining taxable income from sources outside the United States, any net capital loss (and any amount which is a short-term capital loss under section 1212(a)) from sources outside the United States to the extent taken into account in determining capital gain net income for the taxable year shall be reduced by an amount equal to the rate differential portion of the excess of net capital gain from sources within the United States over net capital gain.

(C) Coordination with capital gains rates

The Secretary may by regulations modify the application of this paragraph and paragraph (3) to the extent necessary to properly reflect any capital gain rate differential under section 1(h) or 1201(a) and the computation of net capital gain.

(3) Definitions

For purposes of this subsection—

(A) Foreign source capital gain net income

The term "foreign source capital gain net income" means the lesser of—

(i) capital gain net income from sources without the United States, or

(ii) capital gain net income.

(B) Foreign source net capital gain

The term "foreign source net capital gain" means the lesser of—

(i) net capital gain from sources without the United States, or

(ii) net capital gain.

(C) Section 1231 gains

The term "gain from the sale or exchange of capital assets" includes any gain so treated under section 1231.

(D) Capital gain rate differential

There is a capital gain rate differential for any taxable year if—

(i) in the case of a taxpayer other than a corporation, subsection (h) of section 1 applies to such taxable year, or

(ii) in the case of a corporation, any rate of tax imposed by section 11, 511, or 831(a) or (b) (whichever applies) exceeds the alternative rate of tax under section 1201(a) (determined without regard to the last sentence of section 11(b)(1)).

(E) Rate differential portion

(i) In general

The rate differential portion of foreign source net capital gain, net capital gain, or the excess of net capital gain from sources within the United States over net capital gain, as the case may be, is the same proportion of such amount as—

(I) the excess of the highest applicable tax rate over the alternative tax rate, bears to

(II) the highest applicable tax rate.

(ii) Highest applicable tax rate

For purposes of clause (i), the term "highest applicable tax rate" means—

(I) in the case of a taxpayer other than a corporation, the highest rate of tax set forth in subsection (a), (b), (c), (d), or (e) of section 1 (whichever applies), or

(II) in the case of a corporation, the highest rate of tax specified in section 11(b).

(iii) Alternative tax rate

For purposes of clause (i), the term "alternative tax rate" means—

(I) in the case of a taxpayer other than a corporation, the alternative rate of tax determined under section 1(h), or

(II) in the case of a corporation, the alternative rate of tax under section 1201(a).

(4) Coordination with section 936

For purposes of subsection (a), in the case of a corporation, the taxable income shall not include any portion thereof taken into account for purposes of the credit (if any) allowed by section 936 (without regard to subsections (a)(4) and (i) thereof).

(c) Carryback and carryover of excess tax paid

Any amount by which all taxes paid or accrued to foreign countries or possessions of the United States for any taxable year for which the taxpayer chooses to have the benefits of this subpart exceed the limitation under subsection (a) shall be deemed taxes paid or accrued to foreign countries or possessions of the United States in the first preceding taxable year and in any of the first 10 succeeding taxable years, in that order and to the extent not deemed taxes paid or accrued in a prior taxable year, in the amount by which the limitation under subsection (a) for such preceding or succeeding taxable year exceeds the sum of the taxes paid or accrued to foreign countries or possessions of the United States for such preceding or succeeding taxable year and the amount of the taxes for any taxable year earlier than the current taxable year which shall be deemed to have been paid or accrued in such preceding or subsequent taxable year (whether or not the taxpayer chooses to have the benefits of this subpart with respect to such earlier taxable year). Such amount deemed paid or accrued in any year may be availed of only as a tax credit and not as a deduction and only if the taxpayer for such year chooses to have the benefits of this subpart as to taxes paid or accrued for that year to foreign countries or possessions of the United States.

(d) Separate application of section with respect to certain categories of income

(1) In general

The provisions of subsections (a), (b), and (c) and sections 902, 907, and 960 shall be applied separately with respect to—

(A) passive category income, and

(B) general category income.

(2) Definitions and special rules

For purposes of this subsection—

(A) Categories

(i) Passive category income

The term "passive category income" means passive income and specified passive category income.

(ii) General category income

The term "general category income" means income other than passive category income.

(B) Passive income

(i) In general

Except as otherwise provided in this subparagraph, the term "passive income" means any income received or accrued by any person which is of a kind which would be foreign personal holding company income (as defined in section 954(c)).

(ii) Certain amounts included

Except as provided in clause (iii), the term "passive income" includes, except as provided in subparagraph (E)(iii) [1] or paragraph (3)(I) [1], any amount includible in gross income under section 1293 (relating to certain passive foreign investment companies).

(iii) Exceptions

The term "passive income" shall not include—

(I) any export financing interest, and

(II) any high-taxed income.

(iv) Clarification of application of section 864(d)(6)

In determining whether any income is of a kind which would be foreign personal holding company income, the rules of section 864(d)(6) shall apply only in the case of income of a controlled foreign corporation.

(v) Specified passive category income

The term "specified passive category income" means—

(I) dividends from a DISC or former DISC (as defined in section 992(a)) to the extent such dividends are treated as income from sources without the United States, and

(II) distributions from a former FSC (as defined in section 922) out of earnings and profits attributable to foreign trade income (within the meaning of section 923(b)) or interest or carrying charges (as defined in section 927(d)(1)) derived from a transaction which results in foreign trade income (as defined in section 923(b)).

Any reference in subclause (II) to section 922, 923, or 927 shall be treated as a reference to such section as in effect before its repeal by the FSC Repeal and Extraterritorial Income Exclusion Act of 2000.

(C) Treatment of financial services income and companies

(i) In general

Financial services income shall be treated as general category income in the case of—

(I) a member of a financial services group, and

(II) any other person if such person is predominantly engaged in the active conduct of a banking, insurance, financing, or similar business.

(ii) Financial services group

The term "financial services group" means any affiliated group (as defined in section 1504(a) without regard to paragraphs (2) and (3) of section 1504(b)) which is predominantly engaged in the active conduct of a banking, insurance, financing, or similar business. In determining whether such a group is so engaged, there shall be taken into account only the income of members of the group that are—

(I) United States corporations, or

(II) controlled foreign corporations in which such United States corporations own, directly or indirectly, at least 80 percent of the total voting power and value of the stock.

(iii) Pass-thru entities

The Secretary shall by regulation specify for purposes of this subparagraph the treatment of financial services income received or accrued by partnerships and by other pass-thru entities which are not members of a financial services group.

(D) Financial services income

(i) In general

Except as otherwise provided in this subparagraph, the term "financial services income" means any income which is received or accrued by any person predominantly engaged in the active conduct of a banking, insurance, financing, or similar business, and which is—

(I) described in clause (ii), or

(II) passive income (determined without regard to subparagraph (B)(iii)(II)).

(ii) General description of financial services income

Income is described in this clause if such income is—

(I) derived in the active conduct of a banking, financing, or similar business,

(II) derived from the investment by an insurance company of its unearned premiums or reserves ordinary and necessary for the proper conduct of its insurance business, or

(III) of a kind which would be insurance income as defined in section 953(a) determined without regard to those provisions of paragraph (1)(A) of such section which limit insurance income to income from countries other than the country in which the corporation was created or organized.

(E) Noncontrolled section 902 corporation

(i) In general

The term "noncontrolled section 902 corporation" means any foreign corporation with respect to which the taxpayer meets the stock ownership requirements of section 902(a) (or, for purposes of applying paragraph (3) or (4), the requirements of section 902(b)). A controlled foreign corporation shall not be treated as a noncontrolled section 902 corporation with respect to any distribution out of its earnings and profits for periods during which it was a controlled foreign corporation.

(ii) Treatment of inclusions under section 1293

If any foreign corporation is a non-controlled section 902 corporation with respect to the taxpayer, any inclusion under section 1293 with respect to such corporation shall be treated as a dividend from such corporation.

(F) High-taxed income

The term "high-taxed income" means any income which (but for this subparagraph) would be passive income if the sum of—

(i) the foreign income taxes paid or accrued by the taxpayer with respect to such income,

and

(ii) the foreign income taxes deemed paid by the taxpayer with respect to such income under section 902 or 960,

exceeds the highest rate of tax specified in section 1 or 11 (whichever applies) multiplied by the amount of such income (determined with regard to section 78). For purposes of the preceding sentence, the term "foreign income taxes" means any income, war profits, or excess profits tax imposed by any foreign country or possession of the United States.

(G) Export financing interest

For purposes of this paragraph, the term "export financing interest" means any interest derived from financing the sale (or other disposition) for use or consumption outside the United States of any property—

(i) which is manufactured, produced, grown, or extracted in the United States by the taxpayer or a related person, and

(ii) not more than 50 percent of the fair market value of which is attributable to products imported into the United States.

For purposes of clause (ii), the fair market value of any property imported into the United States shall be its appraised value, as determined by the Secretary under section 402 of the Tariff Act of 1930 (19 U.S.C. 1401a) in connection with its importation.

(H) Treatment of income tax base differences

(i) In general

In the case of taxable years beginning after December 31, 2006, tax imposed under the law of a foreign country or possession of the United States on an amount which does not constitute income under United States tax principles shall be treated as imposed on income described in paragraph (1)(B).

(ii) Special rule for years before 2007

(I) In general

In the case of taxes paid or accrued in taxable years beginning after December 31, 2004, and before January 1, 2007, a taxpayer may elect to treat tax imposed under the law of a foreign country or possession of the United States on an amount which does not constitute income under United States tax principles as tax imposed on income described in subparagraph (C) or (I) of paragraph (1).

(II) Election irrevocable

Any such election shall apply to the taxable year for which made and all subsequent taxable years described in subclause (I) unless revoked with the consent of the Secretary.

(I) Related person

For purposes of this paragraph, the term "related person" has the meaning given such term by section 954(d)(3), except that such section shall be applied by substituting "the person with respect to whom the determination is being made" for "controlled foreign corporation" each place it appears.

(J) Transitional rule

For purposes of paragraph (1)—

(i) taxes paid or accrued in a taxable year beginning before January 1, 1987, with respect to income which was described in subparagraph (A) of paragraph (1) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) shall be treated as taxes paid or accrued with respect to income described in subparagraph (A) of paragraph (1) (as in effect after such date),

(ii) taxes paid or accrued in a taxable year beginning before January 1, 1987, with respect

to income which was described in subparagraph (E) of paragraph (1) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) shall be treated as taxes paid or accrued with respect to income described in subparagraph (I) of paragraph (1) (as in effect after such date) except that—

(I) such taxes shall be treated as paid or accrued with respect to shipping income to the extent the taxpayer establishes to the satisfaction of the Secretary that such taxes were paid or accrued with respect to such income,

(II) in the case of a person described in subparagraph (C)(i), such taxes shall be treated as paid or accrued with respect to financial services income to the extent the taxpayer establishes to the satisfaction of the Secretary that such taxes were paid or accrued with respect to such income, and

(III) such taxes shall be treated as paid or accrued with respect to high withholding tax interest to the extent the taxpayer establishes to the satisfaction of the Secretary that such taxes were paid or accrued with respect to such income, and

(iii) taxes paid or accrued in a taxable year beginning before January 1, 1987, with respect to income described in any other subparagraph of paragraph (1) (as so in effect before such date) shall be treated as taxes paid or accrued with respect to income described in the corresponding subparagraph of paragraph (1) (as so in effect after such date).

(K) Transitional rules for 2007 changes

For purposes of paragraph (1)—

(i) taxes carried from any taxable year beginning before January 1, 2007, to any taxable year beginning on or after such date, with respect to any item of income, shall be treated as described in the subparagraph of paragraph (1) in which such income would be described were such taxes paid or accrued in a taxable year beginning on or after such date, and

(ii) the Secretary may by regulations provide for the allocation of any carryback of taxes with respect to income from a taxable year beginning on or after January 1, 2007, to a taxable year beginning before such date for purposes of allocating such income among the separate categories in effect for the taxable year to which carried.

(3) Look-thru in case of controlled foreign corporations

(A) In general

Except as otherwise provided in this paragraph, dividends, interest, rents, and royalties received or accrued by the taxpayer from a controlled foreign corporation in which the taxpayer is a United States shareholder shall not be treated as passive category income.

(B) Subpart F inclusions

Any amount included in gross income under section 951(a)(1)(A) shall be treated as passive category income to the extent the amount so included is attributable to passive category income.

(C) Interest, rents, and royalties

Any interest, rent, or royalty which is received or accrued from a controlled foreign corporation in which the taxpayer is a United States shareholder shall be treated as passive category income to the extent it is properly allocable (under regulations prescribed by the Secretary) to passive category income of the controlled foreign corporation.

(D) Dividends

Any dividend paid out of the earnings and profits of any controlled foreign corporation in which the taxpayer is a United States shareholder shall be treated as passive category income in proportion to the ratio of—

(i) the portion of the earnings and profits attributable to passive category income, to

(ii) the total amount of earnings and profits.

(E) Look-thru applies only where subpart F applies

If a controlled foreign corporation meets the requirements of section 954(b)(3)(A) (relating to de minimis rule) for any taxable year, for purposes of this paragraph, none of its foreign base company income (as defined in section 954(a) without regard to section 954(b)(5)) and none of its gross insurance income (as defined in section 954(b)(3)(C)) for such taxable year shall be treated as passive category income, except that this sentence shall not apply to any income which (without regard to this sentence) would be treated as financial services income. Solely for purposes of applying subparagraph (D), passive income of a controlled foreign corporation shall not be treated as passive category income if the requirements of section 954(b)(4) are met with respect to such income.

(F) Coordination with high-taxed income provisions

(i) In determining whether any income of a controlled foreign corporation is passive category income, subclause (II) of paragraph (2)(B)(iii) shall not apply.

(ii) Any income of the taxpayer which is treated as passive category income under this paragraph shall be so treated notwithstanding any provision of paragraph (2); except that the determination of whether any amount is high-taxed income shall be made after the application of this paragraph.

(G) Dividend

For purposes of this paragraph, the term "dividend" includes any amount included in gross income in section 951(a)(1)(B). Any amount included in gross income under section 78 to the extent attributable to amounts included in gross income in section 951(a)(1)(A) shall not be treated as a dividend but shall be treated as included in gross income under section 951(a)(1)(A).

(H) Look-thru applies to passive foreign investment company inclusion

If—

(i) a passive foreign investment company is a controlled foreign corporation, and

(ii) the taxpayer is a United States shareholder in such controlled foreign corporation,

any amount included in gross income under section 1293 shall be treated as income in a separate category to the extent such amount is attributable to income in such category.

(4) Look-thru applies to dividends from noncontrolled section 902 corporations

(A) In general

For purposes of this subsection, any dividend from a noncontrolled section 902 corporation with respect to the taxpayer shall be treated as income described in a subparagraph of paragraph (1) in proportion to the ratio of—

(i) the portion of earnings and profits attributable to income described in such subparagraph, to

(ii) the total amount of earnings and profits.

(B) Earnings and profits of controlled foreign corporations

In the case of any distribution from a controlled foreign corporation to a United States shareholder, rules similar to the rules of subparagraph (A) shall apply in determining the extent to which earnings and profits of the controlled foreign corporation which are attributable to dividends received from a noncontrolled section 902 corporation may be treated as income in a separate category.

(C) Special rules

For purposes of this paragraph—

(i) Earnings and profits

(I) In general

The rules of section 316 shall apply.

(II) Regulations

The Secretary may prescribe regulations regarding the treatment of distributions out of earnings and profits for periods before the taxpayer's acquisition of the stock to which the distributions relate.

(ii) Inadequate substantiation

If the Secretary determines that the proper subparagraph of paragraph (1) in which a dividend is described has not been substantiated, such dividend shall be treated as income described in paragraph (1)(A).

(iii) Coordination with high-taxed income provisions

Rules similar to the rules of paragraph (3)(F) shall apply for purposes of this paragraph.

(iv) Look-thru with respect to carryover of credit

Rules similar to subparagraph (A) also shall apply to any carryforward under subsection (c) from a taxable year beginning before January 1, 2003, of tax allocable to a dividend from a noncontrolled section 902 corporation with respect to the taxpayer. The Secretary may by regulations provide for the allocation of any carryback of tax allocable to a dividend from a noncontrolled section 902 corporation from a taxable year beginning on or after January 1, 2003, to a taxable year beginning before such date for purposes of allocating such dividend among the separate categories in effect for the taxable year to which carried.

(5) Controlled foreign corporation; United States shareholder

For purposes of this subsection—

(A) Controlled foreign corporation

The term "controlled foreign corporation" has the meaning given such term by section 957 (taking into account section 953(c)).

(B) United States shareholder

The term "United States shareholder" has the meaning given such term by section 951(b) (taking into account section 953(c)).

(6) Separate application to items resourced under treaties

(A) In general

If—

(i) without regard to any treaty obligation of the United States, any item of income would be treated as derived from sources within the United States,

(ii) under a treaty obligation of the United States, such item would be treated as arising from sources outside the United States, and

(iii) the taxpayer chooses the benefits of such treaty obligation,

subsections (a), (b), and (c) of this section and sections 902, 907, and 960 shall be applied separately with respect to each such item.

(B) Coordination with other provisions

This paragraph shall not apply to any item of income to which subsection (h)(10) or section 865(h) applies.

(C) Regulations

The Secretary may issue such regulations or other guidance as is necessary or appropriate to carry out the purposes of this paragraph, including regulations or other guidance which provides that related items of income may be aggregated for purposes of this paragraph.

(7) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate for the purposes of this subsection, including regulations—

(A) for the application of paragraph (3) and subsection (f)(5) in the case of income paid (or loans made) through 1 or more entities or between 2 or more chains of entities,

(B) preventing the manipulation of the character of income the effect of which is to avoid the purposes of this subsection, and

(C) providing that rules similar to the rules of paragraph (3)(C) shall apply to interest, rents, and royalties received or accrued from entities which would be controlled foreign corporations if they were foreign corporations.

[(e) Repealed. Pub. L. 101–508, title XI, §11801(a)(31), Nov. 5, 1990, 104 Stat. 1388–521]

(f) Recapture of overall foreign loss

(1) General rule

For purposes of this subpart and section 936, in the case of any taxpayer who sustains an overall foreign loss for any taxable year, that portion of the taxpayer's taxable income from sources without the United States for each succeeding taxable year which is equal to the lesser of—

(A) the amount of such loss (to the extent not used under this paragraph in prior taxable years), or

(B) 50 percent (or such larger percent as the taxpayer may choose) of the taxpayer's taxable income from sources without the United States for such succeeding taxable year,

shall be treated as income from sources within the United States (and not as income from sources without the United States).

(2) Overall foreign loss defined

For purposes of this subsection, the term "overall foreign loss" means the amount by which the gross income for the taxable year from sources without the United States (whether or not the taxpayer chooses the benefits of this subpart for such taxable year) for such year is exceeded by the sum of the deductions properly apportioned or allocated thereto, except that there shall not be taken into account—

(A) any net operating loss deduction allowable for such year under section 172(a), and

(B) any—

(i) foreign expropriation loss for such year, as defined in section 172(h) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990), or

(ii) loss for such year which arises from fire, storm, shipwreck, or other casualty, or from theft,

to the extent such loss is not compensated for by insurance or otherwise.

(3) Dispositions

(A) In general

For purposes of this chapter, if property which has been used predominantly without the United States in a trade or business is disposed of during any taxable year—

(i) the taxpayer, notwithstanding any other provision of this chapter (other than paragraph (1)), shall be deemed to have received and recognized taxable income from sources without the United States in the taxable year of the disposition, by reason of such disposition, in an amount equal to the lesser of the excess of the fair market value of such property over the taxpayer's adjusted basis in such property or the remaining amount of the overall foreign losses which were not used under paragraph (1) for such taxable year or any prior taxable year, and

(ii) paragraph (1) shall be applied with respect to such income by substituting "100 percent" for "50 percent".

In determining for purposes of this subparagraph whether the predominant use of any property has been without the United States, there shall be taken into account use during the 3-year

period ending on the date of the disposition (or, if shorter, the period during which the property has been used in the trade or business).

(B) Disposition defined and special rules

(i) For purposes of this subsection, the term "disposition" includes a sale, exchange, distribution, or gift of property whether or not gain or loss is recognized on the transfer.

(ii) Any taxable income recognized solely by reason of subparagraph (A) shall have the same characterization it would have had if the taxpayer had sold or exchanged the property.

(iii) The Secretary shall prescribe such regulations as he may deem necessary to provide for adjustments to the basis of property to reflect taxable income recognized solely by reason of subparagraph (A).

(C) Exceptions

Notwithstanding subparagraph (B), the term "disposition" does not include—

(i) a disposition of property which is not a material factor in the realization of income by the taxpayer, or

(ii) a disposition of property to a domestic corporation in a distribution or transfer described in section 381(a).

(D) Application to certain dispositions of stock in controlled foreign corporation

(i) In general

This paragraph shall apply to an applicable disposition in the same manner as if it were a disposition of property described in subparagraph (A), except that the exception contained in subparagraph (C)(i) shall not apply.

(ii) Applicable disposition

For purposes of clause (i), the term "applicable disposition" means any disposition of any share of stock in a controlled foreign corporation in a transaction or series of transactions if, immediately before such transaction or series of transactions, the taxpayer owned more than 50 percent (by vote or value) of the stock of the controlled foreign corporation. Such term shall not include a disposition described in clause (iii) or (iv), except that clause (i) shall apply to any gain recognized on any such disposition.

(iii) Exception for certain exchanges where ownership percentage retained

A disposition shall not be treated as an applicable disposition under clause (ii) if it is part of a transaction or series of transactions—

(I) to which section 351 or 721 applies, or under which the transferor receives stock in a foreign corporation in exchange for the stock in the controlled foreign corporation and the stock received is exchanged basis property (as defined in section 7701(a)(44)), and

(II) immediately after which, the transferor owns (by vote or value) at least the same percentage of stock in the controlled foreign corporation (or, if the controlled foreign corporation is not in existence after such transaction or series of transactions, in another foreign corporation stock in [2] which was received by the transferor in exchange for stock in the controlled foreign corporation) as the percentage of stock in the controlled foreign corporation which the taxpayer owned immediately before such transaction or series of transactions.

(iv) Exception for certain asset acquisitions

A disposition shall not be treated as an applicable disposition under clause (ii) if it is part of a transaction or series of transactions in which the taxpayer (or any member of an affiliated group of corporations filing a consolidated return under section 1501 which includes the taxpayer) acquires the assets of a controlled foreign corporation in exchange for the shares of the controlled foreign corporation in a liquidation described in section 332 or a reorganization described in section 368(a)(1).

(v) Controlled foreign corporation

For purposes of this subparagraph, the term "controlled foreign corporation" has the meaning given such term by section 957.

(vi) Stock ownership

For purposes of this subparagraph, ownership of stock shall be determined under the rules of subsections (a) and (b) of section 958.

(4) Accumulation distributions of foreign trust

For purposes of this chapter, in the case of amounts of income from sources without the United States which are treated under section 666 (without regard to subsections (b) and (c) thereof if the taxpayer chose to take a deduction with respect to the amounts described in such subsections under section 667(d)(1)(B)) as having been distributed by a foreign trust in a preceding taxable year, that portion of such amounts equal to the amount of any overall foreign loss sustained by the beneficiary in a year prior to the taxable year of the beneficiary in which such distribution is received from the trust shall be treated as income from sources within the United States (and not income from sources without the United States) to the extent that such loss was not used under this subsection in prior taxable years, or in the current taxable year, against other income of the beneficiary.

(5) Treatment of separate limitation losses

(A) In general

The amount of the separate limitation losses for any taxable year shall reduce income from sources within the United States for such taxable year only to the extent the aggregate amount of such losses exceeds the aggregate amount of the separate limitation incomes for such taxable year.

(B) Allocation of losses

The separate limitation losses for any taxable year (to the extent such losses do not exceed the separate limitation incomes for such year) shall be allocated among (and operate to reduce) such incomes on a proportionate basis.

(C) Recharacterization of subsequent income

If—

(i) a separate limitation loss from any income category (hereinafter in this subparagraph referred to as "the loss category") was allocated to income from any other category under subparagraph (B), and

(ii) the loss category has income for a subsequent taxable year,

such income (to the extent it does not exceed the aggregate separate limitation losses from the loss category not previously recharacterized under this subparagraph) shall be recharacterized as income from such other category in proportion to the prior reductions under subparagraph (B) in such other category not previously taken into account under this subparagraph. Nothing in the preceding sentence shall be construed as recharacterizing any tax.

(D) Special rules for losses from sources in the United States

Any loss from sources in the United States for any taxable year (to the extent such loss does not exceed the separate limitation incomes from such year) shall be allocated among (and operate to reduce) such incomes on a proportionate basis. This subparagraph shall be applied after subparagraph (B).

(E) Definitions

For purposes of this paragraph—

(i) Income category

The term "income category" means each separate category of income described in subsection (d)(1).

(ii) Separate limitation income

The term "separate limitation income" means, with respect to any income category, the taxable income from sources outside the United States, separately computed for such category.

(iii) Separate limitation loss

The term "separate limitation loss" means, with respect to any income category, the loss from such category determined under the principles of section 907(c)(4)(B).

(F) Dispositions

If any separate limitation loss for any taxable year is allocated against any separate limitation income for such taxable year, except to the extent provided in regulations, rules similar to the rules of paragraph (3) shall apply to any disposition of property if gain from such disposition would be in the income category with respect to which there was such separate limitation loss.

(g) Recharacterization of overall domestic loss

(1) General rule

For purposes of this subpart and section 936, in the case of any taxpayer who sustains an overall domestic loss for any taxable year beginning after December 31, 2006, that portion of the taxpayer's taxable income from sources within the United States for each succeeding taxable year which is equal to the lesser of—

(A) the amount of such loss (to the extent not used under this paragraph in prior taxable years), or

(B) 50 percent of the taxpayer's taxable income from sources within the United States for such succeeding taxable year,

shall be treated as income from sources without the United States (and not as income from sources within the United States).

(2) Overall domestic loss

For purposes of this subsection—

(A) In general

The term "overall domestic loss" means—

(i) with respect to any qualified taxable year, the domestic loss for such taxable year to the extent such loss offsets taxable income from sources without the United States for the taxable year or for any preceding qualified taxable year by reason of a carryback, and

(ii) with respect to any other taxable year, the domestic loss for such taxable year to the extent such loss offsets taxable income from sources without the United States for any preceding qualified taxable year by reason of a carryback.

(B) Domestic loss

For purposes of subparagraph (A), the term "domestic loss" means the amount by which the gross income for the taxable year from sources within the United States is exceeded by the sum of the deductions properly apportioned or allocated thereto (determined without regard to any carryback from a subsequent taxable year).

(C) Qualified taxable year

For purposes of subparagraph (A), the term "qualified taxable year" means any taxable year for which the taxpayer chose the benefits of this subpart.

(3) Characterization of subsequent income

(A) In general

Any income from sources within the United States that is treated as income from sources without the United States under paragraph (1) shall be allocated among and increase the income

categories in proportion to the loss from sources within the United States previously allocated to those income categories.

(B) Income category

For purposes of this paragraph, the term "income category" has the meaning given such term by subsection (f)(5)(E)(i).

(4) Coordination with subsection (f)

The Secretary shall prescribe such regulations as may be necessary to coordinate the provisions of this subsection with the provisions of subsection (f).

(h) Source rules in case of United States-owned foreign corporations

(1) In general

The following amounts which are derived from a United States-owned foreign corporation and which would be treated as derived from sources outside the United States without regard to this subsection shall, for purposes of this section, be treated as derived from sources within the United States to the extent provided in this subsection:

(A) Any amount included in gross income under—

(i) section 951(a) (relating to amounts included in gross income of United States shareholders), or

(ii) section 1293 (relating to current taxation of income from qualified funds).

(B) Interest.

(C) Dividends.

(2) Subpart F and passive foreign investment company inclusions

Any amount described in subparagraph (A) of paragraph (1) shall be treated as derived from sources within the United States to the extent such amount is attributable to income of the United States-owned foreign corporation from sources within the United States.

(3) Certain interest allocable to United States source income

Any interest which—

(A) is paid or accrued by a United States-owned foreign corporation during any taxable year,

(B) is paid or accrued to a United States shareholder (as defined in section 951(b)) or a related person (within the meaning of section 267(b)) to such a shareholder, and

(C) is properly allocable (under regulations prescribed by the Secretary) to income of such foreign corporation for the taxable year from sources within the United States,

shall be treated as derived from sources within the United States.

(4) Dividends

(A) In general

The United States source ratio of any dividend paid or accrued by a United States-owned foreign corporation shall be treated as derived from sources within the United States.

(B) United States source ratio

For purposes of subparagraph (A), the term "United States source ratio" means, with respect to any dividend paid out of the earnings and profits for any taxable year, a fraction—

(i) the numerator of which is the portion of the earnings and profits for such taxable year from sources within the United States, and

(ii) the denominator of which is the total amount of earnings and profits for such taxable year.

(5) Exception where United States-owned foreign corporation has small amount of United States source income

Paragraph (3) shall not apply to interest paid or accrued during any taxable year (and paragraph

(4) shall not apply to any dividends paid out of the earnings and profits for such taxable year) if—

(A) the United States-owned foreign corporation has earnings and profits for such taxable year, and

(B) less than 10 percent of such earnings and profits is attributable to sources within the United States.

For purposes of the preceding sentence, earnings and profits shall be determined without any reduction for interest described in paragraph (3) (determined without regard to subparagraph (C) thereof).

(6) United States-owned foreign corporation

For purposes of this subsection, the term "United States-owned foreign corporation" means any foreign corporation if 50 percent or more of—

(A) the total combined voting power of all classes of stock of such corporation entitled to vote, or

(B) the total value of the stock of such corporation,

is held directly (or indirectly through applying paragraphs (2) and (3) of section 958(a) and paragraph (4) of section 318(a)) by United States persons (as defined in section 7701(a)(30)).

(7) Dividend

For purposes of this subsection, the term "dividend" includes any gain treated as ordinary income under section 1246 [3] or as a dividend under section 1248.

(8) Coordination with subsection (f)

This subsection shall be applied before subsection (f).

(9) Treatment of certain domestic corporations

In the case of any dividend treated as not from sources within the United States under section 861(a)(2)(A), the corporation paying such dividend shall be treated for purposes of this subsection as a United States-owned foreign corporation.

(10) Coordination with treaties

(A) In general

If—

(i) any amount derived from a United States-owned foreign corporation would be treated as derived from sources within the United States under this subsection by reason of an item of income of such United States-owned foreign corporation,

(ii) under a treaty obligation of the United States (applied without regard to this subsection and by treating any amount included in gross income under section 951(a)(1) as a dividend), such amount would be treated as arising from sources outside the United States, and

(iii) the taxpayer chooses the benefits of this paragraph,

this subsection shall not apply to such amount to the extent attributable to such item of income (but subsections (a), (b), and (c) of this section and sections 902, 907, and 960 shall be applied separately with respect to such amount to the extent so attributable).

(B) Special rule

Amounts included in gross income under section 951(a)(1) shall be treated as a dividend under subparagraph (A)(ii) only if dividends paid by each corporation (the stock in which is taken into account in determining whether the shareholder is a United States shareholder in the United States-owned foreign corporation), if paid to the United States shareholder, would be treated under a treaty obligation of the United States as arising from sources outside the United States (applied without regard to this subsection).

(11) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate for purposes of this subsection, including—

(A) regulations for the application of this subsection in the case of interest or dividend payments through 1 or more entities, and

(B) regulations providing that this subsection shall apply to interest paid or accrued to any person (whether or not a United States shareholder).

(i) Limitation on use of deconsolidation to avoid foreign tax credit limitations

If 2 or more domestic corporations would be members of the same affiliated group if—

(1) section 1504(b) were applied without regard to the exceptions contained therein, and

(2) the constructive ownership rules of section 1563(e) applied for purposes of section 1504(a),

the Secretary may by regulations provide for resourcing the income of any of such corporations or for modifications to the consolidated return regulations to the extent that such resourcing or modifications are necessary to prevent the avoidance of the provisions of this subpart.

(j) Certain individuals exempt

(1) In general

In the case of an individual to whom this subsection applies for any taxable year—

(A) the limitation of subsection (a) shall not apply,

(B) no taxes paid or accrued by the individual during such taxable year may be deemed paid or accrued under subsection (c) in any other taxable year, and

(C) no taxes paid or accrued by the individual during any other taxable year may be deemed paid or accrued under subsection (c) in such taxable year.

(2) Individuals to whom subsection applies

This subsection shall apply to an individual for any taxable year if—

(A) the entire amount of such individual's gross income for the taxable year from sources without the United States consists of qualified passive income,

(B) the amount of the creditable foreign taxes paid or accrued by the individual during the taxable year does not exceed $300 ($600 in the case of a joint return), and

(C) such individual elects to have this subsection apply for the taxable year.

(3) Definitions

For purposes of this subsection—

(A) Qualified passive income

The term "qualified passive income" means any item of gross income if—

(i) such item of income is passive income (as defined in subsection (d)(2)(B) without regard to clause (iii) thereof), and

(ii) such item of income is shown on a payee statement furnished to the individual.

(B) Creditable foreign taxes

The term "creditable foreign taxes" means any taxes for which a credit is allowable under section 901; except that such term shall not include any tax unless such tax is shown on a payee statement furnished to such individual.

(C) Payee statement

The term "payee statement" has the meaning given to such term by section 6724(d)(2).

(D) Estates and trusts not eligible

This subsection shall not apply to any estate or trust.

(k) Cross reference

(1) For increase of limitation under subsection (a) for taxes paid with respect to amounts received which were included in the gross income of the taxpayer for a prior taxable year as a United States shareholder with respect to a controlled foreign corporation, see section 960(b).

(2) For modification of limitation under subsection (a) for purposes of determining the amount of credit which can be taken against the alternative minimum tax, see section 59(a).

(Aug. 16, 1954, ch. 736, 68A Stat. 287; Pub. L. 85–866, title I, §42(a), Sept. 2, 1958, 72 Stat. 1639; Pub. L. 86–780, §1, Sept. 14, 1960, 74 Stat. 1010; Pub. L. 87–834, §§10(a), 12(b)(2), Oct. 16, 1962, 76 Stat. 1002, 1031; Pub. L. 88–272, title II, §234(b)(6), Feb. 26, 1964, 78 Stat. 116; Pub. L. 89–809, title I, §106(c)(1), Nov. 13, 1966, 80 Stat. 1570; Pub. L. 91–172, title V, §506(b), Dec. 30, 1969, 83 Stat. 635; Pub. L. 92–178, title V, §502(b)(2)–(4), Dec. 10, 1971, 85 Stat. 549; Pub. L. 94–455, title V, §503(b)(1), title X, §§1031(a), 1032(a), 1034(a), 1051(e), title XIX, §1901(b)(10)(B), Oct. 4, 1976, 90 Stat. 1562, 1620, 1624, 1629, 1646, 1795; Pub. L. 95–30, title I, §102(b)(11), May 23, 1977, 91 Stat. 138; Pub. L. 95–600, title IV, §§403(c)(4), 421(e)(6), title VII, §701(q)(2), (u)(2)(A)–(C), (3)(A), (4)(A), (B), (8)(C), Nov. 6, 1978, 92 Stat. 2868, 2876, 2910, 2913, 2916; Pub. L. 96–222, title I, §104(a)(3)(D), Apr. 1, 1980, 94 Stat. 215; Pub. L. 97–248, title II, §211(c)(2), Sept. 3, 1982, 96 Stat. 449; Pub. L. 98–21, title I, §122(c)(1), Apr. 20, 1983, 97 Stat. 87; Pub. L. 98–369, div. A, title I, §§121(a), 122(a), title IV, §474(r)(21), title VIII, §801(d)(2), July 18, 1984, 98 Stat. 638, 643, 843, 995; Pub. L. 99–514, title I, §104(b)(13), title VII, §701(e)(4)(H), title XII, §§1201(a), (b), (d)(1)–(3), 1203(a), 1211(b)(3), 1235(f)(4), title XVIII, §§1810(a)(1)(A), (b)(1)–(4)(A), 1876(d)(2), 1899A(24), Oct. 22, 1986, 100 Stat. 2105, 2343, 2520, 2525, 2531, 2536, 2575, 2821, 2823, 2899, 2959; Pub. L. 100–647, title I, §§1003(b)(2), 1012(a)(1)(A), (2)–(4), (6)–(11), (c), (p)(11), (29), (q)(12), (bb)(4)(A), title II, §2004(l), Nov. 10, 1988, 102 Stat. 3383, 3493–3497, 3517, 3521, 3525, 3534, 3606; Pub. L. 101–239, title VII, §§7402(a), 7811(i)(1), Dec. 19, 1989, 103 Stat. 2357, 2409; Pub. L. 101–508, title XI, §§11101(d)(5), 11801(a)(31), Nov. 5, 1990, 104 Stat. 1388–405, 1388–521; Pub. L. 103–66, title XIII, §§13227(d), 13235(a)(2), Aug. 10, 1993, 107 Stat. 494, 504; Pub. L. 104–188, title I, §§1501(b)(1), (12), 1703(i)(1), 1704(t)(36), Aug. 20, 1996, 110 Stat. 1825, 1826, 1876, 1889; Pub. L. 105–34, title III, §311(c)(3), title XI, §§1101(a), 1105(a), (b), 1111(b), 1163(b), Aug. 5, 1997, 111 Stat. 835, 963, 967, 969, 987; Pub. L. 106–170, title V, §501(b)(2), Dec. 17, 1999, 113 Stat. 1919; Pub. L. 107–16, title II, §§201(b)(2)(G), 202(f)(2)(C), title VI, §618(b)(2)(D), June 7, 2001, 115 Stat. 46, 49, 108; Pub. L. 107–147, title IV, §417(23)(B), title VI, §601(b)(1), Mar. 9, 2002, 116 Stat. 57, 59; Pub. L. 108–311, title III, §312(b)(1), Oct. 4, 2004, 118 Stat. 1181; Pub. L. 108–357, title IV, §§402(a), 403(a)–(b)(5), 404(a)–(f), 413(c)(14), (15), 417(a), title VIII, §895(a), Oct. 22, 2004, 118 Stat. 1491–1495, 1508, 1512, 1647; Pub. L. 109–135, title IV, §§402(i)(3)(G), 403(k), (o), Dec. 21, 2005, 119 Stat. 2614, 2625, 2626; Pub. L. 110–172, §11(f)(3), (g)(10), Dec. 29, 2007, 121 Stat. 2489, 2490; Pub. L. 111–5, div. B, title I, §§1004(b)(5), 1142(b)(1)(E), 1144(b)(1)(E), Feb. 17, 2009, 123 Stat. 314, 330, 332; Pub. L. 111–148, title X, §10909(b)(2)(K), (c), Mar. 23, 2010, 124 Stat. 1023; Pub. L. 111–226, title II, §§213(a), 217(c)(2), Aug. 10, 2010, 124 Stat. 2398, 2402; Pub. L. 111–312, title I, §101(b)(1), Dec. 17, 2010, 124 Stat. 3298; Pub. L. 112–240, title I, §104(c)(2)(K), Jan. 2, 2013, 126 Stat. 2322.)

REFERENCES IN TEXT

Subparagraph (E)(iii) of subsection (d)(2) of this section, referred to in subsec. (d)(2)(B)(ii), was redesignated as subparagraph (E)(ii) by Pub. L. 108–357, title IV, §403(b)(4)(B), Oct. 22, 2004, 118 Stat. 1494.

Paragraph (3) of subsection (d) of this section, referred to in subsec. (d)(2)(B)(ii), was amended generally by Pub. L. 108–357, title IV, §404(f)(4), Oct. 22, 2004, 118 Stat. 1496, and as so amended, no longer contains a subpar. (I).

The FSC Repeal and Extraterritorial Income Exclusion Act of 2000, referred to in subsec. (d)(2)(B)(v), is Pub. L. 106–519, Nov. 15, 2000, 114 Stat. 2423. For complete classification of this Act to the Code, see Short Title of 2000 Amendments note set out under section 1 of this title and Tables.

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (d)(2)(J), is the date of the enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

Section 172(h), referred to in subsec. (f)(2)(B)(i), was repealed by Pub. L. 101–508, title XI, §11811(b)(1), Nov. 5, 1990, 104 Stat. 1388–532.

The date of the enactment of the Revenue Reconciliation Act of 1990, referred to in subsec. (f)(2)(B)(i), is the date of enactment of Pub. L. 101–508, title XI, which was approved Nov. 5, 1990.

Section 1246, referred to in subsec. (h)(7), was repealed by Pub. L. 108–357, title IV, §413(a)(2), Oct. 22, 2004, 118 Stat. 1506.

AMENDMENTS

2013—Subsecs. (i) to (l). Pub. L. 112–240 redesignated subsecs. (j) to (l) as (i) to (k), respectively, and struck out former subsec. (i). Text read as follows: "In the case of any taxable year of an individual to which section 26(a)(2) does not apply, for purposes of subsection (a), the tax against which the credit is taken is such tax reduced by the sum of the credits allowable under subpart A of part IV of subchapter A of this chapter (other than sections 23, 24, 25A(i), 25B, 30 30B,, and 30D)."

2010—Subsec. (d)(6), (7). Pub. L. 111–226, §213(a), added par. (6) and redesignated former par. (6) as (7).

Subsec. (h)(9). Pub. L. 111–226, §217(c)(2), amended par. (9) generally. Prior to amendment, text read as follows: "For purposes of this subsection—

"(A) in the case of interest treated as not from sources within the United States under section 861(a)(1)(A), the corporation paying such interest shall be treated as a United States-owned foreign corporation, and

"(B) in the case of any dividend treated as not from sources within the United States under section 861(a)(2)(A), the corporation paying such dividend shall be treated as a United States-owned foreign corporation."

Subsec. (i). Pub. L. 111–148, §10909(b)(2)(K), (c), as amended by Pub. L. 111–312, temporarily struck out "23," after "than sections". See Effective and Termination Dates of 2010 Amendment note below.

2009—Subsec. (i). Pub. L. 111–5, §1144(b)(1)(E), inserted "30B," after "30".

Pub. L. 111–5, §1142(b)(1)(E), substituted "25B, 30, and 30D" for "and 25B".

Pub. L. 111–5, §1004(b)(5), inserted "25A(i)," after "24,".

2007—Subsec. (d)(2)(B)(v). Pub. L. 110–172, §11(g)(10), inserted "and" at end of subcl. (I), redesignated subcl. (III) as (II), substituted "a former FSC (as defined in section 922)" for "a FSC (or a former FSC)" in subcl. (II), struck out former subcl. (II), which read as follows: "taxable income attributable to foreign trade income (within the meaning of section 923(b)), and", and added concluding provisions.

Subsec. (f)(3)(D)(iv). Pub. L. 110–172, §11(f)(3), substituted "an affiliated group" for "a controlled group".

2005—Subsec. (d)(2)(D). Pub. L. 109–135, §403(o), inserted "as in effect before its repeal" after "section 954(f)".

Subsec. (g)(2). Pub. L. 109–135, §403(k), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: "For purposes of this subsection—

"(A) IN GENERAL.—The term 'overall domestic loss' means any domestic loss to the extent such loss offsets taxable income from sources without the United States for the taxable year or for any preceding taxable year by reason of a carryback. For purposes of the preceding sentence, the term 'domestic loss' means the amount by which the gross income for the taxable year from sources within the United States is exceeded by the sum of the deductions properly apportioned or allocated thereto (determined without regard to any carryback from a subsequent taxable year).

"(B) TAXPAYER MUST HAVE ELECTED FOREIGN TAX CREDIT FOR YEAR OF LOSS.—The term 'overall domestic loss' shall not include any loss for any taxable year unless the taxpayer chose the benefits of this subpart for such taxable year."

Subsec. (i). Pub. L. 109–135, §402(i)(3)(G), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "In the case of an individual, for purposes of subsection (a), the tax against which the credit is taken is such tax reduced by the sum of the credits allowable under subpart A of part IV of subchapter A of this chapter (other than sections 23, 24, and 25B). This subsection shall not apply to taxable years beginning during 2000, 2001, 2002, 2003, 2004, or 2005."

2004—Subsec. (c). Pub. L. 108–357, §417(a), struck out "in the second preceding taxable year," before "in the first preceding taxable year" and substituted "and in any of the first 10" for ", and in the first, second, third, fourth, or fifth".

Subsec. (d)(1). Pub. L. 108–357, §404(a), reenacted heading without change and amended text of par. (1) generally, substituting provisions relating to applicability of subsecs. (a), (b), and (c) and sections 902, 907, and 960 to passive category income and general category income, for provisions relating to applicability of subsecs. (a), (b), and (c) and sections 902, 907, and 960 to passive income, high withholding tax interest, financial services income, shipping income, certain dividends from a DISC or former DISC, taxable income attributable to foreign trade income, certain distributions from a FSC or a former FSC, and income other than income previously described.

Subsec. (d)(1)(E). Pub. L. 108–357, §403(b)(1), struck out subpar. (E) which read as follows: "in the case of a corporation, dividends from noncontrolled section 902 corporations out of earnings and profits accumulated in taxable years beginning before January 1, 2003,".

Subsec. (d)(2)(A). Pub. L. 108–357, §404(b), added subpar. (A). Former subpar. (A) redesignated (B).

Subsec. (d)(2)(A)(ii). Pub. L. 108–357, §413(c)(14), reenacted heading without change and amended text of

cl. (ii) generally. Prior to amendment, text read as follows: "Except as provided in clause (iii), the term 'passive income' includes any amount includible in gross income under section 551 or, except as provided in subparagraph (E)(iii) or paragraph (3)(I), section 1293 (relating to certain passive foreign investment companies)."

Subsec. (d)(2)(B). Pub. L. 108–357, §404(b), redesignated subpar. (A) as (B) and struck out former subpar. (B), which defined the term "high withholding tax interest".

Subsec. (d)(2)(B)(iii). Pub. L. 108–357, §404(f)(1), redesignated subcls. (II) and (III) as (I) and (II), respectively, and struck out former subcl. (I) which read as follows: "any income described in a subparagraph of paragraph (1) other than subparagraph (A),".

Subsec. (d)(2)(B)(v). Pub. L. 108–357, §404(c), added cl. (v).

Subsec. (d)(2)(C). Pub. L. 108–357, §404(d), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (d)(2)(C)(iii). Pub. L. 108–357, §403(b)(2), inserted "and" at end of subcl. (I), redesignated subcl. (III) as (II), and struck out former subcl. (II) which read as follows: "any dividend from a noncontrolled section 902 corporation out of earnings and profits accumulated in taxable years beginning before January 1, 2003, and".

Subsec. (d)(2)(D). Pub. L. 108–357, §404(d), redesignated subpar. (C) as (D) and struck out heading and text of former subpar. (D). Text read as follows: "The term 'shipping income' means any income received or accrued by any person which is of a kind which would be foreign base company shipping income (as defined in section 954(f) as in effect before its repeal). Such term does not include any financial services income."

Pub. L. 108–357, §403(b)(3), substituted "Such term does not include any financial services income" for "Such term does not include any dividend from a noncontrolled section 902 corporation out of earnings and profits accumulated in taxable years beginning before January 1, 2003 and does not include any financial services income".

Subsec. (d)(2)(D)(i). Pub. L. 108–357, §404(f)(2), inserted "or" at end of subcl. (I), added subcl. (II), and struck out former subcls. (II) and (III) which read as follows:

"(II) passive income (determined without regard to subclauses (I) and (III) of subparagraph (A)(iii)), or

"(III) export financing interest which (but for subparagraph (B)(ii)) would be high withholding tax interest."

Subsec. (d)(2)(D)(iii). Pub. L. 108–357, §404(f)(3), which directed striking out of cl. (iii) "as so redesignated and amended by section 404(b)(3)", was executed by striking out heading and text of cl. (iii) as amended by section 403(b)(2) and redesignated by section 404(d), to reflect the probable intent of Congress. Text read as follows: "The term 'financial services income' does not include—

"(I) any high withholding tax interest, and

"(II) any export financing interest not described in clause (i)(III)."

Subsec. (d)(2)(E)(i). Pub. L. 108–357, §403(b)(4)(A), inserted "or (4)" after "paragraph (3)".

Subsec. (d)(2)(E)(ii), (iii). Pub. L. 108–357, §403(b)(4)(B), redesignated cl. (iii) as (ii) and struck out heading and text of former cl. (ii). Text read as follows: "If a foreign corporation is a noncontrolled section 902 corporation with respect to the taxpayer, taxes on high withholding tax interest (to the extent imposed at a rate in excess of 5 percent) shall not be treated as foreign taxes for purposes of determining the amount of foreign taxes deemed paid by the taxpayer under section 902."

Subsec. (d)(2)(E)(iv). Pub. L. 108–357, §403(b)(4)(B), struck out heading and text of cl. (iv). Text read as follows: "All noncontrolled section 902 corporations which are not passive foreign investment companies (as defined in section 1297) shall be treated as one noncontrolled section 902 corporation for purposes of paragraph (1)."

Subsec. (d)(2)(H) to (J). Pub. L. 108–357, §404(e), added subpar. (H) and redesignated former subpars. (H) and (I) as (I) and (J), respectively.

Subsec. (d)(2)(K). Pub. L. 108–357, §404(f)(5), added subpar. (K).

Subsec. (d)(3). Pub. L. 108–357, §404(f)(4), reenacted heading without change and amended text of par. (3) generally, substituting provisions consisting of subpars. (A) to (H) for former subpars. (A) to (I) which contained similar provisions.

Subsec. (d)(3)(F)(i). Pub. L. 108–357, §403(b)(5), substituted "or (D)" for "(D), or (E)".

Subsec. (d)(4). Pub. L. 108–357, §403(a), reenacted heading without change and amended text of par. (4) generally, substituting provisions relating to dividends from noncontrolled section 902 corporations, earnings and profits of controlled foreign corporations, and setting forth special rules, for provisions relating to treatment of applicable dividends, defining the term "applicable dividend", and setting forth special rules.

Subsec. (f)(3)(D). Pub. L. 108–357, §895(a), added subpar. (D).

Subsec. (g). Pub. L. 108–357, §402(a), added subsec. (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 108–357, §402(a), redesignated subsec. (g) as (h). Former subsec. (h) redesignated (i).

Pub. L. 108–311 substituted "2003, 2004, or 2005" for "or 2003".

Subsec. (h)(1)(A). Pub. L. 108–357, §413(c)(15)(A), inserted "or" at end of cl. (i), redesignated cl. (iii) as (ii), and struck out former cl. (ii) which read as follows: "section 551 (relating to foreign personal holding company income taxed to United States shareholders), or".

Subsec. (h)(2). Pub. L. 108–357, §413(c)(15)(B), struck out "foreign personal holding or" before "passive foreign investment" in heading.

Subsecs. (i), (j). Pub. L. 108–357, §402(a), redesignated subsecs. (h) and (i) as (i) and (j), respectively. Former subsec. (j) redesignated (k).

Subsec. (k). Pub. L. 108–357, §402(a), redesignated subsec. (j) as (k). Former subsec. (k) redesignated (l).

Subsec. (k)(3)(A)(i). Pub. L. 108–357, §404(f)(6), which directed amendment of subsec. (j)(3)(A)(i) by substituting "subsection (d)(2)(B)" for "subsection (d)(2)(A)", was executed to subsec. (k)(3)(A)(i) to reflect the probable intent of Congress and the amendment by Pub. L. 108–357, §402(a). See above.

Subsec. (l). Pub. L. 108–357, §402(a), redesignated subsec. (k) as (l).

2002—Subsec. (h). Pub. L. 107–147, §601(b)(1), substituted "during 2000, 2001, 2002, or 2003" for "during 2000 or 2001".

Pub. L. 107–147, §417(23)(B), amended directory language of Pub. L. 107–16, §618(b)(2)(D). See 2001 Amendment note below.

2001—Subsec. (h). Pub. L. 107–16, §618(b)(2)(D), as amended by Pub. L. 107–147, §417(23)(B), substituted ", 24, and 25B" for "and 24".

Pub. L. 107–16, §202(f)(2)(C), substituted "sections 23 and 24" for "section 24".

Pub. L. 107–16, §201(b)(2)(G), inserted "(other than section 24)" after "chapter".

1999—Subsec. (h). Pub. L. 106–170 inserted at end "This subsection shall not apply to taxable years beginning during 2000 or 2001."

1997—Subsec. (b)(2)(C). Pub. L. 105–34, §311(c)(3), added subpar. (C).

Subsec. (d)(1)(E). Pub. L. 105–34, §1105(a)(1), amended subpar. (E) generally. Prior to amendment, subpar. (E) read as follows: "in the case of a corporation, dividends from each noncontrolled section 902 corporation,".

Subsec. (d)(2)(C)(i)(II). Pub. L. 105–34, §1163(b), substituted "subclauses (I) and (III)" for "subclause (I)".

Subsec. (d)(2)(C)(iii)(II), (D). Pub. L. 105–34, §1105(a)(3), inserted "out of earnings and profits accumulated in taxable years beginning before January 1, 2003" after "corporation".

Subsec. (d)(2)(E)(i). Pub. L. 105–34, §1111(b), struck out "and except as provided in regulations, the taxpayer was a United States shareholder in such corporation" after "was a controlled foreign corporation".

Subsec. (d)(2)(E)(iv). Pub. L. 105–34, §1105(a)(2), added cl. (iv).

Subsec. (d)(4) to (6). Pub. L. 105–34, §1105(b), added par. (4) and redesignated former pars. (4) and (5) as (5) and (6), respectively.

Subsecs. (j), (k). Pub. L. 105–34, §1101(a), added subsec. (j) and redesignated former subsec. (j) as (k).

1996—Subsec. (d)(3)(G). Pub. L. 104–188, §1501(b)(1), (12), amended subpar. (G) identically, substituting "section 951(a)(1)(B)" for "subparagraph (B) or (C) of section 951(a)(1)".

Pub. L. 104–188, §1703(i)(1), substituted "subparagraph (B) or (C) of section 951(a)(1)" for "section 951(a)(1)(B)".

Subsec. (f)(2)(B)(i). Pub. L. 104–188, §1704(t)(36), inserted "(as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)" after "section 172(h)".

1993—Subsec. (b)(4). Pub. L. 103–66, §13227(d), inserted before period at end "(without regard to subsections (a)(4) and (i) thereof)".

Subsec. (d)(2)(A)(iii)(II) to (IV). Pub. L. 103–66, §13235(a)(2), inserted "and" at end of subcl. II, substituted "income." for "income, and" in subcl. III, and struck out subcl. (IV) which read as follows: "any foreign oil and gas extraction income (as defined in section 907(c))."

1990—Subsec. (b)(3)(D)(i). Pub. L. 101–508, §11101(d)(5)(A), substituted "subsection (h)" for "subsection (j)".

Subsec. (b)(3)(E)(iii)(I). Pub. L. 101–508, §11101(d)(5)(B), substituted "section 1(h)" for "section 1(j)".

Subsec. (e). Pub. L. 101–508, §11801(a)(31), struck out subsec. (e) which related to transitional rules for carrybacks and carryovers for taxpayers on the per-country limitation.

1989—Subsec. (d)(1)(H). Pub. L. 101–239, §7811(i)(1), substituted "interest or carrying charges (as defined in section 927(d)(1)) derived from a transaction which results in foreign trade income (as defined in section 923(b))" for "qualified interest and carrying charges (as defined in section 245(c))".

Subsecs. (i), (j). Pub. L. 101–239, §7402(a), added subsec. (i) and redesignated former subsec. (i) as (j).

1988—Subsec. (b)(2). Pub. L. 100–647, §1003(b)(2)(A), amended par. (2) generally, substituting general provisions and provisions setting special rules where there is a capital gain rate differential for provisions for corporations and for other taxpayers.

Subsec. (b)(3)(D). Pub. L. 100–647, §1003(b)(2)(B), added subpar. (D) and struck out former subpar. (D), Rate differential portion, which read as follows: "The 'rate differential portion' of foreign source net capital gain, net capital gain, or the excess of net capital gain from sources within the United States over net capital gain, as the case may be, is the same proportion of such amount as the excess of the highest rate of tax specified in section 11(b) over the alternative rate of tax under section 1201(a) bears to the highest rate of tax specified in section 11(b)."

Subsec. (b)(3)(D)(ii). Pub. L. 100–647, §2004(l), substituted "section 11(b)(1)" for "section 11(b)".

Subsec. (b)(3)(E). Pub. L. 100–647, §1003(b)(2)(B), added subpar. (E).

Subsec. (d)(1)(E). Pub. L. 100–647, §1012(a)(11), inserted "in the case of a corporation," before "dividends".

Subsec. (d)(2)(A)(ii). Pub. L. 100–647, §1012(a)(6)(A), (p)(29)(A), substituted "Except as provided in clause (iii), the term" for "The term" and "or, except as provided in subparagraph (E)(iii) or paragraph (3)(I), section 1293" for "or section 1293".

Subsec. (d)(2)(A)(iv). Pub. L. 100–647, §1012(a)(6)(B), added cl. (iv).

Subsec. (d)(2)(B)(iii). Pub. L. 100–647, §1012(a)(8), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: "The Secretary may by regulations provide that amounts (not otherwise high withholding tax interest) shall be treated as high withholding tax interest where necessary to prevent avoidance of the purposes of this subparagraph."

Subsec. (d)(2)(C). Pub. L. 100–647, §1012(a)(1)(A), amended subpar. (C) generally, revising and restating as cls. (i) to (iii) provisions of former cls. (i) to (iv).

Subsec. (d)(2)(D). Pub. L. 100–647, §1012(a)(2), provided for exclusion from term "shipping income" any dividend from a noncontrolled section 902 corporation and any financial services income.

Subsec. (d)(2)(E)(i). Pub. L. 100–647, §1012(a)(10), inserted "and except as provided in regulations, the taxpayer was a United States shareholder in such corporation" before period at end.

Subsec. (d)(2)(E)(iii). Pub. L. 100–647, §1012(p)(29)(B), added cl. (iii).

Subsec. (d)(2)(I)(ii). Pub. L. 100–647, §1012(a)(9), substituted "except that—" for "except to the extent that—", added subcls. (I) to (III), and struck out former subcls. (I) and (II) which read as follows:

"(I) the taxpayer establishes to the satisfaction of the Secretary that such taxes were paid or accrued with respect to shipping income, or

"(II) in the case of an entity meeting the requirements of subparagraph (C)(ii), the taxpayer establishes to the satisfaction of the Secretary that such taxes were paid or accrued with respect to financial services income, and".

Subsec. (d)(3)(E). Pub. L. 100–647, §1012(a)(4), inserted first sentence, struck out former first sentence which read "If a controlled foreign corporation meets the requirements of section 954(b)(3)(A) (relating to de minimis rule) for any taxable year, for purposes of this paragraph, none of its income for such taxable year shall be treated as income in a separate category.", and in second sentence substituted "passive income" for "income (other than high withholding tax interest and dividends from a noncontrolled section 902 corporation)".

Subsec. (d)(3)(F). Pub. L. 100–647, §1012(a)(7), amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: "For purposes of this paragraph, the term 'separate category' means any category of income described in subparagraph (A), (B), (C), (D), or (E) of paragraph (1)."

Subsec. (d)(3)(H). Pub. L. 100–647, §1012(a)(3), added subpar. (H).

Subsec. (d)(3)(I). Pub. L. 100–647, §1012(p)(11), added subpar. (I).

Subsec. (f)(5)(F). Pub. L. 100–647, §1012(c), added subpar. (F).

Subsec. (g)(9)(A). Pub. L. 100–647, §1012(q)(12), substituted "861(a)(1)(A)" for "861(a)(1)(B)".

Subsec. (g)(10), (11). Pub. L. 100–647, §1012(bb)(4)(A), added par. (10) and redesignated former par. (10) as (11).

1986—Subsec. (a). Pub. L. 99–514, §104(b)(13), struck out last sentence "For purposes of the preceding sentence, in the case of an individual the entire taxable income shall be reduced by an amount equal to the zero bracket amount."

Subsec. (b)(3)(C). Pub. L. 99–514, §1211(b)(3), redesignated subpar. (E) as (C) and struck out former subpar. (C), exception for gain from the sale of certain personal property, which read as follows: "There shall be included as gain from sources within the United States any gain from sources without the United States from the sale or exchange of a capital asset which is personal property which—

"(i) in the case of an individual, is sold or exchanged outside of the country (or possession) of the individual's residence,

"(ii) in the case of a corporation, is stock in a second corporation sold or exchanged other than in a country (or possession) in which such second corporation derived more than 50 percent of its gross income

for the 3-year period ending with the close of such second corporation's taxable year immediately preceding the year during which the sale or exchange occurred, or

"(iii) in the case of any taxpayer, is personal property (other than stock in a corporation) sold or exchanged other than in a country (or possession) in which such property is used in a trade or business of the taxpayer or in which such taxpayer derived more than 50 percent of its gross income for the 3-year period ending with the close of its taxable year immediately preceding the year during which the sale or exchange occurred,

unless such gain is subject to an income, war profits, or excess profits tax of a foreign country or possession of the United States, and the rate of tax applicable to such gain is 10 percent or more of the gain from the sale or exchange (computed under this chapter)."

Subsec. (b)(3)(D). Pub. L. 99–514, §1211(b)(3), redesignated subpar. (F) as (D) and struck out former subpar. (D), gain from liquidation of certain foreign corporations, which read as follows: "Subparagraph (C) shall not apply with respect to a distribution in liquidation of a foreign corporation to which part II of subchapter C applies if such corporation derived less than 50 percent of its gross income from sources within the United States for the 3-year period ending with the close of such corporation's taxable year immediately preceding the year during which the distribution occurred."

Subsec. (b)(3)(E), (F). Pub. L. 99–514, §1211(b)(3), redesignated former subpars. (E) and (F) as (C) and (D), respectively.

Subsec. (d). Pub. L. 99–514, §1201(d)(1), substituted "certain categories of income" for "certain interest income and income from DISC, former DISC, FSC, or former FSC" in heading.

Subsec. (d)(1). Pub. L. 99–514, §1201(a), (d)(2), (3), inserted "and sections 902, 907, and 960" in introductory provisions, added subpars. (A) to (E), struck out former subpar. (A) which read "the interest income described in paragraph (2)", redesignated former subpars. (B), (C), (D), and (E) as (F), (G), (H), and (I), respectively, and in subpar. (I), substituted "in any of the preceding subparagraphs" for "in subparagraph (A), (B), (C), or (D)".

Pub. L. 99–514, §1899A(24), made technical correction clarifying heading. See 1984 Amendment note below.

Subsec. (d)(1)(D). Pub. L. 99–514, §1876(d)(2), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: "distributions from a FSC (or former FSC) out of earnings and profits attributable to foreign trade income (within the meaning of section 923(b)), and".

Subsec. (d)(2). Pub. L. 99–514, §1201(b), added par. (2) and struck out former par. (2), interest income to which applicable, which read as follows: "For purposes of this subsection, the interest income described in this paragraph is interest other than interest—

"(A) derived from any transaction which is directly related to the active conduct by the taxpayer of a trade or business in a foreign country or a possession of the United States,

"(B) derived in the conduct by the taxpayer of a banking, financing, or similar business,

"(C) received from a corporation in which the taxpayer (or one or more includible corporations in an affiliated group, as defined in section 1504, of which the taxpayer is a member) owns, directly or indirectly, at least 10 percent of the voting stock, or

"(D) received on obligations acquired as a result of the disposition of a trade or business actively conducted by the taxpayer in a foreign country or possession of the United States or as a result of the disposition of stock or obligations of a corporation in which the taxpayer owned at least 10 percent of the voting stock.

For purposes of subparagraph (C), stock owned, directly or indirectly, by or for a foreign corporation, shall be considered as being proportionately owned by its shareholders. For purposes of this subsection, interest (after the operation of section 904(d)(3)) received from a designated payor corporation described in section 904(d)(3)(E)(iii) by a taxpayer which owns directly or indirectly less than 10 percent of the voting stock of such designated payor corporation shall be treated as interest described in subparagraph (A) to the extent such interest would have been so treated had such taxpayer received it from other than a designated payor corporation."

Pub. L. 99–514, §1810(b)(3), inserted at end "For purposes of this subsection, interest (after the operation of section 904(d)(3)) received from a designated payor corporation described in section 904(d)(3)(E)(iii) by a taxpayer which owns directly or indirectly less than 10 percent of the voting stock of such designated payor corporation shall be treated as interest described in subparagraph (A) to the extent such interest would have been so treated had such taxpayer received it from other than a designated payor corporation."

Subsec. (d)(3). Pub. L. 99–514, §1201(b), added par. (3) and struck out former par. (3) treating as interest certain amounts attributable to United States-owned foreign corporations, etc., subpars. thereof relating to following subject matter: (A) general provisions, (B) separate limitation interest, (C) exception where

designated corporation has small amount of separate limitation interest, (D) treatment of certain interest, (E) designated payor corporation, (F) determination of year to which amount is attributable, (G) ordering rules, (H) dividend, (I) interest and dividends from members of same affiliated group, and (J) distributions through other entities.

Subsec. (d)(3)(C). Pub. L. 99–514, §1810(b)(1), inserted at end "The preceding sentence shall not apply to any amount includible in gross income under section 551 or 951."

Subsec. (d)(3)(E). Pub. L. 99–514, §1810(b)(4)(A), inserted at end:

"(iv) any other corporation formed or availed of for purposes of avoiding the provisions of this paragraph.

For purposes of this paragraph, the rules of paragraph (9) of subsection (g) shall apply."

Subsec. (d)(3)(I). Pub. L. 99–514, §1810(b)(2), redesignated subpar. (I) as (J) and added a new subpar. (I), interest and dividends from members of same affiliated group, which read as follows: "For purposes of this paragraph, dividends and interest received or accrued by the designated payor corporation from another member of the same affiliated group (determined under section 1504 without regard to subsection (b)(3) thereof) shall be treated as separate limitation interest if (and only if) such amounts are attributable (directly or indirectly) to separate limitation interest of any other member of such group."

Subsec. (d)(3)(J). Pub. L. 99–514, §1810(b)(2), redesignated subpar. (I) as (J) and struck out former subpar. (J), interest from members of same affiliated group, which read as follows: "For purposes of this paragraph, interest received or accrued by the designated payor corporation from another member of the same affiliated group (determined under section 1504 without regard to subsection (b)(3) thereof) shall not be treated as separate limitation interest, unless such interest is attributable directly or indirectly to separate limitation interest of such other member."

Subsec. (d)(4), (5). Pub. L. 99–514, §1201(b), added pars. (4) and (5).

Subsec. (f)(5). Pub. L. 99–514, §1203(a), added par. (5).

Subsec. (g)(1)(A)(iii). Pub. L. 99–514, §1235(f)(4)(A), added cl. (iii).

Subsec. (g)(2). Pub. L. 99–514, §1235(f)(4)(B), substituted "holding or passive foreign investment company" for "holding company" in heading.

Subsec. (g)(9), (10). Pub. L. 99–514, §1810(a)(1)(A), added par. (9) and redesignated former par. (9) as (10).

Subsec. (i)(2). Pub. L. 99–514, §701(e)(4)(H), struck out "by an individual" after "can be taken" and substituted "section 59(a)" for "section 55(c)".

1984—Subsec. (d). Pub. L. 98–369, §801(d)(2)(C), which directed amendment of par. (1) heading by substituting "Separate application of section with respect to certain interest income and income from DISC, former DISC, FSC, or former FSC" for "Application of section in case of certain interest income and dividends from a DISC or former DISC" was executed to subsec. (d) heading to reflect the probable intent of Congress.

Subsec. (d)(1)(B) to (E). Pub. L. 98–369, §801(d)(2)(A), (B), struck out "and" after "United States," at end of subpar. (B), substituted "taxable income attributable to foreign trade income (within the meaning of section 923(b))," for "income other than the interest income described in paragraph (2) and dividends described in subparagraph (B)," in subpar. (C), and added subpars. (D) and (E).

Subsec. (d)(3). Pub. L. 98–369, §122(a), added par. (3).

Subsec. (g). Pub. L. 98–369, §121(a), added subsec. (g). Former subsec. (g) redesignated (h).

Pub. L. 98–369, §474(r)(21), amended subsec. (g) generally, substituting "Coordination with nonrefundable personal credits" for "Coordination with credit for the elderly" in heading and in text substituting "reduced by the sum of the credits allowable under subpart A of part IV of subchapter A of this chapter" for "reduced by the amount of the credit (if any) for the taxable year allowable under section 37 (relating to credit for the elderly and the permanently and totally disabled)".

Subsecs. (h), (i). Pub. L. 98–369, §121(a), redesignated former subsecs. (g) and (h) as (h) and (i), respectively.

1983—Subsec. (g). Pub. L. 98–21 substituted "relating to credit for the elderly and the permanently and totally disabled" for "relating to credit for the elderly".

1982—Subsec. (f)(4) to (6). Pub. L. 97–248 struck out par. (4) which provided for the determination of foreign oil related loss where section 907 was applicable, redesignated par. (5) as (4), and purported to redesignate par. (6) as (5). However, subsec. (f) did not contain a par. (6).

1980—Subsec. (b)(3)(F). Pub. L. 96–222, §104(a)(3)(D)(i), redesignated subpar. (E) "Rate differential portion", added by Pub. L. 95–600, as (F).

1978—Subsec. (b)(2). Pub. L. 95–600, §§403(c)(4)(A), 701(u)(2)(A), (3)(A), in subpar. (A) substituted "this section" for "subsection (a)", "the rate differential portion" for "three eighths" wherever appearing, and

"for purposes of determining taxable income from sources without the United States, any net capital loss (and any amount which is a short term capital loss under section 1212(a))" for "any net capital loss".

Subsec. (b)(3). Pub. L. 95–600, §§403(c)(4)(B), 701(u)(2)(B), (C), as amended by Pub. L. 96–222, §104(a)(3)(D)(ii), substituted "There" for "For purposes of this paragraph, there", added subpar. (D), redesignated former subpar. (D), relating to section 1231 gains, as subpar. (E), and added another subpar. (E), relating to rate differential portion. See 1980 Amendment note above.

Subsec. (f)(2)(A). Pub. L. 95–600, §701(u)(4)(A), struck out provision relating to capital loss carrybacks and carryovers.

Subsec. (f)(4). Pub. L. 95–600, §701(u)(4)(B), (8)(C), substituted in introductory provisions "In making the separate computation under this subsection with respect to foreign oil related income which is required by section 907(b)" for "In the case of a corporation to which section 907(b)(1) applies" and in subpar. (A) struck out provision relating to capital loss carrybacks and carryovers.

Subsec. (f)(5). Pub. L. 95–600, §701(q)(2), added par. (5).

Subsec. (h). Pub. L. 95–600, §421(e)(6), designated existing provisions as par. (1) and added par. (2).

1977—Subsec. (a). Pub. L. 95–30 provided that, for purposes of determining the maximum total amount of the credit taken under section 901(a), in the case of an individual, the entire taxable income shall be reduced by an amount equal to the zero bracket amount.

1976—Subsec. (a). Pub. L. 94–455, §1031(a), struck out provisions allowing the per-country limitation, made the overall limitation applicable to all taxpayers to determine their foreign tax credit limitation, and inserted reference to section 901(a).

Subsec. (b). Pub. L. 94–455, §§1031(a), 1034(a), 1051(e), redesignated subsec. (c) as (b)(1), inserted provisions that the net United States capital losses would offset net foreign capital gains and, in the case of corporations, that only 30/48 of the net foreign source gain would be included in the foreign tax credit limitation, and that the gain from the sale or exchange of personal property outside the United States would be considered United States source income unless one of three exceptions applied, and added par. (4).

Subsec. (c). Pub. L. 94–455, §1031(a), redesignated subsec. (d) as (c), and amended the redesignated subsec. (c) generally to conform to the elimination of the per-country limitation in subsec. (a). Former subsec. (c) redesignated (b)(1).

Subsec. (d). Pub. L. 94–455, §1031(a), redesignated subsec. (f)(1), (2), as (d). Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 94–455, §1031(a), added subsec. (e). Former subsec. (e) was eliminated in view of the amendment of subsec. (a).

Subsec. (f). Pub. L. 94–455, §§1031(a), 1032(a), 1901(b)(10)(B), added subsec. (f), and substituted "section 172(h)" for "section 172(k)(1)" in pars. (2)(B)(i) and (4)(B)(i). Former subsec. (f)(1), (2), was redesignated (d). Former subsecs. (f)(3), (4), (5) were omitted.

Subsec. (g). Pub. L. 94–455, §§1032(a), 503(b)(1), added subsec. (g). Former subsec. (f) redesignated (g), and further redesignated (h).

Subsec. (h). Pub. L. 94–455, §503(b)(1), redesignated former subsec. (g) as (h).

1971—Subsec. (f). Pub. L. 92–178, §502(b)(2), inserted "and dividends from a DISC or former DISC" after "interest income" in the heading.

Subsec. (f)(1). Pub. L. 92–178, §502(b)(2), inserted "each of the following items of income" in introductory text, added subpar. (B), and redesignated former subpar. (B) as (C), inserting therein provisions respecting dividends described in subparagraph (B).

Subsec. (f)(3). Pub. L. 92–178, §502(b)(3), provided that the limitation provided by subsec. (a)(2) shall not apply to dividends described in paragraph (1)(B) and substituted "limitation provided by subsection (a)(2) applies with respect to income described in paragraph (1)(B) and (C)" for "limitation provided by subsection (a)(2) applies with respect to income other than the interest income described in paragraph (2)".

Subsec. (f)(5). Pub. L. 92–178, §502(b)(4), added par. (5).

1969—Subsec. (b)(1). Pub. L. 91–172, §506(b)(1), substituted "(A) with the consent of the Secretary or his delegate with respect to any taxable year or (B) for the taxpayer's first taxable year beginning after December 31, 1969" for "with the consent of the Secretary or his delegate with respect to any taxable year".

Subsec. (b)(2). Pub. L. 91–172, §506(b)(2), substituted "Except in a case to which paragraph (1)(B) applies, if the taxpayer" for "If a taxpayer".

1966—Subsec. (f)(2). Pub. L. 89–809 inserted reference to includible corporations in an affiliated group, as defined in section 1504, of which the taxpayer is a member and inserted reference to both direct and indirect ownership in subpar. (C) and inserted provision that, for purposes of subpar. (C), stock owned directly or indirectly by or for a foreign corporation shall be considered as being proportionately owned by its shareholders.

1964—Subsec. (g)(2). Pub. L. 88–272 substituted "section 1503(b)" for "section 1503(d)".

1962—Subsec. (f). Pub. L. 87–834, §10(a), added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 87–834, §§10(a), 12(b)(2), redesignated former subsec. (f) as (g), designated existing provisions as par. (2), and added par. (1).

1960—Subsec. (a). Pub. L. 86–780, §1(a), designated existing provisions as par. (1), inserted introductory clause "In the case of any taxpayer who elects the limitation provided by this paragraph" and inserted "foreign", "or possession of the United States" and "or possession" therein and added par. (2).

Subsec. (b). Pub. L. 86–780, §1(a), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 86–780, §1(b), redesignated former subsec. (b) as (c) and inserted "applicable" before "limitation" therein. Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 86–780, §1(c), redesignated former subsec. (c) as (d) and inserted "applicable" before "limitation" in two places.

Subsecs. (e), (f). Pub. L. 86–780, §1(d), added subsecs. (e) and (f).

1958—Subsec. (c). Pub. L. 85–866 added subsec. (c).

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112–240 applicable to taxable years beginning after Dec. 31, 2011, see section 104(d) of Pub. L. 112–240, set out as a note under section 23 of this title.

EFFECTIVE AND TERMINATION DATES OF 2010 AMENDMENT

Pub. L. 111–226, title II, §213(b), Aug. 10, 2010, 124 Stat. 2399, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 10, 2010]."

Amendment by section 217(c)(2) of Pub. L. 111–226 applicable to taxable years beginning after Dec. 31, 2010, with certain exceptions, see section 217(d) of Pub. L. 111–226, set out as an Effective Date of 2010 Amendment note under section 861 of this title.

Amendment by Pub. L. 111–148 terminated applicable to taxable years beginning after Dec. 31, 2011, and section is amended to read as if such amendment had never been enacted, see section 10909(c) of Pub. L. 111–148, set out as a note under section 1 of this title.

Amendment by Pub. L. 111–148 applicable to taxable years beginning after Dec. 31, 2009, see section 10909(d) of Pub. L. 111–148, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by section 1004(b)(5) of Pub. L. 111–5 applicable to taxable years beginning after Dec. 31, 2008, see section 1004(d) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

Amendment by section 1142(b)(1)(E) of Pub. L. 111–5 applicable to vehicles acquired after Feb. 17, 2009, see section 1142(c) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

Amendment by section 1144(b)(1)(E) of Pub. L. 111–5 applicable to taxable years beginning after Dec. 31, 2008, see section 1144(c) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–172, §11(f)(4), Dec. 29, 2007, 121 Stat. 2489, provided that: "The amendments made by this subsection [amending this section and sections 1298 and 9502 of this title] shall take effect as if included in the provisions of the American Jobs Creation Act of 2004 [Pub. L. 108–357] to which they relate."

EFFECTIVE AND TERMINATION DATES OF 2005 AMENDMENT

Amendment by section 402(i)(3)(G) of Pub. L. 109–135 subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, §901, in the same manner as the provisions of such Act to which such amendment relates, see section 402(i)(3)(H) of Pub. L. 109–135, set out as a note under section 23 of this title. Title IX of Pub. L. 107–16 was repealed by Pub. L. 112–240, title I, §101(a)(1), Jan. 2, 2013, 126 Stat. 2315.

Amendment by section 402(i)(3)(G) of Pub. L. 109–135 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109–58, to which it relates and applicable to taxable years beginning after Dec. 31, 2005, see section 402(m) of Pub. L. 109–135, set out as a note under section 23 of this title.

Amendments by section 403(k), (o) of Pub. L. 109–135 effective as if included in the provisions of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which they relate, see section 403(nn) of Pub. L.

109–135, set out as an Effective Date of 2005 Amendment note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 402(a) of Pub. L. 108–357 applicable to losses for taxable years beginning after Dec. 31, 2006, see section 402(c) of Pub. L. 108–357, set out as a note under section 535 of this title.

Amendment by section 403(a), (b)(1)–(5) of Pub. L. 108–357 applicable to taxable years beginning after Dec. 31, 2002, see section 403(c) of Pub. L. 108–357, set out as a note under section 864 of this title.

Amendment by section 403(a), (b)(1)–(5) of Pub. L. 108–357 not applicable to taxable years beginning after Dec. 31, 2002, and before Jan. 1, 2005, with a specific provision for application of subsec. (d)(4)(C)(iv) of this section, if taxpayer so elects, see section 403(d) of Pub. L. 108–357, set out as a note under section 864 of this title.

Pub. L. 108–357, title IV, §404(g), Oct. 22, 2004, 118 Stat. 1497, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2006.

"(2) TRANSITIONAL RULE RELATING TO INCOME TAX BASE DIFFERENCE.—Section 904(d)(2)(H)(ii) of the Internal Revenue Code of 1986, as added by subsection (e), shall apply to taxable years beginning after December 31, 2004."

Amendment by section 413(c)(14), (15) of Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

Pub. L. 108–357, title IV, §417(c), Oct. 22, 2004, 118 Stat. 1512, provided that:

"(1) CARRYBACK.—The amendments made by subsections (a)(1) and (b)(1) [amending this section and section 907 of this title] shall apply to excess foreign taxes arising in taxable years beginning after the date of the enactment of this Act [Oct. 22, 2004].

"(2) CARRYOVER.—The amendments made by subsections (a)(2) and (b)(2) [amending this section and section 907 of this title] shall apply to excess foreign taxes which (without regard to the amendments made by this section [amending this section and section 907 of this title]) may be carried to any taxable year ending after the date of the enactment of this Act [Oct. 22, 2004]."

Pub. L. 108–357, title VIII, §895(b), Oct. 22, 2004, 118 Stat. 1648, provided that: "The amendment made by this section [amending this section] shall apply to dispositions after the date of the enactment of this Act [Oct. 22, 2004]."

Amendment by Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2003, see section 312(c) of Pub. L. 108–311, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by section 601(b)(1) of Pub. L. 107–147 applicable to taxable years beginning after Dec. 31, 2001, see section 601(c) of Pub. L. 107–147, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by sections 201(b), 202(f), and 618(b) of Pub. L. 107–16 inapplicable to taxable years beginning during 2004 or 2005, see section 312(b)(2) of Pub. L. 108–311, set out as a note under section 23 of this title.

Amendment by sections 201(b), 202(f), and 618(b) of Pub. L. 107–16 inapplicable to taxable years beginning during 2002 and 2003, see section 601(b)(2) of Pub. L. 107–147, set out as a note under section 23 of this title.

Amendment by section 201(b)(2)(G) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 201(e)(2) of Pub. L. 107–16, set out as a note under section 24 of this title.

Amendment by section 202(f)(2)(C) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 202(g)(1) of Pub. L. 107–16, set out as a note under section 23 of this title.

Amendment by section 618(b)(2)(D) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 618(d) of Pub. L. 107–16, set out as a note under section 24 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to taxable years beginning after Dec. 31, 1998, see section 501(c) of Pub. L. 106–170, set out as a note under section 24 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 311(c)(3) of Pub. L. 105–34 applicable to taxable years ending after May 6, 1997,

see section 311(d) of Pub. L. 105–34, set out as a note under section 1 of this title.

Pub. L. 105–34, title XI, §1101(b), Aug. 5, 1997, 111 Stat. 963, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1997."

Pub. L. 105–34, title XI, §1105(c), Aug. 5, 1997, 111 Stat. 968, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2002."

Pub. L. 105–34, title XI, §1111(c)(2), Aug. 5, 1997, 111 Stat. 969, provided that: "The amendment made by subsection (b) [amending this section] shall apply to distributions after the date of the enactment of this Act [Aug. 5, 1997]."

Amendment by section 1163(b) of Pub. L. 105–34 effective Aug. 5, 1997, see section 1163(c) of Pub. L. 105–34, set out as a note under section 902 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, §1501(d), Aug. 20, 1996, 110 Stat. 1826, provided that: "The amendments made by this section [amending this section and sections 951, 956, 959, 989, and 1297 of this title and repealing section 956A of this title] shall apply to taxable years of foreign corporations beginning after December 31, 1996, and to taxable years of United States shareholders within which or with which such taxable years of foreign corporations end."

Amendment by section 1703(i)(1) of Pub. L. 104–188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103–66, §§13001–13444, to which such amendment relates, see section 1703(o) of Pub. L. 104–188, set out as a note under section 39 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13227(d) of Pub. L. 103–66 applicable to taxable years beginning after Dec. 31, 1993, see section 13227(f) of Pub. L. 103–66 set out as a note under section 56 of this title.

Pub. L. 103–66, title XIII, §13235(c), Aug. 10, 1993, 107 Stat. 505, provided that: "The amendments made by this section [amending this section and sections 907 and 954 of this title] shall apply to taxable years beginning after December 31, 1992."

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11101(d)(5) of Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, see section 11101(e) of Pub. L. 101–508, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7402(b), Dec. 19, 1989, 103 Stat. 2358, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after July 10, 1989."

Amendment by section 7811(i)(1) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1012(bb)(4)(B), Nov. 10, 1988, 102 Stat. 3535, provided that: "The amendment made by subparagraph (A) [amending this section] shall take effect as if included in the amendment made by section 121 of the Tax Reform Act of 1984 [Pub. L. 98–369]."

Amendment by sections 1003(b)(2) and 1012(a)(1)(A), (2)–(4), (6)–(11), (c), (p)(11), (29), (q)(12) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 2004(l) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 104(b)(13) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 701(e)(4)(H) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date note under section 55 of this title.

Pub. L. 99–514, title XII, §1201(e), Oct. 22, 1986, 100 Stat. 2525, as amended by Pub. L. 100–647, title I,

§1012(a)(5), Nov. 10, 1988, 102 Stat. 3495; Pub. L. 101–239, title VII, §7404(a), Dec. 19, 1989, 103 Stat. 2361, provided that:

"(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section and sections 864 and 954 of this title] shall apply to taxable years beginning after December 31, 1986.

"[(2) Repealed. Pub. L. 101–239, title VII, §7404(a), Dec. 19, 1989, 103 Stat. 2361.]

"(3) SPECIAL RULE FOR TAXPAYER WITH OVERALL FOREIGN LOSS.—

"(A) IN GENERAL.—If a taxpayer incorporated on June 20, 1928, the principal headquarters of which is in Minneapolis, Minnesota, sustained an overall foreign loss (as defined in section 904(f)(2) of the Internal Revenue Code of 1954 [now 1986]) in taxable years beginning before January 1, 1986, in connection with 2 separate trades or businesses which the taxpayer had, during 1985, substantially disposed of in tax-free transactions pursuant to section 355 of such Code, then an amount, not to exceed $40,000,000 of foreign source income, which, but for this paragraph, would not be treated as overall limitation income, shall be so treated.

"(B) SUBSTANTIAL DISPOSITION.—For purposes of this paragraph, a taxpayer shall be treated as having substantially disposed of a trade or business if the retained portion of such business had sales of less than 10 percent of the annual sales of such business for taxable years ending in 1985."

[Pub. L. 101–239, title VII, §7404(b), (c), Dec. 19, 1989, 103 Stat. 2361, provided that:

["(b) EFFECTIVE DATE.—The repeal made by subsection (a) [amending section 1201(e) of Pub. L. 99–514, set out above] shall apply to taxable years beginning after December 31, 1989.

["(c) EXCEPTION FOR CERTAIN TAXPAYERS WITH SUBSTANTIAL LOAN LOSS RESERVES.—

["(1) IN GENERAL.—The repeal made by subsection (a) shall not apply to any taxpayer if, on any financial statement filed by such taxpayer for regulatory purposes with respect to any quarter ending during the period beginning on March 31, 1989, and ending on December 31, 1989, such taxpayer showed loss reserves against its qualified loans equal to at least 25 percent of the amount of such loans.

["(2) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

["(A) QUALIFIED LOAN.—The term 'qualified loan' has the meaning given such term by section 1201(e)(2)(H) of the Tax Reform Act of 1986 [Pub. L. 99–514, formerly set out above] (as in effect before its repeal by subsection (a)).

["(B) PARENT-SUBSIDIARY CONTROLLED GROUPS.—In the case of any taxpayer which is a member of a parent-subsidiary controlled group (as defined in section 585(c)(5)(A) [26 U.S.C. 585(c)(5)(A)]), this subsection shall be applied by treating all members of such group as 1 taxpayer."]

Pub. L. 99–514, title XII, §1203(b), Oct. 22, 1986, 100 Stat. 2532, provided that: "The amendment made by subsection (a) [amending this section] shall apply to losses incurred in taxable years beginning after December 31, 1986."

Amendment by section 1211(b)(3) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, except as otherwise provided, see section 1211(c) of Pub. L. 99–514, set out as an Effective Date note under section 865 of this title.

Amendment by section 1235(f)(4) of Pub. L. 99–514 applicable to taxable years of foreign corporations beginning after Dec. 31, 1986, see section 1235(h) of Pub. L. 99–514, set out as an Effective Date note under section 1291 of this title.

Pub. L. 99–514, title XVIII, §1810(a)(1)(B), Oct. 22, 1986, 100 Stat. 2822, provided that: "The amendment made by subparagraph (A) [amending this section] shall take effect on March 28, 1985. In the case of any taxable year ending after such date of any corporation treated as a United States-owned foreign corporation by reason of the amendment made by subparagraph (A)—

"(i) only income received or accrued by such corporation after such date shall be taken into account under section 904(g) of the Internal Revenue Code of 1954 [now 1986]; except that

"(ii) paragraph (5) of such section 904(g) shall be applied by taking into account all income received or accrued by such corporation during such taxable year."

Pub. L. 99–514, title XVIII, §1810(b)(4)(B), Oct. 22, 1986, 100 Stat. 2824, provided that:

"(i) The amendment made by subparagraph (A) [amending this section] insofar as it adds the last sentence to subparagraph (E) of section 905(d)(3) [904(d)(3)] shall take effect on March 28, 1985. In the case of any taxable year ending after such date of any corporation treated as a designated payor corporation by reason of the amendment made by subparagraph (A)—

"(I) only income received or accrued by such corporation after such date shall be taken into account under section 904(d)(3) of the Internal Revenue Code of 1954 [now 1986]; except that

"(II) subparagraph (C) of such section 904(d)(3) shall be applied by taking into account all income received or accrued by such corporation during such taxable year.

"(ii) The amendment made by subparagraph (A) insofar as it adds clause (iv) to subparagraph (E) of section 904(d)(3) shall take effect on December 31, 1985. For purposes of such amendment, the rule of the second sentence of clause (i) shall be applied by taking into account December 31, 1985, in lieu of March 28, 1985."

Amendment by sections 1810(b)(1)–(3) and 1876(d)(2) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §121(b), July 18, 1984, 98 Stat. 640, as amended by Pub. L. 99–514, §2, title XVIII, §1810(a)(2), (3), Oct. 22, 1986, 100 Stat. 2095, 2822, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [July 18, 1984]. In the case of any taxable year of any United States-owned foreign corporation ending after the date of the enactment of this Act—

"(A) only income received or accrued by such foreign corporation after such date of enactment shall be taken into account under section 904(g) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)); except that

"(B) paragraph (5) of such section 904(g) (relating to exception where small amount of United States source income) shall be applied by taking into account all income received or accrued by such foreign corporation during such taxable year.

"(2) SPECIAL RULE FOR APPLICABLE CFC.—

"(A) IN GENERAL.—In the case of qualified interest received or accrued by an applicable CFC before January 1, 1992—

"(i) such interest shall not be taken into account under section 904(g) of the Internal Revenue Code of 1986 (as added by subsection (a)), except that

"(ii) such interest shall be taken into account for purposes of applying paragraph (5) of such section 904(g) (relating to exception where small amount of United States source income).

"(B) QUALIFIED INTEREST.—For purposes of subparagraph (A), the term 'qualified interest' means—

"(i) the aggregate amount of interest received or accrued during any taxable year by an applicable CFC on United States affiliate obligations held by such applicable CFC, multiplied by,

"(ii) a fraction (not in excess of 1)—

"(I) the numerator of which is the sum of the aggregate principal amount of United States affiliate obligations held by the applicable CFC on March 31, 1984, but not in excess of the applicable limit, and

"(II) the denominator of which is the average daily principal amount of United States affiliate obligations held by such applicable CFC during the taxable year.

Proper adjustments shall be made to the numerator described in clause (ii)(I) for original issue discount accruing after March 31, 1984, on CFC obligations and United States affiliate obligations.

"(C) ADJUSTMENT FOR RETIREMENT OF CFC OBLIGATIONS.—The amount described in subparagraph (B)(ii)(I) for any taxable year shall be reduced by the sum of—

"(i) the excess of (I) the aggregate principal amount of CFC obligations which are outstanding on March 31, 1984, but only with respect to obligations issued before March 8, 1984, or issued after March 7, 1984, by the applicable CFC pursuant to a binding commitment in effect on March 7, 1984, over (II) the average daily outstanding principal amount during the taxable year of the CFC obligations described in subclause (I), and

"(ii) the portion of the equity of such applicable CFC allocable to the excess described in clause (i) (determined on the basis of the debt-equity ratio of such applicable CFC on March 31, 1984).

"(D) APPLICABLE CFC.—For purposes of this paragraph, the term 'applicable CFC' means any controlled foreign corporation (within the meaning of section 957)—

"(i) which was in existence on March 31, 1984, and

"(ii) the principal purpose of which on such date consisted of the issuing of CFC obligations (or short-term borrowing from nonaffiliated persons) and lending the proceeds of such obligations (or such borrowing) to affiliates.

"(E) AFFILIATES; UNITED STATES AFFILIATES.—For purposes of this paragraph—

"(i) AFFILIATE.—The term 'affiliate' means any person who is a related person (within the meaning of section 482 of the Internal Revenue Code of 1986) to the applicable CFC.

"(ii) UNITED STATES AFFILIATE.—The term 'United States affiliate' means any United States

person which is an affiliate of the applicable CFC.

"(iii) TREATMENT OF CERTAIN FOREIGN CORPORATIONS ENGAGED IN BUSINESS IN UNITED STATES.—For purposes of clause (ii), a foreign corporation shall be treated as a United States person with respect to any interest payment made by such corporation if—

"(I) at least 50 percent of the gross income from all sources of such corporation for the 3-year period ending with the close of its last taxable year ending on or before March 31, 1984, was effectively connected with the conduct of a trade or business within the United States, and

"(II) at least 50 percent of the gross income from all sources of such corporation for the 3-year period ending with the close of its taxable year preceding the payment of such interest was effectively connected with the conduct of a trade or business within the United States.

"(F) UNITED STATES AFFILIATE OBLIGATIONS.—For purposes of this paragraph, the term 'United States affiliate obligations' means any obligation of (and payable by) a United States affiliate.

"(G) CFC OBLIGATION.—For purposes of this paragraph, the term 'CFC obligation' means any obligation of (and issued by) a CFC if—

"(i) the requirements of clause (i) of [former] section 163(f)(2)(B) of the Internal Revenue Code of 1986 are met with respect to such obligation, and

"(ii) in the case of an obligation issued after December 31, 1982, the requirements of clause (ii) of such [former] section 163(f)(2)(B) are met with respect to such obligation.

"(H) TREATMENT OF OBLIGATIONS WITH ORIGINAL ISSUE DISCOUNT.—For purposes of this paragraph, in the case of any obligation with original issue discount, the principal amount of such obligation as of any day shall be treated as equal to the revised issue price as of such day (as defined in section 1278(a)(4) of the Internal Revenue Code of 1986).

"(I) APPLICABLE LIMIT.—For purposes of subparagraph (B)(ii)(I), the term 'applicable limit' means the sum of—

"(i) the equity of the applicable CFC on March 31, 1984, and

"(ii) the aggregate principal amount of CFC obligations outstanding on March 31, 1984, which were issued by an applicable CFC—

"(I) before March 8, 1984, or

"(II) after March 7, 1984, pursuant to a binding commitment in effect on March 7, 1984.

"(3) EXCEPTION FOR CERTAIN TERM OBLIGATIONS.—The amendments made by subsection (a) shall not apply to interest on any term obligations held by a foreign corporation on March 7, 1984. The preceding sentence shall not apply to any United States affiliate obligation (as defined in paragraph (2)(F)) held by an applicable CFC (as defined in paragraph (2)(D)).

"(4) DEFINITIONS.—Any term used in this subsection which is also used in section 904(g) of the Internal Revenue Code of 1986 (as added by subsection (a)) shall have the meaning given such term by such section 904(g).

"(5) SEPARATE APPLICATION OF SECTION 904 IN CASE OF INCOME COVERED BY TRANSITIONAL RULES.—Subsections (a), (b), and (c) of section 904 of the Internal Revenue Code of 1986 shall be applied separately to any amount not treated as income derived from sources within the United States but which (but for the provisions of paragraph (2) or (3) of this subsection) would be so treated under the amendments made by subsection (a). Any such separate application shall be made before any separate application required under section 904(d) of such Code.

"(6) APPLICATION OF PARAGRAPH (5) DELAYED IN CERTAIN CASES.—In the case of a foreign corporation—

"(A) which is a subsidiary of a domestic corporation which has been engaged in manufacturing for more than 50 years, and

"(B) which issued certificates with respect to obligations on—

"(i) September 24, 1979, denominated in French francs,

"(ii) September 10, 1981, denominated in Swiss francs,

"(iii) July 14, 1982, denominated in Swiss francs, and

"(iv) December 1, 1982, denominated in United States dollars,

with a total principal amount of less than 200,000,000 United States dollars.[,]

then paragraph (5) shall not apply to the proceeds from relending such obligations or related capital before January 1, 1986."

Pub. L. 98–369, div. A, title I, §122(b), July 18, 1984, 98 Stat. 644, provided that:

"(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [July 18, 1984].

"(2) SPECIAL RULES FOR INTEREST INCOME.—

"(A) IN GENERAL.—Interest income received or accrued by a designated payor corporation shall be taken into account for purposes of the amendment made by subsection (a) only in taxable years beginning after the date of the enactment of this Act.

"(B) EXCEPTION FOR INVESTMENT AFTER JUNE 22, 1984.—Notwithstanding subparagraph (A), the amendment made by subsection (a) shall apply to interest income received or accrued by a designated payor corporation after the date of enactment of this Act if it is attributable to investment in the designated payor corporation after June 22, 1984.

"(3) TERM OBLIGATIONS OF DESIGNATED PAYOR CORPORATION WHICH IS NOT APPLICABLE CFC.—In the case of any designated payor corporation which is not an applicable CFC (as defined in section 121(b)(2)(D) [section 121(b)(2)(D) of Pub. L. 98–369, set out above]), any interest received or accrued by such corporation on a term obligation held by such corporation on March 7, 1984, shall not be taken into account."

Amendment by section 474(r)(21) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 801(d)(2) of Pub. L. 98–369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable to taxable years beginning after Dec. 31, 1983, except that if an individual's annuity starting date was deferred under section 105(d)(6) of this title as in effect on the day before Apr. 20, 1983, such deferral shall end on the first day of such individual's first taxable year beginning after Dec. 31, 1983, see section 122(d) of Pub. L. 98–21, set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to taxable years beginning after Dec. 31, 1982, except that former subsec. (f)(4), which had provided for the determination of foreign oil related loss where section 907 of this title was applicable, shall continue to apply in certain instances where the taxpayer has had a foreign loss from an activity not related to oil and gas, see section 211(e) of Pub. L. 97–248, set out as a note under section 907 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 403(c)(4) of Pub. L. 95–600 effective on Nov. 6, 1978, see section 403(d)(3) of Pub. L. 95–600, set out as a note under section 528 of this title.

Amendment by section 421(e)(6) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 421(g) of Pub. L. 95–600, set out as note under section 5 of this title.

Amendment by section 701(a)(8)(C) of Pub. L. 95–600 applicable, in the case of individuals, to taxable years ending after Dec. 31, 1974, and, in the case of corporations, to taxable years ending after Dec. 31, 1976, see section 701(u)(8)(D) of Pub. L. 95–600, set out as a note under section 907 of this title.

Pub. L. 95–600, title VII, §701(q)(3)(B), Nov. 6, 1978, 92 Stat. 2910, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by paragraph (2) [amending this section] shall take effect as if included in section 904(f) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as such provision was added to such Code by section 1032(a) of the Tax Reform Act of 1976 [section 1032(a) of Pub. L. 94–455]."

Pub. L. 95–600, title VII, §701(u)(2)(D), Nov. 6, 1978, 92 Stat. 2913, provided that: "The amendments made by this paragraph [amending this section] shall apply to taxable years beginning after December 31, 1975."

Pub. L. 95–600, title VII, §701(u)(3)(B), Nov. 6, 1978, 92 Stat. 2913, provided that: "The amendment made by subparagraph (A) [amending this section] shall apply to taxable years beginning after December 31, 1975."

Pub. L. 95–600, title VII, §701(u)(4)(C), Nov. 6, 1978, 92 Stat. 2914, provided that: "The amendments made by this paragraph [amending this section] shall apply—

"(i) to overall foreign losses sustained in taxable years beginning after December 31, 1975, and

"(ii) to foreign oil related losses sustained in taxable years ending after December 31, 1975."

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 503(b)(1) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, see section 508 of Pub. L. 94–455, set out as a note under section 3 of this title.

Pub. L. 94–455, title X, §1031(c), Oct. 4, 1976, 90 Stat. 1623, as amended by Pub. L. 95–600, title VII, §701(u)(6), (7)(B)(ii), Nov. 6, 1978, 92 Stat. 2914, 2916; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section [amending this section and sections 243, 383, 901, 907, 960, 1351, 1503, 6038, and 6501 of this title] shall apply to taxable years beginning after December 31, 1975.

"(2) EXCEPTION FOR CERTAIN MINING OPERATIONS.—In the case of a domestic corporation or includible corporation in an affiliated group (as defined in section 1504 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) which has as of October 1, 1975—

"(A) been engaged in the active conduct of the trade or business of the extraction of minerals (of a character with respect to which a deduction for depletion is allowable under section 613 of such Code) outside the United States or its possessions for less than 5 years preceding the date of enactment of this Act [Oct. 4, 1976],

"(B) had deductions properly apportioned or allocated to its gross income from such trade or business in excess of such gross income in at least 2 taxable years,

"(C) 80 percent of its gross receipts are from the sale of such minerals, and

"(D) made commitments for substantial expansion of such mineral extraction activities,

the amendments made by this section [amending this section and sections 243, 383, 901, 907, 960, 1351, 1503, 6038, and 6501 of this title] shall apply to taxable years beginning after December 31, 1978. In the case of a loss sustained in a taxable year beginning before January 1, 1979, by any corporation to which this paragraph applies, if section 904(a)(1) of such Code (as in effect before the enactment of this Act [Oct. 4, 1976]) applies with respect to such taxable year, the provisions of section 904(f) of such Code shall be applied with respect to such loss under the principles of such section 904(a)(1).

"(3) EXCEPTION FOR INCOME FROM POSSESSIONS.—In the case of gross income from sources within a possession of the United States (and the deductions properly apportioned or allocated thereto), the amendments made by this section [amending this section and sections 243, 383, 901, 907, 960, 1351, 1503, 6038, and 6501 of this title] shall apply to taxable years beginning after December 31, 1978.

"(4) CARRYBACKS AND CARRYOVERS IN THE CASE OF MINING OPERATIONS AND INCOME FROM A POSSESSION.—In the case of a taxpayer to whom paragraph (2) or (3) of this subsection applies, section 904(e) of such Code [section 904(e) of this title] shall apply except that 'January 1, 1979' shall be substituted for 'January 1, 1976' each place it appears therein. If such a taxpayer elects the overall limitation for a taxable year beginning before January 1, 1979, such section 904(e) shall be applied by substituting 'the January 1, of the last year for which such taxpayer is on the per-country limitation' for 'January 1, 1976' each place it appears therein."

Pub. L. 94–455, title X, §1032(c), Oct. 4, 1976, 90 Stat. 1626, as amended by Pub. L. 95–600, title VII, §701(u)(5), (7)(A), (B)(i), Nov. 6, 1978, 92 Stat. 2914; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—Except as provided in paragraphs (2), (3), and (5), the amendment made by subsection (a) [amending this section] shall apply to losses sustained in taxable years beginning after December 31, 1975. The amendment made by subsection (b)(1) [amending section 907 of this title] shall apply to taxable years beginning after December 31, 1975. The amendment made by subsection (b)(2) [amending section 907 of this title] shall apply to losses sustained in taxable years ending after December 31, 1975.

"(2) OBLIGATIONS OF FOREIGN GOVERNMENTS.—The amendments made by subsection (a) [amending this section] shall not apply to losses on the sale, exchange, or other disposition of bonds, notes, or other evidences of indebtedness issued before May 14, 1976, by a foreign government or instrumentality thereof for the acquisition of property located in that country or stock of a corporation (created or organized in or under the laws of that foreign country) or indebtedness of such corporation.

"(3) SUBSTANTIAL WORTHLESSNESS BEFORE ENACTMENT.—The amendments made by subsection (a) [amending this section] shall not apply to losses incurred on the loss from stock or indebtedness of a corporation in which the taxpayer owned at least 10 percent of the voting stock and which has sustained

losses in 3 out of the last 5 taxable years beginning before January 1, 1976, which has sustained an overall loss for those 5 years, and with respect to which the taxpayer has terminated or will terminate all operations by reason of sale, liquidation, or other disposition before January 1, 1977, of such corporation or its assets.

"(4) LIMITATION BASED ON DEFICIT IN EARNINGS AND PROFITS.—If paragraph (3) would apply to a taxpayer but for the fact that the loss is sustained after December 31, 1976, and if the loss is sustained in a taxable year beginning before January 1, 1979, the amendments made by subsection (a) [amending this section] shall not apply to such loss to the extent that there was on December 31, 1975, a deficit in earnings and profits in the corporation from which the loss arose. For purposes of the preceding sentence, there shall be taken into account only earnings and profits of the corporation which (A) were accumulated in taxable years of the corporation beginning after December 31, 1962, and during the period in which the stock of such corporation from which the loss arose was held by the taxpayer and (B) are attributable to such stock.

"(5) FOREIGN OIL RELATED LOSSES.—The amendment made by subsection (a) [amending this section] shall apply to foreign oil related losses sustained in taxable years ending after December 31, 1975.

"(6) RECAPTURE OF POSSESSION LOSSES DURING TRANSITIONAL PERIOD WHERE TAXPAYER IS ON A PER-COUNTRY BASIS.—

"(A) APPLICATION OF PARAGRAPH.—This paragraph shall apply if—

"(i) the taxpayer sustained a loss in a possession of the United States in a taxable year beginning after December 31, 1975, and before January 1, 1979,

"(ii) such loss is attributable to a trade or business engaged in by the taxpayer in such possession on January 1, 1976, and

"(iii) the taxpayer chooses to have the benefits of subpart A of part III of subchapter N apply for such taxable year and section 904(a)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect before the enactment of this Act [Oct. 4, 1976]) applies with respect to such taxable year.

"(B) NO RECAPTURE DURING TRANSITION PERIOD.—In any case to which this paragraph applies, for purposes of determining the liability for tax of the taxpayer for taxable years beginning before January 1, 1979, section 904(f) of the Internal Revenue Code of 1986 shall not apply with respect to the loss described in subparagraph (A)(i).

"(C) RECAPTURE OF LOSS AFTER THE TRANSITION PERIOD.—In any case to which this paragraph applies—

"(i) for purposes of determining the liability for tax of the taxpayer for taxable years beginning after December 31, 1978, section 904(f) of the Internal Revenue Code of 1986 [subsec. (f) of this section] shall be applied with respect to the loss described in subparagraph (A)(i) under the principles of section 904(a)(1) of such Code (as in effect before the enactment of this Act [Oct. 4, 1976]); but

"(ii) in the case of any taxpayer and any possession, the aggregate amount to which such section 904(f) applies by reason of clause (i) shall not exceed the sum of the net incomes of all affiliated corporations from such possession for taxable years of such affiliated corporations beginning after December 31, 1975, and before January 1, 1979.

"(D) TAXPAYERS NOT ENGAGED IN TRADE OR BUSINESS ON JANUARY 1, 1976.—In any case to which this paragraph applies but for the fact that the taxpayer was not engaged in a trade or business in such possession on January 1, 1976, for purposes of determining the liability for tax of the taxpayer for taxable years beginning before January 1, 1979; if section 904(a)(1) of such Code (as in effect before the enactment of this Act [Oct. 4, 1976]) applies with respect to such taxable year, the provisions of section 904(f) of such Code shall be applied with respect to the loss described in subparagraph (A)(i) under the principles of such section 904(a)(1).

"(E) AFFILIATED CORPORATION DEFINED.—For purposes of subparagraph (C)(ii), the term 'affiliated corporation' means a corporation which, for the taxable year for which the net income is being determined, was not a member of the same affiliated group (within the meaning of section 1504 of the Internal Revenue Code of 1986) as the taxpayer but would have been a member of such group but for the application of subsection (b) of such section 1504."

Pub. L. 94–455, title X, §1034(b), Oct. 4, 1976, 90 Stat. 1630, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1975, except that the provisions of section 904(b)(3)(C) shall only apply to sales or exchanges made after November 12, 1975."

Amendment by section 1051(e) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, with certain exceptions, see section 1051(i) of Pub. L. 94–455, set out as a note under section 27 of this title.

Amendment by section 1901(b)(10) of Pub. L. 94–455 applicable with respect to taxable years ending after Oct. 4, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–178 applicable with respect to taxable years ending after Dec. 31, 1971, except that a corporation may not be a DISC for any taxable year beginning before Jan. 1, 1972, see section 507 of Pub. L. 92–178, set out as a note under section 991 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable with respect to taxable years beginning after Dec. 31, 1969, see section 506(c) of Pub. L. 91–172, set out as a note under section 901 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89–809, title I, §106(c)(2), Nov. 13, 1966, 80 Stat. 1571, provided that: "The amendments made by paragraph (1) [amending this section] shall apply to interest received after December 31, 1965, in taxable years ending after such date."

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 234(c) of Pub. L. 88–272, set out as a note under section 1503 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87–834, §10(b), Oct. 16, 1962, 76 Stat. 1003, provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after the date of the enactment of this Act [Oct. 16, 1962], but only with respect to interest resulting from transactions consummated after April 2, 1962."

EFFECTIVE DATE OF 1960 AMENDMENT

Pub. L. 86–780, §4, Sept. 14, 1960, 74 Stat. 1013, provided that: "The amendments made by the first section [amending this section], section 2 [amending section 1503 of this title], and subsection (a) of section 3 of this Act [amending section 901 of this title] shall apply with respect to taxable years beginning after December 31, 1960. The amendment made by subsection (b) of section 3 of this Act [amending section 901 of this title] shall apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954. The amendments made by subsection (c) of section 3 of this Act [enacting section 6501 of this title] shall apply with respect to taxable years beginning after December 31, 1957."

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85–866, title I, §42(c), Sept. 2, 1958, 72 Stat. 1640, provided that: "The amendments made by subsections (a) and (b) [amending this section and section 6611 of this title] shall apply only with respect to taxable years beginning after December 31, 1957."

SAVINGS PROVISION

For provisions that nothing in amendment by section 11801(a)(31) of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendments by sections 701(e)(4)(H) and 1201(a), (b), (d)(1)–(3) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, and for nonapplication of amendment by section 1211(b)(3) of Pub. L. 99–514 to the extent application of such amendment would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2)–(4) of Pub. L. 100–647, set out as a note under section 861 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

LIMITATION ON CARRYBACK OF FOREIGN TAX CREDITS TO TAXABLE YEARS

BEGINNING BEFORE 1987

Pub. L. 99–514, title XII, §1205, Oct. 22, 1986, 100 Stat. 2532, provided that:

"(a) DETERMINATION OF EXCESS CREDITS.—

"(1) IN GENERAL.—Any taxes paid or accrued in a taxable year beginning after 1986 may be treated under section 904(c) of the Internal Revenue Code of 1954 as paid or accrued in a taxable year beginning before 1987 only to the extent such taxes would be so treated if the tax imposed by chapter 1 of such Code for the taxable year beginning after 1986 were determined by applying section 1 or 11 of such Code (as the case may be) as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986].

"(2) ADJUSTMENTS.—Under regulations prescribed by the Secretary of the Treasury or his delegate proper adjustments shall be made in the application of paragraph (1) to take into account—

"(A) the repeal of the zero bracket amount, and

"(B) the changes in the treatment of capital gains.

"(b) COORDINATION WITH SEPARATE BASKETS.—Any taxes paid or accrued in a taxable year beginning after 1986 which (after the application of subsection (a)) are treated as paid or accrued in a taxable year beginning before 1987 shall be treated as imposed on income described in section 904(d)(1)(E) of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]). No taxes paid or accrued in a taxable year beginning after 1986 with respect to high withholding tax interest (as defined in section 904(d)(2)(B) of the Internal Revenue Code of 1986 as amended by this Act) may be treated as paid or accrued in a taxable year beginning before 1987."

COORDINATION WITH TREATY OBLIGATIONS

Pub. L. 99–514, title XVIII, §1810(a)(4), Oct. 22, 1986, 100 Stat. 2822, provided that: "Section 904(g) of the Internal Revenue Code of 1954 shall apply notwithstanding any treaty obligation of the United States to the contrary (whether entered into on, before, or after the date of the enactment of this Act [Oct. 22, 1986]) unless (in the case of a treaty entered into after the date of the enactment of this Act) such treaty by specific reference to such section 904(g) clearly expresses the intent to override the provisions of such section."

SEPARATE APPLICATION OF SECTION 904 IN CASE OF INCOME COVERED BY TRANSITIONAL RULES

Pub. L. 99–514, title XVIII, §1810(a)(5), Oct. 22, 1986, 100 Stat. 2823, as amended by Pub. L. 100–647, title I, §1018(g)(1), Nov. 10, 1988, 102 Stat. 3582, provided that: "For purposes of section 121(b)(5) of the Tax Reform Act of 1984 [Pub. L. 98–369, set out above] (relating to separate application of section 904 [of the Internal Revenue Code of 1954 [now 1986]] in case of income covered by transitional rules), any carryover under section 904(c) of the Internal Revenue Code of 1954 [now 1986] allowed to a taxpayer which was incorporated on August 31, 1962, attributable to taxes paid or accrued in taxable years beginning in 1981, 1982, 1983, or 1984, with respect to amounts included in gross income under section 951 of such Code in respect of a controlled foreign corporation which was incorporated on May 27, 1977, shall be treated as taxes paid or accrued on income separately treated under such section 121(b)(5)."

[1] *See References in Text note below.*

[2] *So in original.*

[3] *See References in Text note below.*

§905. Applicable rules

(a) Year in which credit taken

The credits provided in this subpart may, at the option of the taxpayer and irrespective of the method of accounting employed in keeping his books, be taken in the year in which the taxes of the foreign country or the possession of the United States accrued, subject, however, to the conditions prescribed in subsection (c). If the taxpayer elects to take such credits in the year in which the taxes of the foreign country or the possession of the United States accrued, the credits for all subsequent years shall be taken on the same basis, and no portion of any such taxes shall be allowed as a deduction in the same or any succeeding year.

(b) Proof of credits

The credits provided in this subpart shall be allowed only if the taxpayer establishes to the satisfaction of the Secretary—

(1) the total amount of income derived from sources without the United States, determined as provided in part I,

(2) the amount of income derived from each country, the tax paid or accrued to which is claimed as a credit under this subpart, such amount to be determined under regulations prescribed by the Secretary, and

(3) all other information necessary for the verification and computation of such credits.

(c) Adjustments to accrued taxes

(1) In general

If—

(A) accrued taxes when paid differ from the amounts claimed as credits by the taxpayer,

(B) accrued taxes are not paid before the date 2 years after the close of the taxable year to which such taxes relate, or

(C) any tax paid is refunded in whole or in part,

the taxpayer shall notify the Secretary, who shall redetermine the amount of the tax for the year or years affected. The Secretary may prescribe adjustments to the pools of post-1986 foreign income taxes and the pools of post-1986 undistributed earnings under sections 902 and 960 in lieu of the redetermination under the preceding sentence.

(2) Special rule for taxes not paid within 2 years

(A) In general

Except as provided in subparagraph (B), in making the redetermination under paragraph (1), no credit shall be allowed for accrued taxes not paid before the date referred to in subparagraph (B) of paragraph (1).

(B) Taxes subsequently paid

Any such taxes if subsequently paid—

(i) shall be taken into account—

(I) in the case of taxes deemed paid under section 902 or section 960, for the taxable year in which paid (and no redetermination shall be made under this section by reason of such payment), and

(II) in any other case, for the taxable year to which such taxes relate, and

(ii) shall be translated as provided in section 986(a)(2)(A).

(3) Adjustments

The amount of tax (if any) due on any redetermination under paragraph (1) shall be paid by the taxpayer on notice and demand by the Secretary, and the amount of tax overpaid (if any) shall be credited or refunded to the taxpayer in accordance with subchapter B of chapter 66 (section 6511 et seq.).

(4) Bond requirements

In the case of any tax accrued but not paid, the Secretary, as a condition precedent to the allowance of the credit provided in this subpart, may require the taxpayer to give a bond, with sureties satisfactory to and approved by the Secretary, in such sum as the Secretary may require, conditioned on the payment by the taxpayer of any amount of tax found due on any such redetermination. Any such bond shall contain such further conditions as the Secretary may require.

(5) Other special rules

In any redetermination under paragraph (1) by the Secretary of the amount of tax due from the taxpayer for the year or years affected by a refund, the amount of the taxes refunded for which

credit has been allowed under this section shall be reduced by the amount of any tax described in section 901 imposed by the foreign country or possession of the United States with respect to such refund; but no credit under this subpart, or deduction under section 164, shall be allowed for any taxable year with respect to any such tax imposed on the refund. No interest shall be assessed or collected on any amount of tax due on any redetermination by the Secretary, resulting from a refund to the taxpayer, for any period before the receipt of such refund, except to the extent interest was paid by the foreign country or possession of the United States on such refund for such period.

(Aug. 16, 1954, ch. 736, 68A Stat. 288; Pub. L. 85–866, title I, §103(b), Sept. 2, 1958, 72 Stat. 1675; Pub. L. 94–455, title XIX, §§1901(a)(114), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1784, 1834; Pub. L. 96–603, §2(c)(1), Dec. 28, 1980, 94 Stat. 3509; Pub. L. 97–248, title III, §343(a), Sept. 3, 1982, 96 Stat. 635; Pub. L. 105–34, title XI, §1102(a)(2), Aug. 5, 1997, 111 Stat. 964.)

AMENDMENTS

1997—Subsec. (c). Pub. L. 105–34 amended heading and text of subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "If accrued taxes when paid differ from the amounts claimed as credits by the taxpayer, or if any tax paid is refunded in whole or in part, the taxpayer shall notify the Secretary, who shall redetermine the amount of the tax for the year or years affected. The amount of tax due on such redetermination, if any, shall be paid by the taxpayer on notice and demand by the Secretary, or the amount of tax overpaid, if any, shall be credited or refunded to the taxpayer in accordance with subchapter B of chapter 66 (sec. 6511 and following). In the case of such a tax accrued but not paid, the Secretary, as a condition precedent to the allowance of this credit, may require the taxpayer to give a bond, with sureties satisfactory to and to be approved by the Secretary, in such sum as the Secretary may require, conditioned on the payment by the taxpayer of any amount of tax found due on any such redetermination; and the bond herein prescribed shall contain such further conditions as the Secretary may require. In such redetermination by the Secretary of the amount of tax due from the taxpayer for the year or years affected by a refund, the amount of the taxes refunded for which credit has been allowed under this section shall be reduced by the amount of any tax described in section 901 imposed by the foreign country or possession of the United States with respect to such refund; but no credit under this subpart, and no deduction under section 164 (relating to deduction for taxes) shall be allowed for any taxable year with respect to such tax imposed on the refund. No interest shall be assessed or collected on any amount of tax due on any redetermination by the Secretary, resulting from a refund to the taxpayer, for any period before the receipt of such refund, except to the extent interest was paid by the foreign country or possession of the United States on such refund for such period."

1982—Subsec. (c). Pub. L. 97–248, §343(a), struck out provision that, although no interest can be assessed or collected on any amount of tax due on any redetermination by the Secretary, resulting from a refund to the taxpayer, for any period before the receipt of such refund, except to the extent interest has been paid by the foreign country or possession of the United States on such refund for such period, that prohibition does not apply (with respect to any period after the refund or adjustment in the foreign taxes) if the taxpayer fails to notify the Secretary (on or before the date prescribed by regulations for giving such notice) unless it is shown that such failure is due to reasonable cause and not due to willful neglect.

1980—Subsec. (c). Pub. L. 96–603 inserted provision that the preceding sentence not apply, with respect to any period after the refund or adjustment in the foreign taxes, if the taxpayer fails to notify the Secretary, on or before the date prescribed by regulations for giving such notice, unless it is shown that such failure is due to reasonable cause and not due to willful neglect.

1976—Subsec. (b). Pub. L. 94–455, §§1901(a)(114), 1906(b)(13)(A), struck out provision allowing credits to be taken for tax on royalties paid, accrued and derived from sources within the United Kingdom of Britain and Northern Ireland and struck out "or his delegate" after "Secretary", in two places.

Subsec. (c). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary" in eight places.

1958—Subsec. (b). Pub. L. 85–866 inserted sentence deeming recipient of a royalty or other amount for use of copyright, patent, and other like property derived from sources within United Kingdom, to have paid or accrued taxes paid or accrued to United Kingdom with respect to royalty if recipient elects to include in its gross income the amount of such United Kingdom tax.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XI, §1102(c)(2), Aug. 5, 1997, 111 Stat. 966, provided that: "The amendment made by subsection (a)(2) [amending this section] shall apply to taxes which relate to taxable years beginning after December 31, 1997."

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title III, §343(b), Sept. 3, 1982, 96 Stat. 635, provided that: "The amendment made by subsection (a) [amending this section] shall have the same effect as if the last sentence of section 905(c) had never been enacted."

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–603 applicable with respect to employer contributions or accruals for taxable years beginning after Dec. 31, 1979, election to apply amendments retroactively with respect to foreign subsidiaries, allowance or prior deductions in case of certain funded branch plans, and time and manner for making elections, see section 2(e) of Pub. L. 96–603, set out as an Effective Date note under section 404A of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(114) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85–866, title I, §103(c), Sept. 2, 1958, 72 Stat. 1675, provided that: "The amendment made by subsection (a) of this section [amending section 131(e) of Internal Revenue Code of 1939] shall apply for all taxable years beginning on or after January 1, 1950, as to which section 131 of the Internal Revenue Code of 1939 is the applicable provision. The amendment made by subsection (b) of this section [amending this section] shall apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954. No interest shall be allowed or paid on any overpayment resulting from the amendments made by subsections (a) and (b) of this section."

§906. Nonresident alien individuals and foreign corporations

(a) Allowance of credit

A nonresident alien individual or a foreign corporation engaged in trade or business within the United States during the taxable year shall be allowed a credit under section 901 for the amount of any income, war profits, and excess profits taxes paid or accrued during the taxable year (or deemed, under section 902, paid or accrued during the taxable year) to any foreign country or possession of the United States with respect to income effectively connected with the conduct of a trade or business within the United States.

(b) Special rules

(1) For purposes of subsection (a) and for purposes of determining the deductions allowable under sections 873(a) and 882(c), in determining the amount of any tax paid or accrued to any foreign country or possession there shall not be taken into account any amount of tax to the extent the tax so paid or accrued is imposed with respect to income from sources within the United States which would not be taxed by such foreign country or possession but for the fact that—

(A) in the case of a nonresident alien individual, such individual is a citizen or resident of such foreign country or possession, or

(B) in the case of a foreign corporation, such corporation was created or organized under the law of such foreign country or possession or is domiciled for tax purposes in such country or possession.

(2) For purposes of subsection (a), in applying section 904 the taxpayer's taxable income shall be treated as consisting only of the taxable income effectively connected with the taxpayer's conduct of a trade or business within the United States.

(3) The credit allowed pursuant to subsection (a) shall not be allowed against any tax imposed by section 871(a) (relating to income of nonresident alien individual not connected with United States business) or 881 (relating to income of foreign corporations not connected with United States business).

(4) For purposes of sections 902(a) and 78, a foreign corporation choosing the benefits of this

subpart which receives dividends shall, with respect to such dividends, be treated as a domestic corporation.

(5) For purposes of section 902, any income, war profits, and excess profits taxes paid or accrued (or deemed paid or accrued) to any foreign country or possession of the United States with respect to income effectively connected with the conduct of a trade or business within the United States shall not be taken into account, and any accumulated profits attributable to such income shall not be taken into account.

(6) No credit shall be allowed under this section against the tax imposed by section 884.

(Added Pub. L. 89–809, title I, §106(a)(1), Nov. 13, 1966, 80 Stat. 1568; amended Pub. L. 98–369, div. A, title VIII, §801(d)(3), July 18, 1984, 98 Stat. 996; Pub. L. 99–514, title XII, §1241(c), title XVIII, §1876(d)(3), Oct. 22, 1986, 100 Stat. 2580, 2899; Pub. L. 100–647, title I, §1012(q)(10), Nov. 10, 1988, 102 Stat. 3524; Pub. L. 110–172, §11(g)(11), Dec. 29, 2007, 121 Stat. 2490.)

AMENDMENTS

2007—Subsec. (b)(5) to (7). Pub. L. 110–172 redesignated pars. (6) and (7) as (5) and (6), respectively, and struck out former par. (5) which read as follows: "No credit shall be allowed under this section for any income, war profits, and excess profits taxes paid or accrued with respect to the foreign trade income (within the meaning of section 923(b)) of a FSC."

1988—Subsec. (b)(6), (7). Pub. L. 100–647 redesignated par. (6), relating to credit against tax imposed by section 884, as (7).

1986—Subsec. (b)(6). Pub. L. 99–514, §1876(d)(3), added par. (6) relating to credit for income, war profits, and excess profits taxes paid or accrued to a foreign country or possession of the United States.

Pub. L. 99–514, §1241(c), added par. (6) relating to credit against tax imposed by section 884.

1984—Subsec. (b)(5). Pub. L. 98–369 added par. (5).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1241(c) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1241(e) of Pub. L. 99–514, set out as an Effective Date note under section 884 of this title.

Amendment by section 1876(d)(3) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE

Section applicable with respect to taxable years beginning after Dec. 31, 1966, and, in applying section 904 of this title with respect to this section, no amount to be carried from or to any taxable year beginning before Jan. 1, 1967, and no such year to be taken into account, see section 106(a)(6) of Pub. L. 89–809, set out as an Effective Date of 1966 Amendment note under section 874 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§907. Special rules in case of foreign oil and gas income

(a) Reduction in amount allowed as foreign tax under section 901

In applying section 901, the amount of any foreign oil and gas taxes paid or accrued (or deemed to have been paid) during the taxable year which would (but for this subsection) be taken into account for purposes of section 901 shall be reduced by the amount (if any) by which the amount of such taxes exceeds the product of—

(1) the amount of the combined foreign oil and gas income for the taxable year,

(2) multiplied by—

(A) in the case of a corporation, the percentage which is equal to the highest rate of tax specified under section 11(b), or

(B) in the case of an individual, a fraction the numerator of which is the tax against which the credit under section 901(a) is taken and the denominator of which is the taxpayer's entire taxable income.

(b) Combined foreign oil and gas income; foreign oil and gas taxes

For purposes of this section—

(1) Combined foreign oil and gas income

The term "combined foreign oil and gas income" means, with respect to any taxable year, the sum of—

(A) foreign oil and gas extraction income, and

(B) foreign oil related income.

(2) Foreign oil and gas taxes

The term "foreign oil and gas taxes" means, with respect to any taxable year, the sum of—

(A) oil and gas extraction taxes, and

(B) any income, war profits, and excess profits taxes paid or accrued (or deemed to have been paid or accrued under section 902 or 960) during the taxable year with respect to foreign oil related income (determined without regard to subsection (c)(4)) or loss which would be taken into account for purposes of section 901 without regard to this section.

(c) Foreign income definitions and special rules

For purposes of this section—

(1) Foreign oil and gas extraction income

The term "foreign oil and gas extraction income" means the taxable income derived from sources without the United States and its possessions from—

(A) the extraction (by the taxpayer or any other person) of minerals from oil or gas wells, or

(B) the sale or exchange of assets used by the taxpayer in the trade or business described in subparagraph (A).

Such term does not include any dividend or interest income which is passive income (as defined in section 904(d)(2)(A)).

(2) Foreign oil related income

The term "foreign oil related income" means the taxable income derived from sources outside the United States and its possessions from—

(A) the processing of minerals extracted (by the taxpayer or by any other person) from oil or gas wells into their primary products,

(B) the transportation of such minerals or primary products,

(C) the distribution or sale of such minerals or primary products,

(D) the disposition of assets used by the taxpayer in the trade or business described in subparagraph (A), (B), or (C), or

(E) the performance of any other related service.

Such term does not include any dividend or interest income which is passive income (as defined in section 904(d)(2)(A)).

(3) Dividends, interest, partnership distribution, etc.

The term "foreign oil and gas extraction income" and the term "foreign oil related income" include—

(A) dividends and interest from a foreign corporation in respect of which taxes are deemed paid by the taxpayer under section 902,

(B) amounts with respect to which taxes are deemed paid under section 960(a), and

(C) the taxpayer's distributive share of the income of partnerships.[1]

to the extent such dividends, interest, amounts, or distributive share is attributable to foreign oil and gas extraction income, or to foreign oil related income, as the case may be; except that interest described in subparagraph (A) shall not be taken into account in computing foreign oil and gas extraction income but shall be taken into account in computing foreign oil-related income.

(4) Recapture of foreign oil and gas losses by recharacterizing later combined foreign oil and gas income

(A) In general

The combined foreign oil and gas income of a taxpayer for a taxable year (determined without regard to this paragraph) shall be reduced—

(i) first by the amount determined under subparagraph (B), and

(ii) then by the amount determined under subparagraph (C).

The aggregate amount of such reductions shall be treated as income (from sources without the United States) which is not combined foreign oil and gas income.

(B) Reduction for pre-2009 foreign oil extraction losses

The reduction under this paragraph shall be equal to the lesser of—

(i) the foreign oil and gas extraction income of the taxpayer for the taxable year (determined without regard to this paragraph), or

(ii) the excess of—

(I) the aggregate amount of foreign oil extraction losses for preceding taxable years beginning after December 31, 1982, and before January 1, 2009, over

(II) so much of such aggregate amount as was recharacterized under this paragraph (as in effect before and after the date of the enactment of the Energy Improvement and Extension Act of 2008) for preceding taxable years beginning after December 31, 1982.

(C) Reduction for post-2008 foreign oil and gas losses

The reduction under this paragraph shall be equal to the lesser of—

(i) the combined foreign oil and gas income of the taxpayer for the taxable year (determined without regard to this paragraph), reduced by an amount equal to the reduction under subparagraph (A) for the taxable year, or

(ii) the excess of—

(I) the aggregate amount of foreign oil and gas losses for preceding taxable years beginning after December 31, 2008, over

(II) so much of such aggregate amount as was recharacterized under this paragraph for preceding taxable years beginning after December 31, 2008.

(D) Foreign oil and gas loss defined

(i) In general

For purposes of this paragraph, the term "foreign oil and gas loss" means the amount by which—

(I) the gross income for the taxable year from sources without the United States and its possessions (whether or not the taxpayer chooses the benefits of this subpart for such taxable year) taken into account in determining the combined foreign oil and gas income

for such year, is exceeded by

(II) the sum of the deductions properly apportioned or allocated thereto.

(ii) Net operating loss deduction not taken into account

For purposes of clause (i), the net operating loss deduction allowable for the taxable year under section 172(a) shall not be taken into account.

(iii) Expropriation and casualty losses not taken into account

For purposes of clause (i), there shall not be taken into account—

(I) any foreign expropriation loss (as defined in section 172(h) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)) for the taxable year, or

(II) any loss for the taxable year which arises from fire, storm, shipwreck, or other casualty, or from theft,

to the extent such loss is not compensated for by insurance or otherwise.

(iv) Foreign oil extraction loss

For purposes of subparagraph (B)(ii)(I), foreign oil extraction losses shall be determined under this paragraph as in effect on the day before the date of the enactment of the Energy Improvement and Extension Act of 2008.

(5) Oil and gas extraction taxes

The term "oil and gas extraction taxes" means any income, war profits, and excess profits tax paid or accrued (or deemed to have been paid under section 902 or 960) during the taxable year with respect to foreign oil and gas extraction income (determined without regard to paragraph (4)) or loss which would be taken into account for purposes of section 901 without regard to this section.

(d) Disregard of certain posted prices, etc.

For purposes of this chapter, in determining the amount of taxable income in the case of foreign oil and gas extraction income, if the oil or gas is disposed of, or is acquired other than from the government of a foreign country, at a posted price (or other pricing arrangement) which differs from the fair market value for such oil or gas, such fair market value shall be used in lieu of such posted price (or other pricing arrangement).

[(e) Repealed. Pub. L. 101–508, title XI, §11801(a)(32), Nov. 5, 1990, 104 Stat. 1388–521]

(f) Carryback and carryover of disallowed credits

(1) In general

If the amount of the foreign oil and gas taxes paid or accrued during any taxable year exceeds the limitation provided by subsection (a) for such taxable year (hereinafter in this subsection referred to as the "unused credit year"), such excess shall be deemed to be foreign oil and gas taxes paid or accrued in the first preceding taxable year and in any of the first 10 succeeding taxable year,[2] in that order and to the extent not deemed tax paid or accrued in a prior taxable year by reason of the limitation imposed by paragraph (2). Such amount deemed paid or accrued in any taxable year may be availed of only as a tax credit and not as a deduction and only if the taxpayer for such year chooses to have the benefits of this subpart as to taxes paid or accrued for that year to foreign countries or possessions.

(2) Limitation

The amount of the unused foreign oil and gas taxes which under paragraph (1) may be deemed paid or accrued in any preceding or succeeding taxable year shall not exceed the lesser of—

(A) the amount by which the limitation provided by subsection (a) for such taxable year exceeds the sum of—

(i) the foreign oil and gas taxes paid or accrued during such taxable year, plus

(ii) the amounts of the foreign oil and gas taxes which by reason of this subsection are deemed paid or accrued in such taxable year and are attributable to taxable years preceding the unused credit year; or

(B) the amount by which the limitation provided by section 904 for such taxable year exceeds the sum of—

(i) the taxes paid or accrued (or deemed to have been paid under section 902 or 960) to all foreign countries and possessions of the United States during such taxable year,

(ii) the amount of such taxes which were deemed paid or accrued in such taxable year under section 904(c) and which are attributable to taxable years preceding the unused credit year, plus

(iii) the amount of the foreign oil and gas taxes which by reason of this subsection are deemed paid or accrued in such taxable year and are attributable to taxable years preceding the unused credit year.

(3) Special rules

(A) In the case of any taxable year which is an unused credit year under this subsection and which is an unused credit year under section 904(c), the provisions of this subsection shall be applied before section 904(c).

(B) For purposes of determining the amount of taxes paid or accrued in any taxable year which may be deemed paid or accrued in a preceding or succeeding taxable year under section 904(c), any tax deemed paid or accrued in such preceding or succeeding taxable year under this subsection shall be considered to be tax paid or accrued in such preceding or succeeding taxable year.

(4) Transition rules for pre-2009 and 2009 disallowed credits

(A) Pre-2009 credits

In the case of any unused credit year beginning before January 1, 2009, this subsection shall be applied to any unused oil and gas extraction taxes carried from such unused credit year to a year beginning after December 31, 2008—

(i) by substituting "oil and gas extraction taxes" for "foreign oil and gas taxes" each place it appears in paragraphs (1), (2), and (3), and

(ii) by computing, for purposes of paragraph (2)(A), the limitation under subparagraph (A) for the year to which such taxes are carried by substituting "foreign oil and gas extraction income" for "foreign oil and gas income" in subsection (a).

(B) 2009 credits

In the case of any unused credit year beginning in 2009, the amendments made to this subsection by the Energy Improvement and Extension Act of 2008 shall be treated as being in effect for any preceding year beginning before January 1, 2009, solely for purposes of determining how much of the unused foreign oil and gas taxes for such unused credit year may be deemed paid or accrued in such preceding year.

(Added Pub. L. 94–12, title VI, §601(a), Mar. 29, 1975, 89 Stat. 54; amended Pub. L. 94–455, title X, §§1031(b)(6), 1032(b), 1035(a), (b), (d)(1), (2), 1052(c)(4), Oct. 4, 1976, 90 Stat. 1623, 1626, 1630–1632, 1648; Pub. L. 95–600, title III, §301(b)(14), title VII, §701(u)(8)(A), (B), Nov. 6, 1978, 92 Stat. 2822, 2916; Pub. L. 97–248, title II, §211(a)–(c)(1), (d), Sept. 3, 1982, 96 Stat. 448–450; Pub. L. 100–647, title I, §1012(g)(6), Nov. 10, 1988, 102 Stat. 3501; Pub. L. 101–508, title XI, §11801(a)(32), Nov. 5, 1990, 104 Stat. 1388–521; Pub. L. 103–66, title XIII, §13235(a)(1), Aug. 10, 1993, 107 Stat. 504; Pub. L. 104–188, title I, §1704(t)(36), Aug. 20, 1996, 110 Stat. 1889; Pub. L. 108–357, title IV, §417(b), Oct. 22, 2004, 118 Stat. 1512; Pub. L. 110–343, div. B, title IV, §402(a)–(c), Oct. 3, 2008, 122 Stat. 3852, 3854.)

REFERENCES IN TEXT

The date of the enactment of the Energy Improvement and Extension Act of 2008, referred to in subsec. (c)(4)(B)(ii)(II), (D)(iv), is the date of enactment of div. B of Pub. L. 110–343, which was approved Oct. 3,

2008.

Section 172(h), referred to in subsec. (c)(4)(D)(iii)(I), was repealed by Pub. L. 101–508, title XI, §11811(b)(1), Nov. 5, 1990, 104 Stat. 1388–532.

The date of the enactment of the Revenue Reconciliation Act of 1990, referred to in subsec. (c)(4)(D)(iii)(I), is the date of enactment of Pub. L. 101–508, title XI, which was approved Nov. 5, 1990.

The Energy Improvement and Extension Act of 2008, referred to in subsec. (f)(4)(B), is div. B of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3807. For the amendments made to subsec. (f) of this section by the Act, see 2008 Amendment notes below.

AMENDMENTS

2008—Subsecs. (a), (b). Pub. L. 110–343, §402(a), amended subsecs. (a) and (b) generally. Prior to amendment, subsec. (a) related to reduction in amount of oil and gas extraction taxes paid or accrued for purposes of section 901 and subsec. (b) excepted certain amounts of foreign oil related income taxes paid or accrued to any foreign country from the definition of "income, war profits, and excess profits taxes".

Subsec. (c)(4). Pub. L. 110–343, §402(b), amended par. (4) generally. Prior to amendment, par. (4) provided for recapture of foreign oil and gas extraction losses by recharacterizing later extraction income.

Subsec. (f). Pub. L. 110–343, §402(c)(1), substituted "foreign oil and gas taxes" for "oil and gas extraction taxes" wherever appearing.

Subsec. (f)(4). Pub. L. 110–343, §402(c)(2), added par. (4).

2004—Subsec. (f)(1). Pub. L. 108–357, §417(b)(3), struck out at end "For purposes of this subsection, the terms 'second preceding taxable year', and 'first preceding taxable year' do not include any taxable year ending before January 1, 1975."

Pub. L. 108–357, §417(b)(2), substituted "and in any of the first 10" for ", and in the first, second, third, fourth, or fifth".

Pub. L. 108–357, §417(b)(1), struck out "in the second preceding taxable year," before "in the first preceding taxable year".

1996—Subsec. (c)(4)(B)(iii)(I). Pub. L. 104–188 inserted "(as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)" after "section 172(h)".

1993—Subsec. (c)(1), (2). Pub. L. 103–66 inserted concluding provisions.

1990—Subsec. (e). Pub. L. 101–508, §11801(a)(32), struck out subsec. (e) which read as follows:

"(1) CREDITS ARISING IN TAXABLE YEARS BEGINNING BEFORE JANUARY 1, 1983.—The amount of taxes paid or accrued in any taxable year beginning before January 1, 1983 (hereinafter in this paragraph referred to as the 'excess credit year') which under section 904(c) or 907(f) may be deemed paid or accrued in a taxable year beginning after December 31, 1982, shall not exceed the amount which could have been deemed paid or accrued if sections 907(b), 907(f), and 904(f)(4) (as in effect on the day before the date of the enactment of the Tax Equity and Fiscal Responsibility Act of 1982) remained in effect for taxable years beginning after December 31, 1982.

"(2) CARRYBACK OF CREDITS ARISING IN TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1982.—The amount of the taxes paid or accrued in a taxable year beginning after December 31, 1982, which may be deemed paid or accrued under section 904(c) or 907(f) in a taxable year beginning before January 1, 1983, shall not exceed the amount which could have been deemed paid or accrued if sections 907(b), 907(f), and 904(f)(4) (as in effect on the day before the date of the enactment of the Tax Equity and Fiscal Responsibility Act of 1982) remained in effect for taxable years beginning after December 31, 1982."

Subsec. (f)(3)(C). Pub. L. 101–508, §11801(a)(32), struck out subpar. (C) which read as follows: "For purposes of determining the amount of the unused oil and gas extraction taxes which under paragraph (1) may be deemed paid or accrued in any taxable year ending before January 1, 1977, subparagraph (A) of paragraph (2) shall be applied as if the amendment made by section 1035(a) of the Tax Reform Act of 1976 applied to such taxable year."

1988—Subsec. (c)(3). Pub. L. 100–647, §1012(g)(6)(B), struck out "and dividends described in subparagraph (B)" after "described in subparagraph (A)" in closing provisions.

Subsec. (c)(3)(B) to (D). Pub. L. 100–647, §1012(g)(6)(A), redesignated subpars. (C) and (D) as (B) and (C), respectively, and struck out former subpar. (B) which read as follows: "dividends from a domestic corporation which are treated under section 861(a)(2)(A) as income from sources without the United States,".

1982—Subsec. (b). Pub. L. 97–248, §211(c)(1), added subsec. (b). Former subsec. (b), which had provided that section 904 be applied separately with respect to foreign oil related income and other taxable income, was struck out.

Subsec. (c)(2). Pub. L. 97–248, §211(b), in subpar. (A) substituted "the processing of minerals extracted (by the taxpayer or by any other person) from oil or gas wells into their primary products" for "the extraction (by

the taxpayer or any other person) of minerals from oil or gas wells", deleted subpar. (B) which had provided that foreign oil related income meant the taxable income derived from sources outside the United States and its possessions from the processing of minerals from oil or gas wells into their primary products, redesignated subpar. (C) as (B), redesignated subpar. (D) as (C) and in subpar. (C) as so redesignated struck out "or" at the end, redesignated subpar. (E) as (D) and in subpar. (D) as so redesignated substituted "disposition" for "sale or exchange", and "or (C), or" for "(C), or (D)", struck out the period at the end, and added subpar. (E).

Subsec. (c)(4). Pub. L. 97–248, §211(a), substituted provisions regarding the recapture of foreign oil and gas extraction losses by recharacterization of later extraction income for provisions that if, for any foreign country for any taxable year, the taxpayer would have had a net operating loss if only items from sources within such country (including deductions properly apportioned or allocated thereto) which related to the extraction of minerals from oil or gas wells had been taken into account, such items would not be taken into account in computing foreign oil and gas extraction income for such year, but would be taken into account in computing foreign oil related income for such year.

Subsec. (e). Pub. L. 97–248, §211(d)(1), substituted rules regarding credits arising in taxable years beginning before Jan. 1, 1983, for rules regarding taxable years ending after Dec. 31, 1974, in par. (1), and in par. (2) substituted rules regarding carryback of credits arising in taxable years beginning after Dec. 31, 1982, for rules regarding taxable years ending after Dec. 31, 1975.

Subsec. (f)(1). Pub. L. 97–248, §211(d)(2)(A), substituted "such excess" for "so much of such excess as does not exceed 2 percent of foreign oil and gas extraction income for such taxable year" in first sentence, and struck out former provision that had directed that the above substitution be made regarding taxes deemed paid or accrued in any taxable year which ended in 1975, 1976, or 1977.

Subsec. (f)(2)(B). Pub. L. 97–248, §211(d)(2)(B)(i), substituted "provided by section 904 for such taxable year" for "provided by section 904 on taxes paid or accrued with respect to foreign oil-related income for such taxable year" in the introductory provisions, and in cl. (i) substituted "the United States during such taxable year" for "the United States with respect to such income during such taxable year".

Subsec. (f)(3)(A). Pub. L. 97–248, §211(d)(2)(B)(ii), substituted "section 904(c)" for "section 904(c) with respect to oil-related income".

Subsec. (f)(3)(B). Pub. L. 97–248, §211(d)(2)(B)(iii), struck out "oil-related" after "determining the amount of".

1978—Subsec. (a)(2). Pub. L. 95–600, §§301(b)(14), 701(u)(8)(A), designated existing provisions as subpar. (A), inserted applicability to corporations and generally reworked applicable formula, and added subpar. (B).

Subsec. (b). Pub. L. 95–600, §701(u)(8)(B), substituted provisions relating to applicability of section 904 separately to foreign oil related income and other taxable income for provisions relating to applicability of section 904 to corporations and other taxpayers.

1976—Subsec. (a). Pub. L. 94–455, §1035(a), substituted "oil and gas extraction taxes" for "income, war profits, and excess profits taxes" after "the amount of any" and, in par. (2), substituted "the percentage which is the sum of the normal tax rate and the surtax rate for the taxable year specified in section 11" for provisions giving the percentage multiplier for years ending 1975, 1976, and after 1976.

Subsec. (b). Pub. L. 94–455, §§1032(b)(1), 1035(b), inserted provisions making a distinction between corporations and other taxpayers and rules applicable to each and, as amended, struck out provision requiring the overall limitation, rather than the per-country limitation, be applied in the case of a corporation to foreign oil-related income and, a taxpayer other than a corporation, to foreign oil and gas extraction income.

Subsec. (c)(5). Pub. L. 94–455, §1035(d)(2), added par. (5).

Subsec. (e)(1). Pub. L. 94–455, §1031(b)(6)(A), substituted "(d) and (e) of section 904 (as in effect on the day before the date of enactment of the Tax Reform Act of 1976)" for "(d) and (e) of section 904" after "In applying subsections".

Subsec. (e)(2). Pub. L. 94–455, §1031(b)(6), substituted "(d) and (e) of section 904 (as in effect on the day before the date of enactment of the Tax Reform Act of 1976)" for "(d) and (e) of section 904" after "In applying subsections", "section 904(a)(1) (as so in effect)" for "section 904(a)(1)" after "provided by section" and, in subpar. (A), "section 904(e)(2) (as so in effect)" for "section 904(e)(2)" after "sentence of section".

Subsec. (f). Pub. L. 94–455, §§1032(b)(2), 1035(d)(1), added subsec. (f). Former subsec. (f), relating to recapture of foreign oil related loss, was struck out.

Subsec. (g). Pub. L. 94–455, §§1032(b)(2), 1035(d)(1), 1052(c)(4), struck out subsec. (g) relating to Western Hemisphere trade corporations which are members of an affiliated group.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title IV, §402(e), Oct. 3, 2008, 122 Stat. 3854, provided that: "The amendments

made by this section [amending this section and section 6501 of this title] shall apply to taxable years beginning after December 31, 2008."

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 417(b)(1) of Pub. L. 108–357 applicable to excess foreign taxes arising in taxable years beginning after Oct. 22, 2004, and amendment by section 417(b)(2) of Pub. L. 108–357 applicable to excess foreign taxes which may be carried to any taxable year ending after Oct. 22, 2004, see section 417(c) of Pub. L. 108–357, set out as a note under section 904 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to taxable years beginning after Dec. 31, 1992, see section 13235(c) of Pub. L. 103–66, set out as a note under section 904 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title II, §211(e), Sept. 3, 1982, 96 Stat. 450, as amended by Pub. L. 97–448, title III, §306(a)(5), 96 Stat. 2401; Pub. L. 98–369, div. A, title VII, §712(e), July 18, 1984, 98 Stat. 947, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 904 of this title] shall apply to taxable years beginning after December 31, 1982.

"(2) RETENTION OF OLD SECTIONS 907(b) AND 904(f)(4) WHERE TAXPAYER HAD SEPARATE BASKET FOREIGN LOSS.—

"(A) IN GENERAL.—If, after applying old sections 907(b) and 904(f)(4) to a taxable year beginning before January 1, 1983, the taxpayer had a separate basket foreign loss, such loss shall not be recaptured from income of a kind not taken into account in computing the amount of such separate basket foreign loss more rapidly than ratably over the 8-year period (or such shorter period as the taxpayer may select) beginning with the first taxable year beginning after December 31, 1982.

"(B) DEFINITIONS.—For purposes of this paragraph—

"(i) The term 'separate basket foreign loss' means any foreign loss attributable to activities taken into account (or not taken into account) in determining foreign oil related income (as defined in old section 907(c)(2)).

"(ii) An 'old' section is such section as in effect on the day before the date of the enactment of this Act [Sept. 3, 1982]."

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 301(b)(14) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95–600, set out as a note under section 11 of this title.

Pub. L. 95–600, title VII, §701(u)(8)(D), Nov. 6, 1978, 92 Stat. 2916, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(i) The amendments made by this paragraph [amending this section and section 904 of this title] shall apply, in the case of individuals, to taxable years ending after December 31, 1974, and, in the case of corporations, to taxable years ending after December 31, 1976.

"(ii) In the case of any taxable year ending after December 31, 1975, with respect to foreign oil related income (within the meaning of section 907(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]), the overall limitation provided by section 904(a)(2) of such Code shall apply and the per-country limitation provided by section 904(a)(1) of such Code shall not apply."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1031(b)(6)(A) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, with exceptions for certain mining operations, income from possessions, and carryback and carryover in the case of mining operations and income from a possession, see section 1031(c) of Pub. L. 94–455, set out as a note under section 904 of this title.

Amendment by section 1032(b)(1) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, and amendment by section 1032(b)(2) of Pub. L. 94–455 applicable to losses sustained in taxable years

beginning after Dec. 31, 1975, see section 1032(c) of Pub. L. 94–455, set out as a note under section 904 of this title.

Pub. L. 94–455, title X, §1035(e), Oct. 4, 1976, 90 Stat. 1633, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after December 31, 1976.

"(2) The amendment made by subsection (b) [amending this section] shall apply to taxable years ending after December 31, 1974; except that the last sentence of section 907(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall only apply to taxable years ending after December 31, 1975.

"(3) The amendment made by subsection (c) [enacting provisions set out below] shall apply to taxable years beginning after June 29, 1976.

"(4) The amendments made by subsection (d) [amending this section] shall apply to taxes paid or accrued during taxable years ending after the date of the enactment of this Act [Oct. 4, 1976]."

Amendment by section 1052(c)(4) of Pub. L. 94–455 effective with respect to taxable years beginning after December 31, 1979, see section 1052(d) of Pub. L. 94–455, set out as a note under section 170 of this title.

EFFECTIVE DATE

Pub. L. 94–12, title VI, §601(d), Mar. 29, 1975, 89 Stat. 58, provided that: "The amendments made by this section [enacting this section and amending section 901 of this title] shall apply to taxable years ending after December 31, 1974; except that—

"(1) the second sentence of section 907(b) shall apply to taxable years ending after December 31, 1975, and

"(2) the provisions of section 907(f) shall apply to losses sustained in taxable years ending after December 31, 1975."

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

TAX CREDIT FOR PRODUCTION-SHARING CONTRACTS

Pub. L. 94–455, title X, §1035(c), Oct. 4, 1976, 90 Stat. 1631, as amended by Pub. L. 95–600, title VII, §§701(u)(9), 703(h)(1), Nov. 6, 1978, 92 Stat. 2916, 2940; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) For purposes of section 901 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], there shall be treated as income, war profits, and excess profits taxes to be taken into account under section 907(a) of such Code amounts designated as income taxes of a foreign government by such government (which otherwise would not be treated as taxes for purposes of section 901 of such Code) with respect to production-sharing contracts for the extraction of foreign oil or gas.

"(2) The amounts specified in paragraph (1) shall not exceed the lessor of—

"(A) the product of the foreign oil and gas extraction income (as defined in section 907(c) of such Code) with respect to all such production-sharing contracts multiplied by the sum of the normal tax rate and the surtax rate for the taxable year specified in section 11 of such Code, or

"(B) the excess of the total amount of foreign oil and gas extraction income (as so defined) for the taxable year multiplied by the sum of the normal tax rate and the surtax rate for the taxable year specified in section 11 of such Code over the amount of any income, war profits, and excess profits taxes paid or accrued (or deemed to have been paid) without regard to paragraph (1) during the taxable year with respect to foreign oil and gas extraction income.

"(3) The production-sharing contracts taken into account for purposes of paragraph (1) shall be those contracts which were entered into before April 8, 1976, for the sharing of foreign oil and gas production with a foreign government (or an entity owned by such government) with respect to which amounts claimed as taxes paid or accrued to such foreign government for taxable years beginning before June 30, 1976, will not be disallowed as taxes. A contract described in the preceding sentence shall be taken into account under paragraph (1) only with respect to amounts (A) paid or accrued to the foreign government before January 1, 1978, and (B) attributable to income earned before such date."

[1] *So in original. The period probably should be a comma.*

[2] *So in original. Probably should be "years,".*

§908. Reduction of credit for participation in or cooperation with an international boycott

(a) In general

If a person, or a member of a controlled group (within the meaning of section 993(a)(3)) which includes such person, participates in or cooperates with an international boycott during the taxable year (within the meaning of section 999(b)), the amount of the credit allowable under section 901 to such person, or under section 902 or 960 to United States shareholders of such person, for foreign taxes paid during the taxable year shall be reduced by an amount equal to the product of—

(1) the amount of the credit which, but for this section, would be allowed under section 901 for the taxable year, multiplied by

(2) the international boycott factor (determined under section 999).

(b) Application with sections 275(a)(4) and 78

Section 275(a)(4) and section 78 shall not apply to any amount of taxes denied credit under subsection (a).

(Added Pub. L. 94–455, title X, §1061(a), Oct. 4, 1976, 90 Stat. 1649.)

EFFECTIVE DATE

Pub. L. 94–455, title X, §1066(a), Oct. 4, 1976, 90 Stat. 1654, provided that:

"(1) GENERAL RULE.—The amendments made by this part (other than by section 1065) [enacting this section and section 999 of this title and amending sections 952 and 995 of this title] apply to participation in or cooperation with an international boycott more than 30 days after the date of enactment of this Act [Oct. 4, 1976].

"(2) EXISTING CONTRACTS.—In the case of operations which constitute participation in or cooperation with an international boycott and which are carried out in accordance with the terms of a binding contract entered into before September 2, 1976, the amendments made by this part (other than by section 1065) apply to such participation or cooperation after December 31, 1977."

§909. Suspension of taxes and credits until related income taken into account

(a) In general

If there is a foreign tax credit splitting event with respect to a foreign income tax paid or accrued by the taxpayer, such tax shall not be taken into account for purposes of this title before the taxable year in which the related income is taken into account under this chapter by the taxpayer.

(b) Special rules with respect to section 902 corporations

If there is a foreign tax credit splitting event with respect to a foreign income tax paid or accrued by a section 902 corporation, such tax shall not be taken into account—

(1) for purposes of section 902 or 960, or

(2) for purposes of determining earnings and profits under section 964(a),

before the taxable year in which the related income is taken into account under this chapter by such section 902 corporation or a domestic corporation which meets the ownership requirements of subsection (a) or (b) of section 902 with respect to such section 902 corporation.

(c) Special rules

For purposes of this section—

(1) Application to partnerships, etc.

In the case of a partnership, subsections (a) and (b) shall be applied at the partner level. Except as otherwise provided by the Secretary, a rule similar to the rule of the preceding sentence shall apply

in the case of any S corporation or trust.

(2) Treatment of foreign taxes after suspension

In the case of any foreign income tax not taken into account by reason of subsection (a) or (b), except as otherwise provided by the Secretary, such tax shall be so taken into account in the taxable year referred to in such subsection (other than for purposes of section 986(a)) as a foreign income tax paid or accrued in such taxable year.

(d) Definitions

For purposes of this section—

(1) Foreign tax credit splitting event

There is a foreign tax credit splitting event with respect to a foreign income tax if the related income is (or will be) taken into account under this chapter by a covered person.

(2) Foreign income tax

The term "foreign income tax" means any income, war profits, or excess profits tax paid or accrued to any foreign country or to any possession of the United States.

(3) Related income

The term "related income" means, with respect to any portion of any foreign income tax, the income (or, as appropriate, earnings and profits) to which such portion of foreign income tax relates.

(4) Covered person

The term "covered person" means, with respect to any person who pays or accrues a foreign income tax (hereafter in this paragraph referred to as the "payor")—

(A) any entity in which the payor holds, directly or indirectly, at least a 10 percent ownership interest (determined by vote or value),

(B) any person which holds, directly or indirectly, at least a 10 percent ownership interest (determined by vote or value) in the payor,

(C) any person which bears a relationship to the payor described in section 267(b) or 707(b), and

(D) any other person specified by the Secretary for purposes of this paragraph.

(5) Section 902 corporation

The term "section 902 corporation" means any foreign corporation with respect to which one or more domestic corporations meets the ownership requirements of subsection (a) or (b) of section 902.

(e) Regulations

The Secretary may issue such regulations or other guidance as is necessary or appropriate to carry out the purposes of this section, including regulations or other guidance which provides—

(1) appropriate exceptions from the provisions of this section, and

(2) for the proper application of this section with respect to hybrid instruments.

(Added Pub. L. 111–226, title II, §211(a), Aug. 10, 2010, 124 Stat. 2394.)

EFFECTIVE DATE

Pub. L. 111–226, title II, §211(c), Aug. 10, 2010, 124 Stat. 2395, provided that: "The amendments made by this section [enacting this section] shall apply to—

"(1) foreign income taxes (as defined in section 909(d) of the Internal Revenue Code of 1986, as added by this section) paid or accrued in taxable years beginning after December 31, 2010; and

"(2) foreign income taxes (as so defined) paid or accrued by a section 902 corporation (as so defined) in taxable years beginning on or before such date (and not deemed paid under section 902(a) or 960 of such Code on or before such date), but only for purposes of applying sections 902 and 960 with respect to periods after such date.

Section 909(b)(2) of the Internal Revenue Code of 1986, as added by this section, shall not apply to foreign

income taxes described in paragraph (2)."

SUBPART B—EARNED INCOME OF CITIZENS OR RESIDENTS OF UNITED STATES

Sec.
911. Citizens or residents of the United States living abroad.
912. Exemption for certain allowances.
[913. Repealed.]

AMENDMENTS

1981—Pub. L. 97–34, title I, §§111(b)(1), 112(b)(1), Aug. 13, 1981, 95 Stat. 194, 195, substituted "Citizens or residents of the United States living abroad" for "Income earned by individuals in certain camps or from charitable services" in item 911 and struck out item 913 "Deduction for certain expenses of living abroad".

1980—Pub. L. 96–595, §4(c)(2), Dec. 24, 1980, 94 Stat. 3467, inserted "or from charitable services" after "camps" in item 911.

1978—Pub. L. 95–615, §§202(g)(2), (3), 203(c), formerly §§202(f)(2), (3), 203(c), Nov. 8, 1978, 92 Stat. 3100, 3106, renumbered Pub. L. 96–222, title I, §108(a)(1)(A), Apr. 1, 1980, 94 Stat. 223, inserted in subpart heading "or Residents" after "Citizens", substituted in item 911 "Income earned by individuals in certain camps" for "Earned income from sources without the United States", and added item 913.

§911. Citizens or residents of the United States living abroad

(a) Exclusion from gross income

At the election of a qualified individual (made separately with respect to paragraphs (1) and (2)), there shall be excluded from the gross income of such individual, and exempt from taxation under this subtitle, for any taxable year—

(1) the foreign earned income of such individual, and

(2) the housing cost amount of such individual.

(b) Foreign earned income

(1) Definition

For purposes of this section—

(A) In general

The term "foreign earned income" with respect to any individual means the amount received by such individual from sources within a foreign country or countries which constitute earned income attributable to services performed by such individual during the period described in subparagraph (A) or (B) of subsection (d)(1), whichever is applicable.

(B) Certain amounts not included in foreign earned income

The foreign earned income for an individual shall not include amounts—

(i) received as a pension or annuity,

(ii) paid by the United States or an agency thereof to an employee of the United States or an agency thereof,

(iii) included in gross income by reason of section 402(b) (relating to taxability of beneficiary of nonexempt trust) or section 403(c) (relating to taxability of beneficiary under a nonqualified annuity), or

(iv) received after the close of the taxable year following the taxable year in which the services to which the amounts are attributable are performed.

(2) Limitation on foreign earned income

(A) In general

The foreign earned income of an individual which may be excluded under subsection (a)(1)

for any taxable year shall not exceed the amount of foreign earned income computed on a daily basis at an annual rate equal to the exclusion amount for the calendar year in which such taxable year begins.

(B) Attribution to year in which services are performed

For purposes of applying subparagraph (A), amounts received shall be considered received in the taxable year in which the services to which the amounts are attributable are performed.

(C) Treatment of community income

In applying subparagraph (A) with respect to amounts received from services performed by a husband or wife which are community income under community property laws applicable to such income, the aggregate amount which may be excludable from the gross income of such husband and wife under subsection (a)(1) for any taxable year shall equal the amount which would be so excludable if such amounts did not constitute community income.

(D) Exclusion amount

(i) In general

The exclusion amount for any calendar year is the exclusion amount determined in accordance with the following table (as adjusted by clause (ii)):

For calendar year—	The exclusion amount is—
1998	$72,000
1999	74,000
2000	76,000
2001	78,000
2002 and thereafter	80,000.

(ii) Inflation adjustment

In the case of any taxable year beginning in a calendar year after 2005, the $80,000 amount in clause (i) shall be increased by an amount equal to the product of—

(I) such dollar amount, and

(II) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting "2004" for "1992" in subparagraph (B) thereof.

If any increase determined under the preceding sentence is not a multiple of $100, such increase shall be rounded to the next lowest multiple of $100.

(c) Housing cost amount

For purposes of this section—

(1) In general

The term "housing cost amount" means an amount equal to the excess of—

(A) the housing expenses of an individual for the taxable year to the extent such expenses do not exceed the amount determined under paragraph (2), over

(B) an amount equal to the product of—

(i) 16 percent of the amount (computed on a daily basis) in effect under subsection (b)(2)(D) for the calendar year in which such taxable year begins, multiplied by

(ii) the number of days of such taxable year within the applicable period described in subparagraph (A) or (B) of subsection (d)(1).

(2) Limitation

(A) In general

The amount determined under this paragraph is an amount equal to the product of—

(i) 30 percent (adjusted as may be provided under subparagraph (B)) of the amount (computed on a daily basis) in effect under subsection (b)(2)(D) for the calendar year in which the taxable year of the individual begins, multiplied by

(ii) the number of days of such taxable year within the applicable period described in subparagraph (A) or (B) of subsection (d)(1).

(B) Regulations

The Secretary may issue regulations or other guidance providing for the adjustment of the percentage under subparagraph (A)(i) on the basis of geographic differences in housing costs relative to housing costs in the United States.

(3) Housing expenses

(A) In general

The term "housing expenses" means the reasonable expenses paid or incurred during the taxable year by or on behalf of an individual for housing for the individual (and, if they reside with him, for his spouse and dependents) in a foreign country. The term—

(i) includes expenses attributable to the housing (such as utilities and insurance), but

(ii) does not include interest and taxes of the kind deductible under section 163 or 164 or any amount allowable as a deduction under section 216(a).

Housing expenses shall not be treated as reasonable to the extent such expenses are lavish or extravagant under the circumstances.

(B) Second foreign household

(i) In general

Except as provided in clause (ii), only housing expenses incurred with respect to that abode which bears the closest relationship to the tax home of the individual shall be taken into account under paragraph (1).

(ii) Separate household for spouse and dependents

If an individual maintains a separate abode outside the United States for his spouse and dependents and they do not reside with him because of living conditions which are dangerous, unhealthful, or otherwise adverse, then—

(I) the words "if they reside with him" in subparagraph (A) shall be disregarded, and

(II) the housing expenses incurred with respect to such abode shall be taken into account under paragraph (1).

(4) Special rules where housing expenses not provided by employer

(A) In general

To the extent the housing cost amount of any individual for any taxable year is not attributable to employer provided amounts, such amount shall be treated as a deduction allowable in computing adjusted gross income to the extent of the limitation of subparagraph (B).

(B) Limitation

For purposes of subparagraph (A), the limitation of this subparagraph is the excess of—

(i) the foreign earned income of the individual for the taxable year, over

(ii) the amount of such income excluded from gross income under subsection (a) for the taxable year.

(C) 1-year carryover of housing amounts not allowed by reason of subparagraph (B)

(i) In general

The amount not allowable as a deduction for any taxable year under subparagraph (A) by reason of the limitation of subparagraph (B) shall be treated as a deduction allowable in computing adjusted gross income for the succeeding taxable year (and only for the succeeding taxable year) to the extent of the limitation of clause (ii) for such succeeding taxable year.

(ii) Limitation

For purposes of clause (i), the limitation of this clause for any taxable year is the excess of—

(I) the limitation of subparagraph (B) for such taxable year, over

(II) amounts treated as a deduction under subparagraph (A) for such taxable year.

(D) Employer provided amounts

For purposes of this paragraph, the term "employer provided amounts" means any amount paid or incurred on behalf of the individual by the individual's employer which is foreign earned income included in the individual's gross income for the taxable year (without regard to this section).

(E) Foreign earned income

For purposes of this paragraph, an individual's foreign earned income for any taxable year shall be determined without regard to the limitation of subparagraph (A) of subsection (b)(2).

(d) Definitions and special rules

For purposes of this section—

(1) Qualified individual

The term "qualified individual" means an individual whose tax home is in a foreign country and who is—

(A) a citizen of the United States and establishes to the satisfaction of the Secretary that he has been a bona fide resident of a foreign country or countries for an uninterrupted period which includes an entire taxable year, or

(B) a citizen or resident of the United States and who, during any period of 12 consecutive months, is present in a foreign country or countries during at least 330 full days in such period.

(2) Earned income

(A) In general

The term "earned income" means wages, salaries, or professional fees, and other amounts received as compensation for personal services actually rendered, but does not include that part of the compensation derived by the taxpayer for personal services rendered by him to a corporation which represents a distribution of earnings or profits rather than a reasonable allowance as compensation for the personal services actually rendered.

(B) Taxpayer engaged in trade or business

In the case of a taxpayer engaged in a trade or business in which both personal services and capital are material income-producing factors, under regulations prescribed by the Secretary, a reasonable allowance as compensation for the personal services rendered by the taxpayer, not in excess of 30 percent of his share of the net profits of such trade or business, shall be considered as earned income.

(3) Tax home

The term "tax home" means, with respect to any individual, such individual's home for purposes of section 162(a)(2) (relating to traveling expenses while away from home). An individual shall not be treated as having a tax home in a foreign country for any period for which his abode is within the United States.

(4) Waiver of period of stay in foreign country

Notwithstanding paragraph (1), an individual who—

(A) is a bona fide resident of, or is present in, a foreign country for any period,

(B) leaves such foreign country after August 31, 1978—

(i) during any period during which the Secretary determines, after consultation with the Secretary of State or his delegate, that individuals were required to leave such foreign country because of war, civil unrest, or similar adverse conditions in such foreign country which precluded the normal conduct of business by such individuals, and

(ii) before meeting the requirements of such paragraph (1), and

(C) establishes to the satisfaction of the Secretary that such individual could reasonably have been expected to have met such requirements but for the conditions referred to in clause (i) of subparagraph (B),

shall be treated as a qualified individual with respect to the period described in subparagraph (A) during which he was a bona fide resident of, or was present in, the foreign country, and in applying subsections (b)(2)(A), (c)(1)(B)(ii), and (c)(2)(A)(ii) with respect to such individual, only the days within such period shall be taken into account.

(5) Test of bona fide residence

If—

(A) an individual who has earned income from sources within a foreign country submits a statement to the authorities of that country that he is not a resident of that country, and

(B) such individual is held not subject as a resident of that country to the income tax of that country by its authorities with respect to such earnings,

then such individual shall not be considered a bona fide resident of that country for purposes of paragraph (1)(A).

(6) Denial of double benefits

No deduction or exclusion from gross income under this subtitle or credit against the tax imposed by this chapter (including any credit or deduction for the amount of taxes paid or accrued to a foreign country or possession of the United States) shall be allowed to the extent such deduction, exclusion, or credit is properly allocable to or chargeable against amounts excluded from gross income under subsection (a).

(7) Aggregate benefit cannot exceed foreign earned income

The sum of the amount excluded under subsection (a) and the amount deducted under subsection (c)(4)(A) for the taxable year shall not exceed the individual's foreign earned income for such year.

(8) Limitation on income earned in restricted country

(A) In general

If travel (or any transaction in connection with such travel) with respect to any foreign country is subject to the regulations described in subparagraph (B) during any period—

(i) the term "foreign earned income" shall not include any income from sources within such country attributable to services performed during such period,

(ii) the term "housing expenses" shall not include any expenses allocable to such period for housing in such country or for housing of the spouse or dependents of the taxpayer in another country while the taxpayer is present in such country, and

(iii) an individual shall not be treated as a bona fide resident of, or as present in, a foreign country for any day during which such individual was present in such country during such period.

(B) Regulations

For purposes of this paragraph, regulations are described in this subparagraph if such regulations—

(i) have been adopted pursuant to the Trading With the Enemy Act (50 U.S.C. App. 1 et seq.), or the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), and

(ii) include provisions generally prohibiting citizens and residents of the United States from engaging in transactions related to travel to, from, or within a foreign country.

(C) Exception

Subparagraph (A) shall not apply to any individual during any period in which such individual's activities are not in violation of the regulations described in subparagraph (B).

(9) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations providing rules—

(A) for cases where a husband and wife each have earned income from sources outside the United States, and

(B) for married individuals filing separate returns.

(e) Election

(1) In general

An election under subsection (a) shall apply to the taxable year for which made and to all subsequent taxable years unless revoked under paragraph (2).

(2) Revocation

A taxpayer may revoke an election made under paragraph (1) for any taxable year after the taxable year for which such election was made. Except with the consent of the Secretary, any taxpayer who makes such a revocation for any taxable year may not make another election under this section for any subsequent taxable year before the 6th taxable year after the taxable year for which such revocation was made.

(f) Determination of tax liability

(1) In general

If, for any taxable year, any amount is excluded from gross income of a taxpayer under subsection (a), then, notwithstanding sections 1 and 55—

(A) if such taxpayer has taxable income for such taxable year, the tax imposed by section 1 for such taxable year shall be equal to the excess (if any) of—

(i) the tax which would be imposed by section 1 for such taxable year if the taxpayer's taxable income were increased by the amount excluded under subsection (a) for such taxable year, over

(ii) the tax which would be imposed by section 1 for such taxable year if the taxpayer's taxable income were equal to the amount excluded under subsection (a) for such taxable year, and

(B) if such taxpayer has a taxable excess (as defined in section 55(b)(1)(A)(ii)) for such taxable year, the amount determined under the first sentence of section 55(b)(1)(A)(i) for such taxable year shall be equal to the excess (if any) of—

(i) the amount which would be determined under such sentence for such taxable year (subject to the limitation of section 55(b)(3)) if the taxpayer's taxable excess (as so defined) were increased by the amount excluded under subsection (a) for such taxable year, over

(ii) the amount which would be determined under such sentence for such taxable year if the taxpayer's taxable excess (as so defined) were equal to the amount excluded under subsection (a) for such taxable year.

(2) Special rules

(A) Regular tax

In applying section 1(h) for purposes of determining the tax under paragraph (1)(A)(i) for any

taxable year in which, without regard to this subsection, the taxpayer's net capital gain exceeds taxable income (hereafter in this subparagraph referred to as the capital gain excess)—

(i) the taxpayer's net capital gain (determined without regard to section 1(h)(11)) shall be reduced (but not below zero) by such capital gain excess,

(ii) the taxpayer's qualified dividend income shall be reduced by so much of such capital gain excess as exceeds the taxpayer's net capital gain (determined without regard to section 1(h)(11) and the reduction under clause (i)), and

(iii) adjusted net capital gain, unrecaptured section 1250 gain, and 28-percent rate gain shall each be determined after increasing the amount described in section 1(h)(4)(B) by such capital gain excess.

(B) Alternative minimum tax

In applying section 55(b)(3) for purposes of determining the tax under paragraph (1)(B)(i) for any taxable year in which, without regard to this subsection, the taxpayer's net capital gain exceeds the taxable excess (as defined in section 55(b)(1)(A)(ii))—

(i) the rules of subparagraph (A) shall apply, except that such subparagraph shall be applied by substituting "the taxable excess (as defined in section 55(b)(1)(A)(ii))" for "taxable income", and

(ii) the reference in section 55(b)(3)(B) to the excess described in section 1(h)(1)(B) shall be treated as a reference to such excess as determined under the rules of subparagraph (A) for purposes of determining the tax under paragraph (1)(A)(i).

(C) Definitions

Terms used in this paragraph which are also used in section 1(h) shall have the respective meanings given such terms by section 1(h), except that in applying subparagraph (B) the adjustments under part VI of subchapter A shall be taken into account.

(g) Cross references

For administrative and penal provisions relating to the exclusions provided for in this section, see sections 6001, 6011, 6012(c), and the other provisions of subtitle F.

(Aug. 16, 1954, ch. 736, 68A Stat. 289; Pub. L. 85–866, title I, §72(b), Sept. 2, 1958, 72 Stat. 1660; Pub. L. 87–834, §11(a), Oct. 16, 1962, 76 Stat. 1003; Pub. L. 88–272, title II, §237(a), Feb. 26, 1964, 78 Stat. 128; Pub. L. 89–809, title I, §105(e)(3), Nov. 13, 1966, 80 Stat. 1567; Pub. L. 94–455, title X, §1011(a), (b), title XIX, §§1901(a)(115), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1610, 1784, 1834; Pub. L. 95–30, title I, §102(b)(12), May 23, 1977, 91 Stat. 138; Pub. L. 95–600, title IV, §401(b)(4), title VII, §§701(u)(10)(A), 703(e), Nov. 6, 1978, 92 Stat. 2867, 2917, 2939; Pub. L. 95–615, title II, §202(a)–(e), (g)(1), formerly §202(a)–(f)(1), Nov. 8, 1978, 92 Stat. 3098–3100, renumbered §202(a)–(e), (g)(1), and amended Pub. L. 96–222, title I, §§107(a)(3)(B), 108(a)(1)(A), (C), (D), Apr. 1, 1980, 94 Stat. 223, 224; Pub. L. 96–595, §4(a)–(c)(1), Dec. 24, 1980, 94 Stat. 3466, 3467; Pub. L. 97–34, title I, §111(a), Aug. 13, 1981, 95 Stat. 190; Pub. L. 97–448, title I, §101(c), Jan. 12, 1983, 96 Stat. 2366; Pub. L. 98–369, div. A, title I, §17, July 18, 1984, 98 Stat. 505; Pub. L. 99–514, title XII, §1233(a), (b), Oct. 22, 1986, 100 Stat. 2564; Pub. L. 105–34, title XI, §1172(a), Aug. 5, 1997, 111 Stat. 988; Pub. L. 109–222, title V, §515(a)–(c), May 17, 2006, 120 Stat. 367; Pub. L. 110–172, §4(c), Dec. 29, 2007, 121 Stat. 2476.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

REFERENCES IN TEXT

The Trading With the Enemy Act, referred to in subsec. (d)(8)(B)(i), is act Oct. 6, 1917, ch. 106, 40 Stat. 411, as amended, which is classified to sections 1 to 6, 7 to 39, and 41 to 44 of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see Tables.

The International Emergency Economic Powers Act, referred to in subsec. (d)(8)(B)(i), is Pub. L. 95–223, title II, Dec. 28, 1977, 91 Stat. 1626, which is classified generally to chapter 35 (§1701 et seq.) of Title 50,

War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 50 and Tables.

AMENDMENTS

2007—Subsec. (f). Pub. L. 110–172 amended heading and text generally, substituting provisions relating to determination of tax liability, special rules for determining regular tax and alternative minimum tax, and definitions for former provisions relating to determination of tax liability and tentative minimum tax.

2006—Subsec. (b)(2)(D)(ii). Pub. L. 109–222, §515(a)(1), substituted "2005" for "2007" in introductory provisions.

Subsec. (b)(2)(D)(ii)(II). Pub. L. 109–222, §515(a)(2), substituted "2004" for "2006".

Subsec. (c)(1)(A). Pub. L. 109–222, §515(b)(2)(A), inserted "to the extent such expenses do not exceed the amount determined under paragraph (2)" after "the taxable year".

Subsec. (c)(1)(B)(i). Pub. L. 109–222, §515(b)(1), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: "16 percent of the salary (computed on a daily basis) of an employee of the United States who is compensated at a rate equal to the annual rate paid for step 1 of grade GS–14, multiplied by".

Subsec. (c)(2) to (4). Pub. L. 109–222, §515(b)(2)(B), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

Subsec. (d)(4). Pub. L. 109–222, §515(b)(2)(C)(i), substituted ", (c)(1)(B)(ii), and (c)(2)(A)(ii)" for "and (c)(1)(B)(ii)" in concluding provisions.

Subsec. (d)(7). Pub. L. 109–222, §515(b)(2)(C)(ii), which directed substitution of "subsection (c)(4)" for "subsection (c)(3)", was executed by substituting "subsection (c)(4)(A)" for "subsection (c)(3)(A)" to reflect the probable intent of Congress.

Subsecs. (f), (g). Pub. L. 109–222, §515(c), added subsec. (f) and redesignated former subsec. (f) as (g).

1997—Subsec. (b)(2)(A). Pub. L. 105–34, §1172(a)(1), substituted "equal to the exclusion amount for the calendar year in which such taxable year begins" for "of $70,000".

Subsec. (b)(2)(D). Pub. L. 105–34, §1172(a)(2), added subpar. (D).

1986—Subsec. (b)(2)(A). Pub. L. 99–514, §1233(a), in amending subpar. (A) generally, substituted "an annual rate of $70,000" for "the annual rate set forth in the following table for each day of the taxable year within the applicable period described in subparagraph (A) or (B) of subsection (d)(1):

"In the case of taxable years beginning in:	The annual rate is:
1983, 1984, 1985, 1986, or 1987	$80,000
1988	85,000
1989	90,000
1990 and thereafter	95,000."

Subsec. (d)(8), (9). Pub. L. 99–514, §1233(b), added par. (8) and redesignated former par. (8) as (9).

1984—Subsec. (b)(2)(A). Pub. L. 98–369 amended table by striking out item which set the annual rate at $75,000 for taxable years beginning in 1982, substituted item setting the annual rate at $80,000 for taxable years beginning in 1983, 1984, 1985, 1986, or 1987 for items which had set annual rates of $80,000 for taxable years beginning in 1983, $85,000 for taxable years beginning in 1984, $90,000 for taxable years beginning in 1985, and $95,000 for taxable years beginning in 1986 and thereafter, and added items setting annual rates of $85,000 for taxable years beginning in 1988, $90,000 for taxable years beginning in 1989, and $95,000 for taxable years beginning in 1990 and thereafter.

1983—Subsec. (c)(3)(B)(ii). Pub. L. 97–448, §101(c)(2), substituted "subsection (a)" for "subsection (a)(1)".

Subsec. (d)(7), (8). Pub. L. 97–448, §101(c)(1), added par. (7) and redesignated former par. (7) as (8).

1981—Pub. L. 97–34 amended section generally, modifying the eligibility standards of existing law, replacing the existing system of deduction for excess living costs with an exclusion of a portion of foreign earned income, and providing for an individual's election to exclude a portion of his income or to deduct an amount for housing, based on his housing expenses.

1980—Pub. L. 96–595 §4(c)(1), inserted "or from charitable services" after "camps" in section catchline.

Subsec. (a). Pub. L. 96–595, §4(a), inserted "or who performs qualified charitable services in a lesser developed country," after "hardship area".

Pub. L. 96–222, §108(a)(1)(C), (D), substituted "a foreign country or" for "qualified foreign" in par. (2) and, in provisions following par. (2), substituted "his gross income any deduction," for "his gross income" and "other than the deduction allowed by section 217" for "other than the deductions allowed by sections 217".

Subsec. (c)(1)(A). Pub. L. 96–595, §4(b)(1), substituted "Dollar limitations" for "In general" in heading, redesignated existing provisions as cl. (i), and in cl. (i) as so redesignated, inserted "Camp residents—In the case of an individual who resides in a camp located in a hardship area" before "the amount excluded", and added cls. (ii) and (iii).

Subsec. (c)(1)(D), (E). Pub. L. 96–595, §4(b)(2), added subpars. (D) and (E).

1978—Pub. L. 95–615, §202(f)(1), substituted "Income earned by individuals in certain camps" for "Earned income from sources without the United States" in section catchline.

Subsec. (a). Pub. L. 95–615, §202(a), in introductory provisions inserted reference to an individual described in section 913(a) who, because of his employment, resides in a camp located in a hardship area, in par. (1) substituted reference to amounts received from sources within a foreign country or countries for reference to amounts received from sources without the United States, in par. (2) substituted reference to amounts received from sources within qualified foreign countries for reference to amounts received from sources without the United States, and in provisions following par. (2) struck out "any deductions (other than those allowed by section 151, relating to personal exemptions)," after "deduction from his gross income" and inserted ", other than the deductions allowed by sections 217 (relating to moving expenses)" after "subsection".

Pub. L. 95–600, §701(u)(10)(A), inserted provisions setting forth formula for determining amount of reduction of taxes, and struck out provisions relating to the credit against taxes.

Subsec. (c)(1)(A). Pub. L. 95–615, §202(b), substituted "The amount excluded" for "Except as provided in subparagraphs (B) and (C), the amount excluded" and "an annual rate of $20,000 for days during which he resides in a camp" for "an annual rate of $15,000".

Subsec. (c)(1)(B). Pub. L. 95–615, §202(b), substituted provisions relating to conditions upon which an individual will be considered to reside in a camp because of his employment for provisions which related to the amount excluded from the gross income of an individual performing qualified charitable services.

Subsec. (c)(1)(C). Pub. L. 95–615, §202(b), substituted provisions relating to definition of "hardship area" for provisions which related to the amount excluded from the gross income of an individual performing both qualified charitable services and other services.

Subsec. (c)(1)(D). Pub. L. 95–615, §202(b), struck out subpar. (D) which defined "qualified charitable services".

Subsec. (c)(7). Pub. L. 95–615, §202(c), added par. (7).

Pub. L. 95–600, §703(e), redesignated former par. (8) as (7). Such par. (8) was subsequently repealed by section 202(e) of Pub. L. 95–615 without taking into account the redesignation of par. (8) as (7) by Pub. L. 95–600. See 1978 Amendment note for subsec. (c)(8) below.

Subsec. (c)(8). Pub. L. 95–615, §202(e), struck out par. (8) which related to the nonexclusion under subsec. (a) of any amount attributable to services performed in a foreign country or countries if such amount was received outside of the foreign country or countries where such services were performed and if one of the purposes was the avoidance of any tax imposed by such foreign country or countries on such amount.

Subsec. (d). Pub. L. 95–615, §202(d)(1), redesignated subsec. (e) as (d), inserted "for the taxable year" after "section apply", and struck out provision that an election was applicable to the taxable year for which made and to all subsequent taxable years. Former subsec. (d), which related to the computation of tax imposed by section 1 or section 1201 if an individual earned income which was excluded from gross income under subsec. (a) and which defined "net taxable income" and "net excluded earned income", was struck out.

Subsec. (d)(1). Pub. L. 95–600, §401(b)(4), struck out provisions respecting applicability of section 1201 of this title.

Subsecs. (e), (f). Pub. L. 95–615, §202(d)(1), (2), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

1977—Subsec. (d)(1)(B). Pub. L. 95–30 substituted "on the sum of (i) the amount of net excluded earned income, and (ii) the zero bracket amount" for "on the amount of net excluded earned income".

1976—Subsec. (a). Pub. L. 94–455, §§1011(b)(1), 1906(b)(13)(A), struck out "or his delegate" after "Secretary" in par. (1), and in provisions following par. (2), inserted "or as a credit against the tax imposed by this chapter any credit for the amount of taxes paid or accrued to a foreign country or possession of the United States, to the extent that such deductions or credit is" after "personal exemptions)".

Subsec. (b). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (c)(1). Pub. L. 94–455, §1011(a), reduced the amount excludable from individual's gross income from $20,000 to $15,000 and $20,000 for employees of charitable organizations, added special rule to be

applied to income from charitable sources and other sources combined, inserted definition of "qualified charitable services", and struck out provisions relating to $25,000 exclusion for individual who has been a bona fide resident in a foreign country for an uninterrupted period of 3 years.

Subsec. (c)(7). Pub. L. 94–455, §1901(a)(115), struck out par. (7) relating to certain noncash remuneration from sources outside the United States.

Subsec. (c)(8). Pub. L. 94–455, §1011(b)(2), added par. (8).

Subsecs. (d) to (f). Pub. L. 94–455, §1011(b)(3), added subsecs. (d) and (e) and redesignated former subsec. (d) as (f).

1966—Subsec. (d). Pub. L. 89–809 designated existing text as par. (1) and added par. (2).

1964—Subsec. (c)(1)(B). Pub. L. 88–272 substituted "$25,000" for "$35,000".

1962—Subsec. (a). Pub. L. 87–834 substituted "which constitute earned income attributable to services performed during such uninterrupted period" for "if such amounts constitute earned income (as defined in subsection (b)) attributable to such period" in par. (1), and "which constitute earned income attributable to services performed during such 18-month period" for "if such amounts constitute earned income (as defined in subsection (b)) attributable to such period" in par. (2), inserted provisions in pars. (1) and (2) requiring the amount excluded under such paragraphs to be computed by applying the special rules contained in subsec. (c), and eliminated provisions from par. (2) which limited the amount excluded under such paragraph to not more than $20,000 if the 18-month period includes the entire taxable year, and to not more than an amount which bears the same ratio to $20,000 as the number of days in the part of the taxable year within the 18-month period bears to the total number of days in such year if the 18-month period does not include the entire taxable year.

Subsecs. (c) and (d). Pub. L. 87–834 added subsec. (c) and redesignated former subsec. (c) as (d).

1958—Subsec. (c). Pub. L. 85–866 added subsec. (c).

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–172 effective as if included in the provisions of the Tax Increase Prevention and Reconciliation Act of 2005, Pub. L. 109–222, to which such amendment relates, with certain exceptions, see section 4(d) of Pub. L. 110–172, set out as a note under section 355 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–222, title V, §515(d), May 17, 2006, 120 Stat. 368, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2005."

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XI, §1172(b), Aug. 5, 1997, 111 Stat. 988, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1997."

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XII, §1233(c), Oct. 22, 1986, 100 Stat. 2565, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1986."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years ending after Dec. 31, 1983, see section 18(a) of Pub. L. 98–369, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title I, §115, Aug. 13, 1981, 95 Stat. 196, provided that: "The amendments made by this subtitle [subtitle B (§§111–115) of title I of Pub. L. 97–34, amending this section and sections 37, 43, 62, 63, 105, 119, 410, 879, 1034, 1302, 1303, 1304, 1402, 3401, 6012, and 6091 of this title and repealing section 913 of this title] (other than section 114 [amending section 208 of Pub. L. 95–615, set out below]) shall apply with respect to taxable years beginning after December 31, 1981."

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–595, §4(d), Dec. 24, 1980, 94 Stat. 3467, provided that: "The amendments made by this section

[amending this section] shall apply to taxable years beginning after December 31, 1978."

Amendment by section 107(a)(3)(B) of Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

Amendment by section 108(a)(1)(A), (C), (D) of Pub. L. 96–222 effective as if included in the Foreign Earned Income Act of 1978, Pub. L. 95–615, see section 108(a)(2)(A) of Pub. L. 96–222, set out as a note under section 3 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 401(b)(4) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 401(c) of Pub. L. 95–600, set out as a note under section 1201 of this title.

Pub. L. 95–600, title VII, §701(u)(10)(B), Nov. 6, 1978, 92 Stat. 2917, as amended by Pub. L. 96–222, title I, §107(a)(1)(B), Apr. 1, 1980, 94 Stat. 222, provided that: "The amendment made by subparagraph (A) [amending this section] shall apply to taxable years beginning in calendar year 1978 but only in the case of taxpayers who make an election under section 209(c) of the Foreign Earned Income Act of 1978 [section 209(c) of Pub. L. 95–615, set out below]."

Amendment by section 703(e) of Pub. L. 95–600 effective on Oct. 4, 1976, see section 703(r) of Pub. L. 95–600, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT; ELECTION OF PRIOR LAW

Pub. L. 95–615, title II, §209, Nov. 8, 1978, 92 Stat. 3109, provided that:

"(a) GENERAL RULE.—Except as provided in subsections (b) and (c), the amendments made by this title [see section 201(a) of Pub. L. 95–615, set out as a Short Title of 1978 Amendment note under section 1 of this title] shall apply to taxable years beginning after December 31, 1977.

"(b) WAGE WITHHOLDING.—The amendment made by section 207(a) [amending section 3401 of this title] shall apply to remuneration paid after the date of the enactment of this Act. [Nov. 8, 1978].

"(c) ELECTION OF PRIOR LAW.—

"(1) A taxpayer may elect not to have the amendments made by this title [see section 201(a) of Pub. L. 95–615, set out as a Short Title of 1978 Amendment note under section 1 of this title] apply with respect to any taxable year beginning after December 31, 1977, and before January 1, 1979.

"(2) An election under this subsection shall be filed with a taxpayer's timely filed return for the first taxable year beginning after December 31, 1977."

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title X, §1011(d), Oct. 4, 1976, 90 Stat. 1611, as amended by Pub. L. 95–30, title III, §302, May 23, 1977, 91 Stat. 152; Pub. L. 95–615, §4(a), Nov. 8, 1978, 92 Stat. 3097, provided that: "The amendments made by this section [amending this section and section 36 of this title] shall apply to taxable years beginning after December 31, 1977."

Amendment by section 1901(a)(115) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88–272, title II, §237(b), Feb. 26, 1964, 78 Stat. 128, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1964."

EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87–834, §11(c)(1), Oct. 16, 1962, 76 Stat. 1005, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after September 4, 1962, but only with respect to amounts—

"(A) received after March 12, 1962, which are attributable to services performed after December 31, 1962, or

"(B) received after December 31, 1962, which are attributable to services performed on or before December 31, 1962, unless on March 12, 1962, there existed a right (whether forfeitable or nonforfeitable) to receive such amounts."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1957, see section 72(c) of Pub. L. 85–866 set out as a note under section 6012 of this title.

REPEALS

Section 703(e) of Pub. L. 95–600, cited as a credit to this section, was repealed by Pub. L. 96–222, title I, §107(a)(3)(B), Apr. 1, 1980, 94 Stat. 223. See 1978 Amendment note for subsec. (c)(7) of this section set out above.

TREATMENT OF CERTAIN PERSONS IN PANAMA

Pub. L. 99–514, title XII, §1232(a), Oct. 22, 1986, 100 Stat. 2563, provided that: "Nothing in the Panama Canal Treaty (or in any agreement implementing such Treaty) shall be construed as exempting (in whole or in part) any citizen or resident of the United States from any tax under the Internal Revenue Code of 1954 or 1986. The preceding sentence shall apply to all taxable years whether beginning before, on, or after the date of the enactment of this Act [Oct. 22, 1986] (or in the case of any tax not imposed with respect to a taxable year, to taxable events after the date of enactment of this Act.)"

TAXABLE YEARS BEGINNING IN 1977 OR 1978; INDIVIDUALS WHO LEAVE FOREIGN COUNTRY AFTER AUGUST 31, 1978

Rules similar to the rules of section 913(j)(4) of this title to apply for the purposes of applying this section for taxable years beginning in 1977 or 1978 in the case of an individual who leaves a foreign country after Aug. 31, 1978, see section 1(b) of Pub. L. 96–608, set out as an Effective Date of 1980 Amendment note under section 913 of this title.

INDIVIDUALS FOR WHOM UNUSED ZERO BRACKET AMOUNT COMPUTATION IS PROVIDED FOR TAXABLE YEARS BEGINNING IN 1977

Pub. L. 95–615, §4(b), Nov. 8, 1978, 92 Stat. 3097, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "If for any taxable year beginning in 1977—

"(1) an individual is entitled to the benefits of section 911 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], and

"(2) such individual chooses to take to any extent the benefits of section 901 of such Code,

then such individual shall be treated for such taxable year as an individual for whom an unused zero bracket amount computation is provided by section 63(e) of such Code."

REPORTS TO CONGRESSIONAL COMMITTEES; INFORMATION FROM FEDERAL AGENCIES

Pub. L. 95–615, title II, §208, Nov. 8, 1978, 92 Stat. 3108, as amended by Pub. L. 97–34, title I, §114, Aug. 13, 1981, 95 Stat. 195; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 101–508, title XI, §11833, Nov. 5, 1990, 104 Stat. 1388–560, provided that:

"(a) GENERAL RULE.—As soon as practicable after December 31, 1993, and as soon as practicable after the close of each fifth calendar year thereafter, the Secretary of the Treasury shall transmit a report to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate on the operation and effects of sections 911 and 912 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].

"(b) INFORMATION FROM FEDERAL AGENCIES.—Each agency of the Federal Government which pays allowances excludable from gross income under section 912 of such Code shall keep such records and furnish to the Secretary of the Treasury such information as he determines to be necessary to carry out his responsibility under subsection (a)."

§912. Exemption for certain allowances

The following items shall not be included in gross income, and shall be exempt from taxation under this subtitle:

(1) Foreign areas allowances

In the case of civilian officers and employees of the Government of the United States, amounts received as allowances or otherwise (but not amounts received as post differentials) under—

(A) chapter 9 of title I of the Foreign Service Act of 1980,

(B) section 4 of the Central Intelligence Agency Act of 1949, as amended (50 U.S.C., sec.

403e),[1]

(C) title II of the Overseas Differentials and Allowances Act, or

(D) subsection (e) or (f) of the first section of the Administrative Expenses Act of 1946, as amended, or section 22 of such Act.

(2) Cost-of-living allowances

In the case of civilian officers or employees of the Government of the United States stationed outside the continental United States (other than Alaska), amounts (other than amounts received under title II of the Overseas Differentials and Allowances Act) received as cost-of-living allowances in accordance with regulations approved by the President (or in the case of judicial officers or employees of the United States, in accordance with rules similar to such regulations).

(3) Peace Corps allowances

In the case of an individual who is a volunteer or volunteer leader within the meaning of the Peace Corps Act and members of his family, amounts received as allowances under section 5 or 6 of the Peace Corps Act other than amounts received as—

(A) termination payments under section 5(c) or section 6(1) of such Act,

(B) leave allowances,

(C) if such individual is a volunteer leader training in the United States, allowances to members of his family, and

(D) such portion of living allowances as the President may determine under the Peace Corps Act as constituting basic compensation.

(Aug. 16, 1954, ch. 736, 68A Stat. 290; Pub. L. 86–707, title V, §523(a), Sept. 6, 1960, 74 Stat. 802; Pub. L. 87–293, title II, §201(a), Sept. 22, 1961, 75 Stat. 625; Pub. L. 96–465, title II, §2206(e)(3), Oct. 17, 1980, 94 Stat. 2163; Pub. L. 100–647, title VI, §6137(a), Nov. 10, 1988, 102 Stat. 3723.)

REFERENCES IN TEXT

The Foreign Service Act of 1980, referred to in par. (1)(A), is Pub. L. 96–465, Oct. 17, 1980, 94 Stat. 2071, as amended. Chapter 9 of title I of the Foreign Service Act of 1980 is classified generally to subchapter IX (§4081 et seq.) of chapter 52 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 3901 of Title 22 and Tables.

The Central Intelligence Agency Act of 1949, referred to in par. (1)(B), is act June 20, 1949, ch. 227, 63 Stat. 208, which was formerly classified generally to section 403a et seq. of Title 50, War and National Defense, prior to editorial reclassification in Title 50, and is now classified generally to chapter 46 (§3501 et seq.) of Title 50. Section 4 of the Act is now classified to section 3505 of Title 50. For complete classification of this Act to the Code, see Tables.

Title II of the Overseas Differentials and Allowances Act, referred to in pars. (1)(C) and (2), was title II of Pub. L. 86–707, Sept. 6, 1960, 74 Stat. 793, which was repealed and reenacted as sections 5922 to 5925 of Title 5, Government Organization and Employees, by Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 378.

Sections 1(e) and (f) and 22 of the Administrative Expenses Act of 1946, referred to in par. (1)(D), were repealed and the provisions thereof reenacted as sections 5726(b), 5727(b) to (e), and 5913 of Title 5, by Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 378.

The Peace Corps Act, referred to in par. (3), is Pub. L. 87–293, Sept. 22, 1961, 75 Stat. 612, as amended, which is classified principally to chapter 34 (§2501 et seq.) of Title 22, Foreign Relations and Intercourse. Sections 5 and 6 of that act are classified to sections 2504 and 2505 of Title 22. For complete classification of this act to the Code, see Short Title note set out under section 2501 of Title 22 and Tables.

AMENDMENTS

1988—Par. (2). Pub. L. 100–647 inserted "(or in the case of judicial officers or employees of the United States, in accordance with rules similar to such regulations)" after "President".

1980—Par. (1)(A). Pub. L. 96–465 substituted reference to chapter 9 of title I of the Foreign Service Act of 1980 for reference to title IX of the Foreign Service Act of 1946.

1961—Par. (3). Pub. L. 87–293 added par. (3).

1960—Pub. L. 86–707 exempted foreign areas allowances received under section 4 of the Central Intelligence Agency Act of 1949, title II of the Overseas Differentials and Allowances Act, subsection (e) or (f) of the first section of the Administrative Expenses Act of 1946, or section 22 of such Act, provided that

amounts received as post differentials shall not be exempt and in provisions relating to cost-of-living allowances excluded Alaska from term "continental United States" and amounts received under title II of the Overseas Differentials and Allowances Act.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title VI, §6137(b), Nov. 10, 1988, 102 Stat. 3723, provided that: "The amendment made by subsection (a) [amending this section] shall apply to allowances received after October 12, 1987, in taxable years ending after such date."

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–465 effective Feb. 15, 1981, except as otherwise provided, see section 2403 of Pub. L. 96–465, set out as an Effective Date note under section 3901 of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE OF 1961 AMENDMENT

Pub. L. 87–293, title II, §201(d), Sept. 22, 1961, 75 Stat. 625, provided that: "The amendments made by subsections (a) and (b) of this section [amending this section and section 1303 of this title] shall apply with respect to taxable years ending after March 1, 1961. The amendment made by subsection (c) [amending section 3401 of this title] shall apply with respect to remuneration paid after the date of the enactment of this Act [Sept. 22, 1961]."

[Section 201(d) of Pub. L. 87–293 was repealed by Pub. L. 89–572, §5(a), Sept. 13, 1966, 80 Stat. 765. Such repeal not deemed to affect amendments contained in such provisions, see sections 5(b) of Pub. L. 89–572, set out as a note under former section 2515 of Title 22, Foreign Relations and Intercourse.]

EFFECTIVE DATE OF 1960 AMENDMENT

Pub. L. 86–707, title V, §523(b), Sept. 6, 1960, 74 Stat. 802, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Paragraphs (1) and (2) of section 912 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as amended by subsection (a) of this section, shall apply only with respect to amounts received on or after the date of the enactment of this Act [Sept. 6, 1960] in taxable years ending on or after such date."

REPEALS; AMENDMENTS AND APPLICATION OF AMENDMENTS UNAFFECTED

Section 201(a) of Pub. L. 87–293, cited as a credit to this section, was repealed by Pub. L. 89–572, §5(a), Sept. 13, 1966, 80 Stat. 765. Such repeal not deemed to affect amendments to this section contained in such provisions, and continuation in full force and effect until modified by appropriate authority of all determinations, authorization, regulations, orders, contracts, agreements, and other actions issued undertaken, or entered into under authority of the repealed provisions, see section 5(b) of Pub. L. 89–572, set out as a note under former section 2515 of Title 22, Foreign Relations and Intercourse.

DELEGATION OF FUNCTIONS

Function of determining the portion of living allowances constituting basic compensation for Peace Corps volunteers or volunteer leaders under par. (3) of this section delegated by President to Director of Peace Corps to be performed in consultation with the Secretary of the Treasury, see section 1–104 of Ex. Ord. No. 12137, May 16, 1979, 44 F.R. 29023, set out as a note under section 2501 of Title 22, Foreign Relations and Intercourse.

Authority of President under par. (2) of this section delegated to Secretary of Defense with respect to military departments, and to Secretary of Transportation with respect to Coast Guard when it is not operating as a service in the Navy, concerning civilian employees of nonappropriated fund instrumentalities of the armed forces, see section 201 of Ex. Ord. No. 11137, Jan. 7, 1964, as amended, set out as a note under section 5921 of Title 5, Government Organization and Employees.

TREATMENT OF EMPLOYEES OF PANAMA CANAL COMMISSION AND DEPARTMENT OF DEFENSE

Pub. L. 99–514, title XII, §1232(b), Oct. 22, 1986, 100 Stat. 2564, provided that: "Employees of the Panama Canal Commission and civilian employees of the Defense Department of the United States stationed in Panama may exclude from gross income allowances which are comparable to the allowances excludable under section 912(1) of the Internal Revenue Code of 1986 by employees of the State Department of the United States stationed in Panama. The preceding sentence shall apply to taxable years beginning after December 31, 1986."

[1] *See References in Text note below.*

[§913. Repealed. Pub. L. 97–34, title I, §112(a), Aug. 13, 1981, 95 Stat. 194]

Section, added Pub. L. 95–615, title II, §203(a), Nov. 8, 1978, 92 Stat. 3100; amended Pub. L. 96–222, title I, §108(a)(1)(B), (F), Apr. 1, 1980. 94 Stat. 223, 225; Pub. L. 96–608, §1(a), Dec. 28, 1980, 94 Stat. 3550, related to a deduction for certain expenses of living abroad.

EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to taxable years beginning after Dec. 31, 1981, see section 115 of Pub. L. 97–34, set out as an Effective Date of 1981 Amendment note under section 911 of this title.

[SUBPART C—REPEALED]

[§§921 to 927. Repealed. Pub. L. 106–519, §2, Nov. 15, 2000, 114 Stat. 2423]

Section 921, added Pub. L. 98–369, div. A, title VIII, §801(a), July 18, 1984, 98 Stat. 985, provided for exclusion from gross income of exempt foreign trade income.

A prior section 921, acts Aug. 16, 1954, ch. 736, 68A Stat. 290; Oct. 4, 1976, Pub. L. 94–455, title XIX, §1901(a)(116), 90 Stat. 1784, defined Western Hemisphere trade corporation, prior to repeal by Pub. L. 94–455, title X, §1052(b), Oct. 4, 1976, 90 Stat. 1648, effective with respect to taxable years beginning after Dec. 31, 1979.

Section 922, added Pub. L. 98–369, div. A, title VIII, §801(a), July 18, 1984, 98 Stat. 986, defined FSC's.

A prior section 922, acts Aug. 16, 1954, ch. 736, 68A Stat. 291; Dec. 10, 1971, Pub. L. 92–178, title V, §502(c), 85 Stat. 550; Oct. 4, 1976, Pub. L. 94–455, title X, §1052(a), (c)(1), 90 Stat. 1647, 1648; Nov. 6, 1978, Pub. L. 95–600, title III, §301(b)(15), 92 Stat. 2822, related to a special deduction for a Western Hemisphere trade corporation, prior to repeal by Pub. L. 94–455, title X, §1052(b), Oct. 4, 1976, 90 Stat. 1648, effective with respect to taxable years beginning after Dec. 31, 1979.

Section 923, added Pub. L. 98–369, div. A, title VIII, §801(a), July 18, 1984, 98 Stat. 986; amended Pub. L. 99–514, title XVIII, §1876(b)(3), Oct. 22, 1986, 100 Stat. 2898, related to exempt foreign trade income.

Section 924, added Pub. L. 98–369, div. A, title VIII, §801(a), July 18, 1984, 98 Stat. 987; amended Pub. L. 99–514, title XVIII, §1876(e)(2), (l), Oct. 22, 1986, 100 Stat. 2899, 2901, related to foreign trading gross receipts.

Section 925, added Pub. L. 98–369, div. A, title VIII, §801(a), July 18, 1984, 98 Stat. 990, related to transfer pricing rules.

Section 926, added Pub. L. 98–369, div. A, title VIII, §801(a), July 18, 1984, 98 Stat. 991, related to distributions to shareholders.

Section 927, added Pub. L. 98–369, div. A, title VIII, §801(a), July 18, 1984, 98 Stat. 991; amended Pub. L. 99–514, title XVIII, §1876(a)(1), (e)(1), (f)(1), (p)(5), Oct. 22, 1986, 100 Stat. 2897, 2899, 2902; Pub. L. 100–647, title I, §1012(bb)(8)(A), Nov. 10, 1988, 102 Stat. 3536; Pub. L. 101–508, title XI, §11704(a)(10), Nov. 5, 1990, 104 Stat. 1388–518; Pub. L. 103–66, title XIII, §13239(a), Aug. 10, 1993, 107 Stat. 509; Pub. L. 105–34, title XI, §1171(a), Aug. 5, 1997, 111 Stat. 987, related to other definitions and special rules.

EFFECTIVE DATE OF REPEAL

Repeal applicable to transactions after Sept. 30, 2000, with special rules relating to existing foreign sales corporations, see section 5 of Pub. L. 106–519, set out as an Effective Date of 2000 Amendments note under section 56 of this title.

SUBPART D—POSSESSIONS OF THE UNITED STATES

Sec.

931. Income from sources within Guam, American Samoa, or the Northern Mariana Islands.

932. Coordination of United States and Virgin Islands income taxes.
933. Income from sources within Puerto Rico.
934. Limitation on reduction in income tax liability incurred to the Virgin Islands.
[934A, 935. Repealed.]
936. Puerto Rico and possession tax credit.[1]
937. Residence and source rules involving possessions.

AMENDMENTS

2004—Pub. L. 108–357, title VIII, §908(c)(6), Oct. 22, 2004, 118 Stat. 1657, added item 937.

1986—Pub. L. 99–514, title XII, §§1272(d)(12), 1274(d), 1275(c)(8), Oct. 22, 1986, 100 Stat. 2595, 2598, 2599, substituted "Guam, American Samoa, or the Northern Mariana Islands" for "possessions of the United States" in item 931, added item 932, and struck out former item 932 "Citizens of possessions of the United States", item 934A "Income tax rate on Virgin Islands source income" and item 935 "Coordination of United States and Guam individual income taxes".

1983—Pub. L. 97–455, §1(d)(1), Jan. 12, 1983, 96 Stat. 2498, added item 934A.

1972—Pub. L. 92–606, §1(f)(5), Oct. 31, 1972, 86 Stat. 1497, added item 935.

1960—Pub. L. 86–779, §4(a)(2), Sept. 14, 1960, 74 Stat. 999, added item 934.

[1] Editorially supplied. Section 936 added by Pub. L. 94–455 without corresponding amendment of subpart analysis.

§931. Income from sources within Guam, American Samoa, or the Northern Mariana Islands

(a) General rule

In the case of an individual who is a bona fide resident of a specified possession during the entire taxable year, gross income shall not include—

(1) income derived from sources within any specified possession, and

(2) income effectively connected with the conduct of a trade or business by such individual within any specified possession.

(b) Deductions, etc. allocable to excluded amounts not allowable

An individual shall not be allowed—

(1) as a deduction from gross income any deductions (other than the deduction under section 151, relating to personal exemptions), or

(2) any credit,

properly allocable or chargeable against amounts excluded from gross income under this section.

(c) Specified possession

For purposes of this section, the term "specified possession" means Guam, American Samoa, and the Northern Mariana Islands.

(d) Employees of the United States

Amounts paid for services performed as an employee of the United States (or any agency thereof) shall be treated as not described in paragraph (1) or (2) of subsection (a).

(Aug. 16, 1954, ch. 736, 68A Stat. 291; Pub. L. 89–809, title I, §107(a), Nov. 13, 1966, 80 Stat. 1571; Pub. L. 92–178, title V, §502(d), Dec. 10, 1971, 85 Stat. 550; Pub. L. 92–606, §1(f)(1), Oct. 31, 1972, 86 Stat. 1497; Pub. L. 94–455, title X, §1051(c), title XIX, §§1901(a)(117), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1645, 1784, 1834; Pub. L. 95–30, title I, §101(d)(12), May 23, 1977, 91 Stat. 134; Pub. L. 98–369, div. A, title VII, §711(c)(2)(A)(iv), July 18, 1984, 98 Stat. 945; Pub. L. 99–514, title XII, §1272(a), Oct. 22, 1986, 100 Stat. 2593; Pub. L. 108–357, title VIII, §908(c)(1), Oct. 22, 2004, 118 Stat. 1656.)

AMENDMENTS

2004—Subsec. (d). Pub. L. 108–357 amended heading and text of subsec. (d) generally, substituting provisions relating to employees of the United States for provisions consisting of pars. (1) to (3) relating to special rules concerning employees of the United States, determination of source of income, and determination of residency.

1986—Pub. L. 99–514 amended section generally, substituting provisions relating to income from sources within Guam, American Samoa, or the Northern Mariana Islands, for former provisions relating to income from sources within possessions of the United States, which had declared in: subsec. (a), general rule as to gross income, including requirements relating to 3-year period and trade or business; subsec. (b), rule as to amounts received in United States; subsec. (c), definition of "possession of the United States"; subsec. (d), general rule allowing deductions only to extent connected with income from sources within United States, and specific exceptions to limitations of general rule; subsec. (e), deduction for personal exemption; subsec. (f), allowance of deductions and credits; subsec. (g), foreign tax credit; subsec. (h), provisions relating to employees of United States.

1984—Subsec. (d)(2)(B). Pub. L. 98–369 substituted "for losses" for ", for losses of property not connected with the trade or business if arising from certain casualties or theft,".

1977—Subsec. (d)(3). Pub. L. 95–30 struck out par. (3) which made a cross reference to section 142(b)(2) for disallowance of the standard deduction.

1976—Subsec. (a). Pub. L. 94–455, §1051(c)(1), struck out all references to domestic corporations and made subsection applicable only to individual citizens.

Subsec. (c). Pub. L. 94–455, §1051(c)(2), substituted "Commonwealth of Puerto Rico, the Virgin Islands of the United States, or Guam" for "Virgin Islands of the United States, and such term when used with respect to citizens of the United States does not include Puerto Rico or Guam" after "does not include the".

Subsec. (d)(1). Pub. L. 94–455, §§1051(c)(3), 1906(b)(13)(A), substituted "a citizen of the United States" for "persons" after "in the case of" and struck out "or his delegate" after "Secretary".

Subsec. (f). Pub. L. 94–455, §§1051(c)(3), 1906(b)(13)(A), substituted "A citizen of the United States" for "Persons" after "Allowance of deductions and credits" and struck out in two places "or his delegate" after "Secretary".

Subsecs. (h), (i). Pub. L. 94–455, §1901(a)(117), redesignated subsec. (i) as (h). Former subsec. (h), relating to the status of a citizen of the United States who has been interned by the enemy, was struck out.

1972—Subsec. (c). Pub. L. 92–606 substituted "Puerto Rico or Guam" for "Puerto Rico".

1971—Subsec. (a). Pub. L. 92–178 provided for non-application of section in the case of a corporation for a taxable year for which it is a DISC or in which it owns at any time stock in a DISC or former DISC.

1966—Subsec (d). Pub. L. 89–809 made applicable to United States citizens and domestic corporations engaged in trade or business in possessions, who qualify for the special tax treatment of income qualifying for the exclusion relating to income from United States possessions, provisions which allow deductions to nonresident aliens or foreign corporations engaged in trade or business in the United States by allowing deductions only where they are allocable to income effectively connected with the trade or business in the United States and by spelling out the exceptions allowing deductions whether or not connected with income from sources within the United States in the case of losses not connected with the trade or business but incurred in transactions entered into for profit, casualty losses, and charitable contributions.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years ending after Oct. 22, 2004, see section 908(d)(1) of Pub. L. 108–357, set out as an Effective Date note under section 937 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XII, §1277, Oct. 22, 1986, 100 Stat. 2600, as amended by Pub. L. 100–647, title I, §1012(z), Nov. 10, 1988, 102 Stat. 3530, provided that:

"(a) IN GENERAL.—Except as otherwise provided in this section, the amendments made by this subtitle [subtitle G (§§1271–1277) of title XII of Pub. L. 99–514, enacting section 932 of this title, amending this section and sections 28, 32, 48, 63, 153, 246, 338, 864, 876, 881, 933, 934, 936, 957, 1402, 1442, 3401, 6091, 7651, 7654, and 7655 of this title, repealing sections 932, 934A, and 935 of this title, and enacting provisions set out as notes under this section and section 932 of this title] shall apply to taxable years beginning after December 31, 1986.

"(b) SPECIAL RULE FOR GUAM, AMERICAN SAMOA, AND THE NORTHERN MARIANA ISLANDS.—The amendments made by this subtitle shall apply with respect to Guam, American Samoa, or the Northern Mariana Islands (and to residents thereof and corporations created or organized therein) only if

(and so long as) an implementing agreement under section 1271 [set out below] is in effect between the United States and such possession.

"(c) SPECIAL RULES FOR THE VIRGIN ISLANDS.—

"(1) IN GENERAL.—The amendments made by section 1275(c) [amending sections 28, 48, 338, 864, and 934 of this title and repealing section 934A of this title] shall apply with respect to the Virgin Islands (and residents thereof and corporations created or organized therein) only if (and so long as) an implementing agreement is in effect between the United States and the Virgin Islands with respect to the establishment of rules under which the evasion or avoidance of United States income tax shall not be permitted or facilitated by such possession. Any such implementing agreement shall be executed on behalf of the United States by the Secretary of the Treasury, after consultation with the Secretary of the Interior.

"(2) SECTION 1275(b).—

"(A) IN GENERAL.—The amendment made by section 1275(b) [amending section 7651 of this title] shall apply with respect to—

"(i) any taxable year beginning after December 31, 1986, and

"(ii) any pre-1987 open year.

"(B) SPECIAL RULES.—In the case of any pre-1987 open year—

"(i) the amendment made by section 1275(b) shall not apply to income from sources in the Virgin Islands or income effectively connected with the conduct of a trade or business in the Virgin Islands, and

"(ii) the taxpayer shall be allowed a credit—

"(I) against any additional tax imposed by subtitle A of the Internal Revenue Code of 1954 [now 1986] (by reason of the amendment made by section 1275(b)) on income not described in clause (i),

"(II) for any tax paid to the Virgin Islands before the date of the enactment of this Act [Oct. 22, 1986] and attributable to such income.

For purposes of clause (ii)(II), any tax paid before January 1, 1987, pursuant to a process in effect before August 16, 1986, shall be treated as paid before the date of the enactment of this Act.

"(C) PRE-1987 OPEN YEAR.—For purposes of this paragraph, the term 'pre-1987 open year' means any taxable year beginning before January 1, 1987, if on the date of the enactment of this Act [Oct. 22, 1986] the assessment of a deficiency of income tax for such taxable year is not barred by any law or rule of law.

"(D) EXCEPTION.—In the case of any pre-1987 open year, the amendment made by section 1275(b) shall not apply to any domestic corporation if—

"(i) during the fiscal year which ended May 31, 1986, such corporation was actively engaged directly or through a subsidiary in the conduct of a trade or business in the Virgin Islands and such trade or business consists of business related to marine activities, and

"(ii) such corporation was incorporated on March 31, 1983, in Delaware.

"(E) EXCEPTION FOR CERTAIN TRANSACTIONS.—

"(i) IN GENERAL.—In the case of any pre-1987 open year, the amendment made by section 1275(b) shall not apply to any income derived from transactions described in clause (ii) by 1 or more corporations which were formed in Delaware on or about March 6, 1981, and which have owned 1 or more office buildings in St. Thomas, United States Virgin Islands, for at least 5 years before the date of the enactment of this Act [Oct. 22, 1986].

"(ii) DESCRIPTION OF TRANSACTIONS.—The transactions described in this clause are—

"(I) the redemptions of limited partnership interests for cash and property described in an agreement (as amended) dated March 12, 1981,

"(II) the subsequent disposition of the properties distributed in such redemptions, and

"(III) interest earned before January 1, 1987, on bank deposits of proceeds received from such redemptions to the extent such deposits are located in the United States Virgin Islands.

"(iii) LIMITATION.—The aggregate reduction in tax by reason of this subparagraph shall not exceed $8,312,000. If the taxes which would be payable as the result of the application of the amendment made by section 1275(b) to pre-1987 open years exceeds the limitation of the preceding sentence, such excess shall be treated as attributable to income received in taxable years in reverse chronological order.

"(d) REPORT ON IMPLEMENTING AGREEMENTS.—If, during the 1-year period beginning on the date of the enactment of this Act [Oct. 22, 1986], any implementing agreement described in subsection (b) or (c) is

not executed, the Secretary of the Treasury or his delegate shall report to the Committee on Finance of the United States Senate, the Committee on Ways and Means, and the Committee on Interior and Insular Affairs [now Committee on Natural Resources] of the House of Representatives with respect to—

"(1) the status of such negotiations, and

"(2) the reason why such agreement has not been executed.

"(e) TREATMENT OF CERTAIN UNITED STATES PERSONS.—Except as otherwise provided in regulations prescribed by the Secretary of the Treasury or his delegate, if a United States person becomes a resident of Guam, American Samoa, or the Northern Mariana Islands, the rules of section 877(c) of the Internal Revenue Code of 1954 [now 1986] shall apply to such person during the 10-year period beginning when such person became such a resident. Notwithstanding subsection (b), the preceding sentence shall apply to dispositions after December 31, 1985, in taxable years ending after such date.

"(f) EXEMPTION FROM WITHHOLDING.—Notwithstanding subsection (b), the modification of section 884 of the Internal Revenue Code of 1986 by reason of the amendment to section 881 of such Code by section 1273(b)(1) of this Act shall apply to taxable years beginning after December 31, 1986."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 711(c)(2)(A)(v) of Pub. L. 98–369, set out as a note under section 165 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1051(c) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1975, with certain exceptions, see section 1051(i) of Pub. L. 94–455, set out as a note under section 27 of this title.

Amendment by section 1901(a)(117) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Pub. L. 92–606, §2, Oct. 31, 1972, 86 Stat. 1497, provided in part that: "The amendments made by section 1 [enacting sections 935 and 6688 of this title, amending this section, sections 932, 7654, and 7701 of this title, and section 1421i of Title 48, Territories and Insular Possessions, and enacting provisions set out as notes under sections 881 and 1442 of this title] (other than section 1(e)) [amending sections 881 and 1442 of this title] shall apply with respect to taxable years beginning after December 31, 1972."

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–178 applicable with respect to taxable years ending after Dec. 31, 1971, except that a corporation may not be a DISC for any taxable year beginning before Jan. 1, 1972, see section 507 of Pub. L. 92–178, set out as an Effective Date note under section 991 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89–809, title I, §107(b), Nov. 13, 1966, 80 Stat. 1571, provided that: "The amendment made by this section [amending this section] shall apply with respect to taxable years beginning after December 31, 1966."

AUTHORITY OF GUAM, AMERICAN SAMOA, AND THE NORTHERN MARIANA ISLANDS TO ENACT REVENUE LAWS

Pub. L. 99–514, title XII, §1271, Oct. 22, 1986, 100 Stat. 2591, provided that:

"(a) IN GENERAL.—Except as provided in subsection (b), nothing in the laws of the United States shall prevent Guam, American Samoa, or the Northern Mariana Islands from enacting tax laws (which shall apply in lieu of the mirror system) with respect to income—

"(1) from sources within, or effectively connected with the conduct of a trade or business within, any such possession, or

"(2) received or accrued by any resident of such possession.

"(b) AGREEMENTS TO ALLEVIATE CERTAIN PROBLEMS RELATING TO TAX ADMINISTRATION.—Subsection (a) shall apply to Guam, American Samoa, or the Northern Mariana Islands only if (and so long as) an implementing agreement is in effect between the United States and such possession with respect to—

"(1) the elimination of double taxation involving taxation by such possession and taxation by the United States,

"(2) the establishment of rules under which the evasion or avoidance of United States income tax shall not be permitted or facilitated by such possession,

"(3) the exchange of information between such possession and the United States for purposes of tax administration, and

"(4) the resolution of other problems arising in connection with the administration of the tax laws of such possession or the United States.

Any such implementing agreement shall be executed on behalf of the United States by the Secretary of the Treasury after consultation with the Secretary of the Interior.

"(c) REVENUES NOT TO DECREASE.—The total amount of the revenue received by any possession referred to in subsection (a) pursuant to its tax laws during the implementation year and each of the 4 fiscal years thereafter shall not be less than the revenue (adjusted for inflation) which was received by such possession pursuant to tax laws for its last fiscal year before the implementation year.

"(d) NONDISCRIMINATORY TREATMENT REQUIRED.—Nothing in any tax law of a possession referred to in subsection (a) may discriminate against any United States person or any resident (corporate or otherwise) of any other possession.

"(e) ENFORCEMENT.—

"(1) IN GENERAL.—If the Secretary of the Treasury (after consultation with the Secretary of the Interior) determines that any possession has failed to comply with subsection (c) or (d), the Secretary of the Treasury shall so notify the Governor of such possession in writing. If such possession does not comply with subsection (c) or (d) (as the case may be) within 90 days of such notification, the Secretary of the Treasury shall notify the Congress of such noncompliance. Unless the Congress by law provides otherwise, the mirror system of taxation shall be reinstated in such possession and shall be in full force and effect for taxable years beginning after such notification to the Congress.

"(2) SPECIAL RULE FOR REVENUE REQUIREMENTS.—If the failure to comply with subsection (c) is for good cause and does not jeopardize the fiscal integrity of the possession, the Secretary may waive the requirements of subsection (c) for such period as he determines appropriate.

"(f) DEFINITIONS AND SPECIAL RULES.—

"(1) IMPLEMENTATION YEAR.—For purposes of this section, the term "implementation year" means the 1st fiscal year of the possession in which the tax laws authorized by subsection (a) take effect.

"(2) MIRROR SYSTEM.—For purposes of this section, the mirror system of taxation consists of the provisions of law (in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]) which make the provisions of the income tax laws of the United States (as in effect from time to time) in effect in a possession of the United States.

"(3) SPECIAL RULE FOR NORTHERN MARIANA ISLANDS.—Notwithstanding the provisions of the last clause of section 601(a) of Public Law 94–241 [48 U.S.C. 1801 note], the Commonwealth of the Northern Mariana Islands may elect to continue its mirror system of taxation without regard to whether Guam enacts tax laws under the authority provided in subsection (a)."

§932. Coordination of United States and Virgin Islands income taxes

(a) Treatment of United States residents

(1) Application of subsection

This subsection shall apply to an individual for the taxable year if—

(A) such individual—

(i) is a citizen or resident of the United States (other than a bona fide resident of the Virgin Islands during the entire taxable year), and

(ii) has income derived from sources within the Virgin Islands, or effectively connected with the conduct of a trade or business within such possession, for the taxable year, or

(B) such individual files a joint return for the taxable year with an individual described in subparagraph (A).

(2) Filing requirement

Each individual to whom this subsection applies for the taxable year shall file his income tax

return for the taxable year with both the United States and the Virgin Islands.

(3) Extent of income tax liability

In the case of an individual to whom this subsection applies in a taxable year for purposes of so much of this title (other than this section and section 7654) as relates to the taxes imposed by this chapter, the United States shall be treated as including the Virgin Islands.

(b) Portion of United States tax liability payable to the Virgin Islands

(1) In general

Each individual to whom subsection (a) applies for the taxable year shall pay the applicable percentage of the taxes imposed by this chapter for such taxable year (determined without regard to paragraph (3)) to the Virgin Islands.

(2) Applicable percentage

(A) In general

For purposes of paragraph (1), the term "applicable percentage" means the percentage which Virgin Islands adjusted gross income bears to adjusted gross income.

(B) Virgin Islands adjusted gross income

For purposes of subparagraph (A), the term "Virgin Islands adjusted gross income" means adjusted gross income determined by taking into account only income derived from sources within the Virgin Islands and deductions properly apportioned or allocable thereto.

(3) Amounts paid allowed as credit

There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the taxes required to be paid to the Virgin Islands under paragraph (1) which are so paid.

(c) Treatment of Virgin Islands residents

(1) Application of subsection

This subsection shall apply to an individual for the taxable year if—

(A) such individual is a bona fide resident of the Virgin Islands during the entire taxable year, or

(B) such individual files a joint return for the taxable year with an individual described in subparagraph (A).

(2) Filing requirement

Each individual to whom this subsection applies for the taxable year shall file an income tax return for the taxable year with the Virgin Islands.

(3) Extent of income tax liability

In the case of an individual to whom this subsection applies in a taxable year for purposes of so much of this title (other than this section and section 7654) as relates to the taxes imposed by this chapter, the Virgin Islands shall be treated as including the United States.

(4) Residents of the Virgin Islands

In the case of an individual—

(A) who is a bona fide resident of the Virgin Islands during the entire taxable year,

(B) who, on his return of income tax to the Virgin Islands, reports income from all sources and identifies the source of each item shown on such return, and

(C) who fully pays his tax liability referred to in section 934(a) to the Virgin Islands with respect to such income,

for purposes of calculating income tax liability to the United States, gross income shall not include any amount included in gross income on such return, and allocable deductions and credits shall not be taken into account.

(d) Special rule for joint returns

In the case of a joint return, this section shall be applied on the basis of the residence of the spouse who has the greater adjusted gross income (determined without regard to community property laws) for the taxable year.

(e) Special rule for applying section to tax imposed in Virgin Islands

In applying this section for purposes of determining income tax liability incurred to the Virgin Islands, the provisions of this section shall not be affected by the provisions of Federal law referred to in section 934(a).

(Added Pub. L. 99–514, title XII, §1274(a), Oct. 22, 1986, 100 Stat. 2596; amended Pub. L. 100–647, title I, §1012(w)(1)–(3), Nov. 10, 1988, 102 Stat. 3530; Pub. L. 108–357, title VIII, §908(c)(2), Oct. 22, 2004, 118 Stat. 1656.)

PRIOR PROVISIONS

A prior section 932, acts Aug. 16, 1954, ch. 736, 68A Stat. 292; Nov. 13, 1966, Pub. L. 89–809, title I, §103(m), 80 Stat. 1554; Oct. 31, 1972, Pub. L. 92–606, §1(f)(2), (3), 86 Stat. 1497; Apr. 7, 1986, Pub. L. 99–272, title XII, §12103(a), 100 Stat. 285, related to income taxation of citizens of possessions of the United States, prior to repeal by Pub. L. 99–514, title XII, §1272(d)(1), Oct. 22, 1986, 100 Stat. 2594.

AMENDMENTS

2004—Subsecs. (a)(1)(A)(i), (c)(1)(A), (4)(A). Pub. L. 108–357 substituted "during the entire taxable year" for "at the close of the taxable year".

1988—Subsec. (c)(2). Pub. L. 100–647, §1012(w)(3), substituted "an income tax return" for "his income tax return".

Subsec. (c)(4). Pub. L. 100–647, §1012(w)(2), amended par. (4) generally. Prior to amendment, par. (4) read as follows: "In the case of an individual who is a bona fide resident of the Virgin Islands at the close of the taxable year and who, on his return of income tax to the Virgin Islands, reports income from all sources and identifies the source of each item shown on such return, for purposes of calculating income tax liability to the United States gross income shall not include any amount included in gross income on such return."

Subsec. (e). Pub. L. 100–647, §1012(w)(1), substituted current heading for "Section not to apply to tax imposed in Virgin Islands" and amended text generally. Prior to amendment, text read as follows: "This section shall not apply for purposes of determining income tax liability incurred to the Virgin Islands."

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years ending after Oct. 22, 2004, see section 908(d)(1) of Pub. L. 108–357, set out as an Effective Date note under section 937 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Enactment of section 932 and repeal of prior section 932 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note under section 931 of this title.

REGULATIONS

Pub. L. 99–514, title XII, §1274(c), Oct. 22, 1986, 100 Stat. 2598, as amended by Pub. L. 100–647, title I, §1012(w)(4), Nov. 10, 1988, 102 Stat. 3530, provided that: "The Secretary of the Treasury or his delegate shall prescribe such regulations as may be necessary or appropriate for applying the Internal Revenue Code of 1986 [this title] for purposes of determining tax liability incurred to the Virgin Islands."

AUTHORITY TO IMPOSE NONDISCRIMINATORY LOCAL INCOME TAXES

Pub. L. 99–514, title XII, §1274(b), Oct. 22, 1986, 100 Stat. 2597, provided that: "Nothing in any provision of Federal law shall prevent the Virgin Islands from imposing on any person nondiscriminatory local income

taxes. Any taxes so imposed shall be treated in the same manner as State and local income taxes under section 164 of the Internal Revenue Code of 1954 [now 1986] and shall not be treated as taxes to which section 901 of such Code applies."

§933. Income from sources within Puerto Rico

The following items shall not be included in gross income and shall be exempt from taxation under this subtitle:

(1) Resident of Puerto Rico for entire taxable year

In the case of an individual who is a bona fide resident of Puerto Rico during the entire taxable year, income derived from sources within Puerto Rico (except amounts received for services performed as an employee of the United States or any agency thereof); but such individual shall not be allowed as a deduction from his gross income any deductions (other than the deduction under section 151, relating to personal exemptions), or any credit, properly allocable to or chargeable against amounts excluded from gross income under this paragraph.

(2) Taxable year of change of residence from Puerto Rico

In the case of an individual citizen of the United States who has been a bona fide resident of Puerto Rico for a period of at least 2 years before the date on which he changes his residence from Puerto Rico, income derived from sources therein (except amounts received for services performed as an employee of the United States or any agency thereof) which is attributable to that part of such period of Puerto Rican residence before such date; but such individual shall not be allowed as a deduction from his gross income any deductions (other than the deduction for personal exemptions under section 151), or any credit, properly allocable to or chargeable against amounts excluded from gross income under this paragraph.

(Aug. 16, 1954, ch. 736, 68A Stat. 293; Pub. L. 99–514, title XII, §1272(d)(3), Oct. 22, 1986, 100 Stat. 2594.)

AMENDMENTS

1986—Pub. L. 99–514 inserted ", or any credit," in pars. (1) and (2).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99–514, set out as a note under section 931 of this title.

§934. Limitation on reduction in income tax liability incurred to the Virgin Islands

(a) General rule

Tax liability incurred to the Virgin Islands pursuant to this subtitle, as made applicable in the Virgin Islands by the Act entitled "An Act making appropriations for the naval service for the fiscal year ending June 30, 1922, and for other purposes", approved July 12, 1921 (48 U.S.C. 1397), or pursuant to section 28(a) of the Revised Organic Act of the Virgin Islands, approved July 22, 1954 (48 U.S.C. 1642), shall not be reduced or remitted in any way, directly or indirectly, whether by grant, subsidy, or other similar payment, by any law enacted in the Virgin Islands, except to the extent provided in subsection (b).

(b) Reductions permitted with respect to certain income

(1) In general

Except as provided in paragraph (2), subsection (a) shall not apply with respect to so much of the tax liability referred to in subsection (a) as is attributable to income derived from sources

within the Virgin Islands or income effectively connected with the conduct of a trade or business within the Virgin Islands.

(2) Exception for liability paid by citizens or residents of the United States

Paragraph (1) shall not apply to any liability payable to the Virgin Islands under section 932(b).

(3) Special rule for non-United States income of certain foreign corporations

(A) In general

In the case of a qualified foreign corporation, subsection (a) shall not apply with respect to so much of the tax liability referred to in subsection (a) as is attributable to income which is derived from sources outside the United States and which is not effectively connected with the conduct of a trade or business within the United States.

(B) Qualified foreign corporation

For purposes of subparagraph (A), the term "qualified foreign corporation" means any foreign corporation if less than 10 percent of—

(i) the total voting power of the stock of such corporation, and

(ii) the total value of the stock of such corporation, is owned or treated as owned (within the meaning of section 958) by 1 or more United States persons.

(4) Determination of income source, etc.

The determination as to whether income is derived from sources within the United States or is effectively connected with the conduct of a trade or business within the United States shall be made under regulations prescribed by the Secretary.

(Added Pub. L. 86–779, §4(a)(1), Sept. 14, 1960, 74 Stat. 998; amended Pub. L. 94–455, title XIX, §§1901(a)(118), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1784, 1834; Pub. L. 97–248, title II, §213(b), Sept. 3, 1982, 96 Stat. 463; Pub. L. 97–455, §1(c), Jan. 12, 1983, 96 Stat. 2498; Pub. L. 98–369, div. A, title VIII, §801(d)(7), July 18, 1984, 98 Stat. 996; Pub. L. 99–514, title XII, §1275(a)(2)(A), (c)(1), (2), title XVIII, §1876(f)(2), Oct. 22, 1986, 100 Stat. 2598, 2900; Pub. L. 108–357, title VIII, §908(c)(3), Oct. 22, 2004, 118 Stat. 1656.)

AMENDMENTS

2004—Subsec. (b)(4). Pub. L. 108–357 struck out "the Virgin Islands or" before "the United States" in two places.

1986—Subsec. (a). Pub. L. 99–514, §1275(c)(2)(A), struck out "or (c) or in section 934A" after "subsection (b)".

Subsec. (b). Pub. L. 99–514, §1275(c)(1), (2)(B), added subsec. (b) and struck out former subsec. (b) which excepted from subsec. (a) domestic or Virgin Islands corporations to the extent they derived income from sources without the United States under certain conditions.

Subsec. (c). Pub. L. 99–514, §1275(c)(1), struck out subsec. (c) which provided an exception to subsec. (a) of this section for individual citizens of the United States residing in the Virgin Islands to the extent their income is derived from sources within the Virgin Islands.

Subsec. (d). Pub. L. 99–514, §1275(c)(1), struck out subsec. (d) which related to requirement to supply information.

Subsec. (e). Pub. L. 99–514, §1275(a)(2)(A), struck out subsec. (e) which provided for tax treatment of intangible property income of certain domestic corporations.

Subsec. (f). Pub. L. 99–514, §1275(a)(2)(A), struck out subsec. (f) which provided a transitional rule for applying subsec. (b)(2) of this section with respect to taxable years beginning after Dec. 31, 1982, and before Jan. 1, 1985.

Pub. L. 99–514, §1876(f)(2), struck out subsec. (f) which provided that subsec. (a) of this section not apply in the case of a Virgin Islands corporation which is a FSC.

1984—Subsec. (f). Pub. L. 98–369 added subsec. (f) relating to FSC.

1983—Subsec. (a). Pub. L. 97–455 inserted "or in section 934A" after "subsection (b) or (c)".

1982—Subsec. (b)(2). Pub. L. 97–248, §213(b)(1), substituted "65 percent" for "50 percent".

Subsec. (e). Pub. L. 97–248, §213(b)(2), added subsec. (e).

Subsec. (f). Pub. L. 97–248, §213(b)(2), added a temporary subsec. (f) which provided that in applying

subsec. (b)(2) with respect to taxable years beginning after December 31, 1982, and before January 1, 1985, "55 percent" shall be substituted for "65 percent" for taxable years beginning in calendar year 1983 and "60 percent" shall be substituted for "65 percent" for taxable years beginning in calendar year 1984.

1976—Subsec. (b). Pub. L. 94–455, §1901(a)(118), struck out "For the purposes of this subsection, all amounts received by such corporation within the United States, whether derived from sources within or without the United States, shall be considered as being derived from sources within the United States".

Subsec. (d). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary" in two places.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years ending after Oct. 22, 2004, see section 908(d)(1) of Pub. L. 108–357, set out as an Effective Date note under section 937 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1275(a)(2)(A), (c)(1), (2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99–514, set out as a note under section 931 of this title.

Amendment by section 1876(f)(2) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 97–455, §1(e), Jan. 12, 1983, 96 Stat. 2498, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting section 934A and amending this section] shall apply to amounts received after the date of the enactment of this Act [Jan. 12, 1983] in taxable years ending after such date.

"(2) WITHHOLDING.—The amendment made by subsection (b) [enacting section 1444 of this title] shall apply to payments made after the date of the enactment of this Act."

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to taxable years beginning after Dec. 31, 1982, except that so much of this section to which section 936(h)(6) applies by reason of subsec. (e)(4) of this section is applicable to taxable years ending after July 1, 1982, see section 213(e)(1), (2) of Pub. L. 97–248 set out as a note under section 936 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(118) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE

Pub. L. 86–779, §4(e)(1), Sept. 14, 1960, 74 Stat. 1000, provided that: "The amendments made by subsection (a) [enacting this section] shall apply to tax liability incurred with respect to taxable years beginning on or after January 1, 1960."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

REPORT ON POSSESSIONS CORPORATIONS

For provisions requiring the Secretary of the Treasury to submit a report to Congress respecting the operation and effect of subsec. (b) of this section for the year 1981 and each second calendar year thereafter, see section 441(a) of Pub. L. 98–369, set out as a note under section 936 of this title.

[§934A. Repealed. Pub. L. 99–514, title XII, §1275(c)(3), Oct. 22, 1986, 100 Stat. 2599]

Section, added Pub. L. 97–455, §1(a), Jan. 12, 1983, 96 Stat. 2497, related to income tax rate on Virgin Islands source income.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note under section 931 of this title.

[§935. Repealed. Pub. L. 99–514, title XII, §1272(d)(2), Oct. 22, 1986, 100 Stat. 2594]

Section, added Pub. L. 92–606, §1(a), Oct. 31, 1972, 86 Stat. 1494; amended Pub. L. 108–357, title VIII, §908(c)(4), Oct. 22, 2004, 118 Stat. 1656, related to coordination of United States and Guam individual income taxes.

AMENDMENT SUBSEQUENT TO REPEAL

Pub. L. 108–357, title IX, §908(c)(4), (d), Oct. 22, 2004, 118 Stat. 1656, 1657, applicable to taxable years ending after Oct. 22, 2004, amended section, as in effect before the effective date of its repeal, in introductory provisions of subsec. (a), by substituting "who, during the entire taxable year" for "for the taxable year who", in subsecs. (a)(1) and (b)(1)(B), by inserting "bona fide" before "resident", in subsec. (b)(1)(A), by inserting "(other a bona fide resident of Guam during the entire taxable year)" after "United States", and, in subsection (b)(2), by striking out "residence and" before "citizenship".

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note under section 931 of this title.

§936. Puerto Rico and possession tax credit

(a) Allowance of credit

(1) In general

Except as otherwise provided in this section, if a domestic corporation elects the application of this section and if the conditions of both subparagraph (A) and subparagraph (B) of paragraph (2) are satisfied, there shall be allowed as a credit against the tax imposed by this chapter an amount equal to the portion of the tax which is attributable to the sum of—

(A) the taxable income, from sources without the United States, from—

(i) the active conduct of a trade or business within a possession of the United States, or

(ii) the sale or exchange of substantially all of the assets used by the taxpayer in the active conduct of such trade or business, and

(B) the qualified possession source investment income.

(2) Conditions which must be satisfied

The conditions referred to in paragraph (1) are:

(A) 3-year period

If 80 percent or more of the gross income of such domestic corporation for the 3-year period immediately preceding the close of the taxable year (or for such part of such period immediately preceding the close of such taxable year as may be applicable) was derived from sources within a possession of the United States (determined without regard to subsections (f) and (g) of section 904); and

(B) Trade or business

If 75 percent or more of the gross income of such domestic corporation for such period or such part thereof was derived from the active conduct of a trade or business within a possession of the United States.

(3) Credit not allowed against certain taxes

The credit provided by paragraph (1) shall not be allowed against the tax imposed by—

(A) section 59A (relating to environmental tax),

(B) section 531 (relating to the tax on accumulated earnings),

(C) section 541 (relating to personal holding company tax), or

(D) section 1351 (relating to recoveries of foreign expropriation losses).

(4) Limitations on credit for active business income

(A) In general

The amount of the credit determined under paragraph (1) for any taxable year with respect to income referred to in subparagraph (A) thereof shall not exceed the sum of the following amounts:

(i) 60 percent of the sum of—

(I) the aggregate amount of the possession corporation's qualified possession wages for such taxable year, plus

(II) the allocable employee fringe benefit expenses of the possession corporation for the taxable year.

(ii) The sum of—

(I) 15 percent of the depreciation allowances for the taxable year with respect to short-life qualified tangible property,

(II) 40 percent of the depreciation allowances for the taxable year with respect to medium-life qualified tangible property, and

(III) 65 percent of the depreciation allowances for the taxable year with respect to long-life qualified tangible property.

(iii) If the possession corporation does not have an election to use the method described in subsection (h)(5)(C)(ii) (relating to profit split) in effect for the taxable year, the amount of qualified possession income taxes for the taxable year allocable to nonsheltered income.

(B) Election to take reduced credit

(i) In general

If an election under this subparagraph applies to a possession corporation for any taxable year—

(I) subparagraph (A), and the provisions of subsection (i), shall not apply to such possession corporation for such taxable year, and

(II) the credit determined under paragraph (1) for such taxable year with respect to income referred to in subparagraph (A) thereof shall be the applicable percentage of the credit which would otherwise have been determined under such paragraph with respect to such income.

Notwithstanding subclause (I), a possession corporation to which an election under this subparagraph applies shall be entitled to the benefits of subsection (i)(3)(B) for taxes allocable (on a pro rata basis) to taxable income the tax on which is not offset by reason of this subparagraph.

(ii) Applicable percentage

The term "applicable percentage" means the percentage determined in accordance with the following table:

In the case of taxable years beginning in:	The percentage is:
1994	60
1995	55
1996	50
1997	45
1998 and thereafter	40.

(iii) Election

(I) In general

An election under this subparagraph by any possession corporation may be made only for the corporation's first taxable year beginning after December 31, 1993, for which it is a possession corporation.

(II) Period of election

An election under this subparagraph shall apply to the taxable year for which made and all subsequent taxable years unless revoked.

(III) Affiliated groups

If, for any taxable year, an election is not in effect for any possession corporation which is a member of an affiliated group, any election under this subparagraph for any other member of such group is revoked for such taxable year and all subsequent taxable years. For purposes of this subclause, members of an affiliated group shall be determined without regard to the exceptions contained in section 1504(b) and as if the constructive ownership rules of section 1563(e) applied for purposes of section 1504(a). The Secretary may prescribe regulations to prevent the avoidance of this subclause through deconsolidation or otherwise.

(C) Cross reference

For definitions and special rules applicable to this paragraph, see subsection (i).

(b) Amounts received in United States

In determining taxable income for purposes of subsection (a), there shall not be taken into account as income from sources without the United States any gross income which was received by such domestic corporation within the United States, whether derived from sources within or without the United States. This subsection shall not apply to any amount described in subsection (a)(1)(A)(i) received from a person who is not a related person (within the meaning of subsection (h)(3) but without regard to subparagraphs (D)(ii) and (E)(i) thereof) with respect to the domestic corporation.

(c) Treatment of certain foreign taxes

For purposes of this title, any tax of a foreign country or a possession of the United States which is paid or accrued with respect to taxable income which is taken into account in computing the credit under subsection (a) shall not be treated as income, war profits, or excess profits taxes paid or accrued to a foreign country or possession of the United States, and no deduction shall be allowed under this title with respect to any amounts so paid or accrued.

(d) Definitions and special rules

For purposes of this section—

(1) Possession

The term "possession of the United States" includes the Commonwealth of Puerto Rico and the Virgin Islands.

(2) Qualified possession source investment income

The term "qualified possession source investment income" means gross income which—

(A) is from sources within a possession of the United States in which a trade or business is actively conducted, and

(B) the taxpayer establishes to the satisfaction of the Secretary is attributable to the investment in such possession (for use therein) of funds derived from the active conduct of a trade or business in such possession, or from such investment,

less the deductions properly apportioned or allocated thereto.

(3) Carryover basis property

(A) In general

Income from the sale or exchange of any asset the basis of which is determined in whole or in part by reference to its basis in the hands of another person shall not be treated as income described in subparagraph (A) or (B) of subsection (a)(1).

(B) Exception for possessions corporations, etc.

For purposes of subparagraph (A), the holding of any asset by another person shall not be taken into account if throughout the period for which such asset was held by such person section 931, this section, or section 957(c) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) applied to such person.

(4) Investment in qualified Caribbean Basin countries

(A) In general

For purposes of paragraph (2)(B), an investment in a financial institution shall, subject to such conditions as the Secretary may prescribe by regulations, be treated as for use in Puerto Rico to the extent used by such financial institution (or by the Government Development Bank for Puerto Rico or the Puerto Rico Economic Development Bank)—

(i) for investment, consistent with the goals and purposes of the Caribbean Basin Economic Recovery Act, in—

(I) active business assets in a qualified Caribbean Basin country, or

(II) development projects in a qualified Caribbean Basin country, and

(ii) in accordance with a specific authorization granted by the Commissioner of Financial Institutions of Puerto Rico pursuant to regulations issued by such Commissioner.

A similar rule shall apply in the case of a direct investment in the Government Development Bank for Puerto Rico or the Puerto Rico Economic Development Bank.

(B) Qualified Caribbean Basin country

For purposes of this subsection, the term "qualified Caribbean Basin country" means any beneficiary country (within the meaning of section 212(a)(1)(A) of the Caribbean Basin Economic Recovery Act) which meets the requirements of clauses (i) and (ii) of section 274(h)(6)(A) and the Virgin Islands.

(C) Additional requirements

Subparagraph (A) shall not apply to any investment made by a financial institution (or by the Government Development Bank for Puerto Rico or the Puerto Rico Economic Development Bank) unless—

(i) the person in whose trade or business such investment is made (or such other recipient of the investment) and the financial institution or such Bank certify to the Secretary and the Commissioner of Financial Institutions of Puerto Rico that the proceeds of the loan will be promptly used to acquire active business assets or to make other authorized expenditures, and

(ii) the financial institution (or the Government Development Bank for Puerto Rico or the

Puerto Rico Economic Development Bank) and the recipient of the investment funds agree to permit the Secretary and the Commissioner of Financial Institutions of Puerto Rico to examine such of their books and records as may be necessary to ensure that the requirements of this paragraph are met.

(D) Requirement for investment in Caribbean Basin countries

(i) In general

For each calendar year, the government of Puerto Rico shall take such steps as may be necessary to ensure that at least $100,000,000 of qualified Caribbean Basin country investments are made during such calendar year.

(ii) Qualified Caribbean Basin country investment

For purposes of clause (i), the term "qualified Caribbean Basin country investment" means any investment if—

(I) the income from such investment is treated as qualified possession source investment income by reason of subparagraph (A), and

(II) such investment is not (directly or indirectly) a refinancing of a prior investment (whether or not such prior investment was a qualified Caribbean Basin country investment).

(e) Election

(1) Period of election

The election provided in subsection (a) shall be made at such time and in such manner as the Secretary may by regulations prescribe. Any such election shall apply to the first taxable year for which such election was made and for which the domestic corporation satisfied the conditions of subparagraphs (A) and (B) of subsection (a)(2) and for each taxable year thereafter until such election is revoked by the domestic corporation under paragraph (2). If any such election is revoked by the domestic corporation under paragraph (2), such domestic corporation may make a subsequent election under subsection (a) for any taxable year thereafter for which such domestic corporation satisfies the conditions of subparagraphs (A) and (B) of subsection (a)(2) and any such subsequent election shall remain in effect until revoked by such domestic corporation under paragraph (2).

(2) Revocation

An election under subsection (a)—

(A) may be revoked for any taxable year beginning before the expiration of the 9th taxable year following the taxable year for which such election first applies only with the consent of the Secretary; and

(B) may be revoked for any taxable year beginning after the expiration of such 9th taxable year without the consent of the Secretary.

(f) Limitation on credit for DISC's and FSC's

No credit shall be allowed under this section to a corporation for any taxable year—

(1) for which it is a DISC or former DISC, or

(2) in which it owns at any time stock in a—

(A) DISC or former DISC, or

(B) former FSC.

(g) Exception to accumulated earnings tax

(1) For purposes of section 535, the term "accumulated taxable income" shall not include taxable income entitled to the credit under subsection (a).

(2) For purposes of section 537, the term "reasonable needs of the business" includes assets which produce income eligible for the credit under subsection (a).

(h) Tax treatment of intangible property income

(1) In general

(A) Income attributable to shareholders

The intangible property income of a corporation electing the application of this section for any taxable year shall be included on a pro rata basis in the gross income of all shareholders of such electing corporation at the close of the taxable year of such electing corporation as income from sources within the United States for the taxable year of such shareholder in which or with which the taxable year of such electing corporation ends.

(B) Exclusion from the income of an electing corporation

Any intangible property income of a corporation electing the application of this section which is included in the gross income of a shareholder of such corporation by reason of subparagraph (A) shall be excluded from the gross income of such corporation.

(2) Foreign shareholders; shareholders not subject to tax

(A) In general

Paragraph (1)(A) shall not apply with respect to any shareholder—

(i) who is not a United States person, or

(ii) who is not subject to tax under this title on intangible property income which would be allocated to such shareholder (but for this subparagraph).

(B) Treatment of nonallocated intangible property income

For purposes of this subtitle, intangible property income of a corporation electing the application of this section which is not included in the gross income of a shareholder of such corporation by reason of subparagraph (A)—

(i) shall be treated as income from sources within the United States, and

(ii) shall not be taken into account under subsection (a)(2).

(3) Intangible property income

For purposes of this subsection—

(A) In general

The term "intangible property income" means the gross income of a corporation attributable to any intangible property other than intangible property which has been licensed to such corporation since prior to 1948 and is in use by such corporation on the date of the enactment of this subparagraph.

(B) Intangible property

The term "intangible property" means any—

(i) patent, invention, formula, process, design, pattern, or know-how;

(ii) copyright, literary, musical, or artistic composition;

(iii) trademark, trade name, or brand name;

(iv) franchise, license, or contract;

(v) method, program, system, procedure, campaign, survey, study, forecast, estimate, customer list, or technical data; or

(vi) any similar item,

which has substantial value independent of the services of any individual.

(C) Exclusion of reasonable profit

The term "intangible property income" shall not include any portion of the income from the sale, exchange or other disposition of any product, or from the rendering of services, by a corporation electing the application of this section which is determined by the Secretary to be a reasonable profit on the direct and indirect costs incurred by such electing corporation which are attributable to such income.

(D) Related person

(i) In general

A person (hereinafter referred to as the "related person") is related to any person if—

(I) the related person bears a relationship to such person specified in section 267(b) or section 707(b)(1), or

(II) the related person and such person are members of the same controlled group of corporations.

(ii) Special rule

For purposes of clause (i), section 267(b) and section 707(b)(1) shall be applied by substituting "10 percent" for "50 percent".

(E) Controlled group of corporations

The term "controlled group of corporations" has the meaning given to such term by section 1563(a), except that—

(i) "more than 10 percent" shall be substituted for "at least 80 percent" and "more than 50 percent" each place either appears in section 1563(a), and

(ii) the determination shall be made without regard to subsections (a)(4), (b)(2), and (e)(3)(C) of section 1563.

(4) Distributions to meet qualification requirements

(A) In general

If the Secretary determines that a corporation does not satisfy a condition specified in subparagraph (A) or (B) of subsection (a)(2) for any taxable year by reason of the exclusion from gross income under paragraph (1)(B), such corporation shall nevertheless be treated as satisfying such condition for such year if it makes a pro rata distribution of property after the close of such taxable year to its shareholders (designated at the time of such distribution as a distribution to meet qualification requirements) with respect to their stock in an amount which is equal to—

(i) if the condition of subsection (a)(2)(A) is not satisfied, that portion of the gross income for the period described in subsection (a)(2)(A)—

(I) which was not derived from sources within a possession, and

(II) which exceeds the amount of such income for such period which would enable such corporation to satisfy the condition of subsection (a)(2)(A),

(ii) if the condition of subsection (a)(2)(B) is not satisfied, that portion of the gross income for such period—

(I) which was not derived from the active conduct of a trade or business within a possession, and

(II) which exceeds the amount of such income for such period which would enable such corporation to satisfy the conditions of subsection (a)(2)(B), or

(iii) if neither of such conditions is satisfied, that portion of the gross income which exceeds the amount of gross income for such period which would enable such corporation to satisfy the conditions of subparagraphs (A) and (B) of subsection (a)(2).

(B) Effectively connected income

In the case of a shareholder who is a nonresident alien individual or a foreign corporation, trust, or estate, any distribution described in subparagraph (A) shall be treated as income which is effectively connected with the conduct of a trade or business conducted through a permanent establishment of such shareholder within the United States.

(C) Distribution denied in case of fraud or willful neglect

Subparagraph (A) shall not apply to a corporation if the determination of the Secretary described in subparagraph (A) contains a finding that the failure of such corporation to satisfy

the conditions in subsection (a)(2) was due in whole or in part to fraud with intent to evade tax or willful neglect on the part of such corporation.

(5) Election out

(A) In general

The rules contained in paragraphs (1) through (4) do not apply for any taxable year if an election pursuant to subparagraph (F) is in effect to use one of the methods specified in subparagraph (C).

(B) Eligibility

(i) Requirement of significant business presence

An election may be made to use one of the methods specified in subparagraph (C) with respect to a product or type of service only if an electing corporation has a significant business presence in a possession with respect to such product or type of service. An election may remain in effect with respect to such product or type of service for any subsequent taxable year only if such electing corporation maintains a significant business presence in a possession with respect to such product or type of service in such subsequent taxable year. If an election is not in effect for a taxable year because of the preceding sentence, the electing corporation shall be deemed to have revoked the election on the first day of such taxable year.

(ii) Definition

For purposes of this subparagraph, an electing corporation has a "significant business presence" in a possession for a taxable year with respect to a product or type of service if:

(I) the total production costs (other than direct material costs and other than interest excluded by regulations prescribed by the Secretary) incurred by the electing corporation in the possession in producing units of that product sold or otherwise disposed of during the taxable year by the affiliated group to persons who are not members of the affiliated group are not less than 25 percent of the difference between (a) the gross receipts from sales or other dispositions during the taxable year by the affiliated group to persons who are not members of the affiliated group of such units of the product produced, in whole or in part, by the electing corporation in the possession, and (b) the direct material costs of the purchase of materials for such units of that product by all members of the affiliated group from persons who are not members of the affiliated group; or

(II) no less than 65 percent of the direct labor costs of the affiliated group for units of the product produced during the taxable year in whole or in part by the electing corporation or for the type of service rendered by the electing corporation during the taxable year, is incurred by the electing corporation and is compensation for services performed in the possession; or

(III) with respect to purchases and sales by an electing corporation of all goods not produced in whole or in part by any member of the affiliated group and sold by the electing corporation to persons other than members of the affiliated group, no less than 65 percent of the total direct labor costs of the affiliated group in connection with all purchases and sales of such goods sold during the taxable year by such electing corporation is incurred by such electing corporation and is compensation for services performed in the possession.

Notwithstanding satisfaction of one of the foregoing tests, an electing corporation shall not be treated as having a significant business presence in a possession with respect to a product produced in whole or in part by the electing corporation in the possession, for purposes of an election to use the method specified in subparagraph (C)(ii), unless such product is manufactured or produced in the possession by the electing corporation within the meaning of subsection (d)(1)(A) of section 954.

(iii) Special rules

(I) An electing corporation which produces a product or renders a type of service in a possession on the date of the enactment of this clause is not required to meet the significant business presence test in a possession with respect to such product or type of service for its taxable years beginning before January 1, 1986.

(II) For purposes of this subparagraph, the costs incurred by an electing corporation or any other member of the affiliated group in connection with contract manufacturing by a person other than a member of the affiliated group, or in connection with a similar arrangement thereto, shall be treated as direct labor costs of the affiliated group and shall not be treated as production costs incurred by the electing corporation in the possession or as direct material costs or as compensation for services performed in the possession, except to the extent as may be otherwise provided in regulations prescribed by the Secretary.

(iv) Regulations

The Secretary may prescribe regulations setting forth:

(I) an appropriate transitional (but not in excess of three taxable years) significant business presence test for commencement in a possession of operations with respect to products or types of service after the date of the enactment of this clause and not described in subparagraph (B)(iii)(I),

(II) a significant business presence test for other appropriate cases, consistent with the tests specified in subparagraph (B)(ii),

(III) rules for the definition of a product or type of service, and

(IV) rules for treating components produced in whole or in part by a related person as materials, and the costs (including direct labor costs) related thereto as a cost of materials, where there is an independent resale price for such components or where otherwise consistent with the intent of the substantial business presence tests.

(C) Methods of computation of taxable income

If an election of one of the following methods is in effect pursuant to subparagraph (F) with respect to a product or type of service, an electing corporation shall compute its income derived from the active conduct of a trade or business in a possession with respect to such product or type of service in accordance with the method which is elected.

(i) Cost sharing

(I) Payment of cost sharing

If an election of this method is in effect, the electing corporation must make a payment for its share of the cost (if any) of product area research which is paid or accrued by the affiliated group during that taxable year. Such share shall not be less than the same proportion of 110 percent of the cost of such product area research which the amount of "possession sales" bears to the amount of "total sales" of the affiliated group. The cost of product area research paid or accrued solely by the electing corporation in a taxable year (excluding amounts paid directly or indirectly to or on behalf of related persons and excluding amounts paid under any cost sharing agreements with related persons) will reduce (but not below zero) the amount of the electing corporation's cost sharing payment under this method for that year. In the case of intangible property described in subsection (h)(3)(B)(i) which the electing corporation is treated as owning under subclause (II), in no event shall the payment required under this subclause be less than the inclusion or payment which would be required under section 367(d)(2)(A)(ii) or section 482 if the electing corporation were a foreign corporation.

(a) Product area research

For purposes of this section, the term "product area research" includes (notwithstanding any provision to the contrary) the research, development and experimental costs, losses, expenses and other related deductions—including amounts paid or accrued for the performance of research or similar activities by another person;

qualified research expenses within the meaning of section 41(b); amounts paid or accrued for the use of, or the right to use, research or any of the items specified in subsection (h)(3)(B)(i); and a proper allowance for amounts incurred for the acquisition of any of the items specified in subsection (h)(3)(B)(i)—which are properly apportioned or allocated to the same product area as that in which the electing corporation conducts its activities, and a ratable part of any such costs, losses, expenses and other deductions which cannot definitely be allocated to a particular product area.

(b) Affiliated group

For purposes of this subsection, the term "affiliated group" shall mean the electing corporation and all other organizations, trades or businesses (whether or not incorporated, whether or not organized in the United States, and whether or not affiliated) owned or controlled directly or indirectly by the same interests, within the meaning of section 482.

(c) Possession sales

For purposes of this section, the term "possession sales" means the aggregate sales or other dispositions for the taxable year to persons who are not members of the affiliated group by members of the affiliated group of products produced, in whole or in part, by the electing corporation in the possession which are in the same product area as is used for determining the amount of product area research, and of services rendered, in whole or in part, in the possession in such product area to persons who are not members of the affiliated group.

(d) Total sales

For purposes of this section, the term "total sales" means the aggregate sales or other dispositions for the taxable year to persons who are not members of the affiliated group by members of the affiliated group of all products in the same product area as is used for determining the amount of product area research, and of services rendered in such product area to persons who are not members of the affiliated group.

(e) Product area

For purposes of this section, the term "product area" shall be defined by reference to the three-digit classification of the Standard Industrial Classification code. The Secretary may provide for the aggregation of two or more three-digit classifications where appropriate, and for a classification system other than the Standard Industrial Classification code in appropriate cases.

(II) Effect of election

For purposes of determining the amount of its gross income derived from the active conduct of a trade or business in a possession with respect to a product produced by, or type of service rendered by, the electing corporation for a taxable year, if an election of this method is in effect, the electing corporation shall be treated as the owner (for purposes of obtaining a return thereon) of intangible property described in subsection (h)(3)(B)(i) which is related to the units of the product produced, or type of service rendered, by the electing corporation. Such electing corporation shall not be treated as the owner (for purposes of obtaining a return thereon) of any intangible property described in subsection (h)(3)(B)(ii) through (v) (to the extent not described in subsection (h)(3)(B)(i)) or of any other nonmanufacturing intangible. Notwithstanding the preceding sentence, an electing corporation shall be treated as the owner (for purposes of obtaining a return thereon) of (a) intangible property which was developed solely by such corporation in a possession and is owned by such corporation, (b) intangible property described in subsection (h)(3)(B)(i) acquired by such corporation from a person who was not related to such corporation (or to any person related to such corporation) at the time of, or in connection with, such acquisition, and (c) any intangible property described in subsection (h)(3)(B)(ii) through

(v) (to the extent not described in subsection (h)(3)(B)(i)) and other nonmanufacturing intangibles which relate to sales of units of products, or services rendered, to unrelated persons for ultimate consumption or use in the possession in which the electing corporation conducts its trade or business.

(III) Payment provisions

(a) The cost sharing payment determined under subparagraph (C)(i)(I) for any taxable year shall be made to the person or persons specified in subparagraph (C)(i)(IV)(a) not later than the time prescribed by law for filing the electing corporation's return for such taxable year (including any extensions thereof). If all or part of such payment is not timely made, the amount of the cost sharing payment required to be paid shall be increased by the amount of interest that would have been due under section 6601(a) had the portion of the cost sharing payment that is not timely made been an amount of tax imposed by this title and had the last date prescribed for payment been the due date of the electing corporations [1] return (determined without regard to any extension thereof). The amount by which a cost sharing payment determined under subparagraph (C)(i)(I) is increased by reason of the preceding sentence shall not be treated as a cost sharing payment or as interest. If failure to make timely payment is due in whole or in part to fraud or willful neglect, the electing corporation shall be deemed to have revoked the election made under subparagraph (A) on the first day of the taxable year for which the cost sharing payment was required.

(b) For purposes of this title, any tax of a foreign country or possession of the United States which is paid or accrued with respect to the payment or receipt of a cost sharing payment determined under subparagraph (C)(i)(I) or of an amount of increase referred to in subparagraph (C)(i)(III)(a) shall not be treated as income, war profits, or excess profits taxes paid or accrued to a foreign country or possession of the United States, and no deduction shall be allowed under this title with respect to any amounts of such tax so paid or accrued.

(IV) Special rules

(a) The amount of the cost sharing payment determined under subparagraph (C)(i)(I), and any increase in the amount thereof in accordance with subparagraph (C)(i)(III)(a), shall not be treated as income of the recipient, but shall reduce the amount of the deductions (and the amount of reductions in earnings and profits) otherwise allowable to the appropriate domestic member or members (other than an electing corporation) of the affiliated group, or, if there is no such domestic member, to the foreign member or members of such affiliated group as the Secretary may provide under regulations.

(b) If an election of this method is in effect, the electing corporation shall determine its intercompany pricing under the appropriate section 482 method, provided, however, that an electing corporation shall not be denied use of the resale price method for purposes of such intercompany pricing merely because the reseller adds more than an insubstantial amount to the value of the product by the use of intangible property.

(c) The amount of qualified research expenses, within the meaning of section 41, of any member of the controlled group of corporations (as defined in section 41(f)) of which the electing corporation is a member shall not be affected by the cost sharing payment required under this method.

(ii) Profit split

(I) General rule

If an election of this method is in effect, the electing corporation's taxable income derived from the active conduct of a trade or business in a possession with respect to units of a product produced or type of service rendered, in whole or in part, by the electing corporation shall be equal to 50 percent of the combined taxable income of the affiliated

group (other than foreign affiliates) derived from covered sales of units of the product produced or type of service rendered, in whole or in part, by the electing corporation in a possession.

(II) Computation of combined taxable income

Combined taxable income shall be computed separately for each product produced or type of service rendered, in whole or in part, by the electing corporation in a possession. Combined taxable income shall be computed (notwithstanding any provision to the contrary) for each such product or type of service rendered by deducting from the gross income of the affiliated group (other than foreign affiliates) derived from covered sales of such product or type of service all expenses, losses, and other deductions properly apportioned or allocated to gross income from such sales or services, and a ratable part of all expenses, losses, or other deductions which cannot definitely be allocated to some item or class of gross income, which are incurred by the affiliated group (other than foreign affiliates). Notwithstanding any other provision to the contrary, in computing the combined taxable income for each such product or type of service rendered, the research, development, and experimental costs, expenses and related deductions for the taxable year which would otherwise be apportioned or allocated to the gross income of the affiliated group (other than foreign affiliates) derived from covered sales of such product produced or type of service rendered, in whole or in part, by the electing corporation in a possession, shall not be less than the same proportion of the amount of the share of product area research determined under subparagraph (C)(i)(I) (without regard to the third and fourth sentences thereof, but substituting "120 percent" for "110 percent" in the second sentence thereof) in the product area which includes such product or type of service, that such gross income from the product or type of service bears to such gross income from all products and types of services, within such product area, produced or rendered, in whole or part, by the electing corporation in a possession.

(III) Division of combined taxable income

50 percent of the combined taxable income computed as provided in subparagraph (C)(ii)(II) shall be allocated to the electing corporation. Combined taxable income, computed without regard to the last sentence of subparagraph (C)(ii)(II), less the amount allocated to the electing corporation under the preceding sentence, shall be allocated to the appropriate domestic member or members (other than any electing corporation) of the affiliated group and shall be treated as income from sources within the United States, or, if there is no such domestic member, to a foreign member or members of such affiliated group as the Secretary may provide under regulations.

(IV) Covered sales

For purposes of this paragraph, the term "covered sales" means sales by members of the affiliated group (other than foreign affiliates) to persons who are not members of the affiliated group or to foreign affiliates.

(D) Unrelated person

For purposes of this paragraph, the term "unrelated person" means any person other than a person related within the meaning of paragraph (3)(D) to the electing corporation.

(E) Electing corporation

For purposes of this subsection, the term "electing corporation" means a domestic corporation for which an election under this section is in effect.

(F) Time and manner of election; revocation

(i) In general

An election under subparagraph (A) to use one of the methods under subparagraph (C) shall be made only on or before the due date prescribed by law (including extensions) for

filing the tax return of the electing corporation for its first taxable year beginning after December 31, 1982. If an election of one of such methods is made, such election shall be binding on the electing corporation and such method must be used for each taxable year thereafter until such election is revoked by the electing corporation under subparagraph (F)(iii). If any such election is revoked by the electing corporation under subparagraph (F)(iii), such electing corporation may make a subsequent election under subparagraph (A) only with the consent of the Secretary.

(ii) Manner of making election

An election under subparagraph (A) to use one of the methods under subparagraph (C) shall be made by filing a statement to such effect with the return referred to in subparagraph (F)(i) or in such other manner as the Secretary may prescribe by regulations.

(iii) Revocation

(I) Except as provided in subparagraph (F)(iii)(II), an election may be revoked for any taxable year only with the consent of the Secretary.

(II) An election shall be deemed revoked for the year in which the electing corporation is deemed to have revoked such election under subparagraph (B)(i) or (C)(i)(III)(a).

(iv) Aggregation

(I) Where more than one electing corporation in the affiliated group produces any product or renders any services in the same product area, all such electing corporations must elect to compute their taxable income under the same method under subparagraph (C).

(II) All electing corporations in the same affiliated group that produce any products or render any services in the same product area may elect, subject to such terms and conditions as the Secretary may prescribe by regulations, to compute their taxable income from export sales under a different method from that used for all other sales and services. For this purpose, export sales means all sales by the electing corporation of products to foreign persons for use or consumption outside the United States and its possessions, provided such products are manufactured or produced in the possession within the meaning of subsection (d)(1)(A) of section 954, and further provided (except to the extent otherwise provided by regulations) the income derived by such foreign person on resale of such products (in the same state or in an altered state) is not included in foreign base company income for purposes of section 954(a).

(III) All members of an affiliated group must consent to an election under this subsection at such time and in such manner as shall be prescribed by the Secretary by regulations.

(6) Treatment of certain sales made after July 1, 1982

(A) In general

For purposes of this section, in the case of a disposition of intangible property made by a corporation after July 1, 1982, any gain or loss from such disposition shall be treated as gain or loss from sources within the United States to which paragraph (5) does not apply.

(B) Exception

Subparagraph (A) shall not apply to any disposition by a corporation of intangible property if such disposition is to a person who is not a related person to such corporation.

(C) Paragraph does not affect eligibility

This paragraph shall not apply for purposes of determining whether the corporation meets the requirements of subsection (a)(2).

(7) Section 864(e)(1) not to apply

This subsection shall be applied as if section 864(e)(1) (relating to treatment of affiliated groups) had not been enacted.

(8) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection, including rules for the application of this subsection to income from leasing of products to unrelated persons.

(i) Definitions and special rules relating to limitations of subsection (a)(4)

(1) Qualified possession wages

For purposes of this section—

(A) In general

The term "qualified possession wages" means wages paid or incurred by the possession corporation during the taxable year in connection with the active conduct of a trade or business within a possession of the United States to any employee for services performed in such possession, but only if such services are performed while the principal place of employment of such employee is within such possession.

(B) Limitation on amount of wages taken into account

(i) In general

The amount of wages which may be taken into account under subparagraph (A) with respect to any employee for any taxable year shall not exceed 85 percent of the contribution and benefit base determined under section 230 of the Social Security Act for the calendar year in which such taxable year begins.

(ii) Treatment of part-time employees, etc.

If—

(I) any employee is not employed by the possession corporation on a substantially full-time basis at all times during the taxable year, or

(II) the principal place of employment of any employee with the possession corporation is not within a possession at all times during the taxable year,

the limitation applicable under clause (i) with respect to such employee shall be the appropriate portion (as determined by the Secretary) of the limitation which would otherwise be in effect under clause (i).

(C) Treatment of certain employees

The term "qualified possession wages" shall not include any wages paid to employees who are assigned by the employer to perform services for another person, unless the principal trade or business of the employer is to make employees available for temporary periods to other persons in return for compensation. All possession corporations treated as 1 corporation under paragraph (5) shall be treated as 1 employer for purposes of the preceding sentence.

(D) Wages

(i) In general

Except as provided in clause (ii), the term "wages" has the meaning given to such term by subsection (b) of section 3306 (determined without regard to any dollar limitation contained in such section). For purposes of the preceding sentence, such subsection (b) shall be applied as if the term "United States" included all possessions of the United States.

(ii) Special rule for agricultural labor and railway labor

In any case to which subparagraph (A) or (B) of paragraph (1) of section 51(h) applies, the term "wages" has the meaning given to such term by section 51(h)(2).

(2) Allocable employee fringe benefit expenses

(A) In general

The allocable employee fringe benefit expenses of any possession corporation for any taxable year is an amount which bears the same ratio to the amount determined under subparagraph (B)

for such taxable year as—

(i) the aggregate amount of the possession corporation's qualified possession wages for such taxable year, bears to

(ii) the aggregate amount of the wages paid or incurred by such possession corporation during such taxable year.

In no event shall the amount determined under the preceding sentence exceed 15 percent of the amount referred to in clause (i).

(B) Expenses taken into account

For purposes of subparagraph (A), the amount determined under this subparagraph for any taxable year is the aggregate amount allowable as a deduction under this chapter to the possession corporation for such taxable year with respect to—

(i) employer contributions under a stock bonus, pension, profit-sharing, or annuity plan,

(ii) employer-provided coverage under any accident or health plan for employees, and

(iii) the cost of life or disability insurance provided to employees.

Any amount treated as wages under paragraph (1)(D) shall not be taken into account under this subparagraph.

(3) Treatment of possession taxes

(A) Amount of credit for possession corporations not using profit split

(i) In general

For purposes of subsection (a)(4)(A)(iii), the amount of the qualified possession income taxes for any taxable year allocable to nonsheltered income shall be an amount which bears the same ratio to the possession income taxes for such taxable year as—

(I) the increase in the tax liability of the possession corporation under this chapter for the taxable year by reason of subsection (a)(4)(A) (without regard to clause (iii) thereof), bears to

(II) the tax liability of the possession corporation under this chapter for the taxable year determined without regard to the credit allowable under this section.

(ii) Limitation on amount of taxes taken into account

Possession income taxes shall not be taken into account under clause (i) for any taxable year to the extent that the amount of such taxes exceeds 9 percent of the amount of the taxable income for such taxable year.

(B) Deduction for possession corporations using profit split

Notwithstanding subsection (c), if a possession corporation is not described in subsection (a)(4)(A)(iii) for the taxable year, such possession corporation shall be allowed a deduction for such taxable year in an amount which bears the same ratio to the possession income taxes for such taxable year as—

(i) the increase in the tax liability of the possession corporation under this chapter for the taxable year by reason of subsection (a)(4)(A), bears to

(ii) the tax liability of the possession corporation under this chapter for the taxable year determined without regard to the credit allowable under this section.

In determining the credit under subsection (a) and in applying the preceding sentence, taxable income shall be determined without regard to the preceding sentence.

(C) Possession income taxes

For purposes of this paragraph, the term "possession income taxes" means any taxes of a possession of the United States which are treated as not being income, war profits, or excess profits taxes paid or accrued to a possession of the United States by reason of subsection (c).

(4) Depreciation rules

For purposes of this section—

(A) Depreciation allowances

The term "depreciation allowances" means the depreciation deductions allowable under section 167 to the possession corporation.

(B) Categories of property

(i) Qualified tangible property

The term "qualified tangible property" means any tangible property used by the possession corporation in a possession of the United States in the active conduct of a trade or business within such possession.

(ii) Short-life qualified tangible property

The term "short-life qualified tangible property" means any qualified tangible property to which section 168 applies and which is 3-year property or 5-year property for purposes of such section.

(iii) Medium-life qualified tangible property

The term "medium-life qualified tangible property" means any qualified tangible property to which section 168 applies and which is 7-year property or 10-year property for purposes of such section.

(iv) Long-life qualified tangible property

The term "long-life qualified tangible property" means any qualified tangible property to which section 168 applies and which is not described in clause (ii) or (iii).

(v) Transitional rule

In the case of any qualified tangible property to which section 168 (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) applies, any reference in this paragraph to section 168 shall be treated as a reference to such section as so in effect.

(5) Election to compute credit on consolidated basis

(A) In general

Any affiliated group may elect to treat all possession corporations which would be members of such group but for section 1504(b)(3) or (4) as 1 corporation for purposes of this section. The credit determined under this section with respect to such 1 corporation shall be allocated among such possession corporations in such manner as the Secretary may prescribe.

(B) Election

An election under subparagraph (A) shall apply to the taxable year for which made and all succeeding taxable years unless revoked with the consent of the Secretary.

(6) Possession corporation

The term "possession corporation" means a domestic corporation for which the election provided in subsection (a) is in effect.

(j) Termination

(1) In general

Except as otherwise provided in this subsection, this section shall not apply to any taxable year beginning after December 31, 1995.

(2) Transition rules for active business income credit

Except as provided in paragraph (3)—

(A) Economic activity credit

In the case of an existing credit claimant—

(i) with respect to a possession other than Puerto Rico, and
(ii) to which subsection (a)(4)(B) does not apply,

the credit determined under subsection (a)(1)(A) shall be allowed for taxable years beginning after December 31, 1995, and before January 1, 2002.

(B) Special rule for reduced credit

(i) In general

In the case of an existing credit claimant to which subsection (a)(4)(B) applies, the credit determined under subsection (a)(1)(A) shall be allowed for taxable years beginning after December 31, 1995, and before January 1, 1998.

(ii) Election irrevocable after 1997

An election under subsection (a)(4)(B)(iii) which is in effect for the taxpayer's last taxable year beginning before 1997 may not be revoked unless it is revoked for the taxpayer's first taxable year beginning in 1997 and all subsequent taxable years.

(C) Economic activity credit for Puerto Rico

For economic activity credit for Puerto Rico, see section 30A.

(3) Additional restricted credit

(A) In general

In the case of an existing credit claimant—

(i) the credit under subsection (a)(1)(A) shall be allowed for the period beginning with the first taxable year after the last taxable year to which subparagraph (A) or (B) of paragraph (2), whichever is appropriate, applied and ending with the last taxable year beginning before January 1, 2006, except that

(ii) the aggregate amount of taxable income taken into account under subsection (a)(1)(A) for any such taxable year shall not exceed the adjusted base period income of such claimant.

(B) Coordination with subsection (a)(4)

The amount of income described in subsection (a)(1)(A) which is taken into account in applying subsection (a)(4) shall be such income as reduced under this paragraph.

(4) Adjusted base period income

For purposes of paragraph (3)—

(A) In general

The term "adjusted base period income" means the average of the inflation-adjusted possession incomes of the corporation for each base period year.

(B) Inflation-adjusted possession income

For purposes of subparagraph (A), the inflation-adjusted possession income of any corporation for any base period year shall be an amount equal to the sum of—

(i) the possession income of such corporation for such base period year, plus

(ii) such possession income multiplied by the inflation adjustment percentage for such base period year.

(C) Inflation adjustment percentage

For purposes of subparagraph (B), the inflation adjustment percentage for any base period year means the percentage (if any) by which—

(i) the CPI for 1995, exceeds

(ii) the CPI for the calendar year in which the base period year for which the determination is being made ends.

For purposes of the preceding sentence, the CPI for any calendar year is the CPI (as defined in

section 1(f)(5)) for such year under section 1(f)(4).

(D) Increase in inflation adjustment percentage for growth during base years

The inflation adjustment percentage (determined under subparagraph (C) without regard to this subparagraph) for each of the 5 taxable years referred to in paragraph (5)(A) shall be increased by—

(i) 5 percentage points in the case of a taxable year ending during the 1-year period ending on October 13, 1995;

(ii) 10.25 percentage points in the case of a taxable year ending during the 1-year period ending on October 13, 1994;

(iii) 15.76 percentage points in the case of a taxable year ending during the 1-year period ending on October 13, 1993;

(iv) 21.55 percentage points in the case of a taxable year ending during the 1-year period ending on October 13, 1992; and

(v) 27.63 percentage points in the case of a taxable year ending during the 1-year period ending on October 13, 1991.

(5) Base period year

For purposes of this subsection—

(A) In general

The term "base period year" means each of 3 taxable years which are among the 5 most recent taxable years of the corporation ending before October 14, 1995, determined by disregarding—

(i) one taxable year for which the corporation had the largest inflation-adjusted possession income, and

(ii) one taxable year for which the corporation had the smallest inflation-adjusted possession income.

(B) Corporations not having significant possession income throughout 5-year period

(i) In general

If a corporation does not have significant possession income for each of the most recent 5 taxable years ending before October 14, 1995, then, in lieu of applying subparagraph (A), the term "base period year" means only those taxable years (of such 5 taxable years) for which the corporation has significant possession income; except that, if such corporation has significant possession income for 4 of such 5 taxable years, the rule of subparagraph (A)(ii) shall apply.

(ii) Special rule

If there is no year (of such 5 taxable years) for which a corporation has significant possession income—

(I) the term "base period year" means the first taxable year ending on or after October 14, 1995, but

(II) the amount of possession income for such year which is taken into account under paragraph (4) shall be the amount which would be determined if such year were a short taxable year ending on September 30, 1995.

(iii) Significant possession income

For purposes of this subparagraph, the term "significant possession income" means possession income which exceeds 2 percent of the possession income of the taxpayer for the taxable year (of the period of 6 taxable years ending with the first taxable year ending on or after October 14, 1995) having the greatest possession income.

(C) Election to use one base period year

(i) In general

At the election of the taxpayer, the term "base period year" means—

(I) only the last taxable year of the corporation ending in calendar year 1992, or

(II) a deemed taxable year which includes the first ten months of calendar year 1995.

(ii) Base period income for 1995

In determining the adjusted base period income of the corporation for the deemed taxable year under clause (i)(II), the possession income shall be annualized and shall be determined without regard to any extraordinary item.

(iii) Election

An election under this subparagraph by any possession corporation may be made only for the corporation's first taxable year beginning after December 31, 1995, for which it is a possession corporation. The rules of subclauses (II) and (III) of subsection (a)(4)(B)(iii) shall apply to the election under this subparagraph.

(D) Acquisitions and dispositions

Rules similar to the rules of subparagraphs (A) and (B) of section 41(f)(3) shall apply for purposes of this subsection.

(6) Possession income

For purposes of this subsection, the term "possession income" means, with respect to any possession, the income referred to in subsection (a)(1)(A) determined with respect to that possession. In no event shall possession income be treated as being less than zero.

(7) Short years

If the current year or a base period year is a short taxable year, the application of this subsection shall be made with such annualizations as the Secretary shall prescribe.

(8) Special rules for certain possessions

(A) In general

In the case of an existing credit claimant with respect to an applicable possession, this section (other than the preceding paragraphs of this subsection) shall apply to such claimant with respect to such applicable possession for taxable years beginning after December 31, 1995, and before January 1, 2006.

(B) Applicable possession

For purposes of this paragraph, the term "applicable possession" means Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(9) Existing credit claimant

For purposes of this subsection—

(A) In general

The term "existing credit claimant" means a corporation—

(i)(I) which was actively conducting a trade or business in a possession on October 13, 1995, and

(II) with respect to which an election under this section is in effect for the corporation's taxable year which includes October 13, 1995, or

(ii) which acquired all of the assets of a trade or business of a corporation which—

(I) satisfied the requirements of subclause (I) of clause (i) with respect to such trade or business, and

(II) satisfied the requirements of subclause (II) of clause (i).

(B) New lines of business prohibited

If, after October 13, 1995, a corporation which would (but for this subparagraph) be an existing credit claimant adds a substantial new line of business (other than in an acquisition described in subparagraph (A)(ii)), such corporation shall cease to be treated as an existing

credit claimant as of the close of the taxable year ending before the date of such addition.

(C) Binding contract exception

If, on October 13, 1995, and at all times thereafter, there is in effect with respect to a corporation a binding contract for the acquisition of assets to be used in, or for the sale of assets to be produced from, a trade or business, the corporation shall be treated for purposes of this paragraph as actively conducting such trade or business on October 13, 1995. The preceding sentence shall not apply if such trade or business is not actively conducted before January 1, 1996.

(10) Separate application to each possession

For purposes of determining—

(A) whether a taxpayer is an existing credit claimant, and

(B) the amount of the credit allowed under this section,

this subsection (and so much of this section as relates to this subsection) shall be applied separately with respect to each possession.

(Added Pub. L. 94–455, title X, §1051(b), Oct. 4, 1976, 90 Stat. 1643; amended Pub. L. 94–455, title XIX, §1901(b)(37)(B), Oct. 4, 1976, 90 Stat. 1803; Pub. L. 95–600, title VII, §701(u)(11)(A), (B), Nov. 6, 1978, 92 Stat. 2917; Pub. L. 97–248, title II, §201(d)(8)(B), formerly §201(c)(8)(B), §213(a), Sept. 3, 1982, 96 Stat. 420, 452, renumbered §201(d)(8)(B), Pub. L. 97–448, title III, §306(a)(1)(A)(i), Jan. 12, 1983, 96 Stat. 2400; Pub. L. 98–369, div. A, title IV, §474(r)(22), title VII, §712(g), title VIII, §801(d)(11), July 18, 1984, 98 Stat. 843, 947, 997; Pub. L. 99–499, title V, §516(b)(1)(B), Oct. 17, 1986, 100 Stat. 1770; Pub. L. 99–514, title II, §231(d)(3)(G), title VII, §701(e)(4)(I), title XII, §§1231(a)–(d), (f), 1275(a)(1), title XVIII, §1812(c)(4)(C), Oct. 22, 1986, 100 Stat. 2179, 2343, 2561–2563, 2598, 2835; Pub. L. 100–647, title I, §§1002(h)(3), 1012(h)(2)(B), (j), (n)(4), (5), title VI, §6132(a), Nov. 10, 1988, 102 Stat. 3370, 3502, 3512, 3515, 3721; Pub. L. 101–382, title II, §227(a), Aug. 20, 1990, 104 Stat. 661; Pub. L. 101–508, title XI, §11704(a)(11), Nov. 5, 1990, 104 Stat. 1388–518; Pub. L. 103–66, title XIII, §13227(a), (b), Aug. 10, 1993, 107 Stat. 489, 490; Pub. L. 104–188, title I, §§1601(a), 1704(t)(37), (80), Aug. 20, 1996, 110 Stat. 1827, 1889, 1891; Pub. L. 108–357, title IV, §402(b)(2), Oct. 22, 2004, 118 Stat. 1492; Pub. L. 110–172, §11(g)(12), Dec. 29, 2007, 121 Stat. 2490.)

REFERENCES IN TEXT

The date of the enactment of the Tax Reform Act of 1986, referred to in subsecs. (d)(3)(B) and (i)(4)(B)(v), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

The Caribbean Basin Economic Recovery Act, referred to in subsec. (d)(4)(A)(i), (B), is title II of Pub. L. 98–67, Aug. 5, 1983, 97 Stat. 384, which is classified principally to chapter 15 (§2701 et seq.) of Title 19, Customs Duties. Section 212 of that Act is classified to section 2702 of Title 19. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of Title 19 and Tables.

The date of the enactment of this subparagraph, referred to in subsec. (h)(3)(A), means the date of enactment of Pub. L. 97–248, which was approved Sept. 3, 1982.

The date of the enactment of this clause, referred to in subsec. (h)(5)(B)(iii)(I), (iv), means the date of enactment of Pub. L. 97–248, which was approved Sept. 3, 1982.

Section 230 of the Social Security Act, referred to in subsec. (i)(1)(B)(i), is classified to section 430 of Title 42, The Public Health and Welfare.

AMENDMENTS

2007—Subsec. (f)(2)(B). Pub. L. 110–172 struck out "FSC or" before "former FSC".

2004—Subsec. (a)(2)(A). Pub. L. 108–357 substituted "subsections (f) and (g) of section 904" for "section 904(f)".

1996—Subsec. (a)(4)(A)(ii)(I). Pub. L. 104–188, §1704(t)(80), which directed that subcl. (I) be amended by substituting "depreciation" for "deprecation", could not be executed, because the word "deprecation" did not appear in text.

Subsec. (b). Pub. L. 104–188, §1704(t)(37), substituted "subparagraphs (D)(ii)" for "subparagraphs (D)(ii)(I)".

Subsec. (j). Pub. L. 104–188, §1601(a), added subsec. (j).

1993—Subsec. (a)(1). Pub. L. 103–66, §13227(a)(1), substituted "Except as otherwise provided in this section" for "Except as provided in paragraph (3)".

Subsec. (a)(4). Pub. L. 103–66, §13227(a)(2), added par. (4).

Subsec. (i). Pub. L. 103–66, §13227(b), added subsec. (i).

1990—Subsec. (d)(4)(D). Pub. L. 101–382 added subpar. (D).

Subsec. (e)(1). Pub. L. 101–508 substituted "subsection (a)(2)" for "subsection (a)(1)" wherever appearing.

1988—Subsec. (d)(3)(B). Pub. L. 100–647, §1012(j), inserted "(as in effect on the day before the date of the enactment of the Tax Reform Act of 1986)" after "section 957(c)".

Subsec. (d)(4)(A)(ii). Pub. L. 100–647, §1012(n)(5)(A), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: "in accordance with a specific authorization granted by the Government Development Bank for Puerto Rico pursuant to regulations issued by the Secretary of the Treasury of Puerto Rico."

Subsec. (d)(4)(B). Pub. L. 100–647, §6132(a), inserted "and the Virgin Islands" after "274(h)(6)(A)".

Subsec. (d)(4)(C)(i), (ii). Pub. L. 100–647, §1012(n)(5)(B), substituted "Commissioner of Financial Institutions of Puerto Rico" for "Secretary of the Treasury of Puerto Rico".

Subsec. (h)(5)(C)(i)(I). Pub. L. 100–647, §1012(n)(4), amended directory language of Pub. L. 99–514, §1231(a)(1), see 1986 Amendment note below.

Subsec. (h)(5)(C)(i)(IV)(c). Pub. L. 100–647, §1002(h)(3), substituted "section 41" and "section 41(f)" for "section 30" and "section 30(f)", respectively.

Subsec. (h)(7), (8). Pub. L. 100–647, §1012(h)(2)(B), added par. (7) and redesignated former par. (7) as (8).

1986—Subsec. (a)(2)(B). Pub. L. 99–514, §1231(d)(1), substituted "75 percent" for "65 percent".

Subsec. (a)(2)(C). Pub. L. 99–514, §1231(d)(2), struck out subpar. (C), transitional rule, which read as follows: "In applying subparagraph (B) with respect to taxable years beginning after December 31, 1982, and before January 1, 1985, the following percentage shall be substituted for '65 percent':

"For taxable years beginning in calendar year:	The percentage is:
1983	55
1984	60."

Subsec. (a)(3). Pub. L. 99–499 in par. (3), as amended by Pub. L. 99–514, added subpar. (A) and redesignated former subpars. (A) to (C) as (B) to (D), respectively.

Pub. L. 99–514, §701(e)(4)(I), struck out subpar. (A) which read "section 56 (relating to corporate minimum tax),", and redesignated subpars. (B), (C), and (E) as (A), (B), and (C), respectively.

Subsec. (b). Pub. L. 99–514, §1231(b), inserted at end "This subsection shall not apply to any amount described in subsection (a)(1)(A)(i) received from a person who is not a related person (within the meaning of subsection (h)(3) but without regard to subparagraphs (D)(ii)(I) and (E)(i) thereof) with respect to the domestic corporation."

Subsec. (d)(1). Pub. L. 99–514, §1275(a)(1), substituted "and the Virgin Islands" for ", but does not include the Virgin Islands of the United States".

Subsec. (d)(4). Pub. L. 99–514, §1231(c), added par. (4).

Subsec. (h)(3)(D)(ii). Pub. L. 99–514, §1812(c)(4)(C), amended cl. (ii) generally. Prior to amendment, cl. (ii), special rules, read as follows: "For purposes of clause (i)—

"(I) section 267(b) and section 707(b)(1) shall be applied by substituting '10 percent' for '50 percent', and

"(II) section 267(b)(3) shall be applied without regard to whether a person was a personal holding company or a foreign personal holding company."

Subsec. (h)(5)(C)(i)(I). Pub. L. 99–514, §1231(a)(1), as amended by Pub. L. 100–647, §1012(n)(4), in introductory provisions, substituted "the same proportion of 110 percent of the cost" for "the same proportion of the cost", and inserted at end of material relating to payment of cost sharing "In the case of intangible property described in subsection (h)(3)(B)(i) which the electing corporation is treated as owning under subclause (II), in no event shall the payment required under this subclause be less than the inclusion or payment which would be required under section 367(d)(2)(A)(ii) or section 482 if the electing corporation were a foreign corporation."

Subsec. (h)(5)(C)(i)(I)(a). Pub. L. 99–514, §231(d)(3)(G), substituted "section 41(b)" for "section 30(b)".

Subsec. (h)(5)(C)(ii)(II). Pub. L. 99–514, §1231(f), substituted "all products and types of services, within

such product area, produced or rendered" for "all products produced and types of service rendered".

Pub. L. 99–514, §1231(a)(2), substituted "the third and fourth sentences thereof, but substituting '120 percent' for '110 percent' in the second sentence thereof)" for "the third sentence thereof)".

1984—Subsec. (a)(2)(C). Pub. L. 98–369, §712(g), substituted in table heading "The percentage is" for "The percentage tax is".

Subsec. (f). Pub. L. 98–369, §801(d)(11), amended subsec. (f) generally, substituting in heading "Limitation on credit for DISC's and FSC's" for "DISC or former DISC corporation ineligible for credit", and in text striking out reference to section 992(a) and inserting provision disallowing a credit to a corporation for a taxable year in which it owns at any time stock in a FSC or former FSC.

Subsec. (h)(5)(C)(i)(I)(a). Pub. L. 98–369, §474(r)(22)(A), substituted "section 30(b)" for "section 44F(b)".

Subsec. (h)(5)(C)(i)(IV)(c). Pub. L. 98–369, §474(r)(22)(B), substituted "section 30" for "section 44F" and "section 30(f)" for "section 44F(f)".

1982—Subsec. (a)(2)(B). Pub. L. 97–248, §213(a)(1)(A), substituted "65 percent" for "50 percent".

Subsec. (a)(2)(C). Pub. L. 97–248, §213(a)(1)(B), added subpar. (C).

Subsec. (a)(3)(A). Pub. L. 97–248, §201(d)(8)(B), formerly §201(c)(8)(B), substituted "(relating to corporate minimum tax)" for "(relating to minimum tax)".

Subsec. (h). Pub. L. 97–248, §213(a)(2), added subsec. (h).

1978—Subsec. (a). Pub. L. 95–600, §701(u)(11)(A), reworked provisions of par. (1) into introductory text, substituting reference to par. (3) for reference to par. (2), and subpars. (A) and (B), inserted introductory text of par. (2), redesignated former subpars. (A) and (B) of par. (1) as subpars. (A) and (B) of par. (2), and redesignated former par. (2) as (3).

Subsec. (d). Pub. L. 95–600, §701(u)(11)(B), substituted in heading "Definitions and special rules" for "Definitions" and added par. (3).

1976—Subsec. (a)(2)(D). Pub. L. 94–455, §1901(b)(37)(B), struck out subpar. (D) relating to war loss recoveries.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to losses for taxable years beginning after Dec. 31, 2006, see section 402(c) of Pub. L. 108–357, set out as a note under section 535 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1601(a) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1995, except as otherwise provided, see section 1601(c) of Pub. L. 104–188, set out as an Effective Date note under section 30A of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to taxable years beginning after Dec. 31, 1993, see section 13227(f) of Pub. L. 103–66, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–382, title II, §227(b), Aug. 20, 1990, 104 Stat. 661, provided that: "The amendment made by subsection (a) [amending this section] shall apply to calendar years after 1989."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 1002(h)(3) and 1012(h)(2)(B), (j), (n)(4), (5) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title VI, §6132(b), Nov. 10, 1988, 102 Stat. 3721, provided that: "The amendment made by this section [amending this section] shall apply to investments made after the date of the enactment of this Act [Nov. 10, 1988]."

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 231(d)(3)(G) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1985, see section 231(g) of Pub. L. 99–514, set out as a note under section 41 of this title.

Amendment by section 701(e)(4)(I) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date note under section 55 of this title.

Pub. L. 99–514, title XII, §1231(g), Oct. 22, 1986, 100 Stat. 2563, as amended by Pub. L. 100–647, title I,

§1012(n)(1)–(3), Nov. 10, 1988, 102 Stat. 3514, provided that:

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section [amending this section and sections 367 and 482 of this title] shall apply to taxable years beginning after December 31, 1986.

"(2) SPECIAL RULE FOR TRANSFER OF INTANGIBLES.—

"(A) IN GENERAL.—The amendments made by subsection (e) [amending sections 367 and 482 of this title] shall apply to taxable years beginning after December 31, 1986, but only with respect to transfers after November 16, 1985, or licenses granted after such date (or before such date with respect to property not in existence or owned by the taxpayer on such date). In the case of any transfer (or license) which is not to a foreign person, the preceding sentence shall be applied by substituting 'August 16, 1986' for 'November 16, 1985'.

"(B) SPECIAL RULE FOR SECTION 936.—For purposes of section 936(h)(5)(C) of the Internal Revenue Code of 1986 the amendments made by subsection (e) shall apply to taxable years beginning after December 31, 1986, without regard to when the transfer (or license), if any, was made.

"(3) SUBSECTION (f).—The amendment made by subsection (f) [amending this section] shall apply to taxable years beginning after December 31, 1982.

"(4) TRANSITIONAL RULE.—In the case of a corporation—

"(A) with respect to which an election under section 936 of the Internal Revenue Code of 1986 (relating to possessions tax credit) is in effect,

"(B) which produced an end-product form in Puerto Rico on or before September 3, 1982,

"(C) which began manufacturing a component of such product in Puerto Rico in its taxable year beginning in 1983, and

"(D) with respect to which a Puerto Rican tax exemption was granted on June 27, 1983,

such corporation shall treat such component as a separate product for such taxable year for purposes of determining whether such corporation had a significant business presence in Puerto Rico with respect to such product and its income with respect to such product.

"(5) TRANSITIONAL RULE FOR INCREASE IN GROSS INCOME TEST.—

"(A) IN GENERAL.—If—

"(i) a corporation fails to meet the requirements of subparagraph (B) of section 936(a)(2) of the Internal Revenue Code of 1986 (as amended by subsection (d)(1)) for any taxable year beginning in 1987 or 1988,

"(ii) such corporation would have met the requirements of such subparagraph (B) if such subparagraph had been applied without regard to the amendment made by subsection (d)(1), and

"(iii) 75 percent or more of the gross income of such corporation for such taxable year (or, in the case of a taxable year beginning in 1988, for the period consisting of such taxable year and the preceding taxable year) was derived from the active conduct of a trade or business within a possession of the United States, such corporation shall nevertheless be treated as meeting the requirements of such subparagraph (B) for such taxable year if it elects to reduce the amount of the qualified possession source investment income for the taxable year by the amount of the shortfall determined under subparagraph (B) of this paragraph.

"(B) DETERMINATION OF SHORTFALL.—The shortfall determined under this subparagraph for any taxable year is an amount equal to the excess of—

"(i) 75 percent of the gross income of the corporation for the 3-year period (or part thereof) referred to in section 936(a)(2)(A) of such Code, over

"(ii) the amount of the gross income of such corporation for such period (or part thereof) which was derived from the active conduct of a trade or business within a possession of the United States.

"(C) SPECIAL RULE.—Any income attributable to the investment of the amount not treated as qualified possession source investment income under subparagraph (A) shall not be treated as qualified possession source investment income for any taxable year."

Amendment by section 1275(a)(1) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99–514, set out as a note under section 931 of this title.

Amendment by section 1812(c)(4)(C) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Amendment by Pub. L. 99–499 applicable to taxable years beginning after Dec. 31, 1986, see section 516(c) of Pub. L. 99–499, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(22) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 712(g) of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

Amendment by section 801(d)(11) of Pub. L. 98–369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 201(d)(8)(B) of Pub. L. 97–248 applicable to taxable years beginning after Dec. 31, 1982, see section 201(e)(1) of Pub. L. 97–248, set out as a note under section 5 of this title.

Pub. L. 97–248, title II, §213(e), Sept. 3, 1982, 96 Stat. 466, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section [amending this section and sections 246, 367, and 934 of this title] shall apply to taxable years beginning after December 31, 1982.

"(2) CERTAIN SALES MADE AFTER JULY 1, 1982.—Paragraph (6) of section 936(h) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], and so much of section 934 to which such paragraph applies by reason of section 934(e)(4) of such Code, shall apply to taxable years ending after July 1, 1982.

"(3) CERTAIN TRANSFERS OF INTANGIBLES MADE AFTER AUGUST 14, 1982.—Subsection (d) [amending section 367 of this title] shall apply to taxable years ending after August 14, 1982."

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title VII, §701(u)(11)(C), Nov. 6, 1978, 92 Stat. 2918, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by this paragraph [amending this section] shall apply as if included in section 936 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] at the time of its addition by section 1051(b) of the Tax Reform Act of 1976 [Oct. 4, 1976]."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1975, except that qualified possession source investment income as defined in subsec. (d)(2) of this section shall include income from any source outside the United States if the taxpayer establishes to the satisfaction of the Secretary of the Treasury or his delegate that the income from such sources was earned before Oct. 1, 1976, see section 1051(i) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 27 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(e)(4)(I) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

REPORT ON POSSESSIONS CORPORATIONS

Pub. L. 98–369, div. A, title IV, §441(a), July 18, 1984, 98 Stat. 815, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–647, title VI, §6252(b)(1), Nov. 10, 1988, 102 Stat. 3752, which directed Secretary of the Treasury to submit a report to Congress each fourth calendar year on the operation

and effect of sections 936 and 934(b) of this title, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 142 of House Document No. 103–7.

[1] *So in original. Probably should be "corporation's".*

§937. Residence and source rules involving possessions

(a) Bona fide resident

For purposes of this subpart, section 865(g)(3), section 876, section 881(b), paragraphs (2) and (3) of section 901(b), section 957(c), section 3401(a)(8)(C), and section 7654(a), except as provided in regulations, the term "bona fide resident" means a person—

(1) who is present for at least 183 days during the taxable year in Guam, American Samoa, the Northern Mariana Islands, Puerto Rico, or the Virgin Islands, as the case may be, and

(2) who does not have a tax home (determined under the principles of section 911(d)(3) without regard to the second sentence thereof) outside such specified possession during the taxable year and does not have a closer connection (determined under the principles of section 7701(b)(3)(B)(ii)) to the United States or a foreign country than to such specified possession.

For purposes of paragraph (1), the determination as to whether a person is present for any day shall be made under the principles of section 7701(b).

(b) Source rules

Except as provided in regulations, for purposes of this title—

(1) except as provided in paragraph (2), rules similar to the rules for determining whether income is income from sources within the United States or is effectively connected with the conduct of a trade or business within the United States shall apply for purposes of determining whether income is from sources within a possession specified in subsection (a)(1) or effectively connected with the conduct of a trade or business within any such possession, and

(2) any income treated as income from sources within the United States or as effectively connected with the conduct of a trade or business within the United States shall not be treated as income from sources within any such possession or as effectively connected with the conduct of a trade or business within any such possession.

(c) Reporting requirement

(1) In general

If, for any taxable year, an individual takes the position for United States income tax reporting purposes that the individual became, or ceases to be, a bona fide resident of a possession specified in subsection (a)(1), such individual shall file with the Secretary, at such time and in such manner as the Secretary may prescribe, notice of such position.

(2) Transition rule

If, for any of an individual's 3 taxable years ending before the individual's first taxable year ending after the date of the enactment of this subsection, the individual took a position described in paragraph (1), the individual shall file with the Secretary, at such time and in such manner as the Secretary may prescribe, notice of such position.

(Added Pub. L. 108–357, title VIII, §908(a), Oct. 22, 2004, 118 Stat. 1655.)

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (c)(2), is the date of enactment of Pub. L. 108–357, which was approved Oct. 22, 2004.

EFFECTIVE DATE

Pub. L. 108–357, title VIII, §908(d), Oct. 22, 2004, 118 Stat. 1657, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting this section and amending sections 931, 932, 934, 935, 957, and 6688 of this title] shall apply to taxable years ending after the date of the enactment of this Act [Oct. 22, 2004].

"(2) 183-DAY RULE.—Section 937(a)(1) of the Internal Revenue Code of 1986 (as added by this section) shall apply to taxable years beginning after the date of the enactment of this Act.

"(3) SOURCING.—Section 937(b)(2) of such Code (as so added) shall apply to income earned after the date of the enactment of this Act."

[SUBPART E—REPEALED]

[§§941 to 943. Repealed. Pub. L. 108–357, title I, §101(b)(1), Oct. 22, 2004, 118 Stat. 1423]

Section 941, added Pub. L. 106–519, §3(b), Nov. 15, 2000, 114 Stat. 2424, related to qualifying foreign trade income.

A prior section 941, acts Aug. 16, 1954, ch. 736, 68A Stat. 293; Oct. 4, 1976, Pub. L. 94–455, title X, §1053(a), title XIX, §1906(b)(1)(A), 90 Stat. 1648, 1834, set forth provisions authorizing special deduction for China Trade Act corporations, prior to repeal by Pub. L. 94–455, title X, §1053(c), (e), Oct. 4, 1976, 90 Stat. 1649, effective with respect to taxable years beginning after Dec. 31, 1977.

Section 942, added Pub. L. 106–519, §3(b), Nov. 15, 2000, 114 Stat. 2426, defined "foreign trading gross receipts" and set forth economic process requirements.

A prior section 942, act Aug. 16, 1954, ch. 736, 68A Stat. 294, disallowed foreign tax credit authorized by section 901 to any corporation organized under the China Trade Act, prior to repeal by Pub. L. 94–455, title X, §1053(c), (e), Oct. 4, 1976, 90 Stat. 1649, effective with respect to taxable years beginning after Dec. 31, 1977.

Section 943, added Pub. L. 106–519, §3(b), Nov. 15, 2000, 114 Stat. 2428; amended Pub. L. 107–147, title IV, §417(14), Mar. 9, 2002, 116 Stat. 56, set forth other definitions and special rules for purposes of this subpart.

A prior section 943, acts Aug. 16, 1954, ch. 736, 68A Stat. 294; Oct. 4, 1976, Pub. L. 94–455, title X, §1053(b), 90 Stat. 1648, set forth provisions relating to exclusion from gross income of residents of Formosa or Hong Kong of amounts distributed as dividends by China Trade Act corporations, prior to repeal by Pub. L. 94–455, title X, §1053(c), (e), Oct. 4, 1976, 90 Stat. 1649, effective with respect to taxable years beginning after Dec. 31, 1977.

EFFECTIVE DATE OF REPEAL

Repeal applicable to transactions after Dec. 31, 2004, see section 101(c) of Pub. L. 108–357, set out as an Effective Date of 2004 Amendments note under section 56 of this title.

SUBPART F—CONTROLLED FOREIGN CORPORATIONS

Sec.

951. Amounts included in gross income of United States shareholders.
952. Subpart F income defined.
953. Insurance income.
954. Foreign base company income.
955. Withdrawal of previously excluded subpart F income from qualified investment.
956. Investment of earnings in United States property.
[956A. Repealed.]
957. Controlled foreign corporations; United States persons.
958. Rules for determining stock ownership.
959. Exclusion from gross income of previously taxed earnings and profits.
960. Special rules for foreign tax credit.

961. Adjustments to basis of stock in controlled foreign corporations and of other property.
962. Election by individuals to be subject to tax at corporate rates.
[963. Repealed.]
964. Miscellaneous provisions.
965. Temporary dividends received deduction.

AMENDMENTS

2004—Pub. L. 108–357, title IV, §422(c), Oct. 22, 2004, 118 Stat. 1519, added item 965.

1996—Pub. L. 104–188, title I, §1501(c), Aug. 20, 1996, 110 Stat. 1826, which directed that the analysis for subpart F be amended by striking item 956A, could not be executed, because item 956A "Earnings invested in excess passive assets" had been editorially supplied.

1986—Pub. L. 99–514, title XII, §1221(b)(3)(E), Oct. 22, 1986, 100 Stat. 2553, substituted "Insurance income" for "Income from insurance of United States risks" in item 953.

1975—Pub. L. 94–12, title VI, §602(a)(3)(A), (c)(7), (d)(3)(B), Mar. 29, 1975, 89 Stat. 58, 60, 64, struck out existing item 955 and replaced it with an identical item 955 and struck out item 963 "Receipt of minimum distributions by domestic corporations".

1962—Pub. L. 87–834, §12(a), Oct. 16, 1962, 76 Stat. 1006, added heading of subpart F, and items 951–964.

§951. Amounts included in gross income of United States shareholders

(a) Amounts included

(1) In general

If a foreign corporation is a controlled foreign corporation for an uninterrupted period of 30 days or more during any taxable year, every person who is a United States shareholder (as defined in subsection (b)) of such corporation and who owns (within the meaning of section 958(a)) stock in such corporation on the last day, in such year, on which such corporation is a controlled foreign corporation shall include in his gross income, for his taxable year in which or with which such taxable year of the corporation ends—

(A) the sum of—

(i) his pro rata share (determined under paragraph (2)) of the corporation's subpart F income for such year,

(ii) his pro rata share (determined under section 955(a)(3) as in effect before the enactment of the Tax Reduction Act of 1975) of the corporation's previously excluded subpart F income withdrawn from investment in less developed countries for such year, and

(iii) his pro rata share (determined under section 955(a)(3)) of the corporation's previously excluded subpart F income withdrawn from foreign base company shipping operations for such year; and

(B) the amount determined under section 956 with respect to such shareholder for such year (but only to the extent not excluded from gross income under section 959(a)(2)).

(2) Pro rata share of subpart F income

The pro rata share referred to in paragraph (1)(A)(i) in the case of any United States shareholder is the amount—

(A) which would have been distributed with respect to the stock which such shareholder owns (within the meaning of section 958(a)) in such corporation if on the last day, in its taxable year, on which the corporation is a controlled foreign corporation it had distributed pro rata to its shareholders an amount (i) which bears the same ratio to its subpart F income for the taxable year, as (ii) the part of such year during which the corporation is a controlled foreign corporation bears to the entire year, reduced by

(B) the amount of distributions received by any other person during such year as a dividend with respect to such stock, but only to the extent of the dividend which would have been received if the distribution by the corporation had been the amount (i) which bears the same

ratio to the subpart F income of such corporation for the taxable year, as (ii) the part of such year during which such shareholder did not own (within the meaning of section 958(a)) such stock bears to the entire year.

For purposes of subparagraph (B), any gain included in the gross income of any person as a dividend under section 1248 shall be treated as a distribution received by such person with respect to the stock involved.

(3) Limitation on pro rata share of previously excluded subpart F income withdrawn from investment

For purposes of paragraph (1)(A)(iii), the pro rata share of any United States shareholder of the previously excluded subpart F income of a controlled foreign corporation withdrawn from investment in foreign base company shipping operations shall not exceed an amount—

(A) which bears the same ratio to his pro rata share of such income withdrawn (as determined under section 955(a)(3)) for the taxable year, as

(B) the part of such year during which the corporation is a controlled foreign corporation bears to the entire year.

(b) United States shareholder defined

For purposes of this subpart, the term "United States shareholder" means, with respect to any foreign corporation, a United States person (as defined in section 957(c)) who owns (within the meaning of section 958(a)), or is considered as owning by applying the rules of ownership of section 958(b), 10 percent or more of the total combined voting power of all classes of stock entitled to vote of such foreign corporation.

(c) Coordination with passive foreign investment company provisions

If, but for this subsection, an amount would be included in the gross income of a United States shareholder for any taxable year both under subsection (a)(1)(A)(i) and under section 1293 (relating to current taxation of income from certain passive foreign investment companies), such amount shall be included in the gross income of such shareholder only under subsection (a)(1)(A).

(Added Pub. L. 87–834, §12(a), Oct. 16, 1962, 76 Stat. 1006; amended Pub. L. 94–12, title VI, §602(a)(3)(B), (c)(3), (4), (d)(2), Mar. 29, 1975, 89 Stat. 58, 62; Pub. L. 94–455, title XIX, §1901(a)(119), Oct. 4, 1976, 90 Stat. 1784; Pub. L. 98–369, div. A, title I, §132(c)(1), title VIII, §801(d)(4), July 18, 1984, 98 Stat. 666, 996; Pub. L. 99–514, title XII, §1235(c), title XVIII, §1876(c)(2), Oct. 22, 1986, 100 Stat. 2574, 2898; Pub. L. 100–647, title I, §1012(i)(15), Nov. 10, 1988, 102 Stat. 3510; Pub. L. 103–66, title XIII, §§13231(a), 13232(c), Aug. 10, 1993, 107 Stat. 495, 502; Pub. L. 104–188, title I, §1501(a)(1), Aug. 20, 1996, 110 Stat. 1825; Pub. L. 105–34, title XI, §1112(a)(1), Aug. 5, 1997, 111 Stat. 969; Pub. L. 108–357, title IV, §413(c)(16), Oct. 22, 2004, 118 Stat. 1508; Pub. L. 110–172, §11(g)(13), Dec. 29, 2007, 121 Stat. 2490.)

REFERENCES IN TEXT

The Tax Reduction Act of 1975, referred to in subsec. (a)(1)(A)(ii), is Pub. L. 94–12, Mar. 29, 1975, 89 Stat. 26, as amended, which was enacted Mar. 29, 1975. For complete classification of this Act to the Code, see Short Title of 1975 Amendment note set out under section 1 of this title and Tables.

AMENDMENTS

2007—Subsecs. (c), (d). Pub. L. 110–172 redesignated subsec. (d) as (c) and struck out heading and text of former subsec. (c). Text read as follows:

"(1) IN GENERAL.—The foreign trade income of a FSC and any deductions which are apportioned or allocated to such income shall not be taken into account under this subpart.

"(2) FOREIGN TRADE INCOME.—For purposes of this subsection, the term 'foreign trade income' has the meaning given such term by section 923(b), but does not include section 923(a)(2) non-exempt income (within the meaning of section 927(d)(6))."

2004—Subsecs. (c) to (f). Pub. L. 108–357 redesignated subsecs. (e) and (f) as (c) and (d), respectively, and struck out former subsecs. (c) and (d), which related to coordination of provisions with election of a foreign investment company to distribute income and coordination with foreign personal holding company provisions,

respectively.

1997—Subsec. (a)(2). Pub. L. 105–34 inserted concluding provisions "For purposes of subparagraph (B), any gain included in the gross income of any person as a dividend under section 1248 shall be treated as a distribution received by such person with respect to the stock involved."

1996—Subsec. (a)(1)(A) to (C). Pub. L. 104–188 inserted "and" at end of subpar. (A), substituted period for "; and" at end of subpar. (B), and struck out subpar. (C) which read as follows: "the amount determined under section 956A with respect to such shareholder for such year (but only to the extent not excluded from gross income under section 959(a)(3))."

1993—Subsec. (a)(1)(B). Pub. L. 103–66, §13232(c)(1), substituted "the amount determined under section 956 with respect to such shareholder for such year (but only to the extent not excluded from gross income under section 959(a)(2)); and" for "his pro rata share (determined under section 956(a)(2)) of the corporation's increase in earnings invested in United States property for such year (but only to the extent not excluded from gross income under section 959(a)(2)); and".

Subsec. (a)(1)(C). Pub. L. 103–66, §13231(a), added subpar. (C).

Subsec. (a)(4). Pub. L. 103–66, §13232(c)(2), struck out heading and text of par. (4). Text read as follows: "For purposes of paragraph (1)(B), the pro rata share of any United States shareholder in the increase of the earnings of a controlled foreign corporation invested in United States property shall not exceed an amount (A) which bears the same ratio to his pro rata share of such increase (as determined under section 956(a)(2)) for the taxable year, as (B) the part of such year during which the corporation is a controlled foreign corporation bears to the entire year."

1988—Subsec. (b). Pub. L. 100–647 substituted "section 957(c)" for "section 957(d)".

1986—Subsec. (e)(1). Pub. L. 99–514, §1876(c)(2), struck out last sentence which read as follows: "For purposes of the preceding sentence, income described in paragraph (2) or (3) of section 921(d) shall be treated as derived from sources within the United States."

Subsec. (f). Pub. L. 99–514, §1235(c), added subsec. (f).

1984—Subsec. (d). Pub. L. 98–369, §132(c)(1), amended subsec. (d) generally, substituting provision that, if a United States shareholder is required to include in gross income an amount under both subsec. (a)(1)(A)(ii) of this section and section 551(b) of this title, such amount be included only under subsec. (a)(1)(A)(ii) of this section for provision that, if a United States shareholder is subject to tax under section 551(b) of this title, such shareholder not be required to include as gross income any amount under subsec. (a) of this section.

Subsec. (e). Pub. L. 98–369, §801(d)(4), added subsec. (e).

1976—Subsec. (a)(1). Pub. L. 94–455 struck out "beginning after December 31, 1962" after "during any taxable year".

1975—Subsec. (a)(1)(A)(i). Pub. L. 94–12, §602(a)(3)(B), struck out "except as provided in section 963," before "his pro rata share".

Subsec. (a)(1)(A)(ii). Pub. L. 94–12, §602(c)(3), substituted "(determined under section 955(a)(3) as in effect before the enactment of the Tax Reduction Act of 1975)" for "(determined under section 955(a)(3))".

Subsec. (a)(1)(A)(iii). Pub. L. 94–12, §602(d)(2)(A), added cl. (iii).

Subsec. (a)(3). Pub. L. 94–12, §602(c)(4), (d)(2)(B), substituted "paragraph (i)(A)(iii)" for "paragraph (1)(A)(ii)" and "foreign base company shipping operations" for "less developed countries".

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XI, §1112(a)(2), Aug. 5, 1997, 111 Stat. 969, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to dispositions after the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to taxable years of foreign corporations beginning after Dec. 31, 1996, and to taxable years of United States shareholders within which or with which such taxable years of foreign corporations end, see section 1501(d) of Pub. L. 104–188, set out as a note under section 904 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13231(e), Aug. 10, 1993, 107 Stat. 501, provided that: "The amendments made by this section [enacting section 956A of this title and amending this section and sections 959, 989, 1293, 1296, and 1297 of this title] shall apply to taxable years of foreign corporations beginning after September 30, 1993, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end."

Pub. L. 103–66, title XIII, §13232(d), Aug. 10, 1993, 107 Stat. 502, provided that: "The amendments made by this section [amending this section and section 956 of this title] shall apply to taxable years of controlled foreign corporations beginning after September 30, 1993, and to taxable years of United States shareholders in which or with which such taxable years of controlled foreign corporations end."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1235(c) of Pub. L. 99–514 applicable to taxable years of foreign corporations beginning after Dec. 31, 1986, see section 1235(h) of Pub. L. 99–514, set out as an Effective Date note under section 1291 of this title.

Amendment by section 1876(c)(2) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §132(d)(2)(A), July 18, 1984, 98 Stat. 667, provided that: "The amendment made by paragraph (1) of subsection (c) [amending this section] shall apply to taxable years of United States shareholders beginning after the date of the enactment of this Act [July 18, 1984]."

Amendment by section 801(d)(4) of Pub. L. 98–369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–12 applicable to taxable years of foreign corporations beginning after Dec. 31, 1975, and to taxable years of United States shareholders (within the meaning of 951(b) of this title) within which or with which such taxable years of such foreign corporations end, see section 602(f) of Pub. L. 94–12, set out as an Effective Date note under section 955 of this title.

EFFECTIVE DATE

Pub. L. 87–834, §12(c), Oct. 16, 1962, 76 Stat. 1031, provided that: "The amendments made by this section [enacting this section and sections 952 to 964 and 970 to 972 of this title and amending sections 901, 904, and 1016 of this title] shall apply with respect to taxable years of foreign corporations beginning after December 31, 1962, and to taxable year of United States shareholders within which or with which such taxable years of such foreign corporations end."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§952. Subpart F income defined

(a) In general

For purposes of this subpart, the term "subpart F income" means, in the case of any controlled foreign corporation, the sum of—

(1) insurance income (as defined under section 953),

(2) the foreign base company income (as determined under section 954),
(3) an amount equal to the product of—
(A) the income of such corporation other than income which—
(i) is attributable to earnings and profits of the foreign corporation included in the gross income of a United States person under section 951 (other than by reason of this paragraph), or
(ii) is described in subsection (b),

multiplied by
(B) the international boycott factor (as determined under section 999),

(4) the sum of the amounts of any illegal bribes, kickbacks, or other payments (within the meaning of section 162(c)) paid by or on behalf of the corporation during the taxable year of the corporation directly or indirectly to an official, employee, or agent in fact of a government, and
(5) the income of such corporation derived from any foreign country during any period during which section 901(j) applies to such foreign country.

The payments referred to in paragraph (4) are payments which would be unlawful under the Foreign Corrupt Practices Act of 1977 if the payor were a United States person. For purposes of paragraph (5), the income described therein shall be reduced, under regulations prescribed by the Secretary, so as to take into account deductions (including taxes) properly allocable to such income.

(b) Exclusion of United States income

In the case of a controlled foreign corporation, subpart F income does not include any item of income from sources within the United States which is effectively connected with the conduct by such corporation of a trade or business within the United States unless such item is exempt from taxation (or is subject to a reduced rate of tax) pursuant to a treaty obligation of the United States. For purposes of this subsection, any exemption (or reduction) with respect to the tax imposed by section 884 shall not be taken into account.

(c) Limitation

(1) In general

(A) Subpart F income limited to current earnings and profits

For purposes of subsection (a), the subpart F income of any controlled foreign corporation for any taxable year shall not exceed the earnings and profits of such corporation for such taxable year.

(B) Certain prior year deficits may be taken into account

(i) In general

The amount included in the gross income of any United States shareholder under section 951(a)(1)(A)(i) for any taxable year and attributable to a qualified activity shall be reduced by the amount of such shareholder's pro rata share of any qualified deficit.

(ii) Qualified deficit

The term "qualified deficit" means any deficit in earnings and profits of the controlled foreign corporation for any prior taxable year which began after December 31, 1986, and for which the controlled foreign corporation was a controlled foreign corporation; but only to the extent such deficit—
(I) is attributable to the same qualified activity as the activity giving rise to the income being offset, and
(II) has not previously been taken into account under this subparagraph.

In determining the deficit attributable to qualified activities described in subclause (II) or (III) of clause (iii), deficits in earnings and profits (to the extent not previously taken into account

under this section) for taxable years beginning after 1962 and before 1987 also shall be taken into account. In the case of the qualified activity described in clause (iii)(I), the rule of the preceding sentence shall apply, except that "1982" shall be substituted for "1962".

(iii) Qualified activity

For purposes of this paragraph, the term "qualified activity" means any activity giving rise to—

(I) foreign base company oil related income,

(II) foreign base company sales income,

(III) foreign base company services income,

(IV) in the case of a qualified insurance company, insurance income or foreign personal holding company income, or

(V) in the case of a qualified financial institution, foreign personal holding company income.

(iv) Pro rata share

For purposes of this paragraph, the shareholder's pro rata share of any deficit for any prior taxable year shall be determined under rules similar to rules under section 951(a)(2) for whichever of the following yields the smaller share:

(I) the close of the taxable year, or

(II) the close of the taxable year in which the deficit arose.

(v) Qualified insurance company

For purposes of this subparagraph, the term "qualified insurance company" means any controlled foreign corporation predominantly engaged in the active conduct of an insurance business in the taxable year and in the prior taxable years in which the deficit arose.

(vi) Qualified financial institution

For purposes of this paragraph, the term "qualified financial institution" means any controlled foreign corporation predominantly engaged in the active conduct of a banking, financing, or similar business in the taxable year and in the prior taxable year in which the deficit arose.

(vii) Special rules for insurance income

(I) In general

An election may be made under this clause to have section 953(a) applied for purposes of this title without regard to the same country exception under paragraph (1)(A) thereof. Such election, once made, may be revoked only with the consent of the Secretary.

(II) Special rules for affiliated groups

In the case of an affiliated group of corporations (within the meaning of section 1504 but without regard to section 1504(b)(3) and by substituting "more than 50 percent" for "at least 80 percent" each place it appears), no election may be made under subclause (I) for any controlled foreign corporation unless such election is made for all other controlled foreign corporations who are members of such group and who were created or organized under the laws of the same country as such controlled foreign corporation. For purposes of clause (v), in determining whether any controlled corporation described in the preceding sentence is a qualified insurance company, all such corporations shall be treated as 1 corporation.

(C) Certain deficits of member of the same chain of corporations may be taken into account

(i) In general

A controlled foreign corporation may elect to reduce the amount of its subpart F income for any taxable year which is attributable to any qualified activity by the amount of any

deficit in earnings and profits of a qualified chain member for a taxable year ending with (or within) the taxable year of such controlled foreign corporation to the extent such deficit is attributable to such activity. To the extent any deficit reduces subpart F income under the preceding sentence, such deficit shall not be taken into account under subparagraph (B).

(ii) Qualified chain member

For purposes of this subparagraph, the term "qualified chain member" means, with respect to any controlled foreign corporation, any other corporation which is created or organized under the laws of the same foreign country as the controlled foreign corporation but only if—

(I) all the stock of such other corporation (other than directors' qualifying shares) is owned at all times during the taxable year in which the deficit arose (directly or through 1 or more corporations other than the common parent) by such controlled foreign corporation, or

(II) all the stock of such controlled foreign corporation (other than directors' qualifying shares) is owned at all times during the taxable year in which the deficit arose (directly or through 1 or more corporations other than the common parent) by such other corporation.

(iii) Coordination

This subparagraph shall be applied after subparagraphs (A) and (B).

(2) Recharacterization in subsequent taxable years

If the subpart F income of any controlled foreign corporation for any taxable year was reduced by reason of paragraph (1)(A), any excess of the earnings and profits of such corporation for any subsequent taxable year over the subpart F income of such foreign corporation for such taxable year shall be recharacterized as subpart F income under rules similar to the rules applicable under section 904(f)(5).

(3) Special rule for determining earnings and profits

For purposes of this subsection, earnings and profits of any controlled foreign corporation shall be determined without regard to paragraphs (4), (5), and (6) of section 312(n). Under regulations, the preceding sentence shall not apply to the extent it would increase earnings and profits by an amount which was previously distributed by the controlled foreign corporation.

(d) Income derived from foreign country

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of subsection (a)(5), including regulations which treat income paid through 1 or more entities as derived from a foreign country to which section 901(j) applies if such income was, without regard to such entities, derived from such country.

(Added Pub. L. 87–834, §12(a), Oct. 16, 1962, 76 Stat. 1008; amended Pub. L. 89–809, title I, §104(j), Nov. 13, 1966, 80 Stat. 1562; Pub. L. 94–455, title X, §§1062, 1065(a)(1), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1650, 1653, 1834; Pub. L. 97–248, title II, §288(b)(1), Sept. 3, 1982, 96 Stat. 571; Pub. L. 99–509, title VIII, §8041(b), Oct. 21, 1986, 100 Stat. 1963; Pub. L. 99–514, title XII, §1221(b)(3)(A), (f), title XVIII, §1876(c)(1), Oct. 22, 1986, 100 Stat. 2552, 2554, 2898; Pub. L. 100–647, title I, §1012(i)(16), (22)–(25)(A), title VI, §6131(a), Nov. 10, 1988, 102 Stat. 3510–3512, 3720; Pub. L. 105–34, title XI, §1112(c)(1), Aug. 5, 1997, 111 Stat. 969; Pub. L. 108–357, title IV, §415(c)(1), Oct. 22, 2004, 118 Stat. 1511; Pub. L. 109–135, title IV, §412(kk), Dec. 21, 2005, 119 Stat. 2639; Pub. L. 110–172, §11(g)(14), Dec. 29, 2007, 121 Stat. 2490.)

REFERENCES IN TEXT

The Foreign Corrupt Practices Act of 1977, referred to in subsec. (a), is title I of Pub. L. 95–213, Dec. 19, 1977, 91 Stat. 1494, as amended, which enacted sections 78dd–1 to 78dd–3 of Title 15, Commerce and Trade, and amended sections 78m and 78ff of Title 15. For complete classification of this Act to the Code, see Short Title of 1977 Amendment note set out under section 78a of Title 15 and Tables.

AMENDMENTS

2007—Subsec. (b). Pub. L. 110–172 struck out second sentence which read as follows: "For purposes of the

preceding sentence, income described in paragraph (2) or (3) of section 921(d) shall be treated as derived from sources within the United States."

2005—Subsec. (c)(1)(B)(ii). Pub. L. 109–135 substituted "subclause (II) or (III) of clause (iii)" for "clause (iii)(III) or (IV)" and "clause (iii)(I)" for "clause (iii)(II)" in concluding provisions.

2004—Subsec. (c)(1)(B)(iii). Pub. L. 108–357 redesignated subcls. (II) to (VI) as (I) to (V), respectively, and struck out former subcl. (I) which read as follows: "foreign base company shipping income,".

1997—Subsec. (b). Pub. L. 105–34 inserted at end "For purposes of this subsection, any exemption (or reduction) with respect to the tax imposed by section 884 shall not be taken into account."

1988—Subsec. (c)(1)(B)(ii). Pub. L. 100–647, §1012(i)(24), inserted at end "In determining the deficit attributable to qualified activities described in clause (iii)(III) or (IV), deficits in earnings and profits (to the extent not previously taken into account under this section) for taxable years beginning after 1962 and before 1987 also shall be taken into account. In the case of the qualified activity described in clause (iii)(II), the rule of the preceding sentence shall apply, except that '1982' shall be substituted for '1962'."

Subsec. (c)(1)(B)(iii)(III) to (VI). Pub. L. 100–647, §1012(i)(22), (23), added subcls. (III) and (IV), redesignated former subcl. (III) as (V) and substituted "insurance income or foreign personal holding company income," for "insurance income", and redesignated former subcl. (IV) as (VI).

Subsec. (c)(1)(B)(vii). Pub. L. 100–647, §6131(a), added cl. (vii).

Subsec. (c)(1)(C). Pub. L. 100–647, §1012(i)(25)(A), added subpar. (C).

Subsec. (c)(3). Pub. L. 100–647, §1012(i)(16), added par. (3).

1986—Subsec. (a). Pub. L. 99–509, §8041(b)(1), added par. (5) and last sentence.

Subsec. (a)(1). Pub. L. 99–514, §1221(b)(3)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "the income derived from the insurance of United States risks (as determined under section 953), and".

Subsec. (b). Pub. L. 99–514, §1876(c)(1), inserted last sentence.

Subsec. (c). Pub. L. 99–514, §1221(f), added subsec. (c) and struck out former subsec. (c) which read as follows: "For purposes of subsection (a), the subpart F income of any controlled foreign corporation for any taxable year shall not exceed the earnings and profits of such corporation for such year reduced by the amount (if any) by which—

"(1) an amount equal to—

"(A) the sum of the deficits in earnings and profits for prior taxable years beginning after December 31, 1962, plus

"(B) the sum of the deficits in earnings and profits for taxable years beginning after December 31, 1959, and before January 1, 1963 (reduced by the sum of the earnings and profits for such taxable years); exceeds

"(2) an amount equal to the sum of the earnings and profits for prior taxable years beginning after December 31, 1962, allocated to other earnings and profits under section 959(c)(3).

For purposes of the preceding sentence, any deficit in earnings and profits for any prior taxable year shall be taken into account under paragraph (1) for any taxable year only to the extent it has not been taken into account under such paragraph for any preceding taxable year to reduce earnings and profits of such preceding year."

Subsec. (d). Pub. L. 99–509, §8041(b)(2), added subsec. (d).

Pub. L. 99–514, §1221(f), struck out subsec. (d), special rule in case of indirect ownership, which read as follows: "For purposes of subsection (c), if—

"(1) a United States shareholder owns (within the meaning of section 958(a)) stock of a foreign corporation, and by reason of such ownership owns (within the meaning of such section) stock of any other foreign corporation, and

"(2) any of such foreign corporations has a deficit in earnings and profits for the taxable year,

then the earnings and profits for the taxable year of each such foreign corporation which is a controlled foreign corporation shall, with respect to such United States shareholder, be properly reduced to take into account any deficit described in paragraph (2) in such manner as the Secretary shall prescribe by regulations."

1982—Subsec. (a). Pub. L. 97–248 inserted provision that the payments referred to in par. (4) are payments which would be unlawful under the Foreign Corrupt Practices Act of 1977 if the payor were a United States person.

1976—Subsec. (a)(3). Pub. L. 94–455, §1062(a), added par. (3).

Subsec. (a)(4). Pub. L. 94–455, §1065(a)(1), added par. (4).

Subsec. (d). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

1966—Subsec. (b). Pub. L. 89–809 substituted "In the case of a controlled foreign corporation, subpart F income does not include any item of income from sources within the United States which is effectively

connected with the conduct by such corporation of a trade or business within the United States unless such item is exempt from taxation (or is subject to a reduced rate of tax) pursuant to a treaty obligation of the United States" for "Subpart F income does not include any item includible in gross income under this chapter (other than this subpart) as income derived from sources within the United States of a foreign corporation engaged in trade or business in the United States".

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title IV, §415(d), Oct. 22, 2004, 118 Stat. 1511, provided that: "The amendments made by this section [amending this section and section 954 of this title] shall apply to taxable years of foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end."

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XI, §1112(c)(2), Aug. 5, 1997, 111 Stat. 970, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after December 31, 1986."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1012(i)(16), (22)–(25)(A) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title VI, §6131(b), Nov. 10, 1988, 102 Stat. 3720, provided that: "The amendment made by this section [amending this section] shall take effect as if included in the amendments made by section 1221(f) of the Reform Act [Pub. L. 99–514]."

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 1221(b)(3)(A), (f) of Pub. L. 99–514 applicable to taxable years of foreign corporations beginning after Dec. 31, 1986, except as otherwise provided, see section 1221(g) of Pub. L. 99–514, set out as a note under section 954 of this title.

Amendment by section 1876(c)(1) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Amendment by Pub. L. 99–509 effective Jan. 1, 1987, see section 8041(c) of Pub. L. 99–509, set out as a note under section 901 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to payments made after Sept. 3, 1982, see section 288(c) of Pub. L. 97–248, set out as a note under section 162 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1062 of Pub. L. 94–455 applicable to participation in or cooperation with an international boycott more than 30 days after Oct. 4, 1976, see section 1066(a) of Pub. L. 94–455, set out as a note under section 908 of this title.

Pub. L. 94–455, title X, §1066(b), Oct. 4, 1976, 90 Stat. 1654, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by section 1065 [amending this section and sections 995 and 964 of this title] apply to payments described in section 162(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] made more than 30 days after the date of enactment of this Act [Oct. 4, 1976]."

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

DETERMINATION OF CORPORATE EARNINGS AND PROFITS FOR PURPOSES OF APPLYING SUBSECTION (C)(1)(A)

Pub. L. 100–647, title I, §1012(i)(6), Nov. 10, 1988, 102 Stat. 3508, provided that: "For purposes of applying section 952(c)(1)(A) of the 1986 Code, the earnings and profits of any corporation shall be determined without regard to any increase in earnings and profits under section 1023(e)(3)(C) of the Reform Act [Pub. L. 99–514, set out as an Effective Date note under section 846 of this title]."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§953. Insurance income

(a) Insurance income

(1) In general

For purposes of section 952(a)(1), the term "insurance income" means any income which—

(A) is attributable to the issuing (or reinsuring) of an insurance or annuity contract, and

(B) would (subject to the modifications provided by subsection (b)) be taxed under subchapter L of this chapter if such income were the income of a domestic insurance company.

(2) Exception

Such term shall not include any exempt insurance income (as defined in subsection (e)).

(b) Special rules

For purposes of subsection (a)—

(1) The following provisions of subchapter L shall not apply:

(A) The small life insurance company deduction.

(B) Section 805(a)(5) (relating to operations loss deduction).

(C) Section 832(c)(5) (relating to certain capital losses).

(2) The items referred to in—

(A) section 803(a)(1) (relating to gross amount of premiums and other considerations),

(B) section 803(a)(2) (relating to net decrease in reserves),

(C) section 805(a)(2) (relating to net increase in reserves), and

(D) section 832(b)(4) (relating to premiums earned on insurance contracts),

shall be taken into account only to the extent they are in respect of any reinsurance or the issuing of any insurance or annuity contract described in subsection (a)(1).

(3) Reserves for any insurance or annuity contract shall be determined in the same manner as under section 954(i).

(4) All items of income, expenses, losses, and deductions shall be properly allocated or apportioned under regulations prescribed by the Secretary.

(c) Special rule for certain captive insurance companies

(1) In general

For purposes only of taking into account related person insurance income—

(A) the term "United States shareholder" means, with respect to any foreign corporation, a United States person (as defined in section 957(c)) who owns (within the meaning of section 958(a)) any stock of the foreign corporation,

(B) the term "controlled foreign corporation" has the meaning given to such term by section 957(a) determined by substituting "25 percent or more" for "more than 50 percent", and

(C) the pro rata share referred to in section 951(a)(1)(A)(i) shall be determined under paragraph (5) of this subsection.

(2) Related person insurance income

For purposes of this subsection, the term "related person insurance income" means any insurance income (within the meaning of subsection (a)) attributable to a policy of insurance or reinsurance with respect to which the person (directly or indirectly) insured is a United States shareholder in the foreign corporation or a related person to such a shareholder.

(3) Exceptions

(A) Corporations not held by insureds

Paragraph (1) shall not apply to any foreign corporation if at all times during the taxable year of such foreign corporation—

(i) less than 20 percent of the total combined voting power of all classes of stock of such corporation entitled to vote, and

(ii) less than 20 percent of the total value of such corporation,

is owned (directly or indirectly under the principles of section 883(c)(4)) by persons who are (directly or indirectly) insured under any policy of insurance or reinsurance issued by such corporation or who are related persons to any such person.

(B) De minimis exception

Paragraph (1) shall not apply to any foreign corporation for a taxable year of such corporation if the related person insurance income (determined on a gross basis) of such corporation for such taxable year is less than 20 percent of its insurance income (as so determined) for such taxable year determined without regard to those provisions of subsection (a)(1) which limit insurance income to income from countries other than the country in which the corporation was created or organized.

(C) Election to treat income as effectively connected

Paragraph (1) shall not apply to any foreign corporation for any taxable year if—

(i) such corporation elects (at such time and in such manner as the Secretary may prescribe)—

(I) to treat its related person insurance income for such taxable year as income effectively connected with the conduct of a trade or business in the United States, and

(II) to waive all benefits (other than with respect to section 884) with respect to related person insurance income granted by the United States under any treaty between the United States and any foreign country, and

(ii) such corporation meets such requirements as the Secretary shall prescribe to ensure that the tax imposed by this chapter on such income is paid.

An election under this subparagraph made for any taxable year shall not be effective if the corporation (or any predecessor thereof) was a disqualified corporation for the taxable year for which the election was made or for any prior taxable year beginning after 1986.

(D) Special rules for subparagraph (C)

(i) Period during which election in effect

(I) In general

Except as provided in subclause (II), any election under subparagraph (C) shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

(II) Termination

If a foreign corporation which made an election under subparagraph (C) for any taxable year is a disqualified corporation for any subsequent taxable year, such election shall not apply to any taxable year beginning after such subsequent taxable year.

(ii) Exemption from tax imposed by section 4371

The tax imposed by section 4371 shall not apply with respect to any related person insurance income treated as effectively connected with the conduct of a trade or business within the United States under subparagraph (C).

(E) Disqualified corporation

For purposes of this paragraph the term "disqualified corporation" means, with respect to any taxable year, any foreign corporation which is a controlled foreign corporation for an uninterrupted period of 30 days or more during such taxable year (determined without regard to this subsection) but only if a United States shareholder (determined without regard to this subsection) owns (within the meaning of section 958(a)) stock in such corporation at some time during such taxable year.

(4) Treatment of mutual insurance companies

In the case of a mutual insurance company—

(A) this subsection shall apply,

(B) policyholders of such company shall be treated as shareholders, and

(C) appropriate adjustments in the application of this subpart shall be made under regulations prescribed by the Secretary.

(5) Determination of pro rata share

(A) In general

The pro rata share determined under this paragraph for any United States shareholder is the lesser of—

(i) the amount which would be determined under paragraph (2) of section 951(a) if—

(I) only related person insurance income were taken into account,

(II) stock owned (within the meaning of section 958(a)) by United States shareholders on the last day of the taxable year were the only stock in the foreign corporation, and

(III) only distributions received by United States shareholders were taken into account under subparagraph (B) of such paragraph (2), or

(ii) the amount which would be determined under paragraph (2) of section 951(a) if the entire earnings and profits of the foreign corporation for the taxable year were subpart F income.

(B) Coordination with other provisions

The Secretary shall prescribe regulations providing for such modifications to the provisions of this subpart as may be necessary or appropriate by reason of subparagraph (A).

(6) Related person

For purposes of this subsection—

(A) In general

Except as provided in subparagraph (B), the term "related person" has the meaning given such term by section 954(d)(3).

(B) Treatment of certain liability insurance policies

In the case of any policy of insurance covering liability arising from services performed as a director, officer, or employee of a corporation or as a partner or employee of a partnership, the person performing such services and the entity for which such services are performed shall be treated as related persons.

(7) Coordination with section 1248

For purposes of section 1248, if any person is (or would be but for paragraph (3)) treated under paragraph (1) as a United States shareholder with respect to any foreign corporation which would be taxed under subchapter L if it were a domestic corporation and which is (or would be but for paragraph (3)) treated under paragraph (1) as a controlled foreign corporation—

(A) such person shall be treated as meeting the stock ownership requirements of section 1248(a)(2) with respect to such foreign corporation, and

(B) such foreign corporation shall be treated as a controlled foreign corporation.

(8) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including—

(A) regulations preventing the avoidance of this subsection through cross insurance arrangements or otherwise, and

(B) regulations which may provide that a person will not be treated as a United States shareholder under paragraph (1) with respect to any foreign corporation if neither such person (nor any related person to such person) is (directly or indirectly) insured under any policy of insurance or reinsurance issued by such foreign corporation.

(d) Election by foreign insurance company to be treated as domestic corporation

(1) In general

If—

(A) a foreign corporation is a controlled foreign corporation (as defined in section 957(a) by substituting "25 percent or more" for "more than 50 percent" and by using the definition of United States shareholder under 953(c)(1)(A)),

(B) such foreign corporation would qualify under part I or II of subchapter L for the taxable year if it were a domestic corporation,

(C) such foreign corporation meets such requirements as the Secretary shall prescribe to ensure that the taxes imposed by this chapter on such foreign corporation are paid, and

(D) such foreign corporation makes an election to have this paragraph apply and waives all benefits to such corporation granted by the United States under any treaty,

for purposes of this title, such corporation shall be treated as a domestic corporation.

(2) Period during which election is in effect

(A) In general

Except as provided in subparagraph (B), an election under paragraph (1) shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

(B) Termination

If a corporation which made an election under paragraph (1) for any taxable year fails to meet the requirements of subparagraphs (A), (B), and (C), of paragraph (1) for any subsequent taxable year, such election shall not apply to any taxable year beginning after such subsequent taxable year.

(3) Treatment of losses

If any corporation treated as a domestic corporation under this subsection is treated as a member of an affiliated group for purposes of chapter 6 (relating to consolidated returns), any loss of such corporation shall be treated as a dual consolidated loss for purposes of section 1503(d) without regard to paragraph (2)(B) thereof.

(4) Effect of election

(A) In general

For purposes of section 367, any foreign corporation making an election under paragraph (1) shall be treated as transferring (as of the 1st day of the 1st taxable year to which such election applies) all of its assets to a domestic corporation in connection with an exchange to which section 354 applies.

(B) Exception for pre-1988 earnings and profit

(i) In general

Earnings and profits of the foreign corporation accumulated in taxable years beginning before January 1, 1988, shall not be included in the gross income of the persons holding stock

in such corporation by reason of subparagraph (A).

(ii) Treatment of distributions

For purposes of this title, any distribution made by a corporation to which an election under paragraph (1) applies out of earnings and profits accumulated in taxable years beginning before January 1, 1988, shall be treated as a distribution made by a foreign corporation.

(iii) Certain rules to continue to apply to pre-1988 earnings

The provisions specified in clause (iv) shall be applied without regard to paragraph (1), except that, in the case of a corporation to which an election under paragraph (1) applies, only earnings and profits accumulated in taxable years beginning before January 1, 1988, shall be taken into account.

(iv) Specified provisions

The provisions specified in this clause are:

(I) Section 1248 (relating to gain from certain sales or exchanges of stock in certain foreign corporations).

(II) Subpart F of part III of subchapter N to the extent such subpart relates to earnings invested in United States property or amounts referred to in clause (ii) or (iii) of section 951(a)(1)(A).

(III) Section 884 to the extent the foreign corporation reinvested 1987 earnings and profits in United States assets.

(5) Effect of termination

For purposes of section 367, if—

(A) an election is made by a corporation under paragraph (1) for any taxable year, and

(B) such election ceases to apply for any subsequent taxable year,

such corporation shall be treated as a domestic corporation transferring (as of the 1st day of such subsequent taxable year) all of its property to a foreign corporation in connection with an exchange to which section 354 applies.

(6) Additional tax on corporation making election

(A) In general

If a corporation makes an election under paragraph (1), the amount of tax imposed by this chapter for the 1st taxable year to which such election applies shall be increased by the amount determined under subparagraph (B).

(B) Amount of tax

The amount of tax determined under this paragraph shall be equal to the lesser of—

(i) ¾ of 1 percent of the aggregate amount of capital and accumulated surplus of the corporation as of December 31, 1987, or

(ii) $1,500,000.

(e) Exempt insurance income

For purposes of this section—

(1) Exempt insurance income defined

(A) In general

The term "exempt insurance income" means income derived by a qualifying insurance company which—

(i) is attributable to the issuing (or reinsuring) of an exempt contract by such company or a qualifying insurance company branch of such company, and

(ii) is treated as earned by such company or branch in its home country for purposes of such country's tax laws.

(B) Exception for certain arrangements

Such term shall not include income attributable to the issuing (or reinsuring) of an exempt contract as the result of any arrangement whereby another corporation receives a substantially equal amount of premiums or other consideration in respect of issuing (or reinsuring) a contract which is not an exempt contract.

(C) Determinations made separately

For purposes of this subsection and section 954(i), the exempt insurance income and exempt contracts of a qualifying insurance company or any qualifying insurance company branch of such company shall be determined separately for such company and each such branch by taking into account—

(i) in the case of the qualifying insurance company, only items of income, deduction, gain, or loss, and activities of such company not properly allocable or attributable to any qualifying insurance company branch of such company, and

(ii) in the case of a qualifying insurance company branch, only items of income, deduction, gain, or loss and activities properly allocable or attributable to such branch.

(2) Exempt contract

(A) In general

The term "exempt contract" means an insurance or annuity contract issued or reinsured by a qualifying insurance company or qualifying insurance company branch in connection with property in, liability arising out of activity in, or the lives or health of residents of, a country other than the United States.

(B) Minimum home country income required

(i) In general

No contract of a qualifying insurance company or of a qualifying insurance company branch shall be treated as an exempt contract unless such company or branch derives more than 30 percent of its net written premiums from exempt contracts (determined without regard to this subparagraph)—

(I) which cover applicable home country risks, and

(II) with respect to which no policyholder, insured, annuitant, or beneficiary is a related person (as defined in section 954(d)(3)).

(ii) Applicable home country risks

The term "applicable home country risks" means risks in connection with property in, liability arising out of activity in, or the lives or health of residents of, the home country of the qualifying insurance company or qualifying insurance company branch, as the case may be, issuing or reinsuring the contract covering the risks.

(C) Substantial activity requirements for cross border risks

A contract issued by a qualifying insurance company or qualifying insurance company branch which covers risks other than applicable home country risks (as defined in subparagraph (B)(ii)) shall not be treated as an exempt contract unless such company or branch, as the case may be—

(i) conducts substantial activity with respect to an insurance business in its home country, and

(ii) performs in its home country substantially all of the activities necessary to give rise to the income generated by such contract.

(3) Qualifying insurance company

The term "qualifying insurance company" means any controlled foreign corporation which—

(A) is subject to regulation as an insurance (or reinsurance) company by its home country, and is licensed, authorized, or regulated by the applicable insurance regulatory body for its

home country to sell insurance, reinsurance, or annuity contracts to persons other than related persons (within the meaning of section 954(d)(3)) in such home country,

(B) derives more than 50 percent of its aggregate net written premiums from the issuance or reinsurance by such controlled foreign corporation and each of its qualifying insurance company branches of contracts—

(i) covering applicable home country risks (as defined in paragraph (2)) of such corporation or branch, as the case may be, and

(ii) with respect to which no policyholder, insured, annuitant, or beneficiary is a related person (as defined in section 954(d)(3)),

except that in the case of a branch, such premiums shall only be taken into account to the extent such premiums are treated as earned by such branch in its home country for purposes of such country's tax laws, and

(C) is engaged in the insurance business and would be subject to tax under subchapter L if it were a domestic corporation.

(4) Qualifying insurance company branch

The term "qualifying insurance company branch" means a qualified business unit (within the meaning of section 989(a)) of a controlled foreign corporation if—

(A) such unit is licensed, authorized, or regulated by the applicable insurance regulatory body for its home country to sell insurance, reinsurance, or annuity contracts to persons other than related persons (within the meaning of section 954(d)(3)) in such home country, and

(B) such controlled foreign corporation is a qualifying insurance company, determined under paragraph (3) as if such unit were a qualifying insurance company branch.

(5) Life insurance or annuity contract

For purposes of this section and section 954, the determination of whether a contract issued by a controlled foreign corporation or a qualified business unit (within the meaning of section 989(a)) is a life insurance contract or an annuity contract shall be made without regard to sections 72(s), 101(f), 817(h), and 7702 if—

(A) such contract is regulated as a life insurance or annuity contract by the corporation's or unit's home country, and

(B) no policyholder, insured, annuitant, or beneficiary with respect to the contract is a United States person.

(6) Home country

For purposes of this subsection, except as provided in regulations—

(A) Controlled foreign corporation

The term "home country" means, with respect to a controlled foreign corporation, the country in which such corporation is created or organized.

(B) Qualified business unit

The term "home country" means, with respect to a qualified business unit (as defined in section 989(a)), the country in which the principal office of such unit is located and in which such unit is licensed, authorized, or regulated by the applicable insurance regulatory body to sell insurance, reinsurance, or annuity contracts to persons other than related persons (as defined in section 954(d)(3)) in such country.

(7) Anti-abuse rules

For purposes of applying this subsection and section 954(i)—

(A) the rules of section 954(h)(7) (other than subparagraph (B) thereof) shall apply,

(B) there shall be disregarded any item of income, gain, loss, or deduction of, or derived from, an entity which is not engaged in regular and continuous transactions with persons which are not related persons,

(C) there shall be disregarded any change in the method of computing reserves a principal

purpose of which is the acceleration or deferral of any item in order to claim the benefits of this subsection or section 954(i),

(D) a contract of insurance or reinsurance shall not be treated as an exempt contract (and premiums from such contract shall not be taken into account for purposes of paragraph (2)(B) or (3)) if—

(i) any policyholder, insured, annuitant, or beneficiary is a resident of the United States and such contract was marketed to such resident and was written to cover a risk outside the United States, or

(ii) the contract covers risks located within and without the United States and the qualifying insurance company or qualifying insurance company branch does not maintain such contemporaneous records, and file such reports, with respect to such contract as the Secretary may require,

(E) the Secretary may prescribe rules for the allocation of contracts (and income from contracts) among 2 or more qualifying insurance company branches of a qualifying insurance company in order to clearly reflect the income of such branches, and

(F) premiums from a contract shall not be taken into account for purposes of paragraph (2)(B) or (3) if such contract reinsures a contract issued or reinsured by a related person (as defined in section 954(d)(3)).

For purposes of subparagraph (D), the determination of where risks are located shall be made under the principles of section 953.

(8) Coordination with subsection (c)

In determining insurance income for purposes of subsection (c), exempt insurance income shall not include income derived from exempt contracts which cover risks other than applicable home country risks.

(9) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection and section 954(i).

(10) Application

This subsection and section 954(i) shall apply only to taxable years of a foreign corporation beginning after December 31, 1998, and before January 1, 2014, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends. If this subsection does not apply to a taxable year of a foreign corporation beginning after December 31, 2013 (and taxable years of United States shareholders ending with or within such taxable year), then, notwithstanding the preceding sentence, subsection (a) shall be applied to such taxable years in the same manner as it would if the taxable year of the foreign corporation began in 1998.

(11) Cross reference

For income exempt from foreign personal holding company income, see section 954(i).

(Added Pub. L. 87–834, §12(a), Oct. 16, 1962, 76 Stat. 1008; amended Pub. L. 89–809, title I, §104(m)(2), Nov. 13, 1966, 80 Stat. 1563; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–369, div. A, title II, §211(b)(13), July 18, 1984, 98 Stat. 755; Pub. L. 99–514, title XII, §1221(b)(1), (2), (3)(D), Oct. 22, 1986, 100 Stat. 2551, 2553; Pub. L. 100–647, title I, §1012(i)(1)–(3)(B), (4), (5), (7)–(9), (21), title VI, §6135(a), Nov. 10, 1988, 102 Stat. 3507–3509, 3511, 3721; Pub. L. 101–239, title VII, §7816(p), Dec. 19, 1989, 103 Stat. 2423; Pub. L. 105–277, div. J, title I, §1005(b)(1), (3), Oct. 21, 1998, 112 Stat. 2681–893, 2681–899; Pub. L. 106–170, title V, §503(a), (b), Dec. 17, 1999, 113 Stat. 1921; Pub. L. 107–147, title VI, §614(a)(1), Mar. 9, 2002, 116 Stat. 61; Pub. L. 109–222, title I, §103(a)(1), May 17, 2006, 120 Stat. 346; Pub. L. 110–343, div. C, title III, §303(a), Oct. 3, 2008, 122 Stat. 3866; Pub. L. 111–312, title VII, §750(a), (b), Dec. 17, 2010, 124 Stat. 3320; Pub. L. 112–240, title III, §322(a), Jan. 2, 2013, 126 Stat. 2332.)

AMENDMENTS

2013—Subsec. (e)(10). Pub. L. 112–240 substituted "January 1, 2014" for "January 1, 2012" and "December 31, 2013" for "December 31, 2011".

2010—Subsec. (e)(10). Pub. L. 111–312 substituted "January 1, 2012" for "January 1, 2010" and "December 31, 2011" for "December 31, 2009".

2008—Subsec. (e)(10). Pub. L. 110–343 substituted "January 1, 2010" for "January 1, 2009" and "December 31, 2009" for "December 31, 2008".

2006—Subsec. (e)(10). Pub. L. 109–222 substituted "January 1, 2009" for "January 1, 2007" and "December 31, 2008" for "December 31, 2006".

2002—Subsec. (e)(10). Pub. L. 107–147 substituted "January 1, 2007" for "January 1, 2002" and "December 31, 2006" for "December 31, 2001".

1999—Subsec. (e)(10). Pub. L. 106–170 substituted "taxable years" for "the first taxable year", "January 1, 2002" for "January 1, 2000", and "within which any such" for "within which such", and inserted at end "If this subsection does not apply to a taxable year of a foreign corporation beginning after December 31, 2001 (and taxable years of United States shareholders ending with or within such taxable year), then, notwithstanding the preceding sentence, subsection (a) shall be applied to such taxable years in the same manner as it would if the taxable year of the foreign corporation began in 1998."

1998—Subsec. (a). Pub. L. 105–277, §1005(b)(1)(A), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: "For purposes of section 952(a)(1), the term 'insurance income' means any income which—

"(1) is attributable to the issuing (or reinsuring) of any insurance or annuity contract—

"(A) in connection with property in, liability arising out of activity in, or in connection with the lives or health of residents of, a country other than the country under the laws of which the controlled foreign corporation is created or organized, or

"(B) in connection with risks not described in subparagraph (A) as the result of any arrangement whereby another corporation receives a substantially equal amount of premiums or other consideration in respect of issuing (or reinsuring) a contract described in subparagraph (A), and

"(2) would (subject to the modifications provided by paragraphs (1) and (2) of subsection (b)) be taxed under subchapter L of this chapter if such income were the income of a domestic insurance company."

Subsec. (b)(3), (4). Pub. L. 105–277, §1005(b)(3), added par. (3) and redesignated former par. (3) as (4).

Subsec. (e). Pub. L. 105–277, §1005(b)(1)(B), added subsec. (e).

1989—Subsec. (d)(3). Pub. L. 101–239 substituted "for purposes of section 1503(d) without regard to paragraph (2)(B) thereof" for "(as defined in section 1503(d))".

1988—Subsec. (b)(1). Pub. L. 100–647, §1012(i)(7)(A), redesignated par. (2) as (1) and struck out former par. (1) which read as follows: "A corporation which would, if it were a domestic insurance corporation, be taxable under part II of subchapter L shall apply subsection (a) as if it were taxable under part III of subchapter L."

Subsec. (b)(1)(A). Pub. L. 100–647, §1012(i)(7)(B), added subpar. (A) and struck out former subpar. (A) which read as follows: "The special life insurance company deduction and the small life insurance company deduction."

Subsec. (b)(2) to (4). Pub. L. 100–647, §1012(i)(7)(A), (C), redesignated pars. (3) and (4) as (2) and (3), respectively, and struck out "(other than those taken into account under paragraph (3))" after "and deductions" in par. (3). Former par. (2) redesignated (1).

Subsec. (c)(1)(C). Pub. L. 100–647, §1012(i)(2)(A), added subpar. (C).

Subsec. (c)(2). Pub. L. 100–647, §1012(i)(3)(A), (4)(B), (5), substituted "insurance income (within the meaning of subsection (a)) attributable" for "insurance income attributable", "with respect to which the person (directly or indirectly) insured is" for "with respect to which the primary insured is", and "related person" for "related person (within the meaning of section 954(d)(3))".

Subsec. (c)(3)(A). Pub. L. 100–647, §1012(i)(3)(B), (4)(B), substituted "persons who are (directly or indirectly) insured" for "persons who are the primary insured" and "to any such person" for "(within the meaning of section 954(d)(3)) to any such primary insured".

Subsec. (c)(3)(B). Pub. L. 100–647, §1012(i)(8), substituted "related person insurance income (determined on a gross basis)" for "related person insurance income" and "its insurance income (as so determined)" for "its insurance income".

Subsec. (c)(3)(C). Pub. L. 100–647, §1012(i)(1)(A), (9), substituted "all benefits (other than with respect to section 884)" for "all benefits" and "granted by the United States under any treaty" for "under any income tax treaty" in cl. (i)(II) and inserted at end "An election under this subparagraph made for any taxable year shall

not be effective if the corporation (or any predecessor thereof) was a disqualified corporation for the taxable year for which the election was made or for any prior taxable year beginning after 1986."

Subsec. (c)(3)(D)(i). Pub. L. 100–647, §1012(i)(1)(B), substituted "Period during which election in effect" for "Election irrevocable" in heading and amended text generally. Prior to amendment, text read as follows: "Any election under subparagraph (C) shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary."

Subsec. (c)(3)(E). Pub. L. 100–647, §1012(i)(1)(C), added subpar. (E).

Subsec. (c)(5). Pub. L. 100–647, §1012(i)(2)(B), added par. (5) and redesignated former par. (5) as (6).

Subsec. (c)(6). Pub. L. 100–647, §1012(i)(4)(A), added par. (6) and redesignated former par. (6) as (7).

Pub. L. 100–647, §1012(i)(2)(B), redesignated former par. (5) as (6).

Subsec. (c)(7). Pub. L. 100–647, §1012(i)(21), added par. (7) and struck out former par. (7) "Regulations", which read as follows: "The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including regulations preventing the avoidance of this subsection through cross insurance arrangements or otherwise."

Pub. L. 100–647, §1012(i)(4)(A), redesignated former par. (6) as (7).

Subsec. (c)(8). Pub. L. 100–647, §1012(i)(21), added par. (8).

Subsec. (d). Pub. L. 100–647, §6135(a), added subsec. (d).

1986—Pub. L. 99–514, §1221(b)(3)(D), substituted "Insurance income" for "Income from insurance of United States risks" in section catchline.

Subsec. (a). Pub. L. 99–514, §1221(b)(1), amended subsec. (a) generally, substituting provisions defining "insurance income" for former provisions defining "income derived from the insurance of United States risks".

Subsec. (c). Pub. L. 99–514, §1221(b)(2), added subsec. (c).

1984—Subsec. (a)(2). Pub. L. 98–369, §211(b)(13)(D), substituted "and (2)" for ", (2), and (3)".

Subsec. (b)(1). Pub. L. 98–369, §211(b)(13)(A), redesignated par. (2) as (1). Former par. (1), which provided that the application of part I of subchapter L of this chapter, life insurance company taxable income was the gain from operations as defined in section 809(b), was struck out.

Subsec. (b)(2). Pub. L. 98–369, §211(b)(13)(B), in amending par. (2) generally, substituted

"(A) The special life insurance company deduction and the small life insurance company deduction.

"(B) Section 805(a)(5) (relating to operations loss deduction).

"(C) Section 832(c)(5) (relating to certain capital losses)."

for

"(A) Section 809(d)(4) (operations loss deduction).

"(B) Section 809(d)(5) (certain nonparticipating contracts).

"(C) Section 809(d)(6) (group life, accident, and health insurance)."

and struck out

"(D) Section 809(d)(10) (small business deduction).

"(E) Section 817(b) (gain on property held on December 31, 1958, and certain substituted property acquired after 1958).

"(F) Section 832(c)(5) (certain capital losses)."

Pub. L. 98–369, §211(b)(13)(A), redesignated par. (3) as (2). Former par. (2) redesignated (1).

Subsec. (b)(3). Pub. L. 98–369, §211(b)(13)(A), redesignated par. (4) as (3). Former par. (3) redesignated (2).

Subsec. (b)(3)(A). Pub. L. 98–369, §211(b)(13)(C)(i), substituted "section 803(a)(1)" for "section 809(c)(1)".

Subsec. (b)(3)(B). Pub. L. 98–369, §211(b)(13)(C)(ii), substituted "section 803(a)(2)" for "section 809(c)(2)".

Subsec. (b)(3)(C). Pub. L. 98–369, §211(b)(13)(C)(iii), substituted "section 805(a)(2)" for "section 809(d)(2)".

Subsec. (b)(4), (5). Pub. L. 98–369, §211(b)(13)(A), (E), redesignated par. (5) as (4) and substituted "paragraph (3)" for "paragraph (4)". Former par. (4) redesignated (3).

1976—Subsec. (b)(5). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

1966—Subsec. (b)(3)(F). Pub. L. 89–809 substituted "832(c)(5)" for "832(b)(5)".

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title III, §322(c), Jan. 2, 2013, 126 Stat. 2332, provided that: "The amendments made by this section [amending this section and section 954 of this title] shall apply to taxable years of foreign corporations beginning after December 31, 2011, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends."

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §750(c), Dec. 17, 2010, 124 Stat. 3320, provided that: "The amendments made by this section [amending this section and section 954 of this title] shall apply to taxable years of foreign corporations beginning after December 31, 2009, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends."

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title VI, §614(c), Mar. 9, 2002, 116 Stat. 62, provided that: "The amendments made by this section [amending this section and section 954 of this title] shall apply to taxable years beginning after December 31, 2001."

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title V, §503(c), Dec. 17, 1999, 113 Stat. 1921, provided that: "The amendments made by this section [amending this section and section 954 of this title] shall apply to taxable years beginning after December 31, 1999."

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1012(i)(3)(C), Nov. 10, 1988, 102 Stat. 3508, provided that: "The amendments made by this paragraph [amending this section] to the extent such amendments add the phrase '(directly or indirectly)' shall apply only to taxable years beginning after December 31, 1987."

Amendment by section 1012(i)(1), (2), (4), (5), (7)–(9), (21) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title VI, §6135(b), Nov. 10, 1988, 102 Stat. 3723, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1987."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years of foreign corporations beginning after Dec. 31, 1986, except as otherwise provided, see section 1221(g) of Pub. L. 99–514, set out as a note under section 954 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

§954. Foreign base company income

(a) Foreign base company income

For purposes of section 952(a)(2), the term "foreign base company income" means for any taxable year the sum of—

(1) the foreign personal holding company income for the taxable year (determined under subsection (c) and reduced as provided in subsection (b)(5)),

(2) the foreign base company sales income for the taxable year (determined under subsection (d) and reduced as provided in subsection (b)(5)),

(3) the foreign base company services income for the taxable year (determined under subsection (e) and reduced as provided in subsection (b)(5)),

[(4) Repealed. Pub. L. 108–357, title IV, §415(a)(1), Oct. 22, 2004, 118 Stat. 1511]

(5) the foreign base company oil related income for the taxable year (determined under

subsection (g) and reduced as provided in subsection (b)(5)).

(b) Exclusion and special rules

[(1) Repealed. Pub. L. 94–12, title VI, §602(c)(1), Mar. 29, 1975, 89 Stat. 58]

[(2) Repealed. Pub. L. 99–514, title XII, §1221(c)(1), Oct. 22, 1986, 100 Stat. 2553]

(3) De minimis, etc., rules

For purposes of subsection (a) and section 953—

(A) De minimis rule

If the sum of foreign base company income (determined without regard to paragraph (5)) and the gross insurance income for the taxable year is less than the lesser of—

(i) 5 percent of gross income, or

(ii) $1,000,000,

no part of the gross income for the taxable year shall be treated as foreign base company income or insurance income.

(B) Foreign base company income and insurance income in excess of 70 percent of gross income

If the sum of the foreign base company income (determined without regard to paragraph (5)) and the gross insurance income for the taxable year exceeds 70 percent of gross income, the entire gross income for the taxable year shall, subject to the provisions of paragraphs (4) and (5), be treated as foreign base company income or insurance income (whichever is appropriate).

(C) Gross insurance income

For purposes of subparagraphs (A) and (B), the term "gross insurance income" means any item of gross income taken into account in determining insurance income under section 953.

(4) Exception for certain income subject to high foreign taxes

For purposes of subsection (a) and section 953, foreign base company income and insurance income shall not include any item of income received by a controlled foreign corporation if the taxpayer establishes to the satisfaction of the Secretary that such income was subject to an effective rate of income tax imposed by a foreign country greater than 90 percent of the maximum rate of tax specified in section 11. The preceding sentence shall not apply to foreign base company oil-related income described in subsection (a)(5).

(5) Deductions to be taken into account

For purposes of subsection (a), the foreign personal holding company income, the foreign base company sales income, the foreign base company services income,,[1] and the foreign base company oil related income shall be reduced, under regulations prescribed by the Secretary so as to take into account deductions (including taxes) properly allocable to such income. Except to the extent provided in regulations prescribed by the Secretary, any interest which is paid or accrued by the controlled foreign corporation to any United States shareholder in such corporation (or any controlled foreign corporation related to such a shareholder) shall be allocated first to foreign personal holding company income which is passive income (within the meaning of section 904(d)(2)) of such corporation to the extent thereof. The Secretary may, by regulations, provide that the preceding sentence shall apply also to interest paid or accrued to other persons.

(6) Foreign base company oil related income not treated as another kind of base company income

Income of a corporation which is foreign base company oil related income shall not be considered foreign base company income of such corporation under paragraph (2),[2] or (3) of subsection (a).

(c) Foreign personal holding company income

(1) In general

For purposes of subsection (a)(1), the term "foreign personal holding company income" means the portion of the gross income which consists of:

(A) Dividends, etc.

Dividends, interest, royalties, rents, and annuities.

(B) Certain property transactions

The excess of gains over losses from the sale or exchange of property—

(i) which gives rise to income described in subparagraph (A) (after application of paragraph (2)(A)) other than property which gives rise to income not treated as foreign personal holding company income by reason of subsection (h) or (i) for the taxable year,

(ii) which is an interest in a trust, partnership, or REMIC, or

(iii) which does not give rise to any income.

Gains and losses from the sale or exchange of any property which, in the hands of the controlled foreign corporation, is property described in section 1221(a)(1) shall not be taken into account under this subparagraph.

(C) Commodities transactions

The excess of gains over losses from transactions (including futures, forward, and similar transactions) in any commodities. This subparagraph shall not apply to gains or losses which—

(i) arise out of commodity hedging transactions (as defined in paragraph (5)(A)),

(ii) are active business gains or losses from the sale of commodities, but only if substantially all of the controlled foreign corporation's commodities are property described in paragraph (1), (2), or (8) of section 1221(a), or

(iii) are foreign currency gains or losses (as defined in section 988(b)) attributable to any section 988 transactions.

(D) Foreign currency gains

The excess of foreign currency gains over foreign currency losses (as defined in section 988(b)) attributable to any section 988 transactions. This subparagraph shall not apply in the case of any transaction directly related to the business needs of the controlled foreign corporation.

(E) Income equivalent to interest

Any income equivalent to interest, including income from commitment fees (or similar amounts) for loans actually made.

(F) Income from notional principal contracts

(i) In general

Net income from notional principal contracts.

(ii) Coordination with other categories of foreign personal holding company income

Any item of income, gain, deduction, or loss from a notional principal contract entered into for purposes of hedging any item described in any preceding subparagraph shall not be taken into account for purposes of this subparagraph but shall be taken into account under such other subparagraph.

(G) Payments in lieu of dividends

Payments in lieu of dividends which are made pursuant to an agreement to which section 1058 applies.

(H) Personal service contracts

(i) Amounts received under a contract under which the corporation is to furnish personal services if—

(I) some person other than the corporation has the right to designate (by name or by description) the individual who is to perform the services, or

(II) the individual who is to perform the services is designated (by name or by description) in the contract, and

(ii) amounts received from the sale or other disposition of such a contract.

This subparagraph shall apply with respect to amounts received for services under a particular contract only if at some time during the taxable year 25 percent or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for the individual who has performed, is to perform, or may be designated (by name or by description) as the one to perform, such services.

(2) Exception for certain amounts

(A) Rents and royalties derived in active business

Foreign personal holding company income shall not include rents and royalties which are derived in the active conduct of a trade or business and which are received from a person other than a related person (within the meaning of subsection (d)(3)). For purposes of the preceding sentence, rents derived from leasing an aircraft or vessel in foreign commerce shall not fail to be treated as derived in the active conduct of a trade or business if, as determined under regulations prescribed by the Secretary, the active leasing expenses are not less than 10 percent of the profit on the lease.

(B) Certain export financing

Foreign personal holding company income shall not include any interest which is derived in the conduct of a banking business and which is export financing interest (as defined in section 904(d)(2)(G)).

(C) Exception for dealers

Except as provided by regulations, in the case of a regular dealer in property which is property described in paragraph (1)(B), forward contracts, option contracts, or similar financial instruments (including notional principal contracts and all instruments referenced to commodities), there shall not be taken into account in computing foreign personal holding company income—

(i) any item of income, gain, deduction, or loss (other than any item described in subparagraph (A), (E), or (G) of paragraph (1)) from any transaction (including hedging transactions and transactions involving physical settlement) entered into in the ordinary course of such dealer's trade or business as such a dealer, and

(ii) if such dealer is a dealer in securities (within the meaning of section 475), any interest or dividend or equivalent amount described in subparagraph (E) or (G) of paragraph (1) from any transaction (including any hedging transaction or transaction described in section 956(c)(2)(I)) entered into in the ordinary course of such dealer's trade or business as such a dealer in securities, but only if the income from the transaction is attributable to activities of the dealer in the country under the laws of which the dealer is created or organized (or in the case of a qualified business unit described in section 989(a), is attributable to activities of the unit in the country in which the unit both maintains its principal office and conducts substantial business activity).

(3) Certain income received from related persons

(A) In general

Except as provided in subparagraph (B), the term "foreign personal holding company income" does not include—

(i) dividends and interest received from a related person which (I) is a corporation created or organized under the laws of the same foreign country under the laws of which the

controlled foreign corporation is created or organized, and (II) has a substantial part of its assets used in its trade or business located in such same foreign country, and

(ii) rents and royalties received from a corporation which is a related person for the use of, or the privilege of using, property within the country under the laws of which the controlled foreign corporation is created or organized.

To the extent provided in regulations, payments made by a partnership with 1 or more corporate partners shall be treated as made by such corporate partners in proportion to their respective interests in the partnership.

(B) Exception not to apply to items which reduce subpart F income

Subparagraph (A) shall not apply in the case of any interest, rent, or royalty to the extent such interest, rent, or royalty reduces the payor's subpart F income or creates (or increases) a deficit which under section 952(c) may reduce the subpart F income of the payor or another controlled foreign corporation.

(C) Exception for certain dividends

Subparagraph (A)(i) shall not apply to any dividend with respect to any stock which is attributable to earnings and profits of the distributing corporation accumulated during any period during which the person receiving such dividend did not hold such stock either directly, or indirectly through a chain of one or more subsidiaries each of which meets the requirements of subparagraph (A)(i).

(4) Look-thru rule for certain partnership sales

(A) In general

In the case of any sale by a controlled foreign corporation of an interest in a partnership with respect to which such corporation is a 25-percent owner, such corporation shall be treated for purposes of this subsection as selling the proportionate share of the assets of the partnership attributable to such interest. The Secretary shall prescribe such regulations as may be appropriate to prevent abuse of the purposes of this paragraph, including regulations providing for coordination of this paragraph with the provisions of subchapter K.

(B) 25-percent owner

For purposes of this paragraph, the term "25-percent owner" means a controlled foreign corporation which owns directly 25 percent or more of the capital or profits interest in a partnership. For purposes of the preceding sentence, if a controlled foreign corporation is a shareholder or partner of a corporation or partnership, the controlled foreign corporation shall be treated as owning directly its proportionate share of any such capital or profits interest held directly or indirectly by such corporation or partnership. If a controlled foreign corporation is treated as owning a capital or profits interest in a partnership under constructive ownership rules similar to the rules of section 958(b), the controlled foreign corporation shall be treated as owning such interest directly for purposes of this subparagraph.

(5) Definition and special rules relating to commodity transactions

(A) Commodity hedging transactions

For purposes of paragraph (1)(C)(i), the term "commodity hedging transaction" means any transaction with respect to a commodity if such transaction—

(i) is a hedging transaction as defined in section 1221(b)(2), determined—

(I) without regard to subparagraph (A)(ii) thereof,

(II) by applying subparagraph (A)(i) thereof by substituting "ordinary property or property described in section 1231(b)" for "ordinary property", and

(III) by substituting "controlled foreign corporation" for "taxpayer" each place it appears, and

(ii) is clearly identified as such in accordance with section 1221(a)(7).

(B) Treatment of dealer activities under paragraph (1)(C)

Commodities with respect to which gains and losses are not taken into account under paragraph (2)(C) in computing a controlled foreign corporation's foreign personal holding company income shall not be taken into account in applying the substantially all test under paragraph (1)(C)(ii) to such corporation.

(C) Regulations

The Secretary shall prescribe such regulations as are appropriate to carry out the purposes of paragraph (1)(C) in the case of transactions involving related parties.

(6) Look-thru rule for related controlled foreign corporations

(A) In general

For purposes of this subsection, dividends, interest, rents, and royalties received or accrued from a controlled foreign corporation which is a related person shall not be treated as foreign personal holding company income to the extent attributable or properly allocable (determined under rules similar to the rules of subparagraphs (C) and (D) of section 904(d)(3)) to income of the related person which is neither subpart F income nor income treated as effectively connected with the conduct of a trade or business in the United States. For purposes of this subparagraph, interest shall include factoring income which is treated as income equivalent to interest for purposes of paragraph (1)(E). The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this paragraph, including such regulations as may be necessary or appropriate to prevent the abuse of the purposes of this paragraph.

(B) Exception

Subparagraph (A) shall not apply in the case of any interest, rent, or royalty to the extent such interest, rent, or royalty creates (or increases) a deficit which under section 952(c) may reduce the subpart F income of the payor or another controlled foreign corporation.

(C) Application

Subparagraph (A) shall apply to taxable years of foreign corporations beginning after December 31, 2005, and before January 1, 2014, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

(d) Foreign base company sales income

(1) In general

For purposes of subsection (a)(2), the term "foreign base company sales income" means income (whether in the form of profits, commissions, fees, or otherwise) derived in connection with the purchase of personal property from a related person and its sale to any person, the sale of personal property to any person on behalf of a related person, the purchase of personal property from any person and its sale to a related person, or the purchase of personal property from any person on behalf of a related person where—

(A) the property which is purchased (or in the case of property sold on behalf of a related person, the property which is sold) is manufactured, produced, grown, or extracted outside the country under the laws of which the controlled foreign corporation is created or organized, and

(B) the property is sold for use, consumption, or disposition outside such foreign country, or, in the case of property purchased on behalf of a related person, is purchased for use, consumption, or disposition outside such foreign country.

For purposes of this subsection, personal property does not include agricultural commodities which are not grown in the United States in commercially marketable quantities.

(2) Certain branch income

For purposes of determining foreign base company sales income in situations in which the

carrying on of activities by a controlled foreign corporation through a branch or similar establishment outside the country of incorporation of the controlled foreign corporation has substantially the same effect as if such branch or similar establishment were a wholly owned subsidiary corporation deriving such income, under regulations prescribed by the Secretary the income attributable to the carrying on of such activities of such branch or similar establishment shall be treated as income derived by a wholly owned subsidiary of the controlled foreign corporation and shall constitute foreign base company sales income of the controlled foreign corporation.

(3) Related person defined

For purposes of this section, a person is a related person with respect to a controlled foreign corporation, if—

(A) such person is an individual, corporation, partnership, trust, or estate which controls, or is controlled by, the controlled foreign corporation, or

(B) such person is a corporation, partnership, trust, or estate which is controlled by the same person or persons which control the controlled foreign corporation.

For purposes of the preceding sentence, control means, with respect to a corporation, the ownership, directly or indirectly, of stock possessing more than 50 percent of the total voting power of all classes of stock entitled to vote or of the total value of stock of such corporation. In the case of a partnership, trust, or estate, control means the ownership, directly or indirectly, of more than 50 percent (by value) of the beneficial interests in such partnership, trust, or estate. For purposes of this paragraph, rules similar to the rules of section 958 shall apply.

(4) Special rule for certain timber products

For purposes of subsection (a)(2), the term "foreign base company sales income" includes any income (whether in the form of profits, commissions, fees, or otherwise) derived in connection with—

(A) the sale of any unprocessed timber referred to in section 865(b), or

(B) the milling of any such timber outside the United States.

Subpart G shall not apply to any amount treated as subpart F income by reason of this paragraph.

(e) Foreign base company services income

(1) In general

For purposes of subsection (a)(3), the term "foreign base company services income" means income (whether in the form of compensation, commissions, fees, or otherwise) derived in connection with the performance of technical, managerial, engineering, architectural, scientific, skilled, industrial, commercial, or like services which—

(A) are performed for or on behalf of any related person (within the meaning of subsection (d)(3)), and

(B) are performed outside the country under the laws of which the controlled foreign corporation is created or organized.

(2) Exception

Paragraph (1) shall not apply to income derived in connection with the performance of services which are directly related to—

(A) the sale or exchange by the controlled foreign corporation of property manufactured, produced, grown, or extracted by it and which are performed before the time of the sale or exchange, or

(B) an offer or effort to sell or exchange such property.

Paragraph (1) shall also not apply to income which is exempt insurance income (as defined in section 953(e)) or which is not treated as foreign personal holding income by reason of subsection

(c)(2)(C)(ii), (h), or (i).

[(f) Repealed. Pub. L. 108–357, title IV, §415(a)(2), Oct. 22, 2004, 118 Stat. 1511]

(g) Foreign base company oil related income

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, the term "foreign base company oil related income" means foreign oil related income (within the meaning of paragraphs (2) and (3) of section 907(c)) other than income derived from a source within a foreign country in connection with—

(A) oil or gas which was extracted from an oil or gas well located in such foreign country, or

(B) oil, gas, or a primary product of oil or gas which is sold by the foreign corporation or a related person for use or consumption within such country or is loaded in such country on a vessel or aircraft as fuel for such vessel or aircraft.

Such term shall not include any foreign personal holding company income (as defined in subsection (c)).

(2) Paragraph (1) applies only where corporation has produced 1,000 barrels per day or more

(A) In general

The term "foreign base company oil related income" shall not include any income of a foreign corporation if such corporation is not a large oil producer for the taxable year.

(B) Large oil producer

For purposes of subparagraph (A), the term "large oil producer" means any corporation if, for the taxable year or for the preceding taxable year, the average daily production of foreign crude oil and natural gas of the related group which includes such corporation equaled or exceeded 1,000 barrels.

(C) Related group

The term "related group" means a group consisting of the foreign corporation and any other person who is a related person with respect to such corporation.

(D) Average daily production of foreign crude oil and natural gas

For purposes of this paragraph, the average daily production of foreign crude oil or natural gas of any related group for any taxable year (and the conversion of cubic feet of natural gas into barrels) shall be determined under rules similar to the rules of section 613A except that only crude oil or natural gas from a well located outside the United States shall be taken into account.

(h) Special rule for income derived in the active conduct of banking, financing, or similar businesses

(1) In general

For purposes of subsection (c)(1), foreign personal holding company income shall not include qualified banking or financing income of an eligible controlled foreign corporation.

(2) Eligible controlled foreign corporation

For purposes of this subsection—

(A) In general

The term "eligible controlled foreign corporation" means a controlled foreign corporation which—

(i) is predominantly engaged in the active conduct of a banking, financing, or similar business, and

(ii) conducts substantial activity with respect to such business.

(B) Predominantly engaged

A controlled foreign corporation shall be treated as predominantly engaged in the active conduct of a banking, financing, or similar business if—

(i) more than 70 percent of the gross income of the controlled foreign corporation is derived directly from the active and regular conduct of a lending or finance business from transactions with customers which are not related persons,

(ii) it is engaged in the active conduct of a banking business and is an institution licensed to do business as a bank in the United States (or is any other corporation not so licensed which is specified by the Secretary in regulations), or

(iii) it is engaged in the active conduct of a securities business and is registered as a securities broker or dealer under section 15(a) of the Securities Exchange Act of 1934 or is registered as a Government securities broker or dealer under section 15C(a) of such Act (or is any other corporation not so registered which is specified by the Secretary in regulations).

(3) Qualified banking or financing income

For purposes of this subsection—

(A) In general

The term "qualified banking or financing income" means income of an eligible controlled foreign corporation which—

(i) is derived in the active conduct of a banking, financing, or similar business by—

(I) such eligible controlled foreign corporation, or

(II) a qualified business unit of such eligible controlled foreign corporation,

(ii) is derived from one or more transactions—

(I) with customers located in a country other than the United States, and

(II) substantially all of the activities in connection with which are conducted directly by the corporation or unit in its home country, and

(iii) is treated as earned by such corporation or unit in its home country for purposes of such country's tax laws.

(B) Limitation on nonbanking and nonsecurities businesses

No income of an eligible controlled foreign corporation not described in clause (ii) or (iii) of paragraph (2)(B) (or of a qualified business unit of such corporation) shall be treated as qualified banking or financing income unless more than 30 percent of such corporation's or unit's gross income is derived directly from the active and regular conduct of a lending or finance business from transactions with customers which are not related persons and which are located within such corporation's or unit's home country.

(C) Substantial activity requirement for cross border income

The term "qualified banking or financing income" shall not include income derived from 1 or more transactions with customers located in a country other than the home country of the eligible controlled foreign corporation or a qualified business unit of such corporation unless such corporation or unit conducts substantial activity with respect to a banking, financing, or similar business in its home country.

(D) Determinations made separately

For purposes of this paragraph, the qualified banking or financing income of an eligible controlled foreign corporation and each qualified business unit of such corporation shall be determined separately for such corporation and each such unit by taking into account—

(i) in the case of the eligible controlled foreign corporation, only items of income, deduction, gain, or loss and activities of such corporation not properly allocable or attributable to any qualified business unit of such corporation, and

(ii) in the case of a qualified business unit, only items of income, deduction, gain, or loss

and activities properly allocable or attributable to such unit.

(E) Direct conduct of activities

For purposes of subparagraph (A)(ii)(II), an activity shall be treated as conducted directly by an eligible controlled foreign corporation or qualified business unit in its home country if the activity is performed by employees of a related person and—

(i) the related person is an eligible controlled foreign corporation the home country of which is the same as the home country of the corporation or unit to which subparagraph (A)(ii)(II) is being applied,

(ii) the activity is performed in the home country of the related person, and

(iii) the related person is compensated on an arm's-length basis for the performance of the activity by its employees and such compensation is treated as earned by such person in its home country for purposes of the home country's tax laws.

(4) Lending or finance business

For purposes of this subsection, the term "lending or finance business" means the business of—

(A) making loans,

(B) purchasing or discounting accounts receivable, notes, or installment obligations,

(C) engaging in leasing (including entering into leases and purchasing, servicing, and disposing of leases and leased assets),

(D) issuing letters of credit or providing guarantees,

(E) providing charge and credit card services, or

(F) rendering services or making facilities available in connection with activities described in subparagraphs (A) through (E) carried on by—

(i) the corporation (or qualified business unit) rendering services or making facilities available, or

(ii) another corporation (or qualified business unit of a corporation) which is a member of the same affiliated group (as defined in section 1504, but determined without regard to section 1504(b)(3)).

(5) Other definitions

For purposes of this subsection—

(A) Customer

The term "customer" means, with respect to any controlled foreign corporation or qualified business unit, any person which has a customer relationship with such corporation or unit and which is acting in its capacity as such.

(B) Home country

Except as provided in regulations—

(i) Controlled foreign corporation

The term "home country" means, with respect to any controlled foreign corporation, the country under the laws of which the corporation was created or organized.

(ii) Qualified business unit

The term "home country" means, with respect to any qualified business unit, the country in which such unit maintains its principal office.

(C) Located

The determination of where a customer is located shall be made under rules prescribed by the Secretary.

(D) Qualified business unit

The term "qualified business unit" has the meaning given such term by section 989(a).

(E) Related person

The term "related person" has the meaning given such term by subsection (d)(3).

(6) Coordination with exception for dealers

Paragraph (1) shall not apply to income described in subsection (c)(2)(C)(ii) of a dealer in securities (within the meaning of section 475) which is an eligible controlled foreign corporation described in paragraph (2)(B)(iii).

(7) Anti-abuse rules

For purposes of applying this subsection and subsection (c)(2)(C)(ii)—

(A) there shall be disregarded any item of income, gain, loss, or deduction with respect to any transaction or series of transactions one of the principal purposes of which is qualifying income or gain for the exclusion under this section, including any transaction or series of transactions a principal purpose of which is the acceleration or deferral of any item in order to claim the benefits of such exclusion through the application of this subsection,

(B) there shall be disregarded any item of income, gain, loss, or deduction of an entity which is not engaged in regular and continuous transactions with customers which are not related persons,

(C) there shall be disregarded any item of income, gain, loss, or deduction with respect to any transaction or series of transactions utilizing, or doing business with—

(i) one or more entities in order to satisfy any home country requirement under this subsection, or

(ii) a special purpose entity or arrangement, including a securitization, financing, or similar entity or arrangement,

if one of the principal purposes of such transaction or series of transactions is qualifying income or gain for the exclusion under this subsection, and

(D) a related person, an officer, a director, or an employee with respect to any controlled foreign corporation (or qualified business unit) which would otherwise be treated as a customer of such corporation or unit with respect to any transaction shall not be so treated if a principal purpose of such transaction is to satisfy any requirement of this subsection.

(8) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection, subsection (c)(1)(B)(i), subsection (c)(2)(C)(ii), and the last sentence of subsection (e)(2).

(9) Application

This subsection, subsection (c)(2)(C)(ii), and the last sentence of subsection (e)(2) shall apply only to taxable years of a foreign corporation beginning after December 31, 1998, and before January 1, 2014, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends.

(i) Special rule for income derived in the active conduct of insurance business

(1) In general

For purposes of subsection (c)(1), foreign personal holding company income shall not include qualified insurance income of a qualifying insurance company.

(2) Qualified insurance income

The term "qualified insurance income" means income of a qualifying insurance company which is—

(A) received from a person other than a related person (within the meaning of subsection (d)(3)) and derived from the investments made by a qualifying insurance company or a qualifying insurance company branch of its reserves allocable to exempt contracts or of 80 percent of its unearned premiums from exempt contracts (as both are determined in the manner prescribed under paragraph (4)), or

(B) received from a person other than a related person (within the meaning of subsection (d)(3)) and derived from investments made by a qualifying insurance company or a qualifying insurance company branch of an amount of its assets allocable to exempt contracts equal to—

(i) in the case of property, casualty, or health insurance contracts, one-third of its premiums earned on such insurance contracts during the taxable year (as defined in section 832(b)(4)), and

(ii) in the case of life insurance or annuity contracts, 10 percent of the reserves described in subparagraph (A) for such contracts.

(3) Principles for determining insurance income

Except as provided by the Secretary, for purposes of subparagraphs (A) and (B) of paragraph (2)—

(A) in the case of any contract which is a separate account-type contract (including any variable contract not meeting the requirements of section 817), income credited under such contract shall be allocable only to such contract, and

(B) income not allocable under subparagraph (A) shall be allocated ratably among contracts not described in subparagraph (A).

(4) Methods for determining unearned premiums and reserves

For purposes of paragraph (2)(A)—

(A) Property and casualty contracts

The unearned premiums and reserves of a qualifying insurance company or a qualifying insurance company branch with respect to property, casualty, or health insurance contracts shall be determined using the same methods and interest rates which would be used if such company or branch were subject to tax under subchapter L, except that—

(i) the interest rate determined for the functional currency of the company or branch, and which, except as provided by the Secretary, is calculated in the same manner as the Federal mid-term rate under section 1274(d), shall be substituted for the applicable Federal interest rate, and

(ii) such company or branch shall use the appropriate foreign loss payment pattern.

(B) Life insurance and annuity contracts

(i) In general

Except as provided in clause (ii), the amount of the reserve of a qualifying insurance company or qualifying insurance company branch for any life insurance or annuity contract shall be equal to the greater of—

(I) the net surrender value of such contract (as defined in section 807(e)(1)(A)), or

(II) the reserve determined under paragraph (5).

(ii) Ruling request, etc.

The amount of the reserve under clause (i) shall be the foreign statement reserve for the contract (less any catastrophe, deficiency, equalization, or similar reserves), if, pursuant to a ruling request submitted by the taxpayer or as provided in published guidance, the Secretary determines that the factors taken into account in determining the foreign statement reserve provide an appropriate means of measuring income.

(C) Limitation on reserves

In no event shall the reserve determined under this paragraph for any contract as of any time exceed the amount which would be taken into account with respect to such contract as of such time in determining foreign statement reserves (less any catastrophe, deficiency, equalization, or similar reserves).

(5) Amount of reserve

The amount of the reserve determined under this paragraph with respect to any contract shall be determined in the same manner as it would be determined if the qualifying insurance company or

qualifying insurance company branch were subject to tax under subchapter L, except that in applying such subchapter—

(A) the interest rate determined for the functional currency of the company or branch, and which, except as provided by the Secretary, is calculated in the same manner as the Federal mid-term rate under section 1274(d), shall be substituted for the applicable Federal interest rate,

(B) the highest assumed interest rate permitted to be used in determining foreign statement reserves shall be substituted for the prevailing State assumed interest rate, and

(C) tables for mortality and morbidity which reasonably reflect the current mortality and morbidity risks in the company's or branch's home country shall be substituted for the mortality and morbidity tables otherwise used for such subchapter.

The Secretary may provide that the interest rate and mortality and morbidity tables of a qualifying insurance company may be used for 1 or more of its qualifying insurance company branches when appropriate.

(6) Definitions

For purposes of this subsection, any term used in this subsection which is also used in section 953(e) shall have the meaning given such term by section 953.

(Added Pub. L. 87–834, §12(a), Oct. 16, 1962, 76 Stat. 1009; amended Pub. L. 91–172, title IX, §909(a), Dec. 30, 1969, 83 Stat. 718; Pub. L. 94–12, title VI, §602(b), (c)(1), (2), (d)(1), (e), Mar. 29, 1975, 89 Stat. 58, 60, 64; Pub. L. 94–455, title X, §§1023(a), 1024(a), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1620, 1834; Pub. L. 97–248, title II, §212(a)–(e), Sept. 3, 1982, 96 Stat. 451, 452; Pub. L. 98–369, div. A, title I, §137(a), title VII, §712(f), July 18, 1984, 98 Stat. 672, 947; Pub. L. 99–514, title XII, §§1201(c), 1221(a)(1), (b)(3)(B), (c)(1)–(3)(A), (d), (e), 1223(a), title XVIII, §1810(k), Oct. 22, 1986, 100 Stat. 2525, 2549, 2553, 2557, 2830; Pub. L. 100–647, title I, §§1012(i)(12), (14)(A), (18), (20), (25)(B), 1018(u)(38), Nov. 10, 1988, 102 Stat. 3509–3512, 3592; Pub. L. 101–239, title VII, §7811(i)(3), Dec. 19, 1989, 103 Stat. 2409; Pub. L. 103–66, title XIII, §§13233(a)(1), 13235(a)(3), (b), 13239(d), Aug. 10, 1993, 107 Stat. 502, 504, 505, 509; Pub. L. 104–188, title I, §1704(t)(25), Aug. 20, 1996, 110 Stat. 1888; Pub. L. 105–34, title X, §1051(a), (b), title XI, §1175(a), (b), Aug. 5, 1997, 111 Stat. 940, 990, 993; Pub. L. 105–277, div. J, title I, §1005(a), (b)(2), (c)–(e), title IV, §4003(j), Oct. 21, 1998, 112 Stat. 2681–890, 2681–897, 2681–899, 2681–900, 2681–910; Pub. L. 106–170, title V, §§503(a), 532(c)(2)(Q), Dec. 17, 1999, 113 Stat. 1921, 1931; Pub. L. 107–147, title IV, §417(24)(B)(ii), title VI, §614(a)(2), (b)(1), Mar. 9, 2002, 116 Stat. 57, 61; Pub. L. 108–357, title IV, §§412(a), 413(b)(2), 414(a)–(c), 415(a), (b), (c)(2), 416(a), Oct. 22, 2004, 118 Stat. 1505, 1506, 1510, 1511; Pub. L. 109–135, title IV, §§403(m), 412(ll), (mm), Dec. 21, 2005, 119 Stat. 2626, 2639; Pub. L. 109–222, title I, §103(a)(2), (b)(1), May 17, 2006, 120 Stat. 346; Pub. L. 109–432, div. A, title IV, §426(a)(1), Dec. 20, 2006, 120 Stat. 2974; Pub. L. 110–172, §§4(a), 11(a)(19), (20), (g)(15)(B), Dec. 29, 2007, 121 Stat. 2475, 2486, 2491; Pub. L. 110–343, div. C, title III, §§303(b), 304(a), Oct. 3, 2008, 122 Stat. 3866, 3867; Pub. L. 111–312, title VII, §§750(a), 751(a), Dec. 17, 2010, 124 Stat. 3320, 3321; Pub. L. 112–240, title III, §§322(b), 323(a), Jan. 2, 2013, 126 Stat. 2332, 2333.)

REFERENCES IN TEXT

Sections 15(a) and 15C(a) of the Securities Exchange Act of 1934, referred to in subsec. (h)(2)(B)(iii), are classified to sections 78o(a) and 78o–5(a), respectively, of Title 15, Commerce and Trade.

AMENDMENTS

2013—Subsec. (c)(6)(C). Pub. L. 112–240, §323(a), substituted "January 1, 2014" for "January 1, 2012".
Subsec. (h)(9). Pub. L. 112–240, §322(b), substituted "January 1, 2014" for "January 1, 2012".

2010—Subsec. (c)(6)(C). Pub. L. 111–312, §751(a), substituted "January 1, 2012" for "January 1, 2010".
Subsec. (h)(9). Pub. L. 111–312, §750(a), substituted "January 1, 2012" for "January 1, 2010".

2008—Subsec. (c)(6)(C). Pub. L. 110–343, §304(a), substituted "January 1, 2010" for "January 1, 2009".
Subsec. (h)(9). Pub. L. 110–343, §303(b), substituted "January 1, 2010" for "January 1, 2009".

2007—Subsec. (c)(1)(F). Pub. L. 110–172, §11(a)(19), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "Any item of income, gain, deduction, or loss from a

notional principal contract entered into for purposes of hedging any item described in any preceding subparagraph shall not be taken into account for purposes of this subparagraph but shall be taken into account under such other subparagraph."

Subsec. (c)(1)(H), (I). Pub. L. 110–172, §11(a)(20), redesignated subpar. (I) as (H).

Subsec. (c)(2)(C)(ii). Pub. L. 110–172, §11(g)(15)(B), substituted "section 956(c)(2)(I)" for "section 956(c)(2)(J)".

Subsec. (c)(6)(B), (C). Pub. L. 110–172, §4(a), added subpar. (B) and redesignated former subpar. (B) as (C).

2006—Subsec. (c)(6). Pub. L. 109–222, §103(b)(1), added par.(6).

Subsec. (c)(6)(A). Pub. L. 109–432, in first sentence, substituted "which is neither subpart F income nor income treated as effectively connected with the conduct of a trade or business in the United States" for "which is not subpart F income" and, in last sentence, substituted "The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this paragraph, including such regulations as may be necessary or appropriate to prevent the abuse of the purposes of this paragraph" for "The Secretary shall prescribe such regulations as may be appropriate to prevent the abuse of the purposes of this paragraph".

Subsec. (h)(9). Pub. L. 109–222, §103(a)(2), substituted "January 1, 2009" for "January 1, 2007".

2005—Subsec. (c)(1)(C)(i). Pub. L. 109–135, §412(ll), substituted "paragraph (5)(A)" for "paragraph (4)(A)".

Subsec. (c)(1)(F). Pub. L. 109–135, §412(mm), struck out "Net income from notional principal contracts." before "Any item of income".

Subsec. (c)(4)(B). Pub. L. 109–135, §403(m), inserted at end "If a controlled foreign corporation is treated as owning a capital or profits interest in a partnership under constructive ownership rules similar to the rules of section 958(b), the controlled foreign corporation shall be treated as owning such interest directly for purposes of this subparagraph."

2004—Subsec. (a)(4). Pub. L. 108–357, §415(a)(1), struck out par. (4) which read as follows: "the foreign base company shipping income for the taxable year (determined under subsection (f) and reduced as provided in subsection (b)(5)), and".

Subsec. (b)(5). Pub. L. 108–357, §415(c)(2)(A), struck out "the foreign base company shipping income," after "the foreign base company services income,,".

Subsec. (b)(6) to (8). Pub. L. 108–357, §415(c)(2)(B), (C), redesignated par. (8) as (6) and struck out former pars. (6) and (7) which set forth special rules and special exclusion for foreign base company shipping income.

Subsec. (c)(1)(C)(i), (ii). Pub. L. 108–357, §414(a), amended cls. (i) and (ii) generally. Prior to amendment, cls. (i) and (ii) read as follows:

"(i) arise out of bona fide hedging transactions reasonably necessary to the conduct of any business by a producer, processor, merchant, or handler of a commodity in the manner in which such business is customarily and usually conducted by others,

"(ii) are active business gains or losses from the sale of commodities, but only if substantially all of the controlled foreign corporation's business is as an active producer, processor, merchant, or handler of commodities, or".

Subsec. (c)(1)(I). Pub. L. 108–357, §413(b)(2), added subpar. (I).

Subsec. (c)(2)(A). Pub. L. 108–357, §415(b), inserted at end "For purposes of the preceding sentence, rents derived from leasing an aircraft or vessel in foreign commerce shall not fail to be treated as derived in the active conduct of a trade or business if, as determined under regulations prescribed by the Secretary, the active leasing expenses are not less than 10 percent of the profit on the lease."

Subsec. (c)(2)(C)(i). Pub. L. 108–357, §414(c), inserted "and transactions involving physical settlement" after "(including hedging transactions".

Subsec. (c)(4). Pub. L. 108–357, §412(a), added par. (4).

Subsec. (c)(5). Pub. L. 108–357, §414(b), added par. (5).

Subsec. (f). Pub. L. 108–357, §415(a)(2), struck out subsec. (f) which defined "foreign base company shipping income" for purposes of subsec. (a)(4).

Subsec. (h)(3)(E). Pub. L. 108–357, §416(a), added subpar. (E).

2002—Subsec. (c)(1)(B). Pub. L. 107–147, §417(24)(B)(ii), which directed the amendment of Pub. L. 106–170, §532(c)(2)(Q), was executed to that section as if the amendment were retroactive to the effective date of the amendment by Pub. L. 106–170 to reflect the probable intent of Congress. See 1999 Amendment note below.

Subsec. (h)(9). Pub. L. 107–147, §614(a)(2), substituted "January 1, 2007" for "January 1, 2002".

Subsec. (i)(4)(B). Pub. L. 107–147, §614(b)(1), reenacted heading without change and amended text

generally. Prior to amendment, text read as follows: "The amount of the reserve of a qualifying insurance company or qualifying insurance company branch for any life insurance or annuity contract shall be equal to the greater of—

"(i) the net surrender value of such contract (as defined in section 807(e)(1)(A)), or

"(ii) the reserve determined under paragraph (5)."

1999—Subsec. (c)(1)(B). Pub. L. 106–170, §532(c)(2)(Q), as amended by Pub. L. 107–147, §417(24)(B)(ii), substituted "section 1221(a)(1)" for "section 1221(1)" in concluding provisions.

Subsec. (h)(9). Pub. L. 106–170, §503(a), substituted "taxable years" for "the first taxable year", "January 1, 2002" for "January 1, 2000", and "within which any such" for "within which such".

1998—Subsec. (c)(1)(B)(i). Pub. L. 105–277, §1005(e), inserted "other than property which gives rise to income not treated as foreign personal holding company income by reason of subsection (h) or (i) for the taxable year" before comma at end.

Subsec. (c)(2)(C). Pub. L. 105–277, §1005(c), amended heading and text of subpar. (C), generally. Prior to amendment, text read as follows: "Except as provided in subparagraph (A), (E), or (G) of paragraph (1) or by regulations, in the case of a regular dealer in property (within the meaning of paragraph (1)(B)), forward contracts, option contracts, or similar financial instruments (including notional principal contracts and all instruments referenced to commodities), there shall not be taken into account in computing foreign personal holding income any item of income, gain, deduction, or loss from any transaction (including hedging transactions) entered into in the ordinary course of such dealer's trade or business as such a dealer."

Subsec. (e)(2). Pub. L. 105–277, §1005(d), inserted "or" at end of subpar. (A), substituted a period for ", or" at end of subpar. (B), and inserted concluding provisions.

Subsec. (e)(2)(C). Pub. L. 105–277, §4003(j), substituted "(h)(9)" for "(h)(8)".

Pub. L. 105–277, §1005(d), struck out subpar. (C) which read as follows: "in the case of taxable years described in subsection (h)(9), the active conduct by a controlled foreign corporation of a banking, financing, insurance, or similar business, but only if the corporation is predominantly engaged in the active conduct of such business (within the meaning of subsection (h)(3)) or is a qualifying insurance company."

Subsec. (h). Pub. L. 105–277, §1005(a), amended heading and text of subsec. (h) generally. Prior to amendment, text consisted of pars. (1) to (9) relating to special rule for income derived in active conduct of banking, financing, or similar businesses, principles for determining applicable income, meaning of "predominantly engaged" for purposes of the special rule, methods of determining unearned premiums and reserves, definitions of certain terms for purposes of subsec. (h), anti-abuse rules, coordination with section 953 of this title, and taxable year applicability of subsec. (h).

Subsec. (i). Pub. L. 105–277, §1005(b)(2), added subsec. (i).

1997—Subsec. (c)(1)(B). Pub. L. 105–34, §1051(a)(2), in concluding provisions, struck out "In the case of any regular dealer in property, gains and losses from the sale or exchange of any such property or arising out of bona fide hedging transactions reasonably necessary to the conduct of the business of being a dealer in such property shall not be taken into account under this subparagraph." before "Gains and losses" and "also" after "section 1221(1)".

Subsec. (c)(1)(F), (G). Pub. L. 105–34, §1051(a)(1), added subpars. (F) and (G).

Subsec. (c)(2)(C). Pub. L. 105–34, §1051(b), added subpar. (C).

Subsec. (e)(2)(C). Pub. L. 105–34, §1175(b), added subpar. (C).

Subsec. (h). Pub. L. 105–34, §1175(a), added subsec. (h).

1996—Subsec. (c)(3)(A)(i). Pub. L. 104–188 amended directory language of Pub. L. 101–239, §7811(i)(3)(A). See 1989 Amendment note below.

1993—Subsec. (b)(8). Pub. L. 103–66, §13235(a)(3)(B), struck out "(1)," after "such corporation under paragraph".

Subsec. (c)(3)(C). Pub. L. 103–66, §13233(a)(1), added subpar. (C).

Subsec. (d)(4). Pub. L. 103–66, §13239(d), added par. (4).

Subsec. (f). Pub. L. 103–66, §13235(b), inserted at end of concluding provisions "Except as provided in paragraph (1), such term shall not include any dividend or interest income which is foreign personal holding company income (as defined in subsection (c))."

Subsec. (g)(1). Pub. L. 103–66, §13235(a)(3)(A), inserted at end "Such term shall not include any foreign personal holding company income (as defined in subsection (c))."

1989—Subsec. (c)(3)(A). Pub. L. 101–239, §7811(i)(3)(C), inserted at end "To the extent provided in regulations, payments made by a partnership with 1 or more corporate partners shall be treated as made by such corporate partners in proportion to their respective interests in the partnership."

Subsec. (c)(3)(A)(i). Pub. L. 101–239, §7811(i)(3)(A), as amended by Pub. L. 104–188, substituted "is a corporation created" for "is created" after "person which (I)".

Subsec. (c)(3)(A)(ii). Pub. L. 101–239, §7811(i)(3)(B), substituted "from a corporation which is a related person" for "from a related person".

1988—Subsec. (b)(6), (7). Pub. L. 100–647, §1012(i)(12), struck out "(determined without regard to the exclusion under paragraph (2) of this subsection)" after "paragraph (4) of subsection (a)".

Subsec. (c)(1)(B). Pub. L. 100–647, §1012(i)(18), (20), added cl. (ii), redesignated former cl. (ii) as (iii), added closing provisions, and struck out former closing provisions which read as follows: "This subparagraph shall not apply to gain from the sale or exchange of any property which, in the hands of the taxpayer, is property described in section 1221(1) or to gain from the sale or exchange of any property by a regular dealer in such property."

Subsec. (c)(3)(B). Pub. L. 100–647, §1012(i)(25)(B), inserted before period at end "or creates (or increases) a deficit which under section 952(c) may reduce the subpart F income of the payor or another controlled foreign corporation".

Subsec. (d)(3). Pub. L. 100–647, §1012(i)(14)(A), substituted "more than 50 percent" for "50 percent or more" in last two sentences.

Subsec. (e)(3). Pub. L. 100–647, §1018(u)(38), related to execution of amendment by Pub. L. 99–514, §1221(b)(3)(B), see 1986 Amendment note below.

1986—Subsec. (a)(5). Pub. L. 99–514, §1221(c)(3)(A)(ii), substituted "determined under subsection (g)" for "determined under subsection (h)".

Subsec. (b)(2). Pub. L. 99–514, §1221(c)(1), struck out par. (2), exclusion for reinvested shipping income, which read as follows: "For purposes of subsection (a), foreign base company income does not include foreign base company shipping income to the extent that the amount of such income does not exceed the increase for the taxable year in qualified investments in foreign base company shipping operations of the controlled foreign corporation (as determined under subsection (g))."

Subsec. (b)(3). Pub. L. 99–514, §1223(a), amended par. (3) generally. Prior to amendment, par. (3), special rule where foreign base company income is less than 10 percent or more than 70 percent of gross income, read as follows: "For purposes of subsection (a)—

"(A) If the foreign base company income (determined without regard to paragraphs (2) and (5)) is less than 10 percent of gross income, no part of the gross income of the taxable year shall be treated as foreign base company income.

"(B) If the foreign base company income (determined without regard to paragraphs (2) and (5)) exceeds 70 percent of gross income, the entire gross income of the taxable year shall, subject to the provisions of paragraphs (2), (4), and (5), be treated as foreign base company income."

Subsec. (b)(4). Pub. L. 99–514, §1221(d), amended par. (4) generally. Prior to amendment, par. (4), exception for foreign corporations not availed of to reduce taxes, read as follows: "For purposes of subsection (a), foreign base company income does not include any item of income received by a controlled foreign corporation if it is established to the satisfaction of the Secretary that neither—

"(A) the creation or organization of such controlled foreign corporation under the laws of the foreign country in which it is incorporated (or, in the case of a controlled foreign corporation which is an acquired corporation, the acquisition of such corporation created or organized under the laws of the foreign country in which it is incorporated), nor

"(B) the effecting of the transaction giving rise to such income through the controlled foreign corporation,

has as one of its significant purposes a substantial reduction of income, war profits, or excess profits or similar taxes. The preceding sentence shall not apply to foreign base company oil related income described in subsection (a)(5)."

Subsec. (b)(5). Pub. L. 99–514, §1201(c), inserted at end "Except to the extent provided in regulations prescribed by the Secretary, any interest which is paid or accrued by the controlled foreign corporation to any United States shareholder in such corporation (or any controlled foreign corporation related to such a shareholder) shall be allocated first to foreign personal holding company income which is passive income (within the meaning of section 904(d)(2)) of such corporation to the extent thereof. The Secretary may, by regulations, provide that the preceding sentence shall apply also to interest paid or accrued to other persons."

Subsec. (c). Pub. L. 99–514, §1221(a)(1), amended subsec. (c) generally, substituting pars. (1) to (3) for former provisions which had provided: in par. (1), a reference to definition of "foreign personal holding company income" contained in section 553; in par. (2), that all rents would be included in "foreign personal holding company income" without regard to whether or not such rents constituted 50 percent or more of gross income; in par. (3), for exclusion of certain income derived in active conduct of a trade or business; and in par. (4), exclusion of certain income received from related persons from being included in "foreign personal holding company income". See subsec. (c)(3).

Subsec. (d)(3). Pub. L. 99–514, §1221(e), added subpars. (A) and (B) and concluding provisions and struck out former subpars. (A) to (C) and concluding provisions which read as follows:

"(A) such person is an individual, partnership, trust, or estate which controls the controlled foreign corporation;

"(B) such person is a corporation which controls, or is controlled by, the controlled foreign corporation; or

"(C) such person is a corporation which is controlled by the same person or persons which control the controlled foreign corporation.

For purposes of the preceding sentence, control means the ownership, directly or indirectly, of stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote. For purposes of this paragraph, the rules for determining ownership of stock prescribed by section 958 shall apply."

Subsec. (e). Pub. L. 99–514, §1810(k), in amending subsec. (e) generally, designated existing provisions as par. (1), added par. heading, and substituted subpar. (A) and (B) designations for prior par. (1) and (2) designations, struck out provisions relating to nonapplicability of preceding sentence to services performed in connection with manufactured or grown or extracted property, and provisions determining the place of performance of services for purposes of paragraph (2) with respect to any policy of insurance and reinsurance, and added pars. (2) and (3).

Subsec. (e)(3). Pub. L. 99–514, §1221(b)(3)(B), and Pub. L. 100–647, §1018(u)(38), struck out par. (3) as enacted by section 1810(k) of Pub. L. 99–514, which read as follows: "For purposes of paragraph (1), in the case of any services performed with respect to any policy of insurance or reinsurance with respect to which the primary insured is a related person (within the meaning of section 864(d)(4))—

"(A) such primary insured shall be treated as a related person for purposes of paragraph (1)(A) (whether or not the requirements of subsection (d)(3) are met),

"(B) such services shall be treated as performed in the country within which the insured hazards, risks, losses, or liabilities occur, and

"(C) except as otherwise provided in regulations by the Secretary, rules similar to the rules of section 953(b) shall be applied in determining the income from such services."

Subsec. (f). Pub. L. 99–514, §1221(c)(2), inserted last sentence.

Subsecs. (g), (h). Pub. L. 99–514, §1221(c)(3)(A)(i), redesignated subsec. (h) as (g) and struck out former subsec. (g), increase in qualified investments in foreign base company shipping operations, which read as follows: "For purposes of subsection (b)(2), the increase for any taxable year in qualified investments in foreign base company shipping operations of any controlled foreign corporation is the amount by which—

"(1) the qualified investments in foreign base company shipping operations (as defined in section 955(b)) of the controlled foreign corporation at the close of the taxable year, exceed

"(2) the qualified investments in foreign base company shipping operations (as so defined) of the controlled foreign corporation at the close of the preceding taxable year."

1984—Subsec. (e). Pub. L. 98–369, §137(a), inserted provision that for purposes of par. (2) services performed with respect to any insurance or reinsurance policy be treated as performed in the country of risk.

Subsec. (h)(1). Pub. L. 98–369, §712(f), substituted "paragraphs (2) and (3) of section 907(c)" for "section 907(c)(2)".

1982—Subsec. (a)(5). Pub. L. 97–248, §212(a), (e), added par. (5).

Subsec. (b)(4). Pub. L. 97–248, §212(d), inserted at end "The preceding sentence shall not apply to foreign base company oil related income described in subsection (a)(5)."

Subsec. (b)(5). Pub. L. 97–248, §212(b)(1), substituted ", the foreign base company shipping income, and the foreign base company oil related income" for "and the foreign base company shipping income".

Subsec. (b)(8). Pub. L. 97–248, §212(b)(2), added par. (8).

Subsec. (h). Pub. L. 97–248, §212(c), added subsec. (h).

1976—Subsecs. (b)(4), (5). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (b)(7). Pub. L. 94–455, §1024(a), added par. (7).

Subsec. (c)(3)(C). Pub. L. 94–455, §1023(a), added subpar. (C).

1975—Subsec. (a)(4). Pub. L. 94–12, §602(d)(1)(A), added par. (4).

Subsec. (b)(1). Pub. L. 94–12, §602(c)(1), struck out subsec. (b)(1) which related to the exclusion of certain dividends, interest, and gains from qualified investments in less developed countries.

Subsec. (b)(2). Pub. L. 94–12, §602(d)(1)(B), substituted "foreign base company shipping income to the extent that the amount of such income does not exceed the increase for the taxable year in qualified investments in foreign base company shipping operations of the controlled foreign corporation (as determined under subsection (g))" for "income derived from, or in connection with, the use (or hiring or leasing for use) of

any aircraft or vessel in foreign commerce, or the performance of services directly related to the use of any such aircraft or vessel" in text and "Exclusion for reinvested shipping income" for "Exclusion of certain shipping income" in heading.

Subsec. (b)(3). Pub. L. 94–12, §602(d)(1)(C), (D), (e), substituted "10 percent" for "30 percent" in heading, substituted "paragraphs (2) and (5)" for "paragraphs (1) and (5)" and "10 percent" for "30 percent" in subpar. (A), and substituted "paragraphs (2) and (5)" for "paragraphs (1) and (5)" and "paragraphs (2), (4), and (5)" for "paragraphs (1), (2), (4), and (5)" in subpar. (B).

Subsec. (b)(5). Pub. L. 94–12, §602(d)(1)(E), substituted "the foreign base company services income, and the foreign base company shipping income" for "and the foreign base company services income".

Subsec. (b)(6). Pub. L. 94–12, §602(d)(1)(F), added par. (6).

Subsec. (d)(1). Pub. L. 94–12, §602(b), provided that for purposes of subsec. (d) personal property does not include agricultural commodities which are not grown in the United States in commercially marketable quantities.

Subsecs. (f), (g). Pub. L. 94–12, §602(c)(2), (d)(1)(G), added subsecs. (f) and (g).

1969—Subsec. (b)(4). Pub. L. 91–172 inserted reference to a foreign corporation which is an acquired corporation, and made the effecting of a transaction giving rise to foreign base income through the controlled foreign corporation subject to the Secretary's power to disallow inclusion of any item of such income where such inclusion will have one of the effects prescribed by this section.

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by section 322(b) of Pub. L. 112–240 applicable to taxable years of foreign corporations beginning after Dec. 31, 2011, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends, see section 322(c) of Pub. L. 112–240, set out as a note under section 953 of this title.

Pub. L. 112–240, title III, §323(b), Jan. 2, 2013, 126 Stat. 2333, provided that: "The amendment made by this section [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 2011, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end."

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 750(a) of Pub. L. 111–312 applicable to taxable years of foreign corporations beginning after Dec. 31, 2009, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends, see section 750(c) of Pub. L. 111–312, set out as a note under section 953 of this title.

Pub. L. 111–312, title VII, §751(b), Dec. 17, 2010, 124 Stat. 3321, provided that: "The amendment made by this section [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 2009, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends."

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title III, §304(b), Oct. 3, 2008, 122 Stat. 3867, provided that: "The amendment made by this section [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 2007, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end."

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by section 4(a) of Pub. L. 110–172 effective as if included in the provisions of the Tax Increase Prevention and Reconciliation Act of 2005, Pub. L. 109–222, to which such amendment relates, with certain exceptions, see section 4(d) of Pub. L. 110–172, set out as a note under section 355 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title IV, §426(a)(2), Dec. 20, 2006, 120 Stat. 2974, provided that: "The amendments made by this subsection [amending this section] shall take effect as if included in section 103(b) of the Tax Increase Prevention and Reconciliation Act of 2005 [Pub. L. 109–222]."

Pub. L. 109–222, title I, §103(b)(2), May 17, 2006, 120 Stat. 347, provided that: "The amendment made by this subsection [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 2005, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end."

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 403(m) of Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title IV, §412(b), Oct. 22, 2004, 118 Stat. 1506, provided that: "The amendment made by this section [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end."

Amendment by section 413(b)(2) of Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

Pub. L. 108–357, title IV, §414(d), Oct. 22, 2004, 118 Stat. 1511, provided that: "The amendments made by this section [amending this section] shall apply to transactions entered into after December 31, 2004."

Amendment by section 415(a), (b), (c)(2) of Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 415(d) of Pub. L. 108–357, set out as a note under section 952 of this title.

Pub. L. 108–357, title IV, §416(b), Oct. 22, 2004, 118 Stat. 1512, provided that: "The amendment made by this section [amending this section] shall apply to taxable years of such foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of such foreign corporations end."

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by section 614(a)(2), (b)(1) of Pub. L. 107–147 applicable to taxable years beginning after Dec. 31, 2001, see section 614(c) of Pub. L. 107–147, set out as a note under section 953 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 503(a) of Pub. L. 106–170 applicable to taxable years beginning after Dec. 31, 1999, see section 503(c) of Pub. L. 106–170, set out as a note under section 953 of this title.

Amendment by section 532(c)(2)(Q) of Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 4003(j) of Pub. L. 105–277 effective as if included in the provision of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 4003(l) of Pub. L. 105–277, set out as a note under section 86 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title X, §1051(c), Aug. 5, 1997, 111 Stat. 940, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 5, 1997]."

Pub. L. 105–34, title XI, §1175(c), Aug. 5, 1997, 111 Stat. 993, provided that: "The amendments made by this section [amending this section] shall apply to the first full taxable year of a foreign corporation beginning after December 31, 1997, and before January 1, 1999, and to taxable years of United States shareholders with or within which such taxable year of such foreign corporation ends."

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13233(a)(2), Aug. 10, 1993, 107 Stat. 502, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to taxable years of controlled foreign corporations beginning after September 30, 1993, and to taxable years of United States shareholders in which or with which such taxable years of controlled foreign corporations end."

Amendment by section 13235(a)(3) and (b) of Pub. L. 103–66 applicable to taxable years beginning after Dec. 31, 1992, see section 13235(c) of Pub. L. 103–66, set out as a note under section 904 of this title.

Amendment by section 13239(d) of Pub. L. 103–66 applicable to sales, exchanges, or other dispositions after Aug. 10, 1993, see section 13239(e) of Pub. L. 103–66, set out as a note under section 865 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1201(c) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, except as otherwise provided, see section 1201(e) of Pub. L. 99–514, set out as a note under section 904 of this title.

Pub. L. 99–514, title XII, §1221(g), Oct. 22, 1986, 100 Stat. 2555, as amended by Pub. L. 100–647, title I, §1012(i)(13), Nov. 10, 1988, 102 Stat. 3509, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 864, 952, 953, 955, and 957 of this title] shall apply to taxable years of foreign corporations beginning after December 31, 1986.

"(2) SPECIAL RULE FOR REPEAL OF EXCLUSION FOR REINVESTMENT SHIPPING INCOME.—

"(A) IN GENERAL.—In the case of any qualified controlled foreign corporation—

"(i) the amendments made by subsection (c) [amending this section and section 955 of this title] shall apply to taxable years ending on or after January 1, 1992, and

"(ii) sections 955(a)(1)(A) and 955(a)(2)(A) of the Internal Revenue Code of 1986 (as amended by subsection (c)(3)) shall be applied by substituting 'ending before 1992' for 'beginning before 1987'.

"(B) QUALIFIED CONTROLLED FOREIGN CORPORATION.—For purposes of subparagraph (A), the term 'qualified controlled foreign corporation' means any controlled foreign corporation (as defined in section 957 of such Code)—

"(i) if the United States agent of such corporation is a domestic corporation incorporated on March 13, 1951, and

"(ii) if—

"(I) the certificate of incorporation of such corporation is dated November 23, 1963, and

"(II) such corporation has a wholly owned subsidiary and its certificate of incorporation is dated November 2, 1965.

"(3) EXCEPTION FOR CERTAIN REINSURANCE CONTRACTS.—

"(A) IN GENERAL.—In the case of the 1st 3 taxable years of a qualified controlled foreign insurer beginning after December 31, 1986, the amendments made by this section shall not apply to the phase-in percentage of any qualified reinsurance income.

"(B) PHASE-IN PERCENTAGE.—For purposes of subparagraph (A):

"In the case of taxable years beginning in:	The phase-in percentage is:
1987	75
1988	50
1989	25.

"(C) QUALIFIED CONTROLLED FOREIGN INSURER.—For purposes of this paragraph, the term 'qualified controlled foreign insurer' means—

"(i) any controlled foreign corporation which on August 16, 1986, was a member of an affiliated group (as defined in section 1504(a) of the Internal Revenue Code of 1986 without regard to subsection (b)(3) thereof) which had as its common parent a corporation incorporated in Delaware on June 9, 1967, with executive offices in New York, New York, or

"(ii) any controlled foreign corporation which on August 16, 1986, was a member of an affiliated group (as so defined) which had as its common parent a corporation incorporated in Delaware on November 3, 1981, with executive offices in Philadelphia, Pennsylvania.

"(D) QUALIFIED REINSURANCE INCOME.—For purposes of this paragraph, the term 'qualified reinsurance income' means any insurance income attributable to risks (other than risks described in section 953(a) or 954(e) of such Code as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]) assumed under a reinsurance contract. For purposes of this subparagraph, insurance income shall mean the underwriting income (as defined in section 832(b)(3) of such Code) and investment income derived from an amount of assets (to be segregated and separately identified) equivalent to the ordinary and necessary insurance reserves and necessary surplus equal to 1/3 of earned premium attributable to such contracts. For purposes of this paragraph, the amount of qualified reinsurance income shall not exceed the amount of insurance income from reinsurance contracts for calendar year 1985. In the case of controlled foreign corporations described in subparagraph (C)(ii), the preceding sentence shall not apply and the qualified reinsurance income of any such corporation shall not exceed such corporation's proportionate share of $27,000,000 (determined on the basis of respective amounts of qualified reinsurance income determined without regard to this subparagraph)."

Amendment by section 1223(a) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1223(c) of Pub. L. 99–514, set out as a note under section 864 of this title.

Amendment by section 1810(k) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §137(b), July 18, 1984, 98 Stat. 672, provided that: "The amendments made by subsection (a) [amending this section] shall apply to taxable years of controlled foreign corporations beginning after the date of the enactment of this Act [July 18, 1984]."

Amendment by section 712(f) of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title II, §212(f), Sept. 3, 1982, 96 Stat. 452, provided that: "The amendments made by this section [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 1982, and to taxable years of United States shareholders in which, or with which, such taxable years of foreign corporations end."

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title X, §1023(b), Oct. 4, 1976, 90 Stat. 1620, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendment made by this section [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 1975, and to taxable years of United States shareholders (within the meaning of section 951(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) within which or with which such taxable years of such foreign corporations end."

Pub. L. 94–455, title X, §1024(b), Oct. 4, 1976, 90 Stat. 1620, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendment made by this section [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 1975, and to taxable years of United States shareholders (within the meaning of section 951(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) within which or with which such taxable years of such foreign corporations end."

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–12 applicable to taxable years of foreign corporations beginning after Dec. 31, 1975, and to taxable years of United States shareholders (within the meaning of section 951(b) of this title) within which or with which such taxable years of such foreign corporations end, see section 602(f) of Pub. L. 94–12, set out as an Effective Date note under section 955 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title IX, §909(b), Dec. 30, 1969, 83 Stat. 718, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after October 9, 1969."

LINE ITEM VETO

Pub. L. 105–34, title XI, §1175, Aug. 5, 1997, 111 Stat. 990, amending this section and enacting provisions set out as a note above, was subject to line item veto by the President, Cancellation No. 97–1, signed Aug. 11, 1997, 62 F.R. 43266, Aug. 12, 1997. For decision holding line item veto unconstitutional, see *Clinton v. City*

of New York, 524 U.S. 417, 118 S.Ct. 2091, 141 L.Ed.2d 393 (1998).

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 1201(c) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

SPECIAL RULE FOR APPLICATION OF SECTION 954 TO CERTAIN DIVIDENDS

Pub. L. 99–514, title XII, §1227, Oct. 22, 1986, 100 Stat. 2560, provided that:

"(a) IN GENERAL.—For purposes of section 954(c)(3)(A) of the Internal Revenue Code of 1986, any dividends received by a qualified controlled foreign corporation (within the meaning of section 951 of such Code) during any of its 1st 5 taxable years beginning after December 31, 1986, with respect to its 32.7 percent interest in a Brazilian corporation shall be treated as if such Brazilian corporation were a related person to the qualified controlled foreign corporation to the extent the Brazilian corporation's income is attributable to its interest in the trade or business of mining in Brazil.

"(b) QUALIFIED CONTROLLED FOREIGN CORPORATION.—For purposes of this section, a qualified controlled foreign corporation is a corporation the greater than 99 percent shareholder of which is a company originally incorporated in Montana on July 9, 1951 (the name of which was changed on August 10, 1966).

"(c) EFFECTIVE DATE.—The amendment made by this section shall apply to dividends received after December 31, 1986."

[1] So in original.

[2] So in original. The comma probably should not appear.

§955. Withdrawal of previously excluded subpart F income from qualified investment

(a) General rules

(1) Amount withdrawn

For purposes of this subpart, the amount of previously excluded subpart F income of any controlled foreign corporation withdrawn from investment in foreign base company shipping operations for any taxable year is an amount equal to the decrease in the amount of qualified investments in foreign base company shipping operations of the controlled foreign corporation for such year, but only to the extent that the amount of such decrease does not exceed an amount equal to—

(A) the sum of the amounts excluded under section 954(b)(2) from the foreign base company income of such corporation for all prior taxable years beginning before 1987, reduced by

(B) the sum of the amounts of previously excluded subpart F income withdrawn from investment in foreign base company shipping operations of such corporation determined under this subsection for all prior taxable years.

(2) Decrease in qualified investments

For purposes of paragraph (1), the amount of the decrease in qualified investments in foreign base company shipping operations of any controlled foreign corporation for any taxable year is the amount by which—

(A) the amount of qualified investments in foreign base company shipping operations of the controlled foreign corporation as of the close of the last taxable year beginning before 1987 (to the extent such amount exceeds the sum of the decreases in qualified investments determined under this paragraph for prior taxable years beginning after 1986), exceeds

(B) the amount of qualified investments in foreign base company shipping operations of the controlled foreign corporation at the close of the taxable year,

to the extent that the amount of such decrease does not exceed the sum of the earnings and profits for the taxable year and the earnings and profits accumulated for prior taxable years beginning after December 31, 1975, and the amount of previously excluded subpart F income invested in less developed country corporations described in section 955(c)(2) (as in effect before the enactment of the Tax Reduction Act of 1975) to the extent attributable to earnings and profits accumulated for taxable years beginning after December 31, 1962. For purposes of this paragraph, if qualified investments in foreign base company shipping operations are disposed of by the controlled foreign corporation during the taxable year, the amount of the decrease in qualified investments in foreign base company shipping operations of such controlled foreign corporations for such year shall be reduced by an amount equal to the amount (if any) by which the losses on such dispositions during such year exceed the gains on such dispositions during such year.

(3) Pro rata share of amount withdrawn

In the case of any United States shareholder, the pro rata share of the amount of previously excluded subpart F income of any controlled foreign corporation withdrawn from investment in foreign base company shipping operations for any taxable year is his pro rata share of the amount determined under paragraph (1).

(b) Qualified investments in foreign base company shipping operations

(1) In general

For purposes of this subpart, the term "qualified investments in foreign base company shipping operations" means investments in—

(A) any aircraft or vessel used in foreign commerce, and

(B) other assets which are used in connection with the performance of services directly related to the use of any such aircraft or vessel.

Such term includes, but is not limited to, investments by a controlled foreign corporation in stock or obligations of another controlled foreign corporation which is a related person (within the meaning of section 954(d)(3)) and which holds assets described in the preceding sentence, but only to the extent that such assets are so used.

(2) Qualified investments by related persons

For purposes of determining the amount of qualified investments in foreign based company shipping operations, an investment (or a decrease in investment) in such operations by one or more controlled foreign corporations may, under regulations prescribed by the Secretary, be treated as an investment (or a decrease in investment) by another corporation which is a controlled foreign corporation and is a related person (as defined in section 954(d)(3) with respect to the corporation actually making or withdrawing the investment.

(3) Special rule

For purposes of this subpart, a United States shareholder of a controlled foreign corporation may, under regulations prescribed by the Secretary, elect to make the determinations under subsection (a)(2) of this section and under subsection (g) of section 954 as of the close of the years following the years referred to in such subsections, or as of the close of such longer period of time as such regulations may permit, in lieu of on the last day of such years. Any election under this paragraph made with respect to any taxable year shall apply to such year and to all succeeding taxable years unless the Secretary consents to the revocation of such election.

(4) Amount attributable to property

The amount taken into account under this subpart with respect to any property described in paragraph (1) shall be its adjusted basis, reduced by any liability to which such property is subject.

(5) Income excluded under prior law

Amounts invested in less developed country corporations described in section 955(c)(2) (as in effect before the enactment of the Tax Reduction Act of 1975) shall be treated as qualified investments in foreign base company shipping operations and shall not be treated as investments in less developed countries for purposes of section 951(a)(1)(A)(ii).

(Added Pub. L. 94–12, title VI, §602(d)(3)(A), Mar. 29, 1975, 89 Stat. 62; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 99–514, title XII, §1221(c)(3)(B), (C), Oct. 22, 1986, 100 Stat. 2553; Pub. L. 100–647, title I, §1012(i)(11), Nov. 10, 1988, 102 Stat. 3509.)

REFERENCES IN TEXT

Section 955(c)(2) (as in effect before the enactment of the Tax Reduction Act of 1975), referred to in subsecs. (a)(2) and (b)(5), refers to section 955(c)(2) as added by Pub. L. 87–834, §12(a), Oct. 16, 1962, 76 Stat. 1013, and as in effect from 1962 until the repeal of that section and the enactment of this section by Pub. L. 94–12.

The Tax Reduction Act of 1975, referred to in subsecs. (a)(2) and (b)(5), is Pub. L. 94–12, Mar. 29, 1975, 89 Stat. 26, as amended, which was enacted Mar. 29, 1975. For complete classification of this Act to the Code, see Short Title of 1975 Amendment note set out under section 1 of this title and Tables.

PRIOR PROVISIONS

A prior section 955, added Pub. L. 87–834, §12(a), Oct. 16, 1962, 76 Stat. 1013, related to investments in less developed countries and dealing with less developed country corporations, prior to repeal by Pub. L. 94–12, title VI, §602(c)(5), Mar. 29, 1975, 89 Stat. 59.

AMENDMENTS

1988—Subsec. (a)(2)(A). Pub. L. 100–647 inserted "(to the extent such amount exceeds the sum of the decreases in qualified investments determined under this paragraph for prior taxable years beginning after 1986)" after "beginning before 1987".

1986—Subsec. (a)(1)(A). Pub. L. 99–514, §1221(c)(3)(B), inserted "beginning before 1987" after "all prior taxable years".

Subsec. (a)(2)(A). Pub. L. 99–514, §1221(c)(3)(C), substituted "as of the close of the last taxable year beginning before 1987" for "at the close of the preceding taxable year".

1976—Subsec. (b)(2), (3). Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years of foreign corporations beginning after Dec. 31, 1986, except as otherwise provided, see section 1221(g) of Pub. L. 99–514, set out as a note under section 954 of this title.

EFFECTIVE DATE

Pub. L. 94–12, title VI, §602(f), Mar. 29, 1975, 89 Stat. 64, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by this section [enacting this section, amending sections 851, 902, 951, and 954 of this title, and repealing section 963 and former section 955 of this title] shall apply to taxable years of foreign corporations beginning after December 31, 1975, and to taxable years of United States shareholders (within the meaning of 951(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) within which or with which such taxable years of such foreign corporations end."

§956. Investment of earnings in United States property

(a) General rule

In the case of any controlled foreign corporation, the amount determined under this section with respect to any United States shareholder for any taxable year is the lesser of—

(1) the excess (if any) of—

(A) such shareholder's pro rata share of the average of the amounts of United States property held (directly or indirectly) by the controlled foreign corporation as of the close of each quarter of such taxable year, over

(B) the amount of earnings and profits described in section 959(c)(1)(A) with respect to such shareholder, or

(2) such shareholder's pro rata share of the applicable earnings of such controlled foreign corporation.

The amount taken into account under paragraph (1) with respect to any property shall be its adjusted basis as determined for purposes of computing earnings and profits, reduced by any liability to which the property is subject.

(b) Special rules

(1) Applicable earnings

For purposes of this section, the term "applicable earnings" means, with respect to any controlled foreign corporation, the sum of—

(A) the amount (not including a deficit) referred to in section 316(a)(1) to the extent such amount was accumulated in prior taxable years, and

(B) the amount referred to in section 316(a)(2),

but reduced by distributions made during the taxable year and by earnings and profits described in section 959(c)(1).

(2) Special rule for U.S. property acquired before corporation is a controlled foreign corporation

In applying subsection (a) to any taxable year, there shall be disregarded any item of United States property which was acquired by the controlled foreign corporation before the first day on which such corporation was treated as a controlled foreign corporation. The aggregate amount of property disregarded under the preceding sentence shall not exceed the portion of the applicable earnings of such controlled foreign corporation which were accumulated during periods before such first day.

(3) Special rule where corporation ceases to be controlled foreign corporation

If any foreign corporation ceases to be a controlled foreign corporation during any taxable year—

(A) the determination of any United States shareholder's pro rata share shall be made on the basis of stock owned (within the meaning of section 958(a)) by such shareholder on the last day during the taxable year on which the foreign corporation is a controlled foreign corporation,

(B) the average referred to in subsection (a)(1)(A) for such taxable year shall be determined by only taking into account quarters ending on or before such last day, and

(C) in determining applicable earnings, the amount taken into account by reason of being described in paragraph (2) of section 316(a) shall be the portion of the amount so described which is allocable (on a pro rata basis) to the part of such year during which the corporation is a controlled foreign corporation.

(c) United States property defined

(1) In general

For purposes of subsection (a), the term "United States property" means any property acquired after December 31, 1962, which is—

(A) tangible property located in the United States;

(B) stock of a domestic corporation;

(C) an obligation of a United States person; or

(D) any right to the use in the United States of—

(i) a patent or copyright,

(ii) an invention, model, or design (whether or not patented),

(iii) a secret formula or process, or

(iv) any other similar right,

which is acquired or developed by the controlled foreign corporation for use in the United States.

(2) Exceptions

For purposes of subsection (a), the term "United States property" does not include—

(A) obligations of the United States, money, or deposits with—

(i) any bank (as defined by section 2(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)), without regard to subparagraphs (C) and (G) of paragraph (2) of such section), or

(ii) any corporation not described in clause (i) with respect to which a bank holding company (as defined by section 2(a) of such Act) or financial holding company (as defined by section 2(p) of such Act) owns directly or indirectly more than 80 percent by vote or value of the stock of such corporation;

(B) property located in the United States which is purchased in the United States for export to, or use in, foreign countries;

(C) any obligation of a United States person arising in connection with the sale or processing of property if the amount of such obligation outstanding at no time during the taxable year exceeds the amount which would be ordinary and necessary to carry on the trade or business of both the other party to the sale or processing transaction and the United States person had the sale or processing transaction been made between unrelated persons;

(D) any aircraft, railroad rolling stock, vessel, motor vehicle, or container used in the transportation of persons or property in foreign commerce and used predominantly outside the United States;

(E) an amount of assets of an insurance company equivalent to the unearned premiums or reserves ordinary and necessary for the proper conduct of its insurance business attributable to contracts which are not contracts described in section 953(a)(1); [1]

(F) the stock or obligations of a domestic corporation which is neither a United States shareholder (as defined in section 951(b)) of the controlled foreign corporation, nor a domestic corporation, 25 percent or more of the total combined voting power of which, immediately after the acquisition of any stock in such domestic corporation by the controlled foreign corporation, is owned, or is considered as being owned, by such United States shareholders in the aggregate;

(G) any movable property (other than a vessel or aircraft) which is used for the purpose of exploring for, developing, removing, or transporting resources from ocean waters or under such waters when used on the Continental Shelf of the United States;

(H) an amount of assets of the controlled foreign corporation equal to the earnings and profits accumulated after December 31, 1962, and excluded from subpart F income under section 952(b);

(I) deposits of cash or securities made or received on commercial terms in the ordinary course of a United States or foreign person's business as a dealer in securities or in commodities, but only to the extent such deposits are made or received as collateral or margin for (i) a securities loan, notional principal contract, options contract, forward contract, or futures contract, or (ii)

any other financial transaction in which the Secretary determines that it is customary to post collateral or margin;

(J) an obligation of a United States person to the extent the principal amount of the obligation does not exceed the fair market value of readily marketable securities sold or purchased pursuant to a sale and repurchase agreement or otherwise posted or received as collateral for the obligation in the ordinary course of its business by a United States or foreign person which is a dealer in securities or commodities;

(K) securities acquired and held by a controlled foreign corporation in the ordinary course of its business as a dealer in securities if—

(i) the dealer accounts for the securities as securities held primarily for sale to customers in the ordinary course of business, and

(ii) the dealer disposes of the securities (or such securities mature while held by the dealer) within a period consistent with the holding of securities for sale to customers in the ordinary course of business; and

(L) an obligation of a United States person which—

(i) is not a domestic corporation, and

(ii) is not—

(I) a United States shareholder (as defined in section 951(b)) of the controlled foreign corporation, or

(II) a partnership, estate, or trust in which the controlled foreign corporation, or any related person (as defined in section 954(d)(3)), is a partner, beneficiary, or trustee immediately after the acquisition of any obligation of such partnership, estate, or trust by the controlled foreign corporation.

For purposes of subparagraphs (I), (J), and (K), the term "dealer in securities" has the meaning given such term by section 475(c)(1), and the term "dealer in commodities" has the meaning given such term by section 475(e), except that such term shall include a futures commission merchant.

(3) Certain trade or service receivables acquired from related United States persons

(A) In general

Notwithstanding paragraph (2) (other than subparagraph (H) thereof), the term "United States property" includes any trade or service receivable if—

(i) such trade or service receivable is acquired (directly or indirectly) from a related person who is a United States person, and

(ii) the obligor under such receivable is a United States person.

(B) Definitions

For purposes of this paragraph, the term "trade or service receivable" and "related person" have the respective meanings given to such terms by section 864(d).

(d) Pledges and guarantees

For purposes of subsection (a), a controlled foreign corporation shall, under regulations prescribed by the Secretary, be considered as holding an obligation of a United States person if such controlled foreign corporation is a pledgor or guarantor of such obligations.

(e) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section, including regulations to prevent the avoidance of the provisons [2] of this section through reorganizations or otherwise.

(Added Pub. L. 87–834, §12(a), Oct. 16, 1962, 76 Stat. 1015; amended Pub. L. 94–455, title X, §1021(a), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1618, 1834; Pub. L. 98–369, div. A, title I, §123(b), title VIII, §801(d)(8), July 18, 1984, 98 Stat. 646, 996; Pub. L. 99–514, title XVIII, §1810(c)(1), Oct. 22, 1986, 100 Stat. 2824; Pub. L. 103–66, title XIII, §13232(a), (b), Aug. 10, 1993,

107 Stat. 501; Pub. L. 104–188, title I, §1501(b)(2), (3), Aug. 20, 1996, 110 Stat. 1825; Pub. L. 105–34, title XI, §1173(a), title XVI, §1601(e), Aug. 5, 1997, 111 Stat. 988, 1090; Pub. L. 108–357, title IV, §407(a), (b), title VIII, §837(a), Oct. 22, 2004, 118 Stat. 1498, 1499, 1596; Pub. L. 110–172, §11(g)(15)(A), Dec. 29, 2007, 121 Stat. 2490.)

REFERENCES IN TEXT

Section 953(a)(1), referred to in subsec. (c)(2)(E), was subsequently amended, and section 953(a)(1) no longer describes contracts. However, contracts are described elsewhere in that section.

AMENDMENTS

2007—Subsec. (c)(2). Pub. L. 110–172, §11(g)(15)(A)(ii), substituted "subparagraphs (I), (J), and (K)" for "subparagraphs (J), (K), and (L)" in concluding provisions.

Subsec. (c)(2)(I) to (M). Pub. L. 110–172, §11(g)(15)(A)(i), redesignated subpars. (J) to (M) as (I) to (L), respectively, and struck out former subpar. (I) which read as follows: "to the extent provided in regulations prescribed by the Secretary, property which is otherwise United States property which is held by a FSC and which is related to the export activities of such FSC;".

2004—Subsec. (c)(2). Pub. L. 108–357, §407(b), substituted ", (K), and (L)" for "and (K)" in concluding provisions.

Subsec. (c)(2)(A). Pub. L. 108–357, §837(a), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "obligations of the United States, money, or deposits with persons carrying on the banking business;".

Subsec. (c)(2)(L), (M). Pub. L. 108–357, §407(a), added subpars. (L) and (M).

1997—Subsec. (b)(1)(A). Pub. L. 105–34, §1601(e), inserted "to the extent such amount was accumulated in prior taxable years" after "section 316(a)(1)".

Subsec. (c)(2). Pub. L. 105–34, §1173(a), added subpars. (J) and (K) and concluding provisions.

1996—Subsec. (b)(1). Pub. L. 104–188, §1501(b)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "For purposes of this section, the term 'applicable earnings' has the meaning given to such term by section 956A(b), except that the provisions of such section excluding earnings and profits accumulated in taxable years beginning before October 1, 1993, shall be disregarded."

Subsec. (b)(3). Pub. L. 104–188, §1501(b)(3), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "Rules similar to the rules of section 956A(e) shall apply for purposes of this section."

1993—Subsec. (a). Pub. L. 103–66, §13232(a)(2), added subsec. (a) and struck out former subsec. (a) which consisted of introductory provisions and pars. (1) to (3) setting out general rules for calculating amount of earnings of a controlled foreign corporation invested in United States and pro rata share of the increase for any taxable year in earnings of such a corporation invested in United States property.

Subsecs. (b) to (d). Pub. L. 103–66, §13232(a), added subsec. (b) and redesignated former subsecs. (b) and (c) as (c) and (d), respectively.

Subsec. (e). Pub. L. 103–66, §13232(b), added subsec. (e).

1986—Subsec. (b)(3)(A). Pub. L. 99–514 inserted "(other than subparagraph (H) thereof)".

1984—Subsec. (b)(2)(I). Pub. L. 98–369, §801(d)(8), added subpar. (I).

Subsec. (b)(3). Pub. L. 98–369, §123(b), added par. (3).

1976—Subsec. (b)(2)(F) to (H). Pub. L. 94–455, §1021(a), added subpars. (F) and (G) and redesignated former subpar. (F) as (H).

Subsec. (c). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title IV, §407(c), Oct. 22, 2004, 118 Stat. 1499, provided that: "The amendments made by this section [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end."

Pub. L. 108–357, title VIII, §837(b), Oct. 22, 2004, 118 Stat. 1596, provided that: "The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Oct. 22, 2004]."

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XI, §1173(b), Aug. 5, 1997, 111 Stat. 989, provided that: "The amendments made by

this section [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 1997, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end."

Amendment by section 1601(e) of Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 23 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to taxable years of foreign corporations beginning after Dec. 31, 1996, and to taxable years of United States shareholders within which or with which such taxable years of foreign corporations end, see section 1501(d) of Pub. L. 104–188, set out as a note under section 904 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to taxable years of controlled foreign corporations beginning after Sept. 30, 1993, and to taxable years of United States shareholders in which or with which such taxable years of controlled foreign corporations end, see section 13232(d) of Pub. L. 103–66, set out as a note under section 951 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 123(b) of Pub. L. 98–369 applicable to accounts receivable and evidences of indebtedness transferred after Mar. 1, 1984, in taxable years ending after such date, with an exception, see section 123(c) of Pub. L. 98–369, set out as a note under section 864 of this title.

Amendment by section 801(d)(8) of Pub. L. 98–369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title X, §1021(c), Oct. 4, 1976, 90 Stat. 1619, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by this section [amending this section and section 958 of this title] shall apply to taxable years of foreign corporations beginning after December 31, 1975, and to taxable years of United States shareholders (within the meaning of section 951(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) within which or with which such taxable years of such foreign corporations end. In determining for purposes of any taxable year referred to in the preceding sentence the amount referred to in section 956(a)(2)(A) of the Internal Revenue Code of 1986 for the last taxable year of a corporation beginning before January 1, 1976, the amendments made by this section shall be deemed also to apply to such last taxable year."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[1] See References in Text note below.

[2] So in original. Probably should be "provisions".

[§956A. Repealed. Pub. L. 104–188, title I, §1501(a)(2), Aug. 20, 1996, 110 Stat. 1825]

Section, added Pub. L. 103–66, title XIII, §13231(b), Aug. 10, 1993, 107 Stat. 496; amended Pub. L.

104–188, title I, §1703(i)(2), (3), Aug. 20, 1996, 110 Stat. 1876, related to earnings invested in excess passive assets.

EFFECTIVE DATE OF REPEAL

Repeal by Pub. L. 104–188 applicable to taxable years of foreign corporations beginning after Dec. 31, 1996, and to taxable years of United States shareholders within which or with which such taxable years of foreign corporations end, see section 1501(d) of Pub. L. 104–188, set out as an Effective Date of 1996 Amendment note under section 904 of this title.

§957. Controlled foreign corporations; United States persons

(a) General rule

For purposes of this subpart, the term "controlled foreign corporation" means any foreign corporation if more than 50 percent of—

(1) the total combined voting power of all classes of stock of such corporation entitled to vote, or

(2) the total value of the stock of such corporation,

is owned (within the meaning of section 958(a)), or is considered as owned by applying the rules of ownership of section 958(b), by United States shareholders on any day during the taxable year of such foreign corporation.

(b) Special rule for insurance

For purposes only of taking into account income described in section 953(a) (relating to insurance income), the term "controlled foreign corporation" includes not only a foreign corporation as defined by subsection (a) but also one of which more than 25 percent of the total combined voting power of all classes of stock (or more than 25 percent of the total value of stock) is owned (within the meaning of section 958(a)), or is considered as owned by applying the rules of ownership of section 958(b), by United States shareholders on any day during the taxable year of such corporation, if the gross amount of premiums or other consideration in respect of the reinsurance or the issuing of insurance or annuity contracts described in section 953(a)(1) [1] exceeds 75 percent of the gross amount of all premiums or other consideration in respect of all risks.

(c) United States person

For purposes of this subpart, the term "United States person" has the meaning assigned to it by section 7701(a)(30) except that—

(1) with respect to a corporation organized under the laws of the Commonwealth of Puerto Rico, such term does not include an individual who is a bona fide resident of Puerto Rico, if a dividend received by such individual during the taxable year from such corporation would, for purposes of section 933(1), be treated as income derived from sources within Puerto Rico, and

(2) with respect to a corporation organized under the laws of Guam, American Samoa, or the Northern Mariana Islands—

(A) 80 percent or more of the gross income of which for the 3-year period ending at the close of the taxable year (or for such part of such period as such corporation or any predecessor has been in existence) was derived from sources within such a possession or was effectively connected with the conduct of a trade or business in such a possession, and

(B) 50 percent or more of the gross income of which for such period (or part) was derived from the active conduct of a trade or business within such a possession,

such term does not include an individual who is a bona fide resident of Guam, American Samoa, or the Northern Mariana Islands.

For purposes of subparagraphs (A) and (B) of paragraph (2), the determination as to whether income was derived from the active conduct of a trade or business within a possession shall be made

under regulations prescribed by the Secretary.

(Added Pub. L. 87–834, §12(a), Oct. 16, 1962, 76 Stat. 1017; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 99–514, title XII, §§1221(b)(3)(C), 1222(a), 1224(a), 1273(a), Oct. 22, 1986, 100 Stat. 2553, 2556, 2558, 2595; Pub. L. 108–357, title VIII, §908(c)(5), Oct. 22, 2004, 118 Stat. 1656.)

REFERENCES IN TEXT

Section 953(a)(1), referred to in subsec. (b), was subsequently amended, and section 953(a)(1) no longer describes insurance or annuity contracts. However, insurance or annuity contracts are described elsewhere in that section.

AMENDMENTS

2004—Subsec. (c). Pub. L. 108–357, §908(c)(5)(B), struck out "derived from sources within a possession, was effectively connected with the conduct of a trade or business within a possession, or" after "whether income was" in concluding provisions.

Subsec. (c)(2)(B). Pub. L. 108–357, §908(c)(5)(A), substituted "active conduct of a" for "conduct of an active".

1986—Subsec. (a). Pub. L. 99–514, §1222(a)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "For purposes of this subpart, the term 'controlled foreign corporation' means any foreign corporation of which more than 50 percent of the total combined voting power of all classes of stock entitled to vote is owned (within the meaning of section 958(a)), or is considered as owned by applying the rules of ownership of section 958(b), by United States shareholders on any day during the taxable year of such foreign corporation."

Subsec. (b). Pub. L. 99–514, §1222(a)(2), inserted "(or more than 25 percent of the total value of stock)".

Pub. L. 99–514, §1221(b)(3)(C), substituted "insurance income" for "income derived from insurance of United States risks".

Subsec. (c). Pub. L. 99–514, §1273(a), added par. (2) and concluding provisions and struck out former pars. (2) and (3) which read as follows:

"(2) with respect to a corporation organized under the laws of the Virgin Islands, such term does not include an individual who is a bona fide resident of the Virgin Islands and whose income tax obligation under this subtitle for the taxable year is satisfied pursuant to section 28(a) of the Revised Organic Act of the Virgin Islands, approved July 22, 1954 (48 U.S.C. 1642), by paying tax on income derived from all sources both within and outside the Virgin Islands into the treasury of the Virgin Islands, and

"(3) with respect to a corporation organized under the laws of any other possession of the United States, such term does not include an individual who is a bona fide resident of any such other possession and whose income derived from sources within possessions of the United States is not, by reason of section 931(a), includible in gross income under this subtitle for the taxable year."

Pub. L. 99–514, §1224(a), redesignated subsec. (d) as (c) and struck out former subsec. (c) which provided circumstances under which for purposes of this subpart, the term "controlled foreign corporation" would not include certain corporations created or organized in Puerto Rico or a possession of the United States or under the laws of Puerto Rico or a possession of the United States.

Subsec. (d). Pub. L. 99–514, §1224(a), redesignated subsec. (d) as (c).

1976—Subsec. (c) Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years ending after Oct. 22, 2004, see section 908(d)(1) of Pub. L. 108–357, set out as an Effective Date note under section 937 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1221(b)(3)(C) of Pub. L. 99–514 applicable to taxable years of foreign corporations beginning after Dec. 31, 1986, except as otherwise provided, see section 1221(g) of Pub. L. 99–514, set out as a note under section 954 of this title.

Pub. L. 99–514, title XII, §1222(c), Oct. 22, 1986, 100 Stat. 2557, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and section 552 of this title] shall apply to taxable years of foreign corporations beginning after December 31, 1986; except that for purposes of applying sections 951(a)(1)(B) and 956 of the Internal Revenue Code of 1986, such amendments shall take effect on August 16, 1986.

"(2) TRANSITIONAL RULE.—In the case of any corporation treated as a controlled foreign corporation

by reason of the amendments made by this section, property acquired before August 16, 1986, shall not be taken into account under section 956(b) of the Internal Revenue Code of 1986.

"(3) SPECIAL RULE FOR BENEFICIARY OF TRUST.—In the case of an individual—

"(A) who is a beneficiary of a trust which was established on December 7, 1979, under the laws of a foreign jurisdiction, and

"(B) who was not a citizen or resident of the United States on the date the trust was established, amounts which are included in the gross income of such beneficiary under section 951(a) of the Internal Revenue Code of 1986 with respect to stock held by the trust (and treated as distributed to the trust) shall be treated as the first amounts which are distributed by the trust to such beneficiary and as amounts to which section 959(a) of such Code applies."

Pub. L. 99–514, title XII, §1224(b), Oct. 22, 1986, 100 Stat. 2558, provided that:

"(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 1986; except that for purposes of applying sections 951(a)(1)(B) and 956 of the Internal Revenue Code of 1986, such amendments shall take effect on August 16, 1986.

"(2) TRANSITIONAL RULE.—In the case of any corporation treated as a controlled foreign corporation by reason of the amendment made by subsection (a), property acquired before August 16, 1986, shall not be taken into account under section 956(b) of the Internal Revenue Code of 1986."

Amendment by section 1273(a) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99–514, set out as a note under section 931 of this title.

[1] *See References in Text note below.*

§958. Rules for determining stock ownership

(a) Direct and indirect ownership

(1) General rule

For purposes of this subpart (other than section 960(a)(1)), stock owned means—

(A) stock owned directly, and

(B) stock owned with the application of paragraph (2).

(2) Stock ownership through foreign entities

For purposes of subparagraph (B) of paragraph (1), stock owned, directly or indirectly, by or for a foreign corporation, foreign partnership, or foreign trust or foreign estate (within the meaning of section 7701(a)(31)) shall be considered as being owned proportionately by its shareholders, partners, or beneficiaries. Stock considered to be owned by a person by reason of the application of the preceding sentence shall, for purposes of applying such sentence, be treated as actually owned by such person.

(3) Special rule for mutual insurance companies

For purposes of applying paragraph (1) in the case of a foreign mutual insurance company, the term "stock" shall include any certificate entitling the holder to voting power in the corporation.

(b) Constructive ownership

For purposes of sections 951(b), 954(d)(3), 956(c)(2), and 957, section 318(a) (relating to constructive ownership of stock) shall apply to the extent that the effect is to treat any United States person as a United States shareholder within the meaning of section 951(b), to treat a person as a related person within the meaning of section 954(d)(3), to treat the stock of a domestic corporation as owned by a United States shareholder of the controlled foreign corporation for purposes of section 956(c)(2), or to treat a foreign corporation as a controlled foreign corporation under section 957, except that—

(1) In applying paragraph (1)(A) of section 318(a), stock owned by a nonresident alien individual (other than a foreign trust or foreign estate) shall not be considered as owned by a

citizen or by a resident alien individual.

(2) In applying subparagraphs (A), (B), and (C) of section 318(a)(2), if a partnership, estate, trust, or corporation owns, directly or indirectly, more than 50 percent of the total combined voting power of all classes of stock entitled to vote of a corporation, it shall be considered as owning all the stock entitled to vote.

(3) In applying subparagraph (C) of section 318(a)(2), the phrase "10 percent" shall be substituted for the phrase "50 percent" used in subparagraph (C).

(4) Subparagraph (A), (B), and (C) of section 318(a)(3) shall not be applied so as to consider a United States person as owning stock which is owned by a person who is not a United States person.

Paragraphs (1) and (4) shall not apply for purposes of section 956(c)(2) to treat stock of a domestic corporation as not owned by a United States shareholder.

(Added Pub. L. 87–834, §12(a), Oct. 16, 1962, 76 Stat. 1018; amended Pub. L. 88–554, §4(b)(5), Aug. 31, 1964, 78 Stat. 763; Pub. L. 94–455, title X, §1021(b), Oct. 4, 1976, 90 Stat. 1619; Pub. L. 104–188, title I, §§1703(i)(4), 1704(t)(7), Aug. 20, 1996, 110 Stat. 1876, 1887.)

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–188, §1704(t)(7), substituted "section 960(a)(1)" for "sections 955(b)(1)(A) and (B), 955(c)(2)(A)(ii), and 960(a)(1)" in introductory provisions.

Subsec. (b). Pub. L. 104–188, §1703(i)(4), substituted "956(c)(2)" for "956(b)(2)" wherever appearing in introductory and closing provisions.

1976—Subsec. (b). Pub. L. 94–455 inserted "956(b)(2)" after "purposes of sections 951(b), 954(d)(3),", "to treat the stock of a domestic corporation as owned by a United States shareholder of the controlled foreign corporation for purposes of section 956(b)(2)" after "meaning of section 954(d)(3)" and "Paragraphs (1) and (4) shall not apply for purposes of section 956(b)(2) to treat stock of a domestic corporation as not owned by a United States shareholder" following subpar. (4).

1964—Subsec. (b). Pub. L. 88–554 redesignated pars. (4) and (5) as (3) and (4), respectively, struck out former par. (3) which related to ownership of stock by a partnership, estate, trust, or corporation for purposes of applying first sentence of subpars. (A) and (B), and subpar. (C)(i) of section 318(a)(2) of this title, and made amendments throughout subsec. (b) to conform to changes made in section 318 of this title by Pub. L. 88–554.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1703(i)(4) of Pub. L. 104–188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103–66, §§13001–13444, to which such amendment relates, see section 1703(o) of Pub. L. 104–188, set out as a note under section 39 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable to taxable years of foreign corporations beginning after Dec. 31, 1975, and to taxable years of United States shareholders within which or with which such taxable years of such corporations end, see section 1021(c) of Pub. L. 94–455, set out as a note under section 956 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–554 effective Aug. 31, 1964, except that for purposes of sections 302 and 304 of this title, such amendments shall not apply to distributions in payment for stock acquisitions or redemptions, if such acquisitions or redemptions occurred before Aug. 31, 1964, see section 4(c) of Pub. L. 88–554, set out as a note under section 318 of this title.

§959. Exclusion from gross income of previously taxed earnings and profits

(a) Exclusion from gross income of United States persons

For purposes of this chapter, the earnings and profits of a foreign corporation attributable to amounts which are, or have been, included in the gross income of a United States shareholder under section 951(a) shall not, when—

(1) such amounts are distributed to, or

(2) such amounts would, but for this subsection, be included under section 951(a)(1)(B) in the gross income of,

such shareholder (or any other United States person who acquires from any person any portion of the interest of such United States shareholder in such foreign corporation, but only to the extent of such portion, and subject to such proof of the identity of such interest as the Secretary may by regulations prescribe) directly or indirectly through a chain of ownership described under section 958(a), be again included in the gross income of such United States shareholder (or of such other United States person). The rules of subsection (c) shall apply for purposes of paragraph (1) of this subsection and the rules of subsection (f) shall apply for purposes of paragraph (2) of this subsection.

(b) Exclusion from gross income of certain foreign subsidiaries

For purposes of section 951(a), the earnings and profits of a controlled foreign corporation attributable to amounts which are, or have been, included in the gross income of a United States shareholder under section 951(a), shall not, when distributed through a chain of ownership described under section 958(a), be also included in the gross income of another controlled foreign corporation in such chain for purposes of the application of section 951(a) to such other controlled foreign corporation with respect to such United States shareholder (or to any other United States shareholder who acquires from any person any portion of the interest of such United States shareholder in the controlled foreign corporation, but only to the extent of such portion, and subject to such proof of identity of such interest as the Secretary may prescribe by regulations).

(c) Allocation of distributions

For purposes of subsections (a) and (b), section 316(a) shall be applied by applying paragraph (2) thereof, and then paragraph (1) thereof—

(1) first to the aggregate of—

(A) earnings and profits attributable to amounts included in gross income under section 951(a)(1)(B) (or which would have been included except for subsection (a)(2) of this section), and

(B) earnings and profits attributable to amounts included in gross income under section 951(a)(1)(C) (or which would have been included except for subsection (a)(3) of this section),

with any distribution being allocated between earnings and profits described in subparagraph (A) and earnings and profits described in subparagraph (B) proportionately on the basis of the respective amounts of such earnings and profits,

(2) then to earnings and profits attributable to amounts included in gross income under section 951(a)(1)(A) (but reduced by amounts not included under subparagraph (B) or (C) of section 951(a)(1) because of the exclusions in paragraphs (2) and (3) of subsection (a) of this section), and

(3) then to other earnings and profits.

References in this subsection to section 951(a)(1)(C) and subsection (a)(3) shall be treated as references to such provisions as in effect on the day before the date of the enactment of the Small Business Job Protection Act of 1996.

(d) Distributions excluded from gross income not to be treated as dividends

Except as provided in section 960(a)(3), any distribution excluded from gross income under subsection (a) shall be treated, for purposes of this chapter, as a distribution which is not a dividend; except that such distributions shall immediately reduce earnings and profits.

(e) Coordination with amounts previously taxed under section 1248

For purposes of this section and section 960(b), any amount included in the gross income of any person as a dividend by reason of subsection (a) or (f) of section 1248 shall be treated as an amount included in the gross income of such person (or, in any case to which section 1248(e) applies, of the domestic corporation referred to in section 1248(e)(2)) under section 951(a)(1)(A).

(f) Allocation rules for certain inclusions

(1) In general

For purposes of this section, amounts that would be included under subparagraph (B) of section 951(a)(1) (determined without regard to this section) shall be treated as attributable first to earnings described in subsection (c)(2), and then to earnings described in subsection (c)(3).

(2) Treatment of distributions

In applying this section, actual distributions shall be taken into account before amounts that would be included under section 951(a)(1)(B) (determined without regard to this section).

(Added Pub. L. 87–834, §12(a), Oct. 16, 1962, 76 Stat. 1019; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–369, div. A, title I, §133(b)(1), July 18, 1984, 98 Stat. 668; Pub. L. 99–514, title XII, §1226(b), Oct. 22, 1986, 100 Stat. 2560; Pub. L. 100–647, title I, §1012(bb)(7)(A), Nov. 10, 1988, 102 Stat. 3536; Pub. L. 103–66, title XIII, §13231(c)(1), (2), (4)(A), (B), Aug. 10, 1993, 107 Stat. 497, 498; Pub. L. 104–188, title I, §1501(b)(4)–(8), Aug. 20, 1996, 110 Stat. 1826.)

REFERENCES IN TEXT

The date of the enactment of the Small Business Job Protection Act of 1996, referred to in subsec. (c), is the date of enactment of Pub. L. 104–188, which was approved Aug. 20, 1996.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–188, §1501(b)(4), (5), substituted "paragraph (2)" for "paragraphs (2) and (3)" in closing provisions, inserted "or" at end of par. (1), struck out "or" at end of par. (2), and struck out par. (3) which read as follows: "such amounts would, but for this subsection, be included under section 951(a)(1)(C) in the gross income of,".

Subsec. (c). Pub. L. 104–188, §1501(b)(6), inserted at end "References in this subsection to section 951(a)(1)(C) and subsection (a)(3) shall be treated as references to such provisions as in effect on the day before the date of the enactment of the Small Business Job Protection Act of 1996."

Subsec. (f)(1). Pub. L. 104–188, §1501(b)(7), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "For purposes of this section—

"(A) amounts that would be included under subparagraph (B) of section 951(a)(1) (determined without regard to this section) shall be treated as attributable first to earnings described in subsection (c)(2), and then to earnings described in subsection (c)(3), and

"(B) amounts that would be included under subparagraph (C) of section 951(a)(1) (determined without regard to this section) shall be treated as attributable first to earnings described in subsection (c)(2) to the extent the earnings so described were accumulated in taxable years beginning after September 30, 1993, and then to earnings described in subsection (c)(3)."

Subsec. (f)(2). Pub. L. 104–188, §1501(b)(8), substituted "section 951(a)(1)(B)" for "subparagraphs (B) and (C) of section 951(a)(1)".

1993—Subsec. (a). Pub. L. 103–66, §13231(c)(2)(A), (4)(A), substituted in introductory provisions "earnings and profits" for "earnings and profits for taxable year" and inserted at end of closing provisions "The rules of subsection (c) shall apply for purposes of paragraph (1) of this subsection and the rules of subsection (f) shall apply for purposes of paragraphs (2) and (3) of this subsection."

Subsec. (a)(3). Pub. L. 103–66, §13231(c)(1), added par. (3).

Subsec. (b). Pub. L. 103–66, §13231(c)(4)(A), substituted "earnings and profits" for "earnings and profits for a taxable year".

Subsec. (c)(1). Pub. L. 103–66, §13231(c)(2)(C), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "first to earnings and profits attributable to amounts included in gross income under section 951(a)(1)(B) (or which would have been included except for subsection (a)(2) of this section),".

Subsec. (c)(2). Pub. L. 103–66, §13231(c)(4)(B), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "then to earnings and profits attributable to amounts included in gross income under section 951(a)(1)(A) (but reduced by amounts not included under section 951(a)(1)(B) because of the exclusion in subsection (a)(2) of this section), and".

Subsec. (f). Pub. L. 103–66, §13231(c)(2)(B), added subsec. (f).

1988—Subsec. (e). Pub. L. 100–647 substituted "such person (or, in any case to which section 1248(e) applies, of the domestic corporation referred to in section 1248(e)(2)) under" for "such person under".

1986—Subsec. (d). Pub. L. 99–514 inserted "; except that such distributions shall immediately reduce earnings and profits".

1984—Subsec. (e). Pub. L. 98–369 added subsec. (e).

1976—Subsecs. (a), (b). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to taxable years of foreign corporations beginning after Dec. 31, 1996, and to taxable years of United States shareholders within which or with which such taxable years of foreign corporations end, see section 1501(d) of Pub. L. 104–188, set out as a note under section 904 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to taxable years of foreign corporations beginning after Sept. 30, 1993, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, see section 13231(e) of Pub. L. 103–66, set out as a note under section 951 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1012(bb)(7)(B), Nov. 10, 1988, 102 Stat. 3536, provided that: "The amendment made by subparagraph (A) [amending this section] shall apply in the case of transactions to which section 1248(e) of the 1986 Code applies and which occur after December 31, 1986."

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XII, §1226(c)(2), Oct. 22, 1986, 100 Stat. 2560, provided that: "The amendment made by subsection (b) [amending this section] shall apply to distributions after the date of the enactment of this Act [Oct. 22, 1986]."

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §133(d)(2), (3), July 18, 1984, 98 Stat. 668, as amended by Pub. L. 99–514, §2, title XVIII, §1810(i)(2), Oct. 22, 1986, 100 Stat. 2095, 2829; Pub. L. 100–647, title I, §1018(g)(2), Nov. 10, 1988, 102 Stat. 3582, provided that:

"(2) SUBSECTIONS (b) AND (c).—Except as provided in paragraph (3), the amendments made by subsections (b) and (c) [amending this section and section 1248 of this title] shall apply with respect to transactions to which subsection (a) or (f) of section 1248 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] applies occurring after the date of the enactment of this Act [July 18, 1984].

"(3) ELECTION OF EARLIER DATE FOR CERTAIN TRANSACTIONS.—

"(A) IN GENERAL.—If the appropriate election is made under subparagraph (B), the amendments made by subsection (b) [amending this section and section 1248 of this title] shall apply with respect to transactions to which subsection (a) or (f) of section 1248 of such Code applies occurring after October 9, 1975.

"(B) ELECTION.—

"(i) Subparagraph (A) shall apply with respect to transactions to which subsection (a) of section 1248 of such Code applies if the foreign corporation described in such subsection (or its successor in interest) so elects.

"(ii) Subparagraph (A) shall apply with respect to transactions to which subsection (f) of section 1248 of such Code applies if the domestic corporation described in section 1248(f)(1) of such Code (or its successor) so elects.

"(iii) Any election under clause (i) or (ii) shall be made not later than the date which is 1 year after the date of the enactment of the Tax Reform Act of 1986 [Oct. 22, 1986] and shall be made in such manner as the Secretary of the Treasury or his delegate shall prescribe."

§960. Special rules for foreign tax credit

(a) Taxes paid by a foreign corporation

(1) Deemed paid credit

For purposes of subpart A of this part, if there is included under section 951(a) in the gross income of a domestic corporation any amount attributable to earnings and profits of a foreign corporation which is a member of a qualified group (as defined in section 902(b)) with respect to

the domestic corporation, then, except to the extent provided in regulations, section 902 shall be applied as if the amount so included were a dividend paid by such foreign corporation (determined by applying section 902(c) in accordance with section 904(d)(3)(B)).

(2) Taxes previously deemed paid by domestic corporation

If a domestic corporation receives a distribution from a foreign corporation, any portion of which is excluded from gross income under section 959, the income, war profits, and excess profits taxes paid or deemed paid by such foreign corporation to any foreign country or to any possession of the United States in connection with the earnings and profits of such foreign corporation from which such distribution is made shall not be taken into account for purposes of section 902, to the extent such taxes were deemed paid by a domestic corporation under paragraph (1) for any prior taxable year.

(3) Taxes paid by foreign corporation and not previously deemed paid by domestic corporation

Any portion of a distribution from a foreign corporation received by a domestic corporation which is excluded from gross income under section 959(a) shall be treated by the domestic corporation as a dividend, solely for purposes of taking into account under section 902 any income, war profits, or excess profits taxes paid to any foreign country or to any possession of the United States, on or with respect to the accumulated profits of such foreign corporation from which such distribution is made, which were not deemed paid by the domestic corporation under paragraph (1) for any prior taxable year.

(b) Special rules for foreign tax credit in year of receipt of previously taxed earnings and profits

(1) Increase in section 904 limitation

In the case of any taxpayer who—

(A) either (i) chose to have the benefits of subpart A of this part for a taxable year beginning after September 30, 1993, in which he was required under section 951(a) to include any amount in his gross income, or (ii) did not pay or accrue for such taxable year any income, war profits, or excess profits taxes to any foreign country or to any possession of the United States,

(B) chooses to have the benefits of subpart A of this part for any taxable year in which he receives 1 or more distributions or amounts which are excludable from gross income under section 959(a) and which are attributable to amounts included in his gross income for taxable years referred to in subparagraph (A), and

(C) for the taxable year in which such distributions or amounts are received, pays, or is deemed to have paid, or accrues income, war profits, or excess profits taxes to a foreign country or to any possession of the United States with respect to such distributions or amounts,

the limitation under section 904 for the taxable year in which such distributions or amounts are received shall be increased by the lesser of the amount of such taxes paid, or deemed paid, or accrued with respect to such distributions or amounts or the amount in the excess limitation account as of the beginning of such taxable year.

(2) Excess limitation account

(A) Establishment of account

Each taxpayer meeting the requirements of paragraph (1)(A) shall establish an excess limitation account. The opening balance of such account shall be zero.

(B) Increases in account

For each taxable year beginning after September 30, 1993, the taxpayer shall increase the amount in the excess limitation account by the excess (if any) of—

(i) the amount by which the limitation under section 904(a) for such taxable year was increased by reason of the total amount of the inclusions in gross income under section

951(a) for such taxable year, over

(ii) the amount of any income, war profits, and excess profits taxes paid, or deemed paid, or accrued to any foreign country or possession of the United States which were allowable as a credit under section 901 for such taxable year and which would not have been allowable but for the inclusions in gross income described in clause (i).

Proper reductions in the amount added to the account under the preceding sentence for any taxable year shall be made for any increase in the credit allowable under section 901 for such taxable year by reason of a carryback if such increase would not have been allowable but for the inclusions in gross income described in clause (i).

(C) Decreases in account

For each taxable year beginning after September 30, 1993, for which the limitation under section 904 was increased under paragraph (1), the taxpayer shall reduce the amount in the excess limitation account by the amount of such increase.

(3) Distributions of income previously taxed in years beginning before October 1, 1993

If the taxpayer receives a distribution or amount in a taxable year beginning after September 30, 1993, which is excluded from gross income under section 959(a) and is attributable to any amount included in gross income under section 951(a) for a taxable year beginning before October 1, 1993, the limitation under section 904 for the taxable year in which such amount or distribution is received shall be increased by the amount determined under this subsection as in effect on the day before the date of the enactment of the Revenue Reconcilation [1] Act of 1993.

(4) Cases in which taxes not to be allowed as deduction

In the case of any taxpayer who—

(A) chose to have the benefits of subpart A of this part for a taxable year in which he was required under section 951(a) to include in his gross income an amount in respect of a controlled foreign corporation, and

(B) does not choose to have the benefits of subpart A of this part for the taxable year in which he receives a distribution or amount which is excluded from gross income under section 959(a) and which is attributable to earnings and profits of the controlled foreign corporation which was included in his gross income for the taxable year referred to in subparagraph (A),

no deduction shall be allowed under section 164 for the taxable year in which such distribution or amount is received for any income, war profits, or excess profits taxes paid or accrued to any foreign country or to any possession of the United States on or with respect to such distribution or amount.

(5) Insufficient taxable income

If an increase in the limitation under this subsection exceeds the tax imposed by this chapter for such year, the amount of such excess shall be deemed an overpayment of tax for such year.

(c) Limitation with respect to section 956 inclusions

(1) In general

If there is included under section 951(a)(1)(B) in the gross income of a domestic corporation any amount attributable to the earnings and profits of a foreign corporation which is a member of a qualified group (as defined in section 902(b)) with respect to the domestic corporation, the amount of any foreign income taxes deemed to have been paid during the taxable year by such domestic corporation under section 902 by reason of subsection (a) with respect to such inclusion in gross income shall not exceed the amount of the foreign income taxes which would have been deemed to have been paid during the taxable year by such domestic corporation if cash in an amount equal to the amount of such inclusion in gross income were distributed as a series of distributions

(determined without regard to any foreign taxes which would be imposed on an actual distribution) through the chain of ownership which begins with such foreign corporation and ends with such domestic corporation.

(2) Authority to prevent abuse

The Secretary shall issue such regulations or other guidance as is necessary or appropriate to carry out the purposes of this subsection, including regulations or other guidance which prevent the inappropriate use of the foreign corporation's foreign income taxes not deemed paid by reason of paragraph (1).

(Added Pub. L. 87–834, §12(a), Oct. 16, 1962, 76 Stat. 1020; amended Pub. L. 94–455, title X, §§1031(b)(1), 1033(b)(2), 1037(a), Oct. 4, 1976, 90 Stat. 1622, 1628, 1633; Pub. L. 99–514, title XII, §1202(b), Oct. 22, 1986, 100 Stat. 2530; Pub. L. 103–66, title XIII, §13233(b)(1), Aug. 10, 1993, 107 Stat. 502; Pub. L. 105–34, title XI, §1113(b), Aug. 5, 1997, 111 Stat. 971; Pub. L. 111–226, title II, §214(a), Aug. 10, 2010, 124 Stat. 2399.)

REFERENCES IN TEXT

The date of the enactment of the Revenue Reconciliation Act of 1993, referred to in subsec. (b)(3), is the date of enactment of Pub. L. 103–66, which was approved Aug. 10, 1993.

AMENDMENTS

2010—Subsec. (c). Pub. L. 111–226 added subsec. (c).

1997—Subsec. (a)(1). Pub. L. 105–34 amended heading and text of par. (1) generally. Prior to amendment, text read as follows: "For purposes of subpart A of this part, if there is included, under section 951(a), in the gross income of a domestic corporation any amount attributable to earnings and profits—

"(A) of a foreign corporation (hereafter in this subsection referred to as the 'first foreign corporation') at least 10 percent of the voting stock of which is owned by such domestic corporation, or

"(B) of a second foreign corporation (hereinafter in this subsection referred to as the 'second foreign corporation') at least 10 percent of the voting stock of which is owned by the first foreign corporation, or

"(C) of a third foreign corporation (hereinafter in this subsection referred to as the 'third foreign corporation') at least 10 percent of the voting stock of which is owned by the second foreign corporation,

then, except to the extent provided in regulations, such domestic corporation shall be deemed to have paid a portion of such foreign corporation's post-1986 foreign income taxes determined under section 902 in the same manner as if the amount so included were a dividend paid by such foreign corporation (determined by applying section 902(c) in accordance with section 904(d)(3)(B)). This paragraph shall not apply with respect to any amount included in the gross income of such domestic corporation attributable to earnings and profits of the second foreign corporation or of the third foreign corporation unless, in the case of the second foreign corporation, the percentage-of-voting-stock requirement of section 902(b)(3)(A) is satisfied, and in the case of the third foreign corporation, the percentage-of-voting-stock requirement of section 902(b)(3)(B) is satisfied."

1993—Subsec. (b). Pub. L. 103–66 added pars. (1) to (3), redesignated former pars. (3) and (4) as (4) and (5), respectively, and struck out former par. (1) relating to increase in section 904 limitation and former par. (2) relating to the amount of increase.

1986—Subsec. (a)(1). Pub. L. 99–514 substituted "then, except to the extent provided in regulations, such domestic corporation shall be deemed to have paid a portion of such foreign corporation's post-1986 foreign income taxes determined under section 902 in the same manner as if the amount so included were a dividend paid by such foreign corporation (determined by applying section 902(c) in accordance with section 904(d)(3)(B))" for "then, under regulations prescribed by the Secretary, such domestic corporation shall be deemed to have paid the same proportion of the total income, war profits, and excess profits taxes paid (or deemed paid) by such foreign corporation to a foreign country or possession of the United States for the taxable year on or with respect to the earnings and profits of such foreign corporation which the amount of earnings and profits of such foreign corporation so included in gross income of the domestic corporation bears to the entire amount of the earnings and profits of such corporation for such taxable year".

1976—Subsec. (a)(1). Pub. L. 94–455, §§1033(b)(2), 1037(a), substituted "bears to the entire amount of the earnings and profits of such foreign corporation for such taxable year" for "bears to–" after "gross income of the domestic corporation", struck out subpars. (C) and (D) relating to corporations which are and are not less developed country corporations, inserted in subpar. (A) "(hereafter in this subsection referred to as the 'first foreign corporation')" after "foreign corporation", substituted in subpar. (B) "of a second foreign corporation (hereinafter in this subsection referred to as the 'second foreign corporation') at least 10 percent of the voting

stock of which is owned by the first foreign corporation, or" for "of a foreign corporation at least 50 percent of the voting stock of which is owned by a foreign corporation at least 10 percent of the voting stock of which in turn owned by such domestic corporation" after "(B)", added subpar. (C), and inserted at end "This paragraph shall not apply with respect to any amount included in the gross income of such domestic corporation attributable to earning and profits of the second foreign corporation or of the third foreign corporation unless, in the case of the second foreign corporation, the percentage-of-voting-stock requirement of section 902(b)(3)(A) is satisfied, and in the case of the third foreign corporation, the percentage-of-voting-stock requirement of section 902(b)(3)(B) is satisfied."

Subsec. (b). Pub. L. 94–455, §1031(b)(1), struck out "applicable" in par. (1) after "amount, the", in par. (2) after "increase of the", and in subpar. (A) of par. (2) after "by which the".

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–226, title II, §214(b), Aug. 10, 2010, 124 Stat. 2399, provided that: "The amendment made by this section [amending this section] shall apply to acquisitions of United States property (as defined in section 956(c) of the Internal Revenue Code of 1986) after December 31, 2010."

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable, with special rule, to taxes of foreign corporations for taxable years of such corporations beginning after Aug. 5, 1997, see section 1113(c) of Pub. L. 105–34, set out as a note under section 902 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13233(b)(2), Aug. 10, 1993, 107 Stat. 504, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after September 30, 1993."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to distributions by foreign corporations out of, and to inclusions under section 951(a) of this title attributable to, earnings and profits for taxable years beginning after Dec. 31, 1986, see section 1202(e) of Pub. L. 99–514, set out as a note under section 902 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1031(b)(1) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, see section 1031(c) of Pub. L. 94–455, set out as a note under section 904 of this title.

Amendment by section 1033(b)(2) of Pub. L. 94–455 applicable in respect of any distribution received by a domestic corporation after Dec. 31, 1977, and in respect of any distribution received by a domestic corporation before Jan. 1, 1978, in a taxable year of such corporation beginning after Dec. 31, 1975, but only to the extent that such distribution is made out of the accumulated profits of a foreign corporation for a taxable year beginning after Dec. 31, 1975, see section 1033(c) of Pub. L. 94–455, set out as a note under section 902 of this title.

Pub. L. 94–455, title X, §1037(b), Oct. 4, 1976, 90 Stat. 1634, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendment made by this section [amending this section] shall apply with respect to earnings and profits of a foreign corporation, included, under section 951(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], in the gross income of a domestic corporation in taxable years beginning after December 31, 1976."

[1] So in original. Probably should be "Reconciliation".

§961. Adjustments to basis of stock in controlled foreign corporations and of other property

(a) Increase in basis

Under regulations prescribed by the Secretary, the basis of a United States shareholder's stock in a controlled foreign corporation, and the basis of property of a United States shareholder by reason of which he is considered under section 958(a)(2) as owning stock of a controlled foreign corporation, shall be increased by the amount required to be included in his gross income under section 951(a)

with respect to such stock or with respect to such property, as the case may be, but only to the extent to which such amount was included in the gross income of such United States shareholder. In the case of a United States shareholder who has made an election under section 962 for the taxable year, the increase in basis provided by this subsection shall not exceed an amount equal to the amount of tax paid under this chapter with respect to the amounts required to be included in his gross income under section 951(a).

(b) Reduction in basis

(1) In general

Under regulations prescribed by the Secretary, the adjusted basis of stock or other property with respect to which a United States shareholder or a United States person receives an amount which is excluded from gross income under section 959(a) shall be reduced by the amount so excluded. In the case of a United States shareholder who has made an election under section 962 for any prior taxable year, the reduction in basis provided by this paragraph shall not exceed an amount equal to the amount received which is excluded from gross income under section 959(a) after the application of section 962(d).

(2) Amount in excess of basis

To the extent that an amount excluded from gross income under section 959(a) exceeds the adjusted basis of the stock or other property with respect to which it is received, the amount shall be treated as gain from the sale or exchange of property.

(c) Basis adjustments in stock held by foreign corporations

Under regulations prescribed by the Secretary, if a United States shareholder is treated under section 958(a)(2) as owning stock in a controlled foreign corporation which is owned by another controlled foreign corporation, then adjustments similar to the adjustments provided by subsections (a) and (b) shall be made to—

(1) the basis of such stock, and

(2) the basis of stock in any other controlled foreign corporation by reason of which the United States shareholder is considered under section 958(a)(2) as owning the stock described in paragraph (1),

but only for the purposes of determining the amount included under section 951 in the gross income of such United States shareholder (or any other United States shareholder who acquires from any person any portion of the interest of such United States shareholder by reason of which such shareholder was treated as owning such stock, but only to the extent of such portion, and subject to such proof of identity of such interest as the Secretary may prescribe by regulations). The preceding sentence shall not apply with respect to any stock to which a basis adjustment applies under subsection (a) or (b).

(Added Pub. L. 87–834, §12(a), Oct. 16, 1962, 76 Stat. 1022; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 105–34, title XI, §1112(b)(1), Aug. 5, 1997, 111 Stat. 969; Pub. L. 109–135, title IV, §409(b), Dec. 21, 2005, 119 Stat. 2635.)

AMENDMENTS

2005—Subsec. (c). Pub. L. 109–135 amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: "Under regulations prescribed by the Secretary, if a United States shareholder is treated under section 958(a)(2) as owning any stock in a controlled foreign corporation which is actually owned by another controlled foreign corporation, adjustments similar to the adjustments provided by subsections (a) and (b) shall be made to the basis of such stock in the hands of such other controlled foreign corporation, but only for the purposes of determining the amount included under section 951 in the gross income of such United States shareholder (or any other United States shareholder who acquires from any person any portion of the interest of such United States shareholder by reason of which such shareholder was treated as owning such stock, but only to the extent of such portion, and subject to such proof of identity of such interest as the Secretary may prescribe by regulations)."

1997—Subsec. (c). Pub. L. 105–34 added subsec. (c).

1976—Subsecs. (a), (b)(1). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–135, title IV, §409(d), Dec. 21, 2005, 119 Stat. 2636, provided that: "The amendments made by this section [amending this section and sections 6038B, 6411, and 6601 of this title] shall take effect as if included in the provisions of the Taxpayer Relief Act of 1997 [Pub. L. 105–34] to which they relate."

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XI, §1112(b)(2), Aug. 5, 1997, 111 Stat. 969, provided that: "The amendment made by paragraph (1) [amending this section] shall apply for purposes of determining inclusions for taxable years of United States shareholders beginning after December 31, 1997."

DUAL RESIDENT COMPANIES

Basis adjustments of this section not applicable in certain circumstances involving dual resident companies, see section 6126 of Pub. L. 100–647, set out as a note under section 1502 of this title.

§962. Election by individuals to be subject to tax at corporate rates

(a) General rule

Under regulations prescribed by the Secretary, in the case of a United States shareholder who is an individual and who elects to have the provisions of this section apply for the taxable year—

(1) the tax imposed under this chapter on amounts which are included in his gross income under section 951(a) shall (in lieu of the tax determined under sections 1 and 55) be an amount equal to the tax which would be imposed under sections 11 and 55 if such amounts were received by a domestic corporation, and

(2) for purposes of applying the provisions of section 960 (relating to foreign tax credit) such amounts shall be treated as if they were received by a domestic corporation.

(b) Election

An election to have the provisions of this section apply for any taxable year shall be made by a United States shareholder at such time and in such manner as the Secretary shall prescribe by regulations. An election made for any taxable year may not be revoked except with the consent of the Secretary.

(c) Pro ration of each section 11 bracket amount

For purposes of applying subsection (a)(1), the amount in each taxable income bracket in the tax table in section 11(b) shall not exceed an amount which bears the same ratio to such bracket amount as the amount included in the gross income of the United States shareholder under section 951(a) for the taxable year bears to such shareholder's pro rata share of the earnings and profits for the taxable year of all controlled foreign corporations with respect to which such shareholder includes any amount in gross income under section 951(a).

(d) Special rule for actual distributions

The earnings and profits of a foreign corporation attributable to amounts which were included in the gross income of a United States shareholder under section 951(a) and with respect to which an election under this section applied shall, when such earnings and profits are distributed, notwithstanding the provisions of section 959(a)(1), be included in gross income to the extent that such earnings and profits so distributed exceed the amount of tax paid under this chapter on the amounts to which such election applied.

(Added Pub. L. 87–834, §12(a), Oct. 16, 1962, 76 Stat. 1023; amended Pub. L. 94–12, title III, §303(c)(3), Mar. 29, 1975, 89 Stat. 45; Pub. L. 94–164, §4(d)(1), Dec. 23, 1975, 89 Stat. 975; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–600, title III, §301(b)(16), Nov. 6, 1978, 92 Stat. 2822; Pub. L. 100–647, title I, §1007(g)(11), Nov. 10, 1988, 102 Stat. 3435.)

AMENDMENTS

1988—Subsec. (a)(1). Pub. L. 100–647 substituted "sections 1 and 55" and "sections 11 and 55" for "section 1" and "section 11", respectively.

1978—Subsec. (c). Pub. L. 95–600 substituted provisions relating to the pro ration of each section 11 bracket amount for provisions relating to the surtax exemption.

1976—Subsecs. (a), (b). Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

1975—Subsec. (c). Pub. L. 94–164 substituted "same ratio to the surtax exemption" for "same ratio to $25,000" in subsec. (c) as such subsec. (c) is in effect for taxable years ending after Dec. 31, 1975.

Pub. L. 94–12 substituted "$50,000" for "$25,000".

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95–600, set out as a note under section 11 of this title.

EFFECTIVE AND TERMINATION DATES OF 1975 AMENDMENTS

Amendment by Pub. L. 94–164 applicable to taxable years beginning after Dec. 31, 1975, see section 4(e) of Pub. L. 94–164, set out as a note under section 11 of this title.

Amendment by Pub. L. 94–12 applicable to taxable years ending after Dec. 31, 1974, but to cease to apply for taxable years ending after Dec. 31, 1975, see section 305(b)(1) of Pub. L. 94–12, set out as a note under section 11 of this title.

[§963. Repealed. Pub. L. 94–12, title VI, §602(a)(1), Mar. 29, 1975, 89 Stat. 58]

Section, added Pub. L. 87–834, §12(a), Oct. 16, 1962, 76 Stat. 1023; amended Pub. L. 88–272, title I, §123(b), Feb. 26, 1964, 78 Stat. 29; Pub. L. 90–364, title I, §102(b), June 28, 1968, 82 Stat. 255; Pub. L. 91–53, §5(b), Aug. 7, 1969, 83 Stat. 95; Pub. L. 91–172, title VII, §701(b), Dec. 30, 1969, 83 Stat. 659, dealt with the receipt of minimum distributions by domestic corporations.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to taxable years for foreign corporations beginning after Dec. 31, 1975, and to taxable years of United States shareholders (within the meaning of section 951(b) of this title) within which or with which such taxable years of such foreign corporations end, see section 602(f) of Pub. L. 94–12, set out as an Effective Date note under section 955 of this title.

§964. Miscellaneous provisions

(a) Earnings and profits

Except as provided in section 312(k)(4), for purposes of this subpart, the earnings and profits of any foreign corporation, and the deficit in earnings and profits of any foreign corporation, for any taxable year shall be determined according to rules substantially similar to those applicable to domestic corporations, under regulations prescribed by the Secretary. In determining such earnings and profits, or the deficit in such earnings and profits, the amount of any illegal bribe, kickback, or other payment (within the meaning of section 162(c)) shall not be taken into account to decrease such earnings and profits or to increase such deficit. The payments referred to in the preceding sentence are payments which would be unlawful under the Foreign Corrupt Practices Act of 1977 if the payor were a United States person.

(b) Blocked foreign income

Under regulations prescribed by the Secretary, no part of the earnings and profits of a controlled foreign corporation for any taxable year shall be included in earnings and profits for purposes of

sections 952, 955, and 956, if it is established to the satisfaction of the Secretary that such part could not have been distributed by the controlled foreign corporation to United States shareholders who own (within the meaning of section 958(a)) stock of such controlled foreign corporation because of currency or other restrictions or limitations imposed under the laws of any foreign country.

(c) Records and accounts of United States shareholders

(1) Records and accounts to be maintained

The Secretary may by regulations require each person who is, or has been, a United States shareholder of a controlled foreign corporation to maintain such records and accounts as may be prescribed by such regulations as necessary to carry out the provisions of this subpart and subpart G.

(2) Two or more persons required to maintain or furnish the same records and accounts with respect to the same foreign corporation

Where, but for this paragraph, two or more United States persons would be required to maintain or furnish the same records and accounts as may by regulations be required under paragraph (1) with respect to the same controlled foreign corporation for the same period, the Secretary may by regulations provide that the maintenance or furnishing of such records and accounts by only one such person shall satisfy the requirements of paragraph (1) for such other persons.

(d) Treatment of certain branches

(1) In general

For purposes of this chapter, section 6038, section 6046, and such other provisions as may be specified in regulations—

(A) a qualified insurance branch of a controlled foreign corporation shall be treated as a separate foreign corporation created under the laws of the foreign country with respect to which such branch qualifies under paragraph (2), and

(B) except as provided in regulations, any amount directly or indirectly transferred or credited from such branch to one or more other accounts of such controlled foreign corporation shall be treated as a dividend paid to such controlled foreign corporation.

(2) Qualified insurance branch

For purposes of paragraph (1), the term "qualified insurance branch" means any branch of a controlled foreign corporation which is licensed and predominantly engaged on a permanent basis in the active conduct of an insurance business in a foreign country if—

(A) separate books and accounts are maintained for such branch,

(B) the principal place of business of such branch is in such foreign country,

(C) such branch would be taxable under subchapter L if it were a separate domestic corporation, and

(D) an election under this paragraph applies to such branch.

An election under this paragraph shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

(3) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection.

(e) Gain on certain stock sales by controlled foreign corporations treated as dividends

(1) In general

If a controlled foreign corporation sells or exchanges stock in any other foreign corporation, gain recognized on such sale or exchange shall be included in the gross income of such controlled foreign corporation as a dividend to the same extent that it would have been so included under section 1248(a) if such controlled foreign corporation were a United States person. For purposes

of determining the amount which would have been so includible, the determination of whether such other foreign corporation was a controlled foreign corporation shall be made without regard to the preceding sentence.

(2) Same country exception not applicable

Clause (i) of section 954(c)(3)(A) shall not apply to any amount treated as a dividend by reason of paragraph (1).

(3) Clarification of deemed sales

For purposes of this subsection, a controlled foreign corporation shall be treated as having sold or exchanged any stock if, under any provision of this subtitle, such controlled foreign corporation is treated as having gain from the sale or exchange of such stock.

(Added Pub. L. 87–834, §12(a), Oct. 16, 1962, 76 Stat. 1027; amended Pub. L. 91–172, title IV, §442(b)(1), Dec. 30, 1969, 83 Stat. 628; Pub. L. 94–455, title X, §1065(b), title XIX, §§1901(b)(32)(B)(iii), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1654, 1800, 1834; Pub. L. 97–34, title II, §206(c), Aug. 13, 1981, 95 Stat. 225; Pub. L. 97–248, title II, §288(b)(2), Sept. 3, 1982, 96 Stat. 571; Pub. L. 100–647, title VI, §6129(a), Nov. 10, 1988, 102 Stat. 3716; Pub. L. 105–34, title XI, §1111(a), Aug. 5, 1997, 111 Stat. 968.)

REFERENCES IN TEXT

The Foreign Corrupt Practices Act of 1977, referred to in subsec. (a), is title I of Pub. L. 95–213, Dec. 19, 1977, 91 Stat. 1494, as amended, which enacted sections 78dd–1 to 78dd–3 of Title 15, Commerce and Trade, and amended sections 78m and 78ff of Title 15. For complete classification of this Act to the Code, see Short Title of 1977 Amendment note set out under section 78a of Title 15 and Tables.

AMENDMENTS

1997—Subsec. (e). Pub. L. 105–34 added subsec. (e).

1988—Subsec. (d). Pub. L. 100–647 added subsec. (d).

1982—Subsec. (a). Pub. L. 97–248 inserted provision that payments referred to in sentence beginning "In determining such earnings and profits" are payments which would be unlawful under the Foreign Corrupt Practices Act of 1977 if the payor were a United States person.

1981—Subsec. (a). Pub. L. 97–34 substituted "section 312(k)(4)" for "section 312(k)(3)".

1976—Subsec. (a). Pub. L. 94–455, §§1065(b), 1901(b)(32)(B)(ii), 1906(b)(13)(A), struck out "or his delegate" after "Secretary", inserted second sentence, and substituted "312(k)(3)" for "312(m)(3)" after "provided in section".

Subsecs. (b), (c)(1), (2). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary" whenever appearing.

1969—Subsec. (a). Pub. L. 91–172 inserted reference to the exception provided for in section 312(m)(3).

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XI, §1111(c)(1), Aug. 5, 1997, 111 Stat. 969, provided that: "The amendment made by subsection (a) [amending this section] shall apply to gain recognized on transactions occurring after the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title VI, §6129(b), Nov. 10, 1988, 102 Stat. 3716, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 1988."

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to payments made after Sept. 3, 1982, see section 288(c) of Pub. L. 97–248, set out as a note under section 162 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to property placed in service after Dec. 31, 1980, in taxable years ending after that date, see section 209(a) of Pub. L. 97–34, set out as an Effective Date note under section 168 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1065(b) of Pub. L. 94–455 applicable to payments described in section 162(c) of this title made more than 30 days after Oct. 4, 1976, see section 1066(b) of Pub. L. 94–455, set out as a note under section 952 of this title.

§965. Temporary dividends received deduction

(a) Deduction

(1) In general

In the case of a corporation which is a United States shareholder and for which the election under this section is in effect for the taxable year, there shall be allowed as a deduction an amount equal to 85 percent of the cash dividends which are received during such taxable year by such shareholder from controlled foreign corporations.

(2) Dividends paid indirectly from controlled foreign corporations

If, within the taxable year for which the election under this section is in effect, a United States shareholder receives a cash distribution from a controlled foreign corporation which is excluded from gross income under section 959(a), such distribution shall be treated for purposes of this section as a cash dividend to the extent of any amount included in income by such United States shareholder under section 951(a)(1)(A) as a result of any cash dividend during such taxable year to—

(A) such controlled foreign corporation from another controlled foreign corporation that is in a chain of ownership described in section 958(a), or

(B) any other controlled foreign corporation in such chain of ownership from another controlled foreign corporation in such chain of ownership, but only to the extent of cash distributions described in section 959(b) which are made during such taxable year to the controlled foreign corporation from which such United States shareholder received such distribution.

(b) Limitations

(1) In general

The amount of dividends taken into account under subsection (a) shall not exceed the greater of—

(A) $500,000,000,

(B) the amount shown on the applicable financial statement as earnings permanently reinvested outside the United States, or

(C) in the case of an applicable financial statement which fails to show a specific amount of earnings permanently reinvested outside the United States and which shows a specific amount of tax liability attributable to such earnings, the amount equal to the amount of such liability divided by 0.35.

The amounts described in subparagraphs (B) and (C) shall be treated as being zero if there is no such statement or such statement fails to show a specific amount of such earnings or liability, as the case may be.

(2) Dividends must be extraordinary

The amount of dividends taken into account under subsection (a) shall not exceed the excess (if any) of—

(A) the cash dividends received during the taxable year by such shareholder from controlled foreign corporations, over

(B) the annual average for the base period years of—

(i) the dividends received during each base period year by such shareholder from controlled foreign corporations,

(ii) the amounts includible in such shareholder's gross income for each base period year under section 951(a)(1)(B) with respect to controlled foreign corporations, and

(iii) the amounts that would have been included for each base period year but for section 959(a) with respect to controlled foreign corporations.

The amount taken into account under clause (iii) for any base period year shall not include any amount which is not includible in gross income by reason of an amount described in clause (ii) with respect to a prior taxable year. Amounts described in subparagraph (B) for any base period year shall be such amounts as shown on the most recent return filed for such year; except that amended returns filed after June 30, 2003, shall not be taken into account.

(3) Reduction of benefit if increase in related party indebtedness

The amount of dividends which would (but for this paragraph) be taken into account under subsection (a) shall be reduced by the excess (if any) of—

(A) the amount of indebtedness of the controlled foreign corporation to any related person (as defined in section 954(d)(3)) as of the close of the taxable year for which the election under this section is in effect, over

(B) the amount of indebtedness of the controlled foreign corporation to any related person (as so defined) as of the close of October 3, 2004.

All controlled foreign corporations with respect to which the taxpayer is a United States shareholder shall be treated as 1 controlled foreign corporation for purposes of this paragraph. The Secretary may prescribe such regulations as may be necessary or appropriate to prevent the avoidance of the purposes of this paragraph, including regulations which provide that cash dividends shall not be taken into account under subsection (a) to the extent such dividends are attributable to the direct or indirect transfer (including through the use of intervening entities or capital contributions) of cash or other property from a related person (as so defined) to a controlled foreign corporation.

(4) Requirement to invest in United States

Subsection (a) shall not apply to any dividend received by a United States shareholder unless the amount of the dividend is invested in the United States pursuant to a domestic reinvestment plan which—

(A) is approved by the taxpayer's president, chief executive officer, or comparable official before the payment of such dividend and subsequently approved by the taxpayer's board of directors, management committee, executive committee, or similar body, and

(B) provides for the reinvestment of such dividend in the United States (other than as payment for executive compensation), including as a source for the funding of worker hiring and training, infrastructure, research and development, capital investments, or the financial stabilization of the corporation for the purposes of job retention or creation.

(c) Definitions and special rules

For purposes of this section—

(1) Applicable financial statement

The term "applicable financial statement" means—

(A) with respect to a United States shareholder which is required to file a financial statement with the Securities and Exchange Commission (or which is included in such a statement so filed by another person), the most recent audited annual financial statement (including the notes which form an integral part of such statement) of such shareholder (or which includes such shareholder)—

(i) which was so filed on or before June 30, 2003, and

(ii) which was certified on or before June 30, 2003, as being prepared in accordance with generally accepted accounting principles, and

(B) with respect to any other United States shareholder, the most recent audited financial statement (including the notes which form an integral part of such statement) of such shareholder (or which includes such shareholder)—

(i) which was certified on or before June 30, 2003, as being prepared in accordance with generally accepted accounting principles, and

(ii) which is used for the purposes of a statement or report—

(I) to creditors,

(II) to shareholders, or

(III) for any other substantial nontax purpose.

(2) Base period years

(A) In general

The base period years are the 3 taxable years—

(i) which are among the 5 most recent taxable years ending on or before June 30, 2003, and

(ii) which are determined by disregarding—

(I) 1 taxable year for which the sum of the amounts described in clauses (i), (ii), and (iii) of subsection (b)(2)(B) is the largest, and

(II) 1 taxable year for which such sum is the smallest.

(B) Shorter period

If the taxpayer has fewer than 5 taxable years ending on or before June 30, 2003, then in lieu of applying subparagraph (A), the base period years shall include all the taxable years of the taxpayer ending on or before June 30, 2003.

(C) Mergers, acquisitions, etc.

(i) In general

Rules similar to the rules of subparagraphs (A) and (B) of section 41(f)(3) shall apply for purposes of this paragraph.

(ii) Spin-offs, etc.

If there is a distribution to which section 355 (or so much of section 356 as relates to section 355) applies during the 5-year period referred to in subparagraph (A)(i) and the controlled corporation (within the meaning of section 355) is a United States shareholder—

(I) the controlled corporation shall be treated as being in existence during the period that the distributing corporation (within the meaning of section 355) is in existence, and

(II) for purposes of applying subsection (b)(2) to the controlled corporation and the distributing corporation, amounts described in subsection (b)(2)(B) which are received or includible by the distributing corporation or controlled corporation (as the case may be) before the distribution referred to in subclause (I) from a controlled foreign corporation shall be allocated between such corporations in proportion to their respective interests as United States shareholders of such controlled foreign corporation immediately after such distribution.

Subclause (II) shall not apply if neither the controlled corporation nor the distributing corporation is a United States shareholder of such controlled foreign corporation immediately after such distribution.

(3) Dividend

The term "dividend" shall not include amounts includible in gross income as a dividend under section 78, 367, or 1248. In the case of a liquidation under section 332 to which section 367(b) applies, the preceding sentence shall not apply to the extent the United States shareholder actually receives cash as part of the liquidation.

(4) Coordination with dividends received deduction

No deduction shall be allowed under section 243 or 245 for any dividend for which a deduction

is allowed under this section.

(5) Controlled groups

(A) In general

All United States shareholders which are members of an affiliated group filing a consolidated return under section 1501 shall be treated as one United States shareholder.

(B) Application of $500,000,000 limit

All corporations which are treated as a single employer under section 52(a) shall be limited to one $500,000,000 amount in subsection (b)(1)(A), and such amount shall be divided among such corporations under regulations prescribed by the Secretary.

(C) Permanently reinvested earnings

If a financial statement is an applicable financial statement for more than 1 United States shareholder, the amount applicable under subparagraph (B) or (C) of subsection (b)(1) shall be divided among such shareholders under regulations prescribed by the Secretary.

(d) Denial of foreign tax credit; denial of certain expenses

(1) Foreign tax credit

No credit shall be allowed under section 901 for any taxes paid or accrued (or treated as paid or accrued) with respect to the deductible portion of—

(A) any dividend, or

(B) any amount described in subsection (a)(2) which is included in income under section 951(a)(1)(A).

No deduction shall be allowed under this chapter for any tax for which credit is not allowable by reason of the preceding sentence.

(2) Expenses

No deduction shall be allowed for expenses directly allocable to the deductible portion described in paragraph (1).

(3) Deductible portion

For purposes of paragraph (1), unless the taxpayer otherwise specifies, the deductible portion of any dividend or other amount is the amount which bears the same ratio to the amount of such dividend or other amount as the amount allowed as a deduction under subsection (a) for the taxable year bears to the amount described in subsection (b)(2)(A) for such year.

(4) Coordination with section 78

Section 78 shall not apply to any tax which is not allowable as a credit under section 901 by reason of this subsection.

(e) Increase in tax on included amounts not reduced by credits, etc.

(1) In general

Any tax under this chapter by reason of nondeductible CFC dividends shall not be treated as tax imposed by this chapter for purposes of determining—

(A) the amount of any credit allowable under this chapter, or

(B) the amount of the tax imposed by section 55.

Subparagraph (A) shall not apply to the credit under section 53 or to the credit under section 27(a) with respect to taxes which are imposed by foreign countries and possessions of the United States and are attributable to such dividends.

(2) Limitation on reduction in taxable income, etc.

(A) In general

The taxable income of any United States shareholder for any taxable year shall in no event be less than the amount of nondeductible CFC dividends received during such year.

(B) Coordination with section 172

The nondeductible CFC dividends for any taxable year shall not be taken into account—

(i) in determining under section 172 the amount of any net operating loss for such taxable year, and

(ii) in determining taxable income for such taxable year for purposes of the 2nd sentence of section 172(b)(2).

(3) Nondeductible CFC dividends

For purposes of this subsection, the term "nondeductible CFC dividends" means the excess of the amount of dividends taken into account under subsection (a) over the deduction allowed under subsection (a) for such dividends.

(f) Election

The taxpayer may elect to apply this section to—

(1) the taxpayer's last taxable year which begins before the date of the enactment of this section, or

(2) the taxpayer's first taxable year which begins during the 1-year period beginning on such date.

Such election may be made for a taxable year only if made on or before the due date (including extensions) for filing the return of tax for such taxable year.

(Added Pub. L. 108–357, title IV, §422(a), Oct. 22, 2004, 118 Stat. 1514; amended Pub. L. 109–135, title IV, §403(q), Dec. 21, 2005, 119 Stat. 2627.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (f), is the date of enactment of Pub. L. 108–357, which was approved Oct. 22, 2004.

AMENDMENTS

2005—Subsec. (a)(2)(B). Pub. L. 109–135, §403(q)(1), inserted "from another controlled foreign corporation in such chain of ownership" before ", but only to the extent".

Subsec. (b)(2)(A). Pub. L. 109–135, §403(q)(2), inserted "cash" before "dividends".

Subsec. (b)(3). Pub. L. 109–135, §403(q)(3), inserted at end "The Secretary may prescribe such regulations as may be necessary or appropriate to prevent the avoidance of the purposes of this paragraph, including regulations which provide that cash dividends shall not be taken into account under subsection (a) to the extent such dividends are attributable to the direct or indirect transfer (including through the use of intervening entities or capital contributions) of cash or other property from a related person (as so defined) to a controlled foreign corporation."

Subsec. (c)(1). Pub. L. 109–135, §403(q)(4), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "The term 'applicable financial statement' means, with respect to a United States shareholder, the most recently audited financial statement (including notes and other documents which accompany such statement) which includes such shareholder—

"(A) which is certified on or before June 30, 2003, as being prepared in accordance with generally accepted accounting principles, and

"(B) which is used for the purposes of a statement or report—

"(i) to creditors,

"(ii) to shareholders, or

"(iii) for any other substantial nontax purpose.

In the case of a corporation required to file a financial statement with the Securities and Exchange Commission, such term means the most recent such statement filed on or before June 30, 2003."

Subsec. (d)(2). Pub. L. 109–135, §403(q)(5), substituted "directly allocable" for "properly allocated and apportioned".

Subsec. (d)(4). Pub. L. 109–135, §403(q)(6), added par. (4).

Subsec. (e)(1). Pub. L. 109–135, §403(q)(7), inserted "which are imposed by foreign countries and

possessions of the United States and are" after "taxes" in concluding provisions.

Subsec. (f). Pub. L. 109–135, §403(q)(8), inserted "on or" before "before the due date" in concluding provisions.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendments by Pub. L. 109–135 effective as if included in the provisions of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which they relate, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE

Section applicable to taxable years ending on or after Oct. 22, 2004, see section 422(d) of Pub. L. 108–357, set out as an Effective Date of 2004 Amendments note under section 56 of this title.

SUBPART G—EXPORT TRADE CORPORATIONS

Sec.
970. Reduction of subpart F income of export trade corporations.
971. Definitions.
[972. Repealed.]

AMENDMENTS

1976—Pub. L. 94–455, title XIX, §1901(b)(27)(B), Oct. 4, 1976, 90 Stat. 1799, struck out item 972 "Consolidation of group of export trade corporations".

1962—Pub. L. 87–834, §12(a), Oct. 16, 1962, 76 Stat. 1027, added heading of subpart G, and items 970 to 972.

§970. Reduction of subpart F income of export trade corporations

(a) Export trade income constituting foreign base company income

(1) In general

In the case of a controlled foreign corporation (as defined in section 957) which for the taxable year is an export trade corporation, the subpart F income (determined without regard to this subpart) of such corporation for such year shall be reduced by an amount equal to so much of the export trade income (as defined in section 971(b)) of such corporation for such year as constitutes foreign base company income (as defined in section 954), but only to the extent that such amount does not exceed whichever of the following amounts is the lesser:

(A) an amount equal to 1½ times so much of the export promotion expenses (as defined in section 971(d)) of such corporation for such year as is probably allocable to the export trade income which constitutes foreign base company income of such corporation for such year, or

(B) an amount equal to 10 percent of so much of the gross receipts for such year (or, in the case of gross receipts arising from commissions, fees, or other compensation for its services, so much of the gross amount upon the basis of which such commissions, fees, or other compensation is computed) accruing to such export trade corporation from the sale, installation, operation, maintenance, or use of property in respect of which such corporation derives export trade income as is properly allocable to the export trade income which constitutes foreign base company income of such corporation for such year.

The allocations with respect to export trade income which constitutes foreign base company income under subparagraphs (A) and (B) shall be made under regulations prescribed by the Secretary.

(2) Overall limitation

The reduction under paragraph (1) for any taxable year shall not exceed an amount which bears the same ratio to the increase in the investments in export trade assets (as defined in section

971(c)) of such corporation for such year as the export trade income which constitutes foreign base company income of such corporation for such year bears to the entire export trade income of such corporation for such year.

(b) Inclusion of certain previously excluded amounts

Each United States shareholder of a controlled foreign corporation which for any prior taxable year was an export trade corporation shall include in his gross income under section 951(a)(1)(A)(ii), as an amount to which section 955 (relating to withdrawal of previously excluded subpart F income from qualified investment) applies, his pro rata share of the amount of decrease in the investments in export trade assets of such corporation for such year, but only to the extent that his pro rata share of such amount does not exceed an amount equal to—

(1) his pro rata share of the sum of (A) the amounts by which the subpart F income of such corporation was reduced for all prior taxable years under subsection (a), and (B) the amounts not included in subpart F income (determined without regard to this subpart) for all prior taxable years by reason of the treatment (under section 972 as in effect before the date of the enactment of the Tax Reform Act of 1976) of two or more controlled foreign corporations which are export trade corporations as a single controlled foreign corporation, reduced by

(2) the sum of the amounts which were included in his gross income under section 951(a)(1)(A)(ii) under the provisions of this subsection for all prior taxable years.

(c) Investments in export trade assets

(1) Amount of investments

For purposes of this section, the amount taken into account with respect to any export trade asset shall be its adjusted basis, reduced by any liability to which the asset is subject.

(2) Increase in investments in export trade assets

For purposes of subsection (a), the amount of increase in investments in export trade assets of any controlled foreign corporation for any taxable year is the amount by which—

(A) the amount of such investments at the close of the taxable year, exceeds

(B) the amount of such investments at the close of the preceding taxable year.

(3) Decrease in investments in export trade assets

For purposes of subsection (b), the amount of decrease in investments in export trade assets of any controlled foreign corporation for any taxable year is the amount by which—

(A) the amount of such investments at the close of the preceding taxable year (reduced by an amount equal to the amount of net loss sustained during the taxable year with respect to export trade assets), exceeds

(B) the amount of such investments at the close of the taxable year.

(4) Special rule

A United States shareholder of an export trade corporation may, under regulations prescribed by the Secretary, make the determinations under paragraphs (2) and (3) as of the close of the 75th day after the close of the years referred to in such paragraphs in lieu of on the last day of such years. A United States shareholder of an export trade corporation may, under regulations prescribed by the Secretary, make the determinations under paragraphs (2) and (3) with respect to export trade assets described in section 971(c)(3) as of the close of the years following the years referred to in such paragraphs, or as of the close of such longer period of time as such regulations may permit, in lieu of on the last day of such years and in lieu of on the day prescribed in the preceding sentence. Any election under this paragraph made with respect to any taxable year shall apply to such year and to all succeeding taxable years unless the Secretary consents to the revocation of such election.

(Added Pub. L. 87–834, §12(a), Oct. 16, 1972, 76 Stat. 1027; amended Pub. L. 94–455, title XIX, §§1901(b)(27)(A), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1799, 1834.)

REFERENCES IN TEXT

The Tax Reform Act of 1976, referred to in subsec. (b)(1), is Pub. L. 94–455, Oct. 4, 1976, 90 Stat. 1250, as

amended, which was enacted Oct. 4, 1976. Section 972 of this title was repealed by Pub. L. 94–455, title XIX, §1901(a)(120), Oct. 4, 1976, 90 Stat. 1784. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1976—Subsec. (a)(1). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (b)(1). Pub. L. 94–455, §1901(b)(27)(A), substituted "treatment (under section 972 as in effect before the date of enactment of the Tax Reform Act of 1976) of two or more controlled foreign corporations which are export trade corporations as a single controlled corporation" for "application of section 972" after "reason of the".

Subsec. (c)(4). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary" in three places.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(b)(27)(A) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EXPORT TRADE CORPORATIONS

Pub. L. 92–178, title V, §505(a), (b), Dec. 10, 1971, 85 Stat. 551, provided that:

"(a) USE OF TERMS.—Except as otherwise expressly provided, whenever in this section a reference is made to a section, chapter, or other provision, the reference shall be considered to be made to a section, chapter, or other provision of the Internal Revenue Code of 1954, and terms used in this section shall have the same meaning as when used in such Code.

"(b) TRANSFER TO A DISC OF ASSETS OF EXPORT TRADE CORPORATION.—

"(1) IN GENERAL.—If a corporation (hereinafter in this section called 'parent') owns all of the outstanding stock of an export trade corporation (as defined in section 971), and the export trade corporation, during a taxable year beginning before January 1, 1976, transfers property, without receiving consideration, to a DISC (as defined in section 992(a)) all of whose outstanding stock is owned by the parent, and if the amount transferred by the export trade corporation is not less than the amount of its untaxed subpart F income (as defined in paragraph (2) of this subsection) at the time of such transfer, then—

"(A) notwithstanding section 367 or any other provision of chapter 1, no gain or loss to the export trade corporation, the parent, or the DISC shall be recognized by reason of such transfer;

"(B) the earnings and profits of the DISC shall be increased by the amount transferred to it by the export trade corporation and such amount shall be included in the accumulated DISC income, and for purposes of section 861(a)(2)(D) shall be considered to be qualified export receipts;

"(C) the adjusted basis of the assets transferred to the DISC shall be the same in the hands of the DISC as in the hands of the export trade corporation;

"(D) the earnings and profits of the export trade corporation shall be reduced by the amount transferred to the DISC, to the extent thereof, with the reduction being applied first to the untaxed subpart F income and then to the other earnings and profits in the order in which they were most recently accumulated;

"(E) the basis of the parent's stock in the export trade corporation shall be decreased by the amount obtained by multiplying its basis in such stock by a fraction the numerator of which is the amount transferred to the DISC and the denominator of which is the aggregate adjusted basis of all the assets of the export trade corporation immediately before such transfer;

"(F) the basis of the parent's stock in the DISC shall be increased by the amount of the reduction under subparagraph (E) of its basis in the stock of the export trade corporation;

"(G) the property transferred to the DISC shall not be considered to reduce the investments of the export trade corporation in export trade assets for purposes of applying section 970(b); and

"(H) any foreign income taxes which would have been deemed under section 902 to have been paid by the parent if the transfer had been made to the parent shall be treated as foreign income taxes paid by the DISC.

For purposes of this section, the amount transferred by the export trade corporation to the DISC shall be the aggregate of the adjusted basis of the properties transferred, with proper adjustment for any indebtedness secured by such property or assumed by the DISC in connection with the transfer.

For purposes of this section, a foreign corporation which qualified as an export trade corporation for any 3 taxable years beginning before November 1, 1971, shall be treated as an export trade corporation.

"(2) DEFINITION OF UNTAXED SUBPART F INCOME.—For purposes of this section, the term 'untaxed subpart F income' means with respect to an export trade corporation the amount by which—

"(A) the sum of the amount by which the subpart F income of such corporation was reduced for the taxable year and all prior taxable years under section 970(a) and the amounts not included in subpart F income (determined without regard to subpart G of subchapter N of chapter 1) for all prior taxable years by reason of the application of section 972, exceeds

"(B) the sum of the amounts which were included in the gross income of the shareholders of such corporation under section 951(a)(1)(A)(ii) and under the provision of section 970(b) for all prior taxable years,

determined without regard to the transfer of property described in paragraph (1) of this subsection.

"(3) SPECIAL CASES.—If the provisions of paragraph (1) of this subsection are not applicable solely because the export trade corporation or the DISC, or both, are not owned in the manner prescribed in such paragraph, the provisions shall nevertheless be applicable in such cases to the extent, and in accordance with such rules, as may be prescribed by the Secretary or his delegate.

"(4) TREATMENT OF EXPORT TRADE ASSETS.—If the provisions of this subsection are applicable, accounts receivable held by an export trade corporation and transferred to a DISC, to the extent such receivables were export trade assets in the hands of the export trade corporation, shall be treated as qualified export assets for purposes of section 993(b)."

§971. Definitions

(a) Export trade corporations

For purposes of this subpart, the term "export trade corporation" means—

(1) In general

A controlled foreign corporation (as defined in section 957) which satisfies the following conditions:

(A) 90 percent or more of the gross income of such corporation for the 3–year period immediately preceding the close of the taxable year (or such part of such period subsequent to the effective date of this subpart during which the corporation was in existence) was derived from sources without the United States, and

(B) 75 percent or more of the gross income of such corporation for such period constituted gross income in respect of which such corporation derived export trade income.

(2) Special rule

If 50 percent or more of the gross income of a controlled foreign corporation in the period specified in subsection (a)(1)(A) is gross income in respect of which such corporation derived export trade income in respect of agricultural products grown in the United States, it may qualify as an export trade corporation although it does not meet the requirements of subsection (a)(1)(B).

(3) Limitation

No controlled foreign corporation may qualify as an export trade corporation for any taxable year beginning after October 31, 1971, unless it qualified as an export trade corporation for any taxable year beginning before such date. If a corporation fails to qualify as an export trade corporation for a period of any 3 consecutive taxable years beginning after such date, it may not qualify as an export trade corporation for any taxable year beginning after such period.

(b) Export trade income

For the purposes of this subpart, the term "export trade income" means net income from—

(1) the sale to an unrelated person for use, consumption, or disposition outside the United States of export property (as defined in subsection (e)), or from commissions, fees, compensation, or other income from the performance of commercial, industrial, financial, technical, scientific,

managerial, engineering, architectural, skilled, or other services in respect to such sales or in respect of the installation or maintenance of such export property;

(2) commissions, fees, compensation, or other income from commercial, industrial, financial, technical, scientific, managerial, engineering, architectural, skilled, or other services performed in connection with the use by an unrelated person outside the United States of patents, copyrights, secret processes and formulas, goodwill, trademarks, trade brands, franchises, and other like property acquired or developed and owned by the manufacturer, producer, grower, or extractor of export property in respect of which the export trade corporation earns export trade income under paragraph (1);

(3) commissions, fees, rentals, or other compensation or income attributable to the use of export property by an unrelated person or attributable to the use of export property in the rendition of technical, scientific, or engineering services to an unrelated person; and

(4) interest from export trade assets described in subsection (c)(4).

For purposes of paragraph (3), if a controlled foreign corporation receives income from an unrelated person attributable to the use of export property in the rendition of services to such unrelated person together with income attributable to the rendition of other services to such unrelated person, including personal services, the amount of such aggregate income which shall be considered to be attributable to the use of the export property shall (if such amount cannot be established by reference to transactions between unrelated persons) be that part of such aggregate income which the cost of the export property consumed in the rendition of such services (including a reasonable allowance for depreciation) bears to the total cost and expenses attributable to such aggregate income.

(c) Export trade assets

For purposes of this subpart, the term "export trade assets" means—

(1) working capital reasonably necessary for the production of export trade income,

(2) inventory of export property held for use, consumption, or disposition outside the United States,

(3) facilities located outside the United States for the storage, handling, transportation, packaging, or servicing of export property, and

(4) evidences of indebtedness executed by persons, other than related persons, in connection with payment for purchases of export property for use, consumption, or disposition outside the United States, or in connection with the payment for services described in subsections (b)(2) and (3).

(d) Export promotion expenses

For purposes of this subpart, the term "export promotion expenses" means the following expenses paid or incurred in the receipt or production of export trade income—

(1) a reasonable allowance for salaries or other compensation for personal services actually rendered for such purpose,

(2) rentals or other payments for the use of property actually used for such purpose,

(3) a reasonable allowance for the exhaustion, wear and tear, or obsolescence of property actually used for such purpose, and

(4) any other ordinary and necessary expenses of the corporation to the extent reasonably allocable to the receipt or production of export trade income.

No expense incurred within the United States shall be treated as an export promotion expense within the meaning of the preceding sentence, unless at least 90 percent of each category of expenses described in such sentence is incurred outside the United States.

(e) Export property

For purposes of this subpart, the term "export property" means any property or any interest in property manufactured, produced, grown, or extracted in the United States.

(f) Unrelated person

For purposes of this subpart, the term "unrelated person" means a person other than a related person as defined in section 954(d)(3).

(Added Pub. L. 87–834, §12(a), Oct. 16, 1962, 76 Stat. 1029; amended Pub. L. 92–178, title V, §505(c), Dec. 10, 1971, 85 Stat. 553.)

AMENDMENTS

1971—Subsec. (a)(3). Pub. L. 92–178 added par. (3).

TREATMENT OF CERTAIN FORMER EXPORT TRADE CORPORATIONS

Pub. L. 99–514, title XVIII, §1876(m), Oct. 22, 1986, 100 Stat. 2901, provided that: "If—

"(1) a corporation which is not an export trading corporation for its most recent taxable year ending before the date of the enactment of the Tax Reform Act of 1984 [July 18, 1984] but was an export trading corporation for any prior taxable year, and

"(2)(A) such corporation may not qualify as an export trade corporation for any taxable year beginning after December 31, 1984, by reason of section 971(a)(3) of the Internal Revenue Code of 1954 [now 1986], or (B) such corporation makes an election, before the date 6 months after the date of the enactment of this Act [Oct. 22, 1986], not to be treated as an export trade corporation with respect to taxable years beginning after December 31, 1984,

rules similar to the rules of paragraphs (2) and (4) of section 805(b) of the Tax Reform Act of 1984 [set out as a note under section 991 of this title] shall apply to such corporation. For purposes of the preceding sentence, the term 'export trade corporation' has the meaning given such term by section 971 of such Code."

[§972. Repealed. Pub. L. 94–455, title XIX, §1901(a)(120), Oct. 4, 1976, 90 Stat. 1784]

Section, Pub. L. 87–834, §12(a), Oct. 16, 1962, 76 Stat. 1031, related to the consolidation of a group of export trade corporations for treatment as a single controlled foreign corporation for tax purposes.

[SUBPART H—REPEALED]

[§981. Repealed. Pub. L. 94–455, title X, §1012(b)(2), Oct. 4, 1976, 90 Stat. 1614]

Section, Pub. L. 89–809, title I, §105(e)(1), Nov. 13, 1966, 80 Stat. 1565, related to income of certain nonresident United States citizens subject to foreign community property laws.

SUBPART I—ADMISSIBILITY OF DOCUMENTATION MAINTAINED IN FOREIGN COUNTRIES

Sec.
982. Admissibility of documentation maintained in foreign countries.

AMENDMENTS

1982—Pub. L. 97–248, title III, §337(a), Sept. 3, 1982, 96 Stat. 629, added subpart I and item 982.

§982. Admissibility of documentation maintained in foreign countries

(a) General rule

If the taxpayer fails to substantially comply with any formal document request arising out of the examination of the tax treatment of any item (hereinafter in this section referred to as the "examined

item") before the 90th day after the date of the mailing of such request on motion by the Secretary, any court having jurisdiction of a civil proceeding in which the tax treatment of the examined item is an issue shall prohibit the introduction by the taxpayer of any foreign-based documentation covered by such request.

(b) Reasonable cause exception

(1) In general

Subsection (a) shall not apply with respect to any documentation if the taxpayer establishes that the failure to provide the documentation as requested by the Secretary is due to reasonable cause.

(2) Foreign nondisclosure law not reasonable cause

For purposes of paragraph (1), the fact that a foreign jurisdiction would impose a civil or criminal penalty on the taxpayer (or any other person) for disclosing the requested documentation is not reasonable cause.

(c) Formal document request

For purposes of this section—

(1) Formal document request

The term "formal document request" means any request (made after the normal request procedures have failed to produce the requested documentation) for the production of foreign-based documentation which is mailed by registered or certified mail to the taxpayer at his last known address and which sets forth—

(A) the time and place for the production of the documentation,

(B) a statement of the reason the documentation previously produced (if any) is not sufficient,

(C) a description of the documentation being sought, and

(D) the consequences to the taxpayer of the failure to produce the documentation described in subparagraph (C).

(2) Proceeding to quash

(A) In general

Notwithstanding any other law or rule of law, any person to whom a formal document request is mailed shall have the right to begin a proceeding to quash such request not later than the 90th day after the day such request was mailed. In any such proceeding, the Secretary may seek to compel compliance with such request.

(B) Jurisdiction

The United States district court for the district in which the person (to whom the formal document request is mailed) resides or is found shall have jurisdiction to hear any proceeding brought under subparagraph (A). An order denying the petition shall be deemed a final order which may be appealed.

(C) Suspension of 90-day period

The running of the 90-day period referred to in subsection (a) shall be suspended during any period during which a proceeding brought under subparagraph (A) is pending.

(d) Definitions and special rules

For purposes of this section—

(1) Foreign-based documentation

The term "foreign-based documentation" means any documentation which is outside the United States and which may be relevant or material to the tax treatment of the examined item.

(2) Documentation

The term "documentation" includes books and records.

(3) Authority to extend 90-day period

The Secretary, and any court having jurisdiction over a proceeding under subsection (c)(2), may extend the 90-day period referred to in subsection (a).

(e) Suspension of statute of limitations

If any person takes any action as provided in subsection (c)(2), the running of any period of limitations under section 6501 (relating to the assessment and collection of tax) or under section 6531 (relating to criminal prosecutions) with respect to such person shall be suspended for the period during which the proceeding under such subsection, and appeals therein, are pending.

(Added Pub. L. 97–248, title III, §337(a), Sept. 3, 1982, 96 Stat. 629; amended Pub. L. 98–369, div. A, title VII, §714(k), July 18, 1984, 98 Stat. 963.)

AMENDMENTS

1984—Subsec. (d)(3), (4). Pub. L. 98–369 redesignated par. (4) as (3) and struck out former par. (3) which provided that an item was to be treated as foreign connected if directly or indirectly from a source outside the United States, or the item (in whole or in part) purported to arise outside the United States, or was otherwise dependent on transactions occurring outside the United States.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE

Pub. L. 97–248, title III, §337(c), Sept. 3, 1982, 96 Stat. 630, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by this section [enacting this section] shall apply with respect to formal document requests (as defined in section 982(c)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as added by this section) mailed after the date of the enactment of this Act [Sept. 3, 1982]."

SUBPART J—FOREIGN CURRENCY TRANSACTIONS

Sec.
985. Functional currency.
986. Determination of foreign taxes and foreign corporation's earnings and profits.
987. Branch transactions.
988. Treatment of certain foreign currency transactions.
989. Other definitions and special rules.

AMENDMENTS

1988—Pub. L. 100–647, title I, §1012(v)(1)(C), Nov. 10, 1988, 102 Stat. 3529, added item 986 and struck out former item 986 "Determination of foreign corporation's earnings and profits and foreign taxes".

§985. Functional currency

(a) In general

Unless otherwise provided in regulations, all determinations under this subtitle shall be made in the taxpayer's functional currency.

(b) Functional currency

(1) In general

For purposes of this subtitle, the term "functional currency" means—

(A) except as provided in subparagraph (B), the dollar, or

(B) in the case of a qualified business unit, the currency of the economic environment in which a significant part of such unit's activities are conducted and which is used by such unit in

keeping its books and records.

(2) Functional currency where activities primarily conducted in dollars

The functional currency of any qualified business unit shall be the dollar if activities of such unit are primarily conducted in dollars.

(3) Election

To the extent provided in regulations, the taxpayer may elect to use the dollar as the functional currency for any qualified business unit if—

(A) such unit keeps its books and records in dollars, or

(B) the taxpayer uses a method of accounting that approximates a separate transactions method.

Any such election shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

(4) Change in functional currency treated as a change in method of accounting

Any change in the functional currency shall be treated as a change in the taxpayer's method of accounting for purposes of section 481 under procedures to be established by the Secretary.

(Added Pub. L. 99–514, title XII, §1261(a), Oct. 22, 1986, 100 Stat. 2585.)

EFFECTIVE DATE

Pub. L. 99–514, title XII, §1261(e), Oct. 22, 1986, 100 Stat. 2591, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this subpart and amending sections 1092 and 1256 of this title] shall apply to taxable years beginning after December 31, 1986.

"(2) SPECIAL RULES FOR PURPOSES OF SECTIONS 902 AND 960.—For purposes of applying sections 902 and 960 of the Internal Revenue Code of 1986, the amendments made by this section shall apply to—

"(A) earnings and profits of the foreign corporation for taxable years beginning after December 31, 1986, and

"(B) foreign taxes paid or accrued by the foreign corporation with respect to such earnings and profits."

§986. Determination of foreign taxes and foreign corporation's earnings and profits

(a) Foreign income taxes

(1) Translation of accrued taxes

(A) In general

For purposes of determining the amount of the foreign tax credit, in the case of a taxpayer who takes foreign income taxes into account when accrued, the amount of any foreign income taxes (and any adjustment thereto) shall be translated into dollars by using the average exchange rate for the taxable year to which such taxes relate.

(B) Exception for certain taxes

Subparagraph (A) shall not apply to any foreign income taxes—

(i) paid after the date 2 years after the close of the taxable year to which such taxes relate, or

(ii) paid before the beginning of the taxable year to which such taxes relate.

(C) Exception for inflationary currencies

Subparagraph (A) shall not apply to any foreign income taxes the liability for which is denominated in any inflationary currency (as determined under regulations).

(D) Elective exception for taxes paid other than in functional currency

(i) In general

At the election of the taxpayer, subparagraph (A) shall not apply to any foreign income taxes the liability for which is denominated in any currency other than in the taxpayer's functional currency.

(ii) Application to qualified business units

An election under this subparagraph may apply to foreign income taxes attributable to a qualified business unit in accordance with regulations prescribed by the Secretary.

(iii) Election

Any such election shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

(E) Special rule for regulated investment companies

In the case of a regulated investment company which takes into account income on an accrual basis, subparagraphs (A) through (D) shall not apply and foreign income taxes paid or accrued with respect to such income shall be translated into dollars using the exchange rate as of the date the income accrues.

(F) Cross reference

For adjustments where tax is not paid within 2 years, see section 905(c).

(2) Translation of taxes to which paragraph (1) does not apply

For purposes of determining the amount of the foreign tax credit, in the case of any foreign income taxes to which subparagraph (A) or (E) of paragraph (1) does not apply—

(A) such taxes shall be translated into dollars using the exchange rates as of the time such taxes were paid to the foreign country or possession of the United States, and

(B) any adjustment to the amount of such taxes shall be translated into dollars using—

(i) except as provided in clause (ii), the exchange rate as of the time when such adjustment is paid to the foreign country or possession, or

(ii) in the case of any refund or credit of foreign income taxes, using the exchange rate as of the time of the original payment of such foreign income taxes.

(3) Authority to permit use of average rates

To the extent prescribed in regulations, the average exchange rate for the period (specified in such regulations) during which the taxes or adjustment is paid may be used instead of the exchange rate as of the time of such payment.

(4) Foreign income taxes

For purposes of this subsection, the term "foreign income taxes" means any income, war profits, or excess profits taxes paid or accrued to any foreign country or to any possession of the United States.

(b) Earnings and profits and distributions

For purposes of determining the tax under this subtitle—

(1) of any shareholder of any foreign corporation, the earnings and profits of such corporation shall be determined in the corporation's functional currency, and

(2) in the case of any United States person, the earnings and profits determined under paragraph (1) (when distributed, deemed distributed, or otherwise taken into account under this subtitle) shall (if necessary) be translated into dollars using the appropriate exchange rate.

(c) Previously taxed earnings and profits

(1) In general

Foreign currency gain or loss with respect to distributions of previously taxed earnings and profits (as described in section 959 or 1293(c)) attributable to movements in exchange rates

between the times of deemed and actual distribution shall be recognized and treated as ordinary income or loss from the same source as the associated income inclusion.

(2) Distributions through tiers

The Secretary shall prescribe regulations with respect to the treatment of distributions of previously taxed earnings and profits through tiers of foreign corporations.

(Added Pub. L. 99–514, title XII, §1261(a), Oct. 22, 1986, 100 Stat. 2586; amended Pub. L. 100–647, title I, §1012(v)(1)(A), Nov. 10, 1988, 102 Stat. 3528; Pub. L. 105–34, title XI, §1102(a)(1), (b)(1), Aug. 5, 1997, 111 Stat. 963, 965; Pub. L. 108–357, title IV, §408(a), (b), Oct. 22, 2004, 118 Stat. 1499.)

AMENDMENTS

2004—Subsec. (a)(1)(D). Pub. L. 108–357, §408(a), added subpar. (D). Former subpar. (D) redesignated (E).

Subsec. (a)(1)(E). Pub. L. 108–357, §408(b)(1), added subpar. (E). Former subpar. (E) redesignated (F).

Pub. L. 108–357, §408(a), redesignated subpar. (D) as (E).

Subsec. (a)(1)(F). Pub. L. 108–357, §408(b)(1), redesignated subpar. (E) as (F).

Subsec. (a)(2). Pub. L. 108–357, §408(b)(2), inserted "or (E)" after "subparagraph (A)" in introductory provisions.

1997—Subsec. (a). Pub. L. 105–34, §1102(a)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows:

"(a) FOREIGN TAXES.—

"(1) IN GENERAL.—For purposes of determining the amount of the foreign tax credit—

"(A) any foreign income taxes shall be translated into dollars using the exchange rates as of the time such taxes were paid to the foreign country or possession of the United States, and

"(B) any adjustment to the amount of foreign income taxes shall be translated into dollars using—

"(i) except as provided in clause (ii), the exchange rate as of the time when such adjustment is paid to the foreign country or possession, or

"(ii) in the case of any refund or credit of foreign income taxes, using the exchange rate as of the time of original payment of such foreign income taxes.

"(2) FOREIGN INCOME TAXES.—For purposes of paragraph (1), 'foreign income taxes' means any income, war profits, or excess profits taxes paid to any foreign country or to any possession of the United States."

Subsec. (a)(3), (4). Pub. L. 105–34, §1102(b)(1), added par. (3) and redesignated former par. (3) as (4).

1988—Pub. L. 100–647 substituted "foreign taxes and foreign corporation's earnings and profits" for "foreign corporation's earnings and profits and foreign taxes" in heading, and revised and restructured the provisions of subsecs. (a) and (b).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title IV, §408(c), Oct. 22, 2004, 118 Stat. 1500, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2004."

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XI, §1102(c)(1), Aug. 5, 1997, 111 Stat. 966, provided that: "The amendments made by subsections (a)(1) and (b) [amending this section and section 989 of this title] shall apply to taxes paid or accrued in taxable years beginning after December 31, 1997."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1261(e) of Pub. L. 99–514, set out as a note under section 985 of this title.

§987. Branch transactions

In the case of any taxpayer having 1 or more qualified business units with a functional currency other than the dollar, taxable income of such taxpayer shall be determined—

(1) by computing the taxable income or loss separately for each such unit in its functional currency,

(2) by translating the income or loss separately computed under paragraph (1) at the appropriate exchange rate, and

(3) by making proper adjustments (as prescribed by the Secretary) for transfers of property between qualified business units of the taxpayer having different functional currencies, including—

(A) treating post-1986 remittances from each such unit as made on a pro rata basis out of post-1986 accumulated earnings, and

(B) treating gain or loss determined under this paragraph as ordinary income or loss, respectively, and sourcing such gain or loss by reference to the source of the income giving rise to post-1986 accumulated earnings.

(Added Pub. L. 99–514, title XII, §1261(a), Oct. 22, 1986, 100 Stat. 2586; amended Pub. L. 100–647, title I, §1012(v)(1)(B), Nov. 10, 1988, 102 Stat. 3528.)

AMENDMENTS

1988—Par. (4). Pub. L. 100–647 struck out par. (4) which provided for translation of foreign income taxes paid by each qualified business unit of the taxpayer in the same manner as provided under section 986(b).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1261(e) of Pub. L. 99–514, set out as a note under section 985 of this title.

§988. Treatment of certain foreign currency transactions

(a) General rule

Notwithstanding any other provision of this chapter—

(1) Treatment as ordinary income or loss

(A) In general

Except as otherwise provided in this section, any foreign currency gain or loss attributable to a section 988 transaction shall be computed separately and treated as ordinary income or loss (as the case may be).

(B) Special rule for forward contracts, etc.

Except as provided in regulations, a taxpayer may elect to treat any foreign currency gain or loss attributable to a forward contract, a futures contract, or option described in subsection (c)(1)(B)(iii) which is a capital asset in the hands of the taxpayer and which is not a part of a straddle (within the meaning of section 1092(c), without regard to paragraph (4) thereof) as capital gain or loss (as the case may be) if the taxpayer makes such election and identifies such transaction before the close of the day on which such transaction is entered into (or such earlier time as the Secretary may prescribe).

(2) Gain or loss treated as interest for certain purposes

To the extent provided in regulations, any amount treated as ordinary income or loss under paragraph (1) shall be treated as interest income or expense (as the case may be).

(3) Source

(A) In general

Except as otherwise provided in regulations, in the case of any amount treated as ordinary income or loss under paragraph (1) (without regard to paragraph (1)(B)), the source of such amount shall be determined by reference to the residence of the taxpayer or the qualified business unit of the taxpayer on whose books the asset, liability, or item of income or expense is properly reflected.

(B) Residence

For purposes of this subpart—

(i) In general

The residence of any person shall be—

(I) in the case of an individual, the country in which such individual's tax home (as defined in section 911(d)(3)) is located,

(II) in the case of any corporation, partnership, trust, or estate which is a United States person (as defined in section 7701(a)(30)), the United States, and

(III) in the case of any corporation, partnership, trust, or estate which is not a United States person, a country other than the United States.

If an individual does not have a tax home (as so defined), the residence of such individual shall be the United States if such individual is a United States citizen or a resident alien and shall be a country other than the United States if such individual is not a United States citizen or a resident alien.

(ii) Exception

In the case of a qualified business unit of any taxpayer (including an individual), the residence of such unit shall be the country in which the principal place of business of such qualified business unit is located.

(iii) Special rule for partnerships

To the extent provided in regulations, in the case of a partnership, the determination of residence shall be made at the partner level.

(C) Special rule for certain related party loans

Except to the extent provided in regulations, in the case of a loan by a United States person or a related person to a 10-percent owned foreign corporation which is denominated in a currency other than the dollar and bears interest at a rate at least 10 percentage points higher than the Federal mid-term rate (determined under section 1274(d)) at the time such loan is entered into, the following rules shall apply:

(i) For purposes of section 904 only, such loan shall be marked to market on an annual basis.

(ii) Any interest income earned with respect to such loan for the taxable year shall be treated as income from sources within the United States to the extent of any loss attributable to clause (i).

For purposes of this subparagraph, the term "related person" has the meaning given such term by section 954(d)(3), except that such section shall be applied by substituting "United States person" for "controlled foreign corporation" each place such term appears.

(D) 10-percent owned foreign corporation

The term "10-percent owned foreign corporation" means any foreign corporation in which the United States person owns directly or indirectly at least 10 percent of the voting stock.

(b) Foreign currency gain or loss

For purposes of this section—

(1) Foreign currency gain

The term "foreign currency gain" means any gain from a section 988 transaction to the extent such gain does not exceed gain realized by reason of changes in exchange rates on or after the booking date and before the payment date.

(2) Foreign currency loss

The term "foreign currency loss" means any loss from a section 988 transaction to the extent such loss does not exceed the loss realized by reason of changes in exchange rates on or after the booking date and before the payment date.

(3) Special rule for certain contracts, etc.

In the case of any section 988 transaction described in subsection (c)(1)(B)(iii), any gain or loss from such transaction shall be treated as foreign currency gain or loss (as the case may be).

(c) Other definitions

For purposes of this section—

(1) Section 988 transaction

(A) In general

The term "section 988 transaction" means any transaction described in subparagraph (B) if the amount which the taxpayer is entitled to receive (or is required to pay) by reason of such transaction—

(i) is denominated in terms of a nonfunctional currency, or

(ii) is determined by reference to the value of 1 or more nonfunctional currencies.

(B) Description of transactions

For purposes of subparagraph (A), the following transactions are described in this subparagraph:

(i) The acquisition of a debt instrument or becoming the obligor under a debt instrument.

(ii) Accruing (or otherwise taking into account) for purposes of this subtitle any item of expense or gross income or receipts which is to be paid or received after the date on which so accrued or taken into account.

(iii) Entering into or acquiring any forward contract, futures contract, option, or similar financial instrument.

The Secretary may prescribe regulations excluding from the application of clause (ii) any class of items the taking into account of which is not necessary to carry out the purposes of this section by reason of the small amounts or short periods involved, or otherwise.

(C) Special rules for disposition of nonfunctional currency

(i) In general

In the case of any disposition of any nonfunctional currency—

(I) such disposition shall be treated as a section 988 transaction, and

(II) any gain or loss from such transaction shall be treated as foreign currency gain or loss (as the case may be).

(ii) Nonfunctional currency

For purposes of this section, the term "nonfunctional currency" includes coin or currency, and nonfunctional currency denominated demand or time deposits or similar instruments issued by a bank or other financial institution.

(D) Exception for certain instruments marked to market

(i) In general

Clause (iii) of subparagraph (B) shall not apply to any regulated futures contract or nonequity option which would be marked to market under section 1256 if held on the last day

of the taxable year.

(ii) Election out

(I) In general

The taxpayer may elect to have clause (i) not apply to such taxpayer. Such an election shall apply to contracts held at any time during the taxable year for which such election is made or any succeeding taxable year unless such election is revoked with the consent of the Secretary.

(II) Time for making election

Except as provided in regulations, an election under subclause (I) for any taxable year shall be made on or before the 1st day of such taxable year (or, if later, on or before the 1st day during such year on which the taxpayer holds a contract described in clause (i)).

(III) Special rule for partnerships, etc.

In the case of a partnership, an election under subclause (I) shall be made by each partner separately. A similar rule shall apply in the case of an S corporation.

(iii) Treatment of certain partnerships

This subparagraph shall not apply to any income or loss of a partnership for any taxable year if such partnership made an election under subparagraph (E)(iii)(V) for such year or any preceding year.

(E) Special rules for certain funds

(i) In general

In the case of a qualified fund, clause (iii) of subparagraph (B) shall not apply to any instrument which would be marked to market under section 1256 if held on the last day of the taxable year (determined after the application of clause (iv)).

(ii) Special rule where electing partnership does not qualify

If any partnership made an election under clause (iii)(V) for any taxable year and such partnership has a net loss for such year or any succeeding year from instruments referred to in clause (i), the rules of clauses (i) and (iv) shall apply to any such loss year whether or not such partnership is a qualified fund for such year.

(iii) Qualified fund defined

For purposes of this subparagraph, the term "qualified fund" means any partnership if—

(I) at all times during the taxable year (and during each preceding taxable year to which an election under subclause (V) applied), such partnership has at least 20 partners and no single partner owns more than 20 percent of the interests in the capital or profits of the partnership,

(II) the principal activity of such partnership for such taxable year (and each such preceding taxable year) consists of buying and selling options, futures, or forwards with respect to commodities,

(III) at least 90 percent of the gross income of the partnership for the taxable year (and for each such preceding taxable year) consisted of income or gains described in subparagraph (A), (B), or (G) of section 7704(d)(1) or gain from the sale or disposition of capital assets held for the production of interest or dividends,

(IV) no more than a de minimis amount of the gross income of the partnership for the taxable year (and each such preceding taxable year) was derived from buying and selling commodities, and

(V) an election under this subclause applies to the taxable year.

An election under subclause (V) for any taxable year shall be made on or before the 1st day of such taxable year (or, if later, on or before the 1st day during such year on which the

partnership holds an instrument referred to in clause (i)). Any such election shall apply to the taxable year for which made and all succeeding taxable years unless revoked with the consent of the Secretary.

(iv) Treatment of certain currency contracts

(I) In general

Except as provided in regulations, in the case of a qualified fund, any bank forward contract, any foreign currency futures contract traded on a foreign exchange, or to the extent provided in regulations any similar instrument, which is not otherwise a section 1256 contract shall be treated as a section 1256 contract for purposes of section 1256.

(II) Gains and losses treated as short-term

In the case of any instrument treated as a section 1256 contract under subclause (I), subparagraph (A) of section 1256(a)(3) shall be applied by substituting "100 percent" for "40 percent" (and subparagraph (B) of such section shall not apply).

(v) Special rules for clause (iii)(I)

(I) Certain general partners

The interest of a general partner in the partnership shall not be treated as failing to meet the 20-percent ownership requirements of clause (iii)(I) for any taxable year of the partnership if, for the taxable year of the partner in which such partnership taxable year ends, such partner (and each corporation filing a consolidated return with such partner) had no ordinary income or loss from a section 988 transaction which is foreign currency gain or loss (as the case may be).

(II) Treatment of incentive compensation

For purposes of clause (iii)(I), any income allocable to a general partner as incentive compensation based on profits rather than capital shall not be taken into account in determining such partner's interest in the profits of the partnership.

(III) Treatment of tax-exempt partners

Except as provided in regulations, the interest of a partner in the partnership shall not be treated as failing to meet the 20-percent ownership requirements of clause (iii)(I) if none of the income of such partner from such partnership is subject to tax under this chapter (whether directly or through 1 or more pass-thru entities).

(IV) Look-thru rule

In determining whether the requirements of clause (iii)(I) are met with respect to any partnership, except to the extent provided in regulations, any interest in such partnership held by another partnership shall be treated as held proportionately by the partners in such other partnership.

(vi) Other special rules

For purposes of this subparagraph—

(I) Related persons

Interests in the partnership held by persons related to each other (within the meaning of sections 267(b) and 707(b)) shall be treated as held by 1 person.

(II) Predecessors

References to any partnership shall include a reference to any predecessor thereof.

(III) Inadvertent terminations

Rules similar to the rules of section 7704(e) shall apply.

(IV) Treatment of certain debt instruments

For purposes of clause (iii)(IV), any debt instrument which is a section 988 transaction

shall be treated as a commodity.

(2) Booking date

The term "booking date" means—

(A) in the case of a transaction described in paragraph (1)(B)(i), the date of acquisition or on which the taxpayer becomes the obligor, or

(B) in the case of a transaction described in paragraph (1)(B)(ii), the date on which accrued or otherwise taken into account.

(3) Payment date

The term "payment date" means the date on which the payment is made or received.

(4) Debt instrument

The term "debt instrument" means a bond, debenture, note, or certificate or other evidence of indebtedness. To the extent provided in regulations, such term shall include preferred stock.

(5) Special rules where taxpayer takes or makes delivery

If the taxpayer takes or makes delivery in connection with any section 988 transaction described in paragraph (1)(B)(iii), any gain or loss (determined as if the taxpayer sold the contract, option, or instrument on the date on which he took or made delivery for its fair market value on such date) shall be recognized in the same manner as if such contract, option, or instrument were so sold.

(d) Treatment of 988 hedging transactions

(1) In general

To the extent provided in regulations, if any section 988 transaction is part of a 988 hedging transaction, all transactions which are part of such 988 hedging transaction shall be integrated and treated as a single transaction or otherwise treated consistently for purposes of this subtitle. For purposes of the preceding sentence, the determination of whether any transaction is a section 988 transaction shall be determined without regard to whether such transaction would otherwise be marked-to-market under section 475 or 1256 and such term shall not include any transaction with respect to which an election is made under subsection (a)(1)(B). Sections 475, 1092, and 1256 shall not apply to a transaction covered by this subsection.

(2) 988 hedging transaction

For purposes of paragraph (1), the term "988 hedging transaction" means any transaction—

(A) entered into by the taxpayer primarily—

(i) to manage risk of currency fluctuations with respect to property which is held or to be held by the taxpayer, or

(ii) to manage risk of currency fluctuations with respect to borrowings made or to be made, or obligations incurred or to be incurred, by the taxpayer, and

(B) identified by the Secretary or the taxpayer as being a 988 hedging transaction.

(e) Application to individuals

(1) In general

The preceding provisions of this section shall not apply to any section 988 transaction entered into by an individual which is a personal transaction.

(2) Exclusion for certain personal transactions

If—

(A) nonfunctional currency is disposed of by an individual in any transaction, and

(B) such transaction is a personal transaction,

no gain shall be recognized for purposes of this subtitle by reason of changes in exchange rates after such currency was acquired by such individual and before such disposition. The preceding sentence shall not apply if the gain which would otherwise be recognized on the transaction

exceeds $200.

(3) Personal transactions

For purposes of this subsection, the term "personal transaction" means any transaction entered into by an individual, except that such term shall not include any transaction to the extent that expenses properly allocable to such transaction meet the requirements of—

(A) section 162 (other than traveling expenses described in subsection (a)(2) thereof), or

(B) section 212 (other than that part of section 212 dealing with expenses incurred in connection with taxes).

(Added Pub. L. 99–514, title XII, §1261(a), Oct. 22, 1986, 100 Stat. 2587; amended Pub. L. 100–647, title I, §1012(v)(2)(A), (3), (4), (6)–(8), title VI, §6130(a), (b), Nov. 10, 1988, 102 Stat. 3529, 3530, 3717; Pub. L. 101–239, title VII, §7811(i)(7), Dec. 19, 1989, 103 Stat. 2410; Pub. L. 103–66, title XIII, §13223(b)(1), Aug. 10, 1993, 107 Stat. 484; Pub. L. 105–34, title XI, §1104(a), Aug. 5, 1997, 111 Stat. 967; Pub. L. 106–170, title V, §532(b)(3), Dec. 17, 1999, 113 Stat. 1930.)

AMENDMENTS

1999—Subsec. (d)(2)(A)(i), (ii). Pub. L. 106–170 substituted "to manage" for "to reduce".

1997—Subsec. (e). Pub. L. 105–34 amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows: "This section shall apply to section 988 transactions entered into by an individual only to the extent expenses properly allocable to such transactions meet the requirements of section 162 or 212 (other than that part of section 212 dealing with expenses incurred in connection with taxes)."

1993—Subsec. (d)(1). Pub. L. 103–66 substituted "section 475 or 1256" for "section 1256" and "Sections 475, 1092, and 1256" for "Sections 1092 and 1256".

1989—Subsec. (a). Pub. L. 101–239 inserted introductory provision "Notwithstanding any other provision of this chapter—".

1988—Subsec. (a)(3)(B)(i). Pub. L. 100–647, §1012(v)(8), inserted at end "If an individual does not have a tax home (as so defined), the residence of such individual shall be the United States if such individual is a United States citizen or a resident alien and shall be a country other than the United States if such individual is not a United States citizen or a resident alien."

Subsec. (a)(3)(B)(iii). Pub. L. 100–647, §1012(v)(7), added cl. (iii).

Subsec. (b)(3). Pub. L. 100–647, §1012(v)(3)(A), added par. (3).

Subsec. (c)(1)(B)(iii). Pub. L. 100–647, §6130(a), struck out "unless such instrument would be marked to market under section 1256 if held on the last day of the taxable year" after "similar financial instrument".

Pub. L. 100–647, §1012(v)(6), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: "Entering into or acquiring any forward contract, futures contract, option, or similar financial instrument if such instrument is not marked to market at the close of the taxable year under section 1256."

Subsec. (c)(1)(C)(i)(II). Pub. L. 100–647, §1012(v)(3)(B), amended subcl. (II) generally. Prior to amendment, subcl. (II) read as follows: "for purposes of determining the foreign currency gain or loss from such transaction, paragraphs (1) and (2) of subsection (b) shall be applied by substituting 'acquisition date' for 'booking date' and 'disposition' for 'payment date'."

Subsec. (c)(1)(D), (E). Pub. L. 100–647, §6130(b), added subpars. (D) and (E).

Subsec. (c)(2)(C). Pub. L. 100–647, §1012(v)(3)(C), struck out subpar. (C) which defined "booking date" in the case of a transaction described in par. (1)(B)(iii) as the date on which the position is entered into or acquired.

Subsec. (c)(3). Pub. L. 100–647, §1012(v)(3)(D), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "The term 'payment date' means—

"(A) in the case of a transaction described in paragraph (1)(B)(i) or (ii), the date on which payment is made or received, or

"(B) in the case of a transaction described in paragraph (1)(B)(iii), the date payment is made or received or the date the taxpayer's rights with respect to the position are terminated."

Subsec. (c)(5). Pub. L. 100–647, §1012(v)(2)(A), added par. (5).

Subsec. (d)(1). Pub. L. 100–647, §1012(v)(4), substituted "this subtitle" for "this section".

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XI, §1104(b), Aug. 5, 1997, 111 Stat. 967, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1997."

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to all taxable years ending on or after Dec. 31, 1993, with special rules for taxpayers required to change accounting methods and for floor specialists and market makers, see section 13223(c) of Pub. L. 103–66, set out as an Effective Date note under section 475 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1012(v)(2)(B), Nov. 10, 1988, 102 Stat. 3529, provided that: "The amendment made by subparagraph (A) [amending this section] shall not apply in any case in which the taxpayer takes or makes delivery before June 11, 1987."

Amendment by section 1012(v)(3), (4), (6)–(8) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title VI, §6130(d), Nov. 10, 1988, 102 Stat. 3719, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and section 1092 of this title] shall apply with respect to forward contracts, future contracts, options, and similar instruments entered into or acquired after October 21, 1988.

"(2) TIME FOR MAKING ELECTION.—The time for making any election under subparagraph (D) or (E) of section 988(c)(1) of the 1986 Code shall not expire before the date 30 days after the date of the enactment of this Act [Nov. 10, 1988].

"(3) TRANSITIONAL RULES.—

"(A) The requirements of subclause (IV) of section 988(c)(1)(E)(iii) of the 1986 Code (as added by subsection (b)) shall not apply to periods before the date of the enactment of this Act.

"(B) In the case of any partner in an existing partnership, the 20-percent ownership requirements of subclause (I) of such section 988(c)(1)(E)(iii) shall be treated as met during any period during which such partner does not own a percentage interest in the capital or profits of such partnership greater than 331/3 percent (or, if lower, the lowest such percentage interest of such partner during any prior period after October 21, 1988, during which such partnership is in existence). For purposes of the preceding sentence, the term 'existing partnership' means any partnership if—

"(i) such partnership was in existence on October 21, 1988, and principally engaged on such date in buying and selling options, futures, or forwards with respect to commodities, or

"(ii) a registration statement was filed with respect to such partnership with the Securities and Exchange Commission on or before such date and such registration statement indicated that the principal activity of such partnership will consist of buying and selling instruments referred to in clause (i)."

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1261(e) of Pub. L. 99–514, set out as a note under section 985 of this title.

§989. Other definitions and special rules

(a) Qualified business unit

For purposes of this subpart, the term "qualified business unit" means any separate and clearly identified unit of a trade or business of a taxpayer which maintains separate books and records.

(b) Appropriate exchange rate

Except as provided in regulations, for purposes of this subpart, the term "appropriate exchange rate" means—

(1) in the case of an actual distribution of earnings and profits, the spot rate on the date such

distribution is included in income,

(2) in the case of an actual or deemed sale or exchange of stock in a foreign corporation treated as a dividend under section 1248, the spot rate on the date the deemed dividend is included in income,

(3) in the case of any amounts included in income under section 951(a)(1)(A) or 1293(a), the average exchange rate for the taxable year of the foreign corporation, or

(4) in the case of any other qualified business unit of a taxpayer, the average exchange rate for the taxable year of such qualified business unit.

For purposes of the preceding sentence, any amount included in income under section 951(a)(1)(B) shall be treated as an actual distribution made on the last day of the taxable year for which such amount was so included.

(c) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subpart, including regulations—

(1) setting forth procedures to be followed by taxpayers with qualified business units using a net worth method of accounting before the enactment of this subpart,

(2) limiting the recognition of foreign currency loss on certain remittances from qualified business units,

(3) providing for the recharacterization of interest and principal payments with respect to obligations denominated in certain hyperinflationary currencies,

(4) providing for alternative adjustments to the application of section 905(c),

(5) providing for the appropriate treatment of related party transactions (including transactions between qualified business units of the same taxpayer), and

(6) setting forth procedures for determining the average exchange rate for any period.

(Added Pub. L. 99–514, title XII, §1261(a), Oct. 22, 1986, 100 Stat. 2590; amended Pub. L. 100–647, title I, §1012(v)(5), Nov. 10, 1988, 102 Stat. 3529; Pub. L. 103–66, title XIII, §13231(c)(4)(C), Aug. 10, 1993, 107 Stat. 499; Pub. L. 104–188, title I, §1501(b)(9), Aug. 20, 1996, 110 Stat. 1826; Pub. L. 105–34, title XI, §1102(b)(2), (3), Aug. 5, 1997, 111 Stat. 966; Pub. L. 108–357, title IV, §413(c)(17), Oct. 22, 2004, 118 Stat. 1508.)

REFERENCES IN TEXT

The enactment of this subpart, referred to in subsec. (c)(1), probably means the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

AMENDMENTS

2004—Subsec. (b)(3). Pub. L. 108–357 struck out ", 551(a)," after "section 951(a)(1)(A)".

1997—Subsec. (b)(3), (4). Pub. L. 105–34, §1102(b)(3), struck out "weighted" before "average exchange rate".

Subsec. (c)(6). Pub. L. 105–34, §1102(b)(2), added par. (6).

1996—Subsec. (b). Pub. L. 104–188 substituted "section 951(a)(1)(B)" for "subparagraph (B) or (C) of section 951(a)(1)" in closing provisions.

1993—Subsec. (b). Pub. L. 103–66 substituted "subparagraph (B) or (C) of section 951(a)(1)" for "section 951(a)(1)(B)" in last sentence.

1988—Subsec. (b). Pub. L. 100–647 substituted in par. (3) "section 951(a)(1)(A)" for "section 951(a)" and inserted at end "For purposes of the preceding sentence, any amount included in income under section 951(a)(1)(B) shall be treated as an actual distribution made on the last day of the taxable year for which such amount was so included."

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to taxes paid or accrued in taxable years beginning after Dec. 31, 1997, see section 1102(c)(1) of Pub. L. 105–34, set out as a note under section 986 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to taxable years of foreign corporations beginning after Dec. 31, 1996, and to taxable years of United States shareholders within which or with which such taxable years of foreign corporations end, see section 1501(d) of Pub. L. 104–188, set out as a note under section 904 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to taxable years of foreign corporations beginning after Sept. 30, 1993, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, see section 13231(e) of Pub. L. 103–66, set out as a note under section 951 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1261(e) of Pub. L. 99–514, set out as a note under section 985 of this title.

PART IV—DOMESTIC INTERNATIONAL SALES CORPORATIONS

Subpart		Sec.[1]
A.	**Treatment of qualifying corporations**	**991**
B.	**Treatment of distributions to shareholders**	**995**

AMENDMENTS

1971—Pub. L. 92–178, title V, §501, Dec. 10, 1971, 85 Stat. 535, added part IV to subchapter N of chapter 1.

[1] *Section numbers editorially supplied.*

SUBPART A—TREATMENT OF QUALIFYING CORPORATIONS

Sec.

991. Taxation of a domestic international sales corporation.

992. Requirements of a domestic international sales corporation.

993. Definitions and special rules.[1]

994. Inter-company pricing rules.

[1] *So in original. Does not conform to section catchline.*

§991. Taxation of a domestic international sales corporation

For purposes of the taxes imposed by this subtitle upon a DISC (as defined in section 992(a)), a DISC shall not be subject to the taxes imposed by this subtitle.

(Added Pub. L. 92–178, title V, §501, Dec. 10, 1971, 85 Stat. 535; amended Pub. L. 105–206, title VI, §6011(e)(1), July 22, 1998, 112 Stat. 818.)

AMENDMENTS

1998—Pub. L. 105–206 struck out "except for the tax imposed by chapter 5" before period at end.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates (section 1131(a) of Pub. L. 105–34), see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE

Pub. L. 92–178, title V, §507, Dec. 10, 1971, 85 Stat. 553, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Except as provided in section 505 of this title [amending section 971 of this title and enacting provisions set out as a note under section 970 of this title], the amendments made by sections 501 through 504 of this title [enacting this section and sections 992 to 994, 995 to 997, and 6686 of this title and amending sections 246, 861, 901, 904, 922, 931, 1014, 1504, 6011, 6072, and 6501 of this title] shall apply with respect to taxable years ending after December 31, 1971, except that a corporation may not be a DISC (as defined in section 992(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], added by section 501 of this title) for any taxable year beginning before January 1, 1972."

TRANSITION RULES FOR DISC'S

Pub. L. 98–369, div. A, title VIII, §805(b), July 18, 1984, 98 Stat. 1001, as amended by Pub. L. 99–514, §2, title XVIII, §1876(h), (n), Oct. 22, 1986, 100 Stat. 2095, 2900, 2901, provided that:

"(1) CLOSE OF 1984 TAXABLE YEARS OF DISC'S.—

"(A) IN GENERAL.—For purposes of applying the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the taxable year of each DISC which begins before January 1, 1985, and which (but for this paragraph) would include January 1, 1985, shall close on December 31, 1984. For purposes of such Code, the requirements of section 992(a)(1)(B) of such Code (relating to percentage of qualified export assets on last day of the taxable year) shall not apply to any taxable year ending on December 31, 1984.

"(B) UNDERPAYMENTS OF ESTIMATED TAX.—To the extent provided in regulations prescribed by the Secretary of the Treasury or his delegate, no addition to tax shall be made under section 6654 or 6655 of such Code with respect to any underpayment of any installment required to be paid before April 13, 1985, to the extent the underpayment was created or increased by reason of subparagraph (A).

"(2) EXEMPTION OF ACCUMULATED DISC INCOME FROM TAX.—

"(A) IN GENERAL.—For purposes of applying the Internal Revenue Code of 1986 with respect to actual distributions made after December 31, 1984, by a DISC or former DISC which was a DISC on December 31, 1984, any accumulated DISC income of a DISC or former DISC (within the meaning of section 996(f)(1) of such Code) which is derived before January 1, 1985, shall be treated as previously taxed income (within the meaning of section 996(f)(2) of such Code) with respect to which there had previously been a deemed distribution to which section 996(e)(1) of such Code applied. For purposes of the preceding sentence, the term 'actual distribution' includes a distribution in liquidation, and the earnings and profits of any corporation receiving a distribution not included in gross income by reason of the preceding sentence shall be increased by the amount of such distribution.

"(B) EXCEPTION FOR DISTRIBUTION OF AMOUNTS PREVIOUSLY DISQUALIFIED .—Subparagraph (A) shall not apply to the distribution of any accumulated DISC income of a DISC or former DISC to which section 995(b)(2) of such Code applied by reason of any revocation or disqualification (other than a revocation which under regulations prescribed by the Secretary results solely from the provisions of this title [title VIII, §§801–805, of Pub. L. 98–369, see Effective Date of 1984 Amendment note set out under section 245 of this title].

"(C) TREATMENT OF DISTRIBUTION OF ACCUMULATED DISC INCOME RECEIVED BY COOPERATIVES.—In the case of any actual distribution received by an organization described in section 1381 of such Code and excluded from the gross income of such corporation by reason of subparagraph (A)—

"(i) such amount shall not be included in the gross income of any member of such organization when distributed in the form of a patronage dividend or otherwise, and

"(ii) no deduction shall be allowed to such organization by reason of any such distribution.

"(3) INSTALLMENT TREATMENT OF CERTAIN DEEMED DISTRIBUTIONS OF SHAREHOLDERS.—

"(A) IN GENERAL.—Notwithstanding section 995(b) of such Code, if a shareholder of a DISC elects the application of this paragraph, any qualified distribution shall be treated, for purposes of such Code, as

received by such shareholder in 10 equal installments on the last day of each of the 10 taxable years of such shareholder which begins after the first taxable year of such shareholder beginning in 1984. The preceding sentence shall apply without regard to whether the DISC exists after December 31, 1984.

"(B) QUALIFIED DISTRIBUTION.—The term 'qualified distribution' means any distribution which a shareholder is deemed to have received by reason of section 995(b) of such Code with respect to income derived by the DISC in the first taxable year of the DISC beginning—

"(i) in 1984, and

"(ii) after the date in 1984 on which the taxable year of such shareholder begins.

"(C) SHORTER PERIOD FOR INSTALLMENTS.—The Secretary of the Treasury or his delegate may by regulations provide for the election by any shareholder to be treated as receiving a qualified distribution over such shorter period as the taxpayer may elect.

"(D) ELECTIONS.—Any election under this paragraph shall be made at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe.

"(4) TREATMENT OF TRANSFERS FROM DISC TO FSC.—Except to the extent provided in regulations, section 367 of such Code shall not apply to transfers made before January 1, 1986 (or, if later, the date 1 year after the date on which the corporation ceases to be a DISC), to a FSC of qualified export assets (as defined in section 993(b) of such Code) held on August 4, 1983, by a DISC in a transaction described in section 351 or 368(a)(1) of such Code.

"(5) DEEMED TERMINATION OF A DISC.—Under regulations prescribed by the Secretary, if any controlled group of corporations of which a DISC is a member establishes a FSC, then any DISC which is a member of such group shall be treated as having terminated its DISC status.

"(6) DEFINITIONS.—For purposes of this subsection, the terms 'DISC' and 'former DISC' have the respective meanings given to such terms by section 992 of such Code."

SPECIAL RULE FOR EXPORT TRADE CORPORATIONS

Pub. L. 98–369, div. A, title VIII, §805(c), July 18, 1984, 98 Stat. 1002, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—If, before January 1, 1985, any export trade corporation—

"(A) makes an election under [former] section 927(f)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] to be treated as a FSC, or

"(B) elects not to be treated as an export trade corporation with respect to taxable years beginning after December 31, 1984,

rules similar to the rules of paragraphs (2) and (4) of subsection (b) [section 805(b)(2) and (4) of Pub. L. 98–369, set out as a note above] shall apply to such export trade corporation.

"(2) TREATMENT OF TRANSFERS TO FSC.—In the case of any export trade corporation which—

"(A) makes an election described in paragraph (1), and

"(B) transfers before January 1, 1986, any portion of its property to a FSC in a transaction described in section 351 or 368(a)(1),

then, subject to such rules as the Secretary of the Treasury or his delegate may prescribe based on principles similar to the principles of section 505(a) and (b) of the Revenue Act of 1971 [Pub. L. 92–178, set out as a note under section 970 of this title], no income, gain, or loss shall be recognized on such transfer or on the distribution of any stock of the FSC received (or treated as received) in connection with such transfer.

"(3) EXPORT TRADE CORPORATION.—For purposes of this subsection, the term 'export trade corporation' has the meaning given such term by section 971 of the Internal Revenue Code of 1986."

SUBMISSION OF ANNUAL REPORTS TO CONGRESS

Pub. L. 92–178, title V, §506, Dec. 10, 1971, 85 Stat. 553, which directed, that commencing with calendar year 1972, the Secretary of the Treasury submit annual reports to Congress on the effect and operation of title V, §§501–507, of Pub. L. 92–178, was probably intended by Congress to be repealed by Pub. L. 98–369, div. A, title VIII, §804(b)(1), July 18, 1984, 98 Stat. 1000, which directed that section 806 of Pub. L. 98–178 relating to submission of annual reports to Congress be repealed. Section 804(b)(2) of Pub. L. 98–369 provided that the repeal is applicable to reports for calendar years after 1984.

§992. Requirements of a domestic international sales corporation

(a) Definition of "DISC" and "former DISC"

(1) DISC

For purposes of this title, the term "DISC" means, with respect to any taxable year, a corporation which is incorporated under the laws of any State and satisfies the following conditions for the taxable year:

(A) 95 percent or more of the gross receipts (as defined in section 993(f)) of such corporation consist of qualified export receipts (as defined in section 993(a)),

(B) the adjusted basis of the qualified export assets (as defined in section 993(b)) of the corporation at the close of the taxable year equals or exceeds 95 percent of the sum of the adjusted basis of all assets of the corporation at the close of the taxable year,

(C) such corporation does not have more than one class of stock and the par or stated value of its outstanding stock is at least $2,500 on each day of the taxable year, and

(D) the corporation has made an election pursuant to subsection (b) to be treated as a DISC and such election is in effect for the taxable year.

(2) Status as DISC after having filed a return as a DISC

The Secretary shall prescribe regulations setting forth the conditions under and the extent to which a corporation which has filed a return as a DISC for a taxable year shall be treated as a DISC for such taxable year for all purposes of this title, notwithstanding the fact that the corporation has failed to satisfy the conditions of paragraph (1).

(3) "Former DISC"

For purposes of this title, the term "former DISC" means, with respect to any taxable year, a corporation which is not a DISC for such year but was a DISC in a preceding taxable year and at the beginning of the taxable year has undistributed previously taxed income or accumulated DISC income.

(b) Election

(1) Election

(A) An election by a corporation to be treated as a DISC shall be made by such corporation for a taxable year at any time during the 90–day period immediately preceding the beginning of the taxable year, except that the Secretary may give his consent to the making of an election at such other times as he may designate.

(B) Such election shall be made in such manner as the Secretary shall prescribe and shall be valid only if all persons who are shareholders in such corporation on the first day of the first taxable year for which such election is effective consent to such election.

(2) Effect of election

If a corporation makes an election under paragraph (1), then the provisions of this part shall apply to such corporation for the taxable year of the corporation for which made and for all succeeding taxable years and shall apply to each person who at any time is a shareholder of such corporation for all periods on or after the first day of the first taxable year of the corporation for which the election is effective.

(3) Termination of election

(A) Revocation

An election under this subsection made by any corporation may be terminated by revocation of such election for any taxable year of the corporation after the first taxable year of the corporation for which the election is effective. A termination under this paragraph shall be effective with respect to such election—

(i) for the taxable year in which made, if made at any time during the first 90 days of such taxable year, or

(ii) for the taxable year following the taxable year in which made, if made after the close of such 90 days,

and for all succeeding taxable years of the corporation. Such termination shall be made in such

manner as the Secretary shall prescribe by regulations.

(B) Continued failure to be DISC

If a corporation is not a DISC for each of any 5 consecutive taxable years of the corporation for which an election under this subsection is effective, the election shall be terminated and not be in effect for any taxable year of the corporation after such 5th year.

(c) Distributions to meet qualification requirements

(1) In general

Subject to the conditions provided by paragraph (2), a corporation which for a taxable year does not satisfy a condition specified in paragraph (1)(A) (relating to gross receipts) or (1)(B) (relating to assets) of subsection (a) shall nevertheless be deemed to satisfy such condition for such year if it makes a pro rata distribution of property after the close of the taxable year to its shareholders (designated at the time of such distribution as a distribution to meet qualification requirements) with respect to their stock in an amount which is equal to—

(A) if the condition of subsection (a)(1)(A) is not satisfied, the portion of such corporation's taxable income attributable to its gross receipts which are not qualified export receipts for such year,

(B) if the condition of subsection (a)(1)(B) is not satisfied, the fair market value of those assets which are not qualified export assets on the last day of such taxable year, or

(C) if neither of such conditions is satisfied, the sum of the amounts required by subparagraphs (A) and (B).

(2) Reasonable cause for failure

The conditions under paragraph (1) shall be deemed satisfied in the case of a distribution made under such paragraph—

(A) if the failure to meet the requirements of subsection (a)(1)(A) or (B), and the failure to make such distribution prior to the date on which made, are due to reasonable cause; and

(B) the corporation pays, within the 30–day period beginning with the day on which such distribution is made, to the Secretary, if such corporation makes such distribution after the 15th day of the 9th months after the close of the taxable year, an amount determined by multiplying (i) the amount equal to 4½ percent of such distribution, by (ii) the number of its taxable years which begin after the taxable year with respect to which such distribution is made and before such distribution is made. For purposes of this title, any payment made pursuant to this paragraph shall be treated as interest.

(3) Certain distributions made within 8½ months after close of taxable year deemed for reasonable cause

A distribution made on or before the 15th day of the 9th month after the close of the taxable year shall be deemed for reasonable cause for purposes of paragraph (2)(A) if—

(A) at least 70 percent of the gross receipts of such corporation for such taxable year consist of qualified export receipts, and

(B) the adjusted basis of the qualified export assets held by the corporation on the last day of each month of the taxable year equals or exceeds 70 percent of the sum of the adjusted basis of all assets held by the corporation on such day.

(d) Ineligible corporations

The following corporations shall not be eligible to be treated as a DISC—

(1) a corporation exempt from tax by reason of section 501,

(2) a personal holding company (as defined in section 542),

(3) a financial institution to which section 581 applies,

(4) an insurance company subject to the tax imposed by subchapter L,

(5) a regulated investment company (as defined in section 851(a)),

(6) a China Trade Act corporation receiving the special deduction provided in section 941(a),[1] or

(7) an S corporation.

(e) Coordination with personal holding company provisions in case of certain produced film rents

If—

(1) a corporation (hereinafter in this subsection referred to as "subsidiary") was established to take advantage of the provisions of this part, and

(2) a second corporation (hereinafter in this subsection referred to as "parent") throughout the taxable year owns directly at least 80 percent of the stock of the subsidiary,

then, for purposes of applying subsection (d)(2) and section 541 (relating to personal holding company tax) to the subsidiary for the taxable year, there shall be taken into account under section 543(a)(5) (relating to produced film rents) any interest in a film acquired by the parent and transferred to the subsidiary as if such interest were acquired by the subsidiary at the time it was acquired by the parent.

(Added Pub. L. 92–178, title V, §501, Dec. 10, 1971, 85 Stat. 535; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–354, §5(a)(32), Oct. 19, 1982, 96 Stat. 1695; Pub. L. 98–369, div. A, title VIII, §802(c)(1), July 18, 1984, 98 Stat. 999; Pub. L. 104–188, title I, §1616(b)(11), Aug. 20, 1996, 110 Stat. 1857; Pub. L. 110–172, §11(g)(16), Dec. 29, 2007, 121 Stat. 2491.)

REFERENCES IN TEXT

The China Trade Act, referred to in subsec. (d)(6), is act Sept. 19, 1922, ch. 346, 42 Stat. 849, as amended, which is classified generally to chapter 4 (§141 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 141 of Title 15 and Tables.

Section 941, referred to in subsec. (d)(6), was repealed by Pub. L. 94–455, title X, §1053(c), Oct. 4, 1976, 90 Stat. 1648.

AMENDMENTS

2007—Subsec. (a)(1)(C) to (E). Pub. L. 110–172 inserted "and" at end of subpar. (C), substituted period for ", and" at end of subpar. (D), and struck out subpar. (E) which read as follows: "such corporation is not a member of any controlled group of which a FSC is a member."

1996—Subsec. (d)(3). Pub. L. 104–188 struck out "or 593" after "section 581".

1984—Subsec. (a)(1)(E). Pub. L. 98–369 added subpar. (E).

1982—Subsec. (d)(7). Pub. L. 97–354 substituted "an S corporation" for "an electing small business corporation (as defined in section 1371(b))".

1976—Subsecs. (a)(2), (b)(1), (3), (c)(2)(B). Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1995, see section 1616(c) of Pub. L. 104–188, set out as a note under section 593 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

[1] *See References in Text note below.*

§993. Definitions

(a) Qualified export receipts

(1) General rule

For purposes of this part, except as provided by regulations under paragraph (2), the qualified export receipts of a corporation are—

(A) gross receipts from the sale, exchange, or other disposition of export property,

(B) gross receipts from the lease or rental of export property, which is used by the lessee of such property outside the United States,

(C) gross receipts for services which are related and subsidiary to any qualified sale, exchange, lease, rental, or other disposition of export property by such corporation,

(D) gross receipts from the sale, exchange, or other disposition of qualified export assets (other than export property),

(E) dividends (or amounts includible in gross income under section 951) with respect to stock of a related foreign export corporation (as defined in subsection (e)),

(F) interest on any obligation which is a qualified export asset,

(G) gross receipts for engineering or architectural services for construction projects located (or proposed for location) outside the United States, and

(H) gross receipts for the performance of managerial services in furtherance of the production of other qualified export receipts of a DISC.

(2) Excluded receipts

The Secretary may under regulations designate receipts from the sale, exchange, lease, rental, or other disposition of export property, and from services, as not being receipts described in paragraph (1) if he determines that such sale, exchange, lease, rental, or other disposition, or furnishing of services—

(A) is for ultimate use in the United States;

(B) is accomplished by a subsidy granted by the United States or any instrumentality thereof;

(C) is for use by the United States or any instrumentality thereof where the use of such export property or services is required by law or regulation.

For purposes of this part, the term "qualified export receipts" does not include receipts from a corporation which is a DISC for its taxable year in which the receipts arise and which is a member of a controlled group (as defined in paragraph (3)) which includes the recipient corporation.

(3) Definition of controlled group

For purposes of this part, the term "controlled group" has the meaning assigned to the term "controlled group of corporations" by section 1563(a), except that the phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent" each place it appears therein, and section 1563(b) shall not apply.

(b) Qualified export assets

For purposes of this part, the qualified export assets of a corporation are—

(1) export property (as defined in subsection (c));

(2) assets used primarily in connection with the sale, lease, rental, storage, handling, transportation, packaging, assembly, or servicing of export property, or the performance of engineering or architectural services described in subparagraph (G) of subsection (a)(1) or managerial services in furtherance of the production of qualified export receipts described in subparagraphs (A), (B), (C), and (G) of subsection (a)(1);

(3) accounts receivable and evidences of indebtedness which arise by reason of transactions of such corporation or of another corporation which is a DISC and which is a member of a controlled group which includes such corporation described in subparagraph (A), (B), (C), (D), (G), or (H), of subsection (a)(1);

(4) money, bank deposits, and other similar temporary investments, which are reasonably necessary to meet the working capital requirements of such corporation;

(5) obligations arising in connection with a producer's loan (as defined in subsection (d));

(6) stock or securities of a related foreign export corporation (as defined in subsection (e));

(7) obligations issued, guaranteed, or insured, in whole or in part, by the Export-Import Bank of the United States or the Foreign Credit Insurance Association in those cases where such obligations are acquired from such Bank or Association or from the seller or purchaser of the goods or services with respect to which such obligations arose;

(8) obligations issued by a domestic corporation organized solely for the purpose of financing sales of export property pursuant to an agreement with the Export-Import Bank of the United States under which such corporation makes export loans guaranteed by such bank; and

(9) amounts (other than reasonable working capital) on deposit in the United States that are utilized during the period provided for in, and otherwise in accordance with, regulations prescribed by the Secretary to acquire other qualified export assets.

(c) Export property

(1) In general

For purposes of this part, the term "export property" means property—

(A) manufactured, produced, grown, or extracted in the United States by a person other than a DISC,

(B) held primarily for sale, lease, or rental, in the ordinary course of trade or business, by, or to, a DISC, for direct use, consumption, or disposition outside the United States, and

(C) not more than 50 percent of the fair market value of which is attributable to articles imported into the United States.

In applying subparagraph (C), the fair market value of any article imported into the United States shall be its appraised value as determined by the Secretary under section 402 of the Tariff Act of 1930 (19 U.S.C. 1401a) in connection with its importation.

(2) Excluded property

For purposes of this part, the term "export property" does not include—

(A) property leased or rented by a DISC for use by any member of a controlled group (as defined in subsection (a)(3)) which includes the DISC,

(B) patents, inventions, models, designs, formulas, or processes, whether or not patented, copyrights (other than films, tapes, records, or similar reproductions, for commercial or home use), goodwill, trademarks, trade brands, franchises, or other like property,

(C) products of a character with respect to which a deduction for depletion is allowable (including oil, gas, coal, or uranium products) under section 613 or 613A,

(D) products the export of which is prohibited or curtailed under section 7(a) of the Export Administration Act of 1979 to effectuate the policy set forth in paragraph (2)(C) of section 3 of such Act (relating to the protection of the domestic economy), or

(E) any unprocessed timber which is a softwood.

Subparagraph (C) shall not apply to any commodity or product at least 50 percent of the fair market value of which is attributable to manufacturing or processing, except that subparagraph (C) shall apply to any primary product from oil, gas, coal, or uranium. For purposes of the preceding sentence, the term "processing" does not include extracting or handling, packing, packaging, grading, storing, or transporting. For purposes of subparagraph (E), the term "unprocessed timber" means any log, cant, or similar form of timber.

(3) Property in short supply

If the President determines that the supply of any property described in paragraph (1) is insufficient to meet the requirements of the domestic economy, he may by Executive order designate the property as in short supply. Any property so designated shall be treated as property not described in paragraph (1) during the period beginning with the date specified in the Executive order and ending with the date specified in an Executive order setting forth the President's determination that the property is no longer in short supply.

(d) Producer's loans

(1) In general

An obligation, subject to the rules provided in paragraphs (2) and (3), shall be treated as arising out of a producer's loan if—

(A) the loan, when added to the unpaid balance of all other producer's loans made by the DISC, does not exceed the accumulated DISC income at the beginning of the month in which the loan is made;

(B) the obligation is evidenced by a note (or other evidence of indebtedness) with a stated maturity date not more than 5 years from the date of the loan;

(C) the loan is made to a person engaged in the United States in the manufacturing, production, growing, or extraction of export property determined without regard to subparagraph (C) or (D) of subsection (c)(2), (referred to hereinafter as the "borrower"); and

(D) at the time of such loan it is designated as a producer's loan.

(2) Limitation

An obligation shall be treated as arising out of a producer's loan only to the extent that such loan, when added to the unpaid balance of all other producer's loans to the borrower outstanding at the time such loan is made, does not exceed an amount determined by multiplying the sum of—

(A) the amount of the borrower's adjusted basis determined at the beginning of the borrower's taxable year in which the loan is made, in plant, machinery, and equipment, and supporting production facilities in the United States;

(B) the amount of the borrower's property held primarily for sale, lease, or rental, to customers in the ordinary course of trade or business, at the beginning of such taxable year; and

(C) the aggregate amount of the borrower's research and experimental expenditures (within the meaning of section 174) in the United States during all preceding taxable years beginning after December 31, 1971,

by the percentage which the borrower's receipts, during the 3 taxable years immediately preceding the taxable year (but not including any taxable year commencing prior to 1972) in which the loan is made, from the sale, lease, or rental outside the United States of property which would be export property (determined without regard to subparagraph (C) or (D) of subsection (c)(2)) if held by a DISC is of the gross receipts during such 3 taxable years from the sale, lease, or rental of property held by such borrower primarily for sale, lease, or rental to customers in the ordinary course of the trade or business of such borrower.

(3) Increased investment requirement

An obligation shall be treated as arising out of a producer's loan in a taxable year only to the extent that such loan, when added to the unpaid balance of all other producer's loans to the borrower made during such taxable year, does not exceed an amount equal to—

(A) the amount by which the sum of the adjusted basis of assets described in paragraph (2)(A) and (B) on the last day of the taxable year in which the loan is made exceeds the sum of the adjusted basis of such assets on the first day of such taxable year; plus

(B) the aggregate amount of the borrower's research and experimental expenditures (within the meaning of section 174) in the United States during such taxable year.

(4) Special limitation in the case of domestic film maker

(A) In general

In the case of a borrower who is a domestic film maker and who incurs an obligation to a DISC for the making of a film, and such DISC is engaged in the trade or business of selling, leasing, or renting films which are export property, the limitation described in paragraph (2) may be determined (to the extent provided under regulations prescribed by the Secretary) on the basis of—

(i) the sum of the amounts described in subparagraphs (A), (B), and (C) thereof plus

reasonable estimates of all such amounts to be incurred at any time by the borrower with respect to films which are commenced within the taxable year in which the loan is made, and

(ii) the percentage which, based on the experience of producers of similar films, the annual receipts of such producers from the sale, lease, or rental of such films outside the United States is of the annual gross receipts of such producers from the sale, lease, or rental of such films.

(B) Domestic film maker

For purposes of this paragraph, a borrower is a domestic film maker with respect to a film if—

(i) such borrower is a United States person within the meaning of section 7701(a)(30), except that with respect to a partnership, all of the partners must be United States persons, and with respect to a corporation, all of its officers and at least a majority of its directors must be United States persons;

(ii) such borrower is engaged in the trade or business of making the film with respect to which the loan is made;

(iii) the studio, if any, used or to be used for the taking of photographs and the recording of sound incorporated into such film is located in the United States;

(iv) the aggregate playing time of portions of such film photographed outside the United States does not or will not exceed 20 percent of the playing time of such film; and

(v) not less than 80 percent of the total amount paid or to be paid for services performed in the making of such film is paid or to be paid to persons who are United States persons at the time such services are performed or consists of amounts which are fully taxable by the United States.

(C) Special rules for application of subparagraph (B)(v)

For purposes of clause (v) of subparagraph (B)—

(i) there shall not be taken into account any amount which is contingent upon receipts or profits of the film and which is fully taxable by the United States (within the meaning of clause (ii)); and

(ii) any amount paid or to be paid to a United States person, to a non-resident alien individual, or to a corporation which furnishes the services of an officer or employee to the borrower with respect to the making of a film, shall be treated as fully taxable by the United States only if the total amount received by such person, individual, officer, or employee for services performed in the making of such film is fully included in gross income for purposes of this chapter.

(e) Related foreign export corporation

In determining whether a corporation (hereinafter in this subsection referred to as "the domestic corporation") is a DISC—

(1) Foreign international sales corporation

A foreign corporation is a related foreign export corporation if—

(A) stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote is owned directly by the domestic corporation,

(B) 95 percent or more of such foreign corporation's gross receipts for its taxable year ending with or within the taxable year of the domestic corporation consists of qualified export receipts described in subparagraphs (A), (B), (C), and (D) of subsection (a)(1) and interest on any obligation described in paragraphs (3) and (4) of subsection (b), and

(C) the adjusted basis of the qualified export assets (described in paragraphs (1), (2), (3), and (4) of subsection (b)) held by such foreign corporation at the close of such taxable year equals or exceeds 95 percent of the sum of the adjusted basis of all assets held by it at the close of such taxable year.

(2) Real property holding company

A foreign corporation is a related foreign export corporation if—

(A) stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote is owned directly by the domestic corporation, and

(B) its exclusive function is to hold real property for the exclusive use (under a lease or otherwise) of the domestic corporation.

(3) Associated foreign corporation

A foreign corporation is a related foreign export corporation if—

(A) less than 10 percent of the total combined voting power of all classes of stock entitled to vote of such foreign corporation is owned (within the meaning of section 1563 (d) and (e)) by the domestic corporation or by a controlled group of corporations (within the meaning of section 1563) of which the domestic corporation is a member, and

(B) the ownership of stock or securities in such foreign corporation by the domestic corporation is determined (under regulations prescribed by the Secretary) to be reasonably in furtherance of a transaction or transactions giving rise to qualified export receipts of the domestic corporation.

(f) Gross receipts

For purposes of this part, the term "gross receipts" means the total receipts from the sale, lease, or rental of property held primarily for sale, lease, or rental in the ordinary course of trade or business, and gross income from all other sources. In the case of commissions on the sale, lease, or rental of property, the amount taken into account for purposes of this part as gross receipts shall be the gross receipts on the sale, lease, or rental of the property on which such commissions arose.

(g) United States defined

For purposes of this part, the term "United States" includes the Commonwealth of Puerto Rico and the possessions of the United States.

(Added Pub. L. 92–178, title V, §501, Dec. 10, 1971, 85 Stat. 538; amended Pub. L. 93–482, §3(a), Oct. 26, 1974, 88 Stat. 1456; Pub. L. 94–12, title VI, §603(a), Mar. 29, 1975, 89 Stat. 64; Pub. L. 94–455, title XI, §1101(b), (c), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1658, 1834; Pub. L. 96–39, title II, §202(c)(2), July 26, 1979, 93 Stat. 202; Pub. L. 96–72, §22(c), Sept. 29, 1979, 93 Stat. 535; Pub. L. 98–369, div. A, title VIII, §802(c)(2), July 18, 1984, 98 Stat. 999; Pub. L. 103–66, title XIII, §13239(b), Aug. 10, 1993, 107 Stat. 509.)

REFERENCES IN TEXT

Sections 3(2)(C) and 7(a) of the Export Administration Act of 1979, referred to in subsec. (c)(2)(D), are classified, respectively, to sections 2402(2)(C) and 2406(a) of the Appendix to Title 50, War and National Defense.

AMENDMENTS

1993—Subsec. (c)(2). Pub. L. 103–66, §13239(b)(2), inserted at end "For purposes of subparagraph (E), the term 'unprocessed timber' means any log, cant, or similar form of timber."

Subsec. (c)(2)(E). Pub. L. 103–66, §13239(b)(1), added subpar. (E).

1984—Subsec. (a)(3). Pub. L. 98–369 substituted "the term 'controlled group of corporations' by" for "such term by".

1979—Subsec. (c)(1). Pub. L. 96–39 substituted "of the Tariff Act of 1930 (19 U.S.C. 1401a)" for "402a of the Tariff Act of 1930 (19 U.S.C., sec. 1401a or 1402)".

Subsec. (c)(2)(D). Pub. L. 96–72 substituted "7(a) of the Export Administration Act of 1979" for "4(b) of the Export Administration Act of 1969 (50 U.S.C. App. 2403(b))" and "paragraph (2)(C)" for "paragraph (2)(A)".

1976—Subsecs. (a)(2), (b)(9). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (c). Pub. L. 94–455, §§1101(b), 1906(b)(13)(A), in par. (1) in provisions following subpar. (C), struck out "or his delegate" after "Secretary", in par. (2)(B) "or" after "like property", and in par. (2)(C), substituted "under section 613 or 613A" for "under section 611" after "uranium products)".

Subsec. (d)(1)(C). Pub. L. 94–455, §1101(c)(1), inserted "determined without regard to subparagraph (C) or

(D) of subsection (c)(2)" after "export property".

Subsec. (d)(2). Pub. L. 94–455, §1101(c)(2), inserted "(determined without regard to subparagraph (C) or (D) of subsection (c)(2))" after "would be export property".

Subsecs. (d)(4)(A), (e)(3)(B). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

1975—Subsec. (c)(2). Pub. L. 94–12 added subpars. (C) and (D) and provisions following subpar. (D).

1974—Subsec. (b)(3). Pub. L. 93–482 inserted "or of another corporation which is a DISC and which is a member of a controlled group which includes such corporation" after "such corporation".

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to sales, exchanges, or other dispositions after Aug. 10, 1993, see section 13239(e) of Pub. L. 103–66, set out as a note under section 865 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE OF 1979 AMENDMENTS

Amendment by Pub. L. 96–72 effective upon the expiration of the Export Administration Act of 1969, which terminated on Sept. 30, 1979, or upon any prior date which the Congress by concurrent resolution or the President by proclamation designated, see References in Text note set out under section 2418 of Appendix to Title 50, War and National Defense.

Amendment by Pub. L. 96–39 effective Jan. 1, 1981, with provision for an earlier effective date under certain circumstances, see section 204 of Pub. L. 96–39, set out as a note under section 1401a of Title 19, Customs Duties.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XI, §1101(g)(2), Oct. 4, 1976, 90 Stat. 1659, provided that: "The amendments made by subsection (b) [amending this section] shall apply to sales, exchanges, and other dispositions made after March 18, 1975, in taxable years ending after such date."

Pub. L. 94–455, title XI, §1101(g)(3), Oct. 4, 1976, 90 Stat. 1659, provided that: "The amendments made by subsections (c) and (f) [amending this section] shall apply to taxable years ending after March 18, 1975."

EFFECTIVE DATE OF 1975 AMENDMENT

Pub. L. 94–12, title VI, §603(b), Mar. 29, 1975, 89 Stat. 65, as amended by Pub. L. 94–455, title XI, §1101(f), Oct. 4, 1976, 90 Stat. 1659; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by subsection (a) [amending this section] shall apply to sales, exchanges, and other dispositions made after March 18, 1975, in taxable years ending after such date.

"(2) BINDING CONTRACT.—The amendments made by subsection (a) [amending this section] shall not apply to sales, exchanges, and other dispositions made after March 18, 1975, but before March 19, 1980, if such sales, exchanges, and other dispositions are made pursuant to a fixed contract. The term 'fixed contract' means a contract which was, on March 18, 1975, and is at all times thereafter binding on the DISC or a taxpayer which was a member of the same controlled group (within the meaning of section 993(a)(3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) as the DISC, which was entered into after the date on which the DISC qualified as a DISC and the DISC and the taxpayer became members of the same controlled group, and under which the price and quantity of the products sold, exchanged, or otherwise disposed of cannot be increased."

EFFECTIVE DATE OF 1974 AMENDMENT

Pub. L. 93–482, §3(b), Oct. 26, 1974, 88 Stat. 1456, provided that: "The amendment made by subsection (a) [amending this section] applies to taxable years beginning after December 31, 1973. The amendment shall, at the election of the taxpayer made within 90 days after the date of enactment of this Act [Oct. 26, 1974], also apply to any taxable year beginning after December 31, 1971, and before January 1, 1974."

§994. Inter-company pricing rules

(a) In general

In the case of a sale of export property to a DISC by a person described in section 482, the taxable income of such DISC and such person shall be based upon a transfer price which would allow such DISC to derive taxable income attributable to such sale (regardless of the sales price actually charged) in an amount which does not exceed the greatest of—

(1) 4 percent of the qualified export receipts on the sale of such property by the DISC plus 10 percent of the export promotion expenses of such DISC attributable to such receipts,

(2) 50 percent of the combined taxable income of such DISC and such person which is attributable to the qualified export receipts on such property derived as the result of a sale by the DISC plus 10 percent of the export promotion expenses of such DISC attributable to such receipts, or

(3) taxable income based upon the sale price actually charged (but subject to the rules provided in section 482).

(b) Rules for commissions, rentals, and marginal costing

The Secretary shall prescribe regulations setting forth—

(1) rules which are consistent with the rules set forth in subsection (a) for the application of this section in the case of commissions, rentals, and other income, and

(2) rules for the allocation of expenditures in computing combined taxable income under subsection (a)(2) in those cases where a DISC is seeking to establish or maintain a market for export property.

(c) Export promotion expenses

For purposes of this section, the term "export promotion expenses" means those expenses incurred to advance the distribution or sale of export property for use, consumption, or distribution outside of the United States, but does not include income taxes. Such expenses shall also include freight expenses to the extent of 50 percent of the cost of shipping export property aboard airplanes owned and operated by United States persons or ships documented under the laws of the United States in those cases where law or regulations does not require that such property be shipped aboard such airplanes or ships.

(Added Pub. L. 92–178, title V, §501, Dec. 10, 1971, 85 Stat. 543; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsec. (b). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

SUBPART B—TREATMENT OF DISTRIBUTIONS TO SHAREHOLDERS

Sec.

995. Taxation of DISC income to shareholders.

996. Rules for allocation in the case of distributions and losses.

997. Special subchapter C rules.

§995. Taxation of DISC income to shareholders

(a) General rule

A shareholder of a DISC or former DISC shall be subject to taxation on the earnings and profits of a DISC as provided in this chapter, but subject to the modifications of this subpart.

(b) Deemed distributions

(1) Distributions in qualified years

A shareholder of a DISC shall be treated as having received a distribution taxable as a dividend with respect to his stock in an amount which is equal to his pro rata share of the sum (or, if

smaller, the earnings and profits for the taxable year) of—

(A) the gross interest derived during the taxable year from producer's loans,

(B) the gain recognized by the DISC during the taxable year on the sale or exchange of property, other than property which in the hands of the DISC is a qualified export asset, previously transferred to it in a transaction in which gain was not recognized in whole or in part, but only to the extent that the transferor's gain on the previous transfer was not recognized,

(C) the gain (other than the gain described in subparagraph (B)) recognized by the DISC during the taxable year on the sale or exchange of property (other than property which in the hands of the DISC is stock in trade or other property described in section 1221(a)(1)) previously transferred to it in a transaction in which gain was not recognized in whole or in part, but only to the extent that the transferor's gain on the previous transfer was not recognized and would have been treated as ordinary income if the property has been sold or exchanged rather than transferred to the DISC,

(D) 50 percent of the taxable income of the DISC for the taxable year attributable to military property,

(E) the taxable income of the DISC attributable to qualified export receipts of the DISC for the taxable year which exceed $10,000,000,

(F) the sum of—

(i) in the case of a shareholder which is a C corporation, one-seventeenth of the excess of the taxable income of the DISC for the taxable year, before reduction for any distributions during the year, over the sum of the amounts deemed distributed for the taxable year under subparagraphs (A), (B), (C), (D), and (E),

(ii) an amount equal to 16/17 of the excess referred to in clause (i), multiplied by the international boycott factor determined under section 999, and

(iii) any illegal bribe, kickback, or other payment (within the meaning of section 162(c)) paid by or on behalf of the DISC directly or indirectly to an official, employee, or agent in fact of a government, and

(G) the amount of foreign investment attributable to producer's loans (as defined in subsection (d)) of a DISC for the taxable year.

Distributions described in this paragraph shall be deemed to be received on the last day of the taxable year of the DISC in which the income was derived. In the case of a distribution described in subparagraph (G), earnings and profits for the taxable year shall include accumulated earnings and profits.

(2) Distributions upon disqualification

(A) A shareholder of a corporation which revoked its election to be treated as a DISC or failed to satisfy the conditions of section 992(a)(1) for a taxable year shall be deemed to have received (at the time specified in subparagraph (B)) a distribution taxable as a dividend equal to his pro rata share of the DISC income of such corporation accumulated during the immediately preceding consecutive taxable years for which the corporation was a DISC.

(B) Distributions described in subparagraph (A) shall be deemed to be received in equal installments on the last day of each of the 10 taxable years of the corporation following the year of the termination or disqualification described in subparagraph (A) (but in no case over more than twice the number immediately preceding consecutive taxable years during which the corporation was a DISC).

(3) Taxable income attributable to military property

(A) In general

For purposes of paragraph (1)(D), taxable income of a DISC for the taxable year attributable to military property shall be determined by only taking into account—

(i) the gross income of the DISC for the taxable year which is attributable to military property, and

(ii) the deductions which are properly apportioned or allocated to such income.

(B) Military property

For purposes of subparagraph (A), the term "military property" means any property which is an arm, ammunition, or implement of war designated in the munitions list published pursuant to section 38 of the Arms Export Control Act (22 U.S.C. 2778).

(4) Aggregation of qualified export receipts

(A) In general

For purposes of applying paragraph (1)(E), all DISC's which are members of the same controlled group shall be treated as a single corporation.

(B) Allocation

The dollar amount under paragraph (1)(E) shall be allocated among the DISC's which are members of the same controlled group in a manner provided in regulations prescribed by the Secretary.

(c) Gain on disposition of stock in a DISC

(1) In general

If—

(A) a shareholder disposes of stock in a DISC or former DISC any gain recognized on such disposition shall be included in gross income as a dividend to the extent provided in paragraph (2), or

(B) stock of a DISC or former DISC is disposed of in a transaction in which the separate corporate existence of the DISC or former DISC is terminated other than by a mere change in place of organization, however effected, any gain realized on the disposition of such stock in the transaction shall be recognized notwithstanding any other provision of this title to the extent provided in paragraph (2) and to the extent so recognized shall be included in gross income as a dividend.

(2) Amount included

The amounts described in paragraph (1) shall be included in gross income as a dividend to the extent of the accumulated DISC income of the DISC or former DISC which is attributable to the stock disposed of and which was accumulated in taxable years of such corporation during the period or periods the stock disposed of was held by the shareholder which disposed of such stock.

(d) Foreign investment attributable to DISC earnings

For the purposes of this part—

(1) In general

The amount of foreign investment attributable to producer's loans of a DISC for a taxable year shall be the smallest of—

(A) the net increase in foreign assets by members of the controlled group (as defined in section 993(a)(3)) which includes the DISC,

(B) the actual foreign investment by domestic members of such group, or

(C) the amount of outstanding producer's loans by such DISC to members of such controlled group.

(2) Net increase in foreign assets

The term "net increase in foreign assets" of a controlled group means the excess of—

(A) the amount incurred by such group to acquire assets (described in section 1231(b)) located outside the United States over,

(B) the sum of—

(i) the depreciation with respect to assets of such group located outside the United States;

(ii) the outstanding amount of stock or debt obligations of such group issued after December 31, 1971, to persons other than the United States persons or any member of such

group;

(iii) one-half the earnings and profits of foreign members of such group and foreign branches of domestic members of such group;

(iv) one-half the royalties and fees paid by foreign members of such group to domestic members of such group; and

(v) the uncommitted transitional funds of the group as determined under paragraph (4).

For purposes of this paragraph, assets which are qualified export assets of a DISC (or would be qualified export assets if owned by a DISC) shall not be taken into account. Amounts described in this paragraph (other than in subparagraphs (B)(ii) and (v)) shall be taken into account only to the extent they are attributable to taxable years beginning after December 31, 1971.

(3) Actual foreign investment

The term "actual foreign investment" by domestic members of a controlled group means the sum of—

(A) contributions to capital of foreign members of the group by domestic members of the group after December 31, 1971,

(B) the outstanding amount of stock or debt obligations of foreign members of such group (other than normal trade indebtedness) issued after December 31, 1971, to domestic members of such group,

(C) amounts transferred by domestic members of the group after the December 31, 1971, to foreign branches of such members, and

(D) one-half the earnings and profits of foreign members of such group and foreign branches of domestic members of such group for taxable years beginning after December 31, 1971.

As used in this subsection, the term "domestic member" means a domestic corporation which is a member of a controlled group (as defined in section 993(a)(3)), and the term "foreign member" means a foreign corporation which is a member of such a controlled group.

(4) Uncommitted transitional funds

The uncommitted transitional funds of the group shall be an amount equal to the sum of—

(A) the excess of—

(i) the amount of stock or debt obligations of domestic members of such group outstanding on December 31, 1971, and issued on or after January 1, 1968, to persons other than United States persons or any members of such group, but only to the extent the taxpayer establishes that such amount constitutes a long-term borrowing for purposes of the foreign direct investment program, over

(ii) the net amount of actual foreign investment by domestic members of such group during the period that such stock or debt obligations have been outstanding; and

(B) the amount of liquid assets to the extent not included in subparagraph (A) held by foreign members of such group and foreign branches of domestic members of such group on October 31, 1971, in excess of their reasonable working capital needs on such date.

For purposes of this paragraph, the term "liquid assets" means money, bank deposits (not including time deposits), and indebtedness of 2 years or less to maturity on the date of acquisition; and the actual foreign investment shall be determined under paragraph (3) without regard to the date in subparagraph (A) of such paragraph and without regard to subparagraph (D) of such paragraph.

(5) Special rule

Under regulations prescribed by the Secretary the determinations under this subsection shall be made on a cumulative basis with proper adjustments for amounts previously taken into account.

(e) Certain transfers of DISC assets

If—

(1) a corporation owns, directly or indirectly, all of the stock of a subsidiary and a DISC,

(2) the subsidiary has been engaged in the active conduct of a trade or business (within the meaning of section 355(b)) throughout the 5–year period ending on the date of the transfer and continues to be so engaged thereafter, and

(3) during the taxable year of the subsidiary in which its stock is transferred and its preceding taxable year, such trade or business gives rise to qualified export receipts of the subsidiary and the DISC,

then, under such terms and conditions as the Secretary by regulations shall prescribe, transfers of assets, stock, or both, will be deemed to be a reorganization within the meaning of section 368, a transaction to which section 355 applies, an exchange of stock to which section 351 applies, or a combination thereof. The preceding sentence shall apply only to the extent that the transfer or transfers involved are for the purpose of preventing the separation of the ownership of the stock in the DISC from the ownership of the trade or business which (during the base period) produced the export gross receipts of the DISC.

(f) Interest on DISC-related deferred tax liability

(1) In general

A shareholder of a DISC shall pay for each taxable year interest in an amount equal to the product of—

(A) the shareholder's DISC-related deferred tax liability for such year, and

(B) the base period T-bill rate.

(2) Shareholder's DISC-related deferred tax liability

For purposes of this subsection—

(A) In general

The term "shareholder's DISC-related deferred tax liability" means, with respect to any taxable year of a shareholder of a DISC, the excess of—

(i) the amount which would be the tax liability of the shareholder for the taxable year if the deferred DISC income of such shareholder for such taxable year were included in gross income as ordinary income, over

(ii) the actual amount of the tax liability of such shareholder for such taxable year.

Determinations under the preceding sentence shall be made without regard to carrybacks to such taxable year.

(B) Adjustments for losses, credits, and other items

The Secretary shall prescribe regulations which provide such adjustments—

(i) to the accounts of the DISC, and

(ii) to the amount of any carryover or carryback of the shareholder,

as may be necessary or appropriate in the case of net operating losses, credits, and carryovers, and carrybacks of losses and credits.

(C) Tax liability

The term "tax liability" means the amount of the tax imposed by this chapter for the taxable year reduced by credits allowable against such tax (other than credits allowable under sections 31, 32, and 34).

(3) Deferred DISC income

For purposes of this subsection—

(A) In general

The term "deferred DISC income" means, with respect to any taxable year of a shareholder,

the excess of—

(i) the shareholder's pro rata share of accumulated DISC income (for periods after 1984) of the DISC as of the close of the computation year, over

(ii) the amount of the distributions-in-excess-of-income for the taxable year of the DISC following the computation year.

(B) Computation year

For purposes of applying subparagraph (A) with respect to any taxable year of a shareholder, the computation year is the taxable year of the DISC which ends with (or within) the taxable year of the shareholder which precedes the taxable year of the shareholder for which the amount of deferred DISC income is being determined.

(C) Distributions-in-excess-of-income

For purposes of subparagraph (A), the term "distributions-in-excess-of-income" means, with respect to any taxable year of a DISC, the excess (if any) of—

(i) the amount of actual distributions to the shareholder out of accumulated DISC income, over

(ii) the shareholder's pro rata share of the DISC income for such taxable year.

(4) Base period T-bill rate

For purposes of this subsection, the term "base period T-bill rate" means the annual rate of interest determined by the Secretary to be equivalent to the average of the 1-year constant maturity Treasury yields, as published by the Board of Governors of the Federal Reserve System, for the 1-year period ending on September 30 of the calendar year ending with (or of the most recent calendar year ending before) the close of the taxable year of the shareholder.

(5) Short years

The Secretary shall prescribe such regulations as may be necessary for the application of this subsection to short years of the DISC, the shareholder, or both.

(6) Payment and assessment and collection of interest

The interest accrued during any taxable year which a shareholder is required to pay under paragraph (1) shall be treated, for purposes of this title, as interest payable under section 6601 and shall be paid by the shareholder at the time the tax imposed by this chapter for such taxable year is required to be paid.

(7) DISC includes former DISC

For purposes of this subsection, the term "DISC" includes a former DISC.

(g) Treatment of tax-exempt shareholders

If any organization described in subsection (a)(2) or (b)(2) of section 511 (or any other person otherwise subject to tax under section 511) is a shareholder in a DISC—

(1) any amount deemed distributed to such shareholder under subsection (b),

(2) any actual distribution to such shareholder which under section 996 is treated as out of accumulated DISC income, and

(3) any gain which is treated as a dividend under subsection (c),

shall be treated as derived from the conduct of an unrelated trade or business (and the modifications of section 512(b) shall not apply). The rules of the preceding sentence shall apply also for purposes of determining any such shareholder's DISC-related deferred tax liability under subsection (f).

(Added Pub. L. 92–178, title V, §501, Dec. 10, 1971, 85 Stat. 544; amended Pub. L. 94–455, title X, §§1063, 1065(a)(2), title XI, §1101(a), (d)(1), title XIX, §§1901(b)(3)(K), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1650, 1654, 1655, 1658, 1793, 1834; Pub. L. 95–600, title VII, §§701(u)(12)(B), 703(i)(1), (2), Nov. 6, 1978, 92 Stat. 2918, 2940; Pub. L. 98–369, div. A, title I, §68(d), title VIII, §802(a), (b), July 18, 1984, 98 Stat. 588, 997, 999; Pub. L. 99–514, title XVIII, §1876(b)(2), (g),

(p)(1), Oct. 22, 1986, 100 Stat. 2898, 2900, 2902; Pub. L. 100–647, title I, §§1006(e)(15), 1012(bb)(6)(A), Nov. 10, 1988, 102 Stat. 3402, 3535; Pub. L. 101–239, title VII, §7811(i)(12), Dec. 19, 1989, 103 Stat. 2411; Pub. L. 106–170, title V, §532(c)(2)(R), Dec. 17, 1999, 113 Stat. 1931; Pub. L. 106–554, §1(a)(7) [title III, §§307(c), 319(12)], Dec. 21, 2000, 114 Stat. 2763, 2763A–636, 2763A–646; Pub. L. 107–147, title IV, §417(15), Mar. 9, 2002, 116 Stat. 56.)

AMENDMENTS

2002—Subsec. (b)(3)(B). Pub. L. 107–147 substituted "Arms Export Control Act" for "International Security Assistance and Arms Export Control Act of 1976".

2000—Subsec. (b)(3)(B). Pub. L. 106–554, §1(a)(7) [title III, §319(12)], substituted "section 38 of the International Security Assistance and Arms Export Control Act of 1976 (22 U.S.C. 2778)" for "the Military Security Act of 1954 (22 U.S.C. 1934)".

Subsec. (f)(4). Pub. L. 106–554, §1(a)(7) [title III, §307(c)], substituted "the average of the 1-year constant maturity Treasury yields, as published by the Board of Governors of the Federal Reserve System, for the 1-year period" for "the average investment yield of United States Treasury bills with maturities of 52 weeks which were auctioned during the 1-year period".

1999—Subsec. (b)(1)(C). Pub. L. 106–170 substituted "1221(a)(1)" for "1221(1)".

1989—Subsec. (g). Pub. L. 101–239 substituted "section 511 (or any other person otherwise subject to tax under section 511)" for "section 511" in introductory provisions.

1988—Subsec. (c)(1). Pub. L. 100–647, §1006(e)(15), struck out subpar. (C) and last sentence which read as follows:

> "(C) a shareholder distributes, sells, or exchanges stock in a DISC or former DISC in a transaction to which section 311, 336, or 337 applies, then an amount equal to the excess of the fair market value of such stock over its adjusted basis in the hands of the shareholder shall, notwithstanding any provision of this title, be included in gross income of the shareholder as a dividend to the extent provided in paragraph (2).

Subparagraph (C) shall not apply if the person receiving the stock in the disposition has a holding period for the stock which includes the period for which the stock was held by the shareholder disposing of such stock."

Subsec. (g). Pub. L. 100–647, §1012(bb)(6)(A), added subsec. (g).

1986—Subsec. (b)(1)(F)(i). Pub. L. 99–514, §1876(b)(2)(A), inserted "in the case of a shareholder which is a C corporation,".

Subsec. (b)(1)(F)(ii). Pub. L. 99–514, §1876(b)(2)(B), substituted "16/17 of the excess referred to in clause (i)," for "the amount determined under clause (i)".

Subsec. (f)(4) to (6). Pub. L. 99–514, §1876(p)(1), redesignated as pars. (4), (5), and (6), respectively, former par. (3) relating to base period T-bill rate, (4) relating to short years, and (5) relating to payment and assessment and collection of interest.

Subsec. (f)(7). Pub. L. 99–514, §1876(g), added par. (7).

1984—Subsec. (b)(1)(E). Pub. L. 98–369, §802(b)(1), substituted "of the DISC attributable to qualified export receipts of the DISC for the taxable year which exceed $10,000,000" for "for the taxable year attributable to base period export gross receipts (as defined in subsection (e))".

Subsec. (b)(1)(F)(i). Pub. L. 98–369, §68(d), substituted "one-seventeenth" for "one/half".

Subsec. (b)(4). Pub. L. 98–369, §802(b)(2), added par. (4).

Subsec. (e). Pub. L. 98–369, §802(a)(1), (2), redesignated subsec. (g) as (e). Former subsec. (e), which related to definitions and special rules relating to computation of taxable income attributable to base period export gross receipts, was struck out.

Subsec. (f). Pub. L. 98–369, §802(a)(1), (3), added subsec. (f). Former subsec. (f), which related to small DISCs, was struck out.

Subsec. (g). Pub. L. 98–369, §802(a)(2), redesignated subsec. (g) as (e).

1978—Subsec. (b)(1). Pub. L. 95–600, §703(i)(1), (2), substituted in subpar. (G) "subsection (d)" for "subsection (D)", and in provisions following subpar. (G) "income" for "gross income (taxable income in the case of subparagraph (D))" and "subparagraph (G)" for "subparagraph (E)".

Subsec. (c)(1). Pub. L. 95–600, §701(u)(12)(B), inserted provision relating to application of subpar. (C).

1976—Subsec. (b)(1)(C). Pub. L. 94–455, §1901(b)(3)(K), substituted "ordinary income" for "gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231" after "treated as".

Subsec. (b)(1)(D), (E). Pub. L. 94–455, §1101(a)(1), added subpars. (D) and (E) and redesignated former subpars. (D) and (E) as (F) and (G), respectively.

Subsec. (b)(1)(F). Pub. L. 94–455, §§1063(a), 1065(a)(2), 1101(a)(1), redesignated former subpar. (D) as (F), made existing provision cl. (i), added cls. (ii) and (iii), and substituted "(C), (D), and (E)" for "(C)" after

"(B), and".

Subsec. (b)(1)(G). Pub. L. 94–455, §1101(a)(1), redesignated former subpar. (E) as (G).

Subsec. (b)(2)(B). Pub. L. 94–455, §1101(a)(2), substituted "more than twice the number" for "more than the number" after "no case over".

Subsec. (b)(3). Pub. L. 94–455, §1101(a)(3), added par. (3).

Subsec. (c). Pub. L. 94–455, §1101(d)(1), redesignated existing provisions as pars. (1) and (2) and, as redesignated, added subpar. (1)(C).

Subsec. (d)(5). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsecs. (e) to (g). Pub. L. 94–455, §1101(a)(4), added subsecs. (e) to (g).

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title X, §1012(bb)(6)(B), Nov. 10, 1988, 102 Stat. 3536, provided that: "The amendment made by subparagraph (A) [amending this section] shall apply to taxable years beginning after December 31, 1987."

Amendment by section 1006(e)(15) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 68(d) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1984, see section 68(e)(1) of Pub. L. 98–369, set out as a note under section 291 of this title.

Amendment by section 802(a), (b) of Pub. L. 98–369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title VII, §701(u)(12)(C), Nov. 6, 1978, 92 Stat. 2918, provided that: "The amendment made by subparagraph (B) [amending this section] shall apply to dispositions made after December 31, 1976, in taxable years ending after such date."

Amendment by section 703(i)(1), (2) of Pub. L. 95–600 effective on Oct. 4, 1976, see section 703(r) of Pub. L. 95–600, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1063(a) of Pub. L. 94–455 applicable to participation in or cooperation with an international boycott more than 30 days after Oct. 4, 1976, with special provisions for existing contracts, see section 1066(a) of Pub. L. 94–455, set out as a note under section 908 of this title.

Amendment by section 1065(a)(2) of Pub. L. 94–455 applicable to payments described in section 162(c) of this title made more than 30 days after Oct. 4, 1976, see section 1066(b) of Pub. L. 94–455, set out as a note under section 952 of this title.

Pub. L. 94–455, title XI, §1101(g)(1), Oct. 4, 1976, 90 Stat. 1659, provided that: "The amendments made by subsections (a) and (e) [amending this section and section 996 of this title] shall apply to taxable years beginning after December 31, 1975."

Pub. L. 94–455, title XI, §1101(g)(4), Oct. 4, 1976, 90 Stat. 1659, as amended by Pub. L. 95–600, title VII, §701(u)(12)(A), Nov. 6, 1978, 92 Stat. 2918, provided that: "The amendments made by subsection (d)

[amending this section and section 751 of this title] shall apply to sales, exchanges, or other dispositions after December 31, 1976, in taxable years ending after such date."

Amendment by section 1901(b)(3)(K) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

PRORATION OF BASE PERIOD IN CASE OF FIXED CONTRACTS

Pub. L. 94–455, title XI, §1101(g)(5), Oct. 4, 1976, 90 Stat. 1659, as amended by Pub. L. 95–600, title VII, §703(i)(4), Nov. 6, 1978, 92 Stat. 2940; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "For purposes of determining adjusted base period export gross receipts (under section 995(e)(3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as amended by this section), if any DISC has export gross receipts from export property by reason of paragraph (2) of section 603(b) of the Tax Reduction Act of 1975, [set out as an Effective Date of 1975 Amendment note under section 993 of this title], then the export gross receipts of such DISC for the taxable years of the base period shall be increased by an amount equal to the amount of gross receipts which were excluded from export gross receipts during each taxable year of the base period by reason of the last sentence of section 995(e)(3) of such Code multiplied by a fraction, the numerator of which is the amount of the gross receipts in the taxable year which are export gross receipts by reason of paragraph (2) of section 603(b) of the Tax Reduction Act of 1975 and the denominator of which is the amount of total gross receipts which are excluded from export gross receipts in the taxable year by reason of subparagraph (C) or (D) of paragraph (2) of section 993(c) (determined without regard to paragraph (2) of section 603(b) of the Tax Reduction Act of 1975)."

§996. Rules for allocation in the case of distributions and losses

(a) Rules for actual distributions and certain deemed distributions

(1) In general

Any actual distribution (other than a distribution described in paragraph (2) or to which section 995(c) applies) to a shareholder by a DISC (or former DISC) which is made out of earnings and profits shall be treated as made—

(A) first, out of previously taxed income, to the extent thereof,

(B) second, out of accumulated DISC income, to the extent thereof, and

(C) finally, out of other earnings and profits.

(2) Qualifying distributions

Any actual distribution made pursuant to section 992(c) (relating to distributions to meet qualification requirements), and any deemed distribution pursuant to section 995(b)(1)(G) (relating to foreign investment attributable to producer's loans), shall be treated as made—

(A) first, out of accumulated DISC income, to the extent thereof,

(B) second, out of the earnings and profits described in paragraph (1)(C), to the extent thereof, and

(C) finally, out of previously taxed income.

In the case of any amount of any actual distribution to a C corporation made pursuant to section 992(c) which is required to satisfy the condition of section 992(a)(1)(A), the preceding sentence shall apply to 16/17ths of such amount and paragraph (1) shall apply to the remaining 1/17th of such amount.

(3) Exclusion from gross income

Amounts distributed out of previously taxed income shall be excluded by the distributee from gross income except for gains described in subsection (e)(2), and shall reduce the amount of the

previously taxed income.

(b) Ordering rules for losses

If for any taxable year a DISC, or a former DISC, incurs a deficit in earnings and profits, such deficit shall be chargeable—

(1) first, to earnings and profits described in subsection (a)(1)(C), to the extent thereof,

(2) second, to accumulated DISC income, to the extent thereof, and

(3) finally, to previously taxed income, except that a deficit in earnings and profits shall not be applied against accumulated DISC income which has been determined is to be deemed distributed to the shareholders (pursuant to section 995(b)(2)(A)) as a result of a revocation of election or other disqualification.

(c) Priority of distributions

Any actual distribution made during a taxable year shall be treated as being made subsequent to any deemed distribution made during such year. Any actual distribution made pursuant to section 992(c) (relating to distributions to meet qualification requirements) shall be treated as being made before any other actual distributions during the taxable year.

(d) Subsequent effect of previous disposition of DISC stock

(1) Shareholder previously taxed income adjustment

If—

(A) gain with respect to a share of stock of a DISC or former DISC is treated under section 995(c) as a dividend or as ordinary income, and

(B) any person subsequently receives an actual distribution made out of accumulated DISC income, or a deemed distribution made pursuant to section 995(b)(2), with respect to such share,

such person shall treat such distribution in the same manner as a distribution from previously taxed income to the extent that (i) the gain referred to in subparagraph (A), exceeds (ii) any other amounts with respect to such share which were treated under this paragraph as made from previously taxed income. In applying this paragraph with respect to a share of stock in a DISC or former DISC, gain on the acquisition of such share by the DISC or former DISC or gain on a transaction prior to such acquisition shall not be considered gain referred to in subparagraph (A).

(2) Corporate adjustment upon redemption

If section 995(c) applies to a redemption of stock in a DISC or former DISC, the accumulated DISC income shall be reduced by an amount equal to the gain described in section 995(c) with respect to such stock which is (or has been) treated as ordinary income, except to the extent distributions with respect to such stock have been treated under paragraph (1).

(e) Adjustment to basis

(1) Additions to basis

Amounts representing deemed distributions as provided in section 995(b) shall increase the basis of the stock with respect to which the distribution is made.

(2) Reductions of basis

The portion of an actual distribution made out of previously taxed income shall reduce the basis of the stock with respect to which it is made, and to the extent that it exceeds the adjusted basis of such stock, shall be treated as gain from the sale or exchange of property. In the case of stock includible in the gross estate of a decedent for which an election is made under section 2032 (relating to alternate valuation), this paragraph shall not apply to any distribution made after the date of the decedent's death and before the alternate valuation date provided by section 2032.

(f) Definition of divisions of earnings and profits

For purposes of this part:

(1) DISC income

The earnings and profits derived by a corporation during a taxable year in which such corporation is a DISC, before reduction for any distributions during the year, but reduced by amounts deemed distributed under section 995(b)(1), shall constitute the DISC income for such year. The earnings and profits of a DISC for a taxable year include any amounts includible in such DISC's gross income pursuant to section 951(a) for such year. Accumulated DISC income shall be reduced by deemed distributions under section 995(b)(2).

(2) Previously taxed income

Earnings and profits deemed distributed under section 995(b) for a taxable year shall constitute previously taxed income for such year.

(3) Other earnings and profits

The earnings and profits for a taxable year which are described in neither paragraph (1) nor (2) shall constitute the other earnings and profits for such year.

(g) Effectively connected income

In the case of a shareholder who is a nonresident alien individual or a foreign corporation, trust, or estate, gains referred to in section 995(c) and all distributions out of accumulated DISC income including deemed distributions shall be treated as gains and distributions which are effectively connected with the conduct of a trade or business conducted through a permanent establishment of such shareholder within the United States and which are derived from sources within the United States.

(Added Pub. L. 92–178, title V, §501 Dec. 10, 1971, 85 Stat. 547; amended Pub. L. 94–455, title XI, §1101(e), title XIX, §§1901(b)(3)(I), Oct. 4, 1976, 90 Stat. 1659, 1793; Pub. L. 95–600, title VII, §703(i)(3), Nov. 6, 1978, 92 Stat. 2940; Pub. L. 98–369, div. A, title VIII, §801(d)(10), July 18, 1984, 98 Stat. 997; Pub. L. 99–514, title XVIII, §1876(k), Oct. 22, 1986, 100 Stat. 2900.)

AMENDMENTS

1986—Subsec. (a)(2). Pub. L. 99–514 inserted last sentence and struck out former last sentence which read as follows: "In the case of any amount of any actual distribution made pursuant to section 992(c) which is required to satisfy the condition of section 992(a)(1)(A), the preceding sentence shall apply to one-half of such amount, and paragraph (1) shall apply to the remaining one-half of such amount."

1984—Subsec. (g). Pub. L. 98–369 inserted "and which are derived from sources within the United States".

1978—Subsec. (a)(2). Pub. L. 95–600 substituted "section (b)(1)(G)" for "section (b)(1)(E)".

1976—Subsec. (a)(2). Pub. L. 94–455, §1101(e), inserted at end "In the case of any amount of any actual distribution made pursuant to section 992(c) which is required to satisfy the condition of section 992(a)(1)(A), the preceding sentence shall apply to one-half of such amount, and paragraph (1) shall apply to the remaining one-half of such amount."

Subsec. (d). Pub. L. 94–455, §1901(b)(3)(I), substituted "ordinary income" for "gain from the sale or exchange of property which is not a capital asset" in par. (1)(A) after "dividend or as" and, in par. (2), after "treated as".

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to distributions on or after June 22, 1984, see section 805(a)(3) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 effective on Oct. 4, 1976, see section 703(r) of Pub. L. 95–600, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1101(e) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, see section 1101(g)(1) of Pub. L. 94–455, set out as a note under section 905 of this title.

Amendment by section 1901(b)(3)(I) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§997. Special subchapter C rules

For purposes of applying the provisions of subchapter C of chapter 1, any distribution in property to a corporation by a DISC or former DISC which is made out of previously taxed income or accumulated DISC income shall—

(1) be treated as a distribution in the same amount as if such distribution of property were made to an individual, and

(2) have a basis, in the hands of the recipient corporation, equal to the amount determined under paragraph (1).

(Added Pub. L. 92–178, title V, §501, Dec. 10, 1971, 85 Stat. 549.)

PART V—INTERNATIONAL BOYCOTT DETERMINATIONS

Sec.
999. Reports by taxpayers; determinations.
[1000. Reserved.]

AMENDMENTS

1976—Pub. L. 94–455, title X, §1064(a), Oct. 4, 1976, 90 Stat. 1650, added part heading and analysis of sections.

§999. Reports by taxpayers; determinations

(a) International boycott reports by taxpayers

(1) Report required

If any person, or a member of a controlled group (within the meaning of section 993(a)(3)) which includes that person, has operations in, or related to—

(A) a country (or with the government, a company, or a national of a country) which is on the list maintained by the Secretary under paragraph (3), or

(B) any other country (or with the government, a company, or a national of that country) in which such person or such member had operations during the taxable year if such person (or, if such person is a foreign corporation, any United States shareholder of that corporation) knows or has reason to know that participation in or co-operation with an international boycott is required as a condition of doing business within such country or with such government, company, or national,

that person or shareholder (within the meaning of section 951(b)) shall report such operations to the Secretary at such time and in such manner as the Secretary prescribes, except that in the case of a foreign corporation such report shall be required only of a United States shareholder (within the meaning of such section) of such corporation.

(2) Participation and cooperation; request therefor

A taxpayer shall report whether he, a foreign corporation of which he is a United States

shareholder, or any member of a controlled group which includes the taxpayer or such foreign corporation has participated in or cooperated with an international boycott at any time during the taxable year, or has been requested to participate in or cooperate with such a boycott, and, if so, the nature of any operation in connection with which there was participation in or cooperation with such boycott (or there was a request to participate or cooperate).

(3) List to be maintained

The Secretary shall maintain and publish not less frequently than quarterly a current list of countries which require or may require participation in or cooperation with an international boycott (within the meaning of subsection (b)(3)).

(b) Participation in or cooperation with an international boycott

(1) General rule

If the person or a member of a controlled group (within the meaning of section 993(a)(3)) which includes the person participates in or cooperates with an international boycott in the taxable year, all operations of the taxpayer or such group in that country and in any other country which requires participation in or cooperation with the boycott as a condition of doing business within that country, or with the government, a company, or a national of that country, shall be treated as operations in connection with which such participation or cooperation occurred, except to the extent that the person can clearly demonstrate that a particular operation is a clearly separate and identifiable operation in connection with which there was no participation in or cooperation with an international boycott.

(2) Special rule

(A) Nonboycott operations

A clearly separate and identifiable operation of a person, or of a member of the controlled group (within the meaning of section 993(a)(3)) which includes that person, in or related to any country within the group of countries referred to in paragraph (1) shall not be treated as an operation in or related to a group of countries associated in carrying out an international boycott if the person can clearly demonstrate that he, or that such member, did not participate in or cooperate with the international boycott in connection with that operation.

(B) Separate and identifiable operations

A taxpayer may show that different operations within the same country, or operations in different countries, are clearly separate and identifiable operations.

(3) Definition of boycott participation and cooperation

For purposes of this section, a person participates in or cooperates with an international boycott if he agrees—

(A) as a condition of doing business directly or indirectly within a country or with the government, a company, or a national of a country—

(i) to refrain from doing business with or in a country which is the object of the boycott or with the government, companies, or nationals of that country;

(ii) to refrain from doing business with any United States person engaged in trade in a country which is the object of the boycott or with the government, companies, or nationals of that country;

(iii) to refrain from doing business with any company whose ownership or management is made up, all or in part, of individuals of a particular nationality, race, or religion, or to remove (or refrain from selecting) corporate directors who are individuals of a particular nationality, race, or religion; or

(iv) to refrain from employing individuals of a particular nationality, race, or religion; or

(B) as a condition of the sale of a product to the government, a company, or a national of a country, to refrain from shipping or insuring that product on a carrier owned, leased, or operated

by a person who does not participate in or cooperate with an international boycott (within the meaning of subparagraph (A)).

(4) Compliance with certain laws

This section shall not apply to any agreement by a person (or such member)—

(A) to meet requirements imposed by a foreign country with respect to an international boycott if United States law or regulations, or an Executive Order, sanctions participation in, or cooperation with, that international boycott,

(B) to comply with a prohibition on the importation of goods produced in whole or in part in any country which is the object of an international boycott, or

(C) to comply with a prohibition imposed by a country on the exportation of products obtained in such country to any country which is the object of an international boycott.

(c) International boycott factor

(1) International boycott factor

For purposes of sections 908(a), 952(a)(3), and 995(b)(1)(F)(ii), the international boycott factor is a fraction, determined under regulations prescribed by the Secretary, the numerator of which reflects the world-wide operations of a person (or, in the case of a controlled group (within the meaning of section 993(a)(3)) which includes that person, of the group) which are operations in or related to a group of countries associated in carrying out an international boycott in or with which that person or a member of that controlled group has participated or cooperated in the taxable year, and the denominator of which reflects the world-wide operations of that person or group.

(2) Specifically attributable taxes and income

If the taxpayer clearly demonstrates that the foreign taxes paid and income earned for the taxable year are attributable to specific operations, then, in lieu of applying the international boycott factor for such taxable year, the amount of the credit disallowed under section 908(a), the addition to subpart F income under section 952(a)(3), and the amount of deemed distribution under section 995(b)(1)(F)(ii) for the taxable year, if any, shall be the amount specifically attributable to the operations in which there was participation in or cooperation with an international boycott under section 999(b)(1).

(3) World-wide operations

For purposes of this subsection, the term "world-wide operations" means operations in or related to countries other than the United States.

(d) Determination with respect to particular operations

Upon a request made by the taxpayer, the Secretary shall issue a determination with respect to whether a particular operation of a person, or of a member of a controlled group which includes that person, constitutes participation in or cooperation with an international boycott. The Secretary may issue such a determination in advance of such operation in cases which are of such a nature that an advance determination is possible and appropriate under the circumstances. If the request is made before the operation is commenced, or before the end of a taxable year in which the operation is carried out, the Secretary may decline to issue such a determination before close of the taxable year.

(e) Participation or cooperation by related persons

If a person controls (within the meaning of section 304(c)) a corporation—

(1) participation in or cooperation with an international boycott by such corporation shall be presumed to be such participation or cooperation by such person, and

(2) participation in or cooperation with such a boycott by such person shall be presumed to be such participation or cooperation by such corporation.

(f) Willful failure to report

Any person (within the meaning of section 6671(b)) required to report under this section who willfully fails to make such report shall, in addition to other penalties provided by law, be fined not more than $25,000, imprisoned for not more than one year, or both.

(Added Pub. L. 94–455, title X, §1064(a), Oct. 4, 1976, 90 Stat. 1650; amended Pub. L. 95–600, title VII, §703(h)(2), (3), Nov. 6, 1978, 92 Stat. 2940; Pub. L. 98–369, div. A, title VIII, §802(c)(3), July 18, 1984, 98 Stat. 999; Pub. L. 99–514, title XVIII, §1876(p)(3), Oct. 22, 1986, 100 Stat. 2902; Pub. L. 106–519, §4(5), Nov. 15, 2000, 114 Stat. 2433; Pub. L. 108–357, title I, §101(b)(8), Oct. 22, 2004, 118 Stat. 1423.)

AMENDMENTS

2004—Subsec. (c)(1). Pub. L. 108–357 struck out "941(a)(5)," after "sections 908(a),".

2000—Subsec. (c)(1). Pub. L. 106–519 inserted "941(a)(5)," after "908(a),".

1986—Subsec. (c)(1), (2). Pub. L. 99–514 repealed section 802(c)(3) of Pub. L. 98–369 thereby restoring former text. See 1984 Amendment note below.

1984—Subsec. (c)(1), (2). Pub. L. 98–369 which substituted "995(b)(1)(F)(i)" for "995(b)(1)(F)(ii)" wherever appearing was repealed. See 1986 Amendment note above.

1978—Subsec. (c)(1). Pub. L. 95–600, §703(h)(2), substituted "995(b)(1)(F)(ii)" for "995(b)(3)".

Subsec. (c)(2). Pub. L. 95–600, §703(h)(3), substituted "995(b)(1)(F)(ii)" for "995(b)(1)(D)(ii)".

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to transactions after Dec. 31, 2004, see section 101(c) of Pub. L. 108–357, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–519 applicable to transactions after Sept. 30, 2000, with special rules relating to existing foreign sales corporations, see section 5 of Pub. L. 106–519, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 effective on Oct. 4, 1976, see section 703(r) of Pub. L. 95–600, set out as a note under section 46 of this title.

EFFECTIVE DATE

Section applicable to participation in or cooperation with an international boycott more than 30 days after Oct. 4, 1976, with special provisions for existing contracts, see section 1066(a) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 908 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

REPORTS BY THE SECRETARY

Pub. L. 94–455, title X, §1067, Oct. 4, 1976, 90 Stat. 1654, as amended by Pub. L. 98–369, div. A, title IV, §441(c), July 18, 1984, 98 Stat. 815, which required the Secretary to transmit a report every four years to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate relating to reports filed under section 999(a) of this title and describing the administration of provisions relating to international boycott activity, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 141 of House Document No. 103–7.

[§1000. Reserved]

Subchapter O—Gain or Loss on Disposition of Property

Part

I. Determination of amount of and recognition of gain or loss.
II. Basis rules of general application.
III. Common nontaxable exchanges.
IV. Special rules.
[V. Repealed.]
[VI. Repealed.] [1]
VII. Wash sales; straddles.

AMENDMENTS

1995—Pub. L. 104–7, §2(c), Apr. 11, 1995, 109 Stat. 93, struck out item for part V "Changes to effectuate F.C.C. policy".

1990—Pub. L. 101–508, title XI, §11801(b)(9), Nov. 5, 1990, 104 Stat. 1388–522, struck out item for part VIII "Distributions pursuant to Bank Holding Company Act".

1981—Pub. L. 97–34, title V, §501(d)(3), Aug. 13, 1981, 95 Stat. 327, substituted "Wash sales; straddles" for "Wash sales of stock or securities" in item for part VII.

1976—Pub. L. 94–455, title XIX, §1901(b)(32)(I), Oct. 4, 1976, 90 Stat. 1800, struck out item for part IX "Distributions pursuant to orders enforcing the antitrust laws".

Pub. L. 94–452, §2(c), Oct. 2, 1976, 90 Stat. 1512, struck out "of 1956" after "Bank Holding Company Act" in item for part VIII.

1962—Pub. L. 87–403, §1(b), Feb. 2, 1962, 76 Stat. 5, added item for part IX.

1956—Act May 9, 1956, ch. 240, §10(b), 70 Stat. 146, added item for part VIII.

[1] Part repealed by Pub. L. 109–135 without corresponding amendment of subchapter analysis.

PART I—DETERMINATION OF AMOUNT OF AND RECOGNITION OF GAIN OR LOSS

Sec.

1001. Determination of amount of and recognition of gain or loss.
[1002. Repealed.]

AMENDMENTS

1976—Pub. L. 94–455, title XIX, §1901(b)(28)(B)(ii), Oct. 4, 1976, 90 Stat. 1799, struck out item 1002 "Recognition of gain or loss".

§1001. Determination of amount of and recognition of gain or loss

(a) Computation of gain or loss

The gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the adjusted basis provided in section 1011 for determining gain, and the loss shall be the excess of the adjusted basis provided in such section for determining loss over the amount realized.

(b) Amount realized

The amount realized from the sale or other disposition of property shall be the sum of any money received plus the fair market value of the property (other than money) received. In determining the

amount realized—

(1) there shall not be taken into account any amount received as reimbursement for real property taxes which are treated under section 164(d) as imposed on the purchaser, and

(2) there shall be taken into account amounts representing real property taxes which are treated under section 164(d) as imposed on the taxpayer if such taxes are to be paid by the purchaser.

(c) Recognition of gain or loss

Except as otherwise provided in this subtitle, the entire amount of the gain or loss, determined under this section, on the sale or exchange of property shall be recognized.

(d) Installment sales

Nothing in this section shall be construed to prevent (in the case of property sold under contract providing for payment in installments) the taxation of that portion of any installment payment representing gain or profit in the year in which such payment is received.

(e) Certain term interests

(1) In general

In determining gain or loss from the sale or other disposition of a term interest in property, that portion of the adjusted basis of such interest which is determined pursuant to section 1014, 1015, or 1041 (to the extent that such adjusted basis is a portion of the entire adjusted basis of the property) shall be disregarded.

(2) Term interest in property defined

For purposes of paragraph (1), the term "term interest in property" means—

(A) a life interest in property,

(B) an interest in property for a term of years, or

(C) an income interest in a trust.

(3) Exception

Paragraph (1) shall not apply to a sale or other disposition which is a part of a transaction in which the entire interest in property is transferred to any person or persons.

(Aug. 16, 1954, ch. 736, 68A Stat. 295; Pub. L. 91–172, title II, §231(c)(2), title V, §516(a), Dec. 30, 1969, 83 Stat. 579, 646; Pub. L. 94–455, title XIX, §1901(a)(121), Oct. 4, 1976, 90 Stat. 1784; Pub. L. 95–600, title VII, §702(c)(9), Nov. 6, 1978, 92 Stat. 2928; Pub. L. 96–223, title IV, §401(a), Apr. 2, 1980, 94 Stat. 299; Pub. L. 98–369, div. A, title IV, §421(b)(4), July 18, 1984, 98 Stat. 794; Pub. L. 103–66, title XIII, §13213(a)(2)(E), Aug. 10, 1993, 107 Stat. 474.)

AMENDMENTS

1993—Subsec. (f). Pub. L. 103–66 struck out heading and text of subsec. (f). Text read as follows: "For treatment of certain expenses incident to the sale of a residence which were deducted as moving expenses by the taxpayer or his spouse under section 217(a), see section 217(e)."

1984—Subsec. (e)(1). Pub. L. 98–369 inserted reference to section 1041.

1980—Subsec. (e)(1). Pub. L. 96–223 repealed the amendment made by Pub. L. 95–600. See 1978 Amendment note below.

1978—Subsec. (e)(1). Pub. L. 95–600 inserted reference to section 1023. See Repeals note below.

1976—Subsec. (c). Pub. L. 94–455 substituted provision recognizing the entire amount of gain or loss, except as otherwise provided, for provision referring to section 1002 for the determination of the extent of gain or loss to be recognized.

1969—Subsec. (e). Pub. L. 91–172, §516(a), added subsec. (e).

Subsec. (f). Pub. L. 91–172, §231(c)(2), added subsec. (f).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to expenses incurred after Dec. 31, 1993, see section 13213(e) of Pub. L. 103–66 set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to transfers after July 18, 1984, in taxable years ending after

such date, subject to election to have amendment apply to transfers after 1983 or to transfers pursuant to existing decrees, see section 421(d) of Pub. L. 98–369, set out as an Effective Date note under section 1041 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT AND REVIVAL OF PRIOR LAW

Amendment by Pub. L. 96–223 (repealing section 702(c)(9) of Pub. L. 95–600 and the amendment made thereby, which had amended this section) applicable in respect of decedents dying after Dec. 31, 1976, and except for certain elections, this title to be applied and administered as if those repealed provisions had not been enacted, see section 401(b), (e) of Pub. L. 96–223, set out as a note under section 1023 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 effective as if included in the amendments and additions made by, and the appropriate provisions of Pub. L. 94–455, see section 702(c)(10) of Pub. L. 95–600, set out as a note under section 1014 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 231(c)(2) of Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 231(d) of Pub. L. 91–172, set out as a note under section 217 of this title.

Pub. L. 91–172, title V, §516(d), Dec. 30, 1969, 83 Stat. 648, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) The amendment made by subsection (a) [amending this section] shall apply to sales or other dispositions after October 9, 1969.

"(2) The amendment made by subsection (b) [amending section 1231 of this title] shall apply to taxable years beginning after December 31, 1969.

"(3) The amendments made by subsection (c) [enacting section 1253 and amending sections 162 and 1016 of this title] shall apply to transfers after December 31, 1969, except that section 1253(d)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (c) shall, at the election of the taxpayer (made at such time and in such manner as the Secretary or his delegate may by regulations prescribe), apply to transfers before January 1, 1970, but only with respect to payments made in taxable years ending after December 31, 1969, and beginning before January 1, 1980."

REPEALS

Pub. L. 95–600, §702(c)(9), cited as a credit to this section, and the amendment made thereby, were repealed by Pub. L. 96–223, title IV, §401(a), 94 Stat. 299, resulting in the text of this section reading as it read prior to enactment of section 702(c)(9). See Effective Date of 1980 Amendment and Revival of Prior Law note set out above.

[§1002. Repealed. Pub. L. 94–455, title XIX, §1901(b)(28)(B)(i), Oct. 4, 1976, 90 Stat. 1799]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 295, related to the recognition of the entire amount of gain or loss determined under section 1001 on the sale or exchange of property.

EFFECTIVE DATE OF REPEAL

Repeal effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 2 of this title.

PART II—BASIS RULES OF GENERAL APPLICATION

Sec.

1011. Adjusted basis for determining gain or loss.
1012. Basis of property—cost.

1013. Basis of property included in inventory.
1014. Basis of property acquired from a decedent.
1015. Basis of property acquired by gifts and transfers in trust.
1016. Adjustments to basis.
1017. Discharge of indebtedness.
[1018. Repealed.]
1019. Property on which lessee has made improvements.
[1020. Repealed.]
1021. Sale of annuities.
[1022. Repealed.]
1023. Cross references.
[1024. Renumbered.]

AMENDMENTS

2010—Pub. L. 111–312, title III, §301(a), Dec. 17, 2010, 124 Stat. 3300, amended analysis to read as if amendment by Pub. L. 107–16, §542(e)(6), had never been enacted. See 2001 Amendment note below.

2001—Pub. L. 107–16, title V, §542(e)(6), June 7, 2001, 115 Stat. 86, added item 1022.

1980—Pub. L. 96–589, §6(h)(2), Dec. 24, 1980, 94 Stat. 3410, struck out item 1018 "Adjustments of capital structure before September 22, 1938".

Pub. L. 96–223, title IV, §401(a), Apr. 2, 1980, 94 Stat. 299, repealed section 2005(e)(1) of Pub. L. 94–455 and the amendment made thereby. See 1986 Amendment note below.

1978—Pub. L. 95–600, title V, §515(5), Nov. 6, 1978, 92 Stat. 2884, substituted "December 31, 1979" for "December 31, 1976" in item 1023.

1976—Pub. L. 94–455, title XX, §2005(e)(1), Oct. 4, 1976, 90 Stat. 1878, which added item 1023 and redesignated former item 1023 as 1024, was repealed by Pub. L. 96–223, §401(a). See section 401(b), (e) of Pub. L. 96–223, set out as an Effective Date of 1980 Amendments and Revival of Prior Law note under section 1023 of this title.

Pub. L. 94–455, title XIX, §1901(b)(29)(B), (30)(C), Oct. 4, 1976, 90 Stat. 1799, struck out item 1020 "Election in respect of depreciation, etc., allowed before 1952", and item 1022 "Increase in basis with respect to certain foreign personal holding company stock or securities".

1964—Pub. L. 88–272, title II, §225(j)(3), Feb. 26, 1964, 78 Stat. 93, added item 1022 and redesignated former item 1022 as 1023.

§1011. Adjusted basis for determining gain or loss

(a) General rule

The adjusted basis for determining the gain or loss from the sale or other disposition of property, whenever acquired, shall be the basis (determined under section 1012 or other applicable sections of this subchapter and subchapters C (relating to corporate distributions and adjustments), K (relating to partners and partnerships), and P (relating to capital gains and losses)), adjusted as provided in section 1016.

(b) Bargain sale to a charitable organization

If a deduction is allowable under section 170 (relating to charitable contributions) by reason of a sale, then the adjusted basis for determining the gain from such sale shall be that portion of the adjusted basis which bears the same ratio to the adjusted basis as the amount realized bears to the fair market value of the property.

(Aug. 16, 1954, ch. 736, 68A Stat. 296; Pub. L. 91–172, title II, §201(f), Dec. 30, 1969, 83 Stat. 564.)

AMENDMENTS

1969—Pub. L. 91–172 redesignated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable with respect to sales made after Dec. 19, 1969, see section 201(g)(6) of Pub. L. 91–172, set out as a note under section 170 of this title.

§1012. Basis of property—cost

(a) In general

The basis of property shall be the cost of such property, except as otherwise provided in this subchapter and subchapters C (relating to corporate distributions and adjustments), K (relating to partners and partnerships), and P (relating to capital gains and losses).

(b) Special rule for apportioned real estate taxes

The cost of real property shall not include any amount in respect of real property taxes which are treated under section 164(d) as imposed on the taxpayer.

(c) Determinations by account

(1) In general

In the case of the sale, exchange, or other disposition of a specified security on or after the applicable date, the conventions prescribed by regulations under this section shall be applied on an account by account basis.

(2) Application to certain funds

(A) In general

Except as provided in subparagraph (B), any stock for which an average basis method is permissible under section 1012 which is acquired before January 1, 2012, shall be treated as a separate account from any such stock acquired on or after such date.

(B) Election fund for treatment as single account

If a fund described in subparagraph (A) elects to have this subparagraph apply with respect to one or more of its stockholders—

(i) subparagraph (A) shall not apply with respect to any stock in such fund held by such stockholders, and

(ii) all stock in such fund which is held by such stockholders shall be treated as covered securities described in section 6045(g)(3) without regard to the date of the acquisition of such stock.

A rule similar to the rule of the preceding sentence shall apply with respect to a broker holding such stock as a nominee.

(3) Definitions

For purposes of this section, the terms "specified security" and "applicable date" shall have the meaning given such terms in section 6045(g).

(d) Average basis for stock acquired pursuant to a dividend reinvestment plan

(1) In general

In the case of any stock acquired after December 31, 2010, in connection with a dividend reinvestment plan, the basis of such stock while held as part of such plan shall be determined using one of the methods which may be used for determining the basis of stock in an open-end fund.

(2) Treatment after transfer

In the case of the transfer to another account of stock to which paragraph (1) applies, such stock shall have a cost basis in such other account equal to its basis in the dividend reinvestment plan immediately before such transfer (properly adjusted for any fees or other charges taken into account in connection with such transfer).

(3) Separate accounts; election for treatment as single account

Rules similar to the rules of subsection (c)(2) shall apply for purposes of this subsection.

(4) Dividend reinvestment plan

For purposes of this subsection—

(A) In general

The term "dividend reinvestment plan" means any arrangement under which dividends on any stock are reinvested in stock identical to the stock with respect to which the dividends are paid.

(B) Initial stock acquisition treated as acquired in connection with plan

Stock shall be treated as acquired in connection with a dividend reinvestment plan if such stock is acquired pursuant to such plan or if the dividends paid on such stock are subject to such plan.

(Aug. 16, 1954, ch. 736, 68A Stat. 296; Pub. L. 110–343, div. B, title IV, §403(b), Oct. 3, 2008, 122 Stat. 3857.)

AMENDMENTS

2008—Pub. L. 110–343 designated first sentence as subsec. (a) and second sentence as subsec. (b), inserted headings, and added subsecs. (c) and (d).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title IV, §403(e), Oct. 3, 2008, 122 Stat. 3860, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting sections 6045A and 6045B of this title and amending this section and sections 6045 and 6724 of this title] shall take effect on January 1, 2011.

"(2) EXTENSION OF PERIOD FOR STATEMENTS SENT TO CUSTOMERS.—The amendments made by subsection (a)(3) [amending section 6045 of this title] shall apply to statements required to be furnished after December 31, 2008."

§1013. Basis of property included in inventory

If the property should have been included in the last inventory, the basis shall be the last inventory value thereof.

(Aug. 16, 1954, ch. 736, 68A Stat. 296.)

§1014. Basis of property acquired from a decedent

(a) In general

Except as otherwise provided in this section, the basis of property in the hands of a person acquiring the property from a decedent or to whom the property passed from a decedent shall, if not sold, exchanged, or otherwise disposed of before the decedent's death by such person, be—

(1) the fair market value of the property at the date of the decedent's death,

(2) in the case of an election under either section 2032 or section 811(j) of the Internal Revenue Code of 1939 where the decedent died after October 21, 1942, its value at the applicable valuation date prescribed by those sections,

(3) in the case of an election under section 2032A, its value determined under such section, or

(4) to the extent of the applicability of the exclusion described in section 2031(c), the basis in the hands of the decedent.

(b) Property acquired from the decedent

For purposes of subsection (a), the following property shall be considered to have been acquired from or to have passed from the decedent:

(1) Property acquired by bequest, devise, or inheritance, or by the decedent's estate from the

decedent;

(2) Property transferred by the decedent during his lifetime in trust to pay the income for life to or on the order or direction of the decedent, with the right reserved to the decedent at all times before his death to revoke the trust;

(3) In the case of decedents dying after December 31, 1951, property transferred by the decedent during his lifetime in trust to pay the income for life to or on the order or direction of the decedent with the right reserved to the decedent at all times before his death to make any change in the enjoyment thereof through the exercise of a power to alter, amend, or terminate the trust;

(4) Property passing without full and adequate consideration under a general power of appointment exercised by the decedent by will;

(5) In the case of decedents dying after August 26, 1937, and before January 1, 2005, property acquired by bequest, devise, or inheritance or by the decedent's estate from the decedent, if the property consists of stock or securities of a foreign corporation, which with respect to its taxable year next preceding the date of the decedent's death was, under the law applicable to such year, a foreign personal holding company. In such case, the basis shall be the fair market value of such property at the date of the decedent's death or the basis in the hands of the decedent, whichever is lower;

(6) In the case of decedents dying after December 31, 1947, property which represents the surviving spouse's one-half share of community property held by the decedent and the surviving spouse under the community property laws of any State, or possession of the United States or any foreign country, if at least one-half of the whole of the community interest in such property was includible in determining the value of the decedent's gross estate under chapter 11 of subtitle B (section 2001 and following, relating to estate tax) or section 811 of the Internal Revenue Code of 1939;

(7) In the case of decedents dying after October 21, 1942, and on or before December 31, 1947, such part of any property, representing the surviving spouse's one-half share of property held by a decedent and the surviving spouse under the community property laws of any State, or possession of the United States or any foreign country, as was included in determining the value of the gross estate of the decedent, if a tax under chapter 3 of the Internal Revenue Code of 1939 was payable on the transfer of the net estate of the decedent. In such case, nothing in this paragraph shall reduce the basis below that which would exist if the Revenue Act of 1948 had not been enacted;

(8) In the case of decedents dying after December 31, 1950, and before January 1, 1954, property which represents the survivor's interest in a joint and survivor's annuity if the value of any part of such interest was required to be included in determining the value of decedent's gross estate under section 811 of the Internal Revenue Code of 1939;

(9) In the case of decedents dying after December 31, 1953, property acquired from the decedent by reason of death, form of ownership, or other conditions (including property acquired through the exercise or non-exercise of a power of appointment), if by reason thereof the property is required to be included in determining the value of the decedent's gross estate under chapter 11 of subtitle B or under the Internal Revenue Code of 1939. In such case, if the property is acquired before the death of the decedent, the basis shall be the amount determined under subsection (a) reduced by the amount allowed to the taxpayer as deductions in computing taxable income under this subtitle or prior income tax laws for exhaustion, wear and tear, obsolescence, amortization, and depletion on such property before the death of the decedent. Such basis shall be applicable to the property commencing on the death of the decedent. This paragraph shall not apply to—

(A) annuities described in section 72;

(B) property to which paragraph (5) would apply if the property had been acquired by bequest; and

(C) property described in any other paragraph of this subsection.

(10) Property includible in the gross estate of the decedent under section 2044 (relating to certain property for which marital deduction was previously allowed). In any such case, the last 3 sentences of paragraph (9) shall apply as if such property were described in the first sentence of

paragraph (9).

(c) Property representing income in respect of a decedent

This section shall not apply to property which constitutes a right to receive an item of income in respect of a decedent under section 691.

(d) Special rule with respect to DISC stock

If stock owned by a decedent in a DISC or former DISC (as defined in section 992(a)) acquires a new basis under subsection (a), such basis (determined before the application of this subsection) shall be reduced by the amount (if any) which would have been included in gross income under section 995(c) as a dividend if the decedent had lived and sold the stock at its fair market value on the estate tax valuation date. In computing the gain the decedent would have had if he had lived and sold the stock, his basis shall be determined without regard to the last sentence of section 996(e)(2) (relating to reductions of basis of DISC stock). For purposes of this subsection, the estate tax valuation date is the date of the decedent's death or, in the case of an election under section 2032, the applicable valuation date prescribed by that section.

(e) Appreciated property acquired by decedent by gift within 1 year of death

(1) In general

In the case of a decedent dying after December 31, 1981, if—

(A) appreciated property was acquired by the decedent by gift during the 1-year period ending on the date of the decedent's death, and

(B) such property is acquired from the decedent by (or passes from the decedent to) the donor of such property (or the spouse of such donor),

the basis of such property in the hands of such donor (or spouse) shall be the adjusted basis of such property in the hands of the decedent immediately before the death of the decedent.

(2) Definitions

For purposes of paragraph (1)—

(A) Appreciated property

The term "appreciated property" means any property if the fair market value of such property on the day it was transferred to the decedent by gift exceeds its adjusted basis.

(B) Treatment of certain property sold by estate

In the case of any appreciated property described in subparagraph (A) of paragraph (1) sold by the estate of the decedent or by a trust of which the decedent was the grantor, rules similar to the rules of paragraph (1) shall apply to the extent the donor of such property (or the spouse of such donor) is entitled to the proceeds from such sale.

(Aug. 16, 1954, ch. 736, 68A Stat. 296; Pub. L. 85–320, §2, Feb. 11, 1958, 72 Stat. 5; Pub. L. 92–178, title V, §502(f), Dec. 10, 1971, 85 Stat. 550; Pub. L. 94–455, title XIX, §1901(c)(8), title XX, §2005(a)(1), Oct. 4, 1976, 90 Stat. 1803, 1872; Pub. L. 95–600, title V, §515(1), title VII, §702(c)(1)(A), Nov. 6, 1978, 92 Stat. 2884, 2926; Pub. L. 96–222, title I, §107(a)(2)(A), Apr. 1, 1980, 94 Stat. 222; Pub. L. 96–223, title IV, §401(a), Apr. 2, 1980, 94 Stat. 299; Pub. L. 97–34, title IV, §425(a), Aug. 13, 1981, 95 Stat. 318; Pub. L. 97–448, title I, §104(a)(1)(A), Jan. 12, 1983, 96 Stat. 2379; Pub. L. 105–34, title V, §508(b), Aug. 5, 1997, 111 Stat. 860; Pub. L. 107–16, title V, §541, June 7, 2001, 115 Stat. 76; Pub. L. 108–357, title IV, §413(c)(18), Oct. 22, 2004, 118 Stat. 1508; Pub. L. 111–312, title III, §301(a), Dec. 17, 2010, 124 Stat. 3300.)

REFERENCES IN TEXT

Section 811 of the Internal Revenue Code of 1939, referred to in subsecs. (a)(2) and (b)(6), (8), was classified to section 811 of former Title 26, Internal Revenue Code. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of this title. See, also, section 7851(e) of this title for provision that references in the 1986 Code to a provision of the 1939 Code, not then applicable, shall be deemed a reference to the corresponding provision of the 1986 Code, which is then applicable.

Chapter 3 of the Internal Revenue Code of 1939, referred to in subsec. (b)(7), was comprised of sections 800 to 951 of former Title 26, Internal Revenue Code. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of this title. See also section 7851(a)(2)(A) of this title for applicability of chapter 3 of former title 26. See also section 7851(e) of this title for provision that references in the 1986 Code to a provision of the 1939 Code, not then applicable, shall be deemed a reference to the corresponding provision of the 1986 Code, which is then applicable.

Revenue Act of 1948, referred to in subsec. (b)(7), is act Apr. 2, 1948, ch. 168, 62 Stat. 110. For complete classification of this Act to the Code, see Tables.

The Internal Revenue Code of 1939, referred to in subsec. (b)(9), is act Feb. 10, 1939, ch. 2, 53 Stat. 1, as amended. Prior to the enactment of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the 1939 Code was classified to former Title 26, Internal Revenue Code. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of this title.

AMENDMENTS

2010—Subsec. (f). Pub. L. 111–312 amended section to read as if amendment by Pub. L. 107–16, §541, had never been enacted. See 2001 Amendment note below. Prior to amendment, text of subsec. (f) read as follows: "This section shall not apply with respect to decedents dying after December 31, 2009."

2004—Subsec. (b)(5). Pub. L. 108–357 inserted "and before January 1, 2005," after "August 26, 1937,".

2001—Subsec. (f). Pub. L. 107–16, §541, added subsec. (f).

1997—Subsec. (a). Pub. L. 105–34 struck out "or" at end of pars. (1) and (2), struck out the period at end of par. (3) and inserted ", or", and added par. (4).

1983—Subsec. (b)(10). Pub. L. 97–448 added par. (10).

1981—Subsec. (e). Pub. L. 97–34 added subsec. (e).

1980—Subsec. (a)(3). Pub. L. 96–222 substituted "section 2032A" for "section 2032.1".

Subsec. (d). Pub. L. 96–223 repealed the amendment made by Pub. L. 94–455, §2005(a)(1). See 1976 Amendment note below.

1978—Subsec. (a). Pub. L. 95–600, §702(c)(1)(A), designated existing provisions as pars. (1) and (2) and added par. (3).

Subsec. (d). Pub. L. 95–600, §515(1), substituted "December 31, 1979" for "December 31, 1976" in heading and text.

1976—Subsec. (b)(6), (7). Pub. L. 94–455, §1901(c)(8), struck out "Territory," after "under the community property laws of any State,".

Subsec. (d). Pub. L. 94–455, §2005(a)(1), substituted provision relating to the applicability of this section to decedents dying after 1976 for provision relating to a special rule with respect to DISC stock. See Repeals note below.

1971—Subsec. (d). Pub. L. 92–178 added subsec. (d).

1958—Subsec. (d). Pub. L. 85–320 repealed subsec. (d) which made section inapplicable to restricted stock options described in section 421 which the employee has not exercised at death.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–312 applicable to estates of decedents dying, and transfers made after Dec. 31, 2009, except as otherwise provided, see section 301(e) of Pub. L. 111–312, set out as an Effective and Termination Dates of 2010 Amendment note under section 121 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title V, §508(e)(1), Aug. 5, 1997, 111 Stat. 860, provided that: "The amendments made by subsections (a) and (b) [amending this section and section 2031 of this title] shall apply to estates of decedents dying after December 31, 1997."

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title IV, §425(b), Aug. 13, 1981, 95 Stat. 318, provided that: "The amendment made by subsection (a) [amending this section] shall apply to property acquired after the date of the enactment of this Act [Aug. 13, 1981] by decedents dying after December 31, 1981."

EFFECTIVE DATE OF 1980 AMENDMENTS AND REVIVAL OF PRIOR LAW

Amendment by Pub. L. 96–223 (repealing section 2005(a)(1) of Pub. L. 94–455 and the amendment made thereby, which had amended this section) applicable in respect of decedents dying after Dec. 31, 1976, and except for certain elections, this title to be applied and administered as if those repealed provisions had not been enacted, see section 401(b), (e) of Pub. L. 96–223, set out as a note under section 1023 of this title.

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as an Effective Date of 1980 Amendment note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title VII, §702(c)(10), Nov. 6, 1978, 92 Stat. 2928, provided that: "The amendments made by this subsection [amending this section and sections 1001, 1223, and 2614 of this title] shall take effect as if included in the amendments and additions made by, and the appropriate provisions of the Tax Reform Act of 1976 [Pub. L. 94–455, Oct. 4, 1976, 90 Stat 1525]."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(c)(8) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by section 2005(a)(1) of Pub. L. 94–455 applicable in respect of decedents dying after Dec. 31, 1976, see section 2005(f) of Pub. L. 94–455, set out as an Effective Date note under section 1015 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–178 applicable with respect to taxable years ending after Dec. 31, 1971, except that a corporation may not be a DISC for any taxable year beginning before Jan. 1972, see section 507 of Pub. L. 92–178, set out as a note under section 991 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–320 applicable with respect to taxable years ending after Dec. 31, 1956, but only in the case of employees dying after such date, see section 3 of Pub. L. 85–320, set out as a note under section 421 of this title.

REPEALS

Pub. L. 94–455, §2005(a)(1), cited as a credit to this section, and the amendment made thereby, were repealed by Pub. L. 96–223, title IV, §401(a), 94 Stat. 299, resulting in the text of this section reading as it read prior to enactment of section 2005(a)(1). See Effective Date of 1980 Amendments and Revival of Prior Law note above.

ELECTION OF CARRYOVER BASIS RULES BY CERTAIN ESTATES

Pub. L. 96–223, title IV, §401(d), Apr. 2, 1980, 94 Stat. 300, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Notwithstanding any other provision of law, in the case of a decedent dying after December 31, 1976, and before November 7, 1978, the executor (within the meaning of section 2203 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) of such decedent's estate may irrevocably elect, within 120 days following the date of enactment of this Act [Apr. 2, 1980] and in such manner as the Secretary of the Treasury or his delegate shall prescribe, to have the basis of all property acquired from or passing from the decedent (within the meaning of section 1014(b) of the Internal Revenue Code of 1986) determined for all purposes under such Code as though the provisions of section 2005 of the Tax Reform Act of 1976 [Pub. L. 94–455] (as amended by the provisions of section 702(c) of the Revenue Act of 1978 [Pub. L. 95–600] applied to such property acquired or passing from such decedent."

§1015. Basis of property acquired by gifts and transfers in trust

(a) Gifts after December 31, 1920

If the property was acquired by gift after December 31, 1920, the basis shall be the same as it would be in the hands of the donor or the last preceding owner by whom it was not acquired by gift, except that if such basis (adjusted for the period before the date of the gift as provided in section 1016) is greater than the fair market value of the property at the time of the gift, then for the purpose of determining loss the basis shall be such fair market value. If the facts necessary to determine the basis in the hands of the donor or the last preceding owner are unknown to the donee, the Secretary shall, if possible, obtain such facts from such donor or last preceding owner, or any other person cognizant thereof. If the Secretary finds it impossible to obtain such facts, the basis in the hands of such donor or last preceding owner shall be the fair market value of such property as found by the Secretary as of the date or approximate date at which, according to the best information that the Secretary is able to obtain, such property was acquired by such donor or last preceding owner.

(b) Transfer in trust after December 31, 1920

If the property was acquired after December 31, 1920, by a transfer in trust (other than by a transfer in trust by a gift, bequest, or devise), the basis shall be the same as it would be in the hands of the grantor increased in the amount of gain or decreased in the amount of loss recognized to the grantor on such transfer under the law applicable to the year in which the transfer was made.

(c) Gift or transfer in trust before January 1, 1921

If the property was acquired by gift or transfer in trust on or before December 31, 1920, the basis shall be the fair market value of such property at the time of such acquisition.

(d) Increased basis for gift tax paid

(1) In general

If—

(A) the property is acquired by gift on or after September 2, 1958, the basis shall be the basis determined under subsection (a), increased (but not above the fair market value of the property at the time of the gift) by the amount of gift tax paid with respect to such gift, or

(B) the property was acquired by gift before September 2, 1958, and has not been sold, exchanged, or otherwise disposed of before such date, the basis of the property shall be increased on such date by the amount of gift tax paid with respect to such gift, but such increase shall not exceed an amount equal to the amount by which the fair market value of the property at the time of the gift exceeded the basis of the property in the hands of the donor at the time of the gift.

(2) Amount of tax paid with respect to gift

For purposes of paragraph (1), the amount of gift tax paid with respect to any gift is an amount which bears the same ratio to the amount of gift tax paid under chapter 12 with respect to all gifts made by the donor for the calendar year (or preceding calendar period) in which such gift is made as the amount of such gift bears to the taxable gifts (as defined in section 2503(a) but computed without the deduction allowed by section 2521) made by the donor during such calendar year or period. For purposes of the preceding sentence, the amount of any gift shall be the amount included with respect to such gift in determining (for the purposes of section 2503(a)) the total amount of gifts made during the calendar year or period, reduced by the amount of any deduction allowed with respect to such gift under section 2522 (relating to charitable deduction) or under section 2523 (relating to marital deduction).

(3) Gifts treated as made one-half by each spouse

For purposes of paragraph (1), where the donor and his spouse elected, under section 2513 to have the gift considered as made one-half by each, the amount of gift tax paid with respect to such gift under chapter 12 shall be the sum of the amounts of tax paid with respect to each half of such gift (computed in the manner provided in paragraph (2)).

(4) Treatment as adjustment to basis

For purposes of section 1016(b), an increase in basis under paragraph (1) shall be treated as an

adjustment under section 1016(a).

(5) Application to gifts before 1955

With respect to any property acquired by gift before 1955, references in this subsection to any provision of this title shall be deemed to refer to the corresponding provision of the Internal Revenue Code of 1939 or prior revenue laws which was effective for the year in which such gift was made.

(6) Special rule for gifts made after December 31, 1976

(A) In general

In the case of any gift made after December 31, 1976, the increase in basis provided by this subsection with respect to any gift for the gift tax paid under chapter 12 shall be an amount (not in excess of the amount of tax so paid) which bears the same ratio to the amount of tax so paid as—

(i) the net appreciation in value of the gift, bears to

(ii) the amount of the gift.

(B) Net appreciation

For purposes of paragraph (1), the net appreciation in value of any gift is the amount by which the fair market value of the gift exceeds the donor's adjusted basis immediately before the gift.

(e) Gifts between spouses

In the case of any property acquired by gift in a transfer described in section 1041(a), the basis of such property in the hands of the transferee shall be determined under section 1041(b)(2) and not this section.

(Aug. 16, 1954, ch. 736, 68A Stat. 298; Pub. L. 85–866, title I, §43(a), Sept. 2, 1958, 72 Stat. 1640; Pub. L. 91–614, title I, §102(d)(1), Dec. 31, 1970, 84 Stat. 1841; Pub. L. 94–455, title XIX, §§1901(a)(122), 1906(b) (13)(A), title XX, §2005(c), Oct. 4, 1976, 90 Stat. 1784, 1834, 1877; Pub. L. 97–34, title IV, §442(d)(1), Aug. 13, 1981, 95 Stat. 322; Pub. L. 98–369, div. A, title IV, §421(b)(5), July 18, 1984, 98 Stat. 794.)

REFERENCES IN TEXT

Section 2521, referred to in subsec. (d)(2), was repealed by Pub. L. 94–455, title XX, §2001(b)(3), Oct. 4, 1976, 90 Stat. 1849.

The Internal Revenue Code of 1939, referred to in subsec. (d)(5), is act Feb. 10, 1939, ch. 2, 53 Stat. 1, as amended. Prior to the enactment of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the 1939 Code was classified to former Title 26, Internal Revenue Code. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of this title.

AMENDMENTS

1984—Subsec. (e). Pub. L. 98–369 added subsec. (e).

1981—Subsec. (d)(2). Pub. L. 97–34 substituted "calendar year (or preceding calendar period)" for "calendar quarter (or calendar year if the gift was made before January 1, 1971)" and "calendar year or period" for "calendar quarter or year" in two places.

1976—Subsec. (a). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary" in four places.

Subsec. (d)(1)(A), (B). Pub. L. 94–455, §1901(a)(122), substituted "September 2, 1958" for "the date of enactment of the Technical Amendments Act of 1958".

Subsec. (d)(6). Pub. L. 94–455, §2005(c), added par. (6).

1970—Subsec. (d)(2). Pub. L. 91–614 substituted "calendar quarter (or calendar year if the gift was made before January 1, 1971)" for "calendar year" the first place it appears and "calendar quarter or year" for "calendar year" every other place it appears.

1958—Subsec. (d). Pub. L. 85–866 added subsec. (d).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to transfers after July 18, 1984, in taxable years ending after

such date, subject to election to have amendment apply to transfers after 1983 or to transfers pursuant to existing decrees, see section 421(d) of Pub. L. 98–369, set out as an Effective Date note under section 1041 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable with respect to gifts made after Dec. 31, 1981, see section 442(e) of Pub. L. 97–34, set out as a note under section 2501 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(122) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Pub. L. 94–455, title XX, §2005(f), Oct. 4, 1976, 90 Stat. 1878, as amended by Pub. L. 95–600, title V, §515(6), Nov. 6, 1978, 92 Stat. 2884, provided that:

"(1) Except as provided in paragraph (2), the amendments made by this section [enacting sections 1023, 1040, 6039A, and 6694 of this title, amending sections 691, 1016, and 1246 of this title, and renumbering former section 1023 as 1024] shall apply in respect of decedents dying after December 31, 1979.

"(2) The amendment made by subsection (c) [amending this section] shall apply to gifts made after December 31, 1976."

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91–614, set out as a note under section 2501 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

§1016. Adjustments to basis

(a) General rule

Proper adjustment in respect of the property shall in all cases be made—

(1) for expenditures, receipts, losses, or other items, properly chargeable to capital account, but no such adjustment shall be made—

(A) for taxes or other carrying charges described in section 266, or

(B) for expenditures described in section 173 (relating to circulation expenditures),

for which deductions have been taken by the taxpayer in determining taxable income for the taxable year or prior taxable years;

(2) in respect of any period since February 28, 1913, for exhaustion, wear and tear, obsolescence, amortization, and depletion, to the extent of the amount—

(A) allowed as deductions in computing taxable income under this subtitle or prior income tax laws, and

(B) resulting (by reason of the deductions so allowed) in a reduction for any taxable year of the taxpayer's taxes under this subtitle (other than chapter 2, relating to tax on self-employment income), or prior income, war-profits, or excess-profits tax laws,

but not less than the amount allowable under this subtitle or prior income tax laws. Where no method has been adopted under section 167 (relating to depreciation deduction), the amount allowable shall be determined under the straight line method. Subparagraph (B) of this paragraph shall not apply in respect of any period since February 28, 1913, and before January 1, 1952, unless an election has been made under section 1020 (as in effect before the date of the enactment of the Tax Reform Act of 1976). Where for any taxable year before the taxable year 1932 the depletion allowance was based on discovery value or a percentage of income, then the adjustment for depletion for such year shall be based on the depletion which would have been allowable for such year if computed without reference to discovery value or a percentage of income;

(3) in respect of any period—

(A) before March 1, 1913,

(B) since February 28, 1913, during which such property was held by a person or an organization not subject to income taxation under this chapter or prior income tax laws,

(C) since February 28, 1913, and before January 1, 1958, during which such property was held by a person subject to tax under part I of subchapter L (or the corresponding provisions of prior income tax laws), to the extent that paragraph (2) does not apply, and

(D) since February 28, 1913, during which such property was held by a person subject to tax under part II [1] of subchapter L (or the corresponding provisions of prior income tax laws), to the extent that paragraph (2) does not apply,

for exhaustion, wear and tear, obsolescence, amortization, and depletion, to the extent sustained;

(4) in the case of stock (to the extent not provided for in the foregoing paragraphs) for the amount of distributions previously made which, under the law applicable to the year in which the distribution was made, either were tax-free or were applicable in reduction of basis (not including distributions made by a corporation which was classified as a personal service corporation under the provisions of the Revenue Act of 1918 (40 Stat. 1057), or the Revenue Act of 1921 (42 Stat. 227), out of its earnings or profits which were taxable in accordance with the provisions of section 218 of the Revenue Act of 1918 or 1921);

(5) in the case of any bond (as defined in section 171(d)) the interest on which is wholly exempt from the tax imposed by this subtitle, to the extent of the amortizable bond premium disallowable as a deduction pursuant to section 171(a)(2), and in the case of any other bond (as defined in section 171(d)) to the extent of the deductions allowable pursuant to section 171(a)(1) (or the amount applied to reduce interest payments under section 171(e)(2)) with respect thereto;

(6) in the case of any municipal bond (as defined in section 75(b)), to the extent provided in section 75(a)(2);

(7) in the case of a residence the acquisition of which resulted, under section 1034 (as in effect on the day before the date of the enactment of the Taxpayer Relief Act of 1997), in the nonrecognition of any part of the gain realized on the sale, exchange, or involuntary conversion of another residence, to the extent provided in section 1034(e) (as so in effect);

(8) in the case of property pledged to the Commodity Credit Corporation, to the extent of the amount received as a loan from the Commodity Credit Corporation and treated by the taxpayer as income for the year in which received pursuant to section 77, and to the extent of any deficiency on such loan with respect to which the taxpayer has been relieved from liability;

(9) for amounts allowed as deductions as deferred expenses under section 616(b) (relating to certain expenditures in the development of mines) and resulting in a reduction of the taxpayer's taxes under this subtitle, but not less than the amounts allowable under such section for the taxable year and prior years;

[(10) Repealed. Pub. L. 94–455, title XIX, §1901(b)(21)(G), Oct. 4, 1976, 90 Stat. 1798]

(11) for deductions to the extent disallowed under section 268 (relating to sale of land with unharvested crops), notwithstanding the provisions of any other paragraph of this subsection;

(12) to the extent provided in section 28(h) of the Internal Revenue Code of 1939 in the case of amounts specified in a shareholder's consent made under section 28 of such code;

[(13) Repealed. Pub. L. 108–357, title IV, §413(c)(19), Oct. 22, 2004, 118 Stat. 1509]

(14) for amounts allowed as deductions as deferred expenses under section 174(b)(1) (relating to research and experimental expenditures) and resulting in a reduction of the taxpayers' taxes under this subtitle, but not less than the amounts allowable under such section for the taxable year and prior years;

(15) for deductions to the extent disallowed under section 272 (relating to disposal of coal or domestic iron ore), notwithstanding the provisions of any other paragraph of this subsection;

(16) in the case of any evidence of indebtedness referred to in section 811(b) (relating to amortization of premium and accrual of discount in the case of life insurance companies), to the extent of the adjustments required under section 811(b) (or the corresponding provisions of prior

income tax laws) for the taxable year and all prior taxable years;

(17) to the extent provided in section 1367 in the case of stock of, and indebtedness owed to, shareholders of an S corporation;

(18) to the extent provided in section 961 in the case of stock in controlled foreign corporations (or foreign corporations which were controlled foreign corporations) and of property by reason of which a person is considered as owning such stock;

(19) to the extent provided in section 50(c), in the case of expenditures with respect to which a credit has been allowed under section 38;

(20) for amounts allowed as deductions under section 59(e) (relating to optional 10-year writeoff of certain tax preferences);

(21) to the extent provided in section 1059 (relating to reduction in basis for extraordinary dividends);

(22) in the case of qualified replacement property the acquisition of which resulted under section 1042 in the nonrecognition of any part of the gain realized on the sale or exchange of any property, to the extent provided in section 1042(d),[2]

(23) in the case of property the acquisition of which resulted under section 1043, 1044, 1045, or 1397B in the nonrecognition of any part of the gain realized on the sale of other property, to the extent provided in section 1043(c), 1044(d), 1045(b)(3), or 1397B(b)(4), as the case may be,[2]

(24) to the extent provided in section 179A(e)(6)(A),[2]

(25) to the extent provided in section 30(e)(1),[2]

(26) to the extent provided in sections 23(g) and 137(e),[2]

(27) in the case of a residence with respect to which a credit was allowed under section 1400C, to the extent provided in section 1400C(h),[2]

(28) in the case of a facility with respect to which a credit was allowed under section 45F, to the extent provided in section 45F(f)(1),[2]

(29) in the case of railroad track with respect to which a credit was allowed under section 45G, to the extent provided in section 45G(e)(3),[2]

(30) to the extent provided in section 179B(c),[2]

(31) to the extent provided in section 179D(e),[2]

(32) to the extent provided in section 45L(e), in the case of amounts with respect to which a credit has been allowed under section 45L,[2]

(33) to the extent provided in section 25C(f), in the case of amounts with respect to which a credit has been allowed under section 25C,[2]

(34) to the extent provided in section 25D(f), in the case of amounts with respect to which a credit has been allowed under section 25D,[2]

(35) to the extent provided in section 30B(h)(4),[2]

(36) to the extent provided in section 30C(e)(1),[2] and

(37) to the extent provided in section 30D(f)(1).

(b) Substituted basis

Whenever it appears that the basis of property in the hands of the taxpayer is a substituted basis, then the adjustments provided in subsection (a) shall be made after first making in respect of such substituted basis proper adjustments of a similar nature in respect of the period during which the property was held by the transferor, donor, or grantor, or during which the other property was held by the person for whom the basis is to be determined. A similar rule shall be applied in the case of a series of substituted bases.

(c) Increase in basis of property on which additional estate tax is imposed

(1) Tax imposed with respect to entire interest

If an additional estate tax is imposed under section 2032A(c)(1) with respect to any interest in property and the qualified heir makes an election under this subsection with respect to the

imposition of such tax, the adjusted basis of such interest shall be increased by an amount equal to the excess of—

(A) the fair market value of such interest on the date of the decedent's death (or the alternate valuation date under section 2032, if the executor of the decedent's estate elected the application of such section), over

(B) the value of such interest determined under section 2032A(a).

(2) Partial dispositions

(A) In general

In the case of any partial disposition for which an election under this subsection is made, the increase in basis under paragraph (1) shall be an amount—

(i) which bears the same ratio to the increase which would be determined under paragraph (1) (without regard to this paragraph) with respect to the entire interest, as

(ii) the amount of the tax imposed under section 2032A(c)(1) with respect to such disposition bears to the adjusted tax difference attributable to the entire interest (as determined under section 2032A(c)(2)(B)).

(B) Partial disposition

For purposes of subparagraph (A), the term "partial disposition" means any disposition or cessation to which subsection (c)(2)(D), (h)(1)(B), or (i)(1)(B) of section 2032A applies.

(3) Time adjustment made

Any increase in basis under this subsection shall be deemed to have occurred immediately before the disposition or cessation resulting in the imposition of the tax under section 2032A(c)(1).

(4) Special rule in the case of substituted property

If the tax under section 2032A(c)(1) is imposed with respect to qualified replacement property (as defined in section 2032A(h)(3)(B)) or qualified exchange property (as defined in section 2032A(i)(3)), the increase in basis under paragraph (1) shall be made by reference to the property involuntarily converted or exchanged (as the case may be).

(5) Election

(A) In general

An election under this subsection shall be made at such time and in such manner as the Secretary shall by regulations prescribe. Such an election, once made, shall be irrevocable.

(B) Interest on recaptured amount

If an election is made under this subsection with respect to any additional estate tax imposed under section 2032A(c)(1), for purposes of section 6601 (relating to interest on underpayments), the last date prescribed for payment of such tax shall be deemed to be the last date prescribed for payment of the tax imposed by section 2001 with respect to the estate of the decedent (as determined for purposes of section 6601).

(d) Reduction in basis of automobile on which gas guzzler tax was imposed

If—

(1) the taxpayer acquires any automobile with respect to which a tax was imposed by section 4064, and

(2) the use of such automobile by the taxpayer begins not more than 1 year after the date of the first sale for ultimate use of such automobile,

the basis of such automobile shall be reduced by the amount of the tax imposed by section 4064 with respect to such automobile. In the case of importation, if the date of entry or withdrawal from warehouse for consumption is later than the date of the first sale for ultimate use, such later date shall be substituted for the date of such first sale in the preceding sentence.

(e) Cross reference

For treatment of separate mineral interests as one property, see section 614.

(Aug. 16, 1954, ch. 736, 68A Stat. 299; June 29, 1956, ch. 464, §4(c), 70 Stat. 407; Pub. L. 85–866, title I, §§2(b), 64(d)(2), Sept. 2, 1958, 72 Stat. 1607, 1656; Pub. L. 86–69, §3(d), June 25, 1959, 73 Stat. 139; Pub. L. 87–834, §§2(f), 8(g)(2), 12(b)(4), Oct. 16, 1962, 76 Stat. 972, 998, 1031; Pub. L. 88–272, title II, §§203(a)(3)(C), 225(j)(2), 227(b)(5), Feb. 26, 1964, 78 Stat. 34, 93, 98; Pub. L. 91–172, title II, §231(c)(3), title V, §§504(c)(4), 516(c)(2)(B), Dec. 30, 1969, 83 Stat. 580, 633, 648; Pub. L. 94–455, title XIX, §1901(a)(123), (b)(1)(F)(ii), (21)(G), (29)(A), (30)(A), title XX, §2005(a)(3), Oct. 4, 1976, 90 Stat. 1784, 1790, 1798, 1799, 1876; Pub. L. 95–472, §4(b), Oct. 17, 1978, 92 Stat. 1335; Pub. L. 95–600, title V, §515(2), title VI, §601(b)(3), title VII, §702(r)(3), Nov. 6, 1978, 92 Stat. 2884, 2896, 2938; Pub. L. 95–618, title I, §101(b)(3), title II, §201(b), Nov. 9, 1978, 92 Stat. 3179, 3183; Pub. L. 96–222, title I, §§106(a)(2), (3), 107(a)(2)(C), Apr. 1, 1980, 94 Stat. 221, 222; Pub. L. 96–223, title IV, §401(a), (c)(1), Apr. 2, 1980, 94 Stat. 299, 300; Pub. L. 97–34, title II, §212(d)(2)(G), title IV, §421(g), Aug. 13, 1981, 95 Stat. 239, 310; Pub. L. 97–248, title II, §§201(c)(2), 205(a)(5)(B), Sept. 3, 1982, 96 Stat. 418, 429; Pub. L. 97–354, §5(a)(33), Oct. 19, 1982, 96 Stat. 1695; Pub. L. 98–369, div. A, title I, §§43(a)(2), 53(d)(3), title II, §211(b)(14), title IV, §474(r)(23), title V, §541(b)(2), July 18, 1984, 98 Stat. 558, 568, 756, 844, 890; Pub. L. 99–514, title II, §241(b)(2), title VII, §701(e)(4)(D), title XIII, §1303(b)(3), title XVIII, §1899A(25), Oct. 22, 1986, 100 Stat. 2181, 2343, 2658, 2959; Pub. L. 100–647, title I, §§1006(j)(1)(B), 1018(u)(22), Nov. 10, 1988, 102 Stat. 3411, 3591; Pub. L. 101–194, title V, §502(b)(2), Nov. 30, 1989, 103 Stat. 1755; Pub. L. 101–508, title XI, §§11801(c)(1), 11812(b)(10), 11813(b)(19), Nov. 5, 1990, 104 Stat. 1388–522, 1388–535, 1388–555; Pub. L. 102–486, title XIX, §1913(a)(3)(A), (b)(2)(B), Oct. 24, 1992, 106 Stat. 3019, 3020; Pub. L. 103–66, title XIII, §§13114(b), 13213(a)(2)(F), 13261(f)(3), Aug. 10, 1993, 107 Stat. 431, 474, 539; Pub. L. 104–188, title I, §§1704(t)(56), 1807(c)(5), Aug. 20, 1996, 110 Stat. 1890, 1902; Pub. L. 105–34, title III, §§312(d)(6), 313(b)(1), title VII, §701(b)(2), Aug. 5, 1997, 111 Stat. 840, 842, 869; Pub. L. 106–554, §1(a)(7) [title I, §116(b)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–603; Pub. L. 107–16, title II, §205(b)(3), June 7, 2001, 115 Stat. 53; Pub. L. 108–357, title II, §245(c)(2), title III, §§338(b)(4), 339(d), title IV, §413(c)(19), Oct. 22, 2004, 118 Stat. 1448, 1481, 1484, 1509; Pub. L. 109–58, title XIII, §§1331(b)(1), 1332(c), 1333(b)(1), 1335(b)(4), 1341(b)(2), 1342(b)(2), Aug. 8, 2005, 119 Stat. 1023, 1026, 1029, 1036, 1049, 1051; Pub. L. 109–135, title IV, §412(nn), Dec. 21, 2005, 119 Stat. 2639; Pub. L. 110–172, §§7(a)(1)(C), 11(a)(21), (22), Dec. 29, 2007, 121 Stat. 2481, 2486; Pub. L. 110–343, div. B, title II, §205(d)(2), Oct. 3, 2008, 122 Stat. 3839; Pub. L. 111–5, div. B, title I, §§1141(b)(3), 1142(b)(6), Feb. 17, 2009, 123 Stat. 328, 331; Pub. L. 111–148, title X, §10909(b)(2)(L), (c), Mar. 23, 2010, 124 Stat. 1023; Pub. L. 111–312, title I, §101(b)(1), Dec. 17, 2010, 124 Stat. 3298.)

REFERENCES IN TEXT

Section 1020, referred to in subsec. (a)(2), was repealed by Pub. L. 94–455, title XIX, §1901(a)(125), Oct. 4, 1976, 90 Stat. 1784.

The Tax Reform Act of 1976, referred to in subsec. (a)(2), is Pub. L. 94–455, Oct. 4, 1976, 90 Stat. 1520, as amended, which was enacted Oct. 4, 1976. For complete classification of this Act to the Code, see Tables.

Part II of subchapter L, referred to in subsec. (a)(3)(D), was repealed and part III of subchapter L was redesignated as part II by Pub. L. 99–514, title X, §1024(a)(1), (2), Oct. 22, 1986, 100 Stat. 2405.

The Revenue Act of 1918 (40 Stat. 1057), referred to in subsec. (a)(4), is act Feb. 24, 1919, ch. 18, 40 Stat. 1057. For complete classification of this Act to the Code, see Tables.

The Revenue Act of 1921 (42 Stat. 227), referred to in subsec. (a)(4), is act Nov. 23, 1921, ch. 136, 42 Stat. 227. For complete classification of this Act to the Code, see Tables.

Section 218 of the Revenue Act of 1918 or 1921, referred to in subsec. (a)(4), was not classified to the Code.

The date of the enactment of the Taxpayer Relief Act of 1997, referred to in subsec. (a)(7), is the date of enactment of Pub. L. 105–34, which was approved Aug. 5, 1997.

Section 28 of the Internal Revenue Code of 1939, referred to in subsec. (a)(12), was classified to section 28 of former Title 26, Internal Revenue Code. Section 28 was repealed by section 7851(a)(1)(A) of this title. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of this title. See,

also, section 7851(e) of this title for provision that references in the 1986 Code to a provision of the 1939 Code, not then applicable, shall be deemed a reference to the corresponding provision of the 1986 Code, which is then applicable.

CODIFICATION

Section 10909(b)(2)(L) of Pub. L. 111–148, which directed the amendment of section 1016(a)(26) without specifying the act to be amended, was executed to this section, which is section 1016 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2010 Amendment note below.

AMENDMENTS

2010—Subsec. (a)(26). Pub. L. 111–148, §10909(b)(2)(L), (c), as amended by Pub. L. 111–312, temporarily substituted "36C(g)" for "23(g)". See Codification note above and Effective and Termination Dates of 2010 Amendment note below.

2009—Subsec. (a)(25). Pub. L. 111–5, §1142(b)(6), substituted "section 30(e)(1)" for "section 30(d)(1)".

Subsec. (a)(37). Pub. L. 111–5, §1141(b)(3), which directed amendment of subsec. (a)(25) by substituting "section 30D(f)(1)" for "section 30D(e)(4)", was executed by making the substitution in subsec. (a)(37) to reflect the probable intent of Congress.

2008—Subsec. (a)(37). Pub. L. 110–343 added par. (37).

2007—Subsec. (a)(31), (32). Pub. L. 110–172, §7(a)(1)(C), redesignated pars. (32) and (33) as (31) and (32), respectively, and struck out former par. (31) which read as follows: "in the case of a facility with respect to which a credit was allowed under section 45H, to the extent provided in section 45H(d),".

Subsec. (a)(33). Pub. L. 110–172, §11(a)(21), substituted "section 25C(f)" for "section 25C(e)".

Pub. L. 110–172, §7(a)(1)(C), redesignated par. (34) as (33). Former par. (33) redesignated (32).

Subsec. (a)(34), (35). Pub. L. 110–172, §7(a)(1)(C), redesignated pars. (35) and (36) as (34) and (35), respectively. Former par. (34) redesignated (33).

Subsec. (a)(36). Pub. L. 110–172, §11(a)(22), substituted "section 30C(e)(1)" for "section 30C(f)".

Pub. L. 110–172, §7(a)(1)(C), redesignated par. (37) as (36). Former par. (36) redesignated (35).

Subsec. (a)(37). Pub. L. 110–172, §7(a)(1)(C), redesignated par. (37) as (36).

2005—Subsec. (a)(23). Pub. L. 109–135 substituted "1045(b)(3)" for "1045(b)(4)".

Subsec. (a)(32). Pub. L. 109–58, §1331(b)(1), added par. (32).

Subsec. (a)(33). Pub. L. 109–58, §1332(c), added par. (33).

Subsec. (a)(34). Pub. L. 109–58, §1333(b)(1), added par. (34).

Subsec. (a)(35). Pub. L. 109–58, §1335(b)(4), added par. (35).

Subsec. (a)(36). Pub. L. 109–58, §1341(b)(2), added par. (36).

Subsec. (a)(37). Pub. L. 109–58, §1342(b)(2), added par. (37).

2004—Subsec. (a)(13). Pub. L. 108–357, §413(c)(19), struck out par. (13) which read as follows: "to the extent provided in section 551(e) in the case of the stock of United States shareholders in a foreign personal holding company;".

Subsec. (a)(29). Pub. L. 108–357, §245(c)(2), added par. (29).

Subsec. (a)(30). Pub. L. 108–357, §338(b)(4), added par. (30).

Subsec. (a)(31). Pub. L. 108–357, §339(d), added par. (31).

2001—Subsec. (a)(28). Pub. L. 107–16 added par. (28).

2000—Subsec. (a)(23). Pub. L. 106–554 substituted "1045, or 1397B" for "or 1045" and "1045(b)(4), or 1397B(b)(4)" for "or 1045(b)(4)".

1997—Subsec. (a)(7). Pub. L. 105–34, §312(d)(6), inserted "(as in effect on the day before the date of the enactment of the Taxpayer Relief Act of 1997)" after "section 1034" and "(as so in effect)" after "section 1034(e)".

Subsec. (a)(23). Pub. L. 105–34, §313(b)(1), substituted ", 1044, or 1045" for "or 1044" and ", 1044(d), or 1045(b)(4)" for "or 1044(d)".

Subsec. (a)(27). Pub. L. 105–34, §701(b)(2), added par. (27).

1996—Subsec. (a)(20). Pub. L. 104–188, §1704(t)(56), provided that section 11813(b)(19) of Pub. L. 101–508 shall be applied as if "Paragraph (20) of section 1016(a), as redesignated by section 11801," appeared instead of "paragraph (21) of section 1016(a)". See 1990 Amendment note below.

Subsec. (a)(26). Pub. L. 104–188, §1807(c)(5), added par. (26).

1993—Subsec. (a)(19) to (23). Pub. L. 103–66, §13261(f)(3), redesignated pars. (20) to (24) as (19) to (23), respectively, and struck out former par. (19) which read as follows: "for amounts allowed as deductions for payments made on account of transfers of franchises, trademarks, or trade names under section 1253(d)(2);".

Subsec. (a)(24). Pub. L. 103–66, §13261(f)(3), redesignated par. (25) as (24). Former par. (24) redesignated

(23).

Pub. L. 103–66, §13114(b), substituted "section 1043 or 1044" for "section 1043" and "section 1043(c) or 1044(d), as the case may be" for "section 1043(c)".

Subsec. (a)(25), (26). Pub. L. 103–66, §13261(f)(3), redesignated pars. (25) and (26) as (24) and (25), respectively.

Subsec. (e). Pub. L. 103–66, §13213(a)(2)(F), amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows:

"(1) For treatment of certain expenses incident to the purchase of a residence which were deducted as moving expenses by the taxpayer or his spouse under section 217(a), see section 217(e).

"(2) For treatment of separate mineral interests as one property, see section 614."

1992—Subsec. (a)(25), (26). Pub. L. 102–486 added pars. (25) and (26).

1990—Subsec. (a)(2). Pub. L. 101–508, §11812(b)(10), substituted "under the straight line method" for "under section 167(b)(1)" in concluding provisions.

Subsec. (a)(20). Pub. L. 101–508, §11813(b)(19), which directed the amendment of subsec. (a)(21) by striking "section 48(q)" and inserting "section 50(c)", was executed to subsec. (a)(20). See 1996 Amendment note above.

Pub. L. 101–508, §11801(c)(1), redesignated par. (21) as (20) and struck out former par. (20) which read as follows: "to the extent provided in section 23(e), in the case of property with respect to which a credit has been allowed under section 23;".

Subsec. (a)(21) to (25). Pub. L. 101–508, §11801(c)(1), redesignated pars. (21) to (25) as (20) to (24), respectively.

1989—Subsec. (a)(25). Pub. L. 101–194 added par. (25).

1988—Subsec. (a)(5). Pub. L. 100–647, §1006(j)(1)(B), inserted "(or the amount applied to reduce interest payments under section 171(e)(2))" after "allowable pursuant to section 171(a)(1)".

Subsec. (a)(21) to (26). Pub. L. 100–647, §1018(u)(22), added pars. (21) to (24) and struck out former pars. (23) to (26) which read as follows:

"(23) to the extent provided in section 48(q) in the case of expenditures with respect to which a credit has been allowed under section 38;

"(24) for amounts allowed as deductions under section 59(d) (relating to optional 10-year writeoff of certain tax preferences);

"(25) to the extent provided in section 1059 (relating to reduction in basis for extraordinary dividends); and

"(26) in the case of qualified replacement property, the acquisition of which resulted under section 1042 in the nonrecognition of any part of the gain realized on the sale or exchange of any property, to the extent provided in section 1042(c)."

Former pars. (21) and (22) had been struck out previously.

1986—Subsec. (a). Pub. L. 99–514, §1899A(25), which directed the amendment of pars. (23) to (26) by substituting a semicolon for a comma at the end thereof was executed to pars. (24) to (26) in view of the prior repeal of par. (23).

Pub. L. 99–514, §1303(b)(3), which directed the amendment of subsec. (a) by striking out par. (22) and redesignating pars. (23) to (27) as (22) to (26), respectively, was executed by striking out par. (21) to reflect the probable intent of Congress in view of the amendment by section 241(b)(2) of Pub. L. 99–514. Prior to the amendment, par. (21) read as follows: "to the extent provided in section 1395 in the case of stock of shareholders of a general stock ownership corporation (as defined in section 1391) which makes the election provided by section 1392;".

Pub. L. 99–514, §241(b)(2), redesignated pars. (17) to (27) as (16) to (26), respectively, and struck out former par. (16) which read as follows: "for amounts allowed as deductions for expenditures treated as deferred expenses under section 177 (relating to trademark and trade name expenditures) and resulting in a reduction of the taxpayer's taxes under this subtitle, but not less than the amounts allowable under such section for the taxable year and prior years;".

Subsec. (a)(24). Pub. L. 99–514, §701(e)(4)(D), substituted "section 59(d)" for "section 58(i)".

1984—Subsec. (a)(17). Pub. L. 98–369, §211(b)(14), substituted "section 811(b)" for "section 818(b)" in two places.

Subsec. (a)(21). Pub. L. 98–369, §474(r)(23), substituted "section 23(e)" for "section 44C(e)" and "section 23" for "section 44C".

Subsec. (a)(26). Pub. L. 98–369, §53(d)(3), added par. (26).

Subsec. (a)(27). Pub. L. 98–369, §541(b)(2), added par. (27).

Subsec. (b). Pub. L. 98–369, §43(a)(2), struck out "The term 'substituted basis' as used in this section means a basis determined under any provision of this subchapter and subchapters C (relating to corporate

distributions and adjustments), K (relating to partners and partnerships), and P (relating to capital gains and losses), or under any corresponding provision of a prior income tax law, providing that the basis shall be determined (1) by reference to the basis in the hands of a transferor, donor, or grantor, or (2) by reference to other property held at any time by the person for whom the basis is to be determined." See section 7701(a)(42) of this title.

1982—Subsec. (a)(18). Pub. L. 97–354 substituted "section 1367" for "section 1376", "indebtedness owed to" for "indebtedness owing", and "an S corporation" for "an electing small business corporation (as defined in section 1371(b))".

Subsec. (a)(24). Pub. L. 97–248, §205(a)(5)(B), substituted "to the extent provided in section 48(q)" for "to the extent provided in section 48(g)(5)".

Subsec. (a)(25). Pub. L. 97–248, §201(c)(2), added par. (25).

1981—Subsec. (a)(24). Pub. L. 97–34, §212(d)(2)(G), added par. (24).

Subsec. (c). Pub. L. 97–34, §421(g), substituted provisions respecting increase in basis of property on which additional estate tax is imposed for provisions for increase in basis in the case of certain involuntary conversions, if such compulsory or involuntary conversions are within the meaning of section 1033, and an additional estate tax is imposed under section 2032A, and provisions respecting time adjustment made.

1980—Subsec. (a)(22). Pub. L. 96–222, §106(a)(2), redesignated par. (21), relating to the extent provided in section 1395 in the case of stock of shareholders of a general stock ownership corporation, as (22).

Subsec. (a)(23). Pub. L. 96–223, §401(a), repealed the amendments made by Pub. L. 94–455, §2005(a)(3), and Pub. L. 95–600, §702(r)(3). See 1976 and 1978 Amendment notes below.

Subsec. (c). Pub. L. 96–223, §401(c)(1), struck out provision relating to the net appreciation of in value of certain property and struck out references to section 1023 of this title.

1978—Subsec. (a)(21). Pub. L. 95–618, §101(b)(3), added par. (21) relating to an adjustment to the extent provided in section 44C.

Pub. L. 95–600, §601(b)(3), as amended by Pub. L. 96–222, §106(a)(3), added par. (21) relating to an adjustment to the extent provided in section 1395.

Subsec. (a)(23). Pub. L. 95–600, §702(r)(3), which redesignated par. (23) as (21), was repealed by Pub. L. 96–222, §107(a)(2)(C), and Pub. L. 96–223, §401(a). See Repeals note below.

Pub. L. 95–600, §515(2), substituted "December 31, 1979" for "December 31, 1976".

Subsec. (c). Pub. L. 95–472 added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 95–618, §201(b), added subsec. (d). Former subsec. (d) redesignated (e).

Pub. L. 95–472 redesignated former subsec. (c) as (d).

Subsec. (e). Pub. L. 95–618, §201(b), redesignated former subsec. (d) as (e).

1976—Subsec. (a)(2). Pub. L. 94–455, §1901(b)(29)(A), inserted "(as in effect before the date of the enactment of the Tax Reform Act of 1976)" after "under section 1020".

Subsec. (a)(10). Pub. L. 94–455, §1901(b)(21)(G), struck out par. (10) which related to adjustment for the amounts allowed as deductions as deferred expenses under section 615(b) of this title.

Subsec. (a)(13). Pub. L. 94–455, §1901(b)(1)(F)(ii), substituted "section 551(e)" for "section 551(f)".

Subsec. (a)(19). Pub. L. 94–455, §1901(a)(123), (b)(30)(A), redesignated par. (20) as (19). Former par. (19), which related to adjustment of section 38 property to the extent provided in sections 48(g) and 203 of this title, was struck out.

Subsec. (a)(20). Pub. L. 94–455, §1901(b)(30)(A), redesignated par. (22) as (20). Former par. (20) redesignated (19).

Subsec. (a)(21). Pub. L. 94–455, §1901(b)(30)(A), struck out par. (21) which related to property adjustment to the extent provided in section 1022 of this title.

Subsec. (a)(22). Pub. L. 94–455, §1901(b)(30)(A), redesignated par. (22) as (20).

Subsec. (a)(23). Pub. L. 94–455, §2005(a)(3), added par. (23). See Repeals note below.

1969—Subsec. (a)(22). Pub. L. 91–172, §516(c)(2)(B), added par. (22).

Subsec. (a)(10). Pub. L. 91–172, §504(c)(4), limited exploration expenditures referred to in this par. to pre-1970 exploration expenditures.

Subsec. (c). Pub. L. 91–172, §231(c)(3), redesignated existing provisions as par. (2) and added par. (1).

1964—Subsec. (a)(15). Pub. L. 88–272, §227(b)(5), inserted "or domestic iron ore".

Subsec. (a)(19). Pub. L. 88–272, §203(a)(3)(C), inserted "and in section 203(a)(2) of the Revenue Act of 1964".

Subsec. (a)(21). Pub. L. 88–272, §225(j)(2), added par. (21).

1962—Subsec. (a)(3)(D). Pub. L. 87–834, §8(g)(2), added subpar. (D).

Subsec. (a)(19). Pub. L. 87–834, §2(f), added par. (19).

Subsec. (a)(20). Pub. L. 87–834, §12(b)(4), added par. (20).

1959—Subsec. (a)(3)(C). Pub. L. 86–69, §3(d)(1), added subpar. (C).
Subsec. (a)(17). Pub. L. 86–69, §3(d)(2), added par. (17).
1958—Subsec. (a)(6). Pub. L. 85–866, §2(b), struck out "short-term" before "municipal bond".
Subsec. (a)(18). Pub. L. 85–866, §64(d)(2), added par. (18).
1956—Subsec. (a)(16). Act June 29, 1956, added par. (16).

EFFECTIVE AND TERMINATION DATES OF 2010 AMENDMENT

Amendment by Pub. L. 111–148 terminated applicable to taxable years beginning after Dec. 31, 2011, and section is amended to read as if such amendment had never been enacted, see section 10909(c) of Pub. L. 111–148, set out as a note under section 1 of this title.

Amendment by Pub. L. 111–148 applicable to taxable years beginning after Dec. 31, 2009, see section 10909(d) of Pub. L. 111–148, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by section 1141(b)(3) of Pub. L. 111–5 applicable to vehicles acquired after Dec. 31, 2009, see section 1141(c) of Pub. L. 111–5, set out as a note under section 30B of this title.

Amendment by section 1142(b)(6) of Pub. L. 111–5 applicable to vehicles acquired after Feb. 17, 2009, see section 1142(c) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–343 applicable to taxable years beginning after Dec. 31, 2008, see section 205(e) of Pub. L. 110–343, set out as an Effective and Termination Dates of 2008 Amendment note under section 24 of this title.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by section 7(a)(1)(C) of Pub. L. 110–172 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 7(e) of Pub. L. 110–172, set out as a note under section 1092 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 1331(b)(1) of Pub. L. 109–58 applicable to property placed in service after Dec. 31, 2005, see section 1331(d) of Pub. L. 109–58, set out as an Effective Date note under section 179D of this title.

Amendment by section 1332(c) of Pub. L. 109–58 applicable to qualified new energy efficient homes acquired after Dec. 31, 2005, in taxable years ending after such date, see section 1332(f) of Pub. L. 109–58, set out as a note under section 38 of this title.

Amendment by section 1333(b)(1) of Pub. L. 109–58 applicable to property placed in service after Dec. 31, 2005, see section 1333(c) of Pub. L. 109–58, set out as an Effective Date note under section 25C of this title.

Amendment by section 1335(b)(4) of Pub. L. 109–58 applicable to property placed in service after Dec. 31, 2005, in taxable years ending after such date, see section 1335(c) of Pub. L. 109–58, set out as a note under section 23 of this title.

Amendment by section 1341(b)(2) of Pub. L. 109–58 applicable to property placed in service after Dec. 31, 2005, in taxable years ending after such date, see section 1341(c) of Pub. L. 109–58, set out as an Effective Date note under section 30B of this title.

Amendment by section 1342(b)(2) of Pub. L. 109–58 applicable to property placed in service after Dec. 31, 2005, in taxable years ending after such date, see section 1342(c) of Pub. L. 109–58, set out as an Effective Date note under section 30C of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 245(c)(2) of Pub. L. 108–357 applicable to taxable years beginning after Dec. 31, 2004, see section 245(e) of Pub. L. 108–357, set out as a note under section 38 of this title.

Amendment by section 338(b)(4) of Pub. L. 108–357 applicable to expenses paid or incurred after Dec. 31, 2002, in taxable years ending after such date, see section 338(c) of Pub. L. 108–357, set out as an Effective Date note under section 179B of this title.

Amendment by section 339(d) of Pub. L. 108–357 applicable to expenses paid or incurred after Dec. 31, 2002, in taxable years ending after such date, see section 339(f) of Pub. L. 108–357, set out as a note under section 38 of this title.

Amendment by section 413(c)(19) of Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such

taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 205(c) of Pub. L. 107–16, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(7) [title I, §116(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–604, provided that: "The amendments made by this section [enacting subpart C of part III of subchapter U of this chapter, amending this section and sections 1223, 1394, 1400, and 1400B of this title, redesignating subpart C of part III of subchapter U of this chapter as subpart D of part III of subchapter U of this chapter, and renumbering sections 1397B and 1397C of this title as 1397C and 1397D, respectively, of this title] shall apply to qualified empowerment zone assets acquired after the date of the enactment of this Act [Dec. 21, 2000]."

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 312(d)(6) of Pub. L. 105–34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d) of Pub. L. 105–34, set out as a note under section 121 of this title.

Pub. L. 105–34, title III, §313(c), Aug. 5, 1997, 111 Stat. 842, provided that: "The amendments made by this section [enacting section 1045 of this title and amending this section and section 1223 of this title] shall apply to sales after the date of enactment of this Act [Aug. 5, 1997]."

Amendment by section 701(b)(2) of Pub. L. 105–34 effective Aug. 5, 1997, see section 701(d) of Pub. L. 105–34, set out as a note under section 39 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1807(c)(5) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1807(e) of Pub. L. 104–188, set out as an Effective Date note under section 23 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13114(d), Aug. 10, 1993, 107 Stat. 431, provided that: "The amendments made by this section [enacting section 1044 of this title and amending this section] shall apply to sales on and after the date of the enactment of this Act [Aug. 10, 1993], in taxable years ending on and after such date."

Amendment by section 13213(a)(2)(F) of Pub. L. 103–66 applicable to expenses incurred after Dec. 31, 1993, see section 13213(e) of Pub. L. 103–66 set out as a note under section 62 of this title.

Amendment by section 13261(f)(3) of Pub. L. 103–66 applicable, except as otherwise provided, with respect to property acquired after Aug. 10, 1993, see section 13261(g) of Pub. L. 103–66, set out as an Effective Date note under section 197 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–486 applicable to property placed in service after June 30, 1993, see section 1913(c) of Pub. L. 102–486, set out as an Effective Date note under section 30 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11812(b)(10) of Pub. L. 101–508 applicable to property placed in service after Nov. 5, 1990, but not applicable to any property to which section 168 of this title does not apply by reason of subsec. (f)(5) of section 168, and not applicable to rehabilitation expenditures described in section 252(f)(5) of Pub. L. 99–514, see section 11812(c) of Pub. L. 101–508, set out as a note under section 42 of this title.

Amendment by section 11813(b)(19) of Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–194, title V, §502(c), Nov. 30, 1989, 103 Stat. 1755, provided that: "The amendments made by this section [enacting section 1043 of this title and amending this section and section 1223 of this title] shall apply to sales after the date of the enactment of this Act [Nov. 30, 1989]."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1006(j)(1)(B) of Pub. L. 100–647 applicable in the case of obligations acquired

after Dec. 31, 1987, with exception allowing taxpayer to elect to have amendment apply to obligations acquired after Oct. 22, 1986, see section 1006(j)(1)(C) of Pub. L. 100–647, set out as a note under section 171 of this title.

Amendment by section 1018(u)(22) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 241(b)(2) of Pub. L. 99–514 applicable to expenditures paid or incurred after Dec. 31, 1986, except as otherwise provided, see section 241(c) of Pub. L. 99–514, set out as an Effective Date of Repeal note under former section 177 of this title.

Amendment by section 701(e)(4)(D) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date note under section 55 of this title.

Amendment by section 1303(b)(3) of Pub. L. 99–514 effective Oct. 22, 1986, see section 1311(f) of Pub. L. 99–514, as amended, set out as an Effective Date; Transitional Rules note under section 141 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 43(a)(2) of Pub. L. 98–369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98–369, set out as an Effective Date note under section 1271 of this title.

Amendment by section 53(d)(3) of Pub. L. 98–369 applicable to distribution after Mar. 1, 1984, in taxable years ending after such date, see section 53(e)(1) of Pub. L. 98–369, set out as an Effective Date note under section 1059 of this title.

Amendment by section 211(b)(14) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

Amendment by section 474(r)(23) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 541(b)(2) of Pub. L. 98–369 applicable to sales of securities in taxable years beginning after July 18, 1984, see section 541(c) of Pub. L. 98–369, set out as an Effective Date note under section 1042 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

Amendment by section 201(c)(2) of Pub. L. 97–248 applicable to taxable years beginning after Dec. 31, 1982, see section 201(e)(1) of Pub. L. 97–248, set out as a note under section 5 of this title.

Amendment by section 205(a)(5)(B) of Pub. L. 97–248 applicable to periods after Dec. 31, 1982, under rules similar to the rules of section 48(m) of this title, with certain qualifications, see section 205(c)(1) of Pub. L. 97–248, set out as an Effective Date note under section 196 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 212(d)(2)(G) of Pub. L. 97–34 applicable to expenditures incurred after Dec. 31, 1981, in taxable years ending after that date, see section 212(e) of Pub. L. 97–34, set out as a note under section 46 of this title.

Amendment by section 421(g) of Pub. L. 97–34 applicable with respect to the estates of decedents dying after Dec. 31, 1981, see section 421(k) of Pub. L. 97–34, set out as a note under section 2032A of this title.

EFFECTIVE DATE OF 1980 AMENDMENT AND REVIVAL OF PRIOR LAW

Amendment by section 401(a) of Pub. L. 96–223 (repealing section 2005(a)(3) of Pub. L. 94–455 and section 702(r)(3) of Pub. L. 96–500 and the amendments made thereby, which had amended this section) applicable in respect of decedents dying after Dec. 31, 1976, and except for certain elections, this title to be applied as if those repealed provisions had not been enacted, see section 401(b), (e) of Pub. L. 96–223, set out as a note under section 1023 of this title.

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as an Effective Date of 1980 Amendment note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–618, title I, §101(c), Nov. 9, 1978, 92 Stat. 3180, provided that: "The amendments made by this section [enacting section 23 of this title and amending this section and sections 56 and 6096 of this title] shall apply to taxable years ending on or after April 20, 1977."

Amendment by section 201(b) of Pub. L. 95–618 applicable with respect to 1980 and later model year automobiles, see section 201(g) of Pub. L. 95–618, set out as an Effective Date note under section 4064 of this title.

Amendment by section 601(b)(3) of Pub. L. 95–600 effective with respect to corporations chartered after Dec. 31, 1978, and before Jan. 1, 1984, see section 601(d) of Pub. L. 95–600, set out as a note under section 172 of this title.

Amendment by section 702(r)(3) of Pub. L. 95–600 applicable to estates of decedents dying after Dec. 31, 1976, see section 702(r)(5) of Pub. L. 95–600, set out as a note under section 2051 of this title.

Pub. L. 95–472, §4(d), Oct. 17, 1978, 92 Stat. 1336, provided that: "The amendments made by this section [amending this section and section 2032A of this title] shall apply to involuntary conversions after December 31, 1976."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(123), (b)(1)(F)(ii), (21)(G), (29)(A) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Pub. L. 94–455, title XIX, §1901(b)(30)(B), Oct. 4, 1976, 90 Stat. 1799, provided that: "The amendment made by subparagraph (A)(i) [amending this section] shall apply with respect to stock or securities acquired from a decedent dying after the date of the enactment of this Act [Oct. 4, 1976]."

Amendment by section 2005(a)(3) of Pub. L. 94–455 applicable in respect of decedents dying after Dec. 31, 1976, see section 2005(f) of Pub. L. 94–455 set out as an Effective Date note under section 1015 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 231(c)(3) of Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 231(d) of Pub. L. 91–172, set out as a note under section 217 of this title.

Amendment by section 504(c)(4) of Pub. L. 91–172 applicable with respect to exploration expenditures paid or incurred after Dec. 31, 1969, see section 504(d)(1) of Pub. L. 91–172, set out as a note under section 243 of this title.

Amendment by section 516(c)(2)(B) of Pub. L. 91–172 applicable to transfers after Dec. 31, 1969, see section 516(d)(3) of Pub. L. 91–172, set out as an Effective Date note under section 1001 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by section 203(a)(3)(C) of Pub. L. 88–272 applicable in case of property placed in service after Dec. 31, 1963, with respect to taxable years ending after such date, and in case of property placed in service before Jan. 1, 1964, with respect to taxable years beginning after Dec. 31, 1963, see section 203(a)(4) of Pub. L. 88–272, set out as a note under section 48 of this title.

Amendment by section 225(j)(2) of Pub. L. 88–272 applicable in respect of decedents dying after Dec. 31, 1963, see section 225(l) of Pub. L. 88–272, set out as a note under section 316 of this title.

Amendment by section 227(b)(5) of Pub. L. 88–272 applicable with respect to amounts received or accrued in taxable years beginning after Dec. 31, 1963, attributable to iron ore mined in such years, see section 227(c) of Pub. L. 88–272, set out as a note under section 272 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by section 2(f) of Pub. L. 87–834 applicable with respect to taxable years ending after Dec. 31, 1961, see section 2(h) of Pub. L. 87–834, set out as an Effective Date note under section 46 of this title.

Amendment by section 8(g)(2) of Pub. L. 87–834 applicable with respect to taxable years beginning after Dec. 31, 1962, see section 8(h) of Pub. L. 87–834, set out as a note under section 501 of this title.

Amendment by section 12(b)(1) of Pub. L. 87–834 applicable with respect to taxable years of foreign corporations beginning after Dec. 31, 1962, and to taxable years of United States shareholders within which or with which such taxable years of such foreign corporations end, see section 12(c) of Pub. L. 87–834, set out as an Effective Date note under section 951 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–69 applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 4 of Pub. L. 86–69, set out as a note under section 381 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 2(b) of Pub. L. 85–866 applicable with respect to taxable years ending after December 31, 1957, but only with respect to obligations acquired after such date, see section 2(c) of Pub. L. 85–866, set out as a note under section 75 of this title.

Amendment by section 64(d)(2) of Pub. L. 85–866 applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 64(e) of Pub. L. 85–866, set out as a note under section 172 of this title.

REPEALS

Section 2005(a)(3) of Pub. L. 94–455 and section 702(r)(3) of Pub. L. 95–600, cited as credits to this section, and the amendments made by those sections, were repealed by Pub. L. 96–223, title IV, §401(a), 94 Stat. 299, resulting in the text of this section reading as it read prior to enactment of sections 2005(a)(3) and 702(r)(3). See Effective Date of 1980 Amendments and Revival of Prior Law note above.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(e)(4)(D) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

CHANGE FROM RETIREMENT TO STRAIGHT LINE METHOD OF COMPUTING DEPRECIATION IN CERTAIN CASES

Pub. L. 85–866, title I, §94, Sept. 2, 1958, 72 Stat. 1669, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) SHORT TITLE.—This section may be cited as the 'Retirement-Straight Line Adjustment Act of 1958'.

"(b) MAKING OF ELECTION.—Any taxpayer who held retirement-straight line property on his 1956 adjustment date may elect to have this section apply. Such an election shall be made at such time and in such manner as the Secretary shall prescribe. Any election under this section shall be irrevocable and shall apply to all retirement-straight line property as hereinafter provided in this section (including such property for periods when held by predecessors of the taxpayer).

"(c) RETIREMENT-STRAIGHT LINE PROPERTY DEFINED.—For purposes of this section, the term 'retirement-straight line property' means any property of a kind or class with respect to which the taxpayer or a predecessor (under the terms and conditions prescribed for him by the Commissioner) for any taxable year beginning after December 31, 1940, and before January 1, 1956, changed from the retirement to the straight line method of computing the allowance of deductions for depreciation.

"(d) BASIS ADJUSTMENTS AS OF 1956 ADJUSTMENT DATE.—If the taxpayer has made an election under this section, then in determining the adjusted basis on his 1956 adjustment date of all retirement-straight line property held by the taxpayer, in lieu of the adjustments for depreciation provided in section 1016(a)(2) and (3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the following adjustments shall be made (effective as of his 1956 adjustment date) in respect of all periods before the 1956 adjustment date:

"(1) DEPRECIATION SUSTAINED BEFORE MARCH 1, 1913.—For depreciation sustained before March 1, 1913, on retirement-straight line property held by the taxpayer or a predecessor on such date for which cost was or is claimed as basis and which either—

"(A) RETIRED BEFORE CHANGEOVER.—Was retired by the taxpayer or a predecessor before the changeover date, but only if (i) a deduction was allowed in computing net income by reason of such retirement, and (ii) such deduction was computed on the basis of cost without adjustment for

depreciation sustained before March 1, 1913. In the case of any such property retired during any taxable year beginning after December 31, 1929, the adjustment under this subparagraph shall not exceed that portion of the amount attributable to depreciation sustained before March 1, 1913, which resulted (by reason of the deduction so allowed) in a reduction in taxes under the Internal Revenue Code of 1986 or prior income, war-profits, or excess-profits tax laws.

"(B) HELD ON CHANGEOVER DATE.—Was held by the taxpayer or a predecessor on the changeover date. This subparagraph shall not apply to property to which paragraph (2) applies.

The adjustment determined under this paragraph shall be allocated (in the manner prescribed by the Secretary) among all retirement-straight line property held by the taxpayer on his 1956 adjustment date.

"(2) PROPERTY DISPOSED OF AFTER CHANGEOVER AND BEFORE 1956 ADJUSTMENT DATE.—For that portion of the reserve prescribed by the Commissioner in connection with the changeover which was applicable to property—

"(A) sold, or

"(B) with respect to which a deduction was allowed for Federal income tax purposes by reason of casualty or 'abnormal' retirement in the nature of special obsolescence,

if such sale occurred in, or such deduction was allowed for, a period on or after the changeover date and before the taxpayer's 1956 adjustment date.

"(3) DEPRECIATION ALLOWABLE FROM CHANGEOVER TO 1956 ADJUSTMENT DATE .—For depreciation allowable, under the terms and conditions prescribed by the Commissioner in connection with the changeover, for all periods on and after the changeover date and before the taxpayer's 1956 adjustment date.

This subsection shall apply only with respect to taxable years beginning after December 31, 1955.

"(e) EFFECT ON PERIOD FROM CHANGEOVER TO 1956 ADJUSTMENT DATE.—If the taxpayer has made an election under this section, then in determining the adjusted basis of any retirement-straight line property as of any time on or after the changeover date and before the taxpayer's 1956 adjustment date, in lieu of the adjustments for depreciation provided in section 1016(a)(2) and (3) of the Internal Revenue Code of 1986 and the corresponding provisions of prior revenue laws, the following adjustments shall be made:

"(1) FOR PRESCRIBED RESERVE.—For the amount of the reserve prescribed by the Commissioner in connection with the changeover.

"(2) FOR ALLOWABLE DEPRECIATION.—For the depreciation allowable under the terms and conditions prescribed by the Commissioner in connection with the changeover.

This subsection shall not apply in determining adjusted basis for purposes of section 437(c) of the Internal Revenue Code of 1939. This subsection shall apply only with respect to taxable years beginning on or after the changeover date and before the taxpayer's 1956 adjustment date.

"(f) EQUITY INVESTED CAPITAL, ETC.—If an election is made under this section, then (not withstanding the terms and conditions prescribed by the Commissioner in connection with the changeover)—

"(1) EQUITY INVESTED CAPITAL.—In determining equity invested capital under sections 458 and 718 of the Internal Revenue Code of 1939, accumulated earnings and profits as of the changeover date, and as of the beginning of each taxable year thereafter, shall be reduced by the depreciation sustained before March 1, 1913, as computed under subsection (d)(1)(B); and

"(2) DEFINITION OF EQUITY CAPITAL.—In determining the adjusted basis of assets for the purpose of section 437(c) of the Internal Revenue Code of 1939 (and in addition to any other adjustments required by such Code), the basis shall be reduced by depreciation sustained before March 1, 1913 (as computed under subsection (d)), together with any depreciation allowable under subsection (e)(2) for any period before the year for which the excess profits credit is being computed.

"(g) DEFINITIONS.—For purposes of this section—

"(1) DEPRECIATION.—The term 'depreciation' means exhaustion, wear and tear, and obsolescence.

"(2) CHANGEOVER.—The term 'changeover' means a change from the retirement to the straight line method of computing the allowance of deductions for depreciation.

"(3) CHANGEOVER DATE.—The term 'changeover date' means the first day of the first taxable year for which the changeover was effective.

"(4) 1956 ADJUSTMENT DATE.—The term '1956 adjustment date' means, in the case of any taxpayer, the first day of his first taxable year beginning after December 31, 1955.

"(5) PREDECESSOR.—The term 'predecessor' means any person from whom property of a kind or class to which this section refers was acquired, if the basis of such property is determined by reference to its

basis in the hands of such person. Where a series of transfers of property has occurred and where in each instance the basis of the property was determined by reference to its basis in the hands of the prior holder, the term includes each such prior holder.

"(6) The term 'Secretary' means the Secretary of the Treasury or his delegate.

"(7) The term 'Commissioner' means the Commissioner of Internal Revenue."

[1] *See References in Text note below.*

[2] *So in original. The comma probably should be a semicolon.*

§1017. Discharge of indebtedness

(a) General rule

If—

(1) an amount is excluded from gross income under subsection (a) of section 108 (relating to discharge of indebtedness), and

(2) under subsection (b)(2)(E), (b)(5), or (c)(1) of section 108, any portion of such amount is to be applied to reduce basis,

then such portion shall be applied in reduction of the basis of any property held by the taxpayer at the beginning of the taxable year following the taxable year in which the discharge occurs.

(b) Amount and properties determined under regulations

(1) In general

The amount of reduction to be applied under subsection (a) (not in excess of the portion referred to in subsection (a)), and the particular properties the bases of which are to be reduced, shall be determined under regulations prescribed by the Secretary.

(2) Limitation in title 11 case or insolvency

In the case of a discharge to which subparagraph (A) or (B) of section 108(a)(1) applies, the reduction in basis under subsection (a) of this section shall not exceed the excess of—

(A) the aggregate of the bases of the property held by the taxpayer immediately after the discharge, over

(B) the aggregate of the liabilities of the taxpayer immediately after the discharge.

The preceding sentence shall not apply to any reduction in basis by reason of an election under section 108(b)(5).

(3) Certain reductions may only be made in the basis of depreciable property

(A) In general

Any amount which under subsection (b)(5) or (c)(1) of section 108 is to be applied to reduce basis shall be applied only to reduce the basis of depreciable property held by the taxpayer.

(B) Depreciable property

For purposes of this section, the term "depreciable property" means any property of a character subject to the allowance for depreciation, but only if a basis reduction under subsection (a) will reduce the amount of depreciation or amortization which otherwise would be allowable for the period immediately following such reduction.

(C) Special rule for partnership interests

For purposes of this section, any interest of a partner in a partnership shall be treated as depreciable property to the extent of such partner's proportionate interest in the depreciable property held by such partnership. The preceding sentence shall apply only if there is a

corresponding reduction in the partnership's basis in depreciable property with respect to such partner.

(D) Special rule in case of affiliated group

For purposes of this section, if—

(i) a corporation holds stock in another corporation (hereinafter in this subparagraph referred to as the "subsidiary"), and

(ii) such corporations are members of the same affiliated group which file a consolidated return under section 1501 for the taxable year in which the discharge occurs,

then such stock shall be treated as depreciable property to the extent that such subsidiary consents to a corresponding reduction in the basis of its depreciable property.

(E) Election to treat certain inventory as depreciable property

(i) In general

At the election of the taxpayer, for purposes of this section, the term "depreciable property" includes any real property which is described in section 1221(a)(1).

(ii) Election

An election under clause (i) shall be made on the taxpayer's return for the taxable year in which the discharge occurs or at such other time as may be permitted in regulations prescribed by the Secretary. Such an election, once made, may be revoked only with the consent of the Secretary.

(F) Special rules for qualified real property business indebtedness

In the case of any amount which under section 108(c)(1) is to be applied to reduce basis—

(i) depreciable property shall only include depreciable real property for purposes of subparagraphs (A) and (C),

(ii) subparagraph (E) shall not apply, and

(iii) in the case of property taken into account under section 108(c)(2)(B), the reduction with respect to such property shall be made as of the time immediately before disposition if earlier than the time under subsection (a).

(4) Special rules for qualified farm indebtedness

(A) In general

Any amount which under subsection (b)(2)(E) of section 108 is to be applied to reduce basis and which is attributable to an amount excluded under subsection (a)(1)(C) of section 108—

(i) shall be applied only to reduce the basis of qualified property held by the taxpayer, and

(ii) shall be applied to reduce the basis of qualified property in the following order:

(I) First the basis of qualified property which is depreciable property.

(II) Second the basis of qualified property which is land used or held for use in the trade or business of farming.

(III) Then the basis of other qualified property.

(B) Qualified property

For purposes of this paragraph, the term "qualified property" has the meaning given to such term by section 108(g)(3)(C).

(C) Certain rules made applicable

Rules similar to the rules of subparagraphs (C), (D), and (E) of paragraph (3) shall apply for purposes of this paragraph and section 108(g).

(c) Special rules

(1) Reduction not to be made in exempt property

In the case of an amount excluded from gross income under section 108(a)(1)(A), no reduction

in basis shall be made under this section in the basis of property which the debtor treats as exempt property under section 522 of title 11 of the United States Code.

(2) Reductions in basis not treated as dispositions

For purposes of this title, a reduction in basis under this section shall not be treated as a disposition.

(d) Recapture of reductions

(1) In general

For purposes of sections 1245 and 1250—

(A) any property the basis of which is reduced under this section and which is neither section 1245 property nor section 1250 property shall be treated as section 1245 property, and

(B) any reduction under this section shall be treated as a deduction allowed for depreciation.

(2) Special rule for section 1250

For purposes of section 1250(b), the determination of what would have been the depreciation adjustments under the straight line method shall be made as if there had been no reduction under this section.

(Aug. 16, 1954, ch. 736, 68A Stat. 301; Pub. L. 94–455, title XIX, §§1906(b)(13)(A), 1951(c)(1), Oct. 4, 1976, 90 Stat. 1834, 1840; Pub. L. 96–589, §2(b), Dec. 24, 1980, 94 Stat. 3394; Pub. L. 99–514, title IV, §405(b), title VIII, §822(b)(4), (5), Oct. 22, 1986, 100 Stat. 2224, 2373; Pub. L. 100–647, title I, §1004(a)(5), Nov. 10, 1988, 102 Stat. 3386; Pub. L. 101–508, title XI, §11704(a)(12), Nov. 5, 1990, 104 Stat. 1388–518; Pub. L. 103–66, title XIII, §13150(c)(6)–(8), Aug. 10, 1993, 107 Stat. 448; Pub. L. 104–188, title I, §1703(n)(5), Aug. 20, 1996, 110 Stat. 1877; Pub. L. 105–206, title VI, §6023(11), July 22, 1998, 112 Stat. 825; Pub. L. 106–170, title V, §532(c)(2)(S), Dec. 17, 1999, 113 Stat. 1931.)

AMENDMENTS

1999—Subsec. (b)(3)(E)(i). Pub. L. 106–170 substituted "1221(a)(1)" for "1221(1)".

1998—Subsec. (a)(2). Pub. L. 105–206 substituted "(b)(2)(E)" for "(b)(2)(D)".

1996—Subsec. (b)(4)(A). Pub. L. 104–188 substituted "subsection (b)(2)(E)" for "subsection (b)(2)(D)".

1993—Subsec. (a)(2). Pub. L. 103–66, §13150(c)(6), substituted ", (b)(5), or (c)(1)" for "or (b)(5)".

Subsec. (b)(3)(A). Pub. L. 103–66, §13150(c)(7), inserted "or (c)(1)" after "subsection (b)(5)".

Subsec. (b)(3)(F). Pub. L. 103–66, §13150(c)(8), added subpar. (F).

1990—Subsec. (b)(4)(C). Pub. L. 101–508 substituted "subparagraphs" for "subparagraph".

1988—Subsec. (b)(4). Pub. L. 100–647 substituted "Special rules for" for "Ordering rule in the case of" in heading, and amended text generally. Prior to amendment, text read as follows: "Any amount which is excluded from gross income under section 108(a) by reason of the discharge of qualified farm indebtedness (within the meaning of section 108(g)(2)) and which under subsection (b) of section 108 is to be applied to reduce basis shall be applied—

"(A) first to reduce the tax attributes described in section 108(b)(2) (other than subparagraph (D) thereof),

"(B) then to reduce basis of property other than property described in subparagraph (C), and

"(C) then to reduce the basis of land used or held for use in the trade or business of farming."

1986—Subsec. (a)(2). Pub. L. 99–514, §822(b)(4), substituted "or (b)(5)" for ", (b)(5), or (c)(1)(A)".

Subsec. (b)(3)(A). Pub. L. 99–514, §822(b)(5), struck out "or (c)(1)(A)" after "subsection (b)(5)".

Subsec. (b)(4). Pub. L. 99–514, §405(b), added par. (4).

1980—Pub. L. 96–589 generally revised and expanded the section to specify the amount of reduction of basis of property under different subsections of section 108 of this title and the property to which such reduction is applicable, and provided for recapture of reductions for purposes of gains from depreciable property.

1976—Pub. L. 94–455, §§1906(b)(13)(A), 1951(c)(1), substituted "section 108" for "section 108(a)" in three places and struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any

transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103–66, §§13001–13444, to which such amendment relates, see section 1703(o) of Pub. L. 104–188, set out as a note under section 39 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to discharges after Dec. 31, 1992, in taxable years ending after such date, see section 13150(d) of Pub. L. 103–66, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 405(b) of Pub. L. 99–514 applicable to discharges of indebtedness occurring after Apr. 9, 1986, in taxable years ending after such date, see section 405(c) of Pub. L. 99–514, set out as a note under section 108 of this title.

Amendment by section 822(b)(4), (5) of Pub. L. 99–514 applicable to discharges after Dec. 31, 1986, see section 822(c) of Pub. L. 99–514, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–589 applicable to transactions which occur after Dec. 31, 1980, other than transactions which occur in a proceeding in a bankruptcy case or similar judicial proceeding or in a proceeding under Title 11 commencing on or after Dec. 31, 1980, with an exception permitting the debtor to make the amendment applicable to transactions occurring after Sept. 30, 1979 in a specified manner, see section 7(a) and (f) of Pub. L. 96–589, set out as a note under section 108 of this title.

[§1018. Repealed. Pub. L. 96–589, §6(h)(1), Dec. 24, 1980, 94 Stat. 3410]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 301; Oct. 4, 1976, Pub. L. 94–455, title XIX, §1901(a)(124), 90 Stat. 1784, provided for adjustment of capital structure before Sept. 22, 1938.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1979, but not to apply to proceedings under Title 11, Bankruptcy, commenced before Oct. 1, 1979, see section 7(e) of Pub. L. 96–589, set out as an Effective Date of 1980 Amendment note under section 108 of this title.

§1019. Property on which lessee has made improvements

Neither the basis nor the adjusted basis of any portion of real property shall, in the case of the lessor of such property, be increased or diminished on account of income derived by the lessor in respect of such property and excludable from gross income under section 109 (relating to improvements by lessee on lessor's property). If an amount representing any part of the value of real property attributable to buildings erected or other improvements made by a lessee in respect of such property was included in gross income of the lessor for any taxable year beginning before January 1, 1942, the basis of each portion of such property shall be properly adjusted for the amount so included in gross income.

(Aug. 16, 1954, ch. 736, 68A Stat. 301.)

[§1020. Repealed. Pub. L. 94–455, title XIX, §1901(a)(125), Oct. 4, 1976, 90 Stat.

1784]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 302, related to election to have section 1016(a)(2)(B) of this title apply in respect of periods since Feb. 28, 1913, and before Jan. 1, 1952.

§1021. Sale of annuities

In case of the sale of an annuity contract, the adjusted basis shall in no case be less than zero.

(Aug. 16, 1954, ch. 736, 68A Stat. 302.)

[§1022. Repealed. Pub. L. 111–312, title III, §301(a), Dec. 17, 2010, 124 Stat. 3300]

Section, added Pub. L. 107–16, title V, §542(a), June 7, 2001, 115 Stat. 76, related to treatment of property acquired from a decedent dying after Dec. 31, 2009.

PRIOR PROVISIONS

A prior section 1022, added Pub. L. 88–272, title II, §225(j)(1), Feb. 26, 1964, 78 Stat. 92, dealt with the increase in basis with respect to certain foreign personal holding company stock or securities, prior to repeal by Pub. L. 94–455, title XIX, §1901(a)(126), Oct. 4, 1976, 90 Stat. 1784, applicable with respect to stock or securities acquired from a decedent dying after Oct. 4, 1976.

Another prior section 1022, act Aug. 16, 1954, ch. 736, 68A Stat. 302, relating to cross references, was renumbered section 1023.

EFFECTIVE DATE OF REPEAL

Repeal of section applicable to estates of decedents dying, and transfers made after Dec. 31, 2009, except as otherwise provided, see section 301(e) of Pub. L. 111–312, set out as an Effective and Termination Dates of 2010 Amendment note under section 121 of this title.

§1023. Cross references

(1) For certain distributions by a corporation which are applied in reduction of basis of stock, see section 301(c)(2).

(2) For basis in case of construction of new vessels, see chapter 533 of title 46, United States Code.

(Aug. 16, 1954, ch. 736, 68A Stat. 302, §1022; renumbered §1023, Pub. L. 88–272, title II, §225(j)(1), Feb. 26, 1964, 78 Stat. 92; renumbered §1024 and amended Pub. L. 94–455, title XIX, §1901(a)(127), title XX, §2005(a)(2), Oct. 4, 1976, 90 Stat. 1784, 1872; renumbered §1023, Pub. L. 96–223, title IV, §401(a), Apr. 2, 1980, 94 Stat. 299; Pub. L. 96–589, §6(i)(4), Dec. 24, 1980, 94 Stat. 3410; Pub. L. 109–304, §17(e)(4), Oct. 6, 2006, 120 Stat. 1708.)

PRIOR PROVISIONS

A prior section 1023, added Pub. L. 94–455, title XX, §2005(a)(2), Oct. 4, 1976, 90 Stat. 1872; amended Pub. L. 95–600, title V, §515(3), (4), title VII, §702(c)(2)–(4), (6)–(8), Nov. 6, 1978, 92 Stat. 2884, 2926–2928, related to carryover basis for certain property acquired from a decedent dying after Dec. 31, 1979, prior to repeal by Pub. L. 96–223, title IV, §401(a), Apr. 2, 1980, 94 Stat. 299. The repeal was achieved by repealing section 2005(a)(2) of Pub. L. 94–455 and the amendment made thereby, which had enacted prior section 1023.

AMENDMENTS

2006—Par. (2). Pub. L. 109–304 substituted "chapter 533 of title 46, United States Code" for "section 511 of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1161)".

1980—Pub. L. 96–589 redesignated par. (3) as (2). Former par. (2), which provided reference to sections 670, 796, and 922 of Title 11, Bankruptcy, for basis of property in case of certain reorganizations and arrangements under the Bankruptcy Act, was struck out.

1976—Par. (4). Pub. L. 94–455, §1901(a)(127), struck out par. (4) which referred to section 405 of the Defense Production Act of 1950 for rules applicable in case of payments in violation of that Act.

EFFECTIVE DATE OF 1980 AMENDMENT AND REVIVAL OF PRIOR LAW

Amendment by Pub. L. 96–589 effective Oct. 1, 1979, but not to apply to proceedings under Title 11, Bankruptcy, commenced before Oct. 1, 1979, see section 7(e) of Pub. L. 96–589, set out as an Effective Date of 1980 Amendment note under section 108 of this title.

Pub. L. 96–223, title IV, §401(b), Apr. 2, 1980, 94 Stat. 299, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Except to the extent necessary to carry out subsection (d) [set out as a note under section 1014 of this title], the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall be applied and administered as if the provisions repealed by subsection (a), and the amendments made by those provisions [enacting this section and sections 6039A and 6698A of this title, redesignating former section 1023 as section 1024 of this title, and amending sections 306, 691, 1001, 1014, 1016, 1223, and 1246 of this title], had not been enacted."

Pub. L. 96–223, title IV, §401(e), Apr. 2, 1980, 94 Stat. 301, provided that: "The amendments made by this section [amending sections 306, 691, 1001, 1014, 1016, 1040, 1223, 1246, and 2614 of this title, repealing former section 1023 and sections 6039A and 6698A of this title, redesignating former section 1024 of this title as 1023, and enacting provisions set out as notes under this section and section 1014 of this title] shall apply in respect of decedents dying after December 31, 1976."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(127) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

REPEALS

Pub. L. 94–455, §1901(a)(127), cited as a credit to this section, which renumbered this section as section 1024 of this title, was repealed by Pub. L. 96–223, title IV, §401(a), Apr. 2, 1980, 94 Stat. 299, resulting in the redesignation of this section as section 1023 of this title. See Effective Date of 1980 Amendments and Revival of Prior Law note set out above.

[§1024. Renumbered §1023]

PART III—COMMON NONTAXABLE EXCHANGES

Sec.

1031. Exchange of property held for productive use or investment.
1032. Exchange of stock for property.
1033. Involuntary conversions.
[1034. Repealed.]
1035. Certain exchanges of insurance policies.
1036. Stock for stock of same corporation.
1037. Certain exchanges of United States obligations.
1038. Certain reacquisitions of real property.
[1039. Repealed.]
1040. Transfer of certain farm, etc., real property.
1041. Transfers of property between spouses or incident to divorce.
1042. Sales of stock to employee stock ownership plans or certain cooperatives.
1043. Sale of property to comply with conflict-of-interest requirements.
1044. Rollover of publicly traded securities gain into specialized small business investment companies.
1045. Rollover of gain from qualified small business stock to another qualified small business stock.

AMENDMENTS

2010—Pub. L. 111–312, title III, §301(a), Dec. 17, 2010, 124 Stat. 3300, amended analysis to read as if

amendment by Pub. L. 107–16, §542(d)(2), had never been enacted. See 2001 Amendment note below.

2001—Pub. L. 107–16, title V, §542(d)(2), June 7, 2001, 115 Stat. 84, substituted "Use of appreciated carryover basis property to satisfy pecuniary bequest" for "Transfer of certain farm, etc., real property" in item 1040.

1997—Pub. L. 105–34, title III, §§312(d)(15), 313(b)(3), Aug. 5, 1997, 111 Stat. 841, 842, struck out item 1034 "Rollover of gain on sale of principal residence" and added item 1045.

1993—Pub. L. 103–66, title XIII, §13114(c), Aug. 10, 1993, 107 Stat. 431, added item 1044.

1990—Pub. L. 101–508, title XI, §11801(b)(8), Nov. 5, 1990, 104 Stat. 1388–522, struck out item 1039 "Certain sales of low-income housing projects".

1989—Pub. L. 101–194, title V, §502(b)(3), Nov. 30, 1989, 103 Stat. 1755, added item 1043.

1986—Pub. L. 99–514, title XVIII, §1854(a)(12), Oct. 22, 1986, 100 Stat. 2878, substituted "employee stock ownership plans or certain cooperatives" for "employees" in item 1042.

1984—Pub. L. 98–369, div. A, title IV, §421(c), title V, §541(b)(3), July 18, 1984, 98 Stat. 794, 890, added items 1041 and 1042.

1981—Pub. L. 97–34, title IV, §421(j)(2)(C), Aug. 13, 1981, 95 Stat. 312, substituted "Transfer of certain farm, etc., real property" for "Use of farm, etc., real property to satisfy pecuniary bequest" in item 1040.

1980—Pub. L. 96–223, title IV, §401(a), (c)(2)(B), Apr. 2, 1980, 94 Stat. 299, 300, amended item 1040 generally and repealed Pub. L. 94–455, §2005(e)(1), and the amendment made thereby. See 1976 Amendment note below.

1978—Pub. L. 95–600, title IV, §405(c)(2), Nov. 6, 1978, 92 Stat. 2871, substituted "Rollover of gain on sale of principal residence" for "Sale or exchange of residence" in item 1034.

1976—Pub. L. 94–455, title XX, §2005(e)(2), Oct. 4, 1976, 90 Stat. 1878, which added item 1040, was repealed by Pub. L. 96–223, §401(a). See section 401(b), (e) of Pub. L. 96–223, set out as an Effective Date of 1980 Amendments and Revival of Prior Law note under section 1023 of this title.

1969—Pub. L. 91–172, title IX, §910(c), Dec. 30, 1969, 83 Stat. 722, added item 1039.

1964—Pub. L. 88–570, §2(b), Sept. 2, 1964, 78 Stat. 856, added item 1038.

1959—Pub. L. 86–346, title II, §201(b), Sept. 22, 1959, 73 Stat. 623, added item 1037.

§1031. Exchange of property held for productive use or investment

(a) Nonrecognition of gain or loss from exchanges solely in kind

(1) In general

No gain or loss shall be recognized on the exchange of property held for productive use in a trade or business or for investment if such property is exchanged solely for property of like kind which is to be held either for productive use in a trade or business or for investment.

(2) Exception

This subsection shall not apply to any exchange of—

(A) stock in trade or other property held primarily for sale,
(B) stocks, bonds, or notes,
(C) other securities or evidences of indebtedness or interest,
(D) interests in a partnership,
(E) certificates of trust or beneficial interests, or
(F) choses in action.

For purposes of this section, an interest in a partnership which has in effect a valid election under section 761(a) to be excluded from the application of all of subchapter K shall be treated as an interest in each of the assets of such partnership and not as an interest in a partnership.

(3) Requirement that property be identified and that exchange be completed not more than 180 days after transfer of exchanged property

For purposes of this subsection, any property received by the taxpayer shall be treated as property which is not like-kind property if—

(A) such property is not identified as property to be received in the exchange on or before the day which is 45 days after the date on which the taxpayer transfers the property relinquished in

the exchange, or

(B) such property is received after the earlier of—

(i) the day which is 180 days after the date on which the taxpayer transfers the property relinquished in the exchange, or

(ii) the due date (determined with regard to extension) for the transferor's return of the tax imposed by this chapter for the taxable year in which the transfer of the relinquished property occurs.

(b) Gain from exchanges not solely in kind

If an exchange would be within the provisions of subsection (a), of section 1035(a), of section 1036(a), or of section 1037(a), if it were not for the fact that the property received in exchange consists not only of property permitted by such provisions to be received without the recognition of gain, but also of other property or money, then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property.

(c) Loss from exchanges not solely in kind

If an exchange would be within the provisions of subsection (a), of section 1035(a), of section 1036(a), or of section 1037(a), if it were not for the fact that the property received in exchange consists not only of property permitted by such provisions to be received without the recognition of gain or loss, but also of other property or money, then no loss from the exchange shall be recognized.

(d) Basis

If property was acquired on an exchange described in this section, section 1035(a), section 1036(a), or section 1037(a), then the basis shall be the same as that of the property exchanged, decreased in the amount of any money received by the taxpayer and increased in the amount of gain or decreased in the amount of loss to the taxpayer that was recognized on such exchange. If the property so acquired consisted in part of the type of property permitted by this section, section 1035(a), section 1036(a), or section 1037(a), to be received without the recognition of gain or loss, and in part of other property, the basis provided in this subsection shall be allocated between the properties (other than money) received, and for the purpose of the allocation there shall be assigned to such other property an amount equivalent to its fair market value at the date of the exchange. For purposes of this section, section 1035(a), and section 1036(a), where as part of the consideration to the taxpayer another party to the exchange assumed (as determined under section 357(d)) a liability of the taxpayer, such assumption shall be considered as money received by the taxpayer on the exchange.

(e) Exchanges of livestock of different sexes

For purposes of this section, livestock of different sexes are not property of a like kind.

(f) Special rules for exchanges between related persons

(1) In general

If—

(A) a taxpayer exchanges property with a related person,

(B) there is nonrecognition of gain or loss to the taxpayer under this section with respect to the exchange of such property (determined without regard to this subsection), and

(C) before the date 2 years after the date of the last transfer which was part of such exchange—

(i) the related person disposes of such property, or

(ii) the taxpayer disposes of the property received in the exchange from the related person which was of like kind to the property transferred by the taxpayer,

there shall be no nonrecognition of gain or loss under this section to the taxpayer with respect to such exchange; except that any gain or loss recognized by the taxpayer by reason of this subsection shall be taken into account as of the date on which the disposition referred to in

subparagraph (C) occurs.

(2) Certain dispositions not taken into account

For purposes of paragraph (1)(C), there shall not be taken into account any disposition—

(A) after the earlier of the death of the taxpayer or the death of the related person,

(B) in a compulsory or involuntary conversion (within the meaning of section 1033) if the exchange occurred before the threat or imminence of such conversion, or

(C) with respect to which it is established to the satisfaction of the Secretary that neither the exchange nor such disposition had as one of its principal purposes the avoidance of Federal income tax.

(3) Related person

For purposes of this subsection, the term "related person" means any person bearing a relationship to the taxpayer described in section 267(b) or 707(b)(1).

(4) Treatment of certain transactions

This section shall not apply to any exchange which is part of a transaction (or series of transactions) structured to avoid the purposes of this subsection.

(g) Special rule where substantial diminution of risk

(1) In general

If paragraph (2) applies to any property for any period, the running of the period set forth in subsection (f)(1)(C) with respect to such property shall be suspended during such period.

(2) Property to which subsection applies

This paragraph shall apply to any property for any period during which the holder's risk of loss with respect to the property is substantially diminished by—

(A) the holding of a put with respect to such property,

(B) the holding by another person of a right to acquire such property, or

(C) a short sale or any other transaction.

(h) Special rules for foreign real and personal property

For purposes of this section—

(1) Real property

Real property located in the United States and real property located outside the United States are not property of a like kind.

(2) Personal property

(A) In general

Personal property used predominantly within the United States and personal property used predominantly outside the United States are not property of a like kind.

(B) Predominant use

Except as provided in subparagraphs (C) and (D), the predominant use of any property shall be determined based on—

(i) in the case of the property relinquished in the exchange, the 2-year period ending on the date of such relinquishment, and

(ii) in the case of the property acquired in the exchange, the 2-year period beginning on the date of such acquisition.

(C) Property held for less than 2 years

Except in the case of an exchange which is part of a transaction (or series of transactions) structured to avoid the purposes of this subsection—

(i) only the periods the property was held by the person relinquishing the property (or any related person) shall be taken into account under subparagraph (B)(i), and

(ii) only the periods the property was held by the person acquiring the property (or any related person) shall be taken into account under subparagraph (B)(ii).

(D) Special rule for certain property

Property described in any subparagraph of section 168(g)(4) shall be treated as used predominantly in the United States.

(i) Special rules for mutual ditch, reservoir, or irrigation company stock

For purposes of subsection (a)(2)(B), the term "stocks" shall not include shares in a mutual ditch, reservoir, or irrigation company if at the time of the exchange—

(1) the mutual ditch, reservoir, or irrigation company is an organization described in section 501(c)(12)(A) (determined without regard to the percentage of its income that is collected from its members for the purpose of meeting losses and expenses), and

(2) the shares in such company have been recognized by the highest court of the State in which such company was organized or by applicable State statute as constituting or representing real property or an interest in real property.

(Aug. 16, 1954, ch. 736, 68A Stat. 302; Pub. L. 85–866, title I, §44, Sept. 2, 1958, 72 Stat. 1641; Pub. L. 86–346, title II, §201(c)–(e), Sept. 22, 1959, 73 Stat. 624; Pub. L. 91–172, title II, §212(c)(1), Dec. 30, 1969, 83 Stat. 571; Pub. L. 98–369, div. A, title I, §77(a), July 18, 1984, 98 Stat. 595; Pub. L. 99–514, title XVIII, §1805(d), Oct. 22, 1986, 100 Stat. 2810; Pub. L. 101–239, title VII, §7601(a), Dec. 19, 1989, 103 Stat. 2370; Pub. L. 101–508, title XI, §§11701(h), 11703(d)(1), Nov. 5, 1990, 104 Stat. 1388–508, 1388–517; Pub. L. 105–34, title X, §1052(a), Aug. 5, 1997, 111 Stat. 940; Pub. L. 106–36, title III, §3001(c)(2), June 25, 1999, 113 Stat. 183; Pub. L. 109–135, title IV, §412(pp), Dec. 21, 2005, 119 Stat. 2640; Pub. L. 110–234, title XV, §15342(a), May 22, 2008, 122 Stat. 1518; Pub. L. 110–246, §4(a), title XV, §15342(a), June 18, 2008, 122 Stat. 1664, 2280.)

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2008—Subsec. (i). Pub. L. 110–246 added subsec. (i).

2005—Subsec. (h)(2)(B). Pub. L. 109–135 substituted "subparagraphs" for "subparagraph" in introductory provisions.

1999—Subsec. (d). Pub. L. 106–36, in last sentence, substituted "assumed (as determined under section 357(d)) a liability of the taxpayer" for "assumed a liability of the taxpayer or acquired from the taxpayer property subject to a liability" and struck out "or acquisition (in the amount of the liability)" after "such assumption".

1997—Subsec. (h). Pub. L. 105–34 amended heading and text of subsec. (h) generally. Prior to amendment, text read as follows: "For purposes of this section, real property located in the United States and real property located outside the United States are not property of a like kind."

1990—Subsec. (a)(2). Pub. L. 101–508, §11703(d)(1), inserted at end "For purposes of this section, an interest in a partnership which has in effect a valid election under section 761(a) to be excluded from the application of all of subchapter K shall be treated as an interest in each of the assets of such partnership and not as an interest in a partnership."

Subsec. (f)(3). Pub. L. 101–508, §11701(h), substituted "section 267(b) or 707(b)(1)" for "section 267(b)".

1989—Subsecs. (f) to (h). Pub. L. 101–239 added subsecs. (f) to (h).

1986—Subsec. (a)(3)(A). Pub. L. 99–514 substituted "on or before the day" for "before the day".

1984—Subsec. (a). Pub. L. 98–369, §77(a), in amending subsec. generally, designated existing provisions as par. (1), substituted "No gain or loss shall be recognized on the exchange of property held for productive use in a trade or business or for investment if such property is exchanged solely for property of like kind which is to be held either for productive use in a trade or business or for investment" for "No gain or loss shall be recognized if property held for productive use in trade or business or for investment (not including stock in trade or other property held primarily for sale, nor stocks, bonds, notes, choses in action, certificates of trust or beneficial interest, or other securities or evidences of indebtedness or interest) is exchanged solely for property of a like kind to be held either for productive use in trade or business or for investment", and added pars. (2) and (3).

1969—Subsec. (e). Pub. L. 91–172 added subsec. (e).

1959—Subsecs. (b) to (d). Pub. L. 86–346 inserted references to section 1037(a) in subsecs. (b) and (c) and in first two sentences of subsec. (d).

1958—Subsec. (d). Pub. L. 85–866 inserted in first sentence a comma between "exchanged" and "decreased" and "or decreased in the amount of loss", and substituted in second sentence "subsection" for "paragraph".

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Pub. L. 110–234, title XV, §15342(b), May 22, 2008, 122 Stat. 1518, and Pub. L. 110–246, §4(a), title XV, §15342(b), June 18, 2008, 122 Stat. 1664, 2280, provided that: "The amendment made by this section [amending this section] shall apply to exchanges completed after the date of the enactment of this Act [June 18, 2008]."

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.]

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–36 applicable to transfers after Oct. 18, 1998, see section 3001(e) of Pub. L. 106–36, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title X, §1052(b), Aug. 5, 1997, 111 Stat. 941, provided that:

"(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to transfers after June 8, 1997, in taxable years ending after such date.

"(2) BINDING CONTRACTS.—The amendment made by this section shall not apply to any transfer pursuant to a written binding contract in effect on June 8, 1997, and at all times thereafter before the disposition of property. A contract shall not fail to meet the requirements of the preceding sentence solely because—

"(A) it provides for a sale in lieu of an exchange, or

"(B) the property to be acquired as replacement property was not identified under such contract before June 9, 1997."

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, §11701(h), Nov. 5, 1990, 104 Stat. 1388–508, provided that the amendment made by that section is effective with respect to transfers after Aug. 3, 1990.

Pub. L. 101–508, title XI, §11703(d)(2), Nov. 5, 1990, 104 Stat. 1388–517, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to transfers after July 18, 1984."

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7601(b), Dec. 19, 1989, 103 Stat. 2371, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to transfers after July 10, 1989, in taxable years ending after such date.

"(2) BINDING CONTRACT.—The amendments made by this section shall not apply to any transfer pursuant to a written binding contract in effect on July 10, 1989, and at all times thereafter before the transfer."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §77(b), July 18, 1984, 98 Stat. 596, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendment made by subsection (a) [amending this section] shall apply to transfers made after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.

"(2) BINDING CONTRACT EXCEPTION FOR TRANSFER OF PARTNERSHIP INTERESTS .—Paragraph (2)(D) of section 1031(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by subsection (a)) shall not apply in the case of any exchange pursuant to a binding contract in effect on March 1, 1984, and at all times thereafter before the exchange.

"(3) REQUIREMENT THAT PROPERTY BE IDENTIFIED WITHIN 45 DAYS AND THAT EXCHANGE BE COMPLETED WITHIN 180 DAYS.—Paragraph (3) of section 1031(a) of the Internal Revenue Code of 1986 (as amended by subsection (a)) shall apply—

"(A) to transfers after the date of the enactment of this Act [July 18, 1984], and

"(B) to transfers on or before such date of enactment if the property to be received in the exchange is not received before January 1, 1987.

In the case of any transfer on or before the date of the enactment of this Act which the taxpayer treated as part of a like-kind exchange, the period for assessing any deficiency of tax attributable to the amendment made by subsection (a) [amending this section] shall not expire before January 1, 1988.

"(4) SPECIAL RULE WHERE PROPERTY IDENTIFIED IN BINDING CONTRACT.—If the property to be received in the exchange is identified in a binding contract in effect on June 13, 1984, and at all times thereafter before the transfer, paragraph (3) shall be applied—

"(A) by substituting 'January 1, 1989' for 'January 1, 1987', and

"(B) by substituting 'January 1, 1990' for 'January 1, 1988'.

"(5) SPECIAL RULE FOR LIKE-KIND EXCHANGE OF PARTNERSHIP INTERESTS.—Paragraph (2)(D) of section 1031(a) of the Internal Revenue Code of 1986 (as amended by subsection (a)) shall not apply to any exchange of an interest as general partner pursuant to a plan of reorganization of ownership interest under a contract which took effect on March 29, 1984, and which was executed on or before March 31, 1984, but only if all the exchanges contemplated by the reorganization plan are completed on or before December 31, 1984."

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title II, §212(c)(2), Dec. 30, 1969, 83 Stat. 571, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to taxable years to which the Internal Revenue Code of 1986 [formerly I.R.C. 1954] applies."

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–346 effective for taxable years ending after Sept. 22, 1959, see section 203 of Pub. L. 86–346, set out as an Effective Date note under section 1037 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§1032. Exchange of stock for property

(a) Nonrecognition of gain or loss

No gain or loss shall be recognized to a corporation on the receipt of money or other property in exchange for stock (including treasury stock) of such corporation. No gain or loss shall be recognized by a corporation with respect to any lapse or acquisition of an option, or with respect to a securities futures contract (as defined in section 1234B), to buy or sell its stock (including treasury stock).

(b) Basis

For basis of property acquired by a corporation in certain exchanges for its stock, see section 362.

(Aug. 16, 1954, ch. 736, 68A Stat. 303; Pub. L. 98–369, div. A, title I, §57(a), July 18, 1984, 98 Stat.

574; Pub. L. 106–554, §1(a)(7) [title IV, §401(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–649.)

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–554 inserted ", or with respect to a securities futures contract (as defined in section 1234B)," after "an option" in second sentence.

1984—Subsec. (a). Pub. L. 98–369 inserted provision that no gain or loss shall be recognized by a corporation with respect to any lapse or acquisition of an option to buy or sell its stock (including treasury stock).

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(7) [title IV, §401(j)], Dec. 21, 2000, 114 Stat. 2763, 2763A–651, provided that: "The amendments made by this section [enacting section 1234B of this title and amending this section and sections 1091, 1092, 1223, 1233, 1234A, 1256 and 7701 of this title] shall take effect on the date of the enactment of this Act [Dec. 21, 2000]."

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §57(b), July 18, 1984, 1984, 98 Stat. 574, provided that: "The amendment made by subsection (a) [amending this section] shall apply to options acquired or lapsed after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date."

§1033. Involuntary conversions

(a) General rule

If property (as a result of its destruction in whole or in part, theft, seizure, or requisition or condemnation or threat or imminence thereof) is compulsorily or involuntarily converted—

(1) Conversion into similar property

Into property similar or related in service or use to the property so converted, no gain shall be recognized.

(2) Conversion into money

Into money or into property not similar or related in service or use to the converted property, the gain (if any) shall be recognized except to the extent hereinafter provided in this paragraph:

(A) Nonrecognition of gain

If the taxpayer during the period specified in subparagraph (B), for the purpose of replacing the property so converted, purchases other property similar or related in service or use to the property so converted, or purchases stock in the acquisition of control of a corporation owning such other property, at the election of the taxpayer the gain shall be recognized only to the extent that the amount realized upon such conversion (regardless of whether such amount is received in one or more taxable years) exceeds the cost of such other property or such stock. Such election shall be made at such time and in such manner as the Secretary may by regulations prescribe. For purposes of this paragraph—

(i) no property or stock acquired before the disposition of the converted property shall be considered to have been acquired for the purpose of replacing such converted property unless held by the taxpayer on the date of such disposition; and

(ii) the taxpayer shall be considered to have purchased property or stock only if, but for the provisions of subsection (b) of this section, the unadjusted basis of such property or stock would be its cost within the meaning of section 1012.

(B) Period within which property must be replaced

The period referred to in subparagraph (A) shall be the period beginning with the date of the disposition of the converted property, or the earliest date of the threat or imminence of requisition or condemnation of the converted property, whichever is the earlier, and ending—

(i) 2 years after the close of the first taxable year in which any part of the gain upon the conversion is realized, or

(ii) subject to such terms and conditions as may be specified by the Secretary, at the close of such later date as the Secretary may designate on application by the taxpayer. Such application shall be made at such time and in such manner as the Secretary may by regulations prescribe.

(C) Time for assessment of deficiency attributable to gain upon conversion

If a taxpayer has made the election provided in subparagraph (A), then—

(i) the statutory period for the assessment of any deficiency, for any taxable year in which any part of the gain on such conversion is realized, attributable to such gain shall not expire prior to the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may by regulations prescribe) of the replacement of the converted property or of an intention not to replace, and

(ii) such deficiency may be assessed before the expiration of such 3–year period notwithstanding the provisions of section 6212(c) or the provisions of any other law or rule of law which would otherwise prevent such assessment.

(D) Time for assessment of other deficiencies attributable to election

If the election provided in subparagraph (A) is made by the taxpayer and such other property or such stock was purchased before the beginning of the last taxable year in which any part of the gain upon such conversion is realized, any deficiency, to the extent resulting from such election, for any taxable year ending before such last taxable year may be assessed (notwithstanding the provisions of section 6212(c) or 6501 or the provisions of any other law or rule of law which would otherwise prevent such assessment) at any time before the expiration of the period within which a deficiency for such last taxable year may be assessed.

(E) Definitions

For purposes of this paragraph—

(i) Control

The term "control" means the ownership of stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote and at least 80 percent of the total number of shares of all other classes of stock of the corporation.

(ii) Disposition of the converted property

The term "disposition of the converted property" means the destruction, theft, seizure, requisition, or condemnation of the converted property, or the sale or exchange of such property under threat or imminence of requisition or condemnation.

(b) Basis of property acquired through involuntary conversion

(1) Conversions described in subsection (a)(1)

If the property was acquired as the result of a compulsory or involuntary conversion described in subsection (a)(1), the basis shall be the same as in the case of the property so converted—

(A) decreased in the amount of any money received by the taxpayer which was not expended in accordance with the provisions of law (applicable to the year in which such conversion was made) determining the taxable status of the gain or loss upon such conversion, and

(B) increased in the amount of gain or decreased in the amount of loss to the taxpayer recognized upon such conversion under the law applicable to the year in which such conversion was made.

(2) Conversions described in subsection (a)(2)

In the case of property purchased by the taxpayer in a transaction described in subsection (a)(2) which resulted in the nonrecognition of any part of the gain realized as the result of a compulsory or involuntary conversion, the basis shall be the cost of such property decreased in the amount of the gain not so recognized; and if the property purchased consists of more than 1 piece of property, the basis determined under this sentence shall be allocated to the purchased properties in proportion to their respective costs.

(3) Property held by corporation the stock of which is replacement property

(A) In general

If the basis of stock in a corporation is decreased under paragraph (2), an amount equal to such decrease shall also be applied to reduce the basis of property held by the corporation at the time the taxpayer acquired control (as defined in subsection (a)(2)(E)) of such corporation.

(B) Limitation

Subparagraph (A) shall not apply to the extent that it would (but for this subparagraph) require a reduction in the aggregate adjusted bases of the property of the corporation below the taxpayer's adjusted basis of the stock in the corporation (determined immediately after such basis is decreased under paragraph (2)).

(C) Allocation of basis reduction

The decrease required under subparagraph (A) shall be allocated—

(i) first to property which is similar or related in service or use to the converted property,

(ii) second to depreciable property (as defined in section 1017(b)(3)(B)) not described in clause (i), and

(iii) then to other property.

(D) Special rules

(i) Reduction not to exceed adjusted basis of property

No reduction in the basis of any property under this paragraph shall exceed the adjusted basis of such property (determined without regard to such reduction).

(ii) Allocation of reduction among properties

If more than 1 property is described in a clause of subparagraph (C), the reduction under this paragraph shall be allocated among such property in proportion to the adjusted bases of such property (as so determined).

(c) Property sold pursuant to reclamation laws

For purposes of this subtitle, if property lying within an irrigation project is sold or otherwise disposed of in order to conform to the acreage limitation provisions of Federal reclamation laws, such sale or disposition shall be treated as an involuntary conversion to which this section applies.

(d) Livestock destroyed by disease

For purposes of this subtitle, if livestock are destroyed by or on account of disease, or are sold or exchanged because of disease, such destruction or such sale or exchange shall be treated as an involuntary conversion to which this section applies.

(e) Livestock sold on account of drought, flood, or other weather-related conditions

(1) In general

For purposes of this subtitle, the sale or exchange of livestock (other than poultry) held by a taxpayer for draft, breeding, or dairy purposes in excess of the number the taxpayer would sell if he followed his usual business practices shall be treated as an involuntary conversion to which this section applies if such livestock are sold or exchanged by the taxpayer solely on account of drought, flood, or other weather-related conditions.

(2) Extension of replacement period

(A) In general

In the case of drought, flood, or other weather-related conditions described in paragraph (1) which result in the area being designated as eligible for assistance by the Federal Government, subsection (a)(2)(B) shall be applied with respect to any converted property by substituting "4 years" for "2 years".

(B) Further extension by Secretary

The Secretary may extend on a regional basis the period for replacement under this section (after the application of subparagraph (A)) for such additional time as the Secretary determines appropriate if the weather-related conditions which resulted in such application continue for more than 3 years.

(f) Replacement of livestock with other farm property in certain cases

For purposes of subsection (a), if, because of drought, flood, or other weather-related conditions, or soil contamination or other environmental contamination, it is not feasible for the taxpayer to reinvest the proceeds from compulsorily or involuntarily converted livestock in property similar or related in use to the livestock so converted, other property (including real property in the case of soil contamination or other environmental contamination) used for farming purposes shall be treated as property similar or related in service or use to the livestock so converted.

(g) Condemnation of real property held for productive use in trade or business or for investment

(1) Special rule

For purposes of subsection (a), if real property (not including stock in trade or other property held primarily for sale) held for productive use in trade or business or for investment is (as the result of its seizure, requisition, or condemnation, or threat or imminence thereof) compulsorily or involuntarily converted, property of a like kind to be held either for productive use in trade or business or for investment shall be treated as property similar or related in service or use to the property so converted.

(2) Limitations

Paragraph (1) shall not apply to the purchase of stock in the acquisition of control of a corporation described in subsection (a)(2)(A).

(3) Election to treat outdoor advertising displays as real property

(A) In general

A taxpayer may elect, at such time and in such manner as the Secretary may prescribe, to treat property which constitutes an outdoor advertising display as real property for purposes of this chapter. The election provided by this subparagraph may not be made with respect to any property with respect to which an election under section 179(a) (relating to election to expense certain depreciable business assets) is in effect.

(B) Election

An election made under subparagraph (A) may not be revoked without the consent of the Secretary.

(C) Outdoor advertising display

For purposes of this paragraph, the term "outdoor advertising display" means a rigidly assembled sign, display, or device permanently affixed to the ground or permanently attached to a building or other inherently permanent structure constituting, or used for the display of, a commercial or other advertisement to the public.

(D) Character of replacement property

For purposes of this subsection, an interest in real property purchased as replacement property for a compulsorily or involuntarily converted outdoor advertising display defined in subparagraph (C) (and treated by the taxpayer as real property) shall be considered property of a like kind as the property converted without regard to whether the taxpayer's interest in the replacement property is the same kind of interest the taxpayer held in the converted property.

(4) Special rule

In the case of a compulsory or involuntary conversion described in paragraph (1), subsection (a)(2)(B)(i) shall be applied by substituting "3 years" for "2 years".

(h) Special rules for property damaged by federally declared disasters

(1) Principal residences

If the taxpayer's principal residence or any of its contents is located in a disaster area and is compulsorily or involuntarily converted as a result of a federally declared disaster—

(A) Treatment of insurance proceeds

(i) Exclusion for unscheduled personal property

No gain shall be recognized by reason of the receipt of any insurance proceeds for personal property which was part of such contents and which was not scheduled property for purposes of such insurance.

(ii) Other proceeds treated as common fund

In the case of any insurance proceeds (not described in clause (i)) for such residence or contents—

(I) such proceeds shall be treated as received for the conversion of a single item of property, and

(II) any property which is similar or related in service or use to the residence so converted (or contents thereof) shall be treated for purposes of subsection (a)(2) as property similar or related in service or use to such single item of property.

(B) Extension of replacement period

Subsection (a)(2)(B) shall be applied with respect to any property so converted by substituting "4 years" for "2 years".

(2) Trade or business and investment property

If a taxpayer's property held for productive use in a trade or business or for investment [1] located in a disaster area and compulsorily or involuntarily converted as a result of a federally declared disaster, tangible property of a type held for productive use in a trade or business shall be treated for purposes of subsection (a) as property similar or related in service or use to the property so converted.

(3) Federally declared disaster; disaster area

The terms "federally declared disaster" and "disaster area" shall have the respective meaning given such terms by section 165(h)(3)(C).

(4) Principal residence

For purposes of this subsection, the term "principal residence" has the same meaning as when used in section 121, except that such term shall include a residence not treated as a principal residence solely because the taxpayer does not own the residence.

(i) Replacement property must be acquired from unrelated person in certain cases

(1) In general

If the property which is involuntarily converted is held by a taxpayer to which this subsection applies, subsection (a) shall not apply if the replacement property or stock is acquired from a related person. The preceding sentence shall not apply to the extent that the related person acquired the replacement property or stock from an unrelated person during the period applicable under subsection (a)(2)(B).

(2) Taxpayers to which subsection applies

This subsection shall apply to—

(A) a C corporation,

(B) a partnership in which 1 or more C corporations own, directly or indirectly (determined in accordance with section 707(b)(3)), more than 50 percent of the capital interest, or profits interest, in such partnership at the time of the involuntary conversion, and

(C) any other taxpayer if, with respect to property which is involuntarily converted during the

taxable year, the aggregate of the amount of realized gain on such property on which there is realized gain exceeds $100,000.

In the case of a partnership, subparagraph (C) shall apply with respect to the partnership and with respect to each partner. A similar rule shall apply in the case of an S corporation and its shareholders.

(3) Related person

For purposes of this subsection, a person is related to another person if the person bears a relationship to the other person described in section 267(b) or 707(b)(1).

(j) Sales or exchanges to implement microwave relocation policy

(1) In general

For purposes of this subtitle, if a taxpayer elects the application of this subsection to a qualified sale or exchange, such sale or exchange shall be treated as an involuntary conversion to which this section applies.

(2) Qualified sale or exchange

For purposes of paragraph (1), the term "qualified sale or exchange" means a sale or exchange before January 1, 2000, which is certified by the Federal Communications Commission as having been made by a taxpayer in connection with the relocation of the taxpayer from the 1850–1990MHz spectrum by reason of the Federal Communications Commission's reallocation of that spectrum for use for personal communications services. The Commission shall transmit copies of certifications under this paragraph to the Secretary.

(k) Sales or exchanges under certain hazard mitigation programs

For purposes of this subtitle, if property is sold or otherwise transferred to the Federal Government, a State or local government, or an Indian tribal government to implement hazard mitigation under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (as in effect on the date of the enactment of this subsection) or the National Flood Insurance Act (as in effect on such date), such sale or transfer shall be treated as an involuntary conversion to which this section applies.

(l) Cross references

(1) For determination of the period for which the taxpayer has held property involuntarily converted, see section 1223.

(2) For treatment of gains from involuntary conversions as capital gains in certain cases, see section 1231(a).

(3) For exclusion from gross income of gain from involuntary conversion of principal residence, see section 121.

(Aug. 16, 1954, ch. 736, 68A Stat. 303; June 29, 1956, ch. 464, §5(a), 70 Stat. 407; Pub. L. 85–866, title I, §§45, 46(a), Sept. 2, 1958, 72 Stat. 1641; Pub. L. 88–272, title II, §206(b)(3), Feb. 26, 1964, 78 Stat. 40; Pub. L. 91–172, title IX, §915(a), Dec. 30, 1969, 83 Stat. 723; Pub. L. 94–455, title XIX, §§1901(a)(128), 1906(b)(13)(A), title XXI, §§2127(a), 2140(a), Oct. 4, 1976, 90 Stat. 1785, 1834, 1920, 1932; Pub. L. 95–600, title IV, §404(c)(4), title V, §542(a), title VII, §703(j)(5), Nov. 6, 1978, 92 Stat. 2870, 2888, 2941; Pub. L. 97–34, title II, §202(d)(2), Aug. 13, 1981, 95 Stat. 221; Pub. L. 98–369, div. A, title IV, §474(r)(24), July 18, 1984, 98 Stat. 844; Pub. L. 101–508, title XI, §11813(b)(20), Nov. 5, 1990, 104 Stat. 1388–555; Pub. L. 103–66, title XIII, §13431(a), Aug. 10, 1993, 107 Stat. 567; Pub. L. 104–7, §3(a)(1), (b)(1), Apr. 11, 1995, 109 Stat. 94, 95; Pub. L. 104–188, title I, §§1119(a), (b), 1610(a), Aug. 20, 1996, 110 Stat. 1765, 1844; Pub. L. 105–34, title III, §312(d)(1), (7), title IX, §913(b), title X, §1087(a), Aug. 5, 1997, 111 Stat. 839, 840, 878, 959; Pub. L. 108–311, title IV, §408(a)(7)(C), Oct. 4, 2004, 118 Stat. 1191; Pub. L. 108–357, title III, §311(a), (b), Oct. 22, 2004, 118 Stat. 1466, 1467; Pub. L. 109–7, §1(b), Apr. 15, 2005, 119 Stat. 22; Pub. L. 110–343, div. C, title VII, §706(a)(2)(D)(i)–(iii), Oct. 3, 2008, 122 Stat. 3922.)

REFERENCES IN TEXT

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsec. (k), is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, which is classified principally to chapter 68 (§5121 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of Title 42 and Tables.

The date of the enactment of this subsection, referred to in subsec. (k), is the date of enactment of Pub. L. 109–7, which was approved Apr. 15, 2005.

The National Flood Insurance Act, referred to in subsec. (k), probably means the National Flood Insurance Act of 1968, title XIII of Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 572, as amended, which is classified principally to chapter 50 (§4001 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of Title 42 and Tables.

AMENDMENTS

2008—Subsec. (h). Pub. L. 110–343, §706(a)(2)(D)(i), amended heading generally. Prior to amendment, heading read as follows: "Special rules for property damaged by Presidentially declared disasters".

Subsec. (h)(1). Pub. L. 110–343, §706(a)(2)(D)(i), reenacted heading without change and amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: "If the taxpayer's principal residence or any of its contents is compulsorily or involuntarily converted as a result of a Presidentially declared disaster—".

Subsec. (h)(2). Pub. L. 110–343, §706(a)(2)(D)(ii), substituted "investment located in a disaster area and compulsorily or involuntarily converted as a result of a federally declared disaster" for "investment is compulsorily or involuntarily converted as a result of a Presidentially declared disaster".

Subsec. (h)(3). Pub. L. 110–343, §706(a)(2)(D)(iii), amended par. (3) generally. Prior to amendment, par. (3) defined "Presidentially declared disaster" for purposes of subsec. (h).

2005—Subsecs. (k), (l). Pub. L. 109–7 added subsec. (k) and redesignated former subsec. (k) as (l).

2004—Subsec. (e). Pub. L. 108–357, §311(b), designated existing provisions as par. (1), inserted heading, and added par. (2).

Subsec. (f). Pub. L. 108–357, §311(a), in heading, substituted "in certain cases" for "where there has been environmental contamination" and, in text, inserted "drought, flood, or other weather-related conditions, or" after "because of" and "in the case of soil contamination or other environmental contamination" after "including real property".

Subsec. (h)(3). Pub. L. 108–311 inserted "Robert T. Stafford" before "Disaster Relief and Emergency Assistance Act".

1997—Subsec. (e). Pub. L. 105–34, §913(b), inserted ", flood, or other weather-related conditions" after "drought" in heading and ", flood, or other weather-related conditions" before period at end of text.

Subsec. (h)(4). Pub. L. 105–34, §312(d)(1), substituted "section 121" for "section 1034".

Subsec. (i). Pub. L. 105–34, §1087(a), amended heading and text of subsec. (i) generally. Prior to amendment, text read as follows:

"(1) IN GENERAL.—In the case of—

"(A) a C corporation, or

"(B) a partnership in which 1 or more C corporations own, directly or indirectly (determined in accordance with section 707(b)(3)), more than 50 percent of the capital interest, or profits interest, in such partnership at the time of the involuntary conversion,

subsection (a) shall not apply if the replacement property or stock is acquired from a related person. The preceding sentence shall not apply to the extent that the related person acquired the replacement property or stock from an unrelated person during the period described in subsection (a)(2)(B).

"(2) RELATED PERSON.—For purposes of this subsection, a person is related to another person if the person bears a relationship to the other person described in section 267(b) or 707(b)(1)."

Subsec. (k)(3). Pub. L. 105–34, §312(d)(7), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "For one-time exclusion from gross income of gain from involuntary conversion of principal residence by individual who has attained age 55, see section 121."

1996—Subsec. (b). Pub. L. 104–188, §1610(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "If the property was acquired, after February 28, 1913, as the result of a compulsory or involuntary conversion described in subsection (a)(1) or section 112(f)(2) of the Internal Revenue Code of 1939, the basis shall be the same as in the case of the property so converted, decreased in the amount of any money received by the taxpayer which was not expended in accordance with the provisions of law (applicable to the year in which such conversion was made) determining the taxable status of the gain or loss upon such conversion, and increased in the amount of gain or decreased in the

amount of loss to the taxpayer recognized upon such conversion under the law applicable to the year in which such conversion was made. This subsection shall not apply in respect of property acquired as a result of a compulsory or involuntary conversion of property used by the taxpayer as his principal residence if the destruction, theft, seizure, requisition, or condemnation of such residence, or the sale or exchange of such residence under threat or imminence thereof, occurred after December 31, 1950, and before January 1, 1954. In the case of property purchased by the taxpayer in a transaction described in subsection (a)(3) which resulted in the nonrecognition of any part of the gain realized as the result of a compulsory or involuntary conversion, the basis shall be the cost of such property decreased in the amount of the gain not so recognized; and if the property purchased consists of more than one piece of property, the basis determined under this sentence shall be allocated to the purchased properties in proportion to their respective costs."

Subsec. (h). Pub. L. 104–188, §1119(b)(2), substituted "property" for "principal residences" in heading.

Subsec. (h)(1). Pub. L. 104–188, §1119(b)(3), substituted "Principal residences" for "In general" in heading.

Subsec. (h)(2). Pub. L. 104–188, §1119(a), added par. (2). Former par. (2) redesignated (3).

Subsec. (h)(3). Pub. L. 104–188, §1119(a), (b)(1), redesignated par. (2) as (3) and substituted "property" for "residence" before "is located". Former par. (3) redesignated (4).

Subsec. (h)(4). Pub. L. 104–188, §1119(a), redesignated par. (3) as (4).

1995—Subsec. (i). Pub. L. 104–7, §3(a)(1), added subsec. (i). Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 104–7, §3(b)(1), added subsec. (j). Former subsec. (j) redesignated (k).

Pub. L. 104–7, §3(a)(1), redesignated subsec. (i) as (j).

Subsec. (k). Pub. L. 104–7, §3(b)(1), redesignated subsec. (j) as (k).

1993—Subsecs. (h), (i). Pub. L. 103–66 added subsec. (h) and redesignated former subsec. (h) as (i).

1990—Subsec. (g)(3)(A). Pub. L. 101–508 struck out "with respect to which the investment credit determined under section 46(a) is or has been claimed or" after "to any property".

1984—Subsec. (g)(3)(A). Pub. L. 98–369 substituted "the investment credit determined under section 46(a)" for "the credit allowed by section 38 (relating to investment in certain depreciable property)".

1981—Subsec. (g)(3)(A). Pub. L. 97–34 substituted "(relating to election to expense certain depreciable business assets)" for "(relating to additional first-year depreciation allowance for small business)".

1978—Subsec. (a)(2)(A)(ii). Pub. L. 95–600, §703(j)(5), substituted "subsection (b)" for "subsection (c)".

Subsecs. (f), (g). Pub. L. 95–600, §542(a), added subsec. (f) and redesignated former subsecs. (f) and (g) as (g) and (h), respectively.

Subsec. (h). Pub. L. 95–600, §§404(c)(4), 542(a), redesignated subsec. (g) as (h) and substituted in par. (3) "one-time exclusion" for "exclusion" and "age 55" for "age 65".

1976—Subsec. (a)(2), (3). Pub. L. 94–455, §§1901(a)(128)(A), (B), 1906(b)(13)(A), redesignated par. (3) as (2), struck out in heading "where disposition occurred after 1950" after "Conversion into money", in provisions preceding subpar. (A) "and the disposition of the converted property (as defined in paragraph (2)) occurred after December 31, 1950," after "use to the converted property," and in subpar. (B)(ii) "or his delegate" after "Secretary" wherever appearing, and added subpar. (E). Former par. (2), which related to involuntary conversions into money where dispositions occurred prior to 1951, was struck out.

Subsec. (b). Pub. L. 94–455, §1901(a)(128)(C), (D), redesignated subsec. (c) as (b) and substituted "or section 112(f)(2) of the Internal Revenue Code of 1939" for "or (2)". Former subsec. (b), which related to application of subsec. (a) in the case of property used by taxpayer as his principal residence, if the destruction, theft, etc., occurred after 1950 and before 1954, was struck out.

Subsecs. (c) to (e). Pub. L. 94–455, §1901(a)(128)(C), redesignated subsecs. (d) to (f) as (c) to (e), respectively. Former subsec. (c) redesignated (b).

Subsec. (f). Pub. L. 94–455, §§1901(a)(128)(C), (E), (F), 2127(a), 2140(a), redesignated subsec. (g) as (f), in par. (2) struck out provisions relating to conversion of real property before Jan. 1, 1958, and substituted reference to subsection (a)(2)(A) for reference to subsection (a)(3)(A), and added pars. (3) and (4). Former subsec. (f) redesignated (e).

Subsecs. (g), (h). Pub. L. 94–455, §1901(a)(128)(C), redesignated subsec. (h) as (g). Former subsec. (g) redesignated (f).

1969—Subsec. (a)(3)(B). Pub. L. 91–172 substituted "2 years" for "one year".

1964—Subsec. (h)(3). Pub. L. 88–272 added par. (3).

1958—Subsec. (a)(2). Pub. L. 85–866, §45, inserted provision defining "control".

Subsecs. (g), (h). Pub. L. 85–866, §46(a), added subsec. (g) and redesignated former subsec. (g) as (h).

1956—Subsecs. (f), (g). Act June 29, 1956, added subsec. (f) and redesignated former subsec. (f) as (g).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–343 applicable to disasters declared in taxable years beginning after Dec. 31,

2007, see section 706(d)(1) of Pub. L. 110–343, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–7, §1(c)(2), Apr. 15, 2005, 119 Stat. 22, provided that: "The amendments made by subsection (b) [amending this section] shall apply to sales or other dispositions before, on, or after the date of the enactment of this Act [Apr. 15, 2005]."

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to any taxable year with respect to which the due date (without regard to extensions) for the return is after Dec. 31, 2002, see section 311(d) of Pub. L. 108–357, set out as a note under section 451 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 312(d)(1), (7) of Pub. L. 105–34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d) of Pub. L. 105–34, set out as a note under section 121 of this title.

Amendment by section 913(b) of Pub. L. 105–34 applicable to sales and exchanges after Dec. 31, 1996, see section 913(c) of Pub. L. 105–34, set out as a note under section 451 of this title.

Pub. L. 105–34, title X, §1087(b), Aug. 5, 1997, 111 Stat. 959, provided that: "The amendment made by this section [amending this section] shall apply to involuntary conversions occurring after June 8, 1997."

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, §1119(d)(1), Aug. 20, 1996, 110 Stat. 1765, provided that: "The amendments made by this section [amending this section] shall apply to disasters declared after December 31, 1994, in taxable years ending after such date."

Pub. L. 104–188, title I, §1610(b), Aug. 20, 1996, 110 Stat. 1845, provided that: "The amendment made by this section [amending this section] shall apply to involuntary conversions occurring after the date of the enactment of this Act [Aug. 20, 1996]."

EFFECTIVE DATE OF 1995 AMENDMENT

Pub. L. 104–7, §3(a)(2), Apr. 11, 1995, 109 Stat. 95, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to involuntary conversions occurring on or after February 6, 1995."

Pub. L. 104–7, §3(b)(2), Apr. 11, 1995, 109 Stat. 95, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to sales or exchanges after March 14, 1995."

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13431(b), Aug. 10, 1993, 107 Stat. 567, provided that: "The amendment made by subsection (a) [amending this section] shall apply to property compulsorily or involuntarily converted as a result of disasters for which the determination referred to in section 1033(h)(2) of the Internal Revenue Code of 1986 (as added by this section) is made on or after September 1, 1991, and to taxable years ending on or after such date."

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to property placed in service after Dec. 31, 1980, in taxable years ending after that date, see section 209(a) of Pub. L. 97–34, set out as an Effective Date note under section 168 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 404(c)(4) of Pub. L. 95–600 applicable to sales or exchanges after July 26, 1978, in

taxable years ending after such date, see section 404(d)(1) of Pub. L. 95–600, set out as a note under section 121 of this title.

Pub. L. 95–600, title V, §542(b), Nov. 6, 1978, 92 Stat. 2888, provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1974."

Amendment by section 703(j)(5) of Pub. L. 95–600 effective on Oct. 4, 1976, see section 703(r) of Pub. L. 95–600, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(128) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Pub. L. 94–455, title XXI, §2127(b), Oct. 4, 1976, 90 Stat. 1921, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1970."

Pub. L. 94–455, title XXI, §2140(b), Oct. 4, 1976, 90 Stat. 1932, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendment made by this section [amending this section] shall apply with respect to any disposition of converted property (within the meaning of section 1033(a)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) after December 31, 1974, unless a condemnation proceeding with respect to such property began before the date of the enactment of this Act [Oct. 4, 1976]."

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title IX, §915(b), Dec. 30, 1969, 83 Stat. 723, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendment made by this section [amending this section] shall apply only if the disposition of the converted property (within the meaning of section 1033(a)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) occurs after the date of the enactment of this Act [Dec. 30, 1969]."

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to dispositions after Dec. 31, 1963, in taxable years ending after such date, see section 206(c) of Pub. L. 88–272, set out as an Effective Date note under section 121 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Act June 29, 1956, ch. 464, §5(b), 70 Stat. 407, provided that: "The amendment made by this section [amending this section] shall apply with respect to taxable years ending after December 31, 1955, but only in the case of sales and exchanges of livestock after December 31, 1955."

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

[1] So in original. Probably should be followed by "is".

[§1034. Repealed. Pub. L. 105–34, title III, §312(b), Aug. 5, 1997, 111 Stat. 839]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 306; Sept. 2, 1958, Pub. L. 85–866, title I, §46(b), 72 Stat. 1642; Feb. 26, 1964, Pub. L. 88–272, title II, §206(b)(4), 78 Stat. 40; Jan. 2, 1975, Pub. L. 93–597, §6(a), 88 Stat. 1953; Mar. 29, 1975, Pub. L. 94–12, title II, §207, 89 Stat. 32; Oct. 4, 1976, Pub. L. 94–455, title XIX, §§1901(a)(129), 1906(b)(13)(A), 90 Stat. 1785, 1834; May 23, 1977, Pub. L. 95–30, title I, §102(b)(13), 91 Stat. 138; Nov. 6, 1978, Pub. L. 95–600, title IV, §§404(c)(5), 405(a)–(c)(1), 92 Stat. 2870, 2871; Nov. 8, 1978, Pub. L. 95–615, title II, §206, 92 Stat. 3107; Aug. 13, 1981, Pub. L. 97–34, title I, §§112(b)(4), 122(a),

(b), 95 Stat. 195, 197; July 18, 1984, Pub. L. 98–369, div. A, title X, §1053(a), 98 Stat. 1045; Oct. 22, 1986, Pub. L. 99–514, title XVIII, §1878(g), 100 Stat. 2904; Nov. 10, 1988, Pub. L. 100–647, title VI, §6002(a), 102 Stat. 3684, related to rollover of gain on sale of principal residence.

EFFECTIVE DATE OF REPEAL

Repeal applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d) of Pub. L. 105–34, set out as an Effective Date of 1997 Amendment note under section 121 of this title.

§1035. Certain exchanges of insurance policies

(a) General rules

No gain or loss shall be recognized on the exchange of—

(1) a contract of life insurance for another contract of life insurance or for an endowment or annuity contract or for a qualified long-term care insurance contract; or [1]

(2) a contract of endowment insurance (A) for another contract of endowment insurance which provides for regular payments beginning at a date not later than the date payments would have begun under the contract exchanged, or (B) for an annuity contract, or (C) for a qualified long-term care insurance contract;

(3) an annuity contract for an annuity contract or for a qualified long-term care insurance contract; or

(4) a qualified long-term care insurance contract for a qualified long-term care insurance contract.

(b) Definitions

For the purpose of this section—

(1) Endowment contract

A contract of endowment insurance is a contract with an insurance company which depends in part on the life expectancy of the insured, but which may be payable in full in a single payment during his life.

(2) Annuity contract

An annuity contract is a contract to which paragraph (1) applies but which may be payable during the life of the annuitant only in installments. For purposes of the preceding sentence, a contract shall not fail to be treated as an annuity contract solely because a qualified long-term care insurance contract is a part of or a rider on such contract.

(3) Life insurance contract

A contract of life insurance is a contract to which paragraph (1) applies but which is not ordinarily payable in full during the life of the insured. For purposes of the preceding sentence, a contract shall not fail to be treated as a life insurance contract solely because a qualified long-term care insurance contract is a part of or a rider on such contract.

(c) Exchanges involving foreign persons

To the extent provided in regulations, subsection (a) shall not apply to any exchange having the effect of transferring property to any person other than a United States person.

(d) Cross references

(1) For rules relating to recognition of gain or loss where an exchange is not solely in kind, see subsections (b) and (c) of section 1031.

(2) For rules relating to the basis of property acquired in an exchange described in subsection (a), see subsection (d) of section 1031.

(Aug. 16, 1954, ch. 736, 68A Stat. 309; Pub. L. 98–369, div. A, title II, §§211(b)(15), 224(a), July 18, 1984, 98 Stat. 756, 776; Pub. L. 99–514, title XVIII, §1828, Oct. 22, 1986, 100 Stat. 2851; Pub. L. 105–34, title XI, §1131(b)(1), Aug. 5, 1997, 111 Stat. 979; Pub. L. 109–280, title VIII, §844(b),

Aug. 17, 2006, 120 Stat. 1010.)

CODIFICATION

Another section 1131(b) of Pub. L. 105–34 enacted section 684 of this title.

AMENDMENTS

2006—Subsec. (a)(1). Pub. L. 109–280, §844(b)(3)(A), which directed amendment by inserting "or for a qualified long-term care insurance contract" before semicolon "at the end", was executed by making the insertion before "; or" to reflect the probable intent of Congress.

Subsec. (a)(2). Pub. L. 109–280, §844(b)(3)(B), which directed amendment by inserting ", or (C) for a qualified long-term care insurance contract" before semicolon "at the end", was executed by making the insertion before "; or" to reflect the probable intent of Congress.

Subsec. (a)(3). Pub. L. 109–280, §844(b)(3)(C), inserted "or for a qualified long-term care insurance contract" after "annuity contract".

Subsec. (a)(4). Pub. L. 109–280, §844(b)(4), added par. (4).

Subsec. (b)(2). Pub. L. 109–280, §844(b)(1), inserted at end "For purposes of the preceding sentence, a contract shall not fail to be treated as an annuity contract solely because a qualified long-term care insurance contract is a part of or a rider on such contract."

Subsec. (b)(3). Pub. L. 109–280, §844(b)(2), inserted at end "For purposes of the preceding sentence, a contract shall not fail to be treated as a life insurance contract solely because a qualified long-term care insurance contract is a part of or a rider on such contract."

1997—Subsecs. (c), (d). Pub. L. 105–34 added subsec. (c) and redesignated former subsec. (c) as (d).

1986—Subsec. (b)(1). Pub. L. 99–514 struck out "subject to tax under subchapter L" after "with an insurance company".

1984—Subsec. (b)(1). Pub. L. 98–369, §224(a), which directed the substitution of "an insurance company subject to tax under subchapter L" for "a life insurance company as defined in section 801", was executed by making such substitution for "a life insurance company as defined in section 816" to reflect the probable intent of Congress and the earlier amendment by Pub. L. 98–369, §211(b)(15), which substituted "as defined in section 816" for "as defined in section 801".

Pub. L. 98–369, §211(b)(15), substituted "section 816" for "section 801".

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 applicable to contracts issued after Dec. 31, 1996, but only with respect to taxable years beginning after Dec. 31, 2009, and to exchanges occurring after Dec. 31, 2009, see section 844(g)(1), (2) of Pub. L. 109–280, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 211(b)(5) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

Pub. L. 98–369, div. A, title II, §224(b), July 18, 1984, 98 Stat. 776, provided that: "The amendment made by subsection (a) [amending this section] shall apply to all exchanges whether before, on, or after the date of the enactment of this Act [July 18, 1984]."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[1] *So in original. The word "or" probably should not appear.*

§1036. Stock for stock of same corporation

(a) General rule

No gain or loss shall be recognized if common stock in a corporation is exchanged solely for common stock in the same corporation, or if preferred stock in a corporation is exchanged solely for preferred stock in the same corporation.

(b) Nonqualified preferred stock not treated as stock

For purposes of this section, nonqualified preferred stock (as defined in section 351(g)(2)) shall be treated as property other than stock.

(c) Cross references

(1) For rules relating to recognition of gain or loss where an exchange is not solely in kind, see subsections (b) and (c) of section 1031.

(2) For rules relating to the basis of property acquired in an exchange described in subsection (a), see subsection (d) of section 1031.

(Aug. 16, 1954, ch. 736, 68A Stat. 309; Pub. L. 105–34, title X, §1014(e)(3), Aug. 5, 1997, 111 Stat. 921.)

AMENDMENTS

1997—Subsecs. (b), (c). Pub. L. 105–34 added subsec. (b) and redesignated former subsec. (b) as (c).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable, with certain exceptions, to transactions after June 8, 1997, see section 1014(f) of Pub. L. 105–34, set out as a note under section 351 of this title.

§1037. Certain exchanges of United States obligations

(a) General rule

When so provided by regulations promulgated by the Secretary in connection with the issue of obligations of the United States, no gain or loss shall be recognized on the surrender to the United States of obligations of the United States issued under chapter 31 of title 31 in exchange solely for other obligations issued under such chapter.

(b) Application of original issue discount rules

(1) Exchanges involving obligations issued at a discount

In any case in which gain has been realized but not recognized because of the provisions of subsection (a) (or so much of section 1031(b) as relates to subsection (a) of this section), to the extent such gain is later recognized by reason of a disposition or redemption of an obligation received in an exchange subject to such provisions, the first sentence of section 1271(c)(2) shall apply to such gain as though the obligation disposed of or redeemed were the obligation surrendered to the Government in the exchange rather than the obligation actually disposed of or redeemed. For purposes of this paragraph and subpart A of part V of subchapter P, if the obligation surrendered in the exchange is a nontransferable obligation described in subsection (a) or (c) of section 454—

(A) the aggregate amount considered, with respect to the obligation surrendered, as ordinary income shall not exceed the difference between the issue price and the stated redemption price which applies at the time of the exchange, and

(B) the issue price of the obligation received in the exchange shall be considered to be the stated redemption price of the obligation surrendered in the exchange, increased by the amount of other consideration (if any) paid to the United States as a part of the exchange.

(2) Exchanges of transferable obligations issued at not less than par

In any case in which subsection (a) (or so much of section 1031(b) or (c) as relates to subsection (a) of this section) has applied to the exchange of a transferable obligation which was issued at not less than par for another transferable obligation, the issue price of the obligation received from the

Government in the exchange shall be considered for purposes of applying subpart A of part V of subchapter P to be the same as the issue price of the obligation surrendered to the Government in the exchange, increased by the amount of other consideration (if any) paid to the United States as a part of the exchange.

(c) Cross references

(1) For rules relating to the recognition of gain or loss in a case where subsection (a) would apply except for the fact that the exchange was not made solely for other obligations of the United States, see subsections (b) and (c) of section 1031.

(2) For rules relating to the basis of obligations of the United States acquired in an exchange for other obligations described in subsection (a), see subsection (d) of section 1031.

(Added Pub. L. 86–346, title II, §201(a), Sept. 22, 1959, 73 Stat. 622; amended Pub. L. 94–455, title XIX, §1901(a)(130), (b)(3)(I), Oct. 4, 1976, 90 Stat. 1786, 1793; Pub. L. 97–452, §2(c)(3), Jan. 12, 1983, 96 Stat. 2478; Pub. L. 98–369, div. A, title I, §42(a)(11), July 18, 1984, 98 Stat. 557.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98–369, §42(a)(11)(C), substituted "original issue discount rules" for "section 1232" in heading.

Subsec. (b)(1). Pub. L. 98–369, §42(a)(11)(A), (B), substituted "section 1271(c)(2)" for "section 1232(a)(2)(B)", and "subpart A of part V of subchapter P" for "section 1232".

Subsec. (b)(2). Pub. L. 98–369, §42(a)(11)(B), substituted "subpart A of part V of subchapter P" for "section 1232".

1983—Subsec. (a). Pub. L. 97–452 substituted "chapter 31 of title 31" and "chapter" for "the Second Liberty Bond Act" and "Act", respectively.

1976—Subsec. (b)(1). Pub. L. 94–455 substituted in introductory provisions "section 1232(a)(2)(B)" for "section 1232(a)(2)(A)" and in subpar. (A) "ordinary income" for "gain from the sale or exchange of property which is not a capital asset".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98–369, set out as an Effective Date note under section 1271 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE

Pub. L. 86–346, title II, §203, Sept. 22, 1959, 73 Stat. 624, provided that: "The amendments made by this title [enacting this section and amending section 1031 of this title and section 742a of former Title 31, Money and Finance] shall be effective for taxable years ending after the date of enactment of this Act [Sept. 22, 1959]."

§1038. Certain reacquisitions of real property

(a) General rule

If—

(1) a sale of real property gives rise to indebtedness to the seller which is secured by the real property sold, and

(2) the seller of such property reacquires such property in partial or full satisfaction of such indebtedness,

then, except as provided in subsections (b) and (d), no gain or loss shall result to the seller from such reacquisition, and no debt shall become worthless or partially worthless as a result of such reacquisition.

(b) Amount of gain resulting

(1) In general

In the case of a reacquisition of real property to which subsection (a) applies, gain shall result from such reacquisition to the extent that—

(A) the amount of money and the fair market value of other property (other than obligations of the purchaser) received, prior to such reacquisition, with respect to the sale of such property, exceeds

(B) the amount of the gain on the sale of such property returned as income for periods prior to such reacquisition.

(2) Limitation

The amount of gain determined under paragraph (1) resulting from a reacquisition during any taxable year beginning after the date of the enactment of this section shall not exceed the amount by which the price at which the real property was sold exceeded its adjusted basis, reduced by the sum of—

(A) the amount of the gain on the sale of such property returned as income for periods prior to the reacquisition of such property, and

(B) the amount of money and the fair market value of other property (other than obligations of the purchaser received with respect to the sale of such property) paid or transferred by the seller in connection with the reacquisition of such property.

For purposes of this paragraph, the price at which real property is sold is the gross sales price reduced by the selling commissions, legal fees, and other expenses incident to the sale of such property which are properly taken into account in determining gain or loss on such sale.

(3) Gain recognized

Except as provided in this section, the gain determined under this subsection resulting from a reacquisition to which subsection (a) applies shall be recognized, notwithstanding any other provision of this subtitle.

(c) Basis of reacquired real property

If subsection (a) applies to the reacquisition of any real property, the basis of such property upon such reacquisition shall be the adjusted basis of the indebtedness to the seller secured by such property (determined as of the date of reacquisition), increased by the sum of—

(1) the amount of the gain determined under subsection (b) resulting from such reacquisition, and

(2) the amount described in subsection (b)(2)(B).

If any indebtedness to the seller secured by such property is not discharged upon the reacquisition of such property, the basis of such indebtedness shall be zero.

(d) Indebtedness treated as worthless prior to reacquisition

If, prior to a reacquisition of real property to which subsection (a) applies, the seller has treated indebtedness secured by such property as having become worthless or partially worthless—

(1) such seller shall be considered as receiving, upon the reacquisition of such property, an amount equal to the amount of such indebtedness treated by him as having become worthless, and

(2) the adjusted basis of such indebtedness shall be increased (as of the date of reacquisition) by an amount equal to the amount so considered as received by such seller.

(e) Principal residences

If—

(1) subsection (a) applies to a reacquisition of real property with respect to the sale of which gain was not recognized under section 121 (relating to gain on sale of principal residence); and

(2) within 1 year after the date of the reacquisition of such property by the seller, such property is resold by him,

then, under regulations prescribed by the Secretary, subsections (b), (c), and (d) of this section shall not apply to the reacquisition of such property and, for purposes of applying section 121, the resale of such property shall be treated as a part of the transaction constituting the original sale of such property.

[(f) Repealed. Pub. L. 104–188, title I, §1616(b)(12), Aug. 20, 1996, 110 Stat. 1857]

(g) Acquisition by estate, etc., of seller

Under regulations prescribed by the Secretary, if an installment obligation is indebtedness to the seller which is described in subsection (a), and if such obligation is, in the hands of the taxpayer, an obligation with respect to which section 691(a)(4)(B) applies, then—

(1) for purposes of subsection (a), acquisition of real property by the taxpayer shall be treated as reacquisition by the seller, and

(2) the basis of the real property acquired by the taxpayer shall be increased by an amount equal to the deduction under section 691(c) which would (but for this subsection) have been allowable to the taxpayer with respect to the gain on the exchange of the obligation for the real property.

(Added Pub. L. 88–570, §2(a), Sept. 2, 1964, 78 Stat. 854; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–600, title IV, §§404(c)(6), 405(c)(3), Nov. 6, 1978, 92 Stat. 2870, 2871; Pub. L. 96–471, §4, Oct. 19, 1980, 94 Stat. 2255; Pub. L. 104–188, title I, §1616(b)(12), Aug. 20, 1996, 110 Stat. 1857; Pub. L. 105–34, title III, §312(d)(8), Aug. 5, 1997, 111 Stat. 840.)

AMENDMENTS

1997—Subsec. (e). Pub. L. 105–34 amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows: "If—

"(1) subsection (a) applies to a reacquisition of real property with respect to the sale of which—

"(A) an election under section 121 (relating to one-time exclusion of gain from sale of principal residence by individual who has attained age 55) is in effect, or

"(B) gain was not recognized under section 1034 (relating to rollover of gain on sale of principal residence); and

"(2) within one year after the date of the reacquisition of such property by the seller, such property is resold by him,

then, under regulations prescribed by the Secretary, subsections (b), (c), and (d) of this section shall not apply to the reacquisition of such property and, for purposes of applying sections 121 and 1034, the resale of such property shall be treated as a part of the transaction constituting the original sale of such property."

1996—Subsec. (f). Pub. L. 104–188 struck out subsec. (f) which read as follows:

"(f) REACQUISITIONS BY DOMESTIC BUILDING AND LOAN ASSOCIATIONS.—This section shall not apply to a reacquisition of real property by an organization described in section 593(a) (relating to domestic building and loan associations, etc.)."

1980—Subsec. (g). Pub. L. 96–471 added subsec. (g).

1978—Subsec. (e)(1)(A). Pub. L. 95–600, §404(c)(6), substituted "relating to one-time exclusion of gain from sale of principal residence by individual who has attained age 55" for "relating to gain from sale or exchange of residence of an individual who has attained age 65".

Subsec. (e)(1)(B). Pub. L. 95–600, §405(c)(3), which directed the amendment of section 1083(e)(1)(B) of this title by substituting "(relating to rollover of gain on sale of principal residence)" for "(relating to sale or exchange of residence)", was executed to this section to reflect the probable intent of Congress because section 1083 does not contain a subsec. (e)(1)(B).

1976—Subsec. (e). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d) of Pub. L. 105–34, set out as a note under section 121 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1995, see section 1616(c) of Pub. L. 104–188, set out as a note under section 593 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–471, §6(c), Oct. 19, 1980, 94 Stat. 2256, provided: "The amendment made by section 4 [amending this section] shall apply to acquisitions of real property by the taxpayer after the date of the enactment of this Act [Oct. 19, 1980]."

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 404(c)(6) of Pub. L. 95–600 applicable to sales or exchanges after July 26, 1978, in taxable years ending after such date, see section 404(d)(1) of Pub. L. 95–600, set out as a note under section 121 of this title.

Pub. L. 95–600, title IV, §405(d), Nov. 6, 1978, 92 Stat. 2871, provided that: "The amendments made by this section [amending this section and sections 1034, 1250, 6212, and 6504 of this title] shall apply to sales and exchanges of residences after July 26, 1978, in taxable years ending after such date."

EFFECTIVE DATE; ELECTION TO APPLY TO TAXABLE YEARS BEGINNING AFTER DEC. 31, 1957

Pub. L. 88–570, §2(c), Sept. 2, 1964, 78 Stat. 856, provided that:

"(1) The amendments made by this section [enacting this section] shall apply to taxable years beginning after the date of the enactment of this Act [Sept. 2, 1964].

"(2) If the taxpayer makes an election under this paragraph, the amendments made by this section [enacting this section] shall also apply to taxable years beginning after December 31, 1957, except that such amendments shall not apply with respect to any reacquisition of real property in a taxable year for which the assessment of a deficiency, or the credit or refund of an overpayment, is prevented on the date of the enactment of this Act [Sept. 2, 1964] by the operation of any law or rule of law. An election under this paragraph shall be made within one year after the date of the enactment of this Act and shall be made in such form and manner as the Secretary of the Treasury or his delegate shall prescribe by regulations.

"(3) If an election is made by the taxpayer under paragraph (2), and if the assessment of a deficiency, or the credit or refund of an overpayment, for any taxable year to which such election applies is not prevented on the date of the enactment of this Act [Sept. 2, 1964] by the operation of any law or rule of law—

"(A) the period within which a deficiency for such taxable year may be assessed (to the extent such deficiency is attributable to the application of the amendments made by this section) shall not expire prior to one year after the date of such election; and

"(B) the period within which a claim for credit or refund of an overpayment for such taxable year may be filed (to the extent such overpayment is attributable to the application of such amendments) shall not expire prior to one year after the date of such election.

No interest shall be payable with respect to any deficiency attributable to the application of such amendments, and no interest shall be allowed with respect to any credit or refund of any overpayment attributable to the application of such amendments, for any period prior to the date of the enactment of this Act. An election by a taxpayer under paragraph (2) shall be deemed a consent to the application of this paragraph."

[§1039. Repealed. Pub. L. 101–508, title XI, §11801(a)(33), Nov. 5, 1990, 104 Stat. 1388–521]

Section, added Pub. L. 91–172, title IX, §910(a), Dec. 30, 1969, 83 Stat. 718; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, related to the recognition of gain on certain sales of low-income housing projects.

SAVINGS PROVISION

For provisions that nothing in repeal by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

§1040. Transfer of certain farm, etc., real property

(a) General rule

If the executor of the estate of any decedent transfers to a qualified heir (within the meaning of section 2032A(e)(1)) any property with respect to which an election was made under section 2032A,

then gain on such transfer shall be recognized to the estate only to the extent that, on the date of such transfer, the fair market value of such property exceeds the value of such property for purposes of chapter 11 (determined without regard to section 2032A).

(b) Similar rule for certain trusts

To the extent provided in regulations prescribed by the Secretary, a rule similar to the rule provided in subsection (a) shall apply where the trustee of a trust (any portion of which is included in the gross estate of the decedent) transfers property with respect to which an election was made under section 2032A.

(c) Basis of property acquired in transfer described in subsection (a) or (b)

The basis of property acquired in a transfer with respect to which gain realized is not recognized by reason of subsection (a) or (b) shall be the basis of such property immediately before the transfer increased by the amount of the gain recognized to the estate or trust on the transfer.

(Added Pub. L. 94–455, title XX, §2005(b), Oct. 4, 1976, 90 Stat. 1877; amended Pub. L. 95–600, title VII, §702(d)(3), Nov. 6, 1978, 92 Stat. 2929; Pub. L. 96–222, title I, §105(a)(5)(A), Apr. 1, 1980, 94 Stat. 219; Pub. L. 96–223, title IV, §401(c)(2)(A), Apr. 2, 1980, 94 Stat. 300; Pub. L. 97–34, title IV, §421(j)(2)(B), Aug. 13, 1981, 95 Stat. 312; Pub. L. 97–448, title I, §104(b)(3)(A), (B), Jan. 12, 1983, 96 Stat. 2381; Pub. L. 107–16, title V, §542(d)(1), June 7, 2001, 115 Stat. 84; Pub. L. 111–312, title III, §301(a), Dec. 17, 2010, 124 Stat. 3300.)

AMENDMENTS

2010—Pub. L. 111–312 amended section to read as if amendment by Pub. L. 107–16, §542(d)(1), had never been enacted. See 2001 Amendment note below.

2001—Pub. L. 107–16, §542(d)(1), amended section generally. Prior to amendment, text read as follows:

"(a) GENERAL RULE.—If the executor of the estate of any decedent transfers to a qualified heir (within the meaning of section 2032A(e)(1)) any property with respect to which an election was made under section 2032A, then gain on such transfer shall be recognized to the estate only to the extent that, on the date of such transfer, the fair market value of such property exceeds the value of such property for purposes of chapter 11 (determined without regard to section 2032A).

"(b) SIMILAR RULE FOR CERTAIN TRUSTS.—To the extent provided in regulations prescribed by the Secretary, a rule similar to the rule provided in subsection (a) shall apply where the trustee of a trust (any portion of which is included in the gross estate of the decedent) transfers property with respect to which an election was made under section 2032A.

"(c) BASIS OF PROPERTY ACQUIRED IN TRANSFER DESCRIBED IN SUBSECTION (a) OR (b).—The basis of property acquired in a transfer with respect to which gain realized is not recognized by reason of subsection (a) or (b) shall be the basis of such property immediately before the transfer increased by the amount of the gain recognized to the estate or trust on the transfer."

1983—Subsec. (a). Pub. L. 97–448, §104(b)(3)(A), substituted "on the date of such transfer" for "on the date of such exchange".

Subsec. (c). Pub. L. 97–448, §104(b)(3)(B), substituted references to "transfer", "a transfer", and "the transfer" for references to "exchange", "an exchange", and "the exchange", respectively, wherever appearing in heading and text.

1981—Pub. L. 97–34 substituted "Transfer of certain farm, etc., real property" for "Use of farm, etc., real property to satisfy pecuniary bequest" in section catchline.

Subsec. (a). Pub. L. 97–34 revised subsec. (a) generally, substituting "transfers to a qualified heir (within the meaning of section 2032A(e)(1)) any property" for "satisfies the right of a qualified heir (within the meaning of section 2032A(e)(1)) to receive a pecuniary bequest with property" and "such transfer" for "such exchange" before "shall be recognized".

Subsec. (b). Pub. L. 97–34 substituted "shall apply where the trustee of a trust (any portion of which is included in the gross estate of the decedent) transfers property with respect to which an election was made under section 2032A" for "shall apply where—

"(1) by reason of the death of the decedent, a qualified heir has a right to receive from a trust a specific dollar amount which is the equivalent of a pecuniary bequest, and

"(2) the trustee of the trust satisfies such right with property with respect to which an election was made under section 2032A".

1980—Pub. L. 96–223 substituted "Use of farm, etc., property to satisfy pecuniary bequest" for "Use of

certain appreciated carryover basis property to satisfy pecuniary request" in section catchline, generally revised subsecs. (a) and (b) to reflect the repeal elsewhere in the Code of carryover basis provisions, and struck out subsec. (d) which had provided that, for purposes of this section, references to carryover basis property should be treated as including a reference to property the valuation of which is determined under section 2032A. Pub. L. 96–222 added subsec. (d).

1978—Subsec. (a). Pub. L. 95–600 substituted "chapter 11 (determined without regard to section 2032A)" for "chapter 11".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–312 applicable to estates of decedents dying, and transfers made after Dec. 31, 2009, except as otherwise provided, see section 301(e) of Pub. L. 111–312, set out as an Effective and Termination Dates of 2010 Amendment note under section 121 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to estates of decedents dying after Dec. 31, 2009, see section 542(f)(1) of Pub. L. 107–16, set out as a note under section 121 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable with respect to the estates of decedents dying after Dec. 31, 1976, upon compliance with certain conditions relating to timely election requirement, reinstatement of elections, and statute of limitations, see section 421(k)(5) of Pub. L. 97–34, set out as a note under section 2032A of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–223 applicable in respect of decedents dying after Dec. 31, 1976, see section 401(e) of Pub. L. 96–223, set out as a note under section 1023 of this title.

Pub. L. 96–222, title I, §105(a)(5)(B), Apr. 1, 1980, 94 Stat. 219, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Notwithstanding section 515 of the Revenue Act of 1978 [section 515 of Pub. L. 95–600 which deferred carryover basis rules until Dec. 31, 1979], section 1040 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by subparagraph (A) [amending this section]) shall apply with respect to the estates of decedents dying after December 31, 1976."

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable to estates of decedents dying after Dec. 31, 1976, see section 702(d)(6) of Pub. L. 95–600, set out as a note under section 2032A of this title.

EFFECTIVE DATE

Section applicable in respect of decedents dying after Dec. 31, 1976, see section 2005(f)(1) of Pub. L. 94–455, set out as a note under section 1015 of this title.

§1041. Transfers of property between spouses or incident to divorce

(a) General rule

No gain or loss shall be recognized on a transfer of property from an individual to (or in trust for the benefit of)—

(1) a spouse, or

(2) a former spouse, but only if the transfer is incident to the divorce.

(b) Transfer treated as gift; transferee has transferor's basis

In the case of any transfer of property described in subsection (a)—

(1) for purposes of this subtitle, the property shall be treated as acquired by the transferee by gift, and

(2) the basis of the transferee in the property shall be the adjusted basis of the transferor.

(c) Incident to divorce

For purposes of subsection (a)(2), a transfer of property is incident to the divorce if such transfer—

(1) occurs within 1 year after the date on which the marriage ceases, or

(2) is related to the cessation of the marriage.

(d) Special rule where spouse is nonresident alien

Subsection (a) shall not apply if the spouse (or former spouse) of the individual making the transfer is a nonresident alien.

(e) Transfers in trust where liability exceeds basis

Subsection (a) shall not apply to the transfer of property in trust to the extent that—

(1) the sum of the amount of the liabilities assumed, plus the amount of the liabilities to which the property is subject, exceeds

(2) the total of the adjusted basis of the property transferred.

Proper adjustment shall be made under subsection (b) in the basis of the transferee in such property to take into account gain recognized by reason of the preceding sentence.

(Added Pub. L. 98–369, div. A, title IV, §421(a), July 18, 1984, 98 Stat. 793; amended Pub. L. 99–514, title XVIII, §1842(b), Oct. 22, 1986, 100 Stat. 2853; Pub. L. 100–647, title I, §1018(l)(3), Nov. 10, 1988, 102 Stat. 3584.)

AMENDMENTS

1988—Subsec. (d). Pub. L. 100–647 substituted "Subsection (a)" for "Paragraph (1) of subsection (a)" and "the spouse (or former spouse)" for "the spouse".

1986—Subsec. (e). Pub. L. 99–514 added subsec. (e).

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1018(l)(3), Nov. 10, 1988, 102 Stat. 3584, provided that the amendment made by that section is effective with respect to transfers after June 21, 1988.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Pub. L. 98–369, div. A, title IV, §421(d), July 18, 1984, 98 Stat. 795, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting this section and amending sections 47, 72, 101, 453, 453B, 1001, 1015, and 1239 of this title] shall apply to transfers after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.

"(2) ELECTION TO HAVE AMENDMENTS APPLY TO TRANSFERS AFTER 1983.—If both spouses or former spouses make an election under this paragraph, the amendments made by this section shall apply to all transfers made by such spouses (or former spouses) after December 31, 1983.

"(3) EXCEPTION FOR TRANSFERS PURSUANT TO EXISTING DECREES.—Except in the case of an election under paragraph (2), the amendments made by this section shall not apply to transfers under any instrument in effect on or before the date of the enactment of this Act unless both spouses (or former spouses) elect to have such amendments apply to transfers under such instrument.

"(4) ELECTION.—Any election under paragraph (2) or (3) shall be made in such manner, at such time, and subject to such conditions, as the Secretary of the Treasury or his delegate may by regulations prescribe."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§1042. Sales of stock to employee stock ownership plans or certain cooperatives

(a) Nonrecognition of gain

If—

(1) the taxpayer or executor elects in such form as the Secretary may prescribe the application of this section with respect to any sale of qualified securities,

(2) the taxpayer purchases qualified replacement property within the replacement period, and

(3) the requirements of subsection (b) are met with respect to such sale,

then the gain (if any) on such sale which would be recognized as long-term capital gain shall be recognized only to the extent that the amount realized on such sale exceeds the cost to the taxpayer of such qualified replacement property.

(b) Requirements to qualify for nonrecognition

A sale of qualified securities meets the requirements of this subsection if—

(1) Sale to employee organizations

The qualified securities are sold to—

(A) an employee stock ownership plan (as defined in section 4975(e)(7)), or

(B) an eligible worker-owned cooperative.

(2) Plan must hold 30 percent of stock after sale

The plan or cooperative referred to in paragraph (1) owns (after application of section 318(a)(4)), immediately after the sale, at least 30 percent of—

(A) each class of outstanding stock of the corporation (other than stock described in section 1504(a)(4)) which issued the qualified securities, or

(B) the total value of all outstanding stock of the corporation (other than stock described in section 1504(a)(4)).

(3) Written statement required

(A) In general

The taxpayer files with the Secretary the written statement described in subparagraph (B).

(B) Statement

A statement is described in this subparagraph if it is a verified written statement of—

(i) the employer whose employees are covered by the plan described in paragraph (1), or

(ii) any authorized officer of the cooperative described in paragraph (l),

consenting to the application of sections 4978 and 4979A with respect to such employer or cooperative.

(4) 3-year holding period

The taxpayer's holding period with respect to the qualified securities is at least 3 years (determined as of the time of the sale).

(c) Definitions; special rules

For purposes of this section—

(1) Qualified securities

The term "qualified securities" means employer securities (as defined in section 409(l)) which—

(A) are issued by a domestic C corporation that has no stock outstanding that is readily tradable on an established securities market, and

(B) were not received by the taxpayer in—

(i) a distribution from a plan described in section 401(a), or

(ii) a transfer pursuant to an option or other right to acquire stock to which section 83, 422, or 423 applied (or to which section 422 or 424 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) applied).

(2) Eligible worker-owned cooperative

The term "eligible worker-owned cooperative" means any organization—

(A) to which part I of subchapter T applies,

(B) a majority of the membership of which is composed of employees of such organization,

(C) a majority of the voting stock of which is owned by members,

(D) a majority of the board of directors of which is elected by the members on the basis of 1 person 1 vote, and

(E) a majority of the allocated earnings and losses of which are allocated to members on the basis of—

(i) patronage,

(ii) capital contributions, or

(iii) some combination of clauses (i) and (ii).

(3) Replacement period

The term "replacement period" means the period which begins 3 months before the date on which the sale of qualified securities occurs and which ends 12 months after the date of such sale.

(4) Qualified replacement property

(A) In general

The term "qualified replacement property" means any security issued by a domestic operating corporation which—

(i) did not, for the taxable year preceding the taxable year in which such security was purchased, have passive investment income (as defined in section 1362(d)(3)(C)) in excess of 25 percent of the gross receipts of such corporation for such preceding taxable year, and

(ii) is not the corporation which issued the qualified securities which such security is replacing or a member of the same controlled group of corporations (within the meaning of section 1563(a)(1)) as such corporation.

For purposes of clause (i), income which is described in section 954(c)(3) (as in effect immediately before the Tax Reform Act of 1986) shall not be treated as passive investment income.

(B) Operating corporation

For purposes of this paragraph—

(i) In general

The term "operating corporation" means a corporation more than 50 percent of the assets of which were, at the time the security was purchased or before the close of the replacement period, used in the active conduct of the trade or business.

(ii) Financial institutions and insurance companies

The term "operating corporation" shall include—

(I) any financial institution described in section 581, and

(II) an insurance company subject to tax under subchapter L.

(C) Controlling and controlled corporations treated as 1 corporation

(i) In general

For purposes of applying this paragraph, if—

(I) the corporation issuing the security owns stock representing control of 1 or more other corporations,

(II) 1 or more other corporations own stock representing control of the corporation

issuing the security, or

(III) both,

then all such corporations shall be treated as 1 corporation.

(ii) Control

For purposes of clause (i), the term "control" has the meaning given such term by section 304(c). In determining control, there shall be disregarded any qualified replacement property of the taxpayer with respect to the section 1042 sale being tested.

(D) Security defined

For purposes of this paragraph, the term "security" has the meaning given such term by section 165(g)(2), except that such term shall not include any security issued by a government or political subdivision thereof.

(5) Securities sold by underwriter

No sale of securities by an underwriter to an employee stock ownership plan or eligible worker-owned cooperative in the ordinary course of his trade or business as an underwriter, whether or not guaranteed, shall be treated as a sale for purposes of subsection (a).

(6) Time for filing election

An election under subsection (a) shall be filed not later than the last day prescribed by law (including extensions thereof) for filing the return of tax imposed by this chapter for the taxable year in which the sale occurs.

(7) Section not to apply to gain of C corporation

Subsection (a) shall not apply to any gain on the sale of any qualified securities which is includible in the gross income of any C corporation.

(d) Basis of qualified replacement property

The basis of the taxpayer in qualified replacement property purchased by the taxpayer during the replacement period shall be reduced by the amount of gain not recognized by reason of such purchase and the application of subsection (a). If more than one item of qualified replacement property is purchased, the basis of each of such items shall be reduced by an amount determined by multiplying the total gain not recognized by reason of such purchase and the application of subsection (a) by a fraction—

(1) the numerator of which is the cost of such item of property, and

(2) the denominator of which is the total cost of all such items of property.

Any reduction in basis under this subsection shall not be taken into account for purposes of section 1278(a)(2)(A)(ii) (relating to definition of market discount).

(e) Recapture of gain on disposition of qualified replacement property

(1) In general

If a taxpayer disposes of any qualified replacement property, then, notwithstanding any other provision of this title, gain (if any) shall be recognized to the extent of the gain which was not recognized under subsection (a) by reason of the acquisition by such taxpayer of such qualified replacement property.

(2) Special rule for corporations controlled by the taxpayer

If—

(A) a corporation issuing qualified replacement property disposes of a substantial portion of its assets other than in the ordinary course of its trade or business, and

(B) any taxpayer owning stock representing control (within the meaning of section 304(c)) of such corporation at the time of such disposition holds any qualified replacement property of such corporation at such time,

then the taxpayer shall be treated as having disposed of such qualified replacement property at such time.

(3) Recapture not to apply in certain cases

Paragraph (1) shall not apply to any transfer of qualified replacement property—

(A) in any reorganization (within the meaning of section 368) unless the person making the election under subsection (a)(1) owns stock representing control in the acquiring or acquired corporation and such property is substituted basis property in the hands of the transferee,

(B) by reason of the death of the person making such election,

(C) by gift, or

(D) in any transaction to which section 1042(a) applies.

(f) Statute of limitations

If any gain is realized by the taxpayer on the sale or exchange of any qualified securities and there is in effect an election under subsection (a) with respect to such gain, then—

(1) the statutory period for the assessment of any deficiency with respect to such gain shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may by regulations prescribe) of—

(A) the taxpayer's cost of purchasing qualified replacement property which the taxpayer claims results in nonrecognition of any part of such gain,

(B) the taxpayer's intention not to purchase qualified replacement property within the replacement period, or

(C) a failure to make such purchase within the replacement period, and

(2) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

(g) Application of section to sales of stock in agricultural refiners and processors to eligible farm cooperatives

(1) In general

This section shall apply to the sale of stock of a qualified refiner or processor to an eligible farmers' cooperative.

(2) Qualified refiner or processor

For purposes of this subsection, the term "qualified refiner or processor" means a domestic corporation—

(A) substantially all of the activities of which consist of the active conduct of the trade or business of refining or processing agricultural or horticultural products, and

(B) which, during the 1-year period ending on the date of the sale, purchases more than one-half of such products to be refined or processed from—

(i) farmers who make up the eligible farmers' cooperative which is purchasing stock in the corporation in a transaction to which this subsection is to apply, or

(ii) such cooperative.

(3) Eligible farmers' cooperative

For purposes of this section, the term "eligible farmers' cooperative" means an organization to which part I of subchapter T applies and which is engaged in the marketing of agricultural or horticultural products.

(4) Special rules

In applying this section to a sale to which paragraph (1) applies—

(A) the eligible farmers' cooperative shall be treated in the same manner as a cooperative described in subsection (b)(1)(B),

(B) subsection (b)(2) shall be applied by substituting "100 percent" for "30 percent" each

place it appears,

(C) the determination as to whether any stock in the domestic corporation is a qualified security shall be made without regard to whether the stock is an employer security or to subsection (c)(1)(A), and

(D) paragraphs (2)(D) and (7) of subsection (c) shall not apply.

(Added Pub. L. 98–369, div. A, title V, §541(a), July 18, 1984, 98 Stat. 887; amended Pub. L. 99–514, title XVIII, §§1854(a)(1), (2)(A), (3)(B), (4), (5)(A), (6)(A), (7), (8)(A), (9)(B), (10), (11), (f)(3)(B), 1899A(26), Oct. 22, 1986, 100 Stat. 2872–2878, 2882, 2959; Pub. L. 100–647, title I, §1018(t)(4)(D)–(F), Nov. 10, 1988, 102 Stat. 3588; Pub. L. 101–239, title VII, §7303(a), Dec. 19, 1989, 103 Stat. 2352; Pub. L. 101–508, title XI, §11801(c)(9)(H), Nov. 5, 1990, 104 Stat. 1388–526; Pub. L. 104–188, title I, §§1311(b)(3), 1316(d)(3), 1616(b)(13), 1704(t)(50), Aug. 20, 1996, 110 Stat. 1784, 1786, 1857, 1890; Pub. L. 105–34, title IX, §968(a), Aug. 5, 1997, 111 Stat. 895.)

REFERENCES IN TEXT

The date of the enactment of the Revenue Reconciliation Act of 1990, referred to in subsec. (c)(1)(B)(ii), is the date of enactment of Pub. L. 101–508, which was approved Nov. 5, 1990.

The Tax Reform Act of 1986, referred to in subsec. (c)(4)(A), is Pub. L. 99–514, which was approved Oct. 22, 1986.

AMENDMENTS

1997—Subsec. (g). Pub. L. 105–34 added subsec. (g).

1996—Subsec. (c)(1)(A). Pub. L. 104–188, §1316(d)(3), substituted "domestic C corporation" for "domestic corporation".

Subsec. (c)(1)(B)(ii). Pub. L. 104–188, §1704(t)(50), provided that section 11801(c)(9)(H) of Pub. L. 101–508 shall be applied as if "section 1042(c)(1)(B)" appeared instead of "section 1042(c)(2)(B)". See 1990 Amendment note below.

Subsec. (c)(4)(A)(i). Pub. L. 104–188, §1311(b)(3), substituted "section 1362(d)(3)(C)" for "section 1362(d)(3)(D)".

Subsec. (c)(4)(B)(ii)(I). Pub. L. 104–188, §1616(b)(13), struck out "or 593" after "section 581".

1990—Subsec. (c)(1)(B)(ii). Pub. L. 101–508, which directed the amendment of subsec. (c)(2)(B)(ii) by substituting "section 83, 422, or 423 applied (or to which section 422 or 424 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) applied)" for "section 83, 422, 422A, 423, or 424 applies", was executed to subsec. (c)(1)(B)(ii). See 1996 Amendment note above.

1989—Subsec. (b)(4). Pub. L. 101–239 added par. (4).

1988—Subsec. (b)(3), (4). Pub. L. 100–647, §1018(t)(4)(F), made technical correction to Pub. L. 99–514, §1854(a)(3)(B), see 1986 Amendment notes below.

Subsec. (c)(4)(A). Pub. L. 100–647, §1018(t)(4)(D), inserted "(as in effect immediately before the Tax Reform Act of 1986)" after "section 954(c)(3)" in last sentence.

Subsec. (c)(4)(B)(i). Pub. L. 100–647, §1018(t)(4)(E), substituted "replacement period" for "placement period".

1986—Pub. L. 99–514, §1854(a)(11), which directed that "employee" be inserted before "stock" in section catchline was executed by making the insertion before "stock" the second time that term appears as the probable intent of Congress.

Subsec. (a). Pub. L. 99–514, §1854(a)(1), substituted "the taxpayer or executor elects in such form as the Secretary may prescribe" for "the taxpayer elects" in par. (1) and inserted "which would be recognized as long-term capital gain" in concluding provisions.

Subsec. (b)(2). Pub. L. 99–514, §1854(a)(2)(A), substituted "Plan must hold" for "Employees must own" in heading and amended text generally. Prior to amendment, par. (2) read as follows: "The plan or cooperative referred to in paragraph (1) owns, immediately after the sale, at least 30 percent of the total value of the employer securities (within the meaning of section 409(l)) outstanding as of such time."

Subsec. (b)(3). Pub. L. 99–514, §1854(a)(3)(B), as amended by Pub. L. 100–647, §1018(t)(4)(F), redesignated par. (4) as (3) and struck out former par. (3) which related to plans maintained for benefit of employees.

Subsec. (b)(3)(B). Pub. L. 99–514, §1854(f)(3)(B), amended subpar. (B) similar to amendment by section 1854(a)(9)(B) of Pub. L. 99–514, inserting reference to section 4979A.

Pub. L. 99–514, §1854(a)(9)(B), substituted "sections 4978 and 4979A" for "section 4978(a)".

Subsec. (b)(4). Pub. L. 99–514, §1854(a)(3)(B), as amended by Pub. L. 100–647, §1018(t)(4)(F),

redesignated par. (4) as (3).

Subsec. (c). Pub. L. 99–514, §1899A(26), substituted "this section—" for "this section.—" in introductory provision.

Subsec. (c)(1). Pub. L. 99–514, §1854(a)(4), substituted "stock outstanding that is" for "securities outstanding that are" in subpar. (A), redesignated subpar. (C) as (B), and struck out former subpar. (B) which read as follows: "at the time of the sale described in subsection (a)(1), have been held by the taxpayer for more than 1 year, and".

Subsec. (c)(4). Pub. L. 99–514, §1854(a)(5)(A), amended par. (4) generally. Prior to amendment, par. (4) read as follows: "The term 'qualified replacement property' means any securities (as defined in section 165(g)(2)) issued by a domestic corporation which does not, for the taxable year in which such stock is issued, have passive investment income (as defined in section 1362(d)(3)(D)) that exceeds 25 percent of the gross receipts of such corporation for such taxable year."

Subsec. (c)(5). Pub. L. 99–514, §1854(a)(10), substituted "sold" for "acquired" in heading, and in text substituted "sale of securities" for "acquisition of securities" and inserted "to an employee stock ownership plan or eligible worker-owned cooperative".

Subsec. (c)(7). Pub. L. 99–514, §1854(a)(6)(A), added par. (7).

Subsec. (d). Pub. L. 99–514, §1854(a)(7), inserted last sentence.

Subsecs. (e), (f). Pub. L. 99–514, §1854(a)(8)(A), added subsec. (e) and redesignated former subsec. (e) as (f).

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title IX, §968(b), Aug. 5, 1997, 111 Stat. 896, provided that: "The amendment made by this section [amending this section] shall apply to sales after December 31, 1997."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1316(d)(3) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1997, see section 1316(f) of Pub. L. 104–188, set out as a note under section 170 of this title.

Amendment by section 1311(b)(3) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1317(a) of Pub. L. 104–188, set out as a note under section 641 of this title.

Amendment by section 1616(b)(13) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1995, see section 1616(c) of Pub. L. 104–188, set out as a note under section 593 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7303(b), Dec. 19, 1989, 103 Stat. 2352, provided that: "The amendment made by this section [amending this section] shall apply to sales after July 10, 1989."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1854(a)(1), (2)(A), (4), (5)(A), (7), (10), (11) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Amendment by section 1854(a)(3)(B) of Pub. L. 99–514 applicable to sales of securities after Oct. 22, 1986, except that a taxpayer or executor may elect to have section 1042(b)(3) of the Internal Revenue Code of 1954 (as in effect before the amendment by section 1854(a)(3)(B) of Pub. L. 99–514) apply to sales before Oct. 22, 1986, as if section 1042(b)(3) included the last sentence of section 409(n)(1) of this title (as added by section 1854(a)(3)(A) of Pub. L. 99–514), see section 1854(a)(3)(C) of Pub. L. 99–514, as amended, set out as a note under section 409 of this title.

Pub. L. 99–514, title XVIII, §1854(a)(6)(B)–(D), Oct. 22, 1986, 100 Stat. 2876, provided that:

"(B) The amendment made by subparagraph (A) [amending this section] shall apply to sales after March 28, 1985, except that such amendment shall not apply to sales made before July 1, 1985, if made pursuant to a binding contract in effect on March 28, 1985, and at all times thereafter.

"(C) The amendment made by subparagraph (A) shall not apply to any sale occurring on December 20, 1985, with respect to which—

"(i) a commitment letter was issued by a bank on October 31, 1984, and

"(ii) a final purchase agreement was entered into on November 5, 1985.

"(D) In the case of a sale on September 27, 1985, with respect to which a preliminary commitment letter was issued by a bank on April 10, 1985, and with respect to which a commitment letter was issued by a bank on June 28, 1985, the amendment made by subparagraph (A) shall apply but such sale shall be treated as having occurred on September 27, 1986."

Pub. L. 99–514, title XVIII, §1854(a)(8)(B), Oct. 22, 1986, 100 Stat. 2877, provided that: "The amendment made by subparagraph (A) [amending this section] shall apply to dispositions after the date of the enactment of this Act [Oct. 22, 1986], in taxable years ending after such date."

Amendment by section 1854(a)(9)(B) of Pub. L. 99–514 applicable to sales of securities after Oct. 22, 1986, see section 1854(a)(9)(D) of Pub. L. 99–514, set out as an Effective Date note under section 4979A of this title.

Amendment by section 1854(f)(3)(B) of Pub. L. 99–514 effective Oct. 22, 1986, see section 1854(f)(4)(A) of Pub. L. 99–514, set out as a note under section 409 of this title.

EFFECTIVE DATE

Pub. L. 98–369, div. A, title V, §541(c), July 18, 1984, 98 Stat. 890, provided that: "The amendments made by this section [enacting this section and amending sections 1016 and 1223 of this title] shall apply to sales of securities in taxable years beginning after the date of enactment of this Act [July 18, 1984]."

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

LINE ITEM VETO

Pub. L. 105–34, title IX, §968, Aug. 5, 1997, 111 Stat. 895, amending this section and enacting provisions set out as a note above, was subject to line item veto by the President, Cancellation No. 97–2, signed Aug. 11, 1997, 62 F.R. 43267, Aug. 12, 1997. For decision holding line item veto unconstitutional, see *Clinton v. City of New York*, 524 U.S. 417, 118 S.Ct. 2091, 141 L.Ed.2d 393 (1998).

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

OWNERSHIP OF STOCK OPTIONS AS OWNERSHIP OF STOCK; EMPLOYEE OWNERSHIP OF STOCK AFTER SALE

Pub. L. 99–514, title XVIII, §1854(a)(2)(B), Oct. 22, 1986, 100 Stat. 2873, provided that:

"(i) The requirement that section 1042(b) of the Internal Revenue Code of 1954 [now 1986] shall be applied with regard to section 318(a)(4) of such Code shall apply to sales after May 6, 1986.

"(ii) In the case of sales after July 18, 1984, and before the date of the enactment of this Act [Oct. 22, 1986], paragraph (2) of section 1042(b) of such Code shall apply as if it read as follows:

" '(2) EMPLOYEES MUST OWN 30 PERCENT OF STOCK AFTER SALE.—The plan or cooperative referred to in paragraph (1) owns, immediately after the sale, at least 30 percent of the employer securities or 30 percent of the value of employer securities (within the meaning of section 409(1)) outstanding at the time of sale.' "

REPLACEMENT PERIOD FOR CERTAIN SECURITIES

Pub. L. 99–514, title XVIII, §1854(a)(5)(B), Oct. 22, 1986, 100 Stat. 2875, provided that: "If—

"(i) before January 1, 1987, the taxpayer acquired any security (as defined in section 165(g)(2) of the Internal Revenue Code of 1954 [now 1986]) issued by a domestic corporation or by any State or political subdivision thereof,

"(ii) the taxpayer treated such security as qualified replacement property for purposes of section 1042 of such Code, and

"(iii) such property does not meet the requirements of section 1042(c)(4) of such Code (as amended by subparagraph (A)),

then, with respect to so much of any gain which the taxpayer treated as not recognized under section 1042(a)

by reason of the acquisition of such property, the replacement period for purposes of such section shall not expire before January 1, 1987."

§1043. Sale of property to comply with conflict-of-interest requirements

(a) Nonrecognition of gain

If an eligible person sells any property pursuant to a certificate of divestiture, at the election of the taxpayer, gain from such sale shall be recognized only to the extent that the amount realized on such sale exceeds the cost (to the extent not previously taken into account under this subsection) of any permitted property purchased by the taxpayer during the 60-day period beginning on the date of such sale.

(b) Definitions

For purposes of this section—

(1) Eligible person

The term "eligible person" means—

(A) an officer or employee of the executive branch, or a judicial officer, of the Federal Government, but does not mean a special Government employee as defined in section 202 of title 18, United States Code, and

(B) any spouse or minor or dependent child whose ownership of any property is attributable under any statute, regulation, rule, judicial canon, or executive order referred to in paragraph (2) to a person referred to in subparagraph (A).

(2) Certificate of divestiture

The term "certificate of divestiture" means any written determination—

(A) that states that divestiture of specific property is reasonably necessary to comply with any Federal conflict of interest statute, regulation, rule, judicial canon, or executive order (including section 208 of title 18, United States Code), or requested by a congressional committee as a condition of confirmation,

(B) that has been issued by the President or the Director of the Office of Government Ethics, in the case of executive branch officers or employees, or by the Judicial Conference of the United States (or its designee), in the case of judicial officers, and

(C) that identifies the specific property to be divested.

(3) Permitted property

The term "permitted property" means any obligation of the United States or any diversified investment fund approved by regulations issued by the Office of Government Ethics.

(4) Purchase

The taxpayer shall be considered to have purchased any permitted property if, but for subsection (c), the unadjusted basis of such property would be its cost within the meaning of section 1012.

(5) Special rule for trusts

For purposes of this section, the trustee of a trust shall be treated as an eligible person with respect to property which is held in the trust if—

(A) any person referred to in paragraph (1)(A) has a beneficial interest in the principal or income of the trust, or

(B) any person referred to in paragraph (1)(B) has a beneficial interest in the principal or income of the trust and such interest is attributable under any statute, regulation, rule, judicial canon, or executive order referred to in paragraph (2) to a person referred to in paragraph (1)(A).

(6) Judicial officer

The term "judicial officer" means the Chief Justice of the United States, the Associate Justices

of the Supreme Court, and the judges of the United States courts of appeals, United States district courts, including the district courts in Guam, the Northern Mariana Islands, and the Virgin Islands, Court of Appeals for the Federal Circuit, Court of International Trade, Tax Court, Court of Federal Claims, Court of Appeals for Veterans Claims, United States Court of Appeals for the Armed Forces, and any court created by Act of Congress, the judges of which are entitled to hold office during good behavior.

(c) Basis adjustments

If gain from the sale of any property is not recognized by reason of subsection (a), such gain shall be applied to reduce (in the order acquired) the basis for determining gain or loss of any permitted property which is purchased by the taxpayer during the 60-day period described in subsection (a).

(Added Pub. L. 101–194, title V, §502(a), Nov. 30, 1989, 103 Stat. 1754; amended Pub. L. 101–280, §6(a)(1), May 4, 1990, 104 Stat. 160; Pub. L. 101–508, title XI, §11703(a)(1), Nov. 5, 1990, 104 Stat. 1388–516; Pub. L. 109–432, div. A, title IV, §418(a), (b), Dec. 20, 2006, 120 Stat. 2966.)

AMENDMENTS

2006—Subsec. (b)(1)(A). Pub. L. 109–432, §418(a)(1)(A), inserted ", or a judicial officer," after "executive branch".

Subsec. (b)(1)(B), (2)(A). Pub. L. 109–432, §418(a)(1)(B), (2)(A), inserted "judicial canon," after "rule,".

Subsec. (b)(2)(B). Pub. L. 109–432, §418(a)(2)(B), inserted "in the case of executive branch officers or employees, or by the Judicial Conference of the United States (or its designee), in the case of judicial officers," after "Ethics,".

Subsec. (b)(5)(B). Pub. L. 109–432, §418(a)(3), inserted "judicial canon," after "rule,".

Subsec. (b)(6). Pub. L. 109–432, §418(b), added par. (6).

1990—Subsec. (a). Pub. L. 101–508 substituted "to the extent not previously taken into account under this subsection" for "reduced by any basis adjustment under subsection (c) attributable to a prior sale".

Subsec. (b)(5). Pub. L. 101–280 added par. (5).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title IV, §418(c), Dec. 20, 2006, 120 Stat. 2967, provided that: "The amendments made by this section [amending this section] shall apply to sales after the date of enactment of this Act [Dec. 20, 2006]."

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, §11703(a)(2), Nov. 5, 1990, 104 Stat. 1388–517, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to sales after November 30, 1989."

Pub. L. 101–280, §6(a)(3), May 4, 1990, 104 Stat. 160, provided that: "The amendment made by paragraph (1) [amending this section] and the provisions of paragraph (2) [set out below] shall apply to sales after November 30, 1989."

EFFECTIVE DATE

Section applicable to sales after Nov. 30, 1989, see section 502(c) of Pub. L. 101–194, set out as an Effective Date of 1989 Amendment note under section 1016 of this title.

PROPERTY SOLD BEFORE JUNE 19, 1990

Pub. L. 101–280, §6(a)(2), May 4, 1990, 104 Stat. 160, provided that:

"(A) For purposes of section 1043 of such Code—

"(i) any property sold before June 19, 1990, shall be treated as sold pursuant to a certificate of divestiture (as defined in subsection (b)(2) thereof) if such a certificate is issued with respect to such sale before such date, and

"(ii) in any such case, the 60-day period referred to in subsection (a) thereof shall not expire before the end of the 60-day period beginning on the date on which the certificate of divestiture was issued.

"(B) Notwithstanding subparagraph (A), section 1043 of such Code shall not apply to any sale before April 19, 1990, unless—

"(i) the sale was made in order to comply with an ethics agreement or pursuant to specific direction from the appropriate agency or confirming committee, and

"(ii) the justification for the sale meets the criteria set forth in subsection (b)(2)(A) thereof as implemented by the interim regulations implementing such section 1043, published on April 18, 1990."

§1044. Rollover of publicly traded securities gain into specialized small business investment companies

(a) Nonrecognition of gain

In the case of the sale of any publicly traded securities with respect to which the taxpayer elects the application of this section, gain from such sale shall be recognized only to the extent that the amount realized on such sale exceeds—

(1) the cost of any common stock or partnership interest in a specialized small business investment company purchased by the taxpayer during the 60-day period beginning on the date of such sale, reduced by

(2) any portion of such cost previously taken into account under this section.

This section shall not apply to any gain which is treated as ordinary income for purposes of this subtitle.

(b) Limitations

(1) Limitation on individuals

In the case of an individual, the amount of gain which may be excluded under subsection (a) for any taxable year shall not exceed the lesser of—

(A) $50,000, or

(B) $500,000, reduced by the amount of gain excluded under subsection (a) for all preceding taxable years.

(2) Limitation on C corporations

In the case of a C corporation, the amount of gain which may be excluded under subsection (a) for any taxable year shall not exceed the lesser of—

(A) $250,000, or

(B) $1,000,000, reduced by the amount of gain excluded under subsection (a) for all preceding taxable years.

(3) Special rules for married individuals

For purposes of this subsection—

(A) Separate returns

In the case of a separate return by a married individual, paragraph (1) shall be applied by substituting "$25,000" for "$50,000" and "$250,000" for "$500,000".

(B) Allocation of gain

In the case of any joint return, the amount of gain excluded under subsection (a) for any taxable year shall be allocated equally between the spouses for purposes of applying this subsection to subsequent taxable years.

(C) Marital status

For purposes of this subsection, marital status shall be determined under section 7703.

(4) Special rules for C corporation

For purposes of this subsection—

(A) all corporations which are members of the same controlled group of corporations (within the meaning of section 52(a)) shall be treated as 1 taxpayer, and

(B) any gain excluded under subsection (a) by a predecessor of any C corporation shall be treated as having been excluded by such C corporation.

(c) Definitions and special rules

For purposes of this section—

(1) Publicly traded securities

The term "publicly traded securities" means securities which are traded on an established securities market.

(2) Purchase

The taxpayer shall be considered to have purchased any property if, but for subsection (d), the unadjusted basis of such property would be its cost within the meaning of section 1012.

(3) Specialized small business investment company

The term "specialized small business investment company" means any partnership or corporation which is licensed by the Small Business Administration under section 301(d) of the Small Business Investment Act of 1958 (as in effect on May 13, 1993).

(4) Certain entities not eligible

This section shall not apply to any estate, trust, partnership, or S corporation.

(d) Basis adjustments

If gain from any sale is not recognized by reason of subsection (a), such gain shall be applied to reduce (in the order acquired) the basis for determining gain or loss of any common stock or partnership interest in any specialized small business investment company which is purchased by the taxpayer during the 60-day period described in subsection (a). This subsection shall not apply for purposes of section 1202.

(Added Pub. L. 103–66, title XIII, §13114(a), Aug. 10, 1993, 107 Stat. 430; amended Pub. L. 104–188, title I, §1703(a), Aug. 20, 1996, 110 Stat. 1875.)

REFERENCES IN TEXT

Section 301(d) of the Small Business Investment Act of 1958, referred to in subsec. (c)(3), was classified to section 681(d) of Title 15, Commerce and Trade, prior to repeal by Pub. L. 104–208, div. D, title II, §208(b)(3)(A), Sept. 30, 1996, 110 Stat. 3009–742.

AMENDMENTS

1996—Subsec. (c)(2). Pub. L. 104–188 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "The term 'purchase' has the meaning given such term by section 1043(b)(4)."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103–66, §§13001–13444, to which such amendment relates, see section 1703(o) of Pub. L. 104–188, set out as a note under section 39 of this title.

EFFECTIVE DATE

Section applicable to sales on or after Aug. 10, 1993, in taxable years ending on or after such date, see section 13114(d) of Pub. L. 103–66, set out as an Effective Date of 1993 Amendment note under section 1016 of this title.

§1045. Rollover of gain from qualified small business stock to another qualified small business stock

(a) Nonrecognition of gain

In the case of any sale of qualified small business stock held by a taxpayer other than a corporation for more than 6 months and with respect to which such taxpayer elects the application of this section, gain from such sale shall be recognized only to the extent that the amount realized on such sale exceeds—

(1) the cost of any qualified small business stock purchased by the taxpayer during the 60-day period beginning on the date of such sale, reduced by

(2) any portion of such cost previously taken into account under this section.

This section shall not apply to any gain which is treated as ordinary income for purposes of this title.

(b) Definitions and special rules

For purposes of this section—

(1) Qualified small business stock

The term "qualified small business stock" has the meaning given such term by section 1202(c).

(2) Purchase

A taxpayer shall be treated as having purchased any property if, but for paragraph (3), the unadjusted basis of such property in the hands of the taxpayer would be its cost (within the meaning of section 1012).

(3) Basis adjustments

If gain from any sale is not recognized by reason of subsection (a), such gain shall be applied to reduce (in the order acquired) the basis for determining gain or loss of any qualified small business stock which is purchased by the taxpayer during the 60-day period described in subsection (a).

(4) Holding period

For purposes of determining whether the nonrecognition of gain under subsection (a) applies to stock which is sold—

(A) the taxpayer's holding period for such stock and the stock referred to in subsection (a)(1) shall be determined without regard to section 1223, and

(B) only the first 6 months of the taxpayer's holding period for the stock referred to in subsection (a)(1) shall be taken into account for purposes of applying section 1202(c)(2).

(5) Certain rules to apply

Rules similar to the rules of subsections (f), (g), (h), (i), (j), and (k) of section 1202 shall apply.

(Added Pub. L. 105–34, title III, §313(a), Aug. 5, 1997, 111 Stat. 841; amended Pub. L. 105–206, title VI, §6005(f), July 22, 1998, 112 Stat. 806.)

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–206, §6005(f)(1), in introductory provisions, substituted "a taxpayer other than a corporation" for "an individual" and "such taxpayer" for "such individual".

Subsec. (b)(5). Pub. L. 105–206, §6005(f)(2), added par. (5).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to sales after Aug. 5, 1997, see section 313(c) of Pub. L. 105–34, set out as an Effective Date of 1997 Amendment note under section 1016 of this title.

PART IV—SPECIAL RULES

Sec.

1051. Property acquired during affiliation.

1052. Basis established by the Revenue Act of 1932 or 1934 or by the Internal Revenue Code of 1939.

1053. Property acquired before March 1, 1913.

1054. Certain stock of Federal National Mortgage Association.

1055. Redeemable ground rents.
[1056, 1057. Repealed.]
1058. Transfers of securities under certain agreements.
1059. Corporate shareholder's basis in stock reduced by nontaxed portion of extraordinary dividends.
1059A. Limitation on taxpayer's basis or inventory cost in property imported from related persons.
1060. Special allocation rules for certain asset acquisitions.
1061. Cross references.

AMENDMENTS

2004—Pub. L. 108–357, title VIII, §886(b)(1)(B), Oct. 22, 2004, 118 Stat. 1641, struck out item 1056 "Basis limitation for player contracts transferred in connection with the the sale of a franchise".

1997—Pub. L. 105–34, title XI, §1131(c)(5), Aug. 5, 1997, 111 Stat. 980, struck out item 1057 "Election to treat transfer to foreign trust, etc., as taxable exchange".

1986—Pub. L. 99–514, title VI, §641(b), title XII, §1248(b), Oct. 22, 1986, 100 Stat. 2283, 2584, added items 1059A and 1060 and renumbered former item 1060 as 1061.

1984—Pub. L. 98–369, div. A, title I, §53(d), July 18, 1984, 98 Stat. 568, added item 1059 and renumbered former item 1059 as 1060.

1978—Pub. L. 95–345, §2(d)(2), Aug. 15, 1978, 92 Stat. 483, added item 1058 and renumbered former item 1058 as 1059.

1976—Pub. L. 94–455, title II, §212(a)(2), title X, 1015(c), Oct. 4, 1976, 90 Stat. 1546, 1618, added items 1056 and 1057 and renumbered former item 1056 as 1058.

1963—Pub. L. 88–9, §1(d), Apr. 10, 1963, 77 Stat. 8, added item 1055 and renumbered former item 1055 as 1056.

1960—Pub. L. 86–779, §8(c), Sept. 14, 1960, 74 Stat. 1003, renumbered former item 1054 as 1055 and added new item 1054.

§1051. Property acquired during affiliation

In the case of property acquired by a corporation, during a period of affiliation, from a corporation with which it was affiliated, the basis of such property, after such period of affiliation, shall be determined, in accordance with regulations prescribed by the Secretary, without regard to inter-company transactions in respect of which gain or loss was not recognized. For purposes of this section, the term "period of affiliation" means the period during which such corporations were affiliated (determined in accordance with the law applicable thereto) but does not include any taxable year beginning on or after January 1, 1922, unless a consolidated return was made, nor any taxable year after the taxable year 1928.

(Aug. 16, 1954, ch. 736, 68A Stat. 310; Pub. L. 94–455, title XIX, §§1901(a)(131), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1786, 1834.)

AMENDMENTS

1976—Pub. L. 94–455, §1901(a)(131), struck out last two sentences relating to the basis and adjustment of the basis of corporate property where a consolidated return was filed.

Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(131) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

§1052. Basis established by the Revenue Act of 1932 or 1934 or by the Internal Revenue Code of 1939

(a) Revenue Act of 1932

If the property was acquired, after February 28, 1913, in any taxable year beginning before January 1, 1934, and the basis thereof, for purposes of the Revenue Act of 1932 was prescribed by section 113(a)(6), (7), or (9) of such Act (47 Stat. 199), then for purposes of this subtitle the basis shall be the same as the basis therein prescribed in the Revenue Act of 1932.

(b) Revenue Act of 1934

If the property was acquired, after February 28, 1913, in any taxable year beginning before January 1, 1936, and the basis thereof, for purposes of the Revenue Act of 1934, was prescribed by section 113(a)(6), (7), or (8) of such Act (48 Stat. 706), then for purposes of this subtitle the basis shall be the same as the basis therein prescribed in the Revenue Act of 1934.

(c) Internal Revenue Code of 1939

If the property was acquired, after February 28, 1913, in a transaction to which the Internal Revenue Code of 1939 applied, and the basis thereof, for purposes of the Internal Revenue Code of 1939, was prescribed by section 113(a)(6), (7), (8), (13), (15), (18), (19), or (23) of such code, then for purposes of this subtitle the basis shall be the same as the basis therein prescribed in the Internal Revenue Code of 1939.

(Aug. 16, 1954, ch. 736, 68A Stat. 310.)

REFERENCES IN TEXT

Revenue Act of 1932, referred to in section catchline and subsec. (a), is act June 6, 1932, ch. 209, 47 Stat. 169. For complete classification of the Act to the Code, see Tables.

Revenue Act of 1934, referred to in section catchline and subsec. (b), is act May 10, 1934, ch. 277, 48 Stat. 680. For complete classification of this Act to the Code, see Tables.

The Internal Revenue Code of 1939, referred to in section catchline and subsec. (c), is act Feb. 10, 1939, ch. 2, 53 Stat. 1, as amended. Prior to the enactment of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the 1939 Code was classified to former Title 26, Internal Revenue Code. For Table comparisons of the 1939 Code to the 1986 Code, see table I preceding section 1 of this title.

Section 113 of the Internal Revenue Code of 1939, referred to in subsec. (c), was classified to section 113 of former Title 26, Internal Revenue Code. Section 113 was repealed by section 7851(a)(1)(A) of this title. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of this title. See, also, section 7851(e) of this title for provision that references in the 1986 Code to a provision of the 1939 Code, not then applicable, shall be deemed a reference to the corresponding provision of the 1986 Code, which is then applicable.

§1053. Property acquired before March 1, 1913

In the case of property acquired before March 1, 1913, if the basis otherwise determined under this subtitle, adjusted (for the period before March 1, 1913) as provided in section 1016, is less than the fair market value of the property as of March 1, 1913, then the basis for determining gain shall be such fair market value. In determining the fair market value of stock in a corporation as of March 1, 1913, due regard shall be given to the fair market value of the assets of the corporation as of that date.

(Aug. 16, 1954, ch. 736, 68A Stat. 311; Pub. L. 85–866, title I, §47, Sept. 2, 1958, 72 Stat. 1642.)

AMENDMENTS

1958—Pub. L. 85–866 substituted "subtitle" for "part".

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

§1054. Certain stock of Federal National Mortgage Association

In the case of a share of stock issued pursuant to section 303(c) of the Federal National Mortgage

Association Charter Act (12 U.S.C., sec. 1718), the basis of such share in the hands of the initial holder shall be an amount equal to the capital contributions evidenced by such share reduced by the amount (if any) required by section 162(d) to be treated (with respect to such share) as ordinary and necessary expenses paid or incurred in carrying on a trade or business.

(Added Pub. L. 86–779, §8(b), Sept. 14, 1960, 74 Stat. 1003.)

PRIOR PROVISIONS

A prior section 1054 was renumbered section 1061 of this title.

EFFECTIVE DATE

Section applicable with respect to taxable years beginning after Dec. 31, 1959, see section 8(d) of Pub. L. 86–779, set out as an Effective Date of 1960 Amendment note under section 162 of this title.

§1055. Redeemable ground rents

(a) Character

For purposes of this subtitle—

(1) a redeemable ground rent shall be treated as being in the nature of a mortgage, and

(2) real property held subject to liabilities under a redeemable ground rent shall be treated as held subject to liabilities under a mortgage.

(b) Application of subsection (a)

(1) In general

Subsection (a) shall take effect on the day after the date of the enactment of this section and shall apply with respect to taxable years ending after such date of enactment.

(2) Basis of holder

In determining the basis of real property held subject to liabilities under a redeemable ground rent, subsection (a) shall apply whether such real property was acquired before or after the enactment of this section.

(3) Basis of reserved redeemable ground rent

In the case of a redeemable ground rent reserved or created on or before the date of the enactment of this section in connection with a transfer of the right to hold real property subject to liabilities under such ground rent, the basis of such ground rent after such date in the hands of the person who reserved or created the ground rent shall be the amount taken into account in respect of such ground rent for Federal income tax purposes as consideration for the disposition of such real property. If no such amount was taken into account, such basis shall be determined as if this section had not been enacted.

(c) Redeemable ground rent defined

For purposes of this subtitle, the term "redeemable ground rent" means only a ground rent with respect to which—

(1) there is a lease of land which is assignable by the lessee without the consent of the lessor and which (together with periods for which the lease may be renewed at the option of the lessee) is for a term in excess of 15 years,

(2) the leaseholder has a present or future right to terminate, and to acquire the entire interest of the lessor in the land, by payment of a determined or determinable amount, which right exists by virtue of State or local law and not because of any private agreement or privately created condition, and

(3) the lessor's interest in the land is primarily a security interest to protect the rental payments to which the lessor is entitled under the lease.

(d) Cross reference

For treatment of rentals under redeemable ground rents as interest, see section 163(c).

(Added Pub. L. 88–9, §1(b), Apr. 10, 1963, 77 Stat. 7.)

REFERENCES IN TEXT

Date of the enactment of this section, referred to in subsec. (b)(1), (3), means Apr. 10, 1963, the date of approval of Pub. L. 88–9.

PRIOR PROVISIONS

A prior section 1055 was renumbered section 1061 of this title.

EFFECTIVE DATE

Pub. L. 88–9, §2, Apr. 10, 1963, 77 Stat. 8, provided that: "The amendments made by subsection (a) of the first section of this Act [amending section 163 of this title] shall take effect as of January 1, 1962, and shall apply with respect to taxable years ending on or after such date. The amendments made by subsection (b) of the first section of this Act [enacting this section] shall take effect on the day after the date of the enactment of this Act [Apr. 10, 1963] and shall apply with respect to taxable years ending after such date of enactment."

[§1056. Repealed. Pub. L. 108–357, title VIII, §886(b)(1)(A), Oct. 22, 2004, 118 Stat. 1641]

Section, added Pub. L. 94–455, title II, §212(a)(1), Oct. 4, 1976, 90 Stat. 1545; amended Pub. L. 99–514, title VI, §631(e)(13), Oct. 22, 1986, 100 Stat. 2275, related to basis limitation for player contracts transferred in connection with the sale of a franchise.

A prior section 1056 was renumbered section 1061 of this title.

EFFECTIVE DATE OF REPEAL

Repeal applicable to property acquired after Oct. 22, 2004, see section 886(c)(1) of Pub. L. 108–357, set out as an Effective Date of 2004 Amendment note under section 197 of this title.

[§1057. Repealed. Pub. L. 105–34, title XI, §1131(c)(2), Aug. 5, 1997, 111 Stat. 980]

Section, added Pub. L. 94–455, title X, §1015(c), Oct. 4, 1976, 90 Stat. 1618, related to election to treat transfer to foreign trust, etc., as taxable exchange.

A prior section 1057 was renumbered section 1061 of this title.

§1058. Transfers of securities under certain agreements

(a) General rule

In the case of a taxpayer who transfers securities (as defined in section 1236(c)) pursuant to an agreement which meets the requirements of subsection (b), no gain or loss shall be recognized on the exchange of such securities by the taxpayer for an obligation under such agreement, or on the exchange of rights under such agreement by that taxpayer for securities identical to the securities transferred by that taxpayer.

(b) Agreement requirements

In order to meet the requirements of this subsection, an agreement shall—

(1) provide for the return to the transferor of securities identical to the securities transferred;

(2) require that payments shall be made to the transferor of amounts equivalent to all interest, dividends, and other distributions which the owner of the securities is entitled to receive during the period beginning with the transfer of the securities by the transferor and ending with the transfer of identical securities back to the transferor;

(3) not reduce the risk of loss or opportunity for gain of the transferor of the securities in the securities transferred; and

(4) meet such other requirements as the Secretary may by regulation prescribe.

(c) Basis

Property acquired by a taxpayer described in subsection (a), in a transaction described in that subsection, shall have the same basis as the property transferred by that taxpayer.

(Added Pub. L. 95–345, §2(d)(1), Aug. 15, 1978, 92 Stat. 482.)

PRIOR PROVISIONS

A prior section 1058 was renumbered section 1061 of this title.

EFFECTIVE DATE

Section applicable with respect to amounts received after Dec. 31, 1976, as payments with respect to securities loans (as defined in section 512(a)(5) of this title), and transfers of securities, under agreements described in this section, occurring after such date, see section 2(e) of Pub. L. 95–345, set out as an Effective Date of 1978 Amendment note under section 509 of this title.

§1059. Corporate shareholder's basis in stock reduced by nontaxed portion of extraordinary dividends

(a) General rule

If any corporation receives any extraordinary dividend with respect to any share of stock and such corporation has not held such stock for more than 2 years before the dividend announcement date—

(1) Reduction in basis

The basis of such corporation in such stock shall be reduced (but not below zero) by the nontaxed portion of such dividends.

(2) Amounts in excess of basis

If the nontaxed portion of such dividends exceeds such basis, such excess shall be treated as gain from the sale or exchange of such stock for the taxable year in which the extraordinary dividend is received.

(b) Nontaxed portion

For purposes of this section—

(1) In general

The nontaxed portion of any dividend is the excess (if any) of—

(A) the amount of such dividend, over

(B) the taxable portion of such dividend.

(2) Taxable portion

The taxable portion of any dividend is—

(A) the portion of such dividend includible in gross income, reduced by

(B) the amount of any deduction allowable with respect to such dividend under section 243, 244, or 245.

(c) Extraordinary dividend defined

For purposes of this section—

(1) In general

The term "extraordinary dividend" means any dividend with respect to a share of stock if the amount of such dividend equals or exceeds the threshold percentage of the taxpayer's adjusted basis in such share of stock.

(2) Threshold percentage

The term "threshold percentage" means—

(A) 5 percent in the case of stock which is preferred as to dividends, and

(B) 10 percent in the case of any other stock.

(3) Aggregation of dividends

(A) Aggregation within 85-day period

All dividends—

(i) which are received by the taxpayer (or a person described in subparagraph (C)) with respect to any share of stock, and

(ii) which have ex-dividend dates within the same period of 85 consecutive days,

shall be treated as 1 dividend.

(B) Aggregation within 1 year where dividends exceed 20 percent of adjusted basis

All dividends—

(i) which are received by the taxpayer (or a person described in subparagraph (C)) with respect to any share of stock, and

(ii) which have ex-dividend dates during the same period of 365 consecutive days,

shall be treated as extraordinary dividends if the aggregate of such dividends exceeds 20 percent of the taxpayer's adjusted basis in such stock (determined without regard to this section).

(C) Substituted basis transactions

In the case of any stock, a person is described in this subparagraph if—

(i) the basis of such stock in the hands of such person is determined in whole or in part by reference to the basis of such stock in the hands of the taxpayer, or

(ii) the basis of such stock in the hands of the taxpayer is determined in whole or in part by reference to the basis of such stock in the hands of such person.

(4) Fair market value determination

If the taxpayer establishes to the satisfaction of the Secretary the fair market value of any share of stock as of the day before the ex-dividend date, the taxpayer may elect to apply paragraphs (1) and (3) by substituting such value for the taxpayer's adjusted basis.

(d) Special rules

For purposes of this section—

(1) Time for reduction

Any reduction in basis under subsection (a)(1) shall be treated as occurring at the beginning of the ex-dividend date of the extraordinary dividend to which the reduction relates.

(2) Distributions in kind

To the extent any dividend consists of property other than cash, the amount of such dividend shall be treated as the fair market value of such property (as of the date of the distribution) reduced as provided in section 301(b)(2).

(3) Determination of holding period

For purposes of determining the holding period of stock under subsection (a), rules similar to the rules of paragraphs (3) and (4) of section 246(c) shall apply; except that "2 years" shall be substituted for the number of days specified in subparagraph (B) [1] of section 246(c)(3).

(4) Ex-dividend date

The term "ex-dividend date" means the date on which the share of stock becomes ex-dividend.

(5) Dividend announcement date

The term "dividend announcement date" means, with respect to any dividend, the date on which the corporation declares, announces, or agrees to the amount or payment of such dividend, whichever is the earliest.

(6) Exception where stock held during entire existence of corporation

(A) In general

Subsection (a) shall not apply to any extraordinary dividend with respect to any share of stock of a corporation if—

(i) such stock was held by the taxpayer during the entire period such corporation was in existence, and

(ii) except as provided in regulations, no earnings and profits of such corporation were attributable to transfers of property from (or earnings and profits of) a corporation which is not a qualified corporation.

(B) Qualified corporation

For purposes of subparagraph (A), the term "qualified corporation" means any corporation (including a predecessor corporation)—

(i) with respect to which the taxpayer holds directly or indirectly during the entire period of such corporation's existence at least the same ownership interest as the taxpayer holds in the corporation distributing the extraordinary dividend, and

(ii) which has no earnings and profits—

(I) which were earned by, or

(II) which are attributable to gain on property which accrued during a period the corporation holding the property was,

a corporation not described in clause (i).

(C) Application of paragraph

This paragraph shall not apply to any extraordinary dividend to the extent such application is inconsistent with the purposes of this section.

(e) Special rules for certain distributions

(1) Treatment of partial liquidations and certain redemptions

Except as otherwise provided in regulations—

(A) Redemptions

In the case of any redemption of stock—

(i) which is part of a partial liquidation (within the meaning of section 302(e)) of the redeeming corporation,

(ii) which is not pro rata as to all shareholders, or

(iii) which would not have been treated (in whole or in part) as a dividend if—

(I) any options had not been taken into account under section 318(a)(4), or

(II) section 304(a) had not applied,

any amount treated as a dividend with respect to such redemption shall be treated as an extraordinary dividend to which paragraphs (1) and (2) of subsection (a) apply without regard to the period the taxpayer held such stock. In the case of a redemption described in clause (iii), only the basis in the stock redeemed shall be taken into account under subsection (a).

(B) Reorganizations, etc.

An exchange described in section 356 which is treated as a dividend shall be treated as a redemption of stock for purposes of applying subparagraph (A).

(2) Qualifying dividends

(A) In general

Except as provided in regulations, the term "extraordinary dividend" does not include any qualifying dividend (within the meaning of section 243).

(B) Exception

Subparagraph (A) shall not apply to any portion of a dividend which is attributable to

earnings and profits which—

(i) were earned by a corporation during a period it was not a member of the affiliated group, or

(ii) are attributable to gain on property which accrued during a period the corporation holding the property was not a member of the affiliated group.

(3) Qualified preferred dividends

(A) In general

In the case of 1 or more qualified preferred dividends with respect to any share of stock—

(i) this section shall not apply to such dividends if the taxpayer holds such stock for more than 5 years, and

(ii) if the taxpayer disposes of such stock before it has been held for more than 5 years, the aggregate reduction under subsection (a)(1) with respect to such dividends shall not be greater than the excess (if any) of—

(I) the qualified preferred dividends paid with respect to such stock during the period the taxpayer held such stock, over

(II) the qualified preferred dividends which would have been paid during such period on the basis of the stated rate of return.

(B) Rate of return

For purposes of this paragraph—

(i) Actual rate of return

The actual rate of return shall be the rate of return for the period for which the taxpayer held the stock, determined—

(I) by only taking into account dividends during such period, and

(II) by using the lesser of the adjusted basis of the taxpayer in such stock or the liquidation preference of such stock.

(ii) Stated rate of return

The stated rate of return shall be the annual rate of the qualified preferred dividend payable with respect to any share of stock (expressed as a percentage of the amount described in clause (i)(II)).

(C) Definitions and special rules

For purposes of this paragraph—

(i) Qualified preferred dividend

The term "qualified preferred dividend" means any fixed dividend payable with respect to any share of stock which—

(I) provides for fixed preferred dividends payable not less frequently than annually, and

(II) is not in arrears as to dividends at the time the taxpayer acquires the stock.

Such term shall not include any dividend payable with respect to any share of stock if the actual rate of return on such stock exceeds 15 percent.

(ii) Holding period

In determining the holding period for purposes of subparagraph (A)(ii), subsection (d)(3) shall be applied by substituting "5 years" for "2 years".

(f) Treatment of dividends on certain preferred stock

(1) In general

Any dividend with respect to disqualified preferred stock shall be treated as an extraordinary dividend to which paragraphs (1) and (2) of subsection (a) apply without regard to the period the taxpayer held the stock.

(2) Disqualified preferred stock

For purposes of this subsection, the term "disqualified preferred stock" means any stock which is preferred as to dividends if—

(A) when issued, such stock has a dividend rate which declines (or can reasonably be expected to decline) in the future,

(B) the issue price of such stock exceeds its liquidation rights or its stated redemption price, or

(C) such stock is otherwise structured—

(i) to avoid the other provisions of this section, and

(ii) to enable corporate shareholders to reduce tax through a combination of dividend received deductions and loss on the disposition of the stock.

(g) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this section, including regulations—

(1) providing for the application of this section in the case of stock dividends, stock splits, reorganizations, and other similar transactions, in the case of stock held by pass-thru entities, and in the case of consolidated groups, and

(2) providing that the rules of subsection (f) shall apply in the case of stock which is not preferred as to dividends in cases where stock is structured to avoid the purposes of this section.

(Added Pub. L. 98–369, div. A, title I, §53(a), July 18, 1984, 98 Stat. 565; amended Pub. L. 99–514, title VI, §614(a)–(e), Oct. 22, 1986, 100 Stat. 2251–2253; Pub. L. 100–647, title I, §1006(c), Nov. 10, 1988, 102 Stat. 3393; Pub. L. 101–239, title VII, §7206(a), Dec. 19, 1989, 103 Stat. 2336; Pub. L. 105–34, title X, §§1011(a)–(c), 1013(b), title XVI, §1604(d)(1), Aug. 5, 1997, 111 Stat. 912, 913, 918, 1098; Pub. L. 105–206, title VI, §6010(b), July 22, 1998, 112 Stat. 813.)

REFERENCES IN TEXT

Section 246(c)(3) of this title, referred to in subsec. (d)(3), was amended by Pub. L. 105–34, title X, §1015(b)(2), Aug. 5, 1997, 111 Stat. 922, by striking out subpar. (B) and redesignating subpar. (C) as (B).

PRIOR PROVISIONS

A prior section 1059 was renumbered section 1061 of this title.

AMENDMENTS

1998—Subsec. (g)(1). Pub. L. 105–206 substituted ", in the case of stock held by pass-thru entities, and in the case of consolidated groups" for "and in the case of stock held by pass-thru entities".

1997—Subsec. (a)(2). Pub. L. 105–34, §1011(a), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: "In addition to any gain recognized under this chapter, there shall be treated as gain from the sale or exchange of any stock for the taxable year in which the sale or disposition of such stock occurs an amount equal to the aggregate nontaxed portions of any extraordinary dividends with respect to such stock which did not reduce the basis of such stock by reason of the limitation on reducing basis below zero."

Subsec. (d)(1). Pub. L. 105–34, §1011(c), amended heading and text of par. (1) generally. Prior to amendment, text read as follows:

"(A) IN GENERAL.—Except as provided in subparagraph (B), any reduction in basis under subsection (a)(1) shall occur immediately before any sale or disposition of the stock.

"(B) SPECIAL RULE FOR COMPUTING EXTRAORDINARY DIVIDEND.—In determining a taxpayer's adjusted basis for purposes of subsection (c)(1), any reduction in basis under subsection (a)(1) by reason of a prior distribution which was an extraordinary dividend shall be treated as occurring at the beginning of the ex-dividend date for such distribution."

Subsec. (d)(3). Pub. L. 105–34, §1604(d)(1), substituted "subsection (a)" for "subsection (a)(2)".

Subsec. (e)(1). Pub. L. 105–34, §1011(b), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: "Except as otherwise provided in regulations, in the case of any redemption of stock which is—

"(A) part of a partial liquidation (within the meaning of section 302(e)) of the redeeming corporation, or

"(B) not pro rata as to all shareholders,

any amount treated as a dividend under section 301 with respect to such redemption shall be treated as an extraordinary dividend to which paragraphs (1) and (2) of subsection (a) apply without regard to the period the taxpayer held such stock."

Subsec. (e)(1)(A)(iii). Pub. L. 105–34, §1013(b), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: "which would not have been treated (in whole or in part) as a dividend if any options had not been taken into account under section 318(a)(4)."

1989—Subsecs. (f), (g). Pub. L. 101–239 added subsecs. (f) and (g) and struck out former subsec. (f) which read as follows: "REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this section, including regulations providing for the application of this section in the case of stock dividends, stock splits, reorganizations, and other similar transactions and in the case of stock held by pass-thru entities."

1988—Subsec. (d)(5). Pub. L. 100–647, §1006(c)(2), inserted "amount or" after "agrees to the".

Pub. L. 100–647, §1006(c)(1), redesignated par. (6) as (5) and struck out former par. (5) which related to extension to certain property distributions.

Subsec. (d)(6). Pub. L. 100–647, §1006(c)(3), amended par. (6) generally. Prior to amendment, par. (6) read as follows: "Subsection (a) shall not apply to any extraordinary dividend with respect to any share of stock of a corporation if—

"(A) such stock was held by the taxpayer during the entire period such corporation (and any precedessor [sic] corporation) was in existence,

"(B) except as provided in regulations, the only earnings and profits of such corporation were earnings and profits accumulated by such corporation (or any predecessor corporation) during such period, and

"(C) the application of this paragraph to such dividend is not inconsistent with the purposes of this section."

Pub. L. 100–647, §1006(c)(1), redesignated par. (7) as (6). Former par. (6) redesignated (5).

Subsec. (d)(7). Pub. L. 100–647, §1006(c)(1), redesignated par. (7) as (6).

Subsec. (e)(1). Pub. L. 100–647, §1006(c)(4), substituted "to which paragraphs (1) and (2) of subsection (a) apply without regard to the period the taxpayer held such stock" for "for purposes of this section (without regard to the holding period of the stock)".

Subsec. (e)(2). Pub. L. 100–647, §1006(c)(5), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "Except as provided in regulations, the term 'extraordinary dividend' shall not include any qualifying dividend (within the meaning of section 243(b)(1))."

Subsec. (e)(3)(A). Pub. L. 100–647, §1006(c)(6), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "A qualified preferred dividend shall be treated as an extraordinary dividend—

"(i) only if the actual rate of return of the taxpayer on the stock with respect to which such dividend was paid exceeds 15 percent, or

"(ii) if clause (i) does not apply, and the taxpayer disposes of such stock before the taxpayer has held such stock for more than 5 years, only to the extent the actual rate of return exceeds the stated rate of return."

Subsec. (e)(3)(B). Pub. L. 100–647, §1006(c)(8)(A), which directed the amendment of subpar. (B) "by striking out 'subparagraph (A)' and the material preceding clause (i) and inserting in lieu thereof 'this paragraph' ", was executed by striking out "subparagraph (A)" in the material preceding clause (i) and inserting in lieu thereof "this paragraph", to reflect the probable intent of Congress.

Subsec. (e)(3)(B)(ii). Pub. L. 100–647, §1006(c)(8)(B), substituted "clause (i)(II)" for "subparagraph (B)(i)(II)".

Subsec. (e)(3)(C)(i). Pub. L. 100–647, §1006(c)(7), inserted "fixed" before "dividend payable" in introductory provisions and inserted at end "Such term shall not include any dividend payable with respect to any share of stock if the actual rate of return on such stock exceeds 15 percent."

Subsec. (f). Pub. L. 100–647, §1006(c)(9), inserted "and in the case of stock held by pass-thru entities" after "other similar transactions".

1986—Subsec. (a). Pub. L. 99–514, §614(a)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "If any corporation—

"(1) receives an extraordinary dividend with respect to any share of stock, and

"(2) sells or otherwise disposes of such stock before such stock has been held for more than 1 year,

the basis of such corporation in such stock shall be reduced by the nontaxed portion of such dividend. If the nontaxed portion of such dividend exceeds such basis, such excess shall be treated as gain from the sale or exchange of such stock."

Subsec. (c)(1). Pub. L. 99–514, §614(c)(2), struck out "(determined without regard to this section)" after

"such share of stock".

Subsec. (c)(4). Pub. L. 99–514, §614(b), added par. (4).

Subsec. (d)(1). Pub. L. 99–514, §614(c)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "Any reduction in basis under subsection (a) by reason of any distribution which is an extraordinary dividend shall occur at the beginning of the ex-dividend date for such distribution."

Subsec. (d)(3). Pub. L. 99–514, §614(a)(3), substituted "2 years" for "1 year".

Subsec. (d)(6). Pub. L. 99–514, §614(a)(2), added par. (6).

Subsec. (d)(7). Pub. L. 99–514, §614(d), added par. (7).

Subsecs. (e), (f). Pub. L. 99–514, §614(e), added subsec. (e) and redesignated former subsec. (e) as (f).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title X, §1011(d), Aug. 5, 1997, 111 Stat. 913, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to distributions after May 3, 1995.

"(2) TRANSITION RULE.—The amendments made by this section shall not apply to any distribution made pursuant to the terms of—

"(A) a written binding contract in effect on May 3, 1995, and at all times thereafter before such distribution, or

"(B) a tender offer outstanding on May 3, 1995.

"(3) CERTAIN DIVIDENDS NOT PURSUANT TO CERTAIN REDEMPTIONS.—In determining whether the amendment made by subsection (a) applies to any extraordinary dividend other than a dividend treated as an extraordinary dividend under section 1059(e)(1) of the Internal Revenue Code of 1986 (as amended by this Act), paragraphs (1) and (2) shall be applied by substituting 'September 13, 1995' for 'May 3, 1995'."

Amendment by section 1013(b) of Pub. L. 105–34 applicable to distributions and acquisitions after June 8, 1997, with certain exceptions, see section 1013(d) of Pub. L. 105–34, set out as a note under section 304 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7206(b), Dec. 19, 1989, 103 Stat. 2337, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to stock issued after July 10, 1989, in taxable years ending after such date.

"(2) BINDING CONTRACT.—The amendment made by subsection (a) shall not apply to any stock issued pursuant to a written binding contract in effect on July 10, 1989, and at all times thereafter before the stock is issued."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title VI, §614(f), Oct. 22, 1986, 100 Stat. 2254, provided that:

"(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section] shall apply to dividends declared after July 18, 1986, in taxable years ending after such date.

"(2) AGGREGATION.—For purposes of section 1059(c)(3) of the Internal Revenue Code of 1986, dividends declared after July 18, 1986, shall not be aggregated with dividends declared on or before July 18, 1986.

"(3) REDEMPTIONS.—Section 1059(e)(1) of the Internal Revenue Code of 1986 (as added by subsection (e)) shall apply to dividends declared after the date of the enactment of this Act [Oct. 22, 1986], in taxable years ending after such date."

EFFECTIVE DATE

Pub. L. 98–369, div. A, title I, §53(e), July 18, 1984, 98 Stat. 568, as amended by Pub. L. 99–514, §2, title XVIII, §1804(b)(2), Oct. 22, 1986, 100 Stat. 2095, 2798, provided that:

"(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [enacting this section and amending sections 246, 1016, and 7701 of this title] shall apply to distributions after March 1, 1984, in taxable years ending after such date.

"(2) SUBSECTION (b).—The amendments made by subsection (b) [amending section 246 of this title] shall apply to stock acquired after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.

"(3) RELATED PERSON PROVISIONS.—

"(A) IN GENERAL.—Except as otherwise provided in subparagraph (B), the amendment made by subsection (c) [amending section 7701 of this title] shall take effect on July 18, 1984.

"(B) SPECIAL RULE FOR PURPOSES OF SECTION 265(2).—The amendment made by subsection (c) insofar as it relates to section 265(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall apply to—

"(i) term loans made after July 18, 1984, and

"(ii) demand loans outstanding after July 18, 1984 (other than any loan outstanding on July 18, 1984, and repaid before September 18, 1984).

"(C) TREATMENT OF RENEGOTIATIONS, ETC.—For purposes of this paragraph, any loan renegotiated, extended, or revised after July 18, 1984, shall be treated as a loan made after such date.

"(D) DEFINITION OF TERM AND DEMAND LOANS.—For purposes of this paragraph, the terms 'demand loan' and 'term loan' have the respective meanings given such terms by paragraphs (5) and (6) of section 7872(f) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], except that the second sentence of such paragraph (5) shall not apply."

[1] *See References in Text note below.*

§1059A. Limitation on taxpayer's basis or inventory cost in property imported from related persons

(a) In general

If any property is imported into the United States in a transaction (directly or indirectly) between related persons (within the meaning of section 482), the amount of any costs—

(1) which are taken into account in computing the basis or inventory cost of such property by the purchaser, and

(2) which are also taken into account in computing the customs value of such property,

shall not, for purposes of computing such basis or inventory cost for purposes of this chapter, be greater than the amount of such costs taken into account in computing such customs value.

(b) Customs value; import

For purposes of this section—

(1) Customs value

The term "customs value" means the value taken into account for purposes of determining the amount of any customs duties or any other duties which may be imposed on the importation of any property.

(2) Import

Except as provided in regulations, the term "import" means the entering, or withdrawal from warehouse, for consumption.

(Added Pub. L. 99–514, title XII, §1248(a), Oct. 22, 1986, 100 Stat. 2584.)

EFFECTIVE DATE

Pub. L. 99–514, title XII, §1248(c), Oct. 22, 1986, 100 Stat. 2584, provided that: "The amendments made by this section [enacting this section] shall apply to transactions entered into after March 18, 1986."

§1060. Special allocation rules for certain asset acquisitions

(a) General rule

In the case of any applicable asset acquisition, for purposes of determining both—

(1) the transferee's basis in such assets, and

(2) the gain or loss of the transferor with respect to such acquisition,

the consideration received for such assets shall be allocated among such assets acquired in such acquisition in the same manner as amounts are allocated to assets under section 338(b)(5). If in connection with an applicable asset acquisition, the transferee and transferor agree in writing as to the allocation of any consideration, or as to the fair market value of any of the assets, such agreement shall be binding on both the transferee and transferor unless the Secretary determines that such allocation (or fair market value) is not appropriate.

(b) Information required to be furnished to Secretary

Under regulations, the transferor and transferee in an applicable asset acquisition shall, at such times and in such manner as may be provided in such regulations, furnish to the Secretary the following information:

(1) The amount of the consideration received for the assets which is allocated to section 197 intangibles.

(2) Any modification of the amount described in paragraph (1).

(3) Any other information with respect to other assets transferred in such acquisition as the Secretary deems necessary to carry out the provisions of this section.

(c) Applicable asset acquisition

For purposes of this section, the term "applicable asset acquisition" means any transfer (whether directly or indirectly)—

(1) of assets which constitute a trade or business, and

(2) with respect to which the transferee's basis in such assets is determined wholly by reference to the consideration paid for such assets.

A transfer shall not be treated as failing to be an applicable asset acquisition merely because section 1031 applies to a portion of the assets transferred.

(d) Treatment of certain partnership transactions

In the case of a distribution of partnership property or a transfer of an interest in a partnership—

(1) the rules of subsection (a) shall apply but only for purposes of determining the value of section 197 intangibles for purposes of applying section 755, and

(2) if section 755 applies, such distribution or transfer (as the case may be) shall be treated as an applicable asset acquisition for purposes of subsection (b).

(e) Information required in case of certain transfers of interests in entities

(1) In general

If—

(A) a person who is a 10-percent owner with respect to any entity transfers an interest in such entity, and

(B) in connection with such transfer, such owner (or a related person) enters into an employment contract, covenant not to compete, royalty or lease agreement, or other agreement with the transferee,

such owner and the transferee shall, at such time and in such manner as the Secretary may prescribe, furnish such information as the Secretary may require.

(2) 10-percent owner

For purposes of this subsection—

(A) In general

The term "10-percent owner" means, with respect to any entity, any person who holds 10 percent or more (by value) of the interests in such entity immediately before the transfer.

(B) Constructive ownership

Section 318 shall apply in determining ownership of stock in a corporation. Similar principles shall apply in determining the ownership of interests in any other entity.

(3) Related person

For purposes of this subsection, the term "related person" means any person who is related (within the meaning of section 267(b) or 707(b)(1)) to the 10-percent owner.

(f) Cross reference

For provisions relating to penalties for failure to file a return required by this section, see section 6721.

(Added Pub. L. 99–514, title VI, §641(a), Oct. 22, 1986, 100 Stat. 2282; amended Pub. L. 100–647, title I, §1006(h)(1), (2), (3)(B), Nov. 10, 1988, 102 Stat. 3410; Pub. L. 101–508, title XI, §11323(a), (b)(1), Nov. 5, 1990, 104 Stat. 1388–464; Pub. L. 103–66, title XIII, §13261(e), Aug. 10, 1993, 107 Stat. 539.)

PRIOR PROVISIONS

A prior section 1060 was renumbered section 1061 of this title.

AMENDMENTS

1993—Subsec. (b)(1). Pub. L. 103–66, §13261(e)(1), substituted "section 197 intangibles" for "goodwill or going concern value".

Subsec. (d)(1). Pub. L. 103–66, §13261(e)(2), substituted "section 197 intangibles" for "goodwill or going concern value (or similar items)".

1990—Subsec. (a). Pub. L. 101–508, §11323(a), inserted at end "If in connection with an applicable asset acquisition, the transferee and transferor agree in writing as to the allocation of any consideration, or as to the fair market value of any of the assets, such agreement shall be binding on both the transferee and transferor unless the Secretary determines that such allocation (or fair market value) is not appropriate."

Subsecs. (e), (f). Pub. L. 101–508, §11323(b)(1), added subsec. (e) and redesignated former subsec. (e) as (f).

1988—Subsec. (b)(3). Pub. L. 100–647, §1006(h)(1), substituted "deems" for "may find".

Subsec. (d). Pub. L. 100–647, §1006(h)(2), added subsec. (d).

Subsec. (e). Pub. L. 100–647, §1006(h)(3)(B), added subsec. (e).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable, except as otherwise provided, with respect to property acquired after Aug. 10, 1993, see section 13261(g) of Pub. L. 103–66, set out as an Effective Date note under section 197 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to acquisitions after Oct. 9, 1990, but not applicable to any acquisition pursuant to a written binding contract in effect on Oct. 9, 1990, and at all times thereafter before such acquisition, see section 11323(d) of Pub. L. 101–508, set out as a note under section 338 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title VI, §641(c), Oct. 22, 1986, 100 Stat. 2283, provided that: "The amendments made by this section [enacting this section and renumbering former section 1060 as 1061] shall apply to any acquisition of assets after May 6, 1986, unless such acquisition is pursuant to a binding contract which was in effect on

May 6, 1986, and at all times thereafter."

§1061. Cross references

(1) For nonrecognition of gain in connection with the transfer of obsolete vessels to the Maritime Administration under chapter 573 of title 46, United States Code, see section 57307 of title 46.

(2) For recognition of gain or loss in connection with the construction of new vessels, see chapter 533 of title 46, United States Code.

(Aug. 16, 1954, ch. 736, 68A Stat. 311, §1054; renumbered §1055, Pub. L. 86–779, §8(b), Sept. 14, 1960, 74 Stat. 1003; renumbered §1056, Pub. L. 88–9, §1(b), Apr. 10, 1963, 77 Stat. 7; renumbered §1057, Pub. L. 94–455, title II, §212(a)(1), Oct. 4, 1976, 90 Stat. 1545; renumbered §1058, Pub. L. 94–455, title X, §1015(c), Oct. 4, 1976, 90 Stat. 1618; renumbered §1059, Pub. L. 95–345, §2(d)(1), Aug. 15, 1978, 92 Stat. 482; renumbered §1060, Pub. L. 98–369, div. A, title I, §53(a), July 18, 1984, 98 Stat. 565; renumbered §1061 and amended, Pub. L. 99–514, title VI, §641(a), title XVIII, §1899A(27), Oct. 22, 1986, 100 Stat. 2282, 2960; Pub. L. 109–304, §17(e)(5), Oct. 6, 2006, 120 Stat. 1708.)

AMENDMENTS

2006—Par. (1). Pub. L. 109–304, §17(e)(5)(A), substituted "chapter 573 of title 46, United States Code, see section 57307 of title 46" for "section 510 of the Merchant Marine Act, 1936, see subsection (e) of that section, as amended August 4, 1939 (46 U.S.C. App. 1160)".

Par. (2). Pub. L. 109–304, §17(e)(5)(B), substituted "chapter 533 of title 46, United States Code" for "section 511 of such Act, as amended (46 U.S.C. App. 1161)".

Par. (3). Pub. L. 109–304, §17(e)(5)(C), struck out par. (3), which read as follows: "For nonrecognition of gain in connection with vessels exchanged with the Maritime Administration under section 8 of the Merchant Ship Sales Act of 1946, see subsection (a) of that section (50 U.S.C. App. 1741)."

1986—Pub. L. 99–514, §641(a), renumbered section 1060 of this title as this section.

Pars. (1), (2). Pub. L. 99–514, §1899A(27), which directed the amendment of pars. (1) and (2) of section 1060 by substituting "46 U.S.C. App." for "46 U.S.C." was executed to section 1061 to reflect the probable intent of Congress in view of the renumbering of section 1060 as 1061 by section 641(a) of Pub. L. 99–514.

[PART V—REPEALED]

[§1071. Repealed. Pub. L. 104–7, §2(a), Apr. 11, 1995, 109 Stat. 93]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 311; Sept. 2, 1958, Pub. L. 85–866, title I, §48(a), 72 Stat. 1642; Oct. 4, 1976, Pub. L. 94–455, title XIX, §§1901(b)(31)(E), 1906(b)(13)(A), 90 Stat. 1800, 1834, provided for nonrecognition on FCC certified sales and exchanges.

EFFECTIVE DATE OF REPEAL

Pub. L. 104–7, §2(d), Apr. 11, 1995, 109 Stat. 93, provided that:

"(1) IN GENERAL.—The amendments made by this section [repealing this section and amending sections 1245 and 1250 of this title] shall apply to—

"(A) sales and exchanges on or after January 17, 1995, and

"(B) sales and exchanges before such date if the FCC tax certificate with respect to such sale or exchange is issued on or after such date.

"(2) BINDING CONTRACTS.—

"(A) IN GENERAL.—The amendments made by this section shall not apply to any sale or exchange pursuant to a written contract which was binding on January 16, 1995, and at all times thereafter before the sale or exchange, if the FCC tax certificate with respect to such sale or exchange was applied for, or issued, on or before such date.

"(B) SALES CONTINGENT ON ISSUANCE OF CERTIFICATE.—

"(i) IN GENERAL.—A contract shall be treated as not binding for purposes of subparagraph (A) if the sale or exchange pursuant to such contract, or the material terms of such contract, were contingent, at any time on January 16, 1995, on the issuance of an FCC tax certificate. The preceding sentence shall not apply if the FCC tax certificate for such sale or exchange is issued on or before January 16, 1995.

"(ii) MATERIAL TERMS.—For purposes of clause (i), the material terms of a contract shall not be treated as contingent on the issuance of an FCC tax certificate solely because such terms provide that the sales price would, if such certificate were not issued, be increased by an amount not greater than 10 percent of the sales price otherwise provided in the contract.

"(3) FCC TAX CERTIFICATE.—For purposes of this subsection, the term 'FCC tax certificate' means any certificate of the Federal Communications Commission for the effectuation of section 1071 of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act [Apr. 11, 1995])."

[PART VI—REPEALED]

[§§1081 to 1083. Repealed. Pub. L. 109–135, title IV, §402(a)(1), Dec. 21, 2005, 119 Stat. 2610]

Section 1081, acts Aug. 16, 1954, ch. 736, 68A Stat. 312; Pub. L. 94–455, title XIX, §§1901(a)(132), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1786, 1834, provided for nonrecognition of gain or loss on exchanges or distributions in obedience to orders of SEC.

Section 1082, acts Aug. 16, 1954, ch. 736, 68A Stat. 315; Pub. L. 91–172, title VII, §704(b)(3), Dec. 30, 1969, 83 Stat. 669; Pub. L. 92–178, title III, §303(c)(5), Dec. 10, 1971, 85 Stat. 522; Pub. L. 94–455, title XIX, §§1901(b)(11)(C), 1906(b)(13)(A), 1951(c)(2)(B), title XXI, §2124(a)(3)(C), Oct. 4, 1976, 90 Stat. 1795, 1834, 1840, 1917; Pub. L. 97–34, title II, §212(d)(2)(E), Aug. 13, 1981, 95 Stat. 239; Pub. L. 99–514, title II, §242(b)(1), Oct. 22, 1986, 100 Stat. 2181; Pub. L. 101–508, title XI, §11801(c)(6)(D), Nov. 5, 1990, 104 Stat. 1388–524, related to basis for determining gain or loss.

Section 1083, acts Aug. 16, 1954, ch. 736, 68A Stat. 317; Pub. L. 94–455, title XIX, §1901(a)(133), Oct. 4, 1976, 90 Stat. 1786, related to definitions for this part.

EFFECTIVE DATE OF REPEAL

Repeal effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109–58, to which it relates, but not applicable with respect to any transaction ordered in compliance with the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.) before that Act's repeal, see section 402(m) of Pub. L. 109–135, set out as an Effective and Termination Dates of 2005 Amendments note under section 23 of this title.

PART VII—WASH SALES; STRADDLES

Sec.
1091. Loss from wash sales of stock or securities.
1092. Straddles.

AMENDMENTS

1981—Pub. L. 97–34, title V, §501(d)(1), (2), Aug. 13, 1981, 95 Stat. 326, 327, substituted as part heading "WASH SALES; STRADDLES" for "WASH SALES OF STOCK OR SECURITIES" and added item 1092.

§1091. Loss from wash sales of stock or securities

(a) Disallowance of loss deduction

In the case of any loss claimed to have been sustained from any sale or other disposition of shares of stock or securities where it appears that, within a period beginning 30 days before the date of such sale or disposition and ending 30 days after such date, the taxpayer has acquired (by purchase or by

an exchange on which the entire amount of gain or loss was recognized by law), or has entered into a contract or option so to acquire, substantially identical stock or securities, then no deduction shall be allowed under section 165 unless the taxpayer is a dealer in stock or securities and the loss is sustained in a transaction made in the ordinary course of such business. For purposes of this section, the term "stock or securities" shall, except as provided in regulations, include contracts or options to acquire or sell stock or securities.

(b) Stock acquired less than stock sold

If the amount of stock or securities acquired (or covered by the contract or option to acquire) is less than the amount of stock or securities sold or otherwise disposed of, then the particular shares of stock or securities the loss from the sale or other disposition of which is not deductible shall be determined under regulations prescribed by the Secretary.

(c) Stock acquired not less than stock sold

If the amount of stock or securities acquired (or covered by the contract or option to acquire) is not less than the amount of stock or securities sold or otherwise disposed of, then the particular shares of stock or securities the acquisition of which (or the contract or option to acquire which) resulted in the nondeductibility of the loss shall be determined under regulations prescribed by the Secretary.

(d) Unadjusted basis in case of wash sale of stock

If the property consists of stock or securities the acquisition of which (or the contract or option to acquire which) resulted in the nondeductibility (under this section or corresponding provisions of prior internal revenue laws) of the loss from the sale or other disposition of substantially identical stock or securities, then the basis shall be the basis of the stock or securities so sold or disposed of, increased or decreased, as the case may be, by the difference, if any, between the price at which the property was acquired and the price at which such substantially identical stock or securities were sold or otherwise disposed of.

(e) Certain short sales of stock or securities and securities futures contracts to sell

Rules similar to the rules of subsection (a) shall apply to any loss realized on the closing of a short sale of (or the sale, exchange, or termination of a securities futures contract to sell) stock or securities if, within a period beginning 30 days before the date of such closing and ending 30 days after such date—

(1) substantially identical stock or securities were sold, or

(2) another short sale of (or securities futures contracts to sell) substantially identical stock or securities was entered into.

For purposes of this subsection, the term "securities futures contract" has the meaning provided by section 1234B(c).

(f) Cash settlement

This section shall not fail to apply to a contract or option to acquire or sell stock or securities solely by reason of the fact that the contract or option settles in (or could be settled in) cash or property other than such stock or securities.

(Aug. 16, 1954, ch. 736, 68A Stat. 319; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–369, div. A, title I, §106(a), (b), July 18, 1984, 98 Stat. 629; Pub. L. 100–647, title V, §5075(a), Nov. 10, 1988, 102 Stat. 3682; Pub. L. 106–554, §1(a)(7) [title IV, §401(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–649; Pub. L. 107–147, title IV, §412(d)(2), Mar. 9, 2002, 116 Stat. 53.)

AMENDMENTS

2002—Subsec. (e). Pub. L. 107–147 substituted "securities and securities futures contracts to sell" for "securities" in heading, inserted "(or the sale, exchange, or termination of a securities futures contract to sell)" after "closing of a short sale of" in introductory provisions and "(or securities futures contracts to sell)" after "short sale of" in par. (2), and inserted concluding provisions.

2000—Subsec. (f). Pub. L. 106–554 added subsec. (f).

1988—Subsec. (a). Pub. L. 100–647 inserted sentence at end defining "stock or securities".

1984—Subsec. (a). Pub. L. 98–369, §106(b), substituted "no deduction shall be allowed under section 165 unless the taxpayer is a dealer in stock or securities and the loss is sustained in a transaction made in the ordinary course of such business" for "no deduction for the loss shall be allowed under section 165(c)(2); nor shall such deduction be allowed a corporation under section 165(a) unless it is a dealer in stocks or securities, and the loss is sustained in a transaction made in the ordinary course of business".

Subsec. (e). Pub. L. 98–369, §106(a), added subsec. (e).

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Community Renewal Tax Relief Act of 2000 [H.R. 5662, as enacted by Pub. L. 106–554], to which such amendment relates, see section 412(e) of Pub. L. 107–147, set out as a note under section 151 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title V, §5075(b), Nov. 10, 1988, 102 Stat. 3682, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to any sale after the date of enactment of this Act [Nov. 10, 1988], in taxable years ending after such date."

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §106(c), July 18, 1984, 98 Stat. 629, provided that:

"(1) SUBSECTION (a).—The amendment made by subsection (a) [amending this section] shall apply to short sales of stock or securities after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.

"(2) SUBSECTION (b).—The amendment made by subsection (b) [amending this section] shall apply to sales after December 31, 1984, in taxable years ending after such date."

§1092. Straddles

(a) Recognition of loss in case of straddles, etc.

(1) Limitation on recognition of loss

(A) In general

Any loss with respect to 1 or more positions shall be taken into account for any taxable year only to the extent that the amount of such loss exceeds the unrecognized gain (if any) with respect to 1 or more positions which were offsetting positions with respect to 1 or more positions from which the loss arose.

(B) Carryover of loss

Any loss which may not be taken into account under subparagraph (A) for any taxable year shall, subject to the limitations under subparagraph (A), be treated as sustained in the succeeding taxable year.

(2) Special rule for identified straddles

(A) In general

In the case of any straddle which is an identified straddle—

(i) paragraph (1) shall not apply with respect to positions comprising the identified straddle,

(ii) if there is any loss with respect to any position of the identified straddle, the basis of each of the offsetting positions in the identified straddle shall be increased by an amount which bears the same ratio to the loss as the unrecognized gain with respect to such offsetting position bears to the aggregate unrecognized gain with respect to all such offsetting positions,

(iii) if the application of clause (ii) does not result in an increase in the basis of any offsetting position in the identified straddle, the basis of each of the offsetting positions in the identified straddle shall be increased in a manner which—

(I) is reasonable, consistent with the purposes of this paragraph, and consistently applied by the taxpayer, and

(II) results in an aggregate increase in the basis of such offsetting positions which is equal to the loss described in clause (ii), and

(iv) any loss described in clause (ii) shall not otherwise be taken into account for purposes of this title.

(B) Identified straddle

The term "identified straddle" means any straddle—

(i) which is clearly identified on the taxpayer's records as an identified straddle before the earlier of—

(I) the close of the day on which the straddle is acquired, or

(II) such time as the Secretary may prescribe by regulations.

(ii) to the extent provided by regulations, the value of each position of which (in the hands of the taxpayer immediately before the creation of the straddle) is not less than the basis of such position in the hands of the taxpayer at the time the straddle is created, and

(iii) which is not part of a larger straddle.

A straddle shall be treated as clearly identified for purposes of clause (i) only if such identification includes an identification of the positions in the straddle which are offsetting with respect [1] other positions in the straddle.

(C) Application to liabilities and obligations

Except as otherwise provided by the Secretary, rules similar to the rules of clauses (ii) and (iii) of subparagraph (A) shall apply for purposes of this paragraph with respect to any position which is, or has been, a liability or obligation.

(D) Regulations

The Secretary shall prescribe such regulations or other guidance as may be necessary or appropriate to carry out the purposes of this paragraph. Such regulations or other guidance may specify the proper methods for clearly identifying a straddle as an identified straddle (and for identifying the positions comprising such straddle), the rules for the application of this section to a taxpayer which fails to comply with those identification requirements, the rules for the application of this section to a position which is or has been a liability or obligation, methods of loss allocation which satisfy the requirements of subparagraph (A)(iii), and the ordering rules in cases where a taxpayer disposes (or otherwise ceases to be the holder) of any part of any position which is part of an identified straddle.

(3) Unrecognized gain

For purposes of this subsection—

(A) In general

The term "unrecognized gain" means—

(i) in the case of any position held by the taxpayer as of the close of the taxable year, the amount of gain which would be taken into account with respect to such position if such position were sold on the last business day of such taxable year at its fair market value, and

(ii) in the case of any position with respect to which, as of the close of the taxable year, gain has been realized but not recognized, the amount of gain so realized.

(B) Special rule for identified straddles

For purposes of paragraph (2)(A)(ii), the unrecognized gain with respect to any offsetting position shall be the excess of the fair market value of the position at the time of the determination over the fair market value of the position at the time the taxpayer identified the position as a position in an identified straddle.

(C) Reporting of gain

(i) In general

Each taxpayer shall disclose to the Secretary, at such time and in such manner and form as the Secretary may prescribe by regulations—

(I) each position (whether or not part of a straddle) with respect to which, as of the close of the taxable year, there is unrecognized gain, and

(II) the amount of such unrecognized gain.

(ii) Reports not required in certain cases

Clause (i) shall not apply—

(I) to any position which is part of an identified straddle,

(II) to any position which, with respect to the taxpayer, is property described in paragraph (1) or (2) of section 1221(a) or to any position which is part of a hedging transaction (as defined in section 1256(e)), or

(III) with respect to any taxable year if no loss on a position (including a regulated futures contract) has been sustained during such taxable year or if the only loss sustained on such position is a loss described in subclause (II).

(b) Regulations

(1) In general

The Secretary shall prescribe such regulations with respect to gain or loss on positions which are a part of a straddle as may be appropriate to carry out the purposes of this section and section 263(g). To the extent consistent with such purposes, such regulations shall include rules applying the principles of subsections (a) and (d) of section 1091 and of subsections (b) and (d) of section 1233.

(2) Regulations relating to mixed straddles

(A) Elective provisions in lieu of section 1233(d) principles

The regulations prescribed under paragraph (1) shall provide that—

(i) the taxpayer may offset gains and losses from positions which are part of mixed straddles—

(I) by straddle-by-straddle identification, or

(II) by the establishment (with respect to any class of activities) of a mixed straddle account for which gains and losses would be recognized (and offset) on a periodic basis,

(ii) such offsetting will occur before the application of section 1256, and section 1256(a)(3) will only apply to net gain or net loss attributable to section 1256 contracts, and

(iii) the principles of section 1233(d) shall not apply with respect to any straddle identified under clause (i)(I) or part of an account established under clause (i)(II).

(B) Limitation on net gain or net loss from mixed straddle account

In the case of any mixed straddle account referred to in subparagraph (A)(i)(II)—

(i) Not more than 50 percent of net gain may be treated as long-term capital gain

In no event shall more than 50 percent of the net gain from such account for any taxable year be treated as long-term capital gain.

(ii) Not more than 40 percent of net loss may be treated as short-term capital loss

In no event shall more than 40 percent of the net loss from such account for any taxable year be treated as short-term capital loss.

(C) Authority to treat certain positions as mixed straddles

The regulations prescribed under paragraph (1) may treat as a mixed straddle positions not described in section 1256(d)(4).

(D) Timing and character authority

The regulations prescribed under paragraph (1) shall include regulations relating to the timing and character of gains and losses in case of straddles where at least 1 position is ordinary and at least 1 position is capital.

(c) Straddle defined

For purposes of this section—

(1) In general

The term "straddle" means offsetting positions with respect to personal property.

(2) Offsetting positions

(A) In general

A taxpayer holds offsetting positions with respect to personal property if there is a substantial diminution of the taxpayer's risk of loss from holding any position with respect to personal property by reason of his holding 1 or more other positions with respect to personal property (whether or not of the same kind).

(B) Special rule for identified straddles

In the case of any position which is not part of an identified straddle (within the meaning of subsection (a)(2)(B)), such position shall not be treated as offsetting with respect to any position which is part of an identified straddle.

(3) Presumption

(A) In general

For purposes of paragraph (2), 2 or more positions shall be presumed to be offsetting if—

(i) the positions are in the same personal property (whether established in such property or a contract for such property),

(ii) the positions are in the same personal property, even though such property may be in a substantially altered form,

(iii) the positions are in debt instruments of a similar maturity or other debt instruments described in regulations prescribed by the Secretary,

(iv) the positions are sold or marketed as offsetting positions (whether or not such positions are called a straddle, spread, butterfly, or any similar name),

(v) the aggregate margin requirement for such positions is lower than the sum of the margin requirements for each such position (if held separately), or

(vi) there are such other factors (or satisfaction of subjective or objective tests) as the Secretary may by regulations prescribe as indicating that such positions are offsetting.

For purposes of the preceding sentence, 2 or more positions shall be treated as described in clause (i), (ii), (iii), or (vi) only if the value of 1 or more of such positions ordinarily varies inversely with the value of 1 or more other such positions.

(B) Presumption may be rebutted

Any presumption established pursuant to subparagraph (A) may be rebutted.

(4) Exception for certain straddles consisting of qualified covered call options and the optioned stock

(A) In general

If—

(i) all the offsetting positions making up any straddle consist of 1 or more qualified covered call options and the stock to be purchased from the taxpayer under such options, and

(ii) such straddle is not part of a larger straddle,

such straddle shall not be treated as a straddle for purposes of this section and section 263(g).

(B) Qualified covered call option defined

For purposes of subparagraph (A), the term "qualified covered call option" means any option granted by the taxpayer to purchase stock held by the taxpayer (or stock acquired by the taxpayer in connection with the granting of the option) but only if—

(i) such option is traded on a national securities exchange which is registered with the Securities and Exchange Commission or other market which the Secretary determines has rules adequate to carry out the purposes of this paragraph,

(ii) such option is granted more than 30 days before the day on which the option expires,

(iii) such option is not a deep-in-the-money option,

(iv) such option is not granted by an options dealer (within the meaning of section 1256(g)(8)) in connection with his activity of dealing in options, and

(v) gain or loss with respect to such option is not ordinary income or loss.

(C) Deep-in-the-money option

For purposes of subparagraph (B), the term "deep-in-the-money option" means an option having a strike price lower than the lowest qualified bench mark.

(D) Lowest qualified bench mark

(i) In general

Except as otherwise provided in this subparagraph, for purposes of subparagraph (C), the term "lowest qualified bench mark" means the highest available strike price which is less than the applicable stock price.

(ii) Special rule where option is for period more than 90 days and strike price exceeds $50

In the case of an option—

(I) which is granted more than 90 days before the date on which such option expires, and

(II) with respect to which the strike price is more than $50,

the lowest qualified bench mark is the second highest available strike price which is less than the applicable stock price.

(iii) 85 percent rule where applicable stock price $25 or less

If—

(I) the applicable stock price is $25 or less, and

(II) but for this clause, the lowest qualified bench mark would be less than 85 percent of the applicable stock price,

the lowest qualified bench mark shall be treated as equal to 85 percent of the applicable stock price.

(iv) Limitation where applicable stock price $150 or less

If—

(I) the applicable stock price is $150 or less, and

(II) but for this clause, the lowest qualified bench mark would be less than the applicable stock price reduced by $10,

the lowest qualified bench mark shall be treated as equal to the applicable stock price reduced by $10.

(E) Special year-end rule

Subparagraph (A) shall not apply to any straddle for purposes of section 1092(a) if—

(i) the qualified covered call options referred to in such subparagraph are closed or the stock is disposed of at a loss during any taxable year,

(ii) gain on disposition of the stock to be purchased from the taxpayer under such options

or gains on such options are includible in gross income for a later taxable year, and

(iii) such stock or option was not held by the taxpayer for 30 days or more after the closing of such options or the disposition of such stock.

For purposes of the preceding sentence, the rules of paragraphs (3) (other than subparagraph (B) [2] thereof) and (4) of section 246(c) shall apply in determining the period for which the taxpayer holds the stock.

(F) Strike price

For purposes of this paragraph, the term "strike price" means the price at which the option is exercisable.

(G) Applicable stock price

For purposes of subparagraph (D), the term "applicable stock price" means, with respect to any stock for which an option has been granted—

(i) the closing price of such stock on the most recent day on which such stock was traded before the date on which such option was granted, or

(ii) the opening price of such stock on the day on which such option was granted, but only if such price is greater than 110 percent of the price determined under clause (i).

(H) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this paragraph. Such regulations may include modifications to the provisions of this paragraph which are appropriate to take account of changes in the practices of option exchanges or to prevent the use of options for tax avoidance purposes.

(d) Definitions and special rules

For purposes of this section—

(1) Personal property

The term "personal property" means any personal property of a type which is actively traded.

(2) Position

The term "position" means an interest (including a futures or forward contract or option) in personal property.

(3) Special rules for stock

For purposes of paragraph (1)—

(A) In general

In the case of stock, the term "personal property" includes stock only if—

(i) such stock is of a type which is actively traded and at least 1 of the positions offsetting such stock is a position with respect to such stock or substantially similar or related property, or

(ii) such stock is of a corporation formed or availed of to take positions in personal property which offset positions taken by any shareholder.

(B) Rule for application

For purposes of determining whether subsection (e) applies to any transaction with respect to stock described in subparagraph (A)(ii), all includible corporations of an affiliated group (within the meaning of section 1504(a)) shall be treated as 1 taxpayer.

(4) Positions held by related persons, etc.

(A) In general

In determining whether 2 or more positions are offsetting, the taxpayer shall be treated as holding any position held by a related person.

(B) Related person

For purposes of subparagraph (A), a person is a related person to the taxpayer if with respect to any period during which a position is held by such person, such person—

(i) is the spouse of the taxpayer, or

(ii) files a consolidated return (within the meaning of section 1501) with the taxpayer for any taxable year which includes a portion of such period.

(C) Certain flowthrough entities

If part or all of the gain or loss with respect to a position held by a partnership, trust, or other entity would properly be taken into account for purposes of this chapter by a taxpayer, then, except to the extent otherwise provided in regulations, such position shall be treated as held by the taxpayer.

(5) Special rule for section 1256 contracts

(A) General rule

In the case of a straddle at least 1 (but not all) of the positions of which are section 1256 contracts, the provisions of this section shall apply to any section 1256 contract and any other position making up such straddle.

(B) Special rule for identified straddles

For purposes of subsection (a)(2) (relating to identified straddles), subparagraph (A) and section 1256(a)(4) shall not apply to a straddle all of the offsetting positions of which consist of section 1256 contracts.

(6) Section 1256 contract

The term "section 1256 contract" has the meaning given such term by section 1256(b).

(7) Special rules for foreign currency

(A) Position to include interest in certain debt

For purposes of paragraph (2), an obligor's interest in a nonfunctional currency denominated debt obligation is treated as a position in the nonfunctional currency.

(B) Actively traded requirement

For purposes of paragraph (1), foreign currency for which there is an active interbank market is presumed to be actively traded.

(8) Special rules for physically settled positions

For purposes of subsection (a), if a taxpayer settles a position which is part of a straddle by delivering property to which the position relates (and such position, if terminated, would result in a realization of a loss), then such taxpayer shall be treated as if such taxpayer—

(A) terminated the position for its fair market value immediately before the settlement, and

(B) sold the property so delivered by the taxpayer at its fair market value.

(e) Exception for hedging transactions

This section shall not apply in the case of any hedging transaction (as defined in section 1256(e)).

(f) Treatment of gain or loss and suspension of holding period where taxpayer grantor of qualified covered call option

If a taxpayer holds any stock and grants a qualified covered call option to purchase such stock with a strike price less than the applicable stock price—

(1) Treatment of loss

Any loss with respect to such option shall be treated as long-term capital loss if, at the time such loss is realized, gain on the sale or exchange of such stock would be treated as long-term capital gain.

(2) Suspension of holding period

The holding period of such stock shall not include any period during which the taxpayer is the grantor of such option.

(g) Cross reference

For provision requiring capitalization of certain interest and carrying charges where there is a straddle, see section 263(g).

(Added Pub. L. 97–34, title V, §501(a), Aug. 13, 1981, 95 Stat. 323; amended Pub. L. 97–448, title I, §105(a)(1)(A)–(C), (2)–(4), Jan. 12, 1983, 96 Stat. 2384, 2385; Pub. L. 98–369, div. A, title I, §§101(a)–(d), 102(e)(2), 103(a), 107(a), July 18, 1984, 98 Stat. 616–619, 624, 627, 629; Pub. L. 99–514, title III, §331(a), title XII, §1261(b), title XVIII, §§1808(c), 1899A(66), Oct. 22, 1986, 100 Stat. 2220, 2591, 2817, 2962; Pub. L. 100–647, title VI, §6130(c), Nov. 10, 1988, 102 Stat. 3719; Pub. L. 105–34, title XII, §1271(b)(9), Aug. 5, 1997, 111 Stat. 1037; Pub. L. 106–170, title V, §532(c)(1)(F), Dec. 17, 1999, 113 Stat. 1930; Pub. L. 106–554, §1(a)(7) [title IV, §401(e)], Dec. 21, 2000, 114 Stat. 2763, 2763A–649; Pub. L. 108–357, title VIII, §888(a)–(c)(1), Oct. 22, 2004, 118 Stat. 1642, 1643; Pub. L. 109–135, title IV, §403(ii), Dec. 21, 2005, 119 Stat. 2632; Pub. L. 110–172, §7(d), Dec. 29, 2007, 121 Stat. 2482.)

REFERENCES IN TEXT

Section 246(c)(3) of this title, referred to in subsec. (c)(4)(E), was amended by Pub. L. 105–34, title X, §1015(b)(2), Aug. 5, 1997, 111 Stat. 922, by striking out subpar. (B) and redesignating subpar. (C) as (B).

AMENDMENTS

2007—Subsec. (a)(2)(A)(i). Pub. L. 110–172, §7(d)(2)(B)(i), substituted "positions" for "identified positions".

Subsec. (a)(2)(A)(ii). Pub. L. 110–172, §7(d)(2)(B)(ii), (iii), substituted "any position" for "any identified position" and "the offsetting positions" for "the identified offsetting positions".

Pub. L. 110–172, §7(d)(1), struck out "and" at end.

Subsec. (a)(2)(A)(iii), (iv). Pub. L. 110–172, §7(d)(1), added cl. (iii) and redesignated former cl. (iii) as (iv).

Subsec. (a)(2)(B). Pub. L. 110–172, §7(d)(2)(A), inserted concluding provisions.

Subsec. (a)(2)(C), (D). Pub. L. 110–172, §7(d)(3), (4), added subpar. (C), redesignated former subpar. (C) as (D), and inserted "the rules for the application of this section to a position which is or has been a liability or obligation, methods of loss allocation which satisfy the requirements of subparagraph (A)(iii)," before "and the ordering rules" in subpar. (D).

Subsec. (a)(3)(B). Pub. L. 110–172, §7(d)(2)(C), substituted "offsetting position" for "identified offsetting position".

2005—Subsec. (a)(2). Pub. L. 109–135 added subpar. (C) and struck out concluding provisions of subpar. (B) which read as follows: "The Secretary shall prescribe regulations which specify the proper methods for clearly identifying a straddle as an identified straddle (and the positions comprising such straddle), which specify the rules for the application of this section for a taxpayer which fails to properly identify the positions of an identified straddle, and which specify the ordering rules in cases where a taxpayer disposes of less than an entire position which is part of an identified straddle."

2004—Subsec. (a)(2)(A). Pub. L. 108–357, §888(a)(1), reenacted heading without change and amended text of subpar. (A) generally. Prior to amendment, text read as follows: "In the case of any straddle which is an identified straddle as of the close of any taxable year—

"(i) paragraph (1) shall not apply for such taxable year, and

"(ii) any loss with respect to such straddle shall be treated as sustained not earlier than the day on which all of the positions making up the straddle are disposed of."

Subsec. (a)(2)(B). Pub. L. 108–357, §888(a)(2)(B), inserted concluding provisions.

Subsec. (a)(2)(B)(ii). Pub. L. 108–357, §888(a)(2)(A), added cl. (ii) and struck out former cl. (ii) which read as follows: "all of the original positions of which (as identified by the taxpayer) are acquired on the same day and with respect to which—

"(I) all of such positions are disposed of on the same day during the taxable year, or

"(II) none of such positions has been disposed of as of the close of the taxable year, and".

Subsec. (a)(3)(B), (C). Pub. L. 108–357, §888(a)(3), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (c)(2)(B), (C). Pub. L. 108–357, §888(a)(4), redesignated subpar. (C) as (B) and struck out heading and text of former subpar. (B). Text read as follows: "If 1 or more positions offset only a portion of 1 or more

other positions, the Secretary shall by regulations prescribe the method for determining the portion of such other positions which is to be taken into account for purposes of this section."

Subsec. (d)(3). Pub. L. 108–357, §888(c)(1), reenacted heading without change and amended text of par. (3) generally, substituting provisions directing that the term "personal property" includes stock only if it is of a certain type or of a certain type of corporation and setting forth rule for application of subsec. (e), for provisions directing that the term "personal property" includes any stock which is part of a straddle at least 1 of the offsetting positions of which is an option, a securities futures contract, or a position with respect to substantially similar or related property (other than stock), and of a certain type of corporation, and setting forth special rules relating to application of subsecs. (c), (d)(4), and (e).

Subsec. (d)(8). Pub. L. 108–357, §888(b), added par. (8).

2000—Subsec. (d)(3)(B)(i)(II), (III). Pub. L. 106–554 added subcl. (II) and redesignated former subcl. (II) as (III).

1999—Subsec. (a)(3)(B)(ii)(II). Pub. L. 106–170 substituted "1221(a)" for "1221".

1997—Subsec. (f)(2). Pub. L. 105–34 substituted "The" for "Except for purposes of section 851(b)(3), the".

1988—Subsec. (b)(2)(D). Pub. L. 100–647 added subpar. (D).

1986—Subsec. (c)(4)(E). Pub. L. 99–514, §331(a), in cl. (i), inserted "or the stock is disposed of at a loss", in cl. (ii), substituted "or gains on such options are" for "is", and in cl. (iii), inserted "or option" and "or the disposition of such stock".

Subsec. (d)(3)(A). Pub. L. 99–514, §1808(c), inserted at end "The preceding sentence shall not apply to any interest in stock."

Subsec. (d)(5), (6). Pub. L. 99–514, §1899A(66), amended directory language of section 101(b)(2) of Pub. L. 98–369 to clarify general amendment by sections 101(d) and 102(e) of Pub. L. 98–369. See 1984 Amendment notes below.

Subsec. (d)(7). Pub. L. 99–514, §1261(b), added par. (7).

1984—Subsec. (a)(2)(B)(i). Pub. L. 98–369, §107(a), designated existing provisions as subcl. (I) and added subcl. (II).

Subsec. (b). Pub. L. 98–369, §103(a), amended subsec. (b) generally, substituting provisions dealing with regulations for provisions dealing with character of gain or loss and wash sales.

Subsec. (c)(4). Pub. L. 98–369, §101(a)(2), added par. (4).

Subsec. (d)(1). Pub. L. 98–369, §101(b)(1), struck out "(other than stock)" before "of a type".

Subsec. (d)(2). Pub. L. 98–369, §101(a)(1), redesignated former subpar. (A) as entire par. (2), and struck out former subpar. (B) which provided that "position" includes any stock option which is a part of a straddle and which is an option to buy or sell stock which is actively traded, but does not include a stock option which (i) is traded on a domestic exchange or on a similar foreign exchange designated by the Secretary, and (ii) is of a type with respect to which the maximum period during which such option may be exercised is less than the minimum period for which a capital asset must be held for gain to be treated as long-term capital gain under section 1222(3).

Subsec. (d)(3), (4). Pub. L. 98–369, §101(b)(2), as amended by Pub. L. 99–514, §1899A(66), added par. (3) and redesignated former pars. (3) and (4) as (4) and (5), respectively.

Subsec. (d)(5). Pub. L. 98–369, §101(d), amended par. (4) generally, substituting provisions relating to special rules for section 1256 contracts for provisions relating to special rules for regulated futures contracts.

Pub. L. 98–369, §101(b)(2), as amended by Pub. L. 99–514, §1899A(66), redesignated former par. (4) as (5). Former par. (5) redesignated (6).

Subsec. (d)(6). Pub. L. 98–369, §102(e)(2), amended par. (5) generally, substituting references to section 1256 contracts for references to regulated futures contracts wherever appearing in heading and text.

Pub. L. 98–369, §101(b)(2), as amended by Pub. L. 99–514, §1899A(66), redesignated former par. (5) as (6).

Subsecs. (f), (g). Pub. L. 98–369, §101(c), added subsec. (f) and redesignated former subsec. (f) as (g).

1983—Subsec. (a)(1)(A). Pub. L. 97–448, §105(a)(1)(A), (2), substituted "unrecognized gain" for "unrealized gain" and "which were offsetting positions with respect to 1 or more positions from which the loss arose" for "which— (i) were acquired by the taxpayer before the disposition giving rise to such loss, (ii) were offsetting positions with respect to the 1 or more positions from which the loss arose, and (iii) were not part of an identified straddle as of the close of the taxable year".

Subsec. (a)(3). Pub. L. 97–448, §105(a)(1)(B), substituted "Unrecognized gain" for "Unrealized gain" in heading.

Subsec. (a)(3)(A). Pub. L. 97–448, §105(a)(1)(B), substituted "unrecognized gain" for "unrealized gain" as term defined, designated existing definition as cl. (i), and added cl. (ii).

Subsec. (a)(3)(B)(i)(I). Pub. L. 97–448, §105(a)(1)(C), substituted "with respect to which, as of the close of

the taxable year, there is unrecognized gain, and" for "which is held by such taxpayer as of the close of the taxable year and with respect to which there is unrealized gain, and".

Subsec. (a)(3)(B)(i)(II). Pub. L. 97–448, §105(a)(1)(C), substituted "unrecognized gain" for "unrealized gain".

Subsec. (c)(2)(C). Pub. L. 97–448, §105(a)(4), substituted "subsection (a)(2)(B)" for "subsection (a)(3)(B)".

Subsec. (d)(4). Pub. L. 97–448, §105(a)(3), substituted "a straddle at least 1 (but not all) of the positions of which are regulated futures contracts, the provisions of this section shall apply" for "a straddle— (A) at lease 1 (but not all) of the positions of which are regulated futures contracts, and (B) with respect to which the taxpayer has elected not to have the provisions of section 1256 apply, the provisions of this section shall apply".

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–172, §7(e), Dec. 29, 2007, 121 Stat. 2483, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 45, 45H, 179B, 280C, 470, 1016, and 6501 of this title] shall take effect as if included in the provisions of the American Jobs Creation Act of 2004 [Pub. L. 108–357] to which they relate.

"(2) IDENTIFICATION REQUIREMENT OF AMENDMENT RELATED TO SECTION 888 OF THE AMERICAN JOBS CREATION ACT OF 2004.—The amendment made by subsection (d)(2)(A) [amending this section] shall apply to straddles acquired after the date of the enactment of this Act [Dec. 29, 2007]."

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to positions established on or after Oct. 22, 2004, see section 888(e) of Pub. L. 108–357, set out as a note under section 246 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to taxable years beginning after Aug. 5, 1997, see section 1271(c) of Pub. L. 105–34, set out as a note under section 817 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 applicable with respect to forward contracts, future contracts, options, and similar instruments entered into or acquired after Oct. 21, 1988, see section 6130(d)(1) of Pub. L. 100–647, set out as a note under section 988 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title III, §331(b), Oct. 22, 1986, 100 Stat. 2221, provided that: "The amendments made by this section [amending this section] shall apply to positions established on or after January 1, 1987."

Amendment by section 1261(b) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1261(e) of Pub. L. 99–514, set out as an Effective Date note under section 985 of this title.

Amendment by section 1808(c) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §101(e), July 18, 1984, 98 Stat. 619, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section] shall apply to positions established after December 31, 1983, in taxable years ending after such date.

"(2) SPECIAL RULE FOR OFFSETTING POSITION STOCK.—In the case of any stock of a corporation

formed or availed of to take positions in personal property which offset positions taken by any shareholder, the amendments made by this section shall apply to positions established on or after May 23, 1983, in taxable years ending on or after such date.

"(3) SUBSECTION (c).—The amendment made by subsection (c) [amending this section] shall apply to positions established after June 30, 1984, in taxable years ending after such date.

"(4) SUBSECTION (d).—The amendment made by subsection (d) [amending this section] shall apply to positions established after the date of the enactment of this Act in taxable years ending after such date."

Amendment by section 102(e)(2) of Pub. L. 98–369 applicable to positions established after July 18, 1984, in taxable years ending after that date, except as otherwise provided, see section 102(f), (g) of Pub. L. 98–369, set out as a note under section 1256 of this title.

Pub. L. 98–369, div. A, title I, §103(b), (c), July 18, 1984, 98 Stat. 628, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(b) REQUIREMENT THAT REGULATIONS BE ISSUED WITHIN 6 MONTHS AFTER THE DATE OF ENACTMENT.—The Secretary of the Treasury or his delegate shall prescribe initial regulations under section 1092(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (including regulations relating to mixed straddles) not later than the date 6 months after the date of the enactment of this Act [July 18, 1984].

"(c) EFFECTIVE DATE OF REGULATIONS WITH RESPECT TO MIXED STRADDLES.—The regulations described in subsection (b) with respect to the application of section 1233 of the Internal Revenue Code of 1986 to mixed straddles shall not apply to mixed straddles all of the positions of which were established before January 1, 1984."

Pub. L. 98–369, div. A, title I, §107(e), July 18, 1984, 98 Stat. 630, provided that: "The amendments made by this section [amending this section and sections 1236 and 1256 of this title] shall apply to positions entered into after the date of the enactment of this Act [July 18, 1984], in taxable years ending after such date."

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE

Pub. L. 97–34, title V, §508, Aug. 13, 1981, 95 Stat. 333, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) IN GENERAL.—Except as otherwise provided in this section, the amendments made by this title [enacting this section and sections 1234A and 1256 of this title, amending sections 263, 341, 1212, 1221, 1231, 1232, 1233, 1236, and 6653 of this title, and enacting provisions set out as a note under section 1256 of this title] shall apply to property acquired and positions established by the taxpayer after June 23, 1981, in taxable years ending after such date.

"(b) IDENTIFICATION REQUIREMENTS.—

"(1) UNDER SECTION 1236 OF CODE.—The amendments made by section 506 [amending section 1236 of this title] shall apply to property acquired by the taxpayer after the date of the enactment of this Act [Aug. 13, 1981] in taxable years ending after such date.

"(2) UNDER SECTION 1256(e)(2)(C) OF CODE.—Section 1256(e)(2)(C) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this title) shall apply to property acquired and positions established by the taxpayer after December 31, 1981, in taxable years ending after such date.

"(c) ELECTION WITH RESPECT TO PROPERTY HELD ON JUNE 23, 1981.—If the taxpayer so elects (at such time and in such manner as the Secretary of the Treasury or his delegate shall prescribe) with respect to all regulated futures contracts or positions held by the taxpayer on June 23, 1981, the amendments made by this title shall apply to all such contracts and positions, effective for periods after such date in taxable years ending after such date. For purposes of the preceding sentence, the term 'regulated futures contract' has the meaning given to such term by section 1256(b) of the Internal Revenue Code of 1986, and the term 'position' has the meaning given to such term by section 1092(d)(2) of such Code."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TREATMENT OF CERTAIN LOSSES ON STRADDLES ENTERED INTO BEFORE EFFECTIVE

DATE OF ECONOMIC RECOVERY TAX ACT OF 1981

Pub. L. 98–369, div. A, title I, §108, July 18, 1984, 98 Stat. 630, as amended by Pub. L. 99–514, §2, title XVIII, §1808(d), Oct. 22, 1986, 100 Stat. 2095, 2817, provided that:

"(a) GENERAL RULE.—For purposes of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], in the case of any disposition of 1 or more positions—

"(1) which were entered into before 1982 and form part of a straddle, and

"(2) to which the amendments made by title V of the Economic Recovery Tax Act of 1981 [Pub. L. 97–34, see Effective Date note above] do not apply,

any loss from such disposition shall be allowed for the taxable year of the disposition if such loss is incurred in a trade or business, or if such loss is incurred in a transaction entered into for profit though not connected with a trade or business.

"(b) LOSS INCURRED IN A TRADE OR BUSINESS.—For purposes of subsection (a), any loss incurred by a commodities dealer in the trading of commodities shall be treated as a loss incurred in a trade or business.

"(c) NET LOSS ALLOWED.—If any loss with respect to a position described in paragraphs (1) and (2) of subsection (a) is not allowable as a deduction (after applying subsections (a) and (b)), such loss shall be allowed in determining the gain or loss from dispositions of other positions in the straddle to the extent required to accurately reflect the taxpayer's net gain or loss from all positions in such straddle.

"(d) OTHER RULES.—Except as otherwise provided in subsections (a) and (c) and in sections 1233 and 1234 of such Code, the determination of whether there is recognized gain or loss with respect to a position, and the amount and timing of such gain or loss, and the treatment of such gain or loss as long-term or short-term shall be made without regard to whether such position constitutes part of a straddle.

"(e) STRADDLE.—For purposes of this section, the term 'straddle' has the meaning given to such term by section 1092(c) of the Internal Revenue Code of 1986 as in effect on the day after the date of the enactment of the Economic Recovery Tax Act of 1981 [Aug. 13, 1981], and shall include a straddle all the positions of which are regulated futures contracts.

"(f) COMMODITIES DEALER.—For purposes of this section, the term 'commodities dealer' means any taxpayer who—

"(1) at any time before January 1, 1982, was an individual described in section 1402(i)(2)(B) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this subtitle), or

"(2) was a member of the family (within the meaning of section 704(e)(3) of such Code) of an individual described in paragraph (1) to the extent such member engaged in commodities trading through an organization the members of which consisted solely of—

"(A) 1 or more individuals described in paragraph (1), and

"(B) 1 or more members of the families (as so defined) of such individuals.

"(g) REGULATED FUTURES CONTRACTS.—For purposes of this section, the term 'regulated futures contracts' has the meaning given to such term by section 1256(b) of the Internal Revenue Code of 1986 (as in effect before the date of enactment of this Act [July 18, 1984]).

"(h) SYNDICATES.—For purposes of this section, any loss incurred by a person (other than a commodities dealer) with respect to an interest in a syndicate (within the meaning of section 1256(e)(3)(B) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) shall not be considered to be a loss incurred in a trade or business."

[1] So in original. Probably should be followed by "to".

[2] See References in Text note below.

[PART VIII—REPEALED]

[§§1101 to 1103. Repealed. Pub. L. 101–508, title XI, §11801(a)(34), Nov. 5, 1990, 104 Stat. 1388–521]

Section 1101, added May 9, 1956, ch. 240, §10(a), 70 Stat. 139; amended Oct. 2, 1976, Pub. L. 94–452, §2(a), 90 Stat. 1503; Oct. 4, 1976, Pub. L. 94–455, title XIX, §1906(b)(13)(A), 90 Stat. 1834; Oct. 19, 1982, Pub. L. 97–354, §5(a)(34), 96 Stat. 1695, related to distributions of property pursuant to Bank Holding

Company Act.

Section 1102, added May 9, 1956, ch. 240, §10(a), 70 Stat. 143; amended Dec. 27, 1967, Pub. L. 90–225, §1, 81 Stat. 730; Oct. 2, 1976, Pub. L. 94–452, §2(a), 90 Stat. 1508; Oct. 4, 1976, Pub. L. 94–455, title XIX, §1906(b)(13)(A), 90 Stat. 1834, related to basis of property acquired in distributions, periods of limitation, allocation of earnings and profits, and itemization of property.

Section 1103, added May 9, 1956, ch. 240, §10(a), 70 Stat. 144; amended Oct. 2, 1976, Pub. L. 94–452, §2(a), 90 Stat. 1509; Oct. 4, 1976, Pub. L. 94–455, title XIX, §1906(b)(13)(A), 90 Stat. 1834, related to definitions for this part.

SAVINGS PROVISION

For provisions that nothing in repeal by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

[PART IX—REPEALED]

[§1111. Repealed. Pub. L. 94–455, title XIX, §1901(a)(134), Oct. 4, 1976, 90 Stat. 1786]

Section, added Pub. L. 87–403, §1(a), Feb. 2, 1962, 76 Stat. 4, related to distribution of stock pursuant to order enforcing antitrust laws.

Subchapter P—Capital Gains and Losses

Part

I. Treatment of capital gains.
II. Treatment of capital losses.
III. General rules for determining capital gains and losses.
IV. Special rules for determining capital gains and losses.
V. Special rules for bonds and other debt instruments.
VI. Treatment of certain passive foreign investment companies.

AMENDMENTS

1986—Pub. L. 99–514, title XII, §1235(g), Oct. 22, 1986, 100 Stat. 2576, added item for part VI.

1984—Pub. L. 98–369, div. A, title I, §42(b)(1), July 18, 1984, 98 Stat. 557, added item for part V.

PART I—TREATMENT OF CAPITAL GAINS

Sec.

1201. Alternative tax for corporations.
1202. Partial exclusion for gain from certain small business stock.

AMENDMENTS

2000—Pub. L. 106–554, §1(a)(7) [title I, §117(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–604, substituted "Partial" for "50-percent" in item 1202.

1993—Pub. L. 103–66, title XIII, §13113(d)(6), Aug. 10, 1993, 107 Stat. 430, added item 1202.

1986—Pub. L. 99–514, title III, §301(b)(13), Oct. 22, 1986, 100 Stat. 2218, struck out item 1202 "Deduction for capital gains".

1978—Pub. L. 95–600, title IV, §401(b)(6), Nov. 6, 1978, 92 Stat. 2867, substituted "Alternative tax for corporations" for "Alternative tax" in item 1201.

§1201. Alternative tax for corporations

(a) General rule

If for any taxable year a corporation has a net capital gain and any rate of tax imposed by section 11, 511, or 831(a) or (b) (whichever is applicable) exceeds 35 percent (determined without regard to the last 2 sentences of section 11(b)(1)), then, in lieu of any such tax, there is hereby imposed a tax (if such tax is less than the tax imposed by such sections) which shall consist of the sum of—

(1) a tax computed on the taxable income reduced by the amount of the net capital gain, at the rates and in the manner as if this subsection had not been enacted, plus

(2) a tax of 35 percent of the net capital gain (or, if less, taxable income).

(b) Special rate for qualified timber gains

(1) In general

If, for any taxable year ending after the date of the enactment of the Food, Conservation, and Energy Act of 2008 and beginning on or before the date which is 1 year after such date, a corporation has both a net capital gain and qualified timber gain—

(A) subsection (a) shall apply to such corporation for the taxable year without regard to whether the applicable tax rate exceeds 35 percent, and

(B) the tax computed under subsection (a)(2) shall be equal to the sum of—

(i) 15 percent of the least of—

(I) qualified timber gain,

(II) net capital gain, or

(III) taxable income, plus

(ii) 35 percent of the excess (if any) of taxable income over the sum of the amounts for which a tax was determined under subsection (a)(1) and clause (i).

(2) Qualified timber gain

For purposes of this section, the term "qualified timber gain" means, with respect to any taxpayer for any taxable year, the excess (if any) of—

(A) the sum of the taxpayer's gains described in subsections (a) and (b) of section 631 for such year, over

(B) the sum of the taxpayer's losses described in such subsections for such year.

For purposes of subparagraphs (A) and (B), only timber held more than 15 years shall be taken into account.

(3) Computation for taxable years in which rate first applies or ends

In the case of any taxable year which includes either of the dates set forth in paragraph (1), the qualified timber gain for such year shall not exceed the qualified timber gain properly taken into account for—

(A) in the case of the taxable year including the date of the enactment of the Food, Conservation, and Energy Act of 2008, the portion of the year after such date, and

(B) in the case of the taxable year including the date which is 1 year after such date of enactment, the portion of the year on or before such later date.

(c) Cross references

For computation of the alternative tax—

(1) in the case of life insurance companies, see section 801(a)(2),

(2) in the case of regulated investment companies and their shareholders, see section 852(b)(3)(A) and (D), and

(3) in the case of real estate investment trusts, see section 857(b)(3)(A).

(Aug. 16, 1954, ch. 736, 68A Stat. 320; Mar. 13, 1956, ch. 83, §5(7), 70 Stat. 49; Pub. L. 86–69, §3(f)(2), June 25, 1959, 73 Stat. 140; Pub. L. 87–834, §8(g)(3), Oct. 16, 1962, 76 Stat. 999; Pub. L.

91–172, title V, §511(b), Dec. 30, 1969, 83 Stat. 635; Pub. L. 94–455, title XIX, §1901(a)(135), (b)(33)(L), Oct. 4, 1976, 90 Stat. 1786, 1801; Pub. L. 95–600, title IV, §§401(a), 403(a), (b), Nov. 6, 1978, 92 Stat. 2866, 2868; Pub. L. 96–222, title I, §104(a)(2)(B), (3)(A), Apr. 1, 1980, 94 Stat. 214, 215; Pub. L. 98–369, div. A, title II, §211(b)(16), July 18, 1984, 98 Stat. 756; Pub. L. 99–514, title III, §311(a), title X, §1024(c)(14), Oct. 22, 1986, 100 Stat. 2219, 2408; Pub. L. 100–647, title I, §1003(c)(1), title II, §2004(l), Nov. 10, 1988, 102 Stat. 3384, 3606; Pub. L. 103–66, title XIII, §13221(c)(2), Aug. 10, 1993, 107 Stat. 477; Pub. L. 104–188, title I, §1703(f), Aug. 20, 1996, 110 Stat. 1876; Pub. L. 105–34, title III, §314(a), Aug. 5, 1997, 111 Stat. 842; Pub. L. 110–234, title XV, §15311(a), May 22, 2008, 122 Stat. 1502; Pub. L. 110–246, §4(a), title XV, §15311(a), June 18, 2008, 122 Stat. 1664, 2264.)

REFERENCES IN TEXT

The date of the enactment of the Food, Conservation, and Energy Act of 2008, referred to in subsec. (b)(1), (3), is the date of enactment of Pub. L. 110–246, which was approved June 18, 2008.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2008—Subsecs. (b), (c). Pub. L. 110–246 added subsec. (b) and redesignated former subsec. (b) as (c).

1997—Subsec. (a)(2). Pub. L. 105–34 inserted "(or, if less, taxable income)" after "capital gain".

1996—Subsec. (a). Pub. L. 104–188 substituted "last 2 sentences" for "last sentence".

1993—Subsec. (a). Pub. L. 103–66 substituted "35 percent" for "34 percent" in introductory provisions and in par. (2).

1988—Subsec. (a). Pub. L. 100–647, §2004(l), substituted "section 11(b)(1)" for "section 11(b)".

Pub. L. 100–647, §1003(c)(1), substituted "section 831(a) or (b)" for "section 831(a)".

1986—Subsec. (a). Pub. L. 99–514, §1024(c)(14), which directed the amendment of subsec. (a) by substituting "831(a) or (b)" for "821(a) or (c) and 831(a)" could not be executed in view of amendment by section 311(a) of Pub. L. 99–514.

Pub. L. 99–514, §311(a), amended subsec. (a) generally. Prior to amendment, subsec. (a), corporations, read as follows: "If for any taxable year a corporation has a net capital gain, then, in lieu of the tax imposed by sections 11, 511, 821(a) or (c) and 831(a), there is hereby imposed a tax (if such tax is less than the tax imposed by such sections) which shall consist of the sum of—

"(1) a tax computed on the taxable income reduced by the amount of the net capital gain, at the rates and in the manner as if this subsection had not been enacted, plus

"(2) a tax of 28 percent of the net capital gain."

Subsec. (b). Pub. L. 99–514, §311(a), amended subsec. (b) generally, substituting a comma for the semicolon at end of par. (1) and after "852(b)(3)(A) and (D)" in par. (2).

Subsec. (c). Pub. L. 99–514, §311(a), in amending section generally, struck out subsec. (c), transitional rule, which read as follows: "If for any taxable year ending after December 31, 1978, and beginning before January 1, 1980, a corporation has a net capital gain, then subsection (a) shall be applied by substituting for the language of paragraph (2) the following:

"(2)(A) a tax of 28 percent of the lesser of—

"(i) the net capital gain for the taxable year, or

"(ii) the net capital gain taking into account only gain or loss properly taken into account for the portion of the taxable year after December 31, 1978, plus

"(B) a tax of 30 percent of the excess of—

"(i) the net capital gains for the taxable year, over

"(ii) the amount of net capital gain taken into account under subparagraph (A)."

1984—Subsec. (b)(1). Pub. L. 98–369 substituted "section 801(a)(2)" for "section 802(a)(2)".

1980—Subsec. (b). Pub. L. 96–222, §104(a)(2)(B)(i), substituted in subsec. (b), as subsec. (b) was in effect for taxable years beginning before Jan. 1, 1979, and prior to its repeal by Pub. L. 95–600 (see 1978 Amendment note below), "the excess of the net capital gain over the deduction under section 1202" for "50 percent of the net capital gain".

Subsec. (c). Pub. L. 96–222, §104(a)(3)(A), substituted in heading "Transitional rule" for "Taxable years which include January 1, 1979", in provisions preceding par. (2) "If for any taxable year ending after December 31, 1978, and beginning before January 1, 1980" for "If for any taxable year beginning before

January 1, 1979, and ending after December 31, 1978", and in par. (2)(A)(ii) "gain or loss properly taken into account for the portion of the taxable year" for "sales and exchanges".

Pub. L. 96–222, §104(a)(2)(B)(ii), substituted in subsec. (c), as subsec. (c) was in effect for taxable years beginning before Jan. 1, 1979, and prior to its repeal by Pub. L. 95–600 (see 1978 Amendment note below), "the excess of the net capital gain over the deduction under section 1202" for "50 percent of the net capital gain", redesignated cls. (A) and (B) as pars. (1) and (2), respectively, and in par. (2) as so redesignated, substituted "determined by multiplying the sum referred to in subsection (b)(2)(A) by a fraction" for "equal to 50 percent of the sum referred to in subsection (b)(2)(A)" and added subpars. (A) and (B).

1978—Pub. L. 95–600, §401(a)(3), inserted "for corporations" after "tax" in section catchline.

Subsec. (a)(2). Pub. L. 95–600, §403(a), substituted "28 percent" for "30 percent".

Subsec. (b). Pub. L. 95–600, §401(a)(1), (2), redesignated subsec. (d) as (b). Former subsec. (b), relating to imposition of the alternative tax on other taxpayers, was struck out. See 1980 Amendment note above.

Subsec. (c). Pub. L. 95–600, §§401(a)(1), 403(b), added subsec. (c). Former subsec. (c), which related to computation of the alternative tax where the capital gain exceeds $50,000, was struck out. See 1980 Amendment note above.

Subsec. (d). Pub. L. 95–600, §401(a)(2), redesignated subsec. (d) as (b).

1976—Subsec. (a). Pub. L. 94–455, §1901(a)(135)(A), substituted "net capital gain" for "net section 1201 gain" in three places, incorporated existing text in provisions designated par. (1), struck out prior par. (1) provision adding to the tax in the case of a taxable year beginning before Jan. 1, 1975—

(A) a tax of 25 percent of the lesser of—

(i) the amount of the subsec. (d) gain, or

(ii) the amount of the net section 1201 gain, and

(B) a tax of 30 percent (28 percent in the case of a taxable year beginning after Dec. 31, 1969, and before Jan. 1, 1971) of the excess (if any) of the net section 1201 gain over the subsec. (d) gain, and struck out from par. (2) introductory text "in the case of a taxable year beginning after December 31, 1974,".

Subsec. (b). Pub. L. 94–455, §1901(b)(33)(L), substituted "net capital gain" for "net section 1201 gain" in introductory text and in par. (1).

Subsec. (b)(2)(A). Pub. L. 94–455, §1901(a)(135)(C)(ii), substituted "the sum of the long-term capital gains for the taxable year, but not to exceed $50,000 ($25,000 in the case of a married individual filing a separate return)" for "the amount of the subsection (d) gain".

Subsec. (b)(2)(B). Pub. L. 94–455, §1901(b)(33)(L), substituted "net capital gain" for "net section 1201 gain".

Subsec. (b)(3). Pub. L. 94–455, §1901(a)(135)(C)(iii), (b)(33)(L), substituted "the sum referred to in subparagraph (A)" for "the amount of the subsection (d) gain" and "net capital gain" for "net section 1201 gain".

Subsec. (c). Pub. L. 94–455, §1901(a)(135)(B), substituted in heading "where capital gain exceeds $50,000" for "on capital gain in excess of subsection (d) gain", struck out par. (1) designation, substituted "net capital gain" for "net section 1201 gain" and "50 percent of the sum referred to in subsection (b)(2)(A)" for "50 percent of the subsection (d) gain", and struck out par. (2) limitation that the tax computed for purposes of subsec. (b) shall not exceed an amount equal to the following percentage of the excess of the net section 1201 gain over the subsec. (d) gain:

(A) 29½ percent, in the case of a taxable year beginning after Dec. 31, 1969, and before Jan. 1, 1971, or

(B) 32½ percent, in the case of a taxable year beginning after Dec. 31, 1971, and before Jan. 1, 1972.

Subsecs. (d), (e). Pub. L. 94–455, §1901(a)(135)(C)(i), redesignated subsec. (e) as (d) and struck out existing subsec. (d) defining "subsection (d) gain".

1969—Subsec. (a). Pub. L. 91–172 substituted reference to net section 1201 gain for reference to the excess of the net long-term capital gain of a corporation over the net short-term capital loss, substituted "a tax computed on the taxable income reduced by the amount of the net section 1201 gain" for "a partial tax computed on the taxable income reduced by the taxable income reduced by the amount of such excess," struck out reference to tax of an amount equal to 25 percent of excess or in the case of a taxable year beginning before Apr. 1, 1954 an amount equal to 26 percent of such excess without regard to section 21 of this title, and inserted, in the case of a taxable year beginning Jan. 1, 1975, a tax of 25 percent of the lesser of the amount of the subsec. (d) gain, or the amount of the net section 1201 gain, and a tax of 30 percent (28 percent in the case of a taxable year beginning after Dec. 31, 1969 and before Jan. 1, 1971) of the excess (if any) of the net section 1201 gain over the subsec. (d) gain, and in case of a taxable year beginning after Dec. 31, 1974, a tax of 30 percent of the net section 1201 gain.

Subsec. (b). Pub. L. 91–172 substituted reference to net section 1201 gain for reference to the excess of the

net long-term capital gain over the net short-term capital loss, substituted "a tax computed on the taxable income reduced by an amount equal to 50 percent of the net section 1201 gain" for "a partial tax computed on the taxable income reduced by an amount equal to 50 percent of such excess," struck out reference to tax of an amount equal to 25 percent of the excess of the net long-term capital gain over the net short-term capital loss, and inserted reference to a tax of 25 percent of the lesser of the amount of the subsec. (d) gain, or the amount of the net section 1201 gain, and if the amount of the net section 1201 gain exceeds the amount of the subsec. (d) gain, a tax computed as provided in subsec. (c) on such excess.

Subsec. (c). Pub. L. 91–172 added subsec. (c). Former subsec. (c) redesignated (e)(1).

Subsec (d). Pub. L. 91–172 added subsec. (d).

Subsec. (e). Pub. L. 91–172 redesignated former subsec. (c) as par. (1) and added pars. (2) and (3).

1962—Subsec. (a). Pub. L. 87–834 substituted "section 821(a) or (c)" for section 821(a)(1) or (b)".

1959—Subsec. (a). Pub. L. 86–69 struck out reference to section 802(a).

Subsec. (c). Pub. L. 86–69 added subsec. (c).

1956—Subsec. (a). Act Mar. 13, 1956, inserted reference to section 802(a).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by section 15311(a) of Pub. L. 110–246 applicable to taxable years ending after June 18, 2008, see section 15311(d) of Pub. L. 110–246, set out as a note under section 55 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title III, §314(b), Aug. 5, 1997, 111 Stat. 843, provided that: "The amendment made by this section [amending this section] shall apply to taxable years ending after December 31, 1997."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103–66, §§13001–13444, to which such amendment relates, see section 1703(o) of Pub. L. 104–188, set out as a note under section 39 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to taxable years beginning on or after Jan. 1, 1993, see section 13221(d) of Pub. L. 103–66, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1003(c)(1) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 2004(l) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title III, §311(c), Oct. 22, 1986, 100 Stat. 2219, as amended by Pub. L. 100–647, title I, §1003(c)(2), Nov. 10, 1988, 102 Stat. 3384, provided that: "The amendments made by subsections (a) and (b) [amending this section and sections 593, 631, 852, and 1445 of this title] shall apply to taxable years beginning after December 31, 1986; except that the amendment made by subsection (b)(4) [amending section 1445 of this title] shall apply to payments made after December 31, 1986."

Amendment by section 1024 of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1024(e) of Pub. L. 99–514, set out as a note under section 831 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 104(a)(3)(A) of Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment

relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

Pub. L. 96–222, title I, §104(b)(1), Apr. 1, 1980, 94 Stat. 218, provided that: "The amendments made by subsection (a)(2)(B) [amending this section] shall apply to taxable years beginning in 1978."

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title IV, §401(c), Nov. 6, 1978, 92 Stat. 2867, provided that: "The amendments made by this section [amending this section and sections 3, 5, 871, 911, and 1304 of this title] shall apply to taxable years beginning after December 31, 1978."

Pub. L. 95–600, title IV, §403(d)(1), Nov. 6, 1978, 92 Stat. 2869, provided that: "The amendments made by subsections (a) and (b) [amending this section] shall apply to taxable years ending after December 31, 1978."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title V, §511(d), Dec. 30, 1969, 83 Stat. 638, provided that: "The amendments made by this section [amending this section and sections 802, 852, 857, and 1378 of this title] shall apply to taxable years beginning after December 31, 1969."

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable with respect to taxable years beginning after Dec. 31, 1962, see section 8(h) of Pub. L. 87–834, set out as a note under section 501 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–69 applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 4 of Pub. L. 86–69, set out as a note under section 381 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Mar. 13, 1956, applicable only to taxable years beginning after Dec. 31, 1954, see section 6 of act Mar. 13, 1956, set out as a note under section 316 of this title.

TRANSITIONAL RULES

Pub. L. 99–514, title III, §311(d)(1), Oct. 22, 1986, 100 Stat. 2219, provided that:

"(1) TAXABLE YEARS WHICH BEGIN IN 1986 AND END IN 1987.—In the case of any taxable year which begins before January 1, 1987, and ends on or after such date, paragraph (2) of section 1201(a) of the Internal Revenue Code of 1954 [now 1986], as in effect on the date before the date of enactment of this Act [Oct. 22, 1986], shall be applied as if it read as follows:

" '(2) the sum of—

" '(A) 28 percent of the lesser of—

" '(i) the net capital gain determined by taking into account only gain or loss which is properly taken into account for the portion of the taxable year before January 1, 1987, or

" '(ii) the net capital gain for the taxable year, and

" '(B) 34 percent of the excess (if any) of—

" '(i) the net capital gain for the taxable year, over

" '(ii) the amount of the net capital gain taken into account under subparagraph (A).' "

RATE ON NET CAPITAL GAIN FOR PORTION OF 1981; 20-PERCENT MAXIMUM

Pub. L. 97–34, title I, §102, Aug. 13, 1981, 95 Stat. 186, as amended by Pub. L. 97–448, title I, §101(aa), Jan. 12, 1983, 96 Stat. 2366; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) IN GENERAL.—If for any taxable year ending after June 9, 1981, and beginning before January 1, 1982, a taxpayer other than a corporation has qualified net capital gain, then the tax imposed under section 1 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for such taxable year shall be equal to the lesser of—

"(1) the tax imposed under such section determined without regard to this subsection, or

"(2) the sum of—

"(A) the tax imposed under such section on the excess of—

"(i) the taxable income of the taxpayer, over

"(ii) 40 percent of the qualified net capital gain of the taxpayer, and

"(B) 20 percent of the qualified net capital gain.

"(b) APPLICATION WITH ALTERNATIVE MINIMUM TAX.—

"(1) IN GENERAL.—If subsection (a) applies to any taxpayer for any taxable year, then the amount determined under section 55(a)(1) of the Internal Revenue Code of 1986 for such taxable year shall be equal to the lesser of—

"(A) the amount determined under such section 55(a)(1) determined without regard to this subsection, or

"(B) the sum of—

"(i) the amount which would be determined under such section 55(a)(1) if the alternative minimum taxable income was the excess of—

"(I) the alternative minimum taxable income (within the meaning of section 55(b)(1) of such Code) of the taxpayer, over

"(II) the qualified net capital gain of the taxpayer, and

"(ii) 20 percent of the qualified net capital gain (or, if lesser, the alternative minimum taxable income within the meaning of section 55(b)(1) of such Code).

"(2) NO CREDITS ALLOWABLE.—For purposes of section 55(c) of such Code, no credit allowable under subpart A of part IV of subchapter A of chapter 1 of such Code [section 31 et seq. of this title] (other than section 33(a) of such Code) shall be allowable against the amount described in paragraph (1)(B)(ii).

"(c) QUALIFIED NET CAPITAL GAIN.—

"(1) IN GENERAL.—For purposes of this section, the term 'qualified net capital gain' means the lesser of—

"(A) the net capital gain for the taxable year, or

"(B) the net capital gain for the taxable year taking into account only gain or loss from sales or exchanges occurring after June 9, 1981.

"(2) NET CAPITAL GAIN.—For purposes of this subsection, the term 'net capital gain' has the meaning given such term by section 1222(11) of the Internal Revenue Code of 1986.

"(d) SPECIAL RULE FOR PASS-THRU ENTITIES.—

"(1) IN GENERAL.—In applying subsections (a), (b), and (c) with respect to any pass-thru entity, the determination of when a sale or exchange has occurred shall be made at the entity level.

"(2) PASS-THRU ENTITY DEFINED.—For purposes of paragraph (1), the term 'pass-thru entity' means—

"(A) a regulated investment company,

"(B) a real estate investment trust,

"(C) an electing small business corporation,

"(D) a partnership,

"(E) an estate or trust, and

"(F) a common trust fund."

SPECIAL RULE FOR PASS-THROUGH ENTITIES

Pub. L. 96–222, title I, §104(a)(2)(C), Apr. 1, 1980, 94 Stat. 215, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(i) IN GENERAL.—In applying sections 1201(c)(2)(A)(ii) and 1202(c)(1)(B) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] with respect to any pass-through entity, the determination of the period for which gain or loss is properly taken into account shall be made at the entity level.

"(ii) PASS-THROUGH ENTITY DEFINED.—For purposes of clause (i), the term 'pass-through entity' means—

"(I) a regulated investment company,

"(II) a real estate investment trust,

"(III) an electing small business corporation,

"(IV) a partnership,

"(V) an estate or trust, and

"(VI) a common trust fund."

STUDY OF EFFECTS OF CHANGES IN THE TAX TREATMENT OF CAPITAL GAINS ON STIMULATING INVESTMENT AND ECONOMIC GROWTH

Pub. L. 95–600, title V, §555, Nov. 6, 1978, 92 Stat. 2892, required the Secretary of the Treasury to submit to specific committees of Congress a report, not later than Sept. 30, 1981, respecting effects of changes in tax treatment of capital gains on stimulating investment and economic growth as a result of the enactment of title V of Pub. L. 95–600.

§1202. Partial exclusion for gain from certain small business stock

(a) Exclusion

(1) In general

In the case of a taxpayer other than a corporation, gross income shall not include 50 percent of any gain from the sale or exchange of qualified small business stock held for more than 5 years.

(2) Empowerment zone businesses

(A) In general

In the case of qualified small business stock acquired after the date of the enactment of this paragraph in a corporation which is a qualified business entity (as defined in section 1397C(b)) during substantially all of the taxpayer's holding period for such stock, paragraph (1) shall be applied by substituting "60 percent" for "50 percent".

(B) Certain rules to apply

Rules similar to the rules of paragraphs (5) and (7) of section 1400B(b) shall apply for purposes of this paragraph.

(C) Gain after 2018 not qualified

Subparagraph (A) shall not apply to gain attributable to periods after December 31, 2018.

(D) Treatment of DC zone

The District of Columbia Enterprise Zone shall not be treated as an empowerment zone for purposes of this paragraph.

(3) Special rules for 2009 and certain periods in 2010

In the case of qualified small business stock acquired after the date of the enactment of this paragraph and on or before the date of the enactment of the Creating Small Business Jobs Act of 2010—

(A) paragraph (1) shall be applied by substituting "75 percent" for "50 percent", and
(B) paragraph (2) shall not apply.

In the case of any stock which would be described in the preceding sentence (but for this sentence), the acquisition date for purposes of this subsection shall be the first day on which such stock was held by the taxpayer determined after the application of section 1223.

(4) 100 percent exclusion for stock acquired during certain periods in 2010, 2011, 2012, and 2013

In the case of qualified small business stock acquired after the date of the enactment of the Creating Small Business Jobs Act of 2010 and before January 1, 2014—

(A) paragraph (1) shall be applied by substituting "100 percent" for "50 percent",
(B) paragraph (2) shall not apply, and
(C) paragraph (7) of section 57(a) shall not apply.

In the case of any stock which would be described in the preceding sentence (but for this sentence), the acquisition date for purposes of this subsection shall be the first day on which such stock was held by the taxpayer determined after the application of section 1223.

(b) Per-issuer limitation on taxpayer's eligible gain

(1) In general

If the taxpayer has eligible gain for the taxable year from 1 or more dispositions of stock issued by any corporation, the aggregate amount of such gain from dispositions of stock issued by such corporation which may be taken into account under subsection (a) for the taxable year shall not exceed the greater of—

(A) $10,000,000 reduced by the aggregate amount of eligible gain taken into account by the taxpayer under subsection (a) for prior taxable years and attributable to dispositions of stock issued by such corporation, or

(B) 10 times the aggregate adjusted bases of qualified small business stock issued by such corporation and disposed of by the taxpayer during the taxable year.

For purposes of subparagraph (B), the adjusted basis of any stock shall be determined without regard to any addition to basis after the date on which such stock was originally issued.

(2) Eligible gain

For purposes of this subsection, the term "eligible gain" means any gain from the sale or exchange of qualified small business stock held for more than 5 years.

(3) Treatment of married individuals

(A) Separate returns

In the case of a separate return by a married individual, paragraph (1)(A) shall be applied by substituting "$5,000,000" for "$10,000,000".

(B) Allocation of exclusion

In the case of any joint return, the amount of gain taken into account under subsection (a) shall be allocated equally between the spouses for purposes of applying this subsection to subsequent taxable years.

(C) Marital status

For purposes of this subsection, marital status shall be determined under section 7703.

(c) Qualified small business stock

For purposes of this section—

(1) In general

Except as otherwise provided in this section, the term "qualified small business stock" means any stock in a C corporation which is originally issued after the date of the enactment of the Revenue Reconciliation Act of 1993, if—

(A) as of the date of issuance, such corporation is a qualified small business, and

(B) except as provided in subsections (f) and (h), such stock is acquired by the taxpayer at its original issue (directly or through an underwriter)—

(i) in exchange for money or other property (not including stock), or

(ii) as compensation for services provided to such corporation (other than services performed as an underwriter of such stock).

(2) Active business requirement; etc.

(A) In general

Stock in a corporation shall not be treated as qualified small business stock unless, during substantially all of the taxpayer's holding period for such stock, such corporation meets the active business requirements of subsection (e) and such corporation is a C corporation.

(B) Special rule for certain small business investment companies

(i) Waiver of active business requirement

Notwithstanding any provision of subsection (e), a corporation shall be treated as meeting the active business requirements of such subsection for any period during which such corporation qualifies as a specialized small business investment company.

(ii) Specialized small business investment company

For purposes of clause (i), the term "specialized small business investment company" means any eligible corporation (as defined in subsection (e)(4)) which is licensed to operate under section 301(d) of the Small Business Investment Act of 1958 (as in effect on May 13,

1993).

(3) Certain purchases by corporation of its own stock

(A) Redemptions from taxpayer or related person

Stock acquired by the taxpayer shall not be treated as qualified small business stock if, at any time during the 4-year period beginning on the date 2 years before the issuance of such stock, the corporation issuing such stock purchased (directly or indirectly) any of its stock from the taxpayer or from a person related (within the meaning of section 267(b) or 707(b)) to the taxpayer.

(B) Significant redemptions

Stock issued by a corporation shall not be treated as qualified business stock if, during the 2-year period beginning on the date 1 year before the issuance of such stock, such corporation made 1 or more purchases of its stock with an aggregate value (as of the time of the respective purchases) exceeding 5 percent of the aggregate value of all of its stock as of the beginning of such 2-year period.

(C) Treatment of certain transactions

If any transaction is treated under section 304(a) as a distribution in redemption of the stock of any corporation, for purposes of subparagraphs (A) and (B), such corporation shall be treated as purchasing an amount of its stock equal to the amount treated as such a distribution under section 304(a).

(d) Qualified small business

For purposes of this section—

(1) In general

The term "qualified small business" means any domestic corporation which is a C corporation if—

(A) the aggregate gross assets of such corporation (or any predecessor thereof) at all times on or after the date of the enactment of the Revenue Reconciliation Act of 1993 and before the issuance did not exceed $50,000,000,

(B) the aggregate gross assets of such corporation immediately after the issuance (determined by taking into account amounts received in the issuance) do not exceed $50,000,000, and

(C) such corporation agrees to submit such reports to the Secretary and to shareholders as the Secretary may require to carry out the purposes of this section.

(2) Aggregate gross assets

(A) In general

For purposes of paragraph (1), the term "aggregate gross assets" means the amount of cash and the aggregate adjusted bases of other property held by the corporation.

(B) Treatment of contributed property

For purposes of subparagraph (A), the adjusted basis of any property contributed to the corporation (or other property with a basis determined in whole or in part by reference to the adjusted basis of property so contributed) shall be determined as if the basis of the property contributed to the corporation (immediately after such contribution) were equal to its fair market value as of the time of such contribution.

(3) Aggregation rules

(A) In general

All corporations which are members of the same parent-subsidiary controlled group shall be treated as 1 corporation for purposes of this subsection.

(B) Parent-subsidiary controlled group

For purposes of subparagraph (A), the term "parent-subsidiary controlled group" means any

controlled group of corporations as defined in section 1563(a)(1), except that—

(i) "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears in section 1563(a)(1), and

(ii) section 1563(a)(4) shall not apply.

(e) Active business requirement

(1) In general

For purposes of subsection (c)(2), the requirements of this subsection are met by a corporation for any period if during such period—

(A) at least 80 percent (by value) of the assets of such corporation are used by such corporation in the active conduct of 1 or more qualified trades or businesses, and

(B) such corporation is an eligible corporation.

(2) Special rule for certain activities

For purposes of paragraph (1), if, in connection with any future qualified trade or business, a corporation is engaged in—

(A) start-up activities described in section 195(c)(1)(A),

(B) activities resulting in the payment or incurring of expenditures which may be treated as research and experimental expenditures under section 174, or

(C) activities with respect to in-house research expenses described in section 41(b)(4),

assets used in such activities shall be treated as used in the active conduct of a qualified trade or business. Any determination under this paragraph shall be made without regard to whether a corporation has any gross income from such activities at the time of the determination.

(3) Qualified trade or business

For purposes of this subsection, the term "qualified trade or business" means any trade or business other than—

(A) any trade or business involving the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, or any trade or business where the principal asset of such trade or business is the reputation or skill of 1 or more of its employees,

(B) any banking, insurance, financing, leasing, investing, or similar business,

(C) any farming business (including the business of raising or harvesting trees),

(D) any business involving the production or extraction of products of a character with respect to which a deduction is allowable under section 613 or 613A, and

(E) any business of operating a hotel, motel, restaurant, or similar business.

(4) Eligible corporation

For purposes of this subsection, the term "eligible corporation" means any domestic corporation; except that such term shall not include—

(A) a DISC or former DISC,

(B) a corporation with respect to which an election under section 936 is in effect or which has a direct or indirect subsidiary with respect to which such an election is in effect,

(C) a regulated investment company, real estate investment trust, or REMIC, and

(D) a cooperative.

(5) Stock in other corporations

(A) Look-thru in case of subsidiaries

For purposes of this subsection, stock and debt in any subsidiary corporation shall be disregarded and the parent corporation shall be deemed to own its ratable share of the subsidiary's assets, and to conduct its ratable share of the subsidiary's activities.

(B) Portfolio stock or securities

A corporation shall be treated as failing to meet the requirements of paragraph (1) for any

period during which more than 10 percent of the value of its assets (in excess of liabilities) consists of stock or securities in other corporations which are not subsidiaries of such corporation (other than assets described in paragraph (6)).

(C) Subsidiary

For purposes of this paragraph, a corporation shall be considered a subsidiary if the parent owns more than 50 percent of the combined voting power of all classes of stock entitled to vote, or more than 50 percent in value of all outstanding stock, of such corporation.

(6) Working capital

For purposes of paragraph (1)(A), any assets which—

(A) are held as a part of the reasonably required working capital needs of a qualified trade or business of the corporation, or

(B) are held for investment and are reasonably expected to be used within 2 years to finance research and experimentation in a qualified trade or business or increases in working capital needs of a qualified trade or business,

shall be treated as used in the active conduct of a qualified trade or business. For periods after the corporation has been in existence for at least 2 years, in no event may more than 50 percent of the assets of the corporation qualify as used in the active conduct of a qualified trade or business by reason of this paragraph.

(7) Maximum real estate holdings

A corporation shall not be treated as meeting the requirements of paragraph (1) for any period during which more than 10 percent of the total value of its assets consists of real property which is not used in the active conduct of a qualified trade or business. For purposes of the preceding sentence, the ownership of, dealing in, or renting of real property shall not be treated as the active conduct of a qualified trade or business.

(8) Computer software royalties

For purposes of paragraph (1), rights to computer software which produces active business computer software royalties (within the meaning of section 543(d)(1)) shall be treated as an asset used in the active conduct of a trade or business.

(f) Stock acquired on conversion of other stock

If any stock in a corporation is acquired solely through the conversion of other stock in such corporation which is qualified small business stock in the hands of the taxpayer—

(1) the stock so acquired shall be treated as qualified small business stock in the hands of the taxpayer, and

(2) the stock so acquired shall be treated as having been held during the period during which the converted stock was held.

(g) Treatment of pass-thru entities

(1) In general

If any amount included in gross income by reason of holding an interest in a pass-thru entity meets the requirements of paragraph (2)—

(A) such amount shall be treated as gain described in subsection (a), and

(B) for purposes of applying subsection (b), such amount shall be treated as gain from a disposition of stock in the corporation issuing the stock disposed of by the pass-thru entity and the taxpayer's proportionate share of the adjusted basis of the pass-thru entity in such stock shall be taken into account.

(2) Requirements

An amount meets the requirements of this paragraph if—

(A) such amount is attributable to gain on the sale or exchange by the pass-thru entity of stock which is qualified small business stock in the hands of such entity (determined by treating

such entity as an individual) and which was held by such entity for more than 5 years, and

(B) such amount is includible in the gross income of the taxpayer by reason of the holding of an interest in such entity which was held by the taxpayer on the date on which such pass-thru entity acquired such stock and at all times thereafter before the disposition of such stock by such pass-thru entity.

(3) Limitation based on interest originally held by taxpayer

Paragraph (1) shall not apply to any amount to the extent such amount exceeds the amount to which paragraph (1) would have applied if such amount were determined by reference to the interest the taxpayer held in the pass-thru entity on the date the qualified small business stock was acquired.

(4) Pass-thru entity

For purposes of this subsection, the term "pass-thru entity" means—

(A) any partnership,

(B) any S corporation,

(C) any regulated investment company, and

(D) any common trust fund.

(h) Certain tax-free and other transfers

For purposes of this section—

(1) In general

In the case of a transfer described in paragraph (2), the transferee shall be treated as—

(A) having acquired such stock in the same manner as the transferor, and

(B) having held such stock during any continuous period immediately preceding the transfer during which it was held (or treated as held under this subsection) by the transferor.

(2) Description of transfers

A transfer is described in this subsection if such transfer is—

(A) by gift,

(B) at death, or

(C) from a partnership to a partner of stock with respect to which requirements similar to the requirements of subsection (g) are met at the time of the transfer (without regard to the 5-year holding period requirement).

(3) Certain rules made applicable

Rules similar to the rules of section 1244(d)(2) shall apply for purposes of this section.

(4) Incorporations and reorganizations involving nonqualified stock

(A) In general

In the case of a transaction described in section 351 or a reorganization described in section 368, if qualified small business stock is exchanged for other stock which would not qualify as qualified small business stock but for this subparagraph, such other stock shall be treated as qualified small business stock acquired on the date on which the exchanged stock was acquired.

(B) Limitation

This section shall apply to gain from the sale or exchange of stock treated as qualified small business stock by reason of subparagraph (A) only to the extent of the gain which would have been recognized at the time of the transfer described in subparagraph (A) if section 351 or 368 had not applied at such time. The preceding sentence shall not apply if the stock which is treated as qualified small business stock by reason of subparagraph (A) is issued by a corporation which (as of the time of the transfer described in subparagraph (A)) is a qualified small business.

(C) Successive application

For purposes of this paragraph, stock treated as qualified small business stock under

subparagraph (A) shall be so treated for subsequent transactions or reorganizations, except that the limitation of subparagraph (B) shall be applied as of the time of the first transfer to which such limitation applied (determined after the application of the second sentence of subparagraph (B)).

(D) Control test

In the case of a transaction described in section 351, this paragraph shall apply only if, immediately after the transaction, the corporation issuing the stock owns directly or indirectly stock representing control (within the meaning of section 368(c)) of the corporation whose stock was exchanged.

(i) Basis rules

For purposes of this section—

(1) Stock exchanged for property

In the case where the taxpayer transfers property (other than money or stock) to a corporation in exchange for stock in such corporation—

(A) such stock shall be treated as having been acquired by the taxpayer on the date of such exchange, and

(B) the basis of such stock in the hands of the taxpayer shall in no event be less than the fair market value of the property exchanged.

(2) Treatment of contributions to capital

If the adjusted basis of any qualified small business stock is adjusted by reason of any contribution to capital after the date on which such stock was originally issued, in determining the amount of the adjustment by reason of such contribution, the basis of the contributed property shall in no event be treated as less than its fair market value on the date of the contribution.

(j) Treatment of certain short positions

(1) In general

If the taxpayer has an offsetting short position with respect to any qualified small business stock, subsection (a) shall not apply to any gain from the sale or exchange of such stock unless—

(A) such stock was held by the taxpayer for more than 5 years as of the first day on which there was such a short position, and

(B) the taxpayer elects to recognize gain as if such stock were sold on such first day for its fair market value.

(2) Offsetting short position

For purposes of paragraph (1), the taxpayer shall be treated as having an offsetting short position with respect to any qualified small business stock if—

(A) the taxpayer has made a short sale of substantially identical property,

(B) the taxpayer has acquired an option to sell substantially identical property at a fixed price, or

(C) to the extent provided in regulations, the taxpayer has entered into any other transaction which substantially reduces the risk of loss from holding such qualified small business stock.

For purposes of the preceding sentence, any reference to the taxpayer shall be treated as including a reference to any person who is related (within the meaning of section 267(b) or 707(b)) to the taxpayer.

(k) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this section, including regulations to prevent the avoidance of the purposes of this section through split-ups, shell corporations, partnerships, or otherwise.

(Added Pub. L. 103–66, title XIII, §13113(a), Aug. 10, 1993, 107 Stat. 422; amended Pub. L.

104–188, title I, §1621(b)(7), Aug. 20, 1996, 110 Stat. 1867; Pub. L. 106–554, §1(a)(7) [title I, §117(a), (b)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–604; Pub. L. 108–357, title VIII, §835(b)(9), Oct. 22, 2004, 118 Stat. 1594; Pub. L. 111–5, div. B, title I, §1241(a), Feb. 17, 2009, 123 Stat. 342; Pub. L. 111–240, title II, §2011(a), (b), Sept. 27, 2010, 124 Stat. 2554; Pub. L. 111–312, title VII, §§753(b), 760(a), Dec. 17, 2010, 124 Stat. 3321, 3323; Pub. L. 112–240, title III, §§324(a), (b), 327(b), Jan. 2, 2013, 126 Stat. 2333, 2334.)

REFERENCES IN TEXT

The date of the enactment of this paragraph, referred to in subsec. (a)(2)(A), is the date of enactment of Pub. L. 106–554, which was approved Dec. 21, 2000.

The date of the enactment of this paragraph, referred to in subsec. (a)(3), is the date of enactment of Pub. L. 111–5, which was approved Feb. 17, 2009.

The date of the enactment of the Creating Small Business Jobs Act of 2010, referred to in subsec. (a)(3), (4), is the date of enactment of Pub. L. 111–240, which was approved Sept. 27, 2010.

The date of the enactment of the Revenue Reconciliation Act of 1993, referred to in subsecs. (c)(1) and (d)(1)(A), is the date of enactment of Pub. L. 103–66, which was approved Aug. 10, 1993.

Section 301(d) of the Small Business Investment Act of 1958, referred to in subsec. (c)(2)(B)(ii), was classified to section 681(d) of Title 15, Commerce and Trade, prior to repeal by Pub. L. 104–208, div. D, title II, §208(b)(3)(A), Sept. 30, 1996, 110 Stat. 3009–742.

PRIOR PROVISIONS

A prior section 1202, acts Aug. 16, 1954, ch. 736, 68A Stat. 320; Oct. 4, 1976, Pub. L. 94–455, title XIX, §1901(b)(33)(M), 90 Stat. 1802; Nov. 6, 1978, Pub. L. 95–600, title IV, §402(a), 92 Stat. 2867; Apr. 1, 1980, Pub. L. 96–222, title I, §104(a)(2)(A), 94 Stat. 214, authorized deduction for capital gains, prior to repeal by Pub. L. 99–514, title III, §301(a), (c), Oct. 22, 1986, 100 Stat. 2216, 2218, applicable to taxable years beginning after Dec. 31, 1986.

AMENDMENTS

2013—Subsec. (a)(2)(C). Pub. L. 112–240, §327(b), substituted "2018" for "2016" in heading and "December 31, 2018" for "December 31, 2016" in text.

Subsec. (a)(3). Pub. L. 112–240, §324(b)(1), inserted concluding provisions.

Subsec. (a)(4). Pub. L. 112–240, §324(b)(2), inserted concluding provisions.

Pub. L. 112–240, §324(a), substituted ", 2011, 2012, and 2013" for "and 2011" in heading and "January 1, 2014" for "January 1, 2012" in introductory provisions.

2010—Subsec. (a)(2)(C). Pub. L. 111–312, §753(b), substituted "2016" for "2014" in heading and "December 31, 2016" for "December 31, 2014" in text.

Subsec. (a)(3). Pub. L. 111–240, §2011(b), inserted "certain periods in" before "2010" in heading and substituted "on or before the date of the enactment of the Creating Small Business Jobs Act of 2010" for "before January 1, 2011" in text.

Subsec. (a)(4). Pub. L. 111–312, §760(a), inserted "and 2011" after "2010" in heading and substituted "January 1, 2012" for "January 1, 2011" in introductory provisions.

Pub. L. 111–240, §2011(a), added par. (4).

2009—Subsec. (a)(3). Pub. L. 111–5 added par. (3).

2004—Subsec. (e)(4)(C). Pub. L. 108–357 substituted "or REMIC" for "REMIC, or FASIT".

2000—Pub. L. 106–554, §1(a)(7) [title I, §117(b)(2)], substituted "Partial" for "50-percent" in section catchline.

Subsec. (a). Pub. L. 106–554, §1(a)(7) [title I, §117(a)], amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: "In the case of a taxpayer other than a corporation, gross income shall not include 50 percent of any gain from the sale or exchange of qualified small business stock held for more than 5 years."

1996—Subsec. (e)(4)(C). Pub. L. 104–188 substituted "REMIC, or FASIT" for "or REMIC".

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title III, §324(c), Jan. 2, 2013, 126 Stat. 2333, provided that:

"(1) IN GENERAL.—The amendments made by subsection (a) [amending this section] shall apply to stock acquired after December 31, 2011.

"(2) SUBSECTION (B)(1).—The amendment made by subsection (b)(1) [amending this section] shall take effect as if included in section 1241(a) of division B of the American Recovery and Reinvestment Act of 2009

[Pub. L. 111–5].

"(3) SUBSECTION (B)(2).—The amendment made by subsection (b)(2) [amending this section] shall take effect as if included in section 2011(a) of the Creating Small Business Jobs Act of 2010 [title II of Pub. L. 111–240]."

Pub. L. 112–240, title III, §327(d), Jan. 2, 2013, 126 Stat. 2334, provided that: "The amendments made by this section [amending this section and section 1391 of this title] shall apply to periods after December 31, 2011."

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §753(d), Dec. 17, 2010, 124 Stat. 3321, provided that: "The amendments made by this section [amending this section and section 1391 of this title] shall apply to periods after December 31, 2009."

Pub. L. 111–312, title VII, §760(b), Dec. 17, 2010, 124 Stat. 3323, provided that: "The amendments made by this section [amending this section] shall apply to stock acquired after December 31, 2010."

Pub. L. 111–240, title II, §2011(c), Sept. 27, 2010, 124 Stat. 2554, provided that: "The amendments made by this section [amending this section] shall apply to stock acquired after the date of the enactment of this Act [Sept. 27, 2010]."

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, §1241(b), Feb. 17, 2009, 123 Stat. 342, provided that: "The amendment made by this section [amending this section] shall apply to stock acquired after the date of the enactment of this Act [Feb. 17, 2009]."

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 effective Jan. 1, 2005, with exception for any FASIT in existence on Oct. 22, 2004, to the extent that regular interests issued by the FASIT before such date continue to remain outstanding in accordance with the original terms of issuance, see section 835(c) of Pub. L. 108–357, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 applicable to stock acquired after Dec. 21, 2000, see section 1(a)(7) [title I, §117(c)] of Pub. L. 106–554, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective Sept. 1, 1997, see section 1621(d) of Pub. L. 104–188, set out as a note under section 26 of this title.

EFFECTIVE DATE

Section applicable to stock issued after Aug. 10, 1993, see section 13113(e) of Pub. L. 103–66, set out as an Effective Date of 1993 Amendment note under section 53 of this title.

PART II—TREATMENT OF CAPITAL LOSSES

Sec.
1211. Limitation on capital losses.
1212. Capital loss carrybacks and carryovers.

AMENDMENTS

1969—Pub. L. 91–172, title V, §512(f)(2), Dec. 30, 1969, 83 Stat. 641, substituted "carrybacks and carryovers" for "carryover" in item 1212.

§1211. Limitation on capital losses

(a) Corporations

In the case of a corporation, losses from sales or exchanges of capital assets shall be allowed only to the extent of gains from such sales or exchanges.

(b) Other taxpayers

In the case of a taxpayer other than a corporation, losses from sales or exchanges of capital assets shall be allowed only to the extent of the gains from such sales or exchanges, plus (if such losses exceed such gains) the lower of—

(1) $3,000 ($1,500 in the case of a married individual filing a separate return), or

(2) the excess of such losses over such gains.

(Aug. 16, 1954, ch. 736, 68A Stat. 321; Pub. L. 91–172, title V, §513(a), Dec. 30, 1969, 83 Stat. 642; Pub. L. 94–455, title V, §501(b)(6), title XIV, §1401(a), (b), Oct. 4, 1976, 90 Stat. 1559, 1731; Pub. L. 95–30, title I, §102(b)(14), May 23, 1977, 91 Stat. 138; Pub. L. 99–514, title III, §301(b)(10), Oct. 22, 1986, 100 Stat. 2217.)

AMENDMENTS

1986—Subsec. (b). Pub. L. 99–514 amended subsec. (b) generally, substituting present provisions for provisions which had declared in: par. (1), general rule for limitation on capital losses for taxpayer other than corporation; in par. (2), meaning of term "applicable amount"; and in par. (3), rule relating to computation of taxable income.

1977—Subsec. (b)(1)(A). Pub. L. 95–30 inserted "reduced (but not below zero) by the zero bracket amount" after "taxable year".

1976—Subsec. (b)(1)(B). Pub. L. 94–455, §1401(a), substituted "the applicable amount" for "$1,000".

Subsec. (b)(2). Pub. L. 94–455, §1401(b), substituted provision relating to "applicable amount" for prior provision limiting amount of capital losses for married individuals and reading "In the case of a husband or wife who files a separate return, the amount specified in paragraph (1)(B) shall be $500 in lieu of $1,000."

Subsec. (b)(3). Pub. L. 94–455, §501(b)(6), struck out last sentence "If the taxpayer elects to pay the optional tax imposed by section 3, 'taxable income' as used in this subsection shall read as 'adjusted gross income'."

1969—Subsec. (b). Pub. L. 91–172 provided for only 50 percent of an individual's long-term capital losses to be offset against his ordinary income up to the $1,000 limit although short-term capital losses continue to be fully deductible within the $1,000 limit and the deduction of capital losses against ordinary income for married persons filing separate returns to be limited to $500 for each spouse rather than the $1,000 formerly allowed.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 301(c) of Pub. L. 99–514, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 501(b)(6) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, see section 508 of Pub. L. 94–455, set out as a note under section 3 of this title.

Pub. L. 94–455, title XIV, §1401(c), Oct. 4, 1976, 90 Stat. 1731, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1976."

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title V, §513(d), Dec. 30, 1969, 83 Stat. 643, provided that: "The amendments made by this section [amending this section and sections 1212 and 1222 of this title] shall apply to taxable years beginning after December 31, 1969."

§1212. Capital loss carrybacks and carryovers

(a) Corporations

(1) In general

If a corporation has a net capital loss for any taxable year (hereinafter in this paragraph referred

to as the "loss year"), the amount thereof shall be—

(A) a capital loss carryback to each of the 3 taxable years preceding the loss year, but only to the extent—

(i) such loss is not attributable to a foreign expropriation capital loss, and

(ii) the carryback of such loss does not increase or produce a net operating loss (as defined in section 172(c)) for the taxable year to which it is being carried back;

(B) except as provided in subparagraph (C), a capital loss carryover to each of the 5 taxable years succeeding the loss year; and

(C) a capital loss carryover to each of the 10 taxable years succeeding the loss year, but only to the extent such loss is attributable to a foreign expropriation loss,

and shall be treated as a short-term capital loss in each such taxable year. The entire amount of the net capital loss for any taxable year shall be carried to the earliest of the taxable years to which such loss may be carried, and the portion of such loss which shall be carried to each of the other taxable years to which such loss may be carried shall be the excess, if any, of such loss over the total of the capital gain net income for each of the prior taxable years to which such loss may be carried. For purposes of the preceding sentence, the capital gain net income for any such prior taxable year shall be computed without regard to the net capital loss for the loss year or for any taxable year thereafter. In the case of any net capital loss which cannot be carried back in full to a preceding taxable year by reason of clause (ii) of subparagraph (A), the capital gain net income for such prior taxable year shall in no case be treated as greater than the amount of such loss which can be carried back to such preceding taxable year upon the application of such clause (ii).

(2) Definitions and special rules

(A) Foreign expropriation capital loss defined

For purposes of this subsection, the term "foreign expropriation capital loss" means, for any taxable year, the sum of the losses taken into account in computing the net capital loss for such year which are—

(i) losses sustained directly by reason of the expropriation, intervention, seizure, or similar taking of property by the government of any foreign country, any political subdivision thereof, or any agency or instrumentality of the foregoing, or

(ii) losses (treated under section 165(g)(1) as losses from the sale or exchange of capital assets) from securities which become worthless by reason of the expropriation, intervention, seizure, or similar taking of property by the government of any foreign country, any political subdivision thereof, or any agency or instrumentality of the foregoing.

(B) Portion of loss attributable to foreign expropriation capital loss

For purposes of paragraph (1), the portion of any net capital loss for any taxable year attributable to a foreign expropriation capital loss is the amount of the foreign expropriation capital loss for such year (but not in excess of the net capital loss for such year).

(C) Priority of application

For purposes of paragraph (1), if a portion of a net capital loss for any taxable year is attributable to a foreign expropriation capital loss, such portion shall be considered to be a separate net capital loss for such year to be applied after the other portion of such net capital loss.

(3) Regulated investment companies

(A) In general

If a regulated investment company has a net capital loss for any taxable year—

(i) paragraph (1) shall not apply to such loss,

(ii) the excess of the net short-term capital loss over the net long-term capital gain for such year shall be a short-term capital loss arising on the first day of the next taxable year, and

(iii) the excess of the net long-term capital loss over the net short-term capital gain for such year shall be a long-term capital loss arising on the first day of the next taxable year.

(B) Coordination with general rule

If a net capital loss to which paragraph (1) applies is carried over to a taxable year of a regulated investment company—

(i) Losses to which this paragraph applies

Clauses (ii) and (iii) of subparagraph (A) shall be applied without regard to any amount treated as a short-term capital loss under paragraph (1).

(ii) Losses to which general rule applies

Paragraph (1) shall be applied by substituting "net capital loss for the loss year or any taxable year thereafter (other than a net capital loss to which paragraph (3)(A) applies)" for "net capital loss for the loss year or any taxable year thereafter".

(4) Special rules on carrybacks

A net capital loss of a corporation shall not be carried back under paragraph (1)(A) to a taxable year—

(A) for which it is a regulated investment company (as defined in section 851), or

(B) for which it is a real estate investment trust (as defined in section 856).

(b) Other taxpayers

(1) In general

If a taxpayer other than a corporation has a net capital loss for any taxable year—

(A) the excess of the net short-term capital loss over the net long-term capital gain for such year shall be a short-term capital loss in the succeeding taxable year, and

(B) the excess of the net long-term capital loss over the net short-term capital gain for such year shall be a long-term capital loss in the succeeding taxable year.

(2) Treatment of amounts allowed under section 1211(b)(1) or (2)

(A) In general

For purposes of determining the excess referred to in subparagraph (A) or (B) of paragraph (1), there shall be treated as a short-term capital gain in the taxable year an amount equal to the lesser of—

(i) the amount allowed for the taxable year under paragraph (1) or (2) of section 1211(b), or

(ii) the adjusted taxable income for such taxable year.

(B) Adjusted taxable income

For purposes of subparagraph (A), the term "adjusted taxable income" means taxable income increased by the sum of—

(i) the amount allowed for the taxable year under paragraph (1) or (2) of section 1211(b), and

(ii) the deduction allowed for such year under section 151 or any deduction in lieu thereof.

For purposes of the preceding sentence, any excess of the deductions allowed for the taxable year over the gross income for such year shall be taken into account as negative taxable income.

(c) Carryback of losses from section 1256 contracts to offset prior gains from such contracts

(1) In general

If a taxpayer (other than a corporation) has a net section 1256 contracts loss for the taxable year and elects to have this subsection apply to such taxable year, the amount of such net section 1256 contracts loss—

(A) shall be a carryback to each of the 3 taxable years preceding the loss year, and

(B) to the extent that, after the application of paragraphs (2) and (3), such loss is allowed as a carryback to any such preceding taxable year—

(i) 40 percent of the amount so allowed shall be treated as a short-term capital loss from section 1256 contracts, and

(ii) 60 percent of the amount so allowed shall be treated as a long-term capital loss from section 1256 contracts.

(2) Amount carried to each taxable year

The entire amount of the net section 1256 contracts loss for any taxable year shall be carried to the earliest of the taxable years to which such loss may be carried back under paragraph (1). The portion of such loss which shall be carried to each of the 2 other taxable years to which such loss may be carried back shall be the excess (if any) of such loss over the portion of such loss which, after the application of paragraph (3), was allowed as a carryback for any prior taxable year.

(3) Amount which may be used in any prior taxable year

An amount shall be allowed as a carryback under paragraph (1) to any prior taxable year only to the extent—

(A) such amount does not exceed the net section 1256 contract gain for such year, and

(B) the allowance of such carryback does not increase or produce a net operating loss (as defined in section 172(c)) for such year.

(4) Net section 1256 contracts loss

For purposes of paragraph (1), the term "net section 1256 contracts loss" means the lesser of—

(A) the net capital loss for the taxable year determined by taking into account only gains and losses from section 1256 contracts, or

(B) the sum of the amounts which, but for paragraph (6)(A), would be treated as capital losses in the succeeding taxable year under subparagraphs (A) and (B) of subsection (b)(1).

(5) Net section 1256 contract gain

For purposes of paragraph (1)—

(A) In general

The term "net section 1256 contract gain" means the lesser of—

(i) the capital gain net income for the taxable year determined by taking into account only gains and losses from section 1256 contracts, or

(ii) the capital gain net income for the taxable year.

(B) Special rule

The net section 1256 contract gain for any taxable year before the loss year shall be computed without regard to the net section 1256 contracts loss for the loss year or for any taxable year thereafter.

(6) Coordination with carryforward provisions of subsection (b)(1)

(A) Carryforward amount reduced by amount used as carryback

For purposes of applying subsection (b)(1), if any portion of the net section 1256 contracts loss for any taxable year is allowed as a carryback under paragraph (1) to any preceding taxable year—

(i) 40 percent of the amount allowed as a carryback shall be treated as a short-term capital gain for the loss year, and

(ii) 60 percent of the amount allowed as a carryback shall be treated as a long-term capital gain for the loss year.

(B) Carryover loss retains character as attributable to section 1256 contract

Any amount carried forward as a short-term or long-term capital loss to any taxable year under subsection (b)(1) (after the application of subparagraph (A)) shall, to the extent attributable to losses from section 1256 contracts, be treated as loss from section 1256 contracts

for such taxable year.

(7) Other definitions and special rules

For purposes of this subsection—

(A) Section 1256 contract

The term "section 1256 contract" means any section 1256 contract (as defined in section 1256(b)) to which section 1256 applies.

(B) Exclusion for estates and trusts

This subsection shall not apply to any estate or trust.

(Aug. 16, 1954, ch. 736, 68A Stat. 321; Pub. L. 88–272, title II, §230(a), Feb. 26, 1964, 78 Stat. 99; Pub. L. 88–571, §7(a), Sept. 2, 1964, 78 Stat. 860; Pub. L. 91–172, title V, §§512 (a), (b), (f)(1), 513(b), Dec. 30, 1969, 83 Stat. 638, 639, 641, 642; Pub. L. 94–455, title XIV, §1403 (a), title XIX, §1901(b)(33)(O), Oct. 4, 1976, 90 Stat. 1733, 1802; Pub. L. 95–600, title VII, §703(k), Nov. 6, 1978, 92 Stat. 2942; Pub. L. 97–34, title V, §504, Aug. 13, 1981, 95 Stat. 330; Pub. L. 97–354, §5(a)(35), Oct. 19, 1982, 96 Stat. 1695; Pub. L. 97–448, title I, §105(c)(7), Jan. 12, 1983, 96 Stat. 2387; Pub. L. 98–369, div. A, title I, §102(e)(3), title X, §1002(a), July 18, 1984, 98 Stat. 624, 1012; Pub. L. 99–514, title III, §301(b)(11), title XVIII, §1899A(67), Oct. 22, 1986, 100 Stat. 2218, 2962; Pub. L. 100–647, title I, §1003(a)(3), Nov. 10, 1988, 102 Stat. 3382; Pub. L. 108–357, title IV, §413(c)(20)(A), Oct. 22, 2004, 118 Stat. 1509; Pub. L. 111–325, title I, §101(a), (b)(1), Dec. 22, 2010, 124 Stat. 3538.)

AMENDMENTS

2010—Subsec. (a)(1)(C). Pub. L. 111–325, §101(b)(1), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: "a capital loss carryover—

"(i) in the case of a regulated investment company (as defined in section 851) to each of the 8 taxable years succeeding the loss year, and

"(ii) to the extent such loss is attributable to a foreign expropriation capital loss, to each of the 10 taxable years succeeding the loss year."

Subsec. (a)(3), (4). Pub. L. 111–325, §101(a), added par. (3) and redesignated former par. (3) as (4).

2004—Subsec. (a)(3). Pub. L. 108–357 reenacted heading without change and amended text of par. (3) generally. Prior to amendment, par. (3) provided that a net capital loss of a corporation would not be carried back under par. (1)(A) to a taxable year for which it was a foreign personal holding company (as defined in section 552), for which it was a regulated investment company (as defined in section 851), for which it was a real estate investment trust (as defined in section 856), or for which an election made by it under section 1247 was applicable (relating to election by foreign investment companies to distribute income currently).

1988—Subsec. (b)(2). Pub. L. 100–647 substituted "Treatment of amounts allowed under section 1211(b)(1) or (2)" for "Special rule" as heading and amended text generally. Prior to amendment, text read as follows: "For purposes of determining the excess referred to in subparagraph (A) or (B) of paragraph (1), an amount equal to the amount allowed for the taxable year under paragraph (1) or (2) of section 1211(b) shall be treated as a short-term capital gain in such year."

1986—Subsec. (b)(2). Pub. L. 99–514, §301(b)(11), amended par. (2) generally. Prior to amendment, par. (2), special rules, read as follows:

"(A) For purposes of determining the excess referred to in paragraph (1)(A), an amount equal to the amount allowed for the taxable year under section 1211(b)(1)(A), (B), or (C) shall be treated as a short-term capital gain in such year.

"(B) For purposes of determining the excess referred to in paragraph (1)(B), an amount equal to the sum of—

"(i) the amount allowed for the taxable year under section 1211(b)(1)(A), (B), or (C), and

"(ii) the excess of the amount described in clause (i) over the net short-term capital loss (determined without regard to this subsection) for such year,

shall be treated as a short-term capital gain in such year."

Subsec. (c)(6)(B), (7)(A). Pub. L. 99–514, §1899A(67), amended directory language of Pub. L. 98–369, §102(e)(3)(C), resulting in amendment of subsec. (c)(6)(B). See 1984 Amendment note below.

1984—Subsec. (b)(3). Pub. L. 98–369, §1002(a), struck out par. (3) which read as follows: "In the case of any amount which, under paragraph (1) and section 1211(b) (as in effect for taxable years beginning before

January 1, 1970), is treated as a capital loss in the first taxable year beginning after December 31, 1969, paragraph (1) and section 1211(b) (as in effect for taxable years beginning before January 1, 1970) shall apply (and paragraph (1) and section 1211(b) as in effect for taxable years beginning after December 31, 1969, shall not apply) to the extent such amount exceeds the total of any net capital gains (determined without regard to this subsection) of taxable years beginning after December 31, 1969."

Subsec. (c). Pub. L. 98–369, §102(e)(3)(A), (B), substituted "net section 1256 contracts loss" for "net commodity futures loss" and "section 1256 contracts" for "regulated futures contracts" wherever appearing.

Subsec. (c)(3)(A), (5). Pub. L. 98–369, §102(e)(3)(D), substituted "net section 1256 contract gain" for "net commodity futures gain" wherever appearing.

Subsec. (c)(6)(B), (7)(A). Pub. L. 98–369, §102(e)(3)(C), as amended by Pub. L. 99–514, §1899A(67), substituted "section 1256 contract" for "regulated futures contract" wherever appearing.

1983—Subsec. (c)(4)(A). Pub. L. 97–448 struck out "and positions to which section 1256 applies" after "losses from regulated futures contracts".

1982—Subsec. (a)(3), (4). Pub. L. 97–354 struck out par. (3) relating to electing small business corporations, and redesignated par. (4) as (3).

1981—Subsec. (c). Pub. L. 97–34 added subsec. (c).

1978—Subsec. (a)(1)(C)(ii). Pub. L. 95–600 substituted "succeeding the loss year" for "exceeding the loss year".

1976—Subsec. (a)(1). Pub. L. 94–455, §§1403(a), 1901(b)(33)(O), in subpar. (B) inserted introductory text "except as provided in subparagraph (C)," and struck out "(10) taxable years to the extent such loss is attributable to a foreign expropriation capital loss)" after "5 taxable years" and added subpar. (C), and substituted "capital gain net income" for "net capital gains", "net capital gain" and "net capital gain" in last three sentences, respectively.

1969—Pub. L. 91–172, §512(f)(1), substituted "carrybacks and carryovers" for "carryover" in section catchline.

Subsec. (a)(1). Pub. L. 91–172, §512(a), provided for a 3-year capital loss carryback for corporations, not available for foreign expropriation capital losses for which a special 10-year carryforward is presently available, in addition to the 5–year capital loss carryforward presently allowed corporations, to the extent the carryback of such loss does not increase or produce a net operating loss for the taxable year to which it is being carried back.

Subsec. (a)(3), (4). Pub. L. 91–172, §512(b), added pars. (3) and (4).

Subsec. (b). Pub. L. 91–172, §513(b), struck out reference to Dec. 31, 1963, struck out determination of a short-term capital gain as an amount equal to the excess allowed for the taxable year under former section 1211(b) over the gains from sales or exchanges of capital assets, struck out par. (2) treating as a short-term capital loss in the first taxable year beginning after Dec. 31, 1963, any amount which is treated as a short-term capital loss in such year under this subchapter as in effect immediately before the enactment of the Revenue Act of 1964, added new par. (2) dealing with special rules for determining the excesses referred to in par. (1)(A) and par. (1)(B) and added par. (3).

1964—Subsec. (a). Pub. L. 88–571 provided that if any portion of a net capital loss is attributable to a foreign expropriation capital loss, such portion shall be a short-term capital loss in each of the 10 succeeding taxable years, defined foreign expropriation capital loss, stated what portion of loss is attributable to foreign expropriation capital loss and the priority of application of the net capital loss, and struck out provisions that net capital losses for taxable years beginning before Oct. 20, 1951, were to be determined under the applicable law relating to the computation of capital gains and losses in effect before such date.

Pub. L. 88–272 designated existing provisions as subsec. (a), limited such subsection to corporations, and added subsec. (b).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–325, title I, §101(c), Dec. 22, 2010, 124 Stat. 3538, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 1222 of this title] shall apply to net capital losses for taxable years beginning after the date of the enactment of this Act [Dec. 22, 2010].

"(2) COORDINATION RULES.—Subparagraph (B) of section 1212(a)(3) of the Internal Revenue Code of 1986, as added by this section, shall apply to taxable years beginning after the date of the enactment of this Act."

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title IV, §413(c)(20)(B), Oct. 22, 2004, 118 Stat. 1509, provided that: "The amendment

made by subparagraph (A) [amending this section] shall apply to taxable years beginning after December 31, 2004."

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 301(b)(11) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 301(c) of Pub. L. 99–514, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 102(e)(3) of Pub. L. 98–369 applicable to positions established after July 18, 1984, in taxable years after that date, except as otherwise provided, see section 102(f), (g) of Pub. L. 98–369, set out as a note under section 1256 of this title.

Pub. L. 98–369, div. A, title X, §1002(b), July 18, 1984, 98 Stat. 1012, provided that: "The repeal made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1986."

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to property acquired and positions established by the taxpayer after June 23, 1981, in taxable years ending after such date, and applicable when so elected with respect to property held on June 23, 1981, see section 508 of Pub. L. 97–34, set out as an Effective Date note under section 1092 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 effective Oct. 4, 1976, see section 703(r) of Pub. L. 95–600, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XIV, §1403(b), Oct. 4, 1976, 90 Stat. 1733, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by this section [amending this section] shall apply to loss years (within the meaning of section 1212(a)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) ending on or after January 1, 1970."

Amendment by section 1901(b)(33)(O) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title V, §512(g), Dec. 30, 1969, 83 Stat. 642, provided that: "The amendments made by this section [amending this section and sections 246, 381, 481, 535, 1314, 6411, 6501, 6511, 6601, and 6611 of this title] shall apply with respect to net capital losses sustained in taxable years beginning after December 31, 1969."

Amendment by section 513(b) of Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 513(d) of Pub. L. 91–172, set out as a note under section 1211 of this title.

EFFECTIVE DATE OF 1964 AMENDMENTS

Pub. L. 88–571, §7(b), Sept. 2, 1964, 78 Stat. 861, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to net capital losses (to the extent attributable to foreign expropriation capital losses, as defined in section 1212(a)(2)(A) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) sustained in taxable years ending after December 31, 1958."

Pub. L. 88–272, title II, §230(c), Feb. 26, 1964, 78 Stat. 100, provided that: "The amendments made by this section [amending this section and section 1222 of this title] shall apply to taxable years beginning after December 31, 1963."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

ELECTION NOT TO CARRYBACK CERTAIN NET CAPITAL LOSSES

Pub. L. 91–688, §3, Jan. 12, 1971, 84 Stat. 2073, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) For purposes of applying section 1212(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by section 512 of the Tax Reform Act of 1969) in the case of a corporation which makes an election under subsection (b), any net capital loss sustained in a taxable year beginning after December 31, 1969, may not be carried back to any taxable year beginning before January 1, 1970, for which it was subject to taxation under section 802 of such Code [section 802 of this title], if the carryback of such loss would result in an increase in such corporation's income tax liability for any such taxable year.

"(b) An election to have the provisions of subsection (a) apply shall be made by a corporation—

"(1) in such form and manner as the Secretary of the Treasury or his delegate may prescribe, and

"(2) not later than the time prescribed by law for filing a claim for credit or refund of overpayment of income tax for the first taxable year beginning after December 31, 1969, in which such corporation sustains a net capital loss.

"(c) The Secretary of the Treasury or his delegate shall prescribe such regulations as he determines necessary to carry out the purposes of this section."

PART III—GENERAL RULES FOR DETERMINING CAPITAL GAINS AND LOSSES

Sec.

1221. Capital asset defined.

1222. Other items relating to capital gains and losses.[1]

1223. Holding period of property.

[1] *So in original. Does not conform to section catchline.*

§1221. Capital asset defined

(a) In general

For purposes of this subtitle, the term "capital asset" means property held by the taxpayer (whether or not connected with his trade or business), but does not include—

(1) stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business;

(2) property, used in his trade or business, of a character which is subject to the allowance for depreciation provided in section 167, or real property used in his trade or business;

(3) a copyright, a literary, musical, or artistic composition, a letter or memorandum, or similar property, held by—

(A) a taxpayer whose personal efforts created such property,

(B) in the case of a letter, memorandum, or similar property, a taxpayer for whom such property was prepared or produced, or

(C) a taxpayer in whose hands the basis of such property is determined, for purposes of determining gain from a sale or exchange, in whole or part by reference to the basis of such property in the hands of a taxpayer described in subparagraph (A) or (B);

(4) accounts or notes receivable acquired in the ordinary course of trade or business for services rendered or from the sale of property described in paragraph (1);

(5) a publication of the United States Government (including the Congressional Record) which is received from the United States Government or any agency thereof, other than by purchase at the price at which it is offered for sale to the public, and which is held by—

(A) a taxpayer who so received such publication, or

(B) a taxpayer in whose hands the basis of such publication is determined, for purposes of determining gain from a sale or exchange, in whole or in part by reference to the basis of such publication in the hands of a taxpayer described in subparagraph (A);

(6) any commodities derivative financial instrument held by a commodities derivatives dealer, unless—

(A) it is established to the satisfaction of the Secretary that such instrument has no connection to the activities of such dealer as a dealer, and

(B) such instrument is clearly identified in such dealer's records as being described in subparagraph (A) before the close of the day on which it was acquired, originated, or entered into (or such other time as the Secretary may by regulations prescribe);

(7) any hedging transaction which is clearly identified as such before the close of the day on which it was acquired, originated, or entered into (or such other time as the Secretary may by regulations prescribe); or

(8) supplies of a type regularly used or consumed by the taxpayer in the ordinary course of a trade or business of the taxpayer.

(b) Definitions and special rules

(1) Commodities derivative financial instruments

For purposes of subsection (a)(6)—

(A) Commodities derivatives dealer

The term "commodities derivatives dealer" means a person which [1] regularly offers to enter into, assume, offset, assign, or terminate positions in commodities derivative financial instruments with customers in the ordinary course of a trade or business.

(B) Commodities derivative financial instrument

(i) In general

The term "commodities derivative financial instrument" means any contract or financial instrument with respect to commodities (other than a share of stock in a corporation, a beneficial interest in a partnership or trust, a note, bond, debenture, or other evidence of indebtedness, or a section 1256 contract (as defined in section 1256(b))), the value or settlement price of which is calculated by or determined by reference to a specified index.

(ii) Specified index

The term "specified index" means any one or more or any combination of—

(I) a fixed rate, price, or amount, or

(II) a variable rate, price, or amount,

which is based on any current, objectively determinable financial or economic information with

respect to commodities which is not within the control of any of the parties to the contract or instrument and is not unique to any of the parties' circumstances.

(2) Hedging transaction

(A) In general

For purposes of this section, the term "hedging transaction" means any transaction entered into by the taxpayer in the normal course of the taxpayer's trade or business primarily—

(i) to manage risk of price changes or currency fluctuations with respect to ordinary property which is held or to be held by the taxpayer,

(ii) to manage risk of interest rate or price changes or currency fluctuations with respect to borrowings made or to be made, or ordinary obligations incurred or to be incurred, by the taxpayer, or

(iii) to manage such other risks as the Secretary may prescribe in regulations.

(B) Treatment of nonidentification or improper identification of hedging transactions

Notwithstanding subsection (a)(7), the Secretary shall prescribe regulations to properly characterize any income, gain, expense, or loss arising from a transaction—

(i) which is a hedging transaction but which was not identified as such in accordance with subsection (a)(7), or

(ii) which was so identified but is not a hedging transaction.

(3) Sale or exchange of self-created musical works

At the election of the taxpayer, paragraphs (1) and (3) of subsection (a) shall not apply to musical compositions or copyrights in musical works sold or exchanged by a taxpayer described in subsection (a)(3).

(4) Regulations

The Secretary shall prescribe such regulations as are appropriate to carry out the purposes of paragraph (6) and (7) of subsection (a) in the case of transactions involving related parties.

(Aug. 16, 1954, ch. 736, 68A Stat. 321; Pub. L. 91–172, title V, §514(a), Dec. 30, 1969, 83 Stat. 643; Pub. L. 94–455, title XIX, §1901(c)(9), title XXI, §2132(a), Oct. 4, 1976, 90 Stat. 1803, 1925; Pub. L. 97–34, title V, §505(a), Aug. 13, 1981, 95 Stat. 331; Pub. L. 106–170, title V, §532(a), Dec. 17, 1999, 113 Stat. 1928; Pub. L. 107–16, title V, §542(e)(2)(A), June 7, 2001, 115 Stat. 85; Pub. L. 107–147, title IV, §417(20), Mar. 9, 2002, 116 Stat. 57; Pub. L. 109–222, title II, §204(a), May 17, 2006, 120 Stat. 350; Pub. L. 109–432, div. A, title IV, §412(a), Dec. 20, 2006, 120 Stat. 2963; Pub. L. 111–312, title III, §301(a), Dec. 17, 2010, 124 Stat. 3300.)

AMENDMENTS

2010—Subsec. (a)(3)(C). Pub. L. 111–312 amended subsec. (a)(3)(C) to read as if amendment by Pub. L. 107–16, §542(e)(2)(A), had never been enacted. See 2001 Amendment note below.

2006—Subsec. (b)(3). Pub. L. 109–432 struck out "before January 1, 2011," after "exchanged".

Pub. L. 109–222 added par. (3). Former par. (3) redesignated (4).

Subsec. (b)(4). Pub. L. 109–222 redesignated par. (3) as (4).

2002—Subsec. (b)(1)(B)(i). Pub. L. 107–147 substituted "1256(b)))" for "1256(b))".

2001—Subsec. (a)(3)(C). Pub. L. 107–16, §542(e)(2)(A), inserted "(other than by reason of section 1022)" after "is determined".

1999—Pub. L. 106–170 designated existing provisions as subsec. (a), inserted heading, and added pars. (6) to (8) and subsec. (b).

1981—Pars. (5), (6). Pub. L. 97–34 redesignated par. (6) as (5) and struck out former par. (5), which excluded from definition of "capital asset" an obligation of the United States or any of its possessions, or of a State or any political subdivision thereof, or of the District of Columbia, issued on or after March 1, 1941, on a discount basis and payable without interest at a fixed maturity date not exceeding one year from the date of issue, and is covered by section 1232(a)(4)(B) of this title.

1976—Par. (5). Pub. L. 94–455, §1901(c)(9), struck out "or Territory," after "State".

Par. (6). Pub. L. 94–455, §2132(a), added par. (6).

1969—Par. (3). Pub. L. 91–172 inserted reference to a letter or memorandum, added subpar. (B) dealing

with a letter or memorandum, and redesignated former subpar. (B) as (C).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–312 applicable to estates of decedents dying, and transfers made after Dec. 31, 2009, except as otherwise provided, see section 301(e) of Pub. L. 111–312, set out as an Effective and Termination Dates of 2010 Amendment note under section 121 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title IV, §412(b), Dec. 20, 2006, 120 Stat. 2963, provided that: "The amendment made by this section [amending this section] shall take effect as if included in section 204 of the Tax Increase Prevention and Reconciliation Act of 2005 [Pub. L. 109–222]."

Amendment by Pub. L. 109–222 applicable to sales and exchanges in taxable years beginning after May 17, 2006, see section 204(c) of Pub. L. 109–222, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to estates of decedents dying after Dec. 31, 2009, see section 542(f)(1) of Pub. L. 107–16, set out as a note under section 121 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to property acquired and positions established by the taxpayer after June 23, 1981, in taxable years ending after such date, and applicable when so elected with respect to property held on June 23, 1981, see section 508 of Pub. L. 97–34, set out as an Effective Date note under section 1092 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XXI, §2132(b), Oct. 4, 1976, 90 Stat. 1925, provided that: "The amendment made by subsection (a) [amending this section] shall apply to sales, exchanges, and contributions made after the date of enactment of this Act [Oct. 4, 1976]."

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title V, §514(c), Dec. 30, 1969, 83 Stat. 643, provided that: "The amendments made by this section [amending this section and sections 341 and 1231 of this title] shall apply to sales and other dispositions occurring after July 25, 1969."

[1] So in original. Probably should be "who".

§1222. Other terms relating to capital gains and losses

For purposes of this subtitle—

(1) Short-term capital gain

The term "short-term capital gain" means gain from the sale or exchange of a capital asset held for not more than 1 year, if and to the extent such gain is taken into account in computing gross income.

(2) Short-term capital loss

The term "short-term capital loss" means loss from the sale or exchange of a capital asset held for not more than 1 year, if and to the extent that such loss is taken into account in computing taxable income.

(3) Long-term capital gain

The term "long-term capital gain" means gain from the sale or exchange of a capital asset held for more than 1 year, if and to the extent such gain is taken into account in computing gross

income.

(4) Long-term capital loss

The term "long-term capital loss" means loss from the sale or exchange of a capital asset held for more than 1 year, if and to the extent that such loss is taken into account in computing taxable income.

(5) Net short-term capital gain

The term "net short-term capital gain" means the excess of short-term capital gains for the taxable year over the short-term capital losses for such year.

(6) Net short-term capital loss

The term "net short-term capital loss" means the excess of short-term capital losses for the taxable year over the short-term capital gains for such year.

(7) Net long-term capital gain

The term "net long-term capital gain" means the excess of long-term capital gains for the taxable year over the long-term capital losses for such year.

(8) Net long-term capital loss

The term "net long-term capital loss" means the excess of long-term capital losses for the taxable year over the long-term capital gains for such year.

(9) Capital gain net income

The term "capital gain net income" means the excess of the gains from sales or exchanges of capital assets over the losses from such sales or exchanges.

(10) Net capital loss

The term "net capital loss" means the excess of the losses from sales or exchanges of capital assets over the sum allowed under section 1211. In the case of a corporation, for the purpose of determining losses under this paragraph, amounts which are short-term capital losses under section 1212(a)(1) shall be excluded.

(11) Net capital gain

The term "net capital gain" means the excess of the net long-term capital gain for the taxable year over the net short-term capital loss for such year.

For purposes of this subtitle, in the case of futures transactions in any commodity subject to the rules of a board of trade or commodity exchange, the length of the holding period taken into account under this section or under any other section amended by section 1402 of the Tax Reform Act of 1976 shall be determined without regard to the amendments made by subsections (a) and (b) of such section 1402.

(Aug. 16, 1954, ch. 736, 68A Stat. 322; Pub. L. 88–272, title II, §230(b), Feb. 26, 1964, 78 Stat. 100; Pub. L. 91–172, title V, §§511(a), 513(c), Dec. 30, 1969, 83 Stat. 635, 643; Pub. L. 94–455, title XIV, §1402(a)(1), (2), (d), title XIX, §1901(a)(136), Oct. 4, 1976, 90 Stat. 1731, 1733, 1787; Pub. L. 98–369, div. A, title X, §1001(a), (e), July 18, 1984, 98 Stat. 1011, 1012; Pub. L. 111–325, title I, §101(b)(2), Dec. 22, 2010, 124 Stat. 3538.)

REFERENCES IN TEXT

The Tax Reform Act of 1976, referred to in last sentence, is Pub. L. 94–455, Oct. 4, 1976, 90 Stat. 1520, as amended. For complete classification of this Act and of section 1402 of such Act to the Code, see Tables.

AMENDMENTS

2010—Par. (10). Pub. L. 111–325 substituted "section 1212(a)(1)" for "section 1212".

1984—Pars. (1) to (4). Pub. L. 98–369 substituted "6 months" for "1 year", applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

1976—Pars. (1) to (4). Pub. L. 94–455, §1402(a)(2), provided that "9 months" would be changed to "1

year".

Pub. L. 94–455, §1402(a)(1), provided that "6 months" would be changed to "9 months" for taxable years beginning in 1977.

Par. (9). Pub. L. 94–455, §1901(a)(136)(A), substituted "Capital gain net income" and "capital gain net income" for "Net capital gain" and "net capital gain" in heading and text.

Par. (11). Pub. L. 94–455, §1901(a)(136)(B), substituted "Net capital gain" and "net capital gain" for "Net section 1201 gain" and "net section 1201 gain" in heading and text.

Pub. L. 94–455, §1402(d), inserted sentence at end relating to length of holding period in case of futures transactions in commodities.

1969—Par. (9). Pub. L. 91–172, §513(c), substituted "The" for "In the case of a corporation, the".

Par. (11). Pub. L. 91–172, §511(a), added par. (11).

1964—Pars. (9), (10). Pub. L. 88–272 struck out provisions from par. (9) relating to taxpayers other than corporations, and inserted "In the case of a corporation" in par. (10).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–325 applicable to net capital losses for taxable years beginning after Dec. 22, 2010, see section 101(c)(1) of Pub. L. 111–325, set out as a note under section 1212 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XIV, §1402(a)(1), Oct. 4, 1976, 90 Stat. 1731, provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Pub. L. 94–455, title XIV, §1402(a)(2), Oct. 4, 1976, 90 Stat. 1731, provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

Amendment by section 1901(a)(136) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 513(c) of Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 513(d) of Pub. L. 91–172, set out as a note under section 1211 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 230(c) of Pub. L. 88–272, set out as a note under section 1212 of this title.

§1223. Holding period of property

For purposes of this subtitle—

(1) In determining the period for which the taxpayer has held property received in an exchange, there shall be included the period for which he held the property exchanged if, under this chapter, the property has, for the purpose of determining gain or loss from a sale or exchange, the same basis in whole or in part in his hands as the property exchanged, and, in the case of such exchanges after March 1, 1954, the property exchanged at the time of such exchange was a capital asset as defined in section 1221 or property described in section 1231. For purposes of this paragraph—

(A) an involuntary conversion described in section 1033 shall be considered an exchange of the property converted for the property acquired, and

(B) a distribution to which section 355 (or so much of section 356 as relates to section 355) applies shall be treated as an exchange.

(2) In determining the period for which the taxpayer has held property however acquired there shall be included the period for which such property was held by any other person, if under this chapter such property has, for the purpose of determining gain or loss from a sale or exchange, the same basis in whole or in part in his hands as it would have in the hands of such other person.

(3) In determining the period for which the taxpayer has held stock or securities the acquisition of which (or the contract or option to acquire which) resulted in the nondeductibility (under section 1091 relating to wash sales) of the loss from the sale or other disposition of substantially identical stock or securities, there shall be included the period for which he held the stock or securities the loss from the sale or other disposition of which was not deductible.

(4) In determining the period for which the taxpayer has held stock or rights to acquire stock received on a distribution, if the basis of such stock or rights is determined under section 307 (or under so much of section 1052(c) as refers to section 113(a)(23) of the Internal Revenue Code of 1939), there shall (under regulations prescribed by the Secretary) be included the period for which he held the stock in the distributing corporation before the receipt of such stock or rights upon such distribution.

(5) In determining the period for which the taxpayer has held stock or securities acquired from a corporation by the exercise of rights to acquire such stock or securities, there shall be included only the period beginning with the date on which the right to acquire was exercised.

(6) In determining the period for which the taxpayer has held a residence, the acquisition of which resulted under section 1034 (as in effect on the day before the date of the enactment of the Taxpayer Relief Act of 1997) in the nonrecognition of any part of the gain realized on the sale or exchange of another residence, there shall be included the period for which such other residence had been held as of the date of such sale or exchange. For purposes of this paragraph, the term "sale or exchange" includes an involuntary conversion occurring after December 31, 1950, and before January 1, 1954.

(7) In determining the period for which the taxpayer has held a commodity acquired in satisfaction of a commodity futures contract (other than a commodity futures contract to which section 1256 applies) there shall be included the period for which he held the commodity futures contract if such commodity futures contract was a capital asset in his hands.

(8) Any reference in this section to a provision of this title shall, where applicable, be deemed a reference to the corresponding provision of the Internal Revenue Code of 1939, or prior internal revenue laws.

(9) In the case of a person acquiring property from a decedent or to whom property passed from a decedent (within the meaning of section 1014(b)), if—

(A) the basis of such property in the hands of such person is determined under section 1014, and

(B) such property is sold or otherwise disposed of by such person within 1 year after the decedent's death,

then such person shall be considered to have held such property for more than 1 year.

(10) If—

(A) property is acquired by any person in a transfer to which section 1040 applies,

(B) such property is sold or otherwise disposed of by such person within 1 year after the decedent's death, and

(C) such sale or disposition is to a person who is a qualified heir (as defined in section 2032A(e)(1)) with respect to the decedent,

then the person making such sale or other disposition shall be considered to have held such property for more than 1 year.

(11) In determining the period for which the taxpayer has held qualified replacement property (within the meaning of section 1042(b)) the acquisition of which resulted under section 1042 in the nonrecognition of any part of the gain realized on the sale of qualified securities (within the meaning of section 1042(b)), there shall be included the period for which such qualified securities had been held by the taxpayer.

(12) In determining the period for which the taxpayer has held property the acquisition of which resulted under section 1043 in the nonrecognition of any part of the gain realized on the sale of other property, there shall be included the period for which such other property had been held as

of the date of such sale.

(13) Except for purposes of sections 1202(a)(2), 1202(c)(2)(A), 1400B(b), and 1400F(b), in determining the period for which the taxpayer has held property the acquisition of which resulted under section 1045 or 1397B in the nonrecognition of any part of the gain realized on the sale of other property, there shall be included the period for which such other property has been held as of the date of such sale.

(14) If the security to which a securities futures contract (as defined in section 1234B) relates (other than a contract to which section 1256 applies) is acquired in satisfaction of such contract, in determining the period for which the taxpayer has held such security, there shall be included the period for which the taxpayer held such contract if such contract was a capital asset in the hands of the taxpayer.

(15) CROSS REFERENCE.—

For special holding period provision relating to certain partnership distributions, see section 735(b).

(Aug. 16, 1954, ch. 736, 68A Stat. 323; Pub. L. 87–834, §14(b)(3), Oct. 16, 1962, 76 Stat. 1041; Pub. L. 91–614, title I, §101(g), Dec. 31, 1970, 84 Stat. 1838; Pub. L. 94–455, title XIV, §1402(b)(1)(Q), (2), title XIX, §1906(b) (13)(A), Oct. 4, 1976, 90 Stat. 1732, 1834; Pub. L. 95–600, title VII, §702(c)(5), Nov. 6, 1978, 92 Stat. 2927; Pub. L. 96–223, title IV, §401(a), Apr. 2, 1980, 94 Stat. 299; Pub. L. 97–448, title I, §§104(b)(3)(C), 105(c)(4), Jan. 12, 1983, 96 Stat. 2382, 2385; Pub. L. 98–369, div. A, title I, §54(c), title V, §541(b)(1), title X, §1001(b)(14), (e), July 18, 1984, 98 Stat. 569, 890, 1011, 1012; Pub. L. 100–647, title I, §1006(e)(17), Nov. 10, 1988, 102 Stat. 3403; Pub. L. 101–194, title V, §502(b)(1), Nov. 30, 1989, 103 Stat. 1754; Pub. L. 105–34, title III, §§312(d)(9), 313(b)(2), Aug. 5, 1997, 111 Stat. 840, 842; Pub. L. 105–206, title V, §5001(a)(5), title VI, §6005(d)(4), July 22, 1998, 112 Stat. 788, 805; Pub. L. 106–554, §1(a)(7) [title I, §116(b)(2), title IV, §401(h)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–603, 2763A–650; Pub. L. 108–357, title IV, §413(c)(21), Oct. 22, 2004, 118 Stat. 1509; Pub. L. 109–135, title IV, §402(a)(2), Dec. 21, 2005, 119 Stat. 2610.)

REFERENCES IN TEXT

Section 113(a)(23) of the Internal Revenue Code of 1939, referred to in par. (4), was classified to section 113(a)(23) of former Title 26, Internal Revenue Code. Section 113 was repealed by section 7851(a)(1) of this title. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of this title. See, also, section 7851(e) of this title for provision that references in the 1986 Code to a provision of the 1939 Code, not then applicable, shall be deemed a reference to the corresponding provision of the 1986 Code, which is then applicable.

The date of the enactment of the Taxpayer Relief Act of 1997, referred to in par. (6), is the date of enactment of Pub. L. 105–34, which was approved Aug. 5, 1997.

The Internal Revenue Code of 1939, referred to in par. (8), is act Feb. 10, 1939, ch. 2, 53 Stat. 1, as amended. Prior to the enactment of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the 1939 Code was classified to former Title 26, Internal Revenue Code. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of this title.

AMENDMENTS

2005—Pars. (3) to (16). Pub. L. 109–135 redesignated pars. (4) to (16) as (3) to (15), respectively, and struck out former par. (3) which read as follows: "In determining the period for which the taxpayer has held stock or securities received upon a distribution where no gain was recognized to the distributee under section 1081(c) (or under section 112(g) of the Revenue Act of 1928, 45 Stat. 818, or the Revenue Act of 1932, 48 Stat. 705), there shall be included the period for which he held the stock or securities in the distributing corporation before the receipt of the stock or securities on such distribution."

2004—Pars. (10) to (17). Pub. L. 108–357 redesignated pars. (11) to (17) as (10) to (16), respectively, and struck out former par. (10) which read as follows: "In determining the period for which the taxpayer has held trust certificates of a trust to which subsection (d) of section 1246 applies, or the period for which the taxpayer has held stock in a corporation to which subsection (d) of section 1246 applies, there shall be included the period for which the trust or corporation (as the case may be) held the stock of foreign investment companies."

2000—Par. (15). Pub. L. 106–554, §1(a)(7) [title I, §116(b)(2)], amended par. (15) generally. Prior to amendment, par. (15) read as follows: "In determining the period for which the taxpayer has held property the

acquisition of which resulted under section 1045 in the nonrecognition of any part of the gain realized on the sale of other property, there shall be included the period for which such other property has been held as of the date of such sale."

Pars. (16), (17). Pub. L. 106–554, §1(a)(7) [title IV, §401(h)(1)], added par. (16) and redesignated former par. (16) as (17).

1998—Pars. (11), (12). Pub. L. 105–206, §6005(d)(4), substituted "18 months" for "1 year" in subpar. (B) and concluding provisions.

Pub. L. 105–206, §5001(a)(5), substituted "1 year" for "18 months" in subpar. (B) and concluding provisions.

1997—Par. (7). Pub. L. 105–34, §312(d)(9), inserted "(as in effect on the day before the date of the enactment of the Taxpayer Relief Act of 1997)" after "section 1034".

Pars. (15), (16). Pub. L. 105–34, §313(b)(2), added par. (15) and redesignated former par. (15) as (16).

1989—Pars. (14), (15). Pub. L. 101–194 added par. (14) and redesignated former par. (14) as (15).

1988—Par. (14). Pub. L. 100–647 amended par. (14) generally, substituting "reference" for "references" in heading, striking out "(A)" before "For special holding", and striking out subpar. (B) which related to distributions of appreciated property to corporations.

1984—Pars. (11), (12). Pub. L. 98–369, §1001(b)(14), (e), substituted "6 months" for "1 year", applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

Par. (13). Pub. L. 98–369, §541(b)(1), added par. (13). Former par. (13) redesignated (14).

Par. (14). Pub. L. 98–369, §541(b)(1), redesignated former par. (13) as (14).

Pub. L. 98–369, §54(c), designated existing cross reference as subpar. (A) and added subpar. (B).

1983—Par. (8). Pub. L. 97–448, §105(c)(4), inserted "(other than a commodity futures contract to which section 1256 applies)" after "acquired in satisfaction of a commodity futures contract".

Pars. (12), (13). Pub. L. 97–448, §104(b)(3)(C), added par. (12) and redesignated former par. (12) as (13).

1980—Par. (11)(A). Pub. L. 96–223 repealed the amendment made by Pub. L. 95–600. See 1978 Amendment note below.

1978—Par. (11)(A). Pub. L. 95–600 inserted reference to determination of basis of property under section 1023. See Repeals note below.

1976—Par. (5). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Par. (11). Pub. L. 94–455, §1402(b)(2), provided that "9 months" would be changed to "1 year".

Pub. L. 94–455, §1402(b)(1)(Q), provided that "6 months" would be changed to "9 months" for taxable years beginning in 1977.

1970—Pars. (11), (12). Pub. L. 91–614 added par. (11) and redesignated former par. (11) as (12).

1962—Pars. (10), (11). Pub. L. 87–834 added par. (10) and redesignated former par. (10) as (11).

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109–58, to which it relates, but not applicable with respect to any transaction ordered in compliance with the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.) before its repeal, see section 402(m) of Pub. L. 109–135, set out as an Effective and Termination Dates of 2005 Amendments note under section 23 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by section 1(a)(7) [title I, §116(b)(2)] of Pub. L. 106–554 applicable to qualified empowerment zone assets acquired after Dec. 21, 2000, see section 1(a)(7) [title I, §116(c)] of Pub. L. 106–554, set out as a note under section 1016 of this title.

Amendment by section 1(a)(7) [title IV, §401(h)(1)] of Pub. L. 106–554 effective Dec. 21, 2000, see section 1(a)(7) [title IV, §401(j)] of Pub. L. 106–554, set out as a note under section 1032 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 5001(a)(5) of Pub. L. 105–206 effective Jan. 1, 1998, see section 5001(b)(2) of Pub. L. 105–206, set out as a note under section 1 of this title.

Amendment by section 6005(d)(4) of Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 312(d)(9) of Pub. L. 105–34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d) of Pub. L. 105–34, set out as a note under section 121 of this title.

Amendment by section 313(b)(2) of Pub. L. 105–34 applicable to sales after Aug. 5, 1997, see section 313(c) of Pub. L. 105–34, set out as a note under section 1016 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–194 applicable to sales after Nov. 30, 1989, see section 502(c) of Pub. L. 101–194, set out as a note under section 1016 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 541(b)(1) of Pub. L. 98–369 applicable to sales of securities in taxable years beginning after July 18, 1984, see section 541(c) of Pub. L. 98–369, set out as an Effective Date note under section 1042 of this title.

Amendment by section 1001(b)(14) of Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT AND REVIVAL OF PRIOR LAW

Amendment by Pub. L. 96–223 (repealing section 702(c)(5) of Pub. L. 95–600 and the amendments made thereby, which had amended this section) applicable in respect of decedents dying after Dec. 31, 1976, and except for certain elections, this title to be applied and administered as if those repealed provisions had not been enacted, see section 401(b), (e) of Pub. L. 96–223, set out as a note under section 1023 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 to take effect as if included in the amendments and additions made by, and the appropriate provisions of Pub. L. 94–455, see section 702(c)(10) of Pub. L. 95–600, set out as a note under section 1014 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XIV, §1402(b)(1), Oct. 4, 1976, 90 Stat. 1731, provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Pub. L. 94–455, title XIV, §1402(b)(2), Oct. 4, 1976, 90 Stat. 1732, provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–614 applicable with respect to decedents dying after Dec. 31, 1970, see section 101(j) of Pub. L. 91–614, set out as a note under section 2032 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable with respect to taxable years beginning after Dec. 31, 1962, see section 14(c) of Pub. L. 87–834, set out as a note under section 312 of this title.

REPEALS

Pub. L. 95–600, §702(c)(5), cited as a credit to this section, and the amendments made thereby, were repealed by Pub. L. 96–223, title IV, §401(a), 94 Stat. 299, resulting in the text of this section reading as it read prior to enactment of section 702(c)(5). See Effective Date of 1980 Amendment and Revival of Prior

Law note set out above.

PART IV—SPECIAL RULES FOR DETERMINING CAPITAL GAINS AND LOSSES

Sec.
1231. Property used in the trade or business and involuntary conversions.
[1232 to 1232B. Repealed.]
1233. Gains and losses from short sales.
1234. Options to buy or sell.
1234A. Gains or losses from certain terminations.
1234B. Gains or losses from securities futures contracts.
1235. Sale or exchange of patents.
1236. Dealers in securities.
1237. Real property subdivided for sale.
[1238. Repealed.]
1239. Gain from sale of certain property between spouses or between an individual and a controlled corporation.[1]
[1240. Repealed.]
1241. Cancellation of lease or distributor's agreement.
1242. Losses on small business investment company stock.
1243. Loss of small business investment company.
1244. Losses on small business stock.
1245. Gain from dispositions of certain depreciable property.
[1246, 1247. Repealed.]
1248. Gain from certain sales or exchanges of stock in certain foreign corporations.
1249. Gain from certain sales or exchanges of patents, etc., to foreign corporations.
1250. Gain from dispositions of certain depreciable realty.
[1251. Repealed.]
1252. Gain from the disposition of farm land.[1]
1253. Transfers of franchises, trademarks, and trade names.
1254. Gain from disposition of interest in oil, gas, geothermal, or other mineral properties.
1255. Gain from disposition of section 126 property.
1256. Section 1256 contracts marked to market.
1257. Disposition of converted wetlands or highly erodible croplands.
1258. Recharacterization of gain from certain financial transactions.
1259. Constructive sales treatment for appreciated financial positions.
1260. Gains from constructive ownership transactions.

AMENDMENTS

2004—Pub. L. 108–357, title IV, §413(c)(32), Oct. 22, 2004, 118 Stat. 1510, struck out items 1246 "Gain on foreign investment company stock" and 1247 "Election by foreign investment companies to distribute income currently".

Pub. L. 108–311, title IV, §408(a)(18), Oct. 4, 2004, 118 Stat. 1192, substituted "Gains or losses from securities futures contracts" for "Securities futures contracts" in item 1234B.

2000—Pub. L. 106–554, §1(a)(7) [title IV, §401(h)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–650, which directed the amendment of the table of sections of subpart IV of subchapter P of chapter 1 by adding item 1234B, was executed by adding item 1234B to the table of sections for this part which is part IV of subchapter P of chapter 1 to reflect the probable intent of Congress.

1999—Pub. L. 106–170, title V, §534(b), Dec. 17, 1999, 113 Stat. 1934, added item 1260.

1997—Pub. L. 105–34, title X, §1001(c), Aug. 5, 1997, 111 Stat. 907, added item 1259.

1993—Pub. L. 103–66, title XIII, §13206(a)(2), Aug. 10, 1993, 107 Stat. 465, added item 1258.

1990—Pub. L. 101–508, title XI, §11801(b)(10), Nov. 5, 1990, 104 Stat. 1388–522, struck out item 1238 "Amortization in excess of depreciation".

1988—Pub. L. 100–647, title I, §1018(u)(24), Nov. 10, 1988, 102 Stat. 3591, substituted "geothermal, or other mineral properties" for "or geothermal property" in item 1254.

1986—Pub. L. 99–514, title IV, §403(b), Oct. 22, 1986, 100 Stat. 2222, added item 1257.

1984—Pub. L. 98–369, div. A, title I, §§42(b)(2), 102(e)(6), title IV, §492(c), July 18, 1984, 98 Stat. 557, 624, 854, struck out items 1232 "Bonds and other evidence of indebtedness", 1232A "Original issue discount", 1232B "Tax treatment of stripped bonds", 1251 "Gain from disposition of property used in farming where farm losses offset nonfarm income", and substituted "Section 1256 contracts" for "Regulated futures contracts" in item 1256.

1982—Pub. L. 97–248, title II, §§231(d), 232(c), Sept. 3, 1982, 96 Stat. 499, 501, added items 1232A and 1232B.

1981—Pub. L. 97–34, title V, §§503(b), 507(b), Aug. 13, 1981, 95 Stat. 330, 333, added items 1234A and 1256.

1978—Pub. L. 95–618, title IV, §402(c)(4), Nov. 9, 1978, 92 Stat. 3202, substituted "oil, gas, or geothermal" for "oil or gas" in item 1254.

Pub. L. 95–600, title V, §543(c)(2), Nov. 6, 1978, 92 Stat. 2890, added item 1255.

1976—Pub. L. 94–455, title II, §205(d), title XIX, §1901(b)(34), Oct. 4, 1976, 90 Stat. 1535, 1802, added item 1254 and struck out item 1240 "Taxability to employee of termination payments".

1969—Pub. L. 91–172, title II, §§211(b)(7), 214(b), title V, §516(c)(2)(C), Dec. 30, 1969, 83 Stat. 570, 573, 648, added items 1251 to 1253.

1964—Pub. L. 88–272, title II, §231(b)(7), Feb. 26, 1964, 78 Stat. 105, added item 1250.

1962—Pub. L. 87–834, §§13(a)(2), 14(a)(2), 15(b), 16(b), Oct. 16, 1962, 76 Stat. 1033, 1040, 1044, 1045, added items 1245–1249.

1958—Pub. L. 85–866, title I, §57(c)(3), title II, §202(c), Sept. 2, 1958, 72 Stat. 1646, 1678, added items 1242–1244.

[1] *So in original. Does not conform to section catchline.*

§1231. Property used in the trade or business and involuntary conversions

(a) General rule

(1) Gains exceed losses

If—

(A) the section 1231 gains for any taxable year, exceed

(B) the section 1231 losses for such taxable year,

such gains and losses shall be treated as long-term capital gains or long-term capital losses, as the case may be.

(2) Gains do not exceed losses

If—

(A) the section 1231 gains for any taxable year, do not exceed

(B) the section 1231 losses for such taxable year,

such gains and losses shall not be treated as gains and losses from sales or exchanges of capital assets.

(3) Section 1231 gains and losses

For purposes of this subsection—

(A) Section 1231 gain

The term "section 1231 gain" means—

(i) any recognized gain on the sale or exchange of property used in the trade or business, and

(ii) any recognized gain from the compulsory or involuntary conversion (as a result of

destruction in whole or in part, theft or seizure, or an exercise of the power of requisition or condemnation or the threat or imminence thereof) into other property or money of—

(I) property used in the trade or business, or

(II) any capital asset which is held for more than 1 year and is held in connection with a trade or business or a transaction entered into for profit.

(B) Section 1231 loss

The term "section 1231 loss" means any recognized loss from a sale or exchange or conversion described in subparagraph (A).

(4) Special rules

For purposes of this subsection—

(A) In determining under this subsection whether gains exceed losses—

(i) the section 1231 gains shall be included only if and to the extent taken into account in computing gross income, and

(ii) the section 1231 losses shall be included only if and to the extent taken into account in computing taxable income, except that section 1211 shall not apply.

(B) Losses (including losses not compensated for by insurance or otherwise) on the destruction, in whole or in part, theft or seizure, or requisition or condemnation of—

(i) property used in the trade or business, or

(ii) capital assets which are held for more than 1 year and are held in connection with a trade or business or a transaction entered into for profit,

shall be treated as losses from a compulsory or involuntary conversion.

(C) In the case of any involuntary conversion (subject to the provisions of this subsection but for this sentence) arising from fire, storm, shipwreck, or other casualty, or from theft, of any—

(i) property used in the trade or business, or

(ii) any capital asset which is held for more than 1 year and is held in connection with a trade or business or a transaction entered into for profit,

this subsection shall not apply to such conversion (whether resulting in gain or loss) if during the taxable year the recognized losses from such conversions exceed the recognized gains from such conversions.

(b) Definition of property used in the trade or business

For purposes of this section—

(1) General rule

The term "property used in the trade or business" means property used in the trade or business, of a character which is subject to the allowance for depreciation provided in section 167, held for more than 1 year, and real property used in the trade or business, held for more than 1 year, which is not—

(A) property of a kind which would properly be includible in the inventory of the taxpayer if on hand at the close of the taxable year,

(B) property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business,

(C) a copyright, a literary, musical, or artistic composition, a letter or memorandum, or similar property, held by a taxpayer described in paragraph (3) of section 1221(a), or

(D) a publication of the United States Government (including the Congressional Record) which is received from the United States Government, or any agency thereof, other than by purchase at the price at which it is offered for sale to the public, and which is held by a taxpayer described in paragraph (5) of section 1221(a).

(2) Timber, coal, or domestic iron ore

Such term includes timber, coal, and iron ore with respect to which section 631 applies.

(3) Livestock

Such term includes—

(A) cattle and horses, regardless of age, held by the taxpayer for draft, breeding, dairy, or sporting purposes, and held by him for 24 months or more from the date of acquisition, and

(B) other livestock, regardless of age, held by the taxpayer for draft, breeding, dairy, or sporting purposes, and held by him for 12 months or more from the date of acquisition.

Such term does not include poultry.

(4) Unharvested crop

In the case of an unharvested crop on land used in the trade or business and held for more than 1 year, if the crop and the land are sold or exchanged (or compulsorily or involuntarily converted) at the same time and to the same person, the crop shall be considered as "property used in the trade or business."

(c) Recapture of net ordinary losses

(1) In general

The net section 1231 gain for any taxable year shall be treated as ordinary income to the extent such gain does not exceed the non-recaptured net section 1231 losses.

(2) Non-recaptured net section 1231 losses

For purposes of this subsection, the term "non-recaptured net section 1231 losses" means the excess of—

(A) the aggregate amount of the net section 1231 losses for the 5 most recent preceding taxable years beginning after December 31, 1981, over

(B) the portion of such losses taken into account under paragraph (1) for such preceding taxable years.

(3) Net section 1231 gain

For purposes of this subsection, the term "net section 1231 gain" means the excess of—

(A) the section 1231 gains, over

(B) the section 1231 losses.

(4) Net section 1231 loss

For purposes of this subsection, the term "net section 1231 loss" means the excess of—

(A) the section 1231 losses, over

(B) the section 1231 gains.

(5) Special rules

For purposes of determining the amount of the net section 1231 gain or loss for any taxable year, the rules of paragraph (4) of subsection (a) shall apply.

(Aug. 16, 1954, ch. 736, 68A Stat. 325; Pub. L. 85–866, title I, §49(a), Sept. 2, 1958, 72 Stat. 1642; Pub. L. 88–272, title II, §227(a)(2), Feb. 26, 1964, 78 Stat. 97; Pub. L. 91–172, title II, §212(b)(1), title V, §§514(b)(2), 516(b), Dec. 30, 1969, 83 Stat. 571, 643, 646; Pub. L. 94–455, title XIV, §1402(b)(1)(R), (2), Oct. 4, 1976, 90 Stat. 1732; Pub. L. 95–600, title VII, §701(ee)(1), Nov. 6, 1978, 92 Stat. 2924; Pub. L. 97–34, title V, §505(c)(1), Aug. 13, 1981, 95 Stat. 332; Pub. L. 98–369, div. A, title I, §176(a), title VII, §711(c)(2)(A)(iii), title X, §1001(b)(15), (e), July 18, 1984, 98 Stat. 709, 944, 1012; Pub. L. 106–170, title V, §532(c)(1)(G), Dec. 17, 1999, 113 Stat. 1930.)

AMENDMENTS

1999—Subsec. (b)(1)(C), (D). Pub. L. 106–170 substituted "section 1221(a)" for "section 1221".

1984—Subsec. (a). Pub. L. 98–369, §1001(b)(15), (e), substituted "6 months" for "1 year" wherever appearing, applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

Pub. L. 98–369, §711(c)(2)(A)(iii), amended subsec. (a) generally, substituting pars. (1) to (4), for "If, during the taxable year, the recognized gains on sales or exchanges of property used in the trade or business, plus the recognized gains from the compulsory or involuntary conversion (as a result of destruction in whole or in part, theft or seizure, or an exercise of the power of requisition or condemnation or the threat or imminence thereof) of property used in the trade or business and capital assets held for more than 1 year into other property or money, exceed the recognized losses from such sales, exchanges, and conversions, such gains and losses shall be considered as gains and losses from sales or exchanges of capital assets held for more than 1 year. If such gains do not exceed such losses, such gains and losses shall not be considered as gains and losses from sales or exchanges of capital assets. For purposes of this subsection—

"(1) in determining under this subsection whether gains exceed losses, the gains described therein shall be included only if and to the extent taken into account in computing gross income and the losses described therein shall be included only if and to the extent taken into account in computing taxable income, except that section 1211 shall not apply; and

"(2) losses (including losses not compensated for by insurance or otherwise) upon the destruction, in whole or in part, theft or seizure, or requisition or condemnation of (A) property used in the trade or business or (B) capital assets held for more than 1 year shall be considered losses from a compulsory or involuntary conversion.

In the case of any involuntary conversion (subject to the provisions of this subsection but for this sentence) arising from fire, storm, shipwreck, or other casualty, or from theft, of any property used in the trade or business or of any capital asset held for more than 1 year, this subsection shall not apply to such conversion (whether resulting in gain or loss) if during the taxable year the recognized losses from such conversions exceed the recognized gains from such conversions."

Subsec. (b)(1), (4). Pub. L. 98–369, §1001(b)(15), (e), substituted "6 months" for "1 year", applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

Subsec. (c). Pub. L. 98–369, §176(a), added subsec. (c).

1981—Subsec. (b)(1)(D). Pub. L. 97–34 substituted "paragraph (5)" for "paragraph (6)".

1978—Subsec. (b)(1)(D). Pub. L. 95–600 added subpar. (D).

1976—Subsecs. (a), (b)(1), (4). Pub. L. 94–455, §1402(b)(2), provided that "9 months" would be changed to "1 year" wherever appearing.

Pub. L. 94–455, §1402(b)(1)(R), provided that in subsecs. (a), first and last sentences, (a)(2), and (b)(1), (4), "6 months" would be changed to "9 months" for taxable years beginning in 1977.

1969—Subsec. (a). Pub. L. 91–172, §516(b), provided that casualty (or theft) losses with respect to depreciable property and real estate used in trade or business and capital assets held for the production of income as well as personal assets are to be consolidated with casualty (or theft) gains with respect to this type of property and if the casualty losses exceed the casualty gains, the net loss is treated as an ordinary loss without regard to whether there may be noncasualty gains under this section, but, if the casualty gains exceed the casualty losses, the net gain is treated as a gain under this section and must be consolidated with other gains and losses under this section.

Subsec. (b)(1)(C). Pub. L. 91–172, §514(b)(2), inserted reference to a letter or memorandum.

Subsec. (b)(3). Pub. L. 91–172, §212(b)(1), redesignated existing provisions as subpar. (B) and added subpar. (A).

1964—Subsec. (b)(2). Pub. L. 88–272 inserted reference to iron ore in text, and to domestic iron ore in heading.

1958—Subsec. (a). Pub. L. 85–866 inserted provision respecting casualty losses sustained upon certain uninsured property.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §176(b), July 18, 1984, 98 Stat. 709, provided that: "The amendment made by subsection (a) [amending this section] shall apply to net section 1231 gains for taxable years beginning after December 31, 1984."

Amendment by section 711(c)(2)(A)(iii) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 711(c)(2)(A)(v) of Pub. L. 98–369, set out as a note under section 165 of this title.

Amendment by section 1001(b)(15) of Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to property acquired and positions established by the taxpayer after June 23, 1981, in taxable years ending after such date, and applicable when so elected with respect to property held on June 23, 1981, see section 508 of Pub. L. 97–34, set out as an Effective Date note under section 1092 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title VII, §701(ee)(2), Nov. 6, 1978, 92 Stat. 2924, provided that: "The amendment made by paragraph (1) [amending this section] shall apply with respect to sales, exchanges, and contributions made after October 4, 1976."

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XIV, §1402(b)(1), Oct. 4, 1976, 90 Stat. 1731, provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Pub. L. 94–455, title XIV, §1402(b)(2), Oct. 4, 1976, 90 Stat. 1732, provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title II, §212(b)(2), Dec. 30, 1969, 83 Stat. 571, provided that: "The amendments made by paragraph (1) [amending this section] shall apply to livestock acquired after December 31, 1969."

Amendment by section 514(b)(2) of Pub. L. 91–172 applicable to sales and other dispositions occurring after July 25, 1969, see section 514(c) of Pub. L. 91–172, set out as a note under section 1221 of this title.

Amendment by section 516(b) of Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 516(d)(2) of Pub. L. 91–172, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable with respect to amounts received or accrued in taxable years beginning after Dec. 31, 1963, attributable to iron ore mined in such years, see section 227(c) of Pub. L. 88–272, set out as a note under section 272 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85–866, title I, §49(b), Sept. 2, 1958, 72 Stat. 1642, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1957."

[§§1232 to 1232B. Repealed. Pub. L. 98–369, div. A, title I, §42(a)(1), July 18, 1984, 98 Stat. 556]

Section 1232, acts Aug. 16, 1954, ch. 736, 68A Stat. 326; Sept. 2, 1958, Pub. L. 85–866, title I, §§50(a), 51, 72 Stat. 1642, 1643; June 25, 1959, Pub. L. 86–69, §3(e), 73 Stat. 140; Sept. 2, 1964, Pub. L. 88–563, §5, 78 Stat. 845; Dec. 30, 1969, Pub. L. 91–172, title IV, §413(a), (b), 83 Stat. 609, 611; Oct. 4, 1976, Pub. L. 94–455, title XIV, §1402(b)(1)(S), (2), title XIX, §§1901(b)(3)(I), (14)(D), 1904(b)(10)(C), 90 Stat. 1732, 1793, 1796, 1817; Aug. 13, 1981, Pub. L. 97–34, title V, §505(b), 95 Stat. 331; Sept. 3, 1982, Pub. L. 97–248, title II, §§231(c), 232(b), title III, §310(b)(6), 96 Stat. 499, 501, 599; Jan. 12, 1983, Pub. L. 97–448, title III, §306(a)(9)(B), (C)(i), (ii), 96 Stat. 2403, 2404; July 18, 1984, Pub. L. 98–369, div. A, title X, §1001(b)(16), (d), (e), 98 Stat. 1012, related to bonds and other evidences of indebtedness. See section 1271 et seq. of this title.

Section 1232A, added Pub. L. 97–248, title II, §231(a), Sept. 3, 1982, 96 Stat. 496; amended Pub. L. 98–369, div. A, title II, §211(b)(17), July 18, 1984, 98 Stat. 756, related to original issue discount. See section 1271 et seq. of this title.

Section 1232B, added Pub. L. 97–248, title II, §232(a), Sept. 3, 1982, 96 Stat. 499, related to stripped bonds. See section 1286 of this title.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98–369, set out as an Effective Date note under section 1271 of this title.

§1233. Gains and losses from short sales

(a) Capital assets

For purposes of this subtitle, gain or loss from the short sale of property shall be considered as gain or loss from the sale or exchange of a capital asset to the extent that the property, including a commodity future, used to close the short sale constitutes a capital asset in the hands of the taxpayer.

(b) Short-term gains and holding periods

If gain or loss from a short sale is considered as gain or loss from the sale or exchange of a capital asset under subsection (a) and if on the date of such short sale substantially identical property has been held by the taxpayer for not more than 1 year (determined without regard to the effect, under paragraph (2) of this subsection, of such short sale on the holding period), or if substantially identical property is acquired by the taxpayer after such short sale and on or before the date of the closing thereof—

(1) any gain on the closing of such short sale shall be considered as a gain on the sale or exchange of a capital asset held for not more than 1 year (notwithstanding the period of time any property used to close such short sale has been held); and

(2) the holding period of such substantially identical property shall be considered to begin (notwithstanding section 1223, relating to the holding period of property) on the date of the closing of the short sale, or on the date of a sale, gift, or other disposition of such property, whichever date occurs first. This paragraph shall apply to such substantially identical property in the order of the dates of the acquisition of such property, but only to so much of such property as does not exceed the quantity sold short.

For purposes of this subsection, the acquisition of an option to sell property at a fixed price shall be considered as a short sale, and the exercise or failure to exercise such option shall be considered as a closing of such short sale.

(c) Certain options to sell

Subsection (b) shall not include an option to sell property at a fixed price acquired on the same day on which the property identified as intended to be used in exercising such option is acquired and which, if exercised, is exercised through the sale of the property so identified. If the option is not exercised, the cost of the option shall be added to the basis of the property with which the option is identified. This subsection shall apply only to options acquired after August 16, 1954.

(d) Long-term losses

If on the date of such short sale substantially identical property has been held by the taxpayer for more than 1 year, any loss on the closing of such short sale shall be considered as a loss on the sale or exchange of a capital asset held for more than 1 year (notwithstanding the period of time any property used to close such short sale has been held, and notwithstanding section 1234).

(e) Rules for application of section

(1) Subsection (b)(1) or (d) shall not apply to the gain or loss, respectively, on any quantity of property used to close such short sale which is in excess of the quantity of the substantially identical property referred to in the applicable subsection.

(2) For purposes of subsections (b) and (d)—

(A) the term "property" includes only stocks and securities (including stocks and securities dealt with on a "when issued" basis), and commodity futures, which are capital assets in the hands of the taxpayer, but does not include any position to which section 1092(b) applies;

(B) in the case of futures transactions in any commodity on or subject to the rules of a board of trade or commodity exchange, a commodity future requiring delivery in 1 calendar month shall not be considered as property substantially identical to another commodity future requiring delivery in a different calendar month;

(C) in the case of a short sale of property by an individual, the term "taxpayer", in the

application of this subsection and subsections (b) and (d), shall be read as "taxpayer or his spouse"; but an individual who is legally separated from the taxpayer under a decree of divorce or of separate maintenance shall not be considered as the spouse of the taxpayer;

(D) a securities futures contract (as defined in section 1234B) to acquire substantially identical property shall be treated as substantially identical property; and

(E) entering into a securities futures contract (as so defined) to sell shall be considered to be a short sale, and the settlement of such contract shall be considered to be the closing of such short sale.

(3) Where the taxpayer enters into 2 commodity futures transactions on the same day, one requiring delivery by him in one market and the other requiring delivery to him of the same (or substantially identical) commodity in the same calendar month in a different market, and the taxpayer subsequently closes both such transactions on the same day, subsections (b) and (d) shall have no application to so much of the commodity involved in either such transaction as does not exceed in quantity the commodity involved in the other.

(4)(A) In the case of a taxpayer who is a dealer in securities (within the meaning of section 1236)—

(i) if, on the date of a short sale of stock, substantially identical property which is a capital asset in the hands of the taxpayer has been held for not more than 1 year, and

(ii) if such short sale is closed more than 20 days after the date on which it was made,

subsection (b)(2) shall apply in respect of the holding period of such substantially identical property.

(B) For purposes of subparagraph (A)—

(i) the last sentence of subsection (b) applies; and

(ii) the term "stock" means any share or certificate of stock in a corporation, any bond or other evidence of indebtedness which is convertible into any such share or certificate, or any evidence of an interest in, or right to subscribe to or purchase, any of the foregoing.

(f) Arbitrage operations in securities

In the case of a short sale which had been entered into as an arbitrage operation, to which sale the rule of subsection (b)(2) would apply except as otherwise provided in this subsection—

(1) subsection (b)(2) shall apply first to substantially identical assets acquired for arbitrage operations held at the close of business on the day such sale is made, and only to the extent that the quantity sold short exceeds the substantially identical assets acquired for arbitrage operations held at the close of business on the day such sale is made, shall the holding period of any other such identical assets held by the taxpayer be affected;

(2) in the event that assets acquired for arbitrage operations are disposed of in such manner as to create a net short position in assets acquired for arbitrage operations, such net short position shall be deemed to constitute a short sale made on that day;

(3) for the purpose of paragraphs (1) and (2) of this subsection the taxpayer will be deemed as of the close of any business day to hold property which he is or will be entitled to receive or acquire by virtue of any other asset acquired for arbitrage operations or by virtue of any contract he has entered into in an arbitrage operation; and

(4) for the purpose of this subsection arbitrage operations are transactions involving the purchase and sale of assets for the purpose of profiting from a current difference between the price of the asset purchased and the price of the asset sold, and in which the asset purchased, if not identical to the asset sold, is such that by virtue thereof the taxpayer is, or will be, entitled to acquire assets identical to the assets sold. Such operations must be clearly identified by the taxpayer in his records as arbitrage operations on the day of the transaction or as soon thereafter as may be practicable. Assets acquired for arbitrage operations will include stocks and securities and the right to acquire stocks and securities.

(g) Hedging transactions

This section shall not apply in the case of a hedging transaction in commodity futures.

(h) Short sales of property which becomes substantially worthless

(1) In general

If—

(A) the taxpayer enters into a short sale of property, and

(B) such property becomes substantially worthless,

the taxpayer shall recognize gain in the same manner as if the short sale were closed when the property becomes substantially worthless. To the extent provided in regulations prescribed by the Secretary, the preceding sentence also shall apply with respect to any option with respect to property, any offsetting notional principal contract with respect to property, any futures or forward contract to deliver any property, and any other similar transaction.

(2) Statute of limitations

If property becomes substantially worthless during a taxable year and any short sale of such property remains open at the time such property becomes substantially worthless, then—

(A) the statutory period for the assessment of any deficiency attributable to any part of the gain on such transaction shall not expire before the earlier of—

(i) the date which is 3 years after the date the Secretary is notified by the taxpayer (in such manner as the Secretary may by regulations prescribe) of the substantial worthlessness of such property, or

(ii) the date which is 6 years after the date the return for such taxable year is filed, and

(B) such deficiency may be assessed before the date applicable under subparagraph (A) notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

(Aug. 16, 1954, ch. 736, 68A Stat. 327; Aug. 12, 1955, ch. 871, §1, 69 Stat. 717; Pub. L. 85–866, title I, §52(a), (b), Sept. 2, 1958, 72 Stat. 1643, 1644; Pub. L. 94–455, title XIV, §1402(b)(1)(T), (2), title XIX, §1901(a)(137), Oct. 4, 1976, 90 Stat. 1732, 1787; Pub. L. 97–34, title V, §501(c), Aug. 13, 1981, 95 Stat. 326; Pub. L. 98–369, div. A, title X, §1001(b)(17), (e), July 18, 1984, 98 Stat. 1012; Pub. L. 105–34, title X, §1003(b)(1), Aug. 5, 1997, 111 Stat. 910; Pub. L. 106–554, §1(a)(7) [title IV, §401(f)], Dec. 21, 2000, 114 Stat. 2763, 2763A–649; Pub. L. 107–147, title IV, §412(d)(3)(A), Mar. 9, 2002, 116 Stat. 54.)

AMENDMENTS

2002—Subsec. (e)(2)(E). Pub. L. 107–147 added subpar. (E).

2000—Subsec. (e)(2)(D). Pub. L. 106–554 added subpar. (D).

1997—Subsec. (h). Pub. L. 105–34 added subsec. (h).

1984—Subsecs. (b), (d), (e)(4)(A)(i). Pub. L. 98–369 substituted "6 months" for "1 year" wherever appearing, applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

1981—Subsec. (e)(2)(A). Pub. L. 97–34 inserted ", but does not include any position to which section 1092(b) applies" after "taxpayer".

1976—Subsec. (b). Pub. L. 94–455, §1402(b)(2), provided that "9 months" would be changed to "1 year".

Pub. L. 94–455, §1402(b)(1)(T), (2), provided that "6 months" would be changed to "9 months" for taxable years beginning in 1977.

Subsec. (c). Pub. L. 94–455, §1901(a)(137), substituted "August 16, 1954" for "the date of enactment of this title".

Subsecs. (d), (e)(4)(A)(i). Pub. L. 94–455, §1402(b)(2), provided that "9 months" would be changed to "1 year".

Pub. L. 94–455, §1402(b)(1)(T), provided that "6 months" would be changed to "9 months" for taxable years beginning in 1977.

1958—Subsec. (a). Pub. L. 85–866, §52(b), struck out ", other than a hedging transaction in commodity futures," after "sale of property".

Subsec. (e)(4). Pub. L. 85–866, §52(a), added par. (4).
Subsec. (g). Pub. L. 85–866, §52(b), added subsec. (g).
1955—Subsec. (f). Act Aug. 12, 1955, added subsec. (f).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Community Renewal Tax Relief Act of 2000 [H.R. 5662, as enacted by Pub. L. 106–554], to which such amendment relates, see section 412(e) of Pub. L. 107–147, set out as a note under section 151 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title X, §1003(b)(2), Aug. 5, 1997, 111 Stat. 910, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to property which becomes substantially worthless after the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to property acquired and positions established by the taxpayer after June 23, 1981, in taxable years ending after such date, and applicable when so elected with respect to property held on June 23, 1981, see section 508 of Pub. L. 97–34, set out as an Effective Date note under section 1092 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XIV, §1402(b)(1), Oct. 4, 1976, 90 Stat. 1731, provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.
Pub. L. 94–455, title XIV, §1402(b)(2), Oct. 4, 1976, 90 Stat. 1732, provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.
Amendment by section 1901(a)(137) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 52(b) of Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.
Pub. L. 85–866, title I, §52(c), Sept. 2, 1958, 72 Stat. 1644, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to short sales made after December 31, 1957."

EFFECTIVE DATE OF 1955 AMENDMENT

Act Aug. 12, 1955, ch. 871, §2, 69 Stat. 718, provided that: "The amendment made by the first section of this Act [amending this section] shall apply only with respect to taxable years ending after the date of the enactment of this Act [Aug. 12, 1955] and only in the case of a short sale of property made by the taxpayer after such date."

§1234. Options to buy or sell

(a) Treatment of gain or loss in the case of the purchaser

(1) General rule

Gain or loss attributable to the sale or exchange of, or loss attributable to failure to exercise, an option to buy or sell property shall be considered gain or loss from the sale or exchange of property which has the same character as the property to which the option relates has in the hands of the taxpayer (or would have in the hands of the taxpayer if acquired by him).

(2) Special rule for loss attributable to failure to exercise option

For purposes of paragraph (1), if loss is attributable to failure to exercise an option, the option shall be deemed to have been sold or exchanged on the day it expired.

(3) Nonapplication of subsection

This subsection shall not apply to—

(A) an option which constitutes property described in paragraph (1) of section 1221(a);

(B) in the case of gain attributable to the sale or exchange of an option, any income derived in connection with such option which, without regard to this subsection, is treated as other than gain from the sale or exchange of a capital asset; and

(C) a loss attributable to failure to exercise an option described in section 1233(c).

(b) Treatment of grantor of option in the case of stock, securities, or commodities

(1) General rule

In the case of the grantor of the option, gain or loss from any closing transaction with respect to, and gain on lapse of, an option in property shall be treated as a gain or loss from the sale or exchange of a capital asset held not more than 1 year.

(2) Definitions

For purposes of this subsection—

(A) Closing transaction

The term "closing transaction" means any termination of the taxpayer's obligation under an option in property other than through the exercise or lapse of the option.

(B) Property

The term "property" means stocks and securities (including stocks and securities dealt with on a "when issued" basis), commodities, and commodity futures.

(3) Nonapplication of subsection

This subsection shall not apply to any option granted in the ordinary course of the taxpayer's trade or business of granting options.

(c) Treatment of options on section 1256 contracts and cash settlement options

(1) Section 1256 contracts

Gain or loss shall be recognized on the exercise of an option on a section 1256 contract (within the meaning of section 1256(b)).

(2) Treatment of cash settlement options

(A) In general

For purposes of subsections (a) and (b), a cash settlement option shall be treated as an option to buy or sell property.

(B) Cash settlement option

For purposes of subparagraph (A), the term "cash settlement option" means any option which on exercise settles in (or could be settled in) cash or property other than the underlying property.

(Aug. 16, 1954, ch. 376, 68A Stat. 329; Pub. L. 85–866, title I, §53, Sept. 2, 1958, 72 Stat. 1644; Pub. L. 89–809, title II, §210(a), Nov. 13, 1966, 80 Stat. 1580; Pub. L. 94–455, title XIV, §1402(b)(1)(U), (2), title XXI, §2136(a), Oct. 4, 1976, 90 Stat. 1732, 1929; Pub. L. 98–369, div. A, title I, §105(a), title X, §1001(b)(18), (e), July 18, 1984, 98 Stat. 629, 1012; Pub. L. 106–170, title V, §532(c)(1)(H), Dec. 17, 1999, 113 Stat. 1930.)

AMENDMENTS

1999—Subsec. (a)(3)(A). Pub. L. 106–170 substituted "section 1221(a)" for "section 1221".

1984—Subsec. (b)(1). Pub. L. 98–369, §1001(b)(18), (e), substituted "6 months" for "1 year", applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

Subsec. (c). Pub. L. 98–369, §105(a), added subsec. (c).

1976—Subsec. (a). Pub. L. 94–455, §2136(a), inserted in heading "in the case of the purchaser"; designated existing provisions as par. "(1) General rule" and substituted "an option" and "the option" for "a privilege or

option" and "the option or privilege"; redesignated existing subsec. (b) as par. (2) and substituted "an option" and "the option" for "a privilege or option" and "the privilege or option"; and redesignated existing subsec. (d)(1) to (3) as par. (3)(A) to (C) and substituted in heading and introductory text "Nonapplication" and "subsection" for "Non-application" and "section", in par. (3)(A) "an option" for "a privilege or option", in par. (3)(B) "an option", "such option" and "subsection" for "a privilege or option", "such privilege or option" and "section" and in par. (3)(C) substituted a period for "; or".

Subsec. (b). Pub. L. 94–455, §2136(a), added subsec. (b), incorporating provisions of a prior subsec. (c) providing for a special rule for grantors of straddles, par. (1) relating to "gain on lapse" and reading "In the case of gain on lapse of an option granted by the taxpayer as part of a straddle, the gain shall be deemed to be gain from the sale or exchange of a capital asset held for not more than 6 months on the day that the option expired."; par. (2) relating to "exception" and reading "This subsection shall not apply to any person who holds securities for sale to customers in the ordinary course of his trade or business.", now covered in subsec. (b)(3); and par. (3) relating to definitions of "straddle" and "security".

Subsec. (b)(1). Pub. L. 94–455, §1402(b)(2), provided that "9 months" would be changed to "1 year".

Pub. L. 94–455, §1402(b)(1)(U), provided that "6 months" would be changed to "9 months" for taxable years beginning in 1977.

Subsec. (c). Pub. L. 94–455, §2136(a), struck out provision respecting special rule for grantors of straddles, the paragraphs relating to: (1) gain on lapse; (2) exception, now covered in subsec. (b)(3); and (3) definitions of "straddle" and "security", such provision now covered generally by subsec. (b) of this section.

Subsec. (d). Pub. L. 94–455, §2136(a), struck out provision respecting non-application of section, pars. (1) to (3) now covered in subsec. (a)(3)(A) to (C) of this section, and par. (4) providing for such non-application to gain attributable to the sale or exchange of a privilege or option acquired by the taxpayer before Mar. 1, 1954, if in the hands of the taxpayer such privilege or option was a capital asset.

1966—Subsecs. (c), (d). Pub. L. 89–809 added subsec. (c) and redesignated former subsec. (c) as (d).

1958—Pub. L. 85–866 amended section generally and among other changes provided in subsec. (a) that gain or loss resulting from option to buy or sell property is to be considered gain or loss arising from property which has the same character as the property underlying the option, incorporated existing provisions in subsecs. (b) and (c)(3), and inserted provisions set out in subsec. (c)(1), (2), (4).

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §105(b), July 18, 1984, 98 Stat. 629, provided that: "The amendment made by subsection (a) [amending this section] shall apply to options purchased or granted after October 31, 1983, in taxable years ending after such date."

Amendment by section 1001(b)(18) of Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XIV, §1402(b)(1), Oct. 4, 1976, 90 Stat. 1731, provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Pub. L. 94–455, title XIV, §1402(b)(2), Oct. 4, 1976, 90 Stat. 1732, provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

Pub. L. 94–455, title XXI, §2136(b), Oct. 4, 1976, 90 Stat. 1930, provided that: "The amendment made by subsection (a) [amending this section] shall apply to options granted after September 1, 1976."

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89–809, title II, §210(b), Nov. 13, 1966, 80 Stat. 1580, provided that: "The amendments made by subsection (a) [amending this section] shall apply to straddle transactions entered into after January 25, 1965, in taxable years ending after such date."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

§1234A. Gains or losses from certain terminations

Gain or loss attributable to the cancellation, lapse, expiration, or other termination of—

(1) a right or obligation (other than a securities futures contract, as defined in section 1234B) with respect to property which is (or on acquisition would be) a capital asset in the hands of the taxpayer, or

(2) a section 1256 contract (as defined in section 1256) not described in paragraph (1) which is a capital asset in the hands of the taxpayer,

shall be treated as gain or loss from the sale of a capital asset. The preceding sentence shall not apply to the retirement of any debt instrument (whether or not through a trust or other participation arrangement).

(Added Pub. L. 97–34, title V, §507(a), Aug. 13, 1981, 95 Stat. 333; amended Pub. L. 97–448, title I, §105(e), Jan. 12, 1983, 96 Stat. 2387; Pub. L. 98–369, div. A, title I, §102(e)(4), (9), July 18, 1984, 98 Stat. 624, 625; Pub. L. 105–34, title X, §1003(a)(1), Aug. 5, 1997, 111 Stat. 909; Pub. L. 106–554, §1(a)(7) [title IV, §401(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–648; Pub. L. 107–147, title IV, §412(d)(1)(A), Mar. 9, 2002, 116 Stat. 53.)

AMENDMENTS

2002—Pars. (1) to (3). Pub. L. 107–147 inserted "or" at end of par. (1), struck out "or" at end of par. (2), and struck out par. (3) which read as follows: "a securities futures contract (as so defined) which is a capital asset in the hands of the taxpayer,".

2000—Par. (1). Pub. L. 106–554, §1(a)(7) [title IV, §401(b)(1)], inserted "(other than a securities futures contract, as defined in section 1234B)" after "right or obligation".

Par. (3). Pub. L. 106–554, §1(a)(7) [title IV, §401(b)(2)–(4)], added par. (3).

1997—Par. (1). Pub. L. 105–34 substituted "property" for "personal property (as defined in section 1092(d)(1))".

1984—Pub. L. 98–369, §102(e)(9), inserted at end "The preceding sentence shall not apply to the retirement of any debt instrument (whether or not through a trust or other participation arrangement)."

Par. (2). Pub. L. 98–369, §102(e)(4), substituted "a section 1256 contract" for "a regulated futures contract".

1983—Pub. L. 97–448 inserted reference to a regulated futures contract (as defined in section 1256) not described in paragraph (1) which is a capital asset in the hands of the taxpayer.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Community Renewal Tax Relief Act of 2000 [H.R. 5662, as enacted by Pub. L. 106–554], to which such amendment relates, see section 412(e) of Pub. L. 107–147, set out as a note under section 151 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title X, §1003(a)(2), Aug. 5, 1997, 111 Stat. 910, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to terminations more than 30 days after the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 102(e)(4) of Pub. L. 98–369 applicable to positions established after July 18, 1984, in taxable years ending after that date, except as otherwise provided, and amendment by section 102(e)(9) of Pub. L. 98–369, applicable as if included in the amendment made by section 507(a) of Pub. L. 97–34, as amended by section 105(e) of Pub. L. 97–448, see section 102(f), (g) of Pub. L. 98–369, set out as a note under section 1256 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to property acquired and positions established by the taxpayer after June 23, 1981, in taxable years ending after such date, and applicable when so elected with respect to property held on June 23,

1981, see section 508 of Pub. L. 97–34, set out as a note under section 1092 of this title.

§1234B. Gains or losses from securities futures contracts

(a) Treatment of gain or loss

(1) In general

Gain or loss attributable to the sale, exchange, or termination of a securities futures contract shall be considered gain or loss from the sale or exchange of property which has the same character as the property to which the contract relates has in the hands of the taxpayer (or would have in the hands of the taxpayer if acquired by the taxpayer).

(2) Nonapplication of subsection

This subsection shall not apply to—

(A) a contract which constitutes property described in paragraph (1) or (7) of section 1221(a), and

(B) any income derived in connection with a contract which, without regard to this subsection, is treated as other than gain from the sale or exchange of a capital asset.

(b) Short-term gains and losses

Except as provided in the regulations under section 1092(b) or this section, or in section 1233, if gain or loss on the sale, exchange, or termination of a securities futures contract to sell property is considered as gain or loss from the sale or exchange of a capital asset, such gain or loss shall be treated as short-term capital gain or loss.

(c) Securities futures contract

For purposes of this section, the term "securities futures contract" means any security future (as defined in section 3(a)(55)(A) of the Securities Exchange Act of 1934, as in effect on the date of the enactment of this section). The Secretary may prescribe regulations regarding the status of contracts the values of which are determined directly or indirectly by reference to any index which becomes (or ceases to be) a narrow-based security index (as defined for purposes of section 1256(g)(6)).

(d) Contracts not treated as commodity futures contracts

For purposes of this title, a securities futures contract shall not be treated as a commodity futures contract.

(e) Regulations

The Secretary shall prescribe such regulations as may be appropriate to provide for the proper treatment of securities futures contracts under this title.

(f) Cross reference

For special rules relating to dealer securities futures contracts, see section 1256.

(Added Pub. L. 106–554, §1(a)(7) [title IV, §401(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–648; amended Pub. L. 107–147, title IV, §412(d)(1)(B), (3)(B), Mar. 9, 2002, 116 Stat. 53, 54; Pub. L. 108–311, title IV, §405(a)(1), Oct. 4, 2004, 118 Stat. 1188.)

REFERENCES IN TEXT

Section 3(a)(55)(A) of the Securities Exchange Act of 1934, referred to in subsec. (c), is classified to section 78c(a)(55)(A) of Title 15, Commerce and Trade.

The date of the enactment of this section, referred to in subsec. (c), is the date of enactment of Pub. L. 106–554, which was approved Dec. 21, 2000.

CODIFICATION

Pub. L. 106–554, §1(a)(7) [title IV, §401(a)], which directed amendment of subpart IV of subchapter P of chapter 1 by adding this section after section 1234A, was executed by adding this section after 1234A of this part which is part IV of subchapter P of chapter 1, to reflect the probable intent of Congress.

AMENDMENTS

2004—Subsec. (c). Pub. L. 108–311 inserted at end "The Secretary may prescribe regulations regarding the status of contracts the values of which are determined directly or indirectly by reference to any index which becomes (or ceases to be) a narrow-based security index (as defined for purposes of section 1256(g)(6))."

2002—Subsec. (a)(1). Pub. L. 107–147, §412(d)(1)(B)(i), substituted "sale, exchange, or termination of a securities futures contract" for "sale or exchange of a securities futures contract".

Subsec. (b). Pub. L. 107–147, §412(d)(1)(B)(i), (3)(B), inserted "or in section 1233," after "or this section," and substituted "sale, exchange, or termination of a securities futures contract" for "sale or exchange of a securities futures contract".

Subsec. (f). Pub. L. 107–147, §412(d)(1)(B)(ii), added subsec. (f).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–311, title IV, §405(b), Oct. 4, 2004, 118 Stat. 1189, provided that: "The amendments made by subsection (a) [amending this section and section 1256 of this title] shall take effect as if included in section 401 of the Community Renewal Tax Relief Act of 2000 [H.R. 5662, as enacted by section 1(a)(7) of Pub. L. 106–554, Dec. 21, 2000, 114 Stat. 2763, 2763A–587]."

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Community Renewal Tax Relief Act of 2000 [H.R. 5662, as enacted by Pub. L. 106–554], to which such amendment relates, see section 412(e) of Pub. L. 107–147, set out as a note under section 151 of this title.

§1235. Sale or exchange of patents

(a) General

A transfer (other than by gift, inheritance, or devise) of property consisting of all substantial rights to a patent, or an undivided interest therein which includes a part of all such rights, by any holder shall be considered the sale or exchange of a capital asset held for more than 1 year, regardless of whether or not payments in consideration of such transfer are—

(1) payable periodically over a period generally coterminous with the transferee's use of the patent, or

(2) contingent on the productivity, use, or disposition of the property transferred.

(b) "Holder" defined

For purposes of this section, the term "holder" means—

(1) any individual whose efforts created such property, or

(2) any other individual who has acquired his interest in such property in exchange for consideration in money or money's worth paid to such creator prior to actual reduction to practice of the invention covered by the patent, if such individual is neither—

(A) the employer of such creator, nor

(B) related to such creator (within the meaning of subsection (d)).

(c) Effective date

This section shall be applicable with regard to any amounts received, or payments made, pursuant to a transfer described in subsection (a) in any taxable year to which this subtitle applies, regardless of the taxable year in which such transfer occurred.

(d) Related persons

Subsection (a) shall not apply to any transfer, directly or indirectly, between persons specified within any one of the paragraphs of section 267(b) or persons described in section 707(b); except that, in applying section 267(b) and (c) and section 707(b) for purposes of this section—

(1) the phrase "25 percent or more" shall be substituted for the phrase "more than 50 percent" each place it appears in section 267(b) or 707(b), and

(2) paragraph (4) of section 267(c) shall be treated as providing that the family of an individual shall include only his spouse, ancestors, and lineal descendants.

(e) Cross reference

For special rule relating to nonresident aliens, see section 871(a).

(Aug. 16, 1954, ch. 736, 68A Stat. 329; Pub. L. 85–866, title I, §54(a), Sept. 2, 1958, 72 Stat. 1644; Pub. L. 94–455, title XIV, §1402(b)(1)(V), (2), Oct. 4, 1976, 90 Stat. 1732; Pub. L. 98–369, div. A, title I, §174(b)(5)(C), title X, §1001(b)(19), (e), July 18, 1984, 98 Stat. 707, 1012; Pub. L. 105–206, title V, §5001(a)(5), title VI, §6005(d)(4), July 22, 1998, 112 Stat. 788, 805.)

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–206, §6005(d)(4), substituted "18 months" for "1 year" in introductory provisions.

Pub. L. 105–206, §5001(a)(5), substituted "1 year" for "18 months" in introductory provisions.

1984—Subsec. (a). Pub. L. 98–369, §1001(b)(19), (e), substituted "6 months" for "1 year", applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

Subsec. (d). Pub. L. 98–369, §174(b)(5)(C), substituted "section 267(b) or persons described in section 707(b)" for "section 267(b)" and "section 267(b) and (c) and section 707(b)" for "section 267(b) and (c)" in introductory provisions, and substituted "section 267(b) or 707(b)" for "section 267(b)" in par. (1).

1976—Subsec. (a). Pub. L. 94–455, §1402(b)(2), provided that "9 months" would be changed to "1 year".

Pub. L. 94–455, §1402(b)(1)(V), provided that "6 months" would be changed to "9 months" for taxable years beginning in 1977.

1958—Subsec. (d). Pub. L. 85–866 substituted provisions set out as subsec. (d) for provisions reading "Subsection (a) shall not apply to any sale or exchange between an individual and any other related person (as defined in section 267(b)), except brothers and sisters, whether by the whole or half blood."

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 5001 of Pub. L. 105–206 effective Jan. 1, 1998, see section 5001(b)(2) of Pub. L. 105–206, set out as a note under section 1 of this title.

Amendment by section 6000(d)(4) of Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 174(b)(5)(C) of Pub. L. 98–369 applicable to transactions after Dec. 31, 1983, in taxable years ending after that date, see section 174(c)(2)(A) of Pub. L. 98–369, set out as a note under section 267 of this title.

Amendment by section 1001(b)(19) of Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XIV, §1402(b)(1), Oct. 4, 1976, 90 Stat. 1731, provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Pub. L. 94–455, title XIV, §1402(b)(2), Oct. 4, 1976, 90 Stat. 1732, provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85–866, title I, §54(b), Sept. 2, 1958, 72 Stat. 1644, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years ending after the date of the enactment of this Act [Sept. 2, 1958], but only with respect to transfers after such date."

§1236. Dealers in securities

(a) Capital gains

Gain by a dealer in securities from the sale or exchange of any security shall in no event be considered as gain from the sale or exchange of a capital asset unless—

(1) the security was, before the close of the day on which it was acquired (or such earlier time as the Secretary may prescribe by regulations), clearly identified in the dealer's records as a

security held for investment; and

(2) the security was not, at any time after the close of such day (or such earlier time), held by such dealer primarily for sale to customers in the ordinary course of his trade or business.

(b) Ordinary losses

Loss by a dealer in securities from the sale or exchange of any security shall, except as otherwise provided in section 582(c), (relating to bond, etc., losses of banks), in no event be considered as ordinary loss if at any time after November 19, 1951, the security was clearly identified in the dealer's records as a security held for investment.

(c) Definition of security

For purposes of this section, the term "security" means any share of stock in any corporation, certificate of stock or interest in any corporation, note, bond, debenture, or evidence of indebtedness, or any evidence of an interest in or right to subscribe to or purchase any of the foregoing.

(d) Special rule for floor specialists

(1) In general

In the case of a floor specialist (but only with respect to acquisitions, in connection with his duties on an exchange, of stock in which the specialist is registered with the exchange), subsection (a) shall be applied—

(A) by inserting "the 7th business day following" before "the day" the first place it appears in paragraph (1) and by inserting "7th business" before "day" in paragraph (2), and

(B) by striking the parenthetical phrase in paragraph (1).

(2) Floor specialist

The term "floor specialist" means a person who is—

(A) a member of a national securities exchange,

(B) is registered as a specialist with the exchange, and

(C) meets the requirements for specialists established by the Securities and Exchange Commission.

(e) Special rule for options

For purposes of subsection (a), any security acquired by a dealer pursuant to an option held by such dealer may be treated as held for investment only if the dealer, before the close of the day on which the option was acquired, clearly identified the option on his records as held for investment. For purposes of the preceding sentence, the term "option" includes the right to subscribe to or purchase any security.

(Aug. 16, 1954, ch. 736, 68A Stat. 330; Pub. L. 94–455, title XIX, §1901(b)(3)(E), Oct. 4, 1976, 90 Stat. 1793; Pub. L. 97–34, title V, §506, Aug. 13, 1981, 95 Stat. 332; Pub. L. 97–448, title I, §105(d)(1), Jan. 12, 1983, 96 Stat. 2387; Pub. L. 98–369, div. A, title I, §107(b), July 18, 1984, 98 Stat. 630.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98–369, §107(b)(1), substituted "the security was, before the close of the day on which it was acquired (or such earlier time as the Secretary may prescribe by regulations), clearly identified in the dealer's records as a security held for investment; and" for "the security was, before the close of the day on which it was acquired (before the close of the following day in the case of an acquisition before January 1, 1982), clearly identified in the dealer's records as a security held for investment or if acquired before October 20, 1951, was so identified before November 20, 1951; and".

Subsec. (a)(2). Pub. L. 98–369, §107(b)(2), inserted "(or such earlier time)" after "such day".

1983—Subsec. (e). Pub. L. 97–448 added subsec. (e).

1981—Subsec. (a). Pub. L. 97–34, §506(a), substituted "before the close of the day on which it was acquired (before the close of the following day in the case of an acquisition before January 1, 1982)" for "before the expiration of the 30th day after the date of its acquisition" in par. (1) and "close of such day" for "expiration of such 30th day" in par. (2).

Subsec. (d). Pub. L. 97–34, §506(b), added subsec. (d).

1976—Subsec. (b). Pub. L. 94–455 substituted "ordinary loss" for "loss from the sale or exchange of property which is not a capital asset".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to positions entered into after July 18, 1984, in taxable years ending after that date, see section 107(e) of Pub. L. 98–369, set out as a note under section 1092 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 97–448, title I, §105(d)(2), Jan. 12, 1983, 96 Stat. 2387, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to securities acquired after September 22, 1982, in taxable years ending after such date."

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to property acquired by the taxpayer after Aug. 13, 1981, in taxable years ending after such date, and applicable when so elected with respect to property held on June 23, 1981, see section 508 of Pub. L. 97–34, set out as an Effective Date note under section 1092 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

§1237. Real property subdivided for sale

(a) General

Any lot or parcel which is part of a tract of real property in the hands of a taxpayer other than a C corporation shall not be deemed to be held primarily for sale to customers in the ordinary course of trade or business at the time of sale solely because of the taxpayer having subdivided such tract for purposes of sale or because of any activity incident to such subdivision or sale, if—

(1) such tract, or any lot or parcel thereof, had not previously been held by such taxpayer primarily for sale to customers in the ordinary course of trade or business (unless such tract at such previous time would have been covered by this section) and, in the same taxable year in which the sale occurs, such taxpayer does not so hold any other real property; and

(2) no substantial improvement that substantially enhances the value of the lot or parcel sold is made by the taxpayer on such tract while held by the taxpayer or is made pursuant to a contract of sale entered into between the taxpayer and the buyer. For purposes of this paragraph, an improvement shall be deemed to be made by the taxpayer if such improvement was made by—

(A) the taxpayer or members of his family (as defined in section 267(c)(4)), by a corporation controlled by the taxpayer, an S corporation which included the taxpayer as a shareholder, or by a partnership which included the taxpayer as a partner; or

(B) a lessee, but only if the improvement constitutes income to the taxpayer; or

(C) Federal, State, or local government, or political subdivision thereof, but only if the improvement constitutes an addition to basis for the taxpayer; and

(3) such lot or parcel, except in the case of real property acquired by inheritance or devise, is held by the taxpayer for a period of 5 years.

(b) Special rules for application of section

(1) Gains

If more than 5 lots or parcels contained in the same tract of real property are sold or exchanged, gain from any sale or exchange (which occurs in or after the taxable year in which the sixth lot or parcel is sold or exchanged) of any lot or parcel which comes within the provisions of paragraphs (1), (2) and (3) of subsection (a) of this section shall be deemed to be gain from the sale of property held primarily for sale to customers in the ordinary course of the trade or business to the extent of 5 percent of the selling price.

(2) Expenditures of sale

For the purpose of computing gain under paragraph (1) of this subsection, expenditures incurred in connection with the sale or exchange of any lot or parcel shall neither be allowed as a deduction in computing taxable income, nor treated as reducing the amount realized on such sale or exchange; but so much of such expenditures as does not exceed the portion of gain deemed under paragraph (1) of this subsection to be gain from the sale of property held primarily for sale to customers in the ordinary course of trade or business shall be so allowed as a deduction, and the remainder, if any, shall be treated as reducing the amount realized on such sale or exchange.

(3) Necessary improvements

No improvement shall be deemed a substantial improvement for purposes of subsection (a) if the lot or parcel is held by the taxpayer for a period of 10 years and if—

(A) such improvement is the building or installation of water, sewer, or drainage facilities or roads (if such improvement would except for this paragraph constitute a substantial improvement);

(B) it is shown to the satisfaction of the Secretary that the lot or parcel, the value of which was substantially enhanced by such improvement, would not have been marketable at the prevailing local price for similar building sites without such improvement; and

(C) the taxpayer elects, in accordance with regulations prescribed by the Secretary, to make no adjustment to basis of the lot or parcel, or of any other property owned by the taxpayer, on account of the expenditures for such improvements. Such election shall not make any item deductible which would not otherwise be deductible.

(c) Tract defined

For purposes of this section, the term "tract of real property" means a single piece of real property, except that 2 or more pieces of real property shall be considered a tract if at any time they were contiguous in the hands of the taxpayer or if they would be contiguous except for the interposition of a road, street, railroad, stream, or similar property. If, following the sale or exchange of any lot or parcel from a tract of real property, no further sales or exchanges of any other lots or parcels from the remainder of such tract are made for a period of 5 years, such remainder shall be deemed a tract.

(Aug. 16, 1954, ch. 736, 68A Stat. 330; Apr. 27, 1956, ch. 214, §§1, 2, 70 Stat. 118; Pub. L. 85–866, title I, §55, Sept. 2, 1958, 72 Stat. 1645; Pub. L. 91–686, §2(a), Jan. 12, 1971, 84 Stat. 2071; Pub. L. 94–455, title XIX, §§1901(a)(138), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1787, 1834; Pub. L. 104–188, title I, §1314, Aug. 20, 1996, 110 Stat. 1785.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–188, §1314(a), substituted "other than a C corporation" for "other than a corporation" in introductory provisions.

Subsec. (a)(2)(A). Pub. L. 104–188, §1314(b), inserted "an S corporation which included the taxpayer as a shareholder," after "controlled by the taxpayer,".

1976—Subsec. (b)(3)(B), (C). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (d). Pub. L. 94–455, §1901(a)(138), struck out effective date provision making the section applicable only with respect to sales of property occurring after Dec. 31, 1953, except that for purposes of subsec. (c) defining tract of real property and for determining the number of sales under subsec. (b)(1) of this section, all sales of lots and parcels from any tract of real property during the period of 5 years before Dec. 31, 1953, shall be taken into account, except as provided in subsec. (c).

1971—Subsec. (a). Pub. L. 91–686, §2(a)(1), substituted "other than a corporation" for "(including corporations only if no shareholder directly or indirectly holds real property for sale to customers in the ordinary course of trade or business and only in the case of property described in the last sentence of subsection (b)(3))".

Subsec. (b). Pub. L. 91–686, §2(a)(2), struck out sentence which made subpars. (B) and (C) inapplicable in the case of property acquired through the foreclosure of a lien thereon which secured the payment of an indebtedness to the taxpayer or (in the case of a corporation) to a creditor who has transferred the foreclosure

bid to the taxpayer in exchange for all of its stock and other consideration and in the case of property adjacent to such property if 80 percent of the real property owned by the taxpayer was property described in the first part of the sentence.

1958—Subsec. (a)(1). Pub. L. 85–866 substituted "and, in the same taxable year" for "or, in the same taxable year".

1956—Subsec. (a). Act Apr. 27, 1956, §1, substituted "(including corporations only if no shareholder directly or indirectly holds real property for sale to customers in the ordinary course of trade or business and only in the case of property described in the last sentence of subsection (b)(3))" for "other than a corporation".

Subsec. (b)(3). Act Apr. 27, 1956, §2, substituted "water, sewer, or drainage facilities" for "water or sewer facilities" in subpar. (A), and inserted provision at end that requirements of subpars. (B) and (C) do not apply to certain specified property.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1317(a) of Pub. L. 104–188, set out as a note under section 641 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(138) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Pub. L. 91–686, §2(b), Jan. 12, 1971, 84 Stat. 2071, provided that: "The amendments made by subsection (a) [amending this section] shall be effective for taxable years beginning after the date of enactment of this Act [Jan. 12, 1971]."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Act Apr. 27, 1956, ch. 214, §3, 70 Stat. 119, provided that: "This Act [amending this section] shall apply to all taxable years beginning after Dec. 31, 1954."

SALES OR EXCHANGES BY CORPORATIONS OF REAL PROPERTY HELD MORE THAN 25 YEARS

Pub. L. 91–686, §1, Jan. 12, 1971, 84 Stat. 2070, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided: "That (a) for purposes of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] any lot or parcel of real property sold or exchanged by a corporation which would, but for this Act, be treated as property held primarily for sale to customers in the ordinary course of trade or business shall not, except to the extent provided in (b), be so treated if—

"(1) no shareholder of the corporation directly or indirectly holds real property primarily for sale to customers in the ordinary course of trade or business; and

"(2)(A) such lot or parcel is a part of real property (i) held for more than twenty-five years at the time of sale or exchange, and (ii) acquired before January 1, 1934, by the corporation as a result of the foreclosure of a lien (or liens) thereon which secured the payment of indebtedness held by one or more creditors who transferred one or more foreclosure bids to the corporation in exchange for all its stock (with or without other consideration), or

"(B)(i) such lot or parcel is a part of additional real property acquired before January 1, 1957, by the corporation in the near vicinity of any real property to which subparagraph (A) applies, or

"(ii) such lot or parcel is wholly or to some extent a part of any minor acquisition made after December 31, 1956, by the corporation to adjust boundaries, to fill gaps in previously acquired property, to facilitate the installation of streets, utilities, and other public facilities, or to facilitate the sale of adjacent property, or

"(iii) such lot or parcel is wholly or to some extent a part of a reacquisition by the corporation after December 31, 1956, of property previously owned by the corporation;

but only if at least 80 percent (as measured by area) of the real property sold or exchanged by the corporation within the taxable year is property described in subparagraph (A); and

"(3) there were no acquisitions of real property by the corporation after December 31, 1956, other than—

"(A) acquisitions described in paragraph (2)(B)(ii) and reacquisitions described in paragraph (2)(B)(iii), or

"(B) acquisitions of real property used in a trade or business of the corporation or held for investment by the corporation; and

"(4) the corporation did not after December 31, 1957, sell or exchange (except in condemnation or under threat of condemnation) any residential lot or parcel on which, at the time of the sale or exchange, there existed any substantial improvements (other than improvements in existence at the time the land was acquired by the corporation) except subdivision, clearing, grubbing, and grading, building or installation of water, sewer, and drainage facilities, construction of roads, streets, and sidewalks, and installation of utilities."

In any case in which a corporation referred to in paragraphs (1), (2), (3), and (4) is a member of an affiliated group as defined in section 1504(a) of the Internal Revenue Code of 1986, such affiliated group shall, for purposes of such paragraphs, be treated as a single corporation.

"(b)(1) Gain from any sale or exchange described in subsection (a) shall be deemed, for purposes of such Code, to be gain from the sale of property held primarily for sale to customers in the ordinary course of trade or business to the extent of 5 percent of the selling price.

"(2) For the purpose of computing gain under paragraph (1), expenditures incurred in connection with the sale or exchange of any lot or parcel shall neither be allowed as a deduction in computing taxable income, nor treated as reducing the amount realized on such sale or exchange; but so much of such expenditures as does not exceed the portion of gain deemed under paragraph (1) to be gain from the sale of property held primarily for sale to customers in the ordinary course of trade or business shall be so allowed as a deduction, and the remainder, if any, shall be treated as reducing the amount realized on such sale or exchange.

"(c) The provisions of subsections (a) and (b) shall apply to taxable years beginning after December 31, 1957, and before January 1, 1984."

[§1238. Repealed. Pub. L. 101–508, title XI, §11801(a)(35), Nov. 5, 1990, 104 Stat. 1388–521]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 332; Oct. 4, 1976, Pub. L. 94–455, title XIX, §§1901(b)(3)(K), 1951(c)(2)(A), 90 Stat. 1793, 1840, related to amortization in excess of depreciation.

SAVINGS PROVISION

For provisions that nothing in repeal by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

§1239. Gain from sale of depreciable property between certain related taxpayers

(a) Treatment of gain as ordinary income

In the case of a sale or exchange of property, directly or indirectly, between related persons, any gain recognized to the transferor shall be treated as ordinary income if such property is, in the hands of the transferee, of a character which is subject to the allowance for depreciation provided in section 167.

(b) Related persons

For purposes of subsection (a), the term "related persons" means—

(1) a person and all entities which are controlled entities with respect to such person,

(2) a taxpayer and any trust in which such taxpayer (or his spouse) is a beneficiary, unless such beneficiary's interest in the trust is a remote contingent interest (within the meaning of section 318(a)(3)(B)(i)), and

(3) except in the case of a sale or exchange in satisfaction of a pecuniary bequest, an executor of an estate and a beneficiary of such estate.

(c) Controlled entity defined

(1) General rule

For purposes of this section, the term "controlled entity" means, with respect to any person—

(A) a corporation more than 50 percent of the value of the outstanding stock of which is owned (directly or indirectly) by or for such person,

(B) a partnership more than 50 percent of the capital interest or profits interest in which is owned (directly or indirectly) by or for such person, and

(C) any entity which is a related person to such person under paragraph (3), (10), (11), or (12) of section 267(b).

(2) Constructive ownership

For purposes of this section, ownership shall be determined in accordance with rules similar to the rules under section 267(c) (other than paragraph (3) thereof).

(d) Employer and related employee association

For purposes of subsection (a), the term "related person" also includes—

(1) an employer and any person related to the employer (within the meaning of subsection (b)), and

(2) a welfare benefit fund (within the meaning of section 419(e)) which is controlled directly or indirectly by persons referred to in paragraph (1).

(e) Patent applications treated as depreciable property

For purposes of this section, a patent application shall be treated as property which, in the hands of the transferee, is of a character which is subject to the allowance for depreciation provided in section 167.

(Aug. 16, 1954, ch. 736, 68A Stat. 332; Pub. L. 85–866, title I, §56, Sept. 2, 1958, 72 Stat. 1645; Pub. L. 94–455, title XXI, §2129(a), Oct. 4, 1976, 90 Stat. 1922; Pub. L. 95–600, title VII, §701(v)(1), Nov. 6, 1978, 92 Stat. 2920; Pub. L. 96–471, §5, Oct. 19, 1980, 94 Stat. 2255; Pub. L. 97–448, title III, §301, Jan. 12, 1983, 96 Stat. 2397; Pub. L. 98–369, div. A, title I, §175(a), (b), title IV, §421(b)(6)(A), title V, §557(a), July 18, 1984, 98 Stat. 708, 794, 898; Pub. L. 99–514, title VI, §642(a)(1)(A)–(C), Oct. 22, 1986, 100 Stat. 2283, 2284; Pub. L. 105–34, title XIII, §1308(b), Aug. 5, 1997, 111 Stat. 1041.)

AMENDMENTS

1997—Subsec. (b)(3). Pub. L. 105–34 added par. (3).

1986—Subsec. (b)(1). Pub. L. 99–514, §642(a)(1)(A), substituted "controlled entities" for "80-percent owned entities".

Subsec. (c). Pub. L. 99–514, §642(a)(1)(B), (C), in heading, substituted "Controlled entity" for "80-percent owned entity", in par. (1), in introductory provisions, substituted "controlled entity" for "80-percent owned entity", in subpar. (A), substituted "more than 50 percent of the value" for "80 percent or more in value", in subpar. (B), substituted "more than 50 percent" for "80 percent or more", and added subpar. (C), and amended par. (2) generally. Prior to amendment, par. (2) read as follows: "For purposes of subparagraphs (A) and (B) of paragraph (1), the principles of section 318 shall apply, except that—

"(A) the members of an individual's family shall consist only of such individual and such individual's spouse,

"(B) paragraph (2)(C) of section 318(a) shall be applied without regard to the 50-percent limitation contained therein, and

"(C) paragraph (3) of section 318(a) shall not apply."

1984—Subsec. (b). Pub. L. 98–369, §421(b)(6), redesignated pars. (2) and (3) as (1) and (2), respectively. Former par. (1), defining a husband and wife as "related persons", was struck out.

Pub. L. 98–369, §175(b), amended subsec. (b) generally, adding par. (3).

Subsec. (d). Pub. L. 98–369, §557(a), added subsec. (d).

Subsec. (e). Pub. L. 98–369, §175(a), added subsec. (e).

1983—Subsec. (b). Pub. L. 97–448, §301(a), substituted provisions that "related persons" means (1) a husband and wife, and (2) a person and all entities which are 80-percent owned entities with respect to such person, for provisions which provided that "related persons" meant (1) the taxpayer and the taxpayer's spouse, (2) the taxpayer and an 80-percent owned entity, or (3) two 80-percent owned entities.

Subsec. (c)(1). Pub. L. 97–448, §301(b), inserted ", with respect to any person" after "means" in introductory provisions and substituted "such person" for "the taxpayer" in subpars. (A) and (B).

Subsec. (c)(2). Pub. L. 97–448, §301(b), struck out "and" at end of subpar. (A), substituted "paragraph (2)(C)" for "paragraphs (2)(C) and (3)(C)" in subpar. (B), and added subpar. (C).

1980—Subsec. (b)(1). Pub. L. 96–471 substituted "the taxpayer and the taxpayer's spouse" for "a husband and wife".

Subsec. (b)(2). Pub. L. 96–471 substituted "the taxpayer and an 80-percent owned entity, or" for "an individual and a corporation 80 percent or more in value of the outstanding stock of which is owned, directly or indirectly, by or for such individual, or".

Subsec. (b)(3). Pub. L. 96–471 substituted "two 80-percent owned entities" for "two or more corporations 80 percent or more in value of the outstanding stock of each of which is owned, directly or indirectly, by or for the same individual".

Subsec. (c). Pub. L. 96–471 substituted provisions defining an "80-percent owned entity" for provisions relating to constructive ownership of stock.

1978—Subsec. (a). Pub. L. 95–600 substituted "of a character which is subject to the allowance for depreciation provided in section 167" for "subject to the allowance for depreciation provided in section 167".

1976—Pub. L. 94–455 substituted "sale of depreciable property between certain related taxpayers" for "sale of certain property between spouses or between an individual and a controlled corporation" in section catchline.

Subsec. (a). Pub. L. 94–455 substituted provisions for transactions between related persons for such transactions (1) between a husband and wife; or (2) between an individual and a corporation more than 80 percent in value of the outstanding stock of which is owned by such individual, his spouse, and his minor children and minor grandchildren and "any gain recognized to the transferee shall be treated as ordinary income if such property is, in the hands of the transferee, subject to the allowance for depreciation provided in section 167" for "any gain recognized to the transferor from the sale or exchange of such property shall be considered as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231".

Subsec. (b). Pub. L. 94–455 substituted definition of "related persons" for prior provision making section applicable only to sales or exchanges of depreciable property.

Subsec. (c). Pub. L. 94–455 substituted provision respecting constructive ownership of stock for prior provision making section inapplicable with respect to sales or exchanges made on or before May 3, 1951.

1958—Subsec. (c). Pub. L. 85–866 added subsec. (c).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to taxable years beginning after Aug. 5, 1997, see section 1308(c) of Pub. L. 105–34, set out as a note under section 267 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title VI, §642(c), Oct. 22, 1986, 100 Stat. 2284, as amended by Pub. L. 100–647, title I, §1006(i)(3), Nov. 10, 1988, 102 Stat. 3411, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 453 and 707 of this title] shall apply to sales after the date of the enactment of this Act [Oct. 22, 1986], in taxable years ending after such date.

"(2) TRANSITIONAL RULE FOR BINDING CONTRACTS.—The amendments made by this section shall not apply to sales made after August 14, 1986, which are made pursuant to a binding contract in effect on August 14, 1986, and at all times thereafter."

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §175(c), July 18, 1984, 98 Stat. 708, provided that: "The amendments made by this section [amending this section] shall apply to sales or exchanges after March 1, 1984, in taxable years ending after such date."

Amendment by section 421(b)(6) of Pub. L. 98–369 applicable to transfers after July 18, 1984, in taxable years ending after such date, subject to election to have amendment apply to transfers after 1983 or to transfers pursuant to existing decrees, see section 421(d) of Pub. L. 98–369, set out as an Effective Date note under section 1041 of this title.

Pub. L. 98–369, div. A, title V, §557(b), July 18, 1984, 98 Stat. 899, provided that: "The amendment made by subsection (a) [amending this section] shall apply to sales or exchanges after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date."

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 applicable to dispositions made after Oct. 19, 1980, in taxable years ending after such date, see section 311(a) of Pub. L. 97–448, set out as a note under section 453 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title VII, §701(v)(2), Nov. 6, 1978, 92 Stat. 2920, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendment made by paragraph (1) [amending this section] shall apply as if included in the amendment made to section 1239 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] by section 2129(a) of the Tax Reform Act of 1976 [section 2129(a) of Pub. L. 94–455]."

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XXI, §2129(b), Oct. 4, 1976, 90 Stat. 1922, provided that: "The amendment made by this section [amending this section] shall apply to sales or exchanges after the date of the enactment of this Act [Oct. 4, 1976]. For purposes of the preceding sentence, a sale or exchange is considered to have occurred on or before such date of enactment if such sale or exchange is made pursuant to a binding contract entered into on or before that date."

[§1240. Repealed. Pub. L. 94–455, title XIX, §1901(a)(139), Oct. 4, 1976, 90 Stat. 1787]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 332, related to taxability to employee of termination payments.

EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 2 of this title.

§1241. Cancellation of lease or distributor's agreement

Amounts received by a lessee for the cancellation of a lease, or by a distributor of goods for the cancellation of a distributor's agreement (if the distributor has a substantial capital investment in the distributorship), shall be considered as amounts received in exchange for such lease or agreement.

(Aug. 16, 1954, ch. 736, 68A Stat. 333.)

§1242. Losses on small business investment company stock

If—

(1) a loss is on stock in a small business investment company operating under the Small Business Investment Act of 1958, and

(2) such loss would (but for this section) be a loss from the sale or exchange of a capital asset,

then such loss shall be treated as an ordinary loss. For purposes of section 172 (relating to the net operating loss deduction) any amount of loss treated by reason of this section as an ordinary loss shall be treated as attributable to a trade or business of the taxpayer.

(Added Pub. L. 85–866, title I, §57(a), Sept. 2, 1958, 72 Stat. 1645; amended Pub. L. 94–455, title XIX, §1901(b)(3)(F), Oct. 4, 1976, 90 Stat. 1793.)

REFERENCES IN TEXT

The Small Business Investment Act of 1958, referred to in cl. (1), is Pub. L. 85–699, Aug. 21, 1958, 72 Stat. 689, as amended, which is classified principally to chapter 14B (§661 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 661 of Title 15 and Tables.

AMENDMENTS

1976—Pub. L. 94–455 substituted "an ordinary loss" for "a loss from the sale or exchange of property which is not a capital asset", each time appearing.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE

Section applicable with respect to taxable years beginning after Sept. 2, 1958, see section 57(d) of Pub. L. 85–866, set out as an Effective Date of 1958 Amendment note under section 243 of this title.

§1243. Loss of small business investment company

In the case of a small business investment company operating under the Small Business Investment Act of 1958, if—

(1) a loss is on stock received pursuant to the conversion privilege of convertible debentures acquired pursuant to section 304 of the Small Business Investment Act of 1958, and

(2) such loss would (but for this section) be a loss from the sale or exchange of a capital asset,

then such loss shall be treated as an ordinary loss.

(Added Pub. L. 85–866, title I, §57(a), Sept. 2, 1958, 72 Stat. 1645; amended Pub. L. 91–172, title IV, §433(b), Dec. 30, 1969, 83 Stat. 624; Pub. L. 94–455, title XIX, §1901(b)(3)(F), Oct. 4, 1976, 90 Stat. 1793.)

REFERENCES IN TEXT

The Small Business Investment Act of 1958, referred to in text, is Pub. L. 85–699, Aug. 21, 1958, 72 Stat. 689, as amended, which is classified principally to chapter 14B (§661 et seq.) of Title 15, Commerce and Trade. Section 304 of the Small Business Investment Act of 1958, is classified to section 684 of Title 15. For complete classification of this Act to the Code, see Short Title note set out under section 661 of Title 15 and Tables.

AMENDMENTS

1976—Pub. L. 94–455 substituted "an ordinary loss" for "a loss from the sale or exchange of property which is not a capital asset".

1969—Par. (1). Pub. L. 91–172 substituted "stock received pursuant to the conversion privilege of convertible debentures" for "convertible debentures (including stock received pursuant to the conversion privilege)".

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after July 11, 1969, see section 433(d) of Pub. L. 91–172, set out as a note under section 582 of this title.

EFFECTIVE DATE

Section applicable with respect to taxable years beginning after Sept. 2, 1958, see section 57(d) of Pub. L. 85–866, set out as an Effective Date of 1958 Amendment note under section 243 of this title.

§1244. Losses on small business stock

(a) General rule

In the case of an individual, a loss on section 1244 stock issued to such individual or to a partnership which would (but for this section) be treated as a loss from the sale or exchange of a capital asset shall, to the extent provided in this section, be treated as an ordinary loss.

(b) Maximum amount for any taxable year

For any taxable year the aggregate amount treated by the taxpayer by reason of this section as an ordinary loss shall not exceed—

(1) $50,000, or

(2) $100,000, in the case of a husband and wife filing a joint return for such year under section 6013.

(c) Section 1244 stock defined

(1) In general

For purposes of this section, the term "section 1244 stock" means stock in a domestic corporation if—

(A) at the time such stock is issued, such corporation was a small business corporation,

(B) such stock was issued by such corporation for money or other property (other than stock and securities), and

(C) such corporation, during the period of its 5 most recent taxable years ending before the date the loss on such stock was sustained, derived more than 50 percent of its aggregate gross receipts from sources other than royalties, rents, dividends, interests, annuities, and sales or exchanges of stocks or securities.

(2) Rules for application of paragraph (1)(C)

(A) Period taken into account with respect to new corporations

For purposes of paragraph (1)(C), if the corporation has not been in existence for 5 taxable years ending before the date the loss on the stock was sustained, there shall be substituted for such 5-year period—

(i) the period of the corporation's taxable years ending before such date, or

(ii) if the corporation has not been in existence for 1 taxable year ending before such date, the period such corporation has been in existence before such date.

(B) Gross receipts from sales of securities

For purposes of paragraph (1)(C), gross receipts from the sales or exchanges of stock or securities shall be taken into account only to the extent of gains therefrom.

(C) Nonapplication where deductions exceed gross income

Paragraph (1)(C) shall not apply with respect to any corporation if, for the period taken into account for purposes of paragraph (1)(C), the amount of the deductions allowed by this chapter (other than by sections 172, 243, 244, and 245) exceeds the amount of gross income.

(3) Small business corporation defined

(A) In general

For purposes of this section, a corporation shall be treated as a small business corporation if the aggregate amount of money and other property received by the corporation for stock, as a contribution to capital, and as paid-in surplus, does not exceed $1,000,000. The determination under the preceding sentence shall be made as of the time of the issuance of the stock in question but shall include amounts received for such stock and for all stock theretofore issued.

(B) Amount taken into account with respect to property

For purposes of subparagraph (A), the amount taken into account with respect to any property other than money shall be the amount equal to the adjusted basis to the corporation of such property for determining gain, reduced by any liability to which the property was subject or which was assumed by the corporation. The determination under the preceding sentence shall be made as of the time the property was received by the corporation.

(d) Special rules

(1) Limitations on amount of ordinary loss

(A) Contributions of property having basis in excess of value

If—

(i) section 1244 stock was issued in exchange for property,

(ii) the basis of such stock in the hands of the taxpayer is determined by reference to the basis in his hands of such property, and

(iii) the adjusted basis (for determining loss) of such property immediately before the exchange exceeded its fair market value at such time,

then in computing the amount of the loss on such stock for purposes of this section the basis of such stock shall be reduced by an amount equal to the excess described in clause (iii).

(B) Increases in basis

In computing the amount of the loss on stock for purposes of this section, any increase in the basis of such stock (through contributions to the capital of the corporation, or otherwise) shall be treated as allocable to stock which is not section 1244 stock.

(2) Recapitalizations, changes in name, etc.

To the extent provided in regulations prescribed by the Secretary, stock in a corporation, the basis of which (in the hands of a taxpayer) is determined in whole or in part by reference to the basis in his hands of stock in such corporation which meets the requirements of subsection (c)(1) (other than subparagraph (C) thereof), or which is received in a reorganization described in section 368(a)(1)(F) in exchange for stock which meets such requirements, shall be treated as meeting such requirements. For purposes of paragraphs (1)(C) and (3)(A) of subsection (c), a successor corporation in a reorganization described in section 368(a)(1)(F) shall be treated as the same corporation as its predecessor.

(3) Relationship to net operating loss deduction

For purposes of section 172 (relating to the net operating loss deduction), any amount of loss treated by reason of this section as an ordinary loss shall be treated as attributable to a trade or business of the taxpayer.

(4) Individual defined

For purposes of this section, the term "individual" does not include a trust or estate.

(e) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section.

(Added Pub. L. 85–866, title II, §202(b), Sept. 2, 1958, 72 Stat. 1676; amended Pub. L. 94–455, title XIX, §§1901(b)(1)(W), (3)(G), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1792, 1793, 1834; Pub. L. 95–600, title III, §345(a)–(d), Nov. 6, 1978, 92 Stat. 2844, 2845; Pub. L. 98–369, div. A, title IV, §481(a), July 18, 1984, 98 Stat. 847.)

AMENDMENTS

1984—Subsecs. (c)(1), (d)(2). Pub. L. 98–369 substituted "stock in a" for "common stock in a".

1978—Subsec. (b). Pub. L. 95–600, §345(b), substituted in par. (1) "$50,000" for "$25,000" and in par. (2) "$100,000" for "$50,000".

Subsec. (c). Pub. L. 95–600, §345(a), (c), among other changes, substituted provisions permitting a corporation to issue common stock under the provisions of this section without a written plan for provisions requiring that a written plan to issue section 1244 stock must be adopted by the issuing corporation and increased the amount of section 1244 stock that a qualified small business corporation may issue from $500,000 to $1,000,000.

Subsec. (d)(2). Pub. L. 95–600, §345(d), substituted "subparagraph (C)" for "subparagraph (E)" and "paragraphs (1)(C) and (3)(A)" for "paragraphs (1)(E) and (2)(A)".

1976—Subsecs. (a), (b). Pub. L. 94–455, §1901(b)(3)(G), substituted "an ordinary loss" for "a loss from the sale or exchange of an asset which is not a capital asset".

Subsec. (c)(1)(E). Pub. L. 94–455, §1901(b)(1)(W), struck out reference to section 242 of this title.

Subsec. (d)(2). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (d)(3). Pub. L. 94–455, §1901(b)(3)(G), substituted "an ordinary loss" for "a loss from the sale or exchange of an asset which is not a capital asset".

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title IV, §481(b), July 18, 1984, 98 Stat. 847, provided that: "The amendment made by subsection (a) [amending this section] shall apply to stock issued after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date."

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title III, §345(e), Nov. 6, 1978, 92 Stat. 2845, as amended by Pub. L. 96–222, title I, §103(a)(9), Apr. 1, 1980, 94 Stat. 212, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to stock issued after November 6, 1978.

"(2) SUBSECTION (b).—The amendments made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 1978.

"(3) TRANSITIONAL RULE FOR SUBSECTION (b).—In the case of a taxable year which includes November 6, 1978, the amendments made by subsection (b) [amending this section] shall apply with respect to stock issued after such date."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(b)(1)(W), (3)(G) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

§1245. Gain from dispositions of certain depreciable property

(a) General rule

(1) Ordinary income

Except as otherwise provided in this section, if section 1245 property is disposed of the amount by which the lower of—

(A) the recomputed basis of the property, or

(B)(i) in the case of a sale, exchange, or involuntary conversion, the amount realized, or

(ii) in the case of any other disposition, the fair market value of such property,

exceeds the adjusted basis of such property shall be treated as ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle.

(2) Recomputed basis

For purposes of this section—

(A) In general

The term "recomputed basis" means, with respect to any property, its adjusted basis recomputed by adding thereto all adjustments reflected in such adjusted basis on account of deductions (whether in respect of the same or other property) allowed or allowable to the taxpayer or to any other person for depreciation or amortization.

(B) Taxpayer may establish amount allowed

For purposes of subparagraph (A), if the taxpayer can establish by adequate records or other sufficient evidence that the amount allowed for depreciation or amortization for any period was less than the amount allowable, the amount added for such period shall be the amount allowed.

(C) Certain deductions treated as amortization

Any deduction allowable under section 179, 179A, 179B, 179C, 179D, 179E, 181, 190, 193, or 194 shall be treated as if it were a deduction allowable for amortization.

(3) Section 1245 property

For purposes of this section, the term "section 1245 property" means any property which is or has been property of a character subject to the allowance for depreciation provided in section 167 and is either—

(A) personal property,

(B) other property (not including a building or its structural components) but only if such other property is tangible and has an adjusted basis in which there are reflected adjustments described in paragraph (2) for a period in which such property (or other property)—

(i) was used as an integral part of manufacturing, production, or extraction or of furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services,

(ii) constituted a research facility used in connection with any of the activities referred to in clause (i), or

(iii) constituted a facility used in connection with any of the activities referred to in clause (i) for the bulk storage of fungible commodities (including commodities in a liquid or gaseous state),

(C) so much of any real property (other than any property described in subparagraph (B)) which has an adjusted basis in which there are reflected adjustments for amortization under section 169, 179, 179A, 179B, 179C, 179D, 179E, 185,[1] 188 (as in effect before its repeal by the Revenue Reconciliation Act of 1990), 190, 193, or 194,[2]

(D) a single purpose agricultural or horticultural structure (as defined in section 168(i)(13)),

(E) a storage facility (not including a building or its structural components) used in connection with the distribution of petroleum or any primary product of petroleum, or

(F) any railroad grading or tunnel bore (as defined in section 168(e)(4)).

(b) Exceptions and limitations

(1) Gifts

Subsection (a) shall not apply to a disposition by gift.

(2) Transfers at death

Except as provided in section 691 (relating to income in respect of a decedent), subsection (a) shall not apply to a transfer at death.

(3) Certain tax-free transactions

If the basis of property in the hands of a transferee is determined by reference to its basis in the hands of the transferor by reason of the application of section 332, 351, 361, 721, or 731, then the amount of gain taken into account by the transferor under subsection (a)(1) shall not exceed the amount of gain recognized to the transferor on the transfer of such property (determined without regard to this section). Except as provided in paragraph (6), this paragraph shall not apply to a disposition to an organization (other than a cooperative described in section 521) which is exempt from the tax imposed by this chapter.

(4) Like kind exchanges; involuntary conversions, etc.

If property is disposed of and gain (determined without regard to this section) is not recognized in whole or in part under section 1031 or 1033, then the amount of gain taken into account by the transferor under subsection (a)(1) shall not exceed the sum of—

(A) the amount of gain recognized on such disposition (determined without regard to this section), plus

(B) the fair market value of property acquired which is not section 1245 property and which is not taken into account under subparagraph (A).

(5) Property distributed by a partnership to a partner

(A) In general

For purposes of this section, the basis of section 1245 property distributed by a partnership to a partner shall be deemed to be determined by reference to the adjusted basis of such property to

the partnership.

(B) Adjustments added back

In the case of any property described in subparagraph (A), for purposes of computing the recomputed basis of such property the amount of the adjustments added back for periods before the distribution by the partnership shall be—

(i) the amount of the gain to which subsection (a) would have applied if such property had been sold by the partnership immediately before the distribution at its fair market value at such time, reduced by

(ii) the amount of such gain to which section 751(b) applied.

(6) Transfers to tax-exempt organization where property will be used in unrelated business

(A) In general

The second sentence of paragraph (3) shall not apply to a disposition of section 1245 property to an organization described in section 511(a)(2) or 511(b)(2) if, immediately after such disposition, such organization uses such property in an unrelated trade or business (as defined in section 513).

(B) Later change in use

If any property with respect to the disposition of which gain is not recognized by reason of subparagraph (A) ceases to be used in an unrelated trade or business of the organization acquiring such property, such organization shall be treated for purposes of this section as having disposed of such property on the date of such cessation.

(7) Timber property

In determining, under subsection (a)(2), the recomputed basis of property with respect to which a deduction under section 194 was allowed for any taxable year, the taxpayer shall not take into account adjustments under section 194 to the extent such adjustments are attributable to the amortizable basis of the taxpayer acquired before the 10th taxable year preceding the taxable year in which gain with respect to the property is recognized.

(8) Disposition of amortizable section 197 intangibles

(A) In general

If a taxpayer disposes of more than 1 amortizable section 197 intangible (as defined in section 197(c)) in a transaction or a series of related transactions, all such amortizable 197 intangibles shall be treated as 1 section 1245 property for purposes of this section.

(B) Exception

Subparagraph (A) shall not apply to any amortizable section 197 intangible (as so defined) with respect to which the adjusted basis exceeds the fair market value.

(c) Adjustments to basis

The Secretary shall prescribe such regulations as he may deem necessary to provide for adjustments to the basis of property to reflect gain recognized under subsection (a).

(d) Application of section

This section shall apply notwithstanding any other provision of this subtitle.

(Added Pub. L. 87–834, §13(a)(1), Oct. 16, 1962, 76 Stat. 1032; amended Pub. L. 88–272, title II, §203(d), Feb. 26, 1964, 78 Stat. 35; Pub. L. 91–172, title II, §212(a)(1), (2), title VII, §704(b)(4), Dec. 30, 1969, 83 Stat. 571, 670; Pub. L. 92–178, title I, §104(a)(2), title III, §303(c)(1), (2), Dec. 10, 1971, 85 Stat. 501, 522; Pub. L. 94–81, §2(a), Aug. 9, 1975, 89 Stat. 417; Pub. L. 94–455, title II, §212(b)(1), title XIX, §§1901(a)(140), (b)(3)(K), (11)(D), 1906(b) (13)(A), 1951(c)(2)(C), title XXI, §§2122(b)(3), 2124(a)(2), Oct. 4, 1976, 90 Stat. 1546, 1787, 1793, 1795, 1834, 1840, 1915, 1917; Pub. L. 95–600, title VII, §701(f)(3)(A), (B), (w)(1), (2), Nov. 6, 1978, 92 Stat. 2901, 2920; Pub. L. 96–223, title II, §251(a)(2)(C), Apr. 2, 1980, 94 Stat. 287; Pub. L. 96–451, title III, §301(c)(1), Oct.

14, 1980, 94 Stat. 1990; Pub. L. 97–34, title II, §§201(b), 202(b), 204(a)–(d), 212(d)(2)(F), Aug. 13, 1981, 95 Stat. 218, 220, 222, 223, 239; Pub. L. 97–448, title I, §102(e)(2)(B), Jan. 12, 1983, 96 Stat. 2371; Pub. L. 98–369, div. A, title I, §111(e)(5), (10), July 18, 1984, 98 Stat. 633; Pub. L. 99–121, title I, §103(b)(1)(D), Oct. 11, 1985, 99 Stat. 509; Pub. L. 99–514, title II, §201(d)(11), Oct. 22, 1986, 100 Stat. 2141; Pub. L. 100–647, title I, §1002(i)(2)(I), Nov. 10, 1988, 102 Stat. 3371; Pub. L. 101–239, title VII, §7622(b)(2)[(d)(2)], Dec. 19, 1989, 103 Stat. 2378; Pub. L. 101–508, title XI, §§11704(a)(13), 11801(c)(6)(E), (8)(H), 11813(b)(21), Nov. 5, 1990, 104 Stat. 1388–518, 1388–524, 1388–555; Pub. L. 103–66, title XIII, §13261(f)(4), (5), Aug. 10, 1993, 107 Stat. 539; Pub. L. 104–7, §2(b), Apr. 11, 1995, 109 Stat. 93; Pub. L. 104–188, title I, §1703(n)(6), Aug. 20, 1996, 110 Stat. 1877; Pub. L. 105–34, title XVI, §1604(a)(3), Aug. 5, 1997, 111 Stat. 1097; Pub. L. 108–357, title III, §338(b)(5), title VIII, §886(b)(2), Oct. 22, 2004, 118 Stat. 1481, 1641; Pub. L. 109–58, title XIII, §§1323(b)(1), 1331(b)(2), 1363(a), Aug. 8, 2005, 119 Stat. 1014, 1024, 1060; Pub. L. 109–135, title IV, §§402(a)(6), 403(e)(2), (i)(2), Dec. 21, 2005, 119 Stat. 2610, 2623, 2625; Pub. L. 109–432, div. A, title IV, §404(b)(3), Dec. 20, 2006, 120 Stat. 2956.)

REFERENCES IN TEXT

Section 185 of this title, referred to in subsec. (a)(3)(C), was repealed by Pub. L. 99–514, title II, §242(a), Oct. 22, 1986, 100 Stat. 2181.

The Revenue Reconciliation Act of 1990, referred to in subsec. (a)(3)(C), is title XI of Pub. L. 101–508, Nov. 5, 1990, 104 Stat. 1388–400. Section 11801(a)(13) of the Act repealed section 188 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1 of this title and Tables.

AMENDMENTS

2006—Subsec. (a)(2)(C), (3)(C). Pub. L. 109–432 inserted "179E," after "179D,".

2005—Subsec. (a)(2)(C). Pub. L. 109–135, §403(e)(2), (i)(2), inserted "181," after "179B," and substituted "193, or 194" for "or 193".

Pub. L. 109–58, §1331(b)(2), inserted "179D," after "179C,".

Pub. L. 109–58, §1323(b)(1), inserted "179C," after "179B,".

Subsec. (a)(3)(C). Pub. L. 109–58, §1331(b)(2), inserted "179D," after "179C,".

Pub. L. 109–58, §1323(b)(1), inserted "179C," after "179B,".

Subsec. (b)(3). Pub. L. 109–135, §402(a)(6)(B), substituted "paragraph (6)" for "paragraph (7)".

Subsec. (b)(5) to (8). Pub. L. 109–135, §402(a)(6)(A), redesignated pars. (6) to (9) as (5) to (8), respectively, and struck out heading and text of former par. (5). Text read as follows: "Under regulations prescribed by the Secretary, rules consistent with paragraphs (3) and (4) of this subsection shall apply in the case of transactions described in section 1081 (relating to exchanges in obedience to SEC orders)."

Subsec. (b)(9). Pub. L. 109–135, §402(a)(6)(A), redesignated par. (9) as (8).

Pub. L. 109–58, §1363(a), added par. (9).

2004—Subsec. (a)(2)(C), (3)(C). Pub. L. 108–357, §338(b)(5), inserted "179B," after "179A,".

Subsec. (a)(4). Pub. L. 108–357, §886(b)(2), struck out par. (4) which related to special rule for player contracts if a franchise to conduct any sports enterprise is sold or exchanged.

1997—Subsec. (a)(2)(C), (3)(C). Pub. L. 105–34 inserted "179A," after "179,".

1996—Subsec. (a)(3). Pub. L. 104–188 reenacted heading without change and amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: "For purposes of this section, the term 'section 1245 property' means any property which is or has been property of a character subject to the allowance for depreciation provided in section 167 (or subject to the allowance of amortization provided in)) and is either—".

1995—Subsec. (b)(5). Pub. L. 104–7 struck out "1071 and" before "1081 transactions" in heading and "section 1071 (relating to gain from sale or exchange to effectuate policies of FCC) or" before "section 1081" in text.

1993—Subsec. (a)(2)(C). Pub. L. 103–66, §13261(f)(4), substituted "or 193" for "193, or 1253(d)(2) or (3)".

Subsec. (a)(3). Pub. L. 103–66, §13261(f)(5), struck out "section 185 or 1253(d)(2) or (3)" after "amortization provided in" in introductory provisions.

1990—Subsec. (a)(3). Pub. L. 101–508, §11704(a)(13), substituted "or (3))" for "or (3)" in introductory provisions.

Subsec. (a)(3)(C). Pub. L. 101–508, §11801(c)(6)(E), substituted "188 (as in effect before its repeal by the

Revenue Reconciliation Act of 1990)," for "188,".

Subsec. (a)(3)(D). Pub. L. 101–508, §11813(b)(21), substituted "section 168(i)(13)" for "section 48(p)".

Subsec. (b)(3). Pub. L. 101–508, §11801(c)(8)(H), struck out "371(a), 374(a)," after "332, 351, 361,".

1989—Subsec. (a)(2)(C). Pub. L. 101–239, §7622(b)(2)(A)[(d)(2)(A)], substituted "193, or 1253(d)(2) or (3)" for "or 193".

Subsec. (a)(3). Pub. L. 101–239, §7622(b)(2)(B)[(d)(2)(B)], substituted "section 185 or 1253(d)(2) or (3)" for "section 185" in introductory provisions.

1988—Subsec. (a)(3)(F). Pub. L. 100–647 added subpar. (F).

1986—Subsec. (a)(1). Pub. L. 99–514, §201(d)(11)(A), struck out "during a taxable year beginning after December 31, 1962, or section 1245 recovery property is disposed of after December 31, 1980," after "if section 1245 property is disposed of".

Subsec. (a)(2). Pub. L. 99–514, §201(d)(11)(B), amended par. (2) generally, restating former subpars. (A) to (E) and concluding provisions as subpars. (A) to (C).

Subsec. (a)(3). Pub. L. 99–514, §201(d)(11)(C), redesignated subpars. (D), (E), and (F) as (C), (D), and (E), respectively, and struck out former subpar. (C) which read as follows: "an elevator or an escalator".

Subsec. (a)(5), (6). Pub. L. 99–514, §201(d)(11)(D), struck out par. (5) which defined "section 1245 recovery property" and par. (6) which provided special rule for qualified leased property.

1985—Subsec. (a)(5)(A) to (C). Pub. L. 99–121 substituted "19-year real property" for "18-year real property".

1984—Subsec. (a)(5)(A) to (C). Pub. L. 98–369, §111(e)(5), substituted "18-year real property and low-income housing" for "15-year real property".

Subsec. (d)(5)(D). Pub. L. 98–369, §111(e)(10), substituted "low-income housing (within the meaning of section 168(c)(2)(F))" for "15-year real property which is described in clause (i), (ii), (iii), or (iv) of section 1250(a)(1)(B)".

1983—Subsec. (a)(3)(F). Pub. L. 97–448 inserted "(not including a building or its structural components)" after "a storage facility".

1981—Subsec. (a)(1). Pub. L. 97–34, §204(a), inserted reference to section 1245 recovery property disposed of after Dec. 31, 1980, in introductory provisions.

Subsec. (a)(2). Pub. L. 97–34, §§202(b)(1)–(3), 204(b), inserted reference to section 179 in subpar. (D), added subpar. (E), and, in provisions following subpar. (E), and inserted references to section 179 in three places. Pub. L. 97–34, §212(d)(2)(F), in provisions following subpar. (E), substituted "191 (as in effect before its repeal by the Economic Recovery Tax Act of 1981)" for "191" in two places.

Subsec. (a)(3)(D). Pub. L. 97–34, §202(b)(3), inserted reference to section 179.

Subsec. (a)(3)(E), (F). Pub. L. 97–34, §201(b), added subpars. (E) and (F).

Subsec. (a)(5). Pub. L. 97–34, §204(c), added par. (5).

Subsec. (a)(6). Pub. L. 97–34, §204(d), added par. (6).

1980—Subsec. (a)(2). Pub. L. 96–451, §301(c)(1)(A), (B), inserted references to section 194 in subpar. (D) and text following subpar. (D).

Pub. L. 96–223, §251(a)(2)(C)(i)–(iii), inserted references to section 193 in subpar. (D) and text following subpar. (D).

Subsec. (a)(3)(D). Pub. L. 96–451, §301(c)(1)(B), inserted reference to section 194.

Pub. L. 96–223, §251(a)(2)(C)(i), inserted reference to section 193.

Subsec. (b)(8). Pub. L. 96–451, §301(c)(1)(C), added par. (8).

1978—Subsec. (a)(2). Pub. L. 95–600, §701(f)(3)(A), struck out from the listed sections in subpar. (D) reference to 191 and inserted "(in the case of property described in paragraph (3)(C))" before "191" in two places in next to last sentence.

Subsec. (a)(3)(D). Pub. L. 95–600, §701(f)(3)(B), struck out reference to section 191.

Subsec. (a)(4)(B). Pub. L. 95–600, §701(w)(2), inserted "attributable to periods after December 31, 1975," after "for the depreciation", "incurred after December 31, 1975," after "allowable for losses", and "described in clause (i)" after "of the amounts".

Subsec. (a)(4)(C). Pub. L. 95–600, §701(w)(1), struck out provisions relating to the aggregate of the amounts treated as ordinary income.

1976—Subsec. (a)(1). Pub. L. 94–455, §1901(b)(3)(K), substituted "ordinary income" for "gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231".

Subsec. (a)(2)(D). Pub. L. 94–455, §§2122(b)(3)(B), 2124(a)(2), inserted reference to sections 190 and 191.

Subsec. (a)(2) foll. (D). Pub. L. 94–455, §§1901(b)(11)(D), 1951(c)(2)(C), 2122(b)(3)(A), (C), 2124(a)(2), in text following subpar. (D): struck out reference to section 187 in two places; inserted "(as in effect before its repeal by the Tax Reform Act of 1976)," after "section 168," in two places; inserted provision for treatment

for purposes of this section of any deduction allowable under section 190 as if it were a deduction allowable for amortization; and inserted reference to section 191 in two places, respectively.

Subsec. (a)(3)(D). Pub. L. 94–455, §§2122(b)(3)(A), 2124(a)(2), inserted reference to sections 190 and 191.

Subsec. (a)(4). Pub. L. 94–455, §212(b)(1), added par. (4).

Subsec. (b)(5). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (b)(7)(B). Pub. L. 94–455, §1901(a)(140), struck out "such organization acquiring such property," before "such organization".

Subsec. (c). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

1975—Subsec. (b)(3), (7). Pub. L. 94–81, §2(a)(1), (2), inserted reference to par. (7) in par. (3), and added par. (7).

1971—Subsec. (a)(2). Pub. L. 92–178, §303(c)(1), inserted reference to section 188 in two places in text following subpar. (D).

Subsec. (a)(3)(B)(ii), (iii). Pub. L. 92–178, §104(a)(2), substituted "research facility" for "research or storage facility" in cl. (ii) and added cl. (iii).

Subsec. (a)(3)(D). Pub. L. 92–178, §303(c)(2), inserted reference to section 188.

1969—Subsec. (a)(2). Pub. L. 91–172, §§212(a)(1), 704(b)(4)(A), (B), added subpar. (C) and inserted references to sections 169, 185, and 187, and added subpar. (D).

Subsec. (a)(3). Pub. L. 91–172, §§212(a)(2), 704(b)(4)(C)–(F), struck out "(other than livestock)" after "means any property" and substituted "section 167 (or subject to the allowance of amortization provided in section 185)" for "section 167" and added subpar. (D).

1964—Subsec. (a)(2), (3)(C). Pub. L. 88–272 redefined "recomputed basis" with respect to elevators or escalators in par. (2), and inserted subpar. (C) in par. (3).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–432 applicable to costs paid or incurred after Dec. 20, 2006, see section 404(c) of Pub. L. 109–432, set out as an Effective Date note under section 179E of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 402(a)(6) of Pub. L. 109–135 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109–58, to which it relates, but not applicable with respect to any transaction ordered in compliance with the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.) before its repeal, see section 402(m) of Pub. L. 109–135, set out as an Effective and Termination Dates of 2005 Amendments note under section 23 of this title.

Amendments by section 403(e)(2), (i)(2) of Pub. L. 109–135 effective as if included in the provisions of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which they relate, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

Amendment by section 1323(b)(1) of Pub. L. 109–58 applicable to properties placed in service after Aug. 8, 2005, see section 1323(c) of Pub. L. 109–58, set out as an Effective Date note under section 179C of this title.

Amendment by section 1331(b)(2) of Pub. L. 109–58 applicable to property placed in service after Dec. 31, 2005, see section 1331(d) of Pub. L. 109–58, set out as an Effective Date note under section 179D of this title.

Pub. L. 109–58, title XIII, §1363(b), Aug. 8, 2005, 119 Stat. 1060, provided that: "The amendment made by this section [amending this section] shall apply to dispositions of property after the date of the enactment of this Act [Aug. 8, 2005]."

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 338(b)(5) of Pub. L. 108–357 applicable to expenses paid or incurred after Dec. 31, 2002, in taxable years ending after such date, see section 338(c) of Pub. L. 108–357, set out as an Effective Date note under section 179B of this title.

Amendment by section 886(b)(2) of Pub. L. 108–357 applicable to franchises acquired after Oct. 22, 2004, see section 886(c)(2) of Pub. L. 108–357, set out as a note under section 197 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 effective as if included in the amendments made by section 1913 of the Energy Policy Act of 1992, Pub. L. 102–486, see section 1604(a)(4) of Pub. L. 105–34, set out as a note under section 263 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103–66, §§13001–13444, to which such amendment relates, see section 1703(o) of Pub. L.

104–188, set out as a note under section 39 of this title.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–7 applicable to sales and exchanges on or after January 17, 1995, and to sales and exchanges before such date if FCC tax certificate with respect to such sale or exchange was issued on or after such date, but not applicable with respect to certain binding contracts, see section 2(d) of Pub. L. 104–7, set out as an Effective Date of Repeal note under section 1071 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable, except as otherwise provided, with respect to property acquired after Aug. 10, 1993, see section 13261(g) of Pub. L. 103–66, set out as an Effective Date note under section 197 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11813(b)(21) of Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable to transfers after Oct. 2, 1989, but not applicable to any transfer pursuant to a written binding contract in effect on Oct. 2, 1989, and at all times thereafter before the transfer, see section 7622(c)[(e)] of Pub. L. 101–239, set out as a note under section 167 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to property placed in service after Dec. 31, 1986, in taxable years ending after such date, with exceptions, see sections 203 and 204 of Pub. L. 99–514, set out as a note under section 168 of this title.

Amendment by Pub. L. 99–514 not applicable to any property placed in service before Jan. 1, 1994, if such property placed in service as part of specified rehabilitations, and not applicable to certain additional rehabilitations, see section 251(d)(2), (3) of Pub. L. 99–514, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–121 applicable with respect to property placed in service by the taxpayer after May 8, 1985, with specified exceptions, see section 105(b) of Pub. L. 99–121, set out as a note under section 168 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable with respect to property placed in service by the taxpayer after Mar. 15, 1984, subject to certain exceptions, see section 111(g) of Pub. L. 98–369, set out as a note under section 168 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by sections 201(b), 202(b), and 204(a)–(d) of Pub. L. 97–34 applicable to property placed in service after Dec. 31, 1980, in taxable years ending after that date, see section 209(a) of Pub. L. 97–34, set out as an Effective Date note under section 168 of this title.

Amendment by section 212(d)(2)(F) of Pub. L. 97–34 applicable to expenditures incurred after Dec. 31, 1981, in taxable years ending after such date, see section 212(e) of Pub. L. 97–34, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–451 applicable with respect to additions to capital account made after Dec. 31, 1979, see section 301(d) of Pub. L. 96–451, set out as an Effective Date note under section 194 of this title.

Amendment by Pub. L. 96–223 applicable to taxable years beginning after Dec. 31, 1979, see section 251(b) of Pub. L. 96–223, set out as an Effective Date note under section 193 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 701(f)(3)(A), (B) of Pub. L. 95–600 effective as if included within the amendment of subsec. (a)(2), (3)(D) by section 2124 of Pub. L. 94–455, see section 701(f)(8) of Pub. L. 95–600, set out as an Effective and Termination Dates of 1978 Amendments note under section 167 of this title.

Pub. L. 95–600, title VII, §701(w)(3), Nov. 6, 1978, 92 Stat. 2920, provided that: "The amendments made by this subsection [amending this section] shall apply to transfers of player contracts in connection with any sale or exchange of a franchise after December 31, 1975."

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title II, §212(b)(2), Oct. 4, 1976, 90 Stat. 1547, provided that: "The amendment made by this subsection [amending this section] applies to transfers of player contracts in connection with any sale or exchange of a franchise after December 31, 1975."

Amendment by section 1901(a)(140), (b)(3)(K), (11)(D) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by section 1951(c)(2)(C) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1976, see section 1951(d) of Pub. L. 94–455, set out as a note under section 72 of this title.

Amendment by section 2122(b)(3) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1976, see section 2122(c) of Pub. L. 94–455, as amended, set out as an Effective Date note under section 190 of this title.

Amendment by section 2124(a)(2) of Pub. L. 94–455 applicable with respect to additions to capital account made after June 14, 1976 and before June 15, 1981, see section 2124(a)(4) of Pub. L. 94–455, set out as an Effective Date note under section 642 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–81 applicable to dispositions after Dec. 31, 1969, in taxable years ending after such date, with special provision for an election in the case of dispositions occurring before Aug. 9, 1975, see section 2(c) of Pub. L. 94–81, set out as a note under section 1250 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by section 104(a)(2) of Pub. L. 92–178 applicable to property described in section 50 of this title relating to restoration of credit, see section 104(h) of Pub. L. 92–178, set out as a note under section 48 of this title.

Amendment by section 303(c)(1), (2) of Pub. L. 92–178 applicable to taxable years ending after Dec. 31, 1971, see section 303(d) of Pub. L. 92–178, set out as a note under section 642 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title II, §212(a)(3), Dec. 30, 1969, 83 Stat. 571, provided that: "The amendments made by paragraphs (1) and (2) [amending this section] shall apply with respect to taxable years beginning after December 31, 1969."

Amendment by section 704(b)(4) of Pub. L. 91–172 applicable to taxable years ending after Dec. 31, 1968, see section 704(c) of Pub. L. 91–172, set out as a note under section 169 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable with respect to dispositions after Dec. 31, 1963, in taxable years ending after such date, see section 203(f)(3) of Pub. L. 88–272, set out as a note under section 48 of this title.

EFFECTIVE DATE

Pub. L. 87–834, §13(g), Oct. 16, 1962, 76 Stat. 1035, provided that: "The amendments made by this section [enacting this section and amending sections 167, 170, 301, 312, 341, 453, 613, and 751 of this title] (other than the amendments made by subsection (c) [amending sections 167, 179, and 642 of this title]) shall apply to

taxable years beginning after December 31, 1962. The amendments made by subsection (c) shall apply to taxable years beginning after December 31, 1961, and ending after the date of the enactment of this Act [Oct. 16, 1962]."

SAVINGS PROVISION

For provisions that nothing in amendment by sections 11801 and 11813 of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

[1] *See References in Text note below.*

[2] *Comma added editorially.*

[§§1246, 1247. Repealed. Pub. L. 108–357, title IV, §413(a)(2), (3), Oct. 22, 2004, 118 Stat. 1506]

Section 1246, added Pub. L. 87–834, §14(a)(1), Oct. 16, 1962, 76 Stat. 1036; amended Pub. L. 94–455, title XIV, §1402(b)(1)(W), (2), title XIX, §§1901(a)(141), (b)(3)(I), (32)(B)(ii), 1906(b)(13)(A), title XX, §2005(a)(5), Oct. 4, 1976, 90 Stat. 1732, 1787, 1793, 1800, 1834, 1877; Pub. L. 96–223, title IV, §401(a), Apr. 2, 1980, 94 Stat. 299; Pub. L. 97–34, title VIII, §832(a), Aug. 13, 1981, 95 Stat. 355; Pub. L. 98–369, div. A, title I, §134(a), title X, §1001(b)(20), (e), July 18, 1984, 98 Stat. 668, 1012; Pub. L. 99–514, title XII, §1235(b), Oct. 22, 1986, 100 Stat. 2574; Pub. L. 100–647, title I, §§1012(p)(21), 1018(o)(2), Nov. 10, 1988, 102 Stat. 3519, 3585; Pub. L. 107–16, title V, §542(e)(5)(A), June 7, 2001, 115 Stat. 85; Pub. L. 111–312, title III, §301(a), Dec. 17, 2010, 124 Stat. 3300, related to treatment of gain on foreign investment company stock.

Section 1247, added Pub. L. 87–834, §14(a)(1), Oct. 16, 1962, 76 Stat. 1037; amended Pub. L. 94–455, title XIV, §1402(b)(1)(X), (2), title XIX, §§1901(b)(33)(P), (R), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1732, 1802, 1834; Pub. L. 98–369, div. A, title X, §1001(b)(21), (e), July 18, 1984, 98 Stat. 1012, related to election by foreign investment companies to distribute income currently.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

§1248. Gain from certain sales or exchanges of stock in certain foreign corporations

(a) General rule

If—

(1) a United States person sells or exchanges stock in a foreign corporation, and

(2) such person owns, within the meaning of section 958(a), or is considered as owning by applying the rules of ownership of section 958(b), 10 percent or more of the total combined voting power of all classes of stock entitled to vote of such foreign corporation at any time during the 5-year period ending on the date of the sale or exchange when such foreign corporation was a controlled foreign corporation (as defined in section 957),

then the gain recognized on the sale or exchange of such stock shall be included in the gross income of such person as a dividend, to the extent of the earnings and profits of the foreign corporation attributable (under regulations prescribed by the Secretary) to such stock which were accumulated in taxable years of such foreign corporation beginning after December 31, 1962, and during the period or periods the stock sold or exchanged was held by such person while such foreign corporation was a controlled foreign corporation. For purposes of this section, a United States person

shall be treated as having sold or exchanged any stock if, under any provision of this subtitle, such person is treated as realizing gain from the sale or exchange of such stock.

(b) Limitation on tax applicable to individuals

In the case of an individual, if the stock sold or exchanged is a capital asset (within the meaning of section 1221) and has been held for more than 1 year, the tax attributable to an amount included in gross income as a dividend under subsection (a) shall not be greater than a tax equal to the sum of—

(1) a pro rata share of the excess of—

(A) the taxes that would have been paid by the foreign corporation with respect to its income had it been taxed under this chapter as a domestic corporation (but without allowance for deduction of, or credit for, taxes described in subparagraph (B)), for the period or periods the stock sold or exchanged was held by the United States person in taxable years beginning after December 31, 1962, while the foreign corporation was a controlled foreign corporation, adjusted for distributions and amounts previously included in gross income of a United States shareholder under section 951, over

(B) the income, war profits, or excess profits taxes paid by the foreign corporation with respect to such income; and

(2) an amount equal to the tax that would result by including in gross income, as gain from the sale or exchange of a capital asset held for more than 1 year, an amount equal to the excess of (A) the amount included in gross income as a dividend under subsection (a), over (B) the amount determined under paragraph (1).

(c) Determination of earnings and profits

(1) In general

Except as provided in section 312(k)(4), for purposes of this section, the earnings and profits of any foreign corporation for any taxable year shall be determined according to rules substantially similar to those applicable to domestic corporations, under regulations prescribed by the Secretary.

(2) Earnings and profits of subsidiaries of foreign corporations

If—

(A) subsection (a) or (f) applies to a sale, exchange, or distribution by a United States person of stock of a foreign corporation and, by reason of the ownership of the stock sold or exchanged, such person owned within the meaning of section 958(a)(2) stock of any other foreign corporation; and

(B) such person owned, within the meaning of section 958(a), or was considered as owning by applying the rules of ownership of section 958(b), 10 percent or more of the total combined voting power of all classes of stock entitled to vote of such other foreign corporation at any time during the 5-year period ending on the date of the sale or exchange when such other foreign corporation was a controlled foreign corporation (as defined in section 957),

then, for purposes of this section, the earnings and profits of the foreign corporation the stock of which is sold or exchanged which are attributable to the stock sold or exchanged shall be deemed to include the earnings and profits of such other foreign corporation which—

(C) are attributable (under regulations prescribed by the Secretary) to the stock of such other foreign corporation which such person owned within the meaning of section 958(a)(2) (by reason of his ownership within the meaning of section 958(a)(1)(A) of the stock sold or exchanged) on the date of such sale or exchange (or on the date of any sale or exchange of the stock of such other foreign corporation occurring during the 5-year period ending on the date of the sale or exchange of the stock of such foreign corporation, to the extent not otherwise taken into account under this section but not in excess of the fair market value of the stock of such other foreign corporation sold or exchanged over the basis of such stock (for determining gain) in the hands of the transferor); and

(D) were accumulated in taxable years of such other corporation beginning after December

31, 1962, and during the period or periods—

(i) such other corporation was a controlled foreign corporation, and

(ii) such person owned within the meaning of section 958(a) the stock of such other foreign corporation.

(d) Exclusions from earnings and profits

For purposes of this section, the following amounts shall be excluded, with respect to any United States person, from the earnings and profits of a foreign corporation:

(1) Amounts included in gross income under section 951

Earnings and profits of the foreign corporation attributable to any amount previously included in the gross income of such person under section 951, with respect to the stock sold or exchanged, but only to the extent the inclusion of such amount did not result in an exclusion of an amount from gross income under section 959.

[(2) Repealed. Pub. L. 100–647, title I, §1006(e)(14)(A), Nov. 10, 1988, 102 Stat. 3402]

(3) Less developed country corporations under prior law

Earnings and profits of a foreign corporation which were accumulated during any taxable year beginning before January 1, 1976, while such corporation was a less developed country corporation under section 902(d) as in effect before the enactment of the Tax Reduction Act of 1975.

(4) United States income

Any item includible in gross income of the foreign corporation under this chapter—

(A) for any taxable year beginning before January 1, 1967, as income derived from sources within the United States of a foreign corporation engaged in trade or business within the United States, or

(B) for any taxable year beginning after December 31, 1966, as income effectively connected with the conduct by such corporation of a trade or business within the United States.

This paragraph shall not apply with respect to any item which is exempt from taxation (or is subject to a reduced rate of tax) pursuant to a treaty obligation of the United States.

(5) Foreign trade income

Earnings and profits of the foreign corporation attributable to foreign trade income of a FSC (as defined in section 922) other than foreign trade income which—

(A) is section 923(a)(2) non-exempt income (within the meaning of section 927(d)(6)), or

(B) would not (but for section 923(a)(4)) be treated as exempt foreign trade income.

For purposes of the preceding sentence, the terms "foreign trade income" and "exempt foreign trade income" have the respective meanings given such terms by section 923. Any reference in this paragraph to section 922, 923, or 927 shall be treated as a reference to such section as in effect before its repeal by the FSC Repeal and Extraterritorial Income Exclusion Act of 2000.

(6) Amounts included in gross income under section 1293

Earnings and profits of the foreign corporation attributable to any amount previously included in the gross income of such person under section 1293 with respect to the stock sold or exchanged, but only to the extent the inclusion of such amount did not result in an exclusion of an amount under section 1293(c).

(e) Sales or exchanges of stock in certain domestic corporations

Except as provided in regulations prescribed by the Secretary, if—

(1) a United States person sells or exchanges stock of a domestic corporation, and

(2) such domestic corporation was formed or availed of principally for the holding, directly or indirectly, of stock of one or more foreign corporations,

such sale or exchange shall, for purposes of this section, be treated as a sale or exchange of the stock of the foreign corporation or corporations held by the domestic corporation.

(f) Certain nonrecognition transactions

Except as provided in regulations prescribed by the Secretary—

(1) In general

If—

(A) a domestic corporation satisfies the stock ownership requirements of subsection (a)(2) with respect to a foreign corporation, and

(B) such domestic corporation distributes stock of such foreign corporation in a distribution to which section 311(a), 337, 355(c)(1), or 361(c)(1) applies,

then, notwithstanding any other provision of this subtitle, an amount equal to the excess of the fair market value of such stock over its adjusted basis in the hands of the domestic corporation shall be included in the gross income of the domestic corporation as a dividend to the extent of the earnings and profits of the foreign corporation attributable (under regulations prescribed by the Secretary) to such stock which were accumulated in taxable years of such foreign corporation beginning after December 31, 1962, and during the period or periods the stock was held by such domestic corporation while such foreign corporation was a controlled foreign corporation. For purposes of subsections (c)(2), (d), and (h), a distribution of stock to which this subsection applies shall be treated as a sale of stock to which subsection (a) applies.

(2) Exception for certain distributions

In the case of any distribution of stock of a foreign corporation, paragraph (1) shall not apply if such distribution is to a domestic corporation—

(A) which is treated under this section as holding such stock for the period for which the stock was held by the distributing corporation, and

(B) which, immediately after the distribution, satisfies the stock ownership requirements of subsection (a)(2) with respect to such foreign corporation.

(3) Application to cases described in subsection (e)

To the extent that earnings and profits are taken into account under this subsection, they shall be excluded and not taken into account for purposes of subsection (e).

(g) Exceptions

This section shall not apply to—

(1) distributions to which section 303 (relating to distributions in redemption of stock to pay death taxes) applies; or

(2) any amount to the extent that such amount is, under any other provision of this title, treated as—

(A) a dividend (other than an amount treated as a dividend under subsection (f)),

(B) ordinary income, or

(C) gain from the sale of an asset held for not more than 1 year.

(h) Taxpayer to establish earnings and profits

Unless the taxpayer establishes the amount of the earnings and profits of the foreign corporation to be taken into account under subsection (a) or (f), all gain from the sale or exchange shall be considered a dividend under subsection (a) or (f), and unless the taxpayer establishes the amount of foreign taxes to be taken into account under subsection (b), the limitation of such subsection shall not apply.

(i) Treatment of certain indirect transfers

(1) In general

If any shareholder of a 10-percent corporate shareholder of a foreign corporation exchanges stock of the 10-percent corporate shareholder for stock of the foreign corporation, such 10-percent

corporate shareholder shall recognize gain in the same manner as if the stock of the foreign corporation received in such exchange had been—

(A) issued to the 10-percent corporate shareholder, and

(B) then distributed by the 10-percent corporate shareholder to such shareholder in redemption or liquidation (whichever is appropriate).

The amount of gain recognized by such 10-percent corporate shareholder under the preceding sentence shall not exceed the amount treated as a dividend under this section.

(2) 10-percent corporate shareholder defined

For purposes of this subsection, the term "10-percent corporate shareholder" means any domestic corporation which, as of the day before the exchange referred to in paragraph (1), satisfies the stock ownership requirements of subsection (a)(2) with respect to the foreign corporation.

(j) Cross reference

For provision excluding amounts previously taxed under this section from gross income when subsequently distributed, see section 959(e).

(Added Pub. L. 87–834, §15(a), Oct. 16, 1962, 76 Stat. 1041; amended Pub. L. 89–809, title I, §104(k), Nov. 13, 1966, 80 Stat. 1562; Pub. L. 91–172, title IV, §442(b)(2), Dec. 30, 1969, 83 Stat. 628; Pub. L. 94–455, title X, §§1022(a), 1042(b), (c)(1), (3), title XIV, §1402(b)(1)(Y), (2), title XIX, §§1901(b)(3)(H), (32)(B)(iii), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1619, 1636, 1637, 1732, 1793, 1800, 1834; Pub. L. 97–448, title I, §102(c)(1), Jan. 12, 1983, 96 Stat. 2370; Pub. L. 98–369, div. A, title I, §133(a), (b)(2), (c), title VIII, §801(d)(6), title X, §1001(b)(22), (e), July 18, 1984, 98 Stat. 667, 668, 996, 1012; Pub. L. 99–514, title VI, §631(d)(2), title XVIII, §§1810(i)(1), 1875(g)(1), 1876(a)(2), Oct. 22, 1986, 100 Stat. 2272, 2829, 2897; Pub. L. 100–647, title I, §§1006(e)(14), 1012(p)(19), Nov. 10, 1988, 102 Stat. 3402, 3518; Pub. L. 104–188, title I, §1702(g)(1), Aug. 20, 1996, 110 Stat. 1872; Pub. L. 108–357, title IV, §413(c)(22), Oct. 22, 2004, 118 Stat. 1509; Pub. L. 110–172, §11(g)(17), Dec. 29, 2007, 121 Stat. 2491.)

REFERENCES IN TEXT

The Tax Reduction Act of 1975, referred to in subsec. (d)(3), is Pub. L. 94–12, Mar. 29, 1975, 89 Stat. 26, as amended. For complete classification of this Act to the Code, see Short Title of 1975 Amendment note set out under section 1 of this title and Tables.

The FSC Repeal and Extraterritorial Income Exclusion Act of 2000, referred to in subsec. (d)(5), is Pub. L. 106–519, Nov. 15, 2000, 114 Stat. 2423. For complete classification of this Act to the Code, see Short Title of 2000 Amendments note set out under section 1 of this title and Tables.

AMENDMENTS

2007—Subsec. (d)(5). Pub. L. 110–172 inserted "(as defined in section 922)" after "a FSC" in introductory provisions and inserted second sentence in concluding provisions.

2004—Subsec. (d)(5) to (7). Pub. L. 108–357 redesignated pars. (6) and (7) as (5) and (6), respectively, and struck out heading and text of former par. (5). Text read as follows: "If the United States person whose stock is sold or exchanged was a qualified shareholder (as defined in section 1247(c)) of a foreign corporation which was a foreign investment company (as described in section 1246(b)(1)), the earnings and profits of the foreign corporation for taxable years in which such person was a qualified shareholder."

1996—Subsec. (a). Pub. L. 104–188, §1702(g)(1)(A)(ii), in closing provisions inserted at end "For purposes of this section, a United States person shall be treated as having sold or exchanged any stock if, under any provision of this subtitle, such person is treated as realizing gain from the sale or exchange of such stock."

Subsec. (a)(1). Pub. L. 104–188, §1702(g)(1)(A)(i), struck out ", or if a United States person receives a distribution from a foreign corporation which, under section 302 or 331, is treated as an exchange of stock" after "in a foreign corporation".

Subsec. (e)(1). Pub. L. 104–188, §1702(g)(1)(B), struck out ", or receives a distribution from a domestic corporation which, under section 302 or 331, is treated as an exchange of stock" after "of a domestic corporation".

Subsec. (f)(1)(B). Pub. L. 104–188, §1702(g)(1)(C), substituted "355(c)(1), or 361(c)(1)" for "or 361(c)(1)".

Subsec. (i)(1). Pub. L. 104–188, §1702(g)(1)(D), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "If any shareholder of a 10-percent corporate shareholder of a foreign corporation exchanges stock of the 10-percent corporate shareholder for stock of the foreign corporation, for purposes of this section, the stock of the foreign corporation received in such exchange shall be treated as if it had been—

"(A) issued to the 10-percent corporate shareholder, and

"(B) then distributed by the 10-percent corporate shareholder to such shareholder in redemption or liquidation (whichever is appropriate)."

1988—Subsec. (d)(2). Pub. L. 100–647, §1006(e)(14)(A), struck out par. (2) which related to gain realized from sale or exchange of property in pursuance of plan of complete liquidation.

Subsec. (d)(7). Pub. L. 100–647, §1012(p)(19), added par. (7).

Subsec. (f). Pub. L. 100–647, §1006(e)(14)(E), substituted "nonrecognition" for "section 311, 336, or 337" in heading.

Subsec. (f)(1). Pub. L. 100–647, §1006(e)(14)(C), struck out ", sale, or exchange" after "(h), a distribution" in last sentence.

Subsec. (f)(1)(B). Pub. L. 100–647, §1006(e)(14)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "such domestic corporation distributes, sells, or exchanges stock of such foreign corporation in a transaction to which section 311, 336, or 337 applies,".

Subsec. (f)(3), (4). Pub. L. 100–647, §1006(e)(14)(D), redesignated par. (4) as (3) and struck out former par. (3) which related to nonapplication of paragraph (1) in certain cases.

1986—Subsec. (d)(6). Pub. L. 99–514, §1876(a)(2), amended par. (6) generally. Prior to amendment, par. (6) read as follows: "Earnings and profits of the foreign corporation attributable to foreign trade income (within the meaning of section 923(b)) of a FSC."

Subsec. (e). Pub. L. 99–514, §631(d)(2)(A), substituted "Except as provided in regulations" for "Under regulations".

Subsec. (f). Pub. L. 99–514, §631(d)(2)(B), inserted "Except as provided in regulations prescribed by the Secretary—" after heading.

Subsec. (g). Pub. L. 99–514, §1875(g)(1), inserted "or" at end of par. (1), redesignated par. (3) as (2), and struck out former par. (2) which read as follows: "gain realized on exchanges to which section 356 (relating to receipt of additional consideration in certain reorganizations) applies; or".

Subsec. (i)(1)(B). Pub. L. 99–514, §1810(i)(1), substituted "in redemption or liquidation (whichever is appropriate)" for "in redemption of his stock".

1984—Subsec. (b). Pub. L. 98–369, §1001(b)(22), (e), substituted "6 months" for "1 year", applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

Subsec. (c)(2)(D). Pub. L. 98–369, §133(c), substituted "section 958(a)" for "section 958(a)(2)".

Subsec. (d)(6). Pub. L. 98–369, §801(d)(6), added par. (6).

Subsec. (g)(3)(C). Pub. L. 98–369, §1001(b)(22), (e), substituted "6 months" for "1 year", applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

Subsec. (i). Pub. L. 98–369, §133(a), added subsec. (i).

Subsec. (j). Pub. L. 98–369, §133(b)(2), added subsec. (j).

1983—Subsec. (c)(1). Pub. L. 97–448 substituted "section 312(k)(4)" for "section 312(k)(3)".

1976—Subsec. (a). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (b). Pub. L. 94–455, §1402(b)(2), provided that "9 months" would be changed to "1 year".

Pub. L. 94–455, §1402(b)(1)(Y), provided that "6 months" would be changed to "9 months" for taxable years beginning in 1977.

Subsec. (c)(1). Pub. L. 94–455, §§1901(b)(32)(B)(iii), 1906(b)(13(A), substituted "section 312(k)" for "section 312(m)(3)", and struck out "or his delegate" after "Secretary".

Subsec. (c)(2)(A). Pub. L. 94–455, §1042(c)(3)(A), substituted "subsection (a) or (f) applies to a sale, exchange, or distribution" for "subsection (a) applies to a sale or exchange".

Subsec. (c)(2)(C). Pub. L. 94–455, §1042(b), inserted "(or on the date of any sale or exchange of the stock of such other foreign corporation occurring during the 5–year period ending on the date of the sale or exchange of the stock of such foreign corporation, to the extent not otherwise taken into account under this section but not in excess of the fair market value of the stock of such other foreign corporation sold or exchanged over the basis of such stock (for determining gain) in the hands of the transferor)". §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (d)(2). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (d)(3). Pub. L. 94–455, §1022(a), substituted provisions of par. (3) relating to "Less developed country corporations under prior law" and reading "Earnings and profits of a foreign corporation which were accumulated during any taxable year beginning before January 1, 1976, while such corporation was a less developed country corporation under section 902(d) as in effect before the enactment of the Tax Reduction Act of 1975" for prior par. (3) relating to "Less developed country corporations" and reading "Earnings and profits accumulated by a foreign corporation while it was a less developed country corporation (as defined in section 902(d)), if the stock sold or exchanged was owned for a continuous period of at least 10 years, ending with the date of the sale or exchange, by the United States person who sold or exchanged such stock. In the case of stock sold or exchanged by a corporation, if United States persons who are individuals, estates, or trusts (each of whom owned within the meaning of section 958(a), or were considered as owning by applying the rules of ownership of section 958(b), 10 percent or more of the total combined voting power of all classes of stock entitled to vote of such corporation) owned, or were considered as owning, at any time during the 10-year period ending on the date of the sale or exchange more than 50 percent of the total combined voting power of all classes of stock entitled to vote such corporation, this paragraph shall apply only if such United States persons owned, or were considered as owning, at all times during the remainder of such 10-year period more than 50 percent of the total combined voting power of all classes of stock entitled to vote of such corporation. For purposes of this paragraph, stock owned by a United States person who is an individual, estate, or trust which was acquired by reason of the death of the predecessor in interest of such United States person shall be considered as owned by such United States person during the period such stock was owned by such predecessor in interest, and during the period such stock was owned by any other predecessor in interest if between such United States person and such other predecessor in interest there was no transfer other than by reason of the death of an individual."

Subsec. (e). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (f). Pub. L. 94–455, §1042(c)(1), added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 94–455, §§1042(c)(1), (3)(B), 1901(b)(3)(H), redesignated former subsec. (f) as (g); inserted "(other than an amount treated as a dividend under subsection (f))" in par. (3)(A); and substituted in par. (3)(B) "ordinary income" for "gain from the sale of an asset which is not a capital asset", respectively. Former subsec. (g) redesignated (h).

Subsec. (g)(3)(C). Pub. L. 94–455, §1402(b)(2), provided that "9 months" would be changed to "1 year".

Pub. L. 94–455, §1402(b)(1)(Y), provided that "6 months" would be changed to "9 months" for taxable years beginning in 1977.

Subsec. (h). Pub. L. 94–455, §1042(c)(1), (3)(C), redesignated former subsec. (g) as (h) and inserted reference to subsec. (f) in two places.

1969—Subsec. (c)(1). Pub. L. 91–172 inserted reference to the exception provided for in section 312(m)(3).

1966—Subsec. (d)(4). Pub. L. 89–809 provided that for taxable years beginning after December 31, 1966, the earnings and profits of the foreign corporation, for purposes of this section, is not to include income effectively connected with the conduct of a trade or business within the United States, and inserted provision that the exclusion does not apply to income which is exempt from tax or subject to a reduced rate of tax pursuant to a treaty.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 631(d)(2) of Pub. L. 99–514 applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely

liquidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, set out as an Effective Date note under section 336 of this title.

Pub. L. 99–514, title XVIII, §1875(g)(2), Oct. 22, 1986, 100 Stat. 2897, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to exchanges after March 1, 1986."

Amendment by sections 1810(i)(1) and 1876(a)(2) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §133(d)(1), July 18, 1984, 98 Stat. 668, provided that: "The amendment made by subsection (a) [amending this section] shall apply to exchanges after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date."

Amendment by section 133(b)(2), (c) of Pub. L. 98–369 applicable with respect to transactions to which subsec. (a) or (f) of this section applies occurring after July 18, 1984, with election of earlier date for certain transactions, see section 133(d)(2), (3) of Pub. L. 98–369, set out as a note under section 959 of this title.

Amendment by section 801(d)(6) of Pub. L. 98–369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

Amendment by section 1001(b)(22) of Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title X, §1022(b), Oct. 4, 1976, 90 Stat. 1619, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1975."

For effective date of amendment by section 1042 of Pub. L. 94–455, see section 1042(e) of Pub. L. 94–455, set out as a note under section 367 of this title.

Pub. L. 94–455, title XIV, §1402(b)(1), Oct. 4, 1976, 90 Stat. 1731, provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Pub. L. 94–455, title XIV, §1402(b)(2), Oct. 4, 1976, 90 Stat. 1732, provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

Amendment by section 1901(b)(3)(H), (32)(B)(iii) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to sales or exchanges occurring after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

EFFECTIVE DATE

Pub. L. 87–834, §15(c), Oct. 16, 1962, 76 Stat. 1044, provided that: "The amendments made by this section [enacting this section] shall apply with respect to sales or exchanges occurring after December 31, 1962."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TRANSITIONAL RULE

Pub. L. 99–514, title XVIII, §1875(g)(3), Oct. 22, 1986, 100 Stat. 2897, provided that: "An exchange shall be treated as occurring on or before March 1, 1986, if—

"(A) on or before such date, the taxpayer adopts a plan of reorganization to which section 356 [of the Internal Revenue Code of 1986] applies, and

"(B) such plan or reorganization is implemented and distributions pursuant to such plan are completed on or before the date of enactment of this Act [Oct. 22, 1986]."

§1249. Gain from certain sales or exchanges of patents, etc., to foreign corporations

(a) General rule

Gain from the sale or exchange after December 31, 1962, of a patent, an invention, model, or design (whether or not patented), a copyright, a secret formula or process, or any other similar property right to any foreign corporation by any United States person (as defined in section 7701(a)(30)) which controls such foreign corporation shall, if such gain would (but for the provisions of this subsection) be gain from the sale or exchange of a capital asset or of property described in section 1231, be considered as ordinary income.

(b) Control

For purposes of subsection (a), control means, with respect to any foreign corporation, the ownership, directly or indirectly, of stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote. For purposes of this subsection, the rules for determining ownership of stock prescribed by section 958 shall apply.

(Added Pub. L. 87–834, §16(a), Oct. 16, 1962, 76 Stat. 1045; amended Pub. L. 89–809, title I, §104(m)(3), Nov. 13, 1966, 80 Stat. 1563; Pub. L. 94–455, title XIX, §1901(b)(3)(K), Oct. 4, 1976, 90 Stat. 1793.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94–455 substituted "ordinary income" for "gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231".

1966—Subsec. (a). Pub. L. 89–809 substituted "Gain" for "Except as provided in subsection (c), gain".

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

EFFECTIVE DATE

Pub. L. 87–834, §16(c), Oct. 16, 1962, 76 Stat. 1045, provided that: "The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1962."

§1250. Gain from dispositions of certain depreciable realty

(a) General rule

Except as otherwise provided in this section—

(1) Additional depreciation after December 31, 1975

(A) In general

If section 1250 property is disposed of after December 31, 1975, then the applicable percentage of the lower of—

(i) that portion of the additional depreciation (as defined in subsection (b)(1) or (4)) attributable to periods after December 31, 1975, in respect of the property, or

(ii) the excess of the amount realized (in the case of a sale, exchange, or involuntary conversion), or the fair market value of such property (in the case of any other disposition),

over the adjusted basis of such property,

shall be treated as gain which is ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle.

(B) Applicable percentage

For purposes of subparagraph (A), the term "applicable percentage" means—

(i) in the case of section 1250 property with respect to which a mortgage is insured under section 221(d)(3) or 236 of the National Housing Act, or housing financed or assisted by direct loan or tax abatement under similar provisions of State or local laws and with respect to which the owner is subject to the restrictions described in section 1039(b)(1)(B) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990), 100 percent minus 1 percentage point for each full month the property was held after the date the property was held 100 full months;

(ii) in the case of dwelling units which, on the average, were held for occupancy by families or individuals eligible to receive subsidies under section 8 of the United States Housing Act of 1937, as amended, or under the provisions of State or local law authorizing similar levels of subsidy for lower-income families, 100 percent minus 1 percentage point for each full month the property was held after the date the property was held 100 full months;

(iii) in the case of section 1250 property with respect to which a depreciation deduction for rehabilitation expenditures was allowed under section 167(k), 100 percent minus 1 percentage point for each full month in excess of 100 full months after the date on which such property was placed in service;

(iv) in the case of section 1250 property with respect to which a loan is made or insured under title V of the Housing Act of 1949, 100 percent minus 1 percentage point for each full month the property was held after the date the property was held 100 full months; and

(v) in the case of all other section 1250 property, 100 percent.

In the case of a building (or a portion of a building devoted to dwelling units), if, on the average, 85 percent or more of the dwelling units contained in such building (or portion thereof) are units described in clause (ii), such building (or portion thereof) shall be treated as property described in clause (ii). Clauses (i), (ii), and (iv) shall not apply with respect to the additional depreciation described in subsection (b)(4) which was allowed under section 167(k).

(2) Additional depreciation after December 31, 1969, and before January 1, 1976

(A) In general

If section 1250 property is disposed of after December 31, 1969, and the amount determined under paragraph (1)(A)(ii) exceeds the amount determined under paragraph (1)(A)(i), then the applicable percentage of the lower of—

(i) that portion of the additional depreciation attributable to periods after December 31, 1969, and before January 1, 1976, in respect of the property, or

(ii) the excess of the amount determined under paragraph (1)(A)(ii) over the amount determined under paragraph (1)(A)(i),

shall also be treated as gain which is ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle.

(B) Applicable percentage

For purposes of subparagraph (A), the term "applicable percentage" means—

(i) in the case of section 1250 property disposed of pursuant to a written contract which was, on July 24, 1969, and at all times thereafter, binding on the owner of the property, 100 percent minus 1 percentage point for each full month the property was held after the date the property was held 20 full months;

(ii) in the case of section 1250 property with respect to which a mortgage is insured under

section 221(d)(3) or 236 of the National Housing Act, or housing financed or assisted by direct loan or tax abatement under similar provisions of State or local laws, and with respect to which the owner is subject to the restrictions described in section 1039(b)(1)(B) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990), 100 percent minus 1 percentage point for each full month the property was held after the date the property was held 20 full months;

(iii) in the case of residential rental property (as defined in section 167(j)(2)(B)) other than that covered by clauses (i) and (ii), 100 percent minus 1 percentage point for each full month the property was held after the date the property was held 100 full months;

(iv) in the case of section 1250 property with respect to which a depreciation deduction for rehabilitation expenditures was allowed under section 167(k), 100 percent minus 1 percentage point for each full month in excess of 100 full months after the date on which such property was placed in service; and

(v) in the case of all other section 1250 property, 100 percent.

Clauses (i), (ii), and (iii) shall not apply with respect to the additional depreciation described in subsection (b)(4).

(3) Additional depreciation before January 1, 1970

(A) In general

If section 1250 property is disposed of after December 31, 1963, and the amount determined under paragraph (1)(A)(ii) exceeds the sum of the amounts determined under paragraphs (1)(A)(i) and (2)(A)(i), then the applicable percentage of the lower of—

(i) that portion of the additional depreciation attributable to periods before January 1, 1970, in respect of the property, or

(ii) the excess of the amount determined under paragraph (1)(A)(ii) over the sum of the amounts determined under paragraphs (1)(A)(i) and (2)(A)(i),

shall also be treated as gain which is ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle.

(B) Applicable percentage

For purposes of subparagraph (A), the term "applicable percentage" means 100 percent minus 1 percentage point for each full month the property was held after the date on which the property was held for 20 full months.

(4) Special rule

For purposes of this subsection, any reference to section 167(k) or 167(j)(2)(B) shall be treated as a reference to such section as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990.

(5) Cross reference

For reduction in the case of corporations on capital gain treatment under this section, see section 291(a)(1).

(b) Additional depreciation defined

For purposes of this section—

(1) In general

The term "additional depreciation" means, in the case of any property, the depreciation adjustments in respect of such property; except that, in the case of property held more than one year, it means such adjustments only to the extent that they exceed the amount of the depreciation adjustments which would have resulted if such adjustments had been determined for each taxable year under the straight line method of adjustment.

(2) Property held by lessee

In the case of a lessee, in determining the depreciation adjustments which would have resulted in respect of any building erected (or other improvement made) on the leased property, or in respect of any cost of acquiring the lease, the lease period shall be treated as including all renewal periods. For purposes of the preceding sentence—

(A) the term "renewal period" means any period for which the lease may be renewed, extended, or continued pursuant to an option exercisable by the lessee, but

(B) the inclusion of renewal periods shall not extend the period taken into account by more than 2/3 of the period on the basis of which the depreciation adjustments were allowed.

(3) Depreciation adjustments

The term "depreciation adjustments" means, in respect of any property, all adjustments attributable to periods after December 31, 1963, reflected in the adjusted basis of such property on account of deductions (whether in respect of the same or other property) allowed or allowable to the taxpayer or to any other person for exhaustion, wear and tear, obsolescence, or amortization (other than amortization under section 168 (as in effect before its repeal by the Tax Reform Act of 1976), 169, 185 (as in effect before its repeal by the Tax Reform Act of 1986), 188 (as in effect before its repeal by the Revenue Reconciliation Act of 1990), 190, or 193). For purposes of the preceding sentence, if the taxpayer can establish by adequate records or other sufficient evidence that the amount allowed as a deduction for any period was less than the amount allowable, the amount taken into account for such period shall be the amount allowed.

(4) Additional depreciation attributable to rehabilitation expenditures

The term "additional depreciation" also means, in the case of section 1250 property with respect to which a depreciation or amortization deduction for rehabilitation expenditures was allowed under section 167(k) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) or 191 (as in effect before its repeal by the Economic Recovery Tax Act of 1981), the depreciation or amortization adjustments allowed under such section to the extent attributable to such property, except that, in the case of such property held for more than one year after the rehabilitation expenditures so allowed were incurred, it means such adjustments only to the extent that they exceed the amount of the depreciation adjustments which would have resulted if such adjustments had been determined under the straight line method of adjustment without regard to the useful life permitted under section 167(k) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) or 191 (as in effect before its repeal by the Economic Recovery Tax Act of 1981).

(5) Method of computing straight line adjustments

For purposes of paragraph (1), the depreciation adjustments which would have resulted for any taxable year under the straight line method shall be determined—

(A) in the case of property to which section 168 applies, by determining the adjustments which would have resulted for such year if the taxpayer had elected the straight line method for such year using the recovery period applicable to such property, and

(B) in the case any property to which section 168 does not apply, if a useful life (or salvage value) was used in determining the amount allowable as a deduction for any taxable year, by using such life (or value).

(c) Section 1250 property

For purposes of this section, the term "section 1250 property" means any real property (other than section 1245 property, as defined in section 1245(a)(3)) which is or has been property of a character subject to the allowance for depreciation provided in section 167.

(d) Exceptions and limitations

(1) Gifts

Subsection (a) shall not apply to a disposition by gift.

(2) Transfers at death

Except as provided in section 691 (relating to income in respect of a decedent), subsection (a) shall not apply to a transfer at death.

(3) Certain tax-free transactions

If the basis of property in the hands of a transferee is determined by reference to its basis in the hands of the transferor by reason of the application of section 332, 351, 361, 721, or 731, then the amount of gain taken into account by the transferor under subsection (a) shall not exceed the amount of gain recognized to the transferor on the transfer of such property (determined without regard to this section). Except as provided in paragraph (9), this paragraph shall not apply to a disposition to an organization (other than a cooperative described in section 521) which is exempt from the tax imposed by this chapter.

(4) Like kind exchanges; involuntary conversions, etc.

(A) Recognition limit

If property is disposed of and gain (determined without regard to this section) is not recognized in whole or in part under section 1031 or 1033, then the amount of gain taken into account by the transferor under subsection (a) shall not exceed the greater of the following:

(i) the amount of gain recognized on the disposition (determined without regard to this section), increased as provided in subparagraph (B), or

(ii) the amount determined under subparagraph (C).

(B) Increase for certain stock

With respect to any transaction, the increase provided by this subparagraph is the amount equal to the fair market value of any stock purchased in a corporation which (but for this paragraph) would result in nonrecognition of gain under section 1033(a)(2)(A).

(C) Adjustment where insufficient section 1250 property is acquired

With respect to any transaction, the amount determined under this subparagraph shall be the excess of—

(i) the amount of gain which would (but for this paragraph) be taken into account under subsection (a), over

(ii) the fair market value (or cost in the case of a transaction described in section 1033(a)(2)) of the section 1250 property acquired in the transaction.

(D) Basis of property acquired

In the case of property purchased by the taxpayer in a transaction described in section 1033(a)(2), in applying section 1033(b)(2), such sentence shall be applied—

(i) first solely to section 1250 properties and to the amount of gain not taken into account under subsection (a) by reason of this paragraph, and

(ii) then to all purchased properties to which such sentence applies and to the remaining gain not recognized on the transaction as if the cost of the section 1250 properties were the basis of such properties computed under clause (i).

In the case of property acquired in any other transaction to which this paragraph applies, rules consistent with the preceding sentence shall be applied under regulations prescribed by the Secretary.

(E) Additional depreciation with respect to property disposed of

In the case of any transaction described in section 1031 or 1033, the additional depreciation in respect of the section 1250 property acquired which is attributable to the section 1250 property disposed of shall be an amount equal to the amount of the gain which was not taken into account under subsection (a) by reason of the application of this paragraph.

(5) Property distributed by a partnership to a partner

(A) In general

For purposes of this section, the basis of section 1250 property distributed by a partnership to a partner shall be deemed to be determined by reference to the adjusted basis of such property to the partnership.

(B) Additional depreciation

In respect of any property described in subparagraph (A), the additional depreciation attributable to periods before the distribution by the partnership shall be—

(i) the amount of the gain to which subsection (a) would have applied if such property had been sold by the partnership immediately before the distribution at its fair market value at such time and the applicable percentage for the property had been 100 percent, reduced by

(ii) if section 751(b) applied to any part of such gain, the amount of such gain to which section 751(b) would have applied if the applicable percentage for the property had been 100 percent.

(6) Transfers to tax-exempt organization where property will be used in unrelated business

(A) In general

The second sentence of paragraph (3) shall not apply to a disposition of section 1250 property to an organization described in section 511(a)(2) or 511(b)(2) if, immediately after such disposition, such organization uses such property in an unrelated trade or business (as defined in section 513).

(B) Later change in use

If any property with respect to the disposition of which gain is not recognized by reason of subparagraph (A) ceases to be used in an unrelated trade or business of the organization acquiring such property, such organization shall be treated for purposes of this section as having disposed of such property on the date of such cessation.

(7) Foreclosure dispositions

If any section 1250 property is disposed of by the taxpayer pursuant to a bid for such property at foreclosure or by operation of an agreement or of process of law after there was a default on indebtedness which such property secured, the applicable percentage referred to in paragraph (1)(B), (2)(B), or (3)(B) of subsection (a), as the case may be, shall be determined as if the taxpayer ceased to hold such property on the date of the beginning of the proceedings pursuant to which the disposition occurred, or, in the event there are no proceedings, such percentage shall be determined as if the taxpayer ceased to hold such property on the date, determined under regulations prescribed by the Secretary, on which such operation of an agreement or process of law, pursuant to which the disposition occurred, began.

(e) Holding period

For purposes of determining the applicable percentage under this section, the provisions of section 1223 shall not apply, and the holding period of section 1250 property shall be determined under the following rules:

(1) Beginning of holding period

The holding period of section 1250 property shall be deemed to begin—

(A) in the case of property acquired by the taxpayer, on the day after the date of acquisition, or

(B) in the case of property constructed, reconstructed, or erected by the taxpayer, on the first day of the month during which the property is placed in service.

(2) Property with transferred basis

If the basis of property acquired in a transaction described in paragraph (1), (2), or (3) of subsection (d) is determined by reference to its basis in the hands of the transferor, then the holding period of the property in the hands of the transferee shall include the holding period of the property in the hands of the transferor.

(f) Special rules for property which is substantially improved

(1) Amount treated as ordinary income

If, in the case of a disposition of section 1250 property, the property is treated as consisting of more than one element by reason of paragraph (3), then the amount taken into account under subsection (a) in respect of such section 1250 property as ordinary income shall be the sum of the amounts determined under paragraph (2).

(2) Ordinary income attributable to an element

For purposes of paragraph (1), the amount taken into account for any element shall be the sum of a series of amounts determined for the periods set forth in subsection (a), with the amount for any such period being determined by multiplying—

(A) the amount which bears the same ratio to the lower of the amounts specified in clause (i) or (ii) of subsection (a)(1)(A), in clause (i) or (ii) of subsection (a)(2)(A), or in clause (i) or (ii) of subsection (a)(3)(A), as the case may be, for the section 1250 property as the additional depreciation for such element attributable to such period bears to the sum of the additional depreciation for all elements attributable to such period, by

(B) the applicable percentage for such element for such period.

For purposes of this paragraph, determinations with respect to any element shall be made as if it were a separate property.

(3) Property consisting of more than one element

In applying this subsection in the case of any section 1250 property, there shall be treated as a separate element—

(A) each separate improvement,

(B) if, before completion of section 1250 property, units thereof (as distinguished from improvements) were placed in service, each such unit of section 1250 property, and

(C) the remaining property which is not taken into account under subparagraphs (A) and (B).

(4) Property which is substantially improved

For purposes of this subsection—

(A) In general

The term "separate improvement" means each improvement added during the 36–month period ending on the last day of any taxable year to the capital account for the property, but only if the sum of the amounts added to such account during such period exceeds the greatest of—

(i) 25 percent of the adjusted basis of the property,

(ii) 10 percent of the adjusted basis of the property, determined without regard to the adjustments provided in paragraphs (2) and (3) of section 1016(a), or

(iii) $5,000.

For purposes of clauses (i) and (ii), the adjusted basis of the property shall be determined as of the beginning of the first day of such 36–month period, or of the holding period of the property (within the meaning of subsection (e)), whichever is the later.

(B) Exception

Improvements in any taxable year shall be taken into account for purposes of subparagraph (A) only if the sum of the amounts added to the capital account for the property for such taxable year exceeds the greater of—

(i) $2,000, or

(ii) one percent of the adjusted basis referred to in subparagraph (A)(ii), determined, however, as of the beginning of such taxable year.

For purposes of this section, if the amount added to the capital account for any separate improvement does not exceed the greater of clause (i) or (ii), such improvement shall be treated

as placed in service on the first day, of a calendar month, which is closest to the middle of the taxable year.

(C) Improvement

The term "improvement" means, in the case of any section 1250 property, any addition to capital account for such property after the initial acquisition or after completion of the property.

(g) Adjustments to basis

The Secretary shall prescribe such regulations as he may deem necessary to provide for adjustments to the basis of property to reflect gain recognized under subsection (a).

(h) Application of section

This section shall apply notwithstanding any other provision of this subtitle.

(Added Pub. L. 88–272, title II, §231(a), Feb. 26, 1964, 78 Stat. 100; amended Pub. L. 91–172, title V, §521(b), (c), (e), title VII, §704(b)(5), title IX, §910(b), Dec. 30, 1969, 83 Stat. 652, 653, 670, 720; Pub. L. 92–178, title III, §303(c)(3), Dec. 10, 1971, 85 Stat. 522; Pub. L. 93–625, §5(c), Jan. 3, 1975, 88 Stat. 2112; Pub. L. 94–81, §2(b), Aug. 9, 1975, 89 Stat. 417; Pub. L. 94–455, title II, §202(a)–(c)(1), (2), title XIX, §§1901(b)(3)(K), (31)(A), (B), (E), 1906(b)(13)(A), 1951(c)(2)(C), title XXI, §§2122(b)(4), 2124(a)(3)(D), Oct. 4, 1976, 90 Stat. 1527, 1529, 1530, 1793, 1799, 1800, 1834, 1840, 1915, 1918; Pub. L. 95–600, title IV, §§404(c)(7), 405(c)(4), title VII, §701(f)(3)(C), (E), Nov. 6, 1978, 92 Stat. 2870, 2871, 2901; Pub. L. 96–222, title I, §107(a)(1)(D), Apr. 1, 1980, 94 Stat. 222; Pub. L. 96–223, title II, §251(a)(2)(D), Apr. 2, 1980, 94 Stat. 287; Pub. L. 97–34, title II, §§204(e), 212(d)(2)(F), Aug. 13, 1981, 95 Stat. 223, 239; Pub. L. 97–448, title I, §102(a)(7), Jan. 12, 1983, 96 Stat. 2368; Pub. L. 98–369, div. A, title VII, §712(a)(1)(B), July 18, 1984, 98 Stat. 946; Pub. L. 99–514, title II, §242(b)(2), Oct. 22, 1986, 100 Stat. 2181; Pub. L. 100–647, title I, §1002(a)(1), Nov. 10, 1988, 102 Stat. 3352; Pub. L. 101–239, title VII, §7831(b), Dec. 19, 1989, 103 Stat. 2426; Pub. L. 101–508, title XI, §§11801(c)(6)(F), (8)(I), (15), 11812(b)(11), (12), Nov. 5, 1990, 104 Stat. 1388–524, 1388–527, 1388–536; Pub. L. 104–7, §2(b), Apr. 11, 1995, 109 Stat. 93; Pub. L. 104–188, title I, §1702(h)(18), Aug. 20, 1996, 110 Stat. 1874; Pub. L. 105–34, title III, §312(d)(10), Aug. 5, 1997, 111 Stat. 840; Pub. L. 105–206, title VI, §6023(12), July 22, 1998, 112 Stat. 825; Pub. L. 109–58, title XIII, §1331(b)(3), Aug. 8, 2005, 119 Stat. 1024; Pub. L. 109–135, title IV, §402(a)(7), (h), Dec. 21, 2005, 119 Stat. 2610, 2611.)

REFERENCES IN TEXT

Sections 221 and 236 of the National Housing Act, referred to in subsec. (a)(1)(B)(i), (2)(B)(ii), are classified to sections 1715l and 1715z–1, respectively, of Title 12, Banks and Banking.

The date of the enactment of the Revenue Reconciliation Act of 1990, referred to in subsecs. (a)(1)(B)(i), (2)(B)(ii), (4) and (b)(4), is the date of enactment of Pub. L. 101–508, which was approved Nov. 5, 1990.

Section 8 of the United States Housing Act of 1937, referred to in subsec. (a)(1)(B)(ii), is classified to section 1437f of Title 42, The Public Health and Welfare.

The Housing Act of 1949, referred to in subsec. (a)(1)(B)(iv), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended. Title V of the Housing Act of 1949 is classified generally to subchapter III (§1471 et seq.) of chapter 8A of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of Title 42 and Tables.

The Tax Reform Act of 1976, referred to in subsec. (b)(3), is Pub. L. 94–455, Oct. 4, 1976, 90 Stat. 1520, as amended. Section 1951(a)(4)(A) of the Act repealed section 168 of this title. For complete classification of this Act to the Code, see Tables.

The Tax Reform Act of 1986, referred to in subsec. (b)(3), is Pub. L. 99–514, Oct. 22, 1986, 100 Stat. 2085. Section 242(a) of the Act repealed section 185 of this title. For complete classification of this Act to the Code, see Tables.

The Revenue Reconciliation Act of 1990, referred to in subsec. (b)(3), is title XI of Pub. L. 101–508, Nov. 5, 1990, 104 Stat. 1388–400. Section 11801(a)(13) of the Act repealed section 188 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1 of this title and Tables.

The Economic Recovery Tax Act of 1981, referred to in subsec. (b)(4), is Pub. L. 97–34, Aug. 13, 1981, 95 Stat. 172, as amended. Section 191 of this title was repealed by section 212(d)(1) of Pub. L. 97–34. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2005—Subsec. (b)(3). Pub. L. 109–135, §402(h), struck out "or by section 179D" after "190, or 193)".

Pub. L. 109–58, §1331(b)(3), inserted "or by section 179D" after "190, or 193)".

Subsec. (d)(5) to (8). Pub. L. 109–135, §402(a)(7)(A), redesignated pars. (6) to (8) as (5) to (7), respectively, and struck out heading and text of former par. (5). Text read as follows: "Under regulations prescribed by the Secretary, rules consistent with paragraphs (3) and (4) of this subsection and with subsections (e) and (f) shall apply in the case of transactions described in section 1081 (relating to exchanges in obedience to SEC orders)."

Subsec. (e)(2). Pub. L. 109–135, §402(a)(7)(B), substituted "or (3)" for "(3), or (5)".

1998—Subsec. (d)(4)(D). Pub. L. 105–206 substituted "section 1033(b)(2)" for "the last sentence of section 1033(b)" in introductory provisions.

1997—Subsec. (d)(7) to (10). Pub. L. 105–34, §312(d)(10)(A), redesignated pars. (9) and (10) as (7) and (8), respectively, and struck out heading and text of former par. (7). Text read as follows: "Subsection (a) shall not apply to a disposition of—

"(A) property to the extent used by the taxpayer as his principal residence (within the meaning of section 1034, relating to rollover of gain on sale of principal residence), and

"(B) property in respect of which the taxpayer meets the age and ownership requirements of section 121 (relating to one-time exclusion of gain from sale of principal residence by individual who has attained age 55) but only to the extent that he meets the use requirements of such section in respect of such property."

Subsec. (e)(3). Pub. L. 105–34, §312(d)(10)(B), struck out heading and text of par. (3). Text read as follows: "If the basis of property acquired in a transaction described in paragraph (7) of subsection (d) is determined by reference to the basis in the hands of the taxpayer of other property, then the holding period of the property acquired shall include the holding period of such other property."

1996—Subsec. (e)(4). Pub. L. 104–188 struck out par. (4) which read as follows:

"(4) QUALIFIED LOW-INCOME HOUSING.—The holding period of any section 1250 property acquired which is described in subsection (d)(8)(E)(i) shall include the holding period of the corresponding element of section 1250 property disposed of."

1995—Subsec. (d)(5). Pub. L. 104–7 struck out "1071 and" before "1081 transactions" in heading and "section 1071 (relating to gain from sale or exchange to effectuate policies of FCC) or" before "section 1081" in text.

1990—Subsec. (a)(1)(B)(i), (2)(B)(ii). Pub. L. 101–508, §11801(c)(15)(A), which directed the insertion of "(as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)" after "section 1039(b)(1)(B)" in pars. (1)(A)(i) and (2)(B)(ii) of subsec. (a), was executed to pars. (1)(B)(i) and (2)(B)(ii) to reflect the probable intent of Congress.

Subsec. (a)(4), (5). Pub. L. 101–508, §11812(b)(11), added par. (4) and redesignated former par. (4) as (5).

Subsec. (b)(3). Pub. L. 101–508, §11801(c)(6)(F), substituted "188 (as in effect before its repeal by the Revenue Reconciliation Act of 1990)," for "188,".

Subsec. (b)(4). Pub. L. 101–508, §11812(b)(12), substituted "section 167(k) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)" for "section 167(k)" in two places.

Subsec. (d)(3). Pub. L. 101–508, §11801(c)(8)(I), struck out "371(a), 374(a)," after "332, 351, 361,".

Subsec. (d)(8). Pub. L. 101–508, §11801(c)(15)(B), struck out par. (8) which related to the treatment of gain from the disposition of qualified low-income housing.

Subsecs. (g) to (i). Pub. L. 101–508, §11801(c)(15)(C), redesignated subsecs. (h) and (i) as (g) and (h), respectively, and struck out former subsec. (g) which provided special rules for qualified low-income housing.

1989—Subsec. (b)(5)(A). Pub. L. 101–239, §7831(b)(1), substituted "of property to which section 168 applies" for "of recovery property".

Subsec. (b)(5)(B). Pub. L. 101–239, §7831(b)(2), substituted "to which section 168 does not apply" for "which is not recovery property".

1988—Subsec. (d)(11). Pub. L. 100–647 struck out par. (11) which related to section 1245 recovery property.

1986—Subsec. (b)(3). Pub. L. 99–514 inserted "(as in effect before its repeal by the Tax Reform Act of 1986)" after "185".

1984—Subsec. (a)(4). Pub. L. 98–369 added par. (4).

1983—Subsec. (b)(1). Pub. L. 97–448, §102(a)(7)(B), struck out last sentence providing that, for purposes of defining "additional depreciation", if a useful life (or salvage value) was used in determining the amount allowed as a deduction for any taxable year, such life (or value) was to be used in determining the depreciation adjustments which would have resulted for such year under the straight line method.

Subsec. (b)(5). Pub. L. 97–448, §102(a)(7)(A), added par. (5).

1981—Subsec. (b)(4). Pub. L. 97–34, §212(d)(2)(F), inserted "(as in effect before its repeal by the Economic Recovery Tax Act of 1981)" after "section 167(k) or 191" in two places.

Subsec. (d)(11). Pub. L. 97–34, §204(e), added par. (11).

1980—Subsec. (a)(1)(B). Pub. L. 96–222 inserted "which was allowed under section 167(k)" at end of last sentence.

Subsec. (b)(3). Pub. L. 96–223 inserted reference to section 193.

1978—Subsec. (b)(3). Pub. L. 95–600, §701(f)(3)(C), struck out reference to section 191.

Subsec. (b)(4). Pub. L. 95–600, §701(f)(3)(E), inserted reference to amortization deduction, amortization adjustments, and to section 191 in two places.

Subsec. (d)(7)(A). Pub. L. 95–600, §405(c)(4), substituted "relating to rollover of gain on sale of principal residence" for "relating to sale or exchange of residence".

Subsec. (d)(7)(B). Pub. L. 95–600, §404(c)(7), inserted provisions relating to a one-time exclusion and principal residence and substituted "55" for "65".

1976—Subsec. (a). Pub. L. 94–455, §202(a), in revising text generally, made the following changes:

(1) Added par. (1).

(2) Redesignated as pars. (2) and (3) existing pars. (1) and (2).

(3) Made the following changes in par. (2): inserted in heading ", and before January 1, 1976"; designated introductory text as subpar. "(A) In general"; inserted therein "and the amount determined under paragraph (1)(A)(ii) exceeds the amount determined under paragraph (1)(A)(i), then"; redesignated as cl. (i) existing subpar. (A); substituted therein "attributable to periods after December 31, 1969, and before January 1, 1976" for "(as defined in subsection (b)(1) or (4) attributable to periods after December 31, 1969"; substituted cl. (ii) and concluding text for subpar. (B) and concluding text which read:

"(B) the excess of—

"(i) the amount realized (in the case of a sale, exchange, or involuntary conversion), or the fair market value of such property (in the case of any other disposition), over

"(ii) the adjusted basis of such property,

shall be treated as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231. Such gain shall be recognized notwithstanding any other provision of this subtitle."; redesignated as subpar. (B) existing subpar. (C); substituted therein introductory "subparagraph (A)" for "paragraph (1)"; and deleted from cl. (ii) "constructed, reconstructed, or acquired by the taxpayer before January 1, 1976," after "section 1250 property" and "is" before "financed", and substituted "1" for "one".

(4) Made the following changes in par. (3): substituted in subpar. (A) "determined under paragraph (1)(A)(ii) exceeds the sum of the amounts determined under paragraphs (1)(A)(i) and (2)(A)(i)" for "determined under paragraph (1)(B) exceeds the amount determined under paragraph (1)(A)"; and substituted subpar. (A)(ii) and concluding text for par. (2)(A)(ii), and concluding text which read:

"(ii) the excess of the amount determined under paragraph (1)(B) over the amount determined under paragraph (1)(A),

shall also be treated as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231. Such gain shall be recognized notwithstanding any other provisions of this subtitle."

Subsec. (b)(3). Pub. L. 94–455, §§1951(c)(2)(C), 2122(b)(4), 2124(a)(3)(D), inserted "(as in effect before its repeal by the Tax Reform Act of 1976)" after "section 168" and reference to sections 190 and 191.

Subsec. (d)(4)(B). Pub. L. 94–455, §1901(b)(31)(A), substituted reference to section "1033(a)(2)(A)" for "1033(a)(3)(A)".

Subsec. (d)(4)(C). Pub. L. 94–455, §1901(b)(31)(B), substituted reference to section "1033(a)(2)" for "1033(a)(3)".

Subsec. (d)(4)(D). Pub. L. 94–455, §1901(b)(31)(B), (E), substituted reference to sections "1033(a)(2)" and "1033(b)" for "1033(a)(3)" and "1033(c)" §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (d)(5), (8)(F)(ii). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (d)(10). Pub. L. 94–455, §202(b), added par. (10).

Subsec. (f)(1). Pub. L. 94–455, §1901(b)(3)(K), substituted "ordinary income" for "gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231".

Subsec. (f)(2). Pub. L. 94–455, §202(c)(1), substituted introductory text "the sum of a series of amounts determined for the periods set forth in subsection (a), with the amount for any such period being determined by multiplying" for "the sum of—(A) the amount (if any) determined by multiplying"; substituted subpar. (A) as combined text for prior subpars. (A)(i) and (B)(i) reading "(i) the amount which bears the same ratio to the lower of the amounts specified in subparagraph (A) or (B) of subsection (a)(1) for the section 1250 property as

the additional depreciation for such element attributable to periods after December 31, 1969, bears to the sum of the additional depreciation for all elements attributable to periods after December 31, 1969, by" and "(i) the amount which bears the same ratio to the lower of the amounts specified in subsection (a)(2)(A)(i) or (ii) for the section 1250 property as the additional depreciation for such element attributable to periods before January 1, 1970, bears to the sum of the additional depreciation for all elements attributable to periods before January 1, 1970, by"; and substituted subpar. (B) as combined text for prior subpars. (A)(ii) and (B)(ii), inserting therein "for such period" after "for such element".

Subsec. (g)(1). Pub. L. 94–455, §1901(b)(3)(K), substituted "ordinary income" for "gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231".

Subsec. (g)(2). Pub. L. 94–455, §202(c)(2), substituted "shall be determined in a manner similar to that provided by subsection (f)(2)." for "shall be the amount determined by multiplying—

"(A) the amount which bears the same ratio to the lower of the additional depreciation or the gain recognized for the section 1250 property disposed of as the additional depreciation for such element bears to the sum of the additional depreciation for all elements disposed of, by

"(B) the applicable percentage for such element.

For purposes of this paragraph, determinations with respect to any element shall be made as if it were a separate property."

Subsec. (h). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

1975—Subsec. (a)(1)(C)(ii). Pub. L. 93–625 substituted "January 1, 1976" for "January 1, 1975".

Subsec. (d)(3), (9). Pub. L. 94–81, §2(b), inserted reference to par. (9) in par. (3), and added par. (9).

1971—Subsec. (b)(3). Pub. L. 92–178 inserted reference to section 188.

1969—Subsec. (a). Pub. L. 91–172, §521(b), modified the recapture rules pertaining to residential housing by allowing a 1 percent per month reduction in the amount to be recaptured as ordinary income after the property has been held for 100 full months, with other real property remaining subject to full recapture, applied the existing recapture rules where the sale of property was subject to a binding contract in existence prior to July 25, 1969, provided that changes in the recapture rules are not to apply in federally assisted projects (such as programs under section 221(d)(3) or 236 of the National Housing Act) or to other publicly assisted housing programs under which the return to the investor is limited on a comparable basis, thereby rendering these projects subject to a recapture of the depreciation in full if the sale occurs in the first 12 months and for a phaseout of the recapture of the excess of accelerated over straight-line depreciation after 20 months, the recapture being reduced at the rate of 1 percent per month until 120 months after which no recapture applies, with such recapture rules to continue to apply only with respect to such property constructed, reconstructed, or acquired before Jan. 1, 1975, and applied new recapture rules to depreciation attributable to periods after Dec. 31, 1969.

Subsec. (b)(4). Pub. L. 91–172, §512(c), added par. (4).

Subsec. (b)(3). Pub. L. 91–172, §704(b)(5), inserted reference to sections 169 and 185.

Subsec. (d). Pub. L. 91–172, §§521(e)(1), 910(b)(1), substituted "subsection (a)" for "subsection (a)(1)" wherever it appears and added par. (8).

Subsec. (e)(4). Pub. L. 91–172, §910(b)(2), added par. (4).

Subsec. (f)(1). Pub. L. 91–172, §521(e)(2)(A), substituted "subsection (a)" for "subsection (a)(1)".

Subsec. (f)(2). Pub. L. 91–172, §521(e)(2)(B), redesignated subpars. (A) and (B) as cls. (i) and (ii), respectively, of subpar. (A) and, in cls. (i) and (ii) as so redesignated, inserted reference to depreciation attributable to periods after Dec. 31, 1969, and added subpar. (B).

Subsecs. (g) to (i). Pub. L. 91–172, §910(b)(3), added subsec. (g) and redesignated former subsecs. (g) and (h) as (h) and (i), respectively.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendments by Pub. L. 109–135 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109–58, to which they relate, but amendment by section 402(a)(7) of Pub. L. 109–135 not applicable with respect to any transaction ordered in compliance with the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.) before its repeal, see section 402(m) of Pub. L. 109–135, set out as an Effective and Termination Dates of 2005 Amendments note under section 23 of this title.

Amendment by Pub. L. 109–58 applicable to property placed in service after Dec. 31, 2005, see section 1331(d) of Pub. L. 109–58, set out as an Effective Date note under section 179D of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d) of Pub. L. 105–34, set out as a note under section 121 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–7 applicable to sales and exchanges on or after January 17, 1995, and to sales and exchanges before such date if FCC tax certificate with respect to such sale or exchange was issued on or after such date, but not applicable with respect to certain binding contracts, see section 2(d) of Pub. L. 104–7, set out as an Effective Date of Repeal note under section 1071 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11812(b)(11), (12) of Pub. L. 101–508 applicable to property placed in service after Nov. 5, 1990, but not applicable to any property to which section 168 of this title does not apply by reason of subsec. (f)(5) of section 168, and not applicable to rehabilitation expenditures described in section 252(f)(5) of Pub. L. 99–514, see section 11812(c) of Pub. L. 101–508, set out as a note under section 42 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 7831(g) of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to that portion of the basis of any property which is attributable to expenditures paid or incurred after Dec. 31, 1986, except as otherwise provided, see section 242(c) of Pub. L. 99–514, set out as an Effective Date of Repeal note under former section 185 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 204(e) of Pub. L. 97–34 applicable to property placed in service after Dec. 31, 1980, in taxable years ending after that date, see section 209(a) of Pub. L. 97–34, set out as an Effective Date note under section 168 of this title.

Amendment by section 212(d)(2)(F) of Pub. L. 97–34 applicable to expenditures incurred after Dec. 31, 1981, in taxable years ending after such date, see section 212(e) of Pub. L. 97–34, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–223 applicable to taxable years beginning after Dec. 31, 1979, see section 251(b) of Pub. L. 96–223, set out as an Effective Date note under section 193 of this title.

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 404(c)(7) of Pub. L. 95–600 applicable to sales or exchanges after July 26, 1978, in taxable years ending after such date, see section 404(d)(1) of Pub. L. 95–600, set out as a note under section

121 of this title.

Amendment by section 405(c)(4) of Pub. L. 95–600 applicable to sales and exchanges of residences after July 26, 1978, in taxable years ending after such date, see section 405(d) of Pub. L. 95–600, set out as a note under section 1038 of this title.

Amendment by section 701(f)(3)(C), (E) of Pub. L. 95–600 effective as if included within the amendment of subsec. (b)(3) and (4) by section 2124 of Pub. L. 94–455, see section 701(f)(8) of Pub. L. 95–600, set out as an Effective and Termination Dates of 1978 Amendments note under section 167 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title II, §202(d), Oct. 4, 1976, 90 Stat. 1530, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by this section (other than subsection (b)) [amending this section and section 167 of this title] shall apply for taxable years ending after December 31, 1975. The amendment made by subsection (b) [amending this section] shall apply with respect to proceedings (and to operations of law) referred to in section 1250(d)(10) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] which begin after December 31, 1975."

Amendment by section 1901(b)(3)(K), (31)(A), (B), (E) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by section 1951(c)(2)(C) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1976, see section 1951(d) of Pub. L. 94–455, set out as a note under section 72 of this title.

Amendment by section 2122(b)(4) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1976, and before Jan. 1, 1983, see section 2122(c) of Pub. L. 94–455, as amended by Pub. L. 96–167, 9(c), Dec. 29, 1979, 93 Stat. 1278, set out as a note under section 190 of this title.

Amendment by section 2124(a)(3)(D) of Pub. L. 94–455 applicable with respect to additions to capital accounts made after June 14, 1976 and before June 15, 1981, see section 2124(a)(4) of Pub. L. 94–455, set out as an Effective Date note under section 642 of this title.

EFFECTIVE DATE OF 1975 AMENDMENTS

Pub. L. 94–81, §2(c), Aug. 9, 1975, 89 Stat. 418, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2) the amendments made by this section [amending this section and section 1245 of this title] shall apply to dispositions after December 31, 1969, in taxable years ending after such date.

"(2) ELECTION FOR PAST TRANSACTIONS.—In the case of any disposition occurring before the date of the enactment of this Act [Aug. 9, 1975], the amendments made by this section shall apply only if the organization acquiring the property elects (in the manner provided by regulations prescribed by the Secretary of the Treasury or his delegate) within 1 year after the date of the enactment of this Act to have such amendments apply with respect to such property."

Amendment by Pub. L. 93–625 applicable with respect to property placed in service after Dec. 31, 1973, see section 5(d) of Pub. L. 93–625, set out as a note under section 167 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–178 applicable to taxable years ending after Dec. 31, 1971, see section 303(d) of Pub. L. 92–178, set out as a note under section 642 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 521(b), (c), (e) of Pub. L. 91–172 applicable with respect to taxable years ending after July 24, 1969, see section 521(g) of Pub. L. 91–172, set out as a note under section 167 of this title.

Amendment by section 704(b)(5) of Pub. L. 91–172 applicable to taxable years ending after Dec. 31, 1968, see section 704(c) of Pub. L. 91–172, set out as an Effective Date note under section 169 of this title.

Pub. L. 91–172, title IX, §910(d), Dec. 30, 1969, 83 Stat. 722, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by this section [enacting section 1039 of this title and amending this section] shall apply to approved dispositions of qualified housing projects (within the meaning of section 1039 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] as added by subsection (a)) after October 9, 1969."

EFFECTIVE DATE

Pub. L. 88–272, title II, §231(c), Feb. 26, 1964, 78 Stat. 105, provided that: "The amendments made by this section [enacting this section and amending sections 170, 301, 312, 341, 453, 751, and the analysis preceding section 1231 of this title] shall apply to dispositions after December 31, 1963, in taxable years ending after

such date."

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

[§1251. Repealed. Pub. L. 98–369, div. A, title IV, §492(a), July 18, 1984, 98 Stat. 853]

Section, added Pub. L. 91–172, title II, §211(a), Dec. 30, 1969, 83 Stat. 566; amended Pub. L. 92–178, title III, §305(a), Dec. 10, 1971, 85 Stat. 524; Pub. L. 94–455, title II, §206(a), (b)(1), (2), title XIV, §1402(b)(1)(Z), (2), title XIX, §§1901(b)(3)(K), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1535, 1732, 1793, 1834; Pub. L. 97–354, §5(a)(36), Oct. 19, 1982, 96 Stat. 1695; Pub. L. 98–369, div. A, title X, §1001(b)(23), (e), July 18, 1984, 98 Stat. 1012, related to gain from disposition of property used in farming where farm losses offset nonfarm income.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 1983, see section 492(d) of Pub. L. 98–369, set out as an Effective Date of 1984 Amendment note under section 170 of this title.

§1252. Gain from disposition of farm land

(a) General rule

(1) Ordinary income

Except as otherwise provided in this section, if farm land which the taxpayer has held for less than 10 years is disposed of during a taxable year beginning after December 31, 1969, the lower of—

(A) the applicable percentage of the aggregate of the deductions allowed under sections 175 (relating to soil and water conservation expenditures) and 182 (relating to expenditures by farmers for clearing land) for expenditures made by the taxpayer after December 31, 1969, with respect to the farm land or

(B) the excess of—

(i) the amount realized (in the case of a sale, exchange, or involuntary conversion), or the fair market value of the farm land (in the case of any other disposition), over

(ii) the adjusted basis of such land,

shall be treated as ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle.

(2) Farm land

For purposes of this section, the term "farm land" means any land with respect to which deductions have been allowed under sections 175 (relating to soil and water conservation expenditures) or 182 (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986).

(3) Applicable percentage

For purposes of this section—

If the farm land is disposed of—	The applicable percentage is—

Within 5 years after the date it was acquired	100 percent.
Within the sixth year after it was acquired	80 percent.
Within the seventh year after it was acquired	60 percent.
Within the eighth year after it was acquired	40 percent.
Within the ninth year after it was acquired	20 percent.
10 years or more years after it was acquired	0 percent.

(b) Special rules

Under regulations prescribed by the Secretary, rules similar to the rules of section 1245 shall be applied for purposes of this section.

(Added Pub. L. 91–172, title II, §214(a), Dec. 30, 1969, 83 Stat. 572; amended Pub. L. 94–455, title XIX, §§1901(b)(3)(K), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1793, 1834; Pub. L. 98–369, div. A, title IV, §492(b)(5), July 18, 1984, 98 Stat. 854; Pub. L. 99–514, title IV, §402(b)(2), Oct. 22, 1986, 100 Stat. 2221.)

REFERENCES IN TEXT

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (a)(1)(A), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986. Section 402(a) of the Tax Reform Act of 1986 repealed section 182 of this title.

AMENDMENTS

1986—Subsec. (a)(1)(A). Pub. L. 99–514 substituted "(as in effect on the day before the date of the enactment of the Tax Reform Act of 1986)" for "(relating to expenditures by farmers for clearing land)".

1984—Subsec. (a)(1). Pub. L. 98–369 struck out ", except that this section shall not apply to the extent section 1251 applies to such gain" after "of this subtitle" in last sentence.

1976—Subsec. (a)(1). Pub. L. 94–455, §1901(b)(3)(K), substituted "ordinary income" for "gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231".

Subsec. (b). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to amounts paid or incurred after Dec. 31, 1985, in taxable years ending after such date, see section 402(c) of Pub. L. 99–514, set out as an Effective Date of Repeal note under former section 182 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 492(d) of Pub. L. 98–369, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(b)(3)(K) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE

Pub. L. 91–172, title II, §214(c), Dec. 30, 1969, 83 Stat. 573, provided that: "The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1969."

§1253. Transfers of franchises, trademarks, and trade names

(a) General rule

A transfer of a franchise, trademark, or trade name shall not be treated as a sale or exchange of a capital asset if the transferor retains any significant power, right, or continuing interest with respect to the subject matter of the franchise, trademark, or trade name.

(b) Definitions

For purposes of this section—

(1) Franchise

The term "franchise" includes an agreement which gives one of the parties to the agreement the right to distribute, sell, or provide goods, services, or facilities, within a specified area.

(2) Significant power, right, or continuing interest

The term "significant power, right, or continuing interest" includes, but is not limited to, the following rights with respect to the interest transferred:

(A) A right to disapprove any assignment of such interest, or any part thereof.

(B) A right to terminate at will.

(C) A right to prescribe the standards of quality of products used or sold, or of services furnished, and of the equipment and facilities used to promote such products or services.

(D) A right to require that the transferee sell or advertise only products or services of the transferor.

(E) A right to require that the transferee purchase substantially all of his supplies and equipment from the transferor.

(F) A right to payments contingent on the productivity, use, or disposition of the subject matter of the interest transferred, if such payments constitute a substantial element under the transfer agreement.

(3) Transfer

The term "transfer" includes the renewal of a franchise, trademark, or trade name.

(c) Treatment of contingent payments by transferor

Amounts received or accrued on account of a transfer, sale, or other disposition of a franchise, trademark, or trade name which are contingent on the productivity, use, or disposition of the franchise, trademark, or trade name transferred shall be treated as amounts received or accrued from the sale or other disposition of property which is not a capital asset.

(d) Treatment of payments by transferee

(1) Contingent serial payments

(A) In general

Any amount described in subparagraph (B) which is paid or incurred during the taxable year on account of a transfer, sale, or other disposition of a franchise, trademark, or trade name shall be allowed as a deduction under section 162(a) (relating to trade or business expenses).

(B) Amounts to which paragraph applies

An amount is described in this subparagraph if it—

(i) is contingent on the productivity, use, or disposition of the franchise, trademark, or trade name, and

(ii) is paid as part of a series of payments—

(I) which are payable not less frequently than annually throughout the entire term of the transfer agreement, and

(II) which are substantially equal in amount (or payable under a fixed formula).

(2) Other payments

Any amount paid or incurred on account of a transfer, sale, or other disposition of a franchise, trademark, or trade name to which paragraph (1) does not apply shall be treated as an amount chargeable to capital account.

(3) Renewals, etc.

For purposes of determining the term of a transfer agreement under this section, there shall be taken into account all renewal options (and any other period for which the parties reasonably expect the agreement to be renewed).

(Added Pub. L. 91–172, title V, §516(c)(1), Dec. 30, 1969, 83 Stat. 647; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 101–239, title VII, §7622(a)–(c), Dec. 19, 1989, 103 Stat. 2377; Pub. L. 101–508, title XI, §11701(i), Nov. 5, 1990, 104 Stat. 1388–508; Pub. L. 103–66, title XIII, §13261(c), Aug. 10, 1993, 107 Stat. 539; Pub. L. 104–188, title I, §1704(t)(47), Aug. 20, 1996, 110 Stat. 1889; Pub. L. 108–357, title VIII, §886(b)(3), Oct. 22, 2004, 118 Stat. 1641.)

AMENDMENTS

2004—Subsec. (e). Pub. L. 108–357 struck out heading and text of subsec. (e). Text read as follows: "This section shall not apply to the transfer of a franchise to engage in professional football, basketball, baseball, or other professional sport."

1996—Subsec. (d)(4). Pub. L. 104–188 provided that section 11701(i) of Pub. L. 101–508 shall be applied as if "subsection" appeared instead of "section" in the material proposed to be stricken. See 1990 Amendment note below.

1993—Subsec. (d)(2) to (5). Pub. L. 103–66 added pars. (2) and (3) and struck out former pars. (2) relating to deduction of certain payments for transfer of a franchise, trademark, or trade name not treated as sale or exchange of capital asset, (3) relating to treatment of amounts paid or incurred on account of transfer, sale, or other disposition of a franchise, trademark, or trade name to which pars. (1) and (2) did not apply, (4) relating to renewals for purposes of determining term of transfer agreement under this section or period of amortization under this subtitle, and (5) relating to rules applicable to this subsection.

1990—Subsec. (d)(4). Pub. L. 101–508, §11701(i), which directed the substitution of "under this section or any period of amortization under this subtitle for any payment described in this section" for "or any period of amortization under this section", was executed by making the substitution for "or any period of amortization under this subsection". See 1996 Amendment note above.

1989—Subsec. (d)(1). Pub. L. 101–239, §7622(a), substituted "serial payments" for "payments" in heading and amended text generally. Prior to amendment, text read as follows: "Amounts paid or incurred during the taxable year on account of a transfer, sale, or other disposition of a franchise, trademark, or trade name which are contingent on the productivity, use, or disposition of the franchise, trademark, or trade name transferred shall be allowed as a deduction under section 162(a) (relating to trade or business expenses)."

Subsec. (d)(2). Pub. L. 101–239, §7622(b), designated existing provisions as subpar. (A), inserted subpar. heading, redesignated former subpars. (A) to (C) as cls. (i) to (iii), respectively, and former cls. (i) and (ii) of former subpar. (B) as subcls. (I) and (II), respectively, of cl. (ii), and added subpar. (B).

Subsec. (d)(3) to (5). Pub. L. 101–239, §7622(c), added pars. (3) to (5).

1976—Subsec. (d)(2)(C). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to property acquired after Oct. 22, 2004, see section 886(c)(1) of Pub. L. 108–357, set out as a note under section 197 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable, except as otherwise provided, with respect to property acquired after Aug. 10, 1993, see section 13261(g) of Pub. L. 103–66, set out as an Effective Date note under section 197 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective, except as otherwise provided, as if included in the provision of the Revenue Reconciliation Act of 1989, Pub. L. 101–239, title VII, to which such amendment relates, see section 11701(n) of Pub. L. 101–508, set out as a note under section 42 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable to transfers after Oct. 2, 1989, but not applicable to any transfer pursuant to a written binding contract in effect on Oct. 2, 1989, and at all times thereafter before the transfer, see section 7622(c)[(e)] of Pub. L. 101–239, set out as a note under section 167 of this title.

EFFECTIVE DATE

Section applicable to transfers after Dec. 31, 1969, except that subsec. (d)(1) shall, at the election of the taxpayer (made at such time and in such manner as the Secretary or his delegate may by regulations prescribe), apply to transfers before Jan. 1, 1970, but only with respect to payments made in taxable years

ending after Dec. 31, 1969, and beginning before Jan. 1, 1980, see section 516(d)(3) of Pub. L. 91–172, set out as a note under section 1001 of this title.

§1254. Gain from disposition of interest in oil, gas, geothermal, or other mineral properties

(a) General rule

(1) Ordinary income

If any section 1254 property is disposed of, the lesser of—

(A) the aggregate amount of—

(i) expenditures which have been deducted by the taxpayer or any person under section 263, 616, or 617 with respect to such property and which, but for such deduction, would have been included in the adjusted basis of such property, and

(ii) the deductions for depletion under section 611 which reduced the adjusted basis of such property, or

(B) the excess of—

(i) in the case of—

(I) a sale, exchange, or involuntary conversion, the amount realized, or

(II) in the case of any other disposition, the fair market value of such property, over

(ii) the adjusted basis of such property,

shall be treated as gain which is ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle.

(2) Disposition of portion of property

For purposes of paragraph (1)—

(A) In the case of the disposition of a portion of section 1254 property (other than an undivided interest), the entire amount of the aggregate expenditures or deductions described in paragraph (1)(A) with respect to such property shall be treated as allocable to such portion to the extent of the amount of the gain to which paragraph (1) applies.

(B) In the case of the disposition of an undivided interest in a section 1254 property (or a portion thereof), a proportionate part of the expenditures or deductions described in paragraph (1)(A) with respect to such property shall be treated as allocable to such undivided interest to the extent of the amount of the gain to which paragraph (1) applies.

This paragraph shall not apply to any expenditures to the extent the taxpayer establishes to the satisfaction of the Secretary that such expenditures do not relate to the portion (or interest therein) disposed of.

(3) Section 1254 property

The term "section 1254 property" means any property (within the meaning of section 614) if—

(A) any expenditures described in paragraph (1)(A) are properly chargeable to such property, or

(B) the adjusted basis of such property includes adjustments for deductions for depletion under section 611.

(4) Adjustment for amounts included in gross income under section 617(b)(1)(A)

The amount of the expenditures referred to in paragraph (1)(A)(i) shall be properly adjusted for amounts included in gross income under section 617(b)(1)(A).

(b) Special rules under regulations

Under regulations prescribed by the Secretary—

(1) rules similar to the rule of subsection (g) of section 617 and to the rules of subsections (b) and (c) of section 1245 shall be applied for purposes of this section; and

(2) in the case of the sale or exchange of stock in an S corporation, rules similar to the rules of section 751 shall be applied to that portion of the excess of the amount realized over the adjusted basis of the stock which is attributable to expenditures referred to in subsection (a)(1)(A) of this section.

(Added Pub. L. 94–455, title II, §205(a), Oct. 4, 1976, 90 Stat. 1533; amended Pub. L. 95–618, title IV, §402(c)(1)–(3), Nov. 9, 1978, 92 Stat. 3202; Pub. L. 97–354, §5(a)(37), Oct. 19, 1982, 96 Stat. 1696; Pub. L. 99–514, title IV, §413(a), Oct. 22, 1986, 100 Stat. 2227; Pub. L. 100–647, title I, §1004(c), Nov. 10, 1988, 102 Stat. 3387.)

AMENDMENTS

1988—Subsec. (a)(4). Pub. L. 100–647 added par. (4).

1986—Pub. L. 99–514 amended section generally, substituting "geothermal, or other mineral properties" for "or geothermal property" in section catchline, revising and restating subsec. (a), pars. (1) to (4) as pars. (1) to (3), and reenacting subsec. (b) without change except for substituting "rule of subsection (g)" for "rules of subsection (g)" in par. (1).

1982—Subsec. (b)(2). Pub. L. 97–354 substituted "an S corporation" for "an electing small business corporation (as defined in section 1371(b))".

1978—Pub. L. 95–618, §402(c)(3), substituted "oil, gas, or geothermal" for "oil or gas" in section catchline.

Subsec. (a)(1), (2). Pub. L. 95–618, §402(c)(1), substituted "oil, gas, or geothermal property" for "oil or gas property" wherever appearing.

Subsec. (a)(3). Pub. L. 95–618, §402(c)(2), substituted "Oil, gas, or geothermal" for "Oil or gas" in heading and in text substituted "The term 'oil, gas, or geothermal property' means" for "The term 'oil or gas property' means".

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title IV, §413(c), Oct. 22, 1986, 100 Stat. 2229, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and section 617 of this title] shall apply to any disposition of property which is placed in service by the taxpayer after December 31, 1986.

"(2) EXCEPTION FOR BINDING CONTRACTS.—The amendments made by this section shall not apply to any disposition of property placed in service after December 31, 1986, if such property was acquired pursuant to a written contract which was entered into before September 26, 1985, and which was binding at all times thereafter."

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–618 applicable with respect to wells commenced on or after Oct. 1, 1978, in taxable years ending on or after such date, see section 402(e) of Pub. L. 95–618, set out as a note under section 263 of this title.

EFFECTIVE DATE

Pub. L. 94–455, title II, §205(e), Oct. 4, 1976, 90 Stat. 1535, provided that: "The amendments made by this section [enacting this section and amending sections 163, 170, 301, 312, 341, 453, and 751 of this title] shall apply with respect to taxable years ending after December 31, 1975."

§1255. Gain from disposition of section 126 property

(a) General rule

(1) Ordinary income

Except as otherwise provided in this section, if section 126 property is disposed of, the lower of—

(A) the applicable percentage of the aggregate payments, with respect to such property, excluded from gross income under section 126, or

(B) the excess of—

(i) the amount realized (in the case of a sale, exchange, or involuntary conversion), or the fair market value of such section 126 property (in the case of any other disposition), over

(ii) the adjusted basis of such property,

shall be treated as ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle, except that this section shall not apply to the extent such gain is recognized as ordinary income under any other provision of this part.

(2) Section 126 property

For purposes of this section, "section 126 property" means any property acquired, improved, or otherwise modified by the application of payments excluded from gross income under section 126.

(3) Applicable percentage

For purposes of this section, if section 126 property is disposed of less than 10 years after the date of receipt of payments excluded from gross income under section 126, the applicable percentage is 100 percent. If section 126 property is disposed of more than 10 years after such date, the applicable percentage is 100 percent reduced (but not below zero) by 10 percent for each year or part thereof in excess of 10 years such property was held after the date of receipt of the payments.

(b) Special rules

Under regulations prescribed by the Secretary—

(1) rules similar to the rules applicable under section 1245 shall be applied for purposes of this section, and

(2) for purposes of sections 170(e),[1] and 751(c), amounts treated as ordinary income under this section shall be treated in the same manner as amounts treated as ordinary income under section 1245.

(Added Pub. L. 95–600, title V, §543(c)(1), Nov. 6, 1978, 92 Stat. 2890; amended Pub. L. 96–222, title I, §105(a)(7)(B), (D), Apr. 1, 1980, 94 Stat. 221; Pub. L. 96–471, §2(b)(6), Oct. 19, 1980, 94 Stat. 2254; Pub. L. 99–514, title V, §511(d)(2)(A), title VI, §631(e)(14), Oct. 22, 1986, 100 Stat. 2248, 2275; Pub. L. 100–647, title I, §1005(c)(10), Nov. 10, 1988, 102 Stat. 3392; Pub. L. 108–27, title III, §302(e)(4)(B)(ii), May 28, 2003, 117 Stat. 764.)

AMENDMENTS

2003—Subsec. (b)(2). Pub. L. 108–27 struck out ", 341(e)(12)," after "170(e)".

1988—Subsec. (b)(2). Pub. L. 100–647 amended Pub. L. 99–514, §511(d)(2)(A), see 1986 Amendment note below.

1986—Subsec. (b)(2). Pub. L. 99–514, §511(d)(2)(A), as amended by Pub. L. 100–647, struck out "163(d)," after "sections".

Pub. L. 99–514, §631(e)(14), struck out "453B(d)(2)" after "341(e)(12),".

1980—Subsec. (a)(1)(B). Pub. L. 96–222, §105(a)(7)(B), inserted following cl. (ii) provisions requiring that such gain be recognized notwithstanding any other provision of this subtitle, except that this section shall not apply to the extent such gain is recognized as ordinary income under any other provision of this part.

Subsec. (b)(2). Pub. L. 96–471 substituted "453B(d)(2)" for "453(d)(4)(B)".

Pub. L. 96–222, §105(a)(7)(D), inserted "for purposes of sections 163(d), 170(e), 341(e)(12), 453(d)(4)(B), and 751(c)" before "amounts treated as".

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–27 applicable, except as otherwise provided, to taxable years beginning after Dec. 31, 2002, see section 302(f) of Pub. L. 108–27, set out as an Effective and Termination Dates of 2003 Amendment note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 511(d)(2)(A) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 511(e) of Pub. L. 99–514, set out as a note under section 163 of this title.

Amendment by section 631(e)(14) of Pub. L. 99–514 applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, set out as an Effective Date note under section 336 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

For effective date of amendment by Pub. L. 96–471, see section 6(a)(1) of Pub. L. 96–471, set out as an Effective Date note under section 453 of this title.

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE

Section effective with respect to grants made under the programs after Sept. 30, 1979, see section 543(d) of Pub. L. 95–600, set out as a note under section 126 of this title.

[1] So in original. The comma probably should not appear.

§1256. Section 1256 contracts marked to market

(a) General rule

For purposes of this subtitle—

(1) each section 1256 contract held by the taxpayer at the close of the taxable year shall be treated as sold for its fair market value on the last business day of such taxable year (and any gain or loss shall be taken into account for the taxable year),

(2) proper adjustment shall be made in the amount of any gain or loss subsequently realized for gain or loss taken into account by reason of paragraph (1),

(3) any gain or loss with respect to a section 1256 contract shall be treated as—

(A) short-term capital gain or loss, to the extent of 40 percent of such gain or loss, and

(B) long-term capital gain or loss, to the extent of 60 percent of such gain or loss, and

(4) if all the offsetting positions making up any straddle consist of section 1256 contracts to which this section applies (and such straddle is not part of a larger straddle), sections 1092 and 263(g) shall not apply with respect to such straddle.

(b) Section 1256 contract defined

(1) In general

For purposes of this section, the term "section 1256 contract" means—

(A) any regulated futures contract,

(B) any foreign currency contract,

(C) any nonequity option,

(D) any dealer equity option, and
(E) any dealer securities futures contract.

(2) Exceptions

The term "section 1256 contract" shall not include—

(A) any securities futures contract or option on such a contract unless such contract or option is a dealer securities futures contract, or

(B) any interest rate swap, currency swap, basis swap, interest rate cap, interest rate floor, commodity swap, equity swap, equity index swap, credit default swap, or similar agreement.

(c) Terminations, etc.

(1) In general

The rules of paragraphs (1), (2), and (3) of subsection (a) shall also apply to the termination (or transfer) during the taxable year of the taxpayer's obligation (or rights) with respect to a section 1256 contract by offsetting, by taking or making delivery, by exercise or being exercised, by assignment or being assigned, by lapse, or otherwise.

(2) Special rule where taxpayer takes delivery on or exercises part of straddle

If—

(A) 2 or more section 1256 contracts are part of a straddle (as defined in section 1092(c)), and

(B) the taxpayer takes delivery under or exercises any of such contracts,

then, for purposes of this section, each of the other such contracts shall be treated as terminated on the day on which the taxpayer took delivery.

(3) Fair market value taken into account

For purposes of this subsection, fair market value at the time of the termination (or transfer) shall be taken into account.

(d) Elections with respect to mixed straddles

(1) Election

The taxpayer may elect to have this section not to apply to all section 1256 contracts which are part of a mixed straddle.

(2) Time and manner

An election under paragraph (1) shall be made at such time and in such manner as the Secretary may by regulations prescribe.

(3) Election revocable only with consent

An election under paragraph (1) shall apply to the taxpayer's taxable year for which made and to all subsequent taxable years, unless the Secretary consents to a revocation of such election.

(4) Mixed straddle

For purposes of this subsection, the term "mixed straddle" means any straddle (as defined in section 1092(c))—

(A) at least 1 (but not all) of the positions of which are section 1256 contracts, and

(B) with respect to which each position forming part of such straddle is clearly identified, before the close of the day on which the first section 1256 contract forming part of the straddle is acquired (or such earlier time as the Secretary may prescribe by regulations), as being part of such straddle.

(e) Mark to market not to apply to hedging transactions

(1) Section not to apply

Subsection (a) shall not apply in the case of a hedging transaction.

(2) Definition of hedging transaction

For purposes of this subsection, the term "hedging transaction" means any hedging transaction (as defined in section 1221(b)(2)(A)) if, before the close of the day on which such transaction was entered into (or such earlier time as the Secretary may prescribe by regulations), the taxpayer clearly identifies such transaction as being a hedging transaction.

(3) Special rule for syndicates

(A) In general

Notwithstanding paragraph (2), the term "hedging transaction" shall not include any transaction entered into by or for a syndicate.

(B) Syndicate defined

For purposes of subparagraph (A), the term "syndicate" means any partnership or other entity (other than a corporation which is not an S corporation) if more than 35 percent of the losses of such entity during the taxable year are allocable to limited partners or limited entrepreneurs (within the meaning of section 464(e)(2)).

(C) Holdings attributable to active management

For purposes of subparagraph (B), an interest in an entity shall not be treated as held by a limited partner or a limited entrepreneur (within the meaning of section 464(e)(2))—

(i) for any period if during such period such interest is held by an individual who actively participates at all times during such period in the management of such entity,

(ii) for any period if during such period such interest is held by the spouse, children, grandchildren, and parents of an individual who actively participates at all times during such period in the management of such entity,

(iii) if such interest is held by an individual who actively participated in the management of such entity for a period of not less than 5 years,

(iv) if such interest is held by the estate of an individual who actively participated in the management of such entity or is held by the estate of an individual if with respect to such individual such interest was at any time described in clause (ii), or

(v) if the Secretary determines (by regulations or otherwise) that such interest should be treated as held by an individual who actively participates in the management of such entity, and that such entity and such interest are not used (or to be used) for tax–avoidance purposes.

For purposes of this subparagraph, a legally adopted child of an individual shall be treated as a child of such individual by blood.

(4) Limitation on losses from hedging transactions

(A) In general

(i) Limitation

Any hedging loss for a taxable year which is allocable to any limited partner or limited entrepreneur (within the meaning of paragraph (3)) shall be allowed only to the extent of the taxable income of such limited partner or entrepreneur for such taxable year attributable to the trade or business in which the hedging transactions were entered into. For purposes of the preceding sentence, taxable income shall be determined by not taking into account items attributable to hedging transactions.

(ii) Carryover of disallowed loss

Any hedging loss disallowed under clause (i) shall be treated as a deduction attributable to a hedging transaction allowable in the first succeeding taxable year.

(B) Exception where economic loss

Subparagraph (A)(i) shall not apply to any hedging loss to the extent that such loss exceeds the aggregate unrecognized gains from hedging transactions as of the close of the taxable year

attributable to the trade or business in which the hedging transactions were entered into.

(C) Exception for certain hedging transactions

In the case of any hedging transaction relating to property other than stock or securities, this paragraph shall apply only in the case of a taxpayer described in section 465(a)(1).

(D) Hedging loss

The term "hedging loss" means the excess of—

(i) the deductions allowable under this chapter for the taxable year attributable to hedging transactions (determined without regard to subparagraph (A)(i)), over

(ii) income received or accrued by the taxpayer during such taxable year from such transactions.

(E) Unrecognized gain

The term "unrecognized gain" has the meaning given to such term by section 1092(a)(3).

(f) Special rules

(1) Denial of capital gains treatment for property identified as part of a hedging transaction

For purposes of this title, gain from any property shall in no event be considered as gain from the sale or exchange of a capital asset if such property was at any time personal property (as defined in section 1092(d)(1)) identified under subsection (e)(2) by the taxpayer as being part of a hedging transaction.

(2) Subsection (a)(3) not to apply to ordinary income property

Paragraph (3) of subsection (a) shall not apply to any gain or loss which, but for such paragraph, would be ordinary income or loss.

(3) Capital gain treatment for traders in section 1256 contracts

(A) In general

For purposes of this title, gain or loss from trading of section 1256 contracts shall be treated as gain or loss from the sale or exchange of a capital asset.

(B) Exception for certain hedging transactions

Subparagraph (A) shall not apply to any section 1256 contract to the extent such contract is held for purposes of hedging property if any loss with respect to such property in the hands of the taxpayer would be ordinary loss.

(C) Treatment of underlying property

For purposes of determining whether gain or loss with respect to any property is ordinary income or loss, the fact that the taxpayer is actively engaged in dealing in or trading section 1256 contracts related to such property shall not be taken into account.

(4) Special rule for dealer equity options and dealer securities futures contracts of limited partners or limited entrepreneurs

In the case of any gain or loss with respect to dealer equity options, or dealer securities futures contracts, which are allocable to limited partners or limited entrepreneurs (within the meaning of subsection (e)(3))—

(A) paragraph (3) of subsection (a) shall not apply to any such gain or loss, and

(B) all such gains or losses shall be treated as short-term capital gains or losses, as the case may be.

(5) Special rule related to losses

Section 1091 (relating to loss from wash sales of stock or securities) shall not apply to any loss taken into account by reason of paragraph (1) of subsection (a).

(g) Definitions

For purposes of this section—

(1) Regulated futures contracts defined

The term "regulated futures contract" means a contract—

(A) with respect to which the amount required to be deposited and the amount which may be withdrawn depends on a system of marking to market, and

(B) which is traded on or subject to the rules of a qualified board or exchange.

(2) Foreign currency contract defined

(A) Foreign currency contract

The term "foreign currency contract" means a contract—

(i) which requires delivery of, or the settlement of which depends on the value of, a foreign currency which is a currency in which positions are also traded through regulated futures contracts,

(ii) which is traded in the interbank market, and

(iii) which is entered into at arm's length at a price determined by reference to the price in the interbank market.

(B) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of subparagraph (A), including regulations excluding from the application of subparagraph (A) any contract (or type of contract) if its application thereto would be inconsistent with such purposes.

(3) Nonequity option

The term "nonequity option" means any listed option which is not an equity option.

(4) Dealer equity option

The term "dealer equity option" means, with respect to an options dealer, any listed option which—

(A) is an equity option,

(B) is purchased or granted by such options dealer in the normal course of his activity of dealing in options, and

(C) is listed on the qualified board or exchange on which such options dealer is registered.

(5) Listed option

The term "listed option" means any option (other than a right to acquire stock from the issuer) which is traded on (or subject to the rules of) a qualified board or exchange.

(6) Equity option

The term "equity option" means any option—

(A) to buy or sell stock, or

(B) the value of which is determined directly or indirectly by reference to any stock or any narrow-based security index (as defined in section 3(a)(55) of the Securities Exchange Act of 1934, as in effect on the date of the enactment of this paragraph).

The term "equity option" includes such an option on a group of stocks only if such group meets the requirements for a narrow-based security index (as so defined). The Secretary may prescribe regulations regarding the status of options the values of which are determined directly or indirectly by reference to any index which becomes (or ceases to be) a narrow-based security index (as so defined).

(7) Qualified board or exchange

The term "qualified board or exchange" means—

(A) a national securities exchange which is registered with the Securities and Exchange Commission,

(B) a domestic board of trade designated as a contract market by the Commodity Futures

Trading Commission, or

(C) any other exchange, board of trade, or other market which the Secretary determines has rules adequate to carry out the purposes of this section.

(8) Options dealer

(A) In general

The term "options dealer" means any person registered with an appropriate national securities exchange as a market maker or specialist in listed options.

(B) Persons trading in other markets

In any case in which the Secretary makes a determination under subparagraph (C) of paragraph (7), the term "options dealer" also includes any person whom the Secretary determines performs functions similar to the persons described in subparagraph (A). Such determinations shall be made to the extent appropriate to carry out the purposes of this section.

(9) Dealer securities futures contract

(A) In general

The term "dealer securities futures contract" means, with respect to any dealer, any securities futures contract, and any option on such a contract, which—

(i) is entered into by such dealer (or, in the case of an option, is purchased or granted by such dealer) in the normal course of his activity of dealing in such contracts or options, as the case may be, and

(ii) is traded on a qualified board or exchange.

(B) Dealer

For purposes of subparagraph (A), a person shall be treated as a dealer in securities futures contracts or options on such contracts if the Secretary determines that such person performs, with respect to such contracts or options, as the case may be, functions similar to the functions performed by persons described in paragraph (8)(A). Such determination shall be made to the extent appropriate to carry out the purposes of this section.

(C) Securities futures contract

The term "securities futures contract" has the meaning given to such term by section 1234B.

(Added Pub. L. 97–34, title V, §503(a), Aug. 13, 1981, 95 Stat. 327; amended Pub. L. 97–354, §5(a)(38), Oct. 19, 1982, 96 Stat. 1696; Pub. L. 97–448, title I, §105(c)(1)–(3), (5)(A)–(C), Jan. 12, 1983, 96 Stat. 2385, 2386; Pub. L. 98–369, div. A, title I, §§102(a), (b), (e)(1), (5), 104(a), 107(c), (d), title VII, §722(a)(2), July 18, 1984, 98 Stat. 620, 621, 623, 624, 628, 630, 972; Pub. L. 99–514, title XII, §1261(c), Oct. 22, 1986, 100 Stat. 2591; Pub. L. 106–170, title V, §532(b)(4), Dec. 17, 1999, 113 Stat. 1930; Pub. L. 106–554, §1(a)(7) [title IV, §401(g)(1)–(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–649, 2763A–650; Pub. L. 107–147, title IV, §416(b)(1), Mar. 9, 2002, 116 Stat. 55; Pub. L. 108–311, title IV, §405(a)(2), Oct. 4, 2004, 118 Stat. 1188; Pub. L. 109–135, title IV, §412(oo), Dec. 21, 2005, 119 Stat. 2639; Pub. L. 111–203, title XVI, §1601(a), July 21, 2010, 124 Stat. 2223.)

REFERENCES IN TEXT

Section 3(a)(55) of the Securities Exchange Act of 1934, referred to in subsec. (g)(6)(B), is classified to section 78c(a)(55) of Title 15, Commerce and Trade.

The date of the enactment of this paragraph, referred to in subsec. (g)(6)(B), probably means the date of enactment of Pub. L. 106–554, which amended subsec. (g)(6) generally and which was approved Dec. 21, 2000.

AMENDMENTS

2010—Subsec. (b). Pub. L. 111–203 redesignated first sentence as par. (1), inserted heading, redesignated former pars. (1) to (5) as subpars. (A) to (E), respectively, of par. (1), added par. (2), and struck out

concluding provisions which read as follows: "The term 'section 1256 contract' shall not include any securities futures contract or option on such a contract unless such contract or option is a dealer securities futures contract."

2005—Subsec. (f)(1). Pub. L. 109–135 substituted "subsection (e)(2)" for "subsection (e)(2)(C)".

2004—Subsec. (g)(6). Pub. L. 108–311 added at end of concluding provisions "The Secretary may prescribe regulations regarding the status of options the values of which are determined directly or indirectly by reference to any index which becomes (or ceases to be) a narrow-based security index (as so defined)."

2002—Subsec. (f)(5). Pub. L. 107–147 added par. (5).

2000—Subsec. (b). Pub. L. 106–554, §1(a)(7) [title IV, §401(g)(1)(A)], added par. (5) and concluding provisions.

Subsec. (f)(4). Pub. L. 106–554, §1(a)(7) [title IV, §401(g)(2)], inserted "and dealer securities futures contracts" after "dealer equity options" in heading and ", or dealer securities futures contracts," after "dealer equity options" in introductory provisions.

Subsec. (g)(6). Pub. L. 106–554, §1(a)(7) [title IV, §401(g)(3)], amended heading and text of par. (6) generally. Prior to amendment, text read as follows:

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'equity option' means any option—

"(i) to buy or sell stock, or

"(ii) the value of which is determined directly or indirectly by reference to any stock (or group of stocks) or stock index.

"(B) EXCEPTION FOR CERTAIN OPTIONS REGULATED BY COMMODITIES FUTURES TRADING COMMISSION.—The term 'equity option' does not include any option with respect to any group of stocks or stock index if—

"(i) there is in effect a designation by the Commodities Futures Trading Commission of a contract market for a contract based on such group of stocks or index, or

"(ii) the Secretary determines that such option meets the requirements of law for such a designation."

Subsec. (g)(9). Pub. L. 106–554, §1(a)(7) [title IV, §401(g)(1)(B)], added par. (9).

1999—Subsec. (e)(2). Pub. L. 106–170 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "For purposes of this subsection, the term 'hedging transaction' means any transaction if—

"(A) such transaction is entered into by the taxpayer in the normal course of the taxpayer's trade or business primarily—

"(i) to reduce risk of price change or currency fluctuations with respect to property which is held or to be held by the taxpayer, or

"(ii) to reduce risk of interest rate or price changes or currency fluctuations with respect to borrowings made or to be made, or obligations incurred or to be incurred, by the taxpayer,

"(B) the gain or loss on such transactions is treated as ordinary income or loss, and

"(C) before the close of the day on which such transaction was entered into (or such earlier time as the Secretary may prescribe by regulations), the taxpayer clearly identifies such transaction as being a hedging transaction."

1986—Subsec. (e)(4), (5). Pub. L. 99–514 redesignated par. (5) as (4) and struck out former par. (4), special rule for banks, which read as follows: "In the case of a bank (as defined in section 581), subparagraph (A) of paragraph (2) shall be applied without regard to clause (i) or (ii) thereof."

1984—Pub. L. 98–369, §102(e)(5), substituted "Section 1256 contracts" for "Regulated futures contracts" in section catchline.

Subsec. (a)(1), (3), (4). Pub. L. 98–369, §102(a)(1), substituted "section 1256 contract" for "regulated futures contract" and "section 1256 contracts" for "regulated futures contracts" wherever appearing.

Subsec. (b). Pub. L. 98–369, §102(a)(2), in par. (1), substituted "any regulated futures contract" for "with respect to which the amount required to be deposited and the amount which may be withdrawn depends on the system of marking to market; and", in par. (2), substituted "any foreign currency contract," for "which is traded on or subject to the rules of a domestic board of trade designated as a contract market by the Commodity Futures Trading Commission or of any board of trade or exchange which the Secretary determines has rules adequate to carry out the purposes of this section. Such term includes any foreign currency contract.", and added pars. (3) and (4).

Subsec. (c)(1). Pub. L. 98–369, §102(a)(1)(A), (e)(1)(A), substituted "section 1256 contracts" for "regulated futures contracts", and "by taking or making delivery, by exercise or being exercised, by assignment or being assigned, by lapse," for "by taking or making delivery,".

Subsec. (c)(2). Pub. L. 98–369, §102(e)(1)(C), substituted "takes delivery on or exercises" for "takes delivery on" in heading.

Subsec. (c)(2)(A). Pub. L. 98–369, §102(a)(1)(B), substituted "section 1256 contracts" for "regulated futures contracts".

Subsec. (c)(2)(B). Pub. L. 98–369, §102(e)(1)(B), substituted "takes delivery under or exercises" for "takes delivery under".

Subsec. (d)(1), (4)(A). Pub. L. 98–369, §102(a)(1)(B), substituted "section 1256 contracts" for "regulated futures contracts".

Subsec. (d)(4)(B). Pub. L. 98–369, §102(a)(1)(A), substituted "section 1256 contract" for "regulated futures contract".

Pub. L. 98–369, §107(c), inserted "(or such earlier time as the Secretary may prescribe by regulations)".

Subsec. (e)(2)(C). Pub. L. 98–369, §107(d), inserted "(or such earlier time as the Secretary may prescribe by regulations".

Subsec. (e)(5). Pub. L. 98–369, §104(a), added par. (5).

Subsec. (f)(3), (4). Pub. L. 98–369, §102(b), added pars. (3) and (4).

Subsec. (g). Pub. L. 98–369, §102(a)(3), in amending subsec. (g) generally, inserted provisions relating to regulated futures contracts as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (2), and added pars. (3) to (8).

Subsec. (g)(1)(A). Pub. L. 98–369, §722(a)(2), inserted ", or the settlement of which depends on the value of," after "delivery of".

1983—Subsec. (b). Pub. L. 97–448, §105(c)(5)(A), (B), struck out par. (1) which related to contracts requiring delivery of personal property (as defined in section 1092(d)(1)) or an interest in such property, redesignated pars. (2) and (3) as (1) and (2), respectively, and inserted last sentence providing that such term includes any foreign currency contract.

Subsec. (c). Pub. L. 97–448, §105(c)(1), inserted ", etc." after "Terminations" in heading and, in text, designated existing first and second sentences as pars. (1) and (3), respectively, added par. (2), inserted "(or transfer)" after "termination" and "(or rights)" after "obligation" in par. (1) as so designated, and substituted "this subsection" for "the preceding sentence" and inserted "(or transfer)" after "termination" in par. (3) as so designated.

Subsec. (d)(4)(B). Pub. L. 97–448, §105(c)(2), substituted "day on which the first regulated futures contract forming part of the straddle is acquired" for "day on which such position is acquired".

Subsec. (e)(3)(C)(v). Pub. L. 97–448, §105(c)(3), inserted "(by regulations or otherwise)" after "determines".

Subsec. (g). Pub. L. 97–448, §105(c)(5)(C), added subsec. (g).

1982—Subsec. (e)(3)(B). Pub. L. 97–354 substituted "an S corporation" for "an electing small business corporation within the meaning of section 1371(b)".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of Title 12, Banks and Banking.

Pub. L. 111–203, title XVI, §1601(b), July 21, 2010, 124 Stat. 2223, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [July 21, 2010]."

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 effective as if included in section 401 of the Community Renewal Tax Relief Act of 2000 [H.R. 5662, as enacted by Pub. L. 106–554], see section 405(b) of Pub. L. 108–311, set out as a note under section 1234B of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title IV, §416(b)(2), Mar. 9, 2002, 116 Stat. 55, provided that: "The amendment made by this subsection [amending this section] shall take effect as if included in section 5075 of the Technical and Miscellaneous Revenue Act of 1988 [Pub. L. 100–647]."

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain

exceptions and qualifications, see section 1261(e) of Pub. L. 99–514, set out as an Effective Date note under section 985 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §102(f)–(j), July 18, 1984, 98 Stat. 625, 627, as amended by Pub. L. 99–514, §2, title XVIII, §1808(a)(1), Oct. 22, 1986, 100 Stat. 2095, 2817, provided that:

"(f) EFFECTIVE DATES.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection or subsection (g), the amendments made by this section [amending this section, sections 263, 1092, 1212, 1234A, 1362, 1374, and 1402 of this title, and section 411 of Title 42, The Public Health and Welfare, and enacting provisions set out as a note under section 1362 of this title] shall apply to positions established after the date of the enactment of this Act [July 18, 1984], in taxable years ending after such date.

"(2) SPECIAL RULE FOR OPTIONS ON REGULATED FUTURES CONTRACTS.—In the case of any option with respect to a regulated futures contract (within the meaning of section 1256 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]), the amendments made by this section shall apply to positions established after October 31, 1983, in taxable years ending after such date.

"(3) SPECIAL RULE FOR SELF-EMPLOYMENT TAX.—Except as provided in subsection (g)(2), the amendments made by subsection (c) [amending section 1402 of this title and section 411 of Title 42] shall apply to taxable years beginning after the date of the enactment of this Act [July 18, 1984].

"(4) GAINS OR LOSSES FROM CERTAIN TERMINATIONS.—The amendment made by subsection (d)(9) [probably means subsec. (e)(9), which amended section 1234A of this title] shall apply as if included in the amendment made by section 505(a) [probably means section 507(a)] of the Economic Recovery Tax Act of 1981 [Pub. L. 97–34], as amended by section 105(e) of the Technical Corrections Act of 1982 [Pub. L. 97–448].

"(g) ELECTIONS WITH RESPECT TO PROPERTY HELD ON OR BEFORE THE DATE OF THE ENACTMENT OF THIS ACT.—At the election of the taxpayer—

"(1) the amendments made by this section [amending this section, sections 263, 1092, 1212, 1234A, 1362, 1374, and 1402 of this title, and section 411 of Title 42, The Public Health and Welfare, and enacting provisions set out as a note under section 1362 of this title] shall apply to all section 1256 contracts held by the taxpayer on the date of the enactment of this Act [July 18, 1984], effective for periods after such date in taxable years ending after such date, or

"(2) in lieu of an election under paragraph (1), the amendments made by this section shall apply to all section 1256 contracts held by the taxpayer at any time during the taxable year of the taxpayer which includes the date of the enactment of this Act.

"(h) ELECTIONS FOR INSTALLMENT PAYMENT OF TAX ATTRIBUTABLE TO STOCK OPTIONS.—

"(1) IN GENERAL.—If the taxpayer makes an election under subsection (g)(2) and under this subsection—

"(A) the taxpayer may pay part or all the tax for the taxable year referred to in subsection (g)(2) in 2 or more (but not exceeding 5) equal installments, and

"(B) the maximum amount of tax which may be paid in installments under this subsection shall be the excess of—

"(i) the tax for such taxable year determined by taking into account subsection (g)(2), over

"(ii) the tax for such taxable year determined by taking into account subsection (g)(2) and by treating—

"(I) all section 1256 contracts which are stock options, and

"(II) any stock which was a part of a straddle including any such stock options,

as having been acquired for a purchase price equal to their fair market value on the last business day of the preceding taxable year. Stock options and stock shall be taken into account under subparagraph (B)(ii) only if such options or stock were held on the last day of the preceding taxable year and only if income on such options or stock would have been ordinary income if such options or stock were sold at a gain on such last day.

"(2) DATE FOR PAYMENT OF INSTALLMENT.—

"(A) If an election is made under this subsection, the first installment under paragraph (1) shall be paid on or before the due date for filing the return for the taxable year described in paragraph (1), and each succeeding installment shall be paid on or before the date which is 1 year after the date prescribed for payment of the preceding installment.

"(B) If a bankruptcy case or insolvency proceeding involving the taxpayer is commenced before

the final installment is paid, the total amount of any unpaid installments shall be treated as due and payable on the day preceding the day on which such case or proceeding is commenced.

"(3) INTEREST IMPOSED.—For purposes of section 6601 of the Internal Revenue Code of 1986, the time for payment of any tax with respect to which an election is made under this subsection shall be determined without regard to this subsection.

"(4) FORM OF ELECTION.—An election under this subsection shall be made not later than the time for filing the return for the taxable year described in paragraph (1) and shall be made in the manner and form required by regulations prescribed by Secretary of the Treasury or his delegate. The election shall set forth—

"(A) the amount determined under paragraph (1)(B) and the number of installments elected by the taxpayer,

"(B) the property described in paragraph (1)(B)(ii), and the date on which such property was acquired,

"(C) the fair market value of the property described in paragraph (1)(B)(ii) on the last business day of the taxable year preceding the taxable year described in paragraph (1), and

"(D) such other information for purposes of carrying out the provisions of this subsection as may be required by such regulations.

"(5) DELAY OF IDENTIFICATION REQUIREMENT.—Section 1256(e)(2)(C) of the Internal Revenue Code of 1986 shall not apply to any stock option or stock acquired on or before the 60th day after the date of the enactment of this Act [July 18, 1984].

"(i) DEFINITIONS.—For purposes of subsections (g) and (h)—

"(1) SECTION 1256 CONTRACT.—The term 'section 1256 contract' has the meaning given to such term by section 1256(b) of the Internal Revenue Code of 1986 (as amended by this section).

"(2) STOCK OPTION.—The term 'stock option' means any option to buy or sell stock.

"(j) COORDINATION OF ELECTION UNDER SUBSECTION (d)(3) WITH ELECTIONS UNDER SUBSECTIONS (g) AND (h).—The Secretary of the Treasury or his delegate shall prescribe such regulations as may be necessary to coordinate the election provided by subsection (d)(3) with the elections provided by subsections (g) and (h)."

Pub. L. 98–369, div. A, title I, §104(b), July 18, 1984, 98 Stat. 628, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1984."

Amendment by section 107(c), (d) of Pub. L. 98–369 applicable to positions entered into after July 18, 1984, in taxable years ending after that date, see section 107(e) of Pub. L. 98–369 set out as a note under section 1092 of this title.

Amendment by section 722(a)(2) of Pub. L. 98–369 effective as if included in the provisions of the Technical Corrections Act of 1984, Pub. L. 97–448, to which such amendment relates, see section 722(a)(6) of Pub. L. 98–369, set out as a note under section 172 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

Pub. L. 97–448, title I, §105(c)(5)(D), Jan. 12, 1983, 96 Stat. 2386, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(i) IN GENERAL.—Except as provided in clauses (ii) and (iii), the amendments made by subparagraphs (B) and (C) [amending this section] shall apply only with respect to contracts entered into after May 11, 1982.

"(ii) ELECTION BY TAXPAYER OF RETROACTIVE APPLICATION.—

"(I) RETROACTIVE APPLICATION.—If the taxpayer so elects, the amendments made by subparagraphs (B) and (C) [amending this section] shall apply as if included within the amendments made by title V of the Economic Recovery Tax Act of 1981 [title V of Pub. L. 97–34].

"(II) ADDITIONAL CHOICES WITH RESPECT TO 1981.—If the taxpayer held a foreign currency contract after December 31, 1980, and before June 24, 1981, and such taxpayer makes an election under subclause (I), such taxpayer may revoke any election made under section 508(c) [set out as an Effective Date note under section 1092 of this title] or 509(a) [set out below] of such Act, and may make an election under section 508(c) or 509(a) of such Act.

"(III) ADDITIONAL CHOICES APPLY TO ALL REGULATED FUTURES CONTRACTS .—Except as provided in subclause (IV), in the case of any taxpayer who makes an election under subclause (I), any election under section 508(c) or 509(a) of such Act or any revocation of such an election shall apply to all regulated futures contracts (including foreign currency contracts).

"(IV) SECTION 509(a)(3) AND (4) NOT TO APPLY TO FOREIGN CURRENCY CONTRACTS .—Paragraphs (3) and (4) of section 509(a) of such Act shall not apply to any foreign currency contract.

"(V) TIME FOR MAKING ELECTION OR REVOCATION.—Any election under subclause (I) and any election or revocation under subclause (II) may be made only within the 90-day period beginning on the date of the enactment of this Act [Jan. 12, 1983]. Any such action, once taken, shall be irrevocable.

"(VI) DEFINITIONS.—For purposes of this clause, the terms 'regulated futures contract' and 'foreign currency contract' have the same respective meanings as when used in section 1256 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by this Act).

"(iii) ELECTION BY TAXPAYER WITH RESPECT TO POSITIONS HELD DURING TAXABLE YEARS ENDING AFTER MAY 11, 1982.—In lieu of the election under clause (ii), a taxpayer may elect to have the amendments made by subparagraphs (B) and (C) [amending subsec. (b) of this section to include foreign currency contracts and enacting subsec. (g) of this section, respectively] applied to all positions held in taxable years ending after May 11, 1982, except that the provisions of section 509(a)(3) and (4) of the Economic Recovery Tax Act of 1981 [set out below] shall not apply."

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE

Section (other than subsec. (e)(2)(C)) applicable to property acquired and positions established by the taxpayer after June 23, 1981, in taxable years ending after such date, subsec. (e)(2)(C) of this section applicable to property acquired and positions established by the taxpayer after Dec. 31, 1981, in taxable years ending after such date, and section applicable when so elected with respect to property held on June 23, 1981, see section 508 of Pub. L. 97–34, set out as a note under section 1092 of this title.

DEADLINE FOR DETERMINATION

Pub. L. 106–554, §1(a)(7) [title IV, §401(g)(4)], Dec. 21, 2000, 114 Stat. 2763, 2763A–650, provided that: "The Secretary of the Treasury or his delegate shall make the determinations under section 1256(g)(9)(B) of the Internal Revenue Code of 1986, as added by this Act, not later than July 1, 2001."

ELECTION FOR EXTENSION OF TIME FOR PAYMENT AND APPLICATION OF THIS SECTION FOR THE TAXABLE YEAR INCLUDING JUNE 23, 1981

Pub. L. 97–34, title V, §509, Aug. 13, 1981, 95 Stat. 333, as amended by Pub. L. 97–448, title I, §105(c)(6), Jan. 12, 1983, 96 Stat. 2387; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) ELECTION.—

"(1) IN GENERAL.—In the case of any taxable year beginning before June 23, 1981, and ending after June 22, 1981, the taxpayer may elect, in lieu of any election under section 508(c) [set out as an Effective Date note under section 1092 of this title], to have this section apply to all regulated futures contracts held during such taxable year.

"(2) APPLICATION OF SECTION 1256.—If a taxpayer elects to have the provisions of this section apply to the taxable year described in paragraph (1).—

"(A) the provisions of section 1256 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (other than section 1256(e)(2)(C)) shall apply to regulated futures contracts held by the taxpayer at any time during such taxable year, and

"(B) for purposes of determining the rate of tax applicable to gains and losses from regulated futures contracts held at any time during such year, such gains and losses shall be treated as gain or loss from a sale or exchange occurring in a taxable year beginning in 1982.

"(3) DETERMINATION OF DEFERRED TAX LIABILITY.—If the taxpayer makes an election under this subsection.—

"(A) the taxpayer may pay part or all of the tax for such year in two or more (but not exceeding five) equal installments;

"(B) the maximum amount of tax which may be paid in installments under this section shall be the excess of—

"(i) the tax for such year, determined by taking into account paragraph (2), over

"(ii) the tax for such year, determined by taking into account paragraph (2) and by treating all regulated futures contracts which were held by the taxpayer on the first day of the taxable year

described in paragraph (1), and which were acquired before the first day of such taxable year, as having been acquired for a purchase price equal to their fair market value on the last business day of the preceding taxable year.

"(4) DATE FOR PAYMENT OF INSTALLMENT.—

"(A) If an election is made under this subsection, the first installment under subsection (a)(3)(A) shall be paid on or before the due date for filing the return for the taxable year described in paragraph (1), and each succeeding installment shall be paid on or before the date which is one year after the date prescribed for payment of the preceding installment.

"(B) If a bankruptcy case or insolvency proceeding involving the taxpayer is commenced before the final installment is paid, the total amount of any unpaid installments shall be treated as due and payable on the day preceding the day on which such case or proceeding is commenced.

"(5) INTEREST IMPOSED.—For purposes of section 6601 of the Internal Revenue Code of 1986, the time for payment of any tax with respect to which an election is made under this subsection shall be determined without regard to this subsection.

"(b) FORM OF ELECTION.—An election under this section shall be made not later than the time for filing the return for the taxable year described in subsection (a)(1) and shall be made in the manner and form required by regulations prescribed by the Secretary. The election shall set forth—

"(1) the amount determined under subsection (a)(3)(B) and the number of installments elected by the taxpayer,

"(2) each regulated futures contract held by the taxpayer on the first day of the taxable year described in subsection (a)(1), and the date such contract was acquired,

"(3) the fair market value on the last business day of the preceding taxable year for each regulated futures contract described in paragraph (2), and

"(4) such other information for purposes of carrying out the provisions of this section as may be required by such regulations."

§1257. Disposition of converted wetlands or highly erodible croplands

(a) Gain treated as ordinary income

Any gain on the disposition of converted wetland or highly erodible cropland shall be treated as ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle, except that this section shall not apply to the extent such gain is recognized as ordinary income under any other provision of this part.

(b) Loss treated as long-term capital loss

Any loss recognized on the disposition of converted wetland or highly erodible cropland shall be treated as a long-term capital loss.

(c) Definitions

For purposes of this section—

(1) Converted wetland

The term "converted wetland" means any converted wetland (as defined in section 1201(4) [1] of the Food Security Act of 1985 (16 U.S.C. 3801(4))) held—

(A) by the person whose activities resulted in such land being converted wetland, or

(B) by any other person who at any time used such land for farming purposes.

(2) Highly erodible cropland

The term "highly erodible cropland" means any highly erodible cropland (as defined in section 1201(6) [1] of the Food Security Act of 1985 (16 U.S.C. 3801(6))), if at any time the taxpayer used such land for farming purposes (other than the grazing of animals).

(3) Treatment of successors

If any land is converted wetland or highly erodible cropland in the hands of any person, such land shall be treated as converted wetland or highly erodible cropland in the hands of any other person whose adjusted basis in such land is determined (in whole or in part) by reference to the

adjusted basis of such land in the hands of such person.

(d) Special rules

Under regulations prescribed by the Secretary, rules similar to the rules applicable under section 1245 shall apply for purposes of subsection (a). For purposes of sections 170(e) and 751(c), amounts treated as ordinary income under subsection (a) shall be treated in the same manner as amounts treated as ordinary income under section 1245.

(Added Pub. L. 99–514, title IV, §403(a), Oct. 22, 1986, 100 Stat. 2222; amended Pub. L. 108–27, title III, §302(e)(4)(B)(ii), May 28, 2003, 117 Stat. 764.)

REFERENCES IN TEXT

Section 1201(4) of the Food Security Act of 1985 (16 U.S.C. 3801(4)) and section 1201(6) of the Food Security Act of 1985 (16 U.S.C. 3801(6)), referred to in subsec. (c)(1), (2), probably are references to section 1201(a)(4) and 1201(a)(6) of that Act (16 U.S.C. 3801(a)(4), (6)). Section 1201 of the Food Security Act of 1985 was subsequently amended, and subsecs. (a)(4) and (a)(6) of section 1201 no longer define the terms "converted wetland" and "highly erodible cropland", respectively. However, such terms are defined elsewhere in that section.

AMENDMENTS

2003—Subsec. (d). Pub. L. 108–27 struck out ", 341(e)(12)," after "170(e)".

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–27 applicable, except as otherwise provided, to taxable years beginning after Dec. 31, 2002, see section 302(f) of Pub. L. 108–27, set out as an Effective and Termination Dates of 2003 Amendment note under section 1 of this title.

EFFECTIVE DATE

Pub. L. 99–514, title IV, §403(c), Oct. 22, 1986, 100 Stat. 2222, provided that: "The amendments made by this section [enacting this section] shall apply to dispositions of converted wetland or highly erodible cropland (as defined in section 1257(c) of the Internal Revenue Code of 1986 as added by this section) first used for farming after March 1, 1986, in taxable years ending after that date."

[1] *See References in Text note below.*

§1258. Recharacterization of gain from certain financial transactions

(a) General rule

In the case of any gain—

(1) which (but for this section) would be treated as gain from the sale or exchange of a capital asset, and

(2) which is recognized on the disposition or other termination of any position which was held as part of a conversion transaction,

such gain (to the extent such gain does not exceed the applicable imputed income amount) shall be treated as ordinary income.

(b) Applicable imputed income amount

For purposes of subsection (a), the term "applicable imputed income amount" means, with respect to any disposition or other termination referred to in subsection (a), an amount equal to—

(1) the amount of interest which would have accrued on the taxpayer's net investment in the conversion transaction for the period ending on the date of such disposition or other termination (or, if earlier, the date on which the requirements of subsection (c) ceased to be satisfied) at a rate equal to 120 percent of the applicable rate, reduced by

(2) the amount treated as ordinary income under subsection (a) with respect to any prior disposition or other termination of a position which was held as a part of such transaction.

The Secretary shall by regulations provide for such reductions in the applicable imputed income amount as may be appropriate by reason of amounts capitalized under section 263(g), ordinary income received, or otherwise.

(c) Conversion transaction

For purposes of this section, the term "conversion transaction" means any transaction—

(1) substantially all of the taxpayer's expected return from which is attributable to the time value of the taxpayer's net investment in such transaction, and

(2) which is—

(A) the holding of any property (whether or not actively traded), and the entering into a contract to sell such property (or substantially identical property) at a price determined in accordance with such contract, but only if such property was acquired and such contract was entered into on a substantially contemporaneous basis,

(B) an applicable straddle,

(C) any other transaction which is marketed or sold as producing capital gains from a transaction described in paragraph (1), or

(D) any other transaction specified in regulations prescribed by the Secretary.

(d) Definitions and special rules

For purposes of this section—

(1) Applicable straddle

The term "applicable straddle" means any straddle (within the meaning of section 1092(c)).

(2) Applicable rate

The term "applicable rate" means—

(A) the applicable Federal rate determined under section 1274(d) (compounded semiannually) as if the conversion transaction were a debt instrument, or

(B) if the term of the conversion transaction is indefinite, the Federal short-term rates in effect under section 6621(b) during the period of the conversion transaction (compounded daily).

(3) Treatment of built-in losses

(A) In general

If any position with a built-in loss becomes part of a conversion transaction—

(i) for purposes of applying this subtitle to such position for periods after such position becomes part of such transaction, such position shall be taken into account at its fair market value as of the time it became part of such transaction, except that

(ii) upon the disposition or other termination of such position in a transaction in which gain or loss is recognized, such built-in loss shall be recognized and shall have a character determined without regard to this section.

(B) Built-in loss

For purposes of subparagraph (A), the term "built-in loss" means the loss (if any) which would have been realized if the position had been disposed of or otherwise terminated at its fair market value as of the time such position became part of the conversion transaction.

(4) Position taken into account at fair market value

In determining the taxpayer's net investment in any conversion transaction, there shall be included the fair market value of any position which becomes part of such transaction (determined as of the time such position became part of such transaction).

(5) Special rule for options dealers and commodities traders

(A) In general

Subsection (a) shall not apply to transactions—

(i) of an options dealer in the normal course of the dealer's trade or business of dealing in options, or

(ii) of a commodities trader in the normal course of the trader's trade or business of trading section 1256 contracts.

(B) Definitions

For purposes of this paragraph—

(i) Options dealer

The term "options dealer" has the meaning given such term by section 1256(g)(8).

(ii) Commodities trader

The term "commodities trader" means any person who is a member (or, except as otherwise provided in regulations, is entitled to trade as a member) of a domestic board of trade which is designated as a contract market by the Commodity Futures Trading Commission.

(C) Limited partners and limited entrepreneurs

In the case of any gain from a transaction recognized by an entity which is allocable to a limited partner or limited entrepreneur (within the meaning of section 464(e)(2)), subparagraph (A) shall not apply if—

(i) substantially all of the limited partner's (or limited entrepreneur's) expected return from the entity is attributable to the time value of the partner's (or entrepreneur's) net investment in such entity,

(ii) the transaction (or the interest in the entity) was marketed or sold as producing capital gains treatment from a transaction described in subsection (c)(1), or

(iii) the transaction (or the interest in the entity) is a transaction (or interest) specified in regulations prescribed by the Secretary.

(Added Pub. L. 103–66, title XIII, §13206(a)(1), Aug. 10, 1993, 107 Stat. 462; amended Pub. L. 108–357, title VIII, §888(c)(2), Oct. 22, 2004, 118 Stat. 1643.)

AMENDMENTS

2004—Subsec. (d)(1). Pub. L. 108–357 struck out "; except that the term 'personal property' shall include stock" before period at end.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to positions established on or after Oct. 22, 2004, see section 888(e) of Pub. L. 108–357, set out as a note under section 246 of this title.

EFFECTIVE DATE

Pub. L. 103–66, title XIII, §13206(a)(3), Aug. 10, 1993, 107 Stat. 465, as amended by Pub. L. 104–188, title I, §1703(n)(11), Aug. 20, 1996, 110 Stat. 1877, provided that: "The amendments made by this subsection [enacting this section] shall apply to conversion transactions entered into after April 30, 1993."

§1259. Constructive sales treatment for appreciated financial positions

(a) In general

If there is a constructive sale of an appreciated financial position—

(1) the taxpayer shall recognize gain as if such position were sold, assigned, or otherwise terminated at its fair market value on the date of such constructive sale (and any gain shall be taken into account for the taxable year which includes such date), and

(2) for purposes of applying this title for periods after the constructive sale—

(A) proper adjustment shall be made in the amount of any gain or loss subsequently realized with respect to such position for any gain taken into account by reason of paragraph (1), and

(B) the holding period of such position shall be determined as if such position were originally

acquired on the date of such constructive sale.

(b) Appreciated financial position

For purposes of this section—

(1) In general

Except as provided in paragraph (2), the term "appreciated financial position" means any position with respect to any stock, debt instrument, or partnership interest if there would be gain were such position sold, assigned, or otherwise terminated at its fair market value.

(2) Exceptions

The term "appreciated financial position" shall not include—

(A) any position with respect to debt if—

(i) the position unconditionally entitles the holder to receive a specified principal amount,

(ii) the interest payments (or other similar amounts) with respect to such position meet the requirements of clause (i) of section 860G(a)(1)(B), and

(iii) such position is not convertible (directly or indirectly) into stock of the issuer or any related person,

(B) any hedge with respect to a position described in subparagraph (A), and

(C) any position which is marked to market under any provision of this title or the regulations thereunder.

(3) Position

The term "position" means an interest, including a futures or forward contract, short sale, or option.

(c) Constructive sale

For purposes of this section—

(1) In general

A taxpayer shall be treated as having made a constructive sale of an appreciated financial position if the taxpayer (or a related person)—

(A) enters into a short sale of the same or substantially identical property,

(B) enters into an offsetting notional principal contract with respect to the same or substantially identical property,

(C) enters into a futures or forward contract to deliver the same or substantially identical property,

(D) in the case of an appreciated financial position that is a short sale or a contract described in subparagraph (B) or (C) with respect to any property, acquires the same or substantially identical property, or

(E) to the extent prescribed by the Secretary in regulations, enters into 1 or more other transactions (or acquires 1 or more positions) that have substantially the same effect as a transaction described in any of the preceding subparagraphs.

(2) Exception for sales of nonpublicly traded property

A taxpayer shall not be treated as having made a constructive sale solely because the taxpayer enters into a contract for sale of any stock, debt instrument, or partnership interest which is not a marketable security (as defined in section 453(f)) if the contract settles within 1 year after the date such contract is entered into.

(3) Exception for certain closed transactions

(A) In general

In applying this section, there shall be disregarded any transaction (which would otherwise cause a constructive sale) during the taxable year if—

(i) such transaction is closed on or before the 30th day after the close of such taxable year,

(ii) the taxpayer holds the appreciated financial position throughout the 60-day period beginning on the date such transaction is closed, and

(iii) at no time during such 60-day period is the taxpayer's risk of loss with respect to such position reduced by reason of a circumstance which would be described in section 246(c)(4) if references to stock included references to such position.

(B) Treatment of certain closed transactions where risk of loss on appreciated financial position diminished

If—

(i) a transaction, which would otherwise cause a constructive sale of an appreciated financial position, is closed during the taxable year or during the 30 days thereafter, and

(ii) another transaction is entered into during the 60-day period beginning on the date the transaction referred to in clause (i) is closed—

(I) which would (but for this subparagraph) cause the requirement of subparagraph (A)(iii) not to be met with respect to the transaction described in clause (i) of this subparagraph,

(II) which is closed on or before the 30th day after the close of the taxable year in which the transaction referred to in clause (i) occurs, and

(III) which meets the requirements of clauses (ii) and (iii) of subparagraph (A),

the transaction referred to in clause (ii) shall be disregarded for purposes of determining whether the requirements of subparagraph (A)(iii) are met with respect to the transaction described in clause (i).

(4) Related person

A person is related to another person with respect to a transaction if—

(A) the relationship is described in section 267(b) or 707(b), and

(B) such transaction is entered into with a view toward avoiding the purposes of this section.

(d) Other definitions

For purposes of this section—

(1) Forward contract

The term "forward contract" means a contract to deliver a substantially fixed amount of property (including cash) for a substantially fixed price.

(2) Offsetting notional principal contract

The term "offsetting notional principal contract" means, with respect to any property, an agreement which includes—

(A) a requirement to pay (or provide credit for) all or substantially all of the investment yield (including appreciation) on such property for a specified period, and

(B) a right to be reimbursed for (or receive credit for) all or substantially all of any decline in the value of such property.

(e) Special rules

(1) Treatment of subsequent sale of position which was deemed sold

If—

(A) there is a constructive sale of any appreciated financial position,

(B) such position is subsequently disposed of, and

(C) at the time of such disposition, the transaction resulting in the constructive sale of such position is open with respect to the taxpayer or any related person,

solely for purposes of determining whether the taxpayer has entered into a constructive sale of any other appreciated financial position held by the taxpayer, the taxpayer shall be treated as entering into such transaction immediately after such disposition. For purposes of the preceding sentence,

an assignment or other termination shall be treated as a disposition.

(2) Certain trust instruments treated as stock

For purposes of this section, an interest in a trust which is actively traded (within the meaning of section 1092(d)(1)) shall be treated as stock unless substantially all (by value) of the property held by the trust is debt described in subsection (b)(2)(A).

(3) Multiple positions in property

If a taxpayer holds multiple positions in property, the determination of whether a specific transaction is a constructive sale and, if so, which appreciated financial position is deemed sold shall be made in the same manner as actual sales.

(f) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.

(Added Pub. L. 105–34, title X, §1001(a), Aug. 5, 1997, 111 Stat. 903; amended Pub. L. 105–206, title VI, §6010(a)(1), (2), July 22, 1998, 112 Stat. 812, 813; Pub. L. 108–311, title IV, §406(e), Oct. 4, 2004, 118 Stat. 1189.)

AMENDMENTS

2004—Subsec. (c)(2). Pub. L. 108–311, §406(e)(1), substituted "A taxpayer shall not be treated as having made a constructive sale solely because the taxpayer enters into a contract" for "The term 'constructive sale' shall not include any contract".

Subsec. (c)(3)(A). Pub. L. 108–311, §406(e)(2), substituted "cause a constructive sale" for "be treated as a constructive sale" in introductory provisions.

Subsec. (c)(3)(A)(i). Pub. L. 108–311, §406(e)(3), substituted "on or before" for "before the end of".

Subsec. (c)(3)(B). Pub. L. 108–311, §406(e)(7), substituted "certain closed transactions where risk of loss on appreciated financial position diminished" for "positions which are reestablished" in heading.

Subsec. (c)(3)(B)(i). Pub. L. 108–311, §406(e)(2), substituted "cause a constructive sale" for "be treated as a constructive sale".

Subsec. (c)(3)(B)(ii). Pub. L. 108–311, §406(e)(4), struck out "substantially similar" after "another" in introductory provisions.

Subsec. (c)(3)(B)(ii)(I). Pub. L. 108–311, §406(e)(5), amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: "which also would otherwise be treated as a constructive sale of such position,".

Subsec. (c)(3)(B)(ii)(II). Pub. L. 108–311, §406(e)(6), inserted "on or" before "before the 30th day".

1998—Subsec. (b)(2)(A)(i) to (iii). Pub. L. 105–206, §6010(a)(1)(A), substituted "position" for "debt".

Subsec. (b)(2)(B), (C). Pub. L. 105–206, §6010(a)(1)(B), (C), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (d)(1). Pub. L. 105–206, §6010(a)(2), inserted "(including cash)" after "property".

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 effective as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 406(h) of Pub. L. 108–311, set out as a note under section 55 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to any constructive sale after June 8, 1997, with certain exceptions, see section 1001(d) of Pub. L. 105–34, set out as an Effective Date of 1997 Amendment note under section 475 of this title.

§1260. Gains from constructive ownership transactions

(a) In general

If the taxpayer has gain from a constructive ownership transaction with respect to any financial asset and such gain would (without regard to this section) be treated as a long-term capital gain—

(1) such gain shall be treated as ordinary income to the extent that such gain exceeds the net underlying long-term capital gain, and

(2) to the extent such gain is treated as a long-term capital gain after the application of paragraph (1), the determination of the capital gain rate (or rates) applicable to such gain under section 1(h) shall be determined on the basis of the respective rate (or rates) that would have been applicable to the net underlying long-term capital gain.

(b) Interest charge on deferral of gain recognition

(1) In general

If any gain is treated as ordinary income for any taxable year by reason of subsection (a)(1), the tax imposed by this chapter for such taxable year shall be increased by the amount of interest determined under paragraph (2) with respect to each prior taxable year during any portion of which the constructive ownership transaction was open. Any amount payable under this paragraph shall be taken into account in computing the amount of any deduction allowable to the taxpayer for interest paid or accrued during such taxable year.

(2) Amount of interest

The amount of interest determined under this paragraph with respect to a prior taxable year is the amount of interest which would have been imposed under section 6601 on the underpayment of tax for such year which would have resulted if the gain (which is treated as ordinary income by reason of subsection (a)(1)) had been included in gross income in the taxable years in which it accrued (determined by treating the income as accruing at a constant rate equal to the applicable Federal rate as in effect on the day the transaction closed). The period during which such interest shall accrue shall end on the due date (without extensions) for the return of tax imposed by this chapter for the taxable year in which such transaction closed.

(3) Applicable Federal rate

For purposes of paragraph (2), the applicable Federal rate is the applicable Federal rate determined under section 1274(d) (compounded semiannually) which would apply to a debt instrument with a term equal to the period the transaction was open.

(4) No credits against increase in tax

Any increase in tax under paragraph (1) shall not be treated as tax imposed by this chapter for purposes of determining—

(A) the amount of any credit allowable under this chapter, or

(B) the amount of the tax imposed by section 55.

(c) Financial asset

For purposes of this section—

(1) In general

The term "financial asset" means—

(A) any equity interest in any pass-thru entity, and

(B) to the extent provided in regulations—

(i) any debt instrument, and

(ii) any stock in a corporation which is not a pass-thru entity.

(2) Pass-thru entity

For purposes of paragraph (1), the term "pass-thru entity" means—

(A) a regulated investment company,

(B) a real estate investment trust,

(C) an S corporation,

(D) a partnership,

(E) a trust,

(F) a common trust fund,

(G) a passive foreign investment company (as defined in section 1297 without regard to subsection (d) thereof), and

(H) a REMIC.

(d) Constructive ownership transaction

For purposes of this section—

(1) In general

The taxpayer shall be treated as having entered into a constructive ownership transaction with respect to any financial asset if the taxpayer—

(A) holds a long position under a notional principal contract with respect to the financial asset,

(B) enters into a forward or futures contract to acquire the financial asset,

(C) is the holder of a call option, and is the grantor of a put option, with respect to the financial asset and such options have substantially equal strike prices and substantially contemporaneous maturity dates, or

(D) to the extent provided in regulations prescribed by the Secretary, enters into one or more other transactions (or acquires one or more positions) that have substantially the same effect as a transaction described in any of the preceding subparagraphs.

(2) Exception for positions which are marked to market

This section shall not apply to any constructive ownership transaction if all of the positions which are part of such transaction are marked to market under any provision of this title or the regulations thereunder.

(3) Long position under notional principal contract

A person shall be treated as holding a long position under a notional principal contract with respect to any financial asset if such person—

(A) has the right to be paid (or receive credit for) all or substantially all of the investment yield (including appreciation) on such financial asset for a specified period, and

(B) is obligated to reimburse (or provide credit for) all or substantially all of any decline in the value of such financial asset.

(4) Forward contract

The term "forward contract" means any contract to acquire in the future (or provide or receive credit for the future value of) any financial asset.

(e) Net underlying long-term capital gain

For purposes of this section, in the case of any constructive ownership transaction with respect to any financial asset, the term "net underlying long-term capital gain" means the aggregate net capital gain that the taxpayer would have had if—

(1) the financial asset had been acquired for fair market value on the date such transaction was opened and sold for fair market value on the date such transaction was closed, and

(2) only gains and losses that would have resulted from the deemed ownership under paragraph (1) were taken into account.

The amount of the net underlying long-term capital gain with respect to any financial asset shall be treated as zero unless the amount thereof is established by clear and convincing evidence.

(f) Special rule where taxpayer takes delivery

Except as provided in regulations prescribed by the Secretary, if a constructive ownership transaction is closed by reason of taking delivery, this section shall be applied as if the taxpayer had sold all the contracts, options, or other positions which are part of such transaction for fair market value on the closing date. The amount of gain recognized under the preceding sentence shall not exceed the amount of gain treated as ordinary income under subsection (a). Proper adjustments shall

be made in the amount of any gain or loss subsequently realized for gain recognized and treated as ordinary income under this subsection.

(g) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations—

(1) to permit taxpayers to mark to market constructive ownership transactions in lieu of applying this section, and

(2) to exclude certain forward contracts which do not convey substantially all of the economic return with respect to a financial asset.

(Added Pub. L. 106–170, title V, §534(a), Dec. 17, 1999, 113 Stat. 1931; amended Pub. L. 108–357, title IV, §413(c)(23), Oct. 22, 2004, 118 Stat. 1509; Pub. L. 110–172, §11(a)(23), (24)(B), Dec. 29, 2007, 121 Stat. 2486.)

AMENDMENTS

2007—Subsec. (c)(2)(G). Pub. L. 110–172 substituted "subsection (d)" for "subsection (e)" and inserted "and" at end.

2004—Subsec. (c)(2)(H) to (J). Pub. L. 108–357 redesignated subpar. (J) as (H) and struck out former subpars. (H) and (I), which included foreign personal holding company and foreign investment company (as defined in section 1246(b)) within definition of "pass-thru entity".

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE

Pub. L. 106–170, title V, §534(c), Dec. 17, 1999, 113 Stat. 1934, provided that: "The amendments made by this section [enacting this section] shall apply to transactions entered into after July 11, 1999."

PART V—SPECIAL RULES FOR BONDS AND OTHER DEBT INSTRUMENTS

Subpart

A. Original issue discount.

B. Market discount on bonds.

C. Discount on short-term obligations.

D. Miscellaneous provisions.

AMENDMENTS

1986—Pub. L. 99–514, title XVIII, §1899A(72), Oct. 22, 1986, 100 Stat. 2963, inserted "on bonds" after "discount" in item for subpart B.

SUBPART A—ORIGINAL ISSUE DISCOUNT

Sec.

1271. Treatment of amounts received on retirement or sale or exchange of debt instruments.

1272. Current inclusion in income of original issue discount.

1273. Determination of amount of original issue discount.

1274. Determination of issue price in the case of certain debt instruments issued for property.

1274A. Special rules for certain transactions where stated principal amount does not exceed $2,800,000.

1275. Other definitions and special rules.

AMENDMENTS

1985—Pub. L. 99–121, title I, §102(d), Oct. 11, 1985, 99 Stat. 509, added item 1274A.

§1271. Treatment of amounts received on retirement or sale or exchange of debt instruments

(a) General rule

For purposes of this title—

(1) Retirement

Amounts received by the holder on retirement of any debt instrument shall be considered as amounts received in exchange therefor.

(2) Ordinary income on sale or exchange where intention to call before maturity

(A) In general

If at the time of original issue there was an intention to call a debt instrument before maturity, any gain realized on the sale or exchange thereof which does not exceed an amount equal to—

(i) the original issue discount, reduced by

(ii) the portion of original issue discount previously includible in the gross income of any holder (without regard to subsection (a)(7) or (b)(4) of section 1272 (or the corresponding provisions of prior law)),

shall be treated as ordinary income.

(B) Exceptions

This paragraph (and paragraph (2) of subsection (c)) shall not apply to—

(i) any tax-exempt obligation, or

(ii) any holder who has purchased the debt instrument at a premium.

(3) Certain short-term Government obligations

(A) In general

On the sale or exchange of any short-term Government obligation, any gain realized which does not exceed an amount equal to the ratable share of the acquisition discount shall be treated as ordinary income.

(B) Short-term Government obligation

For purposes of this paragraph, the term "short-term Government obligation" means any obligation of the United States or any of its possessions, or of a State or any political subdivision thereof, or of the District of Columbia, which has a fixed maturity date not more than 1 year from the date of issue. Such term does not include any tax-exempt obligation.

(C) Acquisition discount

For purposes of this paragraph, the term "acquisition discount" means the excess of the stated redemption price at maturity over the taxpayer's basis for the obligation.

(D) Ratable share

For purposes of this paragraph, except as provided in subparagraph (E), the ratable share of the acquisition discount is an amount which bears the same ratio to such discount as—

(i) the number of days which the taxpayer held the obligation, bears to

(ii) the number of days after the date the taxpayer acquired the obligation and up to (and including) the date of its maturity.

(E) Election of accrual on basis of constant interest rate

At the election of the taxpayer with respect to any obligation, the ratable share of the

acquisition discount is the portion of the acquisition discount accruing while the taxpayer held the obligation determined (under regulations prescribed by the Secretary) on the basis of—

(i) the taxpayer's yield to maturity based on the taxpayer's cost of acquiring the obligation, and

(ii) compounding daily.

An election under this subparagraph, once made with respect to any obligation, shall be irrevocable.

(4) Certain short-term nongovernment obligations

(A) In general

On the sale or exchange of any short-term nongovernment obligation, any gain realized which does not exceed an amount equal to the ratable share of the original issue discount shall be treated as ordinary income.

(B) Short-term nongovernment obligation

For purposes of this paragraph, the term "short-term nongovernment obligation" means any obligation which—

(i) has a fixed maturity date not more than 1 year from the date of the issue, and

(ii) is not a short-term Government obligation (as defined in paragraph (3)(B) without regard to the last sentence thereof).

(C) Ratable share

For purposes of this paragraph, except as provided in subparagraph (D), the ratable share of the original issue discount is an amount which bears the same ratio to such discount as—

(i) the number of days which the taxpayer held the obligation, bears to

(ii) the number of days after the date of original issue and up to (and including) the date of its maturity.

(D) Election of accrual on basis of constant interest rate

At the election of the taxpayer with respect to any obligation, the ratable share of the original issue discount is the portion of the original issue discount accruing while the taxpayer held the obligation determined (under regulations prescribed by the Secretary) on the basis of—

(i) the yield to maturity based on the issue price of the obligation, and

(ii) compounding daily.

Any election under this subparagraph, once made with respect to any obligation, shall be irrevocable.

(b) Exception for certain obligations

(1) In general

This section shall not apply to—

(A) any obligation issued by a natural person before June 9, 1997, and

(B) any obligation issued before July 2, 1982, by an issuer which is not a corporation and is not a government or political subdivision thereof.

(2) Termination

Paragraph (1) shall not apply to any obligation purchased (within the meaning of section 1272(d)(1)) after June 8, 1997.

(c) Transition rules

(1) Special rule for certain obligations issued before January 1, 1955

Paragraph (1) of subsection (a) shall apply to a debt instrument issued before January 1, 1955, only if such instrument was issued with interest coupons or in registered form, or was in such form on March 1, 1954.

(2) Special rule for certain obligations with respect to which original issue discount not currently includible

(A) In general

On the sale or exchange of debt instruments issued by a government or political subdivision thereof after December 31, 1954, and before July 2, 1982, or by a corporation after December 31, 1954, and on or before May 27, 1969, any gain realized which does not exceed—

(i) an amount equal to the original issue discount, or

(ii) if at the time of original issue there was no intention to call the debt instrument before maturity, an amount which bears the same ratio to the original issue discount as the number of complete months that the debt instrument was held by the taxpayer bears to the number of complete months from the date of original issue to the date of maturity,

shall be considered as ordinary income.

(B) Subsection (a)(2)(A) not to apply

Subsection (a)(2)(A) shall not apply to any debt instrument referred to in subparagraph (A) of this paragraph.

(C) Cross reference

For current inclusion of original issue discount, see section 1272.

(d) Double inclusion in income not required

This section and sections 1272 and 1286 shall not require the inclusion of any amount previously includible in gross income.

(Added Pub. L. 98–369, div. A, title I, §41(a), July 18, 1984, 98 Stat. 531; amended Pub. L. 99–514, title XVIII, §1803(a)(1)(A), (2), (3), Oct. 22, 1986, 100 Stat. 2791, 2792; Pub. L. 100–647, title I, §1006(u)(4), Nov. 10, 1988, 102 Stat. 3427; Pub. L. 105–34, title X, §1003(c)(1), Aug. 5, 1997, 111 Stat. 910.)

AMENDMENTS

1997—Subsec. (b). Pub. L. 105–34 amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: "This section shall not apply to—

"(1) NATURAL PERSONS.—Any obligation issued by a natural person.

"(2) OBLIGATIONS ISSUED BEFORE JULY 2, 1982, BY CERTAIN ISSUERS.—Any obligation issued before July 2, 1982, by an issuer which—

"(A) is not a corporation, and

"(B) is not a government or political subdivision thereof."

1988—Subsec. (a)(2)(A)(ii). Pub. L. 100–647 substituted "subsection (a)(7)" for "subsection (a)(6)".

1986—Subsec. (a)(3)(B). Pub. L. 99–514, §1803(a)(3), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "For purposes of this paragraph, the term 'short-term Government obligation' means any obligation of the United States or any of its possessions, or of a State or any political subdivision thereof, or of the District of Columbia which is—

"(i) issued on a discount basis, and

"(ii) payable without interest at a fixed maturity date not more than 1 year from the date of issue. Such term does not include any tax-exempt obligation."

Subsec. (a)(3)(D). Pub. L. 99–514, §1803(a)(2)(B), inserted "except as provided in subparagraph (E),".

Subsec. (a)(3)(E). Pub. L. 99–514, §1803(a)(2)(A), added subpar. (E).

Subsec. (a)(4). Pub. L. 99–514, §1803(a)(1)(A), added par. (4).

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title X, §1003(c)(2), Aug. 5, 1997, 111 Stat. 911, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to sales, exchanges, and retirements after the date of enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of

the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Pub. L. 98–369, div. A, title I, §44, July 18, 1984, 98 Stat. 559, as amended by Pub. L. 98–612, §2, Oct. 31, 1984, 98 Stat. 3182; Pub. L. 99–514, §2, title XVIII, §1803(b), Oct. 22, 1986, 100 Stat. 2095, 2797, provided that:

"(a) GENERAL RULE.—Except as otherwise provided in this section, the amendments made by this subtitle [subtitle C (§§41–44) of title I of div. A of Pub. L. 98–369, enacting this section and sections 1272 to 1288 and 6706, amending sections 103A, 163, 165, 249, 341, 405, 409, 453B, 483, 751, 811, 871, 881, 1016, 1037, 1351, 1441, 6049, 7701, and 7805, and repealing sections 1232, 1232A, and 1232B of this title] shall apply to taxable years ending after the date of the enactment of this Act [July 18, 1984].

"(b) TREATMENT OF DEBT INSTRUMENTS RECEIVED IN EXCHANGE FOR PROPERTY.—

"(1) IN GENERAL.—

"(A) Except as otherwise provided in this subsection, section 1274 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by section 41) and the amendment made by section 41(b) (relating to amendment of section 483) shall apply to sales or exchanges after December 31, 1984.

"(B) Section 1274 of such Code and the amendment made by section 41(b) shall not apply to any sale or exchange pursuant to a written contract which was binding on March 1, 1984, and at all times thereafter before the sale or exchange.

"(2) REVISION OF SECTION 482 REGULATIONS.—Not later than 180 days after the date of the enactment of this Act [July 18, 1984], the Secretary of the Treasury or his delegate shall modify the safe harbor interest rates applicable under the regulations prescribed under section 482 of the Internal Revenue Code of 1986 so that such rates are consistent with the rates applicable under section 483 of such Code by reason of the amendments made by section 41.

"(3) CLARIFICATION OF INTEREST ACCRUAL; FAIR MARKET VALUE RULE IN CASE OF POTENTIALLY ABUSIVE SITUATIONS.—

"(A) IN GENERAL.—

"(i) CLARIFICATION OF INTEREST ACCRUAL.—In the case of any sale or exchange—

"(I) after March 1, 1984, nothing in section 483 of the Internal Revenue Code of 1986 shall permit any interest to be deductible before the period to which such interest is properly allocable, or

"(II) after June 8, 1984, notwithstanding section 483 of the Internal Revenue Code of 1986 or any other provision of law, no interest shall be deductible before the period to which such interest is properly allocable.

"(ii) FAIR MARKET RULE.—In the case of any sale or exchange after March 1, 1984, such section 483 shall be treated as including provisions similar to the provisions of section 1274(b)(3) of such Code (as added by section 41).

"(B) EXCEPTION FOR BINDING CONTRACTS.—

"(i) Subparagraph (A)(i)(I) shall not apply to any sale or exchange pursuant to a written contract which was binding on March 1, 1984, and at all times thereafter before the sale or exchange.

"(ii) Subparagraph (A)(i)(II) shall not apply to any sale or exchange pursuant to a written contract which was binding on June 8, 1984, and at all times thereafter before the sale or exchange.

"(C) INTEREST ACCRUAL RULE NOT TO APPLY WHERE SUBSTANTIALLY EQUAL ANNUAL PAYMENTS.—Clause (i) of subparagraph (A) shall not apply to any debt instrument with substantially equal annual payments.

"(4) SPECIAL RULES FOR SALES AFTER DECEMBER 31, 1984, AND BEFORE JULY 1, 1985.—

"(A) IN GENERAL.—In the case of any sale or exchange after December 31, 1984, and before July 1, 1985, of property other than new section 38 property—

"(i) sections 483(c)(1)(B) and 1274(c)(3) of the Internal Revenue Code of 1986 shall be applied by substituting the testing rate determined under subparagraph (B) for 110 percent of the applicable Federal rate determined under section 1274(d) of such Code, and

"(ii) sections 483(b) and 1274(b) of such Code shall be applied by substituting the imputation rate determined under subparagraph (C) for 120 percent of the applicable Federal rate

determined under section 1274(d) of such Code.

"(B) TESTING RATE.—For purposes of this paragraph—

"(i) IN GENERAL.—The testing rate determined under this subparagraph is the sum of—

"(I) 9 percent, plus

"(II) if the borrowed amount exceeds $2,000,000, the excess determined under clause (ii) multiplied by a fraction the numerator of which is the borrowed amount to the extent it exceeds $2,000,000, and the denominator of which is the borrowed amount.

"(ii) EXCESS.—For purposes of clause (i), the excess determined under this clause is the excess of 110 percent of the applicable Federal rate determined under section 1274(d) of such Code over 9 percent.

"(C) IMPUTATION RATE.—For purposes of this paragraph—

"(i) IN GENERAL.—The imputation rate determined under this subparagraph is the sum of—

"(I) 10 percent, plus

"(II) if the borrowed amount exceeds $2,000,000, the excess determined under clause (ii) multiplied by a fraction the numerator of which is the borrowed amount to the extent it exceeds $2,000,000, and the denominator of which is the borrowed amount.

"(ii) EXCESS.—For purposes of clause (i), the excess determined under this clause is the excess of 120 percent of the applicable Federal rate determined under section 1274(d) of such Code over 10 percent.

"(D) BORROWED AMOUNT.—For purposes of this paragraph, the term 'borrowed amount' means the stated principal amount.

"(E) AGGREGATION RULES.—For purposes of this paragraph—

"(i) all sales or exchanges which are part of the same transaction (or a series of related transactions) shall be treated as one sale or exchange, and

"(ii) all debt instruments arising from the same transaction (or a series of related transactions) shall be treated as one debt instrument.

"(F) CASH METHOD OF ACCOUNTING.—In the case of any sale or exchange before July 1, 1985, of property (other than new section 38 property) used in the active business of farming and in which the borrowed amount does not exceed $2,000,000—

"(i) section 1274 of the Internal Revenue Code of 1986 shall not apply, and

"(ii) interest on the obligation issued in connection with such sale or exchange shall be taken into account by both buyer and seller on the cash receipts and disbursements method of accounting.

The Secretary of the Treasury or his delegate may by regulation prescribe rules to prevent the mismatching of interest income and interest deductions in connection with obligations on which interest is computed on the cash receipts and disbursements method of accounting.

"(G) CLARIFICATION OF APPLICATION OF THIS PARAGRAPH, ETC.—This paragraph and paragraphs (5), (6), and (7) shall apply only in the case of sales or exchanges to which section 1274 or 483 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by section 41) applies.

"(5) GENERAL RULE FOR ASSUMPTIONS OF LOANS.—Except as provided in paragraphs (6) and (7), if any person—

"(A) assumes, in connection with the sale or exchange of property, any debt obligation, or

"(B) acquires any property subject to any debt obligation,

sections 1274 and 483 of the Internal Revenue Code of 1986 shall apply to such debt obligation by reason of such assumption (or such acquisition).

"(6) EXCEPTION FOR ASSUMPTIONS OF LOANS MADE ON OR BEFORE OCTOBER 15, 1984.—

"(A) IN GENERAL.—If any person—

"(i) assumes, in connection with the sale or exchange of property, any debt obligation described in subparagraph (B) and issued on or before October 15, 1984, or

"(ii) acquires any property subject to any such debt obligation issued on or before October 15, 1984,

sections 1274 and 483 of the Internal Revenue Code of 1986 shall not be applied to such debt obligation by reason of such assumption (or such acquisition) unless the terms and conditions of such debt obligation are modified in connection with the assumption (or acquisition).

"(B) OBLIGATIONS DESCRIBED IN THIS SUBPARAGRAPH.—A debt obligation is described in this subparagraph if such obligation—

"(i) was issued on or before October 15, 1984, and

"(ii) was assumed (or property was taken subject to such obligation) in connection with the sale or exchange of property (including a deemed sale under section 338 (a)) the sales price of which is not greater than $100,000,000.

"(C) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to effect the purpose of this paragraph and paragraph (5), including regulations relating to tax-exempt obligations, government subsidized loans, or other instruments.

"(D) CERTAIN EXEMPT TRANSACTIONS.—The Secretary shall prescribe regulations under which any transaction shall be exempt from the application of this paragraph if such exemption is not likely to significantly reduce the tax liability of the purchaser by reason of the overstatement of the adjusted basis of the acquired asset.

"(7) EXCEPTION FOR ASSUMPTIONS OF LOANS WITH RESPECT TO CERTAIN PROPERTY.—

"(A) IN GENERAL.—If any person—

"(i) assumes, in connection with the sale or exchange of property described in subparagraph (B), any debt obligation, or

"(ii) acquires any such property subject to any such debt obligation,

sections 1274 and 483 of the Internal Revenue Code of 1986 shall not be applied to such debt obligation by reason of such assumption (or such acquisition) unless the terms and conditions of such debt obligation are modified in connection with the assumption (or acquisition).

"(B) SALES OR EXCHANGES TO WHICH THIS PARAGRAPH APPLIES.—This paragraph shall apply to any of the following sales or exchanges:

"(i) RESIDENCES.—Any sale or exchange of a residence by an individual, an estate, or a testamentary trust, but only if—

"(I) either—

"(aa) such residence on the date of such sale or exchange (or in the case of an estate or testamentary trust, on the date of death of the decedent) was the principal residence (within the meaning of section 1034) of the individual or decedent, or

"(bb) during the 2-year period ending on such date, no substantial portion of such residence was of a character subject to an allowance under this title [probably means the Internal Revenue Code of 1986] for depreciation (or amortization in lieu thereof) in the hands of such individual or decedent, and

"(II) such residence was not at any time, in the hands of such individual, estate, testamentary trust, or decedent, described in section 1221(1) (relating to inventory, etc.).

"(ii) FARMS.—Any sale or exchange by a qualified person of—

"(I) real property which was used as a farm (within the meaning of section 6420(c)(2)) at all times during the 3-year period ending on the date of such sale or exchange, or

"(II) tangible personal property which was used in the active conduct of the trade or business of farming on such farm and is sold in connection with the sale of such farm,

but only if such property is sold or exchanged for use in the active conduct of the trade or business of farming by the transferee of such property.

"(iii) TRADES OR BUSINESSES.—

"(I) IN GENERAL.—Any sale or exchange by a qualified person of any trade or business.

"(II) APPLICATION WITH SUBPARAGRAPH (B).—This subparagraph shall not apply to any sale or exchange of any property described in subparagraph (B).

"(III) NEW SECTION 38 PROPERTY.—This subparagraph shall not apply to the sale or exchange of any property which, in the hands of the transferee, is new section 38 property.

"(iv) SALE OF BUSINESS REAL ESTATE.—Any sale or exchange of any real property used in an active trade or business by a person who would be a qualified person if he disposed of his entire interest.

This subparagraph shall not apply to any transaction described in the last sentence of paragraph (6)(B) (relating to transaction in excess of $100,000,000).

"(C) DEFINITIONS.—For purposes of this paragraph—

"(i) QUALIFIED PERSON DEFINED.—The term 'qualified person' means—

"(I) a person who—

"(aa) is an individual, estate, or testamentary trust,

"(bb) is a corporation which immediately prior to the date of the sale or exchange has 35 or fewer shareholders, or

"(cc) is a partnership which immediately prior to the date of the sale or exchange has 35 or fewer partners,

"(II) is a 10-percent owner of a farm or a trade or business,

"(III) pursuant to a plan, disposes of—

"(aa) an interest in a farm or farm property, or

"(bb) his entire interest in a trade or business and all substantially similar trades or businesses, and

"(IV) the ownership interest of whom may be readily established by reason of qualified allocations (of the type described in section 168(j)(9)(B), one class of stock, or the like).

"(ii) 10-PERCENT OWNER DEFINED.—The term '10-percent owner' means a person having at least a 10-percent ownership interest, applying the attribution rules of section 318 (other than subsection (a)(4)).

"(iii) TRADE OR BUSINESS DEFINED.—

"(I) IN GENERAL.—The term 'trade or business' means any trade or business, including any line of business, qualifying as an active trade or business within the meaning of section 355.

"(II) RENTAL OF REAL PROPERTY.—For purposes of this clause, the holding of real property for rental shall not be treated as an active trade or business.

"(c) MARKET DISCOUNT RULES.—

"(1) ORDINARY INCOME TREATMENT.—Section 1276 of the Internal Revenue Code of 1986 (as added by section 41) shall apply to obligations issued after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.

"(2) INTEREST DEFERRAL RULES.—Section 1277 of such Code (as added by section 41) shall apply to obligations acquired after the date of the enactment of this Act in taxable years ending after such date.

"(d) RULES RELATING TO DISCOUNT ON SHORT-TERM OBLIGATIONS.—Subpart C of part V of subchapter P of chapter 1 of such Code (as added by section 41) shall apply to obligations acquired after the date of the enactment of this Act [July 18, 1984].

"(e) 5-YEAR SPREAD OF ADJUSTMENTS REQUIRED BY REASON OF ACCRUAL OF DISCOUNT ON CERTAIN SHORT-TERM OBLIGATIONS.—

"(1) ELECTION TO HAVE SECTION 1281 APPLY TO ALL OBLIGATIONS HELD DURING TAXABLE YEAR.—A taxpayer may elect for his first taxable year ending after the date of the enactment of this Act [July 18, 1984] to have section 1281 of the Internal Revenue Code of 1986 apply to all short-term obligations described in subsection (b) of such section which were held by the taxpayer at any time during such first taxable year.

"(2) 5-YEAR SPREAD.—

"(A) IN GENERAL.—In the case of any taxpayer who makes an election under paragraph (1)—

"(i) the provisions of section 1281 of the Internal Revenue Code of 1986 (as added by section 41) shall be treated as a change in the method of accounting of the taxpayer,

"(ii) such change shall be treated as having been made with the consent of the Secretary, and

"(iii) the net amount of the adjustments required by section 481(a) of such Code to be taken into account by the taxpayer in computing taxable income (hereinafter in this paragraph referred to as the 'net adjustments') shall be taken into account during the spread period with the amount taken into account in each taxable year in such period determined under subparagraph (B).

"(B) AMOUNT TAKEN INTO ACCOUNT DURING EACH YEAR OF SPREAD PERIOD.—

"(i) FIRST YEAR.—The amount taken into account for the first taxable year in the spread period shall be the sum of—

"(I) one-fifth of the net adjustments, and

"(II) the excess (if any) of—

"(a) the cash basis income over the accrual basis income, over

"(b) one-fifth of the net adjustments.

"(ii) FOR SUBSEQUENT YEARS IN SPREAD PERIOD.—The amount taken into account in the second or any succeeding taxable year in the spread period shall be the sum of—

"(I) the portion of the net adjustments not taken into account in the preceding taxable year of the spread period divided by the number of remaining taxable years in the spread period (including the year for which the determination is being made), and

"(II) the excess (if any) of—

"(a) the excess of the cash basis income over the accrual basis income, over

"(b) one-fifth of the net adjustments, multiplied by 5 minus the number of years remaining in

the spread period (not including the current year).

The excess described in subparagraph (B)(ii)(II)(a) shall be reduced by any amount taken into account under this subclause or clause (i)(II) in any prior year.

"(C) SPREAD PERIOD.—For purposes of this paragraph, the term 'spread period' means the period consisting of the 5 taxable years beginning with the year for which the election is made under paragraph (1).

"(D) CASH BASIS INCOME.—For purposes of this paragraph, the term 'cash basis income' means for any taxable year the aggregate amount which would be includible in the gross income of the taxpayer with respect to short-term obligations described in subsection (b) of section 1281 of such Code if the provisions of section 1281 of such Code did not apply to such taxable year and all prior taxable years within the spread period.

"(E) ACCRUAL BASIS INCOME.—For purposes of this paragraph, the term 'accrual basis income' means for any taxable year the aggregate amount includible in gross income under section 1281(a) of such Code for such a taxable year and all prior taxable years within the spread period.

"(f) TREATMENT OF ORIGINAL ISSUE DISCOUNT ON TAX-EXEMPT OBLIGATIONS.—Section 1288 of such Code (as added by section 41) shall apply to obligations issued after September 3, 1982, and acquired after March 1, 1984.

"(g) REPEAL OF CAPITAL ASSET REQUIREMENT.—Section 1272 of such Code (as added by section 41) shall not apply to any obligation issued on or before December 31, 1984, which is not a capital asset in the hands of the taxpayer.

"(h) REPORTING REQUIREMENTS.—Section 1275(c) of such Code (as added by section 41) and the amendments made by section 41(c) [enacting section 6706 of this title] shall take effect on the day 30 days after the date of the enactment of this Act [July 18, 1984].

"(i) OTHER MISCELLANEOUS CHANGES.—

"(1) ACCRUAL PERIOD.—In the case of any obligation issued after July 1, 1982, and before January 1, 1985, the accrual period, for purposes of section 1272(a) of the Internal Revenue Code of 1986 (as amended by section 41(a)), shall be a 1-year period (or shorter period to maturity) beginning on the day in the calendar year which corresponds to the date of original issue of the obligation.

"(2) CHANGE IN REDUCTION FOR PURCHASE AFTER ORIGINAL ISSUE.—Section 1272(a)(6) of such Code (as so amended) shall not apply to any purchase on or before the date of the enactment of this Act [July 18, 1984], and the rules of section 1232A(a)(6) of such Code (as in effect on the day before the date of the enactment of this Act) shall continue to apply to such purchase.

"(j) CLARIFICATION THAT PRIOR EFFECTIVE DATE RULES NOT AFFECTED.—Nothing in the amendment made by section 41(a) shall affect the application of any effective date provision (including any transitional rule) for any provision which was a predecessor to any provision contained in part V of subchapter P of chapter 1 of the Internal Revenue Code of 1954 (as added by section 41)."

[Amendment of section 44 of Pub. L. 98–369, set out above, by Pub. L. 98–612 (which added pars. (4) to (7) to subsec. (b)) not applicable to sales and exchanges after June 30, 1985, in taxable years ending after such date, see section 105(a)(1) of Pub. L. 99–121, set out as an Effective Date of 1985 Amendment note under section 1274 of this title.]

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§1272. Current inclusion in income of original issue discount

(a) Original issue discount on debt instruments issued after July 1, 1982, included in income on basis of constant interest rate

(1) General rule

For purposes of this title, there shall be included in the gross income of the holder of any debt instrument having original issue discount issued after July 1, 1982, an amount equal to the sum of the daily portions of the original issue discount for each day during the taxable year on which such holder held such debt instrument.

(2) Exceptions

Paragraph (1) shall not apply to—

(A) Tax-exempt obligations

Any tax-exempt obligation.

(B) United States savings bonds

Any United States savings bond.

(C) Short-term obligations

Any debt instrument which has a fixed maturity date not more than 1 year from the date of issue.

(D) Obligations issued by natural persons before March 2, 1984

Any obligation issued by a natural person before March 2, 1984.

(E) Loans between natural persons

(i) In general

Any loan made by a natural person to another natural person if—

(I) such loan is not made in the course of a trade or business of the lender, and

(II) the amount of such loan (when increased by the outstanding amount of prior loans by such natural person to such other natural person) does not exceed $10,000.

(ii) Clause (i) not to apply where tax avoidance a principal purpose

Clause (i) shall not apply if the loan has as 1 of its principal purposes the avoidance of any Federal tax.

(iii) Treatment of husband and wife

For purposes of this subparagraph, a husband and wife shall be treated as 1 person. The preceding sentence shall not apply where the spouses lived apart at all times during the taxable year in which the loan is made.

(3) Determination of daily portions

For purposes of paragraph (1), the daily portion of the original issue discount on any debt instrument shall be determined by allocating to each day in any accrual period its ratable portion of the increase during such accrual period in the adjusted issue price of the debt instrument. For purposes of the preceding sentence, the increase in the adjusted issue price for any accrual period shall be an amount equal to the excess (if any) of—

(A) the product of—

(i) the adjusted issue price of the debt instrument at the beginning of such accrual period, and

(ii) the yield to maturity (determined on the basis of compounding at the close of each accrual period and properly adjusted for the length of the accrual period), over

(B) the sum of the amounts payable as interest on such debt instrument during such accrual period.

(4) Adjusted issue price

For purposes of this subsection, the adjusted issue price of any debt instrument at the beginning of any accrual period is the sum of—

(A) the issue price of such debt instrument, plus

(B) the adjustments under this subsection to such issue price for all periods before the first day of such accrual period.

(5) Accrual period

Except as otherwise provided in regulations prescribed by the Secretary, the term "accrual period" means a 6-month period (or shorter period from the date of original issue of the debt

instrument) which ends on a day in the calendar year corresponding to the maturity date of the debt instrument or the date 6 months before such maturity date.

(6) Determination of daily portions where principal subject to acceleration

(A) In general

In the case of any debt instrument to which this paragraph applies, the daily portion of the original issue discount shall be determined by allocating to each day in any accrual period its ratable portion of the excess (if any) of—

(i) the sum of (I) the present value determined under subparagraph (B) of all remaining payments under the debt instrument as of the close of such period, and (II) the payments during the accrual period of amounts included in the stated redemption price of the debt instrument, over

(ii) the adjusted issue price of such debt instrument at the beginning of such period.

(B) Determination of present value

For purposes of subparagraph (A), the present value shall be determined on the basis of—

(i) the original yield to maturity (determined on the basis of compounding at the close of each accrual period and properly adjusted for the length of the accrual period),

(ii) events which have occurred before the close of the accrual period, and

(iii) a prepayment assumption determined in the manner prescribed by regulations.

(C) Debt instruments to which paragraph applies

This paragraph applies to—

(i) any regular interest in a REMIC or qualified mortgage held by a REMIC,

(ii) any other debt instrument if payments under such debt instrument may be accelerated by reason of prepayments of other obligations securing such debt instrument (or, to the extent provided in regulations, by reason of other events), or

(iii) any pool of debt instruments the yield on which may be affected by reason of prepayments (or to the extent provided in regulations, by reason of other events).

To the extent provided in regulations prescribed by the Secretary, in the case of a small business engaged in the trade or business of selling tangible personal property at retail, clause (iii) shall not apply to debt instruments incurred in the ordinary course of such trade or business while held by such business.

(7) Reduction where subsequent holder pays acquisition premium

(A) Reduction

For purposes of this subsection, in the case of any purchase after its original issue of a debt instrument to which this subsection applies, the daily portion for any day shall be reduced by an amount equal to the amount which would be the daily portion for such day (without regard to this paragraph) multiplied by the fraction determined under subparagraph (B).

(B) Determination of fraction

For purposes of subparagraph (A), the fraction determined under this subparagraph is a fraction—

(i) the numerator of which is the excess (if any) of—

(I) the cost of such debt instrument incurred by the purchaser, over

(II) the issue price of such debt instrument, increased by the portion of original issue discount previously includible in the gross income of any holder (computed without regard to this paragraph), and

(ii) the denominator of which is the sum of the daily portions for such debt instrument for all days after the date of such purchase and ending on the stated maturity date (computed without regard to this paragraph).

(b) Ratable inclusion retained for corporate debt instruments issued before July 2, 1982

(1) General rule

There shall be included in the gross income of the holder of any debt instrument issued by a corporation after May 27, 1969, and before July 2, 1982—

(A) the ratable monthly portion of original issue discount, multiplied by

(B) the number of complete months (plus any fractional part of a month determined under paragraph (3)) such holder held such debt instrument during the taxable year.

(2) Determination of ratable monthly portion

Except as provided in paragraph (4), the ratable monthly portion of original issue discount shall equal—

(A) the original issue discount, divided by

(B) the number of complete months from the date of original issue to the stated maturity date of the debt instrument.

(3) Month defined

For purposes of this subsection—

(A) Complete month

A complete month commences with the date of original issue and the corresponding day of each succeeding calendar month (or the last day of a calendar month in which there is no corresponding day).

(B) Transfers during month

In any case where a debt instrument is acquired on any day other than a day determined under subparagraph (A), the ratable monthly portion of original issue discount for the complete month (or partial month) in which such acquisition occurs shall be allocated between the transferor and the transferee in accordance with the number of days in such complete (or partial) month each held the debt instrument.

(4) Reduction where subsequent holder pays acquisition premium

(A) Reduction

For purposes of this subsection, the ratable monthly portion of original issue discount shall not include its share of the acquisition premium.

(B) Share of acquisition premium

For purposes of subparagraph (A), any month's share of the acquisition premium is an amount (determined at the time of the purchase) equal to—

(i) the excess of—

(I) the cost of such debt instrument incurred by the holder, over

(II) the issue price of such debt instrument, increased by the portion of original issue discount previously includible in the gross income of any holder (computed without regard to this paragraph),

(ii) divided by the number of complete months (plus any fractional part of a month) from the date of such purchase to the stated maturity date of such debt instrument.

(c) Exceptions

This section shall not apply to any holder—

(1) who has purchased the debt instrument at a premium, or

(2) which is a life insurance company to which section 811(b) applies.

(d) Definition and special rule

(1) Purchase defined

For purposes of this section, the term "purchase" means—

(A) any acquisition of a debt instrument, where

(B) the basis of the debt instrument is not determined in whole or in part by reference to the adjusted basis of such debt instrument in the hands of the person from whom acquired.

(2) Basis adjustment

The basis of any debt instrument in the hands of the holder thereof shall be increased by the amount included in his gross income pursuant to this section.

(Added Pub. L. 98–369, div. A, title I, §41(a), July 18, 1984, 98 Stat. 533; amended Pub. L. 99–514, title VI, §672, Oct. 22, 1986, 100 Stat. 2318; Pub. L. 105–34, title X, §1004(a), Aug. 5, 1997, 111 Stat. 911.)

AMENDMENTS

1997—Subsec. (a)(6)(C). Pub. L. 105–34 added cl. (iii) and concluding provisions.

1986—Subsec. (a)(6), (7). Pub. L. 99–514 added par. (6) and redesignated former par. (6) as (7).

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title X, §1004(b)(1), Aug. 5, 1997, 111 Stat. 911, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to debt instruments issued after Dec. 31, 1986, in taxable years ending after such date, see section 675(b) of Pub. L. 99–514, set out as an Effective Date note under section 860A of this title.

EFFECTIVE DATE

Section applicable to taxable years ending after July 18, 1984, but not applicable to any obligation issued on or before Dec. 31, 1984, which is not a capital asset in the hands of the taxpayer, and subsec. (a)(6) of this section not applicable to any purchase on or before July 18, 1984, see section 44 of Pub. L. 98–369, as amended, set out as a note under section 1271 of this title.

CHANGE IN METHOD OF ACCOUNTING

Pub. L. 105–34, title X, §1004(b)(2), Aug. 5, 1997, 111 Stat. 911, provided that: "In the case of any taxpayer required by this section [amending this section and enacting provisions set out as a note above] to change its method of accounting for its first taxable year beginning after the date of the enactment of this Act [Aug. 5, 1997]—

"(A) such change shall be treated as initiated by the taxpayer,

"(B) such change shall be treated as made with the consent of the Secretary of the Treasury, and

"(C) the net amount of the adjustments required to be taken into account by the taxpayer under section 481 of the Internal Revenue Code of 1986 shall be taken into account ratably over the 4-taxable year period beginning with such first taxable year."

§1273. Determination of amount of original issue discount

(a) General rule

For purposes of this subpart—

(1) In general

The term "original issue discount" means the excess (if any) of—

(A) the stated redemption price at maturity, over

(B) the issue price.

(2) Stated redemption price at maturity

The term "stated redemption price at maturity" means the amount fixed by the last modification of the purchase agreement and includes interest and other amounts payable at that time (other than any interest based on a fixed rate, and payable unconditionally at fixed periodic intervals of 1 year or less during the entire term of the debt instrument).

(3) ¼ of 1 percent de minimis rule

If the original issue discount determined under paragraph (1) is less than—

(A) ¼ of 1 percent of the stated redemption price at maturity, multiplied by

(B) the number of complete years to maturity,

then the original issue discount shall be treated as zero.

(b) Issue price

For purposes of this subpart—

(1) Publicly offered debt instruments not issued for property

In the case of any issue of debt instruments—

(A) publicly offered, and

(B) not issued for property,

the issue price is the initial offering price to the public (excluding bond houses and brokers) at which price a substantial amount of such debt instruments was sold.

(2) Other debt instruments not issued for property

In the case of any issue of debt instruments not issued for property and not publicly offered, the issue price of each such instrument is the price paid by the first buyer of such debt instrument.

(3) Debt instruments issued for property where there is public trading

In the case of a debt instrument which is issued for property and which—

(A) is part of an issue a portion of which is traded on an established securities market, or

(B)(i) is issued for stock or securities which are traded on an established securities market, or

(ii) to the extent provided in regulations, is issued for property (other than stock or securities) of a kind regularly traded on an established market,

the issue price of such debt instrument shall be the fair market value of such property.

(4) Other cases

Except in any case—

(A) to which paragraph (1), (2), or (3) of this subsection applies, or

(B) to which section 1274 applies,

the issue price of a debt instrument which is issued for property shall be the stated redemption price at maturity.

(5) Property

In applying this subsection, the term "property" includes services and the right to use property, but such term does not include money.

(c) Special rules for applying subsection (b)

For purposes of subsection (b)—

(1) Initial offering price; price paid by the first buyer

The terms "initial offering price" and "price paid by the first buyer" include the aggregate payments made by the purchaser under the purchase agreement, including modifications thereof.

(2) Treatment of investment units

In the case of any debt instrument and an option, security, or other property issued together as an investment unit—

(A) the issue price for such unit shall be determined in accordance with the rules of this subsection and subsection (b) as if it were a debt instrument,

(B) the issue price determined for such unit shall be allocated to each element of such unit on

the basis of the relationship of the fair market value of such element to the fair market value of all elements in such unit, and

(C) the issue price of any debt instrument included in such unit shall be the portion of the issue price of the unit allocated to the debt instrument under subparagraph (B).

(Added Pub. L. 98–369, div. A, title I, §41(a), July 18, 1984, 98 Stat. 536; amended Pub. L. 99–514, title XVIII, §1803(a)(10), Oct. 22, 1986, 100 Stat. 2794.)

AMENDMENTS

1986—Subsec. (b)(3)(B). Pub. L. 99–514 amended subpar. (B) generally, designating existing provisions as cl. (i) and adding cl. (ii).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section applicable to taxable years ending after July 18, 1984, except as otherwise provided, see section 44 of Pub. L. 98–369, set out as a note under section 1271 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§1274. Determination of issue price in the case of certain debt instruments issued for property

(a) In general

In the case of any debt instrument to which this section applies, for purposes of this subpart, the issue price shall be—

(1) where there is adequate stated interest, the stated principal amount, or

(2) in any other case, the imputed principal amount.

(b) Imputed principal amount

For purposes of this section—

(1) In general

Except as provided in paragraph (3), the imputed principal amount of any debt instrument shall be equal to the sum of the present values of all payments due under such debt instrument.

(2) Determination of present value

For purposes of paragraph (1), the present value of a payment shall be determined in the manner provided by regulations prescribed by the Secretary—

(A) as of the date of the sale or exchange, and

(B) by using a discount rate equal to the applicable Federal rate, compounded semiannually.

(3) Fair market value rule in potentially abusive situations

(A) In general

In the case of any potentially abusive situation, the imputed principal amount of any debt instrument received in exchange for property shall be the fair market value of such property adjusted to take into account other consideration involved in the transaction.

(B) Potentially abusive situation defined

For purposes of subparagraph (A), the term "potentially abusive situation" means—

(i) a tax shelter (as defined in section 6662(d)(2)(C)(iii)),[1] and
(ii) any other situation which, by reason of—
(I) recent sales transactions,
(II) nonrecourse financing,
(III) financing with a term in excess of the economic life of the property, or
(IV) other circumstances,

is of a type which the Secretary specifies by regulations as having potential for tax avoidance.

(c) Debt instruments to which section applies

(1) In general

Except as otherwise provided in this subsection, this section shall apply to any debt instrument given in consideration for the sale or exchange of property if—

(A) the stated redemption price at maturity for such debt instrument exceeds—
(i) where there is adequate stated interest, the stated principal amount, or
(ii) in any other case, the imputed principal amount of such debt instrument determined under subsection (b), and

(B) some or all of the payments due under such debt instrument are due more than 6 months after the date of such sale or exchange.

(2) Adequate stated interest

For purposes of this section, there is adequate stated interest with respect to any debt instrument if the stated principal amount for such debt instrument is less than or equal to the imputed principal amount of such debt instrument determined under subsection (b).

(3) Exceptions

This section shall not apply to—

(A) Sales for $1,000,000 or less of farms by individuals or small businesses

(i) In general

Any debt instrument arising from the sale or exchange of a farm (within the meaning of section 6420(c)(2))—
(I) by an individual, estate, or testamentary trust,
(II) by a corporation which as of the date of the sale or exchange is a small business corporation (as defined in section 1244(c)(3)), or
(III) by a partnership which as of the date of the sale or exchange meets requirements similar to those of section 1244(c)(3).

(ii) $1,000,000 limitation

Clause (i) shall apply only if it can be determined at the time of the sale or exchange that the sales price cannot exceed $1,000,000. For purposes of the preceding sentence, all sales and exchanges which are part of the same transaction (or a series of related transactions) shall be treated as 1 sale or exchange.

(B) Sales of principal residences

Any debt instrument arising from the sale or exchange by an individual of his principal residence (within the meaning of section 121).

(C) Sales involving total payments of $250,000 or less

(i) In general

Any debt instrument arising from the sale or exchange of property if the sum of the following amounts does not exceed $250,000:
(I) the aggregate amount of the payments due under such debt instrument and all other debt instruments received as consideration for the sale or exchange, and

(II) the aggregate amount of any other consideration to be received for the sale or exchange.

(ii) Consideration other than debt instrument taken into account at fair market value

For purposes of clause (i), any consideration (other than a debt instrument) shall be taken into account at its fair market value.

(iii) Aggregation of transactions

For purposes of this subparagraph, all sales and exchanges which are part of the same transaction (or a series of related transactions) shall be treated as 1 sale or exchange.

(D) Debt instruments which are publicly traded or issued for publicly traded property

Any debt instrument to which section 1273(b)(3) applies.

(E) Certain sales of patents

In the case of any transfer described in section 1235(a) (relating to sale or exchange of patents), any amount contingent on the productivity, use, or disposition of the property transferred.

(F) Sales or exchanges to which section 483(e) applies

Any debt instrument to the extent section 483(e) (relating to certain land transfers between related persons) applies to such instrument.

(4) Exception for assumptions

If any person—

(A) in connection with the sale or exchange of property, assumes any debt instrument, or

(B) acquires any property subject to any debt instrument,

in determining whether this section or section 483 applies to such debt instrument, such assumption (or such acquisition) shall not be taken into account unless the terms and conditions of such debt instrument are modified (or the nature of the transaction is changed) in connection with the assumption (or acquisition).

(d) Determination of applicable Federal rate

For purposes of this section—

(1) Applicable Federal rate

(A) In general

In the case of a debt instrument with a term of:	The applicable Federal rate is:
Not over 3 years	The Federal short-term rate.
Over 3 years but not over 9 years	The Federal mid-term rate.
Over 9 years	The Federal long-term rate.

(B) Determination of rates

During each calendar month, the Secretary shall determine the Federal short-term rate, mid-term rate, and long-term rate which shall apply during the following calendar month.

(C) Federal rate for any calendar month

For purposes of this paragraph—

(i) Federal short-term rate

The Federal short-term rate shall be the rate determined by the Secretary based on the average market yield (during any 1-month period selected by the Secretary and ending in the calendar month in which the determination is made) on outstanding marketable obligations of the United States with remaining periods to maturity of 3 years or less.

(ii) Federal mid-term and long-term rates

The Federal mid-term and long-term rate shall be determined in accordance with the principles of clause (i).

(D) Lower rate permitted in certain cases

The Secretary may by regulations permit a rate to be used with respect to any debt instrument which is lower than the applicable Federal rate if the taxpayer establishes to the satisfaction of the Secretary that such lower rate is based on the same principles as the applicable Federal rate and is appropriate for the term of such instrument.

(2) Lowest 3-month rate applicable to any sale or exchange

(A) In general

In the case of any sale or exchange, the applicable Federal rate shall be the lowest 3-month rate.

(B) Lowest 3-month rate

For purposes of subparagraph (A), the term "lowest 3-month rate" means the lowest of the applicable Federal rates in effect for any month in the 3-calendar-month period ending with the 1st calendar month in which there is a binding contract in writing for such sale or exchange.

(3) Term of debt instrument

In determining the term of a debt instrument for purposes of this subsection, under regulations prescribed by the Secretary, there shall be taken into account options to renew or extend.

(e) 110 Percent rate where sale-leaseback involved

(1) In general

In the case of any debt instrument to which this subsection applies, the discount rate used under subsection (b)(2)(B) or section 483(b) shall be 110 percent of the applicable Federal rate, compounded semiannually.

(2) Lower discount rates shall not apply

Section 1274A shall not apply to any debt instrument to which this subsection applies.

(3) Debt instruments to which this subsection applies

This subsection shall apply to any debt instrument given in consideration for the sale or exchange of any property if, pursuant to a plan, the transferor or any related person leases a portion of such property after such sale or exchange.

(Added Pub. L. 98–369, div. A, title I, §41(a), July 18, 1984, 98 Stat. 538; amended Pub. L. 99–121, title I, §§101(a)(1), (b), (c), 102(b), Oct. 11, 1985, 99 Stat. 505, 506, 508; Pub. L. 99–514, title XVIII, §1803(a)(14)(A), Oct. 22, 1986, 100 Stat. 2797; Pub. L. 101–239, title VII, §7721(c)(11), Dec. 19, 1989, 103 Stat. 2400; Pub. L. 104–188, title I, §1704(t)(78), Aug. 20, 1996, 110 Stat. 1891; Pub. L. 105–34, title III, §312(d)(1), Aug. 5, 1997, 111 Stat. 839.)

REFERENCES IN TEXT

Section 6662(d)(2)(C), referred to in subsec. (b)(3)(B)(i), was subsequently amended and cl. (iii) no longer defines the term "tax shelter". However, such term is defined elsewhere in that section.

AMENDMENTS

1997—Subsec. (c)(3)(B). Pub. L. 105–34 substituted "section 121" for "section 1034".

1996—Subsec. (b)(3)(B)(i). Pub. L. 104–188 substituted "section 6662(d)(2)(C)(iii)" for "section 6662(d)(2)(C)(ii)".

1989—Subsec. (b)(3)(B)(i). Pub. L. 101–239 substituted "section 6662(d)(2)(C)(ii)" for "section 6661(b)(2)(C)(ii)".

1986—Subsec. (c)(3)(A). Pub. L. 99–514 substituted "for $1,000,000 or less" for "for less than $1,000,000" in heading of subsec. (c)(4)(A) as so designated prior to its redesignation as subsec. (c)(3)(A) by Pub. L. 99–121, §101(a)(1)(D), see 1985 Amendment note below.

1985—Subsec. (b)(2)(B). Pub. L. 99–121, §101(a)(1)(A), struck out "120 percent of" after "rate equal to".

Subsec. (c)(1)(A)(ii). Pub. L. 99–121, §101(a)(1)(B), amended cl. (ii) generally, substituting "the imputed principal amount of such debt instrument determined under subsection (b)" for "the testing amount".

Subsec. (c)(2). Pub. L. 99–121, §101(a)(1)(C), substituted "the imputed principal amount of such debt instrument determined under subsection (b)" for "the testing amount".

Subsec. (c)(3). Pub. L. 99–121, §101(a)(1)(D), redesignated par. (4) as (3). Former par. (3), defining "testing amount", was struck out.

Subsec. (c)(4). Pub. L. 99–121, §102(b), added par. (4). Former par. (4) redesignated (3).

Subsec. (d)(1)(B) to (D). Pub. L. 99–121, §101(b)(1), amended subpars. (B) to (D) generally, in subpar. (B) substituting provisions setting a monthly schedule for the determination of Federal rates for provisions which had formerly set a semi-annual schedule for the determination of such rates, in subpar. (C) substituting provisions setting a monthly schedule for the determination of Federal short-term, mid-term, and long-term rates based on the average market yield during any 1-month period ending in the month in which the determination is made for former provisions which had directed that the Federal rate determined under subpar. (A) apply during the appropriate 6-month period, and in subpar. (D) substituting provisions allowing a lower rate in certain cases for provisions relating to the setting of the Federal rate for any 6-month period.

Subsec. (d)(2). Pub. L. 99–121, §101(b)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "In the case of any sale or exchange, the determination of the applicable Federal rate shall be made as of the first day on which there is a binding contract in writing for the sale or exchange."

Subsec. (e). Pub. L. 99–121, §101(c), added subsec. (e).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d) of Pub. L. 105–34, set out as a note under section 121 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1989, see section 7721(d) of Pub. L. 101–239, set out as a note under section 461 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Pub. L. 99–121, title I, §105(a), Oct. 11, 1985, 99 Stat. 510, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by sections 101 and 102 [enacting section 1274A and amending this section and sections 280G and 483 of this title] shall apply to sales and exchanges after June 30, 1985, in taxable years ending after such date. The amendment made by section 2 of Public Law 98–612 [amending section 44(b) of Pub. L. 98–369, set out as a note under section 1271 of this title] shall not apply to sales and exchanges after June 30, 1985, in taxable years ending after such date.

"(2) REGULATORY AUTHORITY TO ESTABLISH LOWER RATE.—Section 1274(d)(1)(D) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as added by section 101(b), shall apply as if included in the amendments made by section 41 of the Tax Reform Act of 1984 [Pub. L. 98–369, see Effective Date note set out under section 1271 of this title]."

EFFECTIVE DATE

Section applicable to taxable years ending after July 18, 1984, and applicable to sales or exchanges after Dec. 31, 1984, but not applicable to any sale or exchange pursuant to a written contract which was binding on Mar. 1, 1984, and at all times thereafter before the sale or exchange, see section 44 of Pub. L. 98–369, set out as a note under section 1271 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TRANSITIONAL RULE FOR PURPOSES OF IMPUTED INTEREST RULES

Provisions respecting treatment of debt instruments received in exchange for property, relating to special rules for sales after Dec. 31, 1984, and before July 1, 1985, general rule for assumptions of loans, exception for assumptions of loans made on or before Oct. 15, 1984, and exception for assumptions of loans with respect to certain property, see section 44(b)(4)–(7) of Pub. L. 98–369, as amended, set out as an Effective Date note under section 1271 of this title.

[1] *See References in Text note below.*

§1274A. Special rules for certain transactions where stated principal amount does not exceed $2,800,000

(a) Lower discount rate

In the case of any qualified debt instrument, the discount rate used for purposes of sections 483 and 1274 shall not exceed 9 percent, compounded semiannually.

(b) Qualified debt instrument defined

For purposes of this section, the term "qualified debt instrument" means any debt instrument given in consideration for the sale or exchange of property (other than new section 38 property within the meaning of section 48(b), as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) if the stated principal amount of such instrument does not exceed $2,800,000.

(c) Election to use cash method where stated principal amount does not exceed $2,000,000

(1) In general

In the case of any cash method debt instrument—

(A) section 1274 shall not apply, and

(B) interest on such debt instrument shall be taken into account by both the borrower and the lender under the cash receipts and disbursements method of accounting.

(2) Cash method debt instrument

For purposes of paragraph (1), the term "cash method debt instrument" means any qualified debt instrument if—

(A) the stated principal amount does not exceed $2,000,000,

(B) the lender does not use an accrual method of accounting and is not a dealer with respect to the property sold or exchanged,

(C) section 1274 would have applied to such instrument but for an election under this subsection, and

(D) an election under this subsection is jointly made with respect to such debt instrument by the borrower and lender.

(3) Successors bound by election

(A) In general

Except as provided in subparagraph (B), paragraph (1) shall apply to any successor to the borrower or lender with respect to a cash method debt instrument.

(B) Exception where lender transfers debt instrument to accrual method taxpayer

If the lender (or any successor) transfers any cash method debt instrument to a taxpayer who

uses an accrual method of accounting, this paragraph shall not apply with respect to such instrument for periods after such transfer.

(4) Fair market value rule in potentially abusive situations

In the case of any cash method debt instrument, section 483 shall be applied as if it included provisions similar to the provisions of section 1274(b)(3).

(d) Other special rules

(1) Aggregation rules

For purposes of this section—

(A) all sales or exchanges which are part of the same transaction (or a series of related transactions) shall be treated as 1 sale or exchange, and

(B) all debt instruments arising from the same transaction (or a series of related transactions) shall be treated as 1 debt instrument.

(2) Inflation adjustments

(A) In general

In the case of any debt instrument arising out of a sale or exchange during any calendar year after 1989, each dollar amount contained in the preceding provisions of this section shall be increased by the inflation adjustment for such calendar year. Any increase under the preceding sentence shall be rounded to the nearest multiple of $100 (or, if such increase is a multiple of $50, such increase shall be increased to the nearest multiple of $100).

(B) Inflation adjustment

For purposes of subparagraph (A), the inflation adjustment for any calendar year is the percentage (if any) by which—

(i) the CPI for the preceding calendar year exceeds

(ii) the CPI for calendar year 1988.

For purposes of the preceding sentence, the CPI for any calendar year is the average of the Consumer Price Index as of the close of the 12-month period ending on September 30 of such calendar year.

(e) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including—

(1) regulations coordinating the provisions of this section with other provisions of this title,

(2) regulations necessary to prevent the avoidance of tax through the abuse of the provisions of subsection (c), and

(3) regulations relating to the treatment of transfers of cash method debt instruments.

(Added Pub. L. 99–121, title I, §102(a), Oct. 11, 1985, 99 Stat. 506; amended Pub. L. 101–508, title XI, §11813(b)(22), Nov. 5, 1990, 104 Stat. 1388–555; Pub. L. 104–188, title I, §1704(t)(62), Aug. 20, 1996, 110 Stat. 1890.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Rulings listed in a table below.

REFERENCES IN TEXT

The date of the enactment of the Revenue Reconciliation Act of 1990, referred to in subsec. (b), is the date of enactment of Pub. L. 101–508, which was approved Nov. 5, 1990.

AMENDMENTS

1996—Subsec. (c)(1)(B). Pub. L. 104–188 substituted "instrument" for "instument".

1990—Subsec. (b). Pub. L. 101–508 inserted ", as in effect on the day before the date of the enactment of

the Revenue Reconciliation Act of 1990" after "section 48(b)".

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE

Section applicable to sales and exchanges after June 30, 1985, in taxable years ending after such date, see section 105(a)(1) of Pub. L. 99–121, set out as an Effective Date of 1985 Amendment note under section 1274 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

Provisions relating to inflation adjustment of items in this section for certain years were contained in the following:

2014—Revenue Ruling 2013–23.
2013—Revenue Ruling 2012–33.
2012—Revenue Ruling 2011–27.
2011—Revenue Ruling 2010–30.
2010—Revenue Ruling 2010–2.
2009—Revenue Ruling 2008–52.
2008—Revenue Ruling 2008–3.
2007—Revenue Ruling 2007–4.
2006—Revenue Ruling 2005–76.
2005—Revenue Ruling 2004–107.
2004—Revenue Ruling 2003–119.
2003—Revenue Ruling 2002–79.
2002—Revenue Ruling 2001–65.
2001—Revenue Ruling 2000–55.
2000—Revenue Ruling 99–50.
1999—Revenue Ruling 98–58.
1998—Revenue Ruling 97–56.
1997—Revenue Ruling 96–63.
1996—Revenue Ruling 96–4.

§1275. Other definitions and special rules

(a) Definitions

For purposes of this subpart—

(1) Debt instrument

(A) In general

Except as provided in subparagraph (B), the term "debt instrument" means a bond, debenture, note, or certificate or other evidence of indebtedness.

(B) Exception for certain annuity contracts

The term "debt instrument" shall not include any annuity contract to which section 72 applies and which—

(i) depends (in whole or in substantial part) on the life expectancy of 1 or more individuals, or

(ii) is issued by an insurance company subject to tax under subchapter L (or by an entity described in section 501(c) and exempt from tax under section 501(a) which would be subject to tax under subchapter L were it not so exempt)—

(I) in a transaction in which there is no consideration other than cash or another annuity contract meeting the requirements of this clause,

(II) pursuant to the exercise of an election under an insurance contract by a beneficiary thereof on the death of the insured party under such contract, or

(III) in a transaction involving a qualified pension or employee benefit plan.

(2) Issue date

(A) Publicly offered debt instruments

In the case of any debt instrument which is publicly offered, the term "date of original issue" means the date on which the issue was first issued to the public.

(B) Issues not publicly offered and not issued for property

In the case of any debt instrument to which section 1273(b)(2) applies, the term "date of original issue" means the date on which the debt instrument was sold by the issuer.

(C) Other debt instruments

In the case of any debt instrument not described in subparagraph (A) or (B), the term "date of original issue" means the date on which the debt instrument was issued in a sale or exchange.

(3) Tax-exempt obligation

The term "tax-exempt obligation" means any obligation if—

(A) the interest on such obligation is not includible in gross income under section 103, or

(B) the interest on such obligation is exempt from tax (without regard to the identity of the holder) under any other provision of law.

(4) Treatment of obligations distributed by corporations

Any debt obligation of a corporation distributed by such corporation with respect to its stock shall be treated as if it had been issued by such corporation for property.

(b) Treatment of borrower in the case of certain loans for personal use

(1) Sections 1274 and 483 not to apply

In the case of the obligor under any debt instrument given in consideration for the sale or exchange of property, sections 1274 and 483 shall not apply if such property is personal use property.

(2) Original issue discount deducted on cash basis in certain cases

In the case of any debt instrument, if—

(A) such instrument—

(i) is incurred in connection with the acquisition or carrying of personal use property, and

(ii) has original issue discount (determined after the application of paragraph (1)), and

(B) the obligor under such instrument uses the cash receipts and disbursements method of accounting,

notwithstanding section 163(e), the original issue discount on such instrument shall be deductible only when paid.

(3) Personal use property

For purposes of this subsection, the term "personal use property" means any property substantially all of the use of which by the taxpayer is not in connection with a trade or business of the taxpayer or an activity described in section 212. The determination of whether property is

described in the preceding sentence shall be made as of the time of issuance of the debt instrument.

(c) Information requirements

(1) Information required to be set forth on instrument

(A) In general

In the case of any debt instrument having original issue discount, the Secretary may by regulations require that—

(i) the amount of the original issue discount, and

(ii) the issue date,

be set forth on such instrument.

(B) Special rule for instruments not publicly offered

In the case of any issue of debt instruments not publicly offered, the regulations prescribed under subparagraph (A) shall not require the information to be set forth on the debt instrument before any disposition of such instrument by the first buyer.

(2) Information required to be submitted to Secretary

In the case of any issue of publicly offered debt instruments having original issue discount, the issuer shall (at such time and in such manner as the Secretary shall by regulation prescribe) furnish the Secretary the following information:

(A) The amount of the original issue discount.

(B) The issue date.

(C) Such other information with respect to the issue as the Secretary may by regulations require.

For purposes of the preceding sentence, any person who makes a public offering of stripped bonds (or stripped coupons) shall be treated as the issuer of a publicly offered debt instrument having original issue discount.

(3) Exceptions

This subsection shall not apply to any obligation referred to in section 1272(a)(2) (relating to exceptions from current inclusion of original issue discount).

(4) Cross reference

For civil penalty for failure to meet requirements of this subsection, see section 6706.

(d) Regulation authority

The Secretary may prescribe regulations providing that where, by reason of varying rates of interest, put or call options, indefinite maturities, contingent payments, assumptions of debt instruments, or other circumstances, the tax treatment under this subpart (or section 163(e)) does not carry out the purposes of this subpart (or section 163(e)), such treatment shall be modified to the extent appropriate to carry out the purposes of this subpart (or section 163(e)).

(Added and amended Pub. L. 98–369, div. A, title I, §§41(a), 61(c)(2), July 18, 1984, 98 Stat. 540, 581; Pub. L. 99–514, title XVIII, §1804(f)(2)(A), Oct. 22, 1986, 100 Stat. 2805; Pub. L. 100–647, title I, §1006(u)(4), Nov. 10, 1988, 102 Stat. 3427; Pub. L. 101–508, title XI, §11325(a)(2), Nov. 5, 1990, 104 Stat. 1388–466; Pub. L. 106–554, §1(a)(7) [title III, §318(c)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–645.)

AMENDMENTS

2000—Subsec. (a)(1)(B)(ii). Pub. L. 106–554, in introductory provisions, substituted "subchapter L (or by an entity described in section 501(c) and exempt from tax under section 501(a) which would be subject to tax under subchapter L were it not so exempt)" for "subchapter L".

1990—Subsec. (a)(4), (5). Pub. L. 101–508 redesignated par. (5) as (4) and struck out former par. (4) which

related to a special rule for determination of issue price in case of exchange of debt instruments in reorganization.

1988—Subsec. (a)(4)(B)(ii)(I). Pub. L. 100–647 substituted "subsection (a)(7)" for "subsection (a)(6)".

1986—Subsec. (a)(4), (5). Pub. L. 99–514 redesignated par. (4), relating to treatment of obligations distributed to corporations, as (5), and substituted "by corporations" for "to corporations" in heading.

1984—Subsec. (a)(4). Pub. L. 98–369, §61(c)(2), added par. (4) relating to treatment of obligations distributed to corporations.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(7) [title III, §318(c)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–645, provided that: "The amendment made by this subsection [amending this section] shall take effect as if included in the amendments made by section 41 of the Tax Reform Act of 1984 [Pub. L. 98–369, div. A]."

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable, with certain exceptions, to debt instruments issued and stock transferred after Oct. 1, 1990, in satisfaction of any indebtedness, see section 11325(c) of Pub. L. 101–508, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable with respect to distributions declared Mar. 15, 1984, in taxable years ending after that date, see section 61(e)(3) of Pub. L. 98–369, set out as a note under section 312 of this title.

EFFECTIVE DATE

Section applicable to taxable years ending after July 18, 1984, but subsec. (c) of this section effective on the day 30 days after July 18, 1984, see section 44 of Pub. L. 98–369, set out as a note under section 1271 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

SUBPART B—MARKET DISCOUNT ON BONDS

Sec.

1276. Disposition gain representing accrued market discount treated as ordinary income.
1277. Deferral of interest deduction allocable to accrued market discount.
1278. Definitions and special rules.

§1276. Disposition gain representing accrued market discount treated as ordinary income

(a) Ordinary income

(1) In general

Except as otherwise provided in this section, gain on the disposition of any market discount bond shall be treated as ordinary income to the extent it does not exceed the accrued market discount on such bond. Such gain shall be recognized notwithstanding any other provision of this subtitle.

(2) Dispositions other than sales, etc.

For purposes of paragraph (1), a person disposing of any market discount bond in any transaction other than a sale, exchange, or involuntary conversion shall be treated as realizing an amount equal to the fair market value of the bond.

(3) Treatment of partial principal payments

(A) In general

Any partial principal payment on a market discount bond shall be included in gross income as ordinary income to the extent such payment does not exceed the accrued market discount on such bond.

(B) Adjustment

If subparagraph (A) applies to any partial principal payment on any market discount bond, for purposes of applying this section to any disposition of (or subsequent partial principal payment on) such bond, the amount of accrued market discount shall be reduced by the amount of such partial principal payment included in gross income under subparagraph (A).

(4) Gain treated as interest for certain purposes

Except for purposes of sections 103, 871(a),,[1] 881, 1441, 1442, and 6049 (and such other provisions as may be specified in regulations), any amount treated as ordinary income under paragraph (1) or (3) shall be treated as interest for purposes of this title.

(b) Accrued market discount

For purposes of this section—

(1) Ratable accrual

Except as otherwise provided in this subsection or subsection (c), the accrued market discount on any bond shall be an amount which bears the same ratio to the market discount on such bond as—

(A) the number of days which the taxpayer held the bond, bears to

(B) the number of days after the date the taxpayer acquired the bond and up to (and including) the date of its maturity.

(2) Election of accrual on basis of constant interest rate (in lieu of ratable accrual)

(A) In general

At the election of the taxpayer with respect to any bond, the accrued market discount on such bond shall be the aggregate amount which would have been includible in the gross income of the taxpayer under section 1272(a) (determined without regard to paragraph (2) thereof) with respect to such bond for all periods during which the bond was held by the taxpayer if such bond had been—

(i) originally issued on the date on which such bond was acquired by the taxpayer,

(ii) for an issue price equal to the basis of the taxpayer in such bond immediately after its acquisition.

(B) Coordination where bond has original issue discount

In the case of any bond having original issue discount, for purposes of applying subparagraph (A)—

(i) the stated redemption price at maturity of such bond shall be treated as equal to its revised issue price, and

(ii) the determination of the portion of the original issue discount which would have been

includible in the gross income of the taxpayer under section 1272(a) shall be made under regulations prescribed by the Secretary.

(C) Election irrevocable

An election under subparagraph (A), once made with respect to any bond, shall be irrevocable.

(3) Special rule where partial principal payments

In the case of a bond the principal of which may be paid in 2 or more payments, the amount of accrued market discount shall be determined under regulations prescribed by the Secretary.

(c) Treatment of nonrecognition transactions

Under regulations prescribed by the Secretary—

(1) Transferred basis property

If a market discount bond is transferred in a nonrecognition transaction and such bond is transferred basis property in the hands of the transferee, for purposes of determining the amount of the accrued market discount with respect to the transferee—

(A) the transferee shall be treated as having acquired the bond on the date on which it was acquired by the transferor for an amount equal to the basis of the transferor, and

(B) proper adjustments shall be made for gain recognized by the transferor on such transfer (and for any original issue discount or market discount included in the gross income of the transferor).

(2) Exchanged basis property

If any market discount bond is disposed of by the taxpayer in a nonrecognition transaction and paragraph (1) does not apply to such transaction, any accrued market discount determined with respect to the property disposed of to the extent not theretofore treated as ordinary income under subsection (a)—

(A) shall be treated as accrued market discount with respect to the exchanged basis property received by the taxpayer in such transaction if such property is a market discount bond, and

(B) shall be treated as ordinary income on the disposition of the exchanged basis property received by the taxpayer in such exchange if such property is not a market discount bond.

(3) Paragraph (1) to apply to certain distributions by corporations or partnerships

For purposes of paragraph (1), if the basis of any market discount bond in the hands of a transferee is determined under section 732(a), or 732(b), such property shall be treated as transferred basis property in the hands of such transferee.

(d) Special rules

Under regulations prescribed by the Secretary—

(1) rules similar to the rules of subsection (b) of section 1245 shall apply for purposes of this section; except that—

(A) paragraph (1) of such subsection shall not apply,

(B) an exchange qualifying under section 354(a), 355(a), or 356(a) (determined without regard to subsection (a) of this section) shall be treated as an exchange described in paragraph (3) of such subsection, and

(C) paragraph (3) of section 1245(b) shall be applied as if it did not contain a reference to section 351, and

(2) appropriate adjustments shall be made to the basis of any property to reflect gain recognized under subsection (a).

(Added Pub. L. 98–369, div. A, title I, §41(a), July 18, 1984, 98 Stat. 543; amended Pub. L. 99–514, title VI, §631(e)(15), title XVIII, §§1803(a)(5), (13)(A), 1899A(28), Oct. 22, 1986, 100 Stat. 2275, 2793, 2796, 2960; Pub. L. 100–647, title I, §1018(u)(46), Nov. 10, 1988, 102 Stat. 3592; Pub. L. 103–66, title XIII, §13206(b)(1)(A), (2)(B)(i), Aug. 10, 1993, 107 Stat. 465.)

AMENDMENTS

1993—Subsec. (a)(4). Pub. L. 103–66, §13206(b)(2)(B)(i), substituted "sections 103, 871(a)," for "sections 871(a)".

Subsec. (e). Pub. L. 103–66, §13206(b)(1)(A), struck out heading and text of subsec. (e). Text read as follows: "This section shall not apply to any market discount bond issued on or before July 18, 1984."

1988—Subsec. (b)(3). Pub. L. 100–647 designated paragraph relating to special rule where there are partial principal payments as par. (3) and inserted period at end.

1986—Subsec. (a)(3). Pub. L. 99–514, §1803(a)(13)(A)(i), added par. (3). Former par. (3) redesignated (4).

Subsec. (a)(4). Pub. L. 99–514, §1803(a)(13)(A)(i), (ii), redesignated par. (3) as (4) and substituted "under paragraph (1) or (3)" for "under paragraph (1)".

Subsec. (b). Pub. L. 99–514, §1803(a)(13)(A)(iii), added undesignated par. at end relating to special rule where partial principal payments.

Subsec. (c)(3). Pub. L. 99–514, §631(e)(15), struck out reference to section 334(c).

Subsec. (d)(1)(C). Pub. L. 99–514, §1803(a)(5), added subpar. (C).

Subsec. (e). Pub. L. 99–514, §1899A(28), substituted "July 18, 1984" for "the date of the enactment of this section".

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13206(b)(3), Aug. 10, 1993, 107 Stat. 465, provided that: "The amendments made by this section [probably should be "subsection", which amended this section and sections 1277 and 1278 of this title] shall apply to obligations purchased (within the meaning of section 1272(d)(1) of the Internal Revenue Code of 1986) after April 30, 1993."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 631(e)(15) of Pub. L. 99–514 applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, set out as an Effective Date note under section 336 of this title.

Amendment by section 1803(a)(5) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Pub. L. 99–514, title XVIII, §1803(a)(13)(C), Oct. 22, 1986, 100 Stat. 2797, provided that: "The amendments made by this paragraph [amending this section and section 1286 of this title] shall apply to obligations acquired after the date of the enactment of this Act [Oct. 22, 1986]."

EFFECTIVE DATE

Section applicable to taxable years ending after July 18, 1984, and applicable to obligations issued after July 18, 1984, in taxable years ending after such date, see section 44 of Pub. L. 98–369, set out as a note under section 1271 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[1] *So in original.*

§1277. Deferral of interest deduction allocable to accrued market discount

(a) General rule

Except as otherwise provided in this section, the net direct interest expense with respect to any market discount bond shall be allowed as a deduction for the taxable year only to the extent that such expense exceeds the portion of the market discount allocable to the days during the taxable year on which such bond was held by the taxpayer (as determined under the rules of section 1276(b)).

(b) Disallowed deduction allowed for later years

(1) Election to take into account in later year where net interest income from bond

(A) In general

If—

(i) there is net interest income for any taxable year with respect to any market discount bond, and

(ii) the taxpayer makes an election under this subparagraph with respect to such bond,

any disallowed interest expense with respect to such bond shall be treated as interest paid or accrued by the taxpayer during such taxable year to the extent such disallowed interest expense does not exceed the net interest income with respect to such bond.

(B) Determination of disallowed interest expense

For purposes of subparagraph (A), the amount of the disallowed interest expense—

(i) shall be determined as of the close of the preceding taxable year, and

(ii) shall not include any amount previously taken into account under subparagraph (A).

(C) Net interest income

For purposes of this paragraph, the term "net interest income" means the excess of the amount determined under paragraph (2) of subsection (c) over the amount determined under paragraph (1) of subsection (c).

(2) Remainder of disallowed interest expense allowed for year of disposition

(A) In general

Except as otherwise provided in this paragraph, the amount of the disallowed interest expense with respect to any market discount bond shall be treated as interest paid or accrued by the taxpayer in the taxable year in which such bond is disposed of.

(B) Nonrecognition transactions

If any market discount bond is disposed of in a nonrecognition transaction—

(i) the disallowed interest expense with respect to such bond shall be treated as interest paid or accrued in the year of disposition only to the extent of the amount of gain recognized on such disposition, and

(ii) the disallowed interest expense with respect to such property (to the extent not so treated) shall be treated as disallowed interest expense—

(I) in the case of a transaction described in section 1276(c)(1), of the transferee with respect to the transferred basis property, or

(II) in the case of a transaction described in section 1276(c)(2), with respect to the exchanged basis property.

(C) Disallowed interest expense reduced for amounts previously taken into account under paragraph (1)

For purposes of this paragraph, the amount of the disallowed interest expense shall not include any amount previously taken into account under paragraph (1).

(3) Disallowed interest expense

For purposes of this subsection, the term "disallowed interest expense" means the aggregate amount disallowed under subsection (a) with respect to the market discount bond.

(c) Net direct interest expense

For purposes of this section, the term "net direct interest expense" means, with respect to any market discount bond, the excess (if any) of—

(1) the amount of interest paid or accrued during the taxable year on indebtedness which is incurred or continued to purchase or carry such bond, over

(2) the aggregate amount of interest (including original issue discount) includible in gross income for the taxable year with respect to such bond.

In the case of any financial institution which is a bank (as defined in section 585(a)(2)), the determination of whether interest is described in paragraph (1) shall be made under principles similar to the principles of section 291(e)(1)(B)(ii). Under rules similar to the rules of section 265(a)(5), short sale expenses shall be treated as interest for purposes of determining net direct interest expense.

(Added Pub. L. 98–369, div. A, title I, §41(a), July 18, 1984, 98 Stat. 545; amended Pub. L. 99–514, title IX, §§901(d)(4)(F), §902(e)(2), title XVIII, §1899A(29)–(31), Oct. 22, 1986, 100 Stat. 2380, 2382, 2960; Pub. L. 100–647, title I, §1018(u)(31), Nov. 10, 1988, 102 Stat. 3592; Pub. L. 103–66, title XIII, §13206(b)(1)(B), Aug. 10, 1993, 107 Stat. 465; Pub. L. 104–188, title I, §1616(b)(14), Aug. 20, 1996, 110 Stat. 1857.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–188 struck out "or to which section 593 applies" after "585(a)(2))" in closing provisions.

1993—Subsec. (d). Pub. L. 103–66 struck out heading and text of subsec. (d). Text read as follows: "In the case of a market discount bond issued on or before July 18, 1984, any gain recognized by the taxpayer on any disposition of such bond shall be treated as ordinary income to the extent the amount of such gain does not exceed the amount allowable with respect to such bond under subsection (b)(2) for the taxable year in which such bond is disposed of."

1988—Subsec. (c). Pub. L. 100–647 inserted a closing parenthesis after "section 585(a)(2)".

1986—Subsec. (b)(1)(C). Pub. L. 99–514, §1899A(29), substituted "this paragraph" for "this paragaph".

Subsec. (b)(2)(C). Pub. L. 99–514, §1899A(30), substituted "paragraph (1)" for "paragraph 1" in heading.

Subsec. (c). Pub. L. 99–514, §901(d)(4)(F), substituted "which is a bank (as defined in section 585(a)(2) or to which section 593 applies" for "to which section 585 or 593 applies".

Pub. L. 99–514, §902(e)(2), substituted "section 265(a)(5)" for "section 265(5)".

Subsec. (d). Pub. L. 99–514, §1899A(31), substituted "July 18, 1984" for "the date of the enactment of this section".

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1995, see section 1616(c) of Pub. L. 104–188, set out as a note under section 593 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to obligations purchased (within the meaning of section 1272(d)(1) of this title) after Apr. 30, 1993, see section 13206(b)(3) of Pub. L. 103–66, set out as a note under section 1276 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 901(d)(4)(F) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 901(e) of Pub. L. 99–514, set out as a note under section 166 of this title.

Amendment by section 902(e)(2) of Pub. L. 99–514 applicable to taxable years ending after Dec. 31, 1986, with certain exceptions and qualifications, see section 902(f) of Pub. L. 99–514, set out as a note under section 265 of this title.

EFFECTIVE DATE

Section applicable to taxable years ending after July 18, 1984, and applicable to obligations acquired after July 18, 1984, in taxable years ending after such date, see section 44 of Pub. L. 98–369, set out as a note under section 1271 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§1278. Definitions and special rules

(a) In general

For purposes of this part—

(1) Market discount bond

(A) In general

Except as provided in subparagraph (B), the term "market discount bond" means any bond having market discount.

(B) Exceptions

The term "market discount bond" shall not include—

(i) Short-term obligations

Any obligation with a fixed maturity date not exceeding 6 months from the date of issue.

(ii) United States savings bonds

Any United States savings bond.

(iii) Installment obligations

Any installment obligation to which section 453B applies.

(C) Section 1277 not applicable to tax-exempt obligations

For purposes of section 1277, the term "market discount bond" shall not include any tax-exempt obligation (as defined in section 1275(a)(3)).

(D) Treatment of bonds acquired at original issue

(i) In general

Except as otherwise provided in this subparagraph or in regulations, the term "market discount bond" shall not include any bond acquired by the taxpayer at its original issue.

(ii) Treatment of bonds acquired for less than issue price

Clause (i) shall not apply to any bond if—

(I) the basis of the taxpayer in such bond is determined under section 1012, and

(II) such basis is less than the issue price of such bond determined under subpart A of this part.

(iii) Bonds acquired in certain reorganizations

Clause (i) shall not apply to any bond issued pursuant to a plan of reorganization (within the meaning of section 368(a)(1)) in exchange for another bond having market discount. Solely for purposes of section 1276, the preceding sentence shall not apply if such other bond was issued on or before July 18, 1984 (the date of the enactment of section 1276) and if the bond issued pursuant to such plan of reorganization has the same term and the same interest rate as such other bond had.

(iv) Treatment of certain transferred basis property

For purposes of clause (i), if the adjusted basis of any bond in the hands of the taxpayer is determined by reference to the adjusted basis of such bond in the hands of a person who acquired such bond at its original issue, such bond shall be treated as acquired by the taxpayer at its original issue.

(2) Market discount

(A) In general

The term "market discount" means the excess (if any) of—

(i) the stated redemption price of the bond at maturity, over

(ii) the basis of such bond immediately after its acquisition by the taxpayer.

(B) Coordination where bond has original issue discount

In the case of any bond having original issue discount, for purposes of subparagraph (A), the stated redemption price of such bond at maturity shall be treated as equal to its revised issue price.

(C) De minimis rule

If the market discount is less than ¼ of 1 percent of the stated redemption price of the bond at maturity multiplied by the number of complete years to maturity (after the taxpayer acquired the bond), then the market discount shall be considered to be zero.

(3) Bond

The term "bond" means any bond, debenture, note, certificate, or other evidence of indebtedness.

(4) Revised issue price

The term "revised issue price" means the sum of—

(A) the issue price of the bond, and

(B) the aggregate amount of the original issue discount includible in the gross income of all holders for periods before the acquisition of the bond by the taxpayer (determined without regard to section 1272(a)(7) or (b)(4)) or, in the case of a tax-exempt obligation, the aggregate amount of the original issue discount which accrued in the manner provided by section 1272(a) (determined without regard to paragraph (7) thereof) during periods before the acquisition of the bond by the taxpayer.

(5) Original issue discount, etc.

The terms "original issue discount", "stated redemption price at maturity", and "issue price" have the respective meanings given such terms by subpart A of this part.

(b) Election to include market discount currently

(1) In general

If the taxpayer makes an election under this subsection—

(A) sections 1276 and 1277 shall not apply, and

(B) market discount on any market discount bond shall be included in the gross income of the taxpayer for the taxable years to which it is attributable (as determined under the rules of subsection (b) of section 1276).

Except for purposes of sections 103, 871(a),,[1] 881, 1441, 1442, and 6049 (and such other provisions as may be specified in regulations), any amount included in gross income under subparagraph (B) shall be treated as interest for purposes of this title.

(2) Scope of election

An election under this subsection shall apply to all market discount bonds acquired by the taxpayer on or after the 1st day of the 1st taxable year to which such election applies.

(3) Period to which election applies

An election under this subsection shall apply to the taxable year for which it is made and for all subsequent taxable years, unless the taxpayer secures the consent of the Secretary to the revocation of such election.

(4) Basis adjustment

The basis of any bond in the hands of the taxpayer shall be increased by the amount included in gross income pursuant to this subsection.

(c) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subpart, including regulations providing proper adjustments in the case of a bond the principal of which may be paid in 2 or more payments.

(Added and amended Pub. L. 98–369, div. A, title I, §41(a), title X, §1001(b)(24), July 18, 1984, 98 Stat. 547; Pub. L. 99–514, title XVIII, §§1803(a)(6), 1878(a), 1899A(32), Oct. 22, 1986, 100 Stat. 2793, 2903, 2960; Pub. L. 100–647, title I, §§1006(u)(2), 1018(c)(2), (3), Nov. 10, 1988, 102 Stat. 3427, 3578; Pub. L. 103–66, title XIII, §13206(b)(2), Aug. 10, 1993, 107 Stat. 465.)

AMENDMENTS

1993—Subsec. (a)(1)(B)(ii)–(iv). Pub. L. 103–66, §13206(b)(2)(A)(i), redesignated cls. (iii) and (iv) as (ii) and (iii), respectively, and struck out heading and text of former cl. (ii). Text read as follows: "Any tax-exempt obligation (as defined in section 1275(a)(3))."

Subsec. (a)(1)(C), (D). Pub. L. 103–66, §13206(b)(2)(A)(ii), (iii), added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (a)(4)(B). Pub. L. 103–66, §13206(b)(2)(B)(ii), inserted before period at end "or, in the case of a tax-exempt obligation, the aggregate amount of the original issue discount which accrued in the manner provided by section 1272(a) (determined without regard to paragraph (7) thereof) during periods before the acquisition of the bond by the taxpayer".

Subsec. (b)(1). Pub. L. 103–66, §13206(b)(2)(B)(i), substituted "sections 103, 871(a)," for "sections 871(a)" in last sentence.

1988—Subsec. (a)(4)(B). Pub. L. 100–647, §1006(u)(2), substituted "section 1272(a)(7)" for "section 1272(a)(6)".

Subsec. (b)(4). Pub. L. 100–647, §1018(c)(3), added par. (4).

Subsec. (c). Pub. L. 100–647, §1018(c)(2), inserted before period at end ", including regulations providing proper adjustments in the case of a bond the principal of which may be paid in 2 or more payments".

1986—Subsec. (a)(1)(B)(i). Pub. L. 99–514, §1878(a), amended Pub. L. 98–369, §1001(b), by adding a par. (24) which contained directory language substituting "6 months" for "1 year" in cl. (i). See 1984 Amendment note below.

Subsec. (a)(1)(C). Pub. L. 99–514, §1803(a)(6), added subpar. (C).

Subsec. (a)(4). Pub. L. 99–514, §1899A(32), substituted "means" for "means of" in introductory provisions.

1984—Subsec. (a)(1)(B)(i). Pub. L. 98–369, §1001(b)(24), as added by Pub. L. 99–514, §1878(a), substituted "6 months" for "1 year".

EFFECTIVE DATE OF 1993 AMENDMENT

Amendments by Pub. L. 103–66 applicable to obligations purchased (within the meaning of section 1272(d)(1) of this title) after Apr. 30, 1993, see section 13206(b)(3) of Pub. L. 103–66, set out as a note under section 1276 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by sections 1803(a)(6) and 1878(a) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

EFFECTIVE DATE

Section applicable to taxable years ending after July 18, 1984, except as otherwise provided, see section 44 of Pub. L. 98–369, set out as a note under section 1271 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[1] *So in original.*

SUBPART C—DISCOUNT ON SHORT-TERM OBLIGATIONS

Sec.
1281. Current inclusion in income of discount on certain short-term obligations.
1282. Deferral of interest deduction allocable to accrued discount.
1283. Definitions and special rules.

§1281. Current inclusion in income of discount on certain short-term obligations

(a) General rule

In the case of any short-term obligation to which this section applies, for purposes of this title—

(1) there shall be included in the gross income of the holder an amount equal to the sum of the daily portions of the acquisition discount for each day during the taxable year on which such holder held such obligation, and

(2) any interest payable on the obligation (other than interest taken into account in determining the amount of the acquisition discount) shall be included in gross income as it accrues.

(b) Short-term obligations to which section applies

(1) In general

This section shall apply to any short-term obligation which—

(A) is held by a taxpayer using an accrual method of accounting,

(B) is held primarily for sale to customers in the ordinary course of the taxpayer's trade or business,

(C) is held by a bank (as defined in section 581),

(D) is held by a regulated investment company or a common trust fund,

(E) is identified by the taxpayer under section 1256(e)(2) as being part of a hedging transaction, or

(F) is a stripped bond or stripped coupon held by the person who stripped the bond or coupon (or by any other person whose basis is determined by reference to the basis in the hands of such person).

(2) Treatment of obligations held by pass-thru entities

(A) In general

This section shall apply also to—

(i) any short-term obligation which is held by a pass-thru entity which is formed or availed of for purposes of avoiding the provisions of this section, and

(ii) any short-term obligation which is acquired by a pass-thru entity (not described in clause (i)) during the required accrual period.

(B) Required accrual period

For purposes of subparagraph (A), the term "required accrual period" means the period—

(i) which begins with the first taxable year for which the ownership test of subparagraph (C) is met with respect to the pass-thru entity (or a predecessor), and

(ii) which ends with the first taxable year after the taxable year referred to in clause (i) for which the ownership test of subparagraph (C) is not met and with respect to which the Secretary consents to the termination of the required accrual period.

(C) Ownership test

The ownership test of this subparagraph is met for any taxable year if, on at least 90 days during the taxable year, 20 percent or more of the value of the interests in the pass-thru entity are held by persons described in paragraph (1) or by other pass-thru entities to which subparagraph (A) applies.

(D) Pass-thru entity

The term "pass-thru entity" means any partnership, S corporation, trust, or other pass-thru entity.

(c) Cross reference

For special rules limiting the application of this section to original issue discount in the case of nongovernmental obligations, see section 1283(c).

(Added Pub. L. 98–369, div. A, title I, §41(a), July 18, 1984, 98 Stat. 548; amended Pub. L. 99–514, title XVIII, §1803(a)(7), (8)(A), Oct. 22, 1986, 100 Stat. 2793, 2794.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–514, §1803(a)(8), amended subsec. (a) generally, designating existing provisions as par. (1) and adding par. (2).

Subsec. (b)(1)(F). Pub. L. 99–514, §1803(a)(7), added subpar. (F).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1803(a)(7) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Section 1803(a)(8)(A) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1018(c)(1), Nov. 10, 1988, 102 Stat. 3578, provided that the amendment made by section 1803(a)(8)(A) of Pub. L. 99–514 is effective with respect to obligations acquired after Dec. 31, 1985.

EFFECTIVE DATE

Section applicable to taxable years ending after July 18, 1984, and applicable to obligations acquired after that date, with certain elections available, see section 44 of Pub. L. 98–369, set out as a note under section 1271 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§1282. Deferral of interest deduction allocable to accrued discount

(a) General rule

Except as otherwise provided in this section, the net direct interest expense with respect to any short-term obligation shall be allowed as a deduction for the taxable year only to the extent such expense exceeds the sum of—

(1) the daily portions of the acquisition discount for each day during the taxable year on which the taxpayer held such obligation, and

(2) the amount of any interest payable on the obligation (other than interest taken into account in determining the amount of the acquisition discount) which accrues during the taxable year while the taxpayer held such obligation (and is not included in the gross income of the taxpayer for such taxable year by reason of the taxpayer's method of accounting).

(b) Section not to apply to obligations to which section 1281 applies

(1) In general

This section shall not apply to any short-term obligation to which section 1281 applies.

(2) Election to have section 1281 apply to all obligations

(A) In general

A taxpayer may make an election under this paragraph to have section 1281 apply to all short-term obligations acquired by the taxpayer on or after the 1st day of the 1st taxable year to which such election applies.

(B) Period to which election applies

An election under this paragraph shall apply to the taxable year for which it is made and for all subsequent taxable years, unless the taxpayer secures the consent of the Secretary to the revocation of such election.

(c) Certain rules made applicable

Rules similar to the rules of subsections (b) and (c) of section 1277 shall apply for purposes of this section.

(d) Cross reference

For special rules limiting the application of this section to original issue discount in the case of nongovernmental obligations, see section 1283(c).

(Added Pub. L. 98–369, div. A, title I, §41(a), July 18, 1984, 98 Stat. 549; amended Pub. L. 99–514, title XVIII, §1803(a)(8)(B), Oct. 22, 1986, 100 Stat. 2794.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–514 amended subsec. (a) generally, designating existing provisions as par. (1) and adding par. (2).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section applicable to taxable years ending after July 18, 1984, and to obligations acquired after that date, see section 44 of Pub. L. 98–369, set out as a note under section 1271 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§1283. Definitions and special rules

(a) Definitions

For purposes of this subpart—

(1) Short-term obligation

(A) In general

Except as provided in subparagraph (B), the term "short-term obligation" means any bond, debenture, note, certificate, or other evidence of indebtedness which has a fixed maturity date not more than 1 year from the date of issue.

(B) Exceptions for tax-exempt obligations

The term "short-term obligation" shall not include any tax-exempt obligation (as defined in section 1275(a)(3)).

(2) Acquisition discount

The term "acquisition discount" means the excess of—

(A) the stated redemption price at maturity (as defined in section 1273), over

(B) the taxpayer's basis for the obligation.

(b) Daily portion

For purposes of this subpart—

(1) Ratable accrual

Except as otherwise provided in this subsection, the daily portion of the acquisition discount is an amount equal to—

(A) the amount of such discount, divided by

(B) the number of days after the day on which the taxpayer acquired the obligation and up to (and including) the day of its maturity.

(2) Election of accrual on basis of constant interest rate (in lieu of ratable accrual)

(A) In general

At the election of the taxpayer with respect to any obligation, the daily portion of the acquisition discount for any day is the portion of the acquisition discount accruing on such day determined (under regulations prescribed by the Secretary) on the basis of—

(i) the taxpayer's yield to maturity based on the taxpayer's cost of acquiring the obligation, and

(ii) compounding daily.

(B) Election irrevocable

An election under subparagraph (A), once made with respect to any obligation, shall be irrevocable.

(c) Special rules for nongovernmental obligations

(1) In general

In the case of any short-term obligation which is not a short-term Government obligation (as defined in section 1271(a)(3)(B))—

(A) sections 1281 and 1282 shall be applied by taking into account original issue discount in lieu of acquisition discount, and

(B) appropriate adjustments shall be made in the application of subsection (b) of this section.

(2) Election to have paragraph (1) not apply

(A) In general

A taxpayer may make an election under this paragraph to have paragraph (1) not apply to all obligations acquired by the taxpayer on or after the first day of the first taxable year to which such election applies.

(B) Period to which election applies

An election under this paragraph shall apply to the taxable year for which it is made and for all subsequent taxable years, unless the taxpayer secures the consent of the Secretary to the revocation of such election.

(d) Other special rules

(1) Basis adjustments

The basis of any short-term obligation in the hands of the holder thereof shall be increased by the amount included in his gross income pursuant to section 1281.

(2) Double inclusion in income not required

Section 1281 shall not require the inclusion of any amount previously includible in gross income.

(3) Coordination with other provisions

Section 454(b) and paragraphs (3) and (4) of section 1271(a) shall not apply to any short-term obligation to which section 1281 applies.

(Added Pub. L. 98–369, div. A, title I, §41(a), July 18, 1984, 98 Stat. 549; amended Pub. L. 99–514, title XVIII, §1803(a)(1)(B), Oct. 22, 1986, 100 Stat. 2792.)

AMENDMENTS

1986—Subsec. (d)(3). Pub. L. 99–514 substituted "paragraphs (3) and (4) of section 1271(a)" for "section 1271(a)(3)".

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section applicable to taxable years ending after July 18, 1984, and to obligations acquired after that date, see section 44 of Pub. L. 98–369, set out as a note under section 1271 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

SUBPART D—MISCELLANEOUS PROVISIONS

Sec.
1286. Tax treatment of stripped bonds.
1287. Denial of capital gain treatment for gains on certain obligations not in registered form.
1288. Treatment of original issue discount on tax-exempt obligations.

§1286. Tax treatment of stripped bonds

(a) Inclusion in income as if bond and coupons were original issue discount bonds

If any person purchases after July 1, 1982, a stripped bond or a stripped coupon, then such bond or coupon while held by such purchaser (or by any other person whose basis is determined by reference to the basis in the hands of such purchaser) shall be treated for purposes of this part as a bond originally issued on the purchase date and having an original issue discount equal to the excess (if any) of—

(1) the stated redemption price at maturity (or, in the case of coupon, the amount payable on the due date of such coupon), over

(2) such bond's or coupon's ratable share of the purchase price.

For purposes of paragraph (2), ratable shares shall be determined on the basis of their respective fair market values on the date of purchase.

(b) Tax treatment of person stripping bond

For purposes of this subtitle, if any person strips 1 or more coupons from a bond and after July 1, 1982, disposes of the bond or such coupon—

(1) such person shall include in gross income an amount equal to the sum of—

(A) the interest accrued on such bond while held by such person and before the time such coupon or bond was disposed of (to the extent such interest has not theretofore been included in such person's gross income), and

(B) the accrued market discount on such bond determined as of the time such coupon or bond was disposed of (to the extent such discount has not theretofore been included in such person's gross income),

(2) the basis of the bond and coupons shall be increased by the amount included in gross income under paragraph (1),

(3) the basis of the bond and coupons immediately before the disposition (as adjusted pursuant to paragraph (2)) shall be allocated among the items retained by such person and the items disposed of by such person on the basis of their respective fair market values, and

(4) for purposes of subsection (a), such person shall be treated as having purchased on the date of such disposition each such item which he retains for an amount equal to the basis allocated to such item under paragraph (3).

A rule similar to the rule of paragraph (4) shall apply in the case of any person whose basis in any bond or coupon is determined by reference to the basis of the person described in the preceding sentence.

(c) Retention of existing law for stripped bonds purchased before July 2, 1982

If a bond issued at any time with interest coupons—

(1) is purchased after August 16, 1954, and before January 1, 1958, and the purchaser does not receive all the coupons which first become payable more than 12 months after the date of the purchase, or

(2) is purchased after December 31, 1957, and before July 2, 1982, and the purchaser does not receive all the coupons which first become payable after the date of the purchase,

then the gain on the sale or other disposition of such bond by such purchaser (or by a person whose basis is determined by reference to the basis in the hands of such purchaser) shall be considered as ordinary income to the extent that the fair market value (determined as of the time of the purchase) of the bond with coupons attached exceeds the purchase price. If this subsection and section 1271(a)(2)(A) apply with respect to gain realized on the sale or exchange of any evidence of indebtedness, then section 1271(a)(2)(A) shall apply with respect to that part of the gain to which this subsection does not apply.

(d) Special rules for tax-exempt obligations

(1) In general

In the case of any tax-exempt obligation (as defined in section 1275(a)(3)) from which 1 or more coupons have been stripped—

(A) the amount of the original issue discount determined under subsection (a) with respect to any stripped bond or stripped coupon—

(i) shall be treated as original issue discount on a tax-exempt obligation to the extent such discount does not exceed the tax-exempt portion of such discount, and

(ii) shall be treated as original issue discount on an obligation which is not a tax-exempt obligation to the extent such discount exceeds the tax-exempt portion of such discount,

(B) subsection (b)(1)(A) shall not apply, and

(C) subsection (b)(2) shall be applied by increasing the basis of the bond or coupon by the

sum of—

(i) the interest accrued but not paid before such bond or coupon was disposed of (and not previously reflected in basis), plus

(ii) the amount included in gross income under subsection (b)(1)(B).

(2) Tax-exempt portion

For purposes of paragraph (1), the tax-exempt portion of the original issue discount determined under subsection (a) is the excess of—

(A) the amount referred to in subsection (a)(1), over

(B) an issue price which would produce a yield to maturity as of the purchase date equal to the lower of—

(i) the coupon rate of interest on the obligation from which the coupons were separated, or

(ii) the yield to maturity (on the basis of the purchase price) of the stripped obligation or coupon.

The purchaser of any stripped obligation or coupon may elect to apply clause (i) by substituting "original yield to maturity of" for "coupon rate of interest on".

(e) Definitions and special rules

For purposes of this section—

(1) Bond

The term "bond" means a bond, debenture, note, or certificate or other evidence of indebtedness.

(2) Stripped bond

The term "stripped bond" means a bond issued at any time with interest coupons where there is a separation in ownership between the bond and any coupon which has not yet become payable.

(3) Stripped coupon

The term "stripped coupon" means any coupon relating to a stripped bond.

(4) Stated redemption price at maturity

The term "stated redemption price at maturity" has the meaning given such term by section 1273(a)(2).

(5) Coupon

The term "coupon" includes any right to receive interest on a bond (whether or not evidenced by a coupon). This paragraph shall apply for purposes of subsection (c) only in the case of purchases after July 1, 1982.

(6) Purchase

The term "purchase" has the meaning given such term by section 1272(d)(1).

(f) Treatment of stripped interests in bond and preferred stock funds, etc.

In the case of an account or entity substantially all of the assets of which consist of bonds, preferred stock, or a combination thereof, the Secretary may by regulations provide that rules similar to the rules of this section and 305(e),[1] as appropriate, shall apply to interests in such account or entity to which (but for this subsection) this section or section 305(e), as the case may be, would not apply.

(g) Regulation authority

The Secretary may prescribe regulations providing that where, by reason of varying rates of interest, put or call options, or other circumstances, the tax treatment under this section does not accurately reflect the income of the holder of a stripped coupon or stripped bond, or of the person disposing of such bond or coupon, as the case may be, for any period, such treatment shall be modified to require that the proper amount of income be included for such period.

(Added Pub. L. 98–369, div. A, title I, §41(a), July 18, 1984, 98 Stat. 551; amended Pub. L. 99–514, title XVIII, §§1803(a)(13)(B), 1879(s)(1), Oct. 22, 1986, 100 Stat. 2796, 2912; Pub. L. 100–647, title I, §1018(q)(4)(A), Nov. 10, 1988, 102 Stat. 3585; Pub. L. 108–357, title VIII, §831(a), Oct. 22, 2004, 118 Stat. 1587.)

AMENDMENTS

2004—Subsecs. (f), (g). Pub. L. 108–357 added subsec. (f) and redesignated former subsec. (f) as (g).

1988—Subsec. (d). Pub. L. 100–647 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "In the case of any tax-exempt obligation (as defined in section 1275(a)(3)) from which 1 or more coupons have been stripped—

"(1) the amount of original issue discount determined under subsection (a) with respect to any stripped bond or stripped coupon from such obligation shall be the amount which produces a yield to maturity (as of the purchase date) equal to the lower of—

"(A) the coupon rate of interest on such obligation before the separation of coupons, or

"(B) the yield to maturity (on the basis of purchase price) of the stripped obligation or coupon,

"(2) the amount of original issue discount determined under paragraph (1) shall be taken into account in determining the adjusted basis of the holder under section 1288,

"(3) subsection (b)(1) shall not apply, and

"(4) subsection (b)(2) shall be applied by increasing the basis of the bond or coupon by the interest accrued but not paid before the time such bond or coupon was disposed of (and not previously reflected in basis)."

1986—Subsec. (b)(1). Pub. L. 99–514, §1803(a)(13)(B)(i), amended par. (1) generally, designating existing provisions as subpar. (A) and adding subpar. (B).

Subsec. (b)(2). Pub. L. 99–514, §1803(a)(13)(B)(ii), substituted "the amount included in gross income under paragraph (1)" for "the amount of the accrued interest described in paragraph (1)".

Subsec. (d). Pub. L. 99–514, §1879(s)(1), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "In the case of any tax-exempt obligation (as defined in section 1275(a)(3))—

"(1) subsections (a) and (b)(1) shall not apply,

"(2) the rules of subsection (b)(4) shall apply for purposes of subsection (c), and

"(3) subsection (c) shall be applied without regard to the requirement that the bond be purchased before July 2, 1982."

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to purchases and dispositions after Oct. 22, 2004, see section 831(c) of Pub. L. 108–357, set out as a note under section 305 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1018(q)(4)(B), Nov. 10, 1988, 102 Stat. 3586, provided that:

"(i) Except as provided in clause (ii), the amendment made by subparagraph (A) [amending this section] shall apply to any purchase or sale after June 10, 1987, of any stripped tax-exempt obligation or stripped coupon from such an obligation.

"(ii) If—

"(I) any person held any obligation or coupon in stripped form on June 10, 1987, and

"(II) such obligation or coupon was held by such person on such date for sale in the ordinary course of such person's trade or business,

the amendment made by subparagraph (A) shall not apply to any sale of such obligation or coupon by such person and shall not apply to any such obligation or coupon while held by another person who purchased such obligation or coupon from the person referred to in subclause (I)."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1803(a)(13)(B) of Pub. L. 99–514 applicable to obligations acquired after Oct. 22, 1986, see section 1803(a)(13)(C) of Pub. L. 99–514, set out as a note under section 1276 of this title.

Pub. L. 99–514, title XVIII, §1879(s)(2), Oct. 22, 1986, 100 Stat. 2913, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to any purchase or sale of any stripped tax-exempt obligation or stripped coupon from such an obligation after the date of the enactment of this Act [Oct. 22, 1986]."

EFFECTIVE DATE

Section applicable to taxable years ending after July 18, 1984, except as otherwise provided, see section 44

of Pub. L. 98–369, set out as a note under section 1271 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[1] So in original. Probably should be "section 305(e),".

§1287. Denial of capital gain treatment for gains on certain obligations not in registered form

(a) In general

If any registration-required obligation is not in registered form, any gain on the sale or other disposition of such obligation shall be treated as ordinary income (unless the issuance of such obligation was subject to tax under section 4701).

(b) Definitions

For purposes of subsection (a)—

(1) Registration-required obligation

The term "registration-required obligation" has the meaning given to such term by section 163(f)(2).

(2) Registered form

The term "registered form" has the same meaning as when used in section 163(f).

(Added Pub. L. 98–369, div. A, title I, §41(a), July 18, 1984, 98 Stat. 552; amended Pub. L. 111–147, title V, §502(a)(2)(D), Mar. 18, 2010, 124 Stat. 107.)

AMENDMENTS

2010—Subsec. (b)(1). Pub. L. 111–147 struck out "except that clause (iv) of subparagraph (A), and subparagraph (B), of such section shall not apply" before period.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–147 applicable to obligations issued after the date which is 2 years after Mar. 18, 2010, see section 502(f) of Pub. L. 111–147, set out as a note under section 149 of this title.

EFFECTIVE DATE

Section applicable to taxable years ending after July 18, 1984, except as otherwise provided, see section 44 of Pub. L. 98–369, set out as a note under section 1271 of this title.

§1288. Treatment of original issue discount on tax-exempt obligations

(a) General rule

Original issue discount on any tax-exempt obligation shall be treated as accruing—

(1) for purposes of section 163, in the manner provided by section 1272(a) (determined without regard to paragraph (7) thereof), and

(2) for purposes of determining the adjusted basis of the holder, in the manner provided by section 1272(a) (determined with regard to paragraph (7) thereof).

(b) Definitions and special rules

For purposes of this section—

(1) Original issue discount

The term "original issue discount" has the meaning given to such term by section 1273(a) without regard to paragraph (3) thereof. In applying section 483 or 1274, under regulations prescribed by the Secretary, appropriate adjustments shall be made to the applicable Federal rate to take into account the tax exemption for interest on the obligation.

(2) Tax-exempt obligation

The term "tax-exempt obligation" has the meaning given to such term by section 1275(a)(3).

(3) Short-term obligations

In applying this section to obligations with maturity of 1 year or less, rules similar to the rules of section 1283(b) shall apply.

(Added Pub. L. 98–369, div. A, title I, §41(a), July 18, 1984, 98 Stat. 553; amended Pub. L. 100–647, title I, §1006(u)(3), Nov. 10, 1988, 102 Stat. 3427.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–647 substituted "paragraph (7)" for "paragraph (6)" in pars. (1) and (2).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to taxable years ending after July 18, 1984, and applicable to obligations issued after Sept. 3, 1982, and acquired after Mar. 1, 1984, see section 44 of Pub. L. 98–369, set out as a note under section 1271 of this title.

PART VI—TREATMENT OF CERTAIN PASSIVE FOREIGN INVESTMENT COMPANIES

Subpart

A. Interest on tax deferral.

B. Treatment of qualified electing funds.

C. Election of mark to market for marketable stock.

D. General provisions.

AMENDMENTS

1997—Pub. L. 105–34, title XI, §1122(d)(6), Aug. 5, 1997, 111 Stat. 977, added items for subparts C and D and struck out former item for subpart C "General provisions".

SUBPART A—INTEREST ON TAX DEFERRAL

Sec.

1291. Interest on tax deferral.

§1291. Interest on tax deferral

(a) Treatment of distributions and stock dispositions

(1) Distributions

If a United States person receives an excess distribution in respect of stock in a passive foreign investment company, then—

(A) the amount of the excess distribution shall be allocated ratably to each day in the taxpayer's holding period for the stock,

(B) with respect to such excess distribution, the taxpayer's gross income for the current year shall include (as ordinary income) only the amounts allocated under subparagraph (A) to—

(i) the current year, or

(ii) any period in the taxpayer's holding period before the 1st day of the 1st taxable year of the company which begins after December 31, 1986, and for which it was a passive foreign investment company, and

(C) the tax imposed by this chapter for the current year shall be increased by the deferred tax amount (determined under subsection (c)).

(2) Dispositions

If the taxpayer disposes of stock in a passive foreign investment company, then the rules of paragraph (1) shall apply to any gain recognized on such disposition in the same manner as if such gain were an excess distribution.

(3) Definitions

For purposes of this section—

(A) Holding period

The taxpayer's holding period shall be determined under section 1223; except that—

(i) for purposes of applying this section to an excess distribution, such holding period shall be treated as ending on the date of such distribution, and

(ii) if section 1296 applied to such stock with respect to the taxpayer for any prior taxable year, such holding period shall be treated as beginning on the first day of the first taxable year beginning after the last taxable year for which section 1296 so applied.

(B) Current year

The term "current year" means the taxable year in which the excess distribution or disposition occurs.

(b) Excess distribution

(1) In general

For purposes of this section, the term "excess distribution" means any distribution in respect of stock received during any taxable year to the extent such distribution does not exceed its ratable portion of the total excess distribution (if any) for such taxable year.

(2) Total excess distribution

For purposes of this subsection—

(A) In general

The term "total excess distribution" means the excess (if any) of—

(i) the amount of the distributions in respect of the stock received by the taxpayer during the taxable year, over

(ii) 125 percent of the average amount received in respect of such stock by the taxpayer during the 3 preceding taxable years (or, if shorter, the portion of the taxpayer's holding period before the taxable year).

For purposes of clause (ii), any excess distribution received during such 3-year period shall be taken into account only to the extent it was included in gross income under subsection (a)(1)(B).

(B) No excess for 1st year

The total excess distributions with respect to any stock shall be zero for the taxable year in which the taxpayer's holding period in such stock begins.

(3) Adjustments

Under regulations prescribed by the Secretary—

(A) determinations under this subsection shall be made on a share-by-share basis, except that

shares with the same holding period may be aggregated,

(B) proper adjustments shall be made for stock splits and stock dividends,

(C) if the taxpayer does not hold the stock during the entire taxable year, distributions received during such year shall be annualized,

(D) if the taxpayer's holding period includes periods during which the stock was held by another person, distributions received by such other person shall be taken into account as if received by the taxpayer,

(E) if the distributions are received in a foreign currency, determinations under this subsection shall be made in such currency and the amount of any excess distribution determined in such currency shall be translated into dollars,

(F) proper adjustment shall be made for amounts not includible in gross income by reason of section 959(a) or 1293(c), and

(G) if a charitable deduction was allowable under section 642(c) to a trust for any distribution of its income, proper adjustments shall be made for the deduction so allowable to the extent allocable to distributions or gain in respect of stock in a passive foreign investment company.

(c) Deferred tax amount

For purposes of this section—

(1) In general

The term "deferred tax amount" means, with respect to any distribution or disposition to which subsection (a) applies, an amount equal to the sum of—

(A) the aggregate increases in taxes described in paragraph (2), plus

(B) the aggregate amount of interest (determined in the manner provided under paragraph (3)) on such increases in tax.

Any increase in the tax imposed by this chapter for the current year under subsection (a) to the extent attributable to the amount referred to in subparagraph (B) shall be treated as interest paid under section 6601 on the due date for the current year.

(2) Aggregate increases in taxes

For purposes of paragraph (1)(A), the aggregate increases in taxes shall be determined by multiplying each amount allocated under subsection (a)(1)(A) to any taxable year (other than any taxable year referred to in subsection (a)(1)(B)) by the highest rate of tax in effect for such taxable year under section 1 or 11, whichever applies.

(3) Computation of interest

(A) In general

The amount of interest referred to in paragraph (1)(B) on any increase determined under paragraph (2) for any taxable year shall be determined for the period—

(i) beginning on the due date for such taxable year, and

(ii) ending on the due date for the taxable year with or within which the distribution or disposition occurs,

by using the rates and method applicable under section 6621 for underpayments of tax for such period.

(B) Due date

For purposes of this subsection, the term "due date" means the date prescribed by law (determined without regard to extensions) for filing the return of the tax imposed by this chapter for the taxable year.

(d) Coordination with subparts B and C

(1) In general

This section shall not apply with respect to any distribution paid by a passive foreign investment

company, or any disposition of stock in a passive foreign investment company, if such company is a qualified electing fund with respect to the taxpayer for each of its taxable years—

(A) which begins after December 31, 1986, and for which such company is a passive foreign investment company, and

(B) which includes any portion of the taxpayer's holding period.

Except as provided in section 1296(j), this section also shall not apply if an election under section 1296(k) is in effect for the taxpayer's taxable year. In the case of stock which is marked to market under section 475 or any other provision of this chapter, this section shall not apply, except that rules similar to the rules of section 1296(j) shall apply.

(2) Election to recognize gain where company becomes qualified electing fund

(A) In general

If—

(i) a passive foreign investment company becomes a qualified electing fund with respect to the taxpayer for a taxable year which begins after December 31, 1986,

(ii) the taxpayer holds stock in such company on the first day of such taxable year, and

(iii) the taxpayer establishes to the satisfaction of the Secretary the fair market value of such stock on such first day,

the taxpayer may elect to recognize gain as if he sold such stock on such first day for such fair market value.

(B) Additional election for shareholder of controlled foreign corporations

(i) In general

If—

(I) a passive foreign investment company becomes a qualified electing fund with respect to the taxpayer for a taxable year which begins after December 31, 1986,

(II) the taxpayer holds stock in such company on the first day of such taxable year, and

(III) such company is a controlled foreign corporation (as defined in section 957(a)),

the taxpayer may elect to include in gross income as a dividend received on such first day an amount equal to the portion of the post-1986 earnings and profits of such company attributable (under regulations prescribed by the Secretary) to the stock in such company held by the taxpayer on such first day. The amount treated as a dividend under the preceding sentence shall be treated as an excess distribution and shall be allocated under subsection (a)(1)(A) only to days during periods taken into account in determining the post-1986 earnings and profits so attributable.

(ii) Post-1986 earnings and profits

For purposes of clause (i), the term "post-1986 earnings and profits" means earnings and profits which were accumulated in taxable years of such company beginning after December 31, 1986, and during the period or periods the stock was held by the taxpayer while the company was a passive foreign investment company.

(iii) Coordination with section 959(e)

For purposes of section 959(e), any amount included in gross income under this subparagraph shall be treated as included in gross income under section 1248(a).

(C) Adjustments

In the case of any stock to which subparagraph (A) or (B) applies—

(i) the adjusted basis of such stock shall be increased by the gain recognized under subparagraph (A) or the amount treated as a dividend under subparagraph (B), as the case may be, and

(ii) the taxpayer's holding period in such stock shall be treated as beginning on the first day referred to in such subparagraph.

(e) Certain basis, etc., rules made applicable

Except to the extent inconsistent with the regulations prescribed under subsection (f), rules similar to the rules of subsections (c) and (d) (e),[1] of section 1246 (as in effect on the day before the date of the enactment of the American Jobs Creation Act of 2004) shall apply for purposes of this section; except that—

(1) the reduction under subsection (e) of such section shall be the excess of the basis determined under section 1014 over the adjusted basis of the stock immediately before the decedent's death, and

(2) such a reduction shall not apply in the case of a decedent who was a nonresident alien at all times during his holding period in the stock.

(f) Recognition of gain

To the extent provided in regulations, in the case of any transfer of stock in a passive foreign investment company where (but for this subsection) there is not full recognition of gain, the excess (if any) of—

(1) the fair market value of such stock, over

(2) its adjusted basis,

shall be treated as gain from the sale or exchange of such stock and shall be recognized notwithstanding any provision of law. Proper adjustment shall be made to the basis of any such stock for gain recognized under the preceding sentence.

(g) Coordination with foreign tax credit rules

(1) In general

If there are creditable foreign taxes with respect to any distribution in respect of stock in a passive foreign investment company—

(A) the amount of such distribution shall be determined for purposes of this section with regard to section 78,

(B) the excess distribution taxes shall be allocated ratably to each day in the taxpayer's holding period for the stock, and

(C) to the extent—

(i) that such excess distribution taxes are allocated to a taxable year referred to in subsection (a)(1)(B), such taxes shall be taken into account under section 901 for the current year, and

(ii) that such excess distribution taxes are allocated to any other taxable year, such taxes shall reduce (subject to the principles of section 904(d) and not below zero) the increase in tax determined under subsection (c)(2) for such taxable year by reason of such distribution (but such taxes shall not be taken into account under section 901).

(2) Definitions

For purposes of this subsection—

(A) Creditable foreign taxes

The term "creditable foreign taxes" means, with respect to any distribution—

(i) any foreign taxes deemed paid under section 902 with respect to such distribution, and

(ii) any withholding tax imposed with respect to such distribution,

but only if the taxpayer chooses the benefits of section 901 and such taxes are creditable under section 901 (determined without regard to paragraph (1)(C)(ii)).

(B) Excess distribution taxes

The term "excess distribution taxes" means, with respect to any distribution, the portion of

the creditable foreign taxes with respect to such distribution which is attributable (on a pro rata basis) to the portion of such distribution which is an excess distribution.

(C) Section 1248 gain

The rules of this subsection also shall apply in the case of any gain which but for this section would be includible in gross income as a dividend under section 1248.

(Added Pub. L. 99–514, title XII, §1235(a), Oct. 22, 1986, 100 Stat. 2566; amended Pub. L. 100–647, title I, §1012(p)(1), (3), (6), (7), (9), (12)–(14), (28), (31), (33), title VI, §6127(b), Nov. 10, 1988, 102 Stat. 3515–3517, 3520, 3521, 3715; Pub. L. 105–34, title XI, §1122(b), Aug. 5, 1997, 111 Stat. 976; Pub. L. 105–206, title VI, §6011(c)(2), July 22, 1998, 112 Stat. 818; Pub. L. 107–16, title V, §542(e)(5)(B), June 7, 2001, 115 Stat. 85; Pub. L. 108–357, title IV, §413(c)(24), Oct. 22, 2004, 118 Stat. 1509; Pub. L. 111–147, title V, §521(b), Mar. 18, 2010, 124 Stat. 112; Pub. L. 111–312, title III, §301(a), Dec. 17, 2010, 124 Stat. 3300.)

REFERENCES IN TEXT

The date of the enactment of the American Jobs Creation Act of 2004, referred to in subsec. (e), is the date of enactment of Pub. L. 108–357, which was approved Oct. 22, 2004.

AMENDMENTS

2010—Subsec. (e). Pub. L. 111–312, which directed that subsec. (e) be amended to read as if amendment by Pub. L. 107–16, §542(e)(5)(B), had never been enacted, was executed by inserting "(e)," after "subsections (c) and (d)" and substituting "; except that—" and pars. (1) and (2) for the period at end. See 2001 Amendment note below.

Pub. L. 111–147 substituted "and (d)" for ", (d), and (f)".

2004—Subsec. (b)(3)(F). Pub. L. 108–357, §413(c)(24)(A), substituted "959(a)" for "551(d), 959(a),".

Subsec. (e). Pub. L. 108–357, §413(c)(24)(B), inserted "(as in effect on the day before the date of the enactment of the American Jobs Creation Act of 2004)" after "section 1246" in introductory provisions.

2001—Subsec. (e). Pub. L. 107–16, §542(e)(5)(B), struck out "(e)," after "subsections (c), (d)," and substituted period at end for "; except that—

"(1) the reduction under subsection (e) of such section shall be the excess of the basis determined under section 1014 over the adjusted basis of the stock immediately before the decedent's death, and

"(2) such a reduction shall not apply in the case of a decedent who was a nonresident alien at all times during his holding period in the stock."

1998—Subsec. (d)(1). Pub. L. 105–206 inserted at end "In the case of stock which is marked to market under section 475 or any other provision of this chapter, this section shall not apply, except that rules similar to the rules of section 1296(j) shall apply."

1997—Subsec. (a)(3)(A). Pub. L. 105–34, §1122(b)(3), amended heading and text of subpar. (A) generally. Prior to amendment, text read as follows: "The taxpayer's holding period shall be determined under section 1223; except that, for purposes of applying this section to an excess distribution, such holding period shall be treated as ending on the date of such distribution."

Subsec. (d). Pub. L. 105–34, §1122(b)(2), substituted "subparts B and C" for "subpart B" in heading.

Subsec. (d)(1). Pub. L. 105–34, §1122(b)(1), inserted concluding provisions.

1988—Subsec. (a)(1)(B)(ii). Pub. L. 100–647, §1012(p)(12), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: "any period in the taxpayer's holding period before the 1st day of the 1st taxable year of the company for which it was a passive foreign investment company (or, if later, January 1, 1987), and".

Subsec. (a)(3)(A). Pub. L. 100–647, §1012(p)(14), substituted "for purposes of applying this section to" for "in the case of".

Subsec. (a)(4), (5). Pub. L. 100–647, §1012(p)(7)(A), struck out par. (4) which related to coordination with section 904, and par. (5) which related to section 902 not applying.

Subsec. (b)(2)(A). Pub. L. 100–647, §1012(p)(13), inserted at end "For purposes of clause (ii), any excess distribution received during such 3-year period shall be taken into account only to the extent it was included in gross income under subsection (a)(1)(B)."

Subsec. (b)(3)(F). Pub. L. 100–647, §1012(p)(3), added subpar. (F).

Subsec. (b)(3)(G). Pub. L. 100–647, §1012(p)(33), added subpar. (G).

Subsec. (c)(1). Pub. L. 100–647, §1012(p)(31), inserted at end "Any increase in the tax imposed by this chapter for the current year under subsection (a) to the extent attributable to the amount referred to in

subparagraph (B) shall be treated as interest paid under section 6601 on the due date for the current year."

Subsec. (d)(1). Pub. L. 100–647, §6127(b)(1), inserted "with respect to the taxpayer" after "qualified electing fund".

Pub. L. 100–647, §1012(p)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "This section shall not apply with respect to—

"(A) any distribution paid by a passive foreign investment company during a taxable year for which such company is a qualified electing fund, and

"(B) any disposition of stock in a passive foreign investment company if such company is a qualified electing fund for each of its taxable years—

"(i) which begins after December 31, 1986, and for which such company is a passive foreign investment company, and

"(ii) which includes any portion of the taxpayer's holding period."

Subsec. (d)(2)(A)(i). Pub. L. 100–647, §6127(b)(2), inserted "with respect to the taxpayer" after "qualified electing fund".

Subsec. (d)(2)(B). Pub. L. 100–647, §1012(p)(28), added subpar. (B) and struck out former subpar. (B) which related to adjustments to basis of stock to which subpar. (A) applies.

Subsec. (d)(2)(B)(i)(I). Pub. L. 100–647, §6127(b)(2), inserted "with respect to the taxpayer" after "qualified electing fund".

Subsec. (d)(2)(C). Pub. L. 100–647, §1012(p)(28), added subpar. (C).

Subsec. (e). Pub. L. 100–647, §1012(p)(6)(B), substituted "Except to the extent inconsistent with the regulations prescribed under subsection (f), rules similar".

Subsec. (e)(2). Pub. L. 100–647, §1012(p)(9), struck out "not" before "a nonresident".

Subsec. (f). Pub. L. 100–647, §1012(p)(6)(A), amended subsec. (f) generally. Prior to amendment, subsec. (f), "Nonrecognition provisions", read as follows: "To the extent provided in regulations, gain shall be recognized on any disposition of stock in a passive foreign investment company."

Subsec. (g). Pub. L. 100–647, §1012(p)(7)(B), added subsec. (g).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–312 applicable to estates of decedents dying, and transfers made after Dec. 31, 2009, except as otherwise provided, see section 301(e) of Pub. L. 111–312, set out as an Effective and Termination Dates of 2010 Amendment note under section 121 of this title.

Pub. L. 111–147, title V, §521(c), Mar. 18, 2010, 124 Stat. 112, provided that: "The amendments made by this section [amending this section and section 1298 of this title] take effect on the date of the enactment of this Act [Mar. 18, 2010]."

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to estates of decedents dying after Dec. 31, 2009, see section 542(f)(1) of Pub. L. 107–16, set out as a note under section 121 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to taxable years of United States persons beginning after Dec. 31, 1997, and to taxable years of foreign corporations ending with or within such taxable years of United States persons, see section 1124 of Pub. L. 105–34, set out as a note under section 532 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1012(p)(1), (3), (6), (7), (9), (12)–(14), (28), (31), (33) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under

section 1 of this title.

Amendment by section 6127(b) of Pub. L. 100–647 effective as if included in the amendments made by section 1235 of Pub. L. 99–514, see section 6127(c)(1) of Pub. L. 100–647, set out as a note under section 1295 of this title.

EFFECTIVE DATE

Pub. L. 99–514, title XII, §1235(h), Oct. 22, 1986, 100 Stat. 2576, provided that: "The amendments made by this section [enacting this section and sections 1293 to 1297 of this title and amending sections 532, 542, 551, 851, 904, 951, 1246, and 6503 of this title] shall apply to taxable years of foreign corporations beginning after December 31, 1986."

[1] *So in original. See 2010 Amendment notes below.*

SUBPART B—TREATMENT OF QUALIFIED ELECTING FUNDS

Sec.

1293. Current taxation of income from qualified electing funds.

1294. Election to extend time for payment of tax on undistributed earnings.

1295. Qualified electing fund.

§1293. Current taxation of income from qualified electing funds

(a) Inclusion

(1) In general

Every United States person who owns (or is treated under section 1298(a) as owning) stock of a qualified electing fund at any time during the taxable year of such fund shall include in gross income—

(A) as ordinary income, such shareholder's pro rata share of the ordinary earnings of such fund for such year, and

(B) as long-term capital gain, such shareholder's pro rata share of the net capital gain of such fund for such year.

(2) Year of inclusion

The inclusion under paragraph (1) shall be for the taxable year of the shareholder in which or with which the taxable year of the fund ends.

(b) Pro rata share

The pro rata share referred to in subsection (a) in the case of any shareholder is the amount which would have been distributed with respect to the shareholder's stock if, on each day during the taxable year of the fund, the fund had distributed to each shareholder a pro rata share of that day's ratable share of the fund's ordinary earnings and net capital gain for such year. To the extent provided in regulations, if the fund establishes to the satisfaction of the Secretary that it uses a shorter period than the taxable year to determine shareholders' interests in the earnings of such fund, pro rata shares may be determined by using such shorter period.

(c) Previously taxed amounts distributed tax free

If the taxpayer establishes to the satisfaction of the Secretary that any amount distributed by a passive foreign investment company is paid out of earnings and profits of the company which were included under subsection (a) in the income of any United States person, such amount shall be treated, for purposes of this chapter, as a distribution which is not a dividend; except that such distribution shall immediately reduce earnings and profits. If the passive foreign investment company is a controlled foreign corporation (as defined in section 957(a)), the preceding sentence

shall not apply to any United States shareholder (as defined in section 951(b)) in such corporation, and, in applying section 959 to any such shareholder, any inclusion under this section shall be treated as an inclusion under section 951(a)(1)(A).

(d) Basis adjustments

The basis of the taxpayer's stock in a passive foreign investment company shall be—

(1) increased by any amount which is included in the income of the taxpayer under subsection (a) with respect to such stock, and

(2) decreased by any amount distributed with respect to such stock which is not includible in the income of the taxpayer by reason of subsection (c).

A similar rule shall apply also in the case of any property if by reason of holding such property the taxpayer is treated under section 1298(a) as owning stock in a qualified electing fund.

(e) Ordinary earnings

For purposes of this section—

(1) Ordinary earnings

The term "ordinary earnings" means the excess of the earnings and profits of the qualified electing fund for the taxable year over its net capital gain for such taxable year.

(2) Limitation on net capital gain

A qualified electing fund's net capital gain for any taxable year shall not exceed its earnings and profits for such taxable year.

(3) Determination of earnings and profits

The earnings and profits of any qualified electing fund shall be determined without regard to paragraphs (4), (5), and (6) of section 312(n). Under regulations, the preceding sentence shall not apply to the extent it would increase earnings and profits by an amount which was previously distributed by the qualified electing fund.

(f) Foreign tax credit allowed in the case of 10-percent corporate shareholder

For purposes of section 960—

(1) any amount included in the gross income under subsection (a) shall be treated as if it were included under section 951(a), and

(2) any amount excluded from gross income under subsection (c) shall be treated in the same manner as amounts excluded from gross income under section 959.

(g) Other special rules

(1) Exception for certain income

For purposes of determining the amount included in the gross income of any person under this section, the ordinary earnings and net capital gain of a qualified electing fund shall not include any item of income received by such fund if—

(A) such fund is a controlled foreign corporation (as defined in section 957(a)) and such person is a United States shareholder (as defined in section 951(b)) in such fund, and

(B) such person establishes to the satisfaction of the Secretary that—

(i) such income was subject to an effective rate of income tax imposed by a foreign country greater than 90 percent of the maximum rate of tax specified in section 11, or

(ii) such income is—

(I) from sources within the United States,

(II) effectively connected with the conduct by the qualified electing fund of a trade or business in the United States, and

(III) not exempt from taxation (or subject to a reduced rate of tax) pursuant to a treaty obligation of the United States.

(2) Prevention of double inclusion

The Secretary shall prescribe such adjustment to the provisions of this section as may be necessary to prevent the same item of income of a qualified electing fund from being included in the gross income of a United States person more than once.

(Added Pub. L. 99–514, title XII, §1235(a), Oct. 22, 1986, 100 Stat. 2569; amended Pub. L. 100–647, title I, §1012(p)(15), (18), (23), (32), Nov. 10, 1988, 102 Stat. 3518, 3519, 3521; Pub. L. 103–66, title XIII, §13231(c)(3), Aug. 10, 1993, 107 Stat. 498; Pub. L. 105–34, title XI, §1122(d)(3), Aug. 5, 1997, 111 Stat. 977.)

AMENDMENTS

1997—Subsecs. (a)(1), (d). Pub. L. 105–34 substituted "section 1298(a)" for "section 1297(a)".

1993—Subsec. (c). Pub. L. 103–66 inserted at end "If the passive foreign investment company is a controlled foreign corporation (as defined in section 957(a)), the preceding sentence shall not apply to any United States shareholder (as defined in section 951(b)) in such corporation, and, in applying section 959 to any such shareholder, any inclusion under this section shall be treated as an inclusion under section 951(a)(1)(A)."

1988—Subsec. (b). Pub. L. 100–647, §1012(p)(15), inserted at end "To the extent provided in regulations, if the fund establishes to the satisfaction of the Secretary that it uses a shorter period than the taxable year to determine shareholders' interests in the earnings of such fund, pro rata shares may be determined by using such shorter period."

Subsec. (c). Pub. L. 100–647, §1012(p)(23), inserted ", for purposes of this chapter," after "shall be treated", and "; except that such distribution shall immediately reduce earnings and profits" after "is not a dividend".

Subsec. (e)(3). Pub. L. 100–647, §1012(p)(18), added par. (3).

Subsec. (g). Pub. L. 100–647, §1012(p)(32), added subsec. (g).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to taxable years of United States persons beginning after Dec. 31, 1997, and to taxable years of foreign corporations ending with or within such taxable years of United States persons, see section 1124 of Pub. L. 105–34, set out as a note under section 532 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to taxable years of foreign corporations beginning after Sept. 30, 1993, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, see section 13231(e) of Pub. L. 103–66, set out as a note under section 951 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to taxable years of foreign corporations beginning after Dec. 31, 1986, see section 1235(h) of Pub. L. 99–514, set out as a note under section 1291 of this title.

§1294. Election to extend time for payment of tax on undistributed earnings

(a) Extension allowed by election

(1) In general

At the election of the taxpayer, the time for payment of any undistributed PFIC earnings tax liability of the taxpayer for the taxable year shall be extended to the extent and subject to the limitations provided in this section.

(2) Election not permitted where amounts otherwise includible under section 951

The taxpayer may not make an election under paragraph (1) with respect to the undistributed PFIC earnings tax liability attributable to a qualified electing fund for the taxable year if any amount is includible in the gross income of the taxpayer under section 951 with respect to such fund for such taxable year.

(b) Definitions

For purposes of this section—

(1) Undistributed PFIC earnings tax liability

The term "undistributed PFIC earnings tax liability" means, in the case of any taxpayer, the excess of—

(A) the tax imposed by this chapter for the taxable year, over

(B) the tax which would be imposed by this chapter for such year without regard to the inclusion in gross income under section 1293 of the undistributed earnings of a qualified electing fund.

(2) Undistributed earnings

The term "undistributed earnings" means, with respect to any qualified electing fund, the excess (if any) of—

(A) the amount includible in gross income by reason of section 1293(a) for the taxable year, over

(B) the amount not includible in gross income by reason of section 1293(c) for such taxable year.

(c) Termination of extension

(1) Distributions

(A) In general

If a distribution is not includible in gross income for the taxable year by reason of section 1293(c), then the extension under subsection (a) for payment of the undistributed PFIC earnings tax liability with respect to the earnings to which such distribution is attributable shall expire on the last date prescribed by law (determined without regard to extensions) for filing the return of tax for such taxable year.

(B) Ordering rule

For purposes of subparagraph (A), a distribution shall be treated as made from the most recently accumulated earnings and profits.

(2) Transfers, etc.

If—

(A) stock in a passive foreign investment company is transferred during the taxable year, or

(B) a passive foreign investment company ceases to be a qualified electing fund,

all extensions under subsection (a) for payment of undistributed PFIC earnings tax liability attributable to such stock (or, in the case of such a cessation, attributable to any stock in such company) which had not expired before the date of such transfer or cessation shall expire on the last date prescribed by law (determined without regard to extensions) for filing the return of tax for the taxable year in which such transfer or cessation occurs. To the extent provided in regulations, the preceding sentence shall not apply in the case of a transfer in a transaction with respect to which gain or loss is not recognized (in whole or in part), and the transferee in such transaction shall succeed to the treatment under this section of the transferor.

(3) Jeopardy

If the Secretary believes that collection of an amount to which an extension under this section relates is in jeopardy, the Secretary shall immediately terminate such extension with respect to such amount, and notice and demand shall be made by him for payment of such amount.

(d) Election

The election under subsection (a) shall be made not later than the time prescribed by law (including extensions) for filing the return of tax imposed by this chapter for the taxable year.

(e) Authority to require bond

Section 6165 shall apply to any extension under this section as though the Secretary were extending the time for payment of the tax.

(f) Treatment of loans to shareholder

For purposes of this section and section 1293, any loan by a qualified electing fund (directly or indirectly) to a shareholder of such fund shall be treated as a distribution to such shareholder.

(g) Cross reference

For provisions providing for interest for the period of the extension under this section, see section 6601.

(Added Pub. L. 99–514, title XII, §1235(a), Oct. 22, 1986, 100 Stat. 2570; amended Pub. L. 100–647, title I, §1012(p)(4), (8), (25), (34), Nov. 10, 1988, 102 Stat. 3515, 3517, 3519, 3522; Pub. L. 108–357, title IV, §413(c)(25), Oct. 22, 2004, 118 Stat. 1509.)

AMENDMENTS

2004—Subsec. (a)(2). Pub. L. 108–357 amended heading and text of par. (2) generally. Prior to amendment, text read as follows: "The taxpayer may not make an election under paragraph (1) with respect to the undistributed PFIC earnings tax liability attributable to a qualified electing fund for the taxable year if—

"(A) any amount is includible in the gross income of the taxpayer under section 551 with respect to such fund for such taxable year, or

"(B) any amount is includible in the gross income of the taxpayer under section 951 with respect to such fund for such taxable year."

1988—Subsec. (c)(2). Pub. L. 100–647, §1012(p)(4), (34), substituted "Transfers" for "Dispositions" in heading and "is transferred" for "is disposed of" in subpar. (A), and in closing provisions substituted "such transfer" for "such disposition" in two places and inserted at end "To the extent provided in regulations, the preceding sentence shall not apply in the case of a transfer in a transaction with respect to which gain or loss is not recognized (in whole or in part), and the transferee in such transaction shall succeed to the treatment under this section of the transferor."

Subsec. (f). Pub. L. 100–647, §1012(p)(25), added subsec. (f).

Subsec. (g). Pub. L. 100–647, §1012(p)(8), added subsec. (g).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to taxable years of foreign corporations beginning after Dec. 31, 1986, see section 1235(h) of Pub. L. 99–514, set out as a note under section 1291 of this title.

§1295. Qualified electing fund

(a) General rule

For purposes of this part, any passive foreign investment company shall be treated as a qualified electing fund with respect to the taxpayer if—

(1) an election by the taxpayer under subsection (b) applies to such company for the taxable year, and

(2) such company complies with such requirements as the Secretary may prescribe for purposes of—

(A) determining the ordinary earnings and net capital gain of such company, and
(B) otherwise carrying out the purposes of this subpart.

(b) Election

(1) In general

A taxpayer may make an election under this subsection with respect to any passive foreign investment company for any taxable year of the taxpayer. Such an election, once made with respect to any company, shall apply to all subsequent taxable years of the taxpayer with respect to such company unless revoked by the taxpayer with the consent of the Secretary.

(2) When made

An election under this subsection may be made for any taxable year at any time on or before the due date (determined with regard to extensions) for filing the return of the tax imposed by this chapter for such taxable year. To the extent provided in regulations, such an election may be made later than as required in the preceding sentence where the taxpayer fails to make a timely election because the taxpayer reasonably believed that the company was not a passive foreign investment company.

(Added Pub. L. 99–514, title XII, §1235(a), Oct. 22, 1986, 100 Stat. 2571; amended Pub. L. 100–647, title I, §1012(p)(37)(A), title VI, §6127(a), Nov. 10, 1988, 102 Stat. 3522, 3715.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–647, §6127(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "For purposes of this part, the term 'qualified electing fund' means any passive foreign investment company if—

"(1) an election under subsection (b) applies to such company for the taxable year, and

"(2) such company complies for such taxable year with such requirements as the Secretary may prescribe for purposes of—

"(A) determining the ordinary earnings and net capital gain of such company for the taxable year,

"(B) ascertaining the ownership of its outstanding stock, and

"(C) otherwise carrying out the purposes of this subpart."

Subsec. (b). Pub. L. 100–647, §6127(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

"(1) IN GENERAL.—A passive foreign investment company may make an election under this subsection for any taxable year. Such an election, once made, shall apply to all subsequent taxable years of such company for which such company is a passive foreign investment company unless revoked with the consent of the Secretary.

"(2) WHEN MADE.—An election under this subsection may be made for any taxable year at any time before the 15th day of the 3rd month of the following taxable year. To the extent provided in regulations, such an election may be made later than as required by the preceding sentence in cases where the company failed to make a timely election because it reasonably believed it was not a passive foreign investment company."

Pub. L. 100–647, §1012(p)(37)(A), inserted sentence at end of par. (2) permitting a later election when a company reasonably believed it was not a passive foreign investment company.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1012(p)(37)(A) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title VI, §6127(c), Nov. 10, 1988, 102 Stat. 3715, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and section 1291 of this title] shall take effect as if included in the amendments made by section 1235 of the Reform Act [Pub. L. 99–514].

"(2) TIME FOR MAKING ELECTION.—The period during which an election under section 1295(b) of the 1986 Code may be made shall in no event expire before the date 60 days after the date of the enactment of this Act [Nov. 10, 1988]."

EFFECTIVE DATE

Section applicable to taxable years of foreign corporations beginning after Dec. 31, 1986, see section

1235(h) of Pub. L. 99–514, set out as a note under section 1291 of this title.

EXPIRATION OF SUBSECTION (B) ELECTION PERIOD

Pub. L. 100–647, title I, §1012(p)(37)(B), Nov. 10, 1988, 102 Stat. 3522, provided that: "The period during which an election under section 1295(b) of the 1986 Code may be made shall in no event expire before the date 60 days after the date of enactment of this Act [Nov. 10, 1988]."

SUBPART C—ELECTION OF MARK TO MARKET FOR MARKETABLE STOCK

Sec.
1296. Election of mark to market for marketable stock.

AMENDMENTS

1997—Pub. L. 105–34, title XI, §1122(a), Aug. 5, 1997, 111 Stat. 972, added subpart C and item 1296. Former subpart C redesignated D.

PRIOR PROVISIONS

A prior subpart C, consisting of sections 1296 and 1297 of this title, was redesignated subpart D consisting of sections 1297 and 1298.

§1296. Election of mark to market for marketable stock

(a) General rule

In the case of marketable stock in a passive foreign investment company which is owned (or treated under subsection (g) as owned) by a United States person at the close of any taxable year of such person, at the election of such person—

(1) If the fair market value of such stock as of the close of such taxable year exceeds its adjusted basis, such United States person shall include in gross income for such taxable year an amount equal to the amount of such excess.

(2) If the adjusted basis of such stock exceeds the fair market value of such stock as of the close of such taxable year, such United States person shall be allowed a deduction for such taxable year equal to the lesser of—

(A) the amount of such excess, or

(B) the unreversed inclusions with respect to such stock.

(b) Basis adjustments

(1) In general

The adjusted basis of stock in a passive foreign investment company—

(A) shall be increased by the amount included in the gross income of the United States person under subsection (a)(1) with respect to such stock, and

(B) shall be decreased by the amount allowed as a deduction to the United States person under subsection (a)(2) with respect to such stock.

(2) Special rule for stock constructively owned

In the case of stock in a passive foreign investment company which the United States person is treated as owning under subsection (g)—

(A) the adjustments under paragraph (1) shall apply to such stock in the hands of the person actually holding such stock but only for purposes of determining the subsequent treatment under this chapter of the United States person with respect to such stock, and

(B) similar adjustments shall be made to the adjusted basis of the property by reason of which the United States person is treated as owning such stock.

(c) Character and source rules

(1) Ordinary treatment

(A) Gain

Any amount included in gross income under subsection (a)(1), and any gain on the sale or other disposition of marketable stock in a passive foreign investment company (with respect to which an election under this section is in effect), shall be treated as ordinary income.

(B) Loss

Any—

(i) amount allowed as a deduction under subsection (a)(2), and

(ii) loss on the sale or other disposition of marketable stock in a passive foreign investment company (with respect to which an election under this section is in effect) to the extent that the amount of such loss does not exceed the unreversed inclusions with respect to such stock,

shall be treated as an ordinary loss. The amount so treated shall be treated as a deduction allowable in computing adjusted gross income.

(2) Source

The source of any amount included in gross income under subsection (a)(1) (or allowed as a deduction under subsection (a)(2)) shall be determined in the same manner as if such amount were gain or loss (as the case may be) from the sale of stock in the passive foreign investment company.

(d) Unreversed inclusions

For purposes of this section, the term "unreversed inclusions" means, with respect to any stock in a passive foreign investment company, the excess (if any) of—

(1) the amount included in gross income of the taxpayer under subsection (a)(1) with respect to such stock for prior taxable years, over

(2) the amount allowed as a deduction under subsection (a)(2) with respect to such stock for prior taxable years.

The amount referred to in paragraph (1) shall include any amount which would have been included in gross income under subsection (a)(1) with respect to such stock for any prior taxable year but for section 1291. In the case of a regulated investment company which elected to mark to market the stock held by such company as of the last day of the taxable year preceding such company's first taxable year for which such company elects the application of this section, the amount referred to in paragraph (1) shall include amounts included in gross income under such mark to market with respect to such stock for prior taxable years.

(e) Marketable stock

For purposes of this section—

(1) In general

The term "marketable stock" means—

(A) any stock which is regularly traded on—

(i) a national securities exchange which is registered with the Securities and Exchange Commission or the national market system established pursuant to section 11A of the Securities and Exchange Act of 1934, or

(ii) any exchange or other market which the Secretary determines has rules adequate to carry out the purposes of this part,

(B) to the extent provided in regulations, stock in any foreign corporation which is comparable to a regulated investment company and which offers for sale or has outstanding any stock of which it is the issuer and which is redeemable at its net asset value, and

(C) to the extent provided in regulations, any option on stock described in subparagraph (A) or (B).

(2) Special rule for regulated investment companies

In the case of any regulated investment company which is offering for sale or has outstanding any stock of which it is the issuer and which is redeemable at its net asset value, all stock in a passive foreign investment company which it owns directly or indirectly shall be treated as marketable stock for purposes of this section. Except as provided in regulations, similar treatment as marketable stock shall apply in the case of any other regulated investment company which publishes net asset valuations at least annually.

(f) Treatment of controlled foreign corporations which are shareholders in passive foreign investment companies

In the case of a foreign corporation which is a controlled foreign corporation and which owns (or is treated under subsection (g) as owning) stock in a passive foreign investment company—

(1) this section (other than subsection (c)(2)) shall apply to such foreign corporation in the same manner as if such corporation were a United States person, and

(2) for purposes of subpart F of part III of subchapter N—

(A) any amount included in gross income under subsection (a)(1) shall be treated as foreign personal holding company income described in section 954(c)(1)(A), and

(B) any amount allowed as a deduction under subsection (a)(2) shall be treated as a deduction allocable to foreign personal holding company income so described.

(g) Stock owned through certain foreign entities

Except as provided in regulations—

(1) In general

For purposes of this section, stock owned, directly or indirectly, by or for a foreign partnership or foreign trust or foreign estate shall be considered as being owned proportionately by its partners or beneficiaries. Stock considered to be owned by a person by reason of the application of the preceding sentence shall, for purposes of applying such sentence, be treated as actually owned by such person.

(2) Treatment of certain dispositions

In any case in which a United States person is treated as owning stock in a passive foreign investment company by reason of paragraph (1)—

(A) any disposition by the United States person or by any other person which results in the United States person being treated as no longer owning such stock, and

(B) any disposition by the person owning such stock,

shall be treated as a disposition by the United States person of the stock in the passive foreign investment company.

(h) Coordination with section 851(b)

For purposes of section 851(b)(2), any amount included in gross income under subsection (a) shall be treated as a dividend.

(i) Stock acquired from a decedent

In the case of stock of a passive foreign investment company which is acquired by bequest, devise, or inheritance (or by the decedent's estate) and with respect to which an election under this section was in effect as of the date of the decedent's death, notwithstanding section 1014, the basis of such stock in the hands of the person so acquiring it shall be the adjusted basis of such stock in the hands of the decedent immediately before his death (or, if lesser, the basis which would have been determined under section 1014 without regard to this subsection).

(j) Coordination with section 1291 for first year of election

(1) Taxpayers other than regulated investment companies

(A) In general

If the taxpayer elects the application of this section with respect to any marketable stock in a corporation after the beginning of the taxpayer's holding period in such stock, and if the requirements of subparagraph (B) are not satisfied, section 1291 shall apply to—

(i) any distributions with respect to, or disposition of, such stock in the first taxable year of the taxpayer for which such election is made, and

(ii) any amount which, but for section 1291, would have been included in gross income under subsection (a) with respect to such stock for such taxable year in the same manner as if such amount were gain on the disposition of such stock.

(B) Requirements

The requirements of this subparagraph are met if, with respect to each of such corporation's taxable years for which such corporation was a passive foreign investment company and which begin after December 31, 1986, and included any portion of the taxpayer's holding period in such stock, such corporation was treated as a qualified electing fund under this part with respect to the taxpayer.

(2) Special rules for regulated investment companies

(A) In general

If a regulated investment company elects the application of this section with respect to any marketable stock in a corporation after the beginning of the taxpayer's holding period in such stock, then, with respect to such company's first taxable year for which such company elects the application of this section with respect to such stock—

(i) section 1291 shall not apply to such stock with respect to any distribution or disposition during, or amount included in gross income under this section for, such first taxable year, but

(ii) such regulated investment company's tax under this chapter for such first taxable year shall be increased by the aggregate amount of interest which would have been determined under section 1291(c)(3) if section 1291 were applied without regard to this subparagraph.

Clause (ii) shall not apply if for the preceding taxable year the company elected to mark to market the stock held by such company as of the last day of such preceding taxable year.

(B) Disallowance of deduction

No deduction shall be allowed to any regulated investment company for the increase in tax under subparagraph (A)(ii).

(k) Election

This section shall apply to marketable stock in a passive foreign investment company which is held by a United States person only if such person elects to apply this section with respect to such stock. Such an election shall apply to the taxable year for which made and all subsequent taxable years unless—

(1) such stock ceases to be marketable stock, or

(2) the Secretary consents to the revocation of such election.

(l) Transition rule for individuals becoming subject to United States tax

If any individual becomes a United States person in a taxable year beginning after December 31, 1997, solely for purposes of this section, the adjusted basis (before adjustments under subsection (b)) of any marketable stock in a passive foreign investment company owned by such individual on the first day of such taxable year shall be treated as being the greater of its fair market value on such first day or its adjusted basis on such first day.

(Added Pub. L. 105–34, title XI, §1122(a), Aug. 5, 1997, 111 Stat. 972; amended Pub. L. 105–206, title VI, §6011(c)(3), July 22, 1998, 112 Stat. 818; Pub. L. 107–16, title V, §542(e)(5)(C), June 7, 2001, 115 Stat. 85; Pub. L. 108–311, title IV, §408(a)(19), Oct. 4, 2004, 118 Stat. 1192; Pub. L. 111–312, title III, §301(a), Dec. 17, 2010, 124 Stat. 3300.)

REFERENCES IN TEXT

Section 11A of the Securities and Exchange Act of 1934, referred to in subsec. (e)(1)(A)(i), is classified to section 78k–1 of Title 15, Commerce and Trade.

PRIOR PROVISIONS

A prior section 1296 was renumbered section 1297 of this title.

AMENDMENTS

2010—Subsec. (i). Pub. L. 111–312 amended subsec. (i) to read as if amendment by Pub. L. 107–16, §542(e)(5)(C), had never been enacted. See 2001 Amendment note below.

2004—Subsec. (h). Pub. L. 108–311 substituted "section 851(b)(2)" for "paragraphs (2) and (3) of section 851(b)".

2001—Subsec. (i). Pub. L. 107–16, §542(e)(5)(C), struck out subsec. (i). Text read as follows: "In the case of stock of a passive foreign investment company which is acquired by bequest, devise, or inheritance (or by the decedent's estate) and with respect to which an election under this section was in effect as of the date of the decedent's death, notwithstanding section 1014, the basis of such stock in the hands of the person so acquiring it shall be the adjusted basis of such stock in the hands of the decedent immediately before his death (or, if lesser, the basis which would have been determined under section 1014 without regard to this subsection)."

1998—Subsec. (d). Pub. L. 105–206 inserted at end "In the case of a regulated investment company which elected to mark to market the stock held by such company as of the last day of the taxable year preceding such company's first taxable year for which such company elects the application of this section, the amount referred to in paragraph (1) shall include amounts included in gross income under such mark to market with respect to such stock for prior taxable years."

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–312 applicable to estates of decedents dying, and transfers made after Dec. 31, 2009, except as otherwise provided, see section 301(e) of Pub. L. 111–312, set out as an Effective and Termination Dates of 2010 Amendment note under section 121 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to estates of decedents dying after Dec. 31, 2009, see section 542(f)(1) of Pub. L. 107–16, set out as a note under section 121 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to taxable years of United States persons beginning after Dec. 31, 1997, and to taxable years of foreign corporations ending with or within such taxable years of United States persons, see section 1124 of Pub. L. 105–34, set out as an Effective Date of 1997 Amendment note under section 532 of this title.

SUBPART D—GENERAL PROVISIONS

Sec.
1297. Passive foreign investment company.
1298. Special rules.

AMENDMENTS

1997—Pub. L. 105–34, title XI, §1122(a), (d)(5), Aug. 5, 1997, 111 Stat. 972, 977, redesignated subpart C of this part as this subpart and amended table of sections generally, renumbering items 1296 and 1297 as 1297 and 1298, respectively.

§1297. Passive foreign investment company

(a) In general

For purposes of this part, except as otherwise provided in this subpart, the term "passive foreign investment company" means any foreign corporation if—

(1) 75 percent or more of the gross income of such corporation for the taxable year is passive income, or

(2) the average percentage of assets (as determined in accordance with subsection (e)) held by such corporation during the taxable year which produce passive income or which are held for the production of passive income is at least 50 percent.

(b) Passive income

For purposes of this section—

(1) In general

Except as provided in paragraph (2), the term "passive income" means any income which is of a kind which would be foreign personal holding company income as defined in section 954(c).

(2) Exceptions

Except as provided in regulations, the term "passive income" does not include any income—

(A) derived in the active conduct of a banking business by an institution licensed to do business as a bank in the United States (or, to the extent provided in regulations, by any other corporation),

(B) derived in the active conduct of an insurance business by a corporation which is predominantly engaged in an insurance business and which would be subject to tax under subchapter L if it were a domestic corporation,

(C) which is interest, a dividend, or a rent or royalty, which is received or accrued from a related person (within the meaning of section 954(d)(3)) to the extent such amount is properly allocable (under regulations prescribed by the Secretary) to income of such related person which is not passive income, or

(D) which is export trade income of an export trade corporation (as defined in section 971).

For purposes of subparagraph (C), the term "related person" has the meaning given such term by section 954(d)(3) determined by substituting "foreign corporation" for "controlled foreign corporation" each place it appears in section 954(d)(3).

(c) Look-thru in the case of 25-percent owned corporations

If a foreign corporation owns (directly or indirectly) at least 25 percent (by value) of the stock of another corporation, for purposes of determining whether such foreign corporation is a passive foreign investment company, such foreign corporation shall be treated as if it—

(1) held its proportionate share of the assets of such other corporation, and

(2) received directly its proportionate share of the income of such other corporation.

(d) Exception for United States shareholders of controlled foreign corporations

(1) In general

For purposes of this part, a corporation shall not be treated with respect to a shareholder as a passive foreign investment company during the qualified portion of such shareholder's holding period with respect to stock in such corporation.

(2) Qualified portion

For purposes of this subsection, the term "qualified portion" means the portion of the shareholder's holding period—

(A) which is after December 31, 1997, and

(B) during which the shareholder is a United States shareholder (as defined in section 951(b)) of the corporation and the corporation is a controlled foreign corporation.

(3) New holding period if qualified portion ends

(A) In general

Except as provided in subparagraph (B), if the qualified portion of a shareholder's holding period with respect to any stock ends after December 31, 1997, solely for purposes of this part, the shareholder's holding period with respect to such stock shall be treated as beginning as of the first day following such period.

(B) Exception

Subparagraph (A) shall not apply if such stock was, with respect to such shareholder, stock in a passive foreign investment company at any time before the qualified portion of the shareholder's holding period with respect to such stock and no election under section 1298(b)(1) is made.

(4) Treatment of holders of options

Paragraph (1) shall not apply to stock treated as owned by a person by reason of section 1298(a)(4) (relating to the treatment of a person that has an option to acquire stock as owning such stock) unless such person establishes that such stock is owned (within the meaning of section 958(a)) by a United States shareholder (as defined in section 951(b)) who is not exempt from tax under this chapter.

(e) Methods for measuring assets

(1) Determination using value

The determination under subsection (a)(2) shall be made on the basis of the value of the assets of a foreign corporation if—

(A) such corporation is a publicly traded corporation for the taxable year, or

(B) paragraph (2) does not apply to such corporation for the taxable year.

(2) Determination using adjusted bases

The determination under subsection (a)(2) shall be based on the adjusted bases (as determined for the purposes of computing earnings and profits) of the assets of a foreign corporation if such corporation is not described in paragraph (1)(A) and such corporation—

(A) is a controlled foreign corporation, or

(B) elects the application of this paragraph.

An election under subparagraph (B), once made, may be revoked only with the consent of the Secretary.

(3) Publicly traded corporation

For purposes of this subsection, a foreign corporation shall be treated as a publicly traded corporation if the stock in the corporation is regularly traded on—

(A) a national securities exchange which is registered with the Securities and Exchange Commission or the national market system established pursuant to section 11A of the Securities and Exchange Act of 1934, or

(B) any exchange or other market which the Secretary determines has rules adequate to carry out the purposes of this subsection.

(Added Pub. L. 99–514, title XII, §1235(a), Oct. 22, 1986, 100 Stat. 2572, §1296; amended Pub. L. 100–647, title I, §§1012(p)(2), (5), (16), (26), (27), 1018(u)(40), Nov. 10, 1988, 102 Stat. 3515, 3518–3520, 3592; Pub. L. 103–66, title XIII, §13231(d)(1), (3), Aug. 10, 1993, 107 Stat. 499; Pub. L. 104–188, title I, §1704(r)(1), Aug. 20, 1996, 110 Stat. 1887; renumbered §1297 and amended Pub. L. 105–34, title XI, §§1121, 1122(a), (d)(4), 1123, Aug. 5, 1997, 111 Stat. 971, 972, 977; Pub. L. 105–206, title VI, §6011(b)(1), (d), July 22, 1998, 112 Stat. 817, 818; Pub. L. 110–172, §11(a)(24)(A), (g)(18), Dec. 29, 2007, 121 Stat. 2486, 2491.)

REFERENCES IN TEXT

Section 11A of the Securities and Exchange Act of 1934, referred to in subsec. (e)(3)(A), is classified to section 78k–1 of Title 15, Commerce and Trade.

PRIOR PROVISIONS

A prior section 1297 was renumbered section 1298 of this title.

AMENDMENTS

2007—Subsec. (b)(2)(D). Pub. L. 110–172, §11(g)(18), which directed amendment of subpar. (D) by striking out "foreign trade income of a FSC or", was executed by striking out "foreign trade income of an FSC or" before "export trade income" to reflect the probable intent of Congress.

Subsecs. (d) to (f). Pub. L. 110–172, §11(a)(24)(A), redesignated subsecs. (e) and (f) as (d) and (e), respectively, and struck out heading and text of former subsec. (d). Text read as follows: "For purposes of this part, the term 'passive foreign investment company' does not include any foreign investment company to which section 1247 applies."

1998—Subsec. (e). Pub. L. 105–206, §6011(d), redesignated subsec. (e), relating to methods for measuring assets, as (f).

Subsec. (e)(4). Pub. L. 105–206, §6011(b)(1), added par. (4).

Subsec. (f). Pub. L. 105–206, §6011(d), redesignated subsec. (e), relating to methods for measuring assets, as (f).

1997—Pub. L. 105–34, §1122(a), renumbered section 1296 of this title as this section.

Subsec. (a). Pub. L. 105–34, §1123(b)(2), struck out concluding provisions which read as follows: "In the case of a controlled foreign corporation (or any other foreign corporation if such corporation so elects), the determination under paragraph (2) shall be based on the adjusted bases (as determined for purposes of computing earnings and profits) of its assets in lieu of their value. Such an election, once made, may be revoked only with the consent of the Secretary."

Subsec. (a)(2). Pub. L. 105–34, §1123(b)(1), substituted "(as determined in accordance with subsection (e))" for "(by value)".

Subsec. (b)(3). Pub. L. 105–34, §1122(d)(4), struck out par. (3) which consisted of subpars. (A) to (C) relating to treatment of certain dealers in securities.

Subsec. (e). Pub. L. 105–34, §1123(a), added subsec. (e) relating to methods for measuring assets.

Pub. L. 105–34, §1121, added subsec. (e) relating to exception for United States shareholders of controlled foreign corporations.

1996—Subsec. (b)(2)(D). Pub. L. 104–188 added subpar. (D).

1993—Subsec. (a). Pub. L. 103–66, §13231(d)(1), substituted in closing provisions "In the case of a controlled foreign corporation (or any other foreign corporation if such corporation so elects), the determination under paragraph (2) shall be based on the adjusted bases (as determined for purposes of computing earnings and profits) of its assets in lieu of their value. Such an election, once made, may be revoked only with the consent of the Secretary." for "A foreign corporation may elect to have the determination under paragraph (2) based on the adjusted bases of its assets in lieu of their value. Such an election, once made, may be revoked only with the consent of the Secretary."

Subsec. (b)(3). Pub. L. 103–66, §13231(d)(3), added par. (3).

1988—Subsec. (a). Pub. L. 100–647, §1018(u)(40), inserted a comma after "subpart".

Pub. L. 100–647, §1012(p)(27), inserted at end "A foreign corporation may elect to have the determination under paragraph (2) based on the adjusted bases of its assets in lieu of their value. Such an election, once made, may be revoked only with the consent of the Secretary."

Subsec. (b)(1). Pub. L. 100–647, §1012(p)(5), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "Except as provided in paragraph (2), the term 'passive income' has the meaning given such term by section 904(d)(2)(A) without regard to the exceptions contained in clause (iii) thereof."

Subsec. (b)(2). Pub. L. 100–647, §1012(p)(26), substituted "Exceptions" for "Exception for certain banks and insurance companies" in heading, and inserted sentence at end defining "related person".

Subsec. (b)(2)(B). Pub. L. 100–647, §1012(p)(16), inserted "is predominantly engaged in an insurance business and which" after "a corporation which".

Subsec. (b)(2)(C). Pub. L. 100–647, §1012(p)(26)(A), added subpar. (C).

Subsec. (c). Pub. L. 100–647, §1012(p)(2), inserted "(directly or indirectly)" after "foreign corporation owns".

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to taxable years of United States persons beginning after Dec. 31, 1997, and to taxable years of foreign corporations ending with or within such taxable years of United States persons, see section 1124 of Pub. L. 105–34, set out as a note under section 532 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, §1704(r)(2), Aug. 20, 1996, 110 Stat. 1887, provided that: "The amendments made by paragraph (1) [amending this section] shall take effect as if included in the amendments made by section 1235 of the Tax Reform Act of 1986 [Pub. L. 99–514]."

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to taxable years of foreign corporations beginning after Sept. 30, 1993, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, see section 13231(e) of Pub. L. 103–66, set out as a note under section 951 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to taxable years of foreign corporations beginning after Dec. 31, 1986, see section 1235(h) of Pub. L. 99–514, set out as a note under section 1291 of this title.

§1298. Special rules

(a) Attribution of ownership

For purposes of this part—

(1) Attribution to United States persons

This subsection—

(A) shall apply to the extent that the effect is to treat stock of a passive foreign investment company as owned by a United States person, and

(B) except to the extent provided in regulations, shall not apply to treat stock owned (or treated as owned under this subsection) by a United States person as owned by any other person.

(2) Corporations

(A) In general

If 50 percent or more in value of the stock of a corporation is owned, directly or indirectly, by or for any person, such person shall be considered as owning the stock owned directly or indirectly by or for such corporation in that proportion which the value of the stock which such person so owns bears to the value of all stock in the corporation.

(B) 50-percent limitation not to apply to PFIC

For purposes of determining whether a shareholder of a passive foreign investment company is treated as owning stock owned directly or indirectly by or for such company, subparagraph (A) shall be applied without regard to the 50-percent limitation contained therein. Section 1297(d) shall not apply in determining whether a corporation is a passive foreign investment company for purposes of this subparagraph.

(3) Partnerships, etc.

Stock owned, directly or indirectly, by or for a partnership, estate, or trust shall be considered as being owned proportionately by its partners or beneficiaries.

(4) Options

To the extent provided in regulations, if any person has an option to acquire stock, such stock

shall be considered as owned by such person. For purposes of this paragraph, an option to acquire such an option, and each one of a series of such options, shall be considered as an option to acquire such stock.

(5) Successive application

Stock considered to be owned by a person by reason of the application of paragraph (2), (3), or (4) shall, for purposes of applying such paragraphs, be considered as actually owned by such person.

(b) Other special rules

For purposes of this part—

(1) Time for determination

Stock held by a taxpayer shall be treated as stock in a passive foreign investment company if, at any time during the holding period of the taxpayer with respect to such stock, such corporation (or any predecessor) was a passive foreign investment company which was not a qualified electing fund. The preceding sentence shall not apply if the taxpayer elects to recognize gain (as of the last day of the last taxable year for which the company was a passive foreign investment company (determined without regard to the preceding sentence)) under rules similar to the rules of section 1291(d)(2).

(2) Certain corporations not treated as PFIC's during start-up year

A corporation shall not be treated as a passive foreign investment company for the first taxable year such corporation has gross income (hereinafter in this paragraph referred to as the "start-up year") if—

(A) no predecessor of such corporation was a passive foreign investment company,

(B) it is established to the satisfaction of the Secretary that such corporation will not be a passive foreign investment company for either of the 1st 2 taxable years following the start-up year, and

(C) such corporation is not a passive foreign investment company for either of the 1st 2 taxable years following the start-up year.

(3) Certain corporations changing businesses

A corporation shall not be treated as a passive foreign investment company for any taxable year if—

(A) neither such corporation (nor any predecessor) was a passive foreign investment company for any prior taxable year,

(B) it is established to the satisfaction of the Secretary that—

(i) substantially all of the passive income of the corporation for the taxable year is attributable to proceeds from the disposition of 1 or more active trades or businesses, and

(ii) such corporation will not be a passive foreign investment company for either of the 1st 2 taxable years following such taxable year, and

(C) such corporation is not a passive foreign investment company for either of such 2 taxable years.

(4) Separate interests treated as separate corporations

Under regulations prescribed by the Secretary, where necessary to carry out the purposes of this part, separate classes of stock (or other interests) in a corporation shall be treated as interests in separate corporations.

(5) Application of part where stock held by other entity

(A) In general

Under regulations, in any case in which a United States person is treated as owning stock in a passive foreign investment company by reason of subsection (a)—

(i) any disposition by the United States person or the person owning such stock which

results in the United States person being treated as no longer owning such stock, or

(ii) any distribution of property in respect of such stock to the person holding such stock,

shall be treated as a disposition by, or distribution to, the United States person with respect to the stock in the passive foreign investment company.

(B) Amount treated in same manner as previously taxed income

Rules similar to the rules of section 959(b) shall apply to any amount described in subparagraph (A) and to any amount included in gross income under section 1293(a) (or which would have been so included but for section 951(f)) [1] in respect of stock which the taxpayer is treated as owning under subsection (a).

(6) Dispositions

Except as provided in regulations, if a taxpayer uses any stock in a passive foreign investment company as security for a loan, the taxpayer shall be treated as having disposed of such stock.

(7) Treatment of certain foreign corporations owning stock in 25-percent owned domestic corporation

(A) In general

If—

(i) a foreign corporation is subject to the tax imposed by section 531 (or waives any benefit under any treaty which would otherwise prevent the imposition of such tax), and

(ii) such foreign corporation owns at least 25 percent (by value) of the stock of a domestic corporation,

for purposes of determining whether such foreign corporation is a passive foreign investment company, any qualified stock held by such domestic corporation shall be treated as an asset which does not produce passive income (and is not held for the production of passive income) and any amount included in gross income with respect to such stock shall not be treated as passive income.

(B) Qualified stock

For purposes of subparagraph (A), the term "qualified stock" means any stock in a C corporation which is a domestic corporation and which is not a regulated investment company or real estate investment trust.

(8) Treatment of certain subpart F inclusions

Any amount included in gross income under section 951(a)(1)(B) shall be treated as a distribution received with respect to the stock.

(c) Treatment of stock held by pooled income fund

If stock in a passive foreign investment company is owned (or treated as owned under subsection (a)) by a pooled income fund (as defined in section 642(c)(5)) and no portion of any gain from a disposition of such stock may be allocated to income under the terms of the governing instrument of such fund—

(1) section 1291 shall not apply to any gain on a disposition of such stock by such fund if (without regard to section 1291) a deduction would be allowable with respect to such gain under section 642(c)(3),

(2) section 1293 shall not apply with respect to such stock, and

(3) in determining whether section 1291 applies to any distribution in respect of such stock, subsection (d) of section 1291 shall not apply.

(d) Treatment of certain leased property

For purposes of this part—

(1) In general

Any tangible personal property with respect to which a foreign corporation is the lessee under a lease with a term of at least 12 months shall be treated as an asset actually held by such corporation.

(2) Amount taken into account

(A) In general

The amount taken into account under section 1296(a)(2) [1] with respect to any asset to which paragraph (1) applies shall be the unamortized portion (as determined under regulations prescribed by the Secretary) of the present value of the payments under the lease for the use of such property.

(B) Present value

For purposes of subparagraph (A), the present value of payments described in subparagraph (A) shall be determined in the manner provided in regulations prescribed by the Secretary—

(i) as of the beginning of the lease term, and

(ii) except as provided in such regulations, by using a discount rate equal to the applicable Federal rate determined under section 1274(d)—

(I) by substituting the lease term for the term of the debt instrument, and

(II) without regard to paragraph (2) or (3) thereof.

(3) Exceptions

This subsection shall not apply in any case where—

(A) the lessor is a related person (as defined in section 954(d)(3)) with respect to the foreign corporation, or

(B) a principal purpose of leasing the property was to avoid the provisions of this part.

(e) Special rules for certain intangibles

For purposes of this part—

(1) Research expenditures

The adjusted basis of the total assets of a controlled foreign corporation shall be increased by the research or experimental expenditures (within the meaning of section 174) paid or incurred by such foreign corporation during the taxable year and the preceding 2 taxable years. Any expenditure otherwise taken into account under the preceding sentence shall be reduced by the amount of any reimbursement received by the controlled foreign corporation with respect to such expenditure.

(2) Certain licensed intangibles

(A) In general

In the case of any intangible property (as defined in section 936(h)(3)(B)) with respect to which a controlled foreign corporation is a licensee and which is used by such foreign corporation in the active conduct of a trade or business, the adjusted basis of the total assets of such foreign corporation shall be increased by an amount equal to 300 percent of the payments made during the taxable year by such foreign corporation for the use of such intangible property.

(B) Exceptions

Subparagraph (A) shall not apply to—

(i) any payments to a foreign person if such foreign person is a related person (as defined in section 954(d)(3)) with respect to the controlled foreign corporation, and

(ii) any payments under a license if a principal purpose of entering into such license was to avoid the provisons [2] of this part.

(3) Controlled foreign corporation

For purposes of this subsection, the term "controlled foreign corporation" has the meaning given

such term by section 957(a).

(f) Reporting requirement

Except as otherwise provided by the Secretary, each United States person who is a shareholder of a passive foreign investment company shall file an annual report containing such information as the Secretary may require.

(g) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this part.

(Added Pub. L. 99–514, title XII, §1235(a), Oct. 22, 1986, 100 Stat. 2573, §1297; amended Pub. L. 100–647, title I, §1012(p)(10), (17), (20), (22), (24), (35), (36), Nov. 10, 1988, 102 Stat. 3517–3519, 3522; Pub. L. 101–239, title VII, §7811(i)(4), Dec. 19, 1989, 103 Stat. 2410; Pub. L. 103–66, title XIII, §13231(d)(2), (4), Aug. 10, 1993, 107 Stat. 499; Pub. L. 104–188, title I, §§1501(b)(10), (11), 1703(i)(5), (6), Aug. 20, 1996, 110 Stat. 1826, 1876; renumbered §1298 and amended Pub. L. 105–34, title XI, §1122(a), (e), Aug. 5, 1997, 111 Stat. 972, 977; Pub. L. 105–206, title VI, §6011(b)(2), July 22, 1998, 112 Stat. 818; Pub. L. 110–172, §11(a)(24)(C), (f)(2), Dec. 29, 2007, 121 Stat. 2487, 2489; Pub. L. 111–147, title V, §521(a), Mar. 18, 2010, 124 Stat. 112.)

REFERENCES IN TEXT

Section 951(f), referred to in subsec. (b)(5)(B), was redesignated section 951(d) by Pub. L. 108–357, title IV, §413(c)(16), Oct. 22, 2004, 118 Stat. 1508, and subsequently was redesignated section 951(c) by Pub. L. 110–172, §11(g)(13), Dec. 29, 2007, 121 Stat. 2490.

Section 1296, referred to in subsec. (d)(2)(A), was renumbered section 1297 and a new section 1296 was added by Pub. L. 105–34, title XI, §1122(a), Aug. 5, 1997, 111 Stat. 972.

AMENDMENTS

2010—Subsecs. (f), (g). Pub. L. 111–147 added subsec. (f) and redesignated former subsec. (f) as (g).

2007—Subsec. (a)(2)(B). Pub. L. 110–172, §11(a)(24)(C), substituted "Section 1297(d)" for "Section 1297(e)".

Subsec. (b)(7) to (9). Pub. L. 110–172, §11(f)(2), redesignated pars. (8) and (9) as (7) and (8), respectively, and struck out former par. (7) which read as follows: "Section 1246 shall not apply to earnings and profits of any company for any taxable year beginning after December 31, 1986, if such company is a passive foreign investment company for such taxable year."

1998—Subsec. (a)(2)(B). Pub. L. 105–206 inserted at end "Section 1297(e) shall not apply in determining whether a corporation is a passive foreign investment company for purposes of this subparagraph."

1997—Pub. L. 105–34, §1122(a), renumbered section 1297 of this title as this section.

Subsec. (b)(1). Pub. L. 105–34, §1122(e), inserted "(determined without regard to the preceding sentence)" after "investment company" in last sentence.

1996—Subsec. (b)(9). Pub. L. 104–188, §1501(b)(10), substituted "section 951(a)(1)(B)" for "subparagraph (B) or (C) of section 951(a)(1)".

Subsec. (d)(2). Pub. L. 104–188, §1703(i)(5)(B), in heading substituted "Amount taken into account" for "Determination of adjusted basis".

Subsec. (d)(2)(A). Pub. L. 104–188, §1703(i)(5)(A), substituted "The amount taken into account under section 1296(a)(2) with respect to any asset" for "The adjusted basis of any asset".

Subsec. (d)(3)(B). Pub. L. 104–188, §1501(b)(11), struck out "or section 956A" after "this part".

Subsec. (e). Pub. L. 104–188, §1703(i)(6), inserted "For purposes of this part—" after heading.

Subsec. (e)(2)(B)(ii). Pub. L. 104–188, §1501(b)(11), struck out "or section 956A" after "this part".

1993—Subsec. (b)(9). Pub. L. 103–66, §13231(d)(2), added par. (9).

Subsecs. (d) to (f). Pub. L. 103–66, §13231(d)(4), added subsecs. (d) and (e) and redesignated former subsec. (d) as (f).

1989—Subsec. (b)(5). Pub. L. 101–239, §7811(i)(4)(A), substituted "where stock held" for "where held" in heading.

Subsec. (b)(5)(A). Pub. L. 101–239, §7811(i)(4)(C), substituted "treated as a disposition by, or distribution to" for "treated as a disposition to" in concluding provisions.

Subsec. (b)(5)(A)(ii). Pub. L. 101–239, §7811(i)(4)(B), substituted "any distribution of" for "any disposition of".

1988—Subsec. (a)(4). Pub. L. 100–647, §1012(p)(10)(A), added par. (4). Former par. (4) redesignated (5).

Subsec. (a)(5). Pub. L. 100–647, §1012(p)(10), redesignated par. (4) as (5) and substituted "paragraph (2), (3), or (4)" for "paragraph (2) or (3)".

Subsec. (b)(1). Pub. L. 100–647, §1012(p)(36), substituted "investment company which" for "investment corporation which".

Subsec. (b)(3)(A). Pub. L. 100–647, §1012(p)(22), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "such corporation (and any predecessor) was not a passive foreign investment corporation for any prior taxable year,".

Subsec. (b)(5). Pub. L. 100–647, §1012(p)(17), substituted "part where held" for "section where stock held" in heading, and amended text generally. Prior to amendment, text read as follows: "Under regulations, in any case in which a United States person is treated as holding stock in a passive foreign investment company by reason of subsection (a), any disposition by the United States person or the person holding such stock which results in the United States person being treated as no longer holding such stock, shall be treated as a disposition by the United States person with respect to stock in the passive foreign investment company."

Subsec. (b)(6). Pub. L. 100–647, §1012(p)(20), substituted "Except as provided in regulations, if a" for "If a".

Subsec. (b)(8). Pub. L. 100–647, §1012(p)(24), added par. (8).

Subsecs. (c), (d). Pub. L. 100–647, §1012(p)(35), added subsec. (c) and redesignated former subsec. (c) as (d).

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by section 11(f)(2) of Pub. L. 110–172 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 11(f)(4) of Pub. L. 110–172, set out as a note under section 904 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to taxable years of United States persons beginning after Dec. 31, 1997, and to taxable years of foreign corporations ending with or within such taxable years of United States persons, see section 1124 of Pub. L. 105–34, set out as a note under section 532 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1501(b)(10), (11) of Pub. L. 104–188 applicable to taxable years of foreign corporations beginning after Dec. 31, 1996, and to taxable years of United States shareholders within which or with which such taxable years of foreign corporations end, see section 1501(d) of Pub. L. 104–188, set out as a note under section 904 of this title.

Amendment by section 1703(i)(5), (6) of Pub. L. 104–188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103–66, §§13001–13444, to which such amendment relates, see section 1703(o) of Pub. L. 104–188, set out as a note under section 39 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to taxable years of foreign corporations beginning after Sept. 30, 1993, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, see section 13231(e) of Pub. L. 103–66, set out as a note under section 951 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to taxable years of foreign corporations beginning after Dec. 31, 1986, see section 1235(h) of Pub. L. 99–514, set out as a note under section 1291 of this title.

[1] *See References in Text notes below.*

[2] *So in original. Probably should be "provisions".*

Subchapter Q—Readjustment of Tax Between Years and Special Limitations

Part

I. Income averaging.

II. Mitigation of effect of limitations and other provisions.

[III, IV. Repealed.]

V. Claim of right.

[VI. Repealed.]

VII. Recoveries of foreign expropriation losses.

AMENDMENTS

1997—Pub. L. 105–34, title IX, §933(b), Aug. 5, 1997, 111 Stat. 882, added item for part I.

1986—Pub. L. 99–514, title I, §141(c), Oct. 22, 1986, 100 Stat. 2117, struck out item for part I "Income averaging".

1981—Pub. L. 97–34, title I, §101(c)(2)(C), Aug. 13, 1981, 95 Stat. 183, struck out item for part VI "Maximum rate on personal service income".

1976—Pub. L. 94–455, title XIX, §§1901(b)(36)(E), (37)(F), 1951(c)(3)(D), Oct. 4, 1976, 90 Stat. 1802, 1803, 1841, struck out items for parts III and IV "Involuntary liquidation and replacement of LIFO inventories" and "War loss recoveries", respectively, and substituted in item for part VI "Maximum rate on personal service income" for "Other limitations".

1966—Pub. L. 89–384, §1(g)(1), Apr. 8, 1966, 80 Stat. 104, added item for part VII.

1964—Pub. L. 88–272, title II, §232(f)(3), Feb. 26, 1964, 78 Stat. 112, substituted "averaging" for "attributable to several taxable years" in item for part I.

PART I—INCOME AVERAGING

Sec.

1301. Averaging of farm income.

PRIOR PROVISIONS

A prior part I consisted of sections 1301 to 1305, prior to repeal by Pub. L. 99–514, title I, §141(a), Oct. 22, 1986, 100 Stat. 2117.

§1301. Averaging of farm income

(a) In general

At the election of an individual engaged in a farming business or fishing business, the tax imposed by section 1 for such taxable year shall be equal to the sum of—

(1) a tax computed under such section on taxable income reduced by elected farm income, plus

(2) the increase in tax imposed by section 1 which would result if taxable income for each of the 3 prior taxable years were increased by an amount equal to one-third of the elected farm income.

Any adjustment under this section for any taxable year shall be taken into account in applying this section for any subsequent taxable year.

(b) Definitions

In this section—

(1) Elected farm income

(A) In general

The term "elected farm income" means so much of the taxable income for the taxable year—

(i) which is attributable to any farming business or fishing business; and

(ii) which is specified in the election under subsection (a).

(B) Treatment of gains

For purposes of subparagraph (A), gain from the sale or other disposition of property (other than land) regularly used by the taxpayer in such a farming business or fishing business for a substantial period shall be treated as attributable to such a farming business or fishing business.

(2) Individual

The term "individual" shall not include any estate or trust.

(3) Farming business

The term "farming business" has the meaning given such term by section 263A(e)(4).

(4) Fishing business

The term "fishing business" means the conduct of commercial fishing as defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802).

(c) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this section, including regulations regarding—

(1) the order and manner in which items of income, gain, deduction, or loss, or limitations on tax, shall be taken into account in computing the tax imposed by this chapter on the income of any taxpayer to whom this section applies for any taxable year, and

(2) the treatment of any short taxable year.

(Added Pub. L. 105–34, title IX, §933(a), Aug. 5, 1997, 111 Stat. 881; amended Pub. L. 108–357, title III, §314(b), Oct. 22, 2004, 118 Stat. 1468.)

PRIOR PROVISIONS

A prior section 1301, added Pub. L. 88–272, title II, §232(a), Feb. 26, 1964, 78 Stat. 106; amended Pub. L. 91–172, title III, §311(a), Dec. 30, 1969, 83 Stat. 586; Pub. L. 98–369, div. A, title I, §173(b), (c)(1), July 18, 1984, 98 Stat. 704, placed a limit on the tax attributable to averagable income, prior to repeal by Pub. L. 99–514, title I, §§141(a), 151(a), Oct. 22, 1986, 100 Stat. 2117, 2121, effective Dec. 31, 1986.

Another prior section 1301, act Aug. 16, 1954, ch. 736, 68A Stat. 334, related to compensation from an employment, defined "an employment", and stated the rule with respect to partners, prior to the general revision of this part by Pub. L. 88–272.

A prior section 1302, added Pub. L. 88–272, title II, §232(a), Feb. 26, 1964, 78 Stat. 106; amended Pub. L. 91–172, title III, §311(b), Dec. 30, 1969, 83 Stat. 586; Pub. L. 94–455, title VII, §701(f)(1), Oct. 4, 1976, 90 Stat. 1580; Pub. L. 95–30, title I, §102(b)(15), May 23, 1977, 91 Stat. 138; Pub. L. 95–600, title I, §101(d)(2), Nov. 6, 1978, 92 Stat. 2770; Pub. L. 95–615, §202(g)(5), formerly §202(f)(5), Nov. 8, 1978, 92 Stat. 3100, renumbered Pub. L. 96–222, title I, §108(a)(1)(A), Apr. 1, 1980, 94 Stat. 223; Pub. L. 97–34, title I, §111(b)(3), Aug. 13, 1981, 95 Stat. 194; Pub. L. 97–248, title II, §265(b)(2)(B), Sept. 3, 1982, 96 Stat. 547; Pub. L. 98–369, div. A, title I, §173(a), (c)(2)–(4), July 18, 1984, 98 Stat. 703, 704, defined "averagable income" and other terms related to income averaging, prior to repeal by Pub. L. 99–514, title I, §§141(a), 151(a), Oct. 22, 1986, 100 Stat. 2117, 2121, effective Dec. 31, 1986.

Another prior section 1302, act Aug. 16, 1964, ch. 736, 68A Stat. 335, related to income from an invention or artistic work, prior to the general revision of this part by Pub. L. 88–272.

A prior section 1303, added Pub. L. 88–272, title II, §232(a), Feb. 26, 1964, 78 Stat. 107; amended Pub. L. 91–172, title III, §311(d)(1), Dec. 30, 1969, 83 Stat. 587; Pub. L. 94–455, title XIX, §1901(b)(8)(G), Oct. 4, 1976, 90 Stat. 1795; Pub. L. 97–34, title I, §111(b)(4), Aug. 13, 1981, 95 Stat. 194; Pub. L. 99–272, title XIII, §13206(a), (b), Apr. 7, 1986, 100 Stat. 318, 319, related to individuals eligible for income averaging, prior to repeal by Pub. L. 99–514, title I, §§141(a), 151(a), Oct. 22, 1986, 100 Stat. 2117, 2121, effective Dec. 31, 1986.

Another prior section 1303, acts Aug. 16, 1954, ch. 736, 68A Stat. 335, Sept. 22, 1961, Pub. L. 87–293, title

II, §201(b), 75 Stat. 625, related to income from back pay, prior to the general revision of this part by Pub. L. 88–272.

A prior section 1304, added Pub. L. 88–272, title II, §232(a), Feb. 26, 1964, 78 Stat. 108; amended Pub. L. 91–172, title III, §311(c), (d)(2), title V, §515(c)(4), title VIII, §§802(c)(5), 803(d)(8), Dec. 30, 1969, 83 Stat. 587, 646, 678, 684; Pub. L. 93–406, title II, §2005(c)(6), Sept. 2, 1974, 88 Stat. 991; Pub. L. 94–455, title III, §302(c), title V, §501(b)(7), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1555, 1559, 1834; Pub. L. 95–600, title IV, §401(b)(5), Nov. 6, 1978, 92 Stat. 2867; Pub. L. 95–615, §202(g)(5), formerly §202(f)(5), Nov. 8, 1978, 92 Stat. 3100, renumbered Pub. L. 96–222, title I, §108(a)(1)(A), Apr. 1, 1980, 94 Stat. 223; Pub. L. 97–34, title I, §§101(c)(2)(B), 111(b)(3), (4), Aug. 13, 1981, 95 Stat. 183, 194; Pub. L. 97–248, title II, §265(b)(2)(C), Sept. 3, 1982, 96 Stat. 547, set out special rules for income averaging, prior to repeal by Pub. L. 99–514, title I, §§141(a), 151(a), Oct. 22, 1986, 100 Stat. 2117, 2121, effective Dec. 31, 1986.

Another prior section 1304, act Aug. 11, 1955, ch. 804, §1(a), 69 Stat. 688, related to compensatory damages for patent infringement, prior to the general revision of this part by Pub. L. 88–272.

A prior section 1305, added Pub. L. 88–272, title II, §232(a), Feb. 26, 1964, 78 Stat. 110; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, provided for promulgation of regulations for income averaging, prior to repeal by Pub. L. 99–514, title I, §§141(a), 151(a), Oct. 22, 1986, 100 Stat. 2117, 2121, effective Dec. 31, 1986.

Another prior section 1305, act Aug. 26, 1957, Pub. L. 85–165, §1, 71 Stat. 413, related to damages for breach of contract or fiduciary duty, prior to the general revision of this part by Pub. L. 88–272.

A prior section 1306, Pub. L. 85–866, title I, §58(a), Sept. 2, 1958, 72 Stat. 1646, related to damages received for injuries under the antitrust laws, prior to the general revision of this part by Pub. L. 88–272.

A prior section 1307, act Aug. 16, 1954, ch. 736, 68A Stat. 336, §1307, formerly §1304; renumbered §1305, Aug. 11, 1955, ch. 804, §1(a), 69 Stat. 688; renumbered §1306, Aug. 26, 1957, Pub. L. 85–165, §1, 71 Stat. 413; renumbered §1307, Sept. 2, 1958, Pub. L. 85–866, title I, §58(a), 72 Stat. 1646; amended Oct. 16, 1962, Pub. L. 87–834, §22(a), 76 Stat. 1064, provided rules applicable to this part, prior to the general revision of this part by Pub. L. 88–272.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–357, §314(b)(1), substituted "farming business or fishing business" for "farming business" in introductory provisions.

Subsec. (b)(1)(A)(i), (B). Pub. L. 108–357, §314(b)(2), inserted "or fishing business" after "farming business" wherever appearing.

Subsec. (b)(4). Pub. L. 108–357, §314(b)(3), added par. (4).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years beginning after Dec. 31, 2003, see section 314(c) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 55 of this title.

EFFECTIVE DATE

Pub. L. 105–34, title IX, §933(c), Aug. 5, 1997, 111 Stat. 882, as amended by Pub. L. 105–277, div. J, title II, §2011, Oct. 21, 1998, 112 Stat. 2681–902, provided that: "The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1997."

PART II—MITIGATION OF EFFECT OF LIMITATIONS AND OTHER PROVISIONS

Sec.

1311. Correction of error.

1312. Circumstances of adjustment.

1313. Definitions.

1314. Amount and method of adjustment.

[1315. Repealed.]

AMENDMENTS

1976—Pub. L. 94–455, title XIX, §1901(b)(35), Oct. 4, 1976, 90 Stat. 1802, struck out item 1315 "Effective date".

§1311. Correction of error

(a) General rule

If a determination (as defined in section 1313) is described in one or more of the paragraphs of section 1312 and, on the date of the determination, correction of the effect of the error referred to in the applicable paragraph of section 1312 is prevented by the operation of any law or rule of law, other than this part and other than section 7122 (relating to compromises), then the effect of the error shall be corrected by an adjustment made in the amount and in the manner specified in section 1314.

(b) Conditions necessary for adjustment

(1) Maintenance of an inconsistent position

Except in cases described in paragraphs (3) (B) and (4) of section 1312, an adjustment shall be made under this part only if—

(A) in case the amount of the adjustment would be credited or refunded in the same manner as an overpayment under section 1314, there is adopted in the determination a position maintained by the Secretary, or

(B) in case the amount of the adjustment would be assessed and collected in the same manner as a deficiency under section 1314, there is adopted in the determination a position maintained by the taxpayer with respect to whom the determination is made,

and the position maintained by the Secretary in the case described in subparagraph (A) or maintained by the taxpayer in the case described in subparagraph (B) is inconsistent with the erroneous inclusion, exclusion, omission, allowance, disallowance, recognition, or non-recognition, as the case may be.

(2) Correction not barred at time of erroneous action

(A) Determination described in section 1312(3)(B)

In the case of a determination described in section 1312(3)(B) (relating to certain exclusions from income), adjustment shall be made under this part only if assessment of a deficiency for the taxable year in which the item is includible or against the related taxpayer was not barred, by any law or rule of law, at the time the Secretary first maintained, in a notice of deficiency sent pursuant to section 6212 or before the Tax Court that the item described in section 1312(3)(B) should be included in the gross income of the taxpayer for the taxable year to which the determination relates.

(B) Determination described in section 1312(4)

In the case of a determination described in section 1312(4) (relating to disallowance of certain deductions and credits), adjustment shall be made under this part only if credit or refund of the overpayment attributable to the deduction or credit described in such section which should have been allowed to the taxpayer or related taxpayer was not barred, by any law or rule of law, at the time the taxpayer first maintained before the Secretary or before the Tax Court, in writing, that he was entitled to such deduction or credit for the taxable year to which the determination relates.

(3) Existence of relationship

In case the amount of the adjustment would be assessed and collected in the same manner as a deficiency (except for cases described in section 1312(3)(B)), the adjustment shall not be made with respect to a related taxpayer unless he stands in such relationship to the taxpayer at the time the latter first maintains the inconsistent position in a return, claim for refund, or petition (or amended petition) to the Tax Court for the taxable year with respect to which the determination is made, or if such position is not so maintained, then at the time of the determination.

(Aug. 16, 1954, ch. 736, 68A Stat. 337; Pub. L. 94–455, title XIX, §§1901(a)(142), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1788, 1834.)

AMENDMENTS

1976—Subsec. (b)(2). Pub. L. 94–455, §§1901(a)(142), 1906(b)(13)(A), struck out "or his delegate" after "Secretary" and "of the United States" after "Tax Court" wherever appearing.

Subsec. (b)(3). Pub. L. 94–455, §1901(a)(142), struck out "of the United States" after "Tax Court".

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(142) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

§1312. Circumstances of adjustment

The circumstances under which the adjustment provided in section 1311 is authorized are as follows:

(1) Double inclusion of an item of gross income

The determination requires the inclusion in gross income of an item which was erroneously included in the gross income of the taxpayer for another taxable year or in the gross income of a related taxpayer.

(2) Double allowance of a deduction or credit

The determination allows a deduction or credit which was erroneously allowed to the taxpayer for another taxable year or to a related taxpayer.

(3) Double exclusion of an item of gross income

(A) Items included in income

The determination requires the exclusion from gross income of an item included in a return filed by the taxpayer or with respect to which tax was paid and which was erroneously excluded or omitted from the gross income of the taxpayer for another taxable year, or from the gross income of a related taxpayer; or

(B) Items not included in income

The determination requires the exclusion from gross income of an item not included in a return filed by the taxpayer and with respect to which the tax was not paid but which is includible in the gross income of the taxpayer for another taxable year or in the gross income of a related taxpayer.

(4) Double disallowance of a deduction or credit

The determination disallows a deduction or credit which should have been allowed to, but was not allowed to, the taxpayer for another taxable year, or to a related taxpayer.

(5) Correlative deductions and inclusions for trusts or estates and legatees, beneficiaries, or heirs

The determination allows or disallows any of the additional deductions allowable in computing the taxable income of estates or trusts, or requires or denies any of the inclusions in the computation of taxable income of beneficiaries, heirs, or legatees, specified in subparts A to E, inclusive (secs. 641 and following, relating to estates, trusts, and beneficiaries) of part I of subchapter J of this chapter, or corresponding provisions of prior internal revenue laws, and the correlative inclusion or deduction, as the case may be, has been erroneously excluded, omitted, or included, or disallowed, omitted, or allowed, as the case may be, in respect of the related taxpayer.

(6) Correlative deductions and credits for certain related corporations

The determination allows or disallows a deduction (including a credit) in computing the taxable income (or, as the case may be, net income, normal tax net income, or surtax net income) of a corporation, and a correlative deduction or credit has been erroneously allowed, omitted, or disallowed, as the case may be, in respect of a related taxpayer described in section 1313(c)(7).

(7) Basis of property after erroneous treatment of a prior transaction

(A) General rule

The determination determines the basis of property, and in respect of any transaction on which such basis depends, or in respect of any transaction which was erroneously treated as affecting such basis, there occurred, with respect to a taxpayer described in subparagraph (B) of this paragraph, any of the errors described in subparagraph (C) of this paragraph.

(B) Taxpayers with respect to whom the erroneous treatment occurred

The taxpayer with respect to whom the erroneous treatment occurred must be—

(i) the taxpayer with respect to whom the determination is made,

(ii) a taxpayer who acquired title to the property in the transaction and from whom, mediately or immediately, the taxpayer with respect to whom the determination is made derived title, or

(iii) a taxpayer who had title to the property at the time of the transaction and from whom, mediately or immediately, the taxpayer with respect to whom the determination is made derived title, if the basis of the property in the hands of the taxpayer with respect to whom the determination is made is determined under section 1015(a) (relating to the basis of property acquired by gift).

(C) Prior erroneous treatment

With respect to a taxpayer described in subparagraph (B) of this paragraph—

(i) there was an erroneous inclusion in, or omission from, gross income,

(ii) there was an erroneous recognition, or nonrecognition, of gain or loss, or

(iii) there was an erroneous deduction of an item properly chargeable to capital account or an erroneous charge to capital account of an item properly deductible.

(Aug. 16, 1954, ch. 736, 68A Stat. 338; Pub. L. 85–866, title I, §59(a), Sept. 2, 1958, 72 Stat. 1647.)

AMENDMENTS

1958—Pars. (6), (7). Pub. L. 85–866 added par. (6) and redesignated former par. (6) as (7).

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85–866, title I, §59(c), Sept. 2, 1958, 72 Stat. 1647, provided that: "The amendments made by subsections (a) and (b) [amending this section and section 1314 of this title] shall apply to determinations (as defined in section 1313(a)) made after November 14, 1954."

§1313. Definitions

(a) Determination

For purposes of this part, the term "determination" means—

(1) a decision by the Tax Court or a judgment, decree, or other order by any court of competent jurisdiction, which has become final;

(2) a closing agreement made under section 7121;

(3) a final disposition by the Secretary of a claim for refund. For purposes of this part, a claim for refund shall be deemed finally disposed of by the Secretary—

(A) as to items with respect to which the claim was allowed, on the date of allowance of refund or credit or on the date of mailing notice of disallowance (by reason of offsetting items) of the claim for refund, and

(B) as to items with respect to which the claim was disallowed, in whole or in part, or as to items applied by the Secretary in reduction of the refund or credit, on expiration of the time for instituting suit with respect thereto (unless suit is instituted before the expiration of such time); or

(4) under regulations prescribed by the Secretary, an agreement for purposes of this part, signed

by the Secretary and by any person, relating to the liability of such person (or the person for whom he acts) in respect of a tax under this subtitle for any taxable period.

(b) Taxpayer

Notwithstanding section 7701(a)(14), the term "taxpayer" means any person subject to a tax under the applicable revenue law.

(c) Related taxpayer

For purposes of this part, the term "related taxpayer" means a taxpayer who, with the taxpayer with respect to whom a determination is made, stood, in the taxable year with respect to which the erroneous inclusion, exclusion, omission, allowance, or disallowance was made, in one of the following relationships:

(1) husband and wife,
(2) grantor and fiduciary,
(3) grantor and beneficiary,
(4) fiduciary and beneficiary, legatee, or heir,
(5) decedent and decedent's estate,
(6) partner, or
(7) member of an affiliated group of corporations (as defined in section 1504).

(Aug. 16, 1954, ch. 736, 68A Stat. 339; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsec. (a)(3), (4). Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

§1314. Amount and method of adjustment

(a) Ascertainment of amount of adjustment

In computing the amount of an adjustment under this part there shall first be ascertained the tax previously determined for the taxable year with respect to which the error was made. The amount of the tax previously determined shall be the excess of—

(1) the sum of—

(A) the amount shown as the tax by the taxpayer on his return (determined as provided in section 6211(b)(1), (3), and (4), relating to the definition of deficiency), if a return was made by the taxpayer and an amount was shown as the tax by the taxpayer thereon, plus

(B) the amounts previously assessed (or collected without assessment) as a deficiency, over—

(2) the amount of rebates, as defined in section 6211(b)(2), made.

There shall then be ascertained the increase or decrease in tax previously determined which results solely from the correct treatment of the item which was the subject of the error (with due regard given to the effect of the item in the computation of gross income, taxable income, and other matters under this subtitle). A similar computation shall be made for any other taxable year affected, or treated as affected, by a net operating loss deduction (as defined in section 172) or by a capital loss carryback or carryover (as defined in section 1212), determined with reference to the taxable year with respect to which the error was made. The amount so ascertained (together with any amounts wrongfully collected as additions to the tax or interest, as a result of such error) for each taxable year shall be the amount of the adjustment for that taxable year.

(b) Method of adjustment

The adjustment authorized in section 1311(a) shall be made by assessing and collecting, or refunding or crediting, the amount thereof in the same manner as if it were a deficiency determined

by the Secretary with respect to the taxpayer as to whom the error was made or an overpayment claimed by such taxpayer, as the case may be, for the taxable year or years with respect to which an amount is ascertained under subsection (a), and as if on the date of the determination one year remained before the expiration of the periods of limitation upon assessment or filing claim for refund for such taxable year or years. If, as a result of a determination described in section 1313(a)(4), an adjustment has been made by the assessment and collection of a deficiency or the refund or credit of an overpayment, and subsequently such determination is altered or revoked, the amount of the adjustment ascertained under subsection (a) of this section shall be redetermined on the basis of such alteration or revocation and any overpayment or deficiency resulting from such redetermination shall be refunded or credited, or assessed and collected, as the case may be, as an adjustment under this part. In the case of an adjustment resulting from an increase or decrease in a net operating loss or net capital loss which is carried back to the year of adjustment, interest shall not be collected or paid for any period prior to the close of the taxable year in which the net operating loss or net capital loss arises.

(c) Adjustment unaffected by other items

The amount to be assessed and collected in the same manner as a deficiency, or to be refunded or credited in the same manner as an overpayment, under this part, shall not be diminished by any credit or set-off based upon any item other than the one which was the subject of the adjustment. The amount of the adjustment under this part, if paid, shall not be recovered by a claim or suit for refund or suit for erroneous refund based upon any item other than the one which was the subject of the adjustment.

(d) Periods for which adjustments may be made

No adjustment shall be made under this part in respect of any taxable year beginning prior to January 1, 1932.

(e) Taxes imposed by subtitle C

This part shall not apply to any tax imposed by subtitle C (sec. 3101 and following relating to employment taxes).

(Aug. 16, 1954, ch. 736, 68A Stat. 340; Pub. L. 85–866, title I, §59(b), Sept. 2, 1958, 72 Stat. 1647; Pub. L. 89–44, title VIII, §809(d)(5)(B), June 21, 1965, 79 Stat. 168; Pub. L. 91–172, title V, §512(f)(7), (8), Dec. 30, 1969, 83 Stat. 641, 642; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsec. (b). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

1969—Subsec. (a). Pub. L. 91–172, §512(f)(7), substituted "capital loss carryback or carryover" for "capital loss carryover".

Subsec. (b). Pub. L. 91–172, §512(f)(8), inserted reference to net capital loss.

1965—Subsec. (a)(1)(A). Pub. L. 89–44 struck out "(b)(1) and (3)" and inserted in lieu thereof "(b)(1), (3), and (4)".

1958—Subsec. (c). Pub. L. 85–866 substituted in second sentence "The" for "Other than in the case of an adjustment resulting from a determination under section 1313(a)(4), the".

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable with respect to net capital losses sustained in taxable years beginning after Dec. 31, 1969, see section 512(g) of Pub. L. 91–172, set out as a note under section 1212 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 applicable to taxable years beginning on or after July 1, 1965, see section 809(f) of Pub. L. 89–44, set out as a note under section 6420 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 effective with respect to determinations made after Nov. 14, 1954, see section 59(c) of Pub. L. 85–866, set out as a note under section 1312 of this title.

[§1315. Repealed. Pub. L. 94–455, title XIX, §1901(a)(143), Oct. 4, 1976, 90 Stat. 1788]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 341, related to effective date of this part.

EFFECTIVE DATE OF REPEAL

Repeal effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 2 of this title.

[PART III—REPEALED]

[§1321. Repealed. Pub. L. 94–455, title XIX, §1901(a)(144), Oct. 4, 1976, 90 Stat. 1788]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 342, related to involuntary liquidation of LIFO inventories.

EFFECTIVE DATE OF REPEAL

Repeal effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 2 of this title.

[PART IV—REPEALED]

[§§1331 to 1337. Repealed. Pub. L. 94–455, title XIX, §1901(a)(145)(A), Oct. 4, 1976, 90 Stat. 1788]

Section 1331, act Aug. 16, 1954, ch. 736, 68A Stat. 343, related to war loss recoveries.

Section 1332, act Aug. 16, 1954, ch. 736, 68A Stat. 343, related to inclusion in gross income of war loss recoveries.

Section 1333, act Aug. 16, 1954, ch. 736, 68A Stat. 344, related to tax adjustment measured by prior benefits.

Section 1334, act Aug. 16, 1954, ch. 736, 68A Stat. 346, related to restoration of value of investments referable to destroyed or seized property.

Section 1335, act Aug. 16, 1954, ch. 736, 68A Stat. 346, related to election by taxpayer for application of section 1333.

Section 1336, act Aug. 16, 1954, ch. 736, 68A Stat. 347, related to basis of recovered property.

Section 1337, act Aug. 16, 1954, ch. 736, 68A Stat. 347, related to applicable rules.

EFFECTIVE DATE OF REPEAL

Pub. L. 94–455, title XIX, §1901(a)(145)(B), Oct. 4, 1976, 90 Stat. 1788, provided that: "The repeal by subparagraph (A) [repealing sections 1331 to 1337 of this title] shall apply with respect to war loss recoveries in taxable years beginning after December 31, 1976".

PART V—CLAIM OF RIGHT

Sec.
1341. Computation of tax where taxpayer restores substantial amount held under claim of right.
[1342. Repealed.]

AMENDMENTS

1976—Pub. L. 94–455, title XIX, §1901(b)(38), Oct. 4, 1976, 90 Stat. 1803, struck out item 1342 "Computation of tax where taxpayer recovers substantial amount held by another under claim of right".

§1341. Computation of tax where taxpayer restores substantial amount held under claim of right

(a) General rule

If—

(1) an item was included in gross income for a prior taxable year (or years) because it appeared that the taxpayer had an unrestricted right to such item;

(2) a deduction is allowable for the taxable year because it was established after the close of such prior taxable year (or years) that the taxpayer did not have an unrestricted right to such item or to a portion of such item; and

(3) the amount of such deduction exceeds $3,000,

then the tax imposed by this chapter for the taxable year shall be the lesser of the following:

(4) the tax for the taxable year computed with such deduction; or

(5) an amount equal to—

(A) the tax for the taxable year computed without such deduction, minus

(B) the decrease in tax under this chapter (or the corresponding provisions of prior revenue laws) for the prior taxable year (or years) which would result solely from the exclusion of such item (or portion thereof) from gross income for such prior taxable year (or years).

For purposes of paragraph (5)(B), the corresponding provisions of the Internal Revenue Code of 1939 shall be chapter 1 of such code (other than subchapter E, relating to self-employment income) and subchapter E of chapter 2 of such code.

(b) Special rules

(1) If the decrease in tax ascertained under subsection (a)(5)(B) exceeds the tax imposed by this chapter for the taxable year (computed without the deduction) such excess shall be considered to be a payment of tax on the last day prescribed by law for the payment of tax for the taxable year, and shall be refunded or credited in the same manner as if it were an overpayment for such taxable year.

(2) Subsection (a) does not apply to any deduction allowable with respect to an item which was included in gross income by reason of the sale or other disposition of stock in trade of the taxpayer (or other property of a kind which would properly have been included in the inventory of the taxpayer if on hand at the close of the prior taxable year) or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business. This paragraph shall not apply if the deduction arises out of refunds or repayments with respect to rates made by a regulated public utility (as defined in section 7701(a)(33) without regard to the limitation contained in the last two sentences thereof) if such refunds or repayments are required to be made by the Government, political subdivision, agency, or instrumentality referred to in such section, or by an order of a court, or are made in settlement of litigation or under threat or imminence of litigation.

(3) If the tax imposed by this chapter for the taxable year is the amount determined under subsection (a)(5), then the deduction referred to in subsection (a)(2) shall not be taken into account for any purpose of this subtitle other than this section.

(4) For purposes of determining whether paragraph (4) or paragraph (5) of subsection (a) applies—

(A) in any case where the deduction referred to in paragraph (4) of subsection (a) results in a net operating loss, such loss shall, for purposes of computing the tax for the taxable year under such paragraph (4), be carried back to the same extent and in the same manner as is provided under section 172; and

(B) in any case where the exclusion referred to in paragraph (5)(B) of subsection (a) results in a

net operating loss or capital loss for the prior taxable year (or years), such loss shall, for purposes of computing the decrease in tax for the prior taxable year (or years) under such paragraph (5) (B), be carried back and carried over to the same extent and in the same manner as is provided under section 172 or section 1212, except that no carryover beyond the taxable year shall be taken into account.

(5) For purposes of this chapter, the net operating loss described in paragraph (4)(A) of this subsection, or the net operating loss or capital loss described in paragraph (4)(B) of this subsection, as the case may be, shall (after the application of paragraph (4) or (5)(B) of subsection (a) for the taxable year) be taken into account under section 172 or 1212 for taxable years after the taxable year to the same extent and in the same manner as—

(A) a net operating loss sustained for the taxable year, if paragraph (4) of subsection (a) applied, or

(B) a net operating loss or capital loss sustained for the prior taxable year (or years), if paragraph (5)(B) of subsection (a) applied.

(Aug. 16, 1954, ch. 736, 68A Stat. 348; Pub. L. 85–866, title I, §60(a)–(d), Sept. 2, 1958, 72 Stat. 1647; Pub. L. 87–863, §5(a), Oct. 23, 1962, 76 Stat. 1142; Pub. L. 88–272, title II, §234(b)(7), Feb. 26, 1964, 78 Stat. 116; Pub. L. 94–455, title XIX, §1901(a)(146), Oct. 4, 1976, 90 Stat. 1788.)

REFERENCES IN TEXT

Chapter 1 of the Internal Revenue Code of 1939, referred to in subsec. (a), was comprised of sections 1 to 482 of former Title 26, Internal Revenue Code. Chapter 1 was repealed by section 7851(a)(1)(A) of this title. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of this title. See also section 7851(e) of this title for provision that references in the 1986 Code to a provision of the 1939 Code, not then applicable, shall be deemed a reference to the corresponding provision of the 1986 Code, which is then applicable.

Subchapter E of chapter 2 of the Internal Revenue Code of 1939, referred to in subsec. (a), was comprised of sections 710 to 784 of former Title 26, Internal Revenue Code. Sections 710 to 736, 740, 742 to 744, 750, 751, 760, 761, and 780 to 784 were repealed by act Nov. 8, 1945, ch. 453, title I, §122(a), 59 Stat. 568. Section 741 was repealed by act Oct. 21, 1942, ch. 619, title II, §§224(b), 228(b), 56 Stat. 920, 925. Section 752 was repealed by act Oct. 21, 1942, ch. 619, title II, §229(a)(1), 56 Stat. 931, eff. as of Oct. 8, 1940.

AMENDMENTS

1976—Subsec. (b)(2). Pub. L. 94–455 struck out provision relating to the applicability of this paragraph where deduction arises out of payments or repayments made pursuant to a price redetermination provision in a subcontract entered into before Jan. 1, 1958.

1964—Subsec. (b)(2). Pub. L. 88–272 substituted "7701(a)(33) without regard to the limitation continued in the last two sentences thereof)" for "1503(c) without regard to paragraph (2) thereof)".

1962—Subsec. (b)(4), (5). Pub. L. 87–863 added pars. (4) and (5).

1958—Subsec. (a). Pub. L. 85–866, §60(a), inserted "and subchapter E of chapter 2 of such code" in last sentence.

Subsec. (b)(2). Pub. L. 85–866, §60(b), (c), in second sentence inserted "with respect to rates" and inserted ", or by an order of a court, or are made in settlement of litigation or under threat or imminence of litigation" and inserted last sentence.

Subsec. (b)(3). Pub. L. 85–866, §60(d), added par. (3).

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 234(c) of Pub. L. 88–272, set out as a note under section 1503 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87–863, §5(b), Oct. 23, 1962, 76 Stat. 1143, provided that: "The amendment made by subsection (a) [amending this section] shall be effective with respect to taxable years beginning on or after January 1, 1962."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 60(a), (c), (d) of Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

Pub. L. 85–866, title I, §60(e), Sept. 2, 1958, 72 Stat. 1647, provided that: "The amendment made by subsection (b) [amending this section] shall apply with respect to taxable years beginning after December 31, 1957. No interest shall be allowed or paid on any overpayment resulting from the application of the amendment made by subsection (c) [amending this section]."

[§1342. Repealed. Pub. L. 94–455, title XIX, §1901(a)(147), Oct. 4, 1976, 90 Stat. 1788]

Section, added Aug. 12, 1955, ch. 870, §3, 69 Stat. 717, related to computation of tax where taxpayer recovers substantial amount held by another under claim of right.

EFFECTIVE DATE OF REPEAL

Repeal effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 2 of this title.

[PART VI—REPEALED]

[§1346. Repealed. Pub. L. 94–455, title XIX, §1901(a)(148), Oct. 4, 1976, 90 Stat. 1788]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 349, related to recovery of unconstitutional Federal taxes.

EFFECTIVE DATE OF REPEAL

Repeal effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 2 of this title.

[§1347. Repealed. Pub. L. 94–455, title XIX, §1951(b)(12)(A), Oct. 4, 1976, 90 Stat. 1840]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 349; Sept. 2, 1958, Pub. L. 85–866, title I, §61(a), 72 Stat. 1648; Dec. 30, 1969, Pub. L. 91–172, title VIII, §803(d)(5), 83 Stat. 684, related to claims against the United States involving acquisition of property.

SAVINGS PROVISION

Pub. L. 94–455, title XIX, §1951(b)(12)(B), Oct. 4, 1976, 90 Stat. 1840, provided that: "Notwithstanding subparagraph (A) [repealing this section], if amounts received in a taxable year beginning after December 31, 1976, would have been subject to the provisions of section 1347 if received in a taxable year beginning before such date, the tax imposed by section 1 attributable to such receipt shall be computed as if section 1347 had not been repealed."

[§1348. Repealed. Pub. L. 97–34, title I, §101(c)(1), Aug. 13, 1981, 95 Stat. 183]

Section, added Pub. L. 91–172, title VIII, §804(a), Dec. 30, 1969, 83 Stat. 685; amended Pub. L. 93–406, title II, §2005(c)(14), Sept. 2, 1974, 88 Stat. 992; Pub. L. 94–455, title III, §302(a), Oct. 4, 1976, 90 Stat. 1554; Pub. L. 95–600, title IV, §§441(a), 442(a), title VII, §701(x)(1), (2), Nov. 6, 1978, 92 Stat. 2878, 2920; Pub. L. 95–600, title IV, §441(a), as amended Pub. L. 96–222, title I, §104(a)(5)(B), Apr. 1, 1980, 94 Stat. 218, provided for a 50-percent maximum rate on personal service income.

EFFECTIVE DATE OF REPEAL

Repeal effective for taxable years beginning after Dec. 31, 1981, see section 101(f)(1) of Pub. L. 97–34, set out as an Effective Date of 1981 Amendment note under section 1 of this title.

TRANSITIONAL RULE IN CASE OF TAXABLE YEAR BEGINNING BEFORE NOV. 1, 1978, AND ENDING AFTER OCT. 31, 1978

Pub. L. 95–600, title IV, §441(b)(2), Nov. 6, 1978, 92 Stat. 2878, as amended by Pub. L. 96–222, title I, §104(a)(5)(A), Apr. 1, 1980, 94 Stat. 218, provided that in the case of a taxable year which began before Nov. 1, 1978, and ended after Oct. 31, 1978, the amount taken into account under subsec. (b)(2)(B) of section 1348 of this title by reason of section 57(a)(9) of this title be 50 percent of the lesser of the net capital gain for the taxable year or the net capital gain taking into account only gain or loss properly taken into account for the portion of the taxable year before Nov. 1, 1978.

PART VII—RECOVERIES OF FOREIGN EXPROPRIATION LOSSES

Sec.
1351. Treatment of recoveries of foreign expropriation losses.

§1351. Treatment of recoveries of foreign expropriation losses

(a) Election

(1) In general

This section shall apply only to a recovery, by a domestic corporation subject to the tax imposed by section 11 or 801, of a foreign expropriation loss sustained by such corporation and only if such corporation was subject to the tax imposed by section 11 or 801, as the case may be, for the year of the loss and elects to have the provisions of this section apply with respect to such loss.

(2) Time, manner, and scope

An election under paragraph (1) shall be made at such time and in such manner as the Secretary may prescribe by regulations. An election made with respect to any foreign expropriation loss shall apply to all recoveries in respect of such loss.

(b) Definition of foreign expropriation loss

For purposes of this section, the term "foreign expropriation loss" means any loss sustained by reason of the expropriation, intervention, seizure, or similar taking of property by the government of any foreign country, any political subdivision thereof, or any agency or instrumentality of the foregoing. For purposes of the preceding sentence, a debt which becomes worthless shall, to the extent of any deduction allowed under section 166(a), be treated as a loss.

(c) Amount of recovery

(1) General rule

The amount of any recovery of a foreign expropriation loss is the amount of money and the fair market value of other property received in respect of such loss, determined as of the date of receipt.

(2) Special rule for life insurance companies

The amount of any recovery of a foreign expropriation loss includes, in the case of a life insurance company, the amount of decrease of any item taken into account under section 807(c), to the extent such decrease is attributable to the release, by reason of such loss, of its liabilities with respect to such item.

(d) Adjustment for prior tax benefits

(1) In general

That part of the amount of a recovery of a foreign expropriation loss to which this section

applies which, when added to the aggregate of the amounts of previous recoveries with respect to such loss, does not exceed the allowable deductions in prior taxable years on account of such loss shall be excluded from gross income for the taxable year of the recovery for purposes of computing the tax under this subtitle; but there shall be added to, and assessed and collected as a part of, the tax under this subtitle for such taxable year an amount equal to the total increase in the tax under this subtitle for all taxable years which would result by decreasing, in an amount equal to such part of the recovery so excluded, the deductions allowable in the prior taxable years on account of such loss. For purposes of this paragraph, if the loss to which the recovery relates was taken into account as a loss from the sale or exchange of a capital asset, the amount of the loss shall be treated as an allowable deduction even though there were no gains against which to allow such loss.

(2) Computation

The increase in the tax for each taxable year referred to in paragraph (1) shall be computed in accordance with regulations prescribed by the Secretary. Such regulations shall give effect to previous recoveries of any kind (including recoveries described in section 111, relating to recovery of tax benefit items) with respect to any prior taxable year, but shall otherwise treat the tax previously determined for any taxable year in accordance with the principles set forth in section 1314(a) (relating to correction of errors). Subject to the provisions of paragraph (3), all credits allowable against the tax for any taxable year, and all carryovers and carrybacks affected by so decreasing the allowable deductions, shall be taken into account in computing the increase in the tax.

(3) Foreign taxes

For purposes of this subsection, any choice made under subpart A of part III of subchapter N (relating to foreign tax credit) for any taxable year may be changed.

(4) Substitution of current tax rate

For purposes of this subsection, the rates of tax specified in section 11(b) for the taxable year of the recovery shall be treated as having been in effect for all prior taxable years.

(e) Gain on recovery

That part of the amount of a recovery of a foreign expropriation loss to which this section applies which is not excluded from gross income under subsection (d)(1) shall be considered for the taxable year of the recovery as gain on the involuntary conversion of property as a result of its destruction or seizure and shall be recognized or not recognized as provided in section 1033.

(f) Basis of recovered property

The basis of property (other than money) received as a recovery of a foreign expropriation loss to which this section applies shall be an amount equal to its fair market value on the date of receipt, reduced by such part of the gain under subsection (e) which is not recognized as provided in section 1033.

(g) Restoration of value of investments

For purposes of this section, if the value of any interest in, or with respect to, property (including any interest represented by a security, as defined in section 165(g)(2))—

(1) which became worthless by reason of the expropriation, intervention, seizure, or similar taking of such property by the government of any foreign country, any political subdivision thereof, or any agency or instrumentality of the foregoing, and

(2) which was taken into account as a loss from the sale or exchange of a capital asset or with respect to which a deduction for a loss was allowed under section 165 or a deduction for a bad debt was allowed under section 166,

is restored in whole or in part by reason of any recovery of money or other property in respect of the property which became worthless, the value so restored shall be treated as property received as a recovery in respect of such loss or such bad debt.

(h) Special rule for evidences of indebtedness

Bonds or other evidences of indebtedness received as a recovery of a foreign expropriation loss to which this section applies shall not be considered to have any original issue discount within the meaning of section 1273(a).

(i) Adjustments for succeeding years

For purposes of this subtitle, proper adjustment shall be made, under regulations prescribed by the Secretary, in—

(1) the credit under section 27 (relating to foreign tax credit),

(2) the credit under section 38 (relating to general business credit),

(3) the net operating loss deduction under section 172, or the operations loss deduction under section 810,

(4) the capital loss carryover under section 1212(a), and

(5) such other items as may be specified by such regulations,

for the taxable year of a recovery of a foreign expropriation loss to which this section applies, and for succeeding taxable years, to take into account items changed in making the computations under subsection (d) for taxable years prior to the taxable year of such recovery.

(Added Pub. L. 89–384, §1(a), Apr. 8, 1966, 80 Stat. 99; amended Pub. L. 94–455, title X, §1031(b)(3), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1623, 1834; Pub. L. 95–600, title III, §301(b)(17), Nov. 6, 1978, 92 Stat. 2823; Pub. L. 98–369, div. A, title I, §42(a)(12), title II, §211(b)(18), title IV, §474(r)(25), July 18, 1984, 98 Stat. 557, 756, 844; Pub. L. 99–514, title XVIII, §1812(a)(4), Oct. 22, 1986, 100 Stat. 2833.)

AMENDMENTS

1986—Subsec. (d)(2). Pub. L. 99–514 substituted "relating to recovery of tax benefit items" for "relating to recovery of bad debts, etc.".

1984—Subsec. (a)(1). Pub. L. 98–369, §211(b)(18)(A), substituted "801" for "802" in two places.

Subsec. (c)(2). Pub. L. 98–369, §211(b)(18)(B), substituted "section 807(c)" for "section 810(c)".

Subsec. (h). Pub. L. 98–369, §42(a)(12), substituted "section 1273(a)" for "section 1232(a)(2)".

Subsec. (i)(1). Pub. L. 98–369, §474(r)(25)(A), substituted "section 27" for "section 33".

Subsec. (i)(2). Pub. L. 98–369, §474(r)(25)(B), substituted "section 38 (relating to general business credit)" for "section 38 (relating to investment credit)".

Subsec. (i)(3). Pub. L. 98–369, §211(b)(18)(C), substituted "section 810" for "section 812".

1978—Subsec. (d)(4). Pub. L. 95–600 substituted "the rates of tax specified in section 11(b)" for "the normal tax rate provided by section 11(b) and the surtax rate provided by section 11(c) which are in effect".

1976—Subsecs. (a)(2), (d)(2). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (d)(3). Pub. L. 94–455, §1031(b)(3), struck out provisions relating to an election to have limitation provided by section 904(a)(2) apply and to revocation of such an election previously made.

Subsec. (i). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 42(a)(12) of Pub. L. 98–369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98–369, set out as an Effective Date note under section 1271 of this title.

Amendment by section 211(b)(18) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

Amendment by section 474(r)(25) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95–600, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1031(b)(3) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, with exceptions for certain mining operations, and for income from possessions, see section 1031(c) of Pub. L. 94–455, set out as a note under section 904 of this title.

EFFECTIVE DATE

Pub. L. 89–384, §2, Apr. 8, 1966, 80 Stat. 105, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by section 1 (except subsection (b)) [enacting this section and section 6167 of this title and amending sections 46, 901, 6503, and 6601 of this title] shall apply with respect to amounts received after December 31, 1964, in respect of foreign expropriation losses (as defined in section 1351(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] added by section 1(a)) sustained after December 31, 1958."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

Subchapter R—Election To Determine Corporate Tax on Certain International Shipping Activities Using Per Ton Rate

Sec.
1352. Alternative tax on qualifying shipping activities.
1353. Notional shipping income.
1354. Alternative tax election; revocation; termination.
1355. Definitions and special rules.
1356. Qualifying shipping activities.
1357. Items not subject to regular tax; depreciation; interest.
1358. Allocation of credits, income, and deductions.
1359. Disposition of qualifying vessels.

PRIOR PROVISIONS

A prior subchapter R, consisting of section 1361, related to election of certain partnerships and proprietorships to be taxed as domestic corporations, prior to repeal by Pub. L. 89–389, §4(b)(1), Apr. 14, 1966, 80 Stat. 116, effective Jan. 1, 1969.

§1352. Alternative tax on qualifying shipping activities

In the case of an electing corporation, the tax imposed by section 11 shall be the amount equal to the sum of—

(1) the tax imposed by section 11 determined after the application of this subchapter, and

(2) a tax equal to—

(A) the highest rate of tax specified in section 11, multiplied by

(B) the notional shipping income for the taxable year.

(Added Pub. L. 108–357, title II, §248(a), Oct. 22, 2004, 118 Stat. 1450.)

EFFECTIVE DATE

Subchapter applicable to taxable years beginning after Oct. 22, 2004, see section 248(c) of Pub. L. 108–357, set out as an Effective Date of 2004 Amendments note under section 56 of this title.

§1353. Notional shipping income

(a) In general

For purposes of this subchapter, the notional shipping income of an electing corporation shall be the sum of the amounts determined under subsection (b) for each qualifying vessel operated by such electing corporation.

(b) Amounts

(1) In general

For purposes of subsection (a), the amount of notional shipping income of an electing corporation for each qualifying vessel for the taxable year shall equal the product of—

(A) the daily notional shipping income, and

(B) the number of days during the taxable year that the electing corporation operated such vessel as a qualifying vessel in United States foreign trade.

(2) Treatment of vessels the income from which is not otherwise subject to tax

In the case of a qualifying vessel any of the income from which is not included in gross income by reason of section 883 or otherwise, the amount of notional shipping income from such vessel for the taxable year shall be the amount which bears the same ratio to such shipping income (determined without regard to this paragraph) as the gross income from the operation of such vessel in the United States foreign trade bears to the sum of such gross income and the income so excluded.

(c) Daily notional shipping income

For purposes of subsection (b), the daily notional shipping income from the operation of a qualifying vessel is—

(1) 40 cents for each 100 tons of so much of the net tonnage of the vessel as does not exceed 25,000 net tons, and

(2) 20 cents for each 100 tons of so much of the net tonnage of the vessel as exceeds 25,000 net tons.

(d) Multiple operators of vessel

If for any period 2 or more persons are operators of a qualifying vessel, the notional shipping income from the operation of such vessel for such period shall be allocated among such persons on the basis of their respective ownership, charter, and operating agreement interests in such vessel or on such other basis as the Secretary may prescribe by regulations.

(Added Pub. L. 108–357, title II, §248(a), Oct. 22, 2004, 118 Stat. 1450; amended Pub. L. 109–135, title IV, §403(g)(1)(A), Dec. 21, 2005, 119 Stat. 2624.)

AMENDMENTS

2005—Subsec. (d). Pub. L. 109–135 substituted "ownership, charter, and operating agreement interests" for "ownership and charter interests".

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

§1354. Alternative tax election; revocation; termination

(a) In general

A qualifying vessel operator may elect the application of this subchapter.

(b) Time and manner; years for which effective

An election under this subchapter—

(1) shall be made in such form as prescribed by the Secretary, and

(2) shall be effective for the taxable year for which made and all succeeding taxable years until terminated under subsection (d).

Such election may be effective for any taxable year only if made on or before the due date (including extensions) for filing the corporation's return for such taxable year.

(c) Consistent elections by members of controlled groups

An election under subsection (a) by a member of a controlled group shall apply to all qualifying vessel operators that are members of such group.

(d) Termination

(1) By revocation

(A) In general

An election under subsection (a) may be terminated by revocation.

(B) When effective

Except as provided in subparagraph (C)—

(i) a revocation made during the taxable year and on or before the 15th day of the 3d month thereof shall be effective on the 1st day of such taxable year, and

(ii) a revocation made during the taxable year but after such 15th day shall be effective on the 1st day of the following taxable year.

(C) Revocation may specify prospective date

If the revocation specifies a date for revocation which is on or after the day on which the revocation is made, the revocation shall be effective for taxable years beginning on and after the date so specified.

(2) By person ceasing to be qualifying vessel operator

(A) In general

An election under subsection (a) shall be terminated whenever (at any time on or after the 1st day of the 1st taxable year for which the corporation is an electing corporation) such corporation ceases to be a qualifying vessel operator.

(B) When effective

Any termination under this paragraph shall be effective on and after the date of cessation.

(C) Annualization

The Secretary shall prescribe such annualization and other rules as are appropriate in the case of a termination under this paragraph.

(e) Election after termination

If a qualifying vessel operator has made an election under subsection (a) and if such election has been terminated under subsection (d), such operator (and any successor operator) shall not be eligible to make an election under subsection (a) for any taxable year before its 5th taxable year which begins after the 1st taxable year for which such termination is effective, unless the Secretary consents to such election.

(Added Pub. L. 108–357, title II, §248(a), Oct. 22, 2004, 118 Stat. 1451; amended Pub. L. 109–135, title IV, §403(g)(4), Dec. 21, 2005, 119 Stat. 2624.)

AMENDMENTS

2005—Subsec. (b). Pub. L. 109–135 inserted "on or" after "only if made" in concluding provisions.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out

as a note under section 26 of this title.

§1355. Definitions and special rules

(a) Definitions

For purposes of this subchapter—

(1) Electing corporation

The term "electing corporation" means any corporation for which an election is in effect under this subchapter.

(2) Electing group; controlled group

(A) Electing group

The term "electing group" means a controlled group of which one or more members is an electing corporation.

(B) Controlled group

The term "controlled group" means any group which would be treated as a single employer under subsection (a) or (b) of section 52 if paragraphs (1) and (2) of section 52(a) did not apply.

(3) Qualifying vessel operator

The term "qualifying vessel operator" means any corporation—

(A) who operates one or more qualifying vessels, and

(B) who meets the shipping activity requirement in subsection (c).

(4) Qualifying vessel

The term "qualifying vessel" means a self-propelled (or a combination self-propelled and non-self-propelled) United States flag vessel of not less than 6,000 deadweight tons used exclusively in the United States foreign trade during the period that the election under this subchapter is in effect.

(5) United States flag vessel

The term "United States flag vessel" means any vessel documented under the laws of the United States.

(6) United States domestic trade

The term "United States domestic trade" means the transportation of goods or passengers between places in the United States.

(7) United States foreign trade

The term "United States foreign trade" means the transportation of goods or passengers between a place in the United States and a foreign place or between foreign places.

(b) Operating a vessel

For purposes of this subchapter—

(1) In general

Except as provided in paragraph (2), a person is treated as operating any vessel during any period if—

(A)(i) such vessel is owned by, or chartered (including a time charter) to, the person, or

(ii) the person provides services for such vessel pursuant to an operating agreement, and

(B) such vessel is in use as a qualifying vessel during such period.

(2) Bareboat charters

A person is treated as operating and using a vessel that it has chartered out on bareboat charter terms only if—

(A)(i) the vessel is temporarily surplus to the person's requirements and the term of the charter does not exceed 3 years, or

(ii) the vessel is bareboat chartered to a member of a controlled group which includes such person or to an unrelated person who sub-bareboats or time charters the vessel to such a member (including the owner of the vessel), and

(B) the vessel is used as a qualifying vessel by the person to whom ultimately chartered.

(c) Shipping activity requirement

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, a corporation meets the shipping activity requirement of this subsection for any taxable year only if the requirement of paragraph (4) is met for each of the 2 preceding taxable years.

(2) Special rule for 1st year of election

A corporation meets the shipping activity requirement of this subsection for the first taxable year for which the election under section 1354(a) is in effect only if the requirement of paragraph (4) is met for the preceding taxable year.

(3) Controlled groups

A corporation who is a member of a controlled group meets the shipping activity requirement of this subsection only if such requirement is met determined by treating all members of such group as 1 person.

(4) Requirement

The requirement of this paragraph is met for any taxable year if, on average during such year, at least 25 percent of the aggregate tonnage of qualifying vessels used by the corporation were owned by such corporation or chartered to such corporation on bareboat charter terms.

(d) Activities carried on partnerships, etc.

In applying this subchapter to a partner in a partnership—

(1) each partner shall be treated as operating vessels operated by the partnership,

(2) each partner shall be treated as conducting the activities conducted by the partnership, and

(3) the extent of a partner's ownership, charter, or operating agreement interest in any vessel operated by the partnership shall be determined on the basis of the partner's interest in the partnership.

A similar rule shall apply with respect to other pass-thru entities.

(e) Effect of temporarily ceasing to operate a qualifying vessel

(1) In general

For purposes of subsections (b) and (c), an electing corporation shall be treated as continuing to use a qualifying vessel during any period of temporary cessation if the electing corporation gives timely notice to the Secretary stating—

(A) that it has temporarily ceased to operate the qualifying vessel, and

(B) its intention to resume operating the qualifying vessel.

(2) Notice

Notice shall be deemed timely if given not later than the due date (including extensions) for the corporation's tax return for the taxable year in which the temporary cessation begins.

(3) Period disregard in effect

The period of temporary cessation under paragraph (1) shall continue until the earlier of the date on which—

(A) the electing corporation abandons its intention to resume operation of the qualifying vessel, or

(B) the electing corporation resumes operation of the qualifying vessel.

(f) Effect of temporarily operating a qualifying vessel in the United States domestic trade

(1) In general

For purposes of this subchapter, an electing corporation shall be treated as continuing to use a qualifying vessel in the United States foreign trade during any period of temporary use in the United States domestic trade if the electing corporation gives timely notice to the Secretary stating—

(A) that it temporarily operates or has operated in the United States domestic trade a qualifying vessel which had been used in the United States foreign trade, and

(B) its intention to resume operation of the vessel in the United States foreign trade.

(2) Notice

Notice shall be deemed timely if given not later than the due date (including extensions) for the corporation's tax return for the taxable year in which the temporary cessation begins.

(3) Period disregard in effect

The period of temporary use under paragraph (1) continues until the earlier of the date of [1] which—

(A) the electing corporation abandons its intention to resume operations of the vessel in the United States foreign trade, or

(B) the electing corporation resumes operation of the vessel in the United States foreign trade.

(4) No disregard if domestic trade use exceeds 30 days

Paragraph (1) shall not apply to any qualifying vessel which is operated in the United States domestic trade for more than 30 days during the taxable year.

(g) Great Lakes domestic shipping to not disqualify vessel

(1) In general

If the electing corporation elects (at such time and in such manner as the Secretary may require) to apply this subsection for any taxable year to any qualifying vessel which is used in qualified zone domestic trade during the taxable year—

(A) solely for purposes of subsection (a)(4), such use shall be treated as use in United States foreign trade (and not as use in United States domestic trade), and

(B) subsection (f) shall not apply with respect to such vessel for such taxable year.

(2) Effect of temporarily operating vessel in United States domestic trade

In the case of a qualifying vessel to which this subsection applies—

(A) In general

An electing corporation shall be treated as using such vessel in qualified zone domestic trade during any period of temporary use in the United States domestic trade (other than qualified zone domestic trade) if the electing corporation gives timely notice to the Secretary stating—

(i) that it temporarily operates or has operated in the United States domestic trade (other than qualified zone domestic trade) a qualifying vessel which had been used in the United States foreign trade or qualified zone domestic trade, and

(ii) its intention to resume operation of the vessel in the United States foreign trade or qualified zone domestic trade.

(B) Notice

Notice shall be deemed timely if given not later than the due date (including extensions) for the corporation's tax return for the taxable year in which the temporary cessation begins.

(C) Period disregard in effect

The period of temporary use under subparagraph (A) continues until the earlier of the date of

which—

(i) the electing corporation abandons its intention to resume operations of the vessel in the United States foreign trade or qualified zone domestic trade, or

(ii) the electing corporation resumes operation of the vessel in the United States foreign trade or qualified zone domestic trade.

(D) No disregard if domestic trade use exceeds 30 days

Subparagraph (A) shall not apply to any qualifying vessel which is operated in the United States domestic trade (other than qualified zone domestic trade) for more than 30 days during the taxable year.

(3) Allocation of income and deductions to qualifying shipping activities

In the case of a qualifying vessel to which this subsection applies, the Secretary shall prescribe rules for the proper allocation of income, expenses, losses, and deductions between the qualified shipping activities and the other activities of such vessel.

(4) Qualified zone domestic trade

For purposes of this subsection—

(A) In general

The term "qualified zone domestic trade" means the transportation of goods or passengers between places in the qualified zone if such transportation is in the United States domestic trade.

(B) Qualified zone

The term "qualified zone" means the Great Lakes Waterway and the St. Lawrence Seaway.

(h) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.

(Added Pub. L. 108–357, title II, §248(a), Oct. 22, 2004, 118 Stat. 1452; amended Pub. L. 109–135, title IV, §403(g)(1)(B)–(2), Dec. 21, 2005, 119 Stat. 2624; Pub. L. 109–222, title II, §205(a), May 17, 2006, 120 Stat. 350; Pub. L. 109–432, div. A, title IV, §§413(a), 415(a), Dec. 20, 2006, 120 Stat. 2963.)

AMENDMENTS

2006—Subsec. (a)(4). Pub. L. 109–432, §413(a), substituted "6,000" for "10,000 (6,000, in the case of taxable years beginning after December 31, 2005, and ending before January 1, 2011)".

Pub. L. 109–222 inserted "(6,000, in the case of taxable years beginning after December 31, 2005, and ending before January 1, 2011)" after "10,000".

Subsecs. (g), (h). Pub. L. 109–432, §415(a), added subsec. (g) and redesignated former subsec. (g) as (h).

2005—Subsec. (a)(8). Pub. L. 109–135, §403(g)(1)(B), struck out heading and text of par. (8). Text read as follows: "The term 'charter' includes an operating agreement."

Subsec. (b)(1). Pub. L. 109–135, §403(g)(1)(C), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "Except as provided in paragraph (2), a person is treated as operating any vessel during any period if such vessel is—

"(A) owned by, or chartered (including a time charter) to, the person, and

"(B) is in use as a qualifying vessel during such period."

Subsec. (c)(3). Pub. L. 109–135, §403(g)(2), substituted "determined by treating all members of such group as 1 person." for "determined—

"(A) by treating all members of such group as 1 person, and

"(B) by disregarding vessel charters between members of such group."

Subsec. (d)(3). Pub. L. 109–135, §403(g)(1)(D), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "the extent of a partner's ownership or charter interest in any vessel owned by or chartered to the partnership shall be determined on the basis of the partner's interest in the partnership."

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title IV, §413(b), Dec. 20, 2006, 120 Stat. 2963, provided that: "The amendment

made by this section [amending this section] shall take effect as if included in section 205 of the Tax Increase Prevention and Reconciliation Act of 2005 [Pub. L. 109–222]."

Pub. L. 109–432, div. A, title IV, §415(b), Dec. 20, 2006, 120 Stat. 2965, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Dec. 20, 2006]."

Pub. L. 109–222, title II, §205(b), May 17, 2006, 120 Stat. 350, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 2005."

EFFECTIVE DATE OF 2005 AMENDMENT

Amendments by Pub. L. 109–135 effective as if included in the provisions of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which they relate, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

[1] *So in original.*

§1356. Qualifying shipping activities

(a) Qualifying shipping activities

For purposes of this subchapter, the term "qualifying shipping activities" means—

(1) core qualifying activities,

(2) qualifying secondary activities, and

(3) qualifying incidental activities.

(b) Core qualifying activities

For purposes of this subchapter, the term "core qualifying activities" means activities in operating qualifying vessels in United States foreign trade.

(c) Qualifying secondary activities

For purposes of this section—

(1) In general

The term "qualifying secondary activities" means secondary activities but only to the extent that, without regard to this subchapter, the gross income derived by such corporation from such activities does not exceed 20 percent of the gross income derived by the corporation from its core qualifying activities.

(2) Secondary activities

The term "secondary activities" means—

(A) the active management or operation of vessels other than qualifying vessels in the United States foreign trade,

(B) the provision of vessel, barge, container, or cargo-related facilities or services to any person,

(C) other activities of the electing corporation and other members of its electing group that are an integral part of its business of operating qualifying vessels in United States foreign trade, including—

(i) ownership or operation of barges, containers, chassis, and other equipment that are the complement of, or used in connection with, a qualifying vessel in United States foreign trade,

(ii) the inland haulage of cargo shipped, or to be shipped, on qualifying vessels in United States foreign trade, and

(iii) the provision of terminal, maintenance, repair, logistical, or other vessel, barge, container, or cargo-related services that are an integral part of operating qualifying vessels in United States foreign trade, and

(D) such other activities as may be prescribed by the Secretary pursuant to regulations.

Such term shall not include any core qualifying activities.

(d) Qualifying incidental activities

For purposes of this section, the term "qualified incidental activities" means shipping-related activities if—

(1) they are incidental to the corporation's core qualifying activities,

(2) they are not qualifying secondary activities, and

(3) without regard to this subchapter, the gross income derived by such corporation from such activities does not exceed 0.1 percent of the corporation's gross income from its core qualifying activities.

(e) Application of gross income tests in case of electing group

In the case of an electing group, subsections (c)(1) and (d)(3) shall be applied as if such group were 1 entity, and the limitations under such subsections shall be allocated among the corporations in such group.

(Added Pub. L. 108–357, title II, §248(a), Oct. 22, 2004, 118 Stat. 1454; amended Pub. L. 109–135, title IV, §403(g)(3), Dec. 21, 2005, 119 Stat. 2624.)

AMENDMENTS

2005—Subsec. (c)(2). Pub. L. 109–135, §403(g)(3)(B), inserted concluding provisions.

Subsec. (c)(3). Pub. L. 109–135, §403(g)(3)(A), struck out heading and text of par. (3). Text read as follows:

"(A) IN GENERAL.—Such term shall not include any core qualifying activities.

"(B) NONELECTING CORPORATIONS.—In the case of a corporation (other than an electing corporation) which is a member of an electing group, any core qualifying activities of the corporation shall be treated as qualifying secondary activities (and not as core qualifying activities)."

EFFECTIVE DATE OF 2005 AMENDMENT

Amendments by Pub. L. 109–135 effective as if included in the provisions of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which they relate, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

§1357. Items not subject to regular tax; depreciation; interest

(a) Exclusion from gross income

Gross income of an electing corporation shall not include its income from qualifying shipping activities.

(b) Electing group member

Gross income of a corporation (other than an electing corporation) which is a member of an electing group shall not include its income from qualifying shipping activities conducted by such member.

(c) Denial of losses, deductions, and credits

(1) General rule

Subject to paragraph (2), each item of loss, deduction (other than for interest expense), or credit of any taxpayer with respect to any activity the income from which is excluded from gross income under this section shall be disallowed.

(2) Depreciation

(A) In general

Notwithstanding paragraph (1), the adjusted basis (for purposes of determining gain) of any qualifying vessel shall be determined as if the deduction for depreciation had been allowed.

(B) Method

(i) In general

Except as provided in clause (ii), the straight-line method of depreciation shall apply to qualifying vessels the income from operation of which is excluded from gross income under this section.

(ii) Exception

Clause (i) shall not apply to any qualifying vessel which is subject to a charter entered into before the date of the enactment of this subchapter.

(3) Interest

(A) In general

Except as provided in subparagraph (B), the interest expense of an electing corporation shall be disallowed in the ratio that the fair market value of such corporation's qualifying vessels bears to the fair market value of such corporation's total assets.

(B) Electing group

In the case of a corporation which is a member of an electing group, the interest expense of such corporation shall be disallowed in the ratio that the fair market value of such corporation's qualifying vessels bears to the fair market value of the electing groups total assets.

(Added Pub. L. 108–357, title II, §248(a), Oct. 22, 2004, 118 Stat. 1455.)

REFERENCES IN TEXT

The date of the enactment of this subchapter, referred to in subsec. (c)(2)(B)(ii), is the date of enactment of Pub. L. 108–357, which was approved Oct. 22, 2004.

§1358. Allocation of credits, income, and deductions

(a) Qualifying shipping activities

For purposes of this chapter, the qualifying shipping activities of an electing corporation shall be treated as a separate trade or business activity distinct from all other activities conducted by such corporation.

(b) Exclusion of credits or deductions

(1) No deduction shall be allowed against the notional shipping income of an electing corporation, and no credit shall be allowed against the tax imposed by section 1352(a)(2).[1]

(2) No deduction shall be allowed for any net operating loss attributable to the qualifying shipping activities of any person to the extent that such loss is carried forward by such person from a taxable year preceding the first taxable year for which such person was an electing corporation.

(c) Transactions not at arm's length

Section 482 applies in accordance with this subsection to a transaction or series of transactions—

(1) as between an electing corporation and another person, or

(2) as between an [2] person's qualifying shipping activities and other activities carried on by it.

(Added Pub. L. 108–357, title II, §248(a), Oct. 22, 2004, 118 Stat. 1456.)

[1] So in original. Probably should be section "1352(2).".

[2] So in original.

§1359. Disposition of qualifying vessels

(a) In general

If any qualifying vessel operator sells or disposes of any qualifying vessel in an otherwise taxable transaction, at the election of such operator, no gain shall be recognized if any replacement qualifying vessel is acquired during the period specified in subsection (b), except to the extent that the amount realized upon such sale or disposition exceeds the cost of the replacement qualifying vessel.

(b) Period within which property must be replaced

The period referred to in subsection (a) shall be the period beginning one year prior to the disposition of the qualifying vessel and ending—

(1) 3 years after the close of the first taxable year in which the gain is realized, or

(2) subject to such terms and conditions as may be specified by the Secretary, on such later date as the Secretary may designate on application by the taxpayer.

Such application shall be made at such time and in such manner as the Secretary may by regulations prescribe.

(c) Application of section to noncorporate operators

For purposes of this section, the term "qualifying vessel operator" includes any person who would be a qualifying vessel operator were such person a corporation.

(d) Time for assessment of deficiency attributable to gain

If a qualifying vessel operator has made the election provided in subsection (a), then—

(1) the statutory period for the assessment of any deficiency, for any taxable year in which any part of the gain is realized, attributable to such gain shall not expire prior to the expiration of 3 years from the date the Secretary is notified by such operator (in such manner as the Secretary may by regulations prescribe) of the replacement qualifying vessel or of an intention not to replace, and

(2) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of section 6212(c) or the provisions of any other law or rule of law which would otherwise prevent such assessment.

(e) Basis of replacement qualifying vessel

In the case of any replacement qualifying vessel purchased by the qualifying vessel operator which resulted in the nonrecognition of any part of the gain realized as the result of a sale or other disposition of a qualifying vessel, the basis shall be the cost of the replacement qualifying vessel decreased in the amount of the gain not so recognized; and if the property purchased consists of more than one piece of property, the basis determined under this sentence shall be allocated to the purchased properties in proportion to their respective costs.

(Added Pub. L. 108–357, title II, §248(a), Oct. 22, 2004, 118 Stat. 1456.)

Subchapter S—Tax Treatment of S Corporations and Their Shareholders

Part

I. In general.

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PART I—IN GENERAL

Sec.

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§1361. S corporation defined

(a) S corporation defined

(1) In general

For purposes of this title, the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under section 1362(a) is in effect for such year.

(2) C corporation

For purposes of this title, the term "C corporation" means, with respect to any taxable year, a corporation which is not an S corporation for such year.

(b) Small business corporation

(1) In general

For purposes of this subchapter, the term "small business corporation" means a domestic corporation which is not an ineligible corporation and which does not—

(A) have more than 100 shareholders,

(B) have as a shareholder a person (other than an estate, a trust described in subsection (c)(2), or an organization described in subsection (c)(6)) who is not an individual,

(C) have a nonresident alien as a shareholder, and

(D) have more than 1 class of stock.

(2) Ineligible corporation defined

For purposes of paragraph (1), the term "ineligible corporation" means any corporation which is—

(A) a financial institution which uses the reserve method of accounting for bad debts described in section 585,

(B) an insurance company subject to tax under subchapter L,

(C) a corporation to which an election under section 936 applies, or

(D) a DISC or former DISC.

(3) Treatment of certain wholly owned subsidiaries

(A) In general

Except as provided in regulations prescribed by the Secretary, for purposes of this title—

(i) a corporation which is a qualified subchapter S subsidiary shall not be treated as a separate corporation, and

(ii) all assets, liabilities, and items of income, deduction, and credit of a qualified subchapter S subsidiary shall be treated as assets, liabilities, and such items (as the case may be) of the S corporation.

(B) Qualified subchapter S subsidiary

For purposes of this paragraph, the term "qualified subchapter S subsidiary" means any domestic corporation which is not an ineligible corporation (as defined in paragraph (2)), if—

(i) 100 percent of the stock of such corporation is held by the S corporation, and

(ii) the S corporation elects to treat such corporation as a qualified subchapter S subsidiary.

(C) Treatment of terminations of qualified subchapter S subsidiary status

(i) In general

For purposes of this title, if any corporation which was a qualified subchapter S subsidiary ceases to meet the requirements of subparagraph (B), such corporation shall be treated as a new corporation acquiring all of its assets (and assuming all of its liabilities) immediately before such cessation from the S corporation in exchange for its stock.

(ii) Termination by reason of sale of stock

If the failure to meet the requirements of subparagraph (B) is by reason of the sale of stock of a corporation which is a qualified subchapter S subsidiary, the sale of such stock shall be

treated as if—

(I) the sale were a sale of an undivided interest in the assets of such corporation (based on the percentage of the corporation's stock sold), and

(II) the sale were followed by an acquisition by such corporation of all of its assets (and the assumption by such corporation of all of its liabilities) in a transaction to which section 351 applies.

(D) Election after termination

If a corporation's status as a qualified subchapter S subsidiary terminates, such corporation (and any successor corporation) shall not be eligible to make—

(i) an election under subparagraph (B)(ii) to be treated as a qualified subchapter S subsidiary, or

(ii) an election under section 1362(a) to be treated as an S corporation,

before its 5th taxable year which begins after the 1st taxable year for which such termination was effective, unless the Secretary consents to such election.

(E) Information returns

Except to the extent provided by the Secretary, this paragraph shall not apply to part III of subchapter A of chapter 61 (relating to information returns).

(c) Special rules for applying subsection (b)

(1) Members of a family treated as 1 shareholder

(A) In general

For purposes of subsection (b)(1)(A), there shall be treated as one shareholder—

(i) a husband and wife (and their estates), and

(ii) all members of a family (and their estates).

(B) Members of a family

For purposes of this paragraph—

(i) In general

The term "members of a family" means a common ancestor, any lineal descendant of such common ancestor, and any spouse or former spouse of such common ancestor or any such lineal descendant.

(ii) Common ancestor

An individual shall not be considered to be a common ancestor if, on the applicable date, the individual is more than 6 generations removed from the youngest generation of shareholders who would (but for this subparagraph) be members of the family. For purposes of the preceding sentence, a spouse (or former spouse) shall be treated as being of the same generation as the individual to whom such spouse is (or was) married.

(iii) Applicable date

The term "applicable date" means the latest of—

(I) the date the election under section 1362(a) is made,

(II) the earliest date that an individual described in clause (i) holds stock in the S corporation, or

(III) October 22, 2004.

(C) Effect of adoption, etc.

Any legally adopted child of an individual, any child who is lawfully placed with an individual for legal adoption by the individual, and any eligible foster child of an individual (within the meaning of section 152(f)(1)(C)), shall be treated as a child of such individual by blood.

(2) Certain trusts permitted as shareholders

(A) In general

For purposes of subsection (b)(1)(B), the following trusts may be shareholders:

(i) A trust all of which is treated (under subpart E of part I of subchapter J of this chapter) as owned by an individual who is a citizen or resident of the United States.

(ii) A trust which was described in clause (i) immediately before the death of the deemed owner and which continues in existence after such death, but only for the 2-year period beginning on the day of the deemed owner's death.

(iii) A trust with respect to stock transferred to it pursuant to the terms of a will, but only for the 2-year period beginning on the day on which such stock is transferred to it.

(iv) A trust created primarily to exercise the voting power of stock transferred to it.

(v) An electing small business trust.

(vi) In the case of a corporation which is a bank (as defined in section 581) or a depository institution holding company (as defined in section 3(w)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(1)), a trust which constitutes an individual retirement account under section 408(a), including one designated as a Roth IRA under section 408A, but only to the extent of the stock held by such trust in such bank or company as of the date of the enactment of this clause.

This subparagraph shall not apply to any foreign trust.

(B) Treatment as shareholders

For purposes of subsection (b)(1)—

(i) In the case of a trust described in clause (i) of subparagraph (A), the deemed owner shall be treated as the shareholder.

(ii) In the case of a trust described in clause (ii) of subparagraph (A), the estate of the deemed owner shall be treated as the shareholder.

(iii) In the case of a trust described in clause (iii) of subparagraph (A), the estate of the testator shall be treated as the shareholder.

(iv) In the case of a trust described in clause (iv) of subparagraph (A), each beneficiary of the trust shall be treated as a shareholder.

(v) In the case of a trust described in clause (v) of subparagraph (A), each potential current beneficiary of such trust shall be treated as a shareholder; except that, if for any period there is no potential current beneficiary of such trust, such trust shall be treated as the shareholder during such period.

(vi) In the case of a trust described in clause (vi) of subparagraph (A), the individual for whose benefit the trust was created shall be treated as a shareholder.

(3) Estate of individual in bankruptcy may be shareholder

For purposes of subsection (b)(1)(B), the term "estate" includes the estate of an individual in a case under title 11 of the United States Code.

(4) Differences in common stock voting rights disregarded

For purposes of subsection (b)(1)(D), a corporation shall not be treated as having more than 1 class of stock solely because there are differences in voting rights among the shares of common stock.

(5) Straight debt safe harbor

(A) In general

For purposes of subsection (b)(1)(D), straight debt shall not be treated as a second class of stock.

(B) Straight debt defined

For purposes of this paragraph, the term "straight debt" means any written unconditional

promise to pay on demand or on a specified date a sum certain in money if—

(i) the interest rate (and interest payment dates) are not contingent on profits, the borrower's discretion, or similar factors,

(ii) there is no convertibility (directly or indirectly) into stock, and

(iii) the creditor is an individual (other than a nonresident alien), an estate, a trust described in paragraph (2), or a person which is actively and regularly engaged in the business of lending money.

(C) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to provide for the proper treatment of straight debt under this subchapter and for the coordination of such treatment with other provisions of this title.

(6) Certain exempt organizations permitted as shareholders

For purposes of subsection (b)(1)(B), an organization which is—

(A) described in section 401(a) or 501(c)(3), and

(B) exempt from taxation under section 501(a),

may be a shareholder in an S corporation.

(d) Special rule for qualified subchapter S trust

(1) In general

In the case of a qualified subchapter S trust with respect to which a beneficiary makes an election under paragraph (2)—

(A) such trust shall be treated as a trust described in subsection (c)(2)(A)(i),

(B) for purposes of section 678(a), the beneficiary of such trust shall be treated as the owner of that portion of the trust which consists of stock in an S corporation with respect to which the election under paragraph (2) is made, and

(C) for purposes of applying sections 465 and 469 to the beneficiary of the trust, the disposition of the S corporation stock by the trust shall be treated as a disposition by such beneficiary.

(2) Election

(A) In general

A beneficiary of a qualified subchapter S trust (or his legal representative) may elect to have this subsection apply.

(B) Manner and time of election

(i) Separate election with respect to each corporation

An election under this paragraph shall be made separately with respect to each corporation the stock of which is held by the trust.

(ii) Elections with respect to successive income beneficiaries

If there is an election under this paragraph with respect to any beneficiary, an election under this paragraph shall be treated as made by each successive beneficiary unless such beneficiary affirmatively refuses to consent to such election.

(iii) Time, manner, and form of election

Any election, or refusal, under this paragraph shall be made in such manner and form, and at such time, as the Secretary may prescribe.

(C) Election irrevocable

An election under this paragraph, once made, may be revoked only with the consent of the Secretary.

(D) Grace period

An election under this paragraph shall be effective up to 15 days and 2 months before the date of the election.

(3) Qualified subchapter S trust

For purposes of this subsection, the term "qualified subchapter S trust" means a trust—

(A) the terms of which require that—

(i) during the life of the current income beneficiary, there shall be only 1 income beneficiary of the trust,

(ii) any corpus distributed during the life of the current income beneficiary may be distributed only to such beneficiary,

(iii) the income interest of the current income beneficiary in the trust shall terminate on the earlier of such beneficiary's death or the termination of the trust, and

(iv) upon the termination of the trust during the life of the current income beneficiary, the trust shall distribute all of its assets to such beneficiary, and

(B) all of the income (within the meaning of section 643(b)) of which is distributed (or required to be distributed) currently to 1 individual who is a citizen or resident of the United States.

A substantially separate and independent share of a trust within the meaning of section 663(c) shall be treated as a separate trust for purposes of this subsection and subsection (c).

(4) Trust ceasing to be qualified

(A) Failure to meet requirements of paragraph (3)(A)

If a qualified subchapter S trust ceases to meet any requirement of paragraph (3)(A), the provisions of this subsection shall not apply to such trust as of the date it ceases to meet such requirement.

(B) Failure to meet requirements of paragraph (3)(B)

If any qualified subchapter S trust ceases to meet any requirement of paragraph (3)(B) but continues to meet the requirements of paragraph (3)(A), the provisions of this subsection shall not apply to such trust as of the first day of the first taxable year beginning after the first taxable year for which it failed to meet the requirements of paragraph (3)(B).

(e) Electing small business trust defined

(1) Electing small business trust

For purposes of this section—

(A) In general

Except as provided in subparagraph (B), the term "electing small business trust" means any trust if—

(i) such trust does not have as a beneficiary any person other than (I) an individual, (II) an estate, (III) an organization described in paragraph (2), (3), (4), or (5) of section 170(c), or (IV) an organization described in section 170(c)(1) which holds a contingent interest in such trust and is not a potential current beneficiary,

(ii) no interest in such trust was acquired by purchase, and

(iii) an election under this subsection applies to such trust.

(B) Certain trusts not eligible

The term "electing small business trust" shall not include—

(i) any qualified subchapter S trust (as defined in subsection (d)(3)) if an election under subsection (d)(2) applies to any corporation the stock of which is held by such trust,

(ii) any trust exempt from tax under this subtitle, and

(iii) any charitable remainder annuity trust or charitable remainder unitrust (as defined in section 664(d)).

(C) Purchase

For purposes of subparagraph (A), the term "purchase" means any acquisition if the basis of the property acquired is determined under section 1012.

(2) Potential current beneficiary

For purposes of this section, the term "potential current beneficiary" means, with respect to any period, any person who at any time during such period is entitled to, or at the discretion of any person may receive, a distribution from the principal or income of the trust (determined without regard to any power of appointment to the extent such power remains unexercised at the end of such period). If a trust disposes of all of the stock which it holds in an S corporation, then, with respect to such corporation, the term "potential current beneficiary" does not include any person who first met the requirements of the preceding sentence during the 1-year period ending on the date of such disposition.

(3) Election

An election under this subsection shall be made by the trustee. Any such election shall apply to the taxable year of the trust for which made and all subsequent taxable years of such trust unless revoked with the consent of the Secretary.

(4) Cross reference

For special treatment of electing small business trusts, see section 641(c).

(f) Restricted bank director stock

(1) In general

Restricted bank director stock shall not be taken into account as outstanding stock of the S corporation in applying this subchapter (other than section 1368(f)).

(2) Restricted bank director stock

For purposes of this subsection, the term "restricted bank director stock" means stock in a bank (as defined in section 581) or a depository institution holding company (as defined in section 3(w)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(1)),[1] if such stock—

(A) is required to be held by an individual under applicable Federal or State law in order to permit such individual to serve as a director, and

(B) is subject to an agreement with such bank or company (or a corporation which controls (within the meaning of section 368(c)) such bank or company) pursuant to which the holder is required to sell back such stock (at the same price as the individual acquired such stock) upon ceasing to hold the office of director.

(3) Cross reference

For treatment of certain distributions with respect to restricted bank director stock, see section 1368(f).

(g) Special rule for bank required to change from the reserve method of accounting on becoming S corporation

In the case of a bank which changes from the reserve method of accounting for bad debts described in section 585 or 593 for its first taxable year for which an election under section 1362(a) is in effect, the bank may elect to take into account any adjustments under section 481 by reason of such change for the taxable year immediately preceding such first taxable year.

(Added Pub. L. 97–354, §2, Oct. 19, 1982, 96 Stat. 1669; amended Pub. L. 98–369, div. A, title VII, §721(c), (f), July 18, 1984, 98 Stat. 967; Pub. L. 99–514, title IX, §901(d)(4)(G), title XVIII, §1879(m)(1)(A), Oct. 22, 1986, 100 Stat. 2380, 2910; Pub. L. 100–647, title I, §1018(q)(2), Nov. 10, 1988, 102 Stat. 3585; Pub. L. 101–239, title VII, §7811(c)(6), Dec. 19, 1989, 103 Stat. 2407; Pub. L. 104–188, title I, §§1301–1302(c), 1303, 1304, 1308(a), (b), (d)(1), 1315, 1316(a), (e), 1616(b)(15), Aug. 20, 1996, 110 Stat. 1777, 1779, 1782, 1783, 1785, 1786, 1857; Pub. L. 105–34, title XVI, §1601(c)(1), (3), (4)(B), (C), Aug. 5, 1997, 111 Stat. 1087; Pub. L. 105–206, title VI, §6007(f)(3),

July 22, 1998, 112 Stat. 810; Pub. L. 106–554, §1(a)(7) [title III, §316(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–644; Pub. L. 108–357, title II, §§231(a), 232(a), 233(a), (b), 234(a), 236(a), 239(a), Oct. 22, 2004, 118 Stat. 1433–1435, 1437; Pub. L. 109–135, title IV, §§403(b), 413(a)(1), (c), Dec. 21, 2005, 119 Stat. 2620, 2641; Pub. L. 110–28, title VIII, §§8232(a), 8233(a), 8234(a), May 25, 2007, 121 Stat. 197, 198.)

REFERENCES IN TEXT

The date of the enactment of this clause, referred to in subsec. (c)(2)(A)(vi), is the date of enactment of Pub. L. 108–357, which was approved Oct. 22, 2004.

PRIOR PROVISIONS

A prior section 1361, acts Aug. 16, 1954, ch. 736, 68A Stat. 350; Oct. 10, 1962, Pub. L. 87–792, §7(h), 76 Stat. 829; Feb. 26, 1964, Pub. L. 88–272, title II, §225(k)(5), 78 Stat. 94; Apr. 14, 1966, Pub. L. 89–389, §4(a), 80 Stat. 115, related to election of certain partnerships and proprietorships to be taxed as domestic corporations, prior to repeal by Pub. L. 89–389, §4(b)(1), Apr. 14, 1966, 80 Stat. 116, effective Jan. 1, 1969.

AMENDMENTS

2007—Subsec. (b)(3)(C). Pub. L. 110–28, §8234(a), designated existing provisions as cl. (i), inserted cl. (i) heading, and added cl. (ii).

Subsec. (f). Pub. L. 110–28, §8232(a), added subsec. (f).

Subsec. (g). Pub. L. 110–28, §8233(a), added subsec. (g).

2005—Subsec. (b)(3)(A). Pub. L. 109–135, §413(c)(1), struck out "and in the case of information returns required under part III of subchapter A of chapter 61" after "Secretary".

Subsec. (b)(3)(E). Pub. L. 109–135, §413(c)(2), added subpar. (E).

Subsec. (c)(1). Pub. L. 109–135, §403(b), reenacted heading without change and amended text generally. Prior to amendment, text consisted of subpars. (A) to (D) relating to treatment as 1 shareholder, family members, adoption, and election.

Subsec. (c)(2)(A)(vi). Pub. L. 109–135, §413(a)(1), inserted "or a depository institution holding company (as defined in section 3(w)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(1))" after "a bank (as defined in section 581)" and "or company" after "such bank".

2004—Subsec. (b)(1)(A). Pub. L. 108–357, §232(a), substituted "100" for "75".

Subsec. (b)(3)(A). Pub. L. 108–357, §239(a), inserted "and in the case of information returns required under part III of subchapter A of chapter 61" after "Secretary".

Subsec. (c)(1). Pub. L. 108–357, §231(a), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: "For purposes of subsection (b)(1)(A), a husband and wife (and their estates) shall be treated as 1 shareholder."

Subsec. (c)(2)(A)(vi). Pub. L. 108–357, §233(a), added cl. (vi).

Subsec. (c)(2)(B)(vi). Pub. L. 108–357, §233(b), added cl. (vi).

Subsec. (d)(1)(C). Pub. L. 108–357, §236(a), added subpar. (C).

Subsec. (e)(2). Pub. L. 108–357, §234(a), inserted "(determined without regard to any power of appointment to the extent such power remains unexercised at the end of such period)" after "of the trust" and substituted "1-year" for "60-day".

2000—Subsec. (e)(1)(A)(i)(IV). Pub. L. 106–554 added subcl. (IV).

1998—Subsec. (e)(4). Pub. L. 105–206 substituted "section 641(c)" for "section 641(d)".

1997—Subsec. (b)(1)(B). Pub. L. 105–34, §1601(c)(4)(C), substituted "subsection (c)(6)" for "subsection (c)(7)".

Subsec. (b)(3)(A). Pub. L. 105–34, §1601(c)(3), substituted "Except as provided in regulations prescribed by the Secretary, for purposes of this title" for "For purposes of this title".

Subsec. (c)(6), (7). Pub. L. 105–34, §1601(c)(4)(B), redesignated par. (7) as (6).

Subsec. (e)(1)(B)(iii). Pub. L. 105–34, §1601(c)(1), added cl. (iii).

1996—Subsec. (b)(1)(A). Pub. L. 104–188, §1301, substituted "75" for "35".

Subsec. (b)(1)(B). Pub. L. 104–188, §1316(a)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "have as a shareholder a person (other than an estate and other than a trust described in subsection (c)(2)) who is not an individual,".

Subsec. (b)(2)(A). Pub. L. 104–188, §1315, amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "a financial institution to which section 585 applies (or would apply but for subsection (c) thereof),".

Pub. L. 104–188, §1308(a), redesignated subpar. (B) as (A) and struck out former subpar. (A) which read as

follows: "a member of an affiliated group (determined under section 1504 without regard to the exceptions contained in subsection (b) thereof),".

Subsec. (b)(2)(B). Pub. L. 104–188, §1308(a), redesignated subpar. (C) as (B). Former subpar. (B) redesignated (A).

Pub. L. 104–188, §1616(b)(15), struck out "or to which section 593 applies" after "subsection (c) thereof)".

Subsec. (b)(2)(C) to (E). Pub. L. 104–188, §1308(a), redesignated subpars. (D) and (E) as (C) and (D), respectively. Former subpar. (C) redesignated (B).

Subsec. (b)(3). Pub. L. 104–188, §1308(b), added par. (3).

Subsec. (c)(2)(A)(ii). Pub. L. 104–188, §1303, substituted "2-year period" for "60-day period" in first sentence and struck out at end "If a trust is described in the preceding sentence and if the entire corpus of the trust is includible in the gross estate of the deemed owner, the preceding sentence shall be applied by substituting '2-year period' for '60-day period'."

Subsec. (c)(2)(A)(iii). Pub. L. 104–188, §1303(1), substituted "2-year period" for "60-day period".

Subsec. (c)(2)(A)(v). Pub. L. 104–188, §1302(a), added cl. (v).

Subsec. (c)(2)(B)(v). Pub. L. 104–188, §1302(b), added cl. (v).

Subsec. (c)(5)(B)(iii). Pub. L. 104–188, §1304, substituted "a trust described in paragraph (2), or a person which is actively and regularly engaged in the business of lending money" for "or a trust described in paragraph (2)".

Subsec. (c)(6). Pub. L. 104–188, §1308(d)(1), struck out par. (6) which read as follows:

"(6) OWNERSHIP OF STOCK IN CERTAIN INACTIVE CORPORATIONS.—For purposes of subsection (b)(2)(A), a corporation shall not be treated as a member of an affiliated group during any period within a taxable year by reason of the ownership of stock in another corporation if such other corporation—

"(A) has not begun business at any time on or before the close of such period, and

"(B) does not have gross income for such period."

Subsec. (c)(7). Pub. L. 104–188, §1316(a)(2), added par. (7).

Subsec. (e). Pub. L. 104–188, §1302(c), added subsec. (e).

Subsec. (e)(1)(A)(i). Pub. L. 104–188, §1316(e), struck out "which holds a contingent interest and is not a potential current beneficiary" after "170(c)".

1989—Subsec. (b)(2)(B). Pub. L. 101–239 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "a financial institution which is a bank (as defined in section 585(a)(2)) or to which section 593 applies,".

1988—Subsec. (d)(3). Pub. L. 100–647 substituted "within the meaning of" for "treated as a separate trust under" in last sentence.

1986—Subsec. (b)(2)(B). Pub. L. 99–514, §901(d)(4)(G), substituted "which is a bank (as defined in section 585(a)(2)) or to which section 593 applies" for "to which section 585 or 593 applies".

Subsec. (d)(3). Pub. L. 99–514, §1879(m)(1)(A), inserted at end "A substantially separate and independent share of a trust treated as a separate trust under section 663(c) shall be treated as a separate trust for purposes of this subsection and subsection (c)."

1984—Subsec. (c)(6). Pub. L. 98–369, §721(c), amended par. (6) generally, substituting "during any period within a taxable year" for "during any taxable year" in provisions preceding subpar. (A), and substituting "on or before the close of such period" for "on or after the date of its incorporation and before the close of such taxable year" in subpar. (A), and "does not have gross income for such period" for "does not have taxable income for the period included within such taxable year" in subpar. (B).

Subsec. (d)(2)(B)(i). Pub. L. 98–369, §721(f)(3), substituted "corporation" for "S corporation" in heading and text.

Subsec. (d)(2)(D). Pub. L. 98–369, §721(f)(1), substituted "15 days and 2 months" for "60 days".

Subsec. (d)(3). Pub. L. 98–369, §721(f)(2), in amending par. (3) generally, redesignated subpar. (C) as (A), substituted a period for ", and" at end of subpar. (B), and struck out former subpar. (A) which read "which owns stock in 1 or more S corporations".

Subsec. (d)(4). Pub. L. 98–369, §721(f)(2), in amending par. (4) generally, redesignated existing provisions as subpar. (A), inserted "Failure to meet requirements of paragraph (3)(A)" as subpar. (A) heading, substituted "of paragraph (3)(A)" for "under paragraph (3)", and added subpar. (B).

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–28, title VIII, §8232(c), May 25, 2007, 121 Stat. 198, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and section 1368 of this title] shall apply to taxable years beginning after December 31, 2006.

"(2) SPECIAL RULE FOR TREATMENT AS SECOND CLASS OF STOCK.—In the case of any taxable

year beginning after December 31, 1996, restricted bank director stock (as defined in section 1361(f) of the Internal Revenue Code of 1986, as added by this section) shall not be taken into account in determining whether an S corporation has more than 1 class of stock."

Pub. L. 110–28, title VIII, §8233(b), May 25, 2007, 121 Stat. 198, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2006."

Pub. L. 110–28, title VIII, §8234(b), May 25, 2007, 121 Stat. 199, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2006."

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 403(b) of Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

Pub. L. 109–135, title IV, §413(d), Dec. 21, 2005, 119 Stat. 2642, provided that: "The amendments made by this section [amending this section and sections 1362 and 4975 of this title] shall take effect as if included in the provisions of the American Jobs Creation Act of 2004 [Pub. L. 108–357] to which they relate."

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title II, §231(c)(1), Oct. 22, 2004, 118 Stat. 1433, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 2004."

Pub. L. 108–357, title II, §232(b), Oct. 22, 2004, 118 Stat. 1434, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2004."

Amendment by section 233(a), (b) of Pub. L. 108–357 effective Oct. 22, 2004, see section 233(e) of Pub. L. 108–357, set out as a note under section 512 of this title.

Pub. L. 108–357, title II, §234(b), Oct. 22, 2004, 118 Stat. 1435, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2004."

Pub. L. 108–357, title II, §236(b), Oct. 22, 2004, 118 Stat. 1435, provided that: "The amendments made by this section [amending this section] shall apply to transfers made after December 31, 2004."

Pub. L. 108–357, title II, §239(b), Oct. 22, 2004, 118 Stat. 1437, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2004."

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which such amendment relates, see section 1(a)(7) [title III, §316(e)] of Pub. L. 106–554, set out as a note under section 51 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 23 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by sections 1301–1302(c), 1303, 1304, 1308(a), (b), (d)(1), and 1315 of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1317(a) of Pub. L. 104–188, set out as a note under section 641 of this title.

Amendment by sections 1316(a), (e) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1997, see section 1316(f) of Pub. L. 104–188, set out as a note under section 170 of this title.

Amendment by section 1616(b)(15) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1995, see section 1616(c) of Pub. L. 104–188, set out as a note under section 593 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 901(d)(4)(G) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 901(e) of Pub. L. 99–514, set out as a note under section 166 of this title.

Pub. L. 99–514, title XVIII, §1879(m)(2), Oct. 22, 1986, 100 Stat. 2910, provided that: "The amendments made by this subsection [amending this section and section 1368 of this title] shall apply to taxable years beginning after December 31, 1982."

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title VII, §721(y), July 18, 1984, 98 Stat. 972, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, any amendment made by this section [amending this section, sections 48, 108, 267, 318, 465, 1362, 1363, 1367, 1368, 1371, 1374, 1375, 1378, 1379, 6362, and 6659 and provisions set out as a note under this section] shall take effect as if included in the Subchapter S Revision Act of 1982 [Pub. L. 97–354].

"(2) AMENDMENT MADE BY SUBSECTION (b)(2).—Subparagraph (C) of section 108(d)(7) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by subsection (b)(2)) shall apply to contributions to capital after December 31, 1980, in taxable years ending after such date.

"(3) AMENDMENT MADE BY SUBSECTION (g)(1).—If—

"(A) any portion of a qualified stock purchase is pursuant to a binding contract entered into on or after October 19, 1982, and before the date of the enactment of this Act [July 18, 1984], and

"(B) the purchasing corporation establishes by clear and convincing evidence that such contract was negotiated on the contemplation that, with respect to the deemed sale under section 338 of the Internal Revenue Code of 1986, paragraph (2) of section 1362(e) of such Code would apply,

then the amendment made by paragraph (1) of subsection (g) [amending section 1362 of this title] shall not apply to such qualified stock purchase.

"(4) AMENDMENTS MADE BY SUBSECTION *(L)*.—The amendments made by subsection (l) [amending section 1362 of this title] shall apply to any election under section 1362 of the Internal Revenue Code of 1986 (or any corresponding provision of prior law) made after October 19, 1982.

"(5) AMENDMENT MADE BY SUBSECTION (t).—If—

"(A) on or before the date of the enactment of this Act [July 18, 1984] 50 percent or more of the stock of an S corporation has been sold or exchanged in 1 or more transactions, and

"(B) the person (or persons) acquiring such stock establish by clear and convincing evidence that such acquisitions were negotiated on the contemplation that paragraph (2) of section 1362(e) of the Internal Revenue Code of 1986 would apply to the S termination year in which such sales or exchanges occur,

then the amendment made by subsection (t) [amending section 1362 of this title] shall not apply to such S termination year."

EFFECTIVE DATE

Pub. L. 97–354, §6, Oct. 19, 1982, 96 Stat. 1697, as amended by Pub. L. 97–448, title III, §305(d)(1)(A), Jan. 12, 1983, 96 Stat. 2399; Pub. L. 98–369, div. A, title VII, §721(i), (k), July 18, 1984, 98 Stat. 969; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) IN GENERAL.—Except as otherwise provided in this section, the amendments made by this Act [enacting this section and sections 1362, 1363, 1366 to 1368, 1371 to 1375, 1377 to 1379, and 6241 to 6245 of this title, amending sections 31, 44D to 44F, 46, 48, 50A, 50B, 52, 53, 55, 57, 58, 62, 108, 163, 168, 170, 172, 179, 183, 189, 194, 267, 280, 280A, 291, 447, 464, 465, 613A, 992, 1016, 1101, 1212, 1251, 1254, 1256, 3453, 3454, 4992, 4996, 6037, 6042, 6362, and 6661 of this title and section 1108 of Title 29, Labor, omitting section 1376 of this title, and enacting provisions set out as a note under section 1 of this title] shall apply to taxable years beginning after December 31, 1982.

"(b) TRANSITIONAL RULES.—

"(1) SECTIONS 1379 AND 62(9) CONTINUE TO APPLY FOR 1983.—Sections 1379 and 62(9) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect before the date of the enactment of this Act [Oct. 19, 1982]) shall remain in effect for years beginning before January 1, 1984.

"(2) ALLOWANCE OF EXCLUSION OF DEATH BENEFIT.—Notwithstanding section 241(b) of the Tax Equity and Fiscal Responsibility Act of 1982 [section 241(b) of Pub. L. 97–248, set out as a note under section 416 of this title] in the case of amounts received under a plan of an S corporation, the

amendment made by section 239 of such Act [section 239 of Pub. L. 97–248, amending section 101 of this title] shall apply with respect to decedents dying after December 31, 1982.

"(3) NEW PASSIVE INCOME RULES APPLY TO TAXABLE YEARS BEGINNING DURING 1982.—In the case of a taxable year beginning during 1982—

"(A) sections 1362(d)(3), 1366(f)(3), and 1375 of the Internal Revenue Code of 1986 (as amended by this Act [Pub. L. 97–354]) shall apply, and

"(B) section 1372(e)(5) of such Code (as in effect on the day before the date of the enactment of this Act [Oct. 19, 1982]) shall not apply.

The preceding sentence shall not apply in the case of any corporation which elects (at such time and in such manner as the Secretary of the Treasury or his delegate shall prescribe) to have such sentence not apply. Subsection (e) shall not apply to any termination resulting from an election under the preceding sentence.

"(c) GRANDFATHER RULES.—

"(1) SUBSIDIARIES WHICH ARE FOREIGN CORPORATIONS OR DISC'S.—In the case of any corporation which on September 28, 1982, would have been a member of the same affiliated group as an electing small business corporation but for paragraph (3) or (7) of section 1504(b) of the Internal Revenue Code of 1986, subparagraph (A) of section 1361(b)(2) of such Code (as amended by section 2) shall be applied by substituting 'without regard to the exceptions contained in paragraphs (1), (2), (4), (5), and (6) of subsection (b) thereof' for 'without regard to the exceptions contained in subsection (b) thereof'.

"(2) CASUALTY INSURANCE COMPANIES.—

"(A) IN GENERAL.—In the case of any qualified casualty insurance electing small business corporation—

"(i) the amendments made by this Act shall not apply, and

"(ii) subchapter S (as in effect on July 1, 1982) of chapter 1 of the Internal Revenue Code of 1986 [former sections 1371 to 1379 of this title] and part III of subchapter L of chapter 1 of such Code [section 831 et seq. of this title] shall apply.

"(B) QUALIFIED CASUALTY INSURANCE ELECTING SMALL BUSINESS CORPORATION.—The term 'qualified casualty insurance electing small business corporation' means any corporation described in section 831(a) of the Internal Revenue Code of 1986 if—

"(i) as of July 12, 1982, such corporation was an electing small business corporation and was described in section 831(a) of such Code,

"(ii) such corporation was formed before April 1, 1982, and proposed (through a written private offering first circulated to investors before such date) to elect to be taxed as a subchapter S corporation and to be operated on an established insurance exchange, or

"(iii) such corporation is approved for membership on an established insurance exchange pursuant to a written agreement entered into before December 31, 1982, and such corporation is described in section 831(a) of such Code as of December 31, 1984.

A corporation shall not be treated as a qualified casualty insurance electing small business corporation unless an election under subchapter S of chapter 1 of such Code is in effect for its first taxable year beginning after December 31, 1984.

"(3) CERTAIN CORPORATIONS WITH OIL AND GAS PRODUCTION.—

"(A) IN GENERAL.—In the case of any qualified oil corporation—

"(i) the amendments made by this Act shall not apply, and

"(ii) subchapter S (as in effect on July 1, 1982) of chapter 1 of the Internal Revenue Code of 1986 [former sections 1371 to 1379 of this title] shall apply.

"(B) QUALIFIED OIL CORPORATION.—For purposes of this paragraph, the term 'qualified oil corporation' means any corporation if—

"(i) as of September 28, 1982, such corporation—

"(I) was an electing small business corporation, or

"(II) was a small business corporation which made an election under section 1372(a) after December 31, 1981, and before September 28, 1982,

"(ii) for calendar year 1982, the combined average daily production of domestic crude oil or natural gas of such corporation and any one of its substantial shareholders exceeds 1,000 barrels, and

"(iii) such corporation makes an election under this subparagraph at such time and in such manner as the Secretary of the Treasury or his delegate shall prescribe.

"(C) AVERAGE DAILY PRODUCTION.—For purposes of subparagraph (B), the average daily production of domestic crude oil or domestic natural gas shall be determined under section 613A(c)(2) of such Code without regard to the last sentence thereof.

"(D) SUBSTANTIAL SHAREHOLDER.—For purposes of subparagraph (B), the term 'substantial shareholder' means any person who on July 1, 1982, owns more than 40 percent (in value) of the stock of the corporation.

"(4) CONTINUITY REQUIRED.—

"(A) IN GENERAL.—This subsection shall cease to apply with respect to any corporation after—

"(i) any termination of the election of the corporation under subchapter S of chapter 1 of such Code, or

"(ii) the first day on which more than 50 percent of the stock of the corporation is newly owned stock within the meaning of section 1378(c)(2) of such Code (as amended by this Act [Pub. L. 97–354]).

"(B) SPECIAL RULES FOR PARAGRAPH (2).—

"(i) Paragraph (2) shall also cease to apply with respect to any corporation after the corporation ceases to be described in section 831(a) of such Code.

"(ii) For purposes of determining under subparagraph (A)(ii) whether paragraph (2) ceases to apply to any corporation, section 1378(c)(2) of such Code (as amended by this Act [Pub. L. 97–354]) shall be applied by substituting 'December 31, 1984' for 'December 31, 1982' each place it appears therein.

"(d) TREATMENT OF EXISTING FRINGE BENEFIT PLANS.—

"(1) IN GENERAL.—In the case of existing fringe benefits of a corporation which as of September 28, 1982, was an electing small business corporation, section 1372 of the Internal Revenue Code of 1986 (as added by this Act [Pub. L. 97–354]) shall apply only with respect to taxable years beginning after December 31, 1987.

"(2) REQUIREMENTS.—This subsection shall cease to apply with respect to any corporation after whichever of the following first occurs:

"(A) the first day of the first taxable year beginning after December 31, 1982, with respect to which the corporation does not meet the requirements of section 1372(e)(5) of such Code (as in effect on the day before the date of the enactment of this Act [Oct. 19, 1982]),

"(B) any termination after December 31, 1982, of the election of the corporation under subchapter S of chapter 1 of such Code, or

"(C) the first day on which more than 50 percent of the stock of the corporation is newly owned stock within the meaning of section 1378(c)(2) of such Code (as amended by this Act [Pub. L. 97–354]).

"(3) EXISTING FRINGE BENEFIT.—For purposes of this subsection, the term 'existing fringe benefit' means any employee fringe benefit of a type which the corporation provided to its employees as of September 28, 1982.

"(e) TREATMENT OF CERTAIN ELECTIONS UNDER PRIOR LAW.—For purposes of section 1362(g) of the Internal Revenue Code of 1986, as amended by this Act [Pub. L. 97–354] (relating to no election permitted within 5 years after termination of prior election), any termination or revocation under section 1372(e) of such Code (as in effect on the day before the date of the enactment of this Act [Oct. 19, 1982]) shall not be taken into account.

"(f) TAXABLE YEAR OF S CORPORATIONS.—Section 1378 of the Internal Revenue Code of 1986 (as added by this Act [Pub. L. 97–354]) shall take effect on the day after the date of the enactment of this Act [Oct. 19, 1982]. For purposes of applying such section, the reference in subsection (a)(2) of such section to an election under section 1362(a) shall include a reference to an election under section 1372(a) of such Code as in effect on the day before the date of the enactment of this Act [Oct. 19, 1982]."

ELIMINATION OF ALL EARNINGS AND PROFITS ATTRIBUTABLE TO PRE-1983 YEARS FOR CERTAIN CORPORATIONS

Pub. L. 110–28, title VIII, §8235, May 25, 2007, 121 Stat. 199, provided that: "In the case of a corporation which is—

"(1) described in section 1311(a)(1) of the Small Business Job Protection Act of 1996 [Pub. L. 104–188, set out below], and

"(2) not described in section 1311(a)(2) of such Act,

the amount of such corporation's accumulated earnings and profits (for the first taxable year beginning after the date of the enactment of this Act [May 25, 2007]) shall be reduced by an amount equal to the portion (if any) of such accumulated earnings and profits which were accumulated in any taxable year beginning before January 1, 1983, for which such corporation was an electing small business corporation under subchapter S of the Internal Revenue Code of 1986."

ELIMINATION OF CERTAIN EARNINGS AND PROFITS

Pub. L. 104–188, title I, §1311(a), Aug. 20, 1996, 110 Stat. 1784, provided that: "If—

"(1) a corporation was an electing small business corporation under subchapter S of chapter 1 of the Internal Revenue Code of 1986 for any taxable year beginning before January 1, 1983, and

"(2) such corporation is an S corporation under subchapter S of chapter 1 of such Code for its first taxable year beginning after December 31, 1996,

the amount of such corporation's accumulated earnings and profits (as of the beginning of such first taxable year) shall be reduced by an amount equal to the portion (if any) of such accumulated earnings and profits which were accumulated in any taxable year beginning before January 1, 1983, for which such corporation was an electing small business corporation under such subchapter S."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TRANSITIONAL PROVISIONS

Pub. L. 97–448, title III, §305(d)(1)(B), Jan. 12, 1983, 96 Stat. 2399, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "If—

"(i) after September 30, 1982, and on or before the date of the enactment of this Act [Jan. 12, 1983], stock or securities were transferred to a small business corporation (as defined in section 1361(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] as amended by the Subchapter S Revision Act of 1982 [Pub. L. 97–354]) in a transaction to which section 351 of such Code applies, and

"(ii) such corporation is liquidated under section 333 of such Code before March 1, 1983,

then such stock or securities shall not be taken into account under section 333(e)(2) of such Code."

[1] So in original. Another closing parenthesis probably should precede the comma.

§1362. Election; revocation; termination

(a) Election

(1) In general

Except as provided in subsection (g), a small business corporation may elect, in accordance with the provisions of this section, to be an S corporation.

(2) All shareholders must consent to election

An election under this subsection shall be valid only if all persons who are shareholders in such corporation on the day on which such election is made consent to such election.

(b) When made

(1) In general

An election under subsection (a) may be made by a small business corporation for any taxable year—

(A) at any time during the preceding taxable year, or

(B) at any time during the taxable year and on or before the 15th day of the 3d month of the taxable year.

(2) Certain elections made during 1st 2½ months treated as made for next taxable year

If—

(A) an election under subsection (a) is made for any taxable year during such year and on or before the 15th day of the 3d month of such year, but

(B) either—

(i) on 1 or more days in such taxable year before the day on which the election was made the corporation did not meet the requirements of subsection (b) of section 1361, or

(ii) 1 or more of the persons who held stock in the corporation during such taxable year and before the election was made did not consent to the election,

then such election shall be treated as made for the following taxable year.

(3) Election made after 1st 2½ months treated as made for following taxable year

If—

(A) a small business corporation makes an election under subsection (a) for any taxable year, and

(B) such election is made after the 15th day of the 3d month of the taxable year and on or before the 15th day of the 3rd month of the following taxable year,

then such election shall be treated as made for the following taxable year.

(4) Taxable years of 2½ months or less

For purposes of this subsection, an election for a taxable year made not later than 2 months and 15 days after the first day of the taxable year shall be treated as timely made during such year.

(5) Authority to treat late elections, etc., as timely

If—

(A) an election under subsection (a) is made for any taxable year (determined without regard to paragraph (3)) after the date prescribed by this subsection for making such election for such taxable year or no such election is made for any taxable year, and

(B) the Secretary determines that there was reasonable cause for the failure to timely make such election,

the Secretary may treat such an election as timely made for such taxable year (and paragraph (3) shall not apply).

(c) Years for which effective

An election under subsection (a) shall be effective for the taxable year of the corporation for which it is made and for all succeeding taxable years of the corporation, until such election is terminated under subsection (d).

(d) Termination

(1) By revocation

(A) In general

An election under subsection (a) may be terminated by revocation.

(B) More than one-half of shares must consent to revocation

An election may be revoked only if shareholders holding more than one-half of the shares of stock of the corporation on the day on which the revocation is made consent to the revocation.

(C) When effective

Except as provided in subparagraph (D)—

(i) a revocation made during the taxable year and on or before the 15th day of the 3d month thereof shall be effective on the 1st day of such taxable year, and

(ii) a revocation made during the taxable year but after such 15th day shall be effective on the 1st day of the following taxable year.

(D) Revocation may specify prospective date

If the revocation specifies a date for revocation which is on or after the day on which the revocation is made, the revocation shall be effective on and after the date so specified.

(2) By corporation ceasing to be small business corporation

(A) In general

An election under subsection (a) shall be terminated whenever (at any time on or after the 1st day of the 1st taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation.

(B) When effective

Any termination under this paragraph shall be effective on and after the date of cessation.

(3) Where passive investment income exceeds 25 percent of gross receipts for 3 consecutive taxable years and corporation has accumulated earnings and profits

(A) Termination

(i) In general

An election under subsection (a) shall be terminated whenever the corporation—

(I) has accumulated earnings and profits at the close of each of 3 consecutive taxable years, and

(II) has gross receipts for each of such taxable years more than 25 percent of which are passive investment income.

(ii) When effective

Any termination under this paragraph shall be effective on and after the first day of the first taxable year beginning after the third consecutive taxable year referred to in clause (i).

(iii) Years taken into account

A prior taxable year shall not be taken into account under clause (i) unless—

(I) such taxable year began after December 31, 1981, and

(II) the corporation was an S corporation for such taxable year.

(B) Gross receipts from the sales of certain assets

For purposes of this paragraph—

(i) in the case of dispositions of capital assets (other than stock and securities), gross receipts from such dispositions shall be taken into account only to the extent of the capital gain net income therefrom, and

(ii) in the case of sales or exchanges of stock or securities, gross receipts shall be taken into account only to the extent of the gains therefrom.

(C) Passive investment income defined

(i) In general

Except as otherwise provided in this subparagraph, the term "passive investment income" means gross receipts derived from royalties, rents, dividends, interest, and annuities.

(ii) Exception for interest on notes from sales of inventory

The term "passive investment income" shall not include interest on any obligation acquired in the ordinary course of the corporation's trade or business from its sale of property described in section 1221(a)(1).

(iii) Treatment of certain lending or finance companies

If the S corporation meets the requirements of section 542(c)(6) for the taxable year, the term "passive investment income" shall not include gross receipts for the taxable year which are derived directly from the active and regular conduct of a lending or finance business (as defined in section 542(d)(1)).

(iv) Treatment of certain dividends

If an S corporation holds stock in a C corporation meeting the requirements of section 1504(a)(2), the term "passive investment income" shall not include dividends from such C corporation to the extent such dividends are attributable to the earnings and profits of such C corporation derived from the active conduct of a trade or business.

(v) Exception for banks, etc.

In the case of a bank (as defined in section 581) or a depository institution holding company (as defined in section 3(w)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(1)),[1] the term "passive investment income" shall not include—

(I) interest income earned by such bank or company, or

(II) dividends on assets required to be held by such bank or company, including stock in the Federal Reserve Bank, the Federal Home Loan Bank, or the Federal Agricultural Mortgage Bank or participation certificates issued by a Federal Intermediate Credit Bank.

(e) Treatment of S termination year

(1) In general

In the case of an S termination year, for purposes of this title—

(A) S short year

The portion of such year ending before the 1st day for which the termination is effective shall be treated as a short taxable year for which the corporation is an S corporation.

(B) C short year

The portion of such year beginning on such 1st day shall be treated as a short taxable year for which the corporation is a C corporation.

(2) Pro rata allocation

Except as provided in paragraph (3) and subparagraphs (C) and (D) of paragraph (6), the determination of which items are to be taken into account for each of the short taxable years referred to in paragraph (1) shall be made—

(A) first by determining for the S termination year—

(i) the amount of each of the items of income, loss, deduction, or credit described in section 1366(a)(1)(A), and

(ii) the amount of the nonseparately computed income or loss, and

(B) then by assigning an equal portion of each amount determined under subparagraph (A) to each day of the S termination year.

(3) Election to have items assigned to each short taxable year under normal tax accounting rules

(A) In general

A corporation may elect to have paragraph (2) not apply.

(B) Shareholders must consent to election

An election under this subsection shall be valid only if all persons who are shareholders in the corporation at any time during the S short year and all persons who are shareholders in the corporation on the first day of the C short year consent to such election.

(4) S termination year

For purposes of this subsection, the term "S termination year" means any taxable year of a corporation (determined without regard to this subsection) in which a termination of an election made under subsection (a) takes effect (other than on the 1st day thereof).

(5) Tax for C short year determined on annualized basis

(A) In general

The taxable income for the short year described in subparagraph (B) of paragraph (1) shall be placed on an annual basis by multiplying the taxable income for such short year by the number of days in the S termination year and by dividing the result by the number of days in the short year. The tax shall be the same part of the tax computed on the annual basis as the number of days in such short year is of the number of days in the S termination year.

(B) Section 443(d)(2) to apply

Subsection (d) of section 443 shall apply to the short taxable year described in subparagraph (B) of paragraph (1).

(6) Other special rules

For purposes of this title—

(A) Short years treated as 1 year for carryover purposes

The short taxable year described in subparagraph (A) of paragraph (1) shall not be taken into account for purposes of determining the number of taxable years to which any item may be carried back or carried forward by the corporation.

(B) Due date for S year

The due date for filing the return for the short taxable year described in subparagraph (A) of paragraph (1) shall be the same as the due date for filing the return for the short taxable year described in subparagraph (B) of paragraph (1) (including extensions thereof).

(C) Paragraph (2) not to apply to items resulting from section 338

Paragraph (2) shall not apply with respect to any item resulting from the application of section 338.

(D) Pro rata allocation for S termination year not to apply if 50-percent change in ownership

Paragraph (2) shall not apply to an S termination year if there is a sale or exchange of 50 percent or more of the stock in such corporation during such year.

(f) Inadvertent invalid elections or terminations

If—

(1) an election under subsection (a) or section 1361(b)(3)(B)(ii) by any corporation—

(A) was not effective for the taxable year for which made (determined without regard to subsection (b)(2)) by reason of a failure to meet the requirements of section 1361(b) or to obtain shareholder consents, or

(B) was terminated under paragraph (2) or (3) of subsection (d) or section 1361(b)(3)(C),

(2) the Secretary determines that the circumstances resulting in such ineffectiveness or termination were inadvertent,

(3) no later than a reasonable period of time after discovery of the circumstances resulting in such ineffectiveness or termination, steps were taken—

(A) so that the corporation for which the election was made or the termination occurred is a small business corporation or a qualified subchapter S subsidiary, as the case may be, or

(B) to acquire the required shareholder consents, and

(4) the corporation for which the election was made or the termination occurred, and each person who was a shareholder in such corporation at any time during the period specified pursuant to this subsection, agrees to make such adjustments (consistent with the treatment of such corporation as an S corporation or a qualified subchapter S subsidiary, as the case may be) as may be required by the Secretary with respect to such period,

then, notwithstanding the circumstances resulting in such ineffectiveness or termination, such corporation shall be treated as an S corporation or a qualified subchapter S subsidiary, as the case may be [2] during the period specified by the Secretary.

(g) Election after termination

If a small business corporation has made an election under subsection (a) and if such election has been terminated under subsection (d), such corporation (and any successor corporation) shall not be eligible to make an election under subsection (a) for any taxable year before its 5th taxable year

which begins after the 1st taxable year for which such termination is effective, unless the Secretary consents to such election.

(Added Pub. L. 97–354, §2, Oct. 19, 1982, 96 Stat. 1672; amended Pub. L. 98–369, div. A, title I, §102(d)(2), title VII, §721(g), (h), (l), (t), July 18, 1984, 98 Stat. 623, 968, 969, 971; Pub. L. 100–647, title I, §§1006(f)(6), 1007(g)(9), Nov. 10, 1988, 102 Stat. 3406, 3435; Pub. L. 104–188, title I, §§1305(a), (b), 1308(c), 1311(b)(1), Aug. 20, 1996, 110 Stat. 1779, 1780, 1783, 1784; Pub. L. 106–170, title V, §532(c)(2)(T), Dec. 17, 1999, 113 Stat. 1931; Pub. L. 108–357, title II, §§231(b), 237(a), 238(a), Oct. 22, 2004, 118 Stat. 1433, 1436; Pub. L. 109–135, title IV, §413(b), Dec. 21, 2005, 119 Stat. 2641; Pub. L. 110–28, title VIII, §8231(a), May 25, 2007, 121 Stat. 196; Pub. L. 110–172, §11(a)(25), Dec. 29, 2007, 121 Stat. 2487.)

AMENDMENTS

2007—Subsec. (d)(3)(B) to (F). Pub. L. 110–28 added subpars. (B) and (C) and struck out former subpar. (B), which related to gross receipts from dispositions of capital assets (other than stock and securities) being taken into account only to the extent of the capital gain net income therefrom, subpar. (C), which defined passive investment income, subpar. (D), which provided that, in the case of any options dealer or commodities dealer, passive investment income was to be determined by not taking into account any gain or loss from any section 1256 contract or property related to such a contract, subpar. (E), which related to certain dividends not being treated as passive investment income if an S corporation held stock in a C corporation meeting the requirements of section 1504(a)(2), and subpar. (F), which related to the exception from passive investment income for banks and depository institution holding companies.

Subsec. (f)(1). Pub. L. 110–172 substituted "or section 1361(b)(3)(B)(ii)" for ", section 1361(b)(3)(B)(ii), or section 1361(c)(1)(A)(ii)" in introductory provisions and "or section 1361(b)(3)(C)" for ", section 1361(b)(3)(C), or section 1361(c)(1)(D)(iii)" in subpar. (B).

2005—Subsec. (d)(3)(F). Pub. L. 109–135 substituted "a depository institution holding company (as defined in section 3(w)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(1))" for "a bank holding company (within the meaning of section 2(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a))), or a financial holding company (within the meaning of section 2(p) of such Act)".

2004—Subsec. (d)(3)(F). Pub. L. 108–357, §237(a), added subpar. (F).

Subsec. (f). Pub. L. 108–357, §238(a)(5), inserted "or a qualified subchapter S subsidiary, as the case may be" after "S corporation" in concluding provisions.

Subsec. (f)(1). Pub. L. 108–357, §238(a)(1), inserted ", section 1361(b)(3)(B)(ii)," after "subsection (a)" in introductory provisions.

Pub. L. 108–357, §231(b)(1), inserted "or section 1361(c)(1)(A)(ii)" after "section 1361(b)(3)(B)(ii)," in introductory provisions.

Subsec. (f)(1)(B). Pub. L. 108–357, §238(a)(2), inserted ", section 1361(b)(3)(C)," after "subsection (d)".

Pub. L. 108–357, §231(b)(2), inserted "or section 1361(c)(1)(D)(iii)" after "section 1361(b)(3)(C),".

Subsec. (f)(3)(A). Pub. L. 108–357, §238(a)(3), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "so that the corporation is a small business corporation, or".

Subsec. (f)(4). Pub. L. 108–357, §238(a)(4), amended par. (4) generally. Prior to amendment, par. (4) read as follows: "the corporation, and each person who was a shareholder in the corporation at any time during the period specified pursuant to this subsection, agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period,".

1999—Subsec. (d)(3)(C)(ii). Pub. L. 106–170 substituted "section 1221(a)(1)" for "section 1221(1)".

1996—Subsec. (b)(5). Pub. L. 104–188, §1305(b), added par. (5).

Subsec. (d)(3). Pub. L. 104–188, §1311(b)(1)(A), in heading substituted "accumulated" for "subchapter C".

Subsec. (d)(3)(A)(i)(I). Pub. L. 104–188, §1311(b)(1)(B), substituted "accumulated" for "subchapter C".

Subsec. (d)(3)(B) to (E). Pub. L. 104–188, §1311(b)(1)(C), redesignated subpars. (C) to (F) as (B) to (E), respectively, and struck out former subpar. (B) which read as follows:

"(B) SUBCHAPTER C EARNINGS AND PROFITS.—For purposes of subparagraph (A), the term 'subchapter C earnings and profits' means earnings and profits of any corporation for any taxable year with respect to which an election under section 1362(a) (or under section 1372 of prior law) was not in effect."

Subsec. (d)(3)(F). Pub. L. 104–188, §1311(b)(1)(C), redesignated subpar. (F) as (E).

Pub. L. 104–188, §1308(c), added subpar. (F).

Subsec. (f). Pub. L. 104–188, §1305(a), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows:

"(f) INADVERTENT TERMINATIONS.—If—

"(1) an election under subsection (a) by any corporation was terminated under paragraph (2) or (3) of subsection (d),

"(2) the Secretary determines that the termination was inadvertent,

"(3) no later than a reasonable period of time after discovery of the event resulting in such termination, steps were taken so that the corporation is once more a small business corporation, and

"(4) the corporation, and each person who was a shareholder of the corporation at any time during the period specified pursuant to this subsection, agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period,

then, notwithstanding the terminating event, such corporation shall be treated as continuing to be an S corporation during the period specified by the Secretary."

1988—Subsec. (d)(3)(D)(v). Pub. L. 100–647, §1006(f)(6)(A), struck out cl. (v) which related to special rule for options and commodities dealers.

Subsec. (d)(3)(E). Pub. L. 100–647, §1006(f)(6)(B), added subpar. (E).

Subsec. (e)(5)(B). Pub. L. 100–647, §1007(g)(9), substituted "Subsection (d)" for "Subsection (d)(2)".

1984—Subsec. (b)(3)(B). Pub. L. 98–369, §721(l)(2), substituted "on or before the 15th day of the 3rd month of the following taxable year" for "on or before the last day of such taxable year".

Subsec. (b)(4). Pub. L. 98–369, §721(l)(1), added par. (4).

Subsec. (d)(3)(D)(v). Pub. L. 98–369, §102(d)(2), added cl. (v).

Subsec. (e)(2). Pub. L. 98–369, §721(g)(2), substituted "as provided in paragraph (3) and subparagraphs (C) and (D) of paragraph (6)" for "as provided in paragraph (3)".

Subsec. (e)(3)(B). Pub. L. 98–369, §721(h), struck out "All" in heading, and substituted "subsection" for "paragraph" and "S short year and all persons who are shareholders in the corporation on the first day of the C short year" for "S termination year" in text.

Subsec. (e)(6)(C). Pub. L. 98–369, §721(g)(1), added subpar. (C).

Subsec. (e)(6)(D). Pub. L. 98–369, §721(t), added subpar. (D).

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–28, title VIII, §8231(b), May 25, 2007, 121 Stat. 197, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [May 25, 2007]."

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 413(d) of Pub. L. 109–135, set out as a note under section 1361 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title II, §231(c)(2), Oct. 22, 2004, 118 Stat. 1434, provided that: "The amendments made by subsection (b) [amending this section] shall apply to elections and terminations made after December 31, 2004."

Pub. L. 108–357, title II, §237(b), Oct. 22, 2004, 118 Stat. 1436, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2004."

Pub. L. 108–357, title II, §238(b), Oct. 22, 2004, 118 Stat. 1436, provided that: "The amendments made by this section [amending this section] shall apply to elections made and terminations made after December 31, 2004."

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, §1305(c), Aug. 20, 1996, 110 Stat. 1780, provided that: "The amendments made by subsections (a) and (b) [amending this section] shall apply with respect to elections for taxable years beginning after December 31, 1982."

Amendment by sections 1308(c) and 1311(b)(1) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1317(a) of Pub. L. 104–188, set out as a note under section 641 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 102(d)(2) of Pub. L. 98–369 applicable to positions established after July 18, 1984, in taxable years ending after that date except as otherwise provided, see section 102(f), (g) of Pub. L. 98–369, set out as a note under section 1256 of this title.

Amendment by section 721(g), (h), (l), (t) of Pub. L. 98–369 effective as if included in the Subchapter S Revision Act of 1982, Pub. L. 97–354, except that amendment by section 721(g)(1) is not applicable to certain qualified stock purchases, amendment by section 721(l) is applicable to any election under this section (or any corresponding provision of prior law) made after Oct. 19, 1982, and amendment by section 721(t) is not applicable to certain S termination years, see section 721(y) of Pub. L. 98–369, set out as a note under section 1361 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1982, except that in the case of a taxable year beginning during 1982, subsec. (d)(3) of this section and sections 1366(f)(3) and 1375 of this title shall apply, and section 1372(e)(5) of this title as in effect on the day before Oct. 19, 1982, shall not apply, see section 6(a), (b)(3) of Pub. L. 97–354, set out as a note under section 1361 of this title. For additional provisions relating to the treatment of certain elections under prior law for purposes of subsec. (g) of this section, see section 6(e) of Pub. L. 97–354, set out as a note under section 1361 of this title.

TREATMENT OF CERTAIN ELECTIONS UNDER PRIOR LAW

Pub. L. 104–188, title I, §1317(b), Aug. 20, 1996, 110 Stat. 1787, provided that: "For purposes of section 1362(g) of the Internal Revenue Code of 1986 (relating to election after termination), any termination under section 1362(d) of such Code in a taxable year beginning before January 1, 1997, shall not be taken into account."

SUBCHAPTER S ELECTION

Pub. L. 98–369, div. A, title I, §102(d)(3), July 18, 1984, 98 Stat. 623, as amended by Pub. L. 99–514, §2, title XVIII, §1808(a)(2), Oct. 22, 1986, 100 Stat. 2095, 2817, provided that: "If a commodities dealer or an options dealer—

"(A) becomes a small business corporation (as defined in section 1361(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) at any time before the close of the 75th day after the date of the enactment of this Act [July 18, 1984], and

"(B) makes the election under section 1362(a) of such Code before the close of such 75th day,

then such dealer shall be treated as having received approval for and adopted a taxable year beginning on the first day during 1984 on which it was a small business corporation (as so defined) or such other day as may be permitted under regulations and ending on the date determined under section 1378 of such Code and such election shall be effective for such taxable year."

[1] So in original. Another closing parenthesis probably should precede the comma.

[2] So in original. Probably should be followed by a comma.

§1363. Effect of election on corporation

(a) General rule

Except as otherwise provided in this subchapter, an S corporation shall not be subject to the taxes imposed by this chapter.

(b) Computation of corporation's taxable income

The taxable income of an S corporation shall be computed in the same manner as in the case of an individual, except that—

(1) the items described in section 1366(a)(1)(A) shall be separately stated,

(2) the deductions referred to in section 703(a)(2) shall not be allowed to the corporation,
(3) section 248 shall apply, and
(4) section 291 shall apply if the S corporation (or any predecessor) was a C corporation for any of the 3 immediately preceding taxable years.

(c) Elections of the S corporation

(1) In general

Except as provided in paragraph (2), any election affecting the computation of items derived from an S corporation shall be made by the corporation.

(2) Exceptions

In the case of an S corporation, elections under the following provisions shall be made by each shareholder separately—

(A) section 617 (relating to deduction and recapture of certain mining exploration expenditures), and
(B) section 901 (relating to taxes of foreign countries and possessions of the United States).

(d) Recapture of LIFO benefits

(1) In general

If—

(A) an S corporation was a C corporation for the last taxable year before the first taxable year for which the election under section 1362(a) was effective, and
(B) the corporation inventoried goods under the LIFO method for such last taxable year,

the LIFO recapture amount shall be included in the gross income of the corporation for such last taxable year (and appropriate adjustments to the basis of inventory shall be made to take into account the amount included in gross income under this paragraph).

(2) Additional tax payable in installments

(A) In general

Any increase in the tax imposed by this chapter by reason of this subsection shall be payable in 4 equal installments.

(B) Date for payment of installments

The first installment under subparagraph (A) shall be paid on or before the due date (determined without regard to extensions) for the return of the tax imposed by this chapter for the last taxable year for which the corporation was a C corporation and the 3 succeeding installments shall be paid on or before the due date (as so determined) for the corporation's return for the 3 succeeding taxable years.

(C) No interest for period of extension

Notwithstanding section 6601(b), for purposes of section 6601, the date prescribed for the payment of each installment under this paragraph shall be determined under this paragraph.

(3) LIFO recapture amount

For purposes of this subsection, the term "LIFO recapture amount" means the amount (if any) by which—

(A) the inventory amount of the inventory asset under the first-in, first-out method authorized by section 471, exceeds
(B) the inventory amount of such assets under the LIFO method.

For purposes of the preceding sentence, inventory amounts shall be determined as of the close of the last taxable year referred to in paragraph (1).

(4) Other definitions

For purposes of this subsection—

(A) LIFO method

The term "LIFO method" means the method authorized by section 472.

(B) Inventory assets

The term "inventory assets" means stock in trade of the corporation, or other property of a kind which would properly be included in the inventory of the corporation if on hand at the close of the taxable year.

(C) Method of determining inventory amount

The inventory amount of assets under a method authorized by section 471 shall be determined—

(i) if the corporation uses the retail method of valuing inventories under section 472, by using such method, or

(ii) if clause (i) does not apply, by using cost or market, whichever is lower.

(D) Not treated as member of affiliated group

Except as provided in regulations, the corporation referred to in paragraph (1) shall not be treated as a member of an affiliated group with respect to the amount included in gross income under paragraph (1).

(5) Special rule

Sections 1367(a)(2)(D) and 1371(c)(1) shall not apply with respect to any increase in the tax imposed by reason of this subsection.

(Added Pub. L. 97–354, §2, Oct. 19, 1982, 96 Stat. 1676; amended Pub. L. 98–369, div. A, title VII, §721(a), (b)(1), (p), July 18, 1984, 98 Stat. 966, 970; Pub. L. 99–514, title V, §511(d)(2)(C), title VI, §632(b), title VII, §701(e)(4)(J), Oct. 22, 1986, 100 Stat. 2249, 2277, 2343; Pub. L. 100–203, title X, §10227(a), Dec. 22, 1987, 101 Stat. 1330–416; Pub. L. 100–647, title I, §1006(f)(7), title II, §2004(n), Nov. 10, 1988, 102 Stat. 3407, 3608; Pub. L. 109–135, title IV, §411(a), Dec. 21, 2005, 119 Stat. 2636.)

AMENDMENTS

2005—Subsec. (d)(5). Pub. L. 109–135 added par. (5).

1988—Subsec. (d). Pub. L. 100–647, §1006(f)(7), struck out subsec. (d) which related to distributions of appreciated property.

Subsec. (d)(4)(D). Pub. L. 100–647, §2004(n), added subpar. (D).

Subsec. (e). Pub. L. 100–647, §1006(f)(7), struck out subsec. (e) which provided that subsec. (d) not apply to reorganizations, etc.

1987—Subsec. (d). Pub. L. 100–203 added subsec. (d) relating to recapture of LIFO benefits.

1986—Subsec. (a). Pub. L. 99–514, §701(e)(4)(J), struck out "and in section 58(d)" after "this subchapter".

Subsec. (c)(2). Pub. L. 99–514, §511(d)(2)(C), redesignated subpars. (B) and (C) as (A) and (B), respectively, and struck out former subpar. (A) which read as follows: "section 163(d) (relating to limitation on interest on investment indebtedness),".

Subsec. (e). Pub. L. 99–514, §632(b), amended subsec. (e) generally, substituting "reorganizations, etc." for "complete liquidations and reorganizations", in heading and in text struck out reference to property in complete liquidation of the corporation.

1984—Subsec. (b)(4). Pub. L. 98–369, §721(p), added par. (4).

Subsec. (c)(2). Pub. L. 98–369, §721(b)(1), redesignated subpars. (B) to (D) as (A) to (C), respectively, and struck out subpar. (A) which provided "subsection (b)(5) or (d)(4) of section 108 (relating to income from discharge of indebtedness),".

Subsec. (d). Pub. L. 98–369, §721(a)(2), substituted "Except as provided in subsection (e), if" for "If".

Subsec. (e). Pub. L. 98–369, §721(a)(1), added subsec. (e).

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–135, title IV, §411(b), Dec. 21, 2005, 119 Stat. 2636, provided that: "The amendment made by this section [amending this section] shall take effect as if included in section 10227 of the Omnibus Budget

Reconciliation Act of 1987 [Pub. L. 100–203]."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1006(f)(7) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 2004(n) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title X, §10227(b), Dec. 22, 1987, 101 Stat. 1330–417, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2) the amendment made by subsection (a) [amending this section] shall apply in the case of elections made after December 17, 1987.

"(2) EXCEPTION.—The amendment made by subsection (a) shall not apply in the case of any election made by a corporation after December 17, 1987, and before January 1, 1989, if, on or before December 17, 1987—

"(A) there was a resolution adopted by the board of directors of such corporation to make an election under subchapter S of chapter 1 of the Internal Revenue Code of 1986, or

"(B) there was a ruling request with respect to the business filed with the Internal Revenue Service expressing an intent to make such an election."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 511(d)(2)(C) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 511(e) of Pub. L. 99–514, set out as a note under section 163 of this title.

Amendment by section 632(b) of Pub. L. 99–514 applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, set out as an Effective Date note under section 336 of this title.

Amendment by section 701(e)(4)(J) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date note under section 55 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective as if included in the Subchapter S Revision Act of 1982, Pub. L. 97–354, see section 721(y)(1) of Pub. L. 98–369, set out as a note under section 1361 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as a note under section 1361 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(e)(4)(J) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

PART II—TAX TREATMENT OF SHAREHOLDERS

Sec.
1366. Pass-thru of items to shareholders.
1367. Adjustments to basis of stock of shareholders, etc.
1368. Distributions.

§1366. Pass-thru of items to shareholders

(a) Determination of shareholder's tax liability

(1) In general

In determining the tax under this chapter of a shareholder for the shareholder's taxable year in which the taxable year of the S corporation ends (or for the final taxable year of a shareholder who dies, or of a trust or estate which terminates, before the end of the corporation's taxable year), there shall be taken into account the shareholder's pro rata share of the corporation's—

(A) items of income (including tax-exempt income), loss, deduction, or credit the separate treatment of which could affect the liability for tax of any shareholder, and

(B) nonseparately computed income or loss.

For purposes of the preceding sentence, the items referred to in subparagraph (A) shall include amounts described in paragraph (4) or (6) of section 702(a).

(2) Nonseparately computed income or loss defined

For purposes of this subchapter, the term "nonseparately computed income or loss" means gross income minus the deductions allowed to the corporation under this chapter, determined by excluding all items described in paragraph (1)(A).

(b) Character passed thru

The character of any item included in a shareholder's pro rata share under paragraph (1) of subsection (a) shall be determined as if such item were realized directly from the source from which realized by the corporation, or incurred in the same manner as incurred by the corporation.

(c) Gross income of a shareholder

In any case where it is necessary to determine the gross income of a shareholder for purposes of this title, such gross income shall include the shareholder's pro rata share of the gross income of the corporation.

(d) Special rules for losses and deductions

(1) Cannot exceed shareholder's basis in stock and debt

The aggregate amount of losses and deductions taken into account by a shareholder under subsection (a) for any taxable year shall not exceed the sum of—

(A) the adjusted basis of the shareholder's stock in the S corporation (determined with regard to paragraphs (1) and (2)(A) of section 1367(a) for the taxable year), and

(B) the shareholder's adjusted basis of any indebtedness of the S corporation to the shareholder (determined without regard to any adjustment under paragraph (2) of section 1367(b) for the taxable year).

(2) Indefinite carryover of disallowed losses and deductions

(A) In general

Except as provided in subparagraph (B), any loss or deduction which is disallowed for any taxable year by reason of paragraph (1) shall be treated as incurred by the corporation in the succeeding taxable year with respect to that shareholder.

(B) Transfers of stock between spouses or incident to divorce

In the case of any transfer described in section 1041(a) of stock of an S corporation, any loss or deduction described in subparagraph (A) with respect such stock shall be treated as incurred by the corporation in the succeeding taxable year with respect to the transferee.

(3) Carryover of disallowed losses and deductions to post-termination transition period

(A) In general

If for the last taxable year of a corporation for which it was an S corporation a loss or

deduction was disallowed by reason of paragraph (1), such loss or deduction shall be treated as incurred by the shareholder on the last day of any post-termination transition period.

(B) Cannot exceed shareholder's basis in stock

The aggregate amount of losses and deductions taken into account by a shareholder under subparagraph (A) shall not exceed the adjusted basis of the shareholder's stock in the corporation (determined at the close of the last day of the post-termination transition period and without regard to this paragraph).

(C) Adjustment in basis of stock

The shareholder's basis in the stock of the corporation shall be reduced by the amount allowed as a deduction by reason of this paragraph.

(D) At-risk limitations

To the extent that any increase in adjusted basis described in subparagraph (B) would have increased the shareholder's amount at risk under section 465 if such increase had occurred on the day preceding the commencement of the post-termination transition period, rules similar to the rules described in subparagraphs (A) through (C) shall apply to any losses disallowed by reason of section 465(a).

(4) Application of limitation on charitable contributions

In the case of any charitable contribution of property to which the second sentence of section 1367(a)(2) applies, paragraph (1) shall not apply to the extent of the excess (if any) of—

(A) the shareholder's pro rata share of such contribution, over

(B) the shareholder's pro rata share of the adjusted basis of such property.

(e) Treatment of family group

If an individual who is a member of the family (within the meaning of section 704(e)(3)) of one or more shareholders of an S corporation renders services for the corporation or furnishes capital to the corporation without receiving reasonable compensation therefor, the Secretary shall make such adjustments in the items taken into account by such individual and such shareholders as may be necessary in order to reflect the value of such services or capital.

(f) Special rules

(1) Subsection (a) not to apply to credit allowable under section 34

Subsection (a) shall not apply with respect to any credit allowable under section 34 (relating to certain uses of gasoline and special fuels).

(2) Treatment of tax imposed on built-in gains

If any tax is imposed under section 1374 for any taxable year on an S corporation, for purposes of subsection (a), the amount so imposed shall be treated as a loss sustained by the S corporation during such taxable year. The character of such loss shall be determined by allocating the loss proportionately among the recognized built-in gains giving rise to such tax.

(3) Reduction in pass-thru for tax imposed on excess net passive income

If any tax is imposed under section 1375 for any taxable year on an S corporation, for purposes of subsection (a), each item of passive investment income shall be reduced by an amount which bears the same ratio to the amount of such tax as—

(A) the amount of such item, bears to

(B) the total passive investment income for the taxable year.

(Added Pub. L. 97–354, §2, Oct. 19, 1982, 96 Stat. 1677; amended Pub. L. 98–369, div. A, title IV, §474(r)(26), title VII, §735(c)(16), July 18, 1984, 98 Stat. 844, 985; Pub. L. 99–514, title VI, §632(c)(2), title VII, §701(e)(4)(K), Oct. 22, 1986, 100 Stat. 2277, 2343; Pub. L. 100–647, title I, §1006(f)(5)(E), Nov. 10, 1988, 102 Stat. 3406; Pub. L. 101–239, title VII, §7811(c)(7), Dec. 19,

1989, 103 Stat. 2407; Pub. L. 104–188, title I, §§1302(e), 1307(c)(3)(A), 1309(a)(1), 1312, Aug. 20, 1996, 110 Stat. 1779, 1782, 1783, 1784; Pub. L. 108–357, title II, §235(a), Oct. 22, 2004, 118 Stat. 1435; Pub. L. 110–172, §3(b), Dec. 29, 2007, 121 Stat. 2474.)

AMENDMENTS

2007—Subsec. (d)(4). Pub. L. 110–172 added par. (4).

2004—Subsec. (d)(2). Pub. L. 108–357 reenacted heading without change and amended text of par. (2) generally. Prior to amendment, text read as follows: "Any loss or deduction which is disallowed for any taxable year by reason of paragraph (1) shall be treated as incurred by the corporation in the succeeding taxable year with respect to that shareholder."

1996—Subsec. (a)(1). Pub. L. 104–188, §1302(e), inserted ", or of a trust or estate which terminates," after "who dies" in introductory provisions.

Subsec. (d)(1)(A). Pub. L. 104–188, §1309(a)(1), substituted "paragraphs (1) and (2)(A)" for "paragraph (1)".

Subsec. (d)(3)(D). Pub. L. 104–188, §1312, added subpar. (D).

Subsec. (g). Pub. L. 104–188, §1307(c)(3)(A), struck out subsec. (g) which provided a cross reference to subchapter D of chapter 63 of this title.

1989—Subsec. (f)(2). Pub. L. 101–239 substituted "Treatment of tax imposed on built-in gains" for "Reduction in pass-thru for tax imposed on built-in gains" in heading and amended text generally. Prior to amendment, text read as follows: "If any tax is imposed under section 1374 for any taxable year on an S corporation, for purposes of subsection (a), the amount of each recognized built-in gain (within the meaning of section 1374) for such taxable year shall be reduced by its proportionate share of such tax."

1988—Subsec. (f)(2). Pub. L. 100–647 substituted "within the meaning of section 1374" for "as defined in section 1374(d)(2)".

1986—Subsec. (f)(2). Pub. L. 99–514, §632(c)(2), amended par. (2) generally. Prior to amendment, par. (2), reduction in pass-thru for tax imposed on capital gain, read as follows: "If any tax is imposed under section 1374 for any taxable year on an S corporation, for purposes of subsection (a)—

"(A) the amount of the corporation's long-term capital gains for the taxable year shall be reduced by the amount of such tax, and

"(B) if the amount of such tax exceeds the amount of such long-term capital gains, the corporation's gains from sales or exchanges of property described in section 1231 shall be reduced by the amount of such excess.

For purposes of the preceding sentence, the term 'long-term capital gain' shall not include any gain from the sale or exchange of property described in section 1231."

Pub. L. 99–514, §701(e)(4)(K), struck out "56 or" before "1374".

1984—Subsec. (f). Pub. L. 98–369, §474(r)(26), substituted "section 34" for "section 39" in heading and text.

Subsec. (f)(1). Pub. L. 98–369, §735(c)(16), substituted "and special fuels" for ", special fuels, and lubricating oil".

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–172 effective as if included in the provisions of the Pension Protection Act of 2006, Pub. L. 109–280, to which such amendment relates, see section 3(j) of Pub. L. 110–172, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title II, §235(b), Oct. 22, 2004, 118 Stat. 1435, as amended by Pub. L. 109–135, title IV, §403(c), Dec. 21, 2005, 119 Stat. 2620, provided that: "The amendment made by this section [amending this section] shall apply to transfers after December 31, 2004."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1317(a) of Pub. L. 104–188, set out as a note under section 641 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 632(c)(2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, but only in cases where the return for the taxable year is filed pursuant to an S election made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, as amended, set out as an Effective Date note under section 336 of this title.

Amendment by section 701(e)(4)(K) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date note under section 55 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(26) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 735(c)(16) of Pub. L. 98–369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97–424, to which such amendment relates, see section 736 of Pub. L. 98–369, set out as a note under section 4051 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1982, except that in the case of a taxable year beginning during 1982, subsec. (f)(3) of this section and sections 1362(d)(3) and 1375 of this title shall apply, and section 1372(e)(5) of this title as in effect on the day before Oct. 19, 1982, shall not apply, see section 6(a), (b)(3) of Pub. L. 97–354, set out as a note under section 1361 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(e)(4)(K) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

§1367. Adjustments to basis of stock of shareholders, etc.

(a) General rule

(1) Increases in basis

The basis of each shareholder's stock in an S corporation shall be increased for any period by the sum of the following items determined with respect to that shareholder for such period:

(A) the items of income described in subparagraph (A) of section 1366(a)(1),

(B) any nonseparately computed income determined under subparagraph (B) of section 1366(a)(1), and

(C) the excess of the deductions for depletion over the basis of the property subject to depletion.

(2) Decreases in basis

The basis of each shareholder's stock in an S corporation shall be decreased for any period (but not below zero) by the sum of the following items determined with respect to the shareholder for such period:

(A) distributions by the corporation which were not includible in the income of the shareholder by reason of section 1368,

(B) the items of loss and deduction described in subparagraph (A) of section 1366(a)(1),

(C) any nonseparately computed loss determined under subparagraph (B) of section

1366(a)(1),

(D) any expense of the corporation not deductible in computing its taxable income and not properly chargeable to capital account, and

(E) the amount of the shareholder's deduction for depletion for any oil and gas property held by the S corporation to the extent such deduction does not exceed the proportionate share of the adjusted basis of such property allocated to such shareholder under section 613A(c)(11)(B).

The decrease under subparagraph (B) by reason of a charitable contribution (as defined in section 170(c)) of property shall be the amount equal to the shareholder's pro rata share of the adjusted basis of such property. The preceding sentence shall not apply to contributions made in taxable years beginning after December 31, 2013.

(b) Special rules

(1) Income items

An amount which is required to be included in the gross income of a shareholder and shown on his return shall be taken into account under subparagraph (A) or (B) of subsection (a)(1) only to the extent such amount is included in the shareholder's gross income on his return, increased or decreased by any adjustment of such amount in a redetermination of the shareholder's tax liability.

(2) Adjustments in basis of indebtedness

(A) Reduction of basis

If for any taxable year the amounts specified in subparagraphs (B), (C), (D), and (E) of subsection (a)(2) exceed the amount which reduces the shareholder's basis to zero, such excess shall be applied to reduce (but not below zero) the shareholder's basis in any indebtedness of the S corporation to the shareholder.

(B) Restoration of basis

If for any taxable year beginning after December 31, 1982, there is a reduction under subparagraph (A) in the shareholder's basis in the indebtedness of an S corporation to a shareholder, any net increase (after the application of paragraphs (1) and (2) of subsection (a)) for any subsequent taxable year shall be applied to restore such reduction in basis before any of it may be used to increase the shareholder's basis in the stock of the S corporation.

(3) Coordination with sections 165(g) and 166(d)

This section and section 1366 shall be applied before the application of sections 165(g) and 166(d) to any taxable year of the shareholder or the corporation in which the security or debt becomes worthless.

(4) Adjustments in case of inherited stock

(A) In general

If any person acquires stock in an S corporation by reason of the death of a decedent or by bequest, devise, or inheritance, section 691 shall be applied with respect to any item of income of the S corporation in the same manner as if the decedent had held directly his pro rata share of such item.

(B) Adjustments to basis

The basis determined under section 1014 of any stock in an S corporation shall be reduced by the portion of the value of the stock which is attributable to items constituting income in respect of the decedent.

(Added Pub. L. 97–354, §2, Oct. 19, 1982, 96 Stat. 1679; amended Pub. L. 98–369, div. A, title VII, §§721(d), (w), 722(e)(2), July 18, 1984, 98 Stat. 967, 971, 974; Pub. L. 104–188, title I, §§1313(a), 1702(h)(14), Aug. 20, 1996, 110 Stat. 1785, 1874; Pub. L. 109–280, title XII, §1203(a), Aug. 17,

2006, 120 Stat. 1066; Pub. L. 110–343, div. C, title III, §307(a), Oct. 3, 2008, 122 Stat. 3869; Pub. L. 111–312, title VII, §752(a), Dec. 17, 2010, 124 Stat. 3321; Pub. L. 112–240, title III, §325(a), Jan. 2, 2013, 126 Stat. 2333.)

AMENDMENTS

2013—Subsec. (a)(2). Pub. L. 112–240 substituted "December 31, 2013" for "December 31, 2011" in concluding provisions.

2010—Subsec. (a)(2). Pub. L. 111–312 substituted "December 31, 2011" for "December 31, 2009" in concluding provisions.

2008—Subsec. (a)(2). Pub. L. 110–343 substituted "December 31, 2009" for "December 31, 2007" in concluding provisions.

2006—Subsec. (a)(2). Pub. L. 109–280, which directed the addition of concluding provisions to section 1367(a)(2), without specifying the act to be amended, was executed to subsec. (a)(2) of this section, which is section 1367 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

1996—Subsec. (a)(2)(E). Pub. L. 104–188, §1702(h)(14), substituted "section 613A(c)(11)(B)" for "section 613A(c)(13)(B)".

Subsec. (b)(4). Pub. L. 104–188, §1313(a), added par. (4).

1984—Subsec. (a)(2)(E). Pub. L. 98–369, §722(e)(2), substituted "for any oil and gas property held by the S corporation to the extent such deduction does not exceed the proportionate share of the adjusted basis of such property allocated to such shareholder under section 613A(c)(13)(B)" for "under section 611 with respect to oil and gas wells".

Subsec. (b)(2)(B). Pub. L. 98–369, §721(w), substituted "for any taxable year beginning after December 31, 1982, there is" for "for any taxable year there is".

Subsec. (b)(3). Pub. L. 98–369, §721(d), inserted "and 166(d)" in heading and text.

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title III, §325(b), Jan. 2, 2013, 126 Stat. 2333, provided that: "The amendment made by this section [amending this section] shall apply to contributions made in taxable years beginning after December 31, 2011."

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §752(b), Dec. 17, 2010, 124 Stat. 3321, provided that: "The amendment made by this section [amending this section] shall apply to contributions made in taxable years beginning after December 31, 2009."

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title III, §307(b), Oct. 3, 2008, 122 Stat. 3869, provided that: "The amendment made by this section [amending this section] shall apply to contributions made in taxable years beginning after December 31, 2007."

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title XII, §1203(b), Aug. 17, 2006, 120 Stat. 1066, provided that: "The amendment made by this section [amending this section] shall apply to contributions made in taxable years beginning after December 31, 2005."

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, §1313(b), Aug. 20, 1996, 110 Stat. 1785, provided that: "The amendment made by subsection (a) [amending this section] shall apply in the case of decedents dying after the date of the enactment of this Act [Aug. 20, 1996]."

Amendment by section 1702(h)(14) of Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 721(d), (w) of Pub. L. 98–369 effective as if included in the Subchapter S Revision Act of 1982, Pub. L. 97–354, see section 721(y)(1) of Pub. L. 98–369, set out as a note under section 1361 of this title.

Pub. L. 98–369, div. A, title VII, §722(e)(3)(B), July 18, 1984, 98 Stat. 974, provided that: "The amendment made by paragraph (2) [amending this section] shall apply to taxable years beginning after

December 31, 1982."

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as a note under section 1361 of this title.

§1368. Distributions

(a) General rule

A distribution of property made by an S corporation with respect to its stock to which (but for this subsection) section 301(c) would apply shall be treated in the manner provided in subsection (b) or (c), whichever applies.

(b) S corporation having no earnings and profits

In the case of a distribution described in subsection (a) by an S corporation which has no accumulated earnings and profits—

(1) Amount applied against basis

The distribution shall not be included in gross income to the extent that it does not exceed the adjusted basis of the stock.

(2) Amount in excess of basis

If the amount of the distribution exceeds the adjusted basis of the stock, such excess shall be treated as gain from the sale or exchange of property.

(c) S corporation having earnings and profits

In the case of a distribution described in subsection (a) by an S corporation which has accumulated earnings and profits—

(1) Accumulated adjustments account

That portion of the distribution which does not exceed the accumulated adjustments account shall be treated in the manner provided by subsection (b).

(2) Dividend

That portion of the distribution which remains after the application of paragraph (1) shall be treated as a dividend to the extent it does not exceed the accumulated earnings and profits of the S corporation.

(3) Treatment of remainder

Any portion of the distribution remaining after the application of paragraph (2) of this subsection shall be treated in the manner provided by subsection (b).

Except to the extent provided in regulations, if the distributions during the taxable year exceed the amount in the accumulated adjustments account at the close of the taxable year, for purposes of this subsection, the balance of such account shall be allocated among such distributions in proportion to their respective sizes.

(d) Certain adjustments taken into account

Subsections (b) and (c) shall be applied by taking into account (to the extent proper)—

(1) the adjustments to the basis of the shareholder's stock described in section 1367, and

(2) the adjustments to the accumulated adjustments account which are required by subsection (e)(1).

In the case of any distribution made during any taxable year, the adjusted basis of the stock shall be determined with regard to the adjustments provided in paragraph (1) of section 1367(a) for the taxable year.

(e) Definitions and special rules

For purposes of this section—

(1) Accumulated adjustments account

(A) In general

Except as otherwise provided in this paragraph, the term "accumulated adjustments account" means an account of the S corporation which is adjusted for the S period in a manner similar to the adjustments under section 1367 (except that no adjustment shall be made for income (and related expenses) which is exempt from tax under this title and the phrase "(but not below zero)" shall be disregarded in section 1367(a)(2)) and no adjustment shall be made for Federal taxes attributable to any taxable year in which the corporation was a C corporation.

(B) Amount of adjustment in the case of redemptions

In the case of any redemption which is treated as an exchange under section 302(a) or 303(a), the adjustment in the accumulated adjustments account shall be an amount which bears the same ratio to the balance in such account as the number of shares redeemed in such redemption bears to the number of shares of stock in the corporation immediately before such redemption.

(C) Net loss for year disregarded

(i) In general

In applying this section to distributions made during any taxable year, the amount in the accumulated adjustments account as of the close of such taxable year shall be determined without regard to any net negative adjustment for such taxable year.

(ii) Net negative adjustment

For purposes of clause (i), the term "net negative adjustment" means, with respect to any taxable year, the excess (if any) of—

(I) the reductions in the account for the taxable year (other than for distributions), over

(II) the increases in such account for such taxable year.

(2) S period

The term "S period" means the most recent continuous period during which the corporation has been an S corporation. Such period shall not include any taxable year beginning before January 1, 1983.

(3) Election to distribute earnings first

(A) In general

An S corporation may, with the consent of all of its affected shareholders, elect to have paragraph (1) of subsection (c) not apply to all distributions made during the taxable year for which the election is made.

(B) Affected shareholder

For purposes of subparagraph (A), the term "affected shareholder" means any shareholder to whom a distribution is made by the S corporation during the taxable year.

(f) Restricted bank director stock

If a director receives a distribution (not in part or full payment in exchange for stock) from an S corporation with respect to any restricted bank director stock (as defined in section 1361(f)), the amount of such distribution—

(1) shall be includible in gross income of the director, and

(2) shall be deductible by the corporation for the taxable year of such corporation in which or with which ends the taxable year in which such amount in [1] included in the gross income of the director.

(Added Pub. L. 97–354, §2, Oct. 19, 1982, 96 Stat. 1680; amended Pub. L. 97–448, title III, §305(d)(2), Jan. 12, 1983, 96 Stat. 2399; Pub. L. 98–369, div. A, title VII, §721(r), July 18, 1984, 98

Stat. 970; Pub. L. 99–514, title XVIII, §1879(m)(1)(B), Oct. 22, 1986, 100 Stat. 2910; Pub. L. 104–188, title I, §1309(a)(2)–(c), Aug. 20, 1996, 110 Stat. 1783; Pub. L. 110–28, title VIII, §8232(b), May 25, 2007, 121 Stat. 197.)

AMENDMENTS

2007—Subsec. (f). Pub. L. 110–28 added subsec. (f).

1996—Subsec. (d). Pub. L. 104–188, §1309(a)(2), inserted at end "In the case of any distribution made during any taxable year, the adjusted basis of the stock shall be determined with regard to the adjustments provided in paragraph (1) of section 1367(a) for the taxable year."

Subsec. (e)(1)(A). Pub. L. 104–188, §1309(c), substituted "as otherwise provided in this paragraph" for "as provided in subparagraph (B)" and "section 1367(a)(2)" for "section 1367(b)(2)(A)".

Subsec. (e)(1)(C). Pub. L. 104–188, §1309(b), added subpar. (C).

1986—Subsec. (e)(1)(A). Pub. L. 99–514 inserted "and no adjustment shall be made for Federal taxes attributable to any taxable year in which the corporation was a C corporation" before period at end.

1984—Subsec. (c). Pub. L. 98–369, §721(r)(2), inserted "Except to the extent provided in regulations, if the distributions during the taxable year exceed the amount in the accumulated adjustments account at the close of the taxable year, for purposes of this subsection, the balance of such account shall be allocated among such distributions in proportion to their respective sizes."

Subsec. (e)(1)(A). Pub. L. 98–369, §721(r)(1), substituted "(except that no adjustment shall be made for income (and related expenses) which is exempt from tax under this title and the phrase '(but not below zero)' shall be disregarded in section 1367(b)(2)(A))" for "(except that no adjustment shall be made for income which is exempt from tax under this title and no adjustment shall be made for any expense not deductible in computing the corporation's taxable income and not properly chargeable to capital account)".

1983—Subsec. (e)(3). Pub. L. 97–448 added par. (3).

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–28 applicable to taxable years beginning after Dec. 31, 2006, with special rule for treatment as second class of stock, see section 8232(c) of Pub. L. 110–28, set out as a note under section 1361 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1317(a) of Pub. L. 104–188, set out as a note under section 641 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1982, see section 1879(m)(2) of Pub. L. 99–514, set out as a note under section 1361 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective as if included in the Subchapter S Revision Act of 1982, Pub. L. 97–354, see section 721(y)(1) of Pub. L. 98–369, set out as a note under section 1361 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 97–448, title III, §311(c)(4), Jan. 12, 1983, 96 Stat. 2411, provided that: "The amendments made by subsection (d) of section 305 [amending this section and sections 221, 1374, and 4975 of this title, enacting provisions set out as a note under section 1361 of this title, and amending provisions set out as a note under section 1361 of this title] shall take effect on the date of the enactment of the Subchapter S Revision Act of 1982 [Oct. 19, 1982]."

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as a note under section 1361 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[1] *So in original. Probably should be "is".*

PART III—SPECIAL RULES

Sec.
1371. Coordination with subchapter C.
1372. Partnership rules to apply for fringe benefit purposes.
1373. Foreign income.
1374. Tax imposed on certain built-in gains.
1375. Tax imposed when passive investment income of corporation having accumulated earnings and profits exceeds 25 percent of gross receipts.

AMENDMENTS

1996—Pub. L. 104–188, title I, §1311(b)(2)(D), Aug. 20, 1996, 110 Stat. 1784, substituted "accumulated" for "subchapter C" in item 1375.

1986—Pub. L. 99–514, title VI, §632(d), Oct. 22, 1986, 100 Stat. 2277, substituted "built-in" for "capital" in item 1374.

§1371. Coordination with subchapter C

(a) Application of subchapter C rules

Except as otherwise provided in this title, and except to the extent inconsistent with this subchapter, subchapter C shall apply to an S corporation and its shareholders.

(b) No carryover between C year and S year

(1) From C year to S year

No carryforward, and no carryback, arising for a taxable year for which a corporation is a C corporation may be carried to a taxable year for which such corporation is an S corporation.

(2) No carryover from S year

No carryforward, and no carryback, shall arise at the corporate level for a taxable year for which a corporation is an S corporation.

(3) Treatment of S year as elapsed year

Nothing in paragraphs (1) and (2) shall prevent treating a taxable year for which a corporation is an S corporation as a taxable year for purposes of determining the number of taxable years to which an item may be carried back or carried forward.

(c) Earnings and profits

(1) In general

Except as provided in paragraphs (2) and (3) and subsection (d)(3), no adjustment shall be made to the earnings and profits of an S corporation.

(2) Adjustments for redemptions, liquidations, reorganizations, divisives, etc.

In the case of any transaction involving the application of subchapter C to any S corporation, proper adjustment to any accumulated earnings and profits of the corporation shall be made.

(3) Adjustments in case of distributions treated as dividends under section 1368(c)(2)

Paragraph (1) shall not apply with respect to that portion of a distribution which is treated as a dividend under section 1368(c)(2).

(d) Coordination with investment credit recapture

(1) No recapture by reason of election

Any election under section 1362 shall be treated as a mere change in the form of conducting a

trade or business for purposes of the second sentence of section 50(a)(4).

(2) Corporation continues to be liable

Notwithstanding an election under section 1362, an S corporation shall continue to be liable for any increase in tax under section 49(b) or 50(a) attributable to credits allowed for taxable years for which such corporation was not an S corporation.

(3) Adjustment to earnings and profits for amount of recapture

Paragraph (1) of subsection (c) shall not apply to any increase in tax under section 49(b) or 50(a) for which the S corporation is liable.

(e) Cash distributions during post-termination transition period

(1) In general

Any distribution of money by a corporation with respect to its stock during a post-termination transition period shall be applied against and reduce the adjusted basis of the stock, to the extent that the amount of the distribution does not exceed the accumulated adjustments account (within the meaning of section 1368(e)).

(2) Election to distribute earnings first

An S corporation may elect to have paragraph (1) not apply to all distributions made during a post-termination transition period described in section 1377(b)(1)(A). Such election shall not be effective unless all shareholders of the S corporation to whom distributions are made by the S corporation during such post-termination transition period consent to such election.

(Added Pub. L. 97–354, §2, Oct. 19, 1982, 96 Stat. 1681; amended Pub. L. 98–369, div. A, title VII, §721(e), (o), (x)(3), July 18, 1984, 98 Stat. 967, 970, 971; Pub. L. 99–514, title XVIII, §1899A(33), (34), Oct. 22, 1986, 100 Stat. 2960; Pub. L. 101–508, title XI, §11813(b)(23), Nov. 5, 1990, 104 Stat. 1388–555; Pub. L. 104–188, title I, §1310, Aug. 20, 1996, 110 Stat. 1784.)

PRIOR PROVISIONS

A prior section 1371, added Pub. L. 85–866, title I, §64(a), Sept. 2, 1958, 72 Stat. 1650; amended Pub. L. 86–376, §2(a), Sept. 23, 1959, 73 Stat. 699; Pub. L. 88–272, title II, §233(a), Feb. 26, 1964, 78 Stat. 112; Pub. L. 94–455, title IX, §902(a)(1), (2), (c)(1), (2), Oct. 4, 1976, 90 Stat. 1608, 1609; Pub. L. 95–600, title III, §§341, 342, title VII, §701(y)(1), Nov. 6, 1978, 92 Stat. 2843, 2921; Pub. L. 96–589, §5(d), Dec. 24, 1980, 94 Stat. 3406; Pub. L. 97–34, title II, §§233(a), 234(a), (b), Aug. 13, 1981, 95 Stat. 250, 251; Pub. L. 97–448, title I, §102(i)(1), Jan. 12, 1983, 96 Stat. 2372, related to definitions applicable to election of small business corporations as to taxable status, prior to the general revision of this subchapter by section 2 of Pub. L. 97–354.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–188 reenacted heading without change and amended text generally. Prior to amendment, text read as follows:

"(1) IN GENERAL.—Except as otherwise provided in this title, and except to the extent inconsistent with this subchapter, subchapter C shall apply to an S corporation and its shareholders.

"(2) S CORPORATION AS SHAREHOLDER TREATED LIKE INDIVIDUAL.—For purposes of subchapter C, an S corporation in its capacity as a shareholder of another corporation shall be treated as an individual."

1990—Subsec. (d)(1). Pub. L. 101–508, §11813(b)(23)(A), substituted "section 50(a)(4)" for "section 47(b)".

Subsec. (d)(2), (3). Pub. L. 101–508, §11813(b)(23)(B), substituted "section 49(b) or 50(a)" for "section 47".

1986—Subsec. (e)(1). Pub. L. 99–514, §1899A(33), inserted "(within the meaning of section 1368(e))".

Subsec. (e)(2). Pub. L. 99–514, §1899A(34), struck out "(within the meaning of section 1368(e))" after "to such election".

1984—Subsec. (c)(1). Pub. L. 98–369, §621(e)(2), substituted "paragraphs (2) and (3) and subsection (d)(3)" for "paragraphs (2) and (3)".

Subsec. (d)(3). Pub. L. 98–369, §721(e)(1), added par. (3).

Subsec. (e). Pub. L. 98–369, §721(o), amended subsec. (e) generally, designating existing provisions as par.

(1) and adding par. (2).

Subsec. (e)(2). Pub. L. 98–369, §721(x)(3), inserted "(within the meaning of section 1368(e))".

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1317(a) of Pub. L. 104–188, set out as a note under section 641 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective as if included in the Subchapter S Revision Act of 1982, Pub. L. 97–354, see section 721(y)(1) of Pub. L. 98–369, set out as a note under section 1361 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as a note under section 1361 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§1372. Partnership rules to apply for fringe benefit purposes

(a) General rule

For purposes of applying the provisions of this subtitle which relate to employee fringe benefits—

(1) the S corporation shall be treated as a partnership, and

(2) any 2-percent shareholder of the S corporation shall be treated as a partner of such partnership.

(b) 2-percent shareholder defined

For purposes of this section, the term "2-percent shareholder" means any person who owns (or is considered as owning within the meaning of section 318) on any day during the taxable year of the S corporation more than 2 percent of the outstanding stock of such corporation or stock possessing more than 2 percent of the total combined voting power of all stock of such corporation.

(Added Pub. L. 97–354, §2, Oct. 19, 1982, 96 Stat. 1682.)

PRIOR PROVISIONS

A prior section 1372, added Pub. L. 85–866, title I, §64(a), Sept. 2, 1958, 72 Stat. 1650; amended Pub. L. 87–29, §2, May 4, 1961, 75 Stat. 64; Pub. L. 89–389, §§2(b)(2), 3(a), Apr. 14, 1966, 80 Stat. 114; Pub. L. 91–683, §1(a), Jan. 12, 1971, 84 Stat. 2067; Pub. L. 94–455, title IX, §902(c)(3), title XIX, §§1901(a)(149), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1609, 1788, 1834; Pub. L. 95–600, title III, §343, Nov. 6, 1978, 92 Stat. 2843; Pub. L. 95–628, §5(a), (b), Nov. 10, 1978, 92 Stat. 3628, related to manner, effect, termination, etc., of an election not to be subject to taxes imposed under this chapter, prior to the general revision of this subchapter by section 2 of Pub. L. 97–354.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1982, except that in the case of a taxable year beginning during 1982, sections 1362(d)(3), 1366(f)(3), and 1375 of this title shall apply and subsec. (e)(5) of this section as in effect on the day before Oct. 19, 1982, shall not apply, see section 6(a), (b)(3), of Pub. L. 97–354, set out as a note under section 1361 of this title. For additional provisions relating to the treatment of existing fringe benefit plans and the application of this section, see section 6(d) of Pub. L. 97–354, set out as a note under section 1361 of this title.

§1373. Foreign income

(a) S corporation treated as partnership, etc.

For purposes of subparts A and F of part III, and part V, of subchapter N (relating to income from sources without the United States)—

(1) an S corporation shall be treated as a partnership, and

(2) the shareholders of such corporation shall be treated as partners of such partnership.

(b) Recapture of overall foreign loss

For purposes of section 904(f) (relating to recapture of overall foreign loss), the making or termination of an election to be treated as an S corporation shall be treated as a disposition of the business.

(Added Pub. L. 97–354, §2, Oct. 19, 1982, 96 Stat. 1682.)

PRIOR PROVISIONS

A prior section 1373, added Pub. L. 85–866, title I, §64(a), Sept. 2, 1958, 72 Stat. 1652; amended Pub. L. 89–389, §2(b)(3), Apr. 14, 1966, 80 Stat. 114; Pub. L. 91–172, title III, §301(b)(10), Dec. 30, 1969, 83 Stat. 586, related to taxation of corporation undistributed taxable income to shareholders, prior to the general revision of this subchapter by section 2 of Pub. L. 97–354.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as a note under section 1361 of this title.

§1374. Tax imposed on certain built-in gains

(a) General rule

If for any taxable year beginning in the recognition period an S corporation has a net recognized built-in gain, there is hereby imposed a tax (computed under subsection (b)) on the income of such corporation for such taxable year.

(b) Amount of tax

(1) In general

The amount of the tax imposed by subsection (a) shall be computed by applying the highest rate of tax specified in section 11(b) to the net recognized built-in gain of the S corporation for the taxable year.

(2) Net operating loss carryforwards from C years allowed

Notwithstanding section 1371(b)(1), any net operating loss carryforward arising in a taxable year for which the corporation was a C corporation shall be allowed for purposes of this section as a deduction against the net recognized built-in gain of the S corporation for the taxable year. For purposes of determining the amount of any such loss which may be carried to subsequent taxable years, the amount of the net recognized built-in gain shall be treated as taxable income. Rules similar to the rules of the preceding sentences of this paragraph shall apply in the case of a capital loss carryforward arising in a taxable year for which the corporation was a C corporation.

(3) Credits

(A) In general

Except as provided in subparagraph (B), no credit shall be allowable under part IV of subchapter A of this chapter (other than under section 34) against the tax imposed by subsection (a).

(B) Business credit carryforwards from C years allowed

Notwithstanding section 1371(b)(1), any business credit carryforward under section 39 arising in a taxable year for which the corporation was a C corporation shall be allowed as a credit against the tax imposed by subsection (a) in the same manner as if it were imposed by section 11. A similar rule shall apply in the case of the minimum tax credit under section 53 to the extent attributable to taxable years for which the corporation was a C corporation.

(4) Coordination with section 1201(a)

For purposes of section 1201(a)—

(A) the tax imposed by subsection (a) shall be treated as if it were imposed by section 11, and

(B) the amount of the net recognized built-in gain shall be treated as the taxable income.

(c) Limitations

(1) Corporations which were always S corporations

Subsection (a) shall not apply to any corporation if an election under section 1362(a) has been in effect with respect to such corporation for each of its taxable years. Except as provided in regulations, an S corporation and any predecessor corporation shall be treated as 1 corporation for purposes of the preceding sentence.

(2) Limitation on amount of recognized built-in gains

The amount of the net recognized built-in gain taken into account under this section for any taxable year shall not exceed the excess (if any) of—

(A) the net unrealized built-in gain, over

(B) the net recognized built-in gain for prior taxable years beginning in the recognition period.

(d) Definitions and special rules

For purposes of this section—

(1) Net unrealized built-in gain

The term "net unrealized built-in gain" means the amount (if any) by which—

(A) the fair market value of the assets of the S corporation as of the beginning of its 1st taxable year for which an election under section 1362(a) is in effect, exceeds

(B) the aggregate adjusted bases of such assets at such time.

(2) Net recognized built-in gain

(A) In general

The term "net recognized built-in gain" means, with respect to any taxable year in the recognition period, the lesser of—

(i) the amount which would be the taxable income of the S corporation for such taxable year if only recognized built-in gains and recognized built-in losses were taken into account, or

(ii) such corporation's taxable income for such taxable year (determined as provided in section 1375(b)(1)(B)).

(B) Carryover

If, for any taxable year described in subparagraph (A), the amount referred to in clause (i) of subparagraph (A) exceeds the amount referred to in clause (ii) of subparagraph (A), such excess shall be treated as a recognized built-in gain in the succeeding taxable year. The preceding

sentence shall apply only in the case of a corporation treated as an S corporation by reason of an election made on or after March 31, 1988.

(3) Recognized built-in gain

The term "recognized built-in gain" means any gain recognized during the recognition period on the disposition of any asset except to the extent that the S corporation establishes that—

(A) such asset was not held by the S corporation as of the beginning of the 1st taxable year for which it was an S corporation, or

(B) such gain exceeds the excess (if any) of—

(i) the fair market value of such asset as of the beginning of such 1st taxable year, over

(ii) the adjusted basis of the asset as of such time.

(4) Recognized built-in losses

The term "recognized built-in loss" means any loss recognized during the recognition period on the disposition of any asset to the extent that the S corporation establishes that—

(A) such asset was held by the S corporation as of the beginning of the 1st taxable year referred to in paragraph (3), and

(B) such loss does not exceed the excess of—

(i) the adjusted basis of such asset as of the beginning of such 1st taxable year, over

(ii) the fair market value of such asset as of such time.

(5) Treatment of certain built-in items

(A) Income items

Any item of income which is properly taken into account during the recognition period but which is attributable to periods before the 1st taxable year for which the corporation was an S corporation shall be treated as a recognized built-in gain for the taxable year in which it is properly taken into account.

(B) Deduction items

Any amount which is allowable as a deduction during the recognition period (determined without regard to any carryover) but which is attributable to periods before the 1st taxable year referred to in subparagraph (A) shall be treated as a recognized built-in loss for the taxable year for which it is allowable as a deduction.

(C) Adjustment to net unrealized built-in gain

The amount of the net unrealized built-in gain shall be properly adjusted for amounts which would be treated as recognized built-in gains or losses under this paragraph if such amounts were properly taken into account (or allowable as a deduction) during the recognition period.

(6) Treatment of certain property

If the adjusted basis of any asset is determined (in whole or in part) by reference to the adjusted basis of any other asset held by the S corporation as of the beginning of the 1st taxable year referred to in paragraph (3)—

(A) such asset shall be treated as held by the S corporation as of the beginning of such 1st taxable year, and

(B) any determination under paragraph (3)(B) or (4)(B) with respect to such asset shall be made by reference to the fair market value and adjusted basis of such other asset as of the beginning of such 1st taxable year.

(7) Recognition period

(A) In general

The term "recognition period" means the 10-year period beginning with the 1st day of the 1st taxable year for which the corporation was an S corporation.

(B) Special rules for 2009, 2010, and 2011

No tax shall be imposed on the net recognized built-in gain of an S corporation—

(i) in the case of any taxable year beginning in 2009 or 2010, if the 7th taxable year in the recognition period preceded such taxable year, or

(ii) in the case of any taxable year beginning in 2011, if the 5th year in the recognition period preceded such taxable year.

The preceding sentence shall be applied separately with respect to any asset to which paragraph (8) applies.

(C) Special rule for 2012 and 2013

For purposes of determining the net recognized built-in gain for taxable years beginning in 2012 or 2013, subparagraphs (A) and (D) shall be applied by substituting "5-year" for "10-year".

(D) Special rule for distributions to shareholders

For purposes of applying this section to any amount includible in income by reason of distributions to shareholders pursuant to section 593(e)—

(i) subparagraph (A) shall be applied without regard to the phrase "10-year", and

(ii) subparagraph (B) shall not apply.

(E) Installment sales

If an S corporation sells an asset and reports the income from the sale using the installment method under section 453, the treatment of all payments received shall be governed by the provisions of this paragraph applicable to the taxable year in which such sale was made.

(8) Treatment of transfer of assets from C corporation to S corporation

(A) In general

Except to the extent provided in regulations, if—

(i) an S corporation acquires any asset, and

(ii) the S corporation's basis in such asset is determined (in whole or in part) by reference to the basis of such asset (or any other property) in the hands of a C corporation,

then a tax is hereby imposed on any net recognized built-in gain attributable to any such assets for any taxable year beginning in the recognition period. The amount of such tax shall be determined under the rules of this section as modified by subparagraph (B).

(B) Modifications

For purposes of this paragraph, the modifications of this subparagraph are as follows:

(i) In general

The preceding paragraphs of this subsection shall be applied by taking into account the day on which the assets were acquired by the S corporation in lieu of the beginning of the 1st taxable year for which the corporation was an S corporation.

(ii) Subsection (c)(1) not to apply

Subsection (c)(1) shall not apply.

(9) Reference to 1st taxable year

Any reference in this section to the 1st taxable year for which the corporation was an S corporation shall be treated as a reference to the 1st taxable year for which the corporation was an S corporation pursuant to its most recent election under section 1362.

(e) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section including regulations providing for the appropriate treatment of successor corporations.

(Added Pub. L. 97–354, §2, Oct. 19, 1982, 96 Stat. 1683; amended Pub. L. 97–448, title III, §305(d)(3), Jan. 12, 1983, 96 Stat. 2400; Pub. L. 98–369, div. A, title I, §102(d)(1), title IV,

§474(r)(27), title VII, §721(u), July 18, 1984, 98 Stat. 623, 844, 971; Pub. L. 99–514, title VI, §632(a), Oct. 22, 1986, 100 Stat. 2275; Pub. L. 100–647, title I, §1006(f)(1)–(5)(A), Nov. 10, 1988, 102 Stat. 3403, 3404; Pub. L. 101–239, title VII, §7811(c)(4), (5)(B), (8), Dec. 19, 1989, 103 Stat. 2407, 2408; Pub. L. 105–34, title XVI, §1601(f)(5)(B), Aug. 5, 1997, 111 Stat. 1091; Pub. L. 111–5, div. B, title I, §1251(a), Feb. 17, 2009, 123 Stat. 342; Pub. L. 111–240, title II, §2014(a), Sept. 27, 2010, 124 Stat. 2556; Pub. L. 112–240, title III, §326(a), (b), Jan. 2, 2013, 126 Stat. 2334.)

PRIOR PROVISIONS

A prior section 1374, added Pub. L. 85–866, title I, §64(a), Sept. 2, 1958, 72 Stat. 1653; amended Pub. L. 86–376, §2(b), Sept. 23, 1959, 73 Stat. 699; Pub. L. 94–455, title XIX, §1901(a)(150), Oct. 4, 1976, 90 Stat. 1788, related to allowance to shareholders of corporation net operating loss, prior to the general revision of this subchapter by section 2 of Pub. L. 97–354.

AMENDMENTS

2013—Subsec. (d)(2)(B). Pub. L. 112–240, §326(b), inserted "described in subparagraph (A)" after "for any taxable year".

Subsec. (d)(7)(C), (D). Pub. L. 112–240, §326(a)(1), (2), added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (d)(7)(E). Pub. L. 112–240, §326(a)(3), added subpar. (E).

2010—Subsec. (d)(7)(B). Pub. L. 111–240 amended subpar. (B) generally. Prior to amendment, text read as follows: "In the case of any taxable year beginning in 2009 or 2010, no tax shall be imposed on the net recognized built-in gain of an S corporation if the 7th taxable year in the recognition period preceded such taxable year. The preceding sentence shall be applied separately with respect to any asset to which paragraph (8) applies."

2009—Subsec. (d)(7). Pub. L. 111–5 amended par. (7) generally. Prior to amendment, text read as follows: "The term 'recognition period' means the 10-year period beginning with the 1st day of the 1st taxable year for which the corporation was an S corporation. For purposes of applying this section to any amount includible in income by reason of section 593(e), the preceding sentence shall be applied without regard to the phrase '10-year'."

1997—Subsec. (d)(7). Pub. L. 105–34 inserted at end "For purposes of applying this section to any amount includible in income by reason of section 593(e), the preceding sentence shall be applied without regard to the phrase '10-year'."

1989—Subsec. (b)(3)(B). Pub. L. 101–239, §7811(c)(8), inserted at end "A similar rule shall apply in the case of the minimum tax credit under section 53 to the extent attributable to taxable years for which the corporation was a C corporation."

Subsec. (d)(2)(A)(i). Pub. L. 101–239, §7811(c)(4), struck out "(except as provided in subsection (b)(2))" after "taxable year if".

Subsec. (d)(5)(B). Pub. L. 101–239, §7811(c)(5)(B)(i), inserted "(determined without regard to any carryover)" after "during the recognition period".

Subsec. (d)(5)(C). Pub. L. 101–239, §7811(c)(5)(B)(ii), substituted "which would be treated as recognized built-in gains or losses under this paragraph if such amounts were properly taken into account (or allowable as a deduction) during the recognition period" for "treated as recognized built-in gains or losses under this paragraph".

1988—Subsec. (a). Pub. L. 100–647, §1006(f)(1), inserted "net" before "recognized".

Subsec. (b)(1). Pub. L. 100–647, §1006(f)(2), added par. (1) and struck out former par. (1) which read as follows: "The tax imposed by subsection (a) shall be a tax computed by applying the highest rate of tax specified in section 11(b) to the lesser of—

"(A) the recognized built-in gains of the S corporation for the taxable year, or

"(B) the amount which would be the taxable income of the corporation for such taxable year if such corporation were not an S corporation."

Subsec. (b)(2). Pub. L. 100–647, §1006(f)(2), added par. (2) and struck out former par. (2) which read as follows: "Notwithstanding section 1371(b)(1), any net operating loss carryforward arising in a taxable year for which the corporation was a C corporation shall be allowed as a deduction against the lesser of the amounts referred to in subparagraph (A) or (B) of paragraph (1). For purposes of determining the amount of any such loss which may be carried to subsequent taxable years, the lesser of the amounts referred to in subparagraph (A) or (B) of paragraph (1) shall be treated as taxable income."

Subsec. (b)(4)(B). Pub. L. 100–647, §1006(f)(3), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "the lower of the amounts specified in subparagraphs (A) and (B) of paragraph (1)

shall be treated as the taxable income."

Subsec. (c)(2). Pub. L. 100–647, §1006(f)(4), substituted "net recognized built-in gain" for "recognized built-in gains" in introductory provisions and in subpar. (B).

Subsec. (d)(2) to (9). Pub. L. 100–647, §1006(f)(5)(A), added pars. (2) to (9) and struck out former pars. (2), (3), and (4), which related to recognized built-in gain, recognition period, and taxable income, respectively.

Subsec. (e). Pub. L. 100–647, §1006(f)(5)(A), added subsec. (e).

1986—Pub. L. 99–514 amended section generally, substituting provisions imposing tax on certain built-in gains for provisions imposing tax on certain capital gains which had declared in: subsec. (a), general rule for capital gains tax on S corporations; subsec. (b), amount of tax; subsec. (c), general rule as to exceptions from subsec. (a) in par. (1), exception as to new corporations in par. (2), provisions relating to property with substituted basis in par. (3), and treatment of certain gains of options and commodities dealers in par. (4); and subsec. (d), determination of taxable income of corporation.

1984—Subsec. (b). Pub. L. 98–369, §474(r)(27), substituted "section 34" for "section 39" in provisions following par. (2).

Subsec. (c)(2). Pub. L. 98–369, §721(u), struck out "(and any predecessor corporation)" before "has been in existence" in subpar. (A), and inserted provision that to the extent provided in regulations, an S corporation and any predecessor corporation shall be treated as 1 corporation for purposes of this paragraph and paragraph (1).

Subsec. (c)(4). Pub. L. 98–369, §102(d)(1), added par. (4).

1983—Subsec. (d). Pub. L. 97–448 substituted "this section" for "subsections (a)(2) and (b)(2)".

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title III, §326(c), Jan. 2, 2013, 126 Stat. 2334, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2011."

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–240, title II, §2014(b), Sept. 27, 2010, 124 Stat. 2556, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2010."

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, §1251(b), Feb. 17, 2009, 123 Stat. 342, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2008."

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 23 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, but only in cases where the return for the taxable year is filed pursuant to an S election made after Dec. 31, 1986, and with provision that, in the case of any taxable year of an S corporation which begins after Dec. 31, 1986, and to which the amendments by section 632 (other than subsec. (b) thereof) of Pub. L. 99–514 do not apply, subsec. (b)(1) of this section (as in effect on the date before Oct. 22, 1986) shall apply as if it read as follows: "an amount equal to 34 percent of the amount by which the net capital gain of the corporation for the taxable year exceeds $25,000, or", and with other exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, as amended, set out as an Effective Date note under section 336 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 102(d)(1) of Pub. L. 98–369 applicable to positions established after July 18, 1984, in taxable years ending after that date, except as otherwise provided, see section 102(f), (g) of Pub. L. 98–369 set out as a note under section 1256 of this title.

Amendment by section 474(r)(27) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 721(u) of Pub. L. 98–369 effective as if included in the Subchapter S Revision Act of 1982, Pub. L. 97–354, see section 721(y)(1) of Pub. L. 98–369, set out as a note under section 1361 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective on date of enactment of Subchapter S Revision Act of 1982 [Oct. 19, 1982], see section 311(c)(4) of Pub. L. 97–448, set out as a note under section 1368 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as a note under section 1361 of this title.

§1375. Tax imposed when passive investment income of corporation having accumulated earnings and profits exceeds 25 percent of gross receipts

(a) General rule

If for the taxable year an S corporation has—

(1) accumulated earnings and profits at the close of such taxable year, and

(2) gross receipts more than 25 percent of which are passive investment income,

then there is hereby imposed a tax on the income of such corporation for such taxable year. Such tax shall be computed by multiplying the excess net passive income by the highest rate of tax specified in section 11(b).

(b) Definitions

For purposes of this section—

(1) Excess net passive income

(A) In general

Except as provided in subparagraph (B), the term "excess net passive income" means an amount which bears the same ratio to the net passive income for the taxable year as—

(i) the amount by which the passive investment income for the taxable year exceeds 25 percent of the gross receipts for the taxable year, bears to

(ii) the passive investment income for the taxable year.

(B) Limitation

The amount of the excess net passive income for any taxable year shall not exceed the amount of the corporation's taxable income for such taxable year as determined under section 63(a)—

(i) without regard to the deductions allowed by part VIII of subchapter B (other than the deduction allowed by section 248, relating to organization expenditures), and

(ii) without regard to the deduction under section 172.

(2) Net passive income

The term "net passive income" means—

(A) passive investment income, reduced by

(B) the deductions allowable under this chapter which are directly connected with the production of such income (other than deductions allowable under section 172 and part VIII of subchapter B).

(3) Passive investment income, etc.

The terms "passive investment income" and "gross receipts" have the same respective meanings as when used in paragraph (3) of section 1362(d).

(4) Coordination with section 1374

Notwithstanding paragraph (3), the amount of passive investment income shall be determined by not taking into account any recognized built-in gain or loss of the S corporation for any taxable year in the recognition period. Terms used in the preceding sentence shall have the same respective meanings as when used in section 1374.

(c) Credits not allowable

No credit shall be allowed under part IV of subchapter A of this chapter (other than section 34) against the tax imposed by subsection (a).

(d) Waiver of tax in certain cases

If the S corporation establishes to the satisfaction of the Secretary that—

(1) it determined in good faith that it had no accumulated earnings and profits at the close of a taxable year, and

(2) during a reasonable period of time after it was determined that it did have accumulated earnings and profits at the close of such taxable year such earnings and profits were distributed,

the Secretary may waive the tax imposed by subsection (a) for such taxable year.

(Added Pub. L. 97–354, §2, Oct. 19, 1982, 96 Stat. 1684; amended Pub. L. 98–369, div. A, title IV, §474(r)(28), title VII, §721(v), July 18, 1984, 98 Stat. 844, 971; Pub. L. 99–514, title VI, §632(c)(3), Oct. 22, 1986, 100 Stat. 2277; Pub. L. 100–647, title I, §1006(f)(5)(B)–(D), Nov. 10, 1988, 102 Stat. 3406; Pub. L. 104–188, title I, §1311(b)(2)(A)–(C), Aug. 20, 1996, 110 Stat. 1784; Pub. L. 109–135, title IV, §412(qq), Dec. 21, 2005, 119 Stat. 2640.)

PRIOR PROVISIONS

A prior section 1375, added Pub. L. 85–866, title I, §64(a), Sept. 2, 1958, 72 Stat. 1654; amended Pub. L. 88–272, title II, §§201(d)(13), 233(b), Feb. 26, 1964, 78 Stat. 32, 112; Pub. L. 89–389, §§1(a), (b), 2(b)(4), Apr. 14, 1966, 80 Stat. 111, 114; Pub. L. 91–172, title III, §301(b)(11), Dec. 30, 1969, 83 Stat. 586; Pub. L. 94–455, title XIX, §§1901(a)(151), (b)(33)(Q), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1788, 1802, 1834; Pub. L. 95–600, title VII, §703(j)(6), Nov. 6, 1978, 92 Stat. 2941, related to special rules applicable to distributions of electing small business corporations, prior to the general revision of this subchapter by section 2 of Pub. L. 97–354.

A prior section 1376, added Pub. L. 85–866, title I, §64(a), Sept. 2, 1958, 72 Stat. 1655, related to adjustment to basis of stock of, and indebtedness owing, shareholders, prior to the general revision of this subchapter by section 2 of Pub. L. 97–354.

AMENDMENTS

2005—Subsec. (d)(1), (2). Pub. L. 109–135 substituted "accumulated" for "subchapter C".

1996—Pub. L. 104–188, §1311(b)(2)(C), substituted "accumulated" for "subchapter C" in section catchline.

Subsec. (a)(1). Pub. L. 104–188, §1311(b)(2)(A), substituted "accumulated" for "subchapter C".

Subsec. (b)(3). Pub. L. 104–188, §1311(b)(2)(B), amended par. (3) generally. Prior to amendment, par. (3) read as follows:

"(3) PASSIVE INVESTMENT INCOME; ETC.—The terms 'subchapter C earnings and profits', 'passive investment income', and 'gross receipts' shall have the same respective meanings as when used in paragraph (3) of section 1362(d)."

1988—Subsec. (b)(1)(B). Pub. L. 100–647, §1006(f)(5)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "The amount of the excess net passive income for any taxable year shall not exceed the corporation's taxable income for the taxable year (determined in accordance with section 1374(d)(4))."

Subsec. (b)(4). Pub. L. 100–647, §1006(f)(5)(C), added par. (4).

Subsec. (c). Pub. L. 100–647, §1006(f)(5)(D), amended subsec. (c) generally, in heading substituting "Credits not allowable" for "Special rules", and in text substituting "No credit" for "(1) DISALLOWANCE OF CREDIT.—No credit", and striking out par. (2) which related to coordination with section 1374.

1986—Subsec. (b)(1)(B). Pub. L. 99–514 substituted "section 1374(d)(4)" for "section 1374(d)".
1984—Subsec. (c)(1). Pub. L. 98–369, §474(r)(28), substituted "section 34" for "section 39".
Subsec. (d). Pub. L. 98–369, §721(v), added subsec. (d).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1317(a) of Pub. L. 104–188, set out as a note under section 641 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, but only in cases where the return for the taxable year is filed pursuant to an S election made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, as amended, set out as an Effective Date note under section 336 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(28) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 721(v) of Pub. L. 98–369 effective as if included in the Subchapter S Revision Act of 1982, Pub. L. 97–354, see section 721(y)(1) of Pub. L. 98–369, set out as a note under section 1361 of this title.

EFFECTIVE DATE

This section applicable to taxable years beginning after Dec. 31, 1982, except that in the case of a taxable year beginning during 1982, this section and sections 1362(d)(3) and 1366(f)(3) of this title shall apply, and section 1372(e)(5) of this title as in effect on the day before Oct. 19, 1982, shall not apply, see section 6(a), (b)(3) of Pub. L. 97–354, set out as a note under section 1361 of this title.

PART IV—DEFINITIONS; MISCELLANEOUS

Sec.
1377. Definitions and special rule.
1378. Taxable year of S corporation.
1379. Transitional rules on enactment.

§1377. Definitions and special rule

(a) Pro rata share

For purposes of this subchapter—

(1) In general

Except as provided in paragraph (2), each shareholder's pro rata share of any item for any taxable year shall be the sum of the amounts determined with respect to the shareholder—

(A) by assigning an equal portion of such item to each day of the taxable year, and

(B) then by dividing that portion pro rata among the shares outstanding on such day.

(2) Election to terminate year

(A) In general

Under regulations prescribed by the Secretary, if any shareholder terminates the shareholder's interest in the corporation during the taxable year and all affected shareholders and the corporation agree to the application of this paragraph, paragraph (1) shall be applied to the

affected shareholders as if the taxable year consisted of 2 taxable years the first of which ends on the date of the termination.

(B) Affected shareholders

For purposes of subparagraph (A), the term "affected shareholders" means the shareholder whose interest is terminated and all shareholders to whom such shareholder has transferred shares during the taxable year. If such shareholder has transferred shares to the corporation, the term "affected shareholders" shall include all persons who are shareholders during the taxable year.

(b) Post-termination transition period

(1) In general

For purposes of this subchapter, the term "post-termination transition period" means—

(A) the period beginning on the day after the last day of the corporation's last taxable year as an S corporation and ending on the later of—

(i) the day which is 1 year after such last day, or

(ii) the due date for filing the return for such last year as an S corporation (including extensions),

(B) the 120-day period beginning on the date of any determination pursuant to an audit of the taxpayer which follows the termination of the corporation's election and which adjusts a subchapter S item of income, loss, or deduction of the corporation arising during the S period (as defined in section 1368(e)(2)), and

(C) the 120-day period beginning on the date of a determination that the corporation's election under section 1362(a) had terminated for a previous taxable year.

(2) Determination defined

For purposes of paragraph (1), the term "determination" means—

(A) a determination as defined in section 1313(a), or

(B) an agreement between the corporation and the Secretary that the corporation failed to qualify as an S corporation.

(3) Special rules for audit related post-termination transition periods

(A) No application to carryovers

Paragraph (1)(B) shall not apply for purposes of section 1366(d)(3).

(B) Limitation on application to distributions

Paragraph (1)(B) shall apply to a distribution described in section 1371(e) only to the extent that the amount of such distribution does not exceed the aggregate increase (if any) in the accumulated adjustments account (within the meaning of section 1368(e)) by reason of the adjustments referred to in such paragraph.

(c) Manner of making elections, etc.

Any election under this subchapter, and any revocation under section 1362(d)(1), shall be made in such manner as the Secretary shall by regulations prescribe.

(Added Pub. L. 97–354, §2, Oct. 19, 1982, 96 Stat. 1685; amended Pub. L. 104–188, title I, §§1306–1307(b), Aug. 20, 1996, 110 Stat. 1780; Pub. L. 108–311, title IV, §407(a), Oct. 4, 2004, 118 Stat. 1190.)

PRIOR PROVISIONS

A prior section 1377, added Pub. L. 85–866, title I, §64(a), Sept. 2, 1958, 72 Stat. 1656; amended Pub. L. 94–455, title IX, §902(b)(1), title XIX, §1901(b)(32)(B)(iv), Oct. 4, 1976, 90 Stat. 1608, 1800, related to special rules applicable to earnings and profits of electing small business corporations, prior to the general revision of this subchapter by section 2 of Pub. L. 97–354.

AMENDMENTS

2004—Subsec. (b)(3). Pub. L. 108–311 added par. (3).

1996—Subsec. (a)(2). Pub. L. 104–188, §1306, reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "Under regulations prescribed by the Secretary, if any shareholder terminates his interest in the corporation during the taxable year and all persons who are shareholders during the taxable year agree to the application of this paragraph, paragraph (1) shall be applied as if the taxable year consisted of 2 taxable years the first of which ends on the date of the termination."

Subsec. (b)(1)(A) to (C). Pub. L. 104–188, §1307(a), struck out "and" at end of subpar. (A)(ii), added subpar. (B), and redesignated former subpar. (B) as (C).

Subsec. (b)(2)(A) to (C). Pub. L. 104–188, §1307(b), added subpar. (A), redesignated subpar. (C) as (B), and struck out former subpars. (A) and (B) which read as follows:

"(A) a court decision which becomes final,

"(B) a closing agreement, or".

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which such amendment relates, see section 407(c) of Pub. L. 108–311, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1996 AMENDMENTS

Pub. L. 105–34, title XVI, §1601(c)(2), Aug. 5, 1997, 111 Stat. 1087, provided that:

"(A) Notwithstanding section 1317 of the Small Business Job Protection Act of 1996 [Pub. L. 104–188, enacting provisions set out as notes under sections 641 and 1362 of this title], the amendments made by subsections (a) and (b) of section 1307 of such Act [amending this section] shall apply to determinations made after December 31, 1996.

"(B) In no event shall the 120-day period referred to in section 1377(b)(1)(B) of the Internal Revenue Code of 1986 (as added by such section 1307) expire before the end of the 120-day period beginning on the date of the enactment of this Act [Aug. 5, 1997]."

Amendment by Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1317(a) of Pub. L. 104–188, set out as a note under section 641 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as a note under section 1361 of this title.

§1378. Taxable year of S corporation

(a) General rule

For purposes of this subtitle, the taxable year of an S corporation shall be a permitted year.

(b) Permitted year defined

For purposes of this section, the term "permitted year" means a taxable year which—

(1) is a year ending December 31, or

(2) is any other accounting period for which the corporation establishes a business purpose to the satisfaction of the Secretary.

For purposes of paragraph (2), any deferral of income to shareholders shall not be treated as a business purpose.

(Added Pub. L. 97–354, §2, Oct. 19, 1982, 96 Stat. 1685; amended Pub. L. 98–369, div. A, title VII, §721(m), (q), July 18, 1984, 98 Stat. 969, 970; Pub. L. 99–514, title VIII, §806(b), Oct. 22, 1986, 100 Stat. 2363.)

PRIOR PROVISIONS

A prior section 1378, added Pub. L. 89–389, §2(a), Apr. 14, 1966, 80 Stat. 113; amended Pub. L. 91–172, title V, §511(c)(4), Dec. 30, 1969, 83 Stat. 638; Pub. L. 94–455, title XIX, §1901(a)(152), (b)(33)(R), Oct. 4, 1976, 90 Stat. 1789, 1802, related to tax imposed on certain capital gains, prior to the general revision of this subchapter by section 2 of Pub. L. 97–354.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–514, §806(b)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "For purposes of this subtitle—

"(1) an S corporation shall not change its taxable year to any accounting period other than a permitted year, and

"(2) no corporation may make an election under section 1362(a) for any taxable year unless such taxable year is a permitted year."

Subsec. (b). Pub. L. 99–514, §806(b)(2), inserted at end "For purposes of paragraph (2), any deferral of income to shareholders shall not be treated as a business purpose."

Subsec. (c). Pub. L. 99–514, §806(b)(3), struck out subsec. (c) which required existing S corporations to use permitted year after 50-percent shift in ownership.

1984—Subsec. (c)(1). Pub. L. 98–369, §721(m), substituted "which includes December 31, 1982 (or which is an S corporation for a taxable year beginning during 1983 by reason of an election made on or before October 19, 1982)" for "which includes December 31, 1982".

Subsec. (c)(3)(B)(i). Pub. L. 98–369, §721(q), substituted "who (or whose estate) held" for "who held".

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title VIII, §806(e), Oct. 22, 1986, 100 Stat. 2364, as amended by Pub. L. 100–647, title I, §1008(e)(7), (8), (10), Nov. 10, 1988, 102 Stat. 3441, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and sections 267, 441, and 706 of this title] shall apply to taxable years beginning after December 31, 1986.

"(2) CHANGE IN ACCOUNTING PERIOD.—In the case of any partnership, S corporation, or personal service corporation required by the amendments made by this section to change its accounting period for the taxpayer's first taxable year beginning after December 31, 1986—

"(A) such change shall be treated as initiated by the partnership, S corporation, or personal service corporation,

"(B) such change shall be treated as having been made with the consent of the Secretary, and

"(C) with respect to any partner or shareholder of an S corporation which is required to include the items from more than 1 taxable year of the partnership or S corporation in any 1 taxable year, income in excess of expenses of such partnership or corporation for the short taxable year required by such amendments shall be taken into account ratably in each of the first 4 taxable years beginning after December 31, 1986, unless such partner or shareholder elects to include all such income in the the [sic] partner's or shareholder's taxable year with or within which the partnership's or S corporation's short taxable year ends.

Subparagraph (C) shall apply to a shareholder of an S corporation only if such corporation was an S corporation for a taxable year beginning in 1986.

"(3) BASIS, ETC. RULES—

"(A) BASIS RULE.—The adjusted basis of any partner's interest in a partnership or shareholder's stock in an S corporation shall be determined as if all of the income to be taken into account ratably in the 4 taxable years referred to in paragraph (2)(C) were included in gross income for the 1st of such taxable years.

"(B) TREATMENT OF DISPOSITIONS.—If any interest in a partnership or stock in an S corporation is disposed of before the last taxable year in the spread period, all amounts which would be included in the gross income of the partner or shareholder for subsequent taxable years in the spread period under paragraph (2)(C) and attributable to the interest or stock disposed of shall be included in gross income for the taxable year in which the disposition occurs. For purposes of the preceding sentence, the term 'spread period' means the period consisting of the 4 taxable years referred to in paragraph (2)(C)."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective as if included in Subchapter S Revision Act of 1982, Pub. L. 97–354, see section 721(y)(1) of Pub. L. 98–369, set out as a note under section 1361 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as a note under section 1361 of this title.

CONSTRUCTION OF SECTION 806 OF PUB. L. 99–514

Pub. L. 100–647, title I, §1008(e)(9), Nov. 10, 1988, 102 Stat. 3441, provided that: "Nothing in section 806 of the Reform Act [Pub. L. 99–514, amending this section and sections 267, 441, and 706 of this title and

enacting provisions set out above] or in any legislative history relating thereto shall be construed as requiring the Secretary of the Treasury or his delegate to permit an automatic change of a taxable year."

§1379. Transitional rules on enactment

(a) Old elections

Any election made under section 1372(a) (as in effect before the enactment of the Subchapter S Revision Act of 1982) shall be treated as an election made under section 1362.

(b) References to prior law included

Any references in this title to a provision of this subchapter shall, to the extent not inconsistent with the purposes of this subchapter, include a reference to the corresponding provision as in effect before the enactment of the Subchapter S Revision Act of 1982.

(c) Distributions of undistributed taxable income

If a corporation was an electing small business corporation for the last preenactment year, subsections (f) and (d) of section 1375 (as in effect before the enactment of the Subchapter S Revision Act of 1982) shall continue to apply with respect to distributions of undistributed taxable income for any taxable year beginning before January 1, 1983.

(d) Carryforwards

If a corporation was an electing small business corporation for the last preenactment year and is an S corporation for the 1st postenactment year, any carryforward to the 1st postenactment year which arose in a taxable year for which the corporation was an electing small business corporation shall be treated as arising in the 1st postenactment year.

(e) Preenactment and postenactment years defined

For purposes of this subsection—

(1) Last preenactment year

The term "last preenactment year" means the last taxable year of a corporation which begins before January 1, 1983.

(2) 1st postenactment year

The term "1st postenactment year" means the 1st taxable year of a corporation which begins after December 31, 1982.

(Added Pub. L. 97–354, §2, Oct. 19, 1982, 96 Stat. 1686; amended Pub. L. 98–369, div. A, title VII, §721(n), July 18, 1984, 98 Stat. 969.)

REFERENCES IN TEXT

The enactment of the Subchapter S Revision Act of 1982, referred to in subsecs. (a) to (c), is the enactment of Pub. L. 97–354, which was approved Oct. 19, 1982.

PRIOR PROVISIONS

A prior section 1379, added Pub. L. 91–172, title V, §531(a), Dec. 30, 1969, 83 Stat. 654; amended Pub. L. 93–406, title II, §2001(b), Sept. 2, 1974, 88 Stat. 952; Pub. L. 97–34, title III, §312(c)(6), Aug. 13, 1981, 95 Stat. 284; Pub. L. 97–248, title II, §238(c), Sept. 3, 1982, 96 Stat. 513, related to certain qualified pension, etc., plans, prior to the general revision of this subchapter by section 2 of Pub. L. 97–354.

AMENDMENTS

1984—Subsec. (b). Pub. L. 98–369 struck out "In applying this subchapter to any taxable year beginning after December 31, 1982," and substituted "Any references in this title to a provision" for "any reference in this subchapter to another provision".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective as if included in Subchapter S Revision Act of 1982, Pub. L. 97–354, see section 721(y)(1) of Pub. L. 98–369, set out as a note under section 1361 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, except that this section as in effect before Oct. 19, 1982, to remain in effect for years beginning before Jan. 1, 1984, see section 6(a), (b)(1) of Pub. L. 97–354, set out as a note under section 1361 of this title.

COORDINATION OF REPEALS OF CERTAIN SECTIONS

Subsec. (b) of this section as in effect on day before Sept. 3, 1982, inapplicable to any section 401(j) plan, see section 713(d)(8) of Pub. L. 98–369, set out as a note under section 404 of this title.

Subchapter T—Cooperatives and Their Patrons

Part

I. Tax treatment of cooperatives.

II. Tax treatment by patrons of patronage dividends and per-unit retain allocations.

III. Definitions; special rules.

AMENDMENTS

1966—Pub. L. 89–809, title II, §211(b)(5), Nov. 13, 1966, 80 Stat. 1582, inserted "and per-unit retain allocations" in heading of part II.

1962—Pub. L. 87–834, §17(a), Oct. 16, 1962, 76 Stat. 1045, added headings of subchapter T and of parts I to III.

PART I—TAX TREATMENT OF COOPERATIVES

Sec.

1381. Organizations to which part applies.

1382. Taxable income of cooperatives.

1383. Computation of tax where cooperative redeems nonqualified written notices of allocation or nonqualified per-unit retain certificates.

AMENDMENTS

1966—Pub. L. 89–809, title II, §211(a)(8), Nov. 13, 1966, 80 Stat. 1582, inserted "or nonqualified per-unit retain certificates" in item 1383.

1962—Pub. L. 87–834, §17(a), Oct. 16, 1962, 76 Stat. 1045, added heading of part I and items 1381 to 1383.

§1381. Organizations to which part applies

(a) In general

This part shall apply to—

(1) any organization exempt from tax under section 521 (relating to exemption of farmers' cooperatives from tax), and

(2) any corporation operating on a cooperative basis other than an organization—

(A) which is exempt from tax under this chapter,

(B) which is subject to the provisions of—

(i) part II of subchapter H (relating to mutual savings banks, etc.), or

(ii) subchapter L (relating to insurance companies), or

(C) which is engaged in furnishing electric energy, or providing telephone service, to persons in rural areas.

(b) Tax on certain farmers' cooperatives

An organization described in subsection (a)(1) shall be subject to the taxes imposed by section 11 or 1201.

(c) Cross reference

For treatment of income from load loss transactions of organizations described in subsection (a)(2)(C), see section 501(c)(12)(H).

(Added Pub. L. 87–834, §17(a), Oct. 16, 1962, 76 Stat. 1045; amended Pub. L. 108–357, title III, §319(d), Oct. 22, 2004, 118 Stat. 1472.)

AMENDMENTS

2004—Subsec. (c). Pub. L. 108–357 added subsec. (c).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years beginning after Oct. 22, 2004, see section 319(e) of Pub. L. 108–357, set out as a note under section 501 of this title.

EFFECTIVE DATE

Pub. L. 87–834, §17(c), Oct. 16, 1962, 76 Stat. 1051, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) FOR THE COOPERATIVES.—Except as provided in paragraph (3), the amendments made by subsections (a) and (b) [enacting this subchapter, amending sections 521 and 6072 of this title, and repealing section 522 of this title] shall apply to taxable years of organizations described in section 1381(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)) beginning after December 31, 1962.

"(2) FOR THE PATRONS.—Except as provided in paragraph (3), section 1385 of the Internal Revenue Code of 1986 (as added by subsection (a)) shall apply with respect to any amount received from any organization described in section 1381(a) of such Code, to the extent that such amount is paid by such organization in a taxable year of such organization beginning after December 31, 1962.

"(3) APPLICATION OF EXISTING LAW.—In the case of any money, written notice of allocation, or other property paid by any organization described in section 1381(a)—

"(A) before the first day of the first taxable year of such organization beginning after December 31, 1962, or

"(B) on or after such first day with respect to patronage occurring before such first day,

the tax treatment of such money, written notice of allocation, or other property (including the tax treatment of gain or loss on the redemption, sale, or other disposition of such written notice of allocation) by any person shall be made under the Internal Revenue Code of 1986 without regard to subchapter T of chapter 1 of such Code [this subchapter]."

§1382. Taxable income of cooperatives

(a) Gross income

Except as provided in subsection (b), the gross income of any organization to which this part applies shall be determined without any adjustment (as a reduction in gross receipts, an increase in cost of goods sold, or otherwise) by reason of any allocation or distribution to a patron out of the net earnings of such organization or by reason of any amount paid to a patron as a per-unit retain allocation (as defined in section 1388(f)).

(b) Patronage dividends and per-unit retain allocations

In determining the taxable income of an organization to which this part applies, there shall not be taken into account amounts paid during the payment period for the taxable year—

(1) as patronage dividends (as defined in section 1388(a)), to the extent paid in money, qualified written notices of allocation (as defined in section 1388(c)), or other property (except nonqualified written notices of allocation (as defined in section 1388(d))) with respect to patronage occurring during such taxable year;

(2) in money or other property (except written notices of allocation) in redemption of a nonqualified written notice of allocation which was paid as a patronage dividend during the payment period for the taxable year during which the patronage occurred;

(3) as per-unit retain allocations (as defined in section 1388(f)), to the extent paid in money,

qualified per-unit retain certificates (as defined in section 1388(h)), or other property (except nonqualified per-unit retain certificates, as defined in section 1388(i)) with respect to marketing occurring during such taxable year; or

(4) in money or other property (except per-unit retain certificates) in redemption of a nonqualified per-unit retain certificate which was paid as a per-unit retain allocation during the payment period for the taxable year during which the marketing occurred.

For purposes of this title, any amount not taken into account under the preceding sentence shall, in the case of an amount described in paragraph (1) or (2), be treated in the same manner as an item of gross income and as a deduction therefrom, and in the case of an amount described in paragraph (3) or (4), be treated as a deduction in arriving at gross income.

(c) Deduction for nonpatronage distributions, etc.

In determining the taxable income of an organization described in section 1381(a)(1), there shall be allowed as a deduction (in addition to other deductions allowable under this chapter)—

(1) amounts paid during the taxable year as dividends on its capital stock; and

(2) amounts paid during the payment period for the taxable year—

(A) in money, qualified written notices of allocation, or other property (except nonqualified written notices of allocation) on a patronage basis to patrons with respect to its earnings during such taxable year which are derived from business done for the United States or any of its agencies or from sources other than patronage, or

(B) in money or other property (except written notices of allocation) in redemption of a nonqualified written notice of allocation which was paid, during the payment period for the taxable year during which the earnings were derived, on a patronage basis to a patron with respect to earnings derived from business or sources described in subparagraph (A).

(d) Payment period for each taxable year

For purposes of subsections (b) and (c)(2), the payment period for any taxable year is the period beginning with the first day of such taxable year and ending with the fifteenth day of the ninth month following the close of such year. For purposes of subsections (b)(1) and (c)(2)(A), a qualified check issued during the payment period shall be treated as an amount paid in money during such period if endorsed and cashed on or before the 90th day after the close of such period.

(e) Products marketed under pooling arrangements

For purposes of subsection (b), in the case of a pooling arrangement for the marketing of products—

(1) the patronage shall (to the extent provided in regulations prescribed by the Secretary) be treated as patronage occurring during the taxable year in which the pool closes, and

(2) the marketing of products shall be treated as occurring during any of the taxable years in which the pool is open.

(f) Treatment of earnings received after patronage occurred

If any portion of the earnings from business done with or for patrons is includible in the organization's gross income for a taxable year after the taxable year during which the patronage occurred, then for purposes of applying paragraphs (1) and (2) of subsection (b) to such portion the patronage shall, to the extent provided in regulations prescribed by the Secretary, be considered to have occurred during the taxable year of the organization during which such earnings are includible in gross income.

(g) Use of completed crop pool method of accounting

(1) In general

An organization described in section 1381(a) which is engaged in pooling arrangements for the marketing of products may compute its taxable income with respect to any pool opened prior to March 1, 1978, under the completed crop pool method of accounting if—

(A) the organization has computed its taxable income under such method for the 10 taxable

years ending with its first taxable year beginning after December 31, 1976, and

(B) with respect to the pool, the organization has entered into an agreement with the United States or any of its agencies which includes provisions to the effect that—

(i) the United States or such agency shall provide a loan to the organization with the products comprising the pool serving as collateral for such loan,

(ii) the organization shall use an amount equal to the proceeds of such loan to make price support advances to eligible producers (as determined by the United States or such agency), to defray costs of handling, processing, and storing such products, or to pay all or part of any administrative costs associated with the price support program,

(iii) an amount equal to the net proceeds (as determined under such agreement) from the sale or exchange of the products in the pool shall be used to repay such loan until such loan is repaid in full (or all the products in the pool are disposed of), and

(iv) the net gains (as determined under such agreement) from the sale or exchange of such products shall be distributed to eligible producers, except to the extent that the United States or such agency permits otherwise.

(2) Completed crop pool method of accounting defined

For purposes of this subsection, the term "completed crop pool method of accounting" means a method of accounting under which gain or loss is computed separately for each crop year pool in the year in which the last of the products in the pool are disposed of.

(Added Pub. L. 87–834, §17(a), Oct. 16, 1962, 76 Stat. 1046; amended Pub. L. 89–809, title II, §211(a)(1)–(4), Nov. 13, 1966, 80 Stat. 1580, 1581; Pub. L. 91–172, title IX, §911(a), Dec. 30, 1969, 83 Stat. 722; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–345, §3, Aug. 15, 1978, 92 Stat. 483.)

AMENDMENTS

1978—Subsec. (g). Pub. L. 95–345 added subsec. (g).

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

1969—Subsec. (b)(3). Pub. L. 91–172 expanded the category of per-unit retain allocations that may not be taken into account in determining the taxable income of an organization, by including per-unit retain allocations paid for in money or other property (except nonqualified per-unit retain certificates as defined in section 1388(i) of this section).

1966—Subsec. (a). Pub. L. 89–809, §211(a)(1), inserted reference to amounts paid to patrons as a per-unit retain allocation as defined in section 1388(f).

Subsec. (b). Pub. L. 89–809, §211(a)(2), inserted "and per-unit retain allocations" in heading, added pars. (3) and (4), and, in text following par. (4), inserted provisions making existing text applicable only to amounts described in pars. (1) and (2) and inserted text covering the treatment of amounts described in pars. (3) and (4).

Subsec. (e). Pub. L. 89–809, §211(a)(3), inserted provision that the marketing of products shall be treated as occurring during any of the taxable years in which the pool is open.

Subsec. (f). Pub. L. 89–809, §211(a)(4), substituted "paragraphs (1) and (2) of subsection (b)" for "subsection (b)".

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title IX, §911(c), Dec. 30, 1969, 83 Stat. 722, provided that: "The amendments made by this section [amending this section and section 1388 of this title] shall apply to per-unit retain allocations made after October 9, 1969."

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89–809, title II, §211(e), Nov. 13, 1966, 80 Stat. 1584, provided that:

"(1) The amendments made by subsections (a), (b), and (c) [amending this section and sections 1383, 1385, and 1388 of this title] shall apply to per-unit retain allocations made during taxable years of an organization described in section 1381(a) (relating to organizations to which part I of subchapter T of chapter 1 applies) beginning after April 30, 1966, with respect to products delivered during such years.

"(2) The amendments made by subsection (d) [amending section 6044 of this title] shall apply with respect to calendar years after 1966."

EFFECTIVE DATE

Section applicable, except as otherwise provided, to taxable years of organizations described in section 1381(a) of this title beginning after Dec. 31, 1962, see section 17(c) of Pub. L. 87–834, set out as a note under section 1381 of this title.

§1383. Computation of tax where cooperative redeems nonqualified written notices of allocation or nonqualified per-unit retain certificates

(a) General rule

If, under section 1382(b)(2) or (4), or (c)(2)(B), a deduction is allowable to an organization for the taxable year for amounts paid in redemption of nonqualified written notices of allocation or non-qualified per-unit retain certificates, then the tax imposed by this chapter on such organization for the taxable year shall be the lesser of the following:

(1) the tax for the taxable year computed with such deduction; or

(2) an amount equal to—

(A) the tax for the taxable year computed without such deduction, minus

(B) the decrease in tax under this chapter for any prior taxable year (or years) which would result solely from treating such nonqualified written notices of allocation or nonqualified per-unit retain certificates as qualified written notices of allocation or qualified per-unit retain certificates (as the case may be).

(b) Special rules

(1) If the decrease in tax ascertained under subsection (a)(2)(B) exceeds the tax for the taxable year (computed without the deduction described in subsection (a)) such excess shall be considered to be a payment of tax on the last day prescribed by law for the payment of tax for the taxable year, and shall be refunded or credited in the same manner as if it were an overpayment for such taxable year.

(2) For purposes of determining the decrease in tax under subsection (a)(2)(B), the stated dollar amount of any nonqualified written notice of allocation or nonqualified per-unit retain certificate which is to be treated under such subsection as a qualified written notice of allocation or qualified per-unit retain certificate (as the case may be) shall be the amount paid in redemption of such written notice of allocation or per-unit retain certificate which is allowable as a deduction under section 1382(b)(2) or (4), or (c)(2)(B) for the taxable year.

(3) If the tax imposed by this chapter for the taxable year is the amount determined under subsection (a)(2), then the deduction described in subsection (a) shall not be taken into account for any purpose of this subtitle other than for purposes of this section.

(Added Pub. L. 87–834, §17(a), Oct. 16, 1962, 76 Stat. 1047; amended Pub. L. 89–809, title II, §211(a)(5)–(7), Nov. 13, 1966, 80 Stat. 1581.)

AMENDMENTS

1966—Pub. L. 89–809, §211(a)(5), inserted "or nonqualified per-unit retain certificates" in section catchline.

Subsec. (a). Pub. L. 89–809, §211(a)(6), substituted "section 1382(b)(2) or (4)" for "1382(b)(2)" and inserted references to per-unit retain certificates.

Subsec. (b)(2). Pub. L. 89–809, §211(a)(7), substituted "section 1382(b)(2) or (4)" for "section 1382(b)(2)" and inserted references to per-unit retain certificates.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable to per-unit retain allocations made during taxable years of an organization described in section 1381(a) of this title (relating to organizations to which part I of subchapter T of chapter 1 applies) beginning after Apr. 30, 1966, with respect to products delivered during such years, see section 211(e)(1) of Pub. L. 89–809, set out as a note under section 1382 of this title.

EFFECTIVE DATE

Section applicable, except as otherwise provided, to taxable years of organizations described in section

1381(a) of this title beginning after Dec. 31, 1962, see section 17(c) of Pub. L. 87–834, set out as a note under section 1381 of this title.

PART II—TAX TREATMENT BY PATRONS OF PATRONAGE DIVIDENDS AND PER-UNIT RETAIN ALLOCATIONS

Sec.
1385. Amounts includible in patron's gross income.

AMENDMENTS

1962—Pub. L. 87–834, §17(a), Oct. 16, 1962, 76 Stat. 1048, added heading of part II and item 1385.

§1385. Amounts includible in patron's gross income

(a) General rule

Except as otherwise provided in subsection (b), each person shall include in gross income—

(1) the amount of any patronage dividend which is paid in money, a qualified written notice of allocation, or other property (except a nonqualified written notice of allocation), and which is received by him during the taxable year from an organization described in section 1381(a),

(2) any amount, described in section 1382 (c)(2)(A) (relating to certain nonpatronage distributions by tax-exempt farmers' cooperatives), which is paid in money, a qualified written notice of allocation, or other property (except a nonqualified written notice of allocation), and which is received by him during the taxable year from an organization described in section 1381(a)(1), and

(3) the amount of any per-unit retain allocation which is paid in qualified per-unit retain certificates and which is received by him during the taxable year from an organization described in section 1381(a).

(b) Exclusion from gross income

Under regulations prescribed by the Secretary, the amount of any patronage dividend, and any amount received on the redemption, sale, or other disposition of a nonqualified written notice of allocation which was paid as a patronage dividend, shall not be included in gross income to the extent that such amount—

(1) is properly taken into account as an adjustment to basis of property, or

(2) is attributable to personal, living, or family items.

(c) Treatment of certain nonqualified written notices of allocation and certain nonqualified per-unit retain certificates

(1) Application of subsection

This subsection shall apply to—

(A) any nonqualified written notice of allocation which—

(i) was paid as a patronage dividend, or

(ii) was paid by an organization described in section 1381(a)(1) on a patronage basis with respect to earnings derived from business or sources described in section 1382(c)(2)(A), and

(B) any nonqualified per-unit retain certificate which was paid as a per-unit retain allocation.

(2) Basis; amount of gain

In the case of any nonqualified written notice of allocation or nonqualified per-unit retain certificate to which this subsection applies, for purposes of this chapter—

(A) the basis of such written notice of allocation or per-unit retain certificate in the hands of the patron to whom such written notice of allocation or per-unit retain certificate was paid shall be zero,

(B) the basis of such written notice of allocation or per-unit retain certificate which was acquired from a decedent shall be its basis in the hands of the decedent, and

(C) gain on the redemption, sale, or other disposition of such written notice of allocation or per-unit retain certificate by any person shall, to the extent that the stated dollar amount of such written notice of allocation or per-unit retain certificate exceeds its basis, be considered as ordinary income.

(Added Pub. L. 87–834, §17(a), Oct. 16, 1962, 76 Stat. 1048; amended Pub. L. 89–809, title II, §211(b)(1)–(4), Nov. 13, 1966, 80 Stat. 1582; Pub. L. 94–455, title XIX, §§1901(b)(3)(I), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1793, 1834.)

AMENDMENTS

1976—Subsec. (b). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (c)(2)(C). Pub. L. 94–455, §1901(b)(3)(I), substituted "ordinary income" for "gain from the sale or exchange of property which is not a capital asset".

1966—Subsec. (a)(3). Pub. L. 89–809, §211(b)(1), added par. (3).

Subsec. (c). Pub. L. 89–809, §211(b)(2)–(4), inserted "and certain nonqualified per-unit retain certificates" in heading, inserted provisions to par. (1) for the application of the subsection to any nonqualified per-unit retain certificates which were paid as per-unit retain allocations, and inserted references to per-unit retain certificates in par. (2).

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(b)(3)(I) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable to per-unit retain allocations made during taxable years of an organization described in section 1381(a) of this title (relating to organizations to which part I of subchapter T of chapter 1 applies) beginning after Apr. 30, 1966, with respect to products delivered during such years, see section 211(e)(1) of Pub. L. 89–809, set out as a note under section 1382 of this title.

EFFECTIVE DATE

Section applicable, except as otherwise provided, to taxable years of organizations described in section 1381(a) of this title beginning after Dec. 31, 1962, see section 17(c) of Pub. L. 87–834, set out as a note under section 1381 of this title.

PART III—DEFINITIONS; SPECIAL RULES

Sec.

1388. Definitions; special rules.

AMENDMENTS

1962—Pub. L. 87–834, §17(a), Oct. 16, 1962, 76 Stat. 1049, added heading of part III and item 1388.

§1388. Definitions; special rules

(a) Patronage dividend

For purposes of this subchapter, the term "patronage dividend" means an amount paid to a patron by an organization to which part I of this subchapter applies—

(1) on the basis of quantity or value of business done with or for such patron,

(2) under an obligation of such organization to pay such amount, which obligation existed before the organization received the amount so paid, and

(3) which is determined by reference to the net earnings of the organization from business done with or for its patrons.

Such term does not include any amount paid to a patron to the extent that (A) such amount is out

of earnings other than from business done with or for patrons, or (B) such amount is out of earnings from business done with or for other patrons to whom no amounts are paid, or to whom smaller amounts are paid, with respect to substantially identical transactions. For purposes of paragraph (3), net earnings shall not be reduced by amounts paid during the year as dividends on capital stock or other proprietary capital interests of the organization to the extent that the articles of incorporation or bylaws of such organization or other contract with patrons provide that such dividends are in addition to amounts otherwise payable to patrons which are derived from business done with or for patrons during the taxable year.

(b) Written notice of allocation

For purposes of this subchapter, the term "written notice of allocation" means any capital stock, revolving fund certificate, retain certificate, certificate of indebtedness, letter of advice, or other written notice, which discloses to the recipient the stated dollar amount allocated to him by the organization and the portion thereof, if any, which constitutes a patronage dividend.

(c) Qualified written notice of allocation

(1) Defined

For purposes of this subchapter, the term "qualified written notice of allocation" means—

(A) a written notice of allocation which may be redeemed in cash at its stated dollar amount at any time within a period beginning on the date such written notice of allocation is paid and ending not earlier than 90 days from such date, but only if the distributee receives written notice of the right of redemption at the time he receives such written notice of allocation; and

(B) a written notice of allocation which the distributee has consented, in the manner provided in paragraph (2), to take into account at its stated dollar amount as provided in section 1385(a).

Such term does not include any written notice of allocation which is paid as part of a patronage dividend or as part of a payment described in section 1382(c)(2)(A), unless 20 percent or more of the amount of such patronage dividend, or such payment, is paid in money or by qualified check.

(2) Manner of obtaining consent

A distributee shall consent to take a written notice of allocation into account as provided in paragraph (1)(B) only by—

(A) making such consent in writing,

(B) obtaining or retaining membership in the organization after—

(i) such organization has adopted (after October 16, 1962) a bylaw providing that membership in the organization constitutes such consent, and

(ii) he has received a written notification and copy of such bylaw, or

(C) if neither subparagraph (A) nor (B) applies, endorsing and cashing a qualified check, paid as a part of the patronage dividend or payment of which such written notice of allocation is also a part, on or before the 90th day after the close of the payment period for the taxable year of the organization for which such patronage dividend or payment is paid.

(3) Period for which consent is effective

(A) General rule

Except as provided in subparagraph (B)—

(i) a consent described in paragraph (2) (A) shall be a consent with respect to all patronage of the distributee with the organization occurring (determined with the application of section 1382(e)) during the taxable year of the organization during which such consent is made and all subsequent taxable years of the organization; and

(ii) a consent described in paragraph (2) (B) shall be a consent with respect to all patronage of the distributee with the organization occurring (determined without the application of section 1382(e)) after he received the notification and copy described in paragraph (2)(B)(ii).

(B) Revocation, etc.

(i) Any consent described in paragraph (2)(A) may be revoked (in writing) by the distributee at any time. Any such revocation shall be effective with respect to patronage occurring on or after the first day of the first taxable year of the organization beginning after the revocation is filed with such organization; except that in the case of a pooling arrangement described in section 1382(e), a revocation made by a distributee shall not be effective as to any pool with respect to which the distributee has been a patron before such revocation.

(ii) Any consent described in paragraph (2)(B) shall not be effective with respect to any patronage occurring (determined without the application of section 1382(e)) after the distributee ceases to be a member of the organization or after the bylaws of the organization cease to contain the provision described in paragraph (2)(B)(i).

(4) Qualified check

For purposes of this subchapter, the term "qualified check" means only a check (or other instrument which is redeemable in money) which is paid as a part of a patronage dividend, or as a part of a payment described in section 1382(c)(2)(A), to a distributee who has not given consent as provided in paragraph (2)(A) or (B) with respect to such patronage dividend or payment, and on which there is clearly imprinted a statement that the endorsement and cashing of the check (or other instrument) constitutes the consent of the payee to include in his gross income, as provided in the Federal income tax laws, the stated dollar amount of the written notice of allocation which is a part of the patronage dividend or payment of which such qualified check is also a part. Such term does not include any check (or other instrument) which is paid as part of a patronage dividend or payment which does not include a written notice of allocation (other than a written notice of allocation described in paragraph (1)(A)).

(d) Nonqualified written notice of allocation

For purposes of this subchapter, the term "nonqualified written notice of allocation" means a written notice of allocation which is not described in subsection (c) or a qualified check which is not cashed on or before the 90th day after the close of the payment period for the taxable year for which the distribution of which it is a part is paid.

(e) Determination of amount paid or received

For purposes of this subchapter, in determining amounts paid or received—

(1) property (other than a written notice of allocation or a per-unit retain certificate) shall be taken into account at its fair market value, and

(2) a qualified written notice of allocation or qualified per-unit retain certificate shall be taken into account at its stated dollar amount.

(f) Per-unit retain allocation

For purposes of this subchapter, the term "per-unit retain allocation" means any allocation, by an organization to which part I of this subchapter applies, to a patron with respect to products marketed for him, the amount of which is fixed without reference to the net earnings of the organization pursuant to an agreement between the organization and the patron.

(g) Per-unit retain certificate

For purposes of this subchapter, the term "per-unit retain certificate" means any written notice which discloses to the recipient the stated dollar amount of a per-unit retain allocation to him by the organization.

(h) Qualified per-unit retain certificate

(1) Defined

For purposes of this subchapter, the term "qualified per-unit retain certificate" means any per-unit retain certificate which the distributee has agreed, in the manner provided in paragraph (2), to take into account at its stated dollar amount as provided in section 1385(a).

(2) Manner of obtaining agreement

A distributee shall agree to take a per-unit retain certificate into account as provided in paragraph (1) only by—

(A) making such agreement in writing, or

(B) obtaining or retaining membership in the organization after—

(i) such organization has adopted (after November 13, 1966) a bylaw providing that membership in the organization constitutes such agreement, and

(ii) he has received a written notification and copy of such bylaw.

(3) Period for which agreement is effective

(A) General rule

Except as provided in subparagraph (B)—

(i) an agreement described in paragraph (2)(A) shall be an agreement with respect to all products delivered by the distributee to the organization during the taxable year of the organization during which such agreement is made and all subsequent taxable years of the organization; and

(ii) an agreement described in paragraph (2)(B) shall be an agreement with respect to all products delivered by the distributee to the organization after he received the notification and copy described in paragraph (2)(B)(ii).

(B) Revocation, etc.

(i) Any agreement described in paragraph (2)(A) may be revoked (in writing) by the distributee at any time. Any such revocation shall be effective with respect to products delivered by the distributee on or after the first day of the first taxable year of the organization beginning after the revocation is filed with the organization; except that in the case of a pooling arrangement described in section 1382(e) a revocation made by a distributee shall not be effective as to any products which were delivered to the organization by the distributee before such revocation.

(ii) Any agreement described in paragraph (2)(B) shall not be effective with respect to any products delivered after the distributee ceases to be a member of the organization or after the bylaws of the organization cease to contain the provision described in paragraph (2)(B)(i).

(i) Nonqualified per-unit retain certificate

For purposes of this subchapter, the term "nonqualified per-unit retain certificate" means a per-unit retain certificate which is not described in subsection (h).

(j) Special rules for the netting of gains and losses by cooperatives

For purposes of this subchapter, in the case of any organization to which part I of this subchapter applies—

(1) Optional netting of patronage gains and losses permitted

The net earnings of such organization may, at its option, be determined by offsetting patronage losses (including any patronage loss carried to such year) which are attributable to 1 or more allocation units (whether such units are functional, divisional, departmental, geographic, or otherwise) against patronage earnings of 1 or more other such allocation units.

(2) Certain netting permitted after section 381 transactions

If such an organization acquires the assets of another such organization in a transaction described in section 381(a), the acquiring organization may, in computing its net earnings for taxable years ending after the date of acquisition, offset losses of 1 or more allocation units of the acquiring or acquired organization against earnings of the acquired or acquiring organization, respectively, but only to the extent—

(A) such earnings are properly allocable to periods after the date of acquisition, and

(B) such earnings could have been offset by such losses if such earnings and losses had been derived from allocation units of the same organization.

(3) Notice requirements

(A) In general

In the case of any organization which exercises its option under paragraph (1) for any taxable year, such organization shall, on or before the 15th day of the 9th month following the close of such taxable year, provide to its patrons a written notice which—

(i) states that the organization has offset earnings and losses from 1 or more of its allocation units and that such offset may have affected the amount which is being distributed to its patrons,

(ii) states generally the identity of the offsetting allocation units, and

(iii) states briefly what rights, if any, its patrons may have to additional financial information of such organization under terms of its charter, articles of incorporation, or bylaws, or under any provision of law.

(B) Certain information need not be provided

An organization may exclude from the information required to be provided under clause (ii) of subparagraph (A) any detailed or specific data regarding earnings or losses of such units which such organization determines would disclose commercially sensitive information which—

(i) could result in a competitive disadvantage to such organization, or

(ii) could create a competitive advantage to the benefit of a competitor of such organization.

(C) Failure to provide sufficient notice

If the Secretary determines that an organization failed to provide sufficient notice under this paragraph—

(i) the Secretary shall notify such organization, and

(ii) such organization shall, upon receipt of such notification, provide to its patrons a revised notice meeting the requirements of this paragraph.

Any such failure shall not affect the treatment of the organization under any provision of this subchapter or section 521.

(4) Patronage earnings or losses defined

For purposes of this subsection, the terms "patronage earnings" and "patronage losses" means earnings and losses, respectively, which are derived from business done with or for patrons of the organization.

(k) Cooperative marketing includes value-added processing involving animals

For purposes of section 521 and this subchapter, the marketing of the products of members or other producers shall include the feeding of such products to cattle, hogs, fish, chickens, or other animals and the sale of the resulting animals or animal products.

(Added Pub. L. 87–834, §17(a), Oct. 16, 1962, 76 Stat. 1049; amended Pub. L. 89–809, title II, §211(c), Nov. 13, 1966, 80 Stat. 1582; Pub. L. 91–172, title IX, §911(b), Dec. 30, 1969, 83 Stat. 722; Pub. L. 94–455, title XIX, §1901(a)(153), Oct. 4, 1976, 90 Stat. 1789; Pub. L. 95–600, title III, §316(b)(3), Nov. 6, 1978, 92 Stat. 2830; Pub. L. 99–272, title XIII, §13210(a), Apr. 7, 1986, 100 Stat. 323; Pub. L. 101–508, title XI, §11813(b)(24), Nov. 5, 1990, 104 Stat. 1388–555; Pub. L. 108–357, title III, §§312(a), 316(a), Oct. 22, 2004, 118 Stat. 1467, 1469.)

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–357, §312(a), inserted at end of concluding provisions "For purposes of paragraph (3), net earnings shall not be reduced by amounts paid during the year as dividends on capital stock or other proprietary capital interests of the organization to the extent that the articles of incorporation or bylaws of such organization or other contract with patrons provide that such dividends are in addition to amounts otherwise payable to patrons which are derived from business done with or for patrons during the taxable year."

Subsec. (k). Pub. L. 108–357, §316(a), added subsec. (k).

1990—Subsec. (k). Pub. L. 101–508 struck out subsec. (k) which cross-referenced section 46(h) for provisions relating to apportionment of investment credit between cooperative organizations and their patrons.

1986—Subsecs. (j), (k). Pub. L. 99–272 added subsec. (j) and redesignated former subsec. (j) as (k).

1978—Subsec. (j). Pub. L. 95–600 added subsec. (j).

1976—Subsec. (c)(2)(B)(i). Pub. L. 94–455, §1901 (a)(153)(A), substituted "October 16, 1962" for "the date of the enactment of the Revenue Act of 1962".

Subsec. (h)(2)(B)(i). Pub. L. 94–455, §1901(a)(153)(B), substituted "November 13, 1966" for "the date of the enactment of this subsection".

1969—Subsec. (f). Pub. L. 91–172 struck out reference to allocations made by organizations other than by payment of money or other property except per-unit retain certificates.

1966—Subsec. (e). Pub. L. 89–809, §211(c)(1), inserted references to per-unit retain certificates.

Subsecs. (f) to (i). Pub. L. 89–809, §211(c)(2), added subsecs. (f) to (i).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title III, §312(b), Oct. 22, 2004, 118 Stat. 1467, provided that: "The amendment made by this section [amending this section] shall apply to distributions in taxable years beginning after the date of the enactment of this Act [Oct. 22, 2004]."

Amendment by section 316(a) of Pub. L. 108–357 applicable to taxable years beginning after Oct. 22, 2004, see section 316(c) of Pub. L. 108–357, set out as a note under section 521 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–272, title XIII, §13210(c), Apr. 7, 1986, 100 Stat. 324, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 521 of this title] shall apply to taxable years beginning after December 31, 1962.

"(2) NOTIFICATION REQUIREMENT.—The provisions of section 1388(j)(3) of the Internal Revenue Code of 1954 [now 1986] (as added by subsection (a)) shall apply to taxable years beginning on or after the date of the enactment of this Act [Apr. 7, 1986].

"(3) NO INFERENCE.—Nothing in the amendments made by this section [amending this section and section 521 of this title] shall be construed to infer that a change in law is intended as to whether any patronage earnings may or not be offset by nonpatronage losses, and any determination of such issue shall be made as if such amendments had not been enacted."

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable to taxable years ending after October 31, 1978, see section 316(c) of Pub. L. 95–600, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to per-unit retain allocations made after Oct. 9, 1969, see section 911(c) of Pub. L. 91–172, set out as a note under section 1382 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable to per-unit retain allocations made during taxable years of an organization described in section 1381(a) of this title (relating to organizations to which part I of subchapter T of chapter 1 applies) beginning after Apr. 30, 1966, with respect to products delivered during such years, see section 211(e)(1) of Pub. L. 89–809, set out as a note under section 1382 of this title.

EFFECTIVE DATE

Section applicable, except as otherwise provided, to taxable years of organizations described in section 1381(a) of this title beginning after Dec. 31, 1962, see section 17(c) of Pub. L. 87–834, set out as a note under section 1381 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

PER-UNIT RETAIN CERTIFICATES COVERED BY WRITTEN AGREEMENTS BETWEEN OCT. 14, 1965, AND NOV. 13, 1966: TRANSITION TREATMENT OF BY-LAW PROVISIONS

Pub. L. 89–809, title II, §211(f), Nov. 13, 1966, 80 Stat. 1584, provided that a written agreement between a patron and a cooperative association which met certain qualifications and was entered into after Oct. 14, 1965 and before Nov. 13, 1966, and which was in effect on Nov. 13, 1966, was to be treated for purposes of subsec. (h) of this section as if entered into after Nov. 13, 1966.

Subchapter U—Designation and Treatment of Empowerment Zones, Enterprise Communities, and Rural Development Investment Areas

Part

I. Designation.
II. Tax-exempt facility bonds for empowerment zones and enterprise communities.
III. Additional incentives for empowerment zones.
IV. Incentives for education zones.
V. Regulations.

PRIOR PROVISIONS

A prior subchapter U consisted of sections 1391 to 1397, prior to repeal by Pub. L. 99–514, title XIII, §1303(a), Oct. 22, 1986, 100 Stat. 2658.

AMENDMENTS

1997—Pub. L. 105–34, title II, §226(b)(1), Aug. 5, 1997, 111 Stat. 824, added items for parts IV and V and struck out former item for part IV "Regulations".

PART I—DESIGNATION

Sec.

1391. Designation procedure.
1392. Eligibility criteria.
1393. Definitions and special rules.

§1391. Designation procedure

(a) In general

From among the areas nominated for designation under this section, the appropriate Secretaries may designate empowerment zones and enterprise communities.

(b) Number of designations

(1) Enterprise communities

The appropriate Secretaries may designate in the aggregate 95 nominated areas as enterprise communities under this section, subject to the availability of eligible nominated areas. Of that number, not more than 65 may be designated in urban areas and not more than 30 may be designated in rural areas.

(2) Empowerment zones

The appropriate Secretaries may designate in the aggregate 11 nominated areas as empowerment zones under this section, subject to the availability of eligible nominated areas. Of that number, not more than 8 may be designated in urban areas and not more than 3 may be

designated in rural areas. If 6 empowerment zones are designated in urban areas, no less than 1 shall be designated in an urban area the most populous city of which has a population of 500,000 or less and no less than 1 shall be a nominated area which includes areas in 2 States and which has a population of 50,000 or less. The Secretary of Housing and Urban Development shall designate empowerment zones located in urban areas in such a manner that the aggregate population of all such zones does not exceed 1,000,000.

(c) Period designations may be made

A designation may be made under subsection (a) only after 1993 and before 1996.

(d) Period for which designation is in effect

(1) In general

Any designation under this section shall remain in effect during the period beginning on the date of the designation and ending on the earliest of—

(A)(i) in the case of an empowerment zone, December 31, 2013, or

(ii) in the case of an enterprise community, the close of the 10th calendar year beginning on or after such date of designation,

(B) the termination date designated by the State and local governments as provided for in their nomination, or

(C) the date the appropriate Secretary revokes the designation.

(2) Revocation of designation

The appropriate Secretary may revoke the designation under this section of an area if such Secretary determines that the local government or the State in which it is located—

(A) has modified the boundaries of the area, or

(B) is not complying substantially with, or fails to make progress in achieving the benchmarks set forth in, the strategic plan under subsection (f)(2).

(e) Limitations on designations

No area may be designated under this section unless—

(1) the area is nominated by 1 or more local governments and the State or States in which it is located for designation under this section,

(2) such State or States and the local governments have the authority—

(A) to nominate the area for designation under this section, and

(B) to provide the assurances described in paragraph (3),

(3) such State or States and the local governments provide written assurances satisfactory to the appropriate Secretary that the strategic plan described in the application under subsection (f)(2) for such area will be implemented,

(4) the appropriate Secretary determines that any information furnished is reasonably accurate, and

(5) such State or States and local governments certify that no portion of the area nominated is already included in an empowerment zone or in an enterprise community or in an area otherwise nominated to be designated under this section.

(f) Application

No area may be designated under this section unless the application for such designation—

(1) demonstrates that the nominated area satisfies the eligibility criteria described in section 1392,

(2) includes a strategic plan for accomplishing the purposes of this subchapter that—

(A) describes the coordinated economic, human, community, and physical development plan and related activities proposed for the nominated area,

(B) describes the process by which the affected community is a full partner in the process of developing and implementing the plan and the extent to which local institutions and organizations have contributed to the planning process,

(C) identifies the amount of State, local, and private resources that will be available in the nominated area and the private/public partnerships to be used, which may include participation by, and cooperation with, universities, medical centers, and other private and public entities,

(D) identifies the funding requested under any Federal program in support of the proposed economic, human, community, and physical development and related activities,

(E) identifies baselines, methods, and benchmarks for measuring the success of carrying out the strategic plan, including the extent to which poor persons and families will be empowered to become economically self-sufficient, and

(F) does not include any action to assist any establishment in relocating from one area outside the nominated area to the nominated area, except that assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary is permitted if—

(i) the establishment of the new branch, affiliate, or subsidiary will not result in a decrease in employment in the area of original location or in any other area where the existing business entity conducts business operations, and

(ii) there is no reason to believe that the new branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other area where the existing business entity conducts business operation, and

(3) includes such other information as may be required by the appropriate Secretary.

(g) Additional designations permitted

(1) In general

In addition to the areas designated under subsection (a), the appropriate Secretaries may designate in the aggregate an additional 20 nominated areas as empowerment zones under this section, subject to the availability of eligible nominated areas. Of that number, not more than 15 may be designated in urban areas and not more than 5 may be designated in rural areas.

(2) Period designations may be made and take effect

A designation may be made under this subsection after the date of the enactment of this subsection and before January 1, 1999.

(3) Modifications to eligibility criteria, etc.

(A) Poverty rate requirement

(i) In general

A nominated area shall be eligible for designation under this subsection only if the poverty rate for each population census tract within the nominated area is not less than 20 percent and the poverty rate for at least 90 percent of the population census tracts within the nominated area is not less than 25 percent.

(ii) Treatment of census tracts with small populations

A population census tract with a population of less than 2,000 shall be treated as having a poverty rate of not less than 25 percent if—

(I) more than 75 percent of such tract is zoned for commercial or industrial use, and

(II) such tract is contiguous to 1 or more other population census tracts which have a poverty rate of not less than 25 percent (determined without regard to this clause).

(iii) Exception for developable sites

Clause (i) shall not apply to up to 3 noncontiguous parcels in a nominated area which may be developed for commercial or industrial purposes. The aggregate area of noncontiguous parcels to which the preceding sentence applies with respect to any nominated area shall not exceed 2,000 acres.

(iv) Certain provisions not to apply

Section 1392(a)(4) (and so much of paragraphs (1) and (2) of section 1392(b) as relate to section 1392(a)(4)) shall not apply to an area nominated for designation under this subsection.

(v) Special rule for rural empowerment zone

The Secretary of Agriculture may designate not more than 1 empowerment zone in a rural area without regard to clause (i) if such area satisfies emigration criteria specified by the Secretary of Agriculture.

(B) Size limitation

(i) In general

The parcels described in subparagraph (A)(iii) shall not be taken into account in determining whether the requirement of subparagraph (A) or (B) of section 1392(a)(3) is met.

(ii) Special rule for rural areas

If a population census tract (or equivalent division under section 1392(b)(4)) in a rural area exceeds 1,000 square miles or includes a substantial amount of land owned by the Federal, State, or local government, the nominated area may exclude such excess square mileage or governmentally owned land and the exclusion of that area will not be treated as violating the continuous boundary requirement of section 1392(a)(3)(B).

(C) Aggregate population limitation

The aggregate population limitation under the last sentence of subsection (b)(2) shall not apply to a designation under paragraph (1).

(D) Previously designated enterprise communities may be included

Subsection (e)(5) shall not apply to any enterprise community designated under subsection (a) that is also nominated for designation under this subsection.

(E) Indian reservations may be nominated

(i) In general

Section 1393(a)(4) shall not apply to an area nominated for designation under this subsection.

(ii) Special rule

An area in an Indian reservation shall be treated as nominated by a State and a local government if it is nominated by the reservation governing body (as determined by the Secretary of [1] Interior).

(h) Additional designations permitted

(1) In general

In addition to the areas designated under subsections (a) and (g), the appropriate Secretaries may designate in the aggregate an additional 9 nominated areas as empowerment zones under this section, subject to the availability of eligible nominated areas. Of that number, not more than seven may be designated in urban areas and not more than 2 may be designated in rural areas.

(2) Period designations may be made and take effect

A designation may be made under this subsection after the date of the enactment of this subsection and before January 1, 2002.

(3) Modifications to eligibility criteria, etc.

The rules of subsection (g)(3) shall apply to designations under this subsection.

(4) Empowerment zones which become renewal communities

The number of areas which may be designated as empowerment zones under this subsection shall be increased by 1 for each area which ceases to be an empowerment zone by reason of

section 1400E(e). Each additional area designated by reason of the preceding sentence shall have the same urban or rural character as the area it is replacing.

(Added Pub. L. 103–66, title XIII, §13301(a), Aug. 10, 1993, 107 Stat. 543; amended Pub. L. 105–34, title IX, §§951(a), 952(a), (d), Aug. 5, 1997, 111 Stat. 885–887; Pub. L. 106–554, §1(a)(7) [title I, §§111, 112, title III, §319(13)], Dec. 21, 2000, 114 Stat. 2763, 2763A–600, 2763A–601, 2763A–646; Pub. L. 111–312, title VII, §753(a), Dec. 17, 2010, 124 Stat. 3321; Pub. L. 112–240, title III, §327(a), Jan. 2, 2013, 126 Stat. 2334.)

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (g)(2), is the date of enactment of Pub. L. 105–34, which was approved Aug. 5, 1997.

The date of the enactment of this subsection, referred to in subsec. (h)(2), is the date of enactment of Pub. L. 106–554, which was approved Dec. 21, 2000.

PRIOR PROVISIONS

A prior section 1391, added Pub. L. 95–600, title VI, §601(a), Nov. 6, 1978, 92 Stat. 2892; amended Pub. L. 96–222, title I, §106(a)(4), Apr. 1, 1980, 94 Stat. 221; Pub. L. 96–595, §3(a)(1), (2), Dec. 24, 1980, 94 Stat. 3465, defined terms used in former subchapter U, prior to repeal by Pub. L. 99–514, title XIII, §1303(a), Oct. 22, 1986, 100 Stat. 2658.

AMENDMENTS

2013—Subsec. (d)(1)(A)(i). Pub. L. 112–240 substituted "December 31, 2013" for "December 31, 2011".

2010—Subsec. (d)(1)(A)(i). Pub. L. 111–312, §753(a)(1), substituted "December 31, 2011" for "December 31, 2009".

Subsec. (h)(2). Pub. L. 111–312, §753(a)(2), struck out at end "Subject to subparagraphs (B) and (C) of subsection (d)(1), such designations shall remain in effect during the period beginning on January 1, 2002, and ending on December 31, 2009."

2000—Subsec. (d)(1)(A). Pub. L. 106–554, §1(a)(7) [title I, §112], amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "the close of the 10th calendar year beginning on or after such date of designation,".

Subsec. (g)(3)(C). Pub. L. 106–554, §1(a)(7) [title III, §319(13)], substituted "paragraph (1)" for "paragraph (1)(B)".

Subsec. (h). Pub. L. 106–554, §1(a)(7) [title I, §111], added subsec. (h).

1997—Subsec. (b)(2). Pub. L. 105–34, §951(a)(3), substituted "1,000,000" for "750,000".

Pub. L. 105–34, §951(a)(2), substituted "8" for "6" before "may be designated".

Pub. L. 105–34, §951(a)(1), substituted "11" for "9".

Subsec. (c). Pub. L. 105–34, §952(d)(2), substituted "subsection (a)" for "this section".

Subsecs. (e), (f). Pub. L. 105–34, §952(d)(1), substituted "this section" for "subsection (a)" in introductory provisions.

Subsec. (g). Pub. L. 105–34, §952(a), added subsec. (g).

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112–240 applicable to periods after Dec. 31, 2011, see section 327(d) of Pub. L. 112–240, set out as a note under section 1202 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–312 applicable to periods after Dec. 31, 2009, see section 753(d) of Pub. L. 111–312, set out as a note under section 1202 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title IX, §951(c), Aug. 5, 1997, 111 Stat. 885, provided that: "The amendments made by this section [amending this section and section 1396 of this title] shall take effect on the date of the enactment of this Act [Aug. 5, 1997], except that designations of new empowerment zones made pursuant to such amendments shall be made during the 180-day period beginning on the date of the enactment of this Act. No designation pursuant to such amendments shall take effect before January 1, 2000."

TREATMENT OF CERTAIN TERMINATION DATES SPECIFIED IN NOMINATIONS

Pub. L. 112–240, title III, §327(c), Jan. 2, 2013, 126 Stat. 2334, provided that: "In the case of a designation

of an empowerment zone the nomination for which included a termination date which is contemporaneous with the date specified in subparagraph (A)(i) of section 1391(d)(1) of the Internal Revenue Code of 1986 (as in effect before the enactment of this Act [Jan. 2, 2013]), subparagraph (B) of such section shall not apply with respect to such designation if, after the date of the enactment of this section, the entity which made such nomination amends the nomination to provide for a new termination date in such manner as the Secretary of the Treasury (or the Secretary's designee) may provide."

Pub. L. 111–312, title VII, §753(c), Dec. 17, 2010, 124 Stat. 3321, provided that: "In the case of a designation of an empowerment zone the nomination for which included a termination date which is contemporaneous with the date specified in subparagraph (A)(i) of section 1391(d)(1) of the Internal Revenue Code of 1986 (as in effect before the enactment of this Act [Dec. 17, 2010]), subparagraph (B) of such section shall not apply with respect to such designation if, after the date of the enactment of this section [Dec. 17, 2010], the entity which made such nomination amends the nomination to provide for a new termination date in such manner as the Secretary of the Treasury (or the Secretary's designee) may provide."

[1] So in original. Probably should be followed by "the".

§1392. Eligibility criteria

(a) In general

A nominated area shall be eligible for designation under section 1391 only if it meets the following criteria:

(1) Population

The nominated area has a maximum population of—

(A) in the case of an urban area, the lesser of—

(i) 200,000, or

(ii) the greater of 50,000 or 10 percent of the population of the most populous city located within the nominated area, and

(B) in the case of a rural area, 30,000.

(2) Distress

The nominated area is one of pervasive poverty, unemployment, and general distress.

(3) Size

The nominated area—

(A) does not exceed 20 square miles if an urban area or 1,000 square miles if a rural area,

(B) has a boundary which is continuous, or, except in the case of a rural area located in more than 1 State, consists of not more than 3 noncontiguous parcels,

(C)(i) in the case of an urban area, is located entirely within no more than 2 contiguous States, and

(ii) in the case of a rural area, is located entirely within no more than 3 contiguous States, and

(D) does not include any portion of a central business district (as such term is used for purposes of the most recent Census of Retail Trade) unless the poverty rate for each population census tract in such district is not less than 35 percent (30 percent in the case of an enterprise community).

(4) Poverty rate

The poverty rate—

(A) for each population census tract within the nominated area is not less than 20 percent,

(B) for at least 90 percent of the population census tracts within the nominated area is not less than 25 percent, and

(C) for at least 50 percent of the population census tracts within the nominated area is not less than 35 percent.

(b) Special rules relating to determination of poverty rate

For purposes of subsection (a)(4)—

(1) Treatment of census tracts with small populations

(A) Tracts with no population

In the case of a population census tract with no population—

(i) such tract shall be treated as having a poverty rate which meets the requirements of subparagraphs (A) and (B) of subsection (a)(4), but

(ii) such tract shall be treated as having a zero poverty rate for purposes of applying subparagraph (C) thereof.

(B) Tracts with populations of less than 2,000

A population census tract with a population of less than 2,000 shall be treated as having a poverty rate which meets the requirements of subparagraphs (A) and (B) of subsection (a)(4) if more than 75 percent of such tract is zoned for commercial or industrial use.

(2) Discretion to adjust requirements for enterprise communities

In determining whether a nominated area is eligible for designation as an enterprise community, the appropriate Secretary may, where necessary to carry out the purposes of this subchapter, reduce by 5 percentage points one of the following thresholds for not more than 10 percent of the population census tracts (or, if fewer, 5 population census tracts) in the nominated area:

(A) The 20 percent threshold in subsection (a)(4)(A).

(B) The 25 percent threshold in subsection (a)(4)(B).

(C) The 35 percent threshold in subsection (a)(4)(C).

If the appropriate Secretary elects to reduce the threshold under subparagraph (C), such Secretary may (in lieu of applying the preceding sentence) reduce by 10 percentage points the threshold under subparagraph (C) for 3 population census tracts.

(3) Each noncontiguous area must satisfy poverty rate rule

A nominated area may not include a noncontiguous parcel unless such parcel separately meets (subject to paragraphs (1) and (2)) the criteria set forth in subsection (a)(4).

(4) Areas not within census tracts

In the case of an area which is not tracted for population census tracts, the equivalent county divisions (as defined by the Bureau of the Census for purposes of defining poverty areas) shall be used for purposes of determining poverty rates.

(c) Factors to consider

From among the nominated areas eligible for designation under section 1391 by the appropriate Secretary, such appropriate Secretary shall make designations of empowerment zones and enterprise communities on the basis of—

(1) the effectiveness of the strategic plan submitted pursuant to section 1391(f)(2) and the assurances made pursuant to section 1391(e)(3), and

(2) criteria specified by the appropriate Secretary.

(d) Special eligibility for nominated areas located in Alaska or Hawaii

A nominated area in Alaska or Hawaii shall be treated as meeting the requirements of paragraphs (2), (3), and (4) of subsection (a) if for each census tract or block group within such area 20 percent or more of the families have income which is 50 percent or less of the statewide median family income (as determined under section 143).

(Added Pub. L. 103–66, title XIII, §13301(a), Aug. 10, 1993, 107 Stat. 545; amended Pub. L. 105–34, title IX, §954, Aug. 5, 1997, 111 Stat. 888.)

PRIOR PROVISIONS

A prior section 1392, added Pub. L. 95–600, title VI, §601(a), Nov. 6, 1978, 92 Stat. 2893; amended Pub.

L. 96–222, title I, §106(a)(5), Apr. 1, 1980, 94 Stat. 221; Pub. L. 96–595, §3(a)(3), (4), Dec. 24, 1980, 94 Stat. 3465, related to election by general stock ownership corporations not to be subject to taxes imposed by this chapter, prior to repeal by Pub. L. 99–514, title XIII, §1303(a), Oct. 22, 1986, 100 Stat. 2658.

AMENDMENTS

1997—Subsec. (d). Pub. L. 105–34 added subsec. (d).

§1393. Definitions and special rules

(a) In general

For purposes of this subchapter—

(1) Appropriate Secretary

The term "appropriate Secretary" means—

(A) the Secretary of Housing and Urban Development in the case of any nominated area which is located in an urban area, and

(B) the Secretary of Agriculture in the case of any nominated area which is located in a rural area.

(2) Rural area

The term "rural area" means any area which is—

(A) outside of a metropolitan statistical area (within the meaning of section 143(k)(2)(B)), or

(B) determined by the Secretary of Agriculture, after consultation with the Secretary of Commerce, to be a rural area.

(3) Urban area

The term "urban area" means an area which is not a rural area.

(4) Special rules for Indian reservations

(A) In general

No empowerment zone or enterprise community may include any area within an Indian reservation.

(B) Indian reservation defined

The term "Indian reservation" has the meaning given such term by section 168(j)(6).

(5) Local government

The term "local government" means—

(A) any county, city, town, township, parish, village, or other general purpose political subdivision of a State, and

(B) any combination of political subdivisions described in subparagraph (A) recognized by the appropriate Secretary.

(6) Nominated area

The term "nominated area" means an area which is nominated by 1 or more local governments and the State or States in which it is located for designation under section 1391.

(7) Governments

If more than 1 State or local government seeks to nominate an area under this part, any reference to, or requirement of, this subchapter shall apply to all such governments.

(8) Special rule

An area shall be treated as nominated by a State and a local government if it is nominated by an economic development corporation chartered by the State.

(9) Use of census data

Population and poverty rate shall be determined by the most recent decennial census data

available.

(b) Empowerment zone; enterprise community

For purposes of this title, the terms "empowerment zone" and "enterprise community" mean areas designated as such under section 1391.

(Added Pub. L. 103–66, title XIII, §13301(a), Aug. 10, 1993, 107 Stat. 547.)

PRIOR PROVISIONS

A prior section 1393, added Pub. L. 95–600, title VI, §601(a), Nov. 6, 1978, 92 Stat. 2894; amended Pub. L. 96–595, §3(a)(5), (6), (8), Dec. 24, 1980, 94 Stat. 3465, related to taxation of general stock ownership corporation taxable income to shareholders, prior to repeal by Pub. L. 99–514, title XIII, §1303(a), Oct. 22, 1986, 100 Stat. 2658.

PART II—TAX-EXEMPT FACILITY BONDS FOR EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES

Sec.
1394. Tax-exempt enterprise zone facility bonds.

§1394. Tax-exempt enterprise zone facility bonds

(a) In general

For purposes of part IV of subchapter B of this chapter (relating to tax exemption requirements for State and local bonds), the term "exempt facility bond" includes any bond issued as part of an issue 95 percent or more of the net proceeds (as defined in section 150(a)(3)) of which are to be used to provide any enterprise zone facility.

(b) Enterprise zone facility

For purposes of this section—

(1) In general

The term "enterprise zone facility" means any qualified zone property the principal user of which is an enterprise zone business, and any land which is functionally related and subordinate to such property.

(2) Qualified zone property

The term "qualified zone property" has the meaning given such term by section 1397D; except that—

(A) the references to empowerment zones shall be treated as including references to enterprise communities, and

(B) section 1397D(a)(2) shall be applied by substituting "an amount equal to 15 percent of the adjusted basis" for "an amount equal to the adjusted basis".

(3) Enterprise zone business

(A) In general

Except as modified in this paragraph, the term "enterprise zone business" has the meaning given such term by section 1397C.

(B) Modifications

In applying section 1397C for purposes of this section—

(i) Businesses in enterprise communities eligible

References in section 1397C to empowerment zones shall be treated as including references to enterprise communities.

(ii) Waiver of requirements during startup period

A business shall not fail to be treated as an enterprise zone business during the startup period if—

(I) as of the beginning of the startup period, it is reasonably expected that such business will be an enterprise zone business (as defined in section 1397C as modified by this paragraph) at the end of such period, and

(II) such business makes bona fide efforts to be such a business.

(iii) Reduced requirements after testing period

A business shall not fail to be treated as an enterprise zone business for any taxable year beginning after the testing period by reason of failing to meet any requirement of subsection (b) or (c) of section 1397C if at least 35 percent of the employees of such business for such year are residents of an empowerment zone or an enterprise community. The preceding sentence shall not apply to any business which is not a qualified business by reason of paragraph (1), (4), or (5) of section 1397C(d).

(C) Definitions relating to subparagraph (B)

For purposes of subparagraph (B)—

(i) Startup period

The term "startup period" means, with respect to any property being provided for any business, the period before the first taxable year beginning more than 2 years after the later of—

(I) the date of issuance of the issue providing such property, or

(II) the date such property is first placed in service after such issuance (or, if earlier, the date which is 3 years after the date described in subclause (I)).

(ii) Testing period

The term "testing period" means the first 3 taxable years beginning after the startup period.

(D) Portions of business may be enterprise zone business

The term "enterprise zone business" includes any trades or businesses which would qualify as an enterprise zone business (determined after the modifications of subparagraph (B)) if such trades or businesses were separately incorporated.

(c) Limitation on amount of bonds

(1) In general

Subsection (a) shall not apply to any issue if the aggregate amount of outstanding enterprise zone facility bonds allocable to any person (taking into account such issue) exceeds—

(A) $3,000,000 with respect to any 1 empowerment zone or enterprise community, or

(B) $20,000,000 with respect to all empowerment zones and enterprise communities.

(2) Aggregate enterprise zone facility bond benefit

For purposes of paragraph (1), the aggregate amount of outstanding enterprise zone facility bonds allocable to any person shall be determined under rules similar to the rules of section 144(a)(10), taking into account only bonds to which subsection (a) applies.

(d) Acquisition of land and existing property permitted

The requirements of sections 147(c)(1)(A) and 147(d) shall not apply to any bond described in subsection (a).

(e) Penalty for ceasing to meet requirements

(1) Failures corrected

An issue which fails to meet 1 or more of the requirements of subsections (a) and (b) shall be treated as meeting such requirements if—

(A) the issuer and any principal user in good faith attempted to meet such requirements, and

(B) any failure to meet such requirements is corrected within a reasonable period after such failure is first discovered.

(2) Loss of deductions where facility ceases to be qualified

No deduction shall be allowed under this chapter for interest on any financing provided from any bond to which subsection (a) applies with respect to any facility to the extent such interest accrues during the period beginning on the first day of the calendar year which includes the date on which—

(A) substantially all of the facility with respect to which the financing was provided ceases to be used in an empowerment zone or enterprise community, or

(B) the principal user of such facility ceases to be an enterprise zone business (as defined in subsection (b)).

(3) Exception if zone ceases

Paragraphs (1) and (2) shall not apply solely by reason of the termination or revocation of a designation as an empowerment zone or an enterprise community.

(4) Exception for bankruptcy

Paragraphs (1) and (2) shall not apply to any cessation resulting from bankruptcy.

(f) Bonds for empowerment zones designated under section 1391(g)

(1) In general

In the case of a new empowerment zone facility bond—

(A) such bond shall not be treated as a private activity bond for purposes of section 146, and

(B) subsection (c) of this section shall not apply.

(2) Limitation on amount of bonds

(A) In general

Paragraph (1) shall apply to a new empowerment zone facility bond only if such bond is designated for purposes of this subsection by the local government which nominated the area to which such bond relates.

(B) Limitation on bonds designated

The aggregate face amount of bonds which may be designated under subparagraph (A) with respect to any empowerment zone shall not exceed—

(i) $60,000,000 if such zone is in a rural area,

(ii) $130,000,000 if such zone is in an urban area and the zone has a population of less than 100,000, and

(iii) $230,000,000 if such zone is in an urban area and the zone has a population of at least 100,000.

(C) Special rules

(i) Coordination with limitation in subsection (c)

Bonds to which paragraph (1) applies shall not be taken into account in applying the limitation of subsection (c) to other bonds.

(ii) Current refunding not taken into account

In the case of a refunding (or series of refundings) of a bond designated under this paragraph, the refunding obligation shall be treated as designated under this paragraph (and shall not be taken into account in applying subparagraph (B)) if—

(I) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and

(II) the refunded bond is redeemed not later than 90 days after the date of issuance of the refunding bond.

(3) Empowerment zone facility bond

For purposes of this subsection, the term "empowerment zone facility bond" means any bond which would be described in subsection (a) if—

(A) in the case of obligations issued before January 1, 2002, only empowerment zones designated under section 1391(g) were taken into account under sections 1397C and 1397D, and

(B) in the case of obligations issued after December 31, 2001, all empowerment zones (other than the District of Columbia Enterprise Zone) were taken into account under sections 1397C and 1397D.

(Added Pub. L. 103–66, title XIII, §13301(a), Aug. 10, 1993, 107 Stat. 548; amended Pub. L. 104–188, title I, §1703(n)(7), Aug. 20, 1996, 110 Stat. 1877; Pub. L. 105–34, title IX, §§953(a), 955(a), (b), Aug. 5, 1997, 111 Stat. 887, 889, 890; Pub. L. 106–554, §1(a)(7) [title I, §§115(a), 116(b)(3), (4)], Dec. 21, 2000, 114 Stat. 2763, 2763A–601, 2763A–603; Pub. L. 107–147, title IV, §417(16), Mar. 9, 2002, 116 Stat. 56.)

PRIOR PROVISIONS

A prior section 1394, added Pub. L. 95–600, title VI, §601(a), Nov. 6, 1978, 92 Stat. 2895; amended Pub. L. 96–595, §3(a)(6)–(8), Dec. 24, 1980, 94 Stat. 3465, related to rules applicable to distributions of an electing general stock ownership corporation, prior to repeal by Pub. L. 99–514, title XIII, §1303(a), Oct. 22, 1986, 100 Stat. 2658.

A prior section 1395, added Pub. L. 95–600, title VI, §601(a), Nov. 6, 1978, 92 Stat. 2895, related to adjustment to basis of stock of shareholders, prior to repeal by Pub. L. 99–514, title XIII, §1303(a), Oct. 22, 1986, 100 Stat. 2658.

AMENDMENTS

2002—Subsec. (c)(2). Pub. L. 107–147 substituted "paragraph (1)" for "subparagraph (A)".

2000—Subsec. (b)(2). Pub. L. 106–554, §1(a)(7) [title I, §116(b)(3)(A)], substituted "section 1397D" for "section 1397C" in introductory provisions.

Subsec. (b)(2)(B). Pub. L. 106–554, §1(a)(7) [title I, §116(b)(3)(B)], substituted "section 1397D(a)(2)" for "section 1397C(a)(2)".

Subsec. (b)(3). Pub. L. 106–554, §1(a)(7) [title I, §116(b)(4)(A)], substituted "section 1397C" for "section 1397B" wherever appearing.

Subsec. (b)(3)(B)(iii). Pub. L. 106–554, §1(a)(7) [title I, §116(b)(4)(B)], substituted "section 1397C(d)" for "section 1397B(d)".

Subsec. (f)(3). Pub. L. 106–554, §1(a)(7) [title I, §115(a)], amended heading and text of par. (3) generally. Prior to amendment, text read as follows: "For purposes of this subsection, the term 'new empowerment zone facility bond' means any bond which would be described in subsection (a) if only empowerment zones designated under section 1391(g) were taken into account under sections 1397B and 1397C."

1997—Subsec. (b)(2). Pub. L. 105–34, §955(b), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: "The term 'qualified zone property' has the meaning given such term by section 1397C; except that the references to empowerment zones shall be treated as including references to enterprise communities."

Subsec. (b)(3). Pub. L. 105–34, §955(b), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: "The term 'enterprise zone business' has the meaning given to such term by section 1397B, except that—

"(A) references to empowerment zones shall be treated as including references to enterprise communities, and

"(B) such term includes any trades or businesses which would qualify as an enterprise zone business (determined after the modification of subparagraph (A)) if such trades or businesses were separately incorporated."

Subsec. (f). Pub. L. 105–34, §953(a), added subsec. (f).

1996—Subsec. (e)(2). Pub. L. 104–188, which directed that par. (2) be amended by striking "(i)" and inserting "(A)" and by striking "(ii)" and inserting "(B)", could not be executed, because par. (2) contained neither "(i)" nor "(ii)".

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(7) [title I, §115(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–602, provided that: "The amendments made by this section [amending this section] shall apply to obligations issued after December 31,

2001."

Amendment by section 1(a)(7) [title I, §116(b)(3), (4)] of Pub. L. 106–554 applicable to qualified empowerment zone assets acquired after Dec. 21, 2000, see section 1(a)(7) [title I, §116(c)] of Pub. L. 106–554, set out as a note under section 1016 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title IX, §953(b), Aug. 5, 1997, 111 Stat. 888, provided that: "The amendment made by this section [amending this section] shall apply to obligations issued after the date of the enactment of this Act [Aug. 5, 1997]."

Pub. L. 105–34, title IX, §955(c), Aug. 5, 1997, 111 Stat. 890, provided that: "The amendments made by this section [amending this section] shall apply to obligations issued after the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103–66, §§13001–13444, to which such amendment relates, see section 1703(o) of Pub. L. 104–188, set out as a note under section 39 of this title.

PART III—ADDITIONAL INCENTIVES FOR EMPOWERMENT ZONES

Subpart

A. Empowerment zone employment credit.

B. Additional expensing.

C. Nonrecognition of gain on rollover of empowerment zone investments.

D. General provisions.

AMENDMENTS

2000—Pub. L. 106–554, §1(a)(7) [title I, §116(b)(6)], Dec. 21, 2000, 114 Stat. 2763, 2763A–604, added items for subparts C and D and struck out former item for subpart C "General provisions".

SUBPART A—EMPOWERMENT ZONE EMPLOYMENT CREDIT

Sec.

1396. Empowerment zone employment credit.

1397. Other definitions and special rules.

§1396. Empowerment zone employment credit

(a) Amount of credit

For purposes of section 38, the amount of the empowerment zone employment credit determined under this section with respect to any employer for any taxable year is the applicable percentage of the qualified zone wages paid or incurred during the calendar year which ends with or within such taxable year.

(b) Applicable percentage

For purposes of this section, the applicable percentage is 20 percent.

(c) Qualified zone wages

(1) In general

For purposes of this section, the term "qualified zone wages" means any wages paid or incurred by an employer for services performed by an employee while such employee is a qualified zone employee.

(2) Only first $15,000 of wages per year taken into account

With respect to each qualified zone employee, the amount of qualified zone wages which may

be taken into account for a calendar year shall not exceed $15,000.

(3) Coordination with work opportunity credit

(A) In general

The term "qualified zone wages" shall not include wages taken into account in determining the credit under section 51.

(B) Coordination with paragraph (2)

The $15,000 amount in paragraph (2) shall be reduced for any calendar year by the amount of wages paid or incurred during such year which are taken into account in determining the credit under section 51.

(d) Qualified zone employee

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, the term "qualified zone employee" means, with respect to any period, any employee of an employer if—

(A) substantially all of the services performed during such period by such employee for such employer are performed within an empowerment zone in a trade or business of the employer, and

(B) the principal place of abode of such employee while performing such services is within such empowerment zone.

(2) Certain individuals not eligible

The term "qualified zone employee" shall not include—

(A) any individual described in subparagraph (A), (B), or (C) of section 51(i)(1),

(B) any 5-percent owner (as defined in section 416(i)(1)(B)),

(C) any individual employed by the employer for less than 90 days,

(D) any individual employed by the employer at any facility described in section 144(c)(6)(B), and

(E) any individual employed by the employer in a trade or business the principal activity of which is farming (within the meaning of subparagraph (A) or (B) of section 2032A(e)(5)), but only if, as of the close of the taxable year, the sum of—

(i) the aggregate unadjusted bases (or, if greater, the fair market value) of the assets owned by the employer which are used in such a trade or business, and

(ii) the aggregate value of assets leased by the employer which are used in such a trade or business (as determined under regulations prescribed by the Secretary),

exceeds $500,000.

(3) Special rules related to termination of employment

(A) In general

Paragraph (2)(C) shall not apply to—

(i) a termination of employment of an individual who before the close of the period referred to in paragraph (2)(C) becomes disabled to perform the services of such employment unless such disability is removed before the close of such period and the taxpayer fails to offer reemployment to such individual, or

(ii) a termination of employment of an individual if it is determined under the applicable State unemployment compensation law that the termination was due to the misconduct of such individual.

(B) Changes in form of business

For purposes of paragraph (2)(C), the employment relationship between the taxpayer and an employee shall not be treated as terminated—

(i) by a transaction to which section 381(a) applies if the employee continues to be employed by the acquiring corporation, or

(ii) by reason of a mere change in the form of conducting the trade or business of the taxpayer if the employee continues to be employed in such trade or business and the taxpayer retains a substantial interest in such trade or business.

(Added Pub. L. 103–66, title XIII, §13301(a), Aug. 10, 1993, 107 Stat. 549; amended Pub. L. 104–188, title I, §1201(e)(4), Aug. 20, 1996, 110 Stat. 1772; Pub. L. 105–34, title IX, §§951(b), 952(b), Aug. 5, 1997, 111 Stat. 885, 887; Pub. L. 106–554, §1(a)(7) [title I, §113(a), (b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–601.)

REFERENCES IN TEXT

The Taxpayer Relief Act of 1997, referred to in subsec. (b)(2), is Pub. L. 105–34, Aug. 5, 1997, 111 Stat. 788. For complete classification of this Act to the Code, see Tables.

PRIOR PROVISIONS

A prior section 1396, added Pub. L. 95–600, title VI, §601(a), Nov. 6, 1978, 92 Stat. 2895; amended Pub. L. 96–595, §3(a)(6), (9), (10), Dec. 24, 1980, 94 Stat. 3465, related to minimum distributions by an electing general stock ownership corporation, prior to repeal by Pub. L. 99–514, title XIII, §1303(a), Oct. 22, 1986, 100 Stat. 2658.

AMENDMENTS

2000—Subsec. (b). Pub. L. 106–554, §1(a)(7) [title I, §113(a)], amended subsec. (b) generally, substituting provisions establishing an applicable percentage of 20 percent for provisions setting out tables for determining the applicable percentage.

Subsec. (e). Pub. L. 106–554, §1(a)(7) [title I, §113(b)], struck out heading and text of subsec. (e). Text read as follows: "This section shall be applied without regard to any empowerment zone designated under section 1391(g)."

1997—Subsec. (b). Pub. L. 105–34 substituted "For purposes of this section—

"(1) IN GENERAL.—Except as provided in paragraph (2), the term 'applicable percentage' means the percentage determined in accordance with the following table:"

for "For purposes of this section, the term 'applicable percentage' means the percentage determined in accordance with the following table:" and added par. (2).

Subsec. (e). Pub. L. 105–34, §952(b), added subsec. (e).

1996—Subsec. (c)(3). Pub. L. 104–188 substituted "work opportunity credit" for "targeted jobs credit" in heading.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(7) [title I, §113(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–601, provided that: "The amendments made by this section [amending this section and section 1400 of this title] shall apply to wages paid or incurred after December 31, 2001."

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 951(b) of Pub. L. 105–34 effective Aug. 5, 1997, except that designations of new empowerment zones made pursuant to amendments by section 951 of Pub. L. 105–34 to be made during 180-day period beginning Aug. 5, 1997, and no designation pursuant to such amendments to take effect before Jan. 1, 2000, see section 951(c) of Pub. L. 105–34, set out as a note under section 1391 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to individuals who begin work for the employer after Sept. 30, 1996, see section 1201(g) of Pub. L. 104–188, set out as a note under section 38 of this title.

§1397. Other definitions and special rules

(a) Wages

For purposes of this subpart—

(1) In general

The term "wages" has the same meaning as when used in section 51.

(2) Certain training and educational benefits

(A) In general

The following amounts shall be treated as wages paid to an employee:

(i) Any amount paid or incurred by an employer which is excludable from the gross income of an employee under section 127, but only to the extent paid or incurred to a person not related to the employer.

(ii) In the case of an employee who has not attained the age of 19, any amount paid or incurred by an employer for any youth training program operated by such employer in conjunction with local education officials.

(B) Related person

A person is related to any other person if the person bears a relationship to such other person specified in section 267(b) or 707(b)(1), or such person and such other person are engaged in trades or businesses under common control (within the meaning of subsections (a) and (b) of section 52). For purposes of the preceding sentence, in applying section 267(b) or 707(b)(1), "10 percent" shall be substituted for "50 percent".

(b) Controlled groups

For purposes of this subpart—

(1) all employers treated as a single employer under subsection (a) or (b) of section 52 shall be treated as a single employer for purposes of this subpart, and

(2) the credit (if any) determined under section 1396 with respect to each such employer shall be its proportionate share of the wages giving rise to such credit.

(c) Certain other rules made applicable

For purposes of this subpart, rules similar to the rules of section 51(k) and subsections (c), (d), and (e) of section 52 shall apply.

(Added Pub. L. 103–66, title XIII, §13301(a), Aug. 10, 1993, 107 Stat. 551.)

PRIOR PROVISIONS

A prior section 1397, added Pub. L. 95–600, title VI, §601(a), Nov. 6, 1978, 92 Stat. 2895, related to special rules applicable to an electing general stock ownership corporation, prior to repeal by Pub. L. 99–514, title XIII, §1303(a), Oct. 22, 1986, 100 Stat. 2658.

SUBPART B—ADDITIONAL EXPENSING

Sec.
1397A. Increase in expensing under section 179.

§1397A. Increase in expensing under section 179

(a) General rule

In the case of an enterprise zone business, for purposes of section 179—

(1) the limitation under section 179(b)(1) shall be increased by the lesser of—

(A) $35,000, or

(B) the cost of section 179 property which is qualified zone property placed in service during the taxable year, and

(2) the amount taken into account under section 179(b)(2) with respect to any section 179 property which is qualified zone property shall be 50 percent of the cost thereof.

(b) Recapture

Rules similar to the rules under section 179(d)(10) shall apply with respect to any qualified zone property which ceases to be used in an empowerment zone by an enterprise zone business.

(Added Pub. L. 103–66, title XIII, §13301(a), Aug. 10, 1993, 107 Stat. 552; amended Pub. L. 105–34, title IX, §952(c), Aug. 5, 1997, 111 Stat. 887; Pub. L. 106–554, §1(a)(7) [title I, §114(a), (b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–601.)

AMENDMENTS

2000—Subsec. (a)(1)(A). Pub. L. 106–554, §1(a)(7) [title I, §114(a)], substituted "$35,000" for "$20,000".

Subsec. (c). Pub. L. 106–554, §1(a)(7) [title I, §114(b)], struck out heading and text of subsec. (c). Text read as follows: "For purposes of this section, qualified zone property shall not include any property substantially all of the use of which is in any parcel described in section 1391(g)(3)(A)(iii)."

1997—Subsec. (c). Pub. L. 105–34 added subsec. (c).

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(7) [title I, §114(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–601, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2001."

SUBPART C—NONRECOGNITION OF GAIN ON ROLLOVER OF EMPOWERMENT ZONE INVESTMENTS

Sec.
1397B. Nonrecognition of gain on rollover of empowerment zone investments.

AMENDMENTS

2000—Pub. L. 106–554, §1(a)(7) [title I, §116(a)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–602, added subpart C heading and item 1397B. Former subpart C, consisting of sections 1397B and 1397C, redesignated D.

§1397B. Nonrecognition of gain on rollover of empowerment zone investments

(a) Nonrecognition of gain

In the case of any sale of a qualified empowerment zone asset held by the taxpayer for more than 1 year and with respect to which such taxpayer elects the application of this section, gain from such sale shall be recognized only to the extent that the amount realized on such sale exceeds—

(1) the cost of any qualified empowerment zone asset (with respect to the same zone as the asset sold) purchased by the taxpayer during the 60-day period beginning on the date of such sale, reduced by

(2) any portion of such cost previously taken into account under this section.

(b) Definitions and special rules

For purposes of this section—

(1) Qualified empowerment zone asset

(A) In general

The term "qualified empowerment zone asset" means any property which would be a qualified community asset (as defined in section 1400F) if in section 1400F—

(i) references to empowerment zones were substituted for references to renewal communities,

(ii) references to enterprise zone businesses (as defined in section 1397C) were substituted for references to renewal community businesses, and

(iii) the date of the enactment of this paragraph were substituted for "December 31, 2001" each place it appears.

(B) Treatment of DC zone

The District of Columbia Enterprise Zone shall not be treated as an empowerment zone for purposes of this section.

(2) Certain gain not eligible for rollover

This section shall not apply to—

(A) any gain which is treated as ordinary income for purposes of this subtitle, and

(B) any gain which is attributable to real property, or an intangible asset, which is not an integral part of an enterprise zone business.

(3) Purchase

A taxpayer shall be treated as having purchased any property if, but for paragraph (4), the unadjusted basis of such property in the hands of the taxpayer would be its cost (within the meaning of section 1012).

(4) Basis adjustments

If gain from any sale is not recognized by reason of subsection (a), such gain shall be applied to reduce (in the order acquired) the basis for determining gain or loss of any qualified empowerment zone asset which is purchased by the taxpayer during the 60-day period described in subsection (a). This paragraph shall not apply for purposes of section 1202.

(5) Holding period

For purposes of determining whether the nonrecognition of gain under subsection (a) applies to any qualified empowerment zone asset which is sold—

(A) the taxpayer's holding period for such asset and the asset referred to in subsection (a)(1) shall be determined without regard to section 1223, and

(B) only the first year of the taxpayer's holding period for the asset referred to in subsection (a)(1) shall be taken into account for purposes of paragraphs (2)(A)(iii), (3)(C), and (4)(A)(iii) of section 1400F(b).

(Added Pub. L. 106–554, §1(a)(7) [title I, §116(a)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–602.)

REFERENCES IN TEXT

The date of the enactment of this paragraph, referred to in subsec. (b)(1)(A)(iii), is the date of enactment of Pub. L. 106–554, which was approved Dec. 21, 2000.

PRIOR PROVISIONS

A prior section 1397B was renumbered section 1397C of this title.

EFFECTIVE DATE

Section applicable to qualified empowerment zone assets acquired after Dec. 21, 2000, see section 1(a)(7) [title I, §116(c)] of Pub. L. 106–554, set out as an Effective Date of 2000 Amendment note under section 1016 of this title.

SUBPART D—GENERAL PROVISIONS

Sec.
1397C. Enterprise zone business defined.
1397D. Qualified zone property defined.

AMENDMENTS

2000—Pub. L. 106–554, §1(a)(7) [title I, §116(a)(1), (b)(7)], Dec. 21, 2000, 114 Stat. 2763, 2763A–602, 2763A–604, redesignated subpart C of this part as this subpart and items for sections 1397B and 1397C as 1397C and 1397D, respectively.

§1397C. Enterprise zone business defined

(a) In general

For purposes of this part, the term "enterprise zone business" means—

(1) any qualified business entity, and

(2) any qualified proprietorship.

(b) Qualified business entity

For purposes of this section, the term "qualified business entity" means, with respect to any taxable year, any corporation or partnership if for such year—

(1) every trade or business of such entity is the active conduct of a qualified business within an empowerment zone,

(2) at least 50 percent of the total gross income of such entity is derived from the active conduct of such business,

(3) a substantial portion of the use of the tangible property of such entity (whether owned or leased) is within an empowerment zone,

(4) a substantial portion of the intangible property of such entity is used in the active conduct of any such business,

(5) a substantial portion of the services performed for such entity by its employees are performed in an empowerment zone,

(6) at least 35 percent of its employees are residents of an empowerment zone,

(7) less than 5 percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to collectibles (as defined in section 408(m)(2)) other than collectibles that are held primarily for sale to customers in the ordinary course of such business, and

(8) less than 5 percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to nonqualified financial property.

(c) Qualified proprietorship

For purposes of this section, the term "qualified proprietorship" means, with respect to any taxable year, any qualified business carried on by an individual as a proprietorship if for such year—

(1) at least 50 percent of the total gross income of such individual from such business is derived from the active conduct of such business in an empowerment zone,

(2) a substantial portion of the use of the tangible property of such individual in such business (whether owned or leased) is within an empowerment zone,

(3) a substantial portion of the intangible property of such business is used in the active conduct of such business,

(4) a substantial portion of the services performed for such individual in such business by employees of such business are performed in an empowerment zone,

(5) at least 35 percent of such employees are residents of an empowerment zone,

(6) less than 5 percent of the average of the aggregate unadjusted bases of the property of such individual which is used in such business is attributable to collectibles (as defined in section 408(m)(2)) other than collectibles that are held primarily for sale to customers in the ordinary course of such business, and

(7) less than 5 percent of the average of the aggregate unadjusted bases of the property of such individual which is used in such business is attributable to nonqualified financial property.

For purposes of this subsection, the term "employee" includes the proprietor.

(d) Qualified business

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, the term "qualified business" means any trade or business.

(2) Rental of real property

The rental to others of real property located in an empowerment zone shall be treated as a

qualified business if and only if—

(A) the property is not residential rental property (as defined in section 168(e)(2)), and

(B) at least 50 percent of the gross rental income from the real property is from enterprise zone businesses.

For purposes of subparagraph (B), the lessor of the property may rely on a lessee's certification that such lessee is an enterprise zone business.

(3) Rental of tangible personal property

The rental to others of tangible personal property shall be treated as a qualified business if and only if at least 50 percent of the rental of such property is by enterprise zone businesses or by residents of an empowerment zone.

(4) Treatment of business holding intangibles

The term "qualified business" shall not include any trade or business consisting predominantly of the development or holding of intangibles for sale or license.

(5) Certain businesses excluded

The term "qualified business" shall not include—

(A) any trade or business consisting of the operation of any facility described in section 144(c)(6)(B), and

(B) any trade or business the principal activity of which is farming (within the meaning of subparagraphs [1] (A) or (B) of section 2032A(e)(5)), but only if, as of the close of the taxable year, the sum of—

(i) the aggregate unadjusted bases (or, if greater, the fair market value) of the assets owned by the taxpayer which are used in such a trade or business, and

(ii) the aggregate value of assets leased by the taxpayer which are used in such a trade or business,

exceeds $500,000.

For purposes of subparagraph (B), rules similar to the rules of section 1397(b) shall apply.

(e) Nonqualified financial property

For purposes of this section, the term "nonqualified financial property" means debt, stock, partnership interests, options, futures contracts, forward contracts, warrants, notional principal contracts, annuities, and other similar property specified in regulations; except that such term shall not include—

(1) reasonable amounts of working capital held in cash, cash equivalents, or debt instruments with a term of 18 months or less, or

(2) debt instruments described in section 1221(a)(4).

(f) Treatment of businesses straddling census tract lines

For purposes of this section, if—

(1) a business entity or proprietorship uses real property located within an empowerment zone,

(2) the business entity or proprietorship also uses real property located outside the empowerment zone,

(3) the amount of real property described in paragraph (1) is substantial compared to the amount of real property described in paragraph (2), and

(4) the real property described in paragraph (2) is contiguous to part or all of the real property described in paragraph (1),

then all the services performed by employees, all business activities, all tangible property, and all intangible property of the business entity or proprietorship that occur in or is located on the real property described in paragraphs (1) and (2) shall be treated as occurring or situated in an

empowerment zone.

(Added Pub. L. 103–66, title XIII, §13301(a), Aug. 10, 1993, 107 Stat. 552, §1397B; amended Pub. L. 104–188, title I, §1703(m), Aug. 20, 1996, 110 Stat. 1877; Pub. L. 105–34, title IX, §956(a), Aug. 5, 1997, 111 Stat. 890; Pub. L. 106–170, title V, §532(c)(4), Dec. 17, 1999, 113 Stat. 1931; renumbered §1397C, Pub. L. 106–554, §1(a)(7) [title I, §116(a)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–602.)

PRIOR PROVISIONS

A prior section 1397C was renumbered section 1397D of this title.

AMENDMENTS

2000—Pub. L. 106–554 renumbered section 1397B of this title as this section.

1999—Subsec. (e)(2). Pub. L. 106–170 substituted "section 1221(a)(4)" for "section 1221(4)".

1997—Subsec. (b)(2). Pub. L. 105–34, §956(a)(1), substituted "50 percent" for "80 percent".

Subsec. (b)(3). Pub. L. 105–34, §956(a)(2), substituted "a substantial portion" for "substantially all".

Subsec. (b)(4). Pub. L. 105–34, §956(a)(2), (3), substituted "a substantial portion" for "substantially all" and struck out ", and exclusively related to," after "entity is used in".

Subsec. (b)(5). Pub. L. 105–34, §956(a)(2), substituted "a substantial portion" for "substantially all".

Subsec. (c)(1). Pub. L. 105–34, §956(a)(1), substituted "50 percent" for "80 percent".

Subsec. (c)(2). Pub. L. 105–34, §956(a)(2), substituted "a substantial portion" for "substantially all".

Subsec. (c)(3). Pub. L. 105–34, §956(a)(2), (3), substituted "a substantial portion" for "substantially all" and struck out ", and exclusively related to," after "business is used in".

Subsec. (c)(4). Pub. L. 105–34, §956(a)(2), substituted "a substantial portion" for "substantially all".

Subsec. (d)(2). Pub. L. 105–34, §956(a)(4), inserted concluding provisions.

Subsec. (d)(3). Pub. L. 105–34, §956(a)(5), substituted "at least 50 percent" for "substantially all".

Subsec. (f). Pub. L. 105–34, §956(a)(6), added subsec. (f).

1996—Subsec. (d)(5)(B). Pub. L. 104–188 struck out "preceding" before "taxable year" in introductory provisions.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title IX, §956(b), Aug. 5, 1997, 111 Stat. 891, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to taxable years beginning on or after the date of the enactment of this Act [Aug. 5, 1997].

"(2) SPECIAL RULE FOR ENTERPRISE ZONE FACILITY BONDS.—For purposes of section 1394(b) of the Internal Revenue Code of 1986, the amendments made by this section shall apply to obligations issued after the date of the enactment of this Act."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103–66, §§13001–13444, to which such amendment relates, see section 1703(o) of Pub. L. 104–188, set out as a note under section 39 of this title.

[1] So in original. Probably should be "subparagraph".

§1397D. Qualified zone property defined

(a) General rule

For purposes of this part—

(1) In general

The term "qualified zone property" means any property to which section 168 applies (or would

apply but for section 179) if—

(A) such property was acquired by the taxpayer by purchase (as defined in section 179(d)(2)) after the date on which the designation of the empowerment zone took effect,

(B) the original use of which in an empowerment zone commences with the taxpayer, and

(C) substantially all of the use of which is in an empowerment zone and is in the active conduct of a qualified business by the taxpayer in such zone.

(2) Special rule for substantial renovations

In the case of any property which is substantially renovated by the taxpayer, the requirements of subparagraphs (A) and (B) of paragraph (1) shall be treated as satisfied. For purposes of the preceding sentence, property shall be treated as substantially renovated by the taxpayer if, during any 24-month period beginning after the date on which the designation of the empowerment zone took effect, additions to basis with respect to such property in the hands of the taxpayer exceed the greater of (i) an amount equal to the adjusted basis at the beginning of such 24-month period in the hands of the taxpayer, or (ii) $5,000.

(b) Special rules for sale-leasebacks

For purposes of subsection (a)(1)(B), if property is sold and leased back by the taxpayer within 3 months after the date such property was originally placed in service, such property shall be treated as originally placed in service not earlier than the date on which such property is used under the leaseback.

(Added Pub. L. 103–66, title XIII, §13301(a), Aug. 10, 1993, 107 Stat. 554, §1397C; renumbered §1397D, Pub. L. 106–554, §1(a)(7) [title I, §116(a)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–602.)

PRIOR PROVISIONS

A prior section 1397D was renumbered section 1397F of this title.

AMENDMENTS

2000—Pub. L. 106–554 renumbered section 1397C of this title as this section.

PART IV—INCENTIVES FOR EDUCATION ZONES

Sec.
1397E. Credit to holders of qualified zone academy bonds.

AMENDMENTS

1997—Pub. L. 105–34, title II, §226(a), Aug. 5, 1997, 111 Stat. 820, added part IV heading and item 1397E. Former part IV, consisting of section 1397D, redesignated V.

§1397E. Credit to holders of qualified zone academy bonds

(a) Allowance of credit

In the case of an eligible taxpayer who holds a qualified zone academy bond on the credit allowance date of such bond which occurs during the taxable year, there shall be allowed as a credit against the tax imposed by this chapter for such taxable year the amount determined under subsection (b).

(b) Amount of credit

(1) In general

The amount of the credit determined under this subsection with respect to any qualified zone academy bond is the amount equal to the product of—

(A) the credit rate determined by the Secretary under paragraph (2) for the month in which such bond was issued, multiplied by

(B) the face amount of the bond held by the taxpayer on the credit allowance date.

(2) Determination

During each calendar month, the Secretary shall determine a credit rate which shall apply to bonds issued during the following calendar month. The credit rate for any month is the percentage which the Secretary estimates will permit the issuance of qualified zone academy bonds without discount and without interest cost to the issuer.

(c) Limitation based on amount of tax

The credit allowed under subsection (a) for any taxable year shall not exceed the excess of—

(1) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

(2) the sum of the credits allowable under part IV of subchapter A (other than subpart C thereof, relating to refundable credits, and subparts H, I, and J thereof).

(d) Qualified zone academy bond

For purposes of this section—

(1) In general

The term "qualified zone academy bond" means any bond issued as part of an issue if—

(A) 95 percent or more of the proceeds of such issue are to be used for a qualified purpose with respect to a qualified zone academy established by an eligible local education agency,

(B) the bond is issued by a State or local government within the jurisdiction of which such academy is located,

(C) the issuer—

(i) designates such bond for purposes of this section,

(ii) certifies that it has written assurances that the private business contribution requirement of paragraph (2) will be met with respect to such academy, and

(iii) certifies that it has the written approval of the eligible local education agency for such bond issuance,

(D) the term of each bond which is part of such issue does not exceed the maximum term permitted under paragraph (3), and

(E) the issue meets the requirements of subsections (f), (g), and (h).

(2) Private business contribution requirement

(A) In general

For purposes of paragraph (1), the private business contribution requirement of this paragraph is met with respect to any issue if the eligible local education agency that established the qualified zone academy has written commitments from private entities to make qualified contributions having a present value (as of the date of issuance of the issue) of not less than 10 percent of the proceeds of the issue.

(B) Qualified contributions

For purposes of subparagraph (A), the term "qualified contribution" means any contribution (of a type and quality acceptable to the eligible local education agency) of—

(i) equipment for use in the qualified zone academy (including state-of-the-art technology and vocational equipment),

(ii) technical assistance in developing curriculum or in training teachers in order to promote appropriate market driven technology in the classroom,

(iii) services of employees as volunteer mentors,

(iv) internships, field trips, or other educational opportunities outside the academy for students, or

(v) any other property or service specified by the eligible local education agency.

(3) Term requirement

During each calendar month, the Secretary shall determine the maximum term permitted under

this paragraph for bonds issued during the following calendar month. Such maximum term shall be the term which the Secretary estimates will result in the present value of the obligation to repay the principal on the bond being equal to 50 percent of the face amount of the bond. Such present value shall be determined using as a discount rate the average annual interest rate of tax-exempt obligations having a term of 10 years or more which are issued during the month. If the term as so determined is not a multiple of a whole year, such term shall be rounded to the next highest whole year.

(4) Qualified zone academy

(A) In general

The term "qualified zone academy" means any public school (or academic program within a public school) which is established by and operated under the supervision of an eligible local education agency to provide education or training below the postsecondary level if—

(i) such public school or program (as the case may be) is designed in cooperation with business to enhance the academic curriculum, increase graduation and employment rates, and better prepare students for the rigors of college and the increasingly complex workforce,

(ii) students in such public school or program (as the case may be) will be subject to the same academic standards and assessments as other students educated by the eligible local education agency,

(iii) the comprehensive education plan of such public school or program is approved by the eligible local education agency, and

(iv)(I) such public school is located in an empowerment zone or enterprise community (including any such zone or community designated after the date of the enactment of this section), or

(II) there is a reasonable expectation (as of the date of issuance of the bonds) that at least 35 percent of the students attending such school or participating in such program (as the case may be) will be eligible for free or reduced-cost lunches under the school lunch program established under the Richard B. Russell National School Lunch Act.

(B) Eligible local education agency

The term "eligible local education agency" means any local educational agency as defined in section 9101 of the Elementary and Secondary Education Act of 1965.

(5) Qualified purpose

The term "qualified purpose" means, with respect to any qualified zone academy—

(A) rehabilitating or repairing the public school facility in which the academy is established,

(B) providing equipment for use at such academy,

(C) developing course materials for education to be provided at such academy, and

(D) training teachers and other school personnel in such academy.

(6) Eligible taxpayer

The term "eligible taxpayer" means—

(A) a bank (within the meaning of section 581),

(B) an insurance company to which subchapter L applies, and

(C) a corporation actively engaged in the business of lending money.

(e) Limitation on amount of bonds designated

(1) National limitation

There is a national zone academy bond limitation for each calendar year. Such limitation is $400,000,000 for 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, and 2007, and, except as provided in paragraph (4), zero thereafter.

(2) Allocation of limitation

The national zone academy bond limitation for a calendar year shall be allocated by the Secretary among the States on the basis of their respective populations of individuals below the

poverty line (as defined by the Office of Management and Budget). The limitation amount allocated to a State under the preceding sentence shall be allocated by the State education agency to qualified zone academies within such State.

(3) Designation subject to limitation amount

The maximum aggregate face amount of bonds issued during any calendar year which may be designated under subsection (d)(1) with respect to any qualified zone academy shall not exceed the limitation amount allocated to such academy under paragraph (2) for such calendar year.

(4) Carryover of unused limitation

If for any calendar year—

(A) the limitation amount for any State, exceeds

(B) the amount of bonds issued during such year which are designated under subsection (d)(1) with respect to qualified zone academies within such State,

the limitation amount for such State for the following calendar year shall be increased by the amount of such excess. Any carryforward of a limitation amount may be carried only to the first 2 years (3 years for carryforwards from 1998 or 1999) following the unused limitation year. For purposes of the preceding sentence, a limitation amount shall be treated as used on a first-in first-out basis.

(f) Special rules relating to expenditures

(1) In general

An issue shall be treated as meeting the requirements of this subsection if, as of the date of issuance, the issuer reasonably expects—

(A) at least 95 percent of the proceeds from the sale of the issue are to be spent for 1 or more qualified purposes with respect to qualified zone academies within the 5-year period beginning on the date of issuance of the qualified zone academy bond,

(B) a binding commitment with a third party to spend at least 10 percent of the proceeds from the sale of the issue will be incurred within the 6-month period beginning on the date of issuance of the qualified zone academy bond, and

(C) such purposes will be completed with due diligence and the proceeds from the sale of the issue will be spent with due diligence.

(2) Extension of period

Upon submission of a request prior to the expiration of the period described in paragraph (1)(A), the Secretary may extend such period if the issuer establishes that the failure to satisfy the 5-year requirement is due to reasonable cause and the related purposes will continue to proceed with due diligence.

(3) Failure to spend required amount of bond proceeds within 5 years

To the extent that less than 95 percent of the proceeds of such issue are expended by the close of the 5-year period beginning on the date of issuance (or if an extension has been obtained under paragraph (2), by the close of the extended period), the issuer shall redeem all of the nonqualified bonds within 90 days after the end of such period. For purposes of this paragraph, the amount of the nonqualified bonds required to be redeemed shall be determined in the same manner as under section 142.

(g) Special rules relating to arbitrage

An issue shall be treated as meeting the requirements of this subsection if the issuer satisfies the arbitrage requirements of section 148 with respect to proceeds of the issue.

(h) Reporting

Issuers of qualified academy zone bonds shall submit reports similar to the reports required under section 149(e).

(i) Other definitions

For purposes of this section—

(1) Credit allowance date

The term "credit allowance date" means, with respect to any issue, the last day of the 1-year period beginning on the date of issuance of such issue and the last day of each successive 1-year period thereafter.

(2) Bond

The term "bond" includes any obligation.

(3) State

The term "State" includes the District of Columbia and any possession of the United States.

(j) Credit included in gross income

Gross income includes the amount of the credit allowed to the taxpayer under this section (determined without regard to subsection (c)).

(k) Credit treated as nonrefundable bondholder credit

For purposes of this title, the credit allowed by this section shall be treated as a credit allowable under subpart H of part IV of subchapter A of this chapter.

(l) S corporations

In the case of a qualified zone academy bond held by an S corporation which is an eligible taxpayer—

(1) each shareholder shall take into account such shareholder's pro rata share of the credit, and

(2) no basis adjustments to the stock of the corporation shall be made under section 1367 on account of this section.

(m) Termination

This section shall not apply to any obligation issued after the date of the enactment of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008.

(Added Pub. L. 105–34, title II, §226(a), Aug. 5, 1997, 111 Stat. 821; amended Pub. L. 105–206, title VI, §6004(g)(2)–(4), July 22, 1998, 112 Stat. 796; Pub. L. 106–78, title VII, §752(b)(11), Oct. 22, 1999, 113 Stat. 1169; Pub. L. 106–170, title V, §509, Dec. 17, 1999, 113 Stat. 1924; Pub. L. 107–110, title X, §1076(t), Jan. 8, 2002, 115 Stat. 2092; Pub. L. 107–147, title VI, §608(a), Mar. 9, 2002, 116 Stat. 60; Pub. L. 108–311, title III, §304(a), title IV, §406(c), Oct. 4, 2004, 118 Stat. 1179, 1189; Pub. L. 109–58, title XIII, §1303(c)(2), (3), Aug. 8, 2005, 119 Stat. 997; Pub. L. 109–432, div. A, title I, §107(a), (b)(1), Dec. 20, 2006, 120 Stat. 2938; Pub. L. 110–234, title XV, §15316(c)(2), May 22, 2008, 122 Stat. 1511; Pub. L. 110–246, §4(a), title XV, §15316(c)(2), June 18, 2008, 122 Stat. 1664, 2273; Pub. L. 110–343, div. C, title III, §313(b)(3), Oct. 3, 2008, 122 Stat. 3872; Pub. L. 111–5, div. B, title I, §1531(c)(3), Feb. 17, 2009, 123 Stat. 360.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (d)(4)(A)(iv)(I), is the date of enactment of Pub. L. 105–34, which was approved Aug. 5, 1997.

The Richard B. Russell National School Lunch Act, referred to in subsec. (d)(4)(A)(iv)(II), is act June 4, 1946, ch. 281, 60 Stat. 230, as amended, which is classified generally to chapter 13 (§1751 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1751 of Title 42 and Tables.

Section 9101 of the Elementary and Secondary Education Act of 1965, referred to in subsec. (d)(4)(B), is classified to section 7801 of Title 20, Education.

The date of the enactment of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008, referred to in subsec. (m), is the date of enactment of div. C of Pub. L. 110–343, which was approved Oct. 3, 2008.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub.

L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2009—Subsec. (c)(2). Pub. L. 111–5 substituted ", I, and J" for "and I".

2008—Subsec. (c)(2). Pub. L. 110–246, §15316(c)(2), substituted "subparts H and I" for "subpart H".

Subsec. (m). Pub. L. 110–343 added subsec. (m).

2006—Subsec. (d)(1)(E). Pub. L. 109–432, §107(b)(1)(A), added subpar. (E).

Subsec. (e)(1). Pub. L. 109–432, §107(a), substituted "2005, 2006, and 2007" for "and 2005".

Subsecs. (f) to (l). Pub. L. 109–432, §107(b)(1)(B), added subsecs. (f) to (h) and redesignated former subsecs. (f) to (i) as (i) to (l), respectively.

2005—Subsec. (c)(2). Pub. L. 109–58, §1303(c)(2), inserted ", and subpart H thereof" after "refundable credits".

Subsec. (h). Pub. L. 109–58, §1303(c)(3), amended heading and text of subsec. (h) generally. Prior to amendment, text read as follows: "For purposes of subtitle F, the credit allowed by this section shall be treated as a credit allowable under part IV of subchapter A of this chapter."

2004—Subsec. (e)(1). Pub. L. 108–311, §304(a), substituted "2003, 2004, and 2005" for "and 2003".

Subsec. (i). Pub. L. 108–311, §406(c), added subsec. (i).

2002—Subsec. (d)(4)(B). Pub. L. 107–110 substituted "9101" for "14101".

Subsec. (e)(1). Pub. L. 107–147 substituted "2000, 2001, 2002, and 2003" for "2000, and 2001".

1999—Subsec. (d)(4)(A)(iv)(II). Pub. L. 106–78 substituted "Richard B. Russell National School Lunch Act" for "National School Lunch Act".

Subsec. (e)(1). Pub. L. 106–170, §509(a), substituted ", 1999, 2000, and 2001" for "and 1999".

Subsec. (e)(4). Pub. L. 106–170, §509(b), inserted at end "Any carryforward of a limitation amount may be carried only to the first 2 years (3 years for carryforwards from 1998 or 1999) following the unused limitation year. For purposes of the preceding sentence, a limitation amount shall be treated as used on a first-in first-out basis."

1998—Subsec. (d)(4)(B). Pub. L. 105–206, §6004(g)(2), substituted "local educational agency as defined" for "local education agency as defined".

Subsec. (g). Pub. L. 105–206, §6004(g)(4), inserted "(determined without regard to subsection (c))" after "section".

Subsec. (h). Pub. L. 105–206, §6004(g)(3), added subsec. (h).

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–5 applicable to obligations issued after Feb. 17, 2009, see section 1531(e) of Pub. L. 111–5, set out as a note under section 54 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–343 applicable to obligations issued after Oct. 3, 2008, see section 313(c) of Pub. L. 110–343, set out as a note under section 54A of this title.

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by section 15316(c)(2) of Pub. L. 110–246 applicable to obligations issued after June 18, 2008, see section 15316(d) of Pub. L. 110–246, set out as a note under section 54 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title I, §107(c), Dec. 20, 2006, 120 Stat. 2939, provided that:

"(1) EXTENSION.—The amendment made by subsection (a) [amending this section] shall apply to obligations issued after December 31, 2005.

"(2) SPECIAL RULES.—The amendments made by subsection (b) [amending this section and sections 54 and 1400N of this title] shall apply to obligations issued after the date of the enactment of this Act [Dec. 20, 2006] pursuant to allocations of the national zone academy bond limitation for calendar years after 2005."

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–58 applicable to taxable years beginning after Dec. 31, 2005, see section 1303(e) of Pub. L. 109–58, as amended, set out as an Effective Date note under section 54 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–311, title III, §304(b), Oct. 4, 2004, 118 Stat. 1179, provided that: "The amendment made by

this section [amending this section] shall apply to obligations issued after December 31, 2003."

Amendment by section 406(c) of Pub. L. 108–311 effective as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 406(h) of Pub. L. 108–311, set out as a note under section 55 of this title.

EFFECTIVE DATE OF 2002 AMENDMENTS

Pub. L. 107–147, title VI, §608(b), Mar. 9, 2002, 116 Stat. 60, provided that: "The amendment made by subsection (a) [amending this section] shall apply to obligations issued after the date of the enactment of this Act [Mar. 9, 2002]."

Amendment by Pub. L. 107–110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as an Effective Date note under section 6301 of Title 20, Education.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE

Pub. L. 105–34, title II, §226(c), Aug. 5, 1997, 111 Stat. 824, provided that: "The amendments made by this section [enacting this section and renumbering section 1397D as section 1397F of this title] shall apply to obligations issued after December 31, 1997."

PART V—REGULATIONS

Sec.
1397F. Regulations.

AMENDMENTS

1997—Pub. L. 105–34, title II, §226(a), (b)(2), Aug. 5, 1997, 111 Stat. 820, 824, redesignated part IV of this subchapter as this part and item 1397D as 1397F.

§1397F. Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of parts II and III, including—

(1) regulations limiting the benefit of parts II and III in circumstances where such benefits, in combination with benefits provided under other Federal programs, would result in an activity being 100 percent or more subsidized by the Federal Government,

(2) regulations preventing abuse of the provisions of parts II and III, and

(3) regulations dealing with inadvertent failures of entities to be enterprise zone businesses.

(Added Pub. L. 103–66, title XIII, §13301(a), Aug. 10, 1993, 107 Stat. 555, §1397D; renumbered §1397F, Pub. L. 105–34, title II, §226(a), Aug. 5, 1997, 111 Stat. 820; amended Pub. L. 105–206, title VI, §6004(g)(1), July 22, 1998, 112 Stat. 796.)

AMENDMENTS

1998—Pub. L. 105–206 amended directory language of Pub. L. 105–34, §226(a). See 1997 Amendment note below.

1997—Pub. L. 105–34, §226(a), as amended by Pub. L. 105–206, renumbered section 1397D of this title as this section.

Subchapter V—Title 11 Cases

Sec.

1398. Rules relating to individuals' title 11 cases.
1399. No separate taxable entities for partnerships, corporations, etc.

AMENDMENTS

1980—Pub. L. 96–589, §3(a)(1), Dec. 24, 1980, 94 Stat. 3397, added subchapter V heading "Title 11 Cases" and items 1398 and 1399.

§1398. Rules relating to individuals' title 11 cases

(a) Cases to which section applies

Except as provided in subsection (b), this section shall apply to any case under chapter 7 (relating to liquidations) or chapter 11 (relating to reorganizations) of title 11 of the United States Code in which the debtor is an individual.

(b) Exceptions where case is dismissed, etc.

(1) Section does not apply where case is dismissed

This section shall not apply if the case under chapter 7 or 11 of title 11 of the United States Code is dismissed.

(2) Section does not apply at partnership level

For purposes of subsection (a), a partnership shall not be treated as an individual, but the interest in a partnership of a debtor who is an individual shall be taken into account under this section in the same manner as any other interest of the debtor.

(c) Computation and payment of tax; basic standard deduction

(1) Computation and payment of tax

Except as otherwise provided in this section, the taxable income of the estate shall be computed in the same manner as for an individual. The tax shall be computed on such taxable income and shall be paid by the trustee.

(2) Tax rates

The tax on the taxable income of the estate shall be determined under subsection (d) of section 1.

(3) Basic standard deduction

In the case of an estate which does not itemize deductions, the basic standard deduction for the estate for the taxable year shall be the same as for a married individual filing a separate return for such year.

(d) Taxable year of debtors

(1) General rule

Except as provided in paragraph (2), the taxable year of the debtor shall be determined without regard to the case under title 11 of the United States Code to which this section applies.

(2) Election to terminate debtor's year when case commences

(A) In general

Notwithstanding section 442, the debtor may (without the approval of the Secretary) elect to treat the debtor's taxable year which includes the commencement date as 2 taxable years—

(i) the first of which ends on the day before the commencement date, and

(ii) the second of which begins on the commencement date.

(B) Spouse may join in election

In the case of a married individual (within the meaning of section 7703), the spouse may elect to have the debtor's election under subparagraph (A) also apply to the spouse, but only if the debtor and the spouse file a joint return for the taxable year referred to in subparagraph (A)(i).

(C) No election where debtor has no assets

No election may be made under subparagraph (A) by a debtor who has no assets other than property which the debtor may treat as exempt property under section 522 of title 11 of the United States Code.

(D) Time for making election

An election under subparagraph (A) or (B) may be made only on or before the due date for filing the return for the taxable year referred to in subparagraph (A)(i). Any such election, once made, shall be irrevocable.

(E) Returns

A return shall be made for each of the taxable years specified in subparagraph (A).

(F) Annualization

For purposes of subsections (b), (c), and (d) of section 443, a return filed for either of the taxable years referred to in subparagraph (A) shall be treated as a return made under paragraph (1) of subsection (a) of section 443.

(3) Commencement date defined

For purposes of this subsection, the term "commencement date" means the day on which the case under title 11 of the United States Code to which this section applies commences.

(e) Treatment of income, deductions, and credits

(1) Estate's share of debtor's income

The gross income of the estate for each taxable year shall include the gross income of the debtor to which the estate is entitled under title 11 of the United States Code. The preceding sentence shall not apply to any amount received or accrued by the debtor before the commencement date (as defined in subsection (d)(3)).

(2) Debtor's share of debtor's income

The gross income of the debtor for any taxable year shall not include any item to the extent that such item is included in the gross income of the estate by reason of paragraph (1).

(3) Rule for making determinations with respect to deductions, credits, and employment taxes

Except as otherwise provided in this section, the determination of whether or not any amount paid or incurred by the estate—

(A) is allowable as a deduction or credit under this chapter, or

(B) is wages for purposes of subtitle C,

shall be made as if the amount were paid or incurred by the debtor and as if the debtor were still engaged in the trades and businesses, and in the activities, the debtor was engaged in before the commencement of the case.

(f) Treatment of transfers between debtor and estate

(1) Transfer to estate not treated as disposition

A transfer (other than by sale or exchange) of an asset from the debtor to the estate shall not be treated as a disposition for purposes of any provision of this title assigning tax consequences to a disposition, and the estate shall be treated as the debtor would be treated with respect to such asset.

(2) Transfer from estate to debtor not treated as disposition

In the case of a termination of the estate, a transfer (other than by sale or exchange) of an asset from the estate to the debtor shall not be treated as a disposition for purposes of any provision of this title assigning tax consequences to a disposition, and the debtor shall be treated as the estate would be treated with respect to such asset.

(g) Estate succeeds to tax attributes of debtor

The estate shall succeed to and take into account the following items (determined as of the first day of the debtor's taxable year in which the case commences) of the debtor—

(1) Net operating loss carryovers

The net operating loss carryovers determined under section 172.

(2) Charitable contributions carryovers

The carryover of excess charitable contributions determined under section 170(d)(1).

(3) Recovery of tax benefit items

Any amount to which section 111 (relating to recovery of tax benefit items) applies.

(4) Credit carryovers, etc.

The carryovers of any credit, and all other items which, but for the commencement of the case, would be required to be taken into account by the debtor with respect to any credit.

(5) Capital loss carryovers

The capital loss carryover determined under section 1212.

(6) Basis, holding period, and character of assets

In the case of any asset acquired (other than by sale or exchange) by the estate from the debtor, the basis, holding period, and character it had in the hands of the debtor.

(7) Method of accounting

The method of accounting used by the debtor.

(8) Other attributes

Other tax attributes of the debtor, to the extent provided in regulations prescribed by the Secretary as necessary or appropriate to carry out the purposes of this section.

(h) Administration, liquidation, and reorganization expenses; carryovers and carrybacks of certain excess expenses

(1) Administration, liquidation, and reorganization expenses

Any administrative expense allowed under section 503 of title 11 of the United States Code, and any fee or charge assessed against the estate under chapter 123 of title 28 of the United States Code, to the extent not disallowed under any other provision of this title, shall be allowed as a deduction.

(2) Carryback and carryover of excess administrative costs, etc., to estate taxable years

(A) Deduction allowed

There shall be allowed as a deduction for the taxable year an amount equal to the aggregate of (i) the administrative expense carryovers to such year, plus (ii) the administrative expense carrybacks to such year.

(B) Administrative expense loss, etc.

If a net operating loss would be created or increased for any estate taxable year if section 172(c) were applied without the modification contained in paragraph (4) of section 172(d), then the amount of the net operating loss so created (or the amount of the increase in the net operating loss) shall be an administrative expense loss for such taxable year which shall be an administrative expense carryback to each of the 3 preceding taxable years and an administrative expense carryover to each of the 7 succeeding taxable years.

(C) Determination of amount carried to each taxable year

The portion of any administrative expense loss which may be carried to any other taxable year shall be determined under section 172(b)(2), except that for each taxable year the computation under section 172(b)(2) with respect to the net operating loss shall be made before

the computation under this paragraph.

(D) Administrative expense deductions allowed only to estate

The deductions allowable under this chapter solely by reason of paragraph (1), and the deduction provided by subparagraph (A) of this paragraph, shall be allowable only to the estate.

(i) Debtor succeeds to tax attributes of estate

In the case of a termination of an estate, the debtor shall succeed to and take into account the items referred to in paragraphs (1), (2), (3), (4), (5), and (6) of subsection (g) in a manner similar to that provided in such paragraphs (but taking into account that the transfer is from the estate to the debtor instead of from the debtor to the estate). In addition, the debtor shall succeed to and take into account the other tax attributes of the estate, to the extent provided in regulations prescribed by the Secretary as necessary or appropriate to carry out the purposes of this section.

(j) Other special rules

(1) Change of accounting period without approval

Notwithstanding section 442, the estate may change its annual accounting period one time without the approval of the Secretary.

(2) Treatment of certain carrybacks

(A) Carrybacks from estate

If any carryback year of the estate is a taxable year before the estate's first taxable year, the carryback to such carryback year shall be taken into account for the debtor's taxable year corresponding to the carryback year.

(B) Carrybacks from debtor's activities

The debtor may not carry back to a taxable year before the debtor's taxable year in which the case commences any carryback from a taxable year ending after the case commences.

(C) Carryback and carryback year defined

For purposes of this paragraph—

(i) Carryback

The term "carryback" means a net operating loss carryback under section 172 or a carryback of any credit provided by part IV of subchapter A.

(ii) Carryback year

The term "carryback year" means the taxable year to which a carryback is carried.

(Added Pub. L. 96–589, §3(a)(1), Dec. 24, 1980, 94 Stat. 3397; amended Pub. L. 99–514, title I, §104(b)(14), title XIII, §1301(j)(8), title XVIII, §1812(a)(5), Oct. 22, 1986, 100 Stat. 2105, 2658, 2833.)

REFERENCES IN TEXT

Part IV of subchapter A, referred to in subsec. (j)(2)(C)(i), probably means part IV of subchapter A of chapter 1 of this title.

AMENDMENTS

1986—Subsec. (c). Pub. L. 99–514, §104(b)(14)(A), substituted "basic standard deduction" for "zero bracket amount" in heading.

Subsec. (c)(3). Pub. L. 99–514, §104(b)(14)(B), amended par. (3) generally, substituting "Basic standard deduction" for "Amount of zero bracket amount" in heading and substituting "In the case of an estate which does not itemize deductions, the basic standard deduction for the estate" for "The amount of the estate's zero bracket amount" in text.

Subsec. (d)(2)(B). Pub. L. 99–514, §1301(j)(8), substituted "section 7703" for "section 143".

Subsec. (g)(3). Pub. L. 99–514, §1812(a)(5), amended par. (3) generally. Prior to amendment, par. (3), recovery exclusion, read as follows: "Any recovery exclusion under section 111 (relating to recovery of bad debts, prior taxes, and delinquency amounts)."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 104(b)(14) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 1301(j)(8) of Pub. L. 99–514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99–514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

Amendment by section 1812(a)(5) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Subchapter applicable to bankruptcy cases commencing more than 90 days after Dec. 24, 1980, see section 7(b) of Pub. L. 96–589, set out as an Effective Date of 1980 Amendment note under section 108 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§1399. No separate taxable entities for partnerships, corporations, etc.

Except in any case to which section 1398 applies, no separate taxable entity shall result from the commencement of a case under title 11 of the United States Code.

(Added Pub. L. 96–589, §3(a)(1), Dec. 24, 1980, 94 Stat. 3400.)

Subchapter W—District of Columbia Enterprise Zone

Sec.

1400. Establishment of DC Zone.

1400A. Tax-exempt economic development bonds.

1400B. Zero percent capital gains rate.

1400C. First-time homebuyer credit for District of Columbia.

§1400. Establishment of DC Zone

(a) In general

For purposes of this title—

(1) the applicable DC area is hereby designated as the District of Columbia Enterprise Zone, and

(2) except as otherwise provided in this subchapter, the District of Columbia Enterprise Zone shall be treated as an empowerment zone designated under subchapter U.

(b) Applicable DC area

For purposes of subsection (a), the term "applicable DC area" means the area consisting of—

(1) the census tracts located in the District of Columbia which are part of an enterprise community designated under subchapter U before the date of the enactment of this subchapter, and

(2) all other census tracts—

(A) which are located in the District of Columbia, and

(B) for which the poverty rate is not less than than [1] 20 percent as determined on the basis of the 1990 census.

(c) District of Columbia Enterprise Zone

For purposes of this subchapter, the terms "District of Columbia Enterprise Zone" and "DC Zone" mean the District of Columbia Enterprise Zone designated by subsection (a).

(d) Special rule for application of employment credit

With respect to the DC Zone, section 1396(d)(1)(B) (relating to empowerment zone employment credit) shall be applied by substituting "the District of Columbia" for "such empowerment zone".

(e) Special rule for application of enterprise zone business definition

For purposes of this subchapter and for purposes of applying subchapter U with respect to the DC Zone, section 1397C shall be applied without regard to subsections (b)(6) and (c)(5) thereof.

(f) Time for which designation applicable

(1) In general

The designation made by subsection (a) shall apply for the period beginning on January 1, 1998, and ending on December 31, 2011.

(2) Coordination with DC enterprise community designated under subchapter U

The designation under subchapter U of the census tracts referred to in subsection (b)(1) as an enterprise community shall terminate on December 31, 2011.

(Added Pub. L. 105–34, title VII, §701(a), Aug. 5, 1997, 111 Stat. 863; amended Pub. L. 105–206, title VI, §6008(a), July 22, 1998, 112 Stat. 811; Pub. L. 106–554, §1(a)(7) [title I, §§113(c), 116(b)(5), 164(a)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–601, 2763A–603, 2763A–625; Pub. L. 108–311, title III, §310(a), Oct. 4, 2004, 118 Stat. 1180; Pub. L. 109–432, div. A, title I, §110(a)(1), Dec. 20, 2006, 120 Stat. 2939; Pub. L. 110–343, div. C, title III, §322(a)(1), Oct. 3, 2008, 122 Stat. 3873; Pub. L. 111–312, title VII, §754(a), Dec. 17, 2010, 124 Stat. 3321.)

REFERENCES IN TEXT

The date of the enactment of this subchapter, referred to in subsec. (b)(1), is the date of enactment of Pub. L. 105–34, which was approved Aug. 5, 1997.

AMENDMENTS

2010—Subsec. (f). Pub. L. 111–312 substituted "2011" for "2009" in pars. (1) and (2).

2008—Subsec. (f). Pub. L. 110–343 substituted "2009" for "2007" in pars. (1) and (2).

2006—Subsec. (f). Pub. L. 109–432 substituted "2007" for "2005" in pars. (1) and (2).

2004—Subsec. (f). Pub. L. 108–311 substituted "2005" for "2003" in pars. (1) and (2).

2000—Subsec. (d). Pub. L. 106–554, §1(a)(7) [title I, §113(c)], amended heading and text of subsec. (d) generally, striking out par. (1) designation and heading and par. (2), which provided that there would be no decrease of empowerment zone employment credit in 2002.

Subsec. (e). Pub. L. 106–554, §1(a)(7) [title I, §116(b)(5)], substituted "section 1397C" for "section 1397B".

Subsec. (f). Pub. L. 106–554, §1(a)(7) [title I, §164(a)(1)], substituted "2003" for "2002" in pars. (1) and (2).

1998—Subsec. (b)(2)(B). Pub. L. 105–206 inserted "as determined on the basis of the 1990 census" after "percent".

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §754(e), Dec. 17, 2010, 124 Stat. 3322, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 1400A to 1400C of this title] shall apply to periods after December 31, 2009.

"(2) TAX-EXEMPT DC EMPOWERMENT ZONE BONDS.—The amendment made by subsection (b) [amending section 1400A of this title] shall apply to bonds issued after December 31, 2009.

"(3) ACQUISITION DATES FOR ZERO-PERCENT CAPITAL GAINS RATE.—The amendments made by subsection (c) [amending section 1400B of this title] shall apply to property acquired or substantially improved after December 31, 2009.

"(4) HOMEBUYER CREDIT.—The amendment made by subsection (d) [amending section 1400C of this title] shall apply to homes purchased after December 31, 2009."

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title III, §322(a)(2), Oct. 3, 2008, 122 Stat. 3873, provided that: "The amendments made by this subsection [amending this section] shall apply to periods beginning after December 31, 2007."

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title I, §110(a)(2), Dec. 20, 2006, 120 Stat. 2939, provided that: "The amendments made by this subsection [amending this section] shall apply to periods beginning after December 31, 2005."

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–311, title III, §310(e), Oct. 4, 2004, 118 Stat. 1180, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 1400A to 1400C and 1400F of this title] shall take effect on January 1, 2004.

"(2) TAX-EXEMPT ECONOMIC DEVELOPMENT BONDS.—The amendment made by subsection (b) [amending section 1400A of this title] shall apply to obligations issued after the date of the enactment of this Act [Oct. 4, 2004]."

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by section 1(a)(7) [title I, §113(c)] of Pub. L. 106–554 applicable to wages paid or incurred after Dec. 31, 2001, see section 1(a)(7) [title I, §113(d)] of Pub. L. 106–554, set out as a note under section 1396 of this title.

Amendment by section 1(a)(7) [title I, §116(b)(5)] of Pub. L. 106–554 applicable to qualified empowerment zone assets acquired after Dec. 21, 2000, see section 1(a)(7) [title I, §116(c)] of Pub. L. 106–554, set out as a note under section 1016 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

[1] So in original. The second "than" probably should not appear.

§1400A. Tax-exempt economic development bonds

(a) In general

In the case of the District of Columbia Enterprise Zone, subparagraph (A) of section 1394(c)(1) (relating to limitation on amount of bonds) shall be applied by substituting "$15,000,000" for "$3,000,000" and section 1394(b)(3)(B)(iii) shall be applied without regard to the employee residency requirement.

(b) Period of applicability

This section shall apply to bonds issued during the period beginning on January 1, 1998, and ending on December 31, 2011.

(Added Pub. L. 105–34, title VII, §701(a), Aug. 5, 1997, 111 Stat. 864; amended Pub. L. 105–206, title VI, §6008(b), July 22, 1998, 112 Stat. 811; Pub. L. 106–554, §1(a)(7) [title I, §164(a)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–625; Pub. L. 108–311, title III, §310(b), Oct. 4, 2004, 118 Stat. 1180; Pub. L. 109–432, div. A, title I, §110(b)(1), Dec. 20, 2006, 120 Stat. 2939; Pub. L. 110–343, div. C, title III, §322(b)(1), Oct. 3, 2008, 122 Stat. 3873; Pub. L. 111–312, title VII, §754(b), Dec. 17, 2010, 124 Stat. 3321.)

AMENDMENTS

2010—Subsec. (b). Pub. L. 111–312 substituted "2011" for "2009".
2008—Subsec. (b). Pub. L. 110–343 substituted "2009" for "2007".
2006—Subsec. (b). Pub. L. 109–432 substituted "2007" for "2005".
2004—Subsec. (b). Pub. L. 108–311 substituted "2005" for "2003".
2000—Subsec. (b). Pub. L. 106–554 substituted "2003" for "2002".

1998—Subsec. (a). Pub. L. 105–206 inserted before the period at end "and section 1394(b)(3)(B)(iii) shall be applied without regard to the employee residency requirement".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–312 applicable to bonds issued after Dec. 31, 2009, see section 754(e)(2) of Pub. L. 111–312, set out as a note under section 1400 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title III, §322(b)(2), Oct. 3, 2008, 122 Stat. 3874, provided that: "The amendment made by this subsection [amending this section] shall apply to bonds issued after December 31, 2007."

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title I, §110(b)(2), Dec. 20, 2006, 120 Stat. 2939, provided that: "The amendment made by this subsection [amending this section] shall apply to bonds issued after December 31, 2005."

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 applicable to obligations issued after Oct. 4, 2004, see section 310(e)(2) of Pub. L. 108–311, set out as a note under section 1400 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

§1400B. Zero percent capital gains rate

(a) Exclusion

Gross income shall not include qualified capital gain from the sale or exchange of any DC Zone asset held for more than 5 years.

(b) DC Zone asset

For purposes of this section—

(1) In general

The term "DC Zone asset" means—

(A) any DC Zone business stock,

(B) any DC Zone partnership interest, and

(C) any DC Zone business property.

(2) DC Zone business stock

(A) In general

The term "DC Zone business stock" means any stock in a domestic corporation which is originally issued after December 31, 1997, if—

(i) such stock is acquired by the taxpayer, before January 1, 2012, at its original issue (directly or through an underwriter) solely in exchange for cash,

(ii) as of the time such stock was issued, such corporation was a DC Zone business (or, in the case of a new corporation, such corporation was being organized for purposes of being a DC Zone business), and

(iii) during substantially all of the taxpayer's holding period for such stock, such corporation qualified as a DC Zone business.

(B) Redemptions

A rule similar to the rule of section 1202(c)(3) shall apply for purposes of this paragraph.

(3) DC Zone partnership interest

The term "DC Zone partnership interest" means any capital or profits interest in a domestic partnership which is originally issued after December 31, 1997, if—

(A) such interest is acquired by the taxpayer, before January 1, 2012, from the partnership solely in exchange for cash,

(B) as of the time such interest was acquired, such partnership was a DC Zone business (or, in the case of a new partnership, such partnership was being organized for purposes of being a DC Zone business), and

(C) during substantially all of the taxpayer's holding period for such interest, such partnership qualified as a DC Zone business.

A rule similar to the rule of paragraph (2)(B) shall apply for purposes of this paragraph.

(4) DC Zone business property

(A) In general

The term "DC Zone business property" means tangible property if—

(i) such property was acquired by the taxpayer by purchase (as defined in section 179(d)(2)) after December 31, 1997, and before January 1, 2012,

(ii) the original use of such property in the DC Zone commences with the taxpayer, and

(iii) during substantially all of the taxpayer's holding period for such property, substantially all of the use of such property was in a DC Zone business of the taxpayer.

(B) Special rule for buildings which are substantially improved

(i) In general

The requirements of clauses (i) and (ii) of subparagraph (A) shall be treated as met with respect to—

(I) property which is substantially improved by the taxpayer before January 1, 2012, and

(II) any land on which such property is located.

(ii) Substantial improvement

For purposes of clause (i), property shall be treated as substantially improved by the taxpayer only if, during any 24-month period beginning after December 31, 1997, additions to basis with respect to such property in the hands of the taxpayer exceed the greater of—

(I) an amount equal to the adjusted basis of such property at the beginning of such 24-month period in the hands of the taxpayer, or

(II) $5,000.

(5) Treatment of DC Zone termination

The termination of the designation of the DC Zone shall be disregarded for purposes of determining whether any property is a DC Zone asset.

(6) Treatment of subsequent purchasers, etc.

The term "DC Zone asset" includes any property which would be a DC Zone asset but for paragraph (2)(A)(i), (3)(A), or (4)(A)(i) or (ii) in the hands of the taxpayer if such property was a DC Zone asset in the hands of a prior holder.

(7) 5-year safe harbor

If any property ceases to be a DC Zone asset by reason of paragraph (2)(A)(iii), (3)(C), or (4)(A)(iii) after the 5-year period beginning on the date the taxpayer acquired such property, such property shall continue to be treated as meeting the requirements of such paragraph; except that the amount of gain to which subsection (a) applies on any sale or exchange of such property shall not exceed the amount which would be qualified capital gain had such property been sold on the date of such cessation.

(c) DC Zone business

For purposes of this section, the term "DC Zone business" means any enterprise zone business (as defined in section 1397C), determined—

(1) after the application of section 1400(e),

(2) by substituting "80 percent" for "50 percent" in subsections (b)(2) and (c)(1) of section 1397C, and

(3) by treating no area other than the DC Zone as an empowerment zone or enterprise community.

(d) Treatment of zone as including census tracts with 10 percent poverty rate

For purposes of applying this section (and for purposes of applying this subchapter and subchapter U with respect to this section), the DC Zone shall be treated as including all census tracts—

(1) which are located in the District of Columbia, and

(2) for which the poverty rate is not less than 10 percent as determined on the basis of the 1990 census.

(e) Other definitions and special rules

For purposes of this section—

(1) Qualified capital gain

Except as otherwise provided in this subsection, the term "qualified capital gain" means any gain recognized on the sale or exchange of—

(A) a capital asset, or

(B) property used in the trade or business (as defined in section 1231(b)).

(2) Gain before 1998 or after 2016 not qualified

The term "qualified capital gain" shall not include any gain attributable to periods before January 1, 1998, or after December 31, 2016.

(3) Certain gain not qualified

The term "qualified capital gain" shall not include any gain which would be treated as ordinary income under section 1245 or under section 1250 if section 1250 applied to all depreciation rather than the additional depreciation.

(4) Intangibles and land not integral part of DC Zone business

The term "qualified capital gain" shall not include any gain which is attributable to real property, or an intangible asset, which is not an integral part of a DC Zone business.

(5) Related party transactions

The term "qualified capital gain" shall not include any gain attributable, directly or indirectly, in whole or in part, to a transaction with a related person. For purposes of this paragraph, persons are related to each other if such persons are described in section 267(b) or 707(b)(1).

(f) Certain other rules to apply

Rules similar to the rules of subsections (g), (h), (i)(2), and (j) of section 1202 shall apply for purposes of this section.

(g) Sales and exchanges of interests in partnerships and S corporations which are DC Zone businesses

In the case of the sale or exchange of an interest in a partnership, or of stock in an S corporation, which was a DC Zone business during substantially all of the period the taxpayer held such interest or stock, the amount of qualified capital gain shall be determined without regard to—

(1) any gain which is attributable to real property, or an intangible asset, which is not an integral part of a DC Zone business, and

(2) any gain attributable to periods before January 1, 1998, or after December 31, 2016.

(Added Pub. L. 105–34, title VII, §701(a), Aug. 5, 1997, 111 Stat. 864; amended Pub. L. 105–206, title VI, §6008(c), July 22, 1998, 112 Stat. 811; Pub. L. 106–554, §1(a)(7) [title I, §§116(b)(5), 164(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–603, 2763A–625; Pub. L. 108–311, title III, §310(c)(1)–(2)(B), Oct. 4, 2004, 118 Stat. 1180; Pub. L. 109–432, div. A, title I, §110(c)(1)–(2)(B), Dec. 20, 2006, 120 Stat. 2940; Pub. L. 110–343, div. C, title III, §322(c)(1), (2)(A), (B), Oct. 3, 2008, 122 Stat. 3874; Pub. L. 111–312, title VII, §754(c), Dec. 17, 2010, 124 Stat. 3321.)

AMENDMENTS

2010—Subsec. (b). Pub. L. 111–312, §754(c)(1), substituted "2012" for "2010" wherever appearing.

Subsec. (e)(2). Pub. L. 111–312, §754(c)(2)(A), substituted "2016" for "2014" in heading and text.

Subsec. (g)(2). Pub. L. 111–312, §754(c)(2)(B), substituted "2016" for "2014".

2008—Subsec. (b). Pub. L. 110–343, §322(c)(1), substituted "2010" for "2008" wherever appearing.

Subsec. (e)(2). Pub. L. 110–343, §322(c)(2)(A), substituted "2014" for "2012" in heading and text.

Subsec. (g)(2). Pub. L. 110–343, §322(c)(2)(B), substituted "2014" for "2012".

2006—Subsec. (b). Pub. L. 109–432, §110(c)(1), substituted "2008" for "2006" wherever appearing.

Subsec. (e)(2). Pub. L. 109–432, §110(c)(2)(A), substituted "2012" for "2010" in heading and text.

Subsec. (g)(2). Pub. L. 109–432, §110(c)(2)(B), substituted "2012" for "2010".

2004—Subsec. (b). Pub. L. 108–311, §310(c)(1), substituted "2006" for "2004" wherever appearing.

Subsec. (e)(2). Pub. L. 108–311, §310(c)(2)(A), substituted "2010" for "2008" in heading and text.

Subsec. (g)(2). Pub. L. 108–311, §310(c)(2)(B), substituted "2010" for "2008".

2000—Subsec. (b). Pub. L. 106–554, §1(a)(7) [title I, §164(b)(1)], substituted "2004" for "2003" wherever appearing.

Subsec. (c). Pub. L. 106–554, §1(a)(7) [title I, §116(b)(5)], substituted "section 1397C" for "section 1397B" in introductory provisions and in par. (2).

Subsec. (e)(2). Pub. L. 106–554, §1(a)(7) [title I, §164(b)(2)], substituted "2008" for "2007" in heading and text.

Subsec. (g)(2). Pub. L. 106–554, §1(a)(7) [title I, §164(b)(2)], substituted "2008" for "2007".

1998—Subsec. (b)(5). Pub. L. 105–206, §6008(c)(1), added par. (5).

Subsec. (b)(6). Pub. L. 105–206, §6008(c)(2), substituted "(4)(A)(i) or (ii)" for "(4)(A)(ii)".

Subsec. (c). Pub. L. 105–206, §6008(c)(3), struck out "entity which is an" before "enterprise zone" in introductory provisions.

Subsec. (d)(2). Pub. L. 105–206, §6008(c)(4), inserted "as determined on the basis of the 1990 census" after "percent".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–312 applicable to property acquired or substantially improved after Dec. 31, 2009, see section 754(e)(3) of Pub. L. 111–312, set out as a note under section 1400 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title III, §322(c)(3), Oct. 3, 2008, 122 Stat. 3874, provided that:

"(A) EXTENSION.—The amendments made by paragraph (1) [amending this section] shall apply to acquisitions after December 31, 2007.

"(B) CONFORMING AMENDMENTS.—The amendments made by paragraph (2) [amending this section and section 1400F of this title] shall take effect on the date of the enactment of this Act [Oct. 3, 2008]."

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title I, §110(c)(3), Dec. 20, 2006, 120 Stat. 2940, provided that:

"(A) EXTENSION.—The amendments made by paragraph (1) [amending this section] shall apply to acquisitions after December 31, 2005.

"(B) CONFORMING AMENDMENTS.—The amendments made by paragraph (2) [amending this section and section 1400F of this title] shall take effect on the date of the enactment of this Act [Dec. 20, 2006]."

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 effective Jan. 1, 2004, see section 310(e)(1) of Pub. L. 108–311, set out as a note under section 1400 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by section 1(a)(7) [title I, §116(b)(5)] of Pub. L. 106–554 applicable to qualified empowerment zone assets acquired after Dec. 21, 2000, see section 1(a)(7) [title I, §116(c)] of Pub. L. 106–554, set out as a note under section 1016 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

§1400C. First-time homebuyer credit for District of Columbia

(a) Allowance of credit

In the case of an individual who is a first-time homebuyer of a principal residence in the District of Columbia during any taxable year, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to so much of the purchase price of the residence as does not exceed $5,000.

(b) Limitation based on modified adjusted gross income

(1) In general

The amount allowable as a credit under subsection (a) (determined without regard to this subsection and subsection (d)) for the taxable year shall be reduced (but not below zero) by the amount which bears the same ratio to the credit so allowable as—

(A) the excess (if any) of—

(i) the taxpayer's modified adjusted gross income for such taxable year, over

(ii) $70,000 ($110,000 in the case of a joint return), bears to

(B) $20,000.

(2) Modified adjusted gross income

For purposes of paragraph (1), the term "modified adjusted gross income" means the adjusted gross income of the taxpayer for the taxable year increased by any amount excluded from gross income under section 911, 931, or 933.

(c) First-time homebuyer

For purposes of this section—

(1) In general

The term "first-time homebuyer" means any individual if such individual (and if married, such individual's spouse) had no present ownership interest in a principal residence in the District of Columbia during the 1-year period ending on the date of the purchase of the principal residence to which this section applies.

(2) One-time only

If an individual is treated as a first-time homebuyer with respect to any principal residence, such individual may not be treated as a first-time homebuyer with respect to any other principal residence.

(3) Principal residence

The term "principal residence" has the same meaning as when used in section 121.

(d) Carryforward of unused credit

If the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under subpart A of part IV of subchapter A (other than this section and section 25D), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year.

(e) Special rules

For purposes of this section—

(1) Allocation of dollar limitation

(A) Married individuals filing separately

In the case of a married individual filing a separate return, subsection (a) shall be applied by substituting "$2,500" for "$5,000".

(B) Other taxpayers

If 2 or more individuals who are not married purchase a principal residence, the amount of the credit allowed under subsection (a) shall be allocated among such individuals in such manner as the Secretary may prescribe, except that the total amount of the credits allowed to all such individuals shall not exceed $5,000.

(2) Purchase

(A) In general

The term "purchase" means any acquisition, but only if—

(i) the property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of losses under section 267 or 707(b) (but, in applying section 267(b) and (c) for purposes of this section, paragraph (4) of section 267(c) shall be treated as providing that the family of an individual shall include only his spouse, ancestors, and lineal descendants), and

(ii) the basis of the property in the hands of the person acquiring it is not determined—

(I) in whole or in part by reference to the adjusted basis of such property in the hands of the person from whom acquired, or

(II) under section 1014(a) (relating to property acquired from a decedent).

(B) Construction

A residence which is constructed by the taxpayer shall be treated as purchased by the taxpayer on the date the taxpayer first occupies such residence.

(3) Purchase price

The term "purchase price" means the adjusted basis of the principal residence on the date such residence is purchased.

(4) Coordination with national first-time homebuyers credit

No credit shall be allowed under this section to any taxpayer with respect to the purchase of a residence after December 31, 2008, if a credit under section 36 is allowable to such taxpayer (or the taxpayer's spouse) with respect to such purchase.

(f) Reporting

If the Secretary requires information reporting under section 6045 by a person described in subsection (e)(2) thereof to verify the eligibility of taxpayers for the credit allowable by this section, the exception provided by section 6045(e)(5) shall not apply.

(g) Credit treated as nonrefundable personal credit

For purposes of this title, the credit allowed by this section shall be treated as a credit allowable under subpart A of part IV of subchapter A of this chapter.

(h) Basis adjustment

For purposes of this subtitle, if a credit is allowed under this section with respect to the purchase of any residence, the basis of such residence shall be reduced by the amount of the credit so allowed.

(i) Application of section

This section shall apply to property purchased after August 4, 1997, and before January 1, 2012.

(Added Pub. L. 105–34, title VII, §701(a), Aug. 5, 1997, 111 Stat. 867; amended Pub. L. 105–206, title VI, §6008(d)(1)–(5), July 22, 1998, 112 Stat. 811, 812; Pub. L. 106–170, title V, §510, Dec. 17, 1999, 113 Stat. 1924; Pub. L. 106–554, §1(a)(7) [title I, §163], Dec. 21, 2000, 114 Stat. 2763, 2763A–625; Pub. L. 107–16, title II, §§201(b)(2)(H), 202(f)(2)(C), title VI, §618(b)(2)(E), June 7, 2001, 115 Stat. 46, 49, 108; Pub. L. 107–147, title IV, §417(23)(B), Mar. 9, 2002, 116 Stat. 57; Pub. L. 108–311, title III, §310(d), Oct. 4, 2004, 118 Stat. 1180; Pub. L. 109–58, title XIII, §1335(b)(3), Aug. 8, 2005, 119 Stat. 1036; Pub. L. 109–135, title IV, §402(i)(3)(F), (4), Dec. 21, 2005, 119 Stat. 2614, 2615; Pub. L. 109–432, div. A, title I, §110(d)(1), Dec. 20, 2006, 120 Stat. 2940; Pub. L. 110–343, div. B, title II, §205(d)(1)(E), div. C, title III, §322(d)(1), Oct. 3, 2008, 122 Stat. 3839,

3874; Pub. L. 111–5, div. B, title I, §§1004(b)(6), 1006(d)(1), 1142(b)(1)(F), 1144(b)(1)(F), Feb. 17, 2009, 123 Stat. 314, 316, 330, 332; Pub. L. 111–92, §11(i), Nov. 6, 2009, 123 Stat. 2991; Pub. L. 111–148, title X, §10909(b)(2)(M), (c), Mar. 23, 2010, 124 Stat. 1023; Pub. L. 111–312, title I, §101(b)(1), title VII, §754(d), Dec. 17, 2010, 124 Stat. 3298, 3322; Pub. L. 112–240, title I, §104(c)(2)(L), Jan. 2, 2013, 126 Stat. 2322.)

AMENDMENTS

2013—Subsec. (d). Pub. L. 112–240 amended subsec. (d) generally. Prior to amendment, subsec. (d) related to carryforward of unused credit with a rule for years in which all personal credits allowed against regular and alternative minimum tax and a rule for other years.

2010—Subsec. (d)(2). Pub. L. 111–148, §10909(b)(2)(M), (c), as amended by Pub. L. 111–312, §101(b)(1), temporarily struck out "23," after "this section and sections". See Effective and Termination Dates of 2010 Amendment note below.

Subsec. (i). Pub. L. 111–312, §754(d), substituted "2012" for "2010".

2009—Subsec. (d)(2). Pub. L. 111–5, §1144(b)(1)(F), substituted "30, and 30B" for "and 30".

Pub. L. 111–5, §1142(b)(1)(F), which directed the substitution of "25D, and 30" for "and 25D", was executed by making the substitution for "25D", to reflect the probable intent of Congress and the amendment by Pub. L. 110–343, §205(d)(1)(E). See 2008 Amendment note below.

Pub. L. 111–5, §1004(b)(6), inserted "25A(i)," after "24,".

Subsec. (e)(4). Pub. L. 111–92 struck out "and before December 1, 2009," after "December 31, 2008,".

Pub. L. 111–5, §1006(d)(1), added par. (4).

2008—Subsec. (d)(2). Pub. L. 110–343, §205(d)(1)(E), substituted "25D, and 30D" for "and 25D".

Subsec. (i). Pub. L. 110–343, §322(d)(1), substituted "2010" for "2008".

2006—Subsec. (i). Pub. L. 109–432 substituted "2008" for "2006".

2005—Subsec. (d). Pub. L. 109–135, §402(i)(3)(F), amended heading and text of subsec. (d) generally. Prior to amendment, text read as follows: "If the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under subpart A of part IV of subchapter A (other than this section and sections 23, 24, and 25B), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year."

Pub. L. 109–58, §1335(b)(3), which directed amendment of subsec. (d) by substituting "this section and section 25D" for "this section", was repealed by Pub. L. 109–135, §402(i)(4). See Effective and Termination Dates of 2005 Amendments notes below.

2004—Subsec. (i). Pub. L. 108–311 substituted "2006" for "2004".

2002—Subsec. (d). Pub. L. 107–147 amended directory language of Pub. L. 107–16, §618(b)(2)(E). See 2001 Amendment note below.

2001—Subsec. (d). Pub. L. 107–16, §618(b)(2)(E), as amended by Pub. L. 107–147, substituted ", 24, and 25B" for "and 24".

Pub. L. 107–16, §202(f)(2)(C), substituted "sections 23 and 24" for "section 24".

Pub. L. 107–16, §201(b)(2)(H), inserted "and section 24" after "this section".

2000—Subsec. (i). Pub. L. 106–554 substituted "2004" for "2002".

1999—Subsec. (i). Pub. L. 106–170 substituted "2002" for "2001".

1998—Subsec. (b)(1). Pub. L. 105–206, §6008(d)(1), inserted "and subsection (d)" after "this subsection" in introductory provisions.

Subsec. (c)(1). Pub. L. 105–206, §6008(d)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "The term 'first-time homebuyer' has the same meaning as when used in section 72(t)(8)(D)(i), except that 'principal residence in the District of Columbia during the 1-year period' shall be substituted for 'principal residence during the 2-year period' in subclause (I) thereof."

Subsec. (e)(2)(B). Pub. L. 105–206, §6008(d)(3), inserted "on the date the taxpayer first occupies such residence" before the period at end.

Subsec. (e)(3). Pub. L. 105–206, §6008(d)(4), substituted "on the date such residence is purchased." for "on the date of acquisition (within the meaning of section 72(t)(8)(D)(iii))."

Subsec. (i). Pub. L. 105–206, §6008(d)(5), substituted "Application of section" for "Termination" in heading and amended text generally. Prior to amendment, text read as follows: "This section shall not apply to any property purchased after December 31, 2000."

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112–240 applicable to taxable years beginning after Dec. 31, 2011, see section 104(d) of Pub. L. 112–240, set out as a note under section 23 of this title.

EFFECTIVE AND TERMINATION DATES OF 2010 AMENDMENT

Amendment by section 754(d) of Pub. L. 111–312 applicable to homes purchased after Dec. 31, 2009, see section 754(e)(4) of Pub. L. 111–312, set out as a note under section 1400 of this title.

Amendment by Pub. L. 111–148 terminated applicable to taxable years beginning after Dec. 31, 2011, and section is amended to read as if such amendment had never been enacted, see section 10909(c) of Pub. L. 111–148, set out as a note under section 1 of this title.

Amendment by Pub. L. 111–148 applicable to taxable years beginning after Dec. 31, 2009, see section 10909(d) of Pub. L. 111–148, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–92 applicable to residences purchased after Nov. 30, 2009, see section 11(j)(2) of Pub. L. 111–92, set out as a note under section 36 of this title.

Amendment by section 1004(b)(6) of Pub. L. 111–5 applicable to taxable years beginning after Dec. 31, 2008, see section 1004(d) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

Amendment by section 1006(d)(1) of Pub. L. 111–5 applicable to residences purchased after Dec. 31, 2008, see section 1006(f) of Pub. L. 111–5, set out as a note under section 36 of this title.

Amendment by section 1142(b)(1)(F) of Pub. L. 111–5 applicable to vehicles acquired after Feb. 17, 2009, see section 1142(c) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

Amendment by section 1144(b)(1)(F) of Pub. L. 111–5 applicable to taxable years beginning after Dec. 31, 2008, see section 1144(c) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by section 205(d)(1)(E) of Pub. L. 110–343 applicable to taxable years beginning after Dec. 31, 2008, see section 205(e) of Pub. L. 110–343, set out as an Effective and Termination Dates of 2008 Amendment note under section 24 of this title.

Pub. L. 110–343, div. C, title III, §322(d)(2), Oct. 3, 2008, 122 Stat. 3874, provided that: "The amendment made by this subsection [amending this section] shall apply to property purchased after December 31, 2007."

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title I, §110(d)(2), Dec. 20, 2006, 120 Stat. 2940, provided that: "The amendment made by this subsection [amending this section] shall apply to property purchased after December 31, 2005."

EFFECTIVE AND TERMINATION DATES OF 2005 AMENDMENT

Amendment by section 402(i)(3)(F) of Pub. L. 109–135 subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, §901, in the same manner as the provisions of such Act to which such amendment relates, see section 402(i)(3)(H) of Pub. L. 109–135, set out as a note under section 23 of this title. Title IX of Pub. L. 107–16 was repealed by Pub. L. 112–240, title I, §101(a)(1), Jan. 2, 2013, 126 Stat. 2315.

The Internal Revenue Code of 1986 to be applied and administered as if the amendments made by section 1135(b)(1)–(3) of Pub. L. 109–58 had never been enacted, see section 402(i)(4) of Pub. L. 109–135, set out as a note under section 23 of this title.

Amendments by Pub. L. 109–135 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109–58, to which they relate, except that amendment by section 402(i)(3)(F) of Pub. L. 109–135 is applicable to taxable years beginning after Dec. 31, 2005, see section 402(m) of Pub. L. 109–135, set out as a note under section 23 of this title.

Amendment by Pub. L. 109–58 applicable to property placed in service after Dec. 31, 2005, in taxable years ending after such date, see section 1335(c) of Pub. L. 109–58, set out as a note under section 23 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 effective Jan. 1, 2004, see section 310(e)(1) of Pub. L. 108–311, set out as a note under section 1400 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 inapplicable to taxable years beginning during 2004 or 2005, see section 312(b)(2) of Pub. L. 108–311, set out as a note under section 23 of this title.

Amendment by Pub. L. 107–16 inapplicable to taxable years beginning during 2002 and 2003, see section

601(b)(2) of Pub. L. 107–147, set out as a note under section 23 of this title.

Amendment by section 201(b)(2)(H) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 201(e)(2) of Pub. L. 107–16, set out as a note under section 24 of this title.

Amendment by section 202(f)(2)(C) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 202(g)(1) of Pub. L. 107–16, set out as a note under section 23 of this title.

Amendment by section 618(b)(2)(E) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 618(d) of Pub. L. 107–16, set out as a note under section 24 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

Subchapter X—Renewal Communities

Part

I. Designation.

II. Renewal community capital gain; renewal community business.

III. Additional incentives.

PART I—DESIGNATION

Sec.

1400E. Designation of renewal communities.

§1400E. Designation of renewal communities

(a) Designation

(1) Definitions

For purposes of this title, the term "renewal community" means any area—

(A) which is nominated by 1 or more local governments and the State or States in which it is located for designation as a renewal community (hereafter in this section referred to as a "nominated area"), and

(B) which the Secretary of Housing and Urban Development designates as a renewal community, after consultation with—

(i) the Secretaries of Agriculture, Commerce, Labor, and the Treasury; [1] the Director of the Office of Management and Budget, and the Administrator of the Small Business Administration, and

(ii) in the case of an area on an Indian reservation, the Secretary of the Interior.

(2) Number of designations

(A) In general

Not more than 40 nominated areas may be designated as renewal communities.

(B) Minimum designation in rural areas

Of the areas designated under paragraph (1), at least 12 must be areas—

(i) which are within a local government jurisdiction or jurisdictions with a population of less than 50,000,

(ii) which are outside of a metropolitan statistical area (within the meaning of section 143(k)(2)(B)), or

(iii) which are determined by the Secretary of Housing and Urban Development, after consultation with the Secretary of Commerce, to be rural areas.

(3) Areas designated based on degree of poverty, etc.

(A) In general

Except as otherwise provided in this section, the nominated areas designated as renewal communities under this subsection shall be those nominated areas with the highest average ranking with respect to the criteria described in subparagraphs (B), (C), and (D) of subsection (c)(3). For purposes of the preceding sentence, an area shall be ranked within each such criterion on the basis of the amount by which the area exceeds such criterion, with the area which exceeds such criterion by the greatest amount given the highest ranking.

(B) Exception where inadequate course of action, etc.

An area shall not be designated under subparagraph (A) if the Secretary of Housing and Urban Development determines that the course of action described in subsection (d)(2) with respect to such area is inadequate.

(C) Preference for enterprise communities and empowerment zones

With respect to the first 20 designations made under this section, a preference shall be provided to those nominated areas which are enterprise communities or empowerment zones (and are otherwise eligible for designation under this section).

(4) Limitation on designations

(A) Publication of regulations

The Secretary of Housing and Urban Development shall prescribe by regulation no later than 4 months after the date of the enactment of this section, after consultation with the officials described in paragraph (1)(B)—

(i) the procedures for nominating an area under paragraph (1)(A),

(ii) the parameters relating to the size and population characteristics of a renewal community, and

(iii) the manner in which nominated areas will be evaluated based on the criteria specified in subsection (d).

(B) Time limitations

The Secretary of Housing and Urban Development may designate nominated areas as renewal communities only during the period beginning on the first day of the first month following the month in which the regulations described in subparagraph (A) are prescribed and ending on December 31, 2001.

(C) Procedural rules

The Secretary of Housing and Urban Development shall not make any designation of a nominated area as a renewal community under paragraph (2) unless—

(i) the local governments and the States in which the nominated area is located have the authority—

(I) to nominate such area for designation as a renewal community,

(II) to make the State and local commitments described in subsection (d), and

(III) to provide assurances satisfactory to the Secretary of Housing and Urban Development that such commitments will be fulfilled,

(ii) a nomination regarding such area is submitted in such a manner and in such form, and contains such information, as the Secretary of Housing and Urban Development shall by regulation prescribe, and

(iii) the Secretary of Housing and Urban Development determines that any information furnished is reasonably accurate.

(5) Nomination process for Indian reservations

For purposes of this subchapter, in the case of a nominated area on an Indian reservation, the reservation governing body (as determined by the Secretary of the Interior) shall be treated as being both the State and local governments with respect to such area.

(b) Period for which designation is in effect

(1) In general

Any designation of an area as a renewal community shall remain in effect during the period beginning on January 1, 2002, and ending on the earliest of—

(A) December 31, 2009,

(B) the termination date designated by the State and local governments in their nomination, or

(C) the date the Secretary of Housing and Urban Development revokes such designation.

(2) Revocation of designation

The Secretary of Housing and Urban Development may revoke the designation under this section of an area if such Secretary determines that the local government or the State in which the area is located—

(A) has modified the boundaries of the area, or

(B) is not complying substantially with, or fails to make progress in achieving, the State or local commitments, respectively, described in subsection (d).

(3) Earlier termination of certain benefits if earlier termination of designation

If the designation of an area as a renewal community terminates before December 31, 2009, the day after the date of such termination shall be substituted for "January 1, 2010" each place it appears in sections 1400F and 1400J with respect to such area.

(c) Area and eligibility requirements

(1) In general

The Secretary of Housing and Urban Development may designate a nominated area as a renewal community under subsection (a) only if the area meets the requirements of paragraphs (2) and (3) of this subsection.

(2) Area requirements

A nominated area meets the requirements of this paragraph if—

(A) the area is within the jurisdiction of one or more local governments,

(B) the boundary of the area is continuous, and

(C) the area—

(i) has a population of not more than 200,000 and at least—

(I) 4,000 if any portion of such area (other than a rural area described in subsection (a)(2)(B)(i)) is located within a metropolitan statistical area (within the meaning of section 143(k)(2)(B)) which has a population of 50,000 or greater, or

(II) 1,000 in any other case, or

(ii) is entirely within an Indian reservation (as determined by the Secretary of the Interior).

(3) Eligibility requirements

A nominated area meets the requirements of this paragraph if the State and the local governments in which it is located certify in writing (and the Secretary of Housing and Urban Development, after such review of supporting data as he deems appropriate, accepts such certification) that—

(A) the area is one of pervasive poverty, unemployment, and general distress,

(B) the unemployment rate in the area, as determined by the most recent available data, was at least 1½ times the national unemployment rate for the period to which such data relate,

(C) the poverty rate for each population census tract within the nominated area is at least 20 percent, and

(D) in the case of an urban area, at least 70 percent of the households living in the area have incomes below 80 percent of the median income of households within the jurisdiction of the local government (determined in the same manner as under section 119(b)(2) of the Housing and Community Development Act of 1974).

(4) Consideration of other factors

The Secretary of Housing and Urban Development, in selecting any nominated area for designation as a renewal community under this section—

(A) shall take into account—

(i) the extent to which such area has a high incidence of crime, or

(ii) if such area has census tracts identified in the May 12, 1998, report of the Government Accountability Office regarding the identification of economically distressed areas, and

(B) with respect to 1 of the areas to be designated under subsection (a)(2)(B), may, in lieu of any criteria described in paragraph (3), take into account the existence of outmigration from the area.

(d) Required State and local commitments

(1) In general

The Secretary of Housing and Urban Development may designate any nominated area as a renewal community under subsection (a) only if—

(A) the local government and the State in which the area is located agree in writing that, during any period during which the area is a renewal community, such governments will follow a specified course of action which meets the requirements of paragraph (2) and is designed to reduce the various burdens borne by employers or employees in such area, and

(B) the economic growth promotion requirements of paragraph (3) are met.

(2) Course of action

(A) In general

A course of action meets the requirements of this paragraph if such course of action is a written document, signed by a State (or local government) and neighborhood organizations, which evidences a partnership between such State or government and community-based organizations and which commits each signatory to specific and measurable goals, actions, and timetables. Such course of action shall include at least 4 of the following:

(i) A reduction of tax rates or fees applying within the renewal community.

(ii) An increase in the level of efficiency of local services within the renewal community.

(iii) Crime reduction strategies, such as crime prevention (including the provision of crime prevention services by nongovernmental entities).

(iv) Actions to reduce, remove, simplify, or streamline governmental requirements applying within the renewal community.

(v) Involvement in the program by private entities, organizations, neighborhood organizations, and community groups, particularly those in the renewal community, including a commitment from such private entities to provide jobs and job training for, and technical, financial, or other assistance to, employers, employees, and residents from the renewal community.

(vi) The gift (or sale at below fair market value) of surplus real property (such as land, homes, and commercial or industrial structures) in the renewal community to neighborhood organizations, community development corporations, or private companies.

(B) Recognition of past efforts

For purposes of this section, in evaluating the course of action agreed to by any State or local government, the Secretary of Housing and Urban Development shall take into account the past efforts of such State or local government in reducing the various burdens borne by employers and employees in the area involved.

(3) Economic growth promotion requirements

The economic growth promotion requirements of this paragraph are met with respect to a nominated area if the local government and the State in which such area is located certify in writing that such government and State (respectively) have repealed or reduced, will not enforce,

or will reduce within the nominated area at least 4 of the following:

(A) Licensing requirements for occupations that do not ordinarily require a professional degree.

(B) Zoning restrictions on home-based businesses which do not create a public nuisance.

(C) Permit requirements for street vendors who do not create a public nuisance.

(D) Zoning or other restrictions that impede the formation of schools or child care centers.

(E) Franchises or other restrictions on competition for businesses providing public services, including taxicabs, jitneys, cable television, or trash hauling.

This paragraph shall not apply to the extent that such regulation of businesses and occupations is necessary for and well-tailored to the protection of health and safety.

(e) Coordination with treatment of empowerment zones and enterprise communities

For purposes of this title, the designation under section 1391 of any area as an empowerment zone or enterprise community shall cease to be in effect as of the date that the designation of any portion of such area as a renewal community takes effect.

(f) Definitions and special rules

For purposes of this subchapter—

(1) Governments

If more than one government seeks to nominate an area as a renewal community, any reference to, or requirement of, this section shall apply to all such governments.

(2) Local government

The term "local government" means—

(A) any county, city, town, township, parish, village, or other general purpose political subdivision of a State, and

(B) any combination of political subdivisions described in subparagraph (A) recognized by the Secretary of Housing and Urban Development.

(3) Application of rules relating to census tracts

The rules of section 1392(b)(4) shall apply.

(4) Census data

Population and poverty rate shall be determined by using 1990 census data.

(g) Expansion of designated area based on 2000 census

(1) In general

At the request of all governments which nominated an area as a renewal community, the Secretary of Housing and Urban Development may expand the area of such community to include any census tract if—

(A)(i) at the time such community was nominated, such community would have met the requirements of this section using 1990 census data even if such tract had been included in such community, and

(ii) such tract has a poverty rate using 2000 census data which exceeds the poverty rate for such tract using 1990 census data, or

(B)(i) such community would be described in subparagraph (A)(i) but for the failure to meet one or more of the requirements of paragraphs (2)(C)(i), (3)(C), and (3)(D) of subsection (c) using 1990 census data,

(ii) such community, including such tract, has a population of not more than 200,000 using either 1990 census data or 2000 census data,

(iii) such tract meets the requirement of subsection (c)(3)(C) using 2000 census data, and

(iv) such tract meets the requirement of subparagraph (A)(ii).

(2) Exception for certain census tracts with low population in 1990

In the case of any census tract which did not have a poverty rate determined by the Bureau of the Census using 1990 census data, paragraph (1)(B) shall be applied without regard to clause (iv) thereof.

(3) Special rule for certain census tracts with low population in 2000

At the request of all governments which nominated an area as a renewal community, the Secretary of Housing and Urban Development may expand the area of such community to include any census tract if—

(A) either—

(i) such tract has no population using 2000 census data, or

(ii) no poverty rate for such tract is determined by the Bureau of the Census using 2000 census data,

(B) such tract is one of general distress, and

(C) such community, including such tract, meets the requirements of subparagraphs (A) and (B) of subsection (c)(2).

(4) Period in effect

Any expansion under this subsection shall take effect as provided in subsection (b).

(Added Pub. L. 106–554, §1(a)(7) [title I, §101(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–589; amended Pub. L. 108–357, title II, §222(a), Oct. 22, 2004, 118 Stat. 1431; Pub. L. 109–135, title IV, §412(rr)(1), Dec. 21, 2005, 119 Stat. 2640.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (a)(4)(A), is the date of enactment of Pub. L. 106–554, which was approved Dec. 21, 2000.

Section 119(b)(2) of the Housing and Community Development Act of 1974, referred to in subsec. (c)(3)(D), is classified to section 5318(b)(2) of Title 42, The Public Health and Welfare.

AMENDMENTS

2005—Subsec. (c)(4)(A)(ii). Pub. L. 109–135 substituted "Government Accountability Office" for "General Accounting Office".

2004—Subsec. (g). Pub. L. 108–357 added subsec. (g).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title II, §222(b), Oct. 22, 2004, 118 Stat. 1432, provided that: "The amendment made by subsection (a) [amending this section] shall take effect as if included in the amendments made by section 101 of the Community Renewal Tax Relief Act of 2000 [H.R. 5662, as enacted by section 1(a)(7) of Pub. L. 106–554, Dec. 21, 2000, 114 Stat. 2763, 2763A–587]."

AUDIT AND REPORT

Pub. L. 106–554, §1(a)(7) [title I, §101(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–599, provided that: "Not later than January 31 of 2004, 2007, and 2010, the Comptroller General of the United States shall, pursuant to an audit of the renewal community program established under section 1400E of the Internal Revenue Code of 1986 (as added by subsection (a)) and the empowerment zone and enterprise community program under subchapter U of chapter 1 of such Code, report to Congress on such program and its effect on poverty, unemployment, and economic growth within the designated renewal communities, empowerment zones, and enterprise communities."

ADVISORY COUNCIL ON COMMUNITY RENEWAL

Pub. L. 106–554, §1(a)(7) [title I, subtitle E, part II], Dec. 21, 2000, 114 Stat. 2763, 2763A–622, as amended by Pub. L. 107–147, title IV, §417(21), Mar. 9, 2002, 116 Stat. 57; Pub. L. 108–311, title IV, §408(b)(1), Oct. 4, 2004, 118 Stat. 1192, provided that:

"SEC. 151. SHORT TITLE.

"This part may be cited as the 'Advisory Council on Community Renewal Act'.

"SEC. 152. ESTABLISHMENT.

"There is established an advisory council to be known as the 'Advisory Council on Community Renewal' (in this part referred to as the 'Advisory Council').

"SEC. 153. DUTIES OF ADVISORY COUNCIL.

"The Advisory Council shall advise the Secretary of Housing and Urban Development (in this part referred to as the 'Secretary') on the designation of renewal communities pursuant to the amendment made by section 101 [adding this subchapter and amending section 469 of this title] and on the exercise of any other authority granted to the Secretary pursuant to the amendments made by this title [see Tables for classification].

"SEC. 154. MEMBERSHIP.

"(a) NUMBER AND APPOINTMENT.—The Advisory Council shall be composed of 7 members appointed by the Secretary.

"(b) CHAIRPERSON.—The Chairperson of the Advisory Council (in this part referred to as the 'Chairperson') shall be designated by the Secretary at the time of the appointment.

"(c) TERMS.—Each member shall be appointed for the life of the Advisory Council.

"(d) BASIC PAY.—

"(1) CHAIRPERSON.—The Chairperson shall be paid at a rate equal to the daily rate of basic pay for level III of the Executive Schedule for each day (including travel time) during which the Chairperson is engaged in the actual performance of duties vested in the Advisory Council.

"(2) OTHER MEMBERS.—Members other than the Chairperson shall each be paid at a rate equal to the daily rate of basic pay for level IV of the Executive Schedule for each day (including travel time) during which they are engaged in the actual performance of duties vested in the Advisory Council.

"(e) TRAVEL EXPENSES.—Each member shall receive travel expenses, including per diem in lieu of subsistence, in accordance with applicable provisions under subchapter I of chapter 57 of title 5, United States Code.

"(f) QUORUM.—Four members of the Advisory Council shall constitute a quorum but a lesser number may hold hearings.

"(g) MEETINGS.—The Advisory Council shall meet at the call of the Secretary or the Chairperson.

"SEC. 155. POWERS OF ADVISORY COUNCIL.

"(a) HEARINGS AND SESSIONS.—The Advisory Council may, for the purpose of carrying out this part, hold hearings, sit and act at times and places, take testimony, and receive evidence as the Advisory Council considers appropriate. The Advisory Council may administer oaths or affirmations to witnesses appearing before it.

"(b) POWERS OF MEMBERS AND AGENTS.—Any member or agent of the Advisory Council may, if authorized by the Advisory Council, take any action which the Advisory Council is authorized to take by this section.

"(c) OBTAINING OFFICIAL DATA.—The Advisory Council may secure directly from any department or agency of the United States information necessary to enable it to carry out this part. Upon request of the Chairperson of the Advisory Council, the head of that department or agency shall furnish that information to the Advisory Council.

"SEC. 156. REPORTS.

"(a) ANNUAL REPORTS.—The Advisory Council shall submit to the Secretary an annual report for each fiscal year.

"(b) INTERIM REPORTS.—The Advisory Council may submit to the Secretary such interim reports as the Advisory Council considers appropriate.

"(c) FINAL REPORT.—The Advisory Council shall transmit a final report to the Secretary not later than September 30, 2003. The final report shall contain a detailed statement of the findings and conclusions of the Advisory Council, together with any recommendations for legislative or administrative action that the Advisory Council considers appropriate.

"SEC. 157. TERMINATION.

"(a) IN GENERAL.—The Advisory Council shall terminate 30 days after submitting its final report under section 156(c).

"(b) EXTENSION.—Notwithstanding subsection (a), the Secretary may postpone the termination of the Advisory Council for a period not to exceed 3 years after the Advisory Council submits its final report under section 156(c).

"SEC. 158. APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.

"The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Advisory Council.

"SEC. 159. RESOURCES.

"The Secretary shall provide to the Advisory Council appropriate resources so that the Advisory Council may carry out its duties and functions under this part.

"SEC. 160. EFFECTIVE DATE.

"This part shall be effective 30 days after the date of its enactment [Dec. 21, 2000]."

[1] *So in original. The semicolon probably should be a comma.*

PART II—RENEWAL COMMUNITY CAPITAL GAIN; RENEWAL COMMUNITY BUSINESS

Sec.
1400F. Renewal community capital gain.
1400G. Renewal community business defined.

§1400F. Renewal community capital gain

(a) General rule

Gross income does not include any qualified capital gain from the sale or exchange of a qualified community asset held for more than 5 years.

(b) Qualified community asset

For purposes of this section—

(1) In general

The term "qualified community asset" means—

(A) any qualified community stock,

(B) any qualified community partnership interest, and

(C) any qualified community business property.

(2) Qualified community stock

(A) In general

Except as provided in subparagraph (B), the term "qualified community stock" means any stock in a domestic corporation if—

(i) such stock is acquired by the taxpayer after December 31, 2001, and before January 1, 2010, at its original issue (directly or through an underwriter) from the corporation solely in exchange for cash,

(ii) as of the time such stock was issued, such corporation was a renewal community business (or, in the case of a new corporation, such corporation was being organized for purposes of being a renewal community business), and

(iii) during substantially all of the taxpayer's holding period for such stock, such corporation qualified as a renewal community business.

(B) Redemptions

A rule similar to the rule of section 1202(c)(3) shall apply for purposes of this paragraph.

(3) Qualified community partnership interest

The term "qualified community partnership interest" means any capital or profits interest in a domestic partnership if—

(A) such interest is acquired by the taxpayer after December 31, 2001, and before January 1, 2010, from the partnership solely in exchange for cash,

(B) as of the time such interest was acquired, such partnership was a renewal community business (or, in the case of a new partnership, such partnership was being organized for

purposes of being a renewal community business), and

(C) during substantially all of the taxpayer's holding period for such interest, such partnership qualified as a renewal community business.

A rule similar to the rule of paragraph (2)(B) shall apply for purposes of this paragraph.

(4) Qualified community business property

(A) In general

The term "qualified community business property" means tangible property if—

(i) such property was acquired by the taxpayer by purchase (as defined in section 179(d)(2)) after December 31, 2001, and before January 1, 2010,

(ii) the original use of such property in the renewal community commences with the taxpayer, and

(iii) during substantially all of the taxpayer's holding period for such property, substantially all of the use of such property was in a renewal community business of the taxpayer.

(B) Special rule for substantial improvements

The requirements of clauses (i) and (ii) of subparagraph (A) shall be treated as satisfied with respect to—

(i) property which is substantially improved by the taxpayer before January 1, 2010, and

(ii) any land on which such property is located.

The determination of whether a property is substantially improved shall be made under clause (ii) of section 1400B(b)(4)(B), except that "December 31, 2001" shall be substituted for "December 31, 1997" in such clause.

(c) Qualified capital gain

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, the term "qualified capital gain" means any gain recognized on the sale or exchange of—

(A) a capital asset, or

(B) property used in the trade or business (as defined in section 1231(b)).

(2) Gain before 2002 or after 2014 not qualified

The term "qualified capital gain" shall not include any gain attributable to periods before January 1, 2002, or after December 31, 2014.

(3) Certain rules to apply

Rules similar to the rules of paragraphs (3), (4), and (5) of section 1400B(e) shall apply for purposes of this subsection.

(d) Certain rules to apply

For purposes of this section, rules similar to the rules of paragraphs (5), (6), and (7) of subsection (b), and subsections (f) and (g), of section 1400B shall apply; except that for such purposes section 1400B(g)(2) shall be applied by substituting "January 1, 2002" for "January 1, 1998" and "December 31, 2014" for "December 31, 2014".

(e) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this section, including regulations to prevent the abuse of the purposes of this section.

(Added Pub. L. 106–554, §1(a)(7) [title I, §101(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–594; amended Pub. L. 108–311, title III, §310(c)(2)(C), Oct. 4, 2004, 118 Stat. 1180; Pub. L. 109–432, div. A, title I, §110(c)(2)(C), Dec. 20, 2006, 120 Stat. 2940; Pub. L. 110–343, div. C, title III, §322(c)(2)(C), Oct. 3, 2008, 122 Stat. 3874.)

AMENDMENTS

2008—Subsec. (d). Pub. L. 110–343 substituted "2014'." for "2012'.".
2006—Subsec. (d). Pub. L. 109–432 substituted "2012" for "2010".
2004—Subsec. (d). Pub. L. 108–311 substituted "2010" for "2008".

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 effective Jan. 1, 2004, see section 310(e)(1) of Pub. L. 108–311, set out as a note under section 1400 of this title.

§1400G. Renewal community business defined

For purposes of this subchapter, the term "renewal community business" means any entity or proprietorship which would be a qualified business entity or qualified proprietorship under section 1397C if references to renewal communities were substituted for references to empowerment zones in such section.

(Added Pub. L. 106–554, §1(a)(7) [title I, §101(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–596.)

PART III—ADDITIONAL INCENTIVES

Sec.
1400H. Renewal community employment credit.
1400I. Commercial revitalization deduction.
1400J. Increase in expensing under section 179.

§1400H. Renewal community employment credit

(a) In general

Subject to the modification in subsection (b), a renewal community shall be treated as an empowerment zone for purposes of section 1396 with respect to wages paid or incurred after December 31, 2001.

(b) Modification

In applying section 1396 with respect to renewal communities—

(1) the applicable percentage shall be 15 percent, and

(2) subsection (c) thereof shall be applied by substituting "$10,000" for "$15,000" each place it appears.

(Added Pub. L. 106–554, §1(a)(7) [title I, §101(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–596.)

§1400I. Commercial revitalization deduction

(a) General rule

At the election of the taxpayer, either—

(1) one-half of any qualified revitalization expenditures chargeable to capital account with respect to any qualified revitalization building shall be allowable as a deduction for the taxable year in which the building is placed in service, or

(2) a deduction for all such expenditures shall be allowable ratably over the 120-month period beginning with the month in which the building is placed in service.

(b) Qualified revitalization buildings and expenditures

For purposes of this section—

(1) Qualified revitalization building

The term "qualified revitalization building" means any building (and its structural components) if—

(A) the building is placed in service by the taxpayer in a renewal community and the original use of the building begins with the taxpayer, or

(B) in the case of such building not described in subparagraph (A), such building—

(i) is substantially rehabilitated (within the meaning of section 47(c)(1)(C)) by the taxpayer, and

(ii) is placed in service by the taxpayer after the rehabilitation in a renewal community.

(2) Qualified revitalization expenditure

(A) In general

The term "qualified revitalization expenditure" means any amount properly chargeable to capital account for property for which depreciation is allowable under section 168 (without regard to this section) and which is—

(i) nonresidential real property (as defined in section 168(e)), or

(ii) section 1250 property (as defined in section 1250(c)) which is functionally related and subordinate to property described in clause (i).

(B) Certain expenditures not included

(i) Acquisition cost

In the case of a building described in paragraph (1)(B), the cost of acquiring the building or interest therein shall be treated as a qualified revitalization expenditure only to the extent that such cost does not exceed 30 percent of the aggregate qualified revitalization expenditures (determined without regard to such cost) with respect to such building.

(ii) Credits

The term "qualified revitalization expenditure" does not include any expenditure which the taxpayer may take into account in computing any credit allowable under this title unless the taxpayer elects to take the expenditure into account only for purposes of this section.

(c) Dollar limitation

The aggregate amount which may be treated as qualified revitalization expenditures with respect to any qualified revitalization building shall not exceed the lesser of—

(1) $10,000,000, or

(2) the commercial revitalization expenditure amount allocated to such building under this section by the commercial revitalization agency for the State in which the building is located.

(d) Commercial revitalization expenditure amount

(1) In general

The aggregate commercial revitalization expenditure amount which a commercial revitalization agency may allocate for any calendar year is the amount of the State commercial revitalization expenditure ceiling determined under this paragraph for such calendar year for such agency.

(2) State commercial revitalization expenditure ceiling

The State commercial revitalization expenditure ceiling applicable to any State—

(A) for each calendar year after 2001 and before 2010 is $12,000,000 for each renewal community in the State, and

(B) for each calendar year thereafter is zero.

(3) Commercial revitalization agency

For purposes of this section, the term "commercial revitalization agency" means any agency authorized by a State to carry out this section.

(4) Time and manner of allocations

Allocations under this section shall be made at the same time and in the same manner as under

paragraphs (1) and (7) of section 42(h).

(e) Responsibilities of commercial revitalization agencies

(1) Plans for allocation

Notwithstanding any other provision of this section, the commercial revitalization expenditure amount with respect to any building shall be zero unless—

(A) such amount was allocated pursuant to a qualified allocation plan of the commercial revitalization agency which is approved (in accordance with rules similar to the rules of section 147(f)(2) (other than subparagraph (B)(ii) thereof)) by the governmental unit of which such agency is a part, and

(B) such agency notifies the chief executive officer (or its equivalent) of the local jurisdiction within which the building is located of such allocation and provides such individual a reasonable opportunity to comment on the allocation.

(2) Qualified allocation plan

For purposes of this subsection, the term "qualified allocation plan" means any plan—

(A) which sets forth selection criteria to be used to determine priorities of the commercial revitalization agency which are appropriate to local conditions,

(B) which considers—

(i) the degree to which a project contributes to the implementation of a strategic plan that is devised for a renewal community through a citizen participation process,

(ii) the amount of any increase in permanent, full-time employment by reason of any project, and

(iii) the active involvement of residents and nonprofit groups within the renewal community, and

(C) which provides a procedure that the agency (or its agent) will follow in monitoring compliance with this section.

(f) Special rules

(1) Deduction in lieu of depreciation

The deduction provided by this section for qualified revitalization expenditures shall—

(A) with respect to the deduction determined under subsection (a)(1), be in lieu of any depreciation deduction otherwise allowable on account of one-half of such expenditures, and

(B) with respect to the deduction determined under subsection (a)(2), be in lieu of any depreciation deduction otherwise allowable on account of all of such expenditures.

(2) Basis adjustment, etc.

For purposes of sections 1016 and 1250, the deduction under this section shall be treated in the same manner as a depreciation deduction. For purposes of section 1250(b)(5), the straight line method of adjustment shall be determined without regard to this section.

(3) Substantial rehabilitations treated as separate buildings

A substantial rehabilitation (within the meaning of section 47(c)(1)(C)) of a building shall be treated as a separate building for purposes of subsection (a).

(4) Clarification of allowance of deduction under minimum tax

Notwithstanding section 56(a)(1), the deduction under this section shall be allowed in determining alternative minimum taxable income under section 55.

(g) Termination

This section shall not apply to any building placed in service after December 31, 2009.

(Added Pub. L. 106–554, §1(a)(7) [title I, §101(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–596.)

§1400J. Increase in expensing under section 179

(a) In general

For purposes of section 1397A—

(1) a renewal community shall be treated as an empowerment zone,

(2) a renewal community business shall be treated as an enterprise zone business, and

(3) qualified renewal property shall be treated as qualified zone property.

(b) Qualified renewal property

For purposes of this section—

(1) In general

The term "qualified renewal property" means any property to which section 168 applies (or would apply but for section 179) if—

(A) such property was acquired by the taxpayer by purchase (as defined in section 179(d)(2)) after December 31, 2001, and before January 1, 2010, and

(B) such property would be qualified zone property (as defined in section 1397D) if references to renewal communities were substituted for references to empowerment zones in section 1397D.

(2) Certain rules to apply

The rules of subsections (a)(2) and (b) of section 1397D shall apply for purposes of this section.

(Added Pub. L. 106–554, §1(a)(7) [title I, §101(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–598.)

Subchapter Y—Short-Term Regional Benefits

Part

I. Tax Benefits for New York Liberty Zone.

II. Tax Benefits for GO Zones.

III. Recovery Zone Bonds.

AMENDMENTS

2009—Pub. L. 111–5, div. B, title I, §1401(b), Feb. 17, 2009, 123 Stat. 351, added item for part III.

2005—Pub. L. 109–135, title I, §101(b)(3), Dec. 21, 2005, 119 Stat. 2593, substituted "Short-Term Regional Benefits" for "New York Liberty Zone Benefits" in subchapter heading and amended analysis generally, substituting items for parts I and II for item 1400L.

PART I—TAX BENEFITS FOR NEW YORK LIBERTY ZONE

Sec.

1400L. Tax benefits for New York Liberty Zone.

§1400L. Tax benefits for New York Liberty Zone

(a) Expansion of work opportunity tax credit

(1) In general

For purposes of section 51, a New York Liberty Zone business employee shall be treated as a member of a targeted group.

(2) New York Liberty Zone business employee

For purposes of this subsection—

(A) In general

The term "New York Liberty Zone business employee" means, with respect to any period,

any employee of a New York Liberty Zone business if substantially all the services performed during such period by such employee for such business are performed in the New York Liberty Zone.

(B) Inclusion of certain employees outside the New York Liberty Zone

(i) In general

In the case of a New York Liberty Zone business described in subclause (II) of subparagraph (C)(i), the term "New York Liberty Zone business employee" includes any employee of such business (not described in subparagraph (A)) if substantially all the services performed during such period by such employee for such business are performed in the City of New York, New York.

(ii) Limitation

The number of employees of such a business that are treated as New York Liberty Zone business employees on any day by reason of clause (i) shall not exceed the excess of—

(I) the number of employees of such business on September 11, 2001, in the New York Liberty Zone, over

(II) the number of New York Liberty Zone business employees (determined without regard to this subparagraph) of such business on the day to which the limitation is being applied.

The Secretary may require any trade or business to have the number determined under subclause (I) verified by the New York State Department of Labor.

(C) New York Liberty Zone business

(i) In general

The term "New York Liberty Zone business" means any trade or business which is—

(I) located in the New York Liberty Zone, or

(II) located in the City of New York, New York, outside the New York Liberty Zone, as a result of the physical destruction or damage of such place of business by the September 11, 2001, terrorist attack.

(ii) Credit not allowed for large businesses

The term "New York Liberty Zone business" shall not include any trade or business for any taxable year if such trade or business employed an average of more than 200 employees on business days during the taxable year.

(D) Special rules for determining amount of credit

For purposes of applying subpart F of part IV of subchapter A of this chapter to wages paid or incurred to any New York Liberty Zone business employee—

(i) section 51(a) shall be applied by substituting "qualified wages" for "qualified first-year wages",

(ii) the rules of section 52 shall apply for purposes of determining the number of employees under this paragraph,

(iii) subsections (c)(4) and (i)(2) of section 51 shall not apply, and

(iv) in determining qualified wages, the following shall apply in lieu of section 51(b):

(I) Qualified wages

The term "qualified wages" means wages paid or incurred by the employer to individuals who are New York Liberty Zone business employees of such employer for work performed during calendar year 2002 or 2003.

(II) Only first $6,000 of wages per calendar year taken into account

The amount of the qualified wages which may be taken into account with respect to any individual shall not exceed $6,000 per calendar year.

(b) Special allowance for certain property acquired after September 10, 2001

(1) Additional allowance

In the case of any qualified New York Liberty Zone property—

(A) the depreciation deduction provided by section 167(a) for the taxable year in which such property is placed in service shall include an allowance equal to 30 percent of the adjusted basis of such property, and

(B) the adjusted basis of the qualified New York Liberty Zone property shall be reduced by the amount of such deduction before computing the amount otherwise allowable as a depreciation deduction under this chapter for such taxable year and any subsequent taxable year.

(2) Qualified New York Liberty Zone property

For purposes of this subsection—

(A) In general

The term "qualified New York Liberty Zone property" means property—

(i)(I) which is described in section 168(k)(2)(A)(i), or

(II) which is nonresidential real property, or residential rental property, which is described in subparagraph (B),

(ii) substantially all of the use of which is in the New York Liberty Zone and is in the active conduct of a trade or business by the taxpayer in such Zone,

(iii) the original use of which in the New York Liberty Zone commences with the taxpayer after September 10, 2001,

(iv) which is acquired by the taxpayer by purchase (as defined in section 179(d)) after September 10, 2001, but only if no written binding contract for the acquisition was in effect before September 11, 2001, and

(v) which is placed in service by the taxpayer on or before the termination date.

The term "termination date" means December 31, 2006 (December 31, 2009, in the case of nonresidential real property and residential rental property).

(B) Eligible real property

Nonresidential real property or residential rental property is described in this subparagraph only to the extent it rehabilitates real property damaged, or replaces real property destroyed or condemned, as a result of the September 11, 2001, terrorist attack. For purposes of the preceding sentence, property shall be treated as replacing real property destroyed or condemned if, as part of an integrated plan, such property replaces real property which is included in a continuous area which includes real property destroyed or condemned.

(C) Exceptions

(i) Bonus depreciation property under section 168(k)

Such term shall not include property to which section 168(k) applies.

(ii) Alternative depreciation property

The term "qualified New York Liberty Zone property" shall not include any property described in section 168(k)(2)(D)(i).

(iii) Qualified New York Liberty Zone leasehold improvement property

Such term shall not include any qualified New York Liberty Zone leasehold improvement property.

(iv) Election out

For purposes of this subsection, rules similar to the rules of section 168(k)(2)(D)(iii) shall apply.

(D) Special rules

For purposes of this subsection, rules similar to the rules of section 168(k)(2)(E) shall apply, except that clause (i) thereof shall be applied without regard to "and before January 1, 2014", and clause (iv) thereof shall be applied by substituting "qualified New York Liberty Zone property" for "qualified property".

(E) Allowance against alternative minimum tax

For purposes of this subsection, rules similar to the rules of section 168(k)(2)(G) shall apply.

(c) 5-year recovery period for depreciation of certain leasehold improvements

(1) In general

For purposes of section 168, the term "5-year property" includes any qualified New York Liberty Zone leasehold improvement property.

(2) Qualified New York Liberty Zone leasehold improvement property

For purposes of this section, the term "qualified New York Liberty Zone leasehold improvement property" means qualified leasehold improvement property (as defined in section 168(k)(3)) if—

(A) such building is located in the New York Liberty Zone,

(B) such improvement is placed in service after September 10, 2001, and before January 1, 2007, and

(C) no written binding contract for such improvement was in effect before September 11, 2001.

(3) Requirement to use straight line method

The applicable depreciation method under section 168 shall be the straight line method in the case of qualified New York Liberty Zone leasehold improvement property.

(4) 9-year recovery period under alternative system

For purposes of section 168(g), the class life of qualified New York Liberty Zone leasehold improvement property shall be 9 years.

(5) Election out

For purposes of this subsection, rules similar to the rules of section 168(k)(2)(D)(iii) shall apply.

(d) Tax-exempt bond financing

(1) In general

For purposes of this title, any qualified New York Liberty Bond shall be treated as an exempt facility bond.

(2) Qualified New York Liberty Bond

For purposes of this subsection, the term "qualified New York Liberty Bond" means any bond issued as part of an issue if—

(A) 95 percent or more of the net proceeds (as defined in section 150(a)(3)) of such issue are to be used for qualified project costs,

(B) such bond is issued by the State of New York or any political subdivision thereof,

(C) the Governor or the Mayor designates such bond for purposes of this section, and

(D) such bond is issued after the date of the enactment of this section and before January 1, 2014.

(3) Limitations on amount of bonds

(A) Aggregate amount designated

The maximum aggregate face amount of bonds which may be designated under this subsection shall not exceed $8,000,000,000, of which not to exceed $4,000,000,000 may be designated by the Governor and not to exceed $4,000,000,000 may be designated by the Mayor.

(B) Specific limitations

The aggregate face amount of bonds issued which are to be used for—

(i) costs for property located outside the New York Liberty Zone shall not exceed $2,000,000,000,

(ii) residential rental property shall not exceed $1,600,000,000, and

(iii) costs with respect to property used for retail sales of tangible property and functionally related and subordinate property shall not exceed $800,000,000.

The limitations under clauses (i), (ii), and (iii) shall be allocated proportionately between the bonds designated by the Governor and the bonds designated by the Mayor in proportion to the respective amounts of bonds designated by each.

(C) Movable property

No bonds shall be issued which are to be used for movable fixtures and equipment.

(4) Qualified project costs

For purposes of this subsection—

(A) In general

The term "qualified project costs" means the cost of acquisition, construction, reconstruction, and renovation of—

(i) nonresidential real property and residential rental property (including fixed tenant improvements associated with such property) located in the New York Liberty Zone, and

(ii) public utility property (as defined in section 168(i)(10)) located in the New York Liberty Zone.

(B) Costs for certain property outside zone included

Such term includes the cost of acquisition, construction, reconstruction, and renovation of nonresidential real property (including fixed tenant improvements associated with such property) located outside the New York Liberty Zone but within the City of New York, New York, if such property is part of a project which consists of at least 100,000 square feet of usable office or other commercial space located in a single building or multiple adjacent buildings.

(5) Special rules

In applying this title to any qualified New York Liberty Bond, the following modifications shall apply:

(A) Section 146 (relating to volume cap) shall not apply.

(B) Section 147(d) (relating to acquisition of existing property not permitted) shall be applied by substituting "50 percent" for "15 percent" each place it appears.

(C) Section 148(f)(4)(C) (relating to exception from rebate for certain proceeds to be used to finance construction expenditures) shall apply to the available construction proceeds of bonds issued under this section.

(D) Repayments of principal on financing provided by the issue—

(i) may not be used to provide financing, and

(ii) must be used not later than the close of the 1st semiannual period beginning after the date of the repayment to redeem bonds which are part of such issue.

The requirement of clause (ii) shall be treated as met with respect to amounts received within 10 years after the date of issuance of the issue (or, in the case of a refunding bond, the date of issuance of the original bond) if such amounts are used by the close of such 10 years to redeem bonds which are part of such issue.

(E) Section 57(a)(5) shall not apply.

(6) Separate issue treatment of portions of an issue

This subsection shall not apply to the portion of an issue which (if issued as a separate issue)

would be treated as a qualified bond or as a bond that is not a private activity bond (determined without regard to paragraph (1)), if the issuer elects to so treat such portion.

(e) Advance refundings of certain tax-exempt bonds

(1) In general

With respect to a bond described in paragraph (2) issued as part of an issue 90 percent (95 percent in the case of a bond described in paragraph (2)(C)) or more of the net proceeds (as defined in section 150(a)(3)) of which were used to finance facilities located within the City of New York, New York (or property which is functionally related and subordinate to facilities located within the City of New York for the furnishing of water), one additional advanced refunding after the date of the enactment of this section and before January 1, 2006, shall be allowed under the applicable rules of section 149(d) if—

(A) the Governor or the Mayor designates the advance refunding bond for purposes of this subsection, and

(B) the requirements of paragraph (4) are met.

(2) Bonds described

A bond is described in this paragraph if such bond was outstanding on September 11, 2001, and is—

(A) a State or local bond (as defined in section 103(c)(1)) which is a general obligation of the City of New York, New York,

(B) a State or local bond (as so defined) other than a private activity bond (as defined in section 141(a)) issued by the New York Municipal Water Finance Authority or the Metropolitan Transportation Authority of the State of New York or the Municipal Assistance Corporation, or

(C) a qualified 501(c)(3) bond (as defined in section 145(a)) which is a qualified hospital bond (as defined in section 145(c)) issued by or on behalf of the State of New York or the City of New York, New York.

(3) Aggregate limit

For purposes of paragraph (1), the maximum aggregate face amount of bonds which may be designated under this subsection by the Governor shall not exceed $4,500,000,000 and the maximum aggregate face amount of bonds which may be designated under this subsection by the Mayor shall not exceed $4,500,000,000.

(4) Additional requirements

The requirements of this paragraph are met with respect to any advance refunding of a bond described in paragraph (2) if—

(A) no advance refundings of such bond would be allowed under any provision of law after September 11, 2001,

(B) the advance refunding bond is the only other outstanding bond with respect to the refunded bond, and

(C) the requirements of section 148 are met with respect to all bonds issued under this subsection.

(f) Increase in expensing under section 179

(1) In general

For purposes of section 179—

(A) the limitation under section 179(b)(1) shall be increased by the lesser of—

(i) $35,000, or

(ii) the cost of section 179 property which is qualified New York Liberty Zone property placed in service during the taxable year, and

(B) the amount taken into account under section 179(b)(2) with respect to any section 179 property which is qualified New York Liberty Zone property shall be 50 percent of the cost

thereof.

(2) Qualified New York Liberty Zone property

For purposes of this subsection, the term "qualified New York Liberty Zone property" has the meaning given such term by subsection (b)(2), determined without regard to subparagraph (C)(i) thereof.

(3) Recapture

Rules similar to the rules under section 179(d)(10) shall apply with respect to any qualified New York Liberty Zone property which ceases to be used in the New York Liberty Zone.

(g) Extension of replacement period for nonrecognition of gain

Notwithstanding subsections (g) and (h) of section 1033, clause (i) of section 1033(a)(2)(B) shall be applied by substituting "5 years" for "2 years" with respect to property which is compulsorily or involuntarily converted as a result of the terrorist attacks on September 11, 2001, in the New York Liberty Zone but only if substantially all of the use of the replacement property is in the City of New York, New York.

(h) New York Liberty Zone

For purposes of this section, the term "New York Liberty Zone" means the area located on or south of Canal Street, East Broadway (east of its intersection with Canal Street), or Grand Street (east of its intersection with East Broadway) in the Borough of Manhattan in the City of New York, New York.

(i) References to Governor and Mayor

For purposes of this section, the terms "Governor" and "Mayor" mean the Governor of the State of New York and the Mayor of the City of New York, New York, respectively.

(Added Pub. L. 107–147, title III, §301(a), Mar. 9, 2002, 116 Stat. 33; amended Pub. L. 108–27, title II, §201(c)(2), May 28, 2003, 117 Stat. 757; Pub. L. 108–311, title III, §309(a)–(c), title IV, §403(c), Oct. 4, 2004, 118 Stat. 1179, 1180, 1187; Pub. L. 109–135, title IV, §§405(a)(2), 412(ss), Dec. 21, 2005, 119 Stat. 2634, 2640; Pub. L. 110–185, title I, §103(c)(8), Feb. 13, 2008, 122 Stat. 619; Pub. L. 111–240, title II, §2022(b)(6), Sept. 27, 2010, 124 Stat. 2558; Pub. L. 111–312, title IV, §401(d)(6), title VII, §761(a), Dec. 17, 2010, 124 Stat. 3306, 3323; Pub. L. 112–240, title III, §§328(a), 331(e)(4), Jan. 2, 2013, 126 Stat. 2334, 2337.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsecs. (d)(2)(D) and (e)(1), is the date of enactment of Pub. L. 107–147, which was approved Mar. 9, 2002.

AMENDMENTS

2013—Subsec. (b)(2)(D). Pub. L. 112–240, §331(e)(4), substituted "January 1, 2014" for "January 1, 2013".

Subsec. (d)(2)(D). Pub. L. 112–240, §328(a), substituted "January 1, 2014" for "January 1, 2012".

2010—Subsec. (b)(2)(D). Pub. L. 111–312, §401(d)(6), substituted "January 1, 2013" for "January 1, 2011".

Pub. L. 111–240 substituted "January 1, 2011" for "January 1, 2010".

Subsec. (d)(2)(D). Pub. L. 111–312, §761(a), substituted "2012" for "2010".

2008—Subsec. (b)(2)(D). Pub. L. 110–185 substituted "January 1, 2010" for "January 1, 2005".

2005—Subsec. (b)(2)(C)(ii). Pub. L. 109–135, §412(ss)(1), substituted "section 168(k)(2)(D)(i)" for "section 168(k)(2)(C)(i)".

Subsec. (b)(2)(C)(iv). Pub. L. 109–135, §412(ss)(2), substituted "section 168(k)(2)(D)(iii)" for "section 168(k)(2)(C)(iii)".

Subsec. (b)(2)(D). Pub. L. 109–135, §412(ss)(3), substituted "section 168(k)(2)(E)" for "section 168(k)(2)(D)".

Pub. L. 109–135, §405(a)(2), substituted "January 1, 2005" for "September 11, 2004".

Subsec. (b)(2)(E). Pub. L. 109–135, §412(ss)(4), substituted "section 168(k)(2)(G)" for "section 168(k)(2)(F)".

Subsec. (c)(5). Pub. L. 109–135, §412(ss)(5), substituted "section 168(k)(2)(D)(iii)" for "section 168(k)(2)(C)(iii)".

2004—Subsec. (a)(2)(D). Pub. L. 108–311, §403(c)(1)(A), substituted "subchapter A" for "subchapter B" in introductory provisions.

Subsec. (a)(2)(D)(ii). Pub. L. 108–311, §403(c)(1)(B), substituted "this paragraph" for "subparagraph (B)".

Subsec. (b)(2)(D). Pub. L. 108–311, §403(c)(2), inserted ", and clause (iv) thereof shall be applied by substituting 'qualified New York Liberty Zone property' for 'qualified property' " before period at end.

Subsec. (c)(5). Pub. L. 108–311, §403(c)(3), added par. (5).

Subsec. (d)(2)(D). Pub. L. 108–311, §309(a), substituted "2010" for "2005".

Subsec. (e)(1). Pub. L. 108–311, §309(b), substituted "2006" for "2005".

Subsec. (e)(2)(B). Pub. L. 108–311, §309(c), substituted "or the Municipal Assistance Corporation, or" for ", or" at end.

Subsec. (f)(2). Pub. L. 108–311, §403(c)(4), inserted ", determined without regard to subparagraph (C)(i) thereof" before period at end.

2003—Subsec. (b)(2)(C)(i). Pub. L. 108–27, which directed amendment of heading by substituting "Bonus depreciation property under section 168(k)" for "30-percent additional allowance property", was executed by making the substitution for "30 percent additional allowance property" to reflect the probable intent of Congress.

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title III, §328(b), Jan. 2, 2013, 126 Stat. 2334, provided that: "The amendment made by this section [amending this section] shall apply to bonds issued after December 31, 2011."

Amendment by section 331(e)(4) of Pub. L. 112–240 applicable to property placed in service after Dec. 31, 2012, in taxable years ending after such date, see section 331(f) of Pub. L. 112–240, set out as a note under section 168 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 401(d)(6) of Pub. L. 111–312 applicable to property placed in service after Dec. 31, 2010, in taxable years ending after such date, see section 401(e)(1) of Pub. L. 111–312, set out as a note under section 168 of this title.

Pub. L. 111–312, title VII, §761(b), Dec. 17, 2010, 124 Stat. 3323, provided that: "The amendment made by this section [amending this section] shall apply to bonds issued after December 31, 2009."

Amendment by Pub. L. 111–240 applicable to property placed in service after Dec. 31, 2009, in taxable years ending after such date, see section 2022(c) of Pub. L. 111–240, set out as a note under section 168 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–185 applicable to property placed in service after Dec. 31, 2007, in taxable years ending after such date, see section 103(d) of Pub. L. 110–185, set out as a note under section 168 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 405(a)(2) of Pub. L. 109–135 effective as if included in section 201 of the Jobs and Growth Tax Relief Reconciliation Act of 2003, Pub. L. 108–27, see section 405(b) of Pub. L. 109–135, set out as a note under section 168 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–311, title III, §309(d), Oct. 4, 2004, 118 Stat. 1180, provided that: "The amendment made by subsection (c) [amending this section] shall take effect as if included in the amendments made by section 301 of the Job Creation and Worker Assistance Act of 2002 [Pub. L. 107–147]."

Amendment by section 403(c) of Pub. L. 108–311 effective as if included in the provisions of the Job Creation and Worker Assistance Act of 2002, Pub. L. 107–147, to which such amendment relates, see section 403(f) of Pub. L. 108–311, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–27 applicable to taxable years ending after May 5, 2003, see section 201(d) of Pub. L. 108–27, set out as a note under section 168 of this title.

PART II—TAX BENEFITS FOR GO ZONES

Sec.
1400M. Definitions.
1400N. Tax benefits for Gulf Opportunity Zone.
1400O. Education tax benefits.
1400P. Housing tax benefits.
1400Q. Special rules for use of retirement funds.
1400R. Employment relief.
1400S. Additional tax relief provisions.
1400T. Special rules for mortgage revenue bonds.

AMENDMENTS

2007—Pub. L. 110–172, §11(a)(27), Dec. 29, 2007, 121 Stat. 2487, added item 1400T.

2005—Pub. L. 109–135, title I, §§102(b), 103(b)(3), title II, §201(b)(3), Dec. 21, 2005, 119 Stat. 2594, 2595, 2607, added items 1400O to 1400S.

§1400M. Definitions

For purposes of this part—

(1) Gulf Opportunity Zone

The terms "Gulf Opportunity Zone" and "GO Zone" mean that portion of the Hurricane Katrina disaster area determined by the President to warrant individual or individual and public assistance from the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act by reason of Hurricane Katrina.

(2) Hurricane Katrina disaster area

The term "Hurricane Katrina disaster area" means an area with respect to which a major disaster has been declared by the President before September 14, 2005, under section 401 of such Act by reason of Hurricane Katrina.

(3) Rita GO Zone

The term "Rita GO Zone" means that portion of the Hurricane Rita disaster area determined by the President to warrant individual or individual and public assistance from the Federal Government under such Act by reason of Hurricane Rita.

(4) Hurricane Rita disaster area

The term "Hurricane Rita disaster area" means an area with respect to which a major disaster has been declared by the President before October 6, 2005, under section 401 of such Act by reason of Hurricane Rita.

(5) Wilma GO Zone

The term "Wilma GO Zone" means that portion of the Hurricane Wilma disaster area determined by the President to warrant individual or individual and public assistance from the Federal Government under such Act by reason of Hurricane Wilma.

(6) Hurricane Wilma disaster area

The term "Hurricane Wilma disaster area" means an area with respect to which a major disaster has been declared by the President before November 14, 2005, under section 401 of such Act by reason of Hurricane Wilma.

(Added Pub. L. 109–135, title I, §101(a), Dec. 21, 2005, 119 Stat. 2578.)

REFERENCES IN TEXT

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in text, is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, as amended, which is classified principally to chapter 68 (§5121 et seq.) of Title 42, The Public Health and Welfare. Section 401 of the Act is classified to section 5170 of Title 42. For

complete classification of this Act to the Code, see Short Title note set out under section 5121 of Title 42 and Tables.

EFFECTIVE DATE

Section applicable to taxable years ending on or after August 28, 2005, see section 101(c)(1) of Pub. L. 109–135, set out as an Effective Date note under section 1400N of this title.

§1400N. Tax benefits for Gulf Opportunity Zone

(a) Tax-exempt bond financing

(1) In general

For purposes of this title—

(A) any qualified Gulf Opportunity Zone Bond described in paragraph (2)(A)(i) shall be treated as an exempt facility bond, and

(B) any qualified Gulf Opportunity Zone Bond described in paragraph (2)(A)(ii) shall be treated as a qualified mortgage bond.

(2) Qualified Gulf Opportunity Zone Bond

For purposes of this subsection, the term "qualified Gulf Opportunity Zone Bond" means any bond issued as part of an issue if—

(A)(i) 95 percent or more of the net proceeds (as defined in section 150(a)(3)) of such issue are to be used for qualified project costs, or

(ii) such issue meets the requirements of a qualified mortgage issue, except as otherwise provided in this subsection,

(B) such bond is issued by the State of Alabama, Louisiana, or Mississippi, or any political subdivision thereof,

(C) such bond is designated for purposes of this section by—

(i) in the case of a bond which is required under State law to be approved by the bond commission of such State, such bond commission, and

(ii) in the case of any other bond, the Governor of such State,

(D) such bond is issued after the date of the enactment of this section and before January 1, 2012, and

(E) no portion of the proceeds of such issue is to be used to provide any property described in section 144(c)(6)(B).

(3) Limitations on bonds

(A) Aggregate amount designated

The maximum aggregate face amount of bonds which may be designated under this subsection with respect to any State shall not exceed the product of $2,500 multiplied by the portion of the State population which is in the Gulf Opportunity Zone (as determined on the basis of the most recent census estimate of resident population released by the Bureau of Census before August 28, 2005).

(B) Movable property

No bonds shall be issued which are to be used for movable fixtures and equipment.

(4) Qualified project costs

For purposes of this subsection, the term "qualified project costs" means—

(A) the cost of any qualified residential rental project (as defined in section 142(d)) located in the Gulf Opportunity Zone, and

(B) the cost of acquisition, construction, reconstruction, and renovation of—

(i) nonresidential real property (including fixed improvements associated with such property) located in the Gulf Opportunity Zone, and

(ii) public utility property (as defined in section 168(i)(10)) located in the Gulf Opportunity Zone.

(5) Special rules

In applying this title to any qualified Gulf Opportunity Zone Bond, the following modifications shall apply:

(A) Section 142(d)(1) (defining qualified residential rental project) shall be applied—

(i) by substituting "60 percent" for "50 percent" in subparagraph (A) thereof, and

(ii) by substituting "70 percent" for "60 percent" in subparagraph (B) thereof.

(B) Section 143 (relating to mortgage revenue bonds: qualified mortgage bond and qualified veterans' mortgage bond) shall be applied—

(i) only with respect to owner-occupied residences in the Gulf Opportunity Zone,

(ii) by treating any such residence in the Gulf Opportunity Zone as a targeted area residence,

(iii) by applying subsection (f)(3) thereof without regard to subparagraph (A) thereof, and

(iv) by substituting "$150,000" for "$15,000" in subsection (k)(4) thereof.

(C) Except as provided in section 143, repayments of principal on financing provided by the issue of which such bond is a part may not be used to provide financing.

(D) Section 146 (relating to volume cap) shall not apply.

(E) Section 147(d)(2) (relating to acquisition of existing property not permitted) shall be applied by substituting "50 percent" for "15 percent" each place it appears.

(F) Section 148(f)(4)(C) (relating to exception from rebate for certain proceeds to be used to finance construction expenditures) shall apply to the available construction proceeds of bonds which are part of an issue described in paragraph (2)(A)(i).

(G) Section 57(a)(5) (relating to tax-exempt interest) shall not apply.

(6) Separate issue treatment of portions of an issue

This subsection shall not apply to the portion of an issue which (if issued as a separate issue) would be treated as a qualified bond or as a bond that is not a private activity bond (determined without regard to paragraph (1)), if the issuer elects to so treat such portion.

(7) Special rule for repairs and reconstructions

(A) In general

For purposes of section 143 and this subsection, any qualified GO Zone repair or reconstruction shall be treated as a qualified rehabilitation.

(B) Qualified Go Zone repair or reconstruction

For purposes of subparagraph (A), the term "qualified GO Zone repair or reconstruction" means any repair of damage caused by Hurricane Katrina, Hurricane Rita, or Hurricane Wilma to a building located in the Gulf Opportunity Zone, the Rita GO Zone, or the Wilma GO Zone (or reconstruction of such building in the case of damage constituting destruction) if the expenditures for such repair or reconstruction are 25 percent or more of the mortgagor's adjusted basis in the residence. For purposes of the preceding sentence, the mortgagor's adjusted basis shall be determined as of the completion of the repair or reconstruction or, if later, the date on which the mortgagor acquires the residence.

(C) Termination

This paragraph shall apply only to owner-financing provided after the date of the enactment of this paragraph and before January 1, 2012.

(8) Inclusion of certain counties

For purposes of this subsection, the Gulf Opportunity Zone includes Colbert County, Alabama and Dallas County, Alabama.

(b) Advance refundings of certain tax-exempt bonds

(1) In general

With respect to a bond described in paragraph (3), one additional advance refunding after the date of the enactment of this section and before January 1, 2011, shall be allowed under the applicable rules of section 149(d) if—

(A) the Governor of the State designates the advance refunding bond for purposes of this subsection, and

(B) the requirements of paragraph (5) are met.

(2) Certain private activity bonds

With respect to a bond described in paragraph (3) which is an exempt facility bond described in paragraph (1) or (2) of section 142(a), one advance refunding after the date of the enactment of this section and before January 1, 2011, shall be allowed under the applicable rules of section 149(d) (notwithstanding paragraph (2) thereof) if the requirements of subparagraphs (A) and (B) of paragraph (1) are met.

(3) Bonds described

A bond is described in this paragraph if such bond was outstanding on August 28, 2005, and is issued by the State of Alabama, Louisiana, or Mississippi, or a political subdivision thereof.

(4) Aggregate limit

The maximum aggregate face amount of bonds which may be designated under this subsection by the Governor of a State shall not exceed—

(A) $4,500,000,000 in the case of the State of Louisiana,

(B) $2,250,000,000 in the case of the State of Mississippi, and

(C) $1,125,000,000 in the case of the State of Alabama.

(5) Additional requirements

The requirements of this paragraph are met with respect to any advance refunding of a bond described in paragraph (3) if—

(A) no advance refundings of such bond would be allowed under this title on or after August 28, 2005,

(B) the advance refunding bond is the only other outstanding bond with respect to the refunded bond, and

(C) the requirements of section 148 are met with respect to all bonds issued under this subsection.

(6) Use of proceeds requirement

This subsection shall not apply to any advance refunding of a bond which is issued as part of an issue if any portion of the proceeds of such issue (or any prior issue) was (or is to be) used to provide any property described in section 144(c)(6)(B).

(c) Low-income housing credit

(1) Additional housing credit dollar amount for Gulf Opportunity Zone

(A) In general

For purposes of section 42, in the case of calendar years 2006, 2007, and 2008, the State housing credit ceiling of each State, any portion of which is located in the Gulf Opportunity Zone, shall be increased by the lesser of—

(i) the aggregate housing credit dollar amount allocated by the State housing credit agency of such State to buildings located in the Gulf Opportunity Zone for such calendar year, or

(ii) the Gulf Opportunity housing amount for such State for such calendar year.

(B) Gulf Opportunity housing amount

For purposes of subparagraph (A), the term "Gulf Opportunity housing amount" means, for any calendar year, the amount equal to the product of $18.00 multiplied by the portion of the

State population which is in the Gulf Opportunity Zone (as determined on the basis of the most recent census estimate of resident population released by the Bureau of Census before August 28, 2005).

(C) Allocations treated as made first from additional allocation amount for purposes of determining carryover

For purposes of determining the unused State housing credit ceiling under section 42(h)(3)(C) for any calendar year, any increase in the State housing credit ceiling under subparagraph (A) shall be treated as an amount described in clause (ii) of such section.

(2) Additional housing credit dollar amount for Texas and Florida

For purposes of section 42, in the case of calendar year 2006, the State housing credit ceiling of Texas and Florida shall each be increased by $3,500,000.

(3) Difficult development area

(A) In general

For purposes of section 42, in the case of property placed in service during the period beginning on January 1, 2006, and ending on December 31, 2010, the Gulf Opportunity Zone, the Rita GO Zone, and the Wilma GO Zone—

(i) shall be treated as difficult development areas designated under subclause (I) of section 42(d)(5)(C)(iii),[1] and

(ii) shall not be taken into account for purposes of applying the limitation under subclause (II) of such section.

(B) Application

Subparagraph (A) shall apply only to—

(i) housing credit dollar amounts allocated during the period beginning on January 1, 2006, and ending on December 31, 2008, and

(ii) buildings placed in service during the period described in subparagraph (A) to the extent that paragraph (1) of section 42(h) does not apply to any building by reason of paragraph (4) thereof, but only with respect to bonds issued after December 31, 2005.

(4) Special rule for applying income tests

In the case of property placed in service—

(A) during 2006, 2007, or 2008,

(B) in the Gulf Opportunity Zone, and

(C) in a nonmetropolitan area (as defined in section 42(d)(5)(C)(iv)(IV)),[1]

section 42 shall be applied by substituting "national nonmetropolitan median gross income (determined under rules similar to the rules of section 142(d)(2)(B))" for "area median gross income" in subparagraphs (A) and (B) of section 42(g)(1).

(5) Time for making low-income housing credit allocations

Section 42(h)(1)(B) shall not apply to an allocation of housing credit dollar amount to a building located in the Gulf Opportunity Zone, the Rita GO Zone, or the Wilma GO Zone, if such allocation is made in 2006, 2007, or 2008, and such building is placed in service before January 1, 2012.

(6) Community development block grants not taken into account in determining if buildings are federally subsidized

For purpose of applying section 42(i)(2)(D) [1] to any building which is placed in service in the Gulf Opportunity Zone, the Rita GO Zone, or the Wilma GO Zone during the period beginning on January 1, 2006, and ending on December 31, 2010, a loan shall not be treated as a below market Federal loan solely by reason of any assistance provided under section 106, 107, or 108 of the Housing and Community Development Act of 1974 by reason of section 122 of such Act or any

provision of the Department of Defense Appropriations Act, 2006, or the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006.

(7) Definitions

Any term used in this subsection which is also used in section 42 shall have the same meaning as when used in such section.

(d) Special allowance for certain property acquired on or after August 28, 2005

(1) Additional allowance

In the case of any qualified Gulf Opportunity Zone property—

(A) the depreciation deduction provided by section 167(a) for the taxable year in which such property is placed in service shall include an allowance equal to 50 percent of the adjusted basis of such property, and

(B) the adjusted basis of the qualified Gulf Opportunity Zone property shall be reduced by the amount of such deduction before computing the amount otherwise allowable as a depreciation deduction under this chapter for such taxable year and any subsequent taxable year.

(2) Qualified Gulf Opportunity Zone property

For purposes of this subsection—

(A) In general

The term "qualified Gulf Opportunity Zone property" means property—

(i)(I) which is described in section 168(k)(2)(A)(i), or

(II) which is nonresidential real property or residential rental property,

(ii) substantially all of the use of which is in the Gulf Opportunity Zone and is in the active conduct of a trade or business by the taxpayer in such Zone,

(iii) the original use of which in the Gulf Opportunity Zone commences with the taxpayer on or after August 28, 2005,

(iv) which is acquired by the taxpayer by purchase (as defined in section 179(d)) on or after August 28, 2005, but only if no written binding contract for the acquisition was in effect before August 28, 2005, and

(v) which is placed in service by the taxpayer on or before December 31, 2007 (December 31, 2008, in the case of nonresidential real property and residential rental property).

(B) Exceptions

(i) Alternative depreciation property

Such term shall not include any property described in section 168(k)(2)(D)(i).

(ii) Tax-exempt bond-financed property

Such term shall not include any property any portion of which is financed with the proceeds of any obligation the interest on which is exempt from tax under section 103.

(iii) Qualified revitalization buildings

Such term shall not include any qualified revitalization building with respect to which the taxpayer has elected the application of paragraph (1) or (2) of section 1400I(a).

(iv) Election out

If a taxpayer makes an election under this clause with respect to any class of property for any taxable year, this subsection shall not apply to all property in such class placed in service during such taxable year.

(3) Special rules

For purposes of this subsection, rules similar to the rules of subparagraph (E) of section 168(k)(2) shall apply, except that such subparagraph shall be applied—

(A) by substituting "August 27, 2005" for "December 31, 2007" each place it appears therein,
(B) without regard to "and before January 1, 2014" in clause (i) thereof, and
(C) by substituting "qualified Gulf Opportunity Zone property" for "qualified property" in clause (iv) thereof.

(4) Allowance against alternative minimum tax

For purposes of this subsection, rules similar to the rules of section 168(k)(2)(G) shall apply.

(5) Recapture

For purposes of this subsection, rules similar to the rules under section 179(d)(10) shall apply with respect to any qualified Gulf Opportunity Zone property which ceases to be qualified Gulf Opportunity Zone property.

(6) Extension for certain property

(A) In general

In the case of any specified Gulf Opportunity Zone extension property, paragraph (2)(A) shall be applied without regard to clause (v) thereof.

(B) Specified Gulf Opportunity Zone extension property

For purposes of this paragraph, the term "specified Gulf Opportunity Zone extension property" means property—
(i) substantially all of the use of which is in one or more specified portions of the GO Zone, and
(ii) which is—
(I) nonresidential real property or residential rental property which is placed in service by the taxpayer on or before December 31, 2011, or
(II) in the case of a taxpayer who places a building described in subclause (I) in service on or before December 31, 2011, property described in section 168(k)(2)(A)(i) if substantially all of the use of such property is in such building and such property is placed in service by the taxpayer not later than 90 days after such building is placed in service.

(C) Specified portions of the GO Zone

For purposes of this paragraph, the term "specified portions of the GO Zone" means those portions of the GO Zone which are in any county or parish which is identified by the Secretary as being a county or parish in which hurricanes occurring during 2005 damaged (in the aggregate) more than 60 percent of the housing units in such county or parish which were occupied (determined according to the 2000 Census).

(D) Only pre-January 1, 2012, basis of real property eligible for additional allowance

In the case of property which is qualified Gulf Opportunity Zone property solely by reason of subparagraph (B)(ii)(I), paragraph (1) shall apply only to the extent of the adjusted basis thereof attributable to manufacture, construction, or production before January 1, 2012.

(E) Exception for bonus depreciation property under section 168(k)

The term "specified Gulf Opportunity Zone extension property" shall not include any property to which section 168(k) applies.

(e) Increase in expensing under section 179

(1) In general

For purposes of section 179—
(A) the dollar amount in effect under section 179(b)(1) for the taxable year shall be increased by the lesser of—
(i) $100,000, or
(ii) the cost of qualified section 179 Gulf Opportunity Zone property placed in service during the taxable year, and

(B) the dollar amount in effect under section 179(b)(2) for the taxable year shall be increased by the lesser of—

(i) $600,000, or

(ii) the cost of qualified section 179 Gulf Opportunity Zone property placed in service during the taxable year.

(2) Qualified section 179 Gulf Opportunity Zone property

For purposes of this subsection—

(A) In general

The term "qualified section 179 Gulf Opportunity Zone property" means section 179 property (as defined in section 179(d)) which is qualified Gulf Opportunity Zone property (as defined in subsection (d)(2) without regard to subsection (d)(6)).

(B) Extension for certain property

In the case of property substantially all of the use of which is in one or more specified portions of the GO Zone (as defined by subsection (d)(6)), such term shall include section 179 property (as so defined) which is described in subsection (d)(2), determined—

(i) without regard to subsection (d)(6), and

(ii) by substituting "2008" for "2007" in subparagraph (A)(v) thereof.

(3) Coordination with empowerment zones and renewal communities

For purposes of sections 1397A and 1400J, qualified section 179 Gulf Opportunity Zone property shall not be treated as qualified zone property or qualified renewal property, unless the taxpayer elects not to take such qualified section 179 Gulf Opportunity Zone property into account for purposes of this subsection.

(4) Recapture

For purposes of this subsection, rules similar to the rules under section 179(d)(10) shall apply with respect to any qualified section 179 Gulf Opportunity Zone property which ceases to be qualified section 179 Gulf Opportunity Zone property.

(f) Expensing for certain demolition and clean-up costs

(1) In general

A taxpayer may elect to treat 50 percent of any qualified Gulf Opportunity Zone clean-up cost as an expense which is not chargeable to capital account. Any cost so treated shall be allowed as a deduction for the taxable year in which such cost is paid or incurred.

(2) Qualified Gulf Opportunity Zone clean-up cost

For purposes of this subsection, the term "qualified Gulf Opportunity Zone clean-up cost" means any amount paid or incurred during the period beginning on August 28, 2005, and ending on December 31, 2007, for the removal of debris from, or the demolition of structures on, real property which is located in the Gulf Opportunity Zone and which is—

(A) held by the taxpayer for use in a trade or business or for the production of income, or

(B) property described in section 1221(a)(1) in the hands of the taxpayer.

For purposes of the preceding sentence, amounts paid or incurred shall be taken into account only to the extent that such amount would (but for paragraph (1)) be chargeable to capital account.

(g) Extension of expensing for environmental remediation costs

With respect to any qualified environmental remediation expenditure (as defined in section 198(b)) paid or incurred on or after August 28, 2005, in connection with a qualified contaminated site located in the Gulf Opportunity Zone, section 198 (relating to expensing of environmental remediation costs) shall be applied—

(1) in the case of expenditures paid or incurred on or after August 28, 2005, and before January 1, 2008, by substituting "December 31, 2007" for the date contained in section 198(h), and

(2) except as provided in section 198(d)(2), by treating petroleum products (as defined in section 4612(a)(3)) as a hazardous substance.

(h) Increase in rehabilitation credit

In the case of qualified rehabilitation expenditures (as defined in section 47(c)) paid or incurred during the period beginning on August 28, 2005, and ending on December 31, 2011, with respect to any qualified rehabilitated building or certified historic structure (as defined in section 47(c)) located in the Gulf Opportunity Zone, subsection (a) of section 47 (relating to rehabilitation credit) shall be applied—

(1) by substituting "13 percent" for "10 percent" in paragraph (1) thereof, and

(2) by substituting "26 percent" for "20 percent" in paragraph (2) thereof.

(i) Special rules for small timber producers

(1) Increased expensing for qualified timber property

In the case of qualified timber property any portion of which is located in the Gulf Opportunity Zone, in that portion of the Rita GO Zone which is not part of the Gulf Opportunity Zone, or in the Wilma GO Zone, the limitation under subparagraph (B) of section 194(b)(1) shall be increased by the lesser of—

(A) the limitation which would (but for this subsection) apply under such subparagraph, or

(B) the amount of reforestation expenditures (as defined in section 194(c)(3)) paid or incurred by the taxpayer with respect to such qualified timber property during the specified portion of the taxable year.

(2) 5 year NOL carryback of certain timber losses

For purposes of determining any farming loss under section 172(i), income and deductions which are allocable to the specified portion of the taxable year and which are attributable to qualified timber property any portion of which is located in the Gulf Opportunity Zone, in that portion of the Rita GO Zone which is not part of the Gulf Opportunity Zone, or in the Wilma GO Zone shall be treated as attributable to farming businesses.

(3) Rules not applicable to certain entities

Paragraphs (1) and (2) shall not apply to any taxpayer which—

(A) is a corporation the stock of which is publicly traded on an established securities market, or

(B) is a real estate investment trust.

(4) Rules not applicable to large timber producers

(A) Expensing

Paragraph (1) shall not apply to any taxpayer if such taxpayer holds more than 500 acres of qualified timber property at any time during the taxable year.

(B) NOL carryback

Paragraph (2) shall not apply with respect to any qualified timber property unless—

(i) such property was held by the taxpayer—

(I) on August 28, 2005, in the case of qualified timber property any portion of which is located in the Gulf Opportunity Zone,

(II) on September 23, 2005, in the case of qualified timber property (other than property described in subclause (I)) any portion of which is located in that portion of the Rita GO Zone which is not part of the Gulf Opportunity Zone, or

(III) on October 23, 2005, in the case of qualified timber property (other than property described in subclause (I) or (II)) any portion of which is located in the Wilma GO Zone, and

(ii) such taxpayer held not more than 500 acres of qualified timber property on such date.

(5) Definitions

For purposes of this subsection—

(A) Specified portion

(i) In general

The term "specified portion" means—

(I) in the case of qualified timber property any portion of which is located in the Gulf Opportunity Zone, that portion of the taxable year which is on or after August 28, 2005, and before the termination date,

(II) in the case of qualified timber property (other than property described in clause (i)) any portion of which is located in the Rita GO Zone, that portion of the taxable year which is on or after September 23, 2005, and before the termination date, or

(III) in the case of qualified timber property (other than property described in clause (i) or (ii)) any portion of which is located in the Wilma GO Zone, that portion of the taxable year which is on or after October 23, 2005, and before the termination date.

(ii) Termination date

The term "termination date" means—

(I) for purposes of paragraph (1), January 1, 2008, and

(II) for purposes of paragraph (2), January 1, 2007.

(B) Qualified timber property

The term "qualified timber property" has the meaning given such term in section 194(c)(1).

(j) Special rule for Gulf Opportunity Zone public utility casualty losses

(1) In general

The amount described in section 172(f)(1)(A) for any taxable year shall be increased by the Gulf Opportunity Zone public utility casualty loss for such taxable year.

(2) Gulf Opportunity Zone public utility casualty loss

For purposes of this subsection, the term "Gulf Opportunity Zone public utility casualty loss" means any casualty loss of public utility property (as defined in section 168(i)(10)) located in the Gulf Opportunity Zone if—

(A) such loss is allowed as a deduction under section 165 for the taxable year,

(B) such loss is by reason of Hurricane Katrina, and

(C) the taxpayer elects the application of this subsection with respect to such loss.

(3) Reduction for gains from involuntary conversion

The amount of any Gulf Opportunity Zone public utility casualty loss which would (but for this paragraph) be taken into account under paragraph (1) for any taxable year shall be reduced by the amount of any gain recognized by the taxpayer for such year from the involuntary conversion by reason of Hurricane Katrina of public utility property (as so defined) located in the Gulf Opportunity Zone.

(4) Coordination with general disaster loss rules

Subsection (k) and section 165(i) shall not apply to any Gulf Opportunity Zone public utility casualty loss to the extent such loss is taken into account under paragraph (1).

(5) Election

Any election under paragraph (2)(C) shall be made in such manner as may be prescribed by the Secretary and shall be made by the due date (including extensions of time) for filing the taxpayer's return for the taxable year of the loss. Such election, once made for any taxable year, shall be irrevocable for such taxable year.

(k) Treatment of net operating losses attributable to Gulf Opportunity Zone losses

(1) In general

If a portion of any net operating loss of the taxpayer for any taxable year is a qualified Gulf Opportunity Zone loss, the following rules shall apply:

(A) Extension of carryback period

Section 172(b)(1) shall be applied with respect to such portion—

(i) by substituting "5 taxable years" for "2 taxable years" in subparagraph (A)(i), and

(ii) by not taking such portion into account in determining any eligible loss of the taxpayer under subparagraph (F) thereof for the taxable year.

(B) Suspension of 90 percent AMT limitation

Section 56(d)(1) shall be applied by increasing the amount determined under subparagraph (A)(ii)(I) thereof by the sum of the carrybacks and carryovers of any net operating loss attributable to such portion.

(2) Qualified Gulf Opportunity Zone loss

For purposes of paragraph (1), the term "qualified Gulf Opportunity Zone loss" means the lesser of—

(A) the excess of—

(i) the net operating loss for such taxable year, over

(ii) the specified liability loss for such taxable year to which a 10-year carryback applies under section 172(b)(1)(C), or

(B) the aggregate amount of the following deductions to the extent taken into account in computing the net operating loss for such taxable year:

(i) Any deduction for any qualified Gulf Opportunity Zone casualty loss.

(ii) Any deduction for moving expenses paid or incurred after August 27, 2005, and before January 1, 2008, and allowable under this chapter to any taxpayer in connection with the employment of any individual—

(I) whose principal place of abode was located in the Gulf Opportunity Zone before August 28, 2005,

(II) who was unable to remain in such abode as the result of Hurricane Katrina, and

(III) whose principal place of employment with the taxpayer after such expense is located in the Gulf Opportunity Zone.

For purposes of this clause, the term "moving expenses" has the meaning given such term by section 217(b), except that the taxpayer's former residence and new residence may be the same residence if the initial vacating of the residence was as the result of Hurricane Katrina.

(iii) Any deduction allowable under this chapter for expenses paid or incurred after August 27, 2005, and before January 1, 2008, to temporarily house any employee of the taxpayer whose principal place of employment is in the Gulf Opportunity Zone.

(iv) Any deduction for depreciation (or amortization in lieu of depreciation) allowable under this chapter with respect to any qualified Gulf Opportunity Zone property (as defined in subsection (d)(2), but without regard to subparagraph (B)(iv) thereof)) [2] for the taxable year such property is placed in service.

(v) Any deduction allowable under this chapter for repair expenses (including expenses for removal of debris) paid or incurred after August 27, 2005, and before January 1, 2008, with respect to any damage attributable to Hurricane Katrina and in connection with property which is located in the Gulf Opportunity Zone.

(3) Qualified Gulf Opportunity Zone casualty loss

(A) In general

For purposes of paragraph (2)(B)(i), the term "qualified Gulf Opportunity Zone casualty loss" means any uncompensated section 1231 loss (as defined in section 1231(a)(3)(B)) of property located in the Gulf Opportunity Zone if—

(i) such loss is allowed as a deduction under section 165 for the taxable year, and
(ii) such loss is by reason of Hurricane Katrina.

(B) Reduction for gains from involuntary conversion

The amount of qualified Gulf Opportunity Zone casualty loss which would (but for this subparagraph) be taken into account under subparagraph (A) for any taxable year shall be reduced by the amount of any gain recognized by the taxpayer for such year from the involuntary conversion by reason of Hurricane Katrina of property located in the Gulf Opportunity Zone.

(C) Coordination with general disaster loss rules

Section 165(i) shall not apply to any qualified Gulf Opportunity Zone casualty loss to the extent such loss is taken into account under this subsection.

(4) Special rules

For purposes of paragraph (1), rules similar to the rules of paragraphs (2) and (3) of section 172(i) shall apply with respect to such portion.

(l) Credit to holders of Gulf tax credit bonds

(1) Allowance of credit

If a taxpayer holds a Gulf tax credit bond on one or more credit allowance dates of the bond occurring during any taxable year, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of the credits determined under paragraph (2) with respect to such dates.

(2) Amount of credit

(A) In general

The amount of the credit determined under this paragraph with respect to any credit allowance date for a Gulf tax credit bond is 25 percent of the annual credit determined with respect to such bond.

(B) Annual credit

The annual credit determined with respect to any Gulf tax credit bond is the product of—
(i) the credit rate determined by the Secretary under subparagraph (C) for the day on which such bond was sold, multiplied by
(ii) the outstanding face amount of the bond.

(C) Determination

For purposes of subparagraph (B), with respect to any Gulf tax credit bond, the Secretary shall determine daily or cause to be determined daily a credit rate which shall apply to the first day on which there is a binding, written contract for the sale or exchange of the bond. The credit rate for any day is the credit rate which the Secretary or the Secretary's designee estimates will permit the issuance of Gulf tax credit bonds with a specified maturity or redemption date without discount and without interest cost to the issuer.

(D) Credit allowance date

For purposes of this subsection, the term "credit allowance date" means March 15, June 15, September 15, and December 15. Such term also includes the last day on which the bond is outstanding.

(E) Special rule for issuance and redemption

In the case of a bond which is issued during the 3-month period ending on a credit allowance date, the amount of the credit determined under this paragraph with respect to such credit allowance date shall be a ratable portion of the credit otherwise determined based on the portion of the 3-month period during which the bond is outstanding. A similar rule shall apply when the bond is redeemed or matures.

(3) Limitation based on amount of tax

The credit allowed under paragraph (1) for any taxable year shall not exceed the excess of—

(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

(B) the sum of the credits allowable under part IV of subchapter A (other than subparts C, I, and J and this subsection).

(4) Gulf tax credit bond

For purposes of this subsection—

(A) In general

The term "Gulf tax credit bond" means any bond issued as part of an issue if—

(i) the bond is issued by the State of Alabama, Louisiana, or Mississippi,

(ii) 95 percent or more of the proceeds of such issue are to be used to—

(I) pay principal, interest, or premiums on qualified bonds issued by such State or any political subdivision of such State, or

(II) make a loan to any political subdivision of such State to pay principal, interest, or premiums on qualified bonds issued by such political subdivision,

(iii) the Governor of such State designates such bond for purposes of this subsection,

(iv) the bond is a general obligation of such State and is in registered form (within the meaning of section 149(a)),

(v) the maturity of such bond does not exceed 2 years, and

(vi) the bond is issued after December 31, 2005, and before January 1, 2007.

(B) State matching requirement

A bond shall not be treated as a Gulf tax credit bond unless—

(i) the issuer of such bond pledges as of the date of the issuance of the issue an amount equal to the face amount of such bond to be used for payments described in subclause (I) of subparagraph (A)(ii), or loans described in subclause (II) of such subparagraph, as the case may be, with respect to the issue of which such bond is a part, and

(ii) any such payment or loan is made in equal amounts from the proceeds of such issue and from the amount pledged under clause (i).

The requirement of clause (ii) shall be treated as met with respect to any such payment or loan made during the 1-year period beginning on the date of the issuance (or any successor 1-year period) if such requirement is met when applied with respect to the aggregate amount of such payments and loans made during such period.

(C) Aggregate limit on bond designations

The maximum aggregate face amount of bonds which may be designated under this subsection by the Governor of a State shall not exceed—

(i) $200,000,000 in the case of the State of Louisiana,

(ii) $100,000,000 in the case of the State of Mississippi, and

(iii) $50,000,000 in the case of the State of Alabama.

(D) Special rules relating to arbitrage

A bond which is part of an issue shall not be treated as a Gulf tax credit bond unless, with respect to the issue of which the bond is a part, the issuer satisfies the arbitrage requirements of section 148 with respect to proceeds of the issue and any loans made with such proceeds.

(5) Qualified bond

For purposes of this subsection—

(A) In general

The term "qualified bond" means any obligation of a State or political subdivision thereof

which was outstanding on August 28, 2005.

(B) Exception for private activity bonds

Such term shall not include any private activity bond.

(C) Exception for advance refundings

Such term shall not include any bond with respect to which there is any outstanding refunded or refunding bond during the period in which a Gulf tax credit bond is outstanding with respect to such bond.

(D) Use of proceeds requirement

Such term shall not include any bond issued as part of an issue if any portion of the proceeds of such issue was (or is to be) used to provide any property described in section 144(c)(6)(B).

(6) Credit included in gross income

Gross income includes the amount of the credit allowed to the taxpayer under this subsection (determined without regard to paragraph (3)) and the amount so included shall be treated as interest income.

(7) Other definitions and special rules

For purposes of this subsection—

(A) Bond

The term "bond" includes any obligation.

(B) Partnership; S corporation; and other pass-thru entities

(i) In general

Under regulations prescribed by the Secretary, in the case of a partnership, trust, S corporation, or other pass-thru entity, rules similar to the rules of section 41(g) shall apply with respect to the credit allowable under paragraph (1).

(ii) No basis adjustment

In the case of a bond held by a partnership or an S corporation, rules similar to the rules under section 1397E(l) shall apply.

(C) Bonds held by regulated investment companies

If any Gulf tax credit bond is held by a regulated investment company, the credit determined under paragraph (1) shall be allowed to shareholders of such company under procedures prescribed by the Secretary.

(D) Reporting

Issuers of Gulf tax credit bonds shall submit reports similar to the reports required under section 149(e).

(E) Credit treated as nonrefundable bondholder credit

For purposes of this title, the credit allowed by this subsection shall be treated as a credit allowable under subpart H of part IV of subchapter A of this chapter.

(m) Application of new markets tax credit to investments in community development entities serving Gulf Opportunity Zone

For purposes of section 45D—

(1) a qualified community development entity shall be eligible for an allocation under subsection (f)(2) thereof of the increase in the new markets tax credit limitation described in paragraph (2) only if a significant mission of such entity is the recovery and redevelopment of the Gulf Opportunity Zone,

(2) the new markets tax credit limitation otherwise determined under subsection (f)(1) thereof shall be increased by an amount equal to—

(A) $300,000,000 for 2005 and 2006, to be allocated among qualified community

development entities to make qualified low-income community investments within the Gulf Opportunity Zone, and

(B) $400,000,000 for 2007, to be so allocated, and

(3) subsection (f)(3) thereof shall be applied separately with respect to the amount of the increase under paragraph (2).

(n) Treatment of representations regarding income eligibility for purposes of qualified residential rental project requirements

For purposes of determining if any residential rental project meets the requirements of section 142(d)(1) and if any certification with respect to such project meets the requirements under section 142(d)(7), the operator of the project may rely on the representations of any individual applying for tenancy in such project that such individual's income will not exceed the applicable income limits of section 142(d)(1) upon commencement of the individual's tenancy if such tenancy begins during the 6-month period beginning on and after the date such individual was displaced by reason of Hurricane Katrina.

(o) Treatment of public utility property disaster losses

(1) In general

Upon the election of the taxpayer, in the case of any eligible public utility property loss—

(A) section 165(i) shall be applied by substituting "the fifth taxable year immediately preceding" for "the taxable year immediately preceding",

(B) an application for a tentative carryback adjustment of the tax for any prior taxable year affected by the application of subparagraph (A) may be made under section 6411, and

(C) section 6611 shall not apply to any overpayment attributable to such loss.

(2) Eligible public utility property loss

For purposes of this subsection—

(A) In general

The term "eligible public utility property loss" means any loss with respect to public utility property located in the Gulf Opportunity Zone and attributable to Hurricane Katrina.

(B) Public utility property

The term "public utility property" has the meaning given such term by section 168(i)(10) without regard to the matter following subparagraph (D) thereof.

(3) Waiver of limitations

If refund or credit of any overpayment of tax resulting from the application of paragraph (1) is prevented at any time before the close of the 1-year period beginning on the date of the enactment of this section by the operation of any law or rule of law (including res judicata), such refund or credit may nevertheless be made or allowed if claim therefor is filed before the close of such period.

(p) Tax benefits not available with respect to certain property

(1) Qualified Gulf Opportunity Zone property

For purposes of subsections (d), (e), and (k)(2)(B)(iv), the term "qualified Gulf Opportunity Zone property" shall not include any property described in paragraph (3).

(2) Qualified Gulf Opportunity Zone casualty losses

For purposes of subsection (k)(2)(B)(i), the term "qualified Gulf Opportunity Zone casualty loss" shall not include any loss with respect to any property described in paragraph (3).

(3) Property described

(A) In general

For purposes of this subsection, property is described in this paragraph if such property is—

(i) any property used in connection with any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises, or

(ii) any gambling or animal racing property.

(B) Gambling or animal racing property

For purposes of subparagraph (A)(ii)—

(i) In general

The term "gambling or animal racing property" means—

(I) any equipment, furniture, software, or other property used directly in connection with gambling, the racing of animals, or the on-site viewing of such racing, and

(II) the portion of any real property (determined by square footage) which is dedicated to gambling, the racing of animals, or the on-site viewing of such racing.

(ii) De minimis portion

Clause (i)(II) shall not apply to any real property if the portion so dedicated is less than 100 square feet.

(Added Pub. L. 109–135, title I, §101(a), Dec. 21, 2005, 119 Stat. 2579; amended Pub. L. 109–432, div. A, title I, §§107(b)(2), 120(a), (b), Dec. 20, 2006, 120 Stat. 2939, 2943; Pub. L. 110–28, title VIII, §§8221–8223, May 25, 2007, 121 Stat. 194, 195; Pub. L. 110–185, title I, §103(c)(9), (10), Feb. 13, 2008, 122 Stat. 619; Pub. L. 110–234, title XV, §15316(c)(1), May 22, 2008, 122 Stat. 1511; Pub. L. 110–246, §4(a), title XV, §15316(c)(1), June 18, 2008, 122 Stat. 1664, 2273; Pub. L. 110–289, div. C, title III, §3082(b)(1), (c)(1), July 30, 2008, 122 Stat. 2907; Pub. L. 110–343, div. C, title III, §320(a), Oct. 3, 2008, 122 Stat. 3873; Pub. L. 111–5, div. B, title I, §§1201(a)(2)(E), 1531(c)(3), Feb. 17, 2009, 123 Stat. 333, 360; Pub. L. 111–240, title II, §2022(b)(7), Sept. 27, 2010, 124 Stat. 2558; Pub. L. 111–312, title IV, §401(d)(7), title VII, §§762(a), 763, 764(a), 765(a), Dec. 17, 2010, 124 Stat. 3306, 3323, 3324; Pub. L. 112–240, title III, §331(e)(5), Jan. 2, 2013, 126 Stat. 2337.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsecs. (a)(2)(D), (b)(1), (2), and (o)(3), is the date of enactment of Pub. L. 109–135, which was approved Dec. 21, 2005.

The date of the enactment of this paragraph, referred to in subsec. (a)(7)(C), is the date of enactment of Pub. L. 110–28, which was approved May 25, 2007.

Subpar. (C) of section 42(d)(5), referred to in subsec. (c)(3)(A)(i), (4)(C), was redesignated (B) by Pub. L. 110–289, div. C, title I, §3003(g)(3), July 30, 2008, 122 Stat. 2882.

Subpar. (D) of section 42(i)(2), referred to in subsec. (c)(6), was repealed by Pub. L. 110–289, div. C, title I, §3002(b)(2)(C), July 30, 2008, 122 Stat. 2880.

Sections 106, 107, 108, and 122 of the Housing and Community Development Act of 1974, referred to in subsec. (c)(6), are classified to sections 5306, 5307, 5308, and 5321, respectively, of Title 42, The Public Health and Welfare.

The Department of Defense Appropriations Act, 2006, referred to in subsec. (c)(6), is div. A of Pub. L. 109–148, Dec. 30, 2005, 119 Stat. 2680. For complete classification of this Act to the Code, see Tables.

The Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006, referred to in subsec. (c)(6), is Pub. L. 109–234, June 15, 2006, 120 Stat. 418. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2013—Subsec. (d)(3)(B). Pub. L. 112–240 substituted "January 1, 2014" for "January 1, 2013".

2010—Subsec. (a)(2)(D), (7)(C). Pub. L. 111–312, §764(a), substituted "January 1, 2012" for "January 1, 2011".

Subsec. (c)(5). Pub. L. 111–312, §763, substituted "January 1, 2012" for "January 1, 2011".

Subsec. (d)(3)(B). Pub. L. 111–312, §401(d)(7), substituted "January 1, 2013" for "January 1, 2011".

Pub. L. 111–240 substituted "January 1, 2011" for "January 1, 2010".

Subsec. (d)(6)(B)(ii). Pub. L. 111–312, §765(a)(1), substituted "December 31, 2011" for "December 31, 2010" in subcls. (I) and (II).

Subsec. (d)(6)(D). Pub. L. 111–312, §765(a)(2), substituted "January 1, 2012" for "January 1, 2010" in heading and text.

Subsec. (h). Pub. L. 111–312, §762(a), substituted "December 31, 2011" for "December 31, 2009" in introductory provisions.

2009—Subsec. (d)(3)(B). Pub. L. 111–5, §1201(a)(2)(E), substituted "January 1, 2010" for "January 1, 2009".

Subsec. (l)(3)(B). Pub. L. 111–5, §1531(c)(3), substituted ", I, and J" for "and I".

2008—Subsec. (a)(8). Pub. L. 110–289, §3082(c)(1), added par. (8).

Subsec. (d)(3)(A). Pub. L. 110–185, §103(c)(9)(A), substituted "December 31, 2007" for "September 10, 2001".

Subsec. (d)(3)(B). Pub. L. 110–289, §3082(b)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "by substituting 'January 1, 2008' for 'January 1, 2009' in clause (i) thereof, and".

Pub. L. 110–185, §103(c)(9)(B), substituted "January 1, 2009" for "January 1, 2005".

Subsec. (d)(6)(E). Pub. L. 110–185, §103(c)(10), added subpar. (E).

Subsec. (h). Pub. L. 110–343 substituted "December 31, 2009" for "December 31, 2008" in introductory provisions.

Subsec. (l)(3)(B). Pub. L. 110–246, §15316(c)(1), substituted "subparts C and I" for "subpart C".

2007—Subsec. (a)(7). Pub. L. 110–28, §8223, added par. (7).

Subsec. (c)(3)(A). Pub. L. 110–28, §8222(b)(1), substituted "the period beginning on January 1, 2006, and ending on December 31, 2010" for "2006, 2007, or 2008".

Subsec. (c)(3)(B)(ii). Pub. L. 110–28, §8222(b)(2), substituted "the period described in subparagraph (A)" for "such period".

Subsec. (c)(5). Pub. L. 110–28, §8222(a), added par. (5). Former par. (5) redesignated (6).

Subsec. (c)(6). Pub. L. 110–28, §8222(c), added par. (6). Former par. (6) redesignated (7).

Pub. L. 110–28, §8222(a), redesignated par. (5) as (6).

Subsec. (c)(7). Pub. L. 110–28, §8222(c), redesignated par. (6) as (7).

Subsec. (e)(2). Pub. L. 110–28, §8221, substituted "this subsection—", subpar. (A) heading, and "The term" for "this subsection, the term" and added subpar. (B).

2006—Subsec. (d)(6). Pub. L. 109–432, §120(a), added par. (6).

Subsec. (e)(2). Pub. L. 109–432, §120(b), inserted "without regard to subsection (d)(6)" after "subsection (d)(2)".

Subsec. (l)(7)(B)(ii). Pub. L. 109–432, §107(b)(2), substituted "1397E(l)" for "1397E(i)".

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112–240 applicable to property placed in service after Dec. 31, 2012, in taxable years ending after such date, see section 331(f) of Pub. L. 112–240, set out as a note under section 168 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 401(d)(7) of Pub. L. 111–312 applicable to property placed in service after Dec. 31, 2010, in taxable years ending after such date, see section 401(e)(1) of Pub. L. 111–312, set out as a note under section 168 of this title.

Pub. L. 111–312, title VII, §762(b), Dec. 17, 2010, 124 Stat. 3323, provided that: "The amendment made by this section [amending this section] shall apply to amounts paid or incurred after December 31, 2009."

Pub. L. 111–312, title VII, §765(b), Dec. 17, 2010, 124 Stat. 3324, provided that: "The amendment made by this section [amending this section] shall apply to property placed in service after December 31, 2009."

Amendment by Pub. L. 111–240 applicable to property placed in service after Dec. 31, 2009, in taxable years ending after such date, see section 2022(c) of Pub. L. 111–240, set out as a note under section 168 of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by section 1201(a)(2)(E) of Pub. L. 111–5 applicable to property placed in service after Dec. 31, 2008, in taxable years ending after such date, see section 1201(c)(1) of Pub. L. 111–5, set out as a note under section 168 of this title.

Amendment by section 1531(c)(3) of Pub. L. 111–5 applicable to obligations issued after Feb. 17, 2009, see

section 1531(e) of Pub. L. 111–5, set out as a note under section 54 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title III, §320(b), Oct. 3, 2008, 122 Stat. 3873, provided that: "The amendment made by this section [amending this section] shall apply to expenditures paid or incurred after the date of the enactment of this Act [Oct. 3, 2008]."

Pub. L. 110–289, div. C, title III, §3082(b)(2), July 30, 2008, 122 Stat. 2907, provided that: "The amendment made by this subsection [amending this section] shall apply to property placed in service after December 31, 2007."

Pub. L. 110–289, div. C, title III, §3082(c)(2), July 30, 2008, 122 Stat. 2908, provided that: 'The amendment made by this subsection [amending this section] shall take effect as if included in the provisions of the Gulf Opportunity Zone Act of 2005 [Pub. L. 109–135] to which it relates."

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by section 15316(c)(1) of Pub. L. 110–246 applicable to obligations issued after June 18, 2008, see section 15316(d) of Pub. L. 110–246, set out as a note under section 54 of this title.

Amendment by Pub. L. 110–185 applicable to property placed in service after Dec. 31, 2007, in taxable years ending after such date, see section 103(d) of Pub. L. 110–185, set out as a note under section 168 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 107(b)(2) of Pub. L. 109–432 applicable to obligations issued after Dec. 20, 2006, pursuant to allocations of the national zone academy bond limitation for calendar years after 2005, see section 107(c) of Pub. L. 109–432, set out as a note under section 1397E of this title.

Pub. L. 109–432, div. A, title I, §120(c), Dec. 20, 2006, 120 Stat. 2943, provided that: "The amendments made by this section [amending this section] shall take effect as if included in section 101 of the Gulf Opportunity Zone Act of 2005 [Pub. L. 109–135]."

EFFECTIVE DATE

Pub. L. 109–135, title I, §101(c), Dec. 21, 2005, 119 Stat. 2593, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this section and section 1400M of this title and amending sections 54 and 6049 of this title] shall apply to taxable years ending on or after August 28, 2005.

"(2) CARRYBACKS.—Subsections (i)(2), (j), and (k) of section 1400N of the Internal Revenue Code of 1986 (as added by this section) shall apply to losses arising in such taxable years."

[1] See References in Text note below.

[2] So in original. The second parenthesis probably should not appear.

§1400O. Education tax benefits

In the case of an individual who attends an eligible educational institution (as defined in section 25A(f)(2)) located in the Gulf Opportunity Zone for any taxable year beginning during 2005 or 2006—

(1) in applying section 25A, the term "qualified tuition and related expenses" shall include any costs which are qualified higher education expenses (as defined in section 529(e)(3)),

(2) each of the dollar amounts in effect under subparagraphs (A) and (B) of section 25A(b)(1) shall be twice the amount otherwise in effect before the application of this subsection, and

(3) section 25A(c)(1) shall be applied by substituting "40 percent" for "20 percent".

(Added Pub. L. 109–135, title I, §102(a), Dec. 21, 2005, 119 Stat. 2594; amended Pub. L. 110–172, §11(a)(26), Dec. 29, 2007, 121 Stat. 2487.)

AMENDMENTS

2007—Par. (2). Pub. L. 110–172 substituted "under" for "under of".

§1400P. Housing tax benefits

(a) Exclusion of employer provided housing for individual affected by Hurricane Katrina

(1) In general

Gross income of a qualified employee shall not include the value of any lodging furnished in-kind to such employee (and such employee's spouse or any of such employee's dependents) by or on behalf of a qualified employer for any month during the taxable year.

(2) Limitation

The amount which may be excluded under paragraph (1) for any month for which lodging is furnished during the taxable year shall not exceed $600.

(3) Treatment of exclusion

The exclusion under paragraph (1) shall be treated as an exclusion under section 119 (other than for purposes of sections 3121(a)(19) and 3306(b)(14)).

(b) Employer credit for housing employees affected by Hurricane Katrina

For purposes of section 38, in the case of a qualified employer, the Hurricane Katrina housing credit for any month during the taxable year is an amount equal to 30 percent of any amount which is excludable from the gross income of a qualified employee of such employer under subsection (a) and not otherwise excludable under section 119.

(c) Qualified employee

For purposes of this section, the term "qualified employee" means, with respect to any month, an individual—

(1) who had a principal residence (as defined in section 121) in the Gulf Opportunity Zone on August 28, 2005, and

(2) who performs substantially all employment services—

(A) in the Gulf Opportunity Zone, and

(B) for the qualified employer which furnishes lodging to such individual.

(d) Qualified employer

For purposes of this section, the term "qualified employer" means any employer with a trade or business located in the Gulf Opportunity Zone.

(e) Certain rules to apply

For purposes of this subsection, rules similar to the rules of sections 51(i)(1) and 52 shall apply.

(f) Application of section

This section shall apply to lodging furnished during the period—

(1) beginning on the first day of the first month beginning after the date of the enactment of this section, and

(2) ending on the date which is 6 months after the first day described in paragraph (1).

(Added Pub. L. 109–135, title I, §103(a), Dec. 21, 2005, 119 Stat. 2594.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (f)(1), is the date of enactment of Pub. L. 109–135, which was approved Dec. 21, 2005.

§1400Q. Special rules for use of retirement funds

(a) Tax-favored withdrawals from retirement plans

(1) In general

Section 72(t) shall not apply to any qualified hurricane distribution.

(2) Aggregate dollar limitation

(A) In general

For purposes of this subsection, the aggregate amount of distributions received by an individual which may be treated as qualified hurricane distributions for any taxable year shall not exceed the excess (if any) of—

(i) $100,000, over

(ii) the aggregate amounts treated as qualified hurricane distributions received by such individual for all prior taxable years.

(B) Treatment of plan distributions

If a distribution to an individual would (without regard to subparagraph (A)) be a qualified hurricane distribution, a plan shall not be treated as violating any requirement of this title merely because the plan treats such distribution as a qualified hurricane distribution, unless the aggregate amount of such distributions from all plans maintained by the employer (and any member of any controlled group which includes the employer) to such individual exceeds $100,000.

(C) Controlled group

For purposes of subparagraph (B), the term "controlled group" means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414.

(3) Amount distributed may be repaid

(A) In general

Any individual who receives a qualified hurricane distribution may, at any time during the 3-year period beginning on the day after the date on which such distribution was received, make one or more contributions in an aggregate amount not to exceed the amount of such distribution to an eligible retirement plan of which such individual is a beneficiary and to which a rollover contribution of such distribution could be made under section 402(c), 403(a)(4), 403(b)(8), 408(d)(3), or 457(e)(16), as the case may be.

(B) Treatment of repayments of distributions from eligible retirement plans other than IRAs

For purposes of this title, if a contribution is made pursuant to subparagraph (A) with respect to a qualified hurricane distribution from an eligible retirement plan other than an individual retirement plan, then the taxpayer shall, to the extent of the amount of the contribution, be treated as having received the qualified hurricane distribution in an eligible rollover distribution (as defined in section 402(c)(4)) and as having transferred the amount to the eligible retirement plan in a direct trustee to trustee transfer within 60 days of the distribution.

(C) Treatment of repayments for distributions from IRAs

For purposes of this title, if a contribution is made pursuant to subparagraph (A) with respect to a qualified hurricane distribution from an individual retirement plan (as defined by section 7701(a)(37)), then, to the extent of the amount of the contribution, the qualified hurricane distribution shall be treated as a distribution described in section 408(d)(3) and as having been transferred to the eligible retirement plan in a direct trustee to trustee transfer within 60 days of the distribution.

(4) Definitions

For purposes of this subsection—

(A) Qualified hurricane distribution

Except as provided in paragraph (2), the term "qualified hurricane distribution" means—

(i) any distribution from an eligible retirement plan made on or after August 25, 2005, and before January 1, 2007, to an individual whose principal place of abode on August 28, 2005,

is located in the Hurricane Katrina disaster area and who has sustained an economic loss by reason of Hurricane Katrina,

(ii) any distribution (which is not described in clause (i)) from an eligible retirement plan made on or after September 23, 2005, and before January 1, 2007, to an individual whose principal place of abode on September 23, 2005, is located in the Hurricane Rita disaster area and who has sustained an economic loss by reason of Hurricane Rita, and

(iii) any distribution (which is not described in clause (i) or (ii)) from an eligible retirement plan made on or after October 23, 2005, and before January 1, 2007, to an individual whose principal place of abode on October 23, 2005, is located in the Hurricane Wilma disaster area and who has sustained an economic loss by reason of Hurricane Wilma.

(B) Eligible retirement plan

The term "eligible retirement plan" shall have the meaning given such term by section 402(c)(8)(B).

(5) Income inclusion spread over 3-year period

(A) In general

In the case of any qualified hurricane distribution, unless the taxpayer elects not to have this paragraph apply for any taxable year, any amount required to be included in gross income for such taxable year shall be so included ratably over the 3-taxable year period beginning with such taxable year.

(B) Special rule

For purposes of subparagraph (A), rules similar to the rules of subparagraph (E) of section 408A(d)(3) shall apply.

(6) Special rules

(A) Exemption of distributions from trustee to trustee transfer and withholding rules

For purposes of sections 401(a)(31), 402(f), and 3405, qualified hurricane distributions shall not be treated as eligible rollover distributions.

(B) Qualified hurricane distributions treated as meeting plan distribution requirements

For purposes [1] this title, a qualified hurricane distribution shall be treated as meeting the requirements of sections 401(k)(2)(B)(i), 403(b)(7)(A)(ii), 403(b)(11), and 457(d)(1)(A).

(b) Recontributions of withdrawals for home purchases

(1) Recontributions

(A) In general

Any individual who received a qualified distribution may, during the applicable period, make one or more contributions in an aggregate amount not to exceed the amount of such qualified distribution to an eligible retirement plan (as defined in section 402(c)(8)(B)) of which such individual is a beneficiary and to which a rollover contribution of such distribution could be made under section 402(c), 403(a)(4), 403(b)(8), or 408(d)(3), as the case may be.

(B) Treatment of repayments

Rules similar to the rules of subparagraphs (B) and (C) of subsection (a)(3) shall apply for purposes of this subsection.

(2) Qualified distribution

For purposes of this subsection—

(A) In general

The term "qualified distribution" means any qualified Katrina distribution, any qualified Rita distribution, and any qualified Wilma distribution.

(B) Qualified Katrina distribution

The term "qualified Katrina distribution" means any distribution—

(i) described in section 401(k)(2)(B)(i)(IV), 403(b)(7)(A)(ii) (but only to the extent such distribution relates to financial hardship), 403(b)(11)(B), or 72(t)(2)(F),

(ii) received after February 28, 2005, and before August 29, 2005, and

(iii) which was to be used to purchase or construct a principal residence in the Hurricane Katrina disaster area, but which was not so purchased or constructed on account of Hurricane Katrina.

(C) Qualified Rita distribution

The term "qualified Rita distribution" means any distribution (other than a qualified Katrina distribution)—

(i) described in section 401(k)(2)(B)(i)(IV), 403(b)(7)(A)(ii) (but only to the extent such distribution relates to financial hardship), 403(b)(11)(B), or 72(t)(2)(F),

(ii) received after February 28, 2005, and before September 24, 2005, and

(iii) which was to be used to purchase or construct a principal residence in the Hurricane Rita disaster area, but which was not so purchased or constructed on account of Hurricane Rita.

(D) Qualified Wilma distribution

The term "qualified Wilma distribution" means any distribution (other than a qualified Katrina distribution or a qualified Rita distribution)—

(i) described in section 401(k)(2)(B)(i)(IV), 403(b)(7)(A)(ii) (but only to the extent such distribution relates to financial hardship), 403(b)(11)(B), or 72(t)(2)(F),

(ii) received after February 28, 2005, and before October 24, 2005, and

(iii) which was to be used to purchase or construct a principal residence in the Hurricane Wilma disaster area, but which was not so purchased or constructed on account of Hurricane Wilma.

(3) Applicable period

For purposes of this subsection, the term "applicable period" means—

(A) with respect to any qualified Katrina distribution, the period beginning on August 25, 2005, and ending on February 28, 2006,

(B) with respect to any qualified Rita distribution, the period beginning on September 23, 2005, and ending on February 28, 2006, and

(C) with respect to any qualified Wilma distribution, the period beginning on October 23, 2005, and ending on February 28, 2006.

(c) Loans from qualified plans

(1) Increase in limit on loans not treated as distributions

In the case of any loan from a qualified employer plan (as defined under section 72(p)(4)) to a qualified individual made during the applicable period—

(A) clause (i) of section 72(p)(2)(A) shall be applied by substituting "$100,000" for "$50,000", and

(B) clause (ii) of such section shall be applied by substituting "the present value of the nonforfeitable accrued benefit of the employee under the plan" for "one-half of the present value of the nonforfeitable accrued benefit of the employee under the plan".

(2) Delay of repayment

In the case of a qualified individual with an outstanding loan on or after the qualified beginning date from a qualified employer plan (as defined in section 72(p)(4))—

(A) if the due date pursuant to subparagraph (B) or (C) of section 72(p)(2) for any repayment with respect to such loan occurs during the period beginning on the qualified beginning date and ending on December 31, 2006, such due date shall be delayed for 1 year,

(B) any subsequent repayments with respect to any such loan shall be appropriately adjusted to reflect the delay in the due date under paragraph (1) and any interest accruing during such

delay, and

(C) in determining the 5-year period and the term of a loan under subparagraph (B) or (C) of section 72(p)(2), the period described in subparagraph (A) shall be disregarded.

(3) Qualified individual

For purposes of this subsection—

(A) In general

The term "qualified individual" means any qualified Hurricane Katrina individual, any qualified Hurricane Rita individual, and any qualified Hurricane Wilma individual.

(B) Qualified Hurricane Katrina individual

The term "qualified Hurricane Katrina individual" means an individual whose principal place of abode on August 28, 2005, is located in the Hurricane Katrina disaster area and who has sustained an economic loss by reason of Hurricane Katrina.

(C) Qualified Hurricane Rita individual

The term "qualified Hurricane Rita individual" means an individual (other than a qualified Hurricane Katrina individual) whose principal place of abode on September 23, 2005, is located in the Hurricane Rita disaster area and who has sustained an economic loss by reason of Hurricane Rita.

(D) Qualified Hurricane Wilma individual

The term "qualified Hurricane Wilma individual" means an individual (other than a qualified Hurricane Katrina individual or a qualified Hurricane Rita individual) whose principal place of abode on October 23, 2005, is located in the Hurricane Wilma disaster area and who has sustained an economic loss by reason of Hurricane Wilma.

(4) Applicable period; qualified beginning date

For purposes of this subsection—

(A) Hurricane Katrina

In the case of any qualified Hurricane Katrina individual—

(i) the applicable period is the period beginning on September 24, 2005, and ending on December 31, 2006, and

(ii) the qualified beginning date is August 25, 2005.

(B) Hurricane Rita

In the case of any qualified Hurricane Rita individual—

(i) the applicable period is the period beginning on the date of the enactment of this subsection and ending on December 31, 2006, and

(ii) the qualified beginning date is September 23, 2005.

(C) Hurricane Wilma

In the case of any qualified Hurricane Wilma individual—

(i) the applicable period is the period beginning on the date of the enactment of this subparagraph and ending on December 31, 2006, and

(ii) the qualified beginning date is October 23, 2005.

(d) Provisions relating to plan amendments

(1) In general

If this subsection applies to any amendment to any plan or annuity contract, such plan or contract shall be treated as being operated in accordance with the terms of the plan during the period described in paragraph (2)(B)(i).

(2) Amendments to which subsection applies

(A) In general

This subsection shall apply to any amendment to any plan or annuity contract which is made—

(i) pursuant to any provision of this section, or pursuant to any regulation issued by the Secretary or the Secretary of Labor under any provision of this section, and

(ii) on or before the last day of the first plan year beginning on or after January 1, 2007, or such later date as the Secretary may prescribe.

In the case of a governmental plan (as defined in section 414(d)), clause (ii) shall be applied by substituting the date which is 2 years after the date otherwise applied under clause (ii).

(B) Conditions

This subsection shall not apply to any amendment unless—

(i) during the period—

(I) beginning on the date that this section or the regulation described in subparagraph (A)(i) takes effect (or in the case of a plan or contract amendment not required by this section or such regulation, the effective date specified by the plan), and

(II) ending on the date described in subparagraph (A)(ii) (or, if earlier, the date the plan or contract amendment is adopted),

the plan or contract is operated as if such plan or contract amendment were in effect; and

(ii) such plan or contract amendment applies retroactively for such period.

(Added Pub. L. 109–135, title II, §201(a), Dec. 21, 2005, 119 Stat. 2596.)

REFERENCES IN TEXT

The date of the enactment of this subsection and this subparagraph, referred to in subsec. (c)(4)(B)(i), (C)(i), is the date of enactment of Pub. L. 109–135, which was approved Dec. 21, 2005.

[1] So in original. Probably should be followed by "of".

§1400R. Employment relief

(a) Employee retention credit for employers affected by Hurricane Katrina

(1) In general

For purposes of section 38, in the case of an eligible employer, the Hurricane Katrina employee retention credit for any taxable year is an amount equal to 40 percent of the qualified wages with respect to each eligible employee of such employer for such taxable year. For purposes of the preceding sentence, the amount of qualified wages which may be taken into account with respect to any individual shall not exceed $6,000.

(2) Definitions

For purposes of this subsection—

(A) Eligible employer

The term "eligible employer" means any employer—

(i) which conducted an active trade or business on August 28, 2005, in the GO Zone, and

(ii) with respect to whom the trade or business described in clause (i) is inoperable on any day after August 28, 2005, and before January 1, 2006, as a result of damage sustained by reason of Hurricane Katrina.

(B) Eligible employee

The term "eligible employee" means with respect to an eligible employer an employee whose principal place of employment on August 28, 2005, with such eligible employer was in the GO Zone.

(C) Qualified wages

The term "qualified wages" means wages (as defined in section 51(c)(1), but without regard to section 3306(b)(2)(B)) paid or incurred by an eligible employer with respect to an eligible employee on any day after August 28, 2005, and before January 1, 2006, which occurs during the period—

(i) beginning on the date on which the trade or business described in subparagraph (A) first became inoperable at the principal place of employment of the employee immediately before Hurricane Katrina, and

(ii) ending on the date on which such trade or business has resumed significant operations at such principal place of employment.

Such term shall include wages paid without regard to whether the employee performs no services, performs services at a different place of employment than such principal place of employment, or performs services at such principal place of employment before significant operations have resumed.

(3) Certain rules to apply

For purposes of this subsection, rules similar to the rules of sections 51(i)(1) and 52 shall apply.

(4) Employee not taken into account more than once

An employee shall not be treated as an eligible employee for purposes of this subsection for any period with respect to any employer if such employer is allowed a credit under section 51 with respect to such employee for such period.

(b) Employee retention credit for employers affected by Hurricane Rita

(1) In general

For purposes of section 38, in the case of an eligible employer, the Hurricane Rita employee retention credit for any taxable year is an amount equal to 40 percent of the qualified wages with respect to each eligible employee of such employer for such taxable year. For purposes of the preceding sentence, the amount of qualified wages which may be taken into account with respect to any individual shall not exceed $6,000.

(2) Definitions

For purposes of this subsection—

(A) Eligible employer

The term "eligible employer" means any employer—

(i) which conducted an active trade or business on September 23, 2005, in the Rita GO Zone, and

(ii) with respect to whom the trade or business described in clause (i) is inoperable on any day after September 23, 2005, and before January 1, 2006, as a result of damage sustained by reason of Hurricane Rita.

(B) Eligible employee

The term "eligible employee" means with respect to an eligible employer an employee whose principal place of employment on September 23, 2005, with such eligible employer was in the Rita GO Zone.

(C) Qualified wages

The term "qualified wages" means wages (as defined in section 51(c)(1), but without regard to section 3306(b)(2)(B)) paid or incurred by an eligible employer with respect to an eligible employee on any day after September 23, 2005, and before January 1, 2006, which occurs during the period—

(i) beginning on the date on which the trade or business described in subparagraph (A) first became inoperable at the principal place of employment of the employee immediately before

Hurricane Rita, and

(ii) ending on the date on which such trade or business has resumed significant operations at such principal place of employment.

Such term shall include wages paid without regard to whether the employee performs no services, performs services at a different place of employment than such principal place of employment, or performs services at such principal place of employment before significant operations have resumed.

(3) Certain rules to apply

For purposes of this subsection, rules similar to the rules of sections 51(i)(1) and 52 shall apply.

(4) Employee not taken into account more than once

An employee shall not be treated as an eligible employee for purposes of this subsection for any period with respect to any employer if such employer is allowed a credit under subsection (a) or section 51 with respect to such employee for such period.

(c) Employee retention credit for employers affected by Hurricane Wilma

(1) In general

For purposes of section 38, in the case of an eligible employer, the Hurricane Wilma employee retention credit for any taxable year is an amount equal to 40 percent of the qualified wages with respect to each eligible employee of such employer for such taxable year. For purposes of the preceding sentence, the amount of qualified wages which may be taken into account with respect to any individual shall not exceed $6,000.

(2) Definitions

For purposes of this subsection—

(A) Eligible employer

The term "eligible employer" means any employer—

(i) which conducted an active trade or business on October 23, 2005, in the Wilma GO Zone, and

(ii) with respect to whom the trade or business described in clause (i) is inoperable on any day after October 23, 2005, and before January 1, 2006, as a result of damage sustained by reason of Hurricane Wilma.

(B) Eligible employee

The term "eligible employee" means with respect to an eligible employer an employee whose principal place of employment on October 23, 2005, with such eligible employer was in the Wilma GO Zone.

(C) Qualified wages

The term "qualified wages" means wages (as defined in section 51(c)(1), but without regard to section 3306(b)(2)(B)) paid or incurred by an eligible employer with respect to an eligible employee on any day after October 23, 2005, and before January 1, 2006, which occurs during the period—

(i) beginning on the date on which the trade or business described in subparagraph (A) first became inoperable at the principal place of employment of the employee immediately before Hurricane Wilma, and

(ii) ending on the date on which such trade or business has resumed significant operations at such principal place of employment.

Such term shall include wages paid without regard to whether the employee performs no services, performs services at a different place of employment than such principal place of employment, or performs services at such principal place of employment before significant operations have resumed.

(3) Certain rules to apply

For purposes of this subsection, rules similar to the rules of sections 51(i)(1) and 52 shall apply.

(4) Employee not taken into account more than once

An employee shall not be treated as an eligible employee for purposes of this subsection for any period with respect to any employer if such employer is allowed a credit under subsection (a) or (b) or section 51 with respect to such employee for such period.

(Added Pub. L. 109–135, title II, §201(a), Dec. 21, 2005, 119 Stat. 2601.)

§1400S. Additional tax relief provisions

(a) Temporary suspension of limitations on charitable contributions

(1) In general

Except as otherwise provided in paragraph (2), section 170(b) shall not apply to qualified contributions and such contributions shall not be taken into account for purposes of applying subsections (b) and (d) of section 170 to other contributions.

(2) Treatment of excess contributions

For purposes of section 170—

(A) Individuals

In the case of an individual—

(i) Limitation

Any qualified contribution shall be allowed only to the extent that the aggregate of such contributions does not exceed the excess of the taxpayer's contribution base (as defined in subparagraph (G) of section 170(b)(1)) over the amount of all other charitable contributions allowed under section 170(b)(1).

(ii) Carryover

If the aggregate amount of qualified contributions made in the contribution year (within the meaning of section 170(d)(1)) exceeds the limitation of clause (i), such excess shall be added to the excess described in the portion of subparagraph (A) of such section which precedes clause (i) thereof for purposes of applying such section.

(B) Corporations

In the case of a corporation—

(i) Limitation

Any qualified contribution shall be allowed only to the extent that the aggregate of such contributions does not exceed the excess of the taxpayer's taxable income (as determined under paragraph (2) of section 170(b)) over the amount of all other charitable contributions allowed under such paragraph.

(ii) Carryover

Rules similar to the rules of subparagraph (A)(ii) shall apply for purposes of this subparagraph.

(3) Exception to overall limitation on itemized deductions

So much of any deduction allowed under section 170 as does not exceed the qualified contributions paid during the taxable year shall not be treated as an itemized deduction for purposes of section 68.

(4) Qualified contributions

(A) In general

For purposes of this subsection, the term "qualified contribution" means any charitable contribution (as defined in section 170(c)) if—

(i) such contribution is paid during the period beginning on August 28, 2005, and ending on December 31, 2005, in cash to an organization described in section 170(b)(1)(A) (other than an organization described in section 509(a)(3)),

(ii) in the case of a contribution paid by a corporation, such contribution is for relief efforts related to Hurricane Katrina, Hurricane Rita, or Hurricane Wilma, and

(iii) the taxpayer has elected the application of this subsection with respect to such contribution.

(B) Exception

Such term shall not include a contribution if the contribution is for establishment of a new, or maintenance in an existing, segregated fund or account with respect to which the donor (or any person appointed or designated by such donor) has, or reasonably expects to have, advisory privileges with respect to distributions or investments by reason of the donor's status as a donor.

(C) Application of election to partnerships and S corporations

In the case of a partnership or S corporation, the election under subparagraph (A)(iii) shall be made separately by each partner or shareholder.

(b) Suspension of certain limitations on personal casualty losses

Paragraphs (1) and (2)(A) of section 165(h) shall not apply to losses described in section 165(c)(3)—

(1) which arise in the Hurricane Katrina disaster area on or after August 25, 2005, and which are attributable to Hurricane Katrina,

(2) which arise in the Hurricane Rita disaster area on or after September 23, 2005, and which are attributable to Hurricane Rita, or

(3) which arise in the Hurricane Wilma disaster area on or after October 23, 2005, and which are attributable to Hurricane Wilma.

In the case of any other losses, section 165(h)(2)(A) shall be applied without regard to the losses referred to in the preceding sentence.

(c) Required exercise of authority under section 7508A

In the case of any taxpayer determined by the Secretary to be affected by the Presidentially declared disaster relating to Hurricane Katrina, Hurricane Rita, or Hurricane Wilma, any relief provided by the Secretary under section 7508A shall be for a period ending not earlier than February 28, 2006.

(d) Special rule for determining earned income

(1) In general

In the case of a qualified individual, if the earned income of the taxpayer for the taxable year which includes the applicable date is less than the earned income of the taxpayer for the preceding taxable year, the credits allowed under sections 24(d) and 32 may, at the election of the taxpayer, be determined by substituting—

(A) such earned income for the preceding taxable year, for

(B) such earned income for the taxable year which includes the applicable date.

(2) Qualified individual

For purposes of this subsection—

(A) In general

The term "qualified individual" means any qualified Hurricane Katrina individual, any qualified Hurricane Rita individual, and any qualified Hurricane Wilma individual.

(B) Qualified Hurricane Katrina individual

The term "qualified Hurricane Katrina individual" means any individual whose principal place of abode on August 25, 2005, was located—

(i) in the GO Zone, or

(ii) in the Hurricane Katrina disaster area (but outside the GO Zone) and such individual was displaced from such principal place of abode by reason of Hurricane Katrina.

(C) Qualified Hurricane Rita individual

The term "qualified Hurricane Rita individual" means any individual (other than a qualified Hurricane Katrina individual) whose principal place of abode on September 23, 2005, was located—

(i) in the Rita GO Zone, or

(ii) in the Hurricane Rita disaster area (but outside the Rita GO Zone) and such individual was displaced from such principal place of abode by reason of Hurricane Rita.

(D) Qualified Hurricane Wilma individual

The term "qualified Hurricane Wilma individual" means any individual whose principal place of abode on October 23, 2005, was located—

(i) in the Wilma GO Zone, or

(ii) in the Hurricane Wilma disaster area (but outside the Wilma GO Zone) and such individual was displaced from such principal place of abode by reason of Hurricane Wilma.

(3) Applicable date

For purposes of this subsection, the term "applicable date" means—

(A) in the case of a qualified Hurricane Katrina individual, August 25, 2005,

(B) in the case of a qualified Hurricane Rita individual, September 23, 2005, and

(C) in the case of a qualified Hurricane Wilma individual, October 23, 2005.

(4) Earned income

For purposes of this subsection, the term "earned income" has the meaning given such term under section 32(c).

(5) Special rules

(A) Application to joint returns

For purposes of paragraph (1), in the case of a joint return for a taxable year which includes the applicable date—

(i) such paragraph shall apply if either spouse is a qualified individual, and

(ii) the earned income of the taxpayer for the preceding taxable year shall be the sum of the earned income of each spouse for such preceding taxable year.

(B) Uniform application of election

Any election made under paragraph (1) shall apply with respect to both sections 24(d) and section 32.

(C) Errors treated as mathematical error

For purposes of section 6213, an incorrect use on a return of earned income pursuant to paragraph (1) shall be treated as a mathematical or clerical error.

(D) No effect on determination of gross income, etc.

Except as otherwise provided in this subsection, this title shall be applied without regard to any substitution under paragraph (1).

(e) Secretarial authority to make adjustments regarding taxpayer and dependency status

With respect to taxable years beginning in 2005 or 2006, the Secretary may make such adjustments in the application of the internal revenue laws as may be necessary to ensure that taxpayers do not lose any deduction or credit or experience a change of filing status by reason of

temporary relocations by reason of Hurricane Katrina, Hurricane Rita, or Hurricane Wilma. Any adjustments made under the preceding sentence shall ensure that an individual is not taken into account by more than one taxpayer with respect to the same tax benefit.

(Added Pub. L. 109–135, title II, §201(a), Dec. 21, 2005, 119 Stat. 2604; amended Pub. L. 110–172, §11(a)(14)(C), Dec. 29, 2007, 121 Stat. 2485.)

AMENDMENTS

2007—Subsec. (a)(2)(A)(i). Pub. L. 110–172 substituted "subparagraph (G)" for "subparagraph (F)".

§1400T. Special rules for mortgage revenue bonds

(a) In general

In the case of financing provided with respect to owner-occupied residences in the GO Zone, the Rita GO Zone, or the Wilma GO Zone, section 143 shall be applied—

(1) by treating any such residence in the Rita GO Zone or the Wilma GO Zone as a targeted area residence,

(2) by applying subsection (f)(3) thereof without regard to subparagraph (A) thereof, and

(3) by substituting "$150,000" for "$15,000" in subsection (k)(4) thereof.

(b) Application

Subsection (a) shall not apply to financing provided after December 31, 2010.

(Added Pub. L. 109–135, title II, §201(a), Dec. 21, 2005, 119 Stat. 2607.)

PART III—RECOVERY ZONE BONDS

Sec.
1400U–1. Allocation of recovery zone bonds.
1400U–2. Recovery zone economic development bonds.
1400U–3. Recovery zone facility bonds.

§1400U–1. Allocation of recovery zone bonds

(a) Allocations

(1) In general

(A) General allocation

The Secretary shall allocate the national recovery zone economic development bond limitation and the national recovery zone facility bond limitation among the States in the proportion that each such State's 2008 State employment decline bears to the aggregate of the 2008 State employment declines for all of the States.

(B) Minimum allocation

The Secretary shall adjust the allocations under subparagraph (A) for any calendar year for each State to the extent necessary to ensure that no State receives less than 0.9 percent of the national recovery zone economic development bond limitation and 0.9 percent of the national recovery zone facility bond limitation.

(2) 2008 State employment decline

For purposes of this subsection, the term "2008 State employment decline" means, with respect to any State, the excess (if any) of—

(A) the number of individuals employed in such State determined for December 2007, over

(B) the number of individuals employed in such State determined for December 2008.

(3) Allocations by States

(A) In general

Each State with respect to which an allocation is made under paragraph (1) shall reallocate such allocation among the counties and large municipalities in such State in the proportion to [1] each such county's or municipality's 2008 employment decline bears to the aggregate of the 2008 employment declines for all the counties and municipalities in such State. A county or municipality may waive any portion of an allocation made under this subparagraph.

(B) Large municipalities

For purposes of subparagraph (A), the term "large municipality" means a municipality with a population of more than 100,000.

(C) Determination of local employment declines

For purposes of this paragraph, the employment decline of any municipality or county shall be determined in the same manner as determining the State employment decline under paragraph (2), except that in the case of a municipality any portion of which is in a county, such portion shall be treated as part of such municipality and not part of such county.

(4) National limitations

(A) Recovery zone economic development bonds

There is a national recovery zone economic development bond limitation of $10,000,000,000.

(B) Recovery zone facility bonds

There is a national recovery zone facility bond limitation of $15,000,000,000.

(b) Recovery zone

For purposes of this part, the term "recovery zone" means—

(1) any area designated by the issuer as having significant poverty, unemployment, rate of home foreclosures, or general distress,

(2) any area designated by the issuer as economically distressed by reason of the closure or realignment of a military installation pursuant to the Defense Base Closure and Realignment Act of 1990, and

(3) any area for which a designation as an empowerment zone or renewal community is in effect.

(Added Pub. L. 111–5, div. B, title I, §1401(a), Feb. 17, 2009, 123 Stat. 348.)

REFERENCES IN TEXT

The Defense Base Closure and Realignment Act of 1990, referred to in subsec. (b)(2), is part A of title XXIX of div. B of Pub. L. 101–510, Nov. 5, 1990, 104 Stat. 1808, which is set out as a note under section 2687 of Title 10, Armed Forces. For complete classification of this Act to the Code, see Tables.

EFFECTIVE DATE

Pub. L. 111–5, div. B, title I, §1401(c), Feb. 17, 2009, 123 Stat. 351, provided that: "The amendments made by this section [enacting this part] shall apply to obligations issued after the date of the enactment of this Act [Feb. 17, 2009]."

[1] *So in original.*

§1400U–2. Recovery zone economic development bonds

(a) In general

In the case of a recovery zone economic development bond—

(1) such bond shall be treated as a qualified bond for purposes of section 6431, and

(2) subsection (b) of such section shall be applied by substituting "45 percent" for "35 percent".

(b) Recovery zone economic development bond

(1) In general

For purposes of this section, the term "recovery zone economic development bond" means any build America bond (as defined in section 54AA(d)) issued before January 1, 2011, as part of issue if—

(A) 100 percent of the excess of—

(i) the available project proceeds (as defined in section 54A) of such issue, over

(ii) the amounts in a reasonably required reserve (within the meaning of section 150(a)(3)) with respect to such issue,

are to be used for one or more qualified economic development purposes, and

(B) the issuer designates such bond for purposes of this section.

(2) Limitation on amount of bonds designated

The maximum aggregate face amount of bonds which may be designated by any issuer under paragraph (1) shall not exceed the amount of the recovery zone economic development bond limitation allocated to such issuer under section 1400U–1.

(c) Qualified economic development purpose

For purposes of this section, the term "qualified economic development purpose" means expenditures for purposes of promoting development or other economic activity in a recovery zone, including—

(1) capital expenditures paid or incurred with respect to property located in such zone,

(2) expenditures for public infrastructure and construction of public facilities, and

(3) expenditures for job training and educational programs.

(Added Pub. L. 111–5, div. B, title I, §1401(a), Feb. 17, 2009, 123 Stat. 349.)

§1400U–3. Recovery zone facility bonds

(a) In general

For purposes of part IV of subchapter B (relating to tax exemption requirements for State and local bonds), the term "exempt facility bond" includes any recovery zone facility bond.

(b) Recovery zone facility bond

(1) In general

For purposes of this section, the term "recovery zone facility bond" means any bond issued as part of an issue if—

(A) 95 percent or more of the net proceeds (as defined in section 150(a)(3)) of such issue are to be used for recovery zone property,

(B) such bond is issued before January 1, 2011, and

(C) the issuer designates such bond for purposes of this section.

(2) Limitation on amount of bonds designated

The maximum aggregate face amount of bonds which may be designated by any issuer under paragraph (1) shall not exceed the amount of recovery zone facility bond limitation allocated to such issuer under section 1400U–1.

(c) Recovery zone property

For purposes of this section—

(1) In general

The term "recovery zone property" means any property to which section 168 applies (or would apply but for section 179) if—

(A) such property was constructed, reconstructed, renovated, or acquired by purchase (as defined in section 179(d)(2)) by the taxpayer after the date on which the designation of the recovery zone took effect,

(B) the original use of which in the recovery zone commences with the taxpayer, and

(C) substantially all of the use of which is in the recovery zone and is in the active conduct of a qualified business by the taxpayer in such zone.

(2) Qualified business

The term "qualified business" means any trade or business except that—

(A) the rental to others of real property located in a recovery zone shall be treated as a qualified business only if the property is not residential rental property (as defined in section 168(e)(2)), and

(B) such term shall not include any trade or business consisting of the operation of any facility described in section 144(c)(6)(B).

(3) Special rules for substantial renovations and sale-leaseback

Rules similar to the rules of subsections (a)(2) and (b) of section 1397D shall apply for purposes of this subsection.

(d) Nonapplication of certain rules

Sections 146 (relating to volume cap) and 147(d) (relating to acquisition of existing property not permitted) shall not apply to any recovery zone facility bond.

(Added Pub. L. 111–5, div. B, title I, §1401(a), Feb. 17, 2009, 123 Stat. 350.)

CHAPTER 2—TAX ON SELF-EMPLOYMENT INCOME

Sec.

1401. Rate of tax.

1402. Definitions.

1403. Miscellaneous provisions.

§1401. Rate of tax

(a) Old-age, survivors, and disability insurance

In addition to other taxes, there shall be imposed for each taxable year, on the self-employment income of every individual, a tax equal to the following percent of the amount of the self-employment income for such taxable year:

In the case of a taxable year Beginning after:	And before:	Percent:
December 31, 1983	January 1, 1988	11.40
December 31, 1987	January 1, 1990	12.12
December 31, 1989		12.40

(b) Hospital insurance

(1) In general

In addition to the tax imposed by the preceding subsection, there shall be imposed for each taxable year, on the self-employment income of every individual, a tax equal to the following

percent of the amount of the self-employment income for such taxable year:

In the case of a taxable year Beginning after:	And before:	Percent:
December 31, 1983	January 1, 1985	2.60
December 31, 1984	January 1, 1986	2.70
December 31, 1985		2.90.

(2) Additional tax

(A) In general

In addition to the tax imposed by paragraph (1) and the preceding subsection, there is hereby imposed on every taxpayer (other than a corporation, estate, or trust) for each taxable year beginning after December 31, 2012, a tax equal to 0.9 percent of the self-employment income for such taxable year which is in excess of—

(i) in the case of a joint return, $250,000,

(ii) in the case of a married taxpayer (as defined in section 7703) filing a separate return, ½ of the dollar amount determined under clause (i), and

(iii) in any other case, $200,000.

(B) Coordination with FICA

The amounts under clause (i), (ii), or (iii) (whichever is applicable) of subparagraph (A) shall be reduced (but not below zero) by the amount of wages taken into account in determining the tax imposed under section 3121(b)(2) with respect to the taxpayer.

(c) Relief from taxes in cases covered by certain international agreements

During any period in which there is in effect an agreement entered into pursuant to section 233 of the Social Security Act with any foreign country, the self-employment income of an individual shall be exempt from the taxes imposed by this section to the extent that such self-employment income is subject under such agreement exclusively to the laws applicable to the social security system of such foreign country.

(Aug. 16, 1954, ch. 736, 68A Stat. 353; Sept. 1, 1954, ch. 1206, title II, §208(a), 68 Stat. 1093; Aug. 1, 1956, ch. 836, title II, §202(a), 70 Stat. 845; Pub. L. 85–840, title IV, §401(a), Aug. 28, 1958, 72 Stat. 1041; Pub. L. 87–64, title II, §201(a), June 30, 1961, 75 Stat. 140; Pub. L. 89–97, title I, §111(c)(4), title III, §321(a), July 30, 1965, 79 Stat. 342, 394; Pub. L. 90–248, title I, §109(a)(1), (b)(1), Jan. 2, 1968, 81 Stat. 835, 836; Pub. L. 92–336, title II, §204 (a)(1), (b)(1), July 1, 1972, 86 Stat. 420, 421; Pub. L. 92–603, title I, §135(a)(1), (b)(1), Oct. 30, 1972, 86 Stat. 1362, 1363; Pub. L. 93–233, §6(b)(1), Dec. 31, 1973, 87 Stat. 955; Pub. L. 94–455, title XIX, §1901(a)(154), Oct. 4, 1976, 90 Stat. 1789; Pub. L. 95–216, title I, §101(a)(3), (b)(3), title III, §317(b)(1), Dec. 20, 1977, 91 Stat. 1511, 1512, 1539; Pub. L. 98–21, title I, §124(a), (b), Apr. 20, 1983, 97 Stat. 89; Pub. L. 101–508, title XI, §11801(a)(36), (c)(16), Nov. 5, 1990, 104 Stat. 1388–521, 1388–527; Pub. L. 108–203, title IV, §415, Mar. 2, 2004, 118 Stat. 530; Pub. L. 111–148, title IX, §9015(b)(1), title X, §10906(b), Mar. 23, 2010, 124 Stat. 871, 1020; Pub. L. 111–152, title I, §1402(b)(1)(B), Mar. 30, 2010, 124 Stat. 1063.)

REFERENCES IN TEXT

Section 233 of the Social Security Act, referred to in subsec. (c), is classified to section 433 of Title 42, The Public Health and Welfare.

AMENDMENTS

2010—Subsec. (b). Pub. L. 111–148, §9015(b)(1), designated existing provisions as par. (1), inserted

heading, and added par. (2).

Subsec. (b)(2)(A). Pub. L. 111–152, §1402(b)(1)(B)(i), added cl. (ii) and redesignated former cl. (ii) as (iii).

Pub. L. 111–148, §10906(b), substituted "0.9 percent" for "0.5 percent" in introductory provisions.

Subsec. (b)(2)(B). Pub. L. 111–152, §1402(b)(1)(B)(ii), substituted "under clause (i), (ii), or (iii) (whichever is applicable)" for "under clauses (i) and (ii)".

2004—Subsec. (c). Pub. L. 108–203 substituted "exclusively to the laws applicable to" for "to taxes or contributions for similar purposes under".

1990—Subsecs. (c), (d). Pub. L. 101–508 redesignated subsec. (d) as (c) and struck out former subsec. (c) which provided a credit against self-employment taxes imposed by this section.

1983—Subsec. (a). Pub. L. 98–21, §124(a), amended subsec. (a) generally, substituting a table for former pars. (1) to (7) which had imposed a tax on the self-employment income of every individual (1) in the case of any taxable year beginning before Jan. 1, 1978, to be equal to 7.0 percent of the amount of the self-employment income for such taxable year; (2) in the case of any taxable year beginning after Dec. 31, 1977, and before Jan. 1, 1979, to be equal to 7.10 percent of the amount of the self-employment income for such taxable year; (3) in the case of any taxable year beginning after Dec. 31, 1978, and before Jan. 1, 1981, to be equal to 7.05 percent of the amount of the self-employment income for such taxable year; (4) in the case of any taxable year beginning after Dec. 31, 1980, and before Jan. 1, 1982, to be equal to 8.00 percent of the amount of the self-employment income for such taxable year; (5) in the case of any taxable year beginning after Dec. 31, 1981, and before Jan. 1, 1985, to be equal to 8.05 percent of the amount of the self-employment income for such taxable year; (6) in the case of any taxable year beginning after Dec. 31, 1984, and before Jan. 1, 1990, to be equal to 8.55 percent of the amount of the self-employment income for such taxable year; and (7) in the case of any taxable year beginning after Dec. 31, 1989, to be equal to 9.30 percent of the amount of the self-employment income for such taxable year.

Subsec. (b). Pub. L. 98–21, §124(a), amended subsec. (b) generally, substituting a table for former pars. (1) to (6) which had imposed a tax on the self-employment income of every individual (1) in the case of any taxable year beginning after Dec. 31, 1973, and before Jan. 1, 1978, to be equal to 0.90 percent of the amount of the self-employment income for such taxable year; (2) in the case of any taxable year beginning after Dec. 31, 1977, and before Jan. 1, 1979, to be equal to 1.00 percent of the amount of the self-employment income for such taxable year; (3) in the case of any taxable year beginning after Dec. 31, 1978, and before Jan. 1, 1981, to be equal to 1.05 percent of the amount of the self-employment income for such taxable year; (4) in the case of any taxable year beginning after Dec. 31, 1980, and before Jan. 1, 1985, to be equal to 1.30 percent of the amount of the self-employment income for such taxable year; (5) in the case of any taxable year beginning after Dec. 31, 1984, and before Jan. 1, 1986, to be equal to 1.35 percent of the amount of the self-employment income for such taxable year; and (6) in the case of any taxable year beginning after Dec. 31, 1985, to be equal to 1.45 percent of the amount of the self-employment income for such taxable year.

Subsecs. (c), (d). Pub. L. 98–21, §124(b), added subsec. (c) and redesignated former subsec. (c) as (d).

1977—Subsec. (a). Pub. L. 95–216, §101(a)(3), substituted provisions calling for a graduated increase in the tax from 7.0 percent for taxable years beginning before Jan. 1, 1978, to 9.30 percent for taxable years beginning after Dec. 31, 1989, for provisions under which the tax had been set at 7.0 percent without any increase in the rate in future years.

Subsec. (b). Pub. L. 95–216, §101(b)(3), substituted "after December 31, 1977, and before January 1, 1979" for "after December 31, 1977, and before January 1, 1981" and "1.00 percent" for "1.10 percent" in par. (2), substituted "after December 31, 1978, and before January 1, 1981" for "after December 31, 1980, and before January 1, 1986" and "1.05 percent" for "1.35 percent" in par. (3), substituted "after December 31, 1980, and before January 1, 1985" for "after December 31, 1985" and "1.30 percent" for "1.50 percent" in par. (4), and added pars. (5) and (6).

Subsec. (c). Pub. L. 95–216, §317(b)(1), added subsec. (c).

1976—Subsec. (a). Pub. L. 94–455, §1901(a)(154)(A), among other changes, substituted provisions relating to a uniform tax rate of 7 percent on self-employment income of every individual for provisions relating to varied tax rate of 5.8 percent of the amount of self-employment income for any taxable year beginning after Dec. 31, 1967, and before Jan. 1, 1969, 6.3 percent for any taxable year beginning after Dec. 31, 1968, and before Jan. 1, 1971, 6.9 percent for any taxable year beginning after Dec. 31, 1970, and before Jan. 1, 1973, and 7.0 percent for any taxable year beginning after Dec. 31, 1972.

Subsec. (b). Pub. L. 94–455, §1901(a)(154)(B), redesignated pars. (3) to (6) as (1) to (4). Former pars. (1) and (2), which related to a 6 percent tax rate on self-employment income for any taxable year beginning after Dec. 31, 1967, and before Jan. 1, 1974, and 1 percent tax rate on self-employment income for any taxable year beginning after Dec. 31, 1972, and before Jan. 1, 1974, were struck out.

1973—Subsec. (b)(2). Pub. L. 93–233 substituted "1974" for "1978".

Subsec. (b)(3). Pub. L. 93–233 substituted "1973" and "1978" for "1977" and "1981" and decreased the rate of tax from 1.25 percent to 0.90 percent.

Subsec. (b)(4). Pub. L. 93–233 substituted "1977" and "1981" for "1980" and "1986" and decreased the rate of tax from 1.35 percent to 1.10 percent.

Subsec. (b)(5). Pub. L. 93–233 substituted "beginning after December 31, 1980, and before January 1, 1986" for "beginning after December 31, 1985" and decreased the rate of tax from 1.45 percent to 1.35 percent.

Subsec. (b)(6). Pub. L. 93–233 added par. (6).

1972—Subsec. (a)(3). Pub. L. 92–603, §135(a)(1)(A), substituted "1973" for "1978".

Subsec. (a)(4). Pub. L. 92–603, §135(a)(1)(B), substituted provisions that in the case of taxable years beginning after Dec. 31, 1972, the tax shall be equal to 7.0 percent of the amount of the self-employment income for such taxable year, for provisions that in the case of taxable years beginning after Dec. 31, 1977, and before Jan. 1, 2011, the tax shall be equal to 6.7 percent of the amount of the self-employment income for such taxable year.

Subsec. (a)(5). Pub. L. 92–603, §135(a)(1)(B), struck out par. (5) which provided that in the case of taxable years beginning after Dec. 31, 2010, the tax shall be equal to 7.0 percent of the amount of the self-employment income for the taxable year.

Subsec. (a)(3) to (5). Pub. L. 92–336, §204(a)(1), substituted "January 1, 1978" for "January 1, 1973" and struck out "and" after "such taxable year" in par. (3), extended from any taxable year beginning after December 31, 1972 to any taxable year beginning after December 31, 1977, and before January 1, 2011, and decreased from 7.0 percent to 6.7 percent the provisions relating to the tax on self-employment income in par. (4), and added par. (5).

Subsec. (b)(2). Pub. L. 92–603, §135(b)(1), increased the rate of tax from 0.9 percent to 1.0 percent.

Subsec. (b)(3). Pub. L. 92–603, §135(b)(1), substituted "1981" for "1986" and "1.25" for "1.0".

Subsec. (b)(4). Pub. L. 92–603, §135(b)(1), substituted "1980" for "1985", "1986" for "1993", and "1.35" for "1.1".

Subsec. (b)(5). Pub. L. 92–603, §135(b)(1), substituted "1985" for "1992" and "1.45" for "1.2".

Subsec. (b)(2) to (5). Pub. L. 92–336, §204(b)(1), substituted "1978" for "1976" and "0.9" for "0.65" in subsec. (b)(2), "1977" for "1975", "1986" for "1980" and "1.0" for "0.70" in par. (3), "1985" for "1979", "1993" for "1987" and "1.1" for "0.80" in par. (4), and "1992" for "1986" and "1.2" for "0.90" in par. (5).

1968—Subsecs. (a)(1) to (4). Pub. L. 90–248, §109(a)(1), substituted "December 31, 1967" and "January 1, 1969" for "December 31, 1965" and "January 1, 1967" in par. (1), "December 31, 1968", "January 1, 1971" and "6.3" for "December 31, 1966", "January 1, 1969", and "5.9" in par. (2), and "December 31, 1970" and "6.9" for "December 31, 1968" and "6.6" in par. (3), and reenacted par. (4) without change.

Subsec. (b)(1) to (5). Pub. L. 90–248, §109(b)(1), struck out par. (1) provision for rate of 0.35 percent of amount of self-employment income for any taxable year beginning after Dec. 31, 1965, and before Jan. 1, 1967, redesignated former pars. (2) to (6) as (1) to (5), substituted "December 31, 1967" for "December 31, 1966" in such par. (1) and increased the rate by 0.10 percent to 0.60, 0.65, 0.70, 0.80, and 0.90 in pars. (1) to (5), respectively.

1965—Pub. L. 89–97, §321(a), divided the total tax imposed under the entire section for each taxable year upon the self-employment income for such taxable year into two separate taxes by dividing the section into subsecs. (a) and (b), with subsec. (a) reflecting the tax for old-age, survivors, and disability insurance and subsec. (b) reflecting a separate tax for hospital insurance; reduced from 6.2 percent to 6.15 percent the rate of total tax imposed under the entire section for taxable years beginning after Dec. 31, 1965, and before Jan. 1, 1967 (resulting from a tax of 5.8 percent under subsec. (a) and 0.35 percent under subsec. (b)), increased from 6.2 percent to 6.4 percent the rate for taxable years beginning after Dec. 31, 1966, and before Jan. 1, 1968 (resulting from a tax of 5.9 percent under subsec. (a) and 0.50 percent under subsec. (b)), reduced from 6.9 percent to 6.4 percent the rate for taxable years beginning after Dec. 31, 1967, and before Jan. 1, 1969 (resulting from a tax of 5.9 percent under subsec. (a) and 0.50 percent under subsec. (b)), increased from 6.9 percent to 7.1 percent the rate for taxable years beginning after Dec. 31, 1968, and before Jan. 1, 1973 (resulting from a tax of 6.6 percent under subsec. (a) and 0.50 percent under subsec. (b)), from 6.9 percent to 7.55 percent the rate for taxable years beginning after Dec. 31, 1972, and before Jan. 1, 1976 (resulting from a tax of 7.0 percent under subsec. (a) and 0.55 percent under subsec. (b)), from 6.9 percent to 7.60 percent the rate for taxable years beginning after Dec. 31, 1975, and before Jan. 1, 1980 (resulting from a tax of 7.0 percent under subsec. (a) and 0.60 percent under subsec. (b)), from 6.9 percent to 7.70 percent the rate for taxable years beginning after Dec. 31, 1979, and before Jan. 1, 1987 (resulting from a tax of 7.0 percent under subsec. (a) and 0.70 percent under subsec. (b)), and from 6.9 percent to 7.80 percent the rate for taxable years beginning after Dec. 31, 1986 (resulting from a tax of 7.0 percent under subsec. (a) and 0.80 percent under

subsec. (b)), and provided that the exclusion of employee representatives by section 1402(c)(3) should not apply for purposes of the tax imposed by subsec. (b).

Subsec. (b). Pub. L. 89–97, §111(c)(4), struck out provision that for purposes of the tax imposed by this subsection, the exclusion of employee representatives by section 1402(c)(3) shall not apply.

1961—Pub. L. 87–64 increased the rate of tax for taxable years beginning after Dec. 31, 1961, and before Jan. 1, 1963, from 4½ to 4.7 percent, taxable years beginning after Dec. 31, 1962, and before Jan. 1, 1966, from 5¼ to 5.4 percent, taxable years beginning after Dec. 31, 1965, and before Jan. 1, 1968, from 6 to 6.2 percent, taxable year beginning after Dec. 31, 1967, and before Jan. 1, 1969, from 6 to 6.9 percent, and taxable years beginning after Dec. 31, 1968, from 6¾ to 6.9 percent.

1958—Pub. L. 85–840 increased the rate of tax by substituting provisions imposing a tax of 3¾ percent for taxable years beginning after Dec. 31, 1958, 4½ percent for years beginning after Dec. 31, 1959, 5¼ percent for years beginning after Dec. 31, 1962, 6 percent for years beginning after Dec. 31, 1965, and 6¾ percent for years beginning after Dec. 31, 1968, for provisions which imposed a tax of 33/8 percent for taxable years beginning after Dec. 31, 1956, 41/8 percent for years beginning after Dec. 31, 1959, 47/8 percent for years beginning after Dec. 31, 1964, 55/8 percent for years beginning after Dec. 31, 1969, and 63/8 percent for years beginning after Dec. 31, 1974.

1956—Act Aug. 1, 1956, increased the rate of tax for all taxable years beginning after Dec. 31, 1956, by three-eighths percent.

1954—Act Sept. 1, 1954, increased the 47/8 percent rate of tax on self-employment income for taxable years beginning after Dec. 31, 1969, to 5¼ percent for taxable years beginning after Dec. 31, 1969, and before Jan. 1, 1975, and 6 percent for taxable years beginning after Dec. 31, 1974.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–152, title I, §1402(b)(3), Mar. 30, 2010, 124 Stat. 1063, provided that: "The amendments made by this subsection [amending this section and sections 3101 and 6654 of this title] shall apply with respect to remuneration received, and taxable years beginning after, December 31, 2012."

Amendment by section 9015(b)(1) of Pub. L. 111–148 applicable with respect to remuneration received, and taxable years beginning, after Dec. 31, 2012, see section 9015(c) of Pub. L. 111–148, set out as a note under section 164 of this title.

Pub. L. 111–148, title X, §10906(c), Mar. 23, 2010, 124 Stat. 1020, provided that: "The amendments made by this section [amending this section and section 3101 of this title] shall apply with respect to remuneration received, and taxable years beginning, after December 31, 2012."

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 98–21, title I, §124(d), Apr. 20, 1983, 97 Stat. 91, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section, sections 32, 164, 275, 401, and 1402 of this title, and section 411 of Title 42, The Public Health and Welfare] shall apply to taxable years beginning after December 31, 1983.

"(2) SUBSECTION (c).—The amendments made by subsection (c) [amending sections 32, 164, 275, 401, and 1402 of this title and section 411 of Title 42] shall apply to taxable years beginning after December 31, 1989."

EFFECTIVE DATE OF 1977 AMENDMENT

Pub. L. 95–216, title I, §104, Dec. 20, 1977, 91 Stat. 1514, provided that: "The amendments made by this title [amending this section, sections 3101 and 3111 of this title, and sections 401, 415, and 430 of Title 42, The Public Health and Welfare] shall apply with respect to remuneration paid or received, and taxable years beginning, after 1977."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

Pub. L. 93–233, §6(c), Dec. 31, 1973, 87 Stat. 955, provided that: "The amendment made by subsection (b)(1) [amending this section] shall apply only with respect to taxable years beginning after December 31, 1973. The remaining amendments made by this section [amending sections 3101 and 3111 of this title] shall apply only with respect to remuneration paid after December 31, 1973."

EFFECTIVE DATE OF 1972 AMENDMENT

Pub. L. 92–603, title I, §135(c), Oct. 30, 1972, 86 Stat. 1364, provided that: "The amendments made by subsections (a)(1) and (b)(1) [amending this section] shall apply only with respect to taxable years beginning after December 31, 1972. The remaining amendments made by this section [amending sections 3101 and 3111 of this title] shall apply only with respect to remuneration paid after December 31, 1972."

Pub. L. 92–336, title II, §204(c), Oct. 30, 1972, 86 Stat. 1377, provided that: "The amendments made by subsections (a)(1) and (b)(1) [amending this section] shall apply only with respect to taxable years beginning after December 31, 1972. The remaining amendments made by this section [amending sections 3101 and 3111 of this title] shall apply only with respect to remuneration paid after December 31, 1972."

EFFECTIVE DATE OF 1968 AMENDMENT

Pub. L. 90–248, title I, §109(c), Jan. 2, 1968, 81 Stat. 837, provided that: "The amendments made by subsections (a)(1) and (b)(1) [amending this section] shall apply only with respect to taxable years beginning after December 31, 1967. The remaining amendments made by this section [amending sections 3101 and 3111 of this title] shall apply only with respect to remuneration paid after December 31, 1967."

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 111(c)(4) of Pub. L. 89–97 applicable to calendar year 1966 or to any subsequent calendar year but only if by October 1 immediately preceding such calendar year the Railroad Retirement Tax Act [section 3201 et seq. of this title] provides for a maximum amount of monthly compensation taxable under such Act during all months of such calendar year equal to one-twelfth of maximum wages which Federal Insurance Contributions Act [section 3101 et seq. of this title] provides may be counted for such calendar year, see section 111(e) of Pub. L. 89–97, set out as an Effective Date note under section 1395i–1 of Title 42, The Public Health and Welfare.

Pub. L. 89–97, title III, §321(d), July 30, 1965, 79 Stat. 396, provided that: "The amendments made by subsection (a) [amending this section] shall apply only with respect to taxable years beginning after December 31, 1965. The amendments made by subsections (b) and (c) [amending sections 3101 and 3111 of this title] shall apply only with respect to remuneration paid after December 31, 1965."

EFFECTIVE DATE OF 1961 AMENDMENT

Pub. L. 87–64, title II, §201(d), June 30, 1961, 75 Stat. 141, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1961. The amendments made by subsections (b) and (c) [amending sections 3101 and 3111 of this title] shall apply with respect to remuneration paid after December 31, 1961."

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85–840, title IV, §401(d), Aug. 28, 1958, 72 Stat. 1042, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1958. The amendments made by subsections (b) and (c) [amending sections 3101 and 3111 of this title] shall apply with respect to remuneration paid after December 31, 1958."

EFFECTIVE DATE OF 1956 AMENDMENT

Act Aug. 1, 1956, ch. 836, title II, §202(d), 70 Stat. 846, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1956. The amendments made by subsections (b) and (c) [amending sections 3101 and 3111 of this title] shall apply with respect to remuneration paid after December 31, 1956."

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

TEMPORARY EMPLOYEE PAYROLL TAX CUT

Pub. L. 111–312, title VI, §601, Dec. 17, 2010, 124 Stat. 3309, as amended by Pub. L. 112–78, title I, §101(a)–(d), Dec. 23, 2011, 125 Stat. 1281, 1282; Pub. L. 112–96, title I, §1001(a), (b), Feb. 22, 2012, 126 Stat. 158, provided that:

"(a) IN GENERAL.—Notwithstanding any other provision of law—

"(1) with respect to any taxable year which begins in the payroll tax holiday period, the rate of tax under section 1401(a) of the Internal Revenue Code of 1986 shall be 10.40 percent, and

"(2) with respect to remuneration received during the payroll tax holiday period, the rate of tax under 3101(a) of such Code shall be 4.2 percent (including for purposes of determining the applicable percentage under sections 3201(a) and 3211(a)(1) [probably means 3211(a)] of such Code).

"(b) COORDINATION WITH DEDUCTIONS FOR EMPLOYMENT TAXES.—

"(1) DEDUCTION IN COMPUTING NET EARNINGS FROM SELF-EMPLOYMENT.—For purposes of applying section 1402(a)(12) of the Internal Revenue Code of 1986, the rate of tax imposed by subsection 1401(a) of such Code shall be determined without regard to the reduction in such rate under this section.

"(2) INDIVIDUAL DEDUCTION.—In the case of the taxes imposed by section 1401 of such Code for any taxable year which begins in the payroll tax holiday period, the deduction under section 164(f) of such Code with respect to such taxes shall be equal to the sum of—

"(A) 59.6 percent of the portion of such taxes attributable to the tax imposed by section 1401(a) of such Code (determined after the application of this section), plus

"(B) one-half of the portion of such taxes attributable to the tax imposed by section 1401(b) of such Code.

"(c) PAYROLL TAX HOLIDAY PERIOD.—The term 'payroll tax holiday period' means calendar years 2011 and 2012.

"(d) EMPLOYER NOTIFICATION.—The Secretary of the Treasury shall notify employers of the payroll tax holiday period in any manner the Secretary deems appropriate.

"(e) TRANSFERS OF FUNDS.—

"(1) TRANSFERS TO FEDERAL OLD-AGE AND SURVIVORS INSURANCE TRUST FUND .—There are hereby appropriated to the Federal Old-Age and Survivors Trust Fund and the Federal Disability Insurance Trust Fund established under section 201 of the Social Security Act (42 U.S.C. 401) amounts equal to the reduction in revenues to the Treasury by reason of the application of subsection (a). Amounts appropriated by the preceding sentence shall be transferred from the general fund at such times and in such manner as to replicate to the extent possible the transfers which would have occurred to such Trust Fund had such amendments not been enacted.

"(2) TRANSFERS TO SOCIAL SECURITY EQUIVALENT BENEFIT ACCOUNT.—There are hereby appropriated to the Social Security Equivalent Benefit Account established under section 15A(a) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n–1(a)) amounts equal to the reduction in revenues to the Treasury by reason of the application of subsection (a)(2). Amounts appropriated by the preceding sentence shall be transferred from the general fund at such times and in such manner as to replicate to the extent possible the transfers which would have occurred to such Account had such amendments not been enacted.

"(3) COORDINATION WITH OTHER FEDERAL LAWS.—For purposes of applying any provision of Federal law other than the provisions of the Internal Revenue Code of 1986, the rate of tax in effect under section 3101(a) of such Code shall be determined without regard to the reduction in such rate under this section."

[Pub. L. 112–96, title I, §1001(c), Feb. 22, 2012, 126 Stat. 159, provided that: "The amendments made by this section [amending section 601 of Pub. L. 111–312, set out above] shall apply to remuneration received, and taxable years beginning, after December 31, 2011."]

[Pub. L. 112–78, title I, §101(e), Dec. 23, 2011, 125 Stat. 1282, provided that:

["(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending section 601 of Pub. L. 111–312, set out above] shall apply to remuneration received, and taxable years beginning, after December 31, 2011.

["(2) TECHNICAL AMENDMENTS.—The amendments made by subsection (d) [amending section 601(b)(2) of Pub. L. 111–312, set out above] shall take effect as if included in the enactment of section 601 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 [Pub. L. 111–312]."]

LAND DIVERTED UNDER 1983 PAYMENT-IN-KIND PROGRAM

Land diverted from production of agricultural commodities under a 1983 payment-in-kind program to be treated, for purposes of this chapter, as used during the 1983 crop year by qualified taxpayers in the active conduct of the trade or business of farming, with qualified taxpayers who materially participate in the diversion and devotion to conservation uses under a 1983 payment-in-kind program to be treated as materially participating in the operation of such land during the 1983 crop year, see section 3 of Pub. L. 98–4, set out as a note under section 61 of this title.

DEDUCTION BY OR CREDIT AGAINST INDIVIDUAL INCOME TAX FOR TAXES PAID INTO FOREIGN SOCIAL SECURITY SYSTEM PURSUANT TO INTERNATIONAL AGREEMENT

Pub. L. 95–216, title III, §317(b)(4), Dec. 20, 1977, 91 Stat. 1540, provided that: "Notwithstanding any other provision of law, taxes paid by any individual to any foreign country with respect to any period of employment or self-employment which is covered under the social security system of such foreign country in accordance with the terms of an agreement entered into pursuant to section 233 of the Social Security Act [section 433 of Title 42, The Public Health and Welfare] shall not, under the income tax laws of the United States, be deductible by, or creditable against the income tax of, any such individual."

§1402. Definitions

(a) Net earnings from self-employment

The term "net earnings from self-employment" means the gross income derived by an individual from any trade or business carried on by such individual, less the deductions allowed by this subtitle which are attributable to such trade or business, plus his distributive share (whether or not distributed) of income or loss described in section 702(a)(8) from any trade or business carried on by a partnership of which he is a member; except that in computing such gross income and deductions and such distributive share of partnership ordinary income or loss—

(1) there shall be excluded rentals from real estate and from personal property leased with the real estate (including such rentals paid in crop shares, and including payments under section 1233(2) of the Food Security Act of 1985 (16 U.S.C. 3833(2)) [1] to individuals receiving benefits under section 202 or 223 of the Social Security Act) together with the deductions attributable thereto, unless such rentals are received in the course of a trade or business as a real estate dealer; except that the preceding provisions of this paragraph shall not apply to any income derived by the owner or tenant of land if (A) such income is derived under an arrangement, between the owner or tenant and another individual, which provides that such other individual shall produce agricultural or horticultural commodities (including livestock, bees, poultry, and fur-bearing animals and wildlife) on such land, and that there shall be material participation by the owner or tenant (as determined without regard to any activities of an agent of such owner or tenant) in the production or the management of the production of such agricultural or horticultural commodities, and (B) there is material participation by the owner or tenant (as determined without regard to any activities of an agent of such owner or tenant) with respect to any such agricultural or horticultural commodity;

(2) there shall be excluded dividends on any share of stock, and interest on any bond, debenture, note, or certificate, or other evidence of indebtedness, issued with interest coupons or in registered form by any corporation (including one issued by a government or political subdivision thereof), unless such dividends and interest are received in the course of a trade or business as a dealer in stocks or securities;

(3) there shall be excluded any gain or loss—

(A) which is considered as gain or loss from the sale or exchange of a capital asset,

(B) from the cutting of timber, or the disposal of timber, coal, or iron ore, if section 631 applies to such gain or loss, or

(C) from the sale, exchange, involuntary conversion, or other disposition of property if such property is neither—

(i) stock in trade or other property of a kind which would properly be includible in inventory if on hand at the close of the taxable year, nor

(ii) property held primarily for sale to customers in the ordinary course of the trade or business;

(4) the deduction for net operating losses provided in section 172 shall not be allowed;

(5) if—

(A) any of the income derived from a trade or business (other than a trade or business carried on by a partnership) is community income under community property laws applicable to such income, the gross income and deductions attributable to such trade or business shall be treated as the gross income and deductions of the spouse carrying on such trade or business or, if such

trade or business is jointly operated, treated as the gross income and deductions of each spouse on the basis of their respective distributive share of the gross income and deductions; and

(B) any portion of a partner's distributive share of the ordinary income or loss from a trade or business carried on by a partnership is community income or loss under the community property laws applicable to such share, all of such distributive share shall be included in computing the net earnings from self-employment of such partner, and no part of such share shall be taken into account in computing the net earnings from self-employment of the spouse of such partner;

(6) a resident of Puerto Rico shall compute his net earnings from self-employment in the same manner as a citizen of the United States but without regard to section 933;

(7) the deduction for personal exemptions provided in section 151 shall not be allowed;

(8) an individual who is a duly ordained, commissioned, or licensed minister of a church or a member of a religious order shall compute his net earnings from self-employment derived from the performance of service described in subsection (c)(4) without regard to section 107 (relating to rental value of parsonages), section 119 (relating to meals and lodging furnished for the convenience of the employer), and section 911 (relating to citizens or residents of the United States living abroad), but shall not include in such net earnings from self-employment the rental value of any parsonage or any parsonage allowance (whether or not excludable under section 107) provided after the individual retires, or any other retirement benefit received by such individual from a church plan (as defined in section 414(e)) after the individual retires;

(9) the exclusion from gross income provided by section 931 shall not apply;

(10) there shall be excluded amounts received by a partner pursuant to a written plan of the partnership, which meets such requirements as are prescribed by the Secretary, and which provides for payments on account of retirement, on a periodic basis, to partners generally or to a class or classes of partners, such payments to continue at least until such partner's death, if—

(A) such partner rendered no services with respect to any trade or business carried on by such partnership (or its successors) during the taxable year of such partnership (or its successors), ending within or with his taxable year, in which such amounts were received, and

(B) no obligation exists (as of the close of the partnership's taxable year referred to in subparagraph (A)) from the other partners to such partner except with respect to retirement payments under such plan, and

(C) such partner's share, if any, of the capital of the partnership has been paid to him in full before the close of the partnership's taxable year referred to in subparagraph (A);

(11) the exclusion from gross income provided by section 911(a)(1) shall not apply;

(12) in lieu of the deduction provided by section 164(f) (relating to deduction for one-half of self-employment taxes), there shall be allowed a deduction equal to the product of—

(A) the taxpayer's net earnings from self-employment for the taxable year (determined without regard to this paragraph), and

(B) one-half of the sum of the rates imposed by subsections (a) and (b) of section 1401 for such year (determined without regard to the rate imposed under paragraph (2) of section 1401(b));

(13) there shall be excluded the distributive share of any item of income or loss of a limited partner, as such, other than guaranteed payments described in section 707(c) to that partner for services actually rendered to or on behalf of the partnership to the extent that those payments are established to be in the nature of remuneration for those services;

(14) in the case of church employee income, the special rules of subsection (j)(1) shall apply;

(15) in the case of a member of an Indian tribe, the special rules of section 7873 (relating to income derived by Indians from exercise of fishing rights) shall apply;

(16) the deduction provided by section 199 shall not be allowed; and

(17) notwithstanding the preceding provisions of this subsection, each spouse's share of income

or loss from a qualified joint venture shall be taken into account as provided in section 761(f) in determining net earnings from self-employment of such spouse.

If the taxable year of a partner is different from that of the partnership, the distributive share which he is required to include in computing his net earnings from self-employment shall be based on the ordinary income or loss of the partnership for any taxable year of the partnership ending within or with his taxable year. In the case of any trade or business which is carried on by an individual or by a partnership and in which, if such trade or business were carried on exclusively by employees, the major portion of the services would constitute agricultural labor as defined in section 3121(g)—

(i) in the case of an individual, if the gross income derived by him from such trade or business is not more than the upper limit, the net earnings from self-employment derived by him from such trade or business may, at his option, be deemed to be 662/3 percent of such gross income; or

(ii) in the case of an individual, if the gross income derived by him from such trade or business is more than the upper limit and the net earnings from self-employment derived by him from such trade or business (computed under this subsection without regard to this sentence) are less than the lower limit, the net earnings from self-employment derived by him from such trade or business may, at his option, be deemed to be the lower limit; and

(iii) in the case of a member of a partnership, if his distributive share of the gross income of the partnership derived from such trade or business (after such gross income has been reduced by the sum of all payments to which section 707(c) applies) is not more than the upper limit, his distributive share of income described in section 702(a)(8) derived from such trade or business may, at his option, be deemed to be an amount equal to 662/3 percent of his distributive share of such gross income (after such gross income has been so reduced); or

(iv) in the case of a member of a partnership, if his distributive share of the gross income of the partnership derived from such trade or business (after such gross income has been reduced by the sum of all payments to which section 707(c) applies) is more than the upper limit and his distributive share (whether or not distributed) of income described in section 702(a)(8) derived from such trade or business (computed under this subsection without regard to this sentence) is less than the lower limit, his distributive share of income described in section 702(a)(8) derived from such trade or business may, at his option, be deemed to be the lower limit.

For purposes of the preceding sentence, gross income means—

(v) in the case of any such trade or business in which the income is computed under a cash receipts and disbursements method, the gross receipts from such trade or business reduced by the cost or other basis of property which was purchased and sold in carrying on such trade or business, adjusted (after such reduction) in accordance with the provisions of paragraphs (1) through (7) and paragraph (9) of this subsection; and

(vi) in the case of any such trade or business in which the income is computed under an accrual method, the gross income from such trade or business, adjusted in accordance with the provisions of paragraphs (1) through (7) and paragraph (9) of this subsection;

and, for purposes of such sentence, if an individual (including a member of a partnership) derives gross income from more than one such trade or business, such gross income (including his distributive share of the gross income of any partnership derived from any such trade or business) shall be deemed to have been derived from one trade or business.

The preceding sentence and clauses (i) through (iv) of the second preceding sentence shall also apply in the case of any trade or business (other than a trade or business specified in such second preceding sentence) which is carried on by an individual who is self-employed on a regular basis as defined in subsection (h), or by a partnership of which an individual is a member on a regular basis as defined in subsection (h), but only if such individual's net earnings from self-employment as determined without regard to this sentence in the taxable year are less than the lower limit and less than 662/3 percent of the sum (in such taxable year) of such individual's gross income derived from all trades or businesses carried on by him and his distributive share of the income or loss from all

trades or businesses carried on by all the partnerships of which he is a member; except that this sentence shall not apply to more than 5 taxable years in the case of any individual, and in no case in which an individual elects to determine the amount of his net earnings from self-employment for a taxable year under the provisions of the two preceding sentences with respect to a trade or business to which the second preceding sentence applies and with respect to a trade or business to which this sentence applies shall such net earnings for such year exceed the lower limit.

(b) Self-employment income

The term "self-employment income" means the net earnings from self-employment derived by an individual (other than a nonresident alien individual, except as provided by an agreement under section 233 of the Social Security Act) during any taxable year; except that such term shall not include—

(1) in the case of the tax imposed by section 1401(a), that part of the net earnings from self-employment which is in excess of (i) an amount equal to the contribution and benefit base (as determined under section 230 of the Social Security Act) which is effective for the calendar year in which such taxable year begins, minus (ii) the amount of the wages paid to such individual during such taxable years; or

(2) the net earnings from self-employment, if such net earnings for the taxable year are less than $400.

For purposes of paragraph (1), the term "wages" (A) includes such remuneration paid to an employee for services included under an agreement entered into pursuant to the provisions of section 3121(l) (relating to coverage of citizens of the United States who are employees of foreign affiliates of American employers), as would be wages under section 3121(a) if such services constituted employment under section 3121(b), and (B) includes compensation which is subject to the tax imposed by section 3201 or 3211,.[2] An individual who is not a citizen of the United States but who is a resident of the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa shall not, for purposes of this chapter be considered to be a nonresident alien individual. In the case of church employee income, the special rules of subsection (j)(2) shall apply for purposes of paragraph (2).

(c) Trade or business

The term "trade or business", when used with reference to self-employment income or net earnings from self-employment, shall have the same meaning as when used in section 162 (relating to trade or business expenses), except that such term shall not include—

(1) the performance of the functions of a public office, other than the functions of a public office of a State or a political subdivision thereof with respect to fees received in any period in which the functions are performed in a position compensated solely on a fee basis and in which such functions are not covered under an agreement entered into by such State and the Commissioner of Social Security pursuant to section 218 of the Social Security Act;

(2) the performance of service by an individual as an employee, other than—

(A) service described in section 3121(b)(14)(B) performed by an individual who has attained the age of 18,

(B) service described in section 3121(b)(16),

(C) service described in section 3121(b)(11), (12), or (15) performed in the United States (as defined in section 3121(e)(2)) by a citizen of the United States, except service which constitutes "employment" under section 3121(y),

(D) service described in paragraph (4) of this subsection,

(E) service performed by an individual as an employee of a State or a political subdivision thereof in a position compensated solely on a fee basis with respect to fees received in any period in which such service is not covered under an agreement entered into by such State and the Commissioner of Social Security pursuant to section 218 of the Social Security Act,

(F) service described in section 3121(b) (20), and

(G) service described in section 3121(b)(8)(B);

(3) the performance of service by an individual as an employee or employee representative as defined in section 3231;

(4) the performance of service by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

(5) the performance of service by an individual in the exercise of his profession as a Christian Science practitioner; or

(6) the performance of service by an individual during the period for which an exemption under subsection (g) is effective with respect to him.

The provisions of paragraph (4) or (5) shall not apply to service (other than service performed by a member of a religious order who has taken a vow of poverty as a member of such order) performed by an individual unless an exemption under subsection (e) is effective with respect to him.

(d) Employee and wages

The term "employee" and the term "wages" shall have the same meaning as when used in chapter 21 (sec. 3101 and following, relating to Federal Insurance Contributions Act).

(e) Ministers, members of religious orders, and Christian Science practitioners

(1) Exemption

Subject to paragraph (2), any individual who is (A) a duly ordained, commissioned, or licensed minister of a church or a member of a religious order (other than a member of a religious order who has taken a vow of poverty as a member of such order) or (B) a Christian Science practitioner, upon filing an application (in such form and manner, and with such official, as may be prescribed by regulations made under this chapter) together with a statement that either he is conscientiously opposed to, or because of religious principles he is opposed to, the acceptance (with respect to services performed by him as such minister, member, or practitioner) of any public insurance which makes payments in the event of death, disability, old age, or retirement or makes payments toward the cost of, or provides services for, medical care (including the benefits of any insurance system established by the Social Security Act) and, in the case of an individual described in subparagraph (A), that he has informed the ordaining, commissioning, or licensing body of the church or order that he is opposed to such insurance, shall receive an exemption from the tax imposed by this chapter with respect to services performed by him as such minister, member, or practitioner. Notwithstanding the preceding sentence, an exemption may not be granted to an individual under this subsection if he had filed an effective waiver certificate under this section as it was in effect before its amendment in 1967.

(2) Verification of application

The Secretary may approve an application for an exemption filed pursuant to paragraph (1) only if the Secretary has verified that the individual applying for the exemption is aware of the grounds on which the individual may receive an exemption pursuant to this subsection and that the individual seeks exemption on such grounds. The Secretary (or the Commissioner of Social Security under an agreement with the Secretary) shall make such verification by such means as prescribed in regulations.

(3) Time for filing application

Any individual who desires to file an application pursuant to paragraph (1) must file such application on or before whichever of the following dates is later: (A) the due date of the return (including any extension thereof) for the second taxable year for which he has net earnings from self-employment (computed without regard to subsections (c)(4) and (c)(5)) of $400 or more, any part of which was derived from the performance of service described in subsection (c)(4) or (c)(5); or (B) the due date of the return (including any extension thereof) for his second taxable year ending after 1967.

(4) Effective date of exemption

An exemption received by an individual pursuant to this subsection shall be effective for the first taxable year for which he has net earnings from self-employment (computed without regard to subsections (c)(4) and (c)(5)) of $400 or more, any part of which was derived from the performance of service described in subsection (c)(4) or (c)(5), and for all succeeding taxable years. An exemption received pursuant to this subsection shall be irrevocable.

(f) Partner's taxable year ending as the result of death

In computing a partner's net earnings from self-employment for his taxable year which ends as a result of his death (but only if such taxable year ends within, and not with, the taxable year of the partnership), there shall be included so much of the deceased partner's distributive share of the partnership's ordinary income or loss for the partnership taxable year as is not attributable to an interest in the partnership during any period beginning on or after the first day of the first calendar month following the month in which such partner died. For purposes of this subsection—

(1) in determining the portion of the distributive share which is attributable to any period specified in the preceding sentence, the ordinary income or loss of the partnership shall be treated as having been realized or sustained ratably over the partnership taxable year; and

(2) the term "deceased partner's distributive share" includes the share of his estate or of any other person succeeding, by reason of his death, to rights with respect to his partnership interest.

(g) Members of certain religious faiths

(1) Exemption

Any individual may file an application (in such form and manner, and with such official, as may be prescribed by regulations under this chapter) for an exemption from the tax imposed by this chapter if he is a member of a recognized religious sect or division thereof and is an adherent of established tenets or teachings of such sect or division by reason of which he is conscientiously opposed to acceptance of the benefits of any private or public insurance which makes payments in the event of death, disability, old-age, or retirement or makes payments toward the cost of, or provides services for, medical care (including the benefits of any insurance system established by the Social Security Act). Such exemption may be granted only if the application contains or is accompanied by—

(A) such evidence of such individual's membership in, and adherence to the tenets or teachings of, the sect or division thereof as the Secretary may require for purposes of determining such individual's compliance with the preceding sentence, and

(B) his waiver of all benefits and other payments under titles II and XVIII of the Social Security Act on the basis of his wages and self-employment income as well as all such benefits and other payments to him on the basis of the wages and self-employment income of any other person,

and only if the Commissioner of Social Security finds that—

(C) such sect or division thereof has the established tenets or teachings referred to in the preceding sentence,

(D) it is the practice, and has been for a period of time which he deems to be substantial, for members of such sect or division thereof to make provision for their dependent members which in his judgment is reasonable in view of their general level of living, and

(E) such sect or division thereof has been in existence at all times since December 31, 1950.

An exemption may not be granted to any individual if any benefit or other payment referred to in subparagraph (B) became payable (or, but for section 203 or 222(b) of the Social Security Act, would have become payable) at or before the time of the filing of such waiver.

(2) Period for which exemption effective

An exemption granted to any individual pursuant to this subsection shall apply with respect to all taxable years beginning after December 31, 1950, except that such exemption shall not apply

for any taxable year—

(A) beginning (i) before the taxable year in which such individual first met the requirements of the first sentence of paragraph (1), or (ii) before the time as of which the Commissioner of Social Security finds that the sect or division thereof of which such individual is a member met the requirements of subparagraphs (C) and (D), or

(B) ending (i) after the time such individual ceases to meet the requirements of the first sentence of paragraph (1), or (ii) after the time as of which the Commissioner of Social Security finds that the sect or division thereof of which he is a member ceases to meet the requirements of subparagraph (C) or (D).

(3) Subsection to apply to certain church employees

This subsection shall apply with respect to services which are described in subparagraph (B) of section 3121(b)(8) (and are not described in subparagraph (A) of such section).

(h) Regular basis

An individual shall be deemed to be self-employed on a regular basis in a taxable year, or to be a member of a partnership on a regular basis in such year, if he had net earnings from self-employment, as defined in the first sentence of subsection (a), of not less than $400 in at least two of the three consecutive taxable years immediately preceding such taxable year from trades or businesses carried on by such individual or such partnership.

(i) Special rules for options and commodities dealers

(1) In general

Notwithstanding subsection (a)(3)(A), in determining the net earnings from self-employment of any options dealer or commodities dealer, there shall not be excluded any gain or loss (in the normal course of the taxpayer's activity of dealing in or trading section 1256 contracts) from section 1256 contracts or property related to such contracts.

(2) Definitions

For purposes of this subsection—

(A) Options dealer

The term "options dealer" has the meaning given such term by section 1256(g)(8).

(B) Commodities dealer

The term "commodities dealer" means a person who is actively engaged in trading section 1256 contracts and is registered with a domestic board of trade which is designated as a contract market by the Commodities Futures Trading Commission.

(C) Section 1256 contracts

The term "section 1256 contract" has the meaning given to such term by section 1256(b).

(j) Special rules for certain church employee income

(1) Computation of net earnings

In applying subsection (a)—

(A) church employee income shall not be reduced by any deduction;

(B) church employee income and deductions attributable to such income shall not be taken into account in determining the amount of other net earnings from self-employment.

(2) Computation of self-employment income

(A) Separate application of subsection (b)(2)

Paragraph (2) of subsection (b) shall be applied separately—

(i) to church employee income, and

(ii) to other net earnings from self-employment.

(B) $100 floor

In applying paragraph (2) of subsection (b) to church employee income, "$100" shall be substituted for "$400".

(3) Coordination with subsection (a)(12)

Paragraph (1) shall not apply to any amount allowable as a deduction under subsection (a)(12), and paragraph (1) shall be applied before determining the amount so allowable.

(4) Church employee income defined

For purposes of this section, the term "church employee income" means gross income for services which are described in section 3121(b)(8)(B) (and are not described in section 3121(b)(8)(A)).

(k) Codification of treatment of certain termination payments received by former insurance salesmen

Nothing in subsection (a) shall be construed as including in the net earnings from self-employment of an individual any amount received during the taxable year from an insurance company on account of services performed by such individual as an insurance salesman for such company if—

(1) such amount is received after termination of such individual's agreement to perform such services for such company,

(2) such individual performs no services for such company after such termination and before the close of such taxable year,

(3) such individual enters into a covenant not to compete against such company which applies to at least the 1-year period beginning on the date of such termination, and

(4) the amount of such payment—

(A) depends primarily on policies sold by or credited to the account of such individual during the last year of such agreement or the extent to which such policies remain in force for some period after such termination, or both, and

(B) does not depend to any extent on length of service or overall earnings from services performed for such company (without regard to whether eligibility for payment depends on length of service).

(l) Upper and lower limits

For purposes of subsection (a)—

(1) Lower limit

The lower limit for any taxable year is the sum of the amounts required under section 213(d) of the Social Security Act for a quarter of coverage in effect with respect to each calendar quarter ending with or within such taxable year.

(2) Upper limit

The upper limit for any taxable year is the amount equal to 150 percent of the lower limit for such taxable year.

(Aug. 16, 1954, ch. 736, 68A Stat. 353; Sept. 1, 1954, ch. 1206, title II, §201(a)–(c), 68 Stat. 1087; Aug. 1, 1956, ch. 836, title II, §201(e)(2), (3), (f), (g), (i), 70 Stat. 840–842; Pub. L. 85–239, §§1(a), (b), 2, 5(b), Aug. 30, 1957, 71 Stat. 521–523; Pub. L. 85–840, title IV, §§402(a), 403(a), Aug. 28, 1958, 72 Stat. 1042, 1043; Pub. L. 86–778, title I, §§101(a)–(c), 103(k), (l), 105(c)(1), 106(b), Sept. 13, 1960, 74 Stat. 926, 927, 938, 944, 945; Pub. L. 87–64, title II, §202(a), June 30, 1961, 75 Stat. 141; Pub. L. 88–272, title II, §227(b)(6), Feb. 26, 1964, 78 Stat. 98; Pub. L. 88–650, §2(a), (b), Oct. 13, 1964, 78 Stat. 1076, 1077; Pub. L. 89–97, title III, §§311(b)(1)–(3), 312(b), 319(a), (c), 320(b)(1), 331(a), 341(a), (b), July 30, 1965, 79 Stat. 381, 390, 391, 393, 401, 411; Pub. L. 89–368, title I, §102(c), Mar. 15, 1966, 80 Stat. 64; Pub. L. 90–248, title I, §§108(b)(1), 115(b), 118(a), 122(b), title V, §§501(a), 502(b)(1), Jan. 2, 1968, 81 Stat. 835, 839, 841, 843, 933, 934; Pub. L. 92–5, title II, §203(b)(1), Mar. 17, 1971, 85 Stat. 10; Pub. L. 92–336, title II, §203(b)(1), July 1, 1972, 86 Stat. 418; Pub. L. 92–603, title I, §§121(b), 124(b), 140(b), Oct. 30, 1972, 86 Stat. 1353, 1357, 1366; Pub. L. 93–66, title II, §203(b)(1), July 9, 1973, 87 Stat. 153; Pub. L. 93–233, §5(b)(1),

Dec. 31, 1973, 87 Stat. 954; Pub. L. 93–368, §10(b), Aug. 7, 1974, 88 Stat. 422; Pub. L. 94–92, title II, §203(a), Aug. 9, 1975, 89 Stat. 465; Pub. L. 94–455, title XII, §1207(e)(1)(B), title XIX, §§1901(a)(155), (b)(1)(I)(iii), (X), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1707, 1789, 1791, 1792, 1834; Pub. L. 95–216, title III, §313(b), Dec. 20, 1977, 91 Stat. 1536; Pub. L. 95–600, title VII, §703(j)(8), Nov. 6, 1978, 92 Stat. 2941; Pub. L. 95–615, §202(g)(5), formerly §202(f)(5), Nov. 8, 1978, 92 Stat. 3100, renumbered §202(g)(5), Pub. L. 96–222, title I, §108(a)(1)(A), Apr. 1, 1980, 94 Stat. 223; Pub. L. 97–34, title I, §111(b)(3), (5), Aug. 13, 1981, 95 Stat. 194; Pub. L. 97–248, title II, §278(a)(2), Sept. 3, 1982, 96 Stat. 559; Pub. L. 98–21, title I, §124(c)(2), title III, §§321(e)(3), 322(b)(2), 323(b)(1), Apr. 20, 1983, 97 Stat. 90, 120, 121; Pub. L. 98–369, div. A, title I, §102(c)(1), div. B, title VI, §§2603(c)(2), (d)(2), 2663(j)(5)(B), July 18, 1984, 98 Stat. 622, 1129, 1130, 1171; Pub. L. 99–272, title XIII, §13205(a)(2)(B), Apr. 7, 1986, 100 Stat. 315; Pub. L. 99–509, title IX, §9002(b)(1)(B), Oct. 21, 1986, 100 Stat. 1971; Pub. L. 99–514, title III, §301(b)(12), title XII, §1272(d)(8), (9), title XVII, §1704(a)(1), (2), title XVIII, §§1882(a), (b)(1), 1883(a)(11)(A), Oct. 22, 1986, 100 Stat. 2218, 2594, 2779, 2914, 2916; Pub. L. 100–203, title IX, §9022(b), Dec. 22, 1987, 101 Stat. 1330–295; Pub. L. 100–647, title III, §3043(c)(1), title VIII, §8007(c), Nov. 10, 1988, 102 Stat. 3642, 3783; Pub. L. 101–239, title X, §10204(a)(1), Dec. 19, 1989, 103 Stat. 2474; Pub. L. 101–508, title V, §§5123(a)(3), 5130(a)(2), title XI, §11331(b), Nov. 5, 1990, 104 Stat. 1388–284, 1388–289, 1388–467; Pub. L. 103–66, title XIII, §13207(b), Aug. 10, 1993, 107 Stat. 468; Pub. L. 103–296, title I, §108(h)(1), title III, §319(a)(4), Aug. 15, 1994, 108 Stat. 1487, 1534; Pub. L. 104–188, title I, §1456(a), Aug. 20, 1996, 110 Stat. 1818; Pub. L. 105–34, title IX, §922(a), Aug. 5, 1997, 111 Stat. 879; Pub. L. 108–203, title IV, §425(b), Mar. 2, 2004, 118 Stat. 536; Pub. L. 108–357, title I, §102(d)(7), Oct. 22, 2004, 118 Stat. 1429; Pub. L. 110–28, title VIII, §8215(b)(1), May 25, 2007, 121 Stat. 193; Pub. L. 110–234, title XV, §§15301(a), 15352(a), May 22, 2008, 122 Stat. 1501, 1525; Pub. L. 110–246, §4(a), title XV, §§15301(a), 15352(a), June 18, 2008, 122 Stat. 1664, 2263, 2287; Pub. L. 111–148, title IX, §9015(b)(2)(B), Mar. 23, 2010, 124 Stat. 871.)

REFERENCES IN TEXT

Section 1233(2) of the Food Security Act of 1985 (16 U.S.C. 3833(2)), referred to in subsec. (a)(1), is section 1233(2) of Pub. L. 99–198, which was classified to section 3833(2) of Title 16, Conservation, prior to the general amendment of section 1233 by Pub. L. 113–79, title II, §2004, Feb. 7, 2014, 128 Stat. 715. As so amended, the substance of former section 1233(2) now appears in section 1233(a)(2) which is classified to section 3833(a)(2) of Title 16.

The Social Security Act, referred to in subsecs. (a)(1), (b), (c)(1), (2)(E), (e)(1), (g)(1), and (l)(1), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, which is classified generally to chapter 7 (§301 et seq.) of Title 42, The Public Health and Welfare. Titles II and XVIII of the Act are classified generally to subchapters II (§401 et seq.) and XVIII (§1395 et seq.) of Title 42. Sections 202, 203, 213, 218, 222, 223, 230, and 233 of the Act are classified to sections 402, 403, 413, 418, 422, 423, 430, and 433, respectively, of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Federal Insurance Contributions Act, referred to in subsec. (d), is act Aug. 16, 1954, ch. 736, 68A Stat. 415, as amended, which is classified generally to chapter 21 (§3101 et seq.) of this title. For complete classification of this Act to the Code, see section 3128 of this title and Tables.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2010—Subsec. (a)(12)(B). Pub. L. 111–148 inserted "(determined without regard to the rate imposed under paragraph (2) of section 1401(b))" after "for such year".

2008—Subsec. (a). Pub. L. 110–246, §15352(a)(1), in concluding provisions, substituted "the upper limit" for "$2,400" wherever appearing and "the lower limit" for "$1,600" wherever appearing.

Subsec. (a)(1). Pub. L. 110–246, §15301(a), inserted ", and including payments under section 1233(2) of the Food Security Act of 1985 (16 U.S.C. 3833(2)) to individuals receiving benefits under section 202 or 223 of the Social Security Act" after "crop shares".

Subsec. (l). Pub. L. 110–246, §15352(a)(2), added subsec. (l).

2007—Subsec. (a)(17). Pub. L. 110–28 added par. (17).

2004—Subsec. (a)(5)(A). Pub. L. 108–203 substituted "the gross income and deductions attributable to such trade or business shall be treated as the gross income and deductions of the spouse carrying on such trade or business or, if such trade or business is jointly operated, treated as the gross income and deductions of each spouse on the basis of their respective distributive share of the gross income and deductions; and" for "all of the gross income and deductions attributable to such trade or business shall be treated as the gross income and deductions of the husband unless the wife exercises substantially all of the management and control of such trade or business, in which case all of such gross income and deductions shall be treated as the gross income and deductions of the wife; and".

Subsec. (a)(16). Pub. L. 108–357 added par. (16).

1997—Subsec. (k). Pub. L. 105–34 added subsec. (k).

1996—Subsec. (a)(8). Pub. L. 104–188 inserted before semicolon at end ", but shall not include in such net earnings from self-employment the rental value of any parsonage or any parsonage allowance (whether or not excludable under section 107) provided after the individual retires, or any other retirement benefit received by such individual from a church plan (as defined in section 414(e)) after the individual retires".

1994—Subsec. (c)(1). Pub. L. 103–296, §108(h)(1), substituted "Commissioner of Social Security" for "Secretary of Health and Human Services".

Subsec. (c)(2)(C). Pub. L. 103–296, §319(a)(4), inserted at end "except service which constitutes 'employment' under section 3121(y),".

Subsecs. (c)(2)(E), (e)(2), (g)(1), (2)(A), (B). Pub. L. 103–296, §108(h)(1), substituted "Commissioner of Social Security" for "Secretary of Health and Human Services".

1993—Subsec. (b). Pub. L. 103–66, §13207(b)(1)(C), (D), in concluding provisions, inserted "and" after "section 3121(b)," and struck out "and (C) includes, but only with respect to the tax imposed by section 1401(b), remuneration paid for medicare qualified government employment (as defined in section 3121(u)(3)) which is subject to the taxes imposed by sections 3101(b) and 3111(b)" after "section 3201 or 3211,".

Subsec. (b)(1). Pub. L. 103–66, §13207(b)(1)(A), (B), substituted "in the case of the tax imposed by section 1401(a), that part of the net" for "that part of the net" and "contribution and benefit base (as determined under section 230 of the Social Security Act)" for "applicable contribution base (as determined under subsection (k))".

Subsec. (k). Pub. L. 103–66, §13207(b)(2), struck out subsec. (k) which defined parameters of the applicable contribution base under this chapter.

1990—Subsec. (a). Pub. L. 101–508, §5123(a)(3), struck out last undesignated par. which read as follows: "Any income of an individual which results from or is attributable to the performance of services by such individual as a director of a corporation during any taxable year shall be deemed to have been derived (and received) by such individual in that year, at the time the services were performed, regardless of when the income is actually paid to or received by such individual (unless it was actually paid and received prior to that year)."

Subsec. (b). Pub. L. 101–508, §5130(a)(2), amended directory language of Pub. L. 98–21, §322(b)(2). See 1983 Amendment note below.

Subsec. (b)(1)(i). Pub. L. 101–508, §11331(b)(1), substituted "the applicable contribution base (as determined under subsection (k))" for "the contribution and benefit base (as determined under section 230 of the Social Security Act)".

Subsec. (k). Pub. L. 101–508, §11331(b)(2), added subsec. (k).

1989—Subsec. (g)(3). Pub. L. 101–239 substituted "to apply" for "not to apply" in heading and "shall apply" for "shall not apply" in text.

1988—Subsec. (a)(15). Pub. L. 100–647, §3043(c)(1), added par. (15).

Subsec. (g)(2) to (5). Pub. L. 100–647, §8007(c), struck out par. (2) which related to time for filing applications, struck out par. (4) which related to application by fiduciaries or survivors, and redesignated pars. (3) and (5) as (2) and (3), respectively.

1987—Subsec. (a). Pub. L. 100–203 inserted par. at end relating to income of an individual which results from or is attributable to the performance of services by such individual as a director of a corporation.

1986—Subsec. (a)(8). Pub. L. 99–514, §1272(d)(8), inserted "and" after "of the employer)," and struck out "and section 931 (relating to income from sources within possessions of the United States)" after "living abroad)".

Subsec. (a)(9). Pub. L. 99–514, §1272(d)(9), amended par. (9) generally. Prior to amendment, par. (9) read as follows: "the term 'possession of the United States' as used in sections 931 (relating to income from sources within possessions of the United States) and 932 (relating to citizens of possessions of the United States) shall be deemed not to include the Virgin Islands, Guam, or American Samoa;".

Subsec. (a)(14). Pub. L. 99–514, §1882(b)(1)(B)(i), amended par. (14) generally. Prior to amendment, par.

(14) read as follows: "with respect to remuneration for services which are treated as services in a trade or business under subsection (c)(2)(G)—

"(A) no deduction for trade or business expenses provided under this Code (other than the deduction under paragraph (12)) shall apply;

"(B) the provisions of subsection (b)(2) shall not apply; and

"(C) if the amount of such remuneration from an employer for the taxable year is less than $100, such remuneration from that employer shall not be included in self-employment income."

Subsec. (b). Pub. L. 99–514, §1882(b)(1)(B)(ii), (iii), substituted "paragraph" for "clause" in second sentence and inserted at end "In the case of church employee income, the special rules of subsection (j)(2) shall apply for purposes of paragraph (2)."

Pub. L. 99–509 struck out "under an agreement entered into pursuant to the provisions of section 218 of the Social Security Act (relating to coverage of State employees), or" after "services included" in second sentence.

Pub. L. 99–272 substituted "medicare qualified government employment (as defined in section 3121(u)(3))" for "medicare qualified Federal employment (as defined in section 3121(u)(2))".

Subsec. (c)(2)(G). Pub. L. 99–514, §1883(a)(11)(A), realigned margin of subpar. (G).

Subsec. (e)(1). Pub. L. 99–514, §1704(a)(1), (2)(A), substituted "Subject to paragraph (2), any individual" for "Any individual" and inserted "and, in the case of an individual described in subparagraph (A), that he has informed the ordaining, commissioning, or licensing body of the church or order that he is opposed to such insurance".

Subsec. (e)(2) to (4). Pub. L. 99–514, §1704(a)(2)(B), (C), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

Subsec. (g)(5). Pub. L. 99–514, §1882(a), added par. (5).

Subsec. (i)(1). Pub. L. 99–514, §301(b)(12), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "In determining the net earnings from self-employment of any options dealer or commodities dealer—

"(A) notwithstanding subsection (a)(3)(A), there shall not be excluded any gain or loss (in the normal course of the taxpayer's activity of dealing in or trading section 1256 contracts) from section 1256 contracts or property related to such contracts, and

"(B) the deduction provided by section 1202 shall not apply."

Subsec. (j). Pub. L. 99–514, §1882(b)(1)(A), added subsec. (j).

1984—Subsec. (a)(14). Pub. L. 98–369, §2603(d)(2), added par. (14).

Subsec. (c)(1), (2)(E). Pub. L. 98–369, §2663(j)(5)(B), substituted "Secretary of Health and Human Services" for "Secretary of Health, Education, and Welfare".

Subsec. (c)(2)(G). Pub. L. 98–369, §2603(c)(2), added subpar. (G).

Subsec. (g)(1), (3)(A), (B). Pub. L. 98–369, §2663(j)(5)(B), substituted "Secretary of Health and Human Services" for "Secretary of Health, Education, and Welfare".

Subsec. (i). Pub. L. 98–369, §102(c)(1), added subsec. (i).

1983—Subsec. (a)(11). Pub. L. 98–21, §323(b)(1), struck out "in the case of an individual described in section 911(d)(1)(B)," before "the exclusion".

Subsec. (a)(12), (13). Pub. L. 98–21, §124(c)(2), added par. (12) and redesignated former par. (12) as (13).

Subsec. (b). Pub. L. 98–21, §322(b)(2), as amended by Pub. L. 101–508, §5130(a)(2), inserted ", except as provided by an agreement under section 233 of the Social Security Act" in text preceding par. (1).

Pub. L. 98–21, §321(e)(3), substituted "employees of foreign affiliates of American employers" for "employees of foreign subsidiaries of domestic corporations" in cl. (A) of provisions following par. (2).

1982—Subsec. (b). Pub. L. 97–248 struck out "and" before "(B)" and inserted ", and (C) includes, but only with respect to the tax imposed by section 1401(b), remuneration paid for medicare qualified Federal employment (as defined in section 3121(u)(2)) which is subject to the taxes imposed by sections 3101(b) and 3111(b)".

1981—Subsec. (a)(8). Pub. L. 97–34, §111(b)(3), substituted "relating to citizens or residents of the United States living abroad" for "relating to income earned by employees in certain camps".

Subsec. (a)(11). Pub. L. 97–34, §111(b)(5), substituted "in the case of an individual described in section 911(d)(1)(B), the exclusion from gross income provided by section 911(a)(1) shall not apply" for "in the case of an individual who has been a resident of the United States during the entire taxable year, the exclusion from gross income provided by section 911(a)(2) shall not apply".

1978—Subsec. (a). Pub. L. 95–615 substituted "(relating to income earned by employees in certain camps)" for "(relating to earned income from sources without the United States)" in par. (8).

Pub. L. 95–600, §703(j)(8)(A), substituted "subsection (h)" for "subsection (i)" wherever appearing in last par.

Subsec. (c)(6). Pub. L. 95–600, §703(j)(8)(B), substituted "subsection (g)" for "subsection (h)".

1977—Subsec. (a)(12). Pub. L. 95–216 added par. (12).

1976—Subsec. (a). Pub. L. 94–455, §§1901(b)(1) (I)(iii), (X), 1906(b)(13)(A), substituted, in provisions preceding par. (1) and in two places in cl. (iv) of provisions extending the application of provisions relating to agricultural labor to trade or business carried on by individuals, self-employed or in partnership, "section 702(a)(8)" for "section 702(a)(9)" and struck out in par. (2) "(other than interest described in section 35)" after "unless such dividends and interest" and in par. (10) "or his delegate" after "Secretary".

Subsec. (b)(1). Pub. L. 94–455, §1901(a)(155)(A), among other changes, struck out provisions spelling out fixed Social Security contributions and benefit base limits on wages paid during taxable years between 1955 through 1974.

Subsec. (c)(2)(F). Pub. L. 94–455, §1207(e)(1)(B), added subpar. (F).

Subsec. (g). Pub. L. 94–455, §§1901(a)(155)(B), (C), 1906(b)(13)(A), redesignated subsec. (h) as (g), and as so redesignated, struck out in par. (1)(A) "or his delegate" after "Secretary" and in par. (2) provisions relating to individuals who have self-employment income for taxable years ending before Dec. 31, 1967, on or before Dec. 31, 1968, and substituted in par. (2) reference to for which the individual has self-employment income (determined without regard to this subsection or subsection (c)(6)) for reference to ending on or after Dec. 31, 1967 for which he has self-employment income (as so determined). Former subsec. (g), which related to treatment of certain remunerations erroneously reported as net earnings from self-employment, was struck out.

Subsecs. (h), (i). Pub. L. 94–455, §1901(a)(155)(B), redesignated subsec. (i) as (h). Former subsec. (h) redesignated (g).

1975—Subsec. (b). Pub. L. 94–92 struck out from item B of second sentence the limitation of "wages" to include "compensation" solely with respect to the tax imposed by section 1401(b).

1974—Subsec. (a)(1). Pub. L. 93–368 inserted "(as determined without regard to any activities of an agent of such owner or tenant)" after "material participation by the owner or tenant" wherever appearing.

1973—Subsec. (b)(1)(H). Pub. L. 93–233 substituted "$13,200" for "$12,600".

Pub. L. 93–66 substituted "$12,600" for "$12,000".

1972—Subsec. (a)(8), (11). Pub. L. 92–603, §§121(b)(1), 124(b), 140(b), in par. (8), struck out limitation under which provisions authorizing the computation of net earnings without regard to sections 911 and 931 were limited to citizens of the United States performing religious service as employees of an American employer or as ministers in a foreign country having a congregation predominantly of citizens of the United States, added par. (11), and extended the application of provisions relating to agricultural labor to trade or business carried on by individuals, self-employed or in partnership, with certain exceptions.

Subsec. (b)(1)(F). Pub. L. 92–336, §203(b)(1)(A), inserted "and before 1973" after "1971".

Subsec. (b)(1)(G) to (I). Pub. L. 92–336, §203(b)(1)(B), added subpars. (G) to (I).

Subsec. (i). Pub. L. 92–603, §121(b)(2), added subsec. (i).

1971—Subsec. (b)(1)(E). Pub. L. 92–5, §203(b)(1)(A), inserted "and beginning before 1972" after "1967" and substituted "; and" for "; or".

Subsec. (b)(1)(F). Pub. L. 92–5, §203(b)(1)(B), added subpar. (F).

1968—Subsec. (a)(10). Pub. L. 90–248, §118(a), added par. (10).

Subsec. (b). Pub. L. 90–248, §502(b)(1), designated existing provisions of second sentence respecting "wages" as item "A" and added item "B".

Subsec. (b)(1)(D). Pub. L. 90–248, §108(b)(1)(A), inserted "and before 1968" after "1965".

Subsec. (b)(1)(E). Pub. L. 90–248, §108(b)(1)(B), added subpar. (E).

Subsec. (c). Pub. L. 90–248, §115(b)(1), substituted "such order) performed by an individual unless an exemption under subsection (e) is effective with respect to him" for "such order performed by an individual during the period for which a certificate filed by him under subsection (e) is in effect" in last sentence.

Subsec. (c)(1). Pub. L. 90–248, §122(b)(1), excepted from exclusion from definition of "trade or business" the functions of a public office of a State or a political division thereof with respect to fees received in any period in which the functions are performed in a position compensated solely on a fee basis and in which such functions are not covered under an agreement entered by such State and the Secretary pursuant to section 218 of the Social Security Act [section 418 of Title 42, The Public Health and Welfare].

Subsec. (c)(2)(E). Pub. L. 90–248, §122(b)(2), added subpar. (E).

Subsec. (e). Pub. L. 90–248, §115(b)(2), substituted provisions allowing clergymen, members of religious orders who have not taken a vow of poverty, and Christian Science practitioners to secure an exemption from social security self-employment tax upon meeting requirements of pars. (1) to (3) respecting such exemption, time for filing application, and effective date of exemption for provisions of former pars. (1) to (5) permitting such persons to secure social security coverage by filing a waiver certificate, prescribing time for filing

certificate, effective date of certificate treatment of certain remuneration paid in 1955 and 1956 as wages, and optional provision for certain certificates filed on or before April 15, 1967.

Subsec. (h)(2). Pub. L. 90–248, §501(a), substituted "December 31, 1967" and "December 31, 1968" for "December 31, 1965" and "April 15, 1966", respectively, in subpar. (A) and "December 31, 1967" for "December 31, 1965" in subpar. (B) and inserted in such subpar. (B) exception provision as to when an application shall be deemed timely filed.

1966—Subsec. (e)(3)(E). Pub. L. 89–368 added subpar. (E).

1965—Subsec. (a). Pub. L. 89–97, §312(b), substituted "2,400" for "$1,800" in cls. (i) to (iv) and "$1,600" for "$1,200" in cls. (ii) and (iv) of second sentence following par. (9), wherever appearing.

Subsec. (b)(1)(C). Pub. L. 89–97, §320(b)(1)(C), inserted "and before 1966" after "1958" and substituted "and" for "or" after the semicolon.

Subsec. (b)(1)(D). Pub. L. 89–97, §320(b)(1)(B), added subpar. (D).

Subsec. (c). Pub. L. 89–97, §§311(b)(1), (2), 319(a), struck out from par. (5) "doctor of medicine, or" before and "; or the performance of such service by a partnership" after "Christian Science practitioner," added par. (6), and consolidated into one sentence former last two sentences.

Subsec. (e)(1). Pub. L. 89–97, §311(b)(3)(A), substituted "extended to service described in subsection (c)(4) or (c)(5) performed by him" for "extended to service described in subsection (c)(4), or service described in subsection (c)(5) insofar as it relates to the performance of service by an individual in the exercise of his profession as a Christian Science practitioner, as the case may be performed by him".

Subsec. (e)(2)(A). Pub. L. 89–97, §311(b)(3)(B), substituted "(computed without regard to subsections (c)(4) and (c)(5) of $400 or more, any part of which was derived from the performance of service described in subsection (c)(4) or (c)(5)" for "(computed, in the case of an individual referred to in paragraph (1)(A), without regard to subsection (c)(4), and, in the case of an individual referred to in paragraph (1)(B), without regard to subsection (c)(5) insofar as it relates to the performance of service by an individual in the exercise of his profession as a Christian Science practitioner) of $400 or more, any part of which was derived from the performance of service described in subsection (c)(4), or from the performance of service described in subsection (c)(5) insofar as it relates to the performance of service by an individual in the exercise of his profession as a Christian Science practitioner, as the case may be".

Subsec. (e)(2)(B). Pub. L. 89–97, §341(a), substituted "his second taxable year ending after 1963" for "his second taxable year ending after 1962".

Subsec. (e)(3)(D). Pub. L. 89–97, §341(b), added subpar. (D).

Subsec. (e)(5). Pub. L. 89–97, §331(a), extended applicability of section to earnings in taxable years beyond those ending before 1960, extended until April 15, 1966, the last date for filing a certificate by an individual and until Apr. 15, 1967, the last date for filing a supplemental certificate by an individual, provided for filing of the certificate on or before Apr. 15, 1967, if the individual died on or before April 15, 1966, and extended to Apr. 15, 1967, the date on or before which the tax under section 1401 had been paid, or the overpayment, including interest under section 6611, had been repaid.

Subsec. (e)(6). Pub. L. 89–97, §331(a), struck out par. (6) which dealt with filing of certificates by fiduciaries or survivors on or before April 15, 1962.

Subsec. (h). Pub. L. 89–97, §319(c), added subsec. (h).

1964—Subsec. (a)(3)(B). Pub. L. 88–272 inserted reference to iron ore.

Subsec. (e)(2)(B). Pub. L. 88–650, §2(a), substituted "his second taxable year ending after 1962" for "his second taxable year ending after 1959".

Subsec. (e)(3)(C). Pub. L. 88–650, §2(b), added subpar. (C).

1961—Subsec. (e)(6). Pub. L. 87–64 added par. (6).

1960—Subsec. (a). Pub. L. 86–778, §103(k), added par. (9) and inserted references to paragraph (9) in cls. (v) and (vi) of last sentence.

Subsec. (b). Pub. L. 86–778, §103(l), substituted "the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa" for "the Virgin Islands or a resident of Puerto Rico" in last sentence.

Subsec. (c)(2). Pub. L. 86–778, §106(b), excluded service described in section 3121(b)(11), (12), or (15) performed in the United States (as defined in section 3121(e)(2)) by a citizen of the United States.

Subsec. (e)(2)(B). Pub. L. 86–778, §101(a), substituted "1959" for "1956".

Subsec. (e)(3). Pub. L. 86–778, §101(b), designated existing provisions as cl. (A), struck out provisions which related to certificates for prior taxable years which have now become inapplicable, and added cl. (B).

Subsec. (e)(5). Pub. L. 86–778, §101(c), added par. (5).

Subsec. (g). Pub. L. 86–778, §105(c)(1), added subsec. (g).

1958—Subsec. (b)(1). Pub. L. 85–840, §402(a), increased limitation on self-employment income subject to tax, for taxable years ending after 1958, from $4,200 to $4,800.

Subsec. (f). Pub. L. 85–840, §403(a), added subsec. (f).

1957—Subsec. (a)(8). Pub. L. 85–239, §5(b), permitted computation of net earnings without regard to sections 107 and 119 of this title.

Subsec. (e)(2). Pub. L. 85–239, §1(a), permitted a person to file a certificate on or before the due date of the return (including any extension thereof) for his second taxable year ending after 1956.

Subsec. (e)(3). Pub. L. 85–239, §1(b), provided for the effective date of certificates filed after August 30, 1957, but on or before the due date of the return (including any extension thereof) for the second taxable year ending after 1956, for certificates filed on or before August 30, 1957, which are effective only for the third or fourth taxable year ending after 1954 and all succeeding taxable years, and for certificates filed after the due date of the return (including any extension thereof) for the second taxable year ending after 1956.

Subsec. (e)(4). Pub. L. 85–239, §2, added par. (4).

1956—Subsec. (a). Act Aug. 1, 1956, §201(i), amended generally last two sentences to include those businesses in which the income is computed under an accrual method, and partnerships, to change the method of computation of net earnings for individuals by permitting those whose gross income is not more than $1,800 to deem their net earnings to be 662/3 percent of such gross income, and those whose gross income is more than $1,800 and the net earnings are less than $1,200, to deem the net earnings to be $1,200, and to provide for the computation of net earnings for members of partnerships.

Subsec. (a)(1). Act Aug. 1, 1956, §201(e)(2), struck out from the exclusion income derived by an owner or tenant of land if such income is derived under an arrangement with another individual for the production by such other individual of agricultural or horticultural commodities if such arrangement provides for material participation by the owner or tenant in the production or the management of the production of such commodities, and there is material participation by the owner or tenant with respect to any such commodity.

Subsec. (a)(8)(B). Act Aug. 1, 1956, §201(g), included citizens of the United States who are ministers in foreign countries and have congregations composed predominantly of citizens of the United States.

Subsec. (c)(2). Act Aug. 1, 1956, §201(e)(3), included within "trade or business" service described in section 3121(b)(16) of this title.

Subsec. (c)(5). Act Aug. 1, 1956, §201(f), struck out exclusion of lawyers, dentists, osteopaths, veterinarians, chiropractors, naturopaths, and optometrists.

1954—Subsec. (a). Act Sept. 1, 1954, §201(a), (c)(4), in par. (1) clarified the term rentals to indicate that it includes rentals paid in the form of crop shares, struck out par. (2), redesignated pars. (3) to (8) as (2) to (7), respectively, added a new par. (8), and inserted provisions at end establishing an optional method of reporting income for self-employed farmers.

Subsec. (b). Act Sept. 1, 1954, §201(b), increased the limitation on self-employment income subject to tax, for taxable years ending after 1954, from $3,600 to $4,200 and included as "wages", for purposes of computing "self-employment income," remuneration of United States citizens employed by a foreign subsidiary of a domestic corporation which has agreed to have the Social Security insurance system extended to service performed by such citizens.

Subsec. (c). Act Sept. 1, 1954, §201(c)(2), inserted two sentences at end making the provisions of par. (4) inapplicable to service performed during the period for which a certificate filed under subsec. (e) is in effect.

Subsec. (c)(2). Act Sept. 1, 1954, §201(c)(1), inserted "and other than service described in paragraph (4) of this subsection" after "18".

Subsec. (c)(5). Act Sept. 1, 1954, §201(c)(5), struck out exclusions from self-employment tax in the case of architects, certified public accountants, accountants registered or licensed as accountants under State or municipal law, full-time practicing public accountants, funeral directors and professional engineers.

Subsec. (e). Act Sept. 1, 1954, §201(c)(3), added subsec. (e).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–148 applicable with respect to remuneration received, and taxable years beginning, after Dec. 31, 2012, see section 9015(c) of Pub. L. 111–148, set out as a note under section 164 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Pub. L. 110–234, title XV, §15301(c), May 22, 2008, 122 Stat. 1501, and Pub. L. 110–246, §4(a), title XV, §15301(c), June 18, 2008, 122 Stat. 1664, 2263, provided that: "The amendments made by this section [amending this section and section 411 of Title 42, The Public Health and Welfare] shall apply to payments

made after December 31, 2007."

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.]

Pub. L. 110–234, title XV, §15352(c), May 22, 2008, 122 Stat. 1526, and Pub. L. 110–246, §4(a), title XV, §15352(c), June 18, 2008, 122 Stat. 1664, 2288, provided that: "The amendments made by this section [amending this section and sections 411 and 412 of Title 42, The Public Health and Welfare] shall apply to taxable years beginning after December 31, 2007."

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.]

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–28 applicable to taxable years beginning after Dec. 31, 2006, see section 8215(c) of Pub. L. 110–28, set out as a note under section 761 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years beginning after Dec. 31, 2004, see section 102(e) of Pub. L. 108–357, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title IX, §922(c), Aug. 5, 1997, 111 Stat. 880, provided that: "The amendments made by this section [amending this section and section 411 of Title 42, The Public Health and Welfare] shall apply to payments after December 31, 1997."

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, §1456(b), Aug. 20, 1996, 110 Stat. 1818, provided that: "The amendments made by this section [amending this section] shall apply to years beginning before, on, or after December 31, 1994."

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 108(h)(1) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of Title 42, The Public Health and Welfare.

Pub. L. 103–296, title III, §319(c), Aug. 15, 1994, 108 Stat. 1535, provided that: "The amendments made by this section [amending this section, sections 3102, 3121, and 3122 of this title, and sections 410 and 411 of Title 42, The Public Health and Welfare] shall apply with respect to service performed after the calendar quarter following the calendar quarter in which the date of the enactment of this Act [Aug. 15, 1994] occurs."

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13207(e), Aug. 10, 1993, 107 Stat. 469, provided that: "The amendments made by this section [amending this section and sections 3121, 3122, 3125, 3231, and 6413 of this title] shall apply to 1994 and later calendar years."

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 5123(a)(3) of Pub. L. 101–508 applicable with respect to income received for services performed in taxable years beginning after Dec. 31, 1990, see section 5123(b) of Pub. L. 101–508, set out as a note under section 403 of Title 42, The Public Health and Welfare.

Pub. L. 101–508, title V, §5130(b), Nov. 5, 1990, 104 Stat. 1388–289, provided that: "The amendments made by subsection (a) [amending this section, section 3509 of this title, and sections 408, 409, and 411 of Title 42] shall be effective as if included in the enactment of the provision to which it relates."

Pub. L. 101–508, title XI, §11331(e), Nov. 5, 1990, 104 Stat. 1388–468, provided that: "The amendments made by this section [amending this section and sections 3121, 3122, 3125, 3231, and 6413 of this title] shall apply to 1991 and later calendar years."

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title X, §10204(a)(2), Dec. 19, 1989, 103 Stat. 2474, provided that: "The amendments made by paragraph (1) [amending this section] shall apply with respect to taxable years beginning after December 31, 1989."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 3043(c)(1) of Pub. L. 100–647 applicable to all periods beginning before, on, or after Nov. 10, 1988, with no inference created as to existence or nonexistence or scope of any exemption from tax for income derived from fishing rights secured as of Mar. 17, 1988, by any treaty, law, or Executive Order,

see section 3044 of Pub. L. 100–647, set out as an Effective Date note under section 7873 of this title.

Pub. L. 100–647, title VIII, §8007(d), Nov. 10, 1988, 102 Stat. 3783, provided that: "The amendments made by subsection (a) [enacting section 3127 of this title and renumbering former section 3127 of this title as section 3128] shall apply to wages paid after December 31, 1988. The amendments made by subsection (b) [amending section 402 of Title 42, The Public Health and Welfare] shall apply to benefits paid for (and items and services furnished in) months after December 1988. The amendments made by subsection (c) [amending this section] shall apply to applications for exemptions filed on or after the date of the enactment of this Act [Nov. 10, 1988]."

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title IX, §9022(c), Dec. 22, 1987, 101 Stat. 1330–295, provided that: "The amendments made by this section [amending this section and section 411 of Title 42, The Public Health and Welfare] shall apply with respect to services performed in taxable years beginning on or after January 1, 1988."

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 301(b)(12) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 301(c) of Pub. L. 99–514, set out as a note under section 62 of this title.

Amendment by section 1272(d)(8), (9) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99–514, set out as a note under section 931 of this title.

Pub. L. 99–514, title XVII, §1704(a)(3), Oct. 22, 1986, 100 Stat. 2779, provided that: "The amendments made by paragraphs (1) and (2) [amending this section] shall apply to applications filed after December 31, 1986."

Pub. L. 99–514, title XVIII, §1882(b)(3), Oct. 22, 1986, 100 Stat. 2915, provided that: "The amendments made by this subsection [amending this section and section 411 of Title 42, The Public Health and Welfare] shall apply to remuneration paid or derived in taxable years beginning after December 31, 1985."

Amendment by Pub. L. 99–509 effective, except as otherwise provided, with respect to payments due with respect to wages paid after Dec. 31, 1986, including wages paid after such date by a State (or political subdivision thereof) that modified its agreement pursuant to section 418(e)(2) of Title 42, The Public Health and Welfare, see section 9002(d) of Pub. L. 99–509, set out as a note under section 418 of Title 42.

Amendment by Pub. L. 99–272 applicable to services performed after Mar. 31, 1986, see section 13205(d)(1) of Pub. L. 99–272, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 102(c)(1) of Pub. L. 98–369 applicable to taxable years beginning after July 18, 1984, except as otherwise provided, see section 102(f)(3), (g) of Pub. L. 98–369, set out as a note under section 1256 of this title.

Amendment by section 2603(c)(2) of Pub. L. 98–369 applicable to service performed after Dec. 31, 1983, see section 2603(e) of Pub. L. 98–369, set out as a note under section 410 of Title 42, The Public Health and Welfare.

Amendment by section 2663(j)(5)(B) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of Title 42.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 124(c)(2) of Pub. L. 98–21 applicable to taxable years beginning after Dec. 31, 1989, see section 124(d)(2) of Pub. L. 98–21, set out as a note under section 1401 of this title.

Amendment by section 321(e)(3) of Pub. L. 98–21 applicable to agreements entered into after Apr. 20, 1983, except that at the election of any American employer such amendment shall also apply to any agreement entered into on or before Apr. 20, 1983, see section 321(f) of Pub. L. 98–21 set out as a note under section 406 of this title.

Amendment by section 322(b)(2) of Pub. L. 98–21 effective for taxable years beginning on or after Apr. 20, 1983, see section 322(c) of Pub. L. 98–21 set out as a note under section 3121 of this title.

Pub. L. 98–21, title III, §323(c)(2), Apr. 20, 1983, 97 Stat. 121, provided that: "Except as provided in subsection (b)(2)(B) [amending section 411 of Title 42, The Public Health and Welfare, effective with respect to taxable years beginning after Dec. 31, 1981, and before Jan. 1, 1984], the amendments made by subsection (b) [amending this section and section 411 of Title 42] shall apply to taxable years beginning after December 31, 1983."

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to remuneration paid after Dec. 31, 1982, see section 278(c)(1) of Pub. L. 97–248, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable with respect to taxable years beginning after Dec. 31, 1981, see section 115 of Pub. L. 97–34, set out as a note under section 911 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 effective Oct. 4, 1976, see section 703(r) of Pub. L. 95–600, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT; ELECTION OF PRIOR LAW

Amendment by Pub. L. 95–615 applicable to taxable years beginning after Dec. 31, 1977, with provision for election of prior law, see section 209 of Pub. L. 95–615, set out as an Effective Date of 1978 Amendment note under section 911 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–216 applicable with respect to taxable years beginning after Dec. 31, 1977, see section 313(c) of Pub. L. 95–216, set out as a note under section 411 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1207(e)(1)(B) of Pub. L. 94–455 applicable to taxable years ending after Dec. 31, 1971, see section 1207(f)(4) of Pub. L. 94–455, set out as a note under section 3121 of this title.

Amendment by section 1901(a)(155), (b)(1)(I)(iii), (X) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Pub. L. 94–92, title II, §203(c), Aug. 9, 1975, 89 Stat. 465, provided that: "The amendments made by this section [amending this section and section 3231 of this title] shall be effective January 1, 1975, and shall apply only with respect to compensation paid for services rendered on or after that date."

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–368 applicable with respect to taxable years beginning after Dec. 31, 1973, see section 10(c) of Pub. L. 93–368, set out as a note under section 411 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1973 AMENDMENTS

Amendment by Pub. L. 93–233 applicable only with respect to remuneration paid after, and taxable years beginning after, 1973, see section 5(e) of Pub. L. 93–233, set out as a note under section 409 of Title 42, The Public Health and Welfare.

Amendment by Pub. L. 93–66 applicable only with respect to remuneration paid after, and taxable years beginning after, 1973, see section 203(e) of Pub. L. 93–66, set out as a note under section 409 of Title 42.

EFFECTIVE DATE OF 1972 AMENDMENTS

Amendment by Pub. L. 92–603 applicable with respect to taxable years beginning after Dec. 31, 1972, see sections 121(c), 124(c), and 140(c) of Pub. L. 92–603, set out as notes under section 411 of Title 42, The Public Health and Welfare.

Amendment by Pub. L. 92–336 applicable only with respect to taxable years beginning after 1972, see section 203(c) of Pub. L. 92–336, set out as a note under section 409 of Title 42.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–5 applicable only with respect to taxable years beginning after 1971, see section 203(c) of Pub. L. 92–5, set out as a note under section 409 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 108(b)(1) of Pub. L. 90–248 applicable only with respect to taxable years ending after 1967, see section 108(c) of Pub. L. 90–248, set out as a note under section 409 of Title 42, The Public

Health and Welfare.

Pub. L. 90–248, title I, §115(c), Jan. 2, 1968, 81 Stat. 840, provided that: "The amendments made by subsections (a) and (b) [amending this section and section 411 of Title 42] shall apply only with respect to taxable years ending after 1967."

Pub. L. 90–248, title I, §118(c), Jan. 2, 1968, 81 Stat. 842, provided that: "The amendments made by this section [amending this section and section 411 of Title 42] shall apply only with respect to taxable years ending on or after December 31, 1967."

Pub. L. 90–248, title I, §122(c), Jan. 2, 1968, 81 Stat. 844, provided that:

"(1) The amendments made by subsections (a) and (b) of this section [amending this section and section 411 of Title 42] shall apply with respect to fees received after 1967.

"(2) Notwithstanding the provisions of subsections (a) and (b) of this section [amending this section and section 411 of Title 42], any individual who in 1968 is in a position to which the amendments made by such subsections apply may make an irrevocable election not to have such amendments apply to the fees he receives in 1968 and every year thereafter, if on or before the due date of his income tax return for 1968 (including any extensions thereof) he files with the Secretary of the Treasury or his delegate, in such manner as the Secretary of the Treasury or his delegate shall by regulations prescribe, a certificate of election of exemption from such amendments."

Pub. L. 90–248, title V, §501(b), Jan. 2, 1968, 81 Stat. 933, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1950. For such purpose, chapter 2 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall be treated as applying to all taxable years beginning after such date."

Pub. L. 90–248, title V, §502(b)(2), Jan. 2, 1968, 81 Stat. 934, provided that: "The amendments made by paragraph (1) [amending this section] shall be effective only with respect to taxable years ending on or after December 31, 1968."

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–368 applicable with respect to taxable years beginning after December 31, 1966, see section 102(d) of Pub. L. 89–368, set out as a note under section 6654 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 311(b)(1)–(3) of Pub. L. 89–97 applicable only with respect to taxable years ending on or after Dec. 31, 1965, see section 311(c) of Pub. L. 89–97, set out as a note under section 410 of Title 42, The Public Health and Welfare.

Amendment by section 312(b) of Pub. L. 89–97 applicable only with respect to taxable years beginning after Dec. 31, 1965, see section 312(c) of Pub. L. 89–97, set out as a note under section 411 of Title 42.

Pub. L. 89–97, title III, §319(e), July 30, 1965, 79 Stat. 392, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by this section [amending this section and sections 402 and 411 of Title 42] shall apply with respect to taxable years beginning after December 31, 1950. For such purpose, chapter 2 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall be treated as applying to all taxable years beginning after such date."

Amendment by section 320(b)(1) of Pub. L. 89–97 applicable with respect to taxable years ending after 1965, see section 320(c) of Pub. L. 89–97, set out as a note under section 3121 of this title.

Pub. L. 89–97, title III, §331(d), July 30, 1965, 79 Stat. 403, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by this section [amending this section] shall be applicable (except as otherwise specifically provided therein) only to certificates with respect to which supplemental certificates are filed pursuant to section 1402(e)(5)(A) of such Code after the date of the enactment of this Act [July 30, 1965], and to certificates filed pursuant to section 1402(e)(5)(B) after such date; except that no monthly benefits under title II of the Social Security Act [section 401 et seq. of Title 42] for the month in which this Act is enacted [July 1965] or any prior month shall be payable or increased by reason of such amendments, and no lump sum death payment under such title [section 401 et seq. of Title 42] shall be payable or increased by reason of such amendments in the case of any individual who died prior to the date of the enactment of this Act [July 30, 1965]. The provisions of section 1402(e)(5) and (6) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] which were in effect before the date of enactment of this Act shall be applicable with respect to any certificate filed pursuant thereto before such date if a supplemental certificate is not filed with respect to such certificate as provided in this section."

Pub. L. 89–97, title III, §341(c), July 30, 1965, 79 Stat. 412, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by subsections (a) and (b) [amending this section] shall be applicable only with respect to certificates filed pursuant to section 1402(e) of the Internal

Revenue Code of 1986 [formerly I.R.C. 1954] after the date of the enactment of this Act [July 30, 1965]; except that no monthly benefits under title II of the Social Security Act [section 401 et seq. of Title 42] for the month in which this Act is enacted [July 1965] or any prior month shall be payable or increased by reason of such amendments."

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88–650, §2(c), Oct. 13, 1964, 78 Stat. 1077, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by subsections (a) and (b) [amending this section] shall be applicable only with respect to certificates filed pursuant to section 1402(e) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] after the date of the enactment of this Act [Oct. 13, 1964]; except that no monthly benefits under title II of the Social Security Act [section 401 et seq. of Title 42, The Public Health and Welfare] for the month in which this Act [Oct. 1964] is enacted or any prior month shall be payable or increased by reason of such amendments."

Amendment by Pub. L. 88–272 applicable with respect to amounts received or accrued in taxable years beginning after Dec. 31, 1963, attributable to iron ore mined in such years, see section 227(c) of Pub. L. 88–272, set out as a note under section 272 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Pub. L. 87–64, title II, §202(b), June 30, 1961, 75 Stat. 142, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on the date of enactment of this Act [June 30, 1961]; except that no monthly benefits under title II of the Social Security Act [section 401 et seq. of Title 42, The Public Health and Welfare] for the month in which this Act is enacted or any prior month shall be payable or increased by reason of such amendment, and no lump-sum death payment under such title shall be payable or increased by reason of such amendment in the case of any individual who died prior to the date of enactment of this Act [June 30, 1961]."

EFFECTIVE DATE OF 1960 AMENDMENT

Pub. L. 86–778, title I, §101(f), Sept. 13, 1960, 74 Stat. 928, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by this section [amending this section] shall be applicable (except as otherwise specifically indicated therein) only with respect to certificates (and supplemental certificates) filed pursuant to section 1402(e) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] after the date of the enactment of this Act [Sept. 13, 1960]; except that no monthly benefits under title II of the Social Security Act [section 401 et seq. of Title 42, The Public Health and Welfare] for the month in which this Act is enacted or any prior month shall be payable or increased by reason of such amendments, and no lump-sum death payment under such title shall be payable or increased by reason of such amendments in the case of any individual who died prior to the date of the enactment of this Act [Sept. 13, 1960]."

Amendment by section 103(k) of Pub. L. 86–778 applicable only in the case of taxable years beginning after 1960, except that, insofar as such enactment involves the nonapplication of section 932 of this title to the Virgin Islands for purposes of section 1401 et seq. of this title and section 411 of Title 42, such enactment shall be effective in the case of all taxable years with respect to which such chapter 2 (and corresponding provisions of prior law) and section 411 of Title 42 are applicable, see section 103(v)(1) of Pub. L. 86–778, set out as a note under section 402 of Title 42.

Amendment by section 103(l) of Pub. L. 86–778 applicable only in the case of taxable years beginning after 1960, see section 103(v)(1) of Pub. L. 86–778, set out as a note under section 402 of Title 42.

Amendment by section 106(b) of Pub. L. 86–778 applicable only with respect to taxable years ending on or after Dec. 31, 1960, see section 106(c) of Pub. L. 86–778, set out as a note under section 411 of Title 42.

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85–840, title IV, §403(b), Aug. 28, 1958, 72 Stat. 1044, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply only with respect to individuals who die after the date of the enactment of this Act [Aug. 28, 1958].

"(2) In the case of an individual who died after 1955 and on or before the date of the enactment of this Act [Aug. 28, 1958], the amendment made by subsection (a) [amending this section] shall apply only if—

"(A) before January 1, 1960, there is filed a return (or amended return) of the tax imposed by chapter 2 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [section 1401 et seq. of this title] for the taxable year ending as a result of his death, and

"(B) in any case where the return is filed solely for the purpose of reporting net earnings from self-employment resulting from the amendment made by subsection (a), the return is accompanied by the amount of tax attributable to such net earnings.

In any case described in the preceding sentence, no interest or penalty shall be assessed or collected on the amount of any tax due under chapter 2 of such Code solely by reason of the operation of section 1402(f) of such Code."

EFFECTIVE DATE OF 1957 AMENDMENT

Pub. L. 85–239, §4, Aug. 30, 1957, 71 Stat. 522, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) Section 3 [set out below], and the amendments made by the first section of this Act [amending this section], shall apply with respect to monthly insurance benefits under title II of the Social Security Act [section 401 et seq. of Title 42, The Public Health and Welfare], for months beginning after, and lump sum death payments under such title in the case of deaths occurring after, the date of the enactment of this Act [Aug. 30, 1957].

"(b) Notwithstanding subsection (a), in the case of any individual who—

"(1)(A) has remuneration which is deemed, by reason of section 3, to constitute remuneration for employment for purposes of title II of the Social Security Act [section 401 et seq. of Title 42], or

"(B) has income which constitutes net earnings from self-employment under such title by reason of the filing of a certificate pursuant to section 1402(e)(3)(A) or (B) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], and

"(2) was entitled to monthly insurance benefits under title II of the Social Security Act [section 401 et seq. of Title 42] for the month in which this Act is enacted [August 1957],

section 3 [set out below] and the amendments made by the first section of this Act [amending this section] shall apply with respect to monthly insurance benefits under such title based on his wages and self-employment income only if he, or any other person entitled to monthly insurance benefits under such title on the basis of such wages and self-employment income, files, on or after the date of enactment of this Act [Aug. 30, 1957], an application for recomputation by reason of this Act. Such recomputation shall be made in the manner provided in title II of the Social Security Acts [section 401 et seq. of Title 42] as in effect at the time of the last previous computation or recomputation of such individual's primary insurance amount and as though the application therefor was filed in the month in which the application for such last previous computation or recomputation was filed. No recomputation under this subsection shall be regarded as a recomputation under section 215(f) of the Social Security Act [section 415(f) of Title 42]. Any such recomputation shall be effective for and after the twelfth month before the month in which the application therefor is filed, but in no case for any month which begins on or prior to the date of the enactment of this Act. Any such recomputation shall be effective only if it results in a higher primary insurance amount.

"(c) The preceding provisions of this section shall not render erroneous any monthly insurance benefits under title II of the Social Security Act [section 401 et seq. of Title 42] for the month in which this Act [August 1957] is enacted or any prior month."

Pub. L. 85–239, §5(c), Aug. 30, 1957, 71 Stat. 524, provided that: "The amendments made by this section [amending this section and section 411 of Title 42] shall, except for purposes of section 203 of the Social Security Act [section 403 of title 42], apply only with respect to taxable years ending on or after December 31, 1957. For purposes of section 203 of the Social Security Act [section 403 of Title 42] (other than subsection (a)), such amendments shall apply only with respect to taxable years beginning after the month in which this Act is enacted [August 1957]. For purposes of subsection (a) of such section 203, such amendments shall apply only with respect to taxable years of the insured individual ending on or after December 31, 1957."

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by section 201(e)(2), (f) of act Aug. 1, 1956, applicable with respect to taxable years ending after 1955, amendment by section 201(i) of that act applicable with respect to taxable years ending on or after Dec. 31, 1956, amendment by section 201(e)(3) of that act applicable with respect to taxable years ending after 1954, and, except as provided in section 201(m)(2)(B) of that act, amendment by section 201(g) of that act applicable only with respect to taxable years ending after 1956, see section 201(m) of act Aug. 1, 1956, set out as a under section 3121 of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Act Sept. 1, 1954, ch. 1206, title II, §201(d), 68 Stat. 1089, provided that: "The amendments made by subsections (a), (b) and (c) of this section [amending this section] shall be applicable only with respect to taxable years ending after 1954."

REVOCATION BY MEMBERS OF THE CLERGY OF EXEMPTION FROM SOCIAL SECURITY COVERAGE

Pub. L. 106–170, title IV, §403, Dec. 17, 1999, 113 Stat. 1910, provided that:

"(a) IN GENERAL.—Notwithstanding section 1402(e)(4) of the Internal Revenue Code of 1986, any exemption which has been received under section 1402(e)(1) of such Code by a duly ordained, commissioned, or licensed minister of a church, a member of a religious order, or a Christian Science practitioner, and which is effective for the taxable year in which this Act is enacted [enacted Dec. 17, 1999], may be revoked by filing an application therefor (in such form and manner, and with such official, as may be prescribed by the Commissioner of Internal Revenue), if such application is filed no later than the due date of the Federal income tax return (including any extension thereof) for the applicant's second taxable year beginning after December 31, 1999. Any such revocation shall be effective (for purposes of chapter 2 of the Internal Revenue Code of 1986 and title II of the Social Security Act (42 U.S.C. 401 et seq.)), as specified in the application, either with respect to the applicant's first taxable year beginning after December 31, 1999, or with respect to the applicant's second taxable year beginning after such date, and for all succeeding taxable years; and the applicant for any such revocation may not thereafter again file application for an exemption under such section 1402(e)(1). If the application is filed after the due date of the applicant's Federal income tax return for a taxable year and is effective with respect to that taxable year, it shall include or be accompanied by payment in full of an amount equal to the total of the taxes that would have been imposed by section 1401 of the Internal Revenue Code of 1986 with respect to all of the applicant's income derived in that taxable year which would have constituted net earnings from self-employment for purposes of chapter 2 of such Code (notwithstanding paragraphs (4) and (5) of section 1402(c)) except for the exemption under section 1402(e)(1) of such Code.

"(b) EFFECTIVE DATE.—Subsection (a) shall apply with respect to service performed (to the extent specified in such subsection) in taxable years beginning after December 31, 1999, and with respect to monthly insurance benefits payable under title II on the basis of the wages and self-employment income of any individual for months in or after the calendar year in which such individual's application for revocation (as described in such subsection) is effective (and lump-sum death payments payable under such title on the basis of such wages and self-employment income in the case of deaths occurring in or after such calendar year)."

LIMITED EXEMPTION FOR CANADIAN MINISTERS FROM CERTAIN SELF-EMPLOYMENT TAX LIABILITY

Pub. L. 103–296, title III, §306, Aug. 15, 1994, 108 Stat. 1521, provided that:

"(a) IN GENERAL.—Notwithstanding any other provision of law, if—

"(1) an individual performed services described in section 1402(c)(4) of the Internal Revenue Code of 1986 which are subject to tax under section 1401 of such Code,

"(2) such services were performed in Canada at a time when no agreement between the United States and Canada pursuant to section 233 of the Social Security Act [42 U.S.C. 433] was in effect, and

"(3) such individual was required to pay contributions on the earnings from such services under the social insurance system of Canada,

then such individual may file a certificate under this section in such form and manner, and with such official, as may be prescribed in regulations issued under chapter 2 of such Code. Upon the filing of such certificate, notwithstanding any judgment which has been entered to the contrary, such individual shall be exempt from payment of such tax with respect to services described in paragraphs (1) and (2) and from any penalties or interest for failure to pay such tax or to file a self-employment tax return as required under section 6017 of such Code.

"(b) PERIOD FOR FILING.—A certificate referred to in subsection (a) may be filed only during the 180-day period commencing with the date on which the regulations referred to in subsection (a) are issued.

"(c) TAXABLE YEARS AFFECTED BY CERTIFICATE.—A certificate referred to in subsection (a) shall be effective for taxable years ending after December 31, 1978, and before January 1, 1985.

"(d) RESTRICTION ON CREDITING OF EXEMPT SELF-EMPLOYMENT INCOME.—In any case in which an individual is exempt under this section from paying a tax imposed under section 1401 of the Internal Revenue Code of 1986, any income on which such tax would have been imposed but for such exemption shall not constitute self-employment income under section 211(b) of the Social Security Act (42 U.S.C. 411(b)), and, if such individual's primary insurance amount has been determined under section 215 of such Act (42 U.S.C. 415), notwithstanding section 215(f)(1) of such Act, the Secretary of Health and Human Services (prior to March 31, 1995) or the Commissioner of Social Security (after March 30, 1995) shall recompute

such primary insurance amount so as to take into account the provisions of this subsection. The recomputation under this subsection shall be effective with respect to benefits for months following approval of the certificate of exemption."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

REVOCATION OF EXEMPTION FROM COVERAGE BY CLERGYMEN; PROCEDURE, APPLICABILITY, ETC.

Pub. L. 99–514, title XVII, §1704(b), Oct. 22, 1986, 100 Stat. 2779, provided that:

"(1) IN GENERAL.—Notwithstanding section 1402(e)(3) of the Internal Revenue Code of 1986, as redesignated by subsection (a)(2)(B) of this section, any exemption which has been received under section 1402(e)(1) of such Code by a duly ordained, commissioned, or licensed minister of a church, a member of a religious order, or a Christian Science practitioner, and which is effective for the taxable year in which this Act is enacted [enacted Oct. 22, 1986], may be revoked by filing an application therefor (in such form and manner, and with such official, as may be prescribed in regulations made under chapter 2 of subtitle A of such Code), if such application is filed—

"(A) before the applicant becomes entitled to benefits under section 202(a) or 223 of the Social Security Act [42 U.S.C. 402(a), 423] (without regard to section 202(j)(1) or 223(b) of such Act [42 U.S.C. 402(j)(1), 423(b)]), and

"(B) no later than the due date of the Federal income tax return (including any extension thereof) for the applicant's first taxable year beginning after the date of the enactment of this Act [Oct. 22, 1986].

Any such revocation shall be effective (for purposes of chapter 2 of subtitle A of the Internal Revenue Code of 1986 and title II of the Social Security Act [42 U.S.C. 401 et seq.]), as specified in the application, either with respect to the applicant's first taxable year ending on or after the date of the enactment of this Act [Oct. 22, 1986] or with respect to the applicant's first taxable year beginning after such date, and for all succeeding taxable years; and the applicant for any such revocation may not thereafter again file application for an exemption under such section 1402(e)(1). If the application is filed on or after the due date of the Federal income tax return for the applicant's first taxable year ending on or after the date of the enactment of this Act [Oct. 22, 1986] and is effective with respect to that taxable year, it shall include or be accompanied by payment in full of an amount equal to the total of the taxes that would have been imposed by section 1401 of the Internal Revenue Code of 1986 with respect to all of the applicant's income derived in that taxable year which would have constituted net earnings from self-employment for purposes of chapter 2 of subtitle A of such Code (notwithstanding paragraph (4) or (5) of section 1402(c) of such Code) but for the exemption under section 1402(e)(1) of such Code.

"(2) EFFECTIVE DATE.—Paragraph (1) of this subsection shall apply with respect to service performed (to the extent specified in such paragraph) in taxable years ending on or after the date of the enactment of this Act [Oct. 22, 1986] and with respect to monthly insurance benefits payable under title II of the Social Security Act [42 U.S.C. 401 et seq.] on the basis of the wages and self-employment income of any individual for months in or after the calendar year in which such individual's application for revocation (as described in such paragraph) is effective (and lump-sum death payments payable under such title on the basis of such wages and self-employment income in the case of deaths occurring in or after such calendar year)."

Pub. L. 95–216, title III, §316, Dec. 20, 1977, 91 Stat. 1537, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) Notwithstanding section 1402(e)(3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], any exemption which has been received under section 1402(e)(1) of such Code, by a duly ordained, commissioned, or licensed minister of a church or a Christian Science practitioner, and which is effective for the taxable year in which this Act [Pub. L. 95–216, enacted Dec. 20, 1977] is enacted, may be revoked by filing an application therefor (in such form and manner, and with such official, as may be prescribed in regulations made under chapter 2 of such Code [this chapter]), if such application is filed—

"(1) before the applicant becomes entitled to benefits under section 202(a) or 223 of the Social Security Act [section 402(a) or 423 of Title 42, The Public Health and Welfare] (without regard to section 202(j)(1) or 223(b) of such Act [section 402(j)(1) or 423(b) of Title 42]), and

"(2) no later than the due date of the Federal income tax return (including any extension thereof) for the applicant's first taxable year beginning after the date of the enactment of this Act [Dec. 20, 1977].

Any such revocation shall be effective (for purposes of chapter 2 of the Internal Revenue Code of 1986 [this

chapter] and title II of the Social Security Act [section 401 et seq. of Title 42]), as specified in the application, either with respect to the applicant's first taxable year ending on or after the date of the enactment of this Act [Dec. 20, 1977] or with respect to the applicant's first taxable year beginning after such date, and for all succeeding taxable years; and the applicant for any such revocation may not thereafter again file application for an exemption under such section 1402(e)(1). If the application is filed on or after the due date of the applicant's first taxable year ending on or after the date of the enactment of this Act [Dec. 20, 1977] and is effective with respect to that taxable year, it shall include or be accompanied by payment in full of an amount equal to the total of the taxes that would have been imposed by section 1401 of the Internal Revenue Code of 1986 with respect to all of the applicant's income derived in that taxable year which would have constituted net earnings from self-employment for purposes of chapter 2 of such Code [this chapter] (notwithstanding section 1402(c)(4) or (c)(5) of such Code) except for the exemption under section 1402(e)(1) of such Code.

"(b) Subsection (a) shall apply with respect to service performed (to the extent specified in such subsection) in taxable years ending on or after the date of the enactment of this Act [Dec. 20, 1977], and with respect to monthly insurance benefits payable under title II of the Social Security Act [section 401 et seq. of Title 42] on the basis of the wages and self-employment income of any individual for months in or after the calendar year in which such individual's application for revocation (as described in such subsection) is filed (and lump-sum death payments payable under such title on the basis of such wages and self-employment income in the case of deaths occurring in or after such calendar year)."

ELECTION OF EXEMPTION OF FEES FROM COVERAGES SELF-EMPLOYMENT INCOME

Pub. L. 90–248, title I, §122(c)(2), Jan. 2, 1968, 81 Stat. 844, authorized any individual affected by the amendments made by Pub. L. 90–248 to subsecs. (c)(1), (2)(E) of this section and section 411(c)(1), (2)(E) of Title 42, The Public Health and Welfare, to make an irrevocable election not to have such amendments apply to fees received in 1968 and every year thereafter if he filed, on or before the due date of his income tax return for 1968, with the Secretary of the Treasury, a certificate of election of exemption from such amendments.

TIME FOR CLAIM FOR REFUND OR CREDIT OF OVERPAYMENT; DISALLOWANCE OF INTEREST

Pub. L. 90–248, title V, §501(c), Jan. 2, 1968, 81 Stat. 933, authorized the payment of a refund or credit of any overpayment resulting from the amendment of subsec. (h)(2), relating to the filing of applications under this section, by section 501(a) of Pub. L. 90–248 if the claim therefore was filed on or before Dec. 31, 1968.

REFUND OR CREDIT ON CLAIMS FOR OVERPAYMENT FILED BEFORE APRIL 15, 1966, BY MEMBERS OF RELIGIOUS GROUPS OPPOSED TO INSURANCE

Pub. L. 89–97, title III, §319(f), July 30, 1965, 79 Stat. 392, authorized the payment of a refund or credit of any overpayment resulting from the amendments made to sections 402, 411, and 1402 of this title by Pub. L. 89–97, if the claim therefore is filed on or before Apr. 15, 1966.

COMPUTATION OF INTEREST OR ASSESSMENT OF PENALTIES ON SELF-EMPLOYMENT TAXES PAYABLE BY MINISTERS, MEMBERS OF RELIGIOUS ORDERS, AND CHRISTIAN SCIENCE PRACTITIONERS

Pub. L. 89–97, title III, §331(b), July 30, 1965, 79 Stat. 402, established, for purposes of computing interest, Apr. 15, 1967, as the due date for the payment, under section 1401 of this title, of taxes due for any taxable year ending before Jan. 1, 1966 solely by reason of the filing of a certificate or supplementary certificate under subsec. (e)(5) of this section, which was struck out by section 115(b)(2) of Pub. L. 90–248.

Pub. L. 86–778, title I, §101(d), Sept. 13, 1960, 74 Stat. 927, established, for purposes of computing interest, Apr. 15, 1962, as the due date for the payment, under section 1401 of this title, of taxes due for any taxable year ending before 1959 solely by reason of the filing of a certificate or supplementary certificate under subsec. (e)(3)(B) or (5) of this section.

Pub. L. 85–239, §1(c), Aug. 30, 1957, 71 Stat. 521, established the due date, for purposes of computing interest, for the payment of taxes, where a certificate had been filed under subsec. (e)(3)(A) or (B) of this section after the due date of a return for any taxable year.

REMUNERATION DEEMED NET EARNINGS FROM SELF-EMPLOYMENT AND NOT REMUNERATION FOR EMPLOYMENT

Pub. L. 86–778, title I, §105(c)(2), Sept. 13, 1960, 74 Stat. 945, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Remuneration which is deemed under section 1402(g) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] to constitute net earnings from self-employment and not remuneration for employment shall also be deemed, for purposes of title II of the Social Security Act [section

401 et seq. of Title 42, The Public Health and Welfare], to constitute net earnings from self-employment and not remuneration for employment. If, pursuant to the last sentence of section 1402(g) of the Internal Revenue Code of 1986, an individual is deemed to have become an employee of an organization (or to have become a member of a group) on the first day of a calendar quarter, such individual shall likewise be deemed, for purposes of clause (ii) or (iii) of section 210(a)(8)(B) of the Social Security Act [section 410(a)(18)(B)(ii), (iii) of Title 42], to have become an employee of such organization (or to have become a member of such group) on such day."

REMUNERATION PAID TO MINISTERS, MEMBERS OF RELIGIOUS ORDERS, AND CHRISTIAN SCIENCE PRACTITIONERS IN 1955 AND 1956 DEEMED REMUNERATION FOR EMPLOYMENT FOR PURPOSES OF SOCIAL SECURITY BENEFITS

Pub. L. 85–239, §3, Aug. 30, 1957, 71 Stat. 522, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Remuneration which is deemed under section 1402(e)(4) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] to constitute remuneration for employment shall also be deemed, notwithstanding sections 210(a)(8)(A) and 211(c) of the Social Security Act [sections 410(a)(8)(A) and 411(c) of Title 42, The Public Health and Welfare], to constitute remuneration for employment (and not net earnings from self-employment) for purposes of title II of such Act [section 401 et seq. of Title 42]." See section 4 of Pub. L. 85–239, set out as an Effective Date of 1957 Amendment note above.

MONTHLY BENEFITS AND LUMP-SUM DEATH PAYMENTS UNDER SOCIAL SECURITY ACT

Pub. L. 86–778, title I, §105(d)(2), Sept. 13, 1960, 74 Stat. 945, set out as an Effective Date of 1960 Amendment note under section 3121 of this title, provided that no monthly benefits under title II of the Social Security Act [section 401 et seq. of Title 42, The Public Health and Welfare], for September 1960 or any prior month shall be payable or increased by reason of the provisions of subsections (b) and (c) of section 105 or the amendments made by such subsections [adding subsec. (g) to this section and enacting notes under this section and section 3121 of this title], and no lump-sum death payment under title II of the Social Security Act shall be payable or increased by reason of such provisions or amendments in the case of any individual who died prior to Sept. 13, 1960.

[1] See References in Text note below.

[2] So in original.

§1403. Miscellaneous provisions

(a) Title of chapter

This chapter may be cited as the "Self-Employment Contributions Act of 1954".

(b) Cross references

(1) For provisions relating to returns, see section 6017.

(2) For provisions relating to collection of taxes in Virgin Islands, Guam, American Samoa, and Puerto Rico, see section 7651.

(Aug. 16, 1954, ch. 736, 68A Stat. 355; Pub. L. 86–778, title I, §103(m), Sept. 13, 1960, 74 Stat. 938; Pub. L. 89–368, title I, §102(b)(6), Mar. 15, 1966, 80 Stat. 64; Pub. L. 98–369, div. A, title IV, §412(b)(2), July 18, 1984, 98 Stat. 792.)

AMENDMENTS

1984—Subsec. (b)(3). Pub. L. 98–369 struck out par. (3) referring to section 6015 for provisions relating to declarations of estimated tax on self-employment income.

1966—Subsec. (b)(3). Pub. L. 89–368 added par. (3).

1960—Subsec. (b)(2). Pub. L. 86–778 included Guam and American Samoa.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable with respect to taxable years beginning after Dec. 31, 1984, see section 414(a)(1) of Pub. L. 98–369, set out as a note under section 6654 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–368 applicable with respect to taxable years beginning after December 31, 1966, see section 102(d) of Pub. L. 89–368, set out as a note under section 6654 of this title.

CHAPTER 2A—UNEARNED INCOME MEDICARE CONTRIBUTION

Sec.
1411. Imposition of tax.

§1411. Imposition of tax

(a) In general

Except as provided in subsection (e)—

(1) Application to individuals

In the case of an individual, there is hereby imposed (in addition to any other tax imposed by this subtitle) for each taxable year a tax equal to 3.8 percent of the lesser of—

(A) net investment income for such taxable year, or

(B) the excess (if any) of—

(i) the modified adjusted gross income for such taxable year, over

(ii) the threshold amount.

(2) Application to estates and trusts

In the case of an estate or trust, there is hereby imposed (in addition to any other tax imposed by this subtitle) for each taxable year a tax of 3.8 percent of the lesser of—

(A) the undistributed net investment income for such taxable year, or

(B) the excess (if any) of—

(i) the adjusted gross income (as defined in section 67(e)) for such taxable year, over

(ii) the dollar amount at which the highest tax bracket in section 1(e) begins for such taxable year.

(b) Threshold amount

For purposes of this chapter, the term "threshold amount" means—

(1) in the case of a taxpayer making a joint return under section 6013 or a surviving spouse (as defined in section 2(a)), $250,000,

(2) in the case of a married taxpayer (as defined in section 7703) filing a separate return, ½ of the dollar amount determined under paragraph (1), and

(3) in any other case, $200,000.

(c) Net investment income

For purposes of this chapter—

(1) In general

The term "net investment income" means the excess (if any) of—

(A) the sum of—

(i) gross income from interest, dividends, annuities, royalties, and rents, other than such income which is derived in the ordinary course of a trade or business not described in paragraph (2),

(ii) other gross income derived from a trade or business described in paragraph (2), and

(iii) net gain (to the extent taken into account in computing taxable income) attributable to the disposition of property other than property held in a trade or business not described in paragraph (2), over

(B) the deductions allowed by this subtitle which are properly allocable to such gross income

or net gain.

(2) Trades and businesses to which tax applies

A trade or business is described in this paragraph if such trade or business is—

(A) a passive activity (within the meaning of section 469) with respect to the taxpayer, or

(B) a trade or business of trading in financial instruments or commodities (as defined in section 475(e)(2)).

(3) Income on investment of working capital subject to tax

A rule similar to the rule of section 469(e)(1)(B) shall apply for purposes of this subsection.

(4) Exception for certain active interests in partnerships and S corporations

In the case of a disposition of an interest in a partnership or S corporation—

(A) gain from such disposition shall be taken into account under clause (iii) of paragraph (1)(A) only to the extent of the net gain which would be so taken into account by the transferor if all property of the partnership or S corporation were sold for fair market value immediately before the disposition of such interest, and

(B) a rule similar to the rule of subparagraph (A) shall apply to a loss from such disposition.

(5) Exception for distributions from qualified plans

The term "net investment income" shall not include any distribution from a plan or arrangement described in section 401(a), 403(a), 403(b), 408, 408A, or 457(b).

(6) Special rule

Net investment income shall not include any item taken into account in determining self-employment income for such taxable year on which a tax is imposed by section 1401(b).

(d) Modified adjusted gross income

For purposes of this chapter, the term "modified adjusted gross income" means adjusted gross income increased by the excess of—

(1) the amount excluded from gross income under section 911(a)(1), over

(2) the amount of any deductions (taken into account in computing adjusted gross income) or exclusions disallowed under section 911(d)(6) with respect to the amounts described in paragraph (1).

(e) Nonapplication of section

This section shall not apply to—

(1) a nonresident alien, or

(2) a trust all of the unexpired interests in which are devoted to one or more of the purposes described in section 170(c)(2)(B).

(Added Pub. L. 111–152, title I, §1402(a)(1), Mar. 30, 2010, 124 Stat. 1061.)

EFFECTIVE DATE

Pub. L. 111–152, title I, §1402(a)(4), Mar. 30, 2010, 124 Stat. 1063, provided that: "The amendments made by this subsection [enacting this chapter and amending section 6654 of this title] shall apply to taxable years beginning after December 31, 2012."

CHAPTER 3—WITHHOLDING OF TAX ON NONRESIDENT ALIENS AND FOREIGN CORPORATIONS

Subchapter		Sec.[1]
A.	**Nonresident aliens and foreign corporations**	**1441**
B.	**Application of withholding provisions**	**1461**

AMENDMENTS

1984—Pub. L. 98–369, div. A, title IV, §474(r)(29)(B), (C), July 18, 1984, 98 Stat. 844, struck out "AND

TAX-FREE COVENANT BONDS" after "FOREIGN CORPORATIONS" in heading of chapter 3, and struck out item for subchapter B "Tax-free covenant bonds" and redesignated the item for subchapter C as B.

[1] *Section numbers editorially supplied.*

Subchapter A—Nonresident Aliens and Foreign Corporations

Sec.
1441. Withholding of tax on nonresident aliens.
1442. Withholding of tax on foreign corporations.
1443. Foreign tax-exempt organizations.
1444. Withholding on Virgin Islands source income.
1445. Withholding of tax on dispositions of United States real property interests.
1446. Withholding of tax on foreign partners' share of effectively connected income.[1]

AMENDMENTS

1988—Pub. L. 100–647, title I, §1012(s)(1)(C), Nov. 10, 1988, 102 Stat. 3527, substituted "Withholding of tax on foreign partners' share of effectively connected income" for "Withholding tax on amounts paid by partnerships to foreign partners" in item 1446.

1986—Pub. L. 99–514, title XII, §1246(c), Oct. 22, 1986, 100 Stat. 2582, added item 1446.

1984—Pub. L. 98–369, div. A, title I, §129(a)(2), July 18, 1984, 98 Stat. 659, added item 1445.

1983—Pub. L. 97–455, §1(d)(2), Jan. 12, 1983, 96 Stat. 2498, added item 1444.

[1] *So in original. Does not conform to section catchline.*

§1441. Withholding of tax on nonresident aliens

(a) General rule

Except as otherwise provided in subsection (c), all persons, in whatever capacity acting (including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the United States) having the control, receipt, custody, disposal, or payment of any of the items of income specified in subsection (b) (to the extent that any of such items constitutes gross income from sources within the United States), of any nonresident alien individual or of any foreign partnership shall (except as otherwise provided in regulations prescribed by the Secretary under section 874) deduct and withhold from such items a tax equal to 30 percent thereof, except that in the case of any item of income specified in the second sentence of subsection (b), the tax shall be equal to 14 percent of such item.

(b) Income items

The items of income referred to in subsection (a) are interest (other than original issue discount as defined in section 1273), dividends, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income, gains described in section 631(b) or (c), amounts subject to tax under section 871(a)(1)(C), gains subject to tax under section 871(a)(1)(D), and gains on transfers described in section 1235 made on or before October 4, 1966. The items of income referred to in subsection (a) from which tax shall be deducted and withheld at the rate of 14 percent are amounts which are received by a nonresident alien individual who is temporarily present in the United States as a nonimmigrant under subparagraph (F), (J), (M), or (Q) of section 101(a)(15) of the Immigration and Nationality Act and which are—

(1) incident to a qualified scholarship to which section 117(a) applies, but only to the extent includible in gross income; or

(2) in the case of an individual who is not a candidate for a degree at an educational organization described in section 170(b)(1)(A)(ii), granted by—

(A) an organization described in section 501(c)(3) which is exempt from tax under section 501(a),

(B) a foreign government,

(C) an international organization, or a binational or multinational educational and cultural foundation or commission created or continued pursuant to the Mutual Educational and Cultural Exchange Act of 1961, or

(D) the United States, or an instrumentality or agency thereof, or a State, or a possession of the United States, or any political subdivision thereof, or the District of Columbia,

as a scholarship or fellowship for study, training, or research in the United States. In the case of a nonresident alien individual who is a member of a domestic partnership, the items of income referred to in subsection (a) shall be treated as referring to items specified in this subsection included in his distributive share of the income of such partnership.

(c) Exceptions

(1) Income connected with United States business

No deduction or withholding under subsection (a) shall be required in the case of any item of income (other than compensation for personal services) which is effectively connected with the conduct of a trade or business within the United States and which is included in the gross income of the recipient under section 871(b)(2) for the taxable year.

(2) Owner unknown

The Secretary may authorize the tax under subsection (a) to be deducted and withheld from the interest upon any securities the owners of which are not known to the withholding agent.

(3) Bonds with extended maturity dates

The deduction and withholding in the case of interest on bonds, mortgages, or deeds of trust or other similar obligations of a corporation, within subsections (a), (b), and (c) of section 1451 (as in effect before its repeal by the Tax Reform Act of 1984) were it not for the fact that the maturity date of such obligations has been extended on or after January 1, 1934, and the liability assumed by the debtor exceeds 27½ percent of the interest, shall not exceed the rate of 27½ percent per annum.

(4) Compensation of certain aliens

Under regulations prescribed by the Secretary, compensation for personal services may be exempted from deduction and withholding under subsection (a).

(5) Special items

In the case of gains described in section 631(b) or (c), gains subject to tax under section 871(a)(1)(D), and gains on transfers described in section 1235 made on or before October 4, 1966, the amount required to be deducted and withheld shall, if the amount of such gain is not known to the withholding agent, be such amount, not exceeding 30 percent of the amount payable, as may be necessary to assure that the tax deducted and withheld shall not be less than 30 percent of such gain.

(6) Per diem of certain aliens

No deduction or withholding under subsection (a) shall be required in the case of amounts of per diem for subsistence paid by the United States Government (directly or by contract) to any nonresident alien individual who is engaged in any program of training in the United States under the Mutual Security Act of 1954, as amended.

(7) Certain annuities received under qualified plans

No deduction or withholding under subsection (a) shall be required in the case of any amount received as an annuity if such amount is, under section 871(f), exempt from the tax imposed by section 871(a).

(8) Original issue discount

The Secretary may prescribe such regulations as may be necessary for the deduction and withholding of the tax on original issue discount subject to tax under section 871(a)(1)(C) including rules for the deduction and withholding of the tax on original issue discount from payments of interest.

(9) Interest income from certain portfolio debt investments

In the case of portfolio interest (within the meaning of section 871(h)), no tax shall be required to be deducted and withheld from such interest unless the person required to deduct and withhold tax from such interest knows, or has reason to know, that such interest is not portfolio interest by reason of section 871(h)(3) or (4).

(10) Exception for certain interest and dividends

No tax shall be required to be deducted and withheld under subsection (a) from any amount described in section 871(i)(2).

(11) Certain gambling winnings

No tax shall be required to be deducted and withheld under subsection (a) from any amount exempt from the tax imposed by section 871(a)(1)(A) by reason of section 871(j).

(12) Certain dividends received from regulated investment companies

(A) In general

No tax shall be required to be deducted and withheld under subsection (a) from any amount exempt from the tax imposed by section 871(a)(1)(A) by reason of section 871(k).

(B) Special rule

For purposes of subparagraph (A), clause (i) of section 871(k)(1)(B) shall not apply to any dividend unless the regulated investment company knows that such dividend is a dividend referred to in such clause. A similar rule shall apply with respect to the exception contained in section 871(k)(2)(B).

(d) Exemption of certain foreign partnerships

Subject to such terms and conditions as may be provided by regulations prescribed by the Secretary, subsection (a) shall not apply in the case of a foreign partnership engaged in trade or business within the United States if the Secretary determines that the requirements of subsection (a) impose an undue administrative burden and that the collection of the tax imposed by section 871(a) on the members of such partnership who are nonresident alien individuals will not be jeopardized by the exemption.

(e) Alien resident of Puerto Rico

For purposes of this section, the term "nonresident alien individual" includes an alien resident of Puerto Rico.

(f) Continental shelf areas

For sources of income derived from, or for services performed with respect to, the exploration or exploitation of natural resources on submarine areas adjacent to the territorial waters of the United States, see section 638.

(g) Cross reference

For provision treating 85 percent of social security benefits as subject to withholding under this section, see section 871(a)(3).

(Aug. 16, 1954, ch. 736, 68A Stat. 357; Aug. 26, 1954, ch. 937, title V, §544(f), as added July 18, 1956, ch. 627, §11(a), 70 Stat. 563; amended Pub. L. 85–141, §11(b)(1), Aug. 14, 1957, 71 Stat. 365; Pub. L. 85–866, title I, §40(b), Sept. 2, 1958, 72 Stat. 1638; Pub. L. 87–256, §110(d), Sept. 21, 1961, 75 Stat. 536; Pub. L. 88–272, title III, §302(c), Feb. 26, 1964, 78 Stat. 146; Pub. L. 89–809, title I, §103(h), Nov. 13, 1966, 80 Stat. 1553; Pub. L. 91–172, title V, §505(b), Dec. 30, 1969, 83 Stat. 634;

Pub. L. 92–178, title III, §313(a), (d), Dec. 10, 1971, 85 Stat. 526, 527; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–21, title I, §121(c)(2), Apr. 20, 1983, 97 Stat. 82; Pub. L. 98–369, div. A, title I, §§42(a)(13), 127(e)(1), title IV, §474(r)(29)(G), (H), July 18, 1984, 98 Stat. 557, 652, 845; Pub. L. 99–514, title I, §123(b)(2), title XII, §1214(c)(3), title XVIII, §1810(d)(3)(D), Oct. 22, 1986, 100 Stat. 2113, 2542, 2825; Pub. L. 100–647, title I, §1001(d)(2)(A), title VI, §6134(a)(2), Nov. 10, 1988, 102 Stat. 3350, 3721; Pub. L. 101–508, title XI, §11704(a)(14), Nov. 5, 1990, 104 Stat. 1388–518; Pub. L. 102–318, title V, §521(b)(32), (33), July 3, 1992, 106 Stat. 312; Pub. L. 103–66, title XIII, §13237(c)(4), Aug. 10, 1993, 107 Stat. 508; Pub. L. 103–296, title III, §320(a)(1)(B), Aug. 15, 1994, 108 Stat. 1535; Pub. L. 105–34, title XVI, §1604(g)(3), Aug. 5, 1997, 111 Stat. 1099; Pub. L. 108–357, title IV, §411(a)(3)(A), Oct. 22, 2004, 118 Stat. 1503.)

REFERENCES IN TEXT

Section 101(a)(15) of the Immigration and Nationality Act, as amended, referred to in subsec. (b), is classified to section 1101(a)(15) of Title 8, Aliens and Nationality.

The Mutual Educational and Cultural Exchange Act of 1961, referred to in subsec. (b)(2)(C), is Pub. L. 87–256, Sept. 21, 1961, 75 Stat. 527, as amended, which is classified principally to chapter 33 (§2451 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2451 of Title 22 and Tables.

The Tax Reform Act of 1984, referred to in subsec. (c)(3), is division A [§§5 to 1082] of Pub. L. 98–369, July 18, 1984, 98 Stat. 494, which was approved July 18, 1984. For complete classification of this Act to the Code, see Short Title of 1984 Amendments note set out under section 1 of this title and Tables.

The Mutual Security Act of 1954, referred to in subsec. (c)(6), is act Aug. 26, 1954, ch. 937, 68 Stat. 832, as amended by acts July 8, 1955, ch. 301, 69 Stat. 283; July 18, 1956, ch. 627, §§2 to 11, 70 Stat. 555; Aug. 14, 1957, Pub. L. 85–141, 71 Stat. 355; June 30, 1958, Pub. L. 85–477, ch. 1, §§101 to 103, ch. II, §§201 to 205, ch. III, §301, ch. IV, §401, ch. V, §501, 72 Stat. 261; July 24, 1959, Pub. L. 86–108, §2, ch. 1, §101, ch. II, §§201 to 205(a) to (i), (k) to (n), ch. III, §301, ch. IV, §401(a) to (k), (m), 73 Stat. 246; May 14, 1960, Pub. L. 86–472, ch. I to V, 74 Stat. 134, which was principally classified to chapter 24 (§1750 et seq.) of Title 22, Foreign Relations and Intercourse, and which was repealed by act July 18, 1956, ch. 627, §8(m), 70 Stat. 559, Pub. L. 85–141, §§2(e), 3, 4(b), 11(d), Aug. 14, 1957, 71 Stat. 356, Pub. L. 86–108, ch. II, §§205(j), ch. IV, 401(1), July 24, 1959, 73 Stat. 250, Pub. L. 86–472, ch. II, §§203(d), 204(k), May 14, 1960, 74 Stat. 138, Pub. L. 87–195, pt. III, §642(a)(2), Sept. 4, 1961, 75 Stat. 460, Pub. L. 94–329, title II, §212(b)(1), June 30, 1976, 90 Stat 745, except for sections 1754, 1783, 1796, 1853, 1922, 1928, and 1937 of Title 22. For complete classification of this Act to the Code, see Short Title note set out under section 1754 of Title 22 and Tables.

AMENDMENTS

2004—Subsec. (c)(12). Pub. L. 108–357 added par. (12).

1997—Subsec. (g). Pub. L. 105–34 substituted "85 percent" for "one-half".

1994—Subsec. (b). Pub. L. 103–296 substituted "(J), (M), or (Q)" for "(J), or (M)".

1993—Subsec. (c)(9). Pub. L. 103–66 substituted "section 871(h)(3) or (4)" for "section 871(h)(3)".

1992—Subsecs. (b), (c)(5). Pub. L. 102–318 struck out "402(a)(2), 403(a)(2), or" before "631(b)".

1990—Subsec. (b)(2). Pub. L. 101–508 inserted "section" before "170(b)(1)(A)(ii)".

1988—Subsec. (b). Pub. L. 100–647, §1001(d)(2)(A), amended second sentence generally. Prior to amendment, second sentence read as follows: "The items of income referred to in subsection (a) from which tax shall be deducted and withheld at the rate of 14 percent are amounts which are received by a nonresident alien individual who is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act and which are incident to a qualified scholarship to which section 117(a) applies, but only to the extent such amounts are includible in gross income."

Subsec. (c)(11). Pub. L. 100–647, §6134(a)(2), added par. (11).

1986—Subsec. (b). Pub. L. 99–514, §123(b)(2), amended second sentence generally. Prior to amendment, second sentence read as follows: "The items of income referred to in subsection (a) from which tax shall be deducted and withheld at the rate of 14 percent are—

"(1) that portion of any scholarship or fellowship grant which is received by a nonresident alien individual who is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended, and which is not excluded from gross income under section 117(a)(1) solely by reason of section 117(b)(2)(B); and

"(2) amounts described in subparagraphs (A), (B), (C), and (D) of section 117(a)(2) which are received

by any such nonresident alien individual and which are incident to a scholarship or fellowship grant to which section 117(a)(1) applies, but only to the extent such amounts are includable in gross income."

Subsec. (c)(9). Pub. L. 99–514, §1810(d)(3)(D), substituted "section 871(h)" for "871(h)(2)".

Subsec. (c)(10). Pub. L. 99–514, §1214(c)(3), added par. (10).

1984—Subsec. (a). Pub. L. 98–369, §474(r)(29)(G), struck out "except in the cases provided for in section 1451 and" before "except as otherwise provided in regulations".

Subsec. (b). Pub. L. 98–369, §42(a)(13), substituted "section 1273" for "section 1232(b)".

Subsec. (c)(3). Pub. L. 98–369, §474(r)(29)(H), inserted "(as in effect before its repeal by the Tax Reform Act of 1984)".

Subsec. (c)(9). Pub. L. 98–369, §127(e)(1), added par. (9).

1983—Subsec. (g). Pub. L. 98–21 added subsec. (g).

1976—Pub. L. 94–455 struck out in subsecs. (a), (c)(2), (4), (8), (d), "or his delegate" after "Secretary".

1971—Subsec. (b). Pub. L. 92–178, §313(a), inserted "(other than original issue discount as defined in section 1232(b))" after "interest".

Subsec. (c)(8). Pub. L. 92–178, §313(d), added par. (8).

1969—Subsec. (f). Pub. L. 91–172 added subsec. (f).

1966—Subsec. (a). Pub. L. 89–809, §103(h)(1), substituted "or of any foreign partnership" for ", or of any partnership not engaged in trade or business within the United States and composed in whole or in part of nonresident aliens,".

Subsec. (b). Pub. L. 89–809, §103(h)(2)–(4), struck out "(except interest on deposits with persons carrying on the banking business paid to persons not engaged in business in the United States)" after "The items of income referred to in subsection (a) are interest" and substituted "gains described in section 402(a)(2), 403(a)(2), or 631(b) or (c), amounts subject to tax under section 871(a)(1)(C), gains subject to tax under section 871(a)(1)(D), and gains on transfers described in section 1235 made on or before October 4, 1966" for "and amounts described in section 402(a)(2), section 403(a)(2), section 631(b) and (c), and section 1235, which are considered to be gains from the sale or exchange of capital assets" in text preceding par. (1), and inserted provision for treatment of items of income referred to in subsec. (a) in the case of nonresident alien individuals who are members of domestic partnerships.

Subsec. (c)(1). Pub. L. 89–809, §103(h)(5), substituted "in the case of any item of income (other than compensation for personal services) which is effectively connected with the conduct of a trade or business within the United States and which is included in the gross income of the recipient under section 871(b)(2) for the taxable year" for "in the case of dividends paid by a foreign corporation unless (A) such corporation is engaged in trade or business within the United States, and (B) more than 85 percent of the gross income of such corporation for the 3-year period ending with the close of its taxable year preceding the declaration of such dividends (or for such part of such period as the corporation has been in existence) was derived from sources within the United States as determined under part I of subchapter N of chapter 1" after "shall be required".

Subsec. (c)(4). Pub. L. 89–809, §103(h)(6), struck out provisions which had served to limit to compensation for personal services of nonresident alien individuals who enter and leave the United States at frequent intervals and of nonresident alien individuals for the period they are temporarily present in the United States as a nonimmigrant under subparagraph (F) and (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended, the application of the exemption from deduction and withholding under subsec. (a), leaving the exemption under subsec. (a) applicable to compensation for personal services without further limitation.

Subsec. (c)(5). Pub. L. 89–809, §103(h)(7), substituted "gains described in section 402(a)(2), 403(a)(2), or 631(b) or (c), gains subject to tax under section 871 (a)(1)(D), and gains on transfers described in section 1235 made on or before October 4, 1966," for "amounts described in section 402(a)(2), section 403(a)(2), section 631(b) and (c), and section 1235, which are considered to be gains from the sale or exchange of capital assets," and "amounts payable," for "proceeds from such sale or exchange,".

Subsec. (c)(7). Pub. L. 89–809, §103(h)(8), added par. (7).

Subsecs. (d), (e). Pub. L. 89–809, §103(h)(9), added subsec. (d) and redesignated former subsec. (d) as (e).

1964—Subsecs. (a), (b). Pub. L. 88–272 reduced the withholding rate from 18% to 14%.

1961—Subsec. (a). Pub. L. 87–256, §110(d)(1), required a tax equal to 18 percent of the item in the case of any item of income specified in second sentence of subsection (b).

Subsec. (b). Pub. L. 87–256, §110(d)(2), inserted provisions listing items of income from which tax shall be deducted and withheld at the rate of 18 percent.

Subsec. (c)(4). Pub. L. 87–256, §110(d)(3), authorized the exemption from deduction and withholding of the compensation for personal services of a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subpar. (F) or (J) of section 101(a)(15) of the

Immigration and Nationality Act, as amended.

1958—Subsecs. (b), (c)(5). Pub. L. 85–866 inserted "section 403(a)(2)," after "section 402(a)(2),".

1956—Subsec. (c)(6). Act July 18, 1956, added section 544(f) to act Aug. 26, 1954, which section amended this subsection by adding par. (6).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to dividends with respect to taxable years of regulated investment companies beginning after Dec. 31, 2004, see section 411(d)(1) of Pub. L. 108–357, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective with calendar quarter following Aug. 15, 1994, see section 320(c) of Pub. L. 103–296, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to interest received after Dec. 31, 1993, see section 13237(d) of Pub. L. 103–66, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102–318, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1001(d)(2)(A) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 123(b)(2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, but only in the case of scholarships and fellowships granted after Aug. 16, 1986, see section 151(d) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 1214(c)(3) of Pub. L. 99–514 applicable to payments made in a taxable year of the payor beginning after Dec. 31, 1986, except as otherwise provided, see section 1214(d) of Pub. L. 99–514, as amended, set out as a note under section 861 of this title.

Amendment by section 1810(d)(3)(D) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 42(a)(13) of Pub. L. 98–369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98–369, set out as an Effective Date note under section 1271 of this title.

Amendment by section 127(e)(1) of Pub. L. 98–369 applicable to interest received after July 18, 1984, with respect to obligations issued after such date, in taxable years ending after such date, see section 127(g)(1) of Pub. L. 98–369, set out as a note under section 871 of this title.

Amendment by section 474(r)(29)(G), (H) of Pub. L. 98–369 not applicable with respect to obligations issued before Jan. 1, 1984, see section 475(b) of Pub. L. 98–369, set out as a note under section 33 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable to benefits received after Dec. 31, 1983, in taxable years ending after such date, except for any portion of a lump-sum payment of social security benefits received after Dec. 31, 1983, if the generally applicable payment date for such portion was before Jan. 1, 1984, see section 121(g) of Pub. L. 98–21, set out as an Effective Date note under section 86 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–178 applicable with respect to payments occurring on or after Apr. 1, 1972, see section 313(f) of Pub. L. 92–178, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to payments made in taxable years of recipients beginning after Dec. 31, 1966, see section 103(n)(2) of Pub. L. 89–809, set out as a note under section 871 of

this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to payments made after seventh day following Feb. 24, 1964, see section 302(d) of Pub. L. 88–272, set out as a note under section 3402 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Pub. L. 87–256, §110(h)(2), Sept. 21, 1961, 75 Stat. 537, provided that: "The amendments made by subsection (d) of this section [amending this section] shall apply with respect to payments made after December 31, 1961."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 effective Sept. 3, 1958, see section 40(c) of Pub. L. 85–866, set out as a note under section 871 of this title.

REPEALS

Section 544(f) of act Aug. 26, 1954, cited as a credit to this section, was repealed by Pub. L. 85–141, except insofar as such section 544(f) affected this section.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendments by sections 123(b)(2) and 1214(c)(3) of Pub. L. 99–514 to the extent application of such amendments would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(3), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

WITHHOLDING OF TAX ON NONRESIDENT ALIENS AND FOREIGN CORPORATIONS

Pub. L. 97–248, title III, §342, Sept. 3, 1982, 96 Stat. 635, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Not later than 2 years after the date of the enactment of this Act [Sept. 3, 1982], the Secretary of the Treasury or his delegate shall prescribe regulations establishing certification procedures, refund procedures, or other procedures which ensure that any benefit of any treaty relating to withholding of tax under sections 1441 and 1442 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] is available only to persons entitled to such benefit."

§1442. Withholding of tax on foreign corporations

(a) General rule

In the case of foreign corporations subject to taxation under this subtitle, there shall be deducted and withheld at the source in the same manner and on the same items of income as is provided in section 1441 a tax equal to 30 percent thereof. For purposes of the preceding sentence, the references in section 1441(b) to sections 871(a)(1)(C) and (D) shall be treated as referring to sections 881(a)(3) and (4), the reference in section 1441(c)(1) to section 871(b)(2) shall be treated as referring to section 842 or section 882(a)(2), as the case may be, the reference in section 1441(c)(5) to section 871(a)(1)(D) shall be treated as referring to section 881(a)(4), the reference in section 1441(c)(8) to

section 871(a)(1)(C) shall be treated as referring to section 881(a)(3), the references in section 1441(c)(9) to sections 871(h) and 871(h)(3) or (4) shall be treated as referring to sections 881(c) and 881(c)(3) or (4), the reference in section 1441(c)(10) to section 871(i)(2) shall be treated as referring to section 881(d), and the references in section 1441(c)(12) to sections 871(a) and 871(k) shall be treated as referring to sections 881(a) and 881(e) (except that for purposes of applying subparagraph (A) of section 1441(c)(12), as so modified, clause (ii) of section 881(e)(1)(B) shall not apply to any dividend unless the regulated investment company knows that such dividend is a dividend referred to in such clause).

(b) Exemption

Subject to such terms and conditions as may be provided by regulations prescribed by the Secretary, subsection (a) shall not apply in the case of a foreign corporation engaged in trade or business within the United States if the Secretary determines that the requirements of subsection (a) impose an undue administrative burden and that the collection of the tax imposed by section 881 on such corporation will not be jeopardized by the exemption.

(c) Exception for certain possessions corporations

(1) Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands

For purposes of this section, the term "foreign corporation" does not include a corporation created or organized in Guam, American Samoa, the Northern Mariana Islands, or the Virgin Islands or under the law of any such possession if the requirements of subparagraphs (A), (B), and (C) of section 881(b)(1) are met with respect to such corporation.

(2) Commonwealth of Puerto Rico

(A) In general

If dividends are received during a taxable year by a corporation—

(i) created or organized in, or under the law of, the Commonwealth of Puerto Rico, and

(ii) with respect to which the requirements of subparagraphs (A), (B), and (C) of section 881(b)(1) are met for the taxable year,

subsection (a) shall be applied for such taxable year by substituting "10 percent" for "30 percent".

(B) Applicability

If, on or after the date of the enactment of this paragraph, an increase in the rate of the Commonwealth of Puerto Rico's withholding tax which is generally applicable to dividends paid to United States corporations not engaged in a trade or business in the Commonwealth to a rate greater than 10 percent takes effect, this paragraph shall not apply to dividends received on or after the effective date of the increase.

(Aug. 16, 1954, ch. 736, 68A Stat. 358; Pub. L. 89–809, title I, §104(c), Nov. 13, 1966, 80 Stat. 1557; Pub. L. 92–178, title III, §313(e), Dec. 10, 1971, 85 Stat. 528; Pub. L. 92–606, §1(e)(2), Oct. 31, 1972, 86 Stat. 1497; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–369, div. A, title I, §§127(e)(2), 130(b), title IV, §474(r)(29)(I), July 18, 1984, 98 Stat. 652, 661, 845; Pub. L. 99–514, title XII, §1273(b)(2)(B), title XVIII, §1810(d)(3)(E), Oct. 22, 1986, 100 Stat. 2596, 2825; Pub. L. 100–647, title I, §1012(g)(7), Nov. 10, 1988, 102 Stat. 3501; Pub. L. 103–66, title XIII, §13237(c)(5), Aug. 10, 1993, 107 Stat. 508; Pub. L. 108–357, title IV, §§411(a)(3)(B), 420(b), Oct. 22, 2004, 118 Stat. 1504, 1513.)

REFERENCES IN TEXT

The date of the enactment of this paragraph, referred to in subsec. (c)(2)(B), is the date of enactment of Pub. L. 108–357, which was approved Oct. 22, 2004.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–357, §411(a)(3)(B), substituted "the reference in section 1441(c)(10)" for "and the reference in section 1441(c)(10)" and inserted before period at end ", and the references in section

1441(c)(12) to sections 871(a) and 871(k) shall be treated as referring to sections 881(a) and 881(e) (except that for purposes of applying subparagraph (A) of section 1441(c)(12), as so modified, clause (ii) of section 881(e)(1)(B) shall not apply to any dividend unless the regulated investment company knows that such dividend is a dividend referred to in such clause)".

Subsec. (c). Pub. L. 108–357, §420(b), designated existing provisions as par. (1), inserted heading, and added par. (2).

1993—Subsec. (a). Pub. L. 103–66 substituted "871(h)(3) or (4)" for "871(h)(3)" and "881(c)(3) or (4)" for "881(c)(3)".

1988—Subsec. (a). Pub. L. 100–647 struck out "and" after "to section 881(a)(3)," and inserted before period at end ", and the reference in section 1441(c)(10) to section 871(i)(2) shall be treated as referring to section 881(d)".

1986—Subsec. (a). Pub. L. 99–514, §1810(d)(3)(E), substituted "871(h)" for "871(h)(2)", "881(c)" for "881(c)(2)", and "1441(c)(9)" for "1449(c)(9)".

Subsec. (c). Pub. L. 99–514, §1273(b)(2)(B), amended subsec. (c) generally, substituting reference to "certain possessions corporations" for reference to "certain Guam and Virgin Islands corporations" in heading, and in text extending "foreign corporation" exception so as to not include corporation created or organized in Guam, American Samoa, Northern Mariana Islands, or the Virgin Islands, and striking out par. (2) which declared that par. (1) not apply to tax imposed in Guam, and par. (3) which referred to sections 934 and 943a for tax imposed in Virgin Islands.

1984—Subsec. (a). Pub. L. 98–369, §474(r)(29)(I), struck out "or section 1451" after "provided in section 1441" and struck out "; except that, in the case of interest described in section 1451 (relating to tax-free covenant bonds), the deduction and withholding shall be at the rate specified therein" after "a tax equal to 30 percent thereof".

Pub. L. 98–369, §127(e)(2), struck out "and" after "section 881(a)(4)," and inserted ", and the references in section 1449(c)(9) to sections 871(h)(2) and 871(h)(3) shall be treated as referring to sections 881(c)(2) and 881(c)(3)".

Subsec. (c). Pub. L. 98–369, §130(b), substituted provision relating to exception for certain Guam and Virgin Islands corporations for provision relating to exception for Guam corporations.

1976—Subsec. (b). Pub. L. 94–455 struck out "or his delegate" after "Secretary" in two places.

1972—Subsec. (c). Pub. L. 92–606 added subsec. (c).

1971—Subsec. (a). Pub. L. 92–178 provided that reference in section 1441(c)(8) to section 871(a)(1)(C) shall be treated as referring to section 881(a)(3).

1966—Pub. L. 89–809 limited the withholding of tax at the 30 percent rate to items of fixed or determinable United States source income not effectively connected with the conduct of a trade or business in the United States and authorized the granting of an exemption from the withholding requirement in the case of a foreign corporation engaged in trade or business within the United States if the Secretary or his delegate determines that the withholding imposes an undue administrative burden and that the collection of the tax will not be jeopardized by the exemption.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 411(a)(3)(B) of Pub. L. 108–357 applicable to dividends with respect to taxable years of regulated investment companies beginning after Dec. 31, 2004, see section 411(d)(1) of Pub. L. 108–357, set out as a note under section 871 of this title.

Amendment by section 420(b) of Pub. L. 108–357 applicable to dividends paid after Oct. 22, 2004, see section 420(d) of Pub. L. 108–357, set out as a note under section 881 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to interest received after Dec. 31, 1993, see section 13237(d) of Pub. L. 103–66, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1273(b)(2)(B) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99–514, set out as a note under section 931 of this title.

Amendment by section 1810(d)(3)(E) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 127(e)(2) of Pub. L. 98–369 applicable to interest received after July 18, 1984, with respect to obligations issued after such date, in taxable years after such date, see section 127(g)(1) of Pub. L. 98–369, set out as a note under section 871 of this title.

Amendment by section 130(b) of Pub. L. 98–369 applicable to payments made after Mar. 1, 1984, in taxable years ending after such date, see section 130(d) of Pub. L. 98–369, set out as a note under section 881 of this title.

Amendment by section 474(r)(29)(I) of Pub. L. 98–369 not applicable with respect to obligations issued before Jan. 1, 1984, see section 475(b) of Pub. L. 98–369, set out as a note under section 33 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Pub. L. 92–606, §2, Oct. 31, 1972, 86 Stat. 1497, provided in part that: "The amendment made by section 1(e)(2) [amending this section] shall take effect on the day after the date of enactment of this Act [Oct. 31, 1972]."

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–178 applicable with respect to payments occurring on or after Apr. 1, 1972, see section 313(f) of Pub. L. 92–178, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

WITHHOLDING OF TAX ON NONRESIDENT ALIENS AND FOREIGN CORPORATIONS

For provisions relating to withholding of tax on nonresident aliens and foreign corporations, see Pub. L. 97–248, title III, §342, Sept. 3, 1982, 96 Stat. 635, set out as a note under section 1441 of this title.

§1443. Foreign tax-exempt organizations

(a) Income subject to section 511

In the case of income of a foreign organization subject to the tax imposed by section 511, this chapter shall apply to income includible under section 512 in computing its unrelated business taxable income, but only to the extent and subject to such conditions as may be provided under regulations prescribed by the Secretary.

(b) Income subject to section 4948

In the case of income of a foreign organization subject to the tax imposed by section 4948(a), this chapter shall apply, except that the deduction and withholding shall be at the rate of 4 percent and shall be subject to such conditions as may be provided under regulations prescribed by the Secretary.

(Aug. 16, 1954, ch. 736, 68A Stat. 358; Pub. L. 91–172, title I, §§101(j)(22), 121(d)(2)(C), Dec. 30, 1969, 83 Stat. 528, 547; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" in two places.

1969—Pub. L. 91–172, §101(j)(22), designated existing provisions as subsec. (a) and added subsec. (b).

Subsec. (a). Pub. L. 91–172, §121(d)(2)(C), substituted "income" for "rents" after "this chapter shall apply to".

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 101(j)(22) of Pub. L. 91–172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

Amendment by section 121(d)(2)(C) of Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 121(g) of Pub. L. 91–172, set out as a note under section 511 of this title.

§1444. Withholding on Virgin Islands source income

For purposes of determining the withholding tax liability incurred in the Virgin Islands pursuant to this title (as made applicable to the Virgin Islands) with respect to amounts received from sources within the Virgin Islands by citizens and resident alien individuals of the United States, and corporations organized in the United States, the rate of withholding tax under sections 1441 and 1442 on income subject to tax under section 871(a)(1) or 881 shall not exceed the rate of tax on such income under section 871(a)(1) or 881, as the case may be.

(Added Pub. L. 97–455, §1(b), Jan. 12, 1983, 96 Stat. 2497; amended Pub. L. 100–647, title I, §1012(x), Nov. 10, 1988, 102 Stat. 3530.)

AMENDMENTS

1988—Pub. L. 100–647 struck out "(as modified by section 934A)" before "shall not exceed".

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to payments made after Jan. 12, 1983, see section 1(e)(2) of Pub. L. 97–455, set out as a note under section 934 of this title.

§1445. Withholding of tax on dispositions of United States real property interests

(a) General rule

Except as otherwise provided in this section, in the case of any disposition of a United States real property interest (as defined in section 897(c)) by a foreign person, the transferee shall be required to deduct and withhold a tax equal to 10 percent of the amount realized on the disposition.

(b) Exemptions

(1) In general

No person shall be required to deduct and withhold any amount under subsection (a) with respect to a disposition if paragraph (2), (3), (4), (5), or (6) applies to the transaction.

(2) Transferor furnishes nonforeign affidavit

Except as provided in paragraph (7), this paragraph applies to the disposition if the transferor furnishes to the transferee an affidavit by the transferor stating, under penalty of perjury, the transferor's United States taxpayer identification number and that the transferor is not a foreign person.

(3) Nonpublicly traded domestic corporation furnishes affidavit that interests in corporation not United States real property interests

Except as provided in paragraph (7), this paragraph applies in the case of a disposition of any interest in any domestic corporation if the domestic corporation furnishes to the transferee an affidavit by the domestic corporation stating, under penalty of perjury, that—

(A) the domestic corporation is not and has not been a United States real property holding corporation (as defined in section 897(c)(2)) during the applicable period specified in section

897(c)(1)(A)(ii), or

(B) as of the date of the disposition, interests in such corporation are not United States real property interests by reason of section 897(c)(1)(B).

(4) Transferee receives qualifying statement

(A) In general

This paragraph applies to the disposition if the transferee receives a qualifying statement at such time, in such manner, and subject to such terms and conditions as the Secretary may by regulations prescribe.

(B) Qualifying statement

For purposes of subparagraph (A), the term "qualifying statement" means a statement by the Secretary that—

(i) the transferor either—

(I) has reached agreement with the Secretary (or such agreement has been reached by the transferee) for the payment of any tax imposed by section 871(b)(1) or 882(a)(1) on any gain recognized by the transferor on the disposition of the United States real property interest, or

(II) is exempt from any tax imposed by section 871(b)(1) or 882(a)(1) on any gain recognized by the transferor on the disposition of the United States real property interest, and

(ii) the transferor or transferee has satisfied any transferor's unsatisfied withholding liability or has provided adequate security to cover such liability.

(5) Residence where amount realized does not exceed $300,000

This paragraph applies to the disposition if—

(A) the property is acquired by the transferee for use by him as a residence, and

(B) the amount realized for the property does not exceed $300,000.

(6) Stock regularly traded on established securities market

This paragraph applies if the disposition is of a share of a class of stock that is regularly traded on an established securities market.

(7) Special rules for paragraphs (2), (3), and (9)

Paragraph (2), (3), or (9) (as the case may be) shall not apply to any disposition—

(A) if—

(i) the transferee or qualified substitute has actual knowledge that the affidavit referred to in such paragraph, or the statement referred to in paragraph (9)(A)(ii), is false, or

(ii) the transferee or qualified substitute receives a notice (as described in subsection (d)) from a transferor's agent, transferee's agent, or qualified substitute that such affidavit or statement is false, or

(B) if the Secretary by regulations requires the transferee or qualified substitute to furnish a copy of such affidavit or statement to the Secretary and the transferee or qualified substitute fails to furnish a copy of such affidavit or statement to the Secretary at such time and in such manner as required by such regulations.

(8) Applicable wash sales transactions

No person shall be required to deduct and withhold any amount under subsection (a) with respect to a disposition which is treated as a disposition of a United States real property interest solely by reason of section 897(h)(5).

(9) Alternative procedure for furnishing nonforeign affidavit

For purposes of paragraphs (2) and (7)—

(A) In general

Paragraph (2) shall be treated as applying to a transaction if, in connection with a disposition of a United States real property interest—

(i) the affidavit specified in paragraph (2) is furnished to a qualified substitute, and

(ii) the qualified substitute furnishes a statement to the transferee stating, under penalty of perjury, that the qualified substitute has such affidavit in his possession.

(B) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this paragraph.

(c) Limitations on amount required to be withheld

(1) Cannot exceed transferor's maximum tax liability

(A) In general

The amount required to be withheld under this section with respect to any disposition shall not exceed the amount (if any) determined under subparagraph (B) as the transferor's maximum tax liability.

(B) Request

At the request of the transferor or transferee, the Secretary shall determine, with respect to any disposition, the transferor's maximum tax liability.

(C) Refund of excess amounts withheld

Subject to such terms and conditions as the Secretary may by regulations prescribe, a transferor may seek and obtain a refund of any amounts withheld under this section in excess of the transferor's maximum tax liability.

(2) Authority of Secretary to prescribe reduced amount

At the request of the transferor or transferee, the Secretary may prescribe a reduced amount to be withheld under this section if the Secretary determines that to substitute such reduced amount will not jeopardize the collection of the tax imposed by section 871(b)(1) or 882(a)(1).

(3) Procedural rules

(A) Regulations

Requests for—

(i) qualifying statements under subsection (b)(4),

(ii) determinations of transferor's maximum tax liability under paragraph (1), and

(iii) reductions under paragraph (2) in the amount required to be withheld,

shall be made at the time and manner, and shall include such information, as the Secretary shall prescribe by regulations.

(B) Requests to be handled within 90 days

The Secretary shall take action with respect to any request described in subparagraph (A) within 90 days after the Secretary receives the request.

(d) Liability of transferor's agents, transferee's agents, or qualified substitutes

(1) Notice of false affidavit; foreign corporations

If—

(A) the transferor furnishes the transferee or qualified substitute an affidavit described in paragraph (2) of subsection (b) or a domestic corporation furnishes the transferee an affidavit described in paragraph (3) of subsection (b), and

(B) in the case of—

(i) any transferor's agent—

(I) such agent has actual knowledge that such affidavit is false, or

(II) in the case of an affidavit described in subsection (b)(2) furnished by a corporation, such corporation is a foreign corporation, or

(ii) any transferee's agent or qualified substitute, such agent or substitute has actual knowledge that such affidavit is false,

such agent or qualified substitute shall so notify the transferee at such time and in such manner as the Secretary shall require by regulations.

(2) Failure to furnish notice

(A) In general

If any transferor's agent, transferee's agent, or qualified substitute is required by paragraph (1) to furnish notice, but fails to furnish such notice at such time or times and in such manner as may be required by regulations, such agent or substitute shall have the same duty to deduct and withhold that the transferee would have had if such agent or substitute had complied with paragraph (1).

(B) Liability limited to amount of compensation

An agent's or substitute's liability under subparagraph (A) shall be limited to the amount of compensation the agent or substitute derives from the transaction.

(3) Transferor's agent

For purposes of this subsection, the term "transferor's agent" means any person who represents the transferor—

(A) in any negotiation with the transferee or any transferee's agent related to the transaction, or

(B) in settling the transaction.

(4) Transferee's agent

For purposes of this subsection, the term "transferee's agent" means any person who represents the transferee—

(A) in any negotiation with the transferor or any transferor's agent related to the transaction, or

(B) in settling the transaction.

(5) Settlement officer not treated as transferor's agent

For purposes of this subsection, a person shall not be treated as a transferor's agent or transferee's agent with respect to any transaction merely because such person performs 1 or more of the following acts:

(A) The receipt and the disbursement of any portion of the consideration for the transaction.

(B) The recording of any document in connection with the transaction.

(e) Special rules relating to distributions, etc., by corporations, partnerships, trusts, or estates

(1) Certain domestic partnerships, trusts, and estates

In the case of any disposition of a United States real property interest as defined in section 897(c) (other than a disposition described in paragraph (4) or (5)) by a domestic partnership, domestic trust, or domestic estate, such partnership, the trustee of such trust, or the executor of such estate (as the case may be) shall be required to deduct and withhold under subsection (a) a tax equal to 35 percent (or, to the extent provided in regulations, 20 percent) of the gain realized to the extent such gain—

(A) is allocable to a foreign person who is a partner or beneficiary of such partnership, trust, or estate, or

(B) is allocable to a portion of the trust treated as owned by a foreign person under subpart E of part I of subchapter J.

(2) Certain distributions by foreign corporations

In the case of any distribution by a foreign corporation on which gain is recognized under subsection (d) or (e) of section 897, the foreign corporation shall deduct and withhold under subsection (a) a tax equal to 35 percent of the amount of gain recognized on such distribution under such subsection.

(3) Distributions by certain domestic corporations to foreign shareholders

If a domestic corporation which is or has been a United States real property holding corporation (as defined in section 897(c)(2)) during the applicable period specified in section 897(c)(1)(A)(ii) distributes property to a foreign person in a transaction to which section 302 or part II of subchapter C applies, such corporation shall deduct and withhold under subsection (a) a tax equal to 10 percent of the amount realized by the foreign shareholder. The preceding sentence shall not apply if, as of the date of the distribution, interests in such corporation are not United States real property interests by reason of section 897(c)(1)(B). Rules similar to the rules of the preceding provisions of this paragraph shall apply in the case of any distribution to which section 301 applies and which is not made out of the earnings and profits of such a domestic corporation.

(4) Taxable distributions by domestic or foreign partnerships, trusts, or estates

A domestic or foreign partnership, the trustee of a domestic or foreign trust, or the executor of a domestic or foreign estate shall be required to deduct and withhold under subsection (a) a tax equal to 10 percent of the fair market value (as of the time of the taxable distribution) of any United States real property interest distributed to a partner of the partnership or a beneficiary of the trust or estate, as the case may be, who is a foreign person in a transaction which would constitute a taxable distribution under the regulations promulgated by the Secretary pursuant to section 897.

(5) Rules relating to dispositions of interest in partnerships, trusts, or estates

To the extent provided in regulations, the transferee of a partnership interest or of a beneficial interest in a trust or estate shall be required to deduct and withhold under subsection (a) a tax equal to 10 percent of the amount realized on the disposition.

(6) Distributions by regulated investment companies and real estate investment trusts

If any portion of a distribution from a qualified investment entity (as defined in section 897(h)(4)) to a nonresident alien individual or a foreign corporation is treated under section 897(h)(1) as gain realized by such individual or corporation from the sale or exchange of a United States real property interest, the qualified investment entity shall deduct and withhold under subsection (a) a tax equal to 35 percent (or, to the extent provided in regulations, 20 percent) of the amount so treated.

(7) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including regulations providing for exceptions from provisions of this subsection and regulations for the application of this subsection in the case of payments through 1 or more entities.

(f) Definitions

For purposes of this section—

(1) Transferor

The term "transferor" means the person disposing of the United States real property interest.

(2) Transferee

The term "transferee" means the person acquiring the United States real property interest.

(3) Foreign person

The term "foreign person" means any person other than a United States person.

(4) Transferor's maximum tax liability

The term "transferor's maximum tax liability" means, with respect to the disposition of any interest, the sum of—

(A) the maximum amount which the Secretary determines could be imposed as tax under section 871(b)(1) or 882(a)(1) by reason of the disposition, plus

(B) the amount the Secretary determines to be the transferor's unsatisfied withholding liability with respect to such interest.

(5) Transferor's unsatisfied withholding liability

The term "transferor's unsatisfied withholding liability" means the withholding obligation imposed by this section on the transferor's acquisition of the United States real property interest or on the acquisition of a predecessor interest, to the extent such obligation has not been satisfied.

(6) Qualified substitute

The term "qualified substitute" means, with respect to a disposition of a United States real property interest—

(A) the person (including any attorney or title company) responsible for closing the transaction, other than the transferor's agent, and

(B) the transferee's agent.

(Added Pub. L. 98–369, div. A, title I, §129(a)(1), July 18, 1984, 98 Stat. 655; amended Pub. L. 99–514, title III, §311(b)(4), title XVIII, §1810(f)(2)–(4)(A), (5), (6), (8), Oct. 22, 1986, 100 Stat. 2219, 2827, 2828; Pub. L. 100–647, title I, §1003(b)(3), Nov. 10, 1988, 102 Stat. 3384; Pub. L. 103–66, title XIII, §13221(c)(3), Aug. 10, 1993, 107 Stat. 477; Pub. L. 104–188, title I, §1704(c)(1), Aug. 20, 1996, 110 Stat. 1878; Pub. L. 105–34, title III, §311(c)(1), Aug. 5, 1997, 111 Stat. 835; Pub. L. 108–27, title III, §301(a)(2)(C), May 28, 2003, 117 Stat. 758; Pub. L. 109–222, title V, §§505(b), 506(b), May 17, 2006, 120 Stat. 356, 358; Pub. L. 110–289, div. C, title I, §3024(a)–(c), July 30, 2008, 122 Stat. 2895; Pub. L. 112–240, title I, §102(c)(1)(C), (3), Jan. 2, 2013, 126 Stat. 2319.)

AMENDMENTS

2013—Subsec. (e)(1). Pub. L. 112–240, §102(c)(1)(C), substituted "20 percent" for "15 percent" in introductory provisions.

Subsec. (e)(6). Pub. L. 112–240, §102(c)(3), substituted "20 percent" for "15 percent (20 percent in the case of taxable years beginning after December 31, 2010)".

2008—Subsec. (b)(7). Pub. L. 110–289, §3024(c)(1), amended par. (7) generally. Prior to amendment, par. (7) related to special rules for paragraphs (2) and (3).

Subsec. (b)(9). Pub. L. 110–289, §3024(a), added par. (9).

Subsec. (d). Pub. L. 110–289, §3024(c)(2)(C), substituted ", transferee's agents, or qualified substitutes" for "or transferee's agents" in heading.

Subsec. (d)(1). Pub. L. 110–289, §3024(c)(2)(A), amended par. (1) generally. Prior to amendment, par. (1) related to notice of false affidavit; foreign corporations.

Subsec. (d)(2). Pub. L. 110–289, §3024(c)(2)(B), amended par. (2) generally. Prior to amendment, par. (2) related to failure to furnish notice.

Subsec. (f)(6). Pub. L. 110–289, §3024(b), added par. (6).

2006—Subsec. (b)(8). Pub. L. 109–222, §506(b), added par. (8).

Subsec. (e)(6), (7). Pub. L. 109–222, §505(b), added par. (6) and redesignated former par. (6) as (7).

2003—Subsec. (e)(1). Pub. L. 108–27 substituted "15 percent" for "20 percent".

1997—Subsec. (e)(1). Pub. L. 105–34 substituted "20 percent" for "28 percent" in introductory provisions.

1996—Subsec. (e)(3). Pub. L. 104–188 inserted at end "Rules similar to the rules of the preceding provisions of this paragraph shall apply in the case of any distribution to which section 301 applies and which is not made out of the earnings and profits of such a domestic corporation."

1993—Subsec. (e)(1), (2). Pub. L. 103–66 substituted "35 percent" for "34 percent".

1988—Subsec. (e)(1). Pub. L. 100–647 inserted "(or, to the extent provided in regulations, 28 percent)" after "to 34 percent".

1986—Subsec. (b)(3). Pub. L. 99–514, §1810(f)(2), amended par. (3) generally, substituting "interests in corporation not United States real property interests" for "it is not a United States real property holding

corporation" in heading, striking out the comma before "if the domestic corporation" in introductory provisions, inserting subpar. (A) designation and adding subpar. (B).

Subsec. (d)(1)(A). Pub. L. 99–514, §1810(f)(3)(B), substituted "paragraph (2)" for "paragraph (2)(A)".

Subsec. (d)(1)(B)(i). Pub. L. 99–514, §1810(f)(3)(A), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: "any transferor's agent, the transferor is a foreign corporation or such agent has actual knowledge that such affidavit is false, or".

Subsec. (e)(1). Pub. L. 99–514, §311(b)(4), substituted "34 percent" for "28 percent".

Pub. L. 99–514, §1810(f)(4), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "A domestic partnership, the trustee of a domestic trust, or the executor of a domestic estate shall be required to deduct and withhold under subsection (a) a tax equal to 10 percent of any amount of which such partnership, trustee, or executor has custody which is—

"(A) attributable to the disposition of a United States real property interest (as defined in section 897(c), other than a disposition described in paragraph (4) or (5)), and

"(B) either—

"(i) includible in the distributive share of a partner of the partnership who is a foreign person,

"(ii) includible in the income of a beneficiary of the trust or estate who is a foreign person, or

"(iii) includible in the income of a foreign person under the provisions of section 671."

Subsec. (e)(2). Pub. L. 99–514, §311(b)(4), substituted "34 percent" for "28 percent".

Subsec. (e)(3). Pub. L. 99–514, §1810(f)(5), inserted "The preceding sentence shall not apply if, as of the date of the distribution, interests in such corporation are not United States real property interests by reason of section 897(c)(1)(B)."

Subsec. (e)(4). Pub. L. 99–514, §1810(f)(6), substituted "section 897" for "section 897(g)".

Subsec. (e)(6). Pub. L. 99–514, §1810(f)(8), inserted "and regulations for the application of this subsection in the case of payments through 1 or more entities".

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112–240 applicable to taxable years beginning after Dec. 31, 2012 and applicable to amounts paid on or after Jan. 1, 2013, see section 102(d) of Pub. L. 112–240, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–289, div. C, title I, §3024(d), July 30, 2008, 122 Stat. 2896, provided that: "The amendments made by this section [amending this section] shall apply to dispositions of United States real property interests after the date of the enactment of this Act [July 30, 2008]."

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 505(b) of Pub. L. 109–222 applicable to taxable years of qualified investment entities beginning after Dec. 31, 2005, except that no amount shall be required to be withheld under section 1441, 1442, or 1445 of the Internal Revenue Code of 1986 with respect to any distribution before May 17, 2006 if such amount was not otherwise required to be withheld under any such section as in effect before such amendments, see section 505(d) of Pub. L. 109–222, set out as a note under section 852 of this title.

Amendment by section 506(b) of Pub. L. 109–222 applicable to taxable years beginning after Dec. 31, 2005, except that such amendments shall not apply to any distribution, or substitute dividend payment, occurring before the date that is 30 days after May 17, 2006, see section 506(c) of Pub. L. 109–222, set out as a note under section 897 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–27 applicable to amounts paid after May 28, 2003, see section 301(d)(2) of Pub. L. 108–27, set out as an Effective and Termination Dates of 2003 Amendment note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable only to amounts paid after Aug. 5, 1997, see section 311(d)(2) of Pub. L. 105–34, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, §1704(c)(2), Aug. 20, 1996, 110 Stat. 1878, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to distributions after the date of the enactment of this Act [Aug. 20, 1996]."

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1003(b)(3), Nov. 10, 1988, 102 Stat. 3384, provided that the amendment made by that section is effective for taxable years beginning after Dec. 31, 1987.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 311(b)(4) of Pub. L. 99–514 applicable to payments made after Dec. 31, 1986, see section 311(c) of Pub. L. 99–514, as amended, set out as a note under section 1201 of this title.

Amendment by section 1810(f)(2), (3), (5), (6), (8) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Pub. L. 99–514, title XVIII, §1810(f)(4)(B), Oct. 22, 1986, 100 Stat. 2827, provided that: "The amendment made by subparagraph (A) [amending this section] shall apply to dispositions after the day 30 days after the date of the enactment of this Act [Oct. 22, 1986]."

EFFECTIVE DATE

Pub. L. 98–369, div. A, title I, §129(c)(1), July 18, 1984, 98 Stat. 660, provided that: "The amendment made by subsection (a) [enacting this section] shall apply to any disposition on or after January 1, 1985."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§1446. Withholding tax on foreign partners' share of effectively connected income

(a) General rule

If—

(1) a partnership has effectively connected taxable income for any taxable year, and

(2) any portion of such income is allocable under section 704 to a foreign partner,

such partnership shall pay a withholding tax under this section at such time and in such manner as the Secretary shall by regulations prescribe.

(b) Amount of withholding tax

(1) In general

The amount of the withholding tax payable by any partnership under subsection (a) shall be equal to the applicable percentage of the effectively connected taxable income of the partnership which is allocable under section 704 to foreign partners.

(2) Applicable percentage

For purposes of paragraph (1), the term "applicable percentage" means—

(A) the highest rate of tax specified in section 1 in the case of the portion of the effectively connected taxable income which is allocable under section 704 to foreign partners who are not corporations, and

(B) the highest rate of tax specified in section 11(b)(1) in the case of the portion of the effectively connected taxable income which is allocable under section 704 to foreign partners which are corporations.

(c) Effectively connected taxable income

For purposes of this section, the term "effectively connected taxable income" means the taxable income of the partnership which is effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States computed with the following adjustments:

(1) Paragraph (1) of section 703(a) shall not apply.

(2) The partnership shall be allowed a deduction for depletion with respect to oil and gas wells but the amount of such deduction shall be determined without regard to sections 613 and 613A.

(3) There shall not be taken into account any item of income, gain, loss, or deduction to the extent allocable under section 704 to any partner who is not a foreign partner.

(d) Treatment of foreign partners

(1) Allowance of credit

Each foreign partner of a partnership shall be allowed a credit under section 33 for such partner's share of the withholding tax paid by the partnership under this section. Such credit shall be allowed for the partner's taxable year in which (or with which) the partnership taxable year (for which such tax was paid) ends.

(2) Credit treated as distributed to partner

Except as provided in regulations, a foreign partner's share of any withholding tax paid by the partnership under this section shall be treated as distributed to such partner by such partnership on the earlier of—

(A) the day on which such tax was paid by the partnership, or

(B) the last day of the partnership's taxable year for which such tax was paid.

(e) Foreign partner

For purposes of this section, the term "foreign partner" means any partner who is not a United States person.

(f) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section, including—

(1) regulations providing for the application of this section in the case of publicly traded partnerships, and

(2) regulations providing—

(A) that, for purposes of section 6655, the withholding tax imposed under this section shall be treated as a tax imposed by section 11 and any partnership required to pay such tax shall be treated as a corporation, and

(B) appropriate adjustments in applying section 6655 with respect to such withholding tax.

(Added Pub. L. 99–514, title XII, §1246(a), Oct. 22, 1986, 100 Stat. 2582; amended Pub. L. 100–647, title I, §1012(s)(1)(A), Nov. 10, 1988, 102 Stat. 3526; Pub. L. 101–239, title VII, §7811(i)(6), Dec. 19, 1989, 103 Stat. 2410.)

AMENDMENTS

1989—Subsec. (b)(2)(B). Pub. L. 101–239, §7811(i)(6)(A), substituted "section 11(b)(1)" for "section 11(b)".

Subsec. (d)(2). Pub. L. 101–239, §7811(i)(6)(B), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "A foreign partner's share of any withholding tax paid by the partnership under this section shall be treated as distributed to such partner by such partnership on the last day of the partnership's taxable year (for which such tax was paid)."

Subsec. (f). Pub. L. 101–239, §7811(i)(6)(C), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: "The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section, including regulations providing for the application of this section in the case of publicly traded partnerships."

1988—Pub. L. 100–647 amended section generally, substituting provisions relating to withholding tax on foreign partners' share of effectively connected income for provisions which related to withholding tax on amounts paid by partnerships to foreign partners.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1012(s)(1)(D), Nov. 10, 1988, 102 Stat. 3527, provided that: "The amendments made by this paragraph [amending sections 1446 and 6401 of this title] shall apply to taxable years beginning after December 31, 1987. No amount shall be required to be deducted and withheld under section 1446 of the 1986 Code (as in effect before the amendment made by subparagraph (A))."

EFFECTIVE DATE

Pub. L. 99–514, title XII, §1246(d), Oct. 22, 1986, 100 Stat. 2583, provided that: "The amendment made by this section [enacting this section and amending section 6401 of this title] shall apply to distributions after December 31, 1987 (or, if earlier, the effective date (which shall not be earlier than January 1, 1987) of the initial regulations issued under section 1446 of the Internal Revenue Code of 1986 as added by this section)."

Subchapter B—Application of Withholding Provisions

Sec.
1461. Liability for withheld tax.
1462. Withheld tax as credit to recipient of income.
1463. Tax paid by recipient of income.
1464. Refunds and credits with respect to withheld tax.
[1465. Repealed.]

PRIOR PROVISIONS

A prior subchapter B, consisting of section 1451, acts Aug. 16, 1954, ch. 736, 68A Stat. 359; Oct. 4, 1976, Pub. L. 94–455, title XIX, §1906(b)(13)(A), 90 Stat. 1834, related to tax-free covenant bonds, prior to repeal by Pub. L. 98–369, div. A, title IV, §474(r)(29)(A), July 18, 1984, 98 Stat. 844, which repeal was not applicable with respect to obligations issued before Jan. 1, 1984, pursuant to section 475(b) of Pub. L. 98–369, set out as an Effective Date of 1984 Amendment note under section 33 of this title.

AMENDMENTS

1986—Pub. L. 99–514, title XVIII, §1899A(73), Oct. 22, 1986, 100 Stat. 2963, substituted "Liability for withheld tax" for "Return and payment of withheld tax" in item 1461.

1984—Pub. L. 98–369, div. A, title IV, §474(r)(29)(A), July 18, 1984, 98 Stat. 844, redesignated subchapter C as B, and struck out former subchapter B which related to tax-free covenant bonds.

1976—Pub. L. 94–455, title XIX, §1901(b)(41), Oct. 4, 1976, 90 Stat. 1803, struck out item 1465 "Definition of withholding agent".

[§1451. Repealed. Pub. L. 98–369, div. A, title IV, §474(r)(29)(A), July 18, 1984, 98 Stat. 844]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 359; Oct. 4, 1976, Pub. L. 94–455, title XIX, §1906(b)(13)(A), 90 Stat. 1834, related to tax-free covenant bonds. The repeal was not applicable with respect to obligations issued before Jan. 1, 1984, pursuant to section 475(b) of Pub. L. 98–369, set out as an Effective Date of 1984 Amendment note under section 33 of this title.

§1461. Liability for withheld tax

Every person required to deduct and withhold any tax under this chapter is hereby made liable for such tax and is hereby indemnified against the claims and demands of any person for the amount of any payments made in accordance with the provisions of this chapter.

(Aug. 16, 1954, ch. 736, 68A Stat. 360; Pub. L. 89–809, title I, §103(i), Nov. 13, 1966, 80 Stat. 1554.)

AMENDMENTS

1966—Pub. L. 89–809 struck out requirement that persons required to deduct and withhold any tax under this chapter make return thereof on or before March 15 of each year and pay the tax to the officer designated

in section 6151, and substituted "Liability for withheld tax" for "Return and payment of withheld tax" in section catchline.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to payments occurring after Dec. 31, 1966, see section 103(n)(3) of Pub. L. 89–809, set out as a note under section 871 of this title.

§1462. Withheld tax as credit to recipient of income

Income on which any tax is required to be withheld at the source under this chapter shall be included in the return of the recipient of such income, but any amount of tax so withheld shall be credited against the amount of income tax as computed in such return.

(Aug. 16, 1954, ch. 736, 68A Stat. 360.)

§1463. Tax paid by recipient of income

If—

(1) any person, in violation of the provisions of this chapter, fails to deduct and withhold any tax under this chapter, and

(2) thereafter the tax against which such tax may be credited is paid,

the tax so required to be deducted and withheld shall not be collected from such person; but this section shall in no case relieve such person from liability for interest or any penalties or additions to the tax otherwise applicable in respect of such failure to deduct and withhold.

(Aug. 16, 1954, ch. 736, 68A Stat. 360; Pub. L. 101–239, title VII, §7743(a), Dec. 19, 1989, 103 Stat. 2406; Pub. L. 104–188, title I, §1704(t)(9), Aug. 20, 1996, 110 Stat. 1887.)

AMENDMENTS

1996—Pub. L. 104–188 substituted "this section" for "this subsection".

1989—Pub. L. 101–239 amended section generally. Prior to amendment, section read as follows: "If any tax required under this chapter to be deducted and withheld is paid by the recipient of the income, it shall not be re-collected from the withholding agent; nor in cases in which the tax is so paid shall any penalty be imposed on or collected from the recipient of the income or the withholding agent for failure to return or pay the same, unless such failure was fraudulent and for the purpose of evading payment."

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7743(b), Dec. 19, 1989, 103 Stat. 2406, provided that: "The amendment made by subsection (a) [amending this section] shall apply to failures after December 31, 1989."

§1464. Refunds and credits with respect to withheld tax

Where there has been an overpayment of tax under this chapter, any refund or credit made under chapter 65 shall be made to the withholding agent unless the amount of such tax was actually withheld by the withholding agent.

(Aug. 16, 1954, ch. 736, 68A Stat. 360.)

[§1465. Repealed. Pub. L. 94–455, title XIX, §1901(a)(156), Oct. 4, 1976, 90 Stat. 1789]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 360, defined withholding agent.

EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub.

L. 94–455, set out as an Effective Date of 1976 Amendment note under section 2 of this title.

CHAPTER 4—TAXES TO ENFORCE REPORTING ON CERTAIN FOREIGN ACCOUNTS

Sec.
1471. Withholdable payments to foreign financial institutions.
1472. Withholdable payments to other foreign entities.
1473. Definitions.
1474. Special rules.

PRIOR PROVISIONS

A prior chapter 4, consisting of sections 1481 and 1482, which related to rules applicable to recovery of excessive profits on government contracts, was repealed by Pub. L. 101–508, title XI, §11801(a)(37), Nov. 5, 1990, 104 Stat. 1388–521.

Section 1481, acts Aug. 16, 1954, ch. 736, 68A Stat. 362; June 21, 1965, Pub. L. 89–44, title VIII, §809(d)(5)(B), 79 Stat. 168; Oct. 4, 1976, Pub. L. 94–455, title XIX, §§1901(a)(157), 1906(b)(13)(A), 1951(b)(14)(A), 90 Stat. 1789, 1834, 1840, related to mitigation of effect of renegotiation of government contracts.

Section 1482, added Pub. L. 85–866, title I, §62(a), Sept. 2, 1958, 72 Stat. 1648, related to readjustment for repayments made pursuant to price redeterminations.

§1471. Withholdable payments to foreign financial institutions

(a) In general

In the case of any withholdable payment to a foreign financial institution which does not meet the requirements of subsection (b), the withholding agent with respect to such payment shall deduct and withhold from such payment a tax equal to 30 percent of the amount of such payment.

(b) Reporting requirements, etc.

(1) In general

The requirements of this subsection are met with respect to any foreign financial institution if an agreement is in effect between such institution and the Secretary under which such institution agrees—

(A) to obtain such information regarding each holder of each account maintained by such institution as is necessary to determine which (if any) of such accounts are United States accounts,

(B) to comply with such verification and due diligence procedures as the Secretary may require with respect to the identification of United States accounts,

(C) in the case of any United States account maintained by such institution, to report on an annual basis the information described in subsection (c) with respect to such account,

(D) to deduct and withhold a tax equal to 30 percent of—

(i) any passthru payment which is made by such institution to a recalcitrant account holder or another foreign financial institution which does not meet the requirements of this subsection, and

(ii) in the case of any passthru payment which is made by such institution to a foreign financial institution which has in effect an election under paragraph (3) with respect to such payment, so much of such payment as is allocable to accounts held by recalcitrant account holders or foreign financial institutions which do not meet the requirements of this subsection,

(E) to comply with requests by the Secretary for additional information with respect to any United States account maintained by such institution, and

(F) in any case in which any foreign law would (but for a waiver described in clause (i)) prevent the reporting of any information referred to in this subsection or subsection (c) with respect to any United States account maintained by such institution—

(i) to attempt to obtain a valid and effective waiver of such law from each holder of such account, and

(ii) if a waiver described in clause (i) is not obtained from each such holder within a reasonable period of time, to close such account.

Any agreement entered into under this subsection may be terminated by the Secretary upon a determination by the Secretary that the foreign financial institution is out of compliance with such agreement.

(2) Financial institutions deemed to meet requirements in certain cases

A foreign financial institution may be treated by the Secretary as meeting the requirements of this subsection if—

(A) such institution—

(i) complies with such procedures as the Secretary may prescribe to ensure that such institution does not maintain United States accounts, and

(ii) meets such other requirements as the Secretary may prescribe with respect to accounts of other foreign financial institutions maintained by such institution, or

(B) such institution is a member of a class of institutions with respect to which the Secretary has determined that the application of this section is not necessary to carry out the purposes of this section.

(3) Election to be withheld upon rather than withhold on payments to recalcitrant account holders and nonparticipating foreign financial institutions

In the case of a foreign financial institution which meets the requirements of this subsection and such other requirements as the Secretary may provide and which elects the application of this paragraph—

(A) the requirements of paragraph (1)(D) shall not apply,

(B) the withholding tax imposed under subsection (a) shall apply with respect to any withholdable payment to such institution to the extent such payment is allocable to accounts held by recalcitrant account holders or foreign financial institutions which do not meet the requirements of this subsection, and

(C) the agreement described in paragraph (1) shall—

(i) require such institution to notify the withholding agent with respect to each such payment of the institution's election under this paragraph and such other information as may be necessary for the withholding agent to determine the appropriate amount to deduct and withhold from such payment, and

(ii) include a waiver of any right under any treaty of the United States with respect to any amount deducted and withheld pursuant to an election under this paragraph.

To the extent provided by the Secretary, the election under this paragraph may be made with respect to certain classes or types of accounts of the foreign financial institution.

(c) Information required to be reported on United States accounts

(1) In general

The agreement described in subsection (b) shall require the foreign financial institution to report the following with respect to each United States account maintained by such institution:

(A) The name, address, and TIN of each account holder which is a specified United States person and, in the case of any account holder which is a United States owned foreign entity, the name, address, and TIN of each substantial United States owner of such entity.

(B) The account number.

(C) The account balance or value (determined at such time and in such manner as the Secretary may provide).

(D) Except to the extent provided by the Secretary, the gross receipts and gross withdrawals or payments from the account (determined for such period and in such manner as the Secretary may provide).

(2) Election to be subject to same reporting as United States financial institutions

In the case of a foreign financial institution which elects the application of this paragraph—

(A) subparagraphs (C) and (D) of paragraph (1) shall not apply, and

(B) the agreement described in subsection (b) shall require such foreign financial institution to report such information with respect to each United States account maintained by such institution as such institution would be required to report under sections 6041, 6042, 6045, and 6049 if—

(i) such institution were a United States person, and

(ii) each holder of such account which is a specified United States person or United States owned foreign entity were a natural person and citizen of the United States.

An election under this paragraph shall be made at such time, in such manner, and subject to such conditions as the Secretary may provide.

(3) Separate requirements for qualified intermediaries

In the case of a foreign financial institution which is treated as a qualified intermediary by the Secretary for purposes of section 1441 and the regulations issued thereunder, the requirements of this section shall be in addition to any reporting or other requirements imposed by the Secretary for purposes of such treatment.

(d) Definitions

For purposes of this section—

(1) United States account

(A) In general

The term "United States account" means any financial account which is held by one or more specified United States persons or United States owned foreign entities.

(B) Exception for certain accounts held by individuals

Unless the foreign financial institution elects to not have this subparagraph apply, such term shall not include any depository account maintained by such financial institution if—

(i) each holder of such account is a natural person, and

(ii) with respect to each holder of such account, the aggregate value of all depository accounts held (in whole or in part) by such holder and maintained by the same financial institution which maintains such account does not exceed $50,000.

To the extent provided by the Secretary, financial institutions which are members of the same expanded affiliated group shall be treated for purposes of clause (ii) as a single financial institution.

(C) Elimination of duplicative reporting requirements

Such term shall not include any financial account in a foreign financial institution if—

(i) such account is held by another financial institution which meets the requirements of subsection (b), or

(ii) the holder of such account is otherwise subject to information reporting requirements which the Secretary determines would make the reporting required by this section with respect to United States accounts duplicative.

(2) Financial account

Except as otherwise provided by the Secretary, the term "financial account" means, with respect

to any financial institution—

(A) any depository account maintained by such financial institution,

(B) any custodial account maintained by such financial institution, and

(C) any equity or debt interest in such financial institution (other than interests which are regularly traded on an established securities market).

Any equity or debt interest which constitutes a financial account under subparagraph (C) with respect to any financial institution shall be treated for purposes of this section as maintained by such financial institution.

(3) United States owned foreign entity

The term "United States owned foreign entity" means any foreign entity which has one or more substantial United States owners.

(4) Foreign financial institution

The term "foreign financial institution" means any financial institution which is a foreign entity. Except as otherwise provided by the Secretary, such term shall not include a financial institution which is organized under the laws of any possession of the United States.

(5) Financial institution

Except as otherwise provided by the Secretary, the term "financial institution" means any entity that—

(A) accepts deposits in the ordinary course of a banking or similar business,

(B) as a substantial portion of its business, holds financial assets for the account of others, or

(C) is engaged (or holding itself out as being engaged) primarily in the business of investing, reinvesting, or trading in securities (as defined in section 475(c)(2) without regard to the last sentence thereof), partnership interests, commodities (as defined in section 475(e)(2)), or any interest (including a futures or forward contract or option) in such securities, partnership interests, or commodities.

(6) Recalcitrant account holder

The term "recalcitrant account holder" means any account holder which—

(A) fails to comply with reasonable requests for the information referred to in subsection (b)(1)(A) or (c)(1)(A), or

(B) fails to provide a waiver described in subsection (b)(1)(F) upon request.

(7) Passthru payment

The term "passthru payment" means any withholdable payment or other payment to the extent attributable to a withholdable payment.

(e) Affiliated groups

(1) In general

The requirements of subsections (b) and (c)(1) shall apply—

(A) with respect to United States accounts maintained by the foreign financial institution, and

(B) except as otherwise provided by the Secretary, with respect to United States accounts maintained by each other foreign financial institution (other than any foreign financial institution which meets the requirements of subsection (b)) which is a member of the same expanded affiliated group as such foreign financial institution.

(2) Expanded affiliated group

For purposes of this section, the term "expanded affiliated group" means an affiliated group as defined in section 1504(a), determined—

(A) by substituting "more than 50 percent" for "at least 80 percent" each place it appears, and

(B) without regard to paragraphs (2) and (3) of section 1504(b).

A partnership or any other entity (other than a corporation) shall be treated as a member of an

expanded affiliated group if such entity is controlled (within the meaning of section 954(d)(3)) by members of such group (including any entity treated as a member of such group by reason of this sentence).

(f) Exception for certain payments

Subsection (a) shall not apply to any payment to the extent that the beneficial owner of such payment is—

(1) any foreign government, any political subdivision of a foreign government, or any wholly owned agency or instrumentality of any one or more of the foregoing,

(2) any international organization or any wholly owned agency or instrumentality thereof,

(3) any foreign central bank of issue, or

(4) any other class of persons identified by the Secretary for purposes of this subsection as posing a low risk of tax evasion.

(Added Pub. L. 111–147, title V, §501(a), Mar. 18, 2010, 124 Stat. 97.)

PRIOR PROVISIONS

A prior section 1471, act Aug. 16, 1954, ch. 736, 68A Stat. 361, related to recovery of excessive profits on government contracts, prior to repeal by Pub. L. 94–455, title XIX, §1901(b)(13)(A), Oct. 4, 1976, 90 Stat. 1840.

EFFECTIVE DATE

Pub. L. 111–147, title V, §501(d), Mar. 18, 2010, 124 Stat. 106, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting this chapter and amending sections 6414, 6501, 6513, 6611, and 6724 of this title] shall apply to payments made after December 31, 2012.

"(2) GRANDFATHERED TREATMENT OF OUTSTANDING OBLIGATIONS.—The amendments made by this section shall not require any amount to be deducted or withheld from any payment under any obligation outstanding on the date which is 2 years after the date of the enactment of this Act [Mar. 18, 2010] or from the gross proceeds from any disposition of such an obligation.

"(3) INTEREST ON OVERPAYMENTS.—The amendment made by subsection (b) [amending section 6611 of this title] shall apply—

"(A) in the case of such amendment's application to paragraph (1) of section 6611(e) of the Internal Revenue Code of 1986, to returns the due date for which (determined without regard to extensions) is after the date of the enactment of this Act,

"(B) in the case of such amendment's application to paragraph (2) of such section, to claims for credit or refund of any overpayment filed after the date of the enactment of this Act (regardless of the taxable period to which such refund relates), and

"(C) in the case of such amendment's application to paragraph (3) of such section, to refunds paid after the date of the enactment of this Act (regardless of the taxable period to which such refund relates)."

§1472. Withholdable payments to other foreign entities

(a) In general

In the case of any withholdable payment to a non-financial foreign entity, if—

(1) the beneficial owner of such payment is such entity or any other non-financial foreign entity, and

(2) the requirements of subsection (b) are not met with respect to such beneficial owner,

then the withholding agent with respect to such payment shall deduct and withhold from such payment a tax equal to 30 percent of the amount of such payment.

(b) Requirements for waiver of withholding

The requirements of this subsection are met with respect to the beneficial owner of a payment if—

(1) such beneficial owner or the payee provides the withholding agent with either—

(A) a certification that such beneficial owner does not have any substantial United States

owners, or

(B) the name, address, and TIN of each substantial United States owner of such beneficial owner,

(2) the withholding agent does not know, or have reason to know, that any information provided under paragraph (1) is incorrect, and

(3) the withholding agent reports the information provided under paragraph (1)(B) to the Secretary in such manner as the Secretary may provide.

(c) Exceptions

Subsection (a) shall not apply to—

(1) except as otherwise provided by the Secretary, any payment beneficially owned by—

(A) any corporation the stock of which is regularly traded on an established securities market,

(B) any corporation which is a member of the same expanded affiliated group (as defined in section 1471(e)(2) without regard to the last sentence thereof) as a corporation described in subparagraph (A),

(C) any entity which is organized under the laws of a possession of the United States and which is wholly owned by one or more bona fide residents (as defined in section 937(a)) of such possession,

(D) any foreign government, any political subdivision of a foreign government, or any wholly owned agency or instrumentality of any one or more of the foregoing,

(E) any international organization or any wholly owned agency or instrumentality thereof,

(F) any foreign central bank of issue, or

(G) any other class of persons identified by the Secretary for purposes of this subsection, and

(2) any class of payments identified by the Secretary for purposes of this subsection as posing a low risk of tax evasion.

(d) Non-financial foreign entity

For purposes of this section, the term "non-financial foreign entity" means any foreign entity which is not a financial institution (as defined in section 1471(d)(5)).

(Added Pub. L. 111–147, title V, §501(a), Mar. 18, 2010, 124 Stat. 102.)

§1473. Definitions

For purposes of this chapter—

(1) Withholdable payment

Except as otherwise provided by the Secretary—

(A) In general

The term "withholdable payment" means—

(i) any payment of interest (including any original issue discount), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other fixed or determinable annual or periodical gains, profits, and income, if such payment is from sources within the United States, and

(ii) any gross proceeds from the sale or other disposition of any property of a type which can produce interest or dividends from sources within the United States.

(B) Exception for income connected with United States business

Such term shall not include any item of income which is taken into account under section 871(b)(1) or 882(a)(1) for the taxable year.

(C) Special rule for sourcing interest paid by foreign branches of domestic financial institutions

Subparagraph (B) of section 861(a)(1) shall not apply.

(2) Substantial United States owner

(A) In general

The term "substantial United States owner" means—

(i) with respect to any corporation, any specified United States person which owns, directly or indirectly, more than 10 percent of the stock of such corporation (by vote or value),

(ii) with respect to any partnership, any specified United States person which owns, directly or indirectly, more than 10 percent of the profits interests or capital interests in such partnership, and

(iii) in the case of a trust—

(I) any specified United States person treated as an owner of any portion of such trust under subpart E of part I of subchapter J of chapter 1, and

(II) to the extent provided by the Secretary in regulations or other guidance, any specified United States person which holds, directly or indirectly, more than 10 percent of the beneficial interests of such trust.

(B) Special rule for investment vehicles

In the case of any financial institution described in section 1471(d)(5)(C), clauses (i), (ii), and (iii) of subparagraph (A) shall be applied by substituting "0 percent" for "10 percent".

(3) Specified United States person

Except as otherwise provided by the Secretary, the term "specified United States person" means any United States person other than—

(A) any corporation the stock of which is regularly traded on an established securities market,

(B) any corporation which is a member of the same expanded affiliated group (as defined in section 1471(e)(2) without regard to the last sentence thereof) as a corporation the stock of which is regularly traded on an established securities market,

(C) any organization exempt from taxation under section 501(a) or an individual retirement plan,

(D) the United States or any wholly owned agency or instrumentality thereof,

(E) any State, the District of Columbia, any possession of the United States, any political subdivision of any of the foregoing, or any wholly owned agency or instrumentality of any one or more of the foregoing,

(F) any bank (as defined in section 581),

(G) any real estate investment trust (as defined in section 856),

(H) any regulated investment company (as defined in section 851),

(I) any common trust fund (as defined in section 584(a)), and

(J) any trust which—

(i) is exempt from tax under section 664(c), or

(ii) is described in section 4947(a)(1).

(4) Withholding agent

The term "withholding agent" means all persons, in whatever capacity acting, having the control, receipt, custody, disposal, or payment of any withholdable payment.

(5) Foreign entity

The term "foreign entity" means any entity which is not a United States person.

(Added Pub. L. 111–147, title V, §501(a), Mar. 18, 2010, 124 Stat. 103.)

§1474. Special rules

(a) Liability for withheld tax

Every person required to deduct and withhold any tax under this chapter is hereby made liable for

such tax and is hereby indemnified against the claims and demands of any person for the amount of any payments made in accordance with the provisions of this chapter.

(b) Credits and refunds

(1) In general

Except as provided in paragraph (2), the determination of whether any tax deducted and withheld under this chapter results in an overpayment by the beneficial owner of the payment to which such tax is attributable shall be made as if such tax had been deducted and withheld under subchapter A of chapter 3.

(2) Special rule where foreign financial institution is beneficial owner of payment

(A) In general

In the case of any tax properly deducted and withheld under section 1471 from a specified financial institution payment—

(i) if the foreign financial institution referred to in subparagraph (B) with respect to such payment is entitled to a reduced rate of tax with respect to such payment by reason of any treaty obligation of the United States—

(I) the amount of any credit or refund with respect to such tax shall not exceed the amount of credit or refund attributable to such reduction in rate, and

(II) no interest shall be allowed or paid with respect to such credit or refund, and

(ii) if such foreign financial institution is not so entitled, no credit or refund shall be allowed or paid with respect to such tax.

(B) Specified financial institution payment

The term "specified financial institution payment" means any payment if the beneficial owner of such payment is a foreign financial institution.

(3) Requirement to identify substantial United States owners

No credit or refund shall be allowed or paid with respect to any tax properly deducted and withheld under this chapter unless the beneficial owner of the payment provides the Secretary such information as the Secretary may require to determine whether such beneficial owner is a United States owned foreign entity (as defined in section 1471(d)(3)) and the identity of any substantial United States owners of such entity.

(c) Confidentiality of information

(1) In general

For purposes of this chapter, rules similar to the rules of section 3406(f) shall apply.

(2) Disclosure of list of participating foreign financial institutions permitted

The identity of a foreign financial institution which meets the requirements of section 1471(b) shall not be treated as return information for purposes of section 6103.

(d) Coordination with other withholding provisions

The Secretary shall provide for the coordination of this chapter with other withholding provisions under this title, including providing for the proper crediting of amounts deducted and withheld under this chapter against amounts required to be deducted and withheld under such other provisions.

(e) Treatment of withholding under agreements

Any tax deducted and withheld pursuant to an agreement described in section 1471(b) shall be treated for purposes of this title as a tax deducted and withheld by a withholding agent under section 1471(a).

(f) Regulations

The Secretary shall prescribe such regulations or other guidance as may be necessary or appropriate to carry out the purposes of, and prevent the avoidance of, this chapter.

(Added Pub. L. 111–147, title V, §501(a), Mar. 18, 2010, 124 Stat. 104.)

PRIOR PROVISIONS

For prior sections 1481 and 1482, see Prior Provisions note preceding section 1471 of this title.

[CHAPTER 5—REPEALED]

[§§1491, 1492. Repealed. Pub. L. 105–34, title XI, §1131(a), Aug. 5, 1997, 111 Stat. 978]

Section 1491, acts Aug. 16, 1954, ch. 736, 68A Stat. 365; Oct. 4, 1976, Pub. L. 94–455, title X, §1015(a), 90 Stat. 1617; Nov. 6, 1978, Pub. L. 95–600, title VII, §701(u)(14)(A), 92 Stat. 2919; Aug. 20, 1996, Pub. L. 104–188, title I, §1907(b)(1), 110 Stat. 1916, imposed tax on transfers to avoid income tax.

Section 1492, acts Aug. 16, 1954, ch. 736, 68A Stat. 365; Jan. 12, 1971, Pub. L. 91–681, §1(b), 84 Stat. 2066; Oct. 4, 1976, Pub. L. 94–455, title X, §1015(b), title XIX, §1906(b)(13)(A), 90 Stat. 1618, 1834; Nov. 6, 1978, Pub. L. 95–600, title VII, §701(u)(14)(B), 92 Stat. 2919; July 18, 1984, Pub. L. 98–369, div. A, title I, §131(f)(1), 98 Stat. 665, related to nontaxable transfers.

[§1493. Repealed. Pub. L. 89–809, title I, §103(l)(2), Nov. 13, 1966, 80 Stat. 1554]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 365, defined foreign trust.

EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to taxable years beginning after Dec. 31, 1966, see section 103(n)(1) of Pub. L. 89–809, set out as an Effective Date of 1966 Amendment note under section 871 of this title.

[§1494. Repealed. Pub. L. 105–34, title XI, §1131(a), Aug. 5, 1997, 111 Stat. 978]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 365; Oct. 4, 1976, Pub. L. 94–455, title XIX, §1906 (b)(13)(A), 90 Stat. 1834; July 18, 1984, Pub. L. 98–369, div. A, title I, §131(f)(2), 98 Stat. 665; Aug. 20, 1996, Pub. L. 104–188, title I, §1902(a), 110 Stat. 1909, provided for payment and collection of the tax imposed under section 1491 of this title.

CHAPTER 6—CONSOLIDATED RETURNS

Subchapter		Sec.[1]
A.	**Returns and Payment of Tax**	**1501**
B.	**Related Rules**	**1551**

[1] *Section numbers editorially supplied.*

Subchapter A—Returns and Payment of Tax

Sec.

1501. Privilege to file consolidated returns.
1502. Regulations.
1503. Computation and payment of tax.
1504. Definitions.
1505. Cross references.

§1501. Privilege to file consolidated returns

An affiliated group of corporations shall, subject to the provisions of this chapter, have the privilege of making a consolidated return with respect to the income tax imposed by chapter 1 for the taxable year in lieu of separate returns. The making of a consolidated return shall be upon the condition that all corporations which at any time during the taxable year have been members of the affiliated group consent to all the consolidated return regulations prescribed under section 1502 prior to the last day prescribed by law for the filing of such return. The making of a consolidated return shall be considered as such consent. In the case of a corporation which is a member of the affiliated group for a fractional part of the year, the consolidated return shall include the income of such corporation for such part of the year as it is a member of the affiliated group.

(Aug. 16, 1954, ch. 736, 68A Stat. 367.)

§1502. Regulations

The Secretary shall prescribe such regulations as he may deem necessary in order that the tax liability of any affiliated group of corporations making a consolidated return and of each corporation in the group, both during and after the period of affiliation, may be returned, determined, computed, assessed, collected, and adjusted, in such manner as clearly to reflect the income-tax liability and the various factors necessary for the determination of such liability, and in order to prevent avoidance of such tax liability. In carrying out the preceding sentence, the Secretary may prescribe rules that are different from the provisions of chapter 1 that would apply if such corporations filed separate returns.

(Aug. 16, 1954, ch. 736, 68A Stat. 367; Pub. L. 94–455, title XIX, §1906(b) (13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 108–357, title VIII, §844(a), Oct. 22, 2004, 118 Stat. 1600.)

AMENDMENTS

2004—Pub. L. 108–357 inserted at end "In carrying out the preceding sentence, the Secretary may prescribe rules that are different from the provisions of chapter 1 that would apply if such corporations filed separate returns."

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §844(c), Oct. 22, 2004, 118 Stat. 1600, provided that: "This section [amending this section], and the amendment made by this section, shall apply to taxable years beginning before, on, or after the date of the enactment of this Act [Oct. 22, 2004]."

DUAL RESIDENT COMPANIES

Pub. L. 100–647, title VI, §6126, Nov. 10, 1988, 102 Stat. 3713, provided that:

"(a) GENERAL RULE.—In the case of a transaction which—

"(1) involves the transfer after the date of the enactment of this Act [Nov. 10, 1988] by a domestic corporation, with respect to which there is a qualified excess loss account, of its assets and liabilities to a foreign corporation in exchange for all of the stock of such foreign corporation, followed by the complete liquidation of the domestic corporation into the common parent, and

"(2) qualifies, pursuant to Revenue Ruling 87–27, as a reorganization which is described in section 368(a)(1)(F) of the 1986 Code,

then, solely for purposes of applying Treasury Regulation section 1.1502–19 to such qualified excess loss account, such foreign corporation shall be treated as a domestic corporation in determining whether such foreign corporation is a member of the affiliated group of the common parent.

"(b) TREATMENT OF INCOME OF NEW FOREIGN CORPORATION.—

"(1) IN GENERAL.—In any case to which subsection (a) applies, for purposes of the 1986 Code—

"(A) the source and character of any item of income of the foreign corporation referred to in subsection (a) shall be determined as if such foreign corporation were a domestic corporation,

"(B) the net amount of any such income shall be treated as subpart F income (without regard to section 952(c) of the 1986 Code), and

"(C) the amount in the qualified excess loss account referred to in subsection (a) shall—

"(i) be reduced by the net amount of any such income, and

"(ii) be increased by the amount of any such income distributed directly or indirectly to the common parent described in subsection (a).

"(2) LIMITATION.—Paragraph (1) shall apply to any item of income only to the extent that the net amount of such income does not exceed the amount in the qualified excess loss account after being reduced under paragraph (1)(C) for prior income.

"(3) BASIS ADJUSTMENTS NOT APPLICABLE.—To the extent paragraph (1) applies to any item of income, there shall be no increase in basis under section 961(a) of such Code on account of such income (and there shall be no reduction in basis under section 961(b) of such Code on account of an exclusion attributable to the inclusion of such income).

"(4) RECOGNITION OF GAIN.—For purposes of paragraph (1), if the foreign corporation referred to in subsection (a) transfers any property acquired by such foreign corporation in the transaction referred to in subsection (a) (or transfers any other property the basis of which is determined in whole or in part by reference to the basis of property so acquired) and (but for this paragraph) there is not full recognition of gain on such transfer, the excess (if any) of—

"(A) the fair market value of the property transferred, over

"(B) its adjusted basis,

shall be treated as gain from the sale or exchange of such property and shall be recognized notwithstanding any other provision of law. Proper adjustment shall be made to the basis of any such property for gain recognized under the preceding sentence.

"(c) DEFINITIONS.—For purposes of this section—

"(1) COMMON PARENT.—The term 'common parent' means the common parent of the affiliated group which included the domestic corporation referred to in subsection (a)(1).

"(2) QUALIFIED EXCESS LOSS ACCOUNT.—The term 'qualified excess loss account' means any excess loss account (within the meaning of the consolidated return regulations) to the extent such account is attributable—

"(A) to taxable years beginning before January 1, 1988, and

"(B) to periods during which the domestic corporation was subject to an income tax of a foreign country on its income on a residence basis or without regard to whether such income is from sources in or outside of such foreign country.

The amount of such account shall be determined as of immediately after the transaction referred to in subsection (a) and without, except as provided in subsection (b), diminution for any future adjustment.

"(3) NET AMOUNT.—The net amount of any item of income is the amount of such income reduced by allocable deductions as determined under the rules of section 954(b)(5) of the 1986 Code.

"(4) SECOND SAME COUNTRY CORPORATION MAY BE TREATED AS DOMESTIC CORPORATION IN CERTAIN CASES.—If—

"(A) another foreign corporation acquires from the common parent stock of the foreign corporation referred to in subsection (a) after the transaction referred to in subsection (a),

"(B) both of such foreign corporations are subject to the income tax of the same foreign country on a residence basis, and

"(C) such common parent complies with such reporting requirements as the Secretary of the Treasury or his delegate may prescribe for purposes of this paragraph,

such other foreign corporation shall be treated as a domestic corporation in determining whether the foreign corporation referred to in subsection (a) is a member of the affiliated group referred to in subsection (a) (and the rules of subsection (b) shall apply (i) to any gain of such other foreign corporation on any disposition of such stock, and (ii) to any other income of such other foreign corporation except to the extent it establishes to the satisfaction of the Secretary of the Treasury or his delegate that such income is not attributable to property acquired from the foreign corporation referred to in subsection (a))."

SPECIAL RULE FOR DISPOSITION OF STOCK OF SUBSIDIARY

Pub. L. 99–514, title VI, §647, Oct. 22, 1986, 100 Stat. 2294, provided that: "If for a taxable year of an affiliated group filing a consolidated return ending on or before December 31, 1987, there is a disposition of stock of a subsidiary (within the meaning of Treasury Regulation section 1.1502–19), the amount required to be included in income with respect to such disposition under Treasury Regulation section 1.1502–19(a) shall, notwithstanding such section, be included in income ratably over the 15-year period beginning with the taxable year in which the disposition occurs. The preceding sentence shall apply only if such subsidiary was

incorporated on December 24, 1969, and is a participant in a mineral joint venture with a corporation organized under the laws of the foreign country in which the joint venture mineral project is located."

§1503. Computation and payment of tax

(a) [General rule] [1]

In any case in which a consolidated return is made or is required to be made, the tax shall be determined, computed, assessed, collected, and adjusted in accordance with the regulations under section 1502 prescribed before the last day prescribed by law for the filing of such return.

[(b) Repealed. Pub. L. 94–455, title X, §1052(c)(5), Oct. 4, 1976, 90 Stat. 1648]

(c) Special rule for application of certain losses against income of insurance companies taxed under section 801

(1) In general

If an election under section 1504(c)(2) is in effect for the taxable year and the consolidated taxable income of the members of the group not taxed under section 801 results in a consolidated net operating loss for such taxable year, then under regulations prescribed by the Secretary, the amount of such loss which cannot be absorbed in the applicable carry-back periods against the taxable income of such members not taxed under section 801 shall be taken into account in determining the consolidated taxable income of the affiliated group for such taxable year to the extent of 35 percent of such loss or 35 percent of the taxable income of the members taxed under section 801, whichever is less. The unused portion of such loss shall be available as a carryover, subject to the same limitations (applicable to the sum of the loss for the carryover year and the loss (or losses) carried over to such year), in applicable carryover years.

(2) Losses of recent nonlife affiliates

Notwithstanding the provisions of paragraph (1), a net operating loss for a taxable year of a member of the group not taxed under section 801 shall not be taken into account in determining the taxable income of a member taxed under section 801 (either for the taxable year or as a carryover or carryback) if such taxable year precedes the sixth taxable year such members have been members of the same affiliated group (determined without regard to section 1504(b)(2)).

(d) Dual consolidated loss

(1) In general

The dual consolidated loss for any taxable year of any corporation shall not be allowed to reduce the taxable income of any other member of the affiliated group for the taxable year or any other taxable year.

(2) Dual consolidated loss

For purposes of this section—

(A) In general

Except as provided in subparagraph (B), the term "dual consolidated loss" means any net operating loss of a domestic corporation which is subject to an income tax of a foreign country on its income without regard to whether such income is from sources in or outside of such foreign country, or is subject to such a tax on a residence basis.

(B) Special rule where loss not used under foreign law

To the extent provided in regulations, the term "dual consolidated loss" shall not include any loss which, under the foreign income tax law, does not offset the income of any foreign corporation.

(3) Treatment of losses of separate business units

To the extent provided in regulations, any loss of a separate unit of a domestic corporation shall

be subject to the limitations of this subsection in the same manner as if such unit were a wholly owned subsidiary of such corporation.

(4) Income on assets acquired after the loss

The Secretary shall prescribe such regulations as may be necessary or appropriate to prevent the avoidance of the purposes of this subsection by contributing assets to the corporation with the dual consolidated loss after such loss was sustained.

(e) Special rule for determining adjustments to basis

(1) In general

Solely for purposes of determining gain or loss on the disposition of intragroup stock and the amount of any inclusion by reason of an excess loss account, in determining the adjustments to the basis of such intragroup stock on account of the earnings and profits of any member of an affiliated group for any consolidated year (and in determining the amount in such account)—

(A) such earnings and profits shall be determined as if section 312 were applied for such taxable year (and all preceding consolidated years of the member with respect to such group) without regard to subsections (k) and (n) thereof, and

(B) earnings and profits shall not include any amount excluded from gross income under section 108 to the extent the amount so excluded was not applied to reduce tax attributes (other than basis in property).

(2) Definitions

For purposes of this subsection—

(A) Intragroup stock

The term "intragroup stock" means any stock which—

(i) is in a corporation which is or was a member of an affiliated group of corporations, and

(ii) is held by another corporation which is or was a member of such group.

Such term includes any other property the basis of which is determined (in whole or in part) by reference to the basis of stock described in the preceding sentence.

(B) Consolidated year

The term "consolidated year" means any taxable year for which the affiliated group makes a consolidated return.

(C) Application of section 312(n)(7) not affected

The reference in paragraph (1) to subsection (n) of section 312 shall be treated as not including a reference to paragraph (7) of such subsection.

(3) Adjustments

Under regulations prescribed by the Secretary, proper adjustments shall be made in the application of paragraph (1)—

(A) in the case of any property acquired by the corporation before consolidation, for the difference between the adjusted basis of such property for purposes of computing taxable income and its adjusted basis for purposes of computing earnings and profits, and

(B) in the case of any property, for any basis adjustment under section 50(c).

(4) Elimination of election to reduce basis of indebtedness

Nothing in the regulations prescribed under section 1502 shall permit any reduction in the amount otherwise included in gross income by reason of an excess loss account if such reduction is on account of a reduction in the basis of indebtedness.

(f) Limitation on use of group losses to offset income of subsidiary paying preferred dividends

(1) In general

In the case of any subsidiary distributing during any taxable year dividends on any applicable

preferred stock—

(A) no group loss item shall be allowed to reduce the disqualified separately computed income of such subsidiary for such taxable year, and

(B) no group credit item shall be allowed against the tax imposed by this chapter on such disqualified separately computed income.

(2) Group items

For purposes of this subsection—

(A) Group loss item

The term "group loss item" means any of the following items of any other member of the affiliated group which includes the subsidiary:

(i) Any net operating loss and any net operating loss carryover or carryback under section 172.

(ii) Any loss from the sale or exchange of any capital asset and any capital loss carryover or carryback under section 1212.

(B) Group credit item

The term "group credit item" means any credit allowable under part IV of subchapter A of chapter 1 (other than section 34) to any other member of the affiliated group which includes the subsidiary and any carryover or carryback of any such credit.

(3) Other definitions

For purposes of this subsection—

(A) Disqualified separately computed income

The term "disqualified separately computed income" means the portion of the separately computed taxable income of the subsidiary which does not exceed the dividends distributed by the subsidiary during the taxable year on applicable preferred stock.

(B) Separately computed taxable income

The term "separately computed taxable income" means the separate taxable income of the subsidiary for the taxable year determined—

(i) by taking into account gains and losses from the sale or exchange of a capital asset and section 1231 gains and losses,

(ii) without regard to any net operating loss or capital loss carryover or carryback, and

(iii) with such adjustments as the Secretary may prescribe.

(C) Subsidiary

The term "subsidiary" means any corporation which is a member of an affiliated group filing a consolidated return other than the common parent.

(D) Applicable preferred stock

The term "applicable preferred stock" means stock described in section 1504(a)(4) in the subsidiary which is—

(i) issued after November 17, 1989, and

(ii) held by a person other than a member of the same affiliated group as the subsidiary.

(4) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the provisions of this subsection, including regulations—

(A) to prevent the avoidance of this subsection through the transfer of built-in losses to the subsidiary,

(B) to provide rules for cases in which the subsidiary owns (directly or indirectly) stock in another member of the affiliated group, and

(C) to provide for the application of this subsection where dividends are not paid currently, where the redemption and liquidation rights of the applicable preferred stock exceed the issue

price for such stock, or where the stock is otherwise structured to avoid the purposes of this subsection.

(Aug. 16, 1954, ch. 736, 68A Stat. 367; Pub. L. 86–780, §2, Sept. 14, 1960, 74 Stat. 1011; Pub. L. 88–272, title II, §234(a), (b)(1), (2), Feb. 26, 1964, 78 Stat. 113; Pub. L. 94–455, title X, §§1031(b)(4), 1052(c)(5), title XV, §1507(b)(3), title XIX, §1901(b)(1)(Y), Oct. 4, 1976, 90 Stat. 1623, 1648, 1740, 1792; Pub. L. 98–369, div. A, title II, §211(b)(19), July 18, 1984, 98 Stat. 756; Pub. L. 99–514, title XII, §1249(a), Oct. 22, 1986, 100 Stat. 2584; Pub. L. 100–203, title X, §10222(a)(1), Dec. 22, 1987, 101 Stat. 1330–410; Pub. L. 100–647, title I, §1012(u), title II, §2004(j)(1)(A), (2), (3)(A), Nov. 10, 1988, 102 Stat. 3528, 3604, 3605; Pub. L. 101–239, title VII, §§7201(a), 7207(a), 7821(c), Dec. 19, 1989, 103 Stat. 2328, 2337, 2424; Pub. L. 101–508, title XI, §§11802(f)(4), 11813(b)(25), Nov. 5, 1990, 104 Stat. 1388–530, 1388–555.)

AMENDMENTS

1990—Subsec. (c)(1). Pub. L. 101–508, §11802(f)(4), struck out at end "For taxable years ending with or within calendar year 1981, '25 percent' shall be substituted for '35 percent' each place it appears in the first sentence of this subsection. For taxable years ending with or within calendar year 1982, '30 percent' shall be substituted for '35 percent' each place it appears in that sentence."

Subsec. (e)(3)(B). Pub. L. 101–508, §11813(b)(25), substituted "section 50(c)" for "section 48(q)".

1989—Subsec. (e)(2)(A)(ii). Pub. L. 101–239, §7821(c), substituted "another corporation which is or was a member" for "another member".

Subsec. (e)(4). Pub. L. 101–239, §7207(a), added par. (4).

Subsec. (f). Pub. L. 101–239, §7201(a), added subsec. (f).

1988—Subsec. (d)(3), (4). Pub. L. 100–647, §1012(u), added pars. (3) and (4).

Subsec. (e)(1). Pub. L. 100–647, §2004(j)(1)(A), amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: "Solely for purposes of determining gain or loss on the disposition of intragroup stock, in determining the adjustments to the basis of such intragroup stock on account of the earnings and profits of any member of an affiliated group for any consolidated year—".

Subsec. (e)(2)(C). Pub. L. 100–647, §2004(j)(3)(A), added subpar. (C).

Subsec. (e)(3). Pub. L. 100–647, §2004(j)(2), added par. (3).

1987—Subsec. (e). Pub. L. 100–203 added subsec. (e).

1986—Subsec. (d). Pub. L. 99–514 added subsec. (d).

1984—Subsec. (c). Pub. L. 98–369, §211(b)(19)(A), (C), substituted "section 801" for "section 802" in heading, and wherever appearing in text.

Subsec. (c)(1). Pub. L. 98–369, §211(b)(19)(B), struck out provision that for purposes of this subsection, in determining the taxable income of each insurance company subject to tax under section 802, section 802(b)(3) would not be taken into account.

1976—Subsec. (a). Pub. L. 94–455, §1052(c)(5), struck out subsec. (a) designation.

Subsec. (b). Pub. L. 94–455, §1052(c)(5), struck out subsec. (b) which provided for a special rule for application of foreign tax credit when overall limitation applies.

Subsec. (b)(1). Pub. L. 94–455, §1031(b)(4), struck out "and if for the taxable year an election under section 904(b)(1) (relating to election of overall limitation on foreign tax credit) is in effect" after "section 921)".

Subsec. (b)(3)(C). Pub. L. 94–455, §1901(b)(1)(Y), struck out subpar. (C) which defined "consolidated taxable income".

Subsec. (c). Pub. L. 94–455, §1507(b)(3), added subsec. (c).

1964—Subsec. (a). Pub. L. 88–272, §234(a), struck out provisions which increased the tax imposed under section 11(c), or section 831, by 2% of the consolidated taxable income of the affiliated group of includible corporations, and defined "consolidated taxable income".

Subsec. (b). Pub. L. 88–272, §234(b)(1), (2), redesignated subsec. (d) as (b), and substituted references to section 7701 for references to former subsection (c) of this section, in subpar. (A), and definition of "consolidated taxable income" for provisions relating to the computation of tax, for purposes of par. (1)(A), on the portion of consolidated taxable income attributable to any corporation, without regard to the increase of 2% as in subsec. (a), in subpar. (C). Former subsec. (b), which limited the 2% increase in subsec. (a) in cases where the affiliated group included one or more Western Hemisphere trade corporations or one or more regulated public utilities, to the amount by which the consolidated taxable income of the affiliated group exceed the income attributable to such corporations and utilities, was struck out.

Subsec. (c). Pub. L. 88–272, §234(b)(1), struck out subsec. (c) which defined regulated public utility. See section 7701(a)(33) of this title.

Subsec. (d). Pub. L. 88–272, §234(b)(1), redesignated subsec. (d) as (b).

1960—Subsec. (d). Pub. L. 86–780 added subsec. (d).

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11813(b)(25) of Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7201(b), Dec. 19, 1989, 103 Stat. 2329, provided that:

"(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to taxable years ending after November 17, 1989.

"(2) BINDING CONTRACT EXCEPTION.—For purposes of section 1503(f)(3)(D) of the Internal Revenue Code of 1986, stock issued after November 17, 1989, pursuant to a written binding contract in effect on November 17, 1989, and at all times thereafter before such issuance, shall be treated as issued on November 17, 1989.

"(3) SPECIAL RULE WHEN SUBSIDIARY LEAVES GROUP.—If, by reason of a transaction after November 17, 1989, a corporation ceases to be, or becomes, a member of an affiliated group, the stock of such corporation shall be treated, for purposes of section 1503(f)(3)(D) of such Code, as issued on the date of such cessation or commencement, unless such transaction is of a kind which would not result in the recognition of any deferred intercompany gain under the consolidated return regulations by reason of the acquisition of the entire group.

"(4) RETIRED STOCK.—

"(A) Except as provided in subparagraph (B), if stock issued before November 18, 1989, (or described in paragraph (2)), is retired or acquired after November 17, 1989, by the corporation or another member of the same affiliated group, such stock shall be treated, for purposes of section 1503(f)(3)(D) of such Code, as issued on the date of such retirement or acquisition.

"(B) Subparagraph (A) shall not apply to any retirement or acquisition pursuant to an obligation to reissue under a binding written contract in effect on November 17, 1989, and at all times thereafter before such retirement or acquisition.

"(5) AUCTION RATE PREFERRED.—For purposes of section 1503(f)(3)(D) of such Code, auction rate preferred stock shall be treated as issued when the contract requiring the auction became binding.

"(6) SPECIAL RULE FOR CERTAIN AUCTION RATE PREFERRED.—For purposes of section 1503(f)(3)(D) of the Internal Revenue Code of 1986, any auction rate preferred stock shall be treated as issued before November 18, 1989, if—

"(A) a subsidiary was incorporated before July 10, 1989 for the special purpose of issuing such stock,

"(B) a rating agency was retained before July 10, 1989, and

"(C) such stock is issued before the date 30 days after the date of the enactment of this Act [Dec. 19, 1989]."

Pub. L. 101–239, title VII, §7207(b), Dec. 19, 1989, 103 Stat. 2337, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to dispositions after July 10, 1989, in taxable years ending after such date.

"(2) BINDING CONTRACT.—The amendment made by subsection (a) shall not apply to any disposition pursuant to a written binding contract in effect on July 10, 1989, and at all times thereafter before such disposition."

Amendment by section 7821 of Pub. L. 101–239 effective as if included in the provision of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 7823 of Pub. L. 101–239, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1012(u) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 2004(j)(1)(A), (2), (3)(A) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title X, §10222(a)(2), Dec. 22, 1987, 101 Stat. 1330–410, as amended by Pub. L. 100–647, title II, §2004(j)(1)(B), Nov. 10, 1988, 102 Stat. 3604, provided that:

"(A) IN GENERAL.—Except as provided in subparagraph (B), the amendment made by paragraph (1) [amending this section] shall apply to any intragroup stock disposed of after December 15, 1987. For purposes of determining the adjustments to the basis of such stock, such amendment shall be deemed to have been in effect for all periods whether before, on, or after December 15, 1987.

"(B) EXCEPTION.—The amendment made by paragraph (1) shall not apply to any intragroup stock disposed of after December 15, 1987, and before January 1, 1989, if such disposition is pursuant to a written binding contract, governmental order, letter of intent or preliminary agreement, or stock acquisition agreement, in effect on or before December 15, 1987.

"(C) TREATMENT OF CERTAIN EXCESS LOSS ACCOUNTS.—

"(i) IN GENERAL.—If—

"(I) any disposition on or before December 15, 1987, of stock resulted in an inclusion of an excess loss account (or would have so resulted if the amendments made by paragraph (1) had applied to such disposition), and

"(II) there is an unrecaptured amount with respect to such disposition,

the portion of such unrecaptured amount allocable to stock disposed of in a disposition to which the amendment made by paragraph (1) applies shall be taken into account as negative basis. To the extent permitted by the Secretary of the Treasury or his delegate, the preceding sentence shall not apply to the extent the taxpayer elects to reduce its basis in indebtedness of the corporation with respect to which there would have been an excess loss account.

"(ii) SPECIAL RULES.—For purposes of this subparagraph—

"(I) UNRECAPTURED AMOUNT.—The term 'unrecaptured amount' means the amount by which the inclusion referred to in clause (i)(I) would have been increased if the amendment made by paragraph (1) and [had] applied to the disposition.

"(II) COORDINATION WITH BINDING CONTRACT EXCEPTION.—A disposition shall be treated as occurring on or before December 15, 1987, if the amendment made by paragraph (1) does not apply to such disposition by reason of subparagraph (B)."

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XII, §1249(b), Oct. 22, 1986, 100 Stat. 2585, provided that: "The amendment made by subsection (a) [amending this section] shall apply to net operating losses for taxable years beginning after December 31, 1986."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1031(b)(4) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, see section 1031(c) of Pub. L. 94–455, set out as a note under section 904 of this title.

Amendment by section 1052(c)(5) of Pub. L. 94–455 effective with respect to taxable years beginning after Dec. 31, 1979, see section 1052(d) of Pub. L. 94–455, set out as a note under section 170 of this title.

Amendment by section 1507(b)(3) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1980, see section 1507(c) of Pub. L. 94–455, set out as a note under section 1504 of this title.

Amendment by section 1901(b)(1)(Y) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88–272, title II, §234(c), Feb. 26, 1964, 78 Stat. 116, provided that: "The amendments made by subsections (a) and (b) [amending this section and sections 12, 172, 904, 1341, 1552, and 7701 of this title] shall apply with respect to taxable years beginning after December 31, 1963."

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–780 applicable to taxable years beginning after Dec. 31, 1960, see section 4 of Pub. L. 86–780, set out as a note under section 904 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

[1] *Subsec. (a) heading editorially supplied.*

§1504. Definitions

(a) Affiliated group defined

For purposes of this subtitle—

(1) In general

The term "affiliated group" means—

(A) 1 or more chains of includible corporations connected through stock ownership with a common parent corporation which is an includible corporation, but only if—

(B)(i) the common parent owns directly stock meeting the requirements of paragraph (2) in at least 1 of the other includible corporations, and

(ii) stock meeting the requirements of paragraph (2) in each of the includible corporations (except the common parent) is owned directly by 1 or more of the other includible corporations.

(2) 80-percent voting and value test

The ownership of stock of any corporation meets the requirements of this paragraph if it—

(A) possesses at least 80 percent of the total voting power of the stock of such corporation, and

(B) has a value equal to at least 80 percent of the total value of the stock of such corporation.

(3) 5 years must elapse before reconsolidation

(A) In general

If—

(i) a corporation is included (or required to be included) in a consolidated return filed by an affiliated group for a taxable year which includes any period after December 31, 1984, and

(ii) such corporation ceases to be a member of such group in a taxable year beginning after December 31, 1984,

with respect to periods after such cessation, such corporation (and any successor of such corporation) may not be included in any consolidated return filed by the affiliated group (or by another affiliated group with the same common parent or a successor of such common parent) before the 61st month beginning after its first taxable year in which it ceased to be a member of such affiliated group.

(B) Secretary may waive application of subparagraph (A)

The Secretary may waive the application of subparagraph (A) to any corporation for any period subject to such conditions as the Secretary may prescribe.

(4) Stock not to include certain preferred stock

For purposes of this subsection, the term "stock" does not include any stock which—

(A) is not entitled to vote,

(B) is limited and preferred as to dividends and does not participate in corporate growth to any significant extent,

(C) has redemption and liquidation rights which do not exceed the issue price of such stock (except for a reasonable redemption or liquidation premium), and

(D) is not convertible into another class of stock.

(5) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection, including (but not limited to) regulations—

(A) which treat warrants, obligations convertible into stock, and other similar interests as stock, and stock as not stock,

(B) which treat options to acquire or sell stock as having been exercised,

(C) which provide that the requirements of paragraph (2)(B) shall be treated as met if the affiliated group, in reliance on a good faith determination of value, treated such requirements as met,

(D) which disregard an inadvertent ceasing to meet the requirements of paragraph (2)(B) by reason of changes in relative values of different classes of stock,

(E) which provide that transfers of stock within the group shall not be taken into account in determining whether a corporation ceases to be a member of an affiliated group, and

(F) which disregard changes in voting power to the extent such changes are disproportionate to related changes in value.

(b) Definition of "includible corporation"

As used in this chapter, the term "includible corporation" means any corporation except—

(1) Corporations exempt from taxation under section 501.

(2) Insurance companies subject to taxation under section 801.

(3) Foreign corporations.

(4) Corporations with respect to which an election under section 936 (relating to possession tax credit) is in effect for the taxable year.

[(5) Repealed. Pub. L. 94–455, title X, §1053(d)(2), Oct. 4, 1976, 90 Stat. 1649.]

(6) Regulated investment companies and real estate investment trusts subject to tax under subchapter M of chapter 1.

(7) A DISC (as defined in section 992(a)(1)).

(8) An S corporation.

(c) Includible insurance companies

Notwithstanding the provisions of paragraph (2) of subsection (b)—

(1) Two or more domestic insurance companies each of which is subject to tax under section 801 shall be treated as includible corporations for purposes of applying subsection (a) to such insurance companies alone.

(2)(A) If an affiliated group (determined without regard to subsection (b)(2)) includes one or more domestic insurance companies taxed under section 801, the common parent of such group may elect (pursuant to regulations prescribed by the Secretary) to treat all such companies as includible corporations for purposes of applying subsection (a) except that no such company shall be so treated until it has been a member of the affiliated group for the 5 taxable years immediately preceding the taxable year for which the consolidated return is filed.

(B) If an election under this paragraph is in effect for a taxable year—

(i) section 243(b)(3) and the exception provided under section 243(b)(2) with respect to subsections (b)(2) and (c) of this section,

(ii) section 542(b)(5), and

(iii) subsection (a)(4) and (b)(2)(D) of section 1563, and the reference to section 1563(b)(2)(D) contained in section 1563(b)(3)(C),

shall not be effective for such taxable year.

(d) Subsidiary formed to comply with foreign law

In the case of a domestic corporation owning or controlling, directly or indirectly, 100 percent of the capital stock (exclusive of directors' qualifying shares) of a corporation organized under the laws

of a contiguous foreign country and maintained solely for the purpose of complying with the laws of such country as to title and operation of property, such foreign corporation may, at the option of the domestic corporation, be treated for the purpose of this subtitle as a domestic corporation.

(e) Includible tax-exempt organizations

Despite the provisions of paragraph (1) of subsection (b), two or more organizations exempt from taxation under section 501, one or more of which is described in section 501(c)(2) and the others of which derive income from such 501(c)(2) organizations, shall be considered as includible corporations for the purpose of the application of subsection (a) to such organizations alone.

(f) Special rule for certain amounts derived from a corporation previously treated as a DISC

In determining the consolidated taxable income of an affiliated group for any taxable year beginning after December 31, 1984, a corporation which had been a DISC and which would otherwise be a member of such group shall not be treated as such a member with respect to—

(1) any distribution (or deemed distribution) of accumulated DISC income which was not treated as previously taxed income under section 805(b)(2)(A) of the Tax Reform Act of 1984, and

(2) any amount treated as received under section 805(b)(3) of such Act.

(Aug. 16, 1954, ch. 736, 68A Stat. 369; Mar. 13, 1956, ch. 83, §5(8), 70 Stat. 49; Pub. L. 85–866, title I, §64(d)(3), Sept. 2, 1958, 72 Stat. 1657; Pub. L. 86–69, §3(f)(1), June 25, 1959, 73 Stat. 140; Pub. L. 86–376, §2(c), Sept. 23, 1959, 73 Stat. 699; Pub. L. 86–779, §10(j), Sept. 14, 1960, 74 Stat. 1009; Pub. L. 89–389, §4(b)(3), Apr. 14, 1966, 80 Stat. 116; Pub. L. 91–172, title I, §121(a)(4), Dec. 30, 1969, 83 Stat. 537; Pub. L. 92–178, title V, §502(e), Dec. 10, 1971, 85 Stat. 550; Pub. L. 94–455, title VIII, §803(b)(3), title X, §§1051(g), 1053(d)(2), title XV, §1507(a), Oct. 4, 1976, 90 Stat. 1584, 1646, 1649, 1739; Pub. L. 95–600, title I, §141(f)(4), Nov. 6, 1978, 92 Stat. 2795; Pub. L. 96–222, title I, §101(a)(7)(L)(i)(VIII), (iv)(II), Apr. 1, 1980, 94 Stat. 199, 200; Pub. L. 98–369, div. A, title I, §60(a), title II, §211(b)(20), July 18, 1984, 98 Stat. 577, 756; Pub. L. 99–514, title X, §1024(c)(15), (16), title XVIII, §§1804(e)(1), (10), 1899A(35), Oct. 22, 1986, 100 Stat. 2408, 2800, 2804, 2960; Pub. L. 100–647, title I, §1018(d)(10), Nov. 10, 1988, 102 Stat. 3581; Pub. L. 101–508, title XI, §11814(b), Nov. 5, 1990, 104 Stat. 1388–557; Pub. L. 104–188, title I, §§1308(d)(2), 1702(h)(6), Aug. 20, 1996, 110 Stat. 1783, 1874.)

REFERENCES IN TEXT

Section 805(b)(2)(A) and (3) of the Tax Reform Act of 1984, referred to in subsec. (f)(1), (2), is section 805(b)(2)(A) and (3) of Pub. L. 98–369, which is set out as a note under section 991 of this title.

AMENDMENTS

1996—Subsec. (b)(8). Pub. L. 104–188, §1308(d)(2), added par. (8).

Subsec. (c)(2)(B)(i). Pub. L. 104–188, §1702(h)(6), inserted "section" before "243(b)(2)".

1990—Subsec. (c)(2)(B)(i). Pub. L. 101–508, §11814(b), substituted "section 243(b)(3)" for "section 243(b)(6)" and "243(b)(2)" for "section 243(b)(5)".

1988—Subsec. (b)(7). Pub. L. 100–647, §1018(d)(10)(A), amended par. (7) generally, striking out ", or any other corporation which has accumulated DISC income which is derived after December 31, 1984" after "in section 992(a)(1))".

Subsec. (f). Pub. L. 100–647, §1018(d)(10)(B), added subsec. (f).

1986—Subsec. (a)(4)(C). Pub. L. 99–514, §1804(e)(1), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: "has redemption and liquidation rights which do not exceed the paid-in capital or par value represented by such stock (except for a reasonable redemption premium in excess of such paid-in capital or par value), and".

Subsec. (b)(2). Pub. L. 99–514, §1024(c)(15), struck out "or 821" after "section 802".

Subsec. (b)(7). Pub. L. 99–514, §1804(e)(10), amended par. (7) generally. Prior to amendment, par. (7) read as follows: "A DISC or former DISC (as defined in section 992(a))."

Subsec. (c)(2)(A). Pub. L. 99–514, §1899A(35), struck out "or 821" after "section 801".

Pub. L. 99–514, §1024(c)(16), substituted "subsection (b)(2)) includes" for "subsection (b)(2) includes".

1984—Subsec. (a). Pub. L. 98–369, §60(a), in amending subsec. (a), generally, revised existing provisions of subsec. (a) into pars. (1), (2), and (4), added pars. (3) and (5), revised definition of "affiliated group", and

expanded the enumeration of securities not included under term "stock".

Subsecs. (b)(2), (c)(1), (2)(A). Pub. L. 98–369, §211(b)(20), substituted "section 801" for "section 802".

1980—Subsec. (a). Pub. L. 96–222 substituted "a tax credit employee stock ownership plan" for "an ESOP" and "employee" for "leveraged employee".

1978—Subsec. (a). Pub. L. 95–600 substituted "(within the meaning for section 409A(l)) while such securities are held under an ESOP, or qualifying employer securities (within the meaning of section 4975(e)(8)) while such securities are held under a leveraged employee stock ownership plan which meets the requirements of section 4975(e)(7)" for "within the meaning of section 301(d)(9)(A) of the Tax Reduction Act of 1975, or qualifying employer securities within the meaning of section 4975(e)(8) while such securities are held under an employee stock ownership plan which meets the requirements of section 301(d) of such Act or section 4975(e)(7), respectively".

1976—Subsec. (a). Pub. L. 94–455, §803(b)(3), substituted "dividends, employer securities within the meaning of section 301(d)(9)(A) of the Tax Reduction Act of 1976, or qualifying employer securities within the meaning of section 4975(e)(8) while such securities are held under an employee stock ownership plan which meets the requirements of section 301(d) of such Act or section 4975(e)(7), respectively" for "dividends" after "preferred as to".

Subsec. (b)(4). Pub. L. 94–455, §1051(g), substituted "Corporations with respect to which an election under section 936 (relating to possession tax credit) is in effect for the taxable year" for "Corporations entitled to the benefits of section 931, by reason of receiving a large percentage of their income from sources within possessions of the United States" in par. (4).

Subsec. (b)(5). Pub. L. 94–455, §1053(d)(2), struck out par. (5) which included corporations organized under the China Trade Act, 1922, within term "includible corporation".

Subsec. (c). Pub. L. 94–455, §1507(a), designated existing provisions as provision preceding par. (1) and par. (1), in provision preceding par. (1) as so designated, substituted "Notwithstanding the provisions" for "Despite the provisions", in par. (1) as so designated, substituted "tax under section 802 shall be treated" for "taxation under the same section of this subtitle shall be considered" and added par. (2).

1971—Subsec. (b)(7). Pub. L. 92–178 added par. (7).

1969—Subsec. (e). Pub. L. 91–172 added subsec. (e).

1966—Subsec. (b)(7). Pub. L. 89–389 struck out par. (7) exception to definition of "includible corporation" of unincorporated business enterprises subject to tax as corporations under section 1361 of this title.

1960—Subsec. (b)(6). Pub. L. 86–779 inserted "and real estate investment trusts" after "Regulated investment companies".

1959—Subsec. (b)(2). Pub. L. 86–69 struck out reference to section 811.

Subsec. (b)(8). Pub. L. 86–376 struck out par. (8) which excepted an electing small business corporation from term "includible corporation".

1958—Subsec. (b)(8). Pub. L. 85–866 added par. (8).

1956—Subsec. (b)(2), Act Mar. 13, 1956, inserted reference to section 811.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1308(d)(2) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1317(a) of Pub. L. 104–188, set out as a note under section 641 of this title.

Amendment by section 1702(h)(6) of Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, and for purposes of section 243(b)(3) of this title, references to elections under such section to include references to an election under section 243(b) of this title as in effect on Nov. 4, 1990, see section 11814(c) of Pub. L. 101–508, set out as a note under section 243 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1024(c)(15), (16) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1024(e) of Pub. L. 99–514, set out as a note under section 831 of this title.

Amendment by section 1804(e)(1), (10) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §60(b), July 18, 1984, 98 Stat. 579, as amended by Pub. L. 99–514, §2, title XVIII, §1804(e)(2)–(5), Oct. 22, 1986, 100 Stat. 2095, 2800, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1984.

"(2) SPECIAL RULE FOR CORPORATIONS AFFILIATED ON JUNE 22, 1984.—In the case of a corporation which on June 22, 1984, is a member of an affiliated group which files a consolidated return for such corporation's taxable year which includes June 22, 1984, for purposes of determining whether such corporation continues to be a member of such group for taxable years beginning before January 1, 1988, the amendment made by subsection (a) [amending this section] shall not apply. The preceding sentence shall cease to apply as of the first day after June 22, 1984, on which such corporation does not qualify as a member of such group under section 1504(a) of the Internal Revenue Code of 1954 [now 1986] (as in effect on the day before the date of the enactment of this Act [July 18, 1984]).

"(3) SPECIAL RULE NOT TO APPLY TO CERTAIN SELL-DOWNS AFTER JUNE 22, 1984.—If—

"(A) the requirements of paragraph (2) are satisfied with respect to a corporation,

"(B) more than a de minimis amount of the stock of such corporation—

"(i) is sold or exchanged (including in a redemption), or

"(ii) is issued,

after June 22, 1984 (other than in the ordinary course of business), and

"(C) the requirements of the amendment made by subsection (a) are not satisfied after such sale, exchange, or issuance,

then the amendment made by subsection (a) [amending this section] shall apply for purposes of determining whether such corporation continues to be a member of the group. The preceding sentence shall not apply to any transaction if such transaction does not reduce the percentage of the fair market value of the stock of the corporation referred to in the preceding sentence held by members of the group determined without regard to this paragraph.

"(4) EXCEPTION FOR CERTAIN SELL-DOWNS.—Subsection (b)(2) (and not subsection (b)(3)) will apply to a corporation if such corporation issues or sells stock after June 22, 1984, pursuant to a registration statement filed with the Securities and Exchange Commission on or before June 22, 1984, but only if the requirements of the amendment made by subsection (a) [amending this section] (substituting 'more than 50 percent' for 'at least 80 percent' in paragraph (2)(B) of section 1504(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) are satisfied immediately after such issuance or sale and at all times thereafter until the first day of the first taxable year beginning after December 31, 1987. For purposes of the preceding sentence, if there is a letter of intent between a corporation and a securities underwriter entered into on or before June 22, 1984, and the subsequent issuance or sale is effected pursuant to a registration statement filed with the Securities and Exchange Commission, such stock shall be treated as issued or sold pursuant to a registration statement filed with the Securities and Exchange Commission on or before June 22, 1984.

"(5) NATIVE CORPORATIONS.—

"(A) In the case of a Native Corporation established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), or a corporation all of whose stock is owned directly by such a corporation, during any taxable year (beginning after the effective date of these amendments and before 1992), or any part thereof, in which the Native Corporation is subject to the provisions of section 7(h)(1) of such Act (43 U.S.C. 1606(h)(1))—

"(i) the amendment made by subsection (a) [amending this section] shall not apply, and

"(ii) the requirements for affiliation under section 1504(a) of the Internal Revenue Code of 1986 before the amendment made by subsection (a) shall be applied solely according to the provisions expressly contained therein, without regard to escrow arrangements, redemption rights, or similar provisions.

"(B) Except as provided in subparagraph (C), during the period described in subparagraph (A), no provision of the Internal Revenue Code of 1986 (including sections 269 and 482) or principle of law shall apply to deny the benefit or use of losses incurred or credits earned by a corporation described in subparagraph (A) to the affiliated group of which the Native Corporation is the common parent.

"(C) Losses incurred or credits earned by a corporation described in subparagraph (A) shall be subject to the general consolidated return regulations, including the provisions relating to separate return limitation

years, and to sections 382 and 383 of the Internal Revenue Code of 1986.

"(D) Losses incurred and credits earned by a corporation which is affiliated with a corporation described in subparagraph (A) shall be treated as having been incurred or earned in a separate return limitation year, unless the corporation incurring the losses or earning the credits satisfies the affiliation requirements of section 1504(a) without application of subparagraph (A).

"(6) TREATMENT OF CERTAIN CORPORATIONS AFFILIATED ON JUNE 22, 1984.—In the case of an affiliated group which—

"(A) has as its common parent a Minnesota corporation incorporated on April 23, 1940, and

"(B) has a member which is a New York corporation incorporated on November 13, 1969,

for purposes of determining whether such New York corporation continues to be a member of such group, paragraph (2) shall be applied by substituting for 'January 1, 1988,' the earlier of January 1, 1994, or the date on which the voting power of the preferred stock in such New York corporation terminates.

"(7) ELECTION TO HAVE AMENDMENTS APPLY FOR YEARS BEGINNING AFTER 1983.—If the common parent of any group makes an election under this paragraph, notwithstanding any other provision of this subsection, the amendments made by subsection (a) [amending this section] shall apply to such group for taxable years beginning after December 31, 1983. Any such election, once made, shall be irrevocable.

"(8) TREATMENT OF CERTAIN AFFILIATED GROUPS.—If—

"(A) a corporation (hereinafter in this paragraph referred to as the 'parent') was incorporated in 1968 and filed consolidated returns as the parent of an affiliated group for each of its taxable years ending after 1969 and before 1985,

"(B) another corporation (hereinafter in this paragraph referred to as the 'subsidiary') became a member of the parent's affiliated group in 1978 by reason of a recapitalization pursuant to which the parent increased its voting interest in the subsidiary from not less than 56 percent to not less than 85 percent, and

"(C) such subsidiary is engaged (or was on September 27, 1985, engaged) in manufacturing and distributing a broad line of business systems and related supplies for binding, laminating, shredding, graphics, and providing secure identification,

then, for purposes of determining whether such subsidiary corporation is a member of the parent's affiliated group under section 1504(a) of the Internal Revenue Code of 1954 [now 1986] (as amended by subsection (a)), paragraph (2)(B) of such section 1504(a) shall be applied by substituting '55 percent' for '80 percent'.

"(9) TREATMENT OF CERTAIN CORPORATIONS AFFILIATED DURING 1971.— In the case of a group of corporations which filed a consolidated Federal income tax return for the taxable year beginning during 1971 and which—

"(A) included as a common parent on December 31, 1971, a Delaware corporation incorporated on August 26, 1969, and

"(B) included as a member thereof a Delaware corporation incorporated on November 8, 1971,

for taxable years beginning after December 31, 1970, and ending before January 1, 1988, the requirements for affiliation for each member of such group under section 1504(a) of the Internal Revenue Code of 1954 [now 1986] (before the amendment made by subsection (a) [amending this section]) shall be limited solely to the provisions expressly contained therein and by reference to stock issued under State law as common or preferred stock. During the period described in the preceding sentence, no provision of the Internal Revenue Code of 1986 (including sections 269 and 482) or principle of law, except the general consolidated return regulations (including the provisions relating to separate return limitation years) and sections 382 and 383 of such Code, shall apply to deny the benefit or use of losses incurred or credits earned by members of such group."

Amendment by section 211(b)(20) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 effective with respect to qualified investment for taxable years beginning after Dec. 31, 1978, see section 141(g)(1) of Pub. L. 95–600, set out as a Effective Date note under section 409 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 803(b)(3) of Pub. L. 94–455 applicable for taxable years beginning after Dec. 31,

1974, see section 803(j) of Pub. L. 94–455, set out as a note under section 46 of this title.

Amendment by section 1051(g) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, see section 1051(i) of Pub. L. 94–455, set out as a note under section 27 of this title.

Pub. L. 94–455, title X, §1053(e), Oct. 4, 1976, 90 Stat. 1649, provided that: "The amendments made by subsections (a) and (b) [amending section 941 and 943 of this title] shall apply with respect to taxable years beginning after December 31, 1975. The amendments made by subsections (c) and (d) [amending this section and sections 116, 6072, and 6091 of this title and repealing sections 941–943 of this title] shall apply with respect to taxable years beginning after December 31, 1977."

Pub. L. 94–455, title XV, §1507(c)(1), Oct. 4, 1976, 90 Stat. 1740, provided that: "The amendments made by subsections (a) and (b) [amending this section and sections 821, 843, and 1503 of this title] shall apply to taxable years beginning after December 31, 1980."

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–178 applicable with respect to taxable years ending after Dec. 31, 1971, except that a corporation may not be a DISC for any taxable year beginning before Jan. 1, 1972, see section 507 of Pub. L. 92–178, set out as an Effective Date note under section 991 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 121(g) of Pub. L. 91–172, set out as a note under section 511 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89–389, §4(b), Apr. 14, 1966, 80 Stat. 116, provided that the amendment made by that section is effective on Jan. 1, 1969.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–779 applicable with respect to taxable years of real estate investment trusts beginning after Dec. 31, 1960, see section 10(k) of Pub. L. 86–779, set out as an Effective Date note under section 856 of this title.

EFFECTIVE DATE OF 1959 AMENDMENTS

Pub. L. 86–376, §2(d), Sept. 23, 1959, 73 Stat. 699, provided that: "The amendment made by subsection (a) [amending section 1371 of this title] shall apply to taxable years beginning after December 31, 1959. The amendments made by subsections (b) and (c) [amending this section and section 1374 of this title] shall take effect on the day after the date of the enactment of this Act [Sept. 23, 1959]."

Amendment by Pub. L. 86–69 applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 4 of Pub. L. 86–69, set out as an Effective Date note under section 381 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable only with respect to taxable years beginning after Dec. 31, 1958, see section 64(e) of Pub. L. 85–866, set out as a note under section 172 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Mar. 13, 1956, applicable only to taxable years beginning after Dec. 31, 1954, see section 6 of act Mar. 13, 1956, set out as a note set out under section 316 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

REPEAL OF RULES PERMITTING LOSS TRANSFERS BY ALASKA NATIVE CORPORATIONS

Pub. L. 100–647, title V, §5021, Nov. 10, 1988, 102 Stat. 3666, as amended by Pub. L. 101–239, title VII, §7815(b), Dec. 19, 1989, 103 Stat. 2414, provided that:

"(a) GENERAL RULE.—Nothing in section 60(b)(5) of the Tax Reform Act of 1984 (as amended by section 1804(e)(4) of the Tax Reform Act of 1986) [section 60(b)(5) of Pub. L. 98–369, set out as an Effective Date of 1984 Amendment note above]—

"(1) shall allow any loss (or credit) of any corporation which arises after April 26, 1988, to be used to offset the income (or tax) of another corporation if such use would not be allowable without regard to such

section 60(b)(5) as so amended, or

"(2) shall allow any loss (or credit) of any corporation which arises on or before such date to be used to offset disqualified income (or tax attributable to such income) of another corporation if such use would not be allowable without regard to such section 60(b)(5) as so amended.

"(b) EXCEPTION FOR EXISTING CONTRACTS.—

"(1) IN GENERAL.—Subsection (a) shall not apply to any loss (or credit) of any corporation if—

"(A) such corporation was in existence on April 26, 1988, and

"(B) such loss (or credit) is used to offset income assigned (or attributable to property contributed) pursuant to a binding contract entered into before July 26, 1988.

"(2) $40,000,000 LIMITATION.—The aggregate amount of losses (and the deduction equivalent of credits as determined in the same manner as under section 469(j)(5) of the 1986 Code) to which paragraph (1) applies with respect to any corporation shall not exceed $40,000,000. For purposes of this paragraph, a Native Corporation and all other corporations all of the stock of which is owned directly by such corporation shall be treated as 1 corporation.

"(3) SPECIAL RULE FOR CORPORATIONS UNDER TITLE 11.—In the case of a corporation which on April 26, 1988, was under the jurisdiction of a Federal district court under title 11 of the United States Code—

"(A) paragraph (1)(B) shall be applied by substituting the date 1 year after the date of the enactment of this Act [Nov. 10, 1988] for 'July 26, 1988',

"(B) paragraph (1) shall not apply to any loss or credit which arises on or after the date 1 year after the date of the enactment of this Act, and

"(C) paragraph (2) shall be applied by substituting '$99,000,000' for '$40,000,000'.

"(c) SPECIAL ADMINISTRATIVE RULES.—

"(1) NOTICE TO NATIVE CORPORATIONS OF PROPOSED TAX ADJUSTMENTS .—Notwithstanding section 6103 of the 1986 Code, the Secretary of the Treasury or his delegate shall notify a Native Corporation or its designated representative of any proposed adjustment—

"(A) of the tax liability of a taxpayer which has contracted with the Native Corporation (or other corporation all of the stock of which is owned directly by the Native Corporation) for the use of losses of such Native Corporation (or such other corporation), and

"(B) which is attributable to an asserted overstatement of losses by, or misassignment of income (or income attributable to property contributed) to, an affiliated group of which the Native Corporation (or such other corporation) is a member.

Such notice shall only include information with respect to the transaction between the taxpayer and the Native Corporation.

"(2) RIGHTS OF NATIVE CORPORATION.—

"(A) IN GENERAL.—If a Native Corporation receives a notice under paragraph (1), the Native Corporation shall have the right to—

"(i) submit to the Secretary of the Treasury or his delegate a written statement regarding the proposed adjustment, and

"(ii) meet with the Secretary of the Treasury or his delegate with respect to such proposed adjustment.

The Secretary of the Treasury or his delegate may discuss such proposed adjustment with the Native Corporation or its designated representative.

"(B) EXTENSION OF STATUTE OF LIMITATIONS.—Subparagraph (A) shall not apply if the Secretary of the Treasury or his delegate determines that an extension of the statute of limitation[s] is necessary to permit the participation described in subparagraph (A) and the taxpayer and the Secretary or his delegate have not agreed to such extension.

"(3) JUDICIAL PROCEEDINGS.—In the case of any proceeding in a Federal court or the United States Tax Court involving a proposed adjustment under paragraph (1), the Native Corporation, subject to the rules of such court, may file an amicus brief concerning such adjustment.

"(4) FAILURES.—For purposes of the 1986 Code, any failure by the Secretary of the Treasury or his delegate to comply with the provisions of this subsection shall not affect the validity of the determination of the Internal Revenue Service of any adjustment of tax liability of any taxpayer described in paragraph (1).

"(d) DISQUALIFIED INCOME DEFINED.—For purposes of subsection (a), the term 'disqualified income' means any income assigned (or attributable to property contributed) after April 26, 1988, by a person who is not a Native Corporation or a corporation all the stock of which is owned directly by a Native Corporation.

"(e) BASIS DETERMINATION.—For purposes of determining basis for Federal tax purposes, no provision in any law enacted after the date of the enactment of this Act [Nov. 10, 1988] shall affect the date on

which the transfer to the Native Corporation is made. The preceding sentence shall apply to all taxable years whether beginning before, on, or after such date of enactment."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TRANSACTION RULES

Pub. L. 94–455, title XV, §1507(c)(2), Oct. 4, 1976, 90 Stat. 1740, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(A) LIMITATIONS ON CARRYOVERS OR CARRYBACKS FOR GROUPS ELECTING UNDER SECTION 1504(c)(2).—If an affiliated group elects to file a consolidated return pursuant to section 1501(c)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] a carryover of a loss or credit from a taxable year ending before January 1, 1981, and losses or credits which may be carried back to taxable years ending before such date, shall be taken into account as if this section had not been enacted.

"(B) NONTERMINATION OF AFFILIATED GROUP.—The mere election to file a consolidated return pursuant to such section 1504(c)(2) shall not cause the termination of an affiliated group filing consolidated returns."

§1505. Cross references

(1) For suspension of running of statute of limitations when notice in respect of a deficiency is mailed to one corporation, see section 6503(a)(1).

(2) For allocation of income and deductions of related trades or businesses, see section 482.

(Aug. 16, 1954, ch. 736, 68A Stat. 370.)

Subchapter B—Related Rules

Part		Sec.[1]
I.	**In general**	**1551**
II.	**Certain controlled corporations**	**1561**

[1] *Section numbers editorially supplied.*

PART I—IN GENERAL

Sec.

1551. Disallowance of the benefits of the graduated corporate rates and accumulated earnings credit.

1552. Earnings and profits.

AMENDMENTS

1978—Pub. L. 95–600, title III, §301(b)(18)(C), Nov. 6, 1978, 92 Stat. 2823, in item 1551 substituted "the benefits of the graduated corporate rates" for "surtax exemption".

1964—Pub. L. 88–272, title II, §235(c)(4), Feb. 26, 1964, 78 Stat. 127, inserted table of parts, and heading for part I.

§1551. Disallowance of the benefits of the graduated corporate rates and accumulated earnings credit

(a) In general

If—

(1) any corporation transfers, on or after January 1, 1951, and on or before June 12, 1963, all or part of its property (other than money) to a transferee corporation,

(2) any corporation transfers, directly or indirectly, after June 12, 1963, all or part of its property (other than money) to a transferee corporation, or

(3) five or fewer individuals who are in control of a corporation transfer, directly or indirectly, after June 12, 1963, property (other than money) to a transferee corporation,

and the transferee corporation was created for the purpose of acquiring such property or was not actively engaged in business at the time of such acquisition, and if after such transfer the transferor or transferors are in control of such transferee corporation during any part of the taxable year of such transferee corporation, then for such taxable year of such transferee corporation the Secretary may (except as may be otherwise determined under subsection (c)) disallow the benefits of the rates contained in section 11(b) which are lower than the highest rate specified in such section, or the accumulated earnings credit provided in paragraph (2) or (3) of section 535(c), unless such transferee corporation shall establish by the clear preponderance of the evidence that the securing of such benefits or credit was not a major purpose of such transfer.

(b) Control

For purposes of subsection (a), the term "control" means—

(1) With respect to a transferee corporation described in subsection (a)(1) or (2), the ownership by the transferor corporation, its shareholders, or both, of stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of the stock; or

(2) With respect to each corporation described in subsection (a)(3), the ownership by the five or fewer individuals described in such subsection of stock possessing—

(A) at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of the stock of each corporation, and

(B) more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such individual only to the extent such stock ownership is identical with respect to each such corporation.

For purposes of this subsection, section 1563(e) shall apply in determining the ownership of stock.

(c) Authority of the Secretary under this section

The provisions of section 269(c) and the authority of the Secretary under such section, shall, to the extent not inconsistent with the provisions of this section, be applicable to this section.

(Aug. 16, 1954, ch. 736, 68A Stat. 371; Pub. L. 85–866, title II, §205(a), Sept. 2, 1958, 72 Stat. 1680; Pub. L. 88–272, title II, §235(b), Feb. 26, 1964, 78 Stat. 125; Pub. L. 94–12, title III, §304(b), Mar. 29, 1975, 89 Stat. 45; Pub. L. 94–455, title XIX, §§1901(a)(158), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1790, 1834; Pub. L. 95–600, title III, §301(b)(18)(A), (B), Nov. 6, 1978, 92 Stat. 2823; Pub. L. 97–34, title II, §232(b)(2), Aug. 13, 1981, 95 Stat. 250; Pub. L. 99–514, title XVIII, §1899A(36), Oct. 22, 1986, 100 Stat. 2960.)

AMENDMENTS

1986—Subsec. (c). Pub. L. 99–514 substituted "section 269(c)" for "section 269(b)".

1981—Subsec. (a). Pub. L. 97–34 struck out "$150,000" before "accumulated earnings credit".

1978—Pub. L. 95–600, §301(b)(18)(B), substituted "the benefits of the graduated corporate rates" for "surtax exemption" in section catchline.

Subsec. (a). Pub. L. 95–600, §301(b)(18)(A), in provisions following par. (3) substituted "disallow the benefits of the rates contained in section 11(b) which are lower than the highest rate specified in such section" for "disallow the surtax exemption (as defined in section 11(d))" and "such benefits or" for "such exemption or".

1976—Subsec. (a). Pub. L. 94–455 §§1901(a)(158), 1906(b)(13)(A), substituted "subsection (c)" for "subsection (d)" after "determined under" and struck out "or his delegate" after "Secretary".

1975—Subsec. (a). Pub. L. 94–12 substituted "$150,000" for "$100,000".

1964—Pub. L. 88–272 amended section generally, and among other changes, designated provisions as subsecs. (a) to (c), included among corporations who are disallowed surtax exemption and accumulated earnings credit, corporations, and five or fewer individuals in charge of a corporation who, directly or indirectly, transfer property in contravention of subsec. (a) after June 12, 1963, substituted provisions permitting the Secretary or his delegate to disallow the exemption or the earnings credit, for provisions which disallowed the exemption and the credit except as otherwise determined by the Secretary of his delegate, provisions that for purposes of determining ownership of stock, section 1563(e) shall apply, for provisions which determined ownership in accordance with section 544, and defined control, with respect to corporations described in subsec. (a)(3), to include the additional test as stated in subsec. (b)(2)(B).

1958—Pub. L. 85–866 substituted "$100,000" for "$60,000".

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 232(c) of Pub. L. 97–34, set out as a note under section 535 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95–600, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(158) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–12 applicable to taxable years beginning after Dec. 31, 1974, see section 305(c) of Pub. L. 94–12, set out as a note under section 535 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88–272, title II, §235(d), Feb. 26, 1964, 78 Stat. 127, provided that: "The amendments made by subsections (a) and (c) [enacting sections 1561 to 1563 of this title and amending sections 269, 441, and 802 of this title] shall apply with respect to taxable years ending after December 31, 1963. The amendment made by subsection (b) [amending this section] shall apply with respect to transfers made after June 12, 1963."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable with respect to taxable years beginning after Dec. 31, 1957, see section 205(b) of Pub. L. 85–866, set out as a note under section 535 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§1552. Earnings and profits

(a) General rule

Pursuant to regulations prescribed by the Secretary the earnings and profits of each member of an affiliated group required to be included in a consolidated return for such group filed for a taxable year shall be determined by allocating the tax liability of the group for such year among the members of the group in accord with whichever of the following methods the group shall elect in its first consolidated return filed for such a taxable year:

(1) The tax liability shall be apportioned among the members of the group in accordance with the ratio which that portion of the consolidated taxable income attributable to each member of the group having taxable income bears to the consolidated taxable income.

(2) The tax liability of the group shall be allocated to the several members of the group on the basis of the percentage of the total tax which the tax of such member if computed on a separate return would bear to the total amount of the taxes for all members of the group so computed.

(3) The tax liability of the group (excluding the tax increases arising from the consolidation) shall be allocated on the basis of the contribution of each member of the group to the consolidated taxable income of the group. Any tax increases arising from the consolidation shall be distributed to the several members in direct proportion to the reduction in tax liability resulting to such members from the filing of the consolidated return as measured by the difference between their tax liabilities determined on a separate return basis and their tax liabilities based on their contributions to the consolidated taxable income.

(4) The tax liability of the group shall be allocated in accord with any other method selected by the group with the approval of the Secretary.

(b) Failure to elect

If no election is made in such first return, the tax liability shall be allocated among the several members of the group pursuant to the method prescribed in subsection (a)(1).

(Aug. 16, 1954, ch. 736, 68A Stat. 371; Pub. L. 88–272, title II, §234(b)(8), Feb. 26, 1964, 78 Stat. 116; Pub. L. 94–455, title XIX, §§1901(a)(159), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1790, 1834.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94–455, §§1901(a)(159), 1906(b)(13)(A), struck out "beginning after December 31, 1953, and ending after the date of enactment of this title" after "group filed for a taxable year", and "or his delegate" after "Secretary" in two places.

1964—Subsec. (a)(3). Pub. L. 88–272 struck out "(determined without regard to the 2 percent increase provided by section 1503(a))", before "based on their contributions".

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(159) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 234(c) of Pub. L. 88–272, set out as a note under section 1503 of this title.

PART II—CERTAIN CONTROLLED CORPORATIONS

Sec.
1561. Limitations on certain multiple tax benefits in the case of certain controlled corporations.
[1562. Repealed.]
1563. Definitions and special rules.
[1564. Repealed.]

AMENDMENTS

1990—Pub. L. 101–508, title XI, §11801(b)(12), Nov. 5, 1990, 104 Stat. 1388–522, struck out item 1564 "Transitional rules in the case of certain controlled corporations".

1969—Pub. L. 91–172, title IV, §401(a)(3), (b)(2)(E), Dec. 30, 1969, 83 Stat. 600, 602, substituted "Sec. 1561. Limitations on certain multiple tax benefits in the case of certain controlled corporations." for "Sec. 1561. Surtax exemptions in case of certain controlled corporations.", and struck out item 1562, effective with respect to taxable years beginning after Dec. 31, 1974, and added item 1564.

1964—Pub. L. 88–272, title II, §235(a), Feb. 26, 1964, 78 Stat. 116, added designation of part II, and items 1561 to 1563.

§1561. Limitations on certain multiple tax benefits in the case of certain

controlled corporations

(a) General rule

The component members of a controlled group of corporations on a December 31 shall, for their taxable years which include such December 31, be limited for purposes of this subtitle to—

(1) amounts in each taxable income bracket in the tax table in section 11(b)(1) which do not aggregate more than the maximum amount in such bracket to which a corporation which is not a component member of a controlled group is entitled,

(2) one $250,000 ($150,000 if any component member is a corporation described in section 535(c)(2)(B)) amount for purposes of computing the accumulated earnings credit under section 535(c)(2) and (3),

(3) one $40,000 exemption amount for purposes of computing the amount of the minimum tax, and

(4) one $2,000,000 amount for purposes of computing the tax imposed by section 59A.

The amounts specified in paragraph (1), the amount specified in paragraph (3), and the amount specified in paragraph (4) shall be divided equally among the component members of such group on such December 31 unless all of such component members consent (at such time and in such manner as the Secretary shall by regulations prescribe) to an apportionment plan providing for an unequal allocation of such amounts. The amounts specified in paragraph (2) shall be divided equally among the component members of such group on such December 31 unless the Secretary prescribes regulations permitting an unequal allocation of such amounts. Notwithstanding paragraph (1), in applying the last 2 sentences of section 11(b)(1) to such component members, the taxable income of all such component members shall be taken into account and any increase in tax under such last 2 sentences shall be divided among such component members in the same manner as amounts under paragraph (1). In applying section 55(d)(3), the alternative minimum taxable income of all component members shall be taken into account and any decrease in the exemption amount shall be allocated to the component members in the same manner as under paragraph (3).

(b) Certain short taxable years

If a corporation has a short taxable year which does not include a December 31 and is a component member of a controlled group of corporations with respect to such taxable year, then for purposes of this subtitle—

(1) the amount in each taxable income bracket in the tax table in section 11(b), and

(2) the amount to be used in computing the accumulated earnings credit under section 535(c)(2) and (3),

of such corporation for such taxable year shall be the amount specified in subsection (a)(1) or (2), as the case may be, divided by the number of corporations which are component members of such group on the last day of such taxable year. For purposes of the preceding sentence, section 1563(b) shall be applied as if such last day were substituted for December 31.

(Added Pub. L. 88–272, title II, §235(a), Feb. 26, 1964, 78 Stat. 116; amended Pub. L. 91–172, title IV, §401(a)(1), Dec. 30, 1969, 83 Stat. 599; Pub. L. 94–12, title III, §§303(c)(1), 304(b), Mar. 29, 1975, 89 Stat. 44, 45; Pub. L. 94–164, §4(d)(1), Dec. 23, 1975, 89 Stat. 974; Pub. L. 94–455, title IX, §901(c)(1), title XIX, §§1901(b)(1)(J)(v), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1607, 1791, 1834; Pub. L. 95–600, title III, §301(b)(19), title VII, §703(j)(7), Nov. 6, 1978, 92 Stat. 2823, 2941; Pub. L. 97–34, title II, §232(b)(3), Aug. 13, 1981, 95 Stat. 250; Pub. L. 97–248, title II, §259(b), (c), Sept. 3, 1982, 96 Stat. 539; Pub. L. 98–369, div. A, title I, §66(b), title II, §211(b)(21), July 18, 1984, 98 Stat. 585, 756; Pub. L. 99–499, title V, §516(b)(3), Oct. 17, 1986, 100 Stat. 1771; Pub. L. 99–514, title VII, §701(e)(2), Oct. 22, 1986, 100 Stat. 2342; Pub. L. 100–647, title II, §2004(l), Nov. 10, 1988, 102 Stat. 3606; Pub. L. 104–188, title I, §1703(f), Aug. 20, 1996, 110 Stat. 1876.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–188 in closing provisions substituted "last 2 sentences" for "last sentence"

in two places.

1988—Subsec. (a). Pub. L. 100–647 substituted "section 11(b)(1)" for "section 11(b)" in par. (1) and in penultimate sentence.

1986—Subsec. (a). Pub. L. 99–514 added par. (3), and in concluding provisions, substituted "amounts specified in paragraph (1) (and the amount specified in paragraph (3))" for "amounts specified in paragraph (1)" and inserted "In applying section 55(d)(3), the alternative minimum taxable income of all component members shall be taken into account and any decrease in the exemption amount shall be allocated to the component members in the same manner as under paragraph (3)."

Pub. L. 99–499, in subsec. (a) as amended by Pub. L. 99–514 above, added par. (4), and in concluding provisions substituted ", the amount specified in paragraph (3), and the amount specified in paragraph (4)" for "(and the amount specified in paragraph (3))".

1984—Subsec. (a). Pub. L. 98–369, §211(b)(21)(A), inserted "and" at end of par. (1), substituted a period for the comma at end of par. (2), struck out par. (3) which read as follows: "one $25,000 amount for purposes of computing the limitation on the small business deduction of life insurance companies under sections 804(a)(3) and 809(d)(10), and", struck out par. (4) which read as follows: "one $1,000,000 amount (adjusted as provided in section 809(f)(3) for purposes of computing the limitation under paragraph (1) or (2) of section 809(f).", and substituted "paragraph (2)" for "paragraphs (2), (3), and (4)" in concluding provisions.

Pub. L. 98–369, §66(b), inserted provision that notwithstanding paragraph (1), in applying last sentence of section 11(b) to such component members, the taxable income of all such component members shall be taken into account and any increase in tax under the last sentence shall be divided among such component members in the same manner as amounts under paragraph (1).

Subsec. (b). Pub. L. 98–369, §211(b)(21)(B), inserted "and" at end of par. (1), struck out par. (3) which read as follows: "the amount to be used in computing the limitation on the small business deduction of life insurance companies under sections 804(a)(3) and 809(d)(10), and", struck out par. (4) which read as follows: "the amount (adjusted as provided in section 809(f)(3)) to be used in computing the limitation under paragraph (1) or (2) of section 809(f),", and substituted "or (2)" for ", (2), (3), or (4)" in concluding provisions.

1982—Subsec. (a). Pub. L. 97–248, §259(b), added par. (4) and inserted reference to par. (4) in text following par. (4).

Subsec. (b). Pub. L. 97–248, §259(c), added par. (4) and inserted reference to subsec. (a)(4) in text following par. (4).

1981—Subsec. (a)(2). Pub. L. 97–34 substituted "$250,000 ($150,000 if any component member is a corporation described in section 535(c)(2)(B))" for "$150,000".

1978—Subsec. (a). Pub. L. 95–600, §301(b)(19)(A), in par. (1) substituted "amounts in each taxable income bracket in the tax table in section 11(b) which do not aggregate more than the maximum amount in such bracket to which a corporation is not a component member of a controlled group is entitled" for "the surtax exemption under section 11(d)" and in provisions following par. (3) substituted "amounts" for "amount" in two places and struck out provision that in applying section 11(b)(2), the first $25,000 of taxable income and the second $25,000 of taxable income each be allocated among the component members of a controlled group of corporations in the same manner as the surtax exemption is allocated.

Subsec. (b)(1). Pub. L. 95–600, §301(b)(19)(B), substituted "the amount in each taxable income bracket in the tax table in section 11(b)" for "the surtax exemption under section 11(d)".

Subsec. (b)(3). Pub. L. 95–600, §703(j)(7), substituted "804(a)(3)" for "804(a)(4)".

1976—Subsec. (a). Pub. L. 94–455, §§901(c)(1), 1906(b)(13)(A), inserted "In applying section 11(b)(2), the first $25,000 of taxable income and the second $25,000 of taxable income shall each be allocated among the component members of a controlled group of corporations in the same manner as the surtax exemption is allocated" after "unequal allocation of such amounts" and struck out "or his delegate" after "Secretary" in two places.

Subsec. (a)(3). Pub. L. 94–455, §1901(b)(1)(J)(v), substituted "804(a)(3)" for "804(a)(4)" after "under sections".

1975—Subsec. (a)(1). Pub. L. 94–164 struck out "$25,000" in par. (1) as par. (1) is in effect for taxable years ending after Dec. 31, 1975.

Pub. L. 94–12, §303(c)(1), substituted "$50,000" for "$25,000".

Subsec. (a)(2). Pub. L. 94–12, §304(b), substituted "$150,000" for "$100,000".

1969—Pub. L. 91–172 provided, with respect to taxable years beginning after Dec. 31, 1974, that a controlled group of corporations is limited to one $25,000 surtax exemption under section 11(d), one $100,000 amount for purposes of computing the accumulated earnings credit under section 535(c)(2) and (3), and one $25,000 amount for purposes of computing the limitation on the small business deduction of life insurance companies under sections 804(a)(4) and 809(d)(10).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103–66, §§13001–13444, to which such amendment relates, see section 1703(o) of Pub. L. 104–188, set out as a note under section 39 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date note under section 55 of this title.

Amendment by Pub. L. 99–499 applicable to taxable years beginning after Dec. 31, 1986, see section 516(c) of Pub. L. 99–499, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 66(b) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 66(c) of Pub. L. 98–369, set out as a note under section 11 of this title.

Amendment by section 211(b)(21) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

EFFECTIVE AND TERMINATION DATE OF 1982 AMENDMENT

Pub. L. 97–248, title II, §263(a)(1), Sept. 3, 1982, 96 Stat. 541, provided that the amendment made by section 259(b), (c) of Pub. L. 97–248 is applicable to taxable years beginning after Dec. 31, 1981, and before Jan. 1, 1984.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 232(c) of Pub. L. 97–34, set out as a note under section 535 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 301(b)(19) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95–600, set out as a note under section 11 of this title.

Amendment by section 703(j)(7) of Pub. L. 95–600 effective on Oct. 4, 1976, see section 703(r) of Pub. L. 95–600, set out as a note under section 46 of this title.

EFFECTIVE DATES OF 1976 AMENDMENT

Amendment by section 901(c)(1) of Pub. L. 94–455 applicable to taxable years ending after Dec. 31, 1975, see section 901(d) of Pub. L. 94–455, set out as a note under section 11 of this title.

Amendment by section 1901(b)(1)(J)(v) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE AND TERMINATION DATES OF 1975 AMENDMENT

Amendment by Pub. L. 94–164 applicable to taxable years beginning after Dec. 31, 1975, see section 4(e) of Pub. L. 94–164, set out as a note under section 11 of this title.

Amendment by section 303(c)(1) of Pub. L. 94–12 applicable to taxable years ending after Dec. 31, 1974, but to cease to apply for taxable years ending after Dec. 31, 1975, see section 305(b)(1) of Pub. L. 94–12, set out as a note under section 11 of this title.

Amendment by section 304(b) of Pub. L. 94–12 applicable to taxable years beginning after Dec. 31, 1974, see section 305(c) of Pub. L. 94–12, set out as an Effective Date of 1975 Amendment note under section 535 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title IV, §401(h), Dec. 30, 1969, 83 Stat. 604, provided that:

"(1) The amendments made by subsection (a) [amending this section and repealing section 1562 of this title] shall apply with respect to taxable years beginning after December 31, 1974.

"(2) The amendments made by subsection (b) [enacting section 1564 and amending sections 11, 535, 804,

and 1562] shall apply with respect to taxable years beginning after December 31, 1969.

"(3) The amendments made by subsections (c), (d), (e), and (f) [amending sections 46, 48, 179, and 1563] shall apply with respect to taxable years ending on or after December 31, 1970."

EFFECTIVE DATE

Section applicable with respect to taxable years ending after Dec. 31, 1963, see section 235(d) of Pub. L. 88–272, set out as an Effective Date of 1964 Amendment note under section 1551 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(e)(2) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, see section 1012(aa)(2) of Pub. L. 100–647, set out as a note under section 861 of this title.

[§1562. Repealed. Pub. L. 91–172, title IV, §401(a)(2), Dec. 30, 1969, 83 Stat. 600]

Section, added Pub. L. 88–272, title II, §235(a), Feb. 26, 1964, 78 Stat. 117, amended Pub. L. 91–172, title IV, §401(b)(2)(A), Dec. 30, 1969, 83 Stat. 602, set limits on the privilege of groups to elect multiple surtax exemptions.

EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to taxable years beginning after Dec. 31, 1974, see section 401(h)(1) of Pub. L. 91–172, set out as an Effective Date of 1969 Amendment note under section 1561 of this title.

RETROACTIVE TERMINATION OF ELECTIONS

Pub. L. 91–172, title IV, §401(g), Dec. 30, 1969, 83 Stat. 604, authorized an affiliated group of corporations making a consolidated return for the taxable year which included Dec. 31, 1970, to terminate the election under section 1562 of this title with respect to any prior Dec. 31 which was included in a taxable year of any such corporations from which there was a net operating loss carryover to the 1970 consolidated return year and provided that the termination of such election was to be valid only if in accord with subsecs. (c)(1) and (e) of section 1562 of this title other than the requirement of making the termination prior to the expiration of the 3 year period specified in subsec. (e) of section 1562 of this title.

§1563. Definitions and special rules

(a) Controlled group of corporations

For purposes of this part, the term "controlled group of corporations" means any group of—

(1) Parent-subsidiary controlled group

One or more chains of corporations connected through stock ownership with a common parent corporation if—

(A) stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of stock of each of the corporations, except the common parent corporation, is owned (within the meaning of subsection (d)(1)) by one or more of the other corporations; and

(B) the common parent corporation owns (within the meaning of subsection (d)(1)) stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of stock of at least one of the other corporations, excluding, in computing such voting power or value, stock owned directly by such other corporations.

(2) Brother-sister controlled group

Two or more corporations if 5 or fewer persons who are individuals, estates, or trusts own (within the meaning of subsection (d)(2)) stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership

of each such person only to the extent such stock ownership is identical with respect to each such corporation.

(3) Combined group

Three or more corporations each of which is a member of a group of corporations described in paragraph (1) or (2), and one of which—

(A) is a common parent corporation included in a group of corporations described in paragraph (1), and also

(B) is included in a group of corporations described in paragraph (2).

(4) Certain insurance companies

Two or more insurance companies subject to taxation under section 801 which are members of a controlled group of corporations described in paragraph (1), (2), or (3). Such insurance companies shall be treated as a controlled group of corporations separate from any other corporations which are members of the controlled group of corporations described in paragraph (1), (2), or (3).

(b) Component member

(1) General rule

For purposes of this part, a corporation is a component member of a controlled group of corporations on a December 31 of any taxable year (and with respect to the taxable year which includes such December 31) if such corporation—

(A) is a member of such controlled group of corporations on the December 31 included in such year and is not treated as an excluded member under paragraph (2), or

(B) is not a member of such controlled group of corporations on the December 31 included in such year but is treated as an additional member under paragraph (3).

(2) Excluded members

A corporation which is a member of a controlled group of corporations on December 31 of any taxable year shall be treated as an excluded member of such group for the taxable year including such December 31 if such corporation—

(A) is a member of such group for less than one-half the number of days in such taxable year which precede such December 31,

(B) is exempt from taxation under section 501(a) (except a corporation which is subject to tax on its unrelated business taxable income under section 511) for such taxable year,

(C) is a foreign corporation subject to tax under section 881 for such taxable year,

(D) is an insurance company subject to taxation under section 801 (other than an insurance company which is a member of a controlled group described in subsection (a)(4)), or

(E) is a franchised corporation, as defined in subsection (f)(4).

(3) Additional members

A corporation which—

(A) was a member of a controlled group of corporations at any time during a calendar year,

(B) is not a member of such group on December 31 of such calendar year, and

(C) is not described, with respect to such group, in subparagraph (B), (C), (D), or (E) of paragraph (2),

shall be treated as an additional member of such group on December 31 for its taxable year including such December 31 if it was a member of such group for one-half (or more) of the number of days in such taxable year which precede such December 31.

(4) Overlapping groups

If a corporation is a component member of more than one controlled group of corporations with respect to any taxable year, such corporation shall be treated as a component member of only one controlled group. The determination as to the group of which such corporation is a component

member shall be made under regulations prescribed by the Secretary which are consistent with the purposes of this part.

(c) Certain stock excluded

(1) General rule

For purposes of this part, the term "stock" does not include—

(A) nonvoting stock which is limited and preferred as to dividends,

(B) treasury stock, and

(C) stock which is treated as "excluded stock" under paragraph (2).

(2) Stock treated as "excluded stock"

(A) Parent-subsidiary controlled group

For purposes of subsection (a)(1), if a corporation (referred to in this paragraph as "parent corporation") owns (within the meaning of subsections (d)(1) and (e)(4)), 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock in another corporation (referred to in this paragraph as "subsidiary corporation"), the following stock of the subsidiary corporation shall be treated as excluded stock—

(i) stock in the subsidiary corporation held by a trust which is part of a plan of deferred compensation for the benefit of the employees of the parent corporation or the subsidiary corporation,

(ii) stock in the subsidiary corporation owned by an individual (within the meaning of subsection (d)(2)) who is a principal stockholder or officer of the parent corporation. For purposes of this clause, the term "principal stockholder" of a corporation means an individual who owns (within the meaning of subsection (d)(2)) 5 percent or more of the total combined voting power of all classes of stock entitled to vote or 5 percent or more of the total value of shares of all classes of stock in such corporation,

(iii) stock in the subsidiary corporation owned (within the meaning of subsection (d)(2)) by an employee of the subsidiary corporation if such stock is subject to conditions which run in favor of such parent (or subsidiary) corporation and which substantially restrict or limit the employee's right (or if the employee constructively owns such stock, the direct owner's right) to dispose of such stock, or

(iv) stock in the subsidiary corporation owned (within the meaning of subsection (d)(2)) by an organization (other than the parent corporation) to which section 501 (relating to certain educational and charitable organizations which are exempt from tax) applies and which is controlled directly or indirectly by the parent corporation or subsidiary corporation, by an individual, estate, or trust that is a principal stockholder (within the meaning of clause (ii)) of the parent corporation, by an officer of the parent corporation, or by any combination thereof.

(B) Brother-sister controlled group

For purposes of subsection (a)(2), if 5 or fewer persons who are individuals, estates, or trusts (referred to in this subparagraph as "common owners") own (within the meaning of subsection (d)(2)), 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock in a corporation, the following stock of such corporation shall be treated as excluded stock—

(i) stock in such corporation held by an employees' trust described in section 401(a) which is exempt from tax under section 501(a), if such trust is for the benefit of the employees of such corporation,

(ii) stock in such corporation owned (within the meaning of subsection (d)(2)) by an employee of the corporation if such stock is subject to conditions which run in favor of any of such common owners (or such corporation) and which substantially restrict or limit the employee's right (or if the employee constructively owns such stock, the direct owner's right) to dispose of such stock. If a condition which limits or restricts the employee's right (or the direct owner's right) to dispose of such stock also applies to the stock held by any of the

common owners pursuant to a bona fide reciprocal stock purchase arrangement, such condition shall not be treated as one which restricts or limits the employee's right to dispose of such stock, or

(iii) stock in such corporation owned (within the meaning of subsection (d)(2)) by an organization to which section 501 (relating to certain educational and charitable organizations which are exempt from tax) applies and which is controlled directly or indirectly by such corporation, by an individual, estate, or trust that is a principal stockholder (within the meaning of subparagraph (A)(ii)) of such corporation, by an officer of such corporation, or by any combination thereof.

(d) Rules for determining stock ownership

(1) Parent-subsidiary controlled group

For purposes of determining whether a corporation is a member of a parent-subsidiary controlled group of corporations (within the meaning of subsection (a)(1)), stock owned by a corporation means—

(A) stock owned directly by such corporation, and

(B) stock owned with the application of paragraphs (1), (2), and (3) of subsection (e).

(2) Brother-sister controlled group

For purposes of determining whether a corporation is a member of a brother-sister controlled group of corporations (within the meaning of subsection (a)(2)), stock owned by a person who is an individual, estate, or trust means—

(A) stock owned directly by such person, and

(B) stock owned with the application of subsection (e).

(e) Constructive ownership

(1) Options

If any person has an option to acquire stock, such stock shall be considered as owned by such person. For purposes of this paragraph, an option to acquire such an option, and each one of a series of such options, shall be considered as an option to acquire such stock.

(2) Attribution from partnerships

Stock owned, directly or indirectly, by or for a partnership shall be considered as owned by any partner having an interest of 5 percent or more in either the capital or profits of the partnership in proportion to his interest in capital or profits, whichever such proportion is the greater.

(3) Attribution from estates or trusts

(A) Stock owned, directly or indirectly, by or for an estate or trust shall be considered as owned by any beneficiary who has an actuarial interest of 5 percent or more in such stock, to the extent of such actuarial interest. For purposes of this subparagraph, the actuarial interest of each beneficiary shall be determined by assuming the maximum exercise of discretion by the fiduciary in favor of such beneficiary and the maximum use of such stock to satisfy his rights as a beneficiary.

(B) Stock owned, directly or indirectly, by or for any portion of a trust of which a person is considered the owner under subpart E of part I of subchapter J (relating to grantors and others treated as substantial owners) shall be considered as owned by such person.

(C) This paragraph shall not apply to stock owned by any employees' trust described in section 401(a) which is exempt from tax under section 501(a).

(4) Attribution from corporations

Stock owned, directly or indirectly, by or for a corporation shall be considered as owned by any person who owns (within the meaning of subsection (d)) 5 percent or more in value of its stock in that proportion which the value of the stock which such person so owns bears to the value of all the stock in such corporation.

(5) Spouse

An individual shall be considered as owning stock in a corporation owned, directly or indirectly, by or for his spouse (other than a spouse who is legally separated from the individual under a decree of divorce whether interlocutory or final, or a decree of separate maintenance), except in the case of a corporation with respect to which each of the following conditions is satisfied for its taxable year—

(A) The individual does not, at any time during such taxable year, own directly any stock in such corporation;

(B) The individual is not a director or employee and does not participate in the management of such corporation at any time during such taxable year;

(C) Not more than 50 percent of such corporation's gross income for such taxable year was derived from royalties, rents, dividends, interest, and annuities; and

(D) Such stock in such corporation is not, at any time during such taxable year, subject to conditions which substantially restrict or limit the spouse's right to dispose of such stock and which run in favor of the individual or his children who have not attained the age of 21 years.

(6) Children, grandchildren, parents, and grandparents

(A) Minor children

An individual shall be considered as owning stock owned, directly or indirectly, by or for his children who have not attained the age of 21 years, and, if the individual has not attained the age of 21 years, the stock owned, directly or indirectly, by or for his parents.

(B) Adult children and grandchildren

An individual who owns (within the meaning of subsection (d)(2), but without regard to this subparagraph) more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock in a corporation shall be considered as owning the stock in such corporation owned, directly or indirectly, by or for his parents, grandparents, grandchildren, and children who have attained the age of 21 years.

(C) Adopted child

For purposes of this section, a legally adopted child of an individual shall be treated as a child of such individual by blood.

(f) Other definitions and rules

(1) Employee defined

For purposes of this section the term "employee" has the same meaning such term is given by paragraphs (1) and (2) of section 3121(d).

(2) Operating rules

(A) In general

Except as provided in subparagraph (B), stock constructively owned by a person by reason of the application of paragraph (1), (2), (3), (4), (5), or (6) of subsection (e) shall, for purposes of applying such paragraphs, be treated as actually owned by such person.

(B) Members of family

Stock constructively owned by an individual by reason of the application of paragraph (5) or (6) of subsection (e) shall not be treated as owned by him for purposes of again applying such paragraphs in order to make another the constructive owner of such stock.

(3) Special rules

For purposes of this section—

(A) If stock may be considered as owned by a person under subsection (e)(1) and under any other paragraph of subsection (e), it shall be considered as owned by him under subsection (e)(1).

(B) If stock is owned (within the meaning of subsection (d)) by two or more persons, such

stock shall be considered as owned by the person whose ownership of such stock results in the corporation being a component member of a controlled group. If by reason of the preceding sentence, a corporation would (but for this sentence) become a component member of two controlled groups, it shall be treated as a component member of one controlled group. The determination as to the group of which such corporation is a component member shall be made under regulations prescribed by the Secretary which are consistent with the purposes of this part.

(C) If stock is owned by a person within the meaning of subsection (d) and such ownership results in the corporation being a component member of a controlled group, such stock shall not be treated as excluded stock under subsection (c)(2), if by reason of treating such stock as excluded stock the result is that such corporation is not a component member of a controlled group of corporations.

(4) Franchised corporation

If—

(A) a parent corporation (as defined in subsection (c)(2)(A)), or a common owner (as defined in subsection (c)(2)(B)), of a corporation which is a member of a controlled group of corporations is under a duty (arising out of a written agreement) to sell stock of such corporation (referred to in this paragraph as "franchised corporation") which is franchised to sell the products of another member, or the common owner, of such controlled group;

(B) such stock is to be sold to an employee (or employees) of such franchised corporation pursuant to a bona fide plan designed to eliminate the stock ownership of the parent corporation or of the common owner in the franchised corporation;

(C) such plan—

(i) provides a reasonable selling price for such stock, and

(ii) requires that a portion of the employee's share of the profits of such corporation (whether received as compensation or as a dividend) be applied to the purchase of such stock (or the purchase of notes, bonds, debentures or other similar evidence of indebtedness of such franchised corporation held by such parent corporation or common owner);

(D) such employee (or employees) owns directly more than 20 percent of the total value of shares of all classes of stock in such franchised corporation;

(E) more than 50 percent of the inventory of such franchised corporation is acquired from members of the controlled group, the common owner, or both; and

(F) all of the conditions contained in subparagraphs (A), (B), (C), (D), and (E) have been met for one-half (or more) of the number of days preceding the December 31 included within the taxable year (or if the taxable year does not include December 31, the last day of such year) of the franchised corporation,

then such franchised corporation shall be treated as an excluded member of such group, under subsection (b)(2), for such taxable year.

(5) Brother-sister controlled group definition for provisions other than this part

(A) In general

Except as specifically provided in an applicable provision, subsection (a)(2) shall be applied to an applicable provision as if it read as follows:

"(2) Brother-sister controlled group

"Two or more corporations if 5 or fewer persons who are individuals, estates, or trusts own (within the meaning of subsection (d)(2) stock possessing—

"(A) at least 80 percent of the total combined voting power of all classes of stock entitled to vote, or at least 80 percent of the total value of shares of all classes of stock, of each corporation, and

"(B) more than 50 percent of the total combined voting power of all classes of stock entitled

to vote or more than 50 percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation."

(B) Applicable provision

For purposes of this paragraph, an applicable provision is any provision of law (other than this part) which incorporates the definition of controlled group of corporations under subsection (a).

(Added Pub. L. 88–272, title II, §235(a), Feb. 26, 1964, 78 Stat. 120; amended Pub. L. 91–172, title IV, §401(c), (d), Dec. 30, 1969, 83 Stat. 602; Pub. L. 91–373, title I, §102(b), Aug. 10, 1970, 84 Stat. 696; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–369, div. A, title II, §211(b)(22), July 18, 1984, 98 Stat. 757; Pub. L. 99–514, title X, §1024(c)(17), Oct. 22, 1986, 100 Stat. 2408; Pub. L. 100–647, title I, §1018(s)(3)(A), Nov. 10, 1988, 102 Stat. 3587; Pub. L. 108–357, title VIII, §900(a), (b), Oct. 22, 2004, 118 Stat. 1650.)

AMENDMENTS

2004—Subsec. (a)(2). Pub. L. 108–357, §900(a), substituted "possessing" for "possessing—", struck out "(B)" before "more than 50 percent of the total combined voting power", and struck out subpar. (A) which read as follows: "at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of the stock of each corporation, and".

Subsec. (f)(5). Pub. L. 108–357, §900(b), added par. (5).

1988—Subsec. (d)(1)(B). Pub. L. 100–647 substituted "paragraphs (1), (2), and (3) of subsection (e)" for "subsection (e)(1)".

1986—Subsec. (b)(2)(D). Pub. L. 99–514 struck out "or section 821" after "section 801".

1984—Subsecs. (a)(4), (b)(2)(D). Pub. L. 98–369 substituted "section 801" for "section 802".

1976—Subsecs. (b)(4), (f)(3)(B). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

1970—Subsec. (f)(1). Pub. L. 91–373 substituted "by paragraphs (1) and (2) of section 2131(d)" for "in section 3306(i)".

1969—Subsec. (a)(2). Pub. L. 91–172, §401(c), redesignated existing provisions with minor changes as par. (A) and added par. (B).

Subsec. (c)(2)(A)(iv). Pub. L. 91–172, §401(d)(1), added cl. (iv).

Subsec. (c)(2)(B). Pub. L. 91–172, §401(d)(2), substituted "5 or fewer persons who are individuals, estates, or trusts (referred to in this subparagraph as 'common owners') own" for "a person who is an individual, estate, or trust (referred to in this paragraph as 'common owner') owns" and in cl. (ii), substituted "any of such common owners", "any of the common owners" for "such common owner" and "the common owner", respectively and added cl. (iii).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §900(c), Oct. 22, 2004, 118 Stat. 1650, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 22, 2004]."

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1018(s)(3)(B), Nov. 10, 1988, 102 Stat. 3587, provided that: "The amendment made by subparagraph (A) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Nov. 10, 1988]."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1024(e) of Pub. L. 99–514, set out as a note under section 831 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable with respect to taxable years ending on or after Dec. 31, 1970, see section 401(h)(3) of Pub. L. 91–172, set out as a note under section 1561 of this title.

EFFECTIVE DATE

Section applicable with respect to taxable years ending after Dec. 31, 1963, see section 235(d) of Pub. L. 88–272, set out as an Effective Date of 1964 Amendment note under section 1551 of this title.

[§1564. Repealed. Pub. L. 101–508, title XI, §11801(a)(38), Nov. 5, 1990, 104 Stat. 1388–521]

Section, added Pub. L. 91–172, title IV, §401(b)(1), Dec. 30, 1969, 83 Stat. 600; amended Pub. L. 94–455, title XIX, §§1901(b)(1)(J)(vi), (21)(A)(ii), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1791, 1797, 1834, related to transitional rules in the case of certain controlled corporations.

SAVINGS PROVISION

For provisions that nothing in repeal by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

Subtitle B—Estate and Gift Taxes

Chapter		Sec.[1]
11.	**Estate tax**	**2001**
12.	**Gift tax**	**2501**
13.	**Tax on generation-skipping transfers**	**2601**
14.	**Special valuation rules**	**2701**
15.	**Gifts and bequests from expatriates**	**2801**

AMENDMENTS

2008—Pub. L. 110–245, title III, §301(b)(2), June 17, 2008, 122 Stat. 1646, added item for chapter 15.

1990—Pub. L. 101–508, title XI, §11602(c), Nov. 5, 1990, 104 Stat. 1388–500, added item for chapter 14.

1986—Pub. L. 99–514, title XIV, §1431(b), Oct. 22, 1986, 100 Stat. 2729, struck out "certain" after "Tax on" in item for chapter 13.

1976—Pub. L. 94–455, title XX, §2006(b)(1), Oct. 4, 1976, 90 Stat. 1888, added item for chapter 13.

[1] *Section numbers editorially supplied.*

CHAPTER 11—ESTATE TAX

Subchapter		Sec.[1]
A.	**Estates of citizens or residents**	**2001**
B.	**Estates of nonresidents not citizens**	**2101**
C.	**Miscellaneous**	**2201**

[1] *Section numbers editorially supplied.*

Subchapter A—Estates of Citizens or Residents

Part

I. Tax imposed.

II. Credits against tax.

III. Gross estate.

IV. Taxable estate.

PART I—TAX IMPOSED

Sec.

2001. Imposition and rate of tax.
2002. Liability for payment.

AMENDMENTS

1976—Pub. L. 94–455, title XX, §2001(c)(1)(N)(i), Oct. 4, 1976, 90 Stat. 1853, substituted "Imposition and rate of tax" for "Rate of tax" in item 2001.

§2001. Imposition and rate of tax

(a) Imposition

A tax is hereby imposed on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

(b) Computation of tax

The tax imposed by this section shall be the amount equal to the excess (if any) of—

(1) a tentative tax computed under subsection (c) on the sum of—

(A) the amount of the taxable estate, and

(B) the amount of the adjusted taxable gifts, over

(2) the aggregate amount of tax which would have been payable under chapter 12 with respect to gifts made by the decedent after December 31, 1976, if the modifications described in subsection (g) had been applicable at the time of such gifts.

For purposes of paragraph (1)(B), the term "adjusted taxable gifts" means the total amount of the taxable gifts (within the meaning of section 2503) made by the decedent after December 31, 1976, other than gifts which are includible in the gross estate of the decedent.

(c) Rate schedule

If the amount with respect to which the tentative tax to be computed is:	The tentative tax is:
Not over $10,000	18 percent of such amount.
Over $10,000 but not over $20,000	$1,800, plus 20 percent of the excess of such amount over $10,000.
Over $20,000 but not over $40,000	$3,800, plus 22 percent of the excess of such amount over $20,000.
Over $40,000 but not over $60,000	$8,200 plus 24 percent of the excess of such amount over $40,000.
Over $60,000 but not over $80,000	$13,000, plus 26 percent of the excess of such amount over $60,000.
Over $80,000 but not over $100,000	$18,200, plus 28 percent of the excess of such amount over $80,000.
Over $100,000 but not over $150,000	$23,800, plus 30 percent of the excess of such amount over $100,000.
Over $150,000 but not over $250,000	$38,800, plus 32 percent of the excess of such amount over $150,000.
Over $250,000 but not over $500,000	$70,800, plus 34 percent of the excess of such amount over $250,000.
Over $500,000 but not over $750,000	$155,800, plus 37 percent of the excess of such amount over $500,000.

Over $750,000 but not over $1,000,000	$248,300, plus 39 percent of the excess of such amount over $750,000.
Over $1,000,000	$345,800, plus 40 percent of the excess of such amount over $1,000,000.

(d) Adjustment for gift tax paid by spouse

For purposes of subsection (b)(2), if—

(1) the decedent was the donor of any gift one-half of which was considered under section 2513 as made by the decedent's spouse, and

(2) the amount of such gift is includible in the gross estate of the decedent,

any tax payable by the spouse under chapter 12 on such gift (as determined under section 2012(d)) shall be treated as a tax payable with respect to a gift made by the decedent.

(e) Coordination of sections 2513 and 2035

If—

(1) the decedent's spouse was the donor of any gift one-half of which was considered under section 2513 as made by the decedent, and

(2) the amount of such gift is includible in the gross estate of the decedent's spouse by reason of section 2035,

such gift shall not be included in the adjusted taxable gifts of the decedent for purposes of subsection (b)(1)(B), and the aggregate amount determined under subsection (b)(2) shall be reduced by the amount (if any) determined under subsection (d) which was treated as a tax payable by the decedent's spouse with respect to such gift.

(f) Valuation of gifts

(1) In general

If the time has expired under section 6501 within which a tax may be assessed under chapter 12 (or under corresponding provisions of prior laws) on—

(A) the transfer of property by gift made during a preceding calendar period (as defined in section 2502(b)); or

(B) an increase in taxable gifts required under section 2701(d),

the value thereof shall, for purposes of computing the tax under this chapter, be the value as finally determined for purposes of chapter 12.

(2) Final determination

For purposes of paragraph (1), a value shall be treated as finally determined for purposes of chapter 12 if—

(A) the value is shown on a return under such chapter and such value is not contested by the Secretary before the expiration of the time referred to in paragraph (1) with respect to such return;

(B) in a case not described in subparagraph (A), the value is specified by the Secretary and such value is not timely contested by the taxpayer; or

(C) the value is determined by a court or pursuant to a settlement agreement with the Secretary.

For purposes of subparagraph (A), the value of an item shall be treated as shown on a return if the item is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the nature of such item.

(g) Modifications to gift tax payable to reflect different tax rates

For purposes of applying subsection (b)(2) with respect to 1 or more gifts, the rates of tax under subsection (c) in effect at the decedent's death shall, in lieu of the rates of tax in effect at the time of such gifts, be used both to compute—

(1) the tax imposed by chapter 12 with respect to such gifts, and

(2) the credit allowed against such tax under section 2505, including in computing—

(A) the applicable credit amount under section 2505(a)(1), and

(B) the sum of the amounts allowed as a credit for all preceding periods under section 2505(a)(2).

(Aug. 16, 1954, ch. 736, 68A Stat. 373; Pub. L. 94–455, title XX, §2001(a)(1), Oct. 4, 1976, 90 Stat. 1846; Pub. L. 95–600, title VII, §702(h)(1), Nov. 6, 1978, 92 Stat. 2930; Pub. L. 97–34, title IV, §402(a)–(c), Aug. 13, 1981, 95 Stat. 300; Pub. L. 98–369, div. A, title I, §21(a), July 18, 1984, 98 Stat. 506; Pub. L. 100–203, title X, §10401(a)–(b)(2)(A), Dec. 22, 1987, 101 Stat. 1330–430, 1330–431; Pub. L. 103–66, title XIII, §13208(a)–(b)(2), Aug. 10, 1993, 107 Stat. 469; Pub. L. 105–34, title V, §§501(a)(1)(D), 506(a), Aug. 5, 1997, 111 Stat. 845, 855; Pub. L. 105–206, title VI, §6007(e)(2)(B), July 22, 1998, 112 Stat. 810; Pub. L. 105–277, div. J, title IV, §4003(c), Oct. 21, 1998, 112 Stat. 2681–909; Pub. L. 107–16, title V, §511(a)–(c), June 7, 2001, 115 Stat. 70; Pub. L. 111–312, title III, §302(a)(2), (d)(1), Dec. 17, 2010, 124 Stat. 3301, 3302; Pub. L. 112–240, title I, §101(c)(1), Jan. 2, 2013, 126 Stat. 2317.)

AMENDMENTS

2013—Subsec. (c). Pub. L. 112–240 substituted in table separate tentative tax rates for amounts over $500,000 but not over $750,000, over $750,000 but not over $1,000,000, and over $1,000,000, respectively, for single tentative tax rate for amounts over $500,000.

2010—Subsec. (b)(2). Pub. L. 111–312, §302(d)(1)(A), substituted "if the modifications described in subsection (g)" for "if the provisions of subsection (c) (as in effect at the decedent's death)".

Subsec. (c). Pub. L. 111–312, §302(a)(2), struck out par. (1) designation and heading preceding table, substituted in table a single tentative tax rate for any amount over $500,000 for separate tentative tax rates for amounts ranging from over $500,000 to over $2,500,000, and struck out par. (2) which related to phasedown of maximum rate of tax.

Subsec. (g). Pub. L. 111–312, §302(d)(1)(B), added subsec. (g).

2001—Subsec. (c)(1). Pub. L. 107–16, §511(a), substituted in table provisions that if the amount on which the tax is computed is over $2,500,000, then the tentative tax is $1,025,800, plus 50% of the excess over $2,500,000 for provisions that if the amount on which the tax is computed is over $2,500,000 but not over $3,000,000, then the tentative tax is $1,025,800, plus 53% of the excess over $2,500,000, and if the amount on which the tax is computed is over $3,000,000, then the tentative tax is $1,290,800, plus 55% of the excess over $3,000,000.

Subsec. (c)(2). Pub. L. 107–16, §511(c), added par. (2).

Pub. L. 107–16, §511(b), struck out heading and text of par. (2). Text read as follows: "The tentative tax determined under paragraph (1) shall be increased by an amount equal to 5 percent of so much of the amount (with respect to which the tentative tax is to be computed) as exceeds $10,000,000 but does not exceed the amount at which the average tax rate under this section is 55 percent."

1998—Subsec. (f). Pub. L. 105–206, §6007(e)(2)(B), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "If—

"(1) the time has expired within which a tax may be assessed under chapter 12 (or under corresponding provisions of prior laws) on the transfer of property by gift made during a preceding calendar period (as defined in section 2502(b)), and

"(2) the value of such gift is shown on the return for such preceding calendar period or is disclosed in such return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the nature of such gift,

the value of such gift shall, for purposes of computing the tax under this chapter, be the value of such gift as finally determined for purposes of chapter 12."

Subsec. (f)(2). Pub. L. 105–277 inserted concluding provisions.

1997—Subsec. (c)(2). Pub. L. 105–34, §501(a)(1)(D), substituted "the amount at which the average tax rate under this section is 55 percent" for "$21,040,000".

Subsec. (f). Pub. L. 105–34, §506(a), added subsec. (f).

1993—Subsec. (c)(1). Pub. L. 103–66, §13208(a), substituted in table provisions that if the amount on

which the tax is computed is over $2,500,000 but not over $3,000,000, then the tentative tax is $1,025,800, plus 53% of the excess over $2,500,000 and if the amount on which the tax is computed is over $3,000,000, then the tentative tax is $1,290,800, plus 55% of the excess over $3,000,000 for provisions that if the amount on which the tax is computed is over $2,500,000, then the tentative tax is $1,025,800, plus 50% of the excess over $2,500,000.

Subsec. (c)(2), (3). Pub. L. 103–66, §13208(b)(1), (2), redesignated par. (3) as (2), struck out "($18,340,000 in the case of decedents dying, and gifts made, after 1992)" after "exceed $21,040,000", and struck out former par. (2) which related to the rates of tax on estates under this section for the years 1982 to 1992.

1987—Subsec. (b)(1). Pub. L. 100–203, §10401(b)(2)(A)(i), substituted "under subsection (c)" for "in accordance with the rate schedule set forth in subsection (c)".

Subsec. (b)(2). Pub. L. 100–203, §10401(b)(2)(A)(ii), substituted "the provisions of subsec. (c)" for "the rate schedule set forth in subsection (c)".

Subsec. (c)(2)(A). Pub. L. 100–203, §10401(a)(1), substituted "1993" for "1988".

Subsec. (c)(2)(D). Pub. L. 100–203, §10401(a)(2), (3), substituted in heading "After 1983 and before 1993" for "For 1984, 1985, 1986, or 1987", and in text "after 1983 and before 1993" for "in 1984, 1985, 1986, or 1987".

Subsec. (c)(3). Pub. L. 100–203, §10401(b)(1), added par. (3).

1984—Subsec. (c)(2)(A), (D). Pub. L. 98–369 substituted "1988" for "1985" in subpar. (A) and substituted "1984, 1985, 1986, or 1987" for "1984" in heading and text of subpar. (D).

1981—Subsec. (b)(2). Pub. L. 97–34, §402(c), inserted "which would have been" before "payable" and ", if the rate schedule set forth in subsection (c) (as in effect at the decedent's death) had been applicable at the time of such gifts" after "December 31, 1976,".

Subsec. (c). Pub. L. 97–34, §402(a), (b)(1), designated existing provision as par. (1), inserted heading "In general" and substituted in table provision that if the amount computed is over $2,500,000 then the tentative tax is $1,025,800 plus 50% of the excess over $2,500,000 for provisions that if the amount computed is over $2,500,000 but not over $3,000,000, then the tentative tax is $1,025,800 plus 53% of the excess over $2,500,000, over $3,000,000 but not over $3,500,000 then the tentative tax is $1,290,000 plus 57% of the excess over $3,000,000, over $3,500,000 but not over $4,000,000 then the tentative tax is $1,575,800 plus 61% of the excess over $3,500,000, over $4,000,000 but not over $4,500,000 then the tentative tax is $1,880,800 plus 65% of the excess over $4,000,000, over $4,500,000 but not over $5,000,000 then the tentative tax is $2,205,800 plus 69% of the excess over $4,500,000, over $5,000,000 then the tentative tax is $2,550,800 plus 70% of the excess over $5,000,000, and added par. (2).

1978—Subsec. (e). Pub. L. 95–600 added subsec. (e).

1976—Pub. L. 94–455 substituted provisions setting a unified rate schedule for estate and gift taxes ranging from 18 percent for the first $10,000 in taxable transfers to 70 percent of taxable transfers in excess of $5,000,000, with provision for adjustments for gift taxes paid by spouses, for provisions setting an estate tax of 3 percent of the first $5,000 of the taxable estate to 77 percent of the taxable estate in excess of $10,000,000.

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title I, §101(c)(3), Jan. 2, 2013, 126 Stat. 2318, provided that:

"(A) IN GENERAL.—Except as otherwise provided by in this paragraph, the amendments made by this subsection [amending this section and section 2010 of this title] shall apply to estates of decedents dying, generation-skipping transfers, and gifts made, after December 31, 2012.

"(B) TECHNICAL CORRECTION.—The amendment made by paragraph (2) [amending section 2010 of this title] shall take effect as if included in the amendments made by section 303 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 [Pub. L. 111–312]."

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title III, §302(f), Dec. 17, 2010, 124 Stat. 3302, provided that: "Except as otherwise provided in this subsection [probably should be "section"], the amendments made by this section [amending this section and sections 2010, 2502, 2505 and 2511 of this title] shall apply to estates of decedents dying, generation-skipping transfers, and gifts made, after December 31, 2009."

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–16, title V, §511(f)(1), (2), June 7, 2001, 115 Stat. 71, provided that:

"(1) SUBSECTIONS (a) AND (b).—The amendments made by subsections (a) and (b) [amending this section] shall apply to estates of decedents dying, and gifts made, after December 31, 2001.

"(2) SUBSECTION (c).—The amendment made by subsection (c) [amending this section] shall apply to

estates of decedents dying, and gifts made, after December 31, 2002."

EFFECTIVE DATE OF 1998 AMENDMENTS

Amendment by Pub. L. 105–277 effective as if included in the provision of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 4003(l) of Pub. L. 105–277, set out as a note under section 86 of this title.

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title V, §501(f), Aug. 5, 1997, 111 Stat. 847, as amended by Pub. L. 105–206, title VI, §6007(a)(2), July 22, 1998, 112 Stat. 807, provided that: "The amendments made by this section [amending this section and sections 2010, 2032A, 2102, 2503, 2505, 2631, 6018, and 6601 of this title] (other than the amendment made by subsection (d) [amending section 2631 of this title]) shall apply to the estates of decedents dying, and gifts made, after December 31, 1997."

Pub. L. 105–34, title V, §506(e)(1), Aug. 5, 1997, 111 Stat. 856, as amended by Pub. L. 105–206, title VI, §6007(e)(1), July 22, 1998, 112 Stat. 809, provided that: "The amendments made by subsections (a), (c), and (d) [enacting section 7477 of this title and amending this section and section 2504 of this title] shall apply to gifts made after the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13208(c), Aug. 10, 1993, 107 Stat. 469, provided that: "The amendments made by this section [amending this section and section 2101 of this title] shall apply in the case of decedents dying and gifts made after December 31, 1992."

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title X, §10401(c), Dec. 22, 1987, 101 Stat. 1330–431, provided that: "The amendments made by this section [amending this section and section 2502 of this title] shall apply in the case of decedents dying, and gifts made, after December 31, 1987."

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §21(b), July 18, 1984, 98 Stat. 506, provided that: "The amendments made by subsection (a) [amending this section] shall apply to the estates of decedents dying after, and gifts made after, December 31, 1983."

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title IV, §402(d), Aug. 13, 1981, 95 Stat. 301, provided that: "The amendments made by this section [amending this section] shall apply to estates of decedents dying after, and gifts made after, December 31, 1981."

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title VII, §702(h)(3), Nov. 6, 1978, 92 Stat. 2931, provided that: "The amendments made by this subsection [amending this section and section 2602 of this title] shall apply with respect to the estates of decedents dying after December 31, 1976, except that such amendments shall not apply to transfers made before January 1, 1977."

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XX, §2001(d)(1), Oct. 4, 1976, 90 Stat. 1854, provided that: "The amendments made by subsections (a) [enacting section 2010, amending this section and sections 2012 and 2035, and repealing section 2052 of this title] and (c)(1) [amending sections 2011, 2012, 2013, 2014, 2038, 2044, 2101, 2102, 2104, 2106, 2107, 2206, 2207, and 6018 of this title] shall apply to the estates of decedents dying after December 31, 1976; except that the amendments made by subsection (a)(5) [amending section 2035 of this title] and subparagraphs (K) and (L) of subsection (c)(1) [amending sections 2038 and 2104 of this title] shall not apply to transfers made before January 1, 1977."

SHORT TITLE

Pub. L. 91–614, §1(a), Dec. 31, 1970, 84 Stat. 1836, provided that: "This Act [enacting section 6905 of this title, section 1232a of Title 15, Commerce and Trade, and section 1033 of former Title 31, Money and Finance, amending sections 56, 1015, 1223, 2012, 2032, 2055, 2204, 2501, 2502, 2503, 2504, 2512, 2513,

2515, 2521, 2522, 2523, 4061, 4063, 4216, 4251, 4491, 6019, 6040, 6075, 6091, 6161, 6212, 6214, 6324, 6412, 6416, 6501, 6504, and 6512 of this title, and enacting provisions set out as notes under sections 56, 2032, 2204, 2501, 4063, 4216, 4251, 4491, and 6905 of this title] may be cited as the 'Excise, Estate, and Gift Tax Adjustment Act of 1970'."

SPECIAL ELECTION WITH RESPECT TO ESTATES OF DECEDENTS DYING IN 2010

Pub. L. 111–312, title III, §301(c), Dec. 17, 2010, 124 Stat. 3300, provided that: "Notwithstanding subsection (a) [amending sections 121, 170, 684, 1014, 1040, 1221, 1246, 1291, 1296, 4947, 6018, 6019, 6075, and 7701 of this title and repealing sections 1022, 2210, 2664, and 6716 of this title], in the case of an estate of a decedent dying after December 31, 2009, and before January 1, 2011, the executor (within the meaning of section 2203 of the Internal Revenue Code of 1986) may elect to apply such Code as though the amendments made by subsection (a) do not apply with respect to chapter 11 of such Code and with respect to property acquired or passing from such decedent (within the meaning of section 1014(b) of such Code). Such election shall be made at such time and in such manner as the Secretary of the Treasury or the Secretary's delegate shall provide. Such an election once made shall be revocable only with the consent of the Secretary of the Treasury or the Secretary's delegate. For purposes of section 2652(a)(1) of such Code, the determination of whether any property is subject to the tax imposed by such chapter 11 shall be made without regard to any election made under this subsection."

CLARIFICATION OF TREATMENT OF CERTAIN EXEMPTIONS FOR PURPOSES OF FEDERAL ESTATE AND GIFT TAXES

Pub. L. 98–369, div. A, title VI, §641, July 18, 1984, 98 Stat. 939, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) GENERAL RULE.—Nothing in any provision of law exempting any property (or interest therein) from taxation shall exempt the transfer of such property (or interest therein) from Federal estate, gift, and generation-skipping transfer taxes. In the case of any provision of law enacted after the date of the enactment of this Act [July 18, 1984], such provision shall not be treated as exempting the transfer of property from Federal estate, gift, and generation-skipping transfer taxes unless it refers to the appropriate provisions of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].

"(b) EFFECTIVE DATE.—

"(1) IN GENERAL.—The provisions of subsection (a) shall apply to the estates of decedents dying, gifts made, and transfers made on or after June 19, 1984.

"(2) TREATMENT OF CERTAIN TRANSFERS TREATED AS TAXABLE.—The provisions of subsection (a) shall also apply in the case of any transfer of property (or interest therein) if at any time there was filed an estate or gift tax return showing such transfer as subject to Federal estate or gift tax.

"(3) NO INFERENCE.—No inference shall arise from paragraphs (1) and (2) that any transfer of property (or interest therein) before June 19, 1984, is exempt from Federal estate and gift taxes."

REPORTS WITH TRANSFERS OF PUBLIC HOUSING BONDS

Pub. L. 98–369, div. A, title VI, §642, July 18, 1984, 98 Stat. 939, provided that:

"(a) GENERAL RULE.—With respect to transfers of public housing bonds occurring after December 31, 1983, and before June 19, 1984, the taxpayer shall report the date and amount of such transfer and such other information as the Secretary of the Treasury or his delegate shall prescribe by regulations to allow the determination of the tax and interest due if it is ultimately determined that such transfers are subject to estate, gift, or generation-skipping tax.

"(b) PENALTY FOR FAILURE TO REPORT.—Any taxpayer failing to provide the information required by subsection (a) shall be liable for a penalty equal to 25 percent of the excess of (1) the estate, gift, or generation-skipping tax that is payable assuming that such transfers are subject to tax, over (2) the tax payable assuming such transfers are not so subject."

§2002. Liability for payment

The tax imposed by this chapter shall be paid by the executor.

(Aug. 16, 1954, ch. 736, 68A Stat. 374; Pub. L. 98–369, div. A, title V, §544(b)(1), July 18, 1984, 98 Stat. 894; Pub. L. 101–239, title VII, §7304(b)(2)(A), Dec. 19, 1989, 103 Stat. 2353.)

AMENDMENTS

1989—Pub. L. 101–239 substituted "The" for "Except as provided in section 2210, the".
1984—Pub. L. 98–369 inserted exception phrase.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7304(b)(3), Dec. 19, 1989, 103 Stat. 2353, provided that: "The amendments made by this subsection [amending this section and section 6018 of this title and repealing section 2210 of this title] shall apply to estates of decedents dying after July 12, 1989."

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title V, §544(d), July 18, 1984, 98 Stat. 894, provided that: "The amendments made by this section [enacting section 2210 of this title and amending this section and sections 6018 and 6166 of this title] shall apply to those estates of decedents which are required to file returns on a date (including any extensions) after the date of enactment of this Act [July 18, 1984]."

PART II—CREDITS AGAINST TAX

Sec.
2010. Unified credit against estate tax.
2011. Credit for State death taxes.
2012. Credit for gift tax.
2013. Credit for tax on prior transfers.
2014. Credit for foreign death taxes.
2015. Credit for death taxes on remainders.
2016. Recovery of taxes claimed as credit.

AMENDMENTS

2004—Pub. L. 108–311, title IV, §408(a)(20), Oct. 4, 2004, 118 Stat. 1192, added item 2011.
2001—Pub. L. 107–16, title V, §532(c)(13), June 7, 2001, 115 Stat. 75, struck out item 2011 "Credit for State death taxes".
1976—Pub. L. 94–455, title XX, §2001(c)(1)(N)(ii), Oct. 4, 1976, 90 Stat. 1853, added item 2010.

§2010. Unified credit against estate tax

(a) General rule

A credit of the applicable credit amount shall be allowed to the estate of every decedent against the tax imposed by section 2001.

(b) Adjustment to credit for certain gifts made before 1977

The amount of the credit allowable under subsection (a) shall be reduced by an amount equal to 20 percent of the aggregate amount allowed as a specific exemption under section 2521 (as in effect before its repeal by the Tax Reform Act of 1976) with respect to gifts made by the decedent after September 8, 1976.

(c) Applicable credit amount

(1) In general

For purposes of this section, the applicable credit amount is the amount of the tentative tax which would be determined under section 2001(c) if the amount with respect to which such tentative tax is to be computed were equal to the applicable exclusion amount.

(2) Applicable exclusion amount

For purposes of this subsection, the applicable exclusion amount is the sum of—
(A) the basic exclusion amount, and
(B) in the case of a surviving spouse, the deceased spousal unused exclusion amount.

(3) Basic exclusion amount

(A) In general

For purposes of this subsection, the basic exclusion amount is $5,000,000.

(B) Inflation adjustment

In the case of any decedent dying in a calendar year after 2011, the dollar amount in subparagraph (A) shall be increased by an amount equal to—

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting "calendar year 2010" for "calendar year 1992" in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of $10,000, such amount shall be rounded to the nearest multiple of $10,000.

(4) Deceased spousal unused exclusion amount

For purposes of this subsection, with respect to a surviving spouse of a deceased spouse dying after December 31, 2010, the term "deceased spousal unused exclusion amount" means the lesser of—

(A) the basic exclusion amount, or

(B) the excess of—

(i) the applicable exclusion amount of the last such deceased spouse of such surviving spouse, over

(ii) the amount with respect to which the tentative tax is determined under section 2001(b)(1) on the estate of such deceased spouse.

(5) Special rules

(A) Election required

A deceased spousal unused exclusion amount may not be taken into account by a surviving spouse under paragraph (2) unless the executor of the estate of the deceased spouse files an estate tax return on which such amount is computed and makes an election on such return that such amount may be so taken into account. Such election, once made, shall be irrevocable. No election may be made under this subparagraph if such return is filed after the time prescribed by law (including extensions) for filing such return.

(B) Examination of prior returns after expiration of period of limitations with respect to deceased spousal unused exclusion amount

Notwithstanding any period of limitation in section 6501, after the time has expired under section 6501 within which a tax may be assessed under chapter 11 or 12 with respect to a deceased spousal unused exclusion amount, the Secretary may examine a return of the deceased spouse to make determinations with respect to such amount for purposes of carrying out this subsection.

(6) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this subsection.

(d) Limitation based on amount of tax

The amount of the credit allowed by subsection (a) shall not exceed the amount of the tax imposed by section 2001.

(Added Pub. L. 94–455, title XX, §2001(a)(2), Oct. 4, 1976, 90 Stat. 1848; amended Pub. L. 97–34, title IV, §401(a)(1), (2)(A), Aug. 13, 1981, 95 Stat. 299; Pub. L. 101–508, title XI, §11801(a)(39), (c)(19)(A), Nov. 5, 1990, 104 Stat. 1388–521, 1388–528; Pub. L. 105–34, title V, §501(a)(1)(A), (B), Aug. 5, 1997, 111 Stat. 845; Pub. L. 107–16, title V, §521(a), June 7, 2001, 115 Stat. 71; Pub. L. 111–312, title III, §§302(a)(1), 303(a), Dec. 17, 2010, 124 Stat. 3301, 3302; Pub. L. 112–240, title I, §101(c)(2), Jan. 2, 2013, 126 Stat. 2318.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

REFERENCES IN TEXT

The Tax Reform Act of 1976, referred to in subsec. (b), is Pub. L. 94–455, Oct. 4, 1976, 90 Stat. 1520, as amended. For complete classification of this Act to the Code, see Tables.

Section 2521 of this title, referred to in subsec. (b), was repealed by section 2001(b)(3) of Pub. L. 94–455, applicable to gifts made after Dec. 31, 1976.

AMENDMENTS

2013—Subsec. (c)(4)(B)(i). Pub. L. 112–240 substituted "applicable exclusion amount" for "basic exclusion amount".

2010—Subsec. (c). Pub. L. 111–312, §302(a)(1), amended subsec. (c) generally, substituting pars. (1) and (2) for text which provided that the applicable credit amount for purposes of this section was the amount of the tentative tax which would be determined under the rate schedule set forth in section 2001(c) if the amount with respect to which such tentative tax was to be computed were the applicable exclusion amount determined in accordance with the table, covering years 2002 to 2009, included in that text.

Subsec. (c)(2) to (6). Pub. L. 111–312, §303(a), added pars. (2) to (6) and struck out former par. (2). Prior to amendment, text of par. (2) read as follows:

"(A) IN GENERAL.—For purposes of this subsection, the applicable exclusion amount is $5,000,000.

"(B) INFLATION ADJUSTMENT.—In the case of any decedent dying in a calendar year after 2011, the dollar amount in subparagraph (A) shall be increased by an amount equal to—

"(i) such dollar amount, multiplied by

"(ii) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting 'calendar year 2010' for 'calendar year 1992' in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of $10,000, such amount shall be rounded to the nearest multiple of $10,000."

2001—Subsec. (c). Pub. L. 107–16, in table, substituted provision that in the case of estates of decedents dying during the years 2002 and 2003, the years 2004 and 2005, the years 2006, 2007, and 2008, and the year 2009, the applicable exclusion amount is $1,000,000, $1,500,000, $2,000,000, and $3,500,000, respectively, for provision that in the case of decedents dying, and gifts made, during the year 1998, the year 1999, the years 2000 and 2001, the years 2002 and 2003, the year 2004, the year 2005, and the year 2006 or thereafter, the applicable exclusion amount is $625,000, $650,000, $675,000, $700,000, $850,000, $950,000, and $1,000,000, respectively.

1997—Subsec. (a). Pub. L. 105–34, §501(a)(1)(A), substituted "the applicable credit amount" for "$192,800".

Subsecs. (c), (d). Pub. L. 105–34, §501(a)(1)(B), added subsec. (c) and redesignated former subsec. (c) as (d).

1990—Subsecs. (b) to (d). Pub. L. 101–508 redesignated subsecs. (c) and (d) as (b) and (c), respectively, and struck out former subsec. (b) which provided for a phase-in of the unified credit against estate tax.

1981—Subsec. (a). Pub. L. 97–34, §401(a)(1), substituted "$192,800" for "$47,000".

Subsec. (b). Pub. L. 97–34, §401(a)(2)(A), struck out "$47,000" before "credit" from heading and in text substituted in subsec. (a) substitutions for "$192,800" amounts of "$62,800", "$79,300", "$96,300", "$121,800", and "$155,800" in the case of decedents dying in 1982, 1983, 1984, 1985, and 1986, respectively, for subsec. (a) substitutions for "$47,000" amounts of "$30,000", "$34,000", "$38,000", and "$42,500" in the case of decedents dying in 1977, 1978, 1979, and 1980, respectively.

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112–240 effective as if included in the amendments made by section 303 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. 111–312, see section 101(c)(3)(B) of Pub. L. 112–240, set out as a note under section 2001 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 302(a)(1) of Pub. L. 111–312 applicable to estates of decedents dying, generation-skipping transfers, and gifts made, after Dec. 31, 2009, see section 302(f) of Pub. L. 111–312, set out as a note under section 2001 of this title.

Pub. L. 111–312, title III, §303(c), Dec. 17, 2010, 124 Stat. 3303, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 2505, 2631, and 6018 of this title] shall apply to estates of decedents dying and gifts made after December 31, 2010.

"(2) CONFORMING AMENDMENT RELATING TO GENERATION-SKIPPING TRANSFERS.—The amendment made by subsection (b)(2) [amending section 2631 of this title] shall apply to generation-skipping transfers after December 31, 2010."

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–16, title V, §521(e), June 7, 2001, 115 Stat. 72, provided that:

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section [amending this section and sections 2057, 2505, and 2631 of this title] shall apply to estates of decedents dying, and gifts made, after December 31, 2001.

"(2) SUBSECTION (b)(2).—The amendments made by subsection (b)(2) [amending section 2505 of this title] shall apply to gifts made after December 31, 2009.

"(3) SUBSECTIONS (c) AND (d).—The amendments made by subsections (c) and (d) [amending sections 2057 and 2631 of this title] shall apply to estates of decedents dying, and generation-skipping transfers, after December 31, 2003."

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to estates of decedents dying, and gifts made, after Dec. 31, 1997, see section 501(f) of Pub. L. 105–34, set out as a note under section 2001 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title IV, §401(c)(1), Aug. 13, 1981, 95 Stat. 300, provided that: "The amendments made by subsection (a) [amending this section and section 6018 of this title] shall apply to the estates of decedents dying after December 31, 1981".

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

§2011. Credit for State death taxes

(a) In general

The tax imposed by section 2001 shall be credited with the amount of any estate, inheritance, legacy, or succession taxes actually paid to any State or the District of Columbia, in respect of any property included in the gross estate (not including any such taxes paid with respect to the estate of a person other than the decedent).

(b) Amount of credit

(1) In general

Except as provided in paragraph (2), the credit allowed by this section shall not exceed the appropriate amount stated in the following table:

If the adjusted taxable estate is:	The maximum tax credit shall be:
Not over $90,000	8/10ths of 1% of the amount by which the adjusted taxable estate exceeds $40,000.
Over $90,000 but not over $140,000	$400 plus 1.6% of the excess over $90,000.
Over $140,000 but not over $240,000	$1,200 plus 2.4% of the excess over $140,000.

Over $240,000 but not over $440,000	$3,600 plus 3.2% of the excess over $240,000.
Over $440,000 but not over $640,000	$10,000 plus 4% of the excess over $440,000.
Over $640,000 but not over $840,000	$18,000 plus 4.8% of the excess over $640,000.
Over $840,000 but not over $1,040,000	$27,600 plus 5.6% of the excess over $840,000.
Over $1,040,000 but not over $1,540,000	$38,800 plus 6.4% of the excess over $1,040,000.
Over $1,540,000 but not over $2,040,000	$70,800 plus 7.2% of the excess over $1,540,000.
Over $2,040,000 but not over $2,540,000	$106,800 plus 8% of the excess over $2,040,000.
Over $2,540,000 but not over $3,040,000	$146,800 plus 8.8% of the excess over $2,540,000
Over $3,040,000 but not over $3,540,000	$190,800 plus 9.6% of the excess over $3,040,000.
Over $3,540,000 but not over $4,040,000	$238,800 plus 10.4% of the excess over $3,540,000.
Over $4,040,000 but not over $5,040,000	$290,800 plus 11.2% of the excess over $4,040,000.
Over $5,040,000 but not over $6,040,000	$402,800 plus 12% of the excess over $5,040,000.
Over $6,040,000 but not over $7,040,000	$522,800 plus 12.8% of the excess over $6,040,000.
Over $7,040,000 but not over $8,040,000	$650,800 plus 13.6% of the excess over $7,040,000.
Over $8,040,000 but not over $9,040,000	$786,800 plus 14.4% of the excess over $8,040,000.
Over $9,040,000 but not over $10,040,000	$930,800 plus 15.2% of the excess over $9,040,000.
Over $10,040,000	$1,082,800 plus 16% of the excess over $10,040,000.

(2) Reduction of maximum credit

(A) In general

In the case of estates of decedents dying after December 31, 2001, the credit allowed by this section shall not exceed the applicable percentage of the credit otherwise determined under paragraph (1).

(B) Applicable percentage

In the case of estates of decedents dying during:	The applicable percentage is:
2002	75 percent
2003	50 percent
2004	25 percent.

(3) Adjusted taxable estate

For purposes of this section, the term "adjusted taxable estate" means the taxable estate reduced by $60,000.

(c) Period of limitations on credit

The credit allowed by this section shall include only such taxes as were actually paid and credit therefor claimed within 4 years after the filing of the return required by section 6018, except that—

(1) If a petition for redetermination of a deficiency has been filed with the Tax Court within the time prescribed in section 6213(a), then within such 4-year period or before the expiration of 60 days after the decision of the Tax Court becomes final.

(2) If, under section 6161 or 6166, an extension of time has been granted for payment of the tax shown on the return, or of a deficiency, then within such 4-year period or before the date of the expiration of the period of the extension.

(3) If a claim for refund or credit of an overpayment of tax imposed by this chapter has been filed within the time prescribed in section 6511, then within such 4-year period or before the expiration of 60 days from the date of mailing by certified mail or registered mail by the Secretary to the taxpayer of a notice of the disallowance of any part of such claim, or before the expiration of 60 days after a decision by any court of competent jurisdiction becomes final with respect to a timely suit instituted upon such claim, whichever is later.

Refund based on the credit may (despite the provisions of sections 6511 and 6512) be made if claim therefor is filed within the period above provided. Any such refund shall be made without interest.

(d) Limitation in cases involving deduction under section 2053(d)

In any case where a deduction is allowed under section 2053(d) for an estate, succession, legacy, or inheritance tax imposed by a State or the District of Columbia upon a transfer for public, charitable, or religious uses described in section 2055 or 2106(a)(2), the allowance of the credit under this section shall be subject to the following conditions and limitations:

(1) The taxes described in subsection (a) shall not include any estate, succession, legacy, or inheritance tax for which such deduction is allowed under section 2053(d).

(2) The credit shall not exceed the lesser of—

(A) the amount stated in subsection (b) on an adjusted taxable estate determined by allowing such deduction authorized by section 2053(d), or

(B) that proportion of the amount stated in subsection (b) on an adjusted taxable estate determined without regard to such deduction authorized by section 2053(d) as (i) the amount of the taxes described in subsection (a), as limited by the provisions of paragraph (1) of this subsection, bears to (ii) the amount of the taxes described in subsection (a) before applying the limitation contained in paragraph (1) of this subsection.

(3) If the amount determined under subparagraph (B) of paragraph (2) is less than the amount determined under subparagraph (A) of that paragraph, then for purposes of subsection (d) such lesser amount shall be the maximum credit provided by subsection (b).

(e) Limitation based on amount of tax

The credit provided by this section shall not exceed the amount of the tax imposed by section 2001, reduced by the amount of the unified credit provided by section 2010.

(f) Termination

This section shall not apply to the estates of decedents dying after December 31, 2004.

(Aug. 16, 1954, ch. 736, 68A Stat. 374; Feb. 20, 1956, ch. 63, §3, 70 Stat. 24; Pub. L. 85–866, title I, §§65(a), 102(c)(1), Sept. 2, 1958, 72 Stat. 1657, 1674; Pub. L. 86–175, §3, Aug. 21, 1959, 73 Stat. 397; Pub. L. 94–455, title XIX, §§1902(a)(12)(B), 1906(b)(13)(A), title XX, §§2001(c)(1)(A), 2004(f)(3), Oct. 4, 1976, 90 Stat. 1806, 1834, 1849, 1872; Pub. L. 97–34, title IV, §422(e)(2), Aug.

13, 1981, 95 Stat. 316; Pub. L. 107–16, title V, §§531(a), 532(a), June 7, 2001, 115 Stat. 72, 73; Pub. L. 107–134, title I, §103(b)(1), Jan. 23, 2002, 115 Stat. 2431.)

AMENDMENTS

2002—Subsecs. (d) to (g). Pub. L. 107–134 redesignated subsecs. (e) to (g) as (d) to (f), respectively, and struck out heading and text of former subsec. (d). Text read as follows: "The basic estate tax and the estate tax imposed by the Revenue Act of 1926 shall be 125 percent of the amount determined to be the maximum credit provided by subsection (b). The additional estate tax shall be the difference between the tax imposed by section 2001 or 2101 and the basic estate tax."

2001—Subsec. (b). Pub. L. 107–16, §531(a), designated existing provisions as pars. (1) and (3), inserted headings, in par. (1) substituted "Except as provided in paragraph (2), the credit allowed" for "The credit allowed", and added par. (2).

Subsec. (g). Pub. L. 107–16, §532(a), added subsec. (g).

1981—Subsec. (c)(2). Pub. L. 97–34 struck out reference to section 6166A.

1976—Subsec. (a). Pub. L. 94–455, §1902(a)(12)(B), struck out "or Territory" after "State".

Subsec. (b). Pub. L. 94–455, §2001(c)(1)(A)(i), (ii), substituted "adjusted taxable estate" for "taxable estate" in two places in table and inserted provision that, for purposes of this section, "adjusted taxable estate" means the taxable estate reduced by $60,000.

Subsec. (c)(2). Pub. L. 94–455, §2004(f)(3), substituted "section 6161, 6166, or 6166A" for "section 6161".

Subsec. (c)(3). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (e). Pub. L. 94–455, §§1902(a)(12)(B), 2001(c)(1)(A)(iii), substituted "adjusted taxable estate" for "taxable estate" in par. (2) and struck out "or Territory" after "imposed by a State" in provisions preceding par. (1).

Subsec. (f). Pub. L. 94–455, §2001(c)(1)(A)(iv), added subsec. (f).

1959—Subsec. (e). Pub. L. 86–175 substituted "imposed by a State or Territory or the District of Columbia upon a transfer" for "imposed upon a transfer" in introduction, "such deduction" for "a deduction" in par. (1) and "such deduction" for "the deduction" in two places in par. (2).

1958—Subsec. (a). Pub. L. 85–866, §102(c)(1), struck out "or any possession of the United States," after "District of Columbia,".

Subsec. (c)(3). Pub. L. 85–866, §65(a), added par. (3).

1956—Subsec. (e). Act Feb. 20, 1956, added subsec. (e).

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–134, title I, §103(d), Jan. 23, 2002, 115 Stat. 2431, provided that:

"(1) EFFECTIVE DATE.—The amendments made by this section [amending this section and sections 2053 and 2201 of this title] shall apply to estates of decedents—

"(A) dying on or after September 11, 2001; and

"(B) in the case of individuals dying as a result of the April 19, 1995, terrorist attack, dying on or after April 19, 1995.

"(2) WAIVER OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from the amendments made by this section is prevented at any time before the close of the 1-year period beginning on the date of the enactment of this Act [Jan. 23, 2002] by the operation of any law or rule of law (including res judicata), such refund or credit may nevertheless be made or allowed if claim therefor is filed before the close of such period."

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–16, title V, §531(b), June 7, 2001, 115 Stat. 73, as amended by Pub. L. 108–311, title IV, §408(b)(6), Oct. 4, 2004, 118 Stat. 1192, provided that: "The amendments made by this section [amending this section] shall apply to estates of decedents dying after December 31, 2001."

Pub. L. 107–16, title V, §532(d), June 7, 2001, 115 Stat. 75, provided that: "The amendments made by this section [enacting section 2058 of this title and amending this section and sections 2012 to 2016, 2053, 2056A, 2102, 2106, 2107, 2201, 2604, 6511, and 6612 of this title] shall apply to estates of decedents dying, and generation-skipping transfers, after December 31, 2004."

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to estates of decedents dying after Dec. 31, 1981, see section 422(f)(1) of Pub. L. 97–34, set out as a note under section 6166 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XIX, §1902(c)(1), Oct. 4, 1976, 90 Stat. 1806, as amended by Pub. L. 95–600, title VII, §703(j)(12), Nov. 6, 1978, 92 Stat. 2942, provided that: "The amendments made by paragraphs (1) through (8), and paragraphs (12)(A), (B), and (C), of subsection (a) and by subsection (b) [amending this section and sections 2012, 2013, 2016, 2038, 2053, 2055, 2056, 2106, 2107, 2108, 2201, 6167, and 6503 of this title, repealing section 2202 of this title, and enacting provisions set out as a note under section 2201 of this title] shall apply in the case of estates of decedents dying after the date of the enactment of this Act [Oct. 4, 1976], and the amendment made by paragraph (9) of subsection (a) [amending section 2204 of this title] shall apply in the case of estates of decedents dying after December 31, 1970."

Amendment by section 1902(a)(12)(B) of Pub. L. 94–455 applicable with respect to gifts made after Dec. 31, 1976, see section 1902(c)(2) of Pub. L. 94–455, set out as a note under section 2501 of this title.

Amendment by section 2001(c)(1)(A) of Pub. L. 94–455 applicable to estates of decedents dying after Dec. 31, 1976, see section 2001(d)(1) of Pub. L. 94–455, set out as a note under section 2001 of this title.

Amendment by section 2004(f)(3) of Pub. L. 94–455 applicable to estates of decedents dying after Dec. 31, 1976, see section 2004(g) of Pub. L. 94–455, set out as an Effective Date note under section 6166 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–175 applicable with respect to estates of decedents dying on or after July 1, 1955, see section 4 of Pub. L. 86–175, set out as a note under section 2053 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85–866, title I, §65(c), Sept. 2, 1958, 72 Stat. 1657, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to estates of decedents dying after August 16, 1954. The amendment made by subsection (b) [amending this section] shall apply with respect to estates of decedents dying after February 10, 1939, and on or before August 16, 1954."

Pub. L. 85–866, title I, §102(d), Sept. 2, 1958, 72 Stat. 1675, provided that: "The amendments made by this section (other than by subsection (b)) [enacting section 2208 of this title and amending this section and sections 2104 and 2053 of this title] shall apply to the estates of decedents dying after the date of the enactment of this Act [Sept. 2, 1958]. The amendment made by subsection (b) [amending section 2501 of this title] shall apply to gifts made after the date of the enactment of this Act."

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Feb. 20, 1956, applicable to the estates of all decedents dying after Dec. 31, 1953, see section 4 of act Feb. 20, 1956, set out as a note under section 2053 of this title.

§2012. Credit for gift tax

(a) In general

If a tax on a gift has been paid under chapter 12 (sec. 2501 and following), or under corresponding provisions of prior laws, and thereafter on the death of the donor any amount in respect of such gift is required to be included in the value of the gross estate of the decedent for purposes of this chapter, then there shall be credited against the tax imposed by section 2001 the amount of the tax paid on a gift under chapter 12, or under corresponding provisions of prior laws, with respect to so much of the property which constituted the gift as is included in the gross estate, except that the amount of such credit shall not exceed an amount which bears the same ratio to the tax imposed by section 2001 (after deducting from such tax the unified credit provided by section 2010) as the value (at the time of the gift or at the time of the death, whichever is lower) of so much of the property which constituted the gift as is included in the gross estate bears to the value of the entire gross estate reduced by the aggregate amount of the charitable and marital deductions allowed under sections 2055, 2056, and 2106(a)(2).

(b) Valuation reductions

In applying, with respect to any gift, the ratio stated in subsection (a), the value at the time of the gift or at the time of the death, referred to in such ratio, shall be reduced—

(1) by such amount as will properly reflect the amount of such gift which was excluded in determining (for purposes of section 2503(a)), or of corresponding provisions of prior laws, the total amount of gifts made during the calendar quarter (or calendar year if the gift was made

before January 1, 1971) in which the gift was made;

(2) if a deduction with respect to such gift is allowed under section 2056(a) (relating to marital deduction), then by the amount of such value, reduced as provided in paragraph (1); and

(3) if a deduction with respect to such gift is allowed under sections 2055 or 2106(a)(2) (relating to charitable deduction), then by the amount of such value, reduced as provided in paragraph (1) of this subsection.

(c) Where gift considered made one-half by spouse

Where the decedent was the donor of the gift but, under the provisions of section 2513, or corresponding provisions of prior laws, the gift was considered as made one-half by his spouse—

(1) the term "the amount of the tax paid on a gift under chapter 12", as used in subsection (a), includes the amounts paid with respect to each half of such gift, the amount paid with respect to each being computed in the manner provided in subsection (d); and

(2) in applying, with respect to such gift, the ratio stated in subsection (a), the value at the time of the gift or at the time of the death, referred to in such ratio, includes such value with respect to each half of such gift, each such value being reduced as provided in paragraph (1) of subsection (b).

(d) Computation of amount of gift tax paid

(1) Amount of tax

For purposes of subsection (a), the amount of tax paid on a gift under chapter 12, or under corresponding provisions of prior laws, with respect to any gift shall be an amount which bears the same ratio to the total tax paid for the calendar quarter (or calendar year if the gift was made before January 1, 1971) in which the gift was made as the amount of such gift bears to the total amount of taxable gifts (computed without deduction of the specific exemption) for such quarter or year.

(2) Amount of gift

For purposes of paragraph (1), the "amount of such gift" shall be the amount included with respect to such gift in determining (for the purposes of section 2503(a), or of corresponding provisions of prior laws) the total amount of gifts made during such quarter or year, reduced by the amount of any deduction allowed with respect to such gift under section 2522, or under corresponding provisions of prior laws (relating to charitable deduction), or under section 2523 (relating to marital deduction).

(e) Section inapplicable to gifts made after December 31, 1976

No credit shall be allowed under this section with respect to the amount of any tax paid under chapter 12 on any gift made after December 31, 1976.

(Aug. 16, 1954, ch. 736, 68A Stat. 375; Pub. L. 91–614, title I, §102(d)(2), Dec. 31, 1970, 84 Stat. 1841; Pub. L. 94–455, title XIX, §1902(a)(1), title XX, §2001(a)(3), (c)(1)(B), Oct. 4, 1976, 90 Stat. 1804, 1848, 1850; Pub. L. 97–34, title IV, §403(a)(2)(A), Aug. 13, 1981, 95 Stat. 301; Pub. L. 107–16, title V, §532(c)(1), June 7, 2001, 115 Stat. 73.)

AMENDMENTS

2001—Subsec. (a). Pub. L. 107–16 struck out "the credit for State death taxes provided by section 2011 and" before "the unified credit".

1981—Subsec. (b)(2). Pub. L. 97–34 substituted "the amount of such value, reduced as provided in paragraph (1)" for "an amount which bears the same ratio to such value (reduced as provided in paragraph (1) of this subsection) as the aggregate amount of the marital deductions allowed under section 2056(a) bears to the aggregate amount of such marital deductions computed without regard to subsection (c) thereof".

1976—Subsec. (a). Pub. L. 94–455, §2001(c)(1)(B), substituted "provided by section 2011 and the unified credit provided by section 2010" for "provided by section 2011".

Subsec. (b). Pub. L. 94–455, §1902(a)(1)(A), added heading and substituted a comma for a dash after "deduction)" in pars. (2) and (3).

Subsec. (c). Pub. L. 94–455, §1902(a)(1)(B), added heading.

Subsec. (d). Pub. L. 94–455, §1902(a)(1)(C), (D), added headings for subsec. (d) and for pars. (1) and (2).
Subsec. (e). Pub. L. 94–455, §2001(a)(3), added subsec. (e).
1970—Subsec. (b)(1). Pub. L. 91–614, §102(d)(2)(A), substituted "the calendar quarter (or calendar year if the gift was made before January 1, 1971)" for "the year".
Subsec. (d). Pub. L. 91–614, §102(d)(2)(B), substituted "such quarter or year" for "such year" in two places.
Subsec. (d)(1). Pub. L. 91–614, §102(d)(2)(A), substituted "the calendar quarter (or calendar year if the gift was made before January 1, 1971)" for "the year".

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to estates of decedents dying, and generation-skipping transfers, after Dec. 31, 2004, see section 532(d) of Pub. L. 107–16, set out as a note under section 2011 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to estates of decedents dying after Dec. 31, 1981, but inapplicable under certain conditions under will executed before date which is 30 days after Aug. 13, 1981, or under trust created by such date, see section 403(e) of Pub. L. 97–34, set out as a note under section 2056 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1902(a)(1) of Pub. L. 94–455 applicable to estates of decedents dying after Oct. 4, 1976, see section 1902(c)(1) of Pub. L. 94–455, set out as a note under section 2011 of this title.
Amendment by section 2001(a)(3), (c)(1)(B) of Pub. L. 94–455 applicable to estates of decedents dying after Dec. 31, 1976, see section 2001(d)(1) of Pub. L. 94–455, set out as a note under section 2001 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91–614, set out as a note under section 2501 of this title.

§2013. Credit for tax on prior transfers

(a) General rule

The tax imposed by section 2001 shall be credited with all or a part of the amount of the Federal estate tax paid with respect to the transfer of property (including property passing as a result of the exercise or non-exercise of a power of appointment) to the decedent by or from a person (herein designated as a "transferor") who died within 10 years before, or within 2 years after, the decedent's death. If the transferor died within 2 years of the death of the decedent, the credit shall be the amount determined under subsections (b) and (c). If the transferor predeceased the decedent by more than 2 years, the credit shall be the following percentage of the amount so determined—

(1) 80 percent, if within the third or fourth years preceding the decedent's death;
(2) 60 percent, if within the fifth or sixth years preceding the decedent's death;
(3) 40 percent, if within the seventh or eighth years preceding the decedent's death; and
(4) 20 percent, if within the ninth or tenth years preceding the decedent's death.

(b) Computation of credit

Subject to the limitation prescribed in subsection (c), the credit provided by this section shall be an amount which bears the same ratio to the estate tax paid (adjusted as indicated hereinafter) with respect to the estate of the transferor as the value of the property transferred bears to the taxable estate of the transferor (determined for purposes of the estate tax) decreased by any death taxes paid with respect to such estate. For purposes of the preceding sentence, the estate tax paid shall be the Federal estate tax paid increased by any credits allowed against such estate tax under section 2012, or corresponding provisions of prior laws, on account of gift tax, and for any credits allowed against such estate tax under this section on account of prior transfers where the transferor acquired property from a person who died within 10 years before the death of the decedent.

(c) Limitation on credit

(1) In general

The credit provided in this section shall not exceed the amount by which—

(A) the estate tax imposed by section 2001 or section 2101 (after deducting the credits provided for in sections 2010, 2012, and 2014) computed without regard to this section, exceeds

(B) such tax computed by excluding from the decedent's gross estate the value of such property transferred and, if applicable, by making the adjustment hereinafter indicated.

If any deduction is otherwise allowable under section 2055 or section 2106(a)(2) (relating to charitable deduction) then, for the purpose of the computation indicated in subparagraph (B), the amount of such deduction shall be reduced by that part of such deduction which the value of such property transferred bears to the decedent's entire gross estate reduced by the deductions allowed under sections 2053 and 2054, or section 2106(a)(1) (relating to deduction for expenses, losses, etc.). For purposes of this section, the value of such property transferred shall be the value as provided for in subsection (d) of this section.

(2) Two or more transferors

If the credit provided in this section relates to property received from 2 or more transferors, the limitation provided in paragraph (1) of this subsection shall be computed by aggregating the value of the property so transferred to the decedent. The aggregate limitation so determined shall be apportioned in accordance with the value of the property transferred to the decedent by each transferor.

(d) Valuation of property transferred

The value of property transferred to the decedent shall be the value used for the purpose of determining the Federal estate tax liability of the estate of the transferor but—

(1) there shall be taken into account the effect of the tax imposed by section 2001 or 2101, or any estate, succession, legacy, or inheritance tax, on the net value to the decedent of such property;

(2) where such property is encumbered in any manner, or where the decedent incurs any obligation imposed by the transferor with respect to such property, such encumbrance or obligation shall be taken into account in the same manner as if the amount of a gift to the decedent of such property was being determined; and

(3) if the decedent was the spouse of the transferor at the time of the transferor's death, the net value of the property transferred to the decedent shall be reduced by the amount allowed under section 2056 (relating to marital deductions), as a deduction from the gross estate of the transferor.

(e) Property defined

For purposes of this section, the term "property" includes any beneficial interest in property, including a general power of appointment (as defined in section 2041).

(f) Treatment of additional tax imposed under section 2032A

If section 2032A applies to any property included in the gross estate of the transferor and an additional tax is imposed with respect to such property under section 2032A(c) before the date which is 2 years after the date of the decedent's death, for purposes of this section—

(1) the additional tax imposed by section 2032A(c) shall be treated as a Federal estate tax payable with respect to the estate of the transferor; and

(2) the value of such property and the amount of the taxable estate of the transferor shall be determined as if section 2032A did not apply with respect to such property.

(Aug. 16, 1954, ch. 736, 68A Stat. 377; Pub. L. 94–455, title XIX, §1902(a)(2), title XX, §§2001(c)(1)(C), 2003(c), 2006(b)(2), Oct. 4, 1976, 90 Stat. 1804, 1850, 1862, 1888; Pub. L. 99–514, title XIV, §1432(c)(2), Oct. 22, 1986, 100 Stat. 2730; Pub. L. 100–647, title I, §1011A(g)(7), Nov. 10, 1988, 102 Stat. 3481; Pub. L. 105–34, title X, §1073(b)(2), Aug. 5, 1997, 111 Stat. 948; Pub. L. 107–16, title V, §532(c)(2), June 7, 2001, 115 Stat. 74.)

AMENDMENTS

2001—Subsec. (c)(1)(A). Pub. L. 107–16 struck out "2011," after "sections 2010,".

1997—Subsec. (g). Pub. L. 105–34 struck out heading and text of subsec. (g). Prior to amendment, text read

as follows: "For purposes of this section, the estate tax paid shall not include any portion of such tax attributable to section 4980A(d)."

1988—Subsec. (g). Pub. L. 100–647 added subsec. (g).

1986—Subsec. (g). Pub. L. 99–514 struck out subsec. (g) which provided for treatment of tax imposed on certain generation-skipping transfers.

1976—Subsec. (b). Pub. L. 94–455, §2001(c)(1)(C)(i), struck out "and increased by the exemption provided for by section 2052 or section 2106(a)(3), or the corresponding provisions of prior laws, in determining the taxable estate of the transferor for purposes of the estate tax" after "death taxes paid with respect to such estate".

Subsec. (c)(1)(A). Pub. L. 94–455, §2001(c)(1)(C)(ii), substituted "credits provided for in sections 2010, 2011, 2012, and 2014) computed" for "credits for State death taxes, gift tax, and foreign death taxes provided for in sections 2011, 2012, and 2014) computed".

Subsec. (d)(3). Pub. L. 94–455, §1902(a)(2), struck out ", or the corresponding provision of prior law," after "marital deductions)".

Subsec. (f). Pub. L. 94–455, §2003(c), added subsec. (f).

Subsec. (g). Pub. L. 94–455, §2006(b)(2), added subsec. (g).

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to estates of decedents dying, and generation-skipping transfers, after Dec. 31, 2004, see section 532(d) of Pub. L. 107–16, set out as a note under section 2011 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to estates of decedents dying after Dec. 31, 1996, see section 1073(c) of Pub. L. 105–34, set out as an Effective Date of Repeal note under section 4980A of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99–514, set out as an Effective Date note under section 2601 of this title.

§2014. Credit for foreign death taxes

(a) In general

The tax imposed by section 2001 shall be credited with the amount of any estate, inheritance, legacy, or succession taxes actually paid to any foreign country in respect of any property situated within such foreign country and included in the gross estate (not including any such taxes paid with respect to the estate of a person other than the decedent). The determination of the country within which property is situated shall be made in accordance with the rules applicable under subchapter B (sec. 2101 and following) in determining whether property is situated within or without the United States.

(b) Limitations on credit

The credit provided in this section with respect to such taxes paid to any foreign country—

(1) shall not, with respect to any such tax, exceed an amount which bears the same ratio to the amount of such tax actually paid to such foreign country as the value of property which is—

(A) situated within such foreign country,

(B) subjected to such tax, and

(C) included in the gross estate

bears to the value of all property subjected to such tax; and

(2) shall not, with respect to all such taxes, exceed an amount which bears the same ratio to the

tax imposed by section 2001 (after deducting from such tax the credits provided by sections 2010 and 2012) as the value of property which is—

(A) situated within such foreign country,

(B) subjected to the taxes of such foreign country, and

(C) included in the gross estate

bears to the value of the entire gross estate reduced by the aggregate amount of the deductions allowed under sections 2055 and 2056.

(c) Valuation of property

(1) The values referred to in the ratio stated in subsection (b)(1) are the values determined for purposes of the tax imposed by such foreign country.

(2) The values referred to in the ratio stated in subsection (b)(2) are the values determined under this chapter; but, in applying such ratio, the value of any property described in subparagraphs (A), (B), and (C) thereof shall be reduced by such amount as will properly reflect, in accordance with regulations prescribed by the Secretary, the deductions allowed in respect of such property under sections 2055 and 2056 (relating to charitable and marital deductions).

(d) Proof of credit

The credit provided in this section shall be allowed only if the taxpayer establishes to the satisfaction of the Secretary—

(1) the amount of taxes actually paid to the foreign country,

(2) the amount and date of each payment thereof,

(3) the description and value of the property in respect of which such taxes are imposed, and

(4) all other information necessary for the verification and computation of the credit.

(e) Period of limitation

The credit provided in this section shall be allowed only for such taxes as were actually paid and credit therefor claimed within 4 years after the filing of the return required by section 6018, except that—

(1) If a petition for redetermination of a deficiency has been filed with the Tax Court within the time prescribed in section 6213(a), then within such 4-year period or before the expiration of 60 days after the decision of the Tax Court becomes final.

(2) If, under section 6161, an extension of time has been granted for payment of the tax shown on the return, or of a deficiency, then within such 4-year period or before the date of the expiration of the period of the extension.

Refund based on such credit may (despite the provisions of sections 6511 and 6512) be made if claim therefor is filed within the period above provided. Any such refund shall be made without interest.

(f) Additional limitation in cases involving a deduction under section 2053(d)

In any case where a deduction is allowed under section 2053(d) for an estate, succession, legacy, or inheritance tax imposed by and actually paid to any foreign country upon a transfer by the decedent for public, charitable, or religious uses described in section 2055, the property described in subparagraphs (A), (B), and (C) of paragraphs (1) and (2) of subsection (b) of this section shall not include any property in respect of which such deduction is allowed under section 2053(d).

(g) Possession of United States deemed a foreign country

For purposes of the credits authorized by this section, each possession of the United States shall be deemed to be a foreign country.

(h) Similar credit required for certain alien residents

Whenever the President finds that—

(1) a foreign country, in imposing estate, inheritance, legacy, or succession taxes, does not allow to citizens of the United States resident in such foreign country at the time of death a credit

similar to the credit allowed under subsection (a),

(2) such foreign country, when requested by the United States to do so has not acted to provide such a similar credit in the case of citizens of the United States resident in such foreign country at the time of death, and

(3) it is in the public interest to allow the credit under subsection (a) in the case of citizens or subjects of such foreign country only if it allows such a similar credit in the case of citizens of the United States resident in such foreign country at the time of death,

the President shall proclaim that, in the case of citizens or subjects of such foreign country dying while the proclamation remains in effect, the credit under subsection (a) shall be allowed only if such foreign country allows such a similar credit in the case of citizens of the United States resident in such foreign country at the time of death.

(Aug. 16, 1954, ch. 736, 68A Stat. 378; Pub. L. 85–866, title I, §102(c)(2), Sept. 2, 1958, 72 Stat. 1674; Pub. L. 86–175, §2, Aug. 21, 1959, 73 Stat. 397; Pub. L. 89–809, title I, §106(b)(3), Nov. 13, 1966, 80 Stat. 1570; Pub. L. 94–455, title XIX, §1906(b)(13)(A), title XX, §2001(c)(1)(G), Oct. 4, 1976, 90 Stat. 1834, 1852; Pub. L. 107–16, title V, §532(c)(3), June 7, 2001, 115 Stat. 74.)

AMENDMENTS

2001—Subsec. (b)(2). Pub. L. 107–16 struck out ", 2011," after "sections 2010" in introductory provisions.

1976—Subsec. (b)(2). Pub. L. 94–455, §2001(c)(1)(G), inserted reference to section 2010 in introductory provisions.

Subsecs. (c), (d). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

1966—Subsec. (a). Pub. L. 89–809 struck out provision that, if the decedent at the time of his death was not a citizen of the United States, credit would not be allowed under this section unless the foreign country of which the decedent was a citizen or subject, in imposing estate, inheritance, legacy, or succession taxes, allows a similar credit in the case of a citizen of the United States resident in such country.

Subsec. (h). Pub. L. 89–809 added subsec. (h).

1959—Subsecs. (f), (g). Pub. L. 86–175 added subsec. (f) and redesignated former subsec. (f) as (g).

1958—Subsec. (f). Pub. L. 85–866 added subsec. (f).

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to estates of decedents dying, and generation-skipping transfers, after Dec. 31, 2004, see section 532(d) of Pub. L. 107–16, set out as a note under section 2011 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to estates of decedents dying after Nov. 13, 1966, see section 106(b)(4) of Pub. L. 89–809, set out as a note under section 901 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–175 applicable with respect to estates of decedents dying on or after July 1, 1955, see section 4 of Pub. L. 86–175, set out as a note under section 2053 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable to estates of decedents dying after Sept. 2, 1958, see section 102(d) of Pub. L. 85–866, set out as a note under section 2011 of this title.

§2015. Credit for death taxes on remainders

Where an election is made under section 6163(a) to postpone payment of the tax imposed by section 2001, or 2101, such part of any estate, inheritance, legacy, or succession taxes allowable as a credit under section 2014, as is attributable to a reversionary or remainder interest may be allowed as a credit against the tax attributable to such interest, subject to the limitations on the amount of the credit contained in such sections, if such part is paid, and credit therefor claimed, at any time before the expiration of the time for payment of the tax imposed by section 2001 or 2101 as postponed and extended under section 6163.

(Aug. 16, 1954, ch. 736, 68A Stat. 379; Pub. L. 85–866, title I, §66(a)(1), Sept. 2, 1958, 72 Stat. 1657; Pub. L. 107–16, title V, §532(c)(4), June 7, 2001, 115 Stat. 74.)

AMENDMENTS

2001—Pub. L. 107–16 struck out "2011 or" before "2014".

1958—Pub. L. 85–866 substituted "the time for payment of the tax imposed by section 2001 or 2101 as postponed and extended under section 6163" for "60 days after the termination of the precedent interest or interests in the property".

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to estates of decedents dying, and generation-skipping transfers, after Dec. 31, 2004, see section 532(d) of Pub. L. 107–16, set out as a note under section 2011 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85–866, title I, §66(a)(3), Sept. 2, 1958, 72 Stat. 1658, provided that: "The amendments made by paragraphs (1) and (2) [amending this section and section 927 of I.R.C. 1939] shall apply in the case of any reversionary or remainder interest in property only if the precedent interest or interests in the property did not terminate before the beginning of the 60-day period which ends on the date of the enactment of this Act [Sept. 2, 1958]."

§2016. Recovery of taxes claimed as credit

If any tax claimed as a credit under section 2014 is recovered from any foreign country, the executor, or any other person or persons recovering such amount, shall give notice of such recovery to the Secretary at such time and in such manner as may be required by regulations prescribed by him, and the Secretary shall (despite the provisions of section 6501) redetermine the amount of the tax under this chapter and the amount, if any, of the tax due on such redetermination, shall be paid by the executor or such person or persons, as the case may be, on notice and demand. No interest shall be assessed or collected on any amount of tax due on any redetermination by the Secretary resulting from a refund to the executor of tax claimed as a credit under section 2014, for any period before the receipt of such refund, except to the extent interest was paid by the foreign country on such refund.

(Aug. 16, 1954, ch. 736, 68A Stat. 380; Pub. L. 94–455, title XIX, §§1902(a)(12)(C), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1806, 1834; Pub. L. 107–16, title V, §532(c)(4), June 7, 2001, 115 Stat. 74; Pub. L. 107–147, title IV, §411(h), Mar. 9, 2002, 116 Stat. 46.)

AMENDMENTS

2002—Pub. L. 107–147 struck out "any State, any possession of the United States, or the District of Columbia," after "any foreign country,".

2001—Pub. L. 107–16 struck out "2011 or" before "2014 is recovered".

1976—Pub. L. 94–455 struck out "Territory or" after "any State, any" and "or his delegate" after "Secretary".

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to estates of decedents dying, and generation-skipping transfers, after Dec. 31, 2004, see section 532(d) of Pub. L. 107–16, set out as a note under section 2011 of this title.

PART III—GROSS ESTATE

Sec.

2031. Definition of gross estate.

2032. Alternate valuation.
2032A. Valuation of certain farm, etc., real property.
2033. Property in which the decedent had an interest.
[2033A. Renumbered.]
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2038. Revocable transfers.
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2040. Joint interests.
2041. Powers of appointment.
2042. Proceeds of life insurance.
2043. Transfers for insufficient consideration.
2044. Certain property for which marital deduction was previously allowed.
2045. Prior interests.
2046. Disclaimers.

AMENDMENTS

1998—Pub. L. 105–206, title VI, §6007(b)(1)(E), July 22, 1998, 112 Stat. 808, struck out item 2033A "Family-owned business exclusion".

1997—Pub. L. 105–34, title V, §502(b), title XIII, §1310(b), Aug. 5, 1997, 111 Stat. 852, 1044, added item 2033A and substituted "certain gifts" for "gifts" in item 2035.

1981—Pub. L. 97–34, title IV, §403(d)(3)(A)(ii), Aug. 13, 1981, 95 Stat. 304, added item 2044 and redesignated former items 2044 and 2045 as items 2045 and 2046, respectively.

1976—Pub. L. 94–455, title XX, §§2001(c)(1)(N)(iii), 2003(d)(1), 2009(b)(3)(B), Oct. 4, 1976, 90 Stat. 1853, 1862, 1894, added items 2032A and 2045 and substituted "Adjustments for gifts made within 3 years of decedent's death" for "Transactions in contemplation of death" in item 2035.

§2031. Definition of gross estate

(a) General

The value of the gross estate of the decedent shall be determined by including to the extent provided for in this part, the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated.

(b) Valuation of unlisted stock and securities

In the case of stock and securities of a corporation the value of which, by reason of their not being listed on an exchange and by reason of the absence of sales thereof, cannot be determined with reference to bid and asked prices or with reference to sales prices, the value thereof shall be determined by taking into consideration, in addition to all other factors, the value of stock or securities of corporations engaged in the same or a similar line of business which are listed on an exchange.

(c) Estate tax with respect to land subject to a qualified conservation easement

(1) In general

If the executor makes the election described in paragraph (6), then, except as otherwise provided in this subsection, there shall be excluded from the gross estate the lesser of—

(A) the applicable percentage of the value of land subject to a qualified conservation easement, reduced by the amount of any deduction under section 2055(f) with respect to such land, or

(B) the exclusion limitation.

(2) Applicable percentage

For purposes of paragraph (1), the term "applicable percentage" means 40 percent reduced (but

not below zero) by 2 percentage points for each percentage point (or fraction thereof) by which the value of the qualified conservation easement is less than 30 percent of the value of the land [1] (determined without regard to the value of such easement and reduced by the value of any retained development right (as defined in paragraph (5)). The values taken into account under the preceding sentence shall be such values as of the date of the contribution referred to in paragraph (8)(B).

(3) Exclusion limitation

For purposes of paragraph (1), the exclusion limitation is the limitation determined in accordance with the following table:

In the case of estates of decedents dying during:	The exclusion limitation is:
1998	$100,000
1999	$200,000
2000	$300,000
2001	$400,000
2002 or thereafter	$500,000.

(4) Treatment of certain indebtedness

(A) In general

The exclusion provided in paragraph (1) shall not apply to the extent that the land is debt-financed property.

(B) Definitions

For purposes of this paragraph—

(i) Debt-financed property

The term "debt-financed property" means any property with respect to which there is an acquisition indebtedness (as defined in clause (ii)) on the date of the decedent's death.

(ii) Acquisition indebtedness

The term "acquisition indebtedness" means, with respect to debt-financed property, the unpaid amount of—

(I) the indebtedness incurred by the donor in acquiring such property,

(II) the indebtedness incurred before the acquisition of such property if such indebtedness would not have been incurred but for such acquisition,

(III) the indebtedness incurred after the acquisition of such property if such indebtedness would not have been incurred but for such acquisition and the incurrence of such indebtedness was reasonably foreseeable at the time of such acquisition, and

(IV) the extension, renewal, or refinancing of an acquisition indebtedness.

(5) Treatment of retained development right

(A) In general

Paragraph (1) shall not apply to the value of any development right retained by the donor in the conveyance of a qualified conservation easement.

(B) Termination of retained development right

If every person in being who has an interest (whether or not in possession) in the land executes an agreement to extinguish permanently some or all of any development rights (as defined in subparagraph (D)) retained by the donor on or before the date for filing the return of

the tax imposed by section 2001, then any tax imposed by section 2001 shall be reduced accordingly. Such agreement shall be filed with the return of the tax imposed by section 2001. The agreement shall be in such form as the Secretary shall prescribe.

(C) Additional tax

Any failure to implement the agreement described in subparagraph (B) not later than the earlier of—

(i) the date which is 2 years after the date of the decedent's death, or

(ii) the date of the sale of such land subject to the qualified conservation easement,

shall result in the imposition of an additional tax in the amount of the tax which would have been due on the retained development rights subject to such agreement. Such additional tax shall be due and payable on the last day of the 6th month following such date.

(D) Development right defined

For purposes of this paragraph, the term "development right" means any right to use the land subject to the qualified conservation easement in which such right is retained for any commercial purpose which is not subordinate to and directly supportive of the use of such land as a farm for farming purposes (within the meaning of section 2032A(e)(5)).

(6) Election

The election under this subsection shall be made on or before the due date (including extensions) for filing the return of tax imposed by section 2001 and shall be made on such return. Such an election, once made, shall be irrevocable.

(7) Calculation of estate tax due

An executor making the election described in paragraph (6) shall, for purposes of calculating the amount of tax imposed by section 2001, include the value of any development right (as defined in paragraph (5)) retained by the donor in the conveyance of such qualified conservation easement. The computation of tax on any retained development right prescribed in this paragraph shall be done in such manner and on such forms as the Secretary shall prescribe.

(8) Definitions

For purposes of this subsection—

(A) Land subject to a qualified conservation easement

The term "land subject to a qualified conservation easement" means land—

(i) which is located in the United States or any possession of the United States,

(ii) which was owned by the decedent or a member of the decedent's family at all times during the 3-year period ending on the date of the decedent's death, and

(iii) with respect to which a qualified conservation easement has been made by an individual described in subparagraph (C), as of the date of the election described in paragraph (6).

(B) Qualified conservation easement

The term "qualified conservation easement" means a qualified conservation contribution (as defined in section 170(h)(1)) of a qualified real property interest (as defined in section 170(h)(2)(C)), except that clause (iv) of section 170(h)(4)(A) shall not apply, and the restriction on the use of such interest described in section 170(h)(2)(C) shall include a prohibition on more than a de minimis use for a commercial recreational activity.

(C) Individual described

An individual is described in this subparagraph if such individual is—

(i) the decedent,

(ii) a member of the decedent's family,

(iii) the executor of the decedent's estate, or

(iv) the trustee of a trust the corpus of which includes the land to be subject to the qualified

conservation easement.

(D) Member of family

The term "member of the decedent's family" means any member of the family (as defined in section 2032A(e)(2)) of the decedent.

(9) Treatment of easements granted after death

In any case in which the qualified conservation easement is granted after the date of the decedent's death and on or before the due date (including extensions) for filing the return of tax imposed by section 2001, the deduction under section 2055(f) with respect to such easement shall be allowed to the estate but only if no charitable deduction is allowed under chapter 1 to any person with respect to the grant of such easement.

(10) Application of this section to interests in partnerships, corporations, and trusts

This section shall apply to an interest in a partnership, corporation, or trust if at least 30 percent of the entity is owned (directly or indirectly) by the decedent, as determined under the rules described in section 2057(e)(3).

(d) Cross reference

For executor's right to be furnished on request a statement regarding any valuation made by the Secretary within the gross estate, see section 7517.

(Aug. 16, 1954, ch. 736, 68A Stat. 380; Pub. L. 87–834, §18(a)(1), Oct. 16, 1962, 76 Stat. 1052; Pub. L. 94–455, title XX, §2008(a)(2)(A), Oct. 4, 1976, 90 Stat. 1891; Pub. L. 105–34, title V, §508(a), Aug. 5, 1997, 111 Stat. 857; Pub. L. 105–206, title VI, §6007(g), July 22, 1998, 112 Stat. 810; Pub. L. 105–277, div. J, title IV, §4006(c)(3), Oct. 21, 1998, 112 Stat. 2681–913; Pub. L. 107–16, title V, §551(a), (b), June 7, 2001, 115 Stat. 86.)

AMENDMENTS

2001—Subsec. (c)(2). Pub. L. 107–16, §551(b), inserted at end "The values taken into account under the preceding sentence shall be such values as of the date of the contribution referred to in paragraph (8)(B)."

Subsec. (c)(8)(A)(i). Pub. L. 107–16, §551(a), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: "which is located—

"(I) in or within 25 miles of an area which, on the date of the decedent's death, is a metropolitan area (as defined by the Office of Management and Budget),

"(II) in or within 25 miles of an area which, on the date of the decedent's death, is a national park or wilderness area designated as part of the National Wilderness Preservation System (unless it is determined by the Secretary that land in or within 25 miles of such a park or wilderness area is not under significant development pressure), or

"(III) in or within 10 miles of an area which, on the date of the decedent's death, is an Urban National Forest (as designated by the Forest Service),".

1998—Subsec. (c)(6). Pub. L. 105–206, §6007(g)(2), substituted "on or before the due date (including extensions) for filing the return of tax imposed by section 2001 and shall be made on such return." for "on the return of the tax imposed by section 2001."

Subsec. (c)(9). Pub. L. 105–206, §6007(g)(1), added par. (9). Former par. (9) redesignated (10).

Subsec. (c)(10). Pub. L. 105–277, §4006(c)(3), substituted "section 2057(e)(3)" for "section 2033A(e)(3)".

Pub. L. 105–206, §6007(g)(1), redesignated par. (9) as (10).

1997—Subsecs. (c), (d). Pub. L. 105–34 added subsec. (c) and redesignated former subsec. (c) as (d).

1976—Subsec. (c). Pub. L. 94–455 added subsec. (c).

1962—Subsec. (a). Pub. L. 87–834 struck out provisions which excepted real property situated outside the United States.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–16, title V, §551(c), June 7, 2001, 115 Stat. 86, provided that: "The amendments made by this section [amending this section] shall apply to estates of decedents dying after December 31, 2000."

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub.

L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to estates of decedents dying after Dec. 31, 1997, see section 508(e)(1) of Pub. L. 105–34, set out as a note under section 1014 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87–834, §18(b), Oct. 16, 1962, 76 Stat. 1052, provided that:

"(1) Except as provided in paragraph (2), the amendments made by subsection (a) [amending this section and sections 2033, 2034, 2035, 2036, 2037, 2038, 2040, and 2041 of this title] shall apply to the estates of decedents dying after the date of the enactment of this Act [Oct. 16, 1962].

"(2) In the case of a decedent dying after the date of the enactment of this Act [Oct. 16, 1962] and before July 1, 1964, the value of real property situated outside of the United States shall not be included in the gross estate (as defined in section 2031(a)) of the decedent—

"(A) under section 2033, 2034, 2035(a), 2036(a), 2037(a), or 2038(a) to the extent the real property, or the decedent's interest in it, was acquired by the decedent before February 1, 1962;

"(B) under section 2040 to the extent such property or interest was acquired by the decedent before February 1, 1962, or was held by the decedent and the survivor in a joint tenancy or tenancy by the entirety before February 1, 1962; or

"(C) under section 2041(a) to the extent that before February 1, 1962, such property or interest was subject to a general power of appointment (as defined in section 2041) possessed by the decedent.

In the case of real property, or an interest therein, situated outside of the United States (including a general power of appointment in respect of such property or interest, and including property held by the decedent and the survivor in a joint tenancy or tenancy by the entirety) which was acquired by the decedent after January 31, 1962, by gift within the meaning of section 2511, or from a prior decedent by devise or inheritance, or by reason of death, form of ownership, or other conditions (including the exercise or nonexercise of a power of appointment), for purposes of this paragraph such property or interest therein shall be deemed to have been acquired by the decedent before February 1, 1962, if before that date the donor or prior decedent had acquired the property or his interest therein or had possessed a power of appointment in respect of the property or interest."

[1] *So in original. No closing parenthesis was enacted.*

§2032. Alternate valuation

(a) General

The value of the gross estate may be determined, if the executor so elects, by valuing all the property included in the gross estate as follows:

(1) In the case of property distributed, sold, exchanged, or otherwise disposed of, within 6 months after the decedent's death such property shall be valued as of the date of distribution, sale, exchange, or other disposition.

(2) In the case of property not distributed, sold, exchanged, or otherwise disposed of, within 6 months after the decedent's death such property shall be valued as of the date 6 months after the decedent's death.

(3) Any interest or estate which is affected by mere lapse of time shall be included at its value as of the time of death (instead of the later date) with adjustment for any difference in its value as of the later date not due to mere lapse of time.

(b) Special rules

No deduction under this chapter of any item shall be allowed if allowance for such items is in effect given by the alternate valuation provided by this section. Wherever in any other subsection or section of this chapter reference is made to the value of property at the time of the decedent's death, such reference shall be deemed to refer to the value of such property used in determining the value of the gross estate. In case of an election made by the executor under this section, then—

(1) for purposes of the charitable deduction under section 2055 or 2106(a)(2), any bequest,

legacy, devise, or transfer enumerated therein, and

(2) for the purpose of the marital deduction under section 2056, any interest in property passing to the surviving spouse,

shall be valued as of the date of the decedent's death with adjustment for any difference in value (not due to mere lapse of time or the occurrence or nonoccurrence of a contingency) of the property as of the date 6 months after the decedent's death (substituting, in the case of property distributed by the executor or trustee, or sold, exchanged, or otherwise disposed of, during such 6-month period, the date thereof).

(c) Election must decrease gross estate and estate tax

No election may be made under this section with respect to an estate unless such election will decrease—

(1) the value of the gross estate, and

(2) the sum of the tax imposed by this chapter and the tax imposed by chapter 13 with respect to property includible in the decedent's gross estate (reduced by credits allowable against such taxes).

(d) Election

(1) In general

The election provided for in this section shall be made by the executor on the return of the tax imposed by this chapter. Such election, once made, shall be irrevocable.

(2) Exception

No election may be made under this section if such return is filed more than 1 year after the time prescribed by law (including extensions) for filing such return.

(Aug. 16, 1954, ch. 736, 68A Stat. 381; Pub. L. 91–614, title I, §101(a), Dec. 31, 1970, 84 Stat. 1836; Pub. L. 98–369, div. A, title X, §§1023(a), 1024(a), July 18, 1984, 98 Stat. 1030; Pub. L. 99–514, title XIV, §1432(c)(1), Oct. 22, 1986, 100 Stat. 2730.)

AMENDMENTS

1986—Subsec. (c)(2). Pub. L. 99–514 amended par. (2) generally. Prior to amendment, par. (2) read as follows: "the amount of the tax imposed by this chapter (reduced by credits allowable against such tax)."

1984—Subsec. (c). Pub. L. 98–369, §1023(a), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 98–369, §1024(a), substituted "Election" for "Time of election" in heading, designated existing text as par. (1), inserted heading "In general", substituted "shall be made by the executor on the return of the tax imposed by this chapter" for "shall be exercised by the executor on his return if filed within the time prescribed by law or before the expiration of any extension of time granted pursuant to law for the filing of the return", inserted sentence providing that an election, once made, is irrevocable, and added par. (2).

Pub. L. 98–369, §1023(a), redesignated subsec. (c) as (d).

1970—Pub. L. 91–614 substituted "6 months" for "1 year" in four places and substituted "6-month" for "1-year".

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99–514, set out as an Effective Date note under section 2601 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title X, §1023(b), July 18, 1984, 98 Stat. 1030, provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to estates of decedents dying after the date of the enactment of this Act [July 18, 1984]."

Pub. L. 98–369, div. A, title X, §1024(b), July 18, 1984, 98 Stat. 1030, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to estates of decedents dying after the date of the enactment of this Act [July 18, 1984].

"(2) TRANSITIONAL RULE.—In the case of an estate of a decedent dying before the date of the enactment of this Act [July 18, 1984] if—

"(A) a credit or refund of the tax imposed by chapter 11 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] is not prevented on the date of the enactment of this Act by the operation of any law or rule of law,

"(B) the election under section 2032 of the Internal Revenue Code of 1986 would have met the requirements of such section (as amended by this section and section 1023) had the decedent died after the date of enactment of this Act, and

"(C) a claim for credit or refund of such tax with respect to such estate is filed not later than the 90th day after the date of the enactment of this Act,

then such election shall be treated as a valid election under such section 2032. The statutory period for the assessment of any deficiency which is attributable to an election under this paragraph shall not expire before the close of the 2-year period beginning on the date of the enactment of this Act."

EFFECTIVE DATE OF 1970 AMENDMENT

Pub. L. 91–614, title I, §101(j), Dec. 31, 1970, 84 Stat. 1838, provided that: "The amendments made by this section [enacting section 6905 of this title, amending this section and sections 1223, 2055, 2204, 6040, 6075, 6091, 6161, 6314, 6324, and 6504 of this title, and enacting provisions set out as notes under this section and sections 2204 and 6905 of this title] (other than subsection (f)) [amending sections 2204 and 6905 of this title] shall apply with respect to decedents dying after December 31, 1970."

§2032A. Valuation of certain farm, etc., real property

(a) Value based on use under which property qualifies

(1) General rule

If—

(A) the decedent was (at the time of his death) a citizen or resident of the United States, and

(B) the executor elects the application of this section and files the agreement referred to in subsection (d)(2),

then, for purposes of this chapter, the value of qualified real property shall be its value for the use under which it qualifies, under subsection (b), as qualified real property.

(2) Limitation on aggregate reduction in fair market value

The aggregate decrease in the value of qualified real property taken into account for purposes of this chapter which results from the application of paragraph (1) with respect to any decedent shall not exceed $750,000.

(3) Inflation adjustment

In the case of estates of decedents dying in a calendar year after 1998, the $750,000 amount contained in paragraph (2) shall be increased by an amount equal to—

(A) $750,000, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting "calendar year 1997" for "calendar year 1992" in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of $10,000, such amount shall be rounded to the next lowest multiple of $10,000.

(b) Qualified real property

(1) In general

For purposes of this section, the term "qualified real property" means real property located in the United States which was acquired from or passed from the decedent to a qualified heir of the decedent and which, on the date of the decedent's death, was being used for a qualified use by the decedent or a member of the decedent's family, but only if—

(A) 50 percent or more of the adjusted value of the gross estate consists of the adjusted value of real or personal property which—

(i) on the date of the decedent's death, was being used for a qualified use by the decedent or a member of the decedent's family, and

(ii) was acquired from or passed from the decedent to a qualified heir of the decedent.

(B) 25 percent or more of the adjusted value of the gross estate consists of the adjusted value of real property which meets the requirements of subparagraphs (A)(ii) and (C),

(C) during the 8-year period ending on the date of the decedent's death there have been periods aggregating 5 years or more during which—

(i) such real property was owned by the decedent or a member of the decedent's family and used for a qualified use by the decedent or a member of the decedent's family, and

(ii) there was material participation by the decedent or a member of the decedent's family in the operation of the farm or other business, and

(D) such real property is designated in the agreement referred to in subsection (d)(2).

(2) Qualified use

For purposes of this section, the term "qualified use" means the devotion of the property to any of the following:

(A) use as a farm for farming purposes, or

(B) use in a trade or business other than the trade or business of farming.

(3) Adjusted value

For purposes of paragraph (1), the term "adjusted value" means—

(A) in the case of the gross estate, the value of the gross estate for purposes of this chapter (determined without regard to this section), reduced by any amounts allowable as a deduction under paragraph (4) of section 2053(a), or

(B) in the case of any real or personal property, the value of such property for purposes of this chapter (determined without regard to this section), reduced by any amounts allowable as a deduction in respect of such property under paragraph (4) of section 2053(a).

(4) Decedents who are retired or disabled

(A) In general

If, on the date of the decedent's death, the requirements of paragraph (1)(C)(ii) with respect to the decedent for any property are not met, and the decedent—

(i) was receiving old-age benefits under title II of the Social Security Act for a continuous period ending on such date, or

(ii) was disabled for a continuous period ending on such date,

then paragraph (1)(C)(ii) shall be applied with respect to such property by substituting "the date on which the longer of such continuous periods began" for "the date of the decedent's death" in paragraph (1)(C).

(B) Disabled defined

For purposes of subparagraph (A), an individual shall be disabled if such individual has a mental or physical impairment which renders him unable to materially participate in the operation of the farm or other business.

(C) Coordination with recapture

For purposes of subsection (c)(6)(B)(i), if the requirements of paragraph (1)(C)(ii) are met with respect to any decedent by reason of subparagraph (A), the period ending on the date on which the continuous period taken into account under subparagraph (A) began shall be treated as the period immediately before the decedent's death.

(5) Special rules for surviving spouses

(A) In general

If property is qualified real property with respect to a decedent (hereinafter in this paragraph referred to as the "first decedent") and such property was acquired from or passed from the first decedent to the surviving spouse of the first decedent, for purposes of applying this subsection and subsection (c) in the case of the estate of such surviving spouse, active management of the farm or other business by the surviving spouse shall be treated as material participation by such surviving spouse in the operation of such farm or business.

(B) Special rule

For the purposes of subparagraph (A), the determination of whether property is qualified real property with respect to the first decedent shall be made without regard to subparagraph (D) of paragraph (1) and without regard to whether an election under this section was made.

(C) Coordination with paragraph (4)

In any case in which to do so will enable the requirements of paragraph (1)(C)(ii) to be met with respect to the surviving spouse, this subsection and subsection (c) shall be applied by taking into account any application of paragraph (4).

(c) Tax treatment of dispositions and failures to use for qualified use

(1) Imposition of additional estate tax

If, within 10 years after the decedent's death and before the death of the qualified heir—

(A) the qualified heir disposes of any interest in qualified real property (other than by a disposition to a member of his family), or

(B) the qualified heir ceases to use for the qualified use the qualified real property which was acquired (or passed) from the decedent,

then, there is hereby imposed an additional estate tax.

(2) Amount of additional tax

(A) In general

The amount of the additional tax imposed by paragraph (1) with respect to any interest shall be the amount equal to the lesser of—

(i) the adjusted tax difference attributable to such interest, or

(ii) the excess of the amount realized with respect to the interest (or, in any case other than a sale or exchange at arm's length, the fair market value of the interest) over the value of the interest determined under subsection (a).

(B) Adjusted tax difference attributable to interest

For purposes of subparagraph (A), the adjusted tax difference attributable to an interest is the amount which bears the same ratio to the adjusted tax difference with respect to the estate (determined under subparagraph (C)) as—

(i) the excess of the value of such interest for purposes of this chapter (determined without regard to subsection (a)) over the value of such interest determined under subsection (a), bears to

(ii) a similar excess determined for all qualified real property.

(C) Adjusted tax difference with respect to the estate

For purposes of subparagraph (B), the term "adjusted tax difference with respect to the estate" means the excess of what would have been the estate tax liability but for subsection (a) over the estate tax liability. For purposes of this subparagraph, the term "estate tax liability" means the tax imposed by section 2001 reduced by the credits allowable against such tax.

(D) Partial dispositions

For purposes of this paragraph, where the qualified heir disposes of a portion of the interest acquired by (or passing to) such heir (or a predecessor qualified heir) or there is a cessation of use of such a portion—

(i) the value determined under subsection (a) taken into account under subparagraph (A)(ii) with respect to such portion shall be its pro rata share of such value of such interest, and

(ii) the adjusted tax difference attributable to the interest taken into account with respect to the transaction involving the second or any succeeding portion shall be reduced by the amount of the tax imposed by this subsection with respect to all prior transactions involving portions of such interest.

(E) Special rule for disposition of timber

In the case of qualified woodland to which an election under subsection (e)(13)(A) applies, if the qualified heir disposes of (or severs) any standing timber on such qualified woodland—

(i) such disposition (or severance) shall be treated as a disposition of a portion of the interest of the qualified heir in such property, and

(ii) the amount of the additional tax imposed by paragraph (1) with respect to such disposition shall be an amount equal to the lesser of—

(I) the amount realized on such disposition (or, in any case other than a sale or exchange at arm's length, the fair market value of the portion of the interest disposed or severed), or

(II) the amount of additional tax determined under this paragraph (without regard to this subparagraph) if the entire interest of the qualified heir in the qualified woodland had been disposed of, less the sum of the amount of the additional tax imposed with respect to all prior transactions involving such woodland to which this subparagraph applied.

For purposes of the preceding sentence, the disposition of a right to sever shall be treated as the disposition of the standing timber. The amount of additional tax imposed under paragraph (1) in any case in which a qualified heir disposes of his entire interest in the qualified woodland shall be reduced by any amount determined under this subparagraph with respect to such woodland.

(3) Only 1 additional tax imposed with respect to any 1 portion

In the case of an interest acquired from (or passing from) any decedent, if subparagraph (A) or (B) of paragraph (1) applies to any portion of an interest, subparagraph (B) or (A), as the case may be, of paragraph (1) shall not apply with respect to the same portion of such interest.

(4) Due date

The additional tax imposed by this subsection shall become due and payable on the day which is 6 months after the date of the disposition or cessation referred to in paragraph (1).

(5) Liability for tax; furnishing of bond

The qualified heir shall be personally liable for the additional tax imposed by this subsection with respect to his interest unless the heir has furnished bond which meets the requirements of subsection (e)(11).

(6) Cessation of qualified use

For purposes of paragraph (1)(B), real property shall cease to be used for the qualified use if—

(A) such property ceases to be used for the qualified use set forth in subparagraph (A) or (B) of subsection (b)(2) under which the property qualified under subsection (b), or

(B) during any period of 8 years ending after the date of the decedent's death and before the date of the death of the qualified heir, there had been periods aggregating more than 3 years during which—

(i) in the case of periods during which the property was held by the decedent, there was no material participation by the decedent or any member of his family in the operation of the farm or other business, and

(ii) in the case of periods during which the property was held by any qualified heir, there was no material participation by such qualified heir or any member of his family in the operation of the farm or other business.

(7) Special rules

(A) No tax if use begins within 2 years

If the date on which the qualified heir begins to use the qualified real property (hereinafter in this subparagraph referred to as the commencement date) is before the date 2 years after the decedent's death—

(i) no tax shall be imposed under paragraph (1) by reason of the failure by the qualified heir to so use such property before the commencement date, and

(ii) the 10-year period under paragraph (1) shall be extended by the period after the decedent's death and before the commencement date.

(B) Active management by eligible qualified heir treated as material participation

For purposes of paragraph (6)(B)(ii), the active management of a farm or other business by—

(i) an eligible qualified heir, or

(ii) a fiduciary of an eligible qualified heir described in clause (ii) or (iii) of subparagraph (C),

shall be treated as material participation by such eligible qualified heir in the operation of such farm or business. In the case of an eligible qualified heir described in clause (ii), (iii), or (iv) of subparagraph (C), the preceding sentence shall apply only during periods during which such heir meets the requirements of such clause.

(C) Eligible qualified heir

For purposes of this paragraph, the term "eligible qualified heir" means a qualified heir who—

(i) is the surviving spouse of the decedent,

(ii) has not attained the age of 21,

(iii) is disabled (within the meaning of subsection (b)(4)(B)), or

(iv) is a student.

(D) Student

For purposes of subparagraph (C), an individual shall be treated as a student with respect to periods during any calendar year if (and only if) such individual is a student (within the meaning of section 152(f)(2)) for such calendar year.

(E) Certain rents treated as qualified use

For purposes of this subsection, a surviving spouse or lineal descendant of the decedent shall not be treated as failing to use qualified real property in a qualified use solely because such spouse or descendant rents such property to a member of the family of such spouse or descendant on a net cash basis. For purposes of the preceding sentence, a legally adopted child of an individual shall be treated as the child of such individual by blood.

(8) Qualified conservation contribution is not a disposition

A qualified conservation contribution (as defined in section 170(h)) by gift or otherwise shall not be deemed a disposition under subsection (c)(1)(A).

(d) Election; agreement

(1) Election

The election under this section shall be made on the return of the tax imposed by section 2001. Such election shall be made in such manner as the Secretary shall by regulations prescribe. Such an election, once made, shall be irrevocable.

(2) Agreement

The agreement referred to in this paragraph is a written agreement signed by each person in being who has an interest (whether or not in possession) in any property designated in such agreement consenting to the application of subsection (c) with respect to such property.

(3) Modification of election and agreement to be permitted

The Secretary shall prescribe procedures which provide that in any case in which the executor makes an election under paragraph (1) (and submits the agreement referred to in paragraph (2)) within the time prescribed therefor, but—

(A) the notice of election, as filed, does not contain all required information, or

(B) signatures of 1 or more persons required to enter into the agreement described in paragraph (2) are not included on the agreement as filed, or the agreement does not contain all required information,

the executor will have a reasonable period of time (not exceeding 90 days) after notification of such failures to provide such information or signatures.

(e) Definitions; special rules

For purposes of this section—

(1) Qualified heir

The term "qualified heir" means, with respect to any property, a member of the decedent's family who acquired such property (or to whom such property passed) from the decedent. If a qualified heir disposes of any interest in qualified real property to any member of his family, such member shall thereafter be treated as the qualified heir with respect to such interest.

(2) Member of family

The term "member of the family" means, with respect to any individual, only—

(A) an ancestor of such individual,

(B) the spouse of such individual,

(C) a lineal descendant of such individual, of such individual's spouse, or of a parent of such individual, or

(D) the spouse of any lineal descendant described in subparagraph (C).

For purposes of the preceding sentence, a legally adopted child of an individual shall be treated as the child of such individual by blood.

(3) Certain real property included

In the case of real property which meets the requirements of subparagraph (C) of subsection (b)(1), residential buildings and related improvements on such real property occupied on a regular basis by the owner or lessee of such real property or by persons employed by such owner or lessee for the purpose of operating or maintaining such real property, and roads, buildings, and other structures and improvements functionally related to the qualified use shall be treated as real property devoted to the qualified use.

(4) Farm

The term "farm" includes stock, dairy, poultry, fruit, furbearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards and woodlands.

(5) Farming purposes

The term "farming purposes" means—

(A) cultivating the soil or raising or harvesting any agricultural or horticultural commodity (including the raising, shearing, feeding, caring for, training, and management of animals) on a farm;

(B) handling, drying, packing, grading, or storing on a farm any agricultural or horticultural commodity in its unmanufactured state, but only if the owner, tenant, or operator of the farm regularly produces more than one-half of the commodity so treated; and

(C)(i) the planting, cultivating, caring for, or cutting of trees, or

(ii) the preparation (other than milling) of trees for market.

(6) Material participation

Material participation shall be determined in a manner similar to the manner used for purposes of paragraph (1) of section 1402(a) (relating to net earnings from self-employment).

(7) Method of valuing farms

(A) In general

Except as provided in subparagraph (B), the value of a farm for farming purposes shall be determined by dividing—

(i) the excess of the average annual gross cash rental for comparable land used for farming purposes and located in the locality of such farm over the average annual State and local real estate taxes for such comparable land, by

(ii) the average annual effective interest rate for all new Federal Land Bank loans.

For purposes of the preceding sentence, each average annual computation shall be made on the basis of the 5 most recent calendar years ending before the date of the decedent's death.

(B) Value based on net share rental in certain cases

(i) In general

If there is no comparable land from which the average annual gross cash rental may be determined but there is comparable land from which the average net share rental may be determined, subparagraph (A)(i) shall be applied by substituting "average annual net share rental" for "average annual gross cash rental".

(ii) Net share rental

For purposes of this paragraph, the term "net share rental" means the excess of—

(I) the value of the produce received by the lessor of the land on which such produce is grown, over

(II) the cash operating expenses of growing such produce which, under the lease, are paid by the lessor.

(C) Exception

The formula provided by subparagraph (A) shall not be used—

(i) where it is established that there is no comparable land from which the average annual gross cash rental may be determined, or

(ii) where the executor elects to have the value of the farm for farming purposes determined and that there is no comparable land from which the average net share rental may be determined under paragraph (8).

(8) Method of valuing closely held business interests, etc.

In any case to which paragraph (7)(A) does not apply, the following factors shall apply in determining the value of any qualified real property:

(A) The capitalization of income which the property can be expected to yield for farming or closely held business purposes over a reasonable period of time under prudent management using traditional cropping patterns for the area, taking into account soil capacity, terrain configuration, and similar factors,

(B) The capitalization of the fair rental value of the land for farm land or closely held business purposes,

(C) Assessed land values in a State which provides a differential or use value assessment law for farmland or closely held business,

(D) Comparable sales of other farm or closely held business land in the same geographical area far enough removed from a metropolitan or resort area so that nonagricultural use is not a significant factor in the sales price, and

(E) Any other factor which fairly values the farm or closely held business value of the property.

(9) Property acquired from decedent

Property shall be considered to have been acquired from or to have passed from the decedent if—

(A) such property is so considered under section 1014(b) (relating to basis of property acquired from a decedent),

(B) such property is acquired by any person from the estate, or

(C) such property is acquired by any person from a trust (to the extent such property is includible in the gross estate of the decedent).

(10) Community property

If the decedent and his surviving spouse at any time held qualified real property as community property, the interest of the surviving spouse in such property shall be taken into account under this section to the extent necessary to provide a result under this section with respect to such property which is consistent with the result which would have obtained under this section if such property had not been community property.

(11) Bond in lieu of personal liability

If the qualified heir makes written application to the Secretary for determination of the maximum amount of the additional tax which may be imposed by subsection (c) with respect to the qualified heir's interest, the Secretary (as soon as possible, and in any event within 1 year after the making of such application) shall notify the heir of such maximum amount. The qualified heir, on furnishing a bond in such amount and for such period as may be required, shall be discharged from personal liability for any additional tax imposed by subsection (c) and shall be entitled to a receipt or writing showing such discharge.

(12) Active management

The term "active management" means the making of the management decisions of a business (other than the daily operating decisions).

(13) Special rules for woodlands

(A) In general

In the case of any qualified woodland with respect to which the executor elects to have this subparagraph apply, trees growing on such woodland shall not be treated as a crop.

(B) Qualified woodland

The term "qualified woodland" means any real property which—

(i) is used in timber operations, and

(ii) is an identifiable area of land such as an acre or other area for which records are normally maintained in conducting timber operations.

(C) Timber operations

The term "timber operations" means—

(i) the planting, cultivating, caring for, or cutting of trees, or

(ii) the preparation (other than milling) of trees for market.

(D) Election

An election under subparagraph (A) shall be made on the return of the tax imposed by section 2001. Such election shall be made in such manner as the Secretary shall by regulations prescribe. Such an election, once made, shall be irrevocable.

(14) Treatment of replacement property acquired in section 1031 or 1033 transactions

(A) In general

In the case of any qualified replacement property, any period during which there was ownership, qualified use, or material participation with respect to the replaced property by the decedent or any member of his family shall be treated as a period during which there was such ownership, use, or material participation (as the case may be) with respect to the qualified replacement property.

(B) Limitation

Subparagraph (A) shall not apply to the extent that the fair market value of the qualified replacement property (as of the date of its acquisition) exceeds the fair market value of the replaced property (as of the date of its disposition).

(C) Definitions

For purposes of this paragraph—

(i) Qualified replacement property

The term "qualified replacement property" means any real property which is—

(I) acquired in an exchange which qualifies under section 1031, or

(II) the acquisition of which results in the nonrecognition of gain under section 1033.

Such term shall only include property which is used for the same qualified use as the replaced property was being used before the exchange.

(ii) Replaced property

The term "replaced property" means—

(I) the property transferred in the exchange which qualifies under section 1031, or

(II) the property compulsorily or involuntarily converted (within the meaning of section 1033).

(f) Statute of limitations

If qualified real property is disposed of or ceases to be used for a qualified use, then—

(1) the statutory period for the assessment of any additional tax under subsection (c) attributable to such disposition or cessation shall not expire before the expiration of 3 years from the date the Secretary is notified (in such manner as the Secretary may by regulations prescribe) of such disposition or cessation (or if later in the case of an involuntary conversion or exchange to which subsection (h) or (i) applies, 3 years from the date the Secretary is notified of the replacement of the converted property or of an intention not to replace or of the exchange of property), and

(2) such additional tax may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

(g) Application of this section and section 6324B to interests in partnerships, corporations, and trusts

The Secretary shall prescribe regulations setting forth the application of this section and section 6324B in the case of an interest in a partnership, corporation, or trust which, with respect to the decedent, is an interest in a closely held business (within the meaning of paragraph (1) of section 6166(b)). For purposes of the preceding sentence, an interest in a discretionary trust all the beneficiaries of which are qualified heirs shall be treated as a present interest.

(h) Special rules for involuntary conversions of qualified real property

(1) Treatment of converted property

(A) In general

If there is an involuntary conversion of an interest in qualified real property—

(i) no tax shall be imposed by subsection (c) on such conversion if the cost of the qualified replacement property equals or exceeds the amount realized on such conversion, or

(ii) if clause (i) does not apply, the amount of the tax imposed by subsection (c) on such conversion shall be the amount determined under subparagraph (B).

(B) Amount of tax where there is not complete reinvestment

The amount determined under this subparagraph with respect to any involuntary conversion is the amount of the tax which (but for this subsection) would have been imposed on such conversion reduced by an amount which—

(i) bears the same ratio to such tax, as

(ii) the cost of the qualified replacement property bears to the amount realized on the conversion.

(2) Treatment of replacement property

For purposes of subsection (c)—

(A) any qualified replacement property shall be treated in the same manner as if it were a portion of the interest in qualified real property which was involuntarily converted; except that with respect to such qualified replacement property the 10-year period under paragraph (1) of subsection (c) shall be extended by any period, beyond the 2-year period referred to in section 1033(a)(2)(B)(i), during which the qualified heir was allowed to replace the qualified real property,

(B) any tax imposed by subsection (c) on the involuntary conversion shall be treated as a tax imposed on a partial disposition, and

(C) paragraph (6) of subsection (c) shall be applied—

(i) by not taking into account periods after the involuntary conversion and before the acquisition of the qualified replacement property, and

(ii) by treating material participation with respect to the converted property as material participation with respect to the qualified replacement property.

(3) Definitions and special rules

For purposes of this subsection—

(A) Involuntary conversion

The term "involuntary conversion" means a compulsory or involuntary conversion within the meaning of section 1033.

(B) Qualified replacement property

The term "qualified replacement property" means—

(i) in the case of an involuntary conversion described in section 1033(a)(1), any real property into which the qualified real property is converted, or

(ii) in the case of an involuntary conversion described in section 1033(a)(2), any real property purchased by the qualified heir during the period specified in section 1033(a)(2)(B) for purposes of replacing the qualified real property.

Such term only includes property which is to be used for the qualified use set forth in subparagraph (A) or (B) of subsection (b)(2) under which the qualified real property qualified under subsection (a).

(4) Certain rules made applicable

The rules of the last sentence of section 1033(a)(2)(A) shall apply for purposes of paragraph (3)(B)(ii).

(i) Exchanges of qualified real property

(1) Treatment of property exchanged

(A) Exchanges solely for qualified exchange property

If an interest in qualified real property is exchanged solely for an interest in qualified exchange property in a transaction which qualifies under section 1031, no tax shall be imposed by subsection (c) by reason of such exchange.

(B) Exchanges where other property received

If an interest in qualified real property is exchanged for an interest in qualified exchange property and other property in a transaction which qualifies under section 1031, the amount of

the tax imposed by subsection (c) by reason of such exchange shall be the amount of tax which (but for this subparagraph) would have been imposed on such exchange under subsection (c)(1), reduced by an amount which—

(i) bears the same ratio to such tax, as

(ii) the fair market value of the qualified exchange property bears to the fair market value of the qualified real property exchanged.

For purposes of clause (ii) of the preceding sentence, fair market value shall be determined as of the time of the exchange.

(2) Treatment of qualified exchange property

For purposes of subsection (c)—

(A) any interest in qualified exchange property shall be treated in the same manner as if it were a portion of the interest in qualified real property which was exchanged,

(B) any tax imposed by subsection (c) by reason of the exchange shall be treated as a tax imposed on a partial disposition, and

(C) paragraph (6) of subsection (c) shall be applied by treating material participation with respect to the exchanged property as material participation with respect to the qualified exchange property.

(3) Qualified exchange property

For purposes of this subsection, the term "qualified exchange property" means real property which is to be used for the qualified use set forth in subparagraph (A) or (B) of subsection (b)(2) under which the real property exchanged therefor originally qualified under subsection (a).

(Added Pub. L. 94–455, title XX, §2003(a), Oct. 4, 1976, 90 Stat. 1856; amended Pub. L. 95–472, §4(a), (c), Oct. 17, 1978, 92 Stat. 1334, 1336; Pub. L. 95–600, title VII, §702(d)(1), (2), (4), (5), Nov. 6, 1978, 92 Stat. 2928, 2929; Pub. L. 97–34, title IV, §421(a)–(d)(2)(A), (e), (f), (h)–(j)(2)(A), (3), (4), Aug. 13, 1981, 95 Stat. 306–313; Pub. L. 97–448, title I, §104(b)(1), (2), Jan. 12, 1983, 96 Stat. 2381; Pub. L. 98–369, div. A, title X, §1025(a), July 18, 1984, 98 Stat. 1030; Pub. L. 99–514, title I, §104(b)(3), Oct. 22, 1986, 100 Stat. 2105; Pub. L. 100–647, title VI, §6151(a), Nov. 10, 1988, 102 Stat. 3724; Pub. L. 101–508, title XI, §11802(f)(5), Nov. 5, 1990, 104 Stat. 1388–530; Pub. L. 105–34, title V, §§501(b), 504(a), (b), 508(c), title XIII, §1313(a), Aug. 5, 1997, 111 Stat. 845, 853, 854, 860, 1045; Pub. L. 108–311, title II, §207(22), Oct. 4, 2004, 118 Stat. 1178.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(4)(A)(i), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2004—Subsec. (c)(7)(D). Pub. L. 108–311 substituted "section 152(f)(2)" for "section 151(c)(4)".

1997—Subsec. (a)(3). Pub. L. 105–34, §501(b), added par. (3).

Subsec. (b)(5)(A). Pub. L. 105–34, §504(b), struck out at end "For purposes of subsection (c), such surviving spouse shall not be treated as failing to use such property in a qualified use solely because such spouse rents such property to a member of such spouse's family on a net cash basis."

Subsec. (c)(7)(E). Pub. L. 105–34, §504(a), added subpar. (E).

Subsec. (c)(8). Pub. L. 105–34, §508(c), added par. (8).

Subsec. (d)(3). Pub. L. 105–34, §1313(a), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: "The Secretary shall prescribe procedures which provide that in any case in which—

"(A) the executor makes an election under paragraph (1) within the time prescribed for filing such

election, and

"(B) substantially complies with the regulations prescribed by the Secretary with respect to such election, but—

"(i) the notice of election, as filed, does not contain all required information, or

"(ii) signatures of 1 or more persons required to enter into the agreement described in paragraph (2) are not included on the agreement as filed, or the agreement does not contain all required information, the executor will have a reasonable period of time (not exceeding 90 days) after notification of such failures to provide such information or agreements."

1990—Subsec. (a)(2). Pub. L. 101–508 amended par. (2) generally, substituting present provisions for provisions which established graduated increase in applicable limit on aggregate reduction in fair market value from $600,000 in the case of decedents dying in 1981 to $750,000 in the case of decedents dying in 1983 or thereafter.

1988—Subsec. (b)(5)(A). Pub. L. 100–647 inserted at end "For purposes of subsection (c), such surviving spouse shall not be treated as failing to use such property in a qualified use solely because such spouse rents such property to a member of such spouse's family on a net cash basis."

1986—Subsec. (c)(7)(D). Pub. L. 99–514 substituted "section 151(c)(4)" for "section 151(e)(4)".

1984—Subsec. (d)(3). Pub. L. 98–369 added par. (3).

1983—Subsec. (b)(5)(C). Pub. L. 97–448, §104(b)(1), added subpar. (C).

Subsec. (i)(1)(B)(ii). Pub. L. 97–448, §104(b)(2)(A), substituted "the qualified exchange property" for "the other property".

Subsec. (i)(3). Pub. L. 97–448, §104(b)(2)(B), substituted "subparagraph (A) or (B)" for "subparagraph (A), (B), or (C)".

1981—Subsec. (a)(2). Pub. L. 97–34, §421(a), substituted "Limit on aggregate reduction in fair market value" for "Limitation" in heading "shall not exceed the applicable limit set forth in the following table:" for "shall not exceed $500,000" in text, and inserted table.

Subsec. (b)(1). Pub. L. 97–34, §421(b)(1), substituted "qualified use by the decedent or a member of the decedent's family" for "qualified use" in provision preceding subpar. (A), and in subpars. (A)(i) and (C)(i).

Subsec. (b)(4), (5). Pub. L. 97–34, §421(b)(2), added pars. (4) and (5).

Subsec. (c)(1). Pub. L. 97–34, §421(c)(1)(A), substituted "10 years" for "15 years".

Subsec. (c)(2)(E). Pub. L. 97–34, §421(h)(2), added subpar. (E).

Subsec. (c)(3). Pub. L. 97–34, §421(c)(1)(B)(i), redesignated par. (4) as (3) and struck out former par. (3), which provided for a phaseout of additional tax between the 10th and 15th years.

Subsec. (c)(4), (5). Pub. L. 97–34, §421(c)(1)(B)(i), redesignated pars. (5) and (6) as (4) and (5), respectively. Former par. (4) redesignated (3).

Subsec. (c)(6). Pub. L. 97–34, §421(c)(2)(B)(ii), in subpar. (B) substituted "more than 3 years" for "3 years or more".

Pub. L. 97–34, §421(c)(1)(B)(i), redesignated par. (7) as (6). Former par. (6) redesignated (5).

Subsec. (c)(7). Pub. L. 97–34, §421(c)(1)(B)(i), (2)(A), added par. (7). Former par. (7) redesignated (6).

Subsec. (d)(1). Pub. L. 97–34, §421(j)(3), substituted "The election under this section shall be made on the return of the tax imposed by section 2001. Such election shall be made in such manner as the Secretary shall by regulations prescribe. Such an election, once made, shall be irrevocable." for "The election under this section shall be made not later than the time prescribed by section 6075(a) for filing the return of tax imposed by section 2001 (including extensions thereof), and shall be made in such manner as the Secretary shall by regulations prescribe."

Subsec. (e)(2). Pub. L. 97–34, §421(i), substituted provisions designated subpars. (A) through (D) for "such individual's ancestor or lineal descendant, a lineal descendant of a grandparent of such individual, the spouse of such individual, or the spouse of any such descendant".

Subsec. (e)(7). Pub. L. 97–34, §421(f), added subpar. (B), redesignated former subpar. (B) as (C), and inserted "and that there is no comparable land from which the average net share rental may be determined" after "determined" in subpar. (C), without specifying whether the language was to be inserted in cl. (i) or (ii) of subpar. (C). In view of H. Rept. No. 97–201, 97th Cong., July 14, 1981, p. 492, the language was inserted in cl. (ii) as the probable intent of Congress.

Subsec. (e)(9). Pub. L. 97–34, §421(j)(2)(A), struck out from subpar. (B) "in satisfaction of the right of such person to a pecuniary bequest" after "from the estate" and in subpar. (C) substituted "(to the extent such property is includible in the gross estate of the decedent)" for "in satisfaction of a right (which such person has by reason of the death of the decedent) to receive from the trust a specific dollar amount which is the equivalent of a pecuniary bequest".

Subsec. (e)(12). Pub. L. 97–34, §421(c)(2)(B)(i), added par. (12).

Subsec. (e)(13), (14). Pub. L. 97–34, §421(h)(1), (j)(4), added pars. (13) and (14).

Subsec. (f)(1). Pub. L. 97–34, §421(e)(2), substituted "to which subsection (h)" for "to which an election under subsection (h)".

Pub. L. 97–34, §421(d)(2)(A), substituted "conversion or exchange", "(h) or (i)", and "replace or of the exchange of property" for "conversion", "(h)", and "replace".

Subsec. (g). Pub. L. 97–34, §421(j)(1), inserted provision that for purposes of the preceding sentence, an interest in a discretionary trust all the beneficiaries of which are qualified heirs shall be treated as a present interest.

Subsec. (h)(1)(A). Pub. L. 97–34, §421(e)(1)(A), struck out "and the qualified heir makes an election under this subsection" after "qualified real property".

Subsec. (h)(2)(A). Pub. L. 97–34, §421(c)(1)(B)(ii), substituted "; except that" for ", except that" and "the 10-year period" for "the 15-year period", deleted cl. (i) designation, and struck out cl. (ii), which provided the phaseout period under par. (3) of subsec. (c) be appropriately adjusted to take into account the extension referred to in cl. (i).

Subsec. (h)(2)(C). Pub. L. 97–34, §421(c)(1)(B)(iii), substituted "(6)" for "(7)" in provisions preceding cl. (i).

Subsec. (h)(5). Pub. L. 97–34, §421(e)(1)(B), struck out par. (5) which provided for making a subsec. (h) election at such time and in such manner as the Secretary may by regulations prescribe.

Subsec. (i). Pub. L. 97–34, §421(d)(1), added subsec. (i).

1978—Subsec. (b)(1). Pub. L. 95–600, §702(d)(1), inserted "which was acquired from or passed from the decedent to a qualified heir of the decedent and" after "located in the United States".

Subsec. (c)(6). Pub. L. 95–600, §702(d)(5)(A), inserted "unless the heir has furnished bond which meets the requirements of subsection (e)(11)" after "respect to his interest".

Subsec. (e)(9). Pub. L. 95–600, §702(d)(2), added par. (9).

Subsec. (e)(10). Pub. L. 95–600, §702(d)(4), added par. (10).

Subsec. (e)(11). Pub. L. 95–600, §702(d)(5)(B), added par. (11).

Subsec. (f)(1). Pub. L. 95–472, §4(c), inserted provision relating to the expiration of the statutory period for the assessment of additional tax due under subsec. (c) in the case of an involuntary conversion to which an election under subsec. (h) is applicable.

Subsec. (h). Pub. L. 95–472, §4(a), added subsec. (h).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 501(b) of Pub. L. 105–34 applicable to estates of decedents dying, and gifts made, after Dec. 31, 1997, see section 501(f) of Pub. L. 105–34, set out as a note under section 2001 of this title.

Pub. L. 105–34, title V, §504(c), Aug. 5, 1997, 111 Stat. 854, provided that: "The amendments made by this section [amending this section] shall apply with respect to leases entered into after December 31, 1976."

Amendment by section 508(c) of Pub. L. 105–34 applicable to easements granted after Dec. 31, 1997, see section 508(e)(2) of Pub. L. 105–34, set out as a note under section 170 of this title.

Pub. L. 105–34, title XIII, §1313(b), Aug. 5, 1997, 111 Stat. 1045, provided that: "The amendment made by subsection (a) [amending this section] shall apply to the estates of decedents dying after the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title VI, §6151(b), Nov. 10, 1988, 102 Stat. 3724, provided that:

"(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply with respect to rentals occurring after December 31, 1976.

"(2) WAIVER OF STATUTE OF LIMITATIONS.—If on the date of the enactment of this Act [Nov. 10, 1988] (or at any time within 1 year after such date of enactment) refund or credit of any overpayment of tax resulting from the application of the amendment made by subsection (a) is barred by any law or rule of law, refund or credit of such overpayment shall, nevertheless, be made or allowed if claim therefore is filed before the date 1 year after the date of the enactment of this Act."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title X, §1025(b), July 18, 1984, 98 Stat. 1031, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to estates of decedents dying after December 31, 1976.

"(2) REFUND OR CREDIT OF OVERPAYMENT BARRED BY STATUTE OF LIMITATIONS .—Notwithstanding section 6511(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] or any other period of limitation or lapse of time, a claim for credit or refund of overpayment of the tax imposed by such Code which arises by reason of this section may be filed by any person at any time within the 1-year period beginning on the date of the enactment of this Act [July 18, 1984]. Sections 6511(b) and 6514 of such Code shall not apply to any claim for credit or refund filed under this subsection within such 1-year period."

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title IV, §421(k), Aug. 13, 1981, 95 Stat. 313, as amended by Pub. L. 97–448, title I, §104(b)(4), Jan. 12, 1983, 96 Stat. 2382; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 1016, 1040, and 6324B of this title] shall apply with respect to the estates of decedents dying after December 31, 1981.

"(2) INCREASE IN LIMITATION.—The amendment made by subsection (a) [amending this section] shall apply with respect to the estates of decedents dying after December 31, 1980.

"(3) SUBSECTION (d).—The amendments made by subsection (d) [amending this section and section 6324B of this title] shall apply with respect to exchanges after December 31, 1981.

"(4) SUBSECTION (e).—The amendments made by subsection (e) [amending this section] shall apply with respect to involuntary conversions after December 31, 1981.

"(5) CERTAIN AMENDMENTS MADE RETROACTIVE TO 1976.—

"(A) IN GENERAL.—The amendments made by subsections (b)(1), (j)(1), and (j)(2) [amending this section and section 1040 of this title] and the provisions of subparagraph (A) of section 2032A(c)(7) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (c)(2)) shall apply with respect to the estates of decedents dying after December 31, 1976.

"(B) TIMELY ELECTION REQUIRED.—Subparagraph (A) shall only apply in the case of an estate if a timely election under section 2032A was made with respect to such estate. If the estate of any decedent would not qualify under section 2032A of the Internal Revenue Code of 1986 but for the amendments described in subparagraph (A) and the time for making an election under section 2032A with respect to such estate would (but for this sentence) expire after July 28, 1980, the time for making such election shall not expire before the close of February 16, 1982.

"(C) REINSTATEMENT OF ELECTIONS.—If any election under section 2032A was revoked before the date of the enactment of this Act [Aug. 13, 1981], such election may be reinstated at any time before February 17, 1982.

"(D) STATUTE OF LIMITATIONS.—If on the date of the enactment of this Act [Aug. 13, 1981] (or at any time before February 17, 1982) the making of a credit or refund of any overpayment of tax resulting from the amendments described in subparagraph (A) is barred by any law or rule of law, such credit or refund shall nevertheless be made if claim therefor is made before February 17, 1982."

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title VII, §702(d)(6), Nov. 6, 1978, 92 Stat. 2929, provided that: "The amendments made by this subsection [amending this section and section 1040 of this title] shall apply to the estates of decedents dying after December 31, 1976."

Amendment of section by Pub. L. 95–472 applicable with respect to involuntary conversions after Dec. 31, 1976, see section 4(d) of Pub. L. 95–472, set out as a note under section 1016 of this title.

EFFECTIVE DATE

Pub. L. 94–455, title XX, §2003(e), Oct. 4, 1976, 90 Stat. 1862, provided that: "The amendments made by this section [enacting this section and section 6324B of this title and amending section 2013 of this title] shall

apply to the estates of decedents dying after December 31, 1976."

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

WAIVER OF STATUTE OF LIMITATION FOR TAXES ON CERTAIN FARM VALUATIONS

Pub. L. 107–16, title V, §581, June 7, 2001, 115 Stat. 93, provided that: "If on the date of the enactment of this Act [June 7, 2001] (or at any time within 1 year after the date of the enactment) a refund or credit of any overpayment of tax resulting from the application of section 2032A(c)(7)(E) of the Internal Revenue Code of 1986 is barred by any law or rule of law, the refund or credit of such overpayment shall, nevertheless, be made or allowed if claim therefor is filed before the date 1 year after the date of the enactment of this Act."

INFORMATION NECESSARY FOR VALID SPECIAL USE VALUATION ELECTION

Pub. L. 99–514, title XIV, §1421, Oct. 22, 1986, 100 Stat. 2716, as amended by Pub. L. 100–647, title I, §1014(f), Nov. 10, 1988, 102 Stat. 3562, provided that:

"(a) IN GENERAL.—In the case of any decedent dying before January 1, 1986, if the executor—

"(1) made an election under section 2032A of the Internal Revenue Code of 1954 [now 1986] on the return of tax imposed by section 2001 of such Code, and

"(2) provided substantially all the information with respect to such election required on such return of tax,

such election shall be a valid election for purposes of section 2032A of such Code.

"(b) EXECUTOR MUST PROVIDE INFORMATION.—An election described in subsection (a) shall not be valid if the Secretary of the Treasury or his delegate after the date of the enactment of this Act [Oct. 22, 1986] requests information from the executor with respect to such election and the executor does not provide such information within 90 days of receipt of such request.

"(c) EFFECTIVE DATE.—The provisions of this section shall not apply to the estate of any decedent if before the date of the enactment of this Act [Oct. 22, 1986] the statute of limitations has expired with respect to—

"(1) the return of tax imposed by section 2001 of the Internal Revenue Code of 1954 [now 1986], and

"(2) the period during which a claim for credit or refund may be timely filed.

"(d) SPECIAL RULE FOR CERTAIN ESTATE.—Notwithstanding subsection (a)(2), the provisions of this section shall apply to the estate of an individual who died on January 30, 1984, and with respect to which—

"(1) a Federal estate tax return was filed on October 30, 1984, electing current use valuation, and

"(2) the agreement required under section 2032A was filed on November 9, 1984."

LAND DIVERTED UNDER 1983 PAYMENT-IN-KIND PROGRAM

Land diverted from production of agricultural commodities under a 1983 payment-in-kind program to be treated, for purposes of this section, as used during the 1983 crop year by qualified taxpayers in the active conduct of the trade or business of farming, with qualified taxpayers who materially participate in the diversion and devotion to conservation uses under a 1983 payment-in-kind program to be treated as materially participating in the operation of such land during the 1983 crop year, see section 3 of Pub. L. 98–4, set out as a note under section 61 of this title.

§2033. Property in which the decedent had an interest

The value of the gross estate shall include the value of all property to the extent of the interest therein of the decedent at the time of his death.

(Aug. 16, 1954, ch. 736, 68A Stat. 381; Pub. L. 87–834, §18(a)(2)(A), Oct. 16, 1962, 76 Stat. 1052.)

AMENDMENTS

1962—Pub. L. 87–834 struck out provisions which excepted real property situated outside of the United States.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable to estates of decedents dying after Oct. 16, 1962, except as

otherwise provided, see section 18(b) of Pub. L. 87–834, set out as a note under section 2031 of this title.

[§2033A. Renumbered §2057]

§2034. Dower or curtesy interests

The value of the gross estate shall include the value of all property to the extent of any interest therein of the surviving spouse, existing at the time of the decedent's death as dower or curtesy, or by virtue of a statute creating an estate in lieu of dower or curtesy.

(Aug. 16, 1954, ch. 736, 68A Stat. 381; Pub. L. 87–834, §18(a)(2)(B), Oct. 16, 1962, 76 Stat. 1052.)

AMENDMENTS

1962—Pub. L. 87–834 struck out provisions which excepted real property situated outside of the United States.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable to estates of decedents dying after Oct. 16, 1962, except as otherwise provided, see section 18(b) of Pub. L. 87–834, set out as a note under section 2031 of this title.

§2035. Adjustments for certain gifts made within 3 years of decedent's death

(a) Inclusion of certain property in gross estate

If—

(1) the decedent made a transfer (by trust or otherwise) of an interest in any property, or relinquished a power with respect to any property, during the 3-year period ending on the date of the decedent's death, and

(2) the value of such property (or an interest therein) would have been included in the decedent's gross estate under section 2036, 2037, 2038, or 2042 if such transferred interest or relinquished power had been retained by the decedent on the date of his death,

the value of the gross estate shall include the value of any property (or interest therein) which would have been so included.

(b) Inclusion of gift tax on gifts made during 3 years before decedent's death

The amount of the gross estate (determined without regard to this subsection) shall be increased by the amount of any tax paid under chapter 12 by the decedent or his estate on any gift made by the decedent or his spouse during the 3-year period ending on the date of the decedent's death.

(c) Other rules relating to transfers within 3 years of death

(1) In general

For purposes of—

(A) section 303(b) (relating to distributions in redemption of stock to pay death taxes),

(B) section 2032A (relating to special valuation of certain farms, etc., real property), and

(C) subchapter C of chapter 64 (relating to lien for taxes),

the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, during the 3-year period ending on the date of the decedent's death.

(2) Coordination with section 6166

An estate shall be treated as meeting the 35 percent of adjusted gross estate requirement of section 6166(a)(1) only if the estate meets such requirement both with and without the application

of subsection (a).

(3) Marital and small transfers

Paragraph (1) shall not apply to any transfer (other than a transfer with respect to a life insurance policy) made during a calendar year to any donee if the decedent was not required by section 6019 (other than by reason of section 6019(2)) to file any gift tax return for such year with respect to transfers to such donee.

(d) Exception

Subsection (a) and paragraph (1) of subsection (c) shall not apply to any bona fide sale for an adequate and full consideration in money or money's worth.

(e) Treatment of certain transfers from revocable trusts

For purposes of this section and section 2038, any transfer from any portion of a trust during any period that such portion was treated under section 676 as owned by the decedent by reason of a power in the grantor (determined without regard to section 672(e)) shall be treated as a transfer made directly by the decedent.

(Aug. 16, 1954, ch. 736, 68A Stat. 381; Pub. L. 87–834, §18(a)(2)(C), Oct. 16, 1962, 76 Stat. 1052; Pub. L. 94–455, title XX, §2001(a)(5), Oct. 4, 1976, 90 Stat. 1848; Pub. L. 95–600, title VII, §702(f)(1), Nov. 6, 1978, 92 Stat. 2930; Pub. L. 97–34, title IV, §§403(b)(3)(B), 424(a), Aug. 13, 1981, 95 Stat. 301, 317; Pub. L. 97–448, title I, §104(a)(9), (d)(1)(A), (C), (2), Jan. 12, 1983, 96 Stat. 2381, 2383; Pub. L. 105–34, title XIII, §1310(a), Aug. 5, 1997, 111 Stat. 1043; Pub. L. 106–554, §1(a)(7) [title III, §319(14)], Dec. 21, 2000, 114 Stat. 2763, 2763A–646.)

AMENDMENTS

2000—Subsec. (c)(2). Pub. L. 106–554, §1(a)(7) [title III, §319(14)(A)], substituted "subsection (a)" for "paragraph (1)".

Subsec. (d). Pub. L. 106–554, §1(a)(7) [title III, §319(14)(B)], inserted "and paragraph (1) of subsection (c)" after "Subsection (a)".

1997—Pub. L. 105–34 amended section catchline and text generally. Prior to amendment, section consisted of subsecs. (a) to (d) relating to adjustments for gifts made within 3 years of decedent's death.

1983—Subsec. (b)(2). Pub. L. 97–448, §104(a)(9), substituted "section 6019(2)" for "section 6019(a)(2)".

Subsec. (d)(2). Pub. L. 97–448, §104(d)(2), inserted "of this subsection and paragraph (2) of subsection (b)" after "Paragraph (1)", and struck out "2041," after "2038,".

Subsec. (d)(3)(C), (D). Pub. L. 97–448, §104(d)(1)(C), redesignated subpar. (D) as (C). Former subpar. (C), which referred to section 6166 (relating to extension of time for payment of estate tax where estate consists largely of interest in closely held business), was struck out.

Subsec. (d)(4). Pub. L. 97–448, §104(d)(1)(A), added par. (4).

1981—Subsec. (b)(2). Pub. L. 97–34, §403(b)(3)(B), inserted "(other than by reason of section 6019(a)(2))" after "section 6019".

Subsec. (d). Pub. L. 97–34, §424(a), added subsec. (d).

1978—Subsec. (b). Pub. L. 95–600 substituted in par. (2) provisions relating to gifts for which donee was not required by section 6019 to file gift tax returns for provisions relating to gifts excludable in computing taxable gifts by reason of section 2503(b) and inserted provisions following par. (2) relating to inapplicability of par. (2) to transfers respecting life insurance policies.

1976—Pub. L. 94–455 substituted provisions covering adjustments for gifts made within 3 years of decedent's death for provisions under which transfers by the decedent within 3 years of the decedent's death were deemed to have been made in contemplation of death and included in the value of the gross estate.

1962—Subsec. (a). Pub. L. 87–834 struck out provisions which excepted real property situated outside of the United States.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XIII, §1310(c), Aug. 5, 1997, 111 Stat. 1044, provided that: "The amendments made by this section [amending this section] shall apply to the estates of decedents dying after the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 403(b)(3)(B) of Pub. L. 97–34 applicable to estates of decedents dying after Dec. 31, 1981, see section 403(e) of Pub. L. 97–34, set out as a note under section 2056 of this title.

Pub. L. 97–34, title IV, §424(b), Aug. 13, 1981, 95 Stat. 317, provided that: "The amendment made by subsection (a) [amending this section] shall apply to the estates of decedents dying after December 31, 1981."

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title VII, §702(f)(2), Nov. 6, 1978, 92 Stat. 2930, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to the estates of decedents dying after December 31, 1976, except that it shall not apply to transfers made before January 1, 1977."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable to estates of decedents dying after Dec. 31, 1976, but not to transfers made before Jan. 1, 1977, see section 2001(d)(1) of Pub. L. 94–455, set out as a note under section 2001 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable to estates of decedents dying after Oct. 16, 1962, except as otherwise provided, see section 18(b) of Pub. L. 87–834, set out as a note under section 2031 of this title.

TRANSFERS MADE BY DECEDENT DURING 1977; ELECTION AVAILABLE TO EXECUTOR ON OR BEFORE DUE DATE FOR FILING ESTATE TAX RETURN

Pub. L. 96–222, title I, §107(a)(2)(F), Apr. 1, 1980, 94 Stat. 223, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(i) If the executor elects the benefits of this subparagraph with respect to any estate, section 2035(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to adjustments for gifts made within 3 years of decedent's death) shall be applied with respect to transfers made by the decedent during 1977 as if paragraph (2) of such section 2035(b) read as follows:

" '(2) to any gift to a donee made during 1977 to the extent of the amount of such gift which was excludable in computing taxable gifts by reason of section 2503(b) (relating to $3,000 annual exclusion for purposes of the gift tax) determined without regard to section 2513(a).'

"(ii) The election under clause (i) with respect to any estate shall be made on or before the later of—

"(I) the due date for filing the estate tax return, or

"(II) the day which is 120 days after the date of the enactment of this Act [Apr. 1, 1980]."

§2036. Transfers with retained life estate

(a) General rule

The value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death—

(1) the possession or enjoyment of, or the right to the income from, the property, or

(2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom.

(b) Voting rights

(1) In general

For purposes of subsection (a)(1), the retention of the right to vote (directly or indirectly) shares of stock of a controlled corporation shall be considered to be a retention of the enjoyment of transferred property.

(2) Controlled corporation

For purposes of paragraph (1), a corporation shall be treated as a controlled corporation if, at any time after the transfer of the property and during the 3-year period ending on the date of the decedent's death, the decedent owned (with the application of section 318), or had the right (either alone or in conjunction with any person) to vote, stock possessing at least 20 percent of the total combined voting power of all classes of stock.

(3) Coordination with section 2035

For purposes of applying section 2035 with respect to paragraph (1), the relinquishment or cessation of voting rights shall be treated as a transfer of property made by the decedent.

(c) Limitation on application of general rule

This section shall not apply to a transfer made before March 4, 1931; nor to a transfer made after March 3, 1931, and before June 7, 1932, unless the property transferred would have been includible in the decedent's gross estate by reason of the amendatory language of the joint resolution of March 3, 1931 (46 Stat. 1516).

(Aug. 16, 1954, ch. 736, 68A Stat. 382; Pub. L. 87–834, §18(a)(2)(D), Oct. 16, 1962, 76 Stat. 1052; Pub. L. 94–455, title XX, §2009(a), Oct. 4, 1976, 90 Stat. 1893; Pub. L. 95–600, title VII, §702(i)(1), (2), Nov. 6, 1978, 92 Stat. 2931; Pub. L. 100–203, title X, §10402(a), Dec. 22, 1987, 101 Stat. 1330–431; Pub. L. 100–647, title III, §3031(a)(1), (b)–(e), (g), Nov. 10, 1988, 102 Stat. 3634–3638; Pub. L. 101–508, title XI, §11601(a), Nov. 5, 1990, 104 Stat. 1388–490.)

AMENDMENTS

1990—Subsecs. (c), (d). Pub. L. 101–508 redesignated subsec. (d) as (c) and struck out former subsec. (c) which enunciated a rule that retention of retained interest would be considered to be a retention of enjoyment of transferred property if a person held a substantial interest in an enterprise, and such person in effect transferred after Dec. 17, 1987, property having a disproportionately large share of the potential appreciation in such person's interest in the enterprise while retaining an interest in the income of, or rights in, the enterprise.

1988—Subsec. (c)(1)(B). Pub. L. 100–647, §3031(e), substituted "an interest" for "a disproportionately large share" after "whole retaining".

Subsec. (c)(2). Pub. L. 100–647, §3031(g)(1), substituted "consideration furnished by" for "sales to" in heading, and amended text generally. Prior to amendment, text read as follows: "The exception contained in subsection (a) for a bona fide sale shall not apply to a transfer described in paragraph (1) if such transfer is to a member of the transferor's family."

Subsec. (c)(3)(C). Pub. L. 100–647, §3031(d), substituted "Except as provided in regulations, an" for "An".

Subsec. (c)(4). Pub. L. 100–647, §3031(a)(1), amended par. (4) generally, substituting provisions relating to treatment of certain transfers for provisions relating to coordination with section 2035.

Subsec. (c)(5). Pub. L. 100–647, §3031(g)(2), amended par. (5) generally, substituting provisions relating to the making of appropriate adjustments in amounts included in gross estate for provisions relating to coordination with section 2043.

Subsec. (c)(6). Pub. L. 100–647, §3031(b), added par. (6).

Subsec. (c)(7), (8). Pub. L. 100–647, §3031(b)[(c)], added pars. (7) and (8).

1987—Subsecs. (c), (d). Pub. L. 100–203 added subsec. (c) and redesignated former subsec. (c) as (d).

1978—Subsec. (a). Pub. L. 95–600, §702(i)(2), struck out provision following par. (2) relating to the retention of voting rights in retained stock.

Subsecs. (b), (c). Pub. L. 95–600, §702(i)(1), added subsec. (b) and redesignated former subsec. (b) as (c).

1976—Subsec. (a). Pub. L. 94–455 provided that, for purposes of par. (1), the retention of voting rights in retained stock be considered to be a retention of the enjoyment of that stock.

1962—Subsec. (a). Pub. L. 87–834 struck out provisions which excepted real property situated outside of the United States.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, §11601(c), Nov. 5, 1990, 104 Stat. 1388–491, provided that: "The amendments made by this section [amending this section and sections 2207B and 2501 of this title] shall apply in the case of property transferred after December 17, 1987."

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title III, §3031(h), Nov. 10, 1988, 102 Stat. 3639, provided that:

"(1) IN GENERAL.—Except as provided in this subsection, any amendment made by this section [enacting section 2207B of this title and amending this section and section 2501 of this title] shall take effect as if included in the provisions of the Revenue Act of 1987 [Pub. L. 100–203, title X] to which such amendment relates.

"(2) SUBSECTION (a).—The amendments made by subsection (a) [amending this section and section 2501 of this title] shall apply in cases where the transfer referred to in section 2036(c)(1)(B) of the 1986 Code is on or after June 21, 1988.

"(3) SUBSECTION (f).—If an amount is included in the gross estate of a decedent under section 2036 of the 1986 Code other than solely by reason of section 2036(c) of the 1986 Code, the amendments made by subsection (f) [enacting section 2207B of this title] shall apply to such amount only with respect to property transferred after the date of the enactment of this Act [Nov. 10, 1988].

"(4) CORRECTION PERIOD.—If section 2036(c)(1) of the 1986 Code would (but for this paragraph) apply to any interest arising from a transaction entered into during the period beginning after December 17, 1987, and ending before January 1, 1990, such section shall not apply to such interest if—

"(A) during such period, such actions are taken as are necessary to have such section 2036(c)(1) not apply to such transaction (and any such interest), or

"(B) the original transferor and his spouse on January 1, 1990 (or, if earlier, the date of the original transferor's death), does not hold any interest in the enterprise involved.

"(5) CLARIFICATION OF EFFECTIVE DATE.—For purposes of section 10402(b) of the Revenue Act of 1987 [Pub. L. 100–203, set out as an Effective Date of 1987 Amendment note below], with respect to property transferred on or before December 17, 1987—

"(A) any failure to exercise a right of conversion,

"(B) any failure to pay dividends, and

"(c) [sic] failures to exercise other rights specified in regulations,

shall not be treated as a subsequent transfer."

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title X, §10402(b), Dec. 22, 1987, 101 Stat. 1330–432, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to estates of decedents dying after December 31, 1987, but only in the case of property transferred after December 17, 1987." [For clarification of this note, see section 3031(h)(5) of Pub. L. 100–647, set out as an Effective Date of 1988 Amendment note above.]

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title VII, §702(i)(3), Nov. 6, 1978, 92 Stat. 2931, provided that: "The amendments made by this subsection [amending this section] shall apply to transfers made after June 22, 1976."

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XX, §2009(e)(1), Oct. 4, 1976, 90 Stat. 1896, provided that: "The amendment made by subsection (a) [amending this section] shall apply to transfers made after June 22, 1976."

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable to estates of decedents dying after Oct. 16, 1962, except as otherwise provided, see section 18(b) of Pub. L. 87–834, set out as a note under section 2031 of this title.

§2037. Transfers taking effect at death

(a) General rule

The value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time after September 7, 1916, made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, if—

(1) possession or enjoyment of the property can, through ownership of such interest, be obtained only by surviving the decedent, and

(2) the decedent has retained a reversionary interest in the property (but in the case of a transfer

made before October 8, 1949, only if such reversionary interest arose by the express terms of the instrument of transfer), and the value of such reversionary interest immediately before the death of the decedent exceeds 5 percent of the value of such property.

(b) Special rules

For purposes of this section, the term "reversionary interest" includes a possibility that property transferred by the decedent—

(1) may return to him or his estate, or

(2) may be subject to a power of disposition by him,

but such term does not include a possibility that the income alone from such property may return to him or become subject to a power of disposition by him. The value of a reversionary interest immediately before the death of the decedent shall be determined (without regard to the fact of the decedent's death) by usual methods of valuation, including the use of tables of mortality and actuarial principles, under regulations prescribed by the Secretary. In determining the value of a possibility that property may be subject to a power of disposition by the decedent, such possibility shall be valued as if it were a possibility that such property may return to the decedent or his estate. Notwithstanding the foregoing, an interest so transferred shall not be included in the decedent's gross estate under this section if possession or enjoyment of the property could have been obtained by any beneficiary during the decedent's life through the exercise of a general power of appointment (as defined in section 2041) which in fact was exercisable immediately before the decedent's death.

(Aug. 16, 1954, ch. 736, 68A Stat. 382; Pub. L. 87–834, §18(a)(2)(E), Oct. 16, 1962, 76 Stat. 1052; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsec. (b). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

1962—Subsec. (a). Pub. L. 87–834 struck out provisions which excepted real property situated outside of the United States.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable to estates of decedents dying after Oct. 16, 1962, except as otherwise provided, see section 18(b) of Pub. L. 87–834, set out as a note under section 2031 of this title.

§2038. Revocable transfers

(a) In general

The value of the gross estate shall include the value of all property—

(1) Transfers after June 22, 1936

To the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power (in whatever capacity exercisable) by the decedent alone or by the decedent in conjunction with any other person (without regard to when or from what source the decedent acquired such power), to alter, amend, revoke, or terminate, or where any such power is relinquished during the 3 year period ending on the date of the decedent's death.

(2) Transfers on or before June 22, 1936

To the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power, either by the decedent alone or in conjunction with any person, to alter, amend, or revoke, or where the decedent relinquished any such power during the 3 year period ending on the date of the decedent's death. Except in the case of transfers made

after June 22, 1936, no interest of the decedent of which he has made a transfer shall be included in the gross estate under paragraph (1) unless it is includible under this paragraph.

(b) Date of existence of power

For purposes of this section, the power to alter, amend, revoke, or terminate shall be considered to exist on the date of the decedent's death even though the exercise of the power is subject to a precedent giving of notice or even though the alteration, amendment, revocation, or termination takes effect only on the expiration of a stated period after the exercise of the power, whether or not on or before the date of the decedent's death notice has been given or the power has been exercised. In such cases proper adjustment shall be made representing the interests which would have been excluded from the power if the decedent had lived, and for such purpose, if the notice has not been given or the power has not been exercised on or before the date of his death, such notice shall be considered to have been given, or the power exercised, on the date of his death.

(Aug. 16, 1954, ch. 736, 68A Stat. 383; Pub. L. 86–141, §1, Aug. 7, 1959, 73 Stat. 288; Pub. L. 87–834, §18(a)(2)(F), Oct. 16, 1962, 76 Stat. 1052; Pub. L. 94–455, title XIX, §1902 (a)(3), title XX, §2001(c)(1)(K), Oct. 4, 1976, 90 Stat. 1804, 1852.)

AMENDMENTS

1976—Subsec. (a)(1). Pub. L. 94–455, §2001(c)(1)(K)(i), substituted "during the 3-year period ending on the date of the decedent's death" for "in contemplation of decedent's death".

Subsec. (a)(2). Pub. L. 94–455, §2001(c)(1)(K)(ii), substituted "during the 3-year period ending on the date of the decedent's death" for "in contemplation of his death".

Subsec. (c). Pub. L. 94–455, §1902(a)(3), struck out subsec. (c) which covered the effect of a disability in certain cases by relating a mental disability to relinquish a power to a power, the relinquishment of which would be deemed not to be a transfer for purposes of chapter 4 of the Internal Revenue Code of 1939.

1962—Subsec. (a). Pub. L. 87–834 struck out provisions which excepted real property situated outside of the United States.

1959—Subsec. (c). Pub. L. 86–141 added subsec. (c).

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1902(a)(3) of Pub. L. 94–455 applicable to estates of decedents dying after Oct. 4, 1976, see section 1902(c)(1) of Pub. L. 94–455, set out as a note under section 2011 of this title.

Amendment by section 2001(c)(1)(K)(i), (ii) of Pub. L. 94–455 applicable to estates of decedents dying after Dec. 31, 1976 but not to transfers made before Jan. 1, 1977, see section 2001(d)(1) of Pub. L. 94–455, set out as a note under section 2001 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable to estates of decedents dying after Oct. 16, 1962, except as otherwise provided, see section 18(b) of Pub. L. 87–834, set out as a note under section 2031 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Pub. L. 86–141, §2, Aug. 7, 1959, 73 Stat. 289, provided that: "The amendment made by the first section of this Act [amending this section] shall apply only with respect to estates of decedents dying after August 16, 1954. No interest shall be allowed or paid on any overpayment resulting from the application of the amendment made by the first section of this Act with respect to any payment made before the date of the enactment of this Act [Aug. 7, 1959]."

§2039. Annuities

(a) General

The gross estate shall include the value of an annuity or other payment receivable by any beneficiary by reason of surviving the decedent under any form of contract or agreement entered into after March 3, 1931 (other than as insurance under policies on the life of the decedent), if, under such contract or agreement, an annuity or other payment was payable to the decedent, or the decedent

possessed the right to receive such annuity or payment, either alone or in conjunction with another for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death.

(b) Amount includible

Subsection (a) shall apply to only such part of the value of the annuity or other payment receivable under such contract or agreement as is proportionate to that part of the purchase price therefor contributed by the decedent. For purposes of this section, any contribution by the decedent's employer or former employer to the purchase price of such contract or agreement (whether or not to an employee's trust or fund forming part of a pension, annuity, retirement, bonus or profit sharing plan) shall be considered to be contributed by the decedent if made by reason of his employment.

(Aug. 16, 1954, ch. 736, 68A Stat. 384; Pub. L. 85–866, title I, §§23(e), 67(a), Sept. 2, 1958, 72 Stat. 1622, 1658; Pub. L. 87–792, §7(i), Oct. 10, 1962, 76 Stat. 830; Pub. L. 89–365, §2(a), Mar. 8, 1966, 80 Stat. 33; Pub. L. 91–172, title I, §101(j)(23), Dec. 30, 1969, 83 Stat. 528; Pub. L. 92–580, §2(a), Oct. 27, 1972, 86 Stat. 1276; Pub. L. 93–406, title II, §2007(b)(4), Sept. 2, 1974, 88 Stat. 994; Pub. L. 94–455, title XX, §2009(c)(1)–(3), Oct. 4, 1976, 90 Stat. 1894, 1895; Pub. L. 95–600, title I, §§142(a), (b), 156(c)(4), title VII, §702(j)(1), Nov. 6, 1978, 92 Stat. 2796, 2803, 2931; Pub. L. 96–222, title I, §101(a)(8)(B), Apr. 1, 1980, 94 Stat. 201; Pub. L. 97–34, title III, §§311(d)(1), (h)(4), 313(b)(3), Aug. 13, 1981, 95 Stat. 280, 282, 286; Pub. L. 97–248, title II, §245(a), (b), Sept. 3, 1982, 96 Stat. 524; Pub. L. 97–448, title I, §103(c)(9), Jan. 12, 1983, 96 Stat. 2377; Pub. L. 98–369, div. A, title IV, §491(d)(34), title V, §525(a), July 18, 1984, 98 Stat. 851, 873; Pub. L. 99–514, title XVIII, §§1848(d), 1852(e)(1)(A), Oct. 22, 1986, 100 Stat. 2857, 2868.)

AMENDMENTS

1986—Subsec. (c). Pub. L. 99–514, §1852(e)(1), struck out subsec. (c) which provided an exclusion from gross estate of certain annuity interests created by community property laws.

Subsec. (e). Pub. L. 99–514, §1848(d), struck out "or a bond described in paragraph (3)" after "an annuity described in paragraph (2)" in concluding provisions as such provisions were applicable to obligations issued after Dec. 31, 1983, and prior to repeal of subsec. (e) by Pub. L. 98–369, §525(a), see Effective Date of 1984 Amendment note below.

1984—Subsec. (c). Pub. L. 98–369, §525(a), substituted provisions relating to exception of certain annuity interests created by community property laws for provisions which related to exemption of annuities under certain trusts and plans.

Subsec. (d). Pub. L. 98–369, §525(a), struck out subsec. (d) which related to exemption of certain annuity interests created by community property laws. See subsec. (c) of this section.

Subsec. (e). Pub. L. 98–369, §525(a), struck out subsec. (e) which related to exclusion of individual retirement accounts.

Pub. L. 98–369, §491(d)(34), inserted "or" at end of par. (1), substituted a period for ", or" at end of par. (2), struck out par. (3) which excluded from the value of the gross estate the value of an annuity receivable by any beneficiary, other than the executor, under a retirement bond described in section 409(a), and substituted in provision following par. (2) "or 408(d)(3)" for "405(d)(3), 408(d)(3), or 409(b)(3)(C)", and substituted "or annuity" for ", annuity, or bond" wherever appearing.

Subsecs. (f), (g). Pub. L. 98–369, §525(a), struck out subsec. (f) which related to lump sum distributions and an exception where the recipient elects not to take 10-year averaging, and subsec. (g) which related to a $100,000 limitation on the exclusions under subsecs. (c) and (e).

1983—Subsec. (f)(1). Pub. L. 97–448, §103(c)(9)(A), designated existing provisions as subpar. (A), substituted "without regard to the third sentence of section 402(e)(4)(A))" for "without regard to the next to the last sentence of section 402(e)(4)(A)" in subpar. (A) as so designated, and added subpar. (B).

Subsec. (f)(2). Pub. L. 97–448, §103(c)(9)(B), substituted "An amount described" for "A lump sum distribution described".

1982—Subsec. (c). Pub. L. 97–248, §245(b), substituted "Subject to the limitation of subsection (g), notwithstanding any other provision of this section" for "Notwithstanding the provisions of this section".

Subsec. (e). Pub. L. 97–248, §245(b), substituted "Subject to the limitation of subsection (g), notwithstanding any other provision of this section" for "Notwithstanding the provisions of this section".

Subsec. (g). Pub. L. 97–248, §245(a), added subsec. (g).

1981—Subsec. (c). Pub. L. 97–34, §311(d)(1), provided that for purposes of subsec. (c), any deductible

employee contributions, within the meaning of par. (5) of section 72(o), shall be considered as made by a person other than the decedent.

Subsec. (e). Pub. L. 97–34, §313(b)(3), inserted reference to rollover contribution described in section 405(d)(3).

Pub. L. 97–34, §311(h)(4), substituted "section 219" for "section 219 or 220".

1980—Subsec. (f)(2). Pub. L. 96–222 substituted "(without the application of paragraph (2) thereof), except to the extent that section 402(e)(4)(J) applies to such distribution" for "without the application of paragraph (2) thereof".

1978—Subsec. (c). Pub. L. 95–600, §142(a), substituted "(other than an amount described in subsection (f))" for "(other than a lump sum distribution described in section 402(e)(4), determined without regard to the next to the last sentence of section 402(e)(4)(A))" in provisions preceding par. (1).

Subsec. (e). Pub. L. 95–600, §§156(c)(4), 702(j)(1), inserted "section 403(b)(8) (but only to the extent such contribution is attributed to a distribution from a contract described in subsection (c)(3))," after "403(a)(4)" and inserted "or 220" after "section 219" wherever appearing in provisions following par. (3).

Subsec. (f). Pub. L. 95–600, §142(b), added subsec. (f).

1976—Subsec. (c). Pub. L. 94–455, §2009(c)(2), (3), substituted "other payment (other than a lump sum distribution described in section 402(e)(4), determined without regard to the next to the last sentence of section 402(e)(4)(A)) receivable by any beneficiary" for "other payment receivable by any beneficiary" in provisions preceding par. (1) and substituted "For purposes of this subsection, contributions or payments on behalf of the decedent while he was an employee within the meaning of section 401(c)(1) made under a trust or plan described in paragraph (1) or (2) shall, to the extent allowable as a deduction under section 404, be considered to be made by a person other than the decedent and, to the extent not so allowable, shall be considered to be made by the decedent" for "For purposes of this subsection, contributions or payments on behalf of the decedent while he was an employee within the meaning of section 401(c)(1) made under a trust or plan described in paragraph (1) or (2) shall be considered to be contributions or payments made by the decedent" in provisions following par. (4).

Subsec. (e). Pub. L. 94–455, §2009(c)(1), added subsec. (e).

1974—Subsec. (c). Pub. L. 93–406 inserted reference to section 1452(d) in provisions following par. (4).

1972—Subsec. (d). Pub. L. 92–580 added subsec. (d).

1969—Subsec. (c)(3). Pub. L. 91–172 substituted "section 170(b)(1)(A)(ii) or (vi), or which is a religious organization (other than a trust)," for "section 503(b) (1), (2), or (3),".

1966—Subsec. (c). Pub. L. 89–365 added par. (4), inserted reference to chapter 73 of title 10 of the United States Code in the enumeration of the plans and contracts set out in the prohibition against allowance of exclusion for that part of the value of the amount payable under the plan or contract in the proportion that the total payments or contributions made by the decedent bear to the total payments or contributions made, and provided that, for purposes of this section, amounts payable under chapter 73 of title 10 are attributable to payments or contributions made by the decedent only to the extent of amounts deposited by him pursuant to section 1438 of title 10.

1962—Subsec. (c). Pub. L. 87–792 substituted "was a plan described in section 403(a)" for "met the requirements of section 401(a)(3), (4), (5), and (6)" in par. (2), and inserted sentence providing, for purposes of this subsection, that contributions or payments on behalf of the decedent while he was an employee within the meaning of section 401(c)(1) made under a trust or plan described in paragraph (1) or (2) shall be considered to be contributions or payments made by the decedent.

1958—Subsec. (c)(2). Pub. L. 85–866, §67(a), inserted "(4), (5), and (6)" after "section 401(a)(3)".

Subsec. (c)(3) and closing sentences. Pub. L. 85–866, §23(e), added par. (3), inserted "or under contract described in paragraph (3)" in second sentence of subsec. (c) and substituted "paragraph (1) or (2) shall not be considered to be contributed by the decedent, and contributions or payments made by the decedent's employer or former employer toward the purchase of an annuity contract described in paragraph (3) shall, to the extent excludable from gross income under section 403(b)," for "this subsection shall" in third sentence of subsec. (c).

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XVIII, §1852(e)(1)(B), Oct. 22, 1986, 100 Stat. 2868, provided that: "The amendment made by subparagraph (A) [amending this section] shall apply to estates of decedents dying after the date of the enactment of this Act [Oct. 22, 1986]."

Amendment by section 1848(d) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 491(d)(34) of Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

Pub. L. 98–369, div. A, title V, §525(b)(1), (2), (4), July 18, 1984, 98 Stat. 874, as amended by Pub. L. 99–514, title XVIII, §1852(e)(3), Oct. 22, 1986, 100 Stat. 2868, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to the estates of decedents dying after December 31, 1984.

"(2) EXCEPTION FOR PARTICIPANTS IN PAY STATUS.—The amendments made by this section shall not apply to the estate of any decedent who—

"(A) was a participant in any plan who was in pay status on December 31, 1984, and

"(B) irrevocably elected the form of the benefit before the date of the enactment of this Act [July 18, 1984].

"(4) IRREVOCABLE ELECTION.—For purposes of paragraph (2) [set out above] and section 245(c) of the Tax Equity and Fiscal Responsibility Act of 1982 [see Effective Date of 1982 Amendment note below], an individual who—

"(A) separated from service before January 1, 1985, with respect to paragraph (2), or January 1, 1983, with respect to section 245(c) of the Tax Equity and Fiscal Responsibility Act of 1982, and

"(B) meets the requirements of such paragraph or such section other than the requirement that there be an irrevocable election, and that the individual be in pay status,

shall be treated as having made an irrevocable election and as being in pay status within the time prescribed with respect to a form of benefit if such individual does not change such form of benefit before death."

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title II, §245(c), Sept. 3, 1982, 96 Stat. 525, as amended by Pub. L. 98–369, div. A, title V, §525(b)(3), July 18, 1984, 98 Stat. 874, provided that: "The amendments made by this section [amending this section] shall apply to the estates of decedents dying after December 31, 1982, except that such amendments shall not apply to the estate of any decedent who was a participant in any plan who was in pay status on December 31, 1982, and irrevocably elected before January 1, 1983, the form of benefit."

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 311(d)(1), (h)(4) of Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 311(i)(1) of Pub. L. 97–34, set out as a note under section 219 of this title.

Amendment by section 313(b)(3) of Pub. L. 97–34 applicable to redemptions after Aug. 13, 1981, in taxable years ending after such date, see section 313(c) of Pub. L. 97–34, set out as a note under section 219 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 applicable with respect to the estates of decedents dying after Apr. 1, 1980, see section 101(b)(1)(D) of Pub. L. 96–222, set out as a note under section 691 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title I, §142(c), Nov. 6, 1978, 92 Stat. 2796, provided that: "The amendments made by this section [amending this section] shall apply with respect to the estates of decedents dying after December 31, 1978."

Amendment by section 156(c)(4) of Pub. L. 95–600 applicable to distributions or transfers made after Dec. 31, 1977, in taxable years beginning after such date, see section 156(d) of Pub. L. 95–600, set out as a note under section 403 of this title.

Pub. L. 95–600, title VII, §702(j)(3)(A), Nov. 6, 1978, 92 Stat. 2932, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to the estates of decedents dying after December 31, 1976."

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XX, §2009(e)(3)(A), Oct. 4, 1976, 90 Stat. 1896, provided that: "The amendments made by paragraphs (1), (2), and (3) of subsection (c) [amending this section] shall apply to the estates of

decedents dying after December 31, 1976."

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–406 applicable to taxable years ending on or after Sept. 21, 1972, with respect to individuals dying on or after Sept. 21, 1972, see section 2007(c) of Pub. L. 93–406, set out as a note under section 122 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Pub. L. 92–580, §2(b), Oct. 27, 1972, 86 Stat. 1276, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to estate of decedents for which the period prescribed by the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for filing of a claim for credit or refund of an overpayment of estate tax ends on or after the date of enactment of this Act [Oct. 27, 1972]. No interest shall be allowed or paid on any overpayment of estate tax resulting from the application of the amendment made by subsection (a) for any period prior to the expiration of the one hundred and eightieth day following the date of the enactment of this Act."

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89–365, §2(c), Mar. 8, 1966, 80 Stat. 33, provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to decedents dying after December 31, 1965. The amendments made by subsection (b) [amending section 2517 of this title] shall apply with respect to calendar years after 1965."

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87–792, set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 23(e) of Pub. L. 85–866 applicable with respect to estates of decedents dying after Dec. 31, 1957, see section 23(g) of Pub. L. 85–866, set out as a note under section 403 of this title.

Pub. L. 85–866, title I, §67(b), Sept. 2, 1958, 72 Stat. 1659, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to estates of decedents dying after December 31, 1953."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§2040. Joint interests

(a) General rule

The value of the gross estate shall include the value of all property to the extent of the interest therein held as joint tenants with right of survivorship by the decedent and any other person, or as tenants by the entirety by the decedent and spouse, or deposited, with any person carrying on the banking business, in their joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to have been received or acquired by the latter from the decedent for less than an adequate and full consideration in money or money's worth: *Provided*, That where such property or any part thereof, or part of the consideration with which such property was acquired, is shown to have been at any time acquired by such other person from the decedent for less than an adequate and full consideration in money or money's worth, there shall be excepted only such part of the value of such property as is proportionate to the consideration furnished by such other person: *Provided further*, That where any

property has been acquired by gift, bequest, devise, or inheritance, as a tenancy by the entirety by the decedent and spouse, then to the extent of one-half of the value thereof, or, where so acquired by the decedent and any other person as joint tenants with right of survivorship and their interests are not otherwise specified or fixed by law, then to the extent of the value of a fractional part to be determined by dividing the value of the property by the number of joint tenants with right of survivorship.

(b) Certain joint interests of husband and wife

(1) Interests of spouse excluded from gross estate

Notwithstanding subsection (a), in the case of any qualified joint interest, the value included in the gross estate with respect to such interest by reason of this section is one-half of the value of such qualified joint interest.

(2) Qualified joint interest defined

For purposes of paragraph (1), the term "qualified joint interest" means any interest in property held by the decedent and the decedent's spouse as—

(A) tenants by the entirety, or

(B) joint tenants with right of survivorship, but only if the decedent and the spouse of the decedent are the only joint tenants.

(Aug. 16, 1954, ch. 736, 68A Stat. 385; Pub. L. 87–834, §18(a)(2)(G), Oct. 16, 1962, 76 Stat. 1052; Pub. L. 94–455, title XX, §2002(c)(1), (3), Oct. 4, 1976, 90 Stat. 1855, 1856; Pub. L. 95–600, title V, §511(a), title VII, §702(k)(2), Nov. 6, 1978, 92 Stat. 2881, 2932; Pub. L. 96–222, title I, §105(a)(3), Apr. 1, 1980, 94 Stat. 218; Pub. L. 97–34, title IV, §403(c)(1)–(3)(A), Aug. 13, 1981, 95 Stat. 301, 302.)

AMENDMENTS

1981—Subsec. (a). Pub. L. 97–34, §403(c)(2), substituted "joint tenants with right of survivorship" for "joint tenants" in three places.

Subsec. (b)(2). Pub. L. 97–34, §403(c)(1), in redefining "qualified joint interest" substituted provision defining term as meaning any interest in property held by the decedent and the decedent's spouse as tenants by the entirety, or joint tenants with right of survivorship, but only if the decedent and the spouse of the decedent are the only joint tenants for provision defining the term as meaning any interest in property held by the decedent and the decedent's spouse as joint tenants or as tenants by the entirety, but only if such joint interest was created by the decedent, the decedent's spouse, or both, in the case of personal property, the creation of such joint interest constituted in whole or in part a gift for purposes of chapter 12, or in the case of real property, an election under section 2515 applies with respect to the creation of such joint interest, and in the case of a joint tenancy, only the decedent and the decedent's spouse are joint tenants.

Subsecs. (c) to (e). Pub. L. 97–34, §403(c)(3)(A), repealed subsec. (c) respecting value where spouse of decedent materially participated in farm or other business, subsec. (d) relating to joint interests of husband and wife created before 1977, and subsec. (e) covering treatment of certain post-1976 terminations.

1980—Subsec. (c)(1). Pub. L. 96–222, §105(a)(3)(B), substituted "subsection (a)" for "subsections (a)".

Subsec. (c)(2)(C). Pub. L. 96–222, §105(a)(3)(A), added subpar. (C).

1978—Subsec. (c). Pub. L. 95–600, §511(a), added subsec. (c).

Subsecs. (d), (e). Pub. L. 95–600, §702(k)(2), added subsecs. (d) and (e).

1976—Pub. L. 94–455 designated existing provisions as subsec. (a), added heading for subsec. (a), and added subsec. (b).

1962—Pub. L. 87–834 struck out provisions which excepted real property outside of the United States.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to estates of decedents dying after Dec. 31, 1981, see section 403(e) of Pub. L. 97–34, set out as a note under section 2056 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title V, §511(b), Nov. 6, 1978, 92 Stat. 2882, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to estates of decedents dying after December 31, 1978."

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XX, §2002(d)(3), Oct. 4, 1976, 90 Stat. 1856, provided that: "The amendment made by subsection (c) [amending this section and section 2515 of this title] shall apply to joint interests created after December 31, 1976."

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable to estates of decedents dying after Oct. 16, 1962, except as otherwise provided, see section 18(b) of Pub. L. 87–834, set out as a note under section 2031 of this title.

CONSIDERATION GIVEN BEFORE JULY 14, 1988 BY DECEDENT TO NONCITIZEN SPOUSE TREATED AS ORIGINALLY BELONGING TO SPOUSE

Pub. L. 101–239, title VII, §7815(d)(16), Dec. 19, 1989, 103 Stat. 2419, as amended by Pub. L. 101–508, title XI, §11701(l)(3), Nov. 5, 1990, 104 Stat. 1388–513, provided that: "For purposes of applying section 2040(a) of the Internal Revenue Code of 1986 with respect to any joint interest to which section 2040(b) of such Code does not apply solely by reason of section 2056(d)(1)(B) of such Code, any consideration furnished before July 14, 1988, by the decedent for such interest to the extent treated as a gift to the spouse of the decedent for purposes of chapter 12 of such Code (or would have been so treated if the donor were a citizen of the United States) shall be treated as consideration originally belonging to such spouse and never acquired by such spouse from the decedent."

§2041. Powers of appointment

(a) In general

The value of the gross estate shall include the value of all property—

(1) Powers of appointment created on or before October 21, 1942

To the extent of any property with respect to which a general power of appointment created on or before October 21, 1942, is exercised by the decedent—

(A) by will, or

(B) by a disposition which is of such nature that if it were a transfer of property owned by the decedent, such property would be includible in the decedent's gross estate under sections 2035 to 2038, inclusive;

but the failure to exercise such a power or the complete release of such a power shall not be deemed an exercise thereof. If a general power of appointment created on or before October 21, 1942, has been partially released so that it is no longer a general power of appointment, the exercise of such power shall not be deemed to be the exercise of a general power of appointment if—

(i) such partial release occurred before November 1, 1951, or

(ii) the donee of such power was under a legal disability to release such power on October 21, 1942, and such partial release occurred not later than 6 months after the termination of such legal disability.

(2) Powers created after October 21, 1942

To the extent of any property with respect to which the decedent has at the time of his death a general power of appointment created after October 21, 1942, or with respect to which the decedent has at any time exercised or released such a power of appointment by a disposition which is of such nature that if it were a transfer of property owned by the decedent, such property would be includible in the decedent's gross estate under sections 2035 to 2038, inclusive. For purposes of this paragraph (2), the power of appointment shall be considered to exist on the date

of the decedent's death even though the exercise of the power is subject to a precedent giving of notice or even though the exercise of the power takes effect only on the expiration of a stated period after its exercise, whether or not on or before the date of the decedent's death notice has been given or the power has been exercised.

(3) Creation of another power in certain cases

To the extent of any property with respect to which the decedent—

(A) by will, or

(B) by a disposition which is of such nature that if it were a transfer of property owned by the decedent such property would be includible in the decedent's gross estate under section 2035, 2036, or 2037,

exercises a power of appointment created after October 21, 1942, by creating another power of appointment which under the applicable local law can be validly exercised so as to postpone the vesting of any estate or interest in such property, or suspend the absolute ownership or power of alienation of such property, for a period ascertainable without regard to the date of the creation of the first power.

(b) Definitions

For purposes of subsection (a)—

(1) General power of appointment

The term "general power of appointment" means a power which is exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate; except that—

(A) A power to consume, invade, or appropriate property for the benefit of the decedent which is limited by an ascertainable standard relating to the health, education, support, or maintenance of the decedent shall not be deemed a general power of appointment.

(B) A power of appointment created on or before October 21, 1942, which is exercisable by the decedent only in conjunction with another person shall not be deemed a general power of appointment.

(C) In the case of a power of appointment created after October 21, 1942, which is exercisable by the decedent only in conjunction with another person—

(i) If the power is not exercisable by the decedent except in conjunction with the creator of the power—such power shall not be deemed a general power of appointment.

(ii) If the power is not exercisable by the decedent except in conjunction with a person having a substantial interest in the property, subject to the power, which is adverse to exercise of the power in favor of the decedent—such power shall not be deemed a general power of appointment. For the purposes of this clause a person who, after the death of the decedent, may be possessed of a power of appointment (with respect to the property subject to the decedent's power) which he may exercise in his own favor shall be deemed as having an interest in the property and such interest shall be deemed adverse to such exercise of the decedent's power.

(iii) If (after the application of clauses (i) and (ii)) the power is a general power of appointment and is exercisable in favor of such other person—such power shall be deemed a general power of appointment only in respect of a fractional part of the property subject to such power, such part to be determined by dividing the value of such property by the number of such persons (including the decedent) in favor of whom such power is exercisable.

For purposes of clauses (ii) and (iii), a power shall be deemed to be exercisable in favor of a person if it is exercisable in favor of such person, his estate, his creditors, or the creditors of his estate.

(2) Lapse of power

The lapse of a power of appointment created after October 21, 1942, during the life of the individual possessing the power shall be considered a release of such power. The preceding

sentence shall apply with respect to the lapse of powers during any calendar year only to the extent that the property, which could have been appointed by exercise of such lapsed powers, exceeded in value, at the time of such lapse, the greater of the following amounts:

(A) $5,000, or

(B) 5 percent of the aggregate value, at the time of such lapse, of the assets out of which, or the proceeds of which, the exercise of the lapsed powers could have been satisfied.

(3) Date of creation of power

For purposes of this section, a power of appointment created by a will executed on or before October 21, 1942, shall be considered a power created on or before such date if the person executing such will dies before July 1, 1949, without having republished such will, by codicil or otherwise, after October 21, 1942.

(Aug. 16, 1954, ch. 736, 68A Stat. 385; Pub. L. 87–834, §18(a)(2)(H), Oct. 16, 1962, 76 Stat. 1052; Pub. L. 94–455, title XX, §2009(b)(4)(A), Oct. 4, 1976, 90 Stat. 1894.)

AMENDMENTS

1976—Subsec. (a)(2). Pub. L. 94–455 struck out provision that a disclaimer or renunciation of a power of appointment not be deemed a release of that power.

1962—Subsec. (a). Pub. L. 87–834 struck out provisions which excepted real property situated outside of the United States.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable to transfers creating an interest in person disclaiming made after Dec. 31, 1976, see section 2009(e)(2) of Pub. L. 94–455, set out as a note under section 2518 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable to estates of decedents dying after Oct. 16, 1962, except as otherwise provided, see section 18(b) of Pub. L. 87–834, set out as a note under section 2031 of this title.

§2042. Proceeds of life insurance

The value of the gross estate shall include the value of all property—

(1) Receivable by the executor

To the extent of the amount receivable by the executor as insurance under policies on the life of the decedent.

(2) Receivable by other beneficiaries

To the extent of the amount receivable by all other beneficiaries as insurance under policies on the life of the decedent with respect to which the decedent possessed at his death any of the incidents of ownership, exercisable either alone or in conjunction with any other person. For purposes of the preceding sentence, the term "incident of ownership" includes a reversionary interest (whether arising by the express terms of the policy or other instrument or by operation of law) only if the value of such reversionary interest exceeded 5 percent of the value of the policy immediately before the death of the decedent. As used in this paragraph, the term "reversionary interest" includes a possibility that the policy, or the proceeds of the policy, may return to the decedent or his estate, or may be subject to a power of disposition by him. The value of a reversionary interest at any time shall be determined (without regard to the fact of the decedent's death) by usual methods of valuation, including the use of tables of mortality and actuarial principles, pursuant to regulations prescribed by the Secretary. In determining the value of a possibility that the policy or proceeds thereof may be subject to a power of disposition by the decedent, such possibility shall be valued as if it were a possibility that such policy or proceeds may return to the decedent or his estate.

(Aug. 16, 1954, ch. 736, 68A Stat. 387; Pub. L. 94–455, title XIX, §1906(b)(13) (A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

§2043. Transfers for insufficient consideration

(a) In general

If any one of the transfers, trusts, interests, rights, or powers enumerated and described in sections 2035 to 2038, inclusive, and section 2041 is made, created, exercised, or relinquished for a consideration in money or money's worth, but is not a bona fide sale for an adequate and full consideration in money or money's worth, there shall be included in the gross estate only the excess of the fair market value at the time of death of the property otherwise to be included on account of such transaction, over the value of the consideration received therefor by the decedent.

(b) Marital rights not treated as consideration

(1) In general

For purposes of this chapter, a relinquishment or promised relinquishment of dower or curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the decedent's property or estate, shall not be considered to any extent a consideration "in money or money's worth".

(2) Exception

For purposes of section 2053 (relating to expenses, indebtedness, and taxes), a transfer of property which satisfies the requirements of paragraph (1) of section 2516 (relating to certain property settlements) shall be considered to be made for an adequate and full consideration in money or money's worth.

(Aug. 16, 1954, ch. 736, 68A Stat. 388; Pub. L. 98–369, div. A, title IV, §425(a)(1), July 18, 1984, 98 Stat. 803.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98–369 amended subsec. (b) generally, designating existing provisions as par. (1) and adding par. (2).

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title IV, §425(c)(1), July 18, 1984, 98 Stat. 804, provided that: "The amendments made by subsection (a) [amending this section and section 2053 of this title] shall apply to estates of decedents dying after the date of the enactment of this Act [July 18, 1984]."

§2044. Certain property for which marital deduction was previously allowed

(a) General rule

The value of the gross estate shall include the value of any property to which this section applies in which the decedent had a qualifying income interest for life.

(b) Property to which this section applies

This section applies to any property if—

(1) a deduction was allowed with respect to the transfer of such property to the decedent—

(A) under section 2056 by reason of subsection (b)(7) thereof, or

(B) under section 2523 by reason of subsection (f) thereof, and

(2) section 2519 (relating to dispositions of certain life estates) did not apply with respect to a disposition by the decedent of part or all of such property.

(c) Property treated as having passed from decedent

For purposes of this chapter and chapter 13, property includible in the gross estate of the decedent under subsection (a) shall be treated as property passing from the decedent.

(Added Pub. L. 97–34, title IV, §403(d)(3)(A)(i), Aug. 13, 1981, 95 Stat. 304; amended Pub. L. 97–448, title I, §104(a)(1)(B), Jan. 12, 1983, 96 Stat. 2380.)

PRIOR PROVISIONS

A prior section 2044 was renumbered section 2045 of this title.

AMENDMENTS

1983—Subsec. (c). Pub. L. 97–448 added subsec. (c).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to estates of decedents dying after Dec. 31, 1981, see section 403(e) of Pub. L. 97–34, set out as an Effective Date of 1981 Amendment note under section 2056 of this title.

§2045. Prior interests

Except as otherwise specifically provided by law, sections 2034 to 2042, inclusive, shall apply to the transfers, trusts, estates, interests, rights, powers, and relinquishment of powers, as severally enumerated and described therein, whenever made, created, arising, existing, exercised, or relinquished.

(Aug. 16, 1954, ch. 736, 68A Stat. 388, §2044; Pub. L. 94–455, title XX, §2001(c)(1)(M), Oct. 4, 1976, 90 Stat. 1853; renumbered §2045, Pub. L. 97–34, title IV, §403(d)(3)(A)(i), Aug. 13, 1981, 95 Stat. 304.)

PRIOR PROVISIONS

A prior section 2045 was renumbered section 2046 of this title.

AMENDMENTS

1976—Pub. L. 94–455 substituted "specifically provided by law" for "specifically provided therein".

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable to estates of decedents dying after Dec. 31, 1976, see section 2001(d) of Pub. L. 94–455, set out as a note under section 2001 of this title.

§2046. Disclaimers

For provisions relating to the effect of a qualified disclaimer for purposes of this chapter, see section 2518.

(Added Pub. L. 94–455, title XX, §2009(b)(2), Oct. 4, 1976, 90 Stat. 1893, §2045; renumbered §2046, Pub. L. 97–34, title IV, §403(d)(3)(A)(i), Aug. 13, 1981, 95 Stat. 304.)

EFFECTIVE DATE

Section applicable to transfers creating an interest in person disclaiming made after Dec. 31, 1976, see section 2009(e)(2) of Pub. L. 94–455, set out as a note under section 2518 of this title.

PART IV—TAXABLE ESTATE

Sec.

2051. Definition of taxable estate.
[2052. Repealed.]
2053. Expenses, indebtedness, and taxes.
2054. Losses.
2055. Transfers for public, charitable, and religious uses.
2056. Bequests, etc., to surviving spouse.
2056A. Qualified domestic trust.
2057. Family-owned business interests.
2058. State death taxes.

AMENDMENTS

2001—Pub. L. 107–16, title V, §532(c)(14), June 7, 2001, 115 Stat. 75, added item 2058.

1998—Pub. L. 105–206, title VI, §6006(b)(1)(F), July 22, 1998, 112 Stat. 808, added item 2057.

1990—Pub. L. 101–508, title XI, §11704(a)(39), Nov. 5, 1990, 104 Stat. 1388–520, amended directory language of section 5033(a)(3) of Pub. L. 100–647. See 1988 Amendment note below.

Pub. L. 101–508, title XI, §11704(a)(16), Nov. 5, 1990, 104 Stat. 1388–518, substituted "trust" for "trusts" in item 2056A.

1989—Pub. L. 101–239, title VII, §7304(a)(2)(E), Dec. 19, 1989, 103 Stat. 2353, struck out item 2057 "Sales of employer securities to employee stock ownership plans or worker-owned cooperatives".

1988—Pub. L. 100–647, title V, §5033(a)(3), Nov. 10, 1988, 102 Stat. 3672, as amended by Pub. L. 101–508, title XI, §11704(a)(39), Nov. 5, 1990, 104 Stat. 1388–520, added item 2056A.

1986—Pub. L. 99–514, title XI, §1172(b)(3), Oct. 22, 1986, 100 Stat. 2515, added item 2057.

1981—Pub. L. 97–34, title IV, §427(b), Aug. 13, 1981, 95 Stat. 318, struck out item 2057 "Bequests, etc., to certain minor children".

1976—Pub. L. 94–455, title XX, §§2001(c)(1)(N)(iv), 2007(b), Oct. 4, 1976, 90 Stat. 1853, 1890, added item 2057 and struck out item 2052 "Exemption".

§2051. Definition of taxable estate

For purposes of the tax imposed by section 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate the deductions provided for in this part.

(Aug. 16, 1954, ch. 736, 68A Stat. 388; Pub. L. 95–600, title VII, §702(r)(2), Nov. 6, 1978, 92 Stat. 2938.)

AMENDMENTS

1978—Pub. L. 95–600 struck out "exemption and" after "gross estate the".

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title VII, §702(r)(5), Nov. 6, 1978, 92 Stat. 2939, provided that: "The amendments made by this subsection [amending this section and sections 1016, 6324B, and 6698A of this title] shall apply to estates of decedents dying after December 31, 1976."

[§2052. Repealed. Pub. L. 94–455, title XX, §2001(a)(4), Oct. 4, 1976, 90 Stat. 1848]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 389, provided for an exemption of $60,000 to be deducted from gross estate in determining value of taxable estate.

EFFECTIVE DATE OF REPEAL

Repeal applicable to estates of decedents dying after Dec. 31, 1976, see section 2001(d)(1) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 2001 of this title.

§2053. Expenses, indebtedness, and taxes

(a) General rule

For purposes of the tax imposed by section 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate such amounts—

(1) for funeral expenses,

(2) for administration expenses,

(3) for claims against the estate, and

(4) for unpaid mortgages on, or any indebtedness in respect of, property where the value of the decedent's interest therein, undiminished by such mortgage or indebtedness, is included in the value of the gross estate,

as are allowable by the laws of the jurisdiction, whether within or without the United States, under which the estate is being administered.

(b) Other administration expenses

Subject to the limitations in paragraph (1) of subsection (c), there shall be deducted in determining the taxable estate amounts representing expenses incurred in administering property not subject to claims which is included in the gross estate to the same extent such amounts would be allowable as a deduction under subsection (a) if such property were subject to claims, and such amounts are paid before the expiration of the period of limitation for assessment provided in section 6501.

(c) Limitations

(1) Limitations applicable to subsections (a) and (b)

(A) Consideration for claims

The deduction allowed by this section in the case of claims against the estate, unpaid mortgages, or any indebtedness shall, when founded on a promise or agreement, be limited to the extent that they were contracted bona fide and for an adequate and full consideration in money or money's worth; except that in any case in which any such claim is founded on a promise or agreement of the decedent to make a contribution or gift to or for the use of any donee described in section 2055 for the purposes specified therein, the deduction for such claims shall not be so limited, but shall be limited to the extent that it would be allowable as a deduction under section 2055 if such promise or agreement constituted a bequest.

(B) Certain taxes

Any income taxes on income received after the death of the decedent, or property taxes not accrued before his death, or any estate, succession, legacy, or inheritance taxes, shall not be deductible under this section.

(C) Certain claims by remaindermen

No deduction shall be allowed under this section for a claim against the estate by a remainderman relating to any property described in section 2044.

(D) Section 6166 interest

No deduction shall be allowed under this section for any interest payable under section 6601 on any unpaid portion of the tax imposed by section 2001 for the period during which an extension of time for payment of such tax is in effect under section 6166.

(2) Limitations applicable only to subsection (a)

In the case of the amounts described in subsection (a), there shall be disallowed the amount by which the deductions specified therein exceed the value, at the time of the decedent's death, of property subject to claims, except to the extent that such deductions represent amounts paid before the date prescribed for the filing of the estate tax return. For purposes of this section, the term "property subject to claims" means property includible in the gross estate of the decedent which, or the avails of which, would under the applicable law, bear the burden of the payment of such deductions in the final adjustment and settlement of the estate, except that the value of the property shall be reduced by the amount of the deduction under section 2054 attributable to such property.

(d) Certain foreign death taxes

(1) In general

Notwithstanding the provisions of subsection (c)(1)(B), for purposes of the tax imposed by section 2001, the value of the taxable estate may be determined, if the executor so elects before the expiration of the period of limitation for assessment provided in section 6501, by deducting from the value of the gross estate the amount (as determined in accordance with regulations prescribed by the Secretary) of any estate, succession, legacy, or inheritance tax imposed by and actually paid to any foreign country, in respect of any property situated within such foreign country and included in the gross estate of a citizen or resident of the United States, upon a transfer by the decedent for public, charitable, or religious uses described in section 2055. The determination under this paragraph of the country within which property is situated shall be made in accordance with the rules applicable under subchapter B (sec. 2101 and following) in determining whether property is situated within or without the United States. Any election under this paragraph shall be exercised in accordance with regulations prescribed by the Secretary.

(2) Condition for allowance of deduction

No deduction shall be allowed under paragraph (1) for a foreign death tax specified therein unless the decrease in the tax imposed by section 2001 which results from the deduction provided in paragraph (1) will inure solely for the benefit of the public, charitable, or religious transferees described in section 2055 or section 2106(a)(2). In any case where the tax imposed by section 2001 is equitably apportioned among all the transferees of property included in the gross estate, including those described in sections 2055 and 2106(a)(2) (taking into account any exemptions, credits, or deductions allowed by this chapter), in determining such decrease, there shall be disregarded any decrease in the Federal estate tax which any transferees other than those described in sections 2055 and 2106(a)(2) are required to pay.

(3) Effect on credit for foreign death taxes of deduction under this subsection

(A) Election

An election under this subsection shall be deemed a waiver of the right to claim a credit, against the Federal estate tax, under a death tax convention with any foreign country for any tax or portion thereof in respect of which a deduction is taken under this subsection.

(B) Cross reference

See section 2014(f) for the effect of a deduction taken under this paragraph on the credit for foreign death taxes.

(e) Marital rights

For provisions treating certain relinquishments of marital rights as consideration in money or money's worth, see section 2043(b)(2).

(Aug. 16, 1954, ch. 736, 68A Stat. 389; Feb. 20, 1956, ch. 63, §2, 70 Stat. 23; Pub. L. 85–866, title I, §102(c)(3), Sept. 2, 1958, 72 Stat. 1674; Pub. L. 86–175, §1, Aug. 21, 1959, 73 Stat. 396; Pub. L. 94–455, title XIX, §§1902(a)(12) (B), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1806, 1834; Pub. L. 98–369, div. A, title IV, §425(a)(2), title X, §1027(b), July 18, 1984, 98 Stat. 804, 1031; Pub. L. 100–647, title I, §1011A(g)(11), Nov. 10, 1988, 102 Stat. 3482; Pub. L. 105–34, title V, §503(b)(1), title X, §1073(b)(3), Aug. 5, 1997, 111 Stat. 853, 948; Pub. L. 107–16, title V, §532(c)(5), June 7, 2001, 115 Stat. 74; Pub. L. 107–134, title I, §103(b)(2), Jan. 23, 2002, 115 Stat. 2431.)

AMENDMENTS

2002—Subsec. (d)(3)(B). Pub. L. 107–134 substituted "section 2011(d)" for "section 2011(e)".

2001—Subsec. (d). Pub. L. 107–16 substituted "Certain foreign death taxes" for "Certain State and foreign death taxes" in heading and amended text generally, revising and restating provisions of pars. (1) to (3) so as to eliminate provisions relating to deduction for State death taxes.

1997—Subsec. (c)(1)(B). Pub. L. 105–34, §1073(b)(3), struck out at end "This subparagraph shall not apply to any increase in the tax imposed by this chapter by reason of section 4980A(d)."

Subsec. (c)(1)(D). Pub. L. 105–34, §503(b)(1), added subpar. (D).

1988—Subsec. (c)(1)(B). Pub. L. 100–647, inserted at end "This subparagraph shall not apply to any increase in the tax imposed by this chapter by reason of section 4980A(d)."

1984—Subsec. (c)(1)(C). Pub. L. 98–369, §1027(b), added subpar. (C).

Subsec. (e). Pub. L. 98–369, §425(a)(2), substituted "For provisions treating certain relinquishments of marital rights as consideration in money or money's worth, see section 2043(b)(2)" for "For provisions that relinquishment of marital rights shall not be deemed a consideration 'in money or money's worth,' see section 2043(b)."

1976—Subsec. (d)(1). Pub. L. 94–455 struck out "or his delegate" after "Secretary" in provisions preceding subpar. (A) and following subpar. (B) and struck out "or Territory" after "a State" in subpar. (A).

1959—Subsec. (d). Pub. L. 86–175 inserted a reference to foreign death taxes in heading of subsection and par. (3) and in text of par. (2), redesignated provisions of par. (1) as par. (1)(A) and sentence pertaining to exercise of privilege of election, added par. (2) and sentence for determining location of property, redesignated provisions of par. (3) as par. (3)(B) in part, and added par. (3)(A) and the part of (B) relating to foreign death taxes.

1958—Subsec. (d)(1). Pub. L. 85–866 struck out "or any possession of the United States," after "District of Columbia,".

1956—Subsecs. (d), (e). Act Feb. 20, 1956, added subsec. (d) and redesignated former subsec. (d) as (e).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–134 applicable to estates of decedents dying on or after Sept. 11, 2001, and, in the case of individuals dying as a result of the Apr. 19, 1995, terrorist attack, dying on or after Apr. 19, 1995, with provisions relating to waiver of limitations, see section 103(d) of Pub. L. 107–134, set out as a note under section 2011 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to estates of decedents dying, and generation-skipping transfers, after Dec. 31, 2004, see section 532(d) of Pub. L. 107–16, set out as a note under section 2011 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 503(b)(1) of Pub. L. 105–34 applicable to estates of decedents dying after Dec. 31, 1997, with special rule in case of estate of any decedent dying before Jan. 1, 1998, with respect to which there is an election under section 6166 of this title, see section 503(d) of Pub. L. 105–34, set out as a note under section 163 of this title.

Amendment by section 1073(b)(3) of Pub. L. 105–34 applicable to estates of decedents dying after Dec. 31, 1996, see section 1073(c) of Pub. L. 105–34, set out as an Effective Date of Repeal note under section 4980A of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 425(a)(2) of Pub. L. 98–369 applicable to estates of decedents dying after July 18, 1984, see section 425(c)(1) of Pub. L. 98–369, set out as a note under section 2043 of this title.

Pub. L. 98–369, div. A, title X, §1027(c), July 18, 1984, 98 Stat. 1032, provided that: "The amendments made by this section [amending this section and section 2056 of this title] shall take effect as if included in the amendment made by section 403 of the Economic Recovery Tax Act of 1981 [section 403 of Pub. L. 97–34, see Effective Date of 1981 Amendment note set out under section 2056 of this title]."

EFFECTIVE DATE OF 1959 AMENDMENT

Pub. L. 86–175, §4, Aug. 21, 1959, 73 Stat. 397, provided that: "The amendments made by the preceding sections of this Act [amending this section and sections 2011 and 2014 of this title] shall apply with respect to the estates of decedents dying on or after July 1, 1955."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable to estates of decedents dying after Sept. 2, 1958, see section 102(d) of Pub. L. 85–866, set out as a note under section 2011 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Act Feb. 20, 1956, ch. 63, §4, 70 Stat. 25, as amended by act Oct. 22, 1986, Pub. L. 99–514, §2, 100 Stat. 2095, provided that: "The amendments to the Internal Revenue Code of 1986 [formerly I.R.C. 1954] made by sections 2 and 3 of this Act [amending this section and section 2011 of this title], and provisions having the same effect as this amendment, which shall be considered to be included in chapter 3 of the Internal Revenue Code of 1939, shall apply to the estates of all decedents dying after December 31, 1953."

§2054. Losses

For purposes of the tax imposed by section 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate losses incurred during the settlement of estates arising from fires, storms, shipwrecks, or other casualties, or from theft, when such losses are not compensated for by insurance or otherwise.

(Aug. 16, 1954, ch. 736, 68A Stat. 390.)

§2055. Transfers for public, charitable, and religious uses

(a) In general

For purposes of the tax imposed by section 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate the amount of all bequests, legacies, devises, or transfers—

(1) to or for the use of the United States, any State, any political subdivision thereof, or the District of Columbia, for exclusively public purposes;

(2) to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office;

(3) to a trustee or trustees, or a fraternal society, order, or association operating under the lodge system, but only if such contributions or gifts are to be used by such trustee or trustees, or by such fraternal society, order, or association, exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, such trust, fraternal society, order, or association would not be disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and such trustee or trustees, or such fraternal society, order, or association, does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office;

(4) to or for the use of any veterans' organization incorporated by Act of Congress, or of its departments or local chapters or posts, no part of the net earnings of which inures to the benefit of any private shareholder or individual; or

(5) to an employee stock ownership plan if such transfer qualifies as a qualified gratuitous transfer of qualified employer securities within the meaning of section 664(g).

For purposes of this subsection, the complete termination before the date prescribed for the filing of the estate tax return of a power to consume, invade, or appropriate property for the benefit of an individual before such power has been exercised by reason of the death of such individual or for any

other reason shall be considered and deemed to be a qualified disclaimer with the same full force and effect as though he had filed such qualified disclaimer. Rules similar to the rules of section 501(j) shall apply for purposes of paragraph (2).

(b) Powers of appointment

Property includible in the decedent's gross estate under section 2041 (relating to powers of appointment) received by a donee described in this section shall, for purposes of this section, be considered a bequest of such decedent.

(c) Death taxes payable out of bequests

If the tax imposed by section 2001, or any estate, succession, legacy, or inheritance taxes, are, either by the terms of the will, by the law of the jurisdiction under which the estate is administered, or by the law of the jurisdiction imposing the particular tax, payable in whole or in part out of the bequests, legacies, or devises otherwise deductible under this section, then the amount deductible under this section shall be the amount of such bequests, legacies, or devises reduced by the amount of such taxes.

(d) Limitation on deduction

The amount of the deduction under this section for any transfer shall not exceed the value of the transferred property required to be included in the gross estate.

(e) Disallowance of deductions in certain cases

(1) No deduction shall be allowed under this section for a transfer to or for the use of an organization or trust described in section 508(d) or 4948(c)(4) subject to the conditions specified in such sections.

(2) Where an interest in property (other than an interest described in section 170(f)(3)(B)) passes or has passed from the decedent to a person, or for a use, described in subsection (a), and an interest (other than an interest which is extinguished upon the decedent's death) in the same property passes or has passed (for less than an adequate and full consideration in money or money's worth) from the decedent to a person, or for a use, not described in subsection (a), no deduction shall be allowed under this section for the interest which passes or has passed to the person, or for the use, described in subsection (a) unless—

(A) in the case of a remainder interest, such interest is in a trust which is a charitable remainder annuity trust or a charitable remainder unitrust (described in section 664) or a pooled income fund (described in section 642(c)(5)), or

(B) in the case of any other interest, such interest is in the form of a guaranteed annuity or is a fixed percentage distributed yearly of the fair market value of the property (to be determined yearly).

(3) REFORMATIONS TO COMPLY WITH PARAGRAPH (2).—

(A) IN GENERAL.—A deduction shall be allowed under subsection (a) in respect of any qualified reformation.

(B) QUALIFIED REFORMATION.—For purposes of this paragraph, the term "qualified reformation" means a change of a governing instrument by reformation, amendment, construction, or otherwise which changes a reformable interest into a qualified interest but only if—

(i) any difference between—

(I) the actuarial value (determined as of the date of the decedent's death) of the qualified interest, and

(II) the actuarial value (as so determined) of the reformable interest,

does not exceed 5 percent of the actuarial value (as so determined) of the reformable interest,

(ii) in the case of—

(I) a charitable remainder interest, the nonremainder interest (before and after the qualified reformation) terminated at the same time, or

(II) any other interest, the reformable interest and the qualified interest are for the same

period, and

(iii) such change is effective as of the date of the decedent's death.

A nonremainder interest (before reformation) for a term of years in excess of 20 years shall be treated as satisfying subclause (I) of clause (ii) if such interest (after reformation) is for a term of 20 years.

(C) REFORMABLE INTEREST.—For purposes of this paragraph—

(i) IN GENERAL.—The term "reformable interest" means any interest for which a deduction would be allowable under subsection (a) at the time of the decedent's death but for paragraph (2).

(ii) BENEFICIARY'S INTEREST MUST BE FIXED.—The term "reformable interest" does not include any interest unless, before the remainder vests in possession, all payments to persons other than an organization described in subsection (a) are expressed either in specified dollar amounts or a fixed percentage of the fair market value of the property. For purposes of determining whether all such payments are expressed as a fixed percentage of the fair market value of the property, section 664(d)(3) shall be taken into account.

(iii) SPECIAL RULE WHERE TIMELY COMMENCEMENT OF REFORMATION .—Clause (ii) shall not apply to any interest if a judicial proceeding is commenced to change such interest into a qualified interest not later than the 90th day after—

(I) if an estate tax return is required to be filed, the last date (including extensions) for filing such return, or

(II) if no estate tax return is required to be filed, the last date (including extensions) for filing the income tax return for the 1st taxable year for which such a return is required to be filed by the trust.

(iv) SPECIAL RULE FOR WILL EXECUTED BEFORE JANUARY 1, 1979, ETC.—In the case of any interest passing under a will executed before January 1, 1979, or under a trust created before such date, clause (ii) shall not apply.

(D) QUALIFIED INTEREST.—For purposes of this paragraph, the term "qualified interest" means an interest for which a deduction is allowable under subsection (a).

(E) LIMITATION.—The deduction referred to in subparagraph (A) shall not exceed the amount of the deduction which would have been allowable for the reformable interest but for paragraph (2).

(F) SPECIAL RULE WHERE INCOME BENEFICIARY DIES.—If (by reason of the death of any individual, or by termination or distribution of a trust in accordance with the terms of the trust instrument) by the due date for filing the estate tax return (including any extension thereof) a reformable interest is in a wholly charitable trust or passes directly to a person or for a use described in subsection (a), a deduction shall be allowed for such reformable interest as if it had met the requirements of paragraph (2) on the date of the decedent's death. For purposes of the preceding sentence, the term "wholly charitable trust" means a charitable trust which, upon the allowance of a deduction, would be described in section 4947(a)(1).

(G) STATUTE OF LIMITATIONS.—The period for assessing any deficiency of any tax attributable to the application of this paragraph shall not expire before the date 1 year after the date on which the Secretary is notified that such reformation (or other proceeding pursuant to subparagraph (J) [1] has occurred.

(H) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this paragraph, including regulations providing such adjustments in the application of the provisions of section 508 (relating to special rules relating to section 501(c)(3) organizations), subchapter J (relating to estates, trusts, beneficiaries, and decedents), and chapter 42 (relating to private foundations) as may be necessary by reason of the qualified reformation.

(I) REFORMATIONS PERMITTED IN CASE OF REMAINDER INTERESTS IN

RESIDENCE OR FARM, POOLED INCOME FUNDS, ETC.—The Secretary shall prescribe regulations (consistent with the provisions of this paragraph) permitting reformations in the case of any failure—

(i) to meet the requirements of section 170(f)(3)(B) (relating to remainder interests in personal residence or farm, etc.), or

(ii) to meet the requirements of section 642(c)(5).

(J) VOID OR REFORMED TRUST IN CASES OF INSUFFICIENT REMAINDER INTERESTS.—In the case of a trust that would qualify (or could be reformed to qualify pursuant to subparagraph (B)) but for failure to satisfy the requirement of paragraph (1)(D) or (2)(D) of section 664(d), such trust may be—

(i) declared null and void ab initio, or

(ii) changed by reformation, amendment, or otherwise to meet such requirement by reducing the payout rate or the duration (or both) of any noncharitable beneficiary's interest to the extent necessary to satisfy such requirement,

pursuant to a proceeding that is commenced within the period required in subparagraph (C)(iii). In a case described in clause (i), no deduction shall be allowed under this title for any transfer to the trust and any transactions entered into by the trust prior to being declared void shall be treated as entered into by the transferor.

(4) WORKS OF ART AND THEIR COPYRIGHTS TREATED AS SEPARATE PROPERTIES IN CERTAIN CASES.—

(A) IN GENERAL.—In the case of a qualified contribution of a work of art, the work of art and the copyright on such work of art shall be treated as separate properties for purposes of paragraph (2).

(B) WORK OF ART DEFINED.—For purposes of this paragraph, the term "work of art" means any tangible personal property with respect to which there is a copyright under Federal law.

(C) QUALIFIED CONTRIBUTION DEFINED.—For purposes of this paragraph, the term "qualified contribution" means any transfer of property to a qualified organization if the use of the property by the organization is related to the purpose or function constituting the basis for its exemption under section 501.

(D) QUALIFIED ORGANIZATION DEFINED.—For purposes of this paragraph, the term "qualified organization" means any organization described in section 501(c)(3) other than a private foundation (as defined in section 509). For purposes of the preceding sentence, a private operating foundation (as defined in section 4942(j)(3)) shall not be treated as a private foundation.

(5) CONTRIBUTIONS TO DONOR ADVISED FUNDS.—A deduction otherwise allowed under subsection (a) for any contribution to a donor advised fund (as defined in section 4966(d)(2)) shall only be allowed if—

(A) the sponsoring organization (as defined in section 4966(d)(1)) with respect to such donor advised fund is not—

(i) described in paragraph (3) or (4) of subsection (a), or

(ii) a type III supporting organization (as defined in section 4943(f)(5)(A)) which is not a functionally integrated type III supporting organization (as defined in section 4943(f)(5)(B)), and

(B) the taxpayer obtains a contemporaneous written acknowledgment (determined under rules similar to the rules of section 170(f)(8)(C)) from the sponsoring organization (as so defined) of such donor advised fund that such organization has exclusive legal control over the assets contributed.

(f) Special rule for irrevocable transfers of easements in real property

A deduction shall be allowed under subsection (a) in respect of any transfer of a qualified real

property interest (as defined in section 170(h)(2)(C)) which meets the requirements of section 170(h) (without regard to paragraph (4)(A) thereof).

(g) Cross references

(1) For option as to time for valuation for purpose of deduction under this section, see section 2032.

(2) For treatment of certain organizations providing child care, see section 501(k).

(3) For exemption of gifts and bequests to or for the benefit of Library of Congress, see section 5 of the Act of March 3, 1925, as amended (2 U.S.C. 161).

(4) For treatment of gifts and bequests for the benefit of the Naval Historical Center as gifts or bequests to or for the use of the United States, see section 7222 of title 10, United States Code.

(5) For treatment of gifts and bequests to or for the benefit of National Park Foundation as gifts or bequests to or for the use of the United States, see section 8 of the Act of December 18, 1967 (16 U.S.C. 191).

(6) For treatment of gifts, devises, or bequests accepted by the Secretary of State, the Director of the International Communication Agency, or the Director of the United States International Development Cooperation Agency as gifts, devises, or bequests to or for the use of the United States, see section 25 of the State Department Basic Authorities Act of 1956.

(7) For treatment of gifts or bequests of money accepted by the Attorney General for credit to "Commissary Funds, Federal Prisons," as gifts or bequests to or for the use of the United States, see section 4043 of title 18, United States Code.

(8) For payment of tax on gifts and bequests of United States obligations to the United States, see section 3113(e) of title 31, United States Code.

(9) For treatment of gifts and bequests for benefit of the Naval Academy as gifts or bequests to or for the use of the United States, see section 6973 of title 10, United States Code.

(10) For treatment of gifts and bequests for benefit of the Naval Academy Museum as gifts or bequests to or for the use of the United States, see section 6974 of title 10, United States Code.

(11) For exemption of gifts and bequests received by National Archives Trust Fund Board, see section 2308 of title 44, United States Code.

(12) For treatment of gifts and bequests to or for the use of Indian tribal governments (or their subdivisions), see section 7871.

(Aug. 16, 1954, ch. 736, 68A Stat. 390; Aug. 6, 1956, ch. 1020, §1, 70 Stat. 1075; Pub. L. 85–866, title I, §30(d), Sept. 2, 1958, 72 Stat. 1631; Pub. L. 91–172, title II, §201(d)(1), (4)(A), Dec. 30, 1969, 83 Stat. 560, 561; Pub. L. 91–614, title I, §101(c), Dec. 31, 1970, 84 Stat. 1836; Pub. L. 93–483, §3(a), Oct. 26, 1974, 88 Stat. 1457; Pub. L. 94–455, title XIII, §§1304(a), 1307(d)(1)(B)(ii), (C), 1313(b)(2), title XIX, §§1902(a)(4), (12)(A), 1906(b)(13)(A), title XX, §2009(b)(4)(B), (C), title XXI, §2124(e)(2), Oct. 4, 1976, 90 Stat. 1715, 1727, 1730, 1804, 1805, 1834, 1894, 1919; Pub. L. 95–600, title V, §514(a), Nov. 6, 1978, 92 Stat. 2883; Pub. L. 96–222, title I, §105(a)(4)(A), Apr. 1, 1980, 94 Stat. 219; Pub. L. 96–465, title II, §2206(e)(4), Oct. 17, 1980, 94 Stat. 2163; Pub. L. 96–605, title III, §301(a), Dec. 28, 1980, 94 Stat. 3530; Pub. L. 97–34, title IV, §423(a), Aug. 13, 1981, 95 Stat. 316; Pub. L. 97–248, title II, §286(b)(2), Sept. 3, 1982, 96 Stat. 570; Pub. L. 97–258, §3(f)(1), (2), Sept. 13, 1982, 96 Stat. 1064; Pub. L. 97–473, title II, §202(b)(5), Jan. 14, 1983, 96 Stat. 2610; Pub. L. 98–369, div. A, title X, §§1022(a), 1032(b)(2), July 18, 1984, 98 Stat. 1026, 1033; Pub. L. 99–514, title XIV, §1422(a), Oct. 22, 1986, 100 Stat. 2716; Pub. L. 100–203, title X, §10711(a)(3), Dec. 22, 1987, 101 Stat. 1330–464; Pub. L. 104–201, div. A, title X, §1073(b)(3), Sept. 23, 1996, 110 Stat. 2657; Pub. L. 105–34, title X, §1089(b)(3), (5), title XV, §1530(c)(7), Aug. 5, 1997, 111 Stat. 960, 961, 1078; Pub. L. 109–280, title XII, §§1218(b), 1234(b), Aug. 17, 2006, 120 Stat. 1081, 1100; Pub. L. 110–172, §3(d)(1), Dec. 29, 2007, 121 Stat. 2474.)

REFERENCES IN TEXT

Section 25 of the State Department Basic Authorities Act of 1956, referred to in subsec. (g)(6), is classified to section 2697 of Title 22, Foreign Relations and Intercourse.

CODIFICATION

Sections 1218(b) and 1234(b) of Pub. L. 109–280, which directed the amendment of section 2055 without specifying the act to be amended, were executed to this section, which is section 2055 of the Internal Revenue

Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

AMENDMENTS

2007—Subsecs. (g), (h). Pub. L. 110–172 redesignated subsec. (h) as (g) and struck out heading and text of former subsec. (g). Text read as follows:

"(1) IN GENERAL.—In the case of any additional contribution, the fair market value of such contribution shall be determined by using the lesser of—

"(A) the fair market value of the property at the time of the initial fractional contribution, or

"(B) the fair market value of the property at the time of the additional contribution.

"(2) DEFINITIONS.—For purposes of this paragraph—

"(A) ADDITIONAL CONTRIBUTION.—The term 'additional contribution' means a bequest, legacy, devise, or transfer described in subsection (a) of any interest in a property with respect to which the decedent had previously made an initial fractional contribution.

"(B) INITIAL FRACTIONAL CONTRIBUTION.—The term 'initial fractional contribution' means, with respect to any decedent, any charitable contribution of an undivided portion of the decedent's entire interest in any tangible personal property for which a deduction was allowed under section 170."

2006—Subsec. (e)(5). Pub. L. 109–280, §1234(b), added par. (5). See Codification note above.

Subsecs. (g), (h). Pub. L. 109–280, §1218(b), added subsec. (g) and redesignated former subsec. (g) as (h). See Codification note above.

1997—Subsec. (a)(5). Pub. L. 105–34, §1530(c)(7), added par. (5).

Subsec. (e)(3)(G). Pub. L. 105–34, §1089(b)(5), inserted "(or other proceeding pursuant to subparagraph (J)" after "reformation".

Subsec. (e)(3)(J). Pub. L. 105–34, §1089(b)(3), added subpar. (J).

1996—Subsec. (g)(4). Pub. L. 104–201 amended par. (4) generally, substituting reference to Naval Historical Center for reference to Office of Naval Records and History.

1987—Subsec. (a)(2), (3). Pub. L. 100–203 inserted "(or in opposition to)" after "on behalf of".

1986—Subsecs. (f), (g). Pub. L. 99–514 added subsec. (f) and redesignated former subsec. (f) as (g).

1984—Subsec. (e)(3). Pub. L. 98–369, §1022(a), amended par. (3) generally, substituting provisions relating to reformations to comply with par. (2), defining "qualified reformation", "reformable interest", and "qualified interest", and setting forth limitations on the deduction, a special rule where the income beneficiary dies, statute of limitations, regulations prescribed by the Secretary, and reformations permitted in the case of remainder interests in a residence or farm, pooled income funds, etc., for former par. (3), which provided: "In the case of a will executed before December 31, 1978, or a trust created before such date, if a deduction is not allowable at the time of the decedent's death because of the failure of an interest in property which passes from the decedent to a person, or for a use, described in subsection (a) to meet the requirements of subparagraph (A) or (B) of paragraph (2) of this subsection, and if the governing instrument is amended or conformed on or before December 31, 1981, or, if later, on or before the 30th day after the date on which judicial proceedings begun on or before December 31, 1981, (which are required to amend or conform the governing instrument), become final, so that the interest is in a trust which meets the requirements of such subparagraph (A) or (B) (as the case may be), a deduction shall nevertheless be allowed. The Secretary may, by regulation, provide for the application of the provisions of this paragraph to trusts whose governing instruments are amended or conformed in accordance with this paragraph, and such regulations may provide for any adjustments in the application of the provisions of section 508 (relating to special rules with respect to section 501(c)(3) organizations), subchapter J (relating to estates, trusts, beneficiaries, and decedents), and chapter 42 (relating to private foundations), to such trusts made necessary by the application of this paragraph. If, by the due date for the filing of an estate tax return (including any extension thereof), the interest is in a charitable trust which, upon allowance of a deduction, would be described in section 4947(a)(1), or the interest passes directly to a person or for a use described in subsection (a), a deduction shall be allowed as if the governing instrument was amended or conformed under this paragraph. If the amendment or conformation of the governing instrument is made after the due date for the filing of the estate tax return (including any extension thereof), the deduction shall be allowed upon the filing of a timely claim for credit or refund (as provided for in section 6511) of an overpayment resulting from the application of this paragraph. In the case of a credit or refund as a result of an amendment or conformation made pursuant to this paragraph, no interest shall be allowed for the period prior to the expiration of the 180th day after the date on which the claim for credit or refund is filed."

Subsec. (f)(2). Pub. L. 98–369, §1032(b)(2), added par. (2), and redesignated former pars. (2) to (11) as pars. (3) to (12), respectively.

1983—Subsec. (f)(11). Pub. L. 97–473 added par. (11).

1982—Subsec. (a). Pub. L. 97–248 inserted provision that rules similar to the rules of section 501(j) of this title shall apply for purposes of par. (2).

Subsec. (f)(6). Pub. L. 97–258, §3(f)(1), substituted "section 4043 of title 18, United States Code" for "section 2 of the Act of May 15, 1952, as amended by the Act of July 9, 1952 (31 U.S.C. 725s–4)".

Subsec. (f)(7). Pub. L. 97–258, §3(f)(2), substituted "section 3113(e) of title 31, United States Code" for "section 24 of the Second Liberty Bond Act (31 U.S.C. 757e)".

1981—Subsec. (e)(4). Pub. L. 97–34 added par. (4).

1980—Subsec. (e)(3). Pub. L. 96–605 substituted "December 31, 1978" for "December 31, 1977" and "December 31, 1981" for "December 31, 1978" in two places.

Pub. L. 96–222 substituted "such subparagraph (A) or (B)" for "such subparagraph (a) or (B)" and "so that the interest" for "so that interest".

Subsec. (f)(5). Pub. L. 96–465, among other changes, inserted references to the Director of the International Communication Agency and the Director of the United States International Development Cooperation Agency and substituted reference to section 25 of the State Department Basic Authorities Act of 1956 for reference to section 1021(e) of the Foreign Service Act of 1946.

1978—Subsec. (e)(3). Pub. L. 95–600 inserted "or (B)" before "of paragraph (2)", substituted "on or before December 31, 1978" for "on or before December 31, 1977" wherever appearing and "which meets the requirements of such subparagraph (a) or (B) (as the case may be)," for "which is a charitable remainder annuity trust, a charitable remainder unitrust (described in section 664), or a pooled income fund (described in section 642(c)(5)),".

1976—Subsec. (a). Pub. L. 94–455, §§1307(d)(1)(B)(ii), (C), 1313(b)(2), 1902(a)(12)(A), 2009(b)(4)(B), (C), struck out "(including the interest which falls into any such bequest, legacy, devise, or transfer as a result of an irrevocable disclaimer of a bequest, legacy, devise, transfer, or power, if the disclaimer is made before the date prescribed for the filing of the estate tax return)" after "or transfers" in provisions preceding par. (1), struck out "Territory," after "State," in par. (1), inserted ", or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment)," after "encouragement of art" and substituted "which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation," for "no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation," in par. (2), substituted "such trust, fraternal society, order, or association would not be disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation," for "no substantial part of the activities of such trustee or trustees, or of such fraternal society, order, or association, is carrying on propaganda, or otherwise attempting, to influence legislation," in par. (3), and, in provisions following par. (4), substituted "a qualified disclaimer" for "an irrevocable disclaimer" and "such qualified disclaimer" for "such irrevocable disclaimer".

Subsec. (b). Pub. L. 94–455, §1902(a)(4)(A), struck out provisions under which a bequest in trust, if the surviving spouse of the decedent was entitled for life to all of the net income from the trust and the surviving spouse had a power of appointment over the corpus of that trust exercisable by will in favor of, among others, organizations described in subsec. (a)(2), could be deemed a transfer to the organization by the decedent under certain conditions.

Subsec. (e)(2). Pub. L. 94–455, §2124(e)(2), substituted "(other than an interest described in section 170(f)(3)(B))" for "(other than a remainder interest in a personal residence or farm or an undivided portion of the decedent's entire interest in property)" in provisions preceding subpar. (A).

Subsec. (e)(3). Pub. L. 94–455, §1304(a), §1906(b)(13)(A), substituted "will executed before December 31, 1977," for "will executed before September 21, 1974," and "amended or conformed on or before December 31, 1977, or, if later, on or before the 30th day after the date on which judicial proceedings begun on or before December 31, 1977" for "amended or conformed on or before December 31, 1975, or, if later, on or before the 30th day after the date on which judicial proceedings begun on or before December 31, 1975" and struck out "or his delegate" after "Secretary".

Subsec. (f). Pub. L. 94–455, §1902(a)(4)(B), extended par. (2) by inserting reference to gifts, struck out par. (3) which made a cross reference to section 2 of the Act of Aug. 8, 1946 (60 Stat. 924; 5 U.S.C. 393) for construction of bequests for benefit of the library of the Post Office Department as bequests to or for the use of the United States, redesignated pars. (4)–(11) as (3)–(10), respectively, substituted "For treatment of gifts and bequests for the benefit of the Office of Naval Records and History as gifts or bequests to or for the use of the United States, see section 7222 of title 10, United States Code" for "For exemption of bequests for benefit of Office of Naval Records and Library, Navy Department, see section 2 of the Act of March 4, 1937 (50 Stat. 25; 5 U.S.C. 419b)" in par. (3) as so redesignated, substituted "For treatment of gifts and bequests to or for the benefit of National Park Foundation as gifts or bequests to or for the use of the United States, see section 8 of the Act of December 18, 1967 (16 U.S.C. 191)" for "For exemption of bequests to or for benefit of National

Park Service, see section 5 of the Act of July 10, 1935 (49 Stat. 478; 16 U.S.C. 19c)" in par. (4) as so redesignated, and corrected obsolete and inaccurate references in pars. (5)–(10) as so redesignated.

1974—Subsec. (e)(3). Pub. L. 93–483 added par. (3).

1970—Subsec. (b)(2)(C). Pub. L. 91–614 substituted "6 months" for "one year".

1969—Subsec. (a)(2). Pub. L. 91–172, §201(d)(4)(A) (i), inserted non-participation and non-intervention in political campaigns as an additional qualification.

Subsec. (a)(3). Pub. L. 91–172, §201(d)(4)(A)(ii), inserted non-participation and non-intervention in political campaigns as an additional qualification.

Subsec. (e). Pub. L. 91–172, §201(d)(1), substituted substantive provisions for simple reference to sections 503 and 681 of this title in which such substantive provisions were formerly set out.

1958—Subsec. (e). Pub. L. 85–866 substituted "503" for "504".

1956—Subsec. (b). Act Aug. 6, 1956, designated existing provisions as par. (1) and added par. (2).

CHANGE OF NAME

International Communication Agency, and Director thereof, redesignated United States Information Agency, and Director thereof, by section 303 of Pub. L. 97–241, title III, Aug. 24, 1982, 96 Stat. 291, set out as a note under section 1461 of Title 22, Foreign Relations and Intercourse. United States Information Agency (other than Broadcasting Board of Governors and International Broadcasting Bureau) abolished and functions transferred to Secretary of State, see sections 6531 and 6532 of Title 22.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–172 effective as if included in the provisions of the Pension Protection Act of 2006, Pub. L. 109–280, to which such amendment relates, see section 3(j) of Pub. L. 110–172, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 1218(b) of Pub. L. 109–280 applicable to contributions, bequests, and gifts made after Aug. 17, 2006, see section 1218(d) of Pub. L. 109–280, set out as a note under section 170 of this title.

Amendment by section 1234(b) of Pub. L. 109–280 applicable to contributions made after the date which is 180 days after Aug. 17, 2006, see section 1234(d) of Pub. L. 109–280, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 1089(b)(3), (5) of Pub. L. 105–34 applicable to transfers in trust after July 28, 1997, with special rule for certain decedents, see section 1089(b)(6) of Pub. L. 105–34, set out as a note under section 664 of this title.

Amendment by section 1530(c)(7) of Pub. L. 105–34 applicable to transfers made by trusts to, or for the use of, an employee stock ownership plan after Aug. 5, 1997, see section 1530(d) of Pub. L. 105–34, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable with respect to activities after Dec. 22, 1987, see section 10711(c) of Pub. L. 100–203, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XIV, §1422(e), Oct. 22, 1986, 100 Stat. 2717, provided that: "The amendments made by this section [amending this section and sections 2106 and 2522 of this title] shall apply to transfers and contributions made after December 31, 1986."

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title X, §1022(e), July 18, 1984, 98 Stat. 1029, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) SUBSECTIONS (a), (b), AND (c).—The amendments made by subsections (a), (b), and (c) [amending this section and sections 170 and 2522 of this title] shall apply to reformations after December 31, 1978; except that such amendments shall not apply to any reformation to which section 2055(e)(3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect on the day before the date of the enactment of this Act [July 18, 1984]) applies. For purposes of applying clause (iii) of section 2055(e)(3)(C) of such Code (as amended by this section), the 90th day described in such clause shall be treated as not occurring before the 90th day after the date of the enactment of this Act.

"(2) SUBSECTION (d).—The amendment made by subsection (d) [amending section 664 of this title] shall apply to transfers after December 31, 1978.

"(3) STATUTE OF LIMITATIONS.—

"(A) IN GENERAL.—If on the date of the enactment of this Act [July 18, 1984] (or at any time before the date 1 year after such date of enactment), credit or refund of any overpayment of tax attributable to the amendments made by this section is barred by any law or rule of law, such credit or refund of such overpayment may nevertheless be made if claim therefor is filed before the date 1 year after the date of the enactment of this Act.

"(B) NO INTEREST WHERE STATUTE CLOSED ON DATE OF ENACTMENT.—In any case where the making of the credit or refund of the overpayment described in subparagraph (A) is barred on the date of the enactment of this Act [July 18, 1984], no interest shall be allowed with respect to such overpayment (or any related adjustment) for the period before the date 180 days after the date on which the Secretary of the Treasury (or his delegate) is notified that the reformation has occurred."

Amendment by section 1032(b)(2) of Pub. L. 98–369 applicable to taxable years beginning after July 18, 1984, see section 1032(c) of Pub. L. 98–369, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

For effective date of amendment by Pub. L. 97–473, see section 204(3) of Pub. L. 97–473, set out as an Effective Date note under section 7871 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 effective Oct. 5, 1976, see section 286(c) of Pub. L. 97–248, set out as a note under section 501 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title IV, §423(c)(1), Aug. 13, 1981, 95 Stat. 317, provided that: "The amendment made by subsection (a) [amending this section] shall apply to the estates of decedents dying after December 31, 1981."

EFFECTIVE DATE OF 1980 AMENDMENTS

Pub. L. 96–605, title III, §301(b)(1), Dec. 28, 1980, 94 Stat. 3531, provided that: "The amendment made by subsection (a) [amending this section] shall apply in the case of decedents dying after December 31, 1969."

Amendment by Pub. L. 96–465 effective Feb. 15, 1981, except as otherwise provided, see section 2403 of Pub. L. 96–465, set out as an Effective Date note under section 3901 of Title 22, Foreign Relations and Intercourse.

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EXTENSION OF 1978 AMENDMENT; CHARITABLE LEAD TRUSTS AND CHARITABLE REMAINDER TRUSTS IN CASE OF INCOME AND GIFT TAXES

Pub. L. 96–605, title III, §301(b)(2), Dec. 28, 1980, 94 Stat. 3531, provided that: "Section 514(b) [section 514(b) of Pub. L. 95–600, set out below] (and section 514(c) [section 514(c) of Pub. L. 95–600, set out below] insofar as it relates to section 514(b)) of the Revenue Act of 1978 shall be applied as if the amendment made by subsection (a) [amending this section] had been included in the amendment made by section 514(a) of such Act [section 514(a) of Pub. L. 95–600, amending this section]."

EFFECTIVE DATE OF 1978 AMENDMENT; CHARITABLE LEAD TRUSTS AND CHARITABLE REMAINDER TRUSTS IN CASE OF INCOME AND GIFT TAXES

Pub. L. 95–600, title V, §514(c), as added by Pub. L. 96–222, title I, §105(a)(4)(B), Apr. 1, 1980, 94 Stat. 219; amended Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) FOR SUBSECTION (a).—The amendment made by subsection (a) [amending this section] shall apply in the case of decedents dying after December 31, 1969.

"(2) FOR SUBSECTION (b).—Subsection (b) [section 514(b) of Pub. L. 95–600, set out below]—

"(A) insofar as it relates to section 170 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall apply to transfers in trust and contributions made after July 31, 1969, and

"(B) insofar as it relates to section 2522 of the Internal Revenue Code of 1986 shall apply to transfers made after December 31, 1969."

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XIII, §1304(c), Oct. 4, 1976, 90 Stat. 1716, provided that: "The amendments made by this section [amending this section] shall apply in the case of decedents dying after December 31, 1969."

Amendment by section 1307(d)(1)(B)(ii), (C) of Pub. L. 94–455, applicable to estates of decedents dying after Dec. 31, 1976, see section 1307(e) of Pub. L. 94–455, set out as a note under section 501 of this title.

Amendment by section 1313(b)(2) of Pub. L. 94–455 applicable on day following Oct. 4, 1976, see section 1313(d) of Pub. L. 94–455, set out as a note under section 501 of this title.

Amendment by section 1902(a)(4) of Pub. L. 94–455 applicable in the case of estates of decedents dying after Oct. 4, 1976, see section 1902(c)(1) of Pub. L. 94–455, set out as a note under section 2011 of this title.

Amendment by section 1902(a)(12)(A) of Pub. L. 94–455 applicable with respect to gifts made after Dec. 31, 1976, see section 1902(c)(2) of Pub. L. 94–455, set out as a note under section 2501 of this title.

Amendment by section 2009(b)(4)(B), (C) of Pub. L. 94–455 applicable with respect to transfers creating an interest in person disclaiming made after Dec. 31, 1976, see section 2009(e)(2) of Pub. L. 94–455, set out as a note under section 2518 of this title.

Amendment by section 2124(e)(2) of Pub. L. 94–455 applicable with respect to contributions or transfers made after June 13, 1976, see section 2124(e)(4) of Pub. L. 94–455, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Pub. L. 93–483, §3(b), Oct. 26, 1974, 88 Stat. 1458, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to estates of decedents dying after December 31, 1969."

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–614 applicable with respect to decedents dying after Dec. 31, 1970, see section 101(j) of Pub. L. 91–614, set out as an Effective Date note under section 2032 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 201(d)(1) of Pub. L. 91–172 applicable in the case of decedents dying after Dec. 31, 1969, with specified exceptions, see section 201(g)(4) of Pub. L. 91–172, set out as a note under section 170 of this title.

Amendment by section 201(d)(4)(A) of Pub. L. 91–172 applicable to gifts and transfers made after Dec. 31, 1969, see section 201(g)(4)(E) of Pub. L. 91–172, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Act Aug. 6, 1956, ch. 1020, §3, 70 Stat. 1075, provided that: "The amendments made by this Act [amending this section and section 6503 of this title] shall apply in the case of decedents dying after August 16, 1954."

TRANSFER OF FUNCTIONS

United States International Development Cooperation Agency (other than Agency for International Development and Overseas Private Investment Corporation) abolished and functions and authorities transferred, see sections 6561 and 6562 of Title 22, Foreign Relations and Intercourse.

SPECIAL DONATIONS

Pub. L. 99–514, title XIV, §1422(d), Oct. 22, 1986, 100 Stat. 2717, provided that: "If the Secretary of the Interior acquires by donation after December 31, 1986, a conservation easement (within the meaning of section 2(h) of S. 720, 99th Congress, 1st Session, as in effect on August 16, 1986) [see Pub. L. 99–420, Sept. 25, 1986, §102(h), 99 Stat. 955, 957], such donation shall qualify for treatment under section 2055(f) or 2522(d) of the Internal Revenue Code of 1954 [now 1986], as added by this section."

CHARITABLE LEAD TRUSTS AND CHARITABLE REMAINDER TRUSTS IN CASE OF INCOME AND GIFT TAXES

Pub. L. 95–600, title V, §514(b), Nov. 6, 1978, 92 Stat. 2884, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Under regulations prescribed by the Secretary of the Treasury or his delegate, in the case of trusts created before December 31, 1977, provisions comparable to section 2055(e)(3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by subsection (a)) shall be deemed to be included in sections 170 and 2522 of the Internal Revenue Code of 1986."

EXTENSION OF PERIOD FOR FILING CLAIM FOR REFUND

Pub. L. 94–455, title XIII, §1304(b), Oct. 4, 1976, 90 Stat. 1716, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "A claim for refund or credit of an overpayment of the tax imposed by

section 2001 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] allowable under section 2055(e)(3) of such Code (as amended by subsection (a)) shall not be denied because of the expiration of the time for filing such a claim under section 6511(a) if such claim is filed not later than June 30, 1978."

[1] So in original. Probably should be followed by an additional closing parenthesis.

§2056. Bequests, etc., to surviving spouse

(a) Allowance of marital deduction

For purposes of the tax imposed by section 2001, the value of the taxable estate shall, except as limited by subsection (b), be determined by deducting from the value of the gross estate an amount equal to the value of any interest in property which passes or has passed from the decedent to his surviving spouse, but only to the extent that such interest is included in determining the value of the gross estate.

(b) Limitation in the case of life estate or other terminable interest

(1) General rule

Where, on the lapse of time, on the occurrence of an event or contingency, or on the failure of an event or contingency to occur, an interest passing to the surviving spouse will terminate or fail, no deduction shall be allowed under this section with respect to such interest—

(A) if an interest in such property passes or has passed (for less than an adequate and full consideration in money or money's worth) from the decedent to any person other than such surviving spouse (or the estate of such spouse); and

(B) if by reason of such passing such person (or his heirs or assigns) may possess or enjoy any part of such property after such termination or failure of the interest so passing to the surviving spouse;

and no deduction shall be allowed with respect to such interest (even if such deduction is not disallowed under subparagraphs (A) and (B))—

(C) if such interest is to be acquired for the surviving spouse, pursuant to directions of the decedent, by his executor or by the trustee of a trust.

For purposes of this paragraph, an interest shall not be considered as an interest which will terminate or fail merely because it is the ownership of a bond, note, or similar contractual obligation, the discharge of which would not have the effect of an annuity for life or for a term.

(2) Interest in unidentified assets

Where the assets (included in the decedent's gross estate) out of which, or the proceeds of which, an interest passing to the surviving spouse may be satisfied include a particular asset or assets with respect to which no deduction would be allowed if such asset or assets passed from the decedent to such spouse, then the value of such interest passing to such spouse shall, for purposes of subsection (a), be reduced by the aggregate value of such particular assets.

(3) Interest of spouse conditional on survival for limited period

For purposes of this subsection, an interest passing to the surviving spouse shall not be considered as an interest which will terminate or fail on the death of such spouse if—

(A) such death will cause a termination or failure of such interest only if it occurs within a period not exceeding 6 months after the decedent's death, or only if it occurs as a result of a common disaster resulting in the death of the decedent and the surviving spouse, or only if it occurs in the case of either such event; and

(B) such termination or failure does not in fact occur.

(4) Valuation of interest passing to surviving spouse

In determining for purposes of subsection (a) the value of any interest in property passing to the surviving spouse for which a deduction is allowed by this section—

(A) there shall be taken into account the effect which the tax imposed by section 2001, or any estate, succession, legacy, or inheritance tax, has on the net value to the surviving spouse of such interest; and

(B) where such interest or property is encumbered in any manner, or where the surviving spouse incurs any obligation imposed by the decedent with respect to the passing of such interest, such encumbrance or obligation shall be taken into account in the same manner as if the amount of a gift to such spouse of such interest were being determined.

(5) Life estate with power of appointment in surviving spouse

In the case of an interest in property passing from the decedent, if his surviving spouse is entitled for life to all the income from the entire interest, or all the income from a specific portion thereof, payable annually or at more frequent intervals, with power in the surviving spouse to appoint the entire interest, or such specific portion (exercisable in favor of such surviving spouse, or of the estate of such surviving spouse, or in favor of either, whether or not in each case the power is exercisable in favor of others), and with no power in any other person to appoint any part of the interest, or such specific portion, to any person other than the surviving spouse—

(A) the interest or such portion thereof so passing shall, for purposes of subsection (a), be considered as passing to the surviving spouse, and

(B) no part of the interest so passing shall, for purposes of paragraph (1)(A), be considered as passing to any person other than the surviving spouse.

This paragraph shall apply only if such power in the surviving spouse to appoint the entire interest, or such specific portion thereof, whether exercisable by will or during life, is exercisable by such spouse alone and in all events.

(6) Life insurance or annuity payments with power of appointment in surviving spouse

In the case of an interest in property passing from the decedent consisting of proceeds under a life insurance, endowment, or annuity contract, if under the terms of the contract such proceeds are payable in installments or are held by the insurer subject to an agreement to pay interest thereon (whether the proceeds, on the termination of any interest payments, are payable in a lump sum or in annual or more frequent installments), and such installment or interest payments are payable annually or at more frequent intervals, commencing not later than 13 months after the decedent's death, and all amounts, or a specific portion of all such amounts, payable during the life of the surviving spouse are payable only to such spouse, and such spouse has the power to appoint all amounts, or such specific portion, payable under such contract (exercisable in favor of such surviving spouse, or of the estate of such surviving spouse, or in favor of either, whether or not in each case the power is exercisable in favor of others), with no power in any other person to appoint such amounts to any person other than the surviving spouse—

(A) such amounts shall, for purposes of subsection (a), be considered as passing to the surviving spouse, and

(B) no part of such amounts shall, for purposes of paragraph (1)(A), be considered as passing to any person other than the surviving spouse.

This paragraph shall apply only if, under the terms of the contract, such power in the surviving spouse to appoint such amounts, whether exercisable by will or during life, is exercisable by such spouse alone and in all events.

(7) Election with respect to life estate for surviving spouse

(A) In general

In the case of qualified terminable interest property—

(i) for purposes of subsection (a), such property shall be treated as passing to the surviving spouse, and

(ii) for purposes of paragraph (1)(A), no part of such property shall be treated as passing to any person other than the surviving spouse.

(B) Qualified terminable interest property defined

For purposes of this paragraph—

(i) In general

The term "qualified terminable interest property" means property—

(I) which passes from the decedent,

(II) in which the surviving spouse has a qualifying income interest for life, and

(III) to which an election under this paragraph applies.

(ii) Qualifying income interest for life

The surviving spouse has a qualifying income interest for life if—

(I) the surviving spouse is entitled to all the income from the property, payable annually or at more frequent intervals, or has a usufruct interest for life in the property, and

(II) no person has a power to appoint any part of the property to any person other than the surviving spouse.

Subclause (II) shall not apply to a power exercisable only at or after the death of the surviving spouse. To the extent provided in regulations, an annuity shall be treated in a manner similar to an income interest in property (regardless of whether the property from which the annuity is payable can be separately identified).

(iii) Property includes interest therein

The term "property" includes an interest in property.

(iv) Specific portion treated as separate property

A specific portion of property shall be treated as separate property.

(v) Election

An election under this paragraph with respect to any property shall be made by the executor on the return of tax imposed by section 2001. Such an election, once made, shall be irrevocable.

(C) Treatment of survivor annuities

In the case of an annuity included in the gross estate of the decedent under section 2039 (or, in the case of an interest in an annuity arising under the community property laws of a State, included in the gross estate of the decedent under section 2033) where only the surviving spouse has the right to receive payments before the death of such surviving spouse—

(i) the interest of such surviving spouse shall be treated as a qualifying income interest for life, and

(ii) the executor shall be treated as having made an election under this subsection with respect to such annuity unless the executor otherwise elects on the return of tax imposed by section 2001.

An election under clause (ii), once made, shall be irrevocable.

(8) Special rule for charitable remainder trusts

(A) In general

If the surviving spouse of the decedent is the only beneficiary of a qualified charitable remainder trust who is not a charitable beneficiary nor an ESOP beneficiary, paragraph (1) shall not apply to any interest in such trust which passes or has passed from the decedent to such surviving spouse.

(B) Definitions

For purposes of subparagraph (A)—

(i) Charitable beneficiary

The term "charitable beneficiary" means any beneficiary which is an organization described in section 170(c).

(ii) ESOP beneficiary

The term "ESOP beneficiary" means any beneficiary which is an employee stock ownership plan (as defined in section 4975(e)(7)) that holds a remainder interest in qualified employer securities (as defined in section 664(g)(4)) to be transferred to such plan in a qualified gratuitous transfer (as defined in section 664(g)(1)).

(iii) Qualified charitable remainder trust

The term "qualified charitable remainder trust" means a charitable remainder annuity trust or a charitable remainder unitrust (described in section 664).

(9) Denial of double deduction

Nothing in this section or any other provision of this chapter shall allow the value of any interest in property to be deducted under this chapter more than once with respect to the same decedent.

(10) Specific portion

For purposes of paragraphs (5), (6), and (7)(B)(iv), the term "specific portion" only includes a portion determined on a fractional or percentage basis.

(c) Definition

For purposes of this section, an interest in property shall be considered as passing from the decedent to any person if and only if—

(1) such interest is bequeathed or devised to such person by the decedent;

(2) such interest is inherited by such person from the decedent;

(3) such interest is the dower or curtesy interest (or statutory interest in lieu thereof) of such person as surviving spouse of the decedent;

(4) such interest has been transferred to such person by the decedent at any time;

(5) such interest was, at the time of the decedent's death, held by such person and the decedent (or by them and any other person) in joint ownership with right of survivorship;

(6) the decedent had a power (either alone or in conjunction with any person) to appoint such interest and if he appoints or has appointed such interest to such person, or if such person takes such interest in default on the release or nonexercise of such power; or

(7) such interest consists of proceeds of insurance on the life of the decedent receivable by such person.

Except as provided in paragraph (5) or (6) of subsection (b), where at the time of the decedent's death it is not possible to ascertain the particular person or persons to whom an interest in property may pass from the decedent, such interest shall, for purposes of subparagraphs (A) and (B) of subsection (b)(1), be considered as passing from the decedent to a person other than the surviving spouse.

(d) Disallowance of marital deduction where surviving spouse not United States citizen

(1) In general

Except as provided in paragraph (2), if the surviving spouse of the decedent is not a citizen of the United States—

(A) no deduction shall be allowed under subsection (a), and

(B) section 2040(b) shall not apply.

(2) Marital deduction allowed for certain transfers in trust

(A) In general

Paragraph (1) shall not apply to any property passing to the surviving spouse in a qualified

domestic trust.

(B) Special rule

If any property passes from the decedent to the surviving spouse of the decedent, for purposes of subparagraph (A), such property shall be treated as passing to such spouse in a qualified domestic trust if—

(i) such property is transferred to such a trust before the date on which the return of the tax imposed by this chapter is made, or

(ii) such property is irrevocably assigned to such a trust under an irrevocable assignment made on or before such date which is enforceable under local law.

(3) Allowance of credit to certain spouses

If—

(A) property passes to the surviving spouse of the decedent (hereinafter in this paragraph referred to as the "first decedent"),

(B) without regard to this subsection, a deduction would be allowable under subsection (a) with respect to such property, and

(C) such surviving spouse dies and the estate of such surviving spouse is subject to the tax imposed by this chapter,

the Federal estate tax paid (or treated as paid under section 2056A(b)(7)) by the first decedent with respect to such property shall be allowed as a credit under section 2013 to the estate of such surviving spouse and the amount of such credit shall be determined under such section without regard to when the first decedent died and without regard to subsection (d)(3) of such section.

(4) Special rule where resident spouse becomes citizen

Paragraph (1) shall not apply if—

(A) the surviving spouse of the decedent becomes a citizen of the United States before the day on which the return of the tax imposed by this chapter is made, and

(B) such spouse was a resident of the United States at all times after the date of the death of the decedent and before becoming a citizen of the United States.

(5) Reformations permitted

(A) In general

In the case of any property with respect to which a deduction would be allowable under subsection (a) but for this subsection, the determination of whether a trust is a qualified domestic trust shall be made—

(i) as of the date on which the return of the tax imposed by this chapter is made, or

(ii) if a judicial proceeding is commenced on or before the due date (determined with regard to extensions) for filing such return to change such trust into a trust which is a qualified domestic trust, as of the time when the changes pursuant to such proceeding are made.

(B) Statute of limitations

If a judicial proceeding described in subparagraph (A)(ii) is commenced with respect to any trust, the period for assessing any deficiency of tax attributable to any failure of such trust to be a qualified domestic trust shall not expire before the date 1 year after the date on which the Secretary is notified that the trust has been changed pursuant to such judicial proceeding or that such proceeding has been terminated.

(Aug. 16, 1954, ch. 736, 68A Stat. 392; Pub. L. 89–621, §1(a), Oct. 4, 1966, 80 Stat. 872; Pub. L. 94–455, title XIX, §1902(a)(12)(A), title XX, §§2002(a), 2009(b)(4)(D), (E), Oct. 4, 1976, 90 Stat. 1805, 1854, 1894; Pub. L. 95–600, title VII, §702(g)(1), (2), Nov. 6, 1978, 92 Stat. 2930; Pub. L. 97–34, title IV, §403(a)(1), (d)(1), Aug. 13, 1981, 95 Stat. 301, 302; Pub. L. 97–448, title I, §104(a)(2)(A), (8), Jan. 12, 1983, 96 Stat. 2380, 2381; Pub. L. 98–369, div. A, title X, §1027(a), July 18, 1984, 98 Stat. 1031; Pub. L. 100–647, title V, §5033(a)(1), title VI, §6152(a), Nov. 10, 1988, 102

Stat. 3670, 3725; Pub. L. 101–239, title VII, §7815(d)(4)(A), (5), (6), (8), 7816(q), Dec. 19, 1989, 103 Stat. 2415, 2416, 2423; Pub. L. 101–508, title XI, §§11701(l)(1), 11702(g)(5), Nov. 5, 1990, 104 Stat. 1388–513, 1388–516; Pub. L. 102–486, title XIX, §1941(a), Oct. 24, 1992, 106 Stat. 3036; Pub. L. 105–34, title XIII, §1311(a), title XV, §1530(c)(8), Aug. 5, 1997, 111 Stat. 1044, 1078.)

AMENDMENTS

1997—Subsec. (b)(7)(C). Pub. L. 105–34, §1311(a), inserted "(or, in the case of an interest in an annuity arising under the community property laws of a State, included in the gross estate of the decedent under section 2033)" after "section 2039".

Subsec. (b)(8). Pub. L. 105–34, §1530(c)(8), amended par. (8) generally. Prior to amendment, par. (8) read as follows:

"(8) SPECIAL RULE FOR CHARITABLE REMAINDER TRUSTS.—

"(A) IN GENERAL.—If the surviving spouse of the decedent is the only noncharitable beneficiary of a qualified charitable remainder trust, paragraph (1) shall not apply to any interest in such trust which passes or has passed from the decedent to such surviving spouse.

"(B) DEFINITIONS.—For purposes of subparagraph (A)—

"(i) NONCHARITABLE BENEFICIARY.—The term 'noncharitable beneficiary' means any beneficiary of the qualified charitable remainder trust other than an organization described in section 170(c).

"(ii) QUALIFIED CHARITABLE REMAINDER TRUST.—The term 'qualified charitable remainder trust' means a charitable remainder annuity trust or charitable remainder unitrust (described in section 664)."

1992—Subsec. (b)(10). Pub. L. 102–486 added par. (10).

1990—Subsec. (d)(3). Pub. L. 101–508, §11702(g)(5), substituted "section 2056A(b)(7)" for "section 2056A(b)(6)".

Subsec. (d)(4), (5). Pub. L. 101–508, §11701(l)(1), redesignated par. (4) relating to reformations permitted as par. (5).

1989—Subsec. (b)(7)(C). Pub. L. 101–239, §7816(q), inserted "included in the gross estate of the decedent under section 2039" after "an annuity".

Subsec. (d)(2)(B). Pub. L. 101–239, §7815(d)(4)(A), substituted "Special rule" for "Property passing outside of probate estate" in heading and amended text generally. Prior to amendment, text read as follows: "If any property passes from the decedent to the surviving spouse of the decedent outside of the decedent's probate estate, for purposes of subparagraph (A), such property shall be treated as passing to such spouse in a qualified domestic trust if such property is transferred to such a trust before the day on which the return of the tax imposed by section 2001 is made."

Subsec. (d)(3). Pub. L. 101–239, §7815(d)(6), substituted "this chapter" for "section 2001" in subpar. (C) and inserted "and without regard to subsection (d)(3) of such section" after "first decedent died" in concluding provisions.

Subsec. (d)(4). Pub. L. 101–239, §7815(d)(8), added par. (4) relating to reformations permitted.

Pub. L. 101–239, §7815(d)(5), added par. (4) relating to special rule where resident spouse becomes citizen.

1988—Subsec. (b)(7)(C). Pub. L. 100–647, §6152(a), added subpar. (C).

Subsec. (d). Pub. L. 100–647, §5033(a)(1), added subsec. (d).

1984—Subsec. (b)(7)(B)(ii)(I). Pub. L. 98–369 inserted ", or has a usufruct interest for life in the property".

1983—Subsec. (b)(7)(B)(ii). Pub. L. 97–448, §104(a)(8), inserted provision that an annuity shall be treated in a manner similar to an income interest in property (regardless of whether the property from which the annuity is payable can be separately identified).

Subsec. (b)(9). Pub. L. 97–448, §104(a)(2)(A), added par. (9).

1981—Subsec. (a). Pub. L. 97–34, §403(a)(1)(B), substituted "subsection (b)" for "subsections (b) and (c)".

Subsec. (b)(7), (8). Pub. L. 97–34, §403(d)(1), added pars. (7) and (8).

Subsecs. (c), (d). Pub. L. 97–34, §403(a)(1)(A), redesignated subsec. (d) as (c) and struck out former subsec. (c) relating to limitation on aggregate of deductions.

1978—Subsec. (c)(1)(B). Pub. L. 95–600 inserted in cl. (ii) "required to be included in a gift tax return" after "with respect to any gift" and inserted following cl. (ii) "For purposes of this subparagraph, a gift which is includible in the gross estate of the donor by reason of section 2035 shall not be taken into account".

1976—Subsec. (a). Pub. L. 94–455, §2009(b)(4)(E), substituted "subsections (b) and (c)" for "subsections (b), (c), and (d)".

Subsec. (c)(1). Pub. L. 94–455, §2002(a), designated existing provisions as subpar. (A), substituted provisions that the aggregate amount of the deductions allowed under this section (computed without regard to

this subsection) shall not exceed the greater of $250,000 or 50 percent of the value of the adjusted gross estate as defined in par. (2) for provisions that the aggregate amount of the deductions allowed under this section (computed without regard to this subsection) shall not exceed 50 percent of the value of the adjusted gross estate as defined in par. (2), and added subpars. (B) and (C).

Subsec. (c)(2)(B). Pub. L. 94–455, §1902(a)(12)(A), struck out "Territory," after "State," in provisions preceding cl. (i).

Subsecs. (d), (e). Pub. L. 94–455, §2009(b)(4)(D), redesignated subsec. (e) as (d). Former subsec. (d), which related to disclaimers by the surviving spouse or by other persons, was struck out.

1966—Subsec. (d)(2). Pub. L. 89–621 provided that if the disclaimer is made by the person before the date prescribed for the filing of the estate tax return and if the person does not accept the interest before making the disclaimer, the interest shall, for purposes of this section, be considered as passing from the decedent to the surviving spouse.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XIII, §1311(b), Aug. 5, 1997, 111 Stat. 1044, provided that: "The amendment made by this section [amending this section] shall apply to estates of decedents dying after the date of the enactment of this Act [Aug. 5, 1997]."

Amendment by section 1530(c)(8) of Pub. L. 105–34 applicable to transfers made by trusts to, or for the use of, an employee stock ownership plan after Aug. 5, 1997, see section 1530(d) of Pub. L. 105–34, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–486, title XIX, §1941(c), Oct. 24, 1992, 106 Stat. 3036, provided that:

"(1) SUBSECTION (a).—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the amendment made by subsection (a) [amending this section] shall apply to the estates of decedents dying after the date of the enactment of this Act [Oct. 24, 1992].

"(B) EXCEPTION.—The amendment made by subsection (a) shall not apply to any interest in property which passes (or has passed) to the surviving spouse of the decedent pursuant to a will (or revocable trust) in existence on the date of the enactment of this Act if—

"(i) the decedent dies on or before the date 3 years after such date of enactment, or

"(ii) the decedent was, on such date of enactment, under a mental disability to change the disposition of his property and did not regain his competence to dispose of such property before the date of his death.

The preceding sentence shall not apply if such will (or revocable trust) is amended at any time after such date of enactment in any respect which will increase the amount of the interest which so passes or alters the terms of the transfer by which the interest so passes.

"(2) SUBSECTION (b).—The amendments made by subsection (b) [amending section 2523 of this title] shall apply to gifts made after the date of the enactment of this Act [Oct. 24, 1992]."

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11701(l)(1) of Pub. L. 101–508 effective, except as otherwise provided, as if included in the provision of the Revenue Reconciliation Act of 1989, Pub. L. 101–239, title VII, to which such amendment relates, see section 11701(n) of Pub. L. 101–508, set out as a note under section 42 of this title.

Amendment by section 11702(g)(5) of Pub. L. 101–508 effective as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 11702(j) of Pub. L. 101–508, set out as a note under section 59 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7815(d)(4)(B), Dec. 19, 1989, 103 Stat. 2415, provided that: "In the case of the estate of a decedent dying before the date of the enactment of this Act [Dec. 19, 1989], the period during which the transfer (or irrevocable assignment) referred to in section 2056(d)(2)(B) of the Internal Revenue Code of 1986 (as amended by subparagraph (A)) may be made shall not expire before the date 1 year after such date of enactment."

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title V, §5033(d)(1), Nov. 10, 1988, 102 Stat. 3673, provided that: "The amendments made by subsections (a) and (c) [enacting section 2056A of this title and amending this section and section 2106 of this title] shall apply to estates of the decedents dying after the date of the enactment of this Act [Nov. 10, 1988]."

Pub. L. 100–647, title VI, §6152(c), Nov. 10, 1988, 102 Stat. 3725, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection—

"(A) the amendment made by subsection (a) [amending this section] shall apply with respect to decedents dying after December 31, 1981, and

"(B) the amendment made by subsection (b) [amending section 2523 of this title] shall apply to transfers after December 31, 1981.

"(2) NOT TO APPLY TO EXTENT INCONSISTENT WITH PRIOR RETURN.—In the case of any estate or gift tax return filed before the date of the enactment of this Act [Nov. 10, 1988], the amendments made by this section [amending this section and section 2523 of this title] shall not apply to the extent such amendments would be inconsistent with the treatment of the annuity on such return unless the executor or donor (as the case may be) otherwise elects under this paragraph before the day 2 years after the date of the enactment of this Act.

"(3) EXTENSION OF TIME FOR ELECTION OUT.—The time for making an election under section 2056(b)(7)(C)(ii) or 2523(f)(6)(B) of the 1986 Code (as added by this subsection) shall not expire before the day 2 years after the date of the enactment of this Act (and, if such election is made within the time permitted under this paragraph, the requirement of such section 2056(b)(7)(C)(ii) that it be made on the return shall not apply)."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective as if included in the amendment made by section 403 of the Economic Recovery Tax Act of 1981 [Pub. L. 97–34, see Effective Date of 1981 Amendment note below], see section 1027(c) of Pub. L. 98–369, set out as a note under section 2053 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title IV, §403(e), Aug. 13, 1981, 95 Stat. 305, as amended by Pub. L. 97–448, title I, §104(a)(10), Jan. 12, 1983, 96 Stat. 2381; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) Except as otherwise provided in this subsection, the amendments made by this section [enacting sections 2044 and 2207A of this title, amending this section and sections 691, 2012, 2035, 2040, 2045, 2046, 2519, 2523, 2602, and 6019 of this title, and repealing sections 2515 and 2515A of this title] shall apply to the estates of decedents dying after December 31, 1981.

"(2) The amendments made by paragraphs (1), (2), and (3)(A) of subsection (b) [amending sections 2523 and 6019 of this title], subparagraphs (B) and (C) of subsection (c)(3) [amending section 6019 of this title and repealing sections 2515 and 2515A of this title], and paragraphs (2) and (3)(B) of subsection (d), and paragraph (4)(A) of subsection (d) (to the extent related to the tax imposed by chapter 12 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) [enacting sections 2207A and 2519 of this title and amending section 2523 of this title] shall apply to gifts made after December 31, 1981.

"(3) If—

"(A) the decedent dies after December 31, 1981,

"(B) by reason of the death of the decedent property passes from the decedent or is acquired from the decedent under a will executed before the date which is 30 days after the date of the enactment of this Act [Aug. 13, 1981], or a trust created before such date, which contains a formula expressly providing that the spouse is to receive the maximum amount of property qualifying for the marital deduction allowable by Federal law,

"(C) the formula referred to in subparagraph (B) was not amended to refer specifically to an unlimited marital deduction at any time after the date which is 30 days after the date of enactment of this Act [Aug. 13, 1981], and before the death of the decedent, and

"(D) the State does not enact a statute applicable to such estate which construes this type of formula as referring to the marital deduction allowable by Federal law as amended by subsection (a),

then the amendment made by subsection (a) shall not apply to the estate of such decedent."

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title VII, §702(g)(3), Nov. 6, 1978, 92 Stat. 2930, provided that: "The amendment made by this subsection [amending this section] shall apply to the estates of decedents dying after December 31, 1976."

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XX, §2002(d)(1), Oct. 4, 1976, 90 Stat. 1856, provided that:

"(1)(A) Except as provided in subparagraph (B), the amendment made by subsection (a) [amending this section] shall apply with respect to the estates of decedents dying after December 31, 1976.

"(B) If—

"(i) the decedent dies after December 31, 1976, and before January 1, 1979,

"(ii) by reason of the death of the decedent property passes from the decedent or is acquired from the decedent under a will executed before January 1, 1977, or a trust created before such date, which contains a formula expressly providing that the spouse is to receive the maximum amount of property qualifying for the marital deduction allowable by Federal law,

"(iii) the formula referred to in clause (ii) was not amended at any time after December 31, 1976, and before the death of the decedent, and

"(iv) the State does not enact a statute applicable to such estate which construes this type of formula as referring to the marital deduction allowable by Federal law as amended by subsection (a),

then the amendment made by subsection (a) shall not apply to the estate of such decedent."

Amendment by section 2009(b)(4)(D), (E) of Pub. L. 94–455 applicable with respect to transfers creating an interest in person disclaiming made after Dec. 31, 1976, see section 2009(e)(2) of Pub. L. 94–455, set out as an Effective Date note under section 2518 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89–621, §1(b), Oct. 4, 1966, 80 Stat. 872, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to estates of decedents dying on or after the date of the enactment of this Act [Oct. 4, 1966]."

COMMENCEMENT OF JUDICIAL PROCEEDING TO REFORM TRUST

Pub. L. 101–508, title XI, §11701(l)(2), Nov. 5, 1990, 104 Stat. 1388–513, provided that: "The period during which a proceeding may be commenced under section 2056(d)(5)(A)(ii) of the Internal Revenue Code of 1986 (as redesignated by paragraph (1)) shall not expire before the date 6 months after the date of the enactment of this Act [Nov. 5, 1990]."

APPLICATION OF AMENDMENTS BY SECTION 5033 OF PUB. L. 100–647 TO ESTATES OF, OR GIFTS BY, NONCITIZEN AND NONRESIDENT INDIVIDUALS

Pub. L. 101–239, title VII, §7815(d)(14), Dec. 19, 1989, 103 Stat. 2418, provided that: "In the case of the estate of, or gift by, an individual who was not a citizen or resident of the United States but was a resident of a foreign country with which the United States has a tax treaty with respect to estate, inheritance, or gift taxes, the amendments made by section 5033 of the 1988 Act [Pub. L. 100–647, enacting section 2056A of this title and amending this section and sections 2106 and 2523 of this title] shall not apply to the extent such amendments would be inconsistent with the provisions of such treaty relating to estate, inheritance, or gift tax marital deductions. In the case of the estate of an individual dying before the date 3 years after the date of the enactment of this Act [Dec. 19, 1989], or a gift by an individual before the date 3 years after the date of the enactment of this Act, the requirement of the preceding sentence that the individual not be a citizen or resident of the United States shall not apply."

DISCLAIMER OF INTEREST ARISING FROM ESTATES OF PERSONS DYING BEFORE OCT. 4, 1966, HAVING ESTATE TAX RETURN FILING DATE ON OR AFTER JAN. 1, 1965

Pub. L. 89–621, §1(c), Oct. 4, 1966, 80 Stat. 872, provided that in the case of a decedent dying before Oct. 4, 1966, for which the date prescribed for filing estate tax return was on or after Jan. 1, 1965, and as a result of a disclaimer, the surviving spouse became entitled to receive such interest, then such interest was to be considered as having passed from the decedent to the surviving spouse under certain conditions, with a limit on the amount of deductions allowed.

§2056A. Qualified domestic trust

(a) Qualified domestic trust defined

For purposes of this section and section 2056(d), the term "qualified domestic trust" means, with respect to any decedent, any trust if—

(1) the trust instrument—

(A) except as provided in regulations prescribed by the Secretary, requires that at least 1 trustee of the trust be an individual citizen of the United States or a domestic corporation, and

(B) provides that no distribution (other than a distribution of income) may be made from the trust unless a trustee who is an individual citizen of the United States or a domestic corporation has the right to withhold from such distribution the tax imposed by this section on such distribution,

(2) such trust meets such requirements as the Secretary may by regulations prescribe to ensure the collection of any tax imposed by subsection (b), and

(3) an election under this section by the executor of the decedent applies to such trust.

(b) Tax treatment of trust

(1) Imposition of estate tax

There is hereby imposed an estate tax on—

(A) any distribution before the date of the death of the surviving spouse from a qualified domestic trust, and

(B) the value of the property remaining in a qualified domestic trust on the date of the death of the surviving spouse.

(2) Amount of tax

(A) In general

In the case of any taxable event, the amount of the estate tax imposed by paragraph (1) shall be the amount equal to—

(i) the tax which would have been imposed under section 2001 on the estate of the decedent if the taxable estate of the decedent had been increased by the sum of—

(I) the amount involved in such taxable event, plus

(II) the aggregate amount involved in previous taxable events with respect to qualified domestic trusts of such decedent, reduced by

(ii) the tax which would have been imposed under section 2001 on the estate of the decedent if the taxable estate of the decedent had been increased by the amount referred to in clause (i)(II).

(B) Tentative tax where tax of decedent not finally determined

(i) In general

If the tax imposed on the estate of the decedent under section 2001 is not finally determined before the taxable event, the amount of the tax imposed by paragraph (1) on such event shall be determined by using the highest rate of tax in effect under section 2001 as of the date of the decedent's death.

(ii) Refund of excess when tax finally determined

If—

(I) the amount of the tax determined under clause (i), exceeds

(II) the tax determined under subparagraph (A) on the basis of the final determination of the tax imposed by section 2001 on the estate of the decedent,

such excess shall be allowed as a credit or refund (with interest) if claim therefor is filed not later than 1 year after the date of such final determination.

(C) Special rule where decedent has more than 1 qualified domestic trust

If there is more than 1 qualified domestic trust with respect to any decedent, the amount of

the tax imposed by paragraph (1) with respect to such trusts shall be determined by using the highest rate of tax in effect under section 2001 as of the date of the decedent's death (and the provisions of paragraph (3)(B) shall not apply) unless, pursuant to a designation made by the decedent's executor, there is 1 person—

(i) who is an individual citizen of the United States or a domestic corporation and is responsible for filing all returns of tax imposed under paragraph (1) with respect to such trusts and for paying all tax so imposed, and

(ii) who meets such requirements as the Secretary may by regulations prescribe.

(3) Certain lifetime distributions exempt from tax

(A) Income distributions

No tax shall be imposed by paragraph (1)(A) on any distribution of income to the surviving spouse.

(B) Hardship exemption

No tax shall be imposed by paragraph (1)(A) on any distribution to the surviving spouse on account of hardship.

(4) Tax where trust ceases to qualify

If any qualified domestic trust ceases to meet the requirements of paragraphs (1) and (2) of subsection (a), the tax imposed by paragraph (1) shall apply as if the surviving spouse died on the date of such cessation.

(5) Due date

(A) Tax on distributions

The estate tax imposed by paragraph (1)(A) shall be due and payable on the 15th day of the 4th month following the calendar year in which the taxable event occurs; except that the estate tax imposed by paragraph (1)(A) on distributions during the calendar year in which the surviving spouse dies shall be due and payable not later than the date on which the estate tax imposed by paragraph (1)(B) is due and payable.

(B) Tax at death of spouse

The estate tax imposed by paragraph (1)(B) shall be due and payable on the date 9 months after the date of such death.

(6) Liability for tax

Each trustee shall be personally liable for the amount of the tax imposed by paragraph (1). Rules similar to the rules of section 2204 shall apply for purposes of the preceding sentence.

(7) Treatment of tax

For purposes of section 2056(d), any tax paid under paragraph (1) shall be treated as a tax paid under section 2001 with respect to the estate of the decedent.

(8) Lien for tax

For purposes of section 6324, any tax imposed by paragraph (1) shall be treated as an estate tax imposed under this chapter with respect to a decedent dying on the date of the taxable event (and the property involved shall be treated as the gross estate of such decedent).

(9) Taxable event

The term "taxable event" means the event resulting in tax being imposed under paragraph (1).

(10) Certain benefits allowed

(A) In general

If any property remaining in the qualified domestic trust on the date of the death of the surviving spouse is includible in the gross estate of such spouse for purposes of this chapter (or would be includible if such spouse were a citizen or resident of the United States), any benefit

which is allowable (or would be allowable if such spouse were a citizen or resident of the United States) with respect to such property to the estate of such spouse under section 2014, 2032, 2032A, 2055, 2056, 2058, or 6166 shall be allowed for purposes of the tax imposed by paragraph (1)(B).

(B) Section 303

If the estate of the surviving spouse meets the requirements of section 303 with respect to any property described in subparagraph (A), for purposes of section 303, the tax imposed by paragraph (1)(B) with respect to such property shall be treated as a Federal estate tax payable with respect to the estate of the surviving spouse.

(C) Section 6161(a)(2)

The provisions of section 6161(a)(2) shall apply with respect to the tax imposed by paragraph (1)(B), and the reference in such section to the executor shall be treated as a reference to the trustees of the trust.

(11) Special rule where distribution tax paid out of trust

For purposes of this subsection, if any portion of the tax imposed by paragraph (1)(A) with respect to any distribution is paid out of the trust, an amount equal to the portion so paid shall be treated as a distribution described in paragraph (1)(A).

(12) Special rule where spouse becomes citizen

If the surviving spouse of the decedent becomes a citizen of the United States and if—

(A) such spouse was a resident of the United States at all times after the date of the death of the decedent and before such spouse becomes a citizen of the United States,

(B) no tax was imposed by paragraph (1)(A) with respect to any distribution before such spouse becomes such a citizen, or

(C) such spouse elects—

(i) to treat any distribution on which tax was imposed by paragraph (1)(A) as a taxable gift made by such spouse for purposes of—

(I) section 2001, and

(II) determining the amount of the tax imposed by section 2501 on actual taxable gifts made by such spouse during the year in which the spouse becomes a citizen or any subsequent year, and

(ii) to treat any reduction in the tax imposed by paragraph (1)(A) by reason of the credit allowable under section 2010 with respect to the decedent as a credit allowable to such surviving spouse under section 2505 for purposes of determining the amount of the credit allowable under section 2505 with respect to taxable gifts made by the surviving spouse during the year in which the spouse becomes a citizen or any subsequent year,

paragraph (1)(A) shall not apply to any distributions after such spouse becomes such a citizen (and paragraph (1)(B) shall not apply).

(13) Coordination with section 1015

For purposes of section 1015, any distribution on which tax is imposed by paragraph (1)(A) shall be treated as a transfer by gift, and any tax paid under paragraph (1)(A) shall be treated as a gift tax.

(14) Coordination with terminable interest rules

Any interest in a qualified domestic trust shall not be treated as failing to meet the requirements of paragraph (5) or (7) of section 2056(b) merely by reason of any provision of the trust instrument permitting the withholding from any distribution of an amount to pay the tax imposed by paragraph (1) on such distribution.

(15) No tax on certain distributions

No tax shall be imposed by paragraph (1) on any distribution to the surviving spouse to the extent such distribution is to reimburse such surviving spouse for any tax imposed by subtitle A on any item of income of the trust to which such surviving spouse is not entitled under the terms of the trust.

(c) Definitions

For purposes of this section—

(1) Property includes interest therein

The term "property" includes an interest in property.

(2) Income

Except as provided in regulations, the term "income" has the meaning given to such term by section 643(b).

(3) Trust

To the extent provided in regulations prescribed by the Secretary, the term "trust" includes other arrangements which have substantially the same effect as a trust.

(d) Election

An election under this section with respect to any trust shall be made by the executor on the return of the tax imposed by section 2001. Such an election, once made, shall be irrevocable. No election may be made under this section on any return if such return is filed more than one year after the time prescribed by law (including extensions) for filing such return.

(e) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations under which there may be treated as a qualified domestic trust any annuity or other payment which is includible in the decedent's gross estate and is by its terms payable for life or a term of years.

(Added Pub. L. 100–647, title V, §5033(a)(2), Nov. 10, 1988, 102 Stat. 3670; amended Pub. L. 101–239, title VII, §7815(d)(7), (9)–(13), (15), Dec. 19, 1989, 103 Stat. 2415–2418; Pub. L. 101–508, title XI, §§11702(g)(2)(A), (B), (3)(A), (4), 11704(a)(15), Nov. 5, 1990, 104 Stat. 1388–515, 1388–516, 1388–518; Pub. L. 105–34, title XIII, §§1312(a), 1314(a), Aug. 5, 1997, 111 Stat. 1044, 1045; Pub. L. 107–16, title V, §532(c)(6), June 7, 2001, 115 Stat. 74.)

AMENDMENTS

2001—Subsec. (b)(10)(A). Pub. L. 107–16 struck out "2011," before "2014," and inserted "2058," after "2056,".

1997—Subsec. (a)(1)(A). Pub. L. 105–34, §1314(a), inserted "except as provided in regulations prescribed by the Secretary," before "requires".

Subsec. (c)(3). Pub. L. 105–34, §1312(a), added par. (3).

1990—Subsec. (a)(1). Pub. L. 101–508, §11702(g)(2)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "the trust instrument requires that at least 1 trustee of the trust be an individual citizen of the United States or a domestic corporation and that no distribution from the trust may be made without the approval of such a trustee,".

Subsec. (b)(2)(B)(ii). Pub. L. 101–508, §11704(a)(15), substituted "therefor" for "therefore" in concluding provisions.

Subsec. (b)(10)(A). Pub. L. 101–508, §11702(g)(4), substituted "section 2011, 2014, 2032" for "section 2032".

Subsec. (b)(14), (15). Pub. L. 101–508, §11702(g)(2)(B), added pars. (14) and (15).

Subsec. (d). Pub. L. 101–508, §11702(g)(3)(A), inserted at end "No election may be made under this section on any return if such return is filed more than one year after the time prescribed by law (including extensions) for filing such return."

1989—Subsec. (a)(1). Pub. L. 101–239, §7815(d)(7)(A)(i), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "the trust instrument requires that all trustees of the trust be individual citizens of the United States or domestic corporations,".

Subsec. (a)(2) to (4). Pub. L. 101–239, §7815(d)(7)(A)(ii), redesignated pars. (3) and (4) as (2) and (3), respectively, and struck out former par. (2) which read as follows: "the surviving spouse of the decedent is entitled to all the income from the property in such trust, payable annually or at more frequent intervals,".

Subsec. (b)(1)(A). Pub. L. 101–239, §7815(d)(7)(C), struck out "other than a distribution of income required under subsection (a)(2)" after "qualified domestic trust".

Subsec. (b)(2)(B)(ii). Pub. L. 101–239, §7815(d)(11), inserted "(with interest)" after "credit or refund".

Subsec. (b)(2)(C). Pub. L. 101–239, §7815(d)(12), added subpar. (C).

Subsec. (b)(3). Pub. L. 101–239, §7815(d)(7)(B), added par. (3). Former par. (3) redesignated (4).

Subsec. (b)(4). Pub. L. 101–239, §7815(d)(7)(D), amended par. (4) generally. Prior to amendment, par. (4) read as follows: "If any person other than an individual citizen of the United States or a domestic corporation becomes a trustee of a qualified domestic trust (or such trust ceases to meet the requirements of subsection (a)(3)), the tax imposed by paragraph (1) shall apply as if the surviving spouse died on the date on which such person became such a trustee or the date of such cessation, as the case may be."

Pub. L. 101–239, §7815(d)(7)(B), redesignated par. (3) as (4). Former par. (4) redesignated (5).

Subsec. (b)(5). Pub. L. 101–239, §7815(d)(15), amended par. (5) generally. Prior to amendment, par. (5) read as follows: "The estate tax imposed by paragraph (1) shall be due and payable on the 15th day of the 4th month following the calendar year in which the taxable event occurs."

Pub. L. 101–239, §7815(d)(7)(B), redesignated par. (4) as (5). Former par. (5) redesignated (6).

Subsec. (b)(6) to (9). Pub. L. 101–239, §7815(d)(7)(B), redesignated pars. (5) to (8) as (6) to (9), respectively.

Subsec. (b)(10) to (13). Pub. L. 101–239, §7815(d)(9), added pars. (10) to (13).

Subsec. (c)(2). Pub. L. 101–239, §7815(d)(10), substituted "Except as provided in regulations, the term" for "The term".

Subsec. (e). Pub. L. 101–239, §7815(d)(13), added subsec. (e).

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to estates of decedents dying, and generation-skipping transfers, after Dec. 31, 2004, see section 532(d) of Pub. L. 107–16, set out as a note under section 2011 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XIII, §1312(b), Aug. 5, 1997, 111 Stat. 1045, provided that: "The amendment made by this section [amending this section] shall apply to estates of decedents dying after the date of the enactment of this Act [Aug. 5, 1997]."

Pub. L. 105–34, title XIII, §1314(b), Aug. 5, 1997, 111 Stat. 1045, provided that: "The amendment made by this section [amending this section] shall apply to estates of decedents dying after the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11702(g)(2), (4) of Pub. L. 101–508 effective as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 11702(j) of Pub. L. 101–508, set out as a note under section 59 of this title.

Pub. L. 101–508, title XI, §11702(g)(3)(B), Nov. 5, 1990, 104 Stat. 1388–516, provided that: "The amendment made by subparagraph (A) [amending this section] shall not apply to any election made before the date 6 months after the date of the enactment of this Act [Nov. 5, 1990]."

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to estates of decedents dying after Nov. 10, 1988, see section 5033(d)(1) of Pub. L. 100–647, set out as an Effective Date of 1988 Amendment note under section 2056 of this title.

TRANSITIONAL RULE

Pub. L. 105–34, title XIII, §1303, Aug. 5, 1997, 111 Stat. 1039, provided that:

"(a) GENERAL RULE.—In the case of any trust created under an instrument executed before the date of the enactment of the Revenue Reconciliation Act of 1990 [Nov. 5, 1990], such trust shall be treated as meeting the requirements of paragraph (1) of section 2056A(a) of the Internal Revenue Code of 1986 if the

trust instrument requires that all trustees of the trust be individual citizens of the United States or domestic corporations.

"(b) EFFECTIVE DATE.—The provisions of subsection (a) shall take effect as if included in the provisions of section 11702(g) of the Revenue Reconciliation Act of 1990 [Pub. L. 101–508]."

APPLICATION OF AMENDMENTS BY SECTION 5033 OF PUB. L. 100–647 TO ESTATES OF, OR GIFTS BY, NONCITIZEN AND NONRESIDENT INDIVIDUALS

For provisions directing that in the case of the estate of, or gift by, an individual who was not a citizen or resident of the United States but was a resident of a foreign country with which the United States has a tax treaty with respect to estate, inheritance, or gift taxes, this section shall not apply to the extent such section would be inconsistent with the provisions of such treaty relating to estate, inheritance, or gift tax marital deductions, but that in the case of the estate of an individual dying before the date 3 years after Dec. 19, 1989, or a gift by an individual before the date 3 years after Dec. 19, 1989, the requirement of the preceding provision that the individual not be a citizen or resident of the United States shall not apply, see section 7815(d)(14) of Pub. L. 101–239, set out as a note under section 2056 of this title.

§2057. Family-owned business interests

(a) General rule

(1) Allowance of deduction

For purposes of the tax imposed by section 2001, in the case of an estate of a decedent to which this section applies, the value of the taxable estate shall be determined by deducting from the value of the gross estate the adjusted value of the qualified family-owned business interests of the decedent which are described in subsection (b)(2).

(2) Maximum deduction

The deduction allowed by this section shall not exceed $675,000.

(3) Coordination with unified credit

(A) In general

Except as provided in subparagraph (B), if this section applies to an estate, the applicable exclusion amount under section 2010 shall be $625,000.

(B) Increase in unified credit if deduction is less than $675,000

If the deduction allowed by this section is less than $675,000, the amount of the applicable exclusion amount under section 2010 shall be increased (but not above the amount which would apply to the estate without regard to this section) by the excess of $675,000 over the amount of the deduction allowed.

(b) Estates to which section applies

(1) In general

This section shall apply to an estate if—

(A) the decedent was (at the date of the decedent's death) a citizen or resident of the United States,

(B) the executor elects the application of this section and files the agreement referred to in subsection (h),

(C) the sum of—

(i) the adjusted value of the qualified family-owned business interests described in paragraph (2), plus

(ii) the amount of the gifts of such interests determined under paragraph (3),

exceeds 50 percent of the adjusted gross estate, and

(D) during the 8-year period ending on the date of the decedent's death there have been periods aggregating 5 years or more during which—

(i) such interests were owned by the decedent or a member of the decedent's family, and

(ii) there was material participation (within the meaning of section 2032A(e)(6)) by the decedent or a member of the decedent's family in the operation of the business to which such interests relate.

(2) Includible qualified family-owned business interests

The qualified family-owned business interests described in this paragraph are the interests which—

(A) are included in determining the value of the gross estate, and

(B) are acquired by any qualified heir from, or passed to any qualified heir from, the decedent (within the meaning of section 2032A(e)(9)).

(3) Includible gifts of interests

The amount of the gifts of qualified family-owned business interests determined under this paragraph is the sum of—

(A) the amount of such gifts from the decedent to members of the decedent's family taken into account under section 2001(b)(1)(B), plus

(B) the amount of such gifts otherwise excluded under section 2503(b),

to the extent such interests are continuously held by members of such family (other than the decedent's spouse) between the date of the gift and the date of the decedent's death.

(c) Adjusted gross estate

For purposes of this section, the term "adjusted gross estate" means the value of the gross estate—

(1) reduced by any amount deductible under paragraph (3) or (4) of section 2053(a), and

(2) increased by the excess of—

(A) the sum of—

(i) the amount of gifts determined under subsection (b)(3), plus

(ii) the amount (if more than de minimis) of other transfers from the decedent to the decedent's spouse (at the time of the transfer) within 10 years of the date of the decedent's death, plus

(iii) the amount of other gifts (not included under clause (i) or (ii)) from the decedent within 3 years of such date, other than gifts to members of the decedent's family otherwise excluded under section 2503(b), over

(B) the sum of the amounts described in clauses (i), (ii), and (iii) of subparagraph (A) which are otherwise includible in the gross estate.

For purposes of the preceding sentence, the Secretary may provide that de minimis gifts to persons other than members of the decedent's family shall not be taken into account.

(d) Adjusted value of the qualified family-owned business interests

For purposes of this section, the adjusted value of any qualified family-owned business interest is the value of such interest for purposes of this chapter (determined without regard to this section), reduced by the excess of—

(1) any amount deductible under paragraph (3) or (4) of section 2053(a), over

(2) the sum of—

(A) any indebtedness on any qualified residence of the decedent the interest on which is deductible under section 163(h)(3), plus

(B) any indebtedness to the extent the taxpayer establishes that the proceeds of such indebtedness were used for the payment of educational and medical expenses of the decedent, the decedent's spouse, or the decedent's dependents (within the meaning of section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof), plus

(C) any indebtedness not described in subparagraph (A) or (B), to the extent such indebtedness does not exceed $10,000.

(e) Qualified family-owned business interest

(1) In general

For purposes of this section, the term "qualified family-owned business interest" means—

(A) an interest as a proprietor in a trade or business carried on as a proprietorship, or

(B) an interest in an entity carrying on a trade or business, if—

(i) at least—

(I) 50 percent of such entity is owned (directly or indirectly) by the decedent and members of the decedent's family,

(II) 70 percent of such entity is so owned by members of 2 families, or

(III) 90 percent of such entity is so owned by members of 3 families, and

(ii) for purposes of subclause (II) or (III) of clause (i), at least 30 percent of such entity is so owned by the decedent and members of the decedent's family.

For purposes of the preceding sentence, a decedent shall be treated as engaged in a trade or business if any member of the decedent's family is engaged in such trade or business.

(2) Limitation

Such term shall not include—

(A) any interest in a trade or business the principal place of business of which is not located in the United States,

(B) any interest in an entity, if the stock or debt of such entity or a controlled group (as defined in section 267(f)(1)) of which such entity was a member was readily tradable on an established securities market or secondary market (as defined by the Secretary) at any time within 3 years of the date of the decedent's death,

(C) any interest in a trade or business not described in section 542(c)(2), if more than 35 percent of the adjusted ordinary gross income of such trade or business for the taxable year which includes the date of the decedent's death would qualify as personal holding company income (as defined in section 543(a) without regard to paragraph (2)(B) thereof) if such trade or business were a corporation,

(D) that portion of an interest in a trade or business that is attributable to—

(i) cash or marketable securities, or both, in excess of the reasonably expected day-to-day working capital needs of such trade or business, and

(ii) any other assets of the trade or business (other than assets used in the active conduct of a trade or business described in section 542(c)(2)), which produce, or are held for the production of, personal holding company income (as defined in subparagraph (C)) or income described in section 954(c)(1) (determined without regard to subparagraph (A) thereof and by substituting "trade or business" for "controlled foreign corporation").

In the case of a lease of property on a net cash basis by the decedent to a member of the decedent's family, income from such lease shall not be treated as personal holding company income for purposes of subparagraph (C), and such property shall not be treated as an asset described in subparagraph (D)(ii), if such income and property would not be so treated if the lessor had engaged directly in the activities engaged in by the lessee with respect to such property.

(3) Rules regarding ownership

(A) Ownership of entities

For purposes of paragraph (1)(B)—

(i) Corporations

Ownership of a corporation shall be determined by the holding of stock possessing the appropriate percentage of the total combined voting power of all classes of stock entitled to vote and the appropriate percentage of the total value of shares of all classes of stock.

(ii) Partnerships

Ownership of a partnership shall be determined by the owning of the appropriate percentage of the capital interest in such partnership.

(B) Ownership of tiered entities

For purposes of this section, if by reason of holding an interest in a trade or business, a decedent, any member of the decedent's family, any qualified heir, or any member of any qualified heir's family is treated as holding an interest in any other trade or business—

(i) such ownership interest in the other trade or business shall be disregarded in determining if the ownership interest in the first trade or business is a qualified family-owned business interest, and

(ii) this section shall be applied separately in determining if such interest in any other trade or business is a qualified family-owned business interest.

(C) Individual ownership rules

For purposes of this section, an interest owned, directly or indirectly, by or for an entity described in paragraph (1)(B) shall be considered as being owned proportionately by or for the entity's shareholders, partners, or beneficiaries. A person shall be treated as a beneficiary of any trust only if such person has a present interest in such trust.

(f) Tax treatment of failure to materially participate in business or dispositions of interests

(1) In general

There is imposed an additional estate tax if, within 10 years after the date of the decedent's death and before the date of the qualified heir's death—

(A) the material participation requirements described in section 2032A(c)(6)(B) are not met with respect to the qualified family-owned business interest which was acquired (or passed) from the decedent,

(B) the qualified heir disposes of any portion of a qualified family-owned business interest (other than by a disposition to a member of the qualified heir's family or through a qualified conservation contribution under section 170(h)),

(C) the qualified heir loses United States citizenship (within the meaning of section 877) or with respect to whom an event described in subparagraph (A) or (B) of section 877(e)(1) [1] occurs, and such heir does not comply with the requirements of subsection (g), or

(D) the principal place of business of a trade or business of the qualified family-owned business interest ceases to be located in the United States.

(2) Additional estate tax

(A) In general

The amount of the additional estate tax imposed by paragraph (1) shall be equal to—

(i) the applicable percentage of the adjusted tax difference attributable to the qualified family-owned business interest, plus

(ii) interest on the amount determined under clause (i) at the underpayment rate established under section 6621 for the period beginning on the date the estate tax liability was due under this chapter and ending on the date such additional estate tax is due.

(B) Applicable percentage

For purposes of this paragraph, the applicable percentage shall be determined under the following table:

If the event described in paragraph (1) occurs in the following year of material participation:	The applicable percentage is:

1 through 6	100
7	80
8	60
9	40
10	20.

(C) Adjusted tax difference

For purposes of subparagraph (A)—

(i) In general

The adjusted tax difference attributable to a qualified family-owned business interest is the amount which bears the same ratio to the adjusted tax difference with respect to the estate (determined under clause (ii)) as the value of such interest bears to the value of all qualified family-owned business interests described in subsection (b)(2).

(ii) Adjusted tax difference with respect to the estate

For purposes of clause (i), the term "adjusted tax difference with respect to the estate" means the excess of what would have been the estate tax liability but for the election under this section over the estate tax liability. For purposes of this clause, the term "estate tax liability" means the tax imposed by section 2001 reduced by the credits allowable against such tax.

(3) Use in trade or business by family members

A qualified heir shall not be treated as disposing of an interest described in subsection (e)(1)(A) by reason of ceasing to be engaged in a trade or business so long as the property to which such interest relates is used in a trade or business by any member of such individual's family.

(g) Security requirements for noncitizen qualified heirs

(1) In general

Except upon the application of subparagraph (F) of subsection (i)(3), if a qualified heir is not a citizen of the United States, any interest under this section passing to or acquired by such heir (including any interest held by such heir at a time described in subsection (f)(1)(C)) shall be treated as a qualified family-owned business interest only if the interest passes or is acquired (or is held) in a qualified trust.

(2) Qualified trust

The term "qualified trust" means a trust—

(A) which is organized under, and governed by, the laws of the United States or a State, and

(B) except as otherwise provided in regulations, with respect to which the trust instrument requires that at least 1 trustee of the trust be an individual citizen of the United States or a domestic corporation.

(h) Agreement

The agreement referred to in this subsection is a written agreement signed by each person in being who has an interest (whether or not in possession) in any property designated in such agreement consenting to the application of subsection (f) with respect to such property.

(i) Other definitions and applicable rules

For purposes of this section—

(1) Qualified heir

The term "qualified heir"—

(A) has the meaning given to such term by section 2032A(e)(1), and

(B) includes any active employee of the trade or business to which the qualified

family-owned business interest relates if such employee has been employed by such trade or business for a period of at least 10 years before the date of the decedent's death.

(2) Member of the family

The term "member of the family" has the meaning given to such term by section 2032A(e)(2).

(3) Applicable rules

Rules similar to the following rules shall apply:

(A) Section 2032A(b)(4) (relating to decedents who are retired or disabled).

(B) Section 2032A(b)(5) (relating to special rules for surviving spouses).

(C) Section 2032A(c)(2)(D) (relating to partial dispositions).

(D) Section 2032A(c)(3) (relating to only 1 additional tax imposed with respect to any 1 portion).

(E) Section 2032A(c)(4) (relating to due date).

(F) Section 2032A(c)(5) (relating to liability for tax; furnishing of bond).

(G) Section 2032A(c)(7) (relating to no tax if use begins within 2 years; active management by eligible qualified heir treated as material participation).

(H) Paragraphs (1) and (3) of section 2032A(d) (relating to election; agreement).

(I) Section 2032A(e)(10) (relating to community property).

(J) Section 2032A(e)(14) (relating to treatment of replacement property acquired in section 1031 or 1033 transactions).

(K) Section 2032A(f) (relating to statute of limitations).

(L) Section 2032A(g) (relating to application to interests in partnerships, corporations, and trusts).

(M) Subsections (h) and (i) of section 2032A.

(N) Section 6166(b)(3) (relating to farmhouses and certain other structures taken into account).

(O) Subparagraphs (B), (C), and (D) of section 6166(g)(1) (relating to acceleration of payment).

(P) Section 6324B (relating to special lien for additional estate tax).

(j) Termination

This section shall not apply to the estates of decedents dying after December 31, 2003.

(Added Pub. L. 105–34, title V, §502(a), Aug. 5, 1997, 111 Stat. 847, §2033A; renumbered §2057 and amended Pub. L. 105–206, title VI, §6007(b)(1)(A)–(D), (2)–(7), July 22, 1998, 112 Stat. 807–809; Pub. L. 107–16, title V, §521(d), June 7, 2001, 115 Stat. 72; Pub. L. 108–311, title II, §207(23), Oct. 4, 2004, 118 Stat. 1178.)

REFERENCES IN TEXT

Section 877(e)(1), referred to in subsec. (f)(1)(C), was amended generally by Pub. L. 110–245, title III, §301(c)(2)(A), June 17, 2008, 122 Stat. 1646, and, as so amended, no longer contains subparagraphs.

PRIOR PROVISIONS

A prior section 2057, added Pub. L. 99–514, title XI, §1172(a), Oct. 22, 1986, 100 Stat. 2513; amended Pub. L. 100–203, title X, §§10411(a), 10412(a), Dec. 22, 1987, 101 Stat. 1330–432, 1330–433; Pub. L. 100–647, title I, §1011B(g)(3), Nov. 10, 1988, 102 Stat. 3490, related to sales of employer securities to employee stock ownership plans or worker-owned cooperatives, prior to repeal by Pub. L. 101–239, title VII, §7304(a)(1), (3), Dec. 19, 1989, 103 Stat. 2352, 2353, applicable to estates of decedents dying after Dec. 19, 1989.

Another prior section 2057, added Pub. L. 94–455, title XX, §2007(a), Oct. 4, 1976, 90 Stat. 1890; amended Pub. L. 95–600, title VII, §702(l)(1), (2), Nov. 6, 1978, 92 Stat. 2934, 2935, related to bequests, etc., to certain minor children, prior to repeal by Pub. L. 97–34, title IV, §427(a), (c), Aug. 13, 1981, 95 Stat. 3181, applicable to estates of decedents dying after Dec. 31, 1981.

AMENDMENTS

2004—Subsec. (d)(2)(B). Pub. L. 108–311 inserted ", determined without regard to subsections (b)(1),

(b)(2), and (d)(1)(B) thereof" after "section 152".

2001—Subsec. (j). Pub. L. 107–16 added subsec. (j).

1998—Pub. L. 105–206, §6007(b)(1)(A), (B), renumbered section 2033A of this title as this section and substituted "interests" for "exclusion" in section catchline.

Subsec. (a). Pub. L. 105–206, §6007(b)(1)(B), substituted "General rule" for "In general" in heading and amended text generally. Prior to amendment, text read as follows: "In the case of an estate of a decedent to which this section applies, the value of the gross estate shall not include the lesser of—

"(1) the adjusted value of the qualified family-owned business interests of the decedent otherwise includible in the estate, or

"(2) the excess of $1,300,000 over the applicable exclusion amount under section 2010(c) with respect to such estate."

Subsec. (b)(2)(A). Pub. L. 105–206, §6007(b)(1)(C), struck out "(without regard to this section)" after "gross estate".

Subsec. (b)(3). Pub. L. 105–206, §6007(b)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "The amount of the gifts of qualified family-owned business interests determined under this paragraph is the excess of—

"(A) the sum of—

"(i) the amount of such gifts from the decedent to members of the decedent's family taken into account under subsection 2001(b)(1)(B), plus

"(ii) the amount of such gifts otherwise excluded under section 2503(b),

to the extent such interests are continuously held by members of such family (other than the decedent's spouse) between the date of the gift and the date of the decedent's death, over

"(B) the amount of such gifts from the decedent to members of the decedent's family otherwise included in the gross estate."

Subsec. (c). Pub. L. 105–206, §6007(b)(1)(D), struck out "(determined without regard to this section)" after "the gross estate" in introductory provisions.

Subsec. (e)(1). Pub. L. 105–206, §6007(b)(5)(A), inserted concluding provisions.

Subsec. (e)(2). Pub. L. 105–206, §6007(b)(3)(C), inserted concluding provisions.

Subsec. (e)(2)(C). Pub. L. 105–206, §6007(b)(3)(A), substituted "(as defined in section 543(a) without regard to paragraph (2)(B) thereof) if such trade or business were a corporation" for "(as defined in section 543(a))".

Subsec. (e)(2)(D)(ii). Pub. L. 105–206, §6007(b)(3)(B), substituted "personal holding company income (as defined in subparagraph (C)) or income described" for "income of which is described in section 543(a) or".

Subsec. (f)(2)(A)(i). Pub. L. 105–206, §6007(b)(4)(A), struck out "(as determined under rules similar to the rules of section 2032A(c)(2)(B))" after "business interest".

Subsec. (f)(2)(C). Pub. L. 105–206, §6007(b)(4)(B), added subpar. (C).

Subsec. (f)(3). Pub. L. 105–206, §6007(b)(5)(B), added par. (3).

Subsec. (g)(1). Pub. L. 105–206, §6007(b)(6), struck out "or (M)" after "subparagraph (F)".

Subsec. (i)(3)(L) to (P). Pub. L. 105–206, §6007(b)(7), added subpars. (L) and (M) and redesignated former subpars. (L) to (N) as (N) to (P), respectively.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to estates of decedents dying, and generation-skipping transfers, after Dec. 31, 2003, see section 521(e)(3) of Pub. L. 107–16, set out as a note under section 2010 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE

Pub. L. 105–34, title V, §502(c), Aug. 5, 1997, 111 Stat. 852, provided that: "The amendments made by this section [enacting this section] shall apply to estates of decedents dying after December 31, 1997."

[1] See References in Text note below.

§2058. State death taxes

(a) Allowance of deduction

For purposes of the tax imposed by section 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate the amount of any estate, inheritance, legacy, or succession taxes actually paid to any State or the District of Columbia, in respect of any property included in the gross estate (not including any such taxes paid with respect to the estate of a person other than the decedent).

(b) Period of limitations

The deduction allowed by this section shall include only such taxes as were actually paid and deduction therefor claimed before the later of—

(1) 4 years after the filing of the return required by section 6018, or

(2) if—

(A) a petition for redetermination of a deficiency has been filed with the Tax Court within the time prescribed in section 6213(a), the expiration of 60 days after the decision of the Tax Court becomes final,

(B) an extension of time has been granted under section 6161 or 6166 for payment of the tax shown on the return, or of a deficiency, the date of the expiration of the period of the extension, or

(C) a claim for refund or credit of an overpayment of tax imposed by this chapter has been filed within the time prescribed in section 6511, the latest of the expiration of—

(i) 60 days from the date of mailing by certified mail or registered mail by the Secretary to the taxpayer of a notice of the disallowance of any part of such claim,

(ii) 60 days after a decision by any court of competent jurisdiction becomes final with respect to a timely suit instituted upon such claim, or

(iii) 2 years after a notice of the waiver of disallowance is filed under section 6532(a)(3).

Notwithstanding sections 6511 and 6512, refund based on the deduction may be made if the claim for refund is filed within the period provided in the preceding sentence. Any such refund shall be made without interest.

(Added Pub. L. 107–16, title V, §532(b), June 7, 2001, 115 Stat. 73.)

EFFECTIVE DATE

Section applicable to estates of decedents dying, and generation-skipping transfers, after Dec. 31, 2004, see section 532(d) of Pub. L. 107–16, set out as an Effective Date of 2001 Amendment note under section 2011 of this title.

Subchapter B—Estates of Nonresidents Not Citizens

Sec.

2101. Tax imposed.

2102. Credits against tax.

2103. Definition of gross estate.

2104. Property within the United States.

2105. Property without the United States.

2106. Taxable estate.

2107. Expatriation to avoid tax.

2108. Application of pre-1967 estate tax provisions.

AMENDMENTS

1966—Pub. L. 89–809, title I, §108(h), Nov. 13, 1966, 80 Stat. 1574, added items 2107 and 2108.

§2101. Tax imposed

(a) Imposition

Except as provided in section 2107, a tax is hereby imposed on the transfer of the taxable estate (determined as provided in section 2106) of every decedent nonresident not a citizen of the United States.

(b) Computation of tax

The tax imposed by this section shall be the amount equal to the excess (if any) of—

(1) a tentative tax computed under section 2001(c) on the sum of—

(A) the amount of the taxable estate, and

(B) the amount of the adjusted taxable gifts, over

(2) a tentative tax computed under section 2001(c) on the amount of the adjusted taxable gifts.

(c) Adjustments for taxable gifts

(1) Adjusted taxable gifts defined

For purposes of this section, the term "adjusted taxable gifts" means the total amount of the taxable gifts (within the meaning of section 2503 as modified by section 2511) made by the decedent after December 31, 1976, other than gifts which are includible in the gross estate of the decedent.

(2) Adjustment for certain gift tax

For purposes of this section, the rules of section 2001(d) shall apply.

(Aug. 16, 1954, ch. 736, 68A Stat. 397; Pub. L. 89–809, title I, §108(a), Nov. 13, 1966, 80 Stat. 1571; Pub. L. 94–455, title XX, §2001(c)(1)(D), Oct. 4, 1976, 90 Stat. 1850; Pub. L. 100–647, title V, §5032(a), (c), Nov. 10, 1988, 102 Stat. 3669; Pub. L. 101–239, title VII, §7815(c), Dec. 19, 1989, 103 Stat. 2415; Pub. L. 103–66, title XIII, §13208(b)(3), Aug. 10, 1993, 107 Stat. 469; Pub. L. 107–147, title IV, §411(g)(2), Mar. 9, 2002, 116 Stat. 46.)

AMENDMENTS

2002—Subsec. (b). Pub. L. 107–147 struck out concluding provisions which read as follows: "For purposes of the preceding sentence, there shall be appropriate adjustments in the application of section 2001(c)(2) to reflect the difference between the amount of the credit provided under section 2102(c) and the amount of the credit provided under section 2010."

1993—Subsec. (b). Pub. L. 103–66 substituted "section 2001(c)(2)" for "section 2001(c)(3)" in last sentence.

1989—Subsec. (b). Pub. L. 101–239 inserted at end "For purposes of the preceding sentence, there shall be appropriate adjustments in the application of section 2001(c)(3) to reflect the difference between the amount of the credit provided under section 2102(c) and the amount of the credit provided under section 2010."

1988—Subsec. (b). Pub. L. 100–647, §5032(a), substituted "a tentative tax computed under section 2001(c)" for "a tentative tax computed in accordance with the rate schedule set forth in subsection (d)" in pars. (1) and (2).

Subsec. (d). Pub. L. 100–647, §5032(c), struck out subsec. (d) which provided a rate schedule.

1976—Pub. L. 94–455 redesignated existing provisions as (a) to (d), inserted provisions for adjustments for taxable gifts, revised the tax rate schedule, and struck out provisions relating to property held by Alien Property Custodian.

1966—Subsec. (a). Pub. L. 89–809 substituted table to be used in computing the tax imposed on transfer of taxable estate, determined as provided in section 2106, of every decedent nonresident not a citizen of the United States for provisions sending taxpayer to table in section 2001 for computation of tax imposed.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax

Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable in the case of decedents dying and gifts made after Dec. 31, 1992, see section 13208(c) of Pub. L. 103–66, set out as a note under section 2001 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title V, §5032(d), Nov. 10, 1988, 102 Stat. 3670, provided that: "The amendments made by this section [amending this section and section 2102 of this title] shall apply to the estates of decedents dying after the date of the enactment of this Act [Nov. 10, 1988]."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable to estates of decedents dying after Dec. 31, 1976, see section 2001(d)(1) of Pub. L. 94–455, set out as a note under section 2001 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89–809, title I, §108(i), Nov. 13, 1966, 80 Stat. 1574, provided that: "The amendments made by this section [amending this section and sections 2102, 2104, 2105, 2106, and 6018 of this title and enacting sections 2107 and 2108 of this title] shall apply with respect to estates of decedents dying after the date of the enactment of this Act [Nov. 13, 1966]."

§2102. Credits against tax

(a) In general

The tax imposed by section 2101 shall be credited with the amounts determined in accordance with sections 2012 and 2013 (relating to gift tax and tax on prior transfers).

(b) Unified credit

(1) In general

A credit of $13,000 shall be allowed against the tax imposed by section 2101.

(2) Residents of possessions of the United States

In the case of a decedent who is considered to be a "nonresident not a citizen of the United States" under section 2209, the credit under this subsection shall be the greater of—

(A) $13,000, or

(B) that proportion of $46,800 which the value of that part of the decedent's gross estate which at the time of his death is situated in the United States bears to the value of his entire gross estate wherever situated.

(3) Special rules

(A) Coordination with treaties

To the extent required under any treaty obligation of the United States, the credit allowed under this subsection shall be equal to the amount which bears the same ratio to the applicable credit amount in effect under section 2010(c) for the calendar year which includes the date of death as the value of the part of the decedent's gross estate which at the time of his death is situated in the United States bears to the value of his entire gross estate wherever situated. For purposes of the preceding sentence, property shall not be treated as situated in the United States if such property is exempt from the tax imposed by this subchapter under any treaty obligation of the United States.

(B) Coordination with gift tax unified credit

If a credit has been allowed under section 2505 with respect to any gift made by the decedent, each dollar amount contained in paragraph (1) or (2) or subparagraph (A) of this paragraph (whichever applies) shall be reduced by the amount so allowed.

(4) Limitation based on amount of tax

The credit allowed under this subsection shall not exceed the amount of the tax imposed by section 2101.

(5) Application of other credits

For purposes of subsection (a), sections 2012 and 2013 shall be applied as if the credit allowed under this subsection were allowed under section 2010.

(Aug. 16, 1954, ch. 736, 68A Stat. 397; Pub. L. 89–809, title I, §108(b), Nov. 13, 1966, 80 Stat. 1572; Pub. L. 94–455, title XX, §2001(c)(1)(E)(i), Oct. 4, 1976, 90 Stat. 1851; Pub. L. 100–647, title V, §5032(b), Nov. 10, 1988, 102 Stat. 3669; Pub. L. 104–188, title I, §1704(f)(1), Aug. 20, 1996, 110 Stat. 1879; Pub. L. 105–34, title V, §501(a)(1)(E), Aug. 5, 1997, 111 Stat. 845; Pub. L. 107–16, title V, §532(c)(7), June 7, 2001, 115 Stat. 75.)

AMENDMENTS

2001—Subsec. (a). Pub. L. 107–16, §532(c)(7)(A), reenacted heading without change and amended text of subsec. (a) generally. Prior to amendment, text read as follows: "The tax imposed by section 2101 shall be credited with the amounts determined in accordance with sections 2011 to 2013, inclusive (relating to State death taxes, gift tax, and tax on prior transfers), subject to the special limitation provided in subsection (b)."

Subsec. (b). Pub. L. 107–16, §532(c)(7)(B), redesignated subsec. (c) as (b) and struck out heading and text of former subsec. (b). Text read as follows: "The maximum credit allowed under section 2011 against the tax imposed by section 2101 for State death taxes paid shall be an amount which bears the same ratio to the credit computed as provided in section 2011(b) as the value of the property, as determined for purposes of this chapter, upon which State death taxes were paid and which is included in the gross estate under section 2103 bears to the value of the total gross estate under section 2103. For purposes of this subsection, the term 'State death taxes' means the taxes described in section 2011(a)."

Subsec. (b)(5). Pub. L. 107–16, §532(c)(7)(C), substituted "2012 and 2013" for "2011 to 2013, inclusive,".

Subsec. (c). Pub. L. 107–16, §532(c)(7)(B), redesignated subsec. (c) as (b).

1997—Subsec. (c)(3)(A). Pub. L. 105–34 substituted "the applicable credit amount in effect under section 2010(c) for the calendar year which includes the date of death" for "$192,800".

1996—Subsec. (c)(3)(A). Pub. L. 104–188 inserted at end "For purposes of the preceding sentence, property shall not be treated as situated in the United States if such property is exempt from the tax imposed by this subchapter under any treaty obligation of the United States."

1988—Subsec. (c)(1). Pub. L. 100–647, §5032(b)(1)(A), substituted "$13,000" for "$3,600".

Subsec. (c)(2). Pub. L. 100–647, §5032(b)(1), substituted "$13,000" for "$3,600" in subpar. (A) and "$46,800" for "$15,075" in subpar. (B).

Subsec. (c)(3). Pub. L. 100–647, §5032(b)(2), amended par. (3) generally, substituting provision relating to special rules for coordination with treaties and with gift tax unified tax credit for provision relating to a phase-in of the par. (2)(B) amount for decedents dying during 1977, 1978, 1979, and 1980.

1976—Subsec. (c). Pub. L. 94–455 added subsec. (c).

1966—Pub. L. 89–809 redesignated existing provisions as subsec. (a), inserted reference to special limitation provided in subsec. (b), and added subsec. (b).

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to estates of decedents dying, and generation-skipping transfers, after Dec. 31, 2004, see section 532(d) of Pub. L. 107–16, set out as a note under section 2011 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to estates of decedents dying, and gifts made, after Dec. 31, 1997, see section 501(f) of Pub. L. 105–34, set out as a note under section 2001 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 applicable to estates of decedents dying after Nov. 10, 1988, see section

5032(d) of Pub. L. 100–647, set out as a note under section 2101 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable to estates of decedents dying after Dec. 31, 1976, see section 2001(d)(1) of Pub. L. 94–455, set out as a note under section 2001 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to estates of decedents dying after Nov. 13, 1966, see section 108(i) of Pub. L. 89–809, set out as a note under section 2101 of this title.

§2103. Definition of gross estate

For the purpose of the tax imposed by section 2101, the value of the gross estate of every decedent nonresident not a citizen of the United States shall be that part of his gross estate (determined as provided in section 2031) which at the time of his death is situated in the United States.

(Aug. 16, 1954, ch. 736, 68A Stat. 397.)

§2104. Property within the United States

(a) Stock in corporation

For purposes of this subchapter shares of stock owned and held by a nonresident not a citizen of the United States shall be deemed property within the United States only if issued by a domestic corporation.

(b) Revocable transfers and transfers within 3 years of death

For purposes of this subchapter, any property of which the decedent has made a transfer, by trust or otherwise, within the meaning of sections 2035 to 2038, inclusive, shall be deemed to be situated in the United States, if so situated either at the time of the transfer or at the time of the decedent's death.

(c) Debt obligations

For purposes of this subchapter, debt obligations of—

(1) a United States person, or

(2) the United States, a State or any political subdivision thereof, or the District of Columbia,

owned and held by a nonresident not a citizen of the United States shall be deemed property within the United States. With respect to estates of decedents dying after December 31, 1969, deposits with a domestic branch of a foreign corporation, if such branch is engaged in the commercial banking business, shall, for purposes of this subchapter, be deemed property within the United States. This subsection shall not apply to a debt obligation to which section 2105(b) applies.

(Aug. 16, 1954, ch. 736, 68A Stat. 397; Pub. L. 89–809, title I, §108(c), Nov. 13, 1966, 80 Stat. 1572; Pub. L. 91–172, title IV, §435(b), Dec. 30, 1969, 83 Stat. 625; Pub. L. 93–17, §3(a)(1), Apr. 10, 1973, 87 Stat. 12; Pub. L. 93–625, §9(b), Jan. 3, 1975, 88 Stat. 2116; Pub. L. 94–455, title XX, §2001(c)(1)(L), Oct. 4, 1976, 90 Stat. 1853; Pub. L. 100–647, title I, §1012(q)(11), Nov. 10, 1988, 102 Stat. 3525; Pub. L. 104–188, title I, §1704(t)(38), Aug. 20, 1996, 110 Stat. 1889; Pub. L. 111–226, title II, §217(c)(3), Aug. 10, 2010, 124 Stat. 2402.)

AMENDMENTS

2010—Subsec. (c). Pub. L. 111–226, in concluding provisions, struck out before period at end "or to a debt obligation of a domestic corporation if any interest on such obligation, were such interest received by the decedent at the time of his death, would be treated by reason of section 861(a)(1)(A) as income from sources without the United States".

1996—Subsec. (c). Pub. L. 104–188 substituted "section 861(a)(1)(A)" for "subparagraph (A), (C), or (D) of section 861(a)(1)" in concluding provisions.

1988—Subsec. (c). Pub. L. 100–647 substituted "subparagraph (A), (C), or (D) of section 861(a)(1)" for "section 861(a)(1)(B), section 861(a)(1)(G), or section 861(a)(1)(H)".

1976—Subsec. (b). Pub. L. 94–455 substituted "and transfers within 3 years of death" for "and transfers in contemplation of death" after "Revocable transfers".

1975—Subsec. (c). Pub. L. 93–625 inserted reference to section 861(a)(1)(H) of this title in last sentence.

1973—Subsec. (c). Pub. L. 93–17 made subsec. (c) inapplicable to debt obligations where interest on such obligations is treated as income from sources without the United States by reason of section 861(a)(1)(G) of this title.

1969—Subsec. (c). Pub. L. 91–172 substituted "December 31, 1969" for "December 31, 1972" in provisions deeming deposit with a domestic branch of a foreign corporation if such branch is engaged in the commercial banking business to be property within the United States.

1966—Subsec. (c). Pub. L. 89–809 added subsec. (c).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–226 applicable to taxable years beginning after Dec. 31, 2010, with certain exceptions, see section 217(d) of Pub. L. 111–226, set out as a note under section 861 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 not applicable to transfers made before Jan. 1, 1977, see section 2001(d)(1) of Pub. L. 94–455, set out as a note under section 2001 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–625 applicable with respect to estates of decedents dying after Jan. 3, 1975, see section 9(c) of Pub. L. 93–625, set out as a note under section 861 of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

Pub. L. 93–17, §3(a)(2), Apr. 10, 1973, 87 Stat. 12, provided that: "The amendment made by paragraph (1) [amending this section] shall apply with respect to estates of decedents dying after December 31, 1972, except that in the case of the assumption of a debt obligation of a foreign corporation which is treated as issued under section 4912(c)(2) after December 31, 1972, and before January 1, 1974, the amendment made by paragraph (1) [amending this section] shall apply with respect to estates of decedents dying after December 31, 1973."

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to estates of decedents dying after Nov. 13, 1966, see section 108(i) of Pub. L. 89–809, set out as a note under section 2101 of this title.

SHORT TITLE OF 1973 AMENDMENT

Pub. L. 93–17, §1(a), Apr. 10, 1973, 87 Stat. 12, provided that: "This Act [enacting sections 4922 and 6689 of this title, amending this section and sections 4911, 4912, 4914, 4915, 4916, 4918, 4919, 4920, and 6611 of this title, and enacting provisions set out as notes under this section] may be cited as the 'Interest Equalization Tax Extension Act of 1973'."

§2105. Property without the United States

(a) Proceeds of life insurance

For purposes of this subchapter, the amount receivable as insurance on the life of a nonresident not a citizen of the United States shall not be deemed property within the United States.

(b) Bank deposits and certain other debt obligations

For purposes of this subchapter, the following shall not be deemed property within the United States—

(1) amounts described in section 871(i)(3), if any interest thereon would not be subject to tax by reason of section 871(i)(1) were such interest received by the decedent at the time of his death,

(2) deposits with a foreign branch of a domestic corporation or domestic partnership, if such branch is engaged in the commercial banking business,

(3) debt obligations, if, without regard to whether a statement meeting the requirements of section 871(h)(5) has been received, any interest thereon would be eligible for the exemption from tax under section 871(h)(1) were such interest received by the decedent at the time of his death, and

(4) obligations which would be original issue discount obligations as defined in section 871(g)(1) but for subparagraph (B)(i) thereof, if any interest thereon (were such interest received by the decedent at the time of his death) would not be effectively connected with the conduct of a trade or business within the United States.

Notwithstanding the preceding sentence, if any portion of the interest on an obligation referred to in paragraph (3) would not be eligible for the exemption referred to in paragraph (3) by reason of section 871(h)(4) if the interest were received by the decedent at the time of his death, then an appropriate portion (as determined in a manner prescribed by the Secretary) of the value (as determined for purposes of this chapter) of such debt obligation shall be deemed property within the United States.

(c) Works of art on loan for exhibition

For purposes of this subchapter, works of art owned by a nonresident not a citizen of the United States shall not be deemed property within the United States if such works of art are—

(1) imported into the United States solely for exhibition purposes,

(2) loaned for such purposes, to a public gallery or museum, no part of the net earnings of which inures to the benefit of any private stockholder or individual, and

(3) at the time of the death of the owner, on exhibition, or en route to or from exhibition, in such a public gallery or museum.

(d) Stock in a RIC

(1) In general

For purposes of this subchapter, stock in a regulated investment company (as defined in section 851) owned by a nonresident not a citizen of the United States shall not be deemed property within the United States in the proportion that, at the end of the quarter of such investment company's taxable year immediately preceding a decedent's date of death (or at such other time as the Secretary may designate in regulations), the assets of the investment company that were qualifying assets with respect to the decedent bore to the total assets of the investment company.

(2) Qualifying assets

For purposes of this subsection, qualifying assets with respect to a decedent are assets that, if owned directly by the decedent, would have been—

(A) amounts, deposits, or debt obligations described in subsection (b) of this section,

(B) debt obligations described in the last sentence of section 2104(c), or

(C) other property not within the United States.

(3) Termination

This subsection shall not apply to estates of decedents dying after December 31, 2011.

(Aug. 16, 1954, ch. 736, 68A Stat. 397; Pub. L. 89–809, title I, §108(d), Nov. 13, 1966, 80 Stat. 1572; Pub. L. 98–369, div. A, title I, §127(d), July 18, 1984, 98 Stat. 651; Pub. L. 100–647, title I, §1012(g)(4), Nov. 10, 1988, 102 Stat. 3501; Pub. L. 103–66, title XIII, §13237(b), Aug. 10, 1993, 107 Stat. 508; Pub. L. 105–34, title XIII, §1304(a), Aug. 5, 1997, 111 Stat. 1040; Pub. L. 108–357, title IV, §411(b), Oct. 22, 2004, 118 Stat. 1504; Pub. L. 110–343, div. C, title II, §207(a), Oct. 3, 2008, 122 Stat. 3865; Pub. L. 111–312, title VII, §726(a), Dec. 17, 2010, 124 Stat. 3316.)

AMENDMENTS

2010—Subsec. (d)(3). Pub. L. 111–312 substituted "December 31, 2011" for "December 31, 2009".

2008—Subsec. (d)(3). Pub. L. 110–343 substituted "December 31, 2009" for "December 31, 2007".

2004—Subsec. (d). Pub. L. 108–357 added subsec. (d).

1997—Subsec. (b)(4). Pub. L. 105–34 added par. (4).

1993—Subsec. (b). Pub. L. 103–66 substituted "this subchapter, the following shall not be deemed property within the United States" for "this subchapter" in introductory provisions, added par. (3) and concluding provisions, and struck out former par. (3) and concluding provisions which read as follows:

> "(3) debt obligations, if, without regard to whether a statement meeting the requirements of section 871(h)(4) has been received, any interest thereon would be eligible for the exemption from tax under section 871(h)(1) were such interest received by the decedent at the time of his death,

shall not be deemed property within the United States."

1988—Subsec. (b)(1). Pub. L. 100–647 substituted "section 871(i)(3), if any interest thereon would not be subject to tax by reason of section 871(i)(1)" for "section 861(c), if any interest thereon would be treated by reason of section 861(a)(1)(A) as income from sources without the United States".

1984—Subsec. (b). Pub. L. 98–369, amended subsec. (b) generally, substituting "Bank deposits and certain other debt obligations" for "Certain bank deposits, etc." in heading and ", if any interest thereon would be treated by reason of section 861(a)(1)(A) as income from sources without the United States were such interest received by the decedent at the time of his death," for "if any interest thereon, were such interest received by the decedent at the time of his death, would be treated by reason of section 861(a)(1)(A) as income from sources without the United States, and" in par. (1), inserting "and" after "business," in par. (2), and adding par. (3).

1966—Subsec. (b). Pub. L. 89–809 substituted amounts described in section 861(c) if any interest thereon, were such interest received by the decedent at the time of his death, would be treated by reason of section 861(a)(1)(A) as income from sources without the United States, and deposits with a foreign branch of a domestic corporation or domestic partnership, if such branch is engaged in the commercial banking business for moneys deposited with any person carrying on the banking business by or for a nonresident not a citizen of the United States who was not engaged in business in the United States at the time of his death as the property not to be deemed property within the United States for purposes of this subchapter.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §726(b), Dec. 17, 2010, 124 Stat. 3317, provided that: "The amendment made by this section [amending this section] shall apply to estates of decedents dying after December 31, 2009."

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title II, §207(b), Oct. 3, 2008, 122 Stat. 3865, provided that: "The amendment made by this section [amending this section] shall apply to decedents dying after December 31, 2007."

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to estates of decedents dying after Dec. 31, 2004, see section 411(d)(2) of Pub. L. 108–357, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XIII, §1304(b), Aug. 5, 1997, 111 Stat. 1040, provided that: "The amendment made by this section [amending this section] shall apply to estates of decedents dying after the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to the estates of decedents dying after Dec. 31, 1993, see section 13237(d) of Pub. L. 103–66, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to obligations issued after July 18, 1984, with respect to the estates of decedents dying after such date, see section 127(g)(2) of Pub. L. 98–369, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to estates of decedents dying after Nov. 13, 1966, see section 108(i) of Pub. L. 89–809, set out as a note under section 2101 of this title.

§2106. Taxable estate

(a) Definition of taxable estate

For purposes of the tax imposed by section 2101, the value of the taxable estate of every decedent nonresident not a citizen of the United States shall be determined by deducting from the value of that part of his gross estate which at the time of his death is situated in the United States—

(1) Expenses, losses, indebtedness, and taxes

That proportion of the deductions specified in sections 2053 and 2054 (other than the deductions described in the following sentence) which the value of such part bears to the value of his entire gross estate, wherever situated. Any deduction allowable under section 2053 in the case of a claim against the estate which was founded on a promise or agreement but was not contracted for an adequate and full consideration in money or money's worth shall be allowable under this paragraph to the extent that it would be allowable as a deduction under paragraph (2) if such promise or agreement constituted a bequest.

(2) Transfers for public, charitable, and religious uses

(A) In general

The amount of all bequests, legacies, devises, or transfers (including the interest which falls into any such bequest, legacy, devise, or transfer as a result of an irrevocable disclaimer of a bequest, legacy, devise, transfer, or power, if the disclaimer is made before the date prescribed for the filing of the estate tax return)—

(i) to or for the use of the United States, any State, any political subdivision thereof, or the District of Columbia, for exclusively public purposes;

(ii) to or for the use of any domestic corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office; or

(iii) to a trustee or trustees, or a fraternal society, order, or association operating under the lodge system, but only if such contributions or gifts are to be used within the United States by such trustee or trustees, or by such fraternal society, order, or association, exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, such trust, fraternal society, order, or association would not be disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and such trustee or trustees, or such fraternal society, order, or association, does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office;

(B) Powers of appointment

Property includible in the decedent's gross estate under section 2041 (relating to powers of appointment) received by a donee described in this paragraph shall, for purposes of this paragraph, be considered a bequest of such decedent.

(C) Death taxes payable out of bequests

If the tax imposed by section 2101, or any estate, succession, legacy, or inheritance taxes, are, either by the terms of the will, by the law of the jurisdiction under which the estate is administered, or by the law of the jurisdiction imposing the particular tax, payable in whole or

in part out of the bequests, legacies, or devises otherwise deductible under this paragraph, then the amount deductible under this paragraph shall be the amount of such bequests, legacies, or devises reduced by the amount of such taxes.

(D) Limitation on deduction

The amount of the deduction under this paragraph for any transfer shall not exceed the value of the transferred property required to be included in the gross estate.

(E) Disallowance of deductions in certain cases

The provisions of section 2055(e) shall be applied in the determination of the amount allowable as a deduction under this paragraph.

(F) Cross references

(i) For option as to time for valuation for purposes of deduction under this section, see section 2032.

(ii) For exemption of certain bequests for the benefit of the United States and for rules of construction for certain bequests, see section 2055(g).

(iii) For treatment of gifts and bequests to or for the use of Indian tribal governments (or their subdivisions), see section 7871.

(3) Marital deduction

The amount which would be deductible with respect to property situated in the United States at the time of the decedent's death under the principles of section 2056.

(4) State death taxes

The amount which bears the same ratio to the State death taxes as the value of the property, as determined for purposes of this chapter, upon which State death taxes were paid and which is included in the gross estate under section 2103 bears to the value of the total gross estate under section 2103. For purposes of this paragraph, the term "State death taxes" means the taxes described in section 2011(a).

(b) Condition of allowance of deductions

No deduction shall be allowed under paragraphs (1) and (2) of subsection (a) in the case of a nonresident not a citizen of the United States unless the executor includes in the return required to be filed under section 6018 the value at the time of his death of that part of the gross estate of such nonresident not situated in the United States.

(Aug. 16, 1954, ch. 736, 68A Stat. 398; Pub. L. 85–866, title I, §30(d), Sept. 2, 1958, 72 Stat. 1631; Pub. L. 86–779, §4(c), Sept. 14, 1960, 74 Stat. 1000; Pub. L. 89–809, title I, §108(e), Nov. 13, 1966, 80 Stat. 1572; Pub. L. 91–172, title II, §201(d)(2), (4)(B), Dec. 30, 1969, 83 Stat. 561; Pub. L. 94–455, title XIII, §1307(d)(1)(B)(iii), (C), title XIX, §1902(a)(5), (12)(A), title XX, § 2001(c)(1)(F), Oct. 4, 1976, 90 Stat. 1727, 1805, 1852; Pub. L. 97–473, title II, §202(b)(6), Jan. 14, 1983, 96 Stat. 2610; Pub. L. 99–514, title XIV, §1422(c), Oct. 22, 1986, 100 Stat. 2717; Pub. L. 100–203, title X, §10711(a)(4), Dec. 22, 1987, 101 Stat. 1330–464; Pub. L. 100–647, title V, §5033(c), Nov. 10, 1988, 102 Stat. 3672; Pub. L. 101–239, title VII, §7815(d)(3), Dec. 19, 1989, 103 Stat. 2415; Pub. L. 107–16, title V, §532(c)(8), June 7, 2001, 115 Stat. 75.)

AMENDMENTS

2001—Subsec. (a)(4). Pub. L. 107–16 added par. (4).

1989—Subsec. (a)(3). Pub. L. 101–239 struck out "allowed where spouse is citizen" after "deduction" in heading.

1988—Subsec. (a)(3). Pub. L. 100–647 added par. (3).

1987—Subsec. (a)(2)(A)(ii), (iii). Pub. L. 100–203 inserted "(or in opposition to)" after "on behalf of".

1986—Subsec. (a)(2)(F)(ii). Pub. L. 99–514 substituted "section 2055(g)" for "section 2055(f)".

1983—Subsec. (a)(2)(F). Pub. L. 97–473 substituted "(i)" and "(ii)" for "(1)" and "(2)", respectively, and added cl. (iii).

1976—Subsec. (a)(2)(A)(i). Pub. L. 94–455, §1902 (a)(12)(A), struck out "Territory" after "any State".

Subsec. (a)(2)(A)(ii). Pub. L. 94–455, §1307(d)(1)(B)(iii), substituted "which is not disqualified for tax

exemption under section 501(c)(3) by reason of attempting to influence legislation" for "no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation" after "stockholder or individual".

Subsec. (a)(2)(A)(iii). Pub. L. 94–455, §1307(d)(1)(C), substituted "such trust, fraternal society, order, or association would not be disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation" for "no substantial part of the activities of such trustee or trustees, or of such fraternal society, order, or association, is carrying on propaganda, or otherwise attempting, to influence legislation" after "children or animals".

Subsec. (a)(2)(F). Pub. L. 94–455, §1902(a)(5)(A), substituted "Cross references" for "Other cross references" after "(F)", in cl. (1) "purposes of deduction under this section" for "purpose of deduction under this paragraph" after "valuation for", in cl. (2) provision for exemption of certain bequests for benefit of United States and for rules of construction for certain bequests, for provisions of cls. (2) to (11) relating to bequests to; Library of Congress, Post Office Department, Office of Naval Records and Library, National Park Service, Department of State, Department of Justice, payment of tax on bequests of United States obligations, Naval Academy, Naval Academy Museum, and National Archives Trust Fund Board, respectively.

Subsec. (a)(3). Pub. L. 94–455, §2001(c)(1)(F), struck out par. (3) relating to specific exemption in case of decedents nonresidents not citizens.

Subsec. (c). Pub. L. 94–455, §1902(a)(5)(B), struck out subsec. (c) relating to treatment of United States bonds in determining gross estate of a decedent who was not engaged in business in the United States at the time of his death.

1969—Subsec. (a)(2)(A)(ii), (iii). Pub. L. 91–172, §201(d)(4)(B), inserted non-participation and non-intervention in political campaigns as an additional qualification.

Subsec. (a)(2)(E). Pub. L. 91–172, §201(d)(2), substituted substantive provisions for simple reference to sections 503 and 681 of this title in which such substantive provisions were formerly set out.

1966—Subsec. (a)(3). Pub. L. 89–809 substituted "$30,000" for "$2,000" as size of exemption in subpar. (A) and "$30,000" for "$2,000" as item (i) in formula set out in subpar. (B).

1960—Subsec. (a)(3). Pub. L. 86–779 designated existing provisions as subpar. (A) and added subpar. (B).

1958—Subsec. (a)(2)(E). Pub. L. 85–866 substituted "503" for "504".

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to estates of decedents dying, and generation-skipping transfers, after Dec. 31, 2004, see section 532(d) of Pub. L. 107–16, set out as a note under section 2011 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 applicable to estates of decedents dying after Nov. 10, 1988, see section 5033(d)(1) of Pub. L. 100–647, set out as a note under section 2056 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable with respect to activities after Dec. 22, 1987, see section 10711(c) of Pub. L. 100–203, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to transfers and contributions made after Dec. 31, 1986, see section 1422(e) of Pub. L. 99–514, set out as a note under section 2055 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

For effective date of amendment by Pub. L. 97–473, see section 204(3) of Pub. L. 97–473, set out as an Effective Date note under section 7871 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1902(a)(5) of Pub. L. 94–455 applicable in the case of estates of decedents dying after Oct. 4, 1976, see section 1902(c)(1) of Pub. L. 94–455, set out as a note under section 2011 of this title.

Amendment by section 2001(c)(1)(F) of Pub. L. 94–455 applicable to estates of decedents dying after Dec. 31, 1976, see section 2001(d)(1) of Pub. L. 94–455, set out as a note under section 2001 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 201(d)(2) of Pub. L. 91–172 applicable in the case of decedents dying after Dec. 31, 1969, with specified exceptions, see section 201(g)(4) of Pub. L. 91–172, set out as a note under section 170 of this title.

Amendment by section 201(d)(4)(B) of Pub. L. 91–172 applicable to gifts and transfers made after Dec. 31, 1969, see section 201(g)(4) of Pub. L. 91–172, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to estates of decedents dying after Nov. 13, 1966, see section 108(i) of Pub. L. 89–809, set out as a note under section 2101 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Pub. L. 86–779, §4(e)(2), Sept. 14, 1960, 74 Stat. 1000, provided that: "The amendments made by subsections (b) and (c) [enacting section 2209 of this title and amending this section] shall apply with respect to estates of decedents dying after the date of the enactment of this Act [Sept. 14, 1960]."

APPLICATION OF AMENDMENTS BY SECTION 5033 OF PUB. L. 100–647 TO ESTATES OF, OR GIFTS BY, NONCITIZEN AND NONRESIDENT INDIVIDUALS

For provisions directing that in the case of the estate of, or gift by, an individual who was not a citizen or resident of the United States but was a resident of a foreign country with which the United States has a tax treaty with respect to estate, inheritance, or gift taxes, the amendments made by section 5033 of Pub. L. 100–647 shall not apply to the extent such amendments would be inconsistent with the provisions of such treaty relating to estate, inheritance, or gift tax marital deductions, but that in the case of the estate of an individual dying before the date 3 years after Dec. 19, 1989, or a gift by an individual before the date 3 years after Dec. 19, 1989, the requirement of the preceding provision that the individual not be a citizen or resident of the United States shall not apply, see section 7815(d)(14) of Pub. L. 101–239, set out as a note under section 2056 of this title.

§2107. Expatriation to avoid tax

(a) Treatment of expatriates

A tax computed in accordance with the table contained in section 2001 is hereby imposed on the transfer of the taxable estate, determined as provided in section 2106, of every decedent nonresident not a citizen of the United States if the date of death occurs during a taxable year with respect to which the decedent is subject to tax under section 877(b).

(b) Gross estate

For purposes of the tax imposed by subsection (a), the value of the gross estate of every decedent to whom subsection (a) applies shall be determined as provided in section 2103, except that—

(1) if such decedent owned (within the meaning of section 958(a)) at the time of his death 10 percent or more of the total combined voting power of all classes of stock entitled to vote of a foreign corporation, and

(2) if such decedent owned (within the meaning of section 958(a)), or is considered to have owned (by applying the ownership rules of section 958(b)), at the time of his death, more than 50 percent of—

(A) the total combined voting power of all classes of stock entitled to vote of such corporation, or

(B) the total value of the stock of such corporation,

then that proportion of the fair market value of the stock of such foreign corporation owned (within the meaning of section 958(a)) by such decedent at the time of his death, which the fair market value of any assets owned by such foreign corporation and situated in the United States, at the time of his death, bears to the total fair market value of all assets owned by such foreign corporation at the time of his death, shall be included in the gross estate of such decedent. For purposes of the preceding sentence, a decedent shall be treated as owning stock of a foreign

corporation at the time of his death if, at the time of a transfer, by trust or otherwise, within the meaning of sections 2035 to 2038, inclusive, he owned such stock.

(c) Credits

(1) Unified credit

(A) In general

A credit of $13,000 shall be allowed against the tax imposed by subsection (a).

(B) Limitation based on amount of tax

The credit allowed under this paragraph shall not exceed the amount of the tax imposed by subsection (a).

(2) Credit for foreign death taxes

(A) In general

The tax imposed by subsection (a) shall be credited with the amount of any estate, inheritance, legacy, or succession taxes actually paid to any foreign country in respect of any property which is included in the gross estate solely by reason of subsection (b).

(B) Limitation on credit

The credit allowed by subparagraph (A) for such taxes paid to a foreign country shall not exceed the lesser of—

(i) the amount which bears the same ratio to the amount of such taxes actually paid to such foreign country as the value of the property subjected to such taxes by such foreign country and included in the gross estate solely by reason of subsection (b) bears to the value of all property subjected to such taxes by such foreign country, or

(ii) such property's proportionate share of the excess of—

(I) the tax imposed by subsection (a), over

(II) the tax which would be imposed by section 2101 but for this section.

(C) Proportionate share

In the case of property which is included in the gross estate solely by reason of subsection (b), such property's proportionate share is the percentage which the value of such property bears to the total value of all property included in the gross estate solely by reason of subsection (b).

(3) Other credits

The tax imposed by subsection (a) shall be credited with the amounts determined in accordance with subsections (a) and (b) of section 2102. For purposes of subsection (a) of section 2102, sections 2012 and 2013 shall be applied as if the credit allowed under paragraph (1) were allowed under section 2010.

(d) Burden of proof

If the Secretary establishes that it is reasonable to believe that an individual's loss of United States citizenship would, but for this section, result in a substantial reduction in the estate, inheritance, legacy, and succession taxes in respect of the transfer of his estate, the burden of proving that such loss of citizenship did not have for one of its principal purposes the avoidance of taxes under this subtitle or subtitle A shall be on the executor of such individual's estate.

(e) Cross reference

For comparable treatment of long-term lawful permanent residents who ceased to be taxed as residents, see section 877(e).

(Added Pub. L. 89–809, title I, §108(f), Nov. 13, 1966, 80 Stat. 1573; amended Pub. L. 94–455, title XIX, §§1902(a)(6), 1906(b)(13)(A), title XX, §2001(c)(1)(E)(ii), Oct. 4, 1976, 90 Stat. 1805, 1834, 1851; Pub. L. 104–191, title V, §511(e)(1), (f)(2)(A), Aug. 21, 1996, 110 Stat. 2097, 2099; Pub. L. 105–34, title XVI, §1602(g)(6), Aug. 5, 1997, 111 Stat. 1095; Pub. L. 107–16, title V, §532(c)(7)(C), June 7, 2001, 115 Stat. 75; Pub. L. 108–357, title VIII, §804(a)(3), Oct. 22, 2004, 118 Stat. 1570.)

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–357 reenacted heading without change and amended text of subsec. (a) generally, substituting provisions relating to imposition of tax on the transfer of the taxable estate of every decedent nonresident not a citizen of the United States if the date of death occurs during a taxable year with respect to which the decedent is subject to tax under section 877(b), for provisions relating to imposition of tax on the transfer of the taxable estate of every decedent nonresident not a citizen of the United States if, within the 10-year period ending with the date of death, such decedent lost United States citizenship, unless such loss did not have for one of its principal purposes the avoidance of taxes, and provisions describing individuals to be treated as having a principal purpose to avoid taxes.

2001—Subsec. (c)(3). Pub. L. 107–16 substituted "2012 and 2013" for "2011 to 2013, inclusive,".

1997—Subsec. (c)(2)(B)(i). Pub. L. 105–34, §1602(g)(6)(A), substituted "such foreign country as the value of the property subjected to such taxes by such foreign country and" for "such foreign country in respect of property included in the gross estate as the value of the property".

Subsec. (c)(2)(C). Pub. L. 105–34, §1602(g)(6)(B), amended heading and text of subpar. (C) generally. Prior to amendment, text read as follows: "For purposes of subparagraph (B), a property's proportionate share is the percentage of the value of the property which is included in the gross estate solely by reason of subsection (b) bears to the total value of the gross estate."

1996—Subsec. (a). Pub. L. 104–191, §511(e)(1)(A), substituted "Treatment of expatriates" for "Rate of tax" in heading and amended text generally. Prior to amendment, text read as follows: "A tax computed in accordance with the table contained in section 2001 is hereby imposed on the transfer of the taxable estate, determined as provided in section 2106, of every decedent nonresident not a citizen of the United States dying after November 13, 1966, if after March 8, 1965, and within the 10-year period ending with the date of death such decedent lost United States citizenship, unless such loss did not have for one of its principal purposes the avoidance of taxes under this subtitle or subtitle A."

Subsec. (b)(2). Pub. L. 104–191, §511(e)(1)(C), substituted "more than 50 percent of—" for "more than 50 percent of the total combined voting power of all classes of stock entitled to vote of such foreign corporation," and added subpars. (A) and (B).

Subsec. (c)(2), (3). Pub. L. 104–191, §511(e)(1)(B), added par. (2) and redesignated former par. (2) as (3).

Subsec. (d). Pub. L. 104–191, §511(f)(2)(A), redesignated subsec. (e) as (d) and struck out former subsec. (d) which read as follows:

"(d) EXCEPTION FOR LOSS OF CITIZENSHIP FOR CERTAIN CAUSES.—Subsection (a) shall not apply to the transfer of the estate of a decedent whose loss of United States citizenship resulted from the application of section 301(b), 350, or 355 of the Immigration and Nationality Act, as amended (8 U.S.C. 1401(b), 1482, or 1487)."

Subsec. (e). Pub. L. 104–191, §511(f)(2)(A), added subsec. (e). Former subsec. (e) redesignated (d).

1976—Subsec. (a). Pub. L. 94–455, §1902(a)(6), substituted "November 13, 1966" for "the date of enactment of this section" after "dying after".

Subsec. (c). Pub. L. 94–455, §2001(c)(1)(E)(ii), substituted provisions relating to unified credit for "The tax imposed by subsection (a) shall be credited with the amounts determined in accordance with section 2102."

Subsec. (e). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to individuals who expatriate after June 3, 2004, see section 804(f) of Pub. L. 108–357, set out as a note under section 877 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to estates of decedents dying, and generation-skipping transfers, after Dec. 31, 2004, see section 532(d) of Pub. L. 107–16, set out as a note under section 2011 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 effective as if included in the provisions of the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104–191, to which such amendment relates, see section 1602(i) of Pub. L. 105–34, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–191 applicable to individuals losing United States citizenship on or after Feb. 6, 1995, and to long-term residents of the United States with respect to whom an event described in section

877(e)(1)(A) or (B) of this title occurs on or after Feb. 6, 1995, with special rule for certain individuals who performed an act of expatriation specified in section 1481(a)(1)–(4) of Title 8, Aliens and Nationality, before Feb. 6, 1995, see section 511(g) of Pub. L. 104–191, set out as a note under section 877 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1902(a)(6) of Pub. L. 94–455 applicable in the case of estates of decedents dying after Oct. 4, 1976, see section 1902(c)(1) of Pub. L. 94–455, set out as a note under section 2011 of this title.

Amendment by section 2001(c)(1)(E)(ii) of Pub. L. 94–455 applicable to estates of decedents dying after Dec. 31, 1976, see section 2001(d)(1) of Pub. L. 94–455, set out as a note under section 2001 of this title.

EFFECTIVE DATE

Section applicable with respect to estates of decedents dying after Nov. 13, 1966, see section 108(i) of Pub. L. 89–809, set out as an Effective Date of 1966 Amendment note under section 2101 of this title.

§2108. Application of pre-1967 estate tax provisions

(a) Imposition of more burdensome tax by foreign country

Whenever the President finds that—

(1) under the laws of any foreign country, considering the tax system of such foreign country, a more burdensome tax is imposed by such foreign country on the transfer of estates of decedents who were citizens of the United States and not residents of such foreign country than the tax imposed by this subchapter on the transfer of estates of decedents who were residents of such foreign country,

(2) such foreign country, when requested by the United States to do so, has not acted to revise or reduce such tax so that it is no more burdensome than the tax imposed by this subchapter on the transfer of estates of decedents who were residents of such foreign country, and

(3) it is in the public interest to apply pre-1967 tax provisions in accordance with this section to the transfer of estates of decedents who were residents of such foreign country,

the President shall proclaim that the tax on the transfer of the estate of every decedent who was a resident of such foreign country at the time of his death shall, in the case of decedents dying after the date of such proclamation, be determined under this subchapter without regard to amendments made to sections 2101 (relating to tax imposed), 2102 (relating to credits against tax), 2106 (relating to taxable estate), and 6018 (relating to estate tax returns) on or after November 13, 1966.

(b) Alleviation of more burdensome tax

Whenever the President finds that the laws of any foreign country with respect to which the President has made a proclamation under subsection (a) have been modified so that the tax on the transfer of estates of decedents who were citizens of the United States and not residents of such foreign country is no longer more burdensome than the tax imposed by this subchapter on the transfer of estates of decedents who were residents of such foreign country, he shall proclaim that the tax on the transfer of the estate of every decedent who was a resident of such foreign country at the time of his death shall, in the case of decedents dying after the date of such proclamation, be determined under this subchapter without regard to subsection (a).

(c) Notification of Congress required

No proclamation shall be issued by the President pursuant to this section unless, at least 30 days prior to such proclamation, he has notified the Senate and the House of Representatives of his intention to issue such proclamation.

(d) Implementation by regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to implement this section.

(Added Pub. L. 89–809, title I, §108(f), Nov. 13, 1966, 80 Stat. 1573; amended Pub. L. 94–455, title XIX, §§1902(a)(6), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1805, 1834.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94–455, §1902(a)(6), substituted "November 13, 1976" for "the date of enactment of this section" after "on or after".

Subsec. (d). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1902(a)(6) of Pub. L. 94–455 applicable in the case of estates of decedents dying after Oct. 4, 1976, see section 1902(c)(1) of Pub. L. 94–455, set out as a note under section 2011 of this title.

EFFECTIVE DATE

Section applicable with respect to estates of decedents dying after Nov. 13, 1966, see section 108(i) of Pub. L. 89–809, set out as an Effective Date of 1966 Amendment note under section 2101 of this title.

Subchapter C—Miscellaneous

Sec.

2201. Combat zone-related deaths of members of the Armed Forces, deaths of astronauts, and deaths of victims of certain terrorist attacks.

[2202. Repealed.]

2203. Definition of executor.

2204. Discharge of fiduciary from personal liability.

2205. Reimbursement out of estate.

2206. Liability of life insurance beneficiaries.

2207. Liability of recipient of property over which decedent had power of appointment.

2207A. Right of recovery in the case of certain marital deduction property.

2207B. Right of recovery where decedent retained interest.

2208. Certain residents of possessions considered citizens of the United States.

2209. Certain residents of possessions considered nonresidents not citizens of the United States.

[2210. Repealed.]

AMENDMENTS

2010—Pub. L. 111–312, title III, §301(a), Dec. 17, 2010, 124 Stat. 3300, amended analysis to read as if amendment by Pub. L. 107–16, §501(c)(1), had never been enacted. See 2001 Amendment note below.

2003—Pub. L. 108–121, title I, §110(c)(2)(B), Nov. 11, 2003, 117 Stat. 1342, inserted ", deaths of astronauts," after "Forces" in item 2201.

2002—Pub. L. 107–134, title I, §103(c), Jan. 23, 2002, 115 Stat. 2431, substituted "Combat zone-related deaths of members of the Armed Forces and deaths of victims of certain terrorist attacks." for "Members of the Armed Forces dying in combat zone or by reason of combat-zone-incurred wounds, etc." in item 2201.

2001—Pub. L. 107–16, title V, §501(c)(1), June 7, 2001, 115 Stat. 69, added item 2210 "Termination".

1989—Pub. L. 101–239, title VII, §7304(b)(2)(C), Dec. 19, 1989, 103 Stat. 2353, struck out item 2210 "Liability for payment in case of transfer of employer securities to an employee stock ownership plan or a worker-owned cooperative".

1988—Pub. L. 100–647, title III, §3031(f)(2), Nov. 10, 1988, 102 Stat. 3638, added item 2207B.

1984—Pub. L. 98–369, div. A, title V, §544(b)(2), July 18, 1984, 98 Stat. 894, added item 2210.

1981—Pub. L. 97–34, title IV, §403(d)(4)(B), Aug. 13, 1981, 95 Stat. 305, added item 2207A.

1976—Pub. L. 94–455, title XIX, §1902(b)(1), Oct. 4, 1976, 90 Stat. 1806, struck out item 2202 "Missionaries in foreign service".

1975—Pub. L. 93–597, §6(b)(3), Jan. 2, 1975, 88 Stat. 1953, substituted "Members of the Armed Forces dying in combat zone or by reason of combat-zone-incurred wounds, etc." for "Members of the Armed Forces dying during an induction period." in item 2201.

1970—Pub. L. 91–614, title I, §101(d)(3), Dec. 31, 1970, 84 Stat. 1837, substituted "Discharge of fiduciary from personal liability" for "Discharge of executor from personal liability" in item 2204.

1960—Pub. L. 86–779, §4(b)(2), Sept. 14, 1960, 74 Stat. 1000, added item 2209.

1958—Pub. L. 85–866, title I, §102(c)(4), Sept. 2, 1958, 72 Stat. 1675, added item 2208.

§2201. Combat zone-related deaths of members of the Armed Forces, deaths of astronauts, and deaths of victims of certain terrorist attacks

(a) In general

Unless the executor elects not to have this section apply, in applying sections 2001 and 2101 to the estate of a qualified decedent, the rate schedule set forth in subsection (c) shall be deemed to be the rate schedule set forth in section 2001(c).

(b) Qualified decedent

For purposes of this section, the term "qualified decedent" means—

(1) any citizen or resident of the United States dying while in active service of the Armed Forces of the United States, if such decedent—

(A) was killed in action while serving in a combat zone, as determined under section 112(c), or

(B) died as a result of wounds, disease, or injury suffered while serving in a combat zone (as determined under section 112(c)), and while in the line of duty, by reason of a hazard to which such decedent was subjected as an incident of such service,

(2) any specified terrorist victim (as defined in section 692(d)(4)), and

(3) any astronaut whose death occurs in the line of duty.

(c) Rate schedule

If the amount with respect to which the tentative tax to be computed is:	The tentative tax is:
Not over $150,000	1 percent of the amount by which such amount exceeds $100,000.
Over $150,000 but not over $200,000	$500 plus 2 percent of the excess over $150,000.
Over $200,000 but not over $300,000	$1,500 plus 3 percent of the excess over $200,000.
Over $300,000 but not over $500,000	$4,500 plus 4 percent of the excess over $300,000.
Over $500,000 but not over $700,000	$12,500 plus 5 percent of the excess over $500,000.
Over $700,000 but not over $900,000	$22,500 plus 6 percent of the excess over $700,000.
Over $900,000 but not over $1,100,000	$34,500 plus 7 percent of the excess over $900,000.
Over $1,100,000 but not over $1,600,000	$48,500 plus 8 percent of the excess over $1,100,000.
Over $1,600,000 but not over $2,100,000	$88,500 plus 9 percent of the excess over $1,600,000.
Over $2,100,000 but not over $2,600,000	$133,500 plus 10 percent of the excess over $2,100,000.
Over $2,600,000 but not over $3,100,000	$183,500 plus 11 percent of the excess over $2,600,000.
Over $3,100,000 but not over $3,600,000	$238,500 plus 12 percent of the excess over $3,100,000.
Over $3,600,000 but not over $4,100,000	$298,500 plus 13 percent of the excess over

	$3,600,000.
Over $4,100,000 but not over $5,100,000	$363,500 plus 14 percent of the excess over $4,100,000.
Over $5,100,000 but not over $6,100,000	$503,500 plus 15 percent of the excess over $5,100,000.
Over $6,100,000 but not over $7,100,000	$653,500 plus 16 percent of the excess over $6,100,000.
Over $7,100,000 but not over $8,100,000	$813,500 plus 17 percent of the excess over $7,100,000.
Over $8,100,000 but not over $9,100,000	$983,500 plus 18 percent of the excess over $8,100,000.
Over $9,100,000 but not over $10,100,000	$1,163,500 plus 19 percent of the excess over $9,100,000.
Over $10,100,000	$1,353,500 plus 20 percent of the excess over $10,100,000.

(d) Determination of unified credit

In the case of an estate to which this section applies, subsection (a) shall not apply in determining the credit under section 2010.

(Aug. 16, 1954, ch. 736, 68A Stat. 401; Pub. L. 93–597, §6(b)(1), (2), Jan. 2, 1975, 88 Stat. 1953; Pub. L. 94–455, title XIX, §1902(a)(7)(A), Oct. 4, 1976, 90 Stat. 1805; Pub. L. 107–16, title V, §532(c)(9), June 7, 2001, 115 Stat. 75; Pub. L. 107–134, title I, §103(a), (b)(3), Jan. 23, 2002, 115 Stat. 2430, 2431; Pub. L. 108–121, title I, §110(c)(1), (2)(A), Nov. 11, 2003, 117 Stat. 1342.)

AMENDMENTS

2003—Pub. L. 108–121, §110(c)(2)(A), inserted ", deaths of astronauts," after "Forces" in section catchline.

Subsec. (b)(3). Pub. L. 108–121, §110(c)(1), added par. (3).

2002—Pub. L. 107–134 amended section catchline and text of section generally, substituting present provisions for provisions which had stated that the additional estate tax as defined in former section 2011(d) should not apply to the transfer of the taxable estate of a citizen or resident of the United States dying while in active service as a member of the Armed Forces of the United States, if such decedent was killed in action while serving in a combat zone, as determined under section 112(c), or died as a result of wounds, disease, or injury suffered, while serving in a combat zone (as determined under section 112(c)), and while in line of duty, by reason of a hazard to which he was subjected as an incident of such service.

2001—Pub. L. 107–16, §532(c)(9)(B), which added concluding provisions which read as follows: "For purposes of this section, the additional estate tax is the difference between the tax imposed by section 2001 or 2101 and the amount equal to 125 percent of the maximum credit provided by section 2011(b), as in effect before its repeal by the Economic Growth and Tax Relief Reconciliation Act of 2001.", was repealed by Pub. L. 107–134, §103(b)(3). See Effective Date of 2002 Amendment note below.

Pub. L. 107–16, §532(c)(9)(A), which struck out "as defined in section 2011(d)" after "The additional estate tax" in introductory provisions, was repealed by Pub. L. 107–134, §103(b)(3). See Effective Date of 2002 Amendment note below.

1975—Pub. L. 93–597, as amended by Pub. L. 94–455, §1902(a)(7)(A), struck out "during an induction period (as defined in section 112(c)(5))" after "resident of the United States dying", and substituted "Members of the Armed Forces dying in combat zone or by reason of combat-zone-incurred wounds, etc." for "Members of the Armed Forces dying during an induction period" in section catchline.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–121, title I, §110(c)(3), Nov. 11, 2003, 117 Stat. 1343, provided that: "The amendments made by this subsection [amending this section] shall apply to estates of decedents dying after December 31, 2002."

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–134 applicable to estates of decedents dying on or after Sept. 11, 2001, and, in the case of individuals dying as a result of the Apr. 19, 1995, terrorist attack, dying on or after Apr. 19, 1995,

with provisions relating to waiver of limitations, see section 103(d) of Pub. L. 107–134, set out as a note under section 2011 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to estates of decedents dying, and generation-skipping transfers, after Dec. 31, 2004, see section 532(d) of Pub. L. 107–16, set out as a note under section 2011 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XIX, §1902(a)(7)(B), Oct. 4, 1976, 90 Stat. 1805, provided that: "The amendment made by subsection (A) [amending section 6(b)(1) of Pub. L. 93–597] is effective July 1, 1973."

EFFECTIVE DATE OF 1975 AMENDMENT

Pub. L. 93–597, §6(c), Jan. 2, 1975, 88 Stat. 1953, provided that: "The amendments made by this section [amending this section and section 1034 of this title] shall take effect on July 1, 1973."

[§2202. Repealed. Pub. L. 94–455, title XIX, §1902(a)(8), Oct. 4, 1976, 90 Stat. 1805]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 401; June 25, 1959, Pub. L. 86–70, §22(a), 73 Stat. 146; July 12, 1960, Pub. L. 86–624, §18(b), 74 Stat. 416, related to the presumption that missionaries duly commissioned and serving under boards of foreign missions are residents of the State or the District of Columbia wherein they resided at the time of their commission and departure for service.

EFFECTIVE DATE OF REPEAL

Repeal applicable to estates of decedents dying after Oct. 4, 1976, see section 1902(c)(1) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 2011 of this title.

§2203. Definition of executor

The term "executor" wherever it is used in this title in connection with the estate tax imposed by this chapter means the executor or administrator of the decedent, or, if there is no executor or administrator appointed, qualified, and acting within the United States, then any person in actual or constructive possession of any property of the decedent.

(Aug. 16, 1954, ch. 736, 68A Stat. 401.)

§2204. Discharge of fiduciary from personal liability

(a) General rule

If the executor makes written application to the Secretary for determination of the amount of the tax and discharge from personal liability therefor, the Secretary (as soon as possible, and in any event within 9 months after the making of such application, or, if the application is made before the return is filed, then within 9 months after the return is filed, but not after the expiration of the period prescribed for the assessment of the tax in section 6501) shall notify the executor of the amount of the tax. The executor, on payment of the amount of which he is notified (other than any amount the time for payment of which is extended under sections 6161, 6163, or 6166), and on furnishing any bond which may be required for any amount for which the time for payment is extended, shall be discharged from personal liability for any deficiency in tax thereafter found to be due and shall be entitled to a receipt or writing showing such discharge.

(b) Fiduciary other than the executor

If a fiduciary (not including a fiduciary in respect of the estate of a nonresident decedent) other than the executor makes written application to the Secretary for determination of the amount of any estate tax for which the fiduciary may be personally liable, and for discharge from personal liability therefor, the Secretary upon the discharge of the executor from personal liability under subsection

(a), or upon the expiration of 6 months after the making of such application by the fiduciary, if later, shall notify the fiduciary (1) of the amount of such tax for which it has been determined the fiduciary is liable, or (2) that it has been determined that the fiduciary is not liable for any such tax. Such application shall be accompanied by a copy of the instrument, if any, under which such fiduciary is acting, a description of the property held by the fiduciary, and such other information for purposes of carrying out the provisions of this section as the Secretary may require by regulations. On payment of the amount of such tax for which it has been determined the fiduciary is liable (other than any amount the time for payment of which has been extended under section 6161, 6163, or 6166), and on furnishing any bond which may be required for any amount for which the time for payment has been extended, or on receipt by him of notification of a determination that he is not liable for any such tax, the fiduciary shall be discharged from personal liability for any deficiency in such tax thereafter found to be due and shall be entitled to a receipt or writing evidencing such discharge.

(c) Special lien under section 6324A

For purposes of the second sentence of subsection (a) and the last sentence of subsection (b), an agreement which meets the requirements of section 6324A (relating to special lien for estate tax deferred under section 6166) shall be treated as the furnishing of bond with respect to the amount for which the time for payment has been extended under section 6166.

(d) Good faith reliance on gift tax returns

If the executor in good faith relies on gift tax returns furnished under section 6103(e)(3) for determining the decedent's adjusted taxable gifts, the executor shall be discharged from personal liability with respect to any deficiency of the tax imposed by this chapter which is attributable to adjusted taxable gifts which—

(1) are made more than 3 years before the date of the decedent's death, and

(2) are not shown on such returns.

(Aug. 16, 1954, ch. 736, 68A Stat. 401; Pub. L. 91–614, title I, §101(d)(1), (f), Dec. 31, 1970, 84 Stat. 1836, 1838; Pub. L. 94–455, title XIX, §§1902(a)(9), 1906(b)(13)(A), title XX, §2004(d)(2), (f)(4), (6), Oct. 4, 1976, 90 Stat. 1805, 1834, 1870, 1872; Pub. L. 95–600, title VII, §702(p)(1), Nov. 6, 1978, 92 Stat. 2937; Pub. L. 97–34, title IV, §422(e)(1), (3), Aug. 13, 1981, 95 Stat. 316.)

AMENDMENTS

1981—Subsecs. (a) to (c). Pub. L. 97–34, §422(e)(1), (3), struck out reference to section 6166A in subsecs. (a) and (b), and two such references in subsec. (c).

1978—Subsec. (d). Pub. L. 95–600 added subsec. (d).

1976—Subsec. (a). Pub. L. 94–455, §§1906(b)(13)(A), 2004(f)(6), substituted "6166 or 6166A" for "or 6166" after "6161, 6163" and struck out "or his delegate" in two places after "Secretary".

Subsec. (b). Pub. L. 94–455, §§1902(a)(9), 1906(b)(13)(A), 2004(f)(4), (6), substituted "6166 or 6166A" for "or 6166" after "6161, 6163", "has been" for "has not been" after "payment of which", and struck out "or his delegate" after "Secretary".

Subsec. (c). Pub. L. 94–455, §2004(d)(2), added subsec. (c).

1970—Pub. L. 91–614, §101(d)(1)(A), substituted "fiduciary" for "executor" in section catchline.

Subsec. (a). Pub. L. 91–614, §§101(d)(1)(B), (C), (f), designated existing provisions as subsec. (a), inserted "General Rule—" immediately preceding first sentence and permitted a discharge of the executor even where an extension of time has been granted under sections 6161, 6163, or 6166 of this title, where a bond, if required, is provided to assure payment of taxes for which the extension was granted, and substituted "9 months" for "1 year" in two places.

Subsec. (b). Pub. L. 91–614, §101(d)(1)(D), added subsec. (b).

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to estates of decedents dying after Dec. 31, 1981, see section 422(f)(1) of Pub. L. 97–34, set out as a note under section 6166 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title VII, §702(p)(2), Nov. 6, 1978, 92 Stat. 2937, provided that: "The amendment made by paragraph (1) [amending this section] shall apply with respect to the estates of decedents dying after

December 31, 1976."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1902(a)(9) of Pub. L. 94–455 applicable in the case of estates of decedents dying after Dec. 31, 1970, see section 1902(c)(1) of Pub. L. 94–455, set out as a note under section 2011 of this title.

Amendment by section 2004(d)(4) of Pub. L. 94–455 applicable to estates of decedents dying after Dec. 31, 1976, see section 2004(g) of Pub. L. 94–455, set out as a note under section 6166 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by section 101(d)(1) of Pub. L. 91–614 applicable with respect to decedents dying after Dec. 31, 1970, see section 101(j) of Pub. L. 91–614, set out as a note under section 2032 of this title.

Pub. L. 91–614, title I, §101(f), Dec. 31, 1970, 84 Stat. 1838, provided that the amendment made by that section is effective with respect to the estates of decedents dying after Dec. 31, 1973.

§2205. Reimbursement out of estate

If the tax or any part thereof is paid by, or collected out of, that part of the estate passing to or in the possession of any person other than the executor in his capacity as such, such person shall be entitled to reimbursement out of any part of the estate still undistributed or by a just and equitable contribution by the persons whose interest in the estate of the decedent would have been reduced if the tax had been paid before the distribution of the estate or whose interest is subject to equal or prior liability for the payment of taxes, debts, or other charges against the estate, it being the purpose and intent of this chapter that so far as is practicable and unless otherwise directed by the will of the decedent the tax shall be paid out of the estate before its distribution.

(Aug. 16, 1954, ch. 736, 68A Stat. 402.)

§2206. Liability of life insurance beneficiaries

Unless the decedent directs otherwise in his will, if any part of the gross estate on which tax has been paid consists of proceeds of policies of insurance on the life of the decedent receivable by a beneficiary other than the executor, the executor shall be entitled to recover from such beneficiary such portion of the total tax paid as the proceeds of such policies bear to the taxable estate. If there is more than one such beneficiary, the executor shall be entitled to recover from such beneficiaries in the same ratio. In the case of such proceeds receivable by the surviving spouse of the decedent for which a deduction is allowed under section 2056 (relating to marital deduction), this section shall not apply to such proceeds except as to the amount thereof in excess of the aggregate amount of the marital deductions allowed under such section.

(Aug. 16, 1954, ch. 736, 68A Stat. 402; Pub. L. 94–455, title XX, §2001(c)(1)(H), Oct. 4, 1976, 90 Stat. 1852.)

AMENDMENTS

1976—Pub. L. 94–455 substituted "the taxable estate" for "the sum of the taxable estate and the amount of the exemption allowed in computing the taxable estate, determined under section 2051" after "policies bear to".

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable to estates of decedents dying after Dec. 31, 1976, see section 2001(d)(1) of Pub. L. 94–455, set out as a note under section 2001 of this title.

§2207. Liability of recipient of property over which decedent had power of appointment

Unless the decedent directs otherwise in his will, if any part of the gross estate on which the tax

has been paid consists of the value of property included in the gross estate under section 2041, the executor shall be entitled to recover from the person receiving such property by reason of the exercise, nonexercise, or release of a power of appointment such portion of the total tax paid as the value of such property bears to the taxable estate. If there is more than one such person, the executor shall be entitled to recover from such persons in the same ratio. In the case of such property received by the surviving spouse of the decedent for which a deduction is allowed under section 2056 (relating to marital deduction), this section shall not apply to such property except as to the value thereof reduced by an amount equal to the excess of the aggregate amount of the marital deductions allowed under section 2056 over the amount of proceeds of insurance upon the life of the decedent receivable by the surviving spouse for which proceeds a marital deduction is allowed under such section.

(Aug. 16, 1954, ch. 736, 68A Stat. 402; Pub. L. 94–455, title XX, §2001(c)(1)(I), Oct. 4, 1976, 90 Stat. 1852.)

AMENDMENTS

1976—Pub. L. 94–455 substituted "the taxable estate" for "the sum of the taxable estate and the amount of the exemption allowed in computing the taxable estate, determined under section 2052, or section 2106(a), as the case may be" after "property bears to".

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable to estates of decedents dying after Dec. 31, 1976, see section 2001(d)(1) of Pub. L. 94–455, set out as a note under section 2001 of this title.

§2207A. Right of recovery in the case of certain marital deduction property

(a) Recovery with respect to estate tax

(1) In general

If any part of the gross estate consists of property the value of which is includible in the gross estate by reason of section 2044 (relating to certain property for which marital deduction was previously allowed), the decedent's estate shall be entitled to recover from the person receiving the property the amount by which—

(A) the total tax under this chapter which has been paid, exceeds

(B) the total tax under this chapter which would have been payable if the value of such property had not been included in the gross estate.

(2) Decedent may otherwise direct

Paragraph (1) shall not apply with respect to any property to the extent that the decedent in his will (or a revocable trust) specifically indicates an intent to waive any right of recovery under this subchapter with respect to such property.

(b) Recovery with respect to gift tax

If for any calendar year tax is paid under chapter 12 with respect to any person by reason of property treated as transferred by such person under section 2519, such person shall be entitled to recover from the person receiving the property the amount by which—

(1) the total tax for such year under chapter 12, exceeds

(2) the total tax which would have been payable under such chapter for such year if the value of such property had not been taken into account for purposes of chapter 12.

(c) More than one recipient of property

For purposes of this section, if there is more than one person receiving the property, the right of recovery shall be against each such person.

(d) Taxes and interest

In the case of penalties and interest attributable to additional taxes described in subsections (a) and

(b), rules similar to subsections (a), (b), and (c) shall apply.

(Added Pub. L. 97–34, title IV, §403(d)(4)(A), Aug. 13, 1981, 95 Stat. 304; amended Pub. L. 105–34, title XIII, §1302(a), Aug. 5, 1997, 111 Stat. 1039.)

AMENDMENTS

1997—Subsec. (a)(2). Pub. L. 105–34 amended heading and text of par. (2) generally. Prior to amendment, text read as follows: "Paragraph (1) shall not apply if the decedent otherwise directs by will."

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XIII, §1302(c), Aug. 5, 1997, 111 Stat. 1039, provided that: "The amendments made by this section [amending this section and section 2207B of this title] shall apply with respect to the estates of decedents dying after the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE

Section applicable to estates of decedents dying after Dec. 31, 1981, see section 403(e) of Pub. L. 97–34, set out as an Effective Date of 1981 Amendment note under section 2056 of this title.

§2207B. Right of recovery where decedent retained interest

(a) Estate tax

(1) In general

If any part of the gross estate on which tax has been paid consists of the value of property included in the gross estate by reason of section 2036 (relating to transfers with retained life estate), the decedent's estate shall be entitled to recover from the person receiving the property the amount which bears the same ratio to the total tax under this chapter which has been paid as—

(A) the value of such property, bears to

(B) the taxable estate.

(2) Decedent may otherwise direct

Paragraph (1) shall not apply with respect to any property to the extent that the decedent in his will (or a revocable trust) specifically indicates an intent to waive any right of recovery under this subchapter with respect to such property.

(b) More than one recipient

For purposes of this section, if there is more than 1 person receiving the property, the right of recovery shall be against each such person.

(c) Penalties and interest

In the case of penalties and interest attributable to the additional taxes described in subsection (a), rules similar to the rules of subsections (a) and (b) shall apply.

(d) No right of recovery against charitable remainder trusts

No person shall be entitled to recover any amount by reason of this section from a trust to which section 664 applies (determined without regard to this section).

(Added Pub. L. 100–647, title III, §3031(f)(1), Nov. 10, 1988, 102 Stat. 3637; amended Pub. L. 101–508, title XI, §11601(b)(1), Nov. 5, 1990, 104 Stat. 1388–490; Pub. L. 105–34, title XIII, §1302(b), Aug. 5, 1997, 111 Stat. 1039.)

AMENDMENTS

1997—Subsec. (a)(2). Pub. L. 105–34 amended heading and text of par. (2) generally. Prior to amendment, text read as follows: "Paragraph (1) shall not apply if the decedent otherwise directs in a provision of his will (or a revocable trust) specifically referring to this section."

1990—Subsec. (b). Pub. L. 101–508, §11601(b)(1)(A), redesignated former subsec. (c) as (b) and struck out former subsec. (b) which read as follows: "If for any calendar year tax is paid under chapter 12 with respect to any person by reason of property treated as transferred by such person under section 2036(c)(4),

such person shall be entitled to recover from the original transferee (as defined in section 2036(c)(4)(C)(ii)) the amount which bears the same ratio to the total tax for such year under chapter 12 as—

"(1) the value of such property for purposes of chapter 12, bears to

"(2) the total amount of the taxable gifts for such year."

Subsec. (c). Pub. L. 101–508, §11601(b)(1), redesignated subsec. (d) as (c) and substituted "subsection (a)" for "subsections (a) and (b)" and "subsections (a) and (b)" for "subsections (a), (b), and (c)". Former subsec. (c) redesignated (b).

Subsecs. (d), (e). Pub. L. 101–508, §11601(b)(1)(A), redesignated subsecs. (d) and (e) as (c) and (d), respectively. Former subsec. (d) redesignated (c).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable with respect to estates of decedents dying after Aug. 5, 1997, see section 1302(c) of Pub. L. 105–34, set out as a note under section 2207A of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable in the case of property transferred after Dec. 17, 1987, see section 11601(c) of Pub. L. 101–508, set out as a note under section 2036 of this title.

EFFECTIVE DATE

Section effective as if included in provisions of Revenue Act of 1987, Pub. L. 100–203, title X, except that if an amount is included in the gross estate of a decedent under section 2036 of this title other than solely by reason of section 2036(c) of this title, section applicable to such amount only with respect to property transferred after Nov. 10, 1988, see section 3031(h)(1), (3) of Pub. L. 100–647, set out as an Effective Date of 1988 Amendment note under section 2036 of this title.

§2208. Certain residents of possessions considered citizens of the United States

A decedent who was a citizen of the United States and a resident of a possession thereof at the time of his death shall, for purposes of the tax imposed by this chapter, be considered a "citizen" of the United States within the meaning of that term wherever used in this title unless he acquired his United States citizenship solely by reason of (1) his being a citizen of such possession of the United States, or (2) his birth or residence within such possession of the United States.

(Added Pub. L. 85–866, title I, §102(a), Sept. 2, 1958, 72 Stat. 1674.)

EFFECTIVE DATE

Section applicable to estates of decedents dying after Sept. 2, 1958, see section 102(d) of Pub. L. 85–866, set out as an Effective Date of 1958 Amendment note under section 2011 of this title.

§2209. Certain residents of possessions considered nonresidents not citizens of the United States

A decedent who was a citizen of the United States and a resident of a possession thereof at the time of his death shall, for purposes of the tax imposed by this chapter, be considered a "nonresident not a citizen of the United States" within the meaning of that term wherever used in this title, but only if such person acquired his United States citizenship solely by reason of (1) his being a citizen of such possession of the United States, or (2) his birth or residence within such possession of the United States.

(Added Pub. L. 86–779, §4(b)(1), Sept. 14, 1960, 74 Stat. 999.)

EFFECTIVE DATE

Section applicable with respect to estates of decedents dying after Sept. 14, 1960, see section 4(e)(2) of Pub. L. 86–779, set out as an Effective Date of 1960 Amendment note under section 2106 of this title.

[§2210. Repealed. Pub. L. 111–312, title III, §301(a), Dec. 17, 2010, 124 Stat.

3300]

Section, added Pub. L. 107–16, title V, §501(a), June 7, 2001, 115 Stat. 69, related to termination of applicability of chapter to estates of decedents dying after Dec. 31, 2009.

PRIOR PROVISIONS

A prior section 2210, added Pub. L. 98–369, div. A, title V, §544(a), July 18, 1984, 98 Stat. 892; amended Pub. L. 99–514, title XVIII, §§1854(d)(1)(A), (2)–(6), 1899A(37), Oct. 22, 1986, 100 Stat. 2879, 2880, 2960, related to liability for payment in case of transfer of employer securities to an employee stock ownership plan or a worker-owned cooperative, prior to repeal by Pub. L. 101–239, title VII, §7304(b)(1), (3), Dec. 19, 1989, 103 Stat. 2353, applicable to estates of decedents dying after July 12, 1989.

EFFECTIVE DATE OF REPEAL

Repeal of section applicable to estates of decedents dying, and transfers made after Dec. 31, 2009, except as otherwise provided, see section 301(e) of Pub. L. 111–312, set out as an Effective and Termination Dates of 2010 Amendment note under section 121 of this title.

CHAPTER 12—GIFT TAX

Subchapter		Sec.[1]
A.	**Determination of Tax Liability**	**2501**
B.	**Transfers**	**2511**
C.	**Deductions**	**2521**

[1] *Section numbers editorially supplied.*

Subchapter A—Determination of Tax Liability

Sec.

2501. Imposition of tax.
2502. Rate of tax.
2503. Taxable gifts.
2504. Taxable gifts for preceding calendar periods.
2505. Unified credit against gift tax.

AMENDMENTS

1981—Pub. L. 97–34, title IV, §442(a)(4)(E), Aug. 13, 1981, 95 Stat. 321, substituted "preceding calendar periods" for "preceding years and quarters" in item 2504.

1976—Pub. L. 94–455, title XX, §2001(c)(2)(B)(i), Oct. 4, 1976, 90 Stat. 1853, added item 2505.

1970—Pub. L. 91–614, title I, §102(a)(4)(B), Dec. 31, 1970, 84 Stat. 1840, substituted "Taxable gifts for preceding years and quarters" for "Taxable gifts for preceding years" in item 2504.

§2501. Imposition of tax

(a) Taxable transfers

(1) General rule

A tax, computed as provided in section 2502, is hereby imposed for each calendar year on the transfer of property by gift during such calendar year by any individual resident or nonresident.

(2) Transfers of intangible property

Except as provided in paragraph (3), paragraph (1) shall not apply to the transfer of intangible property by a nonresident not a citizen of the United States.

(3) Exception

(A) Certain individuals

Paragraph (2) shall not apply in the case of a donor to whom section 877(b) applies for the taxable year which includes the date of the transfer.

(B) Credit for foreign gift taxes

The tax imposed by this section solely by reason of this paragraph shall be credited with the amount of any gift tax actually paid to any foreign country in respect of any gift which is taxable under this section solely by reason of this paragraph.

(4) Transfers to political organizations

Paragraph (1) shall not apply to the transfer of money or other property to a political organization (within the meaning of section 527(e)(1)) for the use of such organization.

(5) Transfers of certain stock

(A) In general

In the case of a transfer of stock in a foreign corporation described in subparagraph (B) by a donor to whom section 877(b) applies for the taxable year which includes the date of the transfer—

(i) section 2511(a) shall be applied without regard to whether such stock is situated within the United States, and

(ii) the value of such stock for purposes of this chapter shall be its U.S.-asset value determined under subparagraph (C).

(B) Foreign corporation described

A foreign corporation is described in this subparagraph with respect to a donor if—

(i) the donor owned (within the meaning of section 958(a)) at the time of such transfer 10 percent or more of the total combined voting power of all classes of stock entitled to vote of the foreign corporation, and

(ii) such donor owned (within the meaning of section 958(a)), or is considered to have owned (by applying the ownership rules of section 958(b)), at the time of such transfer, more than 50 percent of—

(I) the total combined voting power of all classes of stock entitled to vote of such corporation, or

(II) the total value of the stock of such corporation.

(C) U.S.-asset value

For purposes of subparagraph (A), the U.S.-asset value of stock shall be the amount which bears the same ratio to the fair market value of such stock at the time of transfer as—

(i) the fair market value (at such time) of the assets owned by such foreign corporation and situated in the United States, bears to

(ii) the total fair market value (at such time) of all assets owned by such foreign corporation.

(b) Certain residents of possessions considered citizens of the United States

A donor who is a citizen of the United States and a resident of a possession thereof shall, for purposes of the tax imposed by this chapter, be considered a "citizen" of the United States within the meaning of that term wherever used in this title unless he acquired his United States citizenship solely by reason of (1) his being a citizen of such possession of the United States, or (2) his birth or residence within such possession of the United States.

(c) Certain residents of possessions considered nonresidents not citizens of the United States

A donor who is a citizen of the United States and a resident of a possession thereof shall, for purposes of the tax imposed by this chapter, be considered a "nonresident not a citizen of the United

States" within the meaning of that term wherever used in this title, but only if such donor acquired his United States citizenship solely by reason of (1) his being a citizen of such possession of the United States, or (2) his birth or residence within such possession of the United States.

(d) Cross references

(1) For increase in basis of property acquired by gift for gift tax paid, see section 1015(d).

(2) For exclusion of transfers of property outside the United States by a nonresident who is not a citizen of the United States, see section 2511(a).

(Aug. 16, 1954, ch. 736, 68A Stat. 403; Pub. L. 85–866, title I, §§43(b), 102(b), Sept. 2, 1958, 72 Stat. 1641, 1674; Pub. L. 86–779, §4(d), Sept. 14, 1960, 74 Stat. 1000; Pub. L. 89–809, title I, §109(a), Nov. 13, 1966, 80 Stat. 1574; Pub. L. 91–614, title I, §102(a)(1), Dec. 31, 1970, 84 Stat. 1838; Pub. L. 93–625, §14(a), Jan. 3, 1975, 88 Stat. 2121; Pub. L. 94–455, title XIX, §§1902(a)(10), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1805, 1834; Pub. L. 97–34, title IV, §442(a)(1), Aug. 13, 1981, 95 Stat. 320; Pub. L. 100–647, title III, §3031(a)(2), Nov. 10, 1988, 102 Stat. 3635; Pub. L. 101–508, title XI, §11601(b)(2), Nov. 5, 1990, 104 Stat. 1388–490; Pub. L. 104–191, title V, §511(e)(2), (f)(2)(B), Aug. 21, 1996, 110 Stat. 2098, 2100; Pub. L. 105–34, title XVI, §1602(g)(5), Aug. 5, 1997, 111 Stat. 1095; Pub. L. 108–357, title VIII, §804(d), Oct. 22, 2004, 118 Stat. 1571.)

AMENDMENTS

2004—Subsec. (a)(3) to (5). Pub. L. 108–357 added pars. (3) and (5), redesignated former par. (5) as (4), and struck out former pars. (3) and (4) which related to exception of certain individuals from taxable transfers and burden of proof.

1997—Subsec. (a)(3)(C). Pub. L. 105–34 substituted "donor" for "decedent".

1996—Subsec. (a)(3). Pub. L. 104–191, §511(e)(2), substituted "Exception" for "Exceptions" in heading and amended text generally. Prior to amendment, text read as follows: "Paragraph (2) shall not apply in the case of a donor who at any time after March 8, 1965, and within the 10-year period ending with the date of transfer lost United States citizenship unless—

"(A) such donor's loss of United States citizenship resulted from the application of section 301(b), 350, or 355 of the Immigration and Nationality Act, as amended (8 U.S.C. 1401(b), 1482, or 1487), or

"(B) such loss did not have for one of its principal purposes the avoidance of taxes under this subtitle or subtitle A."

Subsec. (a)(3)(E). Pub. L. 104–191, §511(f)(2)(B), added subpar. (E).

1990—Subsec. (d)(3). Pub. L. 101–508 struck out par. (3) which read as follows: "For treatment of certain transfers related to estate tax valuation freezes as gifts to which this chapter applies, see section 2036(c)(4)."

1988—Subsec. (d)(3). Pub. L. 100–647 added par. (3).

1981—Subsec. (a)(1), (4). Pub. L. 97–34 substituted "calendar year" for "calendar quarter" wherever appearing.

1976—Subsec. (a)(1). Pub. L. 94–455 inserted "for each calendar quarter" after "hereby imposed" and struck out "For the first calendar quarter of calendar year 1971 and each calendar quarter thereafter" after "General rule-".

Subsec. (a)(4). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

1975—Subsec. (a)(5). Pub. L. 93–625 added par. (5).

1970—Subsec. (a)(1). Pub. L. 91–614, §102(a)(1)(A), substituted "For the first calendar quarter of the calendar year 1971 and each calendar quarter thereafter" for "For the calendar year 1955 and each calendar year thereafter" and "during such calendar quarter" for "during such calendar year".

Subsec. (a)(4). Pub. L. 91–614, §102(a)(1)(B), substituted "calendar quarter" for "calendar year".

1966—Subsec. (a). Pub. L. 89–809 redesignated existing provisions as par. (1), struck out ", except transfers of intangible property by a nonresident not a citizen of the United States and who was not engaged in business in the United States during such calendar year" after "resident or nonresident", and added pars. (2) to (4).

1960—Subsec. (a). Pub. L. 86–779, §4(d)(2), struck out "who is" before "not a citizen".

Subsecs. (c), (d). Pub. L. 86–779, §4(d)(1), added subsec. (c) and redesignated former subsec. (c) as (d).

1958—Subsec. (b). Pub. L. 85–866, §102(b), added subsec. (b) and redesignated former subsec. (b) as (c).

Subsec. (c). Pub. L. 85–866, §102(b), redesignated former subsec. (b) as (c) and Pub. L. 85–866, §43(b), made the heading read in the plural, designated existing provisions as par. (2) and added par. (1).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to individuals who expatriate after June 3, 2004, see section 804(f) of Pub. L. 108–357, set out as a note under section 877 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 effective as if included in the provisions of the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104–191, to which such amendment relates, see section 1602(i) of Pub. L. 105–34, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–191 applicable to individuals losing United States citizenship on or after Feb. 6, 1995, and to long-term residents of the United States with respect to whom an event described in section 877(e)(1)(A) or (B) of this title occurs on or after Feb. 6, 1995, with special rule for certain individuals who performed an act of expatriation specified in section 1481(a)(1)–(4) of Title 8, Aliens and Nationality, before Feb. 6, 1995, see section 511(g) of Pub. L. 104–191, set out as a note under section 877 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable in the case of property transferred after Dec. 17, 1987, see section 11601(c) of Pub. L. 101–508, set out as a note under section 2036 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 applicable in cases where transfer referred to in section 2036(c)(1)(B) of this title is on or after June 21, 1988, see section 3031(h)(2) of Pub. L. 100–647, set out as a note under section 2036 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title IV, §442(e), Aug. 13, 1981, 95 Stat. 323, provided that: "The amendments made by this section [amending this section and sections 1015, 2502, 2503, 2504, 2505, 2512, 2513, 2522, 6019, 6075, and 6212 of this title] shall apply with respect to gifts made after December 31, 1981."

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XIX, §1902(c)(2), Oct. 4, 1976, 90 Stat. 1806, as amended by Pub. L. 95–600, title VII, §703(j)(12), Nov. 6, 1978, 92 Stat. 2942, provided that: "The amendments made by paragraphs (10), (11), and (12)(D) and (E) of subsection (a) [amending this section and sections 2522 and 2523 of this title] shall apply with respect to gifts made after December 31, 1976."

EFFECTIVE DATE OF 1975 AMENDMENT

Pub. L. 93–625, §14(b), Jan. 3, 1975, 88 Stat. 2121, provided that: "The amendment made by subsection (a) [amending this section] shall apply to transfers made after May 7, 1974."

EFFECTIVE DATE OF 1970 AMENDMENT

Pub. L. 91–614, title I, §102(e), Dec. 31, 1970, 84 Stat. 1842, provided that: "The amendments made by this section [amending this section and sections 1015, 2012, 2502, 2503, 2504, 2512, 2513, 2515, 2521, 2522, 2523, 6019, 6075, 6212, 6214, 6324, 6501, and 6512 of this title and enacting provisions set out as a note under this section] shall apply with respect to gifts made after December 31, 1970."

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89–809, title I, §109(c), Nov. 13, 1966, 80 Stat. 1575, provided that: "The amendments made by this section [amending this section and section 2511 of this title] shall apply with respect to the calendar year 1967 and all calendar years thereafter."

EFFECTIVE DATE OF 1960 AMENDMENT

Pub. L. 86–779, §4(e)(3), Sept. 14, 1960, 74 Stat. 1000, provided that: "The amendments made by subsection (d) [amending this section] shall apply with respect to gifts made after the date of the enactment of this Act [Sept. 14, 1960]."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable to gifts made after September 2, 1958, see section 102(d) of Pub. L. 85–866, set out as a note under section 2011 of this title.

ELECTION TO HAVE AMENDMENTS BY TITLE IV OF THE ECONOMIC RECOVERY TAX

ACT OF 1981 NOT APPLY

Pub. L. 97–448, title I, §104(d)(3), Jan. 12, 1983, 96 Stat. 2383, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(A) In the case of any decedent—

"(i) who dies before August 13, 1984, and

"(ii) who made a gift (before August 13, 1981, and during the 3-year period ending on the date of the decedent's death) on which tax imposed by chapter 12 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] has been paid before April 16, 1982,

such decedent's executor may make an election to have subtitle B of such Code (relating to estate and gift taxes) applied with respect to such decedent without regard to any of the amendments made by title IV of the Economic Recovery Tax Act of 1981 [Pub. L. 97–34, title IV].

"(B) An election under subparagraph (A) shall be made at such time and in such manner as the Secretary of the Treasury or his delegate shall prescribe.

"(C) An election under subparagraph (A), once made, shall be irrevocable."

§2502. Rate of tax

(a) Computation of tax

The tax imposed by section 2501 for each calendar year shall be an amount equal to the excess of—

(1) a tentative tax, computed under section 2001(c), on the aggregate sum of the taxable gifts for such calendar year and for each of the preceding calendar periods, over

(2) a tentative tax, computed under such section, on the aggregate sum of the taxable gifts for each of the preceding calendar periods.

(b) Preceding calendar period

Whenever used in this title in connection with the gift tax imposed by this chapter, the term "preceding calendar period" means—

(1) calendar years 1932 and 1970 and all calendar years intervening between calendar year 1932 and calendar year 1970,

(2) the first calendar quarter of calendar year 1971 and all calendar quarters intervening between such calendar quarter and the first calendar quarter of calendar year 1982, and

(3) all calendar years after 1981 and before the calendar year for which the tax is being computed.

For purposes of paragraph (1), the term "calendar year 1932" includes only that portion of such year after June 6, 1932.

(c) Tax to be paid by donor

The tax imposed by section 2501 shall be paid by the donor.

(Aug. 16, 1954, ch. 736, 68A Stat. 403; Pub. L. 91–614, title I, §102(a)(2), Dec. 31, 1970, 84 Stat. 1839; Pub. L. 94–455, title XX, §2001(b)(1), Oct. 4, 1976, 90 Stat. 1849; Pub. L. 97–34, title IV, §442(a)(2), Aug. 13, 1981, 95 Stat. 320; Pub. L. 100–203, title X, §10401(b)(2)(B), Dec. 22, 1987, 101 Stat. 1330–431; Pub. L. 107–16, title V, §511(d), June 7, 2001, 115 Stat. 70; Pub. L. 111–312, title III, §302(b)(2), Dec. 17, 2010, 124 Stat. 3301.)

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–312 amended subsec. (a) to read as if amendment by Pub. L. 107–16, §511(d), had never been enacted. See 2001 Amendment note below.

2001—Subsec. (a). Pub. L. 107–16, §511(d), amended subsec. (a) generally. Prior to amendment, text read as follows: "The tax imposed by section 2501 for each calendar year shall be an amount equal to the excess of—

"(1) a tentative tax, computed under section 2001(c), on the aggregate sum of the taxable gifts for such calendar year and for each of the preceding calendar periods, over

"(2) a tentative tax, computed under such section, on the aggregate sum of the taxable gifts for each of

the preceding calendar periods."

1987—Subsec. (a)(1). Pub. L. 100–203, §10401(b)(2)(B)(i), substituted "under section 2001(c)" for "in accordance with the rate schedule set forth in section 2001(c)".

Subsec. (a)(2). Pub. L. 100–203, §10401(b)(2)(B)(ii), substituted "under such section" for "in accordance with such rate schedule".

1981—Subsec. (a). Pub. L. 97–34 substituted in introductory text and par. (1) "calendar year" for "calendar quarter" and in pars. (1) and (2) "calendar periods" for "calendar years and calendar quarters".

Subsec. (b). Pub. L. 97–34 substituted definition of "preceding calendar period" for "calendar quarter", the latter including only the first calendar quarter of the calendar year 1971 and succeeding calendar quarters (covered in par. (2)), the former incorporating former subsec. (c)(1) definition of "preceding calendar years" as meaning calendar years 1932 and 1970 and all calendar years intervening between calendar year 1932 and calendar year 1970 and "calendar year 1932" as including only the portion of such year after June 6, 1932, and former subsec. (c)(2) definition of "preceding calendar quarters" as meaning the first calendar quarter of calendar year 1971 and all calendar quarters intervening between such calendar quarter and the calendar quarter for which the tax is being computed.

Subsecs. (c), (d). Pub. L. 97–34 redesignated subsec. (d) as (c). Former subsec. (c), defining "preceding calendar years" and "preceding calendar quarters", was incorporated in subsec. (b).

1976—Subsec. (a). Pub. L. 94–455 inserted "tentative" after "(1) a" and "(2) a" and substituted in par. (1) "section 2001(c)" for "this subsection" after "set forth in".

1970—Subsec. (a). Pub. L. 91–614, §102(a)(2)(A), substituted a computation of tax formula based on the current calendar quarter, preceding calendar quarters, and preceding calendar years for a formula based entirely on the current and preceding calendar years.

Subsec. (b). Pub. L. 91–614, §102(a)(2)(B), substituted definition of "calendar quarter" for definition of "calendar year".

Subsec. (c). Pub. L. 91–614, §102(a)(2)(B), substituted definition of "preceding calendar years and quarters" for definition of "preceding calendar years".

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title III, §302(b)(2), Dec. 17, 2010, 124 Stat. 3301, provided that the amendment by section 302(b)(2) is effective on and after Jan. 1, 2011.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–16, title V, §511(f)(3), June 7, 2001, 115 Stat. 71, provided that: "The amendments made by subsections (d) and (e) [amending this section and section 2511 of this title] shall apply to gifts made after December 31, 2009."

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable in the case of decedents dying, and gifts made, after Dec. 31, 1987, see section 10401(c) of Pub. L. 100–203, set out as a note under section 2001 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable with respect to gifts made after Dec. 31, 1981, see section 442(e) of Pub. L. 97–34, set out as a note under section 2501 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XX, §2001(d)(2), Oct. 4, 1976, 90 Stat. 1854, provided that: "The amendments made by subsections (b) and (c)(2) [enacting section 2505 of this title, amending this section and section 2504 of this title, and repealing section 2521 of this title] shall apply to gifts made after December 31, 1976."

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91–614, set out as a note under section 2501 of this title.

§2503. Taxable gifts

(a) General definition

The term "taxable gifts" means the total amount of gifts made during the calendar year, less the deductions provided in subchapter C (section 2522 and following).

(b) Exclusions from gifts

(1) In general

In the case of gifts (other than gifts of future interests in property) made to any person by the donor during the calendar year, the first $10,000 of such gifts to such person shall not, for purposes of subsection (a), be included in the total amount of gifts made during such year. Where there has been a transfer to any person of a present interest in property, the possibility that such interest may be diminished by the exercise of a power shall be disregarded in applying this subsection, if no part of such interest will at any time pass to any other person.

(2) Inflation adjustment

In the case of gifts made in a calendar year after 1998, the $10,000 amount contained in paragraph (1) shall be increased by an amount equal to—

(A) $10,000, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting "calendar year 1997" for "calendar year 1992" in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of $1,000, such amount shall be rounded to the next lowest multiple of $1,000.

(c) Transfer for the benefit of minor

No part of a gift to an individual who has not attained the age of 21 years on the date of such transfer shall be considered a gift of a future interest in property for purposes of subsection (b) if the property and the income therefrom—

(1) may be expended by, or for the benefit of, the donee before his attaining the age of 21 years, and

(2) will to the extent not so expended—

(A) pass to the donee on his attaining the age of 21 years, and

(B) in the event the donee dies before attaining the age of 21 years, be payable to the estate of the donee or as he may appoint under a general power of appointment as defined in section 2514(c).

[(d) Repealed. Pub. L. 97–34, title III, §311(h)(5), Aug. 13, 1981, 95 Stat. 282]

(e) Exclusion for certain transfers for educational expenses or medical expenses

(1) In general

Any qualified transfer shall not be treated as a transfer of property by gift for purposes of this chapter.

(2) Qualified transfer

For purposes of this subsection, the term "qualified transfer" means any amount paid on behalf of an individual—

(A) as tuition to an educational organization described in section 170(b)(1)(A)(ii) for the education or training of such individual, or

(B) to any person who provides medical care (as defined in section 213(d)) with respect to such individual as payment for such medical care.

(f) Waiver of certain pension rights

If any individual waives, before the death of a participant, any survivor benefit, or right to such benefit, under section 401(a)(11) or 417, such waiver shall not be treated as a transfer of property by gift for purposes of this chapter.

(g) Treatment of certain loans of artworks

(1) In general

For purposes of this subtitle, any loan of a qualified work of art shall not be treated as a transfer

(and the value of such qualified work of art shall be determined as if such loan had not been made) if—

(A) such loan is to an organization described in section 501(c)(3) and exempt from tax under section 501(c) (other than a private foundation), and

(B) the use of such work by such organization is related to the purpose or function constituting the basis for its exemption under section 501.

(2) Definitions

For purposes of this section—

(A) Qualified work of art

The term "qualified work of art" means any archaeological, historic, or creative tangible personal property.

(B) Private foundation

The term "private foundation" has the meaning given such term by section 509, except that such term shall not include any private operating foundation (as defined in section 4942(j)(3)).

(Aug. 16, 1954, ch. 736, 68A Stat. 404; Pub. L. 91–614, title I, §102(a)(3), Dec. 31, 1970, 84 Stat. 1839; Pub. L. 95–600, title VII, §702(j)(2), Nov. 6, 1978, 92 Stat. 2931; Pub. L. 97–34, title III, §311(h)(5), title IV, §§441(a), (b), 442(a)(3), Aug. 13, 1981, 95 Stat. 282, 319, 320; Pub. L. 99–514, title XVIII, §1898(h)(1)(B), Oct. 22, 1986, 100 Stat. 2957; Pub. L. 100–647, title I, §1018(s)(2)(A), (u)(52), Nov. 10, 1988, 102 Stat. 3586, 3593; Pub. L. 101–239, title VII, §7811(m)(1), Dec. 19, 1989, 103 Stat. 2412; Pub. L. 105–34, title V, §501(c), Aug. 5, 1997, 111 Stat. 846.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

AMENDMENTS

1997—Subsec. (b). Pub. L. 105–34 designated existing provisions as par. (1), inserted par. heading, realigned margins, and added par. (2).

1989—Subsecs. (f), (g). Pub. L. 101–239 redesignated subsec. (f), relating to treatment of certain loans of artworks, as (g).

1988—Subsec. (e)(2)(B). Pub. L. 100–647, §1018(u)(52), substituted "section 213(d)" for "section 213(e)".

Subsec. (f). Pub. L. 100–647, §1018(s)(2)(A), added subsec. (f) relating to treatment of certain loans of artworks.

1986—Subsec. (f). Pub. L. 99–514 added subsec. (f).

1981—Subsec. (a). Pub. L. 97–34, §442(a)(3)(A), substituted "the total amount of gifts made during the calendar year, less the deductions provided in subchapter C (section 2522 and following)" for ", in the case of gifts made after December 31, 1970, the total amount of gifts made during calendar quarter, less the deductions provided in subchapter C (sec. 2521 and following" and struck out provision that in the case of gifts made before Jan. 1, 1971, "taxable gifts" means the total amount of gifts made during the calendar year, less the deductions provided in subchapter C.

Subsec. (b). Pub. L. 97–34, §442(a)(3)(B), substituted provision that in the case of gifts, other than gifts of future interests in property, made to any person by the donor during the calendar year, the first $10,000 of such gifts to such person shall not, for purposes of subsec. (a), be included in the total amount of gifts made during such year for provision that in computing taxable gifts for the calendar quarter, in the case of gifts, other than gifts of future interests in property, made to any person by the donor during the calendar year 1971 and subsequent calendar years, $10,000 of such gifts to such person less the aggregate of the amounts of such gifts to such person during all preceding calendar quarters of the calendar year shall not, for purposes of subsec. (a), be included in the total amount of gifts made during such quarter.

Pub. L. 97–34, §441(a), substituted "$10,000" for "$3,000".

Subsec. (d). Pub. L. 97–34, §311(h)(5), repealed subsec. (d) which related to individual retirement accounts, etc., for spouse.

Subsec. (e). Pub. L. 97–34, §441(b), added subsec. (e).

1978—Subsec. (d). Pub. L. 95–600 added subsec. (d).

1970—Subsec. (a). Pub. L. 91–614, §102(a)(3)(A), divided definition of "taxable gifts" into gifts made after

Dec. 31, 1970, where taxable gifts are based on the total amount of gifts made during the calendar quarter, less the applicable deductions, and gifts made before Jan. 1, 1971, where taxable gifts are based on the total amount of gifts made during the calendar year, less the applicable deductions.

Subsec. (b). Pub. L. 91–614, §102(a)(3)(B), substituted provisions with regard to computing taxable gifts for the calendar quarter, in the case of gifts made to any persons by the donor during the calendar year 1971 and subsequent calendar years, $3,000 of such gifts to such person less the aggregate of the amounts of such gifts to such person during all preceding calendar quarters of the calendar year shall not be included in the total amount of gifts made during such quarter for provisions requiring in the case of gifts made to any person by the donor during the calendar year 1955 and subsequent calendar years, the first $3,000 of such gifts to such person shall not be included in the total amount of gifts made during such year.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to estates of decedents dying, and gifts made, after Dec. 31, 1997, see section 501(f) of Pub. L. 105–34, set out as a note under section 2001 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1018(s)(2)(B), Nov. 10, 1988, 102 Stat. 3587, provided that: "The amendment made by subparagraph (A) [amending this section] shall apply to loans after July 31, 1969."

Amendment by section 1018(u)(52) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective as if included in the provision of the Retirement Equity Act of 1984, Pub. L. 98–397, to which such amendment relates, except as otherwise provided, see section 1898(j) of Pub. L. 99–514, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 311(h)(5) of Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 311(i)(1) of Pub. L. 97–34, set out as a note under section 219 of this title.

Pub. L. 97–34, title IV, §441(c), Aug. 13, 1981, 95 Stat. 319, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to transfers after December 31, 1981.

"(2) TRANSITIONAL RULE.—If—

"(A) an instrument executed before the date which is 30 days after the date of the enactment of this Act [Aug. 13, 1981] provides for a power of appointment which may be exercised during any period after December 31, 1981,

"(B) such power of appointment is expressly defined in terms of, or by reference to, the amount of the gift tax exclusion under section 2503(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (or the corresponding provision of prior law),

"(C) the instrument described in subparagraph (A) has not been amended on or after the date which is 30 days after the date of the enactment of this Act [Aug. 13, 1981], and

"(D) the State has not enacted a statute applicable to such gift under which such power of appointment is to be construed as being defined in terms of, or by reference to, the amount of the exclusion under such section 2503(b) after its amendment by subsection (a),

then the amendment made by subsection (a) shall not apply to such gift."

Amendment by section 442(a)(3) of Pub. L. 97–34 applicable with respect to gifts made after Dec. 31, 1981, see section 442(e) of Pub. L. 97–34, set out as a note under section 2501 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title VII, §702(j)(3)(B), Nov. 6, 1978, 92 Stat. 2932, provided that: "The amendment made by paragraph (2) [amending this section] shall apply to transfers made after December 31, 1976."

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91–614, set out as a note under section 2501 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§2504. Taxable gifts for preceding calendar periods

(a) In general

In computing taxable gifts for preceding calendar periods for purposes of computing the tax for any calendar year—

(1) there shall be treated as gifts such transfers as were considered to be gifts under the gift tax laws applicable to the calendar period in which the transfers were made,

(2) there shall be allowed such deductions as were provided for under such laws, and

(3) the specific exemption in the amount (if any) allowable under section 2521 (as in effect before its repeal by the Tax Reform Act of 1976) shall be applied in all computations in respect of preceding calendar periods ending before January 1, 1977, for purposes of computing the tax for any calendar year.

(b) Exclusions from gifts for preceding calendar periods

In the case of gifts made to any person by the donor during preceding calendar periods, the amount excluded, if any, by the provisions of gift tax laws applicable to the periods in which the gifts were made shall not, for purposes of subsection (a), be included in the total amount of the gifts made during such preceding calendar periods.

(c) Valuation of gifts

If the time has expired under section 6501 within which a tax may be assessed under this chapter 12 (or under corresponding provisions of prior laws) on—

(1) the transfer of property by gift made during a preceding calendar period (as defined in section 2502(b)); or

(2) an increase in taxable gifts required under section 2701(d),

the value thereof shall, for purposes of computing the tax under this chapter, be the value as finally determined (within the meaning of section 2001(f)(2)) for purposes of this chapter.

(d) Net gifts

The term "net gifts" as used in the corresponding provisions of prior laws shall be read as "taxable gifts" for purposes of this chapter.

(Aug. 16, 1954, ch. 736, 68A Stat. 405; Pub. L. 91–614, title I, §102(a)(4)(A), Dec. 31, 1970, 84 Stat. 1839; Pub. L. 94–455, title XX, §2001(c)(2)(A), Oct. 4, 1976, 90 Stat. 1853; Pub. L. 97–34, title IV, §442(a)(4)(A)–(D), Aug. 13, 1981, 95 Stat. 321; Pub. L. 105–34, title V, §506(d), Aug. 5, 1997, 111 Stat. 856; Pub. L. 105–206, title VI, §6007(e)(2)(B)[(C)], July 22, 1998, 112 Stat. 810.)

REFERENCES IN TEXT

The Tax Reform Act of 1976, referred to in subsec. (a)(3), is Pub. L. 94–455, Oct. 4, 1976, 90 Stat. 1520, as amended. Section 2521 of this title was repealed by section 2001(b)(3) of Pub. L. 94–455. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1998—Subsec. (c). Pub. L. 105–206 substituted "gifts" for "certain gifts for preceding calendar periods" in heading and amended text generally. Prior to amendment, text read as follows: "If the time has expired within which a tax may be assessed under this chapter or under corresponding provisions of prior laws on the transfer

of property by gift made during a preceding calendar period, as defined in section 2502(b), the value of such gift made in such preceding calendar period shall, for purposes of computing the tax under this chapter for any calendar year, be the value of such gift which was used in computing the tax for the last preceding calendar period for which a tax under this chapter or under corresponding provisions of prior laws was assessed or paid."

1997—Subsec. (c). Pub. L. 105–34 struck out ", and if a tax under this chapter or under corresponding provisions of prior laws has been assessed or paid for such preceding calendar period" after "as defined in section 2502(b)".

1981—Pub. L. 97–34, §442(a)(4)(D), substituted "calendar periods" for "years and quarters" in section catchline.

Subsec. (a). Pub. L. 97–34, §442(a)(4)(A), substituted in introductory text "preceding calendar periods" and "calendar year" for "preceding calendar years or calendar quarters" and "calendar quarter", incorporated existing text in provisions designated pars. (1) to (3), and substituted in par. (1) "calendar period" for "years or calendar quarters" and in par. (3) "preceding calendar periods" and "calendar year" for "calendar years or calendar quarters" and "calendar quarter".

Subsec. (b). Pub. L. 97–34, §442(a)(4)(B), substituted in heading "calendar periods" for "years and quarters" and in text "preceding calendar periods" for "preceding calendar years and calendar quarters", "the periods" for "the years and calendar quarters", and "such preceding calendar periods" for "such years and calendar quarters".

Subsec. (c). Pub. L. 97–34, §442(a)(4)(C), substituted in heading "calendar periods" for "calendar years and quarters" and in text "preceding calendar period" for "preceding calendar year or calendar quarter" in four places, "any calendar year" for "any calendar quarter", and "section 2502(b)" for "section 2502(c)".

1976—Subsec. (a). Pub. L. 94–455 inserted "(as in effect before its repeal by the Tax Reform Act of 1976)" after "section 2521" and "ending before January 1, 1977" after "years or calendar quarters" and substituted "of" for "to previous" after "computations in respect".

1970—Pub. L. 91–614 substituted "Taxable gifts for preceding years and quarters" for "Taxable gifts for preceding years" in section catchline.

Subsec. (a). Pub. L. 91–614 substituted "In computing taxable gifts for the preceding calendar years or calendar quarters for the purpose of computing the tax for any calendar quarter," for "In computing taxable gifts for the calendar year 1954 and preceding calendar years for the purpose of computing the tax for the calendar year 1955 or any calendar year thereafter," provided that the laws applicable in the calendar quarters as well as the years in which the transfers in question were made shall apply, and substituted "previous calendar years or calendar quarters for the purpose of computing the tax for any calendar year or calendar quarter" for "the calendar year 1954 and previous calendar years for the purpose of computing the tax for the calendar year 1955 or any calendar year thereafter".

Subsec. (b). Pub. L. 91–614 inserted reference to calendar quarters in heading, substituted "during preceding calendar years and calendar quarters," for "during the calendar year 1954 and preceding calendar years," made reference to the amount excluded by gift tax laws applicable to the calendar quarters as well as years in which the gifts were made, and substituted "during such years and calendar quarters" for "during such year".

Subsec. (c). Pub. L. 91–614 inserted reference to calendar quarters in heading, inserted "or calendar quarter" after "calendar year" in four places, and substituted "for any calendar quarter," for "for the calendar year 1955 and subsequent calendar years,".

Subsec. (d). Pub. L. 91–614 struck out "For years before the calendar year 1955" from explanation of term "net gifts" as used in corresponding provisions of prior laws.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to gifts made after Aug. 5, 1997, see section 506(e)(1) of Pub. L. 105–34, as amended, set out as a note under section 2001 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable with respect to gifts made after Dec. 31, 1981, see section 442(e) of Pub. L. 97–34, set out as a note under section 2501 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91–614, set out as a note under section 2501 of this title.

§2505. Unified credit against gift tax

(a) General rule

In the case of a citizen or resident of the United States, there shall be allowed as a credit against the tax imposed by section 2501 for each calendar year an amount equal to—

(1) the applicable credit amount in effect under section 2010(c) which would apply if the donor died as of the end of the calendar year, reduced by

(2) the sum of the amounts allowable as a credit to the individual under this section for all preceding calendar periods.

For purposes of applying paragraph (2) for any calendar year, the rates of tax in effect under section 2502(a)(2) for such calendar year shall, in lieu of the rates of tax in effect for preceding calendar periods, be used in determining the amounts allowable as a credit under this section for all preceding calendar periods.

(b) Adjustment to credit for certain gifts made before 1977

The amount allowable under subsection (a) shall be reduced by an amount equal to 20 percent of the aggregate amount allowed as a specific exemption under section 2521 (as in effect before its repeal by the Tax Reform Act of 1976) with respect to gifts made by the individual after September 8, 1976.

(c) Limitation based on amount of tax

The amount of the credit allowed under subsection (a) for any calendar year shall not exceed the amount of the tax imposed by section 2501 for such calendar year.

(Added Pub. L. 94–455, title XX, §2001(b)(2), Oct. 4, 1976, 90 Stat. 1849; amended Pub. L. 97–34, title IV, §§401(b), 442(a)(5), Aug. 13, 1981, 95 Stat. 299, 321; Pub. L. 101–508, title XI, §11801(a)(40), (c)(19)(B), Nov. 5, 1990, 104 Stat. 1388–521, 1388–528; Pub. L. 105–34, title V, §501(a)(2), Aug. 5, 1997, 111 Stat. 845; Pub. L. 107–16, title V, §521(b), June 7, 2001, 115 Stat. 71; Pub. L. 111–312, title III, §§301(b), 302(b)(1)(A), (d)(2), 303(b)(1), Dec. 17, 2010, 124 Stat. 3300–3303.)

REFERENCES IN TEXT

The Tax Reform Act of 1976, referred to in subsec. (b), is Pub. L. 94–455, Oct. 4, 1976, 90 Stat. 1520, as amended. Section 2521 of this title was repealed by section 2001(b)(3) of Pub. L. 94–455. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–312, §302(d)(2), inserted concluding provisions.

Subsec. (a)(1). Pub. L. 111–312, §303(b)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "the applicable credit amount in effect under section 2010(c) for such calendar year, reduced by".

Pub. L. 111–312, §302(b)(1)(A), struck out "(determined as if the applicable exclusion amount were $1,000,000)" after "calendar year".

Pub. L. 111–312, §301(b), amended subsec. (a)(1) to read as if amendment by Pub. L. 107–16, §521(b)(2), had never been enacted. See 2001 Amendment note below.

2001—Subsec. (a)(1). Pub. L. 107–16, §521(b)(2), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "the applicable credit amount in effect under section 2010(c) for such calendar year (determined as if the applicable exclusion amount were $1,000,000), reduced by".

Pub. L. 107–16, §521(b)(1), inserted "(determined as if the applicable exclusion amount were $1,000,000)" after "calendar year".

1997—Subsec. (a)(1). Pub. L. 105–34 substituted "the applicable credit amount in effect under section 2010(c) for such calendar year" for "$192,800".

1990—Subsecs. (b) to (d). Pub. L. 101–508 redesignated subsecs. (c) and (d) as subsecs. (b) and (c), respectively, and struck out former subsec. (b) which provided for a phase-in of the unified credit against gift tax.

1981—Subsec. (a). Pub. L. 97–34, §442(a)(5)(A), substituted in provision preceding par. (1) "year" for "quarter", and "periods" for "quarters" in par. (2).

Subsec. (a)(1). Pub. L. 97–34, §401(b)(1), substituted "$192,800" for "$47,000".

Subsec. (b). Pub. L. 97–34, §401(b)(2), struck out from heading "$47,000" before "credit", substituted subsec. (a)(1) substitutions for "$192,800" of amounts of "$62,800", "$79,300", "$96,300", "$121,800", and "$155,800" in the case of gifts made in 1982, 1983, 1984, 1985, and 1986, respectively, for subsec. (a)(1) substitutions for "$47,000" of amounts of "$6,000", "$30,000", "$34,000", "$38,000", and "$42,500" in the case of gifts made after Dec. 31, 1976, and before July 1, 1977, after June 30, 1977, and before Jan. 1, 1978; after Dec. 31, 1977, and before Jan. 1, 1979, after Dec. 31, 1978, and before Jan. 1, 1980, and after Dec. 31, 1979, and before Jan. 1, 1981, respectively.

Subsec. (d). Pub. L. 97–34, §442(a)(5)(B), substituted "year" for "quarter" in two places.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title III, §301(b), Dec. 17, 2010, 124 Stat. 3300, provided that the amendment by section 301(b) is effective on and after Jan. 1, 2011.

Pub. L. 111–312, title III, §302(b)(1)(B), Dec. 17, 2010, 124 Stat. 3301, provided that: "The amendment made by this paragraph [amending this section] shall apply to gifts made after December 31, 2010."

Amendment by section 302(d)(2) of Pub. L. 111–312 applicable to estates of decedents dying, generation-skipping transfers, and gifts made, after Dec. 31, 2009, see section 302(f) of Pub. L. 111–312, set out as a note under section 2001 of this title.

Amendment by section 303(b)(1) of Pub. L. 111–312 applicable to estates of decedents dying and gifts made after Dec. 31, 2010, see section 303(c)(1) of Pub. L. 111–312, set out as a note under section 2010 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 521(b)(1) of Pub. L. 107–16 applicable to estates of decedents dying, and gifts made, after Dec. 31, 2001, and amendment by section 521(b)(2) of Pub. L. 107–16 applicable to gifts made after Dec. 31, 2009, see section 521(e)(1), (2) of Pub. L. 107–16, set out as a note under section 2010 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to estates of decedents dying, and gifts made, after Dec. 31, 1997, see section 501(f) of Pub. L. 105–34, set out as a note under section 2001 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title IV, §401(c)(2), Aug. 13, 1981, 95 Stat. 300, provided that: "The amendments made by subsection (b) [amending this section] shall apply to gifts made after such date [Dec. 31, 1981]."

Amendment by section 442(a)(5) of Pub. L. 97–34 applicable with respect to gifts made after Dec. 31, 1981, see section 442(e) of Pub. L. 97–34, set out as a note under section 2501 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

Subchapter B—Transfers

Sec.

2511. Transfers in general.

2512. Valuation of gifts.

2513. Gift by husband or wife to third party.

2514. Powers of appointment.

2515. Treatment of generation-skipping transfer tax.

[2515A. Repealed.]
2516. Certain property settlements.
[2517. Repealed.]
2518. Disclaimers.
2519. Dispositions of certain life estates.

AMENDMENTS

1986—Pub. L. 99–514, title XIV, §1432(d)(2), title XVIII, §1852(e)(2)(B), Oct. 22, 1986, 100 Stat. 2730, 2868, added item 2515 and struck out item 2517 "Certain annuities under qualified plans".

1981—Pub. L. 97–34, title IV, §403(c)(3)(C), (d)(3)(B)(ii), Aug. 13, 1981, 95 Stat. 302, 304, as amended Pub. L. 97–448, title I, §104(a)(3)(B), Jan. 12, 1983, 96 Stat. 2380, struck out items 2515 "Tenancies by the entirety in real property" and 2515A "Tenancies by the entirety in personal property" and added item 2519.

1978—Pub. L. 95–600, title VII, §702(k)(1)(C), Nov. 6, 1978, 92 Stat. 2932, substituted in item 2515 "Tenancies by the entirety in real property" for "Tenancies by the entirety" and added item 2515A.

1976—Pub. L. 94–455, title XX, §2009(b)(3)(A), Oct. 4, 1976, 90 Stat. 1894, added item 2518.

1958—Pub. L. 85–866, title I, §68(b), Sept. 2, 1958, 72 Stat. 1659, added item 2517.

§2511. Transfers in general

(a) Scope

Subject to the limitations contained in this chapter, the tax imposed by section 2501 shall apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible; but in the case of a nonresident not a citizen of the United States, shall apply to a transfer only if the property is situated within the United States.

(b) Intangible property

For purposes of this chapter, in the case of a nonresident not a citizen of the United States who is excepted from the application of section 2501(a)(2)—

(1) shares of stock issued by a domestic corporation, and

(2) debt obligations of—

(A) a United States person, or

(B) the United States, a State or any political subdivision thereof, or the District of Columbia,

which are owned and held by such nonresident shall be deemed to be property situated within the United States.

(Aug. 16, 1954, ch. 736, 68A Stat. 406; Pub. L. 89–809, title I, §109(b), Nov. 13, 1966, 80 Stat. 1575; Pub. L. 107–16, title V, §511(e), June 7, 2001, 115 Stat. 71; Pub. L. 107–147, title IV, §411(g)(1), Mar. 9, 2002, 116 Stat. 46; Pub. L. 111–312, title III, §302(e), Dec. 17, 2010, 124 Stat. 3302.)

AMENDMENTS

2010—Subsec. (c). Pub. L. 111–312 struck out subsec. (c). Text read as follows: "Notwithstanding any other provision of this section and except as provided in regulations, a transfer in trust shall be treated as a transfer of property by gift, unless the trust is treated as wholly owned by the donor or the donor's spouse under subpart E of part I of subchapter J of chapter 1."

2002—Subsec. (c). Pub. L. 107–147 substituted "transfer of property by gift," for "taxable gift under section 2503,".

2001—Subsec. (c). Pub. L. 107–16 added subsec. (c).

1966—Subsec. (b). Pub. L. 89–809 inserted reference to nonresidents who are excepted from the application of section 2501(a)(2) and expanded section to include debt obligations of United States persons or the United States, a State or any political subdivision thereof, or the District of Columbia.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–312 applicable to estates of decedents dying, generation-skipping transfers, and gifts made, after Dec. 31, 2009, see section 302(f) of Pub. L. 111–312, set out as a note under section 2001 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to gifts made after Dec. 31, 2009, see section 511(f)(3) of Pub. L. 107–16, set out as a note under section 2502 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to calendar year 1967 and all calendar years thereafter, see section 109(c) of Pub. L. 89–809, set out as a note under section 2501 of this title.

§2512. Valuation of gifts

(a) If the gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift.

(b) Where property is transferred for less than an adequate and full consideration in money or money's worth, then the amount by which the value of the property exceeded the value of the consideration shall be deemed a gift, and shall be included in computing the amount of gifts made during the calendar year.

(c) Cross reference

For individual's right to be furnished on request a statement regarding any valuation made by the Secretary of a gift by that individual, see section 7517.

(Aug. 16, 1954, ch. 736, 68A Stat. 406; Pub. L. 91–614, title I, §102(b)(1), Dec. 31, 1970, 84 Stat. 1840; Pub. L. 94–455, title XX, §2008(a)(2)(B), Oct. 4, 1976, 90 Stat. 1891; Pub. L. 97–34, title IV, §442(b)(1), Aug. 13, 1981, 95 Stat. 322.)

AMENDMENTS

1981—Subsec. (b). Pub. L. 97–34 substituted "calendar year" for "calendar quarters".
1976—Subsec. (c). Pub. L. 94–455 added subsec. (c).
1970—Subsec. (b). Pub. L. 91–614 substituted "calendar quarter" for "calendar year".

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable with respect to gifts made after Dec. 31, 1981, see section 442(e) of Pub. L. 97–34, set out as a note under section 2501 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91–614, set out as a note under section 2501 of this title.

§2513. Gift by husband or wife to third party

(a) Considered as made one-half by each

(1) In general

A gift made by one spouse to any person other than his spouse shall, for the purposes of this chapter, be considered as made one-half by him and one-half by his spouse, but only if at the time of the gift each spouse is a citizen or resident of the United States. This paragraph shall not apply with respect to a gift by a spouse of an interest in property if he creates in his spouse a general power of appointment, as defined in section 2514(c), over such interest. For purposes of this section, an individual shall be considered as the spouse of another individual only if he is married to such individual at the time of the gift and does not remarry during the remainder of the calendar year.

(2) Consent of both spouses

Paragraph (1) shall apply only if both spouses have signified (under the regulations provided for in subsection (b)) their consent to the application of paragraph (1) in the case of all such gifts made during the calendar year by either while married to the other.

(b) Manner and time of signifying consent

(1) Manner

A consent under this section shall be signified in such manner as is provided under regulations prescribed by the Secretary.

(2) Time

Such consent may be so signified at any time after the close of the calendar year in which the gift was made, subject to the following limitations—

(A) The consent may not be signified after the 15th day of April following the close of such year, unless before such 15th day no return has been filed for such year by either spouse, in which case the consent may not be signified after a return for such year is filed by either spouse.

(B) The consent may not be signified after a notice of deficiency with respect to the tax for such year has been sent to either spouse in accordance with section 6212(a).

(c) Revocation of consent

Revocation of a consent previously signified shall be made in such manner as in provided under regulations prescribed by the Secretary, but the right to revoke a consent previously signified with respect to a calendar year—

(1) shall not exist after the 15th day of April following the close of such year if the consent was signified on or before such 15th day; and

(2) shall not exist if the consent was not signified until after such 15th day.

(d) Joint and several liability for tax

If the consent required by subsection (a)(2) is signified with respect to a gift made in any calendar year, the liability with respect to the entire tax imposed by this chapter of each spouse for such year shall be joint and several.

(Aug. 16, 1954, ch. 736, 68A Stat. 406; Pub. L. 91–614, title I, §102(b)(2), Dec. 31, 1970, 84 Stat. 1840; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–34, title IV, §442(b)(2), Aug. 13, 1981, 95 Stat. 322.)

AMENDMENTS

1981—Subsec. (a)(1), (2). Pub. L. 97–34, §442(b)(2)(A), substituted "calendar year" for "calendar quarter".

Subsec. (b)(2). Pub. L. 97–34, §442(b)(2)(B)–(D), in introductory text, substituted "calendar year" for "calendar quarter", in subpar. (A), substituted "The consent" for "the consent", "15th day of April following the close of such year" for "15th day of the second month following the close of such calendar quarter", and "such year" for "such calendar quarter" in two other places, and in subpar. (B) substituted "The consent" and "such year" for "the consent" and "such calendar quarter".

Subsec. (c). Pub. L. 97–34, §442(b)(2)(E), in provision preceding par. (1) substituted "calendar year" for "calendar quarter" and in par. (1) "15th day of April following the close of such year" for "15th day of the second month following the close of such quarter".

Subsec. (d). Pub. L. 97–34, §442(b)(2)(F), substituted "any calendar year" and "such year" for "any calendar quarter" and "such calendar quarter".

1976—Subsecs. (b)(1), (c). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

1970—Subsecs. (a), (b)(2). Pub. L. 91–614, §102(b)(2)(A), substituted "calendar quarter" for "calendar year".

Subsec. (b)(2)(A). Pub. L. 91–614, §102(b)(2)(B), substituted "the 15th day of the second month" for "the 15th day of April" and substituted "such calendar quarter" for "such year".

Subsec. (b)(2)(B). Pub. L. 91–614, §102(b)(2)(C), substituted "such calendar quarter" for "such year".

Subsec. (c). Pub. L. 91–614, §102(b)(2)(A), substituted "calendar quarter" for "calendar year".

Subsec. (c)(1). Pub. L. 91–614, §102(b)(2)(D), substituted "15th day of the second month following the close of such calendar quarter" for "15th day of April following the close of such year".

Subsec. (d). Pub. L. 91–614, §102(b)(2)(A), (E), substituted "calendar quarter" for "calendar year" and "such calendar quarter" for "such year".

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable with respect to gifts made after Dec. 31, 1981, see section 442(e) of Pub. L. 97–34, set out as a note under section 2501 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91–614, set out as a note under section 2501 of this title.

§2514. Powers of appointment

(a) Powers created on or before October 21, 1942

An exercise of a general power of appointment created on or before October 21, 1942, shall be deemed a transfer of property by the individual possessing such power; but the failure to exercise such a power or the complete release of such a power shall not be deemed an exercise thereof. If a general power of appointment created on or before October 21, 1942, has been partially released so that it is no longer a general power of appointment, the subsequent exercise of such power shall not be deemed to be the exercise of a general power of appointment if—

(1) such partial release occurred before November 1, 1951, or

(2) the donee of such power was under a legal disability to release such power on October 21, 1942, and such partial release occurred not later than six months after the termination of such legal disability.

(b) Powers created after October 21, 1942

The exercise or release of a general power of appointment created after October 21, 1942, shall be deemed a transfer of property by the individual possessing such power.

(c) Definition of general power of appointment

For purposes of this section, the term "general power of appointment" means a power which is exercisable in favor of the individual possessing the power (hereafter in this subsection referred to as the "possessor"), his estate, his creditors, or the creditors of his estate; except that—

(1) A power to consume, invade, or appropriate property for the benefit of the possessor which is limited by an ascertainable standard relating to the health, education, support, or maintenance of the possessor shall not be deemed a general power of appointment.

(2) A power of appointment created on or before October 21, 1942, which is exercisable by the possessor only in conjunction with another person shall not be deemed a general power of appointment.

(3) In the case of a power of appointment created after October 21, 1942, which is exercisable by the possessor only in conjunction with another person—

(A) if the power is not exercisable by the possessor except in conjunction with the creator of the power—such power shall not be deemed a general power of appointment;

(B) if the power is not exercisable by the possessor except in conjunction with a person having a substantial interest, in the property subject to the power, which is adverse to exercise of the power in favor of the possessor—such power shall not be deemed a general power of appointment. For the purposes of this subparagraph a person who, after the death of the possessor, may be possessed of a power of appointment (with respect to the property subject to the possessor's power) which he may exercise in his own favor shall be deemed as having an interest in the property and such interest shall be deemed adverse to such exercise of the possessor's power;

(C) if (after the application of subparagraphs (A) and (B)) the power is a general power of appointment and is exercisable in favor of such other person—such power shall be deemed a general power of appointment only in respect of a fractional part of the property subject to such

power, such part to be determined by dividing the value of such property by the number of such persons (including the possessor) in favor of whom such power is exercisable.

For purposes of subparagraphs (B) and (C), a power shall be deemed to be exercisable in favor of a person if it is exercisable in favor of such person, his estate, his creditors, or the creditors of his estate.

(d) Creation of another power in certain cases

If a power of appointment created after October 21, 1942, is exercised by creating another power of appointment which, under the applicable local law, can be validly exercised so as to postpone the vesting of any estate or interest in the property which was subject to the first power, or suspend the absolute ownership or power of alienation of such property, for a period ascertainable without regard to the date of the creation of the first power, such exercise of the first power shall, to the extent of the property subject to the second power, be deemed a transfer of property by the individual possessing such power.

(e) Lapse of power

The lapse of a power of appointment created after October 21, 1942, during the life of the individual possessing the power shall be considered a release of such power. The rule of the preceding sentence shall apply with respect to the lapse of powers during any calendar year only to the extent that the property which could have been appointed by exercise of such lapsed powers exceeds in value the greater of the following amounts:

(1) $5,000, or

(2) 5 percent of the aggregate value of the assets out of which, or the proceeds of which, the exercise of the lapsed powers could be satisfied.

(f) Date of creation of power

For purposes of this section a power of appointment created by a will executed on or before October 21, 1942, shall be considered a power created on or before such date if the person executing such will dies before July 1, 1949, without having republished such will, by codicil or otherwise, after October 21, 1942.

(Aug. 16, 1954, ch. 736, 68A Stat. 407; Pub. L. 94–455, title XX, §2009(b)(4)(F), Oct. 4, 1976, 90 Stat. 1894.)

AMENDMENTS

1976—Subsec. (b). Pub. L. 94–455 struck out "A disclaimer or renunciation of such a power of appointment shall not be deemed a release of such power."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable to transfers creating an interest in person disclaiming made after Dec. 31, 1976, see section 2009(e)(2) of Pub. L. 94–455, set out as a note under section 2518 of this title.

§2515. Treatment of generation-skipping transfer tax

In the case of any taxable gift which is a direct skip (within the meaning of chapter 13), the amount of such gift shall be increased by the amount of any tax imposed on the transferor under chapter 13 with respect to such gift.

(Added Pub. L. 99–514, title XIV, §1432(d)(1), Oct. 22, 1986, 100 Stat. 2730.)

PRIOR PROVISIONS

A prior section, acts Aug. 16, 1954, ch. 736, 68A Stat. 409; Dec. 31, 1970, Pub. L. 91–614, title I, §102(b)(3), 84 Stat. 1841; Oct. 4, 1976, Pub. L. 94–455, title XX, §2002(c)(2), 90 Stat. 1855; Nov. 6, 1978, Pub. L. 95–600, title VII, §702(k)(1)(B), 92 Stat. 2932, related to tenancies by the entirety in real property, prior to repeal applicable to gifts made after Dec. 31, 1981, by Pub. L. 97–34, title IV, §403(c)(3)(B), (e)(2), Aug. 13, 1981, 95 Stat. 302, 305.

EFFECTIVE DATE

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99–514, set out as a note under section 2601 of this title.

[§2515A. Repealed. Pub. L. 97–34, title IV, §403(c)(3)(B), Aug. 13, 1981, 95 Stat. 302]

Section, added Pub. L. 95–600, title VII, §702(k)(1)(A), Nov. 6, 1978, 92 Stat. 2932, related to tenancies by the entirety in personal property.

EFFECTIVE DATE OF REPEAL

Repeal applicable to gifts made after Dec. 31, 1981, see section 403(e)(2) of Pub. L. 97–34, set out as an Effective Date of 1981 Amendment note under section 2056 of this title.

§2516. Certain property settlements

Where a husband and wife enter into a written agreement relative to their marital and property rights and divorce occurs within the 3-year period beginning on the date 1 year before such agreement is entered into (whether or not such agreement is approved by the divorce decree), any transfers of property or interests in property made pursuant to such agreement—

(1) to either spouse in settlement of his or her marital or property rights, or

(2) to provide a reasonable allowance for the support of issue of the marriage during minority,

shall be deemed to be transfers made for a full and adequate consideration in money or money's worth.

(Aug. 16, 1954, ch. 736, 68A Stat. 409; Pub. L. 98–369, div. A, title IV, §425(b), July 18, 1984, 98 Stat. 804.)

AMENDMENTS

1984—Pub. L. 98–369 substituted in introductory text "within the 3-year period beginning on the date 1 year before such agreement is entered into" for "within 2 years thereafter".

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title IV, §425(c)(2), July 18, 1984, 98 Stat. 804, provided that: "The amendment made by subsection (b) [amending this section] shall apply to transfers after the date of the enactment of this Act [July 18, 1984]."

[§2517. Repealed. Pub. L. 99–514, title XVIII, §1852(e)(2)(A), Oct. 22, 1986, 100 Stat. 2868]

Section, added and amended Pub. L. 85–866, title I, §§23(f), 68(a), Sept. 2, 1958, 72 Stat. 1623, 1659; Pub. L. 87–792, §7(j), Oct. 10, 1962, 76 Stat. 830; Mar. 8, 1966, Pub. L. 89–365, §2(b), 80 Stat. 33; Dec. 30, 1969, Pub. L. 91–172, title I, §101(j)(24), 83 Stat. 528; Pub. L. 94–455, title XX, §2009(c) (4), (5), Oct. 4, 1976, 90 Stat. 1895, 1896; Pub. L. 97–34, title III, §311(d)(2), Aug. 13, 1981, 95 Stat. 280; Pub. L. 98–369, div. A, title IV, §491(d)(35), July 18, 1984, 98 Stat. 851, related to the transfers of certain annuities under qualified plans.

EFFECTIVE DATE OF REPEAL

Repeal applicable to transfers after Oct. 22, 1986, see section 1852(e)(2)(E) of Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note under section 406 of this title.

§2518. Disclaimers

(a) General rule

For purposes of this subtitle, if a person makes a qualified disclaimer with respect to any interest in property, this subtitle shall apply with respect to such interest as if the interest had never been transferred to such person.

(b) Qualified disclaimer defined

For purposes of subsection (a), the term "qualified disclaimer" means an irrevocable and unqualified refusal by a person to accept an interest in property but only if—

(1) such refusal is in writing,

(2) such writing is received by the transferor of the interest, his legal representative, or the holder of the legal title to the property to which the interest relates not later than the date which is 9 months after the later of—

(A) the day on which the transfer creating the interest in such person is made, or

(B) the day on which such person attains age 21,

(3) such person has not accepted the interest or any of its benefits, and

(4) as a result of such refusal, the interest passes without any direction on the part of the person making the disclaimer and passes either—

(A) to the spouse of the decedent, or

(B) to a person other than the person making the disclaimer.

(c) Other rules

For purposes of subsection (a)—

(1) Disclaimer of undivided portion of interest

A disclaimer with respect to an undivided portion of an interest which meets the requirements of the preceding sentence shall be treated as a qualified disclaimer of such portion of the interest.

(2) Powers

A power with respect to property shall be treated as an interest in such property.

(3) Certain transfers treated as disclaimers

A written transfer of the transferor's entire interest in the property—

(A) which meets requirements similar to the requirements of paragraphs (2) and (3) of subsection (b), and

(B) which is to a person or persons who would have received the property had the transferor made a qualified disclaimer (within the meaning of subsection (b)),

shall be treated as a qualified disclaimer.

(Added Pub. L. 94–455, title XX, §2009(b)(1), Oct. 4, 1976, 90 Stat. 1893; amended Pub. L. 95–600, title VII, §702(m)(1), Nov. 6, 1978, 92 Stat. 2935; Pub. L. 97–34, title IV, §426(a), Aug. 13, 1981, 95 Stat. 318; Pub. L. 97–448, title I, §104(e), Jan. 12, 1983, 96 Stat. 2384.)

AMENDMENTS

1983—Subsec. (c)(3). Pub. L. 97–448 substituted "A written transfer" for "For purposes of subsection (a), a written transfer".

1981—Subsec. (c)(3). Pub. L. 97–34 added par. (3).

1978—Subsec. (b)(4). Pub. L. 95–600 inserted provision relating to spouse of decedent.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title IV, §426(b), Aug. 13, 1981, 95 Stat. 318, provided that: "The amendment made by

subsection (a) [amending this section] shall apply to transfers creating an interest in the person disclaiming made after December 31, 1981."

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title VII, §702(m)(2), Nov. 6, 1978, 92 Stat. 2935, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to transfers creating an interest in the person disclaiming made after December 31, 1976."

EFFECTIVE DATE

Pub. L. 94–455, title XX, §2009(e)(2), Oct. 4, 1976, 90 Stat. 1896, provided that: "The amendments made by subsection (b) [enacting this section and section 2046 of this title and amending sections 2041, 2055, 2056, and 2514 of this title] shall apply with respect to transfers creating an interest in the person disclaiming made after December 31, 1976."

§2519. Dispositions of certain life estates

(a) General rule

For purposes of this chapter and chapter 11, any disposition of all or part of a qualifying income interest for life in any property to which this section applies shall be treated as a transfer of all interests in such property other than the qualifying income interest.

(b) Property to which this subsection applies

This section applies to any property if a deduction was allowed with respect to the transfer of such property to the donor—

(1) under section 2056 by reason of subsection (b)(7) thereof, or

(2) under section 2523 by reason of subsection (f) thereof.

(c) Cross reference

For right of recovery for gift tax in the case of property treated as transferred under this section, see section 2207A(b).

(Added Pub. L. 97–34, title IV, §403(d)(3)(B)(i), Aug. 13, 1981, 95 Stat. 304; amended Pub. L. 97–448, title I, §104(a)(3), (7), Jan. 12, 1983, 96 Stat. 2380, 2381.)

AMENDMENTS

1983—Pub. L. 97–448, §104(a)(3)(B), amended directory language of Pub. L. 97–34, §403(d)(3)(B)(i), to clarify that this section be inserted at end of subchapter B of chapter 12, rather than at end of subchapter B of chapter 11, and did not involve any change in text.

Subsec. (a). Pub. L. 97–448, §104(a)(3)(A), substituted "For purposes of this chapter and chapter 11, any disposition" for "Any disposition" and "treated as a transfer of all interests in such property other than the qualifying income interest" for "treated as a transfer of such property".

Subsec. (c). Pub. L. 97–448, §104(a)(7), added subsec. (c).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to gifts made after Dec. 31, 1981, see section 403(e)(2) of Pub. L. 97–34, set out as an Effective Date of 1981 Amendment note under section 2056 of this title.

Subchapter C—Deductions

Sec.

[2521. Repealed.]

2522. Charitable and similar gifts.
2523. Gift to spouse.
2524. Extent of deductions.

AMENDMENTS

1976—Pub. L. 94–455, title XX, §2001(c)(2)(B)(ii), Oct. 4, 1976, 90 Stat. 1853, struck out item 2521 "Specific exemption".

[§2521. Repealed. Pub. L. 94–455, title XX, §2001(b)(3), Oct. 4, 1976, 90 Stat. 1849]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 410, allowed a deduction, in the case of a citizen or resident, an exemption of $30,000, less amounts claimed and allowed for calendar year 1932 and calendar years intervening between that year and year for which tax is being computed.

§2522. Charitable and similar gifts

(a) Citizens or residents

In computing taxable gifts for the calendar year, there shall be allowed as a deduction in the case of a citizen or resident the amount of all gifts made during such year to or for the use of—

(1) the United States, any State, or any political subdivision thereof, or the District of Columbia, for exclusively public purposes;

(2) a corporation, or trust, or community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office;

(3) a fraternal society, order, or association, operating under the lodge system, but only if such gifts are to be used exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals;

(4) posts or organizations of war veterans, or auxiliary units or societies of any such posts or organizations, if such posts, organizations, units, or societies are organized in the United States or any of its possessions, and if no part of their net earnings insures to the benefit of any private shareholder or individual.

Rules similar to the rules of section 501(j) shall apply for purposes of paragraph (2).

(b) Nonresidents

In the case of a nonresident not a citizen of the United States, there shall be allowed as a deduction the amount of all gifts made during such year to or for the use of—

(1) the United States, any State, or any political subdivision thereof, or the District of Columbia, for exclusively public purposes;

(2) a domestic corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office;

(3) a trust, or community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office; but only if such gifts are to be used within the United States exclusively for such purposes;

(4) a fraternal society, order, or association, operating under the lodge system, but only if such gifts are to be used within the United States exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals;

(5) posts or organizations of war veterans, or auxiliary units or societies of any such posts or organizations, if such posts, organizations, units, or societies are organized in the United States or any of its possessions, and if no part of their net earnings inures to the benefit of any private shareholder or individual.

(c) Disallowance of deductions in certain cases

(1) No deduction shall be allowed under this section for a gift to of [1] for the use of an organization or trust described in section 508(d) or 4948(c)(4) subject to the conditions specified in such sections.

(2) Where a donor transfers an interest in property (other than an interest described in section 170(f)(3)(B)) to a person, or for a use, described in subsection (a) or (b) and an interest in the same property is retained by the donor, or is transferred or has been transferred (for less than an adequate and full consideration in money or money's worth) from the donor to a person, or for a use, not described in subsection (a) or (b), no deduction shall be allowed under this section for the interest which is, or has been transferred to the person, or for the use, described in subsection (a) or (b), unless—

(A) in the case of a remainder interest, such interest is in a trust which is a charitable remainder annuity trust or a charitable remainder unitrust (described in section 664) or a pooled income fund (described in section 642(c)(5)), or

(B) in the case of any other interest, such interest is in the form of a guaranteed annuity or is a fixed percentage distributed yearly of the fair market value of the property (to be determined yearly).

(3) Rules similar to the rules of section 2055(e)(4) shall apply for purposes of paragraph (2).

(4) Reformations to comply with paragraph (2)

(A) In general

A deduction shall be allowed under subsection (a) in respect of any qualified reformation (within the meaning of section 2055(e)(3)(B)).

(B) Rules similar to section 2055(e)(3) to apply

For purposes of this paragraph, rules similar to the rules of section 2055(e)(3) shall apply.

(5) Contributions to donor advised funds

A deduction otherwise allowed under subsection (a) for any contribution to a donor advised fund (as defined in section 4966(d)(2)) shall only be allowed if—

(A) the sponsoring organization (as defined in section 4966(d)(1)) with respect to such donor advised fund is not—

(i) described in paragraph (3) or (4) of subsection (a), or

(ii) a type III supporting organization (as defined in section 4943(f)(5)(A)) which is not a functionally integrated type III supporting organization (as defined in section 4943(f)(5)(B)), and

(B) the taxpayer obtains a contemporaneous written acknowledgment (determined under rules

similar to the rules of section 170(f)(8)(C)) from the sponsoring organization (as so defined) of such donor advised fund that such organization has exclusive legal control over the assets contributed.

(d) Special rule for irrevocable transfers of easements in real property

A deduction shall be allowed under subsection (a) in respect of any transfer of a qualified real property interest (as defined in section 170(h)(2)(C)) which meets the requirements of section 170(h) (without regard to paragraph (4)(A) thereof).

(e) Special rules for fractional gifts

(1) Denial of deduction in certain cases

(A) In general

No deduction shall be allowed for a contribution of an undivided portion of a taxpayer's entire interest in tangible personal property unless all interests in the property are held immediately before such contribution by—

(i) the taxpayer, or

(ii) the taxpayer and the donee.

(B) Exceptions

The Secretary may, by regulation, provide for exceptions to subparagraph (A) in cases where all persons who hold an interest in the property make proportional contributions of an undivided portion of the entire interest held by such persons.

(2) Recapture of deduction in certain cases; addition to tax

(A) In general

The Secretary shall provide for the recapture of an amount equal to any deduction allowed under this section (plus interest) with respect to any contribution of an undivided portion of a taxpayer's entire interest in tangible personal property—

(i) in any case in which the donor does not contribute all of the remaining interests in such property to the donee (or, if such donee is no longer in existence, to any person described in section 170(c)) on or before the earlier of—

(I) the date that is 10 years after the date of the initial fractional contribution, or

(II) the date of the death of the donor, and

(ii) in any case in which the donee has not, during the period beginning on the date of the initial fractional contribution and ending on the date described in clause (i)—

(I) had substantial physical possession of the property, and

(II) used the property in a use which is related to a purpose or function constituting the basis for the organizations' exemption under section 501.

(B) Addition to tax

The tax imposed under this chapter for any taxable year for which there is a recapture under subparagraph (A) shall be increased by 10 percent of the amount so recaptured.

(C) Initial fractional contribution

For purposes of this paragraph, the term "initial fractional contribution" means, with respect to any donor, the first gift of an undivided portion of the donor's entire interest in any tangible personal property for which a deduction is allowed under subsection (a) or (b).

(f) Cross references

(1) For treatment of certain organizations providing child care, see section 501(k).

(2) For exemption of certain gifts to or for the benefit of the United States and for rules of construction with respect to certain bequests, see section 2055(f).

(3) For treatment of gifts to or for the use of Indian tribal governments (or their subdivisions), see section 7871.

(Aug. 16, 1954, ch. 736, 68A Stat. 410; Pub. L. 85–866, title I, §30(d), Sept. 2, 1958, 72 Stat. 1631; Pub. L. 91–172, title II, §201(d)(3), (4)(C), (D), Dec. 30, 1969, 83 Stat. 561, 562; Pub. L. 91–614, title I, §102(c)(2), Dec. 31, 1970, 84 Stat. 1841; Pub. L. 94–455, title XII, §§1307(d)(1)(B)(iv), (v), 1313(b)(3), title XIX, §1902(a)(11), (12)(D), title XXI, §2124(e)(3), Oct. 4, 1976, 90 Stat. 1727, 1730, 1805, 1806, 1920; Pub. L. 97–34, title IV, §§423(b), 442(c), Aug. 13, 1981, 95 Stat. 317, 322; Pub. L. 97–248, title II, §286(b)(3), Sept. 3, 1982, 96 Stat. 570; Pub. L. 97–473, title II, §202(b)(7), Jan. 14, 1983, 96 Stat. 2610; Pub. L. 98–369, div. A, title X, §§1022(c), 1032(b)(3), July 18, 1984, 98 Stat. 1028, 1034; Pub. L. 99–514, title XIV, §1422(b), Oct. 22, 1986, 100 Stat. 2717; Pub. L. 100–203, title X, §10711(a)(5), (6), Dec. 22, 1987, 101 Stat. 1330–464; Pub. L. 109–280, title XII, §§1218(c), 1234(c), Aug. 17, 2006, 120 Stat. 1082, 1101; Pub. L. 110–172, §§3(d)(2), 11(a)(16), Dec. 29, 2007, 121 Stat. 2474, 2485.)

CODIFICATION

Sections 1218(c) and 1234(c) of Pub. L. 109–280, which directed the amendment of section 2522 without specifying the act to be amended, were executed to this section, which is section 2522 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

AMENDMENTS

2007—Subsec. (e)(1)(A). Pub. L. 110–172, §11(a)(16)(A), in introductory provisions, substituted "all interests in the property are" for "all interest in the property is".

Subsec. (e)(2). Pub. L. 110–172, §3(d)(2)(A), (B), redesignated par. (3) as (2) and struck out heading and text of former par. (2). Text read as follows: "In the case of any additional contribution, the fair market value of such contribution shall be determined by using the lesser of—

"(A) the fair market value of the property at the time of the initial fractional contribution, or

"(B) the fair market value of the property at the time of the additional contribution."

Subsec. (e)(2)(A)(i). Pub. L. 110–172, §11(a)(16)(B), substituted "interests" for "interest" and "on or before" for "before".

Subsec. (e)(2)(C). Pub. L. 110–172, §3(d)(2)(C), added subpar. (C).

Subsec. (e)(3). Pub. L. 110–172, §3(d)(2)(B), redesignated par. (3) as (2).

Subsec. (e)(4). Pub. L. 110–172, §3(d)(2)(A), struck out heading and text of par. (4). Text read as follows: "For purposes of this subsection—

"(A) ADDITIONAL CONTRIBUTION.—The term 'additional contribution' means any gift for which a deduction is allowed under subsection (a) or (b) of any interest in a property with respect to which the donor has previously made an initial fractional contribution.

"(B) INITIAL FRACTIONAL CONTRIBUTION.—The term 'initial fractional contribution' means, with respect to any donor, the first gift of an undivided portion of the donor's entire interest in any tangible personal property for which a deduction is allowed under subsection (a) or (b)."

2006—Subsec. (c)(5). Pub. L. 109–280, §1234(c), added par. (5). See Codification note above.

Subsecs. (e), (f). Pub. L. 109–280, §1218(c), added subsec. (e) and redesignated former subsec. (e) as (f). See Codification note above.

1987—Subsecs. (a)(2), (b)(2), (3). Pub. L. 100–203 inserted "(or in opposition to)" after "on behalf of".

1986—Subsecs. (d), (e). Pub. L. 99–514 added subsec. (d) and redesignated former subsec. (d) as (e).

1984—Subsec. (c)(4). Pub. L. 98–369, §1022(c), added par. (4).

Subsec. (d). Pub. L. 98–369, §1032(b)(3), added par. (1) and redesignated former pars. (1) and (2) as (2) and (3), respectively.

1983—Subsec. (d). Pub. L. 97–473 designated existing provisions as par. (1), substituted "bequests" for "gifts" second time appearing in par. (1) as so designated, and added par. (2).

1982—Subsec. (a). Pub. L. 97–248 inserted provision that rules similar to rules of section 501(j) apply for purposes of par. (2).

1981—Subsec. (a). Pub. L. 97–34, §442(c), substituted "year" for "quarter" in two places in provision preceding par. (1).

Subsec. (b). Pub. L. 97–34, §442(c), substituted "year" for "quarter" in provision preceding par. (1).

Subsec. (c)(3). Pub. L. 97–34, §423(b), added par. (3).

1976—Subsec. (a)(1). Pub. L. 94–455, §1902(a)(12)(D), struck out "Territory" after "any State".

Subsec. (a)(2). Pub. L. 94–455, §§1307(d)(1)(B)(iv), 1313(b)(3), substituted "which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation" for "no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation" after

"shareholder or individual" and inserted "or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment)" after "or educational purposes".

Subsec. (b)(1). Pub. L. 94–455, §1902(a)(12)(D), struck out "Territory" after "any State".

Subsec. (b)(2). Pub. L. 94–455, §1307(d)(1)(B)(v), substituted "which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation" for "no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation" after "shareholder or individual".

Subsec. (c)(2). Pub. L. 94–455, §2124(e)(3), substituted "(other than an interest described in section 170(f)(3)(B))" for "(other than a remainder interest in a personal residence or farm or an undivided portion of the donor's entire interest in property)" after "an interest in property".

Subsec. (d). Pub. L. 94–455, §1902(a)(11), substituted subsec. (d) for former subsec. (d), pars. (1) through (10), which dealt with cross references to specific exemptions and rules of construction for gifts to the United States and its instrumentalities.

1970—Pub. L. 91–614 substituted "quarter" for "year" in three places.

1969—Subsecs. (a)(2), (b)(2), (3). Pub. L. 91–172, §201(d)(4)(C), (D), inserted non-participation and non-intervention in political campaigns as an additional qualification.

Subsec. (c). Pub. L. 91–172, §201(d)(3), substituted substantive provisions for simple reference to sections 503 and 681 in which such substantive provisions were formerly set out.

1958—Subsec. (c). Pub. L. 85–866 substituted "503" for "504".

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by section 3(d)(2) of Pub. L. 110–172 effective as if included in the provisions of the Pension Protection Act of 2006, Pub. L. 109–280, to which such amendment relates, see section 3(j) of Pub. L. 110–172, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 1218(c) of Pub. L. 109–280 applicable to contributions, bequests, and gifts made after Aug. 17, 2006, see section 1218(d) of Pub. L. 109–280, set out as a note under section 170 of this title.

Amendment by section 1234(c) of Pub. L. 109–280 applicable to contributions made after the date which is 180 days after Aug. 17, 2006, see section 1234(d) of Pub. L. 109–280, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable with respect to activities after Dec. 22, 1987, see section 10711(c) of Pub. L. 100–203, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to transfers and contributions made after Dec. 31, 1986, see section 1422(e) of Pub. L. 99–514, set out as a note under section 2055 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 1022(c) of Pub. L. 98–369 applicable to reformations after Dec. 31, 1978, but inapplicable to any reformation to which section 2055(e)(3) of this title as in effect before July 18, 1984, applies, see section 1022(e)(1) of Pub. L. 98–369, set out as a note under section 2055 of this title.

Amendment by section 1032(b)(3) of Pub. L. 98–369 applicable to taxable years beginning after July 18, 1984, see section 1032(c) of Pub. L. 98–369, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

For effective date of amendment by Pub. L. 97–473, see section 204(4) of Pub. L. 97–473, set out as an Effective Date note under section 7871 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 effective Oct. 5, 1976, see section 286(c) of Pub. L. 97–248, set out as a note under section 501 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title IV, §423(c)(2), Aug. 13, 1981, 95 Stat. 317, provided that: "The amendment made by subsection (b) [amending this section] shall apply to transfers after December 31, 1981."

Amendment by section 442(c) of Pub. L. 97–34 applicable with respect to gifts made after Dec. 31, 1981, see section 442(e) of Pub. L. 97–34, set out as a note under section 2501 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 2124(e)(3) of Pub. L. 94–455 applicable with respect to contributions or transfers made after June 13, 1976, see section 2124(e)(4) of Pub. L. 94–455, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91–614, set out as a note under section 2501 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 201(d)(3) of Pub. L. 91–172 applicable to gifts made after Dec. 31, 1969, except that the amendment of par. (2) of subsec. (c) applicable to gifts made after July 31, 1969, see section 201(g)(4)(D) of Pub. L. 91–172, set out as a note under section 170 of this title.

Amendment by section 201(d)(4)(C), (D) of Pub. L. 91–172 applicable to gifts and transfers made after Dec. 31, 1969, see section 201(g)(4)(E) of Pub. L. 91–172, set out as a note under section 170 of this title.

CHARITABLE LEAD TRUSTS AND CHARITABLE REMAINDER TRUSTS IN CASE OF INCOME AND GIFT TAXES

For inclusion of provisions comparable to section 2055(e)(3) of this title in this section, see section 514(b) of Pub. L. 95–600, set out as a note under section 2055 of this title.

[1] So in original. Probably should be "or".

§2523. Gift to spouse

(a) Allowance of deduction

Where a donor transfers during the calendar year by gift an interest in property to a donee who at the time of the gift is the donor's spouse, there shall be allowed as a deduction in computing taxable gifts for the calendar year an amount with respect to such interest equal to its value.

(b) Life estate or other terminable interest

Where, on the lapse of time, on the occurrence of an event or contingency, or on the failure of an event or contingency to occur, such interest transferred to the spouse will terminate or fail, no deduction shall be allowed with respect to such interest—

(1) if the donor retains in himself, or transfers or has transferred (for less than an adequate and full consideration in money or money's worth) to any person other than such donee spouse (or the estate of such spouse), an interest in such property, and if by reason of such retention or transfer the donor (or his heirs or assigns) or such person (or his heirs or assigns) may possess or enjoy any part of such property after such termination or failure of the interest transferred to the donee spouse; or

(2) if the donor immediately after the transfer to the donee spouse has a power to appoint an interest in such property which he can exercise (either alone or in conjunction with any person) in such manner that the appointee may possess or enjoy any part of such property after such termination or failure of the interest transferred to the donee spouse. For purposes of this paragraph, the donor shall be considered as having immediately after the transfer to the donee spouse such power to appoint even though such power cannot be exercised until after the lapse of time, upon the occurrence of an event or contingency, or on the failure of an event or contingency to occur.

An exercise or release at any time by the donor, either alone or in conjunction with any person, of a power to appoint an interest in property, even though not otherwise a transfer, shall, for purposes of paragraph (1), be considered as a transfer by him. Except as provided in subsection (e), where at the

time of the transfer it is impossible to ascertain the particular person or persons who may receive from the donor an interest in property so transferred by him, such interest shall, for purposes of paragraph (1), be considered as transferred to a person other than the donee spouse.

(c) Interest in unidentified assets

Where the assets out of which, or the proceeds of which, the interest transferred to the donee spouse may be satisfied include a particular asset or assets with respect to which no deduction would be allowed if such asset or assets were transferred from the donor to such spouse, then the value of the interest transferred to such spouse shall, for purposes of subsection (a), be reduced by the aggregate value of such particular assets.

(d) Joint interests

If the interest is transferred to the donee spouse as sole joint tenant with the donor or as tenant by the entirety, the interest of the donor in the property which exists solely by reason of the possibility that the donor may survive the donee spouse, or that there may occur a severance of the tenancy, shall not be considered for purposes of subsection (b) as an interest retained by the donor in himself.

(e) Life estate with power of appointment in donee spouse

Where the donor transfers an interest in property, if by such transfer his spouse is entitled for life to all of the income from the entire interest, or all the income from a specific portion thereof, payable annually or at more frequent intervals, with power in the donee spouse to appoint the entire interest, or such specific portion (exercisable in favor of such donee spouse, or of the estate of such donee spouse, or in favor of either, whether or not in each case the power is exercisable in favor of others), and with no power in any other person to appoint any part of such interest, or such portion, to any person other than the donee spouse—

(1) the interest, or such portion, so transferred shall, for purposes of subsection (a) be considered as transferred to the donee spouse, and

(2) no part of the interest, or such portion, so transferred shall, for purposes of subsection (b)(1), be considered as retained in the donor or transferred to any person other than the donee spouse.

This subsection shall apply only if, by such transfer, such power in the donee spouse to appoint the interest, or such portion, whether exercisable by will or during life, is exercisable by such spouse alone and in all events. For purposes of this subsection, the term "specific portion" only includes a portion determined on a fractional or percentage basis.

(f) Election with respect to life estate for donee spouse

(1) In general

In the case of qualified terminable interest property—

(A) for purposes of subsection (a), such property shall be treated as transferred to the donee spouse, and

(B) for purposes of subsection (b)(1), no part of such property shall be considered as retained in the donor or transferred to any person other than the donee spouse.

(2) Qualified terminable interest property

For purposes of this subsection, the term "qualified terminable interest property" means any property—

(A) which is transferred by the donor spouse,

(B) in which the donee spouse has a qualifying income interest for life, and

(C) to which an election under this subsection applies.

(3) Certain rules made applicable

For purposes of this subsection, rules similar to the rules of clauses (ii), (iii), and (iv) of section 2056(b)(7)(B) shall apply and the rules of section 2056(b)(10) shall apply.

(4) Election

(A) Time and manner

An election under this subsection with respect to any property shall be made on or before the date prescribed by section 6075(b) for filing a gift tax return with respect to the transfer (determined without regard to section 6019(2)) and shall be made in such manner as the Secretary shall by regulations prescribe.

(B) Election irrevocable

An election under this subsection, once made, shall be irrevocable.

(5) Treatment of interest retained by donor spouse

(A) In general

In the case of any qualified terminable interest property—

(i) such property shall not be includible in the gross estate of the donor spouse, and

(ii) any subsequent transfer by the donor spouse of an interest in such property shall not be treated as a transfer for purposes of this chapter.

(B) Subparagraph (A) not to apply after transfer by donee spouse

Subparagraph (A) shall not apply with respect to any property after the donee spouse is treated as having transferred such property under section 2519, or such property is includible in the donee spouse's gross estate under section 2044.

(6) Treatment of joint and survivor annuities

In the case of a joint and survivor annuity where only the donor spouse and donee spouse have the right to receive payments before the death of the last spouse to die—

(A) the donee spouse's interest shall be treated as a qualifying income interest for life,

(B) the donor spouse shall be treated as having made an election under this subsection with respect to such annuity unless the donor spouse otherwise elects on or before the date specified in paragraph (4)(A),

(C) paragraph (5) and section 2519 shall not apply to the donor spouse's interest in the annuity, and

(D) if the donee spouse dies before the donor spouse, no amount shall be includible in the gross estate of the donee spouse under section 2044 with respect to such annuity.

An election under subparagraph (B), once made, shall be irrevocable.

(g) Special rule for charitable remainder trusts

(1) In general

If, after the transfer, the donee spouse is the only noncharitable beneficiary (other than the donor) of a qualified charitable remainder trust, subsection (b) shall not apply to the interest in such trust which is transferred to the donee spouse.

(2) Definitions

For purposes of paragraph (1), the term "noncharitable beneficiary" and "qualified charitable remainder trust" have the meanings given to such terms by section 2056(b)(8)(B).[1]

(h) Denial of double deduction

Nothing in this section or any other provision of this chapter shall allow the value of any interest in property to be deducted under this chapter more than once with respect to the same donor.

(i) Disallowance of marital deduction where spouse not citizen

If the spouse of the donor is not a citizen of the United States—

(1) no deduction shall be allowed under this section,

(2) section 2503(b) shall be applied with respect to gifts which are made by the donor to such spouse and with respect to which a deduction would be allowable under this section but for paragraph (1) by substituting "$100,000" for "$10,000", and

(3) the principles of sections 2515 and 2515A (as such sections were in effect before their repeal by the Economic Recovery Tax Act of 1981) shall apply, except that the provisions of such section 2515 providing for an election shall not apply.

This subsection shall not apply to any transfer resulting from the acquisition of rights under a joint and survivor annuity described in subsection (f)(6).

(Aug. 16, 1954, ch. 736, 68A Stat. 412; Pub. L. 91–614, title I, §102(c)(3), Dec. 31, 1970, 84 Stat. 1841; Pub. L. 94–455, title XIX, §1902(a)(12)(E), title XX, §2002(b), Oct. 4, 1976, 90 Stat. 1806, 1854; Pub. L. 97–34, title IV, §403(b)(1), (2), (d)(2), Aug. 13, 1981, 95 Stat. 301, 303; Pub. L. 97–448, title I, §104(a)(2)(B), (4)–(6), Jan. 12, 1983, 96 Stat. 2380, 2381; Pub. L. 99–514, title XVIII, §1879(n)(1), Oct. 22, 1986, 100 Stat. 2910; Pub. L. 100–647, title V, §5033(b), title VI, §6152(b), Nov. 10, 1988, 102 Stat. 3672, 3725; Pub. L. 101–239, title VII, §7815(d)(1)(A), (2), Dec. 19, 1989, 103 Stat. 2415; Pub. L. 101–508, title XI, §11702(g)(1), Nov. 5, 1990, 104 Stat. 1388–515; Pub. L. 102–486, title XIX, §1941(b), Oct. 24, 1992, 106 Stat. 3036; Pub. L. 105–34, title XVI, §1604(g)(4), Aug. 5, 1997, 111 Stat. 1099.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

REFERENCES IN TEXT

Section 2056 of this title, referred to in subsec. (g)(2), was subsequently amended, and section 2056(b)(8)(B) no longer defines the term "noncharitable beneficiary".

Sections 2515 and 2515A, referred to in subsec. (i)(3), were repealed by Pub. L. 97–34, title IV, §403(c)(3)(B), Aug. 13, 1981, 95 Stat. 302.

AMENDMENTS

1997—Subsec. (g)(1). Pub. L. 105–34 substituted "qualified charitable remainder trust" for "qualified remainder trust".

1992—Subsec. (e). Pub. L. 102–486, §1941(b)(1), in closing provisions, inserted at end "For purposes of this subsection, the term 'specific portion' only includes a portion determined on a fractional or percentage basis."

Subsec. (f)(3). Pub. L. 102–486, §1941(b)(2), inserted before period at end "and the rules of section 2056(b)(10) shall apply".

1990—Subsec. (i). Pub. L. 101–508 inserted at end "This subsection shall not apply to any transfer resulting from the acquisition of rights under a joint and survivor annuity described in subsection (f)(6)."

1989—Subsec. (a). Pub. L. 101–239, §7815(d)(2), struck out "who is a citizen or resident" after "Where a donor".

Subsec. (i)(2). Pub. L. 101–239, §7815(d)(1)(A), substituted "which are made by the donor to such spouse and with respect to which a deduction would be allowable under this section but for paragraph (1)" for "made by the donor to such spouse".

1988—Subsec. (f)(6). Pub. L. 100–647, §6152(b), added par. (6).

Subsec. (i). Pub. L. 100–647, §5033(b), added subsec. (i).

1986—Subsec. (f)(4)(A). Pub. L. 99–514 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "An election under this subsection with respect to any property shall be made on or before the first April 15th after the calendar year in which the interest was transferred and shall be made in such manner as the Secretary shall by regulations prescribe."

1983—Subsec. (f)(3). Pub. L. 97–448, §104(a)(6), substituted "rules similar to the rules of clauses (ii)" for "the rules of clauses (ii)".

Subsec. (f)(4). Pub. L. 97–448, §104(a)(4), divided existing provisions into subpars. (A) and (B), in subpar. (A) as so designated substituted "shall be made on or before the first April 15th after the calendar year in which the interest was transferred and shall be made in such manner as the Secretary shall by regulations prescribe" for "shall be made on the return of the tax imposed by section 2501 for the calendar year in which the interest was transferred", and in subpar. (B) as so designated substituted "An election under this subsection" for "Such an election".

Subsec. (f)(5). Pub. L. 97–448, §104(a)(5), added par. (5).

Subsec. (h). Pub. L. 97–448, §104(a)(2)(B), added subsec. (h).

1981—Subsec. (a). Pub. L. 97–34, §403(b)(1), struck out "(1) In general" designation for existing text and struck out par. (2) which declared that the aggregate of the allowed deductions for any calendar quarter should not exceed the sum of $100,000 reduced, but not below zero, by the aggregate of the allowed deductions for preceding calendar quarters beginning after Dec. 31, 1976, plus 50 percent of the lesser of the amount of the allowed deductions for such calendar quarter, determined without regard to par. (2), or the amount, if any, by which the aggregate determined under cl. (i) of par. (2) for the calendar quarter and for each preceding calendar quarter beginning after Dec. 31, 1976, exceeds $200,000.

Subsec. (f). Pub. L. 97–34, §403(b)(2), (d)(2), substituted provision relating to election with respect to life estate for donee spouse for provision relating to community property.

Subsec. (g). Pub. L. 97–34, §403(d)(2), added subsec. (g).

1976—Subsec. (a). Pub. L. 94–455 designated existing provisions as par. (1), struck out "one-half of" after "interest equal to", and added par. (2) relating to limitations on aggregate amount of deductions.

Subsec. (f)(1). Pub. L. 94–455, §1902(a)(12)(E), struck out "Territory" after "any State".

1970—Subsec. (a). Pub. L. 91–614 substituted "quarter" for "year" in two places.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–486 applicable to gifts made after Oct. 24, 1992, see section 1941(c)(2) of Pub. L. 102–486, set out as a note under section 2056 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 11702(j) of Pub. L. 101–508, set out as a note under section 59 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7815(d)(1)(B), Dec. 19, 1989, 103 Stat. 2415, provided that: "The amendment made by subparagraph (A) [amending this section] shall apply with respect to gifts made after June 29, 1989."

Amendment by section 7815(d)(2) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title V, §5033(d)(2), Nov. 10, 1988, 102 Stat. 3673, provided that: "The amendments made by subsection (b) [amending this section] shall apply to gifts on or after July 14, 1988."

Amendment by section 6152(b) of Pub. L. 100–647 applicable to transfers after Dec. 31, 1981, and, in the case of any estate or gift tax return filed before Nov. 10, 1988, such amendment inapplicable to the extent it would be inconsistent with the treatment of the annuity on such return unless executor or donor otherwise elects before the day 2 years after Nov. 10, 1988, the time for making such an election not to expire before such date, see section 6152(c), of Pub. L. 100–647, set out as a note under section 2056 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XVIII, §1879(n)(2), Oct. 22, 1986, 100 Stat. 2910, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to transfers made after December 31, 1985."

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to gifts made after Dec. 31, 1981, see section 403(e)(2) of Pub. L. 97–34, set out as a note under section 2056 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XX, §2002(d)(2), Oct. 4, 1976, 90 Stat. 1856, provided that: "The amendment made by subsection (b) [amending this section] shall apply to gifts made after December 31, 1976."

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e)

of Pub. L. 91–614, set out as a note under section 2501 of this title.

APPLICATION OF AMENDMENTS BY SECTION 5033 OF PUB. L. 100–647 TO ESTATES OF, OR GIFTS BY, NONCITIZEN AND NONRESIDENT INDIVIDUALS

For provisions directing that in the case of the estate of, or gift by, an individual who was not a citizen or resident of the United States but was a resident of a foreign country with which the United States has a tax treaty with respect to estate, inheritance, or gift taxes, the amendments made by section 5033 of Pub. L. 100–647 shall not apply to the extent such amendments would be inconsistent with the provisions of such treaty relating to estate, inheritance, or gift tax marital deductions, but that in the case of the estate of an individual dying before the date 3 years after Dec. 19, 1989, or a gift by an individual before the date 3 years after Dec. 19, 1989, the requirement of the preceding provision that the individual not be a citizen or resident of the United States shall not apply, see section 7815(d)(14) of Pub. L. 101–239, set out as a note under section 2056 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

SPECIAL RULE FOR CERTAIN TRANSFERS IN OCTOBER 1984

Pub. L. 99–514, title XVIII, §1879(n)(3), Oct. 22, 1986, 100 Stat. 2910, provided that: "An election under section 2523(f) of the Internal Revenue Code of 1954 [now 1986] with respect to an interest in property which—

"(A) was transferred during October 1984, and

"(B) was transferred pursuant to a trust instrument stating that the grantor's intention was that the property of the trust would constitute qualified terminable interest property as to which a Federal gift tax marital deduction would be allowed upon the grantor's election,

shall be made on the return of tax imposed by section 2501 of such Code for the calendar year 1984 which is filed on or before the due date of such return or, if a timely return is not filed, on the first such return filed after the due date of such return and before December 31, 1986."

[1] *See References in Text note below.*

§2524. Extent of deductions

The deductions provided in sections 2522 and 2523 shall be allowed only to the extent that the gifts therein specified are included in the amount of gifts against which such deductions are applied.

(Aug. 16, 1954, ch. 736, 68A Stat. 414.)

CHAPTER 13—TAX ON GENERATION-SKIPPING TRANSFERS

Subchapter		Sec.[1]
A.	**Tax imposed**	**2601**
B.	**Generation-skipping transfers**	**2611**
C.	**Taxable amount**	**2621**
D.	**GST exemption**	**2631**
E.	**Applicable rate; inclusion ratio**	**2641**
F.	**Other definitions and special rules**	**2651**
G.	**Administration**	**2661**

AMENDMENTS

1986—Pub. L. 99–514, title XIV, §1431(a), Oct. 22, 1986, 100 Stat. 2717, struck out "CERTAIN" after "TAX ON" in chapter heading, substituted "Generation-skipping transfers" for "Definitions and special rules" in item for subchapter B and "Taxable amount" for "Administration" in item for subchapter C, and added

items for subchapters D, E, and F.

[1] *Section numbers editorially supplied.*

Subchapter A—Tax Imposed

Sec.
2601. Tax imposed.
2602. Amount of tax.
2603. Liability for tax.
2604. Credit for certain State taxes.

AMENDMENTS

2004—Pub. L. 108–311, title IV, §408(a)(21), Oct. 4, 2004, 118 Stat. 1192, added item 2604.

2001—Pub. L. 107–16, title V, §532(c)(15), June 7, 2001, 115 Stat. 75, struck out item 2604 "Credit for certain State taxes".

1986—Pub. L. 99–514, title XIV, §1431(a), Oct. 22, 1986, 100 Stat. 2717, in amending analysis of subchapter A generally, added item 2604.

§2601. Tax imposed

A tax is hereby imposed on every generation-skipping transfer (within the meaning of subchapter B).

(Added Pub. L. 94–455, title XX, §2006(a), Oct. 4, 1976, 90 Stat. 1879; amended Pub. L. 99–514, title XIV, §1431(a), Oct. 22, 1986, 100 Stat. 2718.)

AMENDMENTS

1986—Pub. L. 99–514 amended section generally, substituting "(within the meaning of subchapter B)" for "in the amount determined under section 2602".

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XIV, §1433, Oct. 22, 1986, 100 Stat. 2731, as amended by Pub. L. 100–647, title I, §1014(h)(1)–(3)(A), (4), Nov. 10, 1988, 102 Stat. 3567, 3568, provided that:

"(a) GENERAL RULE.—Except as provided in subsection (b), the amendments made by this subtitle [subtitle D (§§1431–1433) of title XIV of Pub. L. 99–514, amending chapter 13 of this title, enacting section 2515 of this title, and amending sections 164, 303, 691, 2013, 2032, and 6166 of this title] shall apply to any generation-skipping transfer (within the meaning of section 2611 of the Internal Revenue Code of 1986) made after the date of the enactment of this Act [Oct. 22, 1986].

"(b) SPECIAL RULES.—

"(1) TREATMENT OF CERTAIN INTER VIVOS TRANSFERS MADE AFTER SEPTEMBER 25, 1985.—For purposes of subsection (a) (and chapter 13 of the Internal Revenue Code of 1986 as amended by this part), any inter vivos transfer after September 25, 1985, and on or before the date of the enactment of this Act [Oct. 22, 1986] shall be treated as if it were made on the 1st day after the date of enactment of this Act.

"(2) EXCEPTIONS.—The amendments made by this subtitle shall not apply to—

"(A) any generation-skipping transfer under a trust which was irrevocable on September 25, 1985, but only to the extent that such transfer is not made out of corpus added to the trust after September 25, 1985 (or out of income attributable to corpus so added),

"(B) any generation-skipping transfer under a will or revocable trust executed before the date of the enactment of this Act [Oct. 22, 1986] if the decedent dies before January 1, 1987, and

"(C) any generation-skipping transfer—

"(i) under a trust to the extent such trust consists of property included in the gross estate of a decedent (other than property transferred by the decedent during his life after the date of the enactment of this Act [Oct. 22, 1986]), or reinvestments thereof, or

"(ii) which is a direct skip which occurs by reason of the death of any decedent;

but only if such decedent was, on the date of the enactment of this Act [Oct. 22, 1986], under a

mental disability to change the disposition of his property and did not regain his competence to dispose of such property before the date of his death.

"(3) TREATMENT OF CERTAIN TRANSFERS TO GRANDCHILDREN.—

"(A) IN GENERAL.—For purposes of chapter 13 of the Internal Revenue Code of 1986, the term 'direct skip' shall not include any transfer before January 1, 1990, from a transferor to a grandchild of the transferor to the extent the aggregate transfers from such transferor to such grandchild do not exceed $2,000,000.

"(B) TREATMENT OF TRANSFERS IN TRUST.—For purposes of subparagraph (A), a transfer in trust for the benefit of a grandchild shall be treated as a transfer to such grandchild if (and only if)—

"(i) during the life of the grandchild, no portion of the corpus or income of the trust may be distributed to (or for the benefit of) any person other than such grandchild,

"(ii) the assets of the trust will be includible in the gross estate of the grandchild if the grandchild dies before the trust is terminated, and

"(iii) all of the income of the trust for periods after the grandchild has attained age 21 will be distributed to (or for the benefit of) such grandchild not less frequently than annually.

"(C) COORDINATION WITH SECTION 2653(a) OF THE 1986 CODE.—In the case of any transfer which would be a generation-skipping transfer but for subparagraph (A), the rules of section 2653(a) of the Internal Revenue Code of 1986 shall apply as if such transfer were a generation-skipping transfer.

"(D) COORDINATION WITH TAXABLE TERMINATIONS AND TAXABLE DISTRIBUTIONS.—For purposes of chapter 13 of the Internal Revenue Code of 1986, the terms 'taxable termination' and 'taxable distribution' shall not include any transfer which would be a direct skip but for subparagraph (A).

"(4) DEFINITIONS.—Terms used in this section shall have the same respective meanings as when used in chapter 13 of the Internal Revenue Code of 1986; except that section 2612(c)(2) of such Code shall not apply in determining whether an individual is a grandchild of the transferor.

"(c) REPEAL OF EXISTING TAX ON GENERATION-SKIPPING TRANSFERS.—

"(1) IN GENERAL.—In the case of any tax imposed by chapter 13 of the Internal Revenue Code of 1954 [now 1986] (as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]), such tax (including interest, additions to tax, and additional amounts) shall not be assessed and if assessed, the assessment shall be abated, and if collected, shall be credited or refunded (with interest) as an overpayment.

"(2) WAIVER OF STATUTE OF LIMITATIONS.—If on the date of the enactment of this Act [Oct. 22, 1986] (or at any time within 1 year after such date of enactment) refund or credit of any overpayment of tax resulting from the application of paragraph (1) is barred by any law or rule of law, refund or credit of such overpayment shall, nevertheless, be made or allowed if claim therefore [sic] is filed before the date 1 year after the date of the enactment of this Act.

"(d) ELECTION FOR CERTAIN TRANSFERS BENEFITING GRANDCHILD.—

"(1) IN GENERAL.—For purposes of chapter 13 of the Internal Revenue Code of 1986 (as amended by this Act) and subsection (b) of this section, any transfer in trust for the benefit of a grandchild of a transferor shall be treated as a direct skip to such grandchild if—

"(A) the transfer occurs before the date of enactment of this Act [Oct. 22, 1986],

"(B) the transfer would be a direct skip to a grandchild except for the fact that the trust instrument provides that, if the grandchild dies before vesting of the interest transferred, the interest is transferred to the grandchild's heir (rather than the grandchild's estate), and

"(C) an election under this subsection applies to such transfer.

Any transfer treated as a direct skip by reason of the preceding sentence shall be subject to Federal estate tax on the grandchild's death in the same manner as if the contingent gift over had been to the grandchild's estate.

"(2) ELECTION.—An election under paragraph (1) shall be made at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe.

Unless the grandchild otherwise directs by will, the estate of such grandchild shall be entitled to recover from the person receiving the property on the death of the grandchild any increase in Federal estate tax on the estate of the grandchild by reason of the preceding sentence."

[Pub. L. 101–508, title XI, §11703(c)(3), Nov. 5, 1990, 104 Stat. 1388–517, provided that: "Subparagraph (C) of section 1433(b)(2) of the Tax Reform Act of 1986 [Pub. L. 99–514, set out above] shall not exempt any generation-skipping transfer from the amendments made by subtitle D of title XVI of such Act [probably means subtitle D (§§1431–1433) of title XIV of Pub. L. 99–514, amending chapter 13 of this title, enacting section 2515 of this title, and amending sections 164, 303, 691, 2013, 2032, and 6166 of this title] to the extent

such transfer is attributable to property transferred by gift or by reason of the death of another person to the decedent (or trust) referred to in such subparagraph after August 3, 1990."]

[Pub. L. 100–647, title I, §1014(h)(3)(B), Nov. 10, 1988, 102 Stat. 3568, provided that: "Clause (iii) of section 1443(b)(3)(B) [1433(b)(3)(B)] of the Reform Act [Pub. L. 99–514, set out above] (as amended by subparagraph (A)) shall apply only to transfers after June 10, 1987."]

[Pub. L. 100–647, title I, §1014(h)(5), Nov. 10, 1988, 102 Stat. 3568, provided that: "Subparagraph (C) of section 1433(b)(2) of the Reform Act [Pub. L. 99–514, set out above] shall not exempt any direct skip from the amendments made by subtitle D of title XIV of the Reform Act [Pub. L. 99–514, amending chapter 13 of this title, enacting section 2515 of this title, and amending sections 164, 303, 691, 2013, 2032, and 6166 of this title] if—

["(A) such direct skip results from the application of section 2044 of the 1986 Code, and

["(B) such direct skip is attributable to property transferred to the trust after October 21, 1988."]

EFFECTIVE DATE

Pub. L. 94–455, title XX, §2006(c), Oct. 4, 1976, 90 Stat. 1889, as amended by Pub. L. 95–600, title VII, §702(n)(1), Nov. 6, 1978, 92 Stat. 2935; Pub. L. 97–34, title IV, §428, Aug. 13, 1981, 95 Stat. 319; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this chapter and amending sections 303, 691, and 2013 of this title] shall apply to any generation-skipping transfer (within the meaning of section 2611(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) made after June 11, 1976.

"(2) EXCEPTIONS.—The amendments made by this section shall not apply to any generation-skipping transfer—

"(A) under a trust which was irrevocable on June 11, 1976, but only to the extent that the transfer is not made out of corpus added to the trust after June 11, 1976, or

"(B) in the case of a decedent dying before January 1, 1983, pursuant to a will (or revocable trust) which was in existence on June 11, 1976, and was not amended at any time after that date in any respect which will result in the creation of, or increasing the amount of, any generation-skipping transfer.

For purposes of subparagraph (B), if the decedent on June 11, 1976, was under a mental disability to change the disposition of his property, the period set forth in such subparagraph shall not expire before the date which is 2 years after the date on which he first regains his competence to dispose of such property.

"(3) TRUST EQUIVALENTS.—For purposes of paragraph (2), in the case of a trust equivalent within the meaning of subsection (d) of section 2611 of the Internal Revenue Code of 1986, the provisions of such subsection (d) shall apply."

[Amendment of section 2006(c) of Pub. L. 94–455, set out above, by section 702(n)(1) of Pub. L. 95–600, effective Oct. 4, 1976, see section 702(n)(5) of Pub. L. 95–600, set out as an Effective Date of 1978 Amendment note under section 2613 of this title.]

§2602. Amount of tax

The amount of the tax imposed by section 2601 is—

(1) the taxable amount (determined under subchapter C), multiplied by

(2) the applicable rate (determined under subchapter E).

(Added Pub. L. 94–455, title XX, §2006(a), Oct. 4, 1976, 90 Stat. 1879; amended Pub. L. 95–600, title VII, §702(h)(2), (n)(4), Nov. 6, 1978, 92 Stat. 2931, 2936; Pub. L. 97–34, title IV, §403(a)(2)(B), Aug. 13, 1981, 95 Stat. 301; Pub. L. 99–514, title XIV, §1431(a), Oct. 22, 1986, 100 Stat. 2718.)

AMENDMENTS

1986—Pub. L. 99–514 amended section generally, substituting provisions that amount of tax imposed by section 2601 is the taxable amount (determined under subchapter C), multiplied by the applicable rate (determined under subchapter E) for former provisions which set out in detail the calculations and formulae for determining amount of tax imposed by section 2601.

1981—Subsec. (c)(5). Pub. L. 97–34 redesignated subpars. (B) and (C) as (A) and (B), respectively, and struck out former subpar. (A) relating to adjustments to marital deduction and providing that if the

generation-skipping transfer occurs at the same time as, or within 9 months after, the death of the deemed transferor, for purposes of section 2056, relating to bequests, etc., to surviving spouse, the value of the gross estate of the deemed transferor shall be deemed to be increased by the amount of such transfer.

1978—Subsec. (a)(1)(C). Pub. L. 95–600, §702(h)(2), inserted ", as modified by section 2001(e)" after "within the meaning of section 2001(b)".

Subsec. (d)(1)(A). Pub. L. 95–600, §702(n)(4)(A), inserted "(or at the same time as the death of a beneficiary of the trust assigned to a higher generation than such deemed transferor)" after "such deemed transferor".

Subsec. (d)(2)(A). Pub. L. 95–600, §702(n)(4)(B), inserted "(or beneficiary)" after "the deemed transferor".

EFFECTIVE DATE OF 1986 AMENDMENT

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99–514, set out as a note under section 2601 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to estates of decedents dying after Dec. 31, 1981, but inapplicable under certain conditions under will executed before date which is 30 days after Aug. 13, 1981, or under trust created by such date, see section 403(e) of Pub. L. 97–34, set out as a note under section 2056 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 702(h)(2) of Pub. L. 95–600 applicable to estates of decedents dying after Dec. 31, 1976, except that such amendment shall not apply to transfers made before Jan. 1, 1977, see section 702(h)(3) of Pub. L. 95–600, set out as a note under section 2001 of this title.

Amendment by section 702(n)(4) of Pub. L. 95–600 effective as if included in this chapter as added by section 2006 of Pub. L. 94–455, see section 702(n)(5) of Pub. L. 95–600, set out as a note under section 2613 of this title.

§2603. Liability for tax

(a) Personal liability

(1) Taxable distributions

In the case of a taxable distribution, the tax imposed by section 2601 shall be paid by the transferee.

(2) Taxable termination

In the case of a taxable termination or a direct skip from a trust, the tax shall be paid by the trustee.

(3) Direct skip

In the case of a direct skip (other than a direct skip from a trust), the tax shall be paid by the transferor.

(b) Source of tax

Unless otherwise directed pursuant to the governing instrument by specific reference to the tax imposed by this chapter, the tax imposed by this chapter on a generation-skipping transfer shall be charged to the property constituting such transfer.

(c) Cross reference

For provisions making estate and gift tax provisions with respect to transferee liability, liens, and related matters applicable to the tax imposed by section 2601, see section 2661.

(Added Pub. L. 94–455, title XX, §2006(a), Oct. 4, 1976, 90 Stat. 1881; amended Pub. L. 99–514, title XIV, §1431(a), Oct. 22, 1986, 100 Stat. 2718.)

AMENDMENTS

1986—Pub. L. 99–514 amended section generally, substituting tax liability provisions consisting of language placing liability, under different circumstances, on the transferee, the trustee, or the transferor, the

source of the tax, and a cross reference to section 2661 for former provisions which covered the question of liability for tax with language covering the trustee and the distributee, the limitation on personal liability of the trustee who relied on certain information furnished by the Secretary, the limitation on personal liability of distributee, and the lien on property transferred until the tax was paid in full or became unenforceable by reason of lapse of time.

EFFECTIVE DATE OF 1986 AMENDMENT

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99–514, set out as a note under section 2601 of this title.

§2604. Credit for certain State taxes

(a) General rule

If a generation-skipping transfer (other than a direct skip) occurs at the same time as and as a result of the death of an individual, a credit against the tax imposed by section 2601 shall be allowed in an amount equal to the generation-skipping transfer tax actually paid to any State in respect to any property included in the generation-skipping transfer.

(b) Limitation

The aggregate amount allowed as a credit under this section with respect to any transfer shall not exceed 5 percent of the amount of the tax imposed by section 2601 on such transfer.

(c) Termination

This section shall not apply to the generation-skipping transfers after December 31, 2004.

(Added Pub. L. 99–514, title XIV, §1431(a), Oct. 22, 1986, 100 Stat. 2718; amended Pub. L. 107–16, title V, §532(c)(10), June 7, 2001, 115 Stat. 75.)

AMENDMENTS

2001—Subsec. (c). Pub. L. 107–16 added subsec. (c).

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to estates of decedents dying, and generation-skipping transfers, after Dec. 31, 2004, see section 532(d) of Pub. L. 107–16, set out as a note under section 2011 of this title.

EFFECTIVE DATE

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99–514, set out as a note under section 2601 of this title.

Subchapter B—Generation-Skipping Transfers

Sec.
2611. Generation-skipping transfer defined.
2612. Taxable termination; taxable distribution; direct skip.
2613. Skip person and non-skip person defined.

AMENDMENTS

1986—Pub. L. 99–514, title XIV, §1431(a), Oct. 22, 1986, 100 Stat. 2718, substituted "Generation-Skipping Transfers" for "Definitions and Special Rules" in subchapter heading, substituted "Generation-skipping transfer defined" for "Generation-skipping transfer" in item 2611, "Taxable termination; taxable distribution; direct skip" for "Deemed transferor" in item 2612, and "Skip person and non-skip person defined" for "Other definitions" in item 2613, and struck out item 2614 "Special rules".

§2611. Generation-skipping transfer defined

(a) In general

For purposes of this chapter, the term "generation-skipping transfer" means—

(1) a taxable distribution,

(2) a taxable termination, and

(3) a direct skip.

(b) Certain transfers excluded

The term "generation-skipping transfer" does not include—

(1) any transfer which, if made inter vivos by an individual, would not be treated as a taxable gift by reason of section 2503(e) (relating to exclusion of certain transfers for educational or medical expenses), and

(2) any transfer to the extent—

(A) the property transferred was subject to a prior tax imposed under this chapter,

(B) the transferee in the prior transfer was assigned to the same generation as (or a lower generation than) the generation assignment of the transferee in this transfer, and

(C) such transfers do not have the effect of avoiding tax under this chapter with respect to any transfer.

(Added Pub. L. 94–455, title XX, §2006(a), Oct. 4, 1976, 90 Stat. 1882; amended Pub. L. 99–514, title XIV, §1431(a), Oct. 22, 1986, 100 Stat. 2718; Pub. L. 100–647, title I, §§1014(g)(1), (2), 1018(u)(43), Nov. 10, 1988, 102 Stat. 3562, 3592.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–647, §§1014(g)(1), 1018(u)(43), substituted "generation-skipping transfer" for "generation-skipping transfers" and "means" for "mean".

Subsec. (b). Pub. L. 100–647, §1014(g)(2), redesignated pars. (2) and (3) as (1) and (2), respectively, and struck out former par. (1) which read as follows: "any transfer (other than a direct skip) from a trust, to the extent such transfer is subject to a tax imposed by chapter 11 or 12 with respect to a person in the 1st generation below that of the grantor, and".

1986—Pub. L. 99–514 amended section generally, substituting provisions defining "generation-skipping transfers" and what that term does not include, for former provisions which defined "generation-skipping transfer", "transfer", and "generation-skipping trust", contained provisions to be used in determining the ascertainment of generation, and provided for a generation-skipping trust equivalent.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99–514, set out as a note under section 2601 of this title.

§2612. Taxable termination; taxable distribution; direct skip

(a) Taxable termination

(1) General rule

For purposes of this chapter, the term "taxable termination" means the termination (by death, lapse of time, release of power, or otherwise) of an interest in property held in a trust unless—

(A) immediately after such termination, a non-skip person has an interest in such property, or

(B) at no time after such termination may a distribution (including distributions on termination) be made from such trust to a skip person.

(2) Certain partial terminations treated as taxable

If, upon the termination of an interest in property held in trust by reason of the death of a lineal descendant of the transferor, a specified portion of the trust's assets are distributed to 1 or more skip persons (or 1 or more trusts for the exclusive benefit of such persons), such termination shall constitute a taxable termination with respect to such portion of the trust property.

(b) Taxable distribution

For purposes of this chapter, the term "taxable distribution" means any distribution from a trust to a skip person (other than a taxable termination or a direct skip).

(c) Direct skip

For purposes of this chapter—

(1) In general

The term "direct skip" means a transfer subject to a tax imposed by chapter 11 or 12 of an interest in property to a skip person.

(2) Look-thru rules not to apply

Solely for purposes of determining whether any transfer to a trust is a direct skip, the rules of section 2651(f)(2) shall not apply.

(Added Pub. L. 94–455, title XX, §2006(a), Oct. 4, 1976, 90 Stat. 1883; amended Pub. L. 99–514, title XIV, §1431(a), Oct. 22, 1986, 100 Stat. 2719; Pub. L. 100–647, title I, §1014(g)(5)(B), (7), (15), Nov. 10, 1988, 102 Stat. 3564–3566; Pub. L. 105–34, title V, §511(b), Aug. 5, 1997, 111 Stat. 861.)

AMENDMENTS

1997—Subsec. (c)(2). Pub. L. 105–34, §511(b)(2), substituted "section 2651(f)(2)" for "section 2651(e)(2)".

Pub. L. 105–34, §511(b)(1), redesignated par. (3) as (2) and struck out heading and text of former par. (2). Text read as follows: "For purposes of determining whether any transfer is a direct skip, if—

"(A) an individual is a grandchild of the transferor (or the transferor's spouse or former spouse), and

"(B) as of the time of the transfer, the parent of such individual who is a lineal descendant of the transferor (or the transferor's spouse or former spouse) is dead,

such individual shall be treated as if such individual were a child of the transferor and all of that grandchild's children shall be treated as if they were grandchildren of the transferor. In the case of lineal descendants below a grandchild, the preceding sentence may be reapplied. If any transfer of property to a trust would be a direct skip but for this paragraph, any generation assignment under this paragraph shall apply also for purposes of applying this chapter to transfers from the portion of the trust attributable to such property."

Subsec. (c)(3). Pub. L. 105–34, §511(b)(1), redesignated par. (3) as (2).

1988—Subsec. (a)(2). Pub. L. 100–647, §1014(g)(15), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "If, upon the termination of an interest in property held in a trust, a specified portion of the trust assets are distributed to skip persons who are lineal descendants of the holder of such interest (or to 1 or more trusts for the exclusive benefit of such persons), such termination shall constitute a taxable termination with respect to such portion of the trust property."

Subsec. (c)(2). Pub. L. 100–647, §1014(g)(7), in closing provisions, inserted at end "If any transfer of property to a trust would be a direct skip but for this paragraph, any generation assignment under this paragraph shall apply also for purposes of applying this chapter to transfers from the portion of the trust attributable to such property."

Subsec. (c)(3). Pub. L. 100–647, §1014(g)(5)(B), added par. (3).

1986—Pub. L. 99–514 amended section generally, substituting provisions covering definition and application of "taxable termination", "taxable distribution", and "direct skip" for former provisions which indicated who the "deemed transferor" would be for purposes of this chapter and that, for purposes of determining the person deemed the transferor, a parent related to the grantor of a trust by blood or adoption was to be deemed more closely related than a parent related to a grantor by marriage.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title V, §511(c), Aug. 5, 1997, 111 Stat. 861, provided that: "The amendments made by this section [amending this section and section 2651 of this title] shall apply to terminations, distributions, and transfers occurring after December 31, 1997."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99–514, set out as a note under section 2601 of this title.

§2613. Skip person and non-skip person defined

(a) Skip person

For purposes of this chapter, the term "skip person" means—

(1) a natural person assigned to a generation which is 2 or more generations below the generation assignment of the transferor, or

(2) a trust—

(A) if all interests in such trust are held by skip persons, or

(B) if—

(i) there is no person holding an interest in such trust, and

(ii) at no time after such transfer may a distribution (including distributions on termination) be made from such trust to a nonskip person.

(b) Non-skip person

For purposes of this chapter, the term "non-skip person" means any person who is not a skip person.

(Added Pub. L. 94–455, title XX, §2006(a), Oct. 4, 1976, 90 Stat. 1884; amended Pub. L. 95–600, title VII, §702(n)(2), (3), Nov. 6, 1978, 92 Stat. 2935, 2936; Pub. L. 96–222, title I, §107(a)(2)(B), Apr. 1, 1980, 94 Stat. 222; Pub. L. 99–514, title XIV, §1431(a), Oct. 22, 1986, 100 Stat. 2720; Pub. L. 100–647, title I, §1014(g)(5)(A), Nov. 10, 1988, 102 Stat. 3564.)

AMENDMENTS

1988—Subsec. (a)(1). Pub. L. 100–647 inserted "natural" before "person".

1986—Pub. L. 99–514 amended section generally, substituting definitions of "skip person" and "non-skip person" for former provisions which defined and applied the terms "taxable distribution", "taxable termination", "younger generation beneficiary", and "related or subordinate trustee".

1980—Subsec. (e)(2)(A)(i). Pub. L. 96–222, §107(a)(2)(B)(i), inserted "(other than as a potential appointee under a power of appointment held by another)" after "trust".

Subsec. (e)(2)(B). Pub. L. 96–222, §107(a)(2)(B)(ii), redesignated cls. (iii) to (v) as (iv) to (vi), added cl. (iii), and struck out cl. (vi) which related to an employee of a corporation in which the grantor or any beneficiary of the trust is an executive.

1978—Subsec. (b)(2)(B). Pub. L. 95–600, §702(n)(3), substituted "a present interest and a present power" for "an interest and a power" and "present interest or present power" for "interest or power" wherever appearing.

Subsec. (e). Pub. L. 95–600, §702(n)(2), inserted provisions relating to powers of independent trustees and definition of a related or subordinate trustee.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99–514, set out as a note under section 2601 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title VII, §702(n)(5), Nov. 6, 1978, 92 Stat. 2936, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(A) Except as provided in subparagraph (B), the amendments made by this subsection [amending this section, section 2602 of this title, and provisions set out as a note under section 2601 of this title] shall take effect as if included in chapter 13 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] as added by section 2006 of the Tax Reform Act of 1976 [Pub. L. 94–455, title XX, §2006, Oct. 4, 1976, 90 Stat. 1879].

"(B) The amendment made by paragraph (1) [amending provisions set out as a note under section 2601 of this title] shall take effect on October 4, 1976."

[§2614. Omitted]

CODIFICATION

Section, added Pub. L. 94–455, title XX, §2006(a), Oct. 4, 1976, 90 Stat. 1887; amended Pub. L. 95–600, title VII, §702(c)(1)(B), Nov. 6, 1978, 92 Stat. 2926; Pub. L. 96–223, title IV, §401(c)(3), Apr. 2, 1980, 94 Stat. 300, related to special rules for generation-skipping transfers, prior to the general revision of this chapter by Pub. L. 99–514, §1431(a).

Subchapter C—Taxable Amount

Sec.

2621. Taxable amount in case of taxable distribution.

2622. Taxable amount in case of taxable termination.

2623. Taxable amount in case of direct skip.

2624. Valuation.

AMENDMENTS

1986—Pub. L. 99–514, title XIV, §1431(a), Oct. 22, 1986, 100 Stat. 2720, substituted "Taxable Amount" for "Administration" in subchapter heading, substituted "Taxable amount in case of taxable distribution" for "Administration" in item 2621 and "Taxable amount in case of taxable termination" for "Regulations" in item 2622, and added items 2623 and 2624.

§2621. Taxable amount in case of taxable distribution

(a) In general

For purposes of this chapter, the taxable amount in the case of any taxable distribution shall be—

(1) the value of the property received by the transferee, reduced by

(2) any expense incurred by the transferee in connection with the determination, collection, or refund of the tax imposed by this chapter with respect to such distribution.

(b) Payment of GST tax treated as taxable distribution

For purposes of this chapter, if any of the tax imposed by this chapter with respect to any taxable distribution is paid out of the trust, an amount equal to the portion so paid shall be treated as a taxable distribution.

(Added Pub. L. 94–455, title XX, §2006(a), Oct. 4, 1976, 90 Stat. 1887; amended Pub. L. 97–34, title IV, §422(e)(4), Aug. 13, 1981, 95 Stat. 316; Pub. L. 99–514, title XIV, §1431(a), Oct. 22, 1986, 100 Stat. 2720.)

AMENDMENTS

1986—Pub. L. 99–514 amended section generally, substituting provisions relating to taxable amount in case of a taxable distribution for former provisions which related generally to administration of this chapter. See section 2661 of this title.

1981—Subsec. (b). Pub. L. 97–34 substituted "Section 6166" for "Sections 6166 and 6166A" in heading and "section 6166 (relating to extension of time" for "sections 6166 and 6166A (relating to extensions of time" in text.

EFFECTIVE DATE OF 1986 AMENDMENT

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99–514, set out as a note under section 2601 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to estates of decedents dying after Dec. 31, 1981, see section 422(f)(1) of Pub. L. 97–34, set out as a note under section 6166 of this title.

§2622. Taxable amount in case of taxable termination

(a) In general

For purposes of this chapter, the taxable amount in the case of a taxable termination shall be—

(1) the value of all property with respect to which the taxable termination has occurred, reduced by

(2) any deduction allowed under subsection (b).

(b) Deduction for certain expenses

For purposes of subsection (a), there shall be allowed a deduction similar to the deduction allowed by section 2053 (relating to expenses, indebtedness, and taxes) for amounts attributable to the property with respect to which the taxable termination has occurred.

(Added Pub. L. 94–455, title XX, §2006(a), Oct. 4, 1976, 90 Stat. 1888; amended Pub. L. 99–514, title XIV, §1431(a), Oct. 22, 1986, 100 Stat. 2720.)

AMENDMENTS

1986—Pub. L. 99–514 amended section generally, substituting provisions relating to taxable amount in case of a taxable termination for former provisions which authorized the Secretary to promulgate regulations. See section 2663 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99–514, set out as a note under section 2601 of this title.

§2623. Taxable amount in case of direct skip

For purposes of this chapter, the taxable amount in the case of a direct skip shall be the value of the property received by the transferee.

(Added Pub. L. 99–514, title XIV, §1431(a), Oct. 22, 1986, 100 Stat. 2721.)

EFFECTIVE DATE

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99–514, set out as a note under section 2601 of this title.

§2624. Valuation

(a) General rule

Except as otherwise provided in this chapter, property shall be valued as of the time of the generation-skipping transfer.

(b) Alternate valuation and special use valuation elections apply to certain direct skips

In the case of any direct skip of property which is included in the transferor's gross estate, the value of such property for purposes of this chapter shall be the same as its value for purposes of chapter 11 (determined with regard to sections 2032 and 2032A).

(c) Alternate valuation election permitted in the case of taxable terminations occurring at death

If 1 or more taxable terminations with respect to the same trust occur at the same time as and as a result of the death of an individual, an election may be made to value all of the property included in such terminations in accordance with section 2032.

(d) Reduction for consideration provided by transferee

For purposes of this chapter, the value of the property transferred shall be reduced by the amount of any consideration provided by the transferee.

(Added Pub. L. 99–514, title XIV, §1431(a), Oct. 22, 1986, 100 Stat. 2721.)

EFFECTIVE DATE

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99–514, set out as a note under section 2601 of this title.

Subchapter D—GST Exemption

Sec.
2631. GST exemption.
2632. Special rules for allocation of GST exemption.

§2631. GST exemption

(a) General rule

For purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption amount which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor.

(b) Allocations irrevocable

Any allocation under subsection (a), once made, shall be irrevocable.

(c) GST exemption amount

For purposes of subsection (a), the GST exemption amount for any calendar year shall be equal to the basic exclusion amount under section 2010(c) for such calendar year.

(Added Pub. L. 99–514, title XIV, §1431(a), Oct. 22, 1986, 100 Stat. 2721; amended Pub. L. 105–34, title V, §501(d), Aug. 5, 1997, 111 Stat. 846; Pub. L. 105–206, title VI, §6007(a)(1), July 22, 1998, 112 Stat. 806; Pub. L. 107–16, title V, §521(c), June 7, 2001, 115 Stat. 72; Pub. L. 111–312, title III, §303(b)(2), Dec. 17, 2010, 124 Stat. 3303.)

AMENDMENTS

2010—Subsec. (c). Pub. L. 111–312 substituted "the basic exclusion amount" for "the applicable exclusion amount".

2001—Subsec. (a). Pub. L. 107–16, §521(c)(1), substituted "amount" for "of $1,000,000".

Subsec. (c). Pub. L. 107–16, §521(c)(2), amended heading and text of subsec. (c) generally, substituting provisions relating to the GST exemption amount for any calendar year for provisions which related to inflation adjustment of the $1,000,000 amount contained in subsec. (a) in the case of any calendar year after 1998 and applicability of any increase for any such calendar year.

1998—Subsec. (c). Pub. L. 105–206 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "In the case of an individual who dies in any calendar year after 1998, the $1,000,000 amount contained in subsection (a) shall be increased by an amount equal to—

"(1) $1,000,000, multiplied by

"(2) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting 'calendar year 1997' for 'calendar year 1992' in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of $10,000, such amount shall be rounded to the next lowest multiple of $10,000."

1997—Subsec. (c). Pub. L. 105–34 added subsec. (c).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–312 applicable to generation-skipping transfers after Dec. 31, 2010, see section 303(c)(2) of Pub. L. 111–312, set out as a note under section 2010 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to estates of decedents dying, and generation-skipping transfers, after Dec. 31, 2003, see section 521(e)(3) of Pub. L. 107–16, set out as a note under section 2010 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99–514, set out as a note under section 2601 of this title.

§2632. Special rules for allocation of GST exemption

(a) Time and manner of allocation

(1) Time

Any allocation by an individual of his GST exemption under section 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

(2) Manner

The Secretary shall prescribe by forms or regulations the manner in which any allocation referred to in paragraph (1) is to be made.

(b) Deemed allocation to certain lifetime direct skips

(1) In general

If any individual makes a direct skip during his lifetime, any unused portion of such individual's GST exemption shall be allocated to the property transferred to the extent necessary to make the inclusion ratio for such property zero. If the amount of the direct skip exceeds such unused portion, the entire unused portion shall be allocated to the property transferred.

(2) Unused portion

For purposes of paragraph (1), the unused portion of an individual's GST exemption is that portion of such exemption which has not previously been allocated by such individual (or treated as allocated under paragraph (1) or subsection (c)(1)).

(3) Subsection not to apply in certain cases

An individual may elect to have this subsection not apply to a transfer.

(c) Deemed allocation to certain lifetime transfers to GST trusts

(1) In general

If any individual makes an indirect skip during such individual's lifetime, any unused portion of such individual's GST exemption shall be allocated to the property transferred to the extent necessary to make the inclusion ratio for such property zero. If the amount of the indirect skip exceeds such unused portion, the entire unused portion shall be allocated to the property transferred.

(2) Unused portion

For purposes of paragraph (1), the unused portion of an individual's GST exemption is that portion of such exemption which has not previously been—

(A) allocated by such individual,

(B) treated as allocated under subsection (b) with respect to a direct skip occurring during or before the calendar year in which the indirect skip is made, or

(C) treated as allocated under paragraph (1) with respect to a prior indirect skip.

(3) Definitions

(A) Indirect skip

For purposes of this subsection, the term "indirect skip" means any transfer of property (other than a direct skip) subject to the tax imposed by chapter 12 made to a GST trust.

(B) GST trust

The term "GST trust" means a trust that could have a generation-skipping transfer with respect to the transferor unless—

(i) the trust instrument provides that more than 25 percent of the trust corpus must be distributed to or may be withdrawn by one or more individuals who are non-skip persons—

(I) before the date that the individual attains age 46,

(II) on or before one or more dates specified in the trust instrument that will occur before the date that such individual attains age 46, or

(III) upon the occurrence of an event that, in accordance with regulations prescribed by the Secretary, may reasonably be expected to occur before the date that such individual attains age 46,

(ii) the trust instrument provides that more than 25 percent of the trust corpus must be distributed to or may be withdrawn by one or more individuals who are non-skip persons and who are living on the date of death of another person identified in the instrument (by name or by class) who is more than 10 years older than such individuals,

(iii) the trust instrument provides that, if one or more individuals who are non-skip persons die on or before a date or event described in clause (i) or (ii), more than 25 percent of the trust corpus either must be distributed to the estate or estates of one or more of such individuals or is subject to a general power of appointment exercisable by one or more of such individuals,

(iv) the trust is a trust any portion of which would be included in the gross estate of a non-skip person (other than the transferor) if such person died immediately after the transfer,

(v) the trust is a charitable lead annuity trust (within the meaning of section 2642(e)(3)(A)) or a charitable remainder annuity trust or a charitable remainder unitrust (within the meaning of section 664(d)), or

(vi) the trust is a trust with respect to which a deduction was allowed under section 2522 for the amount of an interest in the form of the right to receive annual payments of a fixed

percentage of the net fair market value of the trust property (determined yearly) and which is required to pay principal to a non-skip person if such person is alive when the yearly payments for which the deduction was allowed terminate.

For purposes of this subparagraph, the value of transferred property shall not be considered to be includible in the gross estate of a non-skip person or subject to a right of withdrawal by reason of such person holding a right to withdraw so much of such property as does not exceed the amount referred to in section 2503(b) with respect to any transferor, and it shall be assumed that powers of appointment held by non-skip persons will not be exercised.

(4) Automatic allocations to certain GST trusts

For purposes of this subsection, an indirect skip to which section 2642(f) applies shall be deemed to have been made only at the close of the estate tax inclusion period. The fair market value of such transfer shall be the fair market value of the trust property at the close of the estate tax inclusion period.

(5) Applicability and effect

(A) In general

An individual—

(i) may elect to have this subsection not apply to—

(I) an indirect skip, or

(II) any or all transfers made by such individual to a particular trust, and

(ii) may elect to treat any trust as a GST trust for purposes of this subsection with respect to any or all transfers made by such individual to such trust.

(B) Elections

(i) Elections with respect to indirect skips

An election under subparagraph (A)(i)(I) shall be deemed to be timely if filed on a timely filed gift tax return for the calendar year in which the transfer was made or deemed to have been made pursuant to paragraph (4) or on such later date or dates as may be prescribed by the Secretary.

(ii) Other elections

An election under clause (i)(II) or (ii) of subparagraph (A) may be made on a timely filed gift tax return for the calendar year for which the election is to become effective.

(d) Retroactive allocations

(1) In general

If—

(A) a non-skip person has an interest or a future interest in a trust to which any transfer has been made,

(B) such person—

(i) is a lineal descendant of a grandparent of the transferor or of a grandparent of the transferor's spouse or former spouse, and

(ii) is assigned to a generation below the generation assignment of the transferor, and

(C) such person predeceases the transferor,

then the transferor may make an allocation of any of such transferor's unused GST exemption to any previous transfer or transfers to the trust on a chronological basis.

(2) Special rules

If the allocation under paragraph (1) by the transferor is made on a gift tax return filed on or

before the date prescribed by section 6075(b) for gifts made within the calendar year within which the non-skip person's death occurred—

(A) the value of such transfer or transfers for purposes of section 2642(a) shall be determined as if such allocation had been made on a timely filed gift tax return for each calendar year within which each transfer was made,

(B) such allocation shall be effective immediately before such death, and

(C) the amount of the transferor's unused GST exemption available to be allocated shall be determined immediately before such death.

(3) Future interest

For purposes of this subsection, a person has a future interest in a trust if the trust may permit income or corpus to be paid to such person on a date or dates in the future.

(e) Allocation of unused GST exemption

(1) In general

Any portion of an individual's GST exemption which has not been allocated within the time prescribed by subsection (a) shall be deemed to be allocated as follows—

(A) first, to property which is the subject of a direct skip occurring at such individual's death, and

(B) second, to trusts with respect to which such individual is the transferor and from which a taxable distribution or a taxable termination might occur at or after such individual's death.

(2) Allocation within categories

(A) In general

The allocation under paragraph (1) shall be made among the properties described in subparagraph (A) thereof and the trusts described in subparagraph (B) thereof, as the case may be, in proportion to the respective amounts (at the time of allocation) of the nonexempt portions of such properties or trusts.

(B) Nonexempt portion

For purposes of subparagraph (A), the term "nonexempt portion" means the value (at the time of allocation) of the property or trust, multiplied by the inclusion ratio with respect to such property or trust.

(Added Pub. L. 99–514, title XIV, §1431(a), Oct. 22, 1986, 100 Stat. 2721; amended Pub. L. 100–647, title I, §1014(g)(16), Nov. 10, 1988, 102 Stat. 3566; Pub. L. 107–16, title V, §561(a), (b), June 7, 2001, 115 Stat. 86, 89.)

AMENDMENTS

2001—Subsec. (b)(2). Pub. L. 107–16, §561(b), substituted "or subsection (c)(1)" for "with respect to a prior direct skip".

Subsecs. (c) to (e). Pub. L. 107–16, §561(a), added subsecs. (c) and (d) and redesignated former subsec. (c) as (e).

1988—Subsec. (b)(2). Pub. L. 100–647 substituted "paragraph (1) with respect to a prior direct skip)" for "paragraph (1)) with respect to a prior direct skip".

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–16, title V, §561(c), June 7, 2001, 115 Stat. 89, provided that:

"(1) DEEMED ALLOCATION.—Section 2632(c) of the Internal Revenue Code of 1986 (as added by subsection (a)), and the amendment made by subsection (b) [amending this section], shall apply to transfers subject to chapter 11 or 12 made after December 31, 2000, and to estate tax inclusion periods ending after December 31, 2000.

"(2) RETROACTIVE ALLOCATIONS.—Section 2632(d) of the Internal Revenue Code of 1986 (as added by subsection (a)) shall apply to deaths of non-skip persons occurring after December 31, 2000."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of

the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99–514, set out as a note under section 2601 of this title.

Subchapter E—Applicable Rate; Inclusion Ratio

Sec.
2641. Applicable rate.
2642. Inclusion ratio.

§2641. Applicable rate

(a) General rule

For purposes of this chapter, the term "applicable rate" means, with respect to any generation-skipping transfer, the product of—

(1) the maximum Federal estate tax rate, and

(2) the inclusion ratio with respect to the transfer.

(b) Maximum Federal estate tax rate

For purposes of subsection (a), the term "maximum Federal estate tax rate" means the maximum rate imposed by section 2001 on the estates of decedents dying at the time of the taxable distribution, taxable termination, or direct skip, as the case may be.

(Added Pub. L. 99–514, title XIV, §1431(a), Oct. 22, 1986, 100 Stat. 2722.)

EFFECTIVE DATE

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99–514, set out as a note under section 2601 of this title.

MODIFICATION OF GENERATION-SKIPPING TRANSFER TAX

Pub. L. 111–312, title III, §302(c), Dec. 17, 2010, 124 Stat. 3302, provided that: "In the case of any generation-skipping transfer made after December 31, 2009, and before January 1, 2011, the applicable rate determined under section 2641(a) of the Internal Revenue Code of 1986 shall be zero."

§2642. Inclusion ratio

(a) Inclusion ratio defined

For purposes of this chapter—

(1) In general

Except as otherwise provided in this section, the inclusion ratio with respect to any property transferred in a generation-skipping transfer shall be the excess (if any) of 1 over—

(A) except as provided in subparagraph (B), the applicable fraction determined for the trust from which such transfer is made, or

(B) in the case of a direct skip, the applicable fraction determined for such skip.

(2) Applicable fraction

For purposes of paragraph (1), the applicable fraction is a fraction—

(A) the numerator of which is the amount of the GST exemption allocated to the trust (or in the case of a direct skip, allocated to the property transferred in such skip), and

(B) the denominator of which is—

(i) the value of the property transferred to the trust (or involved in the direct skip), reduced by

(ii) the sum of—

(I) any Federal estate tax or State death tax actually recovered from the trust attributable to such property, and

(II) any charitable deduction allowed under section 2055 or 2522 with respect to such property.

(3) Severing of trusts

(A) In general

If a trust is severed in a qualified severance, the trusts resulting from such severance shall be treated as separate trusts thereafter for purposes of this chapter.

(B) Qualified severance

For purposes of subparagraph (A)—

(i) In general

The term "qualified severance" means the division of a single trust and the creation (by any means available under the governing instrument or under local law) of two or more trusts if—

(I) the single trust was divided on a fractional basis, and

(II) the terms of the new trusts, in the aggregate, provide for the same succession of interests of beneficiaries as are provided in the original trust.

(ii) Trusts with inclusion ratio greater than zero

If a trust has an inclusion ratio of greater than zero and less than 1, a severance is a qualified severance only if the single trust is divided into two trusts, one of which receives a fractional share of the total value of all trust assets equal to the applicable fraction of the single trust immediately before the severance. In such case, the trust receiving such fractional share shall have an inclusion ratio of zero and the other trust shall have an inclusion ratio of 1.

(iii) Regulations

The term "qualified severance" includes any other severance permitted under regulations prescribed by the Secretary.

(C) Timing and manner of severances

A severance pursuant to this paragraph may be made at any time. The Secretary shall prescribe by forms or regulations the manner in which the qualified severance shall be reported to the Secretary.

(b) Valuation rules, etc.

Except as provided in subsection (f)—

(1) Gifts for which gift tax return filed or deemed allocation made

If the allocation of the GST exemption to any transfers of property is made on a gift tax return filed on or before the date prescribed by section 6075(b) for such transfer or is deemed to be made under section 2632(b)(1) or (c)(1)—

(A) the value of such property for purposes of subsection (a) shall be its value as finally determined for purposes of chapter 12 (within the meaning of section 2001(f)(2)), or, in the case of an allocation deemed to have been made at the close of an estate tax inclusion period, its value at the time of the close of the estate tax inclusion period, and

(B) such allocation shall be effective on and after the date of such transfer, or, in the case of an allocation deemed to have been made at the close of an estate tax inclusion period, on and after the close of such estate tax inclusion period.

(2) Transfers and allocations at or after death

(A) Transfers at death

If property is transferred as a result of the death of the transferor, the value of such property for purposes of subsection (a) shall be its value as finally determined for purposes of chapter 11; except that, if the requirements prescribed by the Secretary respecting allocation of post-death changes in value are not met, the value of such property shall be determined as of the time of the distribution concerned.

(B) Allocations to property transferred at death of transferor

Any allocation to property transferred as a result of the death of the transferor shall be effective on and after the date of the death of the transferor.

(3) Allocations to inter vivos transfers not made on timely filed gift tax return

If any allocation of the GST exemption to any property not transferred as a result of the death of the transferor is not made on a gift tax return filed on or before the date prescribed by section 6075(b) and is not deemed to be made under section 2632(b)(1)—

(A) the value of such property for purposes of subsection (a) shall be determined as of the time such allocation is filed with the Secretary, and

(B) such allocation shall be effective on and after the date on which such allocation is filed with the Secretary.

(4) QTIP trusts

If the value of property is included in the estate of a spouse by virtue of section 2044, and if such spouse is treated as the transferor of such property under section 2652(a), the value of such property for purposes of subsection (a) shall be its value for purposes of chapter 11 in the estate of such spouse.

(c) Treatment of certain direct skips which are nontaxable gifts

(1) In general

In the case of a direct skip which is a nontaxable gift, the inclusion ratio shall be zero.

(2) Exception for certain transfers in trust

Paragraph (1) shall not apply to any transfer to a trust for the benefit of an individual unless—

(A) during the life of such individual, no portion of the corpus or income of the trust may be distributed to (or for the benefit of) any person other than such individual, and

(B) if the trust does not terminate before the individual dies, the assets of such trust will be includible in the gross estate of such individual.

Rules similar to the rules of section 2652(c)(3) shall apply for purposes of subparagraph (A).

(3) Nontaxable gift

For purposes of this subsection, the term "nontaxable gift" means any transfer of property to the extent such transfer is not treated as a taxable gift by reason of—

(A) section 2503(b) (taking into account the application of section 2513), or

(B) section 2503(e).

(d) Special rules where more than 1 transfer made to trust

(1) In general

If a transfer of property is made to a trust in existence before such transfer, the applicable fraction for such trust shall be recomputed as of the time of such transfer in the manner provided in paragraph (2).

(2) Applicable fraction

In the case of any such transfer, the recomputed applicable fraction is a fraction—

(A) the numerator of which is the sum of—

(i) the amount of the GST exemption allocated to property involved in such transfer, plus

(ii) the nontax portion of such trust immediately before such transfer, and

(B) the denominator of which is the sum of—

(i) the value of the property involved in such transfer reduced by the sum of—

(I) any Federal estate tax or State death tax actually recovered from the trust attributable to such property, and

(II) any charitable deduction allowed under section 2055 or 2522 with respect to such property, and

(ii) the value of all of the property in the trust (immediately before such transfer).

(3) Nontax portion

For purposes of paragraph (2), the term "nontax portion" means the product of—

(A) the value of all of the property in the trust, and

(B) the applicable fraction in effect for such trust.

(4) Similar recomputation in case of certain late allocations

If—

(A) any allocation of the GST exemption to property transferred to a trust is not made on a timely filed gift tax return required by section 6019, and

(B) there was a previous allocation with respect to property transferred to such trust,

the applicable fraction for such trust shall be recomputed as of the time of such allocation under rules similar to the rules of paragraph (2).

(e) Special rules for charitable lead annuity trusts

(1) In general

For purposes of determining the inclusion ratio for any charitable lead annuity trust, the applicable fraction shall be a fraction—

(A) the numerator of which is the adjusted GST exemption, and

(B) the denominator of which is the value of all of the property in such trust immediately after the termination of the charitable lead annuity.

(2) Adjusted GST exemption

For purposes of paragraph (1), the adjusted GST exemption is an amount equal to the GST exemption allocated to the trust increased by interest determined—

(A) at the interest rate used in determining the amount of the deduction under section 2055 or 2522 (as the case may be) for the charitable lead annuity, and

(B) for the actual period of the charitable lead annuity.

(3) Definitions

For purposes of this subsection—

(A) Charitable lead annuity trust

The term "charitable lead annuity trust" means any trust in which there is a charitable lead annuity.

(B) Charitable lead annuity

The term "charitable lead annuity" means any interest in the form of a guaranteed annuity with respect to which a deduction was allowed under section 2055 or 2522 (as the case may be).

(4) Coordination with subsection (d)

Under regulations, appropriate adjustments shall be made in the application of subsection (d) to take into account the provisions of this subsection.

(f) Special rules for certain inter vivos transfers

Except as provided in regulations—

(1) In general

For purposes of determining the inclusion ratio, if—

(A) an individual makes an inter vivos transfer of property, and

(B) the value of such property would be includible in the gross estate of such individual under chapter 11 if such individual died immediately after making such transfer (other than by reason of section 2035),

any allocation of GST exemption to such property shall not be made before the close of the estate tax inclusion period (and the value of such property shall be determined under paragraph (2)). If such transfer is a direct skip, such skip shall be treated as occurring as of the close of the estate tax inclusion period.

(2) Valuation

In the case of any property to which paragraph (1) applies, the value of such property shall be—

(A) if such property is includible in the gross estate of the transferor (other than by reason of section 2035), its value for purposes of chapter 11, or

(B) if subparagraph (A) does not apply, its value as of the close of the estate tax inclusion period (or, if any allocation of GST exemption to such property is not made on a timely filed gift tax return for the calendar year in which such period ends, its value as of the time such allocation is filed with the Secretary).

(3) Estate tax inclusion period

For purposes of this subsection, the term "estate tax inclusion period" means any period after the transfer described in paragraph (1) during which the value of the property involved in such transfer would be includible in the gross estate of the transferor under chapter 11 if he died. Such period shall in no event extend beyond the earlier of—

(A) the date on which there is a generation-skipping transfer with respect to such property, or

(B) the date of the death of the transferor.

(4) Treatment of spouse

Except as provided in regulations, any reference in this subsection to an individual or transferor shall be treated as including a reference to the spouse of such individual or transferor.

(5) Coordination with subsection (d)

Under regulations, appropriate adjustments shall be made in the application of subsection (d) to take into account the provisions of this subsection.

(g) Relief provisions

(1) Relief from late elections

(A) In general

The Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make—

(i) an allocation of GST exemption described in paragraph (1) or (2) of subsection (b), and

(ii) an election under subsection (b)(3) or (c)(5) of section 2632.

Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of this paragraph.

(B) Basis for determinations

In determining whether to grant relief under this paragraph, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief under this paragraph, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

(2) Substantial compliance

An allocation of GST exemption under section 2632 that demonstrates an intent to have the lowest possible inclusion ratio with respect to a transfer or a trust shall be deemed to be an allocation of so much of the transferor's unused GST exemption as produces the lowest possible inclusion ratio. In determining whether there has been substantial compliance, all relevant circumstances shall be taken into account, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant.

(Added Pub. L. 99–514, title XIV, §1431(a), Oct. 22, 1986, 100 Stat. 2722; amended Pub. L. 100–647, title I, §1014(g)(3)(A), (4), (17)(A), (B), (18), Nov. 10, 1988, 102 Stat. 3563, 3566, 3567; Pub. L. 101–239, title VII, §7811(j)(4), Dec. 19, 1989, 103 Stat. 2411; Pub. L. 101–508, title XI, §§11703(c)(1), (2), 11704(a)(17), (36), Nov. 5, 1990, 104 Stat. 1388–517, 1388–519; Pub. L. 107–16, title V, §§562(a), 563(a), (b), 564(a), June 7, 2001, 115 Stat. 89–91.)

AMENDMENTS

2001—Subsec. (a)(3). Pub. L. 107–16, §562(a), added par. (3).

Subsec. (b)(1). Pub. L. 107–16, §563(a), reenacted heading without change and amended text of par. (1) generally. Prior to amendment, text read as follows: "If the allocation of the GST exemption to any property is made on a gift tax return filed on or before the date prescribed by section 6075(b) or is deemed to be made under section 2632(b)(1)—

"(A) the value of such property for purposes of subsection (a) shall be its value for purposes of chapter 12, and

"(B) such allocation shall be effective on and after the date of such transfer."

Subsec. (b)(2)(A). Pub. L. 107–16, §563(b), reenacted heading without change and amended text of subpar. (A) generally. Prior to amendment, text read as follows: "If property is transferred as a result of the death of the transferor, the value of such property for purposes of subsection (a) shall be its value for purposes of chapter 11; except that, if the requirements prescribed by the Secretary respecting allocation of post-death changes in value are not met, the value of such property shall be determined as of the time of the distribution concerned."

Subsec. (g). Pub. L. 107–16, §564(a), added subsec. (g).

1990—Subsec. (b)(3). Pub. L. 101–508, §11704(a)(36), amended Pub. L. 100–647, §1014(g)(4)(F)(ii). See 1988 Amendment note below.

Subsec. (c)(2). Pub. L. 101–508, §11703(c)(2), inserted at end: "Rules similar to the rules of section 2652(c)(3) shall apply for purposes of subparagraph (A)."

Subsec. (c)(2)(B). Pub. L. 101–508, §11703(c)(1), substituted "the trust does not terminate before the individual dies" for "such individual dies before the trust is terminated".

Subsec. (d)(2)(B)(i)(I). Pub. L. 101–508, §11704(a)(17), substituted "State" for "state".

1989—Subsec. (b)(1), (3). Pub. L. 101–239 substituted "a gift tax return filed on or before the date prescribed by section 6075(b)" for "a timely filed gift tax return required by section 6019" in introductory provisions.

1988—Subsec. (a)(2). Pub. L. 100–647, §1014(g)(4)(B), struck out at end "Except as provided in paragraphs (3) and (4) of subsection (b), the value determined under subparagraph (B)(i) shall be of the property as of the time of the transfer to the trust (or the direct skip)."

Subsec. (b). Pub. L. 100–647, §1014(g)(4)(D), inserted "Except as provided in subsection (f)—" as introductory provision.

Subsec. (b)(2)(A). Pub. L. 100–647, §1014(g)(4)(C), inserted before period at end "; except that, if the requirements prescribed by the Secretary respecting allocation of post-death changes in value are not met, the value of such property shall be determined as of the time of the distribution concerned."

Subsec. (b)(2)(B). Pub. L. 100–647, §1014(g)(4)(E), substituted "to property transferred at death" for "at or after death" in heading and "to property transferred as a result of the death of the transferor" for "at or after the death of the transferor" in text.

Subsec. (b)(3). Pub. L. 100–647, §1014(g)(4)(F)(ii), as amended by Pub. L. 101–508, §11704(a)(36), substituted "Allocations to inter vivos transfers" for "Inter vivos allocations" in heading.

Pub. L. 100–647, §1014(g)(4)(F)(i), substituted "to any property not transferred as a result of the death of the transferor is" for "to any property is made during the life of the transferor but is".

Subsec. (c). Pub. L. 100–647, §1014(g)(17)(A), inserted "direct skips which are" in heading and amended text generally. Prior to amendment, text read as follows:

"(1) DIRECT SKIPS.—In the case of any direct skip which is a nontaxable gift, the inclusion ratio shall be

zero.

"(2) TREATMENT OF NONTAXABLE GIFTS MADE TO TRUSTS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), any nontaxable gift which is not a direct skip and which is made to a trust shall not be taken into account under subsection (a)(2)(B).

"(B) DETERMINATION OF 1ST TRANSFER TO TRUST.—In the case of any nontaxable gift referred to in subparagraph (A) which is the 1st transfer to the trust, the inclusion ratio for such trust shall be zero.

"(3) NONTAXABLE GIFT.—For purposes of this section, the term 'nontaxable gift' means any transfer of property to the extent such transfer is not treated as a taxable gift by reason of—

"(A) section 2503(b) (taking into account the application of section 2513), or

"(B) section 2503(e)."

Subsec. (d)(1). Pub. L. 100–647, §1014(g)(17)(B), struck out "(other than a nontaxable gift)" after "transfer of property".

Subsec. (d)(2)(B)(i). Pub. L. 100–647, §1014(g)(18), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: "the value of the property involved in such transfer, reduced by any charitable deduction allowed under section 2055 or 2522 with respect to such property, and".

Subsec. (e). Pub. L. 100–647, §1014(g)(3)(A), added subsec. (e).

Subsec. (f). Pub. L. 100–647, §1014(g)(4)(A), added subsec. (f).

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–16, title V, §562(b), June 7, 2001, 115 Stat. 90, provided that: "The amendment made by this section [amending this section] shall apply to severances after December 31, 2000."

Pub. L. 107–16, title V, §563(c), June 7, 2001, 115 Stat. 91, provided that: "The amendments made by this section [amending this section] shall apply to transfers subject to chapter 11 or 12 of the Internal Revenue Code of 1986 made after December 31, 2000."

Pub. L. 107–16, title V, §564(b), June 7, 2001, 115 Stat. 91, provided that:

"(1) RELIEF FROM LATE ELECTIONS.—Section 2642(g)(1) of the Internal Revenue Code of 1986 (as added by subsection (a)) shall apply to requests pending on, or filed after, December 31, 2000.

"(2) SUBSTANTIAL COMPLIANCE.—Section 2642(g)(2) of such Code (as so added) shall apply to transfers subject to chapter 11 or 12 of the Internal Revenue Code of 1986 made after December 31, 2000. No implication is intended with respect to the availability of relief from late elections or the application of a rule of substantial compliance on or before such date."

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, §11703(c)(4), Nov. 5, 1990, 104 Stat. 1388–517, provided that: "The amendments made by paragraphs (1) and (2) [amending this section] shall apply to transfers after March 31, 1988."

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1014(g)(3)(B), Nov. 10, 1988, 102 Stat. 3563, provided that: "The amendment made by subparagraph (A) [amending this section] shall apply for purposes of determining the inclusion ratio with respect to property transferred after October 13, 1987."

Pub. L. 100–647, title I, §1014(g)(17)(C), Nov. 10, 1988, 102 Stat. 3567, provided that: "The amendments made by this paragraph [amending this section] shall apply to transfers after March 31, 1988."

Amendment by section 1014(g)(4), (18) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99–514, set out as a note under section 2601 of this title.

Subchapter F—Other Definitions and Special Rules

Sec.
2651. Generation assignment.
2652. Other definitions.
2653. Taxation of multiple skips.
2654. Special rules.

§2651. Generation assignment

(a) In general

For purposes of this chapter, the generation to which any person (other than the transferor) belongs shall be determined in accordance with the rules set forth in this section.

(b) Lineal descendants

(1) In general

An individual who is a lineal descendant of a grandparent of the transferor shall be assigned to that generation which results from comparing the number of generations between the grandparent and such individual with the number of generations between the grandparent and the transferor.

(2) On spouse's side

An individual who is a lineal descendant of a grandparent of a spouse (or former spouse) of the transferor (other than such spouse) shall be assigned to that generation which results from comparing the number of generations between such grandparent and such individual with the number of generations between such grandparent and such spouse.

(3) Treatment of legal adoptions, etc.

For purposes of this subsection—

(A) Legal adoptions

A relationship by legal adoption shall be treated as a relationship by blood.

(B) Relationships by half-blood

A relationship by the half-blood shall be treated as a relationship of the whole-blood.

(c) Marital relationship

(1) Marriage to transferor

An individual who has been married at any time to the transferor shall be assigned to the transferor's generation.

(2) Marriage to other lineal descendants

An individual who has been married at any time to an individual described in subsection (b) shall be assigned to the generation of the individual so described.

(d) Persons who are not lineal descendants

An individual who is not assigned to a generation by reason of the foregoing provisions of this section shall be assigned to a generation on the basis of the date of such individual's birth with—

(1) an individual born not more than 12½ years after the date of the birth of the transferor assigned to the transferor's generation,

(2) an individual born more than 12½ years but not more than 37½ years after the date of the birth of the transferor assigned to the first generation younger than the transferor, and

(3) similar rules for a new generation every 25 years.

(e) Special rule for persons with a deceased parent

(1) In general

For purposes of determining whether any transfer is a generation-skipping transfer, if—

(A) an individual is a descendant of a parent of the transferor (or the transferor's spouse or former spouse), and

(B) such individual's parent who is a lineal descendant of the parent of the transferor (or the transferor's spouse or former spouse) is dead at the time the transfer (from which an interest of such individual is established or derived) is subject to a tax imposed by chapter 11 or 12 upon the transferor (and if there shall be more than 1 such time, then at the earliest such time),

such individual shall be treated as if such individual were a member of the generation which is 1 generation below the lower of the transferor's generation or the generation assignment of the youngest living ancestor of such individual who is also a descendant of the parent of the transferor (or the transferor's spouse or former spouse), and the generation assignment of any descendant of such individual shall be adjusted accordingly.

(2) Limited application of subsection to collateral heirs

This subsection shall not apply with respect to a transfer to any individual who is not a lineal descendant of the transferor (or the transferor's spouse or former spouse) if, at the time of the transfer, such transferor has any living lineal descendant.

(f) Other special rules

(1) Individuals assigned to more than 1 generation

Except as provided in regulations, an individual who, but for this subsection, would be assigned to more than 1 generation shall be assigned to the youngest such generation.

(2) Interests through entities

Except as provided in paragraph (3), if an estate, trust, partnership, corporation, or other entity has an interest in property, each individual having a beneficial interest in such entity shall be treated as having an interest in such property and shall be assigned to a generation under the foregoing provisions of this subsection.

(3) Treatment of certain charitable organizations and governmental entities

Any—

(A) organization described in section 511(a)(2),

(B) charitable trust described in section 511(b)(2), and

(C) governmental entity,

shall be assigned to the transferor's generation.

(Added Pub. L. 99–514, title XIV, §1431(a), Oct. 22, 1986, 100 Stat. 2725; amended Pub. L. 100–647, title I, §1014(g)(11), (19), Nov. 10, 1988, 102 Stat. 3565, 3567; Pub. L. 105–34, title V, §511(a), Aug. 5, 1997, 111 Stat. 860.)

AMENDMENTS

1997—Subsecs. (e), (f). Pub. L. 105–34 added subsec. (e) and redesignated former subsec. (e) as (f).

1988—Subsec. (b)(2). Pub. L. 100–647, §1014(g)(19), inserted "(or former spouse)" after "a spouse".

Subsec. (e)(3). Pub. L. 100–647, §1014(g)(11), amended par. (3) generally, including governmental entities among the organizations to be assigned to transferor's generation.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to terminations, distributions, and transfers occurring after Dec. 31, 1997, see section 511(c) of Pub. L. 105–34, set out as a note under section 2612 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99–514, set out as a note under section 2601 of this title.

§2652. Other definitions

(a) Transferor

For purposes of this chapter—

(1) In general

Except as provided in this subsection or section 2653(a), the term "transferor" means—

(A) in the case of any property subject to the tax imposed by chapter 11, the decedent, and

(B) in the case of any property subject to the tax imposed by chapter 12, the donor.

An individual shall be treated as transferring any property with respect to which such individual is the transferor.

(2) Gift-splitting by married couples

If, under section 2513, one-half of a gift is treated as made by an individual and one-half of such gift is treated as made by the spouse of such individual, such gift shall be so treated for purposes of this chapter.

(3) Special election for qualified terminable interest property

In the case of—

(A) any trust with respect to which a deduction is allowed to the decedent under section 2056 by reason of subsection (b)(7) thereof, and

(B) any trust with respect to which a deduction to the donor spouse is allowed under section 2523 by reason of subsection (f) thereof,

the estate of the decedent or the donor spouse, as the case may be, may elect to treat all of the property in such trust for purposes of this chapter as if the election to be treated as qualified terminable interest property had not been made.

(b) Trust and trustee

(1) Trust

The term "trust" includes any arrangement (other than an estate) which, although not a trust, has substantially the same effect as a trust.

(2) Trustee

In the case of an arrangement which is not a trust but which is treated as a trust under this subsection, the term "trustee" shall mean the person in actual or constructive possession of the property subject to such arrangement.

(3) Examples

Arrangements to which this subsection applies include arrangements involving life estates and remainders, estates for years, and insurance and annuity contracts.

(c) Interest

(1) In general

A person has an interest in property held in trust if (at the time the determination is made) such person—

(A) has a right (other than a future right) to receive income or corpus from the trust,

(B) is a permissible current recipient of income or corpus from the trust and is not described in section 2055(a), or

(C) is described in section 2055(a) and the trust is—

(i) a charitable remainder annuity trust,
(ii) a charitable remainder unitrust within the meaning of section 664, or
(iii) a pooled income fund within the meaning of section 642(c)(5).

(2) Certain interests disregarded

For purposes of paragraph (1), an interest which is used primarily to postpone or avoid any tax imposed by this chapter shall be disregarded.

(3) Certain support obligations disregarded

The fact that income or corpus of the trust may be used to satisfy an obligation of support arising under State law shall be disregarded in determining whether a person has an interest in the trust, if—

(A) such use is discretionary, or

(B) such use is pursuant to the provisions of any State law substantially equivalent to the Uniform Gifts to Minors Act.

(d) Executor

For purposes of this chapter, the term "executor" has the meaning given such term by section 2203.

(Added Pub. L. 99–514, title XIV, §1431(a), Oct. 22, 1986, 100 Stat. 2726; amended Pub. L. 100–647, title I, §1014(g)(6), (8), (9), (14), (20), Nov. 10, 1988, 102 Stat. 3565–3567; Pub. L. 105–34, title XIII, §1305(b), Aug. 5, 1997, 111 Stat. 1040; Pub. L. 105–206, title VI, §6013(a)(3), (4)(A), July 22, 1998, 112 Stat. 819.)

AMENDMENTS

1998—Subsec. (b)(1). Pub. L. 105–206, §6013(a)(4)(A), struck out at end "Such term shall not include any trust during any period the trust is treated as part of an estate under section 645."

Pub. L. 105–206, §6013(a)(3), substituted "section 645" for "section 646".

1997—Subsec. (b)(1). Pub. L. 105–34 inserted at end "Such term shall not include any trust during any period the trust is treated as part of an estate under section 646."

1988—Subsec. (a)(1). Pub. L. 100–647, §1014(g)(9), substituted "any property" for "a transfer of a kind" in subpars. (A) and (B) and inserted at end "An individual shall be treated as transferring any property with respect to which such individual is the transferor."

Subsec. (a)(3). Pub. L. 100–647, §1014(g)(14), substituted "any trust" for "any property" in subpars. (A) and (B) and "may elect to treat all of the property in such trust" for "may elect to treat such property" in closing provisions.

Subsec. (c)(2). Pub. L. 100–647, §1014(g)(8), struck out "nominal" before "interests" in heading and substituted "any tax" for "the tax" in text.

Subsec. (c)(3). Pub. L. 100–647, §1014(g)(6), added par. (3).

Subsec. (d). Pub. L. 100–647, §1014(g)(20), added subsec. (d).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable with respect to estates of decedents dying after Aug. 5, 1997, see section 1305(d) of Pub. L. 105–34, set out as an Effective Date note under section 645 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99–514, set out as a note under

section 2601 of this title.

§2653. Taxation of multiple skips

(a) General rule

For purposes of this chapter, if—

(1) there is a generation-skipping transfer of any property, and

(2) immediately after such transfer such property is held in trust,

for purposes of applying this chapter (other than section 2651) to subsequent transfers from the portion of such trust attributable to such property, the trust will be treated as if the transferor of such property were assigned to the first generation above the highest generation of any person who has an interest in such trust immediately after the transfer.

(b) Trust retains inclusion ratio

(1) In general

Except as provided in paragraph (2), the provisions of subsection (a) shall not affect the inclusion ratio determined with respect to any trust. Under regulations prescribed by the Secretary, notwithstanding the preceding sentence, proper adjustment shall be made to the inclusion ratio with respect to such trust to take into account any tax under this chapter borne by such trust which is imposed by this chapter on the transfer described in subsection (a).

(2) Special rule for pour-over trust

(A) In general

If the generation-skipping transfer referred to in subsection (a) involves the transfer of property from 1 trust to another trust (hereinafter in this paragraph referred to as the "pour-over trust"), the inclusion ratio for the pour-over trust shall be determined by treating the nontax portion of such distribution as if it were a part of a GST exemption allocated to such trust.

(B) Nontax portion

For purposes of subparagraph (A), the nontax portion of any distribution is the amount of such distribution multiplied by the applicable fraction which applies to such distribution.

(Added Pub. L. 99–514, title XIV, §1431(a), Oct. 22, 1986, 100 Stat. 2727.)

EFFECTIVE DATE

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99–514, set out as a note under section 2601 of this title.

§2654. Special rules

(a) Basis adjustment

(1) In general

Except as provided in paragraph (2), if property is transferred in a generation-skipping transfer, the basis of such property shall be increased (but not above the fair market value of such property) by an amount equal to that portion of the tax imposed by section 2601 (computed without regard to section 2604) with respect to the transfer which is attributable to the excess of the fair market value of such property over its adjusted basis immediately before the transfer. The preceding shall be applied after any basis adjustment under section 1015 with respect to the transfer.

(2) Certain transfers at death

If property is transferred in a taxable termination which occurs at the same time as and as a

result of the death of an individual, the basis of such property shall be adjusted in a manner similar to the manner provided under section 1014(a); except that, if the inclusion ratio with respect to such property is less than 1, any increase or decrease in basis shall be limited by multiplying such increase or decrease (as the case may be) by the inclusion ratio.

(b) Certain trusts treated as separate trusts

For purposes of this chapter—

(1) the portions of a trust attributable to transfers from different transferors shall be treated as separate trusts, and

(2) substantially separate and independent shares of different beneficiaries in a trust shall be treated as separate trusts.

Except as provided in the preceding sentence, nothing in this chapter shall be construed as authorizing a single trust to be treated as 2 or more trusts. For purposes of this subsection, a trust shall be treated as part of an estate during any period that the trust is so treated under section 645.

(c) Disclaimers

For provisions relating to the effect of a qualified disclaimer for purposes of this chapter, see section 2518.

(d) Limitation on personal liability of trustee

A trustee shall not be personally liable for any increase in the tax imposed by section 2601 which is attributable to the fact that—

(1) section 2642(c) (relating to exemption of certain nontaxable gifts) does not apply to a transfer to the trust which was made during the life of the transferor and for which a gift tax return was not filed, or

(2) the inclusion ratio with respect to the trust is greater than the amount of such ratio as computed on the basis of the return on which was made (or was deemed made) an allocation of the GST exemption to property transferred to such trust.

The preceding sentence shall not apply if the trustee has knowledge of facts sufficient reasonably to conclude that a gift tax return was required to be filed or that the inclusion ratio was erroneous.

(Added Pub. L. 99–514, title XIV, §1431(a), Oct. 22, 1986, 100 Stat. 2727; amended Pub. L. 100–647, title I, §1014(g)(12), (13), Nov. 10, 1988, 102 Stat. 3565, 3566; Pub. L. 101–239, title VII, §7811(j)(2), Dec. 19, 1989, 103 Stat. 2411; Pub. L. 105–206, title VI, §6013(a)(4)(B), July 22, 1998, 112 Stat. 819.)

AMENDMENTS

1998—Subsec. (b). Pub. L. 105–206 inserted at end "For purposes of this subsection, a trust shall be treated as part of an estate during any period that the trust is so treated under section 645."

1989—Subsec. (a)(1). Pub. L. 101–239 inserted at end "The preceding shall be applied after any basis adjustment under section 1015 with respect to the transfer."

1988—Subsec. (a)(2). Pub. L. 100–647, §1014(g)(12), inserted "or decrease" after "any increase" and "or decrease (as the case may be)" after "such increase".

Subsec. (b). Pub. L. 100–647, §1014(g)(13), substituted "Certain trusts" for "Separate shares" in heading and amended text generally. Prior to amendment, text read as follows: "Substantially separate and independent shares of different beneficiaries in a trust shall be treated as separate trusts."

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates (see section 1305 of Pub. L. 105–34), see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates,

see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99–514, set out as a note under section 2601 of this title.

Subchapter G—Administration

Sec.
2661. Administration.
2662. Return requirements.
2663. Regulations.
[2664. Repealed.]

AMENDMENTS

2010—Pub. L. 111–312, title III, §301(a), Dec. 17, 2010, 124 Stat. 3300, amended analysis to read as if amendment by Pub. L. 107–16, §501(c)(2), had never been enacted. See 2001 Amendment note below.

2001—Pub. L. 107–16, title V, §501(c)(2), June 7, 2001, 115 Stat. 69, added item 2664 "Termination".

§2661. Administration

Insofar as applicable and not inconsistent with the provisions of this chapter—

(1) except as provided in paragraph (2), all provisions of subtitle F (including penalties) applicable to the gift tax, to chapter 12, or to section 2501, are hereby made applicable in respect of the generation-skipping transfer tax, this chapter, or section 2601, as the case may be, and

(2) in the case of a generation-skipping transfer occurring at the same time as and as a result of the death of an individual, all provisions of subtitle F (including penalties) applicable to the estate tax, to chapter 11, or to section 2001 are hereby made applicable in respect of the generation-skipping transfer tax, this chapter, or section 2601 (as the case may be).

(Added Pub. L. 99–514, title XIV, §1431(a), Oct. 22, 1986, 100 Stat. 2728.)

EFFECTIVE DATE

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99–514, set out as a note under section 2601 of this title.

§2662. Return requirements

(a) In general

The Secretary shall prescribe by regulations the person who is required to make the return with respect to the tax imposed by this chapter and the time by which any such return must be filed. To the extent practicable, such regulations shall provide that—

(1) the person who is required to make such return shall be the person liable under section 2603(a) for payment of such tax, and

(2) the return shall be filed—

(A) in the case of a direct skip (other than from a trust), on or before the date on which an estate or gift tax return is required to be filed with respect to the transfer, and

(B) in all other cases, on or before the 15th day of the 4th month after the close of the taxable year of the person required to make such return in which such transfer occurs.

(b) Information returns

The Secretary may by regulations require a return to be filed containing such information as he determines to be necessary for purposes of this chapter.

(Added Pub. L. 99–514, title XIV, §1431(a), Oct. 22, 1986, 100 Stat. 2728.)

EFFECTIVE DATE

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99–514, set out as a note under section 2601 of this title.

EXTENSION OF TIME FOR FILING RETURN

Pub. L. 111–312, title III, §301(d)(2), Dec. 17, 2010, 124 Stat. 3300, provided that: "In the case of any generation-skipping transfer made after December 31, 2009, and before the date of the enactment of this Act [Dec. 17, 2010], the due date for filing any return under section 2662 of the Internal Revenue Code of 1986 (including any election required to be made on such a return) shall not be earlier than the date which is 9 months after the date of the enactment of this Act."

§2663. Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this chapter, including—

(1) such regulations as may be necessary to coordinate the provisions of this chapter with the recapture tax imposed under section 2032A(c),

(2) regulations (consistent with the principles of chapters 11 and 12) providing for the application of this chapter in the case of transferors who are nonresidents not citizens of the United States, and

(3) regulations providing for such adjustments as may be necessary to the application of this chapter in the case of any arrangement which, although not a trust, is treated as a trust under section 2652(b).

(Added Pub. L. 99–514, title XIV, §1431(a), Oct. 22, 1986, 100 Stat. 2729; amended Pub. L. 100–647, title I, §1014(g)(10), Nov. 10, 1988, 102 Stat. 3565.)

AMENDMENTS

1988—Par. (3). Pub. L. 100–647 added par. (3).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99–514, set out as a note under section 2601 of this title.

[§2664. Repealed. Pub. L. 111–312, title III, §301(a), Dec. 17, 2010, 124 Stat. 3300]

Section, added Pub. L. 107–16, title V, §501(b), June 7, 2001, 115 Stat. 69, related to termination of applicability of chapter to generation-skipping transfers after Dec. 31, 2009.

EFFECTIVE DATE OF REPEAL

Repeal of section applicable to estates of decedents dying, and transfers made after Dec. 31, 2009, except as otherwise provided, see section 301(e) of Pub. L. 111–312, set out as an Effective and Termination Dates of 2010 Amendment note under section 121 of this title.

CHAPTER 14—SPECIAL VALUATION RULES

Sec.
2701. Special valuation rules in case of transfers of certain interests in corporations or partnerships.
2702. Special valuation rules in case of transfers of interests in trusts.
2703. Certain rights and restrictions disregarded.
2704. Treatment of certain lapsing rights and restrictions.

§2701. Special valuation rules in case of transfers of certain interests in corporations or partnerships

(a) Valuation rules

(1) In general

Solely for purposes of determining whether a transfer of an interest in a corporation or partnership to (or for the benefit of) a member of the transferor's family is a gift (and the value of such transfer), the value of any right—

(A) which is described in subparagraph (A) or (B) of subsection (b)(1), and

(B) which is with respect to any applicable retained interest that is held by the transferor or an applicable family member immediately after the transfer,

shall be determined under paragraph (3). This paragraph shall not apply to the transfer of any interest for which market quotations are readily available (as of the date of transfer) on an established securities market.

(2) Exceptions for marketable retained interests, etc.

Paragraph (1) shall not apply to any right with respect to an applicable retained interest if—

(A) market quotations are readily available (as of the date of the transfer) for such interest on an established securities market,

(B) such interest is of the same class as the transferred interest, or

(C) such interest is proportionally the same as the transferred interest, without regard to nonlapsing differences in voting power (or, for a partnership, nonlapsing differences with respect to management and limitations on liability).

Subparagraph (C) shall not apply to any interest in a partnership if the transferor or an applicable family member has the right to alter the liability of the transferee of the transferred property. Except as provided by the Secretary, any difference described in subparagraph (C) which lapses by reason of any Federal or State law shall be treated as a nonlapsing difference for purposes of such subparagraph.

(3) Valuation of rights to which paragraph (1) applies

(A) In general

The value of any right described in paragraph (1), other than a distribution right which consists of a right to receive a qualified payment, shall be treated as being zero.

(B) Valuation of certain qualified payments

If—

(i) any applicable retained interest confers a distribution right which consists of the right to

a qualified payment, and

(ii) there are 1 or more liquidation, put, call, or conversion rights with respect to such interest,

the value of all such rights shall be determined as if each liquidation, put, call, or conversion right were exercised in the manner resulting in the lowest value being determined for all such rights.

(C) Valuation of qualified payments where no liquidation, etc. rights

In the case of an applicable retained interest which is described in subparagraph (B)(i) but not subparagraph (B)(ii), the value of the distribution right shall be determined without regard to this section.

(4) Minimum valuation of junior equity

(A) In general

In the case of a transfer described in paragraph (1) of a junior equity interest in a corporation or partnership, such interest shall in no event be valued at an amount less than the value which would be determined if the total value of all of the junior equity interests in the entity were equal to 10 percent of the sum of—

(i) the total value of all of the equity interests in such entity, plus

(ii) the total amount of indebtedness of such entity to the transferor (or an applicable family member).

(B) Definitions

For purposes of this paragraph—

(i) Junior equity interest

The term "junior equity interest" means common stock or, in the case of a partnership, any partnership interest under which the rights as to income and capital (or, to the extent provided in regulations, the rights as to either income or capital) are junior to the rights of all other classes of equity interests.

(ii) Equity interest

The term "equity interest" means stock or any interest as a partner, as the case may be.

(b) Applicable retained interests

For purposes of this section—

(1) In general

The term "applicable retained interest" means any interest in an entity with respect to which there is—

(A) a distribution right, but only if, immediately before the transfer described in subsection (a)(1), the transferor and applicable family members hold (after application of subsection (e)(3)) control of the entity, or

(B) a liquidation, put, call, or conversion right.

(2) Control

For purposes of paragraph (1)—

(A) Corporations

In the case of a corporation, the term "control" means the holding of at least 50 percent (by vote or value) of the stock of the corporation.

(B) Partnerships

In the case of a partnership, the term "control" means—

(i) the holding of at least 50 percent of the capital or profits interests in the partnership, or

(ii) in the case of a limited partnership, the holding of any interest as a general partner.

(C) Applicable family member

For purposes of this subsection, the term "applicable family member" includes any lineal descendant of any parent of the transferor or the transferor's spouse.

(c) Distribution and other rights; qualified payments

For purposes of this section—

(1) Distribution right

(A) In general

The term "distribution right" means—

(i) a right to distributions from a corporation with respect to its stock, and

(ii) a right to distributions from a partnership with respect to a partner's interest in the partnership.

(B) Exceptions

The term "distribution right" does not include—

(i) a right to distributions with respect to any interest which is junior to the rights of the transferred interest,

(ii) any liquidation, put, call, or conversion right, or

(iii) any right to receive any guaranteed payment described in section 707(c) of a fixed amount.

(2) Liquidation, etc. rights

(A) In general

The term "liquidation, put, call, or conversion right" means any liquidation, put, call, or conversion right, or any similar right, the exercise or nonexercise of which affects the value of the transferred interest.

(B) Exception for fixed rights

(i) In general

The term "liquidation, put, call, or conversion right" does not include any right which must be exercised at a specific time and at a specific amount.

(ii) Treatment of certain rights

If a right is assumed to be exercised in a particular manner under subsection (a)(3)(B), such right shall be treated as so exercised for purposes of clause (i).

(C) Exception for certain rights to convert

The term "liquidation, put, call, or conversion right" does not include any right which—

(i) is a right to convert into a fixed number (or a fixed percentage) of shares of the same class of stock in a corporation as the transferred stock in such corporation under subsection (a)(1) (or stock which would be of the same class but for nonlapsing differences in voting power),

(ii) is nonlapsing,

(iii) is subject to proportionate adjustments for splits, combinations, reclassifications, and similar changes in the capital stock, and

(iv) is subject to adjustments similar to the adjustments under subsection (d) for accumulated but unpaid distributions.

A rule similar to the rule of the preceding sentence shall apply for partnerships.

(3) Qualified payment

(A) In general

Except as otherwise provided in this paragraph, the term "qualified payment" means any dividend payable on a periodic basis under any cumulative preferred stock (or a comparable

payment under any partnership interest) to the extent that such dividend (or comparable payment) is determined at a fixed rate.

(B) Treatment of variable rate payments

For purposes of subparagraph (A), a payment shall be treated as fixed as to rate if such payment is determined at a rate which bears a fixed relationship to a specified market interest rate.

(C) Elections

(i) In general

Payments under any interest held by a transferor which (without regard to this subparagraph) are qualified payments shall be treated as qualified payments unless the transferor elects not to treat such payments as qualified payments. Payments described in the preceding sentence which are held by an applicable family member shall be treated as qualified payments only if such member elects to treat such payments as qualified payments.

(ii) Election to have interest treated as qualified payment

A transferor or applicable family member holding any distribution right which (without regard to this subparagraph) is not a qualified payment may elect to treat such right as a qualified payment, to be paid in the amounts and at the times specified in such election. The preceding sentence shall apply only to the extent that the amounts and times so specified are not inconsistent with the underlying legal instrument giving rise to such right.

(iii) Elections irrevocable

Any election under this subparagraph with respect to an interest shall, once made, be irrevocable.

(d) Transfer tax treatment of cumulative but unpaid distributions

(1) In general

If a taxable event occurs with respect to any distribution right to which subsection (a)(3)(B) or (C) applied, the following shall be increased by the amount determined under paragraph (2):

(A) The taxable estate of the transferor in the case of a taxable event described in paragraph (3)(A)(i).

(B) The taxable gifts of the transferor for the calendar year in which the taxable event occurs in the case of a taxable event described in paragraph (3)(A)(ii) or (iii).

(2) Amount of increase

(A) In general

The amount of the increase determined under this paragraph shall be the excess (if any) of—

(i) the value of the qualified payments payable during the period beginning on the date of the transfer under subsection (a)(1) and ending on the date of the taxable event determined as if—

(I) all such payments were paid on the date payment was due, and

(II) all such payments were reinvested by the transferor as of the date of payment at a yield equal to the discount rate used in determining the value of the applicable retained interest described in subsection (a)(1), over

(ii) the value of such payments paid during such period computed under clause (i) on the basis of the time when such payments were actually paid.

(B) Limitation on amount of increase

(i) In general

The amount of the increase under subparagraph (A) shall not exceed the applicable percentage of the excess (if any) of—

(I) the value (determined as of the date of the taxable event) of all equity interests in the entity which are junior to the applicable retained interest, over

(II) the value of such interests (determined as of the date of the transfer to which subsection (a)(1) applied).

(ii) Applicable percentage

For purposes of clause (i), the applicable percentage is the percentage determined by dividing—

(I) the number of shares in the corporation held (as of the date of the taxable event) by the transferor which are applicable retained interests of the same class, by

(II) the total number of shares in such corporation (as of such date) which are of the same class as the class described in subclause (I).

A similar percentage shall be determined in the case of interests in a partnership.

(iii) Definition

For purposes of this subparagraph, the term "equity interest" has the meaning given such term by subsection (a)(4)(B).

(C) Grace period

For purposes of subparagraph (A), any payment of any distribution during the 4-year period beginning on its due date shall be treated as having been made on such due date.

(3) Taxable events

For purposes of this subsection—

(A) In general

The term "taxable event" means any of the following:

(i) The death of the transferor if the applicable retained interest conferring the distribution right is includible in the estate of the transferor.

(ii) The transfer of such applicable retained interest.

(iii) At the election of the taxpayer, the payment of any qualified payment after the period described in paragraph (2)(C), but only with respect to such payment.

(B) Exception where spouse is transferee

(i) Deathtime transfers

Subparagraph (A)(i) shall not apply to any interest includible in the gross estate of the transferor if a deduction with respect to such interest is allowable under section 2056 or 2106(a)(3).

(ii) Lifetime transfers

A transfer to the spouse of the transferor shall not be treated as a taxable event under subparagraph (A)(ii) if such transfer does not result in a taxable gift by reason of—

(I) any deduction allowed under section 2523, or the exclusion under section 2503(b), or

(II) consideration for the transfer provided by the spouse.

(iii) Spouse succeeds to treatment of transferor

If an event is not treated as a taxable event by reason of this subparagraph, the transferee spouse or surviving spouse (as the case may be) shall be treated in the same manner as the transferor in applying this subsection with respect to the interest involved.

(4) Special rules for applicable family members

(A) Family member treated in same manner as transferor

For purposes of this subsection, an applicable family member shall be treated in the same manner as the transferor with respect to any distribution right retained by such family member to which subsection (a)(3)(B) or (C) applied.

(B) Transfer to applicable family member

In the case of a taxable event described in paragraph (3)(A)(ii) involving the transfer of an applicable retained interest to an applicable family member (other than the spouse of the transferor), the applicable family member shall be treated in the same manner as the transferor in applying this subsection to distributions accumulating with respect to such interest after such taxable event.

(C) Transfer to transferors

In the case of a taxable event described in paragraph (3)(A)(ii) involving a transfer of an applicable retained interest from an applicable family member to a transferor, this subsection shall continue to apply to the transferor during any period the transferor holds such interest.

(5) Transfer to include termination

For purposes of this subsection, any termination of an interest shall be treated as a transfer.

(e) Other definitions and rules

For purposes of this section—

(1) Member of the family

The term "member of the family" means, with respect to any transferor—

(A) the transferor's spouse,

(B) a lineal descendant of the transferor or the transferor's spouse, and

(C) the spouse of any such descendant.

(2) Applicable family member

The term "applicable family member" means, with respect to any transferor—

(A) the transferor's spouse,

(B) an ancestor of the transferor or the transferor's spouse, and

(C) the spouse of any such ancestor.

(3) Attribution of indirect holdings and transfers

An individual shall be treated as holding any interest to the extent such interest is held indirectly by such individual through a corporation, partnership, trust, or other entity. If any individual is treated as holding any interest by reason of the preceding sentence, any transfer which results in such interest being treated as no longer held by such individual shall be treated as a transfer of such interest.

(4) Effect of adoption

A relationship by legal adoption shall be treated as a relationship by blood.

(5) Certain changes treated as transfers

Except as provided in regulations, a contribution to capital or a redemption, recapitalization, or other change in the capital structure of a corporation or partnership shall be treated as a transfer of an interest in such entity to which this section applies if the taxpayer or an applicable family member—

(A) receives an applicable retained interest in such entity pursuant to such transaction, or

(B) under regulations, otherwise holds, immediately after such transaction, an applicable retained interest in such entity.

This paragraph shall not apply to any transaction (other than a contribution to capital) if the interests in the entity held by the transferor, applicable family members, and members of the transferor's family before and after the transaction are substantially identical.

(6) Adjustments

Under regulations prescribed by the Secretary, if there is any subsequent transfer, or inclusion in the gross estate, of any applicable retained interest which was valued under the rules of subsection (a), appropriate adjustments shall be made for purposes of chapter 11, 12, or 13 to

reflect the increase in the amount of any prior taxable gift made by the transferor or decedent by reason of such valuation or to reflect the application of subsection (d).

(7) Treatment as separate interests

The Secretary may by regulation provide that any applicable retained interest shall be treated as 2 or more separate interests for purposes of this section.

(Added Pub. L. 101–508, title XI, §11602(a), Nov. 5, 1990, 104 Stat. 1388–491; amended Pub. L. 104–188, title I, §1702(f)(1)–(3)(B), (4)–(5)(B), (6)–(10), Aug. 20, 1996, 110 Stat. 1870–1872.)

AMENDMENTS

1996—Subsec. (a)(3)(B). Pub. L. 104–188, §1702(f)(1)(B), inserted "certain" before "qualified" in heading.

Subsec. (a)(3)(C). Pub. L. 104–188, §1702(f)(1)(A), added subpar. (C).

Subsec. (a)(4)(B)(i). Pub. L. 104–188, §1702(f)(2), inserted "(or, to the extent provided in regulations, the rights as to either income or capital)" after "income and capital".

Subsec. (b)(2)(C). Pub. L. 104–188, §1702(f)(3)(A), added subpar. (C).

Subsec. (c)(1)(B)(i). Pub. L. 104–188, §1702(f)(4), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: "a right to distributions with respect to any junior equity interest (as defined in subsection (a)(4)(B)(i)),".

Subsec. (c)(3)(C)(i). Pub. L. 104–188, §1702(f)(5)(A), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows:

"(i) WAIVER OF QUALIFIED PAYMENT TREATMENT.—A transferor or applicable family member may elect with respect to payments under any interest specified in such election to treat such payments as payments which are not qualified payments."

Subsec. (c)(3)(C)(ii). Pub. L. 104–188, §1702(f)(5)(B), amended first sentence generally. Prior to amendment, first sentence read as follows: "A transferor or any applicable family member may elect to treat any distribution right as a qualified payment, to be paid in the amounts and at the times specified in such election."

Subsec. (d)(1). Pub. L. 104–188, §1702(f)(1)(C), substituted "subsection (a)(3)(B) or (C)" for "subsection (a)(3)(B)".

Subsec. (d)(3)(A)(iii). Pub. L. 104–188, §1702(f)(6), struck out "the period ending on the date of" after "with respect to".

Subsec. (d)(3)(B)(ii)(I). Pub. L. 104–188, §1702(f)(7), inserted "or the exclusion under section 2503(b)," after "section 2523,".

Subsec. (d)(4)(A). Pub. L. 104–188, §1702(f)(1)(C), substituted "subsection (a)(3)(B) or (C)" for "subsection (a)(3)(B)".

Subsec. (d)(4)(C). Pub. L. 104–188, §1702(f)(9), added subpar. (C).

Subsec. (e)(3). Pub. L. 104–188, §1702(f)(3)(B), substituted "Attribution of indirect holdings and transfers" for "Attribution rules" in par. heading, struck out subpar. (A) designation and heading which read "Indirect holdings and transfers", and struck out subpar. (B) which read as follows:

"(B) CONTROL.—For purposes of subsections (b)(1), an individual shall be treated as holding any interest held by the individual's brothers, sisters, or lineal descendants."

Subsec. (e)(5)(A). Pub. L. 104–188, §1702(f)(8)(A), substituted "such transaction" for "such contribution to capital or such redemption, recapitalization, or other change".

Subsec. (e)(5)(B). Pub. L. 104–188, §1702(f)(8)(B), substituted "such transaction" for "the transfer".

Subsec. (e)(6). Pub. L. 104–188, §1702(f)(10), inserted "or to reflect the application of subsection (d)" before period at end.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE

Pub. L. 101–508, title XI, §11602(e)(1), Nov. 5, 1990, 104 Stat. 1388–500, provided that:

"(A) IN GENERAL.—The amendments made by subsection (a) [enacting this chapter]—

"(i) to the extent such amendments relate to sections 2701 and 2702 of the Internal Revenue Code of 1986 (as added by such amendments), shall apply to transfers after October 8, 1990,

"(ii) to the extent such amendments relate to section 2703 of such Code (as so added), shall apply to—

"(I) agreements, options, rights, or restrictions entered into or granted after October 8, 1990, and

"(II) agreements, options, rights, or restrictions which are substantially modified after October 8, 1990, and

"(iii) to the extent such amendments relate to section 2704 of such Code (as so added), shall apply to restrictions or rights (or limitations on rights) created after October 8, 1990.

"(B) EXCEPTION.—For purposes of subparagraph (A)(i), with respect to property transferred before October 9, 1990—

"(i) any failure to exercise a right of conversion,

"(ii) any failure to pay dividends, and

"(iii) any failure to exercise other rights specified in regulations,

shall not be treated as a subsequent transfer."

TIME FOR ELECTION UNDER SUBSECTION (C)(3)(C)(I)

Pub. L. 104–188, title I, §1702(f)(5)(C), Aug. 20, 1996, 110 Stat. 1871, provided that: "The time for making an election under the second sentence of section 2701(c)(3)(C)(i) of the Internal Revenue Code of 1986 (as amended by subparagraph (A)) shall not expire before the due date (including extensions) for filing the transferor's return of the tax imposed by section 2501 of such Code for the first calendar year ending after the date of enactment [probably means the date of enactment of Pub. L. 104–188, Oct. 20, 1996]."

STUDY OF METHODS USED TO DISTORT VALUATION OF PROPERTY FOR PURPOSES OF ESTATE AND GIFT TAX

Pub. L. 101–508, title XI, §11602(d), Nov. 5, 1990, 104 Stat. 1388–500, provided that: "The Secretary of the Treasury shall conduct a study of—

"(1) the prevalence and types of options and agreements used to distort the valuation of property for purposes of subtitle B of the Internal Revenue Code of 1986, and

"(2) other methods using discretionary rights to distort the value of property for such purposes.

The Secretary shall, not later than December 31, 1992, report the results of such study, together with such legislative recommendations as the Secretary considers necessary, to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives."

§2702. Special valuation rules in case of transfers of interests in trusts

(a) Valuation rules

(1) In general

Solely for purposes of determining whether a transfer of an interest in trust to (or for the benefit of) a member of the transferor's family is a gift (and the value of such transfer), the value of any interest in such trust retained by the transferor or any applicable family member (as defined in section 2701(e)(2)) shall be determined as provided in paragraph (2).

(2) Valuation of retained interests

(A) In general

The value of any retained interest which is not a qualified interest shall be treated as being zero.

(B) Valuation of qualified interest

The value of any retained interest which is a qualified interest shall be determined under section 7520.

(3) Exceptions

(A) In general

This subsection shall not apply to any transfer—

(i) if such transfer is an incomplete gift,

(ii) if such transfer involves the transfer of an interest in trust all the property in which consists of a residence to be used as a personal residence by persons holding term interests in such trust, or

(iii) to the extent that regulations provide that such transfer is not inconsistent with the purposes of this section.

(B) Incomplete gift

For purposes of subparagraph (A), the term "incomplete gift" means any transfer which would not be treated as a gift whether or not consideration was received for such transfer.

(b) Qualified interest

For purposes of this section, the term "qualified interest" means—

(1) any interest which consists of the right to receive fixed amounts payable not less frequently than annually,

(2) any interest which consists of the right to receive amounts which are payable not less frequently than annually and are a fixed percentage of the fair market value of the property in the trust (determined annually), and

(3) any noncontingent remainder interest if all of the other interests in the trust consist of interests described in paragraph (1) or (2).

(c) Certain property treated as held in trust

For purposes of this section—

(1) In general

The transfer of an interest in property with respect to which there is 1 or more term interests shall be treated as a transfer of an interest in a trust.

(2) Joint purchases

If 2 or more members of the same family acquire interests in any property described in paragraph (1) in the same transaction (or a series of related transactions), the person (or persons) acquiring the term interests in such property shall be treated as having acquired the entire property and then transferred to the other persons the interests acquired by such other persons in the transaction (or series of transactions). Such transfer shall be treated as made in exchange for the consideration (if any) provided by such other persons for the acquisition of their interests in such property.

(3) Term interest

The term "term interest" means—

(A) a life interest in property, or

(B) an interest in property for a term of years.

(4) Valuation rule for certain term interests

If the nonexercise of rights under a term interest in tangible property would not have a substantial effect on the valuation of the remainder interest in such property—

(A) subparagraph (A) of subsection (a)(2) shall not apply to such term interest, and

(B) the value of such term interest for purposes of applying subsection (a)(1) shall be the amount which the holder of the term interest establishes as the amount for which such interest could be sold to an unrelated third party.

(d) Treatment of transfers of interests in portion of trust

In the case of a transfer of an income or remainder interest with respect to a specified portion of the property in a trust, only such portion shall be taken into account in applying this section to such transfer.

(e) Member of the family

For purposes of this section, the term "member of the family" shall have the meaning given such term by section 2704(c)(2).

(Added Pub. L. 101–508, title XI, §11602(a), Nov. 5, 1990, 104 Stat. 1388–497; amended Pub. L. 104–188, title I, §1702(f)(11), Aug. 20, 1996, 110 Stat. 1872.)

AMENDMENTS

1996—Subsec. (a)(3)(A)(i). Pub. L. 104–188, §1702(f)(11)(A)(i), (ii), (B)(i), substituted "if" for "to the extent" and "incomplete gift" for "incomplete transfer", and struck out "or" at end.

Subsec. (a)(3)(A)(ii). Pub. L. 104–188, §1702(f)(11)(A)(iii), substituted ", or" for period at end.

Subsec. (a)(3)(A)(iii). Pub. L. 104–188, §1702(f)(11)(A)(iv), added cl. (iii).

Subsec. (a)(3)(B). Pub. L. 104–188, §1702(f)(11)(B), substituted "incomplete gift" for "incomplete transfer" in heading and text.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

§2703. Certain rights and restrictions disregarded

(a) General rule

For purposes of this subtitle, the value of any property shall be determined without regard to—

(1) any option, agreement, or other right to acquire or use the property at a price less than the fair market value of the property (without regard to such option, agreement, or right), or

(2) any restriction on the right to sell or use such property.

(b) Exceptions

Subsection (a) shall not apply to any option, agreement, right, or restriction which meets each of the following requirements:

(1) It is a bona fide business arrangement.

(2) It is not a device to transfer such property to members of the decedent's family for less than full and adequate consideration in money or money's worth.

(3) Its terms are comparable to similar arrangements entered into by persons in an arms' length transaction.

(Added Pub. L. 101–508, title XI, §11602(a), Nov. 5, 1990, 104 Stat. 1388–498.)

§2704. Treatment of certain lapsing rights and restrictions

(a) Treatment of lapsed voting or liquidation rights

(1) In general

For purposes of this subtitle, if—

(A) there is a lapse of any voting or liquidation right in a corporation or partnership, and

(B) the individual holding such right immediately before the lapse and members of such individual's family hold, both before and after the lapse, control of the entity,

such lapse shall be treated as a transfer by such individual by gift, or a transfer which is includible in the gross estate of the decedent, whichever is applicable, in the amount determined under paragraph (2).

(2) Amount of transfer

For purposes of paragraph (1), the amount determined under this paragraph is the excess (if any) of—

(A) the value of all interests in the entity held by the individual described in paragraph (1) immediately before the lapse (determined as if the voting and liquidation rights were nonlapsing), over

(B) the value of such interests immediately after the lapse.

(3) Similar rights

The Secretary may by regulations apply this subsection to rights similar to voting and liquidation rights.

(b) Certain restrictions on liquidation disregarded

(1) In general

For purposes of this subtitle, if—

(A) there is a transfer of an interest in a corporation or partnership to (or for the benefit of) a member of the transferor's family, and

(B) the transferor and members of the transferor's family hold, immediately before the transfer, control of the entity,

any applicable restriction shall be disregarded in determining the value of the transferred interest.

(2) Applicable restriction

For purposes of this subsection, the term "applicable restriction" means any restriction—

(A) which effectively limits the ability of the corporation or partnership to liquidate, and

(B) with respect to which either of the following applies:

(i) The restriction lapses, in whole or in part, after the transfer referred to in paragraph (1).

(ii) The transferor or any member of the transferor's family, either alone or collectively, has the right after such transfer to remove, in whole or in part, the restriction.

(3) Exceptions

The term "applicable restriction" shall not include—

(A) any commercially reasonable restriction which arises as part of any financing by the corporation or partnership with a person who is not related to the transferor or transferee, or a member of the family of either, or

(B) any restriction imposed, or required to be imposed, by any Federal or State law.

(4) Other restrictions

The Secretary may by regulations provide that other restrictions shall be disregarded in determining the value of the transfer of any interest in a corporation or partnership to a member of the transferor's family if such restriction has the effect of reducing the value of the transferred interest for purposes of this subtitle but does not ultimately reduce the value of such interest to the transferee.

(c) Definitions and special rules

For purposes of this section—

(1) Control

The term "control" has the meaning given such term by section 2701(b)(2).

(2) Member of the family

The term "member of the family" means, with respect to any individual—

(A) such individual's spouse,

(B) any ancestor or lineal descendant of such individual or such individual's spouse,

(C) any brother or sister of the individual, and

(D) any spouse of any individual described in subparagraph (B) or (C).

(3) Attribution

The rule of section 2701(e)(3) shall apply for purposes of determining the interests held by any individual.

(Added Pub. L. 101–508, title XI, §11602(a), Nov. 5, 1990, 104 Stat. 1388–498; amended Pub. L. 104–188, title I, §1702(f)(3)(C), Aug. 20, 1996, 110 Stat. 1871.)

AMENDMENTS

1996—Subsec. (c)(3). Pub. L. 104–188 substituted "section 2701(e)(3)" for "section 2701(e)(3)(A)".

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

CHAPTER 15—GIFTS AND BEQUESTS FROM EXPATRIATES

Sec.
2801. Imposition of tax.

§2801. Imposition of tax

(a) In general

If, during any calendar year, any United States citizen or resident receives any covered gift or bequest, there is hereby imposed a tax equal to the product of—

(1) the highest rate of tax specified in the table contained in section 2001(c) as in effect on the date of such receipt (or, if greater, the highest rate of tax specified in the table applicable under section 2502(a) as in effect on the date), and

(2) the value of such covered gift or bequest.

(b) Tax to be paid by recipient

The tax imposed by subsection (a) on any covered gift or bequest shall be paid by the person receiving such gift or bequest.

(c) Exception for certain gifts

Subsection (a) shall apply only to the extent that the value of covered gifts and bequests received by any person during the calendar year exceeds the dollar amount in effect under section 2503(b) for such calendar year.

(d) Tax reduced by foreign gift or estate tax

The tax imposed by subsection (a) on any covered gift or bequest shall be reduced by the amount of any gift or estate tax paid to a foreign country with respect to such covered gift or bequest.

(e) Covered gift or bequest

(1) In general

For purposes of this chapter, the term "covered gift or bequest" means—

(A) any property acquired by gift directly or indirectly from an individual who, at the time of such acquisition, is a covered expatriate, and

(B) any property acquired directly or indirectly by reason of the death of an individual who, immediately before such death, was a covered expatriate.

(2) Exceptions for transfers otherwise subject to estate or gift tax

Such term shall not include—

(A) any property shown on a timely filed return of tax imposed by chapter 12 which is a taxable gift by the covered expatriate, and

(B) any property included in the gross estate of the covered expatriate for purposes of chapter 11 and shown on a timely filed return of tax imposed by chapter 11 of the estate of the covered expatriate.

(3) Exceptions for transfers to spouse or charity

Such term shall not include any property with respect to which a deduction would be allowed under section 2055, 2056, 2522, or 2523, whichever is appropriate, if the decedent or donor were a United States person.

(4) Transfers in trust

(A) Domestic trusts

In the case of a covered gift or bequest made to a domestic trust—

(i) subsection (a) shall apply in the same manner as if such trust were a United States citizen, and

(ii) the tax imposed by subsection (a) on such gift or bequest shall be paid by such trust.

(B) Foreign trusts

(i) In general

In the case of a covered gift or bequest made to a foreign trust, subsection (a) shall apply to any distribution attributable to such gift or bequest from such trust (whether from income or corpus) to a United States citizen or resident in the same manner as if such distribution were a covered gift or bequest.

(ii) Deduction for tax paid by recipient

There shall be allowed as a deduction under section 164 the amount of tax imposed by this section which is paid or accrued by a United States citizen or resident by reason of a distribution from a foreign trust, but only to the extent such tax is imposed on the portion of such distribution which is included in the gross income of such citizen or resident.

(iii) Election to be treated as domestic trust

Solely for purposes of this section, a foreign trust may elect to be treated as a domestic trust. Such an election may be revoked with the consent of the Secretary.

(f) Covered expatriate

For purposes of this section, the term "covered expatriate" has the meaning given to such term by section 877A(g)(1).

(Added Pub. L. 110–245, title III, §301(b)(1), June 17, 2008, 122 Stat. 1644.)

EFFECTIVE DATE

Pub. L. 110–245, title III, §301(g), June 17, 2008, 122 Stat. 1647, provided that:

"(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [enacting this chapter and section 877A of this title and amending sections 877, 6039G, and 7701 of this title] shall apply to any individual whose expatriation date (as so defined) is on or after the date of the enactment of this Act [June 17, 2008].

"(2) GIFTS AND BEQUESTS.—Chapter 15 of the Internal Revenue Code of 1986 (as added by subsection (b)) shall apply to covered gifts and bequests (as defined in section 2801 of such Code, as so added) received on or after the date of the enactment of this Act from transferors (or from the estates of transferors) whose expatriation date is on or after such date of enactment."

Subtitle C—Employment Taxes

Chapter		Sec.[1]
21.	**Federal insurance contributions act**	**3101**
22.	**Railroad retirement tax act**	**3201**
23.	**Federal unemployment tax act**	**3301**
23A.	**Railroad Unemployment Repayment Tax**	**3321**
24.	**Collection of income tax at source on wages**	**3401**
25.	**General provisions relating to employment taxes**	**3501**

AMENDMENTS

1983—Pub. L. 98–76, title II, §231(c), Aug. 12, 1983, 97 Stat. 429, added item for chapter 23A.

Pub. L. 98–67 repealed amendments made by Pub. L. 97–248. See 1982 Amendment note below.

1982—Pub. L. 97–248, title III, §§307(b)(1), (6), 308(a), Sept. 3, 1982, 96 Stat. 590, 591, provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, the heading of subtitle C is amended to read "Employment Taxes and Collection of Income Tax at Source", the caption of chapter 24 is amended by striking out "On Wages", and the caption of chapter 25 is amended by

inserting "And Collection Of Income Taxes At Source" after "Employment Taxes". Section 102(a), (b) of Pub. L. 98–67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§301–308) of title III of Pub. L. 97–248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 [now 1986] [this title] shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

[1] *Section numbers editorially supplied.*

CHAPTER 21—FEDERAL INSURANCE CONTRIBUTIONS ACT

Subchapter		Sec.[1]
A.	**Tax on employees**	**3101**
B.	**Tax on employers**	**3111**
C.	**General provisions**	**3121**

[1] *Section numbers editorially supplied.*

Subchapter A—Tax on Employees

Sec.
3101. Rate of tax.
3102. Deduction of tax from wages.

§3101. Rate of tax

(a) Old-age, survivors, and disability insurance

In addition to other taxes, there is hereby imposed on the income of every individual a tax equal to the following percentages of the wages (as defined in section 3121(a)) received by him with respect to employment (as defined in section 3121(b))—

In cases of wages received during:	The rate shall be:
1984, 1985, 1986, or 1987	5.7 percent
1988 or 1989	6.06 percent
1990 or thereafter	6.2 percent.

(b) Hospital insurance

(1) In general

In addition to the tax imposed by the preceding subsection, there is hereby imposed on the income of every individual a tax equal to 1.45 percent of the wages (as defined in section 3121(a)) received by him with respect to employment (as defined in section 3121(b)).

(2) Additional tax

In addition to the tax imposed by paragraph (1) and the preceding subsection, there is hereby imposed on every taxpayer (other than a corporation, estate, or trust) a tax equal to 0.9 percent of wages which are received with respect to employment (as defined in section 3121(b)) during any taxable year beginning after December 31, 2012, and which are in excess of—

(A) in the case of a joint return, $250,000,

(B) in the case of a married taxpayer (as defined in section 7703) filing a separate return, ½ of the dollar amount determined under subparagraph (A), and

(C) in any other case, $200,000.

(c) Relief from taxes in cases covered by certain international agreements

During any period in which there is in effect an agreement entered into pursuant to section 233 of the Social Security Act with any foreign country, wages received by or paid to an individual shall be exempt from the taxes imposed by this section to the extent that such wages are subject under such agreement exclusively to the laws applicable to the social security system of such foreign country.

(Aug. 16, 1954, ch. 736, 68A Stat. 415; Sept. 1, 1954, ch. 1206, title II, §208(b), 68 Stat. 1094; Aug. 1, 1956, ch. 836, title II, §202(b), 70 Stat. 845; Pub. L. 85–840, title IV, §401(b), Aug. 28, 1958, 72 Stat. 1041; Pub. L. 87–64, title II, §201(b), June 30, 1961, 75 Stat. 141; Pub. L. 89–97, title I, §111(c)(5), title III, §321(b), July 30, 1965, 79 Stat. 342, 395; Pub. L. 90–248, title I, §109(a)(2), (b)(2), Jan. 2, 1968, 81 Stat. 836; Pub. L. 92–5, title II, §204(a)(1), Mar. 17, 1971, 85 Stat. 11; Pub. L. 92–336, §204(a)(2), (b)(2), July 1, 1972, 86 Stat. 421, 422; Pub. L. 92–603, §135(a)(2), (b)(2), Oct. 30, 1972, 86 Stat. 1362, 1363; Pub. L. 93–233, §6(a)(1), (b)(2), Dec. 31, 1973, 87 Stat. 954, 955; Pub. L. 94–455, title XIX, §1903(a)(1), Oct. 4, 1976, 90 Stat. 1806; Pub. L. 95–216, title I, §101(a)(1), (b)(1), title III, §317(b)(2), Dec. 20, 1977, 91 Stat. 1510, 1511, 1540; Pub. L. 98–21, title I, §123(a)(1), Apr. 20, 1983, 97 Stat. 87; Pub. L. 108–203, title IV, §415, Mar. 2, 2004, 118 Stat. 530; Pub. L. 111–148, title IX, §9015(a)(1), title X, §10906(a), Mar. 23, 2010, 124 Stat. 870, 1020; Pub. L. 111–152, title I, §1402(b)(1)(A), Mar. 30, 2010, 124 Stat. 1063.)

REFERENCES IN TEXT

Section 233 of the Social Security Act, referred to in subsec. (c), is classified to section 433 of Title 42, The Public Health and Welfare.

AMENDMENTS

2010—Subsec. (b). Pub. L. 111–148, §9015(a)(1), designated existing text as par. (1), inserted heading, substituted "1.45 percent of the" for "the following percentages of the" and "(as defined in section 3121(b))." for "(as defined in section 3121(b))—", struck out former pars. (1) to (6), which related to rates in calendar years 1974 to 1985 and after Dec. 31, 1985, and added par. (2).

Subsec. (b)(2). Pub. L. 111–152, §1402(b)(1)(A), added subpar. (B) and redesignated former subpar. (B) as (C).

Pub. L. 111–148, §10906(a), substituted "0.9 percent" for "0.5 percent" in introductory provisions.

2004—Subsec. (c). Pub. L. 108–203 substituted "exclusively to the laws applicable to" for "to taxes or contributions for similar purposes under".

1983—Subsec. (a). Pub. L. 98–21 substituted table of rates for former pars. (1) to (7) which had imposed a tax on the income of every individual (1) with respect to wages received during the calendar years 1974 through 1977 at the rate of 4.95 percent; (2) with respect to wages received during the calendar year 1978 at the rate of 5.05 percent; (3) with respect to wages received during the calendar years 1979 and 1980 at the rate of 5.08 percent; (4) with respect to wages received during the calendar year 1981 at the rate of 5.35 percent; (5) with respect to wages received during the calendar years 1982 through 1984 at the rate of 5.40 percent; (6) with respect to wages received during the calendar years 1985 through 1989 at the rate of 5.70 percent; and (7) with respect to wages received after Dec. 31, 1989, at the rate of 6.20 percent.

1977—Subsec. (a). Pub. L. 95–216, §101(a)(1), substituted "1974 through 1977" for "1974 through 2010" in par. (1), substituted "wages received during the calendar year 1978, the rate shall be 5.05 percent" for "wages received after December 31, 2010, the rate shall be 5.95 percent" in par. (2), and added pars. (3) to (7).

Subsec. (b). Pub. L. 95–216, §101(b)(1), substituted "wages received during the calendar year 1978, the rate shall be 1.00 percent" for "wages received during the calendar years 1978 through 1980, the rate shall be 1.10 percent" in par. (2), substituted "wages received during the calendar years 1979 and 1980, the rate shall be 1.05 percent" for "wages received during the calendar years 1981 through 1985, the rate shall be 1.35 percent", in par. (3), substituted "wages received during the calendar years 1981 through 1984, the rate shall be 1.30 percent" for "wages received after December 31, 1985, the rate shall be 1.50 percent" in par. (4), and added pars. (5) and (6).

Subsec. (c). Pub. L. 95–216, §317(b)(2), added subsec. (c).

1976—Subsec. (a). Pub. L. 94–455, §1903(a)(1)(A), redesignated pars. (5) and (6) as (1) and (2), respectively. Former pars. (1) to (4), which related to a tax rate of 3.8 percent with respect to wages received during the calendar year 1968, a tax rate of 4.2 percent with respect to wages received during the calendar

years 1969 and 1970, a tax rate of 4.6 percent with respect to wages received during the calendar years 1971 and 1972, and a tax rate of 4.85 percent with respect to wages received during the calendar year 1973, respectively, were struck out.

Subsec. (b). Pub. L. 94–455, §1903(a)(1)(B), redesignated pars. (3) to (6) as (1) to (4), respectively. Former pars. (1) and (2), which related to a tax rate of .60 percent with respect to wages received during the calendar years 1968, 1969, 1970, 1971, and 1972 and a tax rate of 1.0 percent with respect to wages received during the calendar year 1973, respectively, were struck out.

1973—Subsec. (a)(4). Pub. L. 93–233, §6(a)(1), struck out provision for application of 4.85 percent rate of tax during calendar years 1974, 1975, 1976, and 1977.

Subsec. (a)(5). Pub. L. 93–233, §6(a)(1), increased rate of tax from 4.80 percent to 4.95 percent and substituted calendar year "1974" for "1978" as the initial year for application of such rate.

Subsec. (a)(6). Pub. L. 93–233, §6(a)(1), increased rate of tax from 5.85 percent to 5.95 percent.

Subsec. (b)(2). Pub. L. 93–233, §6(b)(2), struck out provision for application of 1.0 percent rate of tax during calendar years 1974, 1975, 1976, and 1977.

Subsec. (b)(3). Pub. L. 93–233, §6(b)(2), incorporated former provision of par. (2) for taxation of wages received during calendar years 1974, 1975, 1976, and 1977, decreased the applicable rate of tax from 1.0 percent to 0.90 percent, and struck out provision for 1.25 percent rate of tax for calendar years 1978, 1979, 1980.

Subsec. (b)(4). Pub. L. 93–233, §6(b)(2), incorporated former provision of par. (3) for taxation of wages received during calendar years 1978, 1979, and 1980, decreased the applicable rate of tax from 1.25 percent to 1.10 percent, and struck out provision for 1.35 percent rate of tax for calendar years 1981, 1982, 1983, 1984, and 1985.

Subsec. (b)(5). Pub. L. 93–233, §6(b)(2), incorporated former provision of par. (4) for taxation of wages received during calendar years 1981 through 1985 at applicable 1.35 percent rate of tax and struck out provision for 1.45 percent rate of tax for wages received after Dec. 31, 1985.

Subsec. (b)(6). Pub. L. 93–233, §6(b)(2), incorporated former provision of par. (5) for taxation of wages received after Dec. 31, 1985 and increased the applicable rate of tax from 1.45 to 1.50 percent.

1972—Subsec. (a)(3). Pub. L. 92–603, §135(a)(2)(A), substituted "the calendar years 1971 and 1972" for "any of the calendar years 1971 through 1977".

Subsec. (a)(3) to (5). Pub. L. 92–336, §204(a)(2), substituted "any of the calendar years 1971 through 1977" for "the calendar years 1971 and 1972" in par. (3), "any of the calendar years 1978 through 2010" for "the calendar years 1973, 1974, and 1975" and "4.5" for "5.0" in par. (4), and "December 31, 2010" for "December 31, 1975" and "5.35" for "5.15" in par. (5).

Subsec. (a)(4). Pub. L. 92–603, §135(a)(2)(B), substituted "wages received during the calendar years 1973, 1974, 1975, 1976, and 1977, the rate shall be 4.85 percent;" for "wages paid during any of the calendar years 1978 through 2010, the rate shall be 4.5 per cent; and".

Subsec. (a)(5). Pub. L. 92–603, §135(a)(2)(B), substituted "wages received during the calendar years 1978 through 2010, the rate shall be 4.80 percent; and" for "wages paid after December 31, 2010, the rate shall be 5.35 percent".

Subsec. (a)(6). Pub. L. 92–603, §135(a)(2)(B), added par. (6).

Subsec. (b)(2). Pub. L. 92–603, §135(b)(2), increased rate of tax from 0.9 percent to 1.0 percent.

Subsec. (b)(2) to (5). Pub. L. 92–336, §204(b)(2), inserted references to 1976 and 1977 and substituted "0.9" for "0.65" in par. (2), substituted references for the calendar years 1978 through 1985 for references to the calendar years 1976 through 1979 and substituted "1.0" for "0.70" in par. (3), substituted references for the calendar years 1986 through 1992 for references to the calendar years 1980 through 1986 and substituted "1.1" for "0.80" in par. (4), and substituted "1992" for "1986" and "1.2" for "0.90" in par. (5).

Subsec. (b)(3). Pub. L. 92–603, §135(b)(2), substituted "and 1980, the rate shall be 1.25 percent" for "1980, 1981, 1982, 1983, 1984, and 1985, the rate shall be 1.0 percent".

Subsec. (b)(4). Pub. L. 92–603, §135(b)(2), substituted "1981, 1982, 1983, 1984, and 1985, the rate shall be 1.35 percent; and" for "1986, 1987, 1988, 1990, 1991, and 1992, the rate shall be 1.1 percent; and".

Subsec. (b)(5). Pub. L. 92–603, §135(b)(2), substituted "December 31, 1985, the rate shall be 1.45 percent" for "December 31, 1992, the rate shall be 1.2 percent".

1971—Subsec. (a)(4). Pub. L. 92–5 substituted "with respect to wages received during the calendar years 1973, 1974, and 1975, the rate shall be 5.0 percent; and" for "with respect to wages received after December 31, 1972, the rate shall be 5.0 percent".

Subsec. (a)(5). Pub. L. 92–5 added par. (5).

1968—Subsec. (a)(1) to (4). Pub. L. 90–248, §109(a)(2), substituted "1968" and "3.8" for "1966" and "3.85" in par. (1) and "1969 and 1970" and "4.2" for "1967 and 1968" and "3.9" in par. (2), struck out

reference to calendar years 1969 and 1970 from par. (3) and substituted "4.6" and "4.4", and substituted "5.0" for "4.85" in par. (4).

Subsec. (b)(1) to (5). Pub. L. 90–248, §109(b)(2), struck out par. (1) provision for employee rate of 0.35 percent of wages received with respect to employment during calendar year 1966, redesignated pars. (2) to (6) as (1) to (5), struck out reference to "1967" in such par. (1) and increased the rate by 0.10 percent to 0.60, 0.65, 0.70, 0.80, and 0.90 in pars. (1) to (5), respectively.

1965—Pub. L. 89–97, §321(b), divided the total tax imposed under the entire section upon income through a tax equal to percentages of wages into two separate taxes by dividing the section into subsecs. (a) and (b), with subsec. (a) reflecting the tax for old-age, survivors, and disability insurance and subsec. (b) reflecting the tax for hospital insurance, but, in the case of subsec. (b), without regard to the provisions of section 3121(b)(9) insofar as it relates to employees; increased from 41/8 percent to 4.20 percent the rate of total tax imposed by the entire section upon wages received during calendar year 1966 (resulting from a tax of 3.85 percent under subsec. (a) and 0.35 percent under subsec. (b)), increased from 41/8 percent to 4.40 percent the rate of total tax imposed by the entire section upon wages received during calendar year 1967 (resulting from a tax of 3.9 percent under subsec. (a) and 0.50 percent under subsec. (b)), reduced from 45/8 percent to 4.40 percent the rate of total tax imposed by the entire section upon wages received during calendar year 1968, (resulting from a tax of 3.9 percent under subsec. (a) and 0.50 percent under subsec. (b)), increased from 45/8 percent to 4.90 percent the rate for calendar years 1969, 1970, 1971, and 1972 (resulting from a tax of 4.4 percent under subsec. (a) and 0.50 percent under subsec. (b)), increased from 45/8 percent to 5.40 percent the rate for calendar years 1973, 1974, and 1975, (resulting from a tax of 4.85 percent under subsec. (a) and 0.55 percent under subsec. (b)), increased from 45/8 percent to 5.45 percent the rate for calendar years 1976, 1977, 1978, and 1979 (resulting from a tax of 4.85 percent under subsec. (a) and 0.60 percent under subsec. (b)), increased from 45/8 percent to 5.55 percent the rate for calendar years 1980 through 1986 (resulting from a tax of 4.85 percent under subsec. (a) and 0.70 percent under subsec. (b)), and increased the rate for calendar years after Dec. 31, 1986, to 5.65 percent (resulting from a tax of 4.85 percent under subsec. (a) and 0.80 percent under subsec. (b)).

Subsec. (b). Pub. L. 89–97, §111(c)(5), struck out ", but without regard to the provisions of paragraph (9) thereof insofar as it relates to employees" after "as defined in section 3121(b)".

1961—Pub. L. 87–64 increased rate of tax for calendar year 1962 from 3 to 31/8 percent, calendar years 1963 to 1965, inclusive, from 3½ to 35/8 percent, calendar years 1966 and 1967 from 4 to 41/8 percent, calendar year 1968 from 4 to 45/8 percent, and for calendar years after December 31, 1968, from 4½ to 45/8 percent.

1958—Pub. L. 85–840 increased rate of tax by substituting provisions imposing a tax of 2½% for calendar year 1959, 3% for calendar years 1960 to 1962, 3½% for calendar years 1963 to 1965, 4% for calendar years 1966 to 1968, and 4½% for calendar years beginning after Dec. 31, 1968, for provisions which imposed a tax of 2¼% for calendar years 1957 to 1959, 2¾% for calendar years 1960 to 1964, 3¼% for calendar years 1965 to 1969, 3¾% for calendar years 1970 to 1974, and 4¼% for calendar years beginning after Dec. 31, 1974.

1956—Act Aug. 1, 1956, increased rate of tax with respect to wages received during calendar years 1957 to 1959, and for all calendar years thereafter, by one-quarter percent.

1954—Act Sept. 1, 1954, increased the 3¼ percent rate of tax for the calendar year 1970 and subsequent years to 3½ percent for calendar years 1970 to 1974 and 4 percent for 1975 and subsequent years.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–152 applicable with respect to remuneration received, and taxable years beginning after, Dec. 31, 2012, see section 1402(b)(3) of Pub. L. 111–152, set out as a note under section 1401 of this title.

Amendment by section 9015(a)(1) of Pub. L. 111–148 applicable with respect to remuneration received, and taxable years beginning, after Dec. 31, 2012, see section 9015(c) of Pub. L. 111–148, set out as a note under section 164 of this title.

Amendment by section 10906(a) of Pub. L. 111–148 applicable with respect to remuneration received, and taxable years beginning, after Dec. 31, 2012, see section 10906(c) of Pub. L. 111–148, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 98–21, title I, §123(a)(3), Apr. 20, 1983, 97 Stat. 88, provided that: "The amendments made by this subsection [amending this section and section 3111 of this title] shall apply to remuneration paid after December 31, 1983."

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–216 applicable with respect to remuneration paid or received, and taxable years beginning, after 1977, see section 104 of Pub. L. 95–216, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XIX, §1903(d), Oct. 4, 1976, 90 Stat. 1810, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by this section [see Tables for classification of section 1903 of Pub. L. 94–455] shall apply with respect to wages paid after December 31, 1976, except that the amendments made to chapter 22 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [section 3201 et seq. of this title] shall apply with respect to compensation paid for services rendered after December 31, 1976."

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93–233 applicable only with respect to remuneration paid after December 31, 1973, see section 6(c) of Pub. L. 93–233, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 1972 AMENDMENTS

Amendment by Pub. L. 92–603 applicable only with respect to remuneration paid after Dec. 31, 1972, see section 135(c) of Pub. L. 92–603, set out as a note under section 1401 of this title.

Amendment by Pub. L. 92–336 applicable only with respect to remuneration paid after December 31, 1972, see section 204(c) of Pub. L. 92–336, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Pub. L. 92–5, title II, §204(b), Mar. 17, 1971, 85 Stat. 12, provided that: "The amendments made by subsection (a)(1) [amending this section] shall apply only with respect to taxable years beginning after December 31, 1971. The remaining amendments made by this section [amending section 3111 of this title] shall apply only with respect to remuneration paid after December 31, 1971."

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–248 applicable only with respect to remuneration paid after Dec. 31, 1967, see section 109(c) of Pub. L. 90–248, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 111(c)(5) of Pub. L. 89–97 applicable to calendar year 1966 or to any subsequent calendar year but only if by October 1 immediately preceding such calendar year the Railroad Retirement Tax Act (section 3201 et seq. of this title) provides for a maximum amount of monthly compensation taxable under such Act during all months of such calendar year equal to one-twelfth of maximum wages which Federal Insurance Contributions Act (section 3101 et seq. of this title) provides may be counted for such calendar year, see section 111(e) of Pub. L. 89–97, set out as an Effective Date note under section 1395i–1 of Title 42, The Public Health and Welfare.

Amendment by section 321(b) of Pub. L. 89–97 applicable with respect to remuneration paid after December 31, 1965, see section 321(d) of Pub. L. 89–97, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–64 applicable with respect to remuneration paid after Dec. 31, 1961, see section 201(d) of Pub. L. 87–64, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–840 applicable with respect to remuneration paid after Dec. 31, 1958, see section 401(d) of Pub. L. 85–840, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Aug. 1, 1956, applicable with respect to remuneration paid after Dec. 31, 1956, see section 202(d) of such act Aug. 1, 1956, set out as a note under section 1401 of this title.

TEMPORARY EMPLOYEE PAYROLL TAX CUT

Notwithstanding any other provision of law, with respect to remuneration received during calendar years 2011 and 2012, the rate of tax under 26 U.S.C. 3101(a) to be 4.2 percent, see section 601 of Pub. L. 111–312, set out as a note under section 1401 of this title.

PENALTIES AND INTEREST NOT ASSESSED FOR FAILURE TO MAKE TIMELY PAYMENT

DURING PERIOD JANUARY 1, 1982, TO JUNE 30, 1982, OF TAXES ATTRIBUTABLE TO AMENDMENTS BY PUB. L. 97–123

Pub. L. 97–123, §3(f), Dec. 29, 1981, 95 Stat. 1663; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Notwithstanding any other provision of law, no penalties or interest shall be assessed on account of any failure to make timely payment of taxes, imposed by sections 3101, 3111, 3201(b), 3211, or 3221(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] with respect to payments made for the period beginning January 1, 1982, and ending June 30, 1982, to the extent that such taxes are attributable to this section (or the amendments made by this section) [amending sections 3121 and 3231 of this title and section 409 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under section 3121 of this title] and that such failure is due to reasonable cause and not to willful neglect."

REFERENCES TO SOCIAL SECURITY ACT

Act Sept. 1, 1954, ch. 1206, title IV, §402, 68 Stat. 1098, as amended by act Oct. 22, 1986, Pub. L. 99–514, §2, 100 Stat. 2095, provided that: "References in the Internal Revenue Code of 1939 [former Title 26, Internal Revenue Code], the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the Railroad Retirement Act of 1937, as amended [section 231 et seq. of Title 45, Railroads], or any other law of the United States to any section or subdivision of a section of the Social Security Act [section 301 et seq. of Title 42, The Public Health and Welfare] redesignated by this Act shall be deemed to refer to such section or subdivision of a section as so redesignated."

§3102. Deduction of tax from wages

(a) Requirement

The tax imposed by section 3101 shall be collected by the employer of the taxpayer, by deducting the amount of the tax from the wages as and when paid. An employer who in any calendar year pays to an employee cash remuneration to which paragraph (7)(B) of section 3121(a) is applicable may deduct an amount equivalent to such tax from any such payment of remuneration, even though at the time of payment the total amount of such remuneration paid to the employee by the employer in the calendar year is less than the applicable dollar threshold (as defined in section 3121(x)) for such year; and an employer who in any calendar year pays to an employee cash remuneration to which paragraph (7)(C) or (10) of section 3121(a) is applicable may deduct an amount equivalent to such tax from any such payment of remuneration, even though at the time of payment the total amount of such remuneration paid to the employee by the employer in the calendar year is less than $100; and an employer who in any calendar year pays to an employee cash remuneration to which paragraph (8)(B) of section 3121(a) is applicable may deduct an amount equivalent to such tax from any such payment of remuneration, even though at the time of payment the total amount of such remuneration paid to the employee by the employer in the calendar year is less than $150; and an employer who is furnished by an employee a written statement of tips (received in a calendar month) pursuant to section 6053(a) to which paragraph (12)(B) of section 3121(a) is applicable may deduct an amount equivalent to such tax with respect to such tips from any wages of the employee (exclusive of tips) under his control, even though at the time such statement is furnished the total amount of the tips included in statements furnished to the employer as having been received by the employee in such calendar month in the course of his employment by such employer is less than $20.

(b) Indemnification of employer

Every employer required so to deduct the tax shall be liable for the payment of such tax, and shall be indemnified against the claims and demands of any person for the amount of any such payment made by such employer.

(c) Special rule for tips

(1) In the case of tips which constitute wages, subsection (a) shall be applicable only to such tips as are included in a written statement furnished to the employer pursuant to section 6053(a), and only to the extent that collection can be made by the employer, at or after the time such statement is so furnished and before the close of the 10th day following the calendar month (or, if paragraph (3) applies, the 30th day following the year) in which the tips were deemed paid, by deducting the

amount of the tax from such wages of the employee (excluding tips, but including funds turned over by the employee to the employer pursuant to paragraph (2)) as are under control of the employer.

(2) If the tax imposed by section 3101, with respect to tips which are included in written statements furnished in any month to the employer pursuant to section 6053(a), exceeds the wages of the employee (excluding tips) from which the employer is required to collect the tax under paragraph (1), the employee may furnish to the employer on or before the 10th day of the following month (or, if paragraph (3) applies, on or before the 30th day of the following year) an amount of money equal to the amount of the excess.

(3) The Secretary may, under regulations prescribed by him, authorize employers—

(A) to estimate the amount of tips that will be reported by the employee pursuant to section 6053(a) in any calendar year,

(B) to determine the amount to be deducted upon each payment of wages (exclusive of tips) during such year as if the tips so estimated constituted the actual tips so reported, and

(C) to deduct upon any payment of wages (other than tips, but including funds turned over by the employee to the employer pursuant to paragraph (2)) to such employee during such year (and within 30 days thereafter) such amount as may be necessary to adjust the amount actually deducted upon such wages of the employee during the year to the amount required to be deducted in respect of tips included in written statements furnished to the employer during the year.

(4) If the tax imposed by section 3101 with respect to tips which constitute wages exceeds the portion of such tax which can be collected by the employer from the wages of the employee pursuant to paragraph (1) or paragraph (3), such excess shall be paid by the employee.

(d) Special rule for certain taxable group-term life insurance benefits

(1) In general

In the case of any payment for group-term life insurance to which this subsection applies—

(A) subsection (a) shall not apply,

(B) the employer shall separately include on the statement required under section 6051—

(i) the portion of the wages which consists of payments for group-term life insurance to which this subsection applies, and

(ii) the amount of the tax imposed by section 3101 on such payments, and

(C) the tax imposed by section 3101 on such payments shall be paid by the employee.

(2) Benefits to which subsection applies

This subsection shall apply to any payment for group-term life insurance to the extent—

(A) such payment constitutes wages, and

(B) such payment is for coverage for periods during which an employment relationship no longer exists between the employee and the employer.

(e) Special rule for certain transferred Federal employees

In the case of any payments of wages for service performed in the employ of an international organization pursuant to a transfer to which the provisions of section 3121(y) are applicable—

(1) subsection (a) shall not apply,

(2) the head of the Federal agency from which the transfer was made shall separately include on the statement required under section 6051—

(A) the amount determined to be the amount of the wages for such service, and

(B) the amount of the tax imposed by section 3101 on such payments, and

(3) the tax imposed by section 3101 on such payments shall be paid by the employee.

(f) Special rules for additional tax

(1) In general

In the case of any tax imposed by section 3101(b)(2), subsection (a) shall only apply to the

extent to which the taxpayer receives wages from the employer in excess of $200,000, and the employer may disregard the amount of wages received by such taxpayer's spouse.

(2) Collection of amounts not withheld

To the extent that the amount of any tax imposed by section 3101(b)(2) is not collected by the employer, such tax shall be paid by the employee.

(3) Tax paid by recipient

If an employer, in violation of this chapter, fails to deduct and withhold the tax imposed by section 3101(b)(2) and thereafter the tax is paid by the employee, the tax so required to be deducted and withheld shall not be collected from the employer, but this paragraph shall in no case relieve the employer from liability for any penalties or additions to tax otherwise applicable in respect of such failure to deduct and withhold.

(Aug. 16, 1954, ch. 736, 68A Stat. 415; Sept. 1, 1954, ch. 1206, title II, §205A, 68 Stat. 1093; Aug. 1, 1956, ch. 836, title II, §201(h)(3), 70 Stat. 841; Pub. L. 89–97, title III, §313(c)(1), (2), July 30, 1965, 79 Stat. 382, 383; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–216, title III, §355(a), (b), Dec. 20, 1977, 91 Stat. 1555; Pub. L. 101–508, title V, §5124(a), Nov. 5, 1990, 104 Stat. 1388–284; Pub. L. 103–296, title III, §319(a)(3), Aug. 15, 1994, 108 Stat. 1534; Pub. L. 103–387, §2(a)(1)(D), Oct. 22, 1994, 108 Stat. 4072; Pub. L. 108–203, title IV, §424(b), Mar. 2, 2004, 118 Stat. 536; Pub. L. 111–148, title IX, §9015(a)(2), Mar. 23, 2010, 124 Stat. 871.)

AMENDMENTS

2010—Subsec. (f). Pub. L. 111–148 added subsec. (f).

2004—Subsec. (a). Pub. L. 108–203 struck out "and the employee has not performed agricultural labor for the employer on 20 days or more in the calendar year for cash remuneration computed on a time basis" after "less than $150".

1994—Subsec. (a). Pub. L. 103–387 in second sentence substituted "An employer who in any calendar year" for "An employer who in any calendar quarter" and "remuneration paid to the employee by the employer in the calendar year is less than the applicable dollar threshold (as defined in section 3121(x)) for such year" for "remuneration paid to the employee by the employer in the calendar quarter is less than $50".

Subsec. (e). Pub. L. 103–296 added subsec. (e).

1990—Subsec. (d). Pub. L. 101–508 added subsec. (d).

1977—Subsec. (a). Pub. L. 95–216, §355(a), substituted "cash remuneration to which paragraph (7)(B) of section 3121(a) is applicable" for "cash remuneration to which paragraph (7)(B) or (C) or (10) of section 3121(a) is applicable" and inserted "and an employer who in any calendar year pays to an employee cash remuneration to which paragraph (7)(C) or (10) of section 3121(a) is applicable may deduct an amount equivalent to such tax from any such payment of remuneration, even though at the time of payment the total amount of such remuneration paid to the employee by the employer in the calendar year is less than $100;".

Subsec. (c)(1), (2). Pub. L. 95–216, §355(b)(1), substituted "year" for "quarter" wherever appearing.

Subsec. (c)(3)(A). Pub. L. 95–216, §355(b)(2)(A), substituted "in any calendar year" for "in any quarter of the calendar year".

Subsec. (c)(3)(B), (C). Pub. L. 95–216, §355(b)(2)(B), substituted "year" for "quarter" wherever appearing.

1976—Subsec. (c)(3). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

1965—Subsec. (a). Pub. L. 89–97, §313(c)(2), inserted provisions at end of second sentence allowing a deduction from any wages of an employee of an amount equivalent to the tax on tips when an employer is furnished with a written statement of tips received by an employee.

Subsec. (c). Pub. L. 89–97, §313(c)(1), added subsec. (c).

1956—Subsec. (a). Act Aug. 1, 1956, substituted "$150 and the employee has not performed agricultural labor for the employer on 20 days or more in the calendar year for cash remuneration computed on a time basis" for "$100".

1954—Subsec. (a). Act Sept. 1, 1954, inserted last sentence permitting in certain instances an employer to deduct employee tax even though payment to employee is less than $50 for calendar quarter or $100 for calendar year.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–148 applicable with respect to remuneration received, and taxable years

beginning, after Dec. 31, 2012, see section 9015(c) of Pub. L. 111–148, set out as a note under section 164 of this title.

EFFECTIVE DATE OF 1994 AMENDMENTS

Pub. L. 103–387, §2(a)(3), Oct. 22, 1994, 108 Stat. 4072, provided that:

"(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection [amending this section, section 3121 of this title, and sections 409 and 410 of Title 42, The Public Health and Welfare] shall apply to remuneration paid after December 31, 1993.

"(B) EXCLUDED EMPLOYMENT.—The amendments made by paragraphs (1)(C) and (2)(B) [amending section 3121 of this title and section 410 of Title 42] shall apply to services performed after December 31, 1994."

Amendment by Pub. L. 103–296 applicable with respect to service performed after calendar quarter following calendar quarter in which Aug. 15, 1994, occurs, see section 319(c) of Pub. L. 103–296, set out as a note under section 1402 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title V, §5124(c), Nov. 5, 1990, 104 Stat. 1388–285, provided that: "The amendments made by this section [amending this section and section 3202 of this title] shall apply to coverage provided after December 31, 1990."

EFFECTIVE DATE OF 1977 AMENDMENT

Pub. L. 95–216, title III, §355(c), Dec. 20, 1977, 91 Stat. 1555, provided that: "The amendments made by this section [amending this section] shall apply with respect to remuneration paid and to tips received after December 31, 1977."

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–97 applicable only with respect to tips received by employees after 1965, see section 313(f) of Pub. L. 89–97, set out as an Effective Date note under section 6053 of this title.

NO LOSS OF SOCIAL SECURITY COVERAGE FOR 1994; CONTINUATION OF W–2 FILING REQUIREMENT

Pub. L. 103–387, §2(a)(4), Oct. 22, 1994, 108 Stat. 4072, provided that: "Notwithstanding the amendments made by this subsection [amending this section, section 3121 of this title, and sections 409 and 410 of Title 42, The Public Health and Welfare], if the wages (as defined in section 3121(a) of the Internal Revenue Code of 1986) paid during 1994 to an employee for domestic service in a private home of the employer are less than $1,000—

"(A) the employer shall file any return or statement required under section 6051 of such Code with respect to such wages (determined without regard to such amendments), and

"(B) the employee shall be entitled to credit under section 209 of the Social Security Act [42 U.S.C. 409] with respect to any such wages required to be included on any such return or statement."

Subchapter B—Tax on Employers

Sec.
3111. Rate of tax.
3112. Instrumentalities of the United States.
[3113. Repealed.]

AMENDMENTS

1976—Pub. L. 94–455, title XIX, §1903(b), Oct. 4, 1976, 90 Stat. 1810, struck out item 3113 "District of Columbia credit unions".

1956—Act Aug. 1, 1956, ch. 836, title II, §201(a)(2), 70 Stat. 839, added item 3113.

§3111. Rate of tax

(a) Old-age, survivors, and disability insurance

In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to

having individuals in his employ, equal to the following percentages of the wages (as defined in section 3121(a)) paid by him with respect to employment (as defined in section 3121(b))—

In cases of wages paid during:	The rate shall be:
1984, 1985, 1986, or 1987	5.7 percent
1988 or 1989	6.06 percent
1990 or thereafter	6.2 percent.

(b) Hospital insurance

In addition to the tax imposed by the preceding subsection, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to the following percentages of the wages (as defined in section 3121(a)) paid by him with respect to employment (as defined in section 3121(b))—

(1) with respect to wages paid during the calendar years 1974 through 1977, the rate shall be 0.90 percent;

(2) with respect to wages paid during the calendar year 1978, the rate shall be 1.00 percent;

(3) with respect to wages paid during the calendar years 1979 and 1980, the rate shall be 1.05 percent;

(4) with respect to wages paid during the calendar years 1981 through 1984, the rate shall be 1.30 percent;

(5) with respect to wages paid during the calendar year 1985, the rate shall be 1.35 percent; and

(6) with respect to wages paid after December 31, 1985, the rate shall be 1.45 percent.

(c) Relief from taxes in cases covered by certain international agreements

During any period in which there is in effect an agreement entered into pursuant to section 233 of the Social Security Act with any foreign country, wages received by or paid to an individual shall be exempt from the taxes imposed by this section to the extent that such wages are subject under such agreement exclusively to the laws applicable to the social security system of such foreign country.

(d) Special exemption for certain individuals hired in 2010

(1) In general

Subsection (a) shall not apply to wages paid by a qualified employer with respect to employment during the period beginning on the day after the date of the enactment of this subsection and ending on December 31, 2010, of any qualified individual for services performed—

(A) in a trade or business of such qualified employer, or

(B) in the case of a qualified employer exempt from tax under section 501(a), in furtherance of the activities related to the purpose or function constituting the basis of the employer's exemption under section 501.

(2) Qualified employer

For purposes of this subsection—

(A) In general

The term "qualified employer" means any employer other than the United States, any State, or any political subdivision thereof, or any instrumentality of the foregoing.

(B) Treatment of employees of post-secondary educational institutions

Notwithstanding subparagraph (A), the term "qualified employer" includes any employer which is a public institution of higher education (as defined in section 101(b) of the Higher Education Act of 1965).

(3) Qualified individual

For purposes of this subsection, the term "qualified individual" means any individual who—

(A) begins employment with a qualified employer after February 3, 2010, and before January 1, 2011,

(B) certifies by signed affidavit, under penalties of perjury, that such individual has not been employed for more than 40 hours during the 60-day period ending on the date such individual begins such employment,

(C) is not employed by the qualified employer to replace another employee of such employer unless such other employee separated from employment voluntarily or for cause, and

(D) is not an individual described in section 51(i)(1) (applied by substituting "qualified employer" for "taxpayer" each place it appears).

(4) Election

A qualified employer may elect to have this subsection not apply. Such election shall be made in such manner as the Secretary may require.

(5) Special rule for first calendar quarter of 2010

(A) Nonapplication of exemption during first quarter

Paragraph (1) shall not apply with respect to wages paid during the first calendar quarter of 2010.

(B) Crediting of first quarter exemption during second quarter

The amount by which the tax imposed under subsection (a) would (but for subparagraph (A)) have been reduced with respect to wages paid by a qualified employer during the first calendar quarter of 2010 shall be treated as a payment against the tax imposed under subsection (a) with respect to the qualified employer for the second calendar quarter of 2010 which is made on the date that such tax is due.

(e) Credit for employment of qualified veterans

(1) In general

If a qualified tax-exempt organization hires a qualified veteran with respect to whom a credit would be allowable under section 38 by reason of section 51 if the organization were not a qualified tax-exempt organization, then there shall be allowed as a credit against the tax imposed by subsection (a) on wages paid with respect to employment of all employees of the organization during the applicable period an amount equal to the credit determined under section 51 (after application of the modifications under paragraph (3)) with respect to wages paid to such qualified veteran during such period.

(2) Overall limitation

The aggregate amount allowed as a credit under this subsection for all qualified veterans for any period with respect to which tax is imposed under subsection (a) shall not exceed the amount of the tax imposed by subsection (a) on wages paid with respect to employment of all employees of the organization during such period.

(3) Modifications

For purposes of paragraph (1), section 51 shall be applied—

(A) by substituting "26 percent" for "40 percent" in subsection (a) thereof,

(B) by substituting "16.25 percent" for "25 percent" in subsection (i)(3)(A) thereof, and

(C) by only taking into account wages paid to a qualified veteran for services in furtherance of the activities related to the purpose or function constituting the basis of the organization's exemption under section 501.

(4) Applicable period

The term "applicable period" means, with respect to any qualified veteran, the 1-year period beginning with the day such qualified veteran begins work for the organization.

(5) Definitions

For purposes of this subsection—

(A) the term "qualified tax-exempt organization" means an employer that is an organization described in section 501(c) and exempt from taxation under section 501(a), and

(B) the term "qualified veteran" has meaning [1] given such term by section 51(d)(3).

(Aug. 16, 1954, ch. 736, 68A Stat. 416; Sept. 1, 1954, ch. 1206, title II, §208(c), 68 Stat. 1094; Aug. 1, 1956. ch. 836, title II, §202(c), 70 Stat. 845; Pub. L. 85–840, title IV, §401(c), Aug. 28, 1958, 72 Stat. 1042; Pub. L. 87–64, title II, §201(c), June 30, 1961, 75 Stat. 141; Pub. L. 89–97, title I, §111(c)(6), title III, §321(c), July 30, 1965, 79 Stat. 343, 396; Pub. L. 90–248, title I, §109(a)(3), (b)(3), Jan. 2, 1968, 81 Stat. 836, 837; Pub. L. 92–5, title II, §204(a)(2), Mar. 17, 1971, 85 Stat. 11; Pub. L. 92–336, title II, §204(a)(3), (b)(3), July 1, 1972, 86 Stat. 421, 422; Pub. L. 92–603, title I, §135(a)(3), (b)(3), Oct. 30, 1972, 86 Stat. 1363, 1364; Pub. L. 93–233, §6(a)(2), (b)(3), Dec. 31, 1973, 87 Stat. 954, 955; Pub. L. 94–455, title XIX, §1903(a)(1), Oct. 4, 1976, 90 Stat. 1806; Pub. L. 95–216, title I, §101(a)(2), (b)(2), title III, §§315(b), 317(b)(2), Dec. 20, 1977, 91 Stat. 1511, 1512, 1537, 1540; Pub. L. 98–21, title I, §123(a)(2), Apr. 20, 1983, 97 Stat. 88; Pub. L. 100–203, title IX, §9006(b)(1), Dec. 22, 1987, 101 Stat. 1330–289; Pub. L. 100–647, title VIII, §8016(a)(5), Nov. 10, 1988, 102 Stat. 3793; Pub. L. 108–203, title IV, §415, Mar. 2, 2004, 118 Stat. 530; Pub. L. 111–147, title I, §101(a), Mar. 18, 2010, 124 Stat. 72; Pub. L. 112–56, title II, §261(e)(2), Nov. 21, 2011, 125 Stat. 730.)

REFERENCES IN TEXT

Section 233 of the Social Security Act, referred to in subsec. (c), is classified to section 433 of Title 42, The Public Health and Welfare.

The date of the enactment of this subsection, referred to in subsec. (d)(1), is the date of the enactment of Pub. L. 111–147, which was approved Mar. 18, 2010.

Section 101(b) of the Higher Education Act of 1965, referred to in subsec. (d)(2)(B), is classified to section 1001(b) of Title 20, Education.

AMENDMENTS

2011—Subsec. (e). Pub. L. 112–56 added subsec. (e).

2010—Subsec. (d). Pub. L. 111–147 added subsec. (d).

2004—Subsec. (c). Pub. L. 108–203 substituted "exclusively to the laws applicable to" for "to taxes or contributions for similar purposes under".

1988—Subsecs. (a), (b). Pub. L. 100–647 made technical correction to directory language of Pub. L. 100–203, §9006(b)(1), see 1987 Amendment note below.

1987—Subsecs. (a), (b). Pub. L. 100–203, as amended by Pub. L. 100–647, struck out "and (t)" after "3121(a)" in introductory provisions.

1983—Subsec. (a). Pub. L. 98–21 substituted table of rates for pars. (1) to (7) which had imposed a tax on every employer (1) with respect to wages paid during the calendar years 1974 through 1977 at the rate of 4.95 percent, (2) with respect to wages paid during the calendar year 1978 at the rate of 5.05 percent, (3) with respect to wages paid during the calendar years 1979 and 1980 at the rate of 5.08 percent, (4) with respect to wages paid during the calendar year 1981 at the rate of 5.35 percent, (5) with respect to wages paid during the calendar years 1982 through 1984 at the rate of 5.40 percent, (6) with respect to wages paid during the calendar years 1985 through 1989 at the rate of 5.70 percent, and (7) with respect to wages paid after Dec. 31, 1989, at the rate of 6.20 percent.

1977—Subsec. (a). Pub. L. 95–216, §§101(a)(2), 315(b), substituted "(as defined in section 3121(a) and (t))" for "(as defined in section 3121(a))" in provisions preceding par. (1), substituted "1974 through 1977" for "1974 through 2010" in par. (1), substituted "wages paid during the calendar year 1978, the rate shall be 5.05 percent" for "wages paid after December 31, 2010, the rate shall be 5.95 percent" in par. (2), and added pars. (3) to (7).

Subsec. (b). Pub. L. 95–216, §§101(b)(2), 315(b), substituted "(as defined in section 3121(a) and (t))" for "(as defined in section 3121(a))" in provisions preceding par. (1), substituted "wages paid during the calendar year 1978, the rate shall be 1.00 percent" for "wages paid during the calendar years 1978 through 1980, the rate shall be 1.10 percent", in par. (2), substituted "wages paid during the calendar years 1979 and 1980, the rate shall be 1.05 percent" for wages paid during the calendar years 1981 through 1985, the rate shall be 1.35 percent" in par. (3), substituted "wages paid during the calendar years 1981 through 1984, the rate shall be 1.30 percent" for "wages paid after December 31, 1985, the rate shall be 1.50 percent" in par. (4), and added pars. (5) and (6).

Subsec. (c). Pub. L. 95–216, §317(b)(2), added subsec. (c).

1976—Subsec. (a). Pub. L. 94–455, §1903(a)(1)(A), redesignated pars. (5) and (6) as (1) and (2). Former pars. (1) to (4), which related to a tax rate of 3.8 percent with respect to wages received during the taxable year 1968, a tax rate of 4.2 percent with respect to wages received during the calendar year 1969 and 1970, a tax rate of 4.6 percent with respect to wages received during the calendar years 1971 and 1972, and a tax rate of 4.85 percent with respect to wages received during the calendar year 1973, respectively, were struck out.

Subsec. (b). Pub. L. 94–455, §1903(a)(1)(B), redesignated pars. (3) to (6) as (1) to (4), respectively. Former pars. (1) and (2), which related to a tax rate of .60 percent with respect to wages received during the calendar years 1968, 1969, 1970, 1971, and 1972 and a tax rate of 1.0 percent with respect to wages received during the calendar year 1973, respectively, were struck out.

1973—Subsec. (a)(4). Pub. L. 93–233, §6(a)(2), struck out provision for application of 4.85 percent rate of tax during calendar years 1974, 1975, 1976, and 1977.

Subsec. (a)(5). Pub. L. 93–233, §6(a)(2), increased rate of tax from 4.80 percent to 4.95 percent and substituted calendar year "1974" to "1978" as initial year for application of such rate.

Subsec. (a)(6). Pub. L. 93–233, §6(a)(2), increased rate of tax from 5.85 percent to 5.95 percent.

Subsec. (b)(2). Pub. L. 93–233, §6(b)(3), struck out provision for application of 1.0 percent rate of tax during calendar years 1974, 1975, 1976, and 1977.

Subsec. (b)(3). Pub. L. 93–233, §6(b)(3), incorporated former provision of par. (2) for taxation of wages received during calendar years 1974, 1975, 1976, and 1977, decreased the applicable rate of tax from 1.0 percent to 0.90 percent, and struck out provision for 1.25 percent rate of tax for calendar years 1978, 1979, and 1980.

Subsec. (b)(4). Pub. L. 93–233, §6(b)(3), incorporated former provision of par. (3) for taxation of wages received during calendar years 1978, 1979, and 1980, decreased the applicable rate of tax from 1.25 percent to 1.10 percent, and struck out provision for 1.35 percent rate of tax for calendar years 1981, 1982, 1983, 1984, and 1985.

Subsec. (b)(5). Pub. L. 93–233, §6(b)(3), incorporated former provision of par. (4) for taxation of wages received during calendar years 1981 through 1985 at applicable 1.35 percent rate of tax and struck out provision for 1.45 percent rate of tax for wages received after Dec. 31, 1985.

Subsec. (b)(6). Pub. L. 93–233, §6(b)(3), incorporated former provision of par. (5) for taxation of wages received after Dec. 31, 1985 and increased the applicable rate of tax from 1.45 percent to 1.50 percent.

1972—Subsec. (a)(3). Pub. L. 92–603, §135(a)(3)(A), substituted "the calendar years 1971 and 1972" for "any of the calendar years 1971 through 1977".

Subsec. (a)(3) to (5). Pub. L. 92–336, §204(a)(3), substituted "any of the calendar years 1971 through 1977" for "the calendar years 1971 and 1972" in par. (3), "any of the calendar years 1978 through 2010" for "the calendar years 1973, 1974, and 1975" and "4.5" for "5.0" in par. (4), and "December 31, 2010" for "December 31, 1975" and "5.35" for "5.15" in par. (5).

Subsec. (a)(4). Pub. L. 92–603, §135(a)(3)(B), substituted "received during the calendar years 1973, 1974, 1975, 1976, and 1977, the rate shall be 4.85 percent;" for "received during any of the calendar years 1978 through 2010, the rate shall be 4.5 percent; and".

Subsec. (a)(5). Pub. L. 92–603, §135(a)(3)(B), substituted "received during the calendar years 1978 through 2010, the rate shall be 4.80 percent; and" for "received after December 31, 2010, the rate shall be 5.35 percent".

Subsec. (a)(6). Pub. L. 92–603, §135(a)(3)(B), added par. (6).

Subsec. (b)(2). Pub. L. 92–603, §135(b)(3), increased rate to 1.0 percent from 0.9 percent.

Subsec. (b)(2) to (5). Pub. L. 92–336, §204(b)(3), inserted references to 1976 and 1977 and substituted "0.9" for "0.65" in par. (2), substituted references for the calendar years 1978 through 1985 for references to the calendar years 1976 through 1979 and substituted "1.0" for "0.70" in par. (3), substituted references for the calendar years 1986 through 1992 for references to the calendars 1980 through 1986 and substituted "1.1" for "0.80" in par. (4), and substituted "1992" and "1986" and "1.2" for "0.9" in par. (5).

Subsec. (b)(3). Pub. L. 92–603, §135(b)(3), substituted "and 1980, the rate shall be 1.25 percent" for "1980, 1981, 1982, 1983, 1984, and 1985, the rate shall be 1.0 percent".

Subsec. (b)(4). Pub. L. 92–603, §135(b)(3), substituted "1981, 1982, 1983, 1984, and 1985, the rate shall be 1.35 percent" for "1986, 1987, 1988, 1989, 1990, 1991, and 1992, the rate shall be 1.1 percent".

Subsec. (b)(5). Pub. L. 92–603, §135(b)(3), substituted "1985, the rate shall be 1.45 percent" for "1992, the rate shall be 1.2 percent".

1971—Subsec. (a)(4). Pub. L. 92–5 substituted "with respect to wages paid during the calendar years 1973, 1974, and 1975, the rate shall be 5.0 percent; and" for "with respect to wages paid after December 31, 1972, the rate shall be 5.0 percent".

Subsec. (a)(5). Pub. L. 92–5 added par. (5).

1968—Subsec. (a)(1) to (4). Pub. L. 90–248, §109(a)(3), substituted "1968" and "3.8" for "1966" and "3.85" in par. (1) and "1969 and 1970" and "4.2" for "1967 and 1968" and "3.9" in par. (2), struck out reference to calendar years 1969 and 1970 from par. (3) and substituted therein "4.6" for "4.4", and substituted "5.0" for "4.85" in par. (4).

Subsecs. (b)(1) to (5). Pub. L. 90–248, §109(b)(3), struck out par. (1) provision for employer rate of 0.35 percent of wages paid with respect to employment during calendar year 1966, redesignated pars. (2) to (6) as (1) to (5), struck out reference to "1967" in such par. (1) and increased the rate by 0.10 percent to 0.60, 0.65, 0.70, 0.80, and 0.90 in pars. (1) to (5), respectively.

1965—Pub. L. 89–97, §321(c), divided the total excise tax imposed under the entire section upon employers through a tax equal to percentages of wages paid by him into two separate taxes by dividing the section into subsecs. (a) and (b), with subsec. (a) reflecting the tax for old-age, survivors, and disability insurance, and subsec. (b) reflecting the tax for hospital insurance, but, in the case of subsec. (b), without regard to the provisions of section 3121(b)(9) insofar as it relates to employees; increased from 41/8 percent to 4.20 percent the rate of total tax imposed by the entire section upon wages paid during calendar year 1966 (resulting from a tax of 3.85 percent under subsec. (a) and 0.35 percent under subsec. (b)), increased from 41/8 percent to 4.40 percent the rate of total tax imposed by the entire section upon wages paid during calendar year 1967 (resulting from a tax of 3.9 percent under subsec. (a) and 0.50 percent under subsec. (b)), reduced from 45/8 percent to 4.40 percent the rate of total tax imposed by the entire section upon wages paid during calendar year 1968 (resulting from a tax of 3.9 percent under subsec. (a) and 0.50 percent under subsec. (b)), increased from 45/8 percent to 4.90 percent the rate of total tax imposed by the entire section upon wages paid during the calendar years 1969, 1970, 1971, and 1972 (resulting from a tax of 4.4 percent under subsec. (a) and 0.50 percent under subsec. (b)), increased from 45/8 percent to 5.40 percent the rate for calendar years 1973, 1974, and 1975 (resulting from a tax of 4.85 percent under subsec. (a) and 0.55 percent under subsec. (b)), increased from 45/8 percent to 5.45 percent the rate for calendar years 1976, 1977, 1978, and 1979 (resulting from a tax of 4.85 percent under subsec. (a) and 0.60 percent under subsec. (b)), increased from 45/8 percent to 5.55 percent the rate for calendar years 1980 through 1986 (resulting from a tax of 4.85 percent under subsec. (a) and 0.70 percent under subsec. (b)), and increased the rate from 45/8 percent to 5.65 percent for calendar years after December 31, 1986 (resulting from a tax of 4.85 percent under subsec. (a) and 0.80 percent under subsec. (b)).

Subsec. (b). Pub. L. 89–97, §111(c)(6), struck out ", but without regard to the provisions of paragraph (9) thereof insofar as it relates to employees" after "as defined in section 3121(b)".

1961—Pub. L. 87–64 increased rate of tax for calendar year 1962 from 3 to 31/8 percent, calendar years 1963 to 1965, inclusive, from 3½ to 35/8 percent, calendar years 1966 and 1967 from 4 to 41/8 percent, calendar year 1968 from 4 to 45/8 percent, and for calendar years after December 31, 1968, from 4½ to 45/8 percent.

1958—Pub. L. 85–840 increased rate of tax by substituting provisions imposing a tax of 2½ percent for calendar year 1959, 3 percent for calendar years 1960–62, 3½ percent for calendar years 1963–65, 4 percent for calendar years 1966–68, and 4½ percent for calendar years beginning after Dec. 31, 1968, for provisions which imposed a tax of 2¼ percent for calendar years 1957–59, 2¾ percent for calendar years 1960–64, 3¼ percent for calendar years 1965–69, 3¾ percent for calendar years 1970–74, and 4¼ percent for calendar years beginning after Dec. 31, 1974.

1956—Act Aug. 1, 1956, increased rate of tax with respect to wages paid during calendar years 1957 to 1959, and for all calendar years thereafter, by one-quarter percent.

1954—Act Sept. 1, 1954, increased 3¼ percent rate of tax for calendar year 1970 and subsequent years to 3½ percent for calendar years 1970 to 1974 and 4 percent for 1975 and subsequent years.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112–56 applicable to individuals who begin work for the employer after Nov. 21, 2011, see section 261(g) of Pub. L. 112–56, set out as a note under section 51 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–147 applicable to wages paid after Mar. 18, 2010, see section 101(e) of Pub. L. 111–147, set out as a note under section 51 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title VIII, §8016(b), Nov. 10, 1988, 102 Stat. 3793, provided that:

"(1) Except as provided in paragraph (2), the amendments made by this section [amending this section, sections 3121 and 3306 of this title, and sections 405, 410, and 411 of Title 42, The Public Health and

Welfare] shall be effective on the date of the enactment of this Act [Nov. 10, 1988].

"(2) Any amendment made by this section to a provision of a particular Public Law which is referred to by its number, or to a provision of the Social Security Act [42 U.S.C. 301 et seq.] or the Internal Revenue Code of 1986 as added or amended by a provision of a particular Public Law which is so referred to, shall be effective as though it had been included or reflected in the relevant provisions of that Public Law at the time of its enactment."

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title IX, §9006(c), Dec. 22, 1987, 101 Stat. 1330–289, provided that: "The amendments made by this section [amending this section and section 3121 of this title] shall apply with respect to tips received (and wages paid) on and after January 1, 1988."

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable to remuneration paid after Dec. 31, 1983, see section 123(a)(3) of Pub. L. 98–21, set out as a note under section 3101 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by section 101(a)(2), (b)(2) of Pub. L. 95–216 applicable with respect to remuneration paid or received, and taxable years beginning, after 1977, see section 104 of Pub. L. 95–216, set out as a note under section 1401 of this title.

Pub. L. 95–216, title III, §315(c), Dec. 20, 1977, 91 Stat. 1537, provided that: "The amendments made by this section [amending this section and section 3121 of this title] shall apply with respect to wages paid with respect to employment performed in months after December 1977."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable with respect to wages paid after Dec. 31, 1976, see section 1903(d) of Pub. L. 94–455, set out as a note under section 3101 of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93–233 applicable only with respect to remuneration paid after December 31, 1973, see section 6(c) of Pub. L. 93–233, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 1972 AMENDMENTS

Amendment by Pub. L. 92–603 applicable only with respect to remuneration paid after Dec. 31, 1972, see section 135(c) of Pub. L. 92–603, set out as a note under section 1401 of this title.

Amendment by Pub. L. 92–336 applicable only with respect to remuneration paid after December 31, 1972, see section 204(c) of Pub. L. 92–336, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–5 applicable only with respect to remuneration paid after Dec. 31, 1971, see section 204(b) of Pub. L. 92–5, set out as a note under section 3101 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–248 applicable only with respect to remuneration paid after Dec. 31, 1967, see section 109(c) of Pub. L. 90–248, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 111(c)(6) of Pub. L. 89–97 applicable to calendar year 1966 or to any subsequent calendar year but only if by October 1 immediately preceding such calendar year the Railroad Retirement Tax Act (section 3201 et seq. of this title) provides for a maximum amount of monthly compensation taxable under such Act during all months of such calendar year equal to one-twelfth of maximum wages which Federal Insurance Contributions Act (section 3101 et seq. of this title) provides may be counted for such calendar year, see section 111(e) of Pub. L. 89–97, set out as an Effective Date note under section 1395i–1 of Title 42, The Public Health and Welfare.

Amendment by section 321(c) of Pub. L. 89–97 applicable with respect to remuneration paid after December 31, 1965, see section 321(d) of Pub. L. 89–97, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–64 applicable with respect to remuneration paid after Dec. 31, 1961, see section 201(d) of Pub. L. 87–64, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–840 applicable with respect to remuneration paid after Dec. 31, 1958, see section 401(d) of Pub. L. 85–840, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Aug. 1, 1956, applicable with respect to remuneration paid after Dec. 31, 1956, see section 202(d) of such act Aug. 1, 1956, set out as a note under section 1401 of this title.

PENALTIES AND INTEREST NOT ASSESSED FOR FAILURE TO MAKE TIMELY PAYMENT DURING PERIOD JANUARY 1, 1982, TO JUNE 30, 1982, OF TAXES ATTRIBUTABLE TO AMENDMENTS BY PUB. L. 97–123

For provision that no penalties or interest shall be assessed on account of any failure to make timely payment of taxes imposed by this section with respect to payments made for the period Jan. 1, 1982, and ending June 30, 1982, to the extent that such taxes are attributable to section 3 of Pub. L. 97–123 or the amendments made by that section, see section 3(f) of Pub. L. 97–123, set out as a note under section 3101 of this title.

[1] So in original. Probably should be preceded by "the".

§3112. Instrumentalities of the United States

Notwithstanding any other provision of law (whether enacted before or after the enactment of this section) which grants to any instrumentality of the United States an exemption from taxation, such instrumentality shall not be exempt from the tax imposed by section 3111 unless such other provision of law grants a specific exemption, by reference to section 3111 (or the corresponding section of prior law), from the tax imposed by such section.

(Aug. 16, 1954, ch. 736, 68A Stat. 416.)

[§3113. Repealed. Pub. L. 94–455, title XIX, §1903(a)(2), Oct. 4, 1976, 90 Stat. 1806]

Section, added Aug. 1, 1956, ch. 836, title II, §201(a)(1), 70 Stat. 839, related to a restriction on exemptions from taxation for District of Columbia credit unions with respect to the tax imposed by section 3111 of this title.

EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to wages paid after Dec. 31, 1976, see section 1903(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 3101 of this title.

Subchapter C—General Provisions

Sec.

3121. Definitions.
3122. Federal service.
3123. Deductions as constructive payments.
3124. Estimate of revenue reduction.
3125. Returns in the case of governmental employees in States, Guam, American Samoa, and the District of Columbia.
3126. Return and payment by governmental employer.
3127. Exemption for employers and their employees where both are members of religious faiths opposed to participation in Social Security Act programs.
3128. Short title.

AMENDMENTS

1988—Pub. L. 100–647, title VIII, §8007(a)(2), Nov. 10, 1988, 102 Stat. 3782, added item 3127 and redesignated former item 3127 as 3128.

1986—Pub. L. 99–509, title IX, §9002(a)(2), Oct. 21, 1986, 100 Stat. 1971, added item 3126 and redesignated former item 3126 as 3127.

Pub. L. 99–272, title XIII, §13205(a)(2)(A)(iii), Apr. 7, 1986, 100 Stat. 315, inserted "States," in item 3125.

1965—Pub. L. 89–97, title III, §317(c)(3), July 30, 1965, 79 Stat. 389, inserted reference to the District of Columbia in item 3125.

1960—Pub. L. 86–778, title I, §103(q)(2), Sept. 13, 1960, 74 Stat. 940, added item 3125 and redesignated former item 3125 as 3126.

§3121. Definitions

(a) Wages

For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash; except that such term shall not include—

(1) in the case of the taxes imposed by sections 3101(a) and 3111(a) that part of the remuneration which, after remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) equal to the contribution and benefit base (as determined under section 230 of the Social Security Act) with respect to employment has been paid to an individual by an employer during the calendar year with respect to which such contribution and benefit base is effective, is paid to such individual by such employer during such calendar year. If an employer (hereinafter referred to as successor employer) during any calendar year acquires substantially all the property used in a trade or business of another employer (hereinafter referred to as a predecessor), or used in a separate unit of a trade or business of a predecessor, and immediately after the acquisition employs in his trade or business an individual who immediately prior to the acquisition was employed in the trade or business of such predecessor, then, for the purpose of determining whether the successor employer has paid remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment equal to the contribution and benefit base (as determined under section 230 of the Social Security Act) to such individual during such calendar year, any remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment paid (or considered under this paragraph as having been paid) to such individual by such predecessor during such calendar year and prior to such acquisition shall be considered as having been paid by such successor employer;

(2) the amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of—

(A) sickness or accident disability (but, in the case of payments made to an employee or any of his dependents, this subparagraph shall exclude from the term "wages" only payments which are received under a workman's compensation law), or

(B) medical or hospitalization expenses in connection with sickness or accident disability, or

(C) death, except that this paragraph does not apply to a payment for group-term life insurance to the extent that such payment is includible in the gross income of the employee;

[(3) Repealed. Pub. L. 98–21, title III, §324(a)(3)(B), Apr. 20, 1983, 97 Stat. 123]

(4) any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of 6 calendar months following the last calendar month in

which the employee worked for such employer;

(5) any payment made to, or on behalf of, an employee or his beneficiary—

(A) from or to a trust described in section 401(a) which is exempt from tax under section 501(a) at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust,

(B) under or to an annuity plan which, at the time of such payment, is a plan described in section 403(a),

(C) under a simplified employee pension (as defined in section 408(k)(1)), other than any contributions described in section 408(k)(6),

(D) under or to an annuity contract described in section 403(b), other than a payment for the purchase of such contract which is made by reason of a salary reduction agreement (whether evidenced by a written instrument or otherwise),

(E) under or to an exempt governmental deferred compensation plan (as defined in subsection (v)(3)),

(F) to supplement pension benefits under a plan or trust described in any of the foregoing provisions of this paragraph to take into account some portion or all of the increase in the cost of living (as determined by the Secretary of Labor) since retirement but only if such supplemental payments are under a plan which is treated as a welfare plan under section 3(2)(B)(ii) of the Employee Retirement Income Security Act of 1974,

(G) under a cafeteria plan (within the meaning of section 125) if such payment would not be treated as wages without regard to such plan and it is reasonable to believe that (if section 125 applied for purposes of this section) section 125 would not treat any wages as constructively received,

(H) under an arrangement to which section 408(p) applies, other than any elective contributions under paragraph (2)(A)(i) thereof, or

(I) under a plan described in section 457(e)(11)(A)(ii) and maintained by an eligible employer (as defined in section 457(e)(1));

(6) the payment by an employer (without deduction from the remuneration of the employee)—

(A) of the tax imposed upon an employee under section 3101, or

(B) of any payment required from an employee under a State unemployment compensation law,

with respect to remuneration paid to an employee for domestic service in a private home of the employer or for agricultural labor;

(7)(A) remuneration paid in any medium other than cash to an employee for service not in the course of the employer's trade or business or for domestic service in a private home of the employer;

(B) cash remuneration paid by an employer in any calendar year to an employee for domestic service in a private home of the employer (including domestic service on a farm operated for profit), if the cash remuneration paid in such year by the employer to the employee for such service is less than the applicable dollar threshold (as defined in subsection (x)) for such year;

(C) cash remuneration paid by an employer in any calendar year to an employee for service not in the course of the employer's trade or business, if the cash remuneration paid in such year by the employer to the employee for such service is less than $100. As used in this subparagraph, the term "service not in the course of the employer's trade or business" does not include domestic service in a private home of the employer and does not include service described in subsection (g)(5);

(8)(A) remuneration paid in any medium other than cash for agricultural labor;

(B) cash remuneration paid by an employer in any calendar year to an employee for agricultural labor unless—

(i) the cash remuneration paid in such year by the employer to the employee for such labor is $150 or more, or

(ii) the employer's expenditures for agricultural labor in such year equal or exceed $2,500,

except that clause (ii) shall not apply in determining whether remuneration paid to an employee constitutes "wages" under this section if such employee (I) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (II) commutes daily from his permanent residence to the farm on which he is so employed, and (III) has been employed in agriculture less than 13 weeks during the preceding calendar year;

[(9) Repealed. Pub. L. 98–21, title III, §324(a)(3)(B), Apr. 20, 1983, 97 Stat. 123]

(10) remuneration paid by an employer in any calendar year to an employee for service described in subsection (d)(3)(C) (relating to home workers), if the cash remuneration paid in such year by the employer to the employee for such service is less than $100;

(11) remuneration paid to or on behalf of an employee if (and to the extent that) at the time of the payment of such remuneration it is reasonable to believe that a corresponding deduction is allowable under section 217 (determined without regard to section 274(n));

(12)(A) tips paid in any medium other than cash;

(B) cash tips received by an employee in any calendar month in the course of his employment by an employer unless the amount of such cash tips is $20 or more;

(13) any payment or series of payments by an employer to an employee or any of his dependents which is paid—

(A) upon or after the termination of an employee's employment relationship because of (i) death, or (ii) retirement for disability, and

(B) under a plan established by the employer which makes provision for his employees generally or a class or classes of his employees (or for such employees or class or classes of employees and their dependents),

other than any such payment or series of payments which would have been paid if the employee's employment relationship had not been so terminated;

(14) any payment made by an employer to a survivor or the estate of a former employee after the calendar year in which such employee died;

(15) any payment made by an employer to an employee, if at the time such payment is made such employee is entitled to disability insurance benefits under section 223(a) of the Social Security Act and such entitlement commenced prior to the calendar year in which such payment is made, and if such employee did not perform any services for such employer during the period for which such payment is made;

(16) remuneration paid by an organization exempt from income tax under section 501(a) (other than an organization described in section 401(a)) or under section 521 in any calendar year to an employee for service rendered in the employ of such organization, if the remuneration paid in such year by the organization to the employee for such service is less than $100;

(17) any contribution, payment, or service provided by an employer which may be excluded from the gross income of an employee, his spouse, or his dependents, under the provisions of section 120 (relating to amounts received under qualified group legal services plans);

(18) any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127, 129, 134(b)(4), or 134(b)(5);

(19) the value of any meals or lodging furnished by or on behalf of the employer if at the time of such furnishing it is reasonable to believe that the employee will be able to exclude such items from income under section 119;

(20) any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 74(c), 108(f)(4), 117, or 132;

(21) in the case of a member of an Indian tribe, any remuneration on which no tax is imposed by this chapter by reason of section 7873 (relating to income derived by Indians from exercise of

fishing rights);

(22) remuneration on account of—

(A) a transfer of a share of stock to any individual pursuant to an exercise of an incentive stock option (as defined in section 422(b)) or under an employee stock purchase plan (as defined in section 423(b)), or

(B) any disposition by the individual of such stock; or

(23) any benefit or payment which is excludable from the gross income of the employee under section 139B(b).

Nothing in the regulations prescribed for purposes of chapter 24 (relating to income tax withholding) which provides an exclusion from "wages" as used in such chapter shall be construed to require a similar exclusion from "wages" in the regulations prescribed for purposes of this chapter. Except as otherwise provided in regulations prescribed by the Secretary, any third party which makes a payment included in wages solely by reason of the parenthetical matter contained in subparagraph (A) of paragraph (2) shall be treated for purposes of this chapter and chapter 22 as the employer with respect to such wages.

(b) Employment

For purposes of this chapter, the term "employment" means any service, of whatever nature, performed (A) by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, or (B) outside the United States by a citizen or resident of the United States as an employee for an American employer (as defined in subsection (h)), or (C) if it is service, regardless of where or by whom performed, which is designated as employment or recognized as equivalent to employment under an agreement entered into under section 233 of the Social Security Act; except that such term shall not include—

(1) service performed by foreign agricultural workers lawfully admitted to the United States from the Bahamas, Jamaica, and the other British West Indies, or from any other foreign country or possession thereof, on a temporary basis to perform agricultural labor;

(2) domestic service performed in a local college club, or local chapter of a college fraternity or sorority, by a student who is enrolled and is regularly attending classes at a school, college, or university;

(3)(A) service performed by a child under the age of 18 in the employ of his father or mother;

(B) service not in the course of the employer's trade or business, or domestic service in a private home of the employer, performed by an individual under the age of 21 in the employ of his father or mother, or performed by an individual in the employ of his spouse or son or daughter; except that the provisions of this subparagraph shall not be applicable to such domestic service performed by an individual in the employ of his son or daughter if—

(i) the employer is a surviving spouse or a divorced individual and has not remarried, or has a spouse living in the home who has a mental or physical condition which results in such spouse's being incapable of caring for a son, daughter, stepson, or stepdaughter (referred to in clause (ii)) for at least 4 continuous weeks in the calendar quarter in which the service is rendered, and

(ii) a son, daughter, stepson, or stepdaughter of such employer is living in the home, and

(iii) the son, daughter, stepson, or stepdaughter (referred to in clause (ii)) has not attained age 18 or has a mental or physical condition which requires the personal care and supervision of an adult for at least 4 continuous weeks in the calendar quarter in which the service is rendered;

(4) service performed by an individual on or in connection with a vessel not an American vessel, or on or in connection with an aircraft not an American aircraft, if (A) the individual is employed on and in connection with such vessel or aircraft, when outside the United States and

(B)(i) such individual is not a citizen of the United States or (ii) the employer is not an American employer;

(5) service performed in the employ of the United States or any instrumentality of the United States, if such service—

(A) would be excluded from the term "employment" for purposes of this title if the provisions of paragraphs (5) and (6) of this subsection as in effect in January 1983 had remained in effect, and

(B) is performed by an individual who—

(i) has been continuously performing service described in subparagraph (A) since December 31, 1983, and for purposes of this clause—

(I) if an individual performing service described in subparagraph (A) returns to the performance of such service after being separated therefrom for a period of less than 366 consecutive days, regardless of whether the period began before, on, or after December 31, 1983, then such service shall be considered continuous,

(II) if an individual performing service described in subparagraph (A) returns to the performance of such service after being detailed or transferred to an international organization as described under section 3343 of subchapter III of chapter 33 of title 5, United States Code, or under section 3581 of chapter 35 of such title, then the service performed for that organization shall be considered service described in subparagraph (A),

(III) if an individual performing service described in subparagraph (A) is reemployed or reinstated after being separated from such service for the purpose of accepting employment with the American Institute in Taiwan as provided under section 3310 of chapter 48 of title 22, United States Code, then the service performed for that Institute shall be considered service described in subparagraph (A),

(IV) if an individual performing service described in subparagraph (A) returns to the performance of such service after performing service as a member of a uniformed service (including, for purposes of this clause, service in the National Guard and temporary service in the Coast Guard Reserve) and after exercising restoration or reemployment rights as provided under chapter 43 of title 38, United States Code, then the service so performed as a member of a uniformed service shall be considered service described in subparagraph (A), and

(V) if an individual performing service described in subparagraph (A) returns to the performance of such service after employment (by a tribal organization) to which section 105(e)(2) [1] of the Indian Self-Determination Act applies, then the service performed for that tribal organization shall be considered service described in subparagraph (A); or

(ii) is receiving an annuity from the Civil Service Retirement and Disability Fund, or benefits (for service as an employee) under another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed service);

except that this paragraph shall not apply with respect to any such service performed on or after any date on which such individual performs—

(C) service performed as the President or Vice President of the United States,

(D) service performed—

(i) in a position placed in the Executive Schedule under sections 5312 through 5317 of title 5, United States Code,

(ii) as a noncareer appointee in the Senior Executive Service or a noncareer member of the Senior Foreign Service, or

(iii) in a position to which the individual is appointed by the President (or his designee) or the Vice President under section 105(a)(1), 106(a)(1), or 107 (a)(1) or (b)(1) of title 3, United States Code, if the maximum rate of basic pay for such position is at or above the rate for level V of the Executive Schedule,

(E) service performed as the Chief Justice of the United States, an Associate Justice of the Supreme Court, a judge of a United States court of appeals, a judge of a United States district court (including the district court of a territory), a judge of the United States Court of Federal Claims, a judge of the United States Court of International Trade, a judge of the United States Tax Court, a United States magistrate judge, or a referee in bankruptcy or United States bankruptcy judge,

(F) service performed as a Member, Delegate, or Resident Commissioner of or to the Congress,

(G) any other service in the legislative branch of the Federal Government if such service—

(i) is performed by an individual who was not subject to subchapter III of chapter 83 of title 5, United States Code, or to another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed services), on December 31, 1983, or

(ii) is performed by an individual who has, at any time after December 31, 1983, received a lump-sum payment under section 8342(a) of title 5, United States Code, or under the corresponding provision of the law establishing the other retirement system described in clause (i), or

(iii) is performed by an individual after such individual has otherwise ceased to be subject to subchapter III of chapter 83 of title 5, United States Code (without having an application pending for coverage under such subchapter), while performing service in the legislative branch (determined without regard to the provisions of subparagraph (B) relating to continuity of employment), for any period of time after December 31, 1983,

and for purposes of this subparagraph (G) an individual is subject to such subchapter III or to any such other retirement system at any time only if (a) such individual's pay is subject to deductions, contributions, or similar payments (concurrent with the service being performed at that time) under section 8334(a) of such title 5 or the corresponding provision of the law establishing such other system, or (in a case to which section 8332(k)(1) of such title applies) such individual is making payments of amounts equivalent to such deductions, contributions, or similar payments while on leave without pay, or (b) such individual is receiving an annuity from the Civil Service Retirement and Disability Fund, or is receiving benefits (for service as an employee) under another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed services), or

(H) service performed by an individual—

(i) on or after the effective date of an election by such individual, under section 301 of the Federal Employees' Retirement System Act of 1986, section 307 of the Central Intelligence Agency Retirement Act (50 U.S.C. 2157), or the Federal Employees' Retirement System Open Enrollment Act of 1997 [2] to become subject to the Federal Employees' Retirement System provided in chapter 84 of title 5, United States Code, or

(ii) on or after the effective date of an election by such individual, under regulations issued under section 860 of the Foreign Service Act of 1980, to become subject to the Foreign Service Pension System provided in subchapter II of chapter 8 of title I of such Act;

(6) service performed in the employ of the United States or any instrumentality of the United States if such service is performed—

(A) in a penal institution of the United States by an inmate thereof;

(B) by any individual as an employee included under section 5351(2) of title 5, United States Code (relating to certain interns, student nurses, and other student employees of hospitals of the Federal Government), other than as a medical or dental intern or a medical or dental resident in training; or

(C) by any individual as an employee serving on a temporary basis in case of fire, storm, earthquake, flood, or other similar emergency;

(7) service performed in the employ of a State, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned thereby, except that this paragraph shall not apply in the case of—

(A) service which, under subsection (j), constitutes covered transportation service,

(B) service in the employ of the Government of Guam or the Government of American Samoa or any political subdivision thereof, or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, performed by an officer or employee thereof (including a member of the legislature of any such Government or political subdivision), and, for purposes of this title with respect to the taxes imposed by this chapter—

(i) any person whose service as such an officer or employee is not covered by a retirement system established by a law of the United States shall not, with respect to such service, be regarded as an employee of the United States or any agency or instrumentality thereof, and

(ii) the remuneration for service described in clause (i) (including fees paid to a public official) shall be deemed to have been paid by the Government of Guam or the Government of American Samoa or by a political subdivision thereof or an instrumentality of any one or more of the foregoing which is wholly owned thereby, whichever is appropriate,

(C) service performed in the employ of the District of Columbia or any instrumentality which is wholly owned thereby, if such service is not covered by a retirement system established by a law of the United States (other than the Federal Employees Retirement System provided in chapter 84 of title 5, United States Code); except that the provisions of this subparagraph shall not be applicable to service performed—

(i) in a hospital or penal institution by a patient or inmate thereof;

(ii) by any individual as an employee included under section 5351(2) of title 5, United States Code (relating to certain interns, student nurses, and other student employees of hospitals of the District of Columbia Government), other than as a medical or dental intern or as a medical or dental resident in training;

(iii) by any individual as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or other similar emergency; or

(iv) by a member of a board, committee, or council of the District of Columbia, paid on a per diem, meeting, or other fee basis,

(D) service performed in the employ of the Government of Guam (or any instrumentality which is wholly owned by such Government) by an employee properly classified as a temporary or intermittent employee, if such service is not covered by a retirement system established by a law of Guam; except that (i) the provisions of this subparagraph shall not be applicable to services performed by an elected official or a member of the legislature or in a hospital or penal institution by a patient or inmate thereof, and (ii) for purposes of this subparagraph, clauses (i) and (ii) of subparagraph (B) shall apply,

(E) service included under an agreement entered into pursuant to section 218 of the Social Security Act, or

(F) service in the employ of a State (other than the District of Columbia, Guam, or American Samoa), of any political subdivision thereof, or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, by an individual who is not a member of a retirement system of such State, political subdivision, or instrumentality, except that the provisions of this subparagraph shall not be applicable to service performed—

(i) by an individual who is employed to relieve such individual from unemployment;

(ii) in a hospital, home, or other institution by a patient or inmate thereof;

(iii) by any individual as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency;

(iv) by an election official or election worker if the remuneration paid in a calendar year for such service is less than $1,000 with respect to service performed during any calendar

year commencing on or after January 1, 1995, ending on or before December 31, 1999, and the adjusted amount determined under section 218(c)(8)(B) of the Social Security Act for any calendar year commencing on or after January 1, 2000, with respect to service performed during such calendar year; or

(v) by an employee in a position compensated solely on a fee basis which is treated pursuant to section 1402(c)(2)(E) as a trade or business for purposes of inclusion of such fees in net earnings from self-employment;

for purposes of this subparagraph, except as provided in regulations prescribed by the Secretary, the term "retirement system" has the meaning given such term by section 218(b)(4) of the Social Security Act;

(8)(A) service performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order, except that this subparagraph shall not apply to service performed by a member of such an order in the exercise of such duties, if an election of coverage under subsection (r) is in effect with respect to such order, or with respect to the autonomous subdivision thereof to which such member belongs;

(B) service performed in the employ of a church or qualified church-controlled organization if such church or organization has in effect an election under subsection (w), other than service in an unrelated trade or business (within the meaning of section 513(a));

(9) service performed by an individual as an employee or employee representative as defined in section 3231;

(10) service performed in the employ of—

(A) a school, college, or university, or

(B) an organization described in section 509(a)(3) if the organization is organized, and at all times thereafter is operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of a school, college, or university and is operated, supervised, or controlled by or in connection with such school, college, or university, unless it is a school, college, or university of a State or a political subdivision thereof and the services performed in its employ by a student referred to in section 218(c)(5) of the Social Security Act are covered under the agreement between the Commissioner of Social Security and such State entered into pursuant to section 218 of such Act;

if such service is performed by a student who is enrolled and regularly attending classes at such school, college, or university;

(11) service performed in the employ of a foreign government (including service as a consular or other officer or employee or a nondiplomatic representative);

(12) service performed in the employ of an instrumentality wholly owned by a foreign government—

(A) if the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

(B) if the Secretary of State shall certify to the Secretary of the Treasury that the foreign government, with respect to whose instrumentality and employees thereof exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof;

(13) service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law;

(14)(A) service performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(B) service performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back;

(15) service performed in the employ of an international organization, except service which constitutes "employment" under subsection (y);

(16) service performed by an individual under an arrangement with the owner or tenant of land pursuant to which—

(A) such individual undertakes to produce agricultural or horticultural commodities (including livestock, bees, poultry, and fur-bearing animals and wildlife) on such land,

(B) the agricultural or horticultural commodities produced by such individual, or the proceeds therefrom, are to be divided between such individual and such owner or tenant, and

(C) the amount of such individual's share depends on the amount of the agricultural or horticultural commodities produced;

(17) service in the employ of any organization which is performed (A) in any year during any part of which such organization is registered, or there is in effect a final order of the Subversive Activities Control Board requiring such organization to register, under the Internal Security Act of 1950, as amended, as a Communist-action organization, a Communist-front organization, or a Communist-infiltrated organization, and (B) after June 30, 1956;

(18) service performed in Guam by a resident of the Republic of the Philippines while in Guam on a temporary basis as a nonimmigrant alien admitted to Guam pursuant to section 101(a)(15)(H)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii));

(19) Service which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F), (J), (M), or (Q) of section 101(a)(15) of the Immigration and Nationality Act, as amended, and which is performed to carry out the purpose specified in subparagraph (F), (J), (M), or (Q), as the case may be;

(20) service (other than service described in paragraph (3)(A)) performed by an individual on a boat engaged in catching fish or other forms of aquatic animal life under an arrangement with the owner or operator of such boat pursuant to which—

(A) such individual does not receive any cash remuneration other than as provided in subparagraph (B) and other than cash remuneration—

(i) which does not exceed $100 per trip;

(ii) which is contingent on a minimum catch; and

(iii) which is paid solely for additional duties (such as mate, engineer, or cook) for which additional cash remuneration is traditional in the industry,

(B) such individual receives a share of the boat's (or the boats' in the case of a fishing operation involving more than one boat) catch of fish or other forms of aquatic animal life or a share of the proceeds from the sale of such catch, and

(C) the amount of such individual's share depends on the amount of the boat's (or the boats' in the case of a fishing operation involving more than one boat) catch of fish or other forms of aquatic animal life,

but only if the operating crew of such boat (or each boat from which the individual receives a share in the case of a fishing operation involving more than one boat) is normally made up of fewer than 10 individuals; or

(21) domestic service in a private home of the employer which—

(A) is performed in any year by an individual under the age of 18 during any portion of such year; and

(B) is not the principal occupation of such employee.

For purposes of paragraph (20), the operating crew of a boat shall be treated as normally made up of fewer than 10 individuals if the average size of the operating crew on trips made during the preceding 4 calendar quarters consisted of fewer than 10 individuals.

(c) Included and excluded service

For purposes of this chapter, if the services performed during one-half or more of any pay period by an employee for the person employing him constitute employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one-half of any such pay period by an employee for the person employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in this subsection, the term "pay period" means a period (of not more than 31 consecutive days) for which a payment of remuneration is ordinarily made to the employee by the person employing him. This subsection shall not be applicable with respect to services performed in a pay period by an employee for the person employing him, where any of such service is excepted by subsection (b)(9).

(d) Employee

For purposes of this chapter, the term "employee" means—

(1) any officer of a corporation; or

(2) any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee; or

(3) any individual (other than an individual who is an employee under paragraph (1) or (2)) who performs services for remuneration for any person—

(A) as an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or dry-cleaning services, for his principal;

(B) as a full-time life insurance salesman;

(C) as a home worker performing work, according to specifications furnished by the person for whom the services are performed, on materials or goods furnished by such person which are required to be returned to such person or a person designated by him; or

(D) as a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his principal (except for side-line sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations;

if the contract of service contemplates that substantially all of such services are to be performed personally by such individual; except that an individual shall not be included in the term "employee" under the provisions of this paragraph if such individual has a substantial investment in facilities used in connection with the performance of such services (other than in facilities for transportation), or if the services are in the nature of a single transaction not part of a continuing relationship with the person for whom the services are performed; or

(4) any individual who performs services that are included under an agreement entered into pursuant to section 218 of the Social Security Act.

(e) State, United States, and citizen

For purposes of this chapter—

(1) State

The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(2) United States

The term "United States" when used in a geographical sense includes the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

An individual who is a citizen of the Commonwealth of Puerto Rico (but not otherwise a citizen of the United States) shall be considered, for purposes of this section, as a citizen of the United States.

(f) American vessel and aircraft

For purposes of this chapter, the term "American vessel" means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State; and the term "American aircraft" means an aircraft registered under the laws of the United States.

(g) Agricultural labor

For purposes of this chapter, the term "agricultural labor" includes all service performed—

(1) on a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife;

(2) in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

(3) in connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15(g) of the Agricultural Marketing Act, as amended (12 U.S.C. 1141j), or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(4)(A) in the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half of the commodity with respect to which such service is performed;

(B) in the employ of a group of operators of farms (other than a cooperative organization) in the performance of service described in subparagraph (A), but only if such operators produced all of the commodity with respect to which such service is performed. For purposes of this subparagraph, any unincorporated group of operators shall be deemed a cooperative organization if the number of operators comprising such group is more than 20 at any time during the calendar year in which such service is performed;

(C) the provisions of subparagraphs (A) and (B) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or

(5) on a farm operated for profit if such service is not in the course of the employer's trade or business.

As used in this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(h) American employer

For purposes of this chapter, the term "American employer" means an employer which is—

(1) the United States or any instrumentality thereof,

(2) an individual who is a resident of the United States,
(3) a partnership, if two-thirds or more of the partners are residents of the United States,
(4) a trust, if all of the trustees are residents of the United States, or
(5) a corporation organized under the laws of the United States or of any State.

(i) Computation of wages in certain cases

(1) Domestic service

For purposes of this chapter, in the case of domestic service described in subsection (a)(7)(B), any payment of cash remuneration for such service which is more or less than a whole-dollar amount shall, under such conditions and to such extent as may be prescribed by regulations made under this chapter, be computed to the nearest dollar. For the purpose of the computation to the nearest dollar, the payment of a fractional part of a dollar shall be disregarded unless it amounts to one-half dollar or more, in which case it shall be increased to $1. The amount of any payment of cash remuneration so computed to the nearest dollar shall, in lieu of the amount actually paid, be deemed to constitute the amount of cash remuneration for purposes of subsection (a)(7)(B).

(2) Service in the uniformed services

For purposes of this chapter, in the case of an individual performing service, as a member of a uniformed service, to which the provisions of subsection (m)(1) are applicable, the term "wages" shall, subject to the provisions of subsection (a)(1) of this section, include as such individual's remuneration for such service only (A) his basic pay as described in chapter 3 and section 1009 of title 37, United States Code, in the case of an individual performing service to which subparagraph (A) of such subsection (m)(1) applies, or (B) his compensation for such service as determined under section 206(a) of title 37, United States Code, in the case of an individual performing service to which subparagraph (B) of such subsection (m)(1) applies.

(3) Peace Corps volunteer service

For purposes of this chapter, in the case of an individual performing service, as a volunteer or volunteer leader within the meaning of the Peace Corps Act, to which the provisions of section 3121(p) are applicable, the term "wages" shall, subject to the provisions of subsection (a)(1) of this section, include as such individual's remuneration for such service only amounts paid pursuant to section 5(c) or 6(1) of the Peace Corps Act.

(4) Service performed by certain members of religious orders

For purposes of this chapter, in any case where an individual is a member of a religious order (as defined in subsection (r)(2)) performing service in the exercise of duties required by such order, and an election of coverage under subsection (r) is in effect with respect to such order or with respect to the autonomous subdivision thereof to which such member belongs, the term "wages" shall, subject to the provisions of subsection (a)(1), include as such individual's remuneration for such service the fair market value of any board, lodging, clothing, and other perquisites furnished to such member by such order or subdivision thereof or by any other person or organization pursuant to an agreement with such order or subdivision, except that the amount included as such individual's remuneration under this paragraph shall not be less than $100 a month.

(5) Service performed by certain retired justices and judges

For purposes of this chapter, in the case of an individual performing service under the provisions of section 294 of title 28, United States Code (relating to assignment of retired justices and judges to active duty), the term "wages" shall not include any payment under section 371(b) of such title 28 which is received during the period of such service.

(j) Covered transportation service

For purposes of this chapter—

(1) Existing transportation systems—General rule

Except as provided in paragraph (2), all service performed in the employ of a State or political

subdivision in connection with its operation of a public transportation system shall constitute covered transportation service if any part of the transportation system was acquired from private ownership after 1936 and prior to 1951.

(2) Existing transportation systems—Cases in which no transportation employees, or only certain employees, are covered

Service performed in the employ of a State or political subdivision in connection with the operation of its public transportation system shall not constitute covered transportation service if—

(A) any part of the transportation system was acquired from private ownership after 1936 and prior to 1951, and substantially all service in connection with the operation of the transportation system was, on December 31, 1950, covered under a general retirement system providing benefits which, by reason of a provision of the State constitution dealing specifically with retirement systems of the State or political subdivisions thereof, cannot be diminished or impaired; or

(B) no part of the transportation system operated by the State or political subdivision on December 31, 1950, was acquired from private ownership after 1936 and prior to 1951;

except that if such State or political subdivision makes an acquisition after 1950 from private ownership of any part of its transportation system, then, in the case of any employee who—

(C) became an employee of such State or political subdivision in connection with and at the time of its acquisition after 1950 of such part, and

(D) prior to such acquisition rendered service in employment (including as employment service covered by an agreement under section 218 of the Social Security Act) in connection with the operation of such part of the transportation system acquired by the State or political subdivision,

the service of such employee in connection with the operation of the transportation system shall constitute covered transportation service, commencing with the first day of the third calendar quarter following the calendar quarter in which the acquisition of such part took place, unless on such first day such service of such employee is covered by a general retirement system which does not, with respect to such employee, contain special provisions applicable only to employees described in subparagraph (C).

(3) Transportation systems acquired after 1950

All service performed in the employ of a State or political subdivision thereof in connection with its operation of a public transportation system shall constitute covered transportation service if the transportation system was not operated by the State or political subdivision prior to 1951 and, at the time of its first acquisition (after 1950) from private ownership of any part of its transportation system, the State or political subdivision did not have a general retirement system covering substantially all service performed in connection with the operation of the transportation system.

(4) Definitions

For purposes of this subsection—

(A) The term "general retirement system" means any pension, annuity, retirement, or similar fund or system established by a State or by a political subdivision thereof for employees of the State, political subdivision, or both; but such term shall not include such a fund or system which covers only service performed in positions connected with the operation of its public transportation system.

(B) A transportation system or a part thereof shall be considered to have been acquired by a State or political subdivision from private ownership if prior to the acquisition service performed by employees in connection with the operation of the system or part thereof acquired constituted employment under this chapter or subchapter A of chapter 9 of the Internal Revenue Code of 1939 or was covered by an agreement made pursuant to section 218 of the Social

Security Act and some of such employees became employees of the State or political subdivision in connection with and at the time of such acquisition.

(C) The term "political subdivision" includes an instrumentality of—

(i) a State,

(ii) one or more political subdivisions of a State, or

(iii) a State and one or more of its political subdivisions.

[(k) Repealed. Pub. L. 98–21, title I, §102(b)(2), Apr. 20, 1983, 97 Stat. 71]

(l) Agreements entered into by American employers with respect to foreign affiliates

(1) Agreement with respect to certain employees of foreign affiliate

The Secretary shall, at the American employer's request, enter into an agreement (in such manner and form as may be prescribed by the Secretary) with any American employer (as defined in subsection (h)) who desires to have the insurance system established by title II of the Social Security Act extended to service performed outside the United States in the employ of any 1 or more of such employer's foreign affiliates (as defined in paragraph (6)) by all employees who are citizens or residents of the United States, except that the agreement shall not apply to any service performed by, or remuneration paid to, an employee if such service or remuneration would be excluded from the term "employment" or "wages", as defined in this section, had the service been performed in the United States. Such agreement may be amended at any time so as to be made applicable, in the same manner and under the same conditions, with respect to any other foreign affiliate of such American employer. Such agreement shall be applicable with respect to citizens or residents of the United States who, on or after the effective date of the agreement, are employees of and perform services outside the United States for any foreign affiliate specified in the agreement. Such agreement shall provide—

(A) that the American employer shall pay to the Secretary, at such time or times as the Secretary may by regulations prescribe, amounts equivalent to the sum of the taxes which would be imposed by sections 3101 and 3111 (including amounts equivalent to the interest, additions to the taxes, additional amounts, and penalties which would be applicable) with respect to the remuneration which would be wages if the services covered by the agreement constituted employment as defined in this section; and

(B) that the American employer will comply with such regulations relating to payments and reports as the Secretary may prescribe to carry out the purposes of this subsection.

(2) Effective period of agreement

An agreement entered into pursuant to paragraph (1) shall be in effect for the period beginning with the first day of the calendar quarter in which such agreement is entered into or the first day of the succeeding calendar quarter, as may be specified in the agreement; except that in case such agreement is amended to include the services performed for any other affiliate and such amendment is executed after the first month following the first calendar quarter for which the agreement is in effect, the agreement shall be in effect with respect to service performed for such other affiliate only after the calendar quarter in which such amendment is executed. Notwithstanding any other provision of this subsection, the period for which any such agreement is effective with respect to any foreign entity shall terminate at the end of any calendar quarter in which the foreign entity, at any time in such quarter, ceases to be a foreign affiliate as defined in paragraph (6).

(3) No termination of agreement

No agreement under this subsection may be terminated, either in its entirety or with respect to any foreign affiliate, on or after June 15, 1989.

(4) Deposits in trust funds

For purposes of section 201 of the Social Security Act, relating to appropriations to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, such remuneration—

(A) paid for services covered by an agreement entered into pursuant to paragraph (1) as would be wages if the services constituted employment, and

(B) as is reported to the Secretary pursuant to the provisions of such agreement or of the regulations issued under this subsection,

shall be considered wages subject to the taxes imposed by this chapter.

(5) Overpayments and underpayments

(A) If more or less than the correct amount due under an agreement entered into pursuant to this subsection is paid with respect to any payment of remuneration, proper adjustments with respect to the amounts due under such agreement shall be made, without interest, in such manner and at such times as may be required by regulations prescribed by the Secretary.

(B) If an overpayment cannot be adjusted under subparagraph (A), the amount thereof shall be paid by the Secretary, through the Fiscal Service of the Treasury Department, but only if a claim for such overpayment is filed with the Secretary within two years from the time such overpayment was made.

(6) Foreign affiliate defined

For purposes of this subsection and section 210(a) of the Social Security Act—

(A) In general

A foreign affiliate of an American employer is any foreign entity in which such American employer has not less than a 10-percent interest.

(B) Determination of 10-percent interest

For purposes of subparagraph (A), an American employer has a 10-percent interest in any entity if such employer has such an interest directly (or through one or more entities)—

(i) in the case of a corporation, in the voting stock thereof, and

(ii) in the case of any other entity, in the profits thereof.

(7) American employer as separate entity

Each American employer which enters into an agreement pursuant to paragraph (1) of this subsection shall, for purposes of this subsection and section 6413(c)(2)(C), relating to special refunds in the case of employees of certain foreign entities, be considered an employer in its capacity as a party to such agreement separate and distinct from its identity as a person employing individuals on its own account.

(8) Regulations

Regulations of the Secretary to carry out the purposes of this subsection shall be designed to make the requirements imposed on American employers with respect to services covered by an agreement entered into pursuant to this subsection the same, so far as practicable, as those imposed upon employers pursuant to this title with respect to the taxes imposed by this chapter.

(m) Service in the uniformed services

For purposes of this chapter—

(1) Inclusion of service

The term "employment" shall, notwithstanding the provisions of subsection (b) of this section, include—

(A) service performed by an individual as a member of a uniformed service on active duty, but such term shall not include any such service which is performed while on leave without pay, and

(B) service performed by an individual as a member of a uniformed service on inactive duty training.

(2) Active duty

The term "active duty" means "active duty" as described in paragraph (21) of section 101 of title

38, United States Code, except that it shall also include "active duty for training" as described in paragraph (22) of such section.

(3) Inactive duty training

The term "inactive duty training" means "inactive duty training" as described in paragraph (23) of such section 101.

(n) Member of a uniformed service

For purposes of this chapter, the term "member of a uniformed service" means any person appointed, enlisted, or inducted in a component of the Army, Navy, Air Force, Marine Corps, or Coast Guard (including a reserve component as defined in section 101(27) of title 38, United States Code), or in one of those services without specification of component, or as a commissioned officer of the Coast and Geodetic Survey, the National Oceanic and Atmospheric Administration Corps, or the Regular or Reserve Corps of the Public Health Service, and any person serving in the Army or Air Force under call or conscription. The term includes—

(1) a retired member of any of those services;

(2) a member of the Fleet Reserve or Fleet Marine Corps Reserve;

(3) a cadet at the United States Military Academy, a midshipman at the United States Naval Academy, and a cadet at the United States Coast Guard Academy or United States Air Force Academy;

(4) a member of the Reserve Officers' Training Corps, the Naval Reserve Officers' Training Corps, or the Air Force Reserve Officers' Training Corps, when ordered to annual training duty for fourteen days or more, and while performing authorized travel to and from that duty; and

(5) any person while en route to or from, or at, a place for final acceptance or for entry upon active duty in the military, naval, or air service—

(A) who has been provisionally accepted for such duty; or

(B) who, under the Military Selective Service Act, has been selected for active military, naval, or air service;

and has been ordered or directed to proceed to such place.

The term does not include a temporary member of the Coast Guard Reserve.

(o) Crew leader

For purposes of this chapter, the term "crew leader" means an individual who furnishes individuals to perform agricultural labor for another person, if such individual pays (either on his own behalf or on behalf of such person) the individuals so furnished by him for the agricultural labor performed by them and if such individual has not entered into a written agreement with such person whereby such individual has been designated as an employee of such person; and such individuals furnished by the crew leader to perform agricultural labor for another person shall be deemed to be the employees of such crew leader. For purposes of this chapter and chapter 2, a crew leader shall, with respect to service performed in furnishing individuals to perform agricultural labor for another person and service performed as a member of the crew, be deemed not to be an employee of such other person.

(p) Peace Corps volunteer service

For purposes of this chapter, the term "employment" shall, notwithstanding the provisions of subsection (b) of this section, include service performed by an individual as a volunteer or volunteer leader within the meaning of the Peace Corps Act.

(q) Tips included for both employee and employer taxes

For purposes of this chapter, tips received by an employee in the course of his employment shall be considered remuneration for such employment (and deemed to have been paid by the employer for purposes of subsections (a) and (b) of section 3111). Such remuneration shall be deemed to be paid at the time a written statement including such tips is furnished to the employer pursuant to section 6053(a) or (if no statement including such tips is so furnished) at the time received; except

that, in determining the employer's liability in connection with the taxes imposed by section 3111 with respect to such tips in any case where no statement including such tips was so furnished (or to the extent that the statement so furnished was inaccurate or incomplete), such remuneration shall be deemed for purposes of subtitle F to be paid on the date on which notice and demand for such taxes is made to the employer by the Secretary.

(r) Election of coverage by religious orders

(1) Certificate of election by order

A religious order whose members are required to take a vow of poverty, or any autonomous subdivision of such order, may file a certificate (in such form and manner, and with such official, as may be prescribed by regulations under this chapter) electing to have the insurance system established by title II of the Social Security Act extended to services performed by its members in the exercise of duties required by such order or such subdivision thereof. Such certificate of election shall provide that—

(A) such election of coverage by such order or subdivision shall be irrevocable;

(B) such election shall apply to all current and future members of such order, or in the case of a subdivision thereof to all current and future members of such order who belong to such subdivision;

(C) all services performed by a member of such an order or subdivision in the exercise of duties required by such order or subdivision shall be deemed to have been performed by such member as an employee of such order or subdivision; and

(D) the wages of each member, upon which such order or subdivision shall pay the taxes imposed by sections 3101 and 3111, will be determined as provided in subsection (i)(4).

(2) Definition of member

For purposes of this subsection, a member of a religious order means any individual who is subject to a vow of poverty as a member of such order and who performs tasks usually required (and to the extent usually required) of an active member of such order and who is not considered retired because of old age or total disability.

(3) Effective date for election

(A) A certificate of election of coverage shall be in effect, for purposes of subsection (b)(8) and for purposes of section 210(a)(8) of the Social Security Act, for the period beginning with whichever of the following may be designated by the order or subdivision thereof:

(i) the first day of the calendar quarter in which the certificate is filed,

(ii) the first day of the calendar quarter succeeding such quarter, or

(iii) the first day of any calendar quarter preceding the calendar quarter in which the certificate is filed, except that such date may not be earlier than the first day of the twentieth calendar quarter preceding the quarter in which such certificate is filed.

Whenever a date is designated under clause (iii), the election shall apply to services performed before the quarter in which the certificate is filed only if the member performing such services was a member at the time such services were performed and is living on the first day of the quarter in which such certificate is filed.

(B) If a certificate of election filed pursuant to this subsection is effective for one or more calendar quarters prior to the quarter in which such certificate is filed, then—

(i) for purposes of computing interest and for purposes of section 6651 (relating to addition to tax for failure to file tax return), the due date for the return and payment of the tax for such prior calendar quarters resulting from the filing of such certificate shall be the last day of the calendar month following the calendar quarter in which the certificate is filed; and

(ii) the statutory period for the assessment of such tax shall not expire before the expiration of 3 years from such due date.

[(4) Repealed. Pub. L. 98–21, title I, §102(b)(3)(B), Apr. 20, 1983, 97 Stat. 71]

(s) Concurrent employment by two or more employers

For purposes of sections 3102, 3111, and 3121(a)(1), if two or more related corporations concurrently employ the same individual and compensate such individual through a common paymaster which is one of such corporations, each such corporation shall be considered to have paid as remuneration to such individual only the amounts actually disbursed by it to such individual and shall not be considered to have paid as remuneration to such individual amounts actually disbursed to such individual by another of such corporations.

[(t) Repealed. Pub. L. 100–203, title IX, §9006(b)(2), Dec. 22, 1987, 101 Stat. 1330–289]

(u) Application of hospital insurance tax to Federal, State, and local employment

(1) Federal employment

For purposes of the taxes imposed by sections 3101(b) and 3111(b), subsection (b) shall be applied without regard to paragraph (5) thereof.

(2) State and local employment

For purposes of the taxes imposed by sections 3101(b) and 3111(b)—

(A) In general

Except as provided in subparagraphs (B) and (C), subsection (b) shall be applied without regard to paragraph (7) thereof.

(B) Exception for certain services

Service shall not be treated as employment by reason of subparagraph (A) if—

(i) the service is included under an agreement under section 218 of the Social Security Act, or

(ii) the service is performed—

(I) by an individual who is employed by a State or political subdivision thereof to relieve him from unemployment,

(II) in a hospital, home, or other institution by a patient or inmate thereof as an employee of a State or political subdivision thereof or of the District of Columbia,

(III) by an individual, as an employee of a State or political subdivision thereof or of the District of Columbia, serving on a temporary basis in case of fire, storm, snow, earthquake, flood or other similar emergency,

(IV) by any individual as an employee included under section 5351(2) of title 5, United States Code (relating to certain interns, student nurses, and other student employees of hospitals of the District of Columbia Government), other than as a medical or dental intern or a medical or dental resident in training,

(V) by an election official or election worker if the remuneration paid in a calendar year for such service is less than $1,000 with respect to service performed during any calendar year commencing on or after January 1, 1995, ending on or before December 31, 1999, and the adjusted amount determined under section 218(c)(8)(B) of the Social Security Act for any calendar year commencing on or after January 1, 2000, with respect to service performed during such calendar year, or

(VI) by an individual in a position described in section 1402(c)(2)(E).

As used in this subparagraph, the terms "State" and "political subdivision" have the meanings given those terms in section 218(b) of the Social Security Act.

(C) Exception for current employment which continues

Service performed for an employer shall not be treated as employment by reason of subparagraph (A) if—

(i) such service would be excluded from the term "employment" for purposes of this chapter if subparagraph (A) did not apply;

(ii) such service is performed by an individual—

(I) who was performing substantial and regular service for remuneration for that employer before April 1, 1986,

(II) who is a bona fide employee of that employer on March 31, 1986, and

(III) whose employment relationship with that employer was not entered into for purposes of meeting the requirements of this subparagraph; and

(iii) the employment relationship with that employer has not been terminated after March 31, 1986.

(D) Treatment of agencies and instrumentalities

For purposes of subparagraph (C), under regulations—

(i) All agencies and instrumentalities of a State (as defined in section 218(b) of the Social Security Act) or of the District of Columbia shall be treated as a single employer.

(ii) All agencies and instrumentalities of a political subdivision of a State (as so defined) shall be treated as a single employer and shall not be treated as described in clause (i).

(3) Medicare qualified government employment

For purposes of this chapter, the term "medicare qualified government employment" means service which—

(A) is employment (as defined in subsection (b)) with the application of paragraphs (1) and (2), but

(B) would not be employment (as so defined) without the application of such paragraphs.

(v) Treatment of certain deferred compensation and salary reduction arrangements

(1) Certain employer contributions treated as wages

Nothing in any paragraph of subsection (a) (other than paragraph (1)) shall exclude from the term "wages"—

(A) any employer contribution under a qualified cash or deferred arrangement (as defined in section 401(k)) to the extent not included in gross income by reason of section 402(e)(3) or consisting of designated Roth contributions (as defined in section 402A(c)), or

(B) any amount treated as an employer contribution under section 414(h)(2) where the pickup referred to in such section is pursuant to a salary reduction agreement (whether evidenced by a written instrument or otherwise).

(2) Treatment of certain nonqualified deferred compensation plans

(A) In general

Any amount deferred under a nonqualified deferred compensation plan shall be taken into account for purposes of this chapter as of the later of—

(i) when the services are performed, or

(ii) when there is no substantial risk of forfeiture of the rights to such amount.

The preceding sentence shall not apply to any excess parachute payment (as defined in section 280G(b)) or to any specified stock compensation (as defined in section 4985) on which tax is imposed by section 4985.

(B) Taxed only once

Any amount taken into account as wages by reason of subparagraph (A) (and the income attributable thereto) shall not thereafter be treated as wages for purposes of this chapter.

(C) Nonqualified deferred compensation plan

For purposes of this paragraph, the term "nonqualified deferred compensation plan" means any plan or other arrangement for deferral of compensation other than a plan described in subsection (a)(5).

(3) Exempt governmental deferred compensation plan

For purposes of subsection (a)(5), the term "exempt governmental deferred compensation plan" means any plan providing for deferral of compensation established and maintained for its employees by the United States, by a State or political subdivision thereof, or by an agency or instrumentality of any of the foregoing. Such term shall not include—

(A) any plan to which section 83, 402(b), 403(c), 457(a), or 457(f)(1) applies,

(B) any annuity contract described in section 403(b), and

(C) the Thrift Savings Fund (within the meaning of subchapter III of chapter 84 of title 5, United States Code).

(w) Exemption of churches and qualified church-controlled organizations

(1) General rule

Any church or qualified church-controlled organization (as defined in paragraph (3)) may make an election within the time period described in paragraph (2), in accordance with such procedures as the Secretary determines to be appropriate, that services performed in the employ of such church or organization shall be excluded from employment for purposes of title II of the Social Security Act and this chapter. An election may be made under this subsection only if the church or qualified church-controlled organization states that such church or organization is opposed for religious reasons to the payment of the tax imposed under section 3111.

(2) Timing and duration of election

An election under this subsection must be made prior to the first date, more than 90 days after July 18, 1984, on which a quarterly employment tax return for the tax imposed under section 3111 is due, or would be due but for the election, from such church or organization. An election under this subsection shall apply to current and future employees, and shall apply to service performed after December 31, 1983. The election may be revoked by the church or organization under regulations prescribed by the Secretary. The election shall be revoked by the Secretary if such church or organization fails to furnish the information required under section 6051 to the Secretary for a period of 2 years or more with respect to remuneration paid for such services by such church or organization, and, upon request by the Secretary, fails to furnish all such previously unfurnished information for the period covered by the election. Any revocation under the preceding sentence shall apply retroactively to the beginning of the 2-year period for which the information was not furnished.

(3) Definitions

(A) For purposes of this subsection, the term "church" means a church, a convention or association of churches, or an elementary or secondary school which is controlled, operated, or principally supported by a church or by a convention or association of churches.

(B) For purposes of this subsection, the term "qualified church-controlled organization" means any church-controlled tax-exempt organization described in section 501(c)(3), other than an organization which—

(i) offers goods, services, or facilities for sale, other than on an incidental basis, to the general public, other than goods, services, or facilities which are sold at a nominal charge which is substantially less than the cost of providing such goods, services, or facilities; and

(ii) normally receives more than 25 percent of its support from either (I) governmental sources, or (II) receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities, in activities which are not unrelated trades or businesses, or both.

(x) Applicable dollar threshold

For purposes of subsection (a)(7)(B), the term "applicable dollar threshold" means $1,000. In the case of calendar years after 1995, the Commissioner of Social Security shall adjust such $1,000 amount at the same time and in the same manner as under section 215(a)(1)(B)(ii) of the Social Security Act with respect to the amounts referred to in section 215(a)(1)(B)(i) of such Act, except

that, for purposes of this paragraph, 1993 shall be substituted for the calendar year referred to in section 215(a)(1)(B)(ii)(II) of such Act. If any amount as adjusted under the preceding sentence is not a multiple of $100, such amount shall be rounded to the next lowest multiple of $100.

(y) Service in the employ of international organizations by certain transferred Federal employees

(1) In general

For purposes of this chapter, service performed in the employ of an international organization by an individual pursuant to a transfer of such individual to such international organization pursuant to section 3582 of title 5, United States Code, shall constitute "employment" if—

(A) immediately before such transfer, such individual performed service with a Federal agency which constituted "employment" under subsection (b) for purposes of the taxes imposed by sections 3101(a) and 3111(a), and

(B) such individual would be entitled, upon separation from such international organization and proper application, to reemployment with such Federal agency under such section 3582.

(2) Definitions

For purposes of this subsection—

(A) Federal agency

The term "Federal agency" means an agency, as defined in section 3581(1) of title 5, United States Code.

(B) International organization

The term "international organization" has the meaning provided such term by section 3581(3) of title 5, United States Code.

(z) Treatment of certain foreign persons as American employers

(1) In general

If any employee of a foreign person is performing services in connection with a contract between the United States Government (or any instrumentality thereof) and any member of any domestically controlled group of entities which includes such foreign person, such foreign person shall be treated for purposes of this chapter as an American employer with respect to such services performed by such employee.

(2) Domestically controlled group of entities

For purposes of this subsection—

(A) In general

The term "domestically controlled group of entities" means a controlled group of entities the common parent of which is a domestic corporation.

(B) Controlled group of entities

The term "controlled group of entities" means a controlled group of corporations as defined in section 1563(a)(1), except that—

(i) "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears therein, and

(ii) the determination shall be made without regard to subsections (a)(4) and (b)(2) of section 1563.

A partnership or any other entity (other than a corporation) shall be treated as a member of a controlled group of entities if such entity is controlled (within the meaning of section 954(d)(3)) by members of such group (including any entity treated as a member of such group by reason of this sentence).

(3) Liability of common parent

In the case of a foreign person who is a member of any domestically controlled group of entities, the common parent of such group shall be jointly and severally liable for any tax under this chapter for which such foreign person is liable by reason of this subsection, and for any penalty imposed on such person by this title with respect to any failure to pay such tax or to file any return or statement with respect to such tax or wages subject to such tax. No deduction shall be allowed under this title for any liability imposed by the preceding sentence.

(4) Provisions preventing double taxation

(A) Agreements

Paragraph (1) shall not apply to any services which are covered by an agreement under subsection (l).

(B) Equivalent foreign taxation

Paragraph (1) shall not apply to any services if the employer establishes to the satisfaction of the Secretary that the remuneration paid by such employer for such services is subject to a tax imposed by a foreign country which is substantially equivalent to the taxes imposed by this chapter.

(5) Cross reference

For relief from taxes in cases covered by certain international agreements, see sections 3101(c) and 3111(c).

(Aug. 16, 1954, ch. 736, 68A Stat. 417; Sept. 1, 1954, ch. 1206, title II, §§204(a), (b), 205(a)–(e), 206(a), 207, 209, 68 Stat. 1091–1094; Aug. 1, 1956, ch. 836, title I, §§103(j), 121(d), title II, §§201(b)–(d), (e)(1), (h)(1), (2), (j)–(l), 70 Stat. 824, 839–841, 843; Aug. 1, 1956, ch. 837, title IV, §§410, 411(a), 70 Stat. 878; Pub. L. 85–840, title IV, §§402(b), 404(a), 405(a), (b), Aug. 28, 1958, 72 Stat. 1042, 1044–1046; Pub. L. 85–866, title I, §69, Sept. 2, 1958, 72 Stat. 1659; Pub. L. 86–70, §22(a), June 25, 1959, 73 Stat. 146; Pub. L. 86–168, title I, §104(h), title II, §202(a), Aug. 18, 1959, 73 Stat. 387, 389; Pub. L. 86–624, §18(c), July 12, 1960, 74 Stat. 416; Pub. L. 86–778, title I, §§103(n)–(p), 104(b), 105(a), Sept. 13, 1960, 74 Stat. 938, 939, 942; Pub. L. 87–256, §110(e)(1), Sept. 21, 1961, 75 Stat. 536; Pub. L. 87–293, title II, §202(a)(1), (2), Sept. 22, 1961, 75 Stat. 626; Pub. L. 88–272, title II, §220(c)(2), Feb. 26, 1964, 78 Stat. 62; Pub. L. 88–650, §4(b), Oct. 13, 1964, 78 Stat. 1077; Pub. L. 89–97, title III, §§311(b)(4), (5), 313(c)(3), (4), 316(a)(1), (b), 317(b), 320(b)(2), July 30, 1965, 79 Stat. 381, 383, 386, 388, 393; Pub. L. 90–248, title I, §§108(b)(2), 123(b), title IV, §403(i), title V, §504(a), Jan. 2, 1968, 81 Stat. 835, 845, 932, 934; Pub. L. 91–172, title IX, §943(c)(1)–(3), Dec. 30, 1969, 83 Stat. 728; Pub. L. 92–5, title II, §203(b)(2), Mar. 17, 1971, 85 Stat. 11; Pub. L. 92–336, title II, §203(b)(2), July 1, 1972, 86 Stat. 419; Pub. L. 92–603, title I, §§104(i), 122(b), 123(a)(2), (b), (c)(2), 128(b), 129(a)(2), 138(b), Oct. 30, 1972, 86 Stat. 1341, 1354, 1356, 1358, 1359, 1365; Pub. L. 93–66, title II, §203(b)(2), (d), July 9, 1973, 87 Stat. 153; Pub. L. 93–233, §5(b)(2), (d), Dec. 31, 1973, 87 Stat. 954; Pub. L. 94–455, title XII, §1207(e)(1)(A), title XIX, §§1903(a)(3), 1906(b)(13)(A), (C), Oct. 4, 1976, 90 Stat. 1706, 1807, 1834; Pub. L. 94–563, §1(b), (c), Oct. 19, 1976, 90 Stat. 2655; Pub. L. 95–216, title III, §§312(a), (b), (d), (f), (g), 314(a), 315(a), 356(a)–(d), Dec. 20, 1977, 91 Stat. 1532–1536, 1555; Pub. L. 95–472, §3(b), Oct. 17, 1978, 92 Stat. 1333; Pub. L. 95–600, title I, §164(b)(3), Nov. 6, 1978, 92 Stat. 2814; Pub. L. 96–222, title I, §101(a)(10)(B)(i), Apr. 1, 1980, 94 Stat. 201; Pub. L. 96–499, title XI, §1141(a)(1), Dec. 5, 1980, 94 Stat. 2693; Pub. L. 97–34, title I, §124(e)(2)(A), Aug. 13, 1981, 95 Stat. 200; Pub. L. 97–123, §3(b), Dec. 29, 1981, 95 Stat. 1662; Pub. L. 97–248, title II, §278(a)(1), Sept. 3, 1982, 96 Stat. 559; Pub. L. 98–21, title I, §§101(b), (c)(2), 102(b), title III, §§321(a), (e)(1), 322(a)(2), 323(a)(1), 324(a), 327(a)(1), (b)(1), 328(a), Apr. 20, 1983, 97 Stat. 69, 70, 118, 119, 121, 122, 126–128; Pub. L. 98–369, div. A, title I, §67(c), title IV, §491(d)(36), title V, §531(d)(1)(A), div. B, title VI, §§2601(b), 2603(a)(2), (b), 2661(o)(3), 2663(i), (j)(5)(C), July 18, 1984, 98 Stat. 587, 851, 884, 1124, 1128, 1159, 1169, 1171; Pub. L. 99–221, §3(b), Dec. 26, 1985, 99 Stat. 1735; Pub. L. 99–272, title XII, §12112(b), title XIII, §§13205(a)(1), 13303(c)(2), Apr. 7, 1986, 100 Stat. 288, 313, 327; Pub. L. 99–335, title III, §304(b), June 6, 1986, 100 Stat. 606; Pub. L. 99–509, title IX, §9002(b)(1)(A), (2)(A), Oct. 21, 1986, 100 Stat. 1971; Pub. L. 99–514, title I, §122(e)(1), title XI,

§§1108(g)(7), 1147(b), 1151(d)(2)(A), title XVIII, §§1882(c), 1883(a)(11)(B), 1895(b)(18)(A), 1899A(38)–(40), Oct. 22, 1986, 100 Stat. 2112, 2435, 2494, 2505, 2915, 2916, 2935, 2960; Pub. L. 100–203, title IX, §§9001(b), 9002(b), 9003(a)(2), 9004(b), 9005(b), 9006(a), (b)(2), 9023(d), Dec. 22, 1987, 101 Stat. 1330–286 to 1330–289, 1330–296; Pub. L. 100–647, title I, §§1001(d)(2)(C)(i), (g)(4)(B)(i), 1011(e)(8), 1011B(a)(22)(A), (23)(A), 1018(r)(2)(A), (u)(35), title III, §3043(c)(2), title VIII, §§8015(b)(2), (c)(2), 8016(a)(3)(A), (4)(A), (C), 8017(b), Nov. 10, 1988, 102 Stat. 3351, 3352, 3461, 3485, 3486, 3586, 3592, 3642, 3791–3793; Pub. L. 101–140, title II, §203(a)(2), Nov. 8, 1989, 103 Stat. 830; Pub. L. 101–239, title X, §10201(a), (b)(3), Dec. 19, 1989, 103 Stat. 2472; Pub. L. 101–508, title XI, §§11331(a), 11332(b), Nov. 5, 1990, 104 Stat. 1388–467, 1388–469; Pub. L. 101–650, title III, §321, Dec. 1, 1990, 104 Stat. 5117; Pub. L. 102–318, title V, §521(b)(34), July 3, 1992, 106 Stat. 312; Pub. L. 102–572, title IX, §902(b)(1), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 103–66, title XIII, §13207(a), Aug. 10, 1993, 107 Stat. 467; Pub. L. 103–178, title II, §204(c), Dec. 3, 1993, 107 Stat. 2033; Pub. L. 103–296, title I, §108(h)(2), title III, §§303(a)(2), (b)(2), 319(a)(1), (5), 320(a)(1)(C), Aug. 15, 1994, 108 Stat. 1487, 1519, 1533–1535; Pub. L. 103–387, §2(a)(1)(A)–(C), Oct. 22, 1994, 108 Stat. 4071; Pub. L. 104–188, title I, §§1116(a)(1)(A), (B), 1421(b)(8)(A), 1458(b)(1), Aug. 20, 1996, 110 Stat. 1762, 1798, 1819; Pub. L. 105–33, title XI, §11246(b)(2)(A), as added Pub. L. 105–277, div. A, §101(h) [title VIII, §802(a)(2)], Oct. 21, 1998, 112 Stat. 2681–480, 2681–532; Pub. L. 105–61, title VI, §642(d)(2), Oct. 10, 1997, 111 Stat. 1319; Pub. L. 105–206, title VI, §6023(13), July 22, 1998, 112 Stat. 825; Pub. L. 106–554, §1(a)(7) [title III, §319(15)], Dec. 21, 2000, 114 Stat. 2763, 2763A–647; Pub. L. 108–121, title I, §106(b)(2), Nov. 11, 2003, 117 Stat. 1339; Pub. L. 108–203, title IV, §423(a), (c), Mar. 2, 2004, 118 Stat. 536; Pub. L. 108–357, title II, §251(a)(1)(A), title III, §320(b)(1), title VIII, §802(c)(1), Oct. 22, 2004, 118 Stat. 1458, 1473, 1568; Pub. L. 108–375, div. A, title V, §585(b)(2)(B), Oct. 28, 2004, 118 Stat. 1932; Pub. L. 109–280, title VIII, §854(c)(8), Aug. 17, 2006, 120 Stat. 1018; Pub. L. 110–172, §8(a)(2), Dec. 29, 2007, 121 Stat. 2483; Pub. L. 110–245, title I, §115(a)(1), title III, §302(a), June 17, 2008, 122 Stat. 1636, 1647; Pub. L. 110–458, title I, §108(k)(1), Dec. 23, 2008, 122 Stat. 5110.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a)(1), (15), (b), (d)(4), (j)(2)(D), (4)(B), (l)(1), (4), (6), (r)(3)(A), (u), (w)(1), and (x), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. Sections 201, 210, 215, 218, 223, 230, and 233 of the Act are classified to sections 401, 410, 415, 418, 423, 430, and 433, respectively, of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 3(2)(B)(ii) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (a)(5)(F), is classified to section 1002(2)(B)(ii) of Title 29, Labor.

Section 105(e)(2) of the Indian Self-Determination Act, referred to in subsec. (b)(5)(B)(i)(V), was renumbered section 104(e)(2) of that Act by Pub. L. 100–472, title II, §203(a), Oct. 5, 1988, 102 Stat. 2290, without corresponding amendment to this section. Section 104(e)(2) of the Indian Self-Determination Act is classified to section 450i(e)(2) of Title 25, Indians. Section 105 of that Act is classified to section 450j of Title 25.

Level V of the Executive Schedule, referred to in subsec. (b)(5)(D)(iii), is set out in section 5316 of Title 5, Government Organization and Employees.

Section 301 of the Federal Employees' Retirement System Act of 1986, referred to in subsec. (b)(5)(H)(i), is section 301 of Pub. L. 99–335, which is set out as a note under section 8331 of Title 5, Government Organization and Employees.

The Federal Employees' Retirement System Open Enrollment Act of 1997, referred to in subsec. (b)(5)(H)(i), is section 642 of Pub. L. 105–61, title VI, Oct. 10, 1997, 111 Stat. 1318, which is classified principally to a note under section 8331 of Title 5, Government Organization and Employees. For complete classification of this Act to the Code, see Tables.

The Foreign Service Act of 1980, referred to in subsec. (b)(5)(H)(ii), is Pub. L. 96–465, Oct. 17, 1980, 94 Stat. 2071, as amended. Subchapter II of chapter 8 of title I of the Act is classified generally to part II (§4071 et seq.) of subchapter VIII of chapter 52 of Title 22, Foreign Relations and Intercourse. Section 860 of the Act is classified to section 4071i of Title 22. For complete classification of this Act to the Code, see Short Title note set out under section 3901 of Title 22 and Tables.

The Internal Security Act of 1950, as amended, referred to in subsec. (b)(17), is act Sept. 23, 1950, ch.

1024, 64 Stat. 987, as amended, which is classified principally to chapter 23 (§781 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 781 of Title 50 and Tables.

Section 101(a)(15) of the Immigration and Nationality Act, referred to in subsec. (b)(18), (19), is classified to section 1101(a)(15) of Title 8, Aliens and Nationality.

Section 15(g) of the Agricultural Marketing Act, referred to in subsec. (g)(3), is classified to section 1141j of Title 12, Banks and Banking.

The Peace Corps Act, referred to in subsecs. (i)(3), (p), is Pub. L. 87–293, title I, Sept. 22, 1961, 75 Stat. 612, as amended, which is classified principally to chapter 34 (§2501 et seq.) of Title 22, Foreign Relations and Intercourse. Sections 5 and 6 of the Peace Corps Act are classified to sections 2504 and 2505 of Title 22. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of Title 22 and Tables.

Chapter 9 of the Internal Revenue Code of 1939, referred to in subsec. (j)(4)(B), was comprised of sections 1400 to 1636 of former Title 26, Internal Revenue Code. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of this title. See also section 7851(a)(3) of this title for applicability of chapter 9 of former Title 26. See also section 7851(e) of this title for provision that references in the 1986 Code to a provision of the 1939 Code, not then applicable, shall be deemed a reference to the corresponding provision of the 1986 Code, which is then applicable.

The Military Selective Service Act, referred to in subsec. (n)(5)(B), is act June 24, 1948, ch. 625, 62 Stat. 604, as amended, which is classified principally to section 451 et seq. of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see References in Text note set out under section 451 of Title 50, Appendix, and Tables.

CONSTITUTIONALITY

For information regarding constitutionality of certain provisions of section 3121 of act Aug. 16, 1954, as amended by section 101(b)(1) of Pub. L. 98–21, see Congressional Research Service, The Constitution of the United States of America: Analysis and Interpretation, Appendix 1, Acts of Congress Held Unconstitutional in Whole or in Part by the Supreme Court of the United States.

AMENDMENTS

2008—Subsec. (a)(23). Pub. L. 110–245, §115(a)(1), added par. (23).

Subsec. (b)(5)(E). Pub. L. 110–458 struck out "or special trial judge" before "of the United States Tax Court".

Subsec. (z). Pub. L. 110–245, §302(a), added subsec. (z).

2007—Subsec. (v)(1)(A). Pub. L. 110–172, which directed amendment of subpar. (A) by inserting "or consisting of designated Roth contributions (as defined in section 402A(c))" before comma at end, was executed by making the insertion before ", or", to reflect the probable intent of Congress.

2006—Subsec. (b)(5)(E). Pub. L. 109–280 inserted "or special trial judge" before "of the United States Tax Court".

2004—Subsec. (a)(7)(B). Pub. L. 108–203, §423(a), substituted "on a farm operated for profit" for "described in subsection (g)(5)".

Subsec. (a)(18). Pub. L. 108–375 substituted "134(b)(4), or 134(b)(5)" for "or 134(b)(4)".

Subsec. (a)(20). Pub. L. 108–357, §320(b)(1), inserted "108(f)(4)," after "74(c),".

Subsec. (a)(22). Pub. L. 108–357, §251(a)(1)(A), added par. (22).

Subsec. (g)(5). Pub. L. 108–203, §423(c), struck out "or is domestic service in a private home of the employer" after "employer's trade or business".

Subsec. (v)(2)(A). Pub. L. 108–357, §802(c)(1), inserted "or to any specified stock compensation (as defined in section 4985) on which tax is imposed by section 4985" before period at end.

2003—Subsec. (a)(18). Pub. L. 108–121 substituted ", 129, or 134(b)(4)" for "or 129".

2000—Subsec. (a)(5)(G). Pub. L. 106–554 substituted a comma for the semicolon at end.

1998—Subsec. (a)(5)(F). Pub. L. 105–206, §6023(13)(A), which directed the substitution of a comma for the semicolon at end of subpar. (F), could not be executed because a semicolon did not appear at end of subpar. (F).

Subsec. (a)(5)(G). Pub. L. 105–206, §6023(13)(B), struck out "or" at end.

Subsec. (a)(5)(I). Pub. L. 105–206, §6023(13)(C), substituted a semicolon for the period at end.

Subsec. (b)(7)(C). Pub. L. 105–277 added Pub. L. 105–33, §11246(b)(2)(A). See 1997 Amendment note below.

1997—Subsec. (b)(5)(H)(i). Pub. L. 105–61 substituted "1986," for "1986 or" and inserted "or the Federal

Employees' Retirement System Open Enrollment Act of 1997" after "(50 U.S.C. 2157),".

Subsec. (b)(7)(C). Pub. L. 105–33, §11246(b)(2)(A), as added by Pub. L. 105–277, inserted "(other than the Federal Employees Retirement System provided in chapter 84 of title 5, United States Code)" after "law of the United States" in introductory provisions.

1996—Subsec. (a)(5)(F). Pub. L. 104–188, §1421(b)(8)(A), struck out "or" at end.

Subsec. (a)(5)(G). Pub. L. 104–188, §1458(b)(1), which directed that subpar. (G) be amended by striking "(or)" at the end, could not be executed because "(or)" did not appear.

Pub. L. 104–188, §1421(b)(8)(A), inserted "or" at end.

Subsec. (a)(5)(H). Pub. L. 104–188, §1458(b)(1), inserted "or" at end.

Pub. L. 104–188, §1421(b)(8)(A), added subpar. (H).

Subsec. (a)(5)(I). Pub. L. 104–188, §1458(b)(1), added subpar. (I).

Subsec. (b). Pub. L. 104–188, §1116(a)(1)(A), inserted closing provisions "For purposes of paragraph (20), the operating crew of a boat shall be treated as normally made up of fewer than 10 individuals if the average size of the operating crew on trips made during the preceding 4 calendar quarters consisted of fewer than 10 individuals."

Subsec. (b)(20)(A). Pub. L. 104–188, §1116(a)(1)(B), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "such individual does not receive any cash remuneration (other than as provided in subparagraph (B)),".

1994—Subsec. (a)(7)(B). Pub. L. 103–387, §2(a)(1)(A), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "cash remuneration paid by an employer in any calendar quarter to an employee for domestic service in a private home of the employer, if the cash remuneration paid in such quarter by the employer to the employee for such service is less than $50. As used in this subparagraph, the term 'domestic service in a private home of the employer' does not include service described in subsection (g)(5);".

Subsec. (b)(7)(F)(iv). Pub. L. 103–296, §303(a)(2), substituted "$1,000 with respect to service performed during any calendar year commencing on or after January 1, 1995, ending on or before December 31, 1999, and the adjusted amount determined under section 218(c)(8)(B) of the Social Security Act for any calendar year commencing on or after January 1, 2000, with respect to service performed during such calendar year" for "$100".

Subsec. (b)(10)(B). Pub. L. 103–296, §108(h)(2), substituted "Commissioner of Social Security" for "Secretary of Health and Human Services".

Subsec. (b)(15). Pub. L. 103–296, §319(a)(5), inserted ", except service which constitutes 'employment' under subsection (y)" after "international organization".

Subsec. (b)(19). Pub. L. 103–296, §320(a)(1)(C), substituted "(J), (M), or (Q)" for "(J), or (M)" in two places.

Subsec. (b)(21). Pub. L. 103–387, §2(a)(1)(C), added par. (21).

Subsec. (u)(2)(B)(ii)(V). Pub. L. 103–296, §303(b)(2), substituted "$1,000 with respect to service performed during any calendar year commencing on or after January 1, 1995, ending on or before December 31, 1999, and the adjusted amount determined under section 218(c)(8)(B) of the Social Security Act for any calendar year commencing on or after January 1, 2000, with respect to service performed during such calendar year" for "$100".

Subsec. (x). Pub. L. 103–387, §2(a)(1)(B), added subsec. (x).

Subsec. (y). Pub. L. 103–296, §319(a)(1), added subsec. (y).

1993—Subsec. (a)(1). Pub. L. 103–66, §13207(a)(1), inserted "in the case of the taxes imposed by sections 3101(a) and 3111(a)" after "(1)", substituted "contribution and benefit base (as determined under section 230 of the Social Security Act)" for "applicable contribution base (as determined under subsection (x))" in two places, and substituted "such contribution and benefit base" for "such applicable contribution base".

Subsec. (b)(5)(H)(i). Pub. L. 103–178 substituted "section 307 of the Central Intelligence Agency Retirement Act (50 U.S.C. 2157)" for "section 307 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees".

Subsec. (x). Pub. L. 103–66, §13207(a)(2), struck out subsec. (x) which defined parameters of the applicable contribution base for purposes of this chapter.

1992—Subsec. (b)(5)(E). Pub. L. 102–572 substituted "United States Court of Federal Claims" for "United States Claims Court".

Subsec. (v)(1)(A). Pub. L. 102–318 substituted "402(e)(3)" for "402(a)(8)".

1990—Subsec. (a)(1). Pub. L. 101–508, §11331(a)(1), substituted "applicable contribution base (as determined under subsection (x))" for "contribution and benefit base (as determined under section 230 of the Social Security Act)" wherever appearing and "such applicable contribution base" for "such contribution and

benefit base".

Subsec. (b)(7)(F). Pub. L. 101–508, §11332(b), added subpar. (F).

Subsec. (x). Pub. L. 101–508, §11331(a)(2), added subsec. (x).

1989—Subsec. (l)(1). Pub. L. 101–239, §10201(b)(3), substituted "paragraph (6)" for "paragraph (8)" in introductory provisions.

Subsec. (l)(2). Pub. L. 101–239, §10201(a)(1), inserted at end "Notwithstanding any other provision of this subsection, the period for which any such agreement is effective with respect to any foreign entity shall terminate at the end of any calendar quarter in which the foreign entity, at any time in such quarter, ceases to be a foreign affiliate as defined in paragraph (6)."

Subsec. (l)(3). Pub. L. 101–239, §10201(a)(2), (3), added par. (3) and struck out former par. (3) relating to termination of period by American employer.

Subsec. (l)(4). Pub. L. 101–239, §10201(a)(2), (4), redesignated par. (6) as (4) and struck out former par. (4) relating to termination of period by Secretary.

Subsec. (l)(5). Pub. L. 101–239, §10201(a)(2), (4), redesignated par. (7) as (5) and struck out former par. (5) relating to no renewal of agreement.

Subsec. (l)(6) to (10). Pub. L. 101–239, §10201(a)(4), redesignated pars. (6) to (10) as (4) to (8), respectively.

Subsec. (x). Pub. L. 101–140 amended this section to read as if amendments by Pub. L. 100–647, §1011B(a)(22)(A), had not been enacted, see 1988 Amendment note below.

1988—Subsec. (a)(5)(G). Pub. L. 100–647, §1011B(a)(23)(A), inserted "if such payment would not be treated as wages without regard to such plan and it is reasonable to believe that (if section 125 applied for purposes of this section) section 125 would not treat any wages as constructively received" after "section 125)".

Subsec. (a)(8)(B). Pub. L. 100–647, §8017(b), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "cash remuneration paid by an employer in any calendar year to an employee for agricultural labor unless (i) the cash remuneration paid in such year by the employer to the employee for such labor is $150 or more, or (ii) the employer's expenditures for agricultural labor in such year equal or exceed $2,500;".

Subsec. (a)(11). Pub. L. 100–647, §1001(g)(4)(B)(i), inserted "(determined without regard to section 274(n))" after "section 217".

Subsec. (a)(21). Pub. L. 100–647, §3043(c)(2), added par. (21).

Subsec. (b)(5). Pub. L. 100–647, §8015(c)(2), inserted "any such service performed on or after any date on which such individual performs" after "with respect to" in provision preceding subpar. (C).

Subsec. (b)(5)(H). Pub. L. 100–647, §8015(b)(2), amended subpar. (H) generally. Prior to amendment, subparagraph (H) read as follows: "service performed by an individual on or after the effective date of an election by such individual under section 301(a) of the Federal Employees' Retirement System Act of 1986, or under regulations issued under section 860 of the Foreign Service Act of 1980 or section 307 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, to become subject to chapter 84 of title 5, United States Code;".

Subsec. (b)(19). Pub. L. 100–647, §1001(d)(2)(C)(i), substituted "(F), (J), or (M)" for "(F) or (J)" in two places.

Subsec. (b)(20). Pub. L. 100–647, §8016(a)(4)(A), (C), made technical correction to directory language of Pub. L. 99–272, §13303(c)(2), see 1986 Amendment note below.

Subsec. (d)(3), (4). Pub. L. 100–647, §8016(a)(3)(A), redesignated par. (4) as (3) and substituted "; or" for a period at the end, and redesignated par. (3) as (4), substituted a period for "; or" at the end, and moved redesignated par. (4) to the end of the subsection.

Subsec. (u)(2)(B)(ii)(VI). Pub. L. 100–647, §1018(r)(2)(A), added subcl. (VI).

Subsec. (v)(3)(A). Pub. L. 100–647, §1011(e)(8), substituted "457(f)(1)" for "457(e)(1)".

Subsec. (v)(3)(C). Pub. L. 100–647, §1018(u)(35), substituted "Savings" for "Saving".

Subsec. (x). Pub. L. 100–647, §1011B(a)(22)(A), added subsec. (x) relating to benefits provided under certain employee benefit plans.

1987—Subsec. (a)(2)(C). Pub. L. 100–203, §9003(a)(2), substituted "death, except that this paragraph does not apply to a payment for group-term life insurance to the extent that such payment is includible in the gross income of the employee" for "death".

Subsec. (a)(5)(F). Pub. L. 100–203, §9023(d)(1), substituted a comma for semicolon before "or" at end.

Subsec. (a)(5)(G). Pub. L. 100–203, §9023(d)(2), substituted a semicolon for comma at end.

Subsec. (a)(8)(B)(ii). Pub. L. 100–203, §9002(b), added cl. (ii) and struck out former cl. (ii) which read as follows: "the employee performs agricultural labor for the employer on 20 days or more during such year for

cash remuneration computed on a time basis;".

Subsec. (b)(3)(A). Pub. L. 100–203, §9005(b)(1), substituted "18" for "21".

Pub. L. 100–203, §9004(b)(1), struck out "performed by an individual in the employ of his spouse, and service" after "service".

Subsec. (b)(3)(B). Pub. L. 100–203, §9005(b)(2), inserted "under the age of 21 in the employ of his father or mother, or performed by an individual" after first reference to "individual".

Pub. L. 100–203, §9004(b)(2), inserted introductory provisions and struck out former introductory provisions which read as follows: "service not in the course of the employer's trade or business, or domestic service in a private home of the employer, performed by an individual in the employ of his son or daughter; except that the provisions of this subparagraph shall not be applicable to such domestic service if—".

Subsec. (i)(2). Pub. L. 100–203, §9001(b)(2), substituted "only (A) his basic pay as described in chapter 3 and section 1009 of title 37, United States Code, in the case of an individual performing service to which subparagraph (A) of such subsection (m)(1) applies, or (B) his compensation for such service as determined under section 206(a) of title 37, United States Code, in the case of an individual performing service to which subparagraph (B) of such subsection (m)(1) applies." for "only his basic pay as described in chapter 3 and section 1009 of title 37, United States Code."

Subsec. (m)(1). Pub. L. 100–203, §9001(b)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "The term 'employment' shall, notwithstanding the provisions of subsection (b) of this section, include service performed by an individual as a member of a uniformed service on active duty; but such term shall not include any such service which is performed while on leave without pay."

Subsec. (q). Pub. L. 100–203, §9006(a), in heading substituted "both employee and employer taxes" for "employee taxes", and in text struck out "other than for purposes of the taxes imposed by section 3111" after "of this chapter", substituted "remuneration for such employment (and deemed to have been paid by the employer for purposes of subsections (a) and (b) of section 3111)" for "remuneration for employment", and inserted before period at end "; except that, in determining the employer's liability in connection with the taxes imposed by section 3111 with respect to such tips in any case where no statement including such tips was so furnished (or to the extent that the statement so furnished was inaccurate or incomplete), such remuneration shall be deemed for purposes of subtitle F to be paid on the date on which notice and demand for such taxes is made to the employer by the Secretary".

Subsec. (t). Pub. L. 100–203, §9006(b)(2), struck out subsec. (t) which related to special rule for determining wages subject to employer tax in case of certain employers whose employees receive income from tips.

1986—Subsec. (a)(5)(C). Pub. L. 99–514, §1108(g)(7), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: "under a simplified employee pension if, at the time of the payment, it is reasonable to believe that the employee will be entitled to a deduction under section 219(b)(2) for such payment,".

Subsec. (a)(5)(G). Pub. L. 99–514, §1151(d)(2)(A), added subpar. (G).

Subsec. (a)(8). Pub. L. 99–514, §1883(a)(11)(B), realigned margin of subpar. (B).

Subsec. (a)(20). Pub. L. 99–514, §122(e)(1), inserted reference to section 74(c).

Subsec. (b)(5)(H). Pub. L. 99–335 added subpar. (H).

Subsec. (b)(7)(E). Pub. L. 99–509, §9002(b)(1)(A), added subpar. (E).

Subsec. (b)(20). Pub. L. 99–272, §13303(c)(2), as amended by Pub. L. 100–647, §8016(a)(4)(A), (C), inserted "(other than service described in paragraph (3)(A))" after "service".

Subsec. (d)(3), (4). Pub. L. 99–509, §9002(b)(2)(A), added par. (3) and redesignated former par. (3) as (4).

Subsec. (i)(5). Pub. L. 99–272, §12112(b), substituted "shall not include" for "shall, subject to the provisions of subsection (a)(1) of this section, include".

Subsec. (u). Pub. L. 99–272, §13205(a)(1), amended subsec. (u) generally, substantially expanding and revising its provisions by extending the application of hospital insurance tax to State and local employment.

Subsec. (u)(2)(B)(ii)(V). Pub. L. 99–514, §1895(b)(18)(A), added subcl. (V).

Subsec. (v)(2)(A)(ii). Pub. L. 99–514, §1899A(38), substituted "forfeiture" for "forefeiture".

Subsec. (v)(3)(C). Pub. L. 99–514, §1147(b), added subpar. (C).

Subsec. (w)(1). Pub. L. 99–514, §1899A(39), substituted "this chapter" for "chapter 21 of this Code" in first sentence.

Subsec. (w)(2). Pub. L. 99–514, §1882(c), substituted last three sentences for former last two sentences which read as follows: "The election may not be revoked by the church or organization, but shall be permanently revoked by the Secretary if such church or organization fails to furnish the information required under section 6051 to the Secretary for a period of 2 years or more with respect to remuneration paid for such services by such church or organization, and, upon request by the Secretary, fails to furnish all such previously

unfurnished information for the period covered by the election. Such revocation shall apply retroactively to the beginning of the 2-year period for which the information was not furnished."

Pub. L. 99–514, §1899A(40), substituted "July 18, 1984" for "the date of the enactment of this subsection" in first sentence.

1985—Subsec. (b)(5)(B)(i)(V). Pub. L. 99–221 added subcl. (V).

1984—Subsec. (a). Pub. L. 98–369, §531(d)(1)(A)(i), inserted "(including benefits)" before "paid in any medium" in introductory provisions.

Subsec. (a)(5)(C) to (G). Pub. L. 98–369, §491(d)(36), struck out subpar. (C) which provided: "under or to a bond purchase plan which, at the time of such payment, is a qualified bond purchase plan described in section 405(a)," and redesignated subpars, (D) to (G) as (C) to (F), respectively.

Subsec. (a)(20). Pub. L. 98–369, §531(d)(1)(A)(ii), added par. (20).

Subsec. (b)(1). Pub. L. 98–369, §2663(i)(1), struck out "(A) under contracts entered into in accordance with title V of the Agricultural Act of 1949, as amended (7 U.S.C. 1461–1468), or (B)".

Subsec. (b)(5)(B). Pub. L. 98–369, §2601(b)(1), in amending subpar. (B) generally, substituted provision broadening social security coverage for newly hired Federal civilian employees effective with remuneration paid after Dec. 31, 1983, by providing that persons transferring from other government service to civilian service be covered under social security, unless the other service was in an international organization, or the person is returning to civilian service after temporary military or reserve duty and is exercising his reemployment rights under chapter 43 of title 38.

Subsec. (b)(5)(C) to (G). Pub. L. 98–369, §2601(b)(2), substituted subpar. designations (C) to (G) for former designations (i) to (v), respectively, in subpar. (D), as so redesignated, redesignated cls. (I) to (III) as (i) to (iii), respectively, and amended generally, subpar. (G), as so redesignated, designating provision relating to service performed by an individual who is not subject to subchapter III of chapter 83 of title 5 as cl. (i), and in cl. (i) as so designated, inserting reference to another retirement system established by a law of the United States for Federal employees, other than for members of the uniformed services and adding cls. (ii) and (iii), and provision for determining for purposes of this subparagraph whether an individual is subject to subchapter III of chapter 83 of title 5 or any other retirement system.

Subsec. (b)(8). Pub. L. 98–369, §2603(a)(2), designated existing provisions as subpar. (A), substituted "this subparagraph" for "this paragraph", and added subpar. (B).

Subsec. (b)(10)(B). Pub. L. 98–369, §2663(j)(5)(C), substituted "Secretary of Health and Human Services" for "Secretary of Health, Education, and Welfare".

Subsec. (i)(2). Pub. L. 98–369, §2663(i)(2), substituted "chapter 3 and section 1009 of title 37, United States Code" for "section 102(10) of the Servicemen's and Veterans' Survivor Benefits Act".

Subsec. (m)(2). Pub. L. 98–369, §2663(i)(3), substituted "paragraph (21) of section 101 of title 38, United States Code" for "section 102 of the Servicemen's and Veterans' Survivor Benefits Act" and "paragraph (22) of such section" for "such section".

Subsec. (m)(3). Pub. L. 98–369, §2663(i)(4), substituted "paragraph (23) of such section 101" for "such section 102".

Subsec. (n). Pub. L. 98–369, §2663(i)(5), in provision preceding par. (1) substituted "a reserve component as defined in section 101(27) of title 38, United States Code" for "a reserve component of a uniformed service as defined in section 102(3) of the Servicemen's and Veterans' Survivor Benefits Act", and inserted ", the National Oceanic and Atmospheric Administration Corps,".

Subsec. (n)(5). Pub. L. 98–369, §2663(i)(5)(C), substituted "military, naval, or air" for "military or naval" in two places.

Subsec. (n)(5)(B). Pub. L. 98–369, §2663(i)(5)(D), substituted "Military Selective Service Act" for "Universal Military Training and Service Act".

Subsec. (v)(1)(B). Pub. L. 98–369, §2661(o)(3), substituted "section 414(h)(2) where the pick up referred to in such section is pursuant to a salary reduction agreement (whether evidenced by a written instrument or otherwise)" for "section 414(h)(2)".

Subsec. (v)(2)(A). Pub. L. 98–369, §67(c), inserted provision that the preceding sentence shall not apply to any excess parachute payment (as defined in section 2801G(b)).

Subsec. (w). Pub. L. 98–369, §2603(b), added subsec. (w).

1983—Subsec. (a). Pub. L. 98–21, §327(b)(1), inserted in text following last numbered paragraph a provision that nothing in the regulations prescribed for purposes of chapter 24 (relating to income tax withholding) which provides an exclusion from "wages" as used in such chapter shall be construed to require a similar exclusion from "wages" in regulations prescribed for purposes of this chapter.

Pub. L. 98–21, §324(a)(3)(D), substituted reference to subpar. (A) of par. (2) for reference to subpar. (B) thereof in text following last numbered paragraph.

Subsec. (a)(2). Pub. L. 98–21, §324(a)(3)(A), struck out "(A) retirement, or", and redesignated subpars. (B) to (D) as (A) to (C), respectively.

Subsec. (a)(3). Pub. L. 98–21, §324(a)(3)(B), struck out par. (3) which related to any payment made to an employee (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement.

Subsec. (a)(5)(D). Pub. L. 98–21, §328(a), substituted "section 219(b)(2)" for "section 219".

Subsec. (a)(5)(E) to (G). Pub. L. 98–21, §324(a)(2), added subpars. (E) to (G).

Subsec. (a)(9). Pub. L. 98–21, §324(a)(3)(B), struck out par. (9) which related to any payment (other than vacation or sick pay) made to an employee after the month in which he attained age 62, if such employee did not work for the employer in the period for which such payment was made.

Subsec. (a)(13)(A)(iii). Pub. L. 98–21, §324(a)(3)(C), struck out cl. (iii) which related to the case of retirement after attaining an age specified in the plan referred to in subparagraph (B) or in a pension plan of the employer.

Subsec. (a)(19). Pub. L. 98–21, §327(a)(1), added par. (19).

Subsec. (b). Pub. L. 98–21, §323(a)(1), substituted "a citizen or resident of the United States" for "a citizen of the United States" in text preceding par. (1).

Pub. L. 98–21, §322(a)(2), added cl. (C) in text preceding par. (1).

Subsec. (b)(5). Pub. L. 98–21, §101(b)(1), amended par. (5) generally. Prior to amendment par. (5) read as follows: "Service performed in the employ of any instrumentality of the United States, if such instrumentality is exempt from the tax imposed by section 3111 by virtue of any provision of law which specifically refers to such section (or the corresponding section of prior law) in granting such exemption;".

Subsec. (b)(6). Pub. L. 98–21, §101(b)(1), amended par. (6) generally. Prior to amendment par. (6) read as follows:

"(A) service performed in the employ of the United States or in the employ of any instrumentality of the United States, if such service is covered by a retirement system established by a law of the United States;

"(B) service performed, by an individual in the employ of an instrumentality of the United States if such an instrumentality was exempt from the tax imposed by section 1410 of the Internal Revenue Code of 1939 on December 31, 1950, and if such service is covered by a retirement system established by such instrumentality; except that the provisions of this subparagraph shall not be applicable to—

"(i) service performed in the employ of a corporation which is wholly owned by the United States;

"(ii) service performed in the employ of a Federal land bank, a Federal intermediate credit bank, a bank for cooperatives, a Federal land bank association, a production credit association, a Federal Reserve Bank, a Federal Home Loan Bank, or a Federal Credit Union;

"(iii) service performed in the employ of a State, county, or community committee under the Commodity Stabilization Service;

"(iv) service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Exchanges, Marine Corps Exchanges, or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Defense, at installations of the Department of Defense for the comfort, pleasure, contentment, and mental and physical improvement of personnel of such Department; or

"(v) service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Coast Guard Exchanges or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Transportation, at installations of the Coast Guard for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the Coast Guard;

"(C) service performed in the employ of the United States or in the employ of any instrumentality of the United States, if such service is performed—

"(i) as the President or Vice President of the United States or as a Member, Delegate, or Resident Commissioner of or to the Congress;

"(ii) in the legislative branch;

"(iii) in a penal institution of the United States by an inmate thereof;

"(iv) by any individual as an employee included under section 5351(2) of title 5, United States Code (relating to certain interns, student nurses, and other student employees of hospitals of the Federal Government), other than as a medical or dental intern or a medical or dental resident in training;

"(v) by any individual as an employee serving on a temporary basis in case of fire, storm, earthquake, flood, or other similar emergency; or

"(vi) by any individual to whom subchapter III of chapter 83 of title 5, United States Code, does not apply because such individual is subject to another retirement system (other than the retirement system of

the Tennessee Valley Authority);".

Subsec. (b)(8). Pub. L. 98–21, §102(b)(1), struck out the subpar. (A) designation preceding "service performed", struck out subpar. (B) which related to service performed by employees of nonprofit organizations, and in par. (8), as so designated substituted "except that this paragraph shall not apply" for "except that this subparagraph shall not apply".

Subsec. (i)(5). Pub. L. 98–21, §101(c)(2), added par. (5).

Subsec. (k). Pub. L. 98–21, §102(b)(2), struck out subsec. (k) which related to exemption of religious, charitable and certain other organizations.

Subsec. (l). Pub. L. 98–21, §321(a)(1), substituted "Agreements entered into by American employers with respect to foreign affiliates" for "Agreements entered into by domestic corporations with respect to foreign subsidiaries" in heading.

Subsec. (l)(1). Pub. L. 98–21, §321(a)(1), substituted "affiliates" for "subsidiaries" in par. (1) heading, and in first sentence of provisions preceding subpar. (A), substituted "at the American employer's request" for "at the request of any domestic corporation", "any American employer (as defined in subsection (h)) who" for "any such corporation which", "such manner and form" for "such form and manner", and "affiliates" for "subsidiaries" after "such employer's foreign", and inserted "or residents" after "citizens".

Pub. L. 98–21, §321(e)(1), substituted "American employer" for "domestic corporation", "affiliate" for "subsidiary" and "citizens or residents" for "citizens" wherever appearing in second and third sentences of provisions preceding subpar. (A) and substituted "American employer" for "domestic corporation" in subpars. (A) and (B).

Subsec. (l)(2) to (5). Pub. L. 98–21, §321(e)(1), substituted, wherever appearing, "American employer" for "domestic corporation", "American employers" for "domestic corporations", "affiliate" for "subsidiary", "affiliates" for "subsidiaries", "foreign entity" for "foreign corporation", "foreign entities" for "foreign corporations", and "citizens or residents" for "citizens".

Subsec. (l)(8). Pub. L. 98–21, §321(a)(2), amended par. (8) generally, substituting provision defining a foreign affiliate for provision defining a foreign subsidiary of a domestic corporation which, for the purposes of this subsection and section 210(a) of the Social Security Act, had been defined as a foreign corporation not less than 20 percent of the voting stock of which was owned by such domestic corporation, or a foreign corporation more than 50 percent of the voting stock of which was owned by the foreign corporation described above.

Subsec. (l)(9), (10). Pub. L. 98–21, §321(e)(1), substituted, wherever appearing, "American employer" for "domestic corporation", "American employers" for "domestic corporations", and "foreign entities" for "foreign corporations".

Subsec. (r)(3)(A). Pub. L. 98–21, §102(b)(3)(A), substituted "subsection (b)(8)" and "section 210(a)(8)" for "subsection (b)(8)(A)" and "section 210(a)(8)(A)", respectively, in provisions preceding cl. (i).

Subsec. (r)(4). Pub. L. 98–21, §102(b)(3)(B), struck out par. (4) which related to coordination with coverage of lay employees.

Subsec. (u)(1). Pub. L. 98–21, §101(b)(2), substituted "sections 3101(b) and 3111(b), subsection (b) shall be applied without regard to paragraph (5) thereof" for "sections 3101(b) and 3111(b)—

"(A) paragraph (6) of subsection (b) shall be applied without regard to subparagraphs (A), (B), and (C)(i), (ii), and (vi) thereof, and

"(B) paragraph (5) of subsection (b) (and the provisions of law referred to therein) shall not apply".

Subsec. (v). Pub. L. 98–21, §324(a)(1), added subsec. (v).

1982—Subsec. (u). Pub. L. 97–248 added subsec. (u).

1981—Subsec. (a). Pub. L. 97–123 inserted "(but, in the case of payments made to an employee or any of his dependents this subparagraph shall exclude from the term 'wages' only payments which are received under a workmen's compensation law)" after "sickness or accident disability" in par. (2)(B), and inserted, after par. (18), the following provision: "Except as otherwise provided in regulations prescribed by the Secretary, any third party which makes a payment included in wages solely by reason of the parenthetical matter contained in subparagraph (B) of paragraph (2) shall be treated for purposes of this chapter and chapter 22 as the employer with respect to such wages."

Subsec. (a)(18). Pub. L. 97–34 substituted "section 127 or 129" for "section 127".

1980—Subsec. (a)(5)(D). Pub. L. 96–222 added subpar. (D).

Subsec. (a)(6). Pub. L. 96–499 struck out "(or the corresponding section of prior law)" after "section 3101" in subpar. (A) and inserted "with respect to remuneration paid to an employee for domestic service in a private home of the employer or for agricultural labor" after subpar. (B).

1978—Subsec. (a)(17). Pub. L. 95–472 added par. (17).

Subsec. (a)(18). Pub. L. 95–600 added par. (18).

1977—Subsec. (a)(7)(C), (10). Pub. L. 95–216, §356(a), substituted "year" for "quarter" and "$100" for "$50", wherever appearing.

Subsec. (a)(16). Pub. L. 95–216, §356(b), added par. (16).

Subsec. (b)(10). Pub. L. 95–216, §356(c), struck out subpar. (A) which related to service performed in any calendar quarter in the employ of any organization exempt from income tax under section 501(a) (other than an organization described in section 401(a) or under section 521, if the remuneration for such service was less than $50, struck out the designation "(B)" preceding the remainder of par. (10), and redesignated former cls. (i) and (ii) of former subpar. (B) as subpars. (A) and (B).

Subsecs. (b)(17)(A), (g)(4)(B). Pub. L. 95–216, §356(d), substituted "year" for "quarter".

Subsec. (k)(4)(A). Pub. L. 95–216, §312(b)(2), (f), substituted "(or, if later, as of the earliest date on which it satisfies clause (ii) of this subparagraph)" for "or any subsequent date" in cl. (i) and, in provisions following cl. (ii), inserted "(subject to subparagraph (C))" after "effective".

Subsec. (k)(4)(B)(ii). Pub. L. 95–216, §312(b)(4), substituted "first day of the calendar quarter" for "date".

Subsec. (k)(4)(B)(iii). Pub. L. 95–216, §312(g), added cl. (iii).

Subsec. (k)(4)(C). Pub. L. 95–216, §312(b)(1), added subpar. (C).

Subsec. (k)(5). Pub. L. 95–216, §312(a)(1), substituted "prior to April 1, 1978," for "prior to the expiration of 180 days after the date of the enactment of this paragraph," in subpar. (B), and, in provisions following subpar. (B), substituted "April 1, 1978" for "the 181st day after the date of enactment of this paragraph" and substituted "April 1, 1978," for "such 181st day".

Subsec. (k)(6). Pub. L. 95–216, §312(b)(3), inserted "(except as provided in paragraph (4)(C))" after "services involved" in introductory provisions.

Subsec. (k)(7). Pub. L. 95–216, §312(a)(2), substituted "prior to April 1, 1978," for "prior to the expiration of 180 days after the date of the enactment of this paragraph", "April 1, 1978," for "the 181st day after such date," and "prior to that date" for "prior to the first day of the calendar quarter in which such 181st day occurs".

Subsec. (k)(8). Pub. L. 95–216, §312(a)(3), (d), amended par. (8) first by substituting "prior to April 1, 1978," for "by the end of the 180-day period following the date of the enactment of this paragraph", "prior to April 1, 1978" for "within that period", and "on that date" for "on the 181st day following that date", and then further amending par. (8) as so amended by dividing the existing provisions into introductory provisions, subpar. (B), and closing provisions, inserting subpars. (A) and (C), substituting "by March 31, 1978" for "prior to April 1, 1978", "by that date" for "prior to April 1, 1978", and "on April 1, 1978" for "on that date" in subpar. (B) as so redesignated, and, in closing provisions, inserting ", or with respect to service constituting employment by reason of such request," after "in which the date of such filing or constructive filing occurs".

Subsec. (s). Pub. L. 95–216, §314(a), added subsec. (s).

Subsec. (t). Pub. L. 95–216, §315(a), added subsec. (t).

1976—Subsec. (b). Pub. L. 94–455, §1903(a)(3)(A), substituted ", of whatever nature, performed" for "performed after 1936 and prior to 1955 which was employment for purposes of subchapter A of chapter 9 of the Internal Revenue Code of 1939 under the law applicable to the period in which such service was performed, and any service, of whatever nature, performed after 1954" in introductory text.

Subsec. (b)(1). Pub. L. 94–455, §1903(a)(3)(B), struck out "65 Stat. 119;" before "7 U.S.C. 1461–1468".

Subsec. (b)(6)(B)(v). Pub. L. 94–455, §1903(a)(3)(C), substituted "Secretary of Transportation" for "Secretary of the Treasury".

Subsec. (b)(8)(B). Pub. L. 94–563, §1(b), inserted "or deemed to have been so filed under paragraph (4) or (5) of such subsection" after "filed pursuant to subsection (k) (or the corresponding subsection of prior law)" in provisions preceding cl. (i), inserted "(or deemed to have been filed)" after "filed" in cls. (i), (ii), and (iii), and substituted "is (or is deemed to be) in effect" for "is in effect" in provisions following cl. (iii).

Subsec. (b)(12)(B). Pub. L. 94–455, §1906(b)(13)(C), substituted "to the Secretary of the Treasury" for "to the Secretary".

Subsec. (b)(20). Pub. L. 94–455, §1207(e)(1)(A), added par. (20).

Subsec. (g)(3). Pub. L. 94–455, §1903(a)(3)(D), struck out "46 Stat. 1550, §3;" before "12 U.S.C. 1141j".

Subsec. (k)(1). Pub. L. 94–455, §1903(a)(3)(E), redesignated subpar. (G) as (F). Former subpars. (F) and (H), which related to the right of an organization to request before 1960 to have a certificate effective where such certificate was filed after 1955 but prior to the enactment of this subparagraph and the right of an organization to amend a certificate filed before 1966 to make such certificate effective for an earlier date than had been originally established, respectively, were struck out.

Subsec. (k)(2). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary" wherever appearing.

Subsec. (k)(4) to (8). Pub. L. 94–563, §1(c), added pars. (4) to (8).

Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary" wherever appearing.

Subsec. (l)(1). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (l)(2). Pub. L. 94–455, §1903(a)(3)(F), struck out ", but in no case prior to January 1, 1955" after "specified in the agreement".

Subsec. (l)(4) to (7), (10). Pub. L. 94–455, §1906(b)(13)(a), struck out "or his delegate" after "Secretary" wherever appearing.

Subsec. (m)(1). Pub. L. 94–455, §1903(a)(3)(G), struck out "after December 1956" after "include service performed".

1973—Subsec. (a)(1). Pub. L. 93–233, §5(b)(2), effective with respect to remuneration paid after 1973, substituted "$13,200" for "$12,600" in two places.

Pub. L. 93–233, §5(d), applicable only with respect to remuneration paid after 1973 (as provided in section 5(e) of Pub. L. 93–233, set out as a note under section 409 of Title 42), amended section 203(b)(2)(C) of the Pub. L. 92–336 (set out as 1973 Amendment note hereunder) substituting "$13,200" for "$12,600".

Pub. L. 93–66, §203(b)(2), effective with respect to remuneration paid after 1973, substituted "$12,600" for "$12,000" in two places.

Pub. L. 93–66, §203(d), applicable only with respect to remuneration paid after, and taxable years beginning after, 1973 (as provided in section 203(e) of Pub. L. 93–66, set out as a note under section 409 of Title 42), amended section 203(b)(2)(C) of Pub. L. 92–336 (set out as 1972 Amendment note hereunder) substituting "$12,600" for "$12,000".

1972—Subsec. (a)(1). Pub. L. 92–336, §203(b)(2)(A), substituted "$10,800" for "$9,000" in two places.

Pub. L. 92–336, §203(b)(2)(B), effective with respect to remuneration paid after 1973, substituted "$12,000" for "$10,800" in two places.

Pub. L. 92–336, §203(b)(2)(C), effective with respect to remuneration paid after 1974, substituted "the contribution and benefit base (as determined under section 230 of the Social Security Act)" for "$12,000" in two places, and "the calendar year with respect to which such contribution and benefit base is effective" for "any calendar year".

Subsec. (a)(9). Pub. L. 92–603, §104(i), substituted uniform provision of 62 years of age, for separate provisions for men and women of 65 and 62 years, respectively.

Subsec. (a)(14). Pub. L. 92–603, §122(b), added par. (14).

Subsec. (a)(15). Pub. L. 92–603, §138(b), added par. (15).

Subsec. (b)(7)(D). Pub. L. 92–603, §128(b), added subpar. (D).

Subsec. (b)(8)(A). Pub. L. 92–603, §123(a)(2), inserted provision that this subparagraph shall not apply to service performed by a member of such religious order in the exercise of such duties if an election of coverage under subsec. (r) is in effect with respect to such order, or with respect to the autonomous subdivision thereof to which such member belongs.

Subsec. (b)(10)(B). Pub. L. 92–603, §129(a)(2), inserted provisions relating to service performed in the employ of organizations described in section 509(a)(3) of this title.

Subsec. (i)(4). Pub. L. 92–603, §123(c)(2), added par. (4).

Subsec. (r). Pub. L. 92–603, §123(b), added subsec. (r).

1971—Subsec. (a)(1). Pub. L. 92–5 substituted "$9,000" for "$7,800" in two places.

1969—Subsec. (k)(1)(F)(i), (G)(i), (H)(i). Pub. L. 91–172, §943(c)(1)–(3), inserted "or pay tax" after "tax return".

1968—Subsec. (a)(1). Pub. L. 90–248, §108(b)(2), substituted "$7,800" for "$6,600" wherever appearing.

Subsec. (a)(13). Pub. L. 90–248, §504(a), added par. (13).

Subsec. (b)(3)(B). Pub. L. 90–248, §123(b), provided for inclusion of family employment in a private home in definition of "employment," upon compliance with conditions described in cls. (i) to (iii).

Subsec. (b)(6)(C)(iv). Pub. L. 90–248, §403(i)(1), substituted "section 5351(2) of title 5, United States Code" for "section 2 of the Act of August 4, 1967" and struck out "; 5 U.S.C., sec. 1052" at end of parenthetical text.

Subsec. (b)(6)(C)(vi). Pub. L. 90–248, §403(i)(2), substituted "subchapter III of chapter 83 of title 5, United States Code," for "the Civil Service Retirement Act".

Subsec. (b)(7)(C)(ii). Pub. L. 90–248, §403(i)(3), substituted "section 5351(2) of title 5, United States Code" for "section 2 of the Act of August 4, 1947" and struck out "; 5 U.S.C. 1052" at end of parenthetical text.

1965—Subsec. (a)(1). Pub. L. 89–97, §320(b)(2), substituted "$6,600" for "$4,800" wherever appearing.

Subsec. (a)(12). Pub. L. 89–97, §313(c)(3), added par. (12).

Subsec. (b)(6)(C)(iv). Pub. L. 89–97, §311(b)(4), inserted ", other than as a medical or dental intern or a medical or dental resident in training".

Subsec. (b)(7)(C). Pub. L. 89–97, §317(b)(3), added subpar. (C).

Subsec. (b)(13). Pub. L. 89–97, §311(b)(5), struck out from the definition of employment the exclusion of service performed as an intern in the employ of a hospital by an individual who has completed a 4 years' course in a medical school chartered or approved pursuant to State law.

Subsec. (k)(1)(B)(iii). Pub. L. 89–97, §316(a)(1), substituted "such date may not be earlier than the first day of the twentieth" for ", in the case of a certificate filed prior to January 1, 1960, such date may not be earlier than January 1, 1956, and in the case of a certificate filed after 1959, such date may not be earlier than the first day of the fourth".

Subsec. (k)(1)(H). Pub. L. 89–97, §316(b), added subpar. (H).

Subsec. (q). Pub. L. 89–97, §313(c)(4), added subsec. (q).

1964—Subsec. (a)(11). Pub. L. 88–650 added par. (11).

Pub. L. 88–272 substituted "is a plan described in section 403(a), or" for "meets the requirements of section 401(a)(3), (4), (5), and (6)" in subpar. (5)(B), and added subpar. (5)(C).

1961—Subsec. (b)(19). Pub. L. 87–256 added par. (19).

Subsec. (i)(3). Pub. L. 87–293, §202(a)(1), added par. (3).

Subsec. (p). Pub. L. 87–293, §202(a)(2), added subsec. (p).

1960—Subsec. (b)(3). Pub. L. 86–778, §104(b), designated existing provisions as cl. (A) and struck out provisions which related to service performed by an individual in the employ of his son or daughter, and added cl. (B).

Subsec. (b)(7). Pub. L. 86–778, §103(n), excluded service in the employ of the Government of Guam or the Government of American Samoa or any political subdivision thereof, or of any instrumentality of any one or more of the foregoing which is wholly owned thereby.

Subsec. (b)(18). Pub. L. 86–778, §103(o), added par. (18).

Subsec. (e). Pub. L. 86–778, §103(p), struck out a reference to Hawaii in cl. (1), and included Guam and American Samoa and cls. (1) and (2).

Pub. L. 86–624 struck out "Hawaii," before "the District of Columbia", in cl. (1).

Subsec. (k)(1)(A). Pub. L. 86–778, §105(a)(1), (2), struck out "and that at least two-thirds of its employees concur in the filing of the certificate" after "extended to service performed by its employees", and substituted "of each employee (if any) who concurs" for "of each employee who concurs".

Subsec. (k)(1)(E). Pub. L. 86–778, §105(a)(3), substituted "in either group, or may file a separate certificate pursuant to such subparagraph with respect to the employees in each group" for "in one of the groups if at least two-thirds of the employees in such group concur in the filing of the certificate. The organization may also file such a certificate with respect to the employees in the other group if at least two-thirds of the employees in such other group concur in the filing of such certificate."

1959—Subsec. (b)(6)(B)(ii). Pub. L. 86–168 substituted "Federal land bank association" for "national farm loan association", and included service in the employ of Federal land banks, Federal intermediate credit banks and banks for cooperatives.

Subsec. (e). Pub. L. 86–70 struck out "Alaska," before "Hawaii".

1958—Subsec. (a)(1). Pub. L. 85–840, §402(b), substituted "$4,800" for "$4,200" wherever appearing.

Subsec. (b)(1). Pub. L. 85–840, §404(a), struck out provisions which excluded from definition of "employment" service performed in connection with the production or harvesting of any commodity defined as an agricultural commodity in section 1141j of title 12.

Subsec. (b)(8)(B). Pub. L. 85–840, §405(b), made subparagraph inapplicable to service performed during the period for which a certificate is in effect if such service is performed by an employee who, after the calendar quarter in which the certificate was filed with respect to a group described in section 321(k)(1)(E) of this title, became a member of such group, and made subparagraph applicable with respect to service performed by an employee as a member of a group described in section 3121(k)(1)(E) of this title with respect to which no certificate is in effect.

Subsec. (k)(1). Pub. L. 85–840, §405(a), permitted amendment of the list at any time prior to the expiration of the twenty-fourth month following the calendar quarter in which the certificate is filed, allowed an organization to provide that the certificate shall be in effect for the period beginning with the first day of any calendar quarter preceding the calendar quarter in which the certificate is filed, except that, in the case of a certificate filed prior to Jan. 1, 1960, such date may not be earlier than Jan. 1, 1956, and in the case of a certificate filed after 1959, such date may not be earlier than the first day of the fourth calendar quarter preceding the quarter in which such certificate is first made the certificate effective in the case of services performed by an employee whose name appears on a supplemental list only with respect to service performed by the employee for the period beginning with the first day of the calendar quarter in which the supplemental list is filed, required organizations described in subpar. (A) which employ both individuals who are in

positions covered by a pension, annuity, retirement, or similar fund or system established by a State or political subdivision thereof and individuals who are not in such positions, to divide their employees into two separate groups, authorized the filing of requests by organizations which filed certificates after 1955 but prior to Aug. 28, 1958, to have such certificates effective, with respect to services of certain individuals, for the period beginning with the first day of any calendar quarter preceding the first calendar quarter for which they are effective and following the last calendar quarter of 1955, and provided for the due date and payment of tax for certain calendar quarters and for the expiration of the statutory period of assessment.

Subsec. (l)(3). Pub. L. 85–866 substituted "by" for "be" in heading.

1956—Subsec. (a)(8)(B). Act Aug. 1, 1956, ch. 836, §201(h)(1), included within definition of wages cash remuneration of $150 or more, and cash remuneration computed on a time basis where the employee performs agricultural labor for the employer on 20 days or more during the calendar year.

Subsec. (a)(9). Act Aug. 1, 1956, ch. 836, §201(b), excluded payments made to a woman after she attains the age of 62.

Subsec. (b)(1)(B). Act Aug. 1, 1956, ch. 836, §201(c), excepted from term "employment" services performed by foreign agricultural workers lawfully admitted from any foreign country or possession thereof, on a temporary basis to perform agricultural labor.

Subsec. (b)(6)(B)(ii). Act Aug. 1, 1956, ch. 836, §201(d)(1), included service performed in the employ of a Federal Home Loan Bank.

Subsec. (b)(6)(C)(vi). Act Aug. 1, 1956, ch. 836, §201(d)(2), substituted "Civil Service Retirement Act" for "Civil Service Retirement Act of 1930", and inserted "(other than the retirement system of the Tennessee Valley Authority)" after "retirement system".

Subsec. (b)(16), (17). Act Aug. 1, 1956, ch. 836, §§201(e)(1), 121d, added pars. (16) and (17).

Subsec. (i). Act Aug. 1, 1956, ch. 837, §410, designated existing provisions as par. (1) and added par. (2).

Subsec. (k)(1). Act Aug. 1, 1956, ch. 836, §201(k), (l), inserted "or at any time prior to January 1, 1959, whichever is the later" after "the certificate is in effect", and substituted "the first day of the calendar quarter in which such certificate is filed or the first day of the succeeding calendar quarter, as may be specified in the certificate," for "the first day following the close of the calendar quarter in which such certificate is filed,".

Subsec. (l)(6). Act Aug. 1, 1956, ch. 836, §103(j), inserted reference to the Federal Disability Insurance Trust Fund.

Subsec. (l)(8)(A). Act Aug. 1, 1956, ch. 836, §201(j), substituted "not less than 20 percent" for "more than 50 percent".

Subsecs. (m), (n). Act Aug. 1, 1956, ch. 837, §411(a), added subsecs. (m) and (n).

Subsec. (o). Act Aug. 1, 1956, ch. 836, §201(h)(2), added subsec. (o).

1954—Subsec. (a)(1). Act Sept. 1, 1954, §204(a), substituted "$4,200" for "$3,600" wherever appearing.

Subsec. (a)(7)(B). Act Sept. 1, 1954, §204(b)(1), made coverage of domestic service dependent solely on receipt of $50 in cash wages in a calendar quarter by an employee from an employer for such service.

Subsec. (a)(7)(C). Act Sept. 1, 1954, §204(b)(2), added subpar. (C).

Subsec. (a)(8). Act Sept. 1, 1954, §204(b)(3), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (b)(1). Act Sept. 1, 1954, §205(a), made coverage of agricultural labor depend solely on the payment of cash remuneration of $100 or more per year, thereby eliminating the need for an agricultural laborer to have served a qualifying calendar quarter and to have worked on a full time basis for 60 days during a succeeding calendar quarter and to have received $50 or more for his labor during such succeeding calendar quarter, removed the specific exception from employment of services performed in connection with the ginning of cotton, and added an exception for services performed by West Indian agricultural workers lawfully admitted to the United States on a temporary basis.

Subsec. (b)(3). Act Sept. 1, 1954, §205(b), struck out par. (3) and redesignated pars. (4) to (14) as (3) to (13), respectively.

Subsec. (b)(4). Act Sept. 1, 1954, §205(c), amended par. (4), as redesignated, to make the exception with respect to services on non-American vessels or aircraft applicable only if the individual is not a United States citizen or the employer is not an American employer.

Subsec. (b)(6)(B). Act Sept. 1, 1954, §205(d)(1)(A), amended par. (6), as redesignated, by inserting in subpar. (B) "by an individual" after "service is performed" and "and if such service is covered by a retirement system established by such instrumentality" after "December 31, 1950".

Subsec. (b)(6)(B)(v). Act Sept. 1, 1954, §205(d)(1)(B), amended par. (6), as redesignated, by adding cl. (v) to subpar. (B).

Subsec. (b)(6)(C). Act Sept. 1, 1954, §205(d)(2), struck out exception from coverage for services in the following categories: temporary employees in the Post Office Department field service; temporary census

taking employees of the Bureau of the Census; Federal employees paid on a contract or fee basis; Federal employees receiving compensation of $12 a year or less; certain consular agents; individuals employed under Federal unemployment relief programs; and members of State, county, or community committees under the Commodity Stabilization Service and similar bodies, unless such bodies are composed exclusively of full-time Federal employees, and limited the exclusion of inmates or patients of United States institutions to inmates of penal institutions.

Subsec. (b)(14) to (17). Act Sept. 1, 1954, §205(e), struck out par. (15) and redesignated pars. (16) and (17) as (14) and (15), respectively.

Subsec. (c). Act Sept. 1, 1954, §205(b), substituted "subsection (b)(9)" for "subsection (b)(10)".

Subsec. (d)(3)(C). Act Sept. 1, 1954, §206(a), struck out requirement that performance of services of homeworkers be subject to State licensing requirements.

Subsec. (k)(1). Act Sept. 1, 1954, §§205(b), 207, substituted "(b)(8)(B)" for "(b)(9)(B)" and provided that the list accompanying any certificate filed by a nonprofit organization with respect to its lay employees may be amended only within a period of two years after the certificate takes effect and provided that a supplemental list filed after the first month following the first calendar quarter for which the certificate is in effect shall be in effect only as to those services performed by an individual on the list which are performed by him after the calendar quarter in which the supplemental list is filed.

Subsec. (l). Act Sept. 1, 1954, §209, added subsec. (l).

CHANGE OF NAME

"United States magistrate judge" substituted for "United States magistrate" in subsec. (b)(5)(E) pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–458 effective as if included in the provisions of Pub. L. 109–280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110–458, set out as a note under section 72 of this title.

Pub. L. 110–245, title I, §115(d), June 17, 2008, 122 Stat. 1637, provided that: "The amendments made by this section [amending this section, sections 3306 and 3401 of this title, and section 409 of Title 42, The Public Health and Welfare] shall take effect as if included in section 5 of the Mortgage Forgiveness Debt Relief Act of 2007 [Pub. L. 110–142]."

Pub. L. 110–245, title III, §302(c), June 17, 2008, 122 Stat. 1648, provided that: "The amendment made by this section [amending this section and section 410 of Title 42, The Public Health and Welfare] shall apply to services performed in calendar months beginning more than 30 days after the date of the enactment of this Act [June 17, 2008]."

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–172 effective as if included in the provision of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 8(b) of Pub. L. 110–172, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 2004 AMENDMENTS

Amendment by Pub. L. 108–375 applicable to travel benefits provided after Oct. 28, 2004, see section 585(b)(3) of Pub. L. 108–375, set out as a note under section 134 of this title.

Amendment by section 251(a)(1)(A) of Pub. L. 108–357 applicable to stock acquired pursuant to options exercised after Oct. 22, 2004, see section 251(d) of Pub. L. 108–357, set out as a note under section 421 of this title.

Amendment by section 320(b)(1) of Pub. L. 108–357 applicable to amounts received by an individual in taxable years beginning after Dec. 31, 2003, see section 320(c) of Pub. L. 108–357, set out as a note under section 108 of this title.

Amendment by section 802(c)(1) of Pub. L. 108–357 effective Mar. 4, 2003, see section 802(d) of Pub. L. 108–357, set out as an Effective Date note under section 4985 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–121 applicable to taxable years beginning after Dec. 31, 2002, see section 106(c) of Pub. L. 108–121, set out as a note under section 134 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–277, div. A, §101(h) [title VIII, §805], Oct. 21, 1998, 112 Stat. 2681–480, 2681–538, provided that: "Except as otherwise specifically provided, this title [amending this section and section 410 of Title 42, The Public Health and Welfare, and amending provisions set out as a note under this section] and the amendments made by this title shall take effect as if included in the enactment of title XI of the Balanced Budget Act of 1997 [title XI of Pub. L. 105–33, see Effective Date of 1997 Amendment note below]."

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–33, title XI, §11246(b)(4), formerly §11246(b)(3), Aug. 5, 1997, 111 Stat. 756, renumbered §11246(b)(4), by Pub. L. 105–277, div. A, §101(h) [title VIII, §802(a)(1)], Oct. 21, 1998, 112 Stat. 2681–480, 2681–532, provided that: "The amendments made by this subsection [amending this section and section 410 of Title 42, The Public Health and Welfare] shall apply with respect to all months beginning after the date on which the Director of the Office of Personnel Management issues regulations to carry out section 11–1726, District of Columbia Code (as amended by paragraph (1))."

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, §1116(a)(3), Aug. 20, 1996, 110 Stat. 1762, provided that:

"(A) IN GENERAL.—The amendments made by this subsection [amending this section, section 6050A of this title, and section 410 of Title 42, The Public Health and Welfare] shall apply to remuneration paid—

"(i) after December 31, 1994, and

"(ii) after December 31, 1984, and before January 1, 1995, unless the payor treated such remuneration (when paid) as being subject to tax under chapter 21 of the Internal Revenue Code of 1986.

"(B) REPORTING REQUIREMENT.—The amendment made by paragraph (1)(C) [amending section 6050A of this title] shall apply to remuneration paid after December 31, 1996."

Amendment by section 1421(b)(8)(A) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1421(e) of Pub. L. 104–188, set out as a note under section 72 of this title.

Pub. L. 104–188, title I, §1458(c)(2), Aug. 20, 1996, 110 Stat. 1820, provided that: "The amendments made by subsection (b) [amending this section and section 409 of Title 42, The Public Health and Welfare] shall apply to remuneration paid after December 31, 1996."

EFFECTIVE DATE OF 1994 AMENDMENTS

Amendment by section 2(a)(1)(A), (B) of Pub. L. 103–387 applicable to remuneration paid after Dec. 31, 1993, and amendment by section 2(a)(1)(C) of Pub. L. 103–387 applicable to services performed after Dec. 31, 1994, see section 2(a)(3) of Pub. L. 103–387, set out as a note under section 3102 of this title.

Amendment by section 108(h)(2) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of Title 42, The Public Health and Welfare.

Amendment by section 303(a)(2), (b)(2) of Pub. L. 103–296 applicable with respect to service performed on or after Jan. 1, 1995, see section 303(e) of Pub. L. 103–296, set out as a note under section 410 of Title 42.

Amendment by section 319(a)(1), (5) of Pub. L. 103–296 applicable with respect to service performed after calendar quarter following calendar quarter in which Aug. 15, 1994, occurs, see section 319(c) of Pub. L. 103–296, set out as a note under section 1402 of this title.

Amendment by section 320(a)(1)(C) of Pub. L. 103–296 effective with calendar quarter following Aug. 15, 1994, see section 320(c) of Pub. L. 103–296, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to 1994 and later calendar years, see section 13207(e) of Pub. L. 103–66, set out as a note under section 1402 of this title.

EFFECTIVE DATE OF 1992 AMENDMENTS

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

Amendment by Pub. L. 102–318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102–318, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11331(a) of Pub. L. 101–508 applicable to 1991 and later calendar years, see section 11331(e) of Pub. L. 101–508, set out as a note under section 1402 of this title.

Pub. L. 101–508, title XI, §11332(d), Nov. 5, 1990, 104 Stat. 1388–470, provided that: "The amendments made by this section [amending this section and sections 410 and 418 of Title 42, The Public Health and Welfare] shall apply with respect to service performed after July 1, 1991."

EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by Pub. L. 101–239 applicable with respect to any agreement in effect under section 3121(l) of this title on or after June 15, 1989, with respect to which no notice of termination is in effect on such date, see section 10201(c) of Pub. L. 101–239, set out as a note under section 406 of this title.

Amendment by Pub. L. 101–140 effective as if included in section 1151 of Pub. L. 99–514, see section 203(c) of Pub. L. 101–140, set out as a note under section 79 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1011B(a)(22)(F), Nov. 10, 1988, 102 Stat. 3486, provided that: "The amendments made by this paragraph [amending this section, sections 3231, 3306, and 3401 of this title, and section 409 of Title 42, The Public Health and Welfare] shall not apply to any individual who separated from service with the employer before January 1, 1989."

Pub. L. 100–647, title I, §1018(r)(2)(B), Nov. 10, 1988, 102 Stat. 3586, provided that: "The amendment made by subparagraph (A) [amending this section] shall apply to services performed after March 31, 1986."

Amendment by sections 1001(d)(2)(C)(i), (g)(4)(B)(i), 1011(e)(8), 1011B(a)(23)(A), and 1018(u)(35) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 3043(c)(2) of Pub. L. 100–647 applicable to all periods beginning before, on, or after Nov. 10, 1988, with no inference created as to existence or nonexistence or scope of any exemption from tax for income derived from fishing rights secured as of Mar. 17, 1988, by any treaty, law, or Executive Order, see section 3044 of Pub. L. 100–647, set out as an Effective Date note under section 7873 of this title.

Pub. L. 100–647, title VIII, §8015(b)(3), Nov. 10, 1988, 102 Stat. 3792, provided that: "The amendments made by this subsection [amending this section and section 410 of Title 42, The Public Health and Welfare] shall apply as if such amendments had been included or reflected in section 304 of the Federal Employees' Retirement System Act of 1986 (100 Stat. 606) [Pub. L. 99–335] at the time of its enactment [June 6, 1986]."

Pub. L. 100–647, title VIII, §8015(c)(3), Nov. 10, 1988, 102 Stat. 3792, provided that: "The amendments made by this subsection [amending this section and section 410 of Title 42] shall apply to any individual only upon the performance by such individual of service described in subparagraph (C), (D), (E), (F), (G), or (H) of section 210(a)(5) of the Social Security Act (42 U.S.C. 410(a)(5)) on or after the date of the enactment of this Act [Nov. 10, 1988]."

Amendment by section 8016(a)(3)(A), (4)(A), (C) of Pub. L. 100–647 effective Nov. 10, 1988, except that any amendment to a provision of a particular Public Law which is referred to by its number, or to a provision of the Social Security Act [42 U.S.C. 301 et seq.], or to this title as added or amended by a provision of a particular Public Law which is so referred to, effective as though included or reflected in the relevant provisions of that Public Law at the time of its enactment, see section 8016(b) of Pub. L. 100–647, set out as a note under section 3111 of this title.

Pub. L. 100–647, title VIII, §8017(c), Nov. 10, 1988, 102 Stat. 3794, provided that: "The amendments made by this section [amending this section and section 409 of Title 42, The Public Health and Welfare] shall take effect as if included in the amendments made by section 9002 of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203]."

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title IX, §9001(d), Dec. 22, 1987, 101 Stat. 1330–286, provided that: "The amendments made by this section [amending this section and sections 409, 410, and 429 of Title 42, The Public Health and Welfare] shall apply with respect to remuneration paid after December 31, 1987."

Pub. L. 100–203, title IX, §9002(c), Dec. 22, 1987, 101 Stat. 1330–287, provided that: "The amendments made by this section [amending this section and section 409 of Title 42] shall apply with respect to remuneration for agricultural labor paid after December 31, 1987."

Pub. L. 100–203, title IX, §9003(b), Dec. 22, 1987, 101 Stat. 1330–287, as amended by Pub. L. 100–647, title VIII, §8013(a), Nov. 10, 1988, 102 Stat. 3789, provided that: "The amendments made by subsection (a) [amending this section and section 409 of Title 42] shall apply with respect to group-term life insurance coverage in effect after December 31, 1987, except that such amendments shall not apply with respect to payments by the employer (or a successor of such employer) for group-term life insurance for such employer's former employees who separated from employment with the employer on or before December 31, 1988, to the extent that such payments are not for coverage for any such employee for any period for which such employee is employed by such employer (or a successor of such employer) after the date of such separation."

[Pub. L. 100–647, title VIII, §8013(b), Nov. 10, 1988, 102 Stat. 3790, provided that: "The amendment

made by subsection (a) [amending section 9003(b) of Pub. L. 100–203, set out above] shall apply as if such amendment had been included or reflected in section 9003(b) of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203] at the time of its enactment."]

Pub. L. 100–203, title IX, §9004(c), Dec. 22, 1987, 101 Stat. 1330–288, provided that: "The amendments made by this section [amending this section and section 410 of Title 42] shall apply with respect to to remuneration paid after December 31, 1987."

Pub. L. 100–203, title IX, §9005(c), Dec. 22, 1987, 101 Stat. 1330–288, provided that: "The amendments made by this section [amending this section and section 410 of Title 42] shall apply with respect to to remuneration paid after December 31, 1987."

Amendment by section 9006(a), (b)(2) of Pub. L. 100–203 applicable with respect to tips received and wages paid on or after Jan. 1, 1988, see section 9006(c) of Pub. L. 100–203, set out as a note under section 3111 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 122(e)(1) of Pub. L. 99–514 applicable to prizes and awards granted after Dec. 31, 1986, see section 151(c) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 1108(g)(7) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1986, see section 1108(h) of Pub. L. 99–514, set out as a note under section 219 of this title.

Amendment by section 1151(d)(2)(A) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1983, see section 1151(k)(5) of Pub. L. 99–514, set out as a note under section 79 of this title.

Amendment by section 1882(c) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Pub. L. 99–514, title XVIII, §1895(b)(18)(C), Oct. 22, 1986, 100 Stat. 2935, provided that: "The amendments made by this paragraph [amending this section and section 410 of Title 42, The Public Health and Welfare] shall apply to services performed after March 31, 1986."

Amendment by Pub. L. 99–509, except as otherwise provided, effective with respect to payments due with respect to wages paid after Dec. 31, 1986, including wages paid after such date by a State (or political subdivision thereof) that modified its agreement pursuant to section 418(e)(2) of Title 42, see section 9002(d) of Pub. L. 99–509, set out as a note under section 418 of Title 42.

Amendment by section 12112(b) of Pub. L. 99–272 effective with respect to service performed after Dec. 31, 1983, see section 12112(c) of Pub. L. 99–272, set out as a note under section 409 of Title 42.

Pub. L. 99–272, title XIII, §13205(d)(1), Apr. 7, 1986, 100 Stat. 318, provided that: "The amendments made by subsection (a) [amending this section and sections 1402, 3122, 3125, 6205, and 6413 of this title] shall apply to services performed after March 31, 1986."

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–221 applicable to any return to performance of service in employ of United States, or of an instrumentality thereof, after 1983, see section 3(c) of Pub. L. 99–221, set out as a note under section 410 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 67(c) of Pub. L. 98–369 applicable to payments under agreements entered into or renewed after June 14, 1984, in taxable years ending after such date, with contracts entered into before June 15, 1984, which are amended after June 14, 1984, in any significant relevant aspect to be treated as a contract entered into after June 14, 1984, see section 67(e) of Pub. L. 98–369, set out as an Effective Date note under section 280G of this title.

Amendment by section 491(d)(36) of Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

Amendment by section 531(d)(1)(A) of Pub. L. 98–369 effective Jan. 1, 1985, see section 531(h) of Pub. L. 98–369, set out as an Effective Date note under section 132 of this title.

Amendment by section 2601(b) of Pub. L. 98–369 effective with respect to service performed after Dec. 31, 1983, with enumerated exceptions, see section 2601(f) of Pub. L. 98–369, set out as a note under section 410 of Title 42, The Public Health and Welfare.

Amendment by section 2603(a)(2), (b) of Pub. L. 98–369 applicable to service performed after Dec. 31, 1983, see section 2603(e) of Pub. L. 98–369, set out as a note under section 410 of Title 42.

Pub. L. 98–369, div. B, title VI, §2661(o)(3), July 18, 1984, 98 Stat. 1159, provided that the amendment made by that section is effective Jan. 1, 1984.

Amendment by section 2663 of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing

or affecting any right, liability, status or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of Title 42.

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 98–21, title I, §101(d), Apr. 20, 1983, 97 Stat. 70, as amended by Pub. L. 98–369, div. B, title VI, §2662(a), July 18, 1984, 98 Stat. 1159, provided that: "The amendments made by this section [amending this section and sections 409 and 410 of Title 42, The Public Health and Welfare] shall be effective with respect to service performed after December 31, 1983."

Pub. L. 98–21, title I, §102(c), Apr. 20, 1983, 97 Stat. 71, provided that: "The amendments made by the preceding provisions of this section [amending this section and section 410 of Title 42] shall be effective with respect to service performed after December 31, 1983 (but the provisions of sections 2 and 3 of Public Law 94–563 [set out below] and section 312(c) of Public Law 95–216 [set out below] shall continue in effect, to the extent applicable, as though such amendments had not been made)."

Amendment by section 321 of Pub. L. 98–21, applicable to agreements entered into after Apr. 20, 1983, except that at the election of any American employer such amendment shall also apply to any agreement entered into on or before Apr. 20, 1983, see section 321(f) of Pub. L. 98–21 set out as a note under section 406 of this title.

Pub. L. 98–21, title III, §322(c), Apr. 20, 1983, 97 Stat. 121, provided that: "The amendments made by this section [amending this section, section 1402 of this title, and sections 410 and 411 of Title 42, The Public Health and Welfare] shall be effective for taxable years beginning on or after the date of the enactment of this Act [Apr. 20, 1983]."

Pub. L. 98–21, title III, §323(c)(1), Apr. 20, 1983, 97 Stat. 121, provided that: "The amendments made by subsection (a) [amending this section and section 410 of Title 42] shall apply to remuneration paid after December 31, 1983."

Pub. L. 98–21, title III, §324(d), Apr. 20, 1983, 97 Stat. 125, as amended by Pub. L. 98–369, div. B, title VI, §2662(f)(2), July 18, 1984, 98 Stat. 1159; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) Except as otherwise provided in this subsection, the amendments made by this section [amending this section, section 3306 of this title, and sections 403 and 409 of Title 42 and enacting provisions set out as a note under section 3306 of this title] shall apply to remuneration paid after December 31, 1983. For purposes of applying such amendments to remuneration paid after December 31, 1983, which would have been taken into account before January 1, 1984, if such amendments had applied to periods before January 1, 1984, such remuneration shall be taken into account when paid (or, at the election of the payor, at the time which would be appropriate if such amendments had applied).

"(2) Except as otherwise provided in this subsection, the amendments made by subsection (b) [amending section 3306 of this title and enacting provisions set out as a note under section 3306 of this title] shall apply to remuneration paid after December 31, 1984. For purposes of applying such amendments to remuneration paid after December 31, 1984, which would have been taken into account before January 1, 1985, if such amendments had applied to periods before January 1, 1985, such remuneration shall be taken into account when paid (or, at the election of the payor, at the time which would be appropriate if such amendments had applied).

"(3) The amendments made by this section shall not apply to employer contributions made during 1984 and attributable to services performed during 1983 under a qualified cash or deferred arrangement (as defined in section 401(k) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) if, under the terms of such arrangement as in effect on March 24, 1983—

"(A) the employee makes an election with respect to such contribution before January 1, 1984, and

"(B) the employer identifies the amount of such contribution before January 1, 1984.

In the case of the amendments made by subsection (b), the preceding sentence shall be applied by substituting '1985' for '1984' each place it appears and by substituting 'during 1984' for 'during 1983'.

"(4) In the case of an agreement in existence on March 24, 1983, between a nonqualified deferred compensation plan (as defined in section 3121(v)(2)(C) of the Internal Revenue Code of 1986, as added by this section) and an individual—

"(A) the amendments made by this section (other than subsection (b)) shall apply with respect to services performed by such individual after December 31, 1983, and

"(B) the amendments made by subsection (b) shall apply with respect to services performed by such individual after December 31, 1984.

The preceding sentence shall not apply in the case of a plan to which section 457(a) of such Code applies. For purposes of this paragraph, any plan or agreement to make payments described in paragraph (2), (3), or

(13)(A)(iii) of section 3121(a) of such Code (as in effect on the day before the date of the enactment of this Act [Apr. 20, 1983]) shall be treated as a nonqualified deferred compensation plan."

Pub. L. 98–21, title III, §327(d), Apr. 20, 1983, 97 Stat. 127, as amended by Pub. L. 98–369, div. B, title VI, §2662(g), July 18, 1984, 98 Stat. 1160; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) The amendment made by subsection (a) [amending this section and section 409 of Title 42] shall apply to remuneration paid after December 31, 1983.

"(2) The amendments made by subsection (b) and subsection (c)(4) [amending this section, section 3306 of this title, and section 409 of Title 42] shall apply to remuneration (other than amounts excluded under section 119 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) paid after March 4, 1983, and to any such remuneration paid on or before such date which the employer treated as wages when paid.

"(3) The amendments made by paragraphs (1), (2), and (3) of subsection (c) [amending section 3306 of this title] shall apply to remuneration paid after December 31, 1984."

Pub. L. 98–21, title III, §328(d), Apr. 20, 1983, 97 Stat. 128, provided that:

"(1) Except as provided in paragraph (2), the amendments made by this section [amending this section, section 3306 of this title, and section 409 of Title 42] shall apply to remuneration paid after December 31, 1983.

"(2) The amendments made by subsection (c) [amending section 3306 of this title] shall apply to remuneration paid after December 31, 1984."

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title II, §278(c)(1), Sept. 3, 1982, 96 Stat. 562, provided that: "The amendments made by subsection (a) [amending this section and sections 1402 and 3122 of this title] shall apply to remuneration paid after December 31, 1982."

EFFECTIVE DATE OF 1981 AMENDMENTS

Pub. L. 97–123, §3(g), Dec. 29, 1981, 95 Stat. 1663, provided that:

"(1) Except as provided in paragraph (2), this section (and the amendments made by this section) [amending this section, section 3231 of this title, and section 409 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under this section and section 3101 of this title] shall apply to remuneration paid after December 31, 1981.

"(2) This section (and the amendments made by this section) shall not apply with respect to any payment made by a third party to an employee pursuant to a contractual relationship of an employer with such third party entered into before December 14, 1981, if—

"(A) coverage by such third party for the group in which such employee falls ceases before March 1, 1982, and

"(B) no payment by such third party is made to such employee under such relationship after February 28, 1982."

Amendment by Pub. L. 97–34 applicable to remuneration paid after Dec. 31, 1981, see section 124(f) of Pub. L. 97–34, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Pub. L. 96–499, title XI, §1141(c), Dec. 5, 1980, 94 Stat. 2694, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section, section 3306 of this title, and section 409 of Title 42, The Public Health and Welfare] shall apply with respect to remuneration paid after December 31, 1980.

"(2) EXCEPTION FOR STATE AND LOCAL GOVERNMENTS.—

"(A) The amendments made by this section (insofar as they affect the application of section 218 of the Social Security Act [42 U.S.C. 418]) shall not apply to any payment made before January 1, 1984, by any governmental unit for positions of a kind for which all or a substantial portion of the social security employee taxes were paid by such governmental unit (without deduction from the remuneration of the employee) under the practices of such governmental unit in effect on October 1, 1980.

"(B) For purposes of subparagraph (A), the term 'social security employee taxes' means the amount required to be paid under section 218 of the Social Security Act [42 U.S.C. 418] as the equivalent of the taxes imposed by section 3101 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].

"(C) For purposes of subparagraph (A), the term 'Governmental unit' means a State or political subdivision thereof within the meaning of section 218 of the Social Security Act [42 U.S.C. 418]."

Pub. L. 96–222, title I, §101(b)(1)(E), Apr. 1, 1980, 94 Stat. 205, provided that: "The amendments made by subparagraph (B) of subsection (a)(10) [amending this section and section 3306 of this title] shall apply to

payments made on or after January 1, 1979."

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95–600 applicable with respect to taxable years beginning after Dec. 31, 1978, see section 164(d) of Pub. L. 95–600, set out as an Effective Date note under section 127 of this title.

Pub. L. 95–472, §3(d), Oct. 17, 1978, 92 Stat. 1333, provided that: "The amendments made by this section [amending this section, section 3306 of this title, and section 409 of Title 42, The Public Health and Welfare] shall apply with respect to taxable years beginning after December 31, 1976."

EFFECTIVE DATE OF 1977 AMENDMENT

Pub. L. 95–216, title III, §312(h), Dec. 20, 1977, 91 Stat. 1535, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by subsections (a), (b), (d), (e), (f), and (g) of this section [amending this section and provisions set out below] shall be effective as though they had been included as a part of the amendments made to section 3121(k) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] by the first section of Public Law 94–563 (or, in the case of the amendments made by subsection (e), as a part of section 3 of such Public Law)."

Pub. L. 95–216, title III, §314(c), Dec. 20, 1977, 91 Stat. 1536, provided that: "The amendments made by this section [amending this section and section 3306 of this title] shall apply with respect to wages paid after December 31, 1978."

Amendment by section 315(a) of Pub. L. 95–216 applicable with respect to wages paid with respect to employment performed in months after Dec. 1977, see section 315(c) of Pub. L. 95–216, set out as a note under section 3111 of this title.

Pub. L. 95–216, title III, §356(e), Dec. 20, 1977, 91 Stat. 1556, provided that: "The amendments made by this section [amending this section] shall apply with respect to remuneration paid and services rendered after December 31, 1977."

EFFECTIVE DATE OF 1976 AMENDMENTS

Pub. L. 94–563, §1(d), Oct. 19, 1976, 90 Stat. 2658, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by this section [amending this section and section 410 of Title 42, The Public Health and Welfare], shall apply with respect to services performed after 1950, to the extent covered by waiver certificates filed or deemed to have been filed under section 3121(k)(4) or (5) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by such amendments)."

Pub. L. 94–455, title XII, §1207(f)(4), Oct. 4, 1976, 90 Stat. 1708, as amended by Pub. L. 95–600, title VII, §701(z)(1), Nov. 6, 1978, 92 Stat. 2921; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(A) The amendments made by paragraphs (1)(A) and (2)(A) of subsection (e) [amending this section and section 410 of Title 42, The Public Health and Welfare] shall apply to services performed after December 31, 1954. The amendments made by paragraphs (1)(B), (1)(C), and (2)(B) of such subsection [amending sections 1401 and 3401 of this title and section 411 of Title 42] shall apply to taxable years ending after December 31, 1954. The amendments made by paragraph (3) of such subsection [enacting section 6050A and amending section 6652 of this title] shall apply to calendar years beginning after the date of the enactment of this Act [Oct. 4, 1976].

"(B) Notwithstanding subparagraph (A), if the owner or operator of any boat treated a share of the boat's catch of fish or other aquatic animal life (or a share of the proceeds therefrom) received by an individual after December 31, 1954, and before the date of the enactment of this act [Oct. 4, 1976] for services performed by such individual after December 31, 1954, on such boat as being subject to the tax under chapter 21 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], then the amendments made by paragraphs (1)(A) and (B) and (2) of subsection (c) shall not apply with respect to such services performed by such individual (and the share of the catch, or the proceeds therefrom, received by him for such services)."

[Pub. L. 95–600, title VII, §701(z)(2), Nov. 6, 1978, 92 Stat. 2921, provided that: "The amendments made by paragraph (1) [amending section 1207(f)(4) of Pub. L. 94–455, set out above] shall take effect on October 4, 1976."]

Amendment by section 1903 of Pub. L. 94–455 applicable with respect to wages paid after Dec. 31, 1976, see section 1903(d) of Pub. L. 94–455, set out as a note under section 3101 of this title.

EFFECTIVE DATE OF 1973 AMENDMENTS

Amendment by Pub. L. 93–233 applicable only with respect to remuneration paid after, and taxable years beginning after, 1973, see section 5(e) of Pub. L. 93–233, set out as a note under section 409 of Title 42, The Public Health and Welfare.

Amendment by Pub. L. 93–66 applicable only with respect to remuneration paid after, and taxable years

beginning after, 1973, see section 203(e) of Pub. L. 93–66, set out as a note under section 409 of Title 42.

EFFECTIVE DATE OF 1972 AMENDMENTS

Amendment by section 104(i) of Pub. L. 92–603 applicable only with respect to payments after 1974, see section 104(j) of Pub. L. 92–603, set out as a note under section 414 of Title 42, The Public Health and Welfare.

Amendment by sections 122(b) and 138(b) of Pub. L. 92–603 applicable in the case of any payment made after December 1972, see sections 122(c) and 138(c) of Pub. L. 92–603, set out as notes under section 409 of Title 42.

Amendment by section 128(b) of Pub. L. 92–603 applicable with respect to service performed on and after first day of calendar quarter which begins on or after Oct. 30, 1972, see section 128(c) of Pub. L. 92–603, set out as a note under section 410 of Title 42.

Amendment by section 129(a)(2) of Pub. L. 92–603 applicable to services performed after Dec. 31, 1972, see section 129(b) of Pub. L. 92–603, set out as a note under section 410 of Title 42.

Amendment by Pub. L. 92–336 applicable only with respect to remuneration paid after December 1972, see section 203(c) of Pub. L. 92–336, set out as a note under section 409 of Title 42.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–5 applicable only with respect to remuneration paid after December 1971, see section 203(c) of Pub. L. 92–5, set out as a note under section 409 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable with respect to tax returns the date prescribed by law for filing of which is after Dec. 31, 1969, see section 943(d) of Pub. L. 91–172, set out as a note under section 6651 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 108(b) of Pub. L. 90–248 applicable only with respect to remuneration paid after December 1967, see section 108(c) of Pub. L. 90–248, set out as a note under section 409 of Title 42, The Public Health and Welfare.

Amendment by section 123(b) of Pub. L. 90–248 applicable with respect to services performed after Dec. 31, 1967, see section 123(c) of Pub. L. 90–248, set out as a note under section 410 of Title 42.

Pub. L. 90–248, title V, §504(d), Jan. 2, 1968, 81 Stat. 935, provided that: "The amendments made by this section [amending this section, section 3306 of this title, and section 409 of Title 42] shall apply with respect to remuneration paid after the date of the enactment of this Act [Jan. 2, 1968]."

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 311(b)(4), (5) of Pub. L. 89–97 applicable only with respect to services performed after 1965, see section 311(c) of Pub. L. 89–97, set out as an Effective Date of 1965 Amendment note under section 410 of Title 42, The Public Health and Welfare.

Amendment by section 313 of Pub. L. 89–97 applicable only with respect to tips received by employees after 1965, see section 313(f) of Pub. L. 89–97, set out as an Effective Date note under section 6053 of this title.

Pub. L. 89–97, title III, §316(a)(2), July 30, 1965, 79 Stat. 386, provided that: "The amendment made by paragraph (1) [amending this section] shall apply in the case of any certificate filed under section 3121(k)(1)(A) of such Code after the date of the enactment of this Act [July 30, 1965]."

Amendment by section 317 of Pub. L. 89–97 applicable with respect to services performed after quarter ending September 30, 1965, and after quarter in which Secretary of the Treasury receives a certification from Commissioners of District of Columbia expressing their desire to have insurance system established by sections 401 et seq. and 1395c et seq. of Title 42 extended to the officers and employees coming under provisions of such amendments, see section 317(g) of Pub. L. 89–97, set out as a note under section 410 of Title 42.

Pub. L. 89–97, title III, §320(c), July 30, 1965, 79 Stat. 394, provided that: "The amendments made by subsections (a)(1) and (a)(3)(A) [amending sections 409 and 413 of Title 42], and the amendments made by subsection (b) (except paragraph (1) thereof) [amending this section and sections 3122, 3125, and 6413 of this title], shall apply only with respect to remuneration paid after December 1965. The amendments made by subsections (a)(2), (a)(3)(B), and (b)(1) [amending section 1402 of this title and sections 411 and 413 of Title 42] shall apply only with respect to taxable years ending after 1965. The amendment made by subsection (a)(4) [amending section 415 of Title 42] shall apply only with respect to calendar years after 1965."

EFFECTIVE DATE OF 1964 AMENDMENTS

Pub. L. 88–650, §4(d), Oct. 13, 1964, 78 Stat. 1078, provided that: "The amendments made by this section [amending this section, section 3306 of this title, and section 409 of Title 42, The Public Health and Welfare] shall apply with respect to remuneration paid on or after the first day of the first calendar month which begins more than ten days after the date of the enactment of this Act [Oct. 13, 1964]."

Amendment by Pub. L. 88–272 applicable to remuneration paid after Dec. 31, 1962, see section 220(d) of Pub. L. 88–272, set out as an Effective Date note under section 406 of this title.

EFFECTIVE DATE OF 1961 AMENDMENTS

Pub. L. 87–293, title II, §202(c), Sept. 22, 1961, 75 Stat. 627, provided that: "The amendments made by subsections (a) and (b) of this section [amending this section, sections 3122 and 6051 of this title, and sections 405, 409, and 410 of Title 42, The Public Health and Welfare] shall apply with respect to service performed after the date of the enactment of this Act [Sept. 22, 1961]. In the case of any individual who is enrolled as a volunteer or volunteer leader under section 16(a) of this Act [section 2515(a) of Title 22, Foreign Relations and Intercourse] such amendments shall apply with respect to services performed on or after the effective date of such enrollment." [Section 202(c) of Pub. L. 87–293 repealed by Pub. L. 89–572, §5(a), Sept. 13, 1966, 80 Stat. 765. Such repeal not deemed to affect amendments contained in such provisions, see section 5(b) of Pub. L. 89–572, set out as a note under former section 2515 of Title 22.]

Pub. L. 87–256, title I, §110(h)(3), Sept. 21, 1961, 75 Stat. 537, provided that: "The amendments made by subsections (e) and (f) of this section [amending this section, section 3306 of this title, and section 410 of Title 42, The Public Health and Welfare] shall apply with respect to service performed after December 31, 1961."

EFFECTIVE DATE OF 1960 AMENDMENTS

Amendment by section 103(n) of Pub. L. 86–778 applicable only with respect to (1) service in the employ of the Government of Guam or any political subdivision thereof, or any instrumentality of any one or more of the foregoing wholly owned thereby, which is performed after 1960 and after the calendar quarter in which the Secretary of the Treasury receives a certification by the Governor of Guam that legislation has been enacted by the Government of Guam expressing its desire to have the insurance system established by title II of the Social Security Act (42 U.S.C. 401 et seq.) extended to the officers and employees of such Government and such political subdivisions and instrumentalities, and (2) service in the employ of the Government of American Samoa or any political subdivision thereof or any instrumentality of any one or more of the foregoing wholly owned thereby, which is performed after 1960 and after the calendar quarter in which the Secretary of the Treasury receives a certification by the Governor of American Samoa that the Government of American Samoa desires to have the insurance system established by title II of the Social Security Act extended to the officers and employees of such Government and such political subdivisions and instrumentalities, see section 103(v)(1) of Pub. L. 86–778, set out as a note under section 402 of Title 42, The Public Health and Welfare, and such amendment applicable only as expressly provided therein, see section 103(v)(2) of Pub. L. 86–778, set out as a note under section 402 of Title 42.

Amendment by section 103(o), (p) of Pub. L. 86–778 applicable only with respect to service performed after 1960, see section 103(v)(1) of Pub. L. 86–778, set out as a note under section 402 of Title 42.

Amendment by section 104(b) of Pub. L. 86–778 applicable only with respect to services performed after 1960, see section 104(c) of Pub. L. 86–778, set out as a note under section 410 of Title 42.

Pub. L. 86–624, §18(k), July 12, 1960, 74 Stat. 416, provided that: "The amendments contained in subsections (a) through (j) of this section [amending this section and sections 2202, 3306, 4221, 4233, 4262, 4502, 4774, 7653, and 7701 of this title] shall be effective as of August 21, 1959."

Pub. L. 86–778, title I, §105(d), Sept. 13, 1960, 74 Stat. 945, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) The amendments made by subsection (a) [amending this section] shall apply only with respect to certificates filed under section 3121(k)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] after the date of the enactment of this Act [Sept. 13, 1960].

"(2) No monthly benefits under title II of the Social Security Act [42 U.S.C. 401 et seq.] for the month in which this Act is enacted or any prior month shall be payable or increased by reason of the provisions of subsections (b) and (c) of this section or the amendments made by such subsections [amending section 1402 of this title and enacting provisions set out as notes under this section and 1402 of this title], and no lump-sum death payment under such title shall be payable or increased by reason of such provisions or amendments in the case of any individual who died prior to the date of the enactment of this Act [Sept. 13, 1960]."

EFFECTIVE DATE OF 1959 AMENDMENTS

Amendment by Pub. L. 86–168 effective Jan. 1, 1960, see Pub. L. 86–168, title II, §203(c), Aug. 18, 1959, 73 Stat. 390.

Pub. L. 86–70, §22(i), June 25, 1959, 73 Stat. 147, provided that: "The amendments contained in subsections (a) through (h) of this section [amending this section and sections 2202, 3306, 4221, 4233, 4262, 4502, 4774, 7621, 7653, and 7701 of this title] shall be effective as of January 3, 1959."

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85–840, title IV, §402(e), Aug. 28, 1958, 72 Stat. 1043, provided that: "The amendments made by subsections (b) and (c) [amending this section and section 3122 of this title] shall be applicable only with respect to remuneration paid after 1958."

Pub. L. 85–840, title IV, §404(b), Aug. 28, 1958, 72 Stat. 1044, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to service performed after 1958."

Pub. L. 85–840, title IV, §405(c), Aug. 28, 1958, 72 Stat. 1047, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by subsections (a) and (b) [amending this section] shall apply with respect to certificates filed under section 3121(k)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] after the date of enactment of this Act [Aug. 28, 1958] and requests filed under subparagraph (F) of such section after such date."

EFFECTIVE DATE OF 1956 AMENDMENT

Act Aug. 1, 1956, ch. 836, title II, §201(m), 70 Stat. 843, as amended by act Oct. 22, 1986, Pub. L. 99–514, §2, 100 Stat. 2095, provided that:

"(1) The amendments made by subsection (a) [enacting section 3113 of this title] and paragraph (1) of subsection (h) [amending this section] shall apply with respect to remuneration paid after 1956. The amendment made by subsection (b) [amending this section] shall apply with respect to remuneration paid after October 1956. The amendments made by subsection (c) and paragraph (2) of subsection (h) [amending this section] shall apply with respect to service performed after 1956. The amendments made by paragraphs (1) and (2) of subsection (d) [amending this section] shall apply with respect to service with respect to which the amendments made by paragraphs (1) and (2) of subsection (b) of section 104 of this Act [amending section 410 of Title 42, The Public Health and Welfare] apply. The amendments made by paragraph (1) of subsection (e) [amending this section] shall apply with respect to service performed after 1954. The amendment made by paragraph (3) of such subsection shall [amending section 1402 of this title] apply with respect to taxable years ending after 1954. The amendments made by paragraph (2) of subsection (e) and by subsection (f) [amending section 1402 of this title] shall apply with respect to taxable years ending after 1955. The amendment made by subsection (i) [amending section 1402 of this title] shall apply with respect to taxable years ending on or after December 31, 1956. The amendment made by subsection (l) [amending this section] shall apply with respect to certificates filed after 1956 under section 3121(k) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].

"(2)(A) Except as provided in subparagraph (B), the amendment made by subsection (g) [amending section 1402 of this title] shall apply only with respect to taxable years ending after 1956.

"(B) Any individual who, for a taxable year ending after 1954 and prior to 1957, had income which by reason of the amendment made by subsection (g) would have been included within the meaning of 'net earnings from self-employment' (as such term is defined in section 1402(a) of the Internal Revenue Code of 1986), if such income had been derived in a taxable year ending after 1956 by an individual who had filed a waiver certificate under section 1402(e) of such Code, may elect to have the amendment made by subsection (g) apply to his taxable years ending after 1954 and prior to 1957. No election made by any individual under this subparagraph shall be valid unless such individual has filed a waiver certificate under section 1402(e) of such Code prior to the making of such election or files a waiver certificate at the time he makes such election.

"(C) Any individual described in subparagraph (B) who has filed a waiver certificate under section 1402(e) of such Code prior to the date of enactment of this Act [Aug. 1, 1956], or who files a waiver certificate under such section on or before the due date of his return (including any extension thereof) for his last taxable year ending prior to 1957, must make such election on or before the due date of his return (including any extension thereof) for his last taxable year ending prior to 1957, or before April 16, 1957, whichever is the later.

"(D) Any individual described in subparagraph (B) who has not filed a waiver certificate under section 1402(e) of such Code on or before the due date of his return (including any extension thereof) for his last taxable year ending prior to 1957 must make such election on or before the due date of his return (including any extension thereof) for his first taxable year ending after 1956. Any individual described in this subparagraph whose period for filing a waiver certificate under section 1402(e) of such Code has expired at the time he makes such election may, notwithstanding the provisions of paragraph (2) of such section, file a waiver certificate at the time he makes such election.

"(E) An election under subparagraph (B) shall be made in such manner as the Secretary of the Treasury or his delegate shall prescribe by regulations. Notwithstanding the provisions of paragraph (3) of section 1402(e) of such Code, the waiver certificate filed by an individual who makes an election under subparagraph (B) (regardless of when filed) shall be effective for such individual's first taxable year ending after 1954 in which he had income which by reason of the amendment made by subsection (g) would have been included within the meaning of 'net earnings from self-employment' (as such term is defined in section 1402(a) of such Code), if such income had been derived in a taxable year ending after 1956 by an individual who had filed a waiver certificate under section 1402(e) of such Code, or for the taxable year prescribed by such paragraph (3) of section 1402(e), if such taxable year is earlier, and for all succeeding taxable years.

"(F) No interest or penalty shall be assessed or collected for failure to file a return within the time prescribed by law, if such failure arises solely by reason of an election made by an individual under subparagraph (B), or for any underpayment of the tax imposed by section 1401 of such Code arising solely by reason of such election, for the period ending with the date such individual makes an election under subparagraph (B).

"(3) Any tax under chapter 2 of the Internal Revenue Code of 1986 [section 1401 et seq. of this title] which is due, solely by reason of the enactment of subsection (f) [amending section 1402 of this title], or paragraph (2) of subsection (e), of this section [amending section 1402 of this title], for any taxable year ending on or before the date of the enactment of this Act [Aug. 1, 1956] shall be considered timely paid if payment is made in full on or before the last day of the sixth calendar month following the month in which this Act is enacted. In no event shall interest be imposed on the amount of any tax due under such chapter solely by reason of the enactment of subsection (f), or paragraph (2) of subsection (e), of this section for any period before the day after the date of enactment of this Act.

"(4) Any tax due under chapter 21 of the Internal Revenue Code of 1986 [this chapter] which is due, solely by reason of the enactment of subsection (d) [amending this section] and an effective date prescribed pursuant to paragraph (2)(B) or (2)(C) of section 104(i) [set out as a note under section 410 of Title 42, The Public Health and Welfare], for any calendar quarter beginning prior to the day on which the Secretary of Health, Education, and Welfare approves the plan which prescribes such effective date shall be considered timely paid if payment is made in full on or before the last day of the sixth calendar month following the month in which such plan is approved. In no event shall interest be imposed on the amount of any such tax due under such chapter for any period before the day on which the Secretary of Health, Education, and Welfare approves such plan."

Amendment by act Aug. 1, 1956, ch. 837, effective Jan. 1, 1957, see act Aug. 1, 1956, ch. 837, title VI, §603(a), 70 Stat. 887.

EFFECTIVE DATE OF 1954 AMENDMENT

Act Sept. 1, 1954, ch. 1206, title II, §204(c), 68 Stat. 1091, provided that: "The amendments made by subsections (a) and (b) [amending this section] shall be applicable only with respect to remuneration paid after 1954."

Act Sept. 1, 1954, ch. 1206, title II, §205(f), 68 Stat. 1092, provided that: "The amendments made by subsections (c), (d), and (e) [amending this section] shall be applicable only with respect to services performed after 1954. The amendments made by subsections (a) and (b) [amending this section] shall be applicable only with respect to services (whether performed after 1954 or prior to 1955) for which the remuneration is paid after 1954."

Act Sept. 1, 1954, ch. 1206, title II, §206(b), 68 Stat. 1093, provided that: "The amendment made by subsection (a) [amending this section] shall be applicable only with respect to services performed after 1954."

REGULATIONS

Pub. L. 97–123, §3(d), Dec. 29, 1981, 95 Stat. 1662, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) The regulations prescribed under the last sentence of section 3121(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], and the regulations prescribed under subparagraph (D) of section 3231(e)(4) of such Code, shall provide procedures under which, if (with respect to any employee) the third party promptly—

"(A) withholds the employee portion of the taxes involved,

"(B) deposits such portion under section 6302 of such Code, and

"(C) notifies the employer of the amount of the wages or compensation involved,

the employer (and not the third party) shall be liable for the employer portion of the taxes involved and for meeting the requirements of section 6051 of such Code (relating to receipts for employees) with respects to the wages or compensation involved.

"(2) For purposes of paragraph (1)—

"(A) the term 'employer' means the employer for whom services are normally rendered,

"(B) the term 'taxes involved' means, in the case of any employee, the taxes under chapters 21 and 22 which are payable solely by reason of the parenthetical matter contained in subparagraph (B) of section 3121(a)(2) of such Code, or solely by reason of paragraph (4) of section 3231(e) of such Code, and

"(C) the term 'wages or compensation involved' means, in the case of any employee, wages or compensation with respect to which taxes described in subparagraph (B) are imposed."

REPEALS; AMENDMENTS AND APPLICATION OF AMENDMENTS UNAFFECTED

Section 202(a)(1), (2) of Pub. L. 87–293, cited as a credit to this section, was repealed by Pub. L. 89–572, §5(a), Sept. 13, 1966, 80 Stat. 765. Such repeal not deemed to affect amendments to this section contained in such provisions, and continuation in full force and effect until modified by appropriate authority of all determinations, authorization, regulations, orders, contracts, agreements, and other actions issued, undertaken, or entered into under authority of the repealed provisions, see section 5(b) of Pub. L. 89–572, set out as a note under section 2515 of Title 22, Foreign Relations and Intercourse.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Functions of Public Health Service, of Surgeon General of Public Health Service, and of all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by 1966 Reorg. Plan No. 3, 31 F.R. 8855, 80 Stat. 1610, effective June 25, 1966, set out in the Appendix to Title 5, Government Organization and Employees. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 3508 of Title 20, Education.

Coast and Geodetic Survey consolidated with National Weather Bureau in 1965 to form Environmental Science Services Administration by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out in the Appendix to Title 5, Government Organization and Employees. Commissioned Officer Corps of Environmental Science Services Administration changed to Commissioned Officer Corps of National Oceanic and Atmospheric Administration, see 1970 Reorg. Plan No. 4, §4(d), eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, set out in the Appendix to Title 5.

SUBVERSIVE ACTIVITIES CONTROL BOARD

The Subversive Activities Control Board was established by act Sept. 23, 1950, ch. 1024, §12, 64 Stat. 977 and ceased to operate June 30, 1973.

NO INFERENCE TO BE DRAWN FROM AMENDMENT BY PUB. L. 108–121

No inference to be drawn from amendment to subsec. (a)(18) of this section by section 106 of Pub. L. 108–121 with respect to tax treatment of any amounts under program described in section 134(b)(4) of this title for any taxable year beginning before Jan. 1, 2003, see section 106(d) of Pub. L. 108–121, set out as a note under section 134 of this title.

LINE ITEM VETO

Section 642(d)(2) of Pub. L. 105–61, amending this section, was subject to line item veto by the President, Cancellation No. 97–56, signed Oct. 16, 1997, 62 F.R. 54338, Oct. 17, 1997. For decision holding line item veto unconstitutional, see *Clinton v. City of New York*, 524 U.S. 417, 118 S.Ct. 2091, 141 L.Ed.2d 393 (1998).

CLARIFICATION OF STANDARD TO BE USED IN DETERMINING EMPLOYMENT TAX STATUS OF SECURITIES BROKERS

Pub. L. 105–34, title IX, §921, Aug. 5, 1997, 111 Stat. 879, provided that:

"(a) IN GENERAL.—In determining for purposes of the Internal Revenue Code of 1986 whether a registered representative of a securities broker-dealer is an employee (as defined in section 3121(d) of the Internal Revenue Code of 1986), no weight shall be given to instructions from the service recipient which are imposed only in compliance with investor protection standards imposed by the Federal Government, any State government, or a governing body pursuant to a delegation by a Federal or State agency.

"(b) EFFECTIVE DATE.—Subsection (a) shall apply to services performed after December 31, 1997."

TREATMENT OF CERTAIN UNIVERSITY ACCOUNTS

Pub. L. 104–188, title I, §1802, Aug. 20, 1996, 110 Stat. 1892, provided that:

"(a) IN GENERAL.—For purposes of subsection (s) of section 3121 of the Internal Revenue Code of 1986 (relating to concurrent employment by 2 or more employers)—

"(1) the following entities shall be deemed to be related corporations that concurrently employ the same individual:

"(A) a State university which employs health professionals as faculty members at a medical school, and

"(B) an agency account of a State university which is described in subparagraph (A) and from which there is distributed to such faculty members payments forming a part of the compensation that the State, or such State university, as the case may be, agrees to pay to such faculty members, but only if—

"(i) such agency account is authorized by State law and receives the funds for such payments from a faculty practice plan described in section 501(c)(3) of such Code and exempt from tax under section 501(a) of such Code,

"(ii) such payments are distributed by such agency account to such faculty members who render patient care at such medical school, and

"(iii) such faculty members comprise at least 30 percent of the membership of such faculty practice plan, and

"(2) remuneration which is disbursed by such agency account to any such faculty member of the medical school described in paragraph (1)(A) shall be deemed to have been actually disbursed by the State, or such State university, as the case may be, as a common paymaster and not to have been actually disbursed by such agency account.

"(b) EFFECTIVE DATE.—The provisions of subsection (a) shall apply to remuneration paid after December 31, 1996."

EXCLUSION FROM WAGES AND COMPENSATION OF REFUNDS REQUIRED FROM EMPLOYERS TO COMPENSATE FOR DUPLICATION OF MEDICARE BENEFITS BY HEALTH CARE BENEFITS PROVIDED BY EMPLOYERS

For purposes of this chapter, the term "wages" shall not include the amount of any refund required under section 421 of Pub. L. 100–360, 42 U.S.C. 1395b note, see section 10202 of Pub. L. 101–239, set out as a note under section 1395b of Title 42, The Public Health and Welfare.

NONENFORCEMENT OF AMENDMENT MADE BY SECTION 1151 OF PUB. L. 99–514 FOR FISCAL YEAR 1990

No monies appropriated by Pub. L. 101–136 to be used to implement or enforce section 1151 of Pub. L. 99–514 or the amendments made by such section, see section 528 of Pub. L. 101–136, set out as a note under section 89 of this title.

TREATMENT OF CERTAIN FAMILY SERVICES CARE PROVIDERS

Pub. L. 100–647, title VI, §6305, Nov. 10, 1988, 102 Stat. 3756, provided that:

"(a) IN GENERAL.—A State may treat a person who renders dependent care or similar services as other than an employee [for] employment tax purposes for the applicable period if all of the following conditions are satisfied with respect to such person for such applicable period:

"(i) The person does not provide any dependent care or similar services in any facility owned or operated by the State.

"(ii) The person is compensated by the State for such services, directly or indirectly, out of funds provided pursuant to chapter 7 of title 42 of the United States Code [42 U.S.C. 301 et seq.], or the provisions and amendments made by the Family Security Act of 1988 [probably means the Family Support Act of 1988, Pub. L. 100–485, see Tables for classification].

"(iii) The State does not treat the person, with respect to the provision of dependent care or similar services, as an employee for employment tax purposes.

"(iv) The State files all Federal income tax returns (including information returns) required to be filed with respect to such person on a basis consistent with the State's treatment of such person as other than an employee beginning on the date of the enactment of this section [Nov. 10, 1988].

"(v) No more than ten percent of the State's employees are provided with insurance under title II of the Social Security Act [42 U.S.C. 401 et seq.] pursuant to voluntary agreements with the Secretary of Health and Human Services under section 218 of such title [42 U.S.C. 418].

"(b) STATE.—For purposes of this section, the term 'State' shall mean the government of the United States, District of Columbia, any State or political subdivision thereof, and any agency or instrumentality of any of the foregoing.

"(c) EMPLOYMENT TAX.—For purposes of this section, the term 'employment tax' means any tax imposed by subtitle C of the Internal Revenue Code of 1986.

"(d) APPLICABLE PERIOD.—For purposes of this section, the term 'applicable period' means the period beginning on January 1, 1984 and ending on December 31, 1990.

"(e) REPORT.—The Secretary of the Treasury shall report to the Senate Committee on Finance and the House Committee on Ways and Means on the text [tax] status of day care providers compensated pursuant to the program described in the section no later than December 31, 1989."

[The due date for the report referred to in section 6305(e) of Pub. L. 100–647, set out above, extended to Jan. 1, 1992, by Pub. L. 101–508, title XI, §11831(b), Nov. 5, 1990, 104 Stat. 1388–559.]

CERTAIN EMPLOYER PENSION CONTRIBUTIONS NOT INCLUDED IN FICA WAGE BASE

Pub. L. 100–647, title VIII, §8018, Nov. 10, 1988, 102 Stat. 3794, provided that: "In the case of any State (within the meaning of section 3121(e)(1) of the Internal Revenue Code of 1986) or political subdivision thereof which received a letter ruling of the Internal Revenue Service issued after December 31, 1983, and before the date of the enactment of this Act [Nov. 10, 1988] maintaining that any amount treated as an employer contribution under section 414(h)(2) of the Internal Revenue Code of 1986 is excluded from the definition of 'wages' for purposes of tax liability under section 3121(v)(1)(B) of such Code, such State or political subdivision shall be relieved of any liability for taxes under such section 3121(v)(1)(B) which, in good faith reliance on such letter ruling, were not paid and which would otherwise have been required to be paid (but for this section) on or before the earlier of the date of the enactment of this Act or the date of the receipt of a notice of revocation from the Internal Revenue Service of such letter ruling."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§1401–1465] of title I of Pub. L. 104–188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

FEDERAL LEGISLATIVE BRANCH EMPLOYEES; EXCLUSION OF CERTAIN RETIREMENT CONTRIBUTIONS FOR PURPOSES OF SUBSECTION (B)(5)(G)

Federal employees not to be deemed subject to Federal retirement system for purposes of subsec. (b)(5)(G) of this section if employees are contributing reduced amounts by reason of Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983, see section 2601(c) of Pub. L. 98–369, set out as a note under section 410 of Title 42, The Public Health and Welfare.

SERVICE PERFORMED FOR NONPROFIT ORGANIZATIONS BY FEDERAL EMPLOYEES

For purposes of subsec. (b)(5) of this section as in effect in January 1983 and as in effect on and after January 1, 1984, service performed in the employ of a nonprofit organization described in section 501(c)(3) of this title by an employee who is required by law to be subject to subchapter III of chapter 83 of Title 5, Government Organization and Employees, with respect to such service, is considered to be service performed in the employ of an instrumentality of the United States, see section 2601(e) of Pub. L. 98–369, set out as a note under section 410 of Title 42, The Public Health and Welfare.

REFUNDS TO CHURCHES OR QUALIFIED CHURCH-CONTROLLED ORGANIZATIONS

Pub. L. 98–369, div. B, title VI, §2603(f), July 18, 1984, 98 Stat. 1130, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "In any case where a church or qualified church-controlled organization makes an election under section 3121(w) of the Internal Revenue Code of 1986 [formerly I.R.C.

1954], the Secretary of the Treasury shall refund (without interest) to such church or organization any taxes paid under sections 3101 and 3111 of such Code with respect to service performed after December 31, 1983, which is covered under such election. The refund shall be conditional upon the church or organization agreeing to pay to each employee (or former employee) the portion of the refund attributable to the tax imposed on such employee (or former employee) under section 3101, and such employee (or former employee) may not receive any other refund payment of such taxes."

SOCIAL SECURITY COVERAGE OF RETIRED FEDERAL JUDGES ON ACTIVE DUTY

Pub. L. 98–118, §4, Oct. 11, 1983, 97 Stat. 803, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Notwithstanding section 101(d) of the Social Security Amendments of 1983 [section 101(d) of Pub. L. 98–21, set out as an Effective Date of 1983 Amendment note above], the amendments made by section 101(c) of such Act [amending this section and section 409 of Title 42, The Public Health and Welfare] shall apply only with respect to remuneration paid after December 31, 1985. Remuneration paid prior to January 1, 1986, under section 371(b) of title 28, United States Code, to an individual performing service under section 294 of such title, shall not be included in the term "wages" for purposes of section 209 of the Social Security Act [42 U.S.C. 409] or section 3121(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]."

TREATMENT OF CERTAIN MEDICAL FACULTY PRACTICE PLANS

Pub. L. 98–21, title I, §125, Apr. 20, 1983, 97 Stat. 91, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) GENERAL RULE.—For purposes of subsection (s) of section 3121 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to concurrent employment by 2 or more employers)—

"(1) the following entities shall be deemed to be related corporations:

"(A) a State university which employs health professionals as faculty members at a medical school, and

"(B) a faculty practice plan described in section 501(c)(3) of such Code and exempt from tax under section 501(a) of such Code—

"(i) which employs faculty members of such medical school, and

"(ii) 30 percent or more of the employees of which are concurrently employed by such medical school; and

"(2) remuneration which is disbursed by such faculty practice plan to a health professional employed by both such entities shall be deemed to have been actually disbursed by such university as a common paymaster and not to have been actually disbursed by such faculty practice plan.

"(b) EFFECTIVE DATE.—The provisions of subsection (a) shall apply to remuneration paid after December 31, 1983."

WAIVER OF EXEMPTION BY NONPROFIT ORGANIZATION; TERMINATION OF CERTIFICATE PERIOD ON OR AFTER MARCH 31, 1983, PROHIBITED

Pub. L. 98–21, title I, §102(d), Apr. 20, 1983, 97 Stat. 71, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The period for which a certificate is in effect under section 3121(k) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] may not be terminated under paragraph (1)(D) or (2) thereof on or after March 31, 1983; but no such certificate shall be effective with respect to any service to which the amendments made by this section [amending this section and section 410 of Title 42, The Public Health and Welfare] apply."

PAYMENTS UNDER STATE TEMPORARY DISABILITY LAW TO BE TREATED AS REMUNERATION FOR SERVICE

Pub. L. 97–123, §3(e), Dec. 29, 1981, 95 Stat. 1663, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "For purposes of applying section 209 of the Social Security Act [section 409 of Title 42, The Public Health and Welfare], section 3121(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], and section 3231(e) of such Code with respect to the parenthetical matter contained in section 209(b)(2) of the Social Security Act or section 3121(a)(2)(B) of the Internal Revenue Code of 1986, or with respect to section 3231(e)(4) of such Code (as the case may be), payments under a State temporary disability law shall be treated as remuneration for service."

WAIVER OF EXEMPTION FROM SOCIAL SECURITY TAXES BY CERTAIN ORGANIZATIONS

Pub. L. 96–605, title IV, §401, Dec. 28, 1980, 94 Stat. 3531, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) WAIVER CERTIFICATE.—

"(1) IN GENERAL.—Notwithstanding any other provision of law, any waiver certificate filed by a qualified corporation (hereinafter in this section referred to as the 'corporation') under section 3121(k)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to waiver of exemption from social security taxes by certain organizations) shall be deemed not to be effective, for purposes of the taxes imposed by section 3101 of such Code, with respect to any wages—

"(A) paid by the Corporation to any employee thereof after December 31, 1972, and before April 1, 1975, if the Corporation furnishes to the Secretary of the Treasury or his delegate evidence reasonably satisfactory to him that the Corporation as refunded, prior to February 1, 1977, to such employee (or to his survivors or estate) the full amount of the taxes imposed by section 3101 of such Code on such wages, or

"(B) paid after March 31, 1975, and prior to July 1, 1977, by the Corporation to an individual as an employee of the Corporation, if the Corporation furnishes to the Secretary of the Treasury or his delegate evidence reasonably satisfactory to him that (i) such individual was not an employee of the Corporation on June 30, 1978, and (ii) no amount of the taxes imposed by section 3101 of such Code on such wages were withheld by the Corporation from such wages.

"(2) APPLICATION OF PARAGRAPH (1).—

"(A) EVIDENCE TO BE SUBMITTED TO SECRETARY.—The provisions of paragraph (1) shall not apply to wages described in subparagraph (A) or (B) of such paragraph unless, prior to the close of the one-year period which begins on the date of the enactment of this Act [Dec. 28, 1980], the Corporation furnishes to the Secretary of the Treasury or his delegate the evidence referred to in either such subparagraph.

"(B) TAX NOT IMPOSED.—If the provisions of paragraph (1) apply with respect to any wages paid by the Corporation to an employee thereof, no taxes imposed on such wages by section 3101 of the Internal Revenue Code of 1986 shall be payable, and no interest or penalty with respect to the imposition of taxes by such section on such wages (or with respect to the imposition of taxes by such section or section 3111 of such Code on any wages paid by the Corporation prior to January 1, 1978) shall be imposed or collected.

"(C) CREDIT AGAINST TAX.—Under regulations prescribed by the Secretary, there shall be allowed as a one-time credit against the tax imposed on the Corporation under section 3101 or 3111 of the Internal Revenue Code of 1986 (and any interest or penalties imposed thereon) an amount equal to the sum of—

"(i) all amounts of tax imposed by section 3101 of such Code which have been paid by the Corporation with respect to wages to which paragraph (1) applies, and

"(ii) all amounts paid by such Corporation as a penalty or as interest with respect to the tax imposed by section 3101 or 3111 of such Code on such wages.

"(b) TREATMENT FOR PURPOSES OF SOCIAL SECURITY ACT.—In the administration of titles II and XVIII of the Social Security Act [42 U.S.C. 401 et seq. and 1395 et seq.], any wages paid to any individual to which the provisions of subsection (a) apply shall be treated as wages (within the meaning of section 209 of such Act) [42 U.S.C. 409] for purposes of determining—

"(1) entitlement to, or amount of, any insurance benefit payable to such individual or any other person on the basis of the wages and self-employment income of such individual, or

"(2) entitlement of such individual to benefits under title XVIII of such Act [42 U.S.C. 1395 et seq.] or entitlement of any other person to such benefits on the basis of the wages and self-employment income of such individual.

"(c) QUALIFIED CORPORATION DEFINED.—For purposes of this section, the term 'qualified corporation' means any corporation which—

"(1) filed a waiver certificate under section 3121 of the Internal Revenue Code of 1986 during 1968;

"(2) filed a second waiver certificate under such section during 1975 believing that no other waiver certificate had been filed;

"(3) received a refund of the taxes imposed by sections 3101 and 3111 of such Code with respect to certain wages paid to more than 120 but less than 180 employees who did not concur in the filing of the second waiver certificate; and

"(4) was notified during 1977 by the Internal Revenue Service that the certificate had been filed during 1968.

"(d) LIABILITY FOR TAXES.—Except as provided in subsection (a)(2)(C)(ii), nothing in this section shall be construed to relieve the Corporation of any liability for the payment of the taxes imposed by section 3111 of the Internal Revenue Code of 1986 with respect to any wages paid by it to any individual for any

period."

REFUND OR CREDIT OF TAXES TO NONPROFIT ORGANIZATIONS AFTER SEPT. 9, 1976, ON TAXES PAID UNDER SECTIONS 3101 OR 3111; PROHIBITION; CONSTRUCTIVE FILING OF CERTIFICATE

Pub. L. 94–563, §2, Oct. 19, 1976, 90 Stat. 2658, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Notwithstanding any other provision of law, no refund or credit of any tax paid under section 3101 or 3111 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] by an organization described in section 501(c)(3) of such Code which is exempt from income tax under section 501(a) of such Code shall be made on or after September 9, 1976, by reason of such organization's failure to file a waiver certificate under section 3121(k)(1) of such Code (or the corresponding provision of prior law), if such organization is deemed to have filed such a certificate under section 3121(k)(4) of such Code (as added by the first section of this Act)."

REMUNERATION FOR SERVICES DEEMED TO CONSTITUTE EMPLOYMENT; SERVICES FOR ORGANIZATIONS DEEMED TO HAVE FILED CERTIFICATES UNDER SUBSECTION (K)(4) OF THIS SECTION

Pub. L. 95–216, title III, §312(c), Dec. 20, 1977, 91 Stat. 1533, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "In any case where—

"(1) an individual performed service, as an employee of an organization which is deemed under section 3121(k)(4) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] to have filed a waiver certificate under section 3121(k)(1) of such Code, on or after the first day of the applicable period described in subparagraph (A)(ii) of such section 3121(k)(4) and before July 1, 1977; and

"(2) the service so performed does not constitute employment (as defined in section 210(a) of the Social Security Act [42 U.S.C. 410(a)] and section 3121(b) of such Code) because the waiver certificate which the organization is deemed to have filed is made inapplicable to such service by section 3121(k)(4)(C) of such Code, but would constitute employment (as so defined) in the absence of such section 3121(k)(4)(C),

the remuneration paid for such service shall, upon the request of such individual (filed on or before April 15, 1980, in such manner and form, and with such official, as may be prescribed by regulations made under title II of the Social Security Act [42 U.S.C. 401 et seq.]) accompanied by full payment of all of the taxes which would have been paid under section 3101 of such Code with respect to such remuneration but for such section 3121(k)(4)(C) (or by satisfactory evidence that appropriate arrangements have been made for the payment of such taxes in installments as provided in section 3121(k)(8) of such Code), be deemed to constitute remuneration for employment as so defined. In any case where remuneration paid by an organization to an individual is deemed under the preceding sentence to constitute remuneration for employment, such organization shall be liable (notwithstanding any other provision of such Code) for payment of the taxes which it would have been required to pay under section 3111 of such Code with respect to such remuneration in the absence of such section 3121(k)(4)(C)."

REMUNERATION FOR SERVICES DEEMED TO CONSTITUTE EMPLOYMENT; SERVICES FOR ORGANIZATIONS DEEMED TO HAVE FILED CERTIFICATES UNDER SUBSECTION (K)(5) OF THIS SECTION

Pub. L. 94–563, §3, Oct. 19, 1976, 90 Stat. 2658, as amended by Pub. L. 95–216, title III, §312(e), Dec. 20, 1977, 91 Stat. 1535; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "In any case where—

"(1) an individual performed service, as an employee of an organization which is deemed under section 3121(k)(5) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] to have filed a waiver certificate under section 3121(k)(1) of such Code, at any time prior to the period for which such certificate is effective;

"(2) the taxes imposed by sections 3101 and 3111 of such Code were paid with respect to remuneration paid for such service, but such service (or any part thereof) does not constitute employment (as defined in section 210(a) of the Social Security Act [42 U.S.C. 410(a)] and section 3121(b) of such Code because the applicable taxes so paid were refunded or credited (otherwise than through a refund or credit which would have been allowed if a valid waiver certificate filed under section 3121(k)(1) of such Code had been in effect) prior to September 9, 1976; and

"(3) any portion of such service (with respect to which taxes were paid and refunded or credited as described in paragraph (2)) would constitute employment (as so defined) if the organization had actually filed under section 3121(k)(1) of such Code a valid waiver certificate effective as provided in section 3121(k)(5)(B) thereof (with such individual's signature appearing on the accompanying list),

the remuneration paid for the portion of such service described in paragraph (3) shall, upon the request of such

individual (filed on or before April 15, 1980, in such manner and form, and with such official, as may be prescribed by regulations made under title II of the Social Security Act [42 U.S.C. 401 et seq.]) accompanied by full repayment of the taxes which were paid under section 3101 of such Code with respect to such remuneration and so refunded or credited (or by satisfactory evidence that appropriate arrangements have been made for the repayment of such taxes in installments as provided in section 3121(k)(8) of such Code), be deemed to constitute remuneration for employment as so defined. In any case where remuneration paid by an organization to an individual is deemed under the preceding sentence to constitute remuneration for employment, such organization shall be liable (notwithstanding any other provision of such Code) for repayment of any taxes which it paid under section 3111 of such Code with respect to such remuneration and which were refunded or credited to it."

SERVICE FOR CERTAIN TAX-EXEMPT ORGANIZATIONS PRIOR TO FILING OF WAIVER CERTIFICATE

Pub. L. 86–778, title I, §105(b)(1)–(5), Sept. 13, 1960, 74 Stat. 943, 944, as amended by Pub. L. 89–97, title III, §316(c)(1), July 30, 1965, 79 Stat. 386; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) If—

"(A) an individual performed service in the employ of an organization with respect to which remuneration was paid before the first day of the calendar quarter in which the organization filed a waiver certificate pursuant to section 3121(k)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], and such service is excepted from employment under section 210(a)(8)(B) of the Social Security Act [42 U.S.C. 410(a)(8)(B)],

"(B) such service would have constituted employment as defined in section 210 of such Act [42 U.S.C. 410] if the requirements of section 3121(k)(1) of such Code were satisfied,

"(C) such organization paid, on or before the due date of the tax return for the calendar quarter before the calendar quarter in which the organization filed a certificate pursuant to section 3121(k)(1) of such Code, any amount, as taxes imposed by sections 3101 and 3111 of such Code with respect to such remuneration paid by the organization to the individual for such service,

"(D) such individual, or a fiduciary acting for such individual or his estate, or his survivor (within the meaning of section 205(c)(1)(C) of such Act [42 U.S.C. 405(c)(1)(C)]), requests that such remuneration be deemed to constitute remuneration for employment for purposes of title II of such Act [42 U.S.C. 401 et seq.], and

"(E) the request is made in such form and manner, and with such official, as may be prescribed by regulations made by the Secretary of Health, Education, and Welfare,

then, subject to the conditions stated in paragraphs (2), (3), (4), and (5), the remuneration with respect to which the amount has been paid as taxes shall be deemed to constitute remuneration for employment for purposes of title II of such Act [42 U.S.C. 401 et seq.].

"(2) Paragraph (1) shall not apply with respect to an individual unless the organization referred to in paragraph (1)(A), on or before the date on which the request described in paragraph (1) is made, has filed a certificate pursuant to section 3121(k)(1) of such Code.

"(3) Paragraph (1) shall not apply with respect to an individual who is employed by the organization referred to in paragraph (2) on the date the certificate is filed.

"(4) If credit or refund of any portion of the amount referred to in paragraph (1)(C) (other than a credit or refund which would be allowed if the service constituted employment for purposes of chapter 21 of such Code) has been obtained, paragraph (1) shall not apply with respect to the individual unless the amount credited or refunded (including any interest under section 6611 of such Code) is repaid before January 1, 1968, or, if later, the first day of the third year after the year in which the organization filed a certificate pursuant to section 3121(k)(1) of such Code.

"(5) Paragraph (1) shall not apply to any service performed for the organization in a period for which a certificate filed pursuant to section 3121(k)(1) of such Code is not in effect."

[Pub. L. 89–97, title III, §316(c)(2), July 30, 1965, 79 Stat. 387, provided that: "The amendment made by paragraph (1) [amending section 105(b) of Pub. L. 86–778, set out above] shall take effect on the date of the enactment of this Act [July 30, 1965]. The provisions of section 105(b) of the Social Security Amendments of 1960 [section 105(b) of Pub. L. 86–778] which were in effect before the date of the enactment of this Act [July 30, 1965] shall be applicable with respect to any request filed under section 105(b)(1) of such Amendments before such date. Nothing in the preceding sentence shall prevent the filing of a request under section 105(b)(1) of such Amendments as amended by this Act."]

SERVICE FOR CERTAIN TAX-EXEMPT ORGANIZATIONS FOR WHICH REMUNERATION WAS PAID BEFORE JULY 30, 1965, BUT AFTER FILING OF WAIVER CERTIFICATE

Pub. L. 89–97, title III, §316(d), July 30, 1965, 79 Stat. 387, provided that where an individual performed service for which remuneration was paid before July 30, 1965, by an organization which, before such date, filed a waiver certificate pursuant to subsec. (k)(1) of this section, then under certain conditions, the remuneration paid with respect to such service was to be deemed remuneration for employment for purposes of title II of the Social Security Act, sections 401 et seq, of Title 42, The Public Health and Welfare, even though normally excluded from employment under title II of the Social Security Act.

SERVICE FOR CERTAIN TAX-EXEMPT ORGANIZATIONS PERFORMED AFTER 1950 AND PRIOR TO JULY 1, 1960

Pub. L. 86–778, title I, §105(b)(1)–(5), Sept. 13, 1960, 74 Stat. 943, 944, provided that where an individual performed service in the employ of an organization after 1950 with respect to which remuneration was paid before 1960 and such service is normally excepted from employment under title II of the Social Security Act (42 U.S.C. 401 et seq.), then under certain conditions, the remuneration paid with respect to such service was to be deemed remuneration for employment for purposes of title II of the Social Security Act.

SERVICE FOR CERTAIN TAX-EXEMPT ORGANIZATIONS PERFORMED AFTER 1950 AND PRIOR TO 1957

Act Sept. 1, 1954, ch. 1206, title IV, §403, 68 Stat. 1098, as amended by acts Aug. 1, 1956, ch. 836, title IV, §401, 70 Stat. 855; Aug. 27, 1958, Pub. L. 85–785, §§1–3, 72 Stat. 938, provided that where an individual has been employed after 1950 and before Aug. 1, 1956, by an organization exempt from income tax under section 501(c)(3) of this title but which did not have in effect during the individual's period of employment a valid waiver certificate, or, which failed to have the individual's signature appear on the list of signatures of employees who concurred in the filing of such certificate, where one was in effect, and the service performed by the individual would have constituted employment for purposes of title II of the Social Security Act (42 U.S.C. 401 et seq.) had such requirements been met, then under certain conditions, the remuneration paid was to be deemed remuneration for employment for purposes of title II of the Social Security Act.

[1] See References in Text note below.

[2] So in original. Probably should be followed by a comma.

§3122. Federal service

In the case of the taxes imposed by this chapter with respect to service performed in the employ of the United States or in the employ of any instrumentality which is wholly owned by the United States, including such service which is medicare qualified government employment (as defined in section 3121(u)(3)), including service, performed as a member of a uniformed service, to which the provisions of section 3121(m)(1) are applicable, and including service, performed as a volunteer or volunteer leader within the meaning of the Peace Corps Act, to which the provisions of section 3121(p) are applicable, the determination of the amount of remuneration for such service, and the return and payment of the taxes imposed by this chapter, shall be made by the head of the Federal agency or instrumentality having the control of such service, or by such agents as such head may designate. In the case of the taxes imposed by this chapter with respect to service performed in the employ of an international organization pursuant to a transfer to which the provisions of section 3121(y) are applicable, the determination of the amount of remuneration for such service, and the return and payment of the taxes imposed by this chapter, shall be made by the head of the Federal agency from which the transfer was made. Nothing in this paragraph shall be construed to affect the Secretary's authority to determine under subsections (a) and (b) of section 3121 whether any such service constitutes employment, the periods of such employment, and whether remuneration paid for any such service constitutes wages. The person making such return may, for convenience of administration, make payments of the tax imposed under section 3111 with respect to such service without regard to the contribution and benefit base limitation in section 3121(a)(1), and he shall not be required to obtain a refund of the tax paid under section 3111 on that part of the remuneration not included in wages by reason of section 3121(a)(1). Payments of the tax imposed under section 3111 with respect to service, performed by an individual as a member of a uniformed service, to which the

provisions of section 3121(m)(1) are applicable, shall be made from appropriations available for the pay of members of such uniformed service. The provisions of this section shall be applicable in the case of service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Exchanges, Marine Corps Exchanges, or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Defense, at installations of the Department of Defense for the comfort, pleasure, contentment, and mental and physical improvement of personnel of such Department; and for purposes of this section the Secretary of Defense shall be deemed to be the head of such instrumentality. The provisions of this section shall be applicable also in the case of service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Coast Guard Exchanges or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of the Department in which the Coast Guard is operating, at installations of the Coast Guard for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the Coast Guard; and for purposes of this section the Secretary of the Department in which the Coast Guard is operating shall be deemed to be the head of such instrumentality.

(Aug. 16, 1954, ch. 736, 68A Stat. 428; Sept. 1, 1954, ch. 1206, title II, §§202(c), 203(a), 68 Stat. 1090; Aug. 1, 1956, ch. 837, title IV, §411(b), (c), 70 Stat. 879; Pub. L. 85–840, title IV, §402(c), Aug. 28, 1958, 72 Stat. 1042; Pub. L. 85–866, title I, §70, Sept. 2, 1958, 72 Stat. 1660; Pub. L. 87–293, title II, §202(a)(3), Sept. 22, 1961, 75 Stat. 626; Pub. L. 89–97, title III, §320(b)(3), July 30, 1965, 79 Stat. 393; Pub. L. 90–248, title I, §108(b)(3), Jan. 2, 1968, 81 Stat. 835; Pub. L. 92–5, title II, §203(b)(3), Mar. 17, 1971, 85 Stat. 11; Pub. L. 92–236, §203(b)(3), July 1, 1972, 86 Stat. 419; Pub. L. 93–66, §203(b)(3), (d), July 9, 1973, 87 Stat. 153; Pub. L. 93–233, §5(b)(3), (d), Dec. 31, 1973, 87 Stat. 954; Pub. L. 94–455, title XIX, §1903(a)(4), Oct. 4, 1976, 90 Stat. 1807; Pub. L. 97–248, title II, §278(a)(3), Sept. 3, 1982, 96 Stat. 560; Pub. L. 99–272, title XIII, §13205(a)(2)(C), Apr. 7, 1986, 100 Stat. 315; Pub. L. 100–647, title VIII, §8015(a)(2), Nov. 10, 1988, 102 Stat. 3791; Pub. L. 101–508, title XI, §11331(d)(2), Nov. 5, 1990, 104 Stat. 1388–468; Pub. L. 103–66, title XIII, §13207(d)(4), Aug. 10, 1993, 107 Stat. 468; Pub. L. 103–296, title III, §319(a)(2), Aug. 15, 1994, 108 Stat. 1534; Pub. L. 109–241, title IX, §902(i), July 11, 2006, 120 Stat. 567.)

REFERENCES IN TEXT

The Peace Corps Act, referred to in text, is Pub. L. 87–293, Sept. 22, 1961, 75 Stat. 612, as amended, which is classified principally to chapter 34 (§2501 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of Title 22 and Tables.

AMENDMENTS

2006—Pub. L. 109–241 substituted "Secretary of the Department in which the Coast Guard is operating" for "Secretary of Transportation" in two places.

1994—Pub. L. 103–296 inserted after first sentence "In the case of the taxes imposed by this chapter with respect to service performed in the employ of an international organization pursuant to a transfer to which the provisions of section 3121(y) are applicable, the determination of the amount of remuneration for such service, and the return and payment of the taxes imposed by this chapter, shall be made by the head of the Federal agency from which the transfer was made."

1993—Pub. L. 103–66 substituted "contribution and benefit base limitation" for "applicable contribution base limitation".

1990—Pub. L. 101–508 substituted "applicable contribution base limitation" for "contribution and benefit base limitation".

1988—Pub. L. 100–647 struck out from first sentence "the determination whether an individual has performed service which constitutes employment as defined in section 3121(b)," after "section 3121(p) are applicable," and "which constitutes wages as defined in section 3121(a)" after "remuneration for such service", and inserted after first sentence "Nothing in this paragraph shall be construed to affect the Secretary's authority to determine under subsections (a) and (b) of section 3121 whether any such service constitutes employment, the periods of such employment, and whether remuneration paid for any such service constitutes wages."

1986—Pub. L. 99–272 substituted "including such service which is medicare qualified government employment (as defined in section 3121(u)(3))" for "including service which is medicare qualified Federal employment (as defined in section 3121(u)(2))".

1982—Pub. L. 97–248 inserted "including service which is medicare qualified Federal employment (as defined in section 3121(u)(2)),".

1976—Pub. L. 94–455 substituted "Secretary of Transportation" for "Secretary" in two places.

1973—Pub. L. 93–233, §5(b)(3), effective with respect to remuneration paid after 1973, substituted "$13,200" for "$12,600".

Pub. L. 93–233, §5(d), applicable only with respect to remuneration paid after, and taxable year beginning after, 1973 (as provided in section 5(e) of Pub. L. 93–233, set out as a note under section 409 of Title 42), amended section 203(b)(3)(C) of Pub. L. 92–336 (set out as 1973 Amendment note hereunder) substituting "$13,200" for "$12,600".

Pub. L. 93–66, §203(b)(3), effective with respect to remuneration paid after 1973, substituted "$12,600" for "$12,000".

Pub. L. 93–66, §203(d), applicable only with respect to remuneration paid after, and taxable years beginning after, 1973 (as provided in section 203(e) of Pub. L. 93–66, set out as a note under section 409 of Title 42), amended section 203(b)(3)(C) of Pub. L. 92–336 (set out as 1972 Amendment note hereunder) substituting "$12,600" for "$12,000".

1972—Pub. L. 92–336, §203(b)(3)(A), substituted "$10,800" for "$9,000".

Pub. L. 92–336, §203(b)(3)(B), effective with respect to remuneration paid after 1973, substituted "$12,000" for "$10,800".

Pub. L. 92–336, §203(b)(3)(C), effective with respect to remuneration paid after 1974, substituted "contribution and benefit base" for "$12,000".

1971—Pub. L. 92–5 substituted "$9,000" for "$7,800".

1968—Pub. L. 90–248 substituted "$7,800" for "$6,600" in second sentence.

1965—Pub. L. 89–97 substituted "$6,600" for "$4,800".

1961—Pub. L. 87–293 inserted "and including service, performed as a volunteer or volunteer leader within the meaning of the Peace Corps Act, to which the provisions of section 3121(p) are applicable," after "section 3121(m)(1) are applicable,".

1958—Pub. L. 85–866 substituted "section" for "subsection" wherever appearing.

Pub. L. 85–840 substituted "$4,800" for $4,200".

1956—Act Aug. 1, 1956, included taxes with respect to service, performed as a member of a uniformed service, to which provisions of section 3121(m)(1) of this title are applicable, and authorized payment of tax imposed under section 3111 of this title from appropriations available for pay of members of the uniformed service.

1954—Act Sept. 1, 1954, §202(c), substituted "$4,200" for "$3,600".

Act Sept. 1, 1954, §203(a), inserted provisions making section applicable to services performed by a civilian employee in the Coast Guard Exchanges or certain other activities at Coast Guard installations.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 applicable with respect to service performed after calendar quarter following calendar quarter in which Aug. 15, 1994, occurs, see section 319(c) of Pub. L. 103–296, set out as a note under section 1402 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to 1994 and later calendar years, see section 13207(e) of Pub. L. 103–66, set out as a note under section 1402 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to 1991 and later calendar years, see section 11331(e) of Pub. L. 101–508, set out as a note under section 1402 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title VIII, §8015(a)(3), Nov. 10, 1988, 102 Stat. 3791, provided that: "The amendments made by paragraphs (1) and (2) [amending this section and section 405 of Title 42, The Public Health and Welfare] shall apply to determinations relating to service commenced in any position on or after the date of the enactment of this Act [Nov. 10, 1988]."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 applicable to services performed after Mar. 31, 1986, see section 13205(d)(1) of Pub. L. 99–272, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to remuneration paid after Dec. 31, 1982, see section 278(c)(1) of Pub. L. 97–248, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable with respect to wages paid after Dec. 31, 1976, see section 1903(d) of Pub. L. 94–455, set out as a note under section 3101 of this title.

EFFECTIVE DATE OF 1973 AMENDMENTS

Amendment by Pub. L. 93–233 applicable only with respect to remuneration paid after, and taxable years beginning after, 1973, see section 5(e) of Pub. L. 93–233, set out as a note under section 409 of Title 42, The Public Health and Welfare.

Amendment by Pub. L. 93–66 applicable only with respect to remuneration paid after, and taxable years beginning after, 1973, see section 203(e) of Pub. L. 93–66, set out as a note under section 409 of Title 42.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–336 applicable only with respect to remuneration paid after December 1972, see section 203(c) of Pub. L. 92–336, set out as a note under section 409 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–5 applicable only with respect to remuneration paid after December 1971, see section 203(c) of Pub. L. 92–5, set out as a note under section 409 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–248 applicable only with respect to remuneration paid after December 1967, see section 108(c) of Pub. L. 90–248, set out as a note under section 409 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–97 applicable with respect to remuneration paid after December, 1965, see section 320(c) of Pub. L. 89–97, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–293 applicable with respect to service performed after Sept. 22, 1961, but in the case of persons serving under the Peace Corps agency established by executive order applicable with respect to service performed on or after the effective date of enrollment, see section 202(c) of Pub. L. 87–293, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–840 applicable only with respect to remuneration paid after 1958, see section 402(e) of Pub. L. 85–840, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Aug. 1, 1956, effective Jan. 1, 1956, see act Aug. 1, 1956, ch. 837, title VI, §603(a), 70 Stat. 887.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by section 202(c) of act Sept. 1, 1954, applicable only with respect to remuneration paid after 1954, see section 202(d) of act Sept. 1, 1954, set out as a note under section 1401 of this title.

Act Sept. 1, 1954, ch. 1206, title II, §203(b), 68 Stat. 1091, provided that: "The amendment made by subsection (a) [amending this section] shall become effective January 1, 1955."

REPEALS; AMENDMENTS AND APPLICATION OF AMENDMENT UNAFFECTED

Section 202(a)(3) of Pub. L. 87–293, cited as a credit to this section, was repealed by Pub. L. 89–572, §5(a), Sept. 13, 1966, 80 Stat. 765. Such repeal not deemed to affect amendments to this section contained in such provisions, and continuation in full force and effect until modified by appropriate authority of all

determinations, authorization, regulations, orders, contracts, agreements, and other actions issued, undertaken, or entered into under authority of the repealed provisions, see section 5(b) of Pub. L. 89–572, set out as a note under section 2515 of Title 22, Foreign Relations and Intercourse.

§3123. Deductions as constructive payments

Whenever under this chapter or any act of Congress, or under the law of any State, an employer is required or permitted to deduct any amount from the remuneration of an employee and to pay the amount deducted to the United States, a State, or any political subdivision thereof, then for purposes of this chapter the amount so deducted shall be considered to have been paid to the employee at the time of such deduction.

(Aug. 16, 1954, ch. 736, 68A Stat. 429.)

§3124. Estimate of revenue reduction

The Secretary at intervals of not longer than 3 years shall estimate the reduction in the amount of taxes collected under this chapter by reason of the operation of section 3121(b)(9) and shall include such estimate in his annual report.

(Aug. 16, 1954, ch. 736, 68A Stat. 429; Sept. 1, 1954, ch. 1206, title II, §205(b), 68 Stat. 1091; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".
1954—Act Sept. 1, 1954, substituted "section 3121(b)(9)" for "section 3121(b)(10)".

§3125. Returns in the case of governmental employees in States, Guam, American Samoa, and the District of Columbia

(a) States

Except as otherwise provided in this section, in the case of the taxes imposed by sections 3101(b) and 3111(b) with respect to service performed in the employ of a State or any political subdivision thereof (or any instrumentality of any one or more of the foregoing which is wholly owned thereby), the return and payment of such taxes may be made by the head of the agency or instrumentality having the control of such service, or by such agents as such head may designate. The person making such return may, for convenience of administration, make payments of the tax imposed under section 3111 with respect to the service of such individuals without regard to the contribution and benefit base limitation in section 3121(a)(1).

(b) Guam

The return and payment of the taxes imposed by this chapter on the income of individuals who are officers or employees of the Government of Guam or any political subdivision thereof or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, and those imposed on such Government or political subdivision or instrumentality with respect to having such individuals in its employ, may be made by the Governor of Guam or by such agents as he may designate. The person making such return may, for convenience of administration, make payments of the tax imposed under section 3111 with respect to the service of such individuals without regard to the contribution and benefit base limitation in section 3121(a)(1).

(c) American Samoa

The return and payment of the taxes imposed by this chapter on the income of individuals who are officers or employees of the Government of American Samoa or any political subdivision thereof or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, and those

imposed on such Government or political subdivision or instrumentality with respect to having such individuals in its employ, may be made by the Governor of American Samoa or by such agents as he may designate. The person making such return may, for convenience of administration, make payments of the tax imposed under section 3111 with respect to the service of such individuals without regard to the contribution and benefit base limitation in section 3121(a)(1).

(d) District of Columbia

In the case of the taxes imposed by this chapter with respect to service performed in the employ of the District of Columbia or in the employ of any instrumentality which is wholly owned thereby, the return and payment of the taxes may be made by the Mayor of the District of Columbia or such agents as he may designate. The person making such return may, for convenience of administration, make payments of the tax imposed by section 3111 with respect to such service without regard to the contribution and benefit base limitation in section 3121(a)(1).

(Added Pub. L. 86–778, title I, §103(q)(1), Sept. 13, 1960, 74 Stat. 939; amended Pub. L. 89–97, title III, §§317(c)(1), (2), 320(b)(4), July 30, 1965, 79 Stat. 389, 393; Pub. L. 90–248, title I, §108(b)(4), Jan. 2, 1968, 81 Stat. 835; Pub. L. 92–5, title II, §203(b)(4), Mar. 17, 1971, 85 Stat. 11; Pub. L. 92–336, title II, §203(b)(4), July 1, 1972, 86 Stat. 419; Pub. L. 93–66, title II, §203(b)(4), (d), July 9, 1973, 87 Stat. 153; Pub. L. 93–233, §5(b)(4), (d), Dec. 31, 1973, 87 Stat. 954; Pub. L. 94–455, title XIX, §1903(a)(5), Oct. 4, 1976, 90 Stat. 1807; Pub. L. 99–272, title XIII, §13205(a)(2)(A)(i), (ii), Apr. 7, 1986, 100 Stat. 315; Pub. L. 101–508, title XI, §11331(d)(2), Nov. 5, 1990, 104 Stat. 1388–468; Pub. L. 103–66, title XIII, §13207(d)(4), Aug. 10, 1993, 107 Stat. 468.)

PRIOR PROVISIONS

A prior section 3125 was renumbered section 3128 of this title.

AMENDMENTS

1993—Pub. L. 103–66 which directed the amendment of this section by substituting "contribution and benefit base limitation" for "applicable contribution base limitation" without specifying where the substitution was to be made, was executed by making the substitution in subsecs. (a) to (d) to reflect the probable intent of Congress.

1990—Pub. L. 101–508 substituted "applicable contribution base limitation" for "contribution and benefit base limitation" in subsecs. (a) to (d).

1986—Pub. L. 99–272 inserted "States" in section catchline, added subsec. (a), and redesignated former subsecs. (a) to (c) as (b) to (d), respectively.

1976—Subsec. (c). Pub. L. 94–455 substituted "Mayor of the District of Columbia or such agents as he may designate" for "Commissioners of the District of Columbia or such agents as they may designate".

1973—Pub. L. 93–233, §5(b)(4), effective with respect to remuneration paid after 1973, substituted "$13,200" for "$12,600" wherever appearing.

Pub. L. 93–233, §5(d), applicable only with respect to remuneration paid after, and taxable years beginning after, 1973 (as provided in section 5(e) of Pub. L. 93–233, set out as a note under section 409 of Title 42), amended section 203(b)(4)(C) of Pub. L. 92–336 (set out as 1973 Amendment note hereunder) substituting "$13,200" for "$12,600".

Pub. L. 93–66, §203(b)(4), effective with respect to remuneration paid after 1973, substituted "$12,600" for "$12,000" wherever appearing.

Pub. L. 93–66, §203(d), applicable only with respect to remuneration paid after, and taxable years beginning after, 1973 (as provided in section 203(e) of Pub. L. 93–66, set out as a note under section 409 of Title 42), amended section 203(b)(4)(C) of Pub. L. 92–336 (set out as 1972 Amendment note hereunder) substituting "$12,600" for "$12,000".

1972—Pub. L. 92–336, §203(b)(4)(A), substituted "$10,800" for "$9,000" wherever appearing.

Pub. L. 92–336, §203(b)(4)(B), effective with respect to remuneration paid after 1973, substituted "$12,000" for "$10,800" wherever appearing.

Pub. L. 92–336, §203(b)(4)(C), effective with respect to remuneration paid after 1974, substituted "contribution and benefit base" for "$12,000".

1971—Pub. L. 92–5 substituted "$9,000" for "$7,800" wherever appearing.

1968—Pub. L. 90–248 substituted "$7,800" for "$6,600" wherever appearing.

1965—Subsecs. (a), (b). Pub. L. 89–97, §320(b)(4), substituted "$6,600" for "$4,800".

Subsec. (c). Pub. L. 89–97, §317(c)(1), added subsec. (c) and inserted reference to District of Columbia in section catchline.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to 1994 and later calendar years, see section 13207(e) of Pub. L. 103–66, set out as a note under section 1402 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to 1991 and later calendar years, see section 11331(e) of Pub. L. 101–508, set out as a note under section 1402 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 applicable to services performed after Mar. 31, 1986, see section 13205(d)(1) of Pub. L. 99–272, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1973 AMENDMENTS

Amendment by Pub. L. 93–233 applicable only with respect to remuneration paid after, and taxable years beginning after, 1973, see section 5(e) of Pub. L. 93–233, set out as a note under section 409 of Title 42, The Public Health and Welfare.

Amendment by Pub. L. 93–66 applicable only with respect to remuneration paid after, and taxable years beginning after, 1973, see section 203(e) of Pub. L. 93–66, set out as a note under section 409 of Title 42.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–336 applicable only with respect to remuneration paid after December 1972, see section 203(c) of Pub. L. 92–336, set out as a note under section 409 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–5 applicable only with respect to remuneration paid after December 1971, see section 203(c) of Pub. L. 92–5, set out as a note under section 409 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–248 applicable only with respect to remuneration paid after December 1967, see section 108(c) of Pub. L. 90–248, set out as a note under section 409 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 317(c)(1), (2) of Pub. L. 89–97 applicable with respect to services performed after quarter ending September 30, 1965, and after quarter in which Secretary of the Treasury receives a certification from Commissioners of District of Columbia expressing their desire to have insurance system established by section 401 et seq. and 1395c et seq. of Title 42, The Public Health and Welfare, extended to officers and employees coming under provisions of such amendments, see section 317(g) of Pub. L. 89–97, set out as a note under section 410 of Title 42.

Amendment by section 320(b)(4) of Pub. L. 89–97 applicable with respect to remuneration paid after December 1965, see section 320(c) of Pub. L. 89–97, set out as a note under section 3121 of this title.

EFFECTIVE DATE

Section applicable only with respect to (1) service in the employ of the Government of Guam or any political subdivision thereof, or any instrumentality of any one or more of the foregoing wholly owned thereby, which is performed after 1960 and after the calendar quarter in which the Secretary of the Treasury receives a certification by the Governor of Guam that legislation has been enacted by the Government of Guam expressing its desire to have the insurance system established by title II of the Social Security Act (42 U.S.C. 401 et seq.) extended to the officers and employees of such Government and such political subdivisions and instrumentalities, and (2) service in the employ of the Government of American Samoa or any political subdivision thereof or any instrumentality of any one or more of the foregoing wholly owned thereby, which is performed after 1960 and after the calendar quarter in which the Secretary of the Treasury receives a certification by the Governor of American Samoa that the Government of American Samoa desires to have the insurance system established by title II of the Social Security Act extended to the officers and

employees of such Government and such political subdivisions and instrumentalities, see section 103(v)(1) of Pub. L. 86–778, set out as an Effective Date of 1960 Amendment note under section 402 of Title 42, The Public Health and Welfare.

§3126. Return and payment by governmental employer

If the employer is a State or political subdivision thereof, or an agency or instrumentality of any one or more of the foregoing, the return of the amount deducted and withheld upon any wages under section 3101 and the amount of the tax imposed by section 3111 may be made by any officer or employee of such State or political subdivision or such agency or instrumentality, as the case may be, having control of the payment of such wages, or appropriately designated for that purpose.

(Added Pub. L. 99–509, title IX, §9002(a)(1), Oct. 21, 1986, 100 Stat. 1970.)

PRIOR PROVISIONS

A prior section 3126 was renumbered section 3128 of this title.

EFFECTIVE DATE

Section, except as otherwise provided, effective with respect to payments due with respect to wages paid after Dec. 31, 1986, including wages paid after such date by a State (or political subdivision thereof) that modified its agreement pursuant to section 418(e)(2) of Title 42, The Public Health and Welfare, see section 9002(d) of Pub. L. 99–509, set out as an Effective Date of 1986 Amendment note under section 418 of Title 42.

§3127. Exemption for employers and their employees where both are members of religious faiths opposed to participation in Social Security Act programs

(a) In general

Notwithstanding any other provision of this chapter (and under regulations prescribed to carry out this section), in any case where—

(1) an employer (or, if the employer is a partnership, each partner therein) is a member of a recognized religious sect or division thereof described in section 1402(g)(1) and an adherent of established tenets or teachings of such sect or division as described in such section, and has filed and had approved under subsection (b) an application (in such form and manner, and with such official, as may be prescribed by such regulations) for an exemption from the taxes imposed by section 3111, and

(2) an employee of such employer who is also a member of such a religious sect or division and an adherent of its established tenets or teachings has filed and had approved under subsection (b) an identical application for exemption from the taxes imposed by section 3101,

such employer shall be exempt from the taxes imposed by section 3111 with respect to wages paid to each of the employees thereof who meets the requirements of paragraph (2) and each such employee shall be exempt from the taxes imposed by section 3101 with respect to such wages paid to him by such employer.

(b) Approval of application

An application for exemption filed by an employer (or a partner) under subsection (a)(1) or by an employee under subsection (a)(2) shall be approved only if—

(1) such application contains or is accompanied by the evidence described in section 1402(g)(1)(A) and a waiver described in section 1402(g)(1)(B),

(2) the Commissioner of Social Security makes the findings (with respect to such sect or division) described in section 1402(g)(1)(C), (D), and (E), and

(3) no benefit or other payment referred to in section 1402(g)(1)(B) became payable (or, but for section 203 or 222(b) [1] of the Social Security Act, would have become payable) to the individual

filing the application at or before the time of such filing.

(c) Effective period of exemption

An exemption granted under this section to any employer with respect to wages paid to any of the employees thereof, or granted to any such employee, shall apply with respect to wages paid by such employer during the period—

(1) commencing with the first day of the first calendar quarter, after the quarter in which such application is filed, throughout which such employer (or, if the employer is a partnership, each partner therein) or employee meets the applicable requirements specified in subsections (a) and (b), and

(2) ending with the last day of the calendar quarter preceding the first calendar quarter thereafter in which (A) such employer (or, if the employer is a partnership, any partner therein) or the employee involved does not meet the applicable requirements of subsection (a), or (B) the sect or division thereof of which such employer (or, if the employer is a partnership, any partner therein) or employee is a member is found by the Commissioner of Social Security to have ceased to meet the requirements of subsection (b)(2).

(Added Pub. L. 100–647, title VIII, §8007(a)(1), Nov. 10, 1988, 102 Stat. 3781; amended Pub. L. 101–239, title X, §10204(b)(1), Dec. 19, 1989, 103 Stat. 2474; Pub. L. 103–296, title I, §108(h)(3), Aug. 15, 1994, 108 Stat. 1487.)

REFERENCES IN TEXT

Sections 203 and 222(b) of the Social Security Act, referred to in subsec. (b)(3), are classified to sections 403 and 422(b), respectively, of Title 42, The Public Health and Welfare. Section 222(b) was repealed by Pub. L. 106–170, title I, §101(b)(1)(C), Dec. 17, 1999, 113 Stat. 1873.

PRIOR PROVISIONS

A prior section 3127 was renumbered section 3128 of this title.

AMENDMENTS

1994—Subsecs. (b)(2), (c)(2). Pub. L. 103–296 substituted "Commissioner of Social Security" for "Secretary of Health and Human Services".

1989—Subsec. (a). Pub. L. 101–239, §10204(b)(1)(B), substituted "the employees thereof" for "his employees" in concluding provisions.

Subsec. (a)(1). Pub. L. 101–239, §10204(b)(1)(A), inserted "(or, if the employer is a partnership, each partner therein)" after "an employer".

Subsec. (b). Pub. L. 101–239, §10204(b)(1)(C), inserted "(or a partner)" after "an employer" in introductory provisions.

Subsec. (c). Pub. L. 101–239, §10204(b)(1)(D), substituted "the employees thereof" for "his employees" in introductory provisions.

Subsec. (c)(1). Pub. L. 101–239, §10204(b)(1)(E), inserted "(or, if the employer is a partnership, each partner therein)".

Subsec. (c)(2). Pub. L. 101–239, §10204(b)(1)(F), substituted "such employer (or, if the employer is a partnership, any partner therein) or the employee involved does not meet" for "such employer or the employee involved ceases to meet" in cl. (A) and inserted "(or, if the employer is a partnership, any partner therein)" after "such employer" in cl. (B).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title X, §10204(b)(2), Dec. 19, 1989, 103 Stat. 2474, provided that: "The amendments made by this subsection [amending this section] shall be effective as if they were included in the amendments made by section 8007(a)(1) of the Technical and Miscellaneous Revenue Act of 1988 (102 Stat. 3781) [Pub. L. 100–647]."

EFFECTIVE DATE

Section applicable to wages paid after Dec. 31, 1988, see section 8007(d) of Pub. L. 100–647, set out as an

Effective Date of 1988 Amendment note under section 1402 of this title.

[1] *See References in Text note below.*

§3128. Short title

This chapter may be cited as the "Federal Insurance Contributions Act."

(Aug. 16, 1954, ch. 736, 68A Stat. 429, §3125; renumbered §3126, Pub. L. 86–778, title I, §103(q)(1), Sept. 13, 1960, 74 Stat. 939; renumbered §3127, Pub. L. 99–509, title IX, §9002(a)(1), Oct. 21, 1986, 100 Stat. 1970; renumbered §3128, Pub. L. 100–647, title VIII, §8007(a)(1), Nov. 10, 1988, 102 Stat. 3781.)

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–509, except as otherwise provided, effective with respect to payments due with respect to wages paid after Dec. 31, 1986, including wages paid after such date by a State (or political subdivision thereof) that modified its agreement pursuant to section 418(e)(2) of Title 42, The Public Health and Welfare, see section 9002(d) of Pub. L. 99–509, set out as a note under section 418 of Title 42.

CHAPTER 22—RAILROAD RETIREMENT TAX ACT

Subchapter		Sec.[1]
A.	**Tax on employees**	**3201**
B.	**Tax on employee representatives**	**3211**
C.	**Tax on employers**	**3221**
D.	**General provisions**	**3231**
E.	**Tier 2 tax rate determination.**	**3241**

AMENDMENTS

2001—Pub. L. 107–90, title II, §204(e)(5), Dec. 21, 2001, 115 Stat. 893, added item for subchapter E.

[1] *Section numbers editorially supplied.*

Subchapter A—Tax on Employees

Sec.
3201. Rate of tax.
3202. Deduction of tax from compensation.

§3201. Rate of tax

(a) Tier 1 tax

In addition to other taxes, there is hereby imposed on the income of each employee a tax equal to the applicable percentage of the compensation received during any calendar year by such employee for services rendered by such employee. For purposes of the preceding sentence, the term "applicable percentage" means the percentage equal to the sum of the rates of tax in effect under subsections (a) and (b) of section 3101 for the calendar year.

(b) Tier 2 tax

(1) In general

In addition to other taxes, there is hereby imposed on the income of each employee a tax equal to the applicable percentage of the compensation received during any calendar year by such

employee for services rendered by such employee.

(2) Applicable percentage

For purposes of paragraph (1), the term "applicable percentage" means—

(A) 4.90 percent in the case of compensation received during 2002 or 2003, and

(B) in the case of compensation received during any calendar year after 2003, the percentage determined under section 3241 for such calendar year.

(c) Cross reference

For application of different contribution bases with respect to the taxes imposed by subsections (a) and (b), see section 3231(e)(2).

(Aug. 16, 1954, ch. 736, 68A Stat. 431; Aug. 31, 1954, ch. 1164, pt. II, §206(a), 68 Stat. 1040; Pub. L. 86–28, pt. II, §201(a), May 19, 1959, 73 Stat. 28; Pub. L. 88–133, title II, §201, Oct. 5, 1963, 77 Stat. 221; Pub. L. 89–97, title I, §§105(b)(1), 111(c)(1), July 30, 1965, 79 Stat. 335, 342; Pub. L. 89–212, §§4, 5(a), Sept. 29, 1965, 79 Stat. 861; Pub. L. 89–699, title III, §301(a), Oct. 30, 1966, 80 Stat. 1078; Pub. L. 89–700, title III, §301(v), (vi), Oct. 30, 1966, 80 Stat. 1088, 1089; Pub. L. 93–69, title I, §102(a), July 10, 1973, 87 Stat. 162; Pub. L. 94–93, title II, §201, Aug. 9, 1975, 89 Stat. 466; Pub. L. 94–455, title XIX, §1903(a)(6), Oct. 4, 1976, 90 Stat. 1807; Pub. L. 97–34, title VII, §741(a), Aug. 13, 1981, 95 Stat. 347; Pub. L. 98–76, title II, §§211(a), 221, Aug. 12, 1983, 97 Stat. 419, 420; Pub. L. 100–203, title IX, §9031(a), Dec. 22, 1987, 101 Stat. 1330–296; Pub. L. 101–508, title V, §5125(a), Nov. 5, 1990, 104 Stat. 1388–285; Pub. L. 107–90, title II, §204(c), Dec. 21, 2001, 115 Stat. 892.)

AMENDMENTS

2001—Subsec. (b). Pub. L. 107–90 amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: "In addition to other taxes, there is hereby imposed on the income of each employee a tax equal to 4.90 percent of the compensation received during any calendar year by such employee for services rendered by such employee."

1990—Subsec. (a). Pub. L. 101–508 substituted "applicable" for "following" before "percentage of the" and provision defining the term "applicable percentage" for provision specifying that in the case of compensation received during 1985 the rate of tax was 7.05 percent, for 1986 or 1987 the rate was 7.15 percent, for 1988 or 1989 the rate was 7.51 percent, and 1990 or thereafter the rate was 7.65 percent.

1987—Subsec. (b). Pub. L. 100–203 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "In addition to other taxes, there is hereby imposed on the income of each employee a tax equal to the following percentage of the compensation received during any calendar year by such employee for services rendered by such employee:

"In the case of compensation received during:	The rate shall be:
1985	3.50
1986 or thereafter	4.25."

1983—Pub. L. 98–76, §221, amended section generally, substituting a two tiered tax system with accompanying tax rate tables and a cross reference to section 3231 of this title, for provisions which had taxed an employee at 2.75 percent of so much of the compensation paid in any calendar month to such employee for services rendered by him as was not in excess of an amount equal to one-twelfth of the current maximum annual taxable "wages" as defined in section 3121 for any month and which had provided that the rate of tax imposed by subsection (a) be increased by the rate of the tax imposed with respect to wages by section 3101(a) plus the rate imposed by section 3101(b) of so much of the compensation paid in any calendar month to such employee for services rendered by him as was not in excess of an amount equal to one-twelfth of the current maximum annual taxable "wages" as defined in section 3121 for any month.

Pub. L. 98–76, §211(a), substituted "2.75 percent" for "2.0 percent".

1981—Subsec. (a). Pub. L. 97–34 added subsec. (a).

Subsec. (b). Pub. L. 97–34 designated existing provisions as subsec. (b) and substituted "The rate of tax imposed by subsection (a) shall be increased by" for "In addition to other taxes, there is hereby imposed on the income of every employee a tax rate equal to".

1976—Pub. L. 94–455 struck out "of the Internal Revenue Code of 1954" after "wages by section 3101(a)", "of such Code" after "rate imposed by section 3101(b)", "after September 30, 1973," after "for services rendered by him", "of the Internal Revenue Code of 1954" after "as defined in section 3121", and "after September 30, 1973" after "for any month".

1975—Pub. L. 94–93 inserted "in any calendar month" after "compensation paid".

1973—Pub. L. 93–69 substituted new tax rate provisions on income of employee for services rendered after Sept. 30, 1973, for former provisions which prescribed 6¼, 6½, 7, 7¼, and 7½ percent on income for services rendered after Sept. 30, 1965, Dec. 31, 1965, Dec. 31, 1966, Dec. 31, 1967, and Dec. 31, 1968, respectively, as is not in excess of (i) $450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable "wages" as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after September 30, 1965: *Provided*, That the rate of tax imposed by this section shall be increased, with respect to compensation paid for services rendered after September 30, 1965, by a number of percentage points (including fractional points) equal at any given time to the number of percentage points (including fractional points) by which the rate of the tax imposed with respect to wages by section 3101(a) plus the rate imposed by section 3101(b) at such time exceeds 2¾ percent (the rate provided by paragraph (2) of section 3101 as amended by the Social Security Amendments of 1956).

1966—Pub. L. 89–700 substituted "rendered after September 30, 1965" for "rendered after December 31, 1964", and "(i) $450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable 'wages' as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after September 30, 1965" for "$400 for any calendar month before the calendar month next following the month in which this provision was amended in 1963, or $450 for any calendar month after the month in which this provision was so amended and before the calendar month next following the calendar month in which this provision was amended in 1965, or (i) $450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable 'wages' as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after the month in which this provision was so amended".

Pub. L. 89–699 substituted "7 percent" for "6¾ percent" in subd. (3), "7¼ percent" for "7 percent" in subd. (4), and "7½ percent" for "7¼ percent" in subd. (5).

1965—Pub. L. 89–212 substituted pars. (1) to (5) for former pars. (1) and (2) which imposed a tax equal to 6¾ percent of so much of the compensation paid to such employee for services rendered by him after the month in which this provision was amended in 1959, and before Jan. 1, 1962, and 7¼ percent of so much of the compensation paid to such employee for services rendered by him after Dec. 31, 1961, and inserted "and before the calendar month next following the calendar month in which this provision was amended in 1965, or (i) $450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable 'wages' as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after the month in which this provision was so amended".

Pub. L. 89–97 substituted "the rate of the tax imposed with respect to wages by section 3101(a) at such time exceeds 2¾ percent (the rate provided by paragraph (2) of section 3101 as amended by the Social Security Amendments of 1956)" for "the rate of the tax imposed with respect to wages by section 3101 at such time exceeds the rate provided by paragraph (2) of such section 3101 as amended by the Social Security Amendments of 1956" and inserted "plus the rate imposed by section 3101(b)" after "section 3101(a)", respectively.

1963—Pub. L. 88–133 limited existing taxable compensation base of $400 to any calendar month before Nov. 1963 and increased such base to $450 for any calendar month after Oct. 1963.

1959—Pub. L. 86–28 increased tax from 6¼ percent of compensation not in excess of $350 for any calendar month to 6¾ percent of the compensation not in excess of $400 for any calendar month for services rendered before Jan. 1, 1962, and to 7¼ percent for services rendered after Dec. 31, 1961, and required an increase in the rate of tax with respect to compensation paid for services rendered after Dec. 31, 1964, by a number of percentage points equal at any given time to the number of percentage points by which the rate of tax imposed by section 3101 of this title at such time exceeds the rate provided by par. (2) of such section 3101 as amended by the Social Security Amendments of 1956.

1954—Act Aug. 31, 1954, substituted "$350" for "$300".

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–90 applicable to calendar years beginning after Dec. 31, 2001, see section 204(f) of Pub. L. 107–90, set out as a note under section 24 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title IX, §9031(b), Dec. 22, 1987, 101 Stat. 1330–296, provided that: "The amendment made by this section [amending this section] shall apply with respect to compensation received after December 31, 1987."

EFFECTIVE AND TERMINATION DATES OF 1983 AMENDMENT

Pub. L. 98–76, title II, §212, Aug. 12, 1983, 97 Stat. 419, provided that: "The amendments made by this part [part I (§§211, 212) of subtitle A of title II of Pub. L. 98–76, amending this section, sections 3211 and 3221 of this title, and section 430 of Title 42, The Public Health and Welfare] shall apply to compensation paid for services rendered after December 31, 1983, and before January 1, 1985."

Pub. L. 98–76, title II, §227(a), Aug. 12, 1983, 97 Stat. 426, provided that: "The amendments made by sections 221, 222, 223, and 225 [amending this section and sections 3202, 3211, 3221, and 3231 of this title and section 430 of Title 42] shall apply to remuneration paid after December 31, 1984."

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title VII, §741(e), Aug. 13, 1981, 95 Stat. 347, provided that: "The amendments made by this section [amending this section and sections 3211, 3221, and 3231 of this title and section 430 of Title 42, The Public Health and Welfare] shall apply to compensation paid for services rendered after September 30, 1981."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable with respect to compensation paid for services rendered after Dec. 31, 1976, see section 1903(d) of Pub. L. 94–455, set out as a note under section 3101 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Pub. L. 94–93, title II, §207, Aug. 9, 1975, 89 Stat. 467, provided that: "The amendments made by sections 201 through 205 of this title [amending this section and sections 3211, 3221, and 3231 of this title] shall apply for taxable years ending on or after the date of the enactment of this Act [Aug. 9, 1975] and for taxable years ending before the date of the enactment of this Act as to which the period for assessment and collection of tax or the filing of a claim for credit or refund has not expired on the date of enactment of this Act. The amendment made by section 206 of this title [amending section 3231 of this title] shall apply for taxable years beginning on or after the date of enactment of this Act: *Provided, however,* That with respect to payment made prior to the date of enactment of this Act, the employee may file a written request under section 206 within six months after the enactment of this Act."

EFFECTIVE DATE OF 1973 AMENDMENT

Pub. L. 93–69, title I, §109(b), July 10, 1973, 87 Stat. 165, provided that: "The amendments made by section 102 of this Act [amending this section and sections 3202, 3211, and 3221 of this title] shall become effective on October 1, 1973, and shall apply only with respect to compensation paid for services rendered on or after that date: *Provided, however,* That such amendments shall not be applicable to any dock company, common carrier railroad, or railway labor organization described in section 1(a) of the Railroad Retirement Act of 1937 [section 228a(a) of Title 45, Railroads], with respect to those of its employees covered as of October 1, 1973, by a private supplemental pension plan established through collective bargaining, where a moratorium in an agreement made on or before March 8, 1973, is applicable to changes in rates of pay contained in the current collective-bargaining agreement covering such employees, until the earlier of (1) the date as of which such moratorium expires, or (2) the date as of which such dock company, common carrier railroad, or railway labor organization agrees through collective bargaining to make the provisions of such amendments applicable."

EFFECTIVE DATE OF 1965 AMENDMENTS

Pub. L. 89–212, §6, Sept. 29, 1965, 79 Stat. 862, provided that: "The amendments made by sections 1 and 3 of this Act [amending sections 228b, 228c, and 228e of Title 45, Railroads] shall take effect with respect to annuities accruing and deaths occurring in months after the month in which this Act is enacted [September 1965], and shall apply also to annuities paid in lump sums equal to their commuted value because of a reduction in such annuities under section 2(e) of the Railroad Retirement Act of 1937 [section 228b(e) of Title 45], as in effect before the amendments made by this Act, as if such annuities had not been paid in such lump sums: *Provided, however,* That the amounts of such annuities which were paid in lump sums equal to their commuted value shall not be included in the amount of annuities which become payable by reason of section 1 of this Act [amending section 228b of Title 45]. The amendments made by section 2 of this Act [amending

sections 3203, 3231, 3402, 6053, and 6652 of this title, and section 228a of Title 45] shall apply only with respect to tips received after 1965. The amendments made by section 4 of this Act [amending this section and sections 3202, 3211, and 3221 of this title] shall apply only with respect to calendar months after the month in which this Act is enacted. The amendments made by section 5 of this Act [amending this section and sections 3211 and 3221 of this title] shall apply only with respect to compensation paid for services rendered after September 30, 1965."

Pub. L. 89–97, title I, §105(b)(4), July 30, 1965, 79 Stat. 336, provided that: "The amendments made by this subsection [amending this section and sections 3211 and 3221 of this title] shall be effective with respect to compensation paid for services rendered after December 31, 1965."

Amendment by section 111(c)(1) of Pub. L. 89–97 applicable to calendar year 1966, or to any subsequent calendar year but only if by October 1 immediately preceding such calendar year the Railroad Retirement Tax Act [this chapter] provides for a maximum amount of monthly compensation taxable under such Act during all months of such calendar year equal to one-twelfth of maximum wages which Federal Insurance Contributions Act [section 3101 et seq. of this title] provides may be counted for such calendar year, see section 111(e) of Pub. L. 89–97, set out as an Effective Date note under section 1395i–1 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1959 AMENDMENT

Pub. L. 86–28, title II, §202, May 19, 1959, 73 Stat. 30, provided that: "The amendments made by section 201 [amending this section and sections 3202, 3211, and 3221 of this title] shall, except as otherwise provided in such amendments, be effective as of the first day of the calendar month next following the month in which this Act was enacted [May, 1959], and shall apply only with respect to compensation paid after the month of such enactment, for services rendered after such month of enactment."

EFFECTIVE DATE OF 1954 AMENDMENT

Act Aug. 31, 1954, ch. 1164, pt. IV, §407, 68 Stat. 1042, as amended by act Oct. 22, 1986, Pub. L. 99–514, §2, 100 Stat. 2095, provided that: "The amendments to the Internal Revenue Code of 1986 [formerly I.R.C. 1954] made by section 206 [amending this section and sections 3202, 3211, 3221, and 3231 of this title] shall become effective as if enacted as a part of the Internal Revenue Code of 1986."

SEPARABILITY

Pub. L. 93–69, title III, §301, July 10, 1973, 87 Stat. 168, provided that: "If any provision of this Act [amending this section, sections 3202, 3211, and 3221 of this title, sections 228b, 228c, and 228e of Title 45, Railroads, and section 15a of former Title 49, and enacting provisions set out as notes under this section, and sections 228b, 228c, 228f, and 228o of Title 45] or the application thereof to any person or circumstances should be held invalid, the remainder of such Act or the application of such provision to other persons or circumstances shall not be affected thereby."

PENALTIES AND INTEREST NOT ASSESSED FOR FAILURE TO MAKE TIMELY PAYMENT DURING PERIOD JANUARY 1, 1982, TO JUNE 30, 1982, OF TAXES ATTRIBUTABLE TO AMENDMENTS BY PUB. L. 97–123

For provision that no penalties or interest shall be assessed on account of any failure to make timely payment of taxes imposed by subsec. (b) of this section with respect to payments made for the period Jan. 1, 1982, and ending June 30, 1982, to the extent that such taxes are attributable to section 3 of Pub. L. 97–123 or the amendments made by that section, see section 3(f) of Pub. L. 97–123, set out as a note under section 3101 of this title.

§3202. Deduction of tax from compensation

(a) Requirement

The taxes imposed by section 3201 shall be collected by the employer of the taxpayer by deducting the amount of the taxes from the compensation of the employee as and when paid. An employer who is furnished by an employee a written statement of tips (received in a calendar month) pursuant to section 6053(a) to which paragraph (3) of section 3231(e) is applicable may deduct an amount equivalent to such taxes with respect to such tips from any compensation of the employee

(exclusive of tips) under his control, even though at the time such statement is furnished the total amount of the tips included in statements furnished to the employer as having been received by the employee in such calendar month in the course of his employment by such employer is less than $20.

(b) Indemnification of employer

Every employer required under subsection (a) to deduct the tax shall be liable for the payment of such tax and shall not be liable to any person for the amount of any such payment.

(c) Special rule for tips

(1) In the case of tips which constitute compensation, subsection (a) shall be applicable only to such tips as are included in a written statement furnished to the employer pursuant to section 6053(a), and only to the extent that collection can be made by the employer, at or after the time such statement is so furnished and before the close of the 10th day following the calendar month (or, if paragraph (3) applies, the 30th day following the quarter) in which the tips were deemed paid, by deducting the amount of the tax from such compensation of the employee (excluding tips, but including funds turned over by the employee to the employer pursuant to paragraph (2)) as are under control of the employer.

(2) If the taxes imposed by section 3201, with respect to tips which are included in written statements furnished in any month to the employer pursuant to section 6053(a), exceed the compensation of the employee (excluding tips) from which the employer is required to collect the taxes under paragraph (1), the employee may furnish to the employer on or before the 10th day of the following month (or, if paragraph (3) applies, on or before the 30th day of the following quarter) an amount of money equal to the amount of the excess.

(3) The Secretary may, under regulations prescribed by him, authorize employers—

(A) to estimate the amount of tips that will be reported by the employee pursuant to section 6053(a) in any quarter of the calendar year,

(B) to determine the amount to be deducted upon each payment of compensation (exclusive of tips) during such quarter as if the tips so estimated constituted actual tips so reported, and

(C) to deduct upon any payment of compensation (other than tips, but including funds turned over by the employee to the employer pursuant to paragraph (2)) to such employee during such quarter (and within 30 days thereafter) such amount as may be necessary to adjust the amount actually deducted upon such compensation of the employee during the quarter to the amount required to be deducted in respect of tips included in written statements furnished to the employer during the quarter.

(4) If the taxes imposed by section 3201 with respect to tips which constitute compensation exceed the portion of such taxes which can be collected by the employer from the compensation of the employee pursuant to paragraph (1) or paragraph (3), such excess shall be paid by the employee.

(d) Special rule for certain taxable group-term life insurance benefits

(1) In general

In the case of any payment for group-term life insurance to which this subsection applies—

(A) subsection (a) shall not apply,

(B) the employer shall separately include on the statement required under section 6051—

(i) the portion of the compensation which consists of payments for group-term life insurance to which this subsection applies, and

(ii) the amount of the tax imposed by section 3201 on such payments, and

(C) the tax imposed by section 3201 on such payments shall be paid by the employee.

(2) Benefits to which subsection applies

This subsection shall apply to any payment for group-term life insurance to the extent—

(A) such payment constitutes compensation, and

(B) such payment is for coverage for periods during which an employment relationship no

longer exists between the employee and the employer.

(Aug. 16, 1954, ch. 736, 68A Stat. 431; Aug. 31, 1954, ch. 1164, pt. II, §206(a), 68 Stat. 1040; Pub. L. 86–28, pt. II, §201(b), May 19, 1959, 73 Stat. 29; Pub. L. 88–133, title II, §202, Oct. 5, 1963,77 Stat. 221; Pub. L. 89–212, §§2(a), 4, Sept. 29, 1965, 79 Stat. 858, 861; Pub. L. 89–700, title III, §301(iii), (v), Oct. 30, 1966, 80 Stat. 1088; Pub. L. 93–69, title I, §102(b), July 10, 1973, 87 Stat. 162; Pub. L. 94–455, title XIX, §§1903(a)(7), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1807, 1834; Pub. L. 98–76, title II, §225(a)(2), (c)(1)(A), (B), (2)–(5), Aug. 12, 1983, 97 Stat. 425; Pub. L. 101–508, title V, §5124(b), Nov. 5, 1990, 104 Stat. 1388–285.)

AMENDMENTS

1990—Subsec. (d). Pub. L. 101–508 added subsec. (d).

1983—Subsec. (a). Pub. L. 98–76, §225(a)(2), (c)(1)(A), (2), substituted "taxes imposed by section 3201" for "tax imposed by section 3201", substituted "the amount of the taxes" for "the amount of the tax", and "such taxes" for "such tax", and struck out provisions that if an employee was paid compensation by more than one employer for services rendered during any calendar month and the aggregate of such compensation was in excess of an amount equal to one-twelfth of the current maximum annual taxable "wages" as defined in section 3121 for any month, the tax to be deducted by each employer other than a subordinate unit of a national railway-labor-organization employer from the compensation paid by him to the employee with respect to such month would be that proportion of the tax with respect to such compensation paid by all such employers which the compensation paid by him to the employee for services rendered during such month bears to the total compensation paid by all such employers to such employee for services rendered during such month; and that in the event that the compensation so paid by such employers to the employee for services rendered during such month was less than an amount equal to one-twelfth of the current maximum annual taxable "wages" as defined in section 3121 for any month, each subordinate unit of a national railway-labor-organization employer would deduct such proportion of any additional tax as the compensation paid by such employer to such employee for services rendered during such month bears to the total compensation paid by all such employers to such employee for services rendered during such month.

Subsec. (c)(2). Pub. L. 98–76, §225(c)(1)(B), (3), (5), substituted "taxes imposed by section 3201" for "tax imposed by section 3201", "the taxes under paragraph (1)" for "the tax under paragraph (1)", and "exceed" for "exceeds".

Subsec. (c)(4). Pub. L. 98–76, §225(c)(1)(B), (4), (5), substituted "taxes imposed by section 3201" for "tax imposed by section 3201", "such taxes" for "such tax", and "exceed" for "exceeds".

1976—Subsec. (a). Pub. L. 94–455, §1903(a)(7)(A), struck out provisions relating to the September 30, 1973, qualification on the applicability of provisions of this subsection and "of the Internal Revenue Code of 1954" before "for any month" wherever appearing.

Subsec. (b). Pub. L. 94–455, §1903(a)(7)(B), struck out "made" after "to deduct the tax shall be".

Subsec. (c)(3). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

1973—Subsec. (a). Pub. L. 93–69, in second sentence reading "If an employee . . .", substituted "1973" for "1965" wherever appearing, struck out "(i) $450, or (ii)" before "an amount equal to" in two places, and struck out ", whichever is greater," after "Internal Revenue Code of 1954" in two places.

1966—Subsec. (a). Pub. L. 89–700 substituted "after September 30, 1965" for "after the month in which this provision was amended in 1959" in six places, and "(i) $450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable 'wages' as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after September 30, 1965" for "$400 for any calendar month before the calendar month next following the month in which this provision was amended in 1963, or $450 for any calendar month after the month in which this provision was so amended and before the calendar month next following the calendar month in which this provision was amended in 1965, or (i) $450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable 'wages' as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after the month in which this provision was so amended" in two places.

1965—Subsec. (a). Pub. L. 89–212, §§2(a)(1), 4, inserted sentence permitting an employer who is furnished by an employee a written statement of tips pursuant to section 6053(a) to which par. (3) of section 3231(e) is applicable to deduct an amount equivalent to such tax with respect to such tips from any compensation of the employee under his control, even though at the time such statement is furnished the total amount of the tips included in statements furnished to the employer as having been received by the employee in such calendar month in the course of his employment by such employer is less than $20, and inserted "and before the calendar month next following the calendar month in which this provision was amended in 1965, or (i) $450,

or (ii) an amount equal to one-twelfth of the current maximum annual taxable 'wages' as defined in section 3121, whichever is greater, for any month after the month in which this provision was so amended" in two places.

Subsec. (c). Pub. L. 89–212, §2(a)(2), added subsec. (c).

1963—Subsec. (a). Pub. L. 88–133 limited existing taxable compensation base of $400 to any calendar month before Nov. 1963 and increased such base to $450 for any calendar month after Oct. 1963.

1959—Subsec. (a). Pub. L. 86–28 substituted "after the month in which this provision was amended in 1959" for "after 1954" and for "after December 31, 1954" in five places, and "$400" for "$350" in two places.

1954—Subsec. (a). Act Aug. 31, 1954, substituted "$350" for "$300" wherever appearing.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to coverage provided after Dec. 31, 1990, see section 5124(c) of Pub. L. 101–508, set out as a note under section 3102 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–76 applicable to remuneration paid after Dec. 31, 1984, see section 227(a) of Pub. L. 98–76, set out as a note under section 3201 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1903(a)(7) of Pub. L. 94–455 applicable with respect to compensation paid for services rendered after Dec. 31, 1976, see section 1903(d) of Pub. L. 94–455, set out as a note under section 3201 of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93–69 effective Oct. 1, 1973, and applicable only with respect to compensation paid for services rendered on or after Oct. 1, 1973; and applicable to railway labor organization covered by a private supplemental pension plan as of Oct. 1, 1973, and subject to a moratorium agreed to on or before Mar. 8, 1973, for changes in pay rates, on the earlier of (1) date of expiration of such moratorium, or (2) date as of which the railway labor organization through collective bargaining agreement makes amendment applicable, see section 109(b) of Pub. L. 93–69, set out as a note under section 3201 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 2(a) of Pub. L. 89–212 effective only with respect to tips received after 1965, and amendment by section 4 of Pub. L. 89–212 effective only with respect to calendar months after the month in which Pub. L. 89–212 is enacted, see section 6 of Pub. L. 89–212, set out as a note under section 3201 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–28 effective, except as otherwise provided, first day of calendar month next following May 1959, see section 202 of Pub. L. 86–28, set out as a note under section 3201 of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 31, 1954, effective as if enacted as a part of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], see section 407 of act Aug. 31, 1954, as amended, set out as a note under section 3201 of this title.

Subchapter B—Tax on Employee Representatives

Sec.
3211. Rate of tax.
3212. Determination of compensation.

§3211. Rate of tax

(a) Tier 1 tax

In addition to other taxes, there is hereby imposed on the income of each employee representative a tax equal to the applicable percentage of the compensation received during any calendar year by

such employee representative for services rendered by such employee representative. For purposes of the preceding sentence, the term "applicable percentage" means the percentage equal to the sum of the rates of tax in effect under subsections (a) and (b) of section 3101 and subsections (a) and (b) of section 3111 for the calendar year.

(b) Tier 2 tax

(1) In general

In addition to other taxes, there is hereby imposed on the income of each employee representative a tax equal to the applicable percentage of the compensation received during any calendar year by such employee representatives for services rendered by such employee representative.

(2) Applicable percentage

For purposes of paragraph (1), the term "applicable percentage" means—

(A) 14.75 percent in the case of compensation received during 2002,

(B) 14.20 percent in the case of compensation received during 2003, and

(C) in the case of compensation received during any calendar year after 2003, the percentage determined under section 3241 for such calendar year.

(c) Cross reference

For application of different contribution bases with respect to the taxes imposed by subsections (a) and (b), see section 3231(e)(2).

(Aug. 16, 1954, ch. 736, 68A Stat. 432; Aug. 31, 1954, ch. 1164, pt. II, §206(a), 68 Stat. 1040; Pub. L. 86–28, pt. II, §201(c), May 19, 1959, 73 Stat. 29; Pub. L. 88–133, title II, §201, Oct. 5, 1963, 77 Stat. 221; Pub. L. 89–97, title I, §§105(b)(2), 111(c)(2), July 30, 1965, 79 Stat. 335, 342; Pub. L. 89–212, §§4, 5(b), Sept. 29, 1965, 79 Stat. 861; Pub. L. 89–699, title III, §301 (b), (d), Oct. 30, 1966, 80 Stat. 1078; Pub. L. 89–700, title III, §301(v), (vi), Oct. 30, 1966, 80 Stat. 1088, 1089; Pub. L. 91–215, §4, Mar. 17, 1970, 84 Stat. 70; Pub. L. 93–69, title I, §102(c), July 10, 1973, 87 Stat. 162; Pub. L. 94–93, title II, §202, Aug. 9, 1975, 89 Stat. 466; Pub. L. 94–455, title XIX, §1903(a)(8), Oct. 4, 1976, 90 Stat. 1807; Pub. L. 97–34, title VII, §741(b), Aug. 13, 1981, 95 Stat. 347; Pub. L. 98–76, title II, §§211(c), 223, Aug. 12, 1983, 97 Stat. 419, 421; Pub. L. 101–508, title V, §5125(b), Nov. 5, 1990, 104 Stat. 1388–285; Pub. L. 107–90, title II, §§203(a), 204(b), Dec. 21, 2001, 115 Stat. 891.)

AMENDMENTS

2001—Subsec. (a). Pub. L. 107–90, §204(b), added subsec. (a) and struck out former subsec. (a), which related to imposition of tier 1 and 2 taxes.

Subsec. (b). Pub. L. 107–90, §204(b), added subsec. (b).

Pub. L. 107–90, §203(a), struck out subsec. (b) which read as follows: "In addition to other taxes, there is hereby imposed on the income of each employee representative a tax at a rate equal to the rate of excise tax imposed on every employer, provided for in section 3221(c), for each man-hour for which compensation is paid to him for services rendered as an employee representative."

Subsec. (c). Pub. L. 107–90, §204(b), added subsec. (c).

1990—Subsec. (a). Pub. L. 101–508 substituted "applicable" for "following" before "percentage of the" and provision defining the term "applicable percentage" for provision specifying that in the case of compensation received during 1985 the rate of tax was 14.10 percent, for 1986 or 1987 the rate was 14.30 percent, for 1988 or 1989 the rate was 15.02 percent, and for 1990 or thereafter the rate was 15.30 percent.

1983—Subsec. (a). Pub. L. 98–76, §223, substituted provisions imposing a two tiered tax on each employee representative equal to the percentage of the compensation received during any calendar year by such employee representative for services rendered as is set out in accompanying tables, for provisions that had imposed on each employee representative a tax equal to 12.75 percent plus the sum of the rates of tax imposed with respect to wages by sections 3101(a), 3101(b), 3111(a), and 3111(b) of so much of the compensation paid in any calendar month to such employee representative for services rendered by him as was not in excess of an amount equal to one-twelfth of the current maximum annual taxable "wage" as defined in section 3121 for any month.

Pub. L. 98–76, §211(c), substituted "12.75 percent" for "11.75 percent".

1981—Subsec. (a). Pub. L. 97–34 substituted "11.75" for "9.5".

1976—Subsec. (a). Pub. L. 94–455 substituted "3111(a), and 3111(b)" for "3111(a), 3111(b)", struck out "of the Internal Revenue Code of 1954" before "of so much of the compensation", "after September 30, 1973," after "rendered by him", "of the Internal Revenue Code of 1954" after "as defined in section 3121", and "after September 30, 1973" after "for any month".

1975—Subsec. (a). Pub. L. 94–93 inserted "in any calendar month" after "compensation paid".

1973—Subsec. (a). Pub. L. 93–69 substituted new tax rate provisions on income of employee representatives for services rendered after Sept. 30, 1973, for former provisions which prescribed 12½, 13, 14, 14½, and 15 percent on income for services rendered after Sept. 30, 1965, Dec. 31, 1965, Dec. 31, 1966, Dec. 31, 1967, and Dec. 31, 1968, respectively, as is not in excess of (i) $450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable "wages" as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after September 30, 1965: *Provided*, That the rate of tax imposed by this section shall be increased, with respect to compensation paid for services rendered after September 30, 1965, by a number of percentage points (including fractional points) equal at any given time to twice the number of percentage points (including fractional points) by which the rate of the tax imposed with respect to wages by section 3101(a) plus the rate imposed by section 3101(b) at such time exceeds 2¾ percent (the rate provided by paragraph (2) of section 3101 as amended by the Social Security Amendments of 1956).

1970—Subsec. (b). Pub. L. 91–215 substituted the rate of excise tax imposed on every employer under section 3221(c) of this title for a flat 2-cents per man hour tax as the rate for additional taxes imposed on the income of employee representatives for each man hour of compensation paid.

1966—Pub. L. 89–700 substituted "rendered after September 30, 1965" for "rendered after December 31, 1964", and "(i) $450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable 'wages' as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after September 30, 1965" for "$400 for any calendar month before the calendar month next following the month in which this provision was amended in 1963, or $450 for any calendar month after the month in which this provision was so amended and before the calendar month next following the calendar month in which this provision was amended in 1965, or (i) $450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable 'wages' as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after the month in which this provision was so amended".

Pub. L. 89–699, §301(b), (d), designated existing provisions as subsec. (a), and substituted "14 percent" for "13½ percent" in subd. (3), "14½ percent" for "14 percent" in subd. (4), and "15 percent" for "14½ percent" in subd. (5).

Subsec. (b). Pub. L. 89–699, §301(d), added subsec. (b).

1965—Pub. L. 89–212 substituted pars. (1) to (5) for former pars. (1) and (2) which imposed a tax equal to 13½ percent of so much of the compensation paid to such employee representative for services rendered by him after the month in which this provision was amended in 1959, and before Jan. 1, 1962, and 14½ percent of so much of the compensation paid to such employee representative for services rendered by him after Dec. 31, 1961, and inserted "and before the calendar month next following the calendar month in which this provision was amended in 1965, or (i) $450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable 'wages' as defined in section 3121, whichever is greater, for any month after the month in which this provision was so amended".

Pub. L. 89–97 substituted "the rate of the tax imposed with respect to wages by section 3101(a) at such time exceeds 2¾ percent (the rate provided by paragraph (2) of section 3101 as amended by the Social Security Amendments of 1956)" for "the rate of the tax imposed with respect to wages by section 3101 at such time exceeds the rate provided by paragraph (2) of such section 3101 as amended by the Social Security Amendments of 1956" and inserted "plus the rate imposed by section 3101(b)" after "section 3101(a)", respectively.

1963—Pub. L. 88–133 limited the existing taxable compensation base of $400 to any calendar month before Nov. 1963 and increased such base to $450 for any calendar month after Oct. 1963.

1959—Pub. L. 86–28 increased the tax from 12½ percent of the compensation not in excess of $350 for any calendar month to 13½ percent of the compensation not in excess of $400 for any calendar month for services rendered before Jan. 1, 1962, and to 14½ percent for services rendered after Dec. 31, 1961, and required an increase in the rate of tax with respect to compensation paid for services rendered after December 31, 1964, by a number of percentage points equal at any given time to twice the number of percentage points by which the rate of tax imposed by section 3101 of this title at such time exceeds the rate provided by par. (2) of such section 3101 as amended by the Social Security Amendments of 1956.

1954—Act Aug. 31, 1954, substituted "$350" for "$300".

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–90, title II, §203(c), Dec. 21, 2001, 115 Stat. 891, provided that: "The amendments made by this section [amending this section and section 3221 of this title] shall apply to calendar years beginning after December 31, 2001."

Amendment by section 204(b) of Pub. L. 107–90 applicable to calendar years beginning after Dec. 31, 2001, see section 204(f) of Pub. L. 107–90, set out as a note under section 24 of this title.

EFFECTIVE AND TERMINATION DATES OF 1983 AMENDMENT

Amendment by section 211(c) of Pub. L. 98–76 applicable to compensation paid for services rendered after Dec. 31, 1983, and before Jan. 1, 1985, see section 212 of Pub. L. 98–76, set out as a note under section 3201 of this title.

Amendment by section 223 of Pub. L. 98–76 applicable to remuneration paid after Dec. 31, 1984, see section 227(a) of Pub. L. 98–76, set out as a note under section 3201 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to compensation paid for services rendered after Sept. 30, 1981, see section 741(e) of Pub. L. 97–34, set out as a note under section 3201 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable with respect to compensation paid for services rendered after Dec. 31, 1976, see section 1903(d) of Pub. L. 94–455, set out as a note under section 3101 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–93 applicable for taxable years ending on or after Aug. 9, 1975, and for taxable years ending before Aug. 9, 1975, as to which the period for assessment and collection of tax or the filing of a claim for credit or refund has not expired on Aug. 9, 1975, see section 207 of Pub. L. 94–93, set out as a note under section 3201 of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93–69 effective Oct. 1, 1973, and applicable only with respect to compensation paid for services rendered on or after Oct. 1, 1972; and applicable to railway labor organization covered by private supplemental pension plan as of Oct. 1, 1973, and subject to a moratorium, agreed to on or before Mar. 8, 1973, for changes in pay rates, on the earlier of (1) date of expiration of such moratorium, or (2) date as of which the railway labor organization through collective bargaining agreement makes amendment applicable, see section 109(b) of Pub. L. 93–69, set out as a note under section 3201 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89–699, title III, §301(f), Oct. 30, 1966, 80 Stat. 1079, as amended by Pub. L. 91–215, §8, Mar. 17, 1970, 84 Stat. 72, provided that: "The amendments made by subsections (d) and (e) of this section [amending this section and section 3221 of this title] shall be effective with respect to man-hours, beginning with the first month following enactment of this Act [Oct. 30, 1966], for which compensation is paid."

EFFECTIVE DATE OF 1965 AMENDMENTS

Amendment by section 4 of Pub. L. 89–212 effective only with respect to calendar months after month in which Pub. L. 89–212 is enacted [September 1965], and amendment by section 5(b) of Pub. L. 89–212 effective only with respect to compensation paid for services rendered after Sept. 30, 1965, see section 6 of Pub. L. 89–212, set out as a note under section 3201 of this title.

Amendment by section 105(b)(2) of Pub. L. 89–97 effective with respect to compensation paid for services rendered after Dec. 31, 1965, see section 105(b)(4) of Pub. L. 89–97, set out as a note under section 3201 of this title.

Amendment by section 111(c)(2) of Pub. L. 89–97 applicable to calendar year 1966 or to any subsequent calendar year but only if by October 1 immediately preceding such calendar year the Railroad Retirement Tax Act provides for a maximum amount of monthly compensation taxable under such Act during all months of such calendar year equal to one-twelfth of maximum wages which Federal Insurance Contributions Act provides may be counted for such calendar year, see section 111(e) of Pub. L. 89–97, set out as an Effective Date note under section 1395i–1 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–28 effective, except as otherwise provided, first day of calendar month next following May 1959, see section 202 of Pub. L. 86–28, set out as a note under section 3201 of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 31, 1954, effective as if enacted as a part of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], see section 407 of act Aug. 31, 1954, as amended, set out as a note under section 3201 of this title.

SEPARABILITY

Pub. L. 91–215, §9, Mar. 17, 1970, 84 Stat. 72, provided that: "If any provision of this Act [amending this section, section 3221 of this title, and sections 228c and 228o of Title 45, Railroads, enacting provisions set out as notes under section 3221 of this title and sections 228c and 228o of Title 45, and amending provisions set out as notes under this section] or the application thereof to any person or circumstances is held invalid, the remainder of this Act, and the application of such provisions to other persons or circumstances, shall not be affected thereby."

PENALTIES AND INTEREST NOT ASSESSED FOR FAILURE TO MAKE TIMELY PAYMENT DURING PERIOD JANUARY 1, 1982, TO JUNE 30, 1982, OF TAXES ATTRIBUTABLE TO AMENDMENTS BY PUB. L. 97–123

For provision that no penalties or interest shall be assessed on account of any failure to make timely payment of taxes imposed by this section with respect to payments made for the period Jan. 1, 1982, and ending June 30, 1982, to the extent that such taxes are attributable to section 3 of Pub. L. 97–123 or the amendments made by that section, see section 3(f) of Pub. L. 97–123, set out as a note under section 3101 of this title.

§3212. Determination of compensation

The compensation of an employee representative for the purpose of ascertaining the tax thereon shall be determined in the same manner and with the same effect as if the employee organization by which such employee representative is employed were an employer as defined in section 3231(a).

(Aug. 16, 1954, ch. 736, 68A Stat. 432.)

Subchapter C—Tax on Employers

Sec.
3221. Rate of tax.

§3221. Rate of tax

(a) Tier 1 tax

In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to the applicable percentage of compensation paid during any calendar year by such employer for services rendered to such employer. For purposes of the preceding sentence, the term "applicable percentage" means the percentage equal to the sum of the rates of tax in effect under subsections (a) and (b) of section 3111 for the calendar year.

(b) Tier 2 tax

(1) In general

In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to the applicable percentage of the compensation paid during any calendar year by such employer for services rendered to such employer.

(2) Applicable percentage

For purposes of paragraph (1), the term "applicable percentage" means—

(A) 15.6 percent in the case of compensation paid during 2002,

(B) 14.2 percent in the case of compensation paid during 2003, and

(C) in the case of compensation paid during any calendar year after 2003, the percentage determined under section 3241 for such calendar year.

(c) Special rate for certain individuals hired in 2010

(1) In general

In the case of compensation paid by a qualified employer during the period beginning on the day after the date of the enactment of this subsection and ending on December 31, 2010, with respect to having a qualified individual in the employer's employ for services rendered to such qualified employer, the applicable percentage under subsection (a) shall be equal to the rate of tax in effect under section 3111(b) for the calendar year.

(2) Qualified employer

The term "qualified employer" means any employer other than the United States, any State, or any political subdivision thereof, or any instrumentality of the foregoing.

(3) Qualified individual

For purposes of this subsection, the term "qualified individual" means any individual who—

(A) begins employment with a qualified employer after February 3, 2010, and before January 1, 2011,

(B) certifies by signed affidavit, under penalties of perjury, that such individual has not been employed for more than 40 hours during the 60-day period ending on the date such individual begins such employment,

(C) is not employed by the qualified employer to replace another employee of such employer unless such other employee separated from employment voluntarily or for cause, and

(D) is not an individual described in section 51(i)(1) (applied by substituting "qualified employer" for "taxpayer" each place it appears).

(4) Election

A qualified employer may elect to have this subsection not apply. Such election shall be made in such manner as the Secretary may require.

(5) Special rule for first calendar quarter of 2010

(A) Nonapplication of exemption during first quarter

Paragraph (1) shall not apply with respect to compensation paid during the first calendar quarter of 2010.

(B) Crediting of first quarter exemption during second quarter

The amount by which the tax imposed under subsection (a) would (but for subparagraph (A)) have been reduced with respect to compensation paid by a qualified employer during the first calendar quarter of 2010 shall be treated as a payment against the tax imposed under subsection (a) with respect to the qualified employer for the second calendar quarter of 2010 which is made on the date that such tax is due.

(d) Cross reference

For application of different contribution bases with respect to the taxes imposed by subsections (a) and (b), see section 3231(e)(2).

(Aug. 16, 1954, ch. 736, 68A Stat. 433; Aug. 31, 1954, ch. 1164, pt. II, §206(a), 68 Stat. 1040; Pub. L. 86–28, pt. II, §201(d), May 19, 1959, 73 Stat. 29; Pub. L. 88–133, title II, §202, Oct. 5, 1963, 77 Stat. 221; Pub. L. 89–97, title I, §§105(b)(3), 111(c)(3), July 30, 1965, 79 Stat. 335, 342; Pub. L. 89–212, §§4, 5(c), Sept. 29, 1965, 79 Stat. 861, 862; Pub. L. 89–699, title III, §301(c), (e), Oct. 30, 1966, 80 Stat. 1078; Pub. L. 89–700, title III, §§301(iii), (v), (vi), 302, Oct. 30, 1966, 80 Stat. 1088, 1089; Pub. L. 91–215, §5(a), (b)(1), Mar. 17, 1970, 84 Stat. 71; Pub. L. 93–69, title I, §102(d)–(f), July 10, 1973, 87 Stat. 162, 163; Pub. L. 93–445, title V, §501, Oct. 16, 1974, 88 Stat. 1359; Pub. L. 94–93, title II, §203, Aug. 9, 1975, 89 Stat. 466; Pub. L. 94–455, title XIX, §§1903(a)(9), 1906(b)(13)(G), Oct. 4, 1976, 90 Stat. 1808, 1835; Pub. L. 97–34, title VII, §741(c), Aug. 13, 1981,

95 Stat. 347; Pub. L. 98–76, title II, §§211(b), 222, Aug. 12, 1983, 97 Stat. 419, 420; Pub. L. 100–203, title IX, §9032(a), Dec. 22, 1987, 101 Stat. 1330–296; Pub. L. 101–508, title V, §5125(c), Nov. 5, 1990, 104 Stat. 1388–286; Pub. L. 107–90, title II, §§203(b), 204(a), Dec. 21, 2001, 115 Stat. 891; Pub. L. 111–147, title I, §101(d)(1), Mar. 18, 2010, 124 Stat. 74.)

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (c)(1), is the date of the enactment of Pub. L. 111–147, which was approved Mar. 18, 2010.

AMENDMENTS

2010—Subsecs. (c), (d). Pub. L. 111–147 added subsec. (c) and redesignated former subsec. (c) as (d).

2001—Subsec. (b). Pub. L. 107–90, §204(a), amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: "In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to 16.10 percent of the compensation paid during any calendar year by such employer for services rendered to such employer."

Subsecs. (c) to (e). Pub. L. 107–90, §203(b), redesignated subsec. (e) as (c) and struck out former subsecs. (c) and (d) which provided, in subsec. (c), for imposition of excise tax on every employer, with respect to having individuals in his employ, for each man-hour for which compensation was paid by such employer for services rendered to him during any calendar quarter, and for credit against such tax of amount equivalent in each month to the aggregate amount of reductions in supplemental annuities accruing in such month to employees of such employer, and, in subsec. (d), that such tax would not apply to an employer with respect to employees covered by a supplemental pension plan which is established pursuant to an agreement reached through collective bargaining between the employer and employees.

1990—Subsec. (a). Pub. L. 101–508 substituted "applicable" for "following" before "percentage of" and provision defining "applicable percentage" for provision specifying the tax rate to be 7.05 percent, 7.15 percent, 7.51 percent, and 7.65 percent in the case of compensation paid during 1985, 1986 or 1987, 1988 or 1989, or 1990 or thereafter, respectively.

1987—Subsec. (b). Pub. L. 100–203 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to the following percentage of compensation paid during any calendar year by such employer for services rendered to such employer:

"In the case of compensation paid during:	The rate shall be:
1985	13.75
1986 or thereafter	14.75."

1983—Subsec. (a). Pub. L. 98–76, §222(a), in amending subsec. (a) generally, substituted provisions imposing an excise tax on employers, with respect to having individuals in his employ, equal to a percentage of compensation paid as set out in an accompanying table, for provisions which imposed an excise tax on employers, with respect to having individuals in his employ, equal to 12.75 percent of so much of the compensation paid in any calendar month by such employer for services rendered to him as was not in excess of an amount equal to one-twelfth of the current maximum annual taxable "wages" as defined in section 3121 for any month, with certain exceptions dealing with multiple employers.

Pub. L. 98–76, §211(b), substituted "12.75 percent" for "11.75 percent".

Subsec. (b). Pub. L. 98–76, §222(a), in amending subsec. (b) generally, substituted provisions imposing a second tier excise tax on employers equal to a percentage of compensation paid as set out in an accompanying table, for provisions that the rate of tax imposed by former subsec. (a) would be increased by the rate of tax imposed with respect to wages by section 3111(a) plus the rate imposed by section 3111(b).

Subsec. (e). Pub. L. 98–76, §222(b), added subsec. (e).

1981—Subsec. (a). Pub. L. 97–34 substituted in first sentence "11.75" for "9.5".

1976—Subsec. (a). Pub. L. 94–455, §§1903(a)(9)(A), 1906(b)(13)(G), struck out provisions relating to the September 30, 1973 qualification on the applicability of provisions of this subsection, "of the Internal Revenue Code of 1954" after "as defined in section 3121" wherever appearing, and "of the Treasury" after "to the Secretary".

Subsec. (b). Pub. L. 94–455, §1903(a)(9)(B), struck out ", with respect to compensation paid for services

rendered after September 30, 1973," after "shall be increased", "of the Internal Revenue Code of 1954" after "by section 3111(a)" and "of such Code" after "by section 3111(b)".

Subsec. (c). Pub. L. 94–455, §§1903(a)(9)(C), 1906(b)(13)(G), struck out "(1) at the rate of two cents for the period beginning November 1, 1966, and ending March 31, 1970, and (2) commencing April 1, 1970," after "during any calendar quarter," , "commencing with the quarter beginning April 1, 1970" after "required for each calendar quarter", "of the Treasury" after "representatives, and the Secretary" and "of the Treasury" after "shall certify to the Secretary".

1975—Subsec. (a). Pub. L. 94–93 substituted "compensation paid in any calendar month by such employer" for "compensation paid by such employer".

1974—Subsec. (c). Pub. L. 93–445, §501(a), struck out "for appropriation to the Railroad Retirement Supplemental Account provided for in section 15(b) of the Railroad Retirement Act of 1937" after "commencing April 1, 1970, at such rate as will make available", substituted "at the level provided under section 3(j) of the Railroad Retirement Act of 1937 as in effect on December 31, 1974" for "under section 3(j) of such Act", and inserted "or section 2(h)(2) of the Railroad Retirement Act of 1974" after "section 3(j)(2) of the Railroad Retirement Act of 1937".

Subsec. (d). Pub. L. 93–445, §501(b), substituted "section 2(b) of the Railroad Retirement Act of 1974" for "section 3(j) of the Railroad Retirement Act of 1937" and "section 2(b) of such Act" for "section 3(j) of such Act".

1973—Subsec. (a). Pub. L. 93–69, §102(d), (e), substituted new tax rate provisions on employers for services rendered after Sept. 30, 1973, for former provisions which prescribed 6¼, 6½, 7, 7¼, and 7½ percent on income for services rendered after Sept. 30, 1965; Dec. 31, 1965; Dec. 31, 1966; Dec. 31, 1967; and Dec. 31, 1968, respectively, as is, with respect to any employee for any calendar month, not in excess of (i) $450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable "wages" as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after Sept. 30, 1965, and, in first sentence, substituted "1973" for "1965" wherever appearing, struck out "(i) $450, or (ii)" before "an amount equal to" in two places, and struck out ", whichever is greater," after "Internal Revenue Code of 1954" in two places, respectively.

Subsec. (b). Pub. L. 93–69, §102(f), substituted "1973" for "1965" and "by the rate of tax imposed with respect to wages by section 3111(a) of the Internal Revenue Code of 1954 plus the rate imposed by section 3111(b) of such Code", for "by a number of percentage points (including fractional points) equal at any given time to the number of percentage points (including fractional points) by which the rate of the tax imposed with respect to wages by section 3111(a) plus the rate imposed by section 3111(b) at such time exceeds 2¾ percent (the rate provided by paragraph (2) of section 3111 as amended by the Social Security Amendments of 1956)".

1970—Subsec. (c). Pub. L. 91–215, §5(a), provided a variable standard of taxation on employers for services rendered them during any calendar quarter at the existing 2 cent rate for each man-hour of services for the period from Nov. 1, 1966 to Mar. 31, 1970, and thereafter at such rates as will permit supplemental annuity payments under section 228c(j) of this title, and authorized the Railroad Retirement Board to make the necessary determination of rates, and made it its duty to publish notice of such determinations in the Federal Register.

Subsec. (d). Pub. L. 91–215, §5(b)(1), added subsec. (d).

1966—Subsec. (a). Pub. L. 89–700, §§301(iii), (v), 302, substituted "after September 30, 1965" for "after the month in which this provision was amended in 1959" in six places, and "(i) $450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable 'wages' as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after September 30, 1965" for "400 for any calendar month before the calendar month next following the month in which this provision was amended in 1963, or $450 for any calendar month after the month in which this provision was so amended and before the calendar month next following the calendar month in which this provision was amended in 1965, or (i) $450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable 'wages' as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after the month in which this provision was so amended" in four places, and inserted sentence providing that where compensation for services rendered in a month is paid by two or more employers, one of the employers may, by notice to the Secretary, and by agreement with the other employer, elect for the tax imposed by section 3201 and this section to apply to all of the compensation paid by such employer for such month as does not exceed the maximum amount of compensation in respect to which taxes are imposed by section 3201 and this section; and in such a case the liability of the other employer shall be limited to the difference, if any, between the compensation paid by the electing employer and the maximum amount of compensation to which section 3201 and this section apply.

Pub. L. 89–699, §301(c), substituted "7 percent" for "6¾ percent" in subd. (3), "7¼ percent" for "7 percent" in subd. (4), and "7½ percent" for "7¼ percent" in subd. (5).

Subsec. (b). Pub. L. 89–700, §301(vi), substituted "after September 30, 1965" for "after December 31, 1964".

Subsec. (c). Pub. L. 89–699 added subsec. (c).

1965—Subsec. (a). Pub. L. 89–212 substituted pars. (1) to (5) for former pars. (1) and (2) which imposed an excise tax equal to 6¾ percent of so much of the compensation paid by such employer for services rendered to him after the month in which this provision was amended in 1959, and before Jan. 1, 1962, and 7¼ percent of so much of the compensation paid by such employer for services rendered to him after Dec. 31, 1961, and inserted "and before the calendar month next following the calendar month in which this provision was amended in 1965, or (i) $450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable 'wages' as defined in section 3121, whichever is greater, for any month after the month in which this provision was so amended" wherever appearing.

Subsec. (b). Pub. L. 89–97 substituted "the rate of the tax imposed with respect to wages by section 3111(a) at such time exceeds 2¾ percent (the rate provided by paragraph (2) of section 3111 as amended by the Social Security Amendments of 1956)" for "the rate of the tax imposed with respect to wages by section 3111 at such time exceeds the rate provided by paragraph (2) of such section 3111 as amended by the Social Security Amendments of 1956" and inserted "plus the rate imposed by section 3111(b)" after "section 3111(a)", respectively.

1963—Subsec. (a). Pub. L. 88–133 limited the existing taxable compensation base of $400 to any calendar month before Nov. 1963 and increased such base to $450 for any calendar month after Oct. 1963.

1959—Subsec. (a). Pub. L. 86–28, §201(d)(1), (2)(A), (B), designated former provisions of section as subsec. (a), increased the tax from 6¼ percent of the compensation not in excess of $350 for any calendar month to 6¾ percent of the compensation not in excess of $400 for any calendar month for services rendered before Jan. 1, 1962, and to 7¼ percent for services rendered after Dec. 31, 1961, and substituted "after the month in which this provision was amended in 1959" for "after 1954" and for "after December 31, 1954" in six places, "not more than $400" for "not more than $350", and "less than $400" for "less than $350".

Subsec. (b). Pub. L. 86–28, §201(d)(2)(C), added subsec. (b).

1954—Act Aug. 31, 1954, substituted "$350" for "$300" wherever appearing.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–147 applicable to compensation paid after Mar. 18, 2010, see section 101(e) of Pub. L. 111–147, set out as a note under section 51 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 203(b) of Pub. L. 107–90 applicable to calendar years beginning after Dec. 31, 2001, see section 203(c) of Pub. L. 107–90, set out as a note under section 3211 of this title.

Amendment by section 204(a) of Pub. L. 107–90 applicable to calendar years beginning after Dec. 31, 2001, see section 204(f) of Pub. L. 107–90, set out as a note under section 24 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title IX, §9032(b), Dec. 22, 1987, 101 Stat. 1330–296, provided that: "The amendments made by this section [amending this section] shall apply with respect to compensation paid after December 31, 1987."

EFFECTIVE AND TERMINATION DATES OF 1983 AMENDMENT

Amendment by section 211(b) of Pub. L. 98–76 applicable to compensation paid for services rendered after Dec. 31, 1983, and before Jan. 1, 1985, see section 212 of Pub. L. 98–76, set out as a note under section 3201 of this title.

Amendment by section 222 of Pub. L. 98–76 applicable to remuneration paid after Dec. 31, 1984, see section 227(a) of Pub. L. 98–76, set out as a note under section 3201 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to compensation paid for services rendered after Sept. 30, 1981, see section 741(e) of Pub. L. 97–34, set out as a note under section 3201 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1903(a)(9) of Pub. L. 94–455 applicable with respect to compensation paid for services rendered after Dec. 31, 1976, see section 1903(d) of Pub. L. 94–455, set out as a note under section

3101 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–93 applicable for taxable years ending on or after Aug. 9, 1975, and for taxable years ending before Aug. 9, 1975, as to which the period for assessment and collection of tax or the filing of a claim for credit or refund has not expired on Aug. 9, 1975, see section 207 of Pub. L. 94–93, set out as a note under section 3201 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Pub. L. 93–445, title VI, §604, Oct. 16, 1974, 88 Stat. 1361, provided that: "The amendments made by the provisions of title V of this Act [amending this section and section 6413 of this title] shall become effective on January 1, 1975, and shall apply only with respect to compensation paid for services rendered on or after that date."

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93–69 effective Oct. 1, 1973, and applicable only with respect to compensation paid for services rendered on or after Oct. 1, 1973; and applicable to railway labor organization covered by a private supplemental pension plan as of Oct. 1, 1973, and subject to a moratorium, agreed to on or before Mar. 8, 1973, for changes in pay rates, on the earlier of (1) date of expiration of such moratorium, or (2) date as of which the railway labor organization through collective bargaining agreement makes amendment applicable, see section 109(b) of Pub. L. 93–69, set out as a note under section 3201 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–699 effective with respect to man-hours, beginning with first month following Oct. 30, 1966, for which compensation is paid, see section 301(f) of Pub. L. 89–699, set out as a note under section 3211 of this title.

EFFECTIVE DATE OF 1965 AMENDMENTS

Amendment by section 4 of Pub. L. 89–212 effective only with respect to calendar months after the month in which Pub. L. 89–212 is enacted [September 1965], and amendment by section 5(c) of Pub. L. 89–212 effective only with respect to compensation paid for services rendered after Sept. 30, 1965, see section 6 of Pub. L. 89–212, set out as a note under section 3201 of this title.

Amendment by section 105(b)(3) of Pub. L. 89–97 effective with respect to compensation paid for services rendered after Dec. 31, 1965, see section 105(b)(4) of Pub. L. 89–97, set out as a note under section 3201 of this title.

Amendment by section 111(c)(3) of Pub. L. 89–97 applicable to calendar year 1966 or to any subsequent calendar year but only if by October 1 immediately preceding such calendar year the Railroad Retirement Tax Act provides for a maximum amount of monthly compensation taxable under such Act during all months of such calendar year equal to one-twelfth of maximum wages which Federal Insurance Contributions Act provides may be counted for such calendar year, see section 111(e) of Pub. L. 89–97, set out as an Effective Date note under section 1395i–1 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–28 effective, except as otherwise provided, first day of calendar month next following May 1959, see section 202 of Pub. L. 86–28, set out as a note under section 3201 of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 31, 1954, effective as if enacted as a part of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], see section 407 of act Aug. 31, 1954, as amended, set out as a note under section 3201 of this title.

PENALTIES AND INTEREST NOT ASSESSED FOR FAILURE TO MAKE TIMELY PAYMENT DURING PERIOD JANUARY 1, 1982, TO JUNE 30, 1982, OF TAXES ATTRIBUTABLE TO AMENDMENTS BY PUB. L. 97–123

For provision that no penalties or interest shall be assessed on account of any failure to make timely payment of taxes imposed by subsec. (b) of this section with respect to payments made for the period Jan. 1, 1982, and ending June 30, 1982, to the extent that such taxes are attributable to section 3 of Pub. L. 97–123 or the amendments made by that section, see section 3(f) of Pub. L. 97–123, set out as a note under section 3101 of this title.

EXCISE TAXES ON EMPLOYERS; EMPLOYEES COVERED BY CERTAIN SUPPLEMENTAL PENSION PLANS

Pub. L. 91–215, §5(b)(2), Mar. 17, 1970, 84 Stat. 71, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to (A) supplemental annuities paid on or after April 1, 1970, and (B) man-hours with respect to which compensation is paid for services rendered to such employer on or after such day."

Subchapter D—General Provisions

Sec.
3231. Definitions.
3232. Court jurisdiction.
3233. Short title.

§3231. Definitions

(a) Employer

For purposes of this chapter, the term "employer" means any carrier (as defined in subsection (g)), and any company which is directly or indirectly owned or controlled by one or more such carriers or under common control therewith, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the property or operating all or any part of the business of any such employer; except that the term "employer" shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Surface Transportation Board is hereby authorized and directed upon request of the Secretary, or upon complaint of any party interested, to determine after hearing whether any line operated by electric power falls within the terms of this exception. The term "employer" shall also include railroad associations, traffic associations, tariff bureaus, demurrage bureaus, weighing and inspection bureaus, collection agencies and other associations, bureaus, agencies, or organizations controlled and maintained wholly or principally by two or more employers as hereinbefore defined and engaged in the performance of services in connection with or incidental to railroad transportation; and railway labor organizations, national in scope, which have been or may be organized in accordance with the provisions of the Railway Labor Act, as amended (45 U.S.C., chapter 8), and their State and National legislative committees and their general committees and their insurance departments and their local lodges and divisions, established pursuant to the constitutions and bylaws of such organizations. The term "employer" shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to an employer where delivery is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities.

(b) Employee

For purposes of this chapter, the term "employee" means any individual in the service of one or more employers for compensation; except that the term "employee" shall include an employee of a local lodge or division defined as an employer in subsection (a) only if he was in the service of or in the employment relation to a carrier on or after August 29, 1935. An individual shall be deemed to have been in the employment relation to a carrier on August 29, 1935, if—

(1) he was on that date on leave of absence from his employment, expressly granted to him by the carrier by whom he was employed, or by a duly authorized representative of such carrier, and the grant of such leave of absence was established to the satisfaction of the Railroad Retirement

Board before July 1947; or

(2) he was in the service of a carrier after August 29, 1935, and before January 1946 in each of 6 calendar months, whether or not consecutive; or

(3) before August 29, 1935, he did not retire and was not retired or discharged from the service of the last carrier by whom he was employed or its corporate or operating successor, but—

(A) solely by reason of his physical or mental disability he ceased before August 29, 1935, to be in the service of such carrier and thereafter remained continuously disabled until he attained age 65 or until August 1945, or

(B) solely for such last stated reason a carrier by whom he was employed before August 29, 1935, or a carrier who is its successor did not on or after August 29, 1935, and before August 1945 call him to return to service, or

(C) if he was so called he was solely for such reason unable to render service in 6 calendar months as provided in paragraph (2); or

(4) he was on August 29, 1935, absent from the service of a carrier by reason of a discharge which, within 1 year after the effective date thereof, was protested, to an appropriate labor representative or to the carrier, as wrongful, and which was followed within 10 years of the effective date thereof by his reinstatement in good faith to his former service with all his seniority rights;

except that an individual shall not be deemed to have been on August 29, 1935, in the employment relation to a carrier if before that date he was granted a pension or gratuity on the basis of which a pension was awarded to him pursuant to section 6 of the Railroad Retirement Act of 1937 (45 U.S.C. 228f), or if during the last payroll period before August 29, 1935, in which he rendered service to a carrier he was not in the service of an employer, in accordance with subsection (d), with respect to any service in such payroll period, or if he could have been in the employment relation to an employer only by reason of his having been, either before or after August 29, 1935, in the service of a local lodge or division defined as an employer in subsection (a). The term "employee" includes an officer of an employer. The term "employee" shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

(c) Employee representative

For purposes of this chapter, the term "employee representative" means any officer or official representative of a railway labor organization other than a labor organization included in the term "employer" as defined in subsection (a), who before or after June 29, 1937, was in the service of an employer as defined in subsection (a) and who is duly authorized and designated to represent employees in accordance with the Railway Labor Act (45 U.S.C., chapter 8), as amended, and any individual who is regularly assigned to or regularly employed by such officer or official representative in connection with the duties of his office.

(d) Service

For purposes of this chapter, an individual is in the service of an employer whether his service is rendered within or without the United States, if—

(1) he is subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service, or he is rendering professional or technical services and is integrated into the staff of the employer, or he is rendering, on the property used in the employer's operations, other personal services the rendition of which is integrated into the employer's operations, and

(2) he renders such service for compensation;

except that an individual shall be deemed to be in the service of an employer, other than a local lodge or division or a general committee of a railway-labor-organization employer, not conducting

the principal part of its business in the United States, only when he is rendering service to it in the United States; and an individual shall be deemed to be in the service of such a local lodge or division only if—

(3) all, or substantially all, the individuals constituting its membership are employees of an employer conducting the principal part of its business in the United States; or

(4) the headquarters of such local lodge or division is located in the United States;

and an individual shall be deemed to be in the service of such a general committee only if—

(5) he is representing a local lodge or division described in paragraph (3) or (4) immediately above; or

(6) all, or substantially all, the individuals represented by it are employees of an employer conducting the principal part of its business in the United States; or

(7) he acts in the capacity of a general chairman or an assistant general chairman of a general committee which represents individuals rendering service in the United States to an employer, but in such case if his office or headquarters is not located in the United States and the individuals represented by such general committee are employees of an employer not conducting the principal part of its business in the United States, only such proportion of the remuneration for such service shall be regarded as compensation as the proportion which the mileage in the United States under the jurisdiction of such general committee bears to the total mileage under its jurisdiction, unless such mileage formula is inapplicable, in which case such other formula as the Railroad Retirement Board may have prescribed pursuant to section 1(c) of the Railroad Retirement Act of 1937 (45 U.S.C. 228a) shall be applicable, and if the application of such mileage formula, or such other formula as the Board may prescribe, would result in the compensation of the individual being less than 10 percent of his remuneration for such service, no part of such remuneration shall be regarded as compensation;

Provided however, That an individual not a citizen or resident of the United States shall not be deemed to be in the service of an employer when rendering service outside the United States to an employer who is required under the laws applicable in the place where the service is rendered to employ therein, in whole or in part, citizens or residents thereof; and the laws applicable on August 29, 1935, in the place where the service is rendered shall be deemed to have been applicable there at all times prior to that date.

(e) Compensation

For purposes of this chapter—

(1) The term "compensation" means any form of money remuneration paid to an individual for services rendered as an employee to one or more employers. Such term does not include (i) the amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of sickness or accident disability or medical or hospitalization expenses in connection with sickness or accident disability or death, except that this clause does not apply to a payment for group-term life insurance to the extent that such payment is includible in the gross income of the employee, (ii) tips (except as is provided under paragraph (3)), (iii) an amount paid specifically—either as an advance, as reimbursement or allowance—for traveling or other bona fide and necessary expenses incurred or reasonably expected to be incurred in the business of the employer provided any such payment is identified by the employer either by a separate payment or by specifically indicating the separate amounts where both wages and expense reimbursement or allowance are combined in a single payment, or (iv) any remuneration which would not (if chapter 21 applied to such remuneration) be treated as wages (as defined in section 3121(a)) by reason of section 3121(a)(5). Such term does not include remuneration for service which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under

subparagraph (F), (J), (M), or (Q) of section 101(a)(15) of the Immigration and Nationality Act, as amended, and which is performed to carry out the purpose specified in subparagraph (F), (J), (M), or (Q), as the case may be. For the purpose of determining the amount of taxes under sections 3201 and 3221, compensation earned in the service of a local lodge or division of a railway-labor-organization employer shall be disregarded with respect to any calendar month if the amount thereof is less than $25. Compensation for service as a delegate to a national or international convention of a railway labor organization defined as an "employer" in subsection (a) of this section shall be disregarded for purposes of determining the amount of taxes due pursuant to this chapter if the individual rendering such service has not previously rendered service, other than as such a delegate, which may be included in his "years of service" for purposes of the Railroad Retirement Act. Nothing in the regulations prescribed for purposes of chapter 24 (relating to wage withholding) which provides an exclusion from "wages" as used in such chapter shall be construed to require a similar exclusion from "compensation" in regulations prescribed for purposes of this chapter.

(2) Application of contribution bases

(A) Compensation in excess of applicable base excluded

(i) In general

The term "compensation" does not include that part of remuneration paid during any calendar year to an individual by an employer after remuneration equal to the applicable base has been paid during such calendar year to such individual by such employer for services rendered as an employee to such employer.

(ii) Remuneration not treated as compensation excluded

There shall not be taken into account under clause (i) remuneration which (without regard to clause (i)) is not treated as compensation under this subsection.

(iii) Hospital insurance taxes

Clause (i) shall not apply to—

(I) so much of the rate applicable under section 3201(a) or 3221(a) as does not exceed the rate of tax in effect under section 3101(b), and

(II) so much of the rate applicable under section 3211(a) as does not exceed the rate of tax in effect under section 1401(b).

(B) Applicable base

(i) Tier 1 taxes

Except as provided in clause (ii), the term "applicable base" means for any calendar year the contribution and benefit base determined under section 230 of the Social Security Act for such calendar year.

(ii) Tier 2 taxes, etc.

For purposes of—

(I) the taxes imposed by sections 3201(b), 3211(b), and 3221(b), and

(II) computing average monthly compensation under section 3(j) of the Railroad Retirement Act of 1974 (except with respect to annuity amounts determined under subsection (a) or (f)(3) of section 3 of such Act),

clause (2) of the first sentence, and the second sentence, of subsection (c) of section 230 of the Social Security Act shall be disregarded.

(C) Successor employers

For purposes of this paragraph, the second sentence of section 3121(a)(1) (relating to successor employers) shall apply, except that—

(i) the term "services" shall be substituted for "employment" each place it appears,

(ii) the term "compensation" shall be substituted for "remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection)" each place it appears, and

(iii) the terms "employer", "services", and "compensation" shall have the meanings given such terms by this section.

(3) Solely for purposes of the taxes imposed by section 3201 and other provisions of this chapter insofar as they relate to such taxes, the term "compensation" also includes cash tips received by an employee in any calendar month in the course of his employment by an employer unless the amount of such cash tips is less than $20.

(4)(A) For purposes of applying sections 3201(a), 3211(a), and 3221(a), in the case of payments made to an employee or any of his dependents on account of sickness or accident disability, clause (i) of the second sentence of paragraph (1) shall exclude from the term "compensation" only—

(i) payments which are received under a workmen's compensation law, and

(ii) benefits received under the Railroad Retirement Act of 1974.

(B) Notwithstanding any other provision of law, for purposes of the sections specified in subparagraph (A), the term "compensation" shall include benefits paid under section 2(a) of the Railroad Unemployment Insurance Act for days of sickness, except to the extent that such sickness (as determined in accordance with standards prescribed by the Railroad Retirement Board) is the result of on-the-job injury.

(C) Under regulations prescribed by the Secretary, subparagraphs (A) and (B) shall not apply to payments made after the expiration of a 6-month period comparable to the 6-month period described in section 3121(a)(4).

(D) Except as otherwise provided in regulations prescribed by the Secretary, any third party which makes a payment included in compensation solely by reason of subparagraph (A) or (B) shall be treated for purposes of this chapter as the employer with respect to such compensation.

(5) The term "compensation" shall not include any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 74(c), 108(f)(4), 117, or 132.

(6) The term "compensation" shall not include any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127.

(7) The term "compensation" shall not include any contribution, payment, or service provided by an employer which may be excluded from the gross income of an employee, his spouse, or his dependents, under the provisions of section 120 (relating to amounts received under qualified group legal services plans).

(8) Treatment of certain deferred compensation and salary reduction arrangements

(A) Certain employer contributions treated as compensation

Nothing in any paragraph of this subsection (other than paragraph (2)) shall exclude from the term "compensation" any amount described in subparagraph (A) or (B) of section 3121(v)(1).

(B) Treatment of certain nonqualified deferred compensation

The rules of section 3121(v)(2) which apply for purposes of chapter 21 shall also apply for purposes of this chapter.

(9) Meals and lodging

The term "compensation" shall not include the value of meals or lodging furnished by or on behalf of the employer if at the time of such furnishing it is reasonable to believe that the employee will be able to exclude such items from income under section 119.

(10) Archer MSA contributions

The term "compensation" shall not include any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(b).

(11) Health savings account contributions

The term "compensation" shall not include any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(d).

(12) Qualified stock options

The term "compensation" shall not include any remuneration on account of—

(A) a transfer of a share of stock to any individual pursuant to an exercise of an incentive stock option (as defined in section 422(b)) or under an employee stock purchase plan (as defined in section 423(b)), or

(B) any disposition by the individual of such stock.

(f) Company

For purposes of this chapter, the term "company" includes corporations, associations, and joint-stock companies.

(g) Carrier

For purposes of this chapter, the term "carrier" means a rail carrier subject to part A of subtitle IV of title 49.

(h) Tips constituting compensation, time deemed paid

For purposes of this chapter, tips which constitute compensation for purposes of the taxes imposed by section 3201 shall be deemed to be paid at the time a written statement including such tips is furnished to the employer pursuant to section 6053(a) or (if no statement including such tips is so furnished) at the time received.

(i) Concurrent employment by 2 or more employers

For purposes of this chapter, if 2 or more related corporations which are employers concurrently employ the same individual and compensate such individual through a common paymaster which is 1 of such corporations, each such corporation shall be considered to have paid as remuneration to such individual only the amounts actually disbursed by it to such individual and shall not be considered to have paid as remuneration to such individual amounts actually disbursed to such individual by another of such corporations.

(Aug. 16, 1954, ch. 736, 68A Stat. 434; Aug. 31, 1954, ch. 1164, pt. II, §206(b), 68 Stat. 1040; Pub. L. 89–212, §2(b), Sept. 29, 1965, 79 Stat. 859; Pub. L. 90–624, §1, Oct. 22, 1968, 82 Stat. 1316; Pub. L. 94–92, title II, §203(b), Aug. 9, 1975, 89 Stat. 465; Pub. L. 94–93, title II, §§204–206, Aug. 9, 1975, 89 Stat. 466; Pub. L. 94–455, title XIX, §§1903(a)(10), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1808, 1834; Pub. L. 94–547, §4(b), Oct. 18, 1976, 90 Stat. 2526; Pub. L. 95–473, §2(a)(2)(G), Oct. 17, 1978, 92 Stat. 1465; Pub. L. 97–34, title VII, §§741(d)(2), 743(a)–(c), Aug. 13, 1981, 95 Stat. 347, 348; Pub. L. 97–123, §3(c), Dec. 29, 1981, 95 Stat. 1662; Pub. L. 98–76, title II, §225(a)(1), (3), (b), (c)(1)(C), (6)–(8), Aug. 12, 1983, 97 Stat. 424, 425; Pub. L. 98–369, div. A, title V, §531(d)(2), July 18, 1984, 98 Stat. 884; Pub. L. 98–611, §1(f), Oct. 31, 1984, 98 Stat. 3178; Pub. L. 98–612, §1(c), Oct. 31, 1984, 98 Stat. 3181; Pub. L. 99–514, title I, §122(e)(2), title XVIII, §1899A(41), Oct. 22, 1986, 100 Stat. 2112, 2960; Pub. L. 100–647, title I, §§1001(d)(2)(C)(ii), 1011B(a)(22)(B), Nov. 10, 1988, 102 Stat. 3351, 3486; Pub. L. 101–140, title II, §203(a)(2), Nov. 8, 1989, 103 Stat. 830; Pub. L. 101–239, title X, §§10205(a), 10206(a), (b), 10207(a), (b), Dec. 19, 1989, 103 Stat. 2474–2476; Pub. L. 101–508, title XI, §§11331(c), 11704(a)(19), Nov. 5, 1990, 104 Stat. 1388–468, 1388–519; Pub. L. 103–66, title XIII, §13207(c), Aug. 10, 1993, 107 Stat. 468; Pub. L. 103–296, title III, §320(a)(1)(D), Aug. 15, 1994, 108 Stat. 1535; Pub. L. 104–88, title III, §304(d), Dec. 29, 1995, 109 Stat. 944; Pub. L. 104–191, title III, §301(c)(2)(A), Aug. 21, 1996, 110 Stat. 2049; Pub. L. 106–554, §1(a)(7) [title II, §202(b)(5)], Dec. 21, 2000, 114 Stat. 2763, 2763A–629;

Pub. L. 107–90, title II, §204(e)(3), (4), Dec. 21, 2001, 115 Stat. 893; Pub. L. 108–173, title XII, §1201(d)(2)(A), Dec. 8, 2003, 117 Stat. 2477; Pub. L. 108–357, title II, §251(a)(2), title III, §320(b)(2), Oct. 22, 2004, 118 Stat. 1458, 1473.)

REFERENCES IN TEXT

The Railway Labor Act, referred to in subsecs. (a) and (c), is act May 20, 1926, ch. 347, 44 Stat. 577, as amended, which is classified principally to chapter 8 (§151 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables.

Sections 1 and 6 of the Railroad Retirement Act of 1937, referred to in subsecs. (b) and (d)(7), were classified to sections 228a and 228f of Title 45. The subject matter of sections 228a and 228f is covered by sections 231 and 231o of Title 45.

Section 230 of the Social Security Act, referred to in subsec. (e)(2)(B), is classified to section 430 of Title 42, The Public Health and Welfare.

Section 3(a), (f)(3), (j) of the Railroad Retirement Act of 1974, referred to in subsec. (e)(2)(B)(ii)(II), is classified to section 231b(a), (f)(3), (j) of Title 45, Railroads.

The Railroad Retirement Act of 1974, referred to in subsec. (e)(4)(A)(ii), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, §101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§231 et seq.) of chapter 9 of Title 45. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

Section 101(a)(15) of the Immigration and Nationality Act, referred to in subsec. (e)(1), is classified to section 1101(a)(15) of Title 8, Aliens and Nationality.

Section 2(a) of the Railroad Unemployment Insurance Act, referred to in subsec. (e)(4)(B), is classified to section 352(a) of Title 45, Railroads.

AMENDMENTS

2004—Subsec. (e)(5). Pub. L. 108–357, §320(b)(2), inserted "108(f)(4)," after "74(c),".

Subsec. (e)(12). Pub. L. 108–357, §251(a)(2), added par. (12).

2003—Subsec. (e)(11). Pub. L. 108–173 added par. (11).

2001—Subsec. (e)(2)(A)(iii)(II). Pub. L. 107–90, §204(e)(3), substituted "3211(a)" for "3211(a)(1)".

Subsec. (e)(2)(B)(ii)(I). Pub. L. 107–90, §204(e)(4), substituted "3211(b)" for "3211(a)(2)".

Subsec. (e)(4)(A). Pub. L. 107–90, §204(e)(3), substituted "3211(a)" for "3211(a)(1)".

2000—Subsec. (e)(10). Pub. L. 106–554 substituted "Archer MSA" for "Medical savings account" in heading.

1996—Subsec. (e)(10). Pub. L. 104–191 added par. (10).

1995—Subsec. (a). Pub. L. 104–88, §304(d)(1), substituted "Surface Transportation Board" for "Interstate Commerce Commission".

Subsec. (g). Pub. L. 104–88, §304(d)(2), substituted "a rail carrier subject to part A of subtitle IV" for "an express carrier, sleeping car carrier, or rail carrier providing transportation subject to subchapter I of chapter 105".

1994—Subsec. (e)(1). Pub. L. 103–296 substituted "(J), (M), or (Q)" for "(J), or (M)" in two places.

1993—Subsec. (e)(2)(A)(iii). Pub. L. 103–66, §13207(c)(1), added cl. (iii).

Subsec. (e)(2)(B)(i). Pub. L. 103–66, §13207(c)(2), amended heading and text of cl. (i) generally. Prior to amendment, text read as follows:

"(I) IN GENERAL.—Except as provided in subclause (II) of this clause and in clause (ii), the term 'applicable base' means for any calendar year the contribution and benefit base determined under section 230 of the Social Security Act for such calendar year.

"(II) HOSPITAL INSURANCE TAXES.—For purposes of applying so much of the rate applicable under section 3201(a) or 3221(a) (as the case may be) as does not exceed the rate of tax in effect under section 3101(b), and for purposes of applying so much of the rate of tax applicable under section 3211(a)(1) as does not exceed the rate of tax in effect under section 1401(b), the term 'applicable base' means for any calendar year the applicable contribution base determined under section 3121(x)(2) for such calendar year."

1990—Subsec. (e)(2)(B)(i). Pub. L. 101–508, §11331(c), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: "Except as provided in clause (ii), the term 'applicable base' means for any calendar year the contribution and benefit base determined under section 230 of the Social Security Act for such calendar year."

Subsec. (e)(8) to (10). Pub. L. 101–508, §11704(a)(19), redesignated pars. (9) and (10) as (8) and (9), respectively.

1989—Subsec. (e)(1). Pub. L. 101–239, §10207(b), inserted at end "Nothing in the regulations prescribed for purposes of chapter 24 (relating to wage withholding) which provides an exclusion from 'wages' as used in such chapter shall be construed to require a similar exclusion from 'compensation' in regulations prescribed for purposes of this chapter."

Pub. L. 101–239, §10206(a), substituted "(iii)" for "or (iii)" and inserted ", or (iv) any remuneration which would not (if chapter 21 applied to such remuneration) be treated as wages (as defined in section 3121(a)) by reason of section 3121(a)(5)".

Pub. L. 101–239, §10205(a), inserted "or death, except that this clause does not apply to a payment for group-term life insurance to the extent that such payment is includible in the gross income of the employee" before ", (ii) tips".

Subsec. (e)(8). Pub. L. 101–140 amended subsec. (e) to read as if amendments by Pub. L. 100–647, §1011B(a)(22)(B), had not been enacted, see 1988 Amendment note below.

Subsec. (e)(9). Pub. L. 101–239, §10206(b), added par. (9).

Subsec. (e)(10). Pub. L. 101–239, §10207(a), added par. (10).

1988—Subsec. (e)(1). Pub. L. 100–647, §1001(d)(2)(C)(ii), substituted "(F), (J), or (M)" for "(F) or (J)" in two places.

Subsec. (e)(8). Pub. L. 100–647, §1011B(a)(22)(B), added par. (8).

1986—Subsec. (e)(5). Pub. L. 99–514, §122(e)(2), inserted reference to section 74(c).

Subsec. (e)(6), (7). Pub. L. 99–514, §1899A(41), redesignated par. (6), relating to amounts excludable under section 120, as (7).

1984—Subsec. (e)(5). Pub. L. 98–369, §531(d)(2), added par. (5).

Subsec. (e)(6). Pub. L. 98–611 added par. (6) relating to amounts excludable under section 127.

Pub. L. 98–612 added par. (6) relating to amounts excludable under section 120.

1983—Subsec. (e)(1). Pub. L. 98–76, §225(a)(3), struck out provisions that compensation which was paid in one calendar month but which would be payable in a prior or subsequent taxable month but for the fact prescribed date of payment would fall on a Saturday, Sunday or legal holiday would be deemed to have been paid in such prior or subsequent taxable month and that compensation which was earned during the period for which the Secretary would require a return of taxes under this chapter to be made and which was payable during the calendar month following such period would be deemed to have been paid during such period only.

Subsec. (e)(2). Pub. L. 98–76, §225(a)(1), amended par. (2) generally, substituting provisions which exclude compensation in excess of applicable base, which define "applicable base", and which provide for the applicability of successor employer provisions to this paragraph, for provisions that a payment made by an employer to an individual through the employer's payroll would be presumed, in the absence of evidence to the contrary, to be compensation for service rendered by such individual as an employee of the employer in the period with respect to which the payment was made, that an employee receiving retroactive wage payments would be deemed to be paid compensation in the period during which such compensation was earned only upon a written request by such employee, made within six months following the payment, and a showing that such compensation was earned during a period other than the period in which it was paid, that an employee would be deemed to be paid "for time lost" the amount he was paid by an employer with respect to an identifiable period of absence from the active service of the employer, including absence on account of personal injury, and the amount he was paid by the employer for loss of earnings resulting from his displacement to a less remunerative position or occupation, and that if a payment was made by an employer with respect to a personal injury and included pay for time lost, the total payment would be deemed to be paid for time lost unless, at the time of payment, a part of such payment was specifically apportioned to factors other than time lost, in which event only such part of the payment as was not so apportioned would be deemed to be paid for time lost.

Subsec. (e)(3). Pub. L. 98–76, §225(c)(1)(C), (6), substituted "taxes imposed by section 3201" for "tax imposed by section 3201", and "such taxes" for "such tax".

Subsec. (e)(4)(A). Pub. L. 98–76, §225(c)(7), substituted "3201(a), 3211(a)(1), and 3221(a)" for "3201(b) and 3221(b) (and so much of section 3211(a) as relates to the rates of the taxes imposed by sections 3101 and 3111)".

Subsec. (h). Pub. L. 98–76, §225(c)(8), substituted "taxes imposed by section 3201" for "tax imposed under section 3201", and struck out "; and tips so deemed to be paid in any month shall be deemed paid for services rendered in such month" after "time received".

Subsec. (i). Pub. L. 98–76, §225(b), added subsec. (i).

1981—Subsec. (e)(1). Pub. L. 97–34, §743(a), inserted after third sentence provision that "Compensation which is paid in one calendar month but which would be payable in a prior or subsequent taxable month but for the fact that prescribed date of payment would fall on a Saturday, Sunday or legal holiday shall be deemed

to have been paid in such prior or subsequent taxable month."

Pub. L. 97–34, §741(d)(2), struck out cl. (iii) exclusion from term "compensation" the voluntary payment by an employer, without deduction from the remuneration of the employee, of the tax imposed on such employee by section 3201, redesignated as cl. (iii) provisions formerly designated (iv).

Subsec. (e)(2). Pub. L. 97–34, §743(b), (c), inserted first sentence respecting presumption of a payment through the employer's payroll as being compensation for services rendered as an employee in the period with respect to which payment is made, and in second sentence following "an employee" inserted "receiving retroactive wage payments".

Subsec. (e)(4). Pub. L. 97–123 added par. (4).

1978—Subsec. (g). Pub. L. 95–473 substituted "express carrier, sleeping car carrier, or rail carrier providing transportation subject to subchapter I of chapter 105 of title 49" for "express company, sleeping-car company, or carrier by railroad, subject to part I of the Interstate Commerce Act (49 U.S.C., chapter 1)".

1976—Subsec. (a). Pub. L. 94–455, §§1903(a)(10)(A), 1906(b)(13)(A), struck out "44 Stat. 577;" before "45 U.S.C., chapter 8" and "or his delegate" after "Secretary", respectively.

Subsec. (b). Pub. L. 94–455, §1903(a)(10)(B), struck out in provisions following par. (4) "50 Stat. 312;" before "45 U.S.C. 228f".

Subsec. (c). Pub. L. 94–455, §1903(a)(10)(C), struck out "44 Stat. 577;" before "45 U.S.C. chapter 8".

Subsec. (d)(7). Pub. L. 94–455, §1903(a)(10)(D), struck out "50 Stat. 308;" before "45 U.S.C. 228a".

Subsec. (e)(1). Pub. L. 94–547 provided that "compensation" not include amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of sickness or accident disability or medical or hospitalization expenses in connection with sickness or accident disability, or an amount paid specifically—either as an advance, as reimbursement or allowance—for traveling or other bona fide and necessary expenses incurred or reasonably expected to be incurred in the business of the employer provided any such payment is identified by the employer either by a separate payment or by specifically indicating the separate amounts where both wages and expense reimbursement or allowance are combined in a single payment.

Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

1975—Subsec. (e)(1). Pub. L. 94–93, §204, substituted "paid to an individual for services rendered as an employee to one or more employers" for "earned by an individual for services rendered as an employee to one or more employers, or as an employee representative, including remuneration paid for time lost as an employee, but remuneration paid for time lost shall be deemed earned in the month in which such time is lost".

Pub. L. 94–92 increased from $3 to $25 amount of compensation earned in the service of a local lodge or division of a railway-labor-organization employer to be disregarded with respect to any calendar month in the determination of amount of taxes under sections 3201 and 3221.

Subsec. (e)(2). Pub. L. 94–93, §§205, 206, substituted provision that an employee shall be deemed to be paid compensation in the period during which such compensation is earned only upon a written request by such employee, made within six months following the payment, and a showing that such compensation was earned during a period other than the period in which it was paid for provision that a payment made by an employer to an individual through the employer's payroll shall be presumed, in the absence of evidence to the contrary, to be compensation for service rendered by such individual as an employee of the employer in the period with respect to which payment is made.

1968—Subsec. (e)(1). Pub. L. 90–624 inserted provision excluding remuneration for service performed by nonresident alien individuals temporarily in the United States as participants in a cultural exchange or training program.

1965—Subsec. (e)(1). Pub. L. 89–212, §2(b)(1), inserted "(except as is provided under paragraph (3))".

Subsec. (e)(3). Pub. L. 89–212, §2(b)(2), added par. (3).

Subsec. (h). Pub. L. 89–212, §2(b)(3), added subsec. (h).

1954—Subsec. (e)(1). Act Aug. 31, 1954, excluded from taxation compensation, for service as a delegate to a national or international convention of a railway labor organization, of any person who has no other previous creditable service.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 251(a)(2) of Pub. L. 108–357 applicable to stock acquired pursuant to options exercised after Oct. 22, 2004, see section 251(d) of Pub. L. 108–357, set out as a note under section 421 of

this title.

Amendment by section 320(b)(2) of Pub. L. 108–357 applicable to amounts received by an individual in taxable years beginning after Dec. 31, 2003, see section 320(c) of Pub. L. 108–357, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–173 applicable to taxable years beginning after Dec. 31, 2003, see section 1201(k) of Pub. L. 108–173, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–90 applicable to calendar years beginning after Dec. 31, 2001, see section 204(f) of Pub. L. 107–90, set out as a note under section 24 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–191 applicable to taxable years beginning after Dec. 31, 1996, see section 301(j) of Pub. L. 104–191, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective with calendar quarter following Aug. 15, 1994, see section 320(c) of Pub. L. 103–296, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to 1994 and later calendar years, see section 13207(e) of Pub. L. 103–66, set out as a note under section 1402 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11331(c) of Pub. L. 101–508 applicable to 1991 and later calendar years, see section 11331(e) of Pub. L. 101–508, set out as a note under section 1402 of this title.

EFFECTIVE DATE OF 1989 AMENDMENTS

Pub. L. 101–239, title X, §10205(b), Dec. 19, 1989, 103 Stat. 2474 provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to—

"(A) group-term life insurance coverage in effect after December 31, 1989, and

"(B) remuneration paid before January 1, 1990, which the employer treated as compensation when paid.

"(2) EXCEPTION.—The amendment made by subsection (a) shall not apply with respect to payments by the employer (or a successor of such employer) for group-term life insurance for such employer's former employees who separated from employment with the employer on or before December 31, 1989, to the extent that such payments are not for coverage for any such employee for any period for which such employee is employed by such employer (or a successor of such employer) after the date of such separation.

"(3) BENEFIT DETERMINATIONS TO TAKE INTO ACCOUNT REMUNERATION ON WHICH TAX PAID.—The term 'compensation' as defined in section 1(h) of the Railroad Retirement Act of 1974 [45 U.S.C. 231(h)] includes any remuneration which is included in the term 'compensation' as defined in section 3231(e)(1) of the Internal Revenue Code of 1986 by reason of the amendment made by subsection (a)."

Pub. L. 101–239, title X, §10206(c), Dec. 19, 1989, 103 Stat. 2475, provided that:

"(1) SUBSECTION (a).—The amendment made by subsection (a) [amending this section] shall apply to remuneration paid after December 31, 1989.

"(2) SUBSECTION (b).—Except as otherwise provided in this subsection—

"(A) IN GENERAL.—The amendment made by subsection (b) [amending this section] shall apply to—

"(i) remuneration paid after December 31, 1989, and

"(ii) remuneration paid before January 1, 1990, which the employer treated as compensation when paid.

"(B) BENEFIT DETERMINATIONS TO TAKE INTO ACCOUNT REMUNERATION ON WHICH TAX PAID.—The term 'compensation' as defined in section 1(h) of the Railroad Retirement Act of 1974

[45 U.S.C. 231(h)] includes any remuneration which is included in the term 'compensation' as defined in section 3231(e)(1) of the Internal Revenue Code of 1986 by reason of the amendment made by subsection (b).

"(3) SPECIAL RULE FOR CERTAIN PAYMENTS.—For purposes of applying the amendment made by subsection (b) to remuneration paid after December 31, 1989, which would have been taken into account before January 1, 1990, if such amendments had applied to periods before January 1, 1990, such remuneration shall be taken into account when paid (or, at the election of the payor, at the time which would be appropriate if such amendments had applied).

"(4) EXCEPTION FOR CERTAIN 401(k) CONTRIBUTIONS.—The amendment made by subsection (b) shall not apply to employer contributions made during 1990 and attributable to services performed during 1989 under a qualified cash or deferred arrangement (as defined in section 401(k) of the Internal Revenue Code of 1986) if, under the terms of the arrangement as in effect on June 15, 1989—

"(A) the employee makes an election with respect to such contributions before January 1, 1990, and

"(B) the employer identifies the amount of such contribution before January 1, 1990.

"(5) SPECIAL RULE WITH RESPECT TO NONQUALIFIED DEFERRED COMPENSATION PLANS .—In the case of an agreement in existence on June 15, 1989, between a nonqualified deferred compensation plan (as defined in section 3121(v)(2)(C) of such Code) and an individual, the amendment made by subsection (b) shall apply with respect to services performed by the individual after December 31, 1989. The preceding sentence shall not apply in the case of a plan to which section 457(a) of such Code applies."

Pub. L. 101–239, title X, §10207(c), Dec. 19, 1989, 103 Stat. 2476, provided that: "The amendments made by this section [amending this section] shall apply to remuneration paid after December 31, 1989."

Amendment by Pub. L. 101–140 effective as if included in section 1151 of Pub. L. 99–514, see section 203(c) of Pub. L. 101–140, set out as a note under section 79 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1001(d)(2)(C)(ii) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 1011B(a)(22)(B) of Pub. L. 100–647 not applicable to any individual who separated from service with the employer before Jan. 1, 1989, see section 1011B(a)(22)(F) of Pub. L. 100–647, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 122(e)(2) of Pub. L. 99–514 applicable to prizes and awards granted after Dec. 31, 1986, see section 151(c) of Pub. L. 99–514, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Pub. L. 98–612, §1(d)(3), Oct. 31, 1984, 98 Stat. 3181, provided that: "The amendment made by subsection (c) [amending this section] shall apply to remuneration paid after December 31, 1984."

Amendment by Pub. L. 98–611 applicable to remuneration paid after Dec. 31, 1984, see section 1(g)(3) of Pub. L. 98–611, set out as a note under section 127 of this title.

Amendment by Pub. L. 98–369 effective Jan. 1, 1985, see section 531(h) of Pub. L. 98–369, set out as an Effective Date note under section 132 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–76 applicable to remuneration paid after Dec. 31, 1984, see section 227(a) of Pub. L. 98–76, set out as a note under section 3201 of this title.

EFFECTIVE DATE OF 1981 AMENDMENTS

Amendment by Pub. L. 97–123 applicable to remuneration paid after Dec. 31, 1981, except as otherwise provided, see section 3(g) of Pub. L. 97–123, set out as a note under section 3121 of this title.

Amendment by section 741(d)(2) of Pub. L. 97–34 applicable to compensation paid for services rendered after Sept. 30, 1981, see section 741(e) of Pub. L. 97–34, set out as a note under section 3201 of this title.

Pub. L. 97–34, title VII, §743(d), Aug. 13, 1981, 95 Stat. 349, provided that: "The amendments made by this section [amending this section] shall apply for taxable years beginning after December 31, 1981."

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–547, §4(c)(2), Oct. 18, 1976, 90 Stat. 2527, provided that: "The amendments made by subsection (b) of this section [amending this section] shall apply with respect to taxable years ending after

December 31, 1953: *Provided, however*, That any taxes paid under the Railroad Retirement Tax Act [this chapter] prior to the date on which this Act is enacted [Oct. 18, 1976] shall not be affected or adjusted by reason of the amendments made by such subsection (b) except to the extent that the applicable period of limitation for the assessment of tax and the filing of a claim for credit or refund has not expired prior to the date on which this Act is enacted. If the applicable period of limitation for the filing of a claim for credit or refund would expire within the six-month period following the date on which this Act is enacted, the applicable period for the filing of such a claim for credit or refund shall be extended to include such six-month period."

EFFECTIVE DATE OF 1975 AMENDMENTS

Amendment by sections 204 and 205 of Pub. L. 94–93 applicable for taxable years ending on or after Aug. 9, 1975, and for taxable years ending before Aug. 9, 1975, as to which the period for assessment and collection of tax or the filing of a claim for credit or refund has not expired on Aug. 9, 1975, and amendment by section 206 of Pub. L. 94–93 applicable for taxable years beginning on or after Aug. 9, 1975: *Provided, however*, That with respect to payment made prior to Aug. 9, 1975, the employee may file a written request under section 206 of Pub. L. 94–93 within six months after Aug. 9, 1975, see section 207 of Pub. L. 94–93, set out as a note under section 3201 of this title.

Amendment by Pub. L. 94–92 effective Jan. 1, 1975, and applicable only with respect to compensation paid for services rendered on or after Jan. 1, 1975, see section 203(c) of Pub. L. 94–92, set out as a note under section 1402 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Pub. L. 90–624, §4(a), Oct. 22, 1968, 82 Stat. 1316, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) The amendments made by the first two sections of this Act [amending this section and section 228a of Title 45, Railroads] shall apply with respect to service performed after December 31, 1961.

"(2) Notwithstanding the expiration before the date of the enactment of this Act [Oct. 22, 1968] or within 6 months after such date of the period for filing claim for credit or refund, claim for credit or refund of any overpayment of any tax imposed by chapter 22 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954, 26 U.S.C. 3201 et seq.] attributable to the amendment made by the first section of this Act [amending this section] may be filed at any time within one year after such date of enactment.

"(3) Any credit or refund of an overpayment of the tax imposed by section 3201 or 3211 of the Internal Revenue Code of 1986 which is attributable to the amendment made by the first section of this Act shall be appropriately adjusted for any lump-sum payment which has been made under section 5(f)(2) of the Railroad Retirement Act of 1937 [section 228e(f)(2) of Title 45] before the date of the allowance of such credit or the making of such refund."

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–212 effective only with respect to tips received after 1965, see section 6 of Pub. L. 89–212, set out as a note under section 3201 of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 31, 1954, effective as if enacted as a part of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], see section 407 of act Aug. 31, 1954, as amended, set out as a note under section 3201 of this title.

REGULATIONS

For provisions requiring that the regulations prescribed under subsec. (e)(4) of this section prescribe procedures under which, if (with respect to any employee) the third party promptly (A) withholds the employee portion of the taxes involved, (B) deposits such portion under section 6302 of such Code, and (C) notifies the employer of the amount of the wages or compensation involved, the employer (and not the third party) shall be liable for the employer portion of the taxes involved and for meeting the requirements of section 6051 of this title (relating to receipts for employees) with respect to the wages or compensation involved, see section 3(d) of Pub. L. 97–123, set out as a note under section 3121 of this title.

EXCLUSION FROM WAGES AND COMPENSATION OF REFUNDS REQUIRED FROM EMPLOYERS TO COMPENSATE FOR DUPLICATION OF MEDICARE BENEFITS BY HEALTH CARE BENEFITS PROVIDED BY EMPLOYERS

For purposes of this chapter, the term "compensation" shall not include the amount of any refund required

under section 421 of Pub. L. 100–360, 42 U.S.C. 1395b note, see section 10202 of Pub. L. 101–239, set out as a note under section 1395b of Title 42, The Public Health and Welfare.

PAYMENTS UNDER STATE TEMPORARY DISABILITY LAW TO BE TREATED AS REMUNERATION FOR SERVICE

For purposes of applying subsec. (e) of this section with respect to subsec. (e)(4) of this section, payments under a State temporary disability law to be treated as remuneration for service, see section 3(e) of Pub. L. 97–123, set out as a note under section 3121 of this title.

§3232. Court jurisdiction

The several district courts of the United States shall have jurisdiction to entertain an application by the Attorney General on behalf of the Secretary to compel an employee or other person residing within the jurisdiction of the court or an employer subject to service of process within its jurisdiction to comply with any obligations imposed on such employee, employer, or other person under the provisions of this chapter. The jurisdiction herein specifically conferred upon such Federal courts shall not be held exclusive of any jurisdiction otherwise possessed by such courts to entertain civil actions, whether legal or equitable in nature, in aid of the enforcement of rights or obligations arising under the provisions of this chapter.

(Aug. 16, 1954, ch. 736, 68A Stat. 437; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

§3233. Short title

This chapter may be cited as the "Railroad Retirement Tax Act."

(Aug. 16, 1954, ch. 736, 68A Stat. 438.)

Subchapter E—Tier 2 Tax Rate Determination

Sec.
3241. Determination of tier 2 tax rate based on average account benefits ratio.

§3241. Determination of tier 2 tax rate based on average account benefits ratio

(a) In general

For purposes of sections 3201(b), 3211(b), and 3221(b), the applicable percentage for any calendar year is the percentage determined in accordance with the table in subsection (b).

(b) Tax rate schedule

Average account benefits ratio		Applicable percentage for sections 3211(b) and 3221(b)	Applicable percentage for section 3201(b)
At least	But less than		
	2.5	22.1	4.9
2.5	3.0	18.1	4.9
3.0	3.5	15.1	4.9
3.5	4.0	14.1	4.9

4.0	6.1	13.1	4.9
6.1	6.5	12.6	4.4
6.5	7.0	12.1	3.9
7.0	7.5	11.6	3.4
7.5	8.0	11.1	2.9
8.0	8.5	10.1	1.9
8.5	9.0	9.1	0.9
9.0		8.2	0

(c) Definitions related to determination of rates of tax

(1) Average account benefits ratio

For purposes of this section, the term "average account benefits ratio" means, with respect to any calendar year, the average determined by the Secretary of the account benefits ratios for the 10 most recent fiscal years ending before such calendar year. If the amount determined under the preceding sentence is not a multiple of 0.1, such amount shall be increased to the next highest multiple of 0.1.

(2) Account benefits ratio

For purposes of this section, the term "account benefits ratio" means, with respect to any fiscal year, the amount determined by the Railroad Retirement Board by dividing the fair market value of the assets in the Railroad Retirement Account and of the National Railroad Retirement Investment Trust (and for years before 2002, the Social Security Equivalent Benefits Account) as of the close of such fiscal year by the total benefits and administrative expenses paid from the Railroad Retirement Account and the National Railroad Retirement Investment Trust during such fiscal year.

(d) Notice

No later than December 1 of each calendar year, the Secretary shall publish a notice in the Federal Register of the rates of tax determined under this section which are applicable for the following calendar year.

(Added Pub. L. 107–90, title II, §204(d), Dec. 21, 2001, 115 Stat. 892.)

EFFECTIVE DATE

Subchapter applicable to calendar years beginning after Dec. 31, 2001, see section 204(f) of Pub. L. 107–90, set out as an Effective and Termination Dates of 2001 Amendments note under section 24 of this title.

CHAPTER 23—FEDERAL UNEMPLOYMENT TAX ACT

Sec.
3301. Rate of tax.
3302. Credits against tax.
3303. Conditions of additional credit allowance.
3304. Approval of State laws.
3305. Applicability of State law.
3306. Definitions.
3307. Deductions as constructive payments.
3308. Instrumentalities of the United States.
3309. State law coverage of services performed for nonprofit organizations or governmental entities.
3310. Judicial review.
3311. Short title.

AMENDMENTS

1976—Pub. L. 94–566, title I, §115(c)(4), Oct. 20, 1976, 90 Stat. 2671, substituted "services performed for nonprofit organizations or governmental entities" for "certain services performed for nonprofit organizations and for State hospitals and institutions of higher education" in item 3309.

1970—Pub. L. 91–373, title I, §§104(b)(2), 131(b)(3), Aug. 10, 1970, 84 Stat. 699, 705, added items 3309 and 3310 and redesignated former item 3309 as 3311.

1960—Pub. L. 86–778, title V, §531(d)(2), Sept. 13, 1960, 74 Stat. 984, added item 3308 and redesignated former item 3308 as 3309.

§3301. Rate of tax

There is hereby imposed on every employer (as defined in section 3306(a)) for each calendar year an excise tax, with respect to having individuals in his employ, equal to—

(1) 6.2 percent in the case of calendar years 1988 through 2010 and the first 6 months of calendar year 2011; or

(2) 6.0 percent in the case of the remainder of calendar year 2011 and each calendar year thereafter;

of the total wages (as defined in section 3306(b)) paid by him during the calendar year (or portion of the calendar year) with respect to employment (as defined in section 3306(c)).

(Aug. 16, 1954, ch. 736, 68A Stat. 439; Pub. L. 86–778, title V, §523(a), Sept. 13, 1960, 74 Stat. 980; Pub. L. 87–6, §14(a), Mar. 24, 1961, 75 Stat. 16; Pub. L. 88–31, §2(a), May 29, 1963, 77 Stat. 51; Pub. L. 91–373, title III, §301(a), Aug. 10, 1970, 84 Stat. 713; Pub. L. 92–329, §2(a), June 30, 1972, 86 Stat. 398; Pub. L. 94–455, title XIX, §1903(a)(11), Oct. 4, 1976, 90 Stat. 1808; Pub. L. 94–566, title II, §211(b), Oct. 20, 1976, 90 Stat. 2676; Pub. L. 97–248, title II, §271(b)(1), (c)(1), Sept. 3, 1982, 96 Stat. 554, 555; Pub. L. 99–514, title XVIII, §1899A(42), Oct. 22, 1986, 100 Stat. 2960; Pub. L. 100–203, title IX, §9153(a), Dec. 22, 1987, 101 Stat. 1330–326; Pub. L. 101–508, title XI, §11333(a), Nov. 5, 1990, 104 Stat. 1388–470; Pub. L. 102–164, title IV, §402, Nov. 15, 1991, 105 Stat. 1061; Pub. L. 103–66, title XIII, §13751, Aug. 10, 1993, 107 Stat. 664; Pub. L. 105–34, title X, §1035, Aug. 5, 1997, 111 Stat. 937; Pub. L. 110–140, title XV, §1501(a), Dec. 19, 2007, 121 Stat. 1800; Pub. L. 110–343, div. B, title IV, §404(a), Oct. 3, 2008, 122 Stat. 3860; Pub. L. 111–92, §10(a), Nov. 6, 2009, 123 Stat. 2988.)

AMENDMENTS

2009—Pub. L. 111–92 inserted "(or portion of the calendar year)" after "during the calendar year" in concluding provisions and substituted "through 2010 and the first 6 months of calendar year 2011" for "through 2009" in par. (1) and "the remainder of calendar year 2011" for "calendar year 2010" in par. (2).

2008—Par. (1). Pub. L. 110–343, §404(a)(1), substituted "through 2009" for "through 2008".

Par. (2). Pub. L. 110–343, §404(a)(2), substituted "calendar year 2010" for "calendar year 2009".

2007—Par. (1). Pub. L. 110–140, §1501(a)(1), substituted "2008" for "2007".

Par. (2). Pub. L. 110–140, §1501(a)(2), substituted "2009" for "2008".

1997—Par. (1). Pub. L. 105–34, §1035(1), substituted "2007" for "1998".

Par. (2). Pub. L. 105–34, §1035(2), substituted "2008" for "1999".

1993—Par. (1). Pub. L. 103–66, §13751(1), substituted "1998" for "1996".

Par. (2). Pub. L. 103–66, §13751(2), substituted "1999" for "1997".

1991—Par. (1). Pub. L. 102–164, §402(1), substituted "1996" for "1995".

Par. (2). Pub. L. 102–164, §402(2), substituted "1997" for "1996".

1990—Par. (1). Pub. L. 101–508, §11333(a)(1), substituted "1988 through 1995" for "1988, 1989, and 1990".

Par. (2). Pub. L. 101–508, §11333(a)(2), substituted "1996" for "1991".

1987—Pars. (1), (2). Pub. L. 100–203 amended pars. (1) and (2) generally. Prior to amendment, pars. (1) and (2) read as follows:

"(1) 6.2 percent, in the case of a calendar year beginning before the first calendar year after 1976, as of January 1 of which there is not a balance of repayable advances made to the extended unemployment compensation account (established by section 905(a) of the Social Security Act); or

"(2) 6.0 percent, in the case of such first calendar year and each calendar year thereafter;".

1986—Par. (1). Pub. L. 99–514 substituted "unemployment" for "unemployed".

1982—Par. (1). Pub. L. 97–248, §271(c)(1)(A), substituted "6.2 percent" for "3.5 percent".

Pub. L. 97–248, §271(b)(1), substituted "3.5 percent" for "3.4 percent".

Par. (2). Pub. L. 97–248, §271(c)(1)(B), substituted "6.0 percent" for "3.2 percent".

1976—Pub. L. 94–566 substituted provisions imposing an excise tax equal to 3.4 percent, in the case of a calendar year beginning before the first calendar year after 1976, as of January 1 of which there is not a balance of repayable advances made to the extended unemployed compensation account (established by section 905(a) of the Social Security Act), or 3.2 percent, in the case of such first calendar year and each calendar year thereafter, of the total wages (as defined in section 3306(b)) paid by him during the calendar year with respect to employment (as defined in section 3306(c)), for provisions imposing an excise tax for the calendar year 1970 and each calendar year thereafter, with respect to having individuals in his employ, equal to 3.2 percent of the total wages (as defined in section 3306(b)) paid by him during the calendar year with respect to employment (as defined in section 3306(c)) and provisions that, in the case of wages paid during the calendar year 1973, the rate of such tax should be 3.28 percent in lieu of 3.2 percent.

Pub. L. 94–455 substituted "each calendar year" for "the calendar year 1970 and each calendar year thereafter" and struck out provisions relating to the rate of tax in the case of wages paid during the calendar year 1973.

1972—Pub. L. 92–329 inserted provisions setting forth the rate of tax in the case of wages paid during the calendar year 1973.

1970—Pub. L. 91–373 increased the rate from 3.1 percent to 3.2 percent and struck out provisions setting special rates for wages paid during 1962 and 1963.

1963—Pub. L. 88–31 reduced the tax rate for the year 1963 from 3.5 percent to 3.35 percent.

1961—Pub. L. 87–6 provided for a tax rate of 3.5 percent for calendar years 1962 and 1963.

1960—Pub. L. 86–778 substituted "1961" for "1955" and "3.1 percent" for "3 percent".

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–92, §10(b), Nov. 6, 2009, 123 Stat. 2989, provided that: "The amendments made by this section [amending this section] shall apply to wages paid after December 31, 2009."

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title IV, §404(b), Oct. 3, 2008, 122 Stat. 3860, provided that: "The amendments made by this section [amending this section] shall apply to wages paid after December 31, 2008."

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–140, title XV, §1501(b), Dec. 19, 2007, 121 Stat. 1800, provided that: "The amendments made by this section [amending this section] shall apply to wages paid after December 31, 2007."

Amendment by Pub. L. 110–140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, §11333(b), Nov. 5, 1990, 104 Stat. 1388–470, provided that: "The amendments made by this section [amending this section] shall apply to wages paid after December 31, 1990."

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title IX, §9153(b), Dec. 22, 1987, 101 Stat. 1330–326, provided that: "The amendment made by subsection (a) [amending this section] shall apply to wages paid on or after January 1, 1988."

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title II, §271(d)(1), (2), formerly §271(b)(1), (2), Sept. 3, 1982, 96 Stat. 555, as redesignated by Pub. L. 98–601, §1(a), Oct. 30, 1984, 98 Stat. 3147, provided that:

"(1) SUBSECTIONS (a) AND (b).—The amendments made by subsections (a) and (b) [amending this section, sections 3306 and 6157 of this title, and sections 1101 and 1105 of Title 42, The Public Health and Welfare] shall apply to remuneration paid after December 31, 1982.

"(2) SUBSECTION (c).—The amendments made by subsection (c) [amending this section, sections 3302 and 6157 of this title, and section 1101 of Title 42] shall apply to remuneration paid after December 31, 1984."

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–566, title II, §211(d)(2), Oct. 20, 1976, 90 Stat. 2677, provided that: "The amendment made by subsection (b) [amending this section] shall apply to remuneration paid after December 31, 1976."

EFFECTIVE DATE OF 1970 AMENDMENT

Pub. L. 91–373, title III, §301(a), Aug. 10, 1970, 84 Stat. 713, provided that the amendment made by that section is effective with respect to remuneration paid after Dec. 31, 1969.

EFFECTIVE DATE OF 1960 AMENDMENT

Pub. L. 86–778, title V, §523(c), Sept. 13, 1960, 74 Stat. 982, provided that: "The amendments made by subsection (a) [amending this section] shall apply only with respect to the calendar year 1961 and calendar years thereafter."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§3302. Credits against tax

(a) Contributions to State unemployment funds

(1) The taxpayer may, to the extent provided in this subsection and subsection (c), credit against the tax imposed by section 3301 the amount of contributions paid by him into an unemployment fund maintained during the taxable year under the unemployment compensation law of a State which is certified as provided in section 3304 for the 12-month period ending on October 31 of such year.

(2) The credit shall be permitted against the tax for the taxable year only for the amount of contributions paid with respect to such taxable year.

(3) The credit against the tax for any taxable year shall be permitted only for contributions paid on or before the last day upon which the taxpayer is required under section 6071 to file a return for such year; except that credit shall be permitted for contributions paid after such last day, but such credit shall not exceed 90 percent of the amount which would have been allowable as credit on account of such contributions had they been paid on or before such last day.

(4) Upon the payment of contributions into the unemployment fund of a State which are required under the unemployment compensation law of that State with respect to remuneration on the basis of which, prior to such payment into the proper fund, the taxpayer erroneously paid an amount as contributions under another unemployment compensation law, the payment into the proper fund shall, for purposes of credit against the tax, be deemed to have been made at the time of the erroneous payment. If, by reason of such other law, the taxpayer was entitled to cease paying contributions with respect to services subject to such other law, the payment into the proper fund shall, for purposes of credit against the tax, be deemed to have been made on the date the return for the taxable year was filed under section 6071.

(5) In the case of wages paid by the trustee of an estate under title 11 of the United States Code, if the failure to pay contributions on time was without fault by the trustee, paragraph (3) shall be applied by substituting "100 percent" for "90 percent".

(b) Additional credit

In addition to the credit allowed under subsection (a), a taxpayer may credit against the tax imposed by section 3301 for any taxable year an amount, with respect to the unemployment compensation law of each State certified as provided in section 3303 for the 12-month period ending on October 31 of such year, or with respect to any provisions thereof so certified, equal to the amount, if any, by which the contributions required to be paid by him with respect to the taxable year were less than the contributions such taxpayer would have been required to pay if throughout the taxable year he had been subject under such State law to the highest rate applied thereunder in such 12-month period to any person having individuals in his employ, or to a rate of 5.4 percent, whichever rate is lower.

(c) Limit on total credits

(1) The total credits allowed to a taxpayer under this section shall not exceed 90 percent of the tax against which such credits are allowable.

(2) If an advance or advances have been made to the unemployment account of a State under title XII of the Social Security Act, then the total credits (after applying subsections (a) and (b) and paragraph (1) of this subsection) otherwise allowable under this section for the taxable year in the case of a taxpayer subject to the unemployment compensation law of such State shall be reduced—

(A)(i) in the case of a taxable year beginning with the second consecutive January 1 as of the beginning of which there is a balance of such advances, by 5 percent of the tax imposed by section 3301 with respect to the wages paid by such taxpayer during such taxable year which are attributable to such State; and

(ii) in the case of any succeeding taxable year beginning with a consecutive January 1 as of the beginning of which there is a balance of such advances, by an additional 5 percent, for each such succeeding taxable year, of the tax imposed by section 3301 with respect to the wages paid by such taxpayer during such taxable year which are attributable to such State;

(B) in the case of a taxable year beginning with the third or fourth consecutive January 1 as of the beginning of which there is a balance of such advances, by the amount determined by multiplying the wages paid by such taxpayer during such taxable year which are attributable to such State by the percentage (if any), multiplied by a fraction, the numerator of which is the State's average annual wage in covered employment for the calendar year in which the determination is made and the denominator of which is the wage base under this chapter, by which—

(i) 2.7 percent multiplied by a fraction, the numerator of which is the wage base under this chapter and the denominator of which is the estimated United States average annual wage in covered employment for the calendar year in which the determination is to be made, exceeds

(ii) the average employer contribution rate for such State for the calendar year preceding such taxable year; and

(C) in the case of a taxable year beginning with the fifth or any succeeding consecutive January 1 as of the beginning of which there is a balance of such advances, by the amount determined by multiplying the wages paid by such taxpayer during such taxable year which are attributable to such State by the percentage (if any) by which—

(i) the 5-year benefit cost rate applicable to such State for such taxable year or (if higher) 2.7 percent, exceeds

(ii) the average employer contribution rate for such State for the calendar year preceding such taxable year.

The provisions of the preceding sentence shall not be applicable with respect to the taxable year beginning January 1, 1975, or any succeeding taxable year which begins before January 1, 1980; and, for purposes of such sentence, January 1, 1980, shall be deemed to be the first January 1 occurring after January 1, 1974, and consecutive taxable years in the period commencing January 1, 1980, shall be determined as if the taxable year which begins on January 1, 1980, were the taxable year immediately succeeding the taxable year which began on January 1, 1974. Subparagraph (C) shall not apply with respect to any taxable year to which it would otherwise apply (but subparagraph (B) shall apply to such taxable year) if the Secretary of Labor determines (on or before November 10 of such taxable year) that the State meets the requirements of subsection (f)(2)(B) for such taxable year.

(3) If the Secretary of Labor determines that a State, or State agency, has not—

(A) entered into the agreement described in section 239 of the Trade Act of 1974, with the Secretary of Labor before July 15, 1975, or

(B) fulfilled its commitments under an agreement with the Secretary of Labor as described in section 239 of the Trade Act of 1974,

then, in the case of a taxpayer subject to the unemployment compensation law of such State, the

total credits (after applying subsections (a) and (b) and paragraphs (1) and (2) of this section) otherwise allowable under this section for a year during which such State or agency does not enter into or fulfill such an agreement shall be reduced by 7½ percent of the tax imposed with respect to wages paid by such taxpayer during such year which are attributable to such State.

(d) Definitions and special rules relating to subsection (c)

(1) Rate of tax deemed to be 6 percent

In applying subsection (c), the tax imposed by section 3301 shall be computed at the rate of 6 percent in lieu of the rate provided by such section.

(2) Wages attributable to a particular State

For purposes of subsection (c), wages shall be attributable to a particular State if they are subject to the unemployment compensation law of the State, or (if not subject to the unemployment compensation law of any State) if they are determined (under rules or regulations prescribed by the Secretary) to be attributable to such State.

(3) Additional taxes inapplicable where advances are repaid before November 10 of taxable year

Paragraph (2) of subsection (c) shall not apply with respect to any State for the taxable year if (as of the beginning of November 10 of such year) there is no balance of advances referred to in such paragraph.

(4) Average employer contribution rate

For purposes of subparagraphs (B) and (C) of subsection (c)(2), the average employer contribution rate for any State for any calendar year is that percentage obtained by dividing—

(A) the total of the contributions paid into the State unemployment fund with respect to such calendar year, by

(B)(i) for purposes of subparagraph (B) of subsection (c)(2), the total of the wages (as determined without any limitation on amount) attributable to such State subject to contributions under this chapter with respect to such calendar year, and

(ii) for purposes of subparagraph (C) of subsection (c)(2), the total of the remuneration subject to contributions under the State unemployment compensation law with respect to such calendar year.

For purposes of subparagraph (C) of subsection (c)(2), if the average employer contribution rate for any State for any calendar year (determined without regard to this sentence) equals or exceeds 2.7 percent, such rate shall be determined by increasing the amount taken into account under subparagraph (A) of the preceding sentence by the aggregate amount of employee payments (if any) into the unemployment fund of such State with respect to such calendar year which are to be used solely in the payment of unemployment compensation.

(5) 5-year benefit cost rate

For purposes of subparagraph (C) of subsection (c)(2), the 5-year benefit cost rate applicable to any State for any taxable year is that percentage obtained by dividing—

(A) one-fifth of the total of the compensation paid under the State unemployment compensation law during the 5-year period ending at the close of the second calendar year preceding such taxable year, by

(B) the total of the remuneration subject to contributions under the State unemployment compensation law with respect to the first calendar year preceding such taxable year.

(6) Rounding

If any percentage referred to in either subparagraph (B) or (C) of subsection (c)(2) is not a multiple of .1 percent, it shall be rounded to the nearest multiple of .1 percent.

(7) Determination and certification of percentages

The percentage referred to in subsection (c)(2)(B) or (C) for any taxable year for any State

having a balance referred to therein shall be determined by the Secretary of Labor, and shall be certified by him to the Secretary of the Treasury before June 1 of such year, on the basis of a report furnished by such State to the Secretary of Labor before May 1 of such year. Any such State report shall be made as of the close of March 31 of the taxable year, and shall be made on such forms, and shall contain such information, as the Secretary of Labor deems necessary to the performance of his duties under this section.

(e) Successor employer

Subject to the limits provided by subsection (c), if—

(1) an employer acquires during any calendar year substantially all the property used in the trade or business of another person, or used in a separate unit of a trade or business of such other person, and immediately after the acquisition employs in his trade or business one or more individuals who immediately prior to the acquisition were employed in the trade or business of such other person, and

(2) such other person is not an employer for the calendar year in which the acquisition takes place,

then, for the calendar year in which the acquisition takes place, in addition to the credits allowed under subsections (a) and (b), such employer may credit against the tax imposed by section 3301 for such year an amount equal to the credits which (without regard to subsection (c)) would have been allowable to such other person under subsections (a) and (b) and this subsection for such year, if such other person had been an employer, with respect to remuneration subject to contributions under the unemployment compensation law of a State paid by such other person to the individual or individuals described in paragraph (1).

(f) Limitation on credit reduction

(1) Limitation

In the case of any State which meets the requirements of paragraph (2) with respect to any taxable year the reduction under subsection (c)(2) in credits otherwise applicable to taxpayers subject to the unemployment compensation law of such State shall not exceed the greater of—

(A) the reduction which was in effect with respect to such State under subsection (c)(2) for the preceding taxable year, or

(B) 0.6 percent of the wages paid by the taxpayer during such taxable year which are attributable to such State.

(2) Requirements

The requirements of this paragraph are met by any State with respect to any taxable year if the Secretary of Labor determines (on or before November 10 of such taxable year) that—

(A) no State action was taken during the 12-month period ending on September 30 of such taxable year (excluding any action required under State law as in effect prior to the date of the enactment of this subsection) which has resulted or will result in a reduction in such State's unemployment tax effort (as defined by the Secretary of Labor in regulations),

(B) no State action was taken during the 12-month period ending on September 30 of such taxable year (excluding any action required under State law as in effect prior to the date of the enactment of this subsection) which has resulted or will result in a net decrease in the solvency of the State unemployment compensation system (as defined by the Secretary of Labor in regulations),

(C) the State unemployment tax rate for the taxable year equals or exceeds the average benefit cost ratio for calendar years in the 5-calendar year period ending with the last calendar year before the taxable year, and

(D) the outstanding balance for such State of advances under title XII of the Social Security Act on September 30 of such taxable year was not greater than the outstanding balance for such State of such advances on September 30 of the third preceding taxable year (or, for purposes of applying this subparagraph to taxable year 1983, September 30, 1981).

The requirements of subparagraphs (C) and (D) shall not apply to taxable years 1981 and 1982.

(3) Credit reductions for subsequent years

If the credit reduction under subsection (c)(2) is limited by reason of paragraph (1) of this subsection for any taxable year, for purposes of applying subsection (c)(2) to subsequent taxable years (including years after 1987), the taxable year for which the credit reduction was so limited (and January 1 thereof) shall not be taken into account.

(4) State unemployment tax rate

For purposes of this subsection—

(A) In general

The State unemployment tax rate for any taxable year is the percentage obtained by dividing—

(i) the total amount of contributions paid into the State unemployment fund with respect to such taxable year, by

(ii) the total amount of the remuneration subject to contributions under the State unemployment compensation law with respect to such taxable year (determined without regard to any limitation on the amount of wages subject to contribution under the State law).

(B) Treatment of additional tax under this chapter

(i) Taxable year 1983

In the case of taxable year 1983, any additional tax imposed under this chapter with respect to any State by reason of subsection (c)(2) shall be treated as contributions paid into the State unemployment fund with respect to such taxable year.

(ii) Taxable year 1984

In the case of taxable year 1984, any additional tax imposed under this chapter with respect to any State by reason of subsection (c)(2) shall (to the extent such additional tax is attributable to a credit reduction in excess of 0.6 of wages attributable to such State) be treated as contributions paid into the State unemployment fund with respect to such taxable year.

(5) Benefit cost ratio

For purposes of this subsection—

(A) In general

The benefit cost ratio for any calendar year is the percentage determined by dividing—

(i) the sum of the total of the compensation paid under the State unemployment compensation law during such calendar year and any interest paid during such calendar year on advances made to the State under title XII of the Social Security Act, by

(ii) the total amount of the remuneration subject to contributions under the State unemployment compensation law with respect to such calendar year (determined without regard to any limitation on the amount of remuneration subject to contribution under the State law).

(B) Reimbursable benefits not taken into account

For purposes of subparagraph (A), compensation shall not be taken into account to the extent—

(i) the State is entitled to reimbursement for such compensation under the provisions of any Federal law, or

(ii) such compensation is attributable to services performed for a reimbursing employer.

(C) Reimbursing employer

The term "reimbursing employer" means any governmental entity or other organization (or group of governmental entities or any other organizations) which makes reimbursements in lieu

of contributions to the State unemployment fund.

(D) Special rules for years before 1985

(i) Taxable year 1983

For purposes of determining whether a State meets the requirements of paragraph (2)(C) for taxable year 1983, only regular compensation (as defined in section 205 of the Federal-State Extended Unemployment Compensation Act of 1970) shall be taken into account for purposes of determining the benefit ratio for any preceding calendar year before 1982.

(ii) Taxable year 1984

For purposes of determining whether a State meets the requirements of paragraph (2)(C) for taxable year 1984, only regular compensation (as so defined) shall be taken into account for purposes of determining the benefit ratio for any preceding calendar year before 1981.

(E) Rounding

If any percentage determined under subparagraph (A) is not a multiple of .1 percent, such percentage shall be reduced to the nearest multiple of .1 percent.

(6) Reports

The Secretary of Labor may, by regulations, require a State to furnish such information at such time and in such manner as may be necessary for purposes of this subsection.

(7) Definitions and special rules

The definitions and special rules set forth in subsection (d) shall apply to this subsection in the same manner as they apply to subsection (c).

(8) Partial limitation

(A) In the case of a State which would meet the requirements of this subsection for a taxable year prior to 1986 but for its failure to meet one of the requirements contained in subparagraph (C) or (D) of paragraph (2), the reduction under subsection (c)(2) in credits otherwise applicable to taxpayers in such State for such taxable year and each subsequent year (in a period of consecutive years for each of which a credit reduction is in effect for taxpayers in such State) shall be reduced by 0.1 percentage point.

(B) In the case of a State which does not meet the requirements of paragraph (2) but meets the requirements of subparagraphs (A) and (B) of paragraph (2) and which also meets the requirements of section 1202(b)(8)(B) of the Social Security Act with respect to such taxable year, the reduction under subsection (c)(2) in credits otherwise applicable to taxpayers in such State for such taxable year and each subsequent year (in a period of consecutive years for each of which a credit reduction is in effect for taxpayers in such State) shall be further reduced by an additional 0.1 percentage point.

(C) In no case shall the application of subparagraphs (A) and (B) reduce the credit reduction otherwise applicable under subsection (c)(2) below the limitation under paragraph (1).

(g) Credit reduction not to apply when State makes certain repayments

(1) In general

In the case of any State which meets requirements of paragraph (2) with respect to any taxable year, subsection (c)(2) shall not apply to such taxable year; except that such taxable year (and January 1 of such taxable year) shall (except as provided in subsection (f)(3)) be taken into account for purposes of applying subsection (c)(2) to succeeding taxable years.

(2) Requirements

The requirements of this paragraph are met by any State with respect to any taxable year if the Secretary of Labor determines that—

(A) the repayments during the 1-year period ending on November 9 of such taxable year made by such State of advances under title XII of the Social Security Act are not less than the

sum of—

(i) the potential additional taxes for such taxable year, and

(ii) any advances made to such State during such 1-year period under such title XII,

(B) there will be sufficient amounts in the State unemployment fund to pay all compensation during the 3-month period beginning on November 1 of such taxable year without receiving any advance under title XII of the Social Security Act, and

(C) there is a net increase in the solvency of the State unemployment compensation system for the taxable year attributable to changes made in the State law after the date on which the first advance taken into account in determining the amount of the potential additional taxes was made (or, if later, after the date of the enactment of this subsection) and such net increase equals or exceeds the potential additional taxes for such taxable year.

(3) Definitions

For purposes of paragraph (2)—

(A) Potential additional taxes

The term "potential additional taxes" means, with respect to any State for any taxable year, the aggregate amount of the additional tax which would be payable under this chapter for such taxable year by all taxpayers subject to the unemployment compensation law of such State for such taxable year if paragraph (2) of subsection (c) had applied to such taxable year and any preceding taxable year without regard to this subsection but with regard to subsection (f).

(B) Treatment of certain reductions

Any reduction in the State's balance under section 901(d)(1) of the Social Security Act shall not be treated as a repayment made by such State.

(4) Reports

The Secretary of Labor may require a State to furnish such information at such time and in such manner as may be necessary for purposes of paragraph (2).

(Aug. 16, 1954, ch. 736, 68A Stat. 439; Pub. L. 86–778, title V, §523(b), Sept. 13, 1960, 74 Stat. 980; Pub. L. 87–6, §14(b), Mar. 24, 1961, 75 Stat. 16; Pub. L. 87–321, §1(a), Sept. 26, 1961, 75 Stat. 683; Pub. L. 88–31, §2(b), May 29, 1963, 77 Stat. 51; Pub. L. 88–173, §1(a)–(c), Nov. 7, 1963, 77 Stat. 305; Pub. L. 91–373, title I, §142(a), (b), Aug. 10, 1970, 84 Stat. 707; Pub. L. 93–618, title II, §239(e), Jan. 3, 1975, 88 Stat. 2025; Pub. L. 94–45, title I, §110(a), title III, §302, June 30, 1975, 89 Stat. 239, 243; Pub. L. 94–455, title XIX, §§1903(a)(12), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1808, 1834; Pub. L. 95–19, title II, §201(a), Apr. 12, 1977, 91 Stat. 43; Pub. L. 96–589, §6(f), Dec. 24, 1980, 94 Stat. 3409; Pub. L. 97–35, title XXIV, §2406(a), Aug. 13, 1981, 95 Stat. 876; Pub. L. 97–248, title II, §§271(c)(2), (3)(A), (B), 272(a), 273(a), Sept. 3, 1982, 96 Stat. 555–557; Pub. L. 98–21, title V, §§512(a)(1), (b), 513(a)–(c), Apr. 20, 1983, 97 Stat. 146, 147; Pub. L. 99–514, title XVIII, §1884(1), (2), Oct. 22, 1986, 100 Stat. 2919.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (c)(2), (f)(2)(D), (5)(A)(i), (8)(B), and (g)(2)(A), (B), (3)(B), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XII of the Social Security Act is classified generally to subchapter XII (§1321 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. Sections 901(d)(1) and 1202(b)(8)(B) of the Social Security Act are classified to sections 1101(d)(1) and 1322(b)(8)(B), respectively, of Title 42. For complete classification of this act to the Code, see section 1305 of Title 42 and Tables.

Section 239 of the Trade Act of 1974, referred to in subsec. (c)(3)(A), (B), is classified to subsec. (c)(3) of this section and to section 2311 of Title 19, Customs Duties.

The date of the enactment of this subsection, referred to in subsec. (f)(2)(A), (B), means the date of the enactment of Pub. L. 97–35 which was approved Aug. 13, 1981.

Section 205 of the Federal-State Extended Unemployment Compensation Act of 1970, referred to in subsec. (f)(5)(D)(i), is section 205 of Pub. L. 91–373, title II, Aug. 10, 1970, 84 Stat. 708, which is set out as a note under section 3304 of this title.

The date of the enactment of this subsection, referred to in subsec. (g)(2)(C), means the date of the enactment of Pub. L. 97–248, which was approved Sept. 3, 1982.

AMENDMENTS

1986—Subsec. (c)(2)(B). Pub. L. 99–514, §1884(1), substituted "denominator" for second reference to "determination", and in cl. (i) inserted "percent" after "2.7" and struck out "percent" after "is to be made".

Subsec. (f)(8)(A). Pub. L. 99–514, §1884(2), substituted "1986" for "1987".

1983—Subsec. (c)(2)(B). Pub. L. 98–21, §513(c), inserted ", multiplied by a fraction, the numerator of which is the State's average annual wage in covered employment for the calendar year in which the determination is made and the determination of which is the wage base under this chapter," in provisions preceding cl. (i).

Subsec. (c)(2)(B)(i). Pub. L. 98–21, §513(b), inserted "multiplied by a fraction, the numerator of which is the wage base under this chapter and the denominator of which is the estimated United States average annual wage in covered employment for the calendar year in which the determination is to be made" after "2.7".

Subsec. (d)(4)(B). Pub. L. 98–21, §513(a), amended subpar. (B) generally, adding cl. (i), designating existing provisions as cl. (ii), and inserting reference to purposes of subsec. (c)(2)(C).

Subsec. (f)(1). Pub. L. 98–21, §512(b), struck out "beginning before January 1, 1988," after "any taxable year".

Subsec. (f)(8). Pub. L. 98–21, §512(a)(1), added par. (8).

1982—Subsec. (b). Pub. L. 97–248, §271(c)(2)(A), substituted "5.4 percent" for "2.7 percent".

Subsec. (c)(2). Pub. L. 97–248, §273(a), inserted provision at end that subpar. (C) shall not apply with respect to any taxable year to which it would otherwise apply (but that subpar. (B) would apply to such taxable year) if the Secretary of Labor determines (on or before Nov. 10 of such taxable year) that the State meets the requirements of subsec. (f)(2)(B) of this section for such taxable year.

Subsec. (c)(2)(A). Pub. L. 97–248, §271(c)(3)(A), substituted "5 percent" for "10 percent" in two places.

Subsec. (c)(3). Pub. L. 97–248, §271(c)(3)(B), substituted "7½ percent" for "15 percent" in provisions following subpar. (B).

Subsec. (d)(1). Pub. L. 97–248, §271(c)(2)(B), substituted "6 percent" for "3 percent" in par. heading and text.

Subsec. (g). Pub. L. 97–248, §272(a), added subsec. (g).

1981—Subsec. (f). Pub. L. 97–35 added subsec. (f).

1980—Subsec. (a)(5). Pub. L. 96–589 added par. (5).

1977—Subsec. (c)(2). Pub. L. 95–19 substituted "January 1, 1980" for "January 1, 1978" wherever appearing.

1976—Subsec. (a)(1). Pub. L. 94–455, §1903(a)(12)(A), struck out "(10-month period in the case of October 31, 1972)" after "ending on October 31 of such year".

Subsec. (b). Pub. L. 94–455, §1903(a)(12)(B), struck out "(10-month period in the case of October 31, 1972)" after "ending on October 31, of such year" and substituted "12-month period" for "12 or 10–month period, as the case may be,".

Subsec. (c)(2). Pub. L. 94–455, §1903(a)(12)(C)(i), (ii), redesignated par. (3) as (2), struck out "on or after the date of the enactment of the Employment Security Act of 1960" after "title XII of the Social Security Act", and substituted "paragraph (1)" for "paragraphs (1) and (2). Former par. (2), which related to the computation of the reduction of the total credits allowable to a taxpayer with respect to advances made to the unemployment account, was struck out.

Subsec. (c)(3), (4). Pub. L. 94–455, §1903(a)(12)(C)(i), (iii), redesignated par. (4) as (3) and substituted "paragraphs (1) and (2)" for "paragraphs (1), (2), and (3)". Former par. (3) redesignated (2).

Subsec. (d)(2). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (d)(3). Pub. L. 94–455, §1903(a)(12)(C)(iv), struck out "or (3)" after "Paragraph (2)".

Subsec. (d)(4) to (6). Pub. L. 94–455, §1903(a)(12(C)(v), substituted "subsection (c)(2)" for "subsection (c)(3)".

Subsec. (d)(7). Pub. L. 94–455, §1903(a)(12)(C)(vi), substituted "subsection (c)(2)(B) or (C)" for "subsection (c)(3)(B) or (C)".

Subsec. (d)(8). Pub. L. 94–455, §1903(a)(12)(D), struck out par. (8) which provided for a cross reference to section 104 of the Temporary Unemployment Compensation Act of 1958 relating to the reduction of total credits allowable under subsec. (c) of this section.

1975—Subsec. (c)(3). Pub. L. 94–45, §110(a), provided that par. (3) shall not be applicable with respect to the taxable year beginning Jan. 1, 1975, or any succeeding taxable year which begins before Jan. 1, 1978, and that, for the purposes of par. (3), Jan. 1, 1978, shall be deemed to be the first Jan. 1 occurring after Jan. 1,

1974, and consecutive taxable years in the period commencing Jan. 1, 1978, shall be determined as if the taxable year which begins Jan. 1, 1978, were the taxable year immediately succeeding the taxable year which began on Jan. 1, 1974.

Subsec. (c)(4). Pub. L. 94–45, §302, substituted "July 15, 1975" for "July 1, 1975".

Pub. L. 93–618 added par. (4).

1970—Subsec. (a)(1). Pub. L. 91–373, §142(a), substituted "certified as provided in section 3304 for the 12–month period ending on October 31 of such year (10–month period in the case of October 31, 1972)" for "certified for the taxable year as provided in section 3304".

Subsec. (b). Pub. L. 91–373, §142(b), changed the certification date from December 31 to October 31, with a provision for a 10–month period in the case of October 31, 1972, and provided for certification based on a 12-month period ending each October 31.

1963—Subsec. (c). Pub. L. 88–173, in cl. (2), substituted "on January 1, 1963 (and in the case of any succeeding taxable year beginning before January 1, 1968)," for "with the fourth consecutive January 1", in subpar. (A), and "on or after January 1, 1968," for "with a consecutive January 1", in subpar. (B), and inserted paragraph following subpar. (B).

Subsec. (d)(1). Pub. L. 88–31 substituted "the rate provided by such section" for "3.1 percent (or, in the case of the tax imposed with respect to the calendar years 1962 and 1963, in lieu of 3.5 percent)".

1961—Subsec. (d)(1). Pub. L. 87–6 provided for computation of the tax at the rate of 3 percent in lieu of 3.5 percent for calendar years 1962 and 1968.

Subsec. (e). Pub. L. 87–321 added subsec. (e).

1960—Subsec. (c). Pub. L. 86–778 restricted cl. (2) to advances made before the date of the enactment of the Employment Security Act of 1960, added cl. (3), and struck out provisions which related to the attributing of wages to a particular State, which provisions are now covered by subsec. (d)(2).

Subsec. (d). Pub. L. 86–778 added subsec. (d).

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 98–21, title V, §512(a)(2), Apr. 20, 1983, 97 Stat. 146, provided that: "The amendment made by paragraph (1) [amending this section] shall apply with respect to taxable year 1983 and taxable years thereafter."

Pub. L. 98–21, title V, §513(d), Apr. 20, 1983, 97 Stat. 147, provided that: "The amendments made by this section [amending this section] shall be effective for taxable year 1983 and taxable years thereafter."

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 271(c)(2), (3)(A), (B) of Pub. L. 97–248 applicable to remuneration paid after Dec. 31, 1984, see section 271(d)(2) of Pub. L. 97–248, as amended, set out as a note under section 3301 of this title.

Pub. L. 97–248, title II, §272(b), Sept. 3, 1982, 96 Stat. 557, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1982."

Pub. L. 97–248, title II, §273(b), Sept. 3, 1982, 96 Stat. 557, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1982."

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–35, title XXIV, §2406(b), Aug. 13, 1981, 95 Stat. 878, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1980."

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–589 effective Oct. 1, 1979, but not to apply to proceedings under Title 11, Bankruptcy, commenced before Oct. 1, 1979, see section 7(e) of Pub. L. 96–589, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Pub. L. 91–373, title I, §142(i), Aug. 10, 1970, 84 Stat. 708, provided that: "The amendments made by this section [amending this section and sections 3303 and 3304 of this title] shall apply with respect to the taxable year 1972 and taxable years thereafter."

EFFECTIVE DATE OF 1963 AMENDMENT

Pub. L. 88–173, §1(d), Nov. 7, 1963, 77 Stat. 306, provided that: "The amendments made by subsections (a), (b), and (c) of this section [amending this section] shall apply only with respect to taxable years beginning on or after January 1, 1963."

EFFECTIVE DATE OF 1961 AMENDMENT

Pub. L. 87–321, §1(b), Sept. 26, 1961, 75 Stat. 683, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to the calendar year 1961 and each calendar year thereafter."

EXTENSION OF PERIOD FOR REPAYMENT OF FEDERAL LOANS TO STATE UNEMPLOYMENT FUNDS

Pub. L. 102–318, title III, §304, July 3, 1992, 106 Stat. 298, provided that:

"(a) GENERAL RULE.—If the Secretary of Labor determines that a State meets the requirements of subsection (b), paragraph (2) of section 3302(c) of the Internal Revenue Code of 1986 shall be applied with respect to such State for taxable years after 1991—

"(1) by substituting 'third' for 'second' in subparagraph (A)(i),

"(2) by substituting 'fourth or fifth' for 'third or fourth' in subparagraph (B), and

"(3) by substituting 'sixth' for 'fifth' in subparagraph (C).

"(b) REQUIREMENTS.—A State meets the requirements of this subsection if, during calendar year 1992 or 1993, the State amended its unemployment compensation law to increase estimated contributions required under such law by at least 25 percent.

"(c) SPECIAL RULE.—This section shall not apply to any taxable year after 1994 unless—

"(1) such taxable year is in a series of consecutive taxable years as of the beginning of each of which there was a balance referred to in section 3302(c)(2) of such Code, and

"(2) such series includes a taxable year beginning in 1992, 1993, or 1994."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TRANSITIONAL RULE FOR CERTAIN EMPLOYEES AND SMALL BUSINESSES

Pub. L. 97–248, title II, §271(d)(3), (4), formerly §271(b)(3), Sept. 3, 1982, 96 Stat. 555, as redesignated and amended by Pub. L. 98–601, §1(a), Oct. 30, 1984, 98 Stat. 3147; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(3) TRANSITIONAL RULE FOR CERTAIN EMPLOYEES.—

"(A) IN GENERAL.—Notwithstanding section 3303 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], in the case of taxable years beginning after December 31, 1984, and before January 1, 1989, a taxpayer shall be allowed the additional credit under section 3302(b) of such Code with respect to any employee covered by a qualified specific industry provision if the requirements of subparagraph (B) are met with respect to such employee.

"(B) REQUIREMENTS.—The requirements of this subparagraph are met for any taxable year with respect to any employee covered by a specific industry provision if the amount of contributions required to be paid for the taxable year to the unemployment fund of the State with respect to such employee are not less than the product of the required rate multiplied by the wages paid by the employer during the taxable year.

"(C) REQUIRED RATE.—For purposes of subparagraph (B), the required rate for any taxable year is the sum of—

"(i) the rate at which contributions were required to be made under the specific industry provision as in effect on August 10, 1982, and

"(ii) the applicable percentage of the excess of 5.4 percent over the rate described in clause (i).

"(D) APPLICABLE PERCENTAGE.—For purposes of subparagraph (C), the term 'applicable percentage' means—

"(i) 20 percent in the case of taxable year 1985,

"(ii) 40 percent in the case of taxable year 1986,

"(iii) 60 percent in the case of taxable year 1987, and

"(iv) 80 percent in the case of taxable year 1988.

"(E) QUALIFIED SPECIFIC INDUSTRY PROVISION.—For purposes of this paragraph, the term, 'qualified specific industry provision' means a provision contained in a State unemployment compensation law (as in effect on August 10, 1982)—

"(i) which applies to employees in a specific industry or to an otherwise defined type of employees, and

"(ii) under which employers may elect to make contributions at a specified rate (without experience rating) which exceeds 2.7 percent.

"(4) TRANSITIONAL RULE FOR CERTAIN SMALL BUSINESSES.—

"(A) IN GENERAL.—Notwithstanding section 3303 of the Internal Revenue Code of 1986, in the case of taxable years beginning after December 31, 1984, and before January 1, 1989, a taxpayer shall be allowed the additional credit under section 3302(b) of such Code with respect to any employee covered by a qualified small business provision if the requirements of subparagraph (B) are met with respect to such employee.

"(B) REQUIREMENTS.—The requirements of this subparagraph are met for any taxable year with respect to any employee covered by a qualified small business provision if the amount of contributions required to be paid for the taxable year to the unemployment fund of the State with respect to such employee are not less than the product of the required rate multiplied by the wages paid by the employer during the taxable year.

"(C) REQUIRED RATE.—For purposes of subparagraph (B), the required rate for any taxable year is the sum of—

"(i) 3.1 percent, plus

"(ii) the applicable percentage (as defined in paragraph (3)(D)) of the excess of 5.4 percent over the rate described in clause (i).

"(D) QUALIFIED SMALL BUSINESS PROVISION.—For purposes of this paragraph, the term 'qualified small business provision' means a provision contained in a State unemployment compensation law (as in effect on the date of the enactment of this paragraph [Oct. 30, 1984]) which provides a maximum rate at which an employer is subject to contribution for wages paid during a calendar quarter if the total wages paid by such employer during such calendar quarter are less than $50,000.

"(E) DEFINITION.—For purposes of this paragraph, the term 'wages' means the remuneration subject to contributions under the State unemployment compensation law, except that for purposes of subparagraph (D) the amount of total wages paid by an employer shall be determined without regard to any limitation on the amount subject to contribution."

[Pub. L. 98–601, §1(b), Oct. 30, 1984, 98 Stat. 3148, provided that: "The amendment made by subsection (a) [amending section 271(d) of Pub. L. 97–248, set out above] shall apply to remuneration paid after December 31, 1984."]

FINDINGS OF SECRETARY OF LABOR CONCERNING STEPS TAKEN BY STATES AS PREREQUISITE TO SUSPENSION UNTIL JANUARY 1, 1980, OF AUTOMATIC INCREASES IN FEDERAL UNEMPLOYMENT TAX

Pub. L. 95–19, title II, §201(b), Apr. 12, 1977, 91 Stat. 43, provided that extension under section 201(a) of Pub. L. 95–19 (amending this section) from Jan. 1, 1978, to Jan. 1, 1980, not to apply to any State unless the Secretary of Labor finds that such State meets the requirement of section 110(b) of Emergency Compensation and Special Unemployment Assistance Extension Act of 1975.

FISCAL SOUNDNESS OF STATE UNEMPLOYMENT ACCOUNT IN UNEMPLOYMENT TRUST FUND; UNPAID LOANS TO STATES; FINDINGS OF SECRETARY OF LABOR CONCERNING STEPS TAKEN BY STATES AS PREREQUISITE TO 1975–1977 SUSPENSION OF AUTOMATIC INCREASES IN FEDERAL UNEMPLOYMENT TAX

Pub. L. 94–45, title I, §110(b), June 30, 1975, 89 Stat. 239, provided that:

"(1) The amendment made by subsection (a) [amending this section] shall not be applicable in the case of any State unless the Secretary of Labor finds that such State has studied and taken appropriate action with respect to the financing of its unemployment programs so as substantially to accomplish the purpose of restoring the fiscal soundness of the State's unemployment account in the Unemployment Trust Fund and permitting the repayment within a reasonable time of any advances made to such account under title XII of the Social Security Act [section 1321 et seq. of Title 42, The Public Health and Welfare]. For purposes of the preceding sentence, appropriate action with respect to the financing of a State's unemployment programs means an increase in the State's unemployment tax rate, an increase in the State's unemployment tax base, a change in the experience rating formulas, or a combination thereof.

"(2) The Secretary of Labor shall promptly prescribe and publish in the Federal Register regulations setting forth the criteria according to which he will determine the requirements of the preceding paragraph.

"(3) Immediately after he makes a determination with respect to any State under paragraph (1), the Secretary of Labor shall publish such determination, together with his reasons therefor, in the Federal Register."

§3303. Conditions of additional credit allowance

(a) State standards

A taxpayer shall be allowed an additional credit under section 3302(b) with respect to any reduced rate of contributions permitted by a State law, only if the Secretary of Labor finds that under such law—

(1) no reduced rate of contributions to a pooled fund or to a partially pooled account is permitted to a person (or group of persons) having individuals in his (or their) employ except on the basis of his (or their) experience with respect to unemployment or other factors bearing a direct relation to unemployment risk during not less than the 3 consecutive years immediately preceding the computation date;

(2) no reduced rate of contributions to a guaranteed employment account is permitted to a person (or a group of persons) having individuals in his (or their) employ unless—

(A) the guaranty of remuneration was fulfilled in the year preceding the computation date; and

(B) the balance of such account amounts to not less than 2½ percent of that part of the payroll or payrolls for the 3 years preceding the computation date by which contributions to such account were measured; and

(C) such contributions were payable to such account with respect to 3 years preceding the computation date;

(3) no reduced rate of contributions to a reserve account is permitted to a person (or group of persons) having individuals in his (or their) employ unless—

(A) compensation has been payable from such account throughout the year preceding the computation date, and

(B) the balance of such account amounts to not less than five times the largest amount of compensation paid from such account within any 1 of the 3 years preceding such date, and

(C) the balance of such account amounts to not less than 2½ percent of that part of the payroll or payrolls for the 3 years preceding such date by which contributions to such account were measured, and

(D) such contributions were payable to such account with respect to the 3 years preceding the computation date.

For any person (or group of persons) who has (or have) not been subject to the State law for a period of time sufficient to compute the reduced rates permitted by paragraphs (1), (2), and (3) of this subsection on a 3–year basis (i) the period of time required may be reduced to the amount of time the person (or group of persons) has (or have) had experience under or has (or have) been subject to the State law, whichever is appropriate, but in no case less than 1 year immediately preceding the computation date, or (ii) a reduced rate (not less than 1 percent) may be permitted by the State law on a reasonable basis other than as permitted by paragraph (1), (2), or (3).

(b) Certification by the Secretary of Labor with respect to additional credit allowance

(1) On October 31 of each calendar year, the Secretary of Labor shall certify to the Secretary of the Treasury the law of each State (certified by the Secretary of Labor as provided in section 3304 for the 12-month period ending on such October 31), with respect to which he finds that reduced rates of contributions were allowable with respect to such 12-month period only in accordance with the provisions of subsection (a).

(2) If the Secretary of Labor finds that under the law of a single State (certified by the Secretary of Labor as provided in section 3304) more than one type of fund or account is maintained, and reduced rates of contributions to more than one type of fund or account were allowable with respect to any 12-month period ending on October 31, and one or more of such reduced rates were allowable under conditions not fulfilling the requirements of subsection (a), the Secretary of Labor shall, on such October 31, certify to the Secretary of the Treasury only those provisions of the State law pursuant to

which reduced rates of contributions were allowable with respect to such 12-month period under conditions fulfilling the requirements of subsection (a), and shall, in connection therewith, designate the kind of fund or account, as defined in subsection (c), established by the provisions so certified. If the Secretary of Labor finds that a part of any reduced rate of contributions payable under such law or under such provisions is required to be paid into one fund or account and a part into another fund or account, the Secretary of Labor shall make such certification pursuant to this paragraph as he finds will assure the allowance of additional credits only with respect to that part of the reduced rate of contributions which is allowed under provisions which do fulfill the requirements of subsection (a).

(3) The Secretary of Labor shall, within 30 days after any State law is submitted to him for such purpose, certify to the State agency his findings with respect to reduced rates of contributions to a type of fund or account, as defined in subsection (c), which are allowable under such State law only in accordance with the provisions of subsection (a). After making such findings, the Secretary of Labor shall not withhold his certification to the Secretary of the Treasury of such State law, or of the provisions thereof with respect to which such findings were made, for any 12-month period ending on October 31 pursuant to paragraph (1) or (2) unless, after reasonable notice and opportunity for hearing to the State agency, the Secretary of Labor finds the State law no longer contains the provisions specified in subsection (a) or the State has, with respect to such 12-month period, failed to comply substantially with any such provision.

(c) Definitions

As used in this section—

(1) Reserve account

The term "reserve account" means a separate account in an unemployment fund, maintained with respect to a person (or group of persons) having individuals in his (or their) employ, from which account, unless such account is exhausted, is paid all and only compensation payable on the basis of services performed for such person (or for one or more of the persons comprising the group).

(2) Pooled fund

The term "pooled fund" means an unemployment fund or any part thereof (other than a reserve account or a guaranteed employment account) into which the total contributions of persons contributing thereto are payable, in which all contributions are mingled and undivided, and from which compensation is payable to all individuals eligible for compensation from such fund.

(3) Partially pooled account

The term "partially pooled account" means a part of an unemployment fund in which part of the fund all contributions thereto are mingled and undivided, and from which part of the fund compensation is payable only to individuals to whom compensation would be payable from a reserve account or from a guaranteed employment account but for the exhaustion or termination of such reserve account or of such guaranteed employment account. Payments from a reserve account or guaranteed employment account into a partially pooled account shall not be construed to be inconsistent with the provisions of paragraph (1) or (4).

(4) Guaranteed employment account

The term "guaranteed employment account" means a separate account, in an unemployment fund, maintained with respect to a person (or group of persons) having individuals in his (or their) employ who, in accordance with the provisions of the State law or of a plan thereunder approved by the State agency,

(A) guarantees in advance at least 30 hours of work, for which remuneration will be paid at not less than stated rates, for each of 40 weeks (or if more, 1 weekly hour may be deducted for each added week guaranteed) in a year, to all the individuals who are in his (or their) employ in, and who continue to be available for suitable work in, one or more distinct establishments,

except that any such individual's guaranty may commence after a probationary period (included within the 11 or less consecutive weeks immediately following the first week in which the individual renders services), and

(B) gives security or assurance, satisfactory to the State agency, for the fulfillment of such guaranties, from which account, unless such account is exhausted or terminated, is paid all and only compensation, payable on the basis of services performed for such person (or for one or more of the persons comprising the group), to any such individual whose guaranteed remuneration has not been paid (either pursuant to the guaranty or from the security or assurance provided for the fulfillment of the guaranty), or whose guaranty is not renewed and who is otherwise eligible for compensation under the State law.

(5) Year

The term "year" means any 12 consecutive calendar months.

(6) Balance

The term "balance", with respect to a reserve account or a guaranteed employment account, means the amount standing to the credit of the account as of the computation date; except that, if subsequent to January 1, 1940, any moneys have been paid into or credited to such account other than payments thereto by persons having individuals in their employ, such term shall mean the amount in such account as of the computation date less the total of such other moneys paid into or credited to such account subsequent to January 1, 1940.

(7) Computation date

The term "computation date" means the date, occurring at least once in each calendar year and within 27 weeks prior to the effective date of new rates of contributions, as of which such rates are computed.

(8) Reduced rate

The term "reduced rate" means a rate of contributions lower than the standard rate applicable under the State law, and the term "standard rate" means the rate on the basis of which variations therefrom are computed.

(d) Voluntary contributions

A State law may, without being deemed to violate the standards set forth in subsection (a), permit voluntary contributions to be used in the computation of reduced rates if such contributions are paid prior to the expiration of 120 days after the beginning of the year for which such rates are effective.

(e) Payments by certain nonprofit organizations

A State may, without being deemed to violate the standards set forth in subsection (a), permit an organization (or a group of organizations) described in section 501(c)(3) which is exempt from income tax under section 501(a) to elect (in lieu of paying contributions) to pay into the State unemployment fund amounts equal to the amounts of compensation attributable under the State law to service performed in the employ of such organization (or group).

(f) Prohibition on noncharging due to employer fault

(1) In general

A State law shall be treated as meeting the requirements of subsection (a)(1) only if such law provides that an employer's account shall not be relieved of charges relating to a payment from the State unemployment fund if the State agency determines that—

(A) the payment was made because the employer, or an agent of the employer, was at fault for failing to respond timely or adequately to the request of the agency for information relating to the claim for compensation; and

(B) the employer or agent has established a pattern of failing to respond timely or adequately to such requests.

(2) State authority to impose stricter standards

Nothing in paragraph (1) shall limit the authority of a State to provide that an employer's account not be relieved of charges relating to a payment from the State unemployment fund for reasons other than the reasons described in subparagraphs (A) and (B) of such paragraph, such as after the first instance of a failure to respond timely or adequately to requests described in paragraph (1)(A).

(Aug. 16, 1954, ch. 736, 68A Stat. 440; Sept. 1, 1954, ch. 1212, §2, 68 Stat. 1130; Pub. L. 91–373, title I, §§104(c), 122(a), 142(c)–(e), Aug. 10, 1970, 84 Stat. 699, 702, 707; Pub. L. 94–455, title XIX, §§1903(a)(13), 1906(b)(13)(C), Oct. 4, 1976, 90 Stat. 1809, 1834; Pub. L. 94–566, title I, §122(a), (b), Oct. 20, 1976, 90 Stat. 2675, 2676; Pub. L. 112–40, title II, §252(a), Oct. 21, 2011, 125 Stat. 421.)

AMENDMENTS

2011—Subsecs. (f), (g). Pub. L. 112–40 added subsec. (f) and struck out former subsecs. (f) and (g) which contained transitional provisions enacted by prior amendments.

1976—Subsec. (b)(1) to (3). Pub. L. 94–455 substituted reference to Secretary of the Treasury for reference to Secretary and reference to 12–month period for reference to 12 or 10-month period, as the case may be, and struck out reference to (10-month period in the case of Oct. 31, 1972) following provisions relating to 12–month period ending Oct. 31.

Subsec. (f). Pub. L. 94–566, §122(b), substituted "which elects before April 1, 1972," for "which elects, when such election first becomes available under the State law,".

Subsec. (g). Pub. L. 94–566, §122(a), added subsec. (g).

1970—Subsec. (a). Pub. L. 91–373, §122(a), added to provision following par. (3) the authorization for the allowance of a reduced rate by State law (but not less than 1 percent) on a reasonable basis other than as permitted by par. (1), (2), or (3).

Subsec. (b). Pub. L. 91–373, §142(c)–(e), changed the certification date referred to in pars. (1) to (3) from Dec. 31 to Oct. 31, with provision for a 10-month period in the case of Oct. 31, 1972, and, except for Oct. 31, 1972, provided for a 12-month period ending on Oct. 31 each year.

Subsecs. (e), (f). Pub. L. 91–373, §104(c), added subsecs. (e) and (f).

1954—Subsec. (a). Act Sept. 1, 1954, inserted sentence relating to reduced rates for new employers.

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112–40, title II, §252(b), Oct. 21, 2011, 125 Stat. 422, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to erroneous payments established after the end of the 2-year period beginning on the date of the enactment of this Act [Oct. 21, 2011].

"(2) AUTHORITY.—A State may amend its State law to apply such amendments to erroneous payments established prior to the end of the period described in paragraph (1)."

EFFECTIVE DATE OF 1976 AMENDMENTS

Pub. L. 94–566, title I, §122(c), Oct. 20, 1976, 90 Stat. 2676, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Oct. 20, 1976]. The amendment made by subsection (b) [amending this section] shall take effect on January 1, 1970."

Amendment by section 1903(a)(13) of Pub. L. 94–455 applicable with respect to wages paid after Dec. 31, 1976, see section 1903(d) of Pub. L. 94–455, set out as a note under section 3101 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by section 104(c) of Pub. L. 91–373 [amending this section] to take effect Jan. 1, 1970, see section 104(d)(1) of Pub. L. 91–373, set out as a note under section 3304 of this title.

Pub. L. 91–373, title I, §122(b), Aug. 10, 1970, 84 Stat. 702, provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1971."

Amendment by section 142(c)–(e) of Pub. L. 91–373 applicable with respect to taxable year 1972 and taxable years thereafter, see section 142(i) of Pub. L. 91–373, set out as a note under section 3302 of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Act Sept. 1, 1954, ch. 1212, §2, 68 Stat. 1130, provided that the amendment made by that section is effective after Dec. 31, 1954.

TREATMENT OF CERTAIN CHARITABLE ORGANIZATIONS RETROACTIVELY DETERMINED TO BE DESCRIBED IN SECTION 501(C)(3) OF THIS TITLE

Pub. L. 98–21, title V, §524, Apr. 20, 1983, 97 Stat. 149, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "If—

"(1) an organization did not make an election to make payments (in lieu of contributions) as provided in section 3309(a)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] before April 1, 1972, because such organization, as of such date, was treated as an organization described in section 501(c)(4) of such Code,

"(2) the Internal Revenue Service subsequently determined that such organization was described in section 501(c)(3) of such Code, and

"(3) such organization made such an election before the earlier of—

"(A) the date 18 months after such election was first available to it under the State law, or

"(B) January 1, 1984,

then [former] section 3303(f) of such Code shall be applied with respect to such organization as if it did not contain the requirement that the election be made before April 1, 1972, and by substituting 'January 1, 1982' for 'January 1, 1969'."

§3304. Approval of State laws

(a) Requirements

The Secretary of Labor shall approve any State law submitted to him, within 30 days of such submission, which he finds provides that—

(1) all compensation is to be paid through public employment offices or such other agencies as the Secretary of Labor may approve;

(2) no compensation shall be payable with respect to any day of unemployment occurring within 2 years after the first day of the first period with respect to which contributions are required;

(3) all money received in the unemployment fund shall (except for refunds of sums erroneously paid into such fund and except for refunds paid in accordance with the provisions of section 3305(b)) immediately upon such receipt be paid over to the Secretary of the Treasury to the credit of the Unemployment Trust Fund established by section 904 of the Social Security Act (42 U.S.C. 1104);

(4) all money withdrawn from the unemployment fund of the State shall be used solely in the payment of unemployment compensation, exclusive of expenses of administration, and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 3305(b); except that—

(A) an amount equal to the amount of employee payments into the unemployment fund of a State may be used in the payment of cash benefits to individuals with respect to their disability, exclusive of expenses of administration;

(B) the amounts specified by section 903 (c)(2) or 903(d)(4) of the Social Security Act may, subject to the conditions prescribed in such section, be used for expenses incurred by the State for administration of its unemployment compensation law and public employment offices;

(C) nothing in this paragraph shall be construed to prohibit deducting an amount from unemployment compensation otherwise payable to an individual and using the amount so deducted to pay for health insurance, or the withholding of Federal, State, or local individual income tax, if the individual elected to have such deduction made and such deduction was made under a program approved by the Secretary of Labor;

(D) amounts shall be deducted from unemployment benefits and used to repay overpayments as provided in section 303(g) of the Social Security Act;

(E) amounts may be withdrawn for the payment of short-time compensation under a short-time compensation program (as defined under section 3306(v));

(F) amounts may be withdrawn for the payment of allowances under a self-employment assistance program (as defined in section 3306(t)); and

(G) with respect to amounts of covered unemployment compensation debt (as defined in section 6402(f)(4)) collected under section 6402(f)—

(i) amounts may be deducted to pay any fees authorized under such section; and

(ii) the penalties and interest described in section 6402(f)(4)(B) [1] may be transferred to the appropriate State fund into which the State would have deposited such amounts had the person owing the debt paid such amounts directly to the State;

(5) compensation shall not be denied in such State to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(A) if the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(B) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(C) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;

(6)(A) compensation is payable on the basis of service to which section 3309(a)(1) applies, in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to such law; except that—

(i) with respect to services in an instructional, research, or principal administrative capacity for an educational institution to which section 3309(a)(1) applies, compensation shall not be payable based on such services for any week commencing during the period between two successive academic years or terms (or, when an agreement provides instead for a similar period between two regular but not successive terms, during such period) to any individual if such individual performs such services in the first of such academic years (or terms) and if there is a contract or reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms,

(ii) with respect to services in any other capacity for an educational institution to which section 3309(a)(1) applies—

(I) compensation payable on the basis of such services may be denied to any individual for any week which commences during a period between 2 successive academic years or terms if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms, except that

(II) if compensation is denied to any individual for any week under subclause (I) and such individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of the compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of subclause (I),

(iii) with respect to any services described in clause (i) or (ii), compensation payable on the basis of such services shall be denied to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess,

(iv) with respect to any services described in clause (i) or (ii), compensation payable on the basis of services in any such capacity shall be denied as specified in clauses (i), (ii), and (iii) to any individual who performed such services in an educational institution while in the employ of an educational service agency, and for this purpose the term "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing such services to one or more educational institutions,

(v) with respect to services to which section 3309(a)(1) applies, if such services are provided

to or on behalf of an educational institution, compensation may be denied under the same circumstances as described in clauses (i) through (iv), and

(vi) with respect to services described in clause (ii), clauses (iii) and (iv) shall be applied by substituting "may be denied" for "shall be denied", and

(B) payments (in lieu of contributions) with respect to service to which section 3309(a)(1) applies may be made into the State unemployment fund on the basis set forth in section 3309(a)(2);

(7) an individual who has received compensation during his benefit year is required to have had work since the beginning of such year in order to qualify for compensation in his next benefit year;

(8) compensation shall not be denied to an individual for any week because he is in training with the approval of the State agency (or because of the application, to any such week in training, of State law provisions relating to availability for work, active search for work, or refusal to accept work);

(9)(A) compensation shall not be denied or reduced to an individual solely because he files a claim in another State (or a contiguous country with which the United States has an agreement with respect to unemployment compensation) or because he resides in another State (or such a contiguous country) at the time he files a claim for unemployment compensation;

(B) the State shall participate in any arrangements for the payment of compensation on the basis of combining an individual's wages and employment covered under the State law with his wages and employment covered under the unemployment compensation law of other States which are approved by the Secretary of Labor in consultation with the State unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of compensation in such situations. Any such arrangement shall include provisions for (i) applying the base period of a single State law to a claim involving the combining of an individual's wages and employment covered under two or more State laws, and (ii) avoiding duplicate use of wages and employment by reason of such combining;

(10) compensation shall not be denied to any individual by reason of cancellation of wage credits or total reduction of his benefit rights for any cause other than discharge for misconduct connected with his work, fraud in connection with a claim for compensation, or receipt of disqualifying income;

(11) extended compensation shall be payable as provided by the Federal-State Extended Unemployment Compensation Act of 1970;

(12) no person shall be denied compensation under such State law solely on the basis of pregnancy or termination of pregnancy;

(13) compensation shall not be payable to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two successive sport seasons (or similar periods) if such individual performed such services in the first of such seasons (or similar periods) and there is a reasonable assurance that such individual will perform such services in the later of such seasons (or similar periods);

(14)(A) compensation shall not be payable on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed (including an alien who was lawfully present in the United States as a result of the application of the provisions of section 212(d)(5) of the Immigration and Nationality Act),

(B) any data or information required of individuals applying for compensation to determine whether compensation is not payable to them because of their alien status shall be uniformly required from all applicants for compensation, and

(C) in the case of an individual whose application for compensation would otherwise be approved, no determination by the State agency that compensation to such individual is not

payable because of his alien status shall be made except upon a preponderance of the evidence;

(15)(A) subject to subparagraph (B), the amount of compensation payable to an individual for any week which begins after March 31, 1980, and which begins in a period with respect to which such individual is receiving a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on the previous work of such individual shall be reduced (but not below zero) by an amount equal to the amount of such pension, retirement or retired pay, annuity, or other payment, which is reasonably attributable to such week except that—

(i) the requirements of this paragraph shall apply to any pension, retirement or retired pay, annuity, or other similar periodic payment only if—

(I) such pension, retirement or retired pay, annuity, or similar payment is under a plan maintained (or contributed to) by a base period employer or chargeable employer (as determined under applicable law), and

(II) in the case of such a payment not made under the Social Security Act or the Railroad Retirement Act of 1974 (or the corresponding provisions of prior law), services performed for such employer by the individual after the beginning of the base period (or remuneration for such services) affect eligibility for, or increase the amount of, such pension, retirement or retired pay, annuity, or similar payment, and

(ii) the State law may provide for limitations on the amount of any such a reduction to take into account contributions made by the individual for the pension, retirement or retired pay, annuity, or other similar periodic payment, and

(B) the amount of compensation shall not be reduced on account of any payments of governmental or other pensions, retirement or retired pay, annuity, or other similar payments which are not includible in the gross income of the individual for the taxable year in which it was paid because it was part of a rollover distribution;

(16)(A) wage information contained in the records of the agency administering the State law which is necessary (as determined by the Secretary of Health and Human Services in regulations) for purposes of determining an individual's eligibility for assistance, or the amount of such assistance, under a State program funded under part A of title IV of the Social Security Act, shall be made available to a State or political subdivision thereof when such information is specifically requested by such State or political subdivision for such purposes,

(B) wage and unemployment compensation information contained in the records of such agency shall be furnished to the Secretary of Health and Human Services (in accordance with regulations promulgated by such Secretary) as necessary for the purposes of the National Directory of New Hires established under section 453(i) of the Social Security Act, and

(C) such safeguards are established as are necessary (as determined by the Secretary of Health and Human Services in regulations) to insure that information furnished under subparagraph (A) or (B) is used only for the purposes authorized under such subparagraph;

(17) any interest required to be paid on advances under title XII of the Social Security Act shall be paid in a timely manner and shall not be paid, directly or indirectly (by an equivalent reduction in State unemployment taxes or otherwise) by such State from amounts in such State's unemployment fund;

(18) Federal individual income tax from unemployment compensation is to be deducted and withheld if an individual receiving such compensation voluntarily requests such deduction and withholding; and

(19) all the rights, privileges, or immunities conferred by such law or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal such law at any time.

(b) Notification

The Secretary of Labor shall, upon approving such law, notify the governor of the State of his approval.

(c) Certification

On October 31 of each taxable year the Secretary of Labor shall certify to the Secretary of the Treasury each State whose law he has previously approved, except that he shall not certify any State which, after reasonable notice and opportunity for hearing to the State agency, the Secretary of Labor finds has amended its law so that it no longer contains the provisions specified in subsection (a) or has with respect to the 12-month period ending on such October 31 failed to comply substantially with any such provision in such subsection. No finding of a failure to comply substantially with any provision in paragraph (5) of subsection (a) shall be based on an application or interpretation of State law (1) until all administrative review provided for under the laws of the State has been exhausted, or (2) with respect to which the time for judicial review provided by the laws of the State has not expired, or (3) with respect to which any judicial review is pending. On October 31 of any taxable year, the Secretary of Labor shall not certify any State which, after reasonable notice and opportunity for hearing to the State agency, the Secretary of Labor finds has failed to amend its law so that it contains each of the provisions required by law to be included therein (including provisions relating to the Federal-State Extended Unemployment Compensation Act of 1970 (or any amendments thereto) as required under subsection (a)(11)), or has, with respect to the twelve-month period ending on such October 31, failed to comply substantially with any such provision.

(d) Notice of noncertification

If at any time the Secretary of Labor has reason to believe that a State whose law he has previously approved may not be certified under subsection (c), he shall promptly so notify the governor of such State.

(e) Change of law during 12-month period

Whenever—

(1) any provision of this section, section 3302, or section 3303 refers to a 12-month period ending on October 31 of a year, and

(2) the law applicable to one portion of such period differs from the law applicable to another portion of such period,

then such provision shall be applied by taking into account for each such portion the law applicable to such portion.

(f) Definition of institution of higher education

For purposes of subsection (a)(6), the term "institution of higher education" means an educational institution in any State which—

(1) admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(2) is legally authorized within such State to provide a program of education beyond high school;

(3) provides an educational program for it which awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, or offers a program of training to prepare students for gainful employment in a recognized occupation; and

(4) is a public or other nonprofit institution.

(Aug. 16, 1954, ch. 736, 68A Stat. 443; Pub. L. 91–373, title I, §§104(a), 108(a), 121(a), 131(b)(2), 142(f)–(h), title II, §206, Aug. 10, 1970, 84 Stat. 697, 701, 704, 707, 708, 712; Pub. L. 94–455, title XIX, §§1903(a)(14), 1906(b)(13)(C), (E), Oct. 4, 1976, 90 Stat. 1809, 1834; Pub. L. 94–566, title I, §115(c)(1), (5), title III, §§312(a), (b), 314(a), title V, §506(b), Oct. 20, 1976, 90 Stat. 2670, 2671, 2679, 2680, 2687; Pub. L. 95–19, title III, §302(a), (c), (e), Apr. 12, 1977, 91 Stat. 44, 45; Pub. L. 95–171, §2(a), Nov. 12, 1977, 91 Stat. 1353; Pub. L. 95–216, title IV, §403(b), Dec. 20, 1977, 91 Stat. 1561; Pub. L. 96–364, title IV, §414(a), Sept. 26, 1980, 94 Stat. 1310; Pub. L. 97–35, title XXIV, §2408(a), Aug. 13, 1981, 95 Stat. 880; Pub. L. 97–248, title I, §193(a), Sept. 3, 1982, 96 Stat. 408; Pub. L. 98–21, title V, §§515(b), 521(a), 523(a), Apr. 20, 1983, 97 Stat. 147, 148; Pub. L. 99–272, title XII, §12401(b)(1), Apr. 7, 1986, 100 Stat. 297; Pub. L. 99–514, title XVIII,

§1899A(43), Oct. 22, 1986, 100 Stat. 2960; Pub. L. 101–649, title I, §162(e)(4), Nov. 29, 1990, 104 Stat. 5011; Pub. L. 102–164, title III, §302(a), Nov. 15, 1991, 105 Stat. 1059; Pub. L. 102–318, title IV, §401(a)(1), July 3, 1992, 106 Stat. 298; Pub. L. 103–182, title V, §507(b)(1), Dec. 8, 1993, 107 Stat. 2154; Pub. L. 103–465, title VII, §702(b), (c)(1), Dec. 8, 1994, 108 Stat. 4997; Pub. L. 104–193, title I, §110(l)(1), formerly §110(l)(2), title III, §316(g)(2), Aug. 22, 1996, 110 Stat. 2173, 2218, renumbered Pub. L. 105–33, title V, §5514(a)(2), Aug. 5, 1997, 111 Stat. 620; Pub. L. 107–147, title II, §209(d)(1), Mar. 9, 2002, 116 Stat. 33; Pub. L. 109–280, title XI, §1105(a), Aug. 17, 2006, 120 Stat. 1060; Pub. L. 110–328, §3(c), Sept. 30, 2008, 122 Stat. 3572; Pub. L. 110–458, title I, §111(b), Dec. 23, 2008, 122 Stat. 5113; Pub. L. 112–96, title II, §§2103(a), 2161(b)(1)(A), Feb. 22, 2012, 126 Stat. 161, 172.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(4)(B), (D), (15)(A)(i)(II), (16)(A), (B), (17), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, which is classified generally to chapter 7 (§301 et seq.) of Title 42, The Public Health and Welfare. Part A of title IV and title XII of the Act are classified generally to part A (§601 et seq.) of subchapter IV and subchapter XII (§1321 et seq.), respectively, of chapter 7 of Title 42. Sections 303(g), 453(i), and 903(c)(2), (d)(4) of the Act are classified to sections 503(g), 653(i), and 1103(c)(2), (d)(4), respectively, of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 1305 of Title 42 and Tables.

Section 6402(f)(4)(B), referred to in subsec. (a)(4)(G)(ii), does not relate to penalties and interest. Provisions relating to penalties and interest are found elsewhere in section 6402(f).

The Federal-State Extended Unemployment Compensation Act of 1970, referred to in subsecs. (a)(11) and (c), is Pub. L. 91–373, title II, Aug. 10, 1970, 84 Stat. 708, as amended, which is set out as a note below.

Section 212(d)(5) of the Immigration and Nationality Act, referred to in subsec. (a)(14)(A), is classified to section 1182(d)(5) of Title 8, Aliens and Nationality.

The Railroad Retirement Act of 1974, referred to in subsec. (a)(15)(A)(i)(II), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, §101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§231 et seq.) of chapter 9 of Title 45, Railroads. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

AMENDMENTS

2012—Subsec. (a)(4)(D). Pub. L. 112–96, §2103(a), substituted "shall" for "may".

Subsec. (a)(4)(E). Pub. L. 112–96, §2161(b)(1)(A), amended subpar. (E) generally. Prior to amendment, subpar. (E) read as follows: "amounts may be withdrawn for the payment of short-time compensation under a plan approved by the Secretary of Labor;".

2008—Subsec. (a). Pub. L. 110–458, §111(b)(2), struck out concluding provisions which read as follows: "Compensation shall not be reduced under paragraph (15) for any pension, retirement or retired pay, annuity, or similar payment which is not includible in gross income of the individual for the taxable year in which paid because it was part of a rollover distribution."

Subsec. (a)(4)(G). Pub. L. 110–328 added subpar. (G).

Subsec. (a)(15). Pub. L. 110–458, §111(b)(1), inserted "(A) subject to subparagraph (B)," after par. designation, redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, of subpar. (A), redesignated former cls. (i) and (ii) as subcls. (I) and (II), respectively, of cl. (i), substituted ", and" for semicolon at end of cl. (ii), and added subpar. (B).

2006—Subsec. (a). Pub. L. 109–280 added concluding provisions.

2002—Subsec. (a)(4)(B). Pub. L. 107–147 inserted "or 903(d)(4)" before "of the Social Security Act".

1996—Subsec. (a)(16)(A). Pub. L. 104–193, §316(g)(2)(C), struck out "and" at end.

Pub. L. 104–193, §316(g)(2)(A), substituted "Secretary of Health and Human Services" for "Secretary of Health, Education, and Welfare".

Pub. L. 104–193, §110(l)(1), formerly §110(l)(2), as renumbered by Pub. L. 105–33, substituted "eligibility for assistance, or the amount of such assistance, under a State program funded" for "eligibility for aid or services, or the amount of such aid or services, under a State plan for aid and services to needy families with children approved".

Subsec. (a)(16)(B). Pub. L. 104–193, §316(g)(2)(E), added subpar. (B). Former subpar. (B) redesignated (C).

Pub. L. 104–193, §316(g)(2)(B), substituted "information furnished under subparagraph (A) or (B) is used

only for the purposes authorized under such subparagraph;" for "such information is used only for the purposes authorized under subparagraph (A);".

Pub. L. 104–193, §316(g)(2)(A), substituted "Secretary of Health and Human Services" for "Secretary of Health, Education, and Welfare".

Subsec. (a)(16)(C). Pub. L. 104–193, §316(g)(2)(D), redesignated subpar. (B) as (C).

1994—Subsec. (a)(4)(C). Pub. L. 103–465, §702(c)(1), inserted ", or the withholding of Federal, State, or local individual income tax," after "health insurance".

Subsec. (a)(17) to (19). Pub. L. 103–465, §702(b), struck out "and" at end of par. (17), added par. (18), and redesignated former par. (18) as (19).

1993—Subsec. (a)(4)(F). Pub. L. 103–182 added subpar. (F).

1992—Subsec. (a)(4)(E). Pub. L. 102–318 added subpar. (E).

1991—Subsec. (a)(6)(A)(ii)(I). Pub. L. 102–164, §302(a)(1), substituted "may be denied" for "shall be denied".

Subsec. (a)(6)(A)(iii), (iv). Pub. L. 102–164, §302(a)(2), which directed that "and" be struck out at end of cls. (iii) and (iv), could be executed only to cl. (iv) because "and" did not appear at end of cl. (iii).

Subsec. (a)(6)(A)(vi). Pub. L. 102–164, §302(a)(2), added cl. (vi).

1990—Subsec. (a)(14)(A). Pub. L. 101–649 struck out reference to section 203(a)(7) of Immigration and Nationality Act.

1986—Subsec. (a)(4)(D). Pub. L. 99–272 added subpar. (D).

Subsec. (a)(6)(A)(iii). Pub. L. 99–514 struck out "and" at end.

1983—Subsec. (a)(4)(C). Pub. L. 98–21, §523(a), added subpar. (C).

Subsec. (a)(6)(A)(ii)(I), (iii), (iv). Pub. L. 98–21, §521(a)(2), substituted "shall be denied" for "may be denied".

Subsec. (a)(6)(A)(v). Pub. L. 98–21, §521(a)(1), added cl. (v).

Subsec. (a)(17), (18). Pub. L. 98–21, §515(b), added par. (17) and redesignated former par. (17) as (18).

1982—Subsec. (a)(6)(A)(ii). Pub. L. 97–248 redesignated existing provisions as provisions preceding subcl. (I) and subcl. (I), and in such provisions as so redesignated, struck out "(other than an institution of higher education)" after "capacity for an educational institution", substituted "2" for "two", and inserted "except that" at end of subcl. (I), and added subcl. (II).

1981—Subsec. (c). Pub. L. 97–35 substituted provisions relating to limitations on certification on Oct. 31 of any taxable year, for provisions relating to limitations on certification on Oct. 31 of any taxable year after 1971, and on Oct. 31 of any taxable year after 1977.

1980—Subsec. (a)(15). Pub. L. 96–364 inserted provisions relating to applicability to any pension, retirement or retired pay, annuity, or other similar periodic payment.

1977—Subsec. (a)(6)(A)(i). Pub. L. 95–19, §302(c)(1), (2), inserted a comma between "instructional" and "research", substituted "two successive academic years or terms" for "two successive academic years", and struck out "and" after "the second of such academic years or terms,".

Subsec. (a)(6)(A)(iii). Pub. L. 95–19, §302(c)(3), added cl. (iii).

Subsec. (a)(6)(A)(iv). Pub. L. 95–171 added cl. (iv).

Subsec. (a)(14)(A). Pub. L. 95–19, §302(a), substituted "who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed (including an alien who was" for "who has been lawfully admitted for permanent residence or otherwise is permanently residing in the United States under color of law (including an alien who is".

Subsec. (a)(15). Pub. L. 95–19, §302(e), substituted "March 31, 1980" for "September 30, 1979".

Subsec. (a)(16), (17). Pub. L. 95–216 added par. (16). Former par. (16) redesignated (17).

1976—Subsec. (a)(3). Pub. L. 94–455, §§1903(a)(14)(A), 1906(b)(13)(C), inserted "of the Treasury" after "to the Secretary" and struck out "49 Stat. 640; 52 Stat. 1104, 1105;" before "42 U.S.C. 1104".

Subsec. (a)(6)(A). Pub. L. 94–566, §115(c)(1), designated existing provisions as cl. (i), added cl. (ii), and in cl. (i) as so designated substituted "educational institution" for "institution of higher education", "an agreement provides" for "the contract provides", and "if such individual performs such services in the first of such academic years (or terms) and if there is a contract or reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms, and" for "who has a contract to perform services in any such capacity for any institution or institutions of higher education for both of such academic years or both of such terms, and".

Subsec. (a)(6)(B). Pub. L. 94–566, §506(b), substituted "section 3309(a)(1)" for "section 3309(a)(1)(A)".

Subsec. (a)(12). Pub. L. 94–566, §312(a), substituted provisions that no person shall be denied compensation under such State law solely on the basis of pregnancy or termination of pregnancy for

provisions that each political subdivision of the State should have the right to elect to have compensation payable to employees thereof (whose services were not otherwise subject to such law) based on service performed by such employees in the hospitals and institutions of higher education (as defined in section 3309(d)) operated by such political subdivision; and, if any such political subdivision did elect to have compensation payable to such employees thereof (A) the political subdivision elected should pay into the State unemployment fund, with respect to the service of such employees, payments (in lieu of contributions), and (B) such employees would be entitled to receive, on the basis of such service, compensation payable on the same conditions as compensation which was payable on the basis of similar service for the State which was subject to such law.

Subsec. (a)(13) to (16). Pub. L. 94–566, §314(a), added pars. (13) to (15) and redesignated former par. (13) as (16).

Subsec. (c). Pub. L. 94–566, §312(b), provided that on Oct. 31 of any taxable year after 1977, the Secretary shall not certify any State which, after reasonable notice and opportunity for a hearing to the State agency, the Secretary of Labor finds has failed to amend its law so that it contains each of the provisions required by reason of the enactment of the Unemployment Compensation Amendments of 1976 to be included therein, or has with respect to the 12-month period ending on such Oct. 31, failed to comply substantially with any such provision.

Pub. L. 94–455, §§1903(a)(14)(B), 1906(b)(13)(C), (E), inserted "of the Treasury" after "certify to the Secretary", substituted "the Secretary of Labor shall" for "the Secretary shall" and struck out "(10-month period in the case of October 31, 1972)" after "to the 12-month period".

Subsec. (f). Pub. L. 94–566, §115(c)(5), added subsec. (f).

1970—Subsec. (a)(6) to (13). Pub. L. 91–373, §§104(a), 108(a), 121(a), 206, added pars. (6) to (12) and redesignated former par. (6) as (13).

Subsec. (c). Pub. L. 91–373, §131(b)(2), clarified provisions governing procedure to be followed with respect to a finding of the Secretary of Labor that a state has failed to comply substantially with any of the provisions of subsec. (a)(5).

Pub. L. 91–373, §142(f), substituted "October 31" for "December 31" as certification date and "12-month period ending on such October 31" for "taxable year" and prohibited certifications for failure to amend State laws to contain provisions required by reason of enactment of the Employment Security Amendments of 1970.

Subsec. (d). Pub. L. 91–373, §142(g), substituted "If at any time" for "If, at any time during the taxable year,".

Subsec. (e). Pub. L. 91–373, §142(h), added subsec. (e).

EFFECTIVE DATE OF 2012 AMENDMENT

Pub. L. 112–96, title II, §2103(c), Feb. 22, 2012, 126 Stat. 161, provided that: "The amendments made by this section [amending this section and section 503 of Title 42, The Public Health and Welfare] shall apply to weeks beginning after the end of the first session of the State legislature which begins after the date of enactment of this Act [Feb. 22, 2012]."

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–458 effective as if included in the provisions of Pub. L. 109–280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110–458, set out as a note under section 72 of this title.

Pub. L. 110–328, §3(e), Sept. 30, 2008, 122 Stat. 3573, provided that: "The amendments made by this section [amending this section and sections 6103 and 6402 of this title] shall apply to refunds payable under section 6402 of the Internal Revenue Code of 1986 on or after the date of enactment of this Act [Sept. 30, 2008]."

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title XI, §1105(b), Aug. 17, 2006, 120 Stat. 1060, provided that: "The amendment made by this section [amending this section] shall apply to weeks beginning on or after the date of the enactment of this Act [Aug. 17, 2006]."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 110(l)(1) of Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and

continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of Title 42, The Public Health and Welfare.

For effective date of amendment by section 316(g)(2) of Pub. L. 104–193, see section 395(a)–(c) of Pub. L. 104–193, set out as a note under section 654 of Title 42.

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103–465, title VII, §702(d), Dec. 8, 1994, 108 Stat. 4997, provided that: "The amendments made by this section [amending this section, sections 3306 and 3402 of this title, and section 503 of Title 42, The Public Health and Welfare] shall apply to payments made after December 31, 1996."

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102–164, title III, §302(b), Nov. 15, 1991, 105 Stat. 1059, provided that: "The amendments made by this section [amending this section] section shall apply in the case of compensation paid for weeks beginning on or after the date of the enactment of this Act [Nov. 15, 1991]."

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–649 effective Oct. 1, 1991, and applicable beginning with fiscal year 1992, see section 161(a) of Pub. L. 101–649, set out as a note under section 1101 of Title 8, Aliens and Nationality.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 applicable to recoveries made on or after Apr. 7, 1986, and applicable with respect to overpayments made before, on, or after such date, see section 12401(c) of Pub. L. 99–272, set out as a note under section 503 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 98–21, title V, §521(b), Apr. 20, 1983, 97 Stat. 147, provided that:

"(1) Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply in the case of compensation paid for weeks beginning on or after April 1, 1984.

"(2) In the case of a State with respect to which the Secretary of Labor has determined that State legislation is required in order to comply with the amendment made by this section, the amendment made by this section shall apply in the case of compensation paid for weeks which begin on or after April 1, 1984, and after the end of the first session of the State legislature which begins after the date of the enactment of this Act [Apr. 20, 1983], or which began prior to the date of the enactment of this Act and remained in session for at least twenty-five calendar days after such date of enactment. For purposes of the preceding sentence, the term 'session' means a regular, special, budget, or other session of a State legislature."

Pub. L. 98–21, title V, §523(c), Apr. 20, 1983, 97 Stat. 149, provided that: "The amendments made by this section [amending this section and section 503 of Title 42, The Public Health and Welfare] shall take effect on the date of the enactment of this Act [Apr. 20, 1983]."

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title I, §193(b), Sept. 3, 1982, 96 Stat. 409, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) The amendment made by subsection (a) [amending this section] shall apply to weeks of unemployment beginning after the date of the enactment of this Act [Sept. 3, 1982].

"(2) The amendment made by subsection (a) [amending this section], insofar as it requires retroactive payments of compensation to employees of educational institutions other than institutions of higher education (as defined in section 3304(f) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]), shall not be a requirement for any State law before January 1, 1984."

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–364, title IV, §414(b), Sept. 26, 1980, 94 Stat. 1310, provided that: "The amendment made by subsection (a) [amending this section] shall apply to certifications of States for 1981 and subsequent years."

EFFECTIVE DATE OF 1977 AMENDMENTS

Pub. L. 95–216, title IV, §403(d), Dec. 20, 1977, 91 Stat. 1562, provided that: "The amendments made by this section [enacting section 611 of Title 42, The Public Health and Welfare, and amending this section and section 602 of Title 42] shall be effective on the date of the enactment of this Act [Dec. 20, 1977]."

Pub. L. 95–171, §2(b), Nov. 12, 1977, 91 Stat. 1353, provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to weeks of unemployment which begin after December

31, 1977."

Pub. L. 95–19, title III, §302(d)(1), Apr. 12, 1977, 91 Stat. 45, provided that: "The amendment made by subsection (a) [amending this section] shall take effect as if included in the amendment made by section 314 of the Unemployment Compensation Amendments of 1976."

Pub. L. 95–19, title III, §302(d)(3), Apr. 12, 1977, 91 Stat. 45, provided that: "The amendments made by subsection (c) [amending this section] shall take effect as if included in the amendments made by section 115(c) of the Unemployment Compensation Amendments of 1976."

EFFECTIVE DATE OF 1976 AMENDMENTS

Pub. L. 94–566, title I, §115(d), Oct. 20, 1976, 90 Stat. 2671, as amended by Pub. L. 95–19, title III, §301(a), Apr. 12, 1977, 91 Stat. 43, effective Oct. 20, 1976, provided that:

"(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and section 3309 of this title] shall apply with respect to certifications of States for 1978 and subsequent years; except that—

"(A) the amendments made by subsections (a) and (b) [amending section 3309 of this title] shall only apply with respect to services performed after December 31, 1977; and

"(B) the amendments made by subsection (c) [amending this section and section 3309 of this title] shall only apply with respect to weeks of unemployment which begin after December 31, 1977.

"(2) In the case of any State the legislature of which does not meet in a regular session which closes during the calendar year 1977, the amendments made by subsection (c) [amending this section and section 3309 of this title] shall only apply with respect to weeks of unemployment which begin after December 31, 1978 (or if earlier, the date provided by State law)."

Pub. L. 94–566, title I, §116(f), Oct. 20, 1976, 90 Stat. 2673, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"EFFECTIVE DATES.—

"(1) SUBSECTIONS (a), (c) AND (d).—The amendments made by subsections (a), (c), and (d) [amending sections 202 and 205 of Pub. L. 91–373 and section 102 of Pub. L. 93–57 set out below, section 49d of Title 29, Labor, and section 1301 of Title 42, The Public Health and Welfare] shall take effect on the later of October 1, 1976, or the day after the day on which the Secretary of Labor approves under section 3304(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] an unemployment compensation law submitted to him by the Virgin Islands for approval.

"(2) SUBSECTION (b).—The amendments made by subsection (b) [amending section 3306 of this title] shall apply with respect to remuneration paid after December 31 of the year in which the Secretary of Labor approves for the first time an unemployment compensation law submitted to him by the Virgin Islands for approval, for services performed after such December 31.

"(3) SUBSECTION (e).—The amendments made by subsection (e) [amending sections 8501, 8503, 8504, 8521, and 8522 of Title 5, Government Organization and Employees] shall apply with respect to benefit years beginning on or after the later of October 1, 1976, or the first day of the first week for which compensation becomes payable under an unemployment compensation law of the Virgin Islands which is approved by the Secretary of Labor under section 3304(a) of the Internal Revenue Code of 1986."

Pub. L. 94–566, title III, §312(c), Oct. 20, 1976, 90 Stat. 2679, as amended by Pub. L. 95–19, title III, §301(b), Apr. 12, 1977, 91 Stat. 43, effective Oct. 20, 1976, provided that:

"(1) Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply with respect to certifications of States for 1978 and subsequent years.

"(2) In the case of any State the legislature of which does not meet in a regular session which closes during the calendar year 1977, the amendments made by this section [amending this section] shall apply with respect to the certification of such State for 1979 and subsequent years."

Pub. L. 94–566, title III, §314(b), Oct. 20, 1976, 90 Stat. 2680, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to certifications of States for 1978 and subsequent years, or for 1979 and subsequent years in the case of States the legislatures of which do not meet in a regular session which closes in the calendar year 1977."

Pub. L. 94–566, title V, §506(c), Oct. 20, 1976, 90 Stat. 2687, as amended by Pub. L. 95–19, title III, §301(c), Apr. 12, 1977, 91 Stat. 44, effective Oct. 20, 1976, provided that:

"(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and section 3309 of this title] shall apply with respect to certifications of States for 1978 and subsequent years, but only with respect to services performed after December 31, 1977.

"(2) In the case of any State the legislature of which does not meet in a regular session which closes during the calendar year 1977, the amendments made by this section [amending this section and section 3309 of this

title] shall apply with respect to the certification of such State for 1979 and subsequent years, but only with respect to services performed after December 31, 1978."

[Pub. L. 95–19, title III, §301(d), Apr. 12, 1977, 91 Stat. 44, provided that: "The amendments made by this section [amending this Effective Date of 1976 Amendment note in three places] shall take effect on October 20, 1976."]

EFFECTIVE DATE OF 1970 AMENDMENT

Pub. L. 91–373, title I, §104(d), Aug. 10, 1970, 84 Stat. 699, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) Subject to the provisions of paragraph (2), the amendments made by subsections (a) and (b) [amending this section and enacting section 3309 of this title] shall apply with respect to certifications of State laws for 1972 and subsequent years, but only with respect to service performed after December 31, 1971. The amendment made by subsection (c) [amending section 3303 of this title] shall take effect January 1, 1970.

"(2) Section 3304(a)(6) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a) of this section) shall not be a requirement for the State law of any State prior to July 1, 1972, if the legislature of such State does not meet in a regular session which closes during the calendar year 1971."

Pub. L. 91–373, title I, §108(b), Aug. 10, 1970, 84 Stat. 701, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to certification of State laws for 1972 and subsequent years; except that section 3304(a)(12) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)) shall not be a requirement for the State law of any State prior to July 1, 1972, if the legislature of such State does not meet in a regular session which closes during the calendar year 1971, or prior to January 1, 1975, if compliance with such requirement would necessitate a change in the constitution of such State."

Pub. L. 91–373, title I, §121(b), Aug. 10, 1970, 84 Stat. 702, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) Subject to the provisions of paragraph (2), the amendments made by subsection (a) [amending this section] shall take effect January 1, 1972, and shall apply to the taxable year 1972 and taxable years thereafter.

"(2) Paragraphs (7) through (10) of section 3304(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a) of this section) shall not be requirements for the State law of any State prior to July 1, 1972, if the legislature of such State does not meet in a regular session which closes during the calendar year 1971."

Amendment by section 142(f)–(h) of Pub. L. 91–373 applicable with respect to taxable year 1972 and taxable years thereafter, see section 142(i) of Pub. L. 91–373, set out as a note under section 3302 of this title.

SELF-EMPLOYMENT ASSISTANCE PROGRAMS

Pub. L. 112–96, title II, §§2182–2184, Feb. 22, 2012, 126 Stat. 182–184, provided that:

"SEC. 2182. GRANTS FOR SELF-EMPLOYMENT ASSISTANCE PROGRAMS.

"(a) IN GENERAL.—

"(1) ESTABLISHMENT OR IMPROVED ADMINISTRATION.—Subject to the requirements established under subsection (b), the Secretary shall award grants to States for the purposes of—

"(A) improved administration of self-employment assistance programs that have been established, prior to the date of the enactment of this Act [Feb. 22, 2012], pursuant to section 3306(t) of the Internal Revenue Code of 1986 (26 U.S.C. 3306(t)), for individuals who are eligible to receive regular unemployment compensation;

"(B) development, implementation, and administration of self-employment assistance programs that are established, subsequent to the date of the enactment of this Act, pursuant to section 3306(t) of the Internal Revenue Code of 1986, for individuals who are eligible to receive regular unemployment compensation; and

"(C) development, implementation, and administration of self-employment assistance programs that are established pursuant to section 208 of the Federal-State Extended Unemployment Compensation Act of 1970 [Pub. L. 91–373, set out below] or section 4001(j) of the Supplemental Appropriations Act, 2008, [Pub. L. 110–252, set out below] for individuals who are eligible to receive extended compensation or emergency unemployment compensation.

"(2) PROMOTION AND ENROLLMENT.—Subject to the requirements established under subsection (b), the Secretary shall award additional grants to States that submit approved applications for a grant under paragraph (1) for such States to promote self-employment assistance programs and enroll unemployed individuals in such programs.

"(b) APPLICATION AND DISBURSAL.—

"(1) APPLICATION.—Any State seeking a grant under paragraph (1) or (2) of subsection (a) shall submit an application to the Secretary at such time, in such manner, and containing such information as is determined appropriate by the Secretary. In no case shall the Secretary award a grant under this section with respect to an application that is submitted after December 31, 2013.

"(2) NOTICE.—Not later than 30 days after receiving an application described in paragraph (1) from a State, the Secretary shall notify the State agency as to whether a grant has been approved for such State for the purposes described in subsection (a).

"(3) CERTIFICATION.—If the Secretary determines that a State has met the requirements for a grant under subsection (a), the Secretary shall make a certification to that effect to the Secretary of the Treasury, as well as a certification as to the amount of the grant payment to be transferred to the State account in the Unemployment Trust Fund under section 904 of the Social Security Act (42 U.S.C. 1104). The Secretary of the Treasury shall make the appropriate transfer to the State account not later than 7 days after receiving such certification.

"(c) ALLOTMENT FACTORS.—For purposes of allotting the funds available under subsection (d) to States that have met the requirements for a grant under this section, the amount of the grant provided to each State shall be determined based upon the percentage of unemployed individuals in the State relative to the percentage of unemployed individuals in all States.

"(d) FUNDING.—There are appropriated, out of moneys in the Treasury not otherwise appropriated, $35,000,000 for the period of fiscal year 2012 through fiscal year 2013 for purposes of carrying out the grant program under this section, [sic]

"SEC. 2183. ASSISTANCE AND GUIDANCE IN IMPLEMENTING SELF-EMPLOYMENT ASSISTANCE PROGRAMS.

"(a) MODEL LANGUAGE AND GUIDANCE.—For purposes of assisting States in establishing, improving, and administering self-employment assistance programs, the Secretary shall—

"(1) develop model language that may be used by States in enacting such programs, as well as periodically review and revise such model language; and

"(2) provide technical assistance and guidance in establishing, improving, and administering such programs.

"(b) REPORTING AND EVALUATION.—

"(1) REPORTING.—The Secretary shall establish reporting requirements for States that have established self-employment assistance programs, which shall include reporting on—

"(A) the total number of individuals who received unemployment compensation and—

"(i) were referred to a self-employment assistance program;

"(ii) participated in such program; and

"(iii) received an allowance under such program;

"(B) the total amount of allowances provided to individuals participating in a self-employment assistance program;

"(C) the total income (as determined by survey or other appropriate method) for businesses that have been established by individuals participating in a self-employment assistance program, as well as the total number of individuals employed through such businesses; and

"(D) any additional information, as determined appropriate by the Secretary.

"(2) EVALUATION.—Not later than 5 years after the date of the enactment of this Act [Feb. 22, 2012], the Secretary shall submit to Congress a report that evaluates the effectiveness of self-employment assistance programs established by States, including—

"(A) an analysis of the implementation and operation of self-employment assistance programs by States;

"(B) an evaluation of the economic outcomes for individuals who participated in a self-employment assistance program as compared to individuals who received unemployment compensation and did not participate in a self-employment assistance program, including a comparison as to employment status, income, and duration of receipt of unemployment compensation or self-employment assistance allowances; and

"(C) an evaluation of the state of the businesses started by individuals who participated in a self-employment assistance program, including information regarding—

"(i) the type of businesses established;

"(ii) the sustainability of the businesses;

"(iii) the total income collected by the businesses;

"(iv) the total number of individuals employed through such businesses; and

"(v) the estimated Federal and State tax revenue collected from such businesses and their

employees.

"(c) FLEXIBILITY AND ACCOUNTABILITY.—The model language, guidance, and reporting requirements developed by the Secretary under subsections (a) and (b) shall—

"(1) allow sufficient flexibility for States and participating individuals; and

"(2) ensure accountability and program integrity.

"(d) CONSULTATION.—For purposes of developing the model language, guidance, and reporting requirements described under subsections (a) and (b), the Secretary shall consult with employers, labor organizations, State agencies, and other relevant program experts.

"(e) ENTREPRENEURIAL TRAINING PROGRAMS.—The Secretary shall utilize resources available through the Department of Labor and coordinate with the Administrator of the Small Business Administration to ensure that adequate funding is reserved and made available for the provision of entrepreneurial training to individuals participating in self-employment assistance programs.

"(f) SELF-EMPLOYMENT ASSISTANCE PROGRAM.—For purposes of this section, the term 'self-employment assistance program' means a program established pursuant to section 3306(t) of the Internal Revenue Code of 1986 (26 U.S.C. 3306(t)), section 208 of the Federal-State Extended Unemployment Compensation Act of 1970 [Pub. L. 91–373, set out below], or section 4001(j) of the Supplemental Appropriations Act, 2008, [Pub. L. 110–252, set out below] for individuals who are eligible to receive regular unemployment compensation, extended compensation, or emergency unemployment compensation.

SEC. 2184. DEFINITIONS.

"In this subtitle [subtitle E (§§2181–2184) of title II of Pub. L. 112–96, enacting this note and amending provisions set out as notes under this section]:

"(1) SECRETARY.—The term 'Secretary' means the Secretary of Labor.

"(2) STATE; STATE AGENCY.—The terms 'State' and 'State agency' have the meanings given such terms under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 [title II of Pub. L. 91–373] (26 U.S.C. 3304 note)."

TREATMENT OF ADDITIONAL REGULAR COMPENSATION

Pub. L. 111–92, §8, Nov. 6, 2009, 123 Stat. 2988, provided that: "The monthly equivalent of any additional compensation paid by reason of section 2002 of the Assistance for Unemployed Workers and Struggling Families Act, as contained in Public Law 111–5 (26 U.S.C. 3304 note; 123 Stat. 438 [437]) shall be disregarded after the date of the enactment of this Act [Nov. 6, 2009] in considering the amount of income and assets of an individual for purposes of determining such individual's eligibility for, or amount of, benefits under the Supplemental Nutrition Assistance Program (SNAP)."

INCREASE IN UNEMPLOYMENT COMPENSATION BENEFITS

Pub. L. 111–5, div. B, title II, §2002, Feb. 17, 2009, 123 Stat. 437, as amended by Pub. L. 111–118, div. B, §1009(a)(2), Dec. 19, 2009, 123 Stat. 3471; Pub. L. 111–144, §2(a)(2), Mar. 2, 2010, 124 Stat. 42; Pub. L. 111–157, §2(a)(2), Apr. 15, 2010, 124 Stat. 1116, provided that:

"(a) FEDERAL-STATE AGREEMENTS.—Any State which desires to do so may enter into and participate in an agreement under this section with the Secretary of Labor (hereinafter in this section referred to as the 'Secretary'). Any State which is a party to an agreement under this section may, upon providing 30 days' written notice to the Secretary, terminate such agreement.

"(b) PROVISIONS OF AGREEMENT.—

"(1) ADDITIONAL COMPENSATION.—Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to the amount determined under the State law (before the application of this paragraph) plus an additional $25.

"(2) ALLOWABLE METHODS OF PAYMENT.—Any additional compensation provided for in accordance with paragraph (1) shall be payable either—

"(A) as an amount which is paid at the same time and in the same manner as any regular compensation otherwise payable for the week involved; or

"(B) at the option of the State, by payments which are made separately from, but on the same weekly basis as, any regular compensation otherwise payable.

"(c) NONREDUCTION RULE.—An agreement under this section shall not apply (or shall cease to apply) with respect to a State upon a determination by the Secretary that the method governing the computation of

regular compensation under the State law of that State has been modified in a manner such that—

"(1) the average weekly benefit amount of regular compensation which will be payable during the period of the agreement (determined disregarding any additional amounts attributable to the modification described in subsection (b)(1)) will be less than

"(2) the average weekly benefit amount of regular compensation which would otherwise have been payable during such period under the State law, as in effect on December 31, 2008.

"(d) PAYMENTS TO STATES.—

"(1) IN GENERAL.—

"(A) FULL REIMBURSEMENT.—There shall be paid to each State which has entered into an agreement under this section an amount equal to 100 percent of—

"(i) the total amount of additional compensation (as described in subsection (b)(1)) paid to individuals by the State pursuant to such agreement; and

"(ii) any additional administrative expenses incurred by the State by reason of such agreement (as determined by the Secretary).

"(B) TERMS OF PAYMENTS.—Sums payable to any State by reason of such State's having an agreement under this section shall be payable, either in advance or by way of reimbursement (as determined by the Secretary), in such amounts as the Secretary estimates the State will be entitled to receive under this section for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that his estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made on the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency of the State involved.

"(2) CERTIFICATIONS.—The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this section.

"(3) APPROPRIATION.—There are appropriated from the general fund of the Treasury, without fiscal year limitation, such sums as may be necessary for purposes of this subsection.

"(e) APPLICABILITY.—

"(1) IN GENERAL.—An agreement entered into under this section shall apply to weeks of unemployment—

"(A) beginning after the date on which such agreement is entered into; and

"(B) ending on or before June 2, 2010.

"(2) TRANSITION RULE FOR INDIVIDUALS REMAINING ENTITLED TO REGULAR COMPENSATION AS OF JUNE 2, 2010.—In the case of any individual who, as of the date specified in paragraph (1)(B), has not yet exhausted all rights to regular compensation under the State law of a State with respect to a benefit year that began before such date, additional compensation (as described in subsection (b)(1)) shall continue to be payable to such individual for any week beginning on or after such date for which the individual is otherwise eligible for regular compensation with respect to such benefit year.

"(3) TERMINATION.—Notwithstanding any other provision of this subsection, no additional compensation (as described in subsection (b)(1)) shall be payable for any week beginning after December 7, 2010.

"(f) FRAUD AND OVERPAYMENTS.—The provisions of section 4005 of the Supplemental Appropriations Act, 2008 (Public Law 110–252; 122 Stat. 2356) [set out below] shall apply with respect to additional compensation (as described in subsection (b)(1)) to the same extent and in the same manner as in the case of emergency unemployment compensation.

"(g) APPLICATION TO OTHER UNEMPLOYMENT BENEFITS.—

"(1) IN GENERAL.—Each agreement under this section shall include provisions to provide that the purposes of the preceding provisions of this section shall be applied with respect to unemployment benefits described in subsection (i)(3) to the same extent and in the same manner as if those benefits were regular compensation.

"(2) ELIGIBILITY AND TERMINATION RULES.—Additional compensation (as described in subsection (b)(1))—

"(A) shall not be payable, pursuant to this subsection, with respect to any unemployment benefits described in subsection (i)(3) for any week beginning on or after the date specified in subsection (e)(1)(B), except in the case of an individual who was eligible to receive additional compensation (as so described) in connection with any regular compensation or any unemployment benefits described in subsection (i)(3) for any period of unemployment ending before such date; and

"(B) shall in no event be payable for any week beginning after the date specified in subsection

(e)(3).

"(h) DISREGARD OF ADDITIONAL COMPENSATION FOR PURPOSES OF MEDICAID AND SCHIP.—The monthly equivalent of any additional compensation paid under this section shall be disregarded in considering the amount of income of an individual for any purposes under title XIX and title XXI of the Social Security Act [42 U.S.C. 1396 et seq., 1397aa et seq.].

"(i) DEFINITIONS.—For purposes of this section—

"(1) the terms 'compensation', 'regular compensation', 'benefit year', 'State', 'State agency', 'State law', and 'week' have the respective meanings given such terms under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 [Pub. L. 91–373] (26 U.S.C. 3304 note);

"(2) the term 'emergency unemployment compensation' means emergency unemployment compensation under title IV of the Supplemental Appropriations Act, 2008 (Public Law 110–252; 122 Stat. 2353) [set out below]; and

"(3) any reference to unemployment benefits described in this paragraph shall be considered to refer to—

"(A) extended compensation (as defined by section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 [Pub. L. 91–373, set out below]); and

"(B) unemployment compensation (as defined by section 85(b) of the Internal Revenue Code of 1986) provided under any program administered by a State under an agreement with the Secretary."

[Pub. L. 111–157, §2(c), Apr. 15, 2010, 124 Stat. 1117, provided that: "The amendments made by this section [amending section 2002 of Pub. L. 111–5, set out above, and section 2005 of Pub. L. 111–5, section 5 of Pub. L. 110–449, and sections 4004 and 4007 of Pub. L. 110–252, set out below] shall take effect as if included in the enactment of the Temporary Extension Act of 2010 (Public Law 111–144)."]

FULL FEDERAL FUNDING OF EXTENDED UNEMPLOYMENT COMPENSATION FOR A LIMITED PERIOD

Pub. L. 111–5, div. B, title II, §2005, Feb. 17, 2009, 123 Stat. 444, as amended by Pub. L. 111–118, div. B, §1009(a)(3), Dec. 19, 2009, 123 Stat. 3471; Pub. L. 111–144, §2(a)(3), Mar. 2, 2010, 124 Stat. 42; Pub. L. 111–157, §2(a)(3), Apr. 15, 2010, 124 Stat. 1116; Pub. L. 111–205, §2(a)(2), July 22, 2010, 124 Stat. 2236; Pub. L. 111–312, title V, §501(a)(2), Dec. 17, 2010, 124 Stat. 3307; Pub. L. 112–78, title II, §201(a)(2), Dec. 23, 2011, 125 Stat. 1282; Pub. L. 112–96, title II, §2123(a), Feb. 22, 2012, 126 Stat. 166; Pub. L. 112–240, title V, §502(a), Jan. 2, 2013, 126 Stat. 2344, provided that:

"(a) IN GENERAL.—In the case of sharable extended compensation and sharable regular compensation paid for weeks of unemployment beginning after the date of the enactment of this section [Feb. 17, 2009] and before December 31, 2013, section 204(a)(1) of the Federal-State Extended Unemployment Compensation Act of 1970 [Pub. L. 91–373] (26 U.S.C. 3304 note) shall be applied by substituting '100 percent of' for 'one-half of'.

"(b) SPECIAL RULE.—At the option of a State, for any weeks of unemployment beginning after the date of the enactment of this section [Feb. 17, 2009] and before December 31, 2013, an individual's eligibility period (as described in section 203(c) of the Federal-State Extended Unemployment Compensation Act of 1970 [Pub. L. 91–373, set out below]) shall, for purposes of any determination of eligibility for extended compensation under the State law of such State, be considered to include any week which begins—

"(1) after the date as of which such individual exhausts all rights to emergency unemployment compensation; and

"(2) during an extended benefit period that began on or before the date described in paragraph (1).

"(c) LIMITED EXTENSION.—In the case of an individual who receives extended compensation with respect to 1 or more weeks of unemployment beginning after the date of the enactment of this Act [Feb. 17, 2009] and before December 31, 2013, the provisions of subsections (a) and (b) shall, at the option of a State, be applied by substituting 'ending before June 30, 2014' for 'before December 31, 2013'.

"(d) EXTENSION OF TEMPORARY FEDERAL MATCHING FOR THE FIRST WEEK OF EXTENDED BENEFITS FOR STATES WITH NO WAITING WEEK.—

"(1) IN GENERAL.—[Amended section 5 of Pub. L. 110–449, set out below.]

"(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect as if included in the enactment of the Unemployment Compensation Extension Act of 2008 (Public Law 110–449).

"(e) DEFINITIONS.—For purposes of this section—

"(1) the terms 'sharable extended compensation' and 'sharable regular compensation' have the respective meanings given such terms under section 204 of the Federal-State Extended Unemployment Compensation Act of 1970 [Pub. L. 91–373, set out below];

"(2) the terms 'extended compensation', 'State', 'State law', and 'week' have the respective meanings

given such terms under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 [Pub. L. 91–373, set out below];

"(3) the term 'emergency unemployment compensation' means benefits payable to individuals under title IV of the Supplemental Appropriations Act, 2008 [Pub. L. 110–252, set out below] with respect to their unemployment; and

"(4) the term 'extended benefit period' means an extended benefit period as determined in accordance with applicable provisions of the Federal-State Extended Unemployment Compensation Act of 1970 [title II of Pub. L. 91–373, set out below].

"(f) REGULATIONS.—The Secretary of Labor may prescribe any operating instructions or regulations necessary to carry out this section."

[Pub. L. 112–240, title V, §502(d), Jan. 2, 2013, 126 Stat. 2344, provided that: "The amendments made by this section [amending section 2005 of Pub. L. 111–5, set out above, and section 5 of Pub. L. 110–449 and section 203 of Pub. L. 91–373, set out below] shall take effect as if included in the enactment of the Unemployment Benefits Extension Act of 2012 ([subtitle B of title II of] Public Law 112–96)."]

[Pub. L. 112–96, title II, §2123(d), Feb. 22, 2012, 126 Stat. 167, provided that: "The amendments made by this section [amending section 2005 of Pub. L. 111–5, set out above, and section 5 of Pub. L. 110–449 and section 203 of Pub. L. 91–373, set out below] shall take effect as if included in the enactment of the Temporary Payroll Tax Cut Continuation Act of 2011 (Public Law 112–78)."]

[Pub. L. 112–78, title II, §201(c), Dec. 23, 2011, 125 Stat. 1283, provided that: "The amendments made by this section [amending section 2005 of Pub. L. 111–5, set out above, section 5 of Pub. L. 110–449, sections 4004 and 4007 of Pub. L. 110–252, and section 203 of Pub. L. 91–373, set out below] shall take effect as if included in the enactment of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (Public Law 111–312)."]

[Pub. L. 111–312, title V, §501(c), Dec. 17, 2010, 124 Stat. 3307, provided that: "The amendments made by this section [amending section 2005 of Pub. L. 111–5, set out above, and section 5 of Pub. L. 110–449 and sections 4004 and 4007 of Pub. L. 110–252, set out below] shall take effect as if included in the enactment of the Unemployment Compensation Extension Act of 2010 (Public Law 111–205)."]

[Pub. L. 111–205, §2(d), July 22, 2010, 124 Stat. 2237, provided that: "The amendments made by this section [amending section 2005 of Pub. L. 111–5, set out above, and section 5 of Pub. L. 110–449 and sections 4001, 4004, and 4007 of Pub. L. 110–252, set out below] shall take effect as if included in the enactment of the Continuing Extension Act of 2010 (Public Law 111–157)."]

[Amendment by Pub. L. 111–157 to section 2005 of Pub. L. 111–5, set out above, effective as if included in the enactment of Pub. L. 111–144, see section 2(c) of Pub. L. 111–157, set out following section 2002 of Pub. L. 111–5 above.]

TEMPORARY FEDERAL MATCHING FOR THE FIRST WEEK OF EXTENDED BENEFITS FOR STATES WITH NO WAITING WEEK

Pub. L. 110–449, §5, Nov. 21, 2008, 122 Stat. 5015; as amended by Pub. L. 111–5, div. B, title II, §2005(d)(1), Feb. 17, 2009, 123 Stat. 444; Pub. L. 111–118, div. B, §1009(a)(4), Dec. 19, 2009, 123 Stat. 3471; Pub. L. 111–144, §2(a)(4), Mar. 2, 2010, 124 Stat. 42; Pub. L. 111–157, §2(a)(4), Apr. 15, 2010, 124 Stat. 1116; Pub. L. 111–205, §2(a)(3), July 22, 2010, 124 Stat. 2236; Pub. L. 111–312, title V, §501(a)(3), Dec. 17, 2010, 124 Stat. 3307; Pub. L. 112–78, title II, §201(a)(3), Dec. 23, 2011, 125 Stat. 1282; Pub. L. 112–96, title II, §2123(b), Feb. 22, 2012, 126 Stat. 167; Pub. L. 112–240, title V, §502(b), Jan. 2, 2013, 126 Stat. 2344, provided that: "With respect to weeks of unemployment beginning after the date of the enactment of this Act [Nov. 21, 2008] and ending on or before June 30, 2014, subparagraph (B) of section 204(a)(2) of the Federal-State Extended Unemployment Compensation Act of 1970 [title II of Pub. L. 91–373] (26 U.S.C. 3304 note) shall not apply."

[Amendment by section 502(b) of Pub. L. 112–240 to section 5 of Pub. L. 110–449, set out above, effective as if included in the enactment of subtitle B of title II of Pub. L. 112–96, see section 502(d) of Pub. L. 112–240, set out following section 2005 of Pub. L. 111–5 above.]

[Amendment by section 2123(b) of Pub. L. 112–96 to section 5 of Pub. L. 110–449, set out above, effective as if included in the enactment of Pub. L. 112–78, see section 2123(d) of Pub. L. 112–96, set out following section 2005 of Pub. L. 111–5 above.]

[Amendment by section 201(a)(3) of Pub. L. 112–78 to section 5 of Pub. L. 110–449, set out above, effective as if included in the enactment of Pub. L. 111–312, see section 201(c) of Pub. L. 112–78, set out following section 2005 of Pub. L. 111–5 above.]

[Amendment by section 501(a)(3) of Pub. L. 111–312 to section 5 of Pub. L. 110–449, set out above, effective as if included in the enactment of Pub. L. 111–205, see section 501(c) of Pub. L. 111–312, set out

following section 2005 of Pub. L. 111–5 above.]

[Amendment by section 2(a)(3) of Pub. L. 111–205 to section 5 of Pub. L. 110–449, set out above, effective as if included in the enactment of Pub. L. 111–157, see section 2(d) of Pub. L. 111–205, set out following section 2005 of Pub. L. 111–5 above.]

[Amendment by section 2(a)(4) of Pub. L. 111–157 to section 5 of Pub. L. 110–449, set out above, effective as if included in the enactment of Pub. L. 111–144, see section 2(c) of Pub. L. 111–157, set out following section 2002 of Pub. L. 111–5 above.]

EMERGENCY UNEMPLOYMENT COMPENSATION, 2008

Pub. L. 110–252, title IV, June 30, 2008, 122 Stat. 2353, as amended by Pub. L. 110–449, §§2–4, Nov. 21, 2008, 122 Stat. 5014, 5015; Pub. L. 111–5, div. B, title II, §2001, Feb. 17, 2009, 123 Stat. 436; Pub. L. 111–92, §§2(a), 3(a), (b), 4(a), (b), 5, 6, Nov. 6, 2009, 123 Stat. 2984–2987; Pub. L. 111–118, div. B, §1009(a)(1), (b), Dec. 19, 2009, 123 Stat. 3471; Pub. L. 111–144, §2(a)(1), (b), Mar. 2, 2010, 124 Stat. 42; Pub. L. 111–157, §2(a)(1), (b), Apr. 15, 2010, 124 Stat. 1116; Pub. L. 111–205, §§2(a)(1), (b), (c), 3(a), 4, July 22, 2010, 124 Stat. 2236–2238; Pub. L. 111–312, title V, §501(a)(1), (b), Dec. 17, 2010, 124 Stat. 3307; Pub. L. 112–78, title II, §201(a)(1), (b), Dec. 23, 2011, 125 Stat. 1282, 1283; Pub. L. 112–96, title II, §§2122(a)–(e), 2141, 2142(a), (c), 2143, 2181(b), Feb. 22, 2012, 126 Stat. 163–166, 168–170, 180; Pub. L. 112–240, title V, §§501(a), (b), 503(a), Jan. 2, 2013, 126 Stat. 2343, 2344, provided that:

"FEDERAL-STATE AGREEMENTS

"SEC. 4001. (a) IN GENERAL.—Any State which desires to do so may enter into and participate in an agreement under this title with the Secretary of Labor (in this title referred to as the 'Secretary'). Any State which is a party to an agreement under this title may, upon providing 30 days' written notice to the Secretary, terminate such agreement.

"(b) PROVISIONS OF AGREEMENT.—Any agreement under subsection (a) shall provide that the State agency of the State will make payments of emergency unemployment compensation to individuals who—

"(1) have exhausted all rights to regular compensation under the State law or under Federal law with respect to a benefit year (excluding any benefit year that ended before May 1, 2007);

"(2) have no rights to regular compensation with respect to a week under such law or any other State unemployment compensation law or to compensation under any other Federal law;

"(3) are not receiving compensation with respect to such week under the unemployment compensation law of Canada; and

"(4) are able to work, available to work, and actively seeking work.

"(c) EXHAUSTION OF BENEFITS.—For purposes of subsection (b)(1), an individual shall be deemed to have exhausted such individual's rights to regular compensation under a State law when—

"(1) no payments of regular compensation can be made under such law because such individual has received all regular compensation available to such individual based on employment or wages during such individual's base period; or

"(2) such individual's rights to such compensation have been terminated by reason of the expiration of the benefit year with respect to which such rights existed.

"(d) WEEKLY BENEFIT AMOUNT, ETC.—For purposes of any agreement under this title—

"(1) the amount of emergency unemployment compensation which shall be payable to any individual for any week of total unemployment shall be equal to the amount of the regular compensation (including dependents' allowances) payable to such individual during such individual's benefit year under the State law for a week of total unemployment;

"(2) the terms and conditions of the State law which apply to claims for regular compensation and to the payment thereof (including terms and conditions relating to availability for work, active search for work, and refusal to accept work) shall apply to claims for emergency unemployment compensation and the payment thereof, except—

"(A) that an individual shall not be eligible for emergency unemployment compensation under this title unless, in the base period with respect to which the individual exhausted all rights to regular compensation under the State law, the individual had 20 weeks of full-time insured employment or the equivalent in insured wages, as determined under the provisions of the State law implementing section 202(a)(5) of the Federal-State Extended Unemployment Compensation Act of 1970 [Pub. L. 91–373] (26 U.S.C. 3304 note); and

"(B) where otherwise inconsistent with the provisions of this title or with the regulations or operating instructions of the Secretary promulgated to carry out this title; and

"(3) the maximum amount of emergency unemployment compensation payable to any individual for

whom an emergency unemployment compensation account is established under section 4002 shall not exceed the amount established in such account for such individual.

"(e) COORDINATION RULE.—An agreement under this section shall apply with respect to a State only upon a determination by the Secretary that, under the State law or other applicable rules of such State, the payment of extended compensation for which an individual is otherwise eligible must be deferred until after the payment of any emergency unemployment compensation under section 4002, as amended by the Unemployment Benefits Extension Act of 2012 [subtitle B of title II of Pub. L. 112–96], for which the individual is concurrently eligible.

"(f) UNAUTHORIZED ALIENS INELIGIBLE.—A State shall require as a condition of eligibility for emergency unemployment compensation under this Act [probably means "this title"] that each alien who receives such compensation must be legally authorized to work in the United States, as defined for purposes of the Federal Unemployment Tax Act (26 U.S.C. 3301 et seq.). In determining whether an alien meets the requirements of this subsection, a State must follow the procedures provided in section 1137(d) of the Social Security Act (42 U.S.C. 1320b–7(d)).

"(g) NONREDUCTION RULE.—An agreement under this section shall not apply (or shall cease to apply) with respect to a State upon a determination by the Secretary that the method governing the computation of regular compensation under the State law of that State has been modified in a manner such that—

"(1) the average weekly benefit amount of regular compensation which will be payable during the period of the agreement occurring on or after June 2, 2010 (determined disregarding any additional amounts attributable to the modification described in section 2002(b)(1) of the Assistance for Unemployed Workers and Struggling Families Act, as contained in Public Law 111–5 (26 U.S.C. 3304 note; 123 Stat. 438)), will be less than

"(2) the average weekly benefit amount of regular compensation which would otherwise have been payable during such period under the State law, as in effect on June 2, 2010.

"(h) ACTIVELY SEEKING WORK.—

"(1) IN GENERAL.—For purposes of subsection (b)(4), the term 'actively seeking work' means, with respect to any individual, that such individual—

"(A) is registered for employment services in such a manner and to such extent as prescribed by the State agency;

"(B) has engaged in an active search for employment that is appropriate in light of the employment available in the labor market, the individual's skills and capabilities, and includes a number of employer contacts that is consistent with the standards communicated to the individual by the State;

"(C) has maintained a record of such work search, including employers contacted, method of contact, and date contacted; and

"(D) when requested, has provided such work search record to the State agency.

"(2) RANDOM AUDITING.—The Secretary shall establish for each State a minimum number of claims for which work search records must be audited on a random basis in any given week.

"(i) PROVISION OF SERVICES AND ACTIVITIES.—

"(1) IN GENERAL.—An agreement under this section shall require the following:

"(A) The State which is party to such agreement shall provide reemployment services and reemployment and eligibility assessment activities to each individual—

"(i) who, on or after the 30th day after the date of enactment of the Extended Benefits, Reemployment, and Program Integrity Improvement Act [Feb. 22, 2012], begins receiving amounts described in subsections (b) and (c); and

"(ii) while such individual continues to receive emergency unemployment compensation under this title.

"(B) As a condition of eligibility for emergency unemployment compensation for any week—

"(i) a claimant who has been duly referred to reemployment services shall participate in such services; and

"(ii) a claimant shall be actively seeking work (determined applying subsection (i) [probably means subsection (h)]).

"(2) DESCRIPTION OF SERVICES AND ACTIVITIES.—The reemployment services and in-person reemployment and eligibility assessment activities provided to individuals receiving emergency unemployment compensation described in paragraph (1)—

"(A) shall include—

"(i) the provision of labor market and career information;

"(ii) an assessment of the skills of the individual;

"(iii) orientation to the services available through the one-stop centers established under title

I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.]; and

"(iv) review of the eligibility of the individual for emergency unemployment compensation relating to the job search activities of the individual; and

"(B) may include the provision of—

"(i) comprehensive and specialized assessments;

"(ii) individual and group career counseling;

"(iii) training services;

"(iv) additional reemployment services; and

"(v) job search counseling and the development or review of an individual reemployment plan that includes participation in job search activities and appropriate workshops.

"(3) PARTICIPATION REQUIREMENT.—As a condition of continuing eligibility for emergency unemployment compensation for any week, an individual who has been referred to reemployment services or reemployment and eligibility assessment activities under this subsection shall participate in such services or activities, unless the State agency responsible for the administration of State unemployment compensation law determines that—

"(A) such individual has completed participating in such services or activities; or

"(B) there is justifiable cause for failure to participate or to complete participating in such services or activities, as determined in accordance with guidance to be issued by the Secretary.

"(j) AUTHORITY TO CONDUCT SELF-EMPLOYMENT ASSISTANCE PROGRAM.—

"(1) IN GENERAL.—

"(A) ESTABLISHMENT.—Any agreement under subsection (a) may provide that the State agency of the State shall establish a self-employment assistance program, as described in paragraph (2), to provide for the payment of emergency unemployment compensation as self-employment assistance allowances to individuals who would otherwise satisfy the eligibility criteria specified in subsection (b).

"(B) PAYMENT OF ALLOWANCES.—Subject to subparagraph (C), the self-employment assistance allowance described in subparagraph (A) shall be paid to an eligible individual from such individual's emergency unemployment compensation account, as described in section 4002, and the amount in such account shall be reduced accordingly.

"(C) LIMITATION ON SELF-EMPLOYMENT ASSISTANCE FOR INDIVIDUALS RECEIVING EXTENDED COMPENSATION AND EMERGENCY UNEMPLOYMENT COMPENSATION.—

"(i) COMBINED ELIGIBILITY LIMIT.—Subject to clause (ii), for purposes of self-employment assistance programs established under this subsection and section 208 of the Federal-State Extended Unemployment Compensation Act of 1970 [Pub. L. 91–373, set out below], an individual shall be provided with self-employment assistance allowances under such programs for a total of not greater than 26 weeks (referred to in this subsection as the 'combined eligibility limit').

"(ii) CARRYOVER RULE.—For purposes of an individual who is participating in a self-employment assistance program established under this subsection and has not reached the combined eligibility limit as of the date on which such individual exhausts all rights to extended compensation under this title, the individual shall be eligible to receive self-employment assistance allowances under a self-employment assistance program established under section 208 of the Federal-State Extended Unemployment Compensation Act of 1970 until such individual has reached the combined eligibility limit, provided that the individual otherwise satisfies the eligibility criteria described under title II of such Act [probably means title II of Pub. L. 91–373, set out below].

"(2) DEFINITION OF 'SELF-EMPLOYMENT ASSISTANCE PROGRAM'.—For the purposes of this section, the term 'self-employment assistance program' means a program as defined under section 3306(t) of the Internal Revenue Code of 1986, except as follows:

"(A) all references to 'regular unemployment compensation under the State law' shall be deemed to refer instead to 'emergency unemployment compensation under title IV of the Supplemental Appropriations Act, 2008' [this note];

"(B) paragraph (3)(B) shall not apply;

"(C) clause (i) of paragraph (3)(C) shall be deemed to state as follows:

" '(i) include any entrepreneurial training that the State or non-profit organizations may provide in coordination with programs of training offered by the Small Business Administration, which may include business counseling, mentorship for participants, access to small business development resources, and technical assistance; and';

"(D) the reference to '5 percent' in paragraph (4) shall be deemed to refer instead to '1 percent'; and

"(E) paragraph (5) shall not apply.

"(3) AVAILABILITY OF SELF-EMPLOYMENT ASSISTANCE ALLOWANCES.—In the case of an individual who is eligible to receive emergency unemployment compensation payment under this title, such individual shall not receive self-employment assistance allowances under this subsection unless the State agency has a reasonable expectation that such individual will be entitled to at least 13 times the individual's average weekly benefit amount of extended compensation and emergency unemployment compensation.

"(4) PARTICIPANT OPTION TO TERMINATE PARTICIPATION IN SELF-EMPLOYMENT ASSISTANCE PROGRAM.—

"(A) TERMINATION.—An individual who is participating in a self-employment assistance program established under this subsection may elect to discontinue participation in such program at any time.

"(B) CONTINUED ELIGIBILITY FOR EMERGENCY UNEMPLOYMENT COMPENSATION .—For purposes of an individual whose participation in the self-employment assistance program established under this subsection is terminated pursuant to paragraph (1)(C) or who has discontinued participation in such program, if the individual continues to satisfy the eligibility requirements for emergency unemployment compensation under this title, the individual shall receive emergency unemployment compensation payments with respect to subsequent weeks of unemployment, to the extent that amounts remain in the account established for such individual under section 4002(b) or to the extent that such individual commences receiving the amounts described in subsections (c), (d), or (e) of such section, respectively.

"EMERGENCY UNEMPLOYMENT COMPENSATION ACCOUNT

"SEC. 4002. (a) IN GENERAL.—Any agreement under this title shall provide that the State will establish, for each eligible individual who files an application for emergency unemployment compensation, an emergency unemployment compensation account with respect to such individual's benefit year.

"(b) AMOUNT IN ACCOUNT.—

"(1) IN GENERAL.—The amount established in an account under subsection (a) shall be equal to the lesser of—

"(A) 80 percent of the total amount of regular compensation (including dependents' allowances) payable to the individual during the individual's benefit year under such law, or

"(B) 20 times the individual's average weekly benefit amount for the benefit year.

"(2) SPECIAL RULE RELATING TO AMOUNTS ESTABLISHED IN AN ACCOUNT AS OF A WEEK ENDING AFTER SEPTEMBER 2, 2012.—Notwithstanding any provision of paragraph (1), in the case of any account established as of a week ending after September 2, 2012—

"(A) paragraph (1)(A) shall be applied by substituting '54 percent' for '80 percent'; and

"(B) paragraph (1)(B) shall be applied by substituting '14 weeks' for '20 weeks' [probably should be " '14 times' for '20 times' "].

"(3) WEEKLY BENEFIT AMOUNT.—For purposes of this subsection, an individual's weekly benefit amount for any week is the amount of regular compensation (including dependents' allowances) under the State law payable to such individual for such week for total unemployment.

"(c) SECOND-TIER EMERGENCY UNEMPLOYMENT COMPENSATION.—

"(1) IN GENERAL.—If, at the time that the amount established in an individual's account under subsection (b) is exhausted or at any time thereafter, such individual's State is in an extended benefit period (as determined under paragraph (2)), such account shall be augmented by an amount (hereinafter 'second-tier emergency unemployment compensation') equal to the lesser of—

"(A) 54 percent of the total amount of regular compensation (including dependents' allowances) payable to the individual during the individual's benefit year under the State law, or

"(B) 14 times the individual's average weekly benefit amount (as determined under subsection (b)(2)) for the benefit year.

"(2) EXTENDED BENEFIT PERIOD.—For purposes of paragraph (1), a State shall be considered to be in an extended benefit period, as of any given time, if such a period would then be in effect for such State under such Act [probably means title II of Pub. L. 91–373] if—

"(A) section 203(f) of the Federal-State Extended Unemployment Compensation Act of 1970 [Pub. L. 91–373, set out below] were applied to such State (regardless of whether the State by law had provided for such application); and

"(B) such section 203(f)—

"(i) were applied by substituting the applicable percentage under paragraph (3) for '6.5

percent' in paragraph (1)(A)(i) thereof; and

"(ii) did not include the requirement under paragraph (1)(A)(ii) thereof.

"(3) APPLICABLE PERCENTAGE.—The applicable percentage under this paragraph is, for purposes of determining if a State is in an extended benefit period as of a date occurring in a week ending—

"(A) before June 1, 2012, 0 percent; and

"(B) after the last week under subparagraph (A), 6 percent.

"(4) LIMITATION.—The account of an individual may be augmented not more than once under this subsection.

"(d) THIRD-TIER EMERGENCY UNEMPLOYMENT COMPENSATION.—

"(1) IN GENERAL.—If, at the time that the amount added to an individual's account under subsection (c)(1) (hereinafter 'second-tier emergency unemployment compensation') is exhausted or at any time thereafter, such individual's State is in an extended benefit period (as determined under paragraph (2)), such account shall be further augmented by an amount (hereinafter 'third-tier emergency unemployment compensation') equal to the lesser of—

"(A) 50 percent of the total amount of regular compensation (including dependents' allowances) payable to the individual during the individual's benefit year under the State law; or

"(B) 13 times the individual's average weekly benefit amount (as determined under subsection (b)(2) [probably should be "(b)(3)"]) for the benefit year.

"(2) EXTENDED BENEFIT PERIOD.—For purposes of paragraph (1), a State shall be considered to be in an extended benefit period, as of any given time, if—

"(A) such a period would then be in effect for such State under the Federal-State Extended Unemployment Compensation Act of 1970 [title II of Pub. L. 91–373, set out below] if section 203(d) of such Act—

"(i) were applied by substituting '4' for '5' each place it appears; and

"(ii) did not include the requirement under paragraph (1)(A) thereof; or

"(B) such a period would then be in effect for such State under such Act if—

"(i) section 203(f) of such Act were applied to such State (regardless of whether the State by law had provided for such application); and

"(ii) such section 203(f)—

"(I) were applied by substituting the applicable percentage under paragraph (3) for '6.5 percent' in paragraph (1)(A)(i) thereof; and

"(II) did not include the requirement under paragraph (1)(A)(ii) thereof.

"(3) APPLICABLE PERCENTAGE.—The applicable percentage under this paragraph is, for purposes of determining if a State is in an extended benefit period as of a date occurring in a week ending—

"(A) before June 1, 2012, 6 percent; and

"(B) after the last week under subparagraph (A), 7 percent.

"(4) LIMITATION.—The account of an individual may be augmented not more than once under this subsection.

"(5) SPECIAL RULE RELATING TO AMOUNTS ADDED TO AN ACCOUNT AS OF A WEEK ENDING AFTER SEPTEMBER 2, 2012.—Notwithstanding any provision of paragraph (1), if augmentation under this subsection occurs as of a week ending after September 2, 2012—

"(A) paragraph (1)(A) shall be applied by substituting '35 percent' for '50 percent'; and

"(B) paragraph (1)(B) shall be applied by substituting '9 times' for '13 times'.

"(e) FOURTH-TIER EMERGENCY UNEMPLOYMENT COMPENSATION.—

"(1) IN GENERAL.—If, at the time that the amount added to an individual's account under subsection (d)(1) (third-tier emergency unemployment compensation) is exhausted or at any time thereafter, such individual's State is in an extended benefit period (as determined under paragraph (2)), such account shall be further augmented by an amount (hereinafter 'fourth-tier emergency unemployment compensation') equal to the lesser of—

"(A) 24 percent of the total amount of regular compensation (including dependents' allowances) payable to the individual during the individual's benefit year under the State law; or

"(B) 6 times the individual's average weekly benefit amount (as determined under subsection (b)(2) [probably should be "(b)(3)"]) for the benefit year.

"(2) EXTENDED BENEFIT PERIOD.—For purposes of paragraph (1), a State shall be considered to be in an extended benefit period, as of any given time, if—

"(A) such a period would then be in effect for such State under the Federal-State Extended Unemployment Compensation Act of 1970 [title II of Pub. L. 91–373, set out below] if section 203(d) of such Act—

"(i) were applied by substituting '6' for '5' each place it appears; and

"(ii) did not include the requirement under paragraph (1)(A) thereof; or

"(B) such a period would then be in effect for such State under such Act if—

"(i) section 203(f) of such Act were applied to such State (regardless of whether the State by law had provided for such application); and

"(ii) such section 203(f)—

"(I) were applied by substituting the applicable percentage under paragraph (3) for '6.5 percent' in paragraph (1)(A)(i) thereof; and

"(II) did not include the requirement under paragraph (1)(A)(ii) thereof.

"(3) APPLICABLE PERCENTAGE.—The applicable percentage under this paragraph is, for purposes of determining if a State is in an extended benefit period as of a date occurring in a week ending—

"(A) before June 1, 2012, 8.5 percent; and

"(B) after the last week under subparagraph (A), 9 percent.

"(4) LIMITATION.—The account of an individual may be augmented not more than once under this subsection.

"(5) SPECIAL RULES RELATING TO AMOUNTS ADDED TO AN ACCOUNT.—

"(A) MARCH TO MAY OF 2012.—

"(i) SPECIAL RULE.—Notwithstanding any provision of paragraph (1) but subject to the following 2 sentences, if augmentation under this subsection occurs as of a week ending after the date of enactment of this paragraph [Feb. 22, 2012] and before June 1, 2012 (or if, as of such date of enactment, any fourth-tier amounts remain in the individual's account)—

"(I) paragraph (1)(A) shall be applied by substituting '62 percent' for '24 percent'; and

"(II) paragraph (1)(B) shall be applied by substituting '16 times' for '6 times'.

The preceding sentence shall apply only if, at the time that the account would be augmented under this subparagraph, such individual's State is not in an extended benefit period as determined under the Federal-State Extended Unemployment Compensation Act of 1970 [title II of Pub. L. 91–373, set out below]. In no event shall the total amount added to the account of an individual under this subparagraph cause, in the case of an individual described in the parenthetical matter in the first sentence of this clause, the sum of the total amount previously added to such individual's account under this subsection (as in effect before the date of enactment of this paragraph) and any further amounts added as a result of the enactment of this clause, to exceed the total amount allowable under subclause (I) or (II), as the case may be.

"(ii) LIMITATION.—Notwithstanding any other provision of this title, the amounts added to the account of an individual under this subparagraph may not cause the sum of the amounts previously established in or added to such account, plus any weeks of extended benefits provided to such individual under the Federal-State Extended Unemployment Compensation Act of 1970 [title II of Pub. L. 91–373, set out below] (based on the same exhaustion of regular compensation under section 4001(b)(1)), to in the aggregate exceed the lesser of—

"(I) 282 percent of the total amount of regular compensation (including dependents' allowances) payable to the individual during the individual's benefit year under the State law; or

"(II) 73 times the individual's average weekly benefit amount (as determined under subsection (b)(3)) for the benefit year.

"(B) AFTER AUGUST OF 2012.—Notwithstanding any provision of paragraph (1), if augmentation under this subsection occurs as of a week ending after September 2, 2012—

"(i) paragraph (1)(A) shall be applied by substituting '39 percent' for '24 percent'; and

"(ii) paragraph (1)(B) shall be applied by substituting '10 times' for '6 times'.

"(f) COORDINATION RULES.—

"(1) COORDINATION WITH EXTENDED COMPENSATION.—Notwithstanding an election under section 4001(e) by a State to provide for the payment of emergency unemployment compensation prior to extended compensation, such State may pay extended compensation to an otherwise eligible individual prior to any emergency unemployment compensation under subsection (c), (d), or (e) (by reason of the amendments made by sections 2, 3, and 4 of the Worker, Homeownership, and Business Assistance Act of 2009 [Pub. L. 111–92]), if such individual claimed extended compensation for at least 1 week of unemployment after the exhaustion of emergency unemployment compensation under subsection (b) (as such subsection was in effect on the day before the date of the enactment of this subsection [Nov. 6, 2009]).

"(2) COORDINATION WITH TIERS II, III, AND IV.—If a State determines that implementation of the increased entitlement to second-tier emergency unemployment compensation by reason of the

amendments made by section 2 of the Worker, Homeownership, and Business Assistance Act of 2009 [Pub. L. 111–92] would unduly delay the prompt payment of emergency unemployment compensation under this title by reason of the amendments made by such Act, such State may elect to pay third-tier emergency unemployment compensation prior to the payment of such increased second-tier emergency unemployment compensation until such time as such State determines that such increased second-tier emergency unemployment compensation may be paid without such undue delay. If a State makes the election under the preceding sentence, then, for purposes of determining whether an account may be augmented for fourth-tier emergency unemployment compensation under subsection (e), such State shall treat the date of exhaustion of such increased second-tier emergency unemployment compensation as the date of exhaustion of third-tier emergency unemployment compensation, if such date is later than the date of exhaustion of the third-tier emergency unemployment compensation.

"(g) COORDINATION OF EMERGENCY UNEMPLOYMENT COMPENSATION WITH REGULAR COMPENSATION.—

"(1) If—

"(A) an individual has been determined to be entitled to emergency unemployment compensation with respect to a benefit year,

"(B) that benefit year has expired,

"(C) that individual has remaining entitlement to emergency unemployment compensation with respect to that benefit year, and

"(D) that individual would qualify for a new benefit year in which the weekly benefit amount of regular compensation is at least either $100 or 25 percent less than the individual's weekly benefit amount in the benefit year referred to in subparagraph (A),

then the State shall determine eligibility for compensation as provided in paragraph (2).

"(2) For individuals described in paragraph (1), the State shall determine whether the individual is to be paid emergency unemployment compensation or regular compensation for a week of unemployment using one of the following methods:

"(A) The State shall, if permitted by State law, establish a new benefit year, but defer the payment of regular compensation with respect to that new benefit year until exhaustion of all emergency unemployment compensation payable with respect to the benefit year referred to in paragraph (1)(A);

"(B) The State shall, if permitted by State law, defer the establishment of a new benefit year (which uses all the wages and employment which would have been used to establish a benefit year but for the application of this paragraph), until exhaustion of all emergency unemployment compensation payable with respect to the benefit year referred to in paragraph(1)(A);

"(C) The State shall pay, if permitted by State law—

"(i) regular compensation equal to the weekly benefit amount established under the new benefit year, and

"(ii) emergency unemployment compensation equal to the difference between that weekly benefit amount and the weekly benefit amount for the expired benefit year; or

"(D) The State shall determine rights to emergency unemployment compensation without regard to any rights to regular compensation if the individual elects to not file a claim for regular compensation under the new benefit year.

"PAYMENTS TO STATES HAVING AGREEMENTS FOR THE PAYMENT OF EMERGENCY UNEMPLOYMENT COMPENSATION

"SEC. 4003. (a) GENERAL RULE.—There shall be paid to each State that has entered into an agreement under this title an amount equal to 100 percent of the emergency unemployment compensation paid to individuals by the State pursuant to such agreement.

"(b) TREATMENT OF REIMBURSABLE COMPENSATION.—No payment shall be made to any State under this section in respect of any compensation to the extent the State is entitled to reimbursement in respect of such compensation under the provisions of any Federal law other than this title or chapter 85 of title 5, United States Code. A State shall not be entitled to any reimbursement under such chapter 85 in respect of any compensation to the extent the State is entitled to reimbursement under this title in respect of such compensation.

"(c) DETERMINATION OF AMOUNT.—Sums payable to any State by reason of such State having an agreement under this title shall be payable, either in advance or by way of reimbursement (as may be determined by the Secretary), in such amounts as the Secretary estimates the State will be entitled to receive under this title for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that the Secretary's estimates for any prior calendar month were greater or less than the

amounts which should have been paid to the State. Such estimates may be made on the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency of the State involved.

"FINANCING PROVISIONS

"SEC. 4004. (a) IN GENERAL.—Funds in the extended unemployment compensation account (as established by section 905(a) of the Social Security Act (42 U.S.C. 1105(a))[)] of the Unemployment Trust Fund (as established by section 904(a) of such Act (42 U.S.C. 1104(a))[)] shall be used for the making of payments to States having agreements entered into under this title.

"(b) CERTIFICATION.—The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this title. The Secretary of the Treasury, prior to audit or settlement by the Government Accountability Office, shall make payments to the State in accordance with such certification, by transfers from the extended unemployment compensation account (as so established) to the account of such State in the Unemployment Trust Fund (as so established).

"(c) ASSISTANCE TO STATES.—

"(1) ADMINISTRATION.—There are appropriated out of the employment security administration account (as established by section 901(a) of the Social Security Act (42 U.S.C. 1101(a))[)] of the Unemployment Trust Fund, without fiscal year limitation, such funds as may be necessary for purposes of assisting States (as provided in title III of the Social Security Act (42 U.S.C. 501 et seq.)) in meeting the costs of administration of agreements under this title.

"(2) REEMPLOYMENT SERVICES AND REEMPLOYMENT AND ELIGIBILITY ASSESSMENT ACTIVITIES.—

"(A) APPROPRIATION.—There are appropriated from the general fund of the Treasury, for the period of fiscal year 2012 through fiscal year 2014, out of the employment security administration account (as established by section 901(a) of the Social Security Act [42 U.S.C. 1101(a)]), such sums as determined by the Secretary of Labor in accordance with subparagraph (B) to assist States in providing reemployment services and reemployment and eligibility assessment activities described in section 4001(h)(2).

"(B) DETERMINATION OF TOTAL AMOUNT.—The amount referred to in subparagraph (A) is the amount the Secretary of Labor estimates is equal to—

"(i) the number of individuals who will receive reemployment services and reemployment eligibility and assessment activities described in section 4001(h)(2) in all States through the date specified in [former] section 4007(b)(3); multiplied by

"(ii) $85.

"(C) DISTRIBUTION AMONG STATES.—Of the amounts appropriated under subparagraph (A), the Secretary of Labor shall distribute amounts to each State, in accordance with section 4003(c), that the Secretary estimates is equal to—

"(i) the number of individuals who will receive reemployment services and reemployment and eligibility assessment activities described in section 4001(h)(2) in such State through the date specified in [former] section 4007(b)(3); multiplied by

"(ii) $85.

"(d) APPROPRIATIONS FOR CERTAIN PAYMENTS.—There are appropriated from the general fund of the Treasury, without fiscal year limitation, to the extended unemployment compensation account (as so established) of the Unemployment Trust Fund (as so established) such sums as the Secretary estimates to be necessary to make the payments under this section in respect of—

"(1) compensation payable under chapter 85 of title 5, United States Code; and

"(2) compensation payable on the basis of services to which section 3309(a)(1) of the Internal Revenue Code of 1986 applies.

Amounts appropriated pursuant to the preceding sentence shall not be required to be repaid.

"(e) TRANSFER OF FUNDS.—Notwithstanding any other provision of law, the Secretary of the Treasury shall transfer from the general fund of the Treasury (from funds not otherwise appropriated)—

"(1) to the extended unemployment compensation account (as established by section 905 of the Social Security Act [42 U.S.C. 1105]) such sums as the Secretary of Labor estimates to be necessary to make payments to States under this title by reason of—

"(A) the amendments made by section 2001(a) of the Assistance for Unemployed Workers and Struggling Families Act [title II of div. B of Pub. L. 111–5];

"(B) the amendments made by sections 2 through 4 of the Worker, Homeownership, and Business Assistance Act of 2009 [Pub. L. 111–92];

"(C) the amendments made by section 1009(a)(1) of the Department of Defense Appropriations Act, 2010 [Pub. L. 111–118];

"(D) the amendments made by section 2(a)(1) of the Temporary Extension Act of 2010 [Pub. L. 111–144];

"(E) the amendments made by section 2(a)(1) of the Continuing Extension Act of 2010 [Pub. L. 111–157];

"(F) the amendments made by section 2(a)(1) of the Unemployment Compensation Extension Act of 2010 [Pub. L. 111–205];

"(G) the amendments made by section 501(a)(1) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 [Pub. L. 111–312];

"(H) the amendments made by section 201(a)(1) of the Temporary Payroll Tax Cut Continuation Act of 2011 [Pub. L. 112–78];

"(I) the amendments made by section 2122 of the Unemployment Benefits Extension Act of 2012 [Pub. L. 112–96]; and

"(J) the amendments made by section 501(a) of the American Taxpayer Relief Act of 2012 [Pub. L. 112–240];

"(2) to the employment security administration account (as established by section 901 of the Social Security Act [42 U.S.C. 1101]) such sums as the Secretary of Labor estimates to be necessary for purposes of assisting States in meeting administrative costs by reason of the amendments referred to in paragraph (1); and

"(3) to the Employment Security Administration account (as established by section 901(a) of the Social Security Act [42 U.S.C. 1101(a)]) such sums as the Secretary of Labor determines to be necessary in accordance with subsection (c)(2) to assist States in providing reemployment services and reemployment eligibility and assessment activities described in section 4001(h)(2).

There are appropriated from the general fund of the Treasury, without fiscal year limitation, the sums referred to in the preceding sentence and such sums shall not be required to be repaid.

"FRAUD AND OVERPAYMENTS

"SEC. 4005. (a) IN GENERAL.—If an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received an amount of emergency unemployment compensation under this title to which such individual was not entitled, such individual—

"(1) shall be ineligible for further emergency unemployment compensation under this title in accordance with the provisions of the applicable State unemployment compensation law relating to fraud in connection with a claim for unemployment compensation; and

"(2) shall be subject to prosecution under section 1001 of title 18, United States Code.

"(b) REPAYMENT.—In the case of individuals who have received amounts of emergency unemployment compensation under this title to which they were not entitled, the State shall require such individuals to repay the amounts of such emergency unemployment compensation to the State agency, except that the State agency may waive such repayment if it determines that—

"(1) the payment of such emergency unemployment compensation was without fault on the part of any such individual; and

"(2) such repayment would be contrary to equity and good conscience.

"(c) RECOVERY BY STATE AGENCY.—

"(1) IN GENERAL.—The State agency shall recover the amount to be repaid, or any part thereof, by deductions from any emergency unemployment compensation payable to such individual under this title or from any unemployment compensation payable to such individual under any State or Federal unemployment compensation law administered by the State agency or under any other State or Federal law administered by the State agency which provides for the payment of any assistance or allowance with respect to any week of unemployment, during the 3-year period after the date such individuals received the payment of the emergency unemployment compensation to which they were not entitled, in accordance with the same procedures as apply to the recovery of overpayments of regular unemployment benefits paid by the State.

"(2) OPPORTUNITY FOR HEARING.—No repayment shall be required, and no deduction shall be made, until a determination has been made, notice thereof and an opportunity for a fair hearing has been given to the individual, and the determination has become final.

"(d) REVIEW.—Any determination by a State agency under this section shall be subject to review in the

same manner and to the same extent as determinations under the State unemployment compensation law, and only in that manner and to that extent.

"DEFINITIONS

"SEC. 4006. In this title, the terms 'compensation', 'regular compensation', 'extended compensation', 'benefit year', 'base period', 'State', 'State agency', 'State law', and 'week' have the respective meanings given such terms under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 [Pub. L. 91–373] (26 U.S.C. 3304 note).

"APPLICABILITY

"SEC. 4007. (a) IN GENERAL.—An agreement entered into under this title shall apply to weeks of unemployment—

"(1) beginning after the date on which such agreement is entered into; and

"(2) ending on or before January 1, 2014.

"(b) TERMINATION.—No compensation under this title shall be payable for any week subsequent to the last week described in subsection (a)."

[Pub. L. 112–240, title V, §501(c), Jan. 2, 2013, 126 Stat. 2344, provided that: "The amendments made by this section [amending sections 4004 and 4007 of Pub. L. 110–252, set out above] shall take effect as if included in the enactment of the Unemployment Benefits Extension Act of 2012 ([subtitle B of title II of] Public Law 112–96)".]

[Pub. L. 112–240, title V, §503(b), Jan. 2, 2013, 126 Stat. 2344, provided that: "The amendments made by this section [amending section 4004 of Pub. L. 110–252, set out above] shall take effect as if included in the enactment of the Unemployment Benefits Extension Act of 2012 ([subtitle B of title II of] Public Law 112–96)."]

[Pub. L. 112–96, title II, §2122(f), Feb. 22, 2012, 126 Stat. 166, provided that:

["(1) IN GENERAL.—The amendments made by subsections (b), (c), and (d) [amending sections 4001 and 4002 of Pub. L. 110–252, set out above] shall take effect as of February 28, 2012, and shall apply with respect to weeks of unemployment beginning after that date.

["(2) WEEK DEFINED.—For purposes of this subsection, the term 'week' has the meaning given such term under section 4006 of the Supplemental Appropriations Act, 2008 [Pub. L. 110–252, set out above]."]

[Pub. L. 112–96, title II, §2142(b), Feb. 22, 2012, 126 Stat. 169, provided that: "Not later than 30 days after the date of enactment of this Act [Feb. 22, 2012], the Secretary shall issue guidance on the implementation of the reemployment services and reemployment and eligibility assessment activities required to be provided under the amendment made by subsection (a) [amending section 4001 of Pub. L. 110–252, set out above]."]

[Pub. L. 112–96, §2142(c)(2)(A), which directed amendment of section 4004(e)(1)(G) of Pub. L. 110–252, set out above, by striking out "and" at the end, could not be executed because of the prior identical amendment by Pub. L. 112–96, §2122(e)(1).]

[Pub. L. 112–96, §2142(c)(2)(C), which directed amendment of section 4004(e) of Pub. L. 110–252, set out above, by adding par. (3) "at the end", was executed by adding par. (3) after par. (2), to reflect the probable intent of Congress.]

[Pub. L. 112–96, title II, §2144, Feb. 22, 2012, 126 Stat. 171, provided that: "Subsection (g) of section 4001 of the Supplemental Appropriations Act, 2008 (Public Law 110–252; 26 U.S.C. 3304 note) shall not apply with respect to a State that has enacted a law before March 1, 2012, that, upon taking effect, would violate such subsection."]

[Amendment by section 201(a)(1), (b) of Pub. L. 112–78 to sections 4004 and 4007 of Pub. L. 110–252, set out above, effective as if included in the enactment of Pub. L. 111–312, see section 201(c) of Pub. L. 112–78, set out following section 2005 of Pub. L. 111–5 above.]

[Amendment by section 501(a)(1), (b) of Pub. L. 111–312 to sections 4004 and 4007 of Pub. L. 110–252, set out above, effective as if included in the enactment of Pub. L. 111–205, see section 501(c) of Pub. L. 111–312, set out following section 2005 of Pub. L. 111–5 above.]

[Amendment by section 2(a)(1), (b), (c) of Pub. L. 111–205 to sections 4001, 4004, and 4007 of Pub. L. 110–252, set out above, effective as if included in Pub. L. 111–157, see section 2(d) of Pub. L. 111–205, set out following section 2005 of Pub. L. 111–5 above.]

[Pub. L. 111–205, §3(b), July 22, 2010, 124 Stat. 2238, provided that: "The amendment made by this section [amending section 4002 of Pub. L. 110–252, set out above] shall apply to individuals whose benefit years, as described in section 4002(g)(1)(B) [of] the Supplemental Appropriations Act, 2008 (Public Law 110–252; 26 U.S.C. 3304 note), as amended by this section, expire after the date of enactment of this Act [July 22, 2010]."]

[Amendment by section 2(a)(1), (b) of Pub. L. 111–157 to sections 4004 and 4007 of Pub. L. 110–252, set out above, effective as if included in the enactment of Pub. L. 111–144, see section 2(c) of Pub. L. 111–157, set out following section 2002 of Pub. L. 111–5 above.]

[Pub. L. 111–92, §2(b), Nov. 6, 2009, 123 Stat. 2984, provided that: "The amendments made by this section [amending section 4002 of Pub. L. 110–252, set out above] shall apply as if included in the enactment of the Supplemental Appropriations Act, 2008 [Pub. L. 110–252], except that no amount shall be payable by virtue of such amendments with respect to any week of unemployment commencing before the date of the enactment of this Act [Nov. 6, 2009]."]

[Pub. L. 111–92, §3(c), Nov. 6, 2009, 123 Stat. 2985, provided that: "The amendments made by this section [amending sections 4002 and 4007 of Pub. L. 110–252, set out above] shall apply as if included in the enactment of the Supplemental Appropriations Act, 2008 [Pub. L. 110–252], except that no amount shall be payable by virtue of such amendments with respect to any week of unemployment commencing before the date of the enactment of this Act [Nov. 6, 2009]."]

[Pub. L. 111–92, §4(c), Nov. 6, 2009, 123 Stat. 2986, provided that: "The amendments made by this section [amending sections 4002 and 4007 of Pub. L. 110–252, set out above] shall apply as if included in the enactment of the Supplemental Appropriations Act, 2008 [Pub. L. 110–252], except that no amount shall be payable by virtue of such amendments with respect to any week of unemployment commencing before the date of the enactment of this Act [Nov. 6, 2009]."]

[Pub. L. 110–449, §6, Nov. 21, 2008, 122 Stat. 5015, provided that:

["(a) IN GENERAL.—The amendments made by sections 2, 3, and 4 [amending title IV of Pub. L. 110–252, set out as a note above] shall apply as if included in the enactment of the Supplemental Appropriations Act, 2008 [Pub. L. 110–252], subject to subsection (b).

["(b) ADDITIONAL BENEFITS.—In applying the amendments made by sections 2 and 3, any additional emergency unemployment compensation made payable by such amendments (which would not otherwise have been payable if such amendments had not been enacted) shall be payable only with respect to any week of unemployment beginning on or after the date of the enactment of this Act [Nov. 21, 2008]."]

ADDITIONAL TEMPORARY EXTENDED UNEMPLOYMENT COMPENSATION FOR DISPLACED AIRLINE RELATED WORKERS

Pub. L. 108–11, title IV, §4002, Apr. 16, 2003, 117 Stat. 607, provided that:

"(a) DEFINITIONS.—For purposes of this section—

"(1) the term 'eligible individual' means an individual whose eligibility for temporary extended unemployment compensation under the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107–147; 116 Stat. 21) [title II of Pub. L. 107–147, set out as a note below], as amended by Public Law 108–1 (117 Stat. 3), is or would be based on the exhaustion of regular compensation under State law, entitlement to which was based in whole or in part on qualifying employment performed during such individual's base period;

"(2) the term 'qualifying employment', with respect to an eligible individual, means employment—

"(A) with an air carrier, employment at a facility at an airport, or with an upstream producer or supplier for an air carrier; and

"(B) as determined by the Secretary, separation from which was due, in whole or in part, to—

"(i) reductions in service by an air carrier as a result of a terrorist action or security measure;

"(ii) a closure of an airport in the United States as a result of a terrorist action or security measure; or

"(iii) a military conflict with Iraq that has been authorized by Congress;

"(3) the term 'air carrier' means an air carrier that holds a certificate issued under chapter 411 of title 49, United States Code;

"(4) the term 'upstream producer' means a firm that performs additional, value-added, production processes, including firms that perform final assembly, finishing, or packaging of articles, for another firm;

"(5) the term 'supplier' means a firm that produces component parts for, or articles and contract services considered to be a part of the production process or services for, another firm;

"(6) the term 'Secretary' means the Secretary of Labor; and

"(7) the term 'terrorist action or security measure' means a terrorist attack on the United States on September 11, 2001, or a security measure taken in response to such attack.

"(b) ADDITIONAL TEMPORARY EXTENDED UNEMPLOYMENT COMPENSATION FOR ELIGIBLE INDIVIDUAL.—In the case of an eligible individual, the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107–147; 116 Stat. 21), as amended by Public Law 108–1 (117 Stat. 3), shall be applied as if it had been amended in accordance with subsection (c).

"(c) MODIFICATIONS.—

"(1) IN GENERAL.—For purposes of subsection (b), the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107–147; 116 Stat. 21), as amended by Public Law 108–1 (117 Stat. 3), shall be treated as if it had been amended as provided in this subsection.

"(2) PROGRAM EXTENSION.—Deem section 208 of the Temporary Extended Unemployment Compensation Act of 2002, as amended by Public Law 108–1 (117 Stat. 3), to be amended to read as follows:

" 'SEC. 208. APPLICABILITY.

" '(a) IN GENERAL.—Subject to subsection (b), an agreement entered into under this title shall apply to weeks of unemployment—

" '(1) beginning after the date on which such agreement is entered into; and

" '(2) ending before December 29, 2003.

" '(b) TRANSITION FOR AMOUNT REMAINING IN ACCOUNT.—

" '(1) IN GENERAL.—Subject to paragraph (2), in the case of an individual who has amounts remaining in an account established under section 203 as of December 28, 2003, temporary extended unemployment compensation shall continue to be payable to such individual from such amounts for any week beginning after such date for which the individual meets the eligibility requirements of this title, including such compensation payable by reason of amounts deposited in such account after such date pursuant to the application of subsection (c) of such section.

" '(2) LIMITATION.—No compensation shall be payable by reason of paragraph (1) for any week beginning after December 26, 2004.'.

"(3) ADDITIONAL WEEKS OF BENEFITS.—Deem section 203 of the Temporary Extended Unemployment Compensation Act of 2002, as amended by Public Law 108–1 (117 Stat. 3), to be amended—

"(A) in subsection (b)(1)—

"(i) in subparagraph (A), by striking '50' and inserting '150'; and

"(ii) by striking '13' and inserting '39'; and

"(B) in subsection (c)(1), by inserting '1/3 of' after 'equal to'.

"(4) EFFECTIVE DATE OF MODIFICATIONS DESCRIBED IN PARAGRAPH (3).—

"(A) IN GENERAL.—The amendments described in paragraph (3)—

"(i) shall be deemed to have taken effect as if included in the enactment of the Temporary Extended Unemployment Compensation Act of 2002; but

"(ii) shall be treated as applying only with respect to weeks of unemployment beginning on or after the date of enactment of this Act [Apr. 16, 2003], subject to subparagraph (B).

"(B) SPECIAL RULES.—In the case of an eligible individual for whom a temporary extended unemployment account was established before the date of enactment of this Act [Apr. 16, 2003], the Temporary Extended Unemployment Compensation Act of 2002 (as amended by this section) shall be applied subject to the following:

"(i) Any amounts deposited in the individual's temporary extended unemployment compensation account by reason of section 203(c) of such Act (commonly known as 'TEUC–X amounts') before the date of enactment of this Act [Apr. 16, 2003] shall be treated as amounts deposited by reason of section 203(b) of such Act (commonly known as 'TEUC amounts'), as deemed to have been amended by paragraph (3)(A).

"(ii) For purposes of determining whether the individual is eligible for any TEUC–X amounts under such Act, as deemed to be amended by this subsection—

"(I) any determination made under section 203(c) of such Act before the application of the amendment described in paragraph (3)(B) shall be disregarded; and

"(II) any such determination shall instead be made by applying section 203(c) of such Act, as deemed to be amended by paragraph (3)(B), as of the time that all amounts established in such account in accordance with section 203(b) of such Act (as deemed to be amended under this subsection, and including any amounts described in clause (i)) are in fact exhausted."

TEMPORARY EXTENDED UNEMPLOYMENT COMPENSATION

Pub. L. 107–147, title II, Mar. 9, 2002, 116 Stat. 26, as amended by Pub. L. 108–1, §1(a), Jan. 8, 2003, 117 Stat. 3; Pub. L. 108–26, §2(a), May 28, 2003, 117 Stat. 751; Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814, provided that:

"SEC. 201. SHORT TITLE.

"This title may be cited as the 'Temporary Extended Unemployment Compensation Act of 2002'.

"SEC. 202. FEDERAL-STATE AGREEMENTS.

"(a) IN GENERAL.—Any State which desires to do so may enter into and participate in an agreement under this title with the Secretary of Labor (in this title referred to as the 'Secretary'). Any State which is a party to an agreement under this title may, upon providing 30 days' written notice to the Secretary, terminate such agreement.

"(b) PROVISIONS OF AGREEMENT.—Any agreement under subsection (a) shall provide that the State agency of the State will make payments of temporary extended unemployment compensation to individuals who—

"(1) have exhausted all rights to regular compensation under the State law or under Federal law with respect to a benefit year (excluding any benefit year that ended before March 15, 2001);

"(2) have no rights to regular compensation or extended compensation with respect to a week under such law or any other State unemployment compensation law or to compensation under any other Federal law;

"(3) are not receiving compensation with respect to such week under the unemployment compensation law of Canada; and

"(4) filed an initial claim for regular compensation on or after March 15, 2001.

"(c) EXHAUSTION OF BENEFITS.—For purposes of subsection (b)(1), an individual shall be deemed to have exhausted such individual's rights to regular compensation under a State law when—

"(1) no payments of regular compensation can be made under such law because such individual has received all regular compensation available to such individual based on employment or wages during such individual's base period; or

"(2) such individual's rights to such compensation have been terminated by reason of the expiration of the benefit year with respect to which such rights existed.

"(d) WEEKLY BENEFIT AMOUNT, ETC.—For purposes of any agreement under this title—

"(1) the amount of temporary extended unemployment compensation which shall be payable to any individual for any week of total unemployment shall be equal to the amount of the regular compensation (including dependents' allowances) payable to such individual during such individual's benefit year under the State law for a week of total unemployment;

"(2) the terms and conditions of the State law which apply to claims for regular compensation and to the payment thereof shall apply to claims for temporary extended unemployment compensation and the payment thereof, except—

"(A) that an individual shall not be eligible for temporary extended unemployment compensation under this title unless, in the base period with respect to which the individual exhausted all rights to regular compensation under the State law, the individual had 20 weeks of full-time insured employment or the equivalent in insured wages, as determined under the provisions of the State law implementing section 202(a)(5) of the Federal-State Extended Unemployment Compensation Act of 1970 [Pub. L. 91–373] (26 U.S.C. 3304 note); and

"(B) where otherwise inconsistent with the provisions of this title or with the regulations or operating instructions of the Secretary promulgated to carry out this title; and

"(3) the maximum amount of temporary extended unemployment compensation payable to any individual for whom a temporary extended unemployment compensation account is established under section 203 shall not exceed the amount established in such account for such individual.

"(e) ELECTION BY STATES.—Notwithstanding any other provision of Federal law (and if State law permits), the Governor of a State that is in an extended benefit period may provide for the payment of temporary extended unemployment compensation in lieu of extended compensation to individuals who otherwise meet the requirements of this section. Such an election shall not require a State to trigger off an extended benefit period.

"SEC. 203. TEMPORARY EXTENDED UNEMPLOYMENT COMPENSATION ACCOUNT.

"(a) IN GENERAL.—Any agreement under this title shall provide that the State will establish, for each eligible individual who files an application for temporary extended unemployment compensation, a temporary extended unemployment compensation account with respect to such individual's benefit year.

"(b) AMOUNT IN ACCOUNT.—

"(1) IN GENERAL.—The amount established in an account under subsection (a) shall be equal to the lesser of—

"(A) 50 percent of the total amount of regular compensation (including dependents' allowances) payable to the individual during the individual's benefit year under such law, or

"(B) 13 times the individual's average weekly benefit amount for the benefit year.

"(2) WEEKLY BENEFIT AMOUNT.—For purposes of this subsection, an individual's weekly benefit amount for any week is the amount of regular compensation (including dependents' allowances) under the State law payable to such individual for such week for total unemployment.

"(c) SPECIAL RULE.—

"(1) IN GENERAL.—Notwithstanding any other provision of this section, if, at the time that the individual's account is exhausted, such individual's State is in an extended benefit period (as determined under paragraph (2)), then, such account shall be augmented by an amount equal to the amount originally established in such account (as determined under subsection (b)(1)).

"(2) EXTENDED BENEFIT PERIOD.—For purposes of paragraph (1), a State shall be considered to be in an extended benefit period if, at the time of exhaustion (as described in paragraph (1))—

"(A) such a period is then in effect for such State under the Federal-State Extended Unemployment Compensation Act of 1970 [title II of Pub. L. 91–373]; or

"(B) such a period would then be in effect for such State under such Act if section 203(d) of such Act were applied as if it had been amended by striking '5' each place it appears and inserting '4'.

"SEC. 204. PAYMENTS TO STATES HAVING AGREEMENTS FOR THE PAYMENT OF TEMPORARY EXTENDED UNEMPLOYMENT COMPENSATION.

"(a) GENERAL RULE.—There shall be paid to each State that has entered into an agreement under this title an amount equal to 100 percent of the temporary extended unemployment compensation paid to individuals by the State pursuant to such agreement.

"(b) TREATMENT OF REIMBURSABLE COMPENSATION.—No payment shall be made to any State under this section in respect of any compensation to the extent the State is entitled to reimbursement in respect of such compensation under the provisions of any Federal law other than this title or chapter 85 of title 5, United States Code. A State shall not be entitled to any reimbursement under such chapter 85 in respect of any compensation to the extent the State is entitled to reimbursement under this title in respect of such compensation.

"(c) DETERMINATION OF AMOUNT.—Sums payable to any State by reason of such State having an agreement under this title shall be payable, either in advance or by way of reimbursement (as may be determined by the Secretary), in such amounts as the Secretary estimates the State will be entitled to receive under this title for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that the Secretary's estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made on the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency of the State involved.

"SEC. 205. FINANCING PROVISIONS.

"(a) IN GENERAL.—Funds in the extended unemployment compensation account (as established by section 905(a) of the Social Security Act (42 U.S.C. 1105(a)) of the Unemployment Trust Fund (as established by section 904(a) of such Act (42 U.S.C. 1104(a)) shall be used for the making of payments to States having agreements entered into under this title.

"(b) CERTIFICATION.—The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this title. The Secretary of the Treasury, prior to audit or settlement by the Government Accountability Office, shall make payments to the State in accordance with such certification, by transfers from the extended unemployment compensation account (as so established) to the account of such State in the Unemployment Trust Fund (as so established).

"(c) ASSISTANCE TO STATES.—There are appropriated out of the employment security administration account (as established by section 901(a) of the Social Security Act (42 U.S.C. 1101(a)) of the Unemployment Trust Fund, without fiscal year limitation, such funds as may be necessary for purposes of assisting States (as provided in title III of the Social Security Act (42 U.S.C. 501 et seq.)) in meeting the costs of administration of agreements under this title.

"(d) APPROPRIATIONS FOR CERTAIN PAYMENTS.—There are appropriated from the general fund of the Treasury, without fiscal year limitation, to the extended unemployment compensation account (as so established) of the Unemployment Trust Fund (as so established) such sums as the Secretary estimates to be necessary to make the payments under this section in respect of—

"(1) compensation payable under chapter 85 of title 5, United States Code; and

"(2) compensation payable on the basis of services to which section 3309(a)(1) of the Internal Revenue Code of 1986 applies.

Amounts appropriated pursuant to the preceding sentence shall not be required to be repaid.

"SEC. 206. FRAUD AND OVERPAYMENTS.

"(a) IN GENERAL.—If an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received an amount of temporary extended unemployment compensation under this title to which he was not entitled, such individual—

"(1) shall be ineligible for further temporary extended unemployment compensation under this title in accordance with the provisions of the applicable State unemployment compensation law relating to fraud in connection with a claim for unemployment compensation; and

"(2) shall be subject to prosecution under section 1001 of title 18, United States Code.

"(b) REPAYMENT.—In the case of individuals who have received amounts of temporary extended unemployment compensation under this title to which they were not entitled, the State shall require such individuals to repay the amounts of such temporary extended unemployment compensation to the State agency, except that the State agency may waive such repayment if it determines that—

"(1) the payment of such temporary extended unemployment compensation was without fault on the part of any such individual; and

"(2) such repayment would be contrary to equity and good conscience.

"(c) RECOVERY BY STATE AGENCY.—

"(1) IN GENERAL.—The State agency may recover the amount to be repaid, or any part thereof, by deductions from any temporary extended unemployment compensation payable to such individual under this title or from any unemployment compensation payable to such individual under any Federal unemployment compensation law administered by the State agency or under any other Federal law administered by the State agency which provides for the payment of any assistance or allowance with respect to any week of unemployment, during the 3-year period after the date such individuals received the payment of the temporary extended unemployment compensation to which they were not entitled, except that no single deduction may exceed 50 percent of the weekly benefit amount from which such deduction is made.

"(2) OPPORTUNITY FOR HEARING.—No repayment shall be required, and no deduction shall be made, until a determination has been made, notice thereof and an opportunity for a fair hearing has been given to the individual, and the determination has become final.

"(d) REVIEW.—Any determination by a State agency under this section shall be subject to review in the same manner and to the same extent as determinations under the State unemployment compensation law, and only in that manner and to that extent.

"SEC. 207. DEFINITIONS.

"In this title, the terms 'compensation', 'regular compensation', 'extended compensation', 'additional compensation', 'benefit year', 'base period', 'State', 'State agency', 'State law', and 'week' have the respective meanings given such terms under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 [Pub. L. 91–373] (26 U.S.C. 3304 note).

"SEC. 208. APPLICABILITY.

"(a) IN GENERAL.—Except as provided in subsection (b), an agreement entered into under this title shall apply to weeks of unemployment—

"(1) beginning after the date on which such agreement is entered into; and

"(2) ending on or before December 31, 2003.

"(b) TRANSITION FOR AMOUNT REMAINING IN ACCOUNT.—

"(1) IN GENERAL.—Subject to paragraphs (2) and (3), in the case of an individual who has amounts remaining in an account established under section 203 as of December 31, 2003, temporary extended unemployment compensation shall continue to be payable to such individual from such amounts for any week beginning after such date for which the individual meets the eligibility requirements of this title.

"(2) NO AUGMENTATION AFTER DECEMBER 31, 2003.—If the account of an individual is exhausted after December 31, 2003, then section 203(c) shall not apply and such account shall not be augmented under such section, regardless of whether such individual's State is in an extended benefit period (as determined under paragraph (2) of such section).

"(3) LIMITATION.—No compensation shall be payable by reason of paragraph (1) for any week beginning after March 31, 2004.

"SEC. 209. SPECIAL REED ACT TRANSFER IN FISCAL YEAR 2002.

"(a) REPEAL OF CERTAIN PROVISIONS ADDED BY THE BALANCED BUDGET ACT OF 1997.—

"(1) IN GENERAL.—[Amended section 1103 of Title 42, The Public Health and Welfare.]

"(2) SAVINGS PROVISION.—Any amounts transferred before the date of enactment of this Act [Mar. 9, 2002] under the provision repealed by paragraph (1)(A) [amending section 1103 of Title 42] shall remain subject to section 903 of the Social Security Act [42 U.S.C. 1103], as last in effect before such date of enactment.

"(b) SPECIAL TRANSFER IN FISCAL YEAR 2002.—[Amended section 1103 of Title 42.]

"(c) LIMITATIONS ON TRANSFERS.—Section 903(b) of the Social Security Act [42 U.S.C. 1103(b)] shall apply to transfers under section 903(d) of such Act (as amended by this section). For purposes of the preceding sentence, such section 903(b) shall be deemed to be amended as follows:

"(1) By substituting 'the transfer date described in subsection (d)(5)' for 'October 1 of any fiscal year'.

"(2) By substituting 'remain in the Federal unemployment account' for 'be transferred to the Federal unemployment account as of the beginning of such October 1'.

"(3) By substituting 'fiscal year 2002 (after the transfer date described in subsection (d)(5))' for 'the fiscal year beginning on such October 1'.

"(4) By substituting 'under subsection (d)' for 'as of October 1 of such fiscal year'.

"(5) By substituting '(as of the close of fiscal year 2002)' for '(as of the close of such fiscal year)'.

"(d) TECHNICAL AMENDMENTS.—

"(1) [Amended sections 3304 and 3306 of this title.]

"(2) [Amended section 503 of Title 42.]

"(e) REGULATIONS.—The Secretary of Labor may prescribe any operating instructions or regulations necessary to carry out this section and the amendments made by this section."

[Pub. L. 108–26, §2(b), May 28, 2003, 117 Stat. 751, provided that: "The amendments made by this section [amending section 208 of Pub. L. 107–147, set out above] shall take effect as if included in the enactment of the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107–147 [title II]; 116 Stat. 21 [26])."]

[Pub. L. 108–1, §1(b), Jan. 8, 2003, 117 Stat. 4, provided that: "The amendment made by this section [amending section 208 of Pub. L. 107–147, set out above] shall take effect as if included in the enactment of the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107–147 [title II]; 116 Stat. 21 [26])."]

PROFILING OF NEW CLAIMANTS FOR REGULAR UNEMPLOYMENT COMPENSATION

Pub. L. 103–6, §4, Mar. 4, 1993, 107 Stat. 34, directed Secretary of Labor to establish program for encouraging adoption and implementation by all States of system of profiling all new claimants for regular unemployment compensation to determine which claimants might be likely to exhaust regular unemployment compensation and might need reemployment assistance services, directed Secretary to provide technical assistance and advice to States in development of model profiling systems and procedures for such systems and to provide to each State, from funds available for this purpose, such funds as determined necessary, and directed Secretary to report to Congress on operation and effectiveness of profiling systems adopted by States along with continuation and legislative recommendations, prior to repeal by Pub. L. 103–152, §4(e), Nov. 24, 1993, 107 Stat. 1518.

TREATMENT OF PERSIAN GULF CRISIS RESERVISTS

Pub. L. 102–318, title I, §104, July 3, 1992, 106 Stat. 293, provided that: "If—

"(1) an individual who was a member of a reserve component of the Armed Forces was called for active duty after August 2, 1990, and before March 1, 1991,

"(2) such individual was receiving regular compensation, extended compensation, or a trade readjustment allowance for the week in which he was so called,

"(3) such individual served on such active duty for at least 90 consecutive days, and

"(4) such individual was entitled to regular compensation on the basis of his services on such active duty, but the weekly benefit amount was less than the benefit amount he received for the week referred to in paragraph (2),

such individual's weekly benefit amount under the Emergency Unemployment Compensation Act of 1991 [see section 101(d) of Pub. L. 102–164, formerly set out below] for any week beginning after the date of the enactment of this Act [July 3, 1992] shall be not less than the benefit amount he received for the week referred to in paragraph (2)."

STUDY AND REPORT BY FEDERAL ADVISORY COUNCIL ON SUSPENSION OF ELIGIBILITY REQUIREMENTS FOR UNEMPLOYMENT BENEFITS

Pub. L. 102–318, title II, §202(b)(2), July 3, 1992, 106 Stat. 297, directed Federal Advisory Council

established under 42 U.S.C. 1108 to conduct a study of the provisions suspended by the amendment made by section 202(b)(1) of Pub. L. 102–318, enacting section 202(a)(7) of Pub. L. 91–373, set out below, and to submit, not later than Feb. 1, 1994, to Committee on Ways and Means of House of Representatives and Committee on Finance of Senate, a report of its recommendations on such suspended provisions.

INFORMATION REQUIRED WITH RESPECT TO TAXATION OF UNEMPLOYMENT BENEFITS

Pub. L. 102–318, title III, §301, July 3, 1992, 106 Stat. 297, provided that:

"(a) INFORMATION ON UNEMPLOYMENT BENEFITS.—

"(1) GENERAL RULE.—The State agency in each State shall provide to an individual filing a claim for compensation under the State unemployment compensation law a written explanation of the Federal and State income taxation of unemployment benefits and of the requirements to make payments of estimated Federal and State income taxes.

"(2) STATE AGENCY.—For purposes of this subsection, the term 'State agency' has the meaning given such term by section 3306(e) of the Internal Revenue Code of 1986.

"(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 1992."

EMERGENCY UNEMPLOYMENT COMPENSATION ACT OF 1991

Pub. L. 102–164, §1, titles I, II, Nov. 15, 1991, 105 Stat. 1049, 1056, as amended by Pub. L. 102–182, §3(a)(1)–(6), Dec. 4, 1991, 105 Stat. 1234; Pub. L. 102–244, §§1(a), (b), 2, Feb. 7, 1992, 106 Stat. 3, 4; Pub. L. 102–318, title I, §§101(a)–(d), 102(a), 103(a), 107, July 3, 1992, 106 Stat. 290–293, 295; Pub. L. 103–6, §2(a)–(c), Mar. 4, 1993, 107 Stat. 33; Pub. L. 103–152, §§2(a)–(d), 3(a), Nov. 24, 1993, 107 Stat. 1516, 1517, known as the "Emergency Unemployment Compensation Act of 1991", established an emergency unemployment compensation program for individuals eligible during the period of Nov. 17, 1991, to Feb. 5, 1994, and directed the Secretary of Labor to carry out a job search assistance demonstration program with a final report to Congress on the effectiveness of the demonstration program due not later than 5 years after the commencement of the program.

DETERMINATION OF AMOUNT OF FEDERAL SHARE WITH RESPECT TO CERTAIN EXTENDED BENEFITS PAYMENTS

Pub. L. 100–203, title IX, §9151, Dec. 22, 1987, 101 Stat. 1330–322, provided that: "For the purpose of determining the amount of the Federal payment to any State under section 204(a)(1) of the Federal-State Extended Unemployment Compensation Act of 1970 [Pub. L. 91–373, set out below] with respect to the implementation of paragraph (3) of section 202(a) of such Act [section 202(a) of Pub. L. 91–373, set out below] (as added by section 1024(a) of the Omnibus Reconciliation Act of 1980 [Pub. L. 96–499]), such paragraph shall be considered to apply only with respect to weeks of unemployment beginning after October 31, 1981, except that for any State in which the State legislature did not meet in 1981, it shall be considered to apply for such purpose only with respect to weeks of unemployment beginning after October 31, 1982."

DEMONSTRATION PROGRAM TO PROVIDE SELF-EMPLOYMENT ALLOWANCES FOR ELIGIBLE INDIVIDUALS

Pub. L. 100–203, title IX, §9152, Dec. 22, 1987, 101 Stat. 1330–322, as amended by Pub. L. 100–647, title VIII, §8301, Nov. 10, 1988, 102 Stat. 3798, provided that:

"(a) IN GENERAL.—The Secretary of Labor (hereinafter in this section referred to as the 'Secretary') shall carry out a demonstration program under this section for the purpose of making available self-employment allowances to eligible individuals. To carry out such program, the Secretary shall enter into agreements with three States that—

"(1) apply to participate in such program, and

"(2) demonstrate to the Secretary that they are capable of implementing the provisions of the agreement.

"(b) SELECTION OF STATES.—(1) In determining whether to enter into an agreement with a State under this section, the Secretary shall take into consideration at least—

"(A) the availability and quality of technical assistance currently provided by agencies of the State to the self-employed;

"(B) existing local market conditions and the business climate for new, small business enterprises in the State;

"(C) the adequacy of State resources to carry out a regular unemployment compensation program and a program under this section;

"(D) the range and extent of specialized services to be provided by the State to individuals covered by such an agreement;

"(E) the design of the evaluation to be applied by the State to the program; and

"(F) the standards which are to be utilized by the State for the purpose of assuring that individuals who will receive self-employment assistance under this section will have sufficient experience (or training) and ability to be self employed.

"(2) The Secretary may not enter into an agreement with any State under this section unless the Secretary makes a determination that the State's unemployment compensation program has adequate reserves.

"(c) PROVISIONS OF AGREEMENTS.—Any agreement entered into with a State under this section shall provide that—

"(1) each individual who is an eligible individual with respect to any benefit year beginning during the three-year period commencing on the date on which such agreement is entered into shall receive a self-employment allowance;

"(2) self-employment allowances made to any individual under this section shall be made in the same amount, on the same terms, and subject to the same conditions as regular or extended unemployment compensation, as the case may be, paid by such State; except that—

"(A) State and Federal requirements relating to availability for work, active search for work, or refusal to accept suitable work shall not apply to such individual; and

"(B) such individual shall be considered to be unemployed for purposes of the State and Federal laws applicable to unemployment compensation, as long as the individual meets the requirements applicable under this section to such individual;

"(3) to the extent that such allowances are made to an individual under this section, an amount equal to the amount of such allowances shall be charged against the amount that may be paid to such individual under State law for regular or extended unemployment compensation, as the case may be;

"(4) the total amount paid to an individual with respect to any benefit year under this section may not exceed the total amount that could be paid to such individual for regular or extended unemployment compensation, as the case may be, with respect to such benefit year under State law;

"(5) the State shall implement a program that—

"(A) is approved by the Secretary;

"(B) will not result in any cost to the Unemployment Trust Fund established by section 904(a) of the Social Security Act [42 U.S.C. 1104(a)] in excess of the cost which would have been incurred by such State and charged to such Fund if the State had not participated in the demonstration program under this section;

"(C) is designed to select and assist individuals for self-employment allowances, monitor the individual's self-employment, and provide, as described in subsection (d), to the Secretary a complete evaluation of the use of such allowances; and

"(D) otherwise meets the requirements of this section; and

"(6) the State, from its general revenue funds, shall—

"(A) repay to the Unemployment Trust Fund any cost incurred by the State and charged to the Fund which exceeds the cost which would have been incurred by such State and charged to such Fund if the State had not participated in the demonstration program under this section; and

"(B) in any case in which any excess cost described in subparagraph (A) is not repaid in the fiscal year in which it was charged to the Fund, pay to the Fund an amount of interest, on the outstanding balance of such excess cost, which is sufficient (when combined with any repayment by the State described in subparagraph (A)) to reimburse the Fund for any loss which would not have been incurred if such excess cost had not been incurred.

"(d) EVALUATION.—(1) Each State that enters into an agreement under this section shall carry out an evaluation of its activities under this section. Such evaluation shall be based on an experimental design with random assignment between a treatment group and a control group with not more than one-half of the individuals receiving assistance at any one time being assigned to the treatment group.

"(2) The Secretary shall use the data provided from such evaluation to analyze the benefits and the costs of the program carried out under this section, to formulate the reports under subsection (g), and to estimate any excess costs described in subsection (c)(6)(A).

"(e) FINANCING.—(1) Notwithstanding section 303(a)(5) of the Social Security Act [42 U.S.C. 503(a)(5)] and section 3304(a)(4) of the Internal Revenue Code of 1986, amounts in the unemployment fund of a State may be used by a State to make payments (exclusive of expenses of administration) for self-employment allowances made under this section to an individual who is receiving them in lieu of regular unemployment compensation.

"(2) In any case in which a self-employment allowance is made under this section to an individual in lieu of extended unemployment compensation under the Federal-State Extended Unemployment Compensation Act

of 1970 [title II of Pub. L. 91–373, set out below], payments made under this section for self-employment allowances shall be considered to be compensation described in section 204(a)(1) of such Act and paid under State law.

"(f) LIMITATION.—No funds made available to a State under title III of the Social Security Act [42 U.S.C. 501 et seq.] or any other Federal law may be used for the purpose of administering the program carried out by such State under this section.

"(g) REPORT TO CONGRESS.—(1) Not later than three years after the date of the enactment of this Act [Dec. 22, 1987], the Secretary shall submit an interim report to the Congress on the effectiveness of the demonstration program carried out under this section. Such report shall include—

"(A) information on the extent to which this section has been utilized;

"(B) an analysis of any barriers to such utilization; and

"(C) an analysis of the feasibility of extending the provisions of this section to individuals not covered by State unemployment compensation laws.

"(2) Not later than six years after the date of the enactment of this Act [Dec. 22, 1987], the Secretary shall submit a final report to the Congress on such program.

"(h) FRAUD AND OVERPAYMENTS.—(1) If an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received payment under this section to which he was not entitled, such individual shall be—

"(A) ineligible for further assistance under this section; and

"(B) subject to prosecution under section 1001 of title 18, United States Code.

"(2)(A) If any person received any payment under this section to which such person was not entitled, the State is authorized to require such person to repay such assistance; except that the State agency may waive such repayment if it determines that—

"(i) the providing of such assistance or making of such payment was without fault on the part of such person; and

"(ii) such repayment would be contrary to equity and good conscience.

"(B) No repayment shall be required under subparagraph (A) until a determination has been made, notice thereof and an opportunity for a fair hearing has been given to the person, and the determination has become final. Any determination under such subparagraph shall be subject to review in the same manner and to the same extent as determinations under the State unemployment compensation law, and only in that manner and to that extent.

"(i) DEFINITIONS.—For purposes of this section—

"(1) the term 'eligible individual' means, with respect to any benefit year, an individual who—

"(A) is eligible to receive regular or extended compensation under the State law during such benefit year;

"(B) is likely to receive unemployment compensation for the maximum number of weeks that such compensation is made available under the State law during such benefit year;

"(C) submits an application to the State agency for a self-employment allowance under this section; and

"(D) meets applicable State requirements,

except that not more than (i) 3 percent of the number of individuals eligible to receive regular compensation in a State at the beginning of a fiscal year, or (ii) the number of persons who exhausted their unemployment compensation benefits in the fiscal year ending before such fiscal year, whichever is lesser, may be considered as eligible individuals for such State for purposes of this section during such fiscal year;

"(2) the term 'self-employment allowance' means compensation paid under this section for the purpose of assisting an eligible individual with such individual's self-employment; and

"(3) the terms 'compensation', 'extended compensation', 'regular compensation', 'benefit year', 'State', and 'State law', have the respective meanings given to such terms by section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 [Pub. L. 91–373, set out below]."

SUPPLEMENTAL UNEMPLOYMENT COMPENSATION FOR CERTAIN INDIVIDUALS

Pub. L. 99–272, title XII, §12402, Apr. 7, 1986, 100 Stat. 298, provided that:

"(a) IN GENERAL.—If—

"(1) an individual was receiving Federal supplemental compensation for the week which includes March 31, 1985, or a series of consecutive weeks which began with such week, and

"(2) such individual did not meet the consecutive-week eligibility requirements of the Federal Supplemental Compensation Act of 1982 [subtitle A (§§601–606) of title VI of Pub. L. 97–248, set out below] during any period of 1 or more subsequent weeks by reason of performing temporary disaster services described in subsection (e),

weeks in such period shall be disregarded for purposes of the consecutive-week requirement of section 602(f)(2)(B) of such Act [section 602(f)(2)(B) of Pub. L. 97–248, set out below], and, notwithstanding the requirements of State law relating to the availability for work, the active search for work, or the refusal to accept work, such individual shall be entitled to payment of Federal supplemental compensation for each week of unemployment which is described in subsection (b) and for which a certification of unemployment is made by such individual in accordance with subsection (c).

"(b) WEEKS FOR WHICH PAYMENT SHALL BE MADE.—A week of unemployment for which payment shall be made under subsection (a) is a week which occurred during the period which commences with the first week beginning after the close of the period described in subsection (a)(2) and ends with the beginning of the first week in which the individual was employed after the close of such period.

"(c) CERTIFICATION.—The certification of unemployment referred to in subsection (a) shall be a certification—

"(1) that is made on a form provided by the State agency concerned and signed by the individual; and

"(2) that identifies the weeks of unemployment for which the individual is making the certification.

"(d) LIMITATION ON AMOUNT OF PAYMENT.—In no case may the total amount paid to an individual under subsection (a) exceed the amount remaining in the account established for such individual under section 602(e) of the Federal Supplemental Compensation Act of 1982 [section 602(e) of Pub. L. 97–248, set out below] after payments were made from such account for weeks of unemployment beginning before the period described in subsection (a)(2).

"(e) DEFINITION.—For purposes of subsection (a), the term 'temporary disaster services' means services performed as a member of the National Guard after being called up by the Governor of a State to perform services related to a major disaster that was declared on June 3, 1985, by the President of the United States under the Disaster Relief Act of 1974 [42 U.S.C. 5121 et seq.].

"(f) MODIFICATION OF AGREEMENT.—(1) The Secretary of Labor shall, at the earliest possible date after the date of the enactment of this Act [Apr. 7, 1986], propose to any State concerned a modification of the agreement that the Secretary has with such State under section 602 of the Federal Supplemental Compensation Act of 1982 [section 602 of Pub. L. 97–248, set out below] in order to carry out this section.

"(2) Pending modification of the agreement, the State may make payment in accordance with the provisions of this section and shall be reimbursed in accordance with the provisions of section 604(a) of the Federal Supplemental Compensation Act of 1982 [section 604(a) of Pub. L. 97–248, set out below]. For purposes of carrying out this paragraph, the term 'this subtitle' in such section 604(a) shall include this section.

"(g) EFFECTIVE DATE.—The provisions of this section shall apply to weeks beginning after March 31, 1985."

AMORTIZATION PAYMENTS FOR STATES WITH INDEPENDENT RETIREMENT PLANS FROM FUNDS FOR INCREASED COSTS OF ADMINISTRATION OF UNEMPLOYMENT COMPENSATION LAWS; CHANGES IN STATE LAWS; INCREASED CLAIMS; SALARY COSTS

Pub. L. 99–88, title I, §100, Aug. 15, 1985, 99 Stat. 344, provided that: "Whenever funds are made available, now or hereafter, in this or any other Act for the administration of unemployment compensation laws to meet increased costs of administration resulting from changes in a State law or increases in the number of unemployment insurance claims filed and claims paid or increased salary costs resulting from changes in State salary compensation plans embracing employees of the State generally over those upon which the State's basic allocation was based, which cannot be provided for by normal budgetary adjustment, amortization payments for States which had independent retirement plans prior to 1980 in their State Employment Security Agencies and States agencies administering the State's unemployment compensation law may be paid from such funds."

ARRANGEMENTS TO PREVENT PAYMENTS OF UNEMPLOYMENT COMPENSATION TO RETIREES AND PRISONERS

Pub. L. 98–135, title II, §206, Oct. 24, 1983, 97 Stat. 861, provided that:

"(a) The Secretary of Labor, the Director of the Office of Personnel Management, and the Attorney General are directed to enter into arrangements to make available to the States, computer or other data regarding current and retired Federal employees and Federal prisoners so that States may review the eligibility of these

individuals for unemployment compensation, and take action where appropriate.

"(b) The Secretary of Labor shall report to the Congress, prior to January 31, 1984, on arrangements which have been entered into under subsection (a), and any arrangements which could be entered into with other appropriate State agencies, for the purpose of ensuring that unemployment compensation is not paid to retired individuals or prisoners in violation of law. The report shall include any recommendations for further legislation which might be necessary to aid in preventing such payments."

SHORT-TIME COMPENSATION

Pub. L. 112–96, title II, §§2162–2165, Feb. 22, 2012, 126 Stat. 173–178, provided that:

"SEC. 2162. TEMPORARY FINANCING OF SHORT-TIME COMPENSATION PAYMENTS IN STATES WITH PROGRAMS IN LAW.

"(a) PAYMENTS TO STATES.—

"(1) IN GENERAL.—Subject to paragraph (3), there shall be paid to a State an amount equal to 100 percent of the amount of short-time compensation paid under a short-time compensation program (as defined in section 3306(v) of the Internal Revenue Code of 1986, as added by section 2161(a)) under the provisions of the State law.

"(2) TERMS OF PAYMENTS.—Payments made to a State under paragraph (1) shall be payable by way of reimbursement in such amounts as the Secretary estimates the State will be entitled to receive under this section for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that the Secretary's estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made on the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency of the State involved.

"(3) LIMITATIONS ON PAYMENTS.—

"(A) GENERAL PAYMENT LIMITATIONS.—No payments shall be made to a State under this section for short-time compensation paid to an individual by the State during a benefit year in excess of 26 times the amount of regular compensation (including dependents' allowances) under the State law payable to such individual for a week of total unemployment.

"(B) EMPLOYER LIMITATIONS.—No payments shall be made to a State under this section for benefits paid to an individual by the State under a short-time compensation program if such individual is employed by the participating employer on a seasonal, temporary, or intermittent basis.

"(b) APPLICABILITY.—

"(1) IN GENERAL.—Payments to a State under subsection (a) shall be available for weeks of unemployment—

"(A) beginning on or after the date of the enactment of this Act [Feb. 22, 2012]; and

"(B) ending on or before the date that is 3 years and 6 months after the date of the enactment of this Act.

"(2) THREE-YEAR FUNDING LIMITATION FOR COMBINED PAYMENTS UNDER THIS SECTION AND SECTION 2163.—States may receive payments under this section and section 2163 with respect to a total of not more than 156 weeks.

"(c) TWO-YEAR TRANSITION PERIOD FOR EXISTING PROGRAMS.—During any period that the transition provision under section 2161(a)(3) [of Pub. L. 112–96, set out as a note under section 3306 of this title] is applicable to a State with respect to a short-time compensation program, such State shall be eligible for payments under this section. Subject to paragraphs (1)(B) and (2) of subsection (b), if at any point after the date of the enactment of this Act the State enacts a State law providing for the payment of short-time compensation under a short-time compensation program that meets the definition of such a program under section 3306(v) of the Internal Revenue Code of 1986, as added by section 2161(a), the State shall be eligible for payments under this section after the effective date of such enactment.

"(d) FUNDING AND CERTIFICATIONS.—

"(1) FUNDING.—There are appropriated, out of moneys in the Treasury not otherwise appropriated, such sums as may be necessary for purposes of carrying out this section.

"(2) CERTIFICATIONS.—The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this section.

"(e) DEFINITIONS.—In this section:

"(1) SECRETARY.—The term 'Secretary' means the Secretary of Labor.

"(2) STATE; STATE AGENCY; STATE LAW.—The terms 'State', 'State agency', and 'State law' have the meanings given those terms in section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 [Pub. L. 91–373] (26 U.S.C. 3304 note).

"SEC. 2163. TEMPORARY FINANCING OF SHORT-TIME COMPENSATION AGREEMENTS.

"(a) FEDERAL-STATE AGREEMENTS.—

"(1) IN GENERAL.—Any State which desires to do so may enter into, and participate in, an agreement under this section with the Secretary provided that such State's law does not provide for the payment of short-time compensation under a short-time compensation program (as defined in section 3306(v) of the Internal Revenue Code of 1986, as added by section 2161(a)).

"(2) ABILITY TO TERMINATE.—Any State which is a party to an agreement under this section may, upon providing 30 days' written notice to the Secretary, terminate such agreement.

"(b) PROVISIONS OF FEDERAL-STATE AGREEMENT.—

"(1) IN GENERAL.—Any agreement under this section shall provide that the State agency of the State will make payments of short-time compensation under a plan approved by the State. Such plan shall provide that payments are made in accordance with the requirements under section 3306(v) of the Internal Revenue Code of 1986, as added by section 2161(a).

"(2) LIMITATIONS ON PLANS.—

"(A) GENERAL PAYMENT LIMITATIONS.—A short-time compensation plan approved by a State shall not permit the payment of short-time compensation to an individual by the State during a benefit year in excess of 26 times the amount of regular compensation (including dependents' allowances) under the State law payable to such individual for a week of total unemployment.

"(B) EMPLOYER LIMITATIONS.—A short-time compensation plan approved by a State shall not provide payments to an individual if such individual is employed by the participating employer on a seasonal, temporary, or intermittent basis.

"(3) EMPLOYER PAYMENT OF COSTS.—Any short-time compensation plan entered into by an employer must provide that the employer will pay the State an amount equal to one-half of the amount of short-time compensation paid under such plan. Such amount shall be deposited in the State's unemployment fund and shall not be used for purposes of calculating an employer's contribution rate under section 3303(a)(1) of the Internal Revenue Code of 1986.

"(c) PAYMENTS TO STATES.—

"(1) IN GENERAL.—There shall be paid to each State with an agreement under this section an amount equal to—

"(A) one-half of the amount of short-time compensation paid to individuals by the State pursuant to such agreement; and

"(B) any additional administrative expenses incurred by the State by reason of such agreement (as determined by the Secretary).

"(2) TERMS OF PAYMENTS.—Payments made to a State under paragraph (1) shall be payable by way of reimbursement in such amounts as the Secretary estimates the State will be entitled to receive under this section for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that the Secretary's estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made on the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency of the State involved.

"(3) FUNDING.—There are appropriated, out of moneys in the Treasury not otherwise appropriated, such sums as may be necessary for purposes of carrying out this section.

"(4) CERTIFICATIONS.—The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this section.

"(d) APPLICABILITY.—

"(1) IN GENERAL.—An agreement entered into under this section shall apply to weeks of unemployment—

"(A) beginning on or after the date on which such agreement is entered into; and

"(B) ending on or before the date that is 2 years and 13 weeks after the date of the enactment of this Act [Feb. 22, 2012].

"(2) TWO-YEAR FUNDING LIMITATION.—States may receive payments under this section with respect to a total of not more than 104 weeks.

"(e) SPECIAL RULE.—If a State has entered into an agreement under this section and subsequently enacts a State law providing for the payment of short-time compensation under a short-time compensation program that meets the definition of such a program under section 3306(v) of the Internal Revenue Code of 1986, as added by section 2161(a), the State—

"(1) shall not be eligible for payments under this section for weeks of unemployment beginning after the effective date of such State law; and

"(2) subject to paragraphs (1)(B) and (2) of section 2162(b), shall be eligible to receive payments under section 2162 after the effective date of such State law.

"(f) DEFINITIONS.—In this section:

"(1) SECRETARY.—The term 'Secretary' means the Secretary of Labor.

"(2) STATE; STATE AGENCY; STATE LAW.—The terms 'State', 'State agency', and 'State law' have the meanings given those terms in section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 [Pub. L. 91–373] (26 U.S.C. 3304 note).

"SEC. 2164. GRANTS FOR SHORT-TIME COMPENSATION PROGRAMS.

"(a) GRANTS.—

"(1) FOR IMPLEMENTATION OR IMPROVED ADMINISTRATION.—The Secretary shall award grants to States that enact short-time compensation programs (as defined in subsection (i)(2)) for the purpose of implementation or improved administration of such programs.

"(2) FOR PROMOTION AND ENROLLMENT.—The Secretary shall award grants to States that are eligible and submit plans for a grant under paragraph (1) for such States to promote and enroll employers in short-time compensation programs (as so defined).

"(3) ELIGIBILITY.—

"(A) IN GENERAL.—The Secretary shall determine eligibility criteria for the grants under paragraphs (1) and (2).

"(B) CLARIFICATION.—A State administering a short-time compensation program, including a program being administered by a State that is participating in the transition under the provisions of sections 301(a)(3) and 302(c) [probably means sections "2161(a)(3)" (26 U.S.C. 3306 note) and "2162(c)" of Pub. L. 112–96], that does not meet the definition of a short-time compensation program under section 3306(v) of the Internal Revenue Code of 1986 (as added by 211(a) [probably means "section 2161(a)"]), and a State with an agreement under section 2163, shall not be eligible to receive a grant under this section until such time as the State law of the State provides for payments under a short-time compensation program that meets such definition and such law.

"(b) AMOUNT OF GRANTS.—

"(1) IN GENERAL.—The maximum amount available for making grants to a State under paragraphs (1) and (2) shall be equal to the amount obtained by multiplying $100,000,000 (less the amount used by the Secretary under subsection (e)) by the same ratio as would apply under subsection (a)(2)(B) of section 903 of the Social Security Act (42 U.S.C. 1103) for purposes of determining such State's share of any excess amount (as described in subsection (a)(1) of such section) that would have been subject to transfer to State accounts, as of October 1, 2010, under the provisions of subsection (a) of such section.

"(2) AMOUNT AVAILABLE FOR DIFFERENT GRANTS.—Of the maximum incentive payment determined under paragraph (1) with respect to a State—

"(A) one-third shall be available for a grant under subsection (a)(1); and

"(B) two-thirds shall be available for a grant under subsection (a)(2).

"(c) GRANT APPLICATION AND DISBURSAL.—

"(1) APPLICATION.—Any State seeking a grant under paragraph (1) or (2) of subsection (a) shall submit an application to the Secretary at such time, in such manner, and complete with such information as the Secretary may require. In no case may the Secretary award a grant under this section with respect to an application that is submitted after December 31, 2014.

"(2) NOTICE.—The Secretary shall, within 30 days after receiving a complete application, notify the State agency of the State of the Secretary's findings with respect to the requirements for a grant under paragraph (1) or (2) (or both) of subsection (a).

"(3) CERTIFICATION.—If the Secretary finds that the State law provisions meet the requirements for a grant under subsection (a), the Secretary shall thereupon make a certification to that effect to the Secretary of the Treasury, together with a certification as to the amount of the grant payment to be transferred to the State account in the Unemployment Trust Fund (as established in section 904(a) of the Social Security Act (42 U.S.C. 1104(a))) pursuant to that finding. The Secretary of the Treasury shall make the appropriate transfer to the State account within 7 days after receiving such certification.

"(4) REQUIREMENT.—No certification of compliance with the requirements for a grant under paragraph (1) or (2) of subsection (a) may be made with respect to any State whose—

"(A) State law is not otherwise eligible for certification under section 303 of the Social Security Act (42 U.S.C. 503) or approvable under section 3304 of the Internal Revenue Code of 1986; or

"(B) short-time compensation program is subject to discontinuation or is not scheduled to take effect within 12 months of the certification.

"(d) USE OF FUNDS.—The amount of any grant awarded under this section shall be used for the

implementation of short-time compensation programs and the overall administration of such programs and the promotion and enrollment efforts associated with such programs, such as through—

"(1) the creation or support of rapid response teams to advise employers about alternatives to layoffs;

"(2) the provision of education or assistance to employers to enable them to assess the feasibility of participating in short-time compensation programs; and

"(3) the development or enhancement of systems to automate—

"(A) the submission and approval of plans; and

"(B) the filing and approval of new and ongoing short-time compensation claims.

"(e) ADMINISTRATION.—The Secretary is authorized to use 0.25 percent of the funds available under subsection (g) to provide for outreach and to share best practices with respect to this section and short-time compensation programs.

"(f) RECOUPMENT.—The Secretary shall establish a process under which the Secretary shall recoup the amount of any grant awarded under paragraph (1) or (2) of subsection (a) if the Secretary determines that, during the 5-year period beginning on the first date that any such grant is awarded to the State, the State—

"(1) terminated the State's short-time compensation program; or

"(2) failed to meet appropriate requirements with respect to such program (as established by the Secretary).

"(g) FUNDING.—There are appropriated, out of moneys in the Treasury not otherwise appropriated, to the Secretary, $100,000,000 to carry out this section, to remain available without fiscal year limitation.

"(h) REPORTING.—The Secretary may establish reporting requirements for States receiving a grant under this section in order to provide oversight of grant funds.

"(i) DEFINITIONS.—In this section:

"(1) SECRETARY.—The term 'Secretary' means the Secretary of Labor.

"(2) SHORT-TIME COMPENSATION PROGRAM.—The term 'short-time compensation program' has the meaning given such term in section 3306(v) of the Internal Revenue Code of 1986, as added by section 2161(a).

"(3) STATE; STATE AGENCY; STATE LAW.—The terms 'State', 'State agency', and 'State law' have the meanings given those terms in section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 [Pub. L. 91–373] (26 U.S.C. 3304 note).

"SEC. 2165. ASSISTANCE AND GUIDANCE IN IMPLEMENTING PROGRAMS.

"(a) IN GENERAL.—In order to assist States in establishing, qualifying, and implementing short-time compensation programs (as defined in section 3306(v) of the Internal Revenue Code of 1986, as added by section 2161(a)), the Secretary of Labor (in this section referred to as the 'Secretary') shall—

"(1) develop model legislative language which may be used by States in developing and enacting such programs and periodically review and revise such model legislative language;

"(2) provide technical assistance and guidance in developing, enacting, and implementing such programs;

"(3) establish reporting requirements for States, including reporting on—

"(A) the number of estimated averted layoffs;

"(B) the number of participating employers and workers; and

"(C) such other items as the Secretary of Labor determines are appropriate.

"(b) MODEL LANGUAGE AND GUIDANCE.—The model language and guidance developed under subsection (a) shall allow sufficient flexibility by States and participating employers while ensuring accountability and program integrity.

"(c) CONSULTATION.—In developing the model legislative language and guidance under subsection (a), and in order to meet the requirements of subsection (b), the Secretary shall consult with employers, labor organizations, State workforce agencies, and other program experts."

Pub. L. 102–318, title IV, §401(b)–(d), July 3, 1992, 106 Stat. 299, which related to assistance in implementing short-time compensation programs, was repealed by Pub. L. 112–96, title II, §2161(b)(3), Feb. 22, 2012, 126 Stat. 172.

Pub. L. 97–248, title I, §194, Sept. 3, 1982, 96 Stat. 409, provided that:

"(a) It is the purpose of this section to assist States which provide partial unemployment benefits to individuals whose workweeks are reduced pursuant to an employer plan under which such reductions are made in lieu of temporary layoffs.

"(b)(1) The Secretary of Labor (hereinafter in this section referred to as the 'Secretary') shall develop model legislative language which may be used by States in developing and enacting short-time compensation programs, and shall provide technical assistance to States to assist in developing, enacting, and implementing such short-time compensation program.

"(2) The Secretary shall conduct a study or studies for purposes of evaluating the operation, costs, effect on the State insured rate of unemployment, and other effects of State short-time compensation programs developed pursuant to this section.

"(3) This section shall be a three-year experimental provision, and the provisions of this section regarding guidelines shall terminate 3 years following the date of the enactment of this Act [Sept. 3, 1982].

"(4) States are encouraged to experiment in carrying out the purpose and intent of this section. However, to assure minimum uniformity, States are encouraged to consider requiring the provisions contained in subsections (c) and (d).

"(c) For purposes of this section, the term 'short-time compensation program' means a program under which—

"(1) individuals whose workweeks have been reduced pursuant to a qualified employer plan by at least 10 per centum will be eligible for unemployment compensation;

"(2) the amount of unemployment compensation payable to any such individual shall be a pro rata portion of the unemployment compensation which would be payable to the individual if the individual were totally unemployed;

"(3) eligible employees may be eligible for short-time compensation or regular unemployment compensation, as needed; except that no employee shall be eligible for more than the maximum entitlement during any benefit year to which he or she would have been entitled for total unemployment, and no employee shall be eligible for short-time compensation for more than twenty-six weeks in any twelve-month period; and

"(4) eligible employees will not be expected to meet the availability for work or work search test requirements while collecting short-time compensation benefits, but shall be available for their normal workweek.

"(d) For purposes of subsection (c), the term 'qualified employer plan' means a plan of an employer or of an employers' association which association is party to a collective bargaining agreement (hereinafter referred to as 'employers' association') under which there is a reduction in the number of hours worked by employees rather than temporary layoffs if—

"(1) the employer's or employers' association's short-time compensation plan is approved by the State agency;

"(2) the employer or employers' association certifies to the State agency that the aggregate reduction in work hours pursuant to such plan is in lieu of temporary layoffs which would have affected at least 10 per centum of the employees in the unit or units to which the plan would apply and which would have resulted in an equivalent reduction of work hours;

"(3) during the previous four months the work force in the affected unit or units has not been reduced by temporary layoffs of more than 10 per centum;

"(4) the employer continues to provide health benefits, and retirement benefits under defined benefit pension plans (as defined in section 3(35) of the Employee Requirement Income Security Act of 1974 [29 U.S.C. 1002(35)], to employees whose workweek is reduced under such plan as though their workweek had not been reduced; and

"(5) in the case of employees represented by an exclusive bargaining representative, that representative has consented to the plan.

The State agency shall review at least annually any qualified employer plan put into effect to assure that it continues to meet the requirements of this subsection and of any applicable State law.

"(e) Short-time compensation shall be charged in a manner consistent with the State law.

"(f) For purposes of this section, the term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

"(g)(1) The Secretary shall conduct a study or studies of State short-time compensation programs consulting with employee and employer representatives in developing criteria and guidelines to measure the following factors:

"(A) the impact of the program upon the unemployment trust fund, and a comparison with the estimated impact on the fund of layoffs which would have occurred but for the existence of the program;

"(B) the extent to which the program has protected and preserved the jobs of workers, with special emphasis on newly hired employees, minorities, and women;

"(C) the extent to which layoffs occur in the unit subsequent to initiation of the program and the impact of the program upon the entitlement to unemployment compensation of the employees;

"(D) where feasible, the effect of varying methods of administration;

"(E) the effect of short-time compensation on employers' State unemployment tax rates, including both users and nonusers of short-time compensation, on a State-by-State basis;

"(F) the effect of various State laws and practices under those laws on the retirement and health benefits of employees who are on short-time compensation programs;

"(G) a comparison of costs and benefits to employees, employers, and communities from use of short-time compensation and layoffs;

"(H) the cost of administration of the short-time compensation program; and

"(I) such other factors as may be appropriate.

"(2) Not later than October 1, 1985, the Secretary shall submit to the Congress and to the President a final report on the implementation of this section. Such report shall contain an evaluation of short-time compensation programs and shall contain such recommendations as the Secretary deems advisable, including recommendations as to necessary changes in the Statistical practices of the Department of Labor."

FEDERAL SUPPLEMENTAL COMPENSATION ACT OF 1982

Pub. L. 97–248, title VI, subtitle A (§§601–606), Sept. 3, 1982, 96 Stat. 702, as amended by Pub. L. 97–424, title V, §544(a), (d), Jan. 6, 1983, 96 Stat. 2196; Pub. L. 97–448, title III, §310(a), Jan. 12, 1983, 96 Stat. 2411; Pub. L. 98–21, title V, §§501, 502, 504, 505, Apr. 20, 1983, 97 Stat. 141, 144; Pub. L. 98–92, §1(a), Sept. 2, 1983, 97 Stat. 608; Pub. L. 98–118, §1, Oct. 11, 1983, 97 Stat. 803; Pub. L. 98–135, title I, §§101, 102, Oct. 24, 1983, 97 Stat. 857; Pub. L. 99–15, §1(a), (b), Apr. 4, 1985, 99 Stat. 37, known as the "Federal Supplemental Compensation Act of 1982", authorized States to enter into and participate in an agreement with the Secretary of Labor providing for States to make payments of Federal supplemental compensation for weeks beginning before Apr. 1, 1985, to eligible individuals who had exhausted their rights or had no right to regular compensation under State law.

MODIFICATION OF AGREEMENTS UNDER FEDERAL SUPPLEMENTAL COMPENSATION ACT OF 1982

Pub. L. 99–15, §1(c), Apr. 4, 1985, 99 Stat. 37, provided that: "The Secretary of Labor shall, at the earliest practicable date after the date of the enactment of this Act [Apr. 4, 1985], propose to each State with which he has in effect an agreement under section 602 of the Federal Supplemental Compensation Act of 1982 [section 602 of Pub. L. 97–248, set out above] a modification of such agreement designed to provide for the payment of Federal supplemental compensation under such Act [subtitle A of title VI of Pub. L. 97–248, set out above] in accordance with the amendments made by this Act [amending the Federal Supplemental Compensation Act of 1982]. Notwithstanding any other provision of law, if any State fails or refuses within the three-week period beginning on the date the Secretary of Labor proposes such modification to such State, to enter into such modification of such agreement, the Secretary of Labor shall terminate such agreement effective with the end of the last week which ends on or before the close of such three-week period. Pending modification (or termination) of the agreement, States may pay Federal supplemental compensation in accordance with the amendments made by this Act for weeks beginning after March 31, 1985, and shall be reimbursed in accordance with the provisions of the Federal Supplemental Compensation Act of 1982."

APPLICATION OF FEDERAL SUPPLEMENTAL COMPENSATION ACT OF 1982 WITH RESPECT TO WEEKS BEGINNING AFTER MARCH 31, 1983

Pub. L. 98–13, Mar. 29, 1983, 97 Stat. 54, provided: "That, with respect to weeks beginning after March 31, 1983, the Federal Supplemental Compensation Act of 1982 [subtitle A of title VI of Pub. L. 97–248, set out above] shall be applied as if the provisions contained in part A of title V of the conference report [H. Rept. No. 98–47] on the bill H.R. 1900 [part A (§§501–505) of title V of Pub. L. 98–21, Apr. 20, 1983, 97 Stat. 141–144, amending subtitle A of title VI of Pub. L. 97–248, set out above] were enacted into law on the date of the enactment of this Act [Mar. 29, 1983]."

TERMINATION OF FEDERAL-STATE SUPPLEMENTAL UNEMPLOYMENT COMPENSATION AGREEMENTS WITH STATES FAILING TO RENEGOTIATE

Pub. L. 97–424, title V, §544(c), Jan. 6, 1983, 96 Stat. 2197, provided that: "The Secretary of Labor shall, at the earliest practicable date after the date of the enactment of this Act [Jan. 6, 1983], propose to each State with which he has in effect an agreement under section 602 of the Tax Equity and Fiscal Responsibility Act of 1982 [section 602 of Pub. L. 97–248, set out above] a modification of such agreement designed to provide for the payment of Federal supplemental compensation under such Act [sections 601 to 606 of Pub. L. 97–248, set out above] in accordance with the amendments made by this Act [amending section 602(e) of Pub. L. 97–248, set out above]. Notwithstanding any other provision of law, if any State fails or refuses, within the three-week period beginning on the date the Secretary of Labor proposes such a modification to such State, to enter into such a modification of such agreement, the Secretary of Labor shall terminate such agreement effective with the end of the last week which ends on or before such three-week period."

CERTIFICATION OF STATE UNEMPLOYMENT LAWS; EFFECTIVE DATES

Pub. L. 97–35, title XXIV, §2408(b), Aug. 13, 1981, 95 Stat. 880, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) Except as otherwise provided in paragraph (2)—

"(A) The amendments made by sections 2401 and 2402 [amending Pub. L. 91–373, set out below] shall be required to be included in State unemployment compensation laws for purposes of certifications under section 3304(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] on October 31 of any taxable year after 1980; and

"(B) the amendments made by sections 2403 and 2404 [amending Pub. L. 91–373, set out below] shall be required to be included in such laws for purposes of such certifications on October 31 of any taxable year after 1981.

"(2)(A) In the case of any State the legislature of which—

"(i) does not meet in a session which begins after the date of the enactment of this Act [Aug. 13, 1981] and prior to September 1, 1981, and

"(ii) if in session on the date of the enactment of this Act, does not remain in session for a period of at least 25 calendar days,

the date '1980' in paragraph (1)(A) shall be deemed to be '1981'.

"(B) In the case of any State the legislature of which—

"(i) does not meet in a session which begins after the date of the enactment of this Act [Aug. 13, 1981] and prior to September 1, 1982, and

"(ii) if in session on the date of the enactment of this Act, does not remain in session for a period of at least 25 calendar days,

the date '1981' in paragraph (1)(B) shall be deemed to be '1982'."

Pub. L. 96–499, title X, §1025, Dec. 5, 1980, 94 Stat. 2660, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "On October 31 of any taxable year after 1980, the Secretary of Labor shall not certify any State, as provided in section 3304(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], which, after reasonable notice and opportunity for a hearing to the State agency, the Secretary of Labor finds has failed to amend its law so that it contains each of the provisions required by reason of the enactment of the preceding provisions of this subtitle [subtitle C of title X of Pub. L. 96–499, Dec. 5, 1980, 94 Stat. 2656, which enacted section 8509 of Title 5, Government Organization and Employees, and section 1109 of Title 42, The Public Health and Welfare, enacted provisions set out as notes under this section and section 8509 of Title 5, and amended provisions set out as notes under this section] to be included therein, or has with respect to the 12-month period ending on such October 31, failed to comply substantially with any such provision."

TRANSFER OF FUNDS TO FEDERAL UNEMPLOYMENT TRUST FUND AS PREREQUISITE TO APPROVAL OF VIRGIN ISLANDS UNEMPLOYMENT COMPENSATION LAW

Pub. L. 94–566, title I, §116(g), Oct. 20, 1976, 90 Stat. 2673, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The Secretary of Labor shall not approve an unemployment compensation law of the Virgin Islands under section 3304(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] until the Governor of the Virgin Islands has approved the transfer to the Federal Unemployment Trust Fund established by section 904 of the Social Security Act [42 U.S.C. 1104] of an amount equal to the dollar balance credited to the unemployment subfund of the Virgin Islands established under section 310 of title 24 of the Virgin Islands Code."

FEDERAL REIMBURSEMENT FOR BENEFITS PAID TO NEWLY COVERED WORKERS DURING TRANSITION PERIOD

Pub. L. 94–566, title I, §121, Oct. 20, 1976, 90 Stat. 2673, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided for payment of compensation for any week of unemployment beginning on or after Jan. 1, 1978, for services not covered by State unemployment compensation law during 1-year period ending Dec. 31, 1975, with the Secretary of Labor to pay to the unemployment fund of such State an amount equal to the Federal reimbursement.

EMERGENCY UNEMPLOYMENT COMPENSATION ACT OF 1974

Pub. L. 93–572, §§101–105, Dec. 31, 1974, 88 Stat. 1869–1872, as amended by Pub. L. 94–12, title VII, §701(a), Mar. 29, 1975, 89 Stat. 65; Pub. L. 94–45, title I, §§101(a)–(f), 102(a), 103(a), 106, June 30, 1975, 89 Stat. 236–239; Pub. L. 94–566, title I, §116(d)(3), Oct. 20, 1976, 90 Stat. 2672; Pub. L. 95–19, title I, §§101(a), 102(a)–(c), 103(a), 104(a), 105(a), 107(a), Apr. 12, 1977, 91 Stat. 39–42; Pub. L. 99–514, §2, Oct.

22, 1986, 100 Stat. 2095, known as the "Emergency Unemployment Compensation Act of 1974", provided that, for weeks ending before Jan. 31, 1978, qualified States could enter into agreements with the Secretary of Labor for the payment of emergency unemployment compensation to eligible individuals who had exhausted their rights to regular compensation under State law.

MODIFICATION OF AGREEMENTS WITH STATES TO REFLECT AMENDMENTS UNDER EMERGENCY UNEMPLOYMENT COMPENSATION EXTENSION ACT OF 1977

Pub. L. 95–19, title I, §106, Apr. 12, 1977, 91 Stat. 42, provided that: "The Secretary of Labor shall, at the earliest practicable date after the date of the enactment of this Act [Apr. 12, 1977], propose to each State with which he has in effect an agreement under section 102 of the Emergency Compensation Act of 1974 [Pub. L. 93–572, set out above] a modification of such agreement designed to provide for the payment of emergency compensation under such Act in accordance with the amendments made by this title [enacting sections 102(h) and 105(b) of the Emergency Unemployment Compensation Act of 1974, amending sections 102(b)(2), (c)(3)(A)(ii), (e), (f)(2), 104(b), and 105(a) of that Act, and enacting provisions set out as notes under this section]. Notwithstanding any other provision of law, if any State fails or refuses, within the 3-week period beginning on the date the Secretary of Labor proposes such a modification of such State, to enter into such a modification of such agreement, the Secretary of Labor shall terminate such agreement effective with the end of the last week which ends on or before the last day of such 3-week period."

MODIFICATION OF AGREEMENTS WITH STATES TO REFLECT AMENDMENTS UNDER UNEMPLOYMENT COMPENSATION AMENDMENTS OF 1976

Pub. L. 94–566, title VI, §604, Oct. 20, 1976, 90 Stat. 2691, provided that: "The Secretary of Labor shall, at the earliest practicable date after the date of the enactment of this Act [Oct. 20, 1976], propose to each State with which he has in effect an agreement under section 202 of the Emergency Jobs and Unemployment Assistance Act of 1974 [Pub. L. 93–567, title II, §202, set out below] a modification of such agreement designed to provide for the payment of special unemployment assistance under such Act in accordance with the amendments made by sections 601, 602, and 603 of this title [set out as a Special Unemployment Assistance Programs note below]. Notwithstanding any other provision of law, if any State fails or refuses, within the three-week period beginning on the date the Secretary of Labor proposes such a modification to such State, to enter into such a modification of such agreement, the Secretary of Labor shall terminate such agreement effective with the end of the last week which ends on or before the last day of such three-week period."

AGREEMENTS UNDER EMERGENCY UNEMPLOYMENT COMPENSATION ACT OF 1974 TO BE MODIFIED TO REFLECT AMENDMENT OF THE ACT BY EMERGENCY COMPENSATION AND SPECIAL UNEMPLOYMENT ASSISTANCE EXTENSION ACT OF 1975

Pub. L. 94–45, title I, §105, June 30, 1975, 89 Stat. 239, provided that: "The Secretary of Labor shall, at the earliest practicable date after the date of the enactment of this Act [June 30, 1975], propose to each State with which he has in effect an agreement under section 102 of the Emergency Unemployment Compensation Act of 1974 [Pub. L. 93–567, set out below] a modification of such agreement designed to provide for the payment of the emergency compensation benefits allowable under such Act by reason of the amendments made by this part [part A (§§101–106) of title I of Pub. L. 94–45, enacting and amending provisions set out as notes under this section]. Notwithstanding any provision of the Emergency Unemployment Compensation Act of 1974, if any State fails or refuses, within the three-week period beginning on the date of the enactment of this Act, to enter into such a modification of such agreement, the Secretary of Labor shall terminate such agreement."

AGREEMENTS UNDER EMERGENCY UNEMPLOYMENT COMPENSATION ACT OF 1974 TO BE MODIFIED TO REFLECT AMENDMENT OF THE ACT BY TAX REDUCTION ACT OF 1975

Pub. L. 94–12, title VII, §701(b), Mar. 29, 1975, 89 Stat. 66, provided that: "The Secretary of Labor shall, at the earliest practicable date after the enactment of this Act [Mar. 29, 1975], propose to each State with which he has in effect an agreement entered into pursuant to section 102 of the Emergency Unemployment Compensation Act of 1974 [Pub. L. 93–572, set out above] a modification of such agreement designed to cause payments of emergency compensation thereunder to be made in the manner prescribed by such Act, as amended by subsection (a) of this section [amending section 102(e) of the Emergency Unemployment Compensation Act of 1974]. Notwithstanding any provision of the Emergency Unemployment Compensation Act of 1974, if any such State shall fail or refuse, within a reasonable time after the date of the enactment of

this Act, to enter into such a modification of such agreement, the Secretary of Labor shall terminate such agreement."

NATIONAL COMMISSION ON UNEMPLOYMENT COMPENSATION

Pub. L. 94–566, title IV, §411, Oct. 20, 1976, 90 Stat. 2681, as amended by Pub. L. 95–19, title III, §303, Apr. 12, 1977, 91 Stat. 45; Pub. L. 96–84, §§1(a), (b), 2, 3(a), Oct. 10, 1979, 93 Stat. 653, 654, related to establishment, membership, powers, duties, etc., of the National Commission on Unemployment Compensation, and required a final report not later than July 1, 1980, respecting findings, conclusions, and recommendations, with termination of the Commission on the ninetieth day after the date of submission of the final report to the President.

SPECIAL UNEMPLOYMENT ASSISTANCE PROGRAMS

Pub. L. 93–567, title II, §§201–224, Dec. 31, 1974, 88 Stat. 1850–1853, as amended by Pub. L. 94–45, title II, §§201–203, June 30, 1975, 89 Stat. 240–242; Pub. L. 94–444, §6(a), (b), Oct. 1, 1976, 90 Stat. 1481; Pub. L. 94–566, title VI, §§601(a), 602(a)–(d), 603(a), Oct. 20, 1976, 90 Stat. 2689–2691; Pub. L. 96–499, title X, §1021, Dec. 5, 1980, 94 Stat. 2656; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 105–277, div. A, §101(f) [title VIII, §405(d)(21), (f)(15)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–422, 2681–431, established, with respect to weeks of unemployment ending before June 30, 1978, temporary Federal program of special unemployment assistance for workers who were unemployed during period of aggravated unemployment and who were not otherwise eligible for unemployment allowances under any other law, and provided for Federal reimbursement for unemployment benefits paid on basis of public service employment for services performed in weeks before Dec. 5, 1980.

AGREEMENTS UNDER SPECIAL UNEMPLOYMENT ASSISTANCE PROGRAM TO BE MODIFIED TO REFLECT AMENDMENT OF PROGRAM BY EMERGENCY COMPENSATION AND SPECIAL UNEMPLOYMENT ASSISTANCE EXTENSION ACT OF 1975

Pub. L. 94–45, title II, §204(a), June 30, 1975, 89 Stat. 242, provided that: "The Secretary of Labor shall, at the earliest practicable date after the date of the enactment of this Act [June 30, 1975], propose to each State with which he has in effect an agreement under section 202 of the Emergency Jobs and Unemployment Assistance Act of 1974 [Pub. L. 93–567, title II, set out above] a modification of such agreement designed to provide for the payment of the special unemployment assistance allowable under such Act by reason of the amendments made by section 201 [amending sections 206 and 208 of the Emergency Jobs and Unemployment Assistance Act of 1974]. Notwithstanding any other provision of law, if any State fails or refuses, within the three-week period beginning on the date of the enactment of this Act [June 30, 1975], to enter into such a modification of any such agreement, the Secretary of Labor shall terminate such agreement."

SPECIAL UNEMPLOYMENT ASSISTANCE PROGRAMS; INDIVIDUALS PERFORMING SERVICES FOR EDUCATIONAL INSTITUTIONS OR AGENCIES

Pub. L. 94–32, title I, §101, June 12, 1975, 89 Stat. 178, provided in part that: "Funds appropriated by this Act [Second Supplemental Appropriations Act, 1975], or any other Act, for the payments of special unemployment assistance under title II of the Emergency Jobs and Unemployment Assistance Act of 1974 [Pub. L. 93–567, title II, set out above] shall not be used for making such payments of assistance or waiting period credit, beginning after the date of enactment of this Act [June 12, 1975], to any individual who performs services in an instructional, research, or principal administrative capacity for an educational institution or agency with respect to any week commencing during the period between two successive academic years (or, when the contract provides instead for a similar period between two regular but not successive terms, during such similar period) if—

"(1) such individual performed services in any such capacity for any educational institution or agency for the first of such academic years or terms; and

"(2) such individual has a contract to perform services in any such capacity for any educational institution or agency for the latter of such academic years or terms."

EMERGENCY UNEMPLOYMENT COMPENSATION ACT OF 1971

Pub. L. 92–224, title II, §§201–206, Dec. 29, 1971, 85 Stat. 811–814, as amended by Pub. L. 92–329, §§1, 2(e), June 30, 1972, 86 Stat. 398; Pub. L. 93–368, §4(a), Aug. 7, 1974, 88 Stat. 420; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, known as the "Emergency Unemployment Compensation Act of 1971", provided

that, for weeks ending before Mar. 31, 1973, qualified States could enter into agreements with the Secretary of Labor for the payment of emergency unemployment compensation to eligible individuals who had exhausted their rights to regular compensation under State law.

FEDERAL-STATE EXTENDED UNEMPLOYMENT COMPENSATION ACT OF 1970

Pub. L. 91–373, title II, Aug. 10, 1970, 84 Stat. 708, as amended by Pub. L. 92–599, title V, §501, Oct. 27, 1972, 86 Stat. 1326; Pub. L. 93–53, §5, July 1, 1973, 87 Stat. 137; Pub. L. 93–233, §20, Dec. 31, 1973, 87 Stat. 974; Pub. L. 93–256, §2, Mar. 28, 1974, 88 Stat. 53; Pub. L. 93–329, §2, June 30, 1974, 88 Stat. 288; Pub. L. 93–368, §3, Aug. 7, 1974, 88 Stat. 420; Pub. L. 93–572, §§106–108, Dec. 31, 1974, 88 Stat. 1872; Pub. L. 94–45, title I, §102(b), June 30, 1975, 89 Stat. 238; Pub. L. 94–566, title I, §116(d)(1), (2), title II, §212(a), title III, §311(a), (b), Oct. 20, 1976, 90 Stat. 2672, 2677, 2678; Pub. L. 96–364, title IV, §416(a), Sept. 26, 1980, 94 Stat. 1310; Pub. L. 96–499, title X, §§1022(a), 1024(a), Dec. 5, 1980, 94 Stat. 2656, 2658; Pub. L. 97–35, title XXIV, §§2401(a), (b), 2402(a), 2403(a), 2404(a), (b), title XXV, §2505(b), Aug. 13, 1981, 95 Stat. 874, 875, 876, 884; Pub. L. 97–248, title I, §191(a), Sept. 3, 1982, 96 Stat. 407; Pub. L. 97–258, §5(b), Sept. 13, 1982, 96 Stat. 1068, 1081; Pub. L. 98–21, title V, §522(a), Apr. 20, 1983, 97 Stat. 148; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 102–318, title II, §§201, 202(a)(1), (b)(1), July 3, 1992, 106 Stat. 295, 296; Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814; Pub. L. 111–312, title V, §502, Dec. 17, 2010, 124 Stat. 3307; Pub. L. 112–78, title II, §201(a)(4), Dec. 23, 2011, 125 Stat. 1282; Pub. L. 112–96, title II, §§2123(c), 2181(a), Feb. 22, 2012, 126 Stat. 167, 179; Pub. L. 112–240, title V, §502(c), Jan. 2, 2013, 126 Stat. 2344, provided:

"SEC. 201. [Short Title] This title may be cited as the 'Federal-State Extended Unemployment Compensation Act of 1970'.

"SEC. 202. [Payment of Extended Compensation]

"(a) [State Law Requirements] (1) For purposes of section 3304(a)(11) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], a State law shall provide the payment of extended compensation shall be made, for any week of unemployment which begins in the individual's eligibility period, to individuals who have exhausted all rights to regular compensation under the State law and who have no rights to regular compensation with respect to such week under such law or any other State unemployment compensation law or to compensation under any other Federal law and are not receiving compensation with respect to such week under the unemployment compensation law of Canada. For purposes of the preceding sentence, an individual shall have exhausted his rights to regular compensation under a State law (A) when no payments of regular compensation can be made under such law because such individual has received all regular compensation available to him based on employment or wages during his base period, or (B) when his rights to such compensation have terminated by reason of the expiration of the benefit year with respect to which such rights existed.

"(2) Except where inconsistent with the provisions of this title, the terms and conditions of the State law which apply to claims for regular compensation and to the payment thereof shall apply to claims for extended compensation and to the payment thereof.

"(3)(A) Notwithstanding the provisions of paragraph (2), payment of extended compensation under this Act [see Short Title of 1970 Amendment note set out under section 3311 of this title] shall not be made to any individual for any week of unemployment in his eligibility period—

"(i) during which he fails to accept any offer of suitable work (as defined in subparagraph (c) [probably means subpar. (C)]) or fails to apply for any suitable work to which he was referred by the State agency; or

"(ii) during which he fails to actively engage in seeking work, unless such individual is not actively engaged in seeking work because such individual is, as determined in accordance with State law—

"(I) before any court of the United States or any State pursuant to a lawfully issued summons to appear for jury duty (as such term may be defined by the Secretary of Labor), or

"(II) hospitalized for treatment of an emergency or a life-threatening condition (as such term may be defined by such Secretary),

if such exemptions in clauses (I) and (II) apply to recipients of regular benefits, and the State chooses to apply such exemptions for recipients of extended benefits.

"(B) If any individual is ineligible for extended compensation for any week by reason of a failure described in clause (i) or (ii) of subparagraph (A), the individual shall be ineligible to receive extended compensation for any week which begins during a period which—

"(i) begins with the week following the week in which such failure occurs, and

"(ii) does not end until such individual has been employed during at least 4 weeks which begin after such failure and the total of the remuneration earned by the individual for being so employed is not less

than the product of 4 multiplied by the individual's average weekly benefit amount (as determined for purposes of subsection (b)(1)(c) [probably means subsec. (b)(1)(C)]) for his benefit year.

"(C) For purposes of this paragraph, the term 'suitable work' means, with respect to any individual, any work which is within such individual's capabilities; except that, if the individual furnishes evidence satisfactory to the State agency that such individual's prospects for obtaining work in his customary occupation within a reasonably short period are good, the determination of whether any work is suitable work with respect to such individual shall be made in accordance with the applicable State law.

"(D) Extended compensation shall not be denied under clause (i) of subparagraph (A) to any individual for any week by reason of a failure to accept an offer of, or apply for, suitable work—

"(i) if the gross average weekly remuneration payable to such individual for the position does not exceed the sum of—

"(I) the individual's average weekly benefit amount (as determined for purposes of subsection (b)(1)(C)) for his benefit year, plus

"(II) the amount (if any) of supplemental unemployment compensation benefits (as defined in section 501(c)(17)(D) of the Internal Revenue Code of 1986) payable to such individual for such week;

"(ii) if the position was not offered to such individual in writing and was not listed with the State employment service;

"(iii) if such failure would not result in a denial of compensation under the provisions of the applicable State law to the extent that such provisions are not inconsistent with the provisions of subparagraphs (C) and (E); or

"(iv) if the position pays wages less than the higher of—

"(I) the minimum wage provided by section 6(a)(1) of the Fair Labor Standards Act of 1938 [29 U.S.C. 206(a)(1)], without regard to any exemption; or

"(II) any applicable State or local minimum wage.

"(E) For purposes of this paragraph, an individual shall be treated as actively engaged in seeking work during any week if—

"(i) the individual has engaged in a systematic and sustained effort to obtain work during such week, and

"(ii) the individual provides tangible evidence to the State agency that he has engaged in such an effort during such week.

"(F) For purposes of section 3304(a)(11) of the Internal Revenue Code of 1986, a State law shall provide for referring applicants for benefits under this Act [see Short Title of 1970 Amendment note set out under section 3311 of this title] to any suitable work to which clauses (i), (ii), (iii), and (iv) of subparagraph (D) would not apply.

"(4) No provision of State law which terminates a disqualification for voluntarily leaving employment, being discharged for misconduct, or refusing suitable employment shall apply for purposes of determining eligibility for extended compensation unless such termination is based upon employment subsequent to the date of such disqualification.

"(5) Notwithstanding the provisions of paragraph (2), an individual shall not be eligible for extended compensation unless, in the base period with respect to which the individual exhausted all rights to regular compensation under the State law, the individual had 20 weeks of full-time insured employment, or the equivalent in insured wages. For purposes of this paragraph, the equivalent in insured wages shall be earnings covered by the State law for compensation purposes which exceed 40 times the individual's most recent weekly benefit amount or 1½ times the individual's insured wages in that calendar quarter of the base period in which the individual's insured wages were the highest (or one such quarter if his wages were the same for more than one such quarter). The State shall by law provide which one or more of the foregoing methods of measuring employment and earnings shall be used in that State.

"(6) No payment shall be made under this Act [see Short Title of 1970 Amendment note set out under section 3311 of this title] to any State in respect of any extended compensation or sharable regular compensation paid to any individual for any week if, under the rules of paragraphs (3), (4), and (5), extended compensation would not have been payable to such individual for such week.

"(7) Paragraphs (3) and (4) shall not apply to weeks of unemployment beginning after March 6, 1993, and before January 1, 1995, and no provision of State law in conformity with such paragraphs shall apply during such period.

"(b) [Individual's Compensation Accounts] (1) The State law shall provide that the State will establish, for each eligible individual who files an application therefor, an extended compensation account with respect to such individual's benefit year. The amount established in such account shall be not less than whichever of the following is the least:

"(A) 50 per centum of the total amount of regular compensation (including dependents' allowances) payable to him during such benefit year under such law,

"(B) thirteen times his average weekly benefit amount, or

"(C) thirty-nine times his average weekly benefit amount, reduced by the regular compensation paid (or deemed paid) to him during such benefit year under such law;

except that the amount so determined shall (if the State law so provides) be reduced by the aggregate amount of additional compensation paid (or deemed paid) to him under such law for prior weeks of unemployment in such benefit year which did not begin in an extended benefit period.

"(2) For purposes of paragraph (1), an individual's weekly benefit amount for a week is the amount of regular compensation (including dependents' allowances) under the State law payable to such individual for such week for total unemployment.

"(3)(A) Effective with respect to weeks beginning in a high unemployment period, paragraph (1) shall be applied by substituting—

"(i) '80 per centum' for '50 per centum' in subparagraph (A),

"(ii) 'twenty' for 'thirteen' in subparagraph (B), and

"(iii) 'forty-six' for 'thirty-nine' in subparagraph (C).

"(B) For purposes of subparagraph (A), the term 'high unemployment period' means any period during which an extended benefit period would be in effect if section 203(f)(1)(A)(i) were applied by substituting '8 percent' for '6.5 percent'.

"(c) [Cessation of Extended Benefits When Paid Under an Interstate Claim in a State Where Extended Benefit Period Is Not in Effect] (1) Except as provided in paragraph (2), payment of extended compensation shall not be made to any individual for any week if—

"(A) extended compensation would (but for this subsection) have been payable for such week pursuant to an interstate claim filed in any State under the interstate benefit payment plan, and

"(B) an extended benefit period is not in effect for such week in such State.

"(2) Paragraph (1) shall not apply with respect to the first 2 weeks for which extended compensation is payable (determined without regard to this subsection) pursuant to an interstate claim filed under the interstate benefit payment plan to the individual from the extended compensation account established for the benefit year.

"(3) Section 3304(a)(9)(A) of the Internal Revenue Code of 1986 shall not apply to any denial of compensation required under this subsection.

"SEC. 203. [Extended Benefit Period]

"(a) [Beginning and Ending] For purposes of this title, in the case of any State, an extended benefit period—

"(1) shall begin with the third week after the first week for which there is a State 'on' indicator; and

"(2) shall end with the third week after the first week for which there is a State 'off' indicator.

"(b) [Special Rules] (1) In the case of any State—

"(A) no extended benefit period shall last for a period of less than thirteen consecutive weeks, and

"(B) no extended benefit period may begin before the fourteenth week after the close of a prior extended benefit period with respect to such State.

"(2) When a determination has been made that an extended benefit period is beginning or ending with respect to a State, the Secretary shall cause notice of such determination to be published in the Federal Register.

"(c) [Eligibility Period] For purposes of this title, an individual's eligibility period under the State law shall consist of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such extended benefit period.

"(d) [State 'On' and 'Off' Indicators] For purposes of this section—

"(1) There is a State 'on' indicator for a week if the rate of insured unemployment under the State law for the period consisting of such week and the immediately preceding twelve weeks—

"(A) equaled or exceeded 120 per centum of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years, and

"(B) equaled or exceeded 5 per centum.

"(2) There is a State 'off' indicator for a week if, for the period consisting of such week and the immediately preceding twelve weeks, either subparagraph (A) or subparagraph (B) of paragraph (1) is not satisfied.

Effective with respect to compensation for weeks of unemployment beginning after March 30, 1977 (or, if later, the date established pursuant to State law), the State may by law provide that the determination of whether there has been a State 'on' or 'off' indicator beginning or ending any extended benefit period shall be

made under this subsection as if (i) paragraph (1) did not contain subparagraph (A) thereof, and (ii) the figure '5' contained in subparagraph (B) thereof were '6'; except that, notwithstanding any such provision of State law, any week for which there would otherwise be a State 'on' indicator shall continue to be such a week and shall not be determined to be a week for which there is a State 'off' indicator. Effective with respect to compensation for weeks of unemployment beginning after the date of enactment of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 [Dec. 17, 2010] (or, if later, the date established pursuant to State law), and ending on or before December 31, 2013, the State may by law provide that the determination of whether there has been a state [State] 'on' or 'off' indicator beginning or ending any extended benefit period shall be made under this subsection as if the word 'two' were 'three' in subparagraph (1)(A). For purposes of this subsection, the rate of insured unemployment for any thirteen-week period shall be determined by reference to the average monthly covered employment under the State law for the first four of the most recent six calendar quarters ending before the close of such period.

"(e) [Rate of Insured Unemployment; Covered Employment] (1) For purposes of subsection (d), the term 'rate of insured unemployment' means the percentage arrived at by dividing—

"(A) the average weekly number of individuals filing claims for regular compensation for weeks of unemployment with respect to the specified period, as determined on the basis of the reports made by the State agency to the Secretary, by

"(B) the average monthly covered employment for the specified period.

"(2) Determinations under subsection (d) shall be made by the State agency in accordance with regulations prescribed by the Secretary.

"(f) [Alternative Trigger] (1) Effective with respect to compensation for weeks of unemployment beginning after March 6, 1993, the State may by law provide that for purposes of beginning or ending any extended benefit period under this section—

"(A) there is a State 'on' indicator for a week if—

"(i) the average rate of total unemployment in such State (seasonally adjusted) for the period consisting of the most recent 3 months for which data for all States are published before the close of such week equals or exceeds 6.5 percent, and

"(ii) the average rate of total unemployment in such State (seasonally adjusted) for the 3-month period referred to in clause (i) equals or exceeds 110 percent of such average rate for either (or both) of the corresponding 3-month periods ending in the 2 preceding calendar years; and

"(B) there is a State 'off' indicator for a week if either the requirements of clause (i) or clause (ii) of subparagraph (A) are not satisfied.

Notwithstanding the provision of any State law described in this paragraph, any week for which there would otherwise be a State 'on' indicator shall continue to be such a week and shall not be determined to be a week for which there is a State 'off' indicator.

"(2) Effective with respect to compensation for weeks of unemployment beginning after the date of enactment of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 [Dec. 17, 2010] (or, if later, the date established pursuant to State law), and ending on or before December 31, 2013, the State may by law provide that the determination of whether there has been a state [State] 'on' or 'off' indicator beginning or ending any extended benefit period shall be made under this subsection as if the word 'either' were 'any', the word 'both' were 'all', and the figure '2' were '3' in clause (1)(A)(ii).

"(3) For purposes of this subsection, determinations of the rate of total unemployment in any State for any period (and of any seasonal adjustment) shall be made by the Secretary.

"SEC. 204. [Payments to States]

"(a) [Amount Payable] (1) There shall be paid to each State an amount equal to one-half of the sum of—

"(A) the sharable extended compensation, and

"(B) the sharable regular compensation,

paid to individuals under the State law.

"(2) No payment shall be made to any State under this subsection in respect of compensation (A) for which the State is entitled to reimbursement under the provisions of any Federal law other than this Act, (B) paid for the first week in an individual's eligibility period for which extended compensation or sharable regular compensation is paid, if the State law of such State provides for payment (at any time or under any circumstances) of regular compensation to an individual for his first week of otherwise compensable unemployment, (C) paid for any week with respect to which such benefits are not payable by reason of section 233(d) [now 233(c)] of the Trade Act of 1974 [19 U.S.C. 2293(c)], or (D) paid to an individual with respect to a week of unemployment to the extent that such amount exceeds the amount of such compensation which

would be paid to such individual if such State had a benefit structure which provided that the amount of compensation otherwise payable to any individual for any week shall be rounded (if not a full dollar amount) to the nearest lower full dollar amount.

"(3) The amount which, but for this paragraph, would be payable under this subsection to any State in respect of any compensation paid to an individual whose base period wages include wages for services to which section 3306(c)(7) of the Internal Revenue Code of 1986 applies shall be reduced by an amount which bears the same ratio to the amount which, but for this paragraph, would be payable under this subsection to such State in respect of such compensation as the amount of the base period wages attributable to such services bears to the total amount of the base period wages.

"(b) [Sharable Extended Compensation] For purposes of subsection (a)(1)(A), extended compensation paid to an individual for weeks of unemployment in such individual's eligibility period is sharable extended compensation to the extent that the aggregate extended compensation paid to such individual with respect to any benefit year does not exceed the smallest of the amounts referred to in subparagraphs (A), (B), and (C) of section 202(b)(1).

"(c) [Sharable Regular Compensation] For purposes of subsection (a)(1)(B), regular compensation paid to an individual for a week of unemployment is sharable regular compensation—

"(1) if such week is in such individual's eligibility period (determined under section 203(c)), and

"(2) to the extent that the sum of such compensation, plus the regular compensation paid (or deemed paid) to him with respect to prior weeks of unemployment in the benefit year, exceeds twenty-six times (and does not exceed thirty-nine, forty-six in any case where section 202(b)(3)(A) applies[,] times) the average weekly benefit amount (including allowances for dependents) for weeks of total unemployment payable to such individual under the State law in such benefit year.

"(d) [Payment on Calendar Month Basis] There shall be paid to each State either in advance or by way of reimbursement, as may be determined by the Secretary, such sum as the Secretary estimates the State will be entitled to receive under this title for each calendar month, reduced or increased, as the case may be, by any sum by which the Secretary finds that his estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made upon the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency.

"(e) [Certification] The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this section. The Secretary of the Treasury, prior to audit or settlement by the Government Accountability Office, shall make payment to the State in accordance with such certification, by transfers from the extended unemployment compensation account to the account of such State in the Unemployment Trust Fund.

"SEC. 205. [Definitions] For purposes of this title—

"(1) The term 'compensation' means cash benefits payable to individuals with respect to their unemployment.

"(2) The term 'regular compensation' means compensation payable to an individual under any State unemployment compensation law (including compensation payable pursuant to 5 U.S.C. chapter 85), other than extended compensation and additional compensation.

"(3) The term 'extended compensation' means compensation (including additional compensation and compensation payable pursuant to 5 U.S.C. chapter 85) payable for weeks of unemployment beginning in an extended benefit period to an individual under those provisions of the State law which satisfy the requirements of this title with respect to the payment of extended compensation.

"(4) The term 'additional compensation' means compensation payable to exhaustees by reason of conditions of high unemployment or by reason of other special factors.

"(5) The term 'benefit year' means the benefit year as defined in the applicable State law.

"(6) The term 'base period' means the base period as determined under applicable State law for the benefit year.

"(7) The term 'Secretary' means the Secretary of Labor of the United States.

"(8) The term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

"(9) The term 'State agency' means the agency of the State which administers its State law.

"(10) The term 'State law' means the unemployment compensation law of the State, approved by the Secretary under section 3304 of the Internal Revenue Code of 1986.

"(11) The term 'week' means a week as defined in the applicable State law.

"SEC. 206. [Approval of State Laws] [This section amended section 3304(a) of the Internal Revenue Code by adding par. (11) thereof.]

"SEC. 207. [Effective Dates] (a) Except as provided in subsection (b)—

"(1) in applying section 203, no extended benefit period may begin with a week beginning before January 1, 1972; and

"(2) section 204 shall apply only with respect to weeks of unemployment beginning after December 31, 1971.

"(b)(1) In the case of a State law approved under section 3304(a)(11) of the Internal Revenue Code of 1986, such State law may also provide that an extended benefit period may begin with a week established pursuant to such law which begins earlier than January 1, 1972, but not earlier than 60 days after the date of the enactment of this Act [Aug. 10, 1970].

"(2) For purposes of paragraph (1) with respect to weeks beginning before January 1, 1972, the extended benefit period for the State shall be determined under section 203(a) solely by reference to the State 'on' indicator and the State 'off' indicator.

"(3) In the case of a State law containing a provision described in paragraph (1), section 204 shall also apply with respect to weeks of unemployment in extended benefit periods determined pursuant to paragraph (1).

"(c) Section 3304(a)(11) of the Internal Revenue Code of 1986 (as added by section 206) shall not be a requirement for the State law of any State—

"(1) in the case of any State the legislature of which does not meet in a regular session which closes during the calendar year 1971, with respect to any week of unemployment which begins prior to July 1, 1972; or

"(2) in the case of any other State, with respect to any week of unemployment which begins prior to January 1, 1972.

"SEC. 208. [Authority to Conduct Self-Employment Assistance Programs] (a)(1) At the option of a State, for any weeks of unemployment beginning after the date of enactment of this section [Feb. 22, 2012], the State agency of the State may establish a self-employment assistance program, as described in subsection (b), to provide for the payment of extended compensation as self-employment assistance allowances to individuals who would otherwise satisfy the eligibility criteria under this title.

"(2) Subject to paragraph (3), the self-employment assistance allowance described in paragraph (1) shall be paid to an eligible individual from such individual's extended compensation account, as described in section 202(b), and the amount in such account shall be reduced accordingly.

"(3)(A) Subject to subparagraph (B), for purposes of self-employment assistance programs established under this section and section 4001(j) of the Supplemental Appropriations Act, 2008 [Pub. L. 110–252, set out above], an individual shall be provided with self-employment assistance allowances under such programs for a total of not greater than 26 weeks (referred to in this section as the 'combined eligibility limit').

"(B) For purposes of an individual who is participating in a self-employment assistance program established under this section and has not reached the combined eligibility limit as of the date on which such individual exhausts all rights to extended compensation under this title, the individual shall be eligible to receive self-employment assistance allowances under a self-employment assistance program established under section 4001(j) of the Supplemental Appropriations Act, 2008 [Pub. L. 110–252, set out above], until such individual has reached the combined eligibility limit, provided that the individual otherwise satisfies the eligibility criteria described under title IV of such Act [set out above].

"(b) For the purposes of this section, the term 'self-employment assistance program' means a program as defined under section 3306(t) of the Internal Revenue Code of 1986, except as follows:

"(1) all references to 'regular unemployment compensation under the State law' shall be deemed to refer instead to 'extended compensation under title II of the Federal-State Extended Unemployment Compensation Act of 1970' [this note];

"(2) paragraph (3)(B) shall not apply;

"(3) clause (i) of paragraph (3)(C) shall be deemed to state as follows:

" '(i) include any entrepreneurial training that the State or non-profit organizations may provide in coordination with programs of training offered by the Small Business Administration, which may include business counseling, mentorship for participants, access to small business development resources, and technical assistance; and';

"(4) the reference to '5 percent' in paragraph (4) shall be deemed to refer instead to '1 percent'; and

"(5) paragraph (5) shall not apply.

"(c) In the case of an individual who is eligible to receive extended compensation under this title, such individual shall not receive self-employment assistance allowances under this section unless the State agency has a reasonable expectation that such individual will be entitled to at least 13 times the individual's average weekly benefit amount of extended compensation and emergency unemployment compensation.

"(d)(1) An individual who is participating in a self-employment assistance program established under this

section may elect to discontinue participation in such program at any time.

"(2) For purposes of an individual whose participation in a self-employment assistance program established under this section is terminated pursuant to subsection (a)(3) or who has discontinued participation in such program, if the individual continues to satisfy the eligibility requirements for extended compensation under this title, the individual shall receive extended compensation payments with respect to subsequent weeks of unemployment, to the extent that amounts remain in the account established for such individual under section 202(b)."

[Amendment by section 502(c) of Pub. L. 112–240 to section 203 of Pub. L. 91–373, set out above, effective as if included in the enactment of subtitle B of title II of Pub. L. 112–96, see section 502(d) of Pub. L. 112–240, set out following section 2005 of Pub. L. 111–5 above.]

[Amendment by section 2123(c) of Pub. L. 112–96 to section 203 of Pub. L. 91–373, set out above, effective as if included in the enactment of Pub. L. 112–78, see section 2123(d) of Pub. L. 112–96, set out following section 2005 of Pub. L. 111–5 above.]

[Amendment by section 201(a)(4) of Pub. L. 112–78 to section 203 of Pub. L. 91–373, set out above, effective as if included in the enactment of Pub. L. 111–312, see section 201(c) of Pub. L. 112–78, set out following section 2005 of Pub. L. 111–5 above.]

[Pub. L. 102–318, title II, §202(a)(2), July 3, 1992, 106 Stat. 296, provided that:

["(A) IN GENERAL.—Notwithstanding any other provision of law, the amendment made by paragraph (1) [amending section 202(a)(5) of Pub. L. 91–373, set out above] shall apply for purposes of extended unemployment compensation and emergency unemployment compensation to weeks of unemployment beginning on or after the date of the enactment of this Act [July 3, 1992].

["(B) WAIVER OF RECOVERY OF CERTAIN OVERPAYMENTS.—On and after the date of the enactment of this Act, no repayment of any emergency unemployment compensation shall be required under section 105 of the Emergency Unemployment Compensation Act of 1991 (Public Law 102–164, as amended [formerly set out above]) if the individual would have been entitled to receive such compensation had the amendment made by paragraph (1) applied to all weeks beginning before the date of the enactment of this Act."]

[Pub. L. 98–21, title V, §522(b), Apr. 20, 1983, 97 Stat. 148, provided that: "The amendment made by this section [amending section 202(a)(3)(A)(ii) of Pub. L. 91–373, set out above] shall become effective on the date of the enactment of this Act [Apr. 20, 1983]."]

[Pub. L. 97–248, title I, §191(b), Sept. 3, 1982, 96 Stat. 407, provided that:

["(1) Except as provided in paragraph (2), the amendments made by this section [amending section 204(a)(2) of Pub. L. 91–373, set out above] shall apply in the case of compensation paid to individuals during eligibility periods beginning on or after October 1, 1983.

["(2) In the case of a State with respect to which the Secretary of Labor has determined that State legislation is required in order to provide for rounding down of unemployment compensation amounts, the amendment made by this section [amending section 204(a)(2) of Pub. L. 91–373, set out above] shall apply in the case of compensation paid to individuals during eligibility periods which begin on or after October 1, 1983, and after the end of the first session of the State legislature which begins after the date of the enactment of this Act [Sept. 3, 1982], or which began prior to the date of the enactment of this Act and remained in session for at least twenty-five calendar days after such date of enactment. For purposes of the preceding sentence, the term 'session' means a regular, special, budget, or other session of a State legislature."]

[Pub. L. 97–35, title XXIV, §2401(c), Aug. 13, 1981, 95 Stat. 875, provided that: "The amendments made by this section [amending sections 203 and 204(a)(3), (4) of Pub. L. 91–373, set out above] shall apply to weeks beginning after the date of the enactment of this Act [Aug. 13, 1981]."]

[Pub. L. 97–35, title XXIV, §2402(b), Aug. 13, 1981, 95 Stat. 875, provided that: "The amendment made by subsection (a) [amending section 203(e)(1)(A) of Pub. L. 91–373, set out above] shall apply for purposes of determining whether there are State 'on' or 'off' indicators for weeks beginning after the date of the enactment of this Act [Aug. 13, 1981]. For purposes of making such determinations for such weeks, such amendment shall be deemed to be in effect for all weeks whether beginning before, on, or after such date of enactment."]

[Pub. L. 97–35, title XXIV, §2403(b), Aug. 13, 1981, 95 Stat. 875, provided that: "The amendments made by subsection (a) [amending section 203(d) of Pub. L. 91–373, set out above] shall apply to weeks beginning after September 25, 1982."]

[Pub. L. 97–35, title XXIV, §2404(c), Aug. 13, 1981, 95 Stat. 876, provided that: "The amendments made by this section [amending section 202(a)(5), (6) of Pub. L. 91–373, set out above] shall apply with respect to extended compensation and sharable regular compensation payable for weeks which begin after September 25, 1982."]

[Amendment by sections 2401–2404 of Pub. L. 97–35 (amending Pub. L. 91–373, set out above) required to be included in State unemployment compensation laws for purposes of certifications, see section 2408(b) of Pub. L. 97–35, set out above.]

[Amendment by section 2505(b) of Pub. L. 97–35 (amending section 204(a)(2)(C) of Pub. L. 91–373, set out above) applicable to allowances payable for weeks of unemployment which begin after Sept. 30, 1981, and transitional provisions applicable, see section 2514 of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment and Transitional Provisions note under section 2291 of Title 19, Customs Duties.]

[Pub. L. 96–499, title X, §1022(b), Dec. 5, 1980, 94 Stat. 2656, provided that:

["(1) Except as provided in paragraph (2), the amendments made by this section [amending section 204(a)(2) of Pub. L. 91–373, set out above] shall apply in the case of compensation paid to individuals during eligibility periods beginning on or after the date of the enactment of this Act [Dec. 5, 1980].

["(2) In the case of a State with respect to which the Secretary of Labor has determined that State legislation is required in order to eliminate its current policy of paying regular compensation to an individual for his first week of otherwise compensable unemployment, the amendments made by this section [amending section 204(a)(2) of Pub. L. 91–373, set out above] shall apply in the case of compensation paid to individuals during eligibility periods beginning after the end of the first regularly scheduled session of the State legislature ending more than thirty days after the date of the enactment of this Act [Dec. 5, 1980]."]

[Pub. L. 96–499, title X, §1024(b), Dec. 5, 1980, 94 Stat. 2660, provided that: "The amendment made by this section [amending section 202(a) of Pub. L. 91–373, set out above] shall apply with respect to weeks of unemployment beginning after March 31, 1981."]

[Pub. L. 96–364, title IV, §416(b), Sept. 26, 1980, 94 Stat. 1311, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

["(1) IN GENERAL.—The amendment made by subsection (a) [amending subsec. 202(c) of Pub. L. 91–373, set out above] shall apply to weeks of unemployment beginning after October 1, 1980; except that such amendment shall not be a requirement of any State law under section 3304(a)(11) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for any week which begins before June 1, 1981.

["(2) SPECIAL RULE FOR CERTAIN STATES.—In the case of any State the legislature of which does not meet in a regular session which begins during calendar year 1981 and before April 1, 1981, paragraph (1) shall be applied by substituting 'June 1, 1982' for 'June 1, 1981'."]

[Section 116(f)(1) of Pub. L. 94–566, set out as an Effective Date of 1976 Amendment note above, provided in part that the deletion of "the Virgin Islands or" from section 202(a)(1) of Pub. L. 91–373, set out above, and the insertion of "and the Virgin Islands" in section 205(8) thereof shall take effect on the later of Oct. 1, 1976, or the day after the day on which the Secretary of Labor approves under section 3304(a) of this title an unemployment compensation law submitted to him by the Virgin Islands for approval.]

[Pub. L. 94–566, title II, §212(b), Oct. 20, 1976, 90 Stat. 2677, provided that: "The amendment made by this section [enacting section 204(a)(4) of Pub. L. 91–373, set out above] shall apply with respect to compensation paid for weeks of unemployment beginning on or after January 1, 1979."]

[Pub. L. 94–566, title III, §311(c), Oct. 20, 1976, 90 Stat. 2679, provided that: "The amendment made by subsection (a) of this section [amending section 203(d) of Pub. L. 91–373, set out above] shall apply to weeks beginning after December 31, 1976, and the amendments made by subsection (b) of this section [amending section 203(e) of Pub. L. 91–373, set out above] shall apply to weeks beginning after March 30, 1977."]

STUDY AND REPORT BY SECRETARY OF LABOR COVERING EMERGENCY UNEMPLOYMENT COMPENSATION PROGRAM AND SPECIAL UNEMPLOYMENT ASSISTANCE PROGRAM; REPORT ON OR BEFORE JAN. 1, 1977

Pub. L. 94–45, title I, §104, June 30, 1975, 89 Stat. 238, provided that: "The Secretary of Labor shall conduct a study and review of the program established by the Emergency Unemployment Compensation Act of 1974 [Pub. L. 93–572, set out above] and the program established under title II of the Emergency Jobs and Unemployment Assistance Act of 1974 [Pub. L. 93–567, title II, set out above] and shall submit to the Congress not later than January 1, 1977, a report on such study and review. Such study and review shall include—

"(1) the employment, economic, and demographic characteristics of individuals receiving benefits under either such program,

"(2) the needs of the long-term unemployed for job counseling, testing, referral and placement services, skill and apprenticeship training, career-related education programs, and public service employment opportunities, and

"(3) an examination of all other benefits to which individuals receiving benefits under either such program are eligible together with an investigation of important factors affecting unemployment, a

comparison of the aggregate value of such other benefits plus benefits received under either such program with the amount of compensation received by such individuals in their most recent position of employment."

LOANS TO UNEMPLOYMENT FUND OF VIRGIN ISLANDS

Pub. L. 94–45, title III, §301, June 30, 1975, 89 Stat. 243, as amended by Pub. L. 94–354, July 12, 1976, 90 Stat. 888; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) The Secretary of Labor (hereinafter in this section referred to as the 'Secretary') may make loans to the Virgin Islands in such amounts as he determines to be necessary for the payment in any month of compensation under the unemployment compensation law of the Virgin Islands. A loan may be made under this subsection for the payment of compensation in any month only if—

"(1) the Governor of the Virgin Islands submits an application therefor no earlier than the first day of the preceding month; and

"(2) such application contains an estimate of the amount of the loan which will be required by the Virgin Islands for the payment of compensation in such month.

"(b) For purposes of this section—

"(1) an application for loan under subsection (a) shall be made on such forms and shall contain such information and data (fiscal and otherwise) concerning the operation and administration of the unemployment compensation law of the Virgin Islands as the Secretary deems necessary or relevant to the performance of his duties under this section;

"(2) the amount required by the Virgin Islands for the payment of compensation in any month shall be determined with due allowance for contingencies and taking into account all other amounts that will be available in the unemployment fund of the Virgin Islands for the payment of compensation in such month; and

"(3) the term 'compensation' means cash benefits payable to individuals with respect to their unemployment, exclusive of expenses of administration.

"(c) Any loan made under subsection (a) shall be repayable (without interest) not later than January 1, 1979. If after January 1, 1979, any portion of any such loan remains unpaid, the Virgin Islands shall pay interest thereon, until the loan is paid in full, at a rate equal to the rate of interest in effect under section 6621 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]. If at some future date the Federal Unemployment Tax Act [section 3301 et seq. of this title] shall be made applicable to the Virgin Islands, then, any amount of principal or interest due on any such loan remaining unpaid on such date shall be treated, for purposes of section 3302(c)(3) of the Internal Revenue Code of 1986, as an advance made to the Virgin Islands under title XII of the Social Security Act [42 U.S.C. 1321 et seq.].

"(d) No loan may be made under subsection (a) for any month beginning after September 30, 1977. The aggregate of the loans which may be made under subsection (a) shall not exceed $15,000,000.

"(e) There are authorized to be appropriated from the general fund of the Treasury such sums as may be necessary to carry out this section."

UNEMPLOYMENT COMPENSATION LAW OF COMMONWEALTH OF PUERTO RICO

Pub. L. 86–778, title V, §543(b), Sept. 13, 1960, 74 Stat. 986, provided that: "The unemployment compensation law of the Commonwealth of Puerto Rico shall be considered as meeting the requirements of—

"(1) Section 3304(a)(2) of the Federal Unemployment Tax Act [26 U.S.C. 3304(a)(2)], if such law provides that no compensation is payable with respect to any day of unemployment occurring before January 1, 1959.

"(2) Section 3304(a)(3) of the Federal Unemployment Tax Act [26 U.S.C. 3304(a)(3)] and section 303(a)(4) of the Social Security Act [42 U.S.C. 503(a)(4)], if such law contains the provisions required by those sections and if it requires that, on or before February 1, 1961, there be paid over to the Secretary of the Treasury, for credit to the Puerto Rico account in the Unemployment Trust Fund, an amount equal to the excess of—

"(A) the aggregate of the moneys received in the Puerto Rico unemployment fund before January 1, 1961, over

"(B) the aggregate of the moneys paid from such fund before January 1, 1961, as unemployment compensation or as refunds of contributions erroneously paid."

[1] *See References in Text note below.*

§3305. Applicability of State law

(a) Interstate and foreign commerce

No person required under a State law to make payments to an unemployment fund shall be relieved from compliance therewith on the ground that he is engaged in interstate or foreign commerce, or that the State law does not distinguish between employees engaged in interstate or foreign commerce and those engaged in intrastate commerce.

(b) Federal instrumentalities in general

The legislature of any State may require any instrumentality of the United States (other than an instrumentality to which section 3306(c)(6) applies), and the individuals in its employ, to make contributions to an unemployment fund under a State unemployment compensation law approved by the Secretary of Labor under section 3304 and (except as provided in section 5240 of the Revised Statutes, as amended (12 U.S.C., sec. 484), and as modified by subsection (c)), to comply otherwise with such law. The permission granted in this subsection shall apply (A) only to the extent that no discrimination is made against such instrumentality, so that if the rate of contribution is uniform upon all other persons subject to such law on account of having individuals in their employ, and upon all employees of such persons, respectively, the contributions required of such instrumentality or the individuals in its employ shall not be at a greater rate than is required of such other persons and such employees, and if the rates are determined separately for different persons or classes of persons having individuals in their employ or for different classes of employees, the determination shall be based solely upon unemployment experience and other factors bearing a direct relation to unemployment risk; (B) only if such State law makes provision for the refund of any contributions required under such law from an instrumentality of the United States or its employees for any year in the event such State is not certified by the Secretary of Labor under section 3304 with respect to such year; and (C) only if such State law makes provision for the payment of unemployment compensation to any employee of any such instrumentality of the United States in the same amount, on the same terms, and subject to the same conditions as unemployment compensation is payable to employees of other employers under the State unemployment compensation law.

(c) National banks

Nothing contained in section 5240 of the Revised Statutes, as amended (12 U.S.C. 484), shall prevent any State from requiring any national banking association to render returns and reports relative to the association's employees, their remuneration and services, to the same extent that other persons are required to render like returns and reports under a State law requiring contributions to an unemployment fund. The Comptroller of the Currency shall, upon receipt of a copy of any such return or report of a national banking association from, and upon request of, any duly authorized official, body, or commission of a State, cause an examination of the correctness of such return or report to be made at the time of the next succeeding examination of such association, and shall thereupon transmit to such official, body, or commission a complete statement of his findings respecting the accuracy of such returns or reports.

(d) Federal property

No person shall be relieved from compliance with a State unemployment compensation law on the ground that services were performed on land or premises owned, held, or possessed by the United States, and any State shall have full jurisdiction and power to enforce the provisions of such law to the same extent and with the same effect as though such place were not owned, held, or possessed by the United States.

[(e) Repealed. Sept. 1, 1954, ch. 1212, §4(c), 68 Stat. 1135]

(f) American vessels

The legislature of any State in which a person maintains the operating office, from which the operations of an American vessel operating on navigable waters within or within and without the United States are ordinarily and regularly supervised, managed, directed and controlled, may require such person and the officers and members of the crew of such vessel to make contributions to its

unemployment fund under its State unemployment compensation law approved by the Secretary of Labor under section 3304 and otherwise to comply with its unemployment compensation law with respect to the service performed by an officer or member of the crew on or in connection with such vessel to the same extent and with the same effect as though such service was performed entirely within such State. Such person and the officers and members of the crew of such vessel shall not be required to make contributions, with respect to such service, to the unemployment fund of any other State. The permission granted by this subsection is subject to the condition that such service shall be treated, for purposes of wage credits given employees, like other service subject to such State unemployment compensation law performed for such person in such State, and also subject to the same limitation, with respect to contributions required from such person and from the officers and members of the crew of such vessel, as is imposed by the second sentence (other than clause (B) thereof) of subsection (b) with respect to contributions required from instrumentalities of the United States and from individuals in their employ.

(g) Vessels operated by general agents of United States

The permission granted by subsection (f) shall apply in the same manner and under the same conditions (including the obligation to comply with all requirements of State unemployment compensation laws) to general agents of the Secretary of Commerce with respect to service performed by officers and members of the crew on or in connection with American vessels—

(1) owned by or bareboat chartered to the United States, and

(2) whose business is conducted by such general agents.

As to any such vessel, the State permitted to require contributions on account of such service shall be the State to which the general agent would make contributions if the vessel were operated for his own account. Such general agents are designated, for this purpose, instrumentalities of the United States neither wholly nor partially owned by it and shall not be exempt from the tax imposed by section 3301. The permission granted by this subsection is subject to the same conditions and limitations as are imposed in subsection (f), except that clause (B) of the second sentence of subsection (b) shall apply.

(h) Requirement by State of contributions

Any State may, as to service performed on account of which contributions are made pursuant to subsection (g)—

(1) require contributions from persons performing such service under its unemployment compensation law or temporary disability insurance law administered in connection therewith, and

(2) require general agents of the Secretary of Commerce to make contributions under such temporary disability insurance law and to make such deductions from wages or remuneration as are required by such unemployment compensation or temporary disability insurance law.

(i) General agent as legal entity

Each general agent of the Secretary of Commerce making contributions pursuant to subsection (g) or (h) shall, for purposes of such subsections, be considered a legal entity in his capacity as an instrumentality of the United States, separate and distinct from his identity as a person employing individuals on his own account.

(j) Denial of credits in certain cases

Any person required, pursuant to the permission granted by this section, to make contributions to an unemployment fund under a State unemployment compensation law approved by the Secretary of Labor under section 3304 shall not be entitled to the credits permitted, with respect to the unemployment compensation law of a State, by subsections (a) and (b) of section 3302 against the tax imposed by section 3301 for any taxable year if, on October 31 of such taxable year, the Secretary of Labor certifies to the Secretary of the Treasury his finding, after reasonable notice and opportunity for hearing to the State agency, that the unemployment compensation law of such State is inconsistent with any one or more of the conditions on the basis of which such permission is granted or that, in the application of the State law with respect to the 12-month period ending on

such October 31, there has been a substantial failure to comply with any one or more of such conditions. For purposes of section 3310, a finding of the Secretary of Labor under this subsection shall be treated as a finding under section 3304(c).

(Aug. 16, 1954, ch. 736, 68A Stat. 445; Sept. 1, 1954, ch. 1212, §4(c), 68 Stat. 1135; Pub. L. 86–778, title V, §531(a), (b), Sept. 13, 1960, 74 Stat. 983; Pub. L. 91–373, title I, §123, Aug. 10, 1970, 84 Stat. 702; Pub. L. 94–455, title XIX, §§1903(a)(15), 1906(b)(13)(C), Oct. 4, 1976, 90 Stat. 1809, 1834.)

AMENDMENTS

1976—Subsec. (g). Pub. L. 94–455, §1903(a)(15)(A), struck out "on or after July 1, 1953," after "respect to service performed".

Subsec. (h). Pub. L. 94–455, 1903(a)(15)(B), struck out "on or after July 1, 1953, and" after "as to service performed".

Subsec. (j). Pub. L. 94–455, §§1903(a)(15)(C), 1906(b)(13)(C), struck out "after December 31, 1971," after "for any taxable year" and substituted "to the Secretary of the Treasury" for "to the Secretary".

1970—Subsec. (j). Pub. L. 91–373 added subsec. (j).

1960—Subsec. (b). Pub. L. 86–778, §531(a), substituted "(other than an instrumentality to which section 3306(c)(6) applies)" for "except such as are (1) wholly owned by the United States, or (2) exempt from the tax imposed by section 3301 by virtue of any other provision of law," and added cl. (C).

Subsec. (g). Pub. L. 86–778, §531(b), substituted "neither wholly nor partially" for "not wholly".

1954—Subsec. (e). Act Sept. 1, 1954, repealed subsec. (e) which related to the Bonneville Power Administrator.

EFFECTIVE DATE OF 1960 AMENDMENT

Pub. L. 86–778, title V, §535, Sept. 13, 1960, 74 Stat. 985, provided that: "The amendments made by this part [part 3 (§§531–535) of title V of Pub. L. 86–778, enacting section 3308 and amending this section and section 3306 of this title] (other than the amendments made by subsections (e) and (f) of section 531 [amending sections 1361 and 1367 of Title 42, The Public Health and Welfare]) shall apply with respect to remuneration paid after 1961 for services performed after 1961. The amendments made by subsections (e) and (f) of section 531 shall apply with respect to any week of unemployment which begins after December 31, 1960." [The second sentence of section 535 was repealed by Pub. L. 89–554, §8(a), Sept. 6, 1966, 80 Stat. 661.]

EFFECTIVE DATE OF 1954 AMENDMENT

Act Sept. 1, 1954, ch. 1212, §4(c), 68 Stat. 1135, provided that the amendment made by that section is effective with respect to services performed after Dec. 31, 1954.

APPLICABILITY TO FEDERAL LAND BANKS, FEDERAL INTERMEDIATE CREDIT BANKS, AND BANKS FOR COOPERATIVES

Pub. L. 86–778, title V, §531(g), Sept. 13, 1960, 74 Stat. 984, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Notwithstanding section 203(b) of the Farm Credit Act of 1959, sections 3305(b), 3306(c)(6), and 3308 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], and sections 1501(a) and 1507(a) of the Social Security Act [sections 1361(a) and 1367 of Title 42, The Public Health and Welfare] shall be applicable, according to their terms, to the Federal land banks, Federal intermediate credit banks, and banks for cooperatives."

§3306. Definitions

(a) Employer

For purposes of this chapter—

(1) In general

The term "employer" means, with respect to any calendar year, any person who—

(A) during any calendar quarter in the calendar year or the preceding calendar year paid wages of $1,500 or more, or

(B) on each of some 20 days during the calendar year or during the preceding calendar year,

each day being in a different calendar week, employed at least one individual in employment for some portion of the day.

For purposes of this paragraph, there shall not be taken into account any wages paid to, or employment of, an employee performing domestic services referred to in paragraph (3).

(2) Agricultural labor

In the case of agricultural labor, the term "employer" means, with respect to any calendar year, any person who—

(A) during any calendar quarter in the calendar year or the preceding calendar year paid wages of $20,000 or more for agricultural labor, or

(B) on each of some 20 days during the calendar year or during the preceding calendar year, each day being in a different calendar week, employed at least 10 individuals in employment in agricultural labor for some portion of the day.

(3) Domestic service

In the case of domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, the term "employer" means, with respect to any calendar year, any person who during any calendar quarter in the calendar year or the preceding calendar year paid wages in cash of $1,000 or more for such service.

(4) Special rule

A person treated as an employer under paragraph (3) shall not be treated as an employer with respect to wages paid for any service other than domestic service referred to in paragraph (3) unless such person is treated as an employer under paragraph (1) or (2) with respect to such other service.

(b) Wages

For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash; except that such term shall not include—

(1) that part of the remuneration which, after remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) equal to $7,000 with respect to employment has been paid to an individual by an employer during any calendar year, is paid to such individual by such employer during such calendar year. If an employer (hereinafter referred to as successor employer) during any calendar year acquires substantially all the property used in a trade or business of another employer (hereinafter referred to as a predecessor), or used in a separate unit of a trade or business of a predecessor, and immediately after the acquisition employs in his trade or business an individual who immediately prior to the acquisition was employed in the trade or business of such predecessor, then, for the purpose of determining whether the successor employer has paid remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment equal to $7,000 to such individual during such calendar year, any remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment paid (or considered under this paragraph as having been paid) to such individual by such predecessor during such calendar year and prior to such acquisition shall be considered as having been paid by such successor employer;

(2) the amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of—

(A) sickness or accident disability (but, in the case of payments made to an employee or any of his dependents, this subparagraph shall exclude from the term "wages" only payments which are received under a workmen's compensation law), or

(B) medical or hospitalization expenses in connection with sickness or accident disability, or
(C) death;

[(3) Repealed. Pub. L. 98–21, title III, §324(b)(3)(B), Apr. 20, 1983, 97 Stat. 124]
(4) any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of 6 calendar months following the last calendar month in which the employee worked for such employer;
(5) any payment made to, or on behalf of, an employee or his beneficiary—
(A) from or to a trust described in section 401(a) which is exempt from tax under section 501(a) at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust, or
(B) under or to an annuity plan which, at the time of such payment, is a plan described in section 403(a),
(C) under a simplified employee pension (as defined in section 408(k)(1)), other than any contributions described in section 408(k)(6),
(D) under or to an annuity contract described in section 403(b), other than a payment for the purchase of such contract which is made by reason of a salary reduction agreement (whether evidenced by a written instrument or otherwise),
(E) under or to an exempt governmental deferred compensation plan (as defined in section 3121(v)(3)),
(F) to supplement pension benefits under a plan or trust described in any of the foregoing provisions of this paragraph to take into account some portion or all of the increase in the cost of living (as determined by the Secretary of Labor) since retirement but only if such supplemental payments are under a plan which is treated as a welfare plan under section 3(2)(B)(ii) of the Employee Retirement Income Security Act of 1974; [1]
(G) under a cafeteria plan (within the meaning of section 125) if such payment would not be treated as wages without regard to such plan and it is reasonable to believe that (if section 125 applied for purposes of this section) section 125 would not treat any wages as constructively received, or
(H) under an arrangement to which section 408(p) applies, other than any elective contributions under paragraph (2)(A)(i) thereof,[2]

(6) the payment by an employer (without deduction from the remuneration of the employee)—
(A) of the tax imposed upon an employee under section 3101, or
(B) of any payment required from an employee under a State unemployment compensation law,

with respect to remuneration paid to an employee for domestic service in a private home of the employer or for agricultural labor;
(7) remuneration paid in any medium other than cash to an employee for service not in the course of the employer's trade or business;
[(8) Repealed. Pub. L. 98–21, title III, §324(b)(3)(B), Apr. 20, 1983, 97 Stat. 124]
(9) remuneration paid to or on behalf of an employee if (and to the extent that) at the time of the payment of such remuneration it is reasonable to believe that a corresponding deduction is allowable under section 217 (determined without regard to section 274(n));
(10) any payment or series of payments by an employer to an employee or any of his dependents which is paid—
(A) upon or after the termination of an employee's employment relationship because of (i) death, or (ii) retirement for disability, and
(B) under a plan established by the employer which makes provision for his employees generally or a class or classes of his employees (or for such employees or class or classes of employees and their dependents),

other than any such payment or series of payments which would have been paid if the employee's employment relationship had not been so terminated;

(11) remuneration for agricultural labor paid in any medium other than cash;

(12) any contribution, payment, or service, provided by an employer which may be excluded from the gross income of an employee, his spouse, or his dependents, under the provisions of section 120 (relating to amounts received under qualified group legal services plans);

(13) any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127, 129, 134(b)(4), or 134(b)(5);

(14) the value of any meals or lodging furnished by or on behalf of the employer if at the time of such furnishing it is reasonable to believe that the employee will be able to exclude such items from income under section 119;

(15) any payment made by an employer to a survivor or the estate of a former employee after the calendar year in which such employee died;

(16) any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 74(c), 108(f)(4), 117, or 132;

(17) any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(b);

(18) any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(d);

(19) remuneration on account of—

(A) a transfer of a share of stock to any individual pursuant to an exercise of an incentive stock option (as defined in section 422(b)) or under an employee stock purchase plan (as defined in section 423(b)), or

(B) any disposition by the individual of such stock; or

(20) any benefit or payment which is excludable from the gross income of the employee under section 139B(b).

Except as otherwise provided in regulations prescribed by the Secretary, any third party which makes a payment included in wages solely by reason of the parenthetical matter contained in subparagraph (A) of paragraph (2) shall be treated for purposes of this chapter and chapter 22 as the employer with respect to such wages. Nothing in the regulations prescribed for purposes of chapter 24 (relating to income tax withholding) which provides an exclusion from "wages" as used in such chapter shall be construed to require a similar exclusion from "wages" in the regulations prescribed for purposes of this chapter.

(c) Employment

For purposes of this chapter, the term "employment" means any service performed prior to 1955, which was employment for purposes of subchapter C of chapter 9 of the Internal Revenue Code of 1939 under the law applicable to the period in which such service was performed, and (A) any service, of whatever nature, performed after 1954 by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, and (B) any service, of whatever nature, performed after 1971 outside the United States (except in a

contiguous country with which the United States has an agreement relating to unemployment compensation) by a citizen of the United States as an employee of an American employer (as defined in subsection (j)(3)), except—

(1) agricultural labor (as defined in subsection (k)) unless—

(A) such labor is performed for a person who—

(i) during any calendar quarter in the calendar year or the preceding calendar year paid remuneration in cash of $20,000 or more to individuals employed in agricultural labor (including labor performed by an alien referred to in subparagraph (B)), or

(ii) on each of some 20 days during the calendar year or the preceding calendar year, each day being in a different calendar week, employed in agricultural labor (including labor performed by an alien referred to in subparagraph (B)) for some portion of the day (whether or not at the same moment of time) 10 or more individuals; and

(B) such labor is not agricultural labor performed by an individual who is an alien admitted to the United States to perform agricultural labor pursuant to sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act;

(2) domestic service in a private home, local college club, or local chapter of a college fraternity or sorority unless performed for a person who paid cash remuneration of $1,000 or more to individuals employed in such domestic service in any calendar quarter in the calendar year or the preceding calendar year;

(3) service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is $50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For purposes of this paragraph, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if—

(A) on each of some 24 days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business, or

(B) such individual was regularly employed (as determined under subparagraph (A)) by such employer in the performance of such service during the preceding calendar quarter;

(4) service performed on or in connection with a vessel or aircraft not an American vessel or American aircraft, if the employee is employed on and in connection with such vessel or aircraft when outside the United States;

(5) service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of 21 in the employ of his father or mother;

(6) service performed in the employ of the United States Government or of an instrumentality of the United States which is—

(A) wholly or partially owned by the United States, or

(B) exempt from the tax imposed by section 3301 by virtue of any provision of law which specifically refers to such section (or the corresponding section of prior law) in granting such exemption;

(7) service performed in the employ of a State, or any political subdivision thereof, or in the employ of an Indian tribe, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more States or political subdivisions or Indian tribes; and any service performed in the employ of any instrumentality of one or more States or political subdivisions to the extent that the instrumentality is, with respect to such service, immune under the Constitution of the United States from the tax imposed by section 3301;

(8) service performed in the employ of a religious, charitable, educational, or other organization described in section 501(c)(3) which is exempt from income tax under section 501(a);

(9) service performed by an individual as an employee or employee representative as defined in section 1 of the Railroad Unemployment Insurance Act (45 U.S.C. 351);

(10)(A) service performed in any calendar quarter in the employ of any organization exempt from income tax under section 501(a) (other than an organization described in section 401(a)) or under section 521, if the remuneration for such service is less than $50, or

(B) service performed in the employ of a school, college, or university, if such service is performed (i) by a student who is enrolled and is regularly attending classes at such school, college, or university, or (ii) by the spouse of such a student, if such spouse is advised, at the time such spouse commences to perform such service, that (I) the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university, and (II) such employment will not be covered by any program of unemployment insurance, or

(C) service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers, or

(D) service performed in the employ of a hospital, if such service is performed by a patient of such hospital;

(11) service performed in the employ of a foreign government (including service as a consular or other officer or employee or a nondiplomatic representative);

(12) service performed in the employ of an instrumentality wholly owned by a foreign government—

(A) if the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

(B) if the Secretary of State shall certify to the Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof;

(13) service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law; and service performed as an intern in the employ of a hospital by an individual who has completed a 4 years' course in a medical school chartered or approved pursuant to State law;

(14) service performed by an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission;

(15)(A) service performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(B) service performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back;

(16) service performed in the employ of an international organization;

(17) service performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life (including service performed by any such individual as an ordinary incident to any such activity), except—

(A) service performed in connection with the catching or taking of salmon or halibut, for commercial purposes, and

(B) service performed on or in connection with a vessel of more than 10 net tons (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States);

(18) service described in section 3121(b)(20);

(19) Service [3] which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F), (J), (M), or (Q) of section 101(a)(15) of the Immigration and Nationality Act, as amended (8 U.S.C. 1101(a)(15)(F), (J), (M), or (Q)), and which is performed to carry out the purpose specified in subparagraph (F), (J), (M), or (Q), as the case may be;

(20) service performed by a full time student (as defined in subsection (q)) in the employ of an organized camp—

(A) if such camp—

(i) did not operate for more than 7 months in the calendar year and did not operate for more than 7 months in the preceding calendar year, or

(ii) had average gross receipts for any 6 months in the preceding calendar year which were not more than 331/3 percent of its average gross receipts for the other 6 months in the preceding calendar year; and

(B) if such full time student performed services in the employ of such camp for less than 13 calendar weeks in such calendar year; or

(21) service performed by a person committed to a penal institution.

(d) Included and excluded service

For purposes of this chapter, if the services performed during one-half or more of any pay period by an employee for the person employing him constitute employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one-half of any such pay period by an employee for the person employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in this subsection, the term "pay period" means a period (of not more than 31 consecutive days) for which a payment of remuneration is ordinarily made to the employee by the person employing him. This subsection shall not be applicable with respect to services performed in a pay period by an employee for the person employing him, where any of such service is excepted by subsection (c)(9).

(e) State agency

For purposes of this chapter, the term "State agency" means any State officer, board, or other authority, designated under a State law to administer the unemployment fund in such State.

(f) Unemployment fund

For purposes of this chapter, the term "unemployment fund" means a special fund, established under a State law and administered by a State agency, for the payment of compensation. Any sums standing to the account of the State agency in the Unemployment Trust Fund established by section 904 of the Social Security Act, as amended (42 U.S.C. 1104), shall be deemed to be a part of the unemployment fund of the State, and no sums paid out of the Unemployment Trust Fund to such State agency shall cease to be a part of the unemployment fund of the State until expended by such State agency. An unemployment fund shall be deemed to be maintained during a taxable year only if throughout such year, or such portion of the year as the unemployment fund was in existence, no part of the moneys of such fund was expended for any purpose other than the payment of compensation (exclusive of expenses of administration) and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 3305(b); except that—

(1) an amount equal to the amount of employee payments into the unemployment fund of a State may be used in the payment of cash benefits to individuals with respect to their disability, exclusive of expenses of administration;

(2) the amounts specified by section 903(c)(2) or 903(d)(4) of the Social Security Act may, subject to the conditions prescribed in such section, be used for expenses incurred by the State for administration of its unemployment compensation law and public employment offices,[4]

(3) nothing in this subsection shall be construed to prohibit deducting any amount from unemployment compensation otherwise payable to an individual and using the amount so deducted to pay for health insurance, or the withholding of Federal, State, or local individual income tax, if the individual elected to have such deduction made and such deduction was made under a program approved by the Secretary of Labor;

(4) amounts may be deducted from unemployment benefits and used to repay overpayments as provided in section 303(g) of the Social Security Act;

(5) amounts may be withdrawn for the payment of short-time compensation under a short-time compensation program (as defined in subsection (v)); and

(6) amounts may be withdrawn for the payment of allowances under a self-employment assistance program (as defined in subsection (t)).

(g) Contributions

For purposes of this chapter, the term "contributions" means payments required by a State law to be made into an unemployment fund by any person on account of having individuals in his employ, to the extent that such payments are made by him without being deducted or deductible from the remuneration of individuals in his employ.

(h) Compensation

For purposes of this chapter, the term "compensation" means cash benefits payable to individuals with respect to their unemployment.

(i) Employee

For purposes of this chapter, the term "employee" has the meaning assigned to such term by section 3121(d), except that paragraph (4) and subparagraphs (B) and (C) of paragraph (3) shall not apply.

(j) State, United States, and American employer

For purposes of this chapter—

(1) State

The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

(2) United States

The term "United States" when used in a geographical sense includes the States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

(3) American employer

The term "American employer" means a person who is—

(A) an individual who is a resident of the United States,

(B) a partnership, if two-thirds or more of the partners are residents of the United States,

(C) a trust, if all of the trustees are residents of the United States, or

(D) a corporation organized under the laws of the United States or of any State.

An individual who is a citizen of the Commonwealth of Puerto Rico or the Virgin Islands (but not otherwise a citizen of the United States) shall be considered, for purposes of this section, as a citizen of the United States.

(k) Agricultural labor

For purposes of this chapter, the term "agricultural labor" has the meaning assigned to such term by subsection (g) of section 3121, except that for purposes of this chapter subparagraph (B) of paragraph (4) of such subsection (g) shall be treated as reading:

"(B) in the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described in subparagraph (A), but only if such operators produced more than one-half of the commodity with respect to which such service is performed;".

[(l) Repealed. Sept. 1, 1954, ch. 1212, §4(c), 68 Stat. 1135]

(m) American vessel and aircraft

For purposes of this chapter, the term "American vessel" means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State; and the term "American aircraft" means an aircraft registered under the laws of the United States.

(n) Vessels operated by general agents of United States

Notwithstanding the provisions of subsection (c)(6), service performed by officers and members of the crew of a vessel which would otherwise be included as employment under subsection (c) shall not be excluded by reason of the fact that it is performed on or in connection with an American vessel—

(1) owned by or bareboat chartered to the United States and

(2) whose business is conducted by a general agent of the Secretary of Commerce.

For purposes of this chapter, each such general agent shall be considered a legal entity in his capacity as such general agent, separate and distinct from his identity as a person employing individuals on his own account, and the officers and members of the crew of such an American vessel whose business is conducted by a general agent of the Secretary of Commerce shall be deemed to be performing services for such general agent rather than the United States. Each such general agent who in his capacity as such is an employer within the meaning of subsection (a) shall be subject to all the requirements imposed upon an employer under this chapter with respect to service which constitutes employment by reason of this subsection.

(o) Special rule in case of certain agricultural workers

(1) Crew leaders who are registered or provide specialized agricultural labor

For purposes of this chapter, any individual who is a member of a crew furnished by a crew leader to perform agricultural labor for any other person shall be treated as an employee of such crew leader—

(A) if—

(i) such crew leader holds a valid certificate of registration under the Migrant and Seasonal Agricultural Worker Protection Act; or

(ii) substantially all the members of such crew operate or maintain tractors, mechanized harvesting or crop-dusting equipment, or any other mechanized equipment, which is provided by such crew leader; and

(B) if such individual is not an employee of such other person within the meaning of subsection (i).

(2) Other crew leaders

For purposes of this chapter, in the case of any individual who is furnished by a crew leader to perform agricultural labor for any other person and who is not treated as an employee of such crew leader under paragraph (1)—

(A) such other person and not the crew leader shall be treated as the employer of such

individual; and

(B) such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader (either on his behalf or on behalf of such other person) for the agricultural labor performed for such other person.

(3) Crew leader

For purposes of this subsection, the term "crew leader" means an individual who—

(A) furnishes individuals to perform agricultural labor for any other person,

(B) pays (either on his behalf or on behalf of such other person) the individuals so furnished by him for the agricultural labor performed by them, and

(C) has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person.

(p) Concurrent employment by two or more employers

For purposes of sections 3301, 3302, and 3306(b)(1), if two or more related corporations concurrently employ the same individual and compensate such individual through a common paymaster which is one of such corporations, each such corporation shall be considered to have paid as remuneration to such individual only the amounts actually disbursed by it to such individual and shall not be considered to have paid as remuneration to such individual amounts actually disbursed to such individual by another of such corporations.

(q) Full time student

For purposes of subsection (c)(20), an individual shall be treated as a full time student for any period—

(1) during which the individual is enrolled as a full time student at an educational institution, or

(2) which is between academic years or terms if—

(A) the individual was enrolled as a full time student at an educational institution for the immediately preceding academic year or term, and

(B) there is a reasonable assurance that the individual will be so enrolled for the immediately succeeding academic year or term after the period described in subparagraph (A).

(r) Treatment of certain deferred compensation and salary reduction arrangements

(1) Certain employer contributions treated as wages

Nothing in any paragraph of subsection (b) (other than paragraph (1)) shall exclude from the term "wages"—

(A) any employer contribution under a qualified cash or deferred arrangement (as defined in section 401(k)) to the extent not included in gross income by reason of section 402(e)(3), or

(B) any amount treated as an employer contribution under section 414(h)(2) where the pickup referred to in such section is pursuant to a salary reduction agreement (whether evidenced by a written instrument or otherwise).

(2) Treatment of certain nonqualified deferred compensation plans

(A) In general

Any amount deferred under a nonqualified deferred compensation plan shall be taken into account for purposes of this chapter as of the later of—

(i) when the services are performed, or

(ii) when there is no substantial risk of forfeiture of the rights to such amount.

(B) Taxed only once

Any amount taken into account as wages by reason of subparagraph (A) (and the income attributable thereto) shall not thereafter be treated as wages for purposes of this chapter.

(C) Nonqualified deferred compensation plan

For purposes of this paragraph, the term "nonqualified deferred compensation plan" means

any plan or other arrangement for deferral of compensation other than a plan described in subsection (b)(5).

(s) Tips treated as wages

For purposes of this chapter, the term "wages" includes tips which are—

(1) received while performing services which constitute employment, and

(2) included in a written statement furnished to the employer pursuant to section 6053(a).

(t) Self-employment assistance program

For the purposes of this chapter, the term "self-employment assistance program" means a program under which—

(1) individuals who meet the requirements described in paragraph (3) are eligible to receive an allowance in lieu of regular unemployment compensation under the State law for the purpose of assisting such individuals in establishing a business and becoming self-employed;

(2) the allowance payable to individuals pursuant to paragraph (1) is payable in the same amount, at the same interval, on the same terms, and subject to the same conditions, as regular unemployment compensation under the State law, except that—

(A) State requirements relating to availability for work, active search for work, and refusal to accept work are not applicable to such individuals;

(B) State requirements relating to disqualifying income are not applicable to income earned from self-employment by such individuals; and

(C) such individuals are considered to be unemployed for the purposes of Federal and State laws applicable to unemployment compensation,

as long as such individuals meet the requirements applicable under this subsection;

(3) individuals may receive the allowance described in paragraph (1) if such individuals—

(A) are eligible to receive regular unemployment compensation under the State law, or would be eligible to receive such compensation except for the requirements described in subparagraph (A) or (B) of paragraph (2);

(B) are identified pursuant to a State worker profiling system as individuals likely to exhaust regular unemployment compensation; and

(C) are participating in self-employment assistance activities which—

(i) include entrepreneurial training, business counseling, and technical assistance; and

(ii) are approved by the State agency; and

(D) are actively engaged on a full-time basis in activities (which may include training) relating to the establishment of a business and becoming self-employed;

(4) the aggregate number of individuals receiving the allowance under the program does not at any time exceed 5 percent of the number of individuals receiving regular unemployment compensation under the State law at such time;

(5) the program does not result in any cost to the Unemployment Trust Fund (established by section 904(a) of the Social Security Act) in excess of the cost that would be incurred by such State and charged to such Fund if the State had not participated in such program; and

(6) the program meets such other requirements as the Secretary of Labor determines to be appropriate.

(u) Indian tribe

For purposes of this chapter, the term "Indian tribe" has the meaning given to such term by section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)), and includes any subdivision, subsidiary, or business enterprise wholly owned by such an Indian tribe.

(v) Short-time compensation program

For purposes of this part,[5] the term "short-time compensation program" means a program under which—

(1) the participation of an employer is voluntary;

(2) an employer reduces the number of hours worked by employees in lieu of layoffs;

(3) such employees whose workweeks have been reduced by at least 10 percent, and by not more than the percentage, if any, that is determined by the State to be appropriate (but in no case more than 60 percent), are not disqualified from unemployment compensation;

(4) the amount of unemployment compensation payable to any such employee is a pro rata portion of the unemployment compensation which would otherwise be payable to the employee if such employee were unemployed;

(5) such employees meet the availability for work and work search test requirements while collecting short-time compensation benefits, by being available for their workweek as required by the State agency;

(6) eligible employees may participate, as appropriate, in training (including employer-sponsored training or worker training funded under the Workforce Investment Act of 1998) to enhance job skills if such program has been approved by the State agency;

(7) the State agency shall require employers to certify that if the employer provides health benefits and retirement benefits under a defined benefit plan (as defined in section 414(j)) or contributions under a defined contribution plan (as defined in section 414(i)) to any employee whose workweek is reduced under the program that such benefits will continue to be provided to employees participating in the short-time compensation program under the same terms and conditions as though the workweek of such employee had not been reduced or to the same extent as other employees not participating in the short-time compensation program;

(8) the State agency shall require an employer to submit a written plan describing the manner in which the requirements of this subsection will be implemented (including a plan for giving advance notice, where feasible, to an employee whose workweek is to be reduced) together with an estimate of the number of layoffs that would have occurred absent the ability to participate in short-time compensation and such other information as the Secretary of Labor determines is appropriate;

(9) the terms of the employer's written plan and implementation shall be consistent with employer obligations under applicable Federal and State laws; and

(10) upon request by the State and approval by the Secretary of Labor, only such other provisions are included in the State law that are determined to be appropriate for purposes of a short-time compensation program.

(Aug. 16, 1954, ch. 736, 68A Stat. 447; Sept. 1, 1954, ch. 1212, §§1, 4(c), 68 Stat. 1130, 1135; Pub. L. 86–70, §22(a), June 25, 1959, 73 Stat. 146; Pub. L. 86–624, §18(d), July 12, 1960, 74 Stat. 416; Pub. L. 86–778, title V, §§531(c), 532–534, 543(a), Sept. 13, 1960, 74 Stat. 983, 984, 986; Pub. L. 87–256, §110(f), Sept. 21, 1961, 75 Stat. 537; Pub. L. 87–792, §7(k), Oct. 10, 1962, 76 Stat. 830; Pub. L. 88–650, §4(c), Oct. 13, 1964, 78 Stat. 1077; Pub. L. 90–248, title V, §504(b), Jan. 2, 1968, 81 Stat. 935; Pub. L. 91–53, §1, Aug. 7, 1969, 83 Stat. 91; Pub. L. 91–373, title I, §§101(a), 102(a), 103(a), 105(a), (b), 106(a), title III, §302, Aug. 10, 1970, 84 Stat. 696, 697, 699, 700, 713; Pub. L. 94–455, title XIX, §§1903(a)(16), 1906(b)(13)(C), Oct. 4, 1976, 90 Stat. 1810, 1834; Pub. L. 94–566, title I, §§111 (a), (b), 112(a), 113(a), 114(a), 116(b), title II, §211(a), Oct. 20, 1976, 90 Stat. 2667–2669, 2672, 2676; Pub. L. 95–216, title III, §314(b), Dec. 20, 1977, 91 Stat. 1536; Pub. L. 95–472, §3(a), Oct. 17, 1978, 92 Stat. 1333; Pub. L. 95–600, title I, §164(b)(2), Nov. 6, 1978, 92 Stat. 2813; Pub. L. 96–84, §4(a), (b), Oct. 10, 1979, 93 Stat. 654; Pub. L. 96–222, title I, §101(a)(10)(B)(ii), Apr. 1, 1980, 94 Stat. 201; Pub. L. 96–499, title XI, §1141(b), Dec. 5, 1980, 94 Stat. 2694; Pub. L. 97–34, title I, §124(e)(2)(A), title VIII, §822(a), Aug. 13, 1981, 95 Stat. 200, 351; Pub. L. 97–248, title II, §§271(a), 276(a)(1), (b)(1), (2), 277, Sept. 3, 1982, 96 Stat. 554, 558, 559; Pub. L. 98–21, title III, §§324(b)(1)–(4)(B), 327(c), 328(c), Apr. 20, 1983, 97 Stat. 123, 124, 127, 128; Pub. L. 98–135, title II, §§201(a), 202, Oct. 24, 1983, 97 Stat. 860; Pub. L. 98–369, div. A, title IV, §491(d)(37), title V, §531(d)(3), div. B, title VI, §2661(o)(4), July 18, 1984, 98 Stat. 851, 884, 1159; Pub. L. 99–272, title XII, §12401(b)(2), title XIII, §13303(a), Apr. 7, 1986, 100 Stat. 297, 327; Pub. L. 99–509, title IX, §9002(b)(2)(B), Oct. 21, 1986, 100 Stat. 1971; Pub. L. 99–514, title I, §122(e)(3), title XI, §§1108(g)(8), 1151(d)(2)(B), title XVIII, §§1884(3), 1899A(44), (45), Oct. 22,

1986, 100 Stat. 2112, 2435, 2505, 2919, 2961; Pub. L. 99–595, Oct. 31, 1986, 100 Stat. 3348; Pub. L. 100–647, title I, §§1001(d)(2)(C)(iii), (g)(4)(B)(ii), 1011B(a) (22)(C), (23)(A), 1018(u)(50), title VIII, §8016(a)(3)(B), Nov. 10, 1988, 102 Stat. 3351, 3352, 3486, 3593, 3792; Pub. L. 101–140, title II, §203(a)(2), Nov. 8, 1989, 103 Stat. 830; Pub. L. 102–318, title III, §303(a), title IV, §401(a)(2), title V, §521(b)(35), July 3, 1992, 106 Stat. 297, 298, 312; Pub. L. 103–182, title V, §507(a), (b)(2), Dec. 8, 1993, 107 Stat. 2153, 2154; Pub. L. 103–296, title III, §320(a)(1)(E), Aug. 15, 1994, 108 Stat. 1535; Pub. L. 103–465, title VII, §702(c)(2), Dec. 8, 1994, 108 Stat. 4997; Pub. L. 104–188, title I, §§1203(a), 1421(b)(8)(C), 1704(t)(10), Aug. 20, 1996, 110 Stat. 1773, 1798, 1888; Pub. L. 104–191, title III, §301(c)(2)(B), Aug. 21, 1996, 110 Stat. 2049; Pub. L. 105–33, title V, §5406(a), Aug. 5, 1997, 111 Stat. 605; Pub. L. 106–554, §1(a)(7) [title I, §166(a), (d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–627; Pub. L. 107–147, title II, §209(d)(1), Mar. 9, 2002, 116 Stat. 33; Pub. L. 108–121, title I, §106(b)(3), Nov. 11, 2003, 117 Stat. 1339; Pub. L. 108–173, title XII, §1201(d)(2)(B), Dec. 8, 2003, 117 Stat. 2477; Pub. L. 108–357, title II, §251(a)(3), title III, §320(b)(3), Oct. 22, 2004, 118 Stat. 1458, 1473; Pub. L. 108–375, div. A, title V, §585(b)(2)(C), Oct. 28, 2004, 118 Stat. 1932; Pub. L. 110–245, title I, §115(b), June 17, 2008, 122 Stat. 1636; Pub. L. 112–96, title II, §2161(a)(1), (b)(1)(B), Feb. 22, 2012, 126 Stat. 171, 172.)

REFERENCES IN TEXT

Section 3(2)(B)(ii) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (b)(5)(F), is classified to section 1002(2)(B)(ii) of Title 29, Labor.

Subchapter C of chapter 9 of the Internal Revenue Code of 1939, referred to in subsec. (c), was comprised of sections 1600 to 1611 of former Title 26, Internal Revenue Code. Subchapter C of chapter 9 was repealed by section 7851(a)(3) of this title. For table of comparisons of the 1939 Code to the 1986 Code, see table I preceding section 1 of this title. See, also, section 7851(e) of this title for provision that references in the 1986 Code to a provision of the 1939 Code, not then applicable, shall be deemed a reference to the corresponding provision of the 1986 Code, which is then applicable.

Sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act, referred to in subsec. (c)(1)(B), are classified to sections 1184(c) and 1101(a)(15)(H), respectively, of Title 8, Aliens and Nationality.

Sections 303(g), 903(c)(2), (d)(4), and 904(a) of the Social Security Act, referred to in subsecs. (f)(2), (4) and (t)(5), are classified to sections 503(g), 1103(c)(2), (d)(4), and 1104(a), respectively, of Title 42, The Public Health and Welfare.

The Migrant and Seasonal Agricultural Worker Protection Act, referred to in subsec. (o)(1)(A)(i), is Pub. L. 97–470, Jan. 14, 1983, 96 Stat. 2584, as amended, which is classified generally to chapter 20 (§1801 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of Title 29 and Tables.

The Workforce Investment Act of 1998, referred to in subsec. (v)(6), is Pub. L. 105–220, Aug. 7, 1998, 112 Stat. 936. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

AMENDMENTS

2012—Subsec. (f)(5). Pub. L. 112–96, §2161(b)(1)(B)(i), added par. (5) and struck out former par. (5) relating to short-time compensation which read as follows: "amounts may be withdrawn for the payment of short-time compensation under a plan approved by the Secretary of Labor; and". Former par. (5) relating to self-employment assistance program redesignated (6).

Subsec. (f)(6). Pub. L. 112–96, §2161(b)(1)(B)(ii), redesignated par. (5) relating to self-employment assistance program as (6).

Subsec. (v). Pub. L. 112–96, §2161(a)(1), added subsec. (v).

2008—Subsec. (b)(20). Pub. L. 110–245 added par. (20).

2004—Subsec. (b)(13). Pub. L. 108–375 substituted "134(b)(4), or 134(b)(5)" for "or 134(b)(4)".

Subsec. (b)(16). Pub. L. 108–357, §320(b)(3), inserted "108(f)(4)," after "74(c),".

Subsec. (b)(19). Pub. L. 108–357, §251(a)(3), added par. (19).

2003—Subsec. (b)(13). Pub. L. 108–121 substituted ", 129, or 134(b)(4)" for "or 129".

Subsec. (b)(18). Pub. L. 108–173 added par. (18).

2002—Subsec. (f)(2). Pub. L. 107–147 inserted "or 903(d)(4)" before "of the Social Security Act".

2000—Subsec. (c)(7). Pub. L. 106–554, §1(a)(7) [title I, §166(a)], inserted "or in the employ of an Indian tribe," after "service performed in the employ of a State, or any political subdivision thereof," and "or Indian tribes" after "wholly owned by one or more States or political subdivisions".

Subsec. (u). Pub. L. 106–554, §1(a)(7) [title I, §166(d)], added subsec. (u).

1997—Subsec. (c)(21). Pub. L. 105–33 added par. (21).

1996—Subsec. (b)(5)(H). Pub. L. 104–188, §1421(b)(8)(C), added subpar. (H).

Subsec. (b)(17). Pub. L. 104–191 added par. (17).

Subsec. (c)(1)(B). Pub. L. 104–188, §1203(a), struck out "before January 1, 1995," after "labor performed".

Subsec. (k). Pub. L. 104–188, §1704(t)(10), inserted a period at end.

1994—Subsec. (c)(19). Pub. L. 103–296 substituted "(J), (M), or (Q)" for "(J), or (M)" wherever appearing.

Subsec. (f)(3) to (5). Pub. L. 103–465 added par. (3) and redesignated former pars. (3) and (4) as (4) and (5) relating to payment of short-time compensation, respectively.

1993—Subsec. (f)(5). Pub. L. 103–182, §507(b)(2), added par. (5).

Subsec. (t). Pub. L. 103–182, §507(a), added subsec. (t).

1992—Subsec. (c)(1)(B). Pub. L. 102–318, §303(a), substituted "1995" for "1993".

Subsec. (f)(4). Pub. L. 102–318, §401(a)(2), added par. (4).

Subsec. (r)(1)(A). Pub. L. 102–318, §521(b)(35), substituted "402(e)(3)" for "402(a)(8)".

1989—Subsec. (t). Pub. L. 101–140 amended this section to read as if amendments by Pub. L. 100–647, §1011B(a)(22)(C), had not been enacted, see 1988 Amendment note below.

1988—Subsec. (b)(5)(G). Pub. L. 100–647, §1011B(a)(23)(A), inserted "if such payment would not be treated as wages without regard to such plan and it is reasonable to believe that (if section 125 applied for purposes of this section) section 125 would not treat any wages as constructively received" after "section 125)".

Subsec. (b)(9). Pub. L. 100–647, §1001(g)(4)(B)(ii), inserted "(determined without regard to section 274(n))" after "section 217".

Subsec. (c)(1)(B). Pub. L. 100–647, §1018(u)(50), amended Pub. L. 99–272, §13303(a), see 1986 Amendment notes below.

Subsec. (c)(19). Pub. L. 100–647, §1001(d)(2)(C)(iii), substituted "(F), (J), or (M)" for "(F) or (J)" in three places.

Subsec. (i). Pub. L. 100–647, §8016(a)(3)(B), substituted "paragraph (4) and subparagraphs (B) and (C) of paragraph (3)" for "paragraph (3) and subparagraphs (B) and (C) of paragraph (4)".

Subsec. (t). Pub. L. 100–647, §1011B(a)(22)(C), added subsec. (t) relating to benefits provided under certain employee benefit plans.

1986—Subsec. (b)(2)(A). Pub. L. 99–514, §1899A(44), substituted "workmen's compensation" for "workman's compensation".

Subsec. (b)(5)(C). Pub. L. 99–514, §1108(g)(8), added subpar. (C) and struck out former subpar. (C) which read as follows: "under a simplified employee pension if, at the time of the payment, it is reasonable to believe that the employee will be entitled to a deduction under section 219(b)(2) for such payment,".

Subsec. (b)(5)(G). Pub. L. 99–514, §1151(d)(2)(B), added subpar. (G).

Subsec. (b)(13). Pub. L. 99–514, §1899A(45), substituted a semicolon for a comma.

Subsec. (b)(16). Pub. L. 99–514, §122(e)(3), inserted reference to section 74(c).

Subsec. (c)(1)(B). Pub. L. 99–595 substituted "January 1, 1993" for "January 1, 1988".

Pub. L. 99–272, §13303(a), as amended by Pub. L. 100–647, §1018(u)(50), substituted "January 1, 1988" for "January 1, 1986".

Subsec. (f)(3). Pub. L. 99–272, §12401(b)(2), added par. (3).

Subsec. (i). Pub. L. 99–509 substituted "paragraph (3) and subparagraphs (B) and (C) of paragraph (4)" for "subparagraphs (B) and (C) of paragraph (3)".

Subsec. (o)(1)(A)(i). Pub. L. 99–514, §1884(3), substituted "Migrant and Seasonal Agricultural Worker Protection Act" for "Farm Labor Contractor Registration Act of 1963".

1984—Subsec. (b). Pub. L. 98–369, §531(d)(3)(A), in provisions preceding par. (1), inserted "(including benefits)".

Subsec. (b)(5)(C) to (G). Pub. L. 98–369, §491(d)(37), struck out subpar. (C) which provided: "under or to a bond purchase plan which, at the time of such payment, is a qualified bond purchase plan described in section 405(a)," and redesignated subpars. (D) to (G) as (C) to (F), respectively.

Subsec. (b)(16). Pub. L. 98–369, §531(d)(3)(B), added par. (16).

Subsec. (r)(1)(B). Pub. L. 98–369, §2661(o)(4), substituted "section 414(h)(2) where the pickup referred to in such section is pursuant to a salary reduction agreement (whether evidenced by a written instrument or otherwise)" for "section 414(h)(2)".

Subsec. (s). Pub. L. 98–369, §1073(a), added subsec. (s).

1983—Subsec. (b). Pub. L. 98–21, §327(c)(4), added sentence at end providing that nothing in the regulations prescribed for purposes of chapter 24 (relating to income tax withholding) which provides an

exclusion from "wages" as used in such chapter shall be construed to require a similar exclusion from "wages" in regulations prescribed for purposes of this chapter.

Pub. L. 98–21, §324(b)(4)(B), added sentence at end providing that, except as otherwise provided in regulations prescribed by the Secretary, any third party which makes a payment included in wages solely by reason of parenthetical text contained in subpar. (A) of par. (2) shall be treated for purposes of this chapter and chapter 22 as the employer with respect to such wages.

Subsec. (b)(2). Pub. L. 98–21, §324(b)(3)(A), (4)(A), struck out "(A) retirement or", redesignated subpars. (B) to (D) as (A) to (C), respectively, and in subpar. (A), as so redesignated, substituted "sickness or accident disability (but, in the case of payments made to an employee or any of his dependents, this subparagraph shall exclude from the term 'wages' only payments which are received under a workman's compensation law)" for "sickness or accident disability".

Subsec. (b)(3). Pub. L. 98–21, §324(b)(3)(B), struck out par. (3) which related to any payment made to an employee (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement.

Subsec. (b)(5)(D). Pub. L. 98–21, §328(c), substituted "section 219(b)(2)" for "section 219".

Subsec. (b)(5)(E) to (G). Pub. L. 98–21, §324(b)(2), added subpars. (E) to (G).

Subsec. (b)(8). Pub. L. 98–21, §324(b)(3)(B), struck out par. (8) which related to any payment (other than vacation or sick pay) made to an employee after the month in which he attained the age of 65, if he did not work for the employer in the period for which such payment was made.

Subsec. (b)(10)(A). Pub. L. 98–21, §324(b)(3)(C), struck out cl. (iii) which related to retirement after attaining an age specified in the plan referred to in subpar. (B) or in a pension plan of the employer.

Subsec. (b)(14). Pub. L. 98–21, §327(c)(1)–(3), added par. (14).

Subsec. (b)(15). Pub. L. 98–135, §201(a), added par. (15).

Subsec. (c)(1)(B). Pub. L. 98–135, §202, substituted "1986" for "1984".

Subsec. (r). Pub. L. 98–21, §324(b)(1), added subsec. (r).

1982—Subsec. (b)(1). Pub. L. 97–248, §271(a), substituted "$7,000" for "$6,000" wherever appearing.

Subsec. (c)(1)(B). Pub. L. 97–248, §277, substituted "1984" for "1982".

Subsec. (c)(10)(C). Pub. L. 97–248, §276(a)(1), struck out "under the age of 22" after "service performed by an individual".

Subsec. (c)(20). Pub. L. 97–248, §276(b)(1), added par. (20).

Subsec. (q). Pub. L. 97–248, §276(b)(2), added subsec. (q).

1981—Subsec. (b)(13). Pub. L. 97–34, §124(e)(2)(A), substituted "section 127 or 129" for "section 127".

Subsec. (c)(18), (19). Pub. L. 97–34, §822(a), added par. (18) and redesignated former par. (18) as (19).

1980—Subsec. (b)(5)(D). Pub. L. 96–222 added subpar. (D).

Subsec. (b)(6). Pub. L. 96–499 struck out "(or the corresponding section of prior law)" after "section 3101" in subpar. (A) and inserted "with respect to remuneration paid to an employee for domestic service in a private home of the employer or for agricultural labor" following subpar. (B).

1979—Subsec. (c)(1)(A). Pub. L. 96–84, §4(b), substituted "including labor performed by an alien" for "not taking into account labor performed before January 1, 1980, by an alien" in parenthetical text of cls. (i) and (ii).

Subsec. (c)(1)(B). Pub. L. 96–84, §4(a), substituted "January 1, 1982" for "January 1, 1980".

1978—Subsec. (b)(12). Pub. L. 95–472 added par. (12).

Subsec. (b)(13). Pub. L. 95–600 added par. (13).

1977—Subsec. (p). Pub. L. 95–216 added subsec. (p).

1976—Subsec. (a). Pub. L. 94–566, §114(a), redesignated existing provisions, consisting of an introductory phrase and pars. (1) and (2), as par. (1), consisting of an introductory phrase and subpars. (A) and (B), inserted provisions following subpar. (B) as so redesignated, and added pars. (2), (3), and (4).

Subsec. (b)(1). Pub. L. 94–566, §211(a), substituted "$6,000" for "$4,200" wherever appearing.

Subsec. (b)(11). Pub. L. 94–566, §111(a), added par. (11).

Subsec. (c). Pub. L. 94–566, §116(b)(1), struck out "or in the Virgin Islands" after "agreement relating to unemployment compensation" in parenthetical provisions of cl. (B) preceding par. (1).

Subsec. (c)(1). Pub. L. 94–566, §111(b), inserted "unless" after "subsection (k))" and added subpars. (A) and (B).

Subsec. (c)(2). Pub. L. 94–566, §113(a), inserted "unless performed for a person who paid cash remuneration of $1,000 or more to individuals employed in such domestic service in any calendar quarter in the calendar year or the preceding calendar year" after "sorority".

Subsec. (c)(9). Pub. L. 94–455, §1903(a)(16)(A), struck out "52 Stat. 1094, 1095;" before "45 U.S.C. 351".

Subsec. (c)(12)(B). Pub. L. 94–455, §1906(b)(13)(C), substituted "to the Secretary of the Treasury" for "to

the Secretary".

Subsec. (c)(18). Pub. L. 94–455, §1903(a)(16)(B), inserted "(8 U.S.C. 1101(a)(15)(F) or (J))" after "Immigration and Nationality Act, as amended".

Subsec. (f). Pub. L. 94–455, §1903(a)(16)(C), struck out "49 Stat. 640; 52 Stat. 1104, 1105;" before "42 U.S.C. 1104".

Subsec. (j). Pub. L. 94–566, §116(b)(2), inserted reference to the Virgin Islands in pars. (1) and (2) and in provisions following par. (3).

Subsec. (n). Pub. L. 94–455, §1903(a)(16)(D), struck out "on or after July 1, 1953," after "service performed".

Subsec. (o). Pub. L. 94–566, §112(a), added subsec. (o).

1970—Subsec. (a). Pub. L. 91–373, §101(a), expanded definition of "employer" by reducing from 4 to 1 the number of individuals which a person had to employ on each of some 20 days during the calendar year or the preceding calendar year in order to qualify as an employer and inserted provisions making a person an employer who paid wages of $1,500 or more during any calendar quarter in the calendar year or the preceding calendar year.

Subsec. (b)(1). Pub. L. 91–373, §302, substituted "$4,200" for "$3,000".

Subsec. (c). Pub. L. 91–373, §105(a), inserted reference to service performed after 1971 outside the United States by a citizen of the United States as an employee of an American employer.

Subsec. (c)(10). Pub. L. 91–373, §106(a), designated existing provisions of subpar. (B) as cl. (i) thereof and added cl. (ii) of subpar. (B) and subpars. (C) and (D).

Subsec. (i). Pub. L. 91–373, §102(a), substituted meaning assigned "employee" by section 3121(d) of this title, except that subpars. (B) and (C) of par. (3) were not applicable, as meaning of "employee" for purposes of this chapter for a definition of "employee" as persons including officers of corporations but not including independent contractors under common law rules or persons not employees under such rules.

Subsec. (j)(3). Pub. L. 91–373, §105(b), inserted definition of "American employer".

Subsec. (k). Pub. L. 91–373, §103(a), substituted as definition of "agricultural labor" a simple reference to that term as defined, with a minor exception, in section 3121 of this title for a full definition of the term, the result of which, in view of the substance of section 3121, excluded from the definition of agricultural labor services performed in connection with the production or harvesting of maple sirup, maple sugar, or mushrooms, or the hatching of poultry unless performed on a farm, and provided a new series of tests to determine whether the handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering agricultural or horticultural commodities constitute agricultural labor.

1969—Subsec. (a). Pub. L. 90–53 made status of employer depend also on employment during preceding taxable year.

1968—Subsec. (b)(10). Pub. L. 90–248 added par. (10).

1964—Subsec. (b)(9). Pub. L. 88–650 added par. (9).

1962—Subsec. (b)(5). Pub. L. 87–792 substituted "is a plan described in section 403(a)" for "meets the requirements of section 401(a)(3), (4), (5), and (6)" in subpar. (B), and added subpar. (C).

1961—Subsec. (c)(18). Pub. L. 87–256 added par. (18).

1960—Subsec. (c). Pub. L. 86–778, §532(a), included employment on or in connection with an American aircraft within cl. (B) of the opening provisions.

Subsec. (c)(4). Pub. L. 86–778, §532(b), excluded service performed on or in connection with an aircraft that is not an American aircraft.

Subsec. (c)(6). Pub. L. 86–778, §531(c), substituted "wholly or partially owned" for "wholly owned" in cl. (A), and inserted "which specifically refers to such section (or the corresponding section of prior law) in granting such exemption" in cl. (B).

Subsec. (c)(8). Pub. L. 86–778, §533, substituted "service performed in the employ of a religious, charitable, educational, or other organization described in section 501(c)(3) which is exempt from income tax under section 501(a)" for "service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation."

Subsec. (c)(10). Pub. L. 86–778, §534, struck out provisions which excepted from definition of "employment" service in connection with the collection of dues or premiums for a fraternal beneficiary society, order, or association which is preformed away from the home office or is ritualistic service in connection with any such society, order, or association, service performed in the employ of an agricultural or horticultural organization described in section 501(c)(5) of this title, service performed in the employ of a

voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to members or their dependents or designated beneficiaries, and service performed in the employ of a school, college, or university, not exempt from income tax under section 501(a) of this title if such service is performed by a student who is enrolled and regularly attending classes.

Subsec. (j). Pub. L. 86–778, §543(a), included the Commonwealth of Puerto Rico and struck out "Hawaii" from definition of "State", defined "United States", and inserted provisions requiring an individual who is a citizen of the Commonwealth of Puerto Rico (but not otherwise a citizen of the United States) to be considered for purposes of this section, as a citizen of the United States.

Pub. L. 86–624 struck out "Hawaii, and" before "the District of Columbia".

Subsec. (m). Pub. L. 86–778, §532(c), included aircraft in heading and defined "American aircraft".

1959—Subsec. (j). Pub. L. 86–70 struck out "Alaska," before "Hawaii".

1954—Subsec. (a). Act Sept. 1, 1954, changed definition of employer from "eight or more" to "4 or more".

Subsec. (l). Act Sept. 1, 1954, repealed subsec. (l) which related to certain employees of Bonneville Power Administrator.

EFFECTIVE DATE OF 2012 AMENDMENT; TRANSITION PROVISION

Pub. L. 112–96, title II, §2161(a)(2), (3), Feb. 22, 2012, 126 Stat. 172, provided that:

"(2) EFFECTIVE DATE.—Subject to paragraph (3), the amendment made by paragraph (1) [amending this section] shall take effect on the date of the enactment of this Act [Feb. 22, 2012].

"(3) TRANSITION PERIOD FOR EXISTING PROGRAMS.—In the case of a State that is administering a short-time compensation program as of the date of the enactment of this Act and the State law cannot be administered consistent with the amendment made by paragraph (1), such amendment shall take effect on the earlier of—

"(A) the date the State changes its State law in order to be consistent with such amendment; or

"(B) the date that is 2 years and 6 months after the date of the enactment of this Act."

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–245 effective as if included in section 5 of Pub. L. 110–142, see section 115(d) of Pub. L. 110–245, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 2004 AMENDMENTS

Amendment by Pub. L. 108–375 applicable to travel benefits provided after Oct. 28, 2004, see section 585(b)(3) of Pub. L. 108–375, set out as a note under section 134 of this title.

Amendment by section 251(a)(3) of Pub. L. 108–357 applicable to stock acquired pursuant to options exercised after Oct. 22, 2004, see section 251(d) of Pub. L. 108–357, set out as a note under section 421 of this title.

Amendment by section 320(b)(3) of Pub. L. 108–357 applicable to amounts received by an individual in taxable years beginning after Dec. 31, 2003, see section 320(c) of Pub. L. 108–357, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 2003 AMENDMENTS

Amendment by Pub. L. 108–173 applicable to taxable years beginning after Dec. 31, 2003, see section 1201(k) of Pub. L. 108–173, set out as a note under section 62 of this title.

Amendment by Pub. L. 108–121 applicable to taxable years beginning after Dec. 31, 2002, see section 106(c) of Pub. L. 108–121, set out as a note under section 134 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT; TRANSITION RULE

Pub. L. 106–554, §1(a)(7) [title I, §166(e)], Dec. 21, 2000, 114 Stat. 2763, 2763A–628, provided that:

"(1) EFFECTIVE DATE.—The amendments made by this section [amending this section and section 3309 of this title] shall apply to service performed on or after the date of the enactment of this Act [Dec. 21, 2000].

"(2) TRANSITION RULE.—For purposes of the Federal Unemployment Tax Act [26 U.S.C. 3301 et seq.], service performed in the employ of an Indian tribe (as defined in section 3306(u) of the Internal Revenue Code of 1986 (as added by this section)) shall not be treated as employment (within the meaning of section 3306 of such Code) if—

"(A) it is service which is performed before the date of the enactment of this Act [Dec. 21, 2000] and with respect to which the tax imposed under the Federal Unemployment Tax Act has not been paid, and

"(B) such Indian tribe reimburses a State unemployment fund for unemployment benefits paid for service attributable to such tribe for such period."

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–33, title V, §5406(b), Aug. 5, 1997, 111 Stat. 605, provided that: "The amendments made by this section [amending this section] shall apply with respect to service performed after January 1, 1994."

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by Pub. L. 104–191 applicable to taxable years beginning after Dec. 31, 1996, see section 301(j) of Pub. L. 104–191, set out as a note under section 62 of this title.

Pub. L. 104–188, title I, §1203(b), Aug. 20, 1996, 110 Stat. 1773, provided that: "The amendment made by subsection (a) [amending this section] shall apply to services performed after December 31, 1994."

Amendment by section 1421(b)(8)(C) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1421(e) of Pub. L. 104–188, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 1994 AMENDMENTS

Amendment by Pub. L. 103–465 applicable to payments made after Dec. 31, 1996, see section 702(d) of Pub. L. 103–465, set out as a note under section 3304 of this title.

Amendment by Pub. L. 103–296 effective with calendar quarter following Aug. 15, 1994, see section 320(c) of Pub. L. 103–296, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–182, title V, §507(e), Dec. 8, 1993, 107 Stat. 2154, as amended by Pub. L. 105–306, §3, Oct. 28, 1998, 112 Stat. 2926, provided that: "The provisions of this section [amending this section, section 3304 of this title, and section 503 of Title 42, The Public Health and Welfare, and enacting provisions set out below] and the amendments made by this section shall take effect on the date of the enactment of this Act [Dec. 8, 1993]."

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 521(b)(35) of Pub. L. 102–318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102–318, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–140 effective as if included in section 1151 of Pub. L. 99–514, see section 203(c) of Pub. L. 101–140, set out as a note under section 79 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011B(a)(22)(C) of Pub. L. 100–647 not applicable to any individual who separated from service with the employer before Jan. 1, 1989, see section 1011B(a)(22)(F) of Pub. L. 100–647, set out as a note under section 3121 of this title.

Pub. L. 100–647, title I, §1018(u)(50), Nov. 10, 1988, 102 Stat. 3593, provided that the amendment made by that section is effective Apr. 7, 1986.

Amendment by sections 1001(d)(2)(C)(iii), (g)(4)(B)(ii), and 1011B(a)(23)(A) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 8016(a)(3)(B) of Pub. L. 100–647 effective Nov. 10, 1988, except that any amendment to a provision of a particular Public Law which is referred to by its number, or to a provision of the Social Security Act [42 U.S.C. 301 et seq.], or to this title as added or amended by a provision of a particular Public Law which is so referred to, effective as though included or reflected in the relevant provisions of that Public Law at the time of its enactment, see section 8016(b) of Pub. L. 100–647, set out as a note under section 3111 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 122(e)(3) of Pub. L. 99–514 applicable to prizes and awards granted after Dec. 31, 1986, see section 151(c) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 1108(g)(8) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1986, see section 1108(h) of Pub. L. 99–514, set out as a note under section 219 of this title.

Amendment by section 1151(d)(2)(B) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1983, see section 1151(k)(5) of Pub. L. 99–514, set out as a note under section 79 of this title.

Amendment by Pub. L. 99–509 effective, except as otherwise provided, with respect to payments due with respect to wages paid after Dec. 31, 1986, including wages paid after such date by a State (or political

subdivision thereof) that modified its agreement pursuant to section 418(e)(2) of Title 42, The Public Health and Welfare, see section 9002(d) of Pub. L. 99–509, set out as a note under section 418 of Title 42.

Amendment by Pub. L. 99–272 applicable to recoveries made on or after Apr. 7, 1986, and applicable with respect to overpayments made before, on, or after such date, see section 12401(c) of Pub. L. 99–272, set out as a note under section 503 of Title 42.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 491(d)(37) of Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

Amendment by section 531(d)(3) of Pub. L. 98–369 effective Jan. 1, 1985, see section 531(h) of Pub. L. 98–369, set out as an Effective Date note under section 132 of this title.

Pub. L. 98–369, div. A, title X, §1073(b), July 18, 1984, 98 Stat. 1053, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall take effect on January 1, 1986.

"(2) EXCEPTION FOR CERTAIN STATES.—In the case of any State the legislature of which—

"(A) did not meet in a regular session which begins during 1984 and after the date of the enactment of this Act [July 18, 1984], and

"(B) did not meet in a session which began before the date of the enactment of this Act and remained in session for at least 25 calendar days after such date of enactment,

the amendment made by subsection (a) shall take effect on January 1, 1987."

Pub. L. 98–369, div. B, title VI, §2661(o)(4), July 18, 1984, 98 Stat. 1159, provided that the amendment made by that section is effective Jan. 1, 1985.

EFFECTIVE DATE OF 1983 AMENDMENTS

Pub. L. 98–135, title II, §201(b), Oct. 24, 1983, 97 Stat. 860, provided that: "The amendments made by subsection (a) [amending this section] shall apply to remuneration paid after the date of the enactment of this Act [Oct. 24, 1983]."

Amendment by section 324(b)(1)–(4)(B) of Pub. L. 98–21 applicable to remuneration paid after Dec. 31, 1984, except for certain employer contributions made during 1984 under a qualified cash or deferred arrangement, and except in the case of an agreement with certain nonqualified deferred compensation plans in existence on Mar. 24, 1983, see section 324(d) of Pub. L. 98–21 set out as a note under section 3121 of this title.

Amendment by section 327(c)(1)–(3) of Pub. L. 98–21 applicable to remuneration paid after Dec. 31, 1984, see section 327(d)(3) of Pub. L. 98–21, as amended, set out as a note under section 3121 of this title.

Amendment by section 327(c)(4) of Pub. L. 98–21 applicable to remuneration (other than amounts excluded under 26 U.S.C. 119) paid after Mar. 4, 1983, and to any such remuneration paid on or before such date which the employer treated as wages when paid, see section 327(d)(2) of Pub. L. 98–21, as amended, set out as a note under section 3121 of this title.

Amendment by section 328(c) of Pub. L. 98–21 applicable to remuneration paid after Dec. 31, 1984, see section 328(d)(2) of Pub. L. 98–21, set out as a note under section 3121 of this title.

EFFECTIVE AND TERMINATION DATES OF 1982 AMENDMENTS

Amendment by section 271(a) of Pub. L. 97–248 applicable to remuneration paid after Dec. 31, 1982, see section 271(d)(1) of Pub. L. 97–248, as amended, set out as a note under section 3301 of this title.

Pub. L. 97–248, title II, §276(a)(2), Sept. 3, 1982, 96 Stat. 558, provided that: "The amendment made by paragraph (1) [amending this section] shall apply with respect to services performed after the date of the enactment of this Act [Sept. 3, 1982]."

Pub. L. 97–248, title II, §276(b)(3), Sept. 3, 1982, 96 Stat. 559, provided that: "The amendments made by this subsection [amending this section] shall apply to remuneration paid after December 31, 1982, and before January 1, 1984."

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 124(e)(2)(A) of Pub. L. 97–34 applicable to remuneration paid after Dec. 31, 1981, see section 124(f) of Pub. L. 97–34, set out as an Effective Date of 1981 Amendment note under section 21 of this title.

Pub. L. 97–34, title VIII, §822(b), Aug. 13, 1981, 95 Stat. 351, as amended by Pub. L. 97–362, title II, §203, Oct. 25, 1982, 96 Stat. 1733; Pub. L. 98–369, div. A, title X, §1074, July 18, 1984, 98 Stat. 1053; Pub. L. 99–272, title XIII, §13303(c)(1), Apr. 7, 1986, 100 Stat. 327, provided that: "The amendments made by subsection (a) [amending this section] shall apply to remuneration paid after December 31, 1980."

EFFECTIVE DATE OF 1980 AMENDMENTS

For effective date of amendment by Pub. L. 96–499, see section 1141(c) of Pub. L. 96–499, set out as a note under section 3121 of this title.

Amendment by Pub. L. 96–222 applicable to payments made on or after Jan. 1, 1979, see section 101(b)(1)(E) of Pub. L. 96–222, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Pub. L. 96–84, §4(c), Oct. 10, 1979, 93 Stat. 654, provided that: "The amendments made by this section [amending this section] shall apply to remuneration paid after December 31, 1979, for services performed after such date."

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95–600 applicable with respect to taxable years beginning after Dec. 31, 1978, see section 164(d) of Pub. L. 95–600, set out as an Effective Date note under section 127 of this title.

Amendment by Pub. L. 95–472 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 3(d) of Pub. L. 95–472, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–216 applicable with respect to wages paid after Dec. 31, 1978, see section 314(c) of Pub. L. 95–216, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–566, title I, §111(c), Oct. 20, 1976, 90 Stat. 2667, provided that: "The amendments made by this section [amending this section] shall apply with respect to remuneration paid after December 31, 1977, for services performed after such date."

Pub. L. 94–566, title I, §112(b), Oct. 20, 1976, 90 Stat. 2668, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to remuneration paid after December 31, 1977, for services performed after such date."

Pub. L. 94–566, title I, §113(b), Oct. 20, 1976, 90 Stat. 2669, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to remuneration paid after December 31, 1977, for services performed after such date."

Pub. L. 94–566, title I, §114(c), Oct. 20, 1976, 90 Stat. 2670, provided that: "The amendments made by this section [amending this section and section 6157 of this title] shall apply with respect to remuneration paid after December 31, 1977, for services performed after such date."

Amendment by section 116(b) of Pub. L. 94–566 applicable with respect to remuneration paid after Dec. 31 of the year in which the Secretary of Labor approves for the first time an unemployment compensation law submitted to him by the Virgin Islands for approval, for services performed after such Dec. 31, see section 116(f)(2) of Pub. L. 94–566, set out as a note under section 3304 of this title.

Pub. L. 94–566, title II, §211(d)(1), Oct. 20, 1976, 90 Stat. 2677, provided that: "The amendment made by subsection (a) [amending this section] shall apply to remuneration paid after December 31, 1977."

EFFECTIVE DATE OF 1970 AMENDMENT

Pub. L. 91–373, title I, §101(c)(1), Aug. 10, 1970, 84 Stat. 696, provided that: "The amendments made by subsections (a) and (b)(1) [amending this section and section 6157 of this title] shall apply with respect to calendar years beginning after December 31, 1971."

Pub. L. 91–373, title I, §102(c), Aug. 10, 1970, 84 Stat. 696, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to remuneration paid after December 31, 1971, for services performed after such date."

Pub. L. 91–373, title I, §103(b), Aug. 10, 1970, 84 Stat. 697, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to remuneration paid after December 31, 1971, for services performed after such date."

Pub. L. 91–373, title I, §105(c), Aug. 10, 1970, 84 Stat. 700, provided that: "The amendments made by this section [amending this section] shall apply with respect to service performed after December 31, 1971."

Pub. L. 91–373, title I, §106(b), Aug. 10, 1970, 84 Stat. 701, provided that: "Subsection (a) [amending this section] shall apply with respect to remuneration paid after December 31, 1969."

Pub. L. 91–373, title III, §302, Aug. 10, 1970, 84 Stat. 713, provided that the amendment made by that section is effective with respect to remuneration paid after Dec. 31, 1971.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–53 applicable with respect to calendar years beginning after Dec. 31, 1969, see section 4(a) of Pub. L. 91–53, set out as an Effective Date note under section 6157 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–248 applicable with respect to remuneration paid after Jan. 2, 1968, see section 504(d) of Pub. L. 90–248, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–650 applicable with respect to remuneration paid on or after first day of first calendar month which begins more than ten days after Oct. 13, 1964, see section 4(d) of Pub. L. 88–650, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87–792, set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–256 applicable with respect to service performed after Dec. 31, 1961, see section 110(h)(3) of Pub. L. 87–256, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1960 AMENDMENTS

Amendment by sections 531(c) and 532 to 534 of Pub. L. 86–778 applicable with respect to remuneration paid after 1961 for services performed after 1961, see section 535 of Pub. L. 86–778, set out as a note under section 3305 of this title.

Pub. L. 86–778, title V, §543(a), Sept. 13, 1960, 74 Stat. 986, provided that the amendment made by that section is effective with respect to remuneration paid after Dec. 31, 1960, for services performed after such date.

Amendment by Pub. L. 86–624 effective on Aug. 21, 1959, see section 18(k) of Pub. L. 86–624, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–70 effective Jan. 3, 1959, see section 22(i) of Pub. L. 86–70, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Act Sept. 1, 1954, ch. 1212, §1, 68 Stat. 1130, provided that the amendment made by that section is effective with respect to services performed after Dec. 31, 1955.

Act Sept. 1, 1954, ch. 1212, §4(c), 68 Stat. 1135, provided that the amendment made by that section is effective with respect to services performed after Dec. 31, 1954.

NO INFERENCE TO BE DRAWN FROM AMENDMENT BY PUB. L. 108–121

No inference to be drawn from amendment to subsec. (b)(13) of this section by section 106 of Pub. L. 108–121 with respect to tax treatment of any amounts under program described in section 134(b)(4) of this title for any taxable year beginning before Jan. 1, 2003, see section 106(d) of Pub. L. 108–121, set out as a note under section 134 of this title.

REPORTING REQUIREMENTS

Pub. L. 103–182, title V, §507(c), (d), Dec. 8, 1993, 107 Stat. 2154, provided that:

"(c) STATE REPORTS.—Any State operating a self-employment program authorized by the Secretary of Labor under this section [amending this section, section 3304 of this title, and section 503 of Title 42, The Public Health and Welfare, and enacting provisions set out above] shall report annually to the Secretary on the number of individuals who participate in the self-employment assistance program, the number of individuals who are able to develop and sustain businesses, the operating costs of the program, compliance with program requirements, and any other relevant aspects of program operations requested by the Secretary.

"(d) REPORT TO CONGRESS.—Not later than 4 years after the date of the enactment of this Act [Dec. 8, 1993], the Secretary of Labor shall submit a report to the Congress with respect to the operation of the program authorized under this section. Such report shall be based on the reports received from the States pursuant to subsection (c) and include such other information as the Secretary of Labor determines is appropriate."

EXCLUSION FROM WAGES AND COMPENSATION OF REFUNDS REQUIRED FROM EMPLOYERS TO COMPENSATE FOR DUPLICATION OF MEDICARE BENEFITS BY HEALTH CARE BENEFITS PROVIDED BY EMPLOYERS

For purposes of this chapter, the term "wages" shall not include the amount of any refund required under section 421 of Pub. L. 100–360, 42 U.S.C. 1395b note, see section 10202 of Pub. L. 101–239, set out as a note under section 1395b of Title 42, The Public Health and Welfare.

NONENFORCEMENT OF AMENDMENT MADE BY SECTION 1151 OF PUB. L. 99–514 FOR FISCAL YEAR 1990

No monies appropriated by Pub. L. 101–136 to be used to implement or enforce section 1151 of Pub. L. 99–514 or the amendments made by such section, see section 528 of Pub. L. 101–136, set out as a note under section 89 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§1401–1465] of title I of Pub. L. 104–188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

APPLICABILITY OF UNEMPLOYMENT COMPENSATION TAX TO CERTAIN SERVICES PERFORMED FOR CERTAIN INDIAN TRIBAL GOVERNMENTS

Pub. L. 99–514, title XVII, §1705, Oct. 22, 1986, 100 Stat. 2780, provided that:

"(a) IN GENERAL.—For purposes of the Federal Unemployment Tax Act [26 U.S.C. 3301 et seq.], service performed in the employ of a qualified Indian tribal government shall not be treated as employment (within the meaning of section 3306 of such Act) if it is service—

"(1) which is performed—

"(A) before, on, or after the date of the enactment of this Act [Oct. 22, 1986], but before January 1, 1988, and

"(B) during a period in which the Indian tribal government is not covered by a State unemployment compensation program, and

"(2) with respect to which the tax imposed under the Federal Unemployment Tax Act has not been paid.

"(b) DEFINITION.—For purposes of this section, the term 'qualified Indian tribal government' means an Indian tribal government the service for which is not covered by a State unemployment compensation program on June 11, 1986."

REMUNERATION PAID AFTER SEPT. 30, 1985, TO FULL-TIME STUDENTS EMPLOYED BY SUMMER CAMPS

Pub. L. 99–272, title XIII, §13303(b), Apr. 7, 1986, 100 Stat. 327, provided that: "Notwithstanding paragraph (3) of section 276(b) of the Tax Equity and Fiscal Responsibility Act of 1982 [see Effective Date of 1982 Amendments note above], the amendments made by paragraphs (1) and (2) of such section 276(b) [amending this section] shall also apply to remuneration paid after September 19, 1985."

ADMINISTRATION OF PROVISIONS COVERING PAYMENTS TO EMPLOYEES ON ACCOUNT OF SICKNESS OR ACCIDENT DISABILITY

Pub. L. 98–21, title III, §324(b)(4)(C), Apr. 20, 1983, 97 Stat. 124, provided that: "Rules similar to the rules of subsections (d) and (e) of section 3 of the Act entitled 'An Act to amend the Omnibus Reconciliation Act of

1981 to restore minimum benefits under the Social Security Act' (Public Law 97–123), approved December 29, 1981 [set out as notes under section 3121 of this title], shall apply in the administration of section 3306(b)(2)(A) of such Code (as amended by subparagraph (A))."

APPLICABILITY TO FEDERAL LAND BANKS, FEDERAL INTERMEDIATE CREDIT BANKS, AND BANKS FOR COOPERATIVES

Applicability of subsec. (c)(6) of this section to Federal land banks, Federal intermediate credit banks, and banks for cooperatives, see section 531(g) of Pub. L. 86–778, set out as a note under section 3305 of this title.

[1] *So in original. The semicolon probably should be a comma.*

[2] *So in original. The comma probably should be a semicolon.*

[3] *So in original. Probably should not be capitalized.*

[4] *So in original. The comma probably should be a semicolon.*

[5] *So in original. This section is not contained in a part.*

§3307. Deductions as constructive payments

Whenever under this chapter or any act of Congress, or under the law of any State, an employer is required or permitted to deduct any amount from the remuneration of an employee and to pay the amount deducted to the United States, a State, or any political subdivision thereof, then for purposes of this chapter the amount so deducted shall be considered to have been paid to the employee at the time of such deduction.

(Aug. 16, 1954, ch. 736, 68A Stat. 454.)

§3308. Instrumentalities of the United States

Notwithstanding any other provision of law (whether enacted before or after the enactment of this section) which grants to any instrumentality of the United States an exemption from taxation, such instrumentality shall not be exempt from the tax imposed by section 3301 unless such other provision of law grants a specific exemption, by reference to section 3301 (or the corresponding section of prior law), from the tax imposed by such section.

(Added Pub. L. 86–778, title V, §531(d)(1), Sept. 13, 1960, 74 Stat. 983.)

REFERENCES IN TEXT

Enacted before or after the enactment of this section, referred to in text, means enacted before or after Sept. 13, 1960, the date of approval of Pub. L. 86–778.

PRIOR PROVISIONS

A prior section 3309 was renumbered section 3311 of this title.

EFFECTIVE DATE

Section applicable with respect to remuneration paid after 1961 for services performed after 1961, see section 535 of Pub. L. 86–778, set out as an Effective Date of 1960 Amendment note under section 3305 of this title.

APPLICABILITY TO FEDERAL LAND BANKS, FEDERAL INTERMEDIATE CREDIT BANKS, AND BANKS FOR COOPERATIVES

Applicability of this section to Federal land banks, Federal intermediate credit banks, and banks for cooperatives, see section 531(g) of Pub. L. 86–778, set out as a note under section 3305 of this title.

§3309. State law coverage of services performed for nonprofit organizations or governmental entities

(a) State law requirements

For purposes of section 3304(a)(6)—

(1) except as otherwise provided in subsections (b) and (c), the services to which this paragraph applies are—

(A) service excluded from the term "employment" solely by reason of paragraph (8) of section 3306(c), and

(B) service excluded from the term "employment" solely by reason of paragraph (7) of section 3306(c); and

(2) the State law shall provide that a governmental entity, including an Indian tribe, or any other organization (or group of governmental entities or other organizations) which, but for the requirements of this paragraph, would be liable for contributions with respect to service to which paragraph (1) applies may elect, for such minimum period and at such time as may be provided by State law, to pay (in lieu of such contributions) into the State unemployment fund amounts equal to the amounts of compensation attributable under the State law to such service. The State law may provide safeguards to ensure that governmental entities or other organizations so electing will make the payments required under such elections.

(b) Section not to apply to certain service

This section shall not apply to service performed—

(1) in the employ of (A) a church or convention or association of churches, (B) an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches, or (C) an elementary or secondary school which is operated primarily for religious purposes, which is described in section 501(c)(3), and which is exempt from tax under section 501(a);

(2) by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

(3) in the employ of a governmental entity referred to in paragraph (7) of section 3306(c), if such service is performed by an individual in the exercise of his duties—

(A) as an elected official;

(B) as a member of a legislative body, or a member of the judiciary, of a State or political subdivision thereof, or of an Indian tribe;

(C) as a member of the State National Guard or Air National Guard;

(D) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency;

(E) in a position which, under or pursuant to the State or tribal law, is designated as (i) a major nontenured policymaking or advisory position, or (ii) a policymaking or advisory position the performance of the duties of which ordinarily does not require more than 8 hours per week; or

(F) as an election official or election worker if the amount of remuneration received by the individual during the calendar year for services as an election official or election worker is less than $1,000;

(4) in a facility conducted for the purpose of carrying out a program of—

(A) rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, or

(B) providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market,

by an individual receiving such rehabilitation or remunerative work;

(5) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any Federal agency or an agency of a State or political subdivision thereof or of an Indian tribe, by an individual receiving such work relief or work training; and

(6) by an inmate of a custodial or penal institution.

(c) Nonprofit organizations must employ 4 or more

This section shall not apply to service performed during any calendar year in the employ of any organization unless on each of some 20 days during such calendar year or the preceding calendar year, each day being in a different calendar week, the total number of individuals who were employed by such organization in employment (determined without regard to section 3306(c)(8) and by excluding service to which this section does not apply by reason of subsection (b)) for some portion of the day (whether or not at the same moment of time) was 4 or more.

(d) Election by Indian tribe

The State law shall provide that an Indian tribe may make contributions for employment as if the employment is within the meaning of section 3306 or make payments in lieu of contributions under this section, and shall provide that an Indian tribe may make separate elections for itself and each subdivision, subsidiary, or business enterprise wholly owned by such Indian tribe. State law may require a tribe to post a payment bond or take other reasonable measures to assure the making of payments in lieu of contributions under this section. Notwithstanding the requirements of section 3306(a)(6), if, within 90 days of having received a notice of delinquency, a tribe fails to make contributions, payments in lieu of contributions, or payment of penalties or interest (at amounts or rates comparable to those applied to all other employers covered under the State law) assessed with respect to such failure, or if the tribe fails to post a required payment bond, then service for the tribe shall not be excepted from employment under section 3306(c)(7) until any such failure is corrected. This subsection shall apply to an Indian tribe within the meaning of section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)).

(Added Pub. L. 91–373, title I, §104(b)(1), Aug. 10, 1970, 84 Stat. 697; amended Pub. L. 94–566, title I, §115(a), (b), (c)(2), (3), title V, §506(a), Oct. 20, 1976, 90 Stat. 2670, 2671, 2687; Pub. L. 95–19, title III, §302(b), Apr. 12, 1977, 91 Stat. 44; Pub. L. 105–33, title V, §§5405(a), 5407(a), Aug. 5, 1997, 111 Stat. 604, 605; Pub. L. 106–554, §1(a)(7) [title I, §166(b), (c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–627.)

PRIOR PROVISIONS

A prior section 3309 was renumbered section 3311 of this title.

AMENDMENTS

2000—Subsec. (a)(2). Pub. L. 106–554, §1(a)(7) [title I, §166(b)(1)], inserted ", including an Indian tribe," after "the State law shall provide that a governmental entity".

Subsec. (b)(3)(B). Pub. L. 106–554, §1(a)(7) [title I, §166(b)(2)], inserted ", or of an Indian tribe" before semicolon at end.

Subsec. (b)(3)(E). Pub. L. 106–554, §1(a)(7) [title I, §166(b)(3)], inserted "or tribal" after "the State".

Subsec. (b)(5). Pub. L. 106–554, §1(a)(7) [title I, §166(b)(4)], inserted "or of an Indian tribe" after "an agency of a State or political subdivision thereof".

Subsec. (d). Pub. L. 106–554, §1(a)(7) [title I, §166(c)], added subsec. (d).

1997—Subsec. (b)(1)(C). Pub. L. 105–33, §5407(a), added subpar. (C).

Subsec. (b)(3)(F). Pub. L. 105–33, §5405(a), added subpar. (F).

1977—Subsec. (a)(2). Pub. L. 95–19 substituted "(or group of governmental entities or other organizations)" for "(or group of organizations)".

1976—Pub. L. 94–566, §115(c)(3), substituted "services performed for nonprofit organizations or governmental entities" for "certain services performed for nonprofit organizations and for State hospitals and institutions of higher education" in section catchline.

Subsec. (a)(1)(B). Pub. L. 94–566, §115(a), struck out "performed in the employ of the State, or any instrumentality of the State or of the State and one or more other States, for a hospital or institution of higher education located in the State, if such service is" after "service".

Subsec. (a)(2). Pub. L. 94–566, §506(a), substituted "a governmental entity or any other organization" for

"an organization", "paragraph (1)" for "paragraph (1)(A)", and "that governmental entities or other organizations" for "that organizations".

Subsec. (b)(3). Pub. L. 94–566, §115(b)(1), substituted reference to services performed in the employ of a governmental entity referred to in paragraph (7) of section 3306(c), if such services are performed by an individual in the exercise of his duties as an elected official, as a member of a legislative body, or a member of the judiciary, of a State or political subdivision thereof, as a member of the State National Guard or Air National Guard, as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency, or in a position which, under or pursuant to the State law, is designated as a major nontenured policymaker or advisory position or a policymaking or advisory position the performance of the duties of which ordinarily does not require more than 8 hours per week, for reference to services performed in the employ of a school which is not an institution of higher education.

Subsec. (b)(6). Pub. L. 94–566, §115(b)(2), substituted "by an inmate of a custodial or penal institution" for "for a hospital in a State prison or other State correctional institution by an inmate of the prison or correctional institution".

Subsec. (d). Pub. L. 94–566, §115(c)(2), struck out subsec. (d) which defined "institution of higher education". See section 3304(f) of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 applicable to service performed on or after Dec. 21, 2000, with transition rule for service performed in the employ of an Indian tribe, see section 166(e) of Pub. L. 106–554, set out as a note under section 3306 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–33, title V, §5405(b), Aug. 5, 1997, 111 Stat. 605, provided that: "The amendments made by this section [amending this section] shall apply with respect to service performed after the date of the enactment of this Act [Aug. 5, 1997]."

Pub. L. 105–33, title V, §5407(b), Aug. 5, 1997, 111 Stat. 605, provided that: "The amendments made by this section [amending this section] shall apply with respect to service performed after the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1977 AMENDMENT

Pub. L. 95–19, title III, §302(d)(2), Apr. 12, 1977, 91 Stat. 45, provided that: "The amendment made by subsection (b) [amending this section] shall take effect as if included in the amendments made by section 506 of the Unemployment Compensation Amendments of 1976 [which amended this section in 1976, see Effective Date of 1976 Amendment note below]."

EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment by section 115(a), (b), (c)(2), (3) of Pub. L. 94–566, see section 115(d) of Pub. L. 94–566, set out as a note under section 3304 of this title.

For effective date of amendment by section 506(a) of Pub. L. 94–566, see section 506(c) of Pub. L. 94–566, set out as a note under section 3304 of this title.

EFFECTIVE DATE

Section applicable with respect to certifications of State laws for 1972 and subsequent years, but only with respect to service performed after Dec. 31, 1971, see section 104(d)(1) of Pub. L. 91–373, set out as a note under section 3304 of this title.

§3310. Judicial review

(a) In general

Whenever under section 3303(b) or section 3304(c) the Secretary of Labor makes a finding pursuant to which he is required to withhold a certification with respect to a State under such section, such State may, within 60 days after the Governor of the State has been notified of such action, file with the United States court of appeals for the circuit in which such State is located or with the United States Court of Appeals for the District of Columbia, a petition for review of such action. A

copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary of Labor. The Secretary of Labor thereupon shall file in the court the record of the proceedings on which he based his action as provided in section 2112 of title 28 of the United States Code.

(b) Findings of fact

The findings of fact by the Secretary of Labor, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary of Labor to take further evidence, and the Secretary of Labor may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(c) Jurisdiction of court; review

The court shall have jurisdiction to affirm the action of the Secretary of Labor or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28 of the United States Code.

(d) Stay of Secretary of Labor's action

(1) The Secretary of Labor shall not withhold any certification under section 3303(b) or section 3304(c) until the expiration of 60 days after the Governor of the State has been notified of the action referred to in subsection (a) or until the State has filed a petition for review of such action, whichever is earlier.

(2) The commencement of judicial proceedings under this section shall stay the Secretary of Labor's action for a period of 30 days, and the court may thereafter grant interim relief if warranted, including a further stay of the Secretary of Labor's action and including such other relief as may be necessary to preserve status or rights.

(Added Pub. L. 91–373, title I, §131(b)(1), Aug. 10, 1970, 84 Stat. 703; amended Pub. L. 94–455, title XIX, §1906(b)(13)(F), (H), Oct. 4, 1976, 90 Stat. 1835; Pub. L. 98–620, title IV, §402(28)(A), Nov. 8, 1984, 98 Stat. 3359.)

AMENDMENTS

1984—Subsec. (e). Pub. L. 98–620 struck out subsec. (e) which had provided that any judicial proceedings under this section were entitled to, and upon request of the Secretary of Labor or of the State would receive, a preference and would be heard and determined as expeditiously as possible.

1976—Subsec. (d)(2). Pub. L. 94–455, §1906(b)(13)(F), substituted "the Secretary of Labor's action" for "the Secretary's action" in two places.

Subsec. (e). Pub. L. 94–455, §1906(b)(13)(H), substituted "of the Secretary of Labor" for "of the Secretary".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

§3311. Short title

This chapter may be cited as the "Federal Unemployment Tax Act."

(Aug. 16, 1954, ch. 736, 68A Stat. 454, §3308; renumbered §3309, Pub. L. 86–778, title V, §531(d)(1), Sept. 13, 1960, 74 Stat. 983; renumbered §3311, Pub. L. 91–373, title I, §104(b)(1), Aug. 10, 1970, 84 Stat. 697.)

SHORT TITLE OF 1976 AMENDMENT

Pub. L. 94–566, §1, Oct. 20, 1976, 90 Stat. 2667, provided that: "This Act [enacting section 603a of Title 42, The Public Health and Welfare, amending section 3304 of this title and provisions set out as notes under sections 3301, 3303, 3304, 3306, 3309, and 6157 of this title, sections 8501, 8503, 8504, 8505, 8506, 8521,

and 8522 of Title 5, Government Organization and Employees, sections 49b and 49d of Title 29, Labor, and sections 607, 1101, 1105, 1301, 1321, 1382, 1382a, 1382d, and 1382e of Title 42, and enacting provisions set out as notes under sections 3301, 3303, 3304, and 3306 of this title, sections 8501 and 8506 of Title 5, and sections 607, 1101, 1321, 1382, 1382d, 1382e, and 1396a of Title 42] may be cited as the 'Unemployment Compensation Amendments of 1976'."

SHORT TITLE OF 1975 AMENDMENT

Pub. L. 94–45, §1, June 30, 1975, 89 Stat. 236, provided that: "This Act [amending sections 44 and 3302 of this title and amending provisions set out as notes under sections 44 and 3304 of this title and enacting provisions set out as notes under sections 3302 and 3304 of this title] may be cited as the 'Emergency Compensation and Special Unemployment Assistance Extension Act of 1975'."

SHORT TITLE OF 1970 AMENDMENT

Pub. L. 91–373, §1, Aug. 10, 1970, 84 Stat. 695, provided: "That this Act [enacting sections 3309 and 3310 of this title and sections 504, 1106, 1107, and 1108 of Title 42, The Public Health and Welfare, repealing section 8524 of Title 5, Government Organization and Employees, and amending sections 1563, 3301 to 3306, and 6157 of this title, sections 77c and 78c of Title 15, Commerce and Trade, and sections 1101, 1102, 1103, 1105, and 1323 of Title 42, and enacting provisions set out as notes under sections 3301 to 3304, 3306, and 6157 of this title, section 77c of Title 15, and section 1101 of Title 42] may be cited as the 'Employment Security Amendments of 1970'."

CHAPTER 23A—RAILROAD UNEMPLOYMENT REPAYMENT TAX

Sec.
3321. Imposition of tax.
3322. Definitions.

AMENDMENTS

1990—Pub. L. 101–508, title XI, §11704(a)(18), Nov. 5, 1990, 104 Stat. 1388–519, substituted "23A—" for "23A." in chapter heading.

1988—Pub. L. 100–647, title VII, §7106(a), Nov. 10, 1988, 102 Stat. 3772, reenacted chapter heading and item 3321 without change, substituted "Definitions" for "Taxable period" in item 3322, and omitted item 3323 "Other definitions".

§3321. Imposition of tax

(a) General rule

There is hereby imposed on every rail employer for each calendar month an excise tax, with respect to having individuals in his employ, equal to 4 percent of the total rail wages paid by him during such month.

(b) Tax on employee representatives

(1) In general

There is hereby imposed on the income of each employee representative a tax equal to 4 percent of the rail wages paid to him during the calendar month.

(2) Determination of wages

The rail wages of an employee representative for purposes of paragraph (1) shall be determined in the same manner and with the same effect as if the employee organization by which such employee representative is employed were a rail employer.

(c) Termination if loans to railroad unemployment fund repaid

The tax imposed by this section shall not apply to rail wages paid on or after the 1st day of any calendar month if, as of such 1st day, there is—

(1) no balance of transfers made before October 1, 1985, to the railroad unemployment

insurance account under section 10(d) of the Railroad Unemployment Insurance Act, and

(2) no unpaid interest on such transfers.

(Added Pub. L. 98–76, title II, §231(a), Aug. 12, 1983, 97 Stat. 426; amended Pub. L. 99–272, title XIII, §13301(a), Apr. 7, 1986, 100 Stat. 325; Pub. L. 100–647, title I, §1018(u)(17), title VIII, §7106(a), Nov. 10, 1988, 102 Stat. 3590, 3772.)

REFERENCES IN TEXT

Section 10(d) of the Railroad Unemployment Insurance Act, referred to in subsec. (c)(1), is classified to section 360(d) of Title 45, Railroads.

AMENDMENTS

1988—Pub. L. 100–647, §7106(a), amended section generally, revising and restating provisions of subsecs. (a) and (b) and specifying imposition of 4 percent tax on rail wages rather than a tax based on the "applicable percentage" of rail wages, and in subsec. (c) substituting provisions relating to termination if loans to railroad unemployment fund repaid for provisions relating to rates of tax.

Pub. L. 100–647, §1018(u)(17), added a period at end of par. (4).

1986—Subsec. (c). Pub. L. 99–272 amended subsec. (c) generally. Prior to amendment subsec. (c) read as follows:

"(c) RATE OF TAX.—For purposes of this section—

"(1) FOR TAXABLE PERIOD JULY 1 THROUGH DECEMBER 31, 1986.—The applicable percentage for the taxable period beginning on July 1, 1986, and ending on December 31, 1986, shall be 2 percent.

"(2) SUBSEQUENT TAXABLE PERIODS.—The applicable percentage for any taxable period beginning after 1986 shall be the sum of—

"(A) 2 percent, plus

"(B) 0.3 percent for each preceding taxable period.

In no event shall the applicable percentage exceed 5 percent."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1018(u)(17) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title VII, §7106(d), Nov. 10, 1988, 102 Stat. 3774, provided that: "The amendments made by this section [amending this section and sections 3322, 6157, 6201, 6317, 6513, and 6601 of this title, omitting section 3323 of this title, and amending provisions set out as a note under section 231n of Title 45, Railroads], and the provisions of subsection (b) [set out below], shall apply to remuneration paid after December 31, 1988."

EFFECTIVE DATE

Pub. L. 98–76, title II, §231(d), Aug. 12, 1983, 97 Stat. 429, provided that: "The amendments made by this section [enacting this chapter and amending sections 6157, 6201, 6317, 6513, and 6601 of this title] shall apply to remuneration paid after June 30, 1986."

CONTINUATION OF SURTAX RATE THROUGH 1990

Pub. L. 100–647, title VII, §7106(b), Nov. 10, 1988, 102 Stat. 3773, provided that:

"(1) IN GENERAL.—In the case of any calendar month beginning before January 1, 1991—

"(A) there shall be substituted for '4 percent' in subsections (a) and (b) of section 3321 of the 1986 Code the percentage equal to the sum of—

"(i) 4 percent, plus

"(ii) the surtax rate (if any) for such calendar month, and

"(B) subsection (c) of such section shall not apply to so much of the tax imposed by such section as is attributable to the surtax rate.

"(2) SURTAX RATE.—For purposes of paragraph (1), the surtax rate shall be—

"(A) 3.5 percent for each month during a calendar year if, as of September 30, of the preceding calendar year, there was a balance of transfers (or unpaid interest thereon) made after September 30, 1985, to the railroad unemployment insurance account under section 10(d) of the Railroad Unemployment Insurance Act [45 U.S.C. 360(d)], and

"(B) zero for any other calendar month."

§3322. Definitions

(a) Rail employer

For purposes of this chapter, the term "rail employer" means any person who is an employer as defined in section 1 of the Railroad Unemployment Insurance Act.

(b) Rail wages

For purposes of this chapter, the term "rail wages" means, with respect to any calendar month, so much of the remuneration paid during such month which is subject to contributions under section 8(a) of the Railroad Unemployment Insurance Act.

(c) Employee representative

For purposes of this chapter, the term "employee representative" has the meaning given such term by section 1 of the Railroad Unemployment Insurance Act.

(d) Certain rules made applicable

For purposes of this chapter, rules similar to the rules of section 3307 and 3308 shall apply.

(Added Pub. L. 98–76, title II, §231(a), Aug. 12, 1983, 97 Stat. 427; amended Pub. L. 99–272, title XIII, §13301(d), Apr. 7, 1986, 100 Stat. 327; Pub. L. 100–647, title VII, §7106(a), Nov. 10, 1988, 102 Stat. 3773.)

REFERENCES IN TEXT

Section 1 of the Railroad Unemployment Insurance Act, referred to in subsecs. (a) and (c), is classified to section 351 of Title 45, Railroads.

Section 8(a) of the Railroad Unemployment Insurance Act, referred to in subsec. (b), is classified to section 358(a) of Title 45.

AMENDMENTS

1988—Pub. L. 100–647 amended section generally, substituting present provisions for former provisions relating to taxable period, which had provided, in subsec. (a), for a general rule and, in subsec. (b), for earlier termination if loans to rail unemployment fund repaid.

1986—Subsec. (a)(2), (3). Pub. L. 99–272, §13301(d)(1), struck out "and before 1990, and" after "1986" in par. (2) and struck out par. (3) relating to the period beginning on Jan. 1, 1990, and ending on Sept. 30, 1990.

Subsec. (b). Pub. L. 99–272, §13301(d)(2), substituted "The basic rate under section 3321(c)(1)(A) of the tax imposed by section 3321 shall not apply" for "The tax imposed by this chapter shall not apply" in introductory provision, and inserted "made before October 1, 1985," in par. (1).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 applicable to remuneration paid after Dec. 31, 1988, see section 7106(d) of Pub. L. 100–647, set out as a note under section 3321 of this title.

EXCLUSION FROM WAGES AND COMPENSATION OF REFUNDS REQUIRED FROM EMPLOYERS TO COMPENSATE FOR DUPLICATION OF MEDICARE BENEFITS BY HEALTH CARE BENEFITS PROVIDED BY EMPLOYERS

For purposes of this chapter, the term "rail wages" shall not include the amount of any refund required under section 421 of Pub. L. 100–360, 42 U.S.C. 1395b note, see section 10202 of Pub. L. 101–239, set out as a note under section 1395b of Title 42, The Public Health and Welfare.

[§3323. Omitted]

Section, added Pub. L. 98–76, title II, §231(a), Aug. 12, 1983, 97 Stat. 427; amended Pub. L. 99–272, title XIII, §13301(b), Apr. 7, 1986, 100 Stat. 326, contained definitions, prior to the general amendment of this chapter by Pub. L. 100–647, §7106(a). See section 3322 of this title.

CHAPTER 24—COLLECTION OF INCOME TAX AT SOURCE ON WAGES

Sec.
3401. Definitions.
3402. Income tax collected at source.
3403. Liability for tax.
3404. Return and payment by governmental employer.
3405. Special rules for pensions, annuities, and certain other deferred income.[1]
3406. Backup withholding.
[3451 to 3456. Repealed.]

AMENDMENTS

1983—Pub. L. 98–67, title I, §§102(a), 104(d)(4), Aug. 5, 1983, 97 Stat. 369, 380, added item 3406 and repealed amendments made by Pub. L. 97–248. See 1982 Amendment note below.

1982—Pub. L. 97–248, title III, §§307(b)(4), 308(a), Sept. 3, 1982, 96 Stat. 590, 591, provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, the caption of chapter 24 is amended by striking out "ON WAGES", items for subchapters A and B are added in analysis, and heading "Subchapter A—Withholding From Wages" is added. Section 102(a), (b) of Pub. L. 98–67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§301–308) of title III of Pub. L. 97–248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 [now 1986] [this title] shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

[1] Editorially supplied. Section 3405 added by Pub. L. 97–248 without corresponding amendment of analysis.

§3401. Definitions

(a) Wages

For purposes of this chapter, the term "wages" means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration (including benefits) paid in any medium other than cash; except that such term shall not include remuneration paid—

(1) for active service performed in a month for which such employee is entitled to the benefits of section 112 (relating to certain combat zone compensation of members of the Armed Forces of the United States) to the extent remuneration for such service is excludable from gross income under such section; or

(2) for agricultural labor (as defined in section 3121(g)) unless the remuneration paid for such labor is wages (as defined in section 3121(a)); or

(3) for domestic service in a private home, local college club, or local chapter of a college fraternity or sorority; or

(4) for service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is $50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For purposes of this paragraph, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if—

(A) on each of some 24 days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business; or

(B) such individual was regularly employed (as determined under subparagraph (A)) by such employer in the performance of such service during the preceding calendar quarter; or

(5) for services by a citizen or resident of the United States for a foreign government or an international organization; or

(6) for such services, performed by a nonresident alien individual, as may be designated by

regulations prescribed by the Secretary; or

[(7) Repealed. Pub. L. 89–809, title I, §103(k), Nov. 13, 1966, 80 Stat. 1554]

(8)(A) for services for an employer (other than the United States or any agency thereof)—

(i) performed by a citizen of the United States if, at the time of the payment of such remuneration, it is reasonable to believe that such remuneration will be excluded from gross income under section 911; or

(ii) performed in a foreign country or in a possession of the United States by such a citizen if, at the time of the payment of such remuneration, the employer is required by the law of any foreign country or possession of the United States to withhold income tax upon such remuneration; or

(B) for services for an employer (other than the United States or any agency thereof) performed by a citizen of the United States within a possession of the United States (other than Puerto Rico), if it is reasonable to believe that at least 80 percent of the remuneration to be paid to the employee by such employer during the calendar year will be for such services; or

(C) for services for an employer (other than the United States or any agency thereof) performed by a citizen of the United States within Puerto Rico, if it is reasonable to believe that during the entire calendar year the employee will be a bona fide resident of Puerto Rico; or

(D) for services for the United States (or any agency thereof) performed by a citizen of the United States within a possession of the United States to the extent the United States (or such agency) withholds taxes on such remuneration pursuant to an agreement with such possession; or

(9) for services performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; or

(10)(A) for services performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution; or

(B) for services performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such services, or is entitled to be credited with the unsold newspapers or magazines turned back; or

(11) for services not in the course of the employer's trade or business, to the extent paid in any medium other than cash; or

(12) to, or on behalf of, an employee or his beneficiary—

(A) from or to a trust described in section 401(a) which is exempt from tax under section 501(a) at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust; or

(B) under or to an annuity plan which, at the time of such payment, is a plan described in section 403(a); or

(C) for a payment described in section 402(h)(1) and (2) if, at the time of such payment, it is reasonable to believe that the employee will be entitled to an exclusion under such section for payment; or

(D) under an arrangement to which section 408(p) applies; or

(E) under or to an eligible deferred compensation plan which, at the time of such payment, is a plan described in section 457(b) which is maintained by an eligible employer described in section 457(e)(1)(A),[1] or

(13) pursuant to any provision of law other than section 5(c) or 6(1) of the Peace Corps Act, for service performed as a volunteer or volunteer leader within the meaning of such Act; or

(14) in the form of group-term life insurance on the life of an employee; or

(15) to or on behalf of an employee if (and to the extent that) at the time of the payment of such

remuneration it is reasonable to believe that a corresponding deduction is allowable under section 217 (determined without regard to section 274(n)); or

(16)(A) as tips in any medium other than cash;

(B) as cash tips to an employee in any calendar month in the course of his employment by an employer unless the amount of such cash tips is $20 or more; [2]

(17) for service described in section 3121(b)(20); [2]

(18) for any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127, 129, 134(b)(4), or 134(b)(5); [2]

(19) for any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 74(c), 108(f)(4), 117, or 132; [2]

(20) for any medical care reimbursement made to or for the benefit of an employee under a self-insured medical reimbursement plan (within the meaning of section 105(h)(6)); [2]

(21) for any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(b); [2]

(22) any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(d); or

(23) for any benefit or payment which is excludable from the gross income of the employee under section 139B(b).

The term "wages" includes any amount includible in gross income of an employee under section 409A and payment of such amount shall be treated as having been made in the taxable year in which the amount is so includible.

(b) Payroll period

For purposes of this chapter, the term "payroll period" means a period for which a payment of wages is ordinarily made to the employee by his employer, and the term "miscellaneous payroll period" means a payroll period other than a daily, weekly, biweekly, semimonthly, monthly, quarterly, semiannual or annual payroll period.

(c) Employee

For purposes of this chapter, the term "employee" includes an officer, employee, or elected official of the United States, a State, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term "employee" also includes an officer of a corporation.

(d) Employer

For purposes of this chapter, the term "employer" means the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that—

(1) if the person for whom the individual performs or performed the services does not have control of the payment of the wages for such services, the term "employer" (except for purposes of subsection (a)) means the person having control of the payment of such wages, and

(2) in the case of a person paying wages on behalf of a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, the term "employer" (except for purposes of subsection (a)) means such person.

(e) Number of withholding exemptions claimed

For purposes of this chapter, the term "number of withholding exemptions claimed" means the number of withholding exemptions claimed in a withholding exemption certificate in effect under section 3402(f), or in effect under the corresponding section of prior law, except that if no such

certificate is in effect, the number of withholding exemptions claimed shall be considered to be zero.

(f) Tips

For purposes of subsection (a), the term "wages" includes tips received by an employee in the course of his employment. Such wages shall be deemed to be paid at the time a written statement including such tips is furnished to the employer pursuant to section 6053(a) or (if no statement including such tips is so furnished) at the time received.

(g) Crew leader rules to apply

Rules similar to the rules of section 3121(o) shall apply for purposes of this chapter.

(h) Differential wage payments to active duty members of the uniformed services

(1) In general

For purposes of subsection (a), any differential wage payment shall be treated as a payment of wages by the employer to the employee.

(2) Differential wage payment

For purposes of paragraph (1), the term "differential wage payment" means any payment which—

(A) is made by an employer to an individual with respect to any period during which the individual is performing service in the uniformed services (as defined in chapter 43 of title 38, United States Code) while on active duty for a period of more than 30 days, and

(B) represents all or a portion of the wages the individual would have received from the employer if the individual were performing service for the employer.

(Aug. 16, 1954, ch. 736, 68A Stat. 455; Aug. 9, 1955, ch. 681, 69 Stat. 616; Pub. L. 87–256, §110(g)(1), Sept. 21, 1961, 75 Stat. 537; Pub. L. 87–293, title II, §201(c), Sept. 22, 1961, 75 Stat. 625; Pub. L. 87–792, §7(l), Oct. 10, 1962, 76 Stat. 830; Pub. L. 88–272, title II, §§204(b), 213(c), Feb. 26, 1964, 78 Stat. 36, 52; Pub. L. 89–97, title III, §313(d)(1), (2), July 30, 1965, 79 Stat. 383, 384; Pub. L. 89–809, title I, §103(k), Nov. 13, 1966, 80 Stat. 1554; Pub. L. 92–279, §2, Apr. 26, 1972, 86 Stat. 125; Pub. L. 93–406, title II, §2002(g)(7), Sept. 2, 1974, 88 Stat. 970; Pub. L. 94–455, title XII, §1207(e)(1)(C), title XV, §1501(b)(7), title XIX, §§1903(c), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1707, 1736, 1810, 1834; Pub. L. 95–600, title I, §164(b)(1), Nov. 6, 1978, 92 Stat. 2813; Pub. L. 95–615, §207(a), Nov. 8, 1978, 92 Stat. 3108; Pub. L. 96–222, title I, §103(a)(13)(A), Apr. 1, 1980, 94 Stat. 213; Pub. L. 97–34, title I, §§112(b)(5), 124(e)(2)(A), title III, §311(h)(6), Aug. 13, 1981, 95 Stat. 195, 200, 282; Pub. L. 97–448, title I, §103(c)(12)(B), Jan. 12, 1983, 96 Stat. 2377; Pub. L. 98–369, div. A, title IV, §491(d)(38), title V, §531(d)(4), July 18, 1984, 98 Stat. 851, 885; Pub. L. 99–514, title I, §122(e)(4), title XII, §1272(c), Oct. 22, 1986, 100 Stat. 2112, 2594; Pub. L. 100–647, title I, §§1001(g)(4)(B)(iii), 1011(f)(9), 1011B(a)(22)(D), (33), Nov. 10, 1988, 102 Stat. 3352, 3463, 3486, 3488; Pub. L. 101–140, title II, §203(a)(2), Nov. 8, 1989, 103 Stat. 830; Pub. L. 101–239, title VII, §7631(a), (b), Dec. 19, 1989, 103 Stat. 2378; Pub. L. 101–508, title XI, §11703(f)(1), Nov. 5, 1990, 104 Stat. 1388–517; Pub. L. 104–117, §1(c), Mar. 20, 1996, 110 Stat. 828; Pub. L. 104–188, title I, §§1421(b)(8)(D), 1704(t)(4)(C), Aug. 20, 1996, 110 Stat. 1798, 1887; Pub. L. 104–191, title III, §301(c)(2)(C), Aug. 21, 1996, 110 Stat. 2049; Pub. L. 105–206, title VI, §6023(14), (15), July 22, 1998, 112 Stat. 825; Pub. L. 107–16, title VI, §641(a)(1)(D)(i), June 7, 2001, 115 Stat. 119; Pub. L. 108–121, title I, §106(b)(4), Nov. 11, 2003, 117 Stat. 1339; Pub. L. 108–173, title XII, §1201(d)(2)(C), Dec. 8, 2003, 117 Stat. 2477; Pub. L. 108–357, title III, §320(b)(4), title VIII, §885(b)(2), Oct. 22, 2004, 118 Stat. 1473, 1639; Pub. L. 108–375, div. A, title V, §585(b)(2)(D), Oct. 28, 2004, 118 Stat. 1932; Pub. L. 109–135, title IV, §412(tt), Dec. 21, 2005, 119 Stat. 2640; Pub. L. 110–245, title I, §§105(a)(1), 115(c), June 17, 2008, 122 Stat. 1628, 1637.)

REFERENCES IN TEXT

Sections 5(c) and 6(1) of the Peace Corps Act, referred to in subsec. (a)(13), are classified to sections 2504(c) and 2505(1), respectively, of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

2008—Subsec. (a)(23). Pub. L. 110–245, §115(c), added par. (23).
Subsec. (h). Pub. L. 110–245, §105(a)(1), added subsec. (h).
2005—Subsecs. (g), (h). Pub. L. 109–135 redesignated subsec. (h) as (g).
2004—Subsec. (a). Pub. L. 108–357, §885(b)(2), inserted concluding provisions.
Subsec. (a)(18). Pub. L. 108–375 substituted "134(b)(4), or 134(b)(5)" for "or 134(b)(4)".
Subsec. (a)(19). Pub. L. 108–357, §320(b)(4), inserted "108(f)(4)," after "74(c),".
2003—Subsec. (a)(18). Pub. L. 108–121 substituted ", 129, or 134(b)(4)" for "or 129".
Subsec. (a)(22). Pub. L. 108–173 added par. (22).
2001—Subsec. (a)(12)(E). Pub. L. 107–16 added subpar. (E).
1998—Subsec. (a)(19), (21). Pub. L. 105–206 inserted "for" after par. designation.
1996—Subsec. (a)(1). Pub. L. 104–188, §1704(t)(4)(C), substituted "combat zone compensation" for "combat pay".
Pub. L. 104–117 inserted before semicolon "to the extent remuneration for such service is excludable from gross income under such section".
Subsec. (a)(12)(D). Pub. L. 104–188, §1421(b)(8)(D), added subpar. (D).
Subsec. (a)(21). Pub. L. 104–191 added par. (21).
1990—Subsec. (a)(20). Pub. L. 101–508 added par. (20).
1989—Subsec. (a)(2). Pub. L. 101–239, §7631(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "for agricultural labor (as defined in section 3121(g)); or".
Subsec. (g). Pub. L. 101–140 amended this section to read as if amendments by Pub. L. 100–647, §1011B(a)(22)(D), had not been enacted, see 1988 Amendment note below.
Subsec. (h). Pub. L. 101–239, §7631(b), added subsec. (h).
1988—Subsec. (a)(12)(C). Pub. L. 100–647, §1011(f)(9), substituted "section 402(h)(1) and (2)" for "section 219" and "an exclusion" for "a deduction".
Subsec. (a)(15). Pub. L. 100–647, §1001(g)(4)(B)(iii), inserted "(determined without regard to section 274(n))" after "section 217".
Subsec. (a)(19), (20). Pub. L. 100–647, §1011B(a)(33), redesignated par. (20) as (19) and struck out former par. (19) which excluded medical care reimbursement made to or for benefit of employee under self-insured medical reimbursement plan.
Subsec. (g). Pub. L. 100–647, §1011B(a)(22)(D), added subsec. (g) relating to benefits provided under certain employee benefit plans.
1986—Subsec. (a)(8)(D). Pub. L. 99–514, §1272(c), added subpar. (D).
Subsec. (a)(20). Pub. L. 99–514, §122(e)(4), inserted reference to section 74(c).
1984—Subsec. (a). Pub. L. 98–369, §531(d)(4)(A), inserted "(including benefits)" in introductory provisions.
Subsec. (a)(12). Pub. L. 98–369, §491(d)(38), struck out subpar. (C) which provided: "under or to a bond purchase plan which, at the time of such payment, is a qualified bond purchase plan described in section 405(a);" and redesignated subpar. (D) as (C).
Subsec. (a)(20). Pub. L. 98–369, §531(d)(4)(B), added par. (20).
1983—Subsec. (a)(12)(D). Pub. L. 97–448 substituted "section 219" for "section 219(a)".
1981—Subsec. (a)(12)(D). Pub. L. 97–34, §311(h)(6), substituted "section 219(a)" for "section 219(a) or 220(a)".
Subsec. (a)(18). Pub. L. 97–34, §124(e)(2)(A), substituted "section 127 or 129" for "section 127".
Pub. L. 97–34, §112(b)(5), redesignated par. (19) as (18). Former par. (18), relating to remuneration paid to or on behalf of an employee if (and to the extent that) at the time of the payment of such remuneration it was reasonable to believe that a corresponding deduction was allowable under section 913 (relating to deduction for certain expenses of living abroad), was struck out.
Subsec. (a)(19), (20). Pub. L. 97–34, §112(b)(5), redesignated par. (20) as (19). Former par. (19) redesignated (18).
1980—Subsec. (a)(18) to (20). Pub. L. 96–222 redesignated par. (18), added by Pub. L. 95–600, as (19), in par. (19) as so redesignated, substituted "section 127; or" for "section 124.", and added par. (20).
1978—Subsec. (a)(18). Pub. L. 95–615 added par. (18) relating to payments or benefits excludable from income under section 124.
Pub. L. 95–600 added par. (18) relating to remuneration for which a corresponding deduction is allowable under section 913.
1976—Subsec. (a)(6). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".
Subsec. (a)(12)(D). Pub. L. 94–455, §1501(b)(7), inserted "or 220(a)" after "section 219(a)".
Subsec. (a)(17). Pub. L. 94–455, §1207(e)(1)(C), added par. (17).

Subsec. (c). Pub. L. 94–455, §1903(c), struck out "Territory" after "a State".

1974—Subsec. (a)(12)(D). Pub. L. 93–406 added subpar. (D).

1972—Subsec. (a)(1). Pub. L. 92–279 struck out "as a member of the Armed Forces of the United States" after "active service", substituted "employee" for "member", and parenthetical text "(relating to certain combat pay of members of the Armed Forces of the United States)".

1966—Subsec. (a)(6), (7). Pub. L. 89–809, §103(k), struck out par. (6) dealing with services performed by nonresident alien individuals other than residents of contiguous countries who enter and leave the United States at frequent intervals, residents of Puerto Rico if such services are performed as an employee of the United States or any agency thereof, or individuals temporarily present in the United States as nonimmigrants under certain conditions, redesignated par. (7) as (6), and in par (6) as so redesignated, struck out "who is a resident of a contiguous country and who enters and leaves the United States at frequent intervals" after "nonresident alien individual".

1965—Subsec. (a)(16). Pub. L. 89–97, §313(d)(2), added par. (16).

Subsec. (f). Pub. L. 89–97, §313(d)(1), added subsec. (f).

1964—Subsec. (a)(14). Pub. L. 88–272, §204(b), added par. (14).

Subsec. (a)(15). Pub. L. 88–272, §213(c), added par. (15).

1962—Subsec. (a)(12)(B), (C). Pub. L. 87–792 substituted "is a plan described in section 403(a)" for "meets the requirements of section 401(a)(3), (4), (5), and (6)", in subpar. (B), and added subpar. (C).

1961—Subsec. (a)(6)(C). Pub. L. 87–256 added subpar. (C).

Subsec. (a)(13). Pub. L. 87–293 added par. (13).

1955—Subsec. (a). Act Aug. 9, 1955, excluded from definition of wages, remuneration paid for services performed in a possession of the United States by a United States citizen if the employer is required by the law of the possession to withhold income tax on the remuneration.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–245, title I, §105(a)(2), June 17, 2008, 122 Stat. 1628, provided that: "The amendment made by this subsection [amending this section] shall apply to remuneration paid after December 31, 2008."

Amendment by section 115(c) of Pub. L. 110–245 effective as if included in section 5 of Pub. L. 110–142, see section 115(d) of Pub. L. 110–245, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 2004 AMENDMENTS

Amendment by Pub. L. 108–375 applicable to travel benefits provided after Oct. 28, 2004, see section 585(b)(3) of Pub. L. 108–375, set out as a note under section 134 of this title.

Amendment by section 320(b)(4) of Pub. L. 108–357 applicable to amounts received by an individual in taxable years beginning after Dec. 31, 2003, see section 320(c) of Pub. L. 108–357, set out as a note under section 108 of this title.

Amendment by section 885(b)(2) of Pub. L. 108–357 applicable to amounts deferred after Dec. 31, 2004, with special rules relating to earnings and material modifications and exception for nonelective deferred compensation, see section 885(d) of Pub. L. 108–357, set out as an Effective Date note under section 409A of this title.

EFFECTIVE DATE OF 2003 AMENDMENTS

Amendment by Pub. L. 108–173 applicable to taxable years beginning after Dec. 31, 2003, see section 1201(k) of Pub. L. 108–173, set out as a note under section 62 of this title.

Amendment by Pub. L. 108–121 applicable to taxable years beginning after Dec. 31, 2002, see section 106(c) of Pub. L. 108–121, set out as a note under section 134 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to distributions after Dec. 31, 2001, see section 641(f)(1) of Pub. L. 107–16, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by Pub. L. 104–191 applicable to taxable years beginning after Dec. 31, 1996, see section 301(j) of Pub. L. 104–191, set out as a note under section 62 of this title.

Amendment by section 1421(b)(8)(D) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1421(e) of Pub. L. 104–188, set out as a note under section 72 of this title.

Amendment by Pub. L. 104–117 applicable to remuneration paid after Mar. 20, 1996, see section 1(e) of Pub. L. 104–117, set out in a Treatment of Certain Individuals Performing Services in Certain Hazardous Duty Areas; Effective Date note under section 112 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, §11703(f)(2), Nov. 5, 1990, 104 Stat. 1388–518, provided that: "The amendment made by paragraph (1) [amending this section] shall apply as if included in the amendments made by section 1151 of the Tax Reform Act of 1986 [Pub. L. 99–514, see Effective Date of 1986 Amendment note set out under section 79 of this title] but shall not apply to any amount paid before the date of the enactment of this Act [Nov. 5, 1990] which the employer treated as wages for purposes of chapter 24 of the Internal Revenue Code of 1986 when paid."

EFFECTIVE DATE OF 1989 AMENDMENTS

Pub. L. 101–239, title VII, §7631(c), Dec. 19, 1989, 103 Stat. 2378, provided that: "The amendments made by this section [amending this section] shall apply to remuneration paid after December 31, 1989."

Amendment by Pub. L. 101–140 effective as if included in section 1151 of Pub. L. 99–514, see section 203(c) of Pub. L. 101–140, set out as a note under section 79 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 1001(g)(4)(B)(iii), 1011(f)(9), and 1011B(a)(33) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 1011B(a)(22)(D) of Pub. L. 100–647 not applicable to any individual who separated from service with the employer before Jan. 1, 1989, see section 1011B(a)(22)(F) of Pub. L. 100–647, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 122(e)(4) of Pub. L. 99–514 applicable to prizes and awards granted after Dec. 31, 1986, see section 151(c) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 1272(c) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99–514, set out as a note under section 931 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 491(d)(38) of Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

Amendment by section 531(d)(4) of Pub. L. 98–369 effective Jan. 1, 1985, see section 531(h) of Pub. L. 98–369, set out as an Effective Date note under section 132 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 112(b)(5) of Pub. L. 97–34 applicable with respect to taxable years beginning after Dec. 31, 1981, see section 115 of Pub. L. 97–34, set out as a note under section 911 of this title.

Amendment by section 124(e)(2)(A) of Pub. L. 97–34 applicable to remuneration paid after Dec. 31, 1981, see section 124(f)(2) of Pub. L. 97–34, set out as a note under section 21 of this title.

Amendment by section 311(h)(6) of Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 311(i)(1) of Pub. L. 97–34, set out as a note under section 219 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95–615 applicable to remuneration paid after Nov. 8, 1978, but with taxpayers allowed to elect not to have the amendment apply with respect to any taxable year beginning after Dec. 31, 1977, and before Jan. 1, 1979, see section 209(b), (c) of Pub. L. 95–615, set out as a note under section 911 of this title.

Amendment by Pub. L. 95–600 applicable with respect to taxable years beginning after Dec. 31, 1978, see section 164(d) of Pub. L. 95–600, set out as a note under section 127 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1501(b)(7) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1501(d) of Pub. L. 94–455, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–406 effective on Jan. 1, 1975, see section 2002(i)(2) of Pub. L. 93–406, set out as an Effective Date note under section 4973 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Pub. L. 92–279, §3(b), Apr. 26, 1972, 86 Stat. 125, provided that: "The amendments made by section 2 [amending this section] shall apply to wages paid on or after the first day of the first calendar month which begins more than 30 days after the date of the enactment of this Act [Apr. 26, 1972]."

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to remuneration paid after Dec. 31, 1966, see section 103(n)(4) of Pub. L. 89–809, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 313(d)(1), (2) of Pub. L. 89–97 applicable only with respect to tips received by employees after 1965, see section 313(f) of Pub. L. 89–97, set out as a note under section 6053 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by section 204(b) of Pub. L. 88–272 applicable to remuneration paid after Dec. 31, 1963, in the form of group-term life insurance provided after such date, see section 204(d) of Pub. L. 88–272, set out as an Effective Date note under section 79 of this title.

Amendment by section 213(c) of Pub. L. 88–272 applicable to remuneration paid after the seventh day following Feb. 26, 1964, see section 213(d) of Pub. L. 88–272, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87–792, set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1961 AMENDMENTS

Amendment by Pub. L. 87–293 applicable with respect to remuneration paid after Sept. 22, 1961, see section 201(d) of Pub. L. 87–293, set out as a note under section 912 of this title.

Pub. L. 87–256, §110(h)(4), Sept. 21, 1961, 75 Stat. 538, provided that: "The amendments made by subsection (g) of this section [amending this section and section 3402 of this title] shall apply with respect to wages paid after December 31, 1961."

SHORT TITLE OF 1966 AMENDMENT

Pub. L. 89–368, §1, Mar. 15, 1966, 80 Stat. 38, provided that: "This Act [enacting sections 276 and 6682 of this title and section 428 of Title 42, The Public Health and Welfare, amending sections 1402, 1403, 3402, 4061, 4251, 4253, 6015, 6154, 6211, 6412, 6654, 7205, and 7701 of this title and section 1202 of Title 19, Customs Duties, and enacting provisions set out as notes under sections 276, 3402, 4061, 4251, 6154, and 6654 of this title and section 428 of Title 42] may be cited as the 'Tax Adjustment Act of 1966'."

REPEALS; AMENDMENTS AND APPLICATION OF AMENDMENTS UNAFFECTED

Section 201(c) of Pub. L. 87–293, cited as a credit to this section, was repealed by Pub. L. 89–572, §5(a), Sept. 13, 1966, 80 Stat. 765. Such repeal not deemed to affect amendments to this section contained in such provisions, and continuation in full force and effect until modified by appropriate authority of all determinations, authorization, regulations, orders, contracts, agreements, and other actions issued, undertaken, or entered into under authority of the repealed provisions, see section 5(b) of Pub. L. 89–572, set out as a note under former section 2515 of Title 22, Foreign Relations and Intercourse.

NO INFERENCE TO BE DRAWN FROM AMENDMENT BY PUB. L. 108–121

No inference to be drawn from amendment to subsec. (a)(18) of this section by section 106 of Pub. L. 108–121 with respect to tax treatment of any amounts under program described in section 134(b)(4) of this

title for any taxable year beginning before Jan. 1, 2003, see section 106(d) of Pub. L. 108–121, set out as a note under section 134 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§1401–1465] of title I of Pub. L. 104–188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

CONTROVERSIES INVOLVING WHETHER INDIVIDUALS ARE EMPLOYEES FOR PURPOSES OF EMPLOYMENT TAXES

Pub. L. 95–600, title V, §530, Nov. 6, 1978, 92 Stat. 2885, as amended by Pub. L. 96–167, §9(d), Dec. 29, 1979, 93 Stat. 1278; Pub. L. 96–541, §1, Dec. 17, 1980, 94 Stat. 3204; Pub. L. 97–248, title II, §269(c)(1), (2), 96 Stat. 552; Pub. L. 99–514, §2, title XVII, §1706(a), Oct. 22, 1986, 100 Stat. 2095, 2781; Pub. L. 104–188, title I, §1122(a), Aug. 20, 1996, 110 Stat. 1766; Pub. L. 109–280, title VIII, §864(a), Aug. 17, 2006, 120 Stat. 1024; Pub. L. 110–458, title I, §108(m), Dec. 23, 2008, 122 Stat. 5110, provided that:

"(a) TERMINATION OF CERTAIN EMPLOYMENT TAX LIABILITY.—

"(1) IN GENERAL.—If—

"(A) for purposes of employment taxes, the taxpayer did not treat an individual as an employee for any period, and

"(B) in the case of periods after December 31, 1978, all Federal tax returns (including information returns) required to be filed by the taxpayer with respect to such individual for such period are filed on a basis consistent with the taxpayer's treatment of such individual as not being an employee,

then, for purposes of applying such taxes for such period with respect to the taxpayer, the individual shall be deemed not to be an employee unless the taxpayer had no reasonable basis for not treating such individual as an employee.

"(2) STATUTORY STANDARDS PROVIDING ONE METHOD OF SATISFYING THE REQUIREMENTS OF PARAGRAPH (1).—For purposes of paragraph (1), a taxpayer shall in any case be treated as having a reasonable basis for not treating an individual as an employee for a period if the taxpayer's treatment of such individual for such period was in reasonable reliance on any of the following:

"(A) judicial precedent, published rulings, technical advice with respect to the taxpayer, or a letter ruling to the taxpayer;

"(B) a past Internal Revenue Service audit of the taxpayer in which there was no assessment attributable to the treatment (for employment tax purposes) of the individuals holding positions substantially similar to the position held by this individual; or

"(C) long-standing recognized practice of a significant segment of the industry in which such individual was engaged.

"(3) CONSISTENCY REQUIRED IN THE CASE OF PRIOR TAX TREATMENT.—Paragraph (1) shall not apply with respect to the treatment of any individual for employment tax purposes for any period ending after December 31, 1978, if the taxpayer (or a predecessor) has treated any individual holding a substantially similar position as an employee for purposes of the employment taxes for any period beginning after December 31, 1977.

"(4) REFUND OR CREDIT OF OVERPAYMENT.—If refund or credit of any overpayment of an employment tax resulting from the application of paragraph (1) is not barred on the date of the enactment of this Act [Nov. 6, 1978] by any law or rule of law, the period for filing a claim for refund or credit of such overpayment (to the extent attributable to the application of paragraph (1)) shall not expire before the date 1 year after the date of the enactment of this Act.

"(b) PROHIBITION AGAINST REGULATIONS AND RULINGS ON EMPLOYMENT STATUS.—No regulation or Revenue Ruling shall be published on or after the date of the enactment of this Act [Nov. 6, 1978] and before the effective date of any law hereafter enacted clarifying the employment status of individuals for purposes of the employment taxes by the Department of the Treasury (including the Internal Revenue Service) with respect to the employment status of any individual for purposes of the employment taxes.

"(c) DEFINITIONS.—For purposes of this section—

"(1) EMPLOYMENT TAX.—The term 'employment tax' means any tax imposed by subtitle C of the Internal Revenue Code of 1986 [formerly I.R.C. 1954, section 3101 et seq. of this title].

"(2) EMPLOYMENT STATUS.—The term 'employment status' means the status of an individual, under the usual common law rules applicable in determining the employer-employee relationship, as an

employee or as an independent contractor (or other individual who is not an employee).

"(d) EXCEPTION.—This section shall not apply in the case of an individual who, pursuant to an arrangement between the taxpayer and another person, provides services for such other person as an engineer, designer, drafter, computer programmer, systems analyst, or other similarly skilled worker engaged in a similar line of work.

"(e) SPECIAL RULES FOR APPLICATION OF SECTION.—

"(1) NOTICE OF AVAILABILITY OF SECTION.—An officer or employee of the Internal Revenue Service shall, before or at the commencement of any audit inquiry relating to the employment status of one or more individuals who perform services for the taxpayer, provide the taxpayer with a written notice of the provisions of this section.

"(2) RULES RELATING TO STATUTORY STANDARDS.—For purposes of subsection (a)(2)—

"(A) a taxpayer may not rely on an audit commenced after December 31, 1996, for purposes of subparagraph (B) thereof unless such audit included an examination for employment tax purposes of whether the individual involved (or any individual holding a position substantially similar to the position held by the individual involved) should be treated as an employee of the taxpayer,

"(B) in no event shall the significant segment requirement of subparagraph (C) thereof be construed to require a reasonable showing of the practice of more than 25 percent of the industry (determined by not taking into account the taxpayer), and

"(C) in applying the long-standing recognized practice requirement of subparagraph (C) thereof—

"(i) such requirement shall not be construed as requiring the practice to have continued for more than 10 years, and

"(ii) a practice shall not fail to be treated as long-standing merely because such practice began after 1978.

"(3) AVAILABILITY OF SAFE HARBORS.—Nothing in this section shall be construed to provide that subsection (a) only applies where the individual involved is otherwise an employee of the taxpayer.

"(4) BURDEN OF PROOF.—

"(A) IN GENERAL.—If—

"(i) a taxpayer establishes a prima facie case that it was reasonable not to treat an individual as an employee for purposes of this section, and

"(ii) the taxpayer has fully cooperated with reasonable requests from the Secretary of the Treasury or his delegate,

then the burden of proof with respect to such treatment shall be on the Secretary.

"(B) EXCEPTION FOR OTHER REASONABLE BASIS.—In the case of any issue involving whether the taxpayer had a reasonable basis not to treat an individual as an employee for purposes of this section, subparagraph (A) shall only apply for purposes of determining whether the taxpayer meets the requirements of subparagraph (A), (B), or (C) of subsection (a)(2).

"(5) PRESERVATION OF PRIOR PERIOD SAFE HARBOR.—If—

"(A) an individual would (but for the treatment referred to in subparagraph (B)) be deemed not to be an employee of the taxpayer under subsection (a) for any prior period, and

"(B) such individual is treated by the taxpayer as an employee for employment tax purposes for any subsequent period,

then, for purposes of applying such taxes for such prior period with respect to the taxpayer, the individual shall be deemed not to be an employee.

"(6) SUBSTANTIALLY SIMILAR POSITION.—For purposes of this section, the determination as to whether an individual holds a position substantially similar to a position held by another individual shall include consideration of the relationship between the taxpayer and such individuals.

"(f) TREATMENT OF TEST ROOM SUPERVISORS AND PROCTORS WHO ASSIST IN THE ADMINISTRATION OF COLLEGE ENTRANCE AND PLACEMENT EXAMS.—

"(1) IN GENERAL.—In the case of an individual described in paragraph (2) who is providing services as a test proctor or room supervisor by assisting in the administration of college entrance or placement examinations, this section shall be applied to such services performed after December 31, 2006 (and remuneration paid for such services) without regard to subsection (a)(3) thereof.

"(2) APPLICABILITY.—An individual is described in this paragraph if the individual—

"(A) is providing the services described in subsection (a) to an organization described in section 501(c), and exempt from tax under section 501(a), of the Internal Revenue Code of 1986, and

"(B) is not otherwise treated as an employee of such organization for purposes of subtitle C of such Code (relating to employment taxes)."

[Pub. L. 109–280, title VIII, §864(b), Aug. 17, 2006, 120 Stat. 1024, provided that: "The amendment made

by this section [amending section 530 of Pub. L. 95–600, set out above] shall apply to remuneration for services performed after December 31, 2006."]

[Pub. L. 104–188, title I, §1122(b), Aug. 20, 1996, 110 Stat. 1767, provided that:

["(1) IN GENERAL.—The amendment made by this section [amending section 530 of Pub. L. 95–600, set out above] shall apply to periods after December 31, 1996.

["(2) NOTICE BY INTERNAL REVENUE SERVICE.—Section 530(e)(1) of the Revenue Act of 1978 [Pub. L. 95–600] (as added by subsection (a)) shall apply to audits which commence after December 31, 1996.

["(3) BURDEN OF PROOF.—

["(A) IN GENERAL.—Section 530(e)(4) of the Revenue Act of 1978 (as added by subsection (a)) shall apply to disputes involving periods after December 31, 1996.

["(B) NO INFERENCE.—Nothing in the amendments made by this section shall be construed to infer the proper treatment of the burden of proof with respect to disputes involving periods before January 1, 1997."]

[Pub. L. 99–514, title XVII, §1706(b), Oct. 22, 1986, 100 Stat. 2781, provided that: "The amendment made by this section [amending section 530 of Pub. L. 95–600, set out above] shall apply to remuneration paid and services rendered after December 31, 1986."]

[1] *So in original. The comma probably should be a semicolon.*

[2] *So in original. Probably should be followed by "or".*

§3402. Income tax collected at source

(a) Requirement of withholding

(1) In general

Except as otherwise provided in this section, every employer making payment of wages shall deduct and withhold upon such wages a tax determined in accordance with tables or computational procedures prescribed by the Secretary. Any tables or procedures prescribed under this paragraph shall—

(A) apply with respect to the amount of wages paid during such periods as the Secretary may prescribe, and

(B) be in such form, and provide for such amounts to be deducted and withheld, as the Secretary determines to be most appropriate to carry out the purposes of this chapter and to reflect the provisions of chapter 1 applicable to such periods.

(2) Amount of wages

For purposes of applying tables or procedures prescribed under paragraph (1), the term "the amount of wages" means the amount by which the wages exceed the number of withholding exemptions claimed multiplied by the amount of one such exemption. The amount of each withholding exemption shall be equal to the amount of one personal exemption provided in section 151(b), prorated to the payroll period. The maximum number of withholding exemptions permitted shall be calculated in accordance with regulations prescribed by the Secretary under this section, taking into account any reduction in withholding to which an employee is entitled under this section.

(b) Percentage method of withholding

(1) If wages are paid with respect to a period which is not a payroll period, the withholding exemption allowable with respect to each payment of such wages shall be the exemption allowed for a miscellaneous payroll period containing a number of days (including Sundays and holidays) equal to the number of days in the period with respect to which such wages are paid.

(2) In any case in which wages are paid by an employer without regard to any payroll period or other period, the withholding exemption allowable with respect to each payment of such wages shall be the exemption allowed for a miscellaneous payroll period containing a number of days equal to the number of days (including Sundays and holidays) which have elapsed since the date of the last

payment of such wages by such employer during the calendar year, or the date of commencement of employment with such employer during such year, or January 1 of such year, whichever is the later.

(3) In any case in which the period, or the time described in paragraph (2), in respect of any wages is less than one week, the Secretary, under regulations prescribed by him, may authorize an employer to compute the tax to be deducted and withheld as if the aggregate of the wages paid to the employee during the calendar week were paid for a weekly payroll period.

(4) In determining the amount to be deducted and withheld under this subsection, the wages may, at the election of the employer, be computed to the nearest dollar.

(c) Wage bracket withholding

(1) At the election of the employer with respect to any employee, the employer shall deduct and withhold upon the wages paid to such employee a tax (in lieu of the tax required to be deducted and withheld under subsection (a)) determined in accordance with tables prescribed by the Secretary in accordance with paragraph (6).

(2) If wages are paid with respect to a period which is not a payroll period, the amount to be deducted and withheld shall be that applicable in the case of a miscellaneous payroll period containing a number of days (including Sundays and holidays) equal to the number of days in the period with respect to which such wages are paid.

(3) In any case in which wages are paid by an employer without regard to any payroll period or other period, the amount to be deducted and withheld shall be that applicable in the case of a miscellaneous payroll period containing a number of days equal to the number of days (including Sundays and holidays) which have elapsed since the date of the last payment of such wages by such employer during the calendar year, or the date of commencement of employment with such employer during such year, or January 1 of such year, whichever is the later.

(4) In any case in which the period, or the time described in paragraph (3), in respect of any wages is less than one week, the Secretary, under regulations prescribed by him, may authorize an employer to determine the amount to be deducted and withheld under the tables applicable in the case of a weekly payroll period, in which case the aggregate of the wages paid to the employee during the calendar week shall be considered the weekly wages.

(5) If the wages exceed the highest wage bracket, in determining the amount to be deducted and withheld under this subsection, the wages may, at the election of the employer, be computed to the nearest dollar.

(6) In the case of wages paid after December 31, 1969, the amount deducted and withheld under paragraph (1) shall be determined in accordance with tables prescribed by the Secretary. In the tables so prescribed, the amounts set forth as amounts of wages and amounts of income tax to be deducted and withheld shall be computed on the basis of the table for an annual payroll period prescribed pursuant to subsection (a).

(d) Tax paid by recipient

If the employer, in violation of the provisions of this chapter, fails to deduct and withhold the tax under this chapter, and thereafter the tax against which such tax may be credited is paid, the tax so required to be deducted and withheld shall not be collected from the employer; but this subsection shall in no case relieve the employer from liability for any penalties or additions to the tax otherwise applicable in respect of such failure to deduct and withhold.

(e) Included and excluded wages

If the remuneration paid by an employer to an employee for services performed during one-half or more of any payroll period of not more than 31 consecutive days constitutes wages, all the remuneration paid by such employer to such employee for such period shall be deemed to be wages; but if the remuneration paid by an employer to an employee for services performed during more than one-half of any such payroll period does not constitute wages, then none of the remuneration paid by such employer to such employee for such period shall be deemed to be wages.

(f) Withholding exemptions

(1) In general

An employee receiving wages shall on any day be entitled to the following withholding exemptions:

(A) an exemption for himself unless he is an individual described in section 151(d)(2);

(B) if the employee is married, any exemption to which his spouse is entitled, or would be entitled if such spouse were an employee receiving wages, under subparagraph (A) or (D), but only if such spouse does not have in effect a withholding exemption certificate claiming such exemption;

(C) an exemption for each individual with respect to whom, on the basis of facts existing at the beginning of such day, there may reasonably be expected to be allowable an exemption under section 151(c) for the taxable year under subtitle A in respect of which amounts deducted and withheld under this chapter in the calendar year in which such day falls are allowed as a credit;

(D) any allowance to which he is entitled under subsection (m), but only if his spouse does not have in effect a withholding exemption certificate claiming such allowance; and

(E) a standard deduction allowance which shall be an amount equal to one exemption (or more than one exemption if so prescribed by the Secretary) unless (i) he is married (as determined under section 7703) and his spouse is an employee receiving wages subject to withholding or (ii) he has withholding exemption certificates in effect with respect to more than one employer.

For purposes of this title, any standard deduction allowance under subparagraph (E) shall be treated as if it were denominated a withholding exemption.

(2) Exemption certificates

(A) On commencement of employment

On or before the date of the commencement of employment with an employer, the employee shall furnish the employer with a signed withholding exemption certificate relating to the number of withholding exemptions which he claims, which shall in no event exceed the number to which he is entitled.

(B) Change of status

If, on any day during the calendar year, the number of withholding exemptions to which the employee is entitled is less than the number of withholding exemptions claimed by the employee on the withholding exemption certificate then in effect with respect to him, the employee shall within 10 days thereafter furnish the employer with a new withholding exemption certificate relating to the number of withholding exemptions which the employee then claims, which shall in no event exceed the number to which he is entitled on such day. If, on any day during the calendar year, the number of withholding exemptions to which the employee is entitled is greater than the number of withholding exemptions claimed, the employee may furnish the employer with a new withholding exemption certificate relating to the number of withholding exemptions which the employee then claims, which shall in no event exceed the number to which he is entitled on such day.

(C) Change of status which affects next calendar year

If on any day during the calendar year the number of withholding exemptions to which the employee will be, or may reasonably be expected to be, entitled at the beginning of his next taxable year under subtitle A is different from the number to which the employee is entitled on such day, the employee shall, in such cases and at such times as the Secretary may by regulations prescribe, furnish the employer with a withholding exemption certificate relating to the number of withholding exemptions which he claims with respect to such next taxable year, which shall in no event exceed the number to which he will be, or may reasonably be expected to be, so entitled.

(3) When certificate takes effect

(A) First certificate furnished

A withholding exemption certificate furnished the employer in cases in which no previous such certificate is in effect shall take effect as of the beginning of the first payroll period ending, or the first payment of wages made without regard to a payroll period, on or after the date on which such certificate is so furnished.

(B) Furnished to take place of existing certificate

(i) In general

Except as provided in clauses (ii) and (iii), a withholding exemption certificate furnished to the employer in cases in which a previous such certificate is in effect shall take effect as of the beginning of the 1st payroll period ending (or the 1st payment of wages made without regard to a payroll period) on or after the 30th day after the day on which such certificate is so furnished.

(ii) Employer may elect earlier effective date

At the election of the employer, a certificate described in clause (i) may be made effective beginning with any payment of wages made on or after the day on which the certificate is so furnished and before the 30th day referred to in clause (i).

(iii) Change of status which affects next year

Any certificate furnished pursuant to paragraph (2)(C) shall not take effect, and may not be made effective, with respect to any payment of wages made in the calendar year in which the certificate is furnished.

(4) Period during which certificate remains in effect

A withholding exemption certificate which takes effect under this subsection, or which on December 31, 1954, was in effect under the corresponding subsection of prior law, shall continue in effect with respect to the employer until another such certificate takes effect under this subsection.

(5) Form and contents of certificate

Withholding exemption certificates shall be in such form and contain such information as the Secretary may by regulations prescribe.

(6) Exemption of certain nonresident aliens

Notwithstanding the provisions of paragraph (1), a nonresident alien individual (other than an individual described in section 3401(a)(6)(A) or (B)) shall be entitled to only one withholding exemption.

(7) Exemption where certificate with another employer is in effect

If a withholding exemption certificate is in effect with respect to one employer, an employee shall not be entitled under a certificate in effect with any other employer to any withholding exemption which he has claimed under such first certificate.

(g) Overlapping pay periods, and payment by agent or fiduciary

If a payment of wages is made to an employee by an employer—

(1) with respect to a payroll period or other period, any part of which is included in a payroll period or other period with respect to which wages are also paid to such employee by such employer, or

(2) without regard to any payroll period or other period, but on or prior to the expiration of a payroll period or other period with respect to which wages are also paid to such employee by such employer, or

(3) with respect to a period beginning in one and ending in another calendar year, or

(4) through an agent, fiduciary, or other person who also has the control, receipt, custody, or disposal of, or pays, the wages payable by another employer to such employee,

the manner of withholding and the amount to be deducted and withheld under this chapter shall be determined in accordance with regulations prescribed by the Secretary under which the withholding exemption allowed to the employee in any calendar year shall approximate the withholding exemption allowable with respect to an annual payroll period.

(h) Alternative methods of computing amount to be withheld

The Secretary may, under regulations prescribed by him, authorize—

(1) Withholding on basis of average wages

An employer—

(A) to estimate the wages which will be paid to any employee in any quarter of the calendar year,

(B) to determine the amount to be deducted and withheld upon each payment of wages to such employee during such quarter as if the appropriate average of the wages so estimated constituted the actual wages paid, and

(C) to deduct and withhold upon any payment of wages to such employee during such quarter (and, in the case of tips referred to in subsection (k), within 30 days thereafter) such amount as may be necessary to adjust the amount actually deducted and withheld upon the wages of such employee during such quarter to the amount required to be deducted and withheld during such quarter without regard to this subsection.

(2) Withholding on basis of annualized wages

An employer to determine the amount of tax to be deducted and withheld upon a payment of wages to an employee for a payroll period by—

(A) multiplying the amount of an employee's wages for a payroll period by the number of such payroll periods in the calendar year,

(B) determining the amount of tax which would be required to be deducted and withheld upon the amount determined under subparagraph (A) if such amount constituted the actual wages for the calendar year and the payroll period of the employee were an annual payroll period, and

(C) dividing the amount of tax determined under subparagraph (B) by the number of payroll periods (described in subparagraph (A)) in the calendar year.

(3) Withholding on basis of cumulative wages

An employer, in the case of any employee who requests to have the amount of tax to be withheld from his wages computed on the basis of his cumulative wages, to—

(A) add the amount of the wages to be paid to the employee for the payroll period to the total amount of wages paid by the employer to the employee during the calendar year,

(B) divide the aggregate amount of wages computed under subparagraph (A) by the number of payroll periods to which such aggregate amount of wages relates,

(C) compute the total amount of tax that would have been required to be deducted and withheld under subsection (a) if the average amount of wages (as computed under subparagraph (B)) had been paid to the employee for the number of payroll periods to which the aggregate amount of wages (computed under subparagraph (A)) relates,

(D) determine the excess, if any, of the amount of tax computed under subparagraph (C) over the total amount of tax deducted and withheld by the employer from wages paid to the employee during the calendar year, and

(E) deduct and withhold upon the payment of wages (referred to in subparagraph (A)) to the employee an amount equal to the excess (if any) computed under subparagraph (D).

(4) Other methods

An employer to determine the amount of tax to be deducted and withheld upon the wages paid to an employee by any other method which will require the employer to deduct and withhold upon

such wages substantially the same amount as would be required to be deducted and withheld by applying subsection (a) or (c), either with respect to a payroll period or with respect to the entire taxable year.

(i) Changes in withholding

(1) In general

The Secretary may by regulations provide for increases in the amount of withholding otherwise required under this section in cases where the employee requests such changes.

(2) Treatment as tax

Any increased withholding under paragraph (1) shall for all purposes be considered tax required to be deducted and withheld under this chapter.

(j) Noncash remuneration to retail commission salesman

In the case of remuneration paid in any medium other than cash for services performed by an individual as a retail salesman for a person, where the service performed by such individual for such person is ordinarily performed for remuneration solely by way of cash commission an employer shall not be required to deduct or withhold any tax under this subchapter with respect to such remuneration, provided that such employer files with the Secretary such information with respect to such remuneration as the Secretary may by regulation prescribe.

(k) Tips

In the case of tips which constitute wages, subsection (a) shall be applicable only to such tips as are included in a written statement furnished to the employer pursuant to section 6053(a), and only to the extent that the tax can be deducted and withheld by the employer, at or after the time such statement is so furnished and before the close of the calendar year in which such statement is furnished, from such wages of the employee (excluding tips, but including funds turned over by the employee to the employer for the purpose of such deduction and withholding) as are under the control of the employer; and an employer who is furnished by an employee a written statement of tips (received in a calendar month) pursuant to section 6053(a) to which paragraph (16)(B) of section 3401(a) is applicable may deduct and withhold the tax with respect to such tips from any wages of the employee (excluding tips) under his control, even though at the time such statement is furnished the total amount of the tips included in statements furnished to the employer as having been received by the employee in such calendar month in the course of his employment by such employer is less than $20. Such tax shall not at any time be deducted and withheld in an amount which exceeds the aggregate of such wages and funds (including funds turned over under section 3102(c)(2) or section 3202(c)(2)) minus any tax required by section 3102(a) or section 3202(a) to be collected from such wages and funds.

(l) Determination and disclosure of marital status

(1) Determination of status by employer

For purposes of applying the tables in subsections (a) and (c) to a payment of wages, the employer shall treat the employee as a single person unless there is in effect with respect to such payment of wages a withholding exemption certificate furnished to the employer by the employee after the date of the enactment of this subsection indicating that the employee is married.

(2) Disclosure of status by employee

An employee shall be entitled to furnish the employer with a withholding exemption certificate indicating he is married only if, on the day of such furnishing, he is married (determined with the application of the rules in paragraph (3)). An employee whose marital status changes from married to single shall, at such time as the Secretary may by regulations prescribe, furnish the employer with a new withholding exemption certificate.

(3) Determination of marital status

For purposes of paragraph (2), an employee shall on any day be considered—

(A) as not married, if (i) he is legally separated from his spouse under a decree of divorce or separate maintenance, or (ii) either he or his spouse is, or on any preceding day within the calendar year was, a nonresident alien; or

(B) as married, if (i) his spouse (other than a spouse referred to in subparagraph (A)) died within the portion of his taxable year which precedes such day, or (ii) his spouse died during one of the two taxable years immediately preceding the current taxable year and, on the basis of facts existing at the beginning of such day, the employee reasonably expects, at the close of his taxable year, to be a surviving spouse (as defined in section 2(a)).

(m) Withholding allowances

Under regulations prescribed by the Secretary, an employee shall be entitled to additional withholding allowances or additional reductions in withholding under this subsection. In determining the number of additional withholding allowances or the amount of additional reductions in withholding under this subsection, the employee may take into account (to the extent and in the manner provided by such regulations)—

(1) estimated itemized deductions allowable under chapter 1 (other than the deductions referred to in section 151 and other than the deductions required to be taken into account in determining adjusted gross income under section 62(a) (other than paragraph (10) thereof)),

(2) estimated tax credits allowable under chapter 1, and

(3) such additional deductions (including the additional standard deduction under section 63(c)(3) for the aged and blind) and other items as may be specified by the Secretary in regulations.

(n) Employees incurring no income tax liability

Notwithstanding any other provision of this section, an employer shall not be required to deduct and withhold any tax under this chapter upon a payment of wages to an employee if there is in effect with respect to such payment a withholding exemption certificate (in such form and containing such other information as the Secretary may prescribe) furnished to the employer by the employee certifying that the employee—

(1) incurred no liability for income tax imposed under subtitle A for his preceding taxable year, and

(2) anticipates that he will incur no liability for income tax imposed under subtitle A for his current taxable year.

The Secretary shall by regulations provide for the coordination of the provisions of this subsection with the provisions of subsection (f).

(o) Extension of withholding to certain payments other than wages

(1) General rule

For purposes of this chapter (and so much of subtitle F as relates to this chapter)—

(A) any supplemental unemployment compensation benefit paid to an individual,

(B) any payment of an annuity to an individual, if at the time the payment is made a request that such annuity be subject to withholding under this chapter is in effect, and

(C) any payment to an individual of sick pay which does not constitute wages (determined without regard to this subsection), if at the time the payment is made a request that such sick pay be subject to withholding under this chapter is in effect,

shall be treated as if it were a payment of wages by an employer to an employee for a payroll period.

(2) Definitions

(A) Supplemental unemployment compensation benefits

For purposes of paragraph (1), the term "supplemental unemployment compensation benefits" means amounts which are paid to an employee, pursuant to a plan to which the

employer is a party, because of an employee's involuntary separation from employment (whether or not such separation is temporary), resulting directly from a reduction in force, the discontinuance of a plant or operation, or other similar conditions, but only to the extent such benefits are includible in the employee's gross income.

(B) Annuity

For purposes of this subsection, the term "annuity" means any amount paid to an individual as a pension or annuity.

(C) Sick pay

For purposes of this subsection, the term "sick pay" means any amount which—

(i) is paid to an employee pursuant to a plan to which the employer is a party, and

(ii) constitutes remuneration or a payment in lieu of remuneration for any period during which the employee is temporarily absent from work on account of sickness or personal injuries.

(3) Amount withheld from annuity payments or sick pay

If a payee makes a request that an annuity or any sick pay be subject to withholding under this chapter, the amount to be deducted and withheld under this chapter from any payment to which such request applies shall be an amount (not less than a minimum amount determined under regulations prescribed by the Secretary) specified by the payee in such request. The amount deducted and withheld with respect to a payment which is greater or less than a full payment shall bear the same relation to the specified amount as such payment bears to a full payment.

(4) Request for withholding

A request that an annuity or any sick pay be subject to withholding under this chapter—

(A) shall be made by the payee in writing to the person making the payments and shall contain the social security number of the payee,

(B) shall specify the amount to be deducted and withheld from each full payment, and

(C) shall take effect—

(i) in the case of sick pay, with respect to payments made more than 7 days after the date on which such request is furnished to the payor, or

(ii) in the case of an annuity, at such time (after the date on which such request is furnished to the payor) as the Secretary shall by regulations prescribe.

Such a request may be changed or terminated by furnishing to the person making the payments a written statement of change or termination which shall take effect in the same manner as provided in subparagraph (C). At the election of the payor, any such request (or statement of change or revocation) may take effect earlier than as provided in subparagraph (C).

(5) Special rule for sick pay paid pursuant to certain collective-bargaining agreements

In the case of any sick pay paid pursuant to a collective-bargaining agreement between employee representatives and one or more employers which contains a provision specifying that this paragraph is to apply to sick pay paid pursuant to such agreement and contains a provision for determining the amount to be deducted and withheld from each payment of such sick pay—

(A) the requirement of paragraph (1)(C) that a request for withholding be in effect shall not apply, and

(B) except as provided in subsection (n), the amounts to be deducted and withheld under this chapter shall be determined in accordance with such agreement.

The preceding sentence shall not apply with respect to sick pay paid pursuant to any agreement to any individual unless the social security number of such individual is furnished to the payor and the payor is furnished with such information as is necessary to determine whether the payment is pursuant to the agreement and to determine the amount to be deducted and withheld.

(6) Coordination with withholding on designated distributions under section 3405

This subsection shall not apply to any amount which is a designated distribution (within the meaning of section 3405(e)(1)).

(p) Voluntary withholding agreements

(1) Certain Federal payments

(A) In general

If, at the time a specified Federal payment is made to any person, a request by such person is in effect that such payment be subject to withholding under this chapter, then for purposes of this chapter and so much of subtitle F as relates to this chapter, such payment shall be treated as if it were a payment of wages by an employer to an employee.

(B) Amount withheld

The amount to be deducted and withheld under this chapter from any payment to which any request under subparagraph (A) applies shall be an amount equal to the percentage of such payment specified in such request. Such a request shall apply to any payment only if the percentage specified is 7 percent, any percentage applicable to any of the 3 lowest income brackets in the table under section 1(c), or such other percentage as is permitted under regulations prescribed by the Secretary.

(C) Specified Federal payments

For purposes of this paragraph, the term "specified Federal payment" means—

(i) any payment of a social security benefit (as defined in section 86(d)),

(ii) any payment referred to in the second sentence of section 451(d) which is treated as insurance proceeds,

(iii) any amount which is includible in gross income under section 77(a), and

(iv) any other payment made pursuant to Federal law which is specified by the Secretary for purposes of this paragraph.

(D) Requests for withholding

Rules similar to the rules that apply to annuities under subsection (o)(4) shall apply to requests under this paragraph and paragraph (2).

(2) Voluntary withholding on unemployment benefits

If, at the time a payment of unemployment compensation (as defined in section 85(b)) is made to any person, a request by such person is in effect that such payment be subject to withholding under this chapter, then for purposes of this chapter and so much of subtitle F as relates to this chapter, such payment shall be treated as if it were a payment of wages by an employer to an employee. The amount to be deducted and withheld under this chapter from any payment to which any request under this paragraph applies shall be an amount equal to 10 percent of such payment.

(3) Authority for other voluntary withholding

The Secretary is authorized by regulations to provide for withholding—

(A) from remuneration for services performed by an employee for the employee's employer which (without regard to this paragraph) does not constitute wages, and

(B) from any other type of payment with respect to which the Secretary finds that withholding would be appropriate under the provisions of this chapter,

if the employer and employee, or the person making and the person receiving such other type of payment, agree to such withholding. Such agreement shall be in such form and manner as the Secretary may by regulations prescribe. For purposes of this chapter (and so much of subtitle F as relates to this chapter), remuneration or other payments with respect to which such agreement is made shall be treated as if they were wages paid by an employer to an employee to the extent that such remuneration is paid or other payments are made during the period for which the agreement is in effect.

(q) Extension of withholding to certain gambling winnings

(1) General rule

Every person, including the Government of the United States, a State, or a political subdivision thereof, or any instrumentalities of the foregoing, making any payment of winnings which are subject to withholding shall deduct and withhold from such payment a tax in an amount equal to the product of the third lowest rate of tax applicable under section 1(c) and such payment.

(2) Exemption where tax otherwise withheld

In the case of any payment of winnings which are subject to withholding made to a nonresident alien individual or a foreign corporation, the tax imposed under paragraph (1) shall not apply to any such payment subject to tax under section 1441(a) (relating to withholding on nonresident aliens) or tax under section 1442(a) (relating to withholding on foreign corporations).

(3) Winnings which are subject to withholding

For purposes of this subsection, the term "winnings which are subject to withholding" means proceeds from a wager determined in accordance with the following:

(A) In general

Except as provided in subparagraphs (B) and (C), proceeds of more than $5,000 from a wagering transaction, if the amount of such proceeds is at least 300 times as large as the amount wagered.

(B) State-conducted lotteries

Proceeds of more than $5,000 from a wager placed in a lottery conducted by an agency of a State acting under authority of State law, but only if such wager is placed with the State agency conducting such lottery, or with its authorized employees or agents.

(C) Sweepstakes, wagering pools, certain parimutuel pools, jai alai, and lotteries

Proceeds of more than $5,000 from—

(i) a wager placed in a sweepstakes, wagering pool, or lottery (other than a wager described in subparagraph (B)), or

(ii) a wagering transaction in a parimutuel pool with respect to horse races, dog races, or jai alai if the amount of such proceeds is at least 300 times as large as the amount wagered.

(4) Rules for determining proceeds from a wager

For purposes of this subsection—

(A) proceeds from a wager shall be determined by reducing the amount received by the amount of the wager, and

(B) proceeds which are not money shall be taken into account at their fair market value.

(5) Exception for bingo, keno, and slot machines

The tax imposed under paragraph (1) shall not apply to winnings from a slot machine, keno, and bingo.

(6) Statement by recipient

Every person who is to receive a payment of winnings which are subject to withholding shall furnish the person making such payment a statement, made under the penalties of perjury, containing the name, address, and taxpayer identification number of the person receiving the payment and of each person entitled to any portion of such payment.

(7) Coordination with other sections

For purposes of sections 3403 and 3404 and for purposes of so much of subtitle F (except section 7205) as relates to this chapter, payments to any person of winnings which are subject to withholding shall be treated as if they were wages paid by an employer to an employee.

(r) Extension of withholding to certain taxable payments of Indian casino profits

(1) In general

Every person, including an Indian tribe, making a payment to a member of an Indian tribe from the net revenues of any class II or class III gaming activity conducted or licensed by such tribe shall deduct and withhold from such payment a tax in an amount equal to such payment's proportionate share of the annualized tax.

(2) Exception

The tax imposed by paragraph (1) shall not apply to any payment to the extent that the payment, when annualized, does not exceed an amount equal to the sum of—

(A) the basic standard deduction (as defined in section 63(c)) for an individual to whom section 63(c)(2)(C) [1] applies, and

(B) the exemption amount (as defined in section 151(d)).

(3) Annualized tax

For purposes of paragraph (1), the term "annualized tax" means, with respect to any payment, the amount of tax which would be imposed by section 1(c) (determined without regard to any rate of tax in excess of the fourth lowest rate of tax applicable under section 1(c)) on an amount of taxable income equal to the excess of—

(A) the annualized amount of such payment, over

(B) the amount determined under paragraph (2).

(4) Classes of gaming activities, etc.

For purposes of this subsection, terms used in paragraph (1) which are defined in section 4 of the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.), as in effect on the date of the enactment of this subsection, shall have the respective meanings given such terms by such section.

(5) Annualization

Payments shall be placed on an annualized basis under regulations prescribed by the Secretary.

(6) Alternate withholding procedures

At the election of an Indian tribe, the tax imposed by this subsection on any payment made by such tribe shall be determined in accordance with such tables or computational procedures as may be specified in regulations prescribed by the Secretary (in lieu of in accordance with paragraphs (2) and (3)).

(7) Coordination with other sections

For purposes of this chapter and so much of subtitle F as relates to this chapter, payments to any person which are subject to withholding under this subsection shall be treated as if they were wages paid by an employer to an employee.

(s) Exemption from withholding for any vehicle fringe benefit

(1) Employer election not to withhold

The employer may elect not to deduct and withhold any tax under this chapter with respect to any vehicle fringe benefit provided to any employee if such employee is notified by the employer of such election (at such time and in such manner as the Secretary shall by regulations prescribe). The preceding sentence shall not apply to any vehicle fringe benefit unless the amount of such benefit is included by the employer on a statement timely furnished under section 6051.

(2) Employer must furnish W–2

Any vehicle fringe benefit shall be treated as wages from which amounts are required to be deducted and withheld under this chapter for purposes of section 6051.

(3) Vehicle fringe benefit

For purposes of this subsection, the term "vehicle fringe benefit" means any fringe benefit—

(A) which constitutes wages (as defined in section 3401), and

(B) which consists of providing a highway motor vehicle for the use of the employee.

(Aug. 16, 1954, ch. 736, 68A Stat. 457; Aug. 9, 1955, ch. 666, §2, 69 Stat. 605; Pub. L. 87–256, §110(g)(2), Sept. 21, 1961, 75 Stat. 537; Pub. L. 88–272, title III, §302(a), (b), Feb. 26, 1964, 78 Stat. 140; Pub. L. 89–97, title III, §313(d)(3)–(5), July 30, 1965, 79 Stat. 384; Pub. L. 89–212, §2(c), Sept. 29, 1965, 79 Stat. 859; Pub. L. 89–368, title I, §101(a)–(e)(3), Mar. 15, 1966, 80 Stat. 38–61; Pub. L. 90–364, title I, §102(c), June 28, 1968, 82 Stat. 256; Pub. L. 91–36, §2(a), June 30, 1969, 83 Stat. 42; Pub. L. 91–53, §6(a), Aug. 7, 1969, 83 Stat. 96; Pub. L. 91–172, title VIII, §805(a)–(e), (f)(1), (g), Dec. 30, 1969, 83 Stat. 686, 704–708; Pub. L. 92–178, title II, §208(a), (b)(1), (c)–(h)(1), Dec. 10, 1971, 85 Stat. 512–517; Pub. L. 94–12, title II, §§202(b), 205, Mar. 29, 1975, 89 Stat. 29, 32; Pub. L. 94–164, §§2(b)(2), 5(a)(1), Dec. 23, 1975, 89 Stat. 971, 975; Pub. L. 94–331, §3(a)(1), June 30, 1976, 90 Stat. 782; Pub. L. 94–396, §2(a)(1), Sept. 3, 1976, 90 Stat. 1201; Pub. L. 94–414, §3(a)(1), Sept. 17, 1976, 90 Stat. 1273; Pub. L. 94–455, title IV, §401(d), title V, §§502(b), 504(c)(3), title XII, §1207(d), title XIX, §§1903(a)(17), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1557, 1559, 1566, 1705, 1810, 1834; Pub. L. 95–30, title I, §105, title IV, §405(a), May 23, 1977, 91 Stat. 140, 156; Pub. L. 95–600, title I, §§101(e), 102(c), title VI, §601(b)(2), Nov. 6, 1978, 92 Stat. 2770, 2771, 2896; Pub. L. 96–601, §4(a)–(d), Dec. 24, 1980, 94 Stat. 3496, 3497; Pub. L. 97–34, title I, §101(e), Aug. 13, 1981, 95 Stat. 184; Pub. L. 97–248, title III, §§317(a), 334(d), Sept. 3, 1982, 96 Stat. 607, 627; Pub. L. 98–67, title I, §104(d)(3), Aug. 5, 1983, 97 Stat. 380; Pub. L. 99–44, §3, May 24, 1985, 99 Stat. 77; Pub. L. 99–514, title I, §104(b)(15), title XIII, §§1301(j)(8), 1303(b)(4), title XV, §1581(b), Oct. 22, 1986, 100 Stat. 2106, 2658, 2766; Pub. L. 100–203, title X, §10302(a), Dec. 22, 1987, 101 Stat. 1330–429; Pub. L. 100–647, title I, §1003(a)(2), Nov. 10, 1988, 102 Stat. 3382; Pub. L. 101–508, title XI, §11801(a)(41), Nov. 5, 1990, 104 Stat. 1388–521; Pub. L. 102–318, title V, §522(b)(2)(D), July 3, 1992, 106 Stat. 314; Pub. L. 102–486, title XIX, §§1934(a), 1942(a), Oct. 24, 1992, 106 Stat. 3031, 3036; Pub. L. 103–465, title VII, §§701(a), 702(a), Dec. 8, 1994, 108 Stat. 4995, 4996; Pub. L. 107–16, title I, §101(c)(6)–(9), June 7, 2001, 115 Stat. 43, 44; Pub. L. 109–222, title V, §511(a), May 17, 2006, 120 Stat. 364; Pub. L. 112–56, title I, §102(a), Nov. 21, 2011, 125 Stat. 712.)

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (l)(1), is the date of enactment of Pub. L. 89–368, which was approved Mar. 15, 1966.

Section 63(c)(2)(C), referred to in subsec. (r)(2)(A), was redesignated section 63(c)(2)(D), and a new section 63(c)(2)(C) was added, by Pub. L. 107–147, title IV, §411(e)(1)(C), (D), Mar. 9, 2002, 116 Stat. 46.

Section 4 of the Indian Gaming Regulatory Act, referred to in subsec. (r)(4), is classified to section 2703 of Title 25, Indians.

The date of the enactment of this subsection, referred to in subsec. (r)(4), is the date of enactment of Pub. L. 103–465, which was approved Dec. 8, 1994.

AMENDMENTS

2011—Subsec. (t). Pub. L. 112–56 struck out subsec. (t) which related to extension of 3 percent withholding to certain payments made by Government entities for property or services.

2006—Subsec. (t). Pub. L. 109–222 added subsec. (t).

2001—Subsec. (p)(1)(B). Pub. L. 107–16, §101(c)(6), substituted "7 percent, any percentage applicable to any of the 3 lowest income brackets in the table under section 1(c)," for "7, 15, 28, or 31 percent".

Subsec. (p)(2). Pub. L. 107–16, §101(c)(7), substituted "10 percent" for "15 percent".

Subsec. (q)(1). Pub. L. 107–16, §101(c)(8), substituted "equal to the product of the third lowest rate of tax applicable under section 1(c) and such payment" for "equal to 28 percent of such payment".

Subsec. (r)(3). Pub. L. 107–16, §101(c)(9), substituted "the fourth lowest rate of tax applicable under section 1(c)" for "31 percent" in introductory provisions.

1994—Subsec. (p). Pub. L. 103–465, §702(a), reenacted heading without change and amended text of subsec. (p) generally. Prior to amendment, text read as follows: "The Secretary is authorized by regulations to provide for withholding—

"(1) from remuneration for services performed by an employee for his employer which (without regard to this subsection) does not constitute wages, and

"(2) from any other type of payment with respect to which the Secretary finds that withholding would be appropriate under the provisions of this chapter,

if the employer and the employee, or in the case of any other type of payment the person making and the

person receiving the payment, agree to such withholding. Such agreement shall be made in such form and manner as the Secretary may by regulations provide. For purposes of this chapter (and so much of subtitle F as relates to this chapter) remuneration or other payments with respect to which such agreement is made shall be treated as if they were wages paid by an employer to an employee to the extent that such remuneration is paid or other payments are made during the period for which the agreement is in effect."

Subsec. (r). Pub. L. 103–465, §701(a), added subsec. (r).

1992—Subsec. (o)(6). Pub. L. 102–318 substituted "3405(e)(1)" for "3405(d)(1)".

Subsec. (q)(1). Pub. L. 102–486, §1934(a), substituted "28 percent" for "20 percent".

Subsec. (q)(3)(A), (C). Pub. L. 102–486, §1942(a), substituted "$5,000" for "$1,000".

1990—Subsec. (a)(3). Pub. L. 101–508 struck out par. (3) which read as follows: "Notwithstanding the provisions of this subsection, the Secretary shall modify the tables and procedures under paragraph (1) to reflect—

"(A) the amendments made by section 101(b) of the Economic Recovery Tax Act of 1981, and such modification shall take effect on October 1, 1981, as if such amendments made a 5-percent reduction effective on such date, and

"(B) the amendments made by section 101(a) of such Act, and such modifications shall take effect—

"(i) on July 1, 1982, as if the reductions in the rate of tax under section 1 (as amended by such section) were attributable to a 10-percent reduction effective on such date, and

"(ii) on July 1, 1983, as if such reductions were attributable to a 10-percent reduction effective on such date."

1988—Subsec. (m)(1). Pub. L. 100–647 substituted "section 62(a) (other than paragraph (10) thereof))" for "section 62) (other than paragraph (13) thereof)".

1987—Subsec. (f)(3)(B). Pub. L. 100–203 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "A withholding exemption certificate furnished the employer in cases in which a previous such certificate is in effect shall take effect with respect to the first payment of wages made on or after the first status determination date which occurs at least 30 days from the date on which such certificate is so furnished, except that at the election of the employer such certificate may be made effective with respect to any payment of wages made on or after the date on which such certificate is so furnished; but a certificate furnished pursuant to paragraph (2)(C) shall not take effect, and may not be made effective, with respect to any payment of wages made in the calendar year in which the certificate is furnished. For purposes of this subparagraph the term 'status determination date' means January 1, May 1, July 1, and October 1 of each year."

1986—Subsec. (f)(1). Pub. L. 99–514, §104(b)(15)(F), substituted "standard deduction" for "zero bracket" and "subparagraph (E)" for "subparagraph (G)" in last sentence.

Subsec. (f)(1)(A). Pub. L. 99–514, §104(b)(15)(B), inserted "unless he is an individual described in section 151(d)(2)" after "himself".

Subsec. (f)(1)(B). Pub. L. 99–514, §104(b)(15)(A), redesignated subpar. (D) as (B) and struck out former subpar. (B) which read as follows: "one additional exemption for himself if, on the basis of facts existing at the beginning of such day, there may reasonably be expected to be allowable an exemption under section 151(c)(1) (relating to old age) for the taxable year under subtitle A in respect of which amounts deducted and withheld under this chapter in the calendar year in which such day falls are allowed as a credit;".

Pub. L. 99–514, §104(b)(15)(C), which directed that "subparagraph (A) or (D)" be substituted for "subparagraph (A), (B), (C), or (F)" was executed by making the substitution for "subparagraph (A), (B), or (C)", as the probable intent of Congress.

Subsec. (f)(1)(C). Pub. L. 99–514, §104(b)(15)(A), (D), redesignated subpar. (E) as (C), substituted "section 151(c)" for "section 151(e)", and struck out former subpar. (C) which read as follows: "one additional exemption for himself if, on the basis of facts existing at the beginning of such day, there may reasonably be expected to be allowable an exemption under section 151(d)(1) (relating to the blind) for the taxable year under subtitle A in respect of which amounts deducted and withheld under this chapter in the calendar year in which such day falls are allowed as a credit;".

Subsec. (f)(1)(D). Pub. L. 99–514, §104(b)(15)(A), redesignated subpar. (F) as (D). Former subpar. (D) redesignated (B).

Subsec. (f)(1)(E). Pub. L. 99–514, §104(b)(15)(A), (E), redesignated subpar. (G) as (E) and substituted "standard deduction" for "zero bracket". Former subpar. (E) redesignated (C).

Pub. L. 99–514, §1301(j)(8), substituted "section 7703" for "section 143".

Subsec. (f)(1)(F), (G). Pub. L. 99–514, §104(b)(15)(A), redesignated subpars. (F) and (G) as (D) and (E), respectively.

Subsec. (i)(1). Pub. L. 99–514, §1581(b), struck out "or decreases" after "increases".

Subsec. (m)(3). Pub. L. 99–514, §104(b)(15)(G), inserted "(including the additional standard deduction

under section 63(c)(3) for the aged and blind)".

Subsec. (r). Pub. L. 99–514, §1303(b)(4), struck out subsec. (r) which provided for extension of withholding to GSOC distributions.

1985—Subsec. (s). Pub. L. 99–44 added subsec. (s).

1983—Subsec. (s). Pub. L. 98–67 struck out subsec. (s) which related to extension of withholding to certain payments where identifying number was not furnished or was inaccurate. See section 3406 of this title.

1982—Subsec. (o)(6). Pub. L. 97–248, §334(d), added par. (6).

Subsec. (s). Pub. L. 97–248, §317(a), added subsec. (s).

1981—Subsec. (a). Pub. L. 97–34, §101(e)(1), revised subsec. (a) generally to provide for a 5-percent reduction in income tax withholding rates on Oct. 1, 1981, a further 10-percent reduction on July 1, 1982, and a final 10-percent reduction on July 1, 1983.

Subsec. (b)(1). Pub. L. 97–34, §101(e)(2)(A), redesignated par. (2) as (1). Former par. (1), which set out a table for determining amount of one withholding exemption for each of the various payroll periods, was struck out.

Subsec. (b)(2). Pub. L. 97–34, §101(e)(2)(A), redesignated par. (3) as (2). Former par. (2) redesignated (1).

Subsec. (b)(3). Pub. L. 97–34, §101(e)(2)(A), (B), redesignated par. (4) as (3) and substituted provisions relating to an employer's computation of the tax to be deducted and withheld as if the aggregate of the wages paid to the employee during the calendar week were paid for a weekly payroll period, for provisions relating to an employer's computation of the tax to be deducted and withheld using the excess of the aggregate of the wages paid to the employee during the calendar week over the withholding exemption allowed by this subsection for a weekly payroll period. Former par. (3) redesignated (2).

Subsec. (b)(4), (5). Pub. L. 97–34, §101(e)(2)(A), redesignated par. (5) as (4). Former par. (4) redesignated (3).

Subsec. (f)(1)(G). Pub. L. 97–34, §101(e)(3), inserted "(or more than one exemption if so prescribed by the Secretary)" after "an amount equal to one exemption".

Subsec. (i). Pub. L. 97–34, §101(e)(4), substituted provisions authorizing the Secretary by regulations to provide for increases or decreases in the amount of withholding otherwise required under this section in cases where the employee requests the changes, for provisions under which the Secretary was authorized to provide withholding in addition to that otherwise required under this section in cases in which the employer and the employee agreed to such additional withholding.

Subsec. (m). Pub. L. 97–34, §101(e)(5), revised provisions respecting additional withholding allowances for anticipated excess itemized deductions and tax credits claimed in accordance with Treasury regulations and Treasury statutory authority to provide additional withholding allowances for any additional items specified in Treasury regulations.

1980—Subsec. (o)(1)(C). Pub. L. 96–601, §4(a), added subpar. (C).

Subsec. (o)(2)(B). Pub. L. 96–601, §4(d), struck out ", but only to the extent that the amount is includible in the gross income of such individual" after "pension or annuity".

Subsec. (o)(2)(C). Pub. L. 96–601, §4(c), added subpar. (C).

Subsec. (o)(3). Pub. L. 96–601, §4(b), substituted provision authorizing amount to be withheld from annuity payments or sick pay for provision relating to request for withholding. See subsec. (o)(4) of this section.

Subsec. (o)(4), (5). Pub. L. 96–601, §4(b), added pars. (4) and (5).

1978—Subsec. (a). Pub. L. 95–600, §101(e)(1), substituted "With respect to wages paid after December 31, 1978, the tables so prescribed shall be the same as the tables prescribed under this subsection which were in effect on January 1, 1975, except that such tables shall be modified to the extent necessary to reflect the amendments made by sections 101 and 102 of the Tax Reduction and Simplification Act of 1977 and the amendments made by section 101 of the Revenue Act of 1978." for "With respect to wages paid after May 31, 1977, and before January 1, 1979, the tables so prescribed shall be the same as the tables prescribed under this subsection which were in effect on January 1, 1976; except that such tables shall be modified to the extent necessary so that, had they been in effect for all of 1977, they would reflect the full year effect of the amendments made by sections 101 and 102 of the Tax Reduction and Simplification Act of 1977. With respect to wages paid after December 31, 1978, the tables so prescribed shall be the same as the tables prescribed under this subsection which were in effect on January 1, 1975, except that such tables shall be modified to the extent necessary to reflect the amendments made by sections 101 and 102 of the Tax Reduction and Simplification Act of 1977.".

Subsec. (b)(1). Pub. L. 95–600, §102(c)(1), increased the amounts set out in the table for one withholding exemption for each of the payroll period categories from $14.40, $28.80, $31.30, $62.50, $187.50, $375.00, $750.00 and $2.10 to $19.23, $38.46, $41.66, $83.33, $250.00, $500.00, $1,000.00 and $2.74, respectively.

Subsec. (m)(1). Pub. L. 95–600, §§101(e)(2), 102(c)(2), substituted "$1,000" for "$750", "$3,400" for

"$3,200" and "$2,300" for "$2,200".

Subsec. (r). Pub. L. 95–600, §601(b)(2), added subsec. (r).

1977—Subsec. (a). Pub. L. 95–30, §105(a), substituted "With respect to wages paid after May 31, 1977, and before January 1, 1979, the tables so prescribed shall be the same as the tables prescribed under this subsection which were in effect on January 1, 1976; except that such tables shall be modified to the extent necessary so that, had they been in effect for all of 1977, they would reflect the full year effect of the amendments made by sections 101 and 102 of the Tax Reduction and Simplification Act of 1977. With respect to wages paid after December 31, 1978, the tables so prescribed shall be the same as the tables prescribed under this subsection which were in effect on January 1, 1975, except that such tables shall be modified to the extent necessary to reflect the amendments made by sections 101 and 102 of the Tax Reduction and Simplification Act of 1977" for "With respect to wages paid prior to January 1, 1978, the tables so prescribed shall be the same as the tables prescribed under this section which were in effect on January 1, 1976. With respect to wages paid after December 31, 1977, the Secretary shall prescribe new tables which shall be the same as the tables prescribed under this subsection which were in effect on January 1, 1975, except that such tables shall be modified to the extent necessary to reflect the amendments made to subsections (b) and (c) of section 141 by the Tax Reform Act of 1976".

Subsec. (f)(1). Pub. L. 95–30, §105(b)(1), substituted "zero bracket" for "standard deduction" in subpar. (G) and in provisions following subpar. (G).

Subsec. (m)(1)(B). Pub. L. 95–30, §105(b)(2), substituted "an amount equal to $3,200 ($2,200" for "an amount equal to the lesser of (i) 16 percent of his estimated wages, or (ii) $2,800 ($2,400".

Subsec. (m)(2)(A). Pub. L. 95–30, §105(b)(3)(A), (B), substituted "section 151" for "sections 141 and 151" and "(or the zero bracket amount (within the meaning of section 63(d)))" for "(or the amount of the standard deduction)".

Subsec. (m)(2)(C). Pub. L. 95–30, §105(b)(3)(C), substituted "(or the zero bracket amount)" for "(or the standard deduction)".

Subsec. (q)(3)(C). Pub. L. 95–30, §405(a), inserted reference to certain parimutuel pools and jai alai in heading and, in text, designated existing provisions as cl. (i) and added cl. (ii).

1976—Subsec. (a). Pub. L. 94–455, §§401(d)(1), 1906 (b)(13)(A), struck out "or his delegate" after "Secretary", inserted "With respect to wages paid prior to January 1, 1978" after "by the Secretary", as amended, and substituted "prescribed under this section which were" for "contained in this subsection as" after "same as the tables", "1976" for "1975" after "January 1", and "With respect to wages paid after December 31, 1977, the Secretary shall prescribe new tables which shall be the same as the tables prescribed under this subsection which were in effect on January 1, 1975, except that such tables shall be modified to the extent necessary to reflect the amendments made to subsections (b) and (c) of section 141 by the Tax Reform Act of 1976" for "except that the amounts set forth as amounts of income tax to be withheld with respect to wages paid after April 30, 1975, and before January 1, 1976, shall reflect the full calendar year effect for 1975 of the amendments made by sections 201, 202, 203, and 204 of the Tax Reduction Act of 1975" after "effect on January 1, 1976", as amended.

Pub. L. 94–414 substituted "October 1, 1976" for "September 15, 1976".

Pub. L. 94–396 substituted "September 15, 1976" for "September 1, 1976".

Pub. L. 94–331 substituted "September 1, 1976" for "July 1, 1976".

Subsec. (c)(4). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (c)(6). Pub. L. 94–455, §§401(d)(2), 1906(b)(13)(A), substituted "the table for an annual payroll period prescribed pursuant to subsection (a)" for "table 7 contained in subsection (a)" after "basis of the", as subsec. (c)(6) was in effect on the day before the date of enactment of the Tax Reduction Act of 1975, Pub. L. 94–12, which was approved on Mar. 29, 1975, and struck out "or his delegate" after "Secretary".

Subsecs. (f), (h), (i), (j). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (l). Pub. L. 94–455, §1903(a)(17), substituted "section 2(a)" for "section 2(b)" after "as defined in".

Subsec. (m)(1)(B). Pub. L. 94–455, §401(d)(3), reenacted subpar. (B) without change.

Subsec. (m)(2)(A). Pub. L. 94–455, §502(b), inserted "(other than paragraph (13) thereof)" after "under section 62".

Subsec. (m)(2)(D), (3)(B). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (m)(4). Pub. L. 94–455, §504(c)(3), added subpar. (C). §1906(b)(13)(A) struck out "or his delegate" after "Secretary".

Subsecs. (n), (p). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary" wherever appearing.

Subsec. (q). Pub. L. 94–455, §1207(d), added subsec. (q).

1975—Subsec. (a). Pub. L. 94–164, §5(a)(1), inserted provision that the tables prescribed with respect to

wages paid after Dec. 31, 1975, and before July 1, 1976, shall be the same as the tables prescribed under this subsection which were in effect on Dec. 10, 1975.

Pub. L. 94–12, §205(a), substituted provisions directing the Secretary to prescribe new withholding tables setting changed withholding rates for wages paid during the period May 1, 1975, to Dec. 31, 1975, so as to reflect the full calendar year effect for 1975 of the amendments to the minimum standard deduction, the percentage standard deduction, the earned income credit, and the additional tax credit by sections 201, 202, 203, and 204 of the Tax Reduction Act of 1975, Pub. L. 94–12, for provisions setting out 8 tables to be followed by employers in withholding taxes on wages paid.

Subsec. (c)(6). Pub. L. 94–12, §205(b), substituted "the table for an annual payroll period prescribed pursuant to subsection (a)" for "table 7 contained in subsection (a)". See 1976 Amendment note set out above.

Subsec. (m)(1)(B). Pub. L. 94–164, §2(b)(2), substituted "$2,800" and "$2,400" for "$2,600" and "$2,300" respectively in cl. (ii).

Pub. L. 94–12, §202(b), substituted "the lesser of (i) 16 percent of his estimated wages, or (ii) $2,600 ($2,300 in the case of an individual who is not married (within the meaning of section 143) and who is not a surviving spouse (as defined in section 2(a)))" for "the lesser of (i) $2,000 or (ii) 15 percent of his estimated wages".

1971—Subsec. (a). Pub. L. 92–178, §208(a), substituted new sets of tables 1 to 8 applicable (under §208(i)(1)) with respect to wages paid after Jan. 15, 1972, for the tables applicable in the case of wages paid as provided in former: par. (1) after Dec. 31, 1969, and before July 1, 1970; par. (2) after June 30, 1970, and before Jan. 1, 1971; par. (3) after Dec. 31, 1970, and before Jan. 1, 1972; par. (4) after Dec. 31, 1971, and before Jan. 1, 1973; and par. (5) after Dec. 31, 1972. Pub. L. 92–178, §208(h)(1), made provisions of par. (3) applicable (under section 208(i)(2)) with respect to wages paid after Dec. 31, 1971, and before Jan. 16, 1972.

Subsec. (b)(1). Pub. L. 92–178, §208(b)(1), revised withholding rates upwards, substituting 14.40; 28.80; 31.30; 62.50; 187.50; 375.00; 750.00; and 2.10 for 12.50; 25.00 27.10; 54.20; 162.50; 325.00; 650.00; and 1.80, respectively, to be effective with respect to wages paid after Jan. 15, 1972. Pub. L. 92–178, §208(h)(2), in amending Pub. L. 91–172, §805(b)(1), extended application of such former withholding rates to wages paid after June 30, 1970, and before Jan. 16, 1972, previously applicable to wages paid before Jan. 1, 1972.

Subsec. (c)(6). Pub. L. 92–178, §208(g), substituted "table 7 contained in subsection (a)" for "table 7 contained in paragraph (1), (2), (3), (4), or (5) (whichever is applicable) of subsection (a)".

Subsec. (f)(1)(G). Pub. L. 92–178, §208(c), added subpar. (G).

Subsec. (f)(7). Pub. L. 92–178, §208(d), added par. (7).

Subsec. (m)(1)(B). Pub. L. 92–178, §208(e), substituted "an amount equal to the lesser of (i) $2,000 or (ii) 15 percent of his estimated wages" for "an amount equal to 15 percent of his estimated wages".

Subsec. (m)(2)(A). Pub. L. 92–178, §208(f)(1), inserted "or (if such a return has not been filed for such preceding taxable year at the time the withholding exemption certificate is furnished the employer) the second taxable year preceding the estimation year" after "for the taxable year preceding the estimation year".

Subsec. (m)(2)(D). Pub. L. 92–178, §208(f)(2), substituted as definition of "estimation year" the calendar year in which the wages are paid for prior provision defining term as meaning "(i) with respect to payments of wages after April 30 and on or before December 31 of any calendar year, such calendar year, and (ii) with respect to payments of wages on or after January 1 and before May 1 of any calendar year, the preceding calendar year (except that with respect to an exemption certificate furnished by an employee after he has filed his return for the preceding calendar year, such term means the current calendar year)."

Subsec. (m)(3)(B) to (E). Pub. L. 92–178, §208(f)(3), struck out subpars. (B) and (C) providing that only one certificate be in effect and for termination of effectiveness of certificate and redesignated subpars. (D) and (E) as (B) and (C), respectively.

1969—Subsec. (a)(1). Pub. L. 91–172, §805(a), (b)(2), substituted new sets of tables 1 to 8 for application to wages paid after Dec. 31, 1969, and before July 1, 1970, and after June 30, 1970, and before January 1, 1972, for the tables applicable to wages paid before July 13, 1968, and after Dec. 31, 1969.

Pub. L. 91–53, §6(a)(1), substituted "December 31, 1969" for "July 31, 1969".

Pub. L. 91–36, §2(a)(1), substituted "July 31, 1969" for "June 30, 1969".

Subsec. (a)(2). Pub. L. 91–172, §805(a), substituted a set of tables 1 to 8 for application to wages paid after June 30, 1970, and before Jan. 1, 1971, for the tables applicable to wages paid after June 30, 1970, and before Jan. 1, 1970.

Pub. L. 91–53, §6(a)(2), substituted "January 1, 1970" for "August 1, 1969".

Pub. L. 91–36, §2(a)(2), substituted "August 1, 1969" for "July 1, 1969".

Subsec. (a)(3) to (5). Pub. L. 91–172, §805(a), added sets of tables applicable, respectively, to wages paid after Dec. 31, 1970, and before Jan. 1, 1972, after Dec. 31, 1971, and before Jan. 1, 1973, and after Dec. 31, 1972.

Subsec. (b)(1). Pub. L. 91–172, §805(b)(1)–(4), revised withholding rates effective with respect to wages paid after Dec. 31, 1969, and before July 1, 1970, for the period after June 30, 1970, and before Jan. 1, 1972, during 1972, and after 1972.

Subsec. (c)(1). Pub. L. 91–172, §805(c)(1), substituted provisions authorizing employer to deduct and withhold tax determinable according to tables prescribed by the Secretary or his delegate for provisions under which the employer was authorized to deduct and withhold tax only according to tables set out.

Subsec. (c)(6). Pub. L. 91–172, §805(c)(2), substituted provisions for determination of amount deductible according to tables prescribed by the Secretary or his delegate and for computation of wages and amounts of income tax after Dec. 31, 1969, for provisions for determination of such wages and amounts of income tax after July 13, 1968, and before Jan. 1, 1970.

Pub. L. 91–53, §6(a)(3), substituted "January 1, 1970" for "August 1, 1969".

Pub. L. 91–36, §2(a)(3), substituted "August 1, 1969" for "July 1, 1969".

Subsec. (h). Pub. L. 91–172, §805(d), redesignated existing pars. (1) to (3) as subpars. (A) to (C) of par. (1), and added pars. (2) to (4).

Subsec. (m)(1). Pub. L. 91–172, §805(e)(2), substituted $750 for $700 in the material preceding subpar. (A) and in subpar. (B) substituted 15 per cent for 10 per cent of the first $7,500 and 17 per cent of remainder of the estimated wages.

Subsec. (m)(2)(A). Pub. L. 91–172, §805(e)(2), inserted amount of standard deduction as an alternative limit in cl. (i), and substituted the determinable additional deductions for provisions referring to an employee who did not show such deductions on his return.

Subsec. (m)(2)(B). Pub. L. 91–172, §805(e)(2), struck out limit on aggregate amount.

Subsec. (m)(2)(C), (D). Pub. L. 91–172, §805(e)(1), (2), added subpar. (C). Former subpar. (C) redesignated (D)

Subsec. (n). Pub. L. 91–172, §805(f)(1), added subsec. (n).

Subsecs. (o), (p). Pub. L. 91–172, §805(g), added subsecs. (o) and (p).

1968—Subsec. (a). Pub. L. 90–364, §102(c)(1), designated existing Tables 1 to 8 as constituting par. (1), inserted provisions preceding existing Table 1–8 so as to limit their application to the case of wages paid on or before the 15th day after the date of the enactment of the Revenue and Expenditure Control Act of 1968 or after June 30, 1969, and added par. (2).

Subsec. (c)(6). Pub. L. 90–364, §102(c)(2), added par. (6).

1966—Subsec. (a). Pub. L. 89–368, §101(a), struck out reference to subsections (j) and (k) and substituted provisions establishing separate tables for single persons and for married persons in each of eight payroll period categories each containing six graduated withholding rates ranging from 14 to 30 percent for provisions placing the rate at a fixed 14 percent.

Subsec. (b)(1). Pub. L. 89–368, §101(b), increased amounts set out for one withholding exemption for each of the payroll period categories from "$13.00", "$26.00", "$28.00", "$56.00", "$167.00", "$333.00", "$667.00", and "$1.80" to "$13.50", "$26.90", "$29.20", "$58.30", "$175.00", "$350.00", "$700.00", and "$1.90" respectively.

Subsec. (c)(1). Pub. L. 89–368, §101(c), replaced existing tables with separate tables for employees who are married and for employees who are not married covering weekly, biweekly, semimonthly, monthly, and daily or miscellaneous pay periods and reflecting increased and graduated withholding rates.

Subsec. (f)(1)(F), (3)(B). Pub. L. 89–368, §101(e)(1), (3), added par. (1)(F) and, in par. (3)(B), changed definition of "status determination date" from January 1 and July 1 of each year to January 1, May 1, July 1, and October 1 of each year.

Subsec. (l). Pub. L. 89–368, §101(d), added subsec. (l).

Subsec. (m). Pub. L. 89–368, §101(e)(2), added subsec. (m).

1965—Subsec. (a). Pub. L. 89–97, §313(d)(3), substituted "subsections (j) and (k)" for "subsection (j)".

Subsec. (h)(3). Pub. L. 89–97, §313(d)(4), inserted "(and, in the case of tips referred to in subsection (k), within 30 days thereafter)" after "quarter" first place it appears.

Subsec. (k). Pub. L. 89–212 inserted "or section 3202 (c)(2)" and "or section 3202(a)".

Pub. L. 89–97, §313(d)(5), added subsec. (k).

1964—Subsec. (a). Pub. L. 88–272, §302(a), reduced tax from 18% to 14%.

Subsec. (c)(1). Pub. L. 88–272, §302(b), substituted new tables reflecting lowered withholding rates.

1961—Subsec. (f)(6). Pub. L. 87–256 added par. (6).

1955—Subsec. (a). Act Aug. 9, 1955, §2(a), inserted "(except as provided in subsection (j))" after "upon such wages".

Subsec. (j). Act Aug. 9, 1955, §2(b), added subsec. (j).

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112–56, title I, §102(b), Nov. 21, 2011, 125 Stat. 712, provided that: "The amendment made by this section [amending this section] shall apply to payments made after December 31, 2011."

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–222, title V, §511(b), May 17, 2006, 120 Stat. 365, as amended by Pub. L. 111–5, div. B, title I, §1511, Feb. 17, 2009, 123 Stat. 355, provided that: "The amendment made by this section [amending this section] shall apply to payments made after December 31, 2011."

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to amounts paid after the 60th day after June 7, 2001, and references to income brackets and rates of tax in such amendment to be applied without regard to section 1(i)(1)(D) of this title, see section 101(d)(2) of Pub. L. 107–16, set out as an Effective and Termination Dates of 2001 Amendment note under section 1 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103–465, title VII, §701(b), Dec. 8, 1994, 108 Stat. 4996, provided that: "The amendment made by this section [amending this section] shall apply to payments made after December 31, 1994."

Amendment by section 702(a) of Pub. L. 103–465 applicable to payments made after Dec. 31, 1996, see section 702(d) of Pub. L. 103–465, set out as a note under section 3304 of this title.

EFFECTIVE DATE OF 1992 AMENDMENTS

Pub. L. 102–486, title XIX, §1934(b), Oct. 24, 1992, 106 Stat. 3032, provided that: "The amendment made by this section [amending this section] applies to payments received after December 31, 1992."

Pub. L. 102–486, title XIX, §1942(b), Oct. 24, 1992, 106 Stat. 3036, provided that: "The amendments made by subsection (a) [amending this section] shall apply to payments of winnings after December 31, 1992."

Amendment by Pub. L. 102–318 applicable, except as otherwise provided, to distributions after Dec. 31, 1992, see section 522(d) of Pub. L. 102–318, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title X, §10302(b), Dec. 22, 1987, 101 Stat. 1330–429, provided that: "The amendment made by subsection (a) [amending this section] shall apply to certificates furnished after the day 30 days after the date of the enactment of this Act [Dec. 22, 1987]."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 104(b)(15) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 1301(j)(8) of Pub. L. 99–514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99–514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

Amendment by section 1303(b)(4) of Pub. L. 99–514 effective Oct. 22, 1986, see section 1311(f) of Pub. L. 99–514, as amended, set out as an Effective Date; Transitional Rules note under section 141 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Pub. L. 99–44, §6(d), May 24, 1985, 99 Stat. 79, provided that: "The amendment made by section 3 [amending this section] shall take effect on January 1, 1985."

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–67 applicable with respect to payments made after Dec. 31, 1983, see section 110(a) of Pub. L. 98–67, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title III, §317(b), Sept. 3, 1982, 96 Stat. 610, provided that: "The amendments made by subsection (a) [amending this section] shall apply to payments made after December 31, 1983."

Amendment by section 334(d) of Pub. L. 97–248 applicable to payments or other distributions made after

Dec. 31, 1982, see section 334(e) of Pub. L. 97–248, set out as an Effective Date note under section 3405 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title I, §101(f)(2), Aug. 13, 1981, 95 Stat. 185, provided that: "The amendments made by subsection (e) [amending this section] shall apply to remuneration paid after September 30, 1981; except that the amendment made by subsection (e)(5) [amending this section] shall apply to remuneration paid after December 31, 1981."

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–601, §4(f), Dec. 24, 1980, 94 Stat. 3498, provided that: "The amendments made by this section [amending this section and section 6051 of this title] shall apply to payments made on or after the first day of the first calendar month beginning more than 120 days after the date of the enactment of this Act [Dec. 24, 1980]."

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title I, §101(f)(2), Nov. 6, 1978, 92 Stat. 2771, provided that: "The amendments made by subsection (e) [amending this section] shall apply to remuneration paid after December 31, 1978."

Pub. L. 95–600, title I, §102(d)(2), Nov. 6, 1978, 92 Stat. 2771, provided that: "The amendments made by subsection (c) [amending this section] shall apply with respect to remuneration paid after December 31, 1978."

Amendment by section 601(b)(2) of Pub. L. 95–600 applicable with respect to corporations chartered after Dec. 31, 1978, and before Jan. 1, 1984, see section 601(d) of Pub. L. 95–600, set out as a note under section 172 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Pub. L. 95–30, title I, §106(b), May 23, 1977, 91 Stat. 141, provided that: "The amendments made by section 105 [amending this section] shall apply to wages paid after April 30, 1977."

Pub. L. 95–30, title IV, §405(b), May 23, 1977, 91 Stat. 156, provided that: "The amendments made by this section [amending this section] apply to payments made after April 30, 1977."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 401(d) of Pub. L. 94–455 applicable to wages paid after Sept. 14, 1976, see section 401(e) of Pub. L. 94–455, set out as a note under section 32 of this title.

Pub. L. 94–455, title XII, §1207(f)(3), Oct. 4, 1976, 90 Stat. 1708, provided that: "The amendments made by subsection (d) [amending this section] shall apply to payments of winnings made after the 90th day after the date of the enactment of this Act [Oct. 4, 1976]."

EFFECTIVE AND TERMINATION DATES OF 1975 AMENDMENTS

Amendment by section 2(b)(2) of Pub. L. 94–164 applicable to taxable years ending after Dec. 31, 1975 and before Jan. 1, 1977, see section 2(g) of Pub. L. 94–164, set out as an Effective Date of 1975 Amendment note under section 32 of this title.

Pub. L. 94–12, title II, §209(c), Mar. 29, 1975, 89 Stat. 35, as amended by Pub. L. 94–164, §5(a)(2); Pub. L. 94–331, §3(a)(2); Pub. L. 94–396, §2(b); Pub. L. 94–414, §3(a)(2), provided that: "The amendments made by sections 202(b) and 205 [amending this section] shall apply to wages paid after April 30, 1975, and before October 1, 1976."

EFFECTIVE DATE OF 1971 AMENDMENT

Pub. L. 92–178, title II, §208(i), Dec. 10, 1971, 85 Stat. 517, provided that:

"(1) The amendments made by this section [amending this section] (other than subsection (h)) shall apply with respect to wages paid after January 15, 1972.

"(2) The amendments made by subsection (h) [amending this section] shall apply with respect to wages paid after December 31, 1971, and before January 16, 1972."

EFFECTIVE DATE OF 1969 AMENDMENTS

Pub. L. 91–172, title VIII, §805(h), Dec. 30, 1969, 83 Stat. 709, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) The amendments made by subsections (a), (b), (c), (d), and (e) [amending this section] shall apply with respect to remuneration paid after December 31, 1969.

"(2) The amendment made by subsection (f) [amending this section and section 6051 of this title] applies to

wages paid after April 30, 1970.

"(3) Subsection (o) of section 3402 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], added by subsection (g) of this subsection, shall apply to payments made after December 31, 1970. Subsection (p) of such section 3402, added by subsection (g) of this section, shall apply to payments made after June 30, 1970."

Pub. L. 91–53, §6(b), Aug. 7, 1969, 83 Stat. 96, provided that: "The amendments made by this section [amending this section] shall apply with respect to wages paid after July 31, 1969, and before January 1, 1970."

Pub. L. 91–36, §2(b), June 30, 1969, 83 Stat. 42, provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to wages paid after June 30, 1969."

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89–368, title I, §101(e)(6), Mar. 15, 1966, 80 Stat. 62, provided that: "The amendments made by paragraphs (1) and (2) of this subsection [amending this section] shall apply only with respect to remuneration paid after December 31, 1966, but only with respect to withholding exemptions based on estimation years beginning after such date."

Pub. L. 89–368, title I, §101(g), Mar. 15, 1966, 80 Stat. 62, provided that: "The amendments made by this section (other than subsection (e) [amending this section]) shall apply only with respect to remuneration paid after April 30, 1966."

EFFECTIVE DATE OF 1965 AMENDMENTS

Amendment by Pub. L. 89–212 effective only with respect to tips received after 1965, see section 6 of Pub. L. 89–212, set out as a note under section 3201 of this title.

Amendment by Pub. L. 89–97 applicable only with respect to tips received by employees after 1965, see section 313(f) of Pub. L. 89–97, set out as an Effective Date note under section 6053 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88–272, title III, §302(d), Feb. 26, 1964, 78 Stat. 146, provided that: "The amendments made by subsections (a) and (b) of this section [amending this section] shall apply with respect to remuneration paid after the seventh day following the date of the enactment of this Act [Feb. 26, 1964]. The amendment made by subsection (c) of this section [amending section 1441 of this title] shall apply with respect to payments made after the seventh day following the date of the enactment of this Act."

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–256 applicable with respect to wages paid after Dec. 31, 1961, see section 110(h)(4) of Pub. L. 87–256, set out as a note under section 3401 of this title.

EFFECTIVE DATE OF 1955 AMENDMENT

Act Aug. 9, 1955, ch. 666, §3, 69 Stat. 605, provided that: "The amendment made by section 2 [amending this section] shall be applicable only with respect to remuneration paid after the date of enactment of this Act [Aug. 9, 1955]."

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

WITHHOLDING ALLOWANCES TO REFLECT NEW RATE SCHEDULES

Pub. L. 99–514, title XV, §1581(a), Oct. 22, 1986, 100 Stat. 2765, provided that: "The Secretary of the Treasury or his delegate shall modify the withholding schedules and withholding exemption certificates under section 3402 of the Internal Revenue Code of 1954 [now 1986] to better approximate actual tax liability under the amendments made by this Act [see Tables for classification]."

EMPLOYER'S RESPONSIBILITY UPON FAILURE OF EMPLOYEE TO FILE REVISED

WITHHOLDING ALLOWANCE CERTIFICATE BEFORE OCT. 1, 1987

Pub. L. 99–514, title XV, §1581(c), Oct. 22, 1986, 100 Stat. 2766, as amended by Pub. L. 100–647, title I, §1015(p), Nov. 10, 1988, 102 Stat. 3572, provided that: "If an employee has not filed a revised withholding allowance certificate before October 1, 1987, the employer shall withhold income taxes from the employee's wages—

"(1) as if the employee claimed 1 withholding allowance, if the employee checked the 'single' box on the employee's previous withholding allowance certificate, or

"(2) as if the employee claimed 2 withholding allowances, if the employee checked the 'married' box on the employee's previous withholding allowance certificate.

The preceding sentence shall not apply if its application would result in an increase in the number of withholding allowances for the employee."

FAILURE TO DEDUCT AND WITHHOLD UNDER A DUTY CREATED OR INCREASED BY TAX REFORM ACT OF 1976

Pub. L. 95–30, title III, §304, May 23, 1977, 91 Stat. 152, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "No person shall be liable in respect of any failure to deduct and withhold under section 3402 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to income tax collected at source) on remuneration paid before January 1, 1977, to the extent that the duty to deduct and withhold was created or increased by any provision of the Tax Reform Act of 1976 [Pub. L. 94–455]."

WAGES PAID DURING 1972 AND AFTER 1972

Pub. L. 91–172, title VIII, §805(b)(3), (4), Dec. 30, 1969, 83 Stat. 704, which provided for section 3402(b)(1) withholding rates of 13.50; 26.90; 29.20; 58.30; 175.00; 350.00; 700.00; and 1.90, effective with respect to wages during 1972, and withholding rates of 14.40; 28.80; 31.30; 62.50; 187.50; 375.00; 750.00; and 2.10, effective with respect to wages paid after 1972, was repealed by Pub. L. 92–178, title II, §208(b)(2), Dec. 10, 1971, 85 Stat. 516.

TRANSITIONAL DETERMINATION STATUS DATE

Pub. L. 89–368, title I, §101(f), Mar. 15, 1966, 80 Stat. 62, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Notwithstanding section 3402(f)(3)(B) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], a withholding exemption certificate furnished the employer after the date of the enactment of this Act [Mar. 15, 1966] and before May 1, 1966, shall take effect with respect to the first payment of wages made on or after May 1, 1966, or the 10th day after the date on which such certificate is furnished to the employer, whichever is later, and at the election of the employer such certificate may be made effective with respect to any payment of wages made on or after the date on which such certificate is furnished."

MEANING OF TERMS

Act Aug. 9, 1955, ch. 666, §1, 69 Stat. 605, provided that: "The terms used in this Act [amending subsecs. (a) and (j) of this section] shall have the same meaning as when used in the Internal Revenue Code."

[1] See References in Text note below.

§3403. Liability for tax

The employer shall be liable for the payment of the tax required to be deducted and withheld under this chapter, and shall not be liable to any person for the amount of any such payment.

(Aug. 16, 1954, ch. 736, 68A Stat. 469; Pub. L. 97–248, title III, §§307(a)(2), 308(a), Sept. 3, 1982, 96 Stat. 589, 591; Pub. L. 98–67, title I, §102(a), Aug. 5, 1983, 97 Stat. 369.)

AMENDMENTS

1983—Pub. L. 98–67 repealed amendments made by Pub. L. 97–248. See 1982 Amendment note below.

1982—Pub. L. 97–248 provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, this section is amended by striking out "this chapter" and inserting in lieu thereof "this subchapter". Section 102(a), (b) of Pub. L. 98–67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§301–308) of title III of Pub. L. 97–248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 [now 1986] [this title] shall be applied and administered

(subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

§3404. Return and payment by governmental employer

If the employer is the United States, or a State, or political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing, the return of the amount deducted and withheld upon any wages may be made by any officer or employee of the United States, or of such State, or political subdivision, or of the District of Columbia, or of such agency or instrumentality, as the case may be, having control of the payment of such wages, or appropriately designated for that purpose.

(Aug. 16, 1954, ch. 736, 68A Stat. 469; Pub. L. 94–455, title XIX, §1903(c), Oct. 4, 1976, 90 Stat. 1810.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "Territory" after "or a State" and "of such State".

§3405. Special rules for pensions, annuities, and certain other deferred income

(a) Periodic payments

(1) Withholding as if payment were wages

The payor of any periodic payment (as defined in subsection (e)(2)) shall withhold from such payment the amount which would be required to be withheld from such payment if such payment were a payment of wages by an employer to an employee for the appropriate payroll period.

(2) Election of no withholding

An individual may elect to have paragraph (1) not apply with respect to periodic payments made to such individual. Such an election shall remain in effect until revoked by such individual.

(3) When election takes effect

Any election under this subsection (and any revocation of such an election) shall take effect as provided by subsection (f)(3) of section 3402 for withholding exemption certificates.

(4) Amount withheld where no withholding exemption certificate in effect

In the case of any payment with respect to which a withholding exemption certificate is not in effect, the amount withheld under paragraph (1) shall be determined by treating the payee as a married individual claiming 3 withholding exemptions.

(b) Nonperiodic distribution

(1) Withholding

The payor of any nonperiodic distribution (as defined in subsection (e)(3)) shall withhold from such distribution an amount equal to 10 percent of such distribution.

(2) Election of no withholding

(A) In general

An individual may elect not to have paragraph (1) apply with respect to any nonperiodic distribution.

(B) Scope of election

An election under subparagraph (A)—

(i) except as provided in clause (ii), shall be on a distribution-by-distribution basis, or

(ii) to the extent provided in regulations, may apply to subsequent nonperiodic distributions made by the payor to the payee under the same arrangement.

(c) Eligible rollover distributions

(1) In general

In the case of any designated distribution which is an eligible rollover distribution—

(A) subsections (a) and (b) shall not apply, and

(B) the payor of such distribution shall withhold from such distribution an amount equal to 20 percent of such distribution.

(2) Exception

Paragraph (1)(B) shall not apply to any distribution if the distributee elects under section 401(a)(31)(A) to have such distribution paid directly to an eligible retirement plan.

(3) Eligible rollover distribution

For purposes of this subsection, the term "eligible rollover distribution" has the meaning given such term by section 402(f)(2)(A).

(d) Liability for withholding

(1) In general

Except as provided in paragraph (2), the payor of a designated distribution (as defined in subsection (e)(1)) shall withhold, and be liable for, payment of the tax required to be withheld under this section.

(2) Plan administrator liable in certain cases

(A) In general

In the case of any plan to which this paragraph applies, paragraph (1) shall not apply and the plan administrator shall withhold, and be liable for, payment of the tax unless the plan administrator—

(i) directs the payor to withhold such tax, and

(ii) provides the payor with such information as the Secretary may require by regulations.

(B) Plans to which paragraph applies

This paragraph applies to any plan described in, or which at any time has been determined to be described in—

(i) section 401(a),

(ii) section 403(a),

(iii) section 301(d) of the Tax Reduction Act of 1975, or

(iv) section 457(b) and which is maintained by an eligible employer described in section 457(e)(1)(A).

(e) Definitions and special rules

For purposes of this section—

(1) Designated distribution

(A) In general

Except as provided in subparagraph (B), the term "designated distribution" means any distribution or payment from or under—

(i) an employer deferred compensation plan,

(ii) an individual retirement plan (as defined in section 7701(a)(37)), or

(iii) a commercial annuity.

(B) Exceptions

The term "designated distribution" shall not include—

(i) any amount which is wages without regard to this section,

(ii) the portion of a distribution or payment which it is reasonable to believe is not includible in gross income, and

(iii) any amount which is subject to withholding under subchapter A of chapter 3 (relating

to withholding of tax on nonresident aliens and foreign corporations) by the person paying such amount or which would be so subject but for a tax treaty, or

(iv) any distribution described in section 404(k)(2).

For purposes of clause (ii), any distribution or payment from or under an individual retirement plan (other than a Roth IRA) shall be treated as includible in gross income.

(2) Periodic payment

The term "periodic payment" means a designated distribution which is an annuity or similar periodic payment.

(3) Nonperiodic distribution

The term "nonperiodic distribution" means any designated distribution which is not a periodic payment.

[(4) Repealed. Pub. L. 102–318, title V, §521(b)(38), July 3, 1992, 106 Stat. 312]

(5) Employer deferred compensation plan

The term "employer deferred compensation plan" means any pension, annuity, profit-sharing, or stock bonus plan or other plan deferring the receipt of compensation.

(6) Commercial annuity

The term "commercial annuity" means an annuity, endowment, or life insurance contract issued by an insurance company licensed to do business under the laws of any State.

(7) Plan administrator

The term "plan administrator" has the meaning given such term by section 414(g).

(8) Maximum amount withheld

The maximum amount to be withheld under this section on any designated distribution shall not exceed the sum of the amount of money and the fair market value of other property (other than securities of the employer corporation) received in the distribution. No amount shall be required to be withheld under this section in the case of any designated distribution which consists only of securities of the employer corporation and cash (not in excess of $200) in lieu of financial shares. For purposes of this paragraph, the term "securities of the employer corporation" has the meaning given such term by section 402(e)(4)(E).

(9) Separate arrangements to be treated separately

If the payor has more than 1 arrangement under which designated distributions may be made to any individual, each such arrangement shall be treated separately.

(10) Time and manner of election

(A) In general

Any election and any revocation under this section shall be made at such time and in such manner as the Secretary shall prescribe.

(B) Payor required to notify payee of rights to elect

(i) Periodic payments

The payor of any periodic payment—

(I) shall transmit to the payee notice of the right to make an election under subsection (a) not earlier than 6 months before the first of such payments and not later than when making the first of such payments,

(II) if such a notice is not transmitted under subclause (I) when making such first payment, shall transmit such a notice when making such first payment, and

(III) shall transmit to payees, not less frequently than once each calendar year, notice of their rights to make elections under subsection (a) and to revoke such elections.

(ii) Nonperiodic distributions

The payor of any nonperiodic distribution shall transmit to the payee notice of the right to make any election provided in subsection (b) at the time of the distribution (or at such earlier time as may be provided in regulations).

(iii) Notice

Any notice transmitted pursuant to this subparagraph shall be in such form and contain such information as the Secretary shall prescribe.

(11) Withholding includes deduction

The terms "withholding", "withhold", and "withheld" include "deducting", "deduct", and "deducted".

(12) Failure to provide correct TIN

If—

(A) a payee fails to furnish his TIN to the payor in the manner required by the Secretary, or

(B) the Secretary notifies the payor before any payment or distribution that the TIN furnished by the payee is incorrect,

no election under subsection (a)(2) or (b)(2) shall be treated as in effect and subsection (a)(4) shall not apply to such payee.

(13) Election may not be made with respect to certain payments outside the United States or its possessions

(A) In general

Except as provided in subparagraph (B), in the case of any periodic payment or nonperiodic distribution which is to be delivered outside of the United States and any possession of the United States, no election may be made under subsection (a)(2) or (b)(2) with respect to such payment.

(B) Exception

Subparagraph (A) shall not apply if the recipient certifies to the payor, in such manner as the Secretary may prescribe, that such person is not—

(i) a United States citizen or a resident alien of the United States, or

(ii) an individual to whom section 877 applies.

(f) Withholding to be treated as wage withholding under section 3402 for other purposes

For purposes of this chapter (and so much of subtitle F as relates to this chapter)—

(1) any designated distribution (whether or not an election under this section applies to such distribution) shall be treated as if it were wages paid by an employer to an employee with respect to which there has been withholding under section 3402, and

(2) in the case of any designated distribution not subject to withholding under this section by reason of an election under this section, the amount withheld shall be treated as zero.

(Added Pub. L. 97–248, title III, §334(a), Sept. 3, 1982, 96 Stat. 623; amended Pub. L. 98–369, div. A, title V, §542(c), title VII, §§714(j)(1), (4), (5), 722(h)(4)(A), July 18, 1984, 98 Stat. 891, 962, 963, 976; Pub. L. 99–514, title XI, §1102(e)(1), title XII, §1234(b)(1), title XVIII, §1875(c)(10), Oct. 22, 1986, 100 Stat. 2416, 2566, 2895; Pub. L. 100–647, title I, §1012(bb)(2)(A)–(C), Nov. 10, 1988, 102 Stat. 3534; Pub. L. 102–318, title V, §§521(b)(36)–(40), 522(b)(1)–(2)(C), July 3, 1992, 106 Stat. 312–314; Pub. L. 104–188, title I, §1704(t)(71), Aug. 20, 1996, 110 Stat. 1891; Pub. L. 106–554, §1(a)(7) [title III, §314(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–643; Pub. L. 107–16, title VI, §641(a)(1)(D)(ii), (iii), June 7, 2001, 115 Stat. 119.)

REFERENCES IN TEXT

Section 301(d) of the Tax Reduction Act of 1975, referred to in subsec. (d)(2)(B)(iii), is section 301(d) of Pub. L. 94–12, Mar. 29, 1975, 89 Stat. 26, relating to plan requirements for taxpayers electing additional

credits, which was set out as a note under section 46 of this title and was repealed by Pub. L. 95–600, title I, §141(f)(1), Nov. 6, 1978, 92 Stat. 2795.

AMENDMENTS

2001—Subsec. (c)(3). Pub. L. 107–16, §641(a)(1)(D)(ii), reenacted heading without change and amended text of par. (3) generally. Prior to amendment, text read as follows: "For purposes of this subsection, the term 'eligible rollover distribution' has the meaning given such term by section 402(f)(2)(A) (or in the case of an annuity contract under section 403(b), a distribution from such contract described in section 402(f)(2)(A))."

Subsec. (d)(2)(B)(iv). Pub. L. 107–16, §641(a)(1)(D)(iii), added cl. (iv).

2000—Subsec. (e)(1)(B). Pub. L. 106–554 inserted "(other than a Roth IRA)" after "individual retirement plan" in concluding provisions.

1996—Subsec. (e)(12). Pub. L. 104–188 substituted "(b)(2)" for "(b)(3)" in closing provisions.

1992—Subsec. (a). Pub. L. 102–318, §521(b)(36), substituted "Periodic payments" for "Pensions, annuities, etc." in heading.

Subsec. (a)(1). Pub. L. 102–318, §522(b)(2)(A), substituted "subsection (e)(2)" for "subsection (d)(2)".

Subsec. (b)(1). Pub. L. 102–318, §§521(b)(37)(A), 522(b)(2)(B), substituted "subsection (e)(3)" for "subsection (d)(3)" and "an amount equal to 10 percent of such distribution" for "the amount determined under paragraph (2)".

Subsec. (b)(2), (3). Pub. L. 102–318, §521(b)(37)(B), redesignated par. (3) as (2) and struck out former par. (2) which related to amount of withholding.

Subsec. (c). Pub. L. 102–318, §522(b)(1), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 102–318, §522(b)(1), (2)(C), redesignated subsec. (c) as (d) and substituted "subsection (e)(1)" for "subsection (d)(1)" in par. (1). Former subsec. (d) redesignated (e).

Pub. L. 102–318, §521(b)(40), substituted "(b)(2)" for "(b)(3)" in par. (13)(A).

Pub. L. 102–318, §521(b)(39), amended par. (8) generally. Prior to amendment, par. (8) read as follows: "The maximum amount to be withheld under this section on any designated distribution shall not exceed the sum of the amount of money and the fair market value of other property (other than employer securities of the employer corporation (within the meaning of section 402(a)(3))) received in the distribution. No amount shall be required to be withheld under this section in the case of any designated distribution which consists only of employer securities of the employer corporation (within the meaning of section 402(a)(3)) and cash (not in excess of $200) in lieu of fractional shares."

Pub. L. 102–318, §521(b)(38), struck out par. (4) which defined "qualified total distribution" and provided special rule for accumulated deductible employee contributions in determining qualified total distribution.

Subsecs. (e), (f). Pub. L. 102–318, §522(b)(1), redesignated subsecs. (d) and (e) as (e) and (f), respectively.

1988—Subsec. (d)(13). Pub. L. 100–647, §1012(bb)(2)(C), substituted "United States or its possessions" for "United States" in heading.

Subsec. (d)(13)(A). Pub. L. 100–647, §1012(bb)(2)(A), substituted "the United States and any possession of the United States" for "the United States".

Subsec. (d)(13)(B)(i). Pub. L. 100–647, §1012(bb)(2)(B), amended cl. (i) generally, substituting "or a resident alien of the United States" for "who is a bona fide resident of a foreign country".

1986—Subsec. (d)(1)(B). Pub. L. 99–514, §1102(e)(1), inserted last sentence for "For purposes of clause (ii), any distribution or payment from or under an individual retirement plan shall be treated as includible in gross income."

Subsec. (d)(1)(B)(iii), (iv). Pub. L. 99–514, §1875(c)(10), reenacted cl. (iii) relating to amounts subject to withholding under subchapter A of chapter 3 as cl. (iii) and reenacted cl. (iii) relating to distribution described in section 404(k)(2) as cl. (iv).

Subsec. (d)(13). Pub. L. 99–514, §1234(b)(1), added par. (13).

1984—Subsec. (b)(2)(C). Pub. L. 98–369, §714(j)(1), substituted "nonperiodic distribution" for "distribution described in subparagraph (B)" and "subparagraph (A) or (B) (as the case may be) shall be applied by taking into account" for "the Secretary, in prescribing tables or procedures under paragraph (1), shall take into account", designated phrase "which is made by reason of a participant's death" as cl. (i) and added cl. (ii).

Subsec. (d)(1)(B)(iii). Pub. L. 98–369, §714(j)(4), added cl. (iii) relating to amounts subject to withholding under subchapter A of chapter 3.

Pub. L. 98–369, §542(c), added cl. (iii) relating to distributions described in section 404(k)(2). Directory language that section (d)(1)(B) be amended by striking out "and" at end of cl. (i) and substituting ", or" for the period at end of cl. (ii) could not be executed in view of prior amendment by section 714(j)(4) of Pub. L. 98–369, which struck out "and" at end of cl. (i) and substituted ", and" for the period at end of cl. (ii).

Subsec. (d)(8). Pub. L. 98–369, §714(j)(5), freed from withholding requirement any designated distribution which consists only of employer securities of the employer corporation (within the meaning of section 402(a)(3)) and cash (not in excess of $200) in lieu of fractional shares.

Subsec. (d)(12). Pub. L. 98–369, §722(h)(4), added par. (12).

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to distributions after Dec. 31, 2001, see section 641(f)(1) of Pub. L. 107–16, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 effective as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 1(a)(7) [title III, §314(g)] of Pub. L. 106–554, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 521(b)(36)–(40) of Pub. L. 102–318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102–318, set out as a note under section 402 of this title.

Amendment by section 522(b)(1)–(2)(C) of Pub. L. 102–318 applicable, except as otherwise provided, to distributions after Dec. 31, 1992, see section 522(d) of Pub. L. 102–318, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1012(bb)(2)(D), Nov. 10, 1988, 102 Stat. 3534, provided that: "The amendments made by this paragraph [amending this section] shall apply to distributions made after the date of the enactment of this Act [Nov. 10, 1988]."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1102(e)(1) of Pub. L. 99–514 applicable to contributions and distributions for taxable years beginning after Dec. 31, 1986, see section 1102(g) of Pub. L. 99–514, set out as a note under section 219 of this title.

Pub. L. 99–514, title XII, §1234(b)(2), Oct. 22, 1986, 100 Stat. 2566, provided that: "The amendment made by this subsection [amending this section] shall apply to payments after December 31, 1986."

Amendment by section 1875(c)(10) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 542(c) of Pub. L. 98–369 applicable to taxable years beginning after July 18, 1984, see section 542(d) of Pub. L. 98–369, set out as a note under section 404 of this title.

Amendment by section 714(j)(1), (4), (5) of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

Amendment by section 722(h)(4)(A) of Pub. L. 98–369 applicable to payments or distributions after Dec. 31, 1984, unless the payor elects to have such amendment apply to payments or distributions before Jan. 1, 1985, see section 722(h)(5)(B) of Pub. L. 98–369, set out as a note under section 643 of this title.

EFFECTIVE DATE

Pub. L. 97–248, title III, §334(e), Sept. 3, 1982, 96 Stat. 627, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) AMENDMENT MADE BY SUBSECTIONS (a) AND (d).—Except as provided in paragraph (4), the amendment made by subsections (a) [enacting this section] and (d) [amending section 3402 of this title] shall apply to payments or other distributions made after December 31, 1982.

"(2) AMENDMENTS MADE BY SUBSECTION (b).—Except as provided in paragraph (4), the amendments made by subsection (b) [amending section 6047 of this title] shall take effect on January 1, 1983.

"(3) AMENDMENTS MADE BY SUBSECTION (c).—The amendments made by subsection (c) [enacting section 6704 of this title] shall take effect on January 1, 1985.

"(4) PERIODIC PAYMENTS BEGINNING BEFORE JANUARY 1, 1983.—For purposes of section 3405(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], in the case of periodic payments beginning before January 1, 1983, the first periodic payment after December 31, 1982, shall be treated as the

first such periodic payment.

"(5) DELAY IN APPLICATION.—The Secretary of the Treasury shall prescribe such regulations which delay (but not beyond June 30, 1983) the application of some or all of the amendments made by this section with respect to any payor until such time as such payor is able to comply without undue hardship with the requirements of such provisions.

"(6) WAIVER OF PENALTY.—No penalty shall be assessed under section 6672 with respect to any failure to withhold as required by the amendments made by this section if such failure was before July 1, 1983, and if the person made a good faith effort to comply with such withholding requirements."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§3406. Backup withholding

(a) Requirement to deduct and withhold

(1) In general

In the case of any reportable payment, if—

(A) the payee fails to furnish his TIN to the payor in the manner required,

(B) the Secretary notifies the payor that the TIN furnished by the payee is incorrect,

(C) there has been a notified payee underreporting described in subsection (c), or

(D) there has been a payee certification failure described in subsection (d),

then the payor shall deduct and withhold from such payment a tax equal to the product of the fourth lowest rate of tax applicable under section 1(c) and such payment.

(2) Subparagraphs (C) and (D) of paragraph (1) apply only to interest and dividend payments

Subparagraphs (C) and (D) of paragraph (1) shall apply only to reportable interest or dividend payments.

(b) Reportable payment, etc.

For purposes of this section—

(1) Reportable payment

The term "reportable payment" means—

(A) any reportable interest or dividend payment, and

(B) any other reportable payment.

(2) Reportable interest or dividend payment

(A) In general

The term "reportable interest or dividend payment" means any payment of a kind, and to a payee, required to be shown on a return required under—

(i) section 6049(a) (relating to payments of interest),

(ii) section 6042(a) (relating to payments of dividends), or

(iii) section 6044 (relating to payments of patronage dividends) but only to the extent such payment is in money.

(B) Special rule for patronage dividends

For purposes of subparagraphs (C) and (D) of subsection (a)(1), the term "reportable interest or dividend payment" shall not include any payment to which section 6044 (relating to patronage dividends) applies unless 50 percent or more of such payment is in money.

(3) Other reportable payment

The term "other reportable payment" means any payment of a kind, and to a payee, required to be shown on a return required under—

(A) section 6041 (relating to certain information at source),

(B) section 6041A(a) (relating to payments of remuneration for services),

(C) section 6045 (relating to returns of brokers),

(D) section 6050A (relating to reporting requirements of certain fishing boat operators), but only to the extent such payment is in money and represents a share of the proceeds of the catch,

(E) section 6050N (relating to payments of royalties), or

(F) section 6050W (relating to returns relating to payments made in settlement of payment card transactions).

(4) Whether payment is of reportable kind determined without regard to minimum amount

The determination of whether any payment is of a kind required to be shown on a return described in paragraph (2) or (3) shall be made without regard to any minimum amount which must be paid before a return is required.

(5) Exception for certain small payments

To the extent provided in regulations, the term "reportable payment" shall not include any payment which—

(A) does not exceed $10, and

(B) if determined for a 1-year period, would not exceed $10.

(6) Other reportable payments include payments described in section 6041(a) or 6041A(a) only where aggregate for calendar year is $600 or more

Any payment of a kind required to be shown on a return required under section 6041(a) or 6041A(a) which is made during any calendar year shall be treated as a reportable payment only if—

(A) the aggregate amount of such payment and all previous payments described in such sections by the payor to the payee during such calendar year equals or exceeds $600,

(B) the payor was required under section 6041(a) or 6041A(a) to file a return for the preceding calendar year with respect to payments to the payee, or

(C) during the preceding calendar year, the payor made reportable payments to the payee with respect to which amounts were required to be deducted and withheld under subsection (a).

(7) Exception for certain window payments of interest, etc.

For purposes of subparagraphs (C) and (D) of subsection (a)(1), the term "reportable interest or dividend payment" shall not include any payment—

(A) in redemption of a coupon on a bearer instrument or in redemption of a United States savings bond, or

(B) to the extent provided in regulations, of interest on instruments similar to those described in subparagraph (A).

The preceding sentence shall not apply for purposes of determining whether there is payee underreporting described in subsection (c).

(c) Notified payee underreporting with respect to interest and dividends

(1) Notified payee underreporting

If—

(A) the Secretary determines with respect to any payee that there has been payee

underreporting,

(B) at least 4 notices have been mailed by the Secretary to the payee (over a period of at least 120 days) with respect to the underreporting, and

(C) in the case of any payee who has filed a return for the taxable year, any deficiency of tax attributable to such failure has been assessed,

the Secretary may notify payors of reportable interest or dividend payments with respect to such payee of the requirement to deduct and withhold under subsection (a)(1)(C) (but not the reasons for the withholding under subsection (a)(1)(C)).

(2) Payee underreporting defined

For purposes of this section, there has been payee underreporting if for any taxable year the Secretary determines that—

(A) the payee failed to include in his return of tax under chapter 1 for such year any portion of a reportable interest or dividend payment required to be shown on such return, or

(B) the payee may be required to file a return for such year and to include a reportable interest or dividend payment in such return, but failed to file such return.

(3) Determination by secretary to stop (or not to start) withholding

(A) In general

If the Secretary determines that—

(i) there was no payee underreporting,

(ii) any payee underreporting has been corrected (and any tax, penalty, or interest with respect to the payee underreporting has been paid),

(iii) withholding under subsection (a)(1)(C) has caused (or would cause) undue hardship to the payee and it is unlikely that any payee underreporting by such payee will occur again, or

(iv) there is a bona fide dispute as to whether there has been any payee underreporting,

then the Secretary shall take the action described in subparagraph (B).

(B) Secretary to take action to stop (or not to start) withholding

For purposes of subparagraph (A), if at the time of the Secretary's determination under subparagraph (A)—

(i) no notice has been given under paragraph (1) to any payor with respect to the underreporting, the Secretary shall not give any such notice, or

(ii) if such notice has been given, the Secretary shall—

(I) provide the payee with a written certification that withholding under subsection (a)(1)(C) is to stop, and

(II) notify the applicable payors (and brokers) that such withholding is to stop.

(C) Time for taking action where notice to payor has been given

In any case where notice has been given under paragraph (1) to any payor with respect to any underreporting, if the Secretary makes a determination under subparagraph (A) during the 12-month period ending on October 15 of any calendar year—

(i) except as provided in clause (ii), the Secretary shall take the action described in subparagraph (B)(ii) to bring about the stopping of withholding no later than December 1 of such calendar year, or

(ii) in the case of—

(I) a no payee underreporting determination under clause (i) of subparagraph (A), or

(II) a hardship determination under clause (iii) of subparagraph (A),

such action shall be taken no later than the 45th day after the day on which the Secretary made the determination.

(D) Opportunity to request determination

The Secretary shall prescribe procedures under which—

(i) a payee may request a determination under subparagraph (A), and

(ii) the payee may provide information with respect to such request.

(4) Payor notifies payee of withholding because of payee underreporting

Any payor required to withhold any tax under subsection (a)(1)(C) shall, at the time such withholding begins, notify the payee of such withholding.

(5) Payee may be required to notify Secretary who his payors and brokers are

For purposes of this section, the Secretary may require any payee of reportable interest or dividend payments who is subject to withholding under subsection (a)(1)(C) to notify the Secretary of—

(A) all payors from whom the payee receives reportable interest or dividend payments, and

(B) all brokers with whom the payee has accounts which may involve reportable interest or dividend payments.

The Secretary may notify any such broker that such payee is subject to withholding under subsection (a)(1)(C).

(d) Interest and dividend backup withholding applies to new accounts and instruments unless payee certifies that he is not subject to such withholding

(1) In general

There is a payee certification failure unless the payee has certified to the payor, under penalty of perjury, that such payee is not subject to withholding under subsection (a)(1)(C).

(2) Special rules for readily tradable instruments

(A) In general

Subsection (a)(1)(D) shall apply to any reportable interest or dividend payment to any payee on any readily tradable instrument if (and only if) the payor was notified by a broker under subparagraph (B) or no certification was provided to the payor by the payee under paragraph (1) and—

(i) such instrument was acquired directly by the payee from the payor, or

(ii) such instrument is held by the payor as nominee for the payee.

(B) Broker notifies payor

If—

(i) a payee acquires any readily tradable instrument through a broker, and

(ii) with respect to such acquisition—

(I) the payee fails to furnish his TIN to the broker in the manner required under subsection (a)(1)(A),

(II) the Secretary notifies such broker before such acquisition that the TIN furnished by the payee is incorrect,

(III) the Secretary notifies such broker before such acquisition that such payee is subject to withholding under subsection (a)(1)(C), or

(IV) the payee does not provide a certification to such broker under subparagraph (C),

such broker shall, within such period as the Secretary may prescribe by regulations (but not later than 15 days after such acquisition), notify the payor that such payee is subject to withholding under subparagraph (A), (B), (C), or (D) of subsection (a)(1), respectively.

(C) Time for payee to provide certification to broker

In the case of any readily tradable instrument acquired by a payee through a broker, the certification described in paragraph (1) may be provided by the payee to such broker—

(i) at any time after the payee's account with the broker was established and before the acquisition of such instrument, or

(ii) in connection with the acquisition of such instrument.

(3) Exception for existing accounts, etc.

This subsection and subsection (a)(1)(D) shall not apply to any reportable interest or dividend payment which is paid or credited—

(A) in the case of interest or any other amount of a kind reportable under section 6049, with respect to any account (whatever called) established before January 1, 1984, or with respect to any instrument acquired before January 1, 1984,

(B) in the case of dividends or any other amount reportable under section 6042, on any stock or other instrument acquired before January 1, 1984, or

(C) in the case of patronage dividends or other amounts of a kind reportable under section 6044, with respect to any membership acquired, or contract entered into, before January 1, 1984.

(4) Exception for readily tradable instruments acquired through existing brokerage accounts

Subparagraph (B) of paragraph (2) shall not apply with respect to a readily tradable instrument which was acquired through an account with a broker if—

(A) such account was established before January 1, 1984, and

(B) during 1983, such broker bought or sold instruments for the payee (or acted as a nominee for the payee) through such account.

The preceding sentence shall not apply with respect to any readily tradable instrument acquired through such account after the broker was notified by the Secretary that the payee is subject to withholding under subsection (a)(1)(C).

(e) Period for which withholding is in effect

(1) Failure to furnish TIN

In the case of any failure by a payee to furnish his TIN to a payor in the manner required, subsection (a) shall apply to any reportable payment made by such payor during the period during which the TIN has not been furnished in the manner required. The Secretary may require that a TIN required to be furnished under subsection (a)(1)(A) be provided under penalties of perjury only with respect to interest, dividends, patronage dividends, and amounts subject to broker reporting.

(2) Notification of incorrect number

In any case in which the Secretary notifies the payor that the TIN furnished by the payee is incorrect, subsection (a) shall apply to any reportable payment made by such payor—

(A) after the close of the 30th day after the day on which the payor received such notification, and

(B) before the payee furnishes another TIN in the manner required.

(3) Notified payee underreporting described in subsection (c)

(A) In general

In the case of any notified payee underreporting described in subsection (c), subsection (a) shall apply to any reportable interest or dividend payment made—

(i) after the close of the 30th day after the day on which the payor received notification from the Secretary of such underreporting, and

(ii) before the stop date.

(B) Stop date

For purposes of this subsection, the term "stop date" means the determination effective date or, if later, the earlier of—

(i) the day on which the payor received notification from the Secretary under subsection (c)(3)(B) to stop withholding, or

(ii) the day on which the payor receives from the payee a certification provided by the

Secretary under subsection (c)(3)(B).

(C) Determination effective date

For purposes of this subsection—

(i) In general

Except as provided in clause (ii), the determination effective date of any determination under subsection (c)(3)(A) which is made during the 12-month period ending on October 15 of any calendar year shall be the first January 1 following such October 15.

(ii) Determination that there was no underreporting; hardship

In the case of any determination under clause (i) or (iii) of subsection (c)(3)(A), the determination effective date shall be the date on which the Secretary's determination is made.

(4) Failure to provide certification that payee is not subject to withholding

(A) In general

In the case of any payee certification failure described in subsection (d)(1), subsection (a) shall apply to any reportable interest or dividend payment made during the period during which the certification described in subsection (d)(1) has not been furnished to the payor.

(B) Special rule for readily tradable instruments acquired through broker where notification

In the case of any readily tradable instrument acquired by the payee through a broker, the period described in subparagraph (A) shall start with payments to the payee made after the close of the 30th day after the payor receives notification from a broker under subsection (d)(2)(B).

(5) 30-day grace periods

(A) Start-up

If the payor elects the application of this subparagraph with respect to the payee, subsection (a) shall also apply to any reportable payment made during the 30-day period described in paragraph (2)(A), (3)(A), or (4)(B).

(B) Stopping

Unless the payor elects not to have this subparagraph apply with respect to the payee, subsection (a) shall also apply to any reportable payment made after the close of the period described in paragraph (1), (2), or (4) (as the case may be) and before the 30th day after the close of such period. A similar rule shall also apply with respect to the period described in paragraph (3)(A) where the stop date is determined under clause (i) or (ii) of paragraph (3)(B).

(C) Election of shorter grace period

The payor may elect a period shorter than the grace period set forth in subparagraph (A) or (B), as the case may be.

(f) Confidentiality of information

(1) In general

No person may use any information obtained under this section (including any failure to certify under subsection (d)) except for purposes of meeting any requirement under this section or (subject to the safeguards set forth in section 6103) for purposes permitted under section 6103.

(2) Cross reference

For provision providing for civil damages for violation of paragraph (1), see section 7431.

(g) Exceptions

(1) Payments to certain payees

Subsection (a) shall not apply to any payment made to—

(A) any organization or governmental unit described in subparagraph (B), (C), (D), (E), or (F)

of section 6049(b)(4), or

(B) any other person specified in regulations.

(2) Amounts for which withholding otherwise required

Subsection (a) shall not apply to any amount for which withholding is otherwise required by this title.

(3) Exemption while waiting for TIN

The Secretary shall prescribe regulations for exemptions from the tax imposed by subsection (a) during the period during which a person is waiting for receipt of a TIN.

(h) Other definitions and special rules

For purposes of this section—

(1) Obviously incorrect number

A person shall be treated as failing to furnish his TIN if the TIN furnished does not contain the proper number of digits.

(2) Payee furnishes 2 incorrect TINs

If the payee furnishes the payor 2 incorrect TINs in any 3-year period, the payor shall, after receiving notice of the second incorrect TIN, treat the payee as not having furnished another TIN under subsection (e)(2)(B) until the day on which the payor receives notification from the Secretary that a correct TIN has been furnished.

(3) Joint payees

Except to the extent otherwise provided in regulations, any payment to joint payees shall be treated as if all the payment were made to the first person listed in the payment.

(4) Payor defined

The term "payor" means, with respect to any reportable payment, a person required to file a return described in paragraph (2) or (3) of subsection (b) with respect to such payment.

(5) Broker

(A) In general

The term "broker" has the meaning given to such term by section 6045(c)(1).

(B) Only 1 broker per acquisition

If, but for this subparagraph, there would be more than 1 broker with respect to any acquisition, only the broker having the closest contact with the payee shall be treated as the broker.

(C) Payor not treated as broker

In the case of any instrument, such term shall not include any person who is the payor with respect to such instrument.

(D) Real estate broker not treated as a broker

Except as provided by regulations, such term shall not include any real estate broker (as defined in section 6045(e)(2)).

(6) Readily tradable instrument

The term "readily tradable instrument" means—

(A) any instrument which is part of an issue any portion of which is traded on an established securities market (within the meaning of section 453(f)(5)), and

(B) except as otherwise provided in regulations prescribed by the Secretary, any instrument which is regularly quoted by brokers or dealers making a market.

(7) Original issue discount

To the extent provided in regulations, rules similar to the rules of paragraph (6) of section

6049(d) shall apply.

(8) Requirement of notice to payee

Whenever the Secretary notifies a payor under paragraph (1)(B) of subsection (a) that the TIN furnished by any payee is incorrect, the Secretary shall at the same time furnish a copy of such notice to the payor, and the payor shall promptly furnish such copy to the payee.

(9) Requirement of notice to Secretary

If the Secretary notifies a payor under paragraph (1)(B) of subsection (a) that the TIN furnished by any payee is incorrect and such payee subsequently furnishes another TIN to the payor, the payor shall promptly notify the Secretary of the other TIN so furnished.

(10) Coordination with other sections

For purposes of section 31, this chapter (other than section 3402(n)), and so much of subtitle F (other than section 7205) as relates to this chapter, payments which are subject to withholding under this section shall be treated as if they were wages paid by an employer to an employee (and amounts deducted and withheld under this section shall be treated as if deducted and withheld under section 3402).

(i) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.

(Added Pub. L. 98–67, title I, §104(a), Aug. 5, 1983, 97 Stat. 371; amended Pub. L. 98–369, div. A, title I, §152(a), title VII, §722(h)(1), (2), July 18, 1984, 98 Stat. 691, 975; Pub. L. 99–514, title XV, §§1521(b), 1523(b)(1), title XVIII, §1899A(46), Oct. 22, 1986, 100 Stat. 2746, 2748, 2961; Pub. L. 100–647, title I, §1018(u)(44), Nov. 10, 1988, 102 Stat. 3592; Pub. L. 102–486, title XIX, §1935(a), Oct. 24, 1992, 106 Stat. 3032; Pub. L. 107–16, title I, §101(c)(10), June 7, 2001, 115 Stat. 44; Pub. L. 110–289, div. C, title III, §3091(c), July 30, 2008, 122 Stat. 2911.)

AMENDMENTS

2008—Subsec. (b)(3)(F). Pub. L. 110–289 added subpar. (F).

2001—Subsec. (a)(1). Pub. L. 107–16 substituted "equal to the product of the fourth lowest rate of tax applicable under section 1(c) and such payment" for "equal to 31 percent of such payment" in concluding provisions.

1992—Subsec. (a)(1). Pub. L. 102–486, in closing provisions, substituted "31 percent" for "20 percent".

1988—Subsec. (h)(5)(D). Pub. L. 100–647 inserted period at end of subpar. (D).

1986—Subsec. (b)(3)(E). Pub. L. 99–514, §1523(b)(1), added subpar. (E).

Subsec. (b)(6). Pub. L. 99–514, §1899A(46), substituted "6041A(a)" for "6041(A)(a)" in heading.

Subsec. (h)(5)(D). Pub. L. 99–514, §1521(b), added subpar. (D).

1984—Subsec. (c)(1). Pub. L. 98–369, §722(h)(2), substituted "(but not the reasons for the withholding under subsection (a)(1)(C))" for "(but not the reasons therefor)".

Subsec. (d)(2)(A). Pub. L. 98–369, §722(h)(1)(A), inserted "the payor was notified by a broker under subparagraph (B) or" after "if (and only if)" in provisions preceding cl. (i), struck out cl. (i) which read as follows: "the payor was notified by a broker under subparagraph (B)," and redesignated cls. (ii) and (iii) as (i) and (ii), respectively.

Subsec. (d)(2)(B). Pub. L. 98–369, §722(h)(1)(B), in amending subpar. (B) generally, reenacted cl. (i), in cl. (ii) inserted "with respect to such acquisition—", added subcls. (I) and (II), redesignated former subcls. (I) and (II) as (III) and (IV), respectively, and in subcl. (III) substituted "the Secretary notifies such broker" for "such broker is notified by the Secretary", and in provisions following cl. (ii) substituted "shall within such period as the Secretary may prescribe by regulations (but not later than 15 days after such acquisition), notify the payor that such payee is subject to withholding under subparagraph (A), (B), (C) or (D) of subsection (a)(1)," for "within 15 days after the date of the acquisition notify the payor that such payee is subject to withholding under subsection (a)(1)(D) (or subsection (a)(1)(C) in the case of a notification described in clause (ii)(II)."

Subsec. (e)(1). Pub. L. 98–369, §152(a), inserted provision that the Secretary may require that a TIN required to be furnished under subsection (a)(1)(A) be provided under penalties of perjury only with respect to interest, dividends, patronage dividends, and amounts subject to broker reporting.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–289, div. C, title III, §3091(e), July 30, 2008, 122 Stat. 2911, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting section 6050W of this title and amending this section and section 6724 of this title] shall apply to returns for calendar years beginning after December 31, 2010.

"(2) APPLICATION OF BACKUP WITHHOLDING.—

"(A) IN GENERAL.—The amendment made by subsection (c) [amending this section] shall apply to amounts paid after December 31, 2011.

"(B) ELIGIBILITY FOR TIN MATCHING PROGRAM.—Solely for purposes of carrying out any TIN matching program established by the Secretary under section 3406(i) of the Internal Revenue Code of 1986—

"(i) the amendments made this section shall be treated as taking effect on the date of the enactment of this Act [July 30, 2008], and

"(ii) each person responsible for setting the standards and mechanisms referred to in section 6050W(d)(2)(C) of such Code, as added by this section, for settling transactions involving payment cards shall be treated in the same manner as a payment settlement entity."

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to amounts paid after the 60th day after June 7, 2001, and references to income brackets and rates of tax in such amendment to be applied without regard to section 1(i)(1)(D) of this title, see section 101(d)(2) of Pub. L. 107–16, set out as an Effective and Termination Dates of 2001 Amendment note under section 1 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–486, title XIX, §1935(b), Oct. 24, 1992, 106 Stat. 3032, provided that: "The amendment made by subsection (a) [amending this section] shall apply to amounts paid after December 31, 1992."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1521(b) of Pub. L. 99–514 applicable to real estate transactions closing after Dec. 31, 1986, see section 1521(c) of Pub. L. 99–514, set out as a note under section 6045 of this title.

Amendment by section 1523(b)(1) of Pub. L. 99–514 applicable to payments made after Dec. 31, 1986, see section 1523(d) of Pub. L. 99–514, set out as an Effective Date note under section 6050N of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §152(b), July 18, 1984, 98 Stat. 691, provided that: "The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [July 18, 1984]."

Amendment by section 722(h)(1), (2) of Pub. L. 98–369 applicable as if included in amendments made by Interest and Dividend Tax Compliance Act of 1983, Pub. L. 98–67, see section 722(h)(5)(A) of Pub. L. 98–369, set out as a note under section 643 of this title.

EFFECTIVE DATE

Section applicable with respect to payments made after Dec. 31, 1983, see section 110(a) of Pub. L. 98–67, set out as an Effective Date of 1983 Amendment note under section 31 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[§§3451 to 3456. Repealed. Pub. L. 98–67, title I, §102(a), Aug. 5, 1983, 97 Stat.

369]

Section 3451, Pub. L. 97–248, title III, §301, Sept. 3, 1982, 96 Stat. 576, set forth withholding requirements respecting income tax collected at source on interest, dividends, and patronage dividends.

Section 3452, Pub. L. 97–248, title III, §301, Sept. 3, 1982, 96 Stat. 577, related to exemptions from withholding requirements.

Section 3453, Pub. L. 97–248, title III, §301, Sept. 3, 1982, 96 Stat. 579; Pub. L. 97–354, §3(i)(1), Oct. 19, 1982, 96 Stat. 1690, defined "payor".

Section 3454, Pub. L. 97–248, title III, §301, Sept. 3, 1982, 96 Stat. 580; Pub. L. 97–354, §3(i)(2), (3), Oct. 19, 1982, 96 Stat. 1690; Pub. L. 97–424, title V, §547(b)(3), Jan. 6, 1983, 96 Stat. 2200, defined the terms "interest", "dividend", and "patronage dividend".

Section 3455, Pub. L. 97–248, title III, §301, Sept. 3, 1982, 96 Stat. 583, set forth definitions and other special rules.

Section 3456, Pub. L. 97–248, title III, §301, Sept. 3, 1982, 96 Stat. 585, set forth administrative provisions.

EFFECTIVE DATES; SPECIAL RULES

Pub. L. 97–248, title III, §308, Sept. 3, 1982, 96 Stat. 591, which provided that the amendments made by sections 301 to 308 [enacting subchapter B (§§3451–3456) of chapter 24 of this title and amending sections 31, 274, 275, 643, 661, 3403, 3502, 3507, 6013, 6015, 6042, 6044, 6049, 6051, 6365, 6401, 6413, 6654, 6682, 7205, 7215, 7654, and 7701 of this title] would apply to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, provided for the delay in applications for payors unable to comply with the requirements of such provisions without undue hardship, provided a temporary rule for certain withholding exemptions, and provided for delays in making deposits, was repealed by Pub. L. 98–67, title I, §102(a), Aug. 5, 1983, 97 Stat. 369.

REPEAL OF WITHHOLDING ON INTEREST AND DIVIDENDS

Pub. L. 98–67, title I, §102(a)–(d), Aug. 5, 1983, 97 Stat. 369, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) IN GENERAL.—Subtitle A of title III of the Tax Equity and Fiscal Responsibility Act of 1982 (relating to withholding of tax from interest and dividends) [subtitle A (§§301–308) of title III of Pub. L. 97–248, which enacted this section and sections 3452 to 3456 of this title, amended sections 31, 274, 275, 643, 661, 3403, 3502, 3507, 6013, 6015, 6042, 6044, 6051, 6365, 6401, 6413, 6654, 6682, 7205, 7215, 7654, and 7701 of this title and enacted provisions set out as a note above] is hereby repealed as of the close of June 30, 1983.

"(b) CONFORMING AMENDMENT.—Except as provided in this section, the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall be applied and administered as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

"(c) REPEAL NOT TO APPLY TO AMOUNTS DEDUCTED AND WITHHELD BEFORE SEPTEMBER 2, 1983.—

"(1) IN GENERAL.—If, notwithstanding the repeal made by subsection (a) (and the provisions of subsection (b)), an amount is deducted and withheld before September 2, 1983, under subchapter B of chapter 24 of the Internal Revenue Code of 1986 (as in effect before its repeal by subsection (a)), the repeal made by subsection (a) (and the provisions of subsection (b)) shall not apply to the amount so deducted and withheld.

"(2) ELECTION TO HAVE PARAGRAPH (1) NOT APPLY.—Paragraph (1) shall not apply with respect to any payor who elects (at the time and in the manner prescribed by the Secretary of the Treasury or his delegate) to have paragraph (1) not apply.

"(d) ESTIMATED TAX PAYMENTS.—For purposes of determining the amount of any addition to tax under section 6654 of the Internal Revenue Code of 1986 with respect to any installment required to be paid before July 1, 1983, the amount of the credit allowed by section 31 of such Code for any taxable year which includes any portion of the period beginning July 1, 1983, and ending December 31, 1983, shall be increased by an amount equal to 10 percent of the aggregate amount of payments—

"(1) which are received during the portion of such taxable year after June 30, 1983, and before January 1, 1984, and

"(2) which (but for the repeal made by subsection (a)) would have been subject to withholding under subchapter B of chapter 24 of such Code (determined without regard to any exemption described in section 3452 of such subchapter B)."

CHAPTER 25—GENERAL PROVISIONS RELATING TO EMPLOYMENT TAXES

Sec.
3501. Collection and payment of taxes.
3502. Nondeductibility of taxes in computing taxable income.
3503. Erroneous payments.
3504. Acts to be performed by agents.
3505. Liability of third parties paying or providing for wages.
3506. Individuals providing companion sitting placement services.
[3507. Repealed.]
3508. Treatment of real estate agents and direct sellers.
3509. Determination of employer's liability for certain employment taxes.
3510. Coordination of collection of domestic service employment taxes with collection of income taxes.

AMENDMENTS

2010—Pub. L. 111–226, title II, §219(b)(3), Aug. 10, 2010, 124 Stat. 2403, struck out item 3507 "Advance payment of earned income credit".

1994—Pub. L. 103–387, §2(b)(2), Oct. 22, 1994, 108 Stat. 4074, added item 3510.

1990—Pub. L. 101–508, title XI, §11801(b)(16), Nov. 5, 1990, 104 Stat. 1388–522, struck out item 3510 "Credit for increased social security employee taxes and railroad retirement tier 1 employee taxes imposed during 1984".

1983—Pub. L. 98–67 repealed amendments made by section 307 of Pub. L. 97–248. See 1982 Amendment note below.

Pub. L. 98–21, title I, §123(b)(2), Apr. 20, 1983, 97 Stat. 88, added item 3510.

1982—Pub. L. 97–248, title II, §§269(d), 270(b), Sept. 3, 1982, 96 Stat. 553, 554, added items 3508 and 3509.

Pub. L. 97–248, title III, §§307(b)(5), 308(a), Sept. 3, 1982, 96 Stat. 591, provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, the caption of chapter 25 is amended by inserting "AND COLLECTION OF INCOME TAXES AT SOURCE". Section 102(a), (b) of Pub. L. 98–67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§301–308) of title III of Pub. L. 97–248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 [now 1986] [this title] shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

1978—Pub. L. 95–600, title I, §105(b)(2), Nov. 6, 1978, 92 Stat. 2776, added item 3507.

1977—Pub. L. 95–171, §10(b), Nov. 12, 1977, 91 Stat. 1356, added item 3506.

1966—Pub. L. 89–719, title I, §105(c), Nov. 2, 1966, 80 Stat. 1139, added item 3505.

§3501. Collection and payment of taxes

(a) General rule

The taxes imposed by this subtitle shall be collected by the Secretary and shall be paid into the Treasury of the United States as internal-revenue collections.

(b) Taxes with respect to non-cash fringe benefits

The taxes imposed by this subtitle with respect to non-cash fringe benefits shall be collected (or paid) by the employer at the time and in the manner prescribed by the Secretary by regulations.

(Aug. 16, 1954, ch. 736, 68A Stat. 471; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–369, div. A, title V, §531(d)(5), July 18, 1984, 98 Stat. 885.)

AMENDMENTS

1984—Pub. L. 98–369 designated existing provisions as subsec. (a), added heading, and added subsec. (b).

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective Jan. 1, 1985, see section 531(h) of Pub. L. 98–369, set out as an Effective Date note under section 132 of this title.

§3502. Nondeductibility of taxes in computing taxable income

(a) The taxes imposed by section 3101 of chapter 21, and by sections 3201 and 3211 of chapter 22 shall not be allowed as a deduction to the taxpayer in computing taxable income under subtitle A.

(b) The tax deducted and withheld under chapter 24 shall not be allowed as a deduction either to the employer or to the recipient of the income in computing taxable income under subtitle A.

(Aug. 16, 1954, ch. 736, 68A Stat. 471; Pub. L. 97–248, title III, §§305(b), 308(a), Sept. 3, 1982, 96 Stat. 588, 591; Pub. L. 98–67, title I, §102(a), Aug. 5, 1983, 97 Stat. 369.)

AMENDMENTS

1983—Subsecs. (b), (c). Pub. L. 98–67 repealed amendments made by Pub. L. 97–248. See 1982 Amendment note below.

1982—Subsecs. (b), (c). Pub. L. 97–248 provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, subsec. (b) is amended and a new subsec. (c) is added. Section 102(a), (b) of Pub. L. 98–67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§301–308) of title III of Pub. L. 97–248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 [now 1986] [this title] shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

§3503. Erroneous payments

Any tax paid under chapter 21 or 22 by a taxpayer with respect to any period with respect to which he is not liable to tax under such chapter shall be credited against the tax, if any, imposed by such other chapter upon the taxpayer, and the balance, if any, shall be refunded.

(Aug. 16, 1954, ch. 736, 68A Stat. 471.)

§3504. Acts to be performed by agents

In case a fiduciary, agent, or other person has the control, receipt, custody, or disposal of, or pays the wages of an employee or group of employees, employed by one or more employers, the Secretary, under regulations prescribed by him, is authorized to designate such fiduciary, agent, or other person to perform such acts as are required of employers under this title and as the Secretary may specify. Except as may be otherwise prescribed by the Secretary, all provisions of law (including penalties) applicable in respect of an employer shall be applicable to a fiduciary, agent, or other person so designated but, except as so provided, the employer for whom such fiduciary, agent, or other person acts shall remain subject to the provisions of law (including penalties) applicable in respect of employers.

(Aug. 16, 1954, ch. 736, 68A Stat. 471; Pub. L. 85–866, title I, §71, Sept. 2, 1958, 72 Stat. 1660; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" in three places.

1958—Pub. L. 85–866 substituted "title" for "subtitle" in first sentence.

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85–866, title I, §71, Sept. 2, 1958, 72 Stat. 1660, provided that the amendment made by that section is effective with respect to remuneration paid after Dec. 31, 1954.

§3505. Liability of third parties paying or providing for wages

(a) Direct payment by third parties

For purposes of sections 3102, 3202, 3402, and 3403, if a lender, surety, or other person, who is not an employer under such sections with respect to an employee or group of employees, pays wages directly to such an employee or group of employees, employed by one or more employers, or to an agent on behalf of such employee or employees, such lender, surety, or other person shall be liable in his own person and estate to the United States in a sum equal to the taxes (together with interest) required to be deducted and withheld from such wages by such employer.

(b) Personal liability where funds are supplied

If a lender, surety, or other person supplies funds to or for the account of an employer for the specific purpose of paying wages of the employees of such employer, with actual notice or knowledge (within the meaning of section 6323(i)(1)) that such employer does not intend to or will not be able to make timely payment or deposit of the amounts of tax required by this subtitle to be deducted and withheld by such employer from such wages, such lender, surety, or other person shall be liable in his own person and estate to the United States in a sum equal to the taxes (together with interest) which are not paid over to the United States by such employer with respect to such wages. However, the liability of such lender, surety, or other person shall be limited to an amount equal to 25 percent of the amount so supplied to or for the account of such employer for such purpose.

(c) Effect of payment

Any amounts paid to the United States pursuant to this section shall be credited against the liability of the employer.

(Added Pub. L. 89–719, title I, §105(a), Nov. 2, 1966, 80 Stat. 1138.)

EFFECTIVE DATE

Section applicable only with respect to wages paid on or after Jan. 1, 1967, see section 114(c)(1) of Pub. L. 89–719, set out as an Effective Date of 1966 Amendment note under section 6323 of this title.

§3506. Individuals providing companion sitting placement services

(a) In general

For purposes of this subtitle, a person engaged in the trade or business of putting sitters in touch with individuals who wish to employ them shall not be treated as the employer of such sitters (and such sitters shall not be treated as employees of such person) if such person does not pay or receive the salary or wages of the sitters and is compensated by the sitters or the persons who employ them on a fee basis.

(b) Definition

For purposes of this section, the term "sitters" means individuals who furnish personal attendance, companionship, or household care services to children or to individuals who are elderly or disabled.

(c) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purpose of this section.

(Added Pub. L. 95–171, §10(a), Nov. 12, 1977, 91 Stat. 1356.)

EFFECTIVE DATE

Pub. L. 95–171, §10(c), Nov. 12, 1977, 91 Stat. 1356, provided that: "The amendments made by this section [enacting this section] shall apply to remuneration received after December 31, 1974."

UNEMPLOYMENT COMPENSATION OR SOCIAL SECURITY BENEFITS BASED ON SERVICES PERFORMED BEFORE NOVEMBER 12, 1977, UNAFFECTED

Pub. L. 95–171, §10(d), Nov. 12, 1977, 91 Stat. 1356, provided that: "The amendments made by this section [enacting this section] shall not be construed as affecting (1) any individual's right to receive unemployment compensation based on services performed before the date of the enactment of this Act [Nov.

12, 1977], or (2) any individual's eligibility for social security benefits to the extent based on services performed before that date."

[§3507. Repealed. Pub. L. 111–226, title II, §219(a)(1), Aug. 10, 2010, 124 Stat. 2403]

Section, added Pub. L. 95–600, title I, §105(b)(1), Nov. 6, 1978, 92 Stat. 2773; amended Pub. L. 97–248, title III, §§307(a)(3), 308(a), Sept. 3, 1982, 96 Stat. 589, 591; Pub. L. 98–67, title I, §102(a), Aug. 5, 1983, 97 Stat. 369; Pub. L. 98–369, div. A, title IV, §474(r)(30), title X, §1042(d)(3), (4), July 18, 1984, 98 Stat. 845, 1044; Pub. L. 99–514, title I, §111(d)(2), (3), Oct. 22, 1986, 100 Stat. 2108; Pub. L. 101–508, title XI, §11111(c), Nov. 5, 1990, 104 Stat. 1388–412; Pub. L. 103–66, title XIII, §13131(d)(4)–(6), Aug. 10, 1993, 107 Stat. 435; Pub. L. 103–465, title VII, §721(c), Dec. 8, 1994, 108 Stat. 5002, related to advance payment of earned income credit.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 2010, see section 219(c) of Pub. L. 111–226, set out as an Effective Date of 2010 Amendment note under section 32 of this title.

§3508. Treatment of real estate agents and direct sellers

(a) General rule

For purposes of this title, in the case of services performed as a qualified real estate agent or as a direct seller—

(1) the individual performing such services shall not be treated as an employee, and

(2) the person for whom such services are performed shall not be treated as an employer.

(b) Definitions

For purposes of this section—

(1) Qualified real estate agent

The term "qualified real estate agent" means any individual who is a sales person if—

(A) such individual is a licensed real estate agent,

(B) substantially all of the remuneration (whether or not paid in cash) for the services performed by such individual as a real estate agent is directly related to sales or other output (including the performance of services) rather than to the number of hours worked, and

(C) the services performed by the individual are performed pursuant to a written contract between such individual and the person for whom the services are performed and such contract provides that the individual will not be treated as an employee with respect to such services for Federal tax purposes.

(2) Direct seller

The term "direct seller" means any person if—

(A) such person—

(i) is engaged in the trade or business of selling (or soliciting the sale of) consumer products to any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis which the Secretary prescribes by regulations, for resale (by the buyer or any other person) in the home or otherwise than in a permanent retail establishment,

(ii) is engaged in the trade or business of selling (or soliciting the sale of) consumer products in the home or otherwise than in a permanent retail establishment, or

(iii) is engaged in the trade or business of the delivering or distribution of newspapers or shopping news (including any services directly related to such trade or business),

(B) substantially all the remuneration (whether or not paid in cash) for the performance of the services described in subparagraph (A) is directly related to sales or other output (including the

performance of services) rather than to the number of hours worked, and

(C) the services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed and such contract provides that the person will not be treated as an employee with respect to such services for Federal tax purposes.

(3) Coordination with retirement plans for selfemployed

This section shall not apply for purposes of subtitle A to the extent that the individual is treated as an employee under section 401(c)(1) (relating to self-employed individuals).

(Added Pub. L. 97–248, title II, §269(a), Sept. 3, 1982, 96 Stat. 551; amended Pub. L. 104–188, title I, §1118(a), Aug. 20, 1996, 110 Stat. 1764.)

AMENDMENTS

1996—Subsec. (b)(2)(A). Pub. L. 104–188 added cl. (iii).

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title XI, §1118(b), Aug. 20, 1996, 110 Stat. 1764, provided that: "The amendments made by this section shall apply to services performed after December 31, 1995."

EFFECTIVE DATE

Pub. L. 97–248, title II, §269(e), Sept. 3, 1982, 96 Stat. 553, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this section and amending section 410 of Title 42, The Public Health and Welfare] shall apply to services performed after December 31, 1982.

"(2) SUBSECTION (c).—The amendments made by subsection (c) [amending provisions set out as a note under section 3401 of this title] shall take effect on July 1, 1982."

RULES AND REGULATIONS

Pub. L. 97–248, title II, §269(c)(3), Sept. 3, 1982, 96 Stat. 553, provided that: "Nothing in section 530 of the Revenue Act of 1978 [set out as a note under section 3401 of this title] shall be construed to prohibit the implementation of the amendments made by this section [enacting this section, amending section 410 of Title 42, The Public Health and Welfare, and amending provisions set out as a note under section 3401 of this title]."

§3509. Determination of employer's liability for certain employment taxes

(a) In general

If any employer fails to deduct and withhold any tax under chapter 24 or subchapter A of chapter 21 with respect to any employee by reason of treating such employee as not being an employee for purposes of such chapter or subchapter, the amount of the employer's liability for—

(1) Withholding taxes

Tax under chapter 24 for such year with respect to such employee shall be determined as if the amount required to be deducted and withheld were equal to 1.5 percent of the wages (as defined in section 3401) paid to such employee.

(2) Employee social security tax

Taxes under subchapter A of chapter 21 with respect to such employee shall be determined as if the taxes imposed under such subchapter were 20 percent of the amount imposed under such subchapter without regard to this subparagraph.

(b) Employer's liability increased where employer disregards reporting requirements

(1) In general

In the case of an employer who fails to meet the applicable requirements of section 6041(a), 6041A, or 6051 with respect to any employee, unless such failure is due to reasonable cause and not willful neglect, subsection (a) shall be applied with respect to such employee—

(A) by substituting "3 percent" for "1.5 percent" in paragraph (1); and
(B) by substituting "40 percent" for "20 percent" in paragraph (2).

(2) Applicable requirements

For purposes of paragraph (1), the term "applicable requirements" means the requirements described in paragraph (1) which would be applicable consistent with the employer's treatment of the employee as not being an employee for purposes of chapter 24 or subchapter A of chapter 21.

(c) Section not to apply in cases of intentional disregard

This section shall not apply to the determination of the employer's liability for tax under chapter 24 or subchapter A of chapter 21 if such liability is due to the employer's intentional disregard of the requirement to deduct and withhold such tax.

(d) Special rules

For purposes of this section—

(1) Determination of liability

If the amount of any liability for tax is determined under this section—

(A) the employee's liability for tax shall not be affected by the assessment or collection of the tax so determined,

(B) the employer shall not be entitled to recover from the employee any tax so determined, and

(C) sections [1] 3402(d) and section 6521 shall not apply.

(2) Section not to apply where employer deducts wage but not social security taxes

This section shall not apply to any employer with respect to any wages if—

(A) the employer deducted and withheld any amount of the tax imposed by chapter 24 on such wages, but

(B) failed to deduct and withhold the amount of the tax imposed by subchapter A of chapter 21 with respect to such wages.

(3) Section not to apply to certain statutory employees

This section shall not apply to any tax under subchapter A of chapter 21 with respect to an individual described in subsection (d)(3) of section 3121 (without regard to whether such individual is described in paragraph (1) or (2) of such subsection).

(Added Pub. L. 97–248, title II, §270(a), Sept. 3, 1982, 96 Stat. 553; amended Pub. L. 100–647, title II, §2003(d), Nov. 10, 1988, 102 Stat. 3598; Pub. L. 101–508, title V, §5130(a)(4), Nov. 5, 1990, 104 Stat. 1388–289.)

AMENDMENTS

1990—Subsec. (d)(3). Pub. L. 101–508 substituted "subsection (d)(3)" for "subsection (d)(4)".
1988—Subsec. (d)(3). Pub. L. 100–647 substituted "subsection (d)(4)" for "subsection (d)(3)".

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective as if included in the enactment of Pub. L. 100–647, §2003(d), see section 5130(b) of Pub. L. 101–508, set out as a note under section 1402 of this title.

EFFECTIVE DATE

Pub. L. 97–248, title II, §270(c), Sept. 3, 1982, 96 Stat. 554, provided that: "The amendment made by this section [enacting this section] shall take effect on the date of the enactment of this Act [Sept. 3, 1982], except that such amendments shall not apply to any assessment made before January 1, 1983."

[1] So in original. Probably should be "section".

§3510. Coordination of collection of domestic service employment taxes with

collection of income taxes

(a) General rule

Except as otherwise provided in this section—

(1) returns with respect to domestic service employment taxes shall be made on a calendar year basis,

(2) any such return for any calendar year shall be filed on or before the 15th day of the fourth month following the close of the employer's taxable year which begins in such calendar year, and

(3) no requirement to make deposits (or to pay installments under section 6157) shall apply with respect to such taxes.

(b) Domestic service employment taxes subject to estimated tax provisions

(1) In general

Solely for purposes of section 6654, domestic service employment taxes imposed with respect to any calendar year shall be treated as a tax imposed by chapter 2 for the taxable year of the employer which begins in such calendar year.

(2) Employers not otherwise required to make estimated payments

Paragraph (1) shall not apply to any employer for any calendar year if—

(A) no credit for wage withholding is allowed under section 31 to such employer for the taxable year of the employer which begins in such calendar year, and

(B) no addition to tax would (but for this section) be imposed under section 6654 for such taxable year by reason of section 6654(e).

(3) Annualization

Under regulations prescribed by the Secretary, appropriate adjustments shall be made in the application of section 6654(d)(2) in respect of the amount treated as tax under paragraph (1).

(4) Transitional rule

In the case of any taxable year beginning before January 1, 1998, no addition to tax shall be made under section 6654 with respect to any underpayment to the extent such underpayment was created or increased by this section.

(c) Domestic service employment taxes

For purposes of this section, the term "domestic service employment taxes" means—

(1) any taxes imposed by chapter 21 or 23 on remuneration paid for domestic service in a private home of the employer, and

(2) any amount withheld from such remuneration pursuant to an agreement under section 3402(p).

For purposes of this subsection, the term "domestic service in a private home of the employer" includes domestic service described in section 3121(g)(5).

(d) Exception where employer liable for other employment taxes

To the extent provided in regulations prescribed by the Secretary, this section shall not apply to any employer for any calendar year if such employer is liable for any tax under this subtitle with respect to remuneration for services other than domestic service in a private home of the employer.

(e) General regulatory authority

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section. Such regulations may treat domestic service employment taxes as taxes imposed by chapter 1 for purposes of coordinating the assessment and collection of such employment taxes with the assessment and collection of domestic employers' income taxes.

(f) Authority to enter into agreements to collect State unemployment taxes

(1) In general

The Secretary is hereby authorized to enter into an agreement with any State to collect, as the agent of such State, such State's unemployment taxes imposed on remuneration paid for domestic service in a private home of the employer. Any taxes to be collected by the Secretary pursuant to such an agreement shall be treated as domestic service employment taxes for purposes of this section.

(2) Transfers to State account

Any amount collected under an agreement referred to in paragraph (1) shall be transferred by the Secretary to the account of the State in the Unemployment Trust Fund.

(3) Subtitle F made applicable

For purposes of subtitle F, any amount required to be collected under an agreement under paragraph (1) shall be treated as a tax imposed by chapter 23.

(4) State

For purposes of this subsection, the term "State" has the meaning given such term by section 3306(j)(1).

(Added Pub. L. 103–387, §2(b)(1), Oct. 22, 1994, 108 Stat. 4073.)

PRIOR PROVISIONS

A prior section 3510, added Pub. L. 98–21, title I, §123(b)(1), Apr. 20, 1983, 97 Stat. 88, provided a credit for increased social security employee taxes and railroad retirement tier 1 employee taxes imposed during 1984, prior to repeal by Pub. L. 101–508, title XI, §11801(a)(42), Nov. 5, 1990, 104 Stat. 1388–521.

EFFECTIVE DATE

Pub. L. 103–387, §2(b)(3), Oct. 22, 1994, 108 Stat. 4074, provided that: "The amendments made by this subsection [enacting this section] shall apply to remuneration paid in calendar years beginning after December 31, 1994."

EXPANDED INFORMATION TO EMPLOYERS

Pub. L. 103–387, §2(b)(4), Oct. 22, 1994, 108 Stat. 4074, provided that: "The Secretary of the Treasury or the Secretary's delegate shall prepare and make available information on the Federal tax obligations of employers with respect to employees performing domestic service in a private home of the employer. Such information shall also include a statement that such employers may have obligations with respect to such employees under State laws relating to unemployment insurance and workers compensation."

Subtitle D—Miscellaneous Excise Taxes

Chapter		Sec.[1]
31.	**Retail excise taxes**	**4001**
32.	**Manufacturers excise taxes**	**4061**
33.	**Facilities and services**	**4231**
34.	**Taxes on certain insurance policies**	**4371**
35.	**Taxes on wagering**	**4401**
36.	**Certain other excise taxes**	**4451**
[37.	**Repealed.]**	
38.	**Environmental taxes**	**4611**
39.	**Registration-required obligations**	**4701**
40.	**General provisions relating to occupational taxes**	**4901**
41.	**Public charities**	**4911**
42.	**Private foundations; and certain other tax-exempt organizations**	**4940**
43.	**Qualified pension, etc., plans**	**4971**
44.	**Real estate investment trusts**	**4981**
45.	**Provisions relating to expatriated entities**	**4985**
46.	**Golden parachute payments**	**4999**
47.	**Certain group health plans**	**5000**

48. Maintenance of minimum essential coverage 5000A
49. Cosmetic services 5000B
50. Foreign procurement 5000C

AMENDMENTS

2011—Pub. L. 111–347, title III, §301(a)(2), Jan. 2, 2011, 124 Stat. 3666, added item for chapter 50.

2010—Pub. L. 111–148, title X, §10907(c), Mar. 23, 2010, 124 Stat. 1020, added item for chapter 49.

Pub. L. 111–148, title IX, §9017(b), Mar. 23, 2010, 124 Stat. 872, which directed amendment of analysis by adding item for chapter 49, was not executed in view of Pub. L. 111–148, title X, §10907(a), Mar. 23, 2010, 124 Stat. 1020, which provided that the amendments made by section 9017 of Pub. L. 111–148 were deemed null, void, and of no effect.

Pub. L. 111–148, title I, §1501(c), title VI, §6301(e)(2)(B)(ii), Mar. 23, 2010, 124 Stat. 249, 747, added items for chapters 34 and 48 and struck out former item for chapter 34 "Documentary stamp taxes".

2004—Pub. L. 108–357, title VIII, §802(c)(2), Oct. 22, 2004, 118 Stat. 1568, added item for chapter 45.

1990—Pub. L. 101–508, title XI, §11801(b)(17), Nov. 5, 1990, 104 Stat. 1388–522, struck out item for chapter 37 "Sugar, coconut and palm oil".

1989—Pub. L. 101–239, title VI, §6202(b)(4)(B), title VII, §7841(d)(4), Dec. 19, 1989, 103 Stat. 2233, 2428, substituted semicolon for comma in item for chapter 42 and struck out "large" after "Certain" in item for chapter 47.

1988—Pub. L. 100–418, title I, §1941(b)(3)(A), Aug. 23, 1988, 102 Stat. 1324, struck out item for chapter 45 "Windfall profit tax on domestic crude oil".

1987—Pub. L. 100–203, title X, §10712(c)(8), Dec. 22, 1987, 101 Stat. 1330–467, substituted "and certain other tax-exempt organizations" for "black lung benefit trusts" in item for chapter 42.

1986—Pub. L. 99–509, title IX, §9319(d)(2), Oct. 21, 1986, 100 Stat. 2012, added item for chapter 47.

1984—Pub. L. 98–369, div. A, title I, §67(d)(2), July 18, 1984, 98 Stat. 587, added item for chapter 46.

1983—Pub. L. 97–424, title V, §512(b)(2)(B), Jan. 6, 1983, 96 Stat. 2177, substituted "Retail excise taxes" for "Special fuels" in item for chapter 31.

1982—Pub. L. 97–248, title III, §310(b)(4)(B), Sept. 3, 1982, 96 Stat. 598, added item for chapter 39.

1980—Pub. L. 96–510, title II, §211(b), Dec. 11, 1980, 94 Stat. 2801, added item for chapter 38.

Pub. L. 96–223, §101(a)(2), Apr. 2, 1980, 94 Stat. 250, added item for chapter 45.

1978—Pub. L. 95–227, §4(c)(2)(C), Feb. 10, 1978, 92 Stat. 22, inserted ", black lung benefit trusts" after "foundations" in item for chapter 42.

1976—Pub. L. 94–455, title XIII, §1307(d)(3)(A), title XVI, §1605(c), title XIX, §§1904(b)(7)(E), (10)(G), 1952(n)(6), Oct. 4, 1976, 90 Stat. 1728, 1755, 1815, 1818, 1846, substituted "41. Public charities" for "41. Interest equalization tax" added item for chapter 44 and struck out items for chapters "38. Import taxes" and "39. Regulatory taxes".

1974—Pub. L. 93–406, title II, §1016(b)(2), Sept. 2, 1974, 88 Stat. 932, added item for chapter 43.

1969—Pub. L. 91–172, title I, §101(j)(59), Dec. 30, 1969, 83 Stat. 532, added item for chapter 42.

1964—Pub. L. 88–563, §2(b), Sept. 2, 1964, 78 Stat. 841, added item for chapter 41.

IMPOSITION OF ANNUAL FEE ON BRANDED PRESCRIPTION PHARMACEUTICAL MANUFACTURERS AND IMPORTERS

Pub. L. 111–148, title IX, §9008, Mar. 23, 2010, 124 Stat. 859, as amended by Pub. L. 111–152, title I, §1404(a), Mar. 30, 2010, 124 Stat. 1064, provided that:

"(a) IMPOSITION OF FEE.—

"(1) IN GENERAL.—Each covered entity engaged in the business of manufacturing or importing branded prescription drugs shall pay to the Secretary of the Treasury not later than the annual payment date of each calendar year beginning after 2010 a fee in an amount determined under subsection (b).

"(2) ANNUAL PAYMENT DATE.—For purposes of this section, the term 'annual payment date' means with respect to any calendar year the date determined by the Secretary, but in no event later than September 30 of such calendar year.

"(b) DETERMINATION OF FEE AMOUNT.—

"(1) IN GENERAL.—With respect to each covered entity, the fee under this section for any calendar year shall be equal to an amount that bears the same ratio to the applicable amount as—

"(A) the covered entity's branded prescription drug sales taken into account during the preceding calendar year, bear to

"(B) the aggregate branded prescription drug sales of all covered entities taken into account during such preceding calendar year.

"(2) SALES TAKEN INTO ACCOUNT.—For purposes of paragraph (1), the branded prescription drug sales taken into account during any calendar year with respect to any covered entity shall be determined in accordance with the following table:

"With respect to a covered entity's aggregate branded prescription drug sales during the calendar year that are:	The percentage of such sales taken into account is:
Not more than $5,000,000	0 percent
More than $5,000,000 but not more than $125,000,000	10 percent
More than $125,000,000 but not more than $225,000,000	40 percent
More than $225,000,000 but not more than $400,000,000	75 percent
More than $400,000,000	100 percent.

"(3) SECRETARIAL DETERMINATION.—The Secretary of the Treasury shall calculate the amount of each covered entity's fee for any calendar year under paragraph (1). In calculating such amount, the Secretary of the Treasury shall determine such covered entity's branded prescription drug sales on the basis of reports submitted under subsection (g) and through the use of any other source of information available to the Secretary of the Treasury.

"(4) APPLICABLE AMOUNT.—For purposes of paragraph (1), the applicable amount shall be determined in accordance with the following table:

"Calendar year	**Applicable amount**
2011	$2,500,000,000
2012	$2,800,000,000
2013	$2,800,000,000
2014	$3,000,000,000
2015	$3,000,000,000
2016	$3,000,000,000
2017	$4,000,000,000
2018	$4,100,000,000
2019 and thereafter	$2,800,000,000.

"(c) TRANSFER OF FEES TO MEDICARE PART B TRUST FUND.—There is hereby appropriated to the Federal Supplementary Medical Insurance Trust Fund established under section 1841 of the Social Security Act [42 U.S.C. 1395t] an amount equal to the fees received by the Secretary of the Treasury under subsection (a).

"(d) COVERED ENTITY.—

"(1) IN GENERAL.—For purposes of this section, the term 'covered entity' means any manufacturer or importer with gross receipts from branded prescription drug sales.

"(2) CONTROLLED GROUPS.—

"(A) IN GENERAL.—For purposes of this subsection, all persons treated as a single employer under subsection (a) or (b) of section 52 of the Internal Revenue Code of 1986 or subsection (m) or (o) of section 414 of such Code shall be treated as a single covered entity.

"(B) INCLUSION OF FOREIGN CORPORATIONS.—For purposes of subparagraph (A), in applying subsections (a) and (b) of section 52 of such Code to this section, section 1563 of such Code shall be applied without regard to subsection (b)(2)(C) thereof.

"(3) JOINT AND SEVERAL LIABILITY.—If more than one person is liable for payment of the fee under subsection (a) with respect to a single covered entity by reason of the application of paragraph (2), all such persons shall be jointly and severally liable for payment of such fee.

"(e) BRANDED PRESCRIPTION DRUG SALES.—For purposes of this section—

"(1) IN GENERAL.—The term 'branded prescription drug sales' means sales of branded prescription drugs to any specified government program or pursuant to coverage under any such program.

"(2) BRANDED PRESCRIPTION DRUGS.—

"(A) IN GENERAL.—The term 'branded prescription drug' means—

"(i) any prescription drug the application for which was submitted under section 505(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(b)), or

"(ii) any biological product the license for which was submitted under section 351(a) of the Public Health Service Act (42 U.S.C. 262(a)).

"(B) PRESCRIPTION DRUG.—For purposes of subparagraph (A)(i), the term 'prescription drug' means any drug which is subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(b)).

"(3) EXCLUSION OF ORPHAN DRUG SALES.—The term 'branded prescription drug sales' shall not include sales of any drug or biological product with respect to which a credit was allowed for any taxable year under section 45C of the Internal Revenue Code of 1986. The preceding sentence shall not apply with respect to any such drug or biological product after the date on which such drug or biological product is approved by the Food and Drug Administration for marketing for any indication other than the treatment of the rare disease or condition with respect to which such credit was allowed.

"(4) SPECIFIED GOVERNMENT PROGRAM.—The term 'specified government program' means—

"(A) the Medicare Part D program under part D of title XVIII of the Social Security Act [42 U.S.C. 1395w–101 et seq.],

"(B) the Medicare Part B program under part B of title XVIII of the Social Security Act [42 U.S.C. 1395j et seq.],

"(C) the Medicaid program under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.],

"(D) any program under which branded prescription drugs are procured by the Department of Veterans Affairs,

"(E) any program under which branded prescription drugs are procured by the Department of Defense, or

"(F) the TRICARE retail pharmacy program under section 1074g of title 10, United States Code.

"(f) TAX TREATMENT OF FEES.—The fees imposed by this section—

"(1) for purposes of subtitle F of the Internal Revenue Code of 1986, shall be treated as excise taxes with respect to which only civil actions for refund under procedures of such subtitle shall apply, and

"(2) for purposes of section 275 of such Code, shall be considered to be a tax described in section 275(a)(6).

"(g) REPORTING REQUIREMENT.—Not later than the date determined by the Secretary of the Treasury following the end of any calendar year, the Secretary of Health and Human Services, the Secretary of Veterans Affairs, and the Secretary of Defense shall report to the Secretary of the Treasury, in such manner as the Secretary of the Treasury prescribes, the total branded prescription drug sales for each covered entity with respect to each specified government program under such Secretary's jurisdiction using the following methodology:

"(1) MEDICARE PART D PROGRAM.—The Secretary of Health and Human Services shall report, for each covered entity and for each branded prescription drug of the covered entity covered by the Medicare Part D program, the product of—

"(A) the per-unit ingredient cost, as reported to the Secretary of Health and Human Services by prescription drug plans and Medicare Advantage prescription drug plans, minus any per-unit rebate, discount, or other price concession provided by the covered entity, as reported to the Secretary of Health and Human Services by the prescription drug plans and Medicare Advantage prescription drug plans, and

"(B) the number of units of the branded prescription drug paid for under the Medicare Part D program.

"(2) MEDICARE PART B PROGRAM.—The Secretary of Health and Human Services shall report, for each covered entity and for each branded prescription drug of the covered entity covered by the Medicare Part B program under section 1862(a) of the Social Security Act [42 U.S.C. 1395y(a)], the product of—

"(A) the per-unit average sales price (as defined in section 1847A(c) of the Social Security Act [42 U.S.C. 1395w–3a(c)]) or the per-unit Part B payment rate for a separately paid branded prescription drug without a reported average sales price, and

"(B) the number of units of the branded prescription drug paid for under the Medicare Part B program.

The Centers for Medicare and Medicaid Services shall establish a process for determining the units and the allocated price for purposes of this section for those branded prescription drugs that are not separately payable or for which National Drug Codes are not reported.

"(3) MEDICAID PROGRAM.—The Secretary of Health and Human Services shall report, for each covered entity and for each branded prescription drug of the covered entity covered under the Medicaid

program, the product of—

"(A) the per-unit ingredient cost paid to pharmacies by States for the branded prescription drug dispensed to Medicaid beneficiaries, minus any per-unit rebate paid by the covered entity under section 1927 of the Social Security Act [42 U.S.C. 1396r–8] and any State supplemental rebate, and

"(B) the number of units of the branded prescription drug paid for under the Medicaid program.

"(4) DEPARTMENT OF VETERANS AFFAIRS PROGRAMS.—The Secretary of Veterans Affairs shall report, for each covered entity and for each branded prescription drug of the covered entity the total amount paid for each such branded prescription drug procured by the Department of Veterans Affairs for its beneficiaries.

"(5) DEPARTMENT OF DEFENSE PROGRAMS AND TRICARE.—The Secretary of Defense shall report, for each covered entity and for each branded prescription drug of the covered entity, the sum of—

"(A) the total amount paid for each such branded prescription drug procured by the Department of Defense for its beneficiaries, and

"(B) for each such branded prescription drug dispensed under the TRICARE retail pharmacy program, the product of—

"(i) the per-unit ingredient cost, minus any per-unit rebate paid by the covered entity, and

"(ii) the number of units of the branded prescription drug dispensed under such program.

"(h) SECRETARY.—For purposes of this section, the term 'Secretary' includes the Secretary's delegate.

"(i) GUIDANCE.—The Secretary of the Treasury shall publish guidance necessary to carry out the purposes of this section.

"(j) EFFECTIVE DATE.—This section shall apply to calendar years beginning after December 31, 2010.

"(k) CONFORMING AMENDMENT.—[Amended section 1395t of Title 42, The Public Health and Welfare.]"

[Pub. L. 111–152, title I, §1404(b), Mar. 30, 2010, 124 Stat. 1064, provided that: "The amendments made by this section [amending section 9008 of Pub. L. 111–148, set out above] shall take effect as if included in section 9008 of the Patient Protection and Affordable Care Act [Pub. L. 111–148]."]

IMPOSITION OF ANNUAL FEE ON MEDICAL DEVICE MANUFACTURERS AND IMPORTERS

Pub. L. 111–148, title IX, §9009, Mar. 23, 2010, 124 Stat. 862, as amended by Pub. L. 111–148, title X, §10904(a), Mar. 23, 2010, 124 Stat. 1016, provided for the imposition of an annual fee on medical device manufacturers and importers in calendar years beginning after 2010, prior to repeal by Pub. L. 111–152, title I, §1405(d), Mar. 30, 2010, 124 Stat. 1065.

[Pub. L. 111–152, title I, §1405(d), Mar. 30, 2010, 124 Stat. 1065, provided that the repeal of section 9009 of Pub. L. 111–148, formerly set out above, is effective as of Mar. 23, 2010.]

IMPOSITION OF ANNUAL FEE ON HEALTH INSURANCE PROVIDERS

Pub. L. 111–148, title IX, §9010, title X, §10905(a)–(f), Mar. 23, 2010, 124 Stat. 865, 1017–1019, as amended by Pub. L. 111–152, title I, §1406(a), Mar. 30, 2010, 124 Stat. 1065, provided that:

"(a) IMPOSITION OF FEE.—

"(1) IN GENERAL.—Each covered entity engaged in the business of providing health insurance shall pay to the Secretary not later than the annual payment date of each calendar year beginning after 2013 a fee in an amount determined under subsection (b).

"(2) ANNUAL PAYMENT DATE.—For purposes of this section, the term 'annual payment date' means with respect to any calendar year the date determined by the Secretary, but in no event later than September 30 of such calendar year.

"(b) DETERMINATION OF FEE AMOUNT.—

"(1) IN GENERAL.—With respect to each covered entity, the fee under this section for any calendar year shall be equal to an amount that bears the same ratio to the applicable amount as—

"(A) the covered entity's net premiums written with respect to health insurance for any United States health risk that are taken into account during the preceding calendar year, bears to

"(B) the aggregate net premiums written with respect to such health insurance of all covered entities that are taken into account during such preceding calendar year.

"(2) AMOUNTS TAKEN INTO ACCOUNT.—For purposes of paragraph (1)—

"(A) IN GENERAL.—The net premiums written with respect to health insurance for any United States health risk that are taken into account during any calendar year with respect to any covered entity shall be determined in accordance with the following table:

"With respect to a covered entity's net premiums written	The percentage of net premiums written

during the calendar year that are:	that are taken into account is:
Not more than $25,000,000	0 percent
More than $25,000,000 but not more than $50,000,000	50 percent
More than $50,000,000	100 percent.

"(B) PARTIAL EXCLUSION FOR CERTAIN EXEMPT ACTIVITIES.—After the application of subparagraph (A), only 50 percent of the remaining net premiums written with respect to health insurance for any United States health risk that are attributable to the activities (other than activities of an unrelated trade or business as defined in section 513 of the Internal Revenue Code of 1986) of any covered entity qualifying under paragraph (3), (4), (26), or (29) of section 501(c) of such Code and exempt from tax under section 501(a) of such Code shall be taken into account.

"(3) Secretarial determination.—The Secretary shall calculate the amount of each covered entity's fee for any calendar year under paragraph (1). In calculating such amount, the Secretary shall determine such covered entity's net premiums written with respect to any United States health risk on the basis of reports submitted by the covered entity under subsection (g) and through the use of any other source of information available to the Secretary.

"(c) COVERED ENTITY.—

"(1) IN GENERAL.—For purposes of this section, the term 'covered entity' means any entity which provides health insurance for any United States health risk during the calendar year in which the fee under this section is due.

"(2) EXCLUSION.—Such term does not include—

"(A) any employer to the extent that such employer self-insures its employees' health risks,

"(B) any governmental entity,

"(C) any entity—

"(i) which is incorporated as a nonprofit corporation under a State law,

"(ii) no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in section 501(h) of the Internal Revenue Code of 1986), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office, and

"(iii) more than 80 percent of the gross revenues of which is received from government programs that target low-income, elderly, or disabled populations under titles XVIII, XIX, and XXI of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq., 1397aa et seq.], and

"(D) any entity which is described in section 501(c)(9) of such Code and which is established by an entity (other than by an employer or employers) for purposes of providing health care benefits.

"(3) CONTROLLED GROUPS.—

"(A) IN GENERAL.—For purposes of this subsection, all persons treated as a single employer under subsection (a) or (b) of section 52 of the Internal Revenue Code of 1986 or subsection (m) or (o) of section 414 of such Code shall be treated as a single covered entity (or employer for purposes of paragraph (2)).

"(B) INCLUSION OF FOREIGN CORPORATIONS.—For purposes of subparagraph (A), in applying subsections (a) and (b) of section 52 of such Code to this section, section 1563 of such Code shall be applied without regard to subsection (b)(2)(C) thereof.

If any entity described in subparagraph (C) or (D) of paragraph (2) is treated as a covered entity by reason of the application of the preceding sentence, the net premiums written with respect to health insurance for any United States health risk of such entity shall not be taken into account for purposes of this section.

"(4) JOINT AND SEVERAL LIABILITY.—If more than one person is liable for payment of the fee under subsection (a) with respect to a single covered entity by reason of the application of paragraph (3), all such persons shall be jointly and severally liable for payment of such fee.

"(d) UNITED STATES HEALTH RISK.—For purposes of this section, the term 'United States health risk' means the health risk of any individual who is—

"(1) a United States citizen,

"(2) a resident of the United States (within the meaning of section 7701(b)(1)(A) of the Internal Revenue Code of 1986), or

"(3) located in the United States, with respect to the period such individual is so located.

"(e) APPLICABLE AMOUNT.—For purposes of subsection (b)(1)—

"(1) YEARS BEFORE 2019.—In the case of calendar years beginning before 2019, the applicable amount shall be determined in accordance with the following table:

"Calendar year	Applicable amount
2014	$8,000,000,000
2015	$11,300,000,000
2016	$11,300,000,000
2017	$13,900,000,000
2018	$14,300,000,000.

"(2) YEARS AFTER 2018.—In the case of any calendar year beginning after 2018, the applicable amount shall be the applicable amount for the preceding calendar year increased by the rate of premium growth (within the meaning of section 36B(b)(3)(A)(ii) of the Internal Revenue Code of 1986) for such preceding calendar year.

"(f) TAX TREATMENT OF FEES.—The fees imposed by this section—

"(1) for purposes of subtitle F of the Internal Revenue Code of 1986, shall be treated as excise taxes with respect to which only civil actions for refund under procedures of such subtitle shall apply, and

"(2) for purposes of section 275 of such Code shall be considered to be a tax described in section 275(a)(6).

"(g) REPORTING REQUIREMENT.—

"(1) IN GENERAL.—Not later than the date determined by the Secretary following the end of any calendar year, each covered entity shall report to the Secretary, in such manner as the Secretary prescribes, the covered entity's net premiums written with respect to health insurance for any United States health risk for such calendar year.

"(2) PENALTY FOR FAILURE TO REPORT.—

"(A) IN GENERAL.—In the case of any failure to make a report containing the information required by paragraph (1) on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause, there shall be paid by the covered entity failing to file such report, an amount equal to—

"(i) $10,000, plus

"(ii) the lesser of—

"(I) an amount equal to $1,000, multiplied by the number of days during which such failure continues, or

"(II) the amount of the fee imposed by this section for which such report was required.

"(B) TREATMENT OF PENALTY.—The penalty imposed under subparagraph (A)—

"(i) shall be treated as a penalty for purposes of subtitle F of the Internal Revenue Code of 1986,

"(ii) shall be paid on notice and demand by the Secretary and in the same manner as tax under such Code, and

"(iii) with respect to which only civil actions for refund under procedures of such subtitle F shall apply.

"(3) ACCURACY-RELATED PENALTY.—

"(A) IN GENERAL.—In the case of any understatement of a covered entity's net premiums written with respect to health insurance for any United States health risk for any calendar year, there shall be paid by the covered entity making such understatement, an amount equal to the excess of—

"(i) the amount of the covered entity's fee under this section for the calendar year the Secretary determines should have been paid in the absence of any such understatement, over

"(ii) the amount of such fee the Secretary determined based on such understatement.

"(B) UNDERSTATEMENT.—For purposes of this paragraph, an understatement of a covered entity's net premiums written with respect to health insurance for any United States health risk for any calendar year is the difference between the amount of such net premiums written as reported on the return filed by the covered entity under paragraph (1) and the amount of such net premiums written that should have been reported on such return.

"(C) TREATMENT OF PENALTY.—The penalty imposed under subparagraph (A) shall be subject to the provisions of subtitle F of the Internal Revenue Code of 1986 that apply to assessable penalties imposed under chapter 68 of such Code.

"(4) TREATMENT OF INFORMATION.—Section 6103 of the Internal Revenue Code of 1986 shall not apply to any information reported under this subsection.

"(h) ADDITIONAL DEFINITIONS.—For purposes of this section—

"(1) SECRETARY.—The term 'Secretary' means the Secretary of the Treasury or the Secretary's delegate.

"(2) UNITED STATES.—The term 'United States' means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States.

"(3) HEALTH INSURANCE.—The term 'health insurance' shall not include—

"(A) any insurance coverage described in paragraph (1)(A) or (3) of section 9832(c) of the Internal Revenue Code of 1986,

"(B) any insurance for long-term care, or

"(C) any medicare supplemental health insurance (as defined in section 1882(g)(1) of the Social Security Act [42 U.S.C. 1395ss(g)(1)]).

"(i) GUIDANCE.—The Secretary shall publish guidance necessary to carry out the purposes of this section and shall prescribe such regulations as are necessary or appropriate to prevent avoidance of the purposes of this section, including inappropriate actions taken to qualify as an exempt entity under subsection (c)(2).

"(j) EFFECTIVE DATE.—This section shall apply to calendar years beginning after December 31, 2013."

[Pub. L. 111–152, title I, §1406(a)(3)(C), Mar. 30, 2010, 124 Stat. 1065, which directed amendment of section 9010(c) of Pub. L. 111–148, set out above, by substituting "subparagraph (C) or (D)" for "subparagraph (C)(i)(I), (D)(i)(I), or (E)(i)" in par. (3)(A), was executed by making the substitution in concluding provisions of par. (3), to reflect the probable intent of Congress.]

[Pub. L. 111–152, title I, §1406(b), Mar. 30, 2010, 124 Stat. 1067, provided that: "The amendments made by this section [amending section 9010 of Pub. L. 111–148, set out above] shall take effect as if included in section 9010 of the Patient Protection and Affordable Care Act [Pub. L. 111–148]."]

[Pub. L. 111–148, title X, §10905(g), Mar. 23, 2010, 124 Stat. 1019, provided that: "The amendments made by this section [amending section 9010 of Pub. L. 111–148, set out above] shall take effect as if included in the enactment of section 9010."]

[1] Section numbers editorially supplied.

CHAPTER 31—RETAIL EXCISE TAXES

Subchapter		Sec.[1]
A.	**Luxury passenger vehicles [2]**	**4001**
B.	**Special fuels**	**4041**
C.	**Heavy trucks and trailers**	**4051**

PRIOR PROVISIONS

The provisions of a prior chapter 31, Miscellaneous Excise Taxes, were set out as:

Subchapter (A), Jewelry and related items, comprising sections 4001 to 4003;

Subchapter (B), Furs, comprising sections 4011 to 4013;

Subchapter (C), Toilet preparations, comprising sections 4021 and 4022;

Subchapter (D), Luggage, handbags, etc., comprising section 4031;

Subchapter (E), Special fuels, comprising sections 4041 and 4042; and

Subchapter (F), Special provisions applicable to retailers tax, comprising sections 4051 to 4058.

The headings for subchs. (A) to (D) were struck out by section 101(b)(1) and the listed sections were repealed by section 101(a) of Pub. L. 89–44, title I, June 21, 1965, 79 Stat. 136, the Excise Tax Reduction Act of 1965, applicable with respect to articles sold on or after June 22, 1965, as provided in section 701(a) of Pub. L. 89–44, set out as an Effective Date of 1965 Amendment note under section 4161 of this title.

The headings for subchs. (E) and (F) were stricken by section 1904(a)(1)(A) of Pub. L. 94–455, title XIX, Oct. 4, 1976, 90 Stat. 1810, the Tax Reform Act of 1976. Sections 4051 to 4053 were repealed by section 101(b)(2) of Pub. L. 89–44, title I, June 21, 1965, 79 Stat. 136, applicable with respect to articles sold on or after June 22, 1965, as provided in section 701(a) of Pub. L. 89–44, set out as an Effective Date of 1965 Amendment note under section 4061 of this title; and sections 4042 and 4054 to 4058 were repealed by section 1904(a)(1)(D) of Pub. L. 94–455, title XIX, Oct. 4, 1976, 90 Stat. 1811, effective Feb. 1, 1977, as provided in section 1904(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 4041 of this title.

The subject matter of the prior sections was as follows:

A prior section 4001, acts Aug. 16, 1954, ch. 736, 68A Stat. 473; Sept. 2, 1958, Pub. L. 85–859, title I, §101, 72 Stat. 1275; Sept. 21, 1959, Pub. L. 86–344, §1(a), 73 Stat. 617, imposed an excise tax equivalent to 10 percent of selling price upon jewelry, stones, watches, clocks, case and movements for watches and clocks, flatware and hollow ware, opera glasses, lorgnettes, marine glasses, field glasses, and binoculars.

A prior section 4002, act Aug. 16, 1954, ch. 736, 68A Stat. 473, defined "articles sold at retail" to include articles sold at auction.

A prior section 4003, acts Aug. 16, 1954, ch. 736, 68A Stat. 474; Sept. 2, 1958, Pub. L. 85–859, title I, §102, 72 Stat. 1276, specified exemptions to tax imposed by section 4001.

A prior section 4011, act Aug. 16, 1954, ch. 736, 68A Stat. 475, imposed an excise tax equivalent to 10 percent of selling price upon fur articles.

A prior section 4012, act Aug. 16, 1954, ch. 736, 68A Stat. 475, defined "article sold at retail" to include articles manufactured from material supplied by customer and articles sold at auction.

A prior section 4013, act Aug. 16, 1954, ch. 736, 68A Stat. 475, specified exemptions to tax imposed by section 4011.

A prior section 4021, acts Aug. 16, 1954, ch. 736, 68A Stat. 476; Apr. 8, 1960, Pub. L. 86–413, §1, 74 Stat. 31, imposed an excise tax equivalent to 10 percent of selling price upon toilet preparations.

A prior section 4022, act Aug. 16, 1954, ch. 736, 68A Stat. 476, specified certain exemptions from tax imposed by section 4021, including items for babies, items used in barber shops and beauty parlors, and miniature samples.

A prior section 4031, acts Aug. 16, 1954, ch. 736, 68A Stat. 477; Sept. 2, 1958, Pub. L. 85–859, title I, §103, 72 Stat. 1276, imposed an excise tax equivalent to 10 percent of selling price upon luggage and handbags, including billfolds and wallets, traveler's garment bags, and briefcases.

A prior section 4042, act Aug. 16, 1954, ch. 736, 68A Stat. 478, provided a cross reference to section 4222 for exemption from tax where special motor fuels are sold for use for certain vessels.

A prior section 4051, act Aug. 16, 1954, ch. 736, 68A Stat. 479, defined price for which articles were sold for purposes of determining retailers excise taxes.

A prior section 4052, act Aug. 16, 1954, ch. 736, 68A Stat. 479, provided that lease of an article would be considered sale of article for excise tax purposes.

A prior section 4053, acts Aug. 16, 1954, ch. 736, 68A Stat. 479; Sept. 2, 1958, Pub. L. 85–859, title I, §104, 72 Stat. 1276, made provision for imposition of retailers tax on installment sales.

A prior section 4054, act Aug. 16, 1954, ch. 736, 68A Stat. 479, related to application of taxes to retail sales by United States or by any agency or instrumentality of United States unless specifically exempted from such tax.

A prior section 4055, act Aug. 16, 1954, ch. 736, 68A Stat. 480; June 21, 1965, Pub. L. 89–44, title I, §101(b)(3), 79 Stat. 136, exempted from taxes articles sold for exclusive use of any State, Territory of United States, or any political subdivision thereof, or District of Columbia, including use by such entities of any liquid as a fuel.

A prior section 4056, act Aug. 16, 1954, ch. 736, 68A Stat. 480, provided that no tax shall be imposed upon sale of any article for export, or for shipment to a possession of United States and in due course so shipped and exported.

A prior section 4057, added Pub. L. 85–859, title I, §105(a), Sept. 2, 1958, 72 Stat. 1277; amended Pub. L. 86–344, §2(a), Sept. 21, 1959, 73 Stat. 617; Pub. L. 89–44, title I, §101(b)(4), June 21, 1965, 79 Stat. 136; Pub. L. 91–172, title I, §101(j)(25), Dec. 30, 1969, 83 Stat. 528, provided an exception with respect to sale of any article to a non-profit educational organization for its exclusive use including use of any liquid as a fuel and defined "non-profit educational organization".

A prior section 4058, act Aug. 16, 1954, ch. 736, 68A Stat. 480, §4058, formerly 4057; renumbered Sept. 2, 1958, Pub. L. 85–859, title I, §105(a), 72 Stat. 1277, related to cross references for exemption of sales to United States in certain cases and administrative provisions of general application.

AMENDMENTS

1993—Pub. L. 103–66, title XIII, §13161(b)(3), Aug. 10, 1993, 107 Stat. 453, substituted "Luxury passenger vehicles" for "Certain luxury items" in item for subchapter A.

1990—Pub. L. 101–508, title XI, §11221(e), Nov. 5, 1990, 104 Stat. 1388–444, added item for subchapter A and redesignated former items for subchapters A and B as B and C, respectively.

1983—Pub. L. 97–424, title V, §512(b)(2)(A), Jan. 6, 1983, 96 Stat. 2177, substituted "Retail Excise Taxes" for "Special Fuels" in chapter heading, and added an analysis for subchapters A and B.

1976—Pub. L. 94–455, title XIX, §1904(a)(1)(A), Oct. 4, 1976, 90 Stat. 1810, substituted "Special Fuels"

for "Retailers Excise Taxes" in chapter heading.

[1] *Section numbers editorially supplied.*

[2] *So in original. Does not conform to subchapter heading.*

Subchapter A—Luxury Passenger Automobiles

Sec.
4001. Imposition of tax.
4002. 1st retail sale; uses, etc. treated as sales; determination of price.
4003. Special rules.

PRIOR PROVISIONS

This subchapter consisted of part I with subparts A (§§4001–4004) and B (§§4006, 4007) and part II (§§4011, 4012), prior to being amended generally by Pub. L. 103–66, title XIII, §13161(a), Aug. 10, 1993, 107 Stat. 449.

Another prior subchapter A of chapter 31 was redesignated subchapter B by Pub. L. 101–508, title XI, §11221(a), Nov. 5, 1990, 104 Stat. 1388–438.

AMENDMENTS

1993—Pub. L. 103–66, title XIII, §13161(a), Aug. 10, 1993, 107 Stat. 449, amended subchapter heading and analysis generally, substituting "Luxury Passenger Automobiles" for "Certain Luxury Items" in subchapter heading, striking out part analysis consisting of parts I "Imposition of taxes" and II "Rules of general applicability", part I heading "IMPOSITION OF TAXES", subpart analysis consisting of subparts A "Passenger vehicles, boats, and aircraft" and B "Jewelry and furs", and subpart A heading "Passenger Vehicles, Boats, and Aircraft", substituting "Imposition of tax" for "Passenger vehicles" in item 4001, "1st retail sale; uses, etc. treated as sales; determination of price" for "Boats" in item 4002, and "Special rules" for "Aircraft" in item 4003, and striking out item 4004 "Rules applicable to subpart A".

§4001. Imposition of tax

(a) Imposition of tax

(1) In general

There is hereby imposed on the 1st retail sale of any passenger vehicle a tax equal to 10 percent of the price for which so sold to the extent such price exceeds the applicable amount.

(2) Applicable amount

(A) In general

Except as provided in subparagraphs (B) and (C), the applicable amount is $30,000.

(B) Qualified clean-fuel vehicle property

In the case of a passenger vehicle which is propelled by a fuel which is not a clean-burning fuel and to which is installed qualified clean-fuel vehicle property (as defined in section 179A(c)(1)(A)) for purposes of permitting such vehicle to be propelled by a clean-burning fuel, the applicable amount is equal to the sum of—

(i) the dollar amount in effect under subparagraph (A), plus

(ii) the increase in the price for which the passenger vehicle was sold (within the meaning of section 4002) due to the installation of such property.

(C) Purpose built passenger vehicle

(i) In general

In the case of a purpose built passenger vehicle, the applicable amount is equal to 150 percent of the dollar amount in effect under subparagraph (A).

(ii) Purpose built passenger vehicle

For purposes of clause (i), the term "purpose built passenger vehicle" means a passenger vehicle produced by an original equipment manufacturer and designed so that the vehicle may be propelled primarily by electricity.

(b) Passenger vehicle

(1) In general

For purposes of this subchapter, the term "passenger vehicle" means any 4-wheeled vehicle—

(A) which is manufactured primarily for use on public streets, roads, and highways, and

(B) which is rated at 6,000 pounds unloaded gross vehicle weight or less.

(2) Special rules

(A) Trucks and vans

In the case of a truck or van, paragraph (1)(B) shall be applied by substituting "gross vehicle weight" for "unloaded gross vehicle weight".

(B) Limousines

In the case of a limousine, paragraph (1) shall be applied without regard to subparagraph (B) thereof.

(c) Exceptions for taxicabs, etc.

The tax imposed by this section shall not apply to the sale of any passenger vehicle for use by the purchaser exclusively in the active conduct of a trade or business of transporting persons or property for compensation or hire.

(d) Exemption for law enforcement uses, etc.

No tax shall be imposed by this section on the sale of any passenger vehicle—

(1) to the Federal Government, or a State or local government, for use exclusively in police, firefighting, search and rescue, or other law enforcement or public safety activities, or in public works activities, or

(2) to any person for use exclusively in providing emergency medical services.

(e) Inflation adjustment

(1) In general

The $30,000 amount in subsection (a) shall be increased by an amount equal to—

(A) $30,000, multiplied by

(B) the cost-of-living adjustment under section 1(f)(3) for the calendar year in which the vehicle is sold, determined by substituting "calendar year 1990" for "calendar year 1992" in subparagraph (B) thereof.

(2) Rounding

If any amount as adjusted under paragraph (1) is not a multiple of $2,000, such amount shall be rounded to the next lowest multiple of $2,000.

(f) Phasedown

For sales occurring in calendar years after 1995 and before 2003, subsection (a)(1) and section 4003(a) shall be applied by substituting for "10 percent", each place it appears, the percentage determined in accordance with the following table:

If the calendar year is:	The percentage is:
1996	9 percent
1997	8 percent
1998	7 percent

1999	6 percent
2000	5 percent
2001	4 percent
2002	3 percent.

(g) Termination

The taxes imposed by this section and section 4003 shall not apply to any sale, use, or installation after December 31, 2002.

(Added Pub. L. 101–508, title XI, §11221(a), Nov. 5, 1990, 104 Stat. 1388–439; amended Pub. L. 103–66, title XIII, §13161(a), Aug. 10, 1993, 107 Stat. 449; Pub. L. 104–188, title I, §§1607(a), (b), 1703(c)(1), Aug. 20, 1996, 110 Stat. 1839, 1875; Pub. L. 105–34, title IX, §906(a)–(b)(2), title XVI, §1601(f)(3)(A), (B), Aug. 5, 1997, 111 Stat. 874, 875, 1090.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

AMENDMENTS

1997—Subsec. (a). Pub. L. 105–34, §906(a), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: "There is hereby imposed on the 1st retail sale of any passenger vehicle a tax equal to 10 percent of the price for which so sold to the extent such price exceeds $30,000."

Subsec. (e)(1). Pub. L. 105–34, §906(b)(1), struck out "and section 4003(a)" after "in subsection (a)" in introductory provisions.

Subsec. (f). Pub. L. 105–34, §1601(f)(3)(A)(i), inserted "and section 4003(a)" after "subsection (a)".

Pub. L. 105–34, §1601(f)(3)(A)(ii), inserted ", each place it appears," before "the percentage".

Pub. L. 105–34, §906(b)(2), substituted "subsection (a)(1)" for "subsection (a)".

Subsec. (g). Pub. L. 105–34, §1601(f)(3)(B), substituted "taxes imposed by this section and section 4003" for "tax imposed by this section" and ", use, or installation" for "or use".

1996—Subsec. (e). Pub. L. 104–188, §1703(c)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows:

"(1) IN GENERAL.—If, for any calendar year, the excess (if any) of—

"(A) $30,000, increased by the cost-of-living adjustment for the calendar year, over

"(B) the dollar amount in effect under subsection (a) for the calendar year,

is equal to or greater than $2,000, then the $30,000 amount in subsection (a) and section 4003(a) (as previously adjusted under this subsection) for any subsequent calendar year shall be increased by the amount of such excess rounded to the next lowest multiple of $2,000.

"(2) COST-OF-LIVING ADJUSTMENT.—For purposes of paragraph (1), the cost-of-living adjustment for any calendar year shall be the cost-of-living adjustment under section 1(f)(3) for such calendar year, determined by substituting 'calendar year 1990' for 'calendar year 1992' in subparagraph (B) thereof."

Subsec. (f). Pub. L. 104–188, §1607(b), added subsec. (f). Former subsec. (f) redesignated (g).

Pub. L. 104–188, §1607(a), substituted "December 31, 2002" for "December 31, 1999".

Subsec. (g). Pub. L. 104–188, §1607(b), redesignated subsec. (f) as (g).

1993—Pub. L. 103–66 amended section generally, substituting "Imposition of tax" for "Passenger vehicles" in section catchline and "this subchapter" for "subsection (a)" in subsec. (b)(1) and adding subsecs. (d) to (f).

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title IX, §906(c), Aug. 5, 1997, 111 Stat. 875, provided that: "The amendments made by this section [amending this section and section 4003 of this title] shall apply to sales and installations occurring after the date of the enactment of this Act [Aug. 5, 1997]."

Pub. L. 105–34, title XVI, §1601(f)(3)(C), Aug. 5, 1997, 111 Stat. 1090, provided that: "The amendments made by this paragraph [amending this section] shall apply to sales after the date of the enactment of this Act [Aug. 5, 1997]."

Amendment by section 1601(f)(3)(A), (B) of Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 23 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title XVI, §1607(c), Aug. 20, 1996, 110 Stat. 1840, provided that: "The amendments made by this section [amending this section] shall apply with respect to sales occurring after the date which is 7 days after the date of the enactment of this Act [Aug. 20, 1996]."

Pub. L. 104–188, title XVII, §1703(c)(2), Aug. 20, 1996, 110 Stat. 1875, provided that: "The amendment made by paragraph (1) [amending this section] shall take effect on the date of the enactment of this Act [Aug. 20, 1996]."

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13161(c), Aug. 10, 1993, 107 Stat. 453, provided that: "The amendments made by this section [amending this section and sections 4002, 4003, 4221, and 4222 of this title and omitting sections 4004, 4006, 4007, 4011, and 4012 of this title] shall take effect on January 1, 1993, except that the provisions of section 4001(e) of the Internal Revenue Code of 1986 (as amended by subsection (a)) shall take effect on the date of the enactment of this Act [Aug. 10, 1993]."

EFFECTIVE DATE

Pub. L. 101–508, title XI, §11221(f), Nov. 5, 1990, 104 Stat. 1388–444, provided that:

"(1) IN GENERAL.—The amendments made by this section [enacting this subchapter, redesignating former subchapters A and B of this chapter as subchapters B and C, respectively, and amending sections 4221, 4222, and 4293 of this title] shall take effect on January 1, 1991.

"(2) EXCEPTION FOR BINDING CONTRACTS.—In determining whether any tax imposed by subchapter A of chapter 31 of the Internal Revenue Code of 1986, as added by this section, applies to any sale after December 31, 1990, there shall not be taken into account the amount paid for any article (or any part or accessory therefor) if the purchaser held on September 30, 1990, a contract (which was binding on such date and at all times thereafter before the purchase) for the purchase of such article (or such part or accessory)."

§4002. 1st retail sale; uses, etc. treated as sales; determination of price

(a) 1st retail sale

For purposes of this subchapter, the term "1st retail sale" means the 1st sale, for a purpose other than resale, after manufacture, production, or importation.

(b) Use treated as sale

(1) In general

If any person uses a passenger vehicle (including any use after importation) before the 1st retail sale of such vehicle, then such person shall be liable for tax under this subchapter in the same manner as if such vehicle were sold at retail by him.

(2) Exemption for further manufacture

Paragraph (1) shall not apply to use of a vehicle as material in the manufacture or production of, or as a component part of, another vehicle taxable under this subchapter to be manufactured or produced by him.

(3) Exemption for demonstration use

Paragraph (1) shall not apply to any use of a passenger vehicle as a demonstrator.

(4) Exception for use after importation of certain vehicles

Paragraph (1) shall not apply to the use of a vehicle after importation if the user or importer establishes to the satisfaction of the Secretary that the 1st use of the vehicle occurred before January 1, 1991, outside the United States.

(5) Computation of tax

In the case of any person made liable for tax by paragraph (1), the tax shall be computed on the price at which similar vehicles are sold at retail in the ordinary course of trade, as determined by the Secretary.

(c) Leases considered as sales

For purposes of this subchapter—

(1) In general

Except as otherwise provided in this subsection, the lease of a vehicle (including any renewal or any extension of a lease or any subsequent lease of such vehicle) by any person shall be considered a sale of such vehicle at retail.

(2) Special rules for long-term leases

(A) Tax not imposed on sale for leasing in a qualified lease

The sale of a passenger vehicle to a person engaged in a passenger vehicle leasing or rental trade or business for leasing by such person in a long-term lease shall not be treated as the 1st retail sale of such vehicle.

(B) Long-term lease

For purposes of subparagraph (A), the term "long-term lease" means any long-term lease (as defined in section 4052).

(C) Special rules

In the case of a long-term lease of a vehicle which is treated as the 1st retail sale of such vehicle—

(i) Determination of price

The tax under this subchapter shall be computed on the lowest price for which the vehicle is sold by retailers in the ordinary course of trade.

(ii) Payment of tax

Rules similar to the rules of section 4217(e)(2) shall apply.

(iii) No tax where exempt use by lessee

No tax shall be imposed on any lease payment under a long-term lease if the lessee's use of the vehicle under such lease is an exempt use (as defined in section 4003(b)) of such vehicle.

(d) Determination of price

(1) In general

In determining price for purposes of this subchapter—

(A) there shall be included any charge incident to placing the passenger vehicle in condition ready for use,

(B) there shall be excluded—

(i) the amount of the tax imposed by this subchapter,

(ii) if stated as a separate charge, the amount of any retail sales tax imposed by any State or political subdivision thereof or the District of Columbia, whether the liability for such tax is imposed on the vendor or vendee, and

(iii) the value of any component of such passenger vehicle if—

(I) such component is furnished by the 1st user of such passenger vehicle, and

(II) such component has been used before such furnishing, and

(C) the price shall be determined without regard to any trade-in.

(2) Other rules

Rules similar to the rules of paragraphs (2) and (4) of section 4052(b) shall apply for purposes of this subchapter.

(Added Pub. L. 101–508, title XI, §11221(a), Nov. 5, 1990, 104 Stat. 1388–439; amended Pub. L. 103–66, title XIII, §13161(a), Aug. 10, 1993, 107 Stat. 450.)

AMENDMENTS

1993—Pub. L. 103–66 amended section generally, substituting provisions relating to imposition of luxury

tax upon first retail sale or use of luxury automobile for provisions relating to imposition of similar tax upon boats.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 effective Jan. 1, 1993, see section 13161(c) of Pub. L. 103–66, set out as a note under section 4001 of this title.

§4003. Special rules

(a) Separate purchase of vehicle and parts and accessories therefor

Under regulations prescribed by the Secretary—

(1) In general

Except as provided in paragraph (2), if—

(A) the owner, lessee, or operator of any passenger vehicle installs (or causes to be installed) any part or accessory (other than property described in section 4001(a)(2)(B)) on such vehicle, and

(B) such installation is not later than the date 6 months after the date the vehicle was 1st placed in service,

then there is hereby imposed on such installation a tax equal to 10 percent of the price of such part or accessory and its installation.

(2) Limitation

The tax imposed by paragraph (1) on the installation of any part or accessory shall not exceed 10 percent of the excess (if any) of—

(A) the sum of—

(i) the price of such part or accessory and its installation,

(ii) the aggregate price of the parts and accessories (and their installation) installed before such part or accessory, plus

(iii) the price for which the passenger vehicle was sold, over

(B) the appropriate applicable amount as determined under section 4001(a)(2).

(3) Exceptions

Paragraph (1) shall not apply if—

(A) the part or accessory installed is a replacement part or accessory,

(B) the part or accessory is installed to enable or assist an individual with a disability to operate the vehicle, or to enter or exit the vehicle, by compensating for the effect of such disability, or

(C) the aggregate price of the parts and accessories (and their installation) described in paragraph (1) with respect to the vehicle does not exceed $1,000 (or such other amount or amounts as the Secretary may by regulation prescribe).

The price of any part or accessory (and its installation) to which paragraph (1) does not apply by reason of this paragraph shall not be taken into account under paragraph (2)(A).

(4) Installers secondarily liable for tax

The owners of the trade or business installing the parts or accessories shall be secondarily liable for the tax imposed by this subsection.

(b) Imposition of tax on sales, etc., within 2 years of vehicles purchased tax-free

(1) In general

If—

(A) no tax was imposed under this subchapter on the 1st retail sale of any passenger vehicle

by reason of its exempt use, and

(B) within 2 years after the date of such 1st retail sale, such vehicle is resold by the purchaser or such purchaser makes a substantial nonexempt use of such vehicle,

then such sale or use of such vehicle by such purchaser shall be treated as the 1st retail sale of such vehicle for a price equal to its fair market value at the time of such sale or use.

(2) Exempt use

For purposes of this subsection, the term "exempt use" means any use of a vehicle if the 1st retail sale of such vehicle is not taxable under this subchapter by reason of such use.

(c) Parts and accessories sold with taxable passenger vehicle

Parts and accessories sold on, in connection with, or with the sale of any passenger vehicle shall be treated as part of the vehicle.

(d) Partial payments, etc.

In the case of a contract, sale, or arrangement described in paragraph (2), (3), or (4) of section 4216(c), rules similar to the rules of section 4217(e)(2) shall apply for purposes of this subchapter.

(Added Pub. L. 101–508, title XI, §11221(a), Nov. 5, 1990, 104 Stat. 1388–439; amended Pub. L. 103–66, title XIII, §13161(a), Aug. 10, 1993, 107 Stat. 451; Pub. L. 105–34, title IX, §906(b)(3), (4), title XIV, §1401(a), Aug. 5, 1997, 111 Stat. 875, 1045.)

PRIOR PROVISIONS

Prior sections 4004, 4006, 4007, 4011, and 4012 of this title were omitted in the general revision of this subchapter by Pub. L. 103–66, title XIII, §13161(a), Aug. 10, 1993, 107 Stat. 449.

Section 4004, added Pub. L. 101–508, title XI, §11221(a), Nov. 5, 1990, 104 Stat. 1388–440; amended Pub. L. 103–66, title XIII, §13162(a), Aug. 10, 1993, 107 Stat. 453, related to certain rules applicable to former subpart A of part I of this subchapter.

Section 4006, added Pub. L. 101–508, title XI, §11221(a), Nov. 5, 1990, 104 Stat. 1388–441, related to imposition of tax on 1st retail sale of jewelry.

Section 4007, added Pub. L. 101–508, title XI, §11221(a), Nov. 5, 1990, 104 Stat. 1388–442, related to imposition of tax on 1st retail sale of furs.

Section 4011, added Pub. L. 101–508, title XI, §11221(a), Nov. 5, 1990, 104 Stat. 1388–442, provided definitions and special rules for purposes of this subchapter.

Section 4012, added Pub. L. 101–508, title XI, §11221(a), Nov. 5, 1990, 104 Stat. 1388–444, provided that taxes imposed by this subchapter did not apply to any sale or use after Dec. 31, 1999.

AMENDMENTS

1997—Subsec. (a)(1). Pub. L. 105–34, §906(b)(3), inserted "(other than property described in section 4001(a)(2)(B))" after "part or accessory".

Subsec. (a)(2)(B). Pub. L. 105–34, §906(b)(4), amended subpar. (B) generally, substituting "the appropriate applicable amount as determined under section 4001(a)(2)" for "$30,000".

Subsec. (a)(3)(C). Pub. L. 105–34, §1401(a), substituted "$1,000" for "$200".

1993—Pub. L. 103–66 amended section generally, substituting provisions prescribing special rules applicable to imposition of luxury passenger automobile tax for provisions relating to imposition of similar tax on aircraft.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 906(b)(3), (4) of Pub. L. 105–34 applicable to sales and installations occurring after Aug. 5, 1997, see section 906(c) of Pub. L. 105–34, set out as a note under section 4001 of this title.

Pub. L. 105–34, title XIV, §1401(b), Aug. 5, 1997, 111 Stat. 1046, provided that: "The amendments made by subsection (a) [amending this section and section 4051 of this title] shall apply to installations on vehicles sold after the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 effective Jan. 1, 1993, see section 13161(c) of Pub. L. 103–66, set out as a note under section 4001 of this title.

Subchapter B—Special Fuels

Sec.
4041. Imposition of tax.
4042. Tax on fuel used in commercial transportation on inland waterways.
4043. Surtax on fuel used in aircraft part of a fractional ownership program.

PRIOR PROVISIONS

A prior subchapter B of chapter 31 was redesignated subchapter C by Pub. L. 101–508, title XI, §11221(a), Nov. 5, 1990, 104 Stat. 1388–438.

AMENDMENTS

2012—Pub. L. 112–95, title XI, §1103(a)(4), Feb. 14, 2012, 126 Stat. 151, added item 4043.
1990—Pub. L. 101–508, title XI, §11221(a), Nov. 5, 1990, 104 Stat. 1388–438, redesignated this subchapter, formerly subchapter A, as subchapter B. Former subchapter B redesignated C.
1978—Pub. L. 95–502, title II, §202(c), Oct. 21, 1978, 92 Stat. 1697, added item 4042.
1976—Pub. L. 94–455, title XIX, §1904(a)(1)(A), Oct. 4, 1976, 90 Stat. 1810, added item 4041.

§4041. Imposition of tax

(a) Diesel fuel and special motor fuels

(1) Tax on diesel fuel and kerosene in certain cases

(A) In general

There is hereby imposed a tax on any liquid other than gasoline (as defined in section 4083)—

(i) sold by any person to an owner, lessee, or other operator of a diesel-powered highway vehicle or a diesel-powered train for use as a fuel in such vehicle or train, or

(ii) used by any person as a fuel in a diesel-powered highway vehicle or a diesel-powered train unless there was a taxable sale of such fuel under clause (i).

(B) Exemption for previously taxed fuel

No tax shall be imposed by this paragraph on the sale or use of any liquid if tax was imposed on such liquid under section 4081 (other than such tax at the Leaking Underground Storage Tank Trust Fund financing rate) and the tax thereon was not credited or refunded.

(C) Rate of tax

(i) In general

Except as otherwise provided in this subparagraph, the rate of the tax imposed by this paragraph shall be the rate of tax specified in section 4081(a)(2)(A) on diesel fuel which is in effect at the time of such sale or use.

(ii) Rate of tax on trains

In the case of any sale for use, or use, of diesel fuel in a train, the rate of tax imposed by this paragraph shall be—

(I) 3.3 cents per gallon after December 31, 2004, and before July 1, 2005,
(II) 2.3 cents per gallon after June 30, 2005, and before January 1, 2007, and
(III) 0 after December 31, 2006.

(iii) Rate of tax on certain buses

(I) In general

Except as provided in subclause (II), in the case of fuel sold for use or used in a use described in section 6427(b)(1) (after the application of section 6427(b)(3)), the rate of tax imposed by this paragraph shall be 7.3 cents per gallon (4.3 cents per gallon after

September 30, 2016).

(II) School bus and intracity transportation

No tax shall be imposed by this paragraph on any sale for use, or use, described in subparagraph (B) or (C) of section 6427(b)(2).

(2) Alternative fuels

(A) In general

There is hereby imposed a tax on any liquid (other than gas oil, fuel oil, or any product taxable under section 4081 (other than such tax at the Leaking Underground Storage Tank Trust Fund financing rate))—

(i) sold by any person to an owner, lessee, or other operator of a motor vehicle or motorboat for use as a fuel in such motor vehicle or motorboat, or

(ii) used by any person as a fuel in a motor vehicle or motorboat unless there was a taxable sale of such liquid under clause (i).

(B) Rate of tax

The rate of the tax imposed by this paragraph shall be—

(i) except as otherwise provided in this subparagraph, the rate of tax specified in section 4081(a)(2)(A)(i) which is in effect at the time of such sale or use, and

(ii) in the case of liquefied natural gas, any liquid fuel (other than ethanol and methanol) derived from coal (including peat), and liquid hydrocarbons derived from biomass (as defined in section 45K(c)(3)), 24.3 cents per gallon.

(3) Compressed natural gas

(A) In general

There is hereby imposed a tax on compressed natural gas—

(i) sold by any person to an owner, lessee, or other operator of a motor vehicle or motorboat for use as a fuel in such motor vehicle or motorboat, or

(ii) used by any person as a fuel in a motor vehicle or motorboat unless there was a taxable sale of such gas under clause (i).

The rate of the tax imposed by this paragraph shall be 18.3 cents per energy equivalent of a gallon of gasoline.

(B) Bus uses

No tax shall be imposed by this paragraph on any sale for use, or use, described in subparagraph (B) or (C) of section 6427(b)(2) (relating to school bus and intracity transportation).

(C) Administrative provisions

For purposes of applying this title with respect to the taxes imposed by this subsection, references to any liquid subject to tax under this subsection shall be treated as including references to compressed natural gas subject to tax under this paragraph, and references to gallons shall be treated as including references to energy equivalent of a gallon of gasoline with respect to such gas.

(b) Exemption for off-highway business use; reduction in tax for qualified methanol and ethanol fuel

(1) Exemption for off-highway business use

(A) In general

No tax shall be imposed by subsection (a) on liquids sold for use or used in an off-highway business use.

(B) Tax where other use

If a liquid on which no tax was imposed by reason of subparagraph (A) is used otherwise than in an off-highway business use, a tax shall be imposed by paragraph (1)(B), (2)(B), or (3)(A)(ii) of subsection (a) (whichever is appropriate) and by the corresponding provision of subsection (d)(1) (if any).

(C) Off-highway business use defined

For purposes of this subsection, the term "off-highway business use" has the meaning given to such term by section 6421(e)(2); except that such term shall not, for purposes of subsection (a)(1), include use in a diesel-powered train.

(2) Qualified methanol and ethanol fuel

(A) In general

In the case of any qualified methanol or ethanol fuel—

(i) the rate applicable under subsection (a)(2) shall be the applicable blender rate per gallon less than the otherwise applicable rate (6 cents per gallon in the case of a mixture none of the alcohol in which consists of ethanol), and

(ii) subsection (d)(1) shall be applied by substituting "0.05 cent" for "0.1 cent" with respect to the sales and uses to which clause (i) applies.

(B) Qualified methanol and ethanol fuel produced from coal

The term "qualified methanol or ethanol fuel" means any liquid at least 85 percent of which consists of methanol, ethanol, or other alcohol produced from coal (including peat).

(C) Applicable blender rate

For purposes of subparagraph (A)(i), the applicable blender rate is—

(i) except as provided in clause (ii), 5.4 cents, and

(ii) for sales or uses during calendar years 2001 through 2008, 1/10 of the blender amount applicable under section 40(h)(2) for the calendar year in which the sale or use occurs.

(D) Termination

On and after January 1, 2009, subparagraph (A) shall not apply.

(c) Certain liquids used as a fuel in aviation

(1) In general

There is hereby imposed a tax upon any liquid for use as a fuel other than aviation gasoline—

(A) sold by any person to an owner, lessee, or other operator of an aircraft for use in such aircraft, or

(B) used by any person in an aircraft unless there was a taxable sale of such fuel under subparagraph (A).

(2) Exemption for previously taxed fuel

No tax shall be imposed by this subsection on the sale or use of any liquid for use as a fuel other than aviation gasoline if tax was imposed on such liquid under section 4081 (other than such tax at the Leaking Underground Storage Tank Trust Fund financing rate) and the tax thereon was not credited or refunded.

(3) Rate of tax

The rate of tax imposed by this subsection shall be 21.8 cents per gallon (4.3 cents per gallon with respect to any sale or use for commercial aviation).

(d) Additional taxes to fund Leaking Underground Storage Tank Trust Fund

(1) Tax on sales and uses subject to tax under subsection (a)

In addition to the taxes imposed by subsection (a), there is hereby imposed a tax of 0.1 cent a gallon on the sale or use of any liquid (other than liquefied petroleum gas and other than liquefied natural gas) if tax is imposed by subsection (a)(1) or (2) on such sale or use. No tax shall be imposed under the preceding sentence on the sale or use of any liquid if tax was imposed with

respect to such liquid under section 4081 at the Leaking Underground Storage Tank Trust Fund financing rate.

(2) Liquids used in aviation

In addition to the taxes imposed by subsection (c), there is hereby imposed a tax of 0.1 cent a gallon on any liquid (other than gasoline (as defined in section 4083))—

(A) sold by any person to an owner, lessee, or other operator of an aircraft for use as a fuel in such aircraft, or

(B) used by any person as a fuel in an aircraft unless there was a taxable sale of such liquid under subparagraph (A).

No tax shall be imposed by this paragraph on the sale or use of any liquid if there was a taxable sale of such liquid under section 4081.

(3) Diesel fuel used in trains

In the case of any sale for use or use after December 31, 2006, there is hereby imposed a tax of 0.1 cent per gallon on any liquid other than gasoline (as defined in section 4083)—

(A) sold by any person to an owner, lessee, or other operator of a diesel-powered train for use as a fuel in such train, or

(B) used by any person as a fuel in a diesel-powered train unless there was a taxable sale of such fuel under subparagraph (A).

No tax shall be imposed by this paragraph on the sale or use of any liquid if tax was imposed on such liquid under section 4081.

(4) Termination

The taxes imposed by this subsection shall not apply during any period during which the Leaking Underground Storage Tank Trust Fund financing rate under section 4081 does not apply.

(5) Nonapplication of exemptions other than for exports

For purposes of this section, the tax imposed under this subsection shall be determined without regard to subsections (b)(1)(A), (f), (g), (h), and (l). The preceding sentence shall not apply with respect to subsection (g)(3) and so much of subsection (g)(1) as relates to vessels (within the meaning of section 4221(d)(3)) employed in foreign trade or trade between the United States and any of its possessions.

[(e) Repealed. Pub. L. 108–357, title VIII, §853(d)(2)(C), Oct. 22, 2004, 118 Stat. 1613]

(f) Exemption for farm use

(1) Exemption

Under regulations prescribed by the Secretary, no tax shall be imposed under this section on any liquid sold for use or used on a farm for farming purposes.

(2) Use on a farm for farming purposes

For purposes of paragraph (1) of this subsection, use on a farm for farming purposes shall be determined in accordance with paragraphs (1), (2), and (3) of section 6420(c).

(g) Other exemptions

Under regulations prescribed by the Secretary, no tax shall be imposed under this section—

(1) on any liquid sold for use or used as supplies for vessels or aircraft (within the meaning of section 4221(d)(3));

(2) with respect to the sale of any liquid for the exclusive use of any State, any political subdivision of a State, or the District of Columbia, or with respect to the use by any of the foregoing of any liquid as a fuel;

(3) upon the sale of any liquid for export, or for shipment to a possession of the United States, and in due course so exported or shipped;

(4) with respect to the sale of any liquid to a nonprofit educational organization for its exclusive use, or with respect to the use by a nonprofit educational organization of any liquid as a fuel; and

(5) with respect to the sale of any liquid to a qualified blood collector organization (as defined in section 7701(a)(49)) for such organization's exclusive use in the collection, storage, or transportation of blood.

For purposes of paragraph (4), the term "nonprofit educational organization" means an educational organization described in section 170(b)(1)(A)(ii) which is exempt from income tax under section 501(a). The term also includes a school operated as an activity of an organization described in section 501(c)(3) which is exempt from income tax under section 501(a), if such school normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

(h) Exemption for use by certain aircraft museums

(1) Exemption

Under regulations prescribed by the Secretary, no tax shall be imposed under this section on any liquid sold for use or used by an aircraft museum in an aircraft or vehicle owned by such museum and used exclusively for purposes set forth in paragraph (2)(C).

(2) Definition of aircraft museum

For purposes of this subsection, the term "aircraft museum" means an organization—

(A) described in section 501(c)(3) which is exempt from income tax under section 501(a),

(B) operated as a museum under charter by a State or the District of Columbia, and

(C) operated exclusively for the procurement, care, and exhibition of aircraft of the type used for combat or transport in World War II.

[(i) Repealed. Pub. L. 108–357, title VIII, §853(d)(2)(D), Oct. 22, 2004, 118 Stat. 1613]

(j) Sales by United States, etc.

The taxes imposed by this section shall apply with respect to liquids sold at retail by the United States, or by any agency or instrumentality of the United States, unless sales by such agency or instrumentality are by statute specifically exempted from such taxes.

[(k) Repealed. Pub. L. 108–357, title III, §301(c)(6), Oct. 22, 2004, 118 Stat. 1461]

(l) Exemption for certain uses

No tax shall be imposed under this section on any liquid sold for use in, or used in, a helicopter or a fixed-wing aircraft for purposes of providing transportation with respect to which the requirements of subsection (f) or (g) of section 4261 are met.

(m) Certain alcohol fuels

(1) In general

In the case of the sale or use of any partially exempt methanol or ethanol fuel the rate of the tax imposed by subsection (a)(2) shall be—

(A) after September 30, 1997, and before October 1, 2016—

(i) in the case of fuel none of the alcohol in which consists of ethanol, 9.15 cents per gallon, and

(ii) in any other case, 11.3 cents per gallon, and

(B) after September 30, 2016—

(i) in the case of fuel none of the alcohol in which consists of ethanol, 2.15 cents per gallon, and

(ii) in any other case, 4.3 cents per gallon.

(2) Partially exempt methanol or ethanol fuel

The term "partially exempt methanol or ethanol fuel" means any liquid at least 85 percent of

which consists of methanol, ethanol, or other alcohol produced from natural gas.

(Aug. 16, 1954, ch. 736, 68A Stat. 478; Mar. 30, 1955, ch. 18, §3(a)(1), 69 Stat. 14; Mar. 29, 1956, ch. 115, §3(a)(1), 70 Stat. 66; Apr. 2, 1956, ch. 160, §2(a)(1), 70 Stat. 89; June 29, 1956, ch. 462, title II, §202, 70 Stat. 387; Pub. L. 85–859, title I, §119(b)(1), Sept. 2, 1958, 72 Stat. 1286; Pub. L. 86–342, title II, §201(b), Sept. 21, 1959, 73 Stat. 613; Pub. L. 87–61, title II, §201(a), (c), (d), June 29, 1961, 75 Stat. 123, 124; Pub. L. 89–44, title VIII, §802(a)(2), June 21, 1965, 79 Stat. 159; Pub. L. 91–258, title II, §202, May 21, 1970, 84 Stat. 237; Pub. L. 91–605, title III, §303(a)(1), (2), Dec. 31, 1970, 84 Stat. 1743; Pub. L. 94–280, title III, §303(a)(1), (2), May 5, 1976, 90 Stat. 456; Pub. L. 94–455, title XIX, §§1904(a)(1)(B), (C), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1810, 1811, 1834; Pub. L. 94–530, §1(a), Oct. 17, 1976, 90 Stat. 2487; Pub. L. 95–599, title V, §502(a)(1), (b), Nov. 6, 1978, 92 Stat. 2756, 2757; Pub. L. 95–600, title VII, §703(l)(1), (2), Nov. 6, 1978, 92 Stat. 2942; Pub. L. 95–618, title II, §§221(b)(1), 222(a)(2), 233(a)(3)(B), Nov. 9, 1978, 92 Stat. 3185, 3187, 3191; Pub. L. 96–223, title II, §232(a)(2), Apr. 2, 1980, 94 Stat. 273; Pub. L. 96–298, §1(a), July 1, 1980, 94 Stat. 829; Pub. L. 97–248, title II, §279(a), (b)(1), Sept. 3, 1982, 96 Stat. 563; Pub. L. 97–424, title V, §§511(a)(2), (b)(1), (c)(2), (d)(2), (g)(1), 516(a)(1), (b)(1), Jan. 6, 1983, 96 Stat. 2169–2171, 2173, 2182, 2183; Pub. L. 98–369, div. A, title IX, §§911(a), 912(a), 913(a), title X, §1018(a), July 18, 1984, 98 Stat. 1005, 1007, 1008, 1021; Pub. L. 99–499, title V, §521(a)(2), (d)(1)–(3), Oct. 17, 1986, 100 Stat. 1776, 1779; Pub. L. 99–514, title IV, §422(a)(1), (2), title XVII, §1702(a), title XVIII, §1878(c)(1), Oct. 22, 1986, 100 Stat. 2229, 2773, 2903; Pub. L. 100–17, title V, §502(a)(1), (b)(1)–(3), (c)(1), Apr. 2, 1987, 101 Stat. 256, 257; Pub. L. 100–203, title X, §10502(b), Dec. 22, 1987, 101 Stat. 1330–441; Pub. L. 100–223, title IV, §§402(b), 404(b), 405(b)(3), Dec. 30, 1987, 101 Stat. 1532, 1533, 1535; Pub. L. 100–647, title I, §1017(c)(3), (4), title II, §2001(d)(2), (3)(A)–(D), Nov. 10, 1988, 102 Stat. 3576, 3595; Pub. L. 101–508, title XI, §§11211(a)(4), (b)(3), (6)(C)–(E)(i), (F), (d)(1), (2), (e)(1), (2), 11213(b)(2)(A), (B), (d)(2)(B), (e)(3), Nov. 5, 1990, 104 Stat. 1388–423, 1388–425 to 1388–427, 1388–433, 1388–436; Pub. L. 102–240, title VIII, §8002(b)(1), (2), Dec. 18, 1991, 105 Stat. 2203; Pub. L. 103–66, title XIII, §§13163(a)(2), 13241(b)(2)(A), (B)(iii), (c), (e), (f)(1), (2), 13242(d)(3)–(13), Aug. 10, 1993, 107 Stat. 453, 510, 511, 522–524; Pub. L. 104–188, title I, §§1208, 1609(a)(3), (g)(3), (4)(A), Aug. 20, 1996, 110 Stat. 1776, 1841–1843; Pub. L. 105–2, §2(a)(3), Feb. 28, 1997, 111 Stat. 4; Pub. L. 105–34, title IX, §§902(b)(1), (2), 907(a), (b), title X, §§1031(a)(3), 1032(e)(1), (2), title XIV, §1435(b), title XVI, §1601(f)(4)(A), (B), Aug. 5, 1997, 111 Stat. 873, 875, 929, 935, 1053, 1090; Pub. L. 105–178, title IX, §§9002(a)(1)(A)–(C), 9003(a)(1)(A), (B), (b)(2)(A), 9006(a), June 9, 1998, 112 Stat. 499, 501, 502, 506; Pub. L. 105–206, title VI, §6010(g)(1), July 22, 1998, 112 Stat. 814; Pub. L. 108–357, title II, §241(a)(1), (2)(A), title III, §301(c)(5), (6), title VIII, §853(a)(6), (d)(2)(A)–(E), Oct. 22, 2004, 118 Stat. 1437, 1461, 1611–1613; Pub. L. 109–58, title XIII, §1362(b)(2), Aug. 8, 2005, 119 Stat. 1059; Pub. L. 109–59, title XI, §§11101(a)(1)(A)–(C), 11113(a), 11151(e)(2), 11161(b)(1), (3)(A), Aug. 10, 2005, 119 Stat. 1943, 1946, 1969–1971; Pub. L. 109–280, title XII, §1207(a), Aug. 17, 2006, 120 Stat. 1070; Pub. L. 109–432, div. A, title II, §208, Dec. 20, 2006, 120 Stat. 2946; Pub. L. 110–172, §6(d)(1)(A), (2)(A), (3), Dec. 29, 2007, 121 Stat. 2480, 2481; Pub. L. 112–30, title I, §142(a)(1)(A), (B), (2)(A), Sept. 16, 2011, 125 Stat. 355, 356; Pub. L. 112–102, title IV, §402(a)(1)(A), (B), (2)(A), Mar. 30, 2012, 126 Stat. 281, 282; Pub. L. 112–140, title IV, §402(a)(1)(A), (B), (2)(A), June 29, 2012, 126 Stat. 402; Pub. L. 112–141, div. D, title I, §40102(a)(1)(A), (B), (2)(A), July 6, 2012, 126 Stat. 844.)

AMENDMENTS

2012—Subsec. (a)(1)(C)(iii)(I). Pub. L. 112–141, §40102(a)(1)(A), substituted "September 30, 2016" for "June 30, 2012".

Pub. L. 112–140, §§1(c), 402(a)(1)(A), temporarily substituted "July 6, 2012" for "June 30, 2012". See Effective and Termination Dates of 2012 Amendment note below.

Pub. L. 112–102, §402(a)(1)(A), substituted "June 30, 2012" for "March 31, 2012".

Subsec. (m)(1)(A). Pub. L. 112–141, §40102(a)(2)(A), substituted "October 1, 2016" for "July 1, 2012".

Pub. L. 112–140, §§1(c), 402(a)(2)(A), temporarily substituted "July 7, 2012" for "July 1, 2012" in introductory provisions. See Effective and Termination Dates of 2012 Amendment note below.

Pub. L. 112–102, §402(a)(2)(A), substituted "July 1, 2012" for "April 1, 2012" in introductory provisions.

Subsec. (m)(1)(B). Pub. L. 112–141, §40102(a)(1)(B), substituted "September 30, 2016" for "June 30, 2012".

Pub. L. 112–140, §§1(c), 402(a)(1)(B), temporarily substituted "July 6, 2012" for "June 30, 2012" in introductory provisions. See Effective and Termination Dates of 2012 Amendment note below.

Pub. L. 112–102, §402(a)(1)(B), substituted "June 30, 2012" for "March 31, 2012" in introductory provisions.

2011—Subsec. (a)(1)(C)(iii)(I). Pub. L. 112–30, §142(a)(1)(A), substituted "March 31, 2012" for "September 30, 2011".

Subsec. (m)(1)(A). Pub. L. 112–30, §142(a)(2)(A), substituted "April 1, 2012" for "October 1, 2011" in introductory provisions.

Subsec. (m)(1)(B). Pub. L. 112–30, §142(a)(1)(B), substituted "March 31, 2012" for "September 30, 2011" in introductory provisions.

2007—Subsec. (d)(1). Pub. L. 110–172, §6(d)(1)(A), inserted last sentence.

Subsec. (d)(5). Pub. L. 110–172, §6(d)(2)(A), (3), inserted "(b)(1)(A)," after "without regard to subsections", struck out "(other than with respect to any sale for export under paragraph (3) thereof)" after "(f), (g)", and inserted last sentence.

2006—Subsec. (b)(2)(B). Pub. L. 109–432, §208(c), substituted "and ethanol fuel produced from coal" for "or ethanol fuel" in heading.

Subsec. (b)(2)(C)(ii). Pub. L. 109–432, §208(b), substituted "2008" for "2007".

Subsec. (b)(2)(D). Pub. L. 109–432, §208(a), substituted "January 1, 2009" for "October 1, 2007".

Subsec. (g)(5). Pub. L. 109–280, which directed the addition of par. (5) to section 4041(g), without specifying the act to be amended, was executed to subsec. (g) of this section, which is section 4041 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

2005—Subsec. (a)(1)(B). Pub. L. 109–59, §11161(b)(3)(A), struck out last sentence which read as follows: "This subparagraph shall not apply to aviation-grade kerosene."

Pub. L. 109–58, §1362(b)(2)(A), inserted "(other than such tax at the Leaking Underground Storage Tank Trust Fund financing rate)" after "section 4081".

Subsec. (a)(1)(C)(iii)(I). Pub. L. 109–59, §11101(a)(1)(A), substituted "2011" for "2005".

Subsec. (a)(2). Pub. L. 109–59, §11113(a)(3), substituted "Alternative fuels" for "Special motor fuels" in heading.

Subsec. (a)(2)(A). Pub. L. 109–58, §1362(b)(2)(A), inserted "(other than such tax at the Leaking Underground Storage Tank Trust Fund financing rate)" after "section 4081" in introductory provisions.

Subsec. (a)(2)(B). Pub. L. 109–59, §11113(a)(1)(C), struck out concluding provisions which read as follows: "In the case of any sale or use after September 30, 2011, clause (ii) shall be applied by substituting '3.2 cents' for '13.6 cents', and clause (iii) shall be applied by substituting '2.8 cents' for '11.9 cents'."

Pub. L. 109–59, §11101(a)(1)(B), substituted "2011" for "2005" in concluding provisions.

Subsec. (a)(2)(B)(i). Pub. L. 109–59, §11113(a)(1)(A), inserted "and" at end.

Subsec. (a)(2)(B)(ii). Pub. L. 109–59, §11151(e)(2), substituted "section 45K(c)(3)" for "section 29(c)(3)".

Pub. L. 109–59, §11113(a)(1)(B), (D), added cl. (ii) and struck out former cl. (ii) which read as follows: "13.6 cents per gallon in the case of liquefied petroleum gas, and".

Subsec. (a)(2)(B)(iii). Pub. L. 109–59, §11113(a)(1)(B), struck out cl. (iii) which read as follows: "11.9 cents per gallon in the case of liquefied natural gas."

Subsec. (a)(3)(A). Pub. L. 109–59, §11113(a)(2)(A), substituted "18.3 cents per energy equivalent of a gallon of gasoline" for "48.54 cents per MCF (determined at standard temperature and pressure)" in concluding provisions.

Subsec. (a)(3)(C). Pub. L. 109–59, §11113(a)(2)(B), substituted "energy equivalent of a gallon of gasoline" for "MCF".

Subsec. (b)(1)(A). Pub. L. 109–58, §1362(b)(2)(B), which directed amendment of subpar. (A) by striking out "or (d)(1))", was executed by striking out "or (d)(1)" after "subsection (a)" to reflect the probable intent of Congress.

Subsec. (c). Pub. L. 109–59, §11161(b)(1)(D), substituted "Certain liquids used as a fuel in aviation" for "Aviation-grade kerosene" in heading.

Subsec. (c)(1). Pub. L. 109–59, §11161(b)(1)(A), substituted "any liquid for use as a fuel other than aviation gasoline" for "aviation-grade kerosene" in introductory provisions.

Subsec. (c)(2). Pub. L. 109–59, §11161(b)(1)(B), substituted "liquid for use as a fuel other than aviation gasoline" for "aviation-grade kerosene".

Pub. L. 109–58, §1362(b)(2)(A), inserted "(other than such tax at the Leaking Underground Storage Tank Trust Fund financing rate)" after "section 4081".

Subsec. (c)(3). Pub. L. 109–59, §11161(b)(1)(C), added par. (3) and struck out former par. (3) which read as follows: "The rate of tax imposed by this subsection shall be the rate of tax applicable under section 4081(a)(2)(A)(iv) which is in effect at the time of such sale or use."

Subsec. (d)(5). Pub. L. 109–58, §1362(b)(2)(C), added par. (5).

Subsec. (m)(1)(A), (B). Pub. L. 109–59, §11101(a)(1)(C), substituted "2011" for "2005" in introductory provisions.

2004—Subsec. (a)(1). Pub. L. 108–357, §853(a)(6)(B), inserted "and kerosene" after "diesel fuel" in heading.

Subsec. (a)(1)(B). Pub. L. 108–357, §853(a)(6)(A), inserted at end "This subparagraph shall not apply to aviation-grade kerosene."

Subsec. (a)(1)(C)(ii)(I) to (III). Pub. L. 108–357, §241(a)(1), added subcls. (I) to (III) and struck out former subcls. (I) to (III) which read as follows:

"(I) 6.8 cents per gallon after September 30, 1993, and before October 1, 1995,

"(II) 5.55 cents per gallon after September 30, 1995, and before November 1, 1998, and

"(III) 4.3 cents per gallon after October 31, 1998."

Subsec. (b)(2)(B). Pub. L. 108–357, §301(c)(5), substituted "coal (including peat)" for "a substance other than petroleum or natural gas".

Subsec. (c). Pub. L. 108–357, §853(d)(2)(A), amended heading and text of subsec. (c) generally, substituting provisions relating to imposition of tax upon aviation-grade kerosene and providing exemption for fuel previously taxed under section 4081, for provisions relating to imposition of tax on nongasoline fuels where no tax had been imposed under section 4091.

Subsec. (d)(2). Pub. L. 108–357, §853(d)(2)(B), substituted "section 4081" for "section 4091" in concluding provisions.

Subsec. (d)(3), (4). Pub. L. 108–357, §241(a)(2)(A), added par. (3) and redesignated former par. (3) as (4).

Subsec. (e). Pub. L. 108–357, §853(d)(2)(C), struck out heading and text of subsec. (e). Text read as follows: "If a liquid on which tax was imposed on the sale thereof is taxable at a higher rate under subsection (c)(1) of this section on the use thereof, there is hereby imposed a tax equal to the difference between the tax so imposed and the tax payable at such higher rate."

Subsec. (i). Pub. L. 108–357, §853(d)(2)(D), struck out heading and text of subsec. (i). Text read as follows: "If any liquid is sold by any person for use as a fuel in an aircraft, it shall be presumed for purposes of this section that a tax imposed by this section applies to the sale of such liquid unless the purchaser is registered in such manner (and furnished such information in respect of the use of the liquid) as the Secretary shall by regulations provide."

Subsec. (k). Pub. L. 108–357, §301(c)(6), struck out subsec. (k) which related to rates of tax in the case of the sale or use of any fuels containing alcohol.

Subsec. (m)(1). Pub. L. 108–357, §853(d)(2)(E), reenacted heading without change and amended text of par. (1) generally, substituting provisions relating to rates of tax after Sept. 30, 1997, and before Oct. 1, 2005, and rates of tax after Sept. 30, 2005, for provisions relating to rates of tax after Sept. 30, 1997, and before Oct. 1, 2005, rates of tax after Sept. 30, 2005, and rate of tax imposed by subsec. (c)(1).

1998—Subsec. (a)(1)(C)(ii)(II). Pub. L. 105–178, §9006(a)(1), substituted "November 1, 1998" for "October 1, 1999".

Subsec. (a)(1)(C)(ii)(III). Pub. L. 105–178, §9006(a)(2), substituted "October 31, 1998" for "September 30, 1999".

Subsec. (a)(1)(C)(iii)(I). Pub. L. 105–178, §9002(a)(1)(A), substituted "2005" for "1999".

Subsec. (a)(2)(B). Pub. L. 105–178, §9002(a)(1)(B), substituted "2005" for "1999" in concluding provisions.

Subsec. (b)(2)(A)(i). Pub. L. 105–178, §9003(b)(2)(A)(i), substituted "the applicable blender rate" for "5.4 cents".

Subsec. (b)(2)(C). Pub. L. 105–178, §9003(b)(2)(A)(ii), added subpar. (C). Former subpar. (C) redesignated (D).

Pub. L. 105–178, §9003(a)(1)(A), substituted "2007" for "2000".

Subsec. (b)(2)(D). Pub. L. 105–178, §9003(b)(2)(A)(ii), redesignated subpar. (C) as (D).

Subsec. (k)(3). Pub. L. 105–178, §9003(a)(1)(B), substituted "2007" for "2000".

Subsec. (l). Pub. L. 105–206 substituted "subsection (f) or (g)" for "subsection (e) or (f)".

Subsec. (m)(1)(A). Pub. L. 105–178, §9002(a)(1)(C), substituted "2005" for "1999" in two places.

1997—Subsec. (a)(1)(A). Pub. L. 105–34, §902(b)(1), substituted "or a diesel-powered train" for ", a diesel-powered train, or a diesel-powered boat" in cls. (i) and (ii) and "vehicle or train" for "vehicle, train, or boat" in cl. (i).

Subsec. (a)(1)(D). Pub. L. 105–34, §902(b)(2), struck out heading and text of subpar. (D). Text read as follows: "In the case of any sale for use, or use, of fuel in a diesel-powered motorboat—

"(i) no tax shall be imposed by subsection (a) or (d)(1) during the period beginning on the date which is 7 days after the date of the enactment of the Small Business Job Protection Act of 1996 and ending on December 31, 1997,

"(ii) effective during the period after September 30, 1999, and before January 1, 2000, the rate of tax imposed by this paragraph is 24.3 cents per gallon, and

"(iii) the termination of the tax under subsection (d) shall not occur before January 1, 2000."

Subsec. (a)(2). Pub. L. 105–34, §907(a)(1), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: "There is hereby imposed a tax on benzol, benzene, naphtha, liquefied petroleum gas, casing head and natural gasoline, or any other liquid (other than kerosene, gas oil, or fuel oil, or any product taxable under section 4081)—

"(A) sold by any person to an owner, lessee, or other operator of a motor vehicle or motorboat for use as a fuel in such motor vehicle or motorboat, or

"(B) used by any person as a fuel in a motor vehicle or motorboat unless there was a taxable sale of such liquid under subparagraph (A).

The rate of the tax imposed by this paragraph shall be the rate of tax specified in section 4081(a)(2)(A)(i) on gasoline which is in effect at the time of such sale or use."

Pub. L. 105–34, §1601(f)(4)(B), substituted "section 4081(a)(2)(A)(i)" for "section 4081(a)(2)(A)" in concluding provisions.

Subsec. (a)(2)(A). Pub. L. 105–34, §1032(e)(1), struck out "kerosene," after "(other than" in introductory provisions.

Subsec. (c)(1). Pub. L. 105–34, §1032(e)(2), substituted "kerosene and any other liquid" for "any liquid" in introductory provisions.

Subsec. (c)(2). Pub. L. 105–34, §1435(b), inserted "or by reason of section 4261(h)" before period at end.

Subsec. (c)(3). Pub. L. 105–2 amended heading and text of par. (3) generally. Prior to amendment, text read as follows: "The taxes imposed by paragraph (1) shall apply during the period beginning on September 1, 1982, and ending on December 31, 1995, and during the period beginning on the date which is 7 calendar days after the date of the enactment of the Small Business Job Protection Act of 1996 and ending on December 31, 1996. The termination under the preceding sentence shall not apply to so much of the tax imposed by paragraph (1) as does not exceed 4.3 cents per gallon."

Subsec. (c)(3)(B). Pub. L. 105–34, §1031(a)(3), substituted "September 30, 2007" for "September 30, 1997".

Subsec. (d)(1). Pub. L. 105–34, §907(a)(2), inserted "and other than liquefied natural gas" after "liquefied petroleum gas".

Subsec. (l). Pub. L. 105–34, §1601(f)(4)(A), struck out "helicopter" after "certain" in heading and inserted "or a fixed-wing aircraft" after "helicopter" in text.

Subsec. (m)(1)(A). Pub. L. 105–34, §907(b), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "the rate of the tax imposed by subsection (a)(2) shall be—

"(i) 11.3 cents per gallon after September 30, 1993, and before October 1, 1999, and

"(ii) 4.3 cents per gallon after September 30, 1999, and".

1996—Subsec. (a)(1)(D). Pub. L. 104–188, §1208, added cl. (i) and redesignated former cls. (i) and (ii) as (ii) and (iii), respectively.

Subsec. (c)(2). Pub. L. 104–188, §1609(g)(3)(A), redesignated par. (4) as (2) and struck out former par. (2) which read as follows:

"(2) GASOLINE.—There is hereby imposed a tax (at the rate specified in paragraph (3)) upon gasoline (as defined in section 4083)—

"(A) sold by any person to an owner, lessee, or other operator of an aircraft, for use as a fuel in such aircraft in noncommercial aviation; or

"(B) used by any person as a fuel in an aircraft in noncommercial aviation, unless there was a taxable sale of such product under subparagraph (A).

The tax imposed by this paragraph shall be in addition to any tax imposed under section 4081."

Subsec. (c)(3). Pub. L. 104–188, §1609(g)(3), redesignated par. (5) as (3) and substituted "paragraph (1)" for "paragraphs (1) and (2)", and struck out former par. (3) which read as follows:

"(3) RATE OF TAX.—The rate of tax imposed by paragraph (2) on any gasoline is 1 cent per gallon."

Subsec. (c)(4). Pub. L. 104–188, §1609(g)(3)(A), redesignated par. (4) as (2).

Subsec. (c)(5). Pub. L. 104–188, §1609(g)(3)(A), redesignated par. (5) as (3).

Pub. L. 104–188, §1609(a)(3), inserted ", and during the period beginning on the date which is 7 calendar

days after the date of the enactment of the Small Business Job Protection Act of 1996 and ending on December 31, 1996" after "December 31, 1995".

Subsec. (k)(1)(A) to (C). Pub. L. 104–188, §1609(g)(4)(A), inserted "and" at end of subpar. (A), substituted period for ", and" at end of subpar. (B), and struck out subpar. (C) which read as follows: "no tax shall be imposed by subsection (c)(2)."

1993—Subsec. (a)(1). Pub. L. 103–66, §13242(d)(3), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: "There is hereby imposed a tax on any liquid (other than any product taxable under section 4081)—

"(A) sold by any person to an owner, lessee, or other operator of a diesel-powered highway vehicle or diesel-powered boat for use as a fuel in such vehicle or boat, or

"(B) used by any person as a fuel in a diesel-powered highway vehicle or diesel-powered boat unless there was a taxable sale of such liquid under subparagraph (A).

The rate of the tax imposed by this paragraph shall be the sum of the Highway Trust Fund financing rate and the diesel fuel deficit reduction rate in effect under section 4091 at the time of such sale or use. No tax shall be imposed by this paragraph on the sale or use of any liquid if there was a taxable sale of such liquid under section 4091."

Pub. L. 103–66, §13163(a)(2), substituted "diesel-powered highway vehicle or diesel-powered boat" for "diesel-powered highway vehicle" in subpars. (A) and (B) and "such vehicle or boat" for "such vehicle" in subpar. (A).

Subsec. (a)(2). Pub. L. 103–66, §13242(d)(4), in introductory provisions, struck out "or paragraph (1) of this subsection" after "section 4081" and, in closing provisions, substituted "The rate of the tax imposed by this paragraph shall be the rate of tax specified in section 4081(a)(2)(A) on gasoline which is in effect at the time of such sale or use." for "The rate of the tax imposed by this paragraph shall be the sum of the Highway Trust Fund financing rate and the deficit reduction rate in effect under section 4081 at the time of such sale or use."

Subsec. (a)(3). Pub. L. 103–66, §13241(e)(1), added par. (3).

Subsec. (b)(1)(B). Pub. L. 103–66, §13242(d)(5)(A), substituted "paragraph (1)(B), (2)(B), or (3)(A)(ii)" for "paragraph (1)(B) or (2)(B)" and inserted before period at end "(if any)".

Subsec. (b)(1)(C). Pub. L. 103–66, §13242(d)(5)(B), inserted before period at end "; except that such term shall not, for purposes of subsection (a)(1), include use in a diesel-powered train".

Subsec. (b)(2)(A)(i). Pub. L. 103–66, §13242(d)(5)(C), struck out "Highway Trust Fund financing" before "rate applicable".

Subsec. (c)(1). Pub. L. 103–66, §13242(d)(6), substituted "The rate of the tax imposed by this paragraph shall be the rate of tax specified in section 4091(b)(1) which is in effect at the time of such sale or use." for "The rate of the tax imposed by this paragraph shall be the sum of the Airport and Airway Trust Fund financing rate and the aviation fuel deficit reduction rate in effect under section 4091 at the time of such sale or use." in concluding provisions.

Pub. L. 103–66, §13241(b)(2)(B)(iii), struck out "of 17.5 cents per gallon" before "upon any liquid" in introductory provisions and inserted "The rate of the tax imposed by this paragraph shall be the sum of the Airport and Airway Trust Fund financing rate and the aviation fuel deficit reduction rate in effect under section 4091 at the time of such sale or use." before last sentence in concluding provisions.

Subsec. (c)(2). Pub. L. 103–66, §13242(d)(7), substituted "gasoline (as defined in section 4083)" for "any product taxable under section 4081".

Subsec. (c)(3). Pub. L. 103–66, §13241(b)(2)(A), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: "The rate of tax imposed by paragraph (2) on any gasoline is the excess of 15 cents a gallon over the sum of the Highway Trust Fund financing rate plus the deficit reduction rate at which tax was imposed on such gasoline under section 4081."

Subsec. (c)(5). Pub. L. 103–66, §13242(d)(8), inserted at end "The termination under the preceding sentence shall not apply to so much of the tax imposed by paragraph (1) as does not exceed 4.3 cents per gallon."

Subsec. (d)(1). Pub. L. 103–66, §13241(e)(2), substituted "subsection (a)(1) or (2)" for "subsection (a)" before "on such sale or use".

Subsec. (d)(2). Pub. L. 103–66, §13242(d)(9), (10), redesignated par. (3) as (2), substituted "(other than gasoline (as defined in section 4083))" for "(other than any product taxable under section 4081)", and struck out heading and text of former par. (2). Text read as follows: "There is hereby imposed a tax of 0.1 cent a gallon on any liquid (other than a product taxable under section 4081)—

"(A) sold by any person to an owner, lessee, or other operator of a diesel-powered train for use as a fuel in such train, or

"(B) used by any person as a fuel in a diesel-powered train unless there was a taxable sale of such liquid under subparagraph (A).

No tax shall be imposed by this paragraph on the sale or use of any liquid if there was a taxable sale of such liquid under section 4091."

Subsec. (d)(3), (4). Pub. L. 103–66, §13242(d)(9), redesignated pars. (3) and (4) as (2) and (3), respectively.

Subsec. (f)(3). Pub. L. 103–66, §13241(f)(1), struck out heading and text of par. (3). Text read as follows: "Except with respect to the taxes imposed by subsection (d), paragraph (1) shall not apply on and after October 1, 1999."

Subsec. (g). Pub. L. 103–66, §13241(f)(2), struck out at end "Except with respect to the taxes imposed by subsection (d), paragraphs (2) and (4) shall not apply on and after October 1, 1999."

Subsec. (k)(1)(A). Pub. L. 103–66, §13242(d)(11), struck out "Highway Trust Fund financing" before "rates under paragraphs" and substituted "section 4081(c)" for "sections 4081(c) and 4091(c), as the case may be".

Subsec. (k)(1)(B). Pub. L. 103–66, §13242(d)(12), substituted "4091(c)" for "4091(d)".

Subsec. (m)(1)(A). Pub. L. 103–66, §13242(d)(13), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "under subsection (a)(2)—

"(i) the Highway Trust Fund financing rate shall be 5.75 cents per gallon, and

"(ii) the deficit reduction rate shall be 5.55 cents per gallon."

Pub. L. 103–66, §13241(c), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "under subsection (a)(2) the Highway Trust Fund financing rate shall be 5.75 cents per gallon and the deficit reduction rate shall be 1.25 cents per gallon, and".

Subsec. (m)(1)(B). Pub. L. 103–66, §13242(d)(13), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "the rate of the tax imposed by subsection (c)(1) shall be the comparable rate under section 4091(d)(1)."

1991—Subsecs. (f)(3), (g). Pub. L. 102–240 substituted "1999" for "1995".

1990—Subsec. (a)(1). Pub. L. 101–508, §11211(b)(6)(C)(i), struck out "of 15 cents a gallon" after "imposed a tax" in introductory provisions and inserted before last sentence "The rate of the tax imposed by this paragraph shall be the sum of the Highway Trust Fund financing rate and the diesel fuel deficit reduction rate in effect under section 4091 at the time of such sale or use."

Subsec. (a)(2). Pub. L. 101–508, §11211(b)(3), substituted "imposed a tax" for "imposed a tax of 9 cents a gallon" in introductory provisions and inserted at end "The rate of the tax imposed by this paragraph shall be the sum of the Highway Trust Fund financing rate and the deficit reduction rate in effect under section 4081 at the time of such sale or use."

Subsec. (a)(3). Pub. L. 101–508, §11211(b)(6)(C)(ii), struck out par. (3) which provided that on and after Oct. 1, 1993, the taxes imposed by subsec. (a) shall not apply.

Subsec. (b)(2)(A)(i). Pub. L. 101–508, §11211(b)(6)(D), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: "subsection (a)(2) shall be applied by substituting '3 cents' for '9 cents', and".

Subsec. (b)(2)(C). Pub. L. 101–508, §11211(e)(1), substituted "2000" for "1993".

Subsec. (c)(1). Pub. L. 101–508, §11213(b)(2)(A), substituted "17.5 cents" for "14 cents".

Subsec. (c)(3). Pub. L. 101–508, §11211(a)(4), substituted "15 cents" for "12 cents" and "the sum of the Highway Trust Fund financing rate plus the deficit reduction rate" for "the Highway Trust Fund financing rate".

Subsec. (c)(5). Pub. L. 101–508, §11213(d)(2)(B), substituted "1995" for "1990".

Subsec. (c)(6). Pub. L. 101–508, §11213(e)(3), struck out par. (6) which provided cross reference to section 4283 for reduction of rates of taxes imposed by subsec. (c)(1) and (2) in certain circumstances.

Subsecs. (f)(3), (g). Pub. L. 101–508, §11211(d)(1), (2), substituted "1995" for "1993".

Subsec. (k)(1)(A). Pub. L. 101–508, §11211(b)(6)(E)(i), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "subsection (a)(1) shall be applied by substituting '9 cents' for '15 cents', and".

Subsec. (k)(1)(B). Pub. L. 101–508, §11213(b)(2)(B)(i), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "no tax shall be imposed by subsection (c)(1), and".

Pub. L. 101–508, §11211(b)(6)(E)(i), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "subsection (a)(2) shall be applied by substituting '3 cents' for '9 cents', and".

Subsec. (k)(1)(C). Pub. L. 101–508, §11211(b)(6)(E)(i), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: "no tax shall be imposed by subsection (c)."

Subsec. (k)(3). Pub. L. 101–508, §11211(e)(2), substituted "2000" for "1993".

Subsec. (m)(1)(A). Pub. L. 101–508, §11211(b)(6)(F), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "subsection (a)(2) shall be applied by substituting '4½ cents' for '9 cents', and".

Subsec. (m)(1)(B). Pub. L. 101–508, §11213(b)(2)(B)(ii), amended subpar. (B) generally. Prior to

amendment, subpar. (B) read as follows: "no tax shall be imposed by subsection (c)."

1988—Subsec. (b)(1)(A). Pub. L. 100–647, §2001(d)(3)(A), inserted reference to subsection (d)(1).

Subsec. (b)(1)(B). Pub. L. 100–647, §2001(d)(3)(B), inserted "and by the corresponding provision of subsection (d)(1)" before the period.

Subsec. (b)(1)(C). Pub. L. 100–647, §1017(c)(3), substituted "section 6421(e)(2)" for "section 6421(d)(2)".

Subsec. (b)(2)(A). Pub. L. 100–647, §2001(d)(3)(D), amended subpar. (A) generally, inserting "(i)" before "subsection (a)(2)" and adding cl. (ii).

Subsec. (b)(3). Pub. L. 100–647, §2001(d)(3)(C), struck out par. (3) which coordinated subsec. (b) with taxes imposed by subsec. (d).

Subsec. (c)(3). Pub. L. 100–647, §2001(d)(2), substituted "the Highway Trust Fund financing rate at which" for "the rate at which".

Subsec. (f)(3). Pub. L. 100–647, §1017(c)(4), amended par. (3) generally, substituting "paragraph (1) shall not apply on and after October 1, 1993" for "on and after October 1, 1993, paragraph (1) shall not apply".

1987—Subsec. (a)(1). Pub. L. 100–203, §10502(b)(1), in heading substituted "Tax on diesel fuel where no tax imposed on fuel under section 4091" for "Diesel fuel" and in text inserted sentence at end that no tax be imposed by this paragraph on the sale or use of any liquid if there was a taxable sale of such liquid under section 4091.

Subsec. (a)(3). Pub. L. 100–17, §502(a)(1), substituted "1993" for "1988".

Subsec. (b)(2)(C). Pub. L. 100–17, §502(b)(1), substituted "1993" for "1988".

Subsec. (c)(1). Pub. L. 100–203, §10502(b)(2), in heading substituted "Tax on nongasoline fuels where no tax imposed on fuel under section 4091" for "In general" and in text inserted sentence at end that no tax be imposed by this paragraph on the sale or use of any liquid if there was a taxable sale of such liquid under section 4091.

Subsec. (c)(5). Pub. L. 100–223, §402(b), substituted "1990" for "1987".

Subsec. (c)(6). Pub. L. 100–223, §405(b)(3), added par. (6).

Subsec. (d)(1). Pub. L. 100–203, §10502(b)(3), added par. (1), substituting new heading for "Liquids other than gasoline, etc., used in motor vehicles, motorboats, or trains", and struck out text of former par. (1) which read as follows: "In addition to the taxes imposed by subsection (a), there is hereby imposed a tax of 0.1 cents a gallon on benzol, benzene, naphtha, casing head and natural gasoline, or any other liquid (other than kerosene, gas oil, liquefied petroleum gas, or fuel oil, or any product taxable under section 4081)—

"(A) sold by any person to an owner, lessee, or other operator of a motor vehicle, motorboat, or train for use as a fuel in such motor vehicle, motorboat, or train, or

"(B) used by any person as a fuel in a motor vehicle, motorboat, or train unless there was a taxable sale of such liquid under subparagraph (A)."

Subsec. (d)(2). Pub. L. 100–203, §10502(b)(3), added par. (2), substituting new heading for "Liquids used in aviation", and struck out text of former par. (2) which read as follows: "In addition to the taxes imposed by subsection (c) and section 4081, there is hereby imposed a tax of 0.1 cents a gallon on any liquid—

"(A) sold by any person to an owner, lessee, or other operator of an aircraft for use as a fuel in such aircraft, or

"(B) used by any person as a fuel in an aircraft unless there was a taxable sale of such liquid under subparagraph (A).

The tax imposed by this paragraph shall not apply to any product taxable under section 4081 which is used as a fuel in an aircraft other than in noncommercial aviation."

Subsec. (d)(3), (4). Pub. L. 100–203, §10502(b)(3), added par. (3) and redesignated former par. (3) as (4).

Subsecs. (f)(3), (g). Pub. L. 100–17, §502(b)(2), (3), substituted "1993" for "1988".

Subsec. (k)(3). Pub. L. 100–17, §502(c)(1), substituted "September 30, 1993" for "December 31, 1992".

Subsec. (l). Pub. L. 100–223, §404(b), amended subsec. (l) generally. Prior to amendment, subsec. (l) read as follows: "No tax shall be imposed under this section on any liquid sold for use in, or used in, a helicopter for the purpose of—

"(1) transporting individuals, equipment, or supplies in the exploration for, or the development or removal of, hard minerals, oil, or gas, or

"(2) the planting, cultivation, cutting or transportation of, or caring for, trees (including logging operation),

but only if the helicopter does not take off from, or land at, a facility eligible for assistance under the Airport and Airway Development Act of 1970, or otherwise use services provided pursuant to the Airport and Airway Improvement Act of 1982 during such use."

Subsec. (n). Pub. L. 100–203, §10502(b)(4), struck out subsec. (n) which related to tax on diesel fuel for highway vehicle use being imposed on sale to retailer.

1986—Subsec. (b). Pub. L. 99–514, §422(a)(2), substituted "reduction in tax" for "exemption" in heading.

Subsec. (b)(2)(A). Pub. L. 99–514, §422(a)(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "No tax shall be imposed by subsection (a) on any qualified methanol or ethanol fuel."

Subsec. (b)(3). Pub. L. 99–499, §521(d)(1), added par. (3).

Subsecs. (d), (e). Pub. L. 99–499, §521(a)(2), added subsec. (d) and redesignated former subsec. (d) as (e).

Subsec. (f)(3). Pub. L. 99–499, §521(d)(2), substituted "Except with respect to the taxes imposed by subsection (d), on and after" for "On and after".

Subsec. (g). Pub. L. 99–499, §521(d)(3), substituted "Except with respect to the taxes imposed by subsection (d), paragraphs" for "Paragraphs" in last sentence.

Subsec. (l)(1). Pub. L. 99–514, §1879(c)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows:

"transporting individuals, equipment, or supplies in—

"(A) the exploration for, or the development or removal of, hard minerals, or

"(B) the exploration for oil or gas, or".

Subsec. (n). Pub. L. 99–514, §1702(a), added subsec. (n).

1984—Subsec. (a)(1). Pub. L. 98–369, §911(a), substituted "15 cents" for "9 cents".

Subsec. (k)(1). Pub. L. 98–369, §912(a), in amending par. (1) generally, substituted "liquid" for "liquid fuel" in provisions preceding subpar. (A), in subpar. (A), substituted "subsection (a)(1) shall be applied by substituting '9 cents' for '15 cents', and" for "subsection (a) shall be applied by substituting '4 cents' for '9 cents' each place it appears, and", added subpar. (B), and redesignated former subpar. (B) as (C).

Subsec. (l)(1). Pub. L. 98–369, §1018(a), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (m). Pub. L. 98–369, §913(a), added subsec. (m).

1983—Subsec. (a). Pub. L. 97–424, §§511(a)(2), 516(a)(1)(A), added subsec. (a), and struck out former subsec. (a) which provided for a tax of 4 cents a gallon on diesel fuel.

Subsec. (b). Pub. L. 97–424, §511(b)(1), (c)(2), added subsec. (b), and struck out former subsec. (b) which provided for a tax of 4 cents a gallon on special motor fuels.

Subsec. (c)(3). Pub. L. 97–424, §511(g)(1), substituted provision that the rate of tax imposed by par. (2) on any gasoline is the excess of 12 cents a gallon over the rate at which tax was imposed on such gasoline under section 4081 for provision that the rate of tax imposed by par. (2) was 8 cents a gallon (10½ cents a gallon in the case of any gasoline with respect to which a tax was imposed under section 4081 at the rate set forth in subsec. (b) thereof).

Subsec. (e). Pub. L. 97–424, §516(a)(1)(B), struck out subsec. (e) which provided that the taxes imposed by subsecs. (a) and (b) would be 1½ cents a gallon and that second and third sentences of subsecs. (a) and (b) would not apply on and after Oct. 1, 1984.

Subsec. (f)(3). Pub. L. 97–424, §516(b)(1)(A), added par. (3).

Subsec. (g). Pub. L. 97–424, §516(b)(1)(B), inserted provision that pars. (2) and (4) shall not apply on and after Oct. 1, 1988.

Subsec. (k). Pub. L. 97–424, §511(d)(2), in par. (1) substituted provisions for a 4-cent tax on the sale or use of any liquid fuel at least 10 percent of which consists of alcohol for provisions that no tax be imposed by this section on the sale or use of such fuel, and in par. (2) substituted "to which paragraph (1) applied" for "on which tax was not imposed by reason of this subsection" after "alcohol" and inserted provision that any tax imposed on such sale shall be reduced by the amount (if any) of the tax imposed on the sale of such mixture.

1982—Subsec. (c). Pub. L. 97–248, §279(a), in par. (1) substituted "14 cents" for "7 cents", in par. (3) substituted "8 cents a gallon (10½ cents a gallon in the case of any gasoline with respect to which a tax is imposed under section 4081 at the rate set forth in subsection (b) thereof)" for "3 cents a gallon", and in par. (5) substituted provisions that the taxes imposed by pars. (1) and (2) shall apply during the period beginning on Sept. 1, 1982, and ending on Dec. 31, 1987, for provisions that on and after Oct. 1, 1980, the taxes imposed by pars. (1) and (2) would not apply.

Subsec. (l). Pub. L. 97–248, §279(b)(1), added subsec. (l).

1980—Subsec. (c)(5). Pub. L. 96–298 extended termination date to "October 1, 1980" from "July 1, 1980".

Subsec. (k)(3). Pub. L. 96–223 added par. (3).

1978—Subsec. (b). Pub. L. 95–618, §§222(a)(2), 233(a)(3)(B), substituted ", in a qualified business use" for "otherwise than as a fuel in a highway vehicle (A) which (at the time of such sale or use) is registered, or is required to be registered, for highway use under the laws of any State or foreign country, or (B) which, in the case of a highway vehicle owned by the United States, is used on the highway" and "is used otherwise than in a qualified business use" for "is used as a fuel in a highway vehicle (A) which (at the time of such use) is registered, or is required to be registered, for highway use under the laws of any State or foreign country, or

(B) which, in the case of a highway vehicle owned by the United States, is used on the highway" and inserted provision that for purposes of this subsection "qualified business use" has the meaning given to such term by section 6421(d)(2).

Subsec. (c)(3). Pub. L. 95–599, §502(b), struck out termination date of Sept. 30, 1979 for 3 cents per gallon rate of tax and struck out provision for a 5½ cents per gallon rate of tax after such date.

Subsec. (e). Pub. L. 95–599, §502(a)(1), substituted "1984" for "1979".

Subsec. (h)(2). Pub. L. 95–600, §703(l)(1), substituted "term 'aircraft museum' means" for "term 'aircraft' means".

Subsecs. (i), (j). Pub. L. 95–600, §703(l)(2), redesignated subsec. (i), relating to sales by United States, or by any agency or instrumentality of United States, as (j).

Subsec. (k). Pub. L. 95–618, §221(b)(1), added subsec. (k).

1976—Subsec. (c)(3). Pub. L. 94–280, §303(a)(1), substituted "1979" for "1977" in two places.

Subsec. (e). Pub. L. 94–280, §303(a)(2), substituted "1979" for "1977".

Subsec. (f)(1). Pub. L. 94–455, §1906(b)(13(A), struck out "or his delegate" after "Secretary".

Subsec. (g). Pub. L. 94–455, §§1904(a)(1)(B), 1906(b)(13)(A), designated existing provisions as par. (1), substituted "Other exemptions" for "Exemptions for use as supplies for vessels" after "(g)", struck out "or his delegate" after "Secretary", and added pars. (2) to (4) and definition of "nonprofit educational organization".

Subsec. (h). Pub. L. 94–530 added subsec. (h). Former subsec. (h) redesignated "(i) Registration".

Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (i). Pub. L. 94–455, §1904(a)(1)(C), added subsec. (i) relating to sales by United States.

Pub. L. 94–530 redesignated former subsec. (h) as "(i) Registration".

1970—Subsec. (b). Pub. L. 91–258, §202(b)(1) and (2), substituted "motor vehicle or motorboat" for "motor vehicle, motorboat, or airplane", twice in par. (1) and once in par. (2), and "in" for "for the propulsion of" in par. (1) preceding "such motor vehicle", in par. (2) preceding "a motor vehicle" and in text following par. (2) before "a highway vehicle (A)" in two places, respectively.

Subsec. (c). Pub. L. 91–258, §202(a), added subsec. (c). Former subsec. (c) redesignated (e).

Subsec. (c)(3). Pub. L. 91–605, §303(a)(1), substituted "1977" for "1972" in two places.

Subsec. (d). Pub. L. 91–258, §202(a), added subsec. (d). Former subsec. (d) redesignated (f).

Subsec. (e). Pub. L. 91–605, §303(a)(2), substituted "1977" for "1972".

Pub. L. 91–258, §202(a), redesignated former subsec. (c) as (e), substituting in par. (1) "subsections (a) and (b)" and "," for "this section" and ";". Former subsec. (e) redesignated (g).

Subsec. (f). Pub. L. 91–258, §202(a), redesignated former subsec. (d) as (f), substituting in par. (1) prohibition against imposition of tax "under this section on any liquid sold for use or used on a farm for farming purposes" for prior provisions that "(A) no tax shall be imposed under subsection (a)(1) or (b)(1) on the sale of any liquid sold for use on a farm for farming purposes, and (B) no tax shall be imposed under subsection (a)(2) or (b)(2) on the use of any liquid used on a farm for farming purposes".

Subsec. (g). Pub. L. 91–258, §202(a), redesignated former subsec. (e) as (g), substituting "this section on any liquid sold" for "subsection (b) in the case of any fuel sold".

Subsec. (h). Pub. L. 91–258, §202(a), added subsec. (h).

1965—Subsec. (b). Pub. L. 89–44 inserted "casinghead and natural gasoline," after "liquefied petroleum gas," in text preceding par. (1).

1961—Subsec. (a). Pub. L. 87–61, §201(a), increased tax on diesel fuel from 3 to 4 cents a gallon, and substituted "a tax of 2 cents a gallon shall be imposed under paragraph (2)" for "a tax of 1 cent a gallon shall be imposed under paragraph (2)".

Subsec. (b). Pub. L. 87–61, §201(a), increased tax on special motor fuels from 3 to 4 cents a gallon, and substituted "a tax of 2 cents a gallon shall be imposed under paragraph (2)" for "a tax of 1 cent a gallon shall be imposed under paragraph (2)".

Subsec. (c). Pub. L. 87–61, §201(c), substituted "October 1, 1972" for "July 1, 1972".

Subsec. (f). Pub. L. 87–61, §201(d), repealed subsec. (f) which authorized a temporary increase in taxes under subsecs. (a) and (b).

1959—Subsecs. (a), (b). Pub. L. 86–342, §201(b)(2), struck out "in lieu of 3 cents a gallon" after "shall be 2 cents a gallon".

Subsec. (f). Pub. L. 86–342, §201(b)(1), added subsec. (f).

1958—Subsec. (e). Pub. L. 85–859 added subsec. (e).

1956—Subsec. (a). Act June 29, 1956, §202(a), increased tax on diesel fuel from 2 cents a gallon to 3 cents a gallon, and inserted provisions which retained tax at 2 cents a gallon for diesel fuel used in vehicles not registered, and not required to be registered, for highway use, or vehicles owned by the United States and not used on the highway.

Subsec. (b). Act June 29, 1956, §202(b), increased tax on special motor fuels from 2 cents a gallon to 3 cents a gallon, and inserted provisions which retained tax at 2 cents a gallon for special motor fuels sold for use or used otherwise than as a fuel for the propulsion of a highway vehicle which is registered, or is required to be registered, for highway use, or vehicles owned by the United States used on the highway.

Subsec. (c). Act June 29, 1956, §202(c), substituted "July 1, 1972" for "April 1, 1956" and provided for nonapplication of second and third sentences of subsec. (a) and (b).

Act Mar. 29, 1956, substituted "April 1, 1957" for "April 1, 1956".

Subsec. (d). Act Apr. 2, 1956, added subsec. (d).

1955—Subsec. (c). Act Mar. 30, 1955, substituted "April 1, 1956" for "April 1, 1955".

EFFECTIVE AND TERMINATION DATES OF 2012 AMENDMENT

Amendment by Pub. L. 112–141 effective July 1, 2012, see section 40102(f) of Pub. L. 112–141, set out as a note under section 460l–11 of Title 16, Conservation.

Amendment by Pub. L. 112–140 to cease to be effective on July 6, 2012, with text as amended by Pub. L. 112–140 to revert back to read as it did on the day before June 29, 2012, and amendments by Pub. L. 112–141 to be executed as if Pub. L. 112–140 had not been enacted, see section 1(c) of Pub. L. 112–140, set out as a note under section 101 of Title 23, Highways.

Amendment by Pub. L. 112–140 effective July 1, 2012, see section 402(f)(1) of Pub. L. 112–140, set out as a note under section 460l–11 of Title 16, Conservation.

Amendment by Pub. L. 112–102 effective Apr. 1, 2012, see section 402(f) of Pub. L. 112–102, set out as a note under section 460l–11 of Title 16, Conservation.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112–30 effective Oct. 1, 2011, see section 142(f) of Pub. L. 112–30, set out as a note under section 460l–11 of Title 16, Conservation.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendments by Pub. L. 110–172 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109–58, to which such amendments relate, and amendment by section 6(d)(3) of Pub. L. 110–172 applicable to fuel sold for use or used after Dec. 29, 2007, see section 6(e) of Pub. L. 110–172, set out as a note under section 30C of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title XII, §1207(g), Aug. 17, 2006, 120 Stat. 1072, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and sections 4221, 4253, 4483, 6416, 6421, and 7701 of this title] shall take effect on January 1, 2007.

"(2) SUBSECTION (d).—The amendment made by subsection (d) [amending section 4483 of this title] shall apply to taxable periods beginning on or after July 1, 2007."

EFFECTIVE DATE OF 2005 AMENDMENTS

Pub. L. 109–59, title XI, §11101(e), Aug. 10, 2005, 119 Stat. 1945, provided that: "The amendments made by this section [amending this section, sections 4051, 4071, 4081, 4221, 4481 to 4483, 6412, 9503, and 9504 of this title, and section 460l–11 of Title 16, Conservation] shall take effect on the date of the enactment of this Act [Aug. 10, 2005]."

Pub. L. 109–59, title XI, §11113(d), Aug. 10, 2005, 119 Stat. 1949, provided that: "The amendments made by this section [amending this section and sections 4101, 6426, and 6427 of this title] shall apply to any sale or use for any period after September 30, 2006."

Amendment by section 11151(e)(2) of Pub. L. 109–59 effective as if included in the provision of the Energy Tax Incentives Act of 2005, Pub. L. 109–58, title XIII, to which such amendment relates, see section 11151(f)(3) of Pub. L. 109–59, set out as a note under section 38 of this title.

Pub. L. 109–59, title XI, §11161(e), Aug. 10, 2005, 119 Stat. 1973, provided that: "The amendments made by this section [amending this section and sections 4081, 4082, 6427, 9502, and 9503 of this title] shall apply to fuels or liquids removed, entered, or sold after September 30, 2005."

Pub. L. 109–58, title XIII, §1362(d), Aug. 8, 2005, 119 Stat. 1060, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting section 6430 of this title and amending this section and sections 4081, 4082, and 9508 of this title] shall take effect on October 1, 2005.

"(2) NO EXEMPTION.—The amendments made by subsection (b) [enacting section 6430 of this title and amending this section and section 4082 of this title] shall apply to fuel entered, removed, or sold after

September 30, 2005."

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title II, §241(c), Oct. 22, 2004, 118 Stat. 1438, provided that: "The amendments made by this section [amending this section and sections 4042, 4082, 6421, and 6427 of this title] shall take effect on January 1, 2005."

Amendment by section 301(c)(5), (6) of Pub. L. 108–357 applicable to fuel sold or used after Dec. 31, 2004, see section 301(d)(1) of Pub. L. 108–357, set out as a note under section 40 of this title.

Pub. L. 108–357, title VIII, §853(e), Oct. 22, 2004, 118 Stat. 1614, provided that: "The amendments made by this section [amending this section and sections 4081 to 4083, 4101, 4103, 4221, 6206, 6416, 6427, 6724, 9502, and 9508 of this title, redesignating subpart C of part III of subchapter A of chapter 32 of this title as subpart B of part III of subchapter A of chapter 32 of this title, and repealing former subpart B of part III of subchapter A of chapter 32 of this title] shall apply to aviation-grade kerosene removed, entered, or sold after December 31, 2004."

EFFECTIVE DATE OF 1998 AMENDMENTS

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

Amendment by section 9003(b)(2)(A) of Pub. L. 105–178 effective Jan. 1, 2001, see section 9003(b)(3) of Pub. L. 105–178, set out as a note under section 40 of this title.

EFFECTIVE DATE OF 1997 AMENDMENTS

Pub. L. 105–34, title IX, §902(c), Aug. 5, 1997, 111 Stat. 873, provided that: "The amendments made by this section [amending this section and sections 4083 and 6421 of this title] shall take effect on January 1, 1998."

Pub. L. 105–34, title IX, §907(c), Aug. 5, 1997, 111 Stat. 876, provided that: "The amendments made by this section [amending this section] shall take effect on October 1, 1997."

Pub. L. 105–34, title X, §1031(e)(1), Aug. 5, 1997, 111 Stat. 932, provided that: "The amendments made by subsection (a) [amending this section and sections 4081 and 4091 of this title] shall apply take effect [sic] on October 1, 1997."

Pub. L. 105–34, title X, §1032(f), Aug. 5, 1997, 111 Stat. 935, as amended by Pub. L. 105–178, title IX, §9008, June 9, 1998, 112 Stat. 506; Pub. L. 106–170, title V, §524, Dec. 17, 1999, 113 Stat. 1928, provided that:

"(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 4081 to 4083, 4093, 4101, 6416, 6427, 6715, 7232, 9503, and 9508 of this title] shall take effect on July 1, 1998.

"(2) The amendment made by subsection (d) [amending section 4101 of this title] shall take effect on January 1, 2002."

Pub. L. 105–34, title XIV, §1435(c)(2), Aug. 5, 1997, 111 Stat. 1053, provided that: "The amendment made by subsection (b) [amending this section] shall take effect on October 1, 1997."

Amendment by section 1601(f)(4)(A), (B) of Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 23 of this title.

Pub. L. 105–2, §2(e)(1), Feb. 28, 1997, 111 Stat. 7, provided that: "The amendments made by subsection (a) [amending this section and sections 4081 and 4091 of this title] shall apply to periods beginning on or after the 7th day after the date of the enactment of this Act [Feb. 28, 1997]."

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title XVI, §1609(i), Aug. 20, 1996, 110 Stat. 1844, provided that: "The amendments made by this section [amending this section and sections 4081, 4091, 4261, 4271, 4282, 6421, and 9502 of this title] shall take effect on the 7th calendar day after the date of the enactment of this Act [Aug. 20, 1996], except that the amendments made by subsection (b) [amending sections 4261 and 4271 of this title] shall not apply to any amount paid before such date."

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13163(d), Aug. 10, 1993, 107 Stat. 454, provided that: "The amendments made by this section [amending this section and sections 4092, 6421, and 9508 of this title] shall take effect on January 1, 1994."

Pub. L. 103–66, title XIII, §13241(g), Aug. 10, 1993, 107 Stat. 512, provided that: "The amendments made by this section [amending this section and sections 4042, 4081, 4091, 4093, 6420, 6421, and 6427 of this title] shall take effect on October 1, 1993."

Pub. L. 103–66, title XIII, §13242(e), Aug. 10, 1993, 107 Stat. 528, provided that: "The amendments made by this section [enacting sections 4084 and 6714 of this title and amending this section and sections 4081 to 4083, 4091 to 4093, 4101 to 4103, 6206, 6302, 6412, 6416, 6420, 6421, 6427, 9502, 9503, and 9508 of this title] shall take effect on January 1, 1994."

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, §11211(a)(6), Nov. 5, 1990, 104 Stat. 1388–424, provided that: "Except as otherwise provided in this subsection, the amendments made by this subsection [amending this section and sections 4081 and 9503 of this title] shall apply to gasoline removed (as defined in [former] section 4082 of the Internal Revenue Code of 1986) after November 30, 1990."

Pub. L. 101–508, title XI, §11211(b)(7), Nov. 5, 1990, 104 Stat. 1388–426, provided that: "The amendments made by this subsection [amending this section and sections 4091, 4093, 6427, 9502, and 9503 of this title] shall take effect on December 1, 1990."

Pub. L. 101–508, title XI, §11213(b)(4), Nov. 5, 1990, 104 Stat. 1388–434, provided that: "The amendments made by this subsection [amending this section and sections 4091 and 6427 of this title] shall take effect on December 1, 1990."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1017(c)(3), (4) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 2001(d)(2), (3)(A)–(D) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Superfund Revenue Act of 1986, Pub. L. 99–499, title V, to which it relates, see section 2001(e) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1987 AMENDMENTS

Pub. L. 100–647, title II, §2001(d)(1)(A), Nov. 10, 1988, 102 Stat. 3594, provided that: "The amendments made by subsections (b)(3) and (d)(17) of section 10502 of the Revenue Act of 1987 [Pub. L. 100–203, amending this section and section 9508 of this title] shall be treated as if included in the amendments made by section 521 of the Superfund Revenue Act of 1986 [Pub. L. 99–499] except that the last sentence of [former] paragraphs (2) and (3) of section 4041(d) of the Internal Revenue Code of 1986 (as amended by such subsection (b)(3)) and the reference to section 4091 of such Code in section 9508(c)(2)(A) of such Code (as amended by such subsection (d)(1) [(d)(17)]) shall not apply to sales before April 1, 1988."

Pub. L. 100–223, title IV, §404(d)(2), Dec. 30, 1987, 101 Stat. 1533, provided that: "The amendment made by subsection (b) [amending this section] shall take effect on October 1, 1988."

Amendment by Pub. L. 100–203 applicable to sales after Mar. 31, 1988, see section 10502(e) of Pub. L. 100–203, set out as a note under section 40 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Pub. L. 99–514, title IV, §422(a)(3), Oct. 22, 1986, 100 Stat. 2230, provided that: "The amendments made by this subsection [amending this section] shall take effect on January 1, 1987."

Pub. L. 99–514, title XVII, §1702(c), Oct. 22, 1986, 100 Stat. 2774, provided that: "The amendments made by this section [amending this section and section 6652 of this title] shall apply to sales after the first calendar quarter beginning more than 60 days after the date of the enactment of this Act [Oct. 22, 1986]."

Amendment by section 1878(c)(1) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Pub. L. 99–499, title V, §521(e), Oct. 17, 1986, 100 Stat. 1780, provided that: "The amendments made by this section [amending this section and sections 4042, 4081, 4221, 6416, 6420, 6421, 6427, 9502, 9503, and 9506 of this title] shall take effect on January 1, 1987."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 911(a) of Pub. L. 98–369 effective Aug. 1, 1984, see section 911(e) of Pub. L. 98–369, set out as a note under section 6427 of this title.

Amendment by section 912(a) of Pub. L. 98–369 effective Jan. 1, 1985, see section 912(g) of Pub. L. 98–369, set out as a note under section 40 of this title.

Pub. L. 98–369, div. A, title IX, §913(c), July 18, 1984, 98 Stat. 1008, provided that: "The amendments made by this section [amending this section and section 40 of this title] shall take effect on August 1, 1984."

Pub. L. 98–369, div. A, title X, §1018(c)(1), July 18, 1984, 98 Stat. 1022, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on April 1, 1984."

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 97–424, title V, §511(h), Jan. 6, 1983, 96 Stat. 2173, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 44E, 4081, 6416, 6420, 6421, and 6427 of this title] shall take effect on April 1, 1983.

"(2) TARIFF ON IMPORTED ALCOHOL.—The amendment made by subsection (d)(5) [amending item 901.50 of the Tariff Schedules, which are not set out in the Code] shall apply with respect to articles entered, or withdrawn from warehouse for consumption, after March 31, 1983.

"(3) FOR SUBSECTION (e)(2).—The amendment made by subsection (e)(2) [amending section 6427 of this title] shall take effect on January 1, 1983.

"(4) SHARED TRANSPORTATION REQUIREMENT.—The amendment made by subsection (e)(3) [amending section 6427 of this title] shall apply with respect to fuel purchased after December 31, 1982, and before January 1, 1984."

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title II, §279(c), Sept. 3, 1982, 96 Stat. 564, provided that: "The amendments made by this section [amending this section and section 6427 of this title] shall take effect on September 1, 1982."

EFFECTIVE DATE OF 1978 AMENDMENTS

Pub. L. 95–618, title II, §221(b)(2), Nov. 9, 1978, 92 Stat. 3185, as amended by Pub. L. 96–223, title II, §232(a)(3), Apr. 2, 1980, 94 Stat. 273, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to sales or use after December 31, 1978."

Pub. L. 95–618, title II, §222(b), Nov. 9, 1978, 92 Stat. 3187, provided that: "The amendments made by subsection (a) [amending this section and sections 6421 and 6424 of this title] shall apply with respect to uses after December 31, 1978."

Amendment by section 233(a)(3)(B) of Pub. L. 95–618 effective on first day of first calendar month which begins more than 10 days after Nov. 9, 1978, see section 233(d) of Pub. L. 95–618, set out as a note under section 34 of this title.

Amendment by Pub. L. 95–600 effective Oct. 4, 1976, see section 703(r) of Pub. L. 95–600, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1976 AMENDMENTS

Pub. L. 94–530, §1(d), Oct. 17, 1976, 90 Stat. 2488, provided that: "The amendments made by this section [amending this section and sections 39, 6427, 7210, 7603, 7604, and 7605 of this title] shall take effect on October 1, 1976."

Pub. L. 94–455, title XIX, §1904(d), Oct. 4, 1976, 90 Stat. 1818, provided that: "Except as otherwise provided in this section, the amendments made by this section [amending this section and sections 263, 861, 1232, 4042, 4216, 4217, 4227, 4253, 4261, 4271, 4371 to 4374, 4482, 4493, 4901, 4905, 4973, 6011, 6416, 6611, 6651, 6808, 7012, 7234, 7240, 7265, 7270, 7272, 7303, 7611, and 7655 of this title and repealing sections 4042, 4054 to 4058, 4226, 4292, 4294, 4295, 4591 to 4597, 4801 to 4806, 4811 to 4826, 4881 to 4886, 4911 to 4931, 6076, 6680, 6681, 6689, 7235, 7239, 7241, 7264, 7267, 7274, and 7328 of this title] shall take effect on the first day of the first month which begins more than 90 days after the date of the enactment of this Act [Oct. 4, 1976]."

EFFECTIVE DATE OF 1970 AMENDMENT

Pub. L. 91–258, title II, §211, May 21, 1970, 84 Stat. 253, provided that:

"(a) GENERAL RULE.—Except as provided in subsection (b), the amendments made by this title [see Short Title of 1970 Amendment note below] shall take effect on July 1, 1970.

"(b) EXCEPTIONS.—The amendments made by sections 203 [enacting section 7275 and amending sections 4261 and 4262 of this title] and 204 [enacting sections 4271 and 4272 of this title] shall apply to transportation beginning after June 30, 1970. The amendments made by subsections (a), (b), and (c) of section 207 [enacting section 6427 and amending sections 39, 6420, 6421, and 6424] shall apply with respect to taxable years ending after June 30, 1970."

EFFECTIVE DATE OF 1965 AMENDMENT

Pub. L. 89–44, title VIII, §802(d)(2), June 21, 1965, 79 Stat. 159, provided that: "The amendment made by subsection (a)(2) [amending this section] shall apply with respect to casinghead and natural gasoline sold or used on or after July 1, 1965, except that such amendment shall not apply to a sale or use of casinghead or natural gasoline which was sold by a producer or importer before such date if tax under section 4081 of the Code (as in effect prior to the amendment made by subsection (a)(1) [amending section 4082 of this title]) was imposed with respect to such sale."

EFFECTIVE DATE OF 1961 AMENDMENT

Pub. L. 87–61, title II, §208, June 29, 1961, 75 Stat. 128, provided that:

"(a) Except as provided in subsection (b), the amendments made by this title [enacting section 6156 of this title, amending this section and sections 4061, 4071, 4081, 4218, 4221, 4226, 4481, 4482, 6412, 6416, 6421, and 6601 of this title, and amending section 209 of The Highway Revenue Act of 1956, set out as a note under section 120 of Title 23, Highways] shall take effect on the date of the enactment of this Act [June 29, 1961].

"(b)(1) The amendments made by sections 201, 202, and 203 [enacting section 6156 of this title and amending this section and sections 4071, 4081, 4481, 4482, 6421, and 6601 of this title] shall take effect on July 1, 1961.

"(2) The amendments made by section 205(a), (c), and (d) [amending sections 4221 and 6416 of this title] shall apply only in the case of gasoline sold on or after October 1, 1961.

"(3) The amendment made by section 205(b) [amending section 4218 of this title] shall apply only in the case of gasoline used on or after October 1, 1961."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–859 effective on first day of first calendar quarter which begins more than 60 days after Sept. 2, 1958, see Pub. L. 85–859, §1(c), Sept. 2, 1958, 72 Stat. 1275.

EFFECTIVE DATE OF 1956 AMENDMENTS

Act June 29, 1956, ch. 462, title II, §211, 70 Stat. 402, provided that: "This title [enacting sections 173 and 174 of Title 23, Highways, and sections 4426, 4481 to 4484 of this title, amending this section and sections 4061, 4071, 4072, 4073, 4081, 4084, 6206, 6412, 6416, 6504, 6511, 6612, 6675, 7210, 7603, 7604, and 7605 of this title, and renumbering sections 4227 and 6422 of this title] shall take effect on the date of its enactment [June 29, 1956], except that the amendments made by sections 202, 203, 204, and 205 [amending this section and sections 4061, 4071, 4072, 4073, and 4081 of this title] shall take effect on July 1, 1956."

Act Apr. 2, 1956, ch. 160, §2(a)(2), 70 Stat. 89, provided that: "The amendment made by paragraph (1) [amending this section] shall take effect on the day after the date of the enactment of this Act [Apr. 2, 1956]."

SHORT TITLE OF 1970 AMENDMENT

Pub. L. 91–258, title II, §201(a), May 21, 1970, 84 Stat. 236, provided that: "This title [enacting sections 4271, 4272, 4281, 4282, 4491 to 4494, 6426, 6427, and 7275 of this title and section 1742 of former Title 49, Transportation, amending this section and sections 39, 874, 4082, 4261, 4262, 4291 to 4294, 6156, 6201, 6206, 6401, 6415, 6416, 6420, 6421, 6424, 6675, 7210, and 7603 to 7605 of this title, repealing former section 4263 of this title, enacting provisions set out as notes under section 104 of Title 4, Flag and Seal, Seat of Government, and the States, and section 1742 of former Title 49, and amending provision set out as a note under section 120 of Title 23, Highways] may be cited as the 'Airport and Airway Revenue Act of 1970'."

SHORT TITLE OF 1956 AMENDMENTS

Act June 29, 1956, ch. 462, title II, §201(a), 70 Stat. 387, provided that: "This title [enacting sections 173 and 174 of Title 23, Highways, and sections 4426, 4481 to 4484 of this title, amending this section and sections 4061, 4071, 4072, 4073, 4081, 4084, 6206, 6412, 6416, 6504, 6511, 6612, 6675, 7210, 7603, 7604, and 7605 of this title, and renumbering sections 4227 and 6422 of this title] may be cited as the 'Highway Revenue Act of 1956'."

Act Mar. 29, 1956, ch. 115, §1, 70 Stat. 66, provided: "That this Act [amending this section and sections 11, 821, 4061, 4081, 5001, 5022, 5041, 5051, 5063, 5134, 5701, 5701 note, 5707, and 6412 of this title] may be cited as the 'Tax Rate Extension Act of 1956'."

SHORT TITLE OF 1955 AMENDMENT

Act Mar. 30, 1955, ch. 18, §1, 69 Stat. 14, provided: "That this Act [amending this section and sections 11, 821, 4061, 4081, 5001, 5022, 5041, 5051, 5063, 5134, 5701, 5701 note, 5707, and 6412 of this title] may be cited as the 'Tax Rate Extension Act of 1955'."

DELAYED DEPOSITS OF HIGHWAY MOTOR FUEL TAX REVENUES

Due date for deposit of taxes imposed by this section which would be required to be made after July 31, 1998, and before Oct. 1, 1998, to be Oct. 5, 1998, see section 901(e) of Pub. L. 105–34, set out as a note under section 6302 of this title.

FLOOR STOCKS TAXES

Pub. L. 101–508, title XI, §11213(b)(5), Nov. 5, 1990, 104 Stat. 1388–434, imposed a floor stocks tax on aviation fuel on which tax was imposed under section 4041(c)(1) or 4091 of this title before Dec. 1, 1990, and which was held on such date by any person.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

STUDY BY SECRETARY OF THE TREASURY; REPORT TO CONGRESS

Pub. L. 96–451, title II, §204, Oct. 14, 1980, 94 Stat. 1988, directed Secretary of the Treasury, after consultation with Secretary of department in which Coast Guard was operating, to conduct a study to determine portion of taxes imposed by sections 4041(b) and 4081 of the Internal Revenue Code of 1954 which were attributable to fuel used in recreational motorboats, and to report to Congress on his findings under such study, not later than 2 years after Oct. 14, 1980.

STUDY OF IMPORTED ALCOHOL BY SECRETARY OF THE TREASURY

Pub. L. 96–223, title II, §232(f), Apr. 2, 1980, 94 Stat. 280, required, within 180 days after Apr. 2, 1980, Secretary of the Treasury to furnish specific congressional committees recommendations for limiting import of alcohol into United States for fuel purposes.

REPORTS ON USE OF ALCOHOL IN FUEL

Pub. L. 95–618, title II, §221(c), Nov. 9, 1978, 92 Stat. 3185, as amended by Pub. L. 96–223, §232(g), Apr. 2, 1980, 94 Stat. 280; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "On April 1 of each year, beginning with April 1, 1981, and ending with April 1, 1992, the Secretary of Energy, in consultation with the Secretary of the Treasury and the Secretary of Transportation, shall submit to the Congress a report on the use of alcohol in fuel. The report shall include—

"(1) a description of the firms engaged in the alcohol fuel industry,

"(2) the amount of alcohol fuel sold in each State, and the amount of gasoline saved in each State by reason of the use of alcohol fuels,

"(3) the revenue loss resulting from the exemptions from tax for alcohol fuels under sections 4041(k) and 4081(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] and the credit allowable under section 44E [now 40] of such Code and the impact of such revenue loss on the Highway Trust Fund, and

"(4) the cost of production and the retail cost of alcohol fuels as compared to gasoline and special fuels not mixed with alcohol."

§4042. Tax on fuel used in commercial transportation on inland waterways

(a) In general

There is hereby imposed a tax on any liquid used during any calendar quarter by any person as a fuel in a vessel in commercial waterway transportation.

(b) Amount of tax

(1) In general

The rate of the tax imposed by subsection (a) is the sum of—

(A) the Inland Waterways Trust Fund financing rate,

(B) the Leaking Underground Storage Tank Trust Fund financing rate, and

(C) the deficit reduction rate.

(2) Rates

For purposes of paragraph (1)—

(A) The Inland Waterways Trust Fund financing rate is the rate determined in accordance with the following table:

If the use occurs:	The tax per gallon is:
Before 1990	10 cents
During 1990	11 cents
During 1991	13 cents
During 1992	15 cents
During 1993	17 cents
During 1994	19 cents
After 1994	20 cents.

(B) The Leaking Underground Storage Tank Trust Fund financing rate is 0.1 cent per gallon.

(C) The deficit reduction rate is—

(i) 3.3 cents per gallon after December 31, 2004, and before July 1, 2005,

(ii) 2.3 cents per gallon after June 30, 2005, and before January 1, 2007, and

(iii) 0 after December 31, 2006.

(3) Exception for fuel on which Leaking Underground Storage Tank Trust Fund financing rate separately imposed

The Leaking Underground Storage Tank Trust Fund financing rate under paragraph (2)(B) shall not apply to the use of any fuel if tax was imposed with respect to such fuel under section 4041(d) or 4081 at the Leaking Underground Storage Tank Trust Fund financing rate.

(4) Termination of Leaking Underground Storage Tank Trust Fund financing rate

The Leaking Underground Storage Tank Trust Fund financing rate under paragraph (2)(B) shall not apply during any period during which the Leaking Underground Storage Tank Trust Fund financing rate under section 4081 does not apply.

(c) Exemptions

(1) Deep-draft ocean-going vessels

The tax imposed by subsection (a) shall not apply with respect to any vessel designed primarily for use on the high seas which has a draft of more than 12 feet.

(2) Passenger vessels

The tax imposed by subsection (a) shall not apply with respect to any vessel used primarily for the transportation of persons.

(3) Use by State or local government in transporting property in a state or local business

Subparagraph (B) of subsection (d)(1) shall not apply with respect to use by a State or political subdivision thereof.

(4) Use in moving lash and seabee ocean-going barges

The tax imposed by subsection (a) shall not apply with respect to use for movement by tug of exclusively LASH (Lighter-aboard-ship) and SEABEE ocean-going barges released by their ocean-going carriers solely to pick up or deliver international cargoes.

(d) Definitions

For purposes of this section—

(1) Commercial waterway transportation

The term "commercial waterway transportation" means any use of a vessel on any inland or intracoastal waterway of the United States—

(A) in the business of transporting property for compensation or hire, or

(B) in transporting property in the business of the owner, lessee, or operator of the vessel (other than fish or other aquatic animal life caught on the voyage).

(2) Inland or intracoastal waterway of the United States

The term "inland or intracoastal waterway of the United States" means any inland or intracoastal waterway of the United States which is described in section 206 of the Inland Waterways Revenue Act of 1978.

(3) Person

The term "person" includes the United States, a State, a political subdivision of a State, or any agency or instrumentality of any of the foregoing.

(e) Date for filing return

The date for filing the return of the tax imposed by this section for any calendar quarter shall be the last day of the first month following such quarter.

(Added Pub. L. 95–502, title II, §202(a), Oct. 21, 1978, 92 Stat. 1696; amended Pub. L. 99–499, title V, §521(a)(3), Oct. 17, 1986, 100 Stat. 1777; Pub. L. 99–662, title XIV, §1404(a), Nov. 17, 1986, 100 Stat. 4270; Pub. L. 100–647, title II, §2002(a)(2), Nov. 10, 1988, 102 Stat. 3597; Pub. L. 103–66, title XIII, §13241(d), Aug. 10, 1993, 107 Stat. 510; Pub. L. 108–357, title II, §241(b), Oct. 22, 2004, 118 Stat. 1438; Pub. L. 110–172, §6(d)(1)(B), Dec. 29, 2007, 121 Stat. 2480.)

REFERENCES IN TEXT

Section 206 of the Inland Waterways Revenue Act of 1978, referred to in subsec. (d)(2), is section 206 of Pub. L. 95–502, title II, Oct. 21, 1978, 92 Stat. 1700, which is classified to section 1804 of Title 33, Navigation and Navigable Waters.

PRIOR PROVISIONS

A prior section 4042, act Aug. 16, 1954, ch. 736, 68A Stat. 478, provided a cross reference to section 4222 of this title for exemption from tax where special motor fuels are sold for use for certain vessels, prior to repeal by Pub. L. 94–455, title XIX, §1904(a)(1)(D), Oct. 4, 1976, 90 Stat. 1811.

AMENDMENTS

2007—Subsec. (b)(3). Pub. L. 110–172 amended heading and text of par. (3) generally. Prior to amendment, text read as follows: "The Leaking Underground Storage Tank Trust Fund financing rate under paragraph (2)(B) shall not apply to the use of any fuel if tax under section 4041(d) was imposed on the sale of such fuel or is imposed on such use."

2004—Subsec. (b)(2)(C). Pub. L. 108–357 amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: "The deficit reduction rate is 4.3 cents per gallon."

1993—Subsec. (b)(1)(C). Pub. L. 103–66, §13241(d)(1), added subpar. (C).

Subsec. (b)(2)(C). Pub. L. 103–66, §13241(d)(2), added subpar. (C).

1988—Subsec. (b)(2). Pub. L. 100–647 amended par. (2) generally. Prior to amendment, par. (2) read as follows: "For purposes of paragraph (1)—

"(A) the Inland Waterways Trust Fund financing rate is 10 cents a gallon, and

"(B) the Leaking Underground Storage Tank Trust Fund financing rate is 0.1 cents a gallon."

1986—Subsec. (b). Pub. L. 99–499 and Pub. L. 99–662 both amended subsec. (b) generally, effective Jan. 1, 1987. Pub. L. 100–647, §2002(a)(1) (see Construction of 1986 Amendments note below), provided that for purposes of this section, the amendment made by Pub. L. 99–499 be treated as enacted after the amendment made by Pub. L. 99–662. Prior to amendment by Pub. L. 99–499 and Pub. L. 99–662, subsec. (b) read as follows:

"If the use occurs—	The tax is—
After September 30, 1980 and before October 1, 1981	4 cents a gallon

After September 30, 1981 and before October 1, 1983	6 cents a gallon
After September 30, 1983 and before October 1, 1985	8 cents a gallon
After September 30, 1985	10 cents a gallon".

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–172 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109–58, to which such amendment relates, see section 6(e) of Pub. L. 110–172, set out as a note under section 30C of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 effective Jan. 1, 2005, see section 241(c) of Pub. L. 108–357, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 effective Oct. 1, 1993, see section 13241(g) of Pub. L. 103–66, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title II, §2002(d), Nov. 10, 1988, 102 Stat. 3597, as amended by Pub. L. 101–239, title VII, §7812(b), Dec. 19, 1989, 103 Stat. 2412, provided that: "The amendments made by subsections (b) and (c) [amending section 4462 of this title and provisions set out as a note under section 4461 of this title] shall take effect as if included in the provision of the Harbor Maintenance Revenue Act of 1986 [Pub. L. 99–662, title XIV] to which it relates, and the amendment made by subsection (a)(2) [amending this section] shall take effect as if included in the amendment made by section 521(a)(3) of the Superfund Revenue Act of 1986 [Pub. L. 99–499, title V]."

EFFECTIVE DATE OF 1986 AMENDMENTS

Pub. L. 99–662, title XIV, §1404(c), Nov. 17, 1986, 100 Stat. 4271, provided that: "The amendments made by this section [amending this section and section 1804 of Title 33, Navigation and Navigable Waters] shall take effect on January 1, 1987."

Amendment by Pub. L. 99–499 effective Jan. 1, 1987, see section 521(e) of Pub. L. 99–499, set out as a note under section 4041 of this title.

EFFECTIVE DATE

Pub. L. 95–502, title II, §202(d), Oct. 21, 1978, 92 Stat. 1697, provided that: "The amendments made by this section [enacting this section and amending section 4293 of this title] shall take effect on October 1, 1980."

CONSTRUCTION OF 1986 AMENDMENTS

Pub. L. 100–647, title II, §2002(a)(1), Nov. 10, 1988, 102 Stat. 3597, provided that: "For purposes of section 4042 of the 1986 Code, the amendment made by section 521(a)(3) of the Superfund Revenue Act of 1986 [Pub. L. 99–499, amending this section] shall be treated as enacted after the amendment made by section 1404(a) of the Harbor Maintenance Revenue Act of 1986 [Pub. L. 99–662, amending this section]."

§4043. Surtax on fuel used in aircraft part of a fractional ownership program

(a) In general

There is hereby imposed a tax on any liquid used (during any calendar quarter by any person) in a fractional program aircraft as fuel—

(1) for the transportation of a qualified fractional owner with respect to the fractional ownership aircraft program of which such aircraft is a part, or

(2) with respect to the use of such aircraft on account of such a qualified fractional owner, including use in deadhead service.

(b) Amount of tax

The rate of tax imposed by subsection (a) is 14.1 cents per gallon.

(c) Definitions and special rules

For purposes of this section—

(1) Fractional program aircraft

The term "fractional program aircraft" means, with respect to any fractional ownership aircraft program, any aircraft which—

(A) is listed as a fractional program aircraft in the management specifications issued to the manager of such program by the Federal Aviation Administration under subpart K of part 91 of title 14, Code of Federal Regulations, and

(B) is registered in the United States.

(2) Fractional ownership aircraft program

The term "fractional ownership aircraft program" means a program under which—

(A) a single fractional ownership program manager provides fractional ownership program management services on behalf of the fractional owners,

(B) there are 1 or more fractional owners per fractional program aircraft, with at least 1 fractional program aircraft having more than 1 owner,

(C) with respect to at least 2 fractional program aircraft, none of the ownership interests in such aircraft are—

(i) less than the minimum fractional ownership interest, or

(ii) held by the program manager referred to in subparagraph (A),

(D) there exists a dry-lease aircraft exchange arrangement among all of the fractional owners, and

(E) there are multi-year program agreements covering the fractional ownership, fractional ownership program management services, and dry-lease aircraft exchange aspects of the program.

(3) Definitions related to fractional ownership interests

(A) Qualified fractional owner

The term "qualified fractional owner" means any fractional owner which has a minimum fractional ownership interest in at least one fractional program aircraft.

(B) Minimum fractional ownership interest

The term "minimum fractional ownership interest" means, with respect to each type of aircraft—

(i) a fractional ownership interest equal to or greater than 1/16 of at least 1 subsonic, fixed wing, or powered lift aircraft, or

(ii) a fractional ownership interest equal to or greater than 1/32 of at least 1 rotorcraft aircraft.

(C) Fractional ownership interest

The term "fractional ownership interest" means—

(i) the ownership of an interest in a fractional program aircraft,

(ii) the holding of a multi-year leasehold interest in a fractional program aircraft, or

(iii) the holding of a multi-year leasehold interest which is convertible into an ownership interest in a fractional program aircraft.

(D) Fractional owner

The term "fractional owner" means any person owning any interest (including the entire interest) in a fractional program aircraft.

(4) Dry-lease aircraft exchange

The term "dry-lease aircraft exchange" means an agreement, documented by the written program agreements, under which the fractional program aircraft are available, on an as needed

basis without crew, to each fractional owner.

(5) Special rule relating to use of fractional program aircraft for flight demonstration, maintenance, or training

For purposes of subsection (a), a fractional program aircraft shall not be considered to be used for the transportation of a qualified fractional owner, or on account of such qualified fractional owner, when it is used for flight demonstration, maintenance, or crew training.

(6) Special rule relating to deadhead service

A fractional program aircraft shall not be considered to be used on account of a qualified fractional owner when it is used in deadhead service and a person other than a qualified fractional owner is separately charged for such service.

(d) Termination

This section shall not apply to liquids used as a fuel in an aircraft after September 30, 2021.

(Added Pub. L. 112–95, title XI, §1103(a)(1), Feb. 14, 2012, 126 Stat. 149.)

EFFECTIVE DATE

Pub. L. 112–95, title XI, §1103(d)(1), Feb. 14, 2012, 126 Stat. 151, provided that: "The amendments made by subsection (a) [enacting this section and amending sections 4082 and 9502 of this title] shall apply to fuel used after March 31, 2012."

Subchapter C—Heavy Trucks and Trailers

Sec.
4051. Imposition of tax on heavy trucks and trailers sold at retail.
4052. Definitions and special rules.
4053. Exemptions.

AMENDMENTS

1990—Pub. L. 101–508, title XI, §11221(a), Nov. 5, 1990, 104 Stat. 1388–438, redesignated this subchapter, formerly subchapter B, as subchapter C.

§4051. Imposition of tax on heavy trucks and trailers sold at retail

(a) Imposition of tax

(1) In general

There is hereby imposed on the first retail sale of the following articles (including in each case parts or accessories sold on or in connection therewith or with the sale thereof) a tax of 12 percent of the amount for which the article is so sold:

(A) Automobile truck chassis.

(B) Automobile truck bodies.

(C) Truck trailer and semitrailer chassis.

(D) Truck trailer and semitrailer bodies.

(E) Tractors of the kind chiefly used for highway transportation in combination with a trailer or semitrailer.

(2) Exclusion for trucks weighing 33,000 pounds or less

The tax imposed by paragraph (1) shall not apply to automobile truck chassis and automobile truck bodies, suitable for use with a vehicle which has a gross vehicle weight of 33,000 pounds or less (as determined under regulations prescribed by the Secretary).

(3) Exclusion for trailers weighing 26,000 pounds or less

The tax imposed by paragraph (1) shall not apply to truck trailer and semitrailer chassis and

bodies, suitable for use with a trailer or semitrailer which has a gross vehicle weight of 26,000 pounds or less (as determined under regulations prescribed by the Secretary.[1]

(4) Exclusion for tractors weighing 19,500 pounds or less

The tax imposed by paragraph (1) shall not apply to tractors of the kind chiefly used for highway transportation in combination with a trailer or semitrailer if—

(A) such tractor has a gross vehicle weight of 19,500 pounds or less (as determined by the Secretary), and

(B) such tractor, in combination with a trailer or semitrailer, has a gross combined weight of 33,000 pounds or less (as determined by the Secretary).

(5) Sale of trucks, etc., treated as sale of chassis and body

For purposes of this subsection, a sale of an automobile truck or truck trailer or semitrailer shall be considered to be a sale of a chassis and of a body described in paragraph (1).

(b) Separate purchase of truck or trailer and parts and accessories therefor

Under regulations prescribed by the Secretary—

(1) In general

If—

(A) the owner, lessee, or operator of any vehicle which contains an article taxable under subsection (a) installs (or causes to be installed) any part or accessory on such vehicle, and

(B) such installation is not later than the date 6 months after the date such vehicle (as it contains such article) was first placed in service,

then there is hereby imposed on such installation a tax equal to 12 percent of the price of such part or accessory and its installation.

(2) Exceptions

Paragraph (1) shall not apply if—

(A) the part or accessory installed is a replacement part or accessory, or

(B) the aggregate price of the parts and accessories (and their installation) described in paragraph (1) with respect to any vehicle does not exceed $1,000 (or such other amount or amounts as the Secretary may by regulations prescribe).

(3) Installers secondarily liable for tax

The owners of the trade or business installing the parts or accessories shall be secondarily liable for the tax imposed by paragraph (1).

(c) Termination

On and after October 1, 2016, the taxes imposed by this section shall not apply.

(d) Credit against tax for tire tax

If—

(1) tires are sold on or in connection with the sale of any article, and

(2) tax is imposed by this subchapter on the sale of such tires,

there shall be allowed as a credit against the tax imposed by this subchapter an amount equal to the tax (if any) imposed by section 4071 on such tires.

(Added Pub. L. 97–424, title V, §512(b)(1), Jan. 6, 1983, 96 Stat. 2174; amended Pub. L. 98–369, div. A, title VII, §734(g), title IX, §921, July 18, 1984, 98 Stat. 980, 1009; Pub. L. 99–514, title XVIII, §§1877(c), 1899A(47), Oct. 22, 1986, 100 Stat. 2902, 2961; Pub. L. 100–17, title V, §502(a)(2), Apr. 2, 1987, 101 Stat. 256; Pub. L. 101–508, title XI, §11211(c)(1), Nov. 5, 1990, 104 Stat. 1388–426; Pub. L. 102–240, title VIII, §8002(a)(1), Dec. 18, 1991, 105 Stat. 2203; Pub. L. 105–34, title XIV, §§1401(a), 1402(a), 1432(a), Aug. 5, 1997, 111 Stat. 1045, 1046, 1050; Pub. L. 105–178, title IX, §9002(a)(1)(D), June 9, 1998, 112 Stat. 499; Pub. L. 109–59, title XI,

§§11101(a)(1)(D), 11112(a), Aug. 10, 2005, 119 Stat. 1943, 1946; Pub. L. 112–30, title I, §142(a)(2)(B), Sept. 16, 2011, 125 Stat. 356; Pub. L. 112–102, title IV, §402(a)(2)(B), Mar. 30, 2012, 126 Stat. 282; Pub. L. 112–140, title IV, §402(a)(2)(B), June 29, 2012, 126 Stat. 402; Pub. L. 112–141, div. D, title I, §40102(a)(2)(B), July 6, 2012, 126 Stat. 844.)

PRIOR PROVISIONS

A prior section 4051, act Aug. 16, 1954, ch. 736, 68A Stat. 479, defined the price for which articles were sold for purposes of determining retailers excise taxes, prior to repeal by Pub. L. 94–455, title XIX, §1904(a)(1)(D), Oct. 4, 1976, 90 Stat. 1811.

AMENDMENTS

2012—Subsec. (c). Pub. L. 112–141 substituted "October 1, 2016" for "July 1, 2012".

Pub. L. 112–140, §§1(c), 402(a)(2)(B), temporarily substituted "July 7, 2012" for "July 1, 2012". See Effective and Termination Dates of 2012 Amendment note below.

Pub. L. 112–102 substituted "July 1, 2012" for "April 1, 2012".

2011—Subsec. (c). Pub. L. 112–30 substituted "April 1, 2012" for "October 1, 2011".

2005—Subsec. (a)(4), (5). Pub. L. 109–59, §11112(a), added par. (4) and redesignated former par. (4) as (5).

Subsec. (c). Pub. L. 109–59, §11101(a)(1)(D), substituted "2011" for "2005".

1998—Subsec. (c). Pub. L. 105–178 substituted "2005" for "1999".

1997—Subsec. (b)(2)(B). Pub. L. 105–34, §1401(a), substituted "$1,000" for "$200".

Subsec. (d). Pub. L. 105–34, §1432(a), redesignated subsec. (e) as (d) and struck out former subsec. (d) which provided for a temporary reduction in tax on certain piggyback trailers.

Subsec. (e). Pub. L. 105–34, §1432(a), redesignated subsec. (e) as (d).

Pub. L. 105–34, §1401(a), amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows: "In the case of any article taxable under subsection (a) on which tax was imposed under section 4061(a), subsection (a) shall be applied by substituting '2 percent' for '12 percent'."

1991—Subsec. (c). Pub. L. 102–240 substituted "1999" for "1995".

1990—Subsec. (c). Pub. L. 101–508 substituted "1995" for "1993".

1987—Subsec. (c). Pub. L. 100–17 substituted "1993" for "1988".

1986—Subsec. (d)(1). Pub. L. 99–514, §1899A(47), substituted "July 18, 1984" for "the date of the enactment of the Tax Reform Act of 1984".

Subsec. (d)(3). Pub. L. 99–514, §1877(c), inserted at end "No tax shall be imposed by reason of this paragraph on any use or resale which occurs more than 6 years after the date of the first retail sale."

1984—Subsec. (b)(3). Pub. L. 98–369, §734(g), substituted "The owners of the trade or business installing the parts or accessories shall be secondarily liable for the tax imposed by paragraph (1)" for "In addition to the owner, lessee, or operator of the vehicle, the owner of the trade or business installing the part or accessory shall be liable for the tax imposed by paragraph (1)".

Subsecs. (d), (e). Pub. L. 98–369, §921, added subsec. (d) and redesignated former subsec. (d) as (e).

EFFECTIVE AND TERMINATION DATES OF 2012 AMENDMENT

Amendment by Pub. L. 112–141 effective July 1, 2012, see section 40102(f) of Pub. L. 112–141, set out as a note under section 460l–11 of Title 16, Conservation.

Amendment by Pub. L. 112–140 to cease to be effective on July 6, 2012, with text as amended by Pub. L. 112–140 to revert back to read as it did on the day before June 29, 2012, and amendments by Pub. L. 112–141 to be executed as if Pub. L. 112–140 had not been enacted, see section 1(c) of Pub. L. 112–140, set out as a note under section 101 of Title 23, Highways.

Amendment by Pub. L. 112–140 effective July 1, 2012, see section 402(f)(1) of Pub. L. 112–140, set out as a note under section 460l–11 of Title 16, Conservation.

Amendment by Pub. L. 112–102 effective Apr. 1, 2012, see section 402(f) of Pub. L. 112–102, set out as a note under section 460l–11 of Title 16, Conservation.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112–30 effective Oct. 1, 2011, see section 142(f) of Pub. L. 112–30, set out as a note under section 460l–11 of Title 16, Conservation.

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–59, title XI, §11112(b), Aug. 10, 2005, 119 Stat. 1946, provided that: "The amendments made

by this section [amending this section] shall apply to sales after September 30, 2005."

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 1401(a) of Pub. L. 105–34 applicable to installations on vehicles sold after Aug. 5, 1997, see section 1401(b) of Pub. L. 105–34, set out as a note under section 4003 of this title.

Pub. L. 105–34, title XIV, §1402(c), Aug. 5, 1997, 111 Stat. 1046, provided that: "The amendments made by this section [amending this section and section 4052 of this title] shall take effect on January 1, 1998."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1877(c) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title VII, §736, July 18, 1984, 98 Stat. 985, provided that: "Except as otherwise provided in this subtitle [subtitle C (§§731–736) of title VII of div. A of Pub. L. 98–369, amending this section and sections 48, 1366, 4052, 4053, 4071 to 4073, 4081, 4082, 4216, 4218, 4221 to 4223, 4227, 4481, 6401, 6412, 6416, 6427, 6511, and 9502 of this title, repealing sections 4061 to 4063 of this title, and amending provisions set out as notes under sections 4061 and 4081 of this title], any amendment made by this subtitle shall take effect as if included in the provisions of the Highway Revenue Act of 1982 [Pub. L. 97–424] to which such amendment relates."

EFFECTIVE DATE

Pub. L. 97–424, title V, §512(b)(3), Jan. 6, 1983, 96 Stat. 2177, provided that: "The amendments made by this subsection [enacting this subchapter and amending section 6416 of this title] shall take effect on April 1, 1983."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[1] So in original. Probably should be preceded by a closing parenthesis.

§4052. Definitions and special rules

(a) First retail sale

For purposes of this subchapter—

(1) In general

The term "first retail sale" means the first sale, for a purpose other than for resale or leasing in a long-term lease, after production, manufacture, or importation.

(2) Leases considered as sales

Rules similar to the rules of section 4217 shall apply.

(3) Use treated as sale

(A) In general

If any person uses an article taxable under section 4051 before the first retail sale of such article, then such person shall be liable for tax under section 4051 in the same manner as if such article were sold at retail by him.

(B) Exemption for use in further manufacture

Subparagraph (A) shall not apply to use of an article as material in the manufacture or production of, or as a component part of, another article to be manufactured or produced by him.

(C) Computation of tax

In the case of any person made liable for tax by subparagraph (A), the tax shall be computed on the price at which similar articles are sold at retail in the ordinary course of trade, as determined by the Secretary.

(b) Determination of price

(1) In general

In determining price for purposes of this subchapter—

(A) there shall be included any charge incident to placing the article in condition ready for use,

(B) there shall be excluded—

(i) the amount of the tax imposed by this subchapter,

(ii) if stated as a separate charge, the amount of any retail sales tax imposed by any State or political subdivision thereof or the District of Columbia, whether the liability for such tax is imposed on the vendor or vendee, and

(iii) the value of any component of such article if—

(I) such component is furnished by the first user of such article, and

(II) such component has been used before such furnishing, and

(C) the price shall be determined without regard to any trade-in.

(2) Sales not at arm's length

In the case of any article sold (otherwise than through an arm's-length transaction) at less than the fair market price, the tax under this subchapter shall be computed on the price for which similar articles are sold at retail in the ordinary course of trade, as determined by the Secretary.

(3) Long-term lease

(A) In general

In the case of any long-term lease of an article which is treated as the first retail sale of such article, the tax under this subchapter shall be computed on a price equal to—

(i) the sum of—

(I) the price (determined under this subchapter but without regard to paragraph (4)) at which such article was sold to the lessor, and

(II) the cost of any parts and accessories installed by the lessor on such article before the first use by the lessee or leased in connection with such long-term lease, plus

(ii) an amount equal to the presumed markup percentage of the sum described in clause (i).

(B) Presumed markup percentage

For purposes of subparagraph (A), the term "presumed markup percentage" means the average markup percentage of retailers of articles of the type involved, as determined by the Secretary.

(C) Exceptions under regulations

To the extent provided in regulations prescribed by the Secretary, subparagraph (A) shall not apply to specified types of leases where its application is not necessary to carry out the purposes of this subsection.

(4) Special rule where tax paid by manufacturer, producer, or importer

(A) In general

In any case where the manufacturer, producer, or importer of any article (or a related person) is liable for tax imposed by this subchapter with respect to such article, the tax under this subchapter shall be computed on a price equal to the sum of—

(i) the price which would (but for this paragraph) be determined under this subchapter, plus

(ii) the product of the price referred to in clause (i) and the presumed markup percentage determined under paragraph (3)(B).

(B) Related person

For purposes of this paragraph—

(i) In general

Except as provided in clause (ii), the term "related person" means any person who is a member of the same controlled group (within the meaning of section 5061(e)(3)) as the manufacturer, producer, or importer.

(ii) Exception for retail establishment

To the extent provided in regulations prescribed by the Secretary, a person shall not be treated as a related person with respect to the sale of any article if such article is sold through a permanent retail establishment in the normal course of the trade or business of being a retailer.

(c) Certain combinations not treated as manufacture

(1) In general

For purposes of this subchapter (other than subsection (a)(3)(B)), a person shall not be treated as engaged in the manufacture of any article by reason of merely combining such article with any item listed in paragraph (2).

(2) Items

The items listed in this paragraph are any coupling device (including any fifth wheel), wrecker crane, loading and unloading equipment (including any crane, hoist, winch, or power liftgate), aerial ladder or tower, snow and ice control equipment, earthmoving, excavation and construction equipment, spreader, sleeper cab, cab shield, or wood or metal floor.

(d) Certain other rules made applicable

Under regulations prescribed by the Secretary, rules similar to the rules of subsections (c) and (d) of section 4216 (relating to partial payments) shall apply for purposes of this subchapter.

(e) Long-term lease

For purposes of this section, the term "long-term lease" means any lease with a term of 1 year or more. In determining a lease term for purposes of the preceding sentence, the rules of section 168(i)(3)(A) shall apply.

(f) Certain repairs and modifications not treated as manufacture

(1) In general

An article described in section 4051(a)(1) shall not be treated as manufactured or produced solely by reason of repairs or modifications to the article (including any modification which changes the transportation function of the article or restores a wrecked article to a functional condition) if the cost of such repairs and modifications does not exceed 75 percent of the retail price of a comparable new article.

(2) Exception

Paragraph (1) shall not apply if the article (as repaired or modified) would, if new, be taxable under section 4051 and the article when new was not taxable under such section or the corresponding provision of prior law.

(g) Regulations

The Secretary shall prescribe regulations which permit, in lieu of any other certification, persons who are purchasing articles taxable under this subchapter for resale or leasing in a long-term lease to execute a statement (made under penalties of perjury) on the sale invoice that such sale is for resale. The Secretary shall not impose any registration requirement as a condition of using such procedure.

(Added Pub. L. 97–424, title V, §512(b)(1), Jan. 6, 1983, 96 Stat. 2175; amended Pub. L. 98–369, div. A, title VII, §§731, 735(b)(2), July 18, 1984, 98 Stat. 976, 981; Pub. L. 100–17, title V, §§505(a)–(c), 506(a), Apr. 2, 1987, 101 Stat. 258, 259; Pub. L. 100–647, title VI, §6111(a), Nov. 10, 1988, 102 Stat. 3713; Pub. L. 105–34, title XIV, §§1402(b), 1434(a), (b), Aug. 5, 1997, 111 Stat. 1046, 1052; Pub. L. 105–206, title VI, §6014(c), July 22, 1998, 112 Stat. 820.)

PRIOR PROVISIONS

A prior section 4052, act Aug. 16, 1954, ch. 736, 68A Stat. 479, provided that lease of an article would be considered the sale of article for excise tax purposes, prior to repeal by Pub. L. 94–455, title XIX, §1904(a)(1)(D), Oct. 4, 1976, 90 Stat. 1811.

AMENDMENTS

1998—Subsec. (f)(2). Pub. L. 105–206 substituted "such section" for "this section".

1997—Subsec. (b)(1)(B)(ii) to (iv). Pub. L. 105–34, §1402(b), inserted "and" at end of cl. (ii), redesignated cl. (iv) as (iii), and struck out former cl. (iii) which read as follows: "the fair market value (including any tax imposed by section 4071) at retail of any tires (not including any metal rim or rim base), and".

Subsec. (d). Pub. L. 105–34, §1434(b)(1), substituted "rules of subsections (c) and (d) of section 4216 (relating to partial payments) shall apply" for "rules of—

"(1) subsections (c) and (d) of section 4216 (relating to partial payments), and

"(2) section 4222 (relating to registration),

shall apply".

Subsec. (e). Pub. L. 105–34, §1434(a), redesignated subsec. (f) as (e).

Subsec. (f). Pub. L. 105–34, §1434(a), added subsec. (f). Former subsec. (f) redesignated (e).

Subsec. (g). Pub. L. 105–34, §1434(b)(2), added subsec. (g).

1988—Subsec. (a)(1). Pub. L. 100–647 substituted "production, manufacture" for "manufacture, production".

1987—Subsec. (a)(1). Pub. L. 100–17, §505(a), inserted "or leasing in a long-term lease" after "resale".

Subsec. (b)(3). Pub. L. 100–17, §505(b), added par. (3).

Subsec. (b)(4). Pub. L. 100–17, §506(a), added par. (4).

Subsec. (f). Pub. L. 100–17, §505(c), added subsec. (f).

1984—Subsec. (b)(1)(B)(iv). Pub. L. 98–369, §731, added cl. (iv).

Subsec. (c). Pub. L. 98–369, §735(b)(2), in amending subsec. (c) generally, designated existing provisions as par. (1), in par. (1) as so designated substituted "by reason of merely combining such article with any article listed in paragraph (2)" for "with any equipment or other item listed in section 4063(d)", and added par. (2).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 1402(b) of Pub. L. 105–34 effective Jan. 1, 1998, see section 1402(c) of Pub. L. 105–34, set out as a note under section 4051 of this title.

Pub. L. 105–34, title XIV, §1434(c), Aug. 5, 1997, 111 Stat. 1052, provided that: "The amendments made by this section [amending this section] shall take effect on January 1, 1998."

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title VI, §6111(b), Nov. 10, 1988, 102 Stat. 3713, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on January 1, 1988."

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–17, title V, §505(d), Apr. 2, 1987, 101 Stat. 259, provided that: "The amendments made by this section [amending this section] shall apply with respect to articles sold by the manufacturer, producer, or importer on or after the first day of the first calendar quarter which begins more than 90 days after the date of the enactment of this Act [Apr. 2, 1987]."

Pub. L. 100–17, title V, §506(b), Apr. 2, 1987, 101 Stat. 259, provided that: "The amendment made by this section [amending this section] shall apply with respect to articles sold by the manufacturer, producer, or importer on or after the 1st day of the 1st calendar quarter which begins more than 90 days after the date of the enactment of this Act [Apr. 2, 1987]."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97–424, to which such amendment relates, see section 736 of Pub. L. 98–369, set out as a note under section 4051 of this title.

§4053. Exemptions

No tax shall be imposed by section 4051 on any of the following articles:

(1) Camper coaches bodies for self-propelled mobile homes

Any article designed—

(A) to be mounted or placed on automobile trucks, automobile truck chassis, or automobile chassis, and

(B) to be used primarily as living quarters or camping accommodations.

(2) Feed, seed, and fertilizer equipment

Any body primarily designed—

(A) to process or prepare seed, feed, or fertilizer for use on farms,

(B) to haul feed, seed, or fertilizer to and on farms,

(C) to spread feed, seed, or fertilizer on farms,

(D) to load or unload feed, seed, or fertilizer on farms, or

(E) for any combination of the foregoing.

(3) House trailers

Any house trailer.

(4) Ambulances, hearses, etc.

Any ambulance, hearse, or combination ambulance-hearse.

(5) Concrete mixers

Any article designed—

(A) to be placed or mounted on an automobile truck chassis or truck trailer or semitrailer chassis, and

(B) to be used to process or prepare concrete.

(6) Trash containers, etc.

Any box, container, receptacle, bin or other similar article—

(A) which is designed to be used as a trash container and is not designed for the transportation of freight other than trash, and

(B) which is not designed to be permanently mounted on or permanently affixed to an automobile truck chassis or body.

(7) Rail trailers and rail vans

Any chassis or body of a trailer or semitrailer which is designed for use both as a highway vehicle and a railroad car. For purposes of the preceding sentence, piggy-back trailer or semitrailer shall not be treated as designed for use as a railroad car.

(8) Mobile machinery

Any vehicle which consists of a chassis—

(A) to which there has been permanently mounted (by welding, bolting, riveting, or other means) machinery or equipment to perform a construction, manufacturing, processing, farming, mining, drilling, timbering, or similar operation if the operation of the machinery or equipment is unrelated to transportation on or off the public highways,

(B) which has been specially designed to serve only as a mobile carriage and mount (and a power source, where applicable) for the particular machinery or equipment involved, whether or not such machinery or equipment is in operation, and

(C) which, by reason of such special design, could not, without substantial structural modification, be used as a component of a vehicle designed to perform a function of transporting any load other than that particular machinery or equipment or similar machinery or equipment requiring such a specially designed chassis.

(9) Idling reduction device

Any device or system of devices which—

(A) is designed to provide to a vehicle those services (such as heat, air conditioning, or electricity) that would otherwise require the operation of the main drive engine while the vehicle is temporarily parked or remains stationary using one or more devices affixed to a tractor, and

(B) is determined by the Administrator of the Environmental Protection Agency, in consultation with the Secretary of Energy and the Secretary of Transportation, to reduce idling of such vehicle at a motor vehicle rest stop or other location where such vehicles are temporarily parked or remain stationary.

(10) Advanced insulation

Any insulation that has an R value of not less than R35 per inch.

(Added Pub. L. 97–424, title V, §512(b)(1), Jan. 6, 1983, 96 Stat. 2176; amended Pub. L. 98–369, div. A, title VII, §735(b)(1), July 18, 1984, 98 Stat. 981; Pub. L. 108–357, title VIII, §851(a)(1), Oct. 22, 2004, 118 Stat. 1607; Pub. L. 110–343, div. B, title II, §206(a), Oct. 3, 2008, 122 Stat. 3839.)

PRIOR PROVISIONS

A prior section 4053, acts Aug. 16, 1954, ch. 736, 68A Stat. 479; Sept. 2, 1958, Pub. L. 85–859, title I, §104, 72 Stat. 1276, made provision for the imposition of the retailers tax on installment sales, prior to repeal by Pub. L. 94–455, title XIX, §1904(a)(1)(D), Oct. 4, 1976, 90 Stat. 1811.

For provisions of prior sections 4054 to 4058 of this title, see Prior Provisions note set out preceding section 4041 of this title.

AMENDMENTS

2008—Pars. (9), (10). Pub. L. 110–343 added pars. (9) and (10).

2004—Par. (8). Pub. L. 108–357 added par. (8).

1984—Pub. L. 98–369 amended section generally, substituting provisions listing articles on which no tax under section 4051 shall be imposed for former provisions which stated that no tax be imposed under section 4051 on any article specified in subsection (a) of section 4063 and that the exemptions provided by section 4221(a) extended to the tax imposed by section 4051.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title II, §206(b), Oct. 3, 2008, 122 Stat. 3839, provided that: "The amendment made by this section [amending this section] shall apply to sales or installations after the date of the enactment of this Act [Oct. 3, 2008]."

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §851(a)(2), Oct. 22, 2004, 118 Stat. 1607, provided that: "The amendment made by this subsection [amending this section] shall take effect on the day after the date of the enactment of this Act [Oct. 22, 2004]."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97–424, to which such amendment relates, see section 736 of Pub. L. 98–369, set out as a note under section 4051 of this title.

CHAPTER 32—MANUFACTURERS EXCISE TAXES

Subchapter		Sec.[1]
A.	**Automotive and related items**	**4061**

B. Coal **4121**
C. Certain vaccines **4131**
D. Recreational equipment **4161**
E. Medical devices **4191**
F. Special provisions applicable to manufacturers tax **4216**
G. Exemptions, registration, etc **4221**

AMENDMENTS

2010—Pub. L. 111–152, title I, §1405(a)(2), Mar. 30, 2010, 124 Stat. 1065, added item for subchapter E.

1987—Pub. L. 100–203, title IX, §9201(c), Dec. 22, 1987, 101 Stat. 1330–330, added item for subchapter C.

1978—Pub. L. 95–227, §2(c), Feb. 10, 1978, 92 Stat. 12, added item for subchapter B.

1965—Pub. L. 89–44, title II, §§203, 204, 206, June 21, 1965, 79 Stat. 139, 140, struck out items for subchapters B, C and E.

[1] Section numbers editorially supplied.

Subchapter A—Automotive and Related Items

Part
I. Gas guzzlers.
II. Tires.
III. Petroleum products.

AMENDMENTS

1984—Pub. L. 98–369, div. A, title VII, §735(a)(3), (c)(5)(B), July 18, 1984, 98 Stat. 980, 982, substituted "Gas guzzlers" for "Motor vehicles" in item for part I, and struck out "and tubes" in item for part II.

PART I—GAS GUZZLERS

Sec.
[4061 to 4063. Repealed.]
4064. Gas guzzler tax.

AMENDMENTS

1986—Pub. L. 99–514, title XVIII, §1875(f), Oct. 22, 1986, 100 Stat. 2897, substituted "guzzler" for "guzzlers" in item 4064.

1984—Pub. L. 98–369, div. A, title VII, §735(a)(2), July 18, 1984, 98 Stat. 980, substituted "GAS GUZZLERS" for "MOTOR VEHICLES" in part I heading, struck out items 4061 "Imposition of tax", 4062 "Articles classified as parts", and 4063 "Exemptions", and substituted "guzzlers" for "guzzler" in item 4064.

1978—Pub. L. 95–618, title II, §201(f), Nov. 9, 1978, 92 Stat. 3184, added item 4064.

1971—Pub. L. 92–178, title IV, §401(g)(2)(D), Dec. 10, 1971, 85 Stat. 533, substituted "Articles classified as parts" for "Definitions" in item 4062.

[§§4061 to 4063. Repealed. Pub. L. 98–369, div. A, title VII, §735(a)(1), July 18, 1984, 98 Stat. 980]

Section 4061, acts Aug. 16, 1954, ch. 736, 68A Stat. 481; Mar. 30, 1955, ch. 18, §3(a)(2), 69 Stat. 14; Aug. 12, 1955, ch. 865, §1, 69 Stat. 709; Mar. 29, 1956, ch. 115, §3(a)(2), 70 Stat. 66; June 29, 1956, ch. 462, title II, §203, 70 Stat. 388; Mar. 29, 1957, Pub. L. 85–12, §3(a)(1), 71 Stat. 9; June 30, 1958, Pub. L. 85–475, §3(a)(1), 72 Stat. 259; June 30, 1959, Pub. L. 86–75, §3(a)(1), 73 Stat. 157; June 30, 1960, Pub. L. 86–564, title II §202(a)(1), 74 Stat. 290; June 29, 1961, Pub. L. 87–61, title II, §204, 75 Stat. 126; June 30, 1961, Pub. L. 87–72, §3(a)(1), 75 Stat. 193; June 28, 1962, Pub. L. 87–508, §3(a)(1), 76 Stat. 114; June 29, 1963, Pub. L. 88–52, §3(a)(1), 77 Stat. 72; June 30, 1964, Pub. L. 88–348, §2(a)(1), 78 Stat. 237; June 21, 1965, Pub. L. 89–44, title II, §201, 79 Stat. 136; Mar. 15, 1966, Pub. L. 89–368, title II, §201(a), 80 Stat. 65; Apr. 12, 1968,

Pub. L. 90–285, §1(a)(1), 82 Stat. 92; June 28, 1968, Pub. L. 90–364, title I, §105(a)(1), 82 Stat. 265; Dec. 30, 1969, Pub. L. 91–172, title VII, §702(a)(1), 83 Stat. 660; Dec. 31, 1970, Pub. L. 91–605, title III, §303(a)(3), (4), 84 Stat. 1743; Dec. 31, 1970, Pub. L. 91–614, title II, §201(a)(1), 84 Stat. 1843; Dec. 10, 1971, Pub. L. 92–178, title IV, §401(a)(1), (g) (1), 85 Stat. 530, 533; May 5, 1976, Pub. L. 94–280, title III, §303(a)(3), (4), 90 Stat. 456; Oct. 4, 1976, Pub. L. 94–455, title XIX, §1906(b)(13)(A), 90 Stat. 1834; Nov. 6, 1978, Pub. L. 95–599, title V, §502(a)(2), (3), 92 Stat. 2756; Jan. 6, 1983, Pub. L. 97–424, title V, §512(a)(1), (2), 96 Stat. 2173, 2174, related to imposition of tax on trucks, buses, tractors, etc.

Section 4062, acts Aug. 16, 1954, ch. 736, 68A Stat. 482; Oct. 13, 1964, Pub. L. 88–653, §5(b), 78 Stat. 1086; Nov. 13, 1966, Pub. L. 89–809, title II, §212(a), 80 Stat. 1585; Dec. 10, 1971, Pub. L. 92–178, title IV, §401(g)(2)(A)–(C), 85 Stat. 533, related to articles classified as parts.

Section 4063, acts Aug. 16, 1954, ch. 736, 68A Stat. 482; Aug. 11, 1955, ch. 805, §1(g), 69 Stat. 690; Oct. 13, 1964, Pub. L. 88–653, §5(a), 78 Stat. 1086; June 21, 1965, Pub. L. 89–44, title VIII, §801(a), 79 Stat. 157; Dec. 30, 1969, Pub. L. 91–172, title IX, §931(a), 83 Stat. 724; Dec. 31, 1970, Pub. L. 91–614, title III, §303(a), 84 Stat. 1845; Dec. 10, 1971, Pub. L. 92–178, title IV, §401(a)(2), (g)(3), 85 Stat. 530, 533; Oct. 4, 1976, Pub. L. 94–455, title XIX, §1906(b)(13)(A), title XXI, §2109(a), 90 Stat. 1834, 1904; Nov. 6, 1978, Pub. L. 95–600, title VII, §701(ff)(1), 92 Stat. 2924; Nov. 9, 1978, Pub. L. 95–618, title II, §231(a), 92 Stat. 3187; Jan. 6, 1983, Pub. L. 97–424, title V, §512(a)(3), 96 Stat. 2174, related to exemptions from tax.

EFFECTIVE DATE OF REPEAL

Repeal effective as if included in the provisions of the Highway Revenue Act of 1982, Pub. L. 97–424, see section 736 of Pub. L. 98–369, set out as an Effective Date of 1984 Amendment note under section 4051 of this title.

§4064. Gas guzzler tax

(a) Imposition of tax

There is hereby imposed on the sale by the manufacturer of each automobile a tax determined in accordance with the following table:

If the fuel economy of the model type in which the automobile falls is:	**The tax is:**
At least 22.5	$0
At least 21.5 but less than 22.5	1,000
At least 20.5 but less than 21.5	1,300
At least 19.5 but less than 20.5	1,700
At least 18.5 but less than 19.5	2,100
At least 17.5 but less than 18.5	2,600
At least 16.5 but less than 17.5	3,000
At least 15.5 but less than 16.5	3,700
At least 14.5 but less than 15.5	4,500
At least 13.5 but less than 14.5	5,400
At least 12.5 but less than 13.5	6,400
Less than 12.5	7,700.

(b) Definitions

For purposes of this section—

(1) Automobile

(A) In general

The term "automobile" means any 4-wheeled vehicle propelled by fuel—

(i) which is manufactured primarily for use on public streets, roads, and highways (except any vehicle operated exclusively on a rail or rails), and

(ii) which is rated at 6,000 pounds unloaded gross vehicle weight or less.

(B) Exception for certain vehicles

The term "automobile" does not include any vehicle which is treated as a nonpassenger automobile under the rules which were prescribed by the Secretary of Transportation for purposes of section 32901 of title 49, United States Code, and which were in effect on the date of the enactment of this section.

(C) Exception for emergency vehicles

The term "automobile" does not include any vehicle sold for use and used—

(i) as an ambulance or combination ambulance-hearse,

(ii) by the United States or by a State or local government for police or other law enforcement purposes, or

(iii) for other emergency uses prescribed by the Secretary by regulations.

(2) Fuel economy

The term "fuel economy" means the average number of miles traveled by an automobile per gallon of gasoline (or equivalent amount of other fuel) consumed, as determined by the EPA Administrator in accordance with procedures established under subsection (c).

(3) Model type

The term "model type" means a particular class of automobile as determined by regulation by the EPA Administrator.

(4) Model year

The term "model year", with reference to any specific calendar year, means a manufacturer's annual production period (as determined by the EPA Administrator) which includes January 1 of such calendar year. If a manufacturer has no annual production period, the term "model year" means the calendar year.

(5) Manufacturer

(A) In general

The term "manufacturer" includes a producer or importer.

(B) Lengthening treated as manufacture

For purposes of this section, subchapter G of this chapter, and section 6416(b)(3), the lengthening of an automobile by any person shall be treated as the manufacture of an automobile by such person.

(6) EPA Administrator

The term "EPA Administrator" means the Administrator of the Environmental Protection Agency.

(7) Fuel

The term "fuel" means gasoline and diesel fuel. The Secretary (after consultation with the Secretary of Transportation) may, by regulation, include any product of petroleum or natural gas within the meaning of such term if he determines that such inclusion is consistent with the need of the Nation to conserve energy.

(c) Determination of fuel economy

For purposes of this section—

(1) In general

Fuel economy for any model type shall be measured in accordance with testing and calculation procedures established by the EPA Administrator by regulation. Procedures so established shall be

the procedures utilized by the EPA Administrator for model year 1975 (weighted 55 percent urban cycle, and 45 percent highway cycle), or procedures which yield comparable results. Procedures under this subsection, to the extent practicable, shall require that fuel economy tests be conducted in conjunction with emissions tests conducted under section 206 of the Clean Air Act. The EPA Administrator shall report any measurements of fuel economy to the Secretary.

(2) Special rule for fuels other than gasoline

The EPA Administrator shall by regulation determine that quantity of any other fuel which is the equivalent of one gallon of gasoline.

(3) Time by which regulations must be issued

Testing and calculation procedures applicable to a model year, and any amendment to such procedures (other than a technical or clerical amendment), shall be promulgated not less than 12 months before the model year to which such procedures apply.

(Added Pub. L. 95–618, title II, §201(a), Nov. 9, 1978, 92 Stat. 3180; amended Pub. L. 99–514, title XVIII, §1812(e)(1)(B)(i), (ii), Oct. 22, 1986, 100 Stat. 2836; Pub. L. 101–508, title XI, §11216(a)–(d), Nov. 5, 1990, 104 Stat. 1388–437; Pub. L. 103–272, §5(g)(1), July 5, 1994, 108 Stat. 1374; Pub. L. 109–59, title XI, §11111(a), Aug. 10, 2005, 119 Stat. 1946.)

REFERENCES IN TEXT

The date of enactment of this section, referred to in subsec. (b)(1)(B), is Nov. 9, 1978.

Section 206 of the Clean Air Act, referred to in subsec. (c)(1), is section 206 of act July 14, 1955, ch. 360, title II, as added Dec. 31, 1970, Pub. L. 91–604, §8(a), 84 Stat. 1694, which is classified to section 7525 of Title 42, The Public Health and Welfare.

AMENDMENTS

2005—Subsec. (b)(1)(A). Pub. L. 109–59 struck out concluding provisions which read as follows: "In the case of a limousine, the preceding sentence shall be applied without regard to clause (ii)."

1994—Subsec. (b)(1)(B). Pub. L. 103–272 substituted "section 32901 of title 49, United States Code," for "section 501 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2001)".

1990—Subsec. (a). Pub. L. 101–508, §11216(a), amended subsec. (a) generally, substituting present provisions for provisions which set forth gas guzzler tax tables in the case of automobiles built in each of the model years 1980 through 1986 and later.

Subsec. (b)(1)(A). Pub. L. 101–508, §11216(b), inserted at end "In the case of a limousine, the preceding sentence shall be applied without regard to clause (ii)."

Subsec. (b)(5)(B). Pub. L. 101–508, §11216(c), substituted heading for one which read: "Exception for certain small manufacturers" and amended text generally. Prior to amendment, text read as follows: "A person shall not be treated as the manufacturer of any automobile if—

"(i) such person would (but for this subparagraph) be so treated solely by reason of lengthening an existing automobile, and

"(ii) such person is a small manufacturer (as defined in subsection (d)(4)) for the model year in which such lengthening occurs."

Subsec. (d). Pub. L. 101–508, §11216(d), struck out subsec. (d) which prescribed special rules for small manufacturers.

1986—Subsec. (b)(1)(A)(ii). Pub. L. 99–514, §1812(e)(1)(B)(i), substituted "unloaded gross vehicle weight" for "gross vehicle weight".

Subsec. (b)(5). Pub. L. 99–514, §1812(e)(1)(B)(ii), amended par. (5) generally, designating existing provisions as subpar. (A), adding subpar. (A) heading, and adding subpar. (B).

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–59, title XI, §11111(b), Aug. 10, 2005, 119 Stat. 1946, provided that: "The amendment made by this section [amending this section] shall take effect on October 1, 2005."

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, §11216(e), Nov. 5, 1990, 104 Stat. 1388–437, provided that:

"(1) SUBSECTIONS (a) AND (b).—The amendments made by subsections (a) and (b) [amending this section] shall apply to sales after December 31, 1990.

"(2) SUBSECTION (c).—The amendments made by subsection (c) [amending this section] shall take effect

on January 1, 1991.

"(3) SUBSECTION (d).—The amendment made by subsection (d) [amending this section] shall take effect on the date of the enactment of this section [Nov. 5, 1990]."

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XVIII, §1812(e)(1)(B)(iii), Oct. 22, 1986, 100 Stat. 2837, provided that: "The amendments made by clauses (i) and (ii) [amending this section] shall take effect as if included in the amendments made by section 201 of Public Law 95–618 [see Effective Date note below]; except that the amendment made by clause (i) shall not apply to any station wagon if—

"(I) such station wagon is originally equipped with more than 6 seat belts,

"(II) such station wagon was manufactured before November 1, 1985, and

"(III) such station wagon is of the 1985 or 1986 model year."

EFFECTIVE DATE

Pub. L. 95–618, title II, §201(g), Nov. 9, 1978, 92 Stat. 3184, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by this section [enacting this section and amending sections 1016, 4217, 4221, 4222, 4293, and 6416 of this title] shall apply with respect to 1980 and later model year automobiles (as defined in section 4064(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954])."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

PART II—TIRES

Sec.

4071. Imposition of tax.

4072. Definitions.

4073. Exemptions.

AMENDMENTS

2004—Pub. L. 108–357, title VIII, §869(d)(2), Oct. 22, 2004, 118 Stat. 1623, substituted "Exemptions" for "Exemption for tires with internal wire fastening" in item 4073.

1984—Pub. L. 98–369, div. A, title VII, §735(c)(5)(A), (C), July 18, 1984, 98 Stat. 982, struck out "AND TUBES" from heading of part II and substituted "Exemption for tires with internal wire fastening" for "Exemptions" in item 4073.

1956—Act June 29, 1956, ch. 462, title II, §204(d), 70 Stat. 389, substituted "Definitions" for "Definition of rubber" in item 4072.

§4071. Imposition of tax

(a) Imposition and rate of tax

There is hereby imposed on taxable tires sold by the manufacturer, producer, or importer thereof a tax at the rate of 9.45 cents (4.725 cents in the case of a biasply tire or super single tire) for each 10 pounds so much of the maximum rated load capacity thereof as exceeds 3,500 pounds.

(b) Special rule for manufacturers who sell at retail

Under regulations prescribed by the Secretary, if the manufacturer, producer, or importer of any tire delivers such tire to a retail store or retail outlet of such manufacturer, producer, or importer, he shall be liable for tax under subsection (a) in respect of such tire in the same manner as if it had been sold at the time it was delivered to such retail store or outlet. This subsection shall not apply to an article in respect to which tax has been imposed by subsection (a). Subsection (a) shall not apply to an article in respect of which tax has been imposed by this subsection.

(c) Tires on imported articles

For the purposes of subsection (a), if an article imported into the United States is equipped with tires—

(1) the importer of the article shall be treated as the importer of the tires with which such article is equipped, and

(2) the sale of the article by the importer thereof shall be treated as the sale of the tires with which such article is equipped.

This subsection shall not apply with respect to the sale of an automobile bus chassis or an automobile bus body.

(d) Termination

On and after October 1, 2016, the taxes imposed by subsection (a) shall not apply.

(Aug. 16, 1954, ch. 736, 68A Stat. 482; June 29, 1956, ch. 462, title II, §204(a), 70 Stat. 388; Pub. L. 86–440, §1(a), Apr. 22, 1960, 74 Stat. 80; Pub. L. 87–61, title II, §202, June 29, 1961, 75 Stat. 124; Pub. L. 89–523, §1(a), Aug. 1, 1966, 80 Stat. 331; Pub. L. 91–605, title III, §303(a)(5), Dec. 31, 1970, 84 Stat. 1744; Pub. L. 92–178, title IV, §401(f), Dec. 10, 1971, 85 Stat. 533; Pub. L. 94–280, title III, §303(a)(5), May 5, 1976, 90 Stat. 456; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–599, title V, §502(a)(4), Nov. 6, 1978, 92 Stat. 2756; Pub. L. 96–222, title I, §108(c)(2)(C), Apr. 1, 1980, 94 Stat. 227; Pub. L. 96–596, §4(a)(1), Dec. 24, 1980, 94 Stat. 3475; Pub. L. 96–598, §1(d), Dec. 24, 1980, 94 Stat. 3486; Pub. L. 97–424, title V, §§514(a), 516(a)(2), Jan. 6, 1983, 96 Stat. 2181, 2182; Pub. L. 98–369, div. A, title VII, §735(c)(2), July 18, 1984, 98 Stat. 982; Pub. L. 100–17, title V, §502(a)(3), Apr. 2, 1987, 101 Stat. 256; Pub. L. 101–508, title XI, §11211(c)(2), Nov. 5, 1990, 104 Stat. 1388–426; Pub. L. 102–240, title VIII, §8002(a)(2), Dec. 18, 1991, 105 Stat. 2203; Pub. L. 105–178, title IX, §9002(a)(1)(E), June 9, 1998, 112 Stat. 499; Pub. L. 108–357, title VIII, §869(a), (d)(1), Oct. 22, 2004, 118 Stat. 1623; Pub. L. 109–59, title XI, §11101(a)(1)(E), Aug. 10, 2005, 119 Stat. 1943; Pub. L. 112–30, title I, §142(a)(2)(C), Sept. 16, 2011, 125 Stat. 356; Pub. L. 112–102, title IV, §402(a)(2)(C), Mar. 30, 2012, 126 Stat. 282; Pub. L. 112–140, title IV, §402(a)(2)(C), June 29, 2012, 126 Stat. 402; Pub. L. 112–141, div. D, title I, §40102(a)(2)(C), July 6, 2012, 126 Stat. 844.)

AMENDMENTS

2012—Subsec. (d). Pub. L. 112–141 substituted "October 1, 2016" for "July 1, 2012".

Pub. L. 112–140, §§1(c), 402(a)(2)(C), temporarily substituted "July 7, 2012" for "July 1, 2012". See Effective and Termination Dates of 2012 Amendment note below.

Pub. L. 112–102 substituted "July 1, 2012" for "April 1, 2012".

2011—Subsec. (d). Pub. L. 112–30 substituted "April 1, 2012" for "October 1, 2011".

2005—Subsec. (d). Pub. L. 109–59 substituted "2011" for "2005".

2004—Subsec. (a). Pub. L. 108–357, §869(a), reenacted heading without change and amended text of subsec. (a) generally. Prior to amendment, subsec. (a) imposed tax and set forth table of rates providing for no tax if the tire weighed not more than 40 lbs., tax of 15 cents per lb. in excess of 40 lbs. if the tire weighed more than 40 lbs. but not more than 70 lbs., tax of $4.50 plus 30 cents per lb. in excess of 70 lbs. if the tire weighed more than 70 lbs. but not more than 90 lbs., and tax of $10.50 plus 50 cents per lb. in excess of 90 lbs. if the tire weighed more than 90 lbs.

Subsec. (c). Pub. L. 108–357, §869(d)(1), redesignated subsec. (e) as (c) and struck out heading and text of former subsec. (c). Text read as follows: "For purposes of this section, weight shall be based on total weight exclusive of metal rims or rim bases. Total weight of the articles shall be determined under regulations prescribed by the Secretary."

Subsec. (e). Pub. L. 108–357, §869(d)(1), redesignated subsec. (e) as (c).

1998—Subsec. (d). Pub. L. 105–178 substituted "2005" for "1999".

1991—Subsec. (d). Pub. L. 102–240 substituted "1999" for "1995".

1990—Subsec. (d). Pub. L. 101–508 substituted "1995" for "1993".

1987—Subsec. (d). Pub. L. 100–17 substituted "1993" for "1988".

1984—Subsec. (b). Pub. L. 98–369, §735(c)(2)(A), struck out "or inner tube" after "any tire", and struck out "or tube" after "such tire" in two places in first sentence.

Subsec. (c). Pub. L. 98–369, §735(c)(2)(B), substituted "on total weight exclusive" for "on total weight, except that in the case of tires such total weight shall be exclusive".

Subsec. (e). Pub. L. 98–369, §735(c)(2)(C), struck out "or inner tubes (other than bicycle tires and inner tubes)" after "equipped with tires" in provisions preceding par. (1), struck out "and inner tubes" before "with which such article is equipped" in pars. (1) and (2), and substituted "sale of an automobile bus chassis or an automobile bus body" for "sale of an article if a tax on such sale is imposed under section 4061 or if such article is an automobile bus chassis or an automobile bus body" in provisions following par. (2).

Subsec. (f). Pub. L. 98–369, §735(c)(2)(D), struck out subsec. (f) which related to imported recapped or retreaded United States tires.

1983—Subsec. (a). Pub. L. 97–424, §514(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "There is hereby imposed upon the following articles, if wholly or in part of rubber, sold by the manufacturer, producer, or importer, a tax at the following rates:

"(1) Tires of the type used on highway vehicles, 9.75 cents a pound.

"(2) Other tires (other than laminated tires to which paragraph (5) applies), 4.875 cents a pound.

"(3) Inner tubes, for tires, 10 cents a pound.

"(4) Tread rubber, 5 cents a pound.

"(5) Laminated tires (not of the type used on highway vehicles) which consist wholly of scrap rubber from used tire casings with an internal metal fastening agent, 1 cent a pound."

Subsec. (d). Pub. L. 97–424, §516(a)(2), substituted provision that, on and after Oct. 1, 1988, the taxes imposed by subsec. (a) shall not apply, for provision that, on and after Oct. 1, 1984, the tax imposed by subsec. (a)(1) would be 4.875 cents a pound, that by subsec. (a)(3) would be 9 cents a pound, and that subsec. (a)(4) would not apply.

1980—Subsec. (a)(1). Pub. L. 96–596, §4(a)(1)(A), substituted "9.75 cents" for "10 cents".

Subsec. (a)(2). Pub. L. 96–596, §4(a)(1)(B), substituted "4.875 cents" for "5 cents".

Subsec. (d)(1). Pub. L. 96–596, §4(a)(1)(C), substituted "4.875 cents" for "5 cents".

Subsec. (e). Pub. L. 96–222 inserted references to an automobile bus chassis or body.

Subsec. (f). Pub. L. 96–598 added subsec. (f).

1978—Subsec. (d). Pub. L. 95–599 substituted "1984" for "1979".

1976—Subsecs. (b), (c). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

Subsec. (d). Pub. L. 94–280 substituted "1979" for "1977".

1971—Subsec. (e). Pub. L. 92–178 added subsec. (e).

1970—Subsec. (d). Pub. L. 91–605 substituted "1977" for "1972".

1966—Subsecs. (b) to (d). Pub. L. 89–523 added subsec. (b) and redesignated former subsec. (b) and (c) as (c) and (d), respectively.

1961—Subsec. (a)(1). Pub. L. 87–61, §202(a), increased tax from 8 to 10 cents a pound.

Subsec. (a)(3). Pub. L. 87–61, §202(c), increased tax from 9 to 10 cents a pound.

Subsec. (a)(4). Pub. L. 87–61, §202(c), increased tax from 3 to 5 cents a pound.

Subsec. (c). Pub. L. 87–61, §202(d), substituted "October 1, 1972" for "July 1, 1972", added par. (2), and redesignated former par. (2) as (3).

1960—Subsec. (a)(2). Pub. L. 86–440, §1(a)(1), inserted "(other than laminated tires to which paragraph (5) applies)" after "other tires".

Subsec. (a)(5). Pub. L. 86–440, §1(a)(2), added par. (5).

1956—Act June 29, 1956, increased tax on tires of type used on highway vehicles from 5 cents a pound to 8 cents a pound, provided for a tax of 3 cents a pound on tread rubber, and required on and after July 1, 1972, a reduction in tax on tires of type used on highway vehicles from 8 cents a pound to 5 cents a pound, and elimination of tax on tread rubber.

EFFECTIVE AND TERMINATION DATES OF 2012 AMENDMENT

Amendment by Pub. L. 112–141 effective July 1, 2012, see section 40102(f) of Pub. L. 112–141, set out as a note under section 460l–11 of Title 16, Conservation.

Amendment by Pub. L. 112–140 to cease to be effective on July 6, 2012, with text as amended by Pub. L. 112–140 to revert back to read as it did on the day before June 29, 2012, and amendments by Pub. L. 112–141 to be executed as if Pub. L. 112–140 had not been enacted, see section 1(c) of Pub. L. 112–140, set out as a note under section 101 of Title 23, Highways.

Amendment by Pub. L. 112–140 effective July 1, 2012, see section 402(f)(1) of Pub. L. 112–140, set out as a note under section 460l–11 of Title 16, Conservation.

Amendment by Pub. L. 112–102 effective Apr. 1, 2012, see section 402(f) of Pub. L. 112–102, set out as a note under section 460l–11 of Title 16, Conservation.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112–30 effective Oct. 1, 2011, see section 142(f) of Pub. L. 112–30, set out as a note under section 460l–11 of Title 16, Conservation.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §869(e), Oct. 22, 2004, 118 Stat. 1623, provided that: "The amendments made by this section [amending this section and sections 4072 and 4073 of this title] shall apply to sales in calendar years beginning more than 30 days after the date of the enactment of this Act [Oct. 22, 2004]."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97–424, to which such amendment relates, see section 736 of Pub. L. 98–369, set out as a note under section 4051 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 97–424, title V, §514(b), Jan. 6, 1983, 96 Stat. 2181, provided that: "The amendment made by this section [amending this section] shall apply to articles sold on or after January 1, 1984".

EFFECTIVE DATE OF 1980 AMENDMENTS

Pub. L. 96–598, §1(e), Dec. 24, 1980, 94 Stat. 3486, provided that: "The amendments made by this section [amending this section and sections 6416 and 6511 of this title] shall take effect on the first day of the first calendar month which begins more than 10 days after the date of the enactment of this Act [Dec. 24, 1980]."

Pub. L. 96–596, §4(a)(2), Dec. 24, 1980, 94 Stat. 3475, provided that: "The amendments made by this subsection [amending this section] shall apply on and after January 1, 1981."

Amendment by Pub. L. 96–222 effective as if included in the provision of the Energy Tax Act of 1978, Pub. L. 95–618, Nov. 9, 1978, 92 Stat. 3174, to which such amendment relates, see section 108(c)(7) of Pub. L. 96–222, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Pub. L. 92–178, title IV, §401(h), Dec. 10, 1971, 85 Stat. 534, provided that:

"(1) Except as otherwise provided in this section, the amendments made by subsections (a), (f), and (g) [amending this section and sections 4061, 4062, 4063, 4216, 4221, 4222, 6412, and 6416 of this title] of this section shall apply with respect to articles sold on or after the day after the date of the enactment of this Act [Dec. 10, 1971].

"(2) For purposes of paragraph (1), an article shall not be considered sold before the day after the date of the enactment of this Act [Dec. 10, 1971] unless possession or right to possession passes to the purchaser before such day.

"(3) In the case of—

"(A) a lease,

"(B) a contract for the sale of an article where it is provided that the price shall be paid by installments and title to the article sold does not pass until a future date notwithstanding partial payment by installments,

"(C) a conditional sale, or

"(D) a chattel mortgage arrangement wherein it is provided that the sale price shall be paid in installments,

entered into on or before the date of the enactment of this Act [Dec. 10, 1971], payments made after such date, with respect to the article leased or sold shall, for purposes of this subsection, be considered as payments made with respect to an article sold after such date, if the lessor or vendor establishes that the amount of payments payable after such date with respect to such article has been reduced by an amount equal to that portion of the tax applicable with respect to the lease or sale of such article which is due and payable after such date. If the lessor or vendor does not establish that the payments have been so reduced, they shall be treated as payments made in respect of an article sold before the day after the date of the enactment of this Act."

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89–523, §1(b), Aug. 1, 1966, 80 Stat. 331, provided that: "The amendments made by subsection (a) [amending this section] shall take effect on the first day of the first calendar quarter which begins more than 20 days after the date on which this Act is enacted [Aug. 1, 1966]."

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–61 effective July 1, 1961, see section 208 of Pub. L. 87–61, set out as a note

under section 4041 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Pub. L. 86–440, §1(b), Apr. 22, 1960, 74 Stat. 81, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to articles sold on or after the first day of the first month which begins more than 10 days after the date of the enactment of this Act [April 22, 1960]."

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act June 29, 1956, effective July 1, 1956, see section 211 of act June 29, 1956, set out as a note under section 4041 of this title.

ALLOWANCE OF CREDIT OR REFUND OF OVERPAYMENT OF TAX IMPOSED

Pub. L. 96–596, §4(b), Dec. 24, 1980, 94 Stat. 3475, provided that:

"(b) DETERMINATION OF OVERPAYMENT.—

"(1) IN GENERAL.—The determination of the extent to which any overpayment of tax imposed by section 4071(a)(1) or (2) or section 4071(b) has arisen by reason of an adjustment of a tire after the original sale pursuant to a warranty or guarantee, and the allowance of a credit or refund of any such overpayment, shall be determined in accordance with the principles set forth in regulations and rulings relating thereto to the extent in effect on March 31, 1978.

"(2) EFFECTIVE DATE.—This subsection shall apply to the adjustment of any tire after March 31, 1978, and prior to January 1, 1983."

§4072. Definitions

(a) Taxable tire

For purposes of this chapter, the term "taxable tire" means any tire of the type used on highway vehicles if wholly or in part made of rubber and if marked pursuant to Federal regulations for highway use.

(b) Rubber

For purposes of this chapter, the term "rubber" includes synthetic and substitute rubber.

(c) Tires of the type used on highway vehicles

For purposes of this part, the term "tires of the type used on highway vehicles" means tires of the type used on—

(1) motor vehicles which are highway vehicles, or

(2) vehicles of the type used in connection with motor vehicles which are highway vehicles.

Such term shall not include tires of a type used exclusively on vehicles described in section 4053(8).

(d) Biasply

For purposes of this part, the term "biasply tire" means a pneumatic tire on which the ply cords that extend to the beads are laid at alternate angles substantially less than 90 degrees to the centerline of the tread.

(e) Super single tire

For purposes of this part, the term "super single tire" means a single tire greater than 13 inches in cross section width designed to replace 2 tires in a dual fitment. Such term shall not include any tire designed for steering.

(Aug. 16, 1954, ch. 736, 68A Stat. 482; June 29, 1956, ch. 462, title II, §204(b), 70 Stat. 389; Pub. L. 98–369, div. A, title VII, §735(c)(3), July 18, 1984, 98 Stat. 982; Pub. L. 108–357, title VIII, §§851(c)(1), 869(b), Oct. 22, 2004, 118 Stat. 1608, 1623; Pub. L. 109–58, title XIII, §1364(a), Aug. 8, 2005, 119 Stat. 1060.)

AMENDMENTS

2005—Subsec. (e). Pub. L. 109–58 inserted at end "Such term shall not include any tire designed for steering."

2004—Subsec. (a). Pub. L. 108–357, §869(b), added subsec. (a) and redesignated former subsec. (a) as (b).

Subsec. (b). Pub. L. 108–357, §869(b), redesignated subsec. (a) as (b). Former subsec. (b) redesignated (c).

Pub. L. 108–357, §851(c)(1), which directed amendment of par. (2) by inserting at end "Such term shall not include tires of a type used exclusively on vehicles described in section 4053(8).", was executed by amending subsec. (b) by inserting that language after par. (2) to reflect the probable intent of Congress.

Subsecs. (c), (d). Pub. L. 108–357, §869(b), redesignated subsecs. (b) and (c) as (c) and (d), respectively. Former subsec. (d) redesignated (e).

Pub. L. 108–357, §869(b), added subsecs. (c) and (d).

Subsec. (e). Pub. L. 108–357, §869(b), redesignated subsec. (d) as (e).

1984—Subsecs. (b), (c). Pub. L. 98–369 redesignated subsec. (c) as (b) and struck out former subsec. (b) which defined "tread rubber".

1956—Act June 29, 1956, substituted "Definitions" for "Definition of rubber" in section catchline.

Act June 29, 1956, designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–58, title XIII, §1364(b), Aug. 8, 2005, 119 Stat. 1060, provided that: "The amendment made by this section [amending this section] shall take effect as if included in section 869 of the American Jobs Creation Act of 2004 [Pub. L. 108–357]."

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §851(c)(2), Oct. 22, 2004, 118 Stat. 1608, provided that: "The amendment made by this subsection [amending this section] shall take effect on the day after the date of the enactment of this Act [Oct. 22, 2004]."

Amendment by section 869(b) of Pub. L. 108–357 applicable to sales in calendar years beginning more than 30 days after Oct. 22, 2004, see section 869(e) of Pub. L. 108–357, set out as a note under section 4071 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97–424, to which such amendment relates, see section 736 of Pub. L. 98–369, set out as a note under section 4051 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act June 29, 1956, effective July 1, 1956, see section 211 of act June 29, 1956, set out as a note under section 4041 of this title.

§4073. Exemptions

The tax imposed by section 4071 shall not apply to tires sold for the exclusive use of the Department of Defense or the Coast Guard.

(Aug. 16, 1954, ch. 736, 68A Stat. 482; June 29, 1956, ch. 462, title II, §204(c), 70 Stat. 389; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–369, div. A, title VII, §735(c)(4), July 18, 1984, 98 Stat. 982; Pub. L. 108–357, title VIII, §869(c), Oct. 22, 2004, 118 Stat. 1623.)

AMENDMENTS

2004—Pub. L. 108–357 amended section catchline and text generally. Prior to amendment, text read as follows: "The tax imposed by section 4071 shall not apply to tires of extruded tiring with an internal wire fastening agent."

1984—Pub. L. 98–369 substituted "Exemption for tires with internal wire fastening" for "Exemptions" in section catchline, and in text struck out subsec. (a) relating to exemption from tax on tires not more than 20 inches in diameter and not more than 1¾ inches in cross section, struck out subsec. (c) relating to exemption from tax on tread rubber in certain cases, and struck out letter designation "(b)" and subsection heading for subsec. (b) thereby designating text of former subsec. (b) as entire text of section.

1976—Subsec. (c). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

1956—Subsec. (c). Act June 29, 1956, added subsec. (c).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to sales in calendar years beginning more than 30 days after Oct. 22, 2004, see section 869(e) of Pub. L. 108–357, set out as a note under section 4071 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97–424, to which such amendment relates, see section 736 of Pub. L. 98–369, set out as a note under section 4051 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act June 29, 1956, effective July 1, 1956, see section 211 of act June 29, 1956, set out as a note under section 4041 of this title.

PART III—PETROLEUM PRODUCTS

Subpart

A. Motor and aviation fuels.

B. Special provisions applicable to fuels tax.

AMENDMENTS

2004—Pub. L. 108–357, title VIII, §853(d)(2)(R), Oct. 22, 2004, 118 Stat. 1614, amended analysis generally, substituting items for subparts A "Motor and aviation fuels" and B "Special provisions applicable to fuels tax" for former items for subparts A "Gasoline and diesel fuel", B "Aviation fuel", and C "Special provisions applicable to petroleum products".

1993—Pub. L. 103–66, title XIII, §13242(d)(43), Aug. 10, 1993, 107 Stat. 528, substituted "Gasoline and diesel fuel" for "Gasoline" in item for subpart A and "Aviation fuel" for "Diesel fuel and aviation fuel" in item for subpart B.

1987—Pub. L. 100–203, title X, §10502(d)(18), Dec. 22, 1987, 101 Stat. 1330–445, added item relating to subpart B.

1983—Pub. L. 97–424, title V, §515(b)(13), Jan. 6, 1983, 96 Stat. 2182, struck out the item for subpart B "Lubricating oil".

SUBPART A—MOTOR AND AVIATION FUELS

Sec.

4081. Imposition of tax.

4082. Exemptions for diesel fuel and kerosene.

4083. Definitions; special rule; administrative authority.

4084. Cross references.

AMENDMENTS

2004—Pub. L. 108–357, title VIII, §853(d)(2)(S), Oct. 22, 2004, 118 Stat. 1614, substituted "Motor and Aviation Fuels" for "Gasoline and Diesel Fuel" in subpart heading.

1997—Pub. L. 105–34, title X, §1032(e)(3)(B), Aug. 5, 1997, 111 Stat. 935, inserted "and kerosene" after "diesel fuel" in item 4082.

1993—Pub. L. 103–66, title XIII, §13242(a), Aug. 10, 1993, 107 Stat. 514, substituted "Gasoline and Diesel Fuel" for "Gasoline" in subpart heading and amended section analysis generally, substituting "Exemptions for diesel fuel" for "Definitions" in item 4082 and "Definitions; special rule; administrative authority" for "Cross references" in item 4083 and adding item 4084.

1986—Pub. L. 99–514, title XVII, §1703(a), Oct. 22, 1986, 100 Stat. 2774, struck out item 4083 "Exemption of sales to producer" and redesignated former item 4084 as 4083.

1956—Act June 29, 1956, ch. 462, title II, §208(e)(2), 70 Stat. 397, substituted "Cross references" for "Relief of farmers from tax in case of gasoline used on the farm" in item 4084.

Act Apr. 2, 1956, ch. 160, §4(a)(2), 70 Stat. 90, added item 4084.

§4081. Imposition of tax

(a) Tax imposed

(1) Tax on removal, entry, or sale

(A) In general

There is hereby imposed a tax at the rate specified in paragraph (2) on—

(i) the removal of a taxable fuel from any refinery,

(ii) the removal of a taxable fuel from any terminal,

(iii) the entry into the United States of any taxable fuel for consumption, use, or warehousing, and

(iv) the sale of a taxable fuel to any person who is not registered under section 4101 unless there was a prior taxable removal or entry of such fuel under clause (i), (ii), or (iii).

(B) Exemption for bulk transfers to registered terminals or refineries

(i) In general

The tax imposed by this paragraph shall not apply to any removal or entry of a taxable fuel transferred in bulk by pipeline or vessel to a terminal or refinery if the person removing or entering the taxable fuel, the operator of such pipeline or vessel (except as provided in clause (ii)), and the operator of such terminal or refinery are registered under section 4101.

(ii) Nonapplication of registration to vessel operators entering by deep-draft vessel

For purposes of clause (i), a vessel operator is not required to be registered with respect to the entry of a taxable fuel transferred in bulk by a vessel described in section 4042(c)(1).

(2) Rates of tax

(A) In general

The rate of the tax imposed by this section is—

(i) in the case of gasoline other than aviation gasoline, 18.3 cents per gallon,

(ii) in the case of aviation gasoline, 19.3 cents per gallon, and

(iii) in the case of diesel fuel or kerosene, 24.3 cents per gallon.

(B) Leaking Underground Storage Tank Trust Fund tax

The rates of tax specified in subparagraph (A) shall each be increased by 0.1 cent per gallon. The increase in tax under this subparagraph shall in this title be referred to as the Leaking Underground Storage Tank Trust Fund financing rate.

(C) Taxes imposed on fuel used in aviation

In the case of kerosene which is removed from any refinery or terminal directly into the fuel tank of an aircraft for use in aviation, the rate of tax under subparagraph (A)(iii) shall be—

(i) in the case of use for commercial aviation by a person registered for such use under section 4101, 4.3 cents per gallon, and

(ii) in the case of use for aviation not described in clause (i), 21.8 cents per gallon.

(D) Diesel-water fuel emulsion

In the case of diesel-water fuel emulsion at least 14 percent of which is water and with respect to which the emulsion additive is registered by a United States manufacturer with the Environmental Protection Agency pursuant to section 211 of the Clean Air Act (as in effect on March 31, 2003), subparagraph (A)(iii) shall be applied by substituting "19.7 cents" for "24.3 cents". The preceding sentence shall not apply to the removal, sale, or use of diesel-water fuel emulsion unless the person so removing, selling, or using such fuel is registered under section 4101.

(3) Certain refueler trucks, tankers, and tank wagons treated as terminal

(A) In general

For purposes of paragraph (2)(C), a refueler truck, tanker, or tank wagon shall be treated as part of a terminal if—

(i) such terminal is located within an airport,

(ii) any kerosene which is loaded in such truck, tanker, or wagon at such terminal is for delivery only into aircraft at the airport in which such terminal is located,

(iii) such truck, tanker, or wagon meets the requirements of subparagraph (B) with respect to such terminal, and

(iv) except in the case of exigent circumstances identified by the Secretary in regulations, no vehicle registered for highway use is loaded with kerosene at such terminal.

(B) Requirements

A refueler truck, tanker, or tank wagon meets the requirements of this subparagraph with respect to a terminal if such truck, tanker, or wagon—

(i) has storage tanks, hose, and coupling equipment designed and used for the purposes of fueling aircraft,

(ii) is not registered for highway use, and

(iii) is operated by—

(I) the terminal operator of such terminal, or

(II) a person that makes a daily accounting to such terminal operator of each delivery of fuel from such truck, tanker, or wagon.

(C) Reporting

The Secretary shall require under section 4101(d) reporting by such terminal operator of—

(i) any information obtained under subparagraph (B)(iii)(II), and

(ii) any similar information maintained by such terminal operator with respect to deliveries of fuel made by trucks, tankers, or wagons operated by such terminal operator.

(D) Applicable rate

For purposes of paragraph (2)(C), in the case of any kerosene treated as removed from a terminal by reason of this paragraph—

(i) the rate of tax specified in paragraph (2)(C)(i) in the case of use described in such paragraph shall apply if such terminal is located within a secured area of an airport, and

(ii) the rate of tax specified in paragraph (2)(C)(ii) shall apply in all other cases.

(4) Liability for tax on kerosene used in commercial aviation

For purposes of paragraph (2)(C)(i), the person who uses the fuel for commercial aviation shall pay the tax imposed under such paragraph. For purposes of the preceding sentence, fuel shall be treated as used when such fuel is removed into the fuel tank.

(b) Treatment of removal or subsequent sale by blender

(1) In general

There is hereby imposed a tax at the rate determined under subsection (a) on taxable fuel removed or sold by the blender thereof.

(2) Credit for tax previously paid

If—

(A) tax is imposed on the removal or sale of a taxable fuel by reason of paragraph (1), and

(B) the blender establishes the amount of the tax paid with respect to such fuel by reason of subsection (a),

the amount of the tax so paid shall be allowed as a credit against the tax imposed by reason of paragraph (1).

(c) Later separation of fuel from diesel-water fuel emulsion

If any person separates the taxable fuel from a diesel-water fuel emulsion on which tax was imposed under subsection (a) at a rate determined under subsection (a)(2)(D) (or with respect to which a credit or payment was allowed or made by reason of section 6427), such person shall be treated as the refiner of such taxable fuel. The amount of tax imposed on any removal of such fuel by such person shall be reduced by the amount of tax imposed (and not credited or refunded) on any prior removal or entry of such fuel.

(d) Termination

(1) In general

The rates of tax specified in clauses (i) and (iii) of subsection (a)(2)(A) shall be 4.3 cents per gallon after September 30, 2016.

(2) Aviation fuels

The rates of tax specified in subsection (a)(2)(A)(ii) and (a)(2)(C)(ii) shall be 4.3 cents per gallon—

(A) after December 31, 1996, and before the date which is 7 days after the date of the enactment of the Airport and Airway Trust Fund Tax Reinstatement Act of 1997, and

(B) after September 30, 2015.

(3) Leaking Underground Storage Tank Trust Fund financing rate

The Leaking Underground Storage Tank Trust Fund financing rate under subsection (a)(2) shall apply after September 30, 1997, and before October 1, 2016.

(e) Refunds in certain cases

Under regulations prescribed by the Secretary, if any person who paid the tax imposed by this section with respect to any taxable fuel establishes to the satisfaction of the Secretary that a prior tax was paid (and not credited or refunded) with respect to such taxable fuel, then an amount equal to the tax paid by such person shall be allowed as a refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.

(Aug. 16, 1954, ch. 736, 68A Stat. 483; Mar. 30, 1955, ch. 18, §3(a)(3), 69 Stat. 14; Mar. 29, 1956, ch. 115, §3(a)(3), 70 Stat. 66; June 29, 1956, ch. 462, title II, §205, 70 Stat. 389; Pub. L. 86–342, title II, §201(a), Sept. 21, 1959, 73 Stat. 613; Pub. L. 87–61, title II, §201(b)–(d), June 29, 1961, 75 Stat. 123, 124; Pub. L. 91–605, title III, §303(a)(6), Dec. 31, 1970, 84 Stat. 1744; Pub. L. 94–280, title III, §303(a)(6), May 5, 1976, 90 Stat. 456; Pub. L. 95–599, title V, §502(a)(5), Nov. 6, 1978, 92 Stat. 2756; Pub. L. 95–618, title II, §221(a)(1), Nov. 9, 1978, 92 Stat. 3185; Pub. L. 96–223, title II, §232(a)(1), (b)(3)(A), (d)(3), Apr. 2, 1980, 94 Stat. 273, 276, 277; Pub. L. 97–424, title V, §§511(a)(1), (d)(1), 516(a)(3), Jan. 6, 1983, 96 Stat. 2169, 2171, 2182; Pub. L. 98–369, div. A, title VII, §732(a)(1), (2), title IX, §912(b), (f), July 18, 1984, 98 Stat. 976, 977, 1007; Pub. L. 99–499, title V, §521(a)(1), Oct. 17, 1986, 100 Stat. 1774; Pub. L. 99–514, title XVII, §1703(a), Oct. 22, 1986, 100 Stat. 2774; Pub. L. 100–17, title V, §502(a)(4), (c)(2), Apr. 2, 1987, 101 Stat. 256, 257; Pub. L. 100–203, title X, §10502(d)(2), Dec. 22, 1987, 101 Stat. 1330–444; Pub. L. 100–647, title I, §1017(c)(1), (14), title II, §2001(d)(5), title VI, §6104(a), Nov. 10, 1988, 102 Stat. 3575, 3577, 3595, 3711; Pub. L. 101–508, title XI, §§11211(a)(1)–(3), (5)(A)–(C), (c)(3), (e)(3), 11212(a), (d)(1), (e)(2), 11215(a), Nov. 5, 1990, 104 Stat. 1388–423, 1388–424, 1388–426, 1388–427, 1388–430, 1388–432, 1388–436; Pub. L. 102–240, title VIII, §8002(a)(3), Dec. 18, 1991, 105 Stat. 2203; Pub. L. 102–486, title XIX, §1920(a), (b), Oct. 24, 1992, 106 Stat. 3026; Pub. L. 103–66, title XIII, §§13241(a), 13242(a), Aug. 10, 1993, 107 Stat. 510, 514; Pub. L. 104–188, title I, §1609(a)(2), (g)(1), (2), (4)(B), Aug. 20, 1996, 110 Stat. 1841–1843; Pub. L. 105–2, §2(a)(2), Feb. 28, 1997, 111 Stat. 4; Pub. L. 105–34, title X, §§1031(a)(2), 1032(b), 1033, Aug. 5, 1997, 111 Stat. 929, 933, 937; Pub. L. 105–178, title IX, §§9002(a)(1)(F), 9003(a)(1)(C), (b)(2)(B), (C), June 9, 1998, 112 Stat. 499, 502, 503; Pub. L. 108–357, title III, §301(c)(7), title VIII, §§853(a)(1)–(3)(A), (4), 860(a), Oct. 22, 2004, 118 Stat. 1461, 1609–1611, 1618; Pub. L. 109–6, §1(a), Mar. 31, 2005, 119 Stat. 20; Pub. L. 109–58, title XIII, §§1343(a), (b)(2), 1362(a), Aug. 8, 2005, 119 Stat. 1051, 1052, 1059; Pub. L. 109–59, title XI, §§11101(a)(1)(F), 11151(b)(1), (2), 11161(a)(1)–(4)(D), 11166(b)(1), Aug. 10,

2005, 119 Stat. 1944, 1968–1970, 1976; Pub. L. 110–161, div. K, title I, §116(a), Dec. 26, 2007, 121 Stat. 2381; Pub. L. 110–190, §2(a), Feb. 28, 2008, 122 Stat. 643; Pub. L. 110–253, §2(a), June 30, 2008, 122 Stat. 2417; Pub. L. 110–330, §2(a), Sept. 30, 2008, 122 Stat. 3717; Pub. L. 111–12, §2(a), Mar. 30, 2009, 123 Stat. 1457; Pub. L. 111–69, §2(a), Oct. 1, 2009, 123 Stat. 2054; Pub. L. 111–116, §2(a), Dec. 16, 2009, 123 Stat. 3031; Pub. L. 111–153, §2(a), Mar. 31, 2010, 124 Stat. 1084; Pub. L. 111–161, §2(a), Apr. 30, 2010, 124 Stat. 1126; Pub. L. 111–197, §2(a), July 2, 2010, 124 Stat. 1353; Pub. L. 111–216, title I, §101(a), Aug. 1, 2010, 124 Stat. 2349; Pub. L. 111–249, §2(a), Sept. 30, 2010, 124 Stat. 2627; Pub. L. 111–329, §2(a), Dec. 22, 2010, 124 Stat. 3566; Pub. L. 112–7, §2(a), Mar. 31, 2011, 125 Stat. 31; Pub. L. 112–16, §2(a), May 31, 2011, 125 Stat. 218; Pub. L. 112–21, §2(a), June 29, 2011, 125 Stat. 233; Pub. L. 112–27, §2(a), Aug. 5, 2011, 125 Stat. 270; Pub. L. 112–30, title I, §142(a)(1)(C), (2)(D), title II, §202(a), Sept. 16, 2011, 125 Stat. 356, 357; Pub. L. 112–91, §2(a), Jan. 31, 2012, 126 Stat. 3; Pub. L. 112–95, title XI, §1101(a), Feb. 14, 2012, 126 Stat. 148; Pub. L. 112–102, title IV, §402(a)(1)(C), (2)(D), Mar. 30, 2012, 126 Stat. 282; Pub. L. 112–140, title IV, §402(a)(1)(C), (2)(D), June 29, 2012, 126 Stat. 402; Pub. L. 112–141, div. D, title I, §40102(a)(1)(C), (2)(D), July 6, 2012, 126 Stat. 844.)

REFERENCES IN TEXT

Section 211 of the Clean Air Act, referred to in subsec. (a)(2)(D), is classified to section 7545 of Title 42, The Public Health and Welfare.

The date of the enactment of the Airport and Airway Trust Fund Tax Reinstatement Act of 1997, referred to in subsec. (d)(2)(A), is the date of enactment of Pub. L. 105–2, which was approved Feb. 28, 1997.

AMENDMENTS

2012—Subsec. (d)(1). Pub. L. 112–141, §40102(a)(1)(C), substituted "September 30, 2016" for "June 30, 2012".

Pub. L. 112–140, §§1(c), 402(a)(1)(C), temporarily substituted "July 6, 2012" for "June 30, 2012". See Effective and Termination Dates of 2012 Amendment note below.

Pub. L. 112–102, §402(a)(1)(C), substituted "June 30, 2012" for "March 31, 2012".

Subsec. (d)(2)(B). Pub. L. 112–95 substituted "September 30, 2015" for "February 17, 2012".

Pub. L. 112–91 substituted "February 17, 2012" for "January 31, 2012".

Subsec. (d)(3). Pub. L. 112–141, §40102(a)(2)(D), substituted "October 1, 2016" for "July 1, 2012".

Pub. L. 112–140, §§1(c), 402(a)(2)(D), temporarily substituted "July 7, 2012" for "July 1, 2012". See Effective and Termination Dates of 2012 Amendment note below.

Pub. L. 112–102, §402(a)(2)(D), substituted "July 1, 2012" for "April 1, 2012".

2011—Subsec. (d)(1). Pub. L. 112–30, §142(a)(1)(C), substituted "March 31, 2012" for "September 30, 2011".

Subsec. (d)(2)(B). Pub. L. 112–30, §202(a), substituted "January 31, 2012" for "September 16, 2011".

Pub. L. 112–27 substituted "September 16, 2011" for "July 22, 2011".

Pub. L. 112–21 substituted "July 22, 2011" for "June 30, 2011".

Pub. L. 112–16 substituted "June 30, 2011" for "May 31, 2011".

Pub. L. 112–7 substituted "May 31, 2011" for "March 31, 2011".

Subsec. (d)(3). Pub. L. 112–30, §142(a)(2)(D), substituted "April 1, 2012" for "October 1, 2011".

2010—Subsec. (d)(2)(B). Pub. L. 111–329 substituted "March 31, 2011" for "December 31, 2010".

Pub. L. 111–249 substituted "December 31, 2010" for "September 30, 2010".

Pub. L. 111–216 substituted "September 30, 2010" for "August 1, 2010".

Pub. L. 111–197 substituted "August 1, 2010" for "July 3, 2010".

Pub. L. 111–161 substituted "July 3, 2010" for "April 30, 2010".

Pub. L. 111–153 substituted "April 30, 2010" for "March 31, 2010".

2009—Subsec. (d)(2)(B). Pub. L. 111–116 substituted "March 31, 2010" for "December 31, 2009".

Pub. L. 111–69 substituted "December 31, 2009" for "September 30, 2009".

Pub. L. 111–12 substituted "September 30, 2009" for "March 31, 2009".

2008—Subsec. (d)(2)(B). Pub. L. 110–330 substituted "March 31, 2009" for "September 30, 2008".

Pub. L. 110–253 substituted "September 30, 2008" for "June 30, 2008".

Pub. L. 110–190 substituted "June 30, 2008" for "February 29, 2008".

2007—Subsec. (d)(2)(B). Pub. L. 110–161 substituted "February 29, 2008" for "September 30, 2007".

2005—Subsec. (a)(1)(B). Pub. L. 109–59, §11166(b)(1), reenacted heading without change and amended text of subpar. (B) generally. Prior to amendment, text read as follows: "The tax imposed by this paragraph

shall not apply to any removal or entry of a taxable fuel transferred in bulk by pipeline or vessel to a terminal or refinery if the person removing or entering the taxable fuel, the operator of such pipeline or vessel, and the operator of such terminal or refinery are registered under section 4101."

Subsec. (a)(2)(A)(ii) to (iv). Pub. L. 109–59, §11161(a)(1), inserted "and" at end of cl. (ii), substituted a period for ", and" at end of cl. (iii), and struck out cl. (iv) which read as follows: "in the case of aviation-grade kerosene, 21.8 cents per gallon."

Subsec. (a)(2)(C). Pub. L. 109–59, §11161(a)(2), amended heading and text of subpar. (C) generally. Prior to amendment, text read as follows: "In the case of aviation-grade kerosene which is removed from any refinery or terminal directly into the fuel tank of an aircraft for use in commercial aviation by a person registered for such use under section 4101, the rate of tax under subparagraph (A)(iv) shall be 4.3 cents per gallon."

Pub. L. 109–59, §11151(b)(1), substituted "for use in commercial aviation by a person registered for such use under section 4101" for "for use in commercial aviation".

Subsec. (a)(2)(D). Pub. L. 109–58, §1343(a), added subpar. (D).

Subsec. (a)(3)(A)(i). Pub. L. 109–59, §11161(a)(3)(A), struck out "a secured area of" before "an airport".

Subsec. (a)(3)(A)(ii), (iv). Pub. L. 109–59, §11161(a)(4)(A), struck out "aviation-grade" before "kerosene".

Subsec. (a)(3)(D). Pub. L. 109–59, §11161(a)(3)(B), added subpar. (D).

Subsec. (a)(4). Pub. L. 109–59, §11161(a)(4)(B), (C), struck out "aviation-grade" before "kerosene" in heading and substituted "paragraph (2)(C)(i)" for "paragraph (2)(C)" in text.

Subsec. (c). Pub. L. 109–58, §1343(b)(2), added subsec. (c).

Subsec. (d)(1). Pub. L. 109–59, §11101(a)(1)(F), substituted "2011" for "2005".

Subsec. (d)(2). Pub. L. 109–59, §11161(a)(4)(D), reenacted par. heading without change and amended text of introductory provisions generally. Prior to amendment, introductory provisions read as follows: "The rates of tax specified in clauses (ii) and (iv) of subsection (a)(2)(A) shall be 4.3 cents per gallon—".

Pub. L. 109–59, §11151(b)(2), amended par. heading and text of introductory provisions generally. Prior to amendment, introductory provisions read as follows: "The rate of tax specified in subsection (a)(2)(A)(ii) shall be 4.3 cents per gallon—".

Subsec. (d)(3). Pub. L. 109–58, §1362(a), substituted "2011" for "2005".

Pub. L. 109–6 substituted "October 1, 2005" for "April 1, 2005".

2004—Subsec. (a)(1)(B). Pub. L. 108–357, §860(a), inserted "by pipeline or vessel" after "transferred in bulk" and ", the operator of such pipeline or vessel," after "the taxable fuel".

Subsec. (a)(2)(A)(iv). Pub. L. 108–357, §853(a)(1), added cl. (iv).

Subsec. (a)(2)(C). Pub. L. 108–357, §853(a)(2), added subpar. (C).

Subsec. (a)(3). Pub. L. 108–357, §853(a)(3)(A), added par. (3).

Subsec. (a)(4). Pub. L. 108–357, §853(a)(4), added par. (4).

Subsec. (c). Pub. L. 108–357, §301(c)(7), struck out subsec. (c) which related to taxation of taxable fuels mixed with alcohol.

1998—Subsec. (c)(4)(A). Pub. L. 105–178, §9003(b)(2)(B), amended heading and text of subpar. (A) generally. Prior to amendment, text read as follows: "The alcohol mixture rate for a qualified alcohol mixture which contains gasoline is the excess of the rate which would (but for this paragraph) be determined under subsection (a) over—

"(i) 5.4 cents per gallon for 10 percent gasohol,

"(ii) 4.158 cents per gallon for 7.7 percent gasohol, and

"(iii) 3.078 cents per gallon for 5.7 percent gasohol.

In the case of a mixture none of the alcohol in which consists of ethanol, clauses (i), (ii), and (iii) shall be applied by substituting '6 cents' for '5.4 cents', '4.62 cents' for '4.158 cents', and '3.42 cents' for '3.078 cents'."

Subsec. (c)(5). Pub. L. 105–178, §9003(b)(2)(C), substituted "the applicable blender rate (as defined in section 4041(b)(2)(C))" for "5.4 cents".

Subsec. (c)(8). Pub. L. 105–178, §9003(a)(1)(C), substituted "2007" for "2000".

Subsec. (d)(1). Pub. L. 105–178, §9002(a)(1)(F), substituted "2005" for "1999".

1997—Subsec. (a)(2)(A)(iii). Pub. L. 105–34, §1032(b), inserted "or kerosene" after "diesel fuel".

Subsec. (d)(1), (2). Pub. L. 105–2 added pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

"(1) IN GENERAL.—On and after October 1, 1999, the rates of tax specified in clauses (i) and (iii) of subsection (a)(2)(A) (other than the tax on aviation gasoline) shall be 4.3 cents per gallon.

"(2) AVIATION GASOLINE.—On and after January 1, 1997, the rate specified in subsection (a)(2)(A)(ii) shall be 4.3 cents per gallon."

Subsec. (d)(2)(B). Pub. L. 105–34, §1031(a)(2), substituted "September 30, 2007" for "September 30,

1997".

Subsec. (d)(3). Pub. L. 105–34, §1033, substituted "shall apply after September 30, 1997, and before April 1, 2005" for "shall not apply after December 31, 1995".

Pub. L. 105–2 struck out heading and text of par. (3) relating to aviation gasoline. Text read as follows: "After December 31, 1996, the rate of tax specified in subsection (a)(2)(A)(i) on aviation gasoline shall be 4.3 cents per gallon."

1996—Subsec. (a)(2)(A). Pub. L. 104–188, §1609(g)(1), added cls. (i) and (ii), redesignated former cl. (ii) as (iii), and struck out former cl. (i) which read as follows: "in the case of gasoline, 18.3 cents per gallon, and".

Subsec. (d)(1). Pub. L. 104–188, §1609(a)(2)(B), (g)(4)(B), substituted "the rates of tax specified in clauses (i) and (iii) of subsection (a)(2)(A) (other than the tax on aviation gasoline)" for "each rate of tax specified in subsection (a)(2)(A)".

Subsec. (d)(2), (3). Pub. L. 104–188, §1609(a)(2)(A), (g)(2), added par. (3) relating to aviation gasoline, redesignated former par. (2), relating to leaking underground storage tank trust fund financing rate, as another par. (3), and added new par. (2) relating to aviation gasoline.

1993—Pub. L. 103–66, §13242(a), amended section generally, substituting, in subsec. (a), provisions imposing tax on taxable fuels for provisions imposing tax on gasoline, in subsec. (b), provisions relating to treatment of removal or subsequent sale of taxable fuels by blender for provisions relating to treatment of removal or subsequent sale of gasoline by blender or compounder, in subsec. (c), provisions relating to taxable fuels mixed with alcohol for provisions relating to gasoline mixed with alcohol at refinery etc., in subsec. (d), provisions decreasing tax rate imposed on taxable fuels to 4.3 cents per gallon beginning on and after Oct. 1, 1999, for provisions terminating the Highway Trust Fund financing and deficit reduction rates on and after Oct. 1, 1999, and Oct. 1, 1995, respectively, and, in subsec. (e), "taxable fuel" for "gasoline" in two places.

Subsec. (a)(2)(B)(iii). Pub. L. 103–66, §13241(a), amended cl. (iii) generally, substituting "6.8 cents per gallon" for "2.5 cents a gallon".

1992—Subsec. (c)(1). Pub. L. 102–486, §1920(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "Under regulations prescribed by the Secretary, subsection (a) shall be applied by substituting rates which are 10/9th of the otherwise applicable rates in the case of the removal or sale of any gasoline for use in producing gasohol at the time of such removal or sale. Subject to such terms and conditions as the Secretary may prescribe (including the application of section 4101), the treatment under the preceding sentence also shall apply to use in producing gasohol after the time of such removal or sale. For purposes of this paragraph, the term 'gasohol' means any mixture of gasoline if at least 10 percent of such mixture is alcohol. For purposes of this subsection, in the case of the Highway Trust Fund financing rate, the otherwise applicable rate is 6.1 cents a gallon."

Subsec. (c)(2). Pub. L. 102–486, §1920(b)(1), substituted "an otherwise applicable rate" for "6.1 cents a gallon".

Subsec. (c)(4). Pub. L. 102–486, §1920(b)(2), substituted heading for one which read: "Lower rate on gasohol made other than from ethanol", added text, and struck out former text which read as follows: "In the case of gasohol none of the alcohol in which consists of ethanol, paragraphs (1) and (2) shall be applied by substituting '5.5 cents' for '6.1 cents'."

1991—Subsec. (d)(1). Pub. L. 102–240 substituted "1999" for "1995".

1990—Subsec. (a)(1). Pub. L. 101–508, §11212(a), substituted heading for one which read: "In general" and amended text generally. Prior to amendment, text read as follows: "There is hereby imposed a tax at the rate specified in paragraph (2) on the earlier of—

"(A) the removal, or

"(B) the sale,

of gasoline by the refiner or importer thereof or the terminal operator."

Subsec. (a)(2)(A)(iii). Pub. L. 101–508, §11211(a)(1), added cl. (iii).

Subsec. (a)(2)(B)(i). Pub. L. 101–508, §11211(a)(2)(A), substituted "11.5 cents" for "9 cents".

Subsec. (a)(2)(B)(iii). Pub. L. 101–508, §11211(a)(2)(B), (C), added cl. (iii).

Subsec. (a)(3). Pub. L. 101–508, §11212(e)(2), struck out par. (3) which read as follows: "For purposes of paragraph (1), the bulk transfer of gasoline to a terminal operator by a refiner or importer shall not be considered a removal or sale of gasoline by such refiner or importer."

Subsec. (c)(1). Pub. L. 101–508, §11211(a)(5)(A), substituted "applied by substituting rates which are 10/9th of the otherwise applicable rates" for "applied by substituting '31/3 cents' for '9 cents' and by substituting '1/9 cent' for '0.1 cent' " and inserted "For purposes of this subsection, in the case of the Highway Trust Fund financing rate, the otherwise applicable rate is 6.1 cents a gallon."

Subsec. (c)(2). Pub. L. 101–508, §11211(a)(5)(B), which directed the substitution of "at a Highway Trust

Fund financing rate equivalent to 6.1 cents" for "at a rate equivalent to 3 cents", was executed by making the substitution for "at a Highway Trust Fund financing rate equivalent to 3 cents" to reflect the probable intent of Congress. See 1986 Amendment note below.

Subsec. (c)(4). Pub. L. 101–508, §11211(a)(5)(C), added par. (4). Former par. (4) redesignated (5).

Subsec. (c)(5). Pub. L. 101–508, §11211(e)(3), substituted "2000" for "1993".

Pub. L. 101–508, §11211(a)(5)(C), redesignated par. (4) as (5).

Subsec. (d)(1). Pub. L. 101–508, §11211(c)(3), substituted "1995" for "1993".

Subsec. (d)(2). Pub. L. 101–508, §11215(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows:

"(A) IN GENERAL.—The Leaking Underground Storage Tank Trust Fund financing rate under subsection (a)(2) shall not apply after the earlier of—

"(i) December 31, 1991, or

"(ii) the last day of the termination month.

"(B) TERMINATION MONTH.—For purposes of subparagraph (A), the termination month is the 1st month as of the close of which the Secretary estimates that the net revenues are at least $500,000,000 from taxes imposed by section 4041(d) and taxes attributable to Leaking Underground Storage Tank Trust Fund financing rate imposed under this section and sections 4042 and 4091.

"(C) NET REVENUES.—For purposes of subparagraph (B), the term 'net revenues' means the excess of gross revenues over amounts payable by reason of section 9508(c)(2) (relating to transfer from Leaking Underground Storage Tank Trust Fund for certain repayments and credits)."

Subsec. (d)(3). Pub. L. 101–508, §11211(a)(3), added par. (3).

Subsec. (e). Pub. L. 101–508, §11212(d)(1), added subsec. (e).

1988—Subsec. (a). Pub. L. 100–647, §1017(c)(1)(A), added pars. (1) and (2), struck out former par. (1) which imposed a tax at the rate specified in subsec. (d) on the earlier of the removal, or the sale of gasoline by the refiner or importer thereof or the terminal operator, and redesignated former par. (2) as (3).

Subsec. (b)(1). Pub. L. 100–647, §1017(c)(1)(B), substituted "subsection (a)" for "subsection (d)".

Subsec. (c)(1). Pub. L. 100–647, §6104(a), inserted after first sentence "Subject to such terms and conditions as the Secretary may prescribe (including the application of section 4101), the treatment under the preceding sentence also shall apply to use in producing gasohol after the time of such removal or sale."

Pub. L. 100–647, §2001(d)(5)(A), inserted "and by substituting '1/9 cent' for '0.1 cent' " before "in the case of the removal".

Pub. L. 100–647, §1017(c)(14), substituted "31/3 cents" for "3 cents".

Pub. L. 100–647, §1017(c)(1)(B), substituted "subsection (a)" for "subsection (d)".

Subsec. (c)(2). Pub. L. 100–647, §2001(d)(5)(B), substituted "reduced by the amount of tax imposed (and not credited or refunded) on any prior removal or sale of such fuel" for "52/3 cents a gallon".

Subsec. (d). Pub. L. 100–647, §1017(c)(1)(D), redesignated subsec. (e) as (d) and struck out former subsec. (d) which related to the rate of tax.

Subsec. (d)(1). Pub. L. 100–647, §1017(c)(1)(C)(i), substituted "subsection (a)(2)" for "subsection (d)(2)(A)".

Subsec. (d)(2)(A). Pub. L. 100–647, §1017(c)(1)(C)(ii), substituted "subsection (a)(2)" for "subsection (d)(2)(B)".

Subsec. (e). Pub. L. 100–647, §1017(c)(1)(D), redesignated subsec. (e) as (d).

1987—Subsec. (c)(4). Pub. L. 100–17, §502(c)(2), substituted "September 30, 1993" for "December 31, 1992".

Subsec. (e)(1). Pub. L. 100–17, §502(a)(4), substituted "1993" for "1988".

Subsec. (e)(2)(B). Pub. L. 100–203 substituted "net revenues are at least $500,000,000 from taxes imposed by section 4041(d) and taxes attributable to Leaking Underground Storage Tank Trust Fund financing rate imposed under this section and sections 4042 and 4091." for "net revenues from the taxes imposed by this section (to the extent attributable to the Leaking Underground Storage Tank Trust Fund financing rate under subsection (d)(2)(B)), section 4041(d), and section 4042 (to the extent attributable to the Leaking Underground Storage Tank Trust Fund financing rate under section 4042(b)) are at least $500,000,000."

1986—Pub. L. 99–514 amended section generally, substituting provisions imposing a tax on the removal or sale of gasoline by the refiner, importer, blender, or compounder thereof or the terminal operator for provisions imposing a tax on gasoline sold by the producer or importer thereof, or by any producer of gasoline.

Subsec. (a). Pub. L. 99–499, §521(a)(1)(B)(i), substituted "at the rate specified in subsection (d)" for "of 9 cents a gallon" in par. (1) as amended by Pub. L. 99–514.

Pub. L. 99–499, §521(a)(1)(A)(i), amended subsec. (a), as in effect the day before Oct. 22, 1986, generally,

substituting "at the rate specified in subsection (b)" for "of 9 cents a gallon".

Subsec. (b). Pub. L. 99–499, §521(a)(1)(B)(i), substituted "at the rate specified in subsection (d)" for "of 9 cents a gallon" in par. (1) as amended by Pub. L. 99–514.

Pub. L. 99–499, §521(a)(1)(A)(i), amended subsec. (b), as in effect the day before Oct. 22, 1986, generally. Prior to amendment, subsec. (b), termination, read as follows: "On and after October 1, 1988, the taxes imposed by this section shall not apply."

Subsec. (c)(1). Pub. L. 99–499, §521(a)(1)(B)(iii)(I), substituted "subsection (d)" for "subsection (a)" in par. (1) as amended by Pub. L. 99–514.

Pub. L. 99–499, §521(a)(1)(A)(iii), substituted "subsection (b)" for "subsection (a)" in introductory provisions as in effect the day before Oct. 22, 1986.

Subsec. (c)(2). Pub. L. 99–499, §521(a)(1)(B)(iii)(II), substituted "a Highway Trust Fund financing rate" for "a rate" in par. (2) as amended by Pub. L. 99–514.

Pub. L. 99–499, §521(a)(1)(A)(iii)(II), substituted "a Highway Trust Fund financing rate" for "a rate" in par. (2) as in effect the day before Oct. 22, 1986.

Subsec. (d). Pub. L. 99–499, §521(a)(1)(B)(ii), added subsec. (d) to this section as amended by Pub. L. 99–514, and struck out former subsec. (d), termination, which read as follows: "On and after October 1, 1988, the taxes imposed by this section shall not apply."

Pub. L. 99–499, §521(a)(1)(A)(i), in amending this section as in effect the day before Oct. 22, 1986, added subsec. (d).

Subsec. (e). Pub. L. 99–499, §521(a)(1)(B)(ii), added subsec. (e) to this section as amended by Pub. L. 99–514.

1984—Subsec. (c)(1). Pub. L. 98–369, §912(b)(A), (B), substituted "3 cents" for "4 cents" in subpar. (A), and "31/3 cents" for "44/9 cents" in subpar. (B).

Pub. L. 98–369, §732(a)(1), struck out "by substituting '4 cents' for '9 cents' in the case of the sale of any gasoline" after "shall be applied" in text preceding subpar. (A), substituted "by substituting '4 cents' for '9 cents' in the case of the sale of any gasohol (the gasoline in which was not taxed under subparagraph (B)), and" for "in a mixture with alcohol, if at least 10 percent of the mixture is alcohol, or" in subpar. (A), substituted "by substituting '44/9 cents' for '9 cents' in the case of the sale of any gasoline for use in producing gasohol" for "for use in producing a mixture at least 10 percent of which is alcohol" in subpar. (B) and inserted definition of "gasohol" after subpar. (B).

Subsec. (c)(2). Pub. L. 98–369, §912(b)(A), (C), substituted "3 cents" for "4 cents" and "52/3 cents" for "45/9 cents".

Pub. L. 98–369, §732(a)(2), substituted "at a rate equivalent to 4 cents a gallon" for "at a rate of 4 cents a gallon", and "45/9 cents a gallon" for "5 cents a gallon".

Subsec. (c)(3). Pub. L. 98–369, §912(f), substituted "coal (including peat)" for "coal".

1983—Subsec. (a). Pub. L. 97–424, §511(a)(1), increased tax from 4 to 9 cents a gallon.

Subsec. (b). Pub. L. 97–424, §516(a)(3), substituted provision that, on and after Oct. 1, 1988, the taxes imposed by this section shall not apply, for provision that, on and after Oct. 1, 1984, the tax imposed by this section would be 1½ cents a gallon.

Subsec. (c)(1). Pub. L. 97–424, §511(d)(1)(A), substituted "subsection (a) shall be applied by substituting '4 cents' for '9 cents' in the case of the sale of any gasoline" for "no tax shall be imposed by this section on the sale of any gasoline" after "Secretary,".

Subsec. (c)(2). Pub. L. 97–424, §511(d)(1)(B), substituted "tax was imposed under subsection (a) at the rate of 4 cents a gallon by reason of this subsection" for "tax was not imposed by reason of this subsection" after "alcohol on which", and inserted provision that the amount of tax imposed on any sale of such gasoline by such person shall be 5 cents a gallon.

1980—Subsec. (c)(2). Pub. L. 96–223, §232(d)(3), inserted "(or with respect to which a credit or payment was allowed or made by reason of section 6427(f)(1))" after "this subsection".

Subsec. (c)(3). Pub. L. 96–223, §232(b)(3)(A), inserted provision that "alcohol" does not include alcohol with a proof of less than 190 (determined without regard to any added denaturants).

Subsec. (c)(4). Pub. L. 96–223, §232(a)(1), added par. (4).

1978—Subsec. (b). Pub. L. 95–599 substituted "1984" for "1979".

Subsec. (c). Pub. L. 95–618 added subsec. (c).

1976—Subsec. (b). Pub. L. 94–280 substituted "1979" for "1977".

1970—Subsec. (b). Pub. L. 91–605 substituted "1977" for "1972".

1961—Subsec. (a). Pub. L. 87–61, §201(b), increased tax from 3 to 4 cents a gallon.

Subsec. (b). Pub. L. 87–61, §201(c), substituted "October 1, 1972" for "July 1, 1972."

Subsec. (c). Pub. L. 87–61, §201(d), repealed subsec. (c) which authorized a temporary increase in tax for

the period October 1, 1959, to July 1, 1961.

1959—Subsec. (c). Pub. L. 86–342 added subsec. (c).

1956—Act Mar. 29, 1956, substituted "April 1, 1957" for "April 1, 1956".

Subsec. (a). Act June 29, 1956, redesignated first sentence as subsec. (a) and increased tax from 2 to 3 cents a gallon.

Subsec. (b). Act June 29, 1956, redesignated second sentence as subsec. (b) and substituted "July 1, 1972" for "April 1, 1956".

1955—Act Mar. 30, 1955, substituted "April 1, 1956" for "April 1, 1955".

EFFECTIVE AND TERMINATION DATES OF 2012 AMENDMENT

Amendment by Pub. L. 112–141 effective July 1, 2012, see section 40102(f) of Pub. L. 112–141, set out as a note under section 460l–11 of Title 16, Conservation.

Amendment by Pub. L. 112–140 to cease to be effective on July 6, 2012, with text as amended by Pub. L. 112–140 to revert back to read as it did on the day before June 29, 2012, and amendments by Pub. L. 112–141 to be executed as if Pub. L. 112–140 had not been enacted, see section 1(c) of Pub. L. 112–140, set out as a note under section 101 of Title 23, Highways.

Amendment by Pub. L. 112–140 effective July 1, 2012, see section 402(f)(1) of Pub. L. 112–140, set out as a note under section 460l–11 of Title 16, Conservation.

Amendment by Pub. L. 112–102 effective Apr. 1, 2012, see section 402(f) of Pub. L. 112–102, set out as a note under section 460l–11 of Title 16, Conservation.

Pub. L. 112–95, title XI, §1101(c), Feb. 14, 2012, 126 Stat. 148, provided that: "The amendments made by this section [amending this section and sections 4261 and 4271 of this title] shall take effect on February 18, 2012."

Pub. L. 112–91, §2(c), Jan. 31, 2012, 126 Stat. 3, provided that: "The amendments made by this section [amending this section and sections 4261 and 4271 of this title] shall take effect on February 1, 2012."

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by section 142(a)(1)(C), (2)(D) of Pub. L. 112–30 effective Oct. 1, 2011, see section 142(f) of Pub. L. 112–30, set out as a note under section 460l–11 of Title 16, Conservation.

Pub. L. 112–30, title II, §202(c), Sept. 16, 2011, 125 Stat. 357, provided that: "The amendments made by this section [amending this section and sections 4261 and 4271 of this title] shall take effect on September 17, 2011."

Pub. L. 112–27, §2(c), Aug. 5, 2011, 125 Stat. 270, provided that: "The amendments made by this section [amending this section and sections 4261 and 4271 of this title] shall take effect on July 23, 2011."

Pub. L. 112–21, §2(c), June 29, 2011, 125 Stat. 233, provided that: "The amendments made by this section [amending this section and sections 4261 and 4271 of this title] shall take effect on July 1, 2011."

Pub. L. 112–16, §2(c), May 31, 2011, 125 Stat. 218, provided that: "The amendments made by this section [amending this section and sections 4261 and 4271 of this title] shall take effect on June 1, 2011."

Pub. L. 112–7, §2(c), Mar. 31, 2011, 125 Stat. 31, provided that: "The amendments made by this section [amending this section and sections 4261 and 4271 of this title] shall take effect on April 1, 2011."

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–329, §2(c), Dec. 22, 2010, 124 Stat. 3566, provided that: "The amendments made by this section [amending this section and sections 4261 and 4271 of this title] shall take effect on January 1, 2011."

Pub. L. 111–249, §2(c), Sept. 30, 2010, 124 Stat. 2627, provided that: "The amendments made by this section [amending this section and sections 4261 and 4271 of this title] shall take effect on October 1, 2010."

Pub. L. 111–216, title I, §101(c), Aug. 1, 2010, 124 Stat. 2349, provided that: "The amendments made by this section [amending this section and sections 4261 and 4271 of this title] shall take effect on August 2, 2010."

Pub. L. 111–197, §2(c), July 2, 2010, 124 Stat. 1353, provided that: "The amendments made by this section [amending this section and sections 4261 and 4271 of this title] shall take effect on July 4, 2010."

Pub. L. 111–161, §2(c), Apr. 30, 2010, 124 Stat. 1126, provided that: "The amendments made by this section [amending this section and sections 4261 and 4271 of this title] shall take effect on May 1, 2010."

Pub. L. 111–153, §2(c), Mar. 31, 2010, 124 Stat. 1084, provided that: "The amendments made by this section [amending this section and sections 4261 and 4271 of this title] shall take effect on April 1, 2010."

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–116, §2(c), Dec. 16, 2009, 123 Stat. 3031, provided that: "The amendments made by this section [amending this section and sections 4261 and 4271 of this title] shall take effect on January 1, 2010."

Pub. L. 111–69, §2(c), Oct. 1, 2009, 123 Stat. 2054, provided that: "The amendments made by this section [amending this section and sections 4261 and 4271 of this title] shall take effect on October 1, 2009."

Pub. L. 111–12, §2(c), Mar. 30, 2009, 123 Stat. 1457, provided that: "The amendments made by this section [amending this section and sections 4261 and 4271 of this title] shall take effect on April 1, 2009."

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–330, §2(c), Sept. 30, 2008, 122 Stat. 3717, provided that: "The amendments made by this section [amending this section and sections 4261 and 4271 of this title] shall take effect on October 1, 2008."

Pub. L. 110–253, §2(c), June 30, 2008, 122 Stat. 2417, provided that: "The amendments made by this section [amending this section and sections 4261 and 4271 of this title] shall take effect on July 1, 2008."

Pub. L. 110–190, §2(c), Feb. 28, 2008, 122 Stat. 643, provided that: "The amendments made by this section [amending this section and sections 4261 and 4271 of this title] shall take effect on March 1, 2008."

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–161, div. K, title I, §116(d), Dec. 26, 2007, 121 Stat. 2382, provided that: "The amendments made by this section [amending this section and sections 4261, 4271, and 9502 of this title] shall take effect on October 1, 2007."

EFFECTIVE DATE OF 2005 AMENDMENTS

Pub. L. 109–59, title XI, §11151(f)(1), Aug. 10, 2005, 119 Stat. 1969, provided that: "The amendments made by subsections (a) and (b) [amending this section and sections 6421 and 6427 of this title] shall take effect as if included in the provisions of the American Jobs Creation Act of 2004 [Pub. L. 108–357] to which they relate."

Amendment by section 11161(a)(1)–(4)(D) of Pub. L. 109–59 applicable to fuels or liquids removed, entered, or sold after Sept. 30, 2005, see section 11161(e) of Pub. L. 109–59, set out as a note under section 4041 of this title.

Pub. L. 109–59, title XI, §11166(b)(2), Aug. 10, 2005, 119 Stat. 1977, provided that: "The amendment made by this subsection [amending this section] shall take effect on the date of the enactment of this Act [Aug. 10, 2005]."

Pub. L. 109–58, title XIII, §1343(c), Aug. 8, 2005, 119 Stat. 1052, provided that: "The amendments made by this section [amending this section and section 6427 of this title] shall take effect on January 1, 2006."

Amendment by section 1362(a) of Pub. L. 109–58 effective Oct. 1, 2005, see section 1362(d)(1) of Pub. L. 109–58, set out as a note under section 4041 of this title.

Pub. L. 109–6, §1(b), Mar. 31, 2005, 119 Stat. 20, provided that: "The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Mar. 31, 2005]."

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 301(c)(7) of Pub. L. 108–357 applicable to fuel sold or used after Dec. 31, 2004, see section 301(d)(1) of Pub. L. 108–357, set out as a note under section 40 of this title.

Amendment by section 853(a)(1)–(3)(A), (4) of Pub. L. 108–357 applicable to aviation-grade kerosene removed, entered, or sold after Dec. 31, 2004, see section 853(e) of Pub. L. 108–357, set out as a note under section 4041 of this title.

Pub. L. 108–357, title VIII, §860(b), Oct. 22, 2004, 118 Stat. 1618, provided that: "The amendments made by this section [amending this section] shall take effect on March 1, 2005."

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 9003(b)(2)(B), (C), of Pub. L. 105–178 effective Jan. 1, 2001, see section 9003(b)(3) of Pub. L. 105–178, set out as a note under section 40 of this title.

EFFECTIVE DATE OF 1997 AMENDMENTS

Amendment by section 1031(a)(2) of Pub. L. 105–34 effective Oct. 1, 1997, see section 1031(e)(1) of Pub. L. 105–34, set out as a note under section 4041 of this title.

Amendment by section 1032(b) of Pub. L. 105–34 effective July 1, 1998, see section 1032(f)(1) of Pub. L. 105–34, as amended, set out as a note under section 4041 of this title.

Amendment by Pub. L. 105–2 applicable to periods beginning on or after the 7th day after Feb. 28, 1997, see section 2(e)(1) of Pub. L. 105–2, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective on 7th calendar day after Aug. 20, 1996, see section 1609(i) of

Pub. L. 104–188, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13241(a) of Pub. L. 103–66 effective Oct. 1, 1993, see section 13241(g) of Pub. L. 103–66, set out as a note under section 4041 of this title.

Amendment by section 13242(a) of Pub. L. 103–66 effective Jan. 1, 1994, see section 13242(e) of Pub. L. 103–66, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–486, title XIX, §1920(c), Oct. 24, 1992, 106 Stat. 3027, provided that: "The amendments made by this section [amending this section] shall apply to gasoline removed (as defined in [former] section 4082 of the Internal Revenue Code of 1986) or entered after December 31, 1992."

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11211(a)(1)–(3), (5)(A)–(C) of Pub. L. 101–508 applicable, except as otherwise provided, to gasoline removed (as defined in [former] section 4082 of this title) after Nov. 30, 1990, see section 11211(a)(6) of Pub. L. 101–508, set out as a note under section 4041 of this title.

Pub. L. 101–508, title XI, §11212(f), Nov. 5, 1990, 104 Stat. 1388–432, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting section 4103 of this title and amending this section and sections 4093, 4101, 4222, 6103, 6416, and 6724 of this title] shall take effect on July 1, 1991.

"(2) REGISTRATION, ETC.—The amendments made by subsections (b), (c), and (e) (other than paragraph (2) thereof) [enacting section 4103 of this title and amending sections 4093, 4101, 4222, 6103, and 6724 of this title] shall take effect on December 1, 1990."

Pub. L. 101–508, title XI, §11215(b), Nov. 5, 1990, 104 Stat. 1388–436, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on December 1, 1990."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1017(c)(1), (14) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 2001(d)(5) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Superfund Revenue Act of 1986, Pub. L. 99–499, title V, to which it relates, see section 2001(e) of Pub. L. 100–647, set out as a note under section 56 of this title.

Pub. L. 100–647, title VI, §6104(b), Nov. 10, 1988, 102 Stat. 3711, provided that: "The amendment made by this section [amending this section] shall take effect on October 1, 1989."

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to sales after Mar. 31, 1988, see section 10502(e) of Pub. L. 100–203, set out as a note under section 40 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Pub. L. 99–514, title XVII, §1703(h), Oct. 22, 1986, 100 Stat. 2779, provided that: "The amendments made by this section [amending this section and sections 34, 4082, 4083, 4101, 4221, 6421, 6427, 7210, 7603 to 7605, 7609, and 7610 of this title and omitting section 4084 of this title] shall apply to gasoline removed (as defined in section 4082 of the Internal Revenue Code of 1986, as amended by this section) after December 31, 1987."

Amendment by Pub. L. 99–499 effective Jan. 1, 1987, see section 521(e) of Pub. L. 99–499, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 732(a)(1), (2) of Pub. L. 98–369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97–424, to which such amendment relates, see section 736 of Pub. L. 98–369, set out as a note under section 4051 of this title.

Amendment by section 912(b), (f) of Pub. L. 98–369 effective Jan. 1, 1985, see section 912(g) of Pub. L. 98–369, set out as a note under section 40 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 511(a)(1), (d)(1) of Pub. L. 97–424 effective Apr. 1, 1983, see section 511(h)(1) of Pub. L. 97–424, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 232(b)(3)(A) of Pub. L. 96–223 applicable to sales or uses after Sept. 30, 1980, in taxable years ending after such date, see section 232(h)(1) of Pub. L. 96–223, set out as an Effective Date note under section 40 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–618, title II, §221(a)(2), Nov. 9, 1978, 92 Stat. 3185, as amended by Pub. L. 96–223, title II, §232(a)(3), Apr. 2, 1980, 94 Stat. 273, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to sales after December 31, 1978."

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–61 effective July 1, 1961, see section 208 of Pub. L. 87–61, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act June 29, 1956, effective July 1, 1956, see section 211 of act June 29, 1956, set out as a note under section 4041 of this title.

LIST OF AIRPORTS WITH SECURED TERMINALS

Pub. L. 108–357, title VIII, §853(a)(3)(B), Oct. 22, 2004, 118 Stat. 1610, provided that: "Not later than December 15, 2004, the Secretary of the Treasury shall publish and maintain a list of airports which include a secured area in which a terminal is located (within the meaning of section 4081(a)(3)(A)(i) of the Internal Revenue Code of 1986, as added by this paragraph)."

DELAYED DEPOSITS OF HIGHWAY MOTOR FUEL TAX REVENUES

Due date for deposit of taxes imposed by this section which would be required to be made after July 31, 1998, and before Oct. 1, 1998, to be Oct. 5, 1998, see section 901(e) of Pub. L. 105–34, set out as a note under section 6302 of this title.

DELAYED DEPOSITS OF AIRPORT TRUST FUND TAX REVENUES

Due date for deposit of taxes imposed by subsec. (a)(2)(A)(ii) of this section which would be required to be made after July 31, 1998, and before Oct. 1, 1998, to be Oct. 5, 1998, see section 1031(g) of Pub. L. 105–34, set out as a note under section 6302 of this title.

MOTOR FUEL TAX ENFORCEMENT ADVISORY COMMISSION

Pub. L. 109–59, title XI, §11141, Aug. 10, 2005, 119 Stat. 1959, provided that:

"(a) ESTABLISHMENT.—There is established a Motor Fuel Tax Enforcement Advisory Commission (in this section referred to as the 'Commission').

"(b) FUNCTION.—The Commission shall—

"(1) review motor fuel revenue collections, historical and current;

"(2) review the progress of investigations with respect to motor fuel taxes;

"(3) develop and review legislative proposals with respect to motor fuel taxes;

"(4) monitor the progress of administrative regulation projects relating to motor fuel taxes;

"(5) review the results of Federal and State agency cooperative efforts regarding motor fuel taxes;

"(6) review the results of Federal interagency cooperative efforts regarding motor fuel taxes; and

"(7) evaluate and make recommendations to the President and Congress regarding—

"(A) the effectiveness of existing Federal enforcement programs regarding motor fuel taxes,

"(B) enforcement personnel allocation, and

"(C) proposals for regulatory projects, legislation, and funding.

"(c) MEMBERSHIP.—

"(1) APPOINTMENT.—The Commission shall be composed of the following representatives appointed by the Chairmen and the Ranking Members of the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives:

"(A) At least one representative from each of the following Federal entities: the Department of Homeland Security, the Department of Transportation—Office of Inspector General, the Federal Highway Administration, the Department of Defense, and the Department of Justice.

"(B) At least one representative from the Federation of State Tax Administrators.

"(C) At least one representative from any State department of transportation.

"(D) Two representatives from the highway construction industry.

"(E) Six representatives from industries relating to fuel distribution—refiners (two representatives), distributors (one representative), pipelines (one representative), and terminal operators (two representatives).

"(F) One representative from the retail fuel industry.

"(G) Two representatives from the staff of the Committee on Finance of the Senate and two representatives from the staff of the Committee on Ways and Means of the House of Representatives.

"(2) TERMS.—Members shall be appointed for the life of the Commission.

"(3) VACANCIES.—A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

"(4) TRAVEL EXPENSES.—Members shall serve without pay but shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

"(5) CHAIRMAN.—The Chairman of the Commission shall be elected by the members.

"(d) FUNDING.—Such sums as are necessary shall be available from the Highway Trust fund for the expenses of the Commission.

"(e) CONSULTATION.—Upon request of the Commission, representatives of the Department of the Treasury and the Internal Revenue Service shall be available for consultation to assist the Commission in carrying out its duties under this section.

"(f) OBTAINING DATA.—The Commission may secure directly from any department or agency of the United States, information (other than information required by any law to be kept confidential by such department or agency) necessary for the Commission to carry out its duties under this section. Upon request of the Commission, the head of that department or agency shall furnish such nonconfidential information to the Commission. The Commission shall also gather evidence through such means as it may deem appropriate, including through holding hearings and soliciting comments by means of Federal Register notices.

"(g) TERMINATION.—The Commission shall terminate as of the close of September 30, 2009."

FLOOR STOCKS TAXES

Pub. L. 108–357, title VIII, §853(f), Oct. 22, 2004, 118 Stat. 1614, provided that:

"(1) IN GENERAL.—There is hereby imposed on aviation-grade kerosene held on January 1, 2005, by any person a tax equal to—

"(A) the tax which would have been imposed before such date on such kerosene had the amendments made by this section [amending this section and sections 4041, 4082, 4083, 4101, 4103, 4221, 6206, 6416, 6427, 6724, 9502, and 9508 of this title, redesignating subpart C of part III of subchapter A of chapter 32 of this title as subpart B of part III of subchapter A of chapter 32 of this title, and repealing former subpart B of part III of subchapter A of chapter 32 of this title] been in effect at all times before such date, reduced by

"(B) the sum of—

"(i) the tax imposed before such date on such kerosene under section 4091 of the Internal Revenue Code of 1986, as in effect on such date, and

"(ii) in the case of kerosene held exclusively for such person's own use, the amount which such person would (but for this clause) reasonably expect (as of such date) to be paid as a refund under section 6427(l) of such Code with respect to such kerosene.

"(2) EXCEPTION FOR FUEL HELD IN AIRCRAFT FUEL TANK.—Paragraph (1) shall not apply to kerosene held in the fuel tank of an aircraft on January 1, 2005.

"(3) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

"(A) LIABILITY FOR TAX.—The person holding the kerosene on January 1, 2005, to which the tax imposed by paragraph (1) applies shall be liable for such tax.

"(B) METHOD AND TIME FOR PAYMENT.—The tax imposed by paragraph (1) shall be paid at such time and in such manner as the Secretary of the Treasury (or the Secretary's delegate) shall prescribe, including the nonapplication of such tax on de minimis amounts of kerosene.

"(4) TRANSFER OF FLOOR STOCK TAX REVENUES TO TRUST FUNDS.—For purposes of determining the amount transferred to any trust fund, the tax imposed by this subsection shall be treated as imposed by section 4081 of the Internal Revenue Code of 1986—

"(A) in any case in which tax was not imposed by section 4091 of such Code, at the Leaking Underground Storage Tank Trust Fund financing rate under such section to the extent of 0.1 cents per gallon, and

"(B) at the rate under section 4081(a)(2)(A)(iv) of such Code to the extent of the remainder.

"(5) HELD BY A PERSON.—For purposes of this subsection, kerosene shall be considered as held by a person if title thereto has passed to such person (whether or not delivery to the person has been made).

"(6) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the tax imposed by section 4081 of such Code shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply with respect to the floor stock tax imposed by paragraph (1) to the same extent as if such tax were imposed by such section."

Pub. L. 105–34, title X, §1032(g), Aug. 5, 1997, 111 Stat. 936, provided that:

"(1) IMPOSITION OF TAX.—In the case of kerosene which is held on July 1, 1998, by any person, there is hereby imposed a floor stocks tax of 24.4 cents per gallon.

"(2) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

"(A) LIABILITY FOR TAX.—A person holding kerosene on July 1, 1998, to which the tax imposed by paragraph (1) applies shall be liable for such tax.

"(B) METHOD OF PAYMENT.—The tax imposed by paragraph (1) shall be paid in such manner as the Secretary shall prescribe.

"(C) TIME FOR PAYMENT.—The tax imposed by paragraph (1) shall be paid on or before August 31, 1998.

"(3) DEFINITIONS.—For purposes of this subsection—

"(A) HELD BY A PERSON.—Kerosene shall be considered as 'held by a person' if title thereto has passed to such person (whether or not delivery to the person has been made).

"(B) SECRETARY.—The term 'Secretary' means the Secretary of the Treasury or his delegate.

"(4) EXCEPTION FOR EXEMPT USES.—The tax imposed by paragraph (1) shall not apply to kerosene held by any person exclusively for any use to the extent a credit or refund of the tax imposed by section 4081 of the Internal Revenue Code of 1986 is allowable for such use.

"(5) EXCEPTION FOR FUEL HELD IN VEHICLE TANK.—No tax shall be imposed by paragraph (1) on kerosene held in the tank of a motor vehicle or motorboat.

"(6) EXCEPTION FOR CERTAIN AMOUNTS OF FUEL.—

"(A) IN GENERAL.—No tax shall be imposed by paragraph (1) on kerosene held on July 1, 1998, by any person if the aggregate amount of kerosene held by such person on such date does not exceed 2,000 gallons. The preceding sentence shall apply only if such person submits to the Secretary (at the time and in the manner required by the Secretary) such information as the Secretary shall require for purposes of this paragraph.

"(B) EXEMPT FUEL.—For purposes of subparagraph (A), there shall not be taken into account fuel held by any person which is exempt from the tax imposed by paragraph (1) by reason of paragraph (4) or (5).

"(C) CONTROLLED GROUPS.—For purposes of this paragraph—

"(i) CORPORATIONS.—

"(I) IN GENERAL.—All persons treated as a controlled group shall be treated as 1 person.

"(II) CONTROLLED GROUP.—The term 'controlled group' has the meaning given to such term by subsection (a) of section 1563 of such Code; except that for such purposes the phrase 'more than 50 percent' shall be substituted for the phrase 'at least 80 percent' each place it appears in such subsection.

"(ii) NONINCORPORATED PERSONS UNDER COMMON CONTROL.—Under regulations prescribed by the Secretary, principles similar to the principles of clause (i) shall apply to a group of persons under common control where 1 or more of such persons is not a corporation.

"(7) COORDINATION WITH SECTION 4081.—No tax shall be imposed by paragraph (1) on kerosene to the extent that tax has been (or will be) imposed on such kerosene under section 4081 or 4091 of such Code.

"(8) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4081 of such Code shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply with respect to the floor stock taxes imposed by paragraph (1) to the same extent as if such taxes were imposed by such section 4081."

Pub. L. 105–2, §2(d), Feb. 28, 1997, 111 Stat. 6, provided that:

"(1) IMPOSITION OF TAX.—In the case of any aviation liquid on which tax was imposed under section 4081 or 4091 of the Internal Revenue Code of 1986 before the tax effective date and which is held on such date by any person, there is hereby imposed a floor stocks tax of—

"(A) 15 cents per gallon in the case of aviation gasoline, and

"(B) 17.5 cents per gallon in the case of aviation fuel.

"(2) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

"(A) LIABILITY FOR TAX.—A person holding, on the tax effective date, any aviation liquid to which the tax imposed by paragraph (1) applies shall be liable for such tax.

"(B) METHOD OF PAYMENT.—The tax imposed by paragraph (1) shall be paid in such manner as

the Secretary shall prescribe.

"(C) TIME FOR PAYMENT.—The tax imposed by paragraph (1) shall be paid on or before the first day of the 5th month beginning after the tax effective date.

"(3) DEFINITIONS.—For purposes of this subsection—

"(A) TAX EFFECTIVE DATE.—The term 'tax effective date' means the date which is 7 days after the date of the enactment of this Act [Feb. 28, 1997].

"(B) AVIATION LIQUID.—The term 'aviation liquid' means aviation gasoline and aviation fuel.

"(C) AVIATION GASOLINE.—The term 'aviation gasoline' has the meaning given such term in section 4081 of such Code.

"(D) AVIATION FUEL.—The term 'aviation fuel' has the meaning given such term by section 4093 of such Code.

"(E) HELD BY A PERSON.—Aviation liquid shall be considered as 'held by a person' if title thereto has passed to such person (whether or not delivery to the person has been made).

"(F) SECRETARY.—The term 'Secretary' means the Secretary of the Treasury or the Secretary's delegate.

"(4) EXCEPTION FOR EXEMPT USES.—The tax imposed by paragraph (1) shall not apply to—

"(A) aviation liquid held by any person on the tax effective date exclusively for any use for which a credit or refund of the entire tax imposed by section 4081 or 4091 of such Code (as the case may be) is allowable for such liquid purchased on or after such tax effective date for such use, or

"(B) aviation fuel held by any person on the tax effective date exclusively for any use described in section 4092(b) of such Code.

"(5) EXCEPTION FOR CERTAIN AMOUNTS OF FUEL.—

"(A) IN GENERAL.—No tax shall be imposed by paragraph (1) on any aviation liquid held on the tax effective date by any person if the aggregate amount of such liquid (determined separately for aviation gasoline and aviation fuel) held by such person on such date does not exceed 2,000 gallons. The preceding sentence shall apply only if such person submits to the Secretary (at the time and in the manner required by the Secretary) such information as the Secretary shall require for purposes of this paragraph.

"(B) EXEMPT FUEL.—Any liquid to which the tax imposed by paragraph (1) does not apply by reason of paragraph (4) shall not be taken into account under subparagraph (A).

"(C) CONTROLLED GROUPS.—For purposes of this paragraph—

"(i) CORPORATIONS.—

"(I) IN GENERAL.—All persons treated as a controlled group shall be treated as 1 person.

"(II) CONTROLLED GROUP.—The term 'controlled group' has the meaning given such term by subsection (a) of section 1563 of such Code; except that for such purposes, the phrase 'more than 50 percent' shall be substituted for the phrase 'at least 80 percent' each place it appears in such subsection.

"(ii) NONINCORPORATED PERSONS UNDER COMMON CONTROL.—Under regulations prescribed by the Secretary, principles similar to the principles of clause (i) shall apply to a group of persons under common control where 1 or more of such persons is not a corporation.

"(6) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4081 or 4091 of such Code shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply with respect to the floor stocks taxes imposed by paragraph (1) to the same extent as if such taxes were imposed by such section 4081 or 4091, as the case may be."

Pub. L. 103–66, title XIII, §13241(h), Aug. 10, 1993, 107 Stat. 512, provided that:

"(1) IMPOSITION OF TAX.—In the case of gasoline, diesel fuel, and aviation fuel on which tax was imposed under section 4081 or 4091 of the Internal Revenue Code of 1986 before October 1, 1993, and which is held on such date by any person, there is hereby imposed a floor stocks tax of 4.3 cents per gallon on such gasoline, diesel fuel, and aviation fuel.

"(2) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

"(A) LIABILITY FOR TAX.—A person holding gasoline, diesel fuel, or aviation fuel on October 1, 1993, to which the tax imposed by paragraph (1) applies shall be liable for such tax.

"(B) METHOD OF PAYMENT.—The tax imposed by paragraph (1) shall be paid in such manner as the Secretary shall prescribe.

"(C) TIME FOR PAYMENT.—The tax imposed by paragraph (1) shall be paid on or before November 30, 1993.

"(3) DEFINITIONS.—For purposes of this subsection—

"(A) HELD BY A PERSON.—Gasoline, diesel fuel, and aviation fuel shall be considered as 'held by a person' if title thereto has passed to such person (whether or not delivery to the person has been made).

"(B) GASOLINE.—The term 'gasoline' has the meaning given such term by section 4082 [see section 4083] of such Code.

"(C) DIESEL FUEL.—The term 'diesel fuel' has the meaning given such term by section 4092 [see section 4083] of such Code.

"(D) AVIATION FUEL.—The term 'aviation fuel' has the meaning given such term by section 4092 [see section 4093] of such Code.

"(E) SECRETARY.—The term 'Secretary' means the Secretary of the Treasury or his delegate.

"(4) EXCEPTION FOR EXEMPT USES.—The tax imposed by paragraph (1) shall not apply to gasoline, diesel fuel, or aviation fuel held by any person exclusively for any use to the extent a credit or refund of the tax imposed by section 4081 or 4091 of such Code, as the case may be, is allowable for such use.

"(5) EXCEPTION FOR FUEL HELD IN VEHICLE TANK.—No tax shall be imposed by paragraph (1) on gasoline or diesel fuel held in the tank of a motor vehicle or motorboat.

"(6) EXCEPTION FOR CERTAIN AMOUNTS OF FUEL.—

"(A) IN GENERAL.—No tax shall be imposed by paragraph (1)—

"(i) on gasoline held on October 1, 1993, by any person if the aggregate amount of gasoline held by such person on such date does not exceed 4,000 gallons, and

"(ii) on diesel fuel or aviation fuel held on October 1, 1993, by any person if the aggregate amount of diesel fuel or aviation fuel held by such person on such date does not exceed 2,000 gallons.

The preceding sentence shall apply only if such person submits to the Secretary (at the time and in the manner required by the Secretary) such information as the Secretary shall require for purposes of this paragraph.

"(B) EXEMPT FUEL.—For purposes of subparagraph (A), there shall not be taken into account fuel held by any person which is exempt from the tax imposed by paragraph (1) by reason of paragraph (4) or (5).

"(C) CONTROLLED GROUPS.—For purposes of this paragraph—

"(i) CORPORATIONS.—

"(I) IN GENERAL.—All persons treated as a controlled group shall be treated as 1 person.

"(II) CONTROLLED GROUP.—The term 'controlled group' has the meaning given to such term by subsection (a) of section 1563 of such Code; except that for such purposes the phrase 'more than 50 percent' shall be substituted for the phrase 'at least 80 percent' each place it appears in such subsection.

"(ii) NONINCORPORATED PERSONS UNDER COMMON CONTROL.—Under regulations prescribed by the Secretary, principles similar to the principles of clause (i) shall apply to a group of persons under common control where 1 or more of such persons is not a corporation.

"(7) OTHER LAW APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4081 of such Code in the case of gasoline and section 4091 of such Code in the case of diesel fuel and aviation fuel shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply with respect to the floor stock taxes imposed by paragraph (1) to the same extent as if such taxes were imposed by such section 4081 or 4091."

Pub. L. 103–66, title XIII, §13243, Aug. 10, 1993, 107 Stat. 529, provided that:

"(a) IN GENERAL.—There is hereby imposed a floor stocks tax on diesel fuel held by any person on January 1, 1994, if—

"(1) no tax was imposed on such fuel under section 4041(a) or 4091 of the Internal Revenue Code of 1986 as in effect on December 31, 1993, and

"(2) tax would have been imposed by section 4081 of such Code, as amended by this Act, on any prior removal, entry, or sale of such fuel had such section 4081 applied to such fuel for periods before January 1, 1994.

"(b) RATE OF TAX.—The rate of the tax imposed by subsection (a) shall be the amount of tax which would be imposed under section 4081 of the Internal Revenue Code of 1986 if there were a taxable sale of such fuel on such date.

"(c) LIABILITY AND PAYMENT OF TAX.—

"(1) LIABILITY FOR TAX.—A person holding the diesel fuel on January 1, 1994, to which the tax imposed by this section applies shall be liable for such tax.

"(2) METHOD OF PAYMENT.—The tax imposed by this section shall be paid in such manner as the Secretary shall prescribe.

"(3) TIME FOR PAYMENT.—The tax imposed by this section shall be paid on or before July 31, 1994.

"(d) DEFINITIONS.—For purposes of this section—

"(1) DIESEL FUEL.—The term 'diesel fuel' has the meaning given such term by section 4083(a) of such Code.

"(2) SECRETARY.—The term 'Secretary' means the Secretary of the Treasury or his delegate.

"(e) EXCEPTIONS.—

"(1) PERSONS ENTITLED TO CREDIT OR REFUND.—The tax imposed by this section shall not apply to fuel held by any person exclusively for any use to the extent a credit or refund of the tax imposed by section 4081 is allowable for such use.

"(2) COMPLIANCE WITH DYEING REQUIRED.—Paragraph (1) shall not apply to the holder of any fuel if the holder of such fuel fails to comply with any requirement imposed by the Secretary with respect to dyeing and marking such fuel.

"(f) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4081 of such Code shall, insofar as applicable and not inconsistent with the provisions of this section, apply with respect to the floor stock taxes imposed by this section to the same extent as if such taxes were imposed by such section 4081."

Pub. L. 101–508, title XI, §11211(j), Nov. 5, 1990, 104 Stat. 1388–428, imposed a floor stocks tax on (A) gasoline and diesel fuel on which tax was imposed under section 4081 or 4091 of this title before Dec. 1, 1990, and which was held on such date by any person, or (B) diesel fuel on which no tax was imposed under section 4091 of this title at the Highway Trust Fund financing rate before Dec. 1, 1990, and which was held on such date by any person for use as fuel in a train.

Pub. L. 99–514, title XVII, §1703(f), Oct. 22, 1986, 100 Stat. 2778, as amended by Pub. L. 100–647, title I, §1017(c)(13), title II, §2001(d)(4), Nov. 10, 1988, 102 Stat. 3577, 3595, imposed a floor stocks tax at the rate of 9.1 cents per gallon on gasoline subject to tax under section 4081 of this title which, on Jan. 1, 1988, was held by a dealer for sale, and with respect to which no tax had been imposed under such section.

STUDY OF EVASION OF GASOLINE TAX

Pub. L. 99–514, title XVII, §1703(g), Oct. 22, 1986, 100 Stat. 2778, directed Secretary of the Treasury or his delegate to conduct a study of incidence of evasion of gasoline tax, with report of the study to be submitted, not later than Dec. 31, 1986, to Committee on Ways and Means of House of Representatives and Committee on Finance of Senate.

EXTENSION OF PAYMENT DUE DATE FOR CERTAIN FUEL TAXES

Pub. L. 97–424, title V, §518, Jan. 6, 1983, 96 Stat. 2184, as amended by Pub. L. 98–369, div. A, title VII, §734(i), July 18, 1984, 98 Stat. 980; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) 14-DAY EXTENSION.—The Secretary shall prescribe regulations which permit any qualified person whose liability for tax under section 4081 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] is payable with respect to semi-monthly periods to pay such tax on or before the day which is 14 days after the close of such semi-monthly period if such payment is made by wire transfer to, except as provided in regulations prescribed by the Secretary of the Treasury or his delegate, any Federal Reserve Bank.

"(b) QUALIFIED PERSON DEFINED.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified person' means—

"(A) any person other than any person whose average daily production of crude oil for the preceding calendar quarter exceeds 1,000 barrels, and

"(B) any independent refiner (within the meaning of section 4995(b)(4) of such Code).

"(2) AGGREGATION RULES.—For purposes of paragraph (1), in determining whether any person's production exceeds 1,000 barrels per day, rules similar to the rules of section 4992(e) of the Internal Revenue Code of 1986 shall apply.

"(c) SPECIAL RULE WHERE 14TH DAY FALLS ON SATURDAY, SUNDAY, OR HOLIDAY.—If, but for this subsection, the due date under subsection (a) would fall on a Saturday, Sunday, or a holiday in the District of Columbia, such due date shall be deemed to be the immediately preceding day which is not a Saturday, Sunday, or such a holiday."

STUDY BY SECRETARY OF THE TREASURY; REPORT TO CONGRESS

Study respecting portion of taxes imposed by this section is attributable to fuel used in recreational motorboats and report to Congress no later than 2 years after Oct. 14, 1980, see Pub. L. 96–451, title II, §204, Oct. 14, 1980, 94 Stat. 1988, set out as a note under section 4041 of this title.

EXPEDITION OF CERTAIN ETHANOL PRODUCTION APPLICATIONS

Pub. L. 95–618, title II, §221(d), Nov. 9, 1978, 92 Stat. 3186, directed Secretary of the Treasury to expedite applications submitted by persons with respect to the production of ethanol for use in producing gasoline and

that the Secretary develop expeditious procedures for processing such applications, prior to repeal by Pub. L. 96–223, §232(e)(2)(E), Apr. 2, 1980, 94 Stat. 280.

§4082. Exemptions for diesel fuel and kerosene

(a) In general

The tax imposed by section 4081 shall not apply to diesel fuel and kerosene—

(1) which the Secretary determines is destined for a nontaxable use,

(2) which is indelibly dyed by mechanical injection in accordance with regulations which the Secretary shall prescribe, and

(3) which meets such marking requirements (if any) as may be prescribed by the Secretary in regulations.

Such regulations shall allow an individual choice of dye color approved by the Secretary or chosen from any list of approved dye colors that the Secretary may publish.

(b) Nontaxable use

For purposes of this section, the term "nontaxable use" means—

(1) any use which is exempt from the tax imposed by section 4041(a)(1) other than by reason of a prior imposition of tax,

(2) any use in a train, and

(3) any use described in section 4041(a)(1)(C)(iii)(II).

The term "nontaxable use" does not include the use of kerosene in an aircraft and such term shall not include any use described in section 6421(e)(2)(C).

(c) Exception to dyeing requirements

Paragraph (2) of subsection (a) shall not apply with respect to any diesel fuel and kerosene—

(1) removed, entered, or sold in a State for ultimate sale or use in an area of such State during the period such area is exempted from the fuel dyeing requirements under subsection (i) of section 211 of the Clean Air Act (as in effect on the date of the enactment of this subsection) by the Administrator of the Environmental Protection Agency under paragraph (4) of such subsection (i) (as so in effect), and

(2) the use of which is certified pursuant to regulations issued by the Secretary.

(d) Additional exceptions to dyeing requirements for kerosene

(1) Use for non-fuel feedstock purposes

Subsection (a)(2) shall not apply to kerosene—

(A) received by pipeline or vessel for use by the person receiving the kerosene in the manufacture or production of any substance (other than gasoline, diesel fuel, or special fuels referred to in section 4041), or

(B) to the extent provided in regulations, removed or entered—

(i) for such a use by the person removing or entering the kerosene, or

(ii) for resale by such person for such a use by the purchaser,

but only if the person receiving, removing, or entering the kerosene and such purchaser (if any) are registered under section 4101 with respect to the tax imposed by section 4081.

(2) Wholesale distributors

To the extent provided in regulations, subsection (a)(2) shall not apply to kerosene received by a wholesale distributor of kerosene if such distributor—

(A) is registered under section 4101 with respect to the tax imposed by section 4081 on kerosene, and

(B) sells kerosene exclusively to ultimate vendors described in section 6427(l)(5)(B) with

respect to kerosene.

(e) Kerosene removed into an aircraft

In the case of kerosene (other than kerosene with respect to which tax is imposed under section 4043) which is exempt from the tax imposed by section 4041(c) (other than by reason of a prior imposition of tax) and which is removed from any refinery or terminal directly into the fuel tank of an aircraft—

(1) the rate of tax under section 4081(a)(2)(A)(iii) shall be zero, and

(2) if such aircraft is employed in foreign trade or trade between the United States and any of its possessions, the increase in such rate under section 4081(a)(2)(B) shall be zero.

For purposes of this subsection, any removal described in section 4081(a)(3)(A) shall be treated as a removal from a terminal but only if such terminal is located within a secure area of an airport.

(f) Exception for Leaking Underground Storage Tank Trust Fund financing rate

(1) In general

Subsection (a) shall not apply to the tax imposed under section 4081 at the Leaking Underground Storage Tank Trust Fund financing rate.

(2) Exception for export, etc.

Paragraph (1) shall not apply with respect to any fuel if the Secretary determines that such fuel is destined for export or for use by the purchaser as supplies for vessels (within the meaning of section 4221(d)(3)) employed in foreign trade or trade between the United States and any of its possessions.

(g) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out this section, including regulations requiring the conspicuous labeling of retail diesel fuel and kerosene pumps and other delivery facilities to assure that persons are aware of which fuel is available only for nontaxable uses.

(h) Cross reference

For tax on train and certain bus uses of fuel purchased tax-free, see subsections (a)(1) and (d)(3) of section 4041.

(Aug. 16, 1954, ch. 736, 68A Stat. 483; Pub. L. 86–342, title II, §201(e)(1), (2), Sept. 21, 1959, 73 Stat. 615; Pub. L. 89–44, title VIII, §802(a)(1), (b)(1), June 21, 1965, 79 Stat. 159; Pub. L. 91–258, title II, §205(c)(6), May 21, 1970, 84 Stat. 242; Pub. L. 98–369, div. A, title VII, §§733(a), 734(c)(1), July 18, 1984, 98 Stat. 977, 979; Pub. L. 99–514, title XVII, §1703(a), Oct. 22, 1986, 100 Stat. 2775; Pub. L. 103–66, title XIII, §13242(a), Aug. 10, 1993, 107 Stat. 517; Pub. L. 104–188, title I, §1801(a), Aug. 20, 1996, 110 Stat. 1891; Pub. L. 105–34, title X, §1032(c)(1), (2), (e)(3)(A), Aug. 5, 1997, 111 Stat. 933, 935; Pub. L. 105–206, title VI, §6010(h)(3), (4), July 22, 1998, 112 Stat. 815; Pub. L. 108–357, title II, §241(a)(2)(B), title VIII, §§851(d)(2), 853(a)(5), 854(a), 857(a), Oct. 22, 2004, 118 Stat. 1438, 1608, 1611, 1615, 1617; Pub. L. 109–58, title XIII, §1362(b)(1), Aug. 8, 2005, 119 Stat. 1059; Pub. L. 109–59, title XI, §11161(a)(4)(A), (E), (b)(3)(C), Aug. 10, 2005, 119 Stat. 1970, 1971; Pub. L. 109–432, div. A, title IV, §420(b)(2), Dec. 20, 2006, 120 Stat. 2969; Pub. L. 110–172, §§6(d)(2)(B), (C), 11(a)(28), Dec. 29, 2007, 121 Stat. 2480, 2481, 2487; Pub. L. 112–95, title XI, §1103(a)(2), Feb. 14, 2012, 126 Stat. 150.)

REFERENCES IN TEXT

Subsection (i) of section 211 of the Clean Air Act, referred to in subsec. (c)(1), is classified to section 7545(i) of Title 42, The Public Health and Welfare.

The date of the enactment of this subsection, referred to in subsec. (c)(1), is the date of enactment of Pub. L. 104–188, which was approved Aug. 20, 1996.

AMENDMENTS

2012—Subsec. (e). Pub. L. 112–95 inserted "(other than kerosene with respect to which tax is imposed

under section 4043)" after "In the case of kerosene" in introductory provisions.

2007—Subsec. (a). Pub. L. 110–172, §6(d)(2)(B)(i), struck out "(other than such tax at the Leaking Underground Storage Tank Trust Fund financing rate imposed in all cases other than for export)" after "section 4081" in introductory provisions.

Subsec. (b). Pub. L. 110–172, §11(a)(28), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "For purposes of this section, the term 'nontaxable use' means—

"(1) any use which is exempt from the tax imposed by section 4041(a)(1) other than by reason of a prior imposition of tax,

"(2) any use in a train, and

"(3) any use described in section 4041(a)(1)(C)(iii)(II).

The term 'nontaxable use' does not include the use of kerosene in an aircraft and such term shall not include any use described in section 6421(e)(2)(C)." See 2004 Amendment notes below.

Subsec. (e). Pub. L. 110–172, §6(d)(2)(C)(ii), designated last sentence as concluding provisions.

Pub. L. 110–172, §6(d)(2)(C)(i), substituted "an aircraft—" and pars. (1) and (2) for "an aircraft, the rate of tax under section 4081(a)(2)(A)(iii) shall be zero."

Subsecs. (f) to (h). Pub. L. 110–172, §6(d)(2)(B)(ii), added subsec. (f) and redesignated former subsecs. (f) and (g) as (g) and (h), respectively.

2006—Subsec. (d)(2)(B). Pub. L. 109–432 substituted "6427(l)(5)(B)" for "6427(l)(6)(B)".

2005—Subsec. (a). Pub. L. 109–58 inserted "(other than such tax at the Leaking Underground Storage Tank Trust Fund financing rate imposed in all cases other than for export)" after "section 4081" in introductory provisions.

Subsec. (b). Pub. L. 109–59, §11161(a)(4)(A), struck out "aviation-grade" before "kerosene" in concluding provisions.

Subsec. (d)(2)(B). Pub. L. 109–59, §11161(b)(3)(C), substituted "section 6427(l)(6)(B)" for "section 6427(l)(5)(B)".

Subsec. (e). Pub. L. 109–59, §11161(a)(4)(E), in heading substituted "Kerosene removed into an aircraft" for "Aviation-grade kerosene" and in text struck out "aviation-grade" before "kerosene", substituted "section 4081(a)(2)(A)(iii)" for "section 4081(a)(2)(A)(iv)", and inserted at end "For purposes of this subsection, any removal described in section 4081(a)(3)(A) shall be treated as a removal from a terminal but only if such terminal is located within a secure area of an airport."

2004—Subsec. (a)(2). Pub. L. 108–357, §854(a), inserted "by mechanical injection" after "indelibly dyed".

Subsec. (b). Pub. L. 108–357, §853(a)(5)(B)(i), inserted at end "The term 'nontaxable use' does not include the use of aviation-grade kerosene in an aircraft."

Pub. L. 108–357, §851(d)(2), which directed amendment of subsec. (b) by inserting "and such term shall not include any use described in section 6421(e)(2)(C)" before period at end, was executed by making the insertion after amendment by Pub. L. 108–357, §853(a)(5)(B)(i), to reflect the probable intent of Congress. See above.

Subsec. (b)(3). Pub. L. 108–357, §857(a), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "any use described in section 6427(b)(1) (after the application of section 6427(b)(3))."

Subsec. (d). Pub. L. 108–357, §853(a)(5)(B)(ii), redesignated pars. (2) and (3) as (1) and (2), respectively, and struck out heading and text of former par. (1). Text read as follows: "Subsection (a)(2) shall not apply to aviation-grade kerosene (as determined under regulations prescribed by the Secretary) which the Secretary determines is destined for use as a fuel in an aircraft."

Subsec. (e). Pub. L. 108–357, §853(a)(5)(A), added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 108–357, §853(a)(5)(A), redesignated subsec. (e) as (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 108–357, §853(a)(5)(A), redesignated subsec. (f) as (g).

Pub. L. 108–357, §241(a)(2)(B), which directed substitution of "subsections (a)(1) and (d)(3) of section 4041" for "section 4041(a)(1)" in subsec. (f), was executed by making the substitution in subsec. (g) to reflect the probable intent of Congress and the amendment by Pub. L. 108–357, §853(a)(5)(A). See Amendment note above and Effective Date of 2004 Amendment notes below.

1998—Subsec. (d)(1). Pub. L. 105–206, §6010(h)(3), reenacted heading without change and amended text of par. (1) generally. Prior to amendment, text read as follows: "Subsection (a)(2) shall not apply to a removal, entry, or sale of aviation-grade kerosene (as determined under regulations prescribed by the Secretary) if the person receiving the kerosene is registered under section 4101 with respect to the tax imposed by section 4091."

Subsec. (d)(3). Pub. L. 105–206, §6010(h)(4), substituted "kerosene received by" for "a removal, entry, or sale of kerosene to" in introductory provisions.

1997—Pub. L. 105–34, §1032(e)(3)(A), inserted "and kerosene" after "diesel fuel" in section catchline.

Subsecs. (a), (c). Pub. L. 105–34, §1032(c)(1), substituted "diesel fuel and kerosene" for "diesel fuel" in introductory provisions.

Subsec. (d). Pub. L. 105–34, §1032(c)(2), added subsec. (d). Former subsec. (d) redesignated (e).

Pub. L. 105–34, §1032(c)(1), substituted "diesel fuel and kerosene" for "diesel fuel".

Subsecs. (e), (f). Pub. L. 105–34, §1032(c)(2), redesignated subsecs. (d) and (e) as (e) and (f), respectively.

1996—Subsecs. (c) to (e). Pub. L. 104–188 added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

1993—Pub. L. 103–66 amended heading and text generally. Prior to amendment, text read as follows:

"(a) GASOLINE.—For purposes of this subpart, the term 'gasoline' includes, to the extent prescribed in regulations—

"(1) gasoline blend stocks, and

"(2) products commonly used as additives in gasoline.

For purposes of paragraph (1), the term 'gasoline blend stocks' means any petroleum product component of gasoline.

"(b) CERTAIN USES DEFINED AS REMOVAL.—If a refiner, importer, terminal operator, blender, or compounder uses (other than in the production of gasoline or special fuels referred to in section 4041) gasoline refined, imported, blended, or compounded by him, such use shall for the purposes of this chapter be considered a removal."

1986—Subsec. (a). Pub. L. 99–514 amended subsec. (a) generally, substituting definitions of "gasoline" and "gasoline blended stocks" for definition of "producer".

Subsec. (b). Pub. L. 99–514 amended subsec. (b) generally, substituting provisions that certain use of gasoline be considered removal for provisions defining "gasoline".

Subsecs. (c) to (e). Pub. L. 99–514, in amending section generally, struck out subsecs. (c) to (e) which defined "sales", "wholesale distributor", and "producer", respectively.

1984—Subsec. (d). Pub. L. 98–369, §733(a), in amending subsec. (d) generally, redesignated existing provisions of par. (1) as subpar. (A) and added subpar. (B), and in par. (2) inserted "but only if such person" before "elects".

Subsec. (e). Pub. L. 98–369, §734(c)(1), added subpar. (e).

1970—Subsec. (c). Pub. L. 91–258 substituted "special fuels referred to in section 4041" for "special motor fuels referred to in section 4041(b)".

1965—Subsec. (b). Pub. L. 89–44, §802(a)(1), substituted "gasoline which are suitable for use as a motor fuel" for "gasoline (including casinghead and natural gasoline".

Subsec. (d)(2). Pub. L. 89–44, §802(b)(1), struck out "and give a bond" after "elects to register".

1959—Subsec. (a). Pub. L. 86–342, §201(e)(1), inserted reference to wholesale distributor.

Subsec. (d). Pub. L. 86–342, §201(e)(2), added subsec. (d).

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112–95 applicable to fuel used after Mar. 31, 2012, see section 1103(d)(1) of Pub. L. 112–95, set out as an Effective Date note under section 4043 of this title.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendments by section 6(d)(2)(B), (C)(i) of Pub. L. 110–172 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109–58, to which such amendments relate, and amendment by section 6(d)(2)(C)(ii) of Pub. L. 110–172 effective as if included in section 11161 of the SAFETEA–LU, Pub. L. 109–59, see section 6(e) of Pub. L. 110–172, set out as a note under section 30C of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–432 applicable to kerosene sold after Sept. 30, 2005, with special rule for pending claims, see section 420(c) of Pub. L. 109–432, set out as a note under section 6427 of this title.

EFFECTIVE DATE OF 2005 AMENDMENTS

Amendment by Pub. L. 109–59 applicable to fuels or liquids removed, entered, or sold after Sept. 30, 2005, see section 11161(e) of Pub. L. 109–59, set out as a note under section 4041 of this title.

Amendment by Pub. L. 109–58 effective Oct. 1, 2005, and applicable to fuel entered, removed, or sold after Sept. 30, 2005, see section 1362(d) of Pub. L. 109–58, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 241(a)(2)(B) of Pub. L. 108–357 effective Jan. 1, 2005, see section 241(c) of Pub.

L. 108–357, set out as a note under section 4041 of this title.

Pub. L. 108–357, title VIII, §851(d)(4), Oct. 22, 2004, 118 Stat. 1609, provided that: "The amendments made by this subsection [amending this section and sections 6421 and 6427 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 22, 2004]."

Amendment by section 853(a)(5) of Pub. L. 108–357 applicable to aviation-grade kerosene removed, entered, or sold after Dec. 31, 2004, see section 853(e) of Pub. L. 108–357, set out as a note under section 4041 of this title.

Pub. L. 108–357, title VIII, §854(d), Oct. 22, 2004, 118 Stat. 1616, provided that: "The amendments made by subsections (a) and (c) [enacting section 6715A of this title and amending this section] shall take effect on the 180th day after the date on which the Secretary issues the regulations described in subsection (b) [set out as a note below] [Such regulations were issued effective Oct. 24, 2005. See 70 F.R. 21332.]."

Pub. L. 108–357, title VIII, §857(d), Oct. 22, 2004, 118 Stat. 1617, provided that: "The amendments made by this section [amending this section and section 6427 of this title] shall apply to fuel sold after December 31, 2004."

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 effective July 1, 1998, see section 1032(f)(1) of Pub. L. 105–34, as amended, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, §1801(b), Aug. 20, 1996, 110 Stat. 1892, provided that: "The amendments made by this section [amending this section] shall apply with respect to fuel removed, entered, or sold on or after the first day of the first calendar quarter beginning after the date of the enactment of this Act [Aug. 20, 1996]."

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 effective Jan. 1, 1994, see section 13242(e) of Pub. L. 103–66, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to gasoline removed (as defined in section 4082 of this title as amended by section 1703 of Pub. L. 99–514) after Dec. 31, 1987, see section 1703(h) of Pub. L. 99–514, set out as a note under section 4081 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title VII, §733(b), July 18, 1984, 98 Stat. 977, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on the first day of the first calendar quarter beginning after the date of the enactment of this Act [July 18, 1984]."

Pub. L. 98–369, div. A, title VII, §734(c)(3), July 18, 1984, 98 Stat. 979, provided that: "The amendments made by this subsection [amending this section and section 6427 of this title] shall take effect on the first day of the first calendar quarter beginning after the date of the enactment of this Act [July 18, 1984]."

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–258 effective July 1, 1970, see section 211(a) of Pub. L. 91–258, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Pub. L. 89–44, title VIII, §802(d)(1), June 21, 1965, 79 Stat. 159, provided that: "The amendments made by subsections (a)(1), (b), and (c) [amending this section and sections 4101, 4222, 7103, and 7232 of this title] shall apply with respect to articles sold on or after July 1, 1965."

EFFECTIVE DATE OF 1959 AMENDMENT

Pub. L. 86–342, title II, §201(e)(3), Sept. 21, 1959, 73 Stat. 615, provided that: "The amendments made by paragraphs (1) and (2) [amending this section] shall take effect on January 1, 1960."

REGULATIONS

Pub. L. 108–357, title VIII, §854(b), Oct. 22, 2004, 118 Stat. 1615, provided that: "Not later than 180 days after the date of the enactment of this Act [Oct. 22, 2004], the Secretary of the Treasury shall issue regulations regarding mechanical dye injection systems described in the amendment made by subsection (a) [amending this section], and such regulations shall include standards for making such systems tamper resistant."

§4083. Definitions; special rule; administrative authority

(a) Taxable fuel

For purposes of this subpart—

(1) In general

The term "taxable fuel" means—

(A) gasoline,

(B) diesel fuel, and

(C) kerosene.

(2) Gasoline

The term "gasoline"—

(A) includes any gasoline blend, other than qualified methanol or ethanol fuel (as defined in section 4041(b)(2)(B)), partially exempt methanol or ethanol fuel (as defined in section 4041(m)(2)), or a denatured alcohol, and

(B) includes, to the extent prescribed in regulations—

(i) any gasoline blend stock, and

(ii) any product commonly used as an additive in gasoline (other than alcohol).

For purposes of subparagraph (B)(i), the term "gasoline blend stock" means any petroleum product component of gasoline.

(3) Diesel fuel

(A) In general

The term "diesel fuel" means—

(i) any liquid (other than gasoline) which is suitable for use as a fuel in a diesel-powered highway vehicle, or a diesel-powered train,

(ii) transmix, and

(iii) diesel fuel blend stocks identified by the Secretary.

(B) Transmix

For purposes of subparagraph (A), the term "transmix" means a byproduct of refined products pipeline operations created by the mixing of different specification products during pipeline transportation.

(b) Commercial aviation

For purposes of this subpart, the term "commercial aviation" means any use of an aircraft in a business of transporting persons or property for compensation or hire by air, unless properly allocable to any transportation exempt from the taxes imposed by sections 4261 and 4271 by reason of section 4281 or 4282 or by reason of subsection (h) or (i) of section 4261. Such term shall not include the use of any aircraft before October 1, 2015, if tax is imposed under section 4043 with respect to the fuel consumed in such use or if no tax is imposed on such use under section 4043 by reason of subsection (c)(5) thereof.

(c) Certain uses defined as removal

If any person uses taxable fuel (other than in the production of taxable fuels or special fuels referred to in section 4041), such use shall for the purposes of this chapter be considered a removal.

(d) Administrative authority

(1) In general

In addition to the authority otherwise granted by this title, the Secretary may in administering compliance with this subpart, section 4041, and penalties and other administrative provisions related thereto—

(A) enter any place at which taxable fuel is produced or is stored (or may be stored) for purposes of—

(i) examining the equipment used to determine the amount or composition of such fuel and the equipment used to store such fuel,

(ii) taking and removing samples of such fuel, and

(iii) inspecting any books and records and any shipping papers pertaining to such fuel, and

(B) detain, for the purposes referred in subparagraph (A), any container which contains or may contain any taxable fuel.

(2) Inspection sites

The Secretary may establish inspection sites for purposes of carrying out the Secretary's authority under paragraph (1)(B).

(3) Penalty for refusal of entry

(A) Forfeiture

The penalty provided by section 7342 shall apply to any refusal to admit entry or other refusal to permit an action by the Secretary authorized by paragraph (1), except that section 7342 shall be applied by substituting "$1,000" for "$500" for each such refusal.

(B) Assessable penalty

For additional assessable penalty for the refusal to admit entry or other refusal to permit an action by the Secretary authorized by paragraph (1), see section 6717.

(Aug. 16, 1954, ch. 736, 68A Stat. 483; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 99–514, title XVII, §1703(a), Oct. 22, 1986, 100 Stat. 2776; Pub. L. 103–66, title XIII, §13242(a), Aug. 10, 1993, 107 Stat. 517; Pub. L. 105–34, title IX, §902(b)(3), title X, §1032(a), (e)(4), Aug. 5, 1997, 111 Stat. 873, 933, 935; Pub. L. 105–206, title VI, §6010(h)(1), July 22, 1998, 112 Stat. 815; Pub. L. 108–357, title III, §301(c)(8), title VIII, §§853(b), 858(a), 859(b)(1), 870(a), Oct. 22, 2004, 118 Stat. 1461, 1611, 1617, 1618, 1623; Pub. L. 109–59, title XI, §11123(b), Aug. 10, 2005, 119 Stat. 1952; Pub. L. 112–95, title XI, §1103(b), Feb. 14, 2012, 126 Stat. 151.)

AMENDMENTS

2012—Subsec. (b). Pub. L. 112–95 inserted at end "Such term shall not include the use of any aircraft before October 1, 2015, if tax is imposed under section 4043 with respect to the fuel consumed in such use or if no tax is imposed on such use under section 4043 by reason of subsection (c)(5) thereof."

2005—Subsec. (b). Pub. L. 109–59 substituted "subsection (h) or (i) of section 4261" for "section 4261(h)".

2004—Subsec. (a)(2). Pub. L. 108–357, §301(c)(8), reenacted heading without change and amended text of par. (2) generally. Prior to amendment, par. (2) defined the term "gasoline", to the extent prescribed in regulations, as including gasoline blend stocks and products commonly used as additives in gasoline, and defined the term "gasoline blend stock" as meaning any petroleum product component of gasoline.

Subsec. (a)(3). Pub. L. 108–357, §870(a), reenacted heading without change and amended text of par. (3) generally. Prior to amendment, par. (3) defined the term "diesel fuel" as meaning any liquid (other than gasoline) which is suitable for use as a fuel in a diesel-powered highway vehicle or a diesel-powered train.

Subsecs. (b), (c). Pub. L. 108–357, §853(b), added subsec. (b) and redesignated former subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 108–357, §853(b), redesignated subsec. (c) as (d).

Subsec. (d)(1)(A)(iii). Pub. L. 108–357, §858(a), added cl. (iii).

Subsec. (d)(3). Pub. L. 108–357, §859(b)(1), designated existing provisions as subpar. (A), inserted heading, and added subpar. (B).

1998—Subsec. (a)(1). Pub. L. 105–206 made technical amendment to directory language of Pub. L. 105–34, §1032(a). See 1997 Amendment note below.

1997—Subsec. (a)(1)(C). Pub. L. 105–34, §1032(a), as amended by Pub. L. 105–206, §6010(h)(1), added subpar. (C).

Subsec. (a)(3). Pub. L. 105–34, §902(b)(3), substituted "or a diesel-powered train" for ", a diesel-powered train, or a diesel-powered boat".

Subsec. (b). Pub. L. 105–34, §1032(e)(4), substituted "taxable fuels" for "gasoline, diesel fuel,".

1993—Pub. L. 103–66 amended heading and text generally. Prior to amendment, text read as follows:

"(1) For provisions to relieve farmers from excise tax in the case of gasoline used on the farm for farming purposes, see section 6420.

"(2) For provisions to relieve purchasers of gasoline from excise tax in the case of gasoline used for certain nonhighway purposes, used by local transit systems, or sold for certain exempt purposes, see section 6421.

"(3) For provisions to relieve purchasers of gasoline from excise tax in the case of gasoline not used for taxable purposes, see section 6427."

1986—Pub. L. 99–514 amended section generally. Prior to amendment, section 4083 "Exemption of sales to producer", read as follows: "Under regulations prescribed by the Secretary the tax imposed by section 4081 shall not apply in the case of sales of gasoline to a producer of gasoline."

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 2012 AMENDMENT

Pub. L. 112–95, title XI, §1103(d)(2), Feb. 14, 2012, 126 Stat. 151, provided that: The amendment made by subsection (b) [amending this section] shall apply to uses of aircraft after March 31, 2012."

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–59, title XI, §11123(c), Aug. 10, 2005, 119 Stat. 1952, provided that: "The amendments made by this section [amending this section and section 4261 of this title] shall apply to transportation beginning after September 30, 2005."

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 301(c)(8) of Pub. L. 108–357 applicable to fuel sold or used after Dec. 31, 2004, see section 301(d)(1) of Pub. L. 108–357, set out as a note under section 40 of this title.

Amendment by section 853(b) of Pub. L. 108–357 applicable to aviation-grade kerosene removed, entered, or sold after Dec. 31, 2004, see section 853(e) of Pub. L. 108–357, set out as a note under section 4041 of this title.

Pub. L. 108–357, title VIII, §858(b), Oct. 22, 2004, 118 Stat. 1617, provided that: "The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Oct. 22, 2004]."

Pub. L. 108–357, title VIII, §859(c), Oct. 22, 2004, 118 Stat. 1618, provided that: "The amendments made by this section [enacting section 6717 of this title and amending this section] shall take effect on January 1, 2005."

Pub. L. 108–357, title VIII, §870(c), Oct. 22, 2004, 118 Stat. 1624, provided that: "The amendment made by this section [amending this section and section 6427 of this title] shall apply to fuel removed, sold, or used after December 31, 2004."

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 902(b)(3) of Pub. L. 105–34 effective Jan. 1, 1998, see section 902(c) of Pub. L. 105–34, set out as a note under section 4041 of this title.

Amendment by section 1032(a), (e)(4) of Pub. L. 105–34 effective July 1, 1998, see section 1032(f)(1) of Pub. L. 105–34, as amended, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 effective Jan. 1, 1994, see section 13242(e) of Pub. L. 103–66, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to gasoline removed (as defined in section 4082 of this title as

amended by section 1703 of Pub. L. 99–514) after Dec. 31, 1987, see section 1703(h) of Pub. L. 99–514 set out as a note under section 4081 of this title.

§4084. Cross references

(1) For provisions to relieve farmers from excise tax in the case of gasoline used on the farm for farming purposes, see section 6420.

(2) For provisions to relieve purchasers of gasoline from excise tax in the case of gasoline used for certain nonhighway purposes, used by local transit systems, or sold for certain exempt purposes, see section 6421.

(3) For provisions to relieve purchasers from excise tax in the case of taxable fuel not used for taxable purposes, see section 6427.

(Added Pub. L. 103–66, title XIII, §13242(a), Aug. 10, 1993, 107 Stat. 518.)

PRIOR PROVISIONS

A prior section 4084, added Apr. 2, 1956, ch. 160, §4(a)(1), 70 Stat. 90; amended June 29, 1956, ch. 462, title II, §208(e)(1), 70 Stat. 396, contained cross references, prior to the general amendment of this subpart by Pub. L. 99–514, §1703(a).

A prior section 4091, added Pub. L. 100–203, title X, §10502(a), Dec. 22, 1987, 101 Stat. 1330–438; amended Pub. L. 100–203, title X, §10502(g), Dec. 22, 1987, 101 Stat. 1330–446; Pub. L. 100–647, title II, §2001(d)(6)(A)–(C), Nov. 10, 1988, 102 Stat. 3596; Pub. L. 101–508, title XI, §§11211(b)(1), (2), (6)(A), (B), (c)(4), (e)(4), 11213(b)(1), (2)(C), (D), (d)(2)(A), 11704(a)(38), Nov. 5, 1990, 104 Stat. 1388–424 to 1388–427, 1388–432, 1388–433, 1388–435, 1388–520; Pub. L. Pub. L. 102–240, title VIII, §8002(a)(4), Dec. 18, 1991, 105 Stat. 2203; Pub. L. 103–66, title XIII, §§13241(b)(1), (2)(B)(i), (ii), 13242(a), Aug. 10, 1993, 107 Stat. 510, 518; Pub. L. 104–188, title I, §1609(a)(1), Aug. 20, 1996, 110 Stat. 1841; Pub. L. 105–2, §2(a)(1), Feb. 28, 1997, 111 Stat. 4; Pub. L. 105–34, title X, §1031(a)(1), title XIV, §1436(a), Aug. 5, 1997, 111 Stat. 929, 1053; Pub. L. 105–178, title IX, §9003(a)(1)(D), (b)(2)(D), June 9, 1998, 112 Stat. 502, 503; Pub. L. 105–206, title VI, §6014(d), July 22, 1998, 112 Stat. 820, related to imposition of tax on the sale of aviation fuel, prior to repeal by Pub. L. 108–357, title VIII, §853(d)(1), (e), Oct. 22, 2004, 118 Stat. 1612, 1614, applicable to aviation-grade kerosene removed, entered, or sold after Dec. 31, 2004.

Another prior section 4091, acts Aug. 16, 1954, ch. 736, 68A Stat. 483; Aug. 11, 1955, ch. 793, §1(a), 69 Stat. 676; June 21, 1965, Pub. L. 89–44, title II, §202(a), 79 Stat. 137, imposed a tax of 6 cents a gallon on lubricating oil (other than cutting oils) sold in the United States by the manufacturer or producer to be paid by the manufacturer or producer, prior to repeal by Pub. L. 97–424, title V, §515(a), (c), Jan. 6, 1983, 96 Stat. 2181, applicable with respect to articles sold after Jan. 6, 1983.

A prior section 4092, added Pub. L. 100–203, title X, §10502(a), Dec. 22, 1987, 101 Stat. 1330–440; amended Pub. L. 100–647, title III, §3003(a), Nov. 10, 1988, 102 Stat. 3616; Pub. L. 103–66, title XIII, §§13163(a)(1), (3), 13242(a), Aug. 10, 1993, 107 Stat. 453, 519; Pub. L. 105–34, title XVI, §1601(f)(4)(C), Aug. 5, 1997, 111 Stat. 1091; Pub. L. 105–206, title VI, §6023(16), July 22, 1998, 112 Stat. 825, related to exemptions from tax imposed by former section 4091, prior to repeal by Pub. L. 108–357, title VIII, §853(d)(1), (e), Oct. 22, 2004, 118 Stat. 1612, 1614, applicable to aviation-grade kerosene removed, entered, or sold after Dec. 31, 2004.

Another prior section 4092, acts Aug. 16, 1954, ch. 736, 68A Stat. 484; Aug. 11, 1955, ch. 793, §1(b), 69 Stat. 676; Nov. 9, 1978, Pub. L. 95–618, title IV, §404(b), 92 Stat. 3205, provided for certain vendees to be considered as manufacturers and defined "cutting oils", prior to repeal by Pub. L. 97–424, title V, §515(a), (c), Jan. 6, 1983, 96 Stat. 2181, applicable with respect to articles sold after Jan. 6, 1983.

A prior section 4093, added Pub. L. 100–203, title X, §10502(a), Dec. 22, 1987, 101 Stat. 1330–440; amended Pub. L. 100–647, title II, §2004(s)(1), title III, §3001(a), Nov. 10, 1988, 102 Stat. 3609, 3613; Pub. L. 101–508, title XI, §§11211(b)(4)(A), 11212(b)(4), 11704(a)(20), Nov. 5, 1990, 104 Stat. 1388–425, 1388–431, 1388–519; Pub. L. 103–66, title XIII, §§13241(f)(3), (4), 13242(a), Aug. 10, 1993, 107 Stat. 511, 512, 520; Pub. L. 104–188, title I, §1702(b)(2)(A), Aug. 20, 1996, 110 Stat. 1868; Pub. L. 105–34, title X, §1032(e)(5), Aug. 5, 1997, 111 Stat. 935, defined terms for purposes of former subpart B of this part, prior to repeal by Pub. L. 108–357, title VIII, §853(d)(1), (e), Oct. 22, 2004, 118 Stat. 1612, 1614, applicable to aviation-grade kerosene removed, entered, or sold after Dec. 31, 2004.

Another prior section 4093, acts Aug. 16, 1954, ch. 736, 68A Stat. 484; Oct. 4, 1976, Pub. L. 94–455, title XIX, §1906(b)(13)(A), 90 Stat. 1834; Nov. 9, 1978, Pub. L. 95–618, title IV, §404(a), 92 Stat. 3204, exempted from tax lubricating oils sold to a manufacturer or producer of lubricating oils for resale, or for

certain uses of lubricating oil in producing rerefined oil, prior to repeal by Pub. L. 97–424, title V, §515(a), (c), Jan. 6, 1983, 96 Stat. 2181, applicable with respect to articles sold after Jan. 6, 1983.

A prior section 4094, added Pub. L. 89–44, title II, §202(c)(1)(A), June 21, 1965, 79 Stat. 139, provided cross reference to sections 39 and 6424 of this title for provisions to relieve purchasers of lubricating oil from excise tax in the case of lubricating oil used otherwise than in a highway motor vehicle, prior to repeal by Pub. L. 97–424, title V, §515(a), (c), Jan. 6, 1983, 96 Stat. 2181, applicable with respect to articles sold after Jan. 6, 1983.

EFFECTIVE DATE

Section effective Jan. 1, 1994, see section 13242(e) of Pub. L. 103–66, set out as an Effective Date of 1993 Amendment note under section 4041 of this title.

SUBPART B—SPECIAL PROVISIONS APPLICABLE TO FUELS TAX

Sec.
4101. Registration and bond.
4102. Inspection of records by local officers.
4103. Certain additional persons liable for tax where willful failure to pay.
4104. Information reporting for persons claiming certain tax benefits.
4105. Two-party exchanges.

PRIOR PROVISIONS

A prior subpart B, consisting of sections 4091 to 4093, related to taxation of aviation fuel, prior to repeal by Pub. L. 108–357, title VIII, §853(d)(1), (e), Oct. 22, 2004, 118 Stat. 1612, 1614, applicable to aviation-grade kerosene removed, entered, or sold after Dec. 31, 2004.

AMENDMENTS

2004—Pub. L. 108–357, title III, §303(b), title VIII, §§853(d)(1), (2)(T), 866(b), Oct. 22, 2004, 118 Stat. 1466, 1612, 1614, 1622, redesignated subpart C as B, substituted "Special Provisions Applicable to Fuels Tax" for "Special Provisions Applicable to Petroleum Products" in subpart heading, and added items 4104 and 4105.

1990—Pub. L. 101–508, title XI, §11212(e)(3), Nov. 5, 1990, 104 Stat. 1388–432, added item 4103.

1986—Pub. L. 99–514, title XVII, §1703(b)(2), Oct. 22, 1986, 100 Stat. 2776, substituted "Registration and bond" for "Registration" in item 4101.

1976—Pub. L. 94–455, title XII, §1202(c)(2), Oct. 4, 1976, 90 Stat. 1686, substituted "Inspection of records by local officers" for "Inspection of records, returns, etc., by local officers" in item 4102.

1965—Pub. L. 89–44, title VIII, §802(b)(5), June 21, 1965, 79 Stat. 159, struck out "and bond" after "Registration" in item 4101.

§4101. Registration and bond

(a) Registration

(1) In general

Every person required by the Secretary to register under this section with respect to the tax imposed by section 4041(a) or 4081, every person producing or importing biodiesel (as defined in section 40A(d)(1)) or alcohol (as defined in section 6426(b)(4)(A)), and every person producing second generation biofuel (as defined in section 40(b)(6)(E)) shall register with the Secretary at such time, in such form and manner, and subject to such terms and conditions, as the Secretary may by regulations prescribe. A registration under this section may be used only in accordance with regulations prescribed under this section.

(2) Registration of persons within foreign trade zones, etc.

The Secretary shall require registration by any person which—

(A) operates a terminal or refinery within a foreign trade zone or within a customs bonded storage facility, or

(B) holds an inventory position with respect to a taxable fuel in such a terminal.

(3) Display of registration

Every operator of a vessel required by the Secretary to register under this section shall display proof of registration through an identification device prescribed by the Secretary on each vessel used by such operator to transport any taxable fuel.

(4) Registration of persons extending credit on certain exempt sales of fuel

The Secretary shall require registration by any person which—

(A) extends credit by credit card to any ultimate purchaser described in subparagraph (C) or (D) of section 6416(b)(2) for the purchase of taxable fuel upon which tax has been imposed under section 4041 or 4081, and

(B) does not collect the amount of such tax from such ultimate purchaser.

(5) Reregistration in event of change in ownership

Under regulations prescribed by the Secretary, a person (other than a corporation the stock of which is regularly traded on an established securities market) shall be required to reregister under this section if after a transaction (or series of related transactions) more than 50 percent of ownership interests in, or assets of, such person are held by persons other than persons (or persons related thereto) who held more than 50 percent of such interests or assets before the transaction (or series of related transactions).

(b) Bonds and liens

(1) In general

Under regulations prescribed by the Secretary, the Secretary may require, as a condition of permitting any person to be registered under subsection (a), that such person—

(A) give a bond in such sum as the Secretary determines appropriate, and

(B) agree to the imposition of a lien—

(i) on such property (or rights to property) of such person used in the trade or business for which the registration is sought, or

(ii) with the consent of such person, on any other property (or rights to property) of such person as the Secretary determines appropriate.

Rules similar to the rules of section 6323 shall apply to the lien imposed pursuant to this paragraph.

(2) Release or discharge of lien

If a lien is imposed pursuant to paragraph (1), the Secretary shall issue a certificate of discharge or a release of such lien in connection with a transfer of the property if there is furnished to the Secretary (and accepted by him) a bond in such sum as the Secretary determines appropriate or the transferor agrees to the imposition of a substitute lien under paragraph (1)(B) in such sum as the Secretary determines appropriate. The Secretary shall respond to any request to discharge or release a lien imposed pursuant to paragraph (1) in connection with a transfer of property not later than 90 days after the date the request for such a discharge or release is made.

(c) Denial, revocation, or suspension of registration

Rules similar to the rules of section 4222(c) shall apply to registration under this section.

(d) Information reporting

The Secretary may require—

(1) information reporting by any person registered under this section, and

(2) information reporting by such other persons as the Secretary deems necessary to carry out this part.

Any person who is required to report under this subsection and who has 25 or more reportable transactions in a month shall file such report in electronic format.

(Aug. 16, 1954, ch. 736, 68A Stat. 484; Pub. L. 89–44, title VIII, §802(b)(2), June 21, 1965, 79 Stat. 159; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–424, title V, §515(b)(8), Jan. 6, 1983, 96 Stat. 2182; Pub. L. 99–514, title XVII, §1703(b)(1), Oct. 22, 1986, 100 Stat. 2776; Pub. L. 100–203, title X, §10502(d)(3), Dec. 22, 1987, 101 Stat. 1330–444; Pub. L. 101–508, title XI, §11212(b)(1), Nov. 5, 1990, 104 Stat. 1388–430; Pub. L. 103–66, title XIII, §13242(d)(1), Aug. 10, 1993, 107 Stat. 522; Pub. L. 105–34, title X, §1032(d), Aug. 5, 1997, 111 Stat. 934; Pub. L. 105–206, title VI, §6010(h)(5), July 22, 1998, 112 Stat. 815; Pub. L. 107–147, title VI, §615(a), Mar. 9, 2002, 116 Stat. 62; Pub. L. 108–357, title III, §301(b), title VIII, §§853(d)(2)(F), 861(a), 862(a), 864(a), Oct. 22, 2004, 118 Stat. 1461, 1613, 1618, 1619, 1621; Pub. L. 109–59, title XI, §§11113(c), 11163(a), 11164(a), Aug. 10, 2005, 119 Stat. 1949, 1973, 1975; Pub. L. 110–172, §11(a)(29), Dec. 29, 2007, 121 Stat. 2487; Pub. L. 110–234, title XV, §15321(b)(3)(A), May 22, 2008, 122 Stat. 1513; Pub. L. 110–246, §4(a), title XV, §15321(b)(3)(A), June 18, 2008, 122 Stat. 1664, 2275; Pub. L. 112–240, title IV, §404(b)(3)(C), Jan. 2, 2013, 126 Stat. 2339.)

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2013—Subsec. (a)(1). Pub. L. 112–240 substituted "second generation biofuel" for "cellulosic biofuel".

2008—Subsec. (a)(1). Pub. L. 110–246, §15321(b)(3)(A), substituted ", every person producing or importing" for "and every person producing or importing" and inserted ", and every person producing cellulosic biofuel (as defined in section 40(b)(6)(E))" before "shall register".

2007—Subsec. (a)(4), (5). Pub. L. 110–172 redesignated par. (4) relating to reregistration in event of change of ownership as (5).

2005—Subsec. (a)(1). Pub. L. 109–59, §11113(c), substituted "4041(a)" for "4041(a)(1)".

Subsec. (a)(4). Pub. L. 109–59, §11164(a), added par. (4) relating to reregistration in event of change in ownership.

Pub. L. 109–59, §11163(a), added par. (4) relating to registration of persons extending credit on certain exempt sales of fuel.

2004—Subsec. (a). Pub. L. 108–357, §861(a), designated existing provisions as par. (1), inserted heading, and added par. (2).

Pub. L. 108–357, §853(d)(2)(F), substituted "or 4081" for ", 4081, or 4091".

Pub. L. 108–357, §301(b), amended par. (1), as amended by Pub. L. 108–357, §861, by inserting "and every person producing or importing biodiesel (as defined in section 40A(d)(1)) or alcohol (as defined in section 6426(b)(4)(A))" before "shall register with the Secretary".

Subsec. (a)(2), (3). Pub. L. 108–357, §862(a), added par. (2) and redesignated former par. (2) as (3).

Subsec. (d). Pub. L. 108–357, §864(a), inserted concluding provisions.

2002—Subsec. (e). Pub. L. 107–147 struck out heading and text of subsec. (e). Text read as follows:

"(1) IN GENERAL.—A terminal for kerosene or diesel fuel may not be an approved facility for storage of non-tax-paid diesel fuel or kerosene under this section unless the operator of such terminal offers such fuel in a dyed form for removal for nontaxable use in accordance with section 4082(a).

"(2) EXCEPTION.—Paragraph (1) shall not apply to any terminal exclusively providing aviation-grade kerosene by pipeline to an airport."

1998—Subsec. (e)(1). Pub. L. 105–206 substituted "such fuel in a dyed form" for "dyed diesel fuel and kerosene".

1997—Subsec. (e). Pub. L. 105–34 added subsec. (e).

1993—Subsec. (a). Pub. L. 103–66 substituted "4041(a)(1), 4081," for "4081".

1990—Pub. L. 101–508 amended section generally. Prior to amendment, section read as follows:

"(a) REGISTRATION.—Every person subject to tax under section 4081 or 4091 shall, before incurring any liability for tax under such section, register with the Secretary.

"(b) BOND.—Under regulations prescribed by the Secretary, every person who registers under subsection (a) may be required to give a bond in such sum as the Secretary determines."

1987—Subsec. (a). Pub. L. 100–203 inserted "or 4091" after "section 4081".

1986—Pub. L. 99–514 amended section generally, substituting "Registration and bond" for "Registration" in section catchline, designating existing provisions as subsec. (a), inserting subsec. (a) heading, and adding

subsec. (b).

1983—Pub. L. 97–424 struck out "or section 4091" after "4081".

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

1965—Pub. L. 89–44 struck out all references to a bond to be given and its terms and requirements.

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112–240 applicable to fuels sold or used after Jan. 2, 2013, see section 404(b)(4) of Pub. L. 112–240, set out as a note under section 40 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by section 15321(b)(3)(A) of Pub. L. 110–246 applicable to fuel produced after Dec. 31, 2008, see section 15321(g) of Pub. L. 110–246, set out as a note under section 40 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 11113(c) of Pub. L. 109–59 applicable to any sale or use for any period after Sept. 30, 2006, see section 11113(d) of Pub. L. 109–59, set out as a note under section 4041 of this title.

Pub. L. 109–59, title XI, §11163(e), Aug. 10, 2005, 119 Stat. 1975, provided that: "The amendments made by this section [amending this section and sections 6206, 6416, 6427, and 6675 of this title] shall apply to sales after December 31, 2005."

Pub. L. 109–59, title XI, §11164(c), Aug. 10, 2005, 119 Stat. 1976, provided that: "The amendments made by this section [amending this section and sections 6719, 7232, and 7272 of this title] shall apply to actions, or failures to act, after the date of the enactment of this Act [Aug. 10, 2005]."

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 301(b) of Pub. L. 108–357 effective Apr. 1, 2005, see section 301(d)(2) of Pub. L. 108–357, set out as a note under section 40 of this title.

Amendment by section 853(d)(2)(F) of Pub. L. 108–357 applicable to aviation-grade kerosene removed, entered, or sold after Dec. 31, 2004, see section 853(e) of Pub. L. 108–357, set out as a note under section 4041 of this title.

Pub. L. 108–357, title VIII, §861(c)(1), Oct. 22, 2004, 118 Stat. 1619, provided that: "The amendments made by subsection (a) [amending this section] shall take effect on January 1, 2005."

Pub. L. 108–357, title VIII, §862(c), Oct. 22, 2004, 118 Stat. 1619, provided that: "The amendments made by this section [amending this section and section 6718 of this title] shall take effect on January 1, 2005."

Pub. L. 108–357, title VIII, §864(b), Oct. 22, 2004, 118 Stat. 1621, provided that: "The amendment made by this section [amending this section] shall apply on January 1, 2006."

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title VI, §615(b), Mar. 9, 2002, 116 Stat. 62, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on January 1, 2002."

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 effective Jan. 1, 2002, see section 1032(f)(2) of Pub. L. 105–34, as amended, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 effective Jan. 1, 1994, see section 13242(e) of Pub. L. 103–66, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective Dec. 1, 1990, see section 11212(f)(2) of Pub. L. 101–508, set out as a note under section 4081 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to sales after Mar. 31, 1988, see section 10502(e) of Pub. L. 100–203, set out as a note under section 40 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to gasoline removed (as defined in section 4082 of this title as amended by section 1703 of Pub. L. 99–514) after Dec. 31, 1987, see section 1703(h) of Pub. L. 99–514, set out as a note under section 4081 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–424 applicable to articles sold after Jan. 6, 1983, see section 515(c) of Pub. L. 97–424, set out as a note under section 34 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 applicable with respect to articles sold on or after July 1, 1965, see section 802(d)(1) of Pub. L. 89–44, set out as a note under section 4082 of this title.

TREATMENT OF DEEP-DRAFT VESSELS

Pub. L. 109–59, title XI, §11166(a), Aug. 10, 2005, 119 Stat. 1976, provided that: "On and after the date of the enactment of this Act [Aug. 10, 2005], the Secretary of the Treasury shall require that a vessel described in section 4042(c)(1) of the Internal Revenue Code of 1986 be considered a vessel for purposes of the registration of the operator of such vessel under section 4101 of such Code, unless such operator uses such vessel exclusively for purposes of the entry of taxable fuel."

PUBLICATION OF REGISTERED PERSONS

Pub. L. 108–357, title VIII, §860(c), Oct. 22, 2004, 118 Stat. 1618, provided that: "Beginning on January 1, 2005, the Secretary of the Treasury (or the Secretary's delegate) shall periodically publish under section 6103(k)(7) of the Internal Revenue Code of 1986 a current list of persons registered under section 4101 of such Code who are required to register under such section."

§4102. Inspection of records by local officers

Under regulations prescribed by the Secretary, records required to be kept with respect to taxes under this part shall be open to inspection by such officers of a State, or a political subdivision of any such State, as shall be charged with the enforcement or collection of any tax on any taxable fuel (as defined in section 4083).

(Aug. 16, 1954, ch. 736, 68A Stat. 484; Pub. L. 94–455, title XII, §1202(c)(1), Oct. 4, 1976, 90 Stat. 1686; Pub. L. 97–424, title V, §515(b)(9), Jan. 6, 1983, 96 Stat. 2182; Pub. L. 103–66, title XIII, §13242(d)(2), Aug. 10, 1993, 107 Stat. 522.)

AMENDMENTS

1993—Pub. L. 103–66 substituted "any taxable fuel (as defined in section 4083)" for "gasoline".

1983—Pub. L. 97–424 struck out "or lubricating oils" after "gasoline".

1976—Pub. L. 94–455 struck out "returns, etc." after "Inspection of records", "or his delegate" after "Secretary", "and returns, reports, and statements with respect to such taxes filed with the Secretary or his delegate" after "under this part", substituted "or a political subdivision of any such State" for "or, Territory or political subdivision thereof or the District of Columbia" after "of any State", and struck out provision relating to availability and fee for certified copies of statements, returns, or reports filed in Secretary's office.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 effective Jan. 1, 1994, see section 13242(e) of Pub. L. 103–66, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–424 applicable to articles sold after Jan. 6, 1983, see section 515(c) of Pub. L. 97–424, set out as a note under section 34 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective Jan. 1, 1977, see section 1202(i) of Pub. L. 94–455, set out as a note under section 6103 of this title.

§4103. Certain additional persons liable for tax where willful failure to pay

In any case in which there is a willful failure to pay the tax imposed by section 4041(a)(1) or 4081, each person—

(1) who is an officer, employee, or agent of the taxpayer who is under a duty to assure the payment of such tax and who willfully fails to perform such duty, or

(2) who willfully causes the taxpayer to fail to pay such tax,

shall be jointly and severally liable with the taxpayer for the tax to which such failure relates.

(Added Pub. L. 101–508, title XI, §11212(c), Nov. 5, 1990, 104 Stat. 1388–431; amended Pub. L. 103–66, title XIII, §13242(d)(1), Aug. 10, 1993, 107 Stat. 522; Pub. L. 108–357, title VIII, §853(d)(2)(F), Oct. 22, 2004, 118 Stat. 1613.)

AMENDMENTS

2004—Pub. L. 108–357 substituted "or 4081" for ", 4081, or 4091" in introductory provisions.

1993—Pub. L. 103–66 substituted "4041(a)(1), 4081," for "4081" in introductory provisions.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to aviation-grade kerosene removed, entered, or sold after Dec. 31, 2004, see section 853(e) of Pub. L. 108–357, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 effective Jan. 1, 1994, see section 13242(e) of Pub. L. 103–66, set out as a note under section 4041 of this title.

EFFECTIVE DATE

Section effective Dec. 1, 1990, see section 11212(f)(2) of Pub. L. 101–508, set out as an Effective Date of 1990 Amendment note under section 4081 of this title.

§4104. Information reporting for persons claiming certain tax benefits

(a) In general

The Secretary shall require any person claiming tax benefits—

(1) under the provisions of section [1] 34, 40, and 40A, to file a return at the time such person claims such benefits (in such manner as the Secretary may prescribe), and

(2) under the provisions of section 4041(b)(2), 6426, or 6427(e) to file a quarterly return (in such manner as the Secretary may prescribe).

(b) Contents of return

Any return filed under this section shall provide such information relating to such benefits and the coordination of such benefits as the Secretary may require to ensure the proper administration and use of such benefits.

(c) Enforcement

With respect to any person described in subsection (a) and subject to registration requirements under this title, rules similar to rules of section 4222(c) shall apply with respect to any requirement under this section.

(Added Pub. L. 108–357, title III, §303(a), Oct. 22, 2004, 118 Stat. 1466.)

EFFECTIVE DATE

Pub. L. 108–357, title III, §303(c), Oct. 22, 2004, 118 Stat. 1466, provided that: "The amendments made by

this section [enacting this section] shall take effect on January 1, 2005."

[1] *So in original. Probably should be "sections".*

§4105. Two-party exchanges

(a) In general

In a two-party exchange, the delivering person shall not be liable for the tax imposed under section 4081(a)(1)(A)(ii).

(b) Two-party exchange

The term "two-party exchange" means a transaction, other than a sale, in which taxable fuel is transferred from a delivering person registered under section 4101 as a taxable fuel registrant to a receiving person who is so registered where all of the following occur:

(1) The transaction includes a transfer from the delivering person, who holds the inventory position for taxable fuel in the terminal as reflected in the records of the terminal operator.

(2) The exchange transaction occurs before or contemporaneous with completion of removal across the rack from the terminal by the receiving person.

(3) The terminal operator in its books and records treats the receiving person as the person that removes the product across the terminal rack for purposes of reporting the transaction to the Secretary.

(4) The transaction is the subject of a written contract.

(Added Pub. L. 108–357, title VIII, §866(a), Oct. 22, 2004, 118 Stat. 1621.)

PRIOR PROVISIONS

Prior sections 4111 to 4113, 4121, and 4131 of this title constituted a former subchapter B of this chapter, see Prior Provisions note set out preceding section 4121 of this title.

EFFECTIVE DATE

Pub. L. 108–357, title VIII, §866(c), Oct. 22, 2004, 118 Stat. 1622, provided that: "The amendment made by this section [enacting this section] shall take effect on the date of the enactment of this Act [Oct. 22, 2004]."

Subchapter B—Coal

Sec.

4121. Imposition of tax.

PRIOR PROVISIONS

A prior subchapter B consisted of sections 4111 to 4113, 4121, and 4131 of this title.

Section 4111, acts Aug. 16, 1954, ch. 736, 68A Stat. 485; Sept. 2, 1958, Pub. L. 85–859, title I, §111(a), 72 Stat. 1277, imposed a manufacturers excise tax of 5 percent on household type refrigerators, quick freeze or frozen storage units, or combinations, and a tax of 10 percent on self-contained air-conditioning units, prior to repeal by Pub. L. 89–44, title II, §203, June 21, 1965, 79 Stat. 139, applicable with respect to articles sold on or after June 22, 1956.

Section 4112, acts Aug. 16, 1954, ch. 736, 68A Stat. 485; Aug. 11, 1955, ch. 805, §1(e), 69 Stat. 689, defined refrigerator components, prior to repeal by Pub. L. 85–859, title I, §111(b)(1), Sept. 2, 1958, 72 Stat. 1277, effective the first day of the first calendar quarter beginning more than 60 days after Sept. 2, 1958.

Section 4113, act Aug. 16, 1954, ch. 736, 68A Stat. 485, related to exemptions for manufacturers of refrigerator components, prior to repeal by act Aug. 11, 1955, ch. 805, §1(d), 69 Stat. 689, effective on the first day of the first month beginning more than 10 days after Aug. 11, 1955.

Section 4121, acts Aug. 16, 1954, ch. 736, 68A Stat. 486; Sept. 2, 1958, Pub. L. 85–859, title I, §112, 72 Stat. 1277, imposed a 5 percent tax on electric, gas, and oil household appliances and their accessories, prior to repeal by Pub. L. 89–44, title II, §203, June 21, 1965, 79 Stat. 139, applicable with respect to articles sold

on or after June 22, 1965.

Section 4131, act Aug. 16, 1954, ch. 736, 68A Stat. 486, imposed a 10 percent tax on electric light bulbs and tubes, prior to repeal by Pub. L. 89–44, title II, §203, June 21, 1965, 79 Stat. 139, applicable with respect to articles sold on or after Jan. 1, 1965.

§4121. Imposition of tax

(a) Tax imposed

(1) In general

There is hereby imposed on coal from mines located in the United States sold by the producer, a tax equal to the rate per ton determined under subsection (b).

(2) Limitation on tax

The amount of the tax imposed by paragraph (1) with respect to a ton of coal shall not exceed the applicable percentage (determined under subsection (b)) of the price at which such ton of coal is sold by the producer.

(b) Determination of rates and limitation on tax

For purposes of subsection (a)—

(1) the rate of tax on coal from underground mines shall be $1.10,

(2) the rate of tax on coal from surface mines shall be $.55, and

(3) the applicable percentage shall be 4.4 percent.

(c) Tax not to apply to lignite

The tax imposed by subsection (a) shall not apply in the case of lignite.

(d) Definitions

For purposes of this subchapter—

(1) Coal from surface mines

Coal shall be treated as produced from a surface mine if all of the geological matter above the coal being mined is removed before the coal is extracted from the earth. Coal extracted by auger shall be treated as coal from a surface mine.

(2) Coal from underground mines

Coal shall be treated as produced from an underground mine if it is not produced from a surface mine.

(3) United States

The term "United States" has the meaning given to it by paragraph (1) of section 638.

(4) Ton

The term "ton" means 2,000 pounds.

(e) Reduction in amount of tax

(1) In general

Effective with respect to sales after the temporary increase termination date, subsection (b) shall be applied—

(A) by substituting "$.50" for "$1.10",

(B) by substituting "$.25" for "$.55", and

(C) by substituting "2 percent" for "4.4 percent".

(2) Temporary increase termination date

For purposes of paragraph (1), the temporary increase termination date is the earlier of—

(A) December 31, 2018, or

(B) the first December 31 after 2007 as of which there is—

(i) no balance of repayable advances made to the Black Lung Disability Trust Fund, and
(ii) no unpaid interest on such advances.

(Added Pub. L. 95–227, §2(a), Feb. 10, 1978, 92 Stat. 11; amended Pub. L. 97–119, title I, §102(a), Dec. 29, 1981, 95 Stat. 1635; Pub. L. 99–272, title XIII, §13203(a), (c), Apr. 7, 1986, 100 Stat. 312, 313; Pub. L. 99–514, title XVIII, §1897(a), Oct. 22, 1986, 100 Stat. 2941; Pub. L. 100–203, title X, §10503, Dec. 22, 1987, 101 Stat. 1330–446; Pub. L. 110–343, div. B, title I, §113(a), Oct. 3, 2008, 122 Stat. 3824.)

PRIOR PROVISIONS

For prior section 4121, see Prior Provisions note set out preceding this section.

AMENDMENTS

2008—Subsec. (e)(2)(A). Pub. L. 110–343, §113(a)(1), substituted "December 31, 2018" for "January 1, 2014".

Subsec. (e)(2)(B). Pub. L. 110–343, §113(a)(2), substituted "December 31 after 2007" for "January 1 after 1981" in introductory provisions.

1987—Subsec. (e)(2)(A). Pub. L. 100–203 substituted "2014" for "1996".

1986—Subsec. (a). Pub. L. 99–272, §13203(a), amended subsec. (a) generally. Prior to amendment subsec. (a) read as follows: "There is hereby imposed on coal sold by the producer a tax at the rates of—

"(1) 50 cents per ton in the case of coal from underground mines located in the United States, and

"(2) 25 cents per ton in the case of coal from surface mines located in the United States."

Subsec. (b). Pub. L. 99–514 struck out ", in the case of sales during any calendar year beginning after December 31, 1985" after "subsection (a)".

Pub. L. 99–272, §13203(a), amended subsec. (b) generally. Prior to amendment subsec. (b), limitation on tax, read as follows: "The amount of the tax imposed by subsection (a) with respect to a ton of coal shall not exceed 2 percent of the price at which such ton of coal is sold by the producer."

Subsec. (e). Pub. L. 99–272, §13203(c), substituted "Reduction in amount of tax" for "Temporary increase in amount of tax" in heading and amended par. (1) generally. Prior to amendment par. (1) read as follows: "Effective with respect to sales after December 31, 1981, and before the temporary increase termination date—

"(A) subsection (a) shall be applied—

"(i) by substituting '$1' for '50 cents', and

"(ii) by substituting '50 cents' for '25 cents', and

"(B) subsection (b) shall be applied by substituting '4 percent' for '2 percent'."

1981—Subsec. (e). Pub. L. 97–119 added subsec. (e).

EFFECTIVE DATE OF 1986 AMENDMENTS

Pub. L. 99–514, title XVIII, §1897(b), Oct. 22, 1986, 100 Stat. 2941, provided that: "The amendment made by subsection (a) [amending this section] shall take effect as if included in the amendment made by section 13203 of the Consolidated Omnibus Budget Reconciliation Act of 1985 [section 13203 of Pub. L. 99–272, see note below]."

Pub. L. 99–272, title XIII, §13203(d), Apr. 7, 1986, 100 Stat. 313, provided that: "The amendments made by this section [amending this section] shall apply to sales after March 31, 1986."

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–119, title I, §102(b), Dec. 29, 1981, 95 Stat. 1635, provided that: "The amendment made by subsection (a) [amending this section] shall apply to sales after December 31, 1981."

EFFECTIVE DATE

Pub. L. 95–227, §2(d), Feb. 10, 1978, 92 Stat. 12, provided that: "The amendments made by this section [enacting this section and amending sections 4218, 4221, 4293, and 6416 of this title] shall apply with respect to sales after March 31, 1978."

Pub. L. 95–227, §5, Feb. 10, 1978, 92 Stat. 24, provided that: "Notwithstanding any other provision of this Act [see Short Title of 1978 Amendment note set out under section 1 of this title] to the contrary, no provision of this Act (including any amendment made by any such provision) shall take effect or apply unless an Act, enacted after the date of enactment of this Act [Feb. 10, 1978], contains a provision, explicitly in satisfaction of the requirements of this section, which states that it is the intent of the Congress that the provisions of this Act shall take effect."

[Pub. L. 95–239, §20(c), Mar. 1, 1978, 92 Stat. 106, provided that: "In accordance with the requirements of section 5 of the Black Lung Benefits Revenue Act of 1977 [Pub. L. 95–227, set out above], it is hereby provided that such Act shall take effect in accordance with the provisions of such Act. The provisions of this subsection are hereby deemed to be in explicit satisfaction of the requirements of section 5 of such Act."]

SHORT TITLE OF 1978 AMENDMENT

For short title of Pub. L. 95–227, Feb. 10, 1978, 92 Stat. 11, as the "Black Lung Benefits Revenue Act of 1977", see Short Title of 1978 Amendments note set out under section 1 of this title.

SPECIAL RULES FOR REFUND OF THE COAL EXCISE TAX TO CERTAIN COAL PRODUCERS AND EXPORTERS

Pub. L. 110–343, div. B, title I, §114, Oct. 3, 2008, 122 Stat. 3826, provided that:

"(a) REFUND.—

"(1) COAL PRODUCERS.—

"(A) IN GENERAL.—Notwithstanding subsections (a)(1) and (c) of section 6416 and section 6511 of the Internal Revenue Code of 1986, if—

"(i) a coal producer establishes that such coal producer, or a party related to such coal producer, exported coal produced by such coal producer to a foreign country or shipped coal produced by such coal producer to a possession of the United States, or caused such coal to be exported or shipped, the export or shipment of which was other than through an exporter who meets the requirements of paragraph (2),

"(ii) such coal producer filed an excise tax return on or after October 1, 1990, and on or before the date of the enactment of this Act [Oct. 3, 2008], and

"(iii) such coal producer files a claim for refund with the Secretary not later than the close of the 30-day period beginning on the date of the enactment of this Act,

then the Secretary shall pay to such coal producer an amount equal to the tax paid under section 4121 of such Code on such coal exported or shipped by the coal producer or a party related to such coal producer, or caused by the coal producer or a party related to such coal producer to be exported or shipped.

"(B) SPECIAL RULES FOR CERTAIN TAXPAYERS.—For purposes of this section—

"(i) IN GENERAL.—If a coal producer or a party related to a coal producer has received a judgment described in clause (iii), such coal producer shall be deemed to have established the export of coal to a foreign country or shipment of coal to a possession of the United States under subparagraph (A)(i).

"(ii) AMOUNT OF PAYMENT.—If a taxpayer described in clause (i) is entitled to a payment under subparagraph (A), the amount of such payment shall be reduced by any amount paid pursuant to the judgment described in clause (iii).

"(iii) JUDGMENT DESCRIBED.—A judgment is described in this subparagraph if such judgment—

"(I) is made by a court of competent jurisdiction within the United States,

"(II) relates to the constitutionality of any tax paid on exported coal under section 4121 of the Internal Revenue Code of 1986, and

"(III) is in favor of the coal producer or the party related to the coal producer.

"(2) EXPORTERS.—Notwithstanding subsections (a)(1) and (c) of section 6416 and section 6511 of the Internal Revenue Code of 1986, and a judgment described in paragraph (1)(B)(iii) of this subsection, if—

"(A) an exporter establishes that such exporter exported coal to a foreign country or shipped coal to a possession of the United States, or caused such coal to be so exported or shipped,

"(B) such exporter filed a tax return on or after October 1, 1990, and on or before the date of the enactment of this Act [Oct. 3, 2008], and

"(C) such exporter files a claim for refund with the Secretary not later than the close of the 30-day period beginning on the date of the enactment of this Act,

then the Secretary shall pay to such exporter an amount equal to $0.825 per ton of such coal exported by the exporter or caused to be exported or shipped, or caused to be exported or shipped, [sic] by the exporter.

"(b) LIMITATIONS.—Subsection (a) shall not apply with respect to exported coal if a settlement with the Federal Government has been made with and accepted by, the coal producer, a party related to such coal producer, or the exporter, of such coal, as of the date that the claim is filed under this section with respect to

such exported coal. For purposes of this subsection, the term 'settlement with the Federal Government' shall not include any settlement or stipulation entered into as of the date of the enactment of this Act [Oct. 3, 2008], the terms of which contemplate a judgment concerning which any party has reserved the right to file an appeal, or has filed an appeal.

"(c) SUBSEQUENT REFUND PROHIBITED.—No refund shall be made under this section to the extent that a credit or refund of such tax on such exported or shipped coal has been paid to any person.

"(d) DEFINITIONS.—For purposes of this section—

"(1) COAL PRODUCER.—The term 'coal producer' means the person in whom is vested ownership of the coal immediately after the coal is severed from the ground, without regard to the existence of any contractual arrangement for the sale or other disposition of the coal or the payment of any royalties between the producer and third parties. The term includes any person who extracts coal from coal waste refuse piles or from the silt waste product which results from the wet washing (or similar processing) of coal.

"(2) EXPORTER.—The term 'exporter' means a person, other than a coal producer, who does not have a contract, fee arrangement, or any other agreement with a producer or seller of such coal to export or ship such coal to a third party on behalf of the producer or seller of such coal and—

"(A) is indicated in the shipper's export declaration or other documentation as the exporter of record, or

"(B) actually exported such coal to a foreign country or shipped such coal to a possession of the United States, or caused such coal to be so exported or shipped.

"(3) RELATED PARTY.—The term 'a party related to such coal producer' means a person who—

"(A) is related to such coal producer through any degree of common management, stock ownership, or voting control,

"(B) is related (within the meaning of section 144(a)(3) of the Internal Revenue Code of 1986) to such coal producer, or

"(C) has a contract, fee arrangement, or any other agreement with such coal producer to sell such coal to a third party on behalf of such coal producer.

"(4) SECRETARY.—The term 'Secretary' means the Secretary of [the] Treasury or the Secretary's designee.

"(e) TIMING OF REFUND.—With respect to any claim for refund filed pursuant to this section, the Secretary shall determine whether the requirements of this section are met not later than 180 days after such claim is filed. If the Secretary determines that the requirements of this section are met, the claim for refund shall be paid not later than 180 days after the Secretary makes such determination.

"(f) INTEREST.—Any refund paid pursuant to this section shall be paid by the Secretary with interest from the date of overpayment determined by using the overpayment rate and method under section 6621 of the Internal Revenue Code of 1986.

"(g) DENIAL OF DOUBLE BENEFIT.—The payment under subsection (a) with respect to any coal shall not exceed—

"(1) in the case of a payment to a coal producer, the amount of tax paid under section 4121 of the Internal Revenue Code of 1986 with respect to such coal by such coal producer or a party related to such coal producer, and

"(2) in the case of a payment to an exporter, an amount equal to $0.825 per ton with respect to such coal exported by the exporter or caused to be exported by the exporter.

"(h) APPLICATION OF SECTION.—This section applies only to claims on coal exported or shipped on or after October 1, 1990, through the date of the enactment of this Act [Oct. 3, 2008].

"(i) STANDING NOT CONFERRED.—

"(1) EXPORTERS.—With respect to exporters, this section shall not confer standing upon an exporter to commence, or intervene in, any judicial or administrative proceeding concerning a claim for refund by a coal producer of any Federal or State tax, fee, or royalty paid by the coal producer.

"(2) COAL PRODUCERS.—With respect to coal producers, this section shall not confer standing upon a coal producer to commence, or intervene in, any judicial or administrative proceeding concerning a claim for refund by an exporter of any Federal or State tax, fee, or royalty paid by the producer and alleged to have been passed on to an exporter."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

Subchapter C—Certain Vaccines

Sec.
4131. Imposition of tax.
4132. Definitions and special rules.

PRIOR PROVISIONS

A prior subchapter C consisted of sections 4141 to 4143, 4151, and 4152 of this title.

Section 4141, acts Aug. 16, 1954, ch. 736, 68A Stat. 487; Aug. 11, 1955, ch. 805, §2(a), 69 Stat. 690; Sept. 2, 1958, Pub. L. 85–859, title I, §113(a), 72 Stat. 1278, imposed a tax equivalent to 10 percent of selling price on radio and television receiving sets, phonographs, radio, television, and phonograph combinations, components, and phonograph records, prior to repeal by Pub. L. 89–44, title II, §204, June 21, 1965, 79 Stat. 140, applicable with respect to articles sold on or after June 22, 1965.

Section 4142, acts Aug. 16, 1954, ch. 736, 68A Stat. 487; Sept. 2, 1958, Pub. L. 85–859, title I, §113(a), 72 Stat. 1278; Oct. 13, 1964, Pub. L. 88–653, §6(a), 78 Stat. 1086, defined "radio and television components" and provided formula to determine selling price of rebuilt television picture tubes, prior to repeal by Pub. L. 89–44, title II, §204, June 21, 1965, 79 Stat. 140, applicable with respect to articles sold on or after June 22, 1965.

Section 4143, Pub. L. 85–859, title I, §113(a), Sept. 2, 1958, 72 Stat. 1278, granted an exemption for certain types of communication, detection, and navigation equipment and components, prior to repeal by Pub. L. 89–44, title II, §204, June 21, 1965, 79 Stat. 140, applicable with respect to articles sold on or after June 22, 1965.

Section 4151, act Aug. 16, 1954, ch. 736, 68A Stat. 488, imposed a tax equivalent to 10 percent of selling price upon the sale of musical instruments, prior to repeal by Pub. L. 89–44, title II, §204, June 21, 1965, 79 Stat. 140, applicable with respect to articles sold on or after June 22, 1965.

Section 4152, act Aug. 16, 1954, ch. 736, 68A Stat. 488, related to exemption of musical instruments sold for religious or educational use, prior to repeal by Pub. L. 85–859, title I, §119(b)(2), Sept. 2, 1958, 72 Stat. 1286, effective on the first day of the first calendar quarter which began more than 60 days after Sept. 2, 1958.

§4131. Imposition of tax

(a) General rule

There is hereby imposed a tax on any taxable vaccine sold by the manufacturer, producer, or importer thereof.

(b) Amount of tax

(1) In general

The amount of the tax imposed by subsection (a) shall be 75 cents per dose of any taxable vaccine.

(2) Combinations of vaccines

If any taxable vaccine is described in more than 1 subparagraph of section 4132(a)(1), the amount of the tax imposed by subsection (a) on such vaccine shall be the sum of the amounts for the vaccines which are so included.

(c) Application of section

The tax imposed by this section shall apply—

(1) after December 31, 1987, and before January 1, 1993, and

(2) during periods after the date of the enactment of the Revenue Reconciliation Act of 1993.

(Added Pub. L. 100–203, title IX, §9201(a), Dec. 22, 1987, 101 Stat. 1330–327; amended Pub. L. 103–66, title XIII, §13421(a), Aug. 10, 1993, 107 Stat. 565; Pub. L. 105–34, title IX, §904(a), Aug. 5, 1997, 111 Stat. 873.)

REFERENCES IN TEXT

The date of the enactment of the Revenue Reconciliation Act of 1993, referred to in subsec. (c)(2), is the

date of enactment of Pub. L. 103–66, which was approved Aug. 10, 1993.

AMENDMENTS

1997—Subsec. (b). Pub. L. 105–34 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

"(b) AMOUNT OF TAX.—

"(1) IN GENERAL.—The amount of the tax imposed by subsection (a) shall be determined in accordance with the following table:

"If the taxable vaccine is:	The tax per dose is:
DPT vaccine	$4.56
DT vaccine	0.06
MMR vaccine	4.44
Polio vaccine	0.29.

"(2) COMBINATIONS OF VACCINES.—If any taxable vaccine is included in more than 1 category of vaccines in the table contained in paragraph (1), the amount of the tax imposed by subsection (a) on such vaccine shall be the sum of the amounts determined under such table for each category in which such vaccine is so included."

1993—Subsec. (c). Pub. L. 103–66 amended subsec. (c) generally. Prior to amendment, subsec. (c) related to termination of tax if amounts collected exceeded projected fund liability.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title IX, §904(d), Aug. 5, 1997, 111 Stat. 874, provided that: "The amendments made by this section [amending this section and section 4132 of this title] shall take effect on the day after the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE

Pub. L. 100–203, title IX, §9201(d), Dec. 22, 1987, 101 Stat. 1330–330, provided that: "The amendments made by this section [enacting this section and section 4132 of this title and amending sections 4221 and 6416 of this title] shall take effect on January 1, 1988."

FLOOR STOCKS TAX

Pub. L. 103–66, title XIII, §13421(c), Aug. 10, 1993, 107 Stat. 566, provided that:

"(1) IMPOSITION OF TAX.—On any taxable vaccine—

"(A) which was sold by the manufacturer, producer, or importer on or before the date of the enactment of this Act [Aug. 10, 1993],

"(B) on which no tax was imposed by section 4131 of the Internal Revenue Code of 1986 (or, if such tax was imposed, was credited or refunded), and

"(C) which is held on such date by any person for sale or use,

there is hereby imposed a tax in the amount determined under section 4131(b) of such Code.

"(2) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

"(A) LIABILITY FOR TAX.—The person holding any taxable vaccine to which the tax imposed by paragraph (1) applies shall be liable for such tax.

"(B) METHOD OF PAYMENT.—The tax imposed by paragraph (1) shall be paid in such manner as the Secretary shall prescribe by regulations.

"(C) TIME FOR PAYMENT.—The tax imposed by paragraph (1) shall be paid on or before the last day of the 6th month beginning after the date of the enactment of this Act.

"(3) DEFINITIONS.—For purposes of this subsection, terms used in this subsection which are also used in section 4131 of such Code shall have the respective meanings such terms have in such section.

"(4) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4131 of such Code shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply to the floor stocks taxes imposed by paragraph (1), to the same extent as if such taxes were imposed by such section 4131."

§4132. Definitions and special rules

(a) Definitions relating to taxable vaccines

For purposes of this subchapter—

(1) Taxable vaccine

The term "taxable vaccine" means any of the following vaccines which are manufactured or produced in the United States or entered into the United States for consumption, use, or warehousing:

(A) Any vaccine containing diphtheria toxoid.
(B) Any vaccine containing tetanus toxoid.
(C) Any vaccine containing pertussis bacteria, extracted or partial cell bacteria, or specific pertussis antigens.
(D) Any vaccine against measles.
(E) Any vaccine against mumps.
(F) Any vaccine against rubella.
(G) Any vaccine containing polio virus.
(H) Any HIB vaccine.
(I) Any vaccine against hepatitis A.
(J) Any vaccine against hepatitis B.
(K) Any vaccine against chicken pox.
(L) Any vaccine against rotavirus gastroenteritis.
(M) Any conjugate vaccine against streptococcus pneumoniae.
(N) Any trivalent vaccine against influenza or any other vaccine against seasonal influenza.
(O) Any meningococcal vaccine.
(P) Any vaccine against the human papillomavirus.

(2) Vaccine

The term "vaccine" means any substance designed to be administered to a human being for the prevention of 1 or more diseases.

(3) United States

The term "United States" has the meaning given such term by section 4612(a)(4).

(4) Importer

The term "importer" means the person entering the vaccine for consumption, use, or warehousing.

(b) Credit or refund where vaccine returned to manufacturer, etc., or destroyed

(1) In general

Under regulations prescribed by the Secretary, whenever any vaccine on which tax was imposed by section 4131 is—

(A) returned (other than for resale) to the person who paid such tax, or
(B) destroyed,

the Secretary shall abate such tax or allow a credit, or pay a refund (without interest), to such person equal to the tax paid under section 4131 with respect to such vaccine.

(2) Claim must be filed within 6 months

Paragraph (1) shall apply to any returned or destroyed vaccine only with respect to claims filed within 6 months after the date the vaccine is returned or destroyed.

(3) Condition of allowance of credit or refund

No credit or refund shall be allowed or made under paragraph (1) with respect to any vaccine unless the person who paid the tax establishes that he—

(A) has repaid or agreed to repay the amount of the tax to the ultimate purchaser of the vaccine, or

(B) has obtained the written consent of such purchaser to the allowance of the credit or the making of the refund.

(4) Tax imposed only once

No tax shall be imposed by section 4131 on the sale of any vaccine if tax was imposed by section 4131 on any prior sale of such vaccine and such tax is not abated, credited, or refunded.

(c) Other special rules

(1) Certain uses treated as sales

Any manufacturer, producer, or importer of a vaccine which uses such vaccine before it is sold shall be liable for the tax imposed by section 4131 in the same manner as if such vaccine were sold by such manufacturer, producer, or importer.

(2) Treatment of vaccines shipped to United States possessions

Section 4221(a)(2) shall not apply to any vaccine shipped to a possession of the United States.

(3) Fractional part of a dose

In the case of a fraction of a dose, the tax imposed by section 4131 shall be the same fraction of the amount of such tax imposed by a whole dose.

(4) Disposition of revenues from Puerto Rico and the Virgin Islands

The provisions of subsections (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by section 4131.

(Added Pub. L. 100–203, title IX, §9201(a), Dec. 22, 1987, 101 Stat. 1330–329; amended Pub. L. 100–647, title II, §2006(a), Nov. 10, 1988, 102 Stat. 3612; Pub. L. 105–34, title IX, §904(b), (c), Aug. 5, 1997, 111 Stat. 873, 874; Pub. L. 105–277, div. C, title XV, §1503(a), div. J, title III, §3002(a), Oct. 21, 1998, 112 Stat. 2681–741, 2681–905; Pub. L. 106–170, title V, §523(a)(1), (b)(1), Dec. 17, 1999, 113 Stat. 1927; Pub. L. 108–357, title VIII, §§889(a), 890(a), Oct. 22, 2004, 118 Stat. 1643, 1644; Pub. L. 109–432, div. A, title IV, §408(a), (b), Dec. 20, 2006, 120 Stat. 2962; Pub. L. 113–15, §1(a), June 25, 2013, 127 Stat. 476.)

AMENDMENTS

2013—Subsec. (a)(1)(N). Pub. L. 113–15 inserted "or any other vaccine against seasonal influenza" before period at end.

2006—Subsec. (a)(1)(O), (P). Pub. L. 109–432 added subpars. (O) and (P).

2004—Subsec. (a)(1)(I) to (M). Pub. L. 108–357, §889(a), added subpar. (I) and redesignated former subpars. (I) to (L) as (J) to (M), respectively.

Subsec. (a)(1)(N). Pub. L. 108–357, §890(a), added subpar. (N).

1999—Subsec. (a)(1)(K). Pub. L. 106–170, §523(b)(1), repealed Pub. L. 105–277, §1503(a). See 1998 Amendment note below.

Subsec. (a)(1)(L). Pub. L. 106–170, §523(a)(1), added subpar. (L).

1998—Subsec. (a)(1)(K). Pub. L. 105–277, §3002(a), added a subpar. (K) identical to that added by Pub. L. 105–277, §1503(a). See below.

Pub. L. 105–277, §1503(a), which directed amendment of section 4132(1) by adding a new subpar. (K) at the end, was repealed by Pub. L. 106–170, §523(b)(1).

1997—Subsec. (a)(1). Pub. L. 105–34, §904(b), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: "The term 'taxable vaccine' means any vaccine—

"(A) which is listed in the table contained in section 4131(b)(1), and

"(B) which is manufactured or produced in the United States or entered into the United States for consumption, use, or warehousing."

Subsec. (a)(2) to (8). Pub. L. 105–34, §904(c), redesignated pars. (6) to (8) as (2) to (4), respectively, and struck out former pars. (2) to (5) which read as follows:

"(2) DPT VACCINE.—The term 'DPT vaccine' means any vaccine containing pertussis bacteria, extracted or partial cell bacteria, or specific pertussis antigens.

"(3) DT VACCINE.—The term 'DT vaccine' means any vaccine (other than a DPT vaccine) containing

diphtheria toxoid or tetanus toxoid.

"(4) MMR VACCINE.—The term 'MMR vaccine' means any vaccine against measles, mumps, or rubella. Not more than 1 tax shall be imposed by section 4131 on any MMR vaccine by reason of being a vaccine against more than 1 of measles, mumps, or rubella.

"(5) POLIO VACCINE.—The term 'polio vaccine' means any vaccine containing polio virus."

1988—Subsec. (c). Pub. L. 100–647 added pars. (1) and (2) and redesignated former pars. (1) and (2) as (3) and (4), respectively.

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 113–15, §1(b), June 25, 2013, 127 Stat. 476, provided that:

"(1) SALES, ETC.—The amendment made by this section [amending this section] shall apply to sales and uses on or after the later of—

"(A) the first day of the first month which begins more than 4 weeks after the date of the enactment of this Act [June 25, 2013], or

"(B) the date on which the Secretary of Health and Human Services lists any vaccine against seasonal influenza (other than any vaccine against seasonal influenza listed by the Secretary prior to the date of the enactment of this Act) for purposes of compensation for any vaccine-related injury or death through the Vaccine Injury Compensation Trust Fund.

"(2) DELIVERIES.—For purposes of paragraph (1) and section 4131 of the Internal Revenue Code of 1986, in the case of sales on or before the effective date described in such paragraph for which delivery is made after such date, the delivery date shall be considered the sale date."

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title IV, §408(c), Dec. 20, 2006, 120 Stat. 2962, provided that:

"(1) SALES, ETC.—The amendments made by this section [amending this section] shall apply to sales and uses on or after the first day of the first month which begins more than 4 weeks after the date of the enactment of this Act [Dec. 20, 2006].

"(2) DELIVERIES.—For purposes of paragraph (1) and section 4131 of the Internal Revenue Code of 1986, in the case of sales on or before the effective date described in such paragraph for which delivery is made after such date, the delivery date shall be considered the sale date."

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §889(b), Oct. 22, 2004, 118 Stat. 1643, provided that:

"(1) SALES, ETC.—The amendments made by subsection (a) [amending this section] shall apply to sales and uses on or after the first day of the first month which begins more than 4 weeks after the date of the enactment of this Act [Oct. 22, 2004].

"(2) DELIVERIES.—For purposes of paragraph (1) and section 4131 of the Internal Revenue Code of 1986, in the case of sales on or before the effective date described in such paragraph for which delivery is made after such date, the delivery date shall be considered the sale date."

Pub. L. 108–357, title VIII, §890(b), Oct. 22, 2004, 118 Stat. 1644, provided that:

"(1) SALES, ETC.—The amendment made by this section [amending this section] shall apply to sales and uses on or after the later of—

"(A) the first day of the first month which begins more than 4 weeks after the date of the enactment of this Act [Oct. 22, 2004], or

"(B) the date on which the Secretary of Health and Human Services lists any vaccine against influenza for purposes of compensation for any vaccine-related injury or death through the Vaccine Injury Compensation Trust Fund.

"(2) DELIVERIES.—For purposes of paragraph (1) and section 4131 of the Internal Revenue Code of 1986, in the case of sales on or before the effective date described in such paragraph for which delivery is made after such date, the delivery date shall be considered the sale date."

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title V, §523(a)(2), Dec. 17, 1999, 113 Stat. 1927, provided that:

"(A) SALES.—The amendment made by this subsection [amending this section] shall apply to vaccine sales after the date of the enactment of this Act [Dec. 17, 1999], but shall not take effect if subsection (b) [see note below] does not take effect.

"(B) DELIVERIES.—For purposes of subparagraph (A), in the case of sales on or before the date described in such subparagraph for which delivery is made after such date, the delivery date shall be considered the sale date."

Pub. L. 106–170, title V, §523(b)(3), Dec. 17, 1999, 113 Stat. 1928, provided that: "The amendments made by this subsection [amending this section and section 9510 of this title and repealing provisions set out as notes under this section and section 9510 of this title] shall take effect as if included in the provisions of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 [Pub. L. 105–277] to which they relate."

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–277, div. C, title XV, §1503(b), div. I, title III, §3002(b), Oct. 21, 1998, 112 Stat. 2681–741, 2681–905, which provided that amendment of this section by Pub. L. 105–277 was applicable to sales after Oct. 21, 1998, and that delivery date would be considered sale date in the case of sales on or before Oct. 21, 1998, was repealed by Pub. L. 106–170, title V, §523(b)(1), Dec. 17, 1999, 113 Stat. 1927.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 effective on the day after Aug. 5, 1997, see section 904(d) of Pub. L. 105–34, set out as a note under section 4131 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title II, §2006(c), Nov. 10, 1988, 102 Stat. 3613, provided that: "The amendments made by this section [amending this section and section 9510 of this title] shall take effect as if included in the amendments made by section 9201 of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203]."

LIMITATION ON CERTAIN CREDITS OR REFUNDS

Pub. L. 105–34, title IX, §904(e), Aug. 5, 1997, 111 Stat. 874, provided that: "For purposes of applying section 4132(b) of the Internal Revenue Code of 1986 with respect to any claim for credit or refund filed before January 1, 1999, the amount of tax taken into account shall not exceed the tax computed under the rate in effect on the day after the date of the enactment of this Act [Aug. 5, 1997]."

Subchapter D—Recreational Equipment

Part

I. Sporting goods.

[II. Repealed.]

III. Firearms.

AMENDMENTS

1965—Pub. L. 89–44, title II, §205(b), June 21, 1965, 79 Stat. 140, struck out item relating to part II.

PART I—SPORTING GOODS

Sec.

4161. Imposition of tax.

4162. Definitions; treatment of certain resales.

AMENDMENTS

1984—Pub. L. 98–369, div. A, title X, §1015(d), July 18, 1984, 98 Stat. 1019, added item 4162.

§4161. Imposition of tax

(a) Sport fishing equipment

(1) Imposition of tax

(A) In general

There is hereby imposed on the sale of any article of sport fishing equipment by the manufacturer, producer, or importer a tax equal to 10 percent of the price for which so sold.

(B) Limitation on tax imposed on fishing rods and poles

The tax imposed by subparagraph (A) on any fishing rod or pole shall not exceed $10.

(2) 3 percent rate of tax for electric outboard motors

In the case of an electric outboard motor, paragraph (1) shall be applied by substituting "3 percent" for "10 percent".

(3) 3 percent rate of tax for tackle boxes

In the case of fishing tackle boxes, paragraph (1) shall be applied by substituting "3 percent" for "10 percent".

(4) Parts or accessories sold in connection with taxable sale

In the case of any sale by the manufacturer, producer, or importer of any article of sport fishing equipment, such article shall be treated as including any parts or accessories of such article sold on or in connection therewith or with the sale thereof.

(b) Bows and arrows, etc.

(1) Bows

(A) In general

There is hereby imposed on the sale by the manufacturer, producer, or importer of any bow which has a peak draw weight of 30 pounds or more, a tax equal to 11 percent of the price for which so sold.

(B) Archery equipment

There is hereby imposed on the sale by the manufacturer, producer, or importer—

(i) of any part or accessory suitable for inclusion in or attachment to a bow described in subparagraph (A), and

(ii) of any quiver, broadhead, or point suitable for use with an arrow described in paragraph (2),

a tax equal to 11 percent of the price for which so sold.

(2) Arrows

(A) In general

There is hereby imposed on the first sale by the manufacturer, producer, or importer of any shaft (whether sold separately or incorporated as part of a finished or unfinished product) of a type used in the manufacture of any arrow which after its assembly—

(i) measures 18 inches overall or more in length, or

(ii) measures less than 18 inches overall in length but is suitable for use with a bow described in paragraph (1)(A),

a tax equal to 39 cents per shaft.

(B) Exemption for certain wooden arrow shafts

Subparagraph (A) shall not apply to any shaft consisting of all natural wood with no laminations or artificial means of enhancing the spine of such shaft (whether sold separately or incorporated as part of a finished or unfinished product) of a type used in the manufacture of any arrow which after its assembly—

(i) measures 5/16 of an inch or less in diameter, and

(ii) is not suitable for use with a bow described in paragraph (1)(A).

(C) Adjustment for inflation

(i) In general

In the case of any calendar year beginning after 2005, the 39-cent amount specified in subparagraph (A) shall be increased by an amount equal to the product of—

(I) such amount, multiplied by

(II) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, determined by substituting "2004" for "1992" in subparagraph (B) thereof.

(ii) Rounding

If any increase determined under clause (i) is not a multiple of 1 cent, such increase shall be rounded to the nearest multiple of 1 cent.

(3) Coordination with subsection (a)

No tax shall be imposed under this subsection with respect to any article taxable under subsection (a).

(Aug. 16, 1954, ch. 736, 68A Stat. 489; Pub. L. 89–44, title II, §205(a), June 21, 1965, 79 Stat. 140; Pub. L. 92–558, title II, §201(a), Oct. 25, 1972, 86 Stat. 1173; Pub. L. 98–369, div. A, title X, §§1015(a), 1017(a), (b), July 18, 1984, 98 Stat. 1017, 1021; Pub. L. 99–514, title XVIII, §1899A(48), Oct. 22, 1986, 100 Stat. 2961; Pub. L. 105–34, title XIV, §1433(a), Aug. 5, 1997, 111 Stat. 1051; Pub. L. 108–357, title III, §§332(a)–(c), 333(a), Oct. 22, 2004, 118 Stat. 1477, 1478; Pub. L. 108–493, §1(a)–(c), Dec. 23, 2004, 118 Stat. 3984; Pub. L. 109–59, title XI, §11117(a), (b), Aug. 10, 2005, 119 Stat. 1951; Pub. L. 109–135, title IV, §412(uu), Dec. 21, 2005, 119 Stat. 2640; Pub. L. 110–343, div. C, title V, §503(a), Oct. 3, 2008, 122 Stat. 3877.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

AMENDMENTS

2008—Subsec. (b)(2)(B), (C). Pub. L. 110–343 added subpar. (B) and redesignated former subpar. (B) as (C).

2005—Subsec. (a)(1). Pub. L. 109–59, §11117(a), reenacted heading without change and amended text of par. (1) generally, designating existing provisions as subpar. (A), inserting subpar. heading, and adding subpar. (B).

Subsec. (a)(2). Pub. L. 109–135 amended heading and text of par. (2) generally. Prior to amendment, text read as follows:

"(A) IN GENERAL.—In the case of an electric outboard motor or a sonar device suitable for finding fish, paragraph (1)(A) shall be applied by substituting '3 percent' for '10 percent'.

"(B) $30 LIMITATION ON TAX IMPOSED ON SONAR DEVICES SUITABLE FOR FINDING FISH .—The tax imposed by paragraph (1)(A) on any sonar device suitable for finding fish shall not exceed $30."

Pub. L. 109–59, §11117(b), substituted "paragraph (1)(A)" for "paragraph (1)" in two places.

2004—Subsec. (a)(3), (4). Pub. L. 108–357, §333(a), added par. (3) and redesignated former par. (3) as (4).

Subsec. (b)(1). Pub. L. 108–357, §332(a), reenacted heading without change and amended text of par. (1) generally, substituting provisions imposing a tax on the sale of any bow which has a peak draw weight of 30 pounds or more, any part or accessory, and any quiver or broadhead suitable for use with an arrow described in par. (2), for provisions imposing a tax on the sale of any bow which has a draw weight of 10 pounds or more, any part of accessory, and any quiver suitable for use with arrows described in par. (2).

Subsec. (b)(1)(B)(ii). Pub. L. 108–493, §1(c), substituted "quiver, broadhead, or point" for "quiver or broadhead".

Subsec. (b)(2). Pub. L. 108–493, §1(b), amended heading and text of par. (2) generally, substituting provisions relating to arrows for provisions relating to arrow components.

Pub. L. 108–357, §332(c), substituted "Arrow components" for "Arrows" in heading and inserted "(other than broadheads)" after "point" in introductory provisions.

Subsec. (b)(3), (4). Pub. L. 108–493, §1(a), repealed Pub. L. 108–357, §332(b). See note below.

Pub. L. 108–357, §332(b), which directed the amendment of subsec. (b) by adding par. (3), relating to arrows, and redesignating former par. (3) as (4), was repealed by Pub. L. 108–493, §1(a). See Construction of 2004 Amendment note below.

1997—Subsec. (b). Pub. L. 105–34 amended subsec. (b) generally. Prior to amendment, subsec. (b) consisted of pars. (1) to (3) imposing taxes on bows and arrows and parts and accessories and providing for coordination of taxes under subsecs. (a) and (b).

1986—Subsec. (b)(1)(B)(ii). Pub. L. 99–514 substituted a comma for the period at end.

1984—Subsec. (a). Pub. L. 98–369, §1015(a), in amending subsec. (a) generally, designated existing

provisions as par. (1), substituted "any article of sport fishing equipment by the manufacturer, producer, or importer" for "fishing rods, creels, reels, and artificial lures, baits, and flies (including parts or accessories of such articles sold on or in connection therewith, or with the sale thereof) by the manufacturer, producer, or importer", and added pars. (2) and (3).

Subsec. (b)(1)(B). Pub. L. 98–369, §1017(a), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (b)(2)(A). Pub. L. 98–369, §1017(b)(2), struck out "(other than a fishing reel)" after "part or accessory".

Subsec. (b)(3). Pub. L. 98–369, §1017(b)(1), added par. (3).

1972—Subsec. (a). Pub. L. 92–558, §201(a)(1), designated existing provisions as subsec. (a) and inserted catchline.

Subsec. (b). Pub. L. 92–558, §201(a)(2), added subsec. (b).

1965—Pub. L. 89–44 removed 10 percent tax on equipment for billiards, pool, bowling, trap shooting, cricket, croquet, badminton, curling, deck tennis, golf, lacrosse, polo, skiing, squash, table tennis, and tennis, and retained tax only for fishing equipment.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title V, §503(b), Oct. 3, 2008, 122 Stat. 3877, provided that: "The amendments made by this section [amending this section] shall apply to shafts first sold after the date of enactment of this Act [Oct. 3, 2008]."

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–59, title XI, §11117(c), Aug. 10, 2005, 119 Stat. 1951, provided that: "The amendments made by this section [amending this section] shall apply to articles sold by the manufacturer, producer, or importer after September 30, 2005."

EFFECTIVE DATE OF 2004 AMENDMENTS

Pub. L. 108–493, §1(d), Dec. 23, 2004, 118 Stat. 3985, provided that: "The amendments made by subsections (b) and (c) [amending this section] shall apply to articles sold by the manufacturer, producer, or importer after March 31, 2005."

Pub. L. 108–357, title III, §332(d), Oct. 22, 2004, 118 Stat. 1478, provided that: "The amendments made by this section [amending this section] shall apply to articles sold by the manufacturer, producer, or importer after the date which is 30 days after the date of the enactment of this Act [Oct. 22, 2004]."

Pub. L. 108–357, title III, §333(b), Oct. 22, 2004, 118 Stat. 1478, provided that: "The amendments made this section [amending this section] shall apply to articles sold by the manufacturer, producer, or importer after December 31, 2004."

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XIV, §1433(b), Aug. 5, 1997, 111 Stat. 1052, provided that: "The amendment made by subsection (a) [amending this section] shall apply to articles sold by the manufacturer, producer, or importer after September 30, 1997."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 1015(a) of Pub. L. 98–369 applicable with respect to articles sold by the manufacturer, producer, or importer after Sept. 30, 1984, see section 1015(e) of Pub. L. 98–369, set out as an Effective Date note under section 4162 of this title.

Pub. L. 98–369, div. A, title X, §1017(c), July 18, 1984, 98 Stat. 1021, provided that: "The amendments made by this section [amending this section] shall apply with respect to articles sold by the manufacturer, producer, or importer after September 30, 1984."

EFFECTIVE DATE OF 1972 AMENDMENT

Pub. L. 92–558, title II, §201(b), Oct. 25, 1972, 86 Stat. 1173, as amended by Pub. L. 93–313, June 8, 1974, 88 Stat. 238, provided that: "The amendments made by subsection (a) of this section [amending this section] shall apply with respect to articles sold by the manufacturer, producer, or importer thereof on or after January 1, 1975."

EFFECTIVE DATE OF 1965 AMENDMENT

Pub. L. 89–44, title VII, §701(a), June 21, 1965, 79 Stat. 155, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by titles I and II of this Act [enacting sections 4094 and 6424 of this title, amending this section and sections 4055, 4057,

4061, 4091, 4216, 4218, 4221, 4222, 4227, 6011, 6206, 6412, 6416, 6675, 7210, 7603, 7604, and 7605 of this title, repealing sections 4001 to 4003, 4011 to 4013, 4021, 4022, 4031, 4051 to 4053, 4111, 4121, 4131, 4141 to 4143, 4151, 4171 to 4173, 4191, 4192, 4201, 4211, and 4224 of this title, and amending provisions set out as a note under section 120 of Title 23, Highways] shall apply with respect to articles sold on or after the day after the date of the enactment of this Act [June 21, 1965].

"(2) SPECIAL RULES.—The amendments made by sections 201(b)(2) [amending section 4061 of this title] (relating to automobile parts and accessories) and 202(a) [amending section 4091 of this title] (relating to lubricating oil) shall apply with respect to articles sold on or after January 1, 1966. The amendments made by section 202(b) [enacting section 6424 of this title] and (c) [enacting section 4094 and amending sections 6206, 6675, 7210, 7603, 7604, and 7605 of this title] (relating to payments with respect to lubricating oil) shall take effect January 1, 1966. The amendments made by section 203 [repealing sections 4111, 4121, and 4131 of this title], insofar as they relate to the tax imposed by section 4131 (relating to electric light bulbs) of the Code, and the amendments made by section 208 [amending sections 4216, 4218, 4221, 4222, and 4227], insofar as they relate to the tax imposed by section 4061(b) (relating to automotive parts and accessories), section 4091 (relating to lubricating oil), or section 4131 (relating to electric light bulbs) of the Code, shall apply with respect to articles sold on or after January 1, 1966. The amendments made by section 207 [amending sections 4216 and 6416 of this title] (relating to partial payments; sales of installment accounts) and 209(a) [amending section 6412 of this title] (relating to floor stocks refunds on passenger automobiles, etc.) shall take effect on the day after the date of the enactment of this Act [June 21, 1965]. The amendments made by section 210 [amending provisions set out as a note under section 120 of Title 23, Highways] (relating to Highway Trust Fund) shall take effect January 1, 1966.

"(3) INSTALLMENT SALES, ETC.—For purposes of paragraphs (1) and (2), an article shall not be considered sold before the day after the date of the enactment of this Act [June 21, 1965] or before January 1, 1966, as the case may be, unless possession or right to possession passes to the purchaser before such day or such date. In the case of—

"(A) a lease,

"(B) a contract for the sale of an article where it is provided that the price shall be paid by installments and title to the article sold does not pass until a future date notwithstanding partial payment by installments,

"(C) a conditional sale, or

"(D) a chattel mortgage arrangement wherein it is provided that the sale price shall be paid in installments,

entered into before such day or such date, payments made on or after such day or such date with respect to the article leased or sold shall, for purposes of this subsection, be considered as payments made with respect to an article sold on or after such day or such date, if the lessor or vendor establishes that the amount of payments payable on or after such day or such date with respect to such article has been reduced by an amount equal to the tax reduction applicable with respect to the lease or sale of such article.

"(4) ELECTRIC LIGHT BULBS USED IN MANUFACTURE OF ARTICLES UPON WHICH TAX IS REPEALED.—For purposes of applying section 4218(a) of the Code with respect to the use of an electric light bulb or tube by the manufacturer, producer, or importer thereof, and for purposes of applying section 4221(d)(6)(A) of the Code with respect to the sale of an electric light bulb or tube for use in further manufacture, an article which was taxable under chapter 32 of the Code on the date of the enactment of this Act [June 21, 1965] shall, during the period beginning with the day after the date of the enactment of this Act through December 31, 1965, be treated as an article taxable under such chapter."

CONSTRUCTION OF 2004 AMENDMENT

Pub. L. 108–493, §1(a), Dec. 23, 2004, 118 Stat. 3984, provided that: "Subsection (b) of section 332 of the American Jobs Creation Act of 2004 [Pub. L. 108–357], and the amendments made by such subsection [amending this section], are hereby repealed; and the Internal Revenue Code of 1986 shall be applied as if such subsection and amendments had never been enacted."

§4162. Definitions; treatment of certain resales

(a) Sport fishing equipment defined

For purposes of this part, the term "sport fishing equipment" means—

(1) fishing rods and poles (and component parts therefor),

(2) fishing reels,

(3) fly fishing lines, and other fishing lines not over 130 pounds test,

(4) fishing spears, spear guns, and spear tips,
(5) items of terminal tackle, including—
(A) leaders,
(B) artificial lures,
(C) artificial baits,
(D) artificial flies,
(E) fishing hooks,
(F) bobbers,
(G) sinkers,
(H) snaps,
(I) drayles, and
(J) swivels,

but not including natural bait or any item of terminal tackle designed for use and ordinarily used on fishing lines not described in paragraph (3), and
(6) the following items of fishing supplies and accessories—
(A) fish stringers,
(B) creels,
(C) tackle boxes,
(D) bags, baskets, and other containers designed to hold fish,
(E) portable bait containers,
(F) fishing vests,
(G) landing nets,
(H) gaff hooks,
(I) fishing hook disgorgers, and
(J) dressing for fishing lines and artificial flies,

(7) fishing tip-ups and tilts,
(8) fishing rod belts, fishing rodholders, fishing harnesses, fish fighting chairs, fishing outriggers, and fishing downriggers, and
(9) electric outboard boat motors.

(b) Treatment of certain resales

(1) In general

If—
(A) the manufacturer, producer, or importer sells any article taxable under section 4161(a) to any person,
(B) the constructive sale price rules of section 4216(b) do not apply to such sale, and
(C) such person (or any other person) sells such article to a related person with respect to the manufacturer, producer, or importer,

then such related person shall be liable for tax under section 4161 in the same manner as if such related person were the manufacturer of the article.

(2) Credit for tax previously paid

If—
(A) tax is imposed on the sale of any article by reason of paragraph (1), and
(B) the related person establishes the amount of the tax which was paid on the sale described in paragraph (1)(A),

the amount of the tax so paid shall be allowed as a credit against the tax imposed by reason of paragraph (1).

(3) Related person

For purposes of this subsection, the term "related person" has the meaning given such term by section 465(b)(3)(C).

(4) Regulations

Except to the extent provided in regulations, rules similar to the rules of this subsection shall also apply in cases (not described in paragraph (1)) in which intermediaries or other devices are used for purposes of reducing the amount of the tax imposed by section 4161(a).

(Added Pub. L. 98–369, div. A, title X, §1015(b), July 18, 1984, 98 Stat. 1017; amended Pub. L. 99–514, title II, §201(d)(7)(C), (12), title XVIII, §1878(b), Oct. 22, 1986, 100 Stat. 2141, 2142, 2903; Pub. L. 108–357, title III, §334(a), (b), Oct. 22, 2004, 118 Stat. 1478.)

AMENDMENTS

2004—Subsec. (a)(8) to (10). Pub. L. 108–357, §334(a), inserted "and" at end of par. (8), substituted a period for ", and" at end of par. (9), and struck out par. (10) which read as follows: "sonar devices suitable for finding fish."

Subsecs. (b), (c). Pub. L. 108–357, §334(b), redesignated subsec. (c) as (b) and struck out heading and text of former subsec. (b). Text read as follows: "For purposes of this part, the term 'sonar device suitable for finding fish' shall not include any sonar device which is—

"(1) a graph recorder,

"(2) a digital type,

"(3) a meter readout, or

"(4) a combination graph recorder or combination meter readout."

1986—Subsec. (a)(6)(I). Pub. L. 99–514, §1878(b), amended subpar. (I) generally, substituting "hook" for "hood".

Subsec. (c)(3). Pub. L. 99–514, §201(d)(7)(C), (12), made identical amendments, substituting "section 465(b)(3)(C)" for "section 168(e)(4)(D)".

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title III, §334(c), Oct. 22, 2004, 118 Stat. 1478, provided that: "The amendments made this section [amending this section] shall apply to articles sold by the manufacturer, producer, or importer after December 31, 2004."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 201(d)(7)(C), (12) of Pub. L. 99–514 applicable to property placed in service after Dec. 31, 1986, in taxable years ending after such date, with exceptions, see sections 203 and 204 of Pub. L. 99–514, set out as a note under section 168 of this title.

Amendment by section 201(d)(7)(C), (12) of Pub. L. 99–514 not applicable to any property placed in service before Jan. 1, 1994, if such property placed in service as part of specified rehabilitations, and not applicable to certain additional rehabilitations, see section 251(d)(2), (3) of Pub. L. 99–514, set out as a note under section 46 of this title.

Amendment by section 1878(b) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Pub. L. 98–369, div. A, title X, §1015(e), July 18, 1984, 98 Stat. 1019, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this section and amending sections 4161 and 6302 of this title] shall apply with respect to articles sold by the manufacturer, producer, or importer after September 30, 1984.

"(2) TREATMENT OF CERTAIN RESALES.—Subsection (c) of section 4162 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to treatment of certain resales), as added by this section, shall apply to sales by related persons (as defined in such subsection) after the date of the enactment of this Act [July 18, 1984]."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such

plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[PART II—REPEALED]

[§§4171 to 4173. Repealed. Pub. L. 89–44, title II, §205(b), June 21, 1965, 79 Stat. 140]

Section 4171, act Aug. 16, 1954, ch. 736, 68A Stat. 489, imposed a 10 percent tax on cameras, camera lenses, and unexposed photographic film on rolls and a 5 percent tax on electric motion or still picture projectors of the household type.

Section 4172, act Aug. 16, 1954, ch. 736, 68A Stat. 490, defined certain vendees of unexposed films as manufacturers for purposes of payment of the tax imposed by section 4171.

Section 4173, act Aug. 16, 1954, ch. 736, 68A Stat. 490, granted exemptions for specified types of cameras, lenses of specified focal lengths, and certain types of film.

EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to articles sold on or after June 22, 1965, see section 701(a) of Pub. L. 84–44, set out as an Effective Date of 1965 Amendment note under section 4161 of this title.

PART III—FIREARMS

Sec.
4181. Imposition of tax.
4182. Exemptions.

§4181. Imposition of tax

There is hereby imposed upon the sale by the manufacturer, producer, or importer of the following articles a tax equivalent to the specified percent of the price for which so sold:

Articles taxable at 10 percent—

Pistols.
Revolvers.

Articles taxable at 11 percent—

Firearms (other than pistols and revolvers).
Shells, and cartridges.

(Aug. 16, 1954, ch. 736, 68A Stat. 490.)

§4182. Exemptions

(a) Machine guns and short barrelled firearms

The tax imposed by section 4181 shall not apply to any firearm on which the tax provided by section 5811 has been paid.

(b) Sales to defense department

No firearms, pistols, revolvers, shells, and cartridges purchased with funds appropriated for the military department shall be subject to any tax imposed on the sale or transfer of such articles.

(c) Small manufacturers, etc.

(1) In general

The tax imposed by section 4181 shall not apply to any pistol, revolver, or firearm described in such section if manufactured, produced, or imported by a person who manufactures, produces, and imports less than an aggregate of 50 of such articles during the calendar year.

(2) Controlled groups

All persons treated as a single employer for purposes of subsection (a) or (b) of section 52 shall be treated as one person for purposes of paragraph (1).

(d) Records

Notwithstanding the provisions of sections 922(b)(5) and 923(g) of title 18, United States Code, no person holding a Federal license under chapter 44 of title 18, United States Code, shall be required to record the name, address, or other information about the purchaser of shotgun ammunition, ammunition suitable for use only in rifles generally available in commerce, or component parts for the aforesaid types of ammunition.

(Aug. 16, 1954, ch. 736, 68A Stat. 490; Pub. L. 91–128, §5, Nov. 26, 1969, 83 Stat. 269; Pub. L. 109–59, title XI, §11131(a), Aug. 10, 2005, 119 Stat. 1959.)

AMENDMENTS

2005—Subsecs. (c), (d). Pub. L. 109–59 added subsec. (c) and redesignated former subsec. (c) as (d).
1969—Subsec. (c). Pub. L. 91–128 added subsec. (c).

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–59, title XI, §11131(b), Aug. 10, 2005, 119 Stat. 1959, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to articles sold by the manufacturer, producer, or importer after September 30, 2005.

"(2) NO INFERENCE.—Nothing in the amendments made by this section shall be construed to create any inference with respect to the proper tax treatment of any sales before the effective date of such amendments."

SHORT TITLE OF 1969 AMENDMENT

Pub. L. 91–128, §1(a), Nov. 26, 1969, 83 Stat. 261, provided that: "This Act [amending this section and sections 4911, 4912, 4914, 4915, 4919, 4920, 6011, and 6680 of this title and enacting provisions set out as notes under section 6680 of this title] may be cited as the 'Interest Equalization Tax Extension Act of 1969'."

Subchapter E—Medical Devices

Sec.
4191. Medical devices.

PRIOR PROVISIONS

A prior subchapter E consisted of sections 4191, 4192, 4201, and 4211 of this title, prior to repeal by Pub. L. 89–44, title II, §206, title VII, §701(a), June 21, 1965, 79 Stat. 140, 155, applicable with respect to articles sold on or after June 22, 1965.

Section 4191, act Aug. 16, 1954, ch. 736, 68A Stat. 491, imposed a tax equivalent to 10 percent of the selling price upon over fifty specified office and business machines including adding machines, bookkeeping machines, cash registers, punch card and computing machines, typewriters, and tabulating machines.

Section 4192, acts Aug. 16, 1954, ch. 736, 68A Stat. 491; Sept. 2, 1958, Pub. L. 85–859, title I, §114(a), 72 Stat. 1278, granted an exemption for cash registers used in registering over-the-counter retail sales and for stencil cutting machines.

Section 4201, acts Aug. 16, 1954, ch. 736, 68A Stat. 492; Sept. 14, 1960, Pub. L. 86–779, §9(a), 74 Stat. 1003, imposed a tax equivalent to 10 percent of the selling price on mechanical pencils, fountain pens, and ballpoint pens and 10 cents on mechanical cigarette lighters.

Section 4211, act Aug. 16, 1954, ch. 736, 68A Stat. 492, imposed a tax of 2 cents per 1,000 for matches, except fancy wooden matches, and a tax of 5½ cents per 1,000 on fancy wooden matches.

§4191. Medical devices

(a) In general

There is hereby imposed on the sale of any taxable medical device by the manufacturer, producer, or importer a tax equal to 2.3 percent of the price for which so sold.

(b) Taxable medical device

For purposes of this section—

(1) In general

The term "taxable medical device" means any device (as defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act) intended for humans.

(2) Exemptions

Such term shall not include—

(A) eyeglasses,

(B) contact lenses,

(C) hearing aids, and

(D) any other medical device determined by the Secretary to be of a type which is generally purchased by the general public at retail for individual use.

(Added Pub. L. 111–152, title I, §1405(a)(1), Mar. 30, 2010, 124 Stat. 1064.)

REFERENCES IN TEXT

Section 201(h) of the Federal Food, Drug, and Cosmetic Act, referred to in subsec. (b)(1), is classified to section 321(h) of Title 21, Food and Drugs.

PRIOR PROVISIONS

For prior sections 4191, 4192, 4201, and 4211, see Prior Provisions note set out preceding this section.

EFFECTIVE DATE

Pub. L. 111–152, title I, §1405(c), Mar. 30, 2010, 124 Stat. 1065, provided that: "The amendments made by this section [enacting this section and amending sections 4221 and 6416 of this title] shall apply to sales after December 31, 2012."

Subchapter F—Special Provisions Applicable to Manufacturers Tax

Sec.
4216. Definition of price.
4217. Leases.
4218. Use by manufacturer or importer considered sale.
4219. Application of tax in case of sales by other than manufacturer or importer.
[4220 to 4225. Repealed.]

AMENDMENTS

1958—Pub. L. 85–859, title I, §§117(d), 119(b)(3), Sept. 2, 1958, 72 Stat. 1281, 1286, substituted "Leases" for "Lease considered sale" in item 4217, and struck out items 4220 to 4225.

1956—Act June 29, 1956, ch. 462, title II, §207(b), 70 Stat. 392, added item 4226 and redesignated former item 4226 as 4227.

§4216. Definition of price

(a) Containers, packing and transportation charges.

In determining, for the purposes of this chapter, the price for which an article is sold, there shall be included any charge for coverings and containers of whatever nature, and any charge incident to placing the article in condition packed ready for shipment, but there shall be excluded the amount of

tax imposed by this chapter, whether or not stated as a separate charge. A transportation, delivery, insurance, installation, or other charge (not required by the foregoing sentence to be included) shall be excluded from the price only if the amount thereof is established to the satisfaction of the Secretary in accordance with the regulations.

(b) Constructive sale price

(1) In general

If an article is—

(A) sold at retail,

(B) sold on consignment, or

(C) sold (otherwise than through an arm's length transaction) at less than the fair market price,

the tax under this chapter shall (if based on the price for which the article is sold) be computed on the price for which such articles are sold, in the ordinary course of trade, by manufacturers or producers thereof, as determined by the Secretary. In the case of an article sold at retail, the computation under the preceding sentence shall be on whichever of the following prices is the lower: (i) the price for which such article is sold, or (ii) the highest price for which such articles are sold to wholesale distributors, in the ordinary course of trade, by manufacturers or producers thereof, as determined by the Secretary. This paragraph shall not apply if paragraph (2) applies.

(2) Special rule

If an article is sold at retail or to a retailer, and if—

(A) the manufacturer, producer, or importer of such article regularly sells such articles at retail or to retailers, as the case may be,

(B) the manufacturer, producer, or importer of such article regularly sells such articles to one or more wholesale distributors in arm's length transactions and he establishes that his prices in such cases are determined without regard to any tax benefit under this paragraph, and

(C) the transaction is an arm's length transaction,

the tax under this chapter shall (if based on the price for which the article is sold) be computed on whichever of the following prices is the lower: (i) the price for which such article is sold, or (ii) the highest price for which such articles are sold by such manufacturer, producer, or importer to wholesale distributors (other than special dealers).

(3) Constructive sale price in case of certain articles

Except as provided in paragraph (4), for purposes of paragraph (1), if—

(A) the manufacturer, producer, or importer of an article regularly sells such article to a distributor which is a member of the same affiliated group of corporations (as defined in section 1504(a)) as the manufacturer, producer, or importer, and

(B) such distributor regularly sells such article to one or more independent retailers, but does not regularly sell to wholesale distributors,

the constructive sale price of such article shall be 90 percent of the lowest price for which such distributor regularly sells such article in arm's-length transactions to such independent retailers. The price determined under this paragraph shall not be adjusted for any exclusion (except for the tax imposed on such article) or readjustments under subsections (a) and (e) and under section 6416(b)(1). If both this paragraph and paragraph (4) apply with respect to an article, the constructive sale price for such article shall be the lower of the constructive sale price determined under this paragraph or paragraph (4).

(4) Constructive sale price in case of certain other articles

For purposes of paragraph (1), if—

(A) the manufacturer, producer, or importer of an article regularly sells (except for tax-free

sales) only to a distributor which is a member of the same affiliated group of corporations (as defined in section 1504(a)) as the manufacturer, producer, or importer,

(B) the distributor regularly sells (except for tax-free sales) such article only to retailers, and

(C) the normal method of sales for such articles within the industry by manufacturers, producers, or importers is to sell such articles in arm's-length transactions to distributors,

the constructive sale price for such article shall be the price at which such article is sold to retailers by the distributor, reduced by a percentage of such price equal to the percentage which (i) the difference between the price for which comparable articles are sold to wholesale distributors, in the ordinary course of trade, by manufacturers or producers thereof, and the price at which such wholesale distributors in arm's-length transactions sell such comparable articles to retailers, is of (ii) the price at which such wholesale distributors in arm's-length transactions sell such comparable articles to retailers. The price determined under this paragraph shall not be adjusted for any exclusion (except for the tax imposed on such article) or readjustment under subsections (a) and (e) and under section 6416(b)(1).

(5) Definition of lowest price

For purposes of paragraphs (1) and (3), the lowest price shall be determined—

(A) without requiring that any given percentage of sales be made at that price, and

(B) without including any fixed amount to which the purchaser has a right as a result of contractual arrangements existing at the time of the sale.

(c) Partial payments

In the case of—

(1) a lease (other than a lease to which section 4217(b) applies),

(2) a contract for the sale of an article wherein it is provided that the price shall be paid by installments and title to the article sold does not pass until a future date notwithstanding partial payment by installments,

(3) a conditional sale, or

(4) a chattel mortgage arrangement wherein it is provided that the sales price shall be paid in installments,

there shall be paid upon each payment with respect to the article a percentage of such payment equal to the rate of tax in effect on the date such payment is due.

(d) Sales of installment accounts

If installment accounts, with respect to payments on which tax is being computed as provided in subsection (c), are sold or otherwise disposed of, then subsection (c) shall not apply with respect to any subsequent payments on such accounts (other than subsequent payments on returned accounts with respect to which credit or refund is allowable by reason of section 6416(b)(5)), but instead—

(1) there shall be paid an amount equal to the difference between (A) the tax previously paid on the payments on such installment accounts, and (B) the total tax which would be payable if such installment accounts had not been sold or otherwise disposed of (computed as provided in subsection (c)); except that

(2) if any such sale is pursuant to the order of, or subject to the approval of, a court of competent jurisdiction in a bankruptcy or insolvency proceeding, the amount computed under paragraph (1) shall not exceed the sum of the amounts computed by multiplying (A) the proportionate share of the amount for which such accounts are sold which is allocable to each unpaid installment payment by (B) the rate of tax under this chapter in effect on the date such unpaid installment payment is or was due.

The sum of the amounts payable under this subsection and subsection (c) in respect of the sale of any article shall not exceed the total tax.

(e) Exclusion of local advertising charge from sale price

(1) Exclusion

In determining, for purposes of this chapter, the price for which an article is sold, there shall be excluded a charge for local advertising (as defined in paragraph (4)) to the extent that such charge—

(A) does not exceed 5 percent of the price for which the article is sold (as determined under this section by excluding any charge for local advertising),

(B) is a separate charge made when the article is sold, and

(C) is intended to be refunded to the purchaser or any subsequent vendee in reimbursement of costs incurred for local advertising.

In the case of any such charge (or portion thereof) which is not so refunded before the first day of the fifth calendar month following the calendar year during which the article was sold, the exclusion provided by the preceding sentence shall cease to apply as of such first day.

(2) Aggregate amount which may be excluded

In the case of articles upon the sale of which tax was imposed under the same section of this chapter—

(A) The sum of (i) the aggregate of the charges for local advertising excluded under paragraph (1), plus (ii) the aggregate of the readjustments for local advertising under section 6416(b)(1) (relating to credits or refunds for price readjustments), shall not exceed

(B) 5 percent of the aggregate of the prices (determined under this section by excluding all charges for local advertising) at which such articles were sold in sales on which tax was imposed by such section of this chapter.

The preceding sentence shall be applied to each manufacturer, producer, and importer as of the close of each calendar quarter, taking into account the items specified in subparagraphs (A) and (B) for such calendar quarter and preceding calendar quarters in the same calendar year.

(3) No adjustment for other advertising charges

Except to the extent provided by paragraphs (1) and (2), no charge or expenditure for advertising shall serve, for purposes of this section or section 6416(b)(1), as the basis for an exclusion from, or as a readjustment of, the price of any article.

(4) Local advertising defined

For purposes of this section and section 6416(b)(1), the term "local advertising" means only advertising which—

(A) is initiated or obtained by the purchaser or any subsequent vendee,

(B) names the article for which the price is determinable under this section and states the location at which such article may be purchased at retail, and

(C) is broadcast over a radio station or television station, appears in a newspaper or magazine, or is displayed by means of an outdoor advertising sign or poster.

(Aug. 16, 1954, ch. 736, 68A Stat. 493; Aug. 9, 1955, ch. 677, §§1, 2, 69 Stat. 613; Pub. L. 85–859, title I, §§115, 116, 117(b), Sept. 2, 1958, 72 Stat. 1279–1281; Pub. L. 86–781, §1, Sept. 14, 1960, 74 Stat. 1017; Pub. L. 87–770, §2(a), Oct. 9, 1962, 76 Stat. 768; Pub. L. 87–858, §1(a), Oct. 23, 1962, 76 Stat. 1134; Pub. L. 89–44, title II, §§207(a), (b), 208(a), (b), title VIII, §801(b), June 21, 1965, 79 Stat. 140, 141, 158; Pub. L. 91–172, title IX, §932(a), Dec. 30, 1969, 83 Stat. 725; Pub. L. 91–614, title III, §301(a), (b), Dec. 31, 1970, 84 Stat. 1844; Pub. L. 92–178, title IV, §401(g)(4), Dec. 10, 1971, 85 Stat. 533; Pub. L. 94–455, title XIX, §§1904(a)(2), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1811, 1834; Pub. L. 95–458, §1(a), (b), Oct. 14, 1978, 92 Stat. 1255; Pub. L. 98–369, div. A, title VII, §735(c)(6), July 18, 1984, 98 Stat. 982.)

AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98–369, §735(c)(6)(A), in provisions following subpar. (C) struck out "(other than an article the sale of which is taxable under section 4061(a))" in second sentence, before "the computation under the preceding sentence", and struck out provision that in the case of an article the sale of

which is taxable under section 4061(a) and which is sold at retail, the computation under the first sentence of this paragraph shall be a percentage (not greater than 100 percent) of the actual selling price based on the highest price for which such articles are sold by manufacturers and producers in the ordinary course of trade (determined without regard to any individual manufacturer's or producer's cost).

Subsec. (b)(2)(B) to (D). Pub. L. 98–369, §735(c)(6)(B), inserted "and" at end of subpar. (B), redesignated subpar. (D) as (C), and struck out former subpar. (C) which related to articles upon which tax is imposed under section 4061(a) of this title.

Subsec. (b)(3). Pub. L. 98–369, §735(c)(6)(D), substituted "paragraph (4)" for "paragraphs (4) and (5)".

Subsec. (b)(5), (6). Pub. L. 98–369, §735(c)(6)(C), (E), redesignated par. (6) as par. (5), substituted "(1) and (3)" for "(1), (3) and (5)", and struck out former par. (5) which related to constructive sale price in the case of automobiles, trucks, etc.

Subsec. (f). Pub. L. 98–369, §735(c)(6)(F), struck out subsec. (f) which related to certain trucks incorporating used components.

1978—Subsec. (b)(1). Pub. L. 95–458 substituted "article sold at retail (other than an article the sale of which is taxable under section 4061(a)), the computation" for "article sold at retail, the computation" and inserted provision requiring the computation of tax on articles taxable under section 4061(a) which are sold at retail to be a percentage, but not greater than 100% of the actual selling price based on the highest price for which the articles are sold by manufacturers and producers in the ordinary course of trade, determined without regard to individual manufacturer's or producer's cost.

1976—Subsec. (a). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (b). Pub. L. 94–455, §§1904(a)(2)(B), 1906(b)(13)(A), struck out "or his delegate" after "Secretary" in two places in par. (1), and substituted "subsections (a) and (e)" for "subsections (a) and (f)" in pars. (3), (4), and (5), after "or readjustments under".

Subsecs. (d) to (g). Pub. L. 94–455, §1904(a)(2)(A), redesignated subsecs. (e) to (g) as (d) to (f), respectively.

1971—Subsec. (b)(2)(C), (5). Pub. L. 92–178, §401(g)(4)(A), substituted "(relating to trucks, buses, tractor, etc.)" for "(relating to automobiles, trucks, etc.)".

Subsec. (g). Pub. L. 92–178, §401(g)(4)(B), inserted reference to "tractors," after "buses,".

1970—Subsec. (b)(3). Pub. L. 91–614, §301(b), substituted "Constructive sale price" for "Fair market price" in heading, "constructive sale price" for "fair market price" three places in text, substituted "paragraphs (4) and (5)" for "paragraph (4)" and "paragraph (1)" for "paragraph (1)(C)".

Subsec. (b)(4). Pub. L. 91–614, §301(b)(2), substituted "Constructive sale price" for "Fair market price" in heading, "constructive sale price" for "fair market price" in text, and "paragraph (1)" for "paragraph (1)(C)".

Subsec. (b)(5), (6). Pub. L. 91–614, §301(a), added pars. (5) and (6).

1969—Subsec. (b)(3), (4). Pub. L. 91–172 added pars. (3) and (4).

1965—Subsec. (b)(2). Pub. L. 89–44, §208(a), struck out reference to special dealers and to articles upon which tax is imposed under section 4191 or 4211 of this title.

Subsec. (b)(3). Pub. L. 89–44, §208(b), struck out par. (3) which related to special dealers.

Subsec. (c). Pub. L. 89–44, §207(a), struck out "that portion of the total tax which is proportionate to the portion of the total amount to be paid represented by such payment" in text following par. (4) and inserted in lieu thereof "a percentage of such payment equal to the rate of tax in effect on the date such payment is due".

Subsec. (e)(1). Pub. L. 89–44, §207(b)(1), substituted "total tax which would be payable if such installment accounts had not been sold or otherwise disposed of (computed as provided in subsection (c)) for "total tax".

Subsec. (e)(2). Pub. L. 89–44, §207(b)(2), substituted, as factor (A) in the formula for computing the maximum amount, the proportionate share of the amount for which such accounts are sold which is allocable to each unpaid installment payment for the amount for which such accounts are sold, and, as factor (B) in the formula, the rate of tax on the date that such unpaid installment payment is or was due for the rate of tax which applied on the day on which the transaction giving rise to such installment accounts took place.

Subsec. (g). Pub. L. 89–44, §801(b), added subsec. (g).

1962—Subsec. (b)(2)(C). Pub. L. 87–858 inserted "in the case of articles upon which tax is imposed under section 4061(a) (relating to automobiles, trucks, etc.), 4191 (relating to business machines), or 4211 (relating to matches)," before "the normal method".

Subsec. (f)(4)(C). Pub. L. 87–770 substituted ", appears in a newspaper or magazine, or is displayed by means of an outdoor advertising sign or poster" for "or appears in a newspaper".

1960—Subsec. (f). Pub. L. 86–781 added subsec. (f).

1958—Subsec. (b). Pub. L. 85–859, §115, inserted provisions in par. (1) requiring, in the case of an article sold at retail, the computation to be on either the price for which the article is sold, or the highest price for which the articles are sold to wholesale distributors, in the ordinary course of trade, by manufacturers or

producers thereof, whichever is lower, and added pars. (2) and (3).

Subsec. (c). Pub. L. 85–859, §117(b), substituted "section 4217(b)" for "subsection (d)".

Subsec. (d). Pub. L. 85–859, §117(b), repealed subsec. (d) which related to tax on leases of certain trailers.

Subsec. (e). Pub. L. 85–859, §116, added subsec. (e).

1955—Subsec. (c)(1). Act Aug. 9, 1955, §1, inserted "(other than a lease to which subsection (d) applies)".

Subsec. (d). Act Aug. 9, 1955, §2, added subsec. (d).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97–424, to which such amendment relates, see section 736 of Pub. L. 98–369, set out as a note under section 4051 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–458, §1(c), Oct. 14, 1978, 92 Stat. 1255, provided that: "The amendments made by this section [amending this section] shall apply to articles sold by the manufacturer or producer on or after the first day of the first calendar quarter beginning 30 days or more after the date of enactment of this Act [Oct. 14, 1978]."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1904(a)(2) of Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94–455, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–178 applicable with respect to articles sold on or after the day after Dec. 10, 1971, see section 401(h)(1) of Pub. L. 92–178, set out as a note under section 4061 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Pub. L. 91–614, title III, §301(c), Dec. 31, 1970, 84 Stat. 1844, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by this section [amending this section] shall apply with respect to articles sold after December 31, 1970; except that section 4216(b)(6) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)) shall also apply to (1) the application of paragraph (1) of such section 4216(b) to articles sold after June 30, 1962, and before January 1, 1971, and (2) the application of paragraph (3) of such section 4216(b) to articles sold after December 31, 1969, and before January 1, 1971."

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title IX, §932(b), Dec. 30, 1969, 83 Stat. 725, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to articles sold after December 31, 1969."

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 207(a), (b) of Pub. L. 89–44 effective June 22, 1965, and amendment by section 208 of Pub. L. 89–44 applicable with respect to articles sold on or after June 22, 1965, except insofar as such amendments related to the taxes imposed by sections 4061(b), 4091, or 4131 and, as to such taxes, applicable with respect to articles sold on or after January 1, 1966, see section 701(a) of Pub. L. 89–44, set out as a note under section 4161 of this title.

Pub. L. 89–44, title VIII, §801(e), June 21, 1965, 79 Stat. 158, provided that: "The amendments made by subsections (a), (b), and (d) [amending this section and sections 4063, 4221, and 6416 of this title] shall apply with respect to articles sold on or after the day after the date of the enactment of this Act [June 21, 1965]. The amendment made by subsection (c) [amending section 4221 of this title] shall apply with respect to articles sold on or after January 1, 1965."

EFFECTIVE DATE OF 1962 AMENDMENTS

Pub. L. 87–858, §1(b), Oct. 23, 1962, 76 Stat. 1134, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to articles sold by the manufacturer, producer, or importer on or after October 1, 1962."

Pub. L. 87–770, §2(b), Oct. 9, 1962, 76 Stat. 768, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to articles sold on or after the first day of the first calendar quarter beginning more than 20 days after the date of the enactment of this Act [Oct. 9, 1962]."

EFFECTIVE DATE OF 1960 AMENDMENT

Pub. L. 86–781, §3, Sept. 14, 1960, 74 Stat. 1018, provided that: "The amendments made by this Act [amending this section and section 6416 of this title] shall apply with respect to articles sold on or after the first day of the first calendar quarter beginning more than twenty days after the date of the enactment of this Act [Sept. 14, 1960]."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–859 effective on first day of first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1(c) of Pub. L. 85–859, Sept. 2, 1958, 72 Stat. 1275.

EFFECTIVE DATE OF 1955 AMENDMENT

Act Aug. 9, 1955, ch. 677, §4, 69 Stat. 614, as amended by act Oct. 22, 1986, Pub. L. 99–514, §2, 100 Stat. 2095, provided that: "The amendments made by subsection (a) [probably should refer to amendments made by sections 1 to 3 of act Aug. 9, 1955, amending this section and section 4217 of this title] shall take effect on the first day of the first month which begins more than 10 days after the date of the enactment of this act [Aug. 9, 1955]. In the application of section 4216(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this Act) to any article which has been leased before the effective date specified in the preceding sentence, under regulations prescribed by the Secretary of the Treasury or his delegate—

"(1) the fair market value of such article shall be the fair market value determined as of such effective date;

"(2) only payments under a lease received on or after such effective date shall be considered in determining when the total tax (as defined in such section 4216(d)) has been paid;

"(3) any lease existing on such effective date, or if there is none, the first lease entered into after such effective date, shall be considered an initial lease (except that fair market value shall be determined as provided in paragraph (1) of this sentence); and

"(4) any lease existing on such effective date shall be considered as having been entered into on such date."

§4217. Leases

(a) Lease considered as sale

For purposes of this chapter, the lease of an article (including any renewal or any extension of a lease or any subsequent lease of such article) by the manufacturer, producer, or importer shall be considered a sale of such article.

(b) Limitation on tax

In the case of any lease described in subsection (a) of an article taxable under this chapter, if the tax under this chapter is based on the price for which such articles are sold, there shall be paid on each lease payment with respect to such article a percentage of such payment equal to the rate of tax in effect on the date of such payment, until the total of the tax payments under such lease and any prior lease to which this subsection applies equals the total tax.

(c) Definition of total tax

For purposes of this section, the term "total tax" means—

(1) except as provided in paragraph (2), the tax computed on the constructive sale price for such article which would be determined under section 4216(b) if such article were sold at retail on the date of the first lease to which subsection (b) applies; or

(2) if the first lease to which subsection (b) applies is not the first lease of the article, the tax computed on the fair market value of such article on the date of the first lease to which subsection (b) applies.

Any such computation of tax shall be made at the applicable rate specified in this chapter in effect on the date of the first lease to which subsection (b) applies.

(d) Special rules

(1) Lessor must also be engaged in selling

Subsection (b) shall not apply to any lease of an article unless at the time of making the lease, or

any prior lease of such article to which subsection (b) applies, the person making the lease or prior lease was also engaged in the business of selling in arm's length transactions the same type and model of article.

(2) Sale before total tax becomes payable

If the taxpayer sells an article before the total tax has become payable, then the tax payable on such sale shall be whichever of the following is the smaller:

(A) the difference between (i) the tax imposed on lease payments under leases of such article to which subsection (b) applies, and (ii) the total tax, or

(B) a tax computed, at the rate in effect on the date of the sale, on the price for which the article is sold.

For purposes of subparagraph (B), if the sale is at arm's length, section 4216(b) shall not apply.

(3) Sale after total tax has become payable

If the taxpayer sells an article after the total tax has become payable, no tax shall be imposed under this chapter on such sale.

(e) Leases of automobiles subject to gas guzzler tax

(1) In general

In the case of the lease of an automobile the sale of which by the manufacturer would be taxable under section 4064, the foregoing provisions of this section shall not apply, but, for purposes of this chapter—

(A) the first lease of such automobile by the manufacturer shall be considered to be a sale, and

(B) any lease of such automobile by the manufacturer after the first lease of such automobile shall not be considered to be a sale.

(2) Payment of tax

In the case of a lease described in paragraph (1)(A)—

(A) there shall be paid by the manufacturer on each lease payment that portion of the total gas guzzler tax which bears the same ratio to such total gas guzzler tax as such payment bears to the total amount to be paid under such lease,

(B) if such lease is canceled, or the automobile is sold or otherwise disposed of, before the total gas guzzler tax is payable, there shall be paid by the manufacturer on such cancellation, sale, or disposition the difference between the tax imposed under subparagraph (A) on the lease payments and the total gas guzzler tax, and

(C) if the automobile is sold or otherwise disposed of after the total gas guzzler tax is payable, no tax shall be imposed under section 4064 on such sale or disposition.

(3) Definitions

For purposes of this subsection—

(A) Manufacturer

The term "manufacturer" includes a producer or importer.

(B) Total gas guzzler tax

The term "total gas guzzler tax" means the tax imposed by section 4064, computed at the rate in effect on the date of the first lease.

(Aug. 16, 1954, ch. 736, 68A Stat. 494; Aug. 9, 1955, ch. 677, §3, 69 Stat. 614; Pub. L. 85–859, title I, §117(a), Sept. 2, 1958, 72 Stat. 1280; Pub. L. 94–455, title XIX, §1904 (a)(3), Oct. 4, 1976, 90 Stat. 1811; Pub. L. 95–618, title II, §201(d), Nov. 9, 1978, 92 Stat. 3184.)

AMENDMENTS

1978—Subsec. (e). Pub. L. 95–618 added subsec. (e).

1976—Subsec. (d)(4). Pub. L. 94–455 struck out par. (4) relating to special transitional rules applicable to

leases.

1958—Pub. L. 85–859 substituted "Leases" for "Lease considered as sale" in section catchline.

Subsec. (a). Pub. L. 85–859 redesignated existing provisions as subsec. (a) and struck out provisions which made subsection inapplicable to the lease of an article upon which the tax has been paid in the manner provided in section 4216(d)(1) or the total tax has been paid in the manner provided in section 4216(d)(2) of this title.

Subsecs. (b) to (d). Pub. L. 85–859 added subsecs. (b) to (d).

1955—Act Aug. 9, 1955, exempted lease of an article upon which tax has been paid under section 4216(d)(1) or section 4216(d)(2) of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–618 applicable with respect to 1980 and later model year automobiles, see section 201(g) of Pub. L. 95–618, set out as an Effective Date note under section 4064 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94–455, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–859 effective on first day of first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1(c) of Pub. L. 85–859, Sept. 2, 1958, 72 Stat. 1275.

EFFECTIVE DATE OF 1955 AMENDMENT

Section effective on first day of first month which begins more than ten days after Aug. 9, 1955, see section 4 of act Aug. 9, 1955, set out as a note under section 4216 of this title.

APPLICATION OF LEASES OF UTILITY TRAILERS

Pub. L. 85–859, title I, §117(c), Sept. 2, 1958, 72 Stat. 1281, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by subsections (a) and (b) [amending this section and section 4216 of this title] shall not apply to any lease of an article if section 4216(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954, prior subsec. (d) of section 4216 of this title] applied to any lease of such article before the effective date specified in section 1(c) of this Act."

§4218. Use by manufacturer or importer considered sale

(a) General rule

If any person manufactures, produces, or imports an article (other than a tire taxable under section 4071) and uses it (otherwise than as material in the manufacture or production of, or as a component part of, another article taxable under this chapter to be manufactured or produced by him), then he shall be liable for tax under this chapter in the same manner as if such article were sold by him. This subsection shall not apply in the case of gasoline used by any person, for nonfuel purposes, as a material in the manufacture or production of another article to be manufactured or produced by him. For the purpose of applying the first sentence of this subsection to coal taxable under section 4121, the words "(otherwise than as material in the manufacture or production of, or as a component part of, another article taxable under this chapter to be manufactured or produced by him)" shall be disregarded.

(b) Tires

If any person manufactures, produces, or imports a tire taxable under section 4071, and sells it on or in connection with the sale of any article, or uses it, then he shall be liable for tax under this chapter in the same manner as if such article were sold by him.

(c) Computation of tax

Except as provided in section 4223(b), in any case in which a person is made liable for tax by the preceding provisions of this section, the tax (if based on the price for which the article is sold) shall be computed on the price at which such or similar articles are sold, in the ordinary course of trade, by manufacturers, producers, or importers, thereof, as determined by the Secretary.

(Aug. 16, 1954, ch. 736, 68A Stat. 494; Aug. 11, 1955, ch. 805, §1(a), (b), 69 Stat. 689; Pub. L. 85–859, title I, §118, Sept. 2, 1958, 72 Stat. 1281; Pub. L. 86–418, §2(a), Apr. 8, 1960, 74 Stat. 38; Pub. L. 87–61, title II, §205(b), June 29, 1961, 75 Stat. 126; Pub. L. 89–44, title II, §208(c), June 21, 1965, 79 Stat. 141; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–227, §2(b)(1), Feb. 10, 1978, 92 Stat. 11; Pub. L. 98–369, div. A, title VII, §735(c)(7), July 18, 1984, 98 Stat. 983.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–369, §735(c)(7)(D), substituted "(other than a tire taxable under section 4071)" for "(other than an article specified in subsection (b), (c), or (d))".

Subsec. (b). Pub. L. 98–369, §735(c)(7)(A), (B), struck out "and tubes" after "Tires" in heading, and in text substituted "If" for "Except as provided in subsection (d), if", and struck out "or inner tube" before "taxable under section 4071".

Subsec. (c). Pub. L. 98–369, §735(c)(7)(C), redesignated subsec. (e) as (c). Former subsec. (c), which related to automotive parts and accessories, was struck out.

Subsec. (d). Pub. L. 98–369, §735(c)(7)(C), struck out subsec. (d) which related to bicycle tires and tubes.

Subsec. (e). Pub. L. 98–369, §735(c)(7)(C), redesignated subsec. (e) as (c).

1978—Subsec. (a). Pub. L. 95–227 inserted provisions relating to applying first sentence of this subsection to coal taxable under section 4121 of this title.

1976—Subsec. (e). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

1965—Subsec. (b). Pub. L. 89–44, §208(c)(1), (2), struck out references to automobile receiving sets from heading, and "or an automobile radio or television receiving set taxable under section 4141," before "and sells it".

Subsec. (c). Pub. L. 89–44, §208(c)(3), (4), struck out reference to radio components and camera lenses from heading, and "a radio or television component taxable under section 4141, or a camera lens taxable under section 4171," before "and uses it".

1961—Subsec. (a). Pub. L. 87–61 inserted sentence making subsection inapplicable in the case of gasoline used by any person, for nonfuel purposes, as a material in the manufacture or production of another article to be manufactured or produced by him.

1960—Subsec. (a). Pub. L. 86–418, §2(a)(1), substituted "subsection (b), (c), or (d)" for "subsection (b) or (c)".

Subsec. (b). Pub. L. 86–418, §2(a)(2), substituted "Except as provided in subsection (d), if any" for "If any."

Subsecs. (d), (e). Pub. L. 86–418, §2(a)(3), added subsec. (d) and redesignated former subsec. (d) as (e).

1958—Pub. L. 85–859 amended section generally, striking out provisions which related to refrigerator components and to sales free of tax by virtue of section 4220 or 4224 of this title, and substituting provisions making manufacturers, producers and importers of parts or accessories taxable under section 4061(b), radio or television components taxable under section 4141, or camera lenses taxable under section 4171 liable for the tax if they use the parts or accessories otherwise than as material in the manufacture or production of, or as component parts of, any other article to be manufactured or produced by them, for provisions which made section inapplicable with respect to such parts if they were used by them as material in the manufacture or production of, or as a component part of, any article.

1955—Subsec. (a)(1). Act Aug. 11, 1955, §1(a), inserted as tax exempt articles under this chapter, automobile parts or accessories, refrigerator, radio, or television components, or camera lenses taxable under section 4061(b), 4111, or 4171, respectively, of this title.

Subsec. (b). Act Aug. 11, 1955, §1(b), excepted from application of section automobile parts or accessories, refrigerator, radio, or television components, and camera lenses, taxable under sections 4061(b), 4111, 4141, and 4171, respectively, of this title, when for use by the purchaser in the manufacture or production of, or as a component part of, any article.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97–424, to which such amendment relates, see section 736 of Pub. L. 98–369, set out as a note under section 4051 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–227 applicable with respect to sales after Mar. 31, 1978, see section 2(d) of Pub. L. 95–227, set out as an Effective Date note under section 4121 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 applicable with respect to articles sold on or after June 22, 1965, except insofar as such amendments related to the taxes imposed by sections 4061(b), 4091, and 4131 and, as to such taxes, applicable with respect to articles sold on or after January 1, 1966, see section 701(a) of Pub. L. 89–44, set out as a note under section 4161 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–61 applicable only in the case of gasoline used on or after October 1, 1961, see section 208 of Pub. L. 87–61, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–418 applicable only with respect to bicycle tires and tubes sold by the manufacturer, producer, or importer thereof on or after the first day of the first month which begins more than 10 days after April 8, 1960, see section 4 of Pub. L. 86–418, set out as a note under section 4221 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–859 effective on first day of first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1 (c) of Pub. L. 85–859, Sept. 2, 1958, 72 Stat. 1275.

EFFECTIVE DATE OF 1955 AMENDMENT

Amendment by act Aug. 11, 1955, effective on first day of first month which begins more than ten days after Aug. 11, 1955, see section 3 of act Aug. 11, 1955, set out as a note under section 6416 of this title.

§4219. Application of tax in case of sales by other than manufacturer or importer

In case any person acquires from the manufacturer, producer, or importer of an article, by operation of law or as a result of any transaction not taxable under this chapter, the right to sell such article, the sale of such article by such person shall be taxable under this chapter as if made by the manufacturer, producer, or importer, and such person shall be liable for the tax.

(Aug. 16, 1954, ch. 736, 68A Stat. 494.)

[§§4220 to 4225. Repealed. Pub. L. 85–859, title I, §119(a), Sept. 2, 1958, 72 Stat. 1282]

Section 4220, acts Aug. 16, 1954, ch. 736, 68A Stat. 494; Aug. 11, 1955, ch. 805, §1(c), 69 Stat. 689, related to exemption for sales or resales to manufacturers. See section 4221 et seq. of this title.

For sections 4221 to 4225, see Prior Provisions notes set out under sections 4221 to 4225 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective on first day of first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1(c) of Pub. L. 85–859, Sept. 2, 1958, 72 Stat. 1275.

Subchapter G—Exemptions, Registration, Etc.

Sec.

4221. Certain tax-free sales.

4222. Registration.

4223. Special rules relating to further manufacture.

[4224. Repealed.]

4225. Exemption of articles manufactured or produced by Indians.

[4226. Repealed.]

4227. Cross reference.

AMENDMENTS

1986—Pub. L. 99–514, title XVIII, §1899A(74), Oct. 22, 1986, 100 Stat. 2963, substituted "reference" for

"references" in item 4227.

1983—Pub. L. 97–473, title II, §202(b)(9), Jan. 14, 1983, 96 Stat. 2610, purported to substitute "Cross references" for "Cross reference" in item 4227. No change in text was required because item 4227 as originally enacted by section 119(a) of Pub. L. 85–859 already read "Cross references".

1976—Pub. L. 94–455, title XIX, §1904(b)(3), Oct. 4, 1976, 90 Stat. 1815, struck out item 4226 "Floor stocks taxes".

1965—Pub. L. 89–44, title I, §101(b)(5), June 21, 1965, 79 Stat. 136, struck out item 4224 "Exemption for articles taxable as jewelry."

1958—Pub. L. 85–859, title I, §119(a), Sept. 2, 1958, 72 Stat. 1282, added subchapter heading and section analysis.

§4221. Certain tax-free sales

(a) General rule

Under regulations prescribed by the Secretary, no tax shall be imposed under this chapter (other than under section 4121 or 4081) on the sale by the manufacturer (or under subchapter A or C of chapter 31 on the first retail sale) of an article—

(1) for use by the purchaser for further manufacture, or for resale by the purchaser to a second purchaser for use by such second purchaser in further manufacture,

(2) for export, or for resale by the purchaser to a second purchaser for export,

(3) for use by the purchaser as supplies for vessels or aircraft,

(4) to a State or local government for the exclusive use of a State or local government,

(5) to a nonprofit educational organization for its exclusive use, or

(6) to a qualified blood collector organization (as defined in section 7701(a)(49)) for such organization's exclusive use in the collection, storage, or transportation of blood,

but only if such exportation or use is to occur before any other use. Paragraphs (4), (5), and (6) shall not apply to the tax imposed by section 4064. In the case of taxes imposed by section 4051,[1] or 4071, paragraphs (4) and (5) shall not apply on and after October 1, 2016. In the case of the tax imposed by section 4131, paragraphs (3), (4), and (5) shall not apply and paragraph (2) shall apply only if the use of the exported vaccine meets such requirements as the Secretary may by regulations prescribe. In the case of taxes imposed by subchapter A of chapter 31, paragraphs (1), (3), (4), and (5) shall not apply. In the case of taxes imposed by subchapter C or D, paragraph (6) shall not apply. In the case of the tax imposed by section 4191, paragraphs (3), (4), (5), and (6) shall not apply.

(b) Proof of resale for further manufacture; proof of export

Where an article has been sold free of tax under subsection (a)—

(1) for resale by the purchaser to a second purchaser for use by such second purchaser in further manufacture, or

(2) for export, or for resale by the purchaser to a second purchaser for export,

subsection (a) shall cease to apply in respect of such sale of such article unless, within the 6-month period which begins on the date of the sale by the manufacturer (or, if earlier, on the date of shipment by the manufacturer), the manufacturer receives proof that the article has been exported or resold for use in further manufacture.

(c) Manufacturer relieved from liability in certain cases

In the case of any article sold free of tax under this section (other than a sale to which subsection (b) applies), and in the case of any article sold free of tax under section 4001(c), 4001(d), or 4053(6), if the manufacturer in good faith accepts a certification by the purchaser that the article will be used in accordance with the applicable provisions of law, no tax shall thereafter be imposed under this chapter in respect of such sale by such manufacturer.

(d) Definitions

For purposes of this section—

(1) Manufacturer

The term "manufacturer" includes a producer or importer of an article, and, in the case of taxes imposed by subchapter A or C of chapter 31, includes the retailer with respect to the first retail sale.

(2) Export

The term "export" includes shipment to a possession of the United States; and the term "exported" includes shipped to a possession of the United States.

(3) Supplies for vessels or aircraft

The term "supplies for vessels or aircraft" means fuel supplies, ships' stores, sea stores, or legitimate equipment on vessels of war of the United States or of any foreign nation, vessels employed in the fisheries or in the whaling business, or vessels actually engaged in foreign trade or trade between the Atlantic and Pacific ports of the United States or between the United States and any of its possessions. For purposes of the preceding sentence, the term "vessels" includes civil aircraft employed in foreign trade or trade between the United States and any of its possessions, and the term "vessels of war of the United States or of any foreign nation" includes aircraft owned by the United States or by any foreign nation and constituting a part of the armed forces thereof.

(4) State or local government

The term "State or local government" means any State, any political subdivision thereof, or the District of Columbia.

(5) Nonprofit educational organization

The term "nonprofit educational organization" means an educational organization described in section 170(b)(1)(A)(ii) which is exempt from income tax under section 501(a). The term also includes a school operated as an activity of an organization described in section 501(c)(3) which is exempt from income tax under section 501(a), if such school normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

(6) Use in further manufacture

An article shall be treated as sold for use in further manufacture if—

(A) such article is sold for use by the purchaser as material in the manufacture or production of, or as a component part of, another article taxable under this chapter to be manufactured or produced by him; or

(B) in the case of gasoline taxable under section 4081, such gasoline is sold for use by the purchaser, for nonfuel purposes, as a material in the manufacture or production of another article to be manufactured or produced by him.

(7) Qualified bus

(A) In general

The term "qualified bus" means—

(i) an intercity or local bus, and

(ii) a school bus.

(B) Intercity or local bus

The term "intercity or local bus" means any automobile bus which is used predominantly in furnishing (for compensation) passenger land transportation available to the general public if—

(i) such transportation is scheduled and along regular routes, or

(ii) the seating capacity of such bus is at least 20 adults (not including the driver).

(C) School bus

The term "school bus" means any automobile bus substantially all the use of which is in

transporting students and employees of schools. For purposes of the preceding sentence, the term "school" means an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are carried on.

(e) Special rules

(1) Reciprocity required in case of civil aircraft

In the case of articles sold for use as supplies for aircraft, the privileges granted under subsection (a)(3) in respect of civil aircraft employed in foreign trade or trade between the United States and any of its possessions, in respect of aircraft registered in a foreign country, shall be allowed only if the Secretary of the Treasury has been advised by the Secretary of Commerce that he has found that such foreign country allows, or will allow, substantially reciprocal privileges in respect of aircraft registered in the United States. If the Secretary of the Treasury is advised by the Secretary of Commerce that he has found that a foreign country has discontinued or will discontinue the allowance of such privileges, the privileges granted under subsection (a)(3) shall not apply thereafter in respect of civil aircraft registered in that foreign country and employed in foreign trade or trade between the United States and any of its possessions.

(2) Tires

(A) Tax-free sales

Under regulations prescribed by the Secretary, no tax shall be imposed under section 4071 on the sale by the manufacturer of a tire if—

(i) such tire is sold for use by the purchaser for sale on or in connection with the sale of another article manufactured or produced by such purchaser; and

(ii) such other article is to be sold by such purchaser in a sale which either will satisfy the requirements of paragraph (2), (3), (4), or (5) of subsection (a) for a tax-free sale, or would satisfy such requirements but for the fact that such other article is not subject to tax under this chapter.

(B) Proof

Where a tire has been sold free of tax under this paragraph, this paragraph shall cease to apply unless, within the 6-moth period which begins on the date of the sale by him (or, if earlier on the date of the shipment by him), the manufacturer of such tire receives proof that the other article referred to in clause (ii) of subparagraph (A) has been sold in a manner which satisfies the requirements of such clause (ii) (including in the case of a sale for export, proof of export of such other article).

(C) Subsection (a)(1) does not apply

Paragraph (1) of subsection (a) shall not apply with respect to the tax imposed under section 4071 on the sale of a tire.

(3) Tires used on intercity, local, and school buses

Under regulations prescribed by the Secretary, the tax imposed by section 4071 shall not apply in the case of tires sold for use by the purchaser on or in connection with a qualified bus.

(Added Pub. L. 85–859, title I, §119(a), Sept. 2, 1958, 72 Stat. 1282; amended Pub. L. 86–70, §22(a), June 25, 1959, 73 Stat. 146; Pub. L. 86–344, §2(b), Sept. 21, 1959, 73 Stat. 617; Pub. L. 86–418, §1, Apr. 8, 1960, 74 Stat. 38; Pub. L. 86–624, §18(e), July 12, 1960, 74 Stat. 416; Pub. L. 87–61, title II, §205(a), June 29, 1961, 75 Stat. 126; Pub. L. 89–44, title II, §208(d), title VIII, §801(c), (d)(1), June 21, 1965, 79 Stat. 141, 158; Pub. L. 91–172, title I, §101(j)(26), Dec. 30, 1969, 83 Stat. 529; Pub. L. 92–178, title IV, §401(a)(3)(A), Dec. 10, 1971, 85 Stat. 531; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–227, §2(b)(2), Feb. 10, 1978, 92 Stat. 12; Pub. L. 95–600, title VII, §701(ff)(2)(A), Nov. 6, 1978, 92 Stat. 2924; Pub. L. 95–618, title II, §§201(c)(1), 232(a), 233(c)(1), (2), Nov. 9, 1978, 92 Stat. 3183, 3189, 3191, 3192; Pub. L. 96–222, title I, §108(c)(5), Apr. 1, 1980, 94 Stat. 227; Pub. L. 97–424, title V, §§515(b)(1),

516(b)(2), Jan. 6, 1983, 96 Stat. 2181, 2183; Pub. L. 98–369, div. A, title VII, §735(c)(8), July 18, 1984, 98 Stat. 983; Pub. L. 99–499, title V, §521(d)(4), Oct. 17, 1986, 100 Stat. 1779; Pub. L. 99–514, title XVII, §1703(c)(2)(C), Oct. 22, 1986, 100 Stat. 2776; Pub. L. 100–17, title V, §502(b)(4), Apr. 2, 1987, 101 Stat. 257; Pub. L. 100–203, title IX, §9201(b)(1), title X, §10502(d)(4), Dec. 22, 1987, 101 Stat. 1330–330, 1330–444; Pub. L. 101–239, title VII, §7841(d)(17), Dec. 19, 1989, 103 Stat. 2429; Pub. L. 101–508, title XI, §§11211(d)(3), 11221(b), (d)(1), (2), Nov. 5, 1990, 104 Stat. 1388–427, 1388–444; Pub. L. 102–240, title VIII, §8002(b)(3), Dec. 18, 1991, 105 Stat. 2203; Pub. L. 103–66, title XIII, §13161(b)(1), Aug. 10, 1993, 107 Stat. 452; Pub. L. 105–178, title IX, §9002(b)(1), June 9, 1998, 112 Stat. 500; Pub. L. 105–206, title VI, §6023(17), July 22, 1998, 112 Stat. 825; Pub. L. 108–357, title VIII, §853(d)(2)(F), Oct. 22, 2004, 118 Stat. 1613; Pub. L. 109–59, title XI, §11101(b)(1), Aug. 10, 2005, 119 Stat. 1944; Pub. L. 109–280, title XII, §1207(b)(1)–(3)(A), Aug. 17, 2006, 120 Stat. 1070; Pub. L. 111–152, title I, §1405(b)(1), Mar. 30, 2010, 124 Stat. 1065; Pub. L. 112–30, title I, §142(d), Sept. 16, 2011, 125 Stat. 356; Pub. L. 112–102, title IV, §402(d), Mar. 30, 2012, 126 Stat. 282; Pub. L. 112–140, title IV, §402(c), June 29, 2012, 126 Stat. 403; Pub. L. 112–141, div. D, title I, §40102(d)(1), July 6, 2012, 126 Stat. 845.)

CODIFICATION

Section 1207(b)(1)–(3)(A) of Pub. L. 109–280, which directed the amendment of section 4221 without specifying the act to be amended, was executed to this section, which is section 4221 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

PRIOR PROVISIONS

A prior section 4221, act Aug. 16, 1954, ch. 736, 68A Stat. 495, related to exemption for articles taxable as jewelry, prior to repeal by Pub. L. 85–859, §119(a).

AMENDMENTS

2012—Subsec. (a). Pub. L. 112–141 substituted "October 1, 2016" for "July 1, 2012" in concluding provisions.

Pub. L. 112–140, §§1(c), 402(c), temporarily substituted "July 7, 2012" for "July 1, 2012" in concluding provisions. See Effective and Termination Dates of 2012 Amendment note below.

Pub. L. 112–102 substituted "July 1, 2012" for "April 1, 2012" in concluding provisions.

2011—Subsec. (a). Pub. L. 112–30 substituted "April 1, 2012" for "October 1, 2011" in concluding provisions.

2010—Subsec. (a). Pub. L. 111–152 inserted at end of concluding provisions "In the case of the tax imposed by section 4191, paragraphs (3), (4), (5), and (6) shall not apply."

2006—Subsec. (a). Pub. L. 109–280, §1207(b)(2), (3)(A), in concluding provisions, substituted "Paragraphs (4), (5), and (6)" for "Paragraphs (4) and (5)" and inserted at end "In the case of taxes imposed by subchapter C or D, paragraph (6) shall not apply." See Codification note above.

Subsec. (a)(6). Pub. L. 109–280, §1207(b)(1), added par. (6). See Codification note above.

2005—Subsec. (a). Pub. L. 109–59 substituted "2011" for "2005" in concluding provisions.

2004—Subsec. (a). Pub. L. 108–357 substituted "or 4081" for ", 4081, or 4091" in introductory provisions.

1998—Subsec. (a). Pub. L. 105–178 substituted "2005" for "1999" in concluding provisions.

Subsec. (c). Pub. L. 105–206 substituted "4053(6)" for "4053(a)(6)".

1993—Subsec. (c). Pub. L. 103–66 substituted "4001(d)" for "4002(b), 4003(c), 4004(a)".

1991—Subsec. (a). Pub. L. 102–240 substituted "1999" for "1995" in concluding provisions.

1990—Subsec. (a). Pub. L. 101–508, §11221(b), substituted "subchapter A or C of chapter 31" for "section 4051" in introductory provisions and inserted at end "In the case of taxes imposed by subchapter A of chapter 31, paragraphs (1), (3), (4), and (5) shall not apply."

Pub. L. 101–508, §11211(d)(3), substituted "1995" for "1993" in concluding provisions.

Subsec. (c). Pub. L. 101–508, §11221(d)(1), substituted "section 4001(c), 4002(b), 4003(c), 4004(a), or 4053(a)(6)" for "section 4053(a)(6)".

Subsec. (d)(1). Pub. L. 101–508, §11221(d)(2), substituted "taxes imposed by subchapter A or C of chapter 31" for "the tax imposed by section 4051".

1989—Subsec. (c). Pub. L. 101–239 struck out "or 4083" after "4053(a)(6)".

1987—Subsec. (a). Pub. L. 100–203, §10502(d)(4), substituted "(other than under section 4121, 4081, or 4091) on the sale by the manufacturer" for "(other than under section 4121 or section 4081 (at the Highway

Trust Fund financing rate)) on the sale by the manufacturer" in introductory text.

Pub. L. 100–203, §9201(b)(1), inserted at end "In the case of the tax imposed by section 4131, paragraphs (3), (4), and (5) shall not apply and paragraph (2) shall apply only if the use of the exported vaccine meets such requirements as the Secretary may by regulations prescribe."

Pub. L. 100–17 substituted "1993" for "1988".

1986—Subsec. (a). Pub. L. 99–514, as amended by Pub. L. 99–499, §521(d)(4)(B), in introductory text, inserted "or section 4081 (at the Highway Trust Fund financing rate)" after "section 4121" as the probable intent of Congress, notwithstanding directory language that the insertion be made before "section 4121", and substituted "or 4071" for "4071, or 4081 (at the Highway Trust Fund financing rate)" in last sentence.

Pub. L. 99–499, §521(d)(4)(A), inserted "(at the Highway Trust Fund financing rate)" after "4081" in last sentence.

1984—Subsec. (a). Pub. L. 98–369, §735(c)(8)(A), inserted "(or under section 4051 on the first retail sale)".

Subsec. (c). Pub. L. 98–369, §735(c)(8)(B), substituted "section 4053(a)(6)" for "section 4063(a)(6) or (7), 4063(b), 4063(e),".

Subsec. (d)(1). Pub. L. 98–369, §735(c)(8)(C), inserted ", and, in the case of the tax imposed by section 4051, includes the retailer with respect to the first retail sale".

Subsec. (d)(6). Pub. L. 98–369, §735(c)(8)(D)(i), struck out provision at end that for purposes of subparagraph (B), the rebuilding of a part or accessory which is exempt from tax under section 4063(c) shall not constitute the manufacture or production of such part or accessory.

Subsec. (d)(6)(A). Pub. L. 98–369, §735(c)(8)(D)(ii), (iv), struck out "(other than an article referred to in subparagraph (B))" after "such article", and inserted "or" at end.

Subsec. (d)(6)(B), (C). Pub. L. 98–369, §735(c)(8)(D)(i), (iii), redesignated subpar. (C) as (B) and struck out former subpar. (B) which related to parts or accessories taxable under former section 4061(b) of this title.

Subsec. (e)(2). Pub. L. 98–369, §735(c)(8)(E), (F), struck out "and tubes" from heading, and in text struck out "or inner tube" and "or tube", as the case may be, after "tire" wherever appearing.

Subsec. (e)(3) to (6). Pub. L. 98–369, §735(c)(8)(G), added par. (3), struck out par. (4) which related to bicycle tires or tubes sold to bicycle manufacturers in general, the definition of a bicycle tire, and proof, struck out par. (5) which related to tires, tubes and tread rubber used on intercity, local, and school buses, and struck out par. (6) which related to bus parts and accessories.

1983—Subsec. (a). Pub. L. 97–424, §516(b)(2), inserted provision that, in the case of taxes imposed by section 4051, 4071, or 4081, pars. (4) and (5) shall not apply on and after Oct. 1, 1988.

Subsec. (c). Pub. L. 97–424, §515(b)(1), substituted "or 4083" for "4083, or 4093" after "4063(e),".

1980—Subsec. (e)(6). Pub. L. 96–222 inserted provisions respecting selling by a purchaser or a second purchaser.

1978—Subsec. (a). Pub. L. 95–618, §201(c)(1), inserted provision that paragraphs (4) and (5) not apply to the tax imposed by section 4064.

Pub. L. 95–227 inserted "(other than under section 4121)" after "this chapter".

Subsec. (c). Pub. L. 95–600 substituted "4063(b), 4063(e)," for "4063(b),".

Subsec. (d)(7). Pub. L. 95–618, §233(c)(2), added par. (7).

Subsec. (e)(5). Pub. L. 95–618, §233(c)(1), substituted provisions relating to the applicability of the taxes imposed by section 4071(a)(1) and (3) in the case of tires or inner tubes for tires sold for use by the purchaser on or in connection with a qualified bus and the tax imposed by section 4071(a)(4) in the case of tread rubber sold for use by the purchaser in the recapping or retreading of any tire to be used by the purchaser on or in connection with a qualified bus for provisions relating to the applicability of the tax imposed by section 4061(a) to a bus sold to any person for use exclusively in transporting students and employees of schools operated by State or local governments or by nonprofit educational organizations.

Subsec. (e)(6). Pub. L. 95–618, §232(a), added par. (6).

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

1971—Subsec. (c). Pub. L. 92–178 inserted reference to section 4063(a)(6) or (7).

1969—Subsec. (d)(5). Pub. L. 91–172 substituted "section 170(b)(1)(A)(ii)" for "section 503(b)(2)".

1965—Subsec. (d)(6)(B). Pub. L. 89–44, §208(d)(1), struck out "a radio or television component taxable under section 4141, or a camera lens taxable under section 4171,".

Subsec. (d)(6). Pub. L. 89–44, §801(c), inserted sentence providing that for purpose of subpar. (B), the rebuilding of a part or accessory which is exempt from tax under section 4063(c) shall not constitute the manufacture or production of such part or accessory.

Subsec. (e)(2). Pub. L. 89–44, §208(d)(2)–(5), struck out reference to automobile receiving sets from catchline and wherever appearing in subpars. (A) to (C), and reference to tax imposed under section 4141 of this title from subpars. (A) and (C).

Subsec. (e)(3). Pub. L. 89–44, §208(d)(6), struck out par. (3) which related to musical instruments sold for religious use.

Subsec. (e)(5). Pub. L. 89–44, §801(d)(1), added par. (5).

Subsec. (f). Pub. L. 89–44, §208(d)(7), struck out subsec. (f) which related to sales of mechanical pencils and pens for export.

1961—Subsec. (d)(6)(C). Pub. L. 87–61 added subpar. (C).

1960—Subsec. (d)(4). Pub. L. 86–624 substituted "any State, any political subdivision thereof, or the District of Columbia" for "any State, Hawaii, the District of Columbia, or any political subdivision of any of the foregoing".

Subsec. (e)(4). Pub. L. 86–418 added par. (4).

1959—Subsec. (d)(4). Pub. L. 86–70 struck out "Alaska," before "Hawaii".

Subsec. (d)(5). Pub. L. 86–344 included in definition of "nonprofit educational organization" a school operated as an activity of certain organizations exempt from the income tax and having a regular situs, faculty, curriculum and student body.

EFFECTIVE AND TERMINATION DATES OF 2012 AMENDMENT

Amendment by Pub. L. 112–141 effective July 1, 2012, see section 40102(f) of Pub. L. 112–141, set out as a note under section 460l–11 of Title 16, Conservation.

Amendment by Pub. L. 112–140 to cease to be effective on July 6, 2012, with text as amended by Pub. L. 112–140 to revert back to read as it did on the day before June 29, 2012, and amendments by Pub. L. 112–141 to be executed as if Pub. L. 112–140 had not been enacted, see section 1(c) of Pub. L. 112–140, set out as a note under section 101 of Title 23, Highways.

Amendment by Pub. L. 112–140 effective July 1, 2012, see section 402(f)(1) of Pub. L. 112–140, set out as a note under section 460l–11 of Title 16, Conservation.

Amendment by Pub. L. 112–102 effective Apr. 1, 2012, see section 402(f) of Pub. L. 112–102, set out as a note under section 460l–11 of Title 16, Conservation.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112–30 effective Oct. 1, 2011, see section 142(f) of Pub. L. 112–30, set out as a note under section 460l–11 of Title 16, Conservation.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–152 applicable to sales after Dec. 31, 2012, see section 1405(c) of Pub. L. 111–152, set out as an Effective Date note under section 4191 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 effective Jan. 1, 2007, see section 1207(g)(1) of Pub. L. 109–280, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to aviation-grade kerosene removed, entered, or sold after Dec. 31, 2004, see section 853(e) of Pub. L. 108–357, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 effective Jan. 1, 1993, see section 13161(c) of Pub. L. 103–66, set out as a note under section 4001 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11221(b), (d)(1), (2) of Pub. L. 101–508 effective Jan. 1, 1991, with exception for contracts binding on Sept. 30, 1990, and at all times thereafter, see section 11221(f) of Pub. L. 101–508, set out as an Effective Date note under section 4001 of this title.

EFFECTIVE DATE OF 1987 AMENDMENTS

Pub. L. 100–647, title I, §1017(c)(5), Nov. 10, 1988, 102 Stat. 3576, provided that: "The amendment made by section 10502(d)(4) of the Revenue Act of 1987 [Pub. L. 100–203, amending this section] shall be treated as if included in the amendments made by section 1703 of the Reform Act [Pub. L. 99–514] except that the reference to section 4091 of the Internal Revenue Code of 1986 shall not apply to sales before April 1, 1988."

Amendment by section 9201(b)(1) of Pub. L. 100–203 effective Jan. 1, 1988, see section 9201(d) of Pub. L. 100–203, set out as an Effective Date note under section 4131 of this title.

Amendment by section 10502(d)(4) of Pub. L. 100–203 applicable to sales after Mar. 31, 1988, see section 10502(e) of Pub. L. 100–203, set out as a note under section 40 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99–514 applicable to gasoline removed (as defined in section 4082 of this title as amended by section 1703 of Pub. L. 99–514) after Dec. 31, 1987, see section 1703(h) of Pub. L. 99–514, set out as a note under section 4081 of this title.

Amendment by Pub. L. 99–499 effective Jan. 1, 1987, see section 521(e) of Pub. L. 99–499, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97–424, to which such amendment relates, see section 736 of Pub. L. 98–369, set out as a note under section 4051 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 515(b)(1) of Pub. L. 97–424 applicable to articles sold after Jan. 6, 1983, see section 515(c) of Pub. L. 97–424, set out as a note under section 34 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective as if included in the provision of the Energy Tax Act of 1978, Pub. L. 95–618, to which such amendment relates, see section 108(c)(7) of Pub. L. 96–222, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by section 201(c)(1) of Pub. L. 95–618 applicable with respect to 1980 and later model year automobiles, see section 201(g) of Pub. L. 95–618, set out as an Effective Date note under section 4064 of this title.

Pub. L. 95–618, title II, §232(c), Nov. 9, 1978, 92 Stat. 3190, provided that: "The amendments made by this section [amending this section and section 6416 of this title] shall apply to sales on or after the first day of the first calendar month beginning more than 10 days after the date of the enactment of this Act [Nov. 9, 1978]."

Amendment by section 233(c)(1), (2) of Pub. L. 95–618 effective on first day of first calendar month which begins more than 10 days after Nov. 9, 1978, see section 233(d) of Pub. L. 95–618, set out as a note under section 34 of this title.

Pub. L. 95–600, title VII, §701(ff)(3), Nov. 6, 1978, 92 Stat. 2925, provided that: "The amendments made by this subsection [amending this section and sections 4061 and 4222 of this title] shall take effect on the first day of the first calendar month beginning more than 20 days after the date of the enactment of this Act [Nov. 6, 1978]."

Amendment by Pub. L. 95–227 applicable with respect to sales after Mar. 31, 1978, see section 2(d) of Pub. L. 95–227, set out as an Effective Date note section 4121 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–178 applicable with respect to articles sold on or after the day after Dec. 10, 1971, see section 401(h)(1) of Pub. L. 92–178, set out as a note under section 4071 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 effective on Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 208(d) of Pub. L. 89–44 applicable with respect to articles sold on or after June 22, 1965, except insofar as such amendments related to the taxes imposed by sections 4061(b), 4091, and 4131 and, as to such taxes, applicable with respect to articles sold on or after January 1, 1966, see section 701(a) of Pub. L. 89–44, set out as a note under section 4161 of this title.

Amendment by section 801(c), (d)(1) of Pub. L. 89–44 applicable with respect to articles sold on or after June 22, 1965, see section 801(e) of Pub. L. 89–44, set out as a note under section 4261 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–61 applicable only in the case of gasoline sold on or after Oct. 1, 1961, see section 208 of Pub. L. 87–61, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1960 AMENDMENTS

Amendment by Pub. L. 86–624 effective on Aug. 21, 1959, see section 18(k) of Pub. L. 86–624, set out as a note under section 3121 of this title.

Pub. L. 86–418, §4, Apr. 8, 1960, 74 Stat. 39, provided that: "The amendments made by this Act [amending this section and sections 4218, 4223, and 6416 of this title] shall apply only with respect to bicycle tires and tubes sold by the manufacturer, producer, or importer thereof on or after the first day of the first month which begins more than 10 days after the date of the enactment of this Act [Apr. 8, 1960]."

EFFECTIVE DATE OF 1959 AMENDMENTS

Amendment by Pub. L. 86–344 effective Jan. 1, 1959, see section 2(e) of Pub. L. 86–344, Sept. 21, 1959, 73 Stat. 618.

Amendment by Pub. L. 86–70 effective Jan. 3, 1959, see section 22(i) of Pub. L. 86–70, set out as a note under section 3121 of this title.

EFFECTIVE DATE

Section effective on first day of first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1(c) of Pub. L. 85–859, Sept. 2, 1958, 72 Stat. 1275.

[1] *So in original. The comma probably should not appear.*

§4222. Registration

(a) General rule

Except as provided in subsection (b), section 4221 shall not apply with respect to the sale of any article unless the manufacturer, the first purchaser, and the second purchaser (if any) are all registered under this section. Registration under this section shall be made at such time, in such manner and form, and subject to such terms and conditions, as the Secretary may by regulations prescribe. A registration under this section may be used only in accordance with regulations prescribed under this section.

(b) Exceptions

(1) Purchases by State and local governments

Subsection (a) shall not apply to any State or local government in connection with the purchase by it of any article if such State or local government complies with such regulations relating to the use of exemption certificates in lieu of registration as the Secretary shall prescribe to carry out the purpose of this paragraph.

(2) Under regulations

Subject to such regulations as the Secretary may prescribe for the purpose of this paragraph, the Secretary may relieve the purchaser or the second purchaser, or both, from the requirement of registering under this section.

(3) Certain purchases and sales by the United States

Subsection (a) shall apply to purchases and sales by the United States only to the extent provided by regulations prescribed by the Secretary.

[(4) Repealed. Pub. L. 89–44, title II, §208(e), June 21, 1965, 79 Stat. 141]

(5) Supplies for vessels or aircraft

Subsection (a) shall not apply to a sale of an article for use by the purchaser as supplies for any vessel or aircraft if such purchaser complies with such regulations relating to the use of exemption certificates in lieu of registration as the Secretary shall prescribe to carry out the purpose of this paragraph.

(c) Denial, revocation, or suspension of registration

Under regulations prescribed by the Secretary, the registration of any person under this section may be denied, revoked, or suspended if the Secretary determines—

(1) that such person has used such registration to avoid the payment of any tax imposed by this chapter, or to postpone or in any manner to interfere with the collection of any such tax, or

(2) that such denial, revocation, or suspension is necessary to protect the revenue.

The denial, revocation, or suspension under this subsection shall be in addition to any penalty provided by law for any act or failure to act.

(d) Registration in the case of certain other exemptions

The provisions of this section may be extended to, and made applicable with respect to, the exemptions provided by sections 4001(c), 4001(d), 4053(6), 4064(b)(1)(C), 4101, and 4182(b), and the exemptions authorized under section 4293 in respect of the taxes imposed by this chapter, to the extent provided by regulations prescribed by the Secretary.

(e) Definitions

Terms used in this section which are defined in section 4221(d) shall have the meaning given to them by section 4221(d).

(Added Pub. L. 85–859, title I, §119(a), Sept. 2, 1958, 72 Stat. 1284; amended Pub. L. 89–44, title II, §208(e), title VIII, §802(c), June 21, 1965, 79 Stat. 141, 159; Pub. L. 92–178, title IV, §401(a)(3)(B), Dec. 10, 1971, 85 Stat. 531; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–600, title VII, §701(ff)(2)(B), Nov. 6, 1978, 92 Stat. 2925; Pub. L. 95–618, title II, §§201(e), 231(f)(2), Nov. 9, 1978, 92 Stat. 3184, 3189; Pub. L. 97–424, title V, §515(b)(2), Jan. 6, 1983, 96 Stat. 2181; Pub. L. 98–369, div. A, title VII, §735(c)(9), July 18, 1984, 98 Stat. 983; Pub. L. 100–647, title I, §1017(c)(16), Nov. 10, 1988, 102 Stat. 3577; Pub. L. 101–508, title XI, §§11212(b)(2), 11221(d)(3), Nov. 5, 1990, 104 Stat. 1388–431, 1388–444; Pub. L. 103–66, title XIII, §13161(b)(2), Aug. 10, 1993, 107 Stat. 452; Pub. L. 105–34, title XIV, §1431(a), Aug. 5, 1997, 111 Stat. 1050; Pub. L. 105–206, title VI, §6023(17), July 22, 1998, 112 Stat. 825.)

PRIOR PROVISIONS

A prior section 4222, act Aug. 16, 1954, ch. 736, 68 Stat. 495, related to exemption from tax of certain supplies for vessels and airplanes, prior to repeal by Pub. L. 85–859, §119(a). See section 4221 of this title.

AMENDMENTS

1998—Subsec. (d). Pub. L. 105–206 substituted "4053(6)" for "4053(a)(6)".

1997—Subsec. (b)(2). Pub. L. 105–34 substituted "Under regulations" for "Export" in heading and struck out "in the case of any sale or resale for export," after "this paragraph," in text.

1993—Subsec. (d). Pub. L. 103–66 substituted "4001(d)" for "4002(b), 4003(c), 4004(a)".

1990—Subsec. (c). Pub. L. 101–508, §11212(b)(2), substituted "Denial, revocation, or suspension" for "Revocation or suspension" in heading, "denied, revoked, or suspended" for "revoked or suspended" in introductory provisions, and "denial, revocation, or suspension" for "revocation or suspension" in par. (2) and concluding provisions.

Subsec. (d). Pub. L. 101–508, §11221(d)(3), substituted "sections 4001(c), 4002(b), 4003(c), 4004(a), 4053(a)(6)" for "sections 4053(a)(6)".

1988—Subsec. (d). Pub. L. 100–647 substituted "4101" for "4083".

1984—Subsec. (d). Pub. L. 98–369 substituted "4053(a)(6)" for "4063(a)(7), 4063(b), 4063(e)".

1983—Subsec. (d). Pub. L. 97–424 struck out "4093," after "4083,".

1978—Subsec. (d). Pub. L. 95–618 substituted "4063(a)(7), 4063(b), 4064(b)(1)(C)," for "4063(a)(6) and (7), 4063(b),".

Pub. L. 95–600 substituted "4063(b), 4063(e)," for "4063(b),".

1976—Subsecs. (a) to (d). Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

1971—Subsec. (d). Pub. L. 92–178 inserted reference to section 4063(a)(6) and (7).

1965—Subsec. (b)(4). Pub. L. 89–44, §208(e), struck out par. (4) which related to mechanical pencils, fountain pens, and ball point pens.

Subsec. (b)(5). Pub. L. 89–44, §802(c), added par. (5).

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XIV, §1431(b), Aug. 5, 1997, 111 Stat. 1050, provided that: "The amendments made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 effective Jan. 1, 1993, see section 13161(c) of Pub. L. 103–66, set out as a note under section 4001 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11212(b)(2) of Pub. L. 101–508 effective Dec. 1, 1990, see section 11212(f)(2) of Pub. L. 101–508, set out as a note under section 4081 of this title.

Amendment by section 11221(d)(3) of Pub. L. 101–508 effective Jan. 1, 1991, with exception for contract binding on Sept. 30, 1990, and at all times thereafter, see section 11221(f) of Pub. L. 101–508, set out as an Effective Date note under section 4001 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97–424, to which such amendment relates, see section 736 of Pub. L. 98–369, set out as a note under section 4051 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–424 applicable to articles sold after Jan. 6, 1983, see section 515(c) of Pub. L. 97–424, set out as a note under section 34 of this title.

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by section 201(e) of Pub. L. 95–618 applicable with respect to 1980 and later model year automobiles, see section 201(g) of Pub. L. 95–618, set out as an Effective Date note under section 4064 of this title.

Pub. L. 95–618, title II, §231(g), Nov. 9, 1978, 92 Stat. 3189, provided that:

"(1) The amendments made by subsections (a) and (f) [amending this section and sections 4063 and 6412 of this title] shall apply with respect to articles sold after the date of the enactment of this Act [Nov. 9, 1978].

"(2) For purposes of paragraph (1), an article shall not be considered sold on or before the date of the enactment of this Act [Nov. 9, 1978] unless possession or right to possession passes to the purchaser on or before such date.

"(3) In the case of—

"(A) a lease,

"(B) a contract for the sale of an article providing that the price shall be paid by installments and title to the article sold does not pass until a future date notwithstanding partial payment by installments,

"(C) a conditional sale, or

"(D) a chattel mortgage arrangement providing that the sale price shall be paid in installments,

entered into on or before the date of the enactment of this Act [Nov. 9, 1978], payments made after such date with respect to the article leased or sold shall, for purposes of this subsection, be considered as payments made with respect to an article sold after such date, if the lessor or vendor establishes that the amount of payments payable after such date with respect to such article has been reduced by an amount equal to that portion of the tax applicable with respect to the lease or sale of such article which is due and payable after such date. If the lessor or vendor does not establish that the payments have been so reduced, they shall be treated as payments made in respect of an article sold on or before the date of the enactment of this Act."

Amendment by Pub. L. 95–600 effective on first day of first calendar month beginning more than 20 days after Nov. 6, 1978, see section 701(ff)(3) of Pub. L. 95–600, set out as a note under section 4221 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–178 applicable with respect to articles sold on or after the day after Dec. 10, 1971, see section 401(h)(1) of Pub. L. 92–178, set out as a note under section 4071 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 208(e) of Pub. L. 89–44 applicable with respect to articles sold on or after June 22, 1965, except insofar as such amendments related to the taxes imposed by sections 4061(b), 4091, and 4131 and, as to such taxes, applicable with respect to articles sold on or after January 1, 1966, see section 701(a) of Pub. L. 89–44, set out as a note under section 4161 of this title.

Amendment by section 802(c) of Pub. L. 89–44 applicable with respect to articles sold on or after July 1, 1965, see section 802(d)(1) of Pub. L. 89–44, set out as a note under section 4082 of this title.

§4223. Special rules relating to further manufacture

(a) Purchasing manufacturer to be treated as the manufacturer

For purposes of this chapter, a manufacturer or producer to whom an article is sold or resold free of tax under section 4221(a)(1) for use by him in further manufacture shall be treated as the manufacturer or producer of such article.

(b) Computation of tax

If the manufacturer or producer referred to in subsection (a) incurs liability for tax under this chapter on his sale or use of an article referred to in subsection (a) and the tax is based on the price for which the article is sold, the article shall be treated as having been sold by him—

(1) at the price for which the article was sold by him (or, where the tax is on his use of the article, at the price referred to in section 4218(c)); or

(2) if he so elects and establishes such price to the satisfaction of the Secretary—

(A) at the price for which the article was sold to him; or

(B) at the price for which the article was sold by the person who (without regard to subsection (a)) is the manufacturer, producer, or importer of such article.

For purposes of this subsection, the price for which the article was sold shall be determined as provided in section 4216. For purposes of paragraph (2) no adjustment or readjustment shall be made in such price by reason of any discount, rebate, allowance, return or repossession of a container or covering, or otherwise. An election under paragraph (2) shall be made in the return reporting the tax applicable to the sale or use of the article, and may not be revoked.

(Added Pub. L. 85–859, title I, §119(a), Sept. 2, 1958, 72 Stat. 1285; amended Pub. L. 86–418, §2(b), Apr. 8, 1960, 74 Stat. 38; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–369, div. A, title VII, §735(c)(10), July 18, 1984, 98 Stat. 983.)

PRIOR PROVISIONS

A prior section 4223, act Aug. 16, 1954, ch. 736, 68A Stat. 495, related to exemption of articles manufactured or produced by Indians, prior to repeal by Pub. L. 85–859, §119(a). See section 4225 of this title.

AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98–369 substituted "4218(c)" for "section 4218(e)".

1976—Subsec. (b) Pub. L. 94–455 struck out "or his delegate" after "Secretary".

1960—Subsec. (b)(1). Pub. L. 86–418 substituted "section 4218(e)" for "section 4218(d)".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97–424, to which such amendment relates, see section 736 of Pub. L. 98–369, set out as a note under section 4051 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–418 applicable only with respect to bicycle tires and tubes sold by the manufacturer, producer, or importer thereof on or after the first day of the first month which begins more than 10 days after April 8, 1960, see section 4 of Pub. L. 86–418, set out as a note under section 4221 of this title.

[§4224. Repealed. Pub. L. 89–44, title I, §101(b)(5), June 21, 1965, 79 Stat. 136]

Section, Pub. L. 85–859, title I, §119(a), Sept. 2, 1958, 72 Stat. 1286, exempted, with specified exemptions, articles taxable under section 4001 from the imposition of the manufacturers excise tax.

A prior section 4224, act Aug. 16, 1954, ch. 736, 68A Stat. 495, exempted articles for the exclusive use of any State, Territory, or political subdivision of either, or the District of Columbia, prior to repeal by Pub. L. 85–859, title I, §119(a), Sept. 2, 1958, 72 Stat. 1282.

EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to articles sold on or after June 22, 1965, see section 701(a) of Pub. L. 89–44, set out as an Effective Date of 1965 Amendment note under section 4161 of this title.

§4225. Exemption of articles manufactured or produced by Indians

No tax shall be imposed under this chapter on any article of native Indian handicraft manufactured or produced by Indians on Indian reservations, or in Indian schools, or by Indians under the jurisdiction of the United States Government in Alaska.

(Added Pub. L. 85–859, title I, §119(a), Sept. 2, 1958, 72 Stat. 1286.)

PRIOR PROVISIONS

A prior section 4225, act Aug. 16, 1954, ch. 736, 68A Stat. 496, related to exemption for exports, prior to repeal by Pub. L. 85–859, §119(a). See section 4221 of this title.

ADMISSION OF ALASKA AS STATE

Admission of Alaska into the Union was accomplished Jan. 3, 1959, on issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85–508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

[§4226. Repealed. Pub. L. 94–455, title XIX, §1904(a)(4), Oct. 4, 1976, 90 Stat. 1811]

Section, added June 29, 1956, ch. 462, title II, §207(a), 70 Stat. 391; amended Sept. 21, 1959, Pub. L. 86–342, title II, §201(c)(1)–(3), 73 Stat. 614; June 29, 1961, Pub. L. 87–61, title II, §206(a), (b), 75 Stat. 127; Aug. 1, 1966, Pub. L. 89–523, §2, 80 Stat. 331, related to floor stocks taxes for 1956 on tires of the type used on highway vehicles, on tread rubber, on gasoline, for 1959 on gasoline, for 1961 on certain tires and inner tubes and tread rubber, provisions relating to overpayment of floor stocks taxes, due date for taxes, taxes on certain tires and tubes, and definitions of "dealer" and "held by a dealer".

A prior section 4226 of this title was renumbered section 4227.

§4227. Cross reference

For exception for a sale to an Indian tribal government (or its subdivision) for the exclusive use of an Indian tribal government (or its subdivision), see section 7871.

(Aug. 16, 1954, ch. 736, 68A Stat. 496, §4226; renumbered §4227, June 29, 1956, ch. 462, title II, §207(a), 70 Stat. 391; amended Pub. L. 89–44, title II, §208(f), June 21, 1965, 79 Stat. 141; Pub. L. 94–455, title XIX, §1904(a)(5), Oct. 4, 1976, 90 Stat. 1811; Pub. L. 97–473, title II, §202(b)(8), Jan. 14, 1983, 96 Stat. 2610; Pub. L. 98–369, div. A, title VII, §735(c)(11), July 18, 1984, 98 Stat. 983; Pub. L. 99–514, title XVIII, §1899A(49), Oct. 22, 1986, 100 Stat. 2961.)

AMENDMENTS

1986—Pub. L. 99–514 amended section generally, substituting "reference" for "references" in section catchline, struck out par. (1) designation, substituted "exception" for "exemption", and struck out par. (2) relating to cross reference to credit for taxes on tires.

1984—Par. (2). Pub. L. 98–369 struck out "and tubes" after "on tires".

1983—Pub. L. 97–473 designated existing provisions as par. (2) and added par. (1).

1976—Pub. L. 94–455 struck out pars. (1) and (3) relating to cross references to exemption from tax in case of certain sales to the United States and to administrative provisions of general applicability, respectively.

1965—Par. (2). Pub. L. 89–44 struck out "and automobile radio and television receiving sets," after "tires and inner tubes,".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97–424, to which such amendment relates, see section 736 of Pub. L. 98–369, set out as a note under section 4051 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

For effective date of amendment by Pub. L. 97–473, see section 204(5) of Pub. L. 97–473, set out as an Effective Date note under section 7871 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94–455, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 applicable with respect to articles sold on or after June 22, 1965, except insofar as such amendments related to the taxes imposed by sections 4061(b), 4091, and 4131 and, as to such taxes, applicable with respect to articles sold on or after January 1, 1966, see section 701(a) of Pub. L. 89–44, set out as a note under section 4161 of this title.

CHAPTER 33—FACILITIES AND SERVICES

Subchapter		Sec.[1]
[A.	**Repealed.]**	
B.	**Communications**	**4251**
C.	**Transportation by air**	**4261**
[D.	**Repealed.]**	
E.	**Special provisions applicable to services and facilities taxes**	**4291**

REPEAL OF SUBCHAPTER B

Table of subchapters for chapter 33 amended by striking out the item relating to subchapter B dealing with Communications, effective Jan. 1, 1982, see Pub. L. 90–364, title I, §105(b)(3), June 28, 1968, 82 Stat. 266, as amended by Pub. L. 91–172, title VII, §702(b)(3), Dec. 30, 1969, 83 Stat. 660; Pub. L. 91–614, title II, §201(b)(3), Dec. 31, 1970, 84 Stat. 1843. Repeal of item B was not executed in view of the amendments to section 4251 of this title by Pub. L. 96–499, Pub. L. 97–34, Pub. L. 97–248, Pub. L. 98–369, Pub. L. 99–514, and Pub. L. 101–508, extending the date in (and finally eliminating) provisions which had reduced the tax to zero after a specified date.

AMENDMENTS

1970—Pub. L. 91–258, title II, §205(c)(5), May 21, 1970, 84 Stat. 242, substituted "Transportation by air" for "Transportation of persons by air" in item for subchapter C.

1965—Pub. L. 89–44, title III, §§301, 304, June 21, 1965, 79 Stat. 145, 148, struck out items for subchapters A and D.

1962—Pub. L. 87–508, §5(c)(1), June 28, 1962, 76 Stat. 118, substituted "Transportation of persons by air" for "Transportation of persons" in item for subchapter C.

1958—Pub. L. 85–475, §4(b)(1), June 30, 1958, 72 Stat. 260, substituted "Transportation of persons" for "Transportation" in item for subchapter C.

EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87–508, §5(d), June 28, 1962, 76 Stat. 119, provided in part that: "The amendment made by subsection (c)(1) [amending item for subchapter C in the analysis] shall apply only with respect to transportation beginning after November 15, 1962."

[1] *Section numbers editorially supplied.*

[Subchapter A—Repealed]

[§§4231 to 4234. Repealed. Pub. L. 89–44, title III, §301, June 21, 1965, 79 Stat. 145]

Section 4231, acts Aug. 16, 1954, ch. 736, 68A Stat. 497; Aug. 6, 1956, ch. 1019, §1, 70 Stat. 1074; Sept. 2, 1958, Pub. L. 85–859, title I, §131(a)–(c), 72 Stat. 1286, 1287; Apr. 8, 1960, Pub. L. 86–422, §1, 74 Stat. 41, imposed a tax on admissions, permanent use or lease of boxes or seats, sales outside of box office in excess of established price, sales by proprietors in excess of established price, and cabarets.

Section 4232, acts Aug. 16, 1954, ch. 736, 68A Stat. 498; Sept. 2, 1958, Pub. L. 85–859, title I, §131(d), 72 Stat. 1287, defined admission, roof garden, cabaret, or other similar place, and performance for profit as used in section 4231.

Section 4233, acts Aug. 16, 1954, ch. 736, 68A Stat. 498; Aug. 11, 1955, ch. 792, §1, 69 Stat. 675; Apr. 16, 1958, Pub. L. 85–380, §§1–3, 72 Stat. 88; Sept. 2, 1958, Pub. L. 85–859, title I, §131(e), (f), 72 Stat. 1287; June 25, 1959, Pub. L. 86–70, §22(a), 73 Stat. 146; Sept. 21, 1959, Pub. L. 86–319, §1, 73 Stat. 590; Sept. 21, 1959, Pub. L. 86–344, §2(c), 73 Stat. 617; July 12, 1960, Pub. L. 86–624, §18(d), 74 Stat. 416, granted certain exemptions to certain charitable, educational, or religious entertainments, agricultural fairs, certain musical or dramatic performances, swimming pools, etc., home and garden tours, historic sites, certain amateur theatricals, certain amateur baseball games, rodeos, pageants, and certain benefit performances.

Section 4234, act Aug. 16, 1954, ch. 736, 68A Stat. 501, required that price of tickets be printed on face or back of such tickets and provided a penalty for selling tickets not so stamped.

EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to admissions, services, or uses after noon, December 31, 1965, see section 701(b)(1) of Pub. L. 89–44, set out as an Effective Date of 1965 Amendment note under section 4291 of this title.

[§§4241 to 4243. Repealed. Pub. L. 89–44, title III, §301, June 21, 1965, 79 Stat. 145]

Section 4241, acts Aug. 16, 1954, ch. 736, 68A Stat. 501; Sept. 2, 1958, Pub. L. 85–859, title I, §132(a), 72 Stat. 1288; Sept. 21, 1959, Pub. L. 86–344, §3(b), 73 Stat. 618, imposed a tax on dues or membership fees, initiation, fees, and life memberships in social, athletic, or sporting clubs or organizations.

Section 4242, act Aug. 16, 1954, ch. 736, 68A Stat. 501, defined dues and initiation fees as used in section 4241.

Section 4243, acts Aug. 16, 1954, ch. 736, 68A Stat. 502; Sept. 2, 1958, Pub. L. 85–859, title I, §132(b), 72 Stat. 1288; Sept. 21, 1959, Pub. L. 86–344, §3(a), 73 Stat. 618, granted exemptions to fraternal organizations, payments for capital improvements, and nonprofit swimming or skating facilities.

EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to dues and membership fees attributable to periods beginning on or after January 1, 1966, initiation fees and amounts paid for life memberships attributable to memberships beginning on or after January 1, 1966, initiation fees paid on or after July 1, 1965, to a new club or organization first making its facilities available to members on or after such a date, and, in the case of amounts described in section 4243(b) of this title, 3-year periods beginning on or after January 1, 1966, see section 701(b)(1) of Pub. L. 89–44, set out as an Effective Date of 1965 Amendment note under section 4291 of this title.

Subchapter B—Communications

Sec.

4251. Imposition of tax.
4252. Definitions.
4253. Exemptions.
4254. Computation of tax.

REPEAL

This subchapter, relating to the tax on communication, was repealed by Pub. L. 90–364, title I, §105(b)(3), June 28, 1968, 82 Stat. 266, as amended by Pub. L. 91–172, title VII, §702(b)(3), Dec. 30, 1969, 83 Stat. 660; Pub. L. 91–614, title II, §201(b)(3), Dec. 31, 1970, 84 Stat. 1843, effective with respect to amounts paid pursuant to bills first rendered on or after Jan. 1, 1982. In the case of communications services rendered before Nov. 1, 1981, for which a bill has not been rendered before Jan. 1, 1982, a bill shall be treated as having been first rendered on Dec. 31, 1981. Repeal of this subchapter was not executed in view of the amendments to section 4251 of this title by Pub. L. 96–499, Pub. L. 97–34, Pub. L. 97–248, Pub. L. 98–369, Pub. L. 99–514, Pub. L. 100–203, and Pub. L. 101–508, extending the date in (and finally eliminating) provisions which had reduced the tax to zero after a specified date.

§4251. Imposition of tax

(a) Tax imposed

(1) In general

There is hereby imposed on amounts paid for communications services a tax equal to the applicable percentage of amounts so paid.

(2) Payment of tax

The tax imposed by this section shall be paid by the person paying for such services.

(b) Definitions

For purposes of subsection (a)—

(1) Communications services

The term "communications services" means—

(A) local telephone service;
(B) toll telephone service; and
(C) teletypewriter exchange service.

(2) Applicable percentage

The term "applicable percentage" means 3 percent.

(c) Special rule

For purposes of subsections (a) and (b), in the case of communications services rendered before November 1 of a calendar year for which a bill has not been rendered before the close of such year, a bill shall be treated as having been first rendered on December 31 of such year.

(d) Treatment of prepaid telephone cards

(1) In general

For purposes of this subchapter, in the case of communications services acquired by means of a prepaid telephone card—

(A) the face amount of such card shall be treated as the amount paid for such communications services, and

(B) that amount shall be treated as paid when the card is transferred by any telecommunications carrier to any person who is not such a carrier.

(2) Determination of face amount in absence of specified dollar amount

In the case of any prepaid telephone card which entitles the user other than to a specified dollar

amount of use, the face amount shall be determined under regulations prescribed by the Secretary.

(3) Prepaid telephone card

For purposes of this subsection, the term "prepaid telephone card" means any card or any other similar arrangement which permits its holder to obtain communications services and pay for such services in advance.

(Aug. 16, 1954, ch. 736, 68A Stat. 503; Pub. L. 85–859, title I, §133(a), Sept. 2, 1958, 72 Stat. 1289; Pub. L. 86–75, §5, June 30, 1959, 73 Stat. 158; Pub. L. 86–564, title II, §202(a)(2), June 30, 1960, 74 Stat. 290; Pub. L. 87–72, §3(a)(2), June 30, 1961, 75 Stat. 193; Pub. L. 87–508, §3(a)(2), June 28, 1962, 76 Stat. 114; Pub. L. 88–52, §3(a)(2), June 29, 1963, 77 Stat. 72; Pub. L. 88–348, §2(a)(2), June 30, 1964, 78 Stat. 237; Pub. L. 89–44, title III, §302, title VII, §701(b)(2)(B), June 21, 1965, 79 Stat. 145, 156; Pub. L. 89–368, title II, §202(a), Mar. 15, 1966, 80 Stat. 66; Pub. L. 90–285, §1(a)(3), Apr. 12, 1968, 82 Stat. 92; Pub. L. 90–364, title I, §105(b)(1), (2), June 28, 1968, 82 Stat. 265; Pub. L. 91–172, title VII, §702(b)(1), (2), Dec. 30, 1969, 83 Stat. 660; Pub. L. 91–614, title II, §201(b)(1), (2), Dec. 31, 1970, 84 Stat. 1843; Pub. L. 96–499, title XI, §1151, Dec. 5, 1980, 94 Stat. 2694; Pub. L. 97–34, title VIII, §821, Aug. 13, 1981, 95 Stat. 351; Pub. L. 97–248, title II, §282(a), Sept. 3, 1982, 96 Stat. 568; Pub. L. 98–369, div. A, title I, §26, July 18, 1984, 98 Stat. 507; Pub. L. 99–514, title XVIII, §1801(b), Oct. 22, 1986, 100 Stat. 2785; Pub. L. 100–203, title X, §10501, Dec. 22, 1987, 101 Stat. 1330–438; Pub. L. 101–508, title XI, §11217(a), Nov. 5, 1990, 104 Stat. 1388–437; Pub. L. 105–34, title X, §1034(a), Aug. 5, 1997, 111 Stat. 937; Pub. L. 105–206, title VI, §6010(i), July 22, 1998, 112 Stat. 815.)

REPEAL

This subchapter, relating to the tax on communications, was repealed by Pub. L. 90–364, title I, §105(b)(3), June 28, 1968, 82 Stat. 266, as amended by Pub. L. 91–172, title VII, §702(b)(3), Dec. 30, 1969, 83 Stat. 660; Pub. L. 91–614, title II, §201(b)(3), Dec. 31, 1970, 84 Stat. 1843, effective with respect to amounts paid pursuant to bills first rendered on or after Jan. 1, 1982. In the case of communications services rendered before Nov. 1, 1981, for which a bill has not been rendered before Jan. 1, 1982, a bill shall be treated as having been first rendered on Dec. 31, 1981.

Pub. L. 96–499, title XI, §1151, Dec. 5, 1980, 94 Stat. 2694; Pub. L. 97–34, title VIII, §821, Aug. 13, 1981, 95 Stat. 351; Pub. L. 97–248, title II, §282(a), Sept. 3, 1982, 96 Stat. 568; Pub. L. 98–369, div. A, title I, §26, July 18, 1984, 98 Stat. 507; Pub. L. 99–514, title XVIII, §1801(b), Oct. 22, 1986, 100 Stat. 2785; Pub. L. 100–203, title X, §10501, Dec. 22, 1987, 101 Stat. 1330–438; Pub. L. 101–508, title XI, §11217(a), Nov. 5, 1990, 104 Stat. 1388–437, amended section 4251 of this title, relating to the imposition of the tax on communications, extending the date in (and finally eliminating) provisions which had reduced the tax to zero after a specified date, without amending Pub. L. 90–364, title I, §105(b)(3), June 28, 1968, 82 Stat. 266, which, as amended, had repealed this subchapter, effective with respect to amounts paid pursuant to bills first rendered on or after Jan. 1, 1982.

AMENDMENTS

1998—Subsec. (d)(3). Pub. L. 105–206 substituted "any other similar arrangement" for "other similar arrangement".

1997—Subsec. (d). Pub. L. 105–34 added subsec. (d).

1990—Subsec. (b)(2). Pub. L. 101–508 substituted "percent." for "percent; except that, with respect to amounts paid pursuant to bills first rendered after 1990, the applicable percentage shall be zero."

1987—Subsec. (b)(2). Pub. L. 100–203 amended par. (2) generally. Prior to amendment, par. (2) read as follows: "The term 'applicable percentage' means—

"With respect to amount paid pursuant to bills first rendered:	The percentage is:
During 1983, 1984, 1985, 1986, or 1987	3
During 1988 or thereafter	0."

1986—Subsec. (b)(2). Pub. L. 99–514 inserted "1985," after "1984," in table.

1984—Subsec. (b)(2). Pub. L. 98–369 substituted "During 1983, 1984, 1986, or 1987" for "During 1983, 1984, or 1985" in item relating to an applicable percentage of 3 and substituted "During 1988 or thereafter" for "During 1986 or thereafter" in item relating to an applicable percentage of 0.

1982—Subsec. (a). Pub. L. 97–248 added subsec. (a) and struck out former subsec. (a) which provided that there was a tax on communication services specified as local telephone service, toll telephone service, and teletypewriter exchange service, directed that the tax was to be paid by the person paying for such services, and designated the tax as the percentage of the amount paid for the services as set out in the following table:

"Amounts paid pursuant to bills first rendered—	**Percent—**
Before January 1, 1973	10
During 1973	9
During 1974	8
During 1975	7
During 1976	6
During 1977	5
During 1978	4
During 1979	3
During 1980 or 1981	2
During 1982, 1983, or 1984	1"

Subsec. (b). Pub. L. 97–248 added subsec. (b) and struck out former subsec. (b) which provided that the tax imposed by former subsec. (a) would not apply to amounts paid pursuant to bills first rendered on or after January 1, 1985.

1981—Subsec. (a)(2). Pub. L. 97–34, §821(a), substituted "During 1982, 1983, or 1984" for "During 1982" in table.

Subsec. (b). Pub. L. 97–34, §821(b), extended termination date to Jan. 1, 1985, from Jan. 1, 1983.

1980—Subsec. (a)(2). Pub. L. 96–499, §1151(a), substituted "During 1980 or 1981" for "During 1980" and "During 1982" for "During 1981" in table.

Subsec. (b). Pub. L. 96–499, §1151(b), substituted "1983" for "1982".

1970—Subsec. (a)(2). Pub. L. 91–614, §201(b)(1), substituted provisions providing the rate of tax on amounts paid for communication services pursuant to bills first rendered before Jan. 1, 1973 is 10% of such amount, amounts paid pursuant to bills first rendered during 1973 is 9% of such amount, during 1974 is 8% of such amount, during 1975 is 7% of such amount, during 1976 is 6% of such amount, during 1977 is 5% of such amount, during 1978 is 4% of such amount, during 1979 is 3% of such amount, during 1980 is 2% of such amount, and during 1981 is 1% of such amount for provisions providing the rate of tax on amounts paid for communication services pursuant to bills first rendered before Jan. 1, 1971 is 10% of such amount, amounts paid pursuant to bills first rendered during 1971 is 5% of such amount, during 1972 is 3% of such amount, and during 1973 is 1% of such amount.

Subsec. (b). Pub. L. 91–614, §201(b)(2), substituted "January 1, 1982" for "January 1, 1974".

1969—Subsec. (a)(2). Pub. L. 91–172, §702(b)(1), increased rate of tax on amounts paid for communication services from 5 to 10 percent during 1970, from 3 to 5 percent during 1971, from 1 to 3 percent during 1972, and imposed a 1 percent tax on amounts paid for communication services during 1973.

Subsec. (b). Pub. L. 91–172, §702(b)(2), substituted "January 1, 1974" for "January 1, 1973".

1968—Subsec. (a)(2). Pub. L. 90–364, §105(b)(1), extended from April 30, 1968, through the end of 1969 the period for the imposition of the 10 percent rate, thereby increasing the rate from 1 percent to 10 percent for the period May 1, 1968, through the end of 1968 and from 0 percent to 10 percent for 1969, and imposed a rate of 5 percent during 1970, a rate of 3 percent during 1971, and a rate of 1 percent during 1972.

Pub. L. 90–285 substituted "April 30, 1968" and "May 1, 1968" for "March 31, 1968" and "April 1, 1968" respectively.

Subsec. (b). Pub. L. 90–364, §105(b)(2), substituted "1973" for "1969".

Subsec. (c). Pub. L. 90–364, §105(b)(2), extended provisions calling for treatment of bills not rendered before the end of a year for service rendered before November 1 of that year as having been first rendered on December 31 of that year so as to include years subsequent to 1968 and struck out special provision for the application of subsec. (a) in the case of communication services rendered before March 1, 1968, for which a bill was not rendered before May 1, 1968.

Pub. L. 90–285 substituted "March 1, 1968," for "February 1, 1968", "May 1, 1968" for "April 1, 1968", "April 30, 1968" for "March 31, 1968", and "February 29, 1968" for "January 31, 1968".

1966—Subsec. (a)(2). Pub. L. 89–368, §202(a)(1), increased to 10 percent the schedule of rates for tax imposed for the period up to April 1, 1968, and authorized a reduction to 1 percent for the period after March 31, 1968, and before January 1, 1969.

Subsec. (c). Pub. L. 89–368, §202(a)(2), conformed subsection to rate reduction schedule alterations by providing that, in the case of communications services rendered before February 1, 1968, for which a bill has not been rendered before April 1, 1968, the bill shall be treated as having been first rendered on March 31, 1968, and, in the case of services rendered after January 31, 1968, and before November 1, 1968, for which a bill has not been rendered before January 1, 1969, the bill shall be treated as having first been rendered on December 31, 1968.

1965—Subsec. (a). Pub. L. 89–44, §302, substituted local telephone service, toll telephone service, and teletypewriter exchange service, for general telephone service, toll telephone service, telegraph service, teletypewriter exchange service, wire mileage service, and wire and equipment service as the taxed services and reduced the rate of tax to 3 percent during 1966, 2 percent during 1967, and 1 percent during 1968.

Subsec. (b). Pub. L. 89–44, §302, added subsec. (b). Pub. L. 89–44, §701(b)(2)(B), repealed former subsec. (b), as in effect June 30, 1965, effective on and after July 1, 1965. Such repealed provision had called for termination of the tax on general telephone service as of July 1, 1965.

Subsec. (c). Pub. L. 89–44, §302, added subsec. (c).

1964—Subsec. (b)(2). Pub. L. 88–348 substituted "July 1, 1965" for "July 1, 1964" in two places.

1963—Subsec. (b)(2). Pub. L. 88–52 substituted "July 1, 1964" for "July 1, 1963" in two places.

1962—Subsec. (b)(2). Pub. L. 87–508 substituted "July 1, 1963" for "July 1, 1962" in two places.

1961—Subsec. (b)(2). Pub. L. 87–72 substituted "July 1, 1962" for "July 1, 1961" in two places.

1960—Subsec. (b)(2). Pub. L. 86–564 substituted "July 1, 1961" for "July 1, 1960" in two places.

1959—Pub. L. 86–75 designated former provisions as subsec. (a) and added subsec. (b).

1958—Pub. L. 85–859 redesignated "local telephone service" as "general telephone service", "long distance telephone service" as "toll telephone service" and "leased wire, teletypewriter or talking circuit special service" as "teletypewriter exchange service" and "wire mileage service".

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title X, §1034(b), Aug. 5, 1997, 111 Stat. 937, provided that: "The amendments made by this section [amending this section] shall apply to amounts paid in calendar months beginning more than 60 days after the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title II, §282(b), Sept. 3, 1982, 96 Stat. 568, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to amounts paid for communications services pursuant to bills first rendered after December 31, 1982."

EFFECTIVE DATE OF 1968 AMENDMENTS

Amendment by Pub. L. 90–364 effective Apr. 30, 1968, see section 105(c) of Pub. L. 90–364, set out as a note under section 6412 of this title.

Amendment by Pub. L. 90–285 effective Mar. 31, 1968, see section 1(b) of Pub. L. 90–285, set out as a note under section 6412 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89–368, title II, §202(c), Mar. 15, 1966, 80 Stat. 66, provided that: "The amendments made by subsections (a) [amending this section] and (b) [amending section 4253 of this title] shall apply to amounts paid pursuant to bills first rendered on or after April 1, 1966, for services rendered on or after such date. In the case of amounts paid pursuant to bills rendered on or after such date for services which were rendered before such date and for which no previous bill was rendered, such amendments shall apply except with respect to such services as were rendered more than 2 months before such date. In the case of services rendered more than 2 months before such date, the provisions of subchapter B of chapter 33 of the Code in effect at the time such services were rendered, subject to the provision of section 701(b)(2) of the Excise Tax Reduction Act of 1965 [see Effective Date of 1965 Amendment note below], shall apply to the amounts paid for such services."

EFFECTIVE DATE OF 1965 AMENDMENT

Pub. L. 89–44, title VII, §701(b)(2)(A), June 21, 1965, 79 Stat. 156, provided that: "The amendments made by section 302 [amending this section and sections 4252, 4253, and 4254 of this title] (relating to communication services) shall apply to amounts paid pursuant to bills rendered on or after January 1, 1966, for services rendered on or after such date. In the case of amounts paid pursuant to bills rendered on or after January 1, 1966, for services which were rendered before such date and for which no previous bill was rendered, such amendments shall apply except with respect to such services as were rendered more than 2 months before such date. In the case of services rendered more than 2 months before such date, the provisions of subchapter B of chapter 33 of the Code in effect at the time such services were rendered shall apply to the amounts paid for such services."

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85–859, title I, §133(b), Sept. 2, 1958, 72 Stat. 1292, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) Subject to the provisions of paragraph (2), the amendment made by subsection (a) [amending this section and sections 4252 to 4254 of this title] shall apply with respect to amounts paid on or after the effective date prescribed in section (1)(c) of this Act for services rendered on or after such date.

"(2) The amendment made by subsection (a) [amending this section and sections 4252 to 4254 of this title] shall not apply with respect to amounts paid pursuant to bills rendered before the effective date prescribed in section 1(c) of this Act. In the case of amounts paid pursuant to bills rendered on or after such date for services for which no previous bill was rendered, such amendments shall apply except with respect to such services as were rendered more than 2 months before such date. In the case of services rendered more than 2 months before such date the provisions of subchapter B of chapter 33 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] in effect at the time such services were rendered shall apply to the amounts paid for such services."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§4252. Definitions

(a) Local telephone service

For purposes of this subchapter, the term "local telephone service" means—

(1) the access to a local telephone system, and the privilege of telephonic quality communication with substantially all persons having telephone or radio telephone stations constituting a part of such local telephone system, and

(2) any facility or service provided in connection with a service described in paragraph (1).

The term "local telephone service" does not include any service which is a "toll telephone service" or a "private communication service" as defined in subsections (b) and (d).

(b) Toll telephone service

For purposes of this subchapter, the term "toll telephone service" means—

(1) a telephonic quality communication for which (A) there is a toll charge which varies in amount with the distance and elapsed transmission time of each individual communication and (B) the charge is paid within the United States, and

(2) a service which entitles the subscriber, upon payment of a periodic charge (determined as a flat amount or upon the basis of total elapsed transmission time), to the privilege of an unlimited number of telephonic communications to or from all or a substantial portion of the persons having telephone or radio telephone stations in a specified area which is outside the local telephone system area in which the station provided with this service is located.

(c) Teletypewriter exchange service

For purposes of this subchapter, the term "teletypewriter exchange service" means the access from a teletypewriter or other data station to the teletypewriter exchange system of which such station is a part, and the privilege of intercommunication by such station with substantially all persons having teletypewriter or other data stations constituting a part of the same teletypewriter exchange system, to which the subscriber is entitled upon payment of a charge or charges (whether such charge or charges are determined as a flat periodic amount, on the basis of distance and elapsed transmission time, or in some other manner). The term "teletypewriter exchange service" does not include any service which is "local telephone service" as defined in subsection (a).

(d) Private communication service

For purposes of this subchapter, the term "private communication service" means—

(1) the communication service furnished to a subscriber which entitles the subscriber—

(A) to exclusive or priority use of any communication channel or groups of channels, or

(B) to the use of an intercommunication system for the subscriber's stations,

regardless of whether such channel, groups of channels, or intercommunication system may be connected through switching with a service described in subsection (a), (b), or (c),

(2) switching capacity, extension lines and stations, or other associated services which are provided in connection with, and are necessary or unique to the use of, channels or systems described in paragraph (1), and

(3) the channel mileage which connects a telephone station located outside a local telephone system area with a central office in such local telephone system,

except that such term does not include any communication service unless a separate charge is made for such service.

(Aug. 16, 1954, ch. 736, 68A Stat. 503; Pub. L. 85–859, title I, §133(a), Sept. 2, 1958, 72 Stat. 1290; Pub. L. 87–508, §4(a), June 28, 1962, 76 Stat. 115; Pub. L. 89–44, title III, §302, June 21, 1965, 79 Stat. 145.)

REPEAL

This subchapter, relating to the tax on communications was repealed by Pub. L. 90–364, title I, §105(b)(3), June 28, 1968, 82 Stat. 266, as amended by Pub. L. 91–172, title VII, §702(b)(3), Dec. 30, 1969, 83 Stat. 660; Pub. L. 91–614, title II, §201(b)(3), Dec. 31, 1970, 84 Stat. 1843, effective with respect to amounts paid pursuant to bills first rendered on or after Jan. 1, 1982. In the case of communications services rendered before Nov. 1, 1981, for which a bill has not been rendered before Jan. 1, 1982, a bill shall be treated as having been first rendered on Dec. 31, 1981. Repeal of this subchapter was not executed in view of the amendments to section 4251 of this title by Pub. L. 96–499, Pub. L. 97–34, Pub. L. 97–248, Pub. L. 98–369, Pub. L. 99–514, Pub. L. 100–203, and Pub. L. 101–508, extending the date in (and finally eliminating) provisions which had reduced the tax to zero after a specified date.

AMENDMENTS

1965—Subsec. (a). Pub. L. 89–44 substituted definition of "local telephone service" for definition of "general telephone service".

Subsec. (b). Pub. L. 89–44 replaced definition of "toll telephone service" as telephone or radio telephone message or conversation for which there is a toll charge paid within the United States with a definition which defined the term as a telephonic quality communication carrying a varying toll charge depending upon distance and elapsed transmission time and a service entitling the subscriber, upon payment of a periodic charge, to unlimited telephonic communication in an area outside the local telephone system area.

Subsec. (c). Pub. L. 89–44 substituted definition of "teletypewriter exchange service" for definition of "telegraph service".

Subsec. (d). Pub. L. 89–44 substituted definition of "private communication service" for definition of "teletypewriter exchange service".

Subsecs. (e), (f). Pub. L. 89–44 struck out subsecs. (e) and (f) which defined wire mileage service and wire and equipment service.

1962—Subsec. (e)(1), (2). Pub. L. 87–508 limited wire mileage service to service not used in the conduct of a trade or business.

1958—Subsec. (a). Pub. L. 85–859 substituted definition of "general telephone service" for provisions which defined "local telephone service" as any telephone service not taxable as long distance telephone service; leased wire; teletypewriter or talking circuit special service; or wire and equipment service, and provided that amounts paid for the installation of instruments, wires, poles, switchboards, apparatus, and equipment shall not be considered amounts paid for service, and that amounts paid for services and facilities which are exempted from other communication taxes by section 4253(b) should not be deemed to be within the definition of local telephone service.

Subsec. (b). Pub. L. 85–859 substituted "toll telephone service" for "long distance telephone service" and struck out provisions which defined "long distance telephone service" as a telephone or radio telephone message or conversation for which the toll charge is more than 24 cents.

Subsec. (c). Pub. L. 85–859 substituted "For purposes of this subchapter, the term 'telegraph service' means a telegram" for "As used in section 4251 the term 'telegraph service' means a telegraph".

Subsec. (d). Pub. L. 85–859 substituted provisions defining "teletypewriter exchange service" for provisions which defined "leased wire, teletypewriter or talking circuit special service".

Subsec. (e). Pub. L. 85–859 substituted provisions defining "wire mileage service" for provisions which defined "wire and equipment service", which were covered by subsec. (f) of this section.

Subsec. (f). Pub. L. 85–859 added subsec. (f). Similar provisions were formerly contained in subsec. (e) of this section.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 applicable to amounts paid pursuant to bills rendered on or after January 1, 1966, for services rendered on or after such date but, in the case of amounts paid pursuant to bills rendered after January 1, 1966, for services rendered before such date for which no previous bill had been rendered, applicable except with respect to such services as were rendered more than two months before such date, see section 701(b)(2)(A) of Pub. L. 89–44, set out as a note under section 4251 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87–508, §4(c), June 28, 1962, 76 Stat. 115, provided that: "The amendments made by subsections (a) and (b) [amending this section and section 4253 of this title] shall apply with respect to services furnished on or after January 1, 1963."

EFFECTIVE DATE OF 1958 AMENDMENT

For effective date of amendment made by Pub. L. 85–859, see section 133(b) of Pub. L. 85–859, set out as a note under section 4251 of this title.

§4253. Exemptions

(a) Certain coin-operated service

Service paid for by inserting coins in coin-operated telephones available to the public shall not be subject to the tax imposed by section 4251 with respect to local telephone service, or with respect to toll telephone service if the charge for such toll telephone service is less than 25 cents; except that where such coin-operated telephone service is furnished for a guaranteed amount, the amounts paid under such guarantee plus any fixed monthly or other periodic charge shall be subject to the tax.

(b) News services

No tax shall be imposed under section 4251, except with respect to local telephone service, on any payment received from any person for services used in the collection of news for the public press, or a news ticker service furnishing a general news service similar to that of the public press, or radio broadcasting, or in the dissemination of news through the public press, or a news ticker service furnishing a general news service similar to that of the public press, or by means of radio broadcasting, if the charge for such service is billed in writing to such person.

(c) International, etc., organizations

No tax shall be imposed under section 4251 on any payment received for services furnished to an international organization, or to the American National Red Cross.

(d) Servicemen in combat zone

No tax shall be imposed under section 4251 on any payment received for any toll telephone service which originates within a combat zone, as defined in section 112, from a member of the Armed Forces of the United States performing service in such combat zone, as determined under such section, provided a certificate, setting forth such facts as the Secretary may by regulations prescribe, is furnished to the person receiving such payment.

(e) Items otherwise taxed

Only one payment of tax under section 4251 shall be required with respect to the tax on any service, notwithstanding the lines or stations of one or more persons are used in furnishing such service.

(f) Common carriers and communications companies

No tax shall be imposed under section 4251 on the amount paid for any toll telephone service described in section 4252(b)(2) to the extent that the amount so paid is for use by a common carrier, telephone or telegraph company, or radio broadcasting station or network in the conduct of its business as such.

(g) Installation charges

No tax shall be imposed under section 4251 on so much of any amount paid for the installation of any instrument, wire, pole, switchboard, apparatus, or equipment as is properly attributable to such installation.

(h) Nonprofit hospitals

No tax shall be imposed under section 4251 on any amount paid by a nonprofit hospital for services furnished to such organization. For purposes of this subsection, the term "nonprofit hospital" means a hospital referred to in section 170(b)(1)(A)(iii) which is exempt from income tax under section 501(a).

(i) State and local governmental exemption

Under regulations prescribed by the Secretary, no tax shall be imposed under section 4251 upon any payment received for services or facilities furnished to the government of any State, or any political subdivision thereof, or the District of Columbia.

(j) Exception for nonprofit educational organizations

Under regulations prescribed by the Secretary, no tax shall be imposed under section 4251 on any amount paid by a nonprofit educational organization for services or facilities furnished to such organization. For purposes of this subsection, the term "nonprofit educational organization" means an educational organization described in section 170(b)(1)(A)(ii) which is exempt from income tax under section 501(a). The term also includes a school operated as an activity of an organization described in section 501(c)(3) which is exempt from income tax under section 501(a), if such school normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

(k) Exemption for qualified blood collector organizations

Under regulations provided by the Secretary, no tax shall be imposed under section 4251 on any amount paid by a qualified blood collector organization (as defined in section 7701(a)(49)) for services or facilities furnished to such organization.

(l) Filing of exemption certificates

(1) In general

In order to claim an exemption under subsection (c), (h), (i), (j), or (k), a person shall provide to the provider of communications services a statement (in such form and manner as the Secretary may provide) certifying that such person is entitled to such exemption.

(2) Duration of certificate

Any statement provided under paragraph (1) shall remain in effect until—

(A) the provider of communications services has actual knowledge that the information provided in such statement is false, or

(B) such provider is notified by the Secretary that the provider of the statement is no longer entitled to an exemption described in paragraph (1).

If any information provided in such statement is no longer accurate, the person providing such statement shall inform the provider of communications services within 30 days of any change of information.

(Aug. 16, 1954, ch. 736, 68A Stat. 504; Pub. L. 85–859, title I, §133(a), Sept. 2, 1958, 72 Stat. 1290; Pub. L. 86–344, §4(a), Sept. 21, 1959, 73 Stat. 619; Pub. L. 87–508, §4(b), June 28, 1962, 76 Stat. 115; Pub. L. 89–44, title III, §302, June 21, 1965, 79 Stat. 146; Pub. L. 89–368, title II, §202(b), Mar. 15, 1966, 80 Stat. 66; Pub. L. 91–172, title I, §101(j)(27), Dec. 30, 1969, 83 Stat. 529; Pub. L. 94–455, title XIX, §§1904(a)(6), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1811, 1834; Pub. L. 101–508, title XI, §11217(c)(1), Nov. 5, 1990, 104 Stat. 1388–438; Pub. L. 109–280, title XII, §1207(c), Aug. 17, 2006, 120 Stat. 1070.)

REPEAL

This subchapter, relating to the tax on communications, was repealed by Pub. L. 90–364, title I, §105(b)(3), June 28, 1968, 82 Stat. 266, as amended by Pub. L. 91–172, title VII, §702(b)(3), Dec. 30, 1969, 83 Stat. 660; Pub. L. 91–614, title II, §201(b)(3), Dec. 31, 1970, 84 Stat. 1843, effective with respect to amounts paid pursuant to bills first rendered on or after Jan. 1, 1982. In the case of communications services rendered before Nov. 1, 1981, for which a bill has not been rendered before Jan. 1, 1982, a bill shall be treated as having been first rendered on Dec. 31, 1981. Repeal of this subchapter was not executed in view of the amendments to section 4251 of this title by Pub. L. 96–499, Pub. L. 97–34, Pub. L. 97–248, Pub. L. 98–369, Pub. L. 99–514, Pub. L. 100–203, and Pub. L. 101–508, extending the date in (and finally eliminating) provisions which had reduced the tax to zero after a specified date.

CODIFICATION

Section 1207(c) of Pub. L. 109–280, which directed the amendment of section 4253 without specifying the act to be amended, was executed to this section, which is section 4253 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

AMENDMENTS

2006—Subsec. (k). Pub. L. 109–280, §1207(c)(1), added subsec. (k). Former subsec. (k) redesignated (l). See Codification note above.

Subsec. (l). Pub. L. 109–280, §1207(c)(1), redesignated subsec. (k) as (l). See Codification note above.

Subsec. (l)(1). Pub. L. 109–280, §1207(c)(2), substituted "(j), or (k)" for "or (j)". See Codification note above.

1990—Subsec. (k). Pub. L. 101–508 added subsec. (k).

1976—Subsec. (d). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsecs. (i), (j). Pub. L. 94–455, §1904(a)(6), added subsecs. (i) and (j).

1969—Subsec. (h). Pub. L. 91–172 substituted "section 170(b)(1)(A)(iii)" for "section 503(b)(5)".

1966—Subsec. (h). Pub. L. 89–368 added subsec. (h).

1965—Subsec. (a). Pub. L. 89–44 substituted "with respect to local telephone service, or with respect to toll telephone service if the charge for such toll telephone service is less than 25 cents", for "with respect to general telephone service, or with respect to toll telephone service or telegraph service if the charge for such toll telephone service or telegraph service is less than 25 cents".

Subsec. (b). Pub. L. 89–44 substituted "local telephone service" for "general telephone service" and "such service" for "such services".

Subsec. (c). Pub. L. 89–44 substituted "International, etc., organizations" for "Certain organizations" in heading.

Subsec. (d). Pub. L. 89–44 reenacted subsec. (d) without change.

Subsec. (e). Pub. L. 89–44 substituted "any service" for "toll telephone service, telegraph service, or teletypewriter exchange service".

Subsec. (f). Pub. L. 89–44 substituted amounts paid for any toll telephone service for amounts paid for wire mileage service, wire and equipment service, and use of any telephone or radiotelephone line or channel which constitutes general telephone service if such line or channel connects stations between any two of which there would otherwise be a toll charge.

Subsec. (g). Pub. L. 89–44 reenacted subsec. (g) without change.

Subsecs. (h) to (j). Pub. L. 89–44 struck out subsecs. (h) to (j), which related to terminal facilities in case of wire mileage service and to certain interior and private communications services.

1962—Subsec. (j). Pub. L. 87–508 added subsec. (j).

1959—Subsec. (f). Pub. L. 86–344 substituted "Common carriers and communications companies" for "Special wire service in company business" in heading, incorporated existing provisions in opening and closing statements and par. (1) and added par. (2).

1958—Subsec. (a). Pub. L. 85–859 substituted "general telephone service, or with respect to toll telephone service or telegraph service if the charge for such toll telephone service or telegraph service is less than 25 cents" for "local telephone service".

Subsec. (b). Pub. L. 85–859 substituted "general telephone service, on any payment received from any person for services used" for "local telephone service, upon any payment received from any person for services or facilities utilized".

Subsec. (c). Pub. L. 85–859 substituted "on any payment received for services furnished to an international organization, or to the American National Red Cross" for "upon any payment received for services or facilities furnished to an international organization, or any organization created by act of Congress to act in matters of relief under the treaty of Geneva of August 22, 1864".

Subsec. (d). Pub. L. 85–859 substituted "on any payment received for any toll telephone service" for "with respect to long distance telephone service upon any payment received for any telephone or radio telephone message".

Subsec. (e). Pub. L. 85–859 substituted "toll telephone service, telegraph service, or teletypewriter exchange service" for "long distance telephone service or telegraph service" and "in furnishing such service" for "in the transmission of such dispatch, message or conversation".

Subsec. (f). Pub. L. 85–859 substituted "any wire mileage service or wire and equipment service as is used in the conduct" for "the service described in sections 4252(d) and (e) as is utilized in the conduct".

Subsecs. (g) to (i). Pub. L. 85–859 added subsecs. (g) to (i).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 effective Jan. 1, 2007, see section 1207(g)(1) of Pub. L. 109–280, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, §11217(c)(2), Nov. 5, 1990, 104 Stat. 1388–438, provided that:

"(A) IN GENERAL.—The amendment made by paragraph (1) [amending this section] shall apply to any claim for exemption made after the date of the enactment of this Act [Nov. 5, 1990].

"(B) DURATION OF EXISTING CERTIFICATES.—Any annual certificate of exemption effective on the date of the enactment of this Act [Nov. 5, 1990] shall remain effective until the end of the annual period."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1904(a)(6) of Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94–455, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–368 applicable to amounts paid pursuant to bills first rendered on or after April 1, 1966, for services rendered on or after such date and to amounts paid pursuant to bills rendered on or after such date for services which were rendered before such date and for which no previous bill was rendered except with respect to such services as were rendered more than two months before such date and, as to services rendered more than 2 months before such date, direction that the provisions of subchapter B of chapter 33 of the Code in effect at the time such services were rendered, be applied, subject to the provision of section 701(b)(2) of the Excise Tax Reduction Act of 1965.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 applicable to amounts paid pursuant to bills rendered on or after January 1, 1966, for services rendered on or after such date, but, in the case of amounts paid pursuant to bills rendered after January 1, 1966, for services rendered before such date for which no previous bill had been rendered, applicable except with respect to such services as were rendered more than two months before such date, see section 701(b)(2)(A) of Pub. L. 89–44, set out as a note under section 4251 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–508 applicable with respect to services furnished on or after Jan. 1, 1963, see section 4(c) of Pub. L. 87–508, set out as a note under section 4252 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Pub. L. 86–344, §4(b), Sept. 21, 1959, 73 Stat. 619, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) Subject to the provisions of paragraph (2), the amendment made by subsection (a) [amending this section] shall apply with respect to amounts paid on or after January 1, 1959, for services rendered on or after such date.

"(2) The amendment made by subsection (a) [amending this section] shall not apply with respect to amounts paid pursuant to bills rendered before January 1, 1959. In the case of amounts paid pursuant to bills rendered on or after such date for services for which no bill was rendered before such date, such amendment shall apply except with respect to such services as were rendered more than 2 months before such date. In the case of services rendered more than 2 months before such date, the provisions of subchapter B of chapter 33 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] in effect at the time such services were rendered shall apply to the amounts paid for such services."

EFFECTIVE DATE OF 1958 AMENDMENT

For effective date of amendment made by Pub. L. 85–859, see section 133(b) of Pub. L. 85–859, set out as a note under section 4251 of this title.

§4254. Computation of tax

(a) General rule

If a bill is rendered the taxpayer for local telephone service or toll telephone service—

(1) the amount on which the tax with respect to such services shall be based shall be the sum of all charges for such services included in the bill; except that

(2) if the person who renders the bill groups individual items for purposes of rendering the bill and computing the tax, then (A) the amount on which the tax with respect to each such group shall be based shall be the sum of all items within that group, and (B) the tax on the remaining items not included in any such group shall be based on the charge for each item separately.

(b) Where payment is made for toll telephone service in coin-operated telephones

If the tax imposed by section 4251 with respect to toll telephone service is paid by inserting coins in coin-operated telephones, tax shall be computed to the nearest multiple of 5 cents, except that, where the tax is midway between multiples of 5 cents, the next higher multiple shall apply.

(c) Certain State and local taxes not included

For purposes of this subchapter, in determining the amounts paid for communications services, there shall not be included the amount of any State or local tax imposed on the furnishing or sale of such services, if the amount of such tax is separately stated in the bill.

(Aug. 16, 1954, ch. 736, 68A Stat. 504; Pub. L. 85–859, title I, §133(a), Sept. 2, 1958, 72 Stat. 1291; Pub. L. 89–44, title III, §302, June 21, 1965, 79 Stat. 147; Pub. L. 95–172, §2(a), Nov. 12, 1977, 91 Stat. 1358.)

REPEAL

This subchapter, relating to the tax on communications was repealed by Pub. L. 90–364, title I, §105(b)(3), June 28, 1968, 82 Stat. 266, as amended by Pub. L. 91–172, title VII, §702(b)(3), Dec. 30, 1969, 83 Stat. 660; Pub. L. 91–614, title II, §201(b)(3), Dec. 31, 1970, 84 Stat. 1843, effective with respect to amounts paid pursuant to bills first rendered on or after Jan. 1, 1982. In the case of communications services rendered before Nov. 1, 1981, for which a bill has not been rendered before Jan. 1, 1982, a bill shall be treated as having been first rendered on Dec. 31, 1981. Repeal of this subchapter was not executed in view of the amendments to section 4251 of this title by Pub. L. 96–499, Pub. L. 97–34, Pub. L. 97–248, Pub. L. 98–369, Pub. L. 99–514, Pub. L. 100–203, and Pub. L. 101–508, extending the date in (and finally eliminating) provisions which had reduced the tax to zero after a specified date.

AMENDMENTS

1977—Subsec. (c). Pub. L. 95–172 added subsec. (c).

1965—Subsec. (a). Pub. L. 89–44 substituted "local telephone service or toll telephone service" for "general telephone service, toll telephone service, or telegraph service".

Subsec. (b). Pub. L. 89–44 substituted "toll telephone service" for "toll telephone service or telegraph service" in catchline and text.

1958—Subsec. (a). Pub. L. 85–859 provided that if the person who renders the bill groups individual items for purposes of rendering the bill and computing the tax, then the amount on which the tax with respect to each group shall be based shall be the sum of all items within that group, and the tax on remaining items not included in any such group shall be based on the charge of each item separately.

Subsec. (b). Pub. L. 85–859 substituted "toll telephone service" for "long distance telephone service".

EFFECTIVE DATE OF 1977 AMENDMENT

Pub. L. 95–172, §2(b), Nov. 12, 1977, 91 Stat. 1358, provided that: "The amendment made by this section [amending this section] shall take effect only with respect to amounts paid pursuant to bills first rendered on or after the first day of the first month which begins more than 20 days after the date of the enactment of this Act [Nov. 12, 1977]. For purposes of the preceding sentence, in the case of communications services rendered more than 2 months before the effective date provided in the preceding sentence, no bill shall be treated as having been first rendered on or after such effective date."

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 applicable to amounts paid pursuant to bills rendered on or after January 1, 1966, for service rendered on or after such date, but, in the case of amounts paid pursuant to bills rendered after January 1, 1966, for services rendered before such date for which no previous bill had been rendered, applicable except with respect to such services as were rendered more than two months before such date, see section 701(b)(2)(A) of Pub. L. 89–44, set out as a note under section 4251 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

For effective date of amendment made by Pub. L. 85–859, see section 133(b) of Pub. L. 85–859, set out as a note under section 4251 of this title.

Subchapter C—Transportation by Air

Part

I. Persons.

II. Property.
III. Special provisions relating to taxes on transportation by air.[1]

[1] *So in original. Does not conform to part heading.*

PART I—PERSONS

Sec.
4261. Imposition of tax.
4262. Definition of taxable transportation.
4263. Special rules.

AMENDMENTS

1970—Pub. L. 91–258, title II, §205(c)(4), May 21, 1970, 84 Stat. 242, substituted "Transportation by Air" for "Transportation of Persons by Air" in subchapter heading, inserted part I to III headings in subchapter analysis, inserted "PART I—PERSONS" as analysis heading preceding section 4261, struck out item 4263, and redesignated item 4264 as 4263.

1962—Pub. L. 87–508, §5(b), June 28, 1962, 76 Stat. 115, substituted "Transportation of Persons by Air" for "Transportation of Persons" in subchapter heading.

1958—Pub. L. 85–475, §4(b)(2), June 30, 1958, 72 Stat. 260, substituted "Transportation of Persons" for "Transportation" in subchapter heading and struck out parts I–III, which were included in subchapter C.

1956—Act July 25, 1956, ch. 725, §5, 70 Stat. 646, added items 4262 and 4264 and redesignated former item 4262 as 4263.

§4261. Imposition of tax

(a) In general

There is hereby imposed on the amount paid for taxable transportation of any person a tax equal to 7.5 percent of the amount so paid.

(b) Domestic segments of taxable transportation

(1) In general

There is hereby imposed on the amount paid for each domestic segment of taxable transportation by air a tax in the amount determined in accordance with the following table for the period in which the segment begins:

In the case of segments beginning:	The tax is:
After September 30, 1997, and before October 1, 1998	$1.00
After September 30, 1998, and before October 1, 1999	$2.00
After September 30, 1999, and before January 1, 2000	$2.25
During 2000	$2.50
During 2001	$2.75
During 2002 or thereafter	$3.00.

(2) Domestic segment

For purposes of this section, the term "domestic segment" means any segment consisting of 1 takeoff and 1 landing and which is taxable transportation described in section 4262(a)(1).

(3) Changes in segments by reason of rerouting

If—

(A) transportation is purchased between 2 locations on specified flights, and

(B) there is a change in the route taken between such 2 locations which changes the number of domestic segments, but there is no change in the amount charged for such transportation,

the tax imposed by paragraph (1) shall be determined without regard to such change in route.

(c) Use of international travel facilities

(1) In general

There is hereby imposed a tax of $12.00 on any amount paid (whether within or without the United States) for any transportation of any person by air, if such transportation begins or ends in the United States.

(2) Exception for transportation entirely taxable under subsection (a)

This subsection shall not apply to any transportation all of which is taxable under subsection (a) (determined without regard to sections 4281 and 4282).

(3) Special rule for Alaska and Hawaii

In any case in which the tax imposed by paragraph (1) applies to a domestic segment beginning or ending in Alaska or Hawaii, such tax shall apply only to departures and shall be at the rate of $6.

(d) By whom paid

Except as provided in section 4263(a), the taxes imposed by this section shall be paid by the person making the payment subject to the tax.

(e) Special rules

(1) Segments to and from rural airports

(A) Exception from segment tax

The tax imposed by subsection (b)(1) shall not apply to any domestic segment beginning or ending at an airport which is a rural airport for the calendar year in which such segment begins or ends (as the case may be).

(B) Rural airport

For purposes of this paragraph, the term "rural airport" means, with respect to any calendar year, any airport if—

(i) there were fewer than 100,000 commercial passengers departing by air (in the case of any airport described in clause (ii)(III), on flight segments of at least 100 miles) during the second preceding calendar year from such airport, and

(ii) such airport—

(I) is not located within 75 miles of another airport which is not described in clause (i),

(II) is receiving essential air service subsidies as of the date of the enactment of this paragraph, or

(III) is not connected by paved roads to another airport.

(C) No phasein of reduced ticket tax

In the case of transportation beginning before October 1, 1999—

(i) In general

Paragraph (5) shall not apply to any domestic segment beginning or ending at an airport which is a rural airport for the calendar year in which such segment begins or ends (as the case may be).

(ii) Transportation involving multiple segments

In the case of transportation involving more than 1 domestic segment at least 1 of which does not begin or end at a rural airport, the 7.5 percent rate applicable by reason of clause (i) shall be applied by taking into account only an amount which bears the same ratio to the

amount paid for such transportation as the number of specified miles in domestic segments which begin or end at a rural airport bears to the total number of specified miles in such transportation.

(2) Amounts paid outside the United States

In the case of amounts paid outside the United States for taxable transportation, the taxes imposed by subsections (a) and (b) shall apply only if such transportation begins and ends in the United States.

(3) Amounts paid for right to award free or reduced rate air transportation

(A) In general

Any amount paid (and the value of any other benefit provided) to an air carrier (or any related person) for the right to provide mileage awards for (or other reductions in the cost of) any transportation of persons by air shall be treated for purposes of subsection (a) as an amount paid for taxable transportation, and such amount shall be taxable under subsection (a) without regard to any other provision of this subchapter.

(B) Controlled group

For purposes of subparagraph (A), a corporation and all wholly owned subsidiaries of such corporation shall be treated as 1 corporation.

(C) Regulations

The Secretary shall prescribe rules which reallocate items of income, deduction, credit, exclusion, or other allowance to the extent necessary to prevent the avoidance of tax imposed by reason of this paragraph. The Secretary may prescribe rules which exclude from the tax imposed by subsection (a) amounts attributable to mileage awards which are used other than for transportation of persons by air.

(4) Inflation adjustment of dollar rates of tax

(A) In general

In the case of taxable events in a calendar year after the last nonindexed year, the $3.00 amount contained in subsection (b) and each dollar amount contained in subsection (c) shall be increased by an amount equal to—

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting the year before the last nonindexed year for "calendar year 1992" in subparagraph (B) thereof.

If any increase determined under the preceding sentence is not a multiple of 10 cents, such increase shall be rounded to the nearest multiple of 10 cents.

(B) Last nonindexed year

For purposes of subparagraph (A), the last nonindexed year is—

(i) 2002 in the case of the $3.00 amount contained in subsection (b), and

(ii) 1998 in the case of the dollar amounts contained in subsection (c).

(C) Taxable event

For purposes of subparagraph (A), in the case of the tax imposed by subsection (b), the beginning of the domestic segment shall be treated as the taxable event.

(D) Special rule for amounts paid for domestic segments beginning after 2002

If an amount is paid during a calendar year for a domestic segment beginning in a later calendar year, then the rate of tax under subsection (b) on such amount shall be the rate in effect for the calendar year in which such amount is paid.

(5) Rates of ticket tax for transportation beginning before October 1, 1999

Subsection (a) shall be applied by substituting for "7.5 percent"—

(A) "9 percent" in the case of transportation beginning after September 30, 1997, and before October 1, 1998, and

(B) "8 percent" in the case of transportation beginning after September 30, 1998, and before October 1, 1999.

(f) Exemption for certain uses

No tax shall be imposed under subsection (a) or (b) on air transportation—

(1) by helicopter for the purpose of transporting individuals, equipment, or supplies in the exploration for, or the development or removal of, hard minerals, oil, or gas, or

(2) by helicopter or by fixed-wing aircraft for the purpose of the planting, cultivation, cutting, or transportation of, or caring for, trees (including logging operations),

but only if the helicopter or fixed-wing aircraft does not take off from, or land at, a facility eligible for assistance under the Airport and Airway Development Act of 1970, or otherwise use services provided pursuant to section 44509 or 44913(b) or subchapter I of chapter 471 of title 49, United States Code, during such use. In the case of helicopter transportation described in paragraph (1), this subsection shall be applied by treating each flight segment as a distinct flight.

(g) Exemption for air ambulances providing certain emergency medical transportation

No tax shall be imposed under this section or section 4271 on any air transportation for the purpose of providing emergency medical services—

(1) by helicopter, or

(2) by a fixed-wing aircraft equipped for and exclusively dedicated on that flight to acute care emergency medical services.

(h) Exemption for skydiving uses

No tax shall be imposed by this section or section 4271 on any air transportation exclusively for the purpose of skydiving.

(i) Exemption for seaplanes

No tax shall be imposed by this section or section 4271 on any air transportation by a seaplane with respect to any segment consisting of a takeoff from, and a landing on, water, but only if the places at which such takeoff and landing occur have not received and are not receiving financial assistance from the Airport and Airways Trust Fund.

(j) Exemption for aircraft in fractional ownership aircraft programs

No tax shall be imposed by this section or section 4271 on any air transportation if tax is imposed under section 4043 with respect to the fuel used in such transportation. This subsection shall not apply after September 30, 2015.

(k) Application of taxes

(1) In general

The taxes imposed by this section shall apply to—

(A) transportation beginning during the period—

(i) beginning on the 7th day after the date of the enactment of the Airport and Airway Trust Fund Tax Reinstatement Act of 1997, and

(ii) ending on September 30, 2015, and

(B) amounts paid during such period for transportation beginning after such period.

(2) Refunds

If, as of the date any transportation begins, the taxes imposed by this section would not have applied to such transportation if paid for on such date, any tax paid under paragraph (1)(B) with respect to such transportation shall be treated as an overpayment.

(Aug. 16, 1954, ch. 736, 68A Stat. 506; July 25, 1956, ch. 725, §§1, 4(b), 70 Stat. 644, 646; Pub. L. 86–75, §4, June 30, 1959, 73 Stat. 158; Pub. L. 86–564, title II, §202(a)(3), June 30, 1960, 74 Stat. 290; Pub. L. 87–72, §3(a)(3), June 30, 1961, 75 Stat. 193; Pub. L. 87–508, §5(a), (b), June 28, 1962, 76 Stat. 115; Pub. L. 88–52, §3(a)(3), June 29, 1963, 77 Stat. 72; Pub. L. 88–348, §2(a)(3), June 30, 1964, 78 Stat. 237; Pub. L. 89–44, title III, §303(a), June 21, 1965, 79 Stat. 148; Pub. L. 91–258, title II, §203(a), May 21, 1970, 84 Stat. 238; Pub. L. 94–455, title XIX, §1904(a)(7), Oct. 4, 1976, 90 Stat. 1812; Pub. L. 96–298, §1(b), July 1, 1980, 94 Stat. 829; Pub. L. 97–248, title II, §280(a), Sept. 3, 1982, 96 Stat. 564; Pub. L. 98–369, div. A, title X, §1018(b), July 18, 1984, 98 Stat. 1021; Pub. L. 99–514, title XVIII, §1878(c)(2), Oct. 22, 1986, 100 Stat. 2903; Pub. L. 100–223, title IV, §§402(a)(1), 404(a), (c), Dec. 30, 1987, 101 Stat. 1532, 1533; Pub. L. 101–239, title VII, §7503(a), Dec. 19, 1989, 103 Stat. 2362; Pub. L. 101–508, title XI, §11213(a)(1), (d)(1), Nov. 5, 1990, 104 Stat. 1388–432, 1388–435; Pub. L. 103–272, §5(g)(2), July 5, 1994, 108 Stat. 1374; Pub. L. 104–188, title I, §1609(b), (d), (e), Aug. 20, 1996, 110 Stat. 1841, 1842; Pub. L. 105–2, §2(b)(1), Feb. 28, 1997, 111 Stat. 5; Pub. L. 105–34, title X, §1031(b)(1), (c)(1), (2), title XIV, §1435(a), title XVI, §1601(f)(4)(D), Aug. 5, 1997, 111 Stat. 929, 930, 1052, 1091; Pub. L. 108–176, title IX, §902(a), Dec. 12, 2003, 117 Stat. 2598; Pub. L. 109–59, title XI, §§11121(c), 11122(a), 11123(a), Aug. 10, 2005, 119 Stat. 1951, 1952; Pub. L. 109–135, title IV, §412(vv), Dec. 21, 2005, 119 Stat. 2640; Pub. L. 110–161, div. K, title I, §116(b)(1), Dec. 26, 2007, 121 Stat. 2381; Pub. L. 110–190, §2(b)(1), Feb. 28, 2008, 122 Stat. 643; Pub. L. 110–253, §2(b)(1), June 30, 2008, 122 Stat. 2417; Pub. L. 110–330, §2(b)(1), Sept. 30, 2008, 122 Stat. 3717; Pub. L. 111–12, §2(b)(1), Mar. 30, 2009, 123 Stat. 1457; Pub. L. 111–69, §2(b)(1), Oct. 1, 2009, 123 Stat. 2054; Pub. L. 111–116, §2(b)(1), Dec. 16, 2009, 123 Stat. 3031; Pub. L. 111–153, §2(b)(1), Mar. 31, 2010, 124 Stat. 1084; Pub. L. 111–161, §2(b)(1), Apr. 30, 2010, 124 Stat. 1126; Pub. L. 111–197, §2(b)(1), July 2, 2010, 124 Stat. 1353; Pub. L. 111–216, title I, §101(b)(1), Aug. 1, 2010, 124 Stat. 2349; Pub. L. 111–249, §2(b)(1), Sept. 30, 2010, 124 Stat. 2627; Pub. L. 111–329, §2(b)(1), Dec. 22, 2010, 124 Stat. 3566; Pub. L. 112–7, §2(b)(1), Mar. 31, 2011, 125 Stat. 31; Pub. L. 112–16, §2(b)(1), May 31, 2011, 125 Stat. 218; Pub. L. 112–21, §2(b)(1), June 29, 2011, 125 Stat. 233; Pub. L. 112–27, §2(b)(1), Aug. 5, 2011, 125 Stat. 270; Pub. L. 112–30, title II, §202(b)(1), Sept. 16, 2011, 125 Stat. 357; Pub. L. 112–91, §2(b)(1), Jan. 31, 2012, 126 Stat. 3; Pub. L. 112–95, title XI, §§1101(b)(1), 1103(c), Feb. 14, 2012, 126 Stat. 148, 151.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title and Internal Revenue Service announcements listed in a table below.

REFERENCES IN TEXT

The date of the enactment of this paragraph, referred to in subsec. (e)(1)(B)(ii)(II), is the date of enactment of Pub. L. 105–34, which was approved Aug. 5, 1997.

The Airport and Airway Development Act of 1970, referred to in subsec. (f), is title I of Pub. L. 91–258, May 21, 1970, 84 Stat. 219, which was classified principally to chapter 25 (§1701 et seq.) of former Title 49, Transportation. Sections 1 to 30 of title I of Pub. L. 91–258, which enacted sections 1701 to 1703, 1711 to 1713, and 1714 to 1730 of former Title 49 and a provision set out as a note under section 1701 of former Title 49, were repealed by Pub. L. 97–248, title V, §523(a), Sept. 3, 1982, 96 Stat. 695. Sections 31, 51, 52(a), (b)(4), (6), (c), (d), and 53 of title I of Pub. L. 91–258 were repealed by Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation. For complete classification of this Act to the Code, see Tables. For disposition of sections of former Title 49, see table at the beginning of Title 49.

The date of the enactment of the Airport and Airway Trust Fund Tax Reinstatement Act of 1997, referred to in subsec. (k)(1)(A)(i), is the date of enactment of Pub. L. 105–2, which was approved Feb. 28, 1997.

AMENDMENTS

2012—Subsec. (j). Pub. L. 112–95, §1103(c), added subsec. (j). Former subsec. (j) redesignated (k).

Subsec. (j)(1)(A)(ii). Pub. L. 112–95, §1101(b)(1), substituted "September 30, 2015" for "February 17, 2012".

Pub. L. 112–91 substituted "February 17, 2012" for "January 31, 2012".

Subsec. (k). Pub. L. 112–95, §1103(c), redesignated subsec. (j) as (k).

2011—Subsec. (j)(1)(A)(ii). Pub. L. 112–30 substituted "January 31, 2012" for "September 16, 2011".
Pub. L. 112–27 substituted "September 16, 2011" for "July 22, 2011".
Pub. L. 112–21 substituted "July 22, 2011" for "June 30, 2011".
Pub. L. 112–16 substituted "June 30, 2011" for "May 31, 2011".
Pub. L. 112–7 substituted "May 31, 2011" for "March 31, 2011".
2010—Subsec. (j)(1)(A)(ii). Pub. L. 111–329 substituted "March 31, 2011" for "December 31, 2010".
Pub. L. 111–249 substituted "December 31, 2010" for "September 30, 2010".
Pub. L. 111–216 substituted "September 30, 2010" for "August 1, 2010".
Pub. L. 111–197 substituted "August 1, 2010" for "July 3, 2010".
Pub. L. 111–161 substituted "July 3, 2010" for "April 30, 2010".
Pub. L. 111–153 substituted "April 30, 2010" for "March 31, 2010".
2009—Subsec. (j)(1)(A)(ii). Pub. L. 111–116 substituted "March 31, 2010" for "December 31, 2009".
Pub. L. 111–69 substituted "December 31, 2009" for "September 30, 2009".
Pub. L. 111–12 substituted "September 30, 2009" for "March 31, 2009".
2008—Subsec. (j)(1)(A)(ii). Pub. L. 110–330 substituted "March 31, 2009" for "September 30, 2008".
Pub. L. 110–253 substituted "September 30, 2008" for "June 30, 2008".
Pub. L. 110–190 substituted "June 30, 2008" for "February 29, 2008".
2007—Subsec. (j)(1)(A)(ii). Pub. L. 110–161 substituted "February 29, 2008" for "September 30, 2007".
2005—Subsec. (e)(1)(B)(i). Pub. L. 109–59, §11122(a)(1), inserted "(in the case of any airport described in clause (ii)(III), on flight segments of at least 100 miles)" after "by air".
Subsec. (e)(1)(B)(ii)(III). Pub. L. 109–59, §11122(a)(2), added subcl. (III).
Subsec. (e)(4)(C). Pub. L. 109–135 substituted "imposed by subsection (b)" for "imposed subsection (b)".
Subsec. (f). Pub. L. 109–59, §11121(c), amended heading and text of subsec. (f) generally. Prior to amendment, text read as follows: "No tax shall be imposed under subsection (a) or (b) on air transportation by helicopter for the purpose of—

"(1) transporting individuals, equipment, or supplies in the exploration for, or the development or removal of, hard minerals, oil, or gas, or

"(2) the planting, cultivation, cutting, or transportation of, or caring for, trees (including logging operations),

but only if the helicopter does not take off from, or land at, a facility eligible for assistance under the Airport and Airway Development Act of 1970, or otherwise use services provided pursuant to section 44509 or 44913(b) or subchapter I of chapter 471 of title 49, United States Code, during such use. In the case of helicopter transportation described in paragraph (1), this subsection shall be applied by treating each flight segment as a distinct flight."
Subsecs. (i), (j). Pub. L. 109–59, §11123(a), added subsec. (i) and redesignated former subsec. (i) as (j).
2003—Subsec. (e)(4)(D). Pub. L. 108–176 added subpar. (D).
1997—Subsec. (a). Pub. L. 105–34, §1031(c)(1), added subsec. (a) and struck out heading and text of former subsec. (a). Text read as follows: "There is hereby imposed upon the amount paid for taxable transportation (as defined in section 4262) of any person a tax equal to 10 percent of the amount so paid. In the case of amounts paid outside of the United States for taxable transportation, the tax imposed by this subsection shall apply only if such transportation begins and ends in the United States."
Subsec. (b). Pub. L. 105–34, §1031(c)(1), added subsec. (b) and struck out heading and text of former subsec. (b). Text read as follows: "There is hereby imposed upon the amount paid for seating or sleeping accommodations in connection with transportation and with respect to which a tax is imposed by subsection (a), a tax equal to 10 percent of the amount so paid."
Subsec. (c). Pub. L. 105–34, §1031(c)(1), added subsec. (c) and struck out heading and text of former subsec. (c). Text read as follows: "There is hereby imposed a tax of $6 upon any amount paid (whether within or without the United States) for any transportation of any person by air, if such transportation begins in the United States. This subsection shall not apply to any transportation all of which is taxable under subsection (a) (determined without regard to sections 4281 and 4282)."
Subsecs. (e), (f). Pub. L. 105–34, §1031(c)(2), added subsec. (e) and redesignated former subsec. (e) as (f). Former subsec. (f) redesignated (g).
Subsec. (g). Pub. L. 105–34, §1031(c)(2), redesignated subsec. (f) as (g). Former subsec. (g) redesignated (h).
Pub. L. 105–2 amended heading and text of subsec. (g) generally. Prior to amendment, text read as follows: "The taxes imposed by this section shall apply with respect to transportation beginning after August 31, 1982, and before January 1, 1996, and to transportation beginning on or after the date which is 7 calendar days after the date of the enactment of the Small Business Job Protection Act of 1996 and before January 1, 1997."

Subsec. (g)(1)(A)(ii). Pub. L. 105–34, §1031(b)(1), substituted "September 30, 2007" for "September 30, 1997".

Subsec. (g)(2). Pub. L. 105–34, §1601(f)(4)(D), inserted "on that flight" after "dedicated".

Subsec. (h). Pub. L. 105–34, §1435(a), added subsec. (h). Former subsec. (h) redesignated (i).

Pub. L. 105–34, §1031(c)(2), redesignated subsec. (g) as (h).

Subsec. (i). Pub. L. 105–34, §1435(a), redesignated subsec. (h) as (i).

1996—Subsec. (e). Pub. L. 104–188, §1609(e), inserted at end "In the case of helicopter transportation described in paragraph (1), this subsection shall be applied by treating each flight segment as a distinct flight."

Subsec. (f). Pub. L. 104–188, §1609(d), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows:

"(f) EXEMPTION FOR CERTAIN EMERGENCY MEDICAL TRANSPORTATION.—No tax shall be imposed under this section or section 4271 on any air transportation by helicopter for the purpose of providing emergency medical services if such helicopter—

"(1) does not take off from, or land at, a facility eligible for assistance under the Airport and Airway Development Act of 1970 during such transportation, and

"(2) does not otherwise use services provided pursuant to section 44509 or 44913(b) or subchapter I of chapter 471 of title 49, United States Code, during such transportation."

Subsec. (g). Pub. L. 104–188, §1609(b), substituted "January 1, 1996, and to transportation beginning on or after the date which is 7 calendar days after the date of the enactment of the Small Business Job Protection Act of 1996 and before January 1, 1997" for "January 1, 1996".

1994—Subsecs. (e), (f)(2). Pub. L. 103–272, §5(g)(2), substituted "section 44509 or 44913(b) or subchapter I of chapter 471 of title 49, United States Code," for "the Airport and Airway Improvement Act of 1982".

1990—Subsecs. (a), (b). Pub. L. 101–508, §11213(a)(1), substituted "10 percent" for "8 percent".

Subsec. (g). Pub. L. 101–508, §11213(d)(1), substituted "January 1, 1996" for "January 1, 1991".

1989—Subsec. (c). Pub. L. 101–239 substituted "$6" for "$3".

1987—Subsec. (e). Pub. L. 100–223, §404(c), which directed the substitution of "Improvement Act" for "System Improvement Act" could not be executed because such words do not appear.

Subsec. (f). Pub. L. 100–223, §404(a), added subsec. (f). Former subsec. (f) redesignated (g).

Pub. L. 100–223, §402(a)(1), substituted "January 1, 1991" for "January 1, 1988".

Subsec. (g). Pub. L. 100–223, §404(a), redesignated former subsec. (f) as (g).

1986—Subsec. (e)(1). Pub. L. 99–514, amended par. (1) generally. Prior to amendment, par. (1) read as follows: "transporting individuals, equipment, or supplies in—

"(A) the exploration for, or the development or removal of, hard minerals, or

"(B) the exploration for oil or gas, or".

1984—Subsec. (e)(1). Pub. L. 98–369 amended par. (1) generally, designating existing provisions as subpar. (A) and adding subpar. (B).

1982—Subsec. (e). Pub. L. 97–248 substituted provisions relating to exemptions for certain helicopter uses for provisions that effective with respect to transportation beginning after Sept. 30, 1980, the rate of taxes imposed by subsecs. (a) and (b) would be 5 percent and taxes imposed by subsec. (c) would not apply.

Subsec. (f). Pub. L. 97–248 added subsec. (f).

1980—Subsec. (e). Pub. L. 96–298 substituted "September 30, 1980" for "June 30, 1980".

1976—Subsec. (a). Pub. L. 94–455, §1904(a)(7)(A), struck out "which begins after June 30, 1970" after "any person".

Subsec. (b). Pub. L. 94–455, §1904(a)(7)(A), struck out "which begins after June 30, 1970" after "with transportation".

Subsec. (c). Pub. L. 94–455, §1904(a)(7)(B), struck out "and begins after June 30, 1970" after "United States".

1970—Subsec. (a). Pub. L. 91–258 consolidated former provisions of subsecs. (a) and (b) for imposition of tax on amounts paid within and outside the United States, substituting an 8 percent rate commencing after June 30, 1970, for prior 5 percent rate commencing after Nov. 15, 1962.

Subsec. (b). Pub. L. 91–258 redesignated subsec. (c) as (b), substituting an 8 percent rate in connection with transportation which begins after June 30, 1970, and with respect to which a tax is imposed by subsec. (a) for prior 5 percent rate in connection with transportation which began after Nov. 15, 1962, and with respect to which a tax had been imposed by former provisions of subsecs. (a) and (b). Former subsec. (b) provisions for imposition of tax on amounts paid outside the United States were incorporated in subsec. (a).

Subsecs. (c), (d). Pub. L. 91–258 added subsec. (c), redesignated former subsec. (c) as (d), and substituted "section 4263(a)" for "section 4264".

Subsec. (e). Pub. L. 91–258 added subsec. (e).

1965—Pub. L. 89–44 substituted "November 15, 1962" for "November 15, 1962, and before July 1, 1965" wherever appearing.

1964—Pub. L. 88–348 substituted "July 1, 1965" for "July 1, 1964" wherever appearing.

1963—Pub. L. 88–52 substituted "July 1, 1964" for "July 1, 1963" wherever appearing.

1962—Subsecs. (a), (b). Pub. L. 87–508, §5(b), struck out imposition of tax on transportation of persons by rail, motor vehicle, or water and substituted "tax equal to 5 percent of the amount so paid in connection with transportation which begins after November 15, 1962, and before July 1, 1963" for "tax equal to 10 percent of the amount so paid for transportation which begins before November 16, 1962".

Pub. L. 87–508, §5(a), substituted provisions imposing a tax equal to 10 percent of the amount paid for transportation which begins before Nov. 16, 1962, for provisions imposing a tax equal to 10 percent of the amount paid before July 1, 1962, or 5 percent of the amount paid on or after July 1, 1962.

Subsec. (c). Pub. L. 87–508, §5(b), substituted "tax equivalent to 5 percent of the amount so paid in connection with transportation which begins after November 15, 1962, and before July 1, 1963" for "tax equivalent to 10 percent of the amount so paid in connection with transportation which begins before November 16, 1962".

Pub. L. 87–508, §5(a), substituted provision imposing a tax equivalent to 10 percent of the amount paid in connection with transportation which begins before Nov. 16, 1962 for provision imposing a tax equivalent to 10 percent of the amount paid before July 1, 1962, or 5 percent of the amount paid on or after July 1, 1962.

1961—Pub. L. 87–72 substituted "July 1, 1962" for "July 1, 1961", wherever appearing.

1960—Pub. L. 86–564 substituted "July 1, 1961" for "July 1, 1960" wherever appearing.

1959—Pub. L. 86–75 reduced tax on transportation of persons from ten to five percent effective July 1, 1960.

1956—Subsec. (a). Act July 25, 1956, §1, substituted "taxable transportation (as defined in section 4262) of any person by rail, motor vehicle, water, or air a tax" for "the transportation of persons by rail, motor vehicle, water, or air within or without the United States a tax".

Subsec. (b). Act July 25, 1956, §1, substituted "taxable transportation (as defined in section 4262) of any person by rail, motor vehicle, water, or air, but only if such transportation begins and ends in the United States" for "transportation of persons by rail, motor vehicle, water, or air which begins and ends in the United States".

Subsec. (d). Act July 25, 1956, §4(b), substituted "Except as provided in section 4264, the" for "The".

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by section 1101(b)(1) of Pub. L. 112–95 effective Feb. 18, 2012, see section 1101(c) of Pub. L. 112–95, set out as an Effective and Termination Dates of 2012 Amendment note under section 4081 of this title.

Pub. L. 112–95, title XI, §1103(d)(3), Feb. 14, 2012, 126 Stat. 151, provided that: "The amendments made by subsection (c) [amending this section] shall apply to taxable transportation provided after March 31, 2012."

Amendment by Pub. L. 112–91 effective Feb. 1, 2012, see section 2(c) of Pub. L. 112–91, set out as an Effective and Termination Dates of 2012 Amendment note under section 4081 of this title.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112–30 effective Sept. 17, 2011, see section 202(c) of Pub. L. 112–30, set out as a note under section 4081 of this title.

Amendment by Pub. L. 112–27 effective July 23, 2011, see section 2(c) of Pub. L. 112–27, set out as a note under section 4081 of this title.

Amendment by Pub. L. 112–21 effective July 1, 2011, see section 2(c) of Pub. L. 112–21, set out as a note under section 4081 of this title.

Amendment by Pub. L. 112–16 effective June 1, 2011, see section 2(c) of Pub. L. 112–16, set out as a note under section 4081 of this title.

Amendment by Pub. L. 112–7 effective Apr. 1, 2011, see section 2(c) of Pub. L. 112–7, set out as a note under section 4081 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–329 effective Jan. 1, 2011, see section 2(c) of Pub. L. 111–329, set out as a note under section 4081 of this title.

Amendment by Pub. L. 111–249 effective Oct. 1, 2010, see section 2(c) of Pub. L. 111–249, set out as a note under section 4081 of this title.

Amendment by Pub. L. 111–216 effective Aug. 2, 2010, see section 101(c) of Pub. L. 111–216, set out as a

note under section 4081 of this title.

Amendment by Pub. L. 111–197 effective July 4, 2010, see section 2(c) of Pub. L. 111–197, set out as a note under section 4081 of this title.

Amendment by Pub. L. 111–161 effective May 1, 2010, see section 2(c) of Pub. L. 111–161, set out as a note under section 4081 of this title.

Amendment by Pub. L. 111–153 effective Apr. 1, 2010, see section 2(c) of Pub. L. 111–153, set out as a note under section 4081 of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–116 effective Jan. 1, 2010, see section 2(c) of Pub. L. 111–116, set out as a note under section 4081 of this title.

Amendment by Pub. L. 111–69 effective Oct. 1, 2009, see section 2(c) of Pub. L. 111–69, set out as a note under section 4081 of this title.

Amendment by Pub. L. 111–12 effective Apr. 1, 2009, see section 2(c) of Pub. L. 111–12, set out as a note under section 4081 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–330 effective Oct. 1, 2008, see section 2(c) of Pub. L. 110–330, set out as a note under section 4081 of this title.

Amendment by Pub. L. 110–253 effective July 1, 2008, see section 2(c) of Pub. L. 110–253, set out as a note under section 4081 of this title.

Amendment by Pub. L. 110–190 effective Mar. 1, 2008, see section 2(c) of Pub. L. 110–190, set out as a note under section 4081 of this title.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–161 effective Oct. 1, 2007, see section 116(d) of div. K of Pub. L. 110–161, set out as a note under section 4081 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–59, title XI, §11121(d), Aug. 10, 2005, 119 Stat. 1952, provided that: "The amendments made by this section [amending this section and section 6420 of this title] shall apply to fuel use or air transportation after September 30, 2005."

Pub. L. 109–59, title XI, §11122(b), Aug. 10, 2005, 119 Stat. 1952, provided that: "The amendments made by this section [amending this section] shall take effect on October 1, 2005."

Amendment by section 11123(a) of Pub. L. 109–59 applicable to transportation beginning after Sept. 30, 2005, see section 11123(c) of Pub. L. 109–59, set out as a note under section 4083 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–176, title IX, §902(b), Dec. 12, 2003, 117 Stat. 2598, provided that: "The amendment made by subsection (a) [amending this section] shall take effect as if included in the provisions of the Taxpayer Relief Act of 1997 [Pub. L. 105–34] to which they relate."

EFFECTIVE DATE OF 1997 AMENDMENTS

Pub. L. 105–34, title X, §1031(e)(2), Aug. 5, 1997, 111 Stat. 932, provided that:

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendments made by subsections (b) and (c) [amending this section and sections 4263 and 4271 of this title] shall apply to transportation beginning on or after October 1, 1997.

"(B) TREATMENT OF AMOUNTS PAID FOR TICKETS PURCHASED BEFORE OCTOBER 1, 1997.—The amendments made by subsection (c) [amending this section and section 4263 of this title] shall not apply to amounts paid before October 1, 1997; except that—

"(i) the amendment made to section 4261(c) of the Internal Revenue Code of 1986 shall apply to amounts paid more than 7 days after the date of the enactment of this Act [Aug. 5, 1997] for transportation beginning on or after October 1, 1997, and

"(ii) the amendment made to section 4263(c) of such Code shall apply to the extent related to taxes imposed under the amendment made to such section 4261(c) on the amounts described in clause (i).

"(C) AMOUNTS PAID FOR RIGHT TO AWARD MILEAGE AWARDS.—

"(i) IN GENERAL.—Paragraph (3) of section 4261(e) of the Internal Revenue Code of 1986 (as added by the amendment made by subsection (c)) shall apply to amounts paid (and other benefits provided) after September 30, 1997.

"(ii) PAYMENTS WITHIN CONTROLLED GROUP.—For purposes of clause (i), any amount paid after June 11, 1997, and before October 1, 1997, by 1 member of a controlled group for a right which is described in such section 4261(e)(3) and is furnished by another member of such group after September 30, 1997, shall be treated as paid after September 30, 1997. For purposes of the preceding sentence, all persons treated as a single employer under subsection (a) or (b) of section 52 of such Code shall be treated as members of a controlled group."

Pub. L. 105–34, title XIV, §1435(c)(1), Aug. 5, 1997, 111 Stat. 1053, provided that: "The amendment made by subsection (a) [amending this section] shall apply to amounts paid after September 30, 1997."

Amendment by section 1601(f)(4)(D) of Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 23 of this title.

Pub. L. 105–2, §2(e)(2), Feb. 28, 1997, 111 Stat. 7, provided that:

"(A) IN GENERAL.—The amendments made by subsection (b) [amending this section and section 4271 of this title] shall apply to transportation beginning on or after such 7th day [means the 7th day after Feb. 28, 1997].

"(B) EXCEPTION FOR CERTAIN PAYMENTS.—Except as provided in subparagraph (C), the amendments made by subsection (b) shall not apply to any amount paid before such 7th day.

"(C) PAYMENTS OF PROPERTY TRANSPORTATION TAX WITHIN CONTROLLED GROUP.—In the case of the tax imposed by section 4271 of the Internal Revenue Code of 1986, subparagraph (B) shall not apply to any amount paid by 1 member of a controlled group for transportation furnished by another member of such group. For purposes of the preceding sentence, all persons treated as a single employer under subsection (a) or (b) of section 52 of the Internal Revenue Code of 1986 shall be treated as members of a controlled group."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective on 7th calendar day after Aug. 20, 1996, but not applicable to any amount paid before such date, see section 1609(i) of Pub. L. 104–188, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, §11213(a)(3), Nov. 5, 1990, 104 Stat. 1388–432, provided that: "The amendments made by this subsection [amending this section and section 4271 of this title] shall apply to transportation beginning after November 30, 1990, but shall not apply to amounts paid on or before such date."

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7503(b), Dec. 19, 1989, 103 Stat. 2362, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to transportation beginning after December 31, 1989, which was not paid for before such date."

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–223, title IV, §404(d)(1), Dec. 30, 1987, 101 Stat. 1533, provided that: "The amendment made by subsection (a) [amending this section] shall apply to transportation beginning after September 30, 1988, but shall not apply to amounts paid on or before such date."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title X, §1018(c)(2), July 18, 1984, 98 Stat. 1022, provided that: "The amendment made by subsection (b) [amending this section] shall apply to transportation beginning after March 31, 1984, but shall not apply to any amount paid on or before such date."

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title II, §280(d), Sept. 3, 1982, 96 Stat. 565, provided that: "The amendments made by this section [amending this section and sections 4271, 4281, and 6156 of this title and repealing sections 4491 to 4494 and 6426 of this title] shall apply with respect to transportation beginning after August 31, 1982; except

that such amendments shall not apply to any amount paid on or before such date."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94–455, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–258 applicable to transportation beginning after June 30, 1970, see section 211(b) of Pub. L. 91–258, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Pub. L. 89–44, title VII, §701(b)(3), June 21, 1965, 79 Stat. 157, provided that: "The amendments made by section 303 [amending this section] shall apply with respect to amounts paid for transportation, and amounts paid for accommodations in connection with transportation, beginning on or after July 1, 1965."

EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87–508, §5(b), June 28, 1962, 76 Stat. 115, provided that the amendment made by that section is effective with respect to transportation beginning after Nov. 15, 1962.

EFFECTIVE DATE OF 1956 AMENDMENT

Act July 25, 1956, ch. 725, §6, 70 Stat. 646, provided that: "The amendments made by this Act [amending this section and sections 4262 to 4264, 4291, and 6421 of this title] shall apply to amounts paid on or after the first day of the first month which begins more than sixty days after the date of the enactment of this Act [July 25, 1956] for transportation commencing on or after such first day."

DELAYED DEPOSITS OF AIRPORT TRUST FUND TAX REVENUES

Due date for deposits of taxes imposed by this section which would be required to be made after Aug. 14, 1997, and before Oct. 1, 1997, to be Oct. 10, 1997, and due date for deposits of taxes imposed by this section which would be required to be made after Aug. 14, 1998, and before Oct. 1, 1998, to be Oct. 5, 1998, see section 1031(g) of Pub. L. 105–34, set out as a note under section 6302 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

Provisions relating to inflation adjustment of items in this section for certain years were contained in the following:

2011—Internal Revenue News Release IR 2010–129, Dec. 29, 2010.

2010—Internal Revenue News Release IR 2009–120, Dec. 23, 2009.

§4262. Definition of taxable transportation

(a) Taxable transportation; in general

For purposes of this part, except as provided in subsection (b), the term "taxable transportation" means—

(1) transportation by air which begins in the United States or in the 225–mile zone and ends in the United States or in the 225–mile zone; and

(2) in the case of transportation by air other than transportation described in paragraph (1), that portion of such transportation which is directly or indirectly from one port or station in the United States to another port or station in the United States, but only if such portion is not a part of uninterrupted international air transportation (within the meaning of subsection (c)(3)).

(b) Exclusion of certain travel

For purposes of this part, the term "taxable transportation" does not include that portion of any

transportation by air which meets all 4 of the following requirements:

(1) such portion is outside the United States;

(2) neither such portion nor any segment thereof is directly or indirectly—

(A) between (i) a point where the route of the transportation leaves or enters the continental United States, or (ii) a port or station in the 225-mile zone, and

(B) a port or station in the 225-mile zone;

(3) such portion—

(A) begins at either (i) the point where the route of the transportation leaves the United States, or (ii) a port or station in the 225-mile zone, and

(B) ends at either (i) the point where the route of the transportation enters the United States, or (ii) a port or station in the 225-mile zone; and

(4) a direct line from the point (or the port or station) specified in paragraph (3)(A), to the point (or the port or station) specified in paragraph (3)(B), passes through or over a point which is not within 225 miles of the United States.

(c) Definitions

For purposes of this section—

(1) Continental United States

The term "continental United States" means the District of Columbia and the States other than Alaska and Hawaii.

(2) 225-mile zone

The term "225-mile zone" means that portion of Canada and Mexico which is not more than 225 miles from the nearest point in the continental United States.

(3) Uninterrupted international air transportation

The term "uninterrupted international air transportation" means any transportation by air which is not transportation described in subsection (a)(1) and in which—

(A) the scheduled interval between (i) the beginning or end of the portion of such transportation which is directly or indirectly from one port or station in the United States to another port or station in the United States and (ii) the end or beginning of the other portion of such transportation is not more than 12 hours, and

(B) the scheduled interval between the beginning or end and the end or beginning of any two segments of the portion of such transportation referred to in subparagraph (A)(i) is not more than 12 hours.

For purposes of this paragraph, in the case of personnel of the United States Army, Air Force, Navy, Marine Corps, and Coast Guard traveling in uniform at their own expense when on official leave, furlough, or pass, the scheduled interval described in subparagraph (A) shall be deemed to be not more than 12 hours if a ticket for the subsequent portion of such transportation is purchased within 12 hours after the end of the earlier portion of such transportation and the purchaser accepts and utilizes the first accommodations actually available to him for such subsequent portion.

(d) Transportation

For purposes of this part, the term "transportation" includes layover or waiting time and movement of the aircraft in deadhead service.

(e) Authority to waive 225-mile zone provisions

(1) In general

If the Secretary of the Treasury determines that Canada or Mexico has entered into a qualified agreement—

(A) the Secretary shall publish a notice of such determination in the Federal Register, and

(B) effective with respect to transportation beginning after the date specified in such notice, to the extent provided in the agreement, the term "225-mile zone" shall not include part or all of the country with respect to which such determination is made.

(2) Termination of waiver

If a determination was made under paragraph (1) with respect to any country and the Secretary of the Treasury subsequently determines that the agreement is no longer in effect or that the agreement is no longer a qualified agreement—

(A) the Secretary shall publish a notice of such determination in the Federal Register, and

(B) subparagraph (B) of paragraph (1) shall cease to apply with respect to transportation beginning after the date specified in such notice.

(3) Qualified agreement

For purposes of this subsection, the term "qualified agreement" means an agreement between the United States and Canada or Mexico (as the case may be)—

(A) setting forth that portion of such country which is not to be treated as within the 225-mile zone, and

(B) providing that the tax imposed by such country on transportation described in subparagraph (A) will be at a level which the Secretary of the Treasury determines to be appropriate.

(4) Requirement that agreement be submitted to Congress

No notice may be published under paragraph (1)(A) with respect to any qualified agreement before the date 90 days after the date on which a copy of such agreement was furnished to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

(Added July 25, 1956, ch. 725, §3, 70 Stat. 644; amended Pub. L. 86–70, §22(b), June 25, 1959, 73 Stat. 146; Pub. L. 86–624, §18(a), July 12, 1960, 74 Stat. 416; Pub. L. 87–508, §5(b), June 28, 1962, 76 Stat. 116; Pub. L. 89–44, title VIII, §803(a), June 21, 1965, 79 Stat. 160; Pub. L. 91–258, title II, §203(b), May 21, 1970, 84 Stat. 238; Pub. L. 97–248, title II, §281A(a)(1), (2), Sept. 3, 1982, 96 Stat. 566, 567.)

PRIOR PROVISIONS

A prior section 4262 was renumbered 4263 of this title and later repealed.

AMENDMENTS

1982—Subsec. (c)(3). Pub. L. 97–248, §281A(a)(1), substituted "12 hours" for "6 hours" wherever appearing.

Subsec. (e). Pub. L. 97–248, §281A(a)(2), added subsec. (e).

1970—Subsec. (a). Pub. L. 91–258, §203(b)(1)–(3), substituted "part" for "subchapter" in introductory text, "transportation by air" for "transportation" in par. (1), and "in the case of transportation by air" for "in the case of transportation" in par. (2), respectively.

Subsec. (b). Pub. L. 91–258, §203(b)(1), (4), substituted "part" for "subchapter" and "transportation by air which" for "transportation which", in introductory text, respectively.

Subsec. (d). Pub. L. 91–258, §203(b)(5), added subsec. (d).

1965—Subsec. (c)(4). Pub. L. 89–44 inserted sentence relating to personnel of the Armed Forces traveling in uniform at their own expense following subpar. (B).

1962—Subsec. (a). Pub. L. 87–508 substituted in introductory phrase "subchapter" for "part" and inserted in par. (2) ", but only if such portion is not a part of uninterrupted international air transportation (within the meaning of subsection (c)(3))".

Subsec. (b). Pub. L. 87–508 substituted in introductory phrase "subchapter" for "part".

Subsec. (c)(3). Pub. L. 87–508 added par. (3).

1960—Subsec. (c)(1). Pub. L. 86–624 inserted "and Hawaii" after "Alaska".

1959—Subsec. (c)(1). Pub. L. 86–70 substituted "the District of Columbia and the States other than Alaska" for "the existing 48 States and the District of Columbia".

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title II, §281A(a)(3), Sept. 3, 1982, 96 Stat. 567, provided that: "The amendments made by this subsection [amending this section] shall apply to transportation beginning after August 31, 1982."

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–258 applicable to transportation beginning after June 30, 1970, see section 211(b) of Pub. L. 91–258, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Pub. L. 89–44, title VIII, §803(b), June 21, 1965, 79 Stat. 160, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to amounts paid for transportation beginning on or after July 1, 1965."

EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87–508, §5(b), June 28, 1962, 76 Stat. 115, provided that the amendment made by that section is effective with respect to transportation beginning after Nov. 15, 1962.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–624 effective August 21, 1959, see section 18(k) of Pub. L. 86–624, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–70 effective Jan. 3, 1959, see section 22(i) of Pub. L. 86–70, set out as a note under section 3121 of this title.

EFFECTIVE DATE

Section applicable to amounts paid on or after first day of first month which begins more than sixty days after July 25, 1956, for transportation commencing on or after such first day, see section 6 of act July 25, 1956, set out as an Effective Date of 1956 Amendment note under section 4261 of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§4263. Special rules

(a) Payments made outside the United States for prepaid orders

If the payment upon which tax is imposed by section 4261 is made outside the United States for a prepaid order, exchange order, or similar order, the person furnishing the initial transportation pursuant to such order shall collect the amount of the tax.

(b) Tax deducted upon refunds

Every person who refunds any amount with respect to a ticket or order which was purchased without payment of the tax imposed by section 4261 shall deduct from the amount refundable, to the extent available, any tax due under such section as a result of the use of a portion of the transportation purchased in connection with such ticket or order, and shall report to the Secretary the amount of any such tax remaining uncollected.

(c) Payment of tax

Where any tax imposed by section 4261 is not paid at the time payment for transportation is made, then, under regulations prescribed by the Secretary, to the extent that such tax is not collected under any other provision of this subchapter, such tax shall be paid by the carrier providing the initial segment of such transportation which begins or ends in the United States.

(d) Application of tax

The tax imposed by section 4261 shall apply to any amount paid within the United States for

transportation of any person by air unless the taxpayer establishes, pursuant to regulations prescribed by the Secretary at the time of payment for the transportation, that the transportation is not transportation in respect of which tax is imposed by section 4261.

(e) Round trips

In applying this subchapter to a round trip, such round trip shall be considered to consist of transportation from the point of departure to the destination, and of separate transportation thereafter.

(f) Transportation outside the northern portion of the Western Hemisphere

In applying this subchapter to transportation any part of which is outside the northern portion of the Western Hemisphere, if the route of such transportation leaves and reenters the northern portion of the Western Hemisphere, such transportation shall be considered to consist of transportation to a point outside such northern portion, and of separate transportation thereafter. For purposes of this subsection, the term "northern portion of the Western Hemisphere" means the area lying west of the 30th meridian west of Greenwich, east of the international dateline, and north of the Equator, but not including any country of South America.

(Added July 25, 1956, ch. 725, §4(a), 70 Stat. 645, §4264; amended Pub. L. 87–508, §5(b), June 28, 1962, 76 Stat. 117; renumbered §4263, Pub. L. 91–258, title II, §205(c)(2), May 21, 1970, 84 Stat. 242; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 105–34, title X, §1031(c)(3), Aug. 5, 1997, 111 Stat. 932.)

PRIOR PROVISIONS

A prior section 4263, acts Aug. 16, 1954, ch. 736, 68A Stat. 506, §4263, formerly §4262; renumbered §4263 and amended July 25, 1956, ch. 725, §2, 70 Stat. 644; Aug. 7, 1956, ch. 1024, §1, 70 Stat. 1077; June 29, 1957, Pub. L. 85–74, 71 Stat. 243; Sept. 2, 1958, Pub. L. 85–859, title I, §134, 72 Stat. 1292; June 28, 1962, Pub. L. 87–508, §5(b), 76 Stat. 117, provided for exemptions, subsecs. (a) to (d) relating to commutation travel, etc., certain organizations; members of the Armed Forces, and small aircraft on nonestablished lines, respectively, prior to repeal by Pub. L. 91–258, title II, §205(c)(1), May 21, 1970, 84 Stat. 242, effective on July 1, 1970, as provided in section 211(a) of Pub. L. 91–258, set out as a note under section 4041 of this title.

AMENDMENTS

1997—Subsec. (c). Pub. L. 105–34 substituted "subchapter, such tax shall be paid by the carrier providing the initial segment of such transportation which begins or ends in the United States." for "subchapter—

"(1) such tax shall be paid by the person paying for the transportation or by the person using the transportation;

"(2) such tax shall be paid within such time as the Secretary shall prescribe by regulations after whichever of the following first occurs:

"(A) the rights to the transportation expire; or

"(B) the time when the transportation becomes subject to tax; and

"(3) payment of such tax shall be made to the Secretary, to the person to whom the payment for transportation was made, or, in the case of transportation other than transportation described in section 4262(a)(1), to any person furnishing any portion of such transportation."

1976—Subsecs. (b) to (d). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

1962—Subsec. (c)(3). Pub. L. 87–508 provided for payment of tax, in the case of transportation other than transportation described in section 4262(a)(1), to any person furnishing any portion of the transportation.

Subsec. (d). Pub. L. 87–508 inserted "by air" after "transportation of any person".

Subsec. (e). Pub. L. 87–508 substituted "subchapter" for "part".

Subsec. (f). Pub. L. 87–508 substituted "subchapter" for "part", struck out par. (1) designation for provision respecting transportation outside the northern portion of the Western Hemisphere and par. (2) prohibiting consideration as a stop at a port within the United States a stop at an intermediate port at which vessel is not authorized to discharge and take on passengers.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to transportation beginning on or after Oct. 1, 1997, with special rule for applicability to amounts paid before Oct. 1, 1997, see section 1031(e)(2) of Pub. L. 105–34, set out as a note under section 4261 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87–508, §5(b), June 28, 1962, 76 Stat. 115, provided that the amendment made by that section is effective with respect to transportation beginning after Nov. 15, 1962.

EFFECTIVE DATE

Section applicable to amounts paid on or after first day of first month which begins more than sixty days after July 25, 1956, for transportation commencing on or after such first day, see section 6 of act July 25, 1956, set out as an Effective Date of 1956 Amendment note under section 4261 of this title.

PART II—PROPERTY

Sec.

4271. Imposition of tax.
4272. Definition of taxable transportation, etc.

AMENDMENTS

1970—Pub. L. 91–258, title II, §204, May 21, 1970, 84 Stat. 239, added "PART II—PROPERTY" and items 4271 and 4272.

§4271. Imposition of tax

(a) In general

There is hereby imposed upon the amount paid within or without the United States for the taxable transportation (as defined in section 4272) of property a tax equal to 6.25 percent of the amount so paid for such transportation. The tax imposed by this subsection shall apply only to amounts paid to a person engaged in the business of transporting property by air for hire.

(b) By whom paid

(1) In general

Except as provided by paragraph (2), the tax imposed by subsection (a) shall be paid by the person making the payment subject to tax.

(2) Payments made outside the United States

If a payment subject to tax under subsection (a) is made outside the United States and the person making such payment does not pay such tax, such tax—

(A) shall be paid by the person to whom the property is delivered in the United States by the person furnishing the last segment of the taxable transportation in respect of which such tax is imposed, and

(B) shall be collected by the person furnishing the last segment of such taxable transportation.

(c) Determination of amounts paid in certain cases

For purposes of this section, in any case in which a person engaged in the business of transporting property by air for hire and one or more other persons not so engaged jointly provide services which include taxable transportation of property, and the person so engaged receives, for the furnishing of such taxable transportation, a portion of the receipts from the joint providing of such services, the amount paid for the taxable transportation shall be treated as being the sum of (1) the portion of the receipts so received, and (2) any expenses incurred by any of the persons not so engaged which are properly attributable to such taxable transportation and which are taken into account in determining the portion of the receipts so received.

(d) Application of tax

(1) In general

The tax imposed by subsection (a) shall apply to—

(A) transportation beginning during the period—

(i) beginning on the 7th day after the date of the enactment of the Airport and Airway Trust Fund Tax Reinstatement Act of 1997, and

(ii) ending on September 30, 2015, and

(B) amounts paid during such period for transportation beginning after such period.

(2) Refunds

If, as of the date any transportation begins, the taxes imposed by this section would not have applied to such transportation if paid for on such date, any tax paid under paragraph (1)(B) with respect to such transportation shall be treated as an overpayment.

(Added Pub. L. 91–258, title II, §204, May 21, 1970, 84 Stat. 239; amended Pub. L. 94–455, title XIX, §1904(a)(8), Oct. 4, 1976, 90 Stat. 1812; Pub. L. 96–298, §1(b), July 1, 1980, 94 Stat. 829; Pub. L. 97–248, title II, §280(b), Sept. 3, 1982, 96 Stat. 564; Pub. L. 100–223, title IV, §402(a)(2), Dec. 30, 1987, 101 Stat. 1532; Pub. L. 101–508, title XI, §11213(a)(2), (d)(1), Nov. 5, 1990, 104 Stat. 1388–432, 1388–435; Pub. L. 104–188, title I, §1609(b), Aug. 20, 1996, 110 Stat. 1841; Pub. L. 105–2, §2(b)(2), Feb. 28, 1997, 111 Stat. 5; Pub. L. 105–34, title X, §1031(b)(2), Aug. 5, 1997, 111 Stat. 929; Pub. L. 110–161, div. K, title I, §116(b)(2), Dec. 26, 2007, 121 Stat. 2381; Pub. L. 110–190, §2(b)(2), Feb. 28, 2008, 122 Stat. 643; Pub. L. 110–253, §2(b)(2), June 30, 2008, 122 Stat. 2417; Pub. L. 110–330, §2(b)(2), Sept. 30, 2008, 122 Stat. 3717; Pub. L. 111–12, §2(b)(2), Mar. 30, 2009, 123 Stat. 1457; Pub. L. 111–69, §2(b)(2), Oct. 1, 2009, 123 Stat. 2054; Pub. L. 111–116, §2(b)(2), Dec. 16, 2009, 123 Stat. 3031; Pub. L. 111–153, §2(b)(2), Mar. 31, 2010, 124 Stat. 1084; Pub. L. 111–161, §2(b)(2), Apr. 30, 2010, 124 Stat. 1126; Pub. L. 111–197, §2(b)(2), July 2, 2010, 124 Stat. 1353; Pub. L. 111–216, title I, §101(b)(2), Aug. 1, 2010, 124 Stat. 2349; Pub. L. 111–249, §2(b)(2), Sept. 30, 2010, 124 Stat. 2627; Pub. L. 111–329, §2(b)(2), Dec. 22, 2010, 124 Stat. 3566; Pub. L. 112–7, §2(b)(2), Mar. 31, 2011, 125 Stat. 31; Pub. L. 112–16, §2(b)(2), May 31, 2011, 125 Stat. 218; Pub. L. 112–21, §2(b)(2), June 29, 2011, 125 Stat. 233; Pub. L. 112–27, §2(b)(2), Aug. 5, 2011, 125 Stat. 270; Pub. L. 112–30, title II, §202(b)(2), Sept. 16, 2011, 125 Stat. 357; Pub. L. 112–91, §2(b)(2), Jan. 31, 2012, 126 Stat. 3; Pub. L. 112–95, title XI, §1101(b)(2), Feb. 14, 2012, 126 Stat. 148.)

REFERENCES IN TEXT

The date of the enactment of the Airport and Airway Trust Fund Tax Reinstatement Act of 1997, referred to in subsec. (d)(1)(A)(i), is the date of enactment of Pub. L. 105–2, which was approved Feb. 28, 1997.

PRIOR PROVISIONS

A prior section 4271, act Aug. 16, 1954, ch. 736, 68A Stat. 507, 508, related to tax for the transportation of property, prior to repeal by Pub. L. 85–475, §4(a), June 30, 1958, 72 Stat. 260. For effective date of repeal, see section 4(c) of Pub. L. 85–475, set out as an Effective Date of 1958 Amendment note under section 6415 of this title.

AMENDMENTS

2012—Subsec. (d)(1)(A)(ii). Pub. L. 112–95 substituted "September 30, 2015" for "February 17, 2012".
Pub. L. 112–91 substituted "February 17, 2012" for "January 31, 2012".
2011—Subsec. (d)(1)(A)(ii). Pub. L. 112–30 substituted "January 31, 2012" for "September 16, 2011".
Pub. L. 112–27 substituted "September 16, 2011" for "July 22, 2011".
Pub. L. 112–21 substituted "July 22, 2011" for "June 30, 2011".
Pub. L. 112–16 substituted "June 30, 2011" for "May 31, 2011".
Pub. L. 112–7 substituted "May 31, 2011" for "March 31, 2011".
2010—Subsec. (d)(1)(A)(ii). Pub. L. 111–329 substituted "March 31, 2011" for "December 31, 2010".
Pub. L. 111–249 substituted "December 31, 2010" for "September 30, 2010".
Pub. L. 111–216 substituted "September 30, 2010" for "August 1, 2010".
Pub. L. 111–197 substituted "August 1, 2010" for "July 3, 2010".
Pub. L. 111–161 substituted "July 3, 2010" for "April 30, 2010".
Pub. L. 111–153 substituted "April 30, 2010" for "March 31, 2010".
2009—Subsec. (d)(1)(A)(ii). Pub. L. 111–116 substituted "March 31, 2010" for "December 31, 2009".
Pub. L. 111–69 substituted "December 31, 2009" for "September 30, 2009".

Pub. L. 111–12 substituted "September 30, 2009" for "March 31, 2009".

2008—Subsec. (d)(1)(A)(ii). Pub. L. 110–330 substituted "March 31, 2009" for "September 30, 2008".

Pub. L. 110–253 substituted "September 30, 2008" for "June 30, 2008".

Pub. L. 110–190 substituted "June 30, 2008" for "February 29, 2008".

2007—Subsec. (d)(1)(A)(ii). Pub. L. 110–161 substituted "February 29, 2008" for "September 30, 2007".

1997—Subsec. (d). Pub. L. 105–2 amended heading and text of subsec. (d) generally. Prior to amendment, text read as follows: "The tax imposed by subsection (a) shall apply with respect to transportation beginning after August 31, 1982, and before January 1, 1996, and to transportation beginning on or after the date which is 7 calendar days after the date of the enactment of the Small Business Job Protection Act of 1996 and before January 1, 1997."

Subsec. (d)(1)(A)(ii). Pub. L. 105–34 substituted "September 30, 2007" for "September 30, 1997".

1996—Subsec. (d). Pub. L. 104–188 substituted "January 1, 1996, and to transportation beginning on or after the date which is 7 calendar days after the date of the enactment of the Small Business Job Protection Act of 1996 and before January 1, 1997" for "January 1, 1996".

1990—Subsec. (a). Pub. L. 101–508, §11213(a)(2), substituted "6.25 percent" for "5 percent".

Subsec. (d). Pub. L. 101–508, §11213(d)(1), substituted "January 1, 1996" for "January 1, 1991".

1987—Subsec. (d). Pub. L. 100–223 substituted "1991" for "1988".

1982—Subsec. (d). Pub. L. 97–248 substituted provision that the tax imposed by subsec. (a) shall apply with respect to transportation beginning after Aug. 31, 1982, and before Jan. 1, 1988, for provision that effective with respect to transportation beginning after Sept. 30, 1980, the tax imposed by subsec. (a) would not apply.

1980—Subsec. (d). Pub. L. 96–298 substituted "September 30, 1980" for "June 30, 1980".

1976—Subsec. (a). Pub. L. 94–455 struck out "which begins after June 30, 1970" after "of property".

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112–95 effective Feb. 18, 2012, see section 1101(c) of Pub. L. 112–95, set out as an Effective and Termination Dates of 2012 Amendment note under section 4081 of this title.

Amendment by Pub. L. 112–91 effective Feb. 1, 2012, see section 2(c) of Pub. L. 112–91, set out as an Effective and Termination Dates of 2012 Amendment note under section 4081 of this title.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112–30 effective Sept. 17, 2011, see section 202(c) of Pub. L. 112–30, set out as a note under section 4081 of this title.

Amendment by Pub. L. 112–27 effective July 23, 2011, see section 2(c) of Pub. L. 112–27, set out as a note under section 4081 of this title.

Amendment by Pub. L. 112–21 effective July 1, 2011, see section 2(c) of Pub. L. 112–21, set out as a note under section 4081 of this title.

Amendment by Pub. L. 112–16 effective June 1, 2011, see section 2(c) of Pub. L. 112–16, set out as a note under section 4081 of this title.

Amendment by Pub. L. 112–7 effective Apr. 1, 2011, see section 2(c) of Pub. L. 112–7, set out as a note under section 4081 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–329 effective Jan. 1, 2011, see section 2(c) of Pub. L. 111–329, set out as a note under section 4081 of this title.

Amendment by Pub. L. 111–249 effective Oct. 1, 2010, see section 2(c) of Pub. L. 111–249, set out as a note under section 4081 of this title.

Amendment by Pub. L. 111–216 effective Aug. 2, 2010, see section 101(c) of Pub. L. 111–216, set out as a note under section 4081 of this title.

Amendment by Pub. L. 111–197 effective July 4, 2010, see section 2(c) of Pub. L. 111–197, set out as a note under section 4081 of this title.

Amendment by Pub. L. 111–161 effective May 1, 2010, see section 2(c) of Pub. L. 111–161, set out as a note under section 4081 of this title.

Amendment by Pub. L. 111–153 effective Apr. 1, 2010, see section 2(c) of Pub. L. 111–153, set out as a note under section 4081 of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–116 effective Jan. 1, 2010, see section 2(c) of Pub. L. 111–116, set out as a note under section 4081 of this title.

Amendment by Pub. L. 111–69 effective Oct. 1, 2009, see section 2(c) of Pub. L. 111–69, set out as a note under section 4081 of this title.

Amendment by Pub. L. 111–12 effective Apr. 1, 2009, see section 2(c) of Pub. L. 111–12, set out as a note under section 4081 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–330 effective Oct. 1, 2008, see section 2(c) of Pub. L. 110–330, set out as a note under section 4081 of this title.

Amendment by Pub. L. 110–253 effective July 1, 2008, see section 2(c) of Pub. L. 110–253, set out as a note under section 4081 of this title.

Amendment by Pub. L. 110–190 effective Mar. 1, 2008, see section 2(c) of Pub. L. 110–190, set out as a note under section 4081 of this title.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–161 effective Oct. 1, 2007, see section 116(d) of div. K of Pub. L. 110–161, set out as a note under section 4081 of this title.

EFFECTIVE DATE OF 1997 AMENDMENTS

Amendment by Pub. L. 105–34 applicable to transportation beginning on or after Oct. 1, 1997, see section 1031(e)(2) of Pub. L. 105–34, set out as a note under section 4261 of this title.

Amendment by Pub. L. 105–2 applicable to transportation beginning on or after the 7th day after Feb. 28, 1997, with special rule for applicability to amounts paid before such 7th day, see section 2(e)(2) of Pub. L. 105–2, set out as a note under section 4261 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective on 7th calendar day after Aug. 20, 1996, but not applicable to any amount paid before such date, see section 1609(i) of Pub. L. 104–188, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11213(a)(2) of Pub. L. 101–508 applicable to transportation beginning after Nov. 30, 1990, but inapplicable to amounts paid on or before such date, see section 11213(a)(3) of Pub. L. 101–508, set out as a note under section 4261 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable with respect to transportation beginning after Aug. 31, 1982, but inapplicable to amounts paid on or before such date, see section 280(d) of Pub. L. 97–248, set out as a note under section 4261 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94–455, set out as a note under section 4041 of this title.

EFFECTIVE DATE

Section applicable to transportation beginning after June 30, 1970, see section 211(b) of Pub. L. 91–258, set out as an Effective Date of 1970 Amendment note under section 4041 of this title.

DELAYED DEPOSITS OF AIRPORT TRUST FUND TAX REVENUES

Due date for deposits of taxes imposed by this section which would be required to be made after July 31, 1998, and before Oct. 1, 1998, to be Oct. 5, 1998, see section 1031(g) of Pub. L. 105–34, set out as a note under section 6302 of this title.

§4272. Definition of taxable transportation, etc.

(a) In general

For purposes of this part, except as provided in subsection (b), the term "taxable transportation" means transportation by air which begins and ends in the United States.

(b) Exceptions

For purposes of this part, the term "taxable transportation" does not include—

(1) that portion of any transportation which meets the requirements of paragraphs (1), (2), (3), and (4) of section 4262(b), or

(2) under regulations prescribed by the Secretary, transportation of property in the course of exportation (including shipment to a possession of the United States) by continuous movement, and in due course so exported.

(c) Excess baggage of passengers

For purposes of this part, the term "property" does not include excess baggage accompanying a passenger traveling on an aircraft operated on an established line.

(d) Transportation

For purposes of this part, the term "transportation" includes layover or waiting time and movement of the aircraft in deadhead service.

(Added Pub. L. 91–258, title II, §204, May 21, 1970, 84 Stat. 240; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

PRIOR PROVISIONS

Prior sections 4272 and 4273 were repealed by Pub. L. 85–475, §4(a), June 30, 1958, 72 Stat. 260. For effective date of repeal, see section 4(c) of Pub. L. 85–475, set out as an Effective Date of 1958 Amendment note under section 6415 of this title.

Section 4272, act Aug. 16, 1954, ch. 736, 68A Stat. 507, 508, related to exemptions from tax for the transportation of property.

Section 4273, act Aug. 16, 1954, ch. 736, 68A Stat. 507, 508, related to registration in connection with the tax for the transportation of property.

AMENDMENTS

1976—Subsec. (b)(2). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

PART III—SPECIAL PROVISIONS APPLICABLE TO TAXES ON TRANSPORTATION BY AIR

Sec.

4281. Small aircraft on nonestablished lines.

4282. Transportation by air for other members of affiliated group.

[4283. Repealed.]

AMENDMENTS

1990—Pub. L. 101–508, title XI, §11213(e)(2), Nov. 5, 1990, 104 Stat. 1388–436, struck out item 4283 "Reduction in aviation-related taxes in certain cases".

1987—Pub. L. 100–223, title IV, §405(c), Dec. 30, 1987, 101 Stat. 1535, added item 4283.

1970—Pub. L. 91–258, title II, §205(a)(1), May 21, 1970, 84 Stat. 241, inserted "PART III—SPECIAL PROVISIONS APPLICABLE TO TAXES ON TRANSPORTATION BY AIR."

§4281. Small aircraft on nonestablished lines

The taxes imposed by sections 4261 and 4271 shall not apply to transportation by an aircraft having a maximum certificated takeoff weight of 6,000 pounds or less, except when such aircraft is operated on an established line or when such aircraft is a jet aircraft. For purposes of the preceding sentence, the term "maximum certificated takeoff weight" means the maximum such weight contained in the type certificate or airworthiness certificate. For purposes of this section, an aircraft shall not be considered as operated on an established line at any time during which such aircraft is being operated on a flight the sole purpose of which is sightseeing.

(Added Pub. L. 91–258, title II, §205(a)(1), May 21, 1970, 84 Stat. 241; amended Pub. L. 97–248,

title II, §280(c)(2)(B), Sept. 3, 1982, 96 Stat. 564; Pub. L. 109–59, title XI, §11124(a), Aug. 10, 2005, 119 Stat. 1952; Pub. L. 112–95, title XI, §1107(a), Feb. 14, 2012, 126 Stat. 154.)

PRIOR PROVISIONS

A prior section 4281, act Aug. 16, 1954, ch. 736, 68A Stat. 508, related to tax on transportation of oil by pipeline, prior to repeal by Pub. L. 85–475, §4(a), June 30, 1958, 72 Stat. 260. For effective date of repeal, see section 4(c) of Pub. L. 85–475, set out as an Effective Date of 1958 Amendment note under section 6415 of this title.

AMENDMENTS

2012—Pub. L. 112–95 inserted "or when such aircraft is a jet aircraft" after "an established line" in first sentence.

2005—Pub. L. 109–59 inserted at end "For purposes of this section, an aircraft shall not be considered as operated on an established line at any time during which such aircraft is being operated on a flight the sole purpose of which is sightseeing."

1982—Pub. L. 97–248 struck out "(as defined in section 4492(b))" after "certificated takeoff weight", and inserted provision defining "maximum certificated takeoff weight".

EFFECTIVE DATE OF 2012 AMENDMENT

Pub. L. 112–95, title XI, §1107(b), Feb. 14, 2012, 126 Stat. 154, provided that: "The amendment made by this section [amending this section] shall apply to taxable transportation provided after March 31, 2012."

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–59, title XI, §11124(b), Aug. 10, 2005, 119 Stat. 1953, provided that: "The amendment made by this section [amending this section] shall apply with respect to transportation beginning after September 30, 2005, but shall not apply to any amount paid before such date for such transportation."

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable with respect to transportation beginning after Aug. 31, 1982, but inapplicable to amounts paid on or before such date, see section 280(d) of Pub. L. 97–248, set out as a note under section 4261 of this title.

EFFECTIVE DATE

Section effective on July 1, 1970, see section 211(a) of Pub. L. 91–258, set out as an Effective Date of 1970 Amendment note under section 4041 of this title.

§4282. Transportation by air for other members of affiliated group

(a) General rule

Under regulations prescribed by the Secretary, if—

(1) one member of an affiliated group is the owner or lessee of an aircraft, and

(2) such aircraft is not available for hire by persons who are not members of such group,

no tax shall be imposed under section 4261 or 4271 upon any payment received by one member of the affiliated group from another member of such group for services furnished to such other member in connection with the use of such aircraft.

(b) Availability for hire

For purposes of subsection (a), the determination of whether an aircraft is available for hire by persons who are not members of an affiliated group shall be made on a flight-by-flight basis.

(c) Affiliated group

For purposes of subsection (a), the term "affiliated group" has the meaning assigned to such term by section 1504(a), except that all corporations shall be treated as includible corporations (without any exclusion under section 1504(b)).

(Added Pub. L. 91–258, title II, §205(a)(1), May 21, 1970, 84 Stat. 241; amended Pub. L. 94–455,

title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 104–188, title I, §1609(f), Aug. 20, 1996, 110 Stat. 1842.)

PRIOR PROVISIONS

A prior section 4282, act Aug. 16, 1954, ch. 736, 68A Stat. 508, defined "fair charge" in connection with tax on transportation of oil by pipeline, prior to repeal by Pub. L. 85–475, §4(a), June 30, 1958, 72 Stat. 260. For effective date of repeal, see section 4(c) of Pub. L. 85–475, set out as an Effective Date of 1958 Amendment note under section 6415 of this title.

AMENDMENTS

1996—Subsecs. (b), (c). Pub. L. 104–188 added subsec. (b) and redesignated former subsec. (b) as (c).
1976—Subsec. (a). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective on 7th calendar day after Aug. 20, 1996, see section 1609(i) of Pub. L. 104–188, set out as a note under section 4041 of this title.

[§4283. Repealed. Pub. L. 101–508, title XI, §11213(e)(1), Nov. 5, 1990, 104 Stat. 1388–436]

Section, added Pub. L. 100–223, title IV, §405(a), Dec. 30, 1987, 101 Stat. 1533; amended Pub. L. 101–239, title VII, §7501(a)–(b)(2), Dec. 19, 1989, 103 Stat. 2361, provided for reduction in aviation-related taxes in certain cases.

[Subchapter D—Repealed]

[§§4286, 4287. Repealed. Pub. L. 89–44, title III, §304, June 21, 1965, 79 Stat. 148]

Section 4286, act Aug. 16, 1954, ch. 736, 68A Stat. 510, imposed a tax equivalent to 10 percent of the amount collected for the use of safety deposit boxes.

Section 4287, act Aug. 16, 1954, ch. 736, 68A Stat. 510, defined safety deposit box.

EFFECTIVE DATE OF REPEAL

Pub. L. 89–44, title VII, §701(b)(4), June 21, 1965, 79 Stat. 157, provided that: "The amendments made by section 304 [repealing these sections] shall apply with respect to use periods beginning on or after July 1, 1965."

Subchapter E—Special Provisions Applicable to Services and Facilities Taxes

Sec.
4291. Cases where persons receiving payment must collect tax.
[4292. Repealed.]
4293. Exemption for United States and possessions.
[4294, 4295. Repealed.]

AMENDMENTS

1976—Pub. L. 94–455, title XIX, §1904(b)(4), Oct. 4, 1976, 90 Stat. 1815, struck out items 4292, 4294, and 4295 relating to State and local governmental exemption, exemption for nonprofit educational organizations, and cross reference to general administrative provisions, respectively.

1958—Pub. L. 85–859, title I, §135(b), Sept. 2, 1958, 72 Stat. 1292, added item 4294 and redesignated former item 4294 as 4295.

§4291. Cases where persons receiving payment must collect tax

Except as otherwise provided in section 4263(a), every person receiving any payment for facilities or services on which a tax is imposed upon the payor thereof under this chapter shall collect the amount of the tax from the person making such payment.

(Aug. 16, 1954, ch. 736, 68A Stat. 511; July 25, 1956, ch. 725, §4(c), 70 Stat. 646; Pub. L. 85–859, title I, §131(g), Sept. 2, 1958, 72 Stat. 1287; Pub. L. 89–44, title III, §305(a), June 21, 1965, 79 Stat. 148; Pub. L. 91–258, title II, §205(c)(3), May 21, 1970, 84 Stat. 242.)

AMENDMENTS

1970—Pub. L. 91–258 substituted "section 4263(a)" for "section 4264(a)".

1965—Pub. L. 89–44 struck out reference to section 4231 and struck out sentence referring to tax imposed on life memberships by section 4241.

1958—Pub. L. 85–859 substituted "Except as otherwise provided in sections 3241 and 4262(a)" for "Except as provided in section 4264(a)".

1956—Act July 25, 1956, inserted "Except as provided in section 4264(a)", and struck out provisions which related to collection of tax where payment specified in section 4261 was made outside the United States for a prepaid order, exchange order, or similar order.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–258 effective on July 1, 1970, see section 211(a) of Pub. L. 91–258, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Pub. L. 89–44, title VII, §701(b)(1), June 21, 1965, 79 Stat. 156, provided that:

"(A) The amendments made by sections 301 and 305 [repealing sections 4231 to 4234 and 4241 to 4243 of this title and amending this section and section 6040 of this title] insofar as they relate to the taxes imposed by section 4231 of the Code, shall apply with respect to admissions, services, or uses after noon, December 31, 1965.

"(B) The amendments made by sections 301 and 305 insofar as they relate to the taxes imposed by section 4241 of the Code, shall apply with respect to—

"(i) dues and membership fees attributable to periods beginning on or after January 1, 1966;

"(ii) initiation fees (other than initiation fees to which clause (iii) applies) and amounts paid for life memberships attributable to memberships beginning on or after January 1, 1966;

"(iii) initiation fees paid on or after July 1, 1965, to a new club or organization which first makes its facilities available to members on or after such date; and

"(iv) in the case of amounts described in section 4243(b) of the Code, 3-year periods beginning on or after January 1, 1966."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–859 effective on first day of first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1(c) of Pub. L. 85–859, Sept. 2, 1958, 72 Stat. 1275.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act July 25, 1956, applicable to amounts paid on or after first day of first month which begins more than sixty days after July 25, 1956, for transportation commencing on or after such first day, see section 6 of act July 25, 1956, set out as a note under section 4261 of this title.

[§4292. Repealed. Pub. L. 94–455, title XIX, §1904(a)(9), Oct. 4, 1976, 90 Stat. 1812]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 511; June 30, 1958, Pub. L. 85–475, §4(b)(3), 72 Stat. 260; May 21, 1970, Pub. L. 91–258, title II, §205(a)(2), 84 Stat. 241, provided tax exemption for any payment received for services or facilities furnished to any State, Territory, or political subdivision of such, or the District of Columbia.

EFFECTIVE DATE OF REPEAL

Repeal effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 4041 of this title.

§4293. Exemption for United States and possessions

The Secretary of the Treasury may authorize exemption from the taxes imposed by subchapter A of chapter 31, section 4041, section 4051, chapter 32 (other than the taxes imposed by sections 4064 and 4121) and subchapter B of chapter 33, as to any particular article, or service or class of articles or services, to be purchased for the exclusive use of the United States, if he determines that the imposition of such taxes with respect to such articles or services, or class of articles or services will cause substantial burden or expense which can be avoided by granting tax exemption and that full benefit of such exemption, if granted, will accrue to the United States.

(Aug. 16, 1954, ch. 736, 68A Stat. 511; Pub. L. 91–258, title II, §205(a)(3), May 21, 1970, 84 Stat. 241; Pub. L. 94–455, title XIX, §1906(b)(13)(B), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–227, §2(b)(3), Feb. 10, 1978, 92 Stat. 12; Pub. L. 95–502, title II, §202(b), Oct. 21, 1978, 92 Stat. 1697; Pub. L. 95–618, title II, §201(c)(2), Nov. 9, 1978, 92 Stat. 3184; Pub. L. 100–647, title VI, §6103(a), Nov. 10, 1988, 102 Stat. 3711; Pub. L. 101–508, title XI, §11221(c), Nov. 5, 1990, 104 Stat. 1388–444.)

AMENDMENTS

1990—Pub. L. 101–508 inserted "subchapter A of chapter 31," before "section 4041".

1988—Pub. L. 100–647 inserted reference to section 4051 of this title.

1978—Pub. L. 95–618 substituted "taxes imposed by sections 4064 and 4121" for "tax imposed by section 4121".

Pub. L. 95–502 substituted "section 4041, chapter 32" for "chapters 31 and 32".

Pub. L. 95–227 inserted "(other than the tax imposed by section 4121)" after "chapters 31 and 32".

1976—Pub. L. 94–455 substituted "Secretary of the Treasury" for "Secretary" after "The".

1970—Pub. L. 91–258 substituted "subchapter B" for "subchapters B and C".

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective Jan. 1, 1991, with exception for contracts binding on Sept. 30, 1990, and at all times thereafter, see section 11221(f) of Pub. L. 101–508, set out as an Effective Date note under section 4001 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title VI, §6103(b), Nov. 10, 1988, 102 Stat. 3711, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 10, 1988]."

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95–618 applicable with respect to 1980 and later model year automobiles, see section 201(g) of Pub. L. 95–618, set out as an Effective Date note under section 4064 of this title.

Amendment by Pub. L. 95–502 effective Oct. 1, 1980, see section 202(d) of Pub. L. 95–502, set out as an Effective Date note under section 4042 of this title.

Amendment by Pub. L. 95–227 applicable with respect to sales after Mar. 31, 1978, see section 2(d) of Pub. L. 95–227, set out as an Effective Date note under section 4121 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1906(d) of Pub. L. 94–455, set out as a note under section 6013 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–258 effective July 1, 1970, see section 211(a) of Pub. L. 91–258, set out as a note under section 4041 of this title.

[§§4294, 4295. Repealed. Pub. L. 94–455, title XIX, §1904(a)(10), (11), Oct. 4, 1976, 90 Stat. 1812]

Section 4294, added Pub. L. 85–859, title I, §135(a), Sept. 2, 1958, 72 Stat. 1292; amended Pub. L. 86–344, §2(d), Sept. 21, 1959, 73 Stat. 618; Pub. L. 91–72, title I, §101(j)(28), Dec. 30, 1969, 83 Stat. 529; Pub. L. 91–258, title II, §205(a)(4), May 21, 1970, 84 Stat. 241, provided an exemption from tax for services and facilities furnished to a nonprofit educational organization and defined "nonprofit educational organization".

Section 4295, act Aug. 16, 1954, ch. 736, 68A Stat. 511, §4295, formerly §4294, renumbered Sept. 2, 1958, Pub. L. 85–859, title I, §135(a), 72 Stat. 1292, related to a cross reference to general administrative provisions.

EFFECTIVE DATE OF REPEAL

Repeal effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 4041 of this title.

CHAPTER 34—TAXES ON CERTAIN INSURANCE POLICIES

Subchapter		Sec.[1]
A.	**Policies issued by foreign insurers**	**4371**
B.	**Insured and self-insured health plans**	**4375**

PRIOR PROVISIONS

The provisions of a prior chapter 34, Documentary Stamp Taxes, were set out as:

Subchapter A, Issuance of capital stock and certificates of indebtedness by a corporation, comprising sections 4301 to 4305 and 4311 to 4316.

Subchapter B, Sale or transfers of capital stock and certificates of indebtedness of a corporation, comprising sections 4321 to 4324, 4331 to 4333, 4341 to 4345, and 4351 to 4354.

Subchapter C, Conveyances, comprising sections 4361 to 4363.

Subchapter D, Policies issued by foreign insurers, comprising sections 4371 to 4375.

Subchapter E, Miscellaneous provisions applicable to documentary stamp taxes, comprising sections 4381 to 4384.

Subchapters A and B were repealed by Pub. L. 89–44, title IV, §401(a), June 21, 1965, 79 Stat. 148.

Subchapter C was struck out by Pub. L. 94–455, title XIX, §1904(a)(12), Oct. 4, 1976, 90 Stat. 1812.

Subchapter D heading was struck out, sections 4371 to 4373 were reenacted without change, section 4374, "liability for tax", was substituted for section 4374, "payment of tax", and section 4375 was struck out by Pub. L. 94–455, title XIX, §1904(a)(12).

Subchapter E, section 4381 was repealed by Pub. L. 89–44, title IV, §401(c), June 21, 1965, 79 Stat. 148, and sections 4382 to 4384 were struck out by Pub. L. 94–455, title XIX, §1904(a)(12), Oct. 4, 1976, 90 Stat. 1812.

The subject matter of the prior sections was as follows:

A prior section 4301, acts Aug. 16, 1954, ch. 736, 68A Stat. 513; Sept. 2, 1958, Pub. L. 85–859, title I, §141(a), 72 Stat. 1293; Apr. 8, 1960, Pub. L. 86–416, §1, 74 Stat. 36, imposed a tax, based upon the actual value of the certificates or shares, upon each original issue of shares or certificates of stock issued by a corporation.

A prior section 4302, acts Aug. 16, 1954, ch. 736, 68A Stat. 513; Sept. 2, 1958, Pub. L. 85–859, title I, §141(a), 72 Stat. 1293, made provision for a determination of tax in the case of recapitalization.

A prior section 4303, acts Aug. 16, 1954, ch. 736, 68A Stat. 514; Sept. 2, 1958, Pub. L. 85–859, title I, §141(a), 72 Stat. 1293, granted exemptions for common trust funds, pooled investment funds, and installment purchases of certain shares or certificates, and directed attention to section 4382 for other exemptions.

A prior section 4304, acts Aug. 16, 1954, ch. 736, 68A Stat. 514; Sept. 2, 1958, Pub. L. 85–859, title I, §141(a), 72 Stat. 1294, called for the affixing of the stamps representing the tax imposed by section 4301 upon the stock books or corresponding records of the corporation.

A prior section 4305, acts Aug. 16, 1954, ch. 736, 68A Stat. 514; Sept. 2, 1958, Pub. L. 85–859, title I, §141(a), 72 Stat. 1294, made cross-references to sections 4381 and 4384 and subtitle F.

A prior section 4311, acts Aug. 16, 1954, ch. 736, 68A Stat. 514; Sept. 2, 1958, Pub. L. 85–859, title I, §141(a), 72 Stat. 1294, imposed a tax on all certificates of indebtedness issued by a corporation.

A prior section 4312, acts Aug. 16, 1954, ch. 736, 68A Stat. 514, §4312, formerly §4313; renumbered

§4312, Sept. 2, 1958, Pub. L. 85–859, title I, §141(a), 72 Stat. 1294, provided that every renewal of any certificate of indebtedness should be taxed as a new issue.

A prior section 4313, acts Aug. 16, 1954, ch. 736, 68A Stat. 514, §4313, formerly §4314; renumbered §4313, Sept. 2, 1958, Pub. L. 85–859, title I, §141(a), 72 Stat. 1294, provided for the method of determining the rate of taxation in the case of a bond conditioned for the repayment of money and given in a penal sum greater than the debt secured.

A prior section 4314, acts Aug. 16, 1954, ch. 736, 68A Stat. 514, §4314, formerly §4315; renumbered §4314, Sept. 2, 1958, Pub. L. 85–859, title I, §141(a), 72 Stat. 1294, granted an exemption to instruments under the terms of which the obligee was required to make installment payments of not more than 20 percent annually, and made reference to section 4382 for other exemptions.

A prior section 4315, acts Aug. 16, 1954, ch. 736, 68A Stat. 514, §4315, formerly §4316; renumbered §4315 and amended Sept. 2, 1958, Pub. L. 85–859, title I, §141(a), 72 Stat. 1294, made cross references to sections 4381 and 4384 and subtitle F.

A prior section 4321, acts Aug. 16, 1954, ch. 736, 68A Stat. 515; Sept. 2, 1958, Pub. L. 85–859, title I, §141(a), 72 Stat. 1295; Sept. 21, 1959, Pub. L. 86–344, §5(a), 73 Stat. 619, imposed a tax upon the sale or transfer of shares or certificates of stock or of rights to subscribe to receive such shares or certificates issued by a corporation.

A prior section 4322, acts Aug. 16, 1954, ch. 736, 68A Stat. 515; Sept. 2, 1958, Pub. L. 85–859, title I, §141(a), 72 Stat. 1295, granted exemptions in the case of sales by brokers or registered nominees and in the case of odd lot sales.

A prior section 4323, acts Aug. 16, 1954, ch. 736, 68A Stat. 516; Sept. 2, 1958, Pub. L. 85–859, title I, §141(a), 72 Stat. 1296; Sept. 21, 1959, Pub. L. 86–344, §5(b), 73 Stat. 619, called for the affixing of the stamps representing the tax upon the books of the corporation and the certification of the actual value of the shares transferred, and made reference to section 4352 in the case of transfers shown otherwise than by the books of the corporation.

A prior section 4324, acts Aug. 16, 1954, ch. 736, 68A Stat. 516; Sept. 2, 1958, Pub. L. 85–859, title I, §141(a), 72 Stat. 1296, made cross references to other sections and subtitles for definitions, penalties, and other general and administrative provisions.

A prior section 4331, acts Aug. 16, 1954, ch. 736, 68A Stat. 516; Sept. 2, 1958, Pub. L. 85–859, title I, §141(a), 72 Stat. 1296, imposed a tax upon each sale or transfer of any certificate of indebtedness issued by a corporation.

A prior section 4332, acts Aug. 16, 1954, ch. 736, 68A Stat. 516; Jan. 28, 1956, ch. 19, 70 Stat. 9; Sept. 2, 1958, Pub. L. 85–859, title I, §141(a), 72 Stat. 1296, granted exemptions in the case of transfers and sales by brokers and installment purchases of obligations and made reference to other exemptions listed in other sections.

A prior section 4333, acts Aug. 16, 1954, ch. 736, 68A Stat. 516; Sept. 2, 1958, Pub. L. 85–859, title I, §141(a), 72 Stat. 1296, made cross references to other sections and subtitles for definitions, penalties, and other general and administrative provisions.

A prior section 4341, acts Aug. 16, 1954, ch. 736, 68A Stat. 517; Sept. 2, 1958, Pub. L. 85–859, title I, §141(a), 72 Stat. 1297, granted an exemption from the imposition of the tax under sections 4321 and 4331 in the case of transfers as collateral security and as security for performance.

A prior section 4342, acts Aug. 16, 1954, ch. 736, 68A Stat. 517; Sept. 2, 1958, Pub. L. 85–859, title I, §141(a), 72 Stat. 1297, granted exemptions in the case of delivery or transfer of instruments by a fiduciary to his nominee or between nominees or by a custodian.

A prior section 4343, acts Aug. 16, 1954, ch. 736, 68A Stat. 517; Sept. 2, 1958, Pub. L. 85–859, title I, §141(a), 72 Stat. 1297, provided that taxes imposed by sections 4321 and 4331 would not apply in specified cases involving decedents, minors, incompetents, financial institutions, bankrupts, successors, foreign governments and aliens, trustees, and survivors.

A prior section 4344, Pub. L. 85–859, title I, §141(a), Sept. 2, 1958, 72 Stat. 1298, made provision for an exemption from tax in the case of specified loan transactions, worthless stock and obligations, and transfers between certain revocable trusts.

A prior section 4345, acts Aug. 16, 1954, ch. 736, 68A Stat. 518, §4345, formerly §4344; renumbered §4345 and amended Sept. 2, 1958, Pub. L. 85–859, title I, §141(a), 72 Stat. 1298, required an exemption certificate setting forth the facts as prescribed by regulations.

A prior section 4346, acts Aug. 16, 1954, ch. 736, 68A Stat. 518, §4346, formerly §4345; renumbered §4346, Sept. 2, 1958, Pub. L. 85–859, title I, §141(a), 72 Stat. 1298, made cross reference to other sections for additional exemptions.

A prior section 4351, acts Aug. 16, 1954, ch. 736, 68A Stat. 518; Sept. 2, 1958, Pub. L. 85–859, title I,

§141(a), 72 Stat. 1299, defined registered nominee and sale or transfer.

A prior section 4352, acts Aug. 16, 1954, ch. 736, 68A Stat. 519, §4352, formerly §4353; renumbered §4352, Sept. 2, 1958, Pub. L. 85–859, title I, §141(a), 72 Stat. 1299, provided for the affixing of the stamps required either on the instrument itself or on the memorandum or bill of sale.

A prior section 4353, Pub. L. 85–859, title I, §141(a), Sept. 2, 1958, 72 Stat. 1299, made provision for the payment of tax through the national securities exchanges without the use of stamps.

A prior section 4354, acts Aug. 16, 1954, ch. 736, 68A Stat. 519; Sept. 2, 1958, Pub. L. 85–859, title I, §141(a), 72 Stat. 1299, made cross references to section 4384 and subtitle F for penalties and other general and administrative provisions.

A prior section 4361, acts Aug. 16, 1954, ch. 736, 68A Stat. 520; Sept. 2, 1958, Pub. L. 85–859, title I, §141(a), 72 Stat. 1299; June 21, 1965, Pub. L. 89–44, title IV, §401(b), 79 Stat. 148, related to the imposition of a tax on each deed, instrument, or writing by which any realty is sold, assigned, transferred, or otherwise conveyed.

A prior section 4362, acts Aug. 16, 1954, ch. 736, 68A Stat. 520; Sept. 2, 1958, Pub. L. 85–859, title I, §141(a), 72 Stat. 1300, related to exemptions to the tax imposed by former section 4361.

A prior section 4363, acts Aug. 16, 1954, ch. 736, 68A Stat. 520; Sept. 2, 1958, Pub. L. 85–859, title I, §141(a), 72 Stat. 1300, related to cross references to former section 4384 and subtitle F of this title.

A prior section 4375, acts Aug. 16, 1954, ch. 736, 68A Stat. 522; Sept. 2, 1958, Pub. L. 85–859, title I, §141(a), 72 Stat. 1301, made cross-references to section 4384 and subtitle F.

A prior section 4381, acts Aug. 16, 1954, ch. 736, 68A Stat. 523, Sept. 2, 1958, Pub. L. 85–859, title I, §141(a), 72 Stat. 1302, defined certificates of indebtedness, corporation, and shares or certificates of stock.

A prior section 4382, acts Aug. 16, 1954, ch. 736, 68A Stat. 523; Sept. 2, 1958, Pub. L. 85–859, title I, §141(a), 72 Stat. 1302; Oct. 16, 1962, Pub. L. 87–834, §6(e)(2), 76 Stat. 984, granted exemptions to Government and state obligations, etc.

A prior section 4383, Pub. L. 85–859, title I, 141(a), Sept. 2, 1958, 72 Stat. 1303, related to the taxation of continuing and terminated partnerships.

A prior section 4384, acts Aug. 16, 1954, ch. 736, 68A Stat. 524, §4384, formerly §4383; renumbered §4384 and amended Sept. 2, 1958, Pub. L. 85–859, title I, §141(a), 72 Stat. 1303, related to liability for the tax.

AMENDMENTS

2010—Pub. L. 111–148, title VI, §6301(e)(2)(B)(i), Mar. 23, 2010, 124 Stat. 746, substituted "TAXES ON CERTAIN INSURANCE POLICIES" for "POLICIES ISSUED BY FOREIGN INSURERS" as chapter heading and added items relating to subchapters A and B.

1976—Pub. L. 94–455, title XIX, §1904(a)(12), Oct. 4, 1976, 90 Stat. 1812, substituted "POLICIES ISSUED BY FOREIGN INSURERS" for "DOCUMENTARY STAMP TAXES" as chapter heading and struck out items relating to subchapters C to E.

1965—Pub. L. 89–44, title IV, §401(a), June 21, 1965, 79 Stat. 148, struck out items relating to subchapters A and B.

EFFECTIVE DATES OF REPEAL

Pub. L. 89–44, title VII, §701(c)(1), June 21, 1965, 79 Stat. 157, provided that: "The amendments made by section 401 [repealing sections 4301 to 4305, 4311 to 4315, 4321 to 4324, 4331 to 4333, 4341 to 4346, 4351 to 4354 and 4381 of this title] (relating to documentary stamp taxes) shall apply on and after January 1, 1966."

Repeal of sections 4361 to 4363, 4375, 4382 to 4384 by section 1904(a)(12) of Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 4041 of this title.

[1] *Section numbers editorially supplied.*

Subchapter A—Policies Issued By Foreign Insurers

Sec.

4371. Imposition of tax.
4372. Definitions.
4373. Exemptions.

4374. Liability for tax.

AMENDMENTS

2010—Pub. L. 111–148, title VI, §6301(e)(2)(B)(i), Mar. 23, 2010, 124 Stat. 746, added subchapter heading.

§4371. Imposition of tax

There is hereby imposed, on each policy of insurance, indemnity bond, annuity contract, or policy of reinsurance issued by any foreign insurer or reinsurer, a tax at the following rates:

(1) Casualty insurance and indemnity bonds

4 cents on each dollar, or fractional part thereof, of the premium paid on the policy of casualty insurance or the indemnity bond, if issued to or for, or in the name of, an insured as defined in section 4372(d);

(2) Life insurance, sickness, and accident policies, and annuity contracts

1 cent on each dollar, or fractional part thereof, of the premium paid on the policy of life, sickness, or accident insurance, or annuity contract; and

(3) Reinsurance

1 cent on each dollar, or fractional part thereof, of the premium paid on the policy of reinsurance covering any of the contracts taxable under paragraph (1) or (2).

(Aug. 16, 1954, ch. 736, 68A Stat. 521; Mar. 13, 1956, ch. 83, §5(9), 70 Stat. 49; Pub. L. 85–859, title I, §141(a), Sept. 2, 1958, 72 Stat. 1300; Pub. L. 86–69, §3(f)(3), June 25, 1959, 73 Stat. 140; Pub. L. 89–44, title VIII, §804(b), June 21, 1965, 79 Stat. 160; Pub. L. 94–455, title XIX, §1904(a)(12), Oct. 4, 1976, 90 Stat. 1812; Pub. L. 98–369, div. A, title II, §211(b)(23), July 18, 1984, 98 Stat. 757; Pub. L. 100–203, title X, §10242(c)(3), Dec. 22, 1987, 101 Stat. 1330–423; Pub. L. 101–239, title VII, §7811(i)(11), Dec. 19, 1989, 103 Stat. 2411.)

CONSTITUTIONALITY

For information regarding constitutionality of section 4371 of act Aug. 16, 1954, see Congressional Research Service, The Constitution of the United States of America: Analysis and Interpretation, Appendix 1, Acts of Congress Held Unconstitutional in Whole or in Part by the Supreme Court of the United States.

AMENDMENTS

1989—Par. (2). Pub. L. 101–239 struck out ", unless the insurer is subject to tax under section 842(b)" after "or annuity contract".

1987—Par. (2). Pub. L. 100–203 substituted "section 842(b)" for "section 813".

1984—Par. (2). Pub. L. 98–369 substituted "section 813" for "section 819".

1976—Pub. L. 94–455 substituted in par. (1) "4 cents" for "four cents" and "premium paid" for "premium charged", in pars. (2) and (3) "1 cent" for "one cent" and "premium paid" for "premium charged", and struck out provision following par. (3) relating to computation of tax on premium paid in lieu of premium charged.

1965—Pub. L. 89–44 inserted last sentence relating to computation of tax on premium paid in lieu of premium charged.

1959—Par. (2). Pub. L. 86–69 substituted "section 819" for "section 816".

1958—Pub. L. 85–859 substituted "is hereby imposed, on each policy of insurance, indemnity bond, annuity contract, or policy of reinsurance issued by any foreign insurer or reinsurer, a tax" for "shall be imposed a tax on each policy of insurance, indemnity bond, annuity contract, or policy of reinsurance issued by any foreign insurer or reinsurer".

1956—Par. (2). Act Mar. 13, 1956, substituted "section 816" for "section 807".

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to taxable years beginning after Dec. 31, 1987, see section 10242(d) of Pub. L. 100–203, set out as a note under section 816 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94–455, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 applicable with respect to policies, bonds, and contracts with respect to which the tax imposed by this section is required to be paid on the basis of a return, see section 804(c) of Pub. L. 89–44, set out as a note under section 4374 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–69 applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 4 of Pub. L. 86–69, set out as an Effective Date note under section 381 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–859 effective on first day of first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1(c) of Pub. L. 85–859, Sept. 2, 1958, 72 Stat. 1275.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Mar. 13, 1956, applicable only to taxable years beginning after Dec. 31, 1954, see section 6 of act Mar. 13, 1956, set out as a note under section 316 of this title.

§4372. Definitions

(a) Foreign insurer or reinsurer

For purposes of section 4371, the term "foreign insurer or reinsurer" means an insurer or reinsurer who is a nonresident alien individual, or a foreign partnership, or a foreign corporation. The term includes a nonresident alien individual, foreign partnership, or foreign corporation which shall become bound by an obligation of the nature of an indemnity bond. The term does not include a foreign government, or municipal or other corporation exercising the taxing power.

(b) Policy of casualty insurance

For purposes of section 4371(1), the term "policy of casualty insurance" means any policy (other than life) or other instrument by whatever name called whereby a contract of insurance is made, continued, or renewed.

(c) Indemnity bond

For purposes of this chapter the term "indemnity bond" means any instrument by whatever name called whereby an obligation of the nature of an indemnity, fidelity, or surety bond is made, continued, or renewed. The term includes any bond for indemnifying any person who shall have become bound or engaged as surety, and any bond for the due execution or performance of any contract, obligation, or requirement, or the duties of any office or position, and to account for money received by virtue thereof, where a premium is charged for the execution of such bond.

(d) Insured

For purposes of section 4371(1), the term "insured" means—

(1) a domestic corporation or partnership, or an individual resident of the United States, against, or with respect to, hazards, risks, losses, or liabilities wholly or partly within the United States, or

(2) a foreign corporation, foreign partnership, or nonresident individual, engaged in a trade or business within the United States, against, or with respect to hazards, risks, or liabilities within the United States.

(e) Policy of life, sickness, or accident insurance, or annuity contract

For the purpose of section 4371(2), the term "policy of life, sickness, or accident insurance, or annuity contract" means any policy or other instrument by whatever name called whereby a contract of insurance or an annuity contract is made, continued, or renewed with respect to the life or hazards to the person of a citizen or resident of the United States.

(f) Policy of reinsurance

For the purpose of section 4371(3), the term "policy of reinsurance" means any policy or other instrument by whatever name called whereby a contract of reinsurance is made, continued, or renewed against, or with respect to, any of the hazards, risks, losses, or liabilities covered by contracts taxable under paragraph (1) or (2) of section 4371.

(Aug. 16, 1954, ch. 736, 68A Stat. 521; Pub. L. 85–859, title I, §141(a), Sept. 2, 1958, 72 Stat. 1300; Pub. L. 94–455, title XIX, §1904(a)(12), Oct. 4, 1976, 90 Stat. 1812.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94–455 substituted "section 4371" for "this subchapter", and inserted provision that term does not include a foreign government, or municipal or other corporation exercising the taxing power.

Subsec. (c). Pub. L. 94–455 substituted "this chapter" for "this subchapter".

1958—Subsec. (d)(2). Pub. L. 85–859 inserted "against, or" before "with respect to".

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94–455, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–859 effective on first day of first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1(c) of Pub. L. 85–859, Sept. 2, 1958, 72 Stat. 1275.

§4373. Exemptions

The tax imposed by section 4371 shall not apply to—

(1) Effectively connected items

Any amount which is effectively connected with the conduct of a trade or business within the United States unless such amount is exempt from the application of section 882(a) pursuant to a treaty obligation of the United States.

(2) Indemnity bond

Any indemnity bond required to be filed by any person to secure payment of any pension, allowance, allotment, relief, or insurance by the United States, or to secure a duplicate for, or the payment of, any bond, note, certificate of indebtedness, war-saving certificate, warrant or check, issued by the United States.

(Aug. 16, 1954, ch. 736, 68A Stat. 522; Pub. L. 85–859, title I, §141(a), Sept. 2, 1958, 72 Stat. 1301; Pub. L. 94–455, title XIX, §1904(a)(12), Oct. 4, 1976, 90 Stat. 1813; Pub. L. 100–647, title I, §1012(q)(13)(A), Nov. 10, 1988, 102 Stat. 3525.)

AMENDMENTS

1988—Par. (1). Pub. L. 100–647 amended par. (1) generally, substituting provisions relating to effectively connected items for provisions relating to domestic agent.

1976—Par. (1). Pub. L. 94–455 substituted "State, or in the District of Columbia, within" for "State, Territory, or District of the United States within".

1958—Pub. L. 85–859 reenacted section without change.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1012(q)(13)(B), Nov. 10, 1988, 102 Stat. 3525, provided that: "The amendment

made by subparagraph (A) [amending this section] shall apply with respect to premiums paid after the date 30 days after the date of the enactment of this Act [Nov. 10, 1988]."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94–455, set out as a note under section 4041 of this title.

§4374. Liability for tax

The tax imposed by this chapter shall be paid, on the basis of a return, by any person who makes, signs, issues, or sells any of the documents and instruments subject to the tax, or for whose use or benefit the same are made, signed, issued, or sold. The United States or any agency or instrumentality thereof shall not be liable for the tax.

(Aug. 16, 1954, ch. 736, 68A Stat. 522; Pub. L. 85–859, title I, §141(a), Sept. 2, 1958, 72 Stat. 1301; Pub. L. 89–44, title VIII, §804(a)(1), (2), June 21, 1965, 79 Stat. 160; Pub. L. 94–455, title XIX, §1904(a)(12), Oct. 4, 1976, 90 Stat. 1813.)

PRIOR PROVISIONS

For provisions of prior sections 4375, 4381 to 4384, see Prior Provisions note preceding section 4371 of this title.

AMENDMENTS

1976—Pub. L. 94–455 substituted in section catchline "Liability for tax" for "Payment of tax" and in text provisions relating to payment of tax on basis of a return and to tax-exempt status of United States and its agencies and instrumentalities for provisions relating to placing of stamps on any policy, indemnity bond, or annuity contract referred to in section 4371 and to regulation by Secretary that tax be paid on basis of a return.

1965—Pub. L. 89–44 substituted "Payment of tax" for "Affixing of stamps" in section catchline, and inserted sentence authorizing Secretary or his delegate to provide by regulation for payment on basis of a return of tax imposed by section 4371.

1958—Pub. L. 85–859 reenacted section without change.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94–455, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Pub. L. 89–44, title VIII, §804(c), June 21, 1965, 79 Stat. 160, provided that: "The amendments made by subsection (a) [amending this section] shall take effect on July 1, 1965. The amendments made by subsection (b) [amending section 4371 of this title] shall apply with respect to policies, bonds, and contracts with respect to which the tax imposed by section 4371 of the Code is required to be paid on the basis of a return."

DETERMINATION OF PARTNERSHIP AS CONTINUING OR TERMINATED PARTNERSHIP

Pub. L. 85–859, title I, §141(b), Sept. 2, 1958, 72 Stat. 1304, mandated that only changes in the partnership occurring on or after the effective date specified in section 1(c) of Pub. L. 85–859 shall be taken into account in the determination of whether a partnership is a continuing or terminated one.

Subchapter B—Insured and Self-Insured Health Plans

Sec.
4375. Health insurance.
4376. Self-insured health plans.
4377. Definitions and special rules.

§4375. Health insurance

(a) Imposition of fee

There is hereby imposed on each specified health insurance policy for each policy year ending after September 30, 2012, a fee equal to the product of $2 ($1 in the case of policy years ending during fiscal year 2013) multiplied by the average number of lives covered under the policy.

(b) Liability for fee

The fee imposed by subsection (a) shall be paid by the issuer of the policy.

(c) Specified health insurance policy

For purposes of this section:

(1) In general

Except as otherwise provided in this section, the term "specified health insurance policy" means any accident or health insurance policy (including a policy under a group health plan) issued with respect to individuals residing in the United States.

(2) Exemption for certain policies

The term "specified health insurance policy" does not include any insurance if substantially all of its coverage is of excepted benefits described in section 9832(c).

(3) Treatment of prepaid health coverage arrangements

(A) In general

In the case of any arrangement described in subparagraph (B), such arrangement shall be treated as a specified health insurance policy, and the person referred to in such subparagraph shall be treated as the issuer.

(B) Description of arrangements

An arrangement is described in this subparagraph if under such arrangement fixed payments or premiums are received as consideration for any person's agreement to provide or arrange for the provision of accident or health coverage to residents of the United States, regardless of how such coverage is provided or arranged to be provided.

(d) Adjustments for increases in health care spending

In the case of any policy year ending in any fiscal year beginning after September 30, 2014, the dollar amount in effect under subsection (a) for such policy year shall be equal to the sum of such dollar amount for policy years ending in the previous fiscal year (determined after the application of this subsection), plus an amount equal to the product of—

(1) such dollar amount for policy years ending in the previous fiscal year, multiplied by

(2) the percentage increase in the projected per capita amount of National Health Expenditures, as most recently published by the Secretary before the beginning of the fiscal year.

(e) Termination

This section shall not apply to policy years ending after September 30, 2019.

(Added Pub. L. 111–148, title VI, §6301(e)(2)(A), Mar. 23, 2010, 124 Stat. 743.)

§4376. Self-insured health plans

(a) Imposition of fee

In the case of any applicable self-insured health plan for each plan year ending after September 30, 2012, there is hereby imposed a fee equal to $2 ($1 in the case of plan years ending during fiscal year 2013) multiplied by the average number of lives covered under the plan.

(b) Liability for fee

(1) In general

The fee imposed by subsection (a) shall be paid by the plan sponsor.

(2) Plan sponsor

For purposes of paragraph (1) the term "plan sponsor" means—

(A) the employer in the case of a plan established or maintained by a single employer,

(B) the employee organization in the case of a plan established or maintained by an employee organization,

(C) in the case of—

(i) a plan established or maintained by 2 or more employers or jointly by 1 or more employers and 1 or more employee organizations,

(ii) a multiple employer welfare arrangement, or

(iii) a voluntary employees' beneficiary association described in section 501(c)(9), the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan, or

(D) the cooperative or association described in subsection (c)(2)(F) in the case of a plan established or maintained by such a cooperative or association.

(c) Applicable self-insured health plan

For purposes of this section, the term "applicable self-insured health plan" means any plan for providing accident or health coverage if—

(1) any portion of such coverage is provided other than through an insurance policy, and

(2) such plan is established or maintained—

(A) by 1 or more employers for the benefit of their employees or former employees,

(B) by 1 or more employee organizations for the benefit of their members or former members,

(C) jointly by 1 or more employers and 1 or more employee organizations for the benefit of employees or former employees,

(D) by a voluntary employees' beneficiary association described in section 501(c)(9),

(E) by any organization described in section 501(c)(6), or

(F) in the case of a plan not described in the preceding subparagraphs, by a multiple employer welfare arrangement (as defined in section 3(40) of Employee Retirement Income Security Act of 1974), a rural electric cooperative (as defined in section 3(40)(B)(iv) of such Act), or a rural telephone cooperative association (as defined in section 3(40)(B)(v) of such Act).

(d) Adjustments for increases in health care spending

In the case of any plan year ending in any fiscal year beginning after September 30, 2014, the dollar amount in effect under subsection (a) for such plan year shall be equal to the sum of such dollar amount for plan years ending in the previous fiscal year (determined after the application of this subsection), plus an amount equal to the product of—

(1) such dollar amount for plan years ending in the previous fiscal year, multiplied by

(2) the percentage increase in the projected per capita amount of National Health Expenditures, as most recently published by the Secretary before the beginning of the fiscal year.

(e) Termination

This section shall not apply to plan years ending after September 30, 2019.

(Added Pub. L. 111–148, title VI, §6301(e)(2)(A), Mar. 23, 2010, 124 Stat. 744.)

REFERENCES IN TEXT

Section 3(40) of Employee Retirement Income Security Act of 1974, referred to in subsec. (c)(2)(F), is classified to section 1002(40) of Title 29, Labor.

§4377. Definitions and special rules

(a) Definitions

For purposes of this subchapter—

(1) Accident and health coverage

The term "accident and health coverage" means any coverage which, if provided by an insurance policy, would cause such policy to be a specified health insurance policy (as defined in section 4375(c)).

(2) Insurance policy

The term "insurance policy" means any policy or other instrument whereby a contract of insurance is issued, renewed, or extended.

(3) United States

The term "United States" includes any possession of the United States.

(b) Treatment of governmental entities

(1) In general

For purposes of this subchapter—

(A) the term "person" includes any governmental entity, and

(B) notwithstanding any other law or rule of law, governmental entities shall not be exempt from the fees imposed by this subchapter except as provided in paragraph (2).

(2) Treatment of exempt governmental programs

In the case of an exempt governmental program, no fee shall be imposed under section 4375 or section 4376 on any covered life under such program.

(3) Exempt governmental program defined

For purposes of this subchapter, the term "exempt governmental program" means—

(A) any insurance program established under title XVIII of the Social Security Act,

(B) the medical assistance program established by title XIX or XXI of the Social Security Act,

(C) any program established by Federal law for providing medical care (other than through insurance policies) to individuals (or the spouses and dependents thereof) by reason of such individuals being members of the Armed Forces of the United States or veterans, and

(D) any program established by Federal law for providing medical care (other than through insurance policies) to members of Indian tribes (as defined in section 4(d) of the Indian Health Care Improvement Act).

(c) Treatment as tax

For purposes of subtitle F, the fees imposed by this subchapter shall be treated as if they were taxes.

(d) No cover over to possessions

Notwithstanding any other provision of law, no amount collected under this subchapter shall be covered over to any possession of the United States.

(Added Pub. L. 111–148, title VI, §6301(e)(2)(A), Mar. 23, 2010, 124 Stat. 746.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(3)(A), (B), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Titles XVIII, XIX, and XXI of the Act are classified generally to subchapters XVIII (§1395 et seq.), XIX (§1396 et seq.), and XXI (§1397aa et seq.), respectively, of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 4(d) of the Indian Health Care Improvement Act, referred to in subsec. (b)(3)(D), is classified to section 1603(d) of Title 25, Indians.

CHAPTER 35—TAXES ON WAGERING

Subchapter Sec.[1]
A. Tax on wagers 4401
B. Occupational tax 4411
C. Miscellaneous provisions 4421

[1] *Section numbers editorially supplied.*

Subchapter A—Tax on Wagers

Sec.
4401. Imposition of tax.
4402. Exemptions.
4403. Record requirements.
4404. Territorial extent.
4405. Cross references.

§4401. Imposition of tax

(a) Wagers

(1) State authorized wagers

There shall be imposed on any wager authorized under the law of the State in which accepted an excise tax equal to 0.25 percent of the amount of such wager.

(2) Unauthorized wagers

There shall be imposed on any wager not described in paragraph (1) an excise tax equal to 2 percent of the amount of such wager.

(b) Amount of wager

In determining the amount of any wager for the purposes of this subchapter, all charges incident to the placing of such wager shall be included; except that if the taxpayer establishes, in accordance with regulations prescribed by the Secretary, that an amount equal to the tax imposed by this subchapter has been collected as a separate charge from the person placing such wager, the amount so collected shall be excluded.

(c) Persons liable for tax

Each person who is engaged in the business of accepting wagers shall be liable for and shall pay the tax under this subchapter on all wagers placed with him. Each person who conducts any wagering pool or lottery shall be liable for and shall pay the tax under this subchapter on all wagers placed in such pool or lottery. Any person required to register under section 4412 who receives wagers for or on behalf of another person without having registered under section 4412 the name and place of residence of such other person shall be liable for and shall pay the tax under this subchapter on all such wagers received by him.

(Aug. 16, 1954, ch. 736, 68A Stat. 525; Pub. L. 85–859, title I, §151(a), Sept. 2, 1958, 72 Stat. 1304; Pub. L. 93–499, §3(a), Oct. 29, 1974, 88 Stat. 1550; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–362, title I, §109(a), Oct. 25, 1982, 96 Stat. 1731.)

AMENDMENTS

1982—Subsec. (a). Pub. L. 97–362 substituted provision that there shall be imposed on any wager authorized under the law of the State in which accepted an excise tax equal to 0.25 percent of the amount of such wager and that there shall be imposed on any other wager an excise tax equal to 2 percent of the amount of such wager for provision that there be imposed on wagers, as defined in section 4421, an excise tax equal to 2 percent of the amount thereof.

1976—Subsec. (b). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

1974—Subsec. (a). Pub. L. 93–499 substituted "2 percent" for "10 percent".

1958—Subsec. (c). Pub. L. 85–859 made all persons required to register under section 4412 of this title who receive wagers for or on behalf of another person without having registered under section 4412 of this title the name and place of residence of such other person liable for the tax on all such wagers received by them.

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–362, title I, §109(c)(1), Oct. 25, 1982, 96 Stat. 1731, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on January 1, 1983."

EFFECTIVE DATE OF 1974 AMENDMENT

Pub. L. 93–499, §3(d)(1), Oct. 29, 1974, 88 Stat. 1551, provided that: "The amendments made by this section [enacting section 4424 and amending this section and section 4411 of this title] take effect on December 1, 1974, and shall apply only with respect to wagers placed on or after such date."

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85–859, title I, §151(b), Sept. 2, 1958, 72 Stat. 1304, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to wagers received after the date of the enactment of this Act [Sept. 2, 1958]."

§4402. Exemptions

No tax shall be imposed by this subchapter—

(1) Parimutuels

On any wager placed with, or on any wager placed in a wagering pool conducted by, a parimutuel wagering enterprise licensed under State law,

(2) Coin-operated devices

On any wager placed in a coin-operated device (as defined in section 4462 as in effect for years beginning before July 1, 1980), or on any amount paid, in lieu of inserting a coin, token, or similar object, to operate a device described in section 4462(a)(2) (as so in effect), or

(3) State-conducted lotteries, etc.

On any wager placed in a sweepstakes, wagering pool, or lottery which is conducted by an agency of a State acting under authority of State law, but only if such wager is placed with the State agency conducting such sweepstakes, wagering pool, or lottery, or with its authorized employees or agents.

(Aug. 16, 1954, ch. 736, 68A Stat. 525; Pub. L. 85–859, title I, §152(b), Sept. 2, 1958, 72 Stat. 1305; Pub. L. 89–44, title IV, §405(a), title VIII, §813(a), June 21, 1965, 79 Stat. 149, 170; Pub. L. 94–455, title XII, §1208(a), Oct. 4, 1976, 90 Stat. 1709; Pub. L. 95–600, title V, §521(c)(1), Nov. 6, 1978, 92 Stat. 2884.)

REFERENCES IN TEXT

Section 4462, referred to in par. (2), was repealed by Pub. L. 95–600, title V, §521(b), Nov. 6, 1978, 92 Stat. 2884.

AMENDMENTS

1978—Par. (2). Pub. L. 95–600 substituted "(as defined in section 4462 as in effect for years beginning before July 1, 1980)" for "with respect to which an occupational tax is imposed by section 4461" and "(as so in effect), or" for "if an occupational tax is imposed with respect to such device by section 4461, or".

1976—Par. (3). Pub. L. 94–455, among other changes, substituted in heading "State-conducted lotteries, etc." for "State-conducted sweepstakes.", and struck out provision that no tax be imposed on any wager placed in a sweepstakes, wagering pool, or lottery in which the ultimate winners are determined by the results of a horse race.

1965—Par. (2). Pub. L. 89–44, §405(a), substituted "section 4462(a)(2)," for "section 4462(a)(2)(B),".

Par. (3). Pub. L. 89–44, §813(a), added par. (3).

1958—Par. (2). Pub. L. 85–859 inserted provisions exempting from the tax amounts paid to operate a

device described in section 4462(a)(2)(B), if an occupational tax is imposed with respect to such device by section 4461 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title V, §521(d)(2), Nov. 6, 1978, 92 Stat. 2885, provided that: "The amendments made by subsections (b) [repealing sections 4461 to 4464 of this title] and (c) [amending this section and section 4901 of this title] shall apply with respect to years beginning after June 30, 1980."

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XII, §1208(c)(1), Oct. 4, 1976, 90 Stat. 1709, provided that: "The amendment made by subsection (a) [amending this section)] shall apply with respect to wagers placed after March 10, 1964".

EFFECTIVE DATE OF 1965 AMENDMENT

Pub. L. 89–44, title VII, §701(c)(2), June 21, 1965, 79 Stat. 157, provided in part that: "The amendments made by sections 403 [amending sections 4461 and 4462 of this title] (relating to occupational tax on coin-operated devices) and 404 [repealing sections 4471 to 4474] (relating to occupational tax on bowling alleys, billiard and pool tables), and by subsections (a) [amending this section], (b) [amending section 4901 of this title] and (d) [amending section 4914 of this title] of section 405 (relating to technical and conforming changes) shall apply on and after July 1, 1965."

Pub. L. 89–44, title VIII, §813(b), June 21, 1965, 79 Stat. 170, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to wagers placed after March 10, 1964."

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85–859, title I, §152(c), Sept. 2, 1958, 72 Stat. 1305, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by subsections (a) and (b) [amending this section and section 4462 of this title] shall take effect on the effective date specified in section 1(c) of this Act [the first day of the first calendar quarter beginning more than 60 days after Sept. 2, 1958]. In the case of the year beginning July 1, 1958, where the trade or business on which the tax is imposed under section 4461 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] was commenced before such effective date, the tax imposed for such year solely by reason of the amendment made by subsection (a)—

"(1) shall be the amount reckoned proportionately from such effective date through June 30, 1959, and

"(2) shall be due on, and payable on or before, the last day of the month the first day of which is such effective date."

§4403. Record requirements

Each person liable for tax under this subchapter shall keep a daily record showing the gross amount of all wagers on which he is so liable, in addition to all other records required pursuant to section 6001(a).

(Aug. 16, 1954, ch. 736, 68A Stat. 525.)

§4404. Territorial extent

The tax imposed by this subchapter shall apply only to wagers

(1) accepted in the United States, or

(2) placed by a person who is in the United States

(A) with a person who is a citizen or resident of the United States, or

(B) in a wagering pool or lottery conducted by a person who is a citizen or resident of the United States.

(Aug. 16, 1954, ch. 736, 68A Stat. 525.)

§4405. Cross references

For penalties and other administrative provisions applicable to this subchapter, see sections 4421 to 4423, inclusive; and subtitle F.

(Aug. 16, 1954, ch. 736, 68A Stat. 526.)

Subchapter B—Occupational Tax

Sec.
4411. Imposition of tax.
4412. Registration.
4413. Certain provisions made applicable.
4414. Cross references.

§4411. Imposition of tax

(a) In general

There shall be imposed a special tax of $500 per year to be paid by each person who is liable for the tax imposed under section 4401 or who is engaged in receiving wagers for or on behalf of any person so liable.

(b) Authorized persons

Subsection (a) shall be applied by substituting "$50" for "$500" in the case of—

(1) any person whose liability for tax under section 4401 is determined only under paragraph (1) of section 4401(a), and

(2) any person who is engaged in receiving wagers only for or on behalf of persons described in paragraph (1).

(Aug. 16, 1954, ch. 736, 68A Stat. 527; Pub. L. 93–499, §3(b), Oct. 29, 1974, 88 Stat. 1550; Pub. L. 97–362, title I, §109(b), Oct. 25, 1982, 96 Stat. 1731.)

CONSTITUTIONALITY

For information regarding constitutionality of section 4411 of act Aug. 16, 1954, see Congressional Research Service, The Constitution of the United States of America: Analysis and Interpretation, Appendix 1, Acts of Congress Held Unconstitutional in Whole or in Part by the Supreme Court of the United States.

AMENDMENTS

1982—Pub. L. 97–362 designated existing provisions as subsec. (a), in subsec. (a), as so designated, substituted "liable for the tax imposed" for "liable for tax", and added subsec. (b).

1974—Pub. L. 93–499 substituted "$500" for "$50".

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–362, title I, §109(c)(2), Oct. 25, 1982, 96 Stat. 1731, provided that: "The amendment made by subsection (b) [amending this section] shall take effect on July 1, 1983."

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–499 effective Dec. 1, 1974, and applicable only with respect to wagers placed on or after such date, see section 3(d)(1) of Pub. L. 93–499, set out as a note under section 4401 of this title.

PERSONS ENGAGED IN ACTIVITIES ON DECEMBER 1, 1974, REQUIRING PAYMENT OF TAX; PERSONS PAYING TAX AND REGISTERING BEFORE DECEMBER 1, 1974

Pub. L. 93–499, §3(d)(2), Oct. 29, 1974, 88 Stat. 1551, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(A) Any person who, on December 1, 1974, is engaged in an activity which makes him liable for payment of the tax imposed by section 4411 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect on such date) shall be treated as commencing such activity on such date for purposes of such section and section 4901 of such Code.

"(B) Any person who, before December 1, 1974.—

"(i) became liable for and paid the tax imposed by section 4411 of the Internal Revenue Code of 1986 (as in effect on July 1, 1974) for the year ending June 30, 1975, shall not be liable for any additional tax

under such section for such year, and

"(ii) registered under section 4412 of such Code (as in effect on July 1, 1974) for the year ending June 30, 1975, shall not be required to reregister under such section for such year."

§4412. Registration

(a) Requirement

Each person required to pay a special tax under this subchapter shall register with the official in charge of the internal revenue district—

(1) his name and place of residence;

(2) if he is liable for tax under subchapter A, each place of business where the activity which makes him so liable is carried on, and the name and place of residence of each person who is engaged in receiving wagers for him or on his behalf; and

(3) if he is engaged in receiving wagers for or on behalf of any person liable for tax under subchapter A, the name and place of residence of each such person.

(b) Firm or company

Where subsection (a) requires the name and place of residence of a firm or company to be registered, the names and places of residence of the several persons constituting the firm or company shall be registered.

(c) Supplemental information

In accordance with regulations prescribed by the Secretary, the Secretary may require from time to time such supplemental information from any person required to register under this section as may be needful to the enforcement of this chapter.

(Aug. 16, 1954, ch. 736, 68A Stat. 527; Pub. L. 94–455, title XIX, §1906(b)(13)(I), Oct. 4, 1976, 90 Stat. 1835.)

CONSTITUTIONALITY

For information regarding constitutionality of section 4412 of act Aug. 16, 1954, see Congressional Research Service, The Constitution of the United States of America: Analysis and Interpretation, Appendix 1, Acts of Congress Held Unconstitutional in Whole or in Part by the Supreme Court of the United States.

AMENDMENTS

1976—Subsec. (c). Pub. L. 94–455 substituted "the Secretary may" for "he or his delegate may".

PERSONS PAYING TAX AND REGISTERING BEFORE DECEMBER 1, 1974

Persons registered before Dec. 1, 1974 under this section (as in effect on July 1, 1974) for the year ending June 30, 1975, not required to reregister under this section for such year, see section 3(d)(2) of Pub. L. 93–499, set out as a note under section 4411 of this title.

§4413. Certain provisions made applicable

Sections 4901, 4902, 4904, 4905, and 4906 shall extend to and apply to the special tax imposed by this subchapter and to the persons upon whom it is imposed, and for that purpose any activity which makes a person liable for special tax under this subchapter shall be considered to be a business or occupation referred to in such sections. No other provision of sections 4901 to 4907, inclusive, shall so extend or apply.

(Aug. 16, 1954, ch. 736, 68A Stat. 527.)

§4414. Cross references

For penalties and other general and administrative provisions applicable to this subchapter,

see sections 4421 to 4423, inclusive; and subtitle F.

(Aug. 16, 1954, ch. 736, 68A Stat. 527.)

Subchapter C—Miscellaneous Provisions

Sec.
4421. Definitions.
4422. Applicability of Federal and State laws.
4423. Inspection of books.
4424. Disclosure of wagering tax information.

AMENDMENTS

1974—Pub. L. 93–499, §3(c)(2), Oct. 29, 1974, 88 Stat. 1551, added item 4424.

§4421. Definitions

For purposes of this chapter—

(1) Wager

The term "wager" means—

(A) any wager with respect to a sports event or a contest placed with a person engaged in the business of accepting such wagers,

(B) any wager placed in a wagering pool with respect to a sports event or a contest, if such pool is conducted for profit, and

(C) any wager placed in a lottery conducted for profit.

(2) Lottery

The term "lottery" includes the numbers game, policy, and similar types of wagering. The term does not include—

(A) any game of a type in which usually

(i) the wagers are placed,

(ii) the winners are determined, and

(iii) the distribution of prizes or other property is made, in the presence of all persons placing wagers in such game, and

(B) any drawing conducted by an organization exempt from tax under sections 501 and 521, if no part of the net proceeds derived from such drawing inures to the benefit of any private shareholder or individual.

(Aug. 16, 1954, ch. 736, 68A Stat. 528.)

§4422. Applicability of Federal and State laws

The payment of any tax imposed by this chapter with respect to any activity shall not exempt any person from any penalty provided by a law of the United States or of any State for engaging in the same activity, nor shall the payment of any such tax prohibit any State from placing a tax on the same activity for State or other purposes.

(Aug. 16, 1954, ch. 736, 68A Stat. 528.)

§4423. Inspection of books

Notwithstanding section 7605(b), the books of account of any person liable for tax under this chapter may be examined and inspected as frequently as may be needful to the enforcement of this

chapter.

(Aug. 16, 1954, ch. 736, 68A Stat. 528.)

§4424. Disclosure of wagering tax information

(a) General rule

Except as otherwise provided in this section, neither the Secretary nor any other officer or employee of the Treasury Department may divulge or make known in any manner whatever to any person—

(1) any original, copy, or abstract of any return, payment, or registration made pursuant to this chapter,

(2) any record required for making any such return, payment, or registration, which the Secretary is permitted by the taxpayer to examine or which is produced pursuant to section 7602, or

(3) any information come at by the exploitation of any such return, payment, registration, or record.

(b) Permissible disclosure

A disclosure otherwise prohibited by subsection (a) may be made in connection with the administration or civil or criminal enforcement of any tax imposed by this title. However, any document or information so disclosed may not be—

(1) divulged or made known in any manner whatever by any officer or employee of the United States to any person except in connection with the administration or civil or criminal enforcement of this title, nor

(2) used, directly or indirectly, in any criminal prosecution for any offense occurring before the date of enactment of this section.

(c) Use of documents possessed by taxpayer

Except in connection with the administration or civil or criminal enforcement of any tax imposed by this title—

(1) any stamp denoting payment of the special tax under this chapter,

(2) any original, copy, or abstract possessed by a taxpayer of any return, payment, or registration made by such taxpayer pursuant to this chapter, and

(3) any information come at by the exploitation of any such document,

shall not be used against such taxpayer in any criminal proceeding.

(d) Inspection by committees of Congress

Section 6103(f) shall apply with respect to any return, payment, or registration made pursuant to this chapter.

(Added Pub. L. 93–499, §3(c)(1), Oct. 29, 1974, 88 Stat. 1550; amended Pub. L. 94–455, title XII, §1202(h)(6), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1688, 1834.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary" wherever appearing.

Subsec. (d). Pub. L. 94–455, §1202(h)(6), substituted "6103(f)" for "6103(d)".

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1202(h)(6) of Pub. L. 94–455 effective Jan. 1, 1977, see section 1202(i) of Pub. L. 94–455, set out as a note under section 6103 of this title.

EFFECTIVE DATE

Section effective Dec. 1, 1974, and applicable only with respect to wagers placed on or after such date, see section 3(d)(1) of Pub. L. 93–499, set out as an Effective Date of 1974 Amendment note under section 4401 of

this title.

CHAPTER 36—CERTAIN OTHER EXCISE TAXES

Subchapter		Sec.[1]
A.	**Harbor maintenance tax**	**4461**
B.	**Transportation by water**	**4471**
B.	**Occupational tax on coin-operated devices**	[2] **4461**
[C.	**Repealed.]**	
D.	**Tax on use of certain vehicles**	**4481**
[E, F.	**Repealed.]**	

AMENDMENTS

1997—Pub. L. 105–34, title XIV, §1432(b)(2), Aug. 5, 1997, 110 Stat. 1050, struck out item for subchapter F "Tax on removal of hard mineral resources from deep seabed".

1989—Pub. L. 101–239, title VII, §7504(b), Dec. 19, 1989, 103 Stat. 2363, added item for subchapter B.

1986—Pub. L. 99–662, title XIV, §1402(b), Nov. 17, 1986, 100 Stat. 4269, added item for subchapter A.

1982—Pub. L. 97–248, title II, §280(c)(2)(A), Sept. 3, 1982, 96 Stat. 564, struck out item for subchapter E.

1980—Pub. L. 96–283, title IV, §402(b), June 28, 1980, 94 Stat. 584, added item for subchapter F.

1970—Pub. L. 91–258, title II, §206(d)(1), May 21, 1970, 84 Stat. 246, added item for subchapter E.

1965—Pub. L. 89–44, title IV, §§402, 404, June 21, 1965, 79 Stat. 148, 149, struck out items for subchapters A and C.

1956—Act June 29, 1956, ch. 462, title II, §206(c), 70 Stat. 391, added item for subchapter D.

[1] Section numbers editorially supplied.

[2] Subchapter repealed by Pub. L. 95–600 without corresponding amendment of chapter analysis.

Subchapter A—Harbor Maintenance Tax

Sec.

4461. Imposition of tax.

4462. Definitions and special rules.

PRIOR PROVISIONS

A prior subchapter A (§§4451 to 4457), act Aug. 16, 1954, ch. 736, 68A Stat. 529, 530, related to tax on playing cards, prior to repeal by Pub. L. 89–44, title IV, §402, June 21, 1965, 79 Stat. 148. Repeal of sections 4451 to 4457 applicable on and after June 22, 1965, see section 701(c)(2) of Pub. L. 89–44, set out in part as an Effective Date of 1965 Amendment note under section 4905 of this title.

§4461. Imposition of tax

(a) General rule

There is hereby imposed a tax on any port use.

(b) Amount of tax

The amount of the tax imposed by subsection (a) on any port use shall be an amount equal to 0.125 percent of the value of the commercial cargo involved.

(c) Liability and time of imposition of tax

(1) Liability

The tax imposed by subsection (a) shall be paid by—

(A) in the case of cargo entering the United States, the importer, or
(B) in any other case, the shipper.

(2) Time of imposition

Except as provided by regulations, the tax imposed by subsection (a) shall be imposed at the time of unloading.

(Added Pub. L. 99–662, title XIV, §1402(a), Nov. 17, 1986, 100 Stat. 4266; amended Pub. L. 101–508, title XI, §11214(a), Nov. 5, 1990, 104 Stat. 1388–436; Pub. L. 109–59, title XI, §11116(b), Aug. 10, 2005, 119 Stat. 1951.)

PRIOR PROVISIONS

For prior section 4461, see Prior Provisions note set out preceding section 4471 of this title.

AMENDMENTS

2005—Subsec. (c)(1). Pub. L. 109–59, §11116(b)(1), inserted "or" at end of subpar. (A), redesignated subpar. (C) as (B), and struck out former subpar. (B) which read as follows: "in the case of cargo to be exported from the United States, the exporter, or".

Subsec. (c)(2). Pub. L. 109–59, §11116(b)(2), substituted "imposed" for "imposed—

"(A) in the case of cargo to be exported from the United States, at the time of loading, and

"(B) in any other case,".

1990—Subsec. (b). Pub. L. 101–508 substituted "0.125 percent" for "0.04 percent".

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–59, title XI, §11116(c), Aug. 10, 2005, 119 Stat. 1951, provided that: "The amendments made by this section [amending this section and section 4462 of this title] shall take effect before, on, and after the date of the enactment of this Act [Aug. 10, 2005]."

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, §11214(b), Nov. 5, 1990, 104 Stat. 1388–436, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on January 1, 1991."

EFFECTIVE DATE

Pub. L. 99–662, title XIV, §1402(c), Nov. 17, 1986, 100 Stat. 4269, provided that: "The amendments made by this section [enacting this section and section 4462 of this title] shall take effect on April 1, 1987."

AUTHORIZATION OF APPROPRIATIONS

Pub. L. 99–662, title XIV, §1403(b), Nov. 17, 1986, 100 Stat. 4270, authorized to be appropriated to Department of the Treasury (from fees collected under section 58c(9), (10) of Title 19, Customs Duties) such sums as necessary to pay all expenses of administration incurred by such Department in administering this subchapter for periods to which such fees apply, prior to repeal by Pub. L. 103–182, title VI, §690(c)(8), Dec. 8, 1993, 107 Stat. 2223.

STUDY OF CARGO DIVERSION

Pub. L. 99–662, title XIV, §1407, Nov. 17, 1986, 100 Stat. 4272, as amended by Pub. L. 100–647, title II, §2002(c), Nov. 10, 1988, 102 Stat. 3597, provided that:

"(a) INITIAL STUDY.—The Secretary of the Treasury, in consultation with United States ports, the Secretary of the Army, the Secretary of Transportation, the United States Trade Representative and other appropriate Federal agencies, shall conduct a study to determine the impact of the port use tax imposed under section 4461(a) of the Internal Revenue Code of 1954 [now 1986] on potential diversions of cargo from particular United States ports to any port in a country contiguous to the United States. The report of the study shall be submitted to the Ways and Means Committee of the House of Representatives and the Committee on Finance of the United States Senate not later than December 1, 1988.

"(b) REVIEW.—The Secretary of the Treasury may, at any time, review and revise the findings of the study conducted pursuant to subsection (a) with respect to any United States port (or to any transaction or class of transactions at such port).

"(c) IMPLEMENTATION OF FINDINGS.—For purposes of section 4462(d)(2)(B) of the Internal Revenue Code of 1954 [now 1986], the findings of the study or review conducted pursuant to subsections (a) and (b) of this section shall be effective 60 days after notification to the ports concerned."

§4462. Definitions and special rules

(a) Definitions

For purposes of this subchapter—

(1) Port use

The term "port use" means—

(A) the loading of commercial cargo on, or

(B) the unloading of commercial cargo from,

a commercial vessel at a port.

(2) Port

(A) In general

The term "port" means any channel or harbor (or component thereof) in the United States, which—

(i) is not an inland waterway, and

(ii) is open to public navigation.

(B) Exception for certain facilities

The term "port" does not include any channel or harbor with respect to which no Federal funds have been used since 1977 for construction, maintenance, or operation, or which was deauthorized by Federal law before 1985.

(C) Special rule for Columbia River

The term "port" shall include the channels of the Columbia River in the States of Oregon and Washington only up to the downstream side of Bonneville lock and dam.

(3) Commercial cargo

(A) In general

The term "commercial cargo" means any cargo transported on a commercial vessel, including passengers transported for compensation or hire.

(B) Certain items not included

The term "commercial cargo" does not include—

(i) bunker fuel, ship's stores, sea stores, or the legitimate equipment necessary to the operation of a vessel, or

(ii) fish or other aquatic animal life caught and not previously landed on shore.

(4) Commercial vessel

(A) In general

The term "commercial vessel" means any vessel used—

(i) in transporting cargo by water for compensation or hire, or

(ii) in transporting cargo by water in the business of the owner, lessee, or operator of the vessel.

(B) Exclusion of ferries

(i) In general

The term "commercial vessel" does not include any ferry engaged primarily in the ferrying of passengers (including their vehicles) between points within the United States, or between the United States and contiguous countries.

(ii) Ferry

The term "ferry" means any vessel which arrives in the United States on a regular schedule

during its operating season at intervals of at least once each business day.

(5) Value

(A) In general

The term "value" means, except as provided in regulations, the value of any commercial cargo as determined by standard commercial documentation.

(B) Transportation of passengers

In the case of the transportation of passengers for hire, the term "value" means the actual charge paid for such service or the prevailing charge for comparable service if no actual charge is paid.

(b) Special rule for Alaska, Hawaii, and possessions

(1) In general

No tax shall be imposed under section 4461(a) with respect to—

(A) cargo loaded on a vessel in a port in the United States mainland for transportation to Alaska, Hawaii, or any possession of the United States for ultimate use or consumption in Alaska, Hawaii, or any possession of the United States,

(B) cargo loaded on a vessel in Alaska, Hawaii, or any possession of the United States for transportation to the United States mainland, Alaska, Hawaii, or such a possession for ultimate use or consumption in the United States mainland, Alaska, Hawaii, or such a possession,

(C) the unloading of cargo described in subparagraph (A) or (B) in Alaska, Hawaii, or any possession of the United States, or in the United States mainland, respectively, or

(D) cargo loaded on a vessel in Alaska, Hawaii, or a possession of the United States and unloaded in the State or possession in which loaded, or passengers transported on United States flag vessels operating solely within the State waters of Alaska or Hawaii and adjacent international waters.

(2) Cargo does not include crude oil with respect to Alaska

For purposes of this subsection, the term "cargo" does not include crude oil with respect to Alaska.

(3) United States mainland

For purposes of this subsection, the term "United States mainland" means the continental United States (not including Alaska).

(c) Coordination of tax where transportation subject to tax imposed by section 4042

No tax shall be imposed under this subchapter with respect to the loading or unloading of any cargo on or from a vessel if any fuel of such vessel has been (or will be) subject to the tax imposed by section 4042 (relating to tax on fuel used in commercial transportation on inland waterways).

(d) Nonapplicability of tax to exports

The tax imposed by section 4461(a) shall not apply to any port use with respect to any commercial cargo to be exported from the United States.

(e) Exemption for United States

No tax shall be imposed under this subchapter on the United States or any agency or instrumentality thereof.

(f) Extension of provisions of law applicable to customs duty

(1) In general

Except to the extent otherwise provided in regulations, all administrative and enforcement provisions of customs laws and regulations shall apply in respect of the tax imposed by this subchapter (and in respect of persons liable therefor) as if such tax were a customs duty. For

purposes of the preceding sentence, any penalty expressed in terms of a relationship to the amount of the duty shall be treated as not less than the amount which bears a similar relationship to the value of the cargo.

(2) Jurisdiction of courts and agencies

For purposes of determining the jurisdiction of any court of the United States or any agency of the United States, the tax imposed by this subchapter shall be treated as if such tax were a customs duty.

(3) Administrative provisions applicable to tax law not to apply

The tax imposed by this subchapter shall not be treated as a tax for purposes of subtitle F or any other provision of law relating to the administration and enforcement of internal revenue taxes.

(g) Special rules

Except as provided by regulations—

(1) Tax imposed only once

Only 1 tax shall be imposed under section 4461(a) with respect to the loading on and unloading from, or the unloading from and the loading on, the same vessel of the same cargo.

(2) Exception for intraport movements

Under regulations, no tax shall be imposed under section 4461(a) on the mere movement of cargo within a port.

(3) Relay cargo

Only 1 tax shall be imposed under section 4461(a) on cargo (moving under a single bill of lading) which is unloaded from one vessel and loaded onto another vessel at any port in the United States for relay to or from any port in Alaska, Hawaii, or any possession of the United States. For purposes of this paragraph, the term "cargo" does not include any item not treated as cargo under subsection (b)(2).

(h) Exemption for humanitarian and development assistance cargos

No tax shall be imposed under this subchapter on any nonprofit organization or cooperative for cargo which is owned or financed by such nonprofit organization or cooperative and which is certified by the United States Customs Service as intended for use in humanitarian or development assistance overseas.

(i) Regulations

The Secretary may prescribe such additional regulations as may be necessary to carry out the purposes of this subchapter including, but not limited to, regulations—

(1) providing for the manner and method of payment and collection of the tax imposed by this subchapter,

(2) providing for the posting of bonds to secure payment of such tax,

(3) exempting any transaction or class of transactions from such tax where the collection of such tax is not administratively practical, and

(4) providing for the remittance or mitigation of penalties and the settlement or compromise of claims.

(Added Pub. L. 99–662, title XIV, §1402(a), Nov. 17, 1986, 100 Stat. 4266; amended Pub. L. 100–647, title II, §2002(b), title VI, §§6109(a), 6110(a), Nov. 10, 1988, 102 Stat. 3597, 3712; Pub. L. 104–188, title I, §1704(i)(1), Aug. 20, 1996, 110 Stat. 1881; Pub. L. 109–59, title XI, §11116(a), Aug. 10, 2005, 119 Stat. 1950.)

PRIOR PROVISIONS

For prior section 4462, see Prior Provisions note set out preceding section 4471 of this title.

AMENDMENTS

2005—Subsec. (d). Pub. L. 109–59 amended heading and text of subsec. (d) generally, substituting

provisions relating to nonapplicability of tax imposed by section 4461(a) to exports for provisions relating to nonapplicability of tax imposed by section 4461(a) to bonded commercial cargo entering the United States for transportation and direct exportation to a foreign country and inapplicability of this provision to certain cargo exported to Canada or Mexico.

1996—Subsec. (b)(1)(D). Pub. L. 104–188 inserted before period at end ", or passengers transported on United States flag vessels operating solely within the State waters of Alaska or Hawaii and adjacent international waters".

1988—Subsec. (b)(1)(B). Pub. L. 100–647, §2002(b), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "cargo loaded on a vessel in Alaska, Hawaii, or any possession of the United States for transportation to the United States mainland for ultimate use or consumption in the United States mainland,".

Subsec. (g)(3). Pub. L. 100–647, §6110(a), added par. (3).

Subsecs. (h), (i). Pub. L. 100–647, §6109(a), added subsec. (h) and redesignated former subsec. (h) as (i).

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–59 effective before, on, and after Aug. 10, 2005, see section 11116(c) of Pub. L. 109–59, set out as a note under section 4461 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, §1704(i)(2), Aug. 20, 1996, 110 Stat. 1881, provided that: "The amendment made by paragraph (1) [amending this section] shall take effect as if included in the amendments made by section 1402(a) of the Harbor Maintenance Revenue Act of 1986 [Pub. L. 99–662, title XIV]."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 2002(b) of Pub. L. 100–647 effective as if included in the provision of the Harbor Maintenance Revenue Act of 1986, Pub. L. 99–662, title XIV, to which it relates, see section 2002(d) of Pub. L. 100–647, set out as a note under section 4042 of this title.

Pub. L. 100–647, title VI, §6109(b), Nov. 10, 1988, 102 Stat. 3712, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on April 1, 1987."

Pub. L. 100–647, title VI, §6110(b), Nov. 10, 1988, 102 Stat. 3713, provided that: "The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Nov. 10, 1988]."

EFFECTIVE DATE

Section effective Apr. 1, 1987, see section 1402(c) of Pub. L. 99–662, set out as a note under section 4461 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Subchapter B—Transportation by Water

Sec.
4471. Imposition of tax.
4472. Definitions.

PRIOR PROVISIONS

A prior subchapter B, consisted of sections 4461 to 4464 of this title, prior to repeal by Pub. L. 95–600, title V, §521(b), Nov. 6, 1978, 92 Stat. 2884, applicable with respect to years beginning after June 30, 1980.

Section 4461, acts Aug. 16, 1954, ch. 736, 68A Stat. 531; Sept. 21, 1959, Pub. L. 86–344, §6(a), 73 Stat. 620; June 21, 1965, Pub. L. 89–44, title IV, §403(a), 79 Stat. 148, imposed a special tax on persons who maintained for use or permitted use of coin-operated gaming devices and provided an exception from such tax.

Section 4462, acts Aug. 16, 1954, ch. 736, 68A Stat. 531; Sept. 2, 1958, Pub. L. 85–859, title I, §152(a), 72

Stat. 1304; June 21, 1965, Pub. L. 89–44, title IV, §403(b), 79 Stat. 149; Oct. 4, 1976, Pub. L. 94–455, title XII, §1208(b), 90 Stat. 1709, defined coin-operated gaming devices.

Section 4463, act Aug. 16, 1954, ch. 736, 68A Stat. 531, related to administrative provisions.

Section 4464, added Pub. L. 92–178, title IV, §402(a), Dec. 10, 1971, 85 Stat. 534, and amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–600, title V, §521(a), Nov. 6, 1978, 92 Stat. 2884, related to credit for State-imposed taxes.

AMENDMENTS

1996—Pub. L. 104–188, title I, §1704(t)(11), Aug. 20, 1996, 110 Stat. 1888, struck out "and special rules" after "Definitions" in item 4472.

§4471. Imposition of tax

(a) In general

There is hereby imposed a tax of $3 per passenger on a covered voyage.

(b) By whom paid

The tax imposed by this section shall be paid by the person providing the covered voyage.

(c) Time of imposition

The tax imposed by this section shall be imposed only once for each passenger on a covered voyage, either at the time of first embarkation or disembarkation in the United States.

(Added Pub. L. 101–239, title VII, §7504(a), Dec. 19, 1989, 103 Stat. 2362.)

PRIOR PROVISIONS

A prior section 4471 was contained in subchapter C of this chapter prior to repeal by Pub. L. 89–44, title IV, §404, June 21, 1965, 79 Stat. 149.

EFFECTIVE DATE

Pub. L. 101–239, title VII, §7504(c), Dec. 19, 1989, 103 Stat. 2363, provided that:

"(1) IN GENERAL.—The amendments made by this section [enacting this subchapter] shall apply to voyages beginning after December 31, 1989, which were not paid for before such date.

"(2) NO DEPOSITS REQUIRED BEFORE APRIL 1, 1990.—No deposit of any tax imposed by subchapter B of chapter 36 of the Internal Revenue Code of 1986, as added by this section, shall be required to be made before April 1, 1990."

§4472. Definitions

For purposes of this subchapter—

(1) Covered voyage

(A) In general

The term "covered voyage" means a voyage of—

(i) a commercial passenger vessel which extends over 1 or more nights, or

(ii) a commercial vessel transporting passengers engaged in gambling aboard the vessel beyond the territorial waters of the United States,

during which passengers embark or disembark the vessel in the United States. Such term shall not include any voyage on any vessel owned or operated by the United States, a State, or any agency or subdivision thereof.

(B) Exception for certain voyages on passenger vessels

The term "covered voyage" shall not include a voyage of a passenger vessel of less than 12 hours between 2 ports in the United States.

(2) Passenger vessel

The term "passenger vessel" means any vessel having berth or stateroom accommodations for more than 16 passengers.

(Added Pub. L. 101–239, title VII, §7504(a), Dec. 19, 1989, 103 Stat. 2362.)

PRIOR PROVISIONS

A prior section 4472 was contained in subchapter C of this chapter prior to repeal by Pub. L. 89–44, title IV, §404, June 21, 1965, 79 Stat. 149.

[Subchapter C—Repealed]

[§§4471 to 4474. Repealed. Pub. L. 89–44, title IV, §404, June 21, 1965, 79 Stat. 149]

Section 4471, act Aug. 16, 1954, ch. 736, 68A Stat. 532, imposed a $20 annual tax upon bowling alleys, billiard tables, and pool tables to be paid by operators of bowling alleys, billiard rooms, and pool rooms.

Section 4472, act Aug. 16, 1954, ch. 736, 68A Stat. 532, defined bowling alley, billiard room, and pool room.

Section 4473, acts Aug. 16, 1954, ch. 736, 68A Stat. 532; Sept. 2, 1958, Pub. L. 85–859, title I, §153(a), 72 Stat. 1305, granted exemptions for hospitals, the armed forces, and certain non-profit and governmental organizations.

Section 4474, act Aug. 16, 1954, ch. 736, 68A Stat. 532, made cross references to chapter 40 and subtitle F for penalties and administrative provisions.

EFFECTIVE DATE OF REPEAL

Repeal applicable on and after July 1, 1965, see section 701(c)(2) of Pub. L. 89–44, set out in part as an Effective Date of 1965 Amendment note under section 4402 of this title.

Subchapter D—Tax on Use of Certain Vehicles

Sec.

4481. Imposition of tax.

4482. Definitions.

4483. Exemptions.

4484. Cross references.

AMENDMENTS

1983—Pub. L. 97–473, title II, §202(b)(11), Jan. 14, 1983, 96 Stat. 2610, substituted "Cross references" for "Cross reference" in item 4484.

1956—Act June 29, 1956, ch. 462, title II, §206(a), 70 Stat. 389, added subchapter heading and analysis of sections.

§4481. Imposition of tax

(a) Imposition of tax

A tax is hereby imposed on the use of any highway motor vehicle which (together with the semitrailers and trailers customarily used in connection with highway motor vehicles of the same type as such highway motor vehicle) has a taxable gross weight of at least 55,000 pounds at the rate specified in the following table:

Taxable gross weight:	Rate of tax:

At least 55,000 pounds, but not over 75,000 pounds	$100 per year plus $22 for each 1,000 pounds (or fraction thereof) in excess of 55,000 pounds.
Over 75,000 pounds	$550.

(b) By whom paid

The tax imposed by this section shall be paid by the person in whose name the highway motor vehicle is, or is required to be, registered under the law of the State or contiguous foreign country in which such vehicle is, or is required to be, registered, or, in case the highway motor vehicle is owned by the United States, by the agency or instrumentality of the United States operating such vehicle.

(c) Proration of tax

(1) Where first use occurs after first month

If in any taxable period the first use of the highway motor vehicle is after the first month in such period, the tax shall be reckoned proportionately from the first day of the month in which such use occurs to and including the last day in such taxable period.

(2) Where vehicle sold, destroyed, or stolen

(A) In general

If in any taxable period a highway motor vehicle is sold, destroyed, or stolen before the first day of the last month in such period and not subsequently used during such taxable period, the tax shall be reckoned proportionately from the first day of the month in such period in which the first use of such highway motor vehicle occurs to and including the last day of the month in which such highway motor vehicle was sold, destroyed, or stolen.

(B) Destroyed

For purposes of subparagraph (A), a highway motor vehicle is destroyed if such vehicle is damaged by reason of an accident or other casualty to such an extent that it is not economic to rebuild.

(d) One tax liability per period

(1) In general

To the extent that the tax imposed by this section is paid with respect to any highway motor vehicle for any taxable period, no further tax shall be imposed by this section for such taxable period with respect to such vehicle.

(2) Cross reference

For privilege of paying tax imposed by this section in installments, see section 6156.[1]

(e) Electronic filing

Any taxpayer who files a return under this section with respect to 25 or more vehicles for any taxable period shall file such return electronically.

(f) Period tax in effect

The tax imposed by this section shall apply only to use before October 1, 2017.

(Added June 29, 1956, ch. 462, title II, §206(a), 70 Stat. 390; amended Pub. L. 87–61, title II, §203(a), (b)(1), (2)(A), (B), June 29, 1961, 75 Stat. 124; Pub. L. 91–605, title III, §303(a)(7), (8), Dec. 31, 1970, 84 Stat. 1744; Pub. L. 94–280, title III, §303(a)(7), (8), May 5, 1976, 90 Stat. 456; Pub. L. 95–599, title V, §502(a)(6), (7), Nov. 6, 1978, 92 Stat. 2756; Pub. L. 97–424, title V, §§513(a), (d), 516(a)(4), Jan. 6, 1983, 96 Stat. 2177, 2179, 2182; Pub. L. 98–369, div. A, title VII, §734(f), title IX, §901(a), July 18, 1984, 98 Stat. 980, 1003; Pub. L. 100–17, title V, §§502(a)(5), 507(a), Apr. 2, 1987, 101 Stat. 256, 260; Pub. L. 101–508, title XI, §11211(c)(5), Nov. 5, 1990, 104 Stat. 1388–426; Pub. L. 102–240, title VIII, §8002(a)(5), Dec. 18, 1991, 105 Stat. 2203; Pub. L. 104–188, title I, §1704(t)(57), Aug. 20, 1996, 110 Stat. 1890; Pub. L. 105–178, title IX,

§9002(a)(1)(G), June 9, 1998, 112 Stat. 499; Pub. L. 108–357, title VIII, §867(a), (c), Oct. 22, 2004, 118 Stat. 1622; Pub. L. 109–14, §9(c)(1), May 31, 2005, 119 Stat. 336; Pub. L. 109–59, title XI, §11101(a)(2)(A), Aug. 10, 2005, 119 Stat. 1944; Pub. L. 112–30, title I, §142(b)(1), Sept. 16, 2011, 125 Stat. 356; Pub. L. 112–102, title IV, §402(b)(1), Mar. 30, 2012, 126 Stat. 282; Pub. L. 112–141, div. D, title I, §40102(b)(1)(A), July 6, 2012, 126 Stat. 844.)

REFERENCES IN TEXT

Section 6156, referred to in subsec. (d)(2), was repealed by Pub. L. 108–357, title VIII, §867(b)(1), Oct. 22, 2004, 118 Stat. 1622.

AMENDMENTS

2012—Subsec. (f). Pub. L. 112–141 substituted "2017" for "2013".

Pub. L. 112–102 substituted "2013" for "2012".

2011—Subsec. (f). Pub. L. 112–30 substituted "2012" for "2011".

2005—Subsec. (f). Pub. L. 109–59 substituted "2011" for "2006".

Pub. L. 109–14 substituted "2006" for "2005".

2004—Subsec. (c)(2). Pub. L. 108–357, §867(a)(2), substituted "sold, destroyed, or stolen" for "destroyed or stolen" in heading.

Subsec. (c)(2)(A). Pub. L. 108–357, §867(a)(1), substituted "sold, destroyed, or stolen" for "destroyed or stolen" in two places.

Subsecs. (e), (f). Pub. L. 108–357, §867(c), added subsec. (e) and redesignated former subsec. (e) as (f).

1998—Subsec. (e). Pub. L. 105–178 substituted "2005" for "1999".

1996—Subsec. (e). Pub. L. 104–188 provided that section 8002(a)(5) of Pub. L. 102–240 shall be applied as if "4481(e)" appeared instead of "4481(c)". See 1991 Amendment note below.

1991—Subsec. (e). Pub. L. 102–240, which directed the substitution of "1999" for "1995" in subsec. (c), was executed by making the substitution in subsec. (e). See 1996 Amendment note above.

1990—Subsec. (e). Pub. L. 101–508 substituted "1995" for "1993".

1987—Subsec. (b). Pub. L. 100–17, §507(a), inserted "or contiguous foreign country" after "State".

Subsec. (e). Pub. L. 100–17, §502(a)(5), substituted "1993" for "1988".

1984—Subsec. (a). Pub. L. 98–369, §901(a), in amending subsec. (a) generally, substituted "55,000" for "33,000" in provisions preceding table, struck out heading "(1) In general", substituted table provisions for former table which provided:

Taxable gross weight		
At least	But less than	Rate of tax
33,000 pounds	55,000	$50 a year, plus $25 for each 1,000 pounds or fraction thereof in excess of 33,000 pounds.
55,000 pounds	80,000	$600 a year, plus the applicable rate for each 1,000 pounds or fraction thereof in excess of 55,000 pounds
80,000 pounds or more		The maximum tax a year.

and struck out par. (2) which provided applicable rates and maximum taxes for taxable periods beginning July 1, 1984 through 1988 or thereafter.

Pub. L. 98–369, §734(f), struck out from subsec. (a), as subsec. (a) was in effect before the amendments made by section 513(a) of Pub. L. 97–424: "In case of the taxable period beginning on July 1, 1984, and ending on September 30, 1984, the tax shall be at the rate of 75 cents for such period for each 1,000 pounds of taxable gross weight or fraction thereof." See 1983 Amendment note below.

1983—Subsec. (a). Pub. L. 97–424, §513(a), substituted "at least 33,000 pounds at the rate specified in the following table:" for "more than 26,000 pounds, at the rate of $3.00 a year for each 1,000 pounds of taxable gross weight or fraction thereof.", and added pars. (1) and (2).

Subsec. (c). Pub. L. 97–424, §513(d), designated existing provisions as par. (1) and added par. (2).

Subsec. (e). Pub. L. 97–424, §516(a)(4), substituted "1988" for "1984" after "October 1,".

1978—Subsec. (a). Pub. L. 95–599, §502(a)(6), substituted "1984" for "1979" in two places.

Subsec. (e). Pub. L. 95–599, §502(a)(7), substituted "1984" for "1979".

1976—Subsec. (a). Pub. L. 94–280, §303(a)(7), substituted "1979" for "1977" in two places.

Subsec. (e). Pub. L. 94–280, §303(a)(8), substituted "1979" for "1977".

1970—Subsec. (a). Pub. L. 91–605, §303(a)(7), substituted "1977" for "1972" in two places.

Subsec. (e). Pub. L. 91–605, §303(a)(8), substituted "1977" for "1972".

1961—Subsec. (a). Pub. L. 87–61, §203(a), (b)(2)(A), increased rate of tax from $1.50 to $3.00 a year, and provided for a tax at the rate of 75 cents for each 1,000 pounds during the period beginning on July 1, 1972, and ending on September 30, 1972.

Subsec. (c). Pub. L. 87–61, §203(b)(2)(B), substituted "any taxable period" for "any year", "after the first month in such period" for "after July 31", and "the last day in such taxable period" for "the last day of June following".

Subsec. (d). Pub. L. 87–61, §203(b)(2)(B), made conforming changes to refer to payment of tax for a taxable period instead of payment for a year, and inserted cross reference to section 6156.

Subsec. (e). Pub. L. 87–61, §203(b)(1), substituted "before October 1, 1972" for "after June 30, 1956, and before July 1, 1972".

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112–141 effective July 1, 2012, see section 40102(f) of Pub. L. 112–141, set out as a note under section 460l–11 of Title 16, Conservation.

Amendment by Pub. L. 112–102 effective Apr. 1, 2012, see section 402(f) of Pub. L. 112–102, set out as an Effective and Termination Dates of 2012 Amendment note under section 460l–11 of Title 16, Conservation.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112–30 effective Oct. 1, 2011, see section 142(f) of Pub. L. 112–30, set out as a note under section 460l–11 of Title 16, Conservation.

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–14, §9(d), May 31, 2005, 119 Stat. 336, provided that: "The amendments made by this section [amending this section and sections 4482, 4483, 9503, and 9504 of this title] shall take effect on the date of the enactment of this Act [May 31, 2005]."

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §867(e), Oct. 22, 2004, 118 Stat. 1622, provided that: "The amendments made by this section [amending this section and section 4483 of this title and repealing section 6156 of this title] shall apply to taxable periods beginning after the date of the enactment of this Act [Oct. 22, 2004]."

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–17, title V, §507(d), Apr. 2, 1987, 101 Stat. 260, provided that: "The amendments made by subsections (a) and (b) [amending this section and section 4483 of this title] shall take effect on July 1, 1987."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 734(f) of Pub. L. 98–369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97–424, to which such amendment relates, see section 736 of Pub. L. 98–369, set out as a note under section 4051 of this title.

Pub. L. 98–369, div. A, title IX, §901(c), July 18, 1984, 98 Stat. 1004, provided that: "The amendment made by subsection (a) [amending this section] (and the provisions of subsection (b) [set out below]) shall take effect on July 1, 1984."

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 97–424, title V, §513(f), Jan. 6, 1983, 96 Stat. 2179, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 4482 and 4483 of this title and enacting provisions set out below] shall take effect on July 1, 1984.

"(2) SPECIAL RULE IN THE CASE OF CERTAIN OWNER-OPERATORS.—

"(A) IN GENERAL.—In the case of a small owner-operator, paragraph (1) of this subsection and paragraph (2) of section 4481(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this section) shall be applied by substituting for each date contained in such paragraphs a date which is 1

year after the date so contained.

"(B) SMALL OWNER-OPERATOR.—For purposes of this paragraph, the term "small owner-operator" means any person who owns and operates at any time during the taxable period no more than 5 highway motor vehicles with respect to which a tax is imposed by section 4481 of such Code for such taxable period.

"[No subpar. (C) has been enacted.]

"(D) AGGREGATION OF VEHICLE OWNERSHIPS.—For purposes of subparagraph (B), all highway motor vehicles with respect to which a tax is imposed by section 4481 of such Code which are owned by—

"(i) any trade or business (whether or not incorporated) which is under common control with the taxpayer (within the meaning of section 52(b)), or

"(ii) any member of any controlled groups of corporations of which the taxpayer is a member, for any taxable period shall be treated as being owned by the taxpayer during such period. The Secretary shall prescribe regulations which provide attribution rules that take into account, in addition to the persons and entities described in the preceding sentence, taxpayers who own highway motor vehicles through partnerships, joint ventures, and corporations.

"(E) CONTROLLED GROUPS OF CORPORATIONS.—For purposes of this paragraph, the term 'controlled group of corporations' has the meaning given to such term by section 1563(a), except that—

"(i) 'more than 50 percent' shall be substituted for 'at least 80 percent' each place it appears in section 1563(a)(1), and

"(ii) the determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of section 1563.

"(F) HIGHWAY MOTOR VEHICLES.—For purposes of this paragraph, the term 'highway motor vehicle' has the meaning given to such term by section 4482(a) of such Code."

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–61 effective July 1, 1961, see section 208 of Pub. L. 87–61, set out as a note under section 4041 of this title.

EFFECTIVE DATE

Section effective June 29, 1956, see section 211 of act June 29, 1956, set out as an Effective Date of 1956 Amendment note under section 4041 of this title.

REGULATIONS

Pub. L. 100–17, title V, §507(c), Apr. 2, 1987, 101 Stat. 260, provided that: "The Secretary of the Treasury or the delegate of the Secretary shall within 120 days after the date of the enactment of this section [Apr. 2, 1987] prescribe regulations governing payment of the tax imposed by section 4481 of the Internal Revenue Code of 1986 on any highway motor vehicle operated by a motor carrier domiciled in any contiguous foreign country or owned or controlled by persons of any contiguous foreign country. Such regulations shall include a procedure by which the operator of such motor vehicle shall evidence that such operator has paid such tax at the time such motor vehicle enters the United States. In the event of the failure to provide evidence of payment, such regulations may provide for denial of entry of such motor vehicle into the United States."

SPECIAL RULES IN THE CASE OF CERTAIN OWNER-OPERATORS

Pub. L. 98–369, div. A, title IX, §901(b), July 18, 1984, 98 Stat. 1003, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) SPECIAL RULE FOR TAXABLE PERIOD BEGINNING ON JULY 1, 1984.—In the case of a small owner-operator, the amount of the tax imposed by section 4481 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] on the use of any highway motor vehicle subject to tax under section 4481(a) of such Code (as amended by subsection (a)) for the taxable period which begins on July 1, 1984, shall be the lesser of—

"(A) $3 for each 1,000 pounds of taxable gross weight (or fraction thereof), or

"(B) the amount of the tax which would be imposed under such section 4481(a) without regard to this paragraph.

"(2) EXEMPTION FOR VEHICLES USED FOR LESS THAN 5,000 MILES (AND CERTAIN OTHER AMENDMENTS) TO TAKE EFFECT ON JULY 1, 1984.—In the case of a small owner-operator, notwithstanding subsection (f)(2) of section 513 of the Highway Revenue Act of 1982 [section 513(f)(2) of

Pub. L. 97–424, set out as an Effective Date of 1983 Amendment note above], the amendments made by subsections (b), (c), and (d) of such section [amending sections 4481 to 4483 of this title] shall take effect on July 1, 1984.

"(3) SMALL OWNER-OPERATOR DEFINED.—For purposes of this subsection, the term 'small owner-operator' has the meaning given such term by section 513(f)(2) of the Highway Revenue Act of 1982.

"(4) TAXABLE GROSS WEIGHT.—For purposes of this subsection, the term 'taxable gross weight' has the same meaning as when used in section 4481 of the Internal Revenue Code of 1986."

STUDIES RELATING TO HEAVY VEHICLE USE TAX

Pub. L. 98–369, div. A, title IX, subtitle D, part I, July 18, 1984, 98 Stat. 1010, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"SEC. 931. WHETHER HEAVY VEHICLES BEAR FAIR SHARE OF HIGHWAY COSTS.

"The Secretary of Transportation shall conduct a study of whether highway motor vehicles with taxable gross weights of 80,000 pounds or more bear their fair share of the costs of the highway system.

"SEC. 932. TRANS-BORDER TRUCKING.

"The Secretary of Transportation shall conduct a study to determine the significance of the tax imposed by section 4481 of the Internal Revenue Code of 1986 (relating to tax on use of certain vehicles) on trans-border trucking operations.

"SEC. 933. WEIGHT-DISTANCE TAXES.

"The Secretary of Transportation shall conduct a study to evaluate the feasibility and ability of weight-distance truck taxes to provide the greatest degree of equity among highway users, to ease the costs of compliance of such taxes, and to improve the efficiency by which such taxes might be administered. Such study shall also include an evaluation of the evasion potential for weight-distance taxes and an assessment of the benefits to interstate commerce of replacing all Federal truck taxes (other than fuel taxes) with a weight-distance tax.

"SEC. 934. REPORTS, ETC.

"(a) CONSULTATION WITH TREASURY.—Studies conducted under this part shall be conducted in consultation with the Secretary of the Treasury.

"(b) REPORT.—Not later than October 1, 1987, the Secretary of Transportation shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on each study conducted under this part together with such recommendations as the Secretary may deem advisable."

STUDY OF ALTERNATIVES TO TAX ON USE OF HEAVY TRUCKS

Pub. L. 97–424, title V, §513(g), Jan. 6, 1983, 96 Stat. 2180, provided that the Secretary of Transportation, in consultation with the Secretary of the Treasury, conduct a study of alternatives to the tax on heavy vehicles imposed by section 4481(a) of the Internal Revenue Code, and plans for improving the collecting and enforcement of such tax and alternatives to such tax, such alternatives to include taxes based either singly or in suitable combinations on vehicle size or configuration; vehicle weight, both registered and actual operating weight; and distance traveled, and such plans for improving tax collection and enforcement to provide for Federal and State co-operation in such activities. The study was to be conducted in consultation with State officials, motor carriers, and other affected parties, and the Secretary of Transportation was to submit a report and recommendations to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than Jan. 1, 1985.

[1] *See References in Text note below.*

§4482. Definitions

(a) Highway motor vehicle

For purposes of this subchapter, the term "highway motor vehicle" means any motor vehicle which is a highway vehicle.

(b) Taxable gross weight

For purposes of this subchapter, the term "taxable gross weight" when used with respect to any highway motor vehicle, means the sum of—

(1) the actual unloaded weight of—

(A) such highway motor vehicle fully equipped for service, and

(B) the semitrailers and trailers (fully equipped for service) customarily used in connection with highway motor vehicles of the same type as such highway motor vehicle, and

(2) the weight of the maximum load customarily carried on highway motor vehicles of the same type as such highway motor vehicle and on the semitrailers and trailers referred to in paragraph (1)(B).

Taxable gross weight shall be determined under regulations prescribed by the Secretary (which regulations may include formulas or other methods for determining the taxable gross weight of vehicles by classes, specifications, or otherwise).

(c) Other definitions and special rule

For purposes of this subchapter—

(1) State

The term "State" means a State and the District of Columbia.

(2) Year

The term "year" means the one-year period beginning on July 1.

(3) Use

The term "use" means use in the United States on the public highways.

(4) Taxable period

The term "taxable period" means any year beginning before July 1, 2017, and the period which begins on July 1, 2017, and ends at the close of September 30, 2017.

(5) Customary use

A semitrailer or trailer shall be treated as customarily used in connection with a highway motor vehicle if such vehicle is equipped to tow such semitrailer or trailer.

(d) Special rule for taxable period in which termination date occurs

In the case of the taxable period which ends on September 30, 2017, the amount of the tax imposed by section 4481 with respect to any highway motor vehicle shall be determined by reducing each dollar amount in the table contained in section 4481(a) by 75 percent.

(Added June 29, 1956, ch. 462, title II, §206(a), 70 Stat. 390; amended Pub. L. 87–61, title II, §203(b)(2)(C), June 29, 1961, 75 Stat. 125; Pub. L. 91–605, title III, §303(a)(9), Dec. 31, 1970, 84 Stat. 1744; Pub. L. 94–280, title III, §303(a)(9), May 5, 1976, 90 Stat. 456; Pub. L. 94–455, title XIX, §§1904(c), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1818, 1834; Pub. L. 95–599, title V, §502(a)(8), Nov. 6, 1978, 92 Stat. 2756; Pub. L. 97–424, title V, §§513(c), (e), 516(a)(4), Jan. 6, 1983, 96 Stat. 2179, 2182; Pub. L. 100–17, title V, §502(a)(5), Apr. 2, 1987, 101 Stat. 256; Pub. L. 101–508, title XI, §11211(c)(5), Nov. 5, 1990, 104 Stat. 1388–426; Pub. L. 102–240, title VIII, §8002(a)(5), Dec. 18, 1991, 105 Stat. 2203; Pub. L. 105–178, title IX, §9002(a)(1)(H), (I), June 9, 1998, 112 Stat. 499; Pub. L. 109–14, §9(c)(2), (3), May 31, 2005, 119 Stat. 336; Pub. L. 109–59, title XI, §11101(a)(2)(B), (C), Aug. 10, 2005, 119 Stat. 1944; Pub. L. 112–30, title I, §142(b)(2), Sept. 16, 2011, 125 Stat. 356; Pub. L. 112–102, title IV, §402(b)(2), Mar. 30, 2012, 126 Stat. 282; Pub. L. 112–140, title IV, §402(e), June 29, 2012, 126 Stat. 403; Pub. L. 112–141, div. D, title I, §40102(b)(1)(B), (2)(A), July 6, 2012, 126 Stat. 845.)

AMENDMENTS

2012—Subsec. (c)(4). Pub. L. 112–141, §40102(b)(2)(A), amended par. (4) generally. Prior to amendment, text read as follows: "The term 'taxable period' means any year beginning before July 1, 2013, and the period

which begins on July 1, 2013, and ends at the close of September 30, 2013."

Pub. L. 112–140, §§1(c), 402(e), temporarily amended par. (4) generally, resulting in text identical to that after amendment by Pub. L. 112–102. See Amendment and Effective and Termination Dates of 2012 Amendment notes below.

Pub. L. 112–102 substituted "2013" for "2012" wherever appearing.

Subsec. (d). Pub. L. 112–141, §40102(b)(1)(B), substituted "2017" for "2013".

Pub. L. 112–102 substituted "2013" for "2012".

2011—Subsecs. (c)(4), (d). Pub. L. 112–30 substituted "2012" for "2011" wherever appearing.

2005—Subsecs. (c)(4), (d). Pub. L. 109–59 substituted "2011" for "2006" wherever appearing.

Pub. L. 109–14 substituted "2006" for "2005" wherever appearing.

1998—Subsecs. (c)(4), (d). Pub. L. 105–178 substituted "2005" for "1999" wherever appearing.

1991—Subsecs. (c)(4), (d). Pub. L. 102–240 substituted "1999" for "1995" wherever appearing.

1990—Subsecs. (c)(4), (d). Pub. L. 101–508 substituted "1995" for "1993" wherever appearing.

1987—Subsecs. (c)(4), (d). Pub. L. 100–17 substituted "1993" for "1988" wherever appearing.

1983—Subsec. (c). Pub. L. 97–424, §513(c)(2), inserted "and special rule" in heading.

Subsec. (c)(4). Pub. L. 97–424, §516(a)(4), substituted "1988" for "1984" wherever appearing.

Subsec. (c)(5). Pub. L. 97–424, §513(c)(1), added par. (5).

Subsec. (d). Pub. L. 97–424, §513(e), added subsec. (d).

1978—Subsec. (c)(4). Pub. L. 95–599 substituted "1984" for "1979" wherever appearing.

1976—Subsec. (b). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (c)(1). Pub. L. 94–455, §1904(c), substituted "State and the District of Columbia" for "State, a Territory of the United States, and the District of Columbia".

Subsec. (c)(4). Pub. L. 94–280 substituted "1979" for "1977" wherever appearing.

1970—Subsec. (c)(4). Pub. L. 91–605 substituted "1977" for "1972" wherever appearing.

1961—Subsec. (c)(4). Pub. L. 87–61 added par. (4).

EFFECTIVE AND TERMINATION DATES OF 2012 AMENDMENT

Pub. L. 112–141, div. D, title I, §40102(b)(2)(B), July 6, 2012, 126 Stat. 845, provided that: "The amendment made by this paragraph [amending this section] shall take effect as if included in the amendments made by section 142 of the Surface Transportation Extension Act of 2011, Part II [Pub. L. 112–30]."

Amendment by section 40102(b)(1)(B) of Pub. L. 112–141 effective July 1, 2012, see section 40102(f) of Pub. L. 112–141, set out as a note under section 460l–11 of Title 16, Conservation.

Amendment by Pub. L. 112–140 to cease to be effective on July 6, 2012, with text as amended by Pub. L. 112–140 to revert back to read as it did on the day before June 29, 2012, and amendments by Pub. L. 112–141 to be executed as if Pub. L. 112–140 had not been enacted, see section 1(c) of Pub. L. 112–140, set out as a note under section 101 of Title 23, Highways.

Amendment by Pub. L. 112–140 effective as if included in section 402 of Pub. L. 112–102, see section 402(f)(2) of Pub. L. 112–140, set out as a note under section 460l–11 of Title 16, Conservation.

Amendment by Pub. L. 112–102 effective Apr. 1, 2012, see section 402(f) of Pub. L. 112–102, set out as a note under section 460l–11 of Title 16, Conservation.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112–30 effective Oct. 1, 2011, see section 142(f) of Pub. L. 112–30, set out as a note under section 460l–11 of Title 16, Conservation.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 513(c), (e) of Pub. L. 97–424 effective July 1, 1984, see section 513(f) of Pub. L. 97–424, set out as a note under section 4481 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1904(c) of Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94–455, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–61 effective July 1, 1961, see section 208 of Pub. L. 87–61, set out as a note under section 4041 of this title.

SPECIAL RULES IN THE CASE OF SMALL OWNER-OPERATORS

Amendment by section 513(c) of Pub. L. 97–424 effective July 1, 1984, in the case of a small owner-operator, notwithstanding section 513(f)(2) of Pub. L. 97–424, see section 901(b)(2) of Pub. L. 98–369, set out as a note under section 4481 of this title.

§4483. Exemptions

(a) State and local governmental exemption

Under regulations prescribed by the Secretary, no tax shall be imposed by section 4481 on the use of any highway motor vehicle by any State or any political subdivision of a State.

(b) Exemption for United States

The Secretary of the Treasury may authorize exemption from the tax imposed by section 4481 as to the use by the United States of any particular highway motor vehicle, or class of highway motor vehicles, if he determines that the imposition of such tax with respect to such use will cause substantial burden or expense which can be avoided by granting tax exemption and that full benefit of such exemption, if granted, will accrue to the United States.

(c) Certain transit-type buses

Under regulations prescribed by the Secretary, no tax shall be imposed by section 4481 on the use of any bus which is of the transit type (rather than of the intercity type) by a person who, for the last 3 months of the preceding year (or for such other period as the Secretary may by regulations prescribe for purposes of this subsection), met the 60-percent passenger fare revenue test set forth in section 6421(b)(2) (as in effect on the day before the date of the enactment of the Energy Tax Act of 1978) as applied to the period prescribed for purposes of this subsection.

(d) Exemption for trucks used for less than 5,000 miles on public highways

(1) Suspension of tax

(A) In general

If—

(i) it is reasonable to expect that the use of any highway motor vehicle on public highways during any taxable period will be less than 5,000 miles, and

(ii) the owner of such vehicle furnishes such information as the Secretary may by forms or regulations require with respect to the expected use of such vehicle,

then the collection of the tax imposed by section 4481 with respect to the use of such vehicle shall be suspended during the taxable period.

(B) Suspension ceases to apply where use exceeds 5,000 miles

Subparagraph (A) shall cease to apply with respect to any highway motor vehicle whenever the use of such vehicle on public highways during the taxable period exceeds 5,000 miles.

(2) Exemption

If—

(A) the collection of the tax imposed by section 4481 with respect to any highway motor vehicle is suspended under paragraph (1),

(B) such vehicle is not used during the taxable period on public highways for more than 5,000 miles, and

(C) except as otherwise provided in regulations, the owner of such vehicle furnishes such information as the Secretary may require with respect to the use of such vehicle during the taxable period,

then no tax shall be imposed by section 4481 on the use of such vehicle for the taxable period.

(3) Refund where tax paid and vehicle not used for more than 5,000 miles

If—

(A) the tax imposed by section 4481 is paid with respect to any highway motor vehicle for any taxable period, and

(B) the requirements of subparagraphs (B) and (C) of paragraph (2) are met with respect to such taxable period,

the amount of such tax shall be credited or refunded (without interest) to the person who paid such tax.

(4) Relief from liability for tax under certain circumstances where truck is transferred

Under regulations prescribed by the Secretary, the owner of a highway motor vehicle with respect to which the collection of the tax imposed by section 4481 is suspended under paragraph (1) shall not be liable for the tax imposed by section 4481 (and the new owner shall be liable for such tax) with respect to such vehicle if—

(A) such vehicle is transferred to a new owner,

(B) such suspension is in effect at the time of such transfer, and

(C) the old owner furnishes such information as the Secretary by forms and regulations requires with respect to the transfer of such vehicle.

(5) 7,500-miles exemption for agricultural vehicles

(A) In general

In the case of an agricultural vehicle, paragraphs (1) and (2) shall be applied by substituting "7,500" for "5,000" each place it appears.

(B) Definitions

For purposes of this paragraph—

(i) Agricultural vehicle

The term "agricultural vehicle" means any highway motor vehicle—

(I) used primarily for farming purposes, and

(II) registered (under the laws of the State in which such vehicle is required to be registered) as a highway motor vehicle used for farming purposes.

(ii) Farming purposes

The term "farming purposes" means the transporting of any farm commodity to or from a farm or the use directly in agricultural production.

(iii) Farm commodity

The term "farm commodity" means any agricultural or horticultural commodity, feed, seed, fertilizer, livestock, bees, poultry, fur-bearing animals, or wildlife.

(6) Owner defined

For purposes of this subsection, the term "owner" means, with respect to any highway motor vehicle, the person described in section 4481(b).

(e) Reduction in tax for trucks used in logging

The tax imposed by section 4481 shall be reduced by 25 percent with respect to any highway motor vehicle if—

(1) the exclusive use of such vehicle during any taxable period is the transportation, to and from a point located on a forested site, of products harvested from such forested site, and

(2) such vehicle is registered (under the laws of the State in which such vehicle is required to be registered) as a highway motor vehicle used in the transportation of harvested forest products.

[(f) Repealed. Pub. L. 108–357, title VIII, §867(d), Oct. 22, 2004, 118 Stat. 1622]

(g) Exemption for mobile machinery

No tax shall be imposed by section 4481 on the use of any vehicle described in section 4053(8).

(h) Exemption for vehicles used in blood collection

(1) In general

No tax shall be imposed by section 4481 on the use of any qualified blood collector vehicle by a qualified blood collector organization.

(2) Qualified blood collector vehicle

For purposes of this subsection, the term "qualified blood collector vehicle" means a vehicle at least 80 percent of the use of which during the prior taxable period was by a qualified blood collector organization in the collection, storage, or transportation of blood.

(3) Special rule for vehicles first placed in service in a taxable period

In the case of a vehicle first placed in service in a taxable period, a vehicle shall be treated as a qualified blood collector vehicle for such taxable period if such qualified blood collector organization certifies to the Secretary that the organization reasonably expects at least 80 percent of the use of such vehicle by the organization during such taxable period will be in the collection, storage, or transportation of blood.

(4) Qualified blood collector organization

The term "qualified blood collector organization" has the meaning given such term by section 7701(a)(49).

(i) Termination of exemptions

Subsections (a) and (c) shall not apply on and after October 1, 2017.

(Added June 29, 1956, ch. 462, title II, §206(a), 70 Stat. 391; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), (B), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–618, title II, §233(a)(3)(C), Nov. 9, 1978, 92 Stat. 3191; Pub. L. 97–424, title V, §§513(b), 516(b)(3), Jan. 6, 1983, 96 Stat. 2177, 2183; Pub. L. 98–369, div. A, title IX, §§902(a), 903(a), July 18, 1984, 98 Stat. 1004; Pub. L. 100–17, title V, §§502(b)(5), 507(b), Apr. 2, 1987, 101 Stat. 257, 260; Pub. L. 101–508, title XI, §11211(d)(4), Nov. 5, 1990, 104 Stat. 1388–427; Pub. L. 102–240, title VIII, §8002(b)(4), Dec. 18, 1991, 105 Stat. 2203; Pub. L. 105–178, title IX, §9002(b)(2), June 9, 1998, 112 Stat. 500; Pub. L. 108–357, title VIII, §§851(b)(1), 867(d), Oct. 22, 2004, 118 Stat. 1607, 1622; Pub. L. 109–14, §9(c)(4), May 31, 2005, 119 Stat. 336; Pub. L. 109–59, title XI, §11101(b)(2), Aug. 10, 2005, 119 Stat. 1944; Pub. L. 109–280, title XII, §1207(d), Aug. 17, 2006, 120 Stat. 1070; Pub. L. 112–30, title I, §142(d), Sept. 16, 2011, 125 Stat. 356; Pub. L. 112–102, title IV, §402(d), Mar. 30, 2012, 126 Stat. 282; Pub. L. 112–140, title IV, §402(c), June 29, 2012, 126 Stat. 403; Pub. L. 112–141, div. D, title I, §40102(d)(2), July 6, 2012, 126 Stat. 845.)

REFERENCES IN TEXT

The date of the enactment of the Energy Tax Act of 1978, referred to in subsec. (c), is the date of enactment of Pub. L. 95–618, which was approved Nov. 9, 1978.

AMENDMENTS

2012—Subsec. (i). Pub. L. 112–141 substituted "October 1, 2017" for "July 1, 2012".

Pub. L. 112–140, §§1(c), 402(c), temporarily substituted "July 7, 2012" for "July 1, 2012". See Effective and Termination Dates of 2012 Amendment note below.

Pub. L. 112–102 substituted "July 1, 2012" for "April 1, 2012".

2011—Subsec. (i). Pub. L. 112–30 substituted "April 1, 2012" for "October 1, 2011".

2006—Subsecs. (h), (i). Pub. L. 109–280, which directed the amendment of section 4483 by adding subsec. (h) and redesignating former subsec. (h) as (i), without specifying the act to be amended, was executed by making the amendments to this section, which is section 4483 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

2005—Subsec. (h). Pub. L. 109–59 substituted "2011" for "2006".

Pub. L. 109–14 substituted "2006" for "2005".

2004—Subsec. (f). Pub. L. 108–357, §867(d), struck out heading and text of subsec. (f). Text read as follows: "If the base for registration purposes of any highway motor vehicle is in a contiguous foreign country for any taxable period, the tax imposed by section 4481 for such period shall be 75 percent of the tax which

would (but for this subsection) be imposed by section 4481 for such period."

Subsecs. (g), (h). Pub. L. 108–357, §851(b)(1), added subsec. (g) and redesignated former subsec. (g) as (h).

1998—Subsec. (g). Pub. L. 105–178 substituted "2005" for "1999".

1991—Subsec. (g). Pub. L. 102–240 substituted "1999" for "1995".

1990—Subsec. (g). Pub. L. 101–508 substituted "1995" for "1993".

1987—Subsec. (f). Pub. L. 100–17, §507(b), added subsec. (f). Former subsec. (f) redesignated (g).

Pub. L. 100–17, §502(b)(5), substituted "1993" for "1988".

Subsec. (g). Pub. L. 100–17, §507(b), redesignated former subsec. (f) as (g).

1984—Subsec. (d)(5), (6). Pub. L. 98–369, §903(a), added par. (5) and redesignated former par. (5) as (6).

Subsecs. (e), (f). Pub. L. 98–369, §902(a), added subsec. (e) and redesignated former subsec. (e) as (f).

1983—Subsec. (d). Pub. L. 97–424, §513(b), added subsec. (d).

Subsec. (e). Pub. L. 97–424, §516(b)(3), added subsec. (e).

1978—Subsec. (c). Pub. L. 95–618 inserted "(as in effect on the day before the date of the enactment of the Energy Tax Act of 1978)" after "section 6421(b)(2)".

1976—Subsecs. (a), (c). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary" wherever appearing.

Subsec. (b). Pub. L. 94–455, §1906(b)(13)(B), inserted "of the Treasury" after "Secretary".

EFFECTIVE AND TERMINATION DATES OF 2012 AMENDMENT

Amendment by Pub. L. 112–141 effective July 1, 2012, see section 40102(f) of Pub. L. 112–141, set out as a note under section 460l–11 of Title 16, Conservation.

Amendment by Pub. L. 112–140 to cease to be effective on July 6, 2012, with text as amended by Pub. L. 112–140 to revert back to read as it did on the day before June 29, 2012, and amendments by Pub. L. 112–141 to be executed as if Pub. L. 112–140 had not been enacted, see section 1(c) of Pub. L. 112–140, set out as a note under section 101 of Title 23, Highways.

Amendment by Pub. L. 112–140 effective July 1, 2012, see section 402(f)(1) of Pub. L. 112–140, set out as a note under section 460l–11 of Title 16, Conservation.

Amendment by Pub. L. 112–102 effective Apr. 1, 2012, see section 402(f) of Pub. L. 112–102, set out as a note under section 460l–11 of Title 16, Conservation.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112–30 effective Oct. 1, 2011, see section 142(f) of Pub. L. 112–30, set out as a note under section 460l–11 of Title 16, Conservation.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 effective Jan. 1, 2007, and applicable to taxable periods beginning on or after July 1, 2007, see section 1207(g) of Pub. L. 109–280, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §851(b)(2), Oct. 22, 2004, 118 Stat. 1608, provided that: "The amendments made by this subsection [amending this section] shall take effect on the day after the date of the enactment of this Act [Oct. 22, 2004]."

Amendment by section 867(d) of Pub. L. 108–357 applicable to taxable periods beginning after Oct. 22, 2004, see section 867(e) of Pub. L. 108–357, set out as a note under section 4481 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 507(b) of Pub. L. 100–17 effective July 1, 1987, see section 507(d) of Pub. L. 100–17, set out as a note under section 4481 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title IX, §902(b), July 18, 1984, 98 Stat. 1004, provided that: "The amendment made by this section [amending this section] shall take effect on July 1, 1984."

Pub. L. 98–369, div. A, title IX, §903(b), July 18, 1984, 98 Stat. 1004, provided that: "The amendments made by subsection (a) [amending this section] shall take effect as if included in the amendments made by section 513 of the Highway Revenue Act of 1982 [Pub. L. 97–424, see section 513(f) of Pub. L. 97–424, set out as an Effective Date of 1983 Amendment note under section 4481 of this title]."

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 513(b) of Pub. L. 97–424 effective July 1, 1984, see section 513(f) of Pub. L.

97–424, set out as a note under section 4481 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–618 effective on first day of first calendar month which begins more than 10 days after Nov. 9, 1978, see section 233(d) of Pub. L. 95–618, set out as a note under section 34 of this title.

SPECIAL RULES IN THE CASE OF SMALL OWNER-OPERATORS

Amendment by section 513(b) of Pub. L. 97–424 effective July 1, 1984, in the case of a small owner-operator, notwithstanding section 513(f)(2) of Pub. L. 97–424, see section 901(b)(2) of Pub. L. 98–369, set out as a note under section 4481 of this title.

§4484. Cross references

(1) For penalties and administrative provisions applicable to this subchapter, see subtitle F.

(2) For exemption for uses by Indian tribal governments (or their subdivisions), see section 7871.

(Added June 29, 1956, ch. 462, title II, §206(a), 70 Stat. 391; amended Pub. L. 97–473, title II, §202(b)(10), Jan. 14, 1983, 96 Stat. 2610.)

AMENDMENTS

1983—Pub. L. 97–473 designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 1983 AMENDMENT

For effective date of amendment by Pub. L. 97–473, see section 204(5) of Pub. L. 97–473, set out as an Effective Date note under section 7871 of this title.

EFFECTIVE DATE

Section effective June 29, 1956, see section 211 of act June 29, 1956, set out as an Effective Date of 1956 Amendment note under section 4041 of this title.

[Subchapter E—Repealed]

[§§4491 to 4494. Repealed. Pub. L. 97–248, title II, §280(c)(1), Sept. 3, 1982, 96 Stat. 564]

Section 4491, added Pub. L. 91–258, title II, §206(a), May 21, 1970, 84 Stat. 243; amended Pub. L. 91–614, title III, §305(a), Dec. 31, 1970, 84 Stat. 1846; Pub. L. 96–298, §1(c)(1), July 1, 1980, 94 Stat. 829, provided for imposition of a tax on use of civil aircraft.

Section 4492, added Pub. L. 91–258, title II, §206(a), May 21, 1970, 84 Stat. 243; amended Pub. L. 94–530, §2(a), Oct. 17, 1976, 90 Stat. 2488; Pub. L. 95–163, §17(b)(1), Nov. 9, 1977, 91 Stat. 1286; Pub. L. 95–504, §2(b), Oct. 24, 1978, 92 Stat. 1705, provided definitions to be used for purposes of this subchapter.

Section 4493, added Pub. L. 91–258, title II, §206(a), May 21, 1970, 84 Stat. 244; amended Pub. L. 94–455, title XIX, §§1904(a)(13), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1814, 1834, enumerated special rules for payment of tax by lessees and certain persons engaged in foreign air commerce.

Section 4494, added Pub. L. 91–258, title II, §206(a), May 21, 1970, 84 Stat. 245, provided a cross reference to subtitle F of this title for penalties and administrative provisions applicable to this subchapter.

EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to transportation beginning after Aug. 31, 1982, but inapplicable to amounts paid on or before such date, see section 280(d) of Pub. L. 97–248, set out as an Effective Date of 1982 Amendment note under section 4261 of this title.

TAX ON USE OF AIRCRAFT

Pub. L. 96–298, §1(c)(2), (3), July 1, 1980, 94 Stat. 829, set out various changes in the amount and rate of

tax under former section 4491 of this title for period beginning on July 1, 1980, and ending on Oct. 1, 1980, and provided that due date for filing any tax return of tax imposed by such section 4491, with respect to any use after June 30, 1980, would not be earlier than Oct. 31, 1980.

[Subchapter F—Repealed]

[§§4495 to 4498. Repealed. Pub. L. 105–34, title XIV, §1432(b)(1), Aug. 5, 1997, 111 Stat. 1050]

Section 4495, added Pub. L. 96–283, title IV, §402(a), June 28, 1980, 94 Stat. 582, provided for imposition of tax on removal of hard mineral resource from deep seabed.

Section 4496, added Pub. L. 96–283, title IV, §402(a), June 28, 1980, 94 Stat. 583, defined terms for purposes of this subchapter.

Section 4497, added Pub. L. 96–283, title IV, §402(a), June 28, 1980, 94 Stat. 583; amended Pub. L. 99–514, title XV, §1511(c)(7), Oct. 22, 1986, 100 Stat. 2745, related to imputed values for commercially recoverable metals and minerals and provided for suspension of tax on minerals held for later processing.

Section 4498, added Pub. L. 96–283, title IV, §402(a), June 28, 1980, 94 Stat. 584, provided for termination of tax imposed by section 4495.

[CHAPTER 37—REPEALED]

[§§4501 to 4503. Repealed. Pub. L. 101–508, title XI, §11801(a)(48), Nov. 5, 1990, 104 Stat. 1388–522]

Section 4501, acts Aug. 16, 1954, ch. 736, 68A Stat. 533; May 29, 1956, ch. 342, §19, 70 Stat. 221; Sept. 2, 1958, Pub. L. 85–859, title I, §162(b), 72 Stat. 1306; July 6, 1960, Pub. L. 86–592, §2, 74 Stat. 330; Mar. 31, 1961, Pub. L. 87–15, §2(a), 75 Stat. 40; May 24, 1962, Pub. L. 87–456, title III, §302(a), (b), 76 Stat. 77; July 13, 1962, Pub. L. 87–535, §18(a), 76 Stat. 166; Nov. 8, 1965, Pub. L. 89–331, §13, 79 Stat. 1280; Oct. 14, 1971, Pub. L. 92–138, §18(b), 85 Stat. 390, related to imposition of tax upon sugar manufactured in United States.

Section 4502, acts Aug. 16, 1954, ch. 736, 68A Stat. 534; May 29, 1956, ch. 342, §20, 70 Stat. 221; June 25, 1959, Pub. L. 86–70, §22(c), 73 Stat. 146; July 12, 1960, Pub. L. 86–624, §18(f), 74 Stat. 416, provided for applicable definitions.

Section 4503, act Aug. 16, 1954, ch. 736, 68A Stat. 534, related to exemption for sugar manufactured for home consumption.

Prior sections 4504 and 4511 to 4514 were repealed by Pub. L. 87–456, title III, §302(d), May 24, 1962, 76 Stat. 77, effective with respect to articles entered or withdrawn from warehouse, for consumption on or after Aug. 31, 1963, as provided by section 501(a) of Pub. L. 87–456.

Section 4504, acts Aug. 16, 1954, ch. 736, 68A Stat. 535; May 29, 1956, ch. 342, §21(a), 70 Stat. 221, required the tax imposed by section 4501(b) to be levied, assessed, collected and paid in the same manner as a duty imposed by the Tariff Act of 1930.

Section 4511, act Aug. 16, 1954, ch. 736, 68A Stat. 536, imposed a tax upon the processing of coconut oil, etc.

Section 4512, act Aug. 16, 1954, ch. 736, 68A Stat. 536, defined "first domestic processing".

Section 4513, act Aug. 16, 1954, ch. 736, 68A Stat. 536, related to exemptions from the tax imposed.

Section 4514, act Aug. 16, 1954, ch. 736, 68A Stat. 536, set forth a cross-reference to subtitle F for administrative provisions.

SAVINGS PROVISION

For provisions that nothing in repeal by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account

prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

[CHAPTER 38—REPEALED] [1]

[1] *A new chapter 38 (§4611 et seq.) follows.*

[§4521. Repealed. Pub. L. 87–456, title III, §302(d), May 24, 1962, 76 Stat. 77]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 539, imposed a tax on petroleum products imported into the United States.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after Aug. 31, 1963, see section 501(a) of Pub. L. 87–456, title V, May 24, 1962, 76 Stat. 78.

[§§4531, 4532. Repealed. Pub. L. 87–456, title III, §302(d), May 24, 1962, 76 Stat. 77]

Sections, act Aug. 16, 1954, ch. 736, 68A Stat. 540, imposed a tax on coal imported into the United States.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after Aug. 31, 1963, see section 501(a) of Pub. L. 87–456, title V, May 24, 1962, 76 Stat. 78.

[§§4541, 4542. Repealed. Pub. L. 87–456, title III, §302(d), May 24, 1962, 76 Stat. 77]

Sections, act Aug. 16, 1954, ch. 736, 68A Stat. 541, imposed a tax on copper imported into the United States.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after Aug. 31, 1963, see section 501(a) of Pub. L. 87–456, title V, May 24, 1962, 76 Stat. 78.

[§§4551 to 4553. Repealed. Pub. L. 87–456, title III, §302(d), May 24, 1962, 76 Stat. 77]

Sections, act Aug. 16, 1954, ch. 736, 68A Stat. 542, imposed a tax on lumber imported into the United States.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after Aug. 31, 1963, see section 501(a) of Pub. L. 87–456, title V, May 24, 1962, 76 Stat. 78.

[§§4561, 4562. Repealed. Pub. L. 87–456, title III, §302(d), May 24, 1962, 76 Stat. 77]

Sections, act Aug. 16, 1954, ch. 736, 68A Stat. 543, imposed a tax on animal oils imported into the United States.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after Aug. 31, 1963, see section 501(a) of Pub. L. 87–456, title V, May 24, 1962, 76 Stat. 78.

[§§4571, 4572. Repealed. Pub. L. 87–456, title III, §302(d), May 24, 1962, 76 Stat. 77]

Sections, act Aug. 16, 1954, ch. 736, 68A Stat. 543, 544, imposed a tax on seeds and seed oil imported into the United States.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after Aug. 31, 1963, see section 501(a) of Pub. L. 87–456, title V, May 24, 1962, 76 Stat. 78.

[§§4581, 4582. Repealed. Pub. L. 87–456, title III, §302(d), May 24, 1962, 76 Stat. 77]

Sections, act Aug. 16, 1954, ch. 736, 68A Stat. 544, imposed a tax on imports of any article, merchandise, or combination (except oils specified in section 4511), 10 percent or more of the quantity by weight of which consists of, or is derived directly or indirectly from, one or more of the products specified in sections 4561 and 4571, or of the oils, fatty acids, or salts specified in section 4511.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after Aug. 31, 1963, see section 501(a) of Pub. L. 87–456, title V, May 24, 1962, 76 Stat. 78.

[§§4591 to 4597. Repealed. Pub. L. 94–455, title XIX, §1904(a)(15), Oct. 4, 1976, 90 Stat. 1814]

Sections, comprising subchapter F, "Oleomargarine", were struck out in the repeal of this chapter by Pub. L. 94–455.

Section 4591, act Aug. 16, 1954, ch. 736, 68A Stat. 545, related to imposition of a tax on all oleomargarine imported from foreign countries.

Section 4592, act Aug. 16, 1954, ch. 736, 68A Stat. 545, related to definitions of oleomargarine, manufacturer, wholesale dealer, and retail sales.

Section 4593, act Aug. 16, 1954, ch. 736, 68A Stat. 546, related to exemptions to tax imposed by section 4591.

Section 4594, act Aug. 16, 1954, ch. 736, 68A Stat. 546, related to packing requirements for manufacturers of oleomargarine.

Section 4595, act Aug. 16, 1954, ch. 736, 68A Stat. 546, related to wholesale and retail selling requirements for oleomargarine.

Section 4596, act Aug. 16, 1954, ch. 736, 68A Stat. 547, related to filing of bonds by manufacturers of oleomargarine.

Section 4597, act Aug. 16, 1954, ch. 736, 68A Stat. 547, related to books and returns of wholesale dealers and manufacturers.

EFFECTIVE DATE OF REPEAL

Repeal effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94–455 set out as an Effective Date of 1976 Amendment note under section 4041 of this title.

[§§4601 to 4603. Repealed. Pub. L. 87–456, title III, §302(d), May 24, 1962, 76 Stat. 77]

Section 4601, acts Aug. 16, 1954, ch. 736, 68A Stat. 548; Sept. 2, 1958, Pub. L. 85–859, title I, §119(b)(4), 72 Stat. 1286, related to applicability of certain tariff provisions.

Sections 4602, 4603, act Aug. 16, 1954, ch. 736, 68A Stat. 548, related to contravention of trade agreements by certain taxes.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after Aug. 31, 1963, see section 501(a) of Pub. L. 87–456, title V, May 24, 1962, 76 Stat. 78.

CHAPTER 38—ENVIRONMENTAL TAXES

Subchapter		Sec.[1]
A.	**Tax on petroleum**	**4611**
B.	**Tax on certain chemicals**	**4661**
C.	**Tax on certain imported substances**	**4671**
D.	**Ozone-depleting chemicals, etc.**	**4681**

PRIOR PROVISIONS

A prior chapter 38, consisting of sections 4521 to 4603 and relating to import taxes, was repealed by Pub. L. 87–456, title III, §302(d), May 24, 1962, 76 Stat. 77, and Pub. L. 94–455, title XIX, §1904(a)(15), Oct. 4, 1976, 90 Stat. 1814.

AMENDMENTS

1989—Pub. L. 101–239, title VII, §7506(b), Dec. 19, 1989, 103 Stat. 2369, added item for subchapter D.

1986—Pub. L. 99–499, title V, §515(b), Oct. 17, 1986, 100 Stat. 1769, added item for subchapter C.

Pub. L. 99–499, title V, §514(a)(2), Oct. 17, 1986, 100 Stat. 1767, struck out item for subchapter C.

1980—Pub. L. 96–510, title II, §231(b), Dec. 11, 1980, 94 Stat. 2804, added item for subchapter C.

Pub. L. 96–510, title II, §211(a), Dec. 11, 1980, 94 Stat. 2797, added chapter 38 and analysis of subchapters consisting of items A and B.

[1] *Section numbers editorially supplied.*

Subchapter A—Tax on Petroleum

Sec.

4611. Imposition of tax.

4612. Definitions and special rules.

§4611. Imposition of tax

(a) General Rule

There is hereby imposed a tax at the rate specified in subsection (c) on—

(1) crude oil received at a United States refinery, and

(2) petroleum products entered into the United States for consumption, use, or warehousing.

(b) Tax on certain uses and exportation

(1) In general

If—

(A) any domestic crude oil is used in or exported from the United States, and

(B) before such use or exportation, no tax was imposed on such crude oil under subsection (a),

then a tax at the rate specified in subsection (c) is hereby imposed on such crude oil.

(2) Exception for use on premises where produced

Paragraph (1) shall not apply to any use of crude oil for extracting oil or natural gas on the premises where such crude oil was produced.

(c) Rate of tax

(1) In general

The rate of the taxes imposed by this section is the sum of—

(A) the Hazardous Substance Superfund financing rate, and

(B) the Oil Spill Liability Trust Fund financing rate.

(2) Rates

For purposes of paragraph (1)—

(A) the Hazardous Substance Superfund financing rate is 9.7 cents a barrel, and

(B) the Oil Spill Liability Trust Fund financing rate is—

(i) in the case of crude oil received or petroleum products entered before January 1, 2017, 8 cents a barrel, and

(ii) in the case of crude oil received or petroleum products entered after December 31, 2016, 9 cents a barrel.

(d) Persons liable for tax

(1) Crude oil received at refinery

The tax imposed by subsection (a)(1) shall be paid by the operator of the United States refinery.

(2) Imported petroleum product

The tax imposed by subsection (a)(2) shall be paid by the person entering the product for consumption, use, or warehousing.

(3) Tax on certain uses or exports

The tax imposed by subsection (b) shall be paid by the person using or exporting the crude oil, as the case may be.

(e) Application of Hazardous Substance Superfund financing rate

(1) In general

Except as provided in paragraphs (2) and (3), the Hazardous Substance Superfund financing rate under this section shall apply after December 31, 1986, and before January 1, 1996.

(2) No tax if unobligated balance in Fund exceeds $3,500,000,000

If on December 31, 1993, or December 31, 1994—

(A) the unobligated balance in the Hazardous Substance Superfund exceeds $3,500,000,000, and

(B) the Secretary, after consultation with the Administrator of the Environmental Protection Agency, determines that the unobligated balance in the Hazardous Substance Superfund will exceed $3,500,000,000 on December 31 of 1994 or 1995, respectively, if no tax is imposed under section 59A, this section, and sections 4661 and 4671,

then no tax shall be imposed under this section (to the extent attributable to the Hazardous Substance Superfund financing rate) during 1994 or 1995, as the case may be.

(3) No tax if amounts collected exceed $11,970,000,000

(A) Estimates by Secretary

The Secretary as of the close of each calendar quarter (and at such other times as the Secretary determines appropriate) shall make an estimate of the amount of taxes which will be collected under section 59A, this section (to the extent attributable to the Hazardous Substance Superfund financing rate), and sections 4661 and 4671 and credited to the Hazardous Substance Superfund during the period beginning January 1, 1987, and ending December 31, 1995.

(B) Termination if $11,970,000,000 credited before January 1, 1996

If the Secretary estimates under subparagraph (A) that more than $11,970,000,000 will be credited to the Fund before January 1, 1996, the Hazardous Substance Superfund financing rate under this section shall not apply after the date on which (as estimated by the Secretary) $11,970,000,000 will be so credited to the Fund.

(f) Application of Oil Spill Liability Trust Fund financing rate

(1) In general

Except as provided in paragraph (2), the Oil Spill Liability Trust Fund financing rate under subsection (c) shall apply on and after April 1, 2006, or if later, the date which is 30 days after the last day of any calendar quarter for which the Secretary estimates that, as of the close of that quarter, the unobligated balance in the Oil Spill Liability Trust Fund is less than $2,000,000,000.

(2) Termination

The Oil Spill Liability Trust Fund financing rate shall not apply after December 31, 2017.

(Added Pub. L. 96–510, title II, §211(a), Dec. 11, 1980, 94 Stat. 2797; amended Pub. L. 99–499, title V, §§511(a), 512(a), (b), Oct. 17, 1986, 100 Stat. 1760, 1761; Pub. L. 99–509, title VIII, §8032(a), (c)(1), (2), Oct. 21, 1986, 100 Stat. 1957, 1958; Pub. L. 100–647, title VI, §6108, Nov. 10, 1988, 102 Stat. 3712; Pub. L. 101–221, §8(a), Dec. 12, 1989, 103 Stat. 1891; Pub. L. 101–239, title VII, §7505(a), (b), Dec. 19, 1989, 103 Stat. 2363; Pub. L. 101–508, title XI, §11231(a)(1)(B), (2), (b), Nov. 5, 1990, 104 Stat. 1388–445; Pub. L. 109–58, title XIII, §1361, Aug. 8, 2005, 119 Stat. 1058; Pub. L. 110–343, div. B, title IV, §405(a)(1), (b)(1), (2), Oct. 3, 2008, 122 Stat. 3860, 3861.)

CODIFICATION

Amendments by Pub. L. 99–509, title VIII, §8031(a), (b), and (d)(1), Oct. 21, 1986, 100 Stat. 1955, to subsecs. (a) to (e) of this section were not executed to text pursuant to Pub. L. 99–509, title VIII, §8031(e)(2), which provided that the amendments made by section 8031 shall not take effect if the Superfund Amendments and Reauthorization Act of 1986 is enacted. The Superfund Amendments and Reauthorization Act of 1986 was enacted as Pub. L. 99–499, approved Oct. 17, 1986.

AMENDMENTS

2008—Subsec. (c)(2)(B). Pub. L. 110–343, §405(a)(1), substituted "is—" for "is 5 cents a barrel." and added cls. (i) and (ii).

Subsec. (f)(1). Pub. L. 110–343, §405(b)(2), substituted "paragraph (2)" for "paragraphs (2) and (3)".

Subsec. (f)(2), (3). Pub. L. 110–343, §405(b)(1), added par. (2) and struck out former pars. (2) and (3), which provided that the Oil Spill Liability Trust Fund financing rate would not apply if the unobligated balance in the Fund exceeded $2,700,000,000 and that the Fund financing rate would not apply after Dec. 31, 2014.

2005—Subsec. (f). Pub. L. 109–58 reenacted heading without change and amended text generally. Prior to amendment, text read as follows:

"(1) IN GENERAL.—Except as provided in paragraph (2), the Oil Spill Liability Trust Fund financing rate under subsection (c) shall apply after December 31, 1989, and before January 1, 1995.

"(2) NO TAX IF UNOBLIGATED BALANCE IN FUND EXCEEDS $1,000,000,000.—The Oil Spill Liability Trust Fund financing rate shall not apply during any calendar quarter if the Secretary estimates that as of the close of the preceding calendar quarter the unobligated balance in the Oil Spill Liability Trust Fund exceeds $1,000,000,000."

1990—Subsec. (e)(1). Pub. L. 101–508, §11231(a)(1)(B), substituted "January 1, 1996" for "January 1, 1992".

Subsec. (e)(2). Pub. L. 101–508, §11231(a)(2), substituted "1993" for "1989" and "1994" for "1990" in introductory provisions and "1994" for "1990" and "1995" for "1991" in subpar. (B) and concluding provisions.

Subsec. (e)(3). Pub. L. 101–508, §11231(b), substituted "$11,970,000,000" for "$6,650,000,000" in heading.

Subsec. (e)(3)(A). Pub. L. 101–508, §11231(b), substituted "December 31, 1995" for "December 31, 1991".

Subsec. (e)(3)(B). Pub. L. 101–508, §11231(a)(1)(B), (b), substituted "January 1, 1996" for "January 1, 1992" in heading and text and "$11,970,000,000" for "$6,650,000,000" in heading and twice in text.

1989—Subsec. (c)(2)(A). Pub. L. 101–221 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "the Hazardous Substance Superfund financing rate is—

"(i) except as provided in clause (ii), 8.2 cents a barrel, and

"(ii) 11.7 cents a barrel in the case of the tax imposed by subsection (a)(2), and".

Subsec. (c)(2)(B). Pub. L. 101–239, §7505(b), substituted "5 cents" for "1.3 cents".

Subsec. (f). Pub. L. 101–239, §7505(a)(1), amended subsec. (f) generally, substituting pars. (1) and (2) for former pars. (1) general applicability, (2) commencement date, and (3) limit on tax of $300,000,000.

1988—Subsec. (f)(2)(B). Pub. L. 100–647 substituted "December 31, 1990" for "September 1, 1987".

1986—Subsecs. (a), (b)(1). Pub. L. 99–499, §512(a), substituted "at the rate specified in subsection (c)" for "of 0.79 cent a barrel".

Subsec. (c). Pub. L. 99–509, §8032(a), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows:

"(1) IN GENERAL.—Except as provided in paragraph (2), the rate of the taxes imposed by this section is 8.2 cents a barrel.

"(2) IMPORTED PETROLEUM PRODUCTS.—The rate of the tax imposed by subsection (a)(2) shall be 11.7 cents a barrel."

Pub. L. 99–499, §512(b), added subsec. (c) and redesignated former subsec. (c) as (d).

Subsec. (d). Pub. L. 99–499, §512(b), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 99–509, §8032(c)(1), substituted "Hazardous Substance Superfund financing rate" for "taxes" in heading, substituted "the Hazardous Substance Superfund financing rate under this section" for "the taxes imposed by this section" in par. (1), inserted "(to the extent attributable to the Hazardous Substance Superfund financing rate)" after "this section" in pars. (2) and (3)(A), and substituted "the Hazardous Substance Superfund financing rate under this section shall not apply" for "no tax shall be imposed under this section" in par. (3)(B).

Pub. L. 99–499, §§511(a), 512(b), amended subsec. (d) generally and redesignated it as (e). Prior to amendment and redesignation, subsec. (d), termination, read as follows: "The taxes imposed by this section shall not apply after September 30, 1985, except that if on September 30, 1983, or September 30, 1984—

"(1) the unobligated balance in the Hazardous Substance Response Trust Fund as of such date exceeds $900,000,000, and

"(2) the Secretary, after consultation with the Administrator of the Environmental Protection Agency, determines that such unobligated balance will exceed $500,000,000 on September 30 of the following year if no tax is imposed under section 4611 or 4661 during the calendar year following the date referred to above,

then no tax shall be imposed by this section during the first calendar year beginning after the date referred to in paragraph (1)."

Subsec. (f). Pub. L. 99–509, §8032(c)(2), added subsec. (f).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title IV, §405(a)(2), Oct. 3, 2008, 122 Stat. 3860, provided that: "The amendment made by this subsection [amending this section] shall apply on and after the first day of the first calendar quarter beginning more than 60 days after the date of the enactment of this Act [Oct. 3, 2008]."

Pub. L. 110–343, div. B, title IV, §405(b)(3), Oct. 3, 2008, 122 Stat. 3861, provided that: "The amendments made by this subsection [amending this section] shall take effect on the date of the enactment of this Act [Oct. 3, 2008]."

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–221, §8(b), Dec. 12, 1989, 103 Stat. 1891, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on the date of enactment of this Act [Dec. 12, 1989]."

EFFECTIVE DATE OF 1986 AMENDMENTS

Pub. L. 99–509, title VIII, §8032(d), Oct. 21, 1986, 100 Stat. 1959, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 4612, 4661, 4671, and 9507 of this title] shall take effect on the commencement date (as defined in [former] section 4611(f)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as added by this section).

"(2) COORDINATION WITH SUPERFUND REAUTHORIZATION.—The amendments made by this section shall take effect only if the Superfund Amendments and Reauthorization Act of 1986 [Pub. L. 99–499, approved Oct. 17, 1986] is enacted."

[Pub. L. 101–239, title VII, §7505(d)(1), Dec. 19, 1989, 103 Stat. 2363, provided that: "For purposes of sections 8032(d) and 8033(c) of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99–509, set out as notes above and under section 9509 of this title], the commencement date is January 1, 1990."]

Pub. L. 99–499, title V, §511(c), Oct. 17, 1986, 100 Stat. 1761, provided that: "The amendments made by this section [amending this section and repealing section 9653 of Title 42, The Public Health and Welfare] shall take effect on January 1, 1987."

Pub. L. 99–499, title V, §512(d), Oct. 17, 1986, 100 Stat. 1761, provided that: "The amendments made by this section [amending this section and section 4612 of this title] shall take effect on January 1, 1987."

EFFECTIVE DATE

Pub. L. 96–510, title II, §211(c), Dec. 11, 1980, 94 Stat. 2801, provided that: "The amendments made by this section [enacting subchapters A and B of this chapter] shall take effect on April 1, 1981."

SHORT TITLE

For short title of title II of Pub. L. 96–510 as the "Hazardous Substance Response Revenue Act of 1980", see Short Title of 1980 Amendment note, set out under section 1 of this title.

§4612. Definitions and special rules

(a) Definitions

For purposes of this subchapter—

(1) Crude oil

The term "crude oil" includes crude oil condensates and natural gasoline.

(2) Domestic crude oil

The term "domestic crude oil" means any crude oil produced from a well located in the United States.

(3) Petroleum product

The term "petroleum product" includes crude oil.

(4) United States

(A) In general

The term "United States" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, any possession of the United States, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(B) United States includes continental shelf areas

The principles of section 638 shall apply for purposes of the term "United States".

(C) United States includes foreign trade zones

The term "United States" includes any foreign trade zone of the United States.

(5) United States refinery

The term "United States refinery" means any facility in the United States at which crude oil is refined.

(6) Refineries which produce natural gasoline

In the case of any United States refinery which produces natural gasoline from natural gas, the gasoline so produced shall be treated as received at such refinery at the time so produced.

(7) Premises

The term "premises" has the same meaning as when used for purposes of determining gross income from the property under section 613.

(8) Barrel

The term "barrel" means 42 United States gallons.

(9) Fractional part of barrel

In the case of a fraction of a barrel, the tax imposed by section 4611 shall be the same fraction of the amount of such tax imposed on a whole barrel.

(b) Only 1 tax imposed with respect to any product

No tax shall be imposed by section 4611 with respect to any petroleum product if the person who would be liable for such tax establishes that a prior tax imposed by such section has been imposed with respect to such product.

(c) Credit where crude oil returned to pipeline

Under regulations prescribed by the Secretary, if an operator of a United States refinery—

(1) removes crude oil from a pipeline, and

(2) returns a portion of such crude oil into a stream of other crude oil in the same pipeline,

there shall be allowed as a credit against the tax imposed by section 4611 to such operator an amount equal to the product of the rate of tax imposed by section 4611 on the crude oil so removed by such operator and the number of barrels of crude oil returned by such operator to such pipeline. Any crude oil so returned shall be treated for purposes of this subchapter as crude oil on which no tax has been imposed by section 4611.

(d) Credit against portion of tax attributable to oil spill rate

There shall be allowed as a credit against so much of the tax imposed by section 4611 as is attributable to the Oil Spill Liability Trust Fund financing rate for any period an amount equal to the excess of—

(1) the sum of—

(A) the aggregate amounts paid by the taxpayer before January 1, 1987, into the Deepwater Port Liability Trust Fund and the Offshore Oil Pollution Compensation Fund, and

(B) the interest accrued on such amounts before such date, over

(2) the amount of such payments taken into account under this subsection for all prior periods.

The preceding sentence shall also apply to amounts paid by the taxpayer into the Trans-Alaska Pipeline Liability Fund to the extent of amounts transferred from such Fund into the Oil Spill Liability Trust Fund. For purposes of this subsection, all taxpayers which would be members of the same affiliated group (as defined in section 1504(a)) if section 1504(a)(2) were applied by substituting "100 percent" for "80 percent" shall be treated as 1 taxpayer.

(e) Income tax credit for unused payments into Trans-Alaska Pipeline Liability Fund

(1) In general

For purposes of section 38, the current year business credit shall include the credit determined under this subsection.

(2) Determination of credit

(A) In general

The credit determined under this subsection for any taxable year is an amount equal to the aggregate credit which would be allowed to the taxpayer under subsection (d) for amounts paid into the Trans-Alaska Pipeline Liability Fund had the Oil Spill Liability Trust Fund financing rate not ceased to apply.

(B) Limitation

(i) In general

The amount of the credit determined under this subsection for any taxable year with respect to any taxpayer shall not exceed the excess of—

(I) the amount determined under clause (ii), over

(II) the aggregate amount of the credit determined under this subsection for prior taxable years with respect to such taxpayer.

(ii) Overall limitation

The amount determined under this clause with respect to any taxpayer is the excess of—

(I) the aggregate amount of credit which would have been allowed under subsection (d) to the taxpayer for periods before the termination date specified in section 4611(f)(1), if amounts in the Trans-Alaska Pipeline Liability Fund which are actually transferred into the Oil Spill Liability Fund were tranferred [1] on January 1, 1990, and the Oil Spill Liability Trust Fund financing rate did not terminate before such termination date, over

(II) the aggregate amount of the credit allowed under subsection (d) to the taxpayer.

(3) Cost of income tax credit borne by Trust Fund

(A) In general

The Secretary shall from time to time transfer from the Oil Spill Liability Trust Fund to the general fund of the Treasury amounts equal to the credits allowed by reason of this subsection.

(B) Trust Fund balance may not be reduced below $1,000,000,000

Transfers may be made under subparagraph (A) only to the extent that the unobligated balance of the Oil Spill Liability Trust Fund exceeds $1,000,000,000. If any transfer is not made by reason of the preceding sentence, such transfer shall be made as soon as permitted under such sentence.

(4) No carryback

No portion of the unused business credit for any taxable year which is attributable to the credit determined under this subsection may be carried to a taxable year beginning on or before the date of the enactment of this paragraph.

(f) Disposition of revenues from Puerto Rico and the Virgin Islands

The provisions of subsections (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by section 4611.

(Added Pub. L. 96–510, title II, §211(a), Dec. 11, 1980, 94 Stat. 2798; amended Pub. L. 99–499, title V, §512(c), Oct. 17, 1986, 100 Stat. 1761; Pub. L. 99–509, title VIII, §8032(b), Oct. 21, 1986, 100 Stat. 1957; Pub. L. 101–239, title VII, §7505(c), Dec. 19, 1989, 103 Stat. 2363; Pub. L. 101–380, title IX, §9002, Aug. 18, 1990, 104 Stat. 574; Pub. L. 102–486, title XIX, §1922(a), Oct. 24, 1992, 106 Stat. 3028.)

REFERENCES IN TEXT

The date of the enactment of this paragraph, referred to in subsec. (e)(4), is the date of the enactment of Pub. L. 102–486, which was approved Oct. 24, 1992.

CODIFICATION

Amendments by Pub. L. 99–509, title VIII, §8031(c), Oct. 21, 1986, 100 Stat. 1955, to subsecs. (c) and (d) of this section were not executed to text pursuant to Pub. L. 99–509, title VIII, §8031(e)(2), which provided that the amendments made by section 8031 shall not take effect if the Superfund Amendments and Reauthorization Act of 1986 is enacted. The Superfund Amendments and Reauthorization Act of 1986 was enacted as Pub. L. 99–499, approved Oct. 17, 1986.

AMENDMENTS

1992—Subsecs. (e), (f). Pub. L. 102–486 added subsec. (e) and redesignated former subsec. (e) as (f).

1990—Subsec. (d). Pub. L. 101–380 substituted at end "For purposes of this subsection, all taxpayers which would be members of the same affiliated group (as defined in section 1504(a)) if section 1504(a)(2) were applied by substituting '100 percent' for '80 percent' shall be treated as 1 taxpayer." for "Amounts may be transferred from the Trans-Alaska Pipeline Liability Fund into the Oil Spill Liability Trust Fund only to the extent the administrators of the Trans-Alaska Pipeline Liability Fund determine that such amounts are not needed to satisfy claims against such Fund."

1989—Subsec. (d). Pub. L. 101–239 inserted at end "The preceding sentence shall also apply to amounts

paid by the taxpayer into the Trans-Alaska Pipeline Liability Fund to the extent of amounts transferred from such Fund into the Oil Spill Liability Trust Fund. Amounts may be transferred from the Trans-Alaska Pipeline Liability Fund into the Oil Spill Liability Trust Fund only to the extent the administrators of the Trans-Alaska Pipeline Liability Fund determine that such amounts are not needed to satisfy claims against such Fund."

1986—Subsec. (c). Pub. L. 99–499 added subsec. (c) and redesignated former subsec. (c) as (d).

Subsec. (d). Pub. L. 99–509 added subsec. (d) and redesignated former subsec. (d) as (e).

Pub. L. 99–499 redesignated former subsec. (c) as (d).

Subsec. (e). Pub. L. 99–509 redesignated former subsec. (d) as (e).

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–486, title XIX, §1922(b), Oct. 24, 1992, 106 Stat. 3029, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 24, 1992]."

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–380 applicable to incidents occurring after Aug. 18, 1990, see section 1020 of Pub. L. 101–380, set out as an Effective Date note under section 2701 of Title 33, Navigation and Navigable Waters.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99–509 effective on commencement date as defined in section 4611(f)(2), see section 8032(d) of Pub. L. 99–509, set out as a note under section 4611 of this title.

Amendment by Pub. L. 99–499 effective Jan. 1, 1987, see section 512(d) of Pub. L. 99–499, set out as a note under section 4611 of this title.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

[1] So in original. Probably should be "transferred".

Subchapter B—Tax on Certain Chemicals

Sec.
4661. Imposition of tax.
4662. Definitions and special rules.

§4661. Imposition of tax

(a) General rule

There is hereby imposed a tax on any taxable chemical sold by the manufacturer, producer, or importer thereof.

(b) Amount of tax

The amount of the tax imposed by subsection (a) shall be determined in accordance with the following table:

In the case of:	**The tax is the following amount per ton**
Acetylene	$4.87
Benzene	4.87
Butane	4.87
Butylene	4.87
Butadiene	4.87

Ethylene	4.87
Methane	3.44
Naphthalene	4.87
Propylene	4.87
Toluene	4.87
Xylene	4.87
Ammonia	2.64
Antimony	4.45
Antimony trioxide	3.75
Arsenic	4.45
Arsenic trioxide	3.41
Barium sulfide	2.30
Bromine	4.45
Cadmium	4.45
Chlorine	2.70
Chromium	4.45
Chromite	1.52
Potassium dichromate	1.69
Sodium dichromate	1.87
Cobalt	4.45
Cupric sulfate	1.87
Cupric oxide	3.59
Cuprous oxide	3.97
Hydrochloric acid	0.29
Hydrogen fluoride	4.23
Lead oxide	4.14
Mercury	4.45
Nickel	4.45
Phosphorus	4.45
Stannous chloride	2.85
Stannic chloride	2.12
Zinc chloride	2.22
Zinc sulfate	1.90
Potassium hydroxide	0.22
Sodium hydroxide	0.28
Sulfuric acid	0.26
Nitric acid	0.24

For periods before 1992, the item relating to xylene in the preceding table shall be applied by substituting "10.13" for "4.87".

(c) Termination

No tax shall be imposed under this section during any period during which the Hazardous Substance Superfund financing rate under section 4611 does not apply.

(Added Pub. L. 96–510, title II, §211(a), Dec. 11, 1980, 94 Stat. 2798; amended Pub. L. 99–499, title V, §513(a), Oct. 17, 1986, 100 Stat. 1761; Pub. L. 99–509, title VIII, §8032(c)(3), Oct. 21, 1986, 100 Stat. 1958.)

CODIFICATION

Amendment by Pub. L. 99–509, title VIII, §8031(d)(2), Oct. 21, 1986, 100 Stat. 1956, to subsec. (c) of this section was not executed to text pursuant to Pub. L. 99–509, title VIII, §8031(e)(2), which provided that the amendments made by section 8031 shall not take effect if the Superfund Amendments and Reauthorization Act of 1986 is enacted. The Superfund Amendments and Reauthorization Act of 1986 was enacted as Pub. L. 99–499, approved Oct. 17, 1986.

AMENDMENTS

1986—Subsec. (b). Pub. L. 99–499 inserted at end "For periods before 1992, the item relating to xylene in the preceding table shall be applied by substituting '10.13' for '4.87'."

Subsec. (c). Pub. L. 99–509 substituted "the Hazardous Substance Superfund financing rate under section 4611 does not apply" for "no tax is imposed under section 4611(a)".

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99–509 effective on commencement date as defined in former section 4611(f)(2), see section 8032(d) of Pub. L. 99–509, set out as a note under section 4611 of this title.

Pub. L. 99–499, title V, §513(h), Oct. 17, 1986, 100 Stat. 1765, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and section 4662 of this title] shall take effect on January 1, 1987.

"(2) REPEAL OF TAX ON XYLENE FOR PERIODS BEFORE OCTOBER 1, 1985.—

"(A) REFUND OF TAX PREVIOUSLY IMPOSED.—

"(i) IN GENERAL.—In the case of any tax imposed by section 4661 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] on the sale or use of xylene before October 1, 1985, such tax (including interest, additions to tax, and additional amounts) shall not be assessed, and if assessed, the assessment shall be abated, and if collected shall be credited or refunded (with interest) as an overpayment.

"(ii) CONDITION TO ALLOWANCE.—Clause (i) shall not apply to a sale of xylene unless the person who (but for clause (i)) would be liable for the tax imposed by section 4661 on such sale meets requirements similar to the requirements of paragraph (1) of section 6416(a) of such Code. For purposes of the preceding sentence, subparagraph (A) of section 6416(a)(1) of such Code shall be applied without regard to the material preceding 'has not collected'.

"(B) WAIVER OF STATUTE OF LIMITATIONS.—If on the date of the enactment of this Act [Oct. 17, 1986] (or at any time within 1 year after such date of enactment) refund or credit of any overpayment of tax resulting from the application of subparagraph (A) is barred by any law or rule of law, refund or credit of such overpayment shall, nevertheless, be made or allowed if claim therefor is filed before the date 1 year after the date of the enactment of this Act.

"(C) XYLENE TO INCLUDE ISOMERS.—For purposes of this paragraph, the term 'xylene' shall include any isomer of xylene whether or not separated.

"(3) INVENTORY EXCHANGES.—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendment made by subsection (f) [amending section 4662 of this title] shall apply as if included in the amendments made by section 211 of the Hazardous Substance Response Revenue Act of 1980 [Pub. L. 96–510, enacting this chapter].

"(B) RECIPIENT MUST AGREE TO TREATMENT AS MANUFACTURER.—In the case of any inventory exchange before January 1, 1987, the amendment made by subsection (f) shall apply only if the person receiving the chemical from the manufacturer, producer, or importer in the exchange agrees to be treated as the manufacturer, producer, or importer of such chemical for purposes of subchapter B of chapter 38 of the Internal Revenue Code of 1986.

"(C) EXCEPTION WHERE MANUFACTURER PAID TAX.—In the case of any inventory exchange before January 1, 1987, the amendment made by subsection (f) shall not apply if the manufacturer, producer, or importer treated such exchange as a sale for purposes of section 4661 of such Code and paid the tax imposed by such section.

"(D) REGISTRATION REQUIREMENTS.—Section 4662(c)(2)(B) of such Code (as added by subsection (f)) shall apply to exchanges made after December 31, 1986.

"(4) EXPORTS OF TAXABLE SUBSTANCES.—Subclause (II) of section 4662(e)(2)(A)(ii) of such Code (as added by this section) shall not apply to the export of any taxable substance (as defined in section 4672(a) of such Code) before January 1, 1989.

"(5) SALES OF INTERMEDIATE HYDROCARBON STREAMS.—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendment made by

subsection (g) [amending section 4662 of this title] shall apply as if included in the amendments made by section 211 of the Hazardous Substances Response Revenue Act of 1980.

"(B) PURCHASER MUST AGREE TO TREATMENT AS MANUFACTURER.—In the case of any sale before January 1, 1987, of any intermediate hydrocarbon stream, the amendment made by subsection (g) shall apply only if the purchaser agrees to be treated as the manufacturer, producer, or importer for purposes of subchapter B of chapter 38 of such Code.

"(C) EXCEPTION WHERE MANUFACTURER PAID TAX.—In the case of any sale before January 1, 1987, of any intermediate hydrocarbon stream, the amendment made by subsection (g) shall not apply if the manufacturer, producer, or importer of such stream paid the tax imposed by section 4661 with respect to such sale on all taxable chemicals contained in such stream.

"(D) REGISTRATION REQUIREMENTS.—Section 4662(b)(10)(C) of such Code (as added by subsection (g)) shall apply to exchanges made after December 31, 1986."

EFFECTIVE DATE

Subchapter effective Apr. 1, 1981, see section 211(c) of Pub. L. 96–510, set out as a note under section 4611 of this title.

§4662. Definitions and special rules

(a) Definitions

For purposes of this subchapter—

(1) Taxable chemical

Except as provided in subsection (b), the term "taxable chemical" means any substance—

(A) which is listed in the table under section 4661(b), and

(B) which is manufactured or produced in the United States or entered into the United States for consumption, use, or warehousing.

(2) United States

The term "United States" has the meaning given such term by section 4612(a)(4).

(3) Importer

The term "importer" means the person entering the taxable chemical for consumption, use, or warehousing.

(4) Ton

The term "ton" means 2,000 pounds. In the case of any taxable chemical which is a gas, the term "ton" means the amount of such gas in cubic feet which is the equivalent of 2,000 pounds on a molecular weight basis.

(5) Fractional part of ton

In the case of a fraction of a ton, the tax imposed by section 4661 shall be the same fraction of the amount of such tax imposed on a whole ton.

(b) Exceptions; other special rules

For purposes of this subchapter—

(1) Methane or butane used as a fuel

Under regulations prescribed by the Secretary, methane or butane shall be treated as a taxable chemical only if it is used otherwise than as a fuel or in the manufacture or production of any motor fuel, diesel fuel, aviation fuel, or jet fuel (and, for purposes of section 4661(a), the person so using it shall be treated as the manufacturer thereof).

(2) Substances used in the production of fertilizer

(A) In general

In the case of nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia which is a qualified fertilizer substance, no tax shall be imposed under section 4661(a).

(B) Qualified fertilizer substance

For purposes of this section, the term "qualified fertilizer substance" means any substance—

(i) used in a qualified fertilizer use by the manufacturer, producer, or importer,

(ii) sold for use by any purchaser in a qualified fertilizer use, or

(iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualified fertilizer use.

(C) Qualified fertilizer use

The term "qualified fertilizer use" means any use in the manufacture or production of fertilizer or for direct application as a fertilizer.

(D) Taxation of nonqualified sale or use

For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the first person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical.

(3) Sulfuric acid produced as a byproduct of air pollution control

In the case of sulfuric acid produced solely as a byproduct of and on the same site as air pollution control equipment, no tax shall be imposed under section 4661.

(4) Substances derived from coal

For purposes of this subchapter, the term "taxable chemical" shall not include any substance to the extent derived from coal.

(5) Substances used in the production of motor fuel, etc.

(A) In general

In the case of any chemical described in subparagraph (D) which is a qualified fuel substance, no tax shall be imposed under section 4661(a).

(B) Qualified fuel substance

For purposes of this section, the term "qualified fuel substance" means any substance—

(i) used in a qualified fuel use by the manufacturer, producer, or importer,

(ii) sold for use by any purchaser in a qualified fuel use, or

(iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualified fuel use.

(C) Qualified fuel use

For purposes of this subsection, the term "qualified fuel use" means—

(i) any use in the manufacture or production of any motor fuel, diesel fuel, aviation fuel, or jet fuel, or

(ii) any use as such a fuel.

(D) Chemicals to which paragraph applies

For purposes of this subsection, the chemicals described in this subparagraph are acetylene, benzene, butylene, butadiene, ethylene, naphthalene, propylene, toluene, and xylene.

(E) Taxation of nonqualified sale or use

For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the first person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical.

(6) Substance having transitory presence during refining process, etc.

(A) In general

No tax shall be imposed under section 4661(a) on any taxable chemical described in

subparagraph (B) by reason of the transitory presence of such chemical during any process of smelting, refining, or otherwise extracting any substance not subject to tax under section 4661(a).

(B) Chemicals to which subparagraph (A) applies

The chemicals described in this subparagraph are—

(i) barium sulfide, cupric sulfate, cupric oxide, cuprous oxide, lead oxide, zinc chloride, and zinc sulfate, and

(ii) any solution or mixture containing any chemical described in clause (i).

(C) Removal treated as use

Nothing in subparagraph (A) shall be construed to apply to any chemical which is removed from or ceases to be part of any smelting, refining, or other extraction process.

(7) Special rule for xylene

Except in the case of any substance imported into the United States or exported from the United States, the term "xylene" does not include any separated isomer of xylene.

(8) Recycled chromium, cobalt, and nickel

(A) In general

No tax shall be imposed under section 4661(a) on any chromium, cobalt, or nickel which is diverted or recovered in the United States from any solid waste as part of a recycling process (and not as part of the original manufacturing or production process).

(B) Exemption not to apply while corrective action uncompleted

Subparagraph (A) shall not apply during any period that required corrective action by the taxpayer at the unit at which the recycling occurs is uncompleted.

(C) Required corrective action

For purposes of subparagraph (B), required corrective action shall be treated as uncompleted during the period—

(i) beginning on the date that the corrective action is required by the Administrator or an authorized State pursuant to—

(I) a final permit under section 3005 of the Solid Waste Disposal Act or a final order under section 3004 or 3008 of such Act, or

(II) a final order under section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and

(ii) ending on the date the Administrator or such State (as the case may be) certifies to the Secretary that such corrective action has been completed.

(D) Special rule for groundwater treatment

In the case of corrective action requiring groundwater treatment, such action shall be treated as completed as of the close of the 10-year period beginning on the date such action is required if such treatment complies with the permit or order applicable under subparagraph (C)(i) throughout such period. The preceding sentence shall cease to apply beginning on the date such treatment ceases to comply with such permit or order.

(E) Solid waste

For purposes of this paragraph, the term "solid waste" has the meaning given such term by section 1004 of the Solid Waste Disposal Act, except that such term shall not include any byproduct, coproduct, or other waste from any process of smelting, refining, or otherwise extracting any metal.

(9) Substances used in the production of animal feed

(A) In general

In the case of—

(i) nitric acid,

(ii) sulfuric acid,

(iii) ammonia, or

(iv) methane used to produce ammonia,

which is a qualified animal feed substance, no tax shall be imposed under section 4661(a).

(B) Qualified animal feed substance

For purposes of this section, the term "qualified animal feed substance" means any substance—

(i) used in a qualified animal feed use by the manufacturer, producer, or importer,

(ii) sold for use by any purchaser in a qualified animal feed use, or

(iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualified animal feed use.

(C) Qualified animal feed use

The term "qualified animal feed use" means any use in the manufacture or production of animal feed or animal feed supplements, or of ingredients used in animal feed or animal feed supplements.

(D) Taxation of nonqualified sale or use

For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the 1st person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical.

(10) Hydrocarbon streams containing mixtures of organic taxable chemicals

(A) In general

No tax shall be imposed under section 4661(a) on any organic taxable chemical while such chemical is part of an intermediate hydrocarbon stream containing one or more organic taxable chemicals.

(B) Removal, etc., treated as use

For purposes of this part, if any organic taxable chemical on which no tax was imposed by reason of subparagraph (A) is isolated, extracted, or otherwise removed from, or ceases to be part of, an intermediate hydrocarbon stream—

(i) such isolation, extraction, removal, or cessation shall be treated as use by the person causing such event, and

(ii) such person shall be treated as the manufacturer of such chemical.

(C) Registration requirement

Subparagraph (A) shall not apply to any sale of any intermediate hydrocarbon stream unless the registration requirements of clauses (i) and (ii) of subsection (c)(2)(B) are satisfied.

(D) Organic taxable chemical

For purposes of this paragraph, the term "organic taxable chemical" means any taxable chemical which is an organic substance.

(c) Use and certain exchanges by manufacturer, etc.

(1) Use treated as sale

Except as provided in subsections (b) and (e), if any person manufactures, produces, or imports any taxable chemical and uses such chemical, then such person shall be liable for tax under section 4661 in the same manner as if such chemical were sold by such person.

(2) Special rules for inventory exchanges

(A) In general

Except as provided in this paragraph, in any case in which a manufacturer, producer, or importer of a taxable chemical exchanges such chemical as part of an inventory exchange with another person—

(i) such exchange shall not be treated as a sale, and

(ii) such other person shall, for purposes of section 4661, be treated as the manufacturer, producer, or importer of such chemical.

(B) Registration requirement

Subparagraph (A) shall not apply to any inventory exchange unless—

(i) both parties are registered with the Secretary as manufacturers, producers, or importers of taxable chemicals, and

(ii) the person receiving the taxable chemical has, at such time as the Secretary may prescribe, notified the manufacturer, producer, or importer of such person's registration number and the internal revenue district in which such person is registered.

(C) Inventory exchange

For purposes of this paragraph, the term "inventory exchange" means any exchange in which 2 persons exchange property which is, in the hands of each person, property described in section 1221(a)(1).

(d) Refund or credit for certain uses

(1) In general

Under regulations prescribed by the Secretary, if—

(A) a tax under section 4661 was paid with respect to any taxable chemical, and

(B) such chemical was used by any person in the manufacture or production of any other substance which is a taxable chemical,

then an amount equal to the tax so paid shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by such section. In any case to which this paragraph applies, the amount of any such credit or refund shall not exceed the amount of tax imposed by such section on the other substance manufactured or produced (or which would have been imposed by such section on such other substance but for subsection (b) or (e) of this section).

(2) Use as fertilizer

Under regulations prescribed by the Secretary, if—

(A) a tax under section 4661 was paid with respect to nitric acid, sulfuric acid, ammonia, or methane used to make ammonia without regard to subsection (b)(2), and

(B) any person uses such substance as a qualified fertilizer substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(2) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.

(3) Use as qualified fuel

Under regulations prescribed by the Secretary, if—

(A) a tax under section 4661 was paid with respect to any chemical described in subparagraph (D) of subsection (b)(5) without regard to subsection (b)(5), and

(B) any person uses such chemical as a qualified fuel substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(5) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.

(4) Use in the production of animal feed

Under regulations prescribed by the Secretary, if—

(A) a tax under section 4661 was paid with respect to nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia, without regard to subsection (b)(9), and

(B) any person uses such substance as a qualified animal feed substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(9) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.

(e) Exemption for exports of taxable chemicals

(1) Tax-free sales

(A) In general

No tax shall be imposed under section 4661 on the sale by the manufacturer or producer of any taxable chemical for export, or for resale by the purchaser to a second purchaser for export.

(B) Proof of export required

Rules similar to the rules of section 4221(b) shall apply for purposes of subparagraph (A).

(2) Credit or refund where tax paid

(A) In general

Except as provided in subparagraph (B), if—

(i) tax under section 4661 was paid with respect to any taxable chemical, and

(ii)(I) such chemical was exported by any person, or

(II) such chemical was used as a material in the manufacture or production of a substance which was exported by any person and which, at the time of export, was a taxable substance (as defined in section 4672(a)),

credit or refund (without interest) of such tax shall be allowed or made to the person who paid such tax.

(B) Condition to allowance

No credit or refund shall be allowed or made under subparagraph (A) unless the person who paid the tax establishes that he—

(i) has repaid or agreed to repay the amount of the tax to the person who exported the taxable chemical or taxable substance (as so defined), or

(ii) has obtained the written consent of such exporter to the allowance of the credit or the making of the refund.

(3) Refunds directly to exporter

The Secretary shall provide, in regulations, the circumstances under which a credit or refund (without interest) of the tax under section 4661 shall be allowed or made to the person who exported the taxable chemical or taxable substance, where—

(A) the person who paid the tax waives his claim to the amount of such credit or refund, and

(B) the person exporting the taxable chemical or taxable substance provides such information as the Secretary may require in such regulations.

(4) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection.

(f) Disposition of revenues from Puerto Rico and the Virgin Islands

The provisions of subsections (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by section 4661.

(Added Pub. L. 96–510, title II, §211(a), Dec. 11, 1980, 94 Stat. 2799; amended Pub. L. 98–369, div. A, title X, §1019(a)–(c), July 18, 1984, 98 Stat. 1022–1024; Pub. L. 99–499, title V, §513(b)–(g), Oct. 17, 1986, 100 Stat. 1762–1765; Pub. L. 100–647, title II, §2001(a), Nov. 10, 1988, 102 Stat. 3593; Pub. L. 106–170, title V, §532(c)(2)(U), Dec. 17, 1999, 113 Stat. 1931.)

REFERENCES IN TEXT

Sections 3005, 3004, and 3008 of the Solid Waste Disposal Act, referred to in subsec. (b)(8)(C)(i)(I), and section 1004 of that Act, referred to in subsec. (b)(8)(E), are classified to sections 6925, 6924, 6928, and 6903, respectively, of Title 42, The Public Health and Welfare.

Section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, referred to in subsec. (b)(8)(C)(i)(II), is classified to section 9606 of Title 42.

AMENDMENTS

1999—Subsec. (c)(2)(C). Pub. L. 106–170 substituted "section 1221(a)(1)" for "section 1221(1)".

1988—Subsec. (b)(10)(A). Pub. L. 100–647, §2001(a)(2), substituted "one or more" for "a mixture of".

Subsec. (e)(3), (4). Pub. L. 100–647, §2001(a)(1), added par. (3) and redesignated former par. (3) as (4).

1986—Subsec. (b)(7). Pub. L. 99–499, §513(c), added par. (7).

Subsec. (b)(8). Pub. L. 99–499, §513(d), added par. (8).

Subsec. (b)(9). Pub. L. 99–499, §513(e)(1), added par. (9).

Subsec. (b)(10). Pub. L. 99–499, §513(g), added par. (10).

Subsec. (c). Pub. L. 99–499, §513(f), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "Except as provided in subsection (b), if any person manufactures, produces, or imports a taxable chemical and uses such chemical, then such person shall be liable for tax under section 4661 in the same manner as if such chemical were sold by such person."

Subsec. (d)(1). Pub. L. 99–499, §513(b)(2), substituted "which is a taxable chemical" for "the sale of which by such person would be taxable under such section", in subpar. (B), and substituted "imposed by such section on the other substance manufactured or produced (or which would have been imposed by such section on such other substance but for subsection (b) or (e) of this section)" for "imposed by such section on the other substance manufactured or produced" in last sentence.

Subsec. (d)(4). Pub. L. 99–499, §513(e)(2), added par. (4).

Subsecs. (e), (f). Pub. L. 99–499, §513(b)(1), added subsec. (e) and redesignated former subsec. (e) as (f).

1984—Subsec. (b)(1). Pub. L. 98–369, §1019(a)(3), inserted "or in the manufacture or production of any motor fuel, diesel fuel, aviation fuel, or jet fuel".

Subsec. (b)(2)(A). Pub. L. 98–369, §1019(b)(2)(A), substituted "qualified fertilizer substance" for "qualified substance".

Subsec. (b)(2)(B) to (D). Pub. L. 98–369, §1019(b)(1), inserted "fertilizer" after "qualified" wherever appearing in subpar. (B), inserted "fertilizer" after "Qualified" in subpar. (C) heading and in text substituted "The term 'qualified fertilizer use' means any use in the manufacture or production of fertilizer or for direct application as a fertilizer" for "For purposes of this subsection, the term 'qualified use' means any use in the manufacture or production of a fertilizer", and added subpar. (D).

Subsec. (b)(5), (6). Pub. L. 98–369, §1019(a)(1), added pars. (5) and (6).

Subsec. (c). Pub. L. 98–369, §1019(c), substituted "Except as provided in subsection (b), if" for "If".

Subsec. (d)(2)(B). Pub. L. 98–369, §1019(b)(2)(B), inserted "fertilizer" after "qualified" and struck out ", or sells such substance for use," after "such substance".

Subsec. (d)(3). Pub. L. 98–369, §1019(a)(2), added par. (3).

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Superfund Revenue Act of 1986, Pub. L. 99–499, title V, to which it relates, see section 2001(e) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–499 effective Jan. 1, 1987, except as otherwise provided, see section 513(h) of Pub. L. 99–499, set out as a note under section 4661 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title X, §1019(d), July 18, 1984, 98 Stat. 1024, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section] shall take effect as if included in the amendments made by section 211(a) of the Hazardous Substance Response Revenue Act of 1980 [Pub. L. 96–510, which enacted this section].

"(2) WAIVER OF LIMITATION.—If refund or credit of any overpayment of tax resulting from the application of the amendments made by this section is prevented at any time before the date which for one year after the date of the enactment of this Act [July 18, 1984] by the operation of any law or rule of law (including res judicata), refund or credit of such overpayment (to the extent attributable to the application of such amendments) may, nevertheless, be made or allowed if claim therefor is filed on or before the date which for one year after the date of the enactment of this Act."

Subchapter C—Tax on Certain Imported Substances

Sec.
4671. Imposition of tax.
4672. Definitions and special rules.

PRIOR PROVISIONS

A prior subchapter C related to tax on hazardous wastes, consisted of sections 4681 and 4682, prior to repeal by Pub. L. 99–499, title V, §514(a)(1), Oct. 17, 1986, 100 Stat. 1767.

§4671. Imposition of tax

(a) General rule

There is hereby imposed a tax on any taxable substance sold or used by the importer thereof.

(b) Amount of tax

(1) In general

Except as provided in paragraph (2), the amount of the tax imposed by subsection (a) with respect to any taxable substance shall be the amount of the tax which would have been imposed by section 4661 on the taxable chemicals used as materials in the manufacture or production of such substance if such taxable chemicals had been sold in the United States for use in the manufacture or production of such taxable substance.

(2) Rate where importer does not furnish information to Secretary

If the importer does not furnish to the Secretary (at such time and in such manner as the Secretary shall prescribe) sufficient information to determine under paragraph (1) the amount of the tax imposed by subsection (a) on any taxable substance, the amount of the tax imposed on such taxable substance shall be 5 percent of the appraised value of such substance as of the time such substance was entered into the United States for consumption, use, or warehousing.

(3) Authority to prescribe rate in lieu of paragraph (2) rate

The Secretary may prescribe for each taxable substance a tax which, if prescribed, shall apply in lieu of the tax specified in paragraph (2) with respect to such substance. The tax prescribed by the Secretary shall be equal to the amount of tax which would be imposed by subsection (a) with respect to the taxable substance if such substance were produced using the predominant method of production of such substance.

(c) Exemptions for substances taxed under sections 4611 and 4661

No tax shall be imposed by this section on the sale or use of any substance if tax is imposed on such sale or use under section 4611 or 4661.

(d) Tax-free sales, etc. for substances used as certain fuels or in the production of fertilizer or

animal feed

Rules similar to the following rules shall apply for purposes of applying this section with respect to taxable substances used or sold for use as described in such rules:

(1) Paragraphs (2), (5), and (9) of section 4662(b) (relating to tax-free sales of chemicals used as fuel or in the production of fertilizer or animal feed).

(2) Paragraphs (2), (3), and (4) of section 4662(d) (relating to refund or credit of tax on certain chemicals used as fuel or in the production of fertilizer or animal feed).

(e) Termination

No tax shall be imposed under this section during any period during which the Hazardous Substance Superfund financing rate under section 4611 does not apply.

(Added Pub. L. 99–499, title V, §515(a), Oct. 17, 1986, 100 Stat. 1767; amended Pub. L. 99–509, title VIII, §8032(c)(3), Oct. 21, 1986, 100 Stat. 1958.)

AMENDMENTS

1986—Subsec. (e). Pub. L. 99–509 substituted "the Hazardous Substance Superfund financing rate under section 4611 does not apply" for "no tax is imposed under section 4611(a)".

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–509 effective on commencement date as defined in former section 4611(f)(2), see section 8032(d) of Pub. L. 99–509, set out as a note under section 4611 of this title.

EFFECTIVE DATE

Pub. L. 99–499, title V, §515(c), Oct. 17, 1986, 100 Stat. 1769, provided that: "The amendments made by this section [enacting this subchapter] shall take effect on January 1, 1989."

STUDY AND REPORT

Pub. L. 99–499, title V, §515(d), Oct. 17, 1986, 100 Stat. 1769, provided that:

"(1) IN GENERAL.—The Secretary of the Treasury or his delegate shall conduct a study of issues relating to the implementation of—

"(A) the tax imposed by the section 4671 of the Internal Revenue Code of 1986 (as added by this section), and

"(B) the credit for exports of taxable substances under section 4661(e)(2)(A)(ii)(II) of such Code.

In conducting such study, the Secretary of the Treasury or his delegate shall consult with the Environmental Protection Agency and the International Trade Commission.

"(2) REPORT.—The report of the study under paragraph (1) shall be submitted not later than January 1, 1988, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate."

§4672. Definitions and special rules

(a) Taxable substance

For purposes of this subchapter—

(1) In general

The term "taxable substance" means any substance which, at the time of sale or use by the importer, is listed as a taxable substance by the Secretary for purposes of this subchapter.

(2) Determination of substances on list

A substance shall be listed under paragraph (1) if—

(A) the substance is contained in the list under paragraph (3), or

(B) the Secretary determines, in consultation with the Administrator of the Environmental Protection Agency and the Commissioner of Customs, that taxable chemicals constitute more than 50 percent of the weight (or more than 50 percent of the value) of the materials used to produce such substance (determined on the basis of the predominant method of production).

If an importer or exporter of any substance requests that the Secretary determine whether such substance be listed as a taxable substance under paragraph (1) or be removed from such listing, the Secretary shall make such determination within 180 days after the date the request was filed.

(3) Initial list of taxable substances

Cumene	Methylene chloride
Styrene	Polypropylene
Ammonium nitrate	Propylene glycol
Nickel oxide	Formaldehyde
Isopropyl alcohol	Acetone
Ethylene glycol	Acrylonitrile
Vinyl chloride	Methanol
Polyethylene resins, total	Propylene oxide
Polybutadiene	Polypropylene resins
Styrene-butadiene, latex	Ethylene oxide
Styrene-butadiene, snpf	Ethylene dichloride
Synthetic rubber, not containing fillers	Cyclohexane
Urea	Isophthalic acid
Ferronickel	Maleic anhydride
Ferrochromium nov 3 pct	Phthalic anhydride
Ferrochrome ov 3 pct. carbon	Ethyl methyl ketone
Unwrought nickel	Chloroform
Nickel waste and scrap	Carbon tetrachloride
Wrought nickel rods and wire	Chromic acid
Nickel powders	Hydrogen peroxide
Phenolic resins	Polystyrene homopolymer resins
Polyvinylchloride resins	Melamine
Polystyrene resins and copolymers	Acrylic and methacrylic acid resins
Ethyl alcohol for nonbeverage use	Vinyl resins
Ethylbenzene	Vinyl resins, NSPF.

(4) Modifications to list

The Secretary shall add to the list under paragraph (3) substances which meet either the weight or value tests of paragraph (2)(B) and may remove from such list only substances which meet neither of such tests.

(b) Other definitions

For purposes of this subchapter—

(1) Importer

The term "importer" means the person entering the taxable substance for consumption, use, or warehousing.

(2) Taxable chemicals; United States

The terms "taxable chemical" and "United States" have the respective meanings given such terms by section 4662(a).

(c) Disposition of revenues from Puerto Rico and the Virgin Islands

The provisions of subsections (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by section 4671.

(Added Pub. L. 99–499, title V, §515(a), Oct. 17, 1986, 100 Stat. 1768; amended Pub. L. 100–647, title II, §2001(b), Nov. 10, 1988, 102 Stat. 3594.)

AMENDMENTS

1988—Subsec. (a)(2). Pub. L. 100–647, §2001(b)(2), inserted at end "If an importer or exporter of any substance requests that the Secretary determine whether such substance be listed as a taxable substance under paragraph (1) or be removed from such listing, the Secretary shall make such determination within 180 days after the date the request was filed."

Subsec. (a)(2)(B). Pub. L. 100–647, §2001(b)(1), inserted "(or more than 50 percent of the value)" after "weight".

Subsec. (a)(4). Pub. L. 100–647, §2001(b)(3), amended par. (4) generally. Prior to amendment, par. (4) read as follows:

"(A) IN GENERAL.—The Secretary may add substances to or remove substances from the list under paragraph (3) (including items listed by reason of paragraph (2)) as necessary to carry out the purposes of this subchapter.

"(B) AUTHORITY TO ADD SUBSTANCES TO LIST BASED ON VALUE.—The Secretary may, to the extent necessary to carry out the purposes of this subchapter, add any substance to the list under paragraph (3) if such substance would be described in paragraph (2)(B) if 'value' were substituted for 'weight' therein."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Superfund Revenue Act of 1986, Pub. L. 99–499, title V, to which it relates, see section 2001(e) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1989, see section 515(c) of Pub. L. 99–499, set out as a note under section 4671 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Subchapter D—Ozone-Depleting Chemicals, Etc.

Sec.
4681. Imposition of tax.
4682. Definitions and special rules.

§4681. Imposition of tax

(a) General rule

There is hereby imposed a tax on—

(1) any ozone-depleting chemical sold or used by the manufacturer, producer, or importer thereof, and

(2) any imported taxable product sold or used by the importer thereof.

(b) Amount of tax

(1) Ozone-depleting chemicals

(A) In general

The amount of the tax imposed by subsection (a) on each pound of ozone-depleting chemical shall be an amount equal to—

(i) the base tax amount, multiplied by

(ii) the ozone-depletion factor for such chemical.

(B) Base tax amount

The base tax amount for purposes of subparagraph (A) with respect to any sale or use during any calendar year after 1995 shall be $5.35 increased by 45 cents for each year after 1995.

(2) Imported taxable product

(A) In general

The amount of the tax imposed by subsection (a) on any imported taxable product shall be the amount of tax which would have been imposed by subsection (a) on the ozone-depleting chemicals used as materials in the manufacture or production of such product if such ozone-depleting chemicals had been sold in the United States on the date of the sale of such imported taxable product.

(B) Certain rules to apply

Rules similar to the rules of paragraphs (2) and (3) of section 4671(b) shall apply.

(Added Pub. L. 101–239, title VII, §7506(a), Dec. 19, 1989, 103 Stat. 2364; amended Pub. L. 101–508, title XI, §11203(c), Nov. 5, 1990, 104 Stat. 1388–422; Pub. L. 102–486, title XIX, §1931(a), Oct. 24, 1992, 106 Stat. 3029; Pub. L. 105–34, title XIV, §1432(c)(1), Aug. 5, 1997, 111 Stat. 1050.)

PRIOR PROVISIONS

A prior section 4681, added Pub. L. 96–510, title II, §231(a), Dec. 11, 1980, 94 Stat. 2804, was contained in subchapter C of this chapter prior to repeal by Pub. L. 99–499, title V, §514(a)(1), (c), Oct. 17, 1986, 100 Stat. 1767, effective Oct. 1, 1983, with provision for waiver of statute of limitations on claims for overpayment.

AMENDMENTS

1997—Subsec. (b)(1)(B). Pub. L. 105–34 added subpar. (B) and struck out heading and text of former subpar. (B). Text read as follows: "The base tax amount for purposes of subparagraph (A) with respect to any sale or use during a calendar year before 1996 with respect to any ozone-depleting chemical is the amount determined under the following table for such calendar year:

"Calendar year:	Base tax amount:
1993	3.35
1994	4.35
1995	5.35."

Subsec. (b)(1)(C). Pub. L. 105–34 struck out heading and text of subpar. (C). Text read as follows: "The base tax amount for purposes of subparagraph (A) with respect to any sale or use of an ozone-depleting chemical during a calendar year after the last year specified in the table under subparagraph (B) applicable to such chemical shall be the base tax amount for such last year increased by 45 cents for each year after such last year."

1992—Subsec. (b)(1)(B). Pub. L. 102–486 amended subpar. (B) generally, substituting present provisions for former provisions which provided for base tax amounts in cl. (i) of initially listed chemicals for 1990 to 1994 and in cl. (ii) of newly listed chemicals for 1991 to 1995.

1990—Subsec. (b)(1)(B). Pub. L. 101–508 amended subpar. (B) generally, designating existing provision as cl. (i), inserting "with respect to any ozone-depleting chemical other than a newly listed chemical (as defined in section 4682(d)(3)(C))", and adding cl. (ii).

Subsec. (b)(1)(C). Pub. L. 101–508 amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: "The base tax amount for purposes of subparagraph (A) with respect to any sale or use during a

calendar year after 1994 shall be the base tax amount for 1994 increased by 45 cents for each year after 1994."

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–486, title XIX, §1931(d), Oct. 24, 1992, 106 Stat. 3029, provided that: "The amendments made by this section [amending this section and section 4682 of this title] shall apply to taxable chemicals sold or used on or after January 1, 1993."

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, §11203(e), Nov. 5, 1990, 104 Stat. 1388–423, provided that: "The amendments made by this section [amending this section and section 4682 of this title] shall take effect on January 1, 1991."

EFFECTIVE DATE

Pub. L. 101–239, title VII, §7506(c), Dec. 19, 1989, 103 Stat. 2369, provided that:

"(1) IN GENERAL.—The amendments made by this section [enacting this subchapter] shall take effect on January 1, 1990.

"(2) NO DEPOSITS REQUIRED BEFORE APRIL 1, 1990.—No deposit of any tax imposed by subchapter D of chapter 38 of the Internal Revenue Code of 1986, as added by this section, shall be required to be made before April 1, 1990.

"(3) NOTIFICATION OF CHANGES IN INTERNATIONAL AGREEMENTS.—The Secretary of the Treasury or his delegate shall notify the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate of changes in the Montreal Protocol and of other international agreements to which the United States is a signatory relating to ozone-depleting chemicals."

§4682. Definitions and special rules

(a) Ozone-depleting chemical

For purposes of this subchapter—

(1) In general

The term "ozone-depleting chemical" means any substance—

(A) which, at the time of the sale or use by the manufacturer, producer, or importer, is listed as an ozone-depleting chemical in the table contained in paragraph (2), and

(B) which is manufactured or produced in the United States or entered into the United States for consumption, use, or warehousing.

(2) Ozone-depleting chemicals

Common name:	Chemical nomenclature:
CFC–11	trichlorofluoromethane
CFC–12	dichlorodifluoromethane
CFC–113	trichlorotrifluoroethane
CFC–114	1,2-dichloro-1,1,2,2-tetra- fluoroethane
CFC–115	chloropentafluoroethane
Halon-1211	bromochlorodifluoro- methane
Halon-1301	bromotrifluoromethane
Halon-2402	dibromotetrafluoroethane
Carbon tetrachloride	Tetrachloromethane
Methyl chloroform	1,1,1-trichloroethane
CFC–13	CF3Cl
CFC–111	C2FCl5
CFC–112	C2F2Cl4
CFC–211	C3FCl7

CFC–212	C3F2Cl6
CFC–213	C3F3Cl5
CFC–214	C3F4Cl4
CFC–215	C3F5Cl3
CFC–216	C3F6Cl2
CFC–217	C3F7Cl.

(b) Ozone-depletion factor

For purposes of this subchapter, the term "ozone-depletion factor" means, with respect to an ozone-depleting chemical, the factor assigned to such chemical under the following table:

Ozone-depleting chemical:	Ozone-depletion factor:
CFC–11	1.0
CFC–12	1.0
CFC–113	0.8
CFC–114	1.0
CFC–115	0.6
Halon-1211	3.0
Halon-1301	10.0
Halon-2402	6.0
Carbon tetrachloride	1.1
Methyl chloroform	0.1
CFC–13	1.0
CFC–111	1.0
CFC–112	1.0
CFC–211	1.0
CFC–212	1.0
CFC–213	1.0
CFC–214	1.0
CFC–215	1.0
CFC–216	1.0
CFC–217	1.0.

(c) Imported taxable product

For purposes of this subchapter—

(1) In general

The term "imported taxable product" means any product (other than an ozone-depleting chemical) entered into the United States for consumption, use, or warehousing if any ozone-depleting chemical was used as material in the manufacture or production of such product.

(2) De minimis exception

The term "imported taxable product" shall not include any product specified in regulations prescribed by the Secretary as using a de minimis amount of ozone-depleting chemicals as materials in the manufacture or production thereof. The preceding sentence shall not apply to any product in which any ozone-depleting chemical (other than methyl chloroform) is used for purposes of refrigeration or air conditioning, creating an aerosol or foam, or manufacturing electronic components.

(d) Exceptions

(1) Recycling

No tax shall be imposed by section 4681 on any ozone-depleting chemical which is diverted or recovered in the United States as part of a recycling process (and not as part of the original manufacturing or production process), or on any recycled Halon-1301 or recycled Halon-2402 imported from any country which is a signatory to the Montreal Protocol on Substances that Deplete the Ozone Layer.

(2) Use in further manufacture

(A) In general

No tax shall be imposed by section 4681—

(i) on the use of any ozone-depleting chemical in the manufacture or production of any other chemical if the ozone-depleting chemical is entirely consumed in such use,

(ii) on the sale by the manufacturer, producer, or importer of any ozone-depleting chemical—

(I) for a use by the purchaser which meets the requirements of clause (i), or

(II) for resale by the purchaser to a second purchaser for a use by the second purchaser which meets the requirements of clause (i).

Clause (ii) shall apply only if the manufacturer, producer, and importer, and the 1st and 2d purchasers (if any), meet such registration requirements as may be prescribed by the Secretary.

(B) Credit or refund

Under regulations prescribed by the Secretary, if—

(i) a tax under this subchapter was paid with respect to any ozone-depleting chemical, and

(ii) such chemical was used (and entirely consumed) by any person in the manufacture or production of any other chemical,

then an amount equal to the tax so paid shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by section 4681.

(3) Exports

(A) In general

Except as provided in subparagraph (B), rules similar to the rules of section 4662(e) (other than section 4662(e)(2)(A)(ii)(II)) shall apply for purposes of this subchapter.

(B) Limit on benefit

(i) In general

The aggregate tax benefit allowable under subparagraph (A) with respect to ozone-depleting chemicals manufactured, produced, or imported by any person during a calendar year shall not exceed the sum of—

(I) the amount equal to the 1986 export percentage of the aggregate tax which would (but for this subsection and subsection (g)) be imposed by this subchapter with respect to the maximum quantity of ozone-depleting chemicals permitted to be manufactured or produced by such person during such calendar year under regulations prescribed by the Environmental Protection Agency (other than chemicals with respect to which subclause (II) applies),

(II) the aggregate tax which would (but for this subsection and subsection (g)) be imposed by this subchapter with respect to any additional production allowance granted to such person with respect to ozone-depleting chemicals manufactured or produced by such person during such calendar year by the Environmental Protection Agency under 40 CFR Part 82 (as in effect on September 14, 1989), and

(III) the aggregate tax which was imposed by this subchapter with respect to

ozone-depleting chemicals imported by such person during the calendar year.

(ii) 1986 export percentage

A person's 1986 export percentage is the percentage equal to the ozone-depletion factor adjusted pounds of ozone-depleting chemicals manufactured or produced by such person during 1986 which were exported during 1986, divided by the ozone-depletion factor adjusted pounds of all ozone-depleting chemicals manufactured or produced by such person during 1986. The percentage determined under the preceding sentence shall be computed by taking into account the sum of such person's direct 1986 exports (as determined by the Environmental Protection Agency) and such person's indirect 1986 exports (as allocated to such person by such Agency in determining such person's consumption and production rights for ozone-depleting chemicals).

(C) Separate application of limit for newly listed chemicals

(i) In general

Subparagraph (B) shall be applied separately with respect to newly listed chemicals and other chemicals.

(ii) Application to newly listed chemicals

In applying subparagraph (B) to newly listed chemicals—

(I) subparagraph (B) shall be applied by substituting "1989" for "1986" each place it appears, and

(II) clause (i)(II) thereof shall be applied by substituting for the regulations referred to therein any regulations (whether or not prescribed by the Secretary) which the Secretary determines are comparable to the regulations referred to in such clause with respect to newly listed chemicals.

(iii) Newly listed chemical

For purposes of this subparagraph, the term "newly listed chemical" means any substance which appears in the table contained in subsection (a)(2) below Halon-2402.

(e) Other definitions

For purposes of this subchapter—

(1) Importer

The term "importer" means the person entering the article for consumption, use, or warehousing.

(2) United States

The term "United States" has the meaning given such term by section 4612(a)(4).

(f) Special rules

(1) Fractional parts of a pound

In the case of a fraction of a pound, the tax imposed by this subchapter shall be the same fraction of the amount of such tax imposed on a whole pound.

(2) Disposition of revenues from Puerto Rico and the Virgin Islands

The provisions of subsections (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by this subchapter.

(g) Chemicals used as propellants in metered-dose inhalers

(1) Exemption from tax

(A) In general

No tax shall be imposed by section 4681 on—

(i) any use of any substance as a propellant in metered-dose inhalers, or

(ii) any qualified sale by the manufacturer, producer, or importer of any substance.

(B) Qualified sale

For purposes of subparagraph (A), the term "qualified sale" means any sale by the manufacturer, producer, or importer of any substance—

(i) for use by the purchaser as a propellant in metered dose inhalers, or

(ii) for resale by the purchaser to a 2d purchaser for such use by the 2d purchaser.

The preceding sentence shall apply only if the manufacturer, producer, and importer, and the 1st and 2d purchasers (if any) meet such registration requirements as may be prescribed by the Secretary.

(2) Overpayments

If any substance on which tax was paid under this subchapter is used by any person as a propellant in metered-dose inhalers, credit or refund without interest shall be allowed to such person in an amount equal to the tax so paid. Amounts payable under the preceding sentence with respect to uses during the taxable year shall be treated as described in section 34(a) for such year unless claim thereof has been timely filed under this paragraph.

(h) Imposition of floor stocks taxes

(1) January 1, 1990, tax

On any ozone-depleting chemical which on January 1, 1990, is held by any person (other than the manufacturer, producer, or importer thereof) for sale or for use in further manufacture, there is hereby imposed a floor stocks tax in an amount equal to the tax which would be imposed by section 4681 on such chemical if the sale of such chemical by the manufacturer, producer, or importer thereof had occurred during 1990.

(2) Other tax-increase dates

(A) In general

If, on any tax-increase date, any ozone-depleting chemical is held by any person (other than the manufacturer, producer, or importer thereof) for sale or for use in further manufacture, there is hereby imposed a floor stocks tax.

(B) Amount of tax

The amount of the tax imposed by subparagraph (A) shall be the excess (if any) of—

(i) the tax which would be imposed under section 4681 on such substance if the sale of such chemical by the manufacturer, producer, or importer thereof had occurred on the tax-increase date, over

(ii) the prior tax (if any) imposed by this subchapter on such substance.

(C) Tax-increase date

For purposes of this paragraph, the term "tax-increase date" means January 1 of any calendar year after 1991.

(3) Due date

The taxes imposed by this subsection on January 1 of any calendar year shall be paid on or before June 30 of such year.

(4) Application of other laws

All other provisions of law, including penalties, applicable with respect to the taxes imposed by section 4681 shall apply to the floor stocks taxes imposed by this subsection.

(Added Pub. L. 101–239, title VII, §7506(a), Dec. 19, 1989, 103 Stat. 2365; amended Pub. L. 101–508, title XI, §§11203(a), (b), (d), 11701(g), Nov. 5, 1990, 104 Stat. 1388–421, 1388–422, 1388–508; Pub. L. 102–486, title XIX, §§1931(b), (c), 1932(a)–(c), Oct. 24, 1992, 106 Stat. 3029–3031; Pub. L. 104–188, title I, §1803(a)(1), (b), Aug. 20, 1996, 110 Stat. 1892, 1893; Pub. L. 105–34, title IX, §903(a), title XIV, §1432(c)(2), Aug. 5, 1997, 111 Stat. 873, 1051.)

PRIOR PROVISIONS

A prior section 4682, added Pub. L. 96–510, title II, §231(a), Dec. 11, 1980, 94 Stat. 2804, was contained in subchapter C of this chapter, prior to repeal by Pub. L. 99–499, title V, §514(a)(1), (c), Oct. 17, 1986, 100 Stat. 1767, effective Oct. 1, 1983, with provision for waiver of statute of limitations on claims for overpayment.

AMENDMENTS

1997—Subsec. (d)(1). Pub. L. 105–34, §903(a), substituted "recycled Halon-1301 or recycled Halon-2402" for "recycled halon".

Subsec. (g). Pub. L. 105–34, §1432(c)(2), amended subsec. (g) generally. Prior to amendment, subsec. (g) consisted of pars. (1) to (5) relating to taxes imposed during 1990 to 1993 on halons, chemicals used in rigid foam insulation, and methyl chloroform and taxes imposed on chemicals used as propellants in metered-dose inhalers.

1996—Subsec. (d)(1). Pub. L. 104–188, §1803(a)(1), inserted before period at end ", or on any recycled halon imported from any country which is a signatory to the Montreal Protocol on Substances that Deplete the Ozone Layer".

Subsec. (g)(4). Pub. L. 104–188, §1803(b), amended par. (4) generally, substituting provisions relating to chemicals used as propellants in metered-dose inhalers for provisions relating to chemicals used for sterilizing medical instruments and as propellants in metered-dose inhalers, including provisions relating to rate of tax, overpayments, and applicable period.

1992—Subsec. (g)(2)(A). Pub. L. 102–486, §1932(a), in table, for sales or use during 1993, decreased applicable percentages from 3.3, 1.0, and 1.6 to 2.49, 0.75, and 1.24 in the case of Halon-1211, Halon-1301, and Halon-2402, respectively, and struck out applicable percentages for sales or use during 1991 and 1992.

Subsec. (g)(2)(B). Pub. L. 102–486, §1931(b), in table decreased applicable percentage in the case of sales or use in 1993 from 10 to 7.46.

Subsec. (g)(4), (5). Pub. L. 102–486, §1932(b), (c), added pars. (4) and (5).

Subsec. (h)(2)(C). Pub. L. 102–486, §1931(c), substituted "any calendar year after 1991" for "1991, 1992, 1993, and 1994".

1990—Subsecs. (a)(2), (b). Pub. L. 101–508, §11203(a), inserted items for "Carbon tetrachloride" through "CFC–217" in tables.

Subsec. (c)(2). Pub. L. 101–508, §11203(d)(1), inserted "(other than methyl chloroform)".

Subsec. (d)(3)(B)(i). Pub. L. 101–508, §11701(g)(1), substituted ", produced, or imported" for "or produced" in introductory provisions.

Subsec. (d)(3)(B)(i)(I). Pub. L. 101–508, §11701(g)(2), amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: "the amount equal to the 1986 export percentage of the aggregate tax imposed by this subchapter with respect to ozone-depleting chemicals manufactured or produced by such person during such calendar year (other than chemicals with respect to which subclause (II) applies), and".

Subsec. (d)(3)(B)(i)(II). Pub. L. 101–508, §11701(g)(3), substituted "tax which would (but for this subsection and subsection (g)) be imposed" for "tax imposed".

Subsec. (d)(3)(B)(i)(III). Pub. L. 101–508, §11701(g)(4), added subcl. (III).

Subsec. (d)(3)(B)(ii). Pub. L. 101–508, §11701(g)(5), substituted last sentence for former last sentence which read as follows: "The percentage determined under the preceding sentence shall be based on data published by the Environmental Protection Agency."

Subsec. (d)(3)(C). Pub. L. 101–508, §11203(b), added subpar. (C).

Subsec. (h)(3). Pub. L. 101–508, §11203(d)(2), substituted "June 30" for "April 1".

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title IX, §903(b), Aug. 5, 1997, 111 Stat. 873, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, §1803(c), Aug. 20, 1996, 110 Stat. 1893, provided that:

"(1) RECYCLED HALON.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the amendment made by subsection (a)(1) [amending this section] shall take effect on January 1, 1997.

"(B) HALON-1211.—In the case of Halon-1211, the amendment made by subsection (a)(1) shall take effect on January 1, 1998.

"(2) METERED-DOSE INHALERS.—The amendment made by subsection (b) [amending this section] shall take effect on the 7th day after the date of the enactment of this Act [Aug. 20, 1996]."

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 1931(b), (c) of Pub. L. 102–486 applicable to taxable chemicals sold or used on or after Jan. 1, 1993, see section 1931(d) of Pub. L. 102–486, set out as a note under section 4681 of this title.

Pub. L. 102–486, title XIX, §1932(d), Oct. 24, 1992, 106 Stat. 3031, provided that: "The amendments made by this section [amending this section] shall apply to sales and uses on or after January 1, 1993."

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11203(a), (b), and (d) of Pub. L. 101–508 effective Jan. 1, 1991, see section 11203(e) of Pub. L. 101–508, set out as a note under section 4681 of this title.

Amendment by section 11701(g) of Pub. L. 101–508 effective, except as otherwise provided, as if included in the provision of the Revenue Reconciliation Act of 1989, Pub. L. 101–239, title VII, to which such amendment relates, see section 11701(n) of Pub. L. 101–508, set out as a note under section 42 of this title.

CERTIFICATION SYSTEM

Pub. L. 104–188, title I, §1803(a)(2), Aug. 20, 1996, 110 Stat. 1892, provided that: "The Secretary of the Treasury, after consultation with the Administrator of the Environmental Protection Agency, shall develop a certification system to ensure compliance with the recycling requirement for imported halon under section 4682(d)(1) of the Internal Revenue Code of 1986, as amended by paragraph (1)."

DEPOSITS FOR FIRST QUARTER OF 1991

Pub. L. 101–508, title XI, §11203(f), Nov. 5, 1990, 104 Stat. 1388–423, provided that: "No deposit of any tax imposed by subchapter D of chapter 38 of the Internal Revenue Code of 1986 on any substance treated as an ozone-depleting chemical by reason of the amendment made by subsection (a)(1) [amending this section] shall be required to be made before April 1, 1991."

CHAPTER 39—REGISTRATION-REQUIRED OBLIGATIONS

Sec.
4701. Tax on issuer of registration-required obligation not in registered form.

PRIOR PROVISIONS

The provisions of a prior chapter 39, Regulatory Taxes, were set out as:

Subchapter A, Narcotic Drugs and Marihuana, comprising sections 4701 to 4707, 4711 to 4716, 4721 to 4726, 4731 to 4736, 4741 to 4746, 4751 to 4757, 4761, 4762, and 4771 to 4776.

Subchapter B, White phosphorus matches, comprising sections 4801 to 4806.

Subchapter C, Adulterated butter and filled cheese, comprising sections 4811 to 4819, 4821, 4822, 4826, 4831 to 4836, 4841, 4842, and 4846.

Subchapter D, Cotton futures, comprising sections 4851 to 4854, 4861 to 4865, and 4871 to 4877.

Subchapter E, Circulation other than of national banks, comprising sections 4881 to 4886.

Subchapter F, Silver bullion, comprising sections 4891 to 4897.

Prior sections 4701 to 4897 were based on act Aug. 16, 1954, ch. 736, 68A Stat. 549–592, as amended.

Sections 4701–4776 were repealed by Pub. L. 91–513, title III, §1101(b)(3)(A), Oct. 27, 1970, 84 Stat. 1292. See section 801 et seq. of Title 21, Food and Drugs.

Sections 4801–4826, 4851–4873, and 4875–4886 were repealed by Pub. L. 94–455, title XIX, §§1904(a)(16)–(18), 1952(b), Oct. 4, 1976, 90 Stat. 1814, 1841.

Sections 4831–4834 and 4836–4846 were repealed by Pub. L. 93–490, §3(a)(1), Oct. 26, 1974, 88 Stat. 1466.

Section 4835 was repealed by Pub. L. 85–881, §1(b)(1), Sept. 2, 1958, 72 Stat. 1704.

Section 4874 was repealed by Pub. L. 91–452, title II, §231(a), Oct. 15, 1970, 84 Stat. 930.

Sections 4891–4897 were repealed by Pub. L. 88–36, title II, §201(a), June 4, 1963, 77 Stat. 54.

AMENDMENTS

1982—Pub. L. 97–248, title III, §310(b)(4)(A), Sept. 3, 1982, 96 Stat. 597, added chapter heading and section analysis.

§4701. Tax on issuer of registration-required obligation not in registered form

(a) Imposition of tax

In the case of any person who issues a registration-required obligation which is not in registered form, there is hereby imposed on such person on the issuance of such obligation a tax in an amount equal to the product of—

(1) 1 percent of the principal amount of such obligation, multiplied by

(2) the number of calendar years (or portions thereof) during the period beginning on the date of issuance of such obligation and ending on the date of maturity.

(b) Definitions

For purposes of this section—

(1) Registration-required obligation

(A) In general

The term "registration-required obligation" has the same meaning as when used in section 163(f), except that such term shall not include any obligation which—

(i) is required to be registered under section 149(a), or

(ii) is described in subparagraph (B).

(B) Certain obligations not included

An obligation is described in this subparagraph if—

(i) there are arrangements reasonably designed to ensure that such obligation will be sold (or resold in connection with the original issue) only to a person who is not a United States person,

(ii) interest on such obligation is payable only outside the United States and its possessions, and

(iii) on the face of such obligation there is a statement that any United States person who holds such obligation will be subject to limitations under the United States income tax laws.

(2) Registered form

The term "registered form" has the same meaning as when used in section 163(f).

(Added Pub. L. 97–248, title III, §310(b)(4)(A), Sept. 3, 1982, 96 Stat. 598; amended Pub. L. 99–514, title XIII, §1301(j)(5), Oct. 22, 1986, 100 Stat. 2657; Pub. L. 111–147, title V, §502(e), Mar. 18, 2010, 124 Stat. 108.)

AMENDMENTS

2010—Subsec. (b)(1). Pub. L. 111–147 amended par. (1) generally. Prior to amendment, text read as follows: "The term 'registration-required obligation' has the same meaning as when used in section 163(f), except that such term shall not include any obligation required to be registered under section 149(a)."

1986—Subsec. (b)(1). Pub. L. 99–514 substituted "section 149(a)" for "section 103(j)".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–147 applicable to obligations issued after the date which is 2 years after Mar. 18, 2010, see section 502(f) of Pub. L. 111–147, set out as a note under section 149 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99–514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

EFFECTIVE DATE

Section applicable to obligations issued after Dec. 31, 1982, with an exception for certain warrants, see section 310(d)(1), (3) of Pub. L. 97–248, set out as an Effective Date of 1982 Amendment note under section 103 of this title.

CHAPTER 40—GENERAL PROVISIONS RELATING TO OCCUPATIONAL TAXES

Sec.
4901. Payment of tax.
4902. Liability of partners.
4903. Liability in case of business in more than one location.
4904. Liability in case of different businesses of same ownership and location.
4905. Liability in case of death or change of location.
4906. Application of State laws.
4907. Federal agencies or instrumentalities.

§4901. Payment of tax

(a) Condition precedent to carrying on certain business

No person shall be engaged in or carry on any trade or business subject to the tax imposed by section 4411 (wagering) until he has paid the special tax therefor.

(b) Computation

All special taxes shall be imposed as of on the first day of July in each year, or on commencing any trade or business on which such tax is imposed. In the former case the tax shall be reckoned for 1 year, and in the latter case it shall be reckoned proportionately, from the first day of the month in which the liability to a special tax commenced, to and including the 30th day of June following.

(Aug. 16, 1954, ch. 736, 68A Stat. 593; Pub. L. 89–44, title IV, §405(b), June 21, 1965, 79 Stat. 149; Pub. L. 91–513, title III, §1102(a), Oct. 27, 1970, 84 Stat. 1292; Pub. L. 94–455, title XIX, §1904(a)(19), Oct. 4, 1976, 90 Stat. 1814; Pub. L. 95–600, title V, §521(c)(2), Nov. 6, 1978, 92 Stat. 2884.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–600 struck out "or 4461(a)(1) (coin-operated gaming devices)" after "(wagering)".

1976—Subsec. (c). Pub. L. 94–455 struck out subsec. (c) which provided that all special taxes should be paid by stamp and made reference to subtitle F for authority of the Secretary to make assessments where special taxes have not been duly paid by stamp.

1970—Subsec. (a). Pub. L. 91–513 struck out references to tax imposed by sections 4721 (narcotic drugs) and 4751 (marihuana).

1965—Subsec. (a). Pub. L. 89–44 substituted "4461(a)(1)" for "4461(2)".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable with respect to years beginning after June 30, 1980, see section 521(d)(2) of Pub. L. 95–600, set out as a note under section 4402 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94–455, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–513 effective on first day of seventh calendar month that begins after Oct. 26, 1970, see section 1105(a) of Pub. L. 91–513, set out as an Effective Date note under section 951 of Title 21, Food and Drugs.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 applicable on and after July 1, 1965, see section 701(c)(2) of Pub. L. 89–44, set out in part as a note under section 4402 of this title.

SAVINGS PROVISION

Prosecution for any violation of law occurring, and civil seizures or forfeitures and injunctive proceedings commenced, prior to the effective date of amendment of this section by section 1102 of Pub. L. 91–513 not to be affected or abated by reason thereof, see section 1103 of Pub. L. 91–513, set out as a note under section 171 of Title 21, Food and Drugs.

PERSONS ENGAGED IN ACTIVITIES ON DECEMBER 1, 1974, REQUIRING PAYMENT OF WAGERING TAX

Person on Dec. 1, 1974, engaging in an activity making him liable for payment of tax imposed by section 4411 of this title (as in effect on such date) to be treated as commencing such activity on such date for purposes of this section and section 4411 of this title, see section 3(d)(2) of Pub. L. 93–499, set out as a note under section 4411 of this title.

§4902. Liability of partners

Any number of persons doing business in copartnership at any one place shall be required to pay but one special tax.

(Aug. 16, 1954, ch. 736, 68A Stat. 593.)

§4903. Liability in case of business in more than one location

The payment of the special tax imposed, other than the tax imposed by section 4411, shall not exempt from an additional special tax the person carrying on a trade or business in any other place than that stated in the register kept in the office of the official in charge of the internal revenue district; but nothing herein contained shall require a special tax for the storage of goods, wares, or merchandise in other places than the place of business, nor, except as provided in this subtitle, for the sale by manufacturers or producers of their own goods, wares, and merchandise, at the place of production or manufacture, and at their principal office or place of business, provided no goods, wares, or merchandise shall be kept except as samples at said office or place of business.

(Aug. 16, 1954, ch. 736, 68A Stat. 593.)

§4904. Liability in case of different businesses of same ownership and location

Whenever more than one of the pursuits or occupations described in this subtitle are carried on in the same place by the same person at the same time, except as otherwise provided in this subtitle, the tax shall be paid for each according to the rates severally prescribed.

(Aug. 16, 1954, ch. 736, 68A Stat. 594.)

§4905. Liability in case of death or change of location

(a) Requirements

When any person who has paid the special tax for any trade or business dies, his spouse or child, or executors or administrators or other legal representatives, may occupy the house or premises, and in like manner carry on, for the residue of the term for which the tax is paid, the same trade or business as the deceased before carried on, in the same house and upon the same premises, without the payment of any additional tax. When any person removes from the house or premises for which any trade or business was taxed to any other place, he may carry on the trade or business specified in the register kept in the office of the official in charge of the internal revenue district at the place to which he removes, without the payment of any additional tax: *Provided*, That all cases of death, change, or removal, as aforesaid, with the name of the successor to any person deceased, or of the person making such change or removal, shall be registered with the Secretary, under regulations to be prescribed by the Secretary.

(b) Registration

For registration in case of wagering, see section 4412.

(Aug. 16, 1954, ch. 736, 68A Stat. 594; Pub. L. 89–44, title IV, §405(c), June 21, 1965, 79 Stat. 149; Pub. L. 91–513, title III, §1102(b), Oct. 27, 1970, 84 Stat. 1292; Pub. L. 94–455, title XIX, §§1904(a)(20), (b)(8)(A), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1814, 1816, 1834.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94–455, §§1904(a)(20), 1906(b)(13)(A), substituted "spouse or child" for "wife or child" and struck out "or his delegate" after "Secretary" wherever appearing.

Subsec. (b). Pub. L. 94–455, §1904(b)(8)(A), among other changes, struck out reference to section 4804(d) for registration in case of white phosphorous matches and references to subtitle F for other provisions relating to registration.

1970—Subsec. (b)(1). Pub. L. 91–513 struck out references to narcotics and marihuana and to sections 4722 and 4753.

1965—Subsec. (b)(1). Pub. L. 89–44 struck out "playing cards," after "wagering," and "4455," after "4412,".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–513 effective on first day of seventh calendar month that begins after Oct. 26, 1970, see section 1105(a) of Pub. L. 91–513, set out as an Effective Date note under section 951 of Title 21, Food and Drugs.

EFFECTIVE DATE OF 1965 AMENDMENT

Pub. L. 89–44, title VII, §701(c)(2), June 21, 1965, 79 Stat. 157, provided in part that: "The amendments made by section 402 [repealing sections 4451 to 4457 of this title] (relating to playing cards) and by subsection (c) of section 405 [amending this section] shall apply on and after the day after the date of the enactment of this Act [June 21, 1965]."

SAVINGS PROVISION

Prosecutions for any violation of law occurring, and civil seizures or forfeitures and injunctive proceedings commenced, prior to the effective date of amendment of this section by section 1102 of Pub. L. 91–513 not to be affected or abated by reason thereof, see section 1103 of Pub. L. 91–513, set out as a note under section 171 of Title 21, Food and Drugs.

§4906. Application of State laws

The payment of any special tax imposed by this subtitle for carrying on any trade or business shall not be held to exempt any person from any penalty or punishment provided by the laws of any State for carrying on the same within such State, or in any manner to authorize the commencement or continuance of such trade or business contrary to the laws of such State or in places prohibited by municipal law; nor shall the payment of any such tax be held to prohibit any State from placing a duty or tax on the same trade or business, for State or other purposes.

(Aug. 16, 1954, ch. 736, 68A Stat. 594.)

§4907. Federal agencies or instrumentalities

Any special tax imposed by this subtitle, except the tax imposed by section 4411, shall apply to any agency or instrumentality of the United States unless such agency or instrumentality is granted by statute a specific exemption from such tax.

(Aug. 16, 1954, ch. 736, 68A Stat. 594.)

CHAPTER 41—PUBLIC CHARITIES

Sec.

4911. Tax on excess expenditures to influence legislation.

4912. Tax on disqualifying lobbying expenditures of certain organizations.

AMENDMENTS

1987—Pub. L. 100–203, title X, §10714(d), Dec. 22, 1987, 101 Stat. 1330–471, added item 4912.

PRIOR PROVISIONS

The provisions of a prior chapter 41, Interest Equalization Tax, were set out as follows:

Subchapter A, Acquisitions of foreign stock and debt obligations, comprising sections 4911 to 4920.

Subchapter B, Acquisition by commercial banks, comprising section 4931.

Prior sections 4911 to 4922 and 4931 were repealed by Pub. L. 94–455, §1904(a)(21)(A), Oct. 4, 1976, 90 Stat. 1814, effective with respect to acquisitions of stock and debt obligations made after June 30, 1974. See section 1904(a)(21)(B), set out as an Effective Date of Repeal of Prior Provisions note below.

The subject matter of the prior provisions is as follows:

Section 4911, added Pub. L. 88–563, §2(a), Sept. 2, 1964, 78 Stat. 809; amended Pub. L. 89–243, §§2, 3(a)(1), (b), Oct. 9, 1965, 79 Stat. 954; Pub. L. 90–59, §§2, 3(a), July 31, 1967, 81 Stat. 145; Pub. L. 91–50, Aug. 2, 1969, 83 Stat. 86; Pub. L. 91–65, §2, Aug. 25, 1969, 83 Stat. 105; Pub. L. 91–128, §§2, 3, Nov. 26, 1969, 83 Stat. 261, 262; Pub. L. 92–9, §2, Apr. 1, 1971, 85 Stat. 13; Pub. L. 93–17, §2, Apr. 10, 1973, 87 Stat. 12, imposed a tax on each acquisition by a United States person of stock of a foreign issuer or a debt obligation of a foreign obligor, if such obligation had a period remaining to maturity of 1 year or more and provided for modification of tax rate by executive order, rate tables, rates during interim period, rules and regulations, persons liable for tax, and termination date, that no tax shall be imposed on any acquisition made after June 30, 1974.

Section 4912, added Pub. L. 88–563, §2(a), Sept. 2, 1964, 78 Stat. 810; amended Pub. L. 89–243, §4(m)(3), Oct. 9, 1965, 79 Stat. 963; Pub. L. 90–59, §5(a)(1), July 31, 1967, 81 Stat. 157; Pub. L. 91–128, §4(a)(1), Nov. 26, 1969, 83 Stat. 263; Pub. L. 92–9, §3(a)(1), Apr. 1, 1971, 85 Stat. 14; Pub. L. 93–17, §3(e), Apr. 10, 1973, 87 Stat. 17, defined term "acquisition" and provided special rules to be applied to certain transfers to foreign trusts, foreign corporations and partnerships, foreign branches, acquisitions from domestic corporations or partnerships formed or availed of to obtain funds for foreign issuer or obligor, and reorganization exchanges.

Section 4913, added Pub. L. 88–563, §2(a), Sept. 12, 1964, 78 Stat. 812, imposed general and special limitations on tax on certain acquisitions relating to stock or debt obligations acquired by surrender, extensions, renewals, and exercises, transfers which are deemed acquisitions and acquisitions by certain domestic corporations and partnerships.

Section 4914, added Pub. L. 88–563, §2(a), Sept. 2, 1964, 78 Stat. 813; amended Pub. L. 89–44, title IV, §405(d), June 21, 1965, 79 Stat. 149; Pub. L. 89–243, §§3(a)(2), (3), 4(a)(1)–(3), (b)–(f)(2), (g), (h)(1), Oct. 9, 1965, 79 Stat. 954, 956–960; Pub. L. 89–809, title II, §§213(a), (b)(1), 214(a), Nov. 13, 1966, 80 Stat. 1585; Pub. L. 90–59, §5(b)(1), (c)(1), (2), (d)(1), (e)(1), (f)(1), July 31, 1967, 81 Stat. 157, 158; Pub. L. 91–128, §4(b)(1), (c)(1), (2), (i)(1), (2), Nov. 26, 1969, 83 Stat. 263, 264, 268; Pub. L. 92–9, §3(b)(1), (2), (c)(1), (d)(1), (2), Apr. 1, 1971, 85 Stat. 15–17; Pub. L. 93–17, §3(f), Apr. 10, 1973, 87 Stat. 17, provided exclusions for certain acquisitions including: transactions not considered acquisitions; export credit, etc., transactions; loans to assure raw materials sources; acquisitions by insurance companies doing business in foreign countries; acquisitions by certain tax-exempt organizations such as labor, fraternal, and similar organizations having foreign branches or chapters; sale or liquidation of foreign subsidiary or sale of foreign branch; certain debt obligations secured by United States mortgages, etc.; acquisitions of stock of foreign issuers investing exclusively in the United States, and loss of entitlement to exclusion in case of certain subsequent transfers or acquisitions of stock or debt obligations in connection with nationalization, expropriation, etc.

Section 4915, added Pub. L. 88–563, §2(a), Sept. 2, 1964, 78 Stat. 824; amended Pub. L. 90–59, §5(h)(3), July 31, 1967, 81 Stat. 163; Pub. L. 91–128, §4(e)(3), Nov. 26, 1969, 83 Stat. 267; Pub. L. 92–9, §3(e)(1), Apr. 1, 1971, 85 Stat. 17; Pub. L. 93–17, §3(g)(1), Apr. 10, 1973, 87 Stat. 18, related to exclusions for direct investments and provided for excluded acquisitions, overpayment with respect to certain taxable acquisitions, special rule for government-controlled enterprises, exception for foreign corporations or partnerships formed or availed of for tax avoidance, exception for acquisitions made with intent to sell to United States persons, and special rule for investments in certain lending and financial corporations.

Section 4916, added Pub. L. 88–563, §2(a), Sept. 2, 1964, 78 Stat. 827; amended Pub. L. 89–243, §4(i), Oct 9, 1965, 79 Stat. 960; Pub. L. 90–59, §5(g)(1), July 31, 1967, 81 Stat. 159; Pub. L. 92–9, §3(b)(3), Apr. 1, 1971, 85 Stat. 16; Pub. L. 93–17, §3(b), Apr. 10, 1973, 87 Stat. 13, related to exclusion for investment in less developed countries, provided special rules applicable to such investments, subsequent tax liability in certain

cases, the repeal of exclusion for issues after Jan. 29, 1973, in the case of less developed country shipping companies, and defined term "less developed country".

Section 4917, added Pub. L. 88–563, §2(a), Sept. 2, 1964, 78 Stat. 830; amended Pub. L. 89–243, §4(j), (k), Oct. 9, 1965, 79 Stat. 960; Pub. L. 90–59, §5(h)(1), July 31, 1967, 81 Stat. 159, related to exclusion for original or new issues where required for international monetary stability.

Section 4918, added Pub. L. 88–563, §2(a), Sept. 2, 1964, 78 Stat. 831; amended Pub. L. 89–809, title II, §213(b)(2), Nov. 13, 1966, 80 Stat. 1585; Pub. L. 90–59, §4(a), July 31, 1967, 81 Stat. 148; Pub. L. 90–73, §2(a)–(c), Aug. 29, 1967, 81 Stat. 175, 176; Pub. L. 93–17, §3(h)(1), Apr. 10, 1973, 87 Stat. 18, related to exemption for prior American ownership and compliance, proof of such ownership or compliance, issuance of IET clean confirmation by participating firm, sales effected by participating firms in connection with exempt acquisitions, filing of transition inventory, transfer of custody certificate, certain debt obligations arising out of loans to assure raw material sources, regulations, and definitions of "participating firm," and "participating custodian".

Section 4919, added Pub. L. 88–563, §2(a), Sept. 2, 1964, 78 Stat. 833; amended Pub. L. 89–243, §4(1), Oct. 9, 1965, 79 Stat. 961; Pub. L. 90–59, §5(i)(1), (2), July 31, 1967, 81 Stat. 159, 160; Pub. L. 91–128, §4(d)(1), Nov. 26, 1969, 83 Stat. 264; Pub. L. 92–9, §3(f)(1), (2), Apr. 1, 1971, 85 Stat. 20; Pub. L. 93–17, §3(i)(1), Apr. 10, 1973, 87 Stat. 19, related to credit or refund on sales by underwriters and dealers to foreign persons, evidence needed to support such credit or refund, and defined terms "underwriter", "dealer", and "persons other than United States persons".

Section 4920, added Pub. L. 88–563, §2(a), Sept. 2, 1964, 78 Stat. 835; amended Pub. L. 89–243, §§3(a)(4), 4(m)(1), (2)(A), (n), Oct. 9, 1965, 79 Stat. 954, 961–963; Pub. L. 90–59, §§4(f), 5(j)–(k)(2), July 31, 1967, 81 Stat. 156, 160–163; Pub. L. 91–128, §4(e)(1), (2), (i)(3), Nov. 26, 1969, 83 Stat. 264, 269; Pub. L. 92–9, §3(e)(2), (3), (g)(1), (h)(1), Apr. 1, 1971, 85 Stat. 18, 20, 21; Pub. L. 93–17, §3(g)(2)(j), Apr. 10, 1973, 87 Stat. 18, 19, related to definitions and special rules.

Section 4921, added Pub. L. 92–9, §3(i)(1), Apr. 1, 1971, 85 Stat. 21, related to standby authority of the President to impose tax on debt obligations of foreign obligors having a period remaining to maturity of less than 1 year and provided that such authority may be extended by Executive order.

Section 4922, added Pub. L. 93–17, §3(d)(1), Apr. 10, 1973, 87 Stat. 15, related to exclusion for certain issues to finance new or additional direct investment in the United States, qualification for exclusion, and loss of entitlement to exclusion by subsequent noncompliance.

Section 4931, added Pub. L 88–563, §2(a), Sept. 2, 1964, 78 Stat. 839; amended Pub. L. 89–243, §§3(e)(1), 4(a)(4), (o), Oct. 9, 1965, 79 Stat. 955, 956, 964; Pub. L. 89–809, title II, §215(a), Nov. 13, 1966, 80 Stat. 1587, Pub. L. 90–59, §3(b)(1), July 31, 1967, 81 Stat. 145, related to the standby authority of the President to impose, by Executive order, tax on acquisitions by commercial banks of debt obligations of foreign obligors, made provision for exclusions concerning export loans, foreign currency loans by foreign branches, preexisting commitments, and provided for prescription of regulations by the Secretary.

EFFECTIVE DATE OF REPEAL OF PRIOR PROVISIONS

Pub. L. 94–455, title XIX, §1904(a)(21)(B), Oct. 4, 1976, 90 Stat. 1814, provided that: "The repeal made by subparagraph (A) [repealing sections 4911 through 4922 and section 4931 of this title] shall apply with respect to acquisitions of stock and debt obligations made after June 30, 1974."

§4911. Tax on excess expenditures to influence legislation

(a) Tax imposed

(1) In general

There is hereby imposed on the excess lobbying expenditures of any organization to which this section applies a tax equal to 25 percent of the amount of the excess lobbying expenditures for the taxable year.

(2) Organizations to which this section applies

This section applies to any organization with respect to which an election under section 501(h) (relating to lobbying expenditures by public charities) is in effect for the taxable year.

(b) Excess lobbying expenditures

For purposes of this section, the term "excess lobbying expenditures" means, for a taxable year,

the greater of—

(1) the amount by which the lobbying expenditures made by the organization during the taxable year exceed the lobbying nontaxable amount for such organization for such taxable year, or

(2) the amount by which the grass roots expenditures made by the organization during the taxable year exceed the grass roots nontaxable amount for such organization for such taxable year.

(c) Definitions

For purposes of this section—

(1) Lobbying expenditures

The term "lobbying expenditures" means expenditures for the purpose of influencing legislation (as defined in subsection (d)).

(2) Lobbying nontaxable amount

The lobbying nontaxable amount for any organization for any taxable year is the lesser of (A) $1,000,000 or (B) the amount determined under the following table:

If the exempt purpose expenditures are—	The lobbying nontaxable amount is—
Not over $500,000	20 percent of the exempt purpose expenditures.
Over $500,000 but not over $1,000,000	$100,000, plus 15 percent of the excess of the exempt purpose expenditures over $500,000.
Over $1,000,000 but not over $1,500,000	$175,000 plus 10 percent of the excess of the exempt purpose expenditures over $1,000,000.
Over $1,500,000	$225,000 plus 5 percent of the excess of the exempt purpose expenditures over $1,500,000.

(3) Grass roots expenditures

The term "grass roots expenditures" means expenditures for the purpose of influencing legislation (as defined in subsection (d) without regard to paragraph (1)(B) thereof).

(4) Grass roots nontaxable amount

The grass roots nontaxable amount for any organization for any taxable year is 25 percent of the lobbying nontaxable amount (determined under paragraph (2)) for such organization for such taxable year.

(d) Influencing legislation

(1) General rule

Except as otherwise provided in paragraph (2), for purposes of this section, the term "influencing legislation" means—

(A) any attempt to influence any legislation through an attempt to affect the opinions of the general public or any segment thereof, and

(B) any attempt to influence any legislation through communication with any member or employee of a legislative body, or with any government official or employee who may participate in the formulation of the legislation.

(2) Exceptions

For purposes of this section, the term "influencing legislation", with respect to an organization, does not include—

(A) making available the results of nonpartisan analysis, study, or research;

(B) providing of technical advice or assistance (where such advice would otherwise constitute the influencing of legislation) to a governmental body or to a committee or other subdivision

thereof in response to a written request by such body or subdivision, as the case may be;

(C) appearances before, or communications to, any legislative body with respect to a possible decision of such body which might affect the existence of the organization, its powers and duties, tax-exempt status, or the deduction of contributions to the organization;

(D) communications between the organization and its bona fide members with respect to legislation or proposed legislation of direct interest to the organization and such members, other than communications described in paragraph (3); and

(E) any communication with a governmental official or employee, other than—

(i) a communication with a member or employee of a legislative body (where such communication would otherwise constitute the influencing of legislation), or

(ii) a communication the principal purpose of which is to influence legislation.

(3) Communications with members

(A) A communication between an organization and any bona fide member of such organization to directly encourage such member to communicate as provided in paragraph (1)(B) shall be treated as a communication described in paragraph (1)(B).

(B) A communication between an organization and any bona fide member of such organization to directly encourage such member to urge persons other than members to communicate as provided in either subparagraph (A) or subparagraph (B) of paragraph (1) shall be treated as a communication described in paragraph (1)(A).

(e) Other definitions and special rules

For purposes of this section—

(1) Exempt purpose expenditures

(A) In general

The term "exempt purpose expenditures" means, with respect to any organization for any taxable year, the total of the amounts paid or incurred by such organization to accomplish purposes described in section 170(c)(2)(B) (relating to religious, charitable, educational, etc., purposes).

(B) Certain amounts included

The term "exempt purpose expenditures" includes—

(i) administrative expenses paid or incurred for purposes described in section 170(c)(2)(B), and

(ii) amounts paid or incurred for the purpose of influencing legislation (whether or not for purposes described in section 170(c)(2)(B)).

(C) Certain amounts excluded

The term "exempt purpose expenditures" does not include amounts paid or incurred to or for—

(i) a separate fundraising unit of such organization, or

(ii) one or more other organizations, if such amounts are paid or incurred primarily for fundraising.

(2) Legislation

The term "legislation" includes action with respect to Acts, bills, resolutions, or similar items by the Congress, any State legislature, any local council, or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure.

(3) Action

The term "action" is limited to the introduction, amendment, enactment, defeat, or repeal of Acts, bills, resolutions, or similar items.

(4) Depreciation, etc., treated as expenditures

In computing expenditures paid or incurred for the purpose of influencing legislation (within the

meaning of subsection (b)(1) or (b)(2)) or exempt purpose expenditures (as defined in paragraph (1)), amounts properly chargeable to capital account shall not be taken into account. There shall be taken into account a reasonable allowance for exhaustion, wear and tear, obsolescence, or amortization. Such allowance shall be computed only on the basis of the straight-line method of depreciation. For purposes of this section, a determination of whether an amount is properly chargeable to capital account shall be made on the basis of the principles that apply under subtitle A to amounts which are paid or incurred in a trade or business.

(f) Affiliated organizations

(1) In general

Except as otherwise provided in paragraph (4), if for a taxable year two or more organizations described in section 501(c)(3) are members of an affiliated group of organizations as defined in paragraph (2), and an election under section 501(h) is effective for at least one such organization for such year, then—

(A) the determination as to whether excess lobbying expenditures have been made and the determination as to whether the expenditure limits of section 501(h)(1) have been exceeded shall be made as though such affiliated group is one organization,

(B) if such group has excess lobbying expenditures, each such organization as to which an election under section 501(h) is effective for such year shall be treated as an organization which has excess lobbying expenditures in an amount which equals such organization's proportionate share of such group's excess lobbying expenditures,

(C) if the expenditure limits of section 501(h)(1) are exceeded, each such organization as to which an election under section 501(h) is effective for such year shall be treated as an organization which is not described in section 501(c)(3) by reason of the application of 501(h), and

(D) subparagraphs (C) and (D) of subsection (d)(2), paragraph (3) or subsection (d), and clause (i) of subsection (e)(1)(C) shall be applied as if such affiliated group were one organization.

(2) Definition of affiliation

For purposes of paragraph (1), two organizations are members of an affiliated group of organizations but only if—

(A) the governing instrument of one such organization requires it to be bound by decisions of the other organization on legislative issues, or

(B) the governing board of one such organization includes persons who—

(i) are specifically designated representatives of another such organization or are members of the governing board, officers, or paid executive staff members of such other organization, and

(ii) by aggregating their votes, have sufficient voting power to cause or prevent action on legislative issues by the first such organization.

(3) Different taxable years

If members of an affiliated group of organizations have different taxable years, their expenditures shall be computed for purposes of this section in a manner to be prescribed by regulations promulgated by the Secretary.

(4) Limited control

If two or more organizations are members of an affiliated group of organizations (as defined in paragraph (2) without regard to subparagraph (B) thereof), no two members of such affiliated group are affiliated (as defined in paragraph (2) without regard to subparagraph (A) thereof), and the governing instrument of no such organization requires it to be bound by decisions of any of the other such organizations on legislative issues other than as to action with respect to Acts, bills, resolutions, or similar items by the Congress, then—

(A) in the case of any organization whose decisions bind one or more members of such

affiliated group, directly or indirectly, the determination as to whether such organization has paid or incurred excess lobbying expenditures and the determination as to whether such organization has exceeded the expenditure limits of section 501(h)(1) shall be made as though such organization has paid or incurred those amounts paid or incurred by such members of such affiliated group to influence legislation with respect to Acts, bills, resolutions, or similar items by the Congress, and

(B) in the case of any organization to which subparagraph (A) does not apply, but which is a member of such affiliated group, the determination as to whether such organization has paid or incurred excess lobbying expenditures and the determination as to whether such organization has exceeded the expenditure limits of section 501(h)(1) shall be made as though such organization is not a member of such affiliated group.

(Added Pub. L. 94–455, title XIII, §1307(b), Oct. 4, 1976, 90 Stat. 1723; amended Pub. L. 95–600, title VII, §703(g)(1), Nov. 6, 1978, 92 Stat. 2940.)

AMENDMENTS

1978—Subsec. (c)(2). Pub. L. 95–600 substituted "exempt purpose expenditures" for "proposed expenditures" in heading of table.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 effective Oct. 4, 1976, see section 703(r) of Pub. L. 95–600, set out as a note under section 46 of this title.

§4912. Tax on disqualifying lobbying expenditures of certain organizations

(a) Tax on organization

If an organization to which this section applies is not described in section 501(c)(3) for any taxable year by reason of making lobbying expenditures, there is hereby imposed a tax on the lobbying expenditures of such organization for such taxable year equal to 5 percent of the amount of such expenditures. The tax imposed by this subsection shall be paid by the organization.

(b) On management

If tax is imposed under subsection (a) on the lobbying expenditures of any organization, there is hereby imposed on the agreement of any organization manager to the making of any such expenditures, knowing that such expenditures are likely to result in the organization not being described in section 501(c)(3), a tax equal to 5 percent of the amount of such expenditures, unless such agreement is not willful and is due to reasonable cause. The tax imposed by this subsection shall be paid by any manager who agreed to the making of the expenditures.

(c) Organizations to which section applies

(1) In general

Except as provided in paragraph (2), this section shall apply to any organization which was exempt (or was determined by the Secretary to be exempt) from taxation under section 501(a) by reason of being an organization described in section 501(c)(3).

(2) Exceptions

This section shall not apply to any organization—

(A) to which an election under section 501(h) applies,

(B) which is a disqualified organization (within the meaning of section 501(h)(5)), or

(C) which is a private foundation.

(d) Definitions

(1) Lobbying expenditures

The term "lobbying expenditure" means any amount paid or incurred by the organization in carrying on propaganda, or otherwise attempting to influence legislation.

(2) Organization manager

The term "organization manager" has the meaning given to such term by section 4955(f)(2).

(3) Joint and several liability

If more than 1 person is liable under subsection (b), all such persons shall be jointly and severally liable under such subsection.

(Added Pub. L. 100–203, title X, §10714(a), Dec. 22, 1987, 101 Stat. 1330–470.)

EFFECTIVE DATE

Pub. L. 100–203, title X, §10714(e), Dec. 22, 1987, 101 Stat. 1330–472, provided that: "The amendments made by this section [enacting this section and amending sections 6501 and 7454 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Dec. 22, 1987]."

CHAPTER 42—PRIVATE FOUNDATIONS; AND CERTAIN OTHER TAX-EXEMPT ORGANIZATIONS

Subchapter		Sec.[1]
A.	**Private foundations**	**4940**
B.	**Black lung benefit trusts**	**4951**
C.	**Political expenditures of section 501(c)(3) organizations**	**4955**
D.	**Failure by certain charitable organizations to meet certain qualification requirements**	**4958**
E.	**Abatement of first and second tier taxes in certain cases**	**4961**
F.	**Tax shelter transactions**	**4965**
G.	**Donor advised funds**	**4966**

AMENDMENTS

2006—Pub. L. 109–280, title XII, §1231(b)(2), Aug. 17, 2006, 120 Stat. 1098, which directed the addition of item for subchapter G to the analysis for chapter 42 without specifying the act to be amended, was executed by adding the item to this analysis, which is for chapter 42 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

Pub. L. 109–222, title V, §516(a)(2), May 17, 2006, 120 Stat. 371, added item for subchapter F.

1996—Pub. L. 104–168, title XIII, §1311(c)(6), July 30, 1996, 110 Stat. 1478, struck out item for subchapter D "Abatement of first and second-tier taxes in certain cases" and added items for subchapters D and E.

1987—Pub. L. 100–203, title X, §10712(c)(7), (9), Dec. 22, 1987, 101 Stat. 1330–467, substituted in chapter heading "AND CERTAIN OTHER TAX-EXEMPT ORGANIZATIONS" for "BLACK LUNG BENEFIT TRUSTS", struck out item for subchapter C "Abatement of first and second tier taxes in certain cases", and added items for subchapters C and D.

1984—Pub. L. 98–369, div. A, title III, §305(b)(3), July 18, 1984, 98 Stat. 784, substituted "Abatement of first and second tier taxes in certain cases" for "Abatement of second tier taxes where there is correction during correction period" in item for subchapter C.

1980—Pub. L. 96–596, §2(c)(3), Dec. 24, 1980, 94 Stat. 3474, added item for subchapter C.

1978—Pub. L. 95–227, §4(c)(2)(A), Feb. 10, 1978, 92 Stat. 22, in chapter heading inserted "; BLACK LUNG BENEFIT TRUSTS" after "FOUNDATIONS", and added items for subchapters A and B.

1969—Pub. L. 91–172, title I, §101(b), Dec. 30, 1969, 83 Stat. 498, added chapter heading "PRIVATE FOUNDATIONS".

[1] *Section numbers editorially supplied.*

Subchapter A—Private Foundations

Sec.

4940. Excise tax based on investment income.
4941. Taxes on self-dealing.
4942. Taxes on failure to distribute income.
4943. Taxes on excess business holdings.
4944. Taxes on investments which jeopardize charitable purpose.
4945. Taxes on taxable expenditures.
4946. Definitions and special rules.
4947. Application of taxes to certain nonexempt trusts.
4948. Application of taxes and denial of exemption with respect to certain foreign organizations.

AMENDMENTS

1978—Pub. L. 95–227, §4(c)(2)(A), Feb. 10, 1978, 92 Stat. 22, added subchapter A heading and designated sections 4940 to 4948 as subchapter A.

1969—Pub. L. 91–172, title I, §101(b), Dec. 30, 1969, 83 Stat. 498, added analysis of sections.

§4940. Excise tax based on investment income

(a) Tax-exempt foundations

There is hereby imposed on each private foundation which is exempt from taxation under section 501(a) for the taxable year, with respect to the carrying on its activities, a tax equal to 2 percent of the net investment income of such foundation for the taxable year.

(b) Taxable foundations

There is hereby imposed on each private foundation which is not exempt from taxation under section 501(a) for the taxable year, with respect to the carrying on of its activities, a tax equal to—

(1) the amount (if any) by which the sum of (A) the tax imposed under subsection (a) (computed as if such subsection applied to such private foundation for the taxable year), plus (B) the amount of the tax which would have been imposed under section 511 for the taxable year if such private foundation had been exempt from taxation under section 501(a), exceeds

(2) the tax imposed under subtitle A on such private foundation for the taxable year.

(c) Net investment income defined

(1) In general

For purposes of subsection (a), the net investment income is the amount by which (A) the sum of the gross investment income and the capital gain net income exceeds (B) the deductions allowed by paragraph (3). Except to the extent inconsistent with the provisions of this section, net investment income shall be determined under the principles of subtitle A.

(2) Gross investment income

For purposes of paragraph (1), the term "gross investment income" means the gross amount of income from interest, dividends, rents, payments with respect to securities loans (as defined in section 512(a)(5)), and royalties, but not including any such income to the extent included in computing the tax imposed by section 511. Such term shall also include income from sources similar to those in the preceding sentence.

(3) Deductions

(A) In general

For purposes of paragraph (1), there shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred for the production or collection of gross investment income or for the management, conservation, or maintenance of property held for the production of such income, determined with the modifications set forth in subparagraph (B).

(B) Modifications

For purposes of subparagraph (A)—

(i) The deduction provided by section 167 shall be allowed, but only on the basis of the straight line method of depreciation.

(ii) The deduction for depletion provided by section 611 shall be allowed, but such deduction shall be determined without regard to section 613 (relating to percentage depletion).

(4) Capital gains and losses

For purposes of paragraph (1) in determining capital gain net income—

(A) There shall not be taken into account any gain or loss from the sale or other disposition of property to the extent that such gain or loss is taken into account for purposes of computing the tax imposed by section 511.

(B) The basis for determining gain in the case of property held by the private foundation on December 31, 1969, and continuously thereafter to the date of its disposition shall be deemed to be not less than the fair market value of such property on December 31, 1969.

(C) Losses from sales or other dispositions of property shall be allowed only to the extent of gains from such sales or other dispositions, and there shall be no capital loss carryovers or carrybacks.

(D) Except to the extent provided by regulation, under rules similar to the rules of section 1031 (including the exception under subsection (a)(2) thereof), no gain or loss shall be taken into account with respect to any portion of property used for a period of not less than 1 year for a purpose or function constituting the basis of the private foundation's exemption if the entire property is exchanged immediately following such period solely for property of like kind which is to be used primarily for a purpose or function constituting the basis for such foundation's exemption.

(5) Tax-exempt income

For purposes of this section, net investment income shall be determined by applying section 103 (relating to State and local bonds) and section 265 (relating to expenses and interest relating to tax-exempt income).

(d) Exemption for certain operating foundations

(1) In general

No tax shall be imposed by this section on any private foundation which is an exempt operating foundation for the taxable year.

(2) Exempt operating foundation

For purposes of this subsection, the term "exempt operating foundation" means, with respect to any taxable year, any private foundation if—

(A) such foundation is an operating foundation (as defined in section 4942(j)(3)),

(B) such foundation has been publicly supported for at least 10 taxable years,

(C) at all times during the taxable year, the governing body of such foundation—

(i) consists of individuals at least 75 percent of whom are not disqualified individuals, and

(ii) is broadly representative of the general public, and

(D) at no time during the taxable year does such foundation have an officer who is a disqualified individual.

(3) Definitions

For purposes of this subsection—

(A) Publicly supported

A private foundation is publicly supported for a taxable year if it meets the requirements of section 170(b)(1)(A)(vi) or 509(a)(2) for such taxable year.

(B) Disqualified individual

The term "disqualified individual" means, with respect to any private foundation, an

individual who is—

(i) a substantial contributor to the foundation,

(ii) an owner of more than 20 percent of—

(I) the total combined voting power of a corporation,

(II) the profits interest of a partnership, or

(III) the beneficial interest of a trust or unincorporated enterprise,

which is a substantial contributor to the foundation, or

(iii) a member of the family of any individual described in clause (i) or (ii).

(C) Substantial contributor

The term "substantial contributor" means a person who is described in section 507(d)(2).

(D) Family

The term "family" has the meaning given to such term by section 4946(d).

(E) Constructive ownership

The rules of paragraphs (3) and (4) of section 4946(a) shall apply for purposes of subparagraph (B)(ii).

(e) Reduction in tax where private foundation meets certain distribution requirements

(1) In general

In the case of any private foundation which meets the requirements of paragraph (2) for any taxable year, subsection (a) shall be applied with respect to such taxable year by substituting "1 percent" for "2 percent".

(2) Requirements

A private foundation meets the requirements of this paragraph for any taxable year if—

(A) the amount of the qualifying distributions made by the private foundation during such taxable year equals or exceeds the sum of—

(i) an amount equal to the assets of such foundation for such taxable year multiplied by the average percentage payout for the base period, plus

(ii) 1 percent of the net investment income of such foundation for such taxable year, and

(B) such private foundation was not liable for tax under section 4942 with respect to any year in the base period.

(3) Average percentage payout for base period

For purposes of this subsection—

(A) In general

The average percentage payout for the base period is the average of the percentage payouts for taxable years in the base period.

(B) Percentage payout

The term "percentage payout" means, with respect to any taxable year, the percentage determined by dividing—

(i) the amount of the qualifying distributions made by the private foundation during the taxable year, by

(ii) the assets of the private foundation for the taxable year.

(C) Special rule where tax reduced under this subsection

For purposes of this paragraph, if the amount of the tax imposed by this section for any taxable year in the base period is reduced by reason of this subsection, the amount of the qualifying distributions made by the private foundation during such year shall be reduced by the amount of such reduction in tax.

(4) Base period

For purposes of this subsection—

(A) In general

The term "base period" means, with respect to any taxable year, the 5 taxable years preceding such taxable year.

(B) New private foundations, etc.

If an organization has not been a private foundation throughout the base period referred to in subparagraph (A), the base period shall consist of the taxable years during which such foundation has been in existence.

(5) Other definitions

For purposes of this subsection—

(A) Qualifying distribution

The term "qualifying distribution" has the meaning given such term by section 4942(g).

(B) Assets

The assets of a private foundation for any taxable year shall be treated as equal to the excess determined under section 4942(e)(1).

(6) Treatment of successor organizations, etc.

In the case of—

(A) a private foundation which is a successor to another private foundation, this subsection shall be applied with respect to such successor by taking into account the experience of such other foundation, and

(B) a merger, reorganization, or division of a private foundation, this subsection shall be applied under regulations prescribed by the Secretary.

(Added Pub. L. 91–172, title I, §101(b), Dec. 30, 1969, 83 Stat. 498; amended Pub. L. 94–455, title XIX, §1901(b)(33)(N), Oct. 4, 1976, 90 Stat. 1802; Pub. L. 95–345, §2(a)(4), Aug. 15, 1978, 92 Stat. 481; Pub. L. 95–600, title V, §520(a), Nov. 6, 1978, 92 Stat. 2884; Pub. L. 98–369, div. A, title III, §§302(a), 303(a), July 18, 1984, 98 Stat. 779, 781; Pub. L. 99–514, title XIII, §1301(j)(6), title XVIII, §1832, Oct. 22, 1986, 100 Stat. 2658, 2851; Pub. L. 109–280, title XII, §1221(a)(1), (b), Aug. 17, 2006, 120 Stat. 1089; Pub. L. 110–172, §3(f), Dec. 29, 2007, 121 Stat. 2475.)

CODIFICATION

Section 1221(a)(1), (b) of Pub. L. 109–280, which directed the amendment of section 4940 without specifying the act to be amended, was executed to this section, which is section 4940 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

AMENDMENTS

2007—Subsec. (c)(4)(A). Pub. L. 110–172 amended text generally. Prior to amendment, text read as follows: "There shall be taken into account only gains and losses from the sale or other disposition of property used for the production of interest, dividends, rents, and royalties, and property used for the production of income included in computing the tax imposed by section 511 (except to the extent gain or loss from the sale or other disposition of such property is taken into account for purposes of such tax)."

2006—Subsec. (c)(2). Pub. L. 109–280, §1221(a)(1), inserted at end "Such term shall also include income from sources similar to those in the preceding sentence." See Codification note above.

Subsec. (c)(4)(A). Pub. L. 109–280, §1221(b)(1), substituted "gross investment income (as defined in paragraph (2))" for "interest, dividends, rents, and royalties". See Codification note above.

Subsec. (c)(4)(C). Pub. L. 109–280, §1221(b)(2), inserted "or carrybacks" after "carryovers". See Codification note above.

Subsec. (c)(4)(D). Pub. L. 109–280, §1221(b)(3), added subpar. (D). See Codification note above.

1986—Subsec. (c)(5). Pub. L. 99–514, §1301(j), substituted "(relating to State and local bonds)" for "(relating to interest on certain governmental obligations)".

Subsec. (e)(2). Pub. L. 99–514, §1832, added subpar. (B) and struck out former subpar. (B) and concluding

provision which read as follows:

"(B) the average percentage payout for the base period equals or exceeds 5 percent.

In the case of an operating foundation (as defined in section 4942(j)(3)), subparagraph (B) shall be applied by substituting '31/3 percent' for '5 percent'."

1984—Subsec. (d). Pub. L. 98–369, §302(a), added subsec. (d).

Subsec. (e). Pub. L. 98–369, §303(a), added subsec. (e).

1978—Subsec. (a). Pub. L. 95–600 substituted "2 percent" for "4 percent".

Subsec. (c)(2). Pub. L. 95–345 inserted provision relating to payments with respect to securities loans.

1976—Subsec. (c). Pub. L. 94–455 substituted "capital gain net income" for "net capital gain" in par. (1) after "investment income and the", and in par. (4) after "par. (1) in determining".

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–172 effective as if included in the provisions of the Pension Protection Act of 2006, Pub. L. 109–280, to which such amendment relates, see section 3(j) of Pub. L. 110–172, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 applicable to taxable years beginning after Aug. 17, 2006, see section 1221(c) of Pub. L. 109–280, set out as a note under section 509 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1301(j)(6) of Pub. L. 99–514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99–514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

Amendment by section 1832 of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title III, §302(c)(1), July 18, 1984, 98 Stat. 780, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1984."

Pub. L. 98–369, div. A, title III, §303(b), July 18, 1984, 98 Stat. 782, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1984."

EFFECTIVE DATE OF 1978 AMENDMENTS

Pub. L. 95–600, title V, §520(b), Nov. 6, 1978, 92 Stat. 2884, provided that: "The amendment made by the first section of this Act [probably meaning section 520(a), which amended this section] shall apply to taxable years beginning after September 30, 1977."

Amendment by Pub. L. 95–345 applicable with respect to amounts received after Dec. 31, 1976, as payments with respect to securities loans (as defined in section 512(a)(5) of this title), and transfers of securities, under agreements described in section 1058 of this title, occurring after such date, see section 2(e) of Pub. L. 95–345, set out as a note under section 509 of this title.

EFFECTIVE DATE

Pub. L. 91–172, title I, §101(k), Dec. 30, 1969, 83 Stat. 533, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided:

"(1) IN GENERAL.—Except as otherwise provided in this subsection and subsection (l) [set out as a note below] the amendments made by this section [enacting this section and sections 507 to 509, 4941 to 4848, 6056, 6684, and 6685 of this title, amending sections 101, 170, 501, 503, 542, 663, 681, 878, 884, 1443, 2039, 2517, 4057, 4221, 4253, 4294, 5214, 6033, 6034, 6043, 6104, 6161, 6201, 6211 to 6214, 6344, 6501, 6503, 6511, 6512, 6601, 6652, 6653, 6659, 6676, 6677, 6679, 6682, 7207, 7422, and 7454 of this title, repealing section 504 of this title, and enacting provisions set out as notes under this section and section 1 of this title] shall take effect on January 1, 1970.

"(2) PROVISIONS EFFECTIVE FOR TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1969 .—The following provisions shall apply to taxable years beginning after December 31, 1969:

"(A) Sections 4940, 4942, 4943, and 4948 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this section), and

"(B) The amendments made by subsection (d) [enacting section 6056 of this title, and amending

sections 6033 and 6652 of this title] and paragraphs (3), (15), (16), (20), (21), (30), (31), (32), (33), (34), (35), and (61) of subsection (j) [amending sections 501, 542, 878, 884, 6033, 6034, and 6043 of this title and repealing section 504 of this title].

"(3) SECTIONS 508(a), (b), AND (c).—Sections 508 (a),(b), and (c) of the Internal Revenue Code of 1986 (as added by this section) shall take effect on October 9, 1969."

SAVINGS PROVISION

Pub. L. 91–172, title I, §101(l), Dec. 30, 1969, 83 Stat. 533, as amended by Pub. L. 93–490, §4(a), Oct. 26, 1974, 88 Stat. 1467; Pub. L. 94–455, title XIII, §§1301(a), 1309(a), Oct. 4, 1976, 90 Stat. 1713, 1729; Pub. L. 95–600, title VII, §703(f), Nov. 6, 1978, 92 Stat. 2940; Pub. L. 98–369, div. A, title III, §314(b)(1), July 18, 1984, 98 Stat. 787; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) REFERENCES TO INTERNAL REVENUE CODE PROVISIONS.—Except as otherwise expressly provided, references in the following paragraphs of this subsection are to sections of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] as amended by this section.

"(2) SECTION 4941.—Section 4941 shall not apply to—

"(A) any transaction between a private foundation and a corporation which is a disqualified person (as defined in section 4946), pursuant to the terms of securities of such corporation in existence at the time acquired by the foundation, if such securities were acquired by the foundation before May 27, 1969;

"(B) the sale, exchange, or other disposition of property which is owned by a private foundation on May 26, 1969 (or which is acquired by a private foundation under the terms of a trust which was irrevocable on May 26, 1969, or under the terms of a will executed on or before such date, which are in effect on such date and at all times thereafter), to a disqualified person, if such foundation is required to dispose of such property in order not to be liable for tax under section 4943 (relating to taxes on excess business holdings) applied, in the case of a disposition before January 1, 1977, without taking section 4943(c)(4) into account and it receives in return an amount which equals or exceeds the fair market value of such property at the time of such disposition or at the time a contract for such disposition was previously executed in a transaction which would not constitute a prohibited transaction (within the meaning of section 503(b) or the corresponding provisions of prior law);

"(C) the leasing of property or the lending of money or other extension of credit between a disqualified person and a private foundation pursuant to a binding contract in effect on October 9, 1969 (or pursuant to renewals of such a contract), until taxable years beginning after December 31, 1979, if such leasing or lending (or other extension of credit) remains at least as favorable as an arm's-length transaction with an unrelated party and if the execution of such contract was not at the time of such execution a prohibited transaction (within the meaning of section 503(b) or the corresponding provisions of prior law);

"(D) the use of goods, services, or facilities which are shared by a private foundation and a disqualified person until taxable years beginning after December 31, 1979, if such use is pursuant to an arrangement in effect before October 9, 1969, and such arrangement was not a prohibited transaction (within the meaning of section 503(b) or the corresponding provisions of prior law) at the time it was made and would not be a prohibited transaction if such section continued to apply;

"(E) the use of property in which a private foundation and a disqualified person have a joint or common interest, if the interests of both in such property were acquired before October 9, 1969; and

"(F) the sale, exchange, or other disposition (other than by lease) of property which is owned by a private foundation to a disqualified person if—

"(i) such foundation is leasing substantially all of such property under a lease to which subparagraph (C) applies,

"(ii) the disposition to such disqualified person occurs before January 1, 1978, and

"(iii) such foundation receives in return for the disposition to such disqualified person an amount which equals or exceeds the fair market value of such property at the time of the disposition or at the time (after June 30, 1976) a contract for the disposition was previously executed in a transaction which would not constitute a prohibited transaction (within the meaning of section 503(b) or any corresponding provision of prior law).

"(3) SECTION 4942.—In the case of organizations organized before May 27, 1969, section 4942 shall—

"(A) for all purposes other than the determination of the minimum investment return under section 4942(j)(3)(B)(ii), for taxable years beginning before January 1, 1972, apply without regard to section 4942(e) (relating to minimum investment return), and for taxable years beginning in 1972, 1973, and 1974, apply with an applicable percentage (as prescribed in section 4942(e)(3)) which does not exceed 4½ percent, 5 percent, and 5½ percent, respectively;

"(B) not apply to an organization to the extent its income is required to be accumulated pursuant to the

mandatory terms (as in effect on May 26, 1969, and at all times thereafter) of an instrument executed before May 27, 1969, with respect to the transfer of income producing property to such organization, except that section 4942 shall apply to such organization if the organization would have been denied exemption if section 504(a) had not been repealed by this Act, or would have had its deductions under section 642(c) limited if section 681(c) had not been repealed by this Act. In applying the preceding sentence, in addition to the limitations contained in section 504(a) or 681(c) before its repeal, section 504(a)(1) or 681(c)(1) shall be treated as not applying to an organization to the extent its income is required to be accumulated pursuant to the mandatory terms (as in effect on January 1, 1951, and at all times thereafter) of an instrument executed before January 1, 1951, with respect to the transfer of income producing property to such organization before such date, if such transfer was irrevocable on such date;

"(C) apply to a grant to a private foundation described in section 4942(g)(1)(A)(ii) which is not described in section 4942(g)(1)(A)(i), pursuant to a written commitment which was binding on May 26, 1969, and at all times thereafter, as if such grant is a grant to an operating foundation (as defined in section 4942(j)(3)), if such grant is made for one or more of the purposes described in section 170(c)(2)(B) and is to be paid out to such private foundation on or before December 31, 1974;

"(D) apply, for purposes of section 4942(f), in such a manner as to treat any distribution made to a private foundation in redemption of stock held by such private foundation in a business enterprise as not essentially equivalent to a dividend under section 302(b)(1) if such redemption is described in paragraph (2)(B) of this subsection;

"(E) not apply to an organization which is prohibited by its governing instrument or other instrument from distributing capital or corpus to the extent the requirements of section 4942 are inconsistent with such prohibition; and

"(F) apply, in the case of an organization described in paragraph (4)(A) of this subsection,

"(i) by applying section 4942(e) without regard to the stock to which paragraph (4)(A)(ii) of this subsection applies,

"(ii) by applying section 4942(f) without regard to dividend income for such stock, and

"(iii) by defining the distributable amount as the sum of the amount determined under section 4942(d) (after the application of clauses (i) and (ii)), and the amount of the dividend income from such stock.

With respect to taxable years beginning after December 31, 1971, subparagraphs (B) and (E) shall apply only during the pendency of any judicial proceeding by the private foundation which is necessary to reform, or to excuse such foundation from compliance with, its governing instrument or any other instrument (as in effect on May 26, 1969) in order to comply with the provisions of section 4942, and in the case of subparagraph (B) for all periods after the termination of such judicial proceeding during which the governing instrument or any other instrument does not permit compliance with such provisions.

"(4) SECTION 4943.—

"(A) In the case of a private foundation—

"(i) which was incorporated before January 1, 1951;

"(ii) substantially all of the assets of which on May 26, 1969, consist of more than 90 percent of the stock of an incorporated business enterprise which is licensed and regulated, the sales or contracts of which are regulated, and the professional representatives of which are licensed, by State regulatory agencies in at least 10 States; and

"(iii) which acquired such stock solely by gift, devise, or bequest, section 4943(c)(4)(A)(i) shall be applied with respect to the holdings of such foundation in such incorporated business enterprise as if it did not contain the phrase ', but in no event shall the percentage so substituted be more than 50 percent', and section 4943(c)(4)(D) shall not apply with respect to such holdings. For purposes of the preceding sentence, stock of such enterprise in a trust created before May 27, 1969, of which the foundation is the remainder beneficiary shall be deemed to be held by such foundation on May 26, 1969, if such foundation held (without regard to such trust) more than 20 percent of the stock of such enterprise on May 26, 1969.

"(B) Subparagraph (A) shall apply to a private foundation only if—

"(i) the foundation does not purchase any stock or other interest in the enterprise described in subparagraph (A) after May 26, 1969, and does not acquire any stock or other interest in any other business enterprise which constitutes excess business holdings under section 4943; and

"(ii) in the last 5 taxable years ending on or before December 31, 1970, the foundation expends substantially all of its adjusted net income (as defined in section 4942(f)) for the purpose or function for which it is organized and operated.

"(C) For purposes of section 4943(c)(6), the term 'purchase' does not include an exchange which is

described in paragraph (2)(B) of this subsection and which is pursuant to a plan for disposition of excess business holdings.

"(5) SECTION 4945.—Section 4945(d)(4) and (h) shall not apply to a grant which is described in paragraph (3)(C) of this subsection.

"(6) SECTION 508(e).—Section 508(e) shall not apply to require inclusion in governing instruments of any provisions inconsistent with this subsection.

"(7) SECTION 509(a).—In the case of any trust created under the terms of a will or a codicil to a will executed on or before March 30, 1924, by which the testator bequeathed all of the outstanding common stock of a corporation in trust, the income of which trust is to be used principally for the benefit of those from time to time employed by the corporation and their families, the trustees of which trust are elected or selected from among the employees of such corporation, and which trust does not own directly any stock in any other corporation, if the trust makes an irrevocable election under this paragraph within one year after the date of the enactment of this Act [Dec. 30, 1969], such trust shall be treated as not being a private foundation for purposes of the Internal Revenue Code of 1986 but shall be treated for purposes of such Code as if it were not exempt from tax under section 501(a) for any taxable year beginning after the date of the enactment of this Act [Dec. 30, 1969] and before the date (if any) on which such trust has complied with the requirements of section 507 for termination of the status of an organization as a private foundation.

"(8) CERTAIN REDEMPTIONS.—For purposes of applying section 302(b)(1) to the determination of the amount of gross investment income under sections 4940 and 4948(a), any distribution made to a private foundation in redemption of stock held by such private foundation in a business enterprise shall be treated as not essentially equivalent to a dividend, if such redemption is described in paragraph (2)(B) of this subsection."

[Pub. L. 98–369, div. A, title III, §314(b)(2), July 18, 1984, 98 Stat. 787, provided that: "The amendment made by paragraph (1) [amending section 101(4)(A)(iii) of Pub. L. 91–172, set out above] shall apply as if included in section 101(l)(4) of the Tax Reform Act of 1969 [Pub. L. 91–172]."]

[Pub. L. 94–455, title XIII, §1301(b), Oct. 4, 1976, 90 Stat. 1713, provided that: "The amendments made by subsection (a) [enacting subpar. (F) of section 101(2) of Pub. L. 91–172, set out above] shall apply to dispositions after the date of the enactment of this Act [Oct. 4, 1976] in taxable years ending after such date."]

[Pub. L. 94–455, title XIII, §1309(b), Oct. 4, 1976, 90 Stat. 1729, provided that: "The amendment made by this section [amending section 101(2)(B) of Pub. L. 91–172, set out above] shall apply to dispositions made after the date of enactment of this Act [Oct. 4, 1976]."]

[Pub. L. 93–490, §4(b), Oct. 26, 1974, 88 Stat. 1467, provided that: "The amendment made by this section [enacting subpar. (F) of section 101(3) of Pub. L. 91–172, set out above] shall apply to taxable years beginning after December 31, 1971."]

DETERMINATION OF OPERATING FOUNDATION STATUS FOR CERTAIN PURPOSES

Pub. L. 100–647, title VI, §6204, Nov. 10, 1988, 102 Stat. 3730, provided that: "For purposes of section 302(c)(3) of the Deficit Reduction Act of 1984 [Pub. L. 98–369, set out below], a private foundation which constituted an operating foundation (as defined in section 4942(j)(3) of the Internal Revenue Code of 1986) for its last taxable year ending before January 1, 1983, shall be treated as constituting an operating foundation as of January 1, 1983."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

PUBLIC SUPPORT REQUIREMENT NOT APPLICABLE TO CERTAIN EXISTING FOUNDATIONS

Pub. L. 98–369, div. A, title III, §302(c)(3), July 18, 1984, 98 Stat. 781, provided that: "A foundation which was an operating foundation (as defined in section 4942(j)(3) of the Internal Revenue Code of 1954) as of January 1, 1983, shall be treated as meeting the requirements of section 4940(d)(2)(B) of such Code (as added by subsection (a))."

§4941. Taxes on self-dealing

(a) Initial taxes

(1) On self-dealer

There is hereby imposed a tax on each act of self-dealing between a disqualified person and a private foundation. The rate of tax shall be equal to 10 percent of the amount involved with respect to the act of self-dealing for each year (or part thereof) in the taxable period. The tax imposed by this paragraph shall be paid by any disqualified person (other than a foundation manager acting only as such) who participates in the act of self-dealing. In the case of a government official (as defined in section 4946(c)), a tax shall be imposed by this paragraph only if such disqualified person participates in the act of self-dealing knowing that it is such an act.

(2) On foundation manager

In any case in which a tax is imposed by paragraph (1), there is hereby imposed on the participation of any foundation manager in an act of self-dealing between a disqualified person and a private foundation, knowing that it is such an act, a tax equal to 5 percent of the amount involved with respect to the act of self-dealing for each year (or part thereof) in the taxable period, unless such participation is not willful and is due to reasonable cause. The tax imposed by this paragraph shall be paid by any foundation manager who participated in the act of self-dealing.

(b) Additional taxes

(1) On self-dealer

In any case in which an initial tax is imposed by subsection (a)(1) on an act of self-dealing by a disqualified person with a private foundation and the act is not corrected within the taxable period, there is hereby imposed a tax equal to 200 percent of the amount involved. The tax imposed by this paragraph shall be paid by any disqualified person (other than a foundation manager acting only as such) who participated in the act of self-dealing.

(2) On foundation manager

In any case in which an additional tax is imposed by paragraph (1), if a foundation manager refused to agree to part or all of the correction, there is hereby imposed a tax equal to 50 percent of the amount involved. The tax imposed by this paragraph shall be paid by any foundation manager who refused to agree to part or all of the correction.

(c) Special rules

For purposes of subsections (a) and (b)—

(1) Joint and several liability

If more than one person is liable under any paragraph of subsection (a) or (b) with respect to any one act of self-dealing, all such persons shall be jointly and severally liable under such paragraph with respect to such act.

(2) $20,000 limit for management

With respect to any one act of self-dealing, the maximum amount of the tax imposed by subsection (a)(2) shall not exceed $20,000, and the maximum amount of the tax imposed by subsection (b)(2) shall not exceed $20,000.

(d) Self-dealing

(1) In general

For purposes of this section, the term "self-dealing" means any direct or indirect—

(A) sale or exchange, or leasing, of property between a private foundation and a disqualified person;

(B) lending of money or other extension of credit between a private foundation and a disqualified person;

(C) furnishing of goods, services, or facilities between a private foundation and a disqualified person;

(D) payment of compensation (or payment or reimbursement of expenses) by a private

foundation to a disqualified person;

(E) transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation; and

(F) agreement by a private foundation to make any payment of money or other property to a government official (as defined in section 4946(c)), other than an agreement to employ such individual for any period after the termination of his government service if such individual is terminating his government service within a 90-day period.

(2) Special rules

For purposes of paragraph (1)—

(A) the transfer of real or personal property by a disqualified person to a private foundation shall be treated as a sale or exchange if the property is subject to a mortgage or similar lien which the foundation assumes or if it is subject to a mortgage or similar lien which a disqualified person placed on the property within the 10-year period ending on the date of the transfer;

(B) the lending of money by a disqualified person to a private foundation shall not be an act of self-dealing if the loan is without interest or other charge (determined without regard to section 7872) and if the proceeds of the loan are used exclusively for purposes specified in section 501(c)(3);

(C) the furnishing of goods, services, or facilities by a disqualified person to a private foundation shall not be an act of self-dealing if the furnishing is without charge and if the goods, services, or facilities so furnished are used exclusively for purposes specified in section 501(c)(3);

(D) the furnishing of goods, services, or facilities by a private foundation to a disqualified person shall not be an act of self-dealing if such furnishing is made on a basis no more favorable than that on which such goods, services, or facilities are made available to the general public;

(E) except in the case of a government official (as defined in section 4946(c)), the payment of compensation (and the payment or reimbursement of expenses) by a private foundation to a disqualified person for personal services which are reasonable and necessary to carrying out the exempt purpose of the private foundation shall not be an act of self-dealing if the compensation (or payment or reimbursement) is not excessive;

(F) any transaction between a private foundation and a corporation which is a disqualified person (as defined in section 4946(a)), pursuant to any liquidation, merger, redemption, recapitalization, or other corporate adjustment, organization, or reorganization, shall not be an act of self-dealing if all of the securities of the same class as that held by the foundation are subject to the same terms and such terms provide for receipt by the foundation of no less than fair market value;

(G) in the case of a government official (as defined in section 4946(c)), paragraph (1) shall in addition not apply to—

(i) prizes and awards which are subject to the provisions of section 74(b) (without regard to paragraph (3) thereof), if the recipients of such prizes and awards are selected from the general public,

(ii) scholarships and fellowship grants which would be subject to the provisions of section 117(a) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) and are to be used for study at an educational organization described in section 170(b)(1)(A)(ii),

(iii) any annuity or other payment (forming part of a stock-bonus, pension, or profit-sharing plan) by a trust which is a qualified trust under section 401,

(iv) any annuity or other payment under a plan which meets the requirements of section 404(a)(2),

(v) any contribution or gift (other than a contribution or gift of money) to, or services or facilities made available to, any such individual, if the aggregate value of such contributions, gifts, services, and facilities to, or made available to, such individual during any calendar year

does not exceed $25,

(vi) any payment made under chapter 41 of title 5, United States Code, or

(vii) any payment or reimbursement of traveling expenses for travel solely from one point in the United States to another point in the United States, but only if such payment or reimbursement does not exceed the actual cost of the transportation involved plus an amount for all other traveling expenses not in excess of 125 percent of the maximum amount payable under section 5702 of title 5, United States Code, for like travel by employees of the United States; and

(H) the leasing by a disqualified person to a private foundation of office space for use by the foundation in a building with other tenants who are not disqualified persons shall not be treated as an act of self-dealing if—

(i) such leasing of office space is pursuant to a binding lease which was in effect on October 9, 1969, or pursuant to renewals of such a lease;

(ii) the execution of such lease was not a prohibited transaction (within the meaning of section 503(b) or any corresponding provision of prior law) at the time of such execution; and

(iii) the terms of the lease (or any renewal) reflect an arm's-length transaction.

(e) Other definitions

For purposes of this section—

(1) Taxable period

The term "taxable period" means, with respect to any act of self-dealing, the period beginning with the date on which the act of self-dealing occurs and ending on the earliest of—

(A) the date of mailing a notice of deficiency with respect to the tax imposed by subsection (a)(1) under section 6212,

(B) the date on which the tax imposed by subsection (a)(1) is assessed, or

(C) the date on which correction of the act of self-dealing is completed.

(2) Amount involved

The term "amount involved" means, with respect to any act of self-dealing, the greater of the amount of money and the fair market value of the other property given or the amount of money and the fair market value of the other property received; except that, in the case of services described in subsection (d)(2)(E), the amount involved shall be only the excess compensation. For purposes of the preceding sentence, the fair market value—

(A) in the case of the taxes imposed by subsection (a), shall be determined as of the date on which the act of self-dealing occurs; and

(B) in the case of the taxes imposed by subsection (b), shall be the highest fair market value during the taxable period.

(3) Correction

The terms "correction" and "correct" mean, with respect to any act of self-dealing, undoing the transaction to the extent possible, but in any case placing the private foundation in a financial position not worse than that in which it would be if the disqualified person were dealing under the highest fiduciary standards.

(Added Pub. L. 91–172, title I, §101(b), Dec. 30, 1969, 83 Stat. 499; amended Pub. L. 94–455, title XIX, §§1901(b)(8)(H), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1795, 1834; Pub. L. 96–596, §2(a)(1)(A), (B), (2)(A), (3)(A), Dec. 24, 1980, 94 Stat. 3469, 3471; Pub. L. 96–608, §5, Dec. 28, 1980, 94 Stat. 3553; Pub. L. 99–234, title I, §107(c), Jan. 2, 1986, 99 Stat. 1759; Pub. L. 99–514, title I, §122(a)(2)(A), title XVIII, §1812(b)(1), Oct. 22, 1986, 100 Stat. 2110, 2833; Pub. L. 100–647, title I, §1001(d)(1)(A), Nov. 10, 1988, 102 Stat. 3350; Pub. L. 109–280, title XII, §1212(a)(1), (2), Aug. 17, 2006, 120 Stat. 1074.)

REFERENCES IN TEXT

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (d)(2)(G)(ii), is the date of

enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

CODIFICATION

Section 1212(a)(1), (2) of Pub. L. 109–280, which directed the amendment of section 4941 without specifying the act to be amended, was executed to this section, which is section 4941 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

AMENDMENTS

2006—Subsec. (a)(1). Pub. L. 109–280, §1212(a)(1)(A), substituted "10 percent" for "5 percent". See Codification note above.

Subsec. (a)(2). Pub. L. 109–280, §1212(a)(1)(B), substituted "5 percent" for "2½ percent". See Codification note above.

Subsec. (c)(2). Pub. L. 109–280, §1212(a)(2), substituted "$20,000" for "$10,000" wherever appearing in heading and text. See Codification note above.

1988—Subsec. (d)(2)(G)(ii). Pub. L. 100–647 amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: "scholarships and fellowship grants which are subject to the provisions of section 117(a) and are to be used for study at an educational organization described in section 170(b)(1)(A)(ii),".

1986—Subsec. (d)(2)(B). Pub. L. 99–514, §1812(b)(1), inserted "(determined without regard to section 7872)" after "without interest or other charge".

Subsec. (d)(2)(G)(i). Pub. L. 99–514, §122(a)(2)(A), inserted "(without regard to paragraph (3) thereof)" after "section 74(b)".

Subsec. (d)(2)(G)(vii). Pub. L. 99–234 substituted "5702" for "5702(a)".

1980—Subsec. (b)(1). Pub. L. 96–596, §2(a)(1)(A), substituted "taxable period" for "correction period".

Subsec. (d)(2)(H). Pub. L. 96–608 added subpar. (H).

Subsec. (e)(1)(B), (C). Pub. L. 96–596, §2(a)(2)(A), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (e)(2)(B). Pub. L. 96–596, §2(a)(1)(B), substituted "taxable period" for "correction period".

Subsec. (e)(4). Pub. L. 96–596, §2(a)(3)(A), struck out par. (4) which defined correction period, with respect to any act of self-dealing, as the period beginning with the date on which the act of self-dealing occurs and ending 90 days after the date of mailing of a notice of deficiency with respect to the tax imposed by subsec. (b)(1) of this section under section 6212 of this title, extended by any period in which the deficiency cannot be assessed under section 6213(a) of this title and any other period which the Secretary determines is reasonable and necessary to bring about correction of the act of self-dealing.

1976—Subsec. (d)(2)(G)(ii). Pub. L. 94–455, §1901(b)(8)(H), substituted "educational organization described in section 170(b)(1)(A)(ii)" for "educational institution described in section 151(e)(4)" after "study at an".

Subsec. (e)(4). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title XII, §1212(f), Aug. 17, 2006, 120 Stat. 1075, provided that: "The amendments made by this section [amending this section and sections 4942 to 4945 and 4958 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 17, 2006]."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 122(a)(2)(A) of Pub. L. 99–514 applicable to prizes and awards granted after Dec. 31, 1986, see section 151(c) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 1812(b)(1) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Amendment by Pub. L. 99–234 effective (1) on effective date of regulations to be promulgated not later than 150 days after Jan. 2, 1986, or (2) 180 days after Jan. 2, 1986, whichever occurs first, see section 301(a) of Pub. L. 99–234, set out as a note under section 5701 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1980 AMENDMENT

For effective date of amendment by Pub. L. 96–596 with respect to any first tier tax and to any second tier tax, see section 2(d) of Pub. L. 96–596, set out as an Effective Date note under section 4961 of this title.

SAVINGS PROVISION

Exceptions to applicability of section, see section 101(l)(2) of Pub. L. 91–172, set out as a note under section 4940 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TAX ON SELF-DEALING NOT TO APPLY TO CERTAIN STOCK PURCHASES

Pub. L. 98–369, div. A, title III, §312, July 18, 1984, 98 Stat. 786, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) GENERAL RULE.—Section 4941 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to taxes on self-dealing) shall not apply to the purchase during 1978 of stock from a private foundation (and to any note issued in connection with such purchase) if—

"(1) consideration for such purchase equaled or exceeded the fair market value of such stock,

"(2) the purchaser of such stock did not make any contribution to such foundation at any time during the 5-year period ending on the date of such purchase,

"(3) the aggregate contributions to such foundation by the purchaser before such date were less than $10,000 and less than 2 percent of the total contributions received by the foundation as of such date, and

"(4) such purchase was pursuant to the settlement of litigation involving the purchaser.

"(b) STATUTE OF LIMITATIONS.—If credit or refund of any overpayment of tax resulting from subsection (a) is prevented at any time before the close of the 1-year period beginning on the date of the enactment of this Act [July 18, 1984] by the operation of any law or rule of law, refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed before the close of such 1-year period."

APPLICABILITY TO DETERMINATION OF STATUS AS SUBSTANTIAL CONTRIBUTOR FOR PURPOSES OF TAXES ON SELF-DEALING OF CONTRIBUTIONS MADE PRIOR TO OCTOBER 9, 1969

Determination of status as substantial contributor within section 507(d)(2) of this title for purposes of applying this section, see section 3 of Pub. L. 95–170, set out as a note under section 507 of this title.

§4942. Taxes on failure to distribute income

(a) Initial tax

There is hereby imposed on the undistributed income of a private foundation for any taxable year, which has not been distributed before the first day of the second (or any succeeding) taxable year following such taxable year (if such first day falls within the taxable period), a tax equal to 30 percent of the amount of such income remaining undistributed at the beginning of such second (or succeeding) taxable year. The tax imposed by this subsection shall not apply to the undistributed income of a private foundation—

(1) for any taxable year for which it is an operating foundation (as defined in subsection (j)(3)), or

(2) to the extent that the foundation failed to distribute any amount solely because of an incorrect valuation of assets under subsection (e), if—

(A) the failure to value the assets properly was not willful and was due to reasonable cause,

(B) such amount is distributed as qualifying distributions (within the meaning of subsection (g)) by the foundation during the allowable distribution period (as defined in subsection (j)(2)),

(C) the foundation notifies the Secretary that such amount has been distributed (within the meaning of subparagraph (B)) to correct such failure, and

(D) such distribution is treated under subsection (h)(2) as made out of the undistributed

income for the taxable year for which a tax would (except for this paragraph) have been imposed under this subsection.

(b) Additional tax

In any case in which an initial tax is imposed under subsection (a) on the undistributed income of a private foundation for any taxable year, if any portion of such income remains undistributed at the close of the taxable period, there is hereby imposed a tax equal to 100 percent of the amount remaining undistributed at such time.

(c) Undistributed income

For purposes of this section, the term "undistributed income" means, with respect to any private foundation for any taxable year as of any time, the amount by which—

(1) the distributable amount for such taxable year, exceeds

(2) the qualifying distributions made before such time out of such distributable amount.

(d) Distributable amount

For purposes of this section, the term "distributable amount" means, with respect to any foundation for any taxable year, an amount equal to—

(1) the sum of the minimum investment return plus the amounts described in subsection (f)(2)(C), reduced by

(2) the sum of the taxes imposed on such private foundation for the taxable year under subtitle A and section 4940.

(e) Minimum investment return

(1) In general

For purposes of subsection (d), the minimum investment return for any private foundation for any taxable year is 5 percent of the excess of—

(A) the aggregate fair market value of all assets of the foundation other than those which are used (or held for use) directly in carrying out the foundation's exempt purpose, over

(B) the acquisition indebtedness with respect to such assets (determined under section 514(c)(1) without regard to the taxable year in which the indebtedness was incurred).

(2) Valuation

(A) In general

For purposes of paragraph (1)(A), the fair market value of securities for which market quotations are readily available shall be determined on a monthly basis. For all other assets, the fair market value shall be determined at such times and in such manner as the Secretary shall by regulations prescribe.

(B) Reductions in value for blockage or similar factors

In determining the value of any securities under this paragraph, the fair market value of such securities (determined without regard to any reduction in value) shall not be reduced unless, and only to the extent that, the private foundation establishes that as a result of—

(i) the size of the block of such securities,

(ii) the fact that the securities held are securities in a closely held corporation, or

(iii) the fact that the sale of such securities would result in a forced or distress sale,

the securities could not be liquidated within a reasonable period of time except at a price less than such fair market value. Any reduction in value allowable under this subparagraph shall not exceed 10 percent of such fair market value.

(f) Adjusted net income

(1) Defined

For purposes of subsection (j), the term "adjusted net income" means the excess (if any) of—

(A) the gross income for the taxable year (determined with the income modifications

provided by paragraph (2)), over

(B) the sum of the deductions (determined with the deduction modifications provided by paragraph (3)) which would be allowed to a corporation subject to the tax imposed by section 11 for the taxable year.

(2) Income modifications

The income modifications referred to in paragraph (1)(A) are as follows:

(A) section 103 (relating to State and local bonds) shall not apply,

(B) capital gains and losses from the sale or other disposition of property shall be taken into account only in an amount equal to any net short-term capital gain for the taxable year;

(C) there shall be taken into account—

(i) amounts received or accrued as repayments of amounts which were taken into account as a qualifying distribution within the meaning of subsection (g)(1)(A) for any taxable year;

(ii) notwithstanding subparagraph (B), amounts received or accrued from the sale or other disposition of property to the extent that the acquisition of such property was taken into account as a qualifying distribution (within the meaning of subsection (g)(1)(B)) for any taxable year; and

(iii) any amount set aside under subsection (g)(2) to the extent it is determined that such amount is not necessary for the purposes for which it was set aside; and

(D) section 483 (relating to imputed interest) shall not apply in the case of a binding contract made in a taxable year beginning before January 1, 1970.

(3) Deduction modifications

The deduction modifications referred to in paragraph (1)(B) are as follows:

(A) no deduction shall be allowed other than all the ordinary and necessary expenses paid or incurred for the production or collection of gross income or for the management, conservation, or maintenance of property held for the production of such income and the allowances for depreciation and depletion determined under section 4940(c)(3)(B), and

(B) section 265 (relating to expenses and interest relating to tax-exempt interest) shall not apply.

(4) Transitional rule

For purposes of paragraph (2)(B), the basis (for purposes of determining gain) of property held by a private foundation on December 31, 1969, and continuously thereafter to the date of its disposition, shall be deemed to be not less than the fair market value of such property on December 31, 1969.

(g) Qualifying distributions defined

(1) In general

For purposes of this section, the term "qualifying distribution" means—

(A) any amount (including that portion of reasonable and necessary administrative expenses) paid to accomplish one or more purposes described in section 170(c)(2)(B), other than any contribution to (i) an organization controlled (directly or indirectly) by the foundation or one or more disqualified persons (as defined in section 4946) with respect to the foundation, except as provided in paragraph (3), or (ii) a private foundation which is not an operating foundation (as defined in subsection (j)(3)), except as provided in paragraph (3), or

(B) any amount paid to acquire an asset used (or held for use) directly in carrying out one or more purposes described in section 170(c)(2)(B).

(2) Certain set-asides

(A) In general

For all taxable years beginning on or after January 1, 1975, subject to such terms and conditions as may be prescribed by the Secretary, an amount set aside for a specific project

which comes within one or more purposes described in section 170(c)(2)(B) may be treated as a qualifying distribution if it meets the requirements of subparagraph (B).

(B) Requirements

An amount set aside for a specific project shall meet the requirements of this subparagraph if at the time of the set-aside the foundation establishes to the satisfaction of the Secretary that the amount will be paid for the specific project within 5 years, and either—

(i) at the time of the set-aside the private foundation establishes to the satisfaction of the Secretary that the project is one which can better be accomplished by such set-aside than by immediate payment of funds, or

(ii)(I) the project will not be completed before the end of the taxable year of the foundation in which the set-aside is made,

(II) the private foundation in each taxable year beginning after December 31, 1975 (or after the end of the fourth taxable year following the year of its creation, whichever is later), distributes amounts, in cash or its equivalent, equal to not less than the distributable amount determined under subsection (d) (without regard to subsection (i)) for purposes described in section 170(c)(2)(B) (including but not limited to payments with respect to set-asides which were treated as qualifying distributions in one or more prior years), and

(III) the private foundation has distributed (including but not limited to payments with respect to set-asides which were treated as qualifying distributions in one or more prior years) during the four taxable years immediately preceding its first taxable year beginning after December 31, 1975, or the fifth taxable year following the year of its creation, whichever is later, an aggregate amount, in cash or its equivalent, of not less than the sum of the following: 80 percent of the first preceding taxable year's distributable amount; 60 percent of the second preceding taxable year's distributable amount; 40 percent of the third preceding taxable year's distributable amount; and 20 percent of the fourth preceding taxable year's distributable amount.

(C) Certain failures to distribute

If, for any taxable year to which clause (ii)(II) of subparagraph (B) applies, the private foundation fails to distribute in cash or its equivalent amounts not less than those required by such clause and—

(i) the failure to distribute such amounts was not willful and was due to reasonable cause, and

(ii) the foundation distributes an amount in cash or its equivalent which is not less than the difference between the amounts required to be distributed under clause (ii)(II) of subparagraph (B) and the amounts actually distributed in cash or its equivalent during that taxable year within the correction period (as defined in section 4963(e)),

such distribution in cash or its equivalent shall be treated for the purposes of this subparagraph as made during such year.

(D) Reduction in distribution amount

If, during the taxable years in the adjustment period for which the organization is a private foundation, the foundation distributes amounts in cash or its equivalent which exceed the amount required to be distributed under clause (ii)(II) of subparagraph (B) (including but not limited to payments with respect to set-asides which were treated as qualifying distributions in prior years), then for purposes of this subsection the distribution required under clause (ii)(II) of subparagraph (B) for the taxable year shall be reduced by an amount equal to such excess.

(E) Adjustment period

For purposes of subparagraph (D), with respect to any taxable year of a private foundation, the taxable years in the adjustment period are the taxable years (not exceeding 5) beginning after December 31, 1975, and immediately preceding the taxable year.

In the case of a set-aside which satisfies the requirements of clause (i) of subparagraph (B), for good cause shown, the period for paying the amount set aside may be extended by the Secretary.

(3) Certain contributions to section 501(c)(3) organizations

For purposes of this section, the term "qualifying distribution" includes a contribution to a section 501(c)(3) organization described in paragraph (1)(A)(i) or (ii) if—

(A) not later than the close of the first taxable year after its taxable year in which such contribution is received, such organization makes a distribution equal to the amount of such contribution and such distribution is a qualifying distribution (within the meaning of paragraph (1) or (2), without regard to this paragraph) which is treated under subsection (h) as a distribution out of corpus (or would be so treated if such section 501(c)(3) organization were a private foundation which is not an operating foundation), and

(B) the private foundation making the contribution obtains adequate records or other sufficient evidence from such organization showing that the qualifying distribution described in subparagraph (A) has been made by such organization.

(4) Limitation on distributions by nonoperating private foundations to supporting organizations

(A) In general

For purposes of this section, the term "qualifying distribution" shall not include any amount paid by a private foundation which is not an operating foundation to—

(i) any type III supporting organization (as defined in section 4943(f)(5)(A)) which is not a functionally integrated type III supporting organization (as defined in section 4943(f)(5)(B)), and

(ii) any organization which is described in subparagraph (B) or (C) if—

(I) a disqualified person of the private foundation directly or indirectly controls such organization or a supported organization (as defined in section 509(f)(3)) of such organization, or

(II) the Secretary determines by regulations that a distribution to such organization otherwise is inappropriate.

(B) Type I and type II supporting organizations

An organization is described in this subparagraph if the organization meets the requirements of subparagraphs (A) and (C) of section 509(a)(3) and is—

(i) operated, supervised, or controlled by one or more organizations described in paragraph (1) or (2) of section 509(a), or

(ii) supervised or controlled in connection with one or more such organizations.

(C) Functionally integrated type III supporting organizations

An organization is described in this subparagraph if the organization is a functionally integrated type III supporting organization (as defined under section 4943(f)(5)(B)).

(h) Treatment of qualifying distributions

(1) In general

Except as provided in paragraph (2), any qualifying distribution made during a taxable year shall be treated as made—

(A) first out of the undistributed income of the immediately preceding taxable year (if the private foundation was subject to the tax imposed by this section for such preceding taxable year) to the extent thereof,

(B) second out of the undistributed income for the taxable year to the extent thereof, and

(C) then out of corpus.

For purposes of this paragraph, distributions shall be taken into account in the order of time in which made.

(2) Correction of deficient distributions for prior taxable years, etc.

In the case of any qualifying distribution which (under paragraph (1)) is not treated as made out of the undistributed income of the immediately preceding taxable year, the foundation may elect to treat any portion of such distribution as made out of the undistributed income of a designated prior taxable year or out of corpus. The election shall be made by the foundation at such time and in such manner as the Secretary shall by regulations prescribe.

(i) Adjustment of distributable amount where distributions during prior years have exceeded income

(1) In general

If, for the taxable years in the adjustment period for which an organization is a private foundation—

(A) the aggregate qualifying distributions treated (under subsection (h)) as made out of the undistributed income for such taxable year or as made out of corpus (except to the extent subsection (g)(3) with respect to the recipient private foundation or section 170(b)(1)(F)(ii) applies) during such taxable years, exceed

(B) the distributable amounts for such taxable years (determined without regard to this subsection),

then, for purposes of this section (other than subsection (h)), the distributable amount for the taxable year shall be reduced by an amount equal to such excess.

(2) Taxable years in adjustment period

For purposes of paragraph (1), with respect to any taxable year of a private foundation the taxable years in the adjustment period are the taxable years (not exceeding 5) beginning after December 31, 1969, and immediately preceding the taxable year.

(j) Other definitions

For purposes of this section—

(1) Taxable period

The term "taxable period" means, with respect to the undistributed income for any taxable year, the period beginning with the first day of the taxable year and ending on the earlier of—

(A) the date of mailing of a notice of deficiency with respect to the tax imposed by subsection (a) under section 6212, or

(B) the date on which the tax imposed by subsection (a) is assessed.

(2) Allowable distribution period

The term "allowable distribution period" means, with respect to any private foundation, the period beginning with the first day of the first taxable year following the taxable year in which the incorrect valuation (described in subsection (a)(2)) occurred and ending 90 days after the date of mailing of a notice of deficiency (with respect to the tax imposed by subsection (a)) under section 6212 extended by—

(A) any period in which a deficiency cannot be assessed under section 6213(a), and

(B) any other period which the Secretary determines is reasonable and necessary to permit a distribution of undistributed income under this section.

(3) Operating foundation

For purposes of this section, the term "operating foundation" means any organization—

(A) which makes qualifying distributions (within the meaning of paragraph (1) or (2) of subsection (g)) directly for the active conduct of the activities constituting the purpose or function for which it is organized and operated equal to substantially all of the lesser of—

(i) its adjusted net income (as defined in subsection (f)), or

(ii) its minimum investment return; and

(B)(i) substantially more than half of the assets of which are devoted directly to such activities or to functionally related businesses (as defined in paragraph (4)), or to both, or are stock of a corporation which is controlled by the foundation and substantially all of the assets of which are so devoted.

(ii) which normally makes qualifying distributions (within the meaning of paragraph (1) or (2) of subsection (g)) directly for the active conduct of the activities constituting the purpose or function for which it is organized and operated in an amount not less than two-thirds of its minimum investment return (as defined in subsection (e)), or

(iii) substantially all of the support (other than gross investment income as defined in section 509(e)) of which is normally received from the general public and from 5 or more exempt organizations which are not described in section 4946(a)(1)(H) with respect to each other or the recipient foundation; not more than 25 percent of the support (other than gross investment income) of which is normally received from any one such exempt organization; and not more than half of the support of which is normally received from gross investment income.

Notwithstanding the provisions of subparagraph (A), if the qualifying distributions (within the meaning of paragraph (1) or (2) of subsection (g)) of an organization for the taxable year exceed the minimum investment return for the taxable year, clause (ii) of subparagraph (A) shall not apply unless substantially all of such qualifying distributions are made directly for the active conduct of the activities constituting the purpose or function for which it is organized and operated.

(4) Functionally related business

The term "functionally related business" means—

(A) a trade or business which is not an unrelated trade or business (as defined in section 513), or

(B) an activity which is carried on within a larger aggregate of similar activities or within a larger complex of other endeavors which is related (aside from the need of the organization for income or funds or the use it makes of the profits derived) to the exempt purposes of the organization.

(5) Certain elderly care facilities

For purposes of this section (but no other provisions of this title), the term "operating foundation" includes any organization which, on May 26, 1969, and at all times thereafter before the close of the taxable year, operated and maintained as its principal functional purpose facilities for the long-term care, comfort, maintenance, or education of permanently and totally disabled persons, elderly persons, needy widows, or children but only if such organization meets the requirements of paragraph (3)(B)(ii).

(Added Pub. L. 91–172, title I, §101(b), Dec. 30, 1969, 83 Stat. 502; amended Pub. L. 94–455, title XIII, §§1302(a), 1303(a), 1310(a), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1713, 1715, 1729, 1834; Pub. L. 95–600, title V, §522(a), Nov. 6, 1978, 92 Stat. 2885; Pub. L. 96–596, §2(a)(1)(C), (2)(B), (3)(B), (4)(A), Dec. 24, 1980, 94 Stat. 3469–3472; Pub. L. 97–34, title VIII, §823(a), Aug. 13, 1981, 95 Stat. 351; Pub. L. 97–448, title I, §108(b), Jan. 12, 1983, 96 Stat. 2391; Pub. L. 98–369, div. A, title III, §§304(a), (b), 305(b)(4), 314(a)(1), (2), July 18, 1984, 98 Stat. 782–784, 787; Pub. L. 99–514, title XIII, §1301(j)(6), Oct. 22, 1986, 100 Stat. 2658; Pub. L. 109–280, title XII, §§1212(b), 1244(a), Aug. 17, 2006, 120 Stat. 1074, 1107; Pub. L. 110–172, §11(a)(14)(D), Dec. 29, 2007, 121 Stat. 2485.)

CODIFICATION

Sections 1212(b) and 1244(a) of Pub. L. 109–280, which directed the amendment of section 4942 without specifying the act to be amended, were executed to this section, which is section 4942 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

AMENDMENTS

2007—Subsec. (i)(1)(A). Pub. L. 110–172 substituted "section 170(b)(1)(F)(ii)" for "section

170(b)(1)(E)(ii)".

2006—Subsec. (a). Pub. L. 109–280, §1212(b), substituted "30 percent" for "15 percent" in introductory provisions. See Codification note above.

Subsec. (g)(4). Pub. L. 109–280, §1244(a), amended heading and text of par. (4) generally, substituting provisions relating to limitation on distributions by nonoperating private foundations to supporting organizations for provisions relating to limitation on administrative expenses allocable to making of contributions, gifts, and grants. See Codification note above.

1986—Subsec. (f)(2)(A). Pub. L. 99–514 substituted "(relating to State and local bonds)" for "(relating to interest on certain governmental obligations)".

1984—Subsec. (a)(2)(B). Pub. L. 98–369, §314(a)(1), substituted "subsection (j)(2)" for "subsection (j)(4)".

Subsec. (d)(1). Pub. L. 98–369, §304(b), substituted "the sum of the minimum investment return plus the amounts described in subsection (f)(2)(C), reduced by" for "the minimum investment return reduced by".

Subsec. (f)(1). Pub. L. 98–369, §314(a)(2), substituted "subsection (j)" for "subsection (d)".

Subsec. (g)(1)(A). Pub. L. 98–369, §304(a)(2), substituted "including that portion of reasonable and necessary administrative expenses" for "including administrative expenses".

Subsec. (g)(2)(C)(ii). Pub. L. 98–369, §305(b)(4), substituted "section 4963(e)" for "section 4962(e)".

Subsec. (g)(4). Pub. L. 98–369, §304(a)(1), added par. (4).

1983—Subsec. (j)(3)(A)(i). Pub. L. 97–448 substituted "or" for "and" at the end.

1981—Subsec. (d)(1). Pub. L. 97–34, §823(a)(1), struck out "or the adjusted net income (whichever is higher)" after "return".

Subsec. (j)(3). Pub. L. 97–34, §823(a)(2), (3), inserted in subpar. (A) "the lesser of" after "substantially all of", designated existing provisions as cl. (i), added cl. (ii), and inserted provision respecting applicability of subpar. (A)(ii).

1980—Subsec. (b). Pub. L. 96–596, §2(a)(1)(C), substituted "taxable period" for "correction period".

Subsec. (g)(2)(C)(ii). Pub. L. 96–596, §2(a)(4)(A), substituted "the correction period (as defined in section 4962(e))" for "the initial correction period provided in subsection (j)(2)".

Subsec. (j)(1). Pub. L. 96–596, §2(a)(2)(B), substituted provision ending the taxable period on the earlier of the date of mailing of a notice of deficiency with respect to the tax imposed by subsec. (a) of this section under section 6212 of this title or the date on which the tax imposed by subsec. (a) of this section is assessed for provision ending the taxable period on the date of mailing the notice of deficiency with respect to a tax imposed by subsec. (a) of this section under section 6212 of this title.

Subsec. (j)(2). Pub. L. 96–596, §2(a)(3)(B)(i), (iii), redesignated par. (4) as (2) and struck out former par. (2), which defined correction period, with respect to any private foundation for any taxable year, as the period beginning with the first day of the taxable year and ending 90 days after the date of mailing a notice of deficiency with respect to the tax imposed by subsec. (b) of this section under section 6212 of this title, extended by any period in which a deficiency cannot be assessed under section 6213(a) of this title and any other period which the Secretary determines is reasonable and necessary to permit a distribution of undistributed income.

Subsec. (j)(3)(B)(i). Pub. L. 96–596, §2(a)(3)(B)(ii), substituted "paragraph (4)" for "paragraph (5)".

Subsec. (j)(4) to (6). Pub. L. 96–596, §2(a)(3)(B)(iii), (iv), redesignated pars. (5) and (6) as (4) and (5), respectively.

1978—Subsec. (j)(6). Pub. L. 95–600 added par. (6).

1976—Subsec. (a)(2)(C). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (e). Pub. L. 94–455, §1303(a), among other changes, substituted provisions establishing a fixed percentage rate to be used in computing the minimum investment return for any private foundation for provisions establishing a variable applicable percentage rate of 7 percent in 1970 and an applicable rate to be determined by the Secretary after 1970, for use in computing the minimum investment return for any private foundation and inserted provisions relating to reduction in value for blockage or similar factors.

Subsec. (f)(2)(D). Pub. L. 94–455, §1310(a), added subpar. (D).

Subsec. (g)(2). Pub. L. 94–455, §1302(a), among other changes, inserted reference to all taxable years beginning on or after Jan. 1, 1975, requirement that the project will not be completed before the end of the taxable year of the foundation in which the set-aside is made, and subpars. (C) to (E).

Subsecs. (h)(2), (j)(2)(B). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 1212(b) of Pub. L. 109–280 applicable to taxable years beginning after Aug. 17, 2006, see section 1212(f) of Pub. L. 109–280, set out as a note under section 4941 of this title.

Pub. L. 109–280, title XII, §1244(c), Aug. 17, 2006, 120 Stat. 1108, provided that: "The amendments made

by this section [amending this section and section 4945 of this title] shall apply to distributions and expenditures after the date of the enactment of this Act [Aug. 17, 2006]."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99–514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title III, §304(c), July 18, 1984, 98 Stat. 783, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1984."

Amendment by section 305(b)(4) of Pub. L. 98–369 applicable to taxable events occurring after Dec. 31, 1984, see section 305(c) of Pub. L. 98–369, set out as an Effective Date note under section 4962 of this title.

Pub. L. 98–369, div. A, title III, §314(a)(4), July 18, 1984, 98 Stat. 787, provided that: "The amendments made by this subsection [amending this section and section 6501 of this title] shall take effect on the date of the enactment of this Act [July 18, 1984].".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title VIII, §823(b), Aug. 13, 1981, 95 Stat. 352, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1981."

EFFECTIVE DATE OF 1980 AMENDMENT

For effective date of amendment by Pub. L. 96–596 with respect to any first tier tax and to any second tier tax, see section 2(d) of Pub. L. 96–596, set out as an Effective Date note under section 4961 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title V, §522(b), Nov. 6, 1978, 92 Stat. 2885, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1969."

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XIII, §1302(c), Oct. 4, 1976, 90 Stat. 1715, provided that: "The amendments made by this section [amending this section and section 6501 of this title] shall apply to taxable years beginning after December 31, 1974."

Pub. L. 94–455, title XIII, §1303(b), Oct. 4, 1976, 90 Stat. 1715, provided that: "The amendment made by this section [amending this section] applies to taxable years beginning after December 31, 1975."

Pub. L. 94–455, title XIII, §1310(b), Oct. 4, 1976, 90 Stat. 1729, provided that: "The amendments made by this section [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Oct. 4, 1976]."

SAVINGS PROVISION

Applicability of section to organizations organized before May 27, 1969, see section 101(l)(3) of Pub. L. 91–172, set out as a note under section 4940 of this title.

§4943. Taxes on excess business holdings

(a) Initial tax

(1) Imposition

There is hereby imposed on the excess business holdings of any private foundation in a business enterprise during any taxable year which ends during the taxable period a tax equal to 10 percent of the value of such holdings.

(2) Special rules

The tax imposed by paragraph (1)—

(A) shall be imposed on the last day of the taxable year, but

(B) with respect to the private foundation's holdings in any business enterprise, shall be determined as of that day during the taxable year when the foundation's excess holdings in such enterprise were the greatest.

(b) Additional tax

In any case in which an initial tax is imposed under subsection (a) with respect to the holdings of a private foundation in any business enterprise, if, at the close of the taxable period with respect to such holdings, the foundation still has excess business holdings in such enterprise, there is hereby imposed a tax equal to 200 percent of such excess business holdings.

(c) Excess business holdings

For purposes of this section—

(1) In general

The term "excess business holdings" means, with respect to the holdings of any private foundation in any business enterprise, the amount of stock or other interest in the enterprise which the foundation would have to dispose of to a person other than a disqualified person in order for the remaining holdings of the foundation in such enterprise to be permitted holdings.

(2) Permitted holdings in a corporation

(A) In general

The permitted holdings of any private foundation in an incorporated business enterprise are—

(i) 20 percent of the voting stock, reduced by

(ii) the percentage of the voting stock owned by all disqualified persons.

In any case in which all disqualified persons together do not own more than 20 percent of the voting stock of an incorporated business enterprise, nonvoting stock held by the private foundation shall also be treated as permitted holdings.

(B) 35 percent rule where third person has effective control of enterprise

If—

(i) the private foundation and all disqualified persons together do not own more than 35 percent of the voting stock of an incorporated business enterprise, and

(ii) it is established to the satisfaction of the Secretary that effective control of the corporation is in one or more persons who are not disqualified persons with respect to the foundation,

then subparagraph (A) shall be applied by substituting 35 percent for 20 percent.

(C) 2 percent de minimis rule

A private foundation shall not be treated as having excess business holdings in any corporation in which it (together with all other private foundations which are described in section 4946(a)(1)(H)) owns not more than 2 percent of the voting stock and not more than 2 percent in value of all outstanding shares of all classes of stock.

(3) Permitted holdings in partnerships, etc.

The permitted holdings of a private foundation in any business enterprise which is not incorporated shall be determined under regulations prescribed by the Secretary. Such regulations shall be consistent in principle with paragraphs (2) and (4), except that—

(A) in the case of a partnership or joint venture, "profits interest" shall be substituted for "voting stock", and "capital interest" shall be substituted for "nonvoting stock",

(B) in the case of a proprietorship, there shall be no permitted holdings, and

(C) in any other case, "beneficial interest" shall be substituted for "voting stock".

(4) Present holdings

(A)(i) In applying this section with respect to the holdings of any private foundation in a business enterprise, if such foundation and all disqualified persons together have holdings in such enterprise in excess of 20 percent of the voting stock on May 26, 1969, the percentage of such holdings shall be substituted for "20 percent," and for "35 percent" (if the percentage of such holdings is greater than 35 percent), wherever it appears in paragraph (2), but in no event shall the percentage so substituted be more than 50 percent.

(ii) If the percentage of the holdings of any private foundation and all disqualified persons together in a business enterprise (or if the percentage of the holdings of the private foundation in such enterprise) decreases for any reason, clause (i) and subparagraph (D) shall, except as provided in the next sentence, be applied for all periods after such decrease by substituting such decreased percentage for the percentage held on May 26, 1969, but in no event shall the percentage substituted be less than 20 percent. For purposes of the preceding sentence, any decrease in percentage holdings attributable to issuances of stock (or to issuances of stock coupled with redemptions of stock) shall be disregarded so long as—

(I) the net percentage decrease disregarded under this sentence does not exceed 2 percent, and

(II) the number of shares held by the foundation is not affected by any such issuance or redemption.

(iii) The percentage substituted under clause (i), and any percentage substituted under subparagraph (D), shall be applied both with respect to the voting stock and, separately, with respect to the value of all outstanding shares of all classes of stock.

(iv) In the case of any merger, recapitalization, or other reorganization involving one or more business enterprises, the application of clauses (i), (ii), and (iii) shall be determined under regulations prescribed by the Secretary.

(B) Any interest in a business enterprise which a private foundation holds on May 26, 1969, if the private foundation on such date has excess business holdings, shall (while held by the foundation) be treated as held by a disqualified person (rather than by the private foundation)—

(i) during the 20-year period beginning on such date, if the private foundation and all disqualified persons have more than a 95 percent voting stock interest on such date,

(ii) except as provided in clause (i), during the 15-year period beginning on such date, if the foundation and all disqualified persons have more than a 75 percent voting stock interest (or more than a 75 percent profits or beneficial interest in the case of any unincorporated enterprise) on such date or more than a 75 percent interest in the value of all outstanding shares of all classes of stock (or more than a 75 percent capital interest in the case of a partnership or joint venture) on such date, or

(iii) during the 10–year period beginning on such date, in any other case.

(C) The 20-year, 15-year, and 10-year periods described in subparagraph (B) for the disposition of excess business holdings shall be suspended during the pendency of any judicial proceeding by the private foundation which is necessary to reform, or to excuse such foundation from compliance with, its governing instrument or any other instrument (as in effect on May 26, 1969) in order to allow disposition of such holdings.

(D)(i) If, at any time during the second phase, all disqualified persons together have holdings in a business enterprise in excess of 2 percent of the voting stock of such enterprise, then subparagraph (A)(i) shall be applied by substituting for "50 percent" the following: "50 percent, of which not more than 25 percent shall be voting stock held by the private foundation".

(ii) If, immediately before the close of the second phase, clause (i) of this subparagraph did not apply with respect to a business enterprise, then for all periods after the close of the second phase subparagraph (A)(i) shall be applied by substituting for "50 percent" the following: "35 percent, or if at any time after the close of the second phase all disqualified persons together have had holdings in such enterprise which exceed 2 percent of the voting stock, 35 percent, of which not more than 25 percent shall be voting stock held by the private foundation".

(iii) For purposes of this subparagraph, the term "second phase" means the 15-year period

immediately following the 20-year, 15-year, or 10-year period described in subparagraph (B), whichever applies, as modified by subparagraph (C).

(E) Clause (ii) of subparagraph (B) shall not apply with respect to any business enterprise if before January 1, 1971, one or more individuals who are substantial contributors (or members of the family (within the meaning of section 4946(d)) of one or more substantial contributors) to the private foundation and who on May 26, 1969, held more than 15 percent of the voting stock of the enterprise elect, in such manner as the Secretary may by regulations prescribe, not to have such clause (ii) apply with respect to such enterprise.

(5) Holdings acquired by trust or will

Paragraph (4) (other than subparagraph (B)(i)) shall apply to any interest in a business enterprise which a private foundation acquires under the terms of a trust which was irrevocable on May 26, 1969, or under the terms of a will executed on or before such date, which are in effect on such date and at all times thereafter, as if such interest were held on May 26, 1969, except that the 15-year and 10-year periods prescribed in clauses (ii) and (iii) of paragraph (4)(B) shall commence with respect to such interest on the date of distribution under the trust or will in lieu of May 26, 1969.

(6) 5-year period to dispose of gifts, bequests, etc.

Except as provided in paragraph (5), if, after May 26, 1969, there is a change in the holdings in a business enterprise (other than by purchase by the private foundation or by a disqualified person) which causes the private foundation to have—

(A) excess business holdings in such enterprise, the interest of the foundation in such enterprise (immediately after such change) shall (while held by the foundation) be treated as held by a disqualified person (rather than by the foundation) during the 5-year period beginning on the date of such change in holdings; or

(B) an increase in excess business holdings in such enterprise (determined without regard to subparagraph (A)), subparagraph (A) shall apply, except that the excess holdings immediately preceding the increase therein shall not be treated, solely because of such increase, as held by a disqualified person (rather than by the foundation).

In any case where an acquisition by a disqualified person would result in a substitution under clause (i) or (ii) of subparagraph (D) of paragraph (4), the preceding sentence shall be applied with respect to such acquisition as if it did not contain the phrase "or by a disqualified person" in the material preceding subparagraph (A).

(7) 5-year extension of period to dispose of certain large gifts and bequests

The Secretary may extend for an additional 5-year period the period under paragraph (6) for disposing of excess business holdings in the case of an unusually large gift or bequest of diverse business holdings or holdings with complex corporate structures if—

(A) the foundation establishes that—

(i) diligent efforts to dispose of such holdings have been made within the initial 5-year period, and

(ii) disposition within the initial 5-year period has not been possible (except at a price substantially below fair market value) by reason of such size and complexity or diversity of such holdings,

(B) before the close of the initial 5-year period—

(i) the private foundation submits to the Secretary a plan for disposing of all of the excess business holdings involved in the extension, and

(ii) the private foundation submits the plan described in clause (i) to the Attorney General (or other appropriate State official) having administrative or supervisory authority or responsibility with respect to the foundation's disposition of the excess business holdings involved and submits to the Secretary any response received by the private foundation from

the Attorney General (or other appropriate State official) to such plan during such 5-year period, and

(C) the Secretary determines that such plan can reasonably be expected to be carried out before the close of the extension period.

(d) Definitions; special rules

For purposes of this section—

(1) Business holdings

In computing the holdings of a private foundation, or a disqualified person (as defined in section 4946) with respect thereto, in any business enterprise, any stock or other interest owned, directly or indirectly, by or for a corporation, partnership, estate, or trust shall be considered as being owned proportionately by or for its shareholders, partners, or beneficiaries. The preceding sentence shall not apply with respect to an income or remainder interest of a private foundation in a trust described in section 4947(a)(2), but only if, in the case of property transferred in trust after May 26, 1969, such foundation holds only an income interest or only a remainder interest in such trust.

(2) Taxable period

The term "taxable period" means, with respect to any excess business holdings of a private foundation in a business enterprise, the period beginning on the first day on which there are excess holdings and ending on the earlier of—

(A) the date of mailing of a notice of deficiency with respect to the tax imposed by subsection (a) under section 6212 in respect of such holdings, or

(B) the date on which the tax imposed by subsection (a) in respect of such holdings is assessed.

(3) Business enterprise

The term "business enterprise" does not include—

(A) a functionally related business (as defined in section 4942(j)(4)), or

(B) a trade or business at least 95 percent of the gross income of which is derived from passive sources.

For purposes of subparagraph (B), gross income from passive sources includes the items excluded by section 512(b)(1), (2), (3), and (5), and income from the sale of goods (including charges or costs passed on at cost to purchasers of such goods or income received in settlement of a dispute concerning or in lieu of the exercise of the right to sell such goods) if the seller does not manufacture, produce, physically receive or deliver, negotiate sales of, or maintain inventories in such goods.

(4) Disqualified person

The term "disqualified person" (as defined in section 4946(a)) does not include a plan described in section 4975(e)(7) with respect to the holdings of a private foundation described in paragraphs (4) and (5) of subsection (c).

(e) Application of tax to donor advised funds

(1) In general

For purposes of this section, a donor advised fund (as defined in section 4966(d)(2)) shall be treated as a private foundation.

(2) Disqualified person

In applying this section to any donor advised fund (as so defined), the term "disqualified person" means, with respect to the donor advised fund, any person who is—

(A) described in section 4966(d)(2)(A)(iii),

(B) a member of the family of an individual described in subparagraph (A), or

(C) a 35-percent controlled entity (as defined in section 4958(f)(3) by substituting "persons described in subparagraph (A) or (B) of section 4943(e)(2)" for "persons described in subparagraph (A) or (B) of paragraph (1)" in subparagraph (A)(i) thereof).

(3) Present holdings

For purposes of this subsection, rules similar to the rules of paragraphs (4), (5), and (6) of subsection (c) shall apply to donor advised funds (as so defined), except that—

(A) "the date of the enactment of this subsection" shall be substituted for "May 26, 1969" each place it appears in paragraphs (4), (5), and (6), and

(B) "January 1, 2007" shall be substituted for "January 1, 1970" in paragraph (4)(E).

(f) Application of tax to supporting organizations

(1) In general

For purposes of this section, an organization which is described in paragraph (3) shall be treated as a private foundation.

(2) Exception

The Secretary may exempt the excess business holdings of any organization from the application of this subsection if the Secretary determines that such holdings are consistent with the purpose or function constituting the basis for its exemption under section 501.

(3) Organizations described

An organization is described in this paragraph if such organization is—

(A) a type III supporting organization (other than a functionally integrated type III supporting organization), or

(B) an organization which meets the requirements of subparagraphs (A) and (C) of section 509(a)(3) and which is supervised or controlled in connection with one or more organizations described in paragraph (1) or (2) of section 509(a), but only if such organization accepts any gift or contribution from any person described in section 509(f)(2)(B).

(4) Disqualified person

(A) In general

In applying this section to any organization described in paragraph (3), the term "disqualified person" means, with respect to the organization—

(i) any person who was, at any time during the 5-year period ending on the date described in subsection (a)(2)(A), in a position to exercise substantial influence over the affairs of the organization,

(ii) any member of the family (determined under section 4958(f)(4)) of an individual described in clause (i),

(iii) any 35-percent controlled entity (as defined in section 4958(f)(3) by substituting "persons described in clause (i) or (ii) of section 4943(f)(4)(A)" for "persons described in subparagraph (A) or (B) of paragraph (1)" in subparagraph (A)(i) thereof),

(iv) any person described in section 4958(c)(3)(B), and

(v) any organization—

(I) which is effectively controlled (directly or indirectly) by the same person or persons who control the organization in question, or

(II) substantially all of the contributions to which were made (directly or indirectly) by the same person or persons described in subparagraph (B) or a member of the family (within the meaning of section 4946(d)) of such a person.

(B) Persons described

A person is described in this subparagraph if such person is—

(i) a substantial contributor to the organization (as defined in section 4958(c)(3)(C)),

(ii) an officer, director, or trustee of the organization (or an individual having powers or responsibilities similar to those of the officers, directors, or trustees of the organization), or

(iii) an owner of more than 20 percent of—

(I) the total combined voting power of a corporation,

(II) the profits interest of a partnership, or

(III) the beneficial interest of a trust or unincorporated enterprise,

which is a substantial contributor (as so defined) to the organization.

(5) Type III supporting organization; functionally integrated type III supporting organization

For purposes of this subsection—

(A) Type III supporting organization

The term "type III supporting organization" means an organization which meets the requirements of subparagraphs (A) and (C) of section 509(a)(3) and which is operated in connection with one or more organizations described in paragraph (1) or (2) of section 509(a).

(B) Functionally integrated type III supporting organization

The term "functionally integrated type III supporting organization" means a type III supporting organization which is not required under regulations established by the Secretary to make payments to supported organizations (as defined under section 509(f)(3)) due to the activities of the organization related to performing the functions of, or carrying out the purposes of, such supported organizations.

(6) Special rule for certain holdings of type III supporting organizations

For purposes of this subsection, the term "excess business holdings" shall not include any holdings of a type III supporting organization in any business enterprise if, as of November 18, 2005, the holdings were held (and at all times thereafter, are held) for the benefit of the community pursuant to the direction of a State attorney general or a State official with jurisdiction over such organization.

(7) Present holdings

For purposes of this subsection, rules similar to the rules of paragraphs (4), (5), and (6) of subsection (c) shall apply to organizations described in section 509(a)(3), except that—

(A) "the date of the enactment of this subsection" shall be substituted for "May 26, 1969" each place it appears in paragraphs (4), (5), and (6), and

(B) "January 1, 2007" shall be substituted for "January 1, 1970" in paragraph (4)(E).

(Added Pub. L. 91–172, title I, §101(b), Dec. 30, 1969, 83 Stat. 507; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–596, §2(a)(1)(D), (2)(C), (3)(C), (4)(B), Dec. 24, 1980, 94 Stat. 3469–3472; Pub. L. 98–369, div. A, title III, §§307(a), 308(a), 309(a), 310(a), 314(c)(1), July 18, 1984, 98 Stat. 784, 785, 787; Pub. L. 109–280, title XII, §§1212(c), 1233(a), 1243(a), Aug. 17, 2006, 120 Stat. 1074, 1099, 1105.)

REFERENCES IN TEXT

The date of enactment of this subsection, referred to in subsecs. (e)(3)(A) and (f)(7)(A), probably means the date of enactment of subsecs. (e) and (f) which were enacted by Pub. L. 109–280, which was approved Aug. 17, 2006.

CODIFICATION

Sections 1212(c), 1233(a), and 1243(a) of Pub. L. 109–280, which directed the amendment of section 4943 without specifying the act to be amended, were executed to this section, which is section 4943 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

AMENDMENTS

2006—Subsec. (a)(1). Pub. L. 109–280, §1212(c), substituted "10 percent" for "5 percent". See Codification note above.

Subsec. (e). Pub. L. 109–280, §1233(a), added subsec. (e). See Codification note above.

Subsec. (f). Pub. L. 109–280, §1243(a), added subsec. (f). See Codification note above.

1984—Subsec. (c)(4)(A)(ii). Pub. L. 98–369, §308(a), substituted "For purposes of the preceding sentence, any decrease in percentage holdings attributable to issuances of stock (or to issuances of stock coupled with redemptions of stock) shall be disregarded so long as (I) the net percentage decrease disregarded under this sentence does not exceed 2 percent, and (II) the number of shares held by the foundation is not affected by any such issuance or redemption" for "For purposes of this clause, any decrease in percentage holdings attributable to issuances of stock (or to issuances of stock coupled with redemptions of stock) shall be determined only as of the close of each taxable year of the private foundation unless the aggregate of the percentage decreases attributable to the issuances of stock (or such issuances and redemptions) during such taxable year equals or exceeds 1 percent".

Subsec. (c)(4)(B)(i). Pub. L. 98–369, §309(a), substituted "the private foundation and all disqualified persons have" for "the private foundation has".

Subsec. (c)(6). Pub. L. 98–369, §310(a), inserted following subpar. (B) "In any case where an acquisition by a disqualified person would result in a substitution under clause (i) or (ii) of subparagraph (D) of paragraph (4), the preceding sentence shall be applied with respect to such acquisition as if it did not contain the phrase 'or by a disqualified person' in the material preceding subparagraph (A)."

Subsec. (c)(7). Pub. L. 98–369, §307(a), added par. (7).

Subsec. (d)(4). Pub. L. 98–369, §314(c)(1), added par. (4).

1980—Subsec. (b). Pub. L. 96–596, §2(a)(1)(D), substituted "taxable period" for "correction period".

Subsec. (d)(2). Pub. L. 96–596, §2(a)(2)(C), substituted provision ending the taxable period on the earlier of the date of mailing of a notice of deficiency with respect to the tax imposed by subsec. (a) of this section under section 6212 of this title in respect to such holdings or the date on which the tax imposed by subsec. (a) of this section in respect to such holdings is assessed for provision ending the taxable period on the date of mailing the notice of deficiency with respect to a tax imposed by subsec. (a) of this section under section 6212 of this title in respect to such holdings.

Subsec. (d)(3), (4). Pub. L. 96–596, §2(a)(3)(C), (4)(B), redesignated par. (4) as (3), and in subpar. (A) of par. (3) as so redesignated, substituted "section 4942(j)(4)" for "section 4942(j)(5)", and struck out par. (3), which defined correction period, with respect to excess business holdings of a private foundation in a business enterprise, as the period ending 90 days after the date of mailing of a notice of deficiency with respect to the tax imposed by subsec. (b) of this section under section 6212 of this title, extended by any period in which a deficiency cannot be assessed under section 6213(a) of this title and any other period which the Secretary determines is reasonable and necessary to permit orderly disposition of such excess business holdings.

1976—Subsecs. (c), (d). Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 1212(c) of Pub. L. 109–280 applicable to taxable years beginning after Aug. 17, 2006, see section 1212(f) of Pub. L. 109–280, set out as a note under section 4941 of this title.

Pub. L. 109–280, title XII, §1233(b), Aug. 17, 2006, 120 Stat. 1100, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 17, 2006]."

Pub. L. 109–280, title XII, §1243(b), Aug. 17, 2006, 120 Stat. 1107, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 17, 2006]."

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title III, §307(b), July 18, 1984, 98 Stat. 785, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to business holdings with respect to which the 5-year period described in section 4943(c)(6) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] ends on or after November 1, 1983.

"(2) TRANSITIONAL RULE.—Any plan submitted to the Secretary of the Treasury or his delegate on or before the 60th day after the date of the enactment of this Act [July 18, 1984] shall be treated as submitted before the close of the initial 5-year period referred to in section 4943(c)(7)(B) of the Internal Revenue Code of 1986 (as added by subsection (a))."

Pub. L. 98–369, div. A, title III, §308(b), July 18, 1984, 98 Stat. 785, provided that: "The amendment made by subsection (a) [amending this section] shall apply to increases and decreases occurring after the date of the enactment of this Act [July 18, 1984]."

Pub. L. 98–369, div. A, title III, §309(b), July 18, 1984, 98 Stat. 785, provided that: "The amendment made by subsection (a) [amending this section] shall take effect as if included in the amendment made by section

101(b) of the Tax Reform Act of 1969 [section 101(b) of Pub. L. 91–172 which enacted this section]."

Pub. L. 98–369, div. A, title III, §310(b), July 18, 1984, 98 Stat. 786, provided that: "The amendment made by subsection (a) [amending this section] shall apply to acquisitions after the date of the enactment of this Act [July 18, 1984]."

Pub. L. 98–369, div. A, title III, §314(c)(2), July 18, 1984, 98 Stat. 788, provided that: "The amendment made by paragraph (1) [amending this section] shall apply with respect to taxable years beginning after the date of the enactment of this Act [July 18, 1984]."

EFFECTIVE DATE OF 1980 AMENDMENT

For effective date of amendment by Pub. L. 96–596 with respect to any first tier tax and to any second tier tax, see section 2(d) of Pub. L. 96–596, set out as an Effective Date note under section 4961 of this title.

SAVINGS PROVISION

Applicability of section to private foundations, see section 101(l)(4) of Pub. L. 91–172, set out as a note under section 4940 of this title.

§4944. Taxes on investments which jeopardize charitable purpose

(a) Initial taxes

(1) On the private foundation

If a private foundation invests any amount in such a manner as to jeopardize the carrying out of any of its exempt purposes, there is hereby imposed on the making of such investment a tax equal to 10 percent of the amount so invested for each year (or part thereof) in the taxable period. The tax imposed by this paragraph shall be paid by the private foundation.

(2) On the management

In any case in which a tax is imposed by paragraph (1), there is hereby imposed on the participation of any foundation manager in the making of the investment, knowing that it is jeopardizing the carrying out of any of the foundation's exempt purposes, a tax equal to 10 percent of the amount so invested for each year (or part thereof) in the taxable period, unless such participation is not willful and is due to reasonable cause. The tax imposed by this paragraph shall be paid by any foundation manager who participated in the making of the investment.

(b) Additional taxes

(1) On the foundation

In any case in which an initial tax is imposed by subsection (a)(1) on the making of an investment and such investment is not removed from jeopardy within the taxable period, there is hereby imposed a tax equal to 25 percent of the amount of the investment. The tax imposed by this paragraph shall be paid by the private foundation.

(2) On the management

In any case in which an additional tax is imposed by paragraph (1), if a foundation manager refused to agree to part or all of the removal from jeopardy, there is hereby imposed a tax equal to 5 percent of the amount of the investment. The tax imposed by this paragraph shall be paid by any foundation manager who refused to agree to part or all of the removal from jeopardy.

(c) Exception for program-related investments

For purposes of this section, investments, the primary purpose of which is to accomplish one or more of the purposes described in section 170(c)(2)(B), and no significant purpose of which is the production of income or the appreciation of property, shall not be considered as investments which jeopardize the carrying out of exempt purposes.

(d) Special rules

For purposes of subsections (a) and (b)—

(1) Joint and several liability

If more than one person is liable under subsection (a)(2) or (b)(2) with respect to any one investment, all such persons shall be jointly and severally liable under such paragraph with respect to such investment.

(2) Limit for management

With respect to any one investment, the maximum amount of the tax imposed by subsection (a)(2) shall not exceed $10,000, and the maximum amount of the tax imposed by subsection (b)(2) shall not exceed $20,000.

(e) Definitions

For purposes of this section—

(1) Taxable period

The term "taxable period" means, with respect to any investment which jeopardizes the carrying out of exempt purposes, the period beginning with the date on which the amount is so invested and ending on the earliest of—

(A) the date of mailing of a notice of deficiency with respect to the tax imposed by subsection (a)(1) under section 6212,

(B) the date on which the tax imposed by subsection (a)(1) is assessed, or

(C) the date on which the amount so invested is removed from jeopardy.

(2) Removal from jeopardy

An investment which jeopardizes the carrying out of exempt purposes shall be considered to be removed from jeopardy when such investment is sold or otherwise disposed of, and the proceeds of such sale or other disposition are not investments which jeopardize the carrying out of exempt purposes.

(Added Pub. L. 91–172, title I, §101(b), Dec. 30, 1969, 83 Stat. 511; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–596, §2(a)(1)(E), (2)(D), (3)(D), Dec. 24, 1980, 94 Stat. 3469–3471; Pub. L. 109–280, title XII, §1212(d), Aug. 17, 2006, 120 Stat. 1074.)

CODIFICATION

Section 1212(d) of Pub. L. 109–280, which directed the amendment of section 4944 without specifying the act to be amended, was executed to this section, which is section 4944 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–280, §1212(d)(1), substituted "10 percent" for "5 percent" in pars. (1) and (2). See Codification note above.

Subsec. (d)(2). Pub. L. 109–280, §1212(d)(2), substituted "$10,000," for "$5,000," and "$20,000." for "$10,000." See Codification note above.

1980—Subsec. (b)(1). Pub. L. 96–596, §2(a)(1)(E), substituted "taxable period" for "correction period".

Subsec. (e)(1)(B), (C). Pub. L. 96–596, §2(a)(2)(D), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (e)(3). Pub. L. 96–596, §2(a)(3)(D), struck out par. (3), which defined correction period, with respect to any investment which jeopardizes the carrying out of exempt purposes, as the period beginning with the date on which such investment is entered into and ending 90 days after the date of mailing of a notice of deficiency with respect to the tax imposed by subsec. (b)(1) of this section under section 6212 of this title, extended by any period in which a deficiency cannot be assessed under section 6213(a) of this title and any other period which the Secretary determines is reasonable and necessary to bring about removal from jeopardy.

1976—Subsec. (e)(3)(B). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 applicable to taxable years beginning after Aug. 17, 2006, see section 1212(f) of Pub. L. 109–280, set out as a note under section 4941 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

For effective date of amendment by Pub. L. 96–596 with respect to any first tier tax and to any second tier

tax, see section 2(d) of Pub. L. 96–596, set out as an Effective Date note under section 4961 of this title.

§4945. Taxes on taxable expenditures

(a) Initial taxes

(1) On the foundation

There is hereby imposed on each taxable expenditure (as defined in subsection (d)) a tax equal to 20 percent of the amount thereof. The tax imposed by this paragraph shall be paid by the private foundation.

(2) On the management

There is hereby imposed on the agreement of any foundation manager to the making of an expenditure, knowing that it is a taxable expenditure, a tax equal to 5 percent of the amount thereof, unless such agreement is not willful and is due to reasonable cause. The tax imposed by this paragraph shall be paid by any foundation manager who agreed to the making of the expenditure.

(b) Additional taxes

(1) On the foundation

In any case in which an initial tax is imposed by subsection (a)(1) on a taxable expenditure and such expenditure is not corrected within the taxable period, there is hereby imposed a tax equal to 100 percent of the amount of the expenditure. The tax imposed by this paragraph shall be paid by the private foundation.

(2) On the management

In any case in which an additional tax is imposed by paragraph (1), if a foundation manager refused to agree to part or all of the correction, there is hereby imposed a tax equal to 50 percent of the amount of the taxable expenditure. The tax imposed by this paragraph shall be paid by any foundation manager who refused to agree to part or all of the correction.

(c) Special rules

For purposes of subsections (a) and (b)—

(1) Joint and several liability

If more than one person is liable under subsection (a)(2) or (b)(2) with respect to the making of a taxable expenditure, all such persons shall be jointly and severally liable under such paragraph with respect to such expenditure.

(2) Limit for management

With respect to any one taxable expenditure, the maximum amount of the tax imposed by subsection (a)(2) shall not exceed $10,000, and the maximum amount of the tax imposed by subsection (b)(2) shall not exceed $20,000.

(d) Taxable expenditure

For purposes of this section, the term "taxable expenditure" means any amount paid or incurred by a private foundation—

(1) to carry on propaganda, or otherwise to attempt, to influence legislation, within the meaning of subsection (e),

(2) except as provided in subsection (f), to influence the outcome of any specific public election, or to carry on, directly or indirectly, any voter registration drive,

(3) as a grant to an individual for travel, study, or other similar purposes by such individual, unless such grant satisfies the requirements of subsection (g),

(4) as a grant to an organization unless—

(A) such organization—

(i) is described in paragraph (1) or (2) of section 509(a),

(ii) is an organization described in section 509(a)(3) (other than an organization described in clause (i) or (ii) of section 4942(g)(4)(A)), or

(iii) is an exempt operating foundation (as defined in section 4940(d)(2)), or

(B) the private foundation exercises expenditure responsibility with respect to such grant in accordance with subsection (h), or

(5) for any purpose other than one specified in section 170(c)(2)(B).

(e) Activities within subsection (d)(1)

For purposes of subsection (d)(1), the term "taxable expenditure" means any amount paid or incurred by a private foundation for—

(1) any attempt to influence any legislation through an attempt to affect the opinion of the general public or any segment thereof, and

(2) any attempt to influence legislation through communication with any member or employee of a legislative body, or with any other government official or employee who may participate in the formulation of the legislation (except technical advice or assistance provided to a governmental body or to a committee or other subdivision thereof in response to a written request by such body or subdivision, as the case may be),

other than through making available the results of nonpartisan analysis, study, or research. Paragraph (2) of this subsection shall not apply to any amount paid or incurred in connection with an appearance before, or communication to, any legislative body with respect to a possible decision of such body which might affect the existence of the private foundation, its powers and duties, its tax-exempt status, or the deduction of contributions to such foundation.

(f) Nonpartisan activities carried on by certain organizations

Subsection (d)(2) shall not apply to any amount paid or incurred by any organization—

(1) which is described in section 501(c)(3) and exempt from taxation under section 501(a),

(2) the activities of which are nonpartisan, are not confined to one specific election period, and are carried on in 5 or more States,

(3) substantially all of the income of which is expended directly for the active conduct of the activities constituting the purpose or function for which it is organized and operated,

(4) substantially all of the support (other than gross investment income as defined in section 509(e)) of which is received from exempt organizations, the general public, governmental units described in section 170(c)(1), or any combination of the foregoing; not more than 25 percent of such support is received from any one exempt organization (for this purpose treating private foundations which are described in section 4946(a)(1)(H) with respect to each other as one exempt organization); and not more than half of the support of which is received from gross investment income, and

(5) contributions to which for voter registration drives are not subject to conditions that they may be used only in specified States, possessions of the United States, or political subdivisions or other areas of any of the foregoing, or the District of Columbia, or that they may be used in only one specific election period.

In determining whether the organization meets the requirements of paragraph (4) for any taxable year of such organization, there shall be taken into account the support received by such organization during such taxable year and during the immediately preceding 4 taxable years of such organization (excluding therefrom any preceding taxable year which begins before January 1, 1970). Subsection (d)(4) shall not apply to any grant to an organization which meets the requirements of this subsection.

(g) Individual grants

Subsection (d)(3) shall not apply to an individual grant awarded on an objective and nondiscriminatory basis pursuant to a procedure approved in advance by the Secretary, if it is demonstrated to the satisfaction of the Secretary that—

(1) the grant constitutes a scholarship or fellowship grant which would be subject to the provisions of section 117(a) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) and is to be used for study at an educational organization described in section 170(b)(1)(A)(ii),

(2) the grant constitutes a prize or award which is subject to the provisions of section 74(b) (without regard to paragraph (3) thereof), if the recipient of such prize or award is selected from the general public, or

(3) the purpose of the grant is to achieve a specific objective, produce a report or other similar product, or improve or enhance a literary, artistic, musical, scientific, teaching, or other similar capacity, skill, or talent of the grantee.

(h) Expenditure responsibility

The expenditure responsibility referred to in subsection (d)(4) means that the private foundation is responsible to exert all reasonable efforts and to establish adequate procedures—

(1) to see that the grant is spent solely for the purpose for which made,

(2) to obtain full and complete reports from the grantee on how the funds are spent, and

(3) to make full and detailed reports with respect to such expenditures to the Secretary.

(i) Other definitions

For purposes of this section—

(1) Correction

The terms "correction" and "correct" means, with respect to any taxable expenditure, (A) recovering part or all of the expenditure to the extent recovery is possible, and where full recovery is not possible such additional corrective action as is prescribed by the Secretary by regulations, or (B) in the case of a failure to comply with subsection (h)(2) or (h)(3), obtaining or making the report in question.

(2) Taxable period

The term "taxable period" means, with respect to any taxable expenditure, the period beginning with the date on which the taxable expenditure occurs and ending on the earlier of—

(A) the date of mailing a notice of deficiency with respect to the tax imposed by subsection (a)(1) under section 6212, or

(B) the date on which the tax imposed by subsection (a)(1) is assessed.

(Added Pub. L. 91–172, title I, §101(b), Dec. 30, 1969, 83 Stat. 512; amended Pub. L. 94–455, title XIX, §§1901(b)(8)(H), 1906(b)(13(A), Oct. 4, 1976, 90 Stat. 1795, 1834; Pub. L. 96–596, §2(a)(1)(F), (2)(E), Dec. 24, 1980, 94 Stat. 3469, 3470; Pub. L. 98–369, div. A, title III, §302(b), July 18, 1984, 98 Stat. 780; Pub. L. 99–514, title I, §122(a)(2)(B), Oct. 22, 1986, 100 Stat. 2110; Pub. L. 100–647, title I, §1001(d)(1)(B), Nov. 10, 1988, 102 Stat. 3350; Pub. L. 109–280, title XII, §§1212(e), 1244(b), Aug. 17, 2006, 120 Stat. 1074, 1107.)

REFERENCES IN TEXT

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (g)(1), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

CODIFICATION

Sections 1212(e) and 1244(b) of Pub. L. 109–280, which directed the amendment of section 4945 without specifying the act to be amended, were executed to this section, which is section 4945 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

AMENDMENTS

2006—Subsec. (a)(1). Pub. L. 109–280, §1212(e)(1)(A), substituted "20 percent" for "10 percent". See Codification note above.

Subsec. (a)(2). Pub. L. 109–280, §1212(e)(1)(B), substituted "5 percent" for "2½ percent". See Codification note above.

Subsec. (c)(2). Pub. L. 109–280, §1212(e)(2), substituted "$10,000," for "$5,000," and "$20,000." for "$10,000." See Codification note above.

Subsec. (d)(4)(A). Pub. L. 109–280, §1244(b), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "such organization is described in paragraph (1), (2), or (3) of section 509(a) or is an exempt operating foundation (as defined in section 4940(d)(2)), or". See Codification note above.

1988—Subsec. (g)(1). Pub. L. 100–647 amended par. (1) generally. Prior to amendment, par. (1) read as follows: "the grant constitutes a scholarship or fellowship grant which is subject to the provisions of section 117(a) and is to be used for study at an educational organization described in section 170(b)(1)(A)(ii),".

1986—Subsec. (g)(2). Pub. L. 99–514 inserted "(without regard to paragraph (3) thereof)" after "section 74(b)".

1984—Subsec. (d)(4). Pub. L. 98–369, in amending par. (4) generally, divided existing provisions into subpars. (A) and (B) and inserted reference in subpar. (A) to exempt foundations (as defined in section 4940(d)(2)).

1980—Subsec. (b)(1). Pub. L. 96–596, §2(a)(1)(F), substituted "taxable period" for "correction period".

Subsec. (i)(2). Pub. L. 96–596, §2(a)(2)(E), substituted provision defining taxable period as the period beginning with the date on which the taxable expenditure occurs and ending on the earlier of the date of mailing a notice of deficiency with respect to the tax imposed by subsec. (a)(1) of this section under section 6212 of this title or the date on which the tax imposed by subsec. (a)(1) of this section is assessed for provision defining correction period as the period beginning with the date on which the taxable expenditure occurs and ending 90 days after the date of mailing of a notice of deficiency with respect to the tax imposed by subsec. (b)(1) of this section under section 6212 of this title, extended by any period in which the deficiency cannot be assessed under section 6213(a) of this title and any other period which the Secretary determines to be reasonable and necessary, except that such determination not be made with respect to any taxable expenditure within the meaning of pars. (1), (2), (3), or (4) of subsec. (d) of this section because of any action by an appropriate State officer.

1976—Subsec. (g). Pub. L. 94–455, §§1901(b)(8)(H), 1906(b)(13)(A), struck out in provisions preceding par. (1) "or his delegate" after "Secretary" and substituted in par. (1) "educational organization described in section 170(b)(1)(A)(ii)" for "educational institution described in section 151(e)(4)".

Subsecs. (h), (i). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary" wherever appearing.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 1212(e) of Pub. L. 109–280 applicable to taxable years beginning after Aug. 17, 2006, see section 1212(f) of Pub. L. 109–280, set out as a note under section 4941 of this title.

Amendment by section 1244(b) of Pub. L. 109–280 applicable to distributions and expenditures after Aug. 17, 2006, see section 1244(c) of Pub. L. 109–280, set out as a note under section 4942 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to prizes and awards granted after Dec. 31, 1986, see section 151(c) of Pub. L. 99–514, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title III, §302(c)(2), July 18, 1984, 98 Stat. 781, provided that: "The amendment made by subsection (b) [amending this section] shall apply to grants made after December 31, 1984, in taxable years ending after such date."

EFFECTIVE DATE OF 1980 AMENDMENT

For effective date of amendment by Pub. L. 96–596 with respect to any first tier tax and to any second tier tax, see section 2(d) of Pub. L. 96–596, set out as an Effective Date note under section 4961 of this title.

SAVINGS PROVISION

Applicability of subsecs. (d)(4) and (h) of this section to grants to private foundations described in section

101(l)(C)(3) of Pub. L. 91–172, see section 101(l)(5) of Pub. L. 91–172, set out as a note under section 4940 of this title.

§4946. Definitions and special rules

(a) Disqualified person

(1) In general

For purposes of this subchapter, the term "disqualified person" means, with respect to a private foundation, a person who is—

(A) a substantial contributor to the foundation,

(B) a foundation manager (within the meaning of subsection (b)(1)),

(C) an owner of more than 20 percent of—

(i) the total combined voting power of a corporation,

(ii) the profits interest of a partnership, or

(iii) the beneficial interest of a trust or unincorporated enterprise,

which is a substantial contributor to the foundation,

(D) a member of the family (as defined in subsection (d)) of any individual described in subparagraph (A), (B), or (C),

(E) a corporation of which persons described in subparagraph (A), (B), (C), or (D) own more than 35 percent of the total combined voting power,

(F) a partnership in which persons described in subparagraph (A), (B), (C), or (D) own more than 35 percent of the profits interest,

(G) a trust or estate in which persons described in subparagraph (A), (B), (C), or (D) hold more than 35 percent of the beneficial interest,

(H) only for purposes of section 4943, a private foundation—

(i) which is effectively controlled (directly or indirectly) by the same person or persons who control the private foundation in question, or

(ii) substantially all of the contributions to which were made (directly or indirectly) by the same person or persons described in subparagraph (A), (B), or (C), or members of their families (within the meaning of subsection (d)), who made (directly or indirectly) substantially all of the contributions to the private foundation in question, and

(I) only for purposes of section 4941, a government official (as defined in subsection (c)).

(2) Substantial contributors

For purposes of paragraph (1), the term "substantial contributor" means a person who is described in section 507(d)(2).

(3) Stockholdings

For purposes of paragraphs (1)(C)(i) and (1)(E), there shall be taken into account indirect stockholdings which would be taken into account under section 267(c), except that, for purposes of this paragraph, section 267(c)(4) shall be treated as providing that the members of the family of an individual are the members within the meaning of subsection (d).

(4) Partnerships; trusts

For purposes of paragraphs (1)(C)(ii) and (iii), (1)(F), and (1)(G), the ownership of profits or beneficial interests shall be determined in accordance with the rules for constructive ownership of stock provided in section 267(c) (other than paragraph (3) thereof), except that section 267(c)(4) shall be treated as providing that the members of the family of an individual are the members within the meaning of subsection (d).

(b) Foundation manager

For purposes of this subchapter, the term "foundation manager" means, with respect to any private

foundation—

(1) an officer, director, or trustee of a foundation (or an individual having powers or responsibilities similar to those of officers, directors, or trustees of the foundation), and

(2) with respect to any act (or failure to act), the employees of the foundation having authority or responsibility with respect to such act (or failure to act).

(c) Government official

For purposes of subsection (a)(1)(I) and section 4941, the term "government official" means, with respect to an act of self-dealing described in section 4941, an individual who, at the time of such act, holds any of the following offices or positions (other than as a "special Government employee", as defined in section 202(a) of title 18, United States Code):

(1) an elective public office in the executive or legislative branch of the Government of the United States,

(2) an office in the executive or judicial branch of the Government of the United States, appointment to which was made by the President,

(3) a position in the executive, legislative, or judicial branch of the Government of the United States—

(A) which is listed in schedule C of rule VI of the Civil Service Rules, or

(B) the compensation for which is equal to or greater than the lowest rate of basic pay for the Senior Executive Service under section 5382 of title 5, United States Code,

(4) a position under the House of Representatives or the Senate of the United States held by an individual receiving gross compensation at an annual rate of $15,000 or more,

(5) an elective or appointive public office in the executive, legislative, or judicial branch of the government of a State, possession of the United States, or political subdivision or other area of any of the foregoing, or of the District of Columbia, held by an individual receiving gross compensation at an annual rate of $20,000 or more,

(6) a position as personal or executive assistant or secretary to any of the foregoing, or

(7) a member of the Internal Revenue Service Oversight Board.

(d) Members of family

For purposes of subsection (a)(1), the family of any individual shall include only his spouse, ancestors, children, grandchildren, great grandchildren, and the spouses of children, grandchildren, and great grandchildren.

(Added Pub. L. 91–172, title I, §101(b), Dec. 30, 1969, 83 Stat. 515; amended Pub. L. 95–227, §4(c)(2)(B), Feb. 10, 1978, 92 Stat. 22; Pub. L. 98–369, div. A, title III, §306(a), July 18, 1984, 98 Stat. 784; Pub. L. 99–514, title XVI, §1606(a), Oct. 22, 1986, 100 Stat. 2771; Pub. L. 105–206, title I, §1101(c)(1), July 22, 1998, 112 Stat. 696; Pub. L. 106–554, §1(a)(7) [title III, §319(16)], Dec. 21, 2000, 114 Stat. 2763, 2763A–647.)

AMENDMENTS

2000—Subsec. (c)(3)(B). Pub. L. 106–554 substituted "the lowest rate of basic pay for the Senior Executive Service under section 5382" for "the lowest rate of compensation prescribed for GS–16 of the General Schedule under section 5332".

1998—Subsec. (c)(7). Pub. L. 105–206 added par. (7).

1986—Subsec. (c)(5). Pub. L. 99–514 substituted "$20,000" for "$15,000".

1984—Subsec. (d). Pub. L. 98–369 amended subsec. (d) generally, substituting references to children, grandchildren, and great grandchildren for references to lineal descendants in two places.

1978—Subsecs. (a)(1), (b). Pub. L. 95–227 substituted "subchapter" for "chapter".

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XVI, §1606(b), Oct. 22, 1986, 100 Stat. 2771, provided that: "The amendment made by this section [amending this section] shall apply to compensation received after December 31, 1985."

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title III, §306(c), July 18, 1984, 98 Stat. 784, provided that: "The amendments made

by this subsection [probably should be "section", amending this section and section 6104 of this title] shall take effect on January 1, 1985."

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–227 applicable with respect to contributions, acts, and expenditures made after Dec. 31, 1977, in and for taxable years beginning after such date, see section 4(f) of Pub. L. 95–227, set out as an Effective Date note under section 192 of this title.

§4947. Application of taxes to certain nonexempt trusts

(a) Application of tax

(1) Charitable trusts

For purposes of part II of subchapter F of chapter 1 (other than section 508(a), (b), and (c)) and for purposes of this chapter, a trust which is not exempt from taxation under section 501(a), all of the unexpired interests in which are devoted to one or more of the purposes described in section 170(c)(2)(B), and for which a deduction was allowed under section 170, 545(b)(2), 642(c), 2055, 2106(a)(2), or 2522 (or the corresponding provisions of prior law), shall be treated as an organization described in section 501(c)(3). For purposes of section 509(a)(3)(A), such a trust shall be treated as if organized on the day on which it first becomes subject to this paragraph.

(2) Split-interest trusts

In the case of a trust which is not exempt from tax under section 501(a), not all of the unexpired interests in which are devoted to one or more of the purposes described in section 170(c)(2)(B), and which has amounts in trust for which a deduction was allowed under section 170, 545(b)(2), 642(c), 2055, 2106(a)(2), or 2522, section 507 (relating to termination of private foundation status), section 508(e) (relating to governing instruments) to the extent applicable to a trust described in this paragraph, section 4941 (relating to taxes on self-dealing), section 4943 (relating to taxes on excess business holdings) except as provided in subsection (b)(3), section 4944 (relating to investments which jeopardize charitable purpose) except as provided in subsection (b)(3), and section 4945 (relating to taxes on taxable expenditures) shall apply as if such trust were a private foundation. This paragraph shall not apply with respect to—

(A) any amounts payable under the terms of such trust to income beneficiaries, unless a deduction was allowed under section 170(f)(2)(B), 2055(e)(2)(B), or 2522(c)(2)(B),

(B) any amounts in trust other than amounts for which a deduction was allowed under section 170, 545(b)(2), 642(c), 2055, 2106(a)(2), or 2522, if such other amounts are segregated from amounts for which no deduction was allowable, or

(C) any amounts transferred in trust before May 27, 1969.

(3) Segregated amounts

For purposes of paragraph (2)(B), a trust with respect to which amounts are segregated shall separately account for the various income, deduction, and other items properly attributable to each of such segregated amounts.

(b) Special rules

(1) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section.

(2) Limit to segregated amounts

If any amounts in the trust are segregated within the meaning of subsection (a)(2)(B) of this section, the value of the net assets for purposes of subsections (c)(2) and (g) of section 507 shall be limited to such segregated amounts.

(3) Sections 4943 and 4944

Sections 4943 and 4944 shall not apply to a trust which is described in subsection (a)(2) if—

(A) all the income interest (and none of the remainder interest) of such trust is devoted solely to one or more of the purposes described in section 170(c)(2)(B), and all amounts in such trust for which a deduction was allowed under section 170, 545(b)(2), 642(c), 2055, 2106(a)(2), or 2522 have an aggregate value not more than 60 percent of the aggregate fair market value of all amounts in such trusts, or

(B) a deduction was allowed under section 170, 545(b)(2), 642(c), 2055, 2106(a)(2), or 2522 for amounts payable under the terms of such trust to every remainder beneficiary but not to any income beneficiary.

(4) Section 507

The provisions of section 507(a) shall not apply to a trust which is described in subsection (a)(2) by reason of a distribution of qualified employer securities (as defined in section 664(g)(4)) to an employee stock ownership plan (as defined in section 4975(e)(7)) in a qualified gratuitous transfer (as defined by section 664(g)).

(Added Pub. L. 91–172, title I, §101(b), Dec. 30, 1969, 83 Stat. 517; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 105–34, title XV, §1530(c)(9), Aug. 5, 1997, 111 Stat. 1079; Pub. L. 107–16, title V, §542(e)(4), June 7, 2001, 115 Stat. 85; Pub. L. 108–357, title IV, §413(c)(30), Oct. 22, 2004, 118 Stat. 1509; Pub. L. 111–312, title III, §301(a), Dec. 17, 2010, 124 Stat. 3300.)

AMENDMENTS

2010—Subsec. (a)(2)(A). Pub. L. 111–312 amended subsec. (a)(2)(A) to read as if amendment by Pub. L. 107–16, §542(e)(4), had never been enacted. See 2001 Amendment note below.

2004—Subsecs. (a)(1), (2), (b)(3). Pub. L. 108–357 struck out "556(b)(2)," after "545(b)(2)," wherever appearing.

2001—Subsec. (a)(2)(A). Pub. L. 107–16, §542(e)(4), inserted "642(c)," after "170(f)(2)(B),".

1997—Subsec. (b)(4). Pub. L. 105–34 added par. (4).

1976—Subsec. (b)(1). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–312 applicable to estates of decedents dying, and transfers made after Dec. 31, 2009, except as otherwise provided, see section 301(e) of Pub. L. 111–312, set out as an Effective and Termination Dates of 2010 Amendment note under section 121 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to deductions for taxable years beginning after Dec. 31, 2009, see section 542(f)(3) of Pub. L. 107–16, set out as a note under section 121 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to transfers made by trusts to, or for the use of, an employee stock ownership plan after Aug. 5, 1997, see section 1530(d) of Pub. L. 105–34, set out as a note under section 401 of this title.

§4948. Application of taxes and denial of exemption with respect to certain foreign organizations

(a) Tax on income of certain foreign organizations

In lieu of the tax imposed by section 4940, there is hereby imposed for each taxable year on the

gross investment income (within the meaning of section 4940(c)(2)) derived from sources within the United States (within the meaning of section 861) by every foreign organization which is a private foundation for the taxable year a tax equal to 4 percent of such income.

(b) Certain sections inapplicable

Section 507 (relating to termination of private foundation status), section 508 (relating to special rules with respect to section 501(c)(3) organizations), and this chapter (other than this section) shall not apply to any foreign organization which has received substantially all of its support (other than gross investment income) from sources outside the United States.

(c) Denial of exemption to foreign organizations engaged in prohibited transactions

(1) General rule

A foreign organization described in subsection (b) shall not be exempt from taxation under section 501(a) if it has engaged in a prohibited transaction after December 31, 1969.

(2) Prohibited transactions

For purposes of this subsection, the term "prohibited transaction" means any act or failure to act (other than with respect to section 4942(e)) which would subject a foreign organization described in subsection (b), or a disqualified person (as defined in section 4946) with respect thereto, to liability for a penalty under section 6684 or a tax under section 507 if such foreign organization were a domestic organization.

(3) Taxable years affected

(A) Except as provided in subparagraph (B), a foreign organization described in subsection (b) shall be denied exemption from taxation under section 501(a) by reason of paragraph (1) for all taxable years beginning with the taxable year during which it is notified by the Secretary that it has engaged in a prohibited transaction. The Secretary shall publish such notice in the Federal Register on the day on which he so notifies such foreign organization.

(B) Under regulations prescribed by the Secretary any foreign organization described in subsection (b) which is denied exemption from taxation under section 501(a) by reason of paragraph (1) may, with respect to the second taxable year following the taxable year in which notice is given under subparagraph (A) (or any taxable year thereafter), file claim for exemption from taxation under section 501(a). If the Secretary is satisfied that such organization will not knowingly again engage in a prohibited transaction, such organization shall not, with respect to taxable years beginning with the taxable year with respect to which such claim is filed, be denied exemption from taxation under section 501(a) by reason of any prohibited transaction which was engaged in before the date on which such notice was given under subparagraph (A).

(4) Disallowance of certain charitable deductions

No gift or bequest shall be allowed as a deduction under section 170, 545(b)(2), 642(c), 2055, 2106(a)(2), or 2522, if made—

(A) to a foreign organization described in subsection (b) after the date on which the Secretary publishes notice under paragraph (3)(A) that he has notified such organization that it has engaged in a prohibited transaction, and

(B) in a taxable year of such organization for which it is not exempt from taxation under section 501(a) by reason of paragraph (1).

(Added Pub. L. 91–172, title I, §101(b), Dec. 30, 1969, 83 Stat. 518; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 108–357, title IV, §413(c)(30), Oct. 22, 2004, 118 Stat. 1509.)

AMENDMENTS

2004—Subsec. (c)(4). Pub. L. 108–357 struck out "556(b)(2)," after "545(b)(2)," in introductory provisions.
1976—Subsec. (c). Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

Subchapter B—Black Lung Benefit Trusts

Sec.
4951. Taxes on self-dealing.
4952. Taxes on taxable expenditures.
4953. Tax on excess contributions to black lung benefit trusts.

§4951. Taxes on self-dealing

(a) Initial taxes

(1) On self-dealer

There is hereby imposed a tax on each act of self-dealing between a disqualified person and a trust described in section 501(c)(21). The rate of tax shall be equal to 10 percent of the amount involved with respect to the act of self-dealing for each year (or part thereof) in the taxable period. The tax imposed by this paragraph shall be paid by any disqualified person (other than a trustee acting only as a trustee of the trust) who participates in the act of self-dealing.

(2) On trustee

In any case in which a tax is imposed by paragraph (1), there is hereby imposed on the participation of any trustee of such a trust in an act of self-dealing between a disqualified person and the trust, knowing that it is such an act, a tax equal to 2½ percent of the amount involved with respect to the act of self-dealing for each year (or part thereof) in the taxable period, unless such participation is not willful and is due to reasonable cause. The tax imposed by this paragraph shall be paid by any such trustee who participated in the act of self-dealing.

(b) Additional taxes

(1) On self-dealer

In any case in which an initial tax is imposed by subsection (a)(1) on an act of self-dealing by a disqualified person with a trust described in section 501(c)(21) and in which the act is not corrected within the taxable period, there is hereby imposed a tax equal to 100 percent of the amount involved. The tax imposed by this paragraph shall be paid by any disqualified person (other than a trustee acting only as a trustee of such a trust) who participated in the act of self-dealing.

(2) On trustee

In any case in which an additional tax is imposed by paragraph (1), if a trustee of such a trust refused to agree to part or all of the correction, there is hereby imposed a tax equal to 50 percent of the amount involved. The tax imposed by this paragraph shall be paid by any such trustee who refused to agree to part or all of the correction.

(c) Joint and several liability

If more than one person is liable under any paragraph of subsection (a) or (b) with respect to any one act of self-dealing, all such persons shall be jointly and severally liable under such paragraph with respect to such act.

(d) Self-dealing

(1) In general

For purposes of this section, the term "self-dealing" means any direct or indirect—

(A) sale, exchange, or leasing of real or personal property between a trust described in section 501(c)(21) and a disqualified person;

(B) lending of money or other extension of credit between such a trust and a disqualified person;

(C) furnishing of goods, services, or facilities between such a trust and a disqualified person;

(D) payment of compensation (or payment or reimbursement of expenses) by such a trust to a disqualified person; and

(E) transfer to, or use by or for the benefit of, a disqualified person of the income or assets of such a trust.

(2) Special rules

For purposes of paragraph (1)—

(A) the transfer of personal property by a disqualified person to such a trust shall be treated as a sale or exchange if the property is subject to a mortgage or similar lien;

(B) the furnishing of goods, services, or facilities by a disqualified person to such a trust shall not be an act of self-dealing if the furnishing is without charge and if the goods, services, or facilities so furnished are used exclusively for the purposes specified in section 501(c)(21)(A); and

(C) the payment of compensation (and the payment or reimbursement of expenses) by such a trust to a disqualified person for personal services which are reasonable and necessary to carrying out the exempt purpose of the trust shall not be an act of self-dealing if the compensation (or payment or reimbursement) is not excessive.

(e) Definitions

For purposes of this section—

(1) Taxable period

The term "taxable period" means, with respect to any act of self-dealing, the period beginning with the date on which the act of self-dealing occurs and ending on the earliest of—

(A) the date of mailing a notice of deficiency with respect to the tax imposed by subsection (a)(1) under section 6212,

(B) the date on which the tax imposed by subsection (a)(1) is assessed, or

(C) the date on which correction of the act of self-dealing is completed.

(2) Amount involved

The term "amount involved" means, with respect to any act of self-dealing, the greater of the amount of money and the fair market value of the other property given or the amount of money and the fair market value of the other property received; except that in the case of services described in subsection (d)(2)(C), the amount involved shall be only the excess compensation. For purposes of the preceding sentence, the fair market value—

(A) in the case of the taxes imposed by subsection (a), shall be determined as of the date on which the act of self-dealing occurs; and

(B) in the case of taxes imposed by subsection (b), shall be the highest fair market value during the taxable period.

(3) Correction

The terms "correction" and "correct" mean, with respect to any act of self-dealing, undoing the transaction to the extent possible, but in any case placing the trust in a financial position not worse than that in which it would be if the disqualified person were dealing under the highest fiduciary standards.

(4) Disqualified person

The term "disqualified person" means, with respect to a trust described in section 501(c)(21), a person who is—

(A) a contributor to the trust,

(B) a trustee of the trust,

(C) an owner of more than 10 percent of—

(i) the total combined voting power of a corporation,

(ii) the profits interest of a partnership, or

(iii) the beneficial interest of a trust or unincorporated enterprise,

which is a contributor to the trust,

(D) an officer, director, or employee of a person who is a contributor to the trust,

(E) the spouse, ancestor, lineal descendant, or spouse of a lineal descendant of an individual described in subparagraph (A), (B), (C), or (D),

(F) a corporation of which persons described in subparagraph (A), (B), (C), (D), or (E) own more than 35 percent of the total combined voting power,

(G) a partnership in which persons described in subparagraph (A), (B), (C), (D), or (E), own more than 35 percent of the profits interest, or

(H) a trust or estate in which persons described in subparagraph (A), (B), (C), (D), or (E), hold more than 35 percent of the beneficial interest.

For purposes of subparagraphs (C)(i) and (F), there shall be taken into account indirect stockholdings which would be taken into account under section 267(c), except that, for purposes of this paragraph, section 267(c)(4) shall be treated as providing that the members of the family of an individual are only those individuals described in subparagraph (E) of this paragraph. For purposes of subparagraphs (C) (ii) and (iii), (G), and (H), the ownership of profits or beneficial interests shall be determined in accordance with the rules for constructive ownership of stock provided in section 267(c) (other than paragraph (3) thereof), except that section 267(c)(4) shall be treated as providing that the members of the family of an individual are only those individuals described in subparagraph (E) of this paragraph.

(f) Payments of benefits

For purposes of this section, a payment, out of assets or income of a trust described in section 501(c)(21), for the purposes described in subclause (I) or (IV) of section 501(c)(21)(A)(i) shall not be considered an act of self-dealing.

(Added Pub. L. 95–227, §4(c)(1), Feb. 10, 1978, 92 Stat. 18; amended Pub. L. 96–596, §2(a)(1)(G), (H), (2)(F), (3)(E), Dec. 24, 1980, 94 Stat. 3469–3471; Pub. L. 102–486, title XIX, §1940(b), Oct. 24, 1992, 106 Stat. 3035.)

AMENDMENTS

1992—Subsec. (f). Pub. L. 102–486 substituted "subclause (I) or (IV) of section 501(c)(21)(A)(i)" for "clause (i) of section 501(c)(21)(A)".

1980—Subsec. (b)(1). Pub. L. 96–596, §2(a)(1)(G), substituted "taxable period" for "correction period".

Subsec. (e)(1)(B), (C). Pub. L. 96–596, §2(a)(2)(F), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (e)(2)(B). Pub. L. 96–596, §2(a)(1)(H), substituted "taxable period" for "correction period".

Subsec. (e)(4), (5). Pub. L. 96–596, §2(a)(3)(E), redesignated par. (5) as (4) and struck out former par. (4) which defined correction period, with respect to any act of self-dealing, as the period beginning with the date on which the act of self-dealing occurs and ending 90 days after the date of mailing of a notice of deficiency under section 6212 of this title with respect to the tax imposed by subsec. (b)(1) of this section, extended by any period in which a deficiency cannot be assessed under section 6213(a) of this title and any other period which the Secretary determines is reasonable and necessary to bring about correction of the act of self-dealing.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–486 applicable to taxable years beginning after Dec. 31, 1991, see section 1940(d) of Pub. L. 102–486, set out as a note under section 192 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

For effective date of amendment by Pub. L. 96–596 with respect to any first tier tax and to any second tier tax, see section 2(d) of Pub. L. 96–596, set out as an Effective Date note under section 4961 of this title.

EFFECTIVE DATE

Subchapter effective with respect to contributions, acts, and expenditures made after Dec. 31, 1977, in and for taxable years beginning after such date, see section 4(f) of Pub. L. 95–227, set out as a note under section 192 of this title.

§4952. Taxes on taxable expenditures

(a) Tax imposed

(1) On the fund

There is hereby imposed on each taxable expenditure (as defined in subsection (d)) from the assets or income of a trust described in section 501(c)(21) a tax equal to 10 percent of the amount thereof. The tax imposed by this paragraph shall be paid by the trustee out of the assets of the trust.

(2) On the trustee

There is hereby imposed on the agreement of any trustee of such a trust to the making of an expenditure, knowing that it is a taxable expenditure, a tax equal to 2½ percent of the amount thereof, unless such agreement is not willful and is due to reasonable cause. The tax imposed by this paragraph shall be paid by the trustee who agreed to the making of the expenditure.

(b) Additional taxes

(1) On the fund

In any case in which an initial tax is imposed by subsection (a)(1) on a taxable expenditure and such expenditure is not corrected within the taxable period, there is hereby imposed a tax equal to 100 percent of the amount of the expenditure. The tax imposed by this paragraph shall be paid by the trustee out of the assets of the trust.

(2) On the trustee

In any case in which an additional tax is imposed by paragraph (1), if a trustee refused to agree to a part or all of the correction, there is hereby imposed a tax equal to 50 percent of the amount of the taxable expenditure. The tax imposed by this paragraph shall be paid by any trustee who refused to agree to part or all of the correction.

(c) Joint and several liability

For purposes of subsections (a) and (b), if more than one person is liable under subsection (a)(2) or (b)(2) with respect to the making of a taxable expenditure, all such persons shall be jointly and severally liable under such paragraph with respect to such expenditure.

(d) Taxable expenditure

For purposes of this section, the term "taxable expenditure" means any amount paid or incurred by a trust described in section 501(c)(21) other than for a purpose specified in such section.

(e) Definitions

(1) Correction

The terms "correction" and "correct" mean, with respect to any taxable expenditure, recovering part or all of the expenditure to the extent recovery is possible, and where full recovery is not possible, contributions by the person or persons whose liabilities for black lung benefit claims (as defined in section 192(e)) are to be paid out of the trust to the extent necessary to place the trust in a financial position not worse than that in which it would be if the taxable expenditure had not been made.

(2) Taxable period

The term "taxable period" means, with respect to any taxable expenditure, the period beginning with the date on which the taxable expenditure occurs and ending on the earlier of—

(A) the date of mailing a notice of deficiency with respect to the tax imposed by subsection (a)(1) under section 6212, or

(B) the date on which the tax imposed by subsection (a)(1) is assessed.

(Added Pub. L. 95–227, §4(c)(1), Feb. 10, 1978, 92 Stat. 21; amended Pub. L. 96–596, §2(a)(1)(I), (2)(G), Dec. 24, 1980, 94 Stat. 3469, 3471.)

AMENDMENTS

1980—Subsec. (b)(1). Pub. L. 96–596, §2(a)(1)(I), substituted "taxable period" for "correction period".

Subsec. (e)(2). Pub. L. 96–596, §2(a)(2)(G), substituted provision defining taxable period as the period beginning with the date on which the taxable expenditure occurs and ending on the earlier of the date of mailing a notice of deficiency with respect to the tax imposed by subsec. (a)(1) of this section under section 6212 of this title or the date on which the tax imposed by subsec. (a)(1) of this section is assessed for provision defining correction period as the period beginning with the date on which the taxable expenditure occurs and ending 90 days after the date of mailing a notice of deficiency under section 6212 of this title with respect to the tax imposed by subsec. (b)(1) of this section, extended by any period in which the deficiency cannot be assessed under section 6213(a) of this title and any other period which the Secretary determines reasonable and necessary to bring about the correction of the taxable expenditure.

EFFECTIVE DATE OF 1980 AMENDMENT

For effective date of amendment by Pub. L. 96–596 with respect to any first tier tax and to any second tier tax, see section 2(d) of Pub. L. 96–596, set out as an Effective Date note under section 4961 of this title.

§4953. Tax on excess contributions to black lung benefit trusts

(a) Tax imposed

There is hereby imposed for each taxable year a tax in an amount equal to 5 percent of the amount of the excess contributions made by a person to or under a trust or trusts described in section 501(c)(21). The tax imposed by this subsection shall be paid by the person making the excess contribution.

(b) Excess contribution

For purposes of this section, the term "excess contribution" means the sum of—

(1) the amount by which the amount contributed for the taxable year to a trust or trusts described in section 501(c)(21) exceeds the amount of the deduction allowable to such person for such contributions for the taxable year under section 192, and

(2) the amount determined under this subsection for the preceding taxable year, reduced by the sum of—

(A) the excess of the maximum amount allowable as a deduction under section 192 for the taxable year over the amount contributed to the trust or trusts for the taxable year, and

(B) amounts distributed from the trust to the contributor which were excess contributions for the preceding taxable year.

(c) Treatment of withdrawal of excess contributions

Amounts distributed during the taxable year from a trust described in section 501(c)(21) to the contributor thereof the sum of which does not exceed the amount of the excess contribution made by the contributor shall not be treated as—

(1) an act of self-dealing (within the meaning of section 4951),

(2) a taxable expenditure (within the meaning of section 4952), or

(3) an act contrary to the purposes for which the trust is exempt from taxation under section 501(a).

(Added Pub. L. 95–227, §4(c)(1), Feb. 10, 1978, 92 Stat. 22.)

Subchapter C—Political Expenditures of Section 501(c)(3) Organizations

Sec.
4955. Taxes on political expenditures of section 501(c)(3) organizations.

PRIOR PROVISIONS

A prior subchapter C, consisting of sections 4961 to 4963 of this title, was redesignated subchapter E.

§4955. Taxes on political expenditures of section 501(c)(3) organizations

(a) Initial taxes

(1) On the organization

There is hereby imposed on each political expenditure by a section 501(c)(3) organization a tax equal to 10 percent of the amount thereof. The tax imposed by this paragraph shall be paid by the organization.

(2) On the management

There is hereby imposed on the agreement of any organization manager to the making of any expenditure, knowing that it is a political expenditure, a tax equal to 2½ percent of the amount thereof, unless such agreement is not willful and is due to reasonable cause. The tax imposed by this paragraph shall be paid by any organization manager who agreed to the making of the expenditure.

(b) Additional taxes

(1) On the organization

In any case in which an initial tax is imposed by subsection (a)(1) on a political expenditure and such expenditure is not corrected within the taxable period, there is hereby imposed a tax equal to 100 percent of the amount of the expenditure. The tax imposed by this paragraph shall be paid by the organization.

(2) On the management

In any case in which an additional tax is imposed by paragraph (1), if an organization manager refused to agree to part or all of the correction, there is hereby imposed a tax equal to 50 percent of the amount of the political expenditure. The tax imposed by this paragraph shall be paid by any organization manager who refused to agree to part or all of the correction.

(c) Special rules

For purposes of subsections (a) and (b)—

(1) Joint and several liability

If more than 1 person is liable under subsection (a)(2) or (b)(2) with respect to the making of a political expenditure, all such persons shall be jointly and severally liable under such subsection with respect to such expenditure.

(2) Limit for management

With respect to any 1 political expenditure, the maximum amount of the tax imposed by subsection (a)(2) shall not exceed $5,000, and the maximum amount of the tax imposed by subsection (b)(2) shall not exceed $10,000.

(d) Political expenditure

For purposes of this section—

(1) In general

The term "political expenditure" means any amount paid or incurred by a section 501(c)(3) organization in any participation in, or intervention in (including the publication or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

(2) Certain other expenditures included

In the case of an organization which is formed primarily for purposes of promoting the candidacy (or prospective candidacy) of an individual for public office (or which is effectively controlled by a candidate or prospective candidate and which is availed of primarily for such purposes), the term "political expenditure" includes any of the following amounts paid or incurred by the organization:

(A) Amounts paid or incurred to such individual for speeches or other services.

(B) Travel expenses of such individual.

(C) Expenses of conducting polls, surveys, or other studies, or preparing papers or other materials, for use by such individual.

(D) Expenses of advertising, publicity, and fundraising for such individual.

(E) Any other expense which has the primary effect of promoting public recognition, or otherwise primarily accruing to the benefit, of such individual.

(e) Coordination with sections 4945 and 4958

If tax is imposed under this section with respect to any political expenditure, such expenditure shall not be treated as a taxable expenditure for purposes of section 4945 or an excess benefit for purposes of section 4958.

(f) Other definitions

For purposes of this section—

(1) Section 501(c)(3) organization

The term "section 501(c)(3) organization" means any organization which (without regard to any political expenditure) would be described in section 501(c)(3) and exempt from taxation under section 501(a).

(2) Organization manager

The term "organization manager" means—

(A) any officer, director, or trustee of the organization (or individual having powers or responsibilities similar to those of officers, directors, or trustees of the organization), and

(B) with respect to any expenditure, any employee of the organization having authority or responsibility with respect to such expenditure.

(3) Correction

The terms "correction" and "correct" mean, with respect to any political expenditure, recovering part or all of the expenditure to the extent recovery is possible, establishment of safeguards to prevent future political expenditures, and where full recovery is not possible, such additional corrective action as is prescribed by the Secretary by regulations.

(4) Taxable period

The term "taxable period" means, with respect to any political expenditure, the period beginning with the date on which the political expenditure occurs and ending on the earlier of—

(A) the date of mailing a notice of deficiency under section 6212 with respect to the tax imposed by subsection (a)(1), or

(B) the date on which tax imposed by subsection (a)(1) is assessed.

(Added Pub. L. 100–203, title X, §10712(a), Dec. 22, 1987, 101 Stat. 1330–465; amended Pub. L. 104–168, title XIII, §1311(c)(1), July 30, 1996, 110 Stat. 1478.)

AMENDMENTS

1996—Subsec. (e). Pub. L. 104–168 substituted "sections 4945 and 4958" for "section 4945" in heading and inserted "or an excess benefit for purposes of section 4958" before period at end of text.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–168, title XIII, §1311(d)(1), (2), July 30, 1996, 110 Stat. 1478, provided that:

"(1) IN GENERAL.—The amendments made by this section [enacting section 4958 of this title and

amending this section and sections 4963, 6213, 7422, and 7454 of this title] (other than subsection (b)) [amending section 501 of this title] shall apply to excess benefit transactions occurring on or after September 14, 1995.

"(2) BINDING CONTRACTS.—The amendments referred to in paragraph (1) shall not apply to any benefit arising from a transaction pursuant to any written contract which was binding on September 13, 1995, and at all times thereafter before such transaction occurred."

EFFECTIVE DATE

Pub. L. 100–203, title X, §10712(d), Dec. 22, 1987, 101 Stat. 1330–468, provided that: "The amendments made by this section [enacting this section and amending sections 4962, 4963, 6213, 6501, 6503, 6684, 7422, and 7454 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Dec. 22, 1987]."

Subchapter D—Failure by Certain Charitable Organizations To Meet Certain Qualification Requirements

Sec.
4958. Taxes on excess benefit transactions.
4959. Taxes on failures by hospital organizations.

PRIOR PROVISIONS

A prior subchapter D, consisting of sections 4961 to 4963 of this title, was redesignated subchapter E.

AMENDMENTS

2010—Pub. L. 111–148, title IX, §9007(b)(2), Mar. 23, 2010, 124 Stat. 857, added item 4959.

§4958. Taxes on excess benefit transactions

(a) Initial taxes

(1) On the disqualified person

There is hereby imposed on each excess benefit transaction a tax equal to 25 percent of the excess benefit. The tax imposed by this paragraph shall be paid by any disqualified person referred to in subsection (f)(1) with respect to such transaction.

(2) On the management

In any case in which a tax is imposed by paragraph (1), there is hereby imposed on the participation of any organization manager in the excess benefit transaction, knowing that it is such a transaction, a tax equal to 10 percent of the excess benefit, unless such participation is not willful and is due to reasonable cause. The tax imposed by this paragraph shall be paid by any organization manager who participated in the excess benefit transaction.

(b) Additional tax on the disqualified person

In any case in which an initial tax is imposed by subsection (a)(1) on an excess benefit transaction and the excess benefit involved in such transaction is not corrected within the taxable period, there is hereby imposed a tax equal to 200 percent of the excess benefit involved. The tax imposed by this subsection shall be paid by any disqualified person referred to in subsection (f)(1) with respect to such transaction.

(c) Excess benefit transaction; excess benefit

For purposes of this section—

(1) Excess benefit transaction

(A) In general

The term "excess benefit transaction" means any transaction in which an economic benefit is

provided by an applicable tax-exempt organization directly or indirectly to or for the use of any disqualified person if the value of the economic benefit provided exceeds the value of the consideration (including the performance of services) received for providing such benefit. For purposes of the preceding sentence, an economic benefit shall not be treated as consideration for the performance of services unless such organization clearly indicated its intent to so treat such benefit.

(B) Excess benefit

The term "excess benefit" means the excess referred to in subparagraph (A).

(2) Special rules for donor advised funds

In the case of any donor advised fund (as defined in section 4966(d)(2))—

(A) the term "excess benefit transaction" includes any grant, loan, compensation, or other similar payment from such fund to a person described in subsection (f)(7) with respect to such fund, and

(B) the term "excess benefit" includes, with respect to any transaction described in subparagraph (A), the amount of any such grant, loan, compensation, or other similar payment.

(3) Special rules for supporting organizations

(A) In general

In the case of any organization described in section 509(a)(3)—

(i) the term "excess benefit transaction" includes—

(I) any grant, loan, compensation, or other similar payment provided by such organization to a person described in subparagraph (B), and

(II) any loan provided by such organization to a disqualified person (other than an organization described in subparagraph (C)(ii)), and

(ii) the term "excess benefit" includes, with respect to any transaction described in clause (i), the amount of any such grant, loan, compensation, or other similar payment.

(B) Person described

A person is described in this subparagraph if such person is—

(i) a substantial contributor to such organization,

(ii) a member of the family (determined under section 4958(f)(4)) of an individual described in clause (i), or

(iii) a 35-percent controlled entity (as defined in section 4958(f)(3) by substituting "persons described in clause (i) or (ii) of section 4958(c)(3)(B)" for "persons described in subparagraph (A) or (B) of paragraph (1)" in subparagraph (A)(i) thereof).

(C) Substantial contributor

For purposes of this paragraph—

(i) In general

The term "substantial contributor" means any person who contributed or bequeathed an aggregate amount of more than $5,000 to the organization, if such amount is more than 2 percent of the total contributions and bequests received by the organization before the close of the taxable year of the organization in which the contribution or bequest is received by the organization from such person. In the case of a trust, such term also means the creator of the trust. Rules similar to the rules of subparagraphs (B) and (C) of section 507(d)(2) shall apply for purposes of this subparagraph.

(ii) Exception

Such term shall not include—

(I) any organization described in paragraph (1), (2), or (4) of section 509(a), and

(II) any organization which is treated as described in such paragraph (2) by reason of the last sentence of section 509(a) and which is a supported organization (as defined in section

509(f)(3)) of the organization to which subparagraph (A) applies.

(4) Authority to include certain other private inurement

To the extent provided in regulations prescribed by the Secretary, the term "excess benefit transaction" includes any transaction in which the amount of any economic benefit provided to or for the use of a disqualified person is determined in whole or in part by the revenues of 1 or more activities of the organization but only if such transaction results in inurement not permitted under paragraph (3) or (4) of section 501(c), as the case may be. In the case of any such transaction, the excess benefit shall be the amount of the inurement not so permitted.

(d) Special rules

For purposes of this section—

(1) Joint and several liability

If more than 1 person is liable for any tax imposed by subsection (a) or subsection (b), all such persons shall be jointly and severally liable for such tax.

(2) Limit for management

With respect to any 1 excess benefit transaction, the maximum amount of the tax imposed by subsection (a)(2) shall not exceed $20,000.

(e) Applicable tax-exempt organization

For purposes of this subchapter, the term "applicable tax-exempt organization" means—

(1) any organization which (without regard to any excess benefit) would be described in paragraph (3), (4), or (29) of section 501(c) and exempt from tax under section 501(a), and

(2) any organization which was described in paragraph (1) at any time during the 5-year period ending on the date of the transaction.

Such term shall not include a private foundation (as defined in section 509(a)).

(f) Other definitions

For purposes of this section—

(1) Disqualified person

The term "disqualified person" means, with respect to any transaction—

(A) any person who was, at any time during the 5-year period ending on the date of such transaction, in a position to exercise substantial influence over the affairs of the organization,

(B) a member of the family of an individual described in subparagraph (A),

(C) a 35-percent controlled entity,

(D) any person who is described in subparagraph (A), (B), or (C) with respect to an organization described in section 509(a)(3) and organized and operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of the applicable tax-exempt organization.[1]

(E) which involves a donor advised fund (as defined in section 4966(d)(2)), any person who is described in paragraph (7) with respect to such donor advised fund (as so defined), and

(F) which involves a sponsoring organization (as defined in section 4966(d)(1)), any person who is described in paragraph (8) with respect to such sponsoring organization (as so defined).

(2) Organization manager

The term "organization manager" means, with respect to any applicable tax-exempt organization, any officer, director, or trustee of such organization (or any individual having powers or responsibilities similar to those of officers, directors, or trustees of the organization).

(3) 35-percent controlled entity

(A) In general

The term "35-percent controlled entity" means—

(i) a corporation in which persons described in subparagraph (A) or (B) of paragraph (1) own more than 35 percent of the total combined voting power,

(ii) a partnership in which such persons own more than 35 percent of the profits interest, and

(iii) a trust or estate in which such persons own more than 35 percent of the beneficial interest.

(B) Constructive ownership rules

Rules similar to the rules of paragraphs (3) and (4) of section 4946(a) shall apply for purposes of this paragraph.

(4) Family members

The members of an individual's family shall be determined under section 4946(d); except that such members also shall include the brothers and sisters (whether by the whole or half blood) of the individual and their spouses.

(5) Taxable period

The term "taxable period" means, with respect to any excess benefit transaction, the period beginning with the date on which the transaction occurs and ending on the earliest of—

(A) the date of mailing a notice of deficiency under section 6212 with respect to the tax imposed by subsection (a)(1), or

(B) the date on which the tax imposed by subsection (a)(1) is assessed.

(6) Correction

The terms "correction" and "correct" mean, with respect to any excess benefit transaction, undoing the excess benefit to the extent possible, and taking any additional measures necessary to place the organization in a financial position not worse than that in which it would be if the disqualified person were dealing under the highest fiduciary standards, except that in the case of any correction of an excess benefit transaction described in subsection (c)(2), no amount repaid in a manner prescribed by the Secretary may be held in any donor advised fund.

(7) Donors and donor advisors

For purposes of paragraph (1)(E), a person is described in this paragraph if such person—

(A) is described in section 4966(d)(2)(A)(iii),

(B) is a member of the family of an individual described in subparagraph (A), or

(C) is a 35-percent controlled entity (as defined in paragraph (3) by substituting "persons described in subparagraph (A) or (B) of paragraph (7)" for "persons described in subparagraph (A) or (B) of paragraph (1)" in subparagraph (A)(i) thereof).

(8) Investment advisors

For purposes of paragraph (1)(F)—

(A) In general

A person is described in this paragraph if such person—

(i) is an investment advisor,

(ii) is a member of the family of an individual described in clause (i), or

(iii) is a 35-percent controlled entity (as defined in paragraph (3) by substituting "persons described in clause (i) or (ii) of paragraph (8)(A)" for "persons described in subparagraph (A) or (B) of paragraph (1)" in subparagraph (A)(i) thereof).

(B) Investment advisor defined

For purposes of subparagraph (A), the term "investment advisor" means, with respect to any sponsoring organization (as defined in section 4966(d)(1)), any person (other than an employee of such organization) compensated by such organization for managing the investment of, or providing investment advice with respect to, assets maintained in donor advised funds (as defined in section 4966(d)(2)) owned by such organization.

(Added Pub. L. 104–168, title XIII, §1311(a), July 30, 1996, 110 Stat. 1475; amended Pub. L. 109–280, title XII, §§1212(a)(3), 1232(a), (b), 1242(a), (b), Aug. 17, 2006, 120 Stat. 1074, 1098, 1099, 1104; Pub. L. 110–172, §3(i), Dec. 29, 2007, 121 Stat. 2475; Pub. L. 111–148, title I, §1322(h)(3), Mar. 23, 2010, 124 Stat. 192.)

CODIFICATION

Sections 1212(a)(3), 1232(a), (b), and 1242(a), (b) of Pub. L. 109–280, which directed the amendment of section 4958 without specifying the act to be amended, were executed to this section, which is section 4958 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

AMENDMENTS

2010—Subsec. (e)(1). Pub. L. 111–148 substituted "paragraph (3), (4), or (29)" for "paragraph (3) or (4)".

2007—Subsec. (c)(3)(A)(i)(II). Pub. L. 110–172, §3(i)(1), substituted "subparagraph (C)(ii)" for "paragraph (1), (2), or (4) of section 509(a)".

Subsec. (c)(3)(C)(ii). Pub. L. 110–172, §3(i)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "Such term shall not include any organization described in paragraph (1), (2), or (4) of section 509(a)."

2006—Subsec. (c)(2). Pub. L. 109–280, §1232(b)(1), added par. (2). Former par. (2) redesignated (3). See Codification note above.

Subsec. (c)(3). Pub. L. 109–280, §1242(b), added par. (3). Former par. (3) redesignated (4). See Codification note above.

Pub. L. 109–280, §1232(b)(1), redesignated par. (2) as (3). See Codification note above.

Subsec. (c)(4). Pub. L. 109–280, §1242(b), redesignated par. (3) as (4). See Codification note above.

Subsec. (d)(2). Pub. L. 109–280, §1212(a)(3), substituted "$20,000" for "$10,000". See Codification note above.

Subsec. (f)(1)(D). Pub. L. 109–280, §1242(a), added subpar. (D). Former subpar. (D) redesignated (E). See Codification note above.

Pub. L. 109–280, §1232(a)(1), added subpar. (D). See Codification note above.

Subsec. (f)(1)(E). Pub. L. 109–280, §1242(a), redesignated subpar. (D) as (E). Former subpar. (E) redesignated (F). See Codification note above.

Pub. L. 109–280, §1232(a)(1), added subpar. (E). See Codification note above.

Subsec. (f)(1)(F). Pub. L. 109–280, §1242(a), redesignated subpar. (E) as (F). See Codification note above.

Subsec. (f)(6). Pub. L. 109–280, §1232(b)(2), inserted ", except that in the case of any correction of an excess benefit transaction described in subsection (c)(2), no amount repaid in a manner prescribed by the Secretary may be held in any donor advised fund" after "standards". See Codification note above.

Subsec. (f)(7), (8). Pub. L. 109–280, §1232(a)(2), added pars. (7) and (8). See Codification note above.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–172 effective as if included in the provisions of the Pension Protection Act of 2006, Pub. L. 109–280, to which such amendment relates, see section 3(j) of Pub. L. 110–172, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 1212(a)(3) of Pub. L. 109–280 applicable to taxable years beginning after Aug. 17, 2006, see section 1212(f) of Pub. L. 109–280, set out as a note under section 4941 of this title.

Pub. L. 109–280, title XII, §1232(c), Aug. 17, 2006, 120 Stat. 1099, provided that: "The amendments made by this section [amending this section] shall apply to transactions occurring after the date of the enactment of this Act [Aug. 17, 2006]."

Pub. L. 109–280, title XII, §1242(c), Aug. 17, 2006, 120 Stat. 1105, provided that:

"(1) SUBSECTION (a).—The amendments made by subsection (a) [amending this section] shall apply to transactions occurring after the date of the enactment of this Act [Aug. 17, 2006].

"(2) SUBSECTION (b).—The amendments made by subsection (a) [probably should be "subsection (b)", amending this section] shall apply to transactions occurring after July 25, 2006."

EFFECTIVE DATE

Section applicable to excess benefit transactions occurring on or after Sept. 14, 1995, and not applicable to any benefit arising from a transaction pursuant to any written contract which was binding on Sept. 13, 1995, and at all times thereafter before such transaction occurred, see section 1311(d)(1), (2) of Pub. L. 104–168, set

out as an Effective Date of 1996 Amendment note under section 4955 of this title.

[1] *So in original. The period probably should be a comma.*

§4959. Taxes on failures by hospital organizations

If a hospital organization to which section 501(r) applies fails to meet the requirement of section 501(r)(3) for any taxable year, there is imposed on the organization a tax equal to $50,000.

(Added Pub. L. 111–148, title IX, §9007(b)(1), Mar. 23, 2010, 124 Stat. 857.)

EFFECTIVE DATE

Section applicable to failures occurring after Mar. 23, 2010, see section 9007(f)(3) of Pub. L. 111–148, set out as an Effective Date of 2010 Amendment note under section 501 of this title.

Subchapter E—Abatement of First and Second Tier Taxes in Certain Cases

Sec.
4961. Abatement of second tier taxes where there is correction.
4962. Abatement of first tier taxes in certain cases.
4963. Definitions.

AMENDMENTS

1996—Pub. L. 104–168, title XIII, §1311(a), July 30, 1996, 110 Stat. 1475, redesignated former subchapter D as E.

1987—Pub. L. 100–203, title X, §10712(a), (b)(5), Dec. 22, 1987, 101 Stat. 1330–465, 1330–467, redesignated former subchapter C as D, and struck out "private foundation" before "first tier taxes" in item 4962.

1984—Pub. L. 98–369, div. A, title III, §305(b)(1), (2), July 18, 1984, 98 Stat. 783, substituted "Abatement of First and Second Tier Taxes in Certain Cases" for "Abatement of Second Tier Taxes Where There Is Correction During Correction Period" in the subchapter heading, added item 4962, and renumbered former item 4962 as 4963.

§4961. Abatement of second tier taxes where there is correction

(a) General rule

If any taxable event is corrected during the correction period for such event, then any second tier tax imposed with respect to such event (including interest, additions to the tax, and additional amounts) shall not be assessed, and if assessed the assessment shall be abated, and if collected shall be credited or refunded as an overpayment.

(b) Supplemental proceeding

If the determination by a court that the taxpayer is liable for a second tier tax has become final, such court shall have jurisdiction to conduct any necessary supplemental proceeding to determine whether the taxable event was corrected during the correction period. Such a supplemental proceeding may be begun only during the period which ends on the 90th day after the last day of the correction period. Where such a supplemental proceeding has begun, the reference in the second sentence of section 6213(a) to a final decision of the Tax Court shall be treated as including a final decision in such supplemental proceeding.

(c) Suspension of period of collection for second tier tax

(1) Proceeding in District Court or United States Court of Federal Claims

If, not later than 90 days after the day on which the second tier tax is assessed, the first tier tax is paid in full and a claim for refund of the amount so paid is filed, no levy or proceeding in court

for the collection of the second tier tax shall be made, begun, or prosecuted until a final resolution of a proceeding begun as provided in paragraph (2) (and of any supplemental proceeding with respect thereto under subsection (b)). Notwithstanding section 7421(a), the collection by levy or proceeding may be enjoined during the time such prohibition is in force by a proceeding in the proper court.

(2) Suit must be brought to determine liability

If, within 90 days after the day on which his claim for refund is denied, the person against whom the second tier tax was assessed fails to begin a proceeding described in section 7422 for the determination of his liability for such tax, paragraph (1) shall cease to apply with respect to such tax, effective on the day following the close of the 90-day period referred to in this paragraph.

(3) Suspension of running of period of limitations on collection

The running of the period of limitations provided in section 6502 on the collection by levy or by a proceeding in court with respect to any second tier tax described in paragraph (1) shall be suspended for the period during which the Secretary is prohibited from collecting by levy or a proceeding in court.

(4) Jeopardy collection

If the Secretary makes a finding that the collection of the second tier tax is in jeopardy, nothing in this subsection shall prevent the immediate collection of such tax.

(Added Pub. L. 96–596, §2(c)(1), Dec. 24, 1980, 94 Stat. 3472; amended Pub. L. 99–514, title XVIII, §1899A(50), Oct. 22, 1986, 100 Stat. 2961; Pub. L. 102–572, title IX, §902(b)(1), Oct. 29, 1992, 106 Stat. 4516.)

AMENDMENTS

1992—Subsec. (c)(1). Pub. L. 102–572 substituted "United States Court of Federal Claims" for "United States Claims Court" in heading.

1986—Subsec. (c)(1). Pub. L. 99–514 substituted "United States Claims Court" for "Court of Claims" in heading.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE

Pub. L. 96–596, §2(d), Dec. 24, 1980, 94 Stat. 3474, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) FIRST TIER TAXES.—The amendments made by this section [enacting this section and section 4962 of this title and amending sections 4941 to 4945, 4951, 4952, 4971, 4975, 6213, 6214, 6503, and 7422 of this title] with respect to any first tier tax shall take effect as if included in the Internal Revenue Code of 1986 [formerly I.R.C. 1954] when such tax was first imposed.

"(2) SECOND TIER TAXES.—The amendments made by this section with respect to any second tier tax shall apply only with respect to taxes assessed after the date of the enactment of this Act [Dec. 24, 1980]. Nothing in the preceding sentence shall be construed to permit the assessment of a tax in a case to which, on the date of the enactment of this Act, the doctrine of res judicata applies.

"(3) FIRST AND SECOND TIER TAX.—For purposes of this subsection, the terms 'first tier tax' and 'second tier tax' have the respective meanings given to such terms by section 4962 of the Internal Revenue Code of 1986."

§4962. Abatement of first tier taxes in certain cases

(a) General rule

If it is established to the satisfaction of the Secretary that—

(1) a taxable event was due to reasonable cause and not to willful neglect, and

(2) such event was corrected within the correction period for such event,

then any qualified first tier tax imposed with respect to such event (including interest) shall not be assessed and, if assessed, the assessment shall be abated and, if collected, shall be credited or refunded as an overpayment.

(b) Qualified first tier tax

For purposes of this section, the term "qualified first tier tax" means any first tier tax imposed by subchapter A, C, D, or G of this chapter, except that such term shall not include the tax imposed by section 4941(a) (relating to initial tax on self-dealing).

(c) Special rule for tax on political expenditures of section 501(c)(3) organizations

In the case of the tax imposed by section 4955(a), subsection (a)(1) shall be applied by substituting "not willful and flagrant" for "due to reasonable cause and not to willful neglect".

(Added Pub. L. 98–369, div. A, title III, §305(a), July 18, 1984, 98 Stat. 783; amended Pub. L. 100–203, title X, §10712(b)(1), (2), (4), Dec. 22, 1987, 101 Stat. 1330–467; Pub. L. 105–34, title XVI, §1603(a), Aug. 5, 1997, 111 Stat. 1096; Pub. L. 110–172, §3(h), Dec. 29, 2007, 121 Stat. 2475.)

PRIOR PROVISIONS

A prior section 4962 was renumbered section 4963 of this title.

AMENDMENTS

2007—Subsec. (b). Pub. L. 110–172 substituted "D, or G" for "or D".

1997—Subsec. (b). Pub. L. 105–34 substituted "subchapter A, C, or D" for "subchapter A or C".

1987—Pub. L. 100–203, §10712(b)(4), struck out "private foundation" before "first tier taxes" in section catchline.

Subsec. (a). Pub. L. 100–203, §10712(b)(2), substituted "any qualified first tier tax" for "any private foundation first tier tax" in closing provisions.

Subsec. (b). Pub. L. 100–203, §10712(b)(1), added subsec. (b) and struck out former subsec. (b) "Private foundation first tier tax" which read as follows: "For purposes of this section, the term 'private foundation first tier tax' means any first tier tax imposed by subchapter A of chapter 42, except that such term shall not include the tax imposed by section 4941(a) (relating to initial tax on self-dealing)."

Subsec. (c). Pub. L. 100–203, §10712(b)(1), added subsec. (c).

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–172 effective as if included in the provisions of the Pension Protection Act of 2006, Pub. L. 109–280, to which such amendment relates, see section 3(j) of Pub. L. 110–172, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XVI, §1603(c), Aug. 5, 1997, 111 Stat. 1097, provided that: "The amendments made by this section [amending this section and section 6033 of this title] shall take effect as if included in the provisions of the Taxpayer Bill of Rights 2 [Pub. L. 104–168] to which such amendments relate."

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to taxable years beginning after Dec. 22, 1987, see section 10712(d) of Pub. L. 100–203, set out as an Effective Date note under section 4955 of this title.

EFFECTIVE DATE

Pub. L. 98–369, div. A, title III, §305(c), July 18, 1984, 98 Stat. 784, provided that: "The amendments made by this section [enacting this section, redesignating former section 4962 as 4963, and amending sections 4942, 6213, and 6503 of this title] shall apply to taxable events occurring after December 31, 1984."

§4963. Definitions

(a) First tier tax

For purposes of this subchapter, the term "first tier tax" means any tax imposed by subsection (a) of section 4941, 4942, 4943, 4944, 4945, 4951, 4952, 4955, 4958, 4966, 4967, 4971, or 4975.

(b) Second tier tax

For purposes of this subchapter, the term "second tier tax" means any tax imposed by subsection (b) of section 4941, 4942, 4943, 4944, 4945, 4951, 4952, 4955, 4958, 4971, or 4975.

(c) Taxable event

For purposes of this subchapter, the term "taxable event" means any act (or failure to act) giving rise to liability for tax under section 4941, 4942, 4943, 4944, 4945, 4951, 4952, 4955, 4958, 4966, 4967, 4971, or 4975.

(d) Correct

For purposes of this subchapter—

(1) In general

Except as provided in paragraph (2), the term "correct" has the same meaning as when used in the section which imposes the second tier tax.

(2) Special rules

The term "correct" means—

(A) in the case of the second tier tax imposed by section 4942(b), reducing the amount of the undistributed income to zero,

(B) in the case of the second tier tax imposed by section 4943(b), reducing the amount of the excess business holdings to zero, and

(C) in the case of the second tier tax imposed by section 4944, removing the investment from jeopardy.

(e) Correction period

For purposes of this subchapter—

(1) In general

The term "correction period" means, with respect to any taxable event, the period beginning on the date on which such event occurs and ending 90 days after the date of mailing under section 6212 of a notice of deficiency with respect to the second tier tax imposed on such taxable event, extended by—

(A) any period in which a deficiency cannot be assessed under section 6213(a) (determined without regard to the last sentence of section 4961(b)), and

(B) any other period which the Secretary determines is reasonable and necessary to bring about correction of the taxable event.

(2) Special rules for when taxable event occurs

For purposes of paragraph (1), the taxable event shall be treated as occurring—

(A) in the case of section 4942, on the first day of the taxable year for which there was a failure to distribute income,

(B) in the case of section 4943, on the first day on which there are excess business holdings,

(C) in the case of section 4971, on the last day of the plan year in which there is an accumulated funding deficiency, and

(D) in any other case, the date on which such event occurred.

(Added Pub. L. 96–596, §2(c)(1), Dec. 24, 1980, 94 Stat. 3473, §4962; renumbered §4963, Pub. L. 98–369, div. A, title III, §305(a), July 18, 1984, 98 Stat. 783; amended Pub. L. 100–203, title X, §10712(b)(3), Dec. 22, 1987, 101 Stat. 1330–467; Pub. L. 104–168, title XIII, §1311(c)(2), July 30, 1996, 110 Stat. 1478; Pub. L. 109–280, title XII, §1231(b)(1), Aug. 17, 2006, 120 Stat. 1098.)

AMENDMENTS

2006—Subsecs. (a), (c). Pub. L. 109–280, which directed the insertion of "4966, 4967," after "4958," in subsecs. (a) and (c) of section 4963, without specifying the act to be amended, was executed by making the

insertion in subsecs. (a) and (c) of this section, which is section 4963 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

1996—Subsecs. (a) to (c). Pub. L. 104–168 inserted "4958," after "4955,".

1987—Subsecs. (a) to (c). Pub. L. 100–203 inserted reference to section 4955 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title XII, §1231(c), Aug. 17, 2006, 120 Stat. 1098, provided that: "The amendments made by this section [enacting subchapter G of this chapter and amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 17, 2006]."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–168 applicable to excess benefit transactions occurring on or after Sept. 14, 1995, and not applicable to any benefit arising from a transaction pursuant to any written contract which was binding on Sept. 13, 1995, and at all times thereafter before such transaction occurred, see section 1311(d)(1), (2) of Pub. L. 104–168, set out as a note under section 4955 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to taxable years beginning after Dec. 22, 1987, see section 10712(d) of Pub. L. 100–203, set out as an Effective Date note under section 4955 of this title.

EFFECTIVE DATE

For effective date of section with respect to any first tier tax and to any second tier tax, see section 2(d) of Pub. L. 96–596, set out as a note under section 4961 of this title.

Subchapter F—Tax Shelter Transactions

Sec.
4965. Excise tax on certain tax-exempt entities entering into prohibited tax shelter transactions.

§4965. Excise tax on certain tax-exempt entities entering into prohibited tax shelter transactions

(a) Being a party to and approval of prohibited transactions

(1) Tax-exempt entity

(A) In general

If a transaction is a prohibited tax shelter transaction at the time any tax-exempt entity described in paragraph (1), (2), or (3) of subsection (c) becomes a party to the transaction, such entity shall pay a tax for the taxable year in which the entity becomes such a party and any subsequent taxable year in the amount determined under subsection (b)(1).

(B) Post-transaction determination

If any tax-exempt entity described in paragraph (1), (2), or (3) of subsection (c) is a party to a subsequently listed transaction at any time during a taxable year, such entity shall pay a tax for such taxable year in the amount determined under subsection (b)(1).

(2) Entity manager

If any entity manager of a tax-exempt entity approves such entity as (or otherwise causes such entity to be) a party to a prohibited tax shelter transaction at any time during the taxable year and knows or has reason to know that the transaction is a prohibited tax shelter transaction, such manager shall pay a tax for such taxable year in the amount determined under subsection (b)(2).

(b) Amount of tax

(1) Entity

In the case of a tax-exempt entity—

(A) In general

Except as provided in subparagraph (B), the amount of the tax imposed under subsection (a)(1) with respect to any transaction for a taxable year shall be an amount equal to the product of the highest rate of tax under section 11, and the greater of—

(i) the entity's net income (after taking into account any tax imposed by this subtitle (other than by this section) with respect to such transaction) for such taxable year which—

(I) in the case of a prohibited tax shelter transaction (other than a subsequently listed transaction), is attributable to such transaction, or

(II) in the case of a subsequently listed transaction, is attributable to such transaction and which is properly allocable to the period beginning on the later of the date such transaction is identified by guidance as a listed transaction by the Secretary or the first day of the taxable year, or

(ii) 75 percent of the proceeds received by the entity for the taxable year which—

(I) in the case of a prohibited tax shelter transaction (other than a subsequently listed transaction), are attributable to such transaction, or

(II) in the case of a subsequently listed transaction, are attributable to such transaction and which are properly allocable to the period beginning on the later of the date such transaction is identified by guidance as a listed transaction by the Secretary or the first day of the taxable year.

(B) Increase in tax for certain knowing transactions

In the case of a tax-exempt entity which knew, or had reason to know, a transaction was a prohibited tax shelter transaction at the time the entity became a party to the transaction, the amount of the tax imposed under subsection (a)(1)(A) with respect to any transaction for a taxable year shall be the greater of—

(i) 100 percent of the entity's net income (after taking into account any tax imposed by this subtitle (other than by this section) with respect to the prohibited tax shelter transaction) for such taxable year which is attributable to the prohibited tax shelter transaction, or

(ii) 75 percent of the proceeds received by the entity for the taxable year which are attributable to the prohibited tax shelter transaction.

This subparagraph shall not apply to any prohibited tax shelter transaction to which a tax-exempt entity became a party on or before the date of the enactment of this section.

(2) Entity manager

In the case of each entity manager, the amount of the tax imposed under subsection (a)(2) shall be $20,000 for each approval (or other act causing participation) described in subsection (a)(2).

(c) Tax-exempt entity

For purposes of this section, the term "tax-exempt entity" means an entity which is—

(1) described in section 501(c) or 501(d),

(2) described in section 170(c) (other than the United States),

(3) an Indian tribal government (within the meaning of section 7701(a)(40)),

(4) described in paragraph (1), (2), or (3) of section 4979(e),

(5) a program described in section 529,

(6) an eligible deferred compensation plan described in section 457(b) which is maintained by an employer described in section 457(e)(1)(A), or

(7) an arrangement described in section 4973(a).

(d) Entity manager

For purposes of this section, the term "entity manager" means—

(1) in the case of an entity described in paragraph (1), (2), or (3) of subsection (c)—

(A) the person with authority or responsibility similar to that exercised by an officer, director, or trustee of an organization, and

(B) with respect to any act, the person having authority or responsibility with respect to such act, and

(2) in the case of an entity described in paragraph (4), (5), (6), or (7) of subsection (c), the person who approves or otherwise causes the entity to be a party to the prohibited tax shelter transaction.

(e) Prohibited tax shelter transaction; subsequently listed transaction

For purposes of this section—

(1) Prohibited tax shelter transaction

(A) In general

The term "prohibited tax shelter transaction" means—

(i) any listed transaction, and

(ii) any prohibited reportable transaction.

(B) Listed transaction

The term "listed transaction" has the meaning given such term by section 6707A(c)(2).

(C) Prohibited reportable transaction

The term "prohibited reportable transaction" means any confidential transaction or any transaction with contractual protection (as defined under regulations prescribed by the Secretary) which is a reportable transaction (as defined in section 6707A(c)(1)).

(2) Subsequently listed transaction

The term "subsequently listed transaction" means any transaction to which a tax-exempt entity is a party and which is determined by the Secretary to be a listed transaction at any time after the entity has become a party to the transaction. Such term shall not include a transaction which is a prohibited reportable transaction at the time the entity became a party to the transaction.

(f) Regulatory authority

The Secretary is authorized to promulgate regulations which provide guidance regarding the determination of the allocation of net income or proceeds of a tax-exempt entity attributable to a transaction to various periods, including before and after the listing of the transaction or the date which is 90 days after the date of the enactment of this section.

(g) Coordination with other taxes and penalties

The tax imposed by this section is in addition to any other tax, addition to tax, or penalty imposed under this title.

(Added Pub. L. 109–222, title V, §516(a)(1), May 17, 2006, 120 Stat. 368; amended Pub. L. 110–172, §11(a)(30), Dec. 29, 2007, 121 Stat. 2487.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsecs. (b)(1)(B) and (f), is the date of enactment of Pub. L. 109–222, which was approved May 17, 2006.

AMENDMENTS

2007—Subsec. (c)(6). Pub. L. 110–172 substituted "section 457(e)(1)(A)" for "section 4457(e)(1)(A)".

EFFECTIVE DATE

Pub. L. 109–222, title V, §516(d), May 17, 2006, 120 Stat. 372, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this section and amending sections 6011, 6033, and 6652 of this title] shall apply to taxable years ending after the date of the enactment of this Act [May 17, 2006], with respect to transactions before, on, or after such date, except that no tax under section 4965(a) of the Internal Revenue Code of 1986 (as added by this section)

shall apply with respect to income or proceeds that are properly allocable to any period ending on or before the date which is 90 days after such date of enactment.

"(2) DISCLOSURE.—The amendments made by subsections (b) and (c) [amending sections 6011, 6033, and 6652 of this title] shall apply to disclosures the due date for which are after the date of the enactment of this Act."

Subchapter G—Donor Advised Funds

Sec.
4966. Taxes on taxable distributions.
4967. Taxes on prohibited benefits.

CODIFICATION

Pub. L. 109–280, title XII, §1231(a), Aug. 17, 2006, 120 Stat. 1094, which directed the addition of subchapter G at the end of chapter 42, without specifying the act to be amended, was executed by adding subchapter G at the end of chapter 42 of this title, which consists of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

§4966. Taxes on taxable distributions

(a) Imposition of taxes

(1) On the sponsoring organization

There is hereby imposed on each taxable distribution a tax equal to 20 percent of the amount thereof. The tax imposed by this paragraph shall be paid by the sponsoring organization with respect to the donor advised fund.

(2) On the fund management

There is hereby imposed on the agreement of any fund manager to the making of a distribution, knowing that it is a taxable distribution, a tax equal to 5 percent of the amount thereof. The tax imposed by this paragraph shall be paid by any fund manager who agreed to the making of the distribution.

(b) Special rules

For purposes of subsection (a)—

(1) Joint and several liability

If more than one person is liable under subsection (a)(2) with respect to the making of a taxable distribution, all such persons shall be jointly and severally liable under such paragraph with respect to such distribution.

(2) Limit for management

With respect to any one taxable distribution, the maximum amount of the tax imposed by subsection (a)(2) shall not exceed $10,000.

(c) Taxable distribution

For purposes of this section—

(1) In general

The term "taxable distribution" means any distribution from a donor advised fund—

(A) to any natural person, or

(B) to any other person if—

(i) such distribution is for any purpose other than one specified in section 170(c)(2)(B), or

(ii) the sponsoring organization does not exercise expenditure responsibility with respect to such distribution in accordance with section 4945(h).

(2) Exceptions

Such term shall not include any distribution from a donor advised fund—

(A) to any organization described in section 170(b)(1)(A) (other than a disqualified supporting organization),

(B) to the sponsoring organization of such donor advised fund, or

(C) to any other donor advised fund.

(d) Definitions

For purposes of this subchapter—

(1) Sponsoring organization

The term "sponsoring organization" means any organization which—

(A) is described in section 170(c) (other than in paragraph (1) thereof, and without regard to paragraph (2)(A) thereof),

(B) is not a private foundation (as defined in section 509(a)), and

(C) maintains 1 or more donor advised funds.

(2) Donor advised fund

(A) In general

Except as provided in subparagraph (B) or (C), the term "donor advised fund" means a fund or account—

(i) which is separately identified by reference to contributions of a donor or donors,

(ii) which is owned and controlled by a sponsoring organization, and

(iii) with respect to which a donor (or any person appointed or designated by such donor) has, or reasonably expects to have, advisory privileges with respect to the distribution or investment of amounts held in such fund or account by reason of the donor's status as a donor.

(B) Exceptions

The term "donor advised fund" shall not include any fund or account—

(i) which makes distributions only to a single identified organization or governmental entity, or

(ii) with respect to which a person described in subparagraph (A)(iii) advises as to which individuals receive grants for travel, study, or other similar purposes, if—

(I) such person's advisory privileges are performed exclusively by such person in the person's capacity as a member of a committee all of the members of which are appointed by the sponsoring organization,

(II) no combination of persons described in subparagraph (A)(iii) (or persons related to such persons) control, directly or indirectly, such committee, and

(III) all grants from such fund or account are awarded on an objective and nondiscriminatory basis pursuant to a procedure approved in advance by the board of directors of the sponsoring organization, and such procedure is designed to ensure that all such grants meet the requirements of paragraph (1), (2), or (3) of section 4945(g).

(C) Secretarial authority

The Secretary may exempt a fund or account not described in subparagraph (B) from treatment as a donor advised fund—

(i) if such fund or account is advised by a committee not directly or indirectly controlled by the donor or any person appointed or designated by the donor for the purpose of advising with respect to distributions from such fund (and any related parties), or

(ii) if such fund benefits a single identified charitable purpose.

(3) Fund manager

The term "fund manager" means, with respect to any sponsoring organization—

(A) an officer, director, or trustee of such sponsoring organization (or an individual having powers or responsibilities similar to those of officers, directors, or trustees of the sponsoring

organization), and

(B) with respect to any act (or failure to act), the employees of the sponsoring organization having authority or responsibility with respect to such act (or failure to act).

(4) Disqualified supporting organization

(A) In general

The term "disqualified supporting organization" means, with respect to any distribution—

(i) any type III supporting organization (as defined in section 4943(f)(5)(A)) which is not a functionally integrated type III supporting organization (as defined in section 4943(f)(5)(B)), and

(ii) any organization which is described in subparagraph (B) or (C) if—

(I) the donor or any person designated by the donor for the purpose of advising with respect to distributions from a donor advised fund (and any related parties) directly or indirectly controls a supported organization (as defined in section 509(f)(3)) of such organization, or

(II) the Secretary determines by regulations that a distribution to such organization otherwise is inappropriate.

(B) Type I and type II supporting organizations

An organization is described in this subparagraph if the organization meets the requirements of subparagraphs (A) and (C) of section 509(a)(3) and is—

(i) operated, supervised, or controlled by one or more organizations described in paragraph (1) or (2) of section 509(a), or

(ii) supervised or controlled in connection with one or more such organizations.

(C) Functionally integrated type III supporting organizations

An organization is described in this subparagraph if the organization is a functionally integrated type III supporting organization (as defined under section 4943(f)(5)(B)).

(Added Pub. L. 109–280, title XII, §1231(a), Aug. 17, 2006, 120 Stat. 1095.)

EFFECTIVE DATE

Section applicable to taxable years beginning after Aug. 17, 2006, see section 1231(c) of Pub. L. 109–280, set out as an Effective Date of 2006 Amendment note under section 4963 of this title.

§4967. Taxes on prohibited benefits

(a) Imposition of taxes

(1) On the donor, donor advisor, or related person

There is hereby imposed on the advice of any person described in subsection (d) to have a sponsoring organization make a distribution from a donor advised fund which results in such person or any other person described in subsection (d) receiving, directly or indirectly, a more than incidental benefit as a result of such distribution, a tax equal to 125 percent of such benefit. The tax imposed by this paragraph shall be paid by any person described in subsection (d) who advises as to the distribution or who receives such a benefit as a result of the distribution.

(2) On the fund management

There is hereby imposed on the agreement of any fund manager to the making of a distribution, knowing that such distribution would confer a benefit described in paragraph (1), a tax equal to 10 percent of the amount of such benefit. The tax imposed by this paragraph shall be paid by any fund manager who agreed to the making of the distribution.

(b) Exception

No tax shall be imposed under this section with respect to any distribution if a tax has been imposed with respect to such distribution under section 4958.

(c) Special rules

For purposes of subsection (a)—

(1) Joint and several liability

If more than one person is liable under paragraph (1) or (2) of subsection (a) with respect to a distribution described in subsection (a), all such persons shall be jointly and severally liable under such paragraph with respect to such distribution.

(2) Limit for management

With respect to any one distribution described in subsection (a), the maximum amount of the tax imposed by subsection (a)(2) shall not exceed $10,000.

(d) Person described

A person is described in this subsection if such person is described in section 4958(f)(7) with respect to a donor advised fund.

(Added Pub. L. 109–280, title XII, §1231(a), Aug. 17, 2006, 120 Stat. 1097.)

EFFECTIVE DATE

Section applicable to taxable years beginning after Aug. 17, 2006, see section 1231(c) of Pub. L. 109–280, set out as an Effective Date of 2006 Amendment note under section 4963 of this title.

CHAPTER 43—QUALIFIED PENSION, ETC., PLANS

Sec.

4971. Taxes on failure to meet minimum funding standards.
4972. Tax on nondeductible contributions to qualified employer plans.
4973. Tax on excess contributions to certain tax-favored accounts and annuities.
4974. Excise tax on certain accumulations in qualified retirement plans.
4975. Tax on prohibited transactions.
4976. Taxes with respect to funded welfare benefit plans.
4977. Tax on certain fringe benefits provided by an employer.
4978. Tax on certain dispositions by employee stock ownership plans and certain cooperatives.
[4978A, 4978B. Repealed.]
4979. Tax on certain excess contributions.
4979A. Tax on certain prohibited allocations of qualified securities.
4980. Tax on reversion of qualified plan assets to employer.
4980A. Tax on excess distributions from qualified retirement plans.[1]
4980B. Failure to satisfy continuation coverage requirements of group health plans.
4980C. Requirements for issuers of qualified long-term care insurance contracts.
4980D. Failure to meet certain group health plan requirements.
4980E. Failure of employer to make comparable Archer MSA contributions.
4980F. Failure of applicable plans reducing benefit accruals to satisfy notice requirements.
4980G. Failure of employer to make comparable health savings account contributions.
4980H. Shared responsibility for employers regarding health coverage.
4980I. Excise tax on high cost employer-sponsored health coverage.

AMENDMENTS

2010—Pub. L. 111–148, title I, §1513(b), title IX, §9001(b), Mar. 23, 2010, 124 Stat. 256, 853, added items 4980H and 4980I.

2003—Pub. L. 108–173, title XII, §1201(d)(4)(B), Dec. 8, 2003, 117 Stat. 2478, added item 4980G.

2002—Pub. L. 107–147, title IV, §417(17)(B), Mar. 9, 2002, 116 Stat. 56, substituted "Archer MSA contributions" for "medical savings account contributions" in item 4980E.

2001—Pub. L. 107–16, title VI, §659(a)(2), June 7, 2001, 115 Stat. 139, added item 4980F.

1998—Pub. L. 105–206, title VI, §6023(18)(B), July 22, 1998, 112 Stat. 825, substituted "certain tax-favored accounts and annuities" for "individual retirement accounts, certain section 403(b) contracts, and certain individual retirement annuities" in item 4973.

1996—Pub. L. 104–191, title III, §§301(c)(4)(B), 326(b), title IV, §402(b), Aug. 21, 1996, 110 Stat. 2050, 2066, 2087, added items 4980C, 4980D, and 4980E.

Pub. L. 104–188, title I, §1602(b)(5)(B), Aug. 20, 1996, 110 Stat. 1834, struck out item 4978B "Tax on disposition of employer securities to which section 133 applied".

1989—Pub. L. 101–239, title VII, §§7301(d)(2), 7304(a)(2)(C)(iii), Dec. 19, 1989, 103 Stat. 2348, 2353, struck out item 4978A "Tax on certain dispositions of employer securities to which section 2057 applied" and added item 4978B.

1988—Pub. L. 100–647, title I, §1011A(g)(1)(B), title III, §3011(c), Nov. 10, 1988, 102 Stat. 3479, 3625, redesignated item 4981A as 4980A and added item 4980B.

1987—Pub. L. 100–203, title X, §10413(b)(2), Dec. 22, 1987, 101 Stat. 1330–438, added item 4978A.

1986—Pub. L. 99–514, title XI, §§1117(b)(2), 1121(a)(2), 1131(c)(2), 1132(b), 1133(b), title XVIII, §§1854(a)(9)(C), 1899A(75), Oct. 22, 1986, 100 Stat. 2462, 2465, 2478, 2480, 2483, 2877, 2963, added item 4972, inserted "section" in item 4973, substituted "Excise tax on certain accumulations in qualified retirement plans" for "Tax on certain accumulations in individual retirement accounts" in item 4974, struck out "and allocations" after "certain dispositions" in item 4978, and added items 4979, 4979A, 4980, and 4981A.

1984—Pub. L. 98–369, div. A, title IV, §491(d)(56), title V, §§511(c)(2), 531(e)(2), 545(b), July 18, 1984, 98 Stat. 852, 862, 886, 896, substituted "and certain individual retirement annuities" for "certain individual retirement annuities, and certain retirement bonds" in item 4973 and added items 4976 to 4978.

1982—Pub. L. 97–248, title II, §237(c)(2), Sept. 3, 1982, 96 Stat. 511, struck out item 4972 "Tax on excess contributions for self-employed individuals".

1974—Pub. L. 93–406, title II, §§1013(b), 2001(f)(2), 2002(h)(3), Sept. 2, 1974, 88 Stat. 920, 957, 970, added chapter heading and analysis of sections 4971 to 4975.

[1] Section repealed by Pub. L. 105–34 without corresponding amendment of chapter analysis.

§4971. Taxes on failure to meet minimum funding standards

(a) Initial tax

If at any time during any taxable year an employer maintains a plan to which section 412 applies, there is hereby imposed for the taxable year a tax equal to—

(1) in the case of a single-employer plan, 10 percent of the aggregate unpaid minimum required contributions for all plan years remaining unpaid as of the end of any plan year ending with or within the taxable year,

(2) in the case of a multiemployer plan, 5 percent of the accumulated funding deficiency determined under section 431 as of the end of any plan year ending with or within the taxable year, and

(3) in the case of a CSEC plan, 10 percent of the CSEC accumulated funding deficiency as of the end of the plan year ending with or within the taxable year.

(b) Additional tax

If—

(1) a tax is imposed under subsection (a)(1) on any unpaid minimum required contribution and such amount remains unpaid as of the close of the taxable period,

(2) a tax is imposed under subsection (a)(2) on any accumulated funding deficiency and the accumulated funding deficiency is not corrected within the taxable period, or

(3) a tax is imposed under subsection (a)(3) on any CSEC accumulated funding deficiency and the CSEC accumulated funding deficiency is not corrected within the taxable period,

there is hereby imposed a tax equal to 100 percent of the unpaid minimum required contribution, accumulated funding deficiency, or CSEC accumulated funding deficiency, whichever is applicable, to the extent not so paid or corrected.

(c) Definitions

For purposes of this section—

(1) Accumulated funding deficiency

The term "accumulated funding deficiency" has the meaning given to such term by section 431.

(2) Correct

The term "correct" means, with respect to an accumulated funding deficiency or CSEC accumulated funding deficiency, the contribution, to or under the plan, of the amount necessary to reduce such accumulated funding deficiency or CSEC accumulated funding deficiency as of the end of a plan year in which such deficiency arose to zero.

(3) Taxable period

The term "taxable period" means, with respect to an accumulated funding deficiency, CSEC accumulated funding deficiency, or unpaid minimum required contribution, whichever is applicable, the period beginning with the end of the plan year in which there is an accumulated funding deficiency, CSEC accumulated funding deficiency, or unpaid minimum required contribution, whichever is applicable [1] and ending on the earlier of—

(A) the date of mailing of a notice of deficiency with respect to the tax imposed by subsection (a), or

(B) the date on which the tax imposed by subsection (a) is assessed.

(4) Unpaid minimum required contribution

(A) In general

The term "unpaid minimum required contribution" means, with respect to any plan year, any minimum required contribution under section 430 for the plan year which is not paid on or before the due date (as determined under section 430(j)(1)) for the plan year.

(B) Ordering rule

Any payment to or under a plan for any plan year shall be allocated first to unpaid minimum required contributions for all preceding plan years on a first-in, first-out basis and then to the minimum required contribution under section 430 for the plan year.

(5) CSEC accumulated funding deficiency

The term "CSEC accumulated funding deficiency" means the accumulated funding deficiency determined under section 433.

(d) Notification of the Secretary of Labor

Before issuing a notice of deficiency with respect to the tax imposed by subsection (a) or (b), the Secretary shall notify the Secretary of Labor and provide him a reasonable opportunity (but not more than 60 days)—

(1) to require the employer responsible for contributing to or under the plan to eliminate the accumulated funding deficiency, CSEC accumulated funding deficiency, or unpaid minimum required contribution, whichever is applicable, or

(2) to comment on the imposition of such tax.

In the case of a multiemployer plan which is in reorganization under section 418, the same notice and opportunity shall be provided to the Pension Benefit Guaranty Corporation.

(e) Liability for tax

(1) In general

Except as provided in paragraph (2), the tax imposed by subsection (a), (b), or (f) shall be paid by the employer responsible for contributing to or under the plan the amount described in section 412(a)(2).

(2) Joint and several liability where employer member of controlled group

(A) In general

If an employer referred to in paragraph (1) is a member of a controlled group, each member of such group shall be jointly and severally liable for the tax imposed by subsection (a), (b), (f), or (g).

(B) Controlled group

For purposes of subparagraph (A), the term "controlled group" means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414.

(f) Failure to pay liquidity shortfall

(1) In general

In the case of a plan to which section 430(j)(4) or 433(f) applies, there is hereby imposed a tax of 10 percent of the excess (if any) of—

(A) the amount of the liquidity shortfall for any quarter, over

(B) the amount of such shortfall which is paid by the required installment under section 430(j) or 433(f), whichever is applicable [1] for such quarter (but only if such installment is paid on or before the due date for such installment).

(2) Additional tax

If the plan has a liquidity shortfall as of the close of any quarter and as of the close of each of the following 4 quarters, there is hereby imposed a tax equal to 100 percent of the amount on which tax was imposed by paragraph (1) for such first quarter.

(3) Definitions and special rule

(A) Liquidity shortfall; quarter

For purposes of this subsection, the terms "liquidity shortfall" and "quarter" have the respective meanings given such terms by section 430(j) or 433(f), whichever is applicable.

(B) Special rule

If the tax imposed by paragraph (2) is paid with respect to any liquidity shortfall for any quarter, no further tax shall be imposed by this subsection on such shortfall for such quarter.

(4) Waiver by Secretary

If the taxpayer establishes to the satisfaction of the Secretary that—

(A) the liquidity shortfall described in paragraph (1) was due to reasonable cause and not willful neglect, and

(B) reasonable steps have been taken to remedy such liquidity shortfall,

the Secretary may waive all or part of the tax imposed by this subsection.

(g) Multiemployer plans in endangered or critical status

(1) In general

Except as provided in this subsection—

(A) no tax shall be imposed under this section for a taxable year with respect to a multiemployer plan if, for the plan years ending with or within the taxable year, the plan is in critical status pursuant to section 432, and

(B) any tax imposed under this subsection for a taxable year with respect to a multiemployer plan if, for the plan years ending with or within the taxable year, the plan is in endangered status pursuant to section 432 shall be in addition to any other tax imposed by this section.

(2) Failure to comply with funding improvement or rehabilitation plan

(A) In general

If any funding improvement plan or rehabilitation plan in effect under section 432 with respect to a multiemployer plan requires an employer to make a contribution to the plan, there is

hereby imposed a tax on each failure of the employer to make the required contribution within the time required under such plan.

(B) Amount of tax

The amount of the tax imposed by subparagraph (A) shall be equal to the amount of the required contribution the employer failed to make in a timely manner.

(C) Liability for tax

The tax imposed by subparagraph (A) shall be paid by the employer responsible for contributing to or under the rehabilitation plan which fails to make the contribution.

(3) Failure to meet requirements for plans in endangered or critical status

If—

(A) a plan which is in seriously endangered status fails to meet the applicable benchmarks by the end of the funding improvement period, or

(B) a plan which is in critical status either—

(i) fails to meet the requirements of section 432(e) by the end of the rehabilitation period, or

(ii) has received a certification under section 432(b)(3)(A)(ii) for 3 consecutive plan years that the plan is not making the scheduled progress in meeting its requirements under the rehabilitation plan,

the plan shall be treated as having an accumulated funding deficiency for purposes of this section for the last plan year in such funding improvement, rehabilitation, or 3-consecutive year period (and each succeeding plan year until such benchmarks or requirements are met) in an amount equal to the greater of the amount of the contributions necessary to meet such benchmarks or requirements or the amount of such accumulated funding deficiency without regard to this paragraph.

(4) Failure to adopt rehabilitation plan

(A) In general

In the case of a multiemployer plan which is in critical status, there is hereby imposed a tax on the failure of such plan to adopt a rehabilitation plan within the time prescribed under section 432.

(B) Amount of tax

The amount of the tax imposed under subparagraph (A) with respect to any plan sponsor for any taxable year shall be the greater of—

(i) the amount of tax imposed under subsection (a) for the taxable year (determined without regard to this subsection), or

(ii) the amount equal to $1,100 multiplied by the number of days during the taxable year which are included in the period beginning on the day following the close of the 240-day period described in section 432(e)(1)(A) and ending on the day on which the rehabilitation plan is adopted.

(C) Liability for tax

(i) In general

The tax imposed by subparagraph (A) shall be paid by each plan sponsor.

(ii) Plan sponsor

For purposes of clause (i), the term "plan sponsor" has the meaning given such term by section 432(i)(9).

(5) Waiver

In the case of a failure described in paragraph (2) or (3) which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by this subsection.

For purposes of this paragraph, reasonable cause includes unanticipated and material market fluctuations, the loss of a significant contributing employer, or other factors to the extent that the payment of tax under this subsection with respect to the failure would be excessive or otherwise inequitable relative to the failure involved.

(6) Terms used in section 432

For purposes of this subsection, any term used in this subsection which is also used in section 432 shall have the meaning given such term by section 432.

(h) Failure of a CSEC plan sponsor to adopt funding restoration plan

(1) In general

In the case of a CSEC plan that is in funding restoration status (within the meaning of section 433(j)(5)(A)), there is hereby imposed a tax on the failure of such plan to adopt a funding restoration plan within the time prescribed under section 433(j)(3).

(2) Amount of tax

The amount of the tax imposed under paragraph (1) with respect to any plan sponsor for any taxable year shall be the amount equal to $100 multiplied by the number of days during the taxable year which are included in the period beginning on the day following the close of the 180-day period described in section 433(j)(3) and ending on the day on which the funding restoration plan is adopted.

(3) Waiver by Secretary

In the case of a failure described in paragraph (1) which the Secretary determines is due to reasonable cause and not to willful neglect, the Secretary may waive a portion or all of the tax imposed by such paragraph.

(4) Liability for tax

The tax imposed by paragraph (1) shall be paid by the plan sponsor (within the meaning of section 433(j)(5)(E)).

(i) Cross references

For disallowance of deduction for taxes paid under this section, see section 275.

For liability for tax in case of an employer party to collective bargaining agreement, see section 413(b)(6).

For provisions concerning notification of Secretary of Labor of imposition of tax under this section, waiver of the tax imposed by subsection (b), and other coordination between Secretary of the Treasury and Secretary of Labor with respect to compliance with this section, see section 3002(b) of title III of the Employee Retirement Income Security Act of 1974.

(Added Pub. L. 93–406, title II, §1013(b), Sept. 2, 1974, 88 Stat. 920; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–364, title II, §204, Sept. 26, 1980, 94 Stat. 1287; Pub. L. 96–596, §2(a)(1)(J), (2)(H), Dec. 24, 1980, 94 Stat. 3469, 3471; Pub. L. 100–203, title IX, §§9304(c)(1), 9305(a), Dec. 22, 1987, 101 Stat. 1330–348, 1330–351; Pub. L. 103–465, title VII, §751(a)(9)(B), Dec. 8, 1994, 108 Stat. 5020; Pub. L. 104–188, title I, §1464(a), Aug. 20, 1996, 110 Stat. 1824; Pub. L. 109–280, title I, §114(e)(1)–(4), title II, §212(b), Aug. 17, 2006, 120 Stat. 854, 855, 915; Pub. L. 110–458, title I, §§101(d)(2)(F), 102(b)(2)(I), (3)(A), Dec. 23, 2008, 122 Stat. 5099, 5103; Pub. L. 113–97, title II, §202(c)(8), (9), Apr. 7, 2014, 128 Stat. 1137, 1138.)

AMENDMENT OF SECTION

For termination of amendment by section 221(c) of Pub. L. 109–280, see Effective and Termination Dates of 2006 Amendment note below.

REFERENCES IN TEXT

Section 3002(b) of title III of the Employee Retirement Income Security Act of 1974, referred to in subsec. (i), is classified to section 1202(b) of Title 29, Labor.

AMENDMENTS

2014—Subsec. (a)(3). Pub. L. 113–97, §202(c)(8)(A), added par. (3).

Subsec. (b). Pub. L. 113–97, §202(c)(8)(B)(ii), which directed substitution of "minimum required contribution, accumulated funding deficiency, or CSEC accumulated funding deficiency" for "minimum required contributions or accumulated funding deficiency", was executed by making the substitution for "minimum required contribution or accumulated funding deficiency" in concluding provisions, to reflect the probable intent of Congress.

Subsec. (b)(3). Pub. L. 113–97, §202(c)(8)(B)(i), added par. (3).

Subsec. (c)(2). Pub. L. 113–97, §202(c)(8)(C)(i), substituted "accumulated funding deficiency or CSEC accumulated funding deficiency" for "accumulated funding deficiency" in two places.

Subsec. (c)(3). Pub. L. 113–97, §202(c)(8)(C)(ii), substituted "accumulated funding deficiency, CSEC accumulated funding deficiency, or unpaid minimum required contribution" for "accumulated funding deficiency or unpaid minimum required contribution" in two places in introductory provisions.

Subsec. (c)(5). Pub. L. 113–97, §202(c)(8)(C)(iii), added par. (5).

Subsec. (d)(1). Pub. L. 113–97, §202(c)(8)(D), substituted "accumulated funding deficiency, CSEC accumulated funding deficiency, or unpaid minimum required contribution" for "accumulated funding deficiency or unpaid minimum required contribution".

Subsec. (f)(1). Pub. L. 113–97, §202(c)(8)(E)(i), substituted "430(j)(4) or 433(f)" for "430(j)(4)" in introductory provisions.

Subsec. (f)(1)(B). Pub. L. 113–97, §202(c)(8)(E)(ii), substituted "430(j) or 433(f), whichever is applicable" for "430(j)".

Subsec. (f)(3)(A). Pub. L. 113–97, §202(c)(8)(E)(iii), substituted "430(j) or 433(f), whichever is applicable" for "412(m)(5)".

Subsecs. (h), (i). Pub. L. 113–97, §202(c)(9), added subsec. (h) and redesignated former subsec. (h) as (i).

2008—Subsec. (b)(1). Pub. L. 110–458, §101(d)(2)(F)(i), substituted "minimum required" for "required minimum".

Subsec. (c)(3). Pub. L. 110–458, §101(d)(2)(F)(ii), inserted "or unpaid minimum required contribution, whichever is applicable" after "accumulated funding deficiency" in two places in introductory provisions.

Subsec. (d)(1). Pub. L. 110–458, §101(d)(2)(F)(ii), inserted "or unpaid minimum required contribution, whichever is applicable" after "accumulated funding deficiency".

Subsec. (e)(1). Pub. L. 110–458, §101(d)(2)(F)(iii), substituted "section 412(a)(2)" for "section 412(a)(1)(A)".

Subsec. (e)(2)(A). Pub. L. 110–458, §102(b)(3)(A), amended directory language of Pub. L. 109–280, §212(b)(2). See 2006 Amendment note below.

Subsec. (g)(4)(B)(ii). Pub. L. 110–458, §102(b)(2)(I)(i), substituted "day following the close of" for "first day of".

Subsec. (g)(4)(C)(ii). Pub. L. 110–458, §102(b)(2)(I)(ii), added cl. (ii) and struck out former cl. (ii). Prior to amendment, text read as follows: "For purposes of clause (i), the term 'plan sponsor' in the case of a multiemployer plan means the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan."

2006—Subsecs. (a), (b). Pub. L. 109–280, §114(e)(1), amended subsecs. (a) and (b) generally. Prior to amendment, subsecs. (a) and (b) read as follows:

"(a) INITIAL TAX.—For each taxable year of an employer who maintains a plan to which section 412 applies, there is hereby imposed a tax of 10 percent (5 percent in the case of a multiemployer plan) on the amount of the accumulated funding deficiency under the plan, determined as of the end of the plan year ending with or within such taxable year.

"(b) ADDITIONAL TAX.—In any case in which an initial tax is imposed by subsection (a) on an accumulated funding deficiency and such accumulated funding deficiency is not corrected within the taxable period, there is hereby imposed a tax equal to 100 percent of such accumulated funding deficiency to the extent not corrected."

Subsec. (c)(1). Pub. L. 109–280, §114(e)(2)(A), substituted "section 431" for "the last two sentences of section 412(a)".

Subsec. (c)(4). Pub. L. 109–280, §114(e)(2)(B), added par. (4).

Subsec. (e)(1). Pub. L. 109–280, §114(e)(3), substituted "section 412(a)(1)(A)" for "section 412(b)(3)(A)".

Subsec. (e)(2)(A). Pub. L. 109–280, §§212(b)(2), 221(c), as amended by Pub. L. 110–458, §102(b)(3)(A), temporarily substituted "If an" for "In the case of a plan other than a multiemployer plan, if the" and "(f), or (g)" for "or (f)". See Effective and Termination Dates of 2006 Amendment note below.

Subsec. (f)(1). Pub. L. 109–280, §114(e)(4), substituted "section 430(j)(4)" for "section 412(m)(5)" in introductory provisions and "section 430(j)" for "section 412(m)" in subpar. (B).

Subsecs. (g), (h). Pub. L. 109–280, §§212(b)(1), 221(c), temporarily added subsec. (g) and redesignated former subsec. (g) as (h). See Effective and Termination Dates of 2006 Amendment note below.

1996—Subsec. (f)(4). Pub. L. 104–188 added par. (4).

1994—Subsec. (e)(1), (2)(A). Pub. L. 103–465, §751(a)(9)(B)(i), substituted "(a), (b), or (f)" for "(a) or (b)".

Subsecs. (f), (g). Pub. L. 103–465, §751(a)(9)(B)(ii), added subsec. (f) and redesignated former subsec. (f) as (g).

1987—Subsec. (a). Pub. L. 100–203, §9305(a)(2)(A), struck out at end "The tax imposed by this subsection shall be paid by the employer responsible for contributing to or under the plan the amount described in section 412(b)(3)(A)."

Pub. L. 100–203, §9304(c)(1), substituted "10 percent (5 percent in the case of a multiemployer plan)" for "5 percent".

Subsec. (b). Pub. L. 100–203, §9305(a)(2)(B), struck out at end "The tax imposed by this subsection shall be paid by the employer described in subsection (a)."

Subsecs. (e), (f). Pub. L. 100–203, §9305(a)(1), added subsec. (e) and redesignated former subsec. (e) as (f).

1980—Subsec. (b). Pub. L. 96–596, §2(a)(1)(J), substituted "taxable period" for "correction period".

Subsec. (c)(1). Pub. L. 96–364, §204(1), substituted "last two sentences" for "last sentence".

Subsec. (c)(3). Pub. L. 96–596, §2(a)(2)(H), substituted provision defining taxable period as the period beginning with the end of the plan year in which there is an accumulated funding deficiency and ending on the earlier of the date of mailing of a notice of deficiency with respect to the tax imposed by subsec. (a) of this section or the date on which the tax imposed by subsec. (a) of this section is assessed for provision defining correction period as the period beginning with the end of a plan year in which there is an accumulated funding deficiency and ending 90 days after the date of mailing of a notice of deficiency under section 6212 of this title with respect to the tax imposed by subsec. (b) of this section, extended by any period in which a deficiency cannot be assessed under section 6213(a) of this title and by any other period which the Secretary determines reasonable and necessary to permit a reduction of the accumulated funding deficiency to zero.

Subsec. (d). Pub. L. 96–364, §204(2), inserted provisions relating to a multiemployer plan in reorganization.

1976—Subsecs. (c), (d). Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–97 applicable to years beginning after Dec. 31, 2013, see section 3 of Pub. L. 113–97, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–458 effective as if included in the provisions of Pub. L. 109–280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110–458, set out as a note under section 72 of this title.

EFFECTIVE AND TERMINATION DATES OF 2006 AMENDMENT

Amendment by section 114(e)(1)–(4) of Pub. L. 109–280 applicable to taxable years beginning after 2007, but only with respect to plan years beginning after 2007 which end with or within any such taxable year, see section 114(g) of Pub. L. 109–280, as added by Pub. L. 110–458, set out as an Effective Date of 2006 Amendment note under section 401 of this title.

Amendment by section 212(b) of Pub. L. 109–280 applicable with respect to taxable years beginning after 2007, but only with respect to plan years beginning after 2007 which end with or within such taxable year, with special rules for certain notices and certain restored benefits, see section 212(e) of Pub. L. 109–280, set out as a note under section 412 of this title.

Amendment by section 212(b) of Pub. L. 109–280 inapplicable to plan years beginning after Dec. 31, 2014, with exception for certain funding improvement and rehabilitation plans, see section 221(c) of Pub. L. 109–280, set out as a note under section 412 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, §1464(b), Aug. 20, 1996, 110 Stat. 1825, provided that: "The amendment made by this section [amending this section] shall take effect as if included in the amendment made by clause (ii) of section 751(a)(9)(B) of the Retirement Protection Act of 1994 [Pub. L. 103–465] (108 Stat. 5020)."

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 applicable to plan years beginning after Dec. 31, 1994, see section

751(b)(1) of Pub. L. 103–465, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title IX, §9304(c)(2), Dec. 22, 1987, 101 Stat. 1330–348, provided that: "The amendments made by this subsection [amending this section] shall apply to plan years beginning after 1988."

Amendment by section 9305(a) of Pub. L. 100–203 applicable with respect to plan years beginning after December 31, 1987, see section 9305(d) of Pub. L. 100–203, set out as a note under section 412 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

For effective date of amendment by Pub. L. 96–596 with respect to any first tier tax and to any second tier tax, see section 2(d) of Pub. L. 96–596, set out as an Effective Date note under section 4961 of this title.

Amendment by Pub. L. 96–364 effective Sept. 26, 1980, see section 210(a) of Pub. L. 96–364, set out as an Effective Date note under section 418 of this title.

EFFECTIVE DATE

Section applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93–406, for plan years beginning after Sept. 2, 1974, and, in the case of plans in existence on Jan. 1, 1974, for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93–406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

APPLICABILITY OF AMENDMENTS BY SUBTITLES A AND B OF TITLE I OF PUB. L. 109–280

For special rules on applicability of amendments by subtitles A (§§101–108) and B (§§111–116) of title I of Pub. L. 109–280 to certain eligible cooperative plans, PBGC settlement plans, and eligible government contractor plans, see sections 104, 105, and 106 of Pub. L. 109–280, set out as notes under section 401 of this title.

SPECIAL RULE FOR CERTAIN BENEFITS FUNDED UNDER AN AGREEMENT APPROVED BY THE PENSION BENEFIT GUARANTY CORPORATION

For applicability of amendment by section 212(b) of Pub. L. 109–280 to a multiemployer plan that is a party to an agreement that was approved by the Pension Benefit Guaranty Corporation prior to June 30, 2005, and that increases benefits and provides for certain withdrawal liability rules, see section 206 of Pub. L. 109–280, set out as a note under section 412 of this title.

EXEMPTION FROM EXCISE TAXES FOR CERTAIN MULTIEMPLOYER PENSION PLANS

Pub. L. 109–280, title II, §214, Aug. 17, 2006, 120 Stat. 918, provided that:

"(a) IN GENERAL.—Notwithstanding any other provision of law, no tax shall be imposed under subsection (a) or (b) of section 4971 of the Internal Revenue Code of 1986 with respect to any accumulated funding deficiency of a plan described in subsection (b) of this section for any taxable year beginning before the earlier of—

"(1) the taxable year in which the plan sponsor adopts a rehabilitation plan under section 305(e) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1085(e)] and section 432(e) of such Code (as added by this Act); or

"(2) the taxable year that contains January 1, 2009.

"(b) PLAN DESCRIBED.—A plan described under this subsection is a multiemployer pension plan—

"(1) with less than 100 participants;

"(2) with respect to which the contributing employers participated in a Federal fishery capacity reduction program;

"(3) with respect to which employers under the plan participated in the Northeast Fisheries Assistance Program; and

"(4) with respect to which the annual normal cost is less than $100,000 and the plan is experiencing a funding deficiency on the date of enactment of this Act [Aug. 17, 2006]."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§1401–1465] of title I of Pub. L. 104–188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

[1] *So in original. Probably should be followed by a comma.*

§4972. Tax on nondeductible contributions to qualified employer plans

(a) Tax imposed

In the case of any qualified employer plan, there is hereby imposed a tax equal to 10 percent of the nondeductible contributions under the plan (determined as of the close of the taxable year of the employer).

(b) Employer liable for tax

The tax imposed by this section shall be paid by the employer making the contributions.

(c) Nondeductible contributions

For purposes of this section—

(1) In general

The term "nondeductible contributions" means, with respect to any qualified employer plan, the sum of—

(A) the excess (if any) of—

(i) the amount contributed for the taxable year by the employer to or under such plan, over

(ii) the amount allowable as a deduction under section 404 for such contributions (determined without regard to subsection (e) thereof), and

(B) the amount determined under this subsection for the preceding taxable year reduced by the sum of—

(i) the portion of the amount so determined returned to the employer during the taxable year, and

(ii) the portion of the amount so determined deductible under section 404 for the taxable year (determined without regard to subsection (e) thereof).

(2) Ordering rule for section 404

For purposes of paragraph (1), the amount allowable as a deduction under section 404 for any taxable year shall be treated as—

(A) first from carryforwards to such taxable year from preceding taxable years (in order of time), and

(B) then from contributions made during such taxable year.

(3) Contributions which may be returned to employer

In determining the amount of nondeductible contributions for any taxable year, there shall not be taken into account any contribution for such taxable year which is distributed to the employer in a distribution described in section 4980(c)(2)(B)(ii) if such distribution is made on or before the last day on which a contribution may be made for such taxable year under section 404(a)(6).

(4) Special rule for self-employed individuals

For purposes of paragraph (1), if—

(A) the amount which is required to be contributed to a plan under section 412 on behalf of an individual who is an employee (within the meaning of section 401(c)(1)), exceeds

(B) the earned income (within the meaning of section 404(a)(8)) of such individual derived from the trade or business with respect to which such plan is established,

such excess shall be treated as an amount allowable as a deduction under section 404.

(5) Pre-1987 contributions

The term "nondeductible contribution" shall not include any contribution made for a taxable year beginning before January 1, 1987.

(6) Exceptions

In determining the amount of nondeductible contributions for any taxable year, there shall not be taken into account—

(A) so much of the contributions to 1 or more defined contribution plans which are not deductible when contributed solely because of section 404(a)(7) as does not exceed the amount of contributions described in section 401(m)(4)(A), or

(B) so much of the contributions to a simple retirement account (within the meaning of section 408(p)) or a simple plan (within the meaning of section 401(k)(11)) which are not deductible when contributed solely because such contributions are not made in connection with a trade or business of the employer.

For purposes of subparagraph (A), the deductible limits under section 404(a)(7) shall first be applied to amounts contributed to a defined benefit plan and then to amounts described in subparagraph (A). Subparagraph (B) shall not apply to contributions made on behalf of the employer or a member of the employer's family (as defined in section 447(e)(1)).

(7) Defined benefit plan exception

In determining the amount of nondeductible contributions for any taxable year, an employer may elect for such year not to take into account any contributions to a defined benefit plan except, in the case of a multiemployer plan, to the extent that such contributions exceed the full-funding limitation (as defined in section 431(c)(6)). For purposes of this paragraph, the deductible limits under section 404(a)(7) shall first be applied to amounts contributed to defined contribution plans and then to amounts described in this paragraph. If an employer makes an election under this paragraph for a taxable year, paragraph (6) shall not apply to such employer for such taxable year.

(d) Definitions

For purposes of this section—

(1) Qualified employer plan

(A) In general

The term "qualified employer plan" means—

(i) any plan meeting the requirements of section 401(a) which includes a trust exempt from tax under section 501(a),

(ii) an annuity plan described in section 403(a),

(iii) any simplified employee pension (within the meaning of section 408(k)), and

(iv) any simple retirement account (within the meaning of section 408(p)).

(B) Exemption for governmental and tax exempt plans

The term "qualified employer plan" does not include a plan described in subparagraph (A) or (B) of section 4980(c)(1).

(2) Employer

In the case of a plan which provides contributions or benefits for employees some or all of whom are self-employed individuals within the meaning of section 401(c)(1), the term "employer" means the person treated as the employer under section 401(c)(4).

(Added Pub. L. 99–514, title XI, §1131(c)(1), Oct. 22, 1986, 100 Stat. 2477; amended Pub. L. 100–647, title I, §1011A(e)(1), (2), title II, §2005(a)(1), Nov. 10, 1988, 102 Stat. 3477, 3610; Pub. L. 103–465, title VII, §755(a), Dec. 8, 1994, 108 Stat. 5023; Pub. L. 104–188, title I, §1421(b)(9)(D), Aug. 20, 1996, 110 Stat. 1798; Pub. L. 105–34, title XV, §1507(a), Aug. 5, 1997, 111 Stat. 1067; Pub. L. 107–16, title VI, §§616(b)(2)(B), 637(a), (b), 652(b), 653(a), June 7, 2001, 115 Stat. 103, 118, 130; Pub. L. 108–311, title IV, §§404(c), 408(b)(9), Oct. 4, 2004, 118 Stat. 1188, 1193; Pub. L. 109–280, title I, §114(e)(5), title VIII, §803(c), Aug. 17, 2006, 120 Stat. 855, 996.)

PRIOR PROVISIONS

A prior section, added Pub. L. 93–406, title II, §2001(f)(1), Sept. 2, 1974, 88 Stat. 955; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–34, title III, §312(e)(3), Aug. 13,

1981, 95 Stat. 285; Pub. L. 97–448, title I, §103(c)(10)(B), Jan. 12, 1983, 96 Stat. 2377; Pub. L. 98–369, div. A, title IV, §491(d)(40), July 18, 1984, 98 Stat. 851, related to tax on excess contributions for self-employed individuals, prior to repeal applicable to years beginning after Dec. 31, 1983, by Pub. L. 97–248, title II, §237(c)(1), Sept. 3, 1982, 96 Stat. 511.

AMENDMENTS

2006—Subsec. (c)(6)(A). Pub. L. 109–280, §803(c), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "so much of the contributions to 1 or more defined contribution plans which are not deductible when contributed solely because of section 404(a)(7) as does not exceed the greater of—

"(i) the amount of contributions not in excess of 6 percent of compensation (within the meaning of section 404(a) and as adjusted under section 404(a)(12)) paid or accrued (during the taxable year for which the contributions were made) to beneficiaries under the plans, or

"(ii) the amount of contributions described in section 401(m)(4)(A), or".

Subsec. (c)(7). Pub. L. 109–280, §114(e)(5), substituted "except, in the case of a multiemployer plan, to the extent that such contributions exceed the full-funding limitation (as defined in section 431(c)(6))" for "except to the extent that such contributions exceed the full-funding limitation (as defined in section 412(c)(7), determined without regard to subparagraph (A)(i)(I) thereof)".

2004—Subsec. (c)(6). Pub. L. 108–311, §408(b)(9), amended directory language of Pub. L. 107–16, §652(b)(3). See 2001 Amendment note below.

Subsec. (c)(6)(A)(ii). Pub. L. 108–311, §404(c), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: "the sum of—

"(I) the amount of contributions described in section 401(m)(4)(A), plus

"(II) the amount of contributions described in section 402(g)(3)(A), or".

2001—Subsec. (c)(6). Pub. L. 107–16, §652(b)(4), substituted "Subparagraph (B)" for "Subparagraph (C)" in concluding provisions.

Pub. L. 107–16, §652(b)(3), as amended by Pub. L. 108–311, §408(b)(9), substituted "subparagraph (A)" for "subparagraph (B)" in two places in concluding provisions.

Pub. L. 107–16, §652(b)(2), in concluding provisions, struck out first sentence which read as follows: "If 1 or more defined benefit plans were taken into account in determining the amount allowable as a deduction under section 404 for contributions to any defined contribution plan, subparagraph (B) shall apply only if such defined benefit plans are described in section 404(a)(1)(D)."

Pub. L. 107–16, §637(b), in concluding provisions, inserted at end "Subparagraph (C) shall not apply to contributions made on behalf of the employer or a member of the employer's family (as defined in section 447(e)(1))."

Subsec. (c)(6)(A). Pub. L. 107–16, §652(b)(1), redesignated subpar. (B) as (A) and struck out former subpar. (A) which read as follows: "contributions that would be deductible under section 404(a)(1)(D) if the plan had more than 100 participants if—

"(i) the plan is covered under section 4021 of the Employee Retirement Income Security Act of 1974, and

"(ii) the plan is terminated under section 4041(b) of such Act on or before the last day of the taxable year,".

Pub. L. 107–16, §637(a), struck out "and" at end.

Subsec. (c)(6)(B). Pub. L. 107–16, §652(b)(1), redesignated subpar. (C) as (B). Former subpar. (B) redesignated (A).

Pub. L. 107–16, §637(a), substituted ", or" for period at end.

Subsec. (c)(6)(B)(i). Pub. L. 107–16, §616(b)(2)(B), substituted "(within the meaning of section 404(a) and as adjusted under section 404(a)(12))" for "(within the meaning of section 404(a))".

Subsec. (c)(6)(C). Pub. L. 107–16, §652(b)(1), redesignated subpar. (C) as (B).

Pub. L. 107–16, §637(a), added subpar. (C).

Subsec. (c)(7). Pub. L. 107–16, §653(a), added par. (7).

1997—Subsec. (c)(6)(B). Pub. L. 105–34 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "contributions to 1 or more defined contribution plans which are not deductible when contributed solely because of section 404(a)(7), but only to the extent such contributions do not exceed 6 percent of compensation (within the meaning of section 404(a)) paid or accrued (during the taxable year for which the contributions were made) to beneficiaries under the plans."

1996—Subsec. (d)(1)(A)(iv). Pub. L. 104–188 added cl. (iv).

1994—Subsec. (c)(6). Pub. L. 103–465 added par. (6).

1988—Subsec. (c). Pub. L. 100–647, §1011A(e)(1), amended subsec. (c) generally, revising and restating

as pars. (1) to (4) provisions of former pars. (1) and (2).

Subsec. (c)(4), (5). Pub. L. 100–647, §2005(a)(1), added par. (4) and redesignated former par. (4) as (5).

Subsec. (d)(1). Pub. L. 100–647, §1011A(e)(2), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "The term 'qualified employer plan' means—

"(A) any plan meeting the requirements of section 401(a) which includes a trust exempt from the tax under section 501(a),

"(B) an annuity plan described in section 403(a), and

"(C) any simplified employee pension (within the meaning of section 408(k))."

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 114(e)(5) of Pub. L. 109–280 applicable to taxable years beginning after 2007, but only with respect to plan years beginning after 2007 which end with or within any such taxable year, see section 114(g) of Pub. L. 109–280, as added by Pub. L. 110–458, set out as a note under section 401 of this title.

Amendment by section 803(c) of Pub. L. 109–280 applicable to contributions for taxable years beginning after Dec. 31, 2005, see section 803(d) of Pub. L. 109–280, set out as a note under section 404 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 404(c) of Pub. L. 108–311 effective as if included in the provision of Pub. L. 107–16 to which such amendment relates, see section 404(f) of Pub. L. 108–311, set out as a note under section 45A of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 616(b)(2)(B) of Pub. L. 107–16 applicable to years beginning after Dec. 31, 2001, see section 616(c) of Pub. L. 107–16, set out as a note under section 404 of this title.

Pub. L. 107–16, title VI, §637(d), June 7, 2001, 115 Stat. 118, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2001."

Amendment by section 652(b) of Pub. L. 107–16 applicable to plan years beginning after Dec. 31, 2001, see section 652(c) of Pub. L. 107–16, set out as a note under section 404 of this title.

Pub. L. 107–16, title VI, §653(b), June 7, 2001, 115 Stat. 130, provided that: "The amendment made by this section [amending this section] shall apply to years beginning after December 31, 2001."

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XV, §1507(b), Aug. 5, 1997, 111 Stat. 1067, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1997."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1421(e) of Pub. L. 104–188, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103–465, title VII, §755(b), Dec. 8, 1994, 108 Stat. 5024, provided that:

"(1) SECTION 4972(C)(6)(A).—Section 4972(c)(6)(A) of the Internal Revenue Code of 1986 (as added by this section) shall apply to taxable years ending on or after the date of enactment of this Act [Dec. 8, 1994].

"(2) SECTION 4972(C)(6)(B).—Section 4972(c)(6)(B) of such Code (as added by this section) shall apply to taxable years ending on or after December 31, 1992."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011A(e)(1), (2) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 2005(a)(1) of Pub. L. 100–647 effective as if included in the amendment made by section 1131(c) of Pub. L. 99–514, see section 2005(e) of Pub. L. 100–647, as amended, set out as a note under section 404 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1986, with special rules in case of plans maintained pursuant to collective bargaining agreements, see section 1131(d) of Pub. L. 99–514, as amended, set out as an Effective Date of 1986 Amendment note under section 404 of this title.

CONSTRUCTION OF 2001 AMENDMENT

Pub. L. 107–16, title VI, §637(c), June 7, 2001, 115 Stat. 118, provided that: "Nothing in the amendments made by this section [amending this section] shall be construed to infer the proper treatment of nondeductible contributions under the laws in effect before such amendments."

APPLICABILITY OF AMENDMENTS BY SUBTITLES A AND B OF TITLE I OF PUB. L. 109–280

For special rules on applicability of amendments by subtitles A (§§101–108) and B (§§111–116) of title I of Pub. L. 109–280 to certain eligible cooperative plans, PBGC settlement plans, and eligible government contractor plans, see sections 104, 105, and 106 of Pub. L. 109–280, set out as notes under section 401 of this title.

INCREASE IN AMOUNT FOR PLAN TERMINATION INSURANCE UNDER EMPLOYEE RETIREMENT INSURANCE SECURITY ACT OF 1974

Pub. L. 100–647, title I, §1011A(e)(5), Nov. 10, 1988, 102 Stat. 3478, provided that: "In the case of any taxable year beginning in 1987, the amount under section 4972(c)(1)(A)(ii) of the 1986 Code for a plan to which title IV of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1301 et seq.] applies shall be increased by the amount (if any) by which, as of the close of the plan year with or within which such taxable year begins—

"(A) the liabilities of such plan (determined as if the plan had terminated as of such time), exceed

"(B) the assets of such plan."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§1401–1465] of title I of Pub. L. 104–188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§4973. Tax on excess contributions to certain tax-favored accounts and annuities

(a) Tax imposed

In the case of—

(1) an individual retirement account (within the meaning of section 408(a)),

(2) an Archer MSA (within the meaning of section 220(d)),

(3) an individual retirement annuity (within the meaning of section 408(b)), a custodial account treated as an annuity contract under section 403(b)(7)(A) (relating to custodial accounts for regulated investment company stock),

(4) a Coverdell education savings account (as defined in section 530), or

(5) a health savings account (within the meaning of section 223(d)),

there is imposed for each taxable year a tax in an amount equal to 6 percent of the amount of the excess contributions to such individual's accounts or annuities (determined as of the close of the taxable year). The amount of such tax for any taxable year shall not exceed 6 percent of the value of the account or annuity (determined as of the close of the taxable year). In the case of an endowment contract described in section 408(b), the tax imposed by this section does not apply to any amount allocable to life, health, accident, or other insurance under such contract. The tax imposed by this subsection shall be paid by such individual.

(b) Excess contributions

For purposes of this section, in the case of individual retirement accounts or individual retirement annuities, the term "excess contributions" means the sum of—

(1) the excess (if any) of—

(A) the amount contributed for the taxable year to the accounts or for the annuities (other than a contribution to a Roth IRA or a rollover contribution described in section 402(c), 403(a)(4), 403(b)(8), 408(d)(3), or 457(e)(16)), over

(B) the amount allowable as a deduction under section 219 for such contributions, and

(2) the amount determined under this subsection for the preceding taxable year reduced by the sum of—

(A) the distributions out of the account for the taxable year which were included in the gross income of the payee under section 408(d)(1),

(B) the distributions out of the account for the taxable year to which section 408(d)(5) applies, and

(C) the excess (if any) of the maximum amount allowable as a deduction under section 219 for the taxable year over the amount contributed (determined without regard to section 219(f)(6)) to the accounts or for the annuities (including the amount contributed to a Roth IRA) for the taxable year.

For purposes of this subsection, any contribution which is distributed from the individual retirement account or the individual retirement annuity in a distribution to which section 408(d)(4) applies shall be treated as an amount not contributed. For purposes of paragraphs (1)(B) and (2)(C), the amount allowable as a deduction under section 219 shall be computed without regard to section 219(g).

(c) Section 403(b) contracts

For purposes of this section, in the case of a custodial account referred to in subsection (a)(3), the term "excess contributions" means the sum of—

(1) the excess (if any) of the amount contributed for the taxable year to such account (other than a rollover contribution described in section 403(b)(8) or 408(d)(3)(A)(iii)), over the lesser of the amount excludable from gross income under section 403(b) or the amount permitted to be contributed under the limitations contained in section 415 (or under whichever such section is applicable, if only one is applicable), and

(2) the amount determined under this subsection for the preceding taxable year, reduced by—

(A) the excess (if any) of the lesser of (i) the amount excludable from gross income under section 403(b) or (ii) the amount permitted to be contributed under the limitations contained in section 415 over the amount contributed to the account for the taxable year (or under whichever such section is applicable, if only one is applicable), and

(B) the sum of the distributions out of the account (for all prior taxable years) which are included in gross income under section 72(e).

(d) Excess contributions to Archer MSAs

For purposes of this section, in the case of Archer MSAs (within the meaning of section 220(d)), the term "excess contributions" means the sum of—

(1) the aggregate amount contributed for the taxable year to the accounts (other than rollover contributions described in section 220(f)(5)) which is neither excludable from gross income under section 106(b) nor allowable as a deduction under section 220 for such year, and

(2) the amount determined under this subsection for the preceding taxable year, reduced by the sum of—

(A) the distributions out of the accounts which were included in gross income under section 220(f)(2), and

(B) the excess (if any) of—

(i) the maximum amount allowable as a deduction under section 220(b)(1) (determined without regard to section 106(b)) for the taxable year, over

(ii) the amount contributed to the accounts for the taxable year.

For purposes of this subsection, any contribution which is distributed out of the Archer MSA in a distribution to which section 220(f)(3) or section 138(c)(3) applies shall be treated as an amount not contributed.

(e) Excess contributions to Coverdell education savings accounts

For purposes of this section—

(1) In general

In the case of Coverdell education savings accounts maintained for the benefit of any one beneficiary, the term "excess contributions" means the sum of—

(A) the amount by which the amount contributed for the taxable year to such accounts exceeds $2,000 (or, if less, the sum of the maximum amounts permitted to be contributed under section 530(c) by the contributors to such accounts for such year); and

(B) the amount determined under this subsection for the preceding taxable year, reduced by the sum of—

(i) the distributions out of the accounts for the taxable year (other than rollover distributions); and

(ii) the excess (if any) of the maximum amount which may be contributed to the accounts for the taxable year over the amount contributed to the accounts for the taxable year.

(2) Special rules

For purposes of paragraph (1), the following contributions shall not be taken into account:

(A) Any contribution which is distributed out of the Coverdell education savings account in a distribution to which section 530(d)(4)(C) applies.

(B) Any rollover contribution.

(f) Excess contributions to Roth IRAs

For purposes of this section, in the case of contributions to a Roth IRA (within the meaning of section 408A(b)), the term "excess contributions" means the sum of—

(1) the excess (if any) of—

(A) the amount contributed for the taxable year to Roth IRAs (other than a qualified rollover contribution described in section 408A(e)), over

(B) the amount allowable as a contribution under sections 408A(c)(2) and (c)(3), and

(2) the amount determined under this subsection for the preceding taxable year, reduced by the sum of—

(A) the distributions out of the accounts for the taxable year, and

(B) the excess (if any) of the maximum amount allowable as a contribution under sections 408A(c)(2) and (c)(3) for the taxable year over the amount contributed by the individual to all individual retirement plans for the taxable year.

For purposes of this subsection, any contribution which is distributed from a Roth IRA in a distribution described in section 408(d)(4) shall be treated as an amount not contributed.

(g) Excess contributions to health savings accounts

For purposes of this section, in the case of health savings accounts (within the meaning of section 223(d)), the term "excess contributions" means the sum of—

(1) the aggregate amount contributed for the taxable year to the accounts (other than a rollover contribution described in section 220(f)(5) or 223(f)(5)) which is neither excludable from gross income under section 106(d) nor allowable as a deduction under section 223 for such year, and

(2) the amount determined under this subsection for the preceding taxable year, reduced by the sum of—

(A) the distributions out of the accounts which were included in gross income under section 223(f)(2), and

(B) the excess (if any) of—

(i) the maximum amount allowable as a deduction under section 223(b) (determined without regard to section 106(d)) for the taxable year, over

(ii) the amount contributed to the accounts for the taxable year.

For purposes of this subsection, any contribution which is distributed out of the health savings account in a distribution to which section 223(f)(3) applies shall be treated as an amount not contributed.

(Added Pub. L. 93–406, title II, §2002(d), Sept. 2, 1974, 88 Stat. 966; amended Pub. L. 94–455, title XV, §1501(b)(8), title XIX, §1904(a)(22), Oct. 4, 1976, 90 Stat. 1736, 1814; Pub. L. 95–600, title I, §§156(c)(3), (5), 157(b)(3), (j)(1), title VII, §701(aa)(1), Nov. 6, 1978, 92 Stat. 2803, 2804, 2809, 2921; Pub. L. 96–222, title I, §101(a)(13)(C), (14)(B), Apr. 1, 1980, 94 Stat. 204; Pub. L. 97–34, title III, §§311(h)(7), (9), (10), 313(b)(2), Aug. 13, 1981, 95 Stat. 282, 286; Pub. L. 98–369, div. A, title IV, §491(d)(41)–(44), (55), July 18, 1984, 98 Stat. 851, 852; Pub. L. 99–514, title XI, §1102(b)(1), title XVIII, §1848(f), Oct. 22, 1986, 100 Stat. 2415, 2858; Pub. L. 100–647, title I, §1011(b)(3), Nov. 10, 1988, 102 Stat. 3456; Pub. L. 102–318, title V, §521(b)(41), July 3, 1992, 106 Stat. 313; Pub. L. 104–188, title I, §1704(t)(70), (72), Aug. 20, 1996, 110 Stat. 1891; Pub. L. 104–191, title III, §301(e), Aug. 21, 1996, 110 Stat. 2051; Pub. L. 105–33, title IV, §4006(b)(1), Aug. 5, 1997, 111 Stat. 333; Pub. L. 105–34, title II, §213(d), title III, §302(b), Aug. 5, 1997, 111 Stat. 817, 828; Pub. L. 105–206, title VI, §§6004(d)(10), 6005(b)(8), 6023(18)(A), July 22, 1998, 112 Stat. 795, 799, 825; Pub. L. 106–554, §1(a)(7) [title II, §202(a)(6), (b)(2)(C), (6), (10)], Dec. 21, 2000, 114 Stat. 2763, 2763A–628, 2763A–629; Pub. L. 107–16, title IV, §§401(a)(2), (g)(2)(D), 402(a)(4)(A), title VI, §641(e)(11), June 7, 2001, 115 Stat. 57, 60, 121; Pub. L. 107–22, §1(b)(1)(C), (2)(B), (4), July 26, 2001, 115 Stat. 197; Pub. L. 108–173, title XII, §1201(e), Dec. 8, 2003, 117 Stat. 2478; Pub. L. 108–311, title IV, §408(a)(22), Oct. 4, 2004, 118 Stat. 1192.)

AMENDMENTS

2004—Subsec. (c). Pub. L. 108–311 substituted "subsection (a)(3)" for "subsection (a)(2)" in introductory provisions.

2003—Subsec. (a)(5). Pub. L. 108–173, §1201(e)(1), added par. (5).

Subsec. (g). Pub. L. 108–173, §1201(e)(2), added subsec. (g).

2001—Subsec. (a)(4). Pub. L. 107–22, §1(b)(1)(C), substituted "a Coverdell education savings" for "an education individual retirement".

Subsec. (b)(1)(A). Pub. L. 107–16, §641(e)(11), substituted "408(d)(3), or 457(e)(16)" for "or 408(d)(3)".

Subsec. (e). Pub. L. 107–22, §1(b)(4), substituted "Coverdell education savings" for "education individual retirement" in heading.

Pub. L. 107–16, §402(a)(4)(A), which directed the substitution of "qualified tuition" for "qualified State tuition" wherever appearing in subsec. (e), could not be executed because the term "qualified State tuition" did not appear subsequent to amendment by section 401(g)(2)(D) of Pub. L. 107–16, which struck out par. (1)(B). See below.

Subsec. (e)(1). Pub. L. 107–22, §1(b)(2)(B), substituted "Coverdell education savings" for "education individual retirement" in introductory provisions.

Subsec. (e)(1)(A). Pub. L. 107–16, §401(a)(2), (g)(2)(D), substituted "$2,000" for "$500" and inserted "and" at end.

Subsec. (e)(1)(B), (C). Pub. L. 107–16, §401(g)(2)(D), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: "if any amount is contributed (other than a contribution described in section 530(b)(2)(B)) during such year to a qualified State tuition program for the benefit of such beneficiary, any amount contributed to such accounts for such taxable year; and".

Subsec. (e)(2)(A). Pub. L. 107–22, §1(b)(2)(B), substituted "Coverdell education savings" for "education individual retirement".

2000—Subsec. (a)(2). Pub. L. 106–554, §1(a)(7) [title II, §202(b)(10)], substituted "an Archer" for "a Archer".

Pub. L. 106–554, §1(a)(7) [title II, §202(a)(6)], substituted "Archer MSA" for "medical savings account".

Subsec. (d). Pub. L. 106–554, §1(a)(7) [title II, §202(a)(6), (b)(2)(C), (6)], substituted "Archer MSAs" for "medical savings accounts" in heading, "Archer MSAs" for "medical savings accounts" in introductory provisions, and "Archer MSA" for "medical savings account" in concluding provisions.

1998—Pub. L. 105–206, §6023(18)(A), amended section catchline generally. Prior to amendment, catchline

read as follows: "Tax on excess contributions to individual retirement accounts, medical savings accounts, certain section 403(b) contracts, and certain individual retirement annuities".

Subsec. (b)(1)(A). Pub. L. 105–206, §6005(b)(8)(B)(i), inserted "a contribution to a Roth IRA or" after "other than".

Subsec. (b)(2)(C). Pub. L. 105–206, §6005(b)(8)(B)(ii), inserted "(including the amount contributed to a Roth IRA)" after "annuities".

Subsec. (e)(1). Pub. L. 105–206, §6004(d)(10)(A), reenacted heading without change and amended text of par. (1) generally. Prior to amendment, text read as follows: "In the case of education individual retirement accounts maintained for the benefit of any 1 beneficiary, the term 'excess contributions' means—

"(A) the amount by which the amount contributed for the taxable year to such accounts exceeds $500, and

"(B) any amount contributed to such accounts for any taxable year if any amount is contributed during such year to a qualified State tuition program for the benefit of such beneficiary."

Subsec. (e)(2)(B), (C). Pub. L. 105–206, §6004(d)(10)(B), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: "Any contribution described in section 530(b)(2)(B) to a qualified State tuition program."

Subsec. (f). Pub. L. 105–206, §6005(b)(8)(C), made technical amendment to directory language of Pub. L. 105–34, §302(b). See 1997 Amendment note below.

Subsec. (f)(1)(A). Pub. L. 105–206, §6005(b)(8)(A)(i), substituted "Roth IRAs" for "such accounts".

Subsec. (f)(2)(B). Pub. L. 105–206, §6005(b)(8)(A)(ii), substituted "by the individual to all individual retirement plans" for "to the accounts".

1997—Subsec. (a)(4). Pub. L. 105–34, §213(d)(1), added par. (4).

Subsec. (d). Pub. L. 105–33 inserted "or section 138(c)(3)" after "section 220(f)(3)" in concluding provisions.

Subsec. (e). Pub. L. 105–34, §213(d)(2), added subsec. (e).

Subsec. (f). Pub. L. 105–34, §302(b), as amended by Pub. L. 105–206, §6005(b)(8)(C), added subsec. (f).

1996—Pub. L. 104–191, §301(e)(1), inserted "medical savings accounts," after "accounts," in section catchline.

Subsec. (a). Pub. L. 104–191, §301(e)(1)–(3), struck out "or" at end of par. (1), added par. (2), and redesignated former par. (2) as (3).

Subsec. (b)(1)(A). Pub. L. 104–188, §1704(t)(72), provided that section 521(b)(41) of Pub. L. 102–318 shall be applied as if "section" appeared instead of "sections" in the material proposed to be stricken. See 1992 Amendment note below.

Pub. L. 104–188, §1704(t)(70), substituted "section" for "sections".

Subsec. (d). Pub. L. 104–191, §301(e)(4), added subsec. (d).

1992—Subsec. (b)(1)(A). Pub. L. 102–318, which directed the substitution of "sections 402(c)" for "sections 402(a)(5), 402(a)(7)", was executed by substituting "sections 402(c)" for "section 402(a)(5), 402(a)(7)". See 1996 Amendment note above.

1988—Subsec. (b). Pub. L. 100–647 substituted "shall be computed without regard to section 219(g)" for "(after application of section 408(o)(2)(B)(ii)) shall be increased by the nondeductible limit under section 408(o)(2)(B)" in last sentence.

1986—Subsec. (b). Pub. L. 99–514, §1102(b)(1), inserted at end "For purposes of paragraphs (1)(B) and (2)(C), the amount allowable as a deduction under section 219 (after application of section 408(o)(2)(B)(ii)) shall be increased by the nondeductible limit under section 408(o)(2)(B)."

Pub. L. 99–514, §1848(f), in introductory provisions, substituted "or individual retirement annuities" for ", individual retirement annuities, or bonds", in par. (1)(A), substituted "(other than a rollover contribution described in section 402(a)(5), 402(a)(7), 403(a)(4), 403(b)(8), or 408(d)(3)), over" for "or bonds (other than a rollover contribution described in section 402(a)(5), 402(a)(7), 403(a)(4), 403(b)(8), 405(d)(3), or 408(d)(3)), over", and in par. (2)(A), struck out "or bonds" after "for the annuities".

1984—Pub. L. 98–369, §491(d)(55), substituted "and certain individual retirement annuities" for "certain individual retirement annuities, and certain retirement bonds" in section catchline.

Subsec. (a). Pub. L. 98–369, §491(d)(41), inserted "or" at end of par. (1), struck out "or" at end of par. (2), struck out par. (3) which imposed a tax in the case of a retirement bond, within the meaning of section 409, established for the benefit of any individual, and in the concluding provision substituted "or annuity" for ", annuity, or bond" and "or annuities" for ", annuities, or bonds".

Subsec. (b). Pub. L. 98–369, §491(d)(43), substituted in provision following par. (2)(C) "or the individual retirement annuity" for ", individual retirement annuity, or bond".

Subsec. (b)(1)(A). Pub. L. 98–369, §491(d)(42), which directed the amendment of subpar. (A) by

substituting "and 408(d)(3)" for "408(d)(3), and 409(b)(3)(C)" was executed, as the probable intent of Congress, by substituting "or 408(d)(3))" for "408(d)(3)), or 409(b)(3)(C)".

Subsec. (c)(1). Pub. L. 98–369, §491(d)(44), substituted "or 408(d)(3)(A)(iii)" for ", 408(d)(3)(A)(iii), or 409(b)(3)(C)".

1981—Subsec. (a). Pub. L. 97–34, §311(h)(9), substituted "The tax imposed by this subsection shall be paid by such individual" for "The tax imposed by this subsection shall be paid by the individual to whom a deduction is allowed for the taxable year under section 219 (determined without regard to subsection (b)(1) thereof) or section 220 (determined without regard to subsection (b)(1) thereof), whichever is appropriate".

Subsec. (b)(1)(A). Pub. L. 97–34, §313(b)(2), inserted "405(d)(3)," after "403(b)(8),".

Subsec. (b)(1)(B). Pub. L. 97–34, §311(h)(7), substituted "section 219" for "section 219 or 220".

Subsec. (b)(2)(C). Pub. L. 97–34, §311(h)(7), (10), substituted "section 219" for "section 219 or 220", and "section 219(f)(6)" for "sections 219(c)(5) and 220(c)(6)".

1980—Subsec. (b)(1)(A). Pub. L. 96–222, §101(a)(14)(B), inserted reference to section 402(a)(7).

Subsec. (c)(1). Pub. L. 96–222, §101(a)(13)(C), substituted "409(b)(3)(C)" for "409(d)(3)(C)".

1978—Subsec. (b)(1)(A). Pub. L. 95–600, §156(c)(3), inserted reference to section 403(b)(8).

Subsec. (b)(2). Pub. L. 95–600, §157(b)(3), substituted "reduced by the sum of—" for "reduced by the excess (if any) of", struck out "the maximum amount allowable as a deduction under section 219 or 220 for the taxable year over the amount contributed to the accounts or for the annuities or bonds for the taxable years and reduced by the sum of the distributions out of the account (for the taxable year and all prior taxable years) which were included in the gross income of the payee under section 408(d)(1)" in provision preceding par. (A), and added subpars. (A), (B), and (C).

Subsec. (b). Pub. L. 95–600, §§157(j)(1), 701(aa)(1), struck out in last sentence "if such distribution consists of an excess contribution solely because of employer contributions to a plan or contract described in section 219(b)(2) or by reason of the application of section 219(b)(1) (without regard to the $1,500 limitation) or section 220(b)(1) (without regard to the $1,750 limitation) and only if such distribution does not exceed the excess of $1,500 or $1,750 if applicable, over the amount described in paragraph (1)(B)" after "as an amount not contributed".

Subsec. (c)(1). Pub. L. 95–600, §156(c)(5), inserted "(other than a rollover contribution described in section 403(b)(8), 408(d)(3)(A)(iii), or 409(d)(3)(C))" after "account".

1976—Subsec. (a)(3). Pub. L. 94–455, §§1501(b)(8)(A), 1904(a)(22)(A), substituted "the individual to whom a deduction is allowed for the taxable year under section 219 (determined without regard to subsection (b)(1) thereof) or section 220 (determined without regard to subsection (b)(1) thereof), whichever is appropriate" for "such individual", effective for taxable years beginning after December 31, 1976 and substituted "such individual" for "the individual to whom a deduction is allowed for the taxable year under section 219 (determined without regard to subsection (b)(1) thereof) or section 220 (determined without regard to subsection (b)(1) thereof), whichever is appropriate", effective for the first day of the first month which begins more than 90 days after Oct. 4, 1976.

Subsec. (b)(1)(B). Pub. L. 94–455, §1501(b)(8)(B), inserted "or 220" after "under section 219".

Subsec. (b)(2). Pub. L. 94–455, §1501(b)(8)(C), inserted "or 220" after "under section 219" and "the taxable year and" before "all prior taxable years" and struck out provisions relating to the treatment of contributions out of individual retirement accounts, annuities or bonds to which section 408(d)(4) applied.

Subsec. (c). Pub. L. 94–455, §1904(a)(22)(B), substituted "subsection (a)(2)" for "subsection (a)(3)" in provisions preceding par. (1).

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–173 applicable to taxable years beginning after Dec. 31, 2003, see section 1201(k) of Pub. L. 108–173, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 2001 AMENDMENTS

Amendment by Pub. L. 107–22 effective July 26, 2001, see section 1(c) of Pub. L. 107–22, set out as a note under section 26 of this title.

Amendment by section 401(a)(2), (g)(2)(D) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 401(h) of Pub. L. 107–16, set out as a note under section 25A of this title.

Amendment by section 402(a)(4)(A) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 402(h) of Pub. L. 107–16, set out as a note under section 72 of this title.

Amendment by section 641(e)(11) of Pub. L. 107–16 applicable to distributions after Dec. 31, 2001, see section 641(f)(1) of Pub. L. 107–16, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 6023(18)(A) of Pub. L. 105–206 effective July 22, 1998, see section 6023(32) of Pub. L. 105–206, set out as a note under section 34 of this title.

Amendment by sections 6004(d)(10) and 6005(b)(8) of Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENTS

Amendment by section 213(d) of Pub. L. 105–34 applicable to taxable years beginning after Dec. 31, 1997, see section 213(f) of Pub. L. 105–34, set out as a note under section 26 of this title.

Amendment by section 302(b) of Pub. L. 105–34 applicable to taxable years beginning after Dec. 31, 1997, see section 302(f) of Pub. L. 105–34, set out as a note under section 219 of this title.

Amendment by Pub. L. 105–33 applicable to taxable years beginning after Dec. 31, 1998, see section 4006(c) of Pub. L. 105–33, set out as an Effective Date note under section 138 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–191 applicable to taxable years beginning after Dec. 31, 1996, see section 301(j) of Pub. L. 104–191, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102–318, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1102(b)(1) of Pub. L. 99–514 applicable to contributions and distributions for taxable years beginning after Dec. 31, 1986, see section 1102(g) of Pub. L. 99–514, set out as a note under section 219 of this title.

Amendment by section 1848(f) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 311(h)(7), (9), (10) of Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 311(i)(1) of Pub. L. 97–34, set out as a note under section 219 of this title.

Amendment by section 313(b)(2) of Pub. L. 97–34 applicable to redemptions after Aug. 13, 1981, in taxable years ending after such date, see section 313(c) of Pub. L. 97–34, set out as a note under section 219 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provision of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 156(c)(3), (5) of Pub. L. 95–600 applicable to distributions or transfers made after Dec. 31, 1977, in taxable years beginning after such date, see section 156(d) of Pub. L. 95–600, set out as a note under section 403 of this title.

Amendment by section 157(b)(3) of Pub. L. 95–600 applicable to determination of deductions for taxable years beginning after Dec. 31, 1975, see section 157(b)(4)(A) of Pub. L. 95–600, set out as a note under section 219 of this title.

Pub. L. 95–600, title I, §157(j)(2), Nov. 6, 1978, 92 Stat. 2809, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to contributions made for taxable years beginning after

December 31, 1977."

Pub. L. 95–600, title VII, §701(aa)(2), Nov. 6, 1978, 92 Stat. 2921, provided that: "The amendment made by paragraph (1) [amending this section] shall apply as if included in section 1501 of the Tax Reform Act of 1976 [section 1501 of Pub. L. 94–455] at the time of the enactment of such Act [Oct. 4, 1976]."

Pub. L. 95–600, title VII, §703(j)(13), Nov. 6, 1978, 92 Stat. 2942, provided that: "Notwithstanding section 1904(d) of the Tax Reform Act of 1976 [Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 4041 of this title], the amendment made by section 1904(a)(22)(A) of such Act [amending this section] shall take effect on the date of the enactment of such Act [Oct. 4, 1976]."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1501(b)(8) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1976, see section 1501(d) of Pub. L. 94–455, set out as a note under section 62 of this title.

Amendment by section 1904(a)(22) of Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94–455, set out as a note under section 4041 of this title.

EFFECTIVE DATE

Pub. L. 93–406, title II, §2002(i)(2), Sept. 2, 1974, 88 Stat. 971, provided that: "The amendments made by subsections (d) through (h) except subsection (g)(5) and (6) [enacting this section and sections 4974 and 6693 of this title and amending sections 37, 46, 50, 56, 72, 801, 805, 901, 3401, and 6047 of this title] shall take effect on January 1, 1975."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§4974. Excise tax on certain accumulations in qualified retirement plans

(a) General rule

If the amount distributed during the taxable year of the payee under any qualified retirement plan or any eligible deferred compensation plan (as defined in section 457(b)) is less than the minimum required distribution for such taxable year, there is hereby imposed a tax equal to 50 percent of the amount by which such minimum required distribution exceeds the actual amount distributed during the taxable year. The tax imposed by this section shall be paid by the payee.

(b) Minimum required distribution

For purposes of this section, the term "minimum required distribution" means the minimum amount required to be distributed during a taxable year under section 401(a)(9), 403(b)(10), 408(a)(6), 408(b)(3), or 457(d)(2), as the case may be, as determined under regulations prescribed by the Secretary.

(c) Qualified retirement plan

For purposes of this section, the term "qualified retirement plan" means—

(1) a plan described in section 401(a) which includes a trust exempt from tax under section 501(a),

(2) an annuity plan described in section 403(a),

(3) an annuity contract described in section 403(b),

(4) an individual retirement account described in section 408(a), or

(5) an individual retirement annuity described in section 408(b).

Such term includes any plan, contract, account, or annuity which, at any time, has been determined by the Secretary to be such a plan, contract, account, or annuity.

(d) Waiver of tax in certain cases

If the taxpayer establishes to the satisfaction of the Secretary that—

(1) the shortfall described in subsection (a) in the amount distributed during any taxable year was due to reasonable error, and

(2) reasonable steps are being taken to remedy the shortfall,

the Secretary may waive the tax imposed by subsection (a) for the taxable year.

(Added Pub. L. 93–406, title II, §2002(e), Sept. 2, 1974, 88 Stat. 967; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–600, title I, §157(i)(1), Nov. 6, 1978, 92 Stat. 2808; Pub. L. 99–514, title XI, §1121(a)(1), title XVIII, §1852(a)(7)(B), (C), Oct. 22, 1986, 100 Stat. 2464, 2866.)

AMENDMENTS

1986—Pub. L. 99–514, §1121(a)(1), amended section generally, substituting provisions imposing an excise tax on certain accumulations in qualified retirement plans for provisions imposing an excise tax on certain accumulations in individual retirement accounts and annuities.

Subsec. (a). Pub. L. 99–514, §1852(a)(7)(B), substituted "section 408(a)(6) or 408(b)(3)" for "section 408(a)(6) or (7), or 408(b)(3) or (4)".

Subsec. (b). Pub. L. 99–514, §1852(a)(7)(C), substituted "section 408(a)(6) or 408(b)(3)" for "section 408(a)(6) or (7) or 408(b)(3) or (4)".

1978—Subsec. (c). Pub. L. 95–600 added subsec. (c).

1976—Subsec. (b). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1121(a)(1) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1988, with special provisions for plans maintained pursuant to collective bargaining agreements ratified before Mar. 1, 1986, and transition rules, see section 1121(d) of Pub. L. 99–514, set out as a note under section 401 of this title.

Amendment by section 1852(a)(7)(B), (C) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title I, §157(i)(2), Nov. 6, 1978, 92 Stat. 2809, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after December 31, 1975."

EFFECTIVE DATE

Section effective Jan. 1, 1975, see section 2002(i)(2) of Pub. L. 93–406, set out as an Effective Date note under section 4973 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§4975. Tax on prohibited transactions

(a) Initial taxes on disqualified person

There is hereby imposed a tax on each prohibited transaction. The rate of tax shall be equal to 15 percent of the amount involved with respect to the prohibited transaction for each year (or part thereof) in the taxable period. The tax imposed by this subsection shall be paid by any disqualified

person who participates in the prohibited transaction (other than a fiduciary acting only as such).

(b) Additional taxes on disqualified person

In any case in which an initial tax is imposed by subsection (a) on a prohibited transaction and the transaction is not corrected within the taxable period, there is hereby imposed a tax equal to 100 percent of the amount involved. The tax imposed by this subsection shall be paid by any disqualified person who participated in the prohibited transaction (other than a fiduciary acting only as such).

(c) Prohibited transaction

(1) General rule

For purposes of this section, the term "prohibited transaction" means any direct or indirect—

(A) sale or exchange, or leasing, of any property between a plan and a disqualified person;

(B) lending of money or other extension of credit between a plan and a disqualified person;

(C) furnishing of goods, services, or facilities between a plan and a disqualified person;

(D) transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a plan;

(E) act by a disqualified person who is a fiduciary whereby he deals with the income or assets of a plan in his own interests or for his own account; or

(F) receipt of any consideration for his own personal account by any disqualified person who is a fiduciary from any party dealing with the plan in connection with a transaction involving the income or assets of the plan.

(2) Special exemption

The Secretary shall establish an exemption procedure for purposes of this subsection. Pursuant to such procedure, he may grant a conditional or unconditional exemption of any disqualified person or transaction, orders of disqualified persons or transactions, from all or part of the restrictions imposed by paragraph (1) of this subsection. Action under this subparagraph may be taken only after consultation and coordination with the Secretary of Labor. The Secretary may not grant an exemption under this paragraph unless he finds that such exemption is—

(A) administratively feasible,

(B) in the interests of the plan and of its participants and beneficiaries, and

(C) protective of the rights of participants and beneficiaries of the plan.

Before granting an exemption under this paragraph, the Secretary shall require adequate notice to be given to interested persons and shall publish notice in the Federal Register of the pendency of such exemption and shall afford interested persons an opportunity to present views. No exemption may be granted under this paragraph with respect to a transaction described in subparagraph (E) or (F) of paragraph (1) unless the Secretary affords an opportunity for a hearing and makes a determination on the record with respect to the findings required under subparagraphs (A), (B), and (C) of this paragraph, except that in lieu of such hearing the Secretary may accept any record made by the Secretary of Labor with respect to an application for exemption under section 408(a) of title I of the Employee Retirement Income Security Act of 1974.

(3) Special rule for individual retirement accounts

An individual for whose benefit an individual retirement account is established and his beneficiaries shall be exempt from the tax imposed by this section with respect to any transaction concerning such account (which would otherwise be taxable under this section) if, with respect to such transaction, the account ceases to be an individual retirement account by reason of the application of section 408(e)(2)(A) or if section 408(e)(4) applies to such account.

(4) Special rule for Archer MSAs

An individual for whose benefit an Archer MSA (within the meaning of section 220(d)) is established shall be exempt from the tax imposed by this section with respect to any transaction concerning such account (which would otherwise be taxable under this section) if section 220(e)(2) applies to such transaction.

(5) Special rule for Coverdell education savings accounts

An individual for whose benefit a Coverdell education savings account is established and any contributor to such account shall be exempt from the tax imposed by this section with respect to any transaction concerning such account (which would otherwise be taxable under this section) if section 530(d) applies with respect to such transaction.

(6) Special rule for health savings accounts

An individual for whose benefit a health savings account (within the meaning of section 223(d)) is established shall be exempt from the tax imposed by this section with respect to any transaction concerning such account (which would otherwise be taxable under this section) if, with respect to such transaction, the account ceases to be a health savings account by reason of the application of section 223(e)(2) to such account.

(d) Exemptions

Except as provided in subsection (f)(6), the prohibitions provided in subsection (c) shall not apply to—

(1) any loan made by the plan to a disqualified person who is a participant or beneficiary of the plan if such loan—

(A) is available to all such participants or beneficiaries on a reasonably equivalent basis,

(B) is not made available to highly compensated employees (within the meaning of section 414(q)) in an amount greater than the amount made available to other employees,

(C) is made in accordance with specific provisions regarding such loans set forth in the plan,

(D) bears a reasonable rate of interest, and

(E) is adequately secured;

(2) any contract, or reasonable arrangement, made with a disqualified person for office space, or legal, accounting, or other services necessary for the establishment or operation of the plan, if no more than reasonable compensation is paid therefor;

(3) any loan to an [1] leveraged employee stock ownership plan (as defined in subsection (e)(7)), if—

(A) such loan is primarily for the benefit of participants and beneficiaries of the plan, and

(B) such loan is at a reasonable rate of interest, and any collateral which is given to a disqualified person by the plan consists only of qualifying employer securities (as defined in subsection (e)(8));

(4) the investment of all or part of a plan's assets in deposits which bear a reasonable interest rate in a bank or similar financial institution supervised by the United States or a State, if such bank or other institution is a fiduciary of such plan and if—

(A) the plan covers only employees of such bank or other institution and employees of affiliates of such bank or other institution, or

(B) such investment is expressly authorized by a provision of the plan or by a fiduciary (other than such bank or institution or affiliates thereof) who is expressly empowered by the plan to so instruct the trustee with respect to such investment;

(5) any contract for life insurance, health insurance, or annuities with one or more insurers which are qualified to do business in a State if the plan pays no more than adequate consideration, and if each such insurer or insurers is—

(A) the employer maintaining the plan, or

(B) a disqualified person which is wholly owned (directly or indirectly) by the employer establishing the plan, or by any person which is a disqualified person with respect to the plan, but only if the total premiums and annuity considerations written by such insurers for life insurance, health insurance, or annuities for all plans (and their employers) with respect to which such insurers are disqualified persons (not including premiums or annuity considerations written by the employer maintaining the plan) do not exceed 5 percent of the total premiums

and annuity considerations written for all lines of insurance in that year by such insurers (not including premiums or annuity considerations written by the employer maintaining the plan);

(6) the provision of any ancillary service by a bank or similar financial institution supervised by the United States or a State, if such service is provided at not more than reasonable compensation, if such bank or other institution is a fiduciary of such plan, and if—

(A) such bank or similar financial institution has adopted adequate internal safeguards which assure that the provision of such ancillary service is consistent with sound banking and financial practice, as determined by Federal or State supervisory authority, and

(B) the extent to which such ancillary service is provided is subject to specific guidelines issued by such bank or similar financial institution (as determined by the Secretary after consultation with Federal and State supervisory authority), and under such guidelines the bank or similar financial institution does not provide such ancillary service—

(i) in an excessive or unreasonable manner, and

(ii) in a manner that would be inconsistent with the best interests of participants and beneficiaries of employee benefit plans;

(7) the exercise of a privilege to convert securities, to the extent provided in regulations of the Secretary but only if the plan receives no less than adequate consideration pursuant to such conversion;

(8) any transaction between a plan and a common or collective trust fund or pooled investment fund maintained by a disqualified person which is a bank or trust company supervised by a State or Federal agency or between a plan and a pooled investment fund of an insurance company qualified to do business in a State if—

(A) the transaction is a sale or purchase of an interest in the fund,

(B) the bank, trust company, or insurance company receives not more than a reasonable compensation, and

(C) such transaction is expressly permitted by the instrument under which the plan is maintained, or by a fiduciary (other than the bank, trust company, or insurance company, or an affiliate thereof) who has authority to manage and control the assets of the plan;

(9) receipt by a disqualified person of any benefit to which he may be entitled as a participant or beneficiary in the plan, so long as the benefit is computed and paid on a basis which is consistent with the terms of the plan as applied to all other participants and beneficiaries;

(10) receipt by a disqualified person of any reasonable compensation for services rendered, or for the reimbursement of expenses properly and actually incurred, in the performance of his duties with the plan, but no person so serving who already receives full-time pay from an employer or an association of employers, whose employees are participants in the plan or from an employee organization whose members are participants in such plan shall receive compensation from such fund, except for reimbursement of expenses properly and actually incurred;

(11) service by a disqualified person as a fiduciary in addition to being an officer, employee, agent, or other representative of a disqualified person;

(12) the making by a fiduciary of a distribution of the assets of the trust in accordance with the terms of the plan if such assets are distributed in the same manner as provided under section 4044 of title IV of the Employee Retirement Income Security Act of 1974 (relating to allocation of assets);

(13) any transaction which is exempt from section 406 of such Act by reason of section 408(e) of such Act (or which would be so exempt if such section 406 applied to such transaction) or which is exempt from section 406 of such Act by reason of section 408(b)(12) of such Act;

(14) any transaction required or permitted under part 1 of subtitle E of title IV or section 4223 of the Employee Retirement Income Security Act of 1974, but this paragraph shall not apply with respect to the application of subsection (c)(1) (E) or (F);

(15) a merger of multiemployer plans, or the transfer of assets or liabilities between

multiemployer plans, determined by the Pension Benefit Guaranty Corporation to meet the requirements of section 4231 of such Act, but this paragraph shall not apply with respect to the application of subsection (c)(1)(E) or (F);

(16) a sale of stock held by a trust which constitutes an individual retirement account under section 408(a) to the individual for whose benefit such account is established if—

(A) such stock is in a bank (as defined in section 581) or a depository institution holding company (as defined in section 3(w)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(1)),[2]

(B) such stock is held by such trust as of the date of the enactment of this paragraph,

(C) such sale is pursuant to an election under section 1362(a) by such bank or company,

(D) such sale is for fair market value at the time of sale (as established by an independent appraiser) and the terms of the sale are otherwise at least as favorable to such trust as the terms that would apply on a sale to an unrelated party,

(E) such trust does not pay any commissions, costs, or other expenses in connection with the sale, and

(F) the stock is sold in a single transaction for cash not later than 120 days after the S corporation election is made;

(17) Any [3] transaction in connection with the provision of investment advice described in subsection (e)(3)(B) to a participant or beneficiary in a plan that permits such participant or beneficiary to direct the investment of plan assets in an individual account, if—

(A) the transaction is—

(i) the provision of the investment advice to the participant or beneficiary of the plan with respect to a security or other property available as an investment under the plan,

(ii) the acquisition, holding, or sale of a security or other property available as an investment under the plan pursuant to the investment advice, or

(iii) the direct or indirect receipt of fees or other compensation by the fiduciary adviser or an affiliate thereof (or any employee, agent, or registered representative of the fiduciary adviser or affiliate) in connection with the provision of the advice or in connection with an acquisition, holding, or sale of a security or other property available as an investment under the plan pursuant to the investment advice; and

(B) the requirements of subsection (f)(8) are met,[4]

(18) any transaction involving the purchase or sale of securities, or other property (as determined by the Secretary of Labor), between a plan and a disqualified person (other than a fiduciary described in subsection (e)(3)) with respect to a plan if—

(A) the transaction involves a block trade,

(B) at the time of the transaction, the interest of the plan (together with the interests of any other plans maintained by the same plan sponsor), does not exceed 10 percent of the aggregate size of the block trade,

(C) the terms of the transaction, including the price, are at least as favorable to the plan as an arm's length [5] transaction, and

(D) the compensation associated with the purchase and sale is not greater than the compensation associated with an arm's length [5] transaction with an unrelated party,[4]

(19) any transaction involving the purchase or sale of securities, or other property (as determined by the Secretary of Labor), between a plan and a disqualified person if—

(A) the transaction is executed through an electronic communication network, alternative trading system, or similar execution system or trading venue subject to regulation and oversight by—

(i) the applicable Federal regulating entity, or

(ii) such foreign regulatory entity as the Secretary of Labor may determine by regulation,

(B) either—

(i) the transaction is effected pursuant to rules designed to match purchases and sales at the best price available through the execution system in accordance with applicable rules of the Securities and Exchange Commission or other relevant governmental authority, or

(ii) neither the execution system nor the parties to the transaction take into account the identity of the parties in the execution of trades,

(C) the price and compensation associated with the purchase and sale are not greater than the price and compensation associated with an arm's length [5] transaction with an unrelated party,

(D) if [6] the disqualified person has an ownership interest in the system or venue described in subparagraph (A), the system or venue has been authorized by the plan sponsor or other independent fiduciary for transactions described in this paragraph, and

(E) not less than 30 days prior to the initial transaction described in this paragraph executed through any system or venue described in subparagraph (A), a plan fiduciary is provided written or electronic notice of the execution of such transaction through such system or venue,[4]

(20) transactions described in subparagraphs (A), (B), and (D) of subsection (c)(1) between a plan and a person that is a disqualified person other than a fiduciary (or an affiliate) who has or exercises any discretionary authority or control with respect to the investment of the plan assets involved in the transaction or renders investment advice (within the meaning of subsection (e)(3)(B)) with respect to those assets, solely by reason of providing services to the plan or solely by reason of a relationship to such a service provider described in subparagraph (F), (G), (H), or (I) of subsection (e)(2), or both, but only if in connection with such transaction the plan receives no less, nor pays no more, than adequate consideration,[4]

(21) any foreign exchange transactions, between a bank or broker-dealer (or any affiliate of either) and a plan (as defined in this section) with respect to which such bank or broker-dealer (or affiliate) is a trustee, custodian, fiduciary, or other disqualified person person,[7] if—

(A) the transaction is in connection with the purchase, holding, or sale of securities or other investment assets (other than a foreign exchange transaction unrelated to any other investment in securities or other investment assets),

(B) at the time the foreign exchange transaction is entered into, the terms of the transaction are not less favorable to the plan than the terms generally available in comparable arm's length [5] foreign exchange transactions between unrelated parties, or the terms afforded by the bank or broker-dealer (or any affiliate of either) in comparable arm's-length foreign exchange transactions involving unrelated parties,

(C) the exchange rate used by such bank or broker-dealer (or affiliate) for a particular foreign exchange transaction does not deviate by more than 3 percent from the interbank bid and asked rates for transactions of comparable size and maturity at the time of the transaction as displayed on an independent service that reports rates of exchange in the foreign currency market for such currency, and

(D) the bank or broker-dealer (or any affiliate of either) does not have investment discretion, or provide investment advice, with respect to the transaction,[4]

(22) any transaction described in subsection (c)(1)(A) involving the purchase and sale of a security between a plan and any other account managed by the same investment manager, if—

(A) the transaction is a purchase or sale, for no consideration other than cash payment against prompt delivery of a security for which market quotations are readily available,

(B) the transaction is effected at the independent current market price of the security (within the meaning of section 270.17a–7(b) of title 17, Code of Federal Regulations),

(C) no brokerage commission, fee (except for customary transfer fees, the fact of which is

disclosed pursuant to subparagraph (D)), or other remuneration is paid in connection with the transaction,

(D) a fiduciary (other than the investment manager engaging in the cross-trades or any affiliate) for each plan participating in the transaction authorizes in advance of any cross-trades (in a document that is separate from any other written agreement of the parties) the investment manager to engage in cross trades at the investment manager's discretion, after such fiduciary has received disclosure regarding the conditions under which cross trades may take place (but only if such disclosure is separate from any other agreement or disclosure involving the asset management relationship), including the written policies and procedures of the investment manager described in subparagraph (H),

(E) each plan participating in the transaction has assets of at least $100,000,000, except that if the assets of a plan are invested in a master trust containing the assets of plans maintained by employers in the same controlled group (as defined in section 407(d)(7) of the Employee Retirement Income Security Act of 1974), the master trust has assets of at least $100,000,000,

(F) the investment manager provides to the plan fiduciary who authorized cross trading under subparagraph (D) a quarterly report detailing all cross trades executed by the investment manager in which the plan participated during such quarter, including the following information, as applicable: (i) the identity of each security bought or sold; (ii) the number of shares or units traded; (iii) the parties involved in the cross-trade; and (iv) trade price and the method used to establish the trade price,

(G) the investment manager does not base its fee schedule on the plan's consent to cross trading, and no other service (other than the investment opportunities and cost savings available through a cross trade) is conditioned on the plan's consent to cross trading,

(H) the investment manager has adopted, and cross-trades are effected in accordance with, written cross-trading policies and procedures that are fair and equitable to all accounts participating in the cross-trading program, and that include a description of the manager's pricing policies and procedures, and the manager's policies and procedures for allocating cross trades in an objective manner among accounts participating in the cross-trading program, and

(I) the investment manager has designated an individual responsible for periodically reviewing such purchases and sales to ensure compliance with the written policies and procedures described in subparagraph (H), and following such review, the individual shall issue an annual written report no later than 90 days following the period to which it relates signed under penalty of perjury to the plan fiduciary who authorized cross trading under subparagraph (D) describing the steps performed during the course of the review, the level of compliance, and any specific instances of non-compliance.

The written report shall also notify the plan fiduciary of the plan's right to terminate participation in the investment manager's cross-trading program at any time,[4] or

(23) except as provided in subsection (f)(11), a transaction described in subparagraph (A), (B), (C), or (D) of subsection (c)(1) in connection with the acquisition, holding, or disposition of any security or commodity, if the transaction is corrected before the end of the correction period.

(e) Definitions

(1) Plan

For purposes of this section, the term "plan" means—

(A) a trust described in section 401(a) which forms a part of a plan, or a plan described in section 403(a), which trust or plan is exempt from tax under section 501(a),

(B) an individual retirement account described in section 408(a),

(C) an individual retirement annuity described in section 408(b),

(D) an Archer MSA described in section 220(d),

(E) a health savings account described in section 223(d),

(F) a Coverdell education savings account described in section 530, or

(G) a trust, plan, account, or annuity which, at any time, has been determined by the

Secretary to be described in any preceding subparagraph of this paragraph.

(2) Disqualified person

For purposes of this section, the term "disqualified person" means a person who is—

(A) a fiduciary;

(B) a person providing services to the plan;

(C) an employer any of whose employees are covered by the plan;

(D) an employee organization any of whose members are covered by the plan;

(E) an owner, direct or indirect, of 50 percent or more of—

(i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of a corporation,

(ii) the capital interest or the profits interest of a partnership, or

(iii) the beneficial interest of a trust or unincorporated enterprise,

which is an employer or an employee organization described in subparagraph (C) or (D);

(F) a member of the family (as defined in paragraph (6)) of any individual described in subparagraph (A), (B), (C), or (E);

(G) a corporation, partnership, or trust or estate of which (or in which) 50 percent or more of—

(i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of such corporation,

(ii) the capital interest or profits interest of such partnership, or

(iii) the beneficial interest of such trust or estate,

is owned directly or indirectly, or held by persons described in subparagraph (A), (B), (C), (D), or (E);

(H) an officer, director (or an individual having powers or responsibilities similar to those of officers or directors), a 10 percent or more shareholder, or a highly compensated employee (earning 10 percent or more of the yearly wages of an employer) of a person described in subparagraph (C), (D), (E), or (G); or

(I) a 10 percent or more (in capital or profits) partner or joint venturer of a person described in subparagraph (C), (D), (E), or (G).

The Secretary, after consultation and coordination with the Secretary of Labor or his delegate, may by regulation prescribe a percentage lower than 50 percent for subparagraphs (E) and (G) and lower than 10 percent for subparagraphs (H) and (I).

(3) Fiduciary

For purposes of this section, the term "fiduciary" means any person who—

(A) exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets,

(B) renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or

(C) has any discretionary authority or discretionary responsibility in the administration of such plan.

Such term includes any person designated under section 405(c)(1)(B) of the Employee Retirement Income Security Act of 1974.

(4) Stockholdings

For purposes of paragraphs (2)(E)(i) and (G)(i) there shall be taken into account indirect stockholdings which would be taken into account under section 267(c), except that, for purposes of this paragraph, section 267(c)(4) shall be treated as providing that the members of the family of

an individual are the members within the meaning of paragraph (6).

(5) Partnerships; trusts

For purposes of paragraphs (2)(E)(ii) and (iii), (G)(ii) and (iii), and (I) the ownership of profits or beneficial interests shall be determined in accordance with the rules for constructive ownership of stock provided in section 267(c) (other than paragraph (3) thereof), except that section 267(c)(4) shall be treated as providing that the members of the family of an individual are the members within the meaning of paragraph (6).

(6) Member of family

For purposes of paragraph (2)(F), the family of any individual shall include his spouse, ancestor, lineal descendant, and any spouse of a lineal descendant.

(7) Employee stock ownership plan

The term "employee stock ownership plan" means a defined contribution plan—

(A) which is a stock bonus plan which is qualified, or a stock bonus and a money purchase plan both of which are qualified under section 401(a), and which are designed to invest primarily in qualifying employer securities; and

(B) which is otherwise defined in regulations prescribed by the Secretary.

A plan shall not be treated as an employee stock ownership plan unless it meets the requirements of section 409(h), section 409(o), and, if applicable, section 409(n), section 409(p), and section 664(g) and, if the employer has a registration-type class of securities (as defined in section 409(e)(4)), it meets the requirements of section 409(e).

(8) Qualifying employer security

The term "qualifying employer security" means any employer security within the meaning of section 409(l). If any moneys or other property of a plan are invested in shares of an investment company registered under the Investment Company Act of 1940, the investment shall not cause that investment company or that investment company's investment adviser or principal underwriter to be treated as a fiduciary or a disqualified person for purposes of this section, except when an investment company or its investment adviser or principal underwriter acts in connection with a plan covering employees of the investment company, its investment adviser, or its principal underwriter.

(9) Section made applicable to withdrawal liability payment funds

For purposes of this section—

(A) In general

The term "plan" includes a trust described in section 501(c)(22).

(B) Disqualified person

In the case of any trust to which this section applies by reason of subparagraph (A), the term "disqualified person" includes any person who is a disqualified person with respect to any plan to which such trust is permitted to make payments under section 4223 of the Employee Retirement Income Security Act of 1974.

(f) Other definitions and special rules

For purposes of this section—

(1) Joint and several liability

If more than one person is liable under subsection (a) or (b) with respect to any one prohibited transaction, all such persons shall be jointly and severally liable under such subsection with respect to such transaction.

(2) Taxable period

The term "taxable period" means, with respect to any prohibited transaction, the period

beginning with the date on which the prohibited transaction occurs and ending on the earliest of—

(A) the date of mailing a notice of deficiency with respect to the tax imposed by subsection (a) under section 6212,

(B) the date on which the tax imposed by subsection (a) is assessed, or

(C) the date on which correction of the prohibited transaction is completed.

(3) Sale or exchange; encumbered property

A transfer or real or personal property by a disqualified person to a plan shall be treated as a sale or exchange if the property is subject to a mortgage or similar lien which the plan assumes or if it is subject to a mortgage or similar lien which a disqualified person placed on the property within the 10-year period ending on the date of the transfer.

(4) Amount involved

The term "amount involved" means, with respect to a prohibited transaction, the greater of the amount of money and the fair market value of the other property given or the amount of money and the fair market value of the other property received; except that, in the case of services described in paragraphs (2) and (10) of subsection (d) the amount involved shall be only the excess compensation. For purposes of the preceding sentence, the fair market value—

(A) in the case of the tax imposed by subsection (a), shall be determined as of the date on which the prohibited transaction occurs; and

(B) in the case of the tax imposed by subsection (b), shall be the highest fair market value during the taxable period.

(5) Correction

The terms "correction" and "correct" mean, with respect to a prohibited transaction, undoing the transaction to the extent possible, but in any case placing the plan in a financial position not worse than that in which it would be if the disqualified person were acting under the highest fiduciary standards.

(6) Exemptions not to apply to certain transactions

(A) In general

In the case of a trust described in section 401(a) which is part of a plan providing contributions or benefits for employees some or all of whom are owner-employees (as defined in section 401(c)(3)), the exemptions provided by subsection (d) (other than paragraphs (9) and (12)) shall not apply to a transaction in which the plan directly or indirectly—

(i) lends any part of the corpus or income of the plan to,

(ii) pays any compensation for personal services rendered to the plan to, or

(iii) acquires for the plan any property from, or sells any property to,

any such owner-employee, a member of the family (as defined in section 267(c)(4)) of any such owner-employee, or any corporation in which any such owner-employee owns, directly or indirectly, 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock of the corporation.

(B) Special rules for shareholder-employees, etc.

(i) In general

For purposes of subparagraph (A), the following shall be treated as owner-employees:

(I) A shareholder-employee.

(II) A participant or beneficiary of an individual retirement plan (as defined in section 7701(a)(37)).

(III) An employer or association of employees which establishes such an individual retirement plan under section 408(c).

(ii) Exception for certain transactions involving shareholder-employees

Subparagraph (A)(iii) shall not apply to a transaction which consists of a sale of employer securities to an employee stock ownership plan (as defined in subsection (e)(7)) by a shareholder-employee, a member of the family (as defined in section 267(c)(4)) of such shareholder-employee, or a corporation in which such a shareholder-employee owns stock representing a 50 percent or greater interest described in subparagraph (A).

(iii) Loan exception

For purposes of subparagraph (A)(i), the term "owner-employee" shall only include a person described in subclause (II) or (III) of clause (i).

(C) Shareholder-employee

For purposes of subparagraph (B), the term "shareholder-employee" means an employee or officer of an S corporation who owns (or is considered as owning within the meaning of section 318(a)(1)) more than 5 percent of the outstanding stock of the corporation on any day during the taxable year of such corporation.

(7) S corporation repayment of loans for qualifying employer securities

A plan shall not be treated as violating the requirements of section 401 or 409 or subsection (e)(7), or as engaging in a prohibited transaction for purposes of subsection (d)(3), merely by reason of any distribution (as described in section 1368(a)) with respect to S corporation stock that constitutes qualifying employer securities, which in accordance with the plan provisions is used to make payments on a loan described in subsection (d)(3) the proceeds of which were used to acquire such qualifying employer securities (whether or not allocated to participants). The preceding sentence shall not apply in the case of a distribution which is paid with respect to any employer security which is allocated to a participant unless the plan provides that employer securities with a fair market value of not less than the amount of such distribution are allocated to such participant for the year which (but for the preceding sentence) such distribution would have been allocated to such participant.

(8) Provision of investment advice to participant and beneficiaries

(A) In general

The prohibitions provided in subsection (c) shall not apply to transactions described in subsection (d)(17) if the investment advice provided by a fiduciary adviser is provided under an eligible investment advice arrangement.

(B) Eligible investment advice arrangement

For purposes of this paragraph, the term "eligible investment advice arrangement" means an arrangement—

(i) which either—

(I) provides that any fees (including any commission or other compensation) received by the fiduciary adviser for investment advice or with respect to the sale, holding, or acquisition of any security or other property for purposes of investment of plan assets do not vary depending on the basis of any investment option selected, or

(II) uses a computer model under an investment advice program meeting the requirements of subparagraph (C) in connection with the provision of investment advice by a fiduciary adviser to a participant or beneficiary, and

(ii) with respect to which the requirements of subparagraphs (D), (E), (F), (G), (H), and (I) are met.

(C) Investment advice program using computer model

(i) In general

An investment advice program meets the requirements of this subparagraph if the requirements of clauses (ii), (iii), and (iv) are met.

(ii) Computer model

The requirements of this clause are met if the investment advice provided under the investment advice program is provided pursuant to a computer model that—

(I) applies generally accepted investment theories that take into account the historic returns of different asset classes over defined periods of time,

(II) utilizes relevant information about the participant, which may include age, life expectancy, retirement age, risk tolerance, other assets or sources of income, and preferences as to certain types of investments,

(III) utilizes prescribed objective criteria to provide asset allocation portfolios comprised of investment options available under the plan,

(IV) operates in a manner that is not biased in favor of investments offered by the fiduciary adviser or a person with a material affiliation or contractual relationship with the fiduciary adviser, and

(V) takes into account all investment options under the plan in specifying how a participant's account balance should be invested and is not inappropriately weighted with respect to any investment option.

(iii) Certification

(I) In general

The requirements of this clause are met with respect to any investment advice program if an eligible investment expert certifies, prior to the utilization of the computer model and in accordance with rules prescribed by the Secretary of Labor, that the computer model meets the requirements of clause (ii).

(II) Renewal of certifications

If, as determined under regulations prescribed by the Secretary of Labor, there are material modifications to a computer model, the requirements of this clause are met only if a certification described in subclause (I) is obtained with respect to the computer model as so modified.

(III) Eligible investment expert

The term "eligible investment expert" means any person which meets such requirements as the Secretary of Labor may provide and which does not bear any material affiliation or contractual relationship with any investment adviser or a related person thereof (or any employee, agent, or registered representative of the investment adviser or related person).

(iv) Exclusivity of recommendation

The requirements of this clause are met with respect to any investment advice program if—

(I) the only investment advice provided under the program is the advice generated by the computer model described in clause (ii), and

(II) any transaction described in (d)(17)(A)(ii) [8] occurs solely at the direction of the participant or beneficiary.

Nothing in the preceding sentence shall preclude the participant or beneficiary from requesting investment advice other than that described in clause (i), but only if such request has not been solicited by any person connected with carrying out the arrangement.

(D) Express authorization by separate fiduciary

The requirements of this subparagraph are met with respect to an arrangement if the arrangement is expressly authorized by a plan fiduciary other than the person offering the investment advice program, any person providing investment options under the plan, or any affiliate of either.

(E) Audits

(i) In general

The requirements of this subparagraph are met if an independent auditor, who has appropriate technical training or experience and proficiency and so represents in writing—

(I) conducts an annual audit of the arrangement for compliance with the requirements of this paragraph, and

(II) following completion of the annual audit, issues a written report to the fiduciary who authorized use of the arrangement which presents its specific findings regarding compliance of the arrangement with the requirements of this paragraph.

(ii) Special rule for individual retirement and similar plans

In the case of a plan described in subparagraphs (B) through (F) (and so much of subparagraph (G) as relates to such subparagraphs) of subsection (e)(1), in lieu of the requirements of clause (i), audits of the arrangement shall be conducted at such times and in such manner as the Secretary of Labor may prescribe.

(iii) Independent auditor

For purposes of this subparagraph, an auditor is considered independent if it is not related to the person offering the arrangement to the plan and is not related to any person providing investment options under the plan.

(F) Disclosure

The requirements of this subparagraph are met if—

(i) the fiduciary adviser provides to a participant or a beneficiary before the initial provision of the investment advice with regard to any security or other property offered as an investment option, a written notification (which may consist of notification by means of electronic communication)—

(I) of the role of any party that has a material affiliation or contractual relationship with the fiduciary adviser,[9] in the development of the investment advice program and in the selection of investment options available under the plan,

(II) of the past performance and historical rates of return of the investment options available under the plan,

(III) of all fees or other compensation relating to the advice that the fiduciary adviser or any affiliate thereof is to receive (including compensation provided by any third party) in connection with the provision of the advice or in connection with the sale, acquisition, or holding of the security or other property,

(IV) of any material affiliation or contractual relationship of the fiduciary adviser or affiliates thereof in the security or other property,

(V) the [10] manner, and under what circumstances, any participant or beneficiary information provided under the arrangement will be used or disclosed,

(VI) of the types of services provided by the fiduciary adviser in connection with the provision of investment advice by the fiduciary adviser,

(VII) that the adviser is acting as a fiduciary of the plan in connection with the provision of the advice, and

(VIII) that a recipient of the advice may separately arrange for the provision of advice by another adviser, that could have no material affiliation with and receive no fees or other compensation in connection with the security or other property, and

(ii) at all times during the provision of advisory services to the participant or beneficiary, the fiduciary adviser—

(I) maintains the information described in clause (i) in accurate form and in the manner described in subparagraph (H),

(II) provides, without charge, accurate information to the recipient of the advice no less frequently than annually,

(III) provides, without charge, accurate information to the recipient of the advice upon request of the recipient, and

(IV) provides, without charge, accurate information to the recipient of the advice concerning any material change to the information required to be provided to the recipient of the advice at a time reasonably contemporaneous to the change in information.

(G) Other conditions

The requirements of this subparagraph are met if—

(i) the fiduciary adviser provides appropriate disclosure, in connection with the sale, acquisition, or holding of the security or other property, in accordance with all applicable securities laws,

(ii) the sale, acquisition, or holding occurs solely at the direction of the recipient of the advice,

(iii) the compensation received by the fiduciary adviser and affiliates thereof in connection with the sale, acquisition, or holding of the security or other property is reasonable, and

(iv) the terms of the sale, acquisition, or holding of the security or other property are at least as favorable to the plan as an arm's length [5] transaction would be.

(H) Standards for presentation of information

(i) In general

The requirements of this subparagraph are met if the notification required to be provided to participants and beneficiaries under subparagraph (F)(i) is written in a clear and conspicuous manner and in a manner calculated to be understood by the average plan participant and is sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of the information required to be provided in the notification.

(ii) Model form for disclosure of fees and other compensation

The Secretary of Labor shall issue a model form for the disclosure of fees and other compensation required in subparagraph (F)(i)(III) which meets the requirements of clause (i).

(I) Maintenance for 6 years of evidence of compliance

The requirements of this subparagraph are met if a fiduciary adviser who has provided advice referred to in subparagraph (A) maintains, for a period of not less than 6 years after the provision of the advice, any records necessary for determining whether the requirements of the preceding provisions of this paragraph and of subsection (d)(17) have been met. A transaction prohibited under subsection (c) shall not be considered to have occurred solely because the records are lost or destroyed prior to the end of the 6-year period due to circumstances beyond the control of the fiduciary adviser.

(J) Definitions

For purposes of this paragraph and subsection (d)(17)—

(i) Fiduciary adviser

The term "fiduciary adviser" means, with respect to a plan, a person who is a fiduciary of the plan by reason of the provision of investment advice referred to in subsection (e)(3)(B) by the person to a participant or beneficiary of the plan and who is—

(I) registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) or under the laws of the State in which the fiduciary maintains its principal office and place of business,

(II) a bank or similar financial institution referred to in subsection (d)(4) or a savings association (as defined in section 3(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(1)), but only if the advice is provided through a trust department of the bank or similar financial institution or savings association which is subject to periodic examination and review by Federal or State banking authorities,

(III) an insurance company qualified to do business under the laws of a State,

(IV) a person registered as a broker or dealer under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.),

(V) an affiliate of a person described in any of subclauses (I) through (IV), or

(VI) an employee, agent, or registered representative of a person described in subclauses (I) through (V) who satisfies the requirements of applicable insurance, banking, and securities laws relating to the provision of the advice.

For purposes of this title, a person who develops the computer model described in subparagraph (C)(ii) or markets the investment advice program or computer model shall be treated as a person who is a fiduciary of the plan by reason of the provision of investment advice referred to in subsection (e)(3)(B) to a participant or beneficiary and shall be treated as a fiduciary adviser for purposes of this paragraph and subsection (d)(17), except that the Secretary of Labor may prescribe rules under which only 1 fiduciary adviser may elect to be treated as a fiduciary with respect to the plan.

(ii) Affiliate

The term "affiliate" of another entity means an affiliated person of the entity (as defined in section 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(3))).

(iii) Registered representative

The term "registered representative" of another entity means a person described in section 3(a)(18) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)) (substituting the entity for the broker or dealer referred to in such section) or a person described in section 202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(17)) (substituting the entity for the investment adviser referred to in such section).

(9) Block trade

The term "block trade" means any trade of at least 10,000 shares or with a market value of at least $200,000 which will be allocated across two or more unrelated client accounts of a fiduciary.

(10) Adequate consideration

The term "adequate consideration" means—

(A) in the case of a security for which there is a generally recognized market—

(i) the price of the security prevailing on a national securities exchange which is registered under section 6 of the Securities Exchange Act of 1934, taking into account factors such as the size of the transaction and marketability of the security, or

(ii) if the security is not traded on such a national securities exchange, a price not less favorable to the plan than the offering price for the security as established by the current bid and asked prices quoted by persons independent of the issuer and of the party in interest, taking into account factors such as the size of the transaction and marketability of the security, and

(B) in the case of an asset other than a security for which there is a generally recognized market, the fair market value of the asset as determined in good faith by a fiduciary or fiduciaries in accordance with regulations prescribed by the Secretary of Labor.

(11) Correction period

(A) In general

For purposes of subsection (d)(23), the term "correction period" means the 14-day period beginning on the date on which the disqualified person discovers, or reasonably should have discovered, that the transaction would (without regard to this paragraph and subsection (d)(23)) constitute a prohibited transaction.

(B) Exceptions

(i) Employer securities

Subsection (d)(23) does not apply to any transaction between a plan and a plan sponsor or its affiliates that involves the acquisition or sale of an employer security (as defined in section

407(d)(1) of the Employee Retirement Income Security Act of 1974) or the acquisition, sale, or lease of employer real property (as defined in section 407(d)(2) of such Act).

(ii) Knowing prohibited transaction

In the case of any disqualified person, subsection (d)(23) does not apply to a transaction if, at the time the transaction is entered into, the disqualified person knew (or reasonably should have known) that the transaction would (without regard to this paragraph) constitute a prohibited transaction.

(C) Abatement of tax where there is a correction

If a transaction is not treated as a prohibited transaction by reason of subsection (d)(23), then no tax under subsections (a) and (b) shall be assessed with respect to such transaction, and if assessed the assessment shall be abated, and if collected shall be credited or refunded as an overpayment.

(D) Definitions

For purposes of this paragraph and subsection (d)(23)—

(i) Security

The term "security" has the meaning given such term by section 475(c)(2) (without regard to subparagraph (F)(iii) and the last sentence thereof).

(ii) Commodity

The term "commodity" has the meaning given such term by section 475(e)(2) (without regard to subparagraph (D)(iii) thereof).

(iii) Correct

The term "correct" means, with respect to a transaction—

(I) to undo the transaction to the extent possible and in any case to make good to the plan or affected account any losses resulting from the transaction, and

(II) to restore to the plan or affected account any profits made through the use of assets of the plan.

(g) Application of section

This section shall not apply—

(1) in the case of a plan to which a guaranteed benefit policy (as defined in section 401(b)(2)(B) of the Employee Retirement Income Security Act of 1974) is issued, to any assets of the insurance company, insurance service, or insurance organization merely because of its issuance of such policy;

(2) to a governmental plan (within the meaning of section 414(d)); or

(3) to a church plan (within the meaning of section 414(e)) with respect to which the election provided by section 410(d) has not been made.

In the case of a plan which invests in any security issued by an investment company registered under the Investment Company Act of 1940, the assets of such plan shall be deemed to include such security but shall not, by reason of such investment, be deemed to include any assets of such company.

(h) Notification of Secretary of Labor

Before sending a notice of deficiency with respect to the tax imposed by subsection (a) or (b), the Secretary shall notify the Secretary of Labor and provide him a reasonable opportunity to obtain a correction of the prohibited transaction or to comment on the imposition of such tax.

(i) Cross reference

For provisions concerning coordination procedures between Secretary of Labor and Secretary of the Treasury with respect to application of tax imposed by this section and for authority to waive imposition of the tax imposed by subsection (b), see section 3003 of the

Employee Retirement Income Security Act of 1974.

(Added Pub. L. 93–406, title II, §2003(a), Sept. 2, 1974, 88 Stat. 971; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–600, title I, §141(f)(5), (6), Nov. 6, 1978, 92 Stat. 2795; Pub. L. 96–222, title I, §101(a)(7)(C), (K), (L)(iv)(III), (v)(XI), Apr. 1, 1980, 94 Stat. 198–201; Pub. L. 96–364, title II, §§208(b), 209(b), Sept. 26, 1980, 94 Stat. 1289, 1290; Pub. L. 96–596, §2(a)(1)(K),(L), (2)(I), (3)(F), Dec. 24, 1980, 94 Stat. 3469, 3471; Pub. L. 97–448, title III, §305(d)(5), Jan. 12, 1983, 96 Stat. 2400; Pub. L. 98–369, div. A, title IV, §491(d)(45), (46), (e)(7), (8), July 18, 1984, 98 Stat. 851–853; Pub. L. 99–514, title XI, §1114(b)(15)(A), title XVIII, §§1854(f)(3)(A), 1899A(51), Oct. 22, 1986, 100 Stat. 2452, 2882, 2961; Pub. L. 101–508, title XI, §11701(m), Nov. 5, 1990, 104 Stat. 1388–513; Pub. L. 104–188, title I, §§1453(a), 1702(g)(3), Aug. 20, 1996, 110 Stat. 1817, 1873; Pub. L. 104–191, title III, §301(f), Aug. 21, 1996, 110 Stat. 2051; Pub. L. 105–34, title II, §213(b), title X, §1074(a), title XV, §§1506(b)(1), 1530(c)(10), title XVI, §1602(a)(5), Aug. 5, 1997, 111 Stat. 816, 949, 1065, 1079, 1094; Pub. L. 105–206, title VI, §6023(19), July 22, 1998, 112 Stat. 825; Pub. L. 106–554, §1(a)(7) [title II, §202(a)(7), (b)(7), (10)], Dec. 21, 2000, 114 Stat. 2763, 2763A–628, 2763A–629; Pub. L. 107–16, title VI, §§612(a), 656(b), June 7, 2001, 115 Stat. 100, 134; Pub. L. 107–22, §1(b)(1)(D), (3)(D), July 26, 2001, 115 Stat. 197; Pub. L. 108–173, title XII, §1201(f), Dec. 8, 2003, 117 Stat. 2479; Pub. L. 108–357, title II, §§233(c), 240(a), Oct. 22, 2004, 118 Stat. 1434, 1437; Pub. L. 109–135, title IV, §413(a)(2), Dec. 21, 2005, 119 Stat. 2641; Pub. L. 109–280, title VI, §§601(b)(1), (2), 611(a)(2), (c)(2), (d)(2), (e)(2), (g)(2), 612(b), Aug. 17, 2006, 120 Stat. 958, 959, 967, 969–971, 974, 976; Pub. L. 110–458, title I, §106(a)(2), (b)(2), (c), Dec. 23, 2008, 122 Stat. 5106.)

REFERENCES IN TEXT

The Employee Retirement Income Security Act of 1974, referred to in text, is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829. Part 1 of subtitle E of title IV of such Act is classified generally to part 1 (29 U.S.C. 1381 et seq.) of subtitle E of subchapter III of chapter 18 of Title 29, Labor. Sections 401, 405 to 408, 3003, 4044, 4223, and 4231 of such Act are classified to sections 1101, 1105 to 1108, 1203, 1344, 1403, and 1411, respectively, of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

The date of the enactment of this paragraph, referred to in subsec. (d)(16)(B), is the date of enactment of Pub. L. 108–357, which was approved Oct. 22, 2004.

The Investment Company Act of 1940, referred to in subsecs. (e)(8) and (g), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§80a–1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80a–51 of Title 15 and Tables.

The Investment Advisers Act of 1940, referred to in subsec. (f)(8)(J)(i)(I), is title II of act Aug. 22, 1940, ch. 686, 54 Stat. 847, as amended, which is classified generally to subchapter II (§80b–1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80b–20 of Title 15 and Tables.

The Securities Exchange Act of 1934, referred to in subsec. (f)(8)(J)(i)(IV), (10)(A)(i), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§78a et seq.) of Title 15, Commerce and Trade. Section 6 of the Act is classified to section 78f of Title 15. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

AMENDMENTS

2008—Subsec. (d)(17). Pub. L. 110–458, §106(a)(2)(A), substituted "that permits" for "and that permits" in introductory provisions.

Subsec. (d)(18). Pub. L. 110–458, §106(b)(2)(A), in introductory provisions, substituted "disqualified person" for "party in interest" and "subsection (e)(3)" for "subsection (e)(3)(B)".

Subsec. (d)(19) to (21). Pub. L. 110–458, §106(b)(2)(B), substituted "disqualified person" for "party in interest" wherever appearing.

Subsec. (d)(21)(C). Pub. L. 110–458, §106(b)(2)(C), struck out "or less" before "than 3 percent".

Subsec. (f)(8)(A). Pub. L. 110–458, §106(a)(2)(B)(i), substituted "subsection (d)(17)" for "subsection (b)(14)".

Subsec. (f)(8)(C)(iv)(II). Pub. L. 110–458, §106(a)(2)(B)(ii), substituted "(d)(17)(A)(ii)" for "subsection (b)(14)(B)(ii)".

Subsec. (f)(8)(F)(i)(I). Pub. L. 110–458, §106(a)(2)(B)(iii), substituted "fiduciary adviser," for "financial adviser".

Subsec. (f)(8)(I). Pub. L. 110–458, §106(a)(2)(B)(iv), substituted "subsection (c)" for "section 406".

Subsec. (f)(8)(J)(i). Pub. L. 110–458, §106(a)(2)(B)(v), substituted "a participant" for "the participant" in introductory provisions and concluding provisions, inserted "referred to in subsection (e)(3)(B)" after "investment advice" in introductory provisions, and substituted "subsection (d)(4)" for "section 408(b)(4)" in subcl. (II).

Subsec. (f)(11)(B)(i). Pub. L. 110–458, §106(c), inserted "of the Employee Retirement Income Security Act of 1974" after "section 407(d)(1)" and "of such Act" after "section 407(d)(2)".

2006—Subsec. (d)(17). Pub. L. 109–280, §601(b)(1), added par. (17).

Subsec. (d)(18). Pub. L. 109–280, §611(a)(2)(A), added par. (18).

Subsec. (d)(19). Pub. L. 109–280, §611(c)(2), added par. (19).

Subsec. (d)(20). Pub. L. 109–280, §611(d)(2)(A), added par. (20).

Subsec. (d)(21). Pub. L. 109–280, §611(e)(2), added par. (21).

Subsec. (d)(22). Pub. L. 109–280, §611(g)(2), added par. (22).

Subsec. (d)(23). Pub. L. 109–280, §612(b)(1), added par. (23).

Subsec. (f)(8). Pub. L. 109–280, §601(b)(2), added par. (8).

Subsec. (f)(9). Pub. L. 109–280, §611(a)(2)(B), added par. (9).

Subsec. (f)(10). Pub. L. 109–280, §611(d)(2)(B), added par. (10).

Subsec. (f)(11). Pub. L. 109–280, §612(b)(2), added par. (11).

2005—Subsec. (d)(16)(A). Pub. L. 109–135, §413(a)(2)(A), inserted "or a depository institution holding company (as defined in section 3(w)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(1))" after "a bank (as defined in section 581)".

Subsec. (d)(16)(C). Pub. L. 109–135, §413(a)(2)(B), inserted "or company" after "such bank".

2004—Subsec. (d)(16). Pub. L. 108–357, §233(c), added par. (16).

Subsec. (f)(7). Pub. L. 108–357, §240(a), added par. (7).

2003—Subsec. (c)(6). Pub. L. 108–173, §1201(f)(1), added par. (6).

Subsec. (e)(1)(E) to (G). Pub. L. 108–173, §1201(f)(2), added subpar. (E) and redesignated former subpars. (E) and (F) as (F) and (G), respectively.

2001—Subsec. (c)(5). Pub. L. 107–22, §1(b)(1)(D), (3)(D), in heading, substituted "Coverdell education savings" for "education individual retirement" and in text, substituted "a Coverdell education savings" for "an education individual retirement".

Subsec. (e)(1)(E). Pub. L. 107–22, §1(b)(1)(D), substituted "a Coverdell education savings" for "an education individual retirement".

Subsec. (e)(7). Pub. L. 107–16, §656(b), inserted ", section 409(p)," after "409(n)" in concluding provisions.

Subsec. (f)(6)(B)(iii). Pub. L. 107–16, §612(a), added cl. (iii).

2000—Subsec. (c)(4). Pub. L. 106–554, §1(a)(7) [title II, §202(b)(10)], substituted "an Archer" for "a Archer".

Pub. L. 106–554, §1(a)(7) [title II, §202(a)(7), (b)(7)], substituted "Archer MSAs" for "medical savings accounts" in heading and "Archer MSA" for "medical savings account" in text.

Subsec. (e)(1)(D). Pub. L. 106–554, §1(a)(7) [title II, §202(b)(10)], substituted "an Archer" for "a Archer".

Pub. L. 106–554, §1(a)(7) [title II, §202(a)(7)], substituted "Archer MSA" for "medical savings account".

1998—Subsec. (c)(3). Pub. L. 105–206, §6023(19)(A), substituted "exempt from the tax" for "exempt for the tax".

Subsec. (i). Pub. L. 105–206, §6023(19)(B), substituted "Secretary of the Treasury" for "Secretary of Treasury".

1997—Subsec. (a). Pub. L. 105–34, §1074(a), substituted "15 percent" for "10 percent".

Subsec. (c)(4). Pub. L. 105–34, §1602(a)(5), substituted "if section 220(e)(2) applies to such transaction." for "if, with respect to such transaction, the account ceases to be a medical savings account by reason of the application of section 220(e)(2) to such account."

Subsec. (c)(5). Pub. L. 105–34, §213(b)(2), added par. (5).

Subsec. (d). Pub. L. 105–34, §1506(b)(1)(B)(ii), struck out concluding provisions which read as follows: "The exemptions provided by this subsection (other than paragraphs (9) and (12)) shall not apply to any transaction with respect to a trust described in section 401(a) which is part of a plan providing contributions or benefits for employees some or all of whom are owner-employees (as defined in section 401(c)(3)) in which a plan directly or indirectly lends any part of the corpus or income of the plan to, pays any compensation for personal services rendered to the plan to, or acquires for the plan any property from or sells any property to,

any such owner-employee, a member of the family (as defined in section 267(c)(4)) of any such owner-employee, or a corporation controlled by any such owner-employee through the ownership, directly or indirectly, of 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock of the corporation. For purposes of the preceding sentence, a shareholder-employee (as defined in section 1379, as in effect on the day before the date of the enactment of the Subchapter S Revision Act of 1982), a participant or beneficiary of an individual retirement account or an individual retirement annuity (as defined in section 408), and an employer or association of employees which establishes such an account or annuity under section 408(c) shall be deemed to be an owner-employee."

Pub. L. 105–34, §1506(b)(1)(B)(i), substituted "Except as provided in subsection (f)(6), the prohibitions" for "The prohibitions" in introductory provisions.

Subsec. (e)(1)(D) to (F). Pub. L. 105–34, §213(b)(1), struck out "or" at end of subpar. (D), added subpar. (E), and redesignated former subpar. (E) as (F).

Subsec. (e)(7). Pub. L. 105–34, §1530(c)(10), inserted "and section 664(g)" after "section 409(n)" in concluding provisions.

Subsec. (f)(6). Pub. L. 105–34, §1506(b)(1)(A), added par. (6).

1996—Subsec. (a). Pub. L. 104–188, §1453(a), substituted "10 percent" for "5 percent".

Subsec. (c)(4). Pub. L. 104–191, §301(f)(1), added par. (4).

Subsec. (d)(13). Pub. L. 104–188, §1702(g)(3), substituted "408(b)(12)" for "408(b)".

Subsec. (e)(1). Pub. L. 104–191, §301(f)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "For purposes of this section, the term 'plan' means a trust described in section 401(a) which forms a part of a plan, or a plan described in section 403(a), which trust or plan is exempt from tax under section 501(a), an individual retirement account described in section 408(a) or an individual retirement annuity described in section 408(b) (or a trust, plan, account, or annuity which, at any time, has been determined by the Secretary to be such a trust, plan, or account)."

1990—Subsec. (d)(13). Pub. L. 101–508 inserted before semicolon at end "or which is exempt from section 406 of such Act by reason of section 408(b) of such Act".

1986—Subsec. (d). Pub. L. 99–514, §1899A(51), inserted a closing parenthesis after "and (12)" in second sentence.

Subsec. (d)(1)(B). Pub. L. 99–514, §1114(b)(15)(A), substituted "highly compensated employees (within the meaning of section 414(q))" for "highly compensated employees, officers, or shareholders".

Subsec. (e)(7). Pub. L. 99–514, §1854(f)(3)(A), inserted ", section 409(o), and, if applicable, section 409(n)" in last sentence.

1984—Subsec. (d). Pub. L. 98–369, §491(d)(45), substituted in provision following par. (15) "or an individual retirement annuity (as defined in section 408)" for ", individual retirement annuity, or an individual retirement bond (as defined in section 408 or 409)".

Subsec. (e)(1). Pub. L. 98–369, §491(d)(46), struck out "or 405(a)" after "section 403(a)" and "or a retirement bond described in section 409" after "section 408(b)", and substituted "or annuity" for "annuity, or bond" and "or account" for "account, or bond".

Subsec. (e)(7). Pub. L. 98–369, §491(e)(7), substituted "section 409(h)" for "section 409A(h)", "section 409(e)(4)" for "section 409A(e)(4)", and "section 409(e)" for "section 409A(e)".

Subsec. (e)(8). Pub. L. 98–369, §491(e)(8), substituted "section 409(l)" for "section 409A(l)".

1983—Subsec. (d). Pub. L. 97–448 inserted ", as in effect on the day before the date of the enactment of the Subchapter S Revision Act of 1982" after "section 1379" in last sentence.

1980—Subsec. (b). Pub. L. 96–596, §2(a)(1)(K), substituted "taxable period" for "correction period".

Subsec. (d)(14), (15). Pub. L. 96–364, §208(b), added pars. (14) and (15).

Subsec. (e)(7). Pub. L. 96–222, §101(a)(7)(K), (L)(iv)(III), (v)(XI), substituted references to an employee stock ownership plan, for references to a leveraged employee stock ownership plan wherever appearing therein, and substituted provisions relating to treatment of a plan as an employee stock ownership plan, for provisions relating to treatment of a plan as a leveraged employee stock ownership plan.

Subsec. (e)(8). Pub. L. 96–222, §101(a)(7)(C), substituted provisions defining "qualifying employer security" within the meaning of section 409A(l), for provisions defining such term as stock, or otherwise an equity security, or within the meaning of section 503(e)(1) to (3).

Subsec. (e)(9). Pub. L. 96–364, §209(b), added par. (9).

Subsec. (f)(2)(B), (C). Pub. L. 96–596, §2(a)(2)(I), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (f)(4)(B). Pub. L. 96–596, §2(a)(1)(L), substituted "taxable period" for "correction period".

Subsec. (f)(6). Pub. L. 96–596, §2(a)(3)(F), struck out par. (6), which defined correction period, with

respect to a prohibited transaction, as the period beginning on the date on which the prohibited transaction occurs and ending 90 days after the date of mailing of a notice of deficiency with respect to the tax imposed by subsec. (b) of this section under section 6212 of this title, extended by any period in which a deficiency cannot be assessed under section 6213(a) of this title and any other period which the Secretary determines is reasonable and necessary to bring about the correction of the prohibited transaction.

1978—Subsec. (d)(3). Pub. L. 95–600, §141(f)(6), substituted "leveraged employee" for "employee".

Subsec. (e)(7). Pub. L. 95–600, §141(f)(5), substituted in heading "Leveraged employee" for "Employee", and in text, "leveraged employee" for "employee" and inserted provision that a plan not be treated as a leveraged employee stock ownership plan unless it meet the requirements of section 409A(e) and (h).

1976—Subsecs. (c) to (f). Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–458 effective as if included in the provisions of Pub. L. 109–280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110–458, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title VI, §601(b)(4), Aug. 17, 2006, 120 Stat. 966, as amended by Pub. L. 110–458, title I, §106(a)(3), Dec. 23, 2008, 122 Stat. 5106, provided that: "Except as provided in this subsection [amending this section and enacting provisions set out as notes under this section], the amendments made by this subsection shall apply with respect to advice referred to in section 4975(e)(3)(B) of the Internal Revenue Code of 1986 provided after December 31, 2006."

Pub. L. 109–280, title VI, §611(h), Aug. 17, 2006, 120 Stat. 975, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 1002, 1108, and 1112 of Title 29, Labor] shall apply to transactions occurring after the date of the enactment of this Act [Aug. 17, 2006].

"(2) BONDING RULE.—The amendments made by subsection (b) [amending section 1112 of Title 29] shall apply to plan years beginning after such date."

Pub. L. 109–280, title VI, §612(c), Aug. 17, 2006, 120 Stat. 977, provided that: "The amendments made by this section [amending this section and section 1108 of Title 29, Labor] shall apply to any transaction which the fiduciary or disqualified person discovers, or reasonably should have discovered, after the date of the enactment of this Act [Aug. 17, 2006] constitutes a prohibited transaction."

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 413(d) of Pub. L. 109–135, set out as a note under section 1361 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 233(c) of Pub. L. 108–357 effective Oct. 22, 2004, see section 233(e) of Pub. L. 108–357, set out as a note under section 512 of this title.

Pub. L. 108–357, title II, §240(b), Oct. 22, 2004, 118 Stat. 1437, provided that: "The amendment made by this section [amending this section] shall apply to distributions with respect to S corporation stock made after December 31, 1997."

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–173 applicable to taxable years beginning after Dec. 31, 2003, see section 1201(k) of Pub. L. 108–173, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–22 effective July 26, 2001, see section 1(c) of Pub. L. 107–22, set out as a note under section 26 of this title.

Pub. L. 107–16, title VI, §612(c), June 7, 2001, 115 Stat. 100, provided that: "The amendment made by this section [amending this section and section 1108 of Title 29, Labor] shall apply to years beginning after December 31, 2001."

Amendment by section 656(b) of Pub. L. 107–16 applicable to plan years beginning after Dec. 31, 2004, except that in the case of any employee stock ownership plan established after Mar. 14, 2001, or established on or before such date if employer securities held by the plan consist of stock in a corporation with respect to which an election under section 1362(a) of this title is not in effect on such date, amendment applicable to

plan years ending after Mar. 14, 2001, see section 656(d) of Pub. L. 107–16, set out as a note under section 409 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 213(b) of Pub. L. 105–34 applicable to taxable years beginning after Dec. 31, 1997, see section 213(f) of Pub. L. 105–34, set out as a note under section 26 of this title.

Pub. L. 105–34, title X, §1074(b), Aug. 5, 1997, 111 Stat. 949, provided that: "The amendment made by this section [amending this section] shall apply to prohibited transactions occurring after the date of the enactment of this Act [Aug. 5, 1997]."

Amendment by section 1506(b)(1) of Pub. L. 105–34 applicable to taxable years beginning after Dec. 31, 1997, see section 1506(c) of Pub. L. 105–34, set out as a note under section 409 of this title.

Amendment by section 1530(c)(10) of Pub. L. 105–34 applicable to transfers made by trusts to, or for the use of, an employee stock ownership plan after Aug. 5, 1997, see section 1530(d) of Pub. L. 105–34, set out as a note under section 401 of this title.

Amendment by section 1602(a)(5) of Pub. L. 105–34 effective as if included in the provisions of the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104–191, to which such amendment relates, see section 1602(i) of Pub. L. 105–34, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by Pub. L. 104–191 applicable to taxable years beginning after Dec. 31, 1996, see section 301(j) of Pub. L. 104–191, set out as a note under section 62 of this title.

Pub. L. 104–188, title I, §1453(b), Aug. 20, 1996, 110 Stat. 1817, provided that: "The amendment made by this section [amending this section] shall apply to prohibited transactions occurring after the date of the enactment of this Act [Aug. 20, 1996]."

Amendment by section 1702(g)(3) of Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective, except as otherwise provided, as if included in the provision of the Revenue Reconciliation Act of 1989, Pub. L. 101–239, title VII, to which such amendment relates, see section 11701(n) of Pub. L. 101–508, set out as a note under section 42 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1114(b)(15)(A) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1988, see section 1114(c)(3) of Pub. L. 99–514, set out as a note under section 414 of this title.

Amendment by section 1854(f)(3)(A) of Pub. L. 99–514 effective Oct. 22, 1986, see section 1854(f)(4)(A) of Pub. L. 99–514, set out as a note under section 409 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 491(d)(45), (46) of Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

Amendment by section 491(e)(7), (8) of Pub. L. 98–369 effective Jan. 1, 1984, see section 491(f)(3) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective on date of enactment of Subchapter S Revision Act of 1982 [Oct. 19, 1982], see section 311(c)(4) of Pub. L. 97–448, set out as a note under section 1368 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

For effective date of amendment by Pub. L. 96–596 with respect to any first tier tax and to any second tier tax, see section 2(d) of Pub. L. 96–596, set out as an Effective Date note under section 4961 of this title.

Amendment by section 208(b) of Pub. L. 96–364 effective Sept. 26, 1980, see section 210(a) of Pub. L. 96–364, set out as an Effective Date note under section 418 of this title.

Amendment by section 209(b) of Pub. L. 96–364 applicable to taxable years ending after Sept. 26, 1980, see section 210(c) of Pub. L. 96–364, set out as an Effective Date note under section 418 of this title.

Pub. L. 96–222, title I, §101(b)(1)(C), Apr. 1, 1980, 94 Stat. 205, provided that: "The amendment made by subparagraph (C) of subsection (a)(6) [probably should be '(a)(7)', which amended this section] shall apply to stock acquired after December 31, 1979."

Amendment by section 101(a)(7)(K), (L)(iv)(III), (v)(XI) of Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provision of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title I, §141(h), as added by Pub. L. 96–222, title I, §101(a)(7)(B), Apr. 1, 1980, 94 Stat. 197; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Paragraphs (5) and (6) of subsection (f) [section 141(f)(5), (6) of Pub. L. 95–600] shall apply—

"(1) insofar as they make the requirements of subsections (e) and (h)(1)(B) of section 409A [now section 409] of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] applicable to section 4975 of such Code, to stock acquired after December 31, 1979, and

"(2) insofar as they make paragraphs (1)(A) and (2) of section 409A(h) [now section 409(h)] of such Code applicable to such section 4975, to distributions after December 31, 1978."

EFFECTIVE DATE; SAVINGS PROVISION

Pub. L. 93–406, title II, §2003(c), Sept. 2, 1974, 88 Stat. 978, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1)(A) The amendments made by this section [enacting this section and amending section 503 of this title] shall take effect on January 1, 1975.

"(B) If, before the amendments made by this section [enacting this section and amending section 503 of this title] take effect, an organization described in section 401(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] is denied exemption under section 501(a) of such Code by reason of section 503 of such Code, the denial of such exemption shall not apply if the disqualified person elects (in such manner and at such time as the Secretary or his delegate shall by regulations prescribe) to pay, with respect to the prohibited transaction (within the meaning of section 503(b) or (g)) which resulted in such denial of exemption, a tax in the amount and in the manner provided with respect to the tax imposed under section 4975 of such Code. An election made under this subparagraph, once made, shall be irrevocable. The Secretary of the Treasury or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this subparagraph.

"(2) Section 4975 of the Internal Revenue Code of 1986 (relating to tax on prohibited transactions) shall not apply to—

"(A) a loan of money or other extension of credit between a plan and a disqualified person under a binding contract in effect on July 1, 1974 (or pursuant to renewals of such a contract), until June 30, 1984, if such loan or other extension of credit remains at least as favorable to the plan as an arm's-length transaction with an unrelated party would be, and if the execution of the contract, the making of the loan, or the extension of credit was not, at the time of such execution, making, or extension, a prohibited transaction (within the meaning of section 503(b) of such Code) or the corresponding provisions of prior law);

"(B) a lease of joint use of property involving the plan and a disqualified person pursuant to a binding contract in effect on July 1, 1974 (or pursuant to renewals of such a contract), until June 30, 1984, if such lease or joint use remains at least as favorable to the plan as an arm's-length transaction with an unrelated party would be and if the execution of the contract was not, at the time of such execution, a prohibited transaction (within the meaning of section 503(b) of such Code) or the corresponding provisions of prior law;

"(C) the sale, exchange, or other disposition of property described in subparagraph (B) between a plan and a disqualified person before June 30, 1984, if—

"(i) in the case of a sale, exchange, or other disposition of the property by the plan to the disqualified person, the plan receives an amount which is not less than the fair market value of the property at the time of such disposition; and

"(ii) in the case of the acquisition of the property by the plan, the plan pays an amount which is not in excess of the fair market value of the property at the time of such acquisition:

"(D) Until June 30, 1977, the provision of services to which subparagraphs (A), (B), and (C) do not apply between a plan and a disqualified person (i) under a binding contract in effect on July 1, 1974 (or pursuant to renewals of such contract), or (ii) if the disqualified person ordinarily and customarily furnished such services on June 30, 1974, if such provision of services remains at least as favorable to the plan as an arm's-length transaction with an unrelated party would be and if the provision of services was not, at the time of such provision, a prohibited transaction (within the meaning of section 503(b) of such Code) or the corresponding provisions of prior law; or

"(E) the sale, exchange, or other disposition of property which is owned by a plan on June 30, 1974, and all times thereafter, to a disqualified person, if such plan is required to dispose of such property in order to comply with the provisions of section 407(a)(2)(A) (relating to the prohibition against holding excess

employer securities and employer real property) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1107(a)(2)] and if the plan receives not less than adequate consideration.

For the purposes of this paragraph, the term 'disqualified person' has the meaning provided by section 4975(e)(2) of the Internal Revenue Code of 1986."

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1114 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

DETERMINATION OF FEASIBILITY OF APPLICATION OF COMPUTER MODEL INVESTMENT ADVICE PROGRAMS FOR INDIVIDUAL RETIREMENT AND SIMILAR PLANS

Pub. L. 109–280, title VI, §601(b)(3), Aug. 17, 2006, 120 Stat. 964, provided that:

"(A) SOLICITATION OF INFORMATION.—As soon as practicable after the date of the enactment of this Act [Aug. 17, 2006], the Secretary of Labor, in consultation with the Secretary of the Treasury, shall—

"(i) solicit information as to the feasibility of the application of computer model investment advice programs for plans described in subparagraphs (B) through (F) (and so much of subparagraph (G) as relates to such subparagraphs) of section 4975(e)(1) of the Internal Revenue Code of 1986, including soliciting information from—

"(I) at least the top 50 trustees of such plans, determined on the basis of assets held by such trustees, and

"(II) other persons offering computer model investment advice programs based on nonproprietary products, and

"(ii) shall on the basis of such information make the determination under subparagraph (B).

The information solicited by the Secretary of Labor under clause (i) from persons described in subclauses (I) and (II) of clause (i) shall include information on computer modeling capabilities of such persons with respect to the current year and preceding year, including such capabilities for investment accounts maintained by such persons.

"(B) DETERMINATION OF FEASIBILITY.—The Secretary of Labor, in consultation with the Secretary of the Treasury, shall, on the basis of information received under subparagraph (A), determine whether there is any computer model investment advice program which may be utilized by a plan described in subparagraph (A)(i) to provide investment advice to the account beneficiary of the plan which—

"(i) utilizes relevant information about the account beneficiary, which may include age, life expectancy, retirement age, risk tolerance, other assets or sources of income, and preferences as to certain types of investments,

"(ii) takes into account the full range of investments, including equities and bonds, in determining the options for the investment portfolio of the account beneficiary, and

"(iii) allows the account beneficiary, in directing the investment of assets, sufficient flexibility in obtaining advice to evaluate and select investment options.

The Secretary of Labor shall report the results of such determination to the committees of Congress referred to in subparagraph (D)(ii) not later than December 31, 2007.

"(C) APPLICATION OF COMPUTER MODEL INVESTMENT ADVICE PROGRAM.—

"(i) CERTIFICATION REQUIRED FOR USE OF COMPUTER MODEL.—

"(I) RESTRICTION ON USE.—Subclause (II) of section 4975(f)(8)(B)(i) of the Internal Revenue Code of 1986 shall not apply to a plan described in subparagraph (A)(i).

"(II) RESTRICTION LIFTED IF MODEL CERTIFIED.—If the Secretary of Labor determines under subparagraph (B) or (D) that there is a computer model investment advice program described in subparagraph (B), subclause (I) shall cease to apply as of the date of such determination.

"(ii) CLASS EXEMPTION IF NO INITIAL CERTIFICATION BY SECRETARY.—If the Secretary of Labor determines under subparagraph (B) that there is no computer model investment advice program described in subparagraph (B), the Secretary of Labor shall grant a class exemption from treatment as a prohibited transaction under section 4975(c) of the Internal Revenue Code of 1986 to any transaction described in section 4975(d)(17)(A) of such Code with respect to plans described in subparagraph (A)(i), subject to such conditions as set forth in such exemption as are in the interests of the plan and its account beneficiary and protective of the rights of the account beneficiary and as are necessary to—

"(I) ensure the requirements of sections 4975(d)(17) and 4975(f)(8) (other than subparagraph (C) thereof) of the Internal Revenue Code of 1986 are met, and

"(II) ensure the investment advice provided under the investment advice program utilizes prescribed objective criteria to provide asset allocation portfolios comprised of securities or other property available as investments under the plan.

If the Secretary of Labor solicits any information under subparagraph (A) from a person and such person does not provide such information within 60 days after the solicitation, then, unless such failure was due to reasonable cause and not wilful neglect, such person shall not be entitled to utilize the class exemption under this clause.

"(D) SUBSEQUENT DETERMINATION.—

"(i) IN GENERAL.—If the Secretary of Labor initially makes a determination described in subparagraph (C)(ii), the Secretary may subsequently determine that there is a computer model investment advice program described in subparagraph (B). If the Secretary makes such subsequent determination, then the class exemption described in subparagraph (C)(ii) shall cease to apply after the later of—

"(I) the date which is 2 years after such subsequent determination, or

"(II) the date which is 3 years after the first date on which such exemption took effect.

"(ii) REQUESTS FOR DETERMINATION.—Any person may request the Secretary of Labor to make a determination under this subparagraph with respect to any computer model investment advice program, and the Secretary of Labor shall make a determination with respect to such request within 90 days. If the Secretary of Labor makes a determination that such program is not described in subparagraph (B), the Secretary shall, within 10 days of such determination, notify the Committee on Ways and Means and the Committee on Education and the Workforce of the House of Representatives and the Committee on Finance and the Committee on Health, Education, Labor, and Pensions of the Senate of such determination and the reasons for such determination.

"(E) EFFECTIVE DATE.—The provisions of this paragraph shall take effect on the date of the enactment of this Act [Aug. 17, 2006]."

COORDINATION OF 2006 AMENDMENT WITH EXISTING EXEMPTIONS

Pub. L. 109–280, title VI, §601(c), Aug. 17, 2006, 120 Stat. 966, provided that: "Any exemption under section 408(b) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1108(b)] and section 4975(d) of the Internal Revenue Code of 1986 provided by the amendments made by this section [amending this section and section 1108 of Title 29, Labor] shall not in any manner alter existing individual or class exemptions, provided by statute or administrative action."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§1401–1465] of title I of Pub. L. 104–188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

INTENT OF CONGRESS CONCERNING EMPLOYEE STOCK OWNERSHIP PLANS

Pub. L. 94–455, title VIII, §803(h), Oct. 4, 1976, 90 Stat. 1590, provided that: "The Congress, in a series of laws (the Regional Rail Reorganization Act of 1973, the Employee Retirement Income Security Act of 1974, the Trade Act of 1974, and the Tax Reduction Act of 1975) and this Act has made clear its interest in encouraging employee stock ownership plans as a bold and innovative method of strengthening the free private enterprise system which will solve the dual problems of securing capital funds for necessary capital growth and of bringing about stock ownership by all corporate employees. The Congress is deeply concerned that the objectives sought by this series of laws will be made unattainable by regulations and rulings which treat employee stock ownership plans as conventional retirement plans, which reduce the freedom of the employee trusts and employers to take the necessary steps to implement the plans, and which otherwise block the establishment and success of these plans. Because of the special purposes for which employee stock ownership plans are established, it is consistent with the intent of Congress to permit these plans (whether structured as pension, stock bonus, or profit-sharing plans) to distribute income on employer securities currently."

[1] *So in original. Probably should be "a".*

[2] *So in original. Another closing parenthesis probably should precede the comma.*

[3] *So in original. Probably should not be capitalized.*

[4] *So in original. The comma probably should be a semicolon.*

[5] *So in original. Probably should be "arm's-length".*

[6] *So in original. The word "if" probably should not appear.*

[7] *So in original.*

[8] *So in original. Probably should be "subsection (d)(17)(A)(ii)".*

[9] *So in original. The comma probably should not appear.*

[10] *So in original. Probably should be "of the".*

§4976. Taxes with respect to funded welfare benefit plans

(a) General rule

If—

(1) an employer maintains a welfare benefit fund, and

(2) there is a disqualified benefit provided during any taxable year,

there is hereby imposed on such employer a tax equal to 100 percent of such disqualified benefit.

(b) Disqualified benefit

For purposes of subsection (a)—

(1) In general

The term "disqualified benefit" means—

(A) any post-retirement medical benefit or life insurance benefit provided with respect to a key employee if a separate account is required to be established for such employee under section 419A(d) and such payment is not from such account,

(B) any post-retirement medical benefit or life insurance benefit provided with respect to an individual in whose favor discrimination is prohibited unless the plan meets the requirements of section 505(b) with respect to such benefit (whether or not such requirements apply to such plan), and

(C) any portion of a welfare benefit fund reverting to the benefit of the employer.

(2) Exception for collective bargaining plans

Paragraph (1)(B) shall not apply to any plan maintained pursuant to an agreement between employee representatives and 1 or more employers if the Secretary finds that such agreement is a collective bargaining agreement and that the benefits referred to in paragraph (1)(B) were the subject of good faith bargaining between such employee representatives and such employer or employers.

(3) Exception for nondeductible contributions

Paragraph (1)(C) shall not apply to any amount attributable to a contribution to the fund which is not allowable as a deduction under section 419 for the taxable year or any prior taxable year

(and such contribution shall not be included in any carryover under section 419(d)).

(4) Exception for certain amounts charged against existing reserve

Subparagraphs (A) and (B) of paragraph (1) shall not apply to post-retirement benefits charged against an existing reserve for post-retirement medical or life insurance benefits (as defined in section 512(a)(3)(E)) or charged against the income on such reserve.

(c) Definitions

For purposes of this section, the terms used in this section shall have the same respective meanings as when used in subpart D of part I of subchapter D of chapter 1.

(Added Pub. L. 98–369, div. A, title V, §511(c)(1), July 18, 1984, 98 Stat. 861; amended Pub. L. 99–514, title XVIII, §1851(a)(11), Oct. 22, 1986, 100 Stat. 2861; Pub. L. 100–647, title I, §1011B(a)(27)(A), (B), title III, §3021(a)(1)(C), Nov. 10, 1988, 102 Stat. 3487, 3626; Pub. L. 101–140, title II, §203(a)(2), Nov. 8, 1989, 103 Stat. 830.)

CODIFICATION

Pub. L. 101–140 amended this section to read as if the amendments made by section 1011B(a)(27) of Pub. L. 100–647 (enacting subsec. (c)) had not been enacted. Subsequent to enactment by Pub. L. 100–647, subsec. (c) was amended by Pub. L. 100–647, §3021(a)(1)(C). See 1988 Amendment note below.

AMENDMENTS

1989—Subsec. (b)(5). Pub. L. 101–140 amended subsec. (b) to read as if amendments by Pub. L. 100–647, §1011B(a)(27)(B), had not been enacted, see 1988 Amendment note below.

Subsecs. (c), (d). Pub. L. 101–140 amended this section to read as if amendments by Pub. L. 100–647, §1011B(a)(27)(A), had not been enacted, see 1988 Amendment note below.

1988—Subsec. (b)(5). Pub. L. 100–647, §1011B(a)(27)(B), added par. (5) relating to limitation in case of benefits to which section 89 applies.

Subsec. (c). Pub. L. 100–647, §1011B(a)(27)(A), added subsec. (c) relating to tax on funded welfare benefit funds which include discriminatory employee benefit plan. Former subsec. (c) redesignated (d).

Subsec. (c)(1)(B). Pub. L. 100–647, §3021(a)(1)(C)(i), substituted "any testing year (as defined in section 89(j)(13))" for "any plan year", see Codification note above.

Subsec. (c)(2)(A). Pub. L. 100–647, §3021(a)(1)(C)(ii), substituted "testing" for "plan" in cls. (i) and (ii), see Codification note above.

Subsec. (d). Pub. L. 100–647, §1011B(a)(27)(A), redesignated former subsec. (c) as (d).

1986—Subsec. (b). Pub. L. 99–514 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "For purposes of subsection (a), the term 'disqualified benefit' means—

"(1) any medical benefit or life insurance benefit provided with respect to a key employee other than from a separate account established for such owner under section 419A(d), and

"(2) any post-retirement medical or life insurance benefit unless the plan meets the requirements of section 505(b)(1) with respect to such benefit, and

"(3) any portion of such fund reverting to the benefit of the employer."

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–140 effective as if included in section 1151 of Pub. L. 99–514, see section 203(c) of Pub. L. 101–140, set out as a note under section 79 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011B(a)(27)(A), (B) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 3021(a)(1)(C) of Pub. L. 100–647 effective as if included in the amendments by section 1151 of Pub. L. 99–514, see section 3021(d)(1) of Pub. L. 100–647, set out as a note under section 129 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section applicable to benefits provided after Dec. 31, 1985, see section 511(e)(7) of Pub. L. 98–369, set out as a note under section 419 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§4977. Tax on certain fringe benefits provided by an employer

(a) Imposition of tax

In the case of an employer to whom an election under this section applies for any calendar year, there is hereby imposed a tax for such calendar year equal to 30 percent of the excess fringe benefits.

(b) Excess fringe benefits

For purposes of subsection (a), the term "excess fringe benefits" means, with respect to any calendar year—

(1) the aggregate value of the fringe benefits provided by the employer during the calendar year which were not includible in gross income under paragraphs (1) and (2) of section 132(a), over

(2) 1 percent of the aggregate amount of compensation—

(A) which was paid by the employer during such calendar year to employees, and

(B) was includible in gross income for purposes of chapter 1.

(c) Effect of election on section 132(a)

If—

(1) an election under this section is in effect with respect to an employer for any calendar year, and

(2) at all times on or after January 1, 1984, and before the close of the calendar year involved, substantially all of the employees of the employer were entitled to employee discounts on goods or services provided by the employer in 1 line of business,

for purposes of paragraphs (1) and (2) of section 132(a) (but not for purposes of section 132(h)), all employees of any line of business of the employer which was in existence on January 1, 1984, shall be treated as employees of the line of business referred to in paragraph (2).

(d) Period of election

An election under this section shall apply to the calendar year for which made and all subsequent calendar years unless revoked by the employer.

(e) Treatment of controlled groups

All employees treated as employed by a single employer under subsection (b), (c), or (m) of section 414 shall be treated as employed by a single employer for purposes of this section.

(f) Section to apply only to employment within the United States

Except as otherwise provided in regulations, this section shall apply only with respect to employment within the United States.

(Added Pub. L. 98–369, div. A, title V, §531(e)(1), July 18, 1984, 98 Stat. 885; amended Pub. L. 99–514, title XVIII, §1853(c)(1), (2), Oct. 22, 1986, 100 Stat. 2871; Pub. L. 103–66, title XIII, §13213(d)(3)(D), Aug. 10, 1993, 107 Stat. 474; Pub. L. 104–188, title I, §1704(t)(66), Aug. 20, 1996, 110 Stat. 1890.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–188 substituted "section 132(h)" for "section 132(i)(2)" in closing

provisions.

1993—Subsec. (c). Pub. L. 103–66 substituted "section 132(i)(2)" for "section 132(g)(2)" in closing provisions.

1986—Subsec. (c)(2). Pub. L. 99–514, §1853(c)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "as of January 1, 1984, substantially all of the employees of the employer were entitled to employee discounts or services provided by the employer in 1 line of business,".

Subsec. (f). Pub. L. 99–514, §1853(c)(2), added subsec. (f).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to reimbursements or other payments in respect of expenses incurred after Dec. 31, 1993, see section 13213(e) of Pub. L. 103–66, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1985, see section 531(h) of Pub. L. 98–369, set out as a note under section 132 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

APPLICATION OF SUBSECTION (C) OF THIS SECTION TO AGRICULTURAL COOPERATIVES INCORPORATED IN 1964

Pub. L. 99–514, title XVIII, §1853(c)(3), Oct. 22, 1986, 100 Stat. 2871, provided that: "For purposes of determining whether the requirements of section 4977(c) of the Internal Revenue Code of 1954 [now 1986] are met in the case of an agricultural cooperative incorporated in 1964, there shall not be taken into account employees of a member of the same controlled group as such cooperative which became a member during July 1980."

§4978. Tax on certain dispositions by employee stock ownership plans and certain cooperatives

(a) Tax on dispositions of securities to which section 1042 applies before close of minimum holding period

If, during the 3-year period after the date on which the employee stock ownership plan or eligible worker-owned cooperative acquired any qualified securities in a sale to which section 1042 applied or acquired any qualified employer securities in a qualified gratuitous transfer to which section 664(g) applied, such plan or cooperative disposes of any qualified securities and—

(1) the total number of shares held by such plan or cooperative after such disposition is less than the total number of employer securities held immediately after such sale, or

(2) except to the extent provided in regulations, the value of qualified securities held by such plan or cooperative after such disposition is less than 30 percent of the total value of all employer securities as of such disposition (60 percent of the total value of all employer securities as of such disposition in the case of any qualified employer securities acquired in a qualified gratuitous transfer to which section 664(g) applied),

there is hereby imposed a tax on the disposition equal to the amount determined under subsection (b).

(b) Amount of tax

(1) In general

The amount of the tax imposed by subsection (a) shall be equal to 10 percent of the amount realized on the disposition.

(2) Limitation

The amount realized taken into account under paragraph (1) shall not exceed that portion allocable to qualified securities acquired in the sale to which section 1042 applied or acquired in the qualified gratuitous transfer to which section 664(g) applied determined as if such securities were disposed of—

(A) first from qualified securities to which section 1042 applied or to which section 664(g) applied acquired during the 3-year period ending on the date of the disposition, beginning with the securities first so acquired, and

(B) then from any other employer securities.

If subsection (d) applies to a disposition, the disposition shall be treated as made from employer securities in the opposite order of the preceding sentence.

(3) Distributions to employees

The amount realized on any distribution to an employee for less than fair market value shall be determined as if the qualified security had been sold to the employee at fair market value.

(c) Liability for payment of taxes

The tax imposed by this subsection shall be paid by—

(1) the employer, or

(2) the eligible worker-owned cooperative,

that made the written statement described in section 664(g)(1)(E) or in section 1042(b)(3) (as the case may be).

(d) Section not to apply to certain dispositions

(1) Certain distributions to employees

This section shall not apply with respect to any distribution of qualified securities (or sale of such securities) which is made by reason of—

(A) the death of the employee,

(B) the retirement of the employee after the employee has attained 59½ years of age,

(C) the disability of the employee (within the meaning of section 72(m)(7)), or

(D) the separation of the employee from service for any period which results in a 1-year break in service (within the meaning of section 411(a)(6)(A)).

(2) Certain reorganizations

In the case of any exchange of qualified securities in any reorganization described in section 368(a)(1) for stock of another corporation, such exchange shall not be treated as a disposition for purposes of this section.

(3) Liquidation of corporation into cooperative

In the case of any exchange of qualified securities pursuant to the liquidation of the corporation issuing qualified securities into the eligible worker-owned cooperative in a transaction which meets the requirements of section 332 (determined by substituting "100 percent" for "80 percent" each place it appears in section 332(b)(1)), such exchange shall not be treated as a disposition for purposes of this section.

(4) Dispositions to meet diversification requirements

This section shall not apply to any disposition of qualified securities which is required under section 401(a)(28).

(e) Definitions and special rules

For purposes of this section—

(1) Employee stock ownership plan

The term "employee stock ownership plan" has the meaning given to such term by section 4975(e)(7).

(2) Qualified securities

The term "qualified securities" has the meaning given to such term by section 1042(c)(1); except that such section shall be applied without regard to subparagraph (B) thereof for purposes of applying this section and section 4979A with respect to securities acquired in a qualified gratuitous transfer (as defined in section 664(g)(1)).

(3) Eligible worker-owned cooperative

The term "eligible worker-owned cooperative" has the meaning given to such term by section 1042(c)(2).

(4) Disposition

The term "disposition" includes any distribution.

(5) Employer securities

The term "employer securities" has the meaning given to such term by section 409(l).

(Added Pub. L. 98–369, div. A, title V, §545(a), July 18, 1984, 98 Stat. 894; amended Pub. L. 99–514, title XVIII, §1854(e), Oct. 22, 1986, 100 Stat. 2880; Pub., L. 100–203, title X, §10413(b)(1), Dec. 22, 1987, 101 Stat. 1330–438; Pub. L. 100–647, title I, §1011B(j)(4), Nov. 10, 1988, 102 Stat. 3492; Pub. L. 101–239, title VII, §7304(a)(2)(C)(ii), Dec. 19, 1989, 103 Stat. 2353; Pub. L. 104–188, title I, §1602(b)(4), Aug. 20, 1996, 110 Stat. 1834; Pub. L. 105–34, title XV, §1530(c)(11)–(14), Aug. 5, 1997, 111 Stat. 1079; Pub. L. 108–311, title IV, §408(a)(23), Oct. 4, 2004, 118 Stat. 1192.)

AMENDMENTS

2004—Subsec. (a)(2). Pub. L. 108–311 substituted "(60 percent" for "60 percent".

1997—Subsec. (a). Pub. L. 105–34, §1530(c)(11)(A), inserted "or acquired any qualified employer securities in a qualified gratuitous transfer to which section 664(g) applied" after "section 1042 applied" in introductory provisions.

Subsec. (a)(2). Pub. L. 105–34, §1530(c)(11)(B), inserted before comma at end "60 percent of the total value of all employer securities as of such disposition in the case of any qualified employer securities acquired in a qualified gratuitous transfer to which section 664(g) applied)".

Subsec. (b)(2). Pub. L. 105–34, §1530(c)(12)(A), inserted "or acquired in the qualified gratuitous transfer to which section 664(g) applied" after "section 1042 applied" in introductory provisions.

Subsec. (b)(2)(A). Pub. L. 105–34, §1530(c)(12)(B), inserted "or to which section 664(g) applied" after "section 1042 applied".

Subsec. (c). Pub. L. 105–34, §1530(c)(13), substituted "written statement described in section 664(g)(1)(E) or in section 1042(b)(3) (as the case may be)" for "written statement described in section 1042(b)(3)".

Subsec. (e)(2). Pub. L. 105–34, §1530(c)(14), inserted before period at end "; except that such section shall be applied without regard to subparagraph (B) thereof for purposes of applying this section and section 4979A with respect to securities acquired in a qualified gratuitous transfer (as defined in section 664(g)(1))".

1996—Subsec. (b)(2). Pub. L. 104–188 added subpars. (A) and (B) and closing provisions and struck out former subpars. (A) to (D) and closing provisions which read as follows:

"(A) first, from section 133 securities (as defined in section 4978B(e)(2)) acquired during the 3-year period ending on the date of such disposition, beginning with the securities first so acquired.

"(B) second, from section 133 securities (as so defined) acquired before such 3-year period unless such securities (or proceeds from the disposition) have been allocated to accounts of participants or beneficiaries.

"(C) third, from qualified securities to which section 1042 applied acquired during the 3-year period ending on the date of the disposition, beginning with the securities first so acquired, and

"(D) then from any other employer securities.

If subsection (d) or section 4978B(d) applies to a disposition, the disposition shall be treated as made from

employer securities in the opposite order of the preceding sentence."

1989—Subsec. (b)(2). Pub. L. 101–239 substituted "determined as if such securities were disposed of—", subpars. (A) to (D), and concluding provision for "(determined as if such securities were disposed of in the order described in section 4978A(e))".

1988—Subsec. (d)(4). Pub. L. 100–647 added par. (4).

1987—Subsec. (b)(2). Pub. L. 100–203 substituted "(determined as if such securities were disposed of in the order described in section 4978A(e))" for "(determined as if such securities were disposed of before any other securities)".

1986—Subsec. (a)(1). Pub. L. 99–514, §1854(e)(1), substituted "than" for "then".

Subsec. (b)(1). Pub. L. 99–514, §1854(e)(2), substituted "subsection (a)" for "paragraph (1)".

Subsec. (c). Pub. L. 99–514, §1854(e)(3), substituted "section 1042(b)(3)" for "section 1042(a)(2)(B)".

Subsec. (d)(1)(C). Pub. L. 99–514, §1854(e)(4), substituted "section 72(m)(7)" for "section 72(m)(5)".

Subsec. (d)(3). Pub. L. 99–514, §1854(e)(7), added par. (3).

Subsec. (e)(2). Pub. L. 99–514, §1854(e)(5), substituted "section 1042(c)(1)" for "section 1042(b)(1)".

Subsec. (e)(3). Pub. L. 99–514, §1854(e)(6), substituted "section 1042(c)(2)" for "section 1042(b)(1)".

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to transfers made by trusts to, or for the use of, an employee stock ownership plan after Aug. 5, 1997, see section 1530(d) of Pub. L. 105–34, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1602(b)(1) of Pub. L. 104–188 applicable to loans made after Aug. 20, 1996, with exception and provisions relating to certain refinancings, see section 1602(c) of Pub. L. 104–188, set out as an Effective Date of Repeal note under former section 133 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable to estates of decedents dying after Dec. 19, 1989, see section 7304(a)(3) of Pub. L. 101–239, set out as a note under section 409 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title X, §10413(c), Dec. 22, 1987, 101 Stat. 1330–438, provided that: "The amendments made by this section [enacting section 4978A of this title and amending this section] shall apply to taxable events (within the meaning of section 4978A(c) of the Internal Revenue Code of 1986) occurring after February 26, 1987."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Pub. L. 98–369, div. A, title V, §545(c), July 18, 1984, 98 Stat. 896, provided that: "The amendments made by this section [enacting this section] shall apply to taxable years beginning after the date of enactment of this Act [July 18, 1984]."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[§4978A. Repealed. Pub. L. 101–239, title VII, §7304(a)(2)(C)(i), Dec. 19, 1989,

103 Stat. 2353]

Section, added Pub. L. 100–203, title X, §10413(a), Dec. 22, 1987, 101 Stat. 1330–436; amended Pub. L. 100–647, title VI, §6060(a), Nov. 10, 1988, 102 Stat. 3699, related to tax on certain dispositions of employer securities to which section 2057 applied.

EFFECTIVE DATE OF REPEAL

Repeal applicable to estates of decedents dying after Dec. 19, 1989, see section 7304(a)(3) of Pub. L. 101–239, set out as an Effective Date of 1989 Amendment note under section 409 of this title.

[§4978B. Repealed. Pub. L. 104–188, title I, §1602(b)(5)(A), Aug. 20, 1996, 110 Stat. 1834]

Section, added Pub. L. 101–239, title VII, §7301(d)(1), Dec. 19, 1989, 103 Stat. 2347; amended Pub. L. 101–508, title XI, §11701(e), Nov. 5, 1990, 104 Stat. 1388–507, related to tax on disposition of employer securities to which former section 133 of this title applied.

EFFECTIVE DATE OF REPEAL

Repeal applicable to loans made after Aug. 20, 1996, with exception and provisions relating to certain refinancings, see section 1602(c) of Pub. L. 104–188, set out as a note under former section 133 of this title.

§4979. Tax on certain excess contributions

(a) General rule

In the case of any plan, there is hereby imposed a tax for the taxable year equal to 10 percent of the sum of—

(1) any excess contributions under such plan for the plan year ending in such taxable year, and

(2) any excess aggregate contributions under the plan for the plan year ending in such taxable year.

(b) Liability for tax

The tax imposed by subsection (a) shall be paid by the employer.

(c) Excess contributions

For purposes of this section, the term "excess contributions" has the meaning given such term by sections 401(k)(8)(B), 408(k)(6)(C), and 501(c)(18).

(d) Excess aggregate contribution

For purposes of this section, the term "excess aggregate contribution" has the meaning given to such term by section 401(m)(6)(B). For purposes of determining excess aggregate contributions under an annuity contract described in section 403(b), such contract shall be treated as a plan described in subsection (e)(1).

(e) Plan

For purposes of this section, the term "plan" means—

(1) a plan described in section 401(a) which includes a trust exempt from tax under section 501(a),

(2) any annuity plan described in section 403(a),

(3) any annuity contract described in section 403(b),

(4) a simplified employee pension of an employer which satisfies the requirements of section 408(k), and

(5) a plan described in section 501(c)(18).

Such term includes any plan which, at any time, has been determined by the Secretary to be such a plan.

(f) No tax where excess distributed within specified period after close of year

(1) In general

No tax shall be imposed under this section on any excess contribution or excess aggregate contribution, as the case may be, to the extent such contribution (together with any income allocable thereto through the end of the plan year for which the contribution was made) is distributed (or, if forfeitable, is forfeited) before the close of the first 2½ months (6 months in the case of an excess contribution or excess aggregate contribution to an eligible automatic contribution arrangement (as defined in section 414(w)(3))) of the following plan year.

(2) Year of inclusion

Any amount distributed as provided in paragraph (1) shall be treated as earned and received by the recipient in the recipient's taxable year in which such distributions were made.

(Added Pub. L. 99–514, title XI, §1117(b)(1), Oct. 22, 1986, 100 Stat. 2461; amended Pub. L. 100–647, title I, §1011(l)(8)–(11), Nov. 10, 1988, 102 Stat. 3470, 3471; Pub. L. 109–280, title IX, §902(e)(1)–(3)(A), Aug. 17, 2006, 120 Stat. 1038.)

AMENDMENTS

2006—Subsec. (f). Pub. L. 109–280, §902(e)(1)(B), substituted "specified period after" for "2½ months of" in heading.

Subsec. (f)(1). Pub. L. 109–280, §902(e)(1)(A), (3)(A), inserted "through the end of the plan year for which the contribution was made" after "thereto" and "(6 months in the case of an excess contribution or excess aggregate contribution to an eligible automatic contribution arrangement (as defined in section 414(w)(3)))" after "2½ months".

Subsec. (f)(2). Pub. L. 109–280, §902(e)(2), reenacted heading without change and amended text of par. (2) generally. Prior to amendment, text read as follows:

"(A) IN GENERAL.—Except as provided in subparagraph (B), any amount distributed as provided in paragraph (1) shall be treated as received and earned by the recipient in his taxable year for which such contribution was made.

"(B) DE MINIMIS DISTRIBUTIONS.—If the total excess contributions and excess aggregate contributions distributed to a recipient under a plan for any plan year are less than $100, such distributions (and any income allocable thereto) shall be treated as earned and received by the recipient in his taxable year in which such distributions were made."

1988—Subsec. (a)(1). Pub. L. 100–647, §1011(l)(8), struck out "a cash or deferred arrangement which is part of" after "contributions under".

Subsec. (c). Pub. L. 100–647, §1011(l)(9), struck out "403(b)," and substituted "408(k)(6)(C)" for "408(k)(8)(B)".

Subsec. (d). Pub. L. 100–647, §1011(l)(10), inserted sentence at end relating to determination of excess aggregate contributions under certain annuity contracts.

Subsec. (f)(2). Pub. L. 100–647, §1011(l)(11), substituted "Year of inclusion" for "Included in prior year" as heading, and amended text generally. Prior to amendment, text read as follows: "Any amount distributed as provided in paragraph (1) shall be treated as received and earned by the recipient in his taxable year for which such contribution was made."

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 applicable to plan years beginning after Dec. 31, 2007, see section 902(g) of Pub. L. 109–280, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to plan years beginning after Dec. 31, 1986, with special provisions for plans maintained pursuant to collective bargaining agreements ratified before Mar. 1, 1986, and for annuity contracts under section 403(b) of this title, see section 1117(d) of Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note under section 401 of this title.

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out this section, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§4979A. Tax on certain prohibited allocations of qualified securities

(a) Imposition of tax

If—

(1) there is a prohibited allocation of qualified securities by any employee stock ownership plan or eligible worker-owned cooperative,

(2) there is an allocation described in section 664(g)(5)(A),

(3) there is any allocation of employer securities which violates the provisions of section 409(p), or a nonallocation year described in subsection (e)(2)(C) with respect to an employee stock ownership plan, or

(4) any synthetic equity is owned by a disqualified person in any nonallocation year,

there is hereby imposed a tax on such allocation or ownership equal to 50 percent of the amount involved.

(b) Prohibited allocation

For purposes of this section, the term "prohibited allocation" means—

(1) any allocation of qualified securities acquired in a sale to which section 1042 applies which violates the provisions of section 409(n), and

(2) any benefit which accrues to any person in violation of the provisions of section 409(n).

(c) Liability for tax

The tax imposed by this section shall be paid—

(1) in the case of an allocation referred to in paragraph (1) or (2) of subsection (a), by—

(A) the employer sponsoring such plan, or

(B) the eligible worker-owned cooperative,

which made the written statement described in section 664(g)(1)(E) or in section 1042(b)(3)(B) (as the case may be), and

(2) in the case of an allocation or ownership referred to in paragraph (3) or (4) of subsection (a), by the S corporation the stock in which was so allocated or owned.

(d) Special statute of limitations for tax attributable to certain allocations

The statutory period for the assessment of any tax imposed by this section on an allocation described in subsection (a)(2) of qualified employer securities shall not expire before the date which is 3 years from the later of—

(1) the 1st allocation of such securities in connection with a qualified gratuitous transfer (as defined in section 664(g)(1)), or

(2) the date on which the Secretary is notified of the allocation described in subsection (a)(2).

(e) Definitions and special rules

For purposes of this section—

(1) Definitions

Except as provided in paragraph (2), terms used in this section have the same respective

meanings as when used in sections 409 and 4978.

(2) Special rules relating to tax imposed by reason of paragraph (3) or (4) of subsection (a)

(A) Prohibited allocations

The amount involved with respect to any tax imposed by reason of subsection (a)(3) is the amount allocated to the account of any person in violation of section 409(p)(1).

(B) Synthetic equity

The amount involved with respect to any tax imposed by reason of subsection (a)(4) is the value of the shares on which the synthetic equity is based.

(C) Special rule during first nonallocation year

For purposes of subparagraph (A), the amount involved for the first nonallocation year of any employee stock ownership plan shall be determined by taking into account the total value of all the deemed-owned shares of all disqualified persons with respect to such plan.

(D) Statute of limitations

The statutory period for the assessment of any tax imposed by this section by reason of paragraph (3) or (4) of subsection (a) shall not expire before the date which is 3 years from the later of—

(i) the allocation or ownership referred to in such paragraph giving rise to such tax, or

(ii) the date on which the Secretary is notified of such allocation or ownership.

(Added and amended Pub. L. 99–514, title XI, §1172(b)(2), title XVIII, §1854(a)(9)(A), Oct. 22, 1986, 100 Stat. 2514, 2877; Pub. L. 101–239, title VII, §7304(a)(2)(D), Dec. 19, 1989, 103 Stat. 2353; Pub. L. 104–188, title I, §1704(t)(22), Aug. 20, 1996, 110 Stat. 1888; Pub. L. 105–34, title XV, §1530(c)(15)–(17), Aug. 5, 1997, 111 Stat. 1079, 1080; Pub. L. 107–16, title VI, §656(c), June 7, 2001, 115 Stat. 134.)

AMENDMENTS

2001—Subsec. (a). Pub. L. 107–16, §656(c)(1), added pars. (3) and (4) and, in concluding provisions, substituted "there is hereby imposed a tax on such allocation or ownership equal to 50 percent of the amount involved." for "there is hereby imposed a tax on such allocation equal to 50 percent of the amount involved."

Subsec. (c). Pub. L. 107–16, §656(c)(2), amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: "The tax imposed by this section shall be paid by—

"(1) the employer sponsoring such plan, or

"(2) the eligible worker-owned cooperative,

which made the written statement described in section 664(g)(1)(E) or in section 1042(b)(3)(B) (as the case may be)."

Subsec. (e). Pub. L. 107–16, §656(c)(3), amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows: "Terms used in this section have the same respective meaning as when used in section 4978."

1997—Subsec. (a). Pub. L. 105–34, §1530(c)(15), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: "If there is a prohibited allocation of qualified securities by any employee stock ownership plan or eligible worker-owned cooperative, there is hereby imposed a tax on such allocation equal to 50 percent of the amount involved."

Subsec. (c). Pub. L. 105–34, §1530(c)(16), amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: "The tax imposed by this section shall be paid by—

"(1) the employer sponsoring such plan, or

"(2) the eligible worker-owned cooperative,

which made the written statement described in section 1042(b)(3)(B)."

Subsecs. (d), (e). Pub. L. 105–34, §1530(c)(17), added subsec. (d) and redesignated former subsec. (d) as (e).

1996—Subsec. (c). Pub. L. 104–188 amended directory language of Pub. L. 101–239, §7304(a)(2)(D)(ii). See 1989 Amendment note below.

1989—Subsec. (b)(1). Pub. L. 101–239, §7304(a)(2)(D)(i), struck out "or section 2057" after "section 1042".

Subsec. (c). Pub. L. 101–239, §7304(a)(2)(D)(ii), as amended by Pub. L. 104–188, struck out "or section

2057(d)" after "section 1042(b)(3)(B)" in concluding provisions.

1986—Subsec. (b)(1). Pub. L. 99–514, §1172(b)(2)(A), inserted reference to section 2057.

Subsec. (c). Pub. L. 99–514, §1172(b)(2)(B), inserted reference to section 2057(d).

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to plan years beginning after Dec. 31, 2004, except that in the case of any employee stock ownership plan established after Mar. 14, 2001, or established on or before such date if employer securities held by the plan consist of stock in a corporation with respect to which an election under section 1362(a) of this title is not in effect on such date, amendment applicable to plan years ending after Mar. 14, 2001, see section 656(d) of Pub. L. 107–16, set out as a note under section 409 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to transfers made by trusts to, or for the use of, an employee stock ownership plan after Aug. 5, 1997, see section 1530(d) of Pub. L. 105–34, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable to estates of decedents dying after Dec. 19, 1989, see section 7304(a)(3) of Pub. L. 101–239, set out as a note under section 409 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1172(b)(2) of Pub. L. 99–514 applicable to sales after Oct. 22, 1986, with respect to which election is made by executor of an estate who is required to file the return of the tax imposed by this title on a date (including extensions) after Oct. 22, 1986, see section 1172(c) of Pub. L. 99–514, set out as a note under section 409 of this title.

EFFECTIVE DATE

Pub. L. 99–514, title XVIII, §1854(a)(9)(D), Oct. 22, 1986, 100 Stat. 2878, provided that: "The amendments made by this paragraph [enacting this section and amending section 1042 of this title] shall apply to sales of securities after the date of the enactment of this Act [Oct. 22, 1986]."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§4980. Tax on reversion of qualified plan assets to employer

(a) Imposition of tax

There is hereby imposed a tax of 20 percent of the amount of any employer reversion from a qualified plan.

(b) Liability for tax

The tax imposed by subsection (a) shall be paid by the employer maintaining the plan.

(c) Definitions and special rules

For purposes of this section—

(1) Qualified plan

The term "qualified plan" means any plan meeting the requirements of section 401(a) or 403(a), other than—

(A) a plan maintained by an employer if such employer has, at all times, been exempt from tax under subtitle A, or

(B) a governmental plan (within the meaning of section 414(d)).

Such term shall include any plan which, at any time, has been determined by the Secretary to be a

qualified plan.

(2) Employer reversion

(A) In general

The term "employer reversion" means the amount of cash and the fair market value of other property received (directly or indirectly) by an employer from the qualified plan.

(B) Exceptions

The term "employer reversion" shall not include—

(i) except as provided in regulations, any amount distributed to or on behalf of any employee (or his beneficiaries) if such amount could have been so distributed before termination of such plan without violating any provision of section 401,

(ii) any distribution to the employer which is allowable under section 401(a)(2)—

(I) in the case of a multiemployer plan, by reason of mistakes of law or fact or the return of any withdrawal liability payment,

(II) in the case of a plan other than a multiemployer plan, by reason of mistake of fact, or

(III) in the case of any plan, by reason of the failure of the plan to initially qualify or the failure of contributions to be deductible, or

(iii) any transfer described in section 420(f)(2)(B)(ii)(II).

(3) Exception for employee stock ownership plans

(A) In general

If, upon an employer reversion from a qualified plan, any applicable amount is transferred from such plan to an employee stock ownership plan described in section 4975(e)(7) or a tax credit employee stock ownership plan (as described in section 409), such amount shall not be treated as an employer reversion for purposes of this section (or includible in the gross income of the employer) if the requirements of subparagraphs (B), (C), and (D) are met.

(B) Investment in employer securities

The requirements of this subparagraph are met if, within 90 days after the transfer (or such longer period as the Secretary may prescribe), the amount transferred is invested in employer securities (as defined in section 409(l)) or used to repay loans used to purchase such securities.

(C) Allocation requirements

The requirements of this subparagraph are met if the portion of the amount transferred which is not allocated under the plan to accounts of participants in the plan year in which the transfer occurs—

(i) is credited to a suspense account and allocated from such account to accounts of participants no less rapidly than ratably over a period not to exceed 7 years, and

(ii) when allocated to accounts of participants under the plan, is treated as an employer contribution for purposes of section 415(c), except that—

(I) the annual addition (as determined under section 415(c)) attributable to each such allocation shall not exceed the value of such securities as of the time such securities were credited to such suspense account, and

(II) no additional employer contributions shall be permitted to an employee stock ownership plan described in subparagraph (A) of the employer before the allocation of such amount.

The amount allocated in the year of transfer shall not be less than the lesser of the maximum amount allowable under section 415 or 1/8 of the amount attributable to the securities acquired. In the case of dividends on securities held in the suspense account, the requirements of this subparagraph are met only if the dividends are allocated to accounts of participants or paid to

participants in proportion to their accounts, or used to repay loans used to purchase employer securities.

(D) Participants

The requirements of this subparagraph are met if at least half of the participants in the qualified plan are participants in the employee stock ownership plan (as of the close of the 1st plan year for which an allocation of the securities is required).

(E) Applicable amount

For purposes of this paragraph, the term "applicable amount" means any amount which—

(i) is transferred after March 31, 1985, and before January 1, 1989, or

(ii) is transferred after December 31, 1988, pursuant to a termination which occurs after March 31, 1985, and before January 1, 1989.

(F) No credit or deduction allowed

No credit or deduction shall be allowed under chapter 1 for any amount transferred to an employee stock ownership plan in a transfer to which this paragraph applies.

(G) Amount transferred to include income thereon, etc.

The amount transferred shall not be treated as meeting the requirements of subparagraphs (B) and (C) unless amounts attributable to such amount also meet such requirements.

(4) Time for payment of tax

For purposes of subtitle F, the time for payment of the tax imposed by subsection (a) shall be the last day of the month following the month in which the employer reversion occurs.

(d) Increase in tax for failure to establish replacement plan or increase benefits

(1) In general

Subsection (a) shall be applied by substituting "50 percent" for "20 percent" with respect to any employer reversion from a qualified plan unless—

(A) the employer establishes or maintains a qualified replacement plan, or

(B) the plan provides benefit increases meeting the requirements of paragraph (3).

(2) Qualified replacement plan

For purposes of this subsection, the term "qualified replacement plan" means a qualified plan established or maintained by the employer in connection with a qualified plan termination (hereinafter referred to as the "replacement plan") with respect to which the following requirements are met:

(A) Participation requirement

At least 95 percent of the active participants in the terminated plan who remain as employees of the employer after the termination are active participants in the replacement plan.

(B) Asset transfer requirement

(i) 25 percent cushion

A direct transfer from the terminated plan to the replacement plan is made before any employer reversion, and the transfer is in an amount equal to the excess (if any) of—

(I) 25 percent of the maximum amount which the employer could receive as an employer reversion without regard to this subsection, over

(II) the amount determined under clause (ii).

(ii) Reduction for increase in benefits

The amount determined under this clause is an amount equal to the present value of the aggregate increases in the accrued benefits under the terminated plan of any participants or beneficiaries pursuant to a plan amendment which—

(I) is adopted during the 60-day period ending on the date of termination of the qualified

plan, and

(II) takes effect immediately on the termination date.

(iii) Treatment of amount transferred

In the case of the transfer of any amount under clause (i)—

(I) such amount shall not be includible in the gross income of the employer,

(II) no deduction shall be allowable with respect to such transfer, and

(III) such transfer shall not be treated as an employer reversion for purposes of this section.

(C) Allocation requirements

(i) In general

In the case of any defined contribution plan, the portion of the amount transferred to the replacement plan under subparagraph (B)(i) is—

(I) allocated under the plan to the accounts of participants in the plan year in which the transfer occurs, or

(II) credited to a suspense account and allocated from such account to accounts of participants no less rapidly than ratably over the 7-plan-year period beginning with the year of the transfer.

(ii) Coordination with section 415 limitation

If, by reason of any limitation under section 415, any amount credited to a suspense account under clause (i)(II) may not be allocated to a participant before the close of the 7-year period under such clause—

(I) such amount shall be allocated to the accounts of other participants, and

(II) if any portion of such amount may not be allocated to other participants by reason of any such limitation, shall be allocated to the participant as provided in section 415.

(iii) Treatment of income

Any income on any amount credited to a suspense account under clause (i)(II) shall be allocated to accounts of participants no less rapidly than ratably over the remainder of the period determined under such clause (after application of clause (ii)).

(iv) Unallocated amounts at termination

If any amount credited to a suspense account under clause (i)(II) is not allocated as of the termination date of the replacement plan—

(I) such amount shall be allocated to the accounts of participants as of such date, except that any amount which may not be allocated by reason of any limitation under section 415 shall be allocated to the accounts of other participants, and

(II) if any portion of such amount may not be allocated to other participants under subclause (I) by reason of such limitation, such portion shall be treated as an employer reversion to which this section applies.

(3) Pro rata benefit increases

(A) In general

The requirements of this paragraph are met if a plan amendment to the terminated plan is adopted in connection with the termination of the plan which provides pro rata increases in the accrued benefits of all qualified participants which—

(i) have an aggregate present value not less than 20 percent of the maximum amount which the employer could receive as an employer reversion without regard to this subsection, and

(ii) take effect immediately on the termination date.

(B) Pro rata increase

For purposes of subparagraph (A), a pro rata increase is an increase in the present value of the accrued benefit of each qualified participant in an amount which bears the same ratio to the

aggregate amount determined under subparagraph (A)(i) as—

(i) the present value of such participant's accrued benefit (determined without regard to this subsection), bears to

(ii) the aggregate present value of accrued benefits of the terminated plan (as so determined).

Notwithstanding the preceding sentence, the aggregate increases in the present value of the accrued benefits of qualified participants who are not active participants shall not exceed 40 percent of the aggregate amount determined under subparagraph (A)(i) by substituting "equal to" for "not less than".

(4) Coordination with other provisions

(A) Limitations

A benefit may not be increased under paragraph (2)(B)(ii) or (3)(A), and an amount may not be allocated to a participant under paragraph (2)(C), if such increase or allocation would result in a failure to meet any requirement under section 401(a)(4) or 415.

(B) Treatment as employer contributions

Any increase in benefits under paragraph (2)(B)(ii) or (3)(A), or any allocation of any amount (or income allocable thereto) to any account under paragraph (2)(C), shall be treated as an annual benefit or annual addition for purposes of section 415.

(C) 10-year participation requirement

Except as provided by the Secretary, section 415(b)(5)(D) shall not apply to any increase in benefits by reason of this subsection to the extent that the application of this subparagraph does not discriminate in favor of highly compensated employees (as defined in section 414(q)).

(5) Definitions and special rules

For purposes of this subsection—

(A) Qualified participant

The term "qualified participant" means an individual who—

(i) is an active participant,

(ii) is a participant or beneficiary in pay status as of the termination date,

(iii) is a participant not described in clause (i) or (ii)—

(I) who has a nonforfeitable right to an accrued benefit under the terminated plan as of the termination date, and

(II) whose service, which was creditable under the terminated plan, terminated during the period beginning 3 years before the termination date and ending with the date on which the final distribution of assets occurs, or

(iv) is a beneficiary of a participant described in clause (iii)(II) and has a nonforfeitable right to an accrued benefit under the terminated plan as of the termination date.

(B) Present value

Present value shall be determined as of the termination date and on the same basis as liabilities of the plan are determined on termination.

(C) Reallocation of increase

Except as provided in paragraph (2)(C), if any benefit increase is reduced by reason of the last sentence of paragraph (3)(A)(ii) or paragraph (4), the amount of such reduction shall be allocated to the remaining participants on the same basis as other increases (and shall be treated as meeting any allocation requirement of this subsection).

(D) Plans taken into account

For purposes of determining whether there is a qualified replacement plan under paragraph

(2), the Secretary may provide that—

(i) 2 or more plans may be treated as 1 plan, or

(ii) a plan of a successor employer may be taken into account.

(E) Special rule for participation requirement

For purposes of paragraph (2)(A), all employers treated as 1 employer under section 414(b), (c), (m), or (o) shall be treated as 1 employer.

(6) Subsection not to apply to employer in bankruptcy

This subsection shall not apply to an employer who, as of the termination date of the qualified plan, is in bankruptcy liquidation under chapter 7 of title 11 of the United States Code or in similar proceedings under State law.

(Added Pub. L. 99–514, title XI, §1132(a), Oct. 22, 1986, 100 Stat. 2478; amended Pub. L. 100–647, title I, §1011A(f)(1)–(3), (6), (7), title V, §5072(a), title VI, §6069(a), Nov. 10, 1988, 102 Stat. 3478, 3479, 3681, 3704; Pub. L. 101–508, title XII, §§12001, 12002(a), Nov. 5, 1990, 104 Stat. 1388–562; Pub. L. 104–188, title I, §1704(a), Aug. 20, 1996, 110 Stat. 1878; Pub. L. 109–280, title IX, §901(a)(2)(C), Aug. 17, 2006, 120 Stat. 1029; Pub. L. 110–458, title I, §108(i)(3), Dec. 23, 2008, 122 Stat. 5110.)

AMENDMENTS

2008—Subsec. (c)(2)(B)(iii). Pub. L. 110–458 added cl. (iii).

2006—Subsec. (c)(3)(A). Pub. L. 109–280 substituted "if the requirements of subparagraphs (B), (C), and (D) are met" for "if—

"(i) the requirements of subparagraphs (B), (C), and (D) are met, and

"(ii) under the plan, employer securities to which subparagraph (B) applies must, except to the extent necessary to meet the requirements of section 401(a)(28), remain in the plan until distribution to participants in accordance with the provisions of such plan".

1996—Subsecs. (a), (d). Pub. L. 104–188 provided that, except as otherwise expressly provided, whenever in title XII of Pub. L. 101–508 an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986. Sections 12001 and 12002(a) of title XII of Pub. L. 101–508 directed the amendment of this section without specifying that the amendment was to the Internal Revenue Code of 1986. See 1990 Amendment note below.

1990—Subsec. (a). Pub. L. 101–508, §12001, which directed the substitution of "20 percent" for "15 percent" in "section 4980(a)" without specifying the Internal Revenue Code of 1986, was executed to subsec. (a) of this section. See 1996 Amendment note above.

Subsec. (d). Pub. L. 101–508, §12002(a), which directed the addition of subsec. (d) to "section 4980" without specifying the Internal Revenue Code of 1986, was executed to this section. See 1996 Amendment note above.

1988—Subsec. (a). Pub. L. 100–647, §6069(a), substituted "15" for "10".

Subsec. (c)(1)(A). Pub. L. 100–647, §1011A(f)(1), substituted "subtitle A" for "this subtitle".

Subsec. (c)(3)(A). Pub. L. 100–647, §1011A(f)(2), inserted "or a tax credit employee stock ownership plan (as described in section 409)" after "section 4975(e)(7)" in introductory text, and ", except to the extent necessary to meet the requirements of section 401(a)(28)," after "must" in cl. (ii).

Subsec. (c)(3)(C). Pub. L. 100–647, §1011A(f)(3), struck out "(by reason of the limitations of section 415)" after "not allocated" in introductory text, and inserted sentence at end relating to minimum amount allocated in year of transfer.

Pub. L. 100–647, §1011A(f)(7), inserted sentence at end relating to dividends on securities held in suspense account.

Subsec. (c)(3)(F), (G). Pub. L. 100–647, §1011A(f)(6), added subpars. (F) and (G).

Subsec. (c)(4). Pub. L. 100–647, §5072(a), added par. (4).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–458 effective as if included in the provisions of Pub. L. 109–280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110–458, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 applicable to plan years beginning after Dec. 31, 2006, with special rules for collectively bargained agreements and certain employer securities held in an ESOP, see section 901(c) of Pub. L. 109–280, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XII, §12003, Nov. 5, 1990, 104 Stat. 1388–566, provided that:

"(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this subtitle [subtitle A (§§12001–12003) of title XII of Pub. L. 101–508, amending this section and sections 1002, 1104, and 1344 of Title 29, Labor] shall apply to reversions occurring after September 30, 1990.

"(b) EXCEPTION.—The amendments made by this subtitle shall not apply to any reversion after September 30, 1990, if—

"(1) in the case of plans subject to title IV of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1301 et seq.], a notice of intent to terminate under such title was provided to participants (or if no participants, to the Pension Benefit Guaranty Corporation) before October 1, 1990,

"(2) in the case of plans subject to title I [29 U.S.C. 1001 et seq.] (and not to title IV) of such Act, a notice of intent to reduce future accruals under section 204(h) of such Act [29 U.S.C. 1054(h)] was provided to participants in connection with the termination before October 1, 1990,

"(3) in the case of plans not subject to title I or IV of such Act, a request for a determination letter with respect to the termination was filed with the Secretary of the Treasury or the Secretary's delegate before October 1, 1990, or

"(4) in the case of plans not subject to title I or IV of such Act and having only 1 participant, a resolution terminating the plan was adopted by the employer before October 1, 1990."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011A(f)(1)–(3), (6), (7) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title V, §5072(b), Nov. 10, 1988, 102 Stat. 3681, provided that: "The amendment made by subsection (a) [amending this section] shall apply to reversions after December 31, 1988."

Pub. L. 100–647, title VI, §6069(b), Nov. 10, 1988, 102 Stat. 3704, provided that:

"(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to reversions occurring on or after October 21, 1988.

"(2) EXCEPTION.—The amendment made by subsection (a) shall not apply to any reversion on or after October 21, 1988, pursuant to a plan termination if—

"(A) with respect to plans subject to title IV of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1301 et seq.], a notice of intent to terminate required under such title was provided to participants (or if no participants, to the Pension Benefit Guaranty Corporation) before October 21, 1988,

"(B) with respect to plans subject to title I of such Act [29 U.S.C. 1001 et seq.], a notice of intent to reduce future accruals required under section 204(h) of such Act [29 U.S.C. 1054(h)] was provided to participants in connection with the termination before October 21, 1988,

"(C) with respect to plans not subject to title I or IV of such Act, the Board of Directors of the employer approved the termination or the employer took other binding action before October 21, 1988, or

"(D) such plan termination was directed by a final order of a court of competent jurisdiction entered before October 21, 1988, and notice of such order was provided to participants before such date."

EFFECTIVE DATE

Pub. L. 99–514, title XI, §1132(c), Oct. 22, 1986, 100 Stat. 2480, as amended by Pub. L. 100–647, title I, §1011A(f)(4), (5), Nov. 10, 1988, 102 Stat. 3479, provided that:

"(1) IN GENERAL.—The amendments made by this section [enacting this section] shall apply to reversions occurring after December 31, 1985.

"(2) EXCEPTION WHERE TERMINATION DATE OCCURRED BEFORE JANUARY 1, 1986.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this section shall not apply to any reversion after December 31, 1985, which occurs pursuant to a plan termination where the termination date is before January 1, 1986.

"(B) ELECTION TO HAVE AMENDMENTS APPLY.—A corporation may elect to have the amendments made by this section apply to any reversion after 1985 pursuant to a plan termination occurring before 1986 if such corporation was incorporated in the State of Delaware in March, 1978, and became a parent corporation of the consolidated group on September 19, 1978, pursuant to a merger agreement recorded in the State of Nevada on September 19, 1978.

"(3) TERMINATION DATE.—For purposes of paragraph (2), the term 'termination date' is the date of the termination (within the meaning of section 411(d)(3) of the Internal Revenue Code of 1986) of the plan.

"(4) TRANSITION RULE FOR CERTAIN TERMINATIONS.—

"(A) IN GENERAL.—In the case of a taxpayer to which this paragraph applies, the amendments made by this section shall not apply to any termination occurring before the date which is 1 year after the date of the enactment of this Act [Oct. 22, 1986].

"(B) TAXPAYERS TO WHOM PARAGRAPH APPLIES.—This paragraph shall apply to—

"(i) a corporation incorporated on June 13, 1917, which has its principal place of business in Bartlesville, Oklahoma,

"(ii) a corporation incorporated on January 17, 1917, which is located in Coatesville, Pennsylvania,

"(iii) a corporation incorporated on January 23, 1928, which has its principal place of business in New York, New York,

"(iv) a corporation incorporated on April 23, 1956, which has its principal place of business in Dallas, Texas, and

"(v) a corporation incorporated in the State of Nevada, the principal place of business of which is in Denver, Colorado, and which filed for relief from creditors under the United States Bankruptcy Code on August 28, 1986.

"(5) SPECIAL RULE FOR EMPLOYEE STOCK OWNERSHIP PLANS.—Section 4980(c)(3) of the Internal Revenue Code of 1986 (as added by subsection (a)) shall apply to reversions occurring after March 31, 1985."

TRANSFER OF EXCESS ASSETS FROM QUALIFIED PENSION PLAN TO WELFARE BENEFIT PLAN

Pub. L. 101–239, title VII, §7861(b), Dec. 19, 1989, 103 Stat. 2430, provided that:

"(1) Notwithstanding any other provision of law, in the case of any qualified pension plan and welfare benefit plan described in paragraph (2), the assets of such pension plan in excess of its liabilities may be transferred to such welfare benefit plan upon the termination of such pension plan if such assets are to be used to provide retiree health benefits.

"(2) For purposes of paragraph (1), a qualified pension plan and welfare benefit plan are described in this paragraph if—

"(A) both such plans are jointly administered pursuant to a collective bargaining agreement between the employer maintaining such plans and one or more employee representatives,

"(B) the welfare benefit plan provides retiree health benefits, and

"(C) the qualified pension plan has assets in excess of liabilities (determined on a termination basis) and the welfare benefit plan has assets which are less than the present value of the benefits to be provided under the plan (determined as of the time of termination of the pension plan).

"(3) For purposes of the Internal Revenue Code of 1986, any transfer of assets to which paragraph (1) applies shall be treated as a reversion of such assets to the employer maintaining the plan which is includible in the gross income of such employer and subject to the tax imposed by section 4980 of such Code."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[§4980A. Repealed. Pub. L. 105–34, title X, §1073(a), Aug. 5, 1997, 111 Stat. 948]

Section, added Pub. L. 99–514, title XI, §1133(a), Oct. 22, 1986, 100 Stat. 2481, §4981A; renumbered §4980A and amended Pub. L. 100–647, title I, §1011A(g)(1)(A), (2)–(6), (9), Nov. 10, 1988, 102 Stat. 3479–3482; Pub. L. 102–318, title V, §521(b)(42), July 3, 1992, 106 Stat. 313; Pub. L. 104–188, title I, §§1401(b)(12), 1452(b), Aug. 20, 1996, 110 Stat. 1789, 1816, related to tax on excess distributions from qualified retirement plans.

EFFECTIVE DATE OF REPEAL

Pub. L. 105–34, title X, §1073(c), Aug. 5, 1997, 111 Stat. 948, provided that:

"(1) EXCESS DISTRIBUTION TAX REPEAL.—Except as provided in paragraph (2), the repeal made by

subsection (a) [repealing this section] shall apply to excess distributions received after December 31, 1996.

"(2) EXCESS RETIREMENT ACCUMULATION TAX REPEAL.—The repeal made by subsection (a) with respect to section 4980A(d) of the Internal Revenue Code of 1986 and the amendments made by subsection (b) [amending sections 691, 2013, 2053, and 6018 of this title] shall apply to estates of decedents dying after December 31, 1996."

§4980B. Failure to satisfy continuation coverage requirements of group health plans

(a) General rule

There is hereby imposed a tax on the failure of a group health plan to meet the requirements of subsection (f) with respect to any qualified beneficiary.

(b) Amount of tax

(1) In general

The amount of the tax imposed by subsection (a) on any failure with respect to a qualified beneficiary shall be $100 for each day in the noncompliance period with respect to such failure.

(2) Noncompliance period

For purposes of this section, the term "noncompliance period" means, with respect to any failure, the period—

(A) beginning on the date such failure first occurs, and

(B) ending on the earlier of—

(i) the date such failure is corrected, or

(ii) the date which is 6 months after the last day in the period applicable to the qualified beneficiary under subsection (f)(2)(B) (determined without regard to clause (iii) thereof).

If a person is liable for tax under subsection (e)(1)(B) by reason of subsection (e)(2)(B) with respect to any failure, the noncompliance period for such person with respect to such failure shall not begin before the 45th day after the written request described in subsection (e)(2)(B) is provided to such person.

(3) Minimum tax for noncompliance period where failure discovered after notice of examination

Notwithstanding paragraphs (1) and (2) of subsection (c)—

(A) In general

In the case of 1 or more failures with respect to a qualified beneficiary—

(i) which are not corrected before the date a notice of examination of income tax liability is sent to the employer, and

(ii) which occurred or continued during the period under examination,

the amount of tax imposed by subsection (a) by reason of such failures with respect to such beneficiary shall not be less than the lesser of $2,500 or the amount of tax which would be imposed by subsection (a) without regard to such paragraphs.

(B) Higher minimum tax where violations are more than de minimis

To the extent violations by the employer (or the plan in the case of a multiemployer plan) for any year are more than de minimis, subparagraph (A) shall be applied by substituting "$15,000" for "$2,500" with respect to the employer (or such plan).

(c) Limitations on amount of tax

(1) Tax not to apply where failure not discovered exercising reasonable diligence

No tax shall be imposed by subsection (a) on any failure during any period for which it is

established to the satisfaction of the Secretary that none of the persons referred to in subsection (e) knew, or exercising reasonable diligence would have known, that such failure existed.

(2) Tax not to apply to failures corrected within 30 days

No tax shall be imposed by subsection (a) on any failure if—

(A) such failure was due to reasonable cause and not to willful neglect, and

(B) such failure is corrected during the 30-day period beginning on the 1st date any of the persons referred to in subsection (e) knew, or exercising reasonable diligence would have known, that such failure existed.

(3) $100 limit on amount of tax for failures on any day with respect to a qualified beneficiary

(A) In general

Except as provided in subparagraph (B), the maximum amount of tax imposed by subsection (a) on failures on any day during the noncompliance period with respect to a qualified beneficiary shall be $100.

(B) Special rule where more than 1 qualified beneficiary

If there is more than 1 qualified beneficiary with respect to the same qualifying event, the maximum amount of tax imposed by subsection (a) on all failures on any day during the noncompliance period with respect to such qualified beneficiaries shall be $200.

(4) Overall limitation for unintentional failures

In the case of failures which are due to reasonable cause and not to willful neglect—

(A) Single employer plans

(i) In general

In the case of failures with respect to plans other than multiemployer plans, the tax imposed by subsection (a) for failures during the taxable year of the employer shall not exceed the amount equal to the lesser of—

(I) 10 percent of the aggregate amount paid or incurred by the employer (or predecessor employer) during the preceding taxable year for group health plans, or

(II) $500,000.

(ii) Taxable years in the case of certain controlled groups

For purposes of this subparagraph, if not all persons who are treated as a single employer for purposes of this section have the same taxable year, the taxable years taken into account shall be determined under principles similar to the principles of section 1561.

(B) Multiemployer plans

(i) In general

In the case of failures with respect to a multiemployer plan, the tax imposed by subsection (a) for failures during the taxable year of the trust forming part of such plan shall not exceed the amount equal to the lesser of—

(I) 10 percent of the amount paid or incurred by such trust during such taxable year to provide medical care (as defined in section 213(d)) directly or through insurance, reimbursement, or otherwise, or

(II) $500,000.

For purposes of the preceding sentence, all plans of which the same trust forms a part shall be treated as 1 plan.

(ii) Special rule for employers required to pay tax

If an employer is assessed a tax imposed by subsection (a) by reason of a failure with respect to a multiemployer plan, the limit shall be determined under subparagraph (A) (and not under this subparagraph) and as if such plan were not a multiemployer plan.

(C) Special rule for persons providing benefits

In the case of a person described in subsection (e)(1)(B) (and not subsection (e)(1)(A)), the aggregate amount of tax imposed by subsection (a) for failures during a taxable year with respect to all plans shall not exceed $2,000,000.

(5) Waiver by Secretary

In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by subsection (a) to the extent that the payment of such tax would be excessive relative to the failure involved.

(d) Tax not to apply to certain plans

This section shall not apply to—

(1) any failure of a group health plan to meet the requirements of subsection (f) with respect to any qualified beneficiary if the qualifying event with respect to such beneficiary occurred during the calendar year immediately following a calendar year during which all employers maintaining such plan normally employed fewer than 20 employees on a typical business day,

(2) any governmental plan (within the meaning of section 414(d)), or

(3) any church plan (within the meaning of section 414(e)).

(e) Liability for tax

(1) In general

Except as otherwise provided in this subsection, the following shall be liable for the tax imposed by subsection (a) on a failure:

(A)(i) In the case of a plan other than a multiemployer plan, the employer.

(ii) In the case of a multiemployer plan, the plan.

(B) Each person who is responsible (other than in a capacity as an employee) for administering or providing benefits under the plan and whose act or failure to act caused (in whole or in part) the failure.

(2) Special rules for persons described in paragraph (1)(B)

(A) No liability unless written agreement

Except in the case of liability resulting from the application of subparagraph (B) of this paragraph, a person described in subparagraph (B) (and not in subparagraph (A)) of paragraph (1) shall be liable for the tax imposed by subsection (a) on any failure only if such person assumed (under a legally enforceable written agreement) responsibility for the performance of the act to which the failure relates.

(B) Failure to cover qualified beneficiaries where current employees are covered

A person shall be treated as described in paragraph (1)(B) with respect to a qualified beneficiary if—

(i) such person provides coverage under a group health plan for any similarly situated beneficiary under the plan with respect to whom a qualifying event has not occurred, and

(ii) the—

(I) employer or plan administrator, or

(II) in the case of a qualifying event described in subparagraph (C) or (E) of subsection (f)(3) where the person described in clause (i) is the plan administrator, the qualified beneficiary,

submits to such person a written request that such person make available to such qualified beneficiary the same coverage which such person provides to the beneficiary referred to in clause (i).

(f) Continuation coverage requirements of group health plans

(1) In general

A group health plan meets the requirements of this subsection only if the coverage of the costs of pediatric vaccines (as defined under section 2162 of the Public Health Service Act) [1] is not reduced below the coverage provided by the plan as of May 1, 1993, and only if each qualified beneficiary who would lose coverage under the plan as a result of a qualifying event is entitled to elect, within the election period, continuation coverage under the plan.

(2) Continuation coverage

For purposes of paragraph (1), the term "continuation coverage" means coverage under the plan which meets the following requirements:

(A) Type of benefit coverage

The coverage must consist of coverage which, as of the time the coverage is being provided, is identical to the coverage provided under the plan to similarly situated beneficiaries under the plan with respect to whom a qualifying event has not occurred. If coverage under the plan is modified for any group of similarly situated beneficiaries, the coverage shall also be modified in the same manner for all individuals who are qualified beneficiaries under the plan pursuant to this subsection in connection with such group.

(B) Period of coverage

The coverage must extend for at least the period beginning on the date of the qualifying event and ending not earlier than the earliest of the following:

(i) Maximum required period

(I) General rule for terminations and reduced hours

In the case of a qualifying event described in paragraph (3)(B), except as provided in subclause (II), the date which is 18 months after the date of the qualifying event.

(II) Special rule for multiple qualifying events

If a qualifying event (other than a qualifying event described in paragraph (3)(F)) occurs during the 18 months after the date of a qualifying event described in paragraph (3)(B), the date which is 36 months after the date of the qualifying event described in paragraph (3)(B).

(III) Special rule for certain bankruptcy proceedings

In the case of a qualifying event described in paragraph (3)(F) (relating to bankruptcy proceedings), the date of the death of the covered employee or qualified beneficiary (described in subsection (g)(1)(D)(iii)), or in the case of the surviving spouse or dependent children of the covered employee, 36 months after the date of the death of the covered employee.

(IV) General rule for other qualifying events

In the case of a qualifying event not described in paragraph (3)(B) or (3)(F), the date which is 36 months after the date of the qualifying event.

(V) Special rule for PBGC recipients

In the case of a qualifying event described in paragraph (3)(B) with respect to a covered employee who (as of such qualifying event) has a nonforfeitable right to a benefit any portion of which is to be paid by the Pension Benefit Guaranty Corporation under title IV of the Employee Retirement Income Security Act of 1974, notwithstanding subclause (I) or (II), the date of the death of the covered employee, or in the case of the surviving spouse or dependent children of the covered employee, 24 months after the date of the death of the covered employee. The preceding sentence shall not require any period of coverage to extend beyond January 1, 2014.

(VI) Special rule for TAA-eligible individuals

In the case of a qualifying event described in paragraph (3)(B) with respect to a covered

employee who is (as of the date that the period of coverage would, but for this subclause or subclause (VII), otherwise terminate under subclause (I) or (II)) a TAA-eligible individual (as defined in paragraph (5)(C)(iv)(II)), the period of coverage shall not terminate by reason of subclause (I) or (II), as the case may be, before the later of the date specified in such subclause or the date on which such individual ceases to be such a TAA-eligible individual. The preceding sentence shall not require any period of coverage to extend beyond January 1, 2014.

(VII) Medicare entitlement followed by qualifying event

In the case of a qualifying event described in paragraph (3)(B) that occurs less than 18 months after the date the covered employee became entitled to benefits under title XVIII of the Social Security Act, the period of coverage for qualified beneficiaries other than the covered employee shall not terminate under this clause before the close of the 36-month period beginning on the date the covered employee became so entitled.

(VIII) Special rule for disability

In the case of a qualified beneficiary who is determined, under title II or XVI of the Social Security Act, to have been disabled at any time during the first 60 days of continuation coverage under this section, any reference in subclause (I) or (II) to 18 months is deemed a reference to 29 months (with respect to all qualified beneficiaries), but only if the qualified beneficiary has provided notice of such determination under paragraph (6)(C) before the end of such 18 months.

(ii) End of plan

The date on which the employer ceases to provide any group health plan to any employee.

(iii) Failure to pay premium

The date on which coverage ceases under the plan by reason of a failure to make timely payment of any premium required under the plan with respect to the qualified beneficiary. The payment of any premium (other than any payment referred to in the last sentence of subparagraph (C)) shall be considered to be timely if made within 30 days after the date due or within such longer period as applies to or under the plan.

(iv) Group health plan coverage or medicare entitlement

The date on which the qualified beneficiary first becomes, after the date of the election—

(I) covered under any other group health plan (as an employee or otherwise) which does not contain any exclusion or limitation with respect to any preexisting condition of such beneficiary (other than such an exclusion or limitation which does not apply to (or is satisfied by) such beneficiary by reason of chapter 100 of this title, part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974, or title XXVII of the Public Health Service Act), or

(II) in the case of a qualified beneficiary other than a qualified beneficiary described in subsection (g)(1)(D) entitled to benefits under title XVIII of the Social Security Act.

(v) Termination of extended coverage for disability

In the case of a qualified beneficiary who is disabled at any time during the first 60 days of continuation coverage under this section, the month that begins more than 30 days after the date of the final determination under title II or XVI of the Social Security Act that the qualified beneficiary is no longer disabled.

(C) Premium requirements

The plan may require payment of a premium for any period of continuation coverage, except that such premium—

(i) shall not exceed 102 percent of the applicable premium for such period, and

(ii) may, at the election of the payor, be made in monthly installments.

In no event may the plan require the payment of any premium before the day which is 45 days after the day on which the qualified beneficiary made the initial election for continuation coverage. In the case of an individual described in the last sentence of subparagraph (B)(i), any reference in clause (i) of this subparagraph to "102 percent" is deemed a reference to "150 percent" for any month after the 18th month of continuation coverage described in subclause (I) or (II) of subparagraph (B)(i).

(D) No requirement of insurability

The coverage may not be conditioned upon, or discriminate on the basis of lack of, evidence of insurability.

(E) Conversion option

In the case of a qualified beneficiary whose period of continuation coverage expires under subparagraph (B)(i), the plan must, during the 180-day period ending on such expiration date, provide to the qualified beneficiary the option of enrollment under a conversion health plan otherwise generally available under the plan.

(3) Qualifying event

For purposes of this subsection, the term "qualifying event" means, with respect to any covered employee, any of the following events which, but for the continuation coverage required under this subsection, would result in the loss of coverage of a qualified beneficiary—

(A) The death of the covered employee.

(B) The termination (other than by reason of such employee's gross misconduct), or reduction of hours, of the covered employee's employment.

(C) The divorce or legal separation of the covered employee from the employee's spouse.

(D) The covered employee becoming entitled to benefits under title XVIII of the Social Security Act.

(E) A dependent child ceasing to be a dependent child under the generally applicable requirements of the plan.

(F) A proceeding in a case under title 11, United States Code, commencing on or after July 1, 1986, with respect to the employer from whose employment the covered employee retired at any time.

In the case of an event described in subparagraph (F), a loss of coverage includes a substantial elimination of coverage with respect to a qualified beneficiary described in subsection (g)(1)(D) within one year before or after the date of commencement of the proceeding.

(4) Applicable premium

For purposes of this subsection—

(A) In general

The term "applicable premium" means, with respect to any period of continuation coverage of qualified beneficiaries, the cost to the plan for such period of the coverage for similarly situated beneficiaries with respect to whom a qualifying event has not occurred (without regard to whether such cost is paid by the employer or employee).

(B) Special rule for self-insured plans

To the extent that a plan is a self-insured plan—

(i) In general

Except as provided in clause (ii), the applicable premium for any period of continuation coverage of qualified beneficiaries shall be equal to a reasonable estimate of the cost of providing coverage for such period for similarly situated beneficiaries which—

(I) is determined on an actuarial basis, and

(II) takes into account such factors as the Secretary may prescribe in regulations.

(ii) Determination on basis of past cost

If a plan administrator elects to have this clause apply, the applicable premium for any period of continuation coverage of qualified beneficiaries shall be equal to—

(I) the cost to the plan for similarly situated beneficiaries for the same period occurring during the preceding determination period under subparagraph (C), adjusted by

(II) the percentage increase or decrease in the implicit price deflator of the gross national product (calculated by the Department of Commerce and published in the Survey of Current Business) for the 12-month period ending on the last day of the sixth month of such preceding determination period.

(iii) Clause (ii) not to apply where significant change

A plan administrator may not elect to have clause (ii) apply in any case in which there is any significant difference between the determination period and the preceding determination period, in coverage under, or in employees covered by, the plan. The determination under the preceding sentence for any determination period shall be made at the same time as the determination under subparagraph (C).

(C) Determination period

The determination of any applicable premium shall be made for a period of 12 months and shall be made before the beginning of such period.

(5) Election

For purposes of this subsection—

(A) Election period

The term "election period" means the period which—

(i) begins not later than the date on which coverage terminates under the plan by reason of a qualifying event,

(ii) is of at least 60 days' duration, and

(iii) ends not earlier than 60 days after the later of—

(I) the date described in clause (i), or

(II) in the case of any qualified beneficiary who receives notice under paragraph (6)(D), the date of such notice.

(B) Effect of election on other beneficiaries

Except as otherwise specified in an election, any election of continuation coverage by a qualified beneficiary described in subparagraph (A)(i) or (B) of subsection (g)(1) shall be deemed to include an election of continuation coverage on behalf of any other qualified beneficiary who would lose coverage under the plan by reason of the qualifying event. If there is a choice among types of coverage under the plan, each qualified beneficiary is entitled to make a separate selection among such types of coverage.

(C) Temporary extension of COBRA election period for certain individuals

(i) In general

In the case of a nonelecting TAA-eligible individual and notwithstanding subparagraph (A), such individual may elect continuation coverage under this subsection during the 60-day period that begins on the first day of the month in which the individual becomes a TAA-eligible individual, but only if such election is made not later than 6 months after the date of the TAA-related loss of coverage.

(ii) Commencement of coverage; no reach-back

Any continuation coverage elected by a TAA-eligible individual under clause (i) shall commence at the beginning of the 60-day election period described in such paragraph and shall not include any period prior to such 60-day election period.

(iii) Preexisting conditions

With respect to an individual who elects continuation coverage pursuant to clause (i), the

period—

(I) beginning on the date of the TAA-related loss of coverage, and

(II) ending on the first day of the 60-day election period described in clause (i),

shall be disregarded for purposes of determining the 63-day periods referred to in section 9801(c)(2), section 701(c)(2) of the Employee Retirement Income Security Act of 1974, and section 2701(c)(2) [1] of the Public Health Service Act.

(iv) Definitions

For purposes of this subsection:

(I) Nonelecting TAA-eligible individual

The term "nonelecting TAA-eligible individual" means a TAA-eligible individual who has a TAA-related loss of coverage and did not elect continuation coverage under this subsection during the TAA-related election period.

(II) TAA-eligible individual

The term "TAA-eligible individual" means an eligible TAA recipient (as defined in paragraph (2) of section 35(c)) and an eligible alternative TAA recipient (as defined in paragraph (3) of such section).

(III) TAA-related election period

The term "TAA-related election period" means, with respect to a TAA-related loss of coverage, the 60-day election period under this subsection which is a direct consequence of such loss.

(IV) TAA-related loss of coverage

The term "TAA-related loss of coverage" means, with respect to an individual whose separation from employment gives rise to being an TAA-eligible individual, the loss of health benefits coverage associated with such separation.

(6) Notice requirement

In accordance with regulations prescribed by the Secretary—

(A) The group health plan shall provide, at the time of commencement of coverage under the plan, written notice to each covered employee and spouse of the employee (if any) of the rights provided under this subsection.

(B) The employer of an employee under a plan must notify the plan administrator of a qualifying event described in subparagraph (A), (B), (D), or (F) of paragraph (3) with respect to such employee within 30 days (or, in the case of a group health plan which is a multiemployer plan, such longer period of time as may be provided in the terms of the plan) of the date of the qualifying event.

(C) Each covered employee or qualified beneficiary is responsible for notifying the plan administrator of the occurrence of any qualifying event described in subparagraph (C) or (E) of paragraph (3) within 60 days after the date of the qualifying event and each qualified beneficiary who is determined, under title II or XVI of the Social Security Act, to have been disabled at any time during the first 60 days of continuation coverage under this section is responsible for notifying the plan administrator of such determination within 60 days after the date of the determination and for notifying the plan administrator within 30 days of the date of any final determination under such title or titles that the qualified beneficiary is no longer disabled.

(D) The plan administrator shall notify—

(i) in the case of a qualifying event described in subparagraph (A), (B), (D), or (F) of paragraph (3), any qualified beneficiary with respect to such event, and

(ii) in the case of a qualifying event described in subparagraph (C) or (E) of paragraph (3) where the covered employee notifies the plan administrator under subparagraph (C), any qualified beneficiary with respect to such event,

of such beneficiary's rights under this subsection.

The requirements of subparagraph (B) shall be considered satisfied in the case of a multiemployer plan in connection with a qualifying event described in paragraph (3)(B) if the plan provides that the determination of the occurrence of such qualifying event will be made by the plan administrator. For purposes of subparagraph (D), any notification shall be made within 14 days (or, in the case of a group health plan which is a multiemployer plan, such longer period of time as may be provided in the terms of the plan) of the date on which the plan administrator is notified under subparagraph (B) or (C), whichever is applicable, and any such notification to an individual who is a qualified beneficiary as the spouse of the covered employee shall be treated as notification to all other qualified beneficiaries residing with such spouse at the time such notification is made.

(7) Covered employee

For purposes of this subsection, the term "covered employee" means an individual who is (or was) provided coverage under a group health plan by virtue of the performance of services by the individual for 1 or more persons maintaining the plan (including as an employee defined in section 401(c)(1)).

(8) Optional extension of required periods

A group health plan shall not be treated as failing to meet the requirements of this subsection solely because the plan provides both—

(A) that the period of extended coverage referred to in paragraph (2)(B) commences with the date of the loss of coverage, and

(B) that the applicable notice period provided under paragraph (6)(B) commences with the date of the loss of coverage.

(g) Definitions

For purposes of this section—

(1) Qualified beneficiary

(A) In general

The term "qualified beneficiary" means, with respect to a covered employee under a group health plan, any other individual who, on the day before the qualifying event for that employee, is a beneficiary under the plan—

(i) as the spouse of the covered employee, or

(ii) as the dependent child of the employee.

Such term shall also include a child who is born to or placed for adoption with the covered employee during the period of continuation coverage under this section.

(B) Special rule for terminations and reduced employment

In the case of a qualifying event described in subsection (f)(3)(B), the term "qualified beneficiary" includes the covered employee.

(C) Exception for nonresident aliens

Notwithstanding subparagraphs (A) and (B), the term "qualified beneficiary" does not include an individual whose status as a covered employee is attributable to a period in which such individual was a nonresident alien who received no earned income (within the meaning of section 911(d)(2)) from the employer which constituted income from sources within the United States (within the meaning of section 861(a)(3)). If an individual is not a qualified beneficiary pursuant to the previous sentence, a spouse or dependent child of such individual shall not be considered a qualified beneficiary by virtue of the relationship of the individual.

(D) Special rule for retirees and widows

In the case of a qualifying event described in subsection (f)(3)(F), the term "qualified beneficiary" includes a covered employee who had retired on or before the date of substantial elimination of coverage and any other individual who, on the day before such qualifying event, is a beneficiary under the plan—

(i) as the spouse of the covered employee,

(ii) as the dependent child of the covered employee, or

(iii) as the surviving spouse of the covered employee.

(2) Group health plan

The term "group health plan" has the meaning given such term by section 5000(b)(1). Such term shall not include any plan substantially all of the coverage under which is for qualified long-term care services (as defined in section 7702B(c)).

(3) Plan administrator

The term "plan administrator" has the meaning given the term "administrator" by section 3(16)(A) of the Employee Retirement Income Security Act of 1974.

(4) Correction

A failure of a group health plan to meet the requirements of subsection (f) with respect to any qualified beneficiary shall be treated as corrected if—

(A) such failure is retroactively undone to the extent possible, and

(B) the qualified beneficiary is placed in a financial position which is as good as such beneficiary would have been in had such failure not occurred.

For purposes of applying subparagraph (B), the qualified beneficiary shall be treated as if he had elected the most favorable coverage in light of the expenses he incurred since the failure first occurred.

(Added Pub. L. 100–647, title III, §3011(a), Nov. 10, 1988, 102 Stat. 3616; amended Pub. L. 101–239, title VI, §§6202(b)(3)(B), 6701(a)–(c), title VII, §§7862(c)(2)(B), (3)(C), (4)(B), (5)(A), 7891(d)(1)(B), (2)(A), Dec. 19, 1989, 103 Stat. 2233, 2294, 2295, 2432, 2433, 2446; Pub. L. 101–508, title XI, §11702(f), Nov. 5, 1990, 104 Stat. 1388–515; Pub. L. 103–66, title XIII, §13422(a), Aug. 10, 1993, 107 Stat. 566; Pub. L. 104–188, title I, §1704(g)(1)(A), (t)(21), Aug. 20, 1996, 110 Stat. 1880, 1888; Pub. L. 104–191, title III, §321(d)(1), title IV, §421(c), Aug. 21, 1996, 110 Stat. 2058, 2088; Pub. L. 107–210, div. A, title II, §203(e)(3), Aug. 6, 2002, 116 Stat. 971; Pub. L. 111–5, div. B, title I, §1899F(b), Feb. 17, 2009, 123 Stat. 429; Pub. L. 111–344, title I, §116(b), Dec. 29, 2010, 124 Stat. 3616; Pub. L. 112–40, title II, §243(a)(3), (4), Oct. 21, 2011, 125 Stat. 420.)

REFERENCES IN TEXT

The Public Health Service Act, referred to in subsec. (f)(1), does not contain a section 2162. The reference probably should be to section 1928 of the Social Security Act, which is classified to section 1396s of Title 42, The Public Health and Welfare, and which relates to pediatric vaccines.

The Social Security Act, referred to in subsec. (f)(2)(B)(i)(IV), (VII), (VIII), (iv)(II), (v), (3)(D), (6)(C), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Titles II, XVI, and XVIII of the Social Security Act are classified generally to subchapters II (§401 et seq.), XVI (§1381 et seq.), and XVIII (§1395 et seq.), respectively, of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Employee Retirement Income Security Act of 1974, referred to in subsecs. (f)(2)(B)(i)(V), (iv)(I), (5)(C)(iii), and (g)(3), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 832. Part 7 of subtitle B of title I of the Act is classified generally to part 7 (§1181 et seq.) of subtitle B of subchapter I of chapter 18 of Title 29, Labor. Sections 3(16)(A) and 701(c)(2) of the Act are classified to sections 1002(16)(A) and 1181(c)(2), respectively, of Title 29. Title IV of the Act is classified principally to subchapter III (§1301 et seq.) of chapter 18 of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

The Public Health Service Act, referred to in subsec. (f)(2)(B)(iv)(I), is act July 1, 1944, ch. 373, 58 Stat. 682. Title XXVII of the Act is classified generally to subchapter XXV (§300gg et seq.) of chapter 6A of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set

out under section 201 of Title 42 and Tables.

Section 2701 of the Public Health Service Act, referred to in subsec. (f)(5)(C)(iii), was classified to section 300gg of Title 42, The Public Health and Welfare, was renumbered section 2704, effective for plan years beginning on or after Jan. 1, 2014, with certain exceptions, and amended, by Pub. L. 111–148, title I, §§1201(2), 1563(c)(1), formerly §1562(c)(1), title X, §10107(b)(1), Mar. 23, 2010, 124 Stat. 154, 264, 911, and was transferred to section 300gg–3 of Title 42. A new section 2701, related to fair health insurance premiums, was added and amended by Pub. L. 111–148, title I, §1201(4), title X, §10103(a), Mar. 23, 2010, 124 Stat. 155, 892, and is classified to section 300gg of Title 42.

AMENDMENTS

2011—Subsec. (f)(2)(B)(i)(V), (VI). Pub. L. 112–40 substituted "January 1, 2014" for "February 12, 2011".

2010—Subsec. (f)(2)(B)(i)(V), (VI). Pub. L. 111–344 substituted "February 12, 2011" for "December 31, 2010".

2009—Subsec. (f)(2)(B)(i)(V). Pub. L. 111–5, §1899F(b)(2), added subcl. (V). Former subcl. (V) redesignated (VII).

Subsec. (f)(2)(B)(i)(VI). Pub. L. 111–5, §1899F(b)(2), added subcl. (VI). Former subcl. (VI) redesignated (VIII).

Pub. L. 111–5, §1899F(b)(1), designated concluding provisions as subcl. (VI) and inserted heading.

Subsec. (f)(2)(B)(i)(VII), (VIII). Pub. L. 111–5, §1899F(b)(2), designated subcls. (V) and (VI) as (VII) and (VIII), respectively.

2002—Subsec. (f)(5)(C). Pub. L. 107–210 added subpar. (C).

1996—Subsec. (f)(2)(B)(i). Pub. L. 104–191, §421(c)(1)(A), in concluding provisions, substituted "at any time during the first 60 days of continuation coverage under this section" for "at the time of a qualifying event described in paragraph (3)(B)", struck out "with respect to such event" after "(II) to 18 months", and inserted "(with respect to all qualified beneficiaries)" after "29 months".

Pub. L. 104–188, §1704(t)(21), made technical amendment to directory language of Pub. L. 101–239, §6701(a)(1). See 1989 Amendment note below.

Subsec. (f)(2)(B)(i)(V). Pub. L. 104–188, §1704(g)(1)(A), substituted "Medicare entitlement followed by qualifying event" for "Qualifying event involving medicare entitlement" in heading and amended text generally. Prior to amendment, text read as follows: "In the case of an event described in paragraph (3)(D) (without regard to whether such event is a qualifying event), the period of coverage for qualified beneficiaries other than the covered employee for such event or any subsequent qualifying event shall not terminate before the close of the 36-month period beginning on the date the covered employee becomes entitled to benefits under title XVIII of the Social Security Act."

Subsec. (f)(2)(B)(iv)(I). Pub. L. 104–191, §421(c)(1)(B), inserted "(other than such an exclusion or limitation which does not apply to (or is satisfied by) such beneficiary by reason of chapter 100 of this title, part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974, or title XXVII of the Public Health Service Act)" before ", or".

Subsec. (f)(2)(B)(v). Pub. L. 104–191, §421(c)(1)(C), substituted "at any time during the first 60 days of continuation coverage under this section" for "at the time of a qualifying event described in paragraph (3)(B)".

Subsec. (f)(6)(C). Pub. L. 104–191, §421(c)(2), substituted "at any time during the first 60 days of continuation coverage under this section" for "at the time of a qualifying event described in paragraph (3)(B)".

Subsec. (g)(1)(A). Pub. L. 104–191, §421(c)(3), inserted at end "Such term shall also include a child who is born to or placed for adoption with the covered employee during the period of continuation coverage under this section."

Subsec. (g)(2). Pub. L. 104–191, §321(d)(1), inserted at end "Such term shall not include any plan substantially all of the coverage under which is for qualified long-term care services (as defined in section 7702B(c))."

1993—Subsec. (f)(1). Pub. L. 103–66 inserted "the coverage of the costs of pediatric vaccines (as defined under section 2162 of the Public Health Service Act) is not reduced below the coverage provided by the plan as of May 1, 1993, and only if" after "only if".

1990—Subsec. (d)(1). Pub. L. 101–508 amended par. (1) generally. Prior to amendment, par. (1) read as follows: "any failure of a group health plan to meet the requirements of subsection (f) if all employers maintaining such plan normally employed fewer than 20 employees on a typical business day during the preceding calendar year,".

1989—Subsec. (f)(2)(B)(i). Pub. L. 101–239, §6701(a)(1), as amended by Pub. L. 104–188, §1704(t)(21), inserted at end "In the case of a qualified beneficiary who is determined, under title II or XVI of the Social Security Act, to have been disabled at the time of a qualifying event described in paragraph (3)(B), any

reference in subclause (I) or (II) to 18 months with respect to such event is deemed a reference to 29 months, but only if the qualified beneficiary has provided notice of such determination under paragraph (6)(C) before the end of such 18 months."

Subsec. (f)(2)(B)(i)(V). Pub. L. 101–239, §7862(c)(5)(A), added subcl. (V).

Subsec. (f)(2)(B)(iv). Pub. L. 101–239, §7862(c)(3)(C), substituted "entitlement" for "eligibility" in heading and inserted "which does not contain any exclusion or limitation with respect to any preexisting condition of such beneficiary" after "or otherwise)" in subcl. (I).

Subsec. (f)(2)(B)(v). Pub. L. 101–239, §6701(a)(2), added cl. (v).

Subsec. (f)(2)(C). Pub. L. 101–239, §7862(c)(4)(B), amended last sentence generally. Prior to amendment, last sentence read as follows: "If an election is made after the qualifying event, the plan shall permit payment for continuation coverage during the period preceding the election to be made within 45 days of the date of the election."

Pub. L. 101–239, §6701(b), inserted at end "In the case of an individual described in the last sentence of subparagraph (B)(i), any reference in clause (i) of this subparagraph to '102 percent' is deemed a reference to '150 percent' for any month after the 18th month of continuation coverage described in subclause (I) or (II) of subparagraph (B)(i)."

Subsec. (f)(6). Pub. L. 101–239, §7891(d)(1)(B)(ii), inserted after and below subpar. (D) the following new flush sentence "The requirements of subparagraph (B) shall be considered satisfied in the case of a multiemployer plan in connection with a qualifying event described in paragraph (3)(B) if the plan provides that the determination of the occurrence of such qualifying event will be made by the plan administrator."

Pub. L. 101–239, §7891(d)(1)(B)(i)(II), inserted "(or, in the case of a group health plan which is a multiemployer plan, such longer period of time as may be provided in the terms of the plan)" after "14 days" in last sentence.

Subsec. (f)(6)(B). Pub. L. 101–239, §7891(d)(1)(B)(i)(I), inserted "(or, in the case of a group health plan which is a multiemployer plan, such longer period of time as may be provided in the terms of the plan)" after "30 days".

Subsec. (f)(6)(C). Pub. L. 101–239, §6701(c), inserted before period at end "and each qualified beneficiary who is determined, under title II or XVI of the Social Security Act, to have been disabled at the time of a qualifying event described in paragraph (3)(B) is responsible for notifying the plan administrator of such determination within 60 days after the date of the determination and for notifying the plan administrator within 30 days of the date of any final determination under such title or titles that the qualified beneficiary is no longer disabled".

Subsec. (f)(7). Pub. L. 101–239, §7862(c)(2)(B), substituted "the performance of services by the individual for 1 or more persons maintaining the plan (including as an employee defined in section 401(c)(1))" for "the individual's employment or previous employment with an employer".

Subsec. (f)(8). Pub. L. 101–239, §7891(d)(2)(A), added par. (8).

Subsec. (g)(2). Pub. L. 101–239, §6202(b)(3)(B), substituted "section 5000(b)(1)" for "section 162(i)".

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112–40, title II, §243(b), Oct. 21, 2011, 125 Stat. 420, provided that: "The amendments made by this section [amending this section, section 1162 of Title 29, Labor, and section 300bb–2 of Title 42, The Public Health and Welfare] shall apply to periods of coverage which would (without regard to the amendments made by this section) end on or after the date which is 30 days after the date of the enactment of this Act [Oct. 21, 2011]."

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–344, title I, §116(d), Dec. 29, 2010, 124 Stat. 3616, provided that: "The amendments made by this section [amending this section, section 1162 of Title 29, Labor, and section 300bb–2 of Title 42, The Public Health and Welfare] shall apply to periods of coverage which would (without regard to the amendments made by this section) end on or after December 31, 2010."

EFFECTIVE DATE OF 2009 AMENDMENT

Except as otherwise provided and subject to certain applicability provisions, amendment by Pub. L. 111–5 effective upon the expiration of the 90-day period beginning on Feb. 17, 2009, see section 1891 of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 2271 of Title 19, Customs Duties.

Pub. L. 111–5, div. B, title I, §1899F(d), Feb. 17, 2009, 123 Stat. 430, provided that: "The amendments made by this section [amending this section, section 1162 of Title 29, Labor, and section 300bb–2 of Title 42, The Public Health and Welfare] shall apply to periods of coverage which would (without regard to the

amendments made by this section) end on or after the date of the enactment of this Act [Feb. 17, 2009]."

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–210 applicable to petitions for certification filed under part 2 or 3 of subchapter II of chapter 12 of Title 19, Customs Duties, on or after the date that is 90 days after Aug. 6, 2002, except as otherwise provided, see section 151 of Pub. L. 107–210, set out as a note preceding section 2271 of Title 19.

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by section 321(d)(1) of Pub. L. 104–191 applicable to contracts issued after Dec. 31, 1996, see section 321(f) of Pub. L. 104–191, set out as an Effective Date note under section 7702B of this title.

Pub. L. 104–191, title IV, §421(d), Aug. 21, 1996, 110 Stat. 2089, provided that: "The amendments made by this section [amending this section, sections 1162, 1166, and 1167 of Title 29, Labor, and sections 300bb–2, 300bb–6, and 300bb–8 of Title 42, The Public Health and Welfare] shall become effective on January 1, 1997, regardless of whether the qualifying event occurred before, on, or after such date."

Pub. L. 104–188, title I, §1704(g)(2), Aug. 20, 1996, 110 Stat. 1881, provided that: "The amendments made by this subsection [amending this section, section 1162 of Title 29, Labor, and section 300bb–2 of Title 42, The Public Health and Welfare] shall apply to plan years beginning after December 31, 1989."

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13422(b), Aug. 10, 1993, 107 Stat. 566, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to plan years beginning after the date of the enactment of this Act [Aug. 10, 1993]."

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 11702(j) of Pub. L. 101–508, set out as a note under section 59 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 6202(b)(3)(B) of Pub. L. 101–239 applicable to items and services furnished after Dec. 19, 1989, see section 6202(b)(5) of Pub. L. 101–239, set out as a note under section 162 of this title.

Pub. L. 101–239, title VI, §6701(d), Dec. 19, 1989, 103 Stat. 2295, provided that: "The amendments made by this section [amending this section] shall apply to plan years beginning on or after the date of the enactment of this Act [Dec. 19, 1989], regardless of whether the qualifying event occurred before, on, or after such date."

Pub. L. 101–239, title VII, §7862(c)(2)(C), Dec. 19, 1989, 103 Stat. 2432, provided that: "The amendments made by this paragraph [amending this section and section 1167 of Title 29, Labor] shall apply to plan years beginning after December 31, 1989."

Amendment by section 7862(c)(3)(C) of Pub. L. 101–239 applicable to (i) qualifying events occurring after Dec. 31, 1989, and (ii) in the case of qualified beneficiaries who elected continuation coverage after Dec. 31, 1988, the period for which the required premium was paid (or was attempted to be paid but was rejected as such), see section 7862(c)(3)(D) of Pub. L. 101–239, set out as a note under section 162 of this title.

Pub. L. 101–239, title VII, §7862(c)(4)(C), Dec. 19, 1989, 103 Stat. 2433, provided that: "The amendments made by this paragraph [amending this section and section 1162 of Title 29, Labor] shall apply to plan years beginning after December 31, 1989."

Pub. L. 101–239, title VII, §7862(c)(5)(C), Dec. 19, 1989, 103 Stat. 2433, provided that: "The amendments made by this paragraph [amending this section and section 1162 of Title 29] shall apply to plan years beginning after December 31, 1989."

Pub. L. 101–239, title VII, §7891(d)(1)(C), Dec. 19, 1989, 103 Stat. 2446, provided that: "The amendments made by this paragraph [amending this section and section 1166 of Title 29] shall apply with respect to plan years beginning on or after January 1, 1990."

Pub. L. 101–239, title VII, §7891(d)(2)(C), Dec. 19, 1989, 103 Stat. 2447, provided that: "The amendments made by this paragraph [amending this section and section 1167 of Title 29] shall apply with respect to plan years beginning on or after January 1, 1990."

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1988, but not applicable to any plan for any plan year to which section 162(k) of this title (as in effect on the day before Nov. 10, 1988) did not apply by

reason of section 10001(e)(2) of Pub. L. 99–272, see section 3011(d) of Pub. L. 100–647, set out as an Effective Date of 1988 Amendment note under section 162 of this title.

CONSTRUCTION OF 2002 AMENDMENT

Nothing in amendment by Pub. L. 107–210, other than provisions relating to COBRA continuation coverage and reporting requirements, to be construed as creating new mandate on any party regarding health insurance coverage, see section 203(f) of Pub. L. 107–210, set out as a note under section 2918 of Title 29, Labor.

NOTIFICATION OF CHANGES IN CONTINUATION COVERAGE

Pub. L. 104–191, title IV, §421(e), Aug. 21, 1996, 110 Stat. 2089, provided that: "Not later than November 1, 1996, each group health plan (covered under title XXII of the Public Health Service Act [42 U.S.C. 300bb–1 et seq.], part 6 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1161 et seq.], and section 4980B(f) of the Internal Revenue Code of 1986) shall notify each qualified beneficiary who has elected continuation coverage under such title, part or section of the amendments made by this section [amending this section, sections 1162, 1166, and 1167 of Title 29, Labor, and sections 300bb–2, 300bb–6, and 300bb–8 of Title 42, The Public Health and Welfare]."

[1] *See References in Text note below.*

§4980C. Requirements for issuers of qualified long-term care insurance contracts

(a) General rule

There is hereby imposed on any person failing to meet the requirements of subsection (c) or (d) a tax in the amount determined under subsection (b).

(b) Amount

(1) In general

The amount of the tax imposed by subsection (a) shall be $100 per insured for each day any requirement of subsection (c) or (d) is not met with respect to each qualified long-term care insurance contract.

(2) Waiver

In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by subsection (a) to the extent that payment of the tax would be excessive relative to the failure involved.

(c) Responsibilities

The requirements of this subsection are as follows:

(1) Requirements of model provisions

(A) Model regulation

The following requirements of the model regulation must be met:

(i) Section 13 (relating to application forms and replacement coverage).

(ii) Section 14 (relating to reporting requirements), except that the issuer shall also report at least annually the number of claims denied during the reporting period for each class of business (expressed as a percentage of claims denied), other than claims denied for failure to meet the waiting period or because of any applicable preexisting condition.

(iii) Section 20 (relating to filing requirements for marketing).

(iv) Section 21 (relating to standards for marketing), including inaccurate completion of medical histories, other than sections 21C(1) and 21C(6) thereof, except that—

(I) in addition to such requirements, no person shall, in selling or offering to sell a qualified long-term care insurance contract, misrepresent a material fact; and

(II) no such requirements shall include a requirement to inquire or identify whether a

prospective applicant or enrollee for long-term care insurance has accident and sickness insurance.

(v) Section 22 (relating to appropriateness of recommended purchase).
(vi) Section 24 (relating to standard format outline of coverage).
(vii) Section 25 (relating to requirement to deliver shopper's guide).

(B) Model Act

The following requirements of the model Act must be met:

(i) Section 6F (relating to right to return), except that such section shall also apply to denials of applications and any refund shall be made within 30 days of the return or denial.
(ii) Section 6G (relating to outline of coverage).
(iii) Section 6H (relating to requirements for certificates under group plans).
(iv) Section 6I (relating to policy summary).
(v) Section 6J (relating to monthly reports on accelerated death benefits).
(vi) Section 7 (relating to incontestability period).

(C) Definitions

For purposes of this paragraph, the terms "model regulation" and "model Act" have the meanings given such terms by section 7702B(g)(2)(B).

(2) Delivery of policy

If an application for a qualified long-term care insurance contract (or for a certificate under such a contract for a group) is approved, the issuer shall deliver to the applicant (or policyholder or certificateholder) the contract (or certificate) of insurance not later than 30 days after the date of the approval.

(3) Information on denials of claims

If a claim under a qualified long-term care insurance contract is denied, the issuer shall, within 60 days of the date of a written request by the policyholder or certificateholder (or representative)—

(A) provide a written explanation of the reasons for the denial, and
(B) make available all information directly relating to such denial.

(d) Disclosure

The requirements of this subsection are met if the issuer of a long-term care insurance policy discloses in such policy and in the outline of coverage required under subsection (c)(1)(B)(ii) that the policy is intended to be a qualified long-term care insurance contract under section 7702B(b).

(e) Qualified long-term care insurance contract defined

For purposes of this section, the term "qualified long-term care insurance contract" has the meaning given such term by section 7702B.

(f) Coordination with State requirements

If a State imposes any requirement which is more stringent than the analogous requirement imposed by this section or section 7702B(g), the requirement imposed by this section or section 7702B(g) shall be treated as met if the more stringent State requirement is met.

(Added Pub. L. 104–191, title III, §326(a), Aug. 21, 1996, 110 Stat. 2065.)

EFFECTIVE DATE

Pub. L. 104–191, title III, §327, Aug. 21, 1996, 110 Stat. 2066, provided that:

"(a) IN GENERAL.—The provisions of, and amendments made by, this part [part II (§§325–327) of subtitle C of title III of Pub. L. 104–191, enacting this section and amending section 7702B of this title] shall apply to contracts issued after December 31, 1996. The provisions of section 321(f) [set out as an Effective Date note under section 7702B of this title] (relating to transition rule) shall apply to such contracts.

"(b) ISSUERS.—The amendments made by section 326 [enacting this section] shall apply to actions taken after December 31, 1996."

§4980D. Failure to meet certain group health plan requirements

(a) General rule

There is hereby imposed a tax on any failure of a group health plan to meet the requirements of chapter 100 (relating to group health plan requirements).

(b) Amount of tax

(1) In general

The amount of the tax imposed by subsection (a) on any failure shall be $100 for each day in the noncompliance period with respect to each individual to whom such failure relates.

(2) Noncompliance period

For purposes of this section, the term "noncompliance period" means, with respect to any failure, the period—

(A) beginning on the date such failure first occurs, and

(B) ending on the date such failure is corrected.

(3) Minimum tax for noncompliance period where failure discovered after notice of examination

Notwithstanding paragraphs (1) and (2) of subsection (c)—

(A) In general

In the case of 1 or more failures with respect to an individual—

(i) which are not corrected before the date a notice of examination of income tax liability is sent to the employer, and

(ii) which occurred or continued during the period under examination,

the amount of tax imposed by subsection (a) by reason of such failures with respect to such individual shall not be less than the lesser of $2,500 or the amount of tax which would be imposed by subsection (a) without regard to such paragraphs.

(B) Higher minimum tax where violations are more than de minimis

To the extent violations for which any person is liable under subsection (e) for any year are more than de minimis, subparagraph (A) shall be applied by substituting "$15,000" for "$2,500" with respect to such person.

(C) Exception for church plans

This paragraph shall not apply to any failure under a church plan (as defined in section 414(e)).

(c) Limitations on amount of tax

(1) Tax not to apply where failure not discovered exercising reasonable diligence

No tax shall be imposed by subsection (a) on any failure during any period for which it is established to the satisfaction of the Secretary that the person otherwise liable for such tax did not know, and exercising reasonable diligence would not have known, that such failure existed.

(2) Tax not to apply to failures corrected within certain periods

No tax shall be imposed by subsection (a) on any failure if—

(A) such failure was due to reasonable cause and not to willful neglect, and

(B)(i) in the case of a plan other than a church plan (as defined in section 414(e)), such failure is corrected during the 30-day period beginning on the first date the person otherwise liable for such tax knew, or exercising reasonable diligence would have known, that such failure existed, and

(ii) in the case of a church plan (as so defined), such failure is corrected before the close of

the correction period (determined under the rules of section 414(e)(4)(C)).

(3) Overall limitation for unintentional failures

In the case of failures which are due to reasonable cause and not to willful neglect—

(A) Single employer plans

(i) In general

In the case of failures with respect to plans other than specified multiple employer health plans, the tax imposed by subsection (a) for failures during the taxable year of the employer shall not exceed the amount equal to the lesser of—

(I) 10 percent of the aggregate amount paid or incurred by the employer (or predecessor employer) during the preceding taxable year for group health plans, or

(II) $500,000.

(ii) Taxable years in the case of certain controlled groups

For purposes of this subparagraph, if not all persons who are treated as a single employer for purposes of this section have the same taxable year, the taxable years taken into account shall be determined under principles similar to the principles of section 1561.

(B) Specified multiple employer health plans

(i) In general

In the case of failures with respect to a specified multiple employer health plan, the tax imposed by subsection (a) for failures during the taxable year of the trust forming part of such plan shall not exceed the amount equal to the lesser of—

(I) 10 percent of the amount paid or incurred by such trust during such taxable year to provide medical care (as defined in section 9832(d)(3)) directly or through insurance, reimbursement, or otherwise, or

(II) $500,000.

For purposes of the preceding sentence, all plans of which the same trust forms a part shall be treated as one plan.

(ii) Special rule for employers required to pay tax

If an employer is assessed a tax imposed by subsection (a) by reason of a failure with respect to a specified multiple employer health plan, the limit shall be determined under subparagraph (A) (and not under this subparagraph) and as if such plan were not a specified multiple employer health plan.

(4) Waiver by Secretary

In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by subsection (a) to the extent that the payment of such tax would be excessive relative to the failure involved.

(d) Tax not to apply to certain insured small employer plans

(1) In general

In the case of a group health plan of a small employer which provides health insurance coverage solely through a contract with a health insurance issuer, no tax shall be imposed by this section on the employer on any failure (other than a failure attributable to section 9811) which is solely because of the health insurance coverage offered by such issuer.

(2) Small employer

(A) In general

For purposes of paragraph (1), the term "small employer" means, with respect to a calendar year and a plan year, an employer who employed an average of at least 2 but not more than 50 employees on business days during the preceding calendar year and who employs at least 2

employees on the first day of the plan year. For purposes of the preceding sentence, all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as one employer.

(B) Employers not in existence in preceding year

In the case of an employer which was not in existence throughout the preceding calendar year, the determination of whether such employer is a small employer shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

(C) Predecessors

Any reference in this paragraph to an employer shall include a reference to any predecessor of such employer.

(3) Health insurance coverage; health insurance issuer

For purposes of paragraph (1), the terms "health insurance coverage" and "health insurance issuer" have the respective meanings given such terms by section 9832.

(e) Liability for tax

The following shall be liable for the tax imposed by subsection (a) on a failure:

(1) Except as otherwise provided in this subsection, the employer.

(2) In the case of a multiemployer plan, the plan.

(3) In the case of a failure under section 9803 (relating to guaranteed renewability) with respect to a plan described in subsection (f)(2)(B), the plan.

(f) Definitions

For purposes of this section—

(1) Group health plan

The term "group health plan" has the meaning given such term by section 9832(a).

(2) Specified multiple employer health plan

The term "specified multiple employer health plan" means a group health plan which is—

(A) any multiemployer plan, or

(B) any multiple employer welfare arrangement (as defined in section 3(40) of the Employee Retirement Income Security Act of 1974, as in effect on the date of the enactment of this section).

(3) Correction

A failure of a group health plan shall be treated as corrected if—

(A) such failure is retroactively undone to the extent possible, and

(B) the person to whom the failure relates is placed in a financial position which is as good as such person would have been in had such failure not occurred.

(Added Pub. L. 104–191, title IV, §402(a), Aug. 21, 1996, 110 Stat. 2084; amended Pub. L. 105–34, title XV, §1531(b)(2), Aug. 5, 1997, 111 Stat. 1085; Pub. L. 109–135, title IV, §412(ww), Dec. 21, 2005, 119 Stat. 2640.)

REFERENCES IN TEXT

Section 3(40) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (f)(2)(B), is classified to section 1002(40) of Title 29, Labor.

The date of the enactment of this section, referred to in subsec. (f)(2)(B), is the date of enactment of Pub. L. 104–191, which was approved Aug. 21, 1996.

AMENDMENTS

2005—Subsec. (a). Pub. L. 109–135 substituted "plan requirements" for "plans requirements".

1997—Subsec. (a). Pub. L. 105–34, §1531(b)(2)(A), substituted "plans" for "plan portability, access, and renewability".

Subsec. (c)(3)(B)(i)(I). Pub. L. 105–34, §1531(b)(2)(B), substituted "9832(d)(3)" for "9805(d)(3)".

Subsec. (d)(1). Pub. L. 105–34, §1531(b)(2)(C), inserted "(other than a failure attributable to section 9811)" after "on any failure".

Subsec. (d)(3). Pub. L. 105–34, §1531(b)(2)(D), substituted "section 9832" for "section 9805".

Subsec. (f)(1). Pub. L. 105–34, §1531(b)(2)(E), substituted "section 9832(a)" for "section 9805(a)".

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XV, §1531(c), Aug. 5, 1997, 111 Stat. 1085, provided that: "The amendments made by this section [enacting sections 9811 and 9812 of this title, amending this section and sections 9801 and 9831 of this title, and renumbering sections 9804 to 9806 of this title as sections 9831 to 9833 of this title] shall apply with respect to group health plans for plan years beginning on or after January 1, 1998."

EFFECTIVE DATE

Pub. L. 104–191, title IV, §402(c), Aug. 21, 1996, 110 Stat. 2087, provided that: "The amendments made by this section [enacting this section] shall apply to failures under chapter 100 of the Internal Revenue Code of 1986 (as added by section 401 of this Act)."

§4980E. Failure of employer to make comparable Archer MSA contributions

(a) General rule

In the case of an employer who makes a contribution to the Archer MSA of any employee with respect to coverage under a high deductible health plan of the employer during a calendar year, there is hereby imposed a tax on the failure of such employer to meet the requirements of subsection (d) for such calendar year.

(b) Amount of tax

The amount of the tax imposed by subsection (a) on any failure for any calendar year is the amount equal to 35 percent of the aggregate amount contributed by the employer to Archer MSAs of employees for taxable years of such employees ending with or within such calendar year.

(c) Waiver by Secretary

In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by subsection (a) to the extent that the payment of such tax would be excessive relative to the failure involved.

(d) Employer required to make comparable MSA contributions for all participating employees

(1) In general

An employer meets the requirements of this subsection for any calendar year if the employer makes available comparable contributions to the Archer MSAs of all comparable participating employees for each coverage period during such calendar year.

(2) Comparable contributions

(A) In general

For purposes of paragraph (1), the term "comparable contributions" means contributions—

(i) which are the same amount, or

(ii) which are the same percentage of the annual deductible limit under the high deductible health plan covering the employees.

(B) Part-year employees

In the case of an employee who is employed by the employer for only a portion of the calendar year, a contribution to the Archer MSA of such employee shall be treated as comparable if it is an amount which bears the same ratio to the comparable amount (determined without regard to this subparagraph) as such portion bears to the entire calendar year.

(3) Comparable participating employees

For purposes of paragraph (1), the term "comparable participating employees" means all employees—

(A) who are eligible individuals covered under any high deductible health plan of the employer, and

(B) who have the same category of coverage.

For purposes of subparagraph (B), the categories of coverage are self-only and family coverage.

(4) Part-time employees

(A) In general

Paragraph (3) shall be applied separately with respect to part-time employees and other employees.

(B) Part-time employee

For purposes of subparagraph (A), the term "part-time employee" means any employee who is customarily employed for fewer than 30 hours per week.

(e) Controlled groups

For purposes of this section, all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as 1 employer.

(f) Definitions

Terms used in this section which are also used in section 220 have the respective meanings given such terms in section 220.

(Added Pub. L. 104–191, title III, §301(c)(4)(A), Aug. 21, 1996, 110 Stat. 2049; amended Pub. L. 106–554, §1(a)(7) [title II, §202(a)(8), (b)(2)(D)], Dec. 21, 2000, 114 Stat. 2763, 2763A–629; Pub. L. 107–147, title IV, §417(17)(A), Mar. 9, 2002, 116 Stat. 56.)

AMENDMENTS

2002—Pub. L. 107–147 substituted "Archer MSA contributions" for "medical savings account contributions" in section catchline.

2000—Subsec. (a). Pub. L. 106–554, §1(a)(7) [title II, §202(a)(8)], substituted "Archer MSA" for "medical savings account".

Subsecs. (b), (d)(1). Pub. L. 106–554, §1(a)(7) [title II, §202(b)(2)(D)], substituted "Archer MSAs" for "medical savings accounts".

Subsec. (d)(2)(B). Pub. L. 106–554, §1(a)(7) [title II, §202(a)(8)], substituted "Archer MSA" for "medical savings account".

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1996, see section 301(j) of Pub. L. 104–191, set out as an Effective Date of 1996 Amendment note under section 62 of this title.

§4980F. Failure of applicable plans reducing benefit accruals to satisfy notice requirements

(a) Imposition of tax

There is hereby imposed a tax on the failure of any applicable pension plan to meet the requirements of subsection (e) with respect to any applicable individual.

(b) Amount of tax

(1) In general

The amount of the tax imposed by subsection (a) on any failure with respect to any applicable individual shall be $100 for each day in the noncompliance period with respect to such failure.

(2) Noncompliance period

For purposes of this section, the term "noncompliance period" means, with respect to any failure, the period beginning on the date the failure first occurs and ending on the date the notice to

which the failure relates is provided or the failure is otherwise corrected.

(c) Limitations on amount of tax

(1) Tax not to apply where failure not discovered and reasonable diligence exercised

No tax shall be imposed by subsection (a) on any failure during any period for which it is established to the satisfaction of the Secretary that any person subject to liability for the tax under subsection (d) did not know that the failure existed and exercised reasonable diligence to meet the requirements of subsection (e).

(2) Tax not to apply to failures corrected within 30 days

No tax shall be imposed by subsection (a) on any failure if—

(A) any person subject to liability for the tax under subsection (d) exercised reasonable diligence to meet the requirements of subsection (e), and

(B) such person provides the notice described in subsection (e) during the 30-day period beginning on the first date such person knew, or exercising reasonable diligence would have known, that such failure existed.

(3) Overall limitation for unintentional failures

(A) In general

If the person subject to liability for tax under subsection (d) exercised reasonable diligence to meet the requirements of subsection (e), the tax imposed by subsection (a) for failures during the taxable year of the employer (or, in the case of a multiemployer plan, the taxable year of the trust forming part of the plan) shall not exceed $500,000. For purposes of the preceding sentence, all multiemployer plans of which the same trust forms a part shall be treated as 1 plan.

(B) Taxable years in the case of certain controlled groups

For purposes of this paragraph, if all persons who are treated as a single employer for purposes of this section do not have the same taxable year, the taxable years taken into account shall be determined under principles similar to the principles of section 1561.

(4) Waiver by Secretary

In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by subsection (a) to the extent that the payment of such tax would be excessive or otherwise inequitable relative to the failure involved.

(d) Liability for tax

The following shall be liable for the tax imposed by subsection (a):

(1) In the case of a plan other than a multiemployer plan, the employer.

(2) In the case of a multiemployer plan, the plan.

(e) Notice requirements for plans significantly reducing benefit accruals

(1) In general

If an applicable pension plan is amended to provide for a significant reduction in the rate of future benefit accrual, the plan administrator shall provide the notice described in paragraph (2) to each applicable individual (and to each employee organization representing applicable individuals) and to each employer who has an obligation to contribute to the plan.

(2) Notice

The notice required by paragraph (1) shall be written in a manner calculated to be understood by the average plan participant and shall provide sufficient information (as determined in accordance with regulations prescribed by the Secretary) to allow applicable individuals to understand the effect of the plan amendment. The Secretary may provide a simplified form of notice for, or exempt from any notice requirement, a plan—

(A) which has fewer than 100 participants who have accrued a benefit under the plan, or

(B) which offers participants the option to choose between the new benefit formula and the

old benefit formula.

(3) Timing of notice

Except as provided in regulations, the notice required by paragraph (1) shall be provided within a reasonable time before the effective date of the plan amendment.

(4) Designees

Any notice under paragraph (1) may be provided to a person designated, in writing, by the person to which it would otherwise be provided.

(5) Notice before adoption of amendment

A plan shall not be treated as failing to meet the requirements of paragraph (1) merely because notice is provided before the adoption of the plan amendment if no material modification of the amendment occurs before the amendment is adopted.

(f) Definitions and special rules

For purposes of this section—

(1) Applicable individual

The term "applicable individual" means, with respect to any plan amendment—

(A) each participant in the plan, and

(B) any beneficiary who is an alternate payee (within the meaning of section 414(p)(8)) under an applicable qualified domestic relations order (within the meaning of section 414(p)(1)(A)),

whose rate of future benefit accrual under the plan may reasonably be expected to be significantly reduced by such plan amendment.

(2) Applicable pension plan

The term "applicable pension plan" means—

(A) any defined benefit plan described in section 401(a) which includes a trust exempt from tax under section 501(a), or

(B) an individual account plan which is subject to the funding standards of section 412.

Such term shall not include a governmental plan (within the meaning of section 414(d)) or a church plan (within the meaning of section 414(e)) with respect to which the election provided by section 410(d) has not been made.

(3) Early retirement

A plan amendment which eliminates or reduces any early retirement benefit or retirement-type subsidy (within the meaning of section 411(d)(6)(B)(i)) shall be treated as having the effect of reducing the rate of future benefit accrual.

(g) New technologies

The Secretary may by regulations allow any notice under subsection (e) to be provided by using new technologies.

(Added Pub. L. 107–16, title VI, §659(a)(1), June 7, 2001, 115 Stat. 137; amended Pub. L. 107–147, title IV, §411(u)(1), Mar. 9, 2002, 116 Stat. 51; Pub. L. 109–280, title V, §502(c)(2), Aug. 17, 2006, 120 Stat. 941.)

AMENDMENTS

2006—Subsec. (e)(1). Pub. L. 109–280 inserted "and to each employer who has an obligation to contribute to the plan" before period at end.

2002—Subsec. (e)(1). Pub. L. 107–147, §411(u)(1)(A), substituted "the notice described in paragraph (2)" for "written notice".

Subsec. (f)(2)(A). Pub. L. 107–147, §411(u)(1)(B), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "any defined benefit plan, or".

Subsec. (f)(3). Pub. L. 107–147, §411(u)(1)(C), struck out "significantly" before "reduces" and before

"reducing".

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title V, §502(d), Aug. 17, 2006, 120 Stat. 941, provided that: "The amendments made by this section [amending this section and sections 1021, 1054, and 1132 of Title 29, Labor] shall apply to plan years beginning after December 31, 2007."

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE

Pub. L. 107–16, title VI, §659(c), June 7, 2001, 115 Stat. 141, as amended by Pub. L. 107–147, title IV, §411(u)(3), Mar. 9, 2002, 116 Stat. 52, provided that:

"(1) IN GENERAL.—The amendments made by this section [enacting this section and amending section 1054 of Title 29, Labor] shall apply to plan amendments taking effect on or after the date of the enactment of this Act [June 7, 2001].

"(2) TRANSITION.—Until such time as the Secretary of the Treasury issues regulations under sections 4980F(e)(2) and (3) of the Internal Revenue Code of 1986, and section 204(h) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1054(h)], as added by the amendments made by this section, a plan shall be treated as meeting the requirements of such sections if it makes a good faith effort to comply with such requirements.

"(3) SPECIAL NOTICE RULE.—

"(A) IN GENERAL.—The period for providing any notice required by the amendments made by this section shall not end before the date which is 3 months after the date of the enactment of this Act.

"(B) REASONABLE NOTICE.—The amendments made by this section shall not apply to any plan amendment taking effect on or after the date of the enactment of this Act if, before April 25, 2001, notice was provided to participants and beneficiaries adversely affected by the plan amendment (and their representatives) which was reasonably expected to notify them of the nature and effective date of the plan amendment."

§4980G. Failure of employer to make comparable health savings account contributions

(a) General rule

In the case of an employer who makes a contribution to the health savings account of any employee during a calendar year, there is hereby imposed a tax on the failure of such employer to meet the requirements of subsection (b) for such calendar year.

(b) Rules and requirements

Rules and requirements similar to the rules and requirements of section 4980E shall apply for purposes of this section.

(c) Regulations

The Secretary shall issue regulations to carry out the purposes of this section, including regulations providing special rules for employers who make contributions to Archer MSAs and health savings accounts during the calendar year.

(d) Exception

For purposes of applying section 4980E to a contribution to a health savings account of an employee who is not a highly compensated employee (as defined in section 414(q)), highly compensated employees shall not be treated as comparable participating employees.

(Added Pub. L. 108–173, title XII, §1201(d)(4)(A), Dec. 8, 2003, 117 Stat. 2478; amended Pub. L. 109–432, div. A, title III, §306(a), Dec. 20, 2006, 120 Stat. 2951.)

AMENDMENTS

2006—Subsec. (d). Pub. L. 109–432 added subsec. (d).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title III, §306(b), Dec. 20, 2006, 120 Stat. 2951, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2006."

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 2003, see section 1201(k) of Pub. L. 108–173, set out as an Effective Date of 2003 Amendment note under section 62 of this title.

§4980H. Shared responsibility for employers regarding health coverage

(a) Large employers not offering health coverage

If—

(1) any applicable large employer fails to offer to its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan (as defined in section 5000A(f)(2)) for any month, and

(2) at least one full-time employee of the applicable large employer has been certified to the employer under section 1411 of the Patient Protection and Affordable Care Act as having enrolled for such month in a qualified health plan with respect to which an applicable premium tax credit or cost-sharing reduction is allowed or paid with respect to the employee,

then there is hereby imposed on the employer an assessable payment equal to the product of the applicable payment amount and the number of individuals employed by the employer as full-time employees during such month.

(b) Large employers offering coverage with employees who qualify for premium tax credits or cost-sharing reductions

(1) In general

If—

(A) an applicable large employer offers to its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan (as defined in section 5000A(f)(2)) for any month, and

(B) 1 or more full-time employees of the applicable large employer has been certified to the employer under section 1411 of the Patient Protection and Affordable Care Act as having enrolled for such month in a qualified health plan with respect to which an applicable premium tax credit or cost-sharing reduction is allowed or paid with respect to the employee,

then there is hereby imposed on the employer an assessable payment equal to the product of the number of full-time employees of the applicable large employer described in subparagraph (B) for such month and an amount equal to 1/12 of $3,000.

(2) Overall limitation

The aggregate amount of tax determined under paragraph (1) with respect to all employees of an applicable large employer for any month shall not exceed the product of the applicable payment amount and the number of individuals employed by the employer as full-time employees during such month.

(c) Definitions and special rules

For purposes of this section—

(1) Applicable payment amount

The term "applicable payment amount" means, with respect to any month, 1/12 of $2,000.

(2) Applicable large employer

(A) In general

The term "applicable large employer" means, with respect to a calendar year, an employer who employed an average of at least 50 full-time employees on business days during the preceding calendar year.

(B) Exemption for certain employers

(i) In general

An employer shall not be considered to employ more than 50 full-time employees if—

(I) the employer's workforce exceeds 50 full-time employees for 120 days or fewer during the calendar year, and

(II) the employees in excess of 50 employed during such 120-day period were seasonal workers.

(ii) Definition of seasonal workers

The term "seasonal worker" means a worker who performs labor or services on a seasonal basis as defined by the Secretary of Labor, including workers covered by section 500.20(s)(1) of title 29, Code of Federal Regulations and retail workers employed exclusively during holiday seasons.

(C) Rules for determining employer size

For purposes of this paragraph—

(i) Application of aggregation rule for employers

All persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986 shall be treated as 1 employer.

(ii) Employers not in existence in preceding year

In the case of an employer which was not in existence throughout the preceding calendar year, the determination of whether such employer is an applicable large employer shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

(iii) Predecessors

Any reference in this subsection to an employer shall include a reference to any predecessor of such employer.

(D) Application of employer size to assessable penalties

(i) In general

The number of individuals employed by an applicable large employer as full-time employees during any month shall be reduced by 30 solely for purposes of calculating—

(I) the assessable payment under subsection (a), or

(II) the overall limitation under subsection (b)(2).

(ii) Aggregation

In the case of persons treated as 1 employer under subparagraph (C)(i), only 1 reduction under subclause (I) or (II) [1] shall be allowed with respect to such persons and such reduction shall be allocated among such persons ratably on the basis of the number of full-time employees employed by each such person.

(E) Full-time equivalents treated as full-time employees

Solely for purposes of determining whether an employer is an applicable large employer under this paragraph, an employer shall, in addition to the number of full-time employees for any month otherwise determined, include for such month a number of full-time employees determined by dividing the aggregate number of hours of service of employees who are not full-time employees for the month by 120.

(3) Applicable premium tax credit and cost-sharing reduction

The term "applicable premium tax credit and cost-sharing reduction" means—

(A) any premium tax credit allowed under section 36B,

(B) any cost-sharing reduction under section 1402 of the Patient Protection and Affordable Care Act, and

(C) any advance payment of such credit or reduction under section 1412 of such Act.

(4) Full-time employee

(A) In general

The term "full-time employee" means, with respect to any month, an employee who is employed on average at least 30 hours of service per week.

(B) Hours of service

The Secretary, in consultation with the Secretary of Labor, shall prescribe such regulations, rules, and guidance as may be necessary to determine the hours of service of an employee, including rules for the application of this paragraph to employees who are not compensated on an hourly basis.

(5) Inflation adjustment

(A) In general

In the case of any calendar year after 2014, each of the dollar amounts in subsection (b) and paragraph (1) shall be increased by an amount equal to the product of—

(i) such dollar amount, and

(ii) the premium adjustment percentage (as defined in section 1302(c)(4) of the Patient Protection and Affordable Care Act) for the calendar year.

(B) Rounding

If the amount of any increase under subparagraph (A) is not a multiple of $10, such increase shall be rounded to the next lowest multiple of $10.

(6) Other definitions

Any term used in this section which is also used in the Patient Protection and Affordable Care Act shall have the same meaning as when used in such Act.

(7) Tax nondeductible

For denial of deduction for the tax imposed by this section, see section 275(a)(6).

(d) Administration and procedure

(1) In general

Any assessable payment provided by this section shall be paid upon notice and demand by the Secretary, and shall be assessed and collected in the same manner as an assessable penalty under subchapter B of chapter 68.

(2) Time for payment

The Secretary may provide for the payment of any assessable payment provided by this section on an annual, monthly, or other periodic basis as the Secretary may prescribe.

(3) Coordination with credits, etc.

The Secretary shall prescribe rules, regulations, or guidance for the repayment of any assessable payment (including interest) if such payment is based on the allowance or payment of an applicable premium tax credit or cost-sharing reduction with respect to an employee, such allowance or payment is subsequently disallowed, and the assessable payment would not have been required to be made but for such allowance or payment.

(Added and amended Pub. L. 111–148, title I, §1513(a), title X, §§10106(e)–(f)(2), 10108(i)(1)(A), Mar. 23, 2010, 124 Stat. 253, 910, 914; Pub. L. 111–152, title I, §1003, Mar. 30, 2010, 124 Stat.

1033; Pub. L. 112–10, div. B, title VIII, §1858(b)(4), Apr. 15, 2011, 125 Stat. 169.)

REFERENCES IN TEXT

The Patient Protection and Affordable Care Act, referred to in subsecs. (a)(2), (b)(1)(B), and (c)(3)(B), (C), (5)(A)(ii), (6), is Pub. L. 111–148, Mar. 23, 2010, 124 Stat. 119. Sections 1302(c)(4), 1402, 1411, and 1412 of the Act are classified to sections 18022(c)(4), 18071, 18081, and 18082, respectively, of Title 42, The Public Health and Welfare. Section 10108 of the Act enacted former section 139D of this title and section 18101 of Title 42, amended sections 36B, 162, 4980H, 6056, and 6724 of this title and section 218b of Title 29, Labor, and enacted provisions set out as notes under sections 36B, 162, 4980H, and 6056 of this title and former section 139D of this title. For complete classification of this Act to the Code, see Short Title note set out under section 18001 of Title 42 and Tables.

AMENDMENTS

2011—Subsec. (b)(3). Pub. L. 112–10 struck out par. (3). Text read as follows: "No assessable payment shall be imposed under paragraph (1) for any month with respect to any employee to whom the employer provides a free choice voucher under section 10108 of the Patient Protection and Affordable Care Act for such month."

2010—Subsec. (b). Pub. L. 111–152, §1003(d), redesignated subsec. (c) as (b) and struck out former subsec. (b) which related to large employers with enrollment waiting periods exceeding 60 days.

Pub. L. 111–148, §10106(e), amended subsec. (b) generally. Prior to amendment, subsec. (b) related to large employers with enrollment waiting periods exceeding 30 days.

Subsec. (c). Pub. L. 111–152, §1003(d), redesignated subsec. (d) as (c). Former subsec. (c) redesignated (b).

Subsec. (c)(1). Pub. L. 111–152, §1003(b)(1), substituted "an amount equal to 1/12 of $3,000" for "400 percent of the applicable payment amount" in concluding provisions.

Subsec. (c)(3). Pub. L. 111–148, §10108(i)(1)(A), added par. (3).

Subsec. (d). Pub. L. 111–152, §1003(d), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (d)(1). Pub. L. 111–152, §1003(b)(2), substituted "$2,000" for "$750".

Subsec. (d)(2)(D). Pub. L. 111–152, §1003(a), amended subpar. (D) generally. Prior to amendment, text read as follows: "In the case of any employer the substantial annual gross receipts of which are attributable to the construction industry—

"(i) subparagraph (A) shall be applied by substituting 'who employed an average of at least 5 full-time employees on business days during the preceding calendar year and whose annual payroll expenses exceed $250,000 for such preceding calendar year' for 'who employed an average of at least 50 full-time employees on business days during the preceding calendar year', and

"(ii) subparagraph (B) shall be applied by substituting '5' for '50'."

Pub. L. 111–148, §10106(f)(2), added subpar. (D).

Subsec. (d)(2)(E). Pub. L. 111–152, §1003(c), added subpar. (E).

Subsec. (d)(4)(A). Pub. L. 111–148, §10106(f)(1), inserted ", with respect to any month," after "means".

Subsec. (d)(5)(A). Pub. L. 111–152, §1003(b)(3), substituted "subsection (b) and paragraph (1)" for "subsection (b)(2) and (d)(1)" in introductory provisions.

Subsec. (e). Pub. L. 111–152, §1003(d), redesignated subsec. (e) as (d).

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112–10 effective as if included in the provisions of, and the amendments made by, the provisions of Pub. L. 111–148 to which it relates, see section 1858(d) of Pub. L. 112–10, set out as a note under section 36B of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–148, title X, §10106(f)(3), Mar. 23, 2010, 124 Stat. 911, provided that: "The amendment made by paragraph (2) [amending this section] shall apply to months beginning after December 31, 2013."

Pub. L. 111–148, title X, §10108(i)(1)(B), Mar. 23, 2010, 124 Stat. 914, provided that: "The amendment made by this paragraph [amending this section] shall apply to months beginning after December 31, 2013."

EFFECTIVE DATE

Pub. L. 111–148, title I, §1513(d), Mar. 23, 2010, 124 Stat. 256, provided that: "The amendments made by this section [enacting this section] shall apply to months beginning after December 31, 2013."

[1] *So in original. Probably means subclause (I) or (II) of clause (i).*

§4980I. Excise tax on high cost employer-sponsored health coverage

(a) Imposition of tax

If—

(1) an employee is covered under any applicable employer-sponsored coverage of an employer at any time during a taxable period, and

(2) there is any excess benefit with respect to the coverage,

there is hereby imposed a tax equal to 40 percent of the excess benefit.

(b) Excess benefit

For purposes of this section—

(1) In general

The term "excess benefit" means, with respect to any applicable employer-sponsored coverage made available by an employer to an employee during any taxable period, the sum of the excess amounts determined under paragraph (2) for months during the taxable period.

(2) Monthly excess amount

The excess amount determined under this paragraph for any month is the excess (if any) of—

(A) the aggregate cost of the applicable employer-sponsored coverage of the employee for the month, over

(B) an amount equal to 1/12 of the annual limitation under paragraph (3) for the calendar year in which the month occurs.

(3) Annual limitation

For purposes of this subsection—

(A) In general

The annual limitation under this paragraph for any calendar year is the dollar limit determined under subparagraph (C) for the calendar year.

(B) Applicable annual limitation

(i) In general

Except as provided in clause (ii), the annual limitation which applies for any month shall be determined on the basis of the type of coverage (as determined under subsection (f)(1)) provided to the employee by the employer as of the beginning of the month.

(ii) Multiemployer plan coverage

Any coverage provided under a multiemployer plan (as defined in section 414(f)) shall be treated as coverage other than self-only coverage.

(C) Applicable dollar limit

(i) 2018

In the case of 2018, the dollar limit under this subparagraph is—

(I) in the case of an employee with self-only coverage, $10,200 multiplied by the health cost adjustment percentage (determined by only taking into account self-only coverage), and

(II) in the case of an employee with coverage other than self-only coverage, $27,500 multiplied by the health cost adjustment percentage (determined by only taking into account coverage other than self-only coverage).

(ii) Health cost adjustment percentage

For purposes of clause (i), the health cost adjustment percentage is equal to 100 percent

plus the excess (if any) of—

(I) the percentage by which the per employee cost for providing coverage under the Blue Cross/Blue Shield standard benefit option under the Federal Employees Health Benefits Plan for plan year 2018 (determined by using the benefit package for such coverage in 2010) exceeds such cost for plan year 2010, over

(II) 55 percent.

(iii) Age and gender adjustment

(I) In general

The amount determined under subclause (I) or (II) of clause (i), whichever is applicable, for any taxable period shall be increased by the amount determined under subclause (II).

(II) Amount determined

The amount determined under this subclause is an amount equal to the excess (if any) of—

(aa) the premium cost of the Blue Cross/Blue Shield standard benefit option under the Federal Employees Health Benefits Plan for the type of coverage provided such individual in such taxable period if priced for the age and gender characteristics of all employees of the individual's employer, over

(bb) that premium cost for the provision of such coverage under such option in such taxable period if priced for the age and gender characteristics of the national workforce.

(iv) Exception for certain individuals

In the case of an individual who is a qualified retiree or who participates in a plan sponsored by an employer the majority of whose employees covered by the plan are engaged in a high-risk profession or employed to repair or install electrical or telecommunications lines—

(I) the dollar amount in clause (i)(I) shall be increased by $1,650, and

(II) the dollar amount in clause (i)(II) shall be increased by $3,450,[1]

(v) Subsequent years

In the case of any calendar year after 2018, each of the dollar amounts under clauses (i) (after the application of clause (ii)) and (iv) shall be increased to the amount equal to such amount as in effect for the calendar year preceding such year, increased by an amount equal to the product of—

(I) such amount as so in effect, multiplied by

(II) the cost-of-living adjustment determined under section 1(f)(3) for such year (determined by substituting the calendar year that is 2 years before such year for "1992" in subparagraph (B) thereof), increased by 1 percentage point in the case of determinations for calendar years beginning before 2020.

If any amount determined under this clause is not a multiple of $50, such amount shall be rounded to the nearest multiple of $50.

(c) Liability to pay tax

(1) In general

Each coverage provider shall pay the tax imposed by subsection (a) on its applicable share of the excess benefit with respect to an employee for any taxable period.

(2) Coverage provider

For purposes of this subsection, the term "coverage provider" means each of the following:

(A) Health insurance coverage

If the applicable employer-sponsored coverage consists of coverage under a group health plan which provides health insurance coverage, the health insurance issuer.

(B) HSA and MSA contributions

If the applicable employer-sponsored coverage consists of coverage under an arrangement under which the employer makes contributions described in subsection (b) or (d) of section 106, the employer.

(C) Other coverage

In the case of any other applicable employer-sponsored coverage, the person that administers the plan benefits.

(3) Applicable share

For purposes of this subsection, a coverage provider's applicable share of an excess benefit for any taxable period is the amount which bears the same ratio to the amount of such excess benefit as—

(A) the cost of the applicable employer-sponsored coverage provided by the provider to the employee during such period, bears to

(B) the aggregate cost of all applicable employer-sponsored coverage provided to the employee by all coverage providers during such period.

(4) Responsibility to calculate tax and applicable shares

(A) In general

Each employer shall—

(i) calculate for each taxable period the amount of the excess benefit subject to the tax imposed by subsection (a) and the applicable share of such excess benefit for each coverage provider, and

(ii) notify, at such time and in such manner as the Secretary may prescribe, the Secretary and each coverage provider of the amount so determined for the provider.

(B) Special rule for multiemployer plans

In the case of applicable employer-sponsored coverage made available to employees through a multiemployer plan (as defined in section 414(f)), the plan sponsor shall make the calculations, and provide the notice, required under subparagraph (A).

(d) Applicable employer-sponsored coverage; cost

For purposes of this section—

(1) Applicable employer-sponsored coverage

(A) In general

The term "applicable employer-sponsored coverage" means, with respect to any employee, coverage under any group health plan made available to the employee by an employer which is excludable from the employee's gross income under section 106, or would be so excludable if it were employer-provided coverage (within the meaning of such section 106).

(B) Exceptions

The term "applicable employer-sponsored coverage" shall not include—

(i) any coverage (whether through insurance or otherwise) described in section 9832(c)(1) (other than subparagraph (G) thereof) or for long-term care, or

(ii) any coverage under a separate policy, certificate, or contract of insurance which provides benefits substantially all of which are for treatment of the mouth (including any organ or structure within the mouth) or for treatment of the eye, or

(iii) any coverage described in section 9832(c)(3) the payment for which is not excludable from gross income and for which a deduction under section 162(l) is not allowable.

(C) Coverage includes employee paid portion

Coverage shall be treated as applicable employer-sponsored coverage without regard to whether the employer or employee pays for the coverage.

(D) Self-employed individual

In the case of an individual who is an employee within the meaning of section 401(c)(1), coverage under any group health plan providing health insurance coverage shall be treated as applicable employer-sponsored coverage if a deduction is allowable under section 162(l) with respect to all or any portion of the cost of the coverage.

(E) Governmental plans included

Applicable employer-sponsored coverage shall include coverage under any group health plan established and maintained primarily for its civilian employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any such government.

(2) Determination of cost

(A) In general

The cost of applicable employer-sponsored coverage shall be determined under rules similar to the rules of section 4980B(f)(4), except that in determining such cost, any portion of the cost of such coverage which is attributable to the tax imposed under this section shall not be taken into account and the amount of such cost shall be calculated separately for self-only coverage and other coverage. In the case of applicable employer-sponsored coverage which provides coverage to retired employees, the plan may elect to treat a retired employee who has not attained the age of 65 and a retired employee who has attained the age of 65 as similarly situated beneficiaries.

(B) Health FSAs

In the case of applicable employer-sponsored coverage consisting of coverage under a flexible spending arrangement (as defined in section 106(c)(2)), the cost of the coverage shall be equal to the sum of—

(i) the amount of employer contributions under any salary reduction election under the arrangement, plus

(ii) the amount determined under subparagraph (A) with respect to any reimbursement under the arrangement in excess of the contributions described in clause (i).

(C) Archer MSAs and HSAs

In the case of applicable employer-sponsored coverage consisting of coverage under an arrangement under which the employer makes contributions described in subsection (b) or (d) of section 106, the cost of the coverage shall be equal to the amount of employer contributions under the arrangement.

(D) Allocation on a monthly basis

If cost is determined on other than a monthly basis, the cost shall be allocated to months in a taxable period on such basis as the Secretary may prescribe.

(3) Employee

The term "employee" includes any former employee, surviving spouse, or other primary insured individual.

(e) Penalty for failure to properly calculate excess benefit

(1) In general

If, for any taxable period, the tax imposed by subsection (a) exceeds the tax determined under such subsection with respect to the total excess benefit calculated by the employer or plan sponsor under subsection (c)(4)—

(A) each coverage provider shall pay the tax on its applicable share (determined in the same manner as under subsection (c)(4)) of the excess, but no penalty shall be imposed on the provider with respect to such amount, and

(B) the employer or plan sponsor shall, in addition to any tax imposed by subsection (a), pay

a penalty in an amount equal to such excess, plus interest at the underpayment rate determined under section 6621 for the period beginning on the due date for the payment of tax imposed by subsection (a) to which the excess relates and ending on the date of payment of the penalty.

(2) Limitations on penalty

(A) Penalty not to apply where failure not discovered exercising reasonable diligence

No penalty shall be imposed by paragraph (1)(B) on any failure to properly calculate the excess benefit during any period for which it is established to the satisfaction of the Secretary that the employer or plan sponsor neither knew, nor exercising reasonable diligence would have known, that such failure existed.

(B) Penalty not to apply to failures corrected within 30 days

No penalty shall be imposed by paragraph (1)(B) on any such failure if—

(i) such failure was due to reasonable cause and not to willful neglect, and

(ii) such failure is corrected during the 30-day period beginning on the 1st date that the employer knew, or exercising reasonable diligence would have known, that such failure existed.

(C) Waiver by Secretary

In the case of any such failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the penalty imposed by paragraph (1), to the extent that the payment of such penalty would be excessive or otherwise inequitable relative to the failure involved.

(f) Other definitions and special rules

For purposes of this section—

(1) Coverage determinations

(A) In general

Except as provided in subparagraph (B), an employee shall be treated as having self-only coverage with respect to any applicable employer-sponsored coverage of an employer.

(B) Minimum essential coverage

An employee shall be treated as having coverage other than self-only coverage only if the employee is enrolled in coverage other than self-only coverage in a group health plan which provides minimum essential coverage (as defined in section 5000A(f)) to the employee and at least one other beneficiary, and the benefits provided under such minimum essential coverage do not vary based on whether any individual covered under such coverage is the employee or another beneficiary.

(2) Qualified retiree

The term "qualified retiree" means any individual who—

(A) is receiving coverage by reason of being a retiree,

(B) has attained age 55, and

(C) is not entitled to benefits or eligible for enrollment under the Medicare program under title XVIII of the Social Security Act.

(3) Employees engaged in high-risk profession

The term "employees engaged in a high-risk profession" means law enforcement officers (as such term is defined in section 1204 of the Omnibus Crime Control and Safe Streets Act of 1968), employees in fire protection activities (as such term is defined in section 3(y) of the Fair Labor Standards Act of 1938), individuals who provide out-of-hospital emergency medical care (including emergency medical technicians, paramedics, and first-responders), individuals whose primary work is longshore work (as defined in section 258(b) of the Immigration and Nationality Act (8 U.S.C. 1288(b)), determined without regard to paragraph (2) thereof), and individuals engaged in the construction, mining, agriculture (not including food processing), forestry, and

fishing industries. Such term includes an employee who is retired from a high-risk profession described in the preceding sentence, if such employee satisfied the requirements of such sentence for a period of not less than 20 years during the employee's employment.

(4) Group health plan

The term "group health plan" has the meaning given such term by section 5000(b)(1).

(5) Health insurance coverage; health insurance issuer

(A) Health insurance coverage

The term "health insurance coverage" has the meaning given such term by section 9832(b)(1) (applied without regard to subparagraph (B) thereof, except as provided by the Secretary in regulations).

(B) Health insurance issuer

The term "health insurance issuer" has the meaning given such term by section 9832(b)(2).

(6) Person that administers the plan benefits

The term "person that administers the plan benefits" shall include the plan sponsor if the plan sponsor administers benefits under the plan.

(7) Plan sponsor

The term "plan sponsor" has the meaning given such term in section 3(16)(B) of the Employee Retirement Income Security Act of 1974.

(8) Taxable period

The term "taxable period" means the calendar year or such shorter period as the Secretary may prescribe. The Secretary may have different taxable periods for employers of varying sizes.

(9) Aggregation rules

All employers treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as a single employer.

(10) Denial of deduction

For denial of a deduction for the tax imposed by this section, see section 275(a)(6).

(g) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out this section.

(Added and amended Pub. L. 111–148, title IX, §9001(a), title X, §10901(a), (b), Mar. 23, 2010, 124 Stat. 847, 1015, 1016; Pub. L. 111–152, title I, §1401(a), Mar. 30, 2010, 124 Stat. 1059.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (f)(2)(C), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Title XVIII of the Act is classified generally to subchapter XVIII (§1395 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 1204 of the Omnibus Crime Control and Safe Streets Act of 1968, referred to in subsec. (f)(3), is classified to section 3796b of Title 42, The Public Health and Welfare.

Section 3(y) of the Fair Labor Standards Act of 1938, referred to in subsec. (f)(3), is classified to section 203(y) of Title 29, Labor.

Section 3(16)(B) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (f)(7), is classified to section 1002(16)(B) of Title 29, Labor.

AMENDMENTS

2010—Subsec. (b)(3)(B). Pub. L. 111–152, §1401(a)(1), designated existing provisions as cl. (i), inserted heading, substituted "Except as provided in clause (ii), the annual" for "The annual", and added cl. (ii).

Subsec. (b)(3)(C). Pub. L. 111–152, §1401(a)(2)(A), struck out introductory provisions which read: "Except as provided in subparagraph (D)—".

Subsec. (b)(3)(C)(i). Pub. L. 111–152, §1401(a)(2)(B)(i), substituted "2018" for "2013" in heading and

introductory provisions.

Subsec. (b)(3)(C)(i)(I). Pub. L. 111–152, §1401(a)(2)(B)(ii), substituted "$10,200 multiplied by the health cost adjustment percentage (determined by only taking into account self-only coverage)" for "$8,500".

Subsec. (b)(3)(C)(i)(II). Pub. L. 111–152, §1401(a)(2)(B)(iii), substituted "$27,500 multiplied by the health cost adjustment percentage (determined by only taking into account coverage other than self-only coverage)" for "$23,000".

Subsec. (b)(3)(C)(ii), (iii). Pub. L. 111–152, §1401(a)(2)(C), added cls. (ii) and (iii). Former cls. (ii) and (iii) redesignated (iv) and (v), respectively.

Subsec. (b)(3)(C)(iv). Pub. L. 111–152, §1401(a)(2)(D), inserted "covered by the plan" after "whose employees" in introductory provisions, added subcls. (I) and (II), and struck out former subcls. (I) and (II) which read as follows:

"(I) the dollar amount in clause (i)(I) (determined after the application of subparagraph (D)) shall be increased by $1,350, and

"(II) the dollar amount in clause (i)(II) (determined after the application of subparagraph (D)) shall be increased by $3,000."

Pub. L. 111–152, §1401(a)(2)(C), redesignated cl. (ii) as (iv).

Subsec. (b)(3)(C)(v). Pub. L. 111–152, §1401(a)(2)(E)(i), (ii), substituted "2018" for "2013" and "clauses (i) (after the application of clause (ii)) and (iv)" for "clauses (i) and (ii)" in introductory provisions.

Pub. L. 111–152, §1401(a)(2)(C), redesignated cl. (iii) as (v).

Subsec. (b)(3)(C)(v)(II). Pub. L. 111–152, §1401(a)(2)(E)(iii), inserted "in the case of determinations for calendar years beginning before 2020" after "1 percentage point".

Subsec. (b)(3)(D). Pub. L. 111–152, §1401(a)(3), struck out subpar. (D) which provided transition rule for States with highest coverage costs.

Subsec. (d)(1)(B)(i). Pub. L. 111–148, §10901(b), substituted "section 9832(c)(1) (other than subparagraph (G) thereof)" for "section 9832(c)(1)(A)".

Subsec. (d)(1)(B)(ii), (iii). Pub. L. 111–152, §1401(a)(4), added cl. (ii) and redesignated former cl. (ii) as (iii).

Subsec. (d)(3). Pub. L. 111–152, §1401(a)(5), added par. (3).

Subsec. (f)(3). Pub. L. 111–148, §10901(a), inserted "individuals whose primary work is longshore work (as defined in section 258(b) of the Immigration and Nationality Act (8 U.S.C. 1288(b)), determined without regard to paragraph (2) thereof)," before "and individuals engaged in the construction, mining".

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–148, title X, §10901(c), Mar. 23, 2010, 124 Stat. 1016, as amended by Pub. L. 111–152, title I, §1401(b)(2), Mar. 30, 2010, 124 Stat. 1060, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2017."

EFFECTIVE DATE

Pub. L. 111–148, title IX, §9001(c), Mar. 23, 2010, 124 Stat. 853, as amended by Pub. L. 111–152, title I, §1401(b)(1), Mar. 30, 2010, 124 Stat. 1060, provided that: "The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 2017."

[1] So in original. The comma probably should be a period.

CHAPTER 44—QUALIFIED INVESTMENT ENTITIES

Sec.
4981. Excise tax on undistributed income of real estate investment trusts.
4982. Excise tax on undistributed income of regulated investment companies.

AMENDMENTS

1986—Pub. L. 99–514, title VI, §651(c), Oct. 22, 1986, 100 Stat. 2297, substituted: "QUALIFIED INVESTMENT ENTITIES" for "REAL ESTATE INVESTMENT TRUSTS" as chapter heading, substituted "Excise tax on undistributed income of real estate investment trusts" for "Excise tax based on certain real estate investment trust taxable income not distributed during the taxable year" in item 4981, and added item 4982.

1976—Pub. L. 94–455, title XVI, §1605(a), Oct. 4, 1976, 90 Stat. 1754, added chapter heading and section

analysis.

§4981. Excise tax on undistributed income of real estate investment trusts

(a) Imposition of tax

There is hereby imposed a tax on every real estate investment trust for each calendar year equal to 4 percent of the excess (if any) of—

(1) the required distribution for such calendar year, over

(2) the distributed amount for such calendar year.

(b) Required distribution

For purposes of this section—

(1) In general

The term "required distribution" means, with respect to any calendar year, the sum of—

(A) 85 percent of the real estate investment trust's ordinary income for such calendar year, plus

(B) 95 percent of the real estate investment trust's capital gain net income for such calendar year.

(2) Increase by prior year shortfall

The amount determined under paragraph (1) for any calendar year shall be increased by the excess (if any) of—

(A) the grossed up required distribution for the preceding calendar year, over

(B) the distributed amount for such preceding calendar year.

(3) Grossed up required distribution

The grossed up required distribution for any calendar year is the required distribution for such year determined—

(A) with the application of paragraph (2) to such taxable year, and

(B) by substituting "100 percent" for each percentage set forth in paragraph (1).

(c) Distributed amount

For purposes of this section—

(1) In general

The term "distributed amount" means, with respect to any calendar year, the sum of—

(A) the deduction for dividends paid (as defined in section 561) during such calendar year (but computed without regard to that portion of such deduction which is attributable to the amount excluded under section 857(b)(2)(D)), and

(B) any amount on which tax is imposed under subsection (b)(1) or (b)(3)(A) of section 857 for any taxable year ending in such calendar year.

(2) Increase by prior year overdistribution

The amount determined under paragraph (1) for any calendar year shall be increased by the excess (if any) of—

(A) the distributed amount for the preceding calendar year (determined with the application of this paragraph to such preceding calendar year), over

(B) the grossed up required distribution for such preceding calendar year.

(3) Determination of dividends paid

The amount of the dividends paid during any calendar year shall be determined without regard to the provisions of section 858.

(d) Time for payment of tax

The tax imposed by this section for any calendar year shall be paid on or before March 15 of the

following calendar year.

(e) Definitions and special rules

For purposes of this section—

(1) Ordinary income

The term "ordinary income" means the real estate investment trust taxable income (as defined in section 857(b)(2)) determined—

(A) without regard to subparagraph (B) of section 857(b)(2),

(B) by not taking into account any gain or loss from the sale or exchange of a capital asset, and

(C) by treating the calendar year as the trust's taxable year.

(2) Capital gain net income

(A) In general

The term "capital gain net income" has the meaning given such term by section 1222(9) (determined by treating the calendar year as the trust's taxable year).

(B) Reduction for net ordinary loss

The amount determined under subparagraph (A) shall be reduced by the amount of the trust's net ordinary loss for the taxable year.

(C) Net ordinary loss

For purposes of this paragraph, the net ordinary loss for the calendar year is the amount which would be net operating loss of the trust for the calendar year if the amount of such loss were determined in the same manner as ordinary income is determined under paragraph (1).

(3) Treatment of deficiency distributions

In the case of any deficiency dividend (as defined in section 860(f))—

(A) such dividend shall be taken into account when paid without regard to section 860, and

(B) any income giving rise to the adjustment shall be treated as arising when the dividend is paid.

(Added Pub. L. 94–455, title XVI, §1605(a), Oct. 4, 1976, 90 Stat. 1754; amended Pub. L. 99–514, title VI, §668(a), Oct. 22, 1986, 100 Stat. 2306; Pub. L. 100–647, title I, §1006(s)(1), (3), Nov. 10, 1988, 102 Stat. 3418.)

AMENDMENTS

1988—Subsec. (c)(1)(A). Pub. L. 100–647, §1006(s)(3), inserted "(but computed without regard to that portion of such deduction which is attributable to the amount excluded under section 857(b)(2)(D)" after "such calendar year".

Subsec. (e)(2). Pub. L. 100–647, §1006(s)(1), amended par. (2) generally, designating existing provisions as subpar. (A) and adding subpars. (B) and (C).

1986—Pub. L. 99–514 substituted "Excise tax on undistributed income of real estate investment trusts" for "Excise tax based on certain real estate investment trust taxable income not distributed during the taxable year" as section catchline and amended text generally. Prior to amendment text read as follows: "Effective with respect to taxable years beginning after December 31, 1979, there is hereby imposed on each real estate investment trust for the taxable year a tax equal to 3 percent of the amount (if any) by which 75 percent of the real estate investment trust taxable income (as defined in section 857(b)(2), but determined without regard to section 857(b)(2)(B), and by excluding any net capital gain for the taxable year) exceeds the amount of the dividends paid deduction (as defined in section 561, but computed without regard to capital gains dividends as defined in section 857(b)(3)(C) and without regard to any dividend paid after the close of the taxable year) for the taxable year. For purposes of the preceding sentence, the determination of the real estate investment trust taxable income shall be made by taking into account only the amount and character of the items of income and deduction as reported by such trust in its return for the taxable year."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of

the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to calendar years beginning after Dec. 31, 1986, see section 669(b) of Pub. L. 99–514, set out as a note under section 856 of this title.

§4982. Excise tax on undistributed income of regulated investment companies

(a) Imposition of tax

There is hereby imposed a tax on every regulated investment company for each calendar year equal to 4 percent of the excess (if any) of—

(1) the required distribution for such calendar year, over

(2) the distributed amount for such calendar year.

(b) Required distribution

For purposes of this section—

(1) In general

The term "required distribution" means, with respect to any calendar year, the sum of—

(A) 98 percent of the regulated investment company's ordinary income for such calendar year, plus

(B) 98.2 percent of the regulated investment company's capital gain net income for the 1-year period ending on October 31 of such calendar year.

(2) Increase by prior year shortfall

The amount determined under paragraph (1) for any calendar year shall be increased by the excess (if any) of—

(A) the grossed up required distribution for the preceding calendar year, over

(B) the distributed amount for such preceding calendar year.

(3) Grossed up required distribution

The grossed up required distribution for any calendar year is the required distribution for such year determined—

(A) with the application of paragraph (2) to such taxable year, and

(B) by substituting "100 percent" for each percentage set forth in paragraph (1).

(c) Distributed amount

For purposes of this section—

(1) In general

The term "distributed amount" means, with respect to any calendar year, the sum of—

(A) the deduction for dividends paid (as defined in section 561) during such calendar year, and

(B) any amount on which tax is imposed under subsection (b)(1) or (b)(3)(A) of section 852 for any taxable year ending in such calendar year.

(2) Increase by prior year overdistribution

The amount determined under paragraph (1) for any calendar year shall be increased by the excess (if any) of—

(A) the distributed amount for the preceding calendar year (determined with the application of this paragraph to such preceding calendar year), over

(B) the grossed up required distribution for such preceding calendar year.

(3) Determination of dividends paid

The amount of the dividends paid during any calendar year shall be determined without regard

to—

(A) the provisions of section 855, and

(B) any exempt-interest dividend as defined in section 852(b)(5).

(4) Special rule for estimated tax payments

(A) In general

In the case of a regulated investment company which elects the application of this paragraph for any calendar year—

(i) the distributed amount with respect to such company for such calendar year shall be increased by the amount on which qualified estimated tax payments are made by such company during such calendar year, and

(ii) the distributed amount with respect to such company for the following calendar year shall be reduced by the amount of such increase.

(B) Qualified estimated tax payments

For purposes of this paragraph, the term "qualified estimated tax payments" means, with respect to any calendar year, payments of estimated tax of a tax described in paragraph (1)(B) for any taxable year which begins (but does not end) in such calendar year.

(d) Time for payment of tax

The tax imposed by this section for any calendar year shall be paid on or before March 15 of the following calendar year.

(e) Definitions and special rules

For purposes of this section—

(1) Ordinary income

The term "ordinary income" means the investment company taxable income (as defined in section 852(b)(2)) determined—

(A) without regard to subparagraphs (A) and (D) of section 852(b)(2),

(B) by not taking into account any gain or loss from the sale or exchange of a capital asset, and

(C) by treating the calendar year as the company's taxable year.

(2) Capital gain net income

(A) In general

Except as provided in subparagraph (B), the term "capital gain net income" has the meaning given such term by section 1222(9) (determined by treating the 1-year period ending on October 31 of any calendar year as the company's taxable year).

(B) Reduction by net ordinary loss for calendar year

The amount determined under subparagraph (A) shall be reduced (but not below the net capital gain) by the amount of the company's net ordinary loss for the calendar year.

(C) Definitions

For purposes of this paragraph—

(i) Net capital gain

The term "net capital gain" has the meaning given such term by section 1222(11) (determined by treating the 1-year period ending on October 31 of the calendar year as the company's taxable year).

(ii) Net ordinary loss

The net ordinary loss for the calendar year is the amount which would be the net operating loss of the company for the calendar year if the amount of such loss were determined in the same manner as ordinary income is determined under paragraph (1).

(3) Treatment of deficiency distributions

In the case of any deficiency dividend (as defined in section 860(f))—

(A) such dividend shall be taken into account when paid without regard to section 860, and

(B) any income giving rise to the adjustment shall be treated as arising when the dividend is paid.

(4) Election to use taxable year in certain cases

(A) In general

If—

(i) the taxable year of the regulated investment company ends with the month of November or December, and

(ii) such company makes an election under this paragraph,

subsection (b)(1)(B) and paragraph (2) of this subsection shall be applied by taking into account the company's taxable year in lieu of the 1-year period ending on October 31 of the calendar year.

(B) Election revocable only with consent

An election under this paragraph, once made, may be revoked only with the consent of the Secretary.

(5) Treatment of specified gains and losses after October 31 of calendar year

(A) In general

Any specified gain or specified loss which (but for this paragraph) would be properly taken into account for the portion of the calendar year after October 31 shall be treated as arising on January 1 of the following calendar year.

(B) Specified gains and losses

For purposes of this paragraph—

(i) Specified gain

The term "specified gain" means ordinary gain from the sale, exchange, or other disposition of property (including the termination of a position with respect to such property). Such term shall include any foreign currency gain attributable to a section 988 transaction (within the meaning of section 988) and any amount includible in gross income under section 1296(a)(1).

(ii) Specified loss

The term "specified loss" means ordinary loss from the sale, exchange, or other disposition of property (including the termination of a position with respect to such property). Such term shall include any foreign currency loss attributable to a section 988 transaction (within the meaning of section 988) and any amount allowable as a deduction under section 1296(a)(2).

(C) Special rule for companies electing to use the taxable year

In the case of any company making an election under paragraph (4), subparagraph (A) shall be applied by substituting the last day of the company's taxable year for October 31.

(6) Treatment of mark to market gain

(A) In general

For purposes of determining a regulated investment company's ordinary income, notwithstanding paragraph (1)(C), each specified mark to market provision shall be applied as if such company's taxable year ended on October 31. In the case of a company making an election under paragraph (4), the preceding sentence shall be applied by substituting the last day of the company's taxable year for October 31.

(B) Specified mark to market provision

For purposes of this paragraph, the term "specified mark to market provision" means sections 1256 and 1296 and any other provision of this title (or regulations thereunder) which treats property as disposed of on the last day of the taxable year.

(7) Elective deferral of certain ordinary losses

Except as provided in regulations prescribed by the Secretary, in the case of a regulated investment company which has a taxable year other than the calendar year—

(A) such company may elect to determine its ordinary income for the calendar year without regard to any net ordinary loss (determined without regard to specified gains and losses taken into account under paragraph (5)) which is attributable to the portion of such calendar year which is after the beginning of the taxable year which begins in such calendar year, and

(B) any amount of net ordinary loss not taken into account for a calendar year by reason of subparagraph (A) shall be treated as arising on the 1st day of the following calendar year.

(f) Exception for certain regulated investment companies

This section shall not apply to any regulated investment company for any calendar year if at all times during such calendar year each shareholder in such company was—

(1) a trust described in section 401(a) and exempt from tax under section 501(a),

(2) a segregated asset account of a life insurance company held in connection with variable contracts (as defined in section 817(d)) [1]

(3) any other tax-exempt entity whose ownership of beneficial interests in the company would not preclude the application of section 817(h)(4), or

(4) another regulated investment company described in this subsection.

For purposes of the preceding sentence, any shares attributable to an investment in the regulated investment company (not exceeding $250,000) made in connection with the organization of such company shall not be taken into account.

(Added Pub. L. 99–514, title VI, §651(a), Oct. 22, 1986, 100 Stat. 2294; amended Pub. L. 100–203, title X, §10104(b)(1), Dec. 22, 1987, 101 Stat. 1330–387; Pub. L. 100–647, title I, §1006(l)(2), (5), (6), Nov. 10, 1988, 102 Stat. 3413, 3414; Pub. L. 101–239, title VII, §7204(a)(1), Dec. 19, 1989, 103 Stat. 2334; Pub. L. 105–34, title XI, §1122(c)(1), Aug. 5, 1997, 111 Stat. 976; Pub. L. 111–325, title IV, §§401(a), 402(a), 403(a), 404(a), Dec. 22, 2010, 124 Stat. 3552–3554.)

AMENDMENTS

2010—Subsec. (b)(1)(B). Pub. L. 111–325, §404(a), substituted "98.2 percent" for "98 percent".

Subsec. (c)(4). Pub. L. 111–325, §403(a), added par. (4).

Subsec. (e)(5) to (7). Pub. L. 111–325, §402(a), added pars. (5) to (7) and struck out former pars. (5) and (6) which related to treatment of foreign currency gains and losses after October 31 of calendar year and treatment of gain recognized under section 1296, respectively.

Subsec. (f). Pub. L. 111–325, §401(a)(1), struck out "either" before dash at end of introductory provisions.

Subsec. (f)(3), (4). Pub. L. 111–325, §401(a)(2)–(4), added pars. (3) and (4).

1997—Subsec. (e)(6). Pub. L. 105–34 added par. (6).

1989—Subsec. (b)(1)(A). Pub. L. 101–239 substituted "98 percent" for "97 percent".

1988—Subsec. (e)(2). Pub. L. 100–647, §1006(l)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "The term 'capital gain net income' has the meaning given to such term by section 1222(9) (determined by treating the 1-year period ending on October 31 of any calendar year as the company's taxable year)."

Subsec. (e)(5). Pub. L. 100–647, §1006(l)(5), added par. (5).

Subsec. (f). Pub. L. 100–647, §1006(l)(6), added subsec. (f).

1987—Subsec. (b)(1)(B). Pub. L. 100–203 substituted "98 percent" for "90 percent".

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–325, title IV, §401(b), Dec. 22, 2010, 124 Stat. 3552, provided that: "The amendment made by this section [amending this section] shall apply to calendar years beginning after the date of the enactment of this Act [Dec. 22, 2010]."

Pub. L. 111–325, title IV, §402(b), Dec. 22, 2010, 124 Stat. 3553, provided that: "The amendments made

by this section [amending this section] shall apply to calendar years beginning after the date of the enactment of this Act [Dec. 22, 2010]."

Pub. L. 111–325, title IV, §403(b), Dec. 22, 2010, 124 Stat. 3554, provided that: "The amendment made by this section [amending this section] shall apply to calendar years beginning after the date of the enactment of this Act [Dec. 22, 2010]."

Pub. L. 111–325, title IV, §404(b), Dec. 22, 2010, 124 Stat. 3554, provided that: "The amendments made by this section [amending this section] shall apply to calendar years beginning after the date of the enactment of this Act [Dec. 22, 2010]."

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to taxable years of United States persons beginning after Dec. 31, 1997, and to taxable years of foreign corporations ending with or within such taxable years of United States persons, see section 1124 of Pub. L. 105–34, set out as a note under section 532 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7204(a)(2), Dec. 19, 1989, 103 Stat. 2334, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to calendar years ending after July 10, 1989."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title X, §10104(b)(2), Dec. 22, 1987, 101 Stat. 1330–387, provided that: "The amendment made by paragraph (1) [amending this section] shall take effect as if included in the amendments made by section 651 of the Tax Reform Act of 1986 [section 651 of Pub. L. 99–514, see Effective Date note below]."

EFFECTIVE DATE

Pub. L. 99–514, title VI, §651(d), Oct. 22, 1986, 100 Stat. 2297, provided that: "The amendments made by this section [enacting this section and amending sections 852 and 855 of this title] shall apply to calendar years beginning after December 31, 1986."

[1] *So in original. Probably should be followed by a comma.*

CHAPTER 45—PROVISIONS RELATING TO EXPATRIATED ENTITIES

Sec.
4985. Stock compensation of insiders in expatriated corporations.

PRIOR PROVISIONS

A prior chapter 45, consisting of sections 4986 to 4998, related to windfall profit tax on domestic crude oil, prior to repeal by Pub. L. 100–418, title I, §1941(a), (c), Aug. 23, 1988, 102 Stat. 1322, 1324, applicable to crude oil removed from the premises on or after Aug. 23, 1988.

§4985. Stock compensation of insiders in expatriated corporations

(a) Imposition of tax

In the case of an individual who is a disqualified individual with respect to any expatriated corporation, there is hereby imposed on such person a tax equal to—

(1) the rate of tax specified in section 1(h)(1)(C), multiplied by

(2) the value (determined under subsection (b)) of the specified stock compensation held (directly or indirectly) by or for the benefit of such individual or a member of such individual's family (as defined in section 267) at any time during the 12-month period beginning on the date which is 6 months before the expatriation date.

(b) Value

For purposes of subsection (a)—

(1) In general

The value of specified stock compensation shall be—

(A) in the case of a stock option (or other similar right) or a stock appreciation right, the fair value of such option or right, and

(B) in any other case, the fair market value of such compensation.

(2) Date for determining value

The determination of value shall be made—

(A) in the case of specified stock compensation held on the expatriation date, on such date,

(B) in the case of such compensation which is canceled during the 6 months before the expatriation date, on the day before such cancellation, and

(C) in the case of such compensation which is granted after the expatriation date, on the date such compensation is granted.

(c) Tax to apply only if shareholder gain recognized

Subsection (a) shall apply to any disqualified individual with respect to an expatriated corporation only if gain (if any) on any stock in such corporation is recognized in whole or part by any shareholder by reason of the acquisition referred to in section 7874(a)(2)(B)(i) with respect to such corporation.

(d) Exception where gain recognized on compensation

Subsection (a) shall not apply to—

(1) any stock option which is exercised on the expatriation date or during the 6-month period before such date and to the stock acquired in such exercise, if income is recognized under section 83 on or before the expatriation date with respect to the stock acquired pursuant to such exercise, and

(2) any other specified stock compensation which is exercised, sold, exchanged, distributed, cashed-out, or otherwise paid during such period in a transaction in which income, gain, or loss is recognized in full.

(e) Definitions

For purposes of this section—

(1) Disqualified individual

The term "disqualified individual" means, with respect to a corporation, any individual who, at any time during the 12-month period beginning on the date which is 6 months before the expatriation date—

(A) is subject to the requirements of section 16(a) of the Securities Exchange Act of 1934 with respect to such corporation or any member of the expanded affiliated group which includes such corporation, or

(B) would be subject to such requirements if such corporation or member were an issuer of equity securities referred to in such section.

(2) Expatriated corporation; expatriation date

(A) Expatriated corporation

The term "expatriated corporation" means any corporation which is an expatriated entity (as defined in section 7874(a)(2)). Such term includes any predecessor or successor of such a corporation.

(B) Expatriation date

The term "expatriation date" means, with respect to a corporation, the date on which the corporation first becomes an expatriated corporation.

(3) Specified stock compensation

(A) In general

The term "specified stock compensation" means payment (or right to payment) granted by the expatriated corporation (or by any member of the expanded affiliated group which includes such corporation) to any person in connection with the performance of services by a disqualified individual for such corporation or member if the value of such payment or right is based on (or determined by reference to) the value (or change in value) of stock in such corporation (or any such member).

(B) Exceptions

Such term shall not include—

(i) any option to which part II of subchapter D of chapter 1 applies, or

(ii) any payment or right to payment from a plan referred to in section 280G(b)(6).

(4) Expanded affiliated group

The term "expanded affiliated group" means an affiliated group (as defined in section 1504(a) without regard to section 1504(b)(3)); except that section 1504(a) shall be applied by substituting "more than 50 percent" for "at least 80 percent" each place it appears.

(f) Special rules

For purposes of this section—

(1) Cancellation of restriction

The cancellation of a restriction which by its terms will never lapse shall be treated as a grant.

(2) Payment or reimbursement of tax by corporation treated as specified stock compensation

Any payment of the tax imposed by this section directly or indirectly by the expatriated corporation or by any member of the expanded affiliated group which includes such corporation—

(A) shall be treated as specified stock compensation, and

(B) shall not be allowed as a deduction under any provision of chapter 1.

(3) Certain restrictions ignored

Whether there is specified stock compensation, and the value thereof, shall be determined without regard to any restriction other than a restriction which by its terms will never lapse.

(4) Property transfers

Any transfer of property shall be treated as a payment and any right to a transfer of property shall be treated as a right to a payment.

(5) Other administrative provisions

For purposes of subtitle F, any tax imposed by this section shall be treated as a tax imposed by subtitle A.

(g) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.

(Added Pub. L. 108–357, title VIII, §802(a), Oct. 22, 2004, 118 Stat. 1566.)

REFERENCES IN TEXT

Section 16(a) of the Securities Exchange Act of 1934, referred to in subsec. (e)(1)(A), is classified to section 78p(a) of Title 15, Commerce and Trade.

PRIOR PROVISIONS

Prior sections 4986 to 4998 were repealed by Pub. L. 100–418, title I, §1941(a), (c), Aug. 23, 1988, 102 Stat. 1322, 1324, applicable to crude oil removed from the premises on or after Aug. 23, 1988.

Section 4986, added Pub. L. 96–223, title I, §101(a)(1), Apr. 2, 1980, 94 Stat. 230, related to imposition of windfall profit tax on domestic crude oil.

Section 4987, added Pub. L. 96–223, title I, §101(a)(1), Apr. 2, 1980, 94 Stat. 230; amended Pub. L. 97–34, title VI, §602(a), Aug. 13, 1981, 95 Stat. 337; Pub. L. 98–369, div. A, title I, §25(a), July 18, 1984, 98 Stat. 506, related to amount of windfall profit tax on domestic crude oil.

Section 4988, added Pub. L. 96–223, title I, §101(a)(1), Apr. 2, 1980, 94 Stat. 231; amended Pub. L. 97–448, title II, §201(a), (h)(1)(D), Jan. 12, 1983, 96 Stat. 2391, 2394; Pub. L. 99–514, title XIII, §1301(j)(4), Oct. 22, 1986, 100 Stat. 2657, related to windfall profit and removal price.

Section 4989, added Pub. L. 96–223, title I, §101(a)(1), Apr. 2, 1980, 94 Stat. 233; amended Pub. L. 97–448, title II, §201(b), Jan. 12, 1983, 96 Stat. 2392, related to adjusted base price for purposes of windfall profit tax on domestic crude oil.

Section 4990, added Pub. L. 96–223, title I, §101(a)(1), Apr. 2, 1980, 94 Stat. 234, related to phaseout of windfall profit tax on domestic crude oil.

Section 4991, added Pub. L. 96–223, title I, §101(a)(1), Apr. 2, 1980, 94 Stat. 235; amended Pub. L. 97–34, title VI, §§601(b)(1), 603(a), Aug. 13, 1981, 95 Stat. 336, 338; Pub. L. 97–448, title II, §201(c), Jan. 12, 1983, 96 Stat. 2392; Pub. L. 99–514, title XVIII, §1879(h)(1), Oct. 22, 1986, 100 Stat. 2907, related to taxable crude oil and categories of oil.

Section 4992, added Pub. L. 96–223, title I, §101(a)(1), Apr. 2, 1980, 94 Stat. 236; amended Pub. L. 97–34, title VI, §603(c), Aug. 13, 1981, 95 Stat. 338; Pub. L. 97–354, §3(b)(2), Oct. 19, 1982, 96 Stat. 1688; Pub. L. 97–448, title II, §201(d), Jan. 12, 1983, 96 Stat. 2392, related to independent producer oil.

Section 4993, added Pub. L. 96–223, title I, §101(a)(1), Apr. 2, 1980, 94 Stat. 239; amended Pub. L. 97–448, title II, §201(e), Jan. 12, 1983, 96 Stat. 2392, related to incremental tertiary oil.

Section 4994, added Pub. L. 96–223, title I, §101(a)(1), Apr. 2, 1980, 94 Stat. 241; amended Pub. L. 97–34, title VI, §§601(b)(2), 603(b), 604(a)–(c), Aug. 13, 1981, 95 Stat. 337–339; Pub. L. 97–248, title II, §291, Sept. 3, 1982, 96 Stat. 572; Pub. L. 97–448, title I, §106(a)(2), (4)(B), (b), title II, §201(f), Jan. 12, 1983, 96 Stat. 2388, 2390, 2392, related to definitions and special rules with respect to exempt oil.

Section 4995, added Pub. L. 96–223, title I, §101(a)(1), Apr. 2, 1980, 94 Stat. 244; amended Pub. L. 97–34, title VI, §601(b)(3), Aug. 13, 1981, 95 Stat. 337; Pub. L. 97–448, title II, §201(g), Jan. 12, 1983, 96 Stat. 2393, related to withholding and depository requirements bearing on the windfall profit tax.

Section 4996, added Pub. L. 96–223, title I, §101(a)(1), Apr. 2, 1980, 94 Stat. 247; amended Pub. L. 97–248, title II, §284(a), Sept. 3, 1982, 96 Stat. 569; Pub. L. 97–354, §3(b)(1), Oct. 19, 1982, 96 Stat. 1688; Pub. L. 97–448, title II, §201(h)(1)(A)–(C), (2), Jan. 12, 1983, 96 Stat. 2393–2395, provided for other definitions and special rules bearing on the windfall profit tax.

Section 4997, added Pub. L. 96–223, title I, §101(a)(1), Apr. 2, 1980, 94 Stat. 249; amended Pub. L. 97–448, title II, §201(i)(1), Jan. 12, 1983, 96 Stat. 2395, related to records and information, and regulations, bearing on the windfall profit.

Section 4998, added Pub. L. 96–223, title I, §101(a)(1), Apr. 2, 1980, 94 Stat. 250, related to cross references.

EFFECTIVE DATE

Pub. L. 108–357, title VIII, §802(d), Oct. 22, 2004, 118 Stat. 1568, provided that: "The amendments made by this section [enacting this chapter and amending sections 162, 275, and 3121 of this title] shall take effect on March 4, 2003; except that periods before such date shall not be taken into account in applying the periods in subsections (a) and (e)(1) of section 4985 of the Internal Revenue Code of 1986, as added by this section."

CHAPTER 46—GOLDEN PARACHUTE PAYMENTS

Sec.
4999. Golden parachute payments.

§4999. Golden parachute payments

(a) Imposition of tax

There is hereby imposed on any person who receives an excess parachute payment a tax equal to 20 percent of the amount of such payment.

(b) Excess parachute payment defined

For purposes of this section, the term "excess parachute payment" has the meaning given to such

term by section 280G(b).

(c) Administrative provisions

(1) Withholding

In the case of any excess parachute payment which is wages (within the meaning of section 3401) the amount deducted and withheld under section 3402 shall be increased by the amount of the tax imposed by this section on such payment.

(2) Other administrative provisions

For purposes of subtitle F, any tax imposed by this section shall be treated as a tax imposed by subtitle A.

(Added Pub. L. 98–369, div. A, title I, §67(b)(1), July 18, 1984, 98 Stat. 587.)

EFFECTIVE DATE

Section applicable to payments under agreements entered into or renewed after June 14, 1984, in taxable years ending after such date, with contracts entered into before June 15, 1984, which are amended after June 14, 1984, in any significant relevant aspect to be treated as a contract entered into after June 14, 1984, see section 67(e) of Pub. L. 98–369, set out as a note under section 280G of this title.

CHAPTER 47—CERTAIN GROUP HEALTH PLANS

Sec.
5000. Certain group health plans.

AMENDMENTS

1989—Pub. L. 101–239, title VI, §6202(b)(4)(A), Dec. 19, 1989, 103 Stat. 2233, struck out "LARGE" after "CERTAIN" in chapter heading and "large" after "Certain" in item 5000.

§5000. Certain group health plans

(a) Imposition of tax

There is hereby imposed on any employer (including a self-employed person) or employee organization that contributes to a nonconforming group health plan a tax equal to 25 percent of the employer's or employee organization's expenses incurred during the calendar year for each group health plan to which the employer or employee organization contributes.

(b) Group health plan and large group health plan

For purposes of this section—

(1) Group health plan

The term "group health plan" means a plan (including a self-insured plan) of, or contributed to by, an employer (including a self-employed person) or employee organization to provide health care (directly or otherwise) to the employees, former employees, the employer, others associated or formerly associated with the employer in a business relationship, or their families.

(2) Large group health plan

The term "large group health plan" means a plan of, or contributed to by, an employer or employee organization (including a self-insured plan) to provide health care (directly or otherwise) to the employees, former employees, the employer, others associated or formerly associated with the employer in a business relationship, or their families, that covers employees of at least one employer that normally employed at least 100 employees on a typical business day during the previous calendar year. For purposes of the preceding sentence—

(A) all employers treated as a single employer under subsection (a) or (b) of section 52 shall be treated as a single employer,

(B) all employees of the members of an affiliated service group (as defined in section 414(m)) shall be treated as employed by a single employer, and

(C) leased employees (as defined in section 414(n)(2)) shall be treated as employees of the person for whom they perform services to the extent they are so treated under section 414(n).

(c) Nonconforming group health plan

For purposes of this section, the term "nonconforming group health plan" means a group health plan or large group health plan that at any time during a calendar year does not comply with the requirements of subparagraphs (A) and (C) or subparagraph (B), respectively, of paragraph (1), or with the requirements of paragraph (2), of section 1862(b) of the Social Security Act.

(d) Government entities

For purposes of this section, the term "employer" does not include a Federal or other governmental entity.

(Added Pub. L. 99–509, title IX, §9319(d)(1), Oct. 21, 1986, 100 Stat. 2012; amended Pub. L. 101–239, title VI, §6202(b)(2), Dec. 19, 1989, 103 Stat. 2233; Pub. L. 103–66, title XIII, §13561(d)(2), (e)(2)(A), Aug. 10, 1993, 107 Stat. 594, 595.)

REFERENCES IN TEXT

Section 1862(b) of the Social Security Act, referred to in subsec. (c), is classified to section 1395y(b) of Title 42, The Public Health and Welfare.

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–66, §13561(e)(2)(A)(i), which directed insertion of "(including a self-employed person)" after "employer", was executed by making the insertion after "employer" the first time it appeared, to reflect the probable intent of Congress.

Subsec. (b)(1). Pub. L. 103–66, §13561(e)(2)(A)(ii), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: "The term 'group health plan' means any plan of, or contributed to by, an employer (including a self-insured plan) to provide health care (directly or otherwise) to the employer's employees, former employees, or the families of such employees or former employees."

Subsec. (b)(2). Pub. L. 103–66, §13561(d)(2), inserted at end "For purposes of the preceding sentence—" and added subpars. (A) to (C).

Subsec. (c). Pub. L. 103–66, §13561(e)(2)(A)(iii), substituted "of paragraph (1), or with the requirements of paragraph (2), of section 1862(b)" for "of section 1862(b)(1)".

1989—Pub. L. 101–239, §6202(b)(2)(A), struck out "large" after "Certain" in section catchline.

Subsec. (a). Pub. L. 101–239, §6202(b)(2)(B), substituted "group health plan" for "large group health plan" in two places.

Subsec. (b). Pub. L. 101–239, §6202(b)(2)(C), substituted "Group health plan and large" for "Large" in heading and amended text generally. Prior to amendment, text read as follows: "For purposes of this section, the term 'large group health plan' means a plan of, or contributed to by, an employer or employee organization (including a self-insured plan) to provide health care (directly or otherwise) to the employees, former employees, the employer, others associated or formerly associated with the employer in a business relationship, or their families, that covers employees of at least one employer that normally employed at least 100 employees on a typical business day during the previous calendar year."

Subsec. (c). Pub. L. 101–239, §6202(b)(2)(C), substituted "group" for "large group" in heading and amended text generally. Prior to amendment, text read as follows: "For purposes of this section, the term 'nonconforming large group health plan' means a large group health plan that at any time during a calendar year does not comply with the requirements of section 1862(b)(4)(A)(i) of the Social Security Act."

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13561(d)(3), Aug. 10, 1993, 107 Stat. 594, provided that: "The amendments made by this subsection [amending this section and section 1395y of Title 42, The Public Health and Welfare] shall take effect 90 days after the date of the enactment of this Act [Aug. 10, 1993]."

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable to items and services furnished after Dec. 19, 1989, see section 6202(b)(5) of Pub. L. 101–239, set out as a note under section 162 of this title.

EFFECTIVE DATE

Section applicable to items and services furnished on or after Jan. 1, 1987, see section 9319(f) of Pub. L. 99–509, set out as an Effective Date of 1986 Amendment note under section 1395y of Title 42, The Public Health and Welfare.

CHAPTER 48—MAINTENANCE OF MINIMUM ESSENTIAL COVERAGE

Sec.
5000A. Requirement to maintain minimum essential coverage.

§5000A. Requirement to maintain minimum essential coverage

(a) Requirement to maintain minimum essential coverage

An applicable individual shall for each month beginning after 2013 ensure that the individual, and any dependent of the individual who is an applicable individual, is covered under minimum essential coverage for such month.

(b) Shared responsibility payment

(1) In general

If a taxpayer who is an applicable individual, or an applicable individual for whom the taxpayer is liable under paragraph (3), fails to meet the requirement of subsection (a) for 1 or more months, then, except as provided in subsection (e), there is hereby imposed on the taxpayer a penalty with respect to such failures in the amount determined under subsection (c).

(2) Inclusion with return

Any penalty imposed by this section with respect to any month shall be included with a taxpayer's return under chapter 1 for the taxable year which includes such month.

(3) Payment of penalty

If an individual with respect to whom a penalty is imposed by this section for any month—

(A) is a dependent (as defined in section 152) of another taxpayer for the other taxpayer's taxable year including such month, such other taxpayer shall be liable for such penalty, or

(B) files a joint return for the taxable year including such month, such individual and the spouse of such individual shall be jointly liable for such penalty.

(c) Amount of penalty

(1) In general

The amount of the penalty imposed by this section on any taxpayer for any taxable year with respect to failures described in subsection (b)(1) shall be equal to the lesser of—

(A) the sum of the monthly penalty amounts determined under paragraph (2) for months in the taxable year during which 1 or more such failures occurred, or

(B) an amount equal to the national average premium for qualified health plans which have a bronze level of coverage, provide coverage for the applicable family size involved, and are offered through Exchanges for plan years beginning in the calendar year with or within which the taxable year ends.

(2) Monthly penalty amounts

For purposes of paragraph (1)(A), the monthly penalty amount with respect to any taxpayer for any month during which any failure described in subsection (b)(1) occurred is an amount equal to 1/12 of the greater of the following amounts:

(A) Flat dollar amount

An amount equal to the lesser of—

(i) the sum of the applicable dollar amounts for all individuals with respect to whom such

failure occurred during such month, or

(ii) 300 percent of the applicable dollar amount (determined without regard to paragraph (3)(C)) for the calendar year with or within which the taxable year ends.

(B) Percentage of income

An amount equal to the following percentage of the excess of the taxpayer's household income for the taxable year over the amount of gross income specified in section 6012(a)(1) with respect to the taxpayer for the taxable year:

(i) 1.0 percent for taxable years beginning in 2014.

(ii) 2.0 percent for taxable years beginning in 2015.

(iii) 2.5 percent for taxable years beginning after 2015.

(3) Applicable dollar amount

For purposes of paragraph (1)—

(A) In general

Except as provided in subparagraphs (B) and (C), the applicable dollar amount is $695.

(B) Phase in

The applicable dollar amount is $95 for 2014 and $325 for 2015.

(C) Special rule for individuals under age 18

If an applicable individual has not attained the age of 18 as of the beginning of a month, the applicable dollar amount with respect to such individual for the month shall be equal to one-half of the applicable dollar amount for the calendar year in which the month occurs.

(D) Indexing of amount

In the case of any calendar year beginning after 2016, the applicable dollar amount shall be equal to $695, increased by an amount equal to—

(i) $695, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year, determined by substituting "calendar year 2015" for "calendar year 1992" in subparagraph (B) thereof.

If the amount of any increase under clause (i) is not a multiple of $50, such increase shall be rounded to the next lowest multiple of $50.

(4) Terms relating to income and families

For purposes of this section—

(A) Family size

The family size involved with respect to any taxpayer shall be equal to the number of individuals for whom the taxpayer is allowed a deduction under section 151 (relating to allowance of deduction for personal exemptions) for the taxable year.

(B) Household income

The term "household income" means, with respect to any taxpayer for any taxable year, an amount equal to the sum of—

(i) the modified adjusted gross income of the taxpayer, plus

(ii) the aggregate modified adjusted gross incomes of all other individuals who—

(I) were taken into account in determining the taxpayer's family size under paragraph (1), and

(II) were required to file a return of tax imposed by section 1 for the taxable year.

(C) Modified adjusted gross income

The term "modified adjusted gross income" means adjusted gross income increased by—

(i) any amount excluded from gross income under section 911, and

(ii) any amount of interest received or accrued by the taxpayer during the taxable year which is exempt from tax.

(d) Applicable individual

For purposes of this section—

(1) In general

The term "applicable individual" means, with respect to any month, an individual other than an individual described in paragraph (2), (3), or (4).

(2) Religious exemptions

(A) Religious conscience exemption

Such term shall not include any individual for any month if such individual has in effect an exemption under section 1311(d)(4)(H) of the Patient Protection and Affordable Care Act which certifies that such individual is—

(i) a member of a recognized religious sect or division thereof which is described in section 1402(g)(1), and

(ii) an adherent of established tenets or teachings of such sect or division as described in such section.

(B) Health care sharing ministry

(i) In general

Such term shall not include any individual for any month if such individual is a member of a health care sharing ministry for the month.

(ii) Health care sharing ministry

The term "health care sharing ministry" means an organization—

(I) which is described in section 501(c)(3) and is exempt from taxation under section 501(a),

(II) members of which share a common set of ethical or religious beliefs and share medical expenses among members in accordance with those beliefs and without regard to the State in which a member resides or is employed,

(III) members of which retain membership even after they develop a medical condition,

(IV) which (or a predecessor of which) has been in existence at all times since December 31, 1999, and medical expenses of its members have been shared continuously and without interruption since at least December 31, 1999, and

(V) which conducts an annual audit which is performed by an independent certified public accounting firm in accordance with generally accepted accounting principles and which is made available to the public upon request.

(3) Individuals not lawfully present

Such term shall not include an individual for any month if for the month the individual is not a citizen or national of the United States or an alien lawfully present in the United States.

(4) Incarcerated individuals

Such term shall not include an individual for any month if for the month the individual is incarcerated, other than incarceration pending the disposition of charges.

(e) Exemptions

No penalty shall be imposed under subsection (a) with respect to—

(1) Individuals who cannot afford coverage

(A) In general

Any applicable individual for any month if the applicable individual's required contribution (determined on an annual basis) for coverage for the month exceeds 8 percent of such individual's household income for the taxable year described in section 1412(b)(1)(B) of the

Patient Protection and Affordable Care Act. For purposes of applying this subparagraph, the taxpayer's household income shall be increased by any exclusion from gross income for any portion of the required contribution made through a salary reduction arrangement.

(B) Required contribution

For purposes of this paragraph, the term "required contribution" means—

(i) in the case of an individual eligible to purchase minimum essential coverage consisting of coverage through an eligible-employer-sponsored plan, the portion of the annual premium which would be paid by the individual (without regard to whether paid through salary reduction or otherwise) for self-only coverage, or

(ii) in the case of an individual eligible only to purchase minimum essential coverage described in subsection (f)(1)(C), the annual premium for the lowest cost bronze plan available in the individual market through the Exchange in the State in the rating area in which the individual resides (without regard to whether the individual purchased a qualified health plan through the Exchange), reduced by the amount of the credit allowable under section 36B for the taxable year (determined as if the individual was covered by a qualified health plan offered through the Exchange for the entire taxable year).

(C) Special rules for individuals related to employees

For purposes of subparagraph (B)(i), if an applicable individual is eligible for minimum essential coverage through an employer by reason of a relationship to an employee, the determination under subparagraph (A) shall be made by reference to [1] required contribution of the employee.

(D) Indexing

In the case of plan years beginning in any calendar year after 2014, subparagraph (A) shall be applied by substituting for "8 percent" the percentage the Secretary of Health and Human Services determines reflects the excess of the rate of premium growth between the preceding calendar year and 2013 over the rate of income growth for such period.

(2) Taxpayers with income below filing threshold

Any applicable individual for any month during a calendar year if the individual's household income for the taxable year described in section 1412(b)(1)(B) of the Patient Protection and Affordable Care Act is less than the amount of gross income specified in section 6012(a)(1) with respect to the taxpayer.

(3) Members of Indian tribes

Any applicable individual for any month during which the individual is a member of an Indian tribe (as defined in section 45A(c)(6)).

(4) Months during short coverage gaps

(A) In general

Any month the last day of which occurred during a period in which the applicable individual was not covered by minimum essential coverage for a continuous period of less than 3 months.

(B) Special rules

For purposes of applying this paragraph—

(i) the length of a continuous period shall be determined without regard to the calendar years in which months in such period occur,

(ii) if a continuous period is greater than the period allowed under subparagraph (A), no exception shall be provided under this paragraph for any month in the period, and

(iii) if there is more than 1 continuous period described in subparagraph (A) covering months in a calendar year, the exception provided by this paragraph shall only apply to months in the first of such periods.

The Secretary shall prescribe rules for the collection of the penalty imposed by this section in cases where continuous periods include months in more than 1 taxable year.

(5) Hardships

Any applicable individual who for any month is determined by the Secretary of Health and Human Services under section 1311(d)(4)(H) to have suffered a hardship with respect to the capability to obtain coverage under a qualified health plan.

(f) Minimum essential coverage

For purposes of this section—

(1) In general

The term "minimum essential coverage" means any of the following:

(A) Government sponsored programs

Coverage under—

(i) the Medicare program under part A of title XVIII of the Social Security Act,

(ii) the Medicaid program under title XIX of the Social Security Act,

(iii) the CHIP program under title XXI of the Social Security Act,

(iv) medical coverage under chapter 55 of title 10, United States Code, including coverage under the TRICARE program; [2]

(v) a health care program under chapter 17 or 18 of title 38, United States Code, as determined by the Secretary of Veterans Affairs, in coordination with the Secretary of Health and Human Services and the Secretary,

(vi) a health plan under section 2504(e) of title 22, United States Code (relating to Peace Corps volunteers); [2] or

(vii) the Nonappropriated Fund Health Benefits Program of the Department of Defense, established under section 349 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 10 U.S.C. 1587 note).

(B) Employer-sponsored plan

Coverage under an eligible employer-sponsored plan.

(C) Plans in the individual market

Coverage under a health plan offered in the individual market within a State.

(D) Grandfathered health plan

Coverage under a grandfathered health plan.

(E) Other coverage

Such other health benefits coverage, such as a State health benefits risk pool, as the Secretary of Health and Human Services, in coordination with the Secretary, recognizes for purposes of this subsection.

(2) Eligible employer-sponsored plan

The term "eligible employer-sponsored plan" means, with respect to any employee, a group health plan or group health insurance coverage offered by an employer to the employee which is—

(A) a governmental plan (within the meaning of section 2791(d)(8) of the Public Health Service Act), or

(B) any other plan or coverage offered in the small or large group market within a State.

Such term shall include a grandfathered health plan described in paragraph (1)(D) offered in a group market.

(3) Excepted benefits not treated as minimum essential coverage

The term "minimum essential coverage" shall not include health insurance coverage which consists of coverage of excepted benefits—

(A) described in paragraph (1) of subsection (c) of section 2791 of the Public Health Service Act; or

(B) described in paragraph (2), (3), or (4) of such subsection if the benefits are provided under a separate policy, certificate, or contract of insurance.

(4) Individuals residing outside United States or residents of territories

Any applicable individual shall be treated as having minimum essential coverage for any month—

(A) if such month occurs during any period described in subparagraph (A) or (B) of section 911(d)(1) which is applicable to the individual, or

(B) if such individual is a bona fide resident of any possession of the United States (as determined under section 937(a)) for such month.

(5) Insurance-related terms

Any term used in this section which is also used in title I of the Patient Protection and Affordable Care Act shall have the same meaning as when used in such title.

(g) Administration and procedure

(1) In general

The penalty provided by this section shall be paid upon notice and demand by the Secretary, and except as provided in paragraph (2), shall be assessed and collected in the same manner as an assessable penalty under subchapter B of chapter 68.

(2) Special rules

Notwithstanding any other provision of law—

(A) Waiver of criminal penalties

In the case of any failure by a taxpayer to timely pay any penalty imposed by this section, such taxpayer shall not be subject to any criminal prosecution or penalty with respect to such failure.

(B) Limitations on liens and levies

The Secretary shall not—

(i) file notice of lien with respect to any property of a taxpayer by reason of any failure to pay the penalty imposed by this section, or

(ii) levy on any such property with respect to such failure.

(Added and amended Pub. L. 111–148, title I, §1501(b), title X, §10106(b)–(d), Mar. 23, 2010, 124 Stat. 244, 909, 910; Pub. L. 111–152, title I, §§1002, 1004(a)(1)(C), (2)(B), Mar. 30, 2010, 124 Stat. 1032, 1034; Pub. L. 111–159, §2(a), Apr. 26, 2010, 124 Stat. 1123; Pub. L. 111–173, §1(a), May 27, 2010, 124 Stat. 1215.)

REFERENCES IN TEXT

The Patient Protection and Affordable Care Act, referred to in subsecs. (d)(2)(A), (e)(1)(A), (2), and (f)(5), is Pub. L. 111–148, Mar. 23, 2010, 124 Stat. 119. Title I of the Act enacted chapter 157 of Title 42, The Public Health and Welfare, and enacted, amended, and transferred numerous other sections and notes in the Code. Sections 1311(d)(4)(H) and 1412(b)(1)(B) of the Act are classified to sections 18031(d)(4)(H) and 18082(b)(1)(B), respectively, of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 18001 of Title 42 and Tables.

The Social Security Act, referred to in subsec. (f)(1)(A)(i) to (iii), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Part A of title XVIII of the Act is classified generally to part A (§1395c et seq.) of subchapter XVIII of chapter 7 of Title 42, The Public Health and Welfare. Titles XIX and XXI of the Act are classified generally to subchapters XIX (§1396 et seq.) and XXI (§1397aa et seq.), respectively, of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 2791 of the Public Health Service Act, referred to in subsec. (f)(2)(A), (3), is classified to section 300gg–91 of Title 42, The Public Health and Welfare.

AMENDMENTS

2010—Subsec. (b)(1). Pub. L. 111–148, §10106(b)(1), amended par. (1) generally. Prior to amendment, text read as follows: "If an applicable individual fails to meet the requirement of subsection (a) for 1 or more months during any calendar year beginning after 2013, then, except as provided in subsection (d), there is hereby imposed a penalty with respect to the individual in the amount determined under subsection (c)."

Subsec. (c)(1), (2). Pub. L. 111–148, §10106(b)(2), amended pars. (1) and (2) generally. Prior to amendment pars. (1) and (2) related to the amount of and dollar limitations on penalty for failure to maintain minimum essential coverage.

Subsec. (c)(2)(B). Pub. L. 111–152, §1002(a)(1)(A), inserted "the excess of" before "the taxpayer's household income" and "for the taxable year over the amount of gross income specified in section 6012(a)(1) with respect to the taxpayer" before "for the taxable year" in introductory provisions.

Subsec. (c)(2)(B)(i). Pub. L. 111–152, §1002(a)(1)(B), substituted "1.0" for "0.5".

Subsec. (c)(2)(B)(ii). Pub. L. 111–152, §1002(a)(1)(C), substituted "2.0" for "1.0".

Subsec. (c)(2)(B)(iii). Pub. L. 111–152, §1002(a)(1)(D), substituted "2.5" for "2.0".

Subsec. (c)(3)(A). Pub. L. 111–152, §1002(a)(2)(A), substituted "$695" for "$750".

Subsec. (c)(3)(B). Pub. L. 111–152, §1002(a)(2)(B), substituted "$325" for "$495".

Pub. L. 111–148, §10106(b)(3), substituted "$495" for "$350".

Subsec. (c)(3)(D). Pub. L. 111–152, §1002(a)(2)(C), substituted "$695" for "$750" in introductory provisions and cl. (i).

Subsec. (c)(4)(B)(i), (ii). Pub. L. 111–152, §1004(a)(1)(C), substituted "modified adjusted gross" for "modified gross".

Subsec. (c)(4)(C). Pub. L. 111–152, §1004(a)(2)(B), amended subpar. (C) generally. Prior to amendment, text read as follows: "The term 'modified gross income' means gross income—

"(i) decreased by the amount of any deduction allowable under paragraph (1), (3), (4), or (10) of section 62(a),

"(ii) increased by the amount of interest received or accrued during the taxable year which is exempt from tax imposed by this chapter, and

"(iii) determined without regard to sections 911, 931, and 933."

Subsec. (c)(4)(D). Pub. L. 111–152, §1002(b)(1), struck out subpar. (D). Text read as follows:

"(i) IN GENERAL.—The term 'poverty line' has the meaning given that term in section 2110(c)(5) of the Social Security Act (42 U.S.C. 1397jj(c)(5)).

"(ii) POVERTY LINE USED.—In the case of any taxable year ending with or within a calendar year, the poverty line used shall be the most recently published poverty line as of the 1st day of such calendar year."

Subsec. (d)(2)(A). Pub. L. 111–148, §10106(c), amended subpar. (A) generally. Prior to amendment, text read as follows: "Such term shall not include any individual for any month if such individual has in effect an exemption under section 1311(d)(4)(H) of the Patient Protection and Affordable Care Act which certifies that such individual is a member of a recognized religious sect or division thereof described in section 1402(g)(1) and an adherent of established tenets or teachings of such sect or division as described in such section."

Subsec. (e)(1)(C). Pub. L. 111–148, §10106(d), amended subpar. (C) generally. Prior to amendment, text read as follows: "For purposes of subparagraph (B)(i), if an applicable individual is eligible for minimum essential coverage through an employer by reason of a relationship to an employee, the determination shall be made by reference to the affordability of the coverage to the employee."

Subsec. (e)(2). Pub. L. 111–152, §1002(b)(2), substituted "below filing threshold" for "under 100 percent of poverty line" in heading and "the amount of gross income specified in section 6012(a)(1) with respect to the taxpayer." for "100 percent of the poverty line for the size of the family involved (determined in the same manner as under subsection (b)(4))." in text.

Subsec. (f)(1)(A)(iv). Pub. L. 111–159, §2(a)(1), added cl. (iv) and struck out former cl. (iv) which read as follows: "the TRICARE for Life program,".

Subsec. (f)(1)(A)(v). Pub. L. 111–173, §1(a), amended cl. (v) generally. Prior to amendment, cl. (v) read as follows: "the veteran's health care program under chapter 17 of title 38, United States Code,".

Subsec. (f)(1)(A)(vii). Pub. L. 111–159, §2(a)(2)–(4), added cl. (vii).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–173, §1(b), May 27, 2010, 124 Stat. 1215, provided that: "The amendment made by subsection (a) [amending this section] shall take effect as if included in section 1501(b) of the Patient Protection and Affordable Care Act [Pub. L. 111–148]."

Pub. L. 111–159, §2(b), Apr. 26, 2010, 124 Stat. 1123, provided that: "The amendments made by this section [amending this section] shall take effect as if included in section 1501(b) of the Patient Protection and Affordable Care Act [Pub. L. 111–148] and shall be executed immediately after the amendments made by

such section 1501(b)."

EFFECTIVE DATE

Pub. L. 111–148, title I, §1501(d), Mar. 23, 2010, 124 Stat. 249, provided that: "The amendments made by this section [enacting this section and section 18091 of Title 42, The Public Health and Welfare] shall apply to taxable years ending after December 31, 2013."

[1] So in original. Probably should be followed by "the".

[2] So in original. The semicolon probably should be a comma.

CHAPTER 49—COSMETIC SERVICES

Sec.
5000B. Imposition of tax on indoor tanning services.

PRIOR PROVISIONS

A prior chapter 49, added Pub. L. 111–148, title IX, §9017(a), Mar. 23, 2010, 124 Stat. 872, which related to elective cosmetic medical procedures and consisted of section 5000B, was not set out in the Code in view of Pub. L. 111–148, title X, §10907(a), Mar. 23, 2010, 124 Stat. 1020, which provided that the amendments made by section 9017 of Pub. L. 111–148 were deemed null, void, and of no effect.

§5000B. Imposition of tax on indoor tanning services

(a) In general

There is hereby imposed on any indoor tanning service a tax equal to 10 percent of the amount paid for such service (determined without regard to this section), whether paid by insurance or otherwise.

(b) Indoor tanning service

For purposes of this section—

(1) In general

The term "indoor tanning service" means a service employing any electronic product designed to incorporate 1 or more ultraviolet lamps and intended for the irradiation of an individual by ultraviolet radiation, with wavelengths in air between 200 and 400 nanometers, to induce skin tanning.

(2) Exclusion of phototherapy services

Such term does not include any phototherapy service performed by a licensed medical professional.

(c) Payment of tax

(1) In general

The tax imposed by this section shall be paid by the individual on whom the service is performed.

(2) Collection

Every person receiving a payment for services on which a tax is imposed under subsection (a) shall collect the amount of the tax from the individual on whom the service is performed and remit such tax quarterly to the Secretary at such time and in such manner as provided by the Secretary.

(3) Secondary liability

Where any tax imposed by subsection (a) is not paid at the time payments for indoor tanning services are made, then to the extent that such tax is not collected, such tax shall be paid by the

person who performs the service.

(Added Pub. L. 111–148, title X, §10907(b), Mar. 23, 2010, 124 Stat. 1020.)

PRIOR PROVISIONS

A prior section 5000B, added Pub. L. 111–148, title IX, §9017(a), Mar. 23, 2010, 124 Stat. 872, which related to tax on elective cosmetic medical procedures, and section 9017(c) of Pub. L. 111–148, which provided that the amendments made by section 9017 of Pub. L. 111–148 were applicable to procedures performed on or after Jan. 1, 2010, were not set out in the Code in view of Pub. L. 111–148, title X, §10907(a), Mar. 23, 2010, 124 Stat. 1020, which provided that the provisions of, and amendments made by, section 9017 of Pub. L. 111–148 were deemed null, void, and of no effect.

EFFECTIVE DATE

Pub. L. 111–148, title X, §10907(d), Mar. 23, 2010, 124 Stat. 1021, provided that: "The amendments made by this section [enacting this section] shall apply to services performed on or after July 1, 2010."

CHAPTER 50—FOREIGN PROCUREMENT

Sec.
5000C. Imposition of tax on certain foreign procurement.

§5000C. Imposition of tax on certain foreign procurement

(a) Imposition of tax

There is hereby imposed on any foreign person that receives a specified Federal procurement payment a tax equal to 2 percent of the amount of such specified Federal procurement payment.

(b) Specified Federal procurement payment

For purposes of this section, the term "specified Federal procurement payment" means any payment made pursuant to a contract with the Government of the United States for—

(1) the provision of goods, if such goods are manufactured or produced in any country which is not a party to an international procurement agreement with the United States, or

(2) the provision of services, if such services are provided in any country which is not a party to an international procurement agreement with the United States.

(c) Foreign person

For purposes of this section, the term "foreign person" means any person other than a United States person.

(d) Administrative provisions

(1) Withholding

The amount deducted and withheld under chapter 3 shall be increased by the amount of tax imposed by this section on such payment.

(2) Other administrative provisions

For purposes of subtitle F, any tax imposed by this section shall be treated as a tax imposed by subtitle A.

(Added Pub. L. 111–347, title III, §301(a)(1), Jan. 2, 2011, 124 Stat. 3666.)

EFFECTIVE DATE

Pub. L. 111–347, title III, §301(a)(3), Jan. 2, 2011, 124 Stat. 3666, provided that: "The amendments made by this subsection [enacting this section] shall apply to payments received pursuant to contracts entered into on and after the date of the enactment of this Act [Jan. 2, 2011]."

PROHIBITION ON REIMBURSEMENT OF FEES

Pub. L. 111–347, title III, §301(b), Jan. 2, 2011, 124 Stat. 3666, provided that:

"(1) IN GENERAL.—The head of each executive agency shall take any and all measures necessary to ensure that no funds are disbursed to any foreign contractor in order to reimburse the tax imposed under section 5000C of the Internal Revenue Code of 1986.

"(2) ANNUAL REVIEW.—The Administrator for Federal Procurement Policy shall annually review the contracting activities of each executive agency to monitor compliance with the requirements of paragraph (1).

"(3) EXECUTIVE AGENCY.—For purposes of this subsection, the term 'executive agency' has the meaning given the term in section 4 of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 403) [see 41 U.S.C. 133]."

APPLICATION

Pub. L. 111–347, title III, §301(c), Jan. 2, 2011, 124 Stat. 3666, provided that: "This section [enacting this section and provisions set out as notes under this section] and the amendments made by this section shall be applied in a manner consistent with United States obligations under international agreements."

Subtitle E—Alcohol, Tobacco, and Certain Other Excise Taxes

Chapter		Sec.[1]
51.	**Distilled spirits, wines, and beer**	**5001**
52.	**Tobacco products and cigarette papers and tubes**	**5701**
53.	**Machine guns and certain other firearms [2]**	**5801**
54.	**Greenmail**	**5881**
55.	**Structured settlement factoring transactions**	**5891**

AMENDMENTS

2002—Pub. L. 107–134, title I, §115(b), Jan. 23, 2002, 115 Stat. 2438, added item relating to chapter 55.

1997—Pub. L. 105–33, title IX, §9302(g)(3)(D), Aug. 5, 1997, 111 Stat. 673, added item relating to chapter 52 and struck out former item relating to chapter 52 "Cigars, cigarettes, smokeless tobacco, pipe tobacco, and cigarette papers and tubes".

1988—Pub. L. 100–647, title V, §5061(c)(4), Nov. 10, 1988, 102 Stat. 3680, substituted "Cigars, cigarettes, smokeless tobacco, pipe tobacco, and cigarette papers and tubes" for "Tobacco, cigars, cigarettes, smokeless tobacco, and cigarette papers and tubes" in item relating to chapter 52.

Pub. L. 100–647, title I, §1018(u)(16), Nov. 10, 1988, 102 Stat. 3590, inserted "smokeless tobacco," after "cigarettes," in item relating to chapter 52.

1987—Pub. L. 100–203, title X, §10228(c), Dec. 22, 1987, 101 Stat. 1330–418, added item relating to chapter 54.

[1] Section numbers editorially supplied.

[2] Chapter heading amended by Pub. L. 90–618 without corresponding amendment of analysis.

CHAPTER 51—DISTILLED SPIRITS, WINES, AND BEER

Subchapter		Sec.[1]
A.	**Gallonage and occupational taxes**	**5001**
B.	**Qualification requirements for distilled spirits plants**	**5171**
C.	**Operation of distilled spirits plants**	**5201**
D.	**Industrial use of distilled spirits**	**5271**
E.	**General provisions relating to distilled spirits**	**5291**
F.	**Bonded and taxpaid wine premises**	**5351**
G.	**Breweries**	**5401**
H.	**Miscellaneous plants and warehouses**	**5501**
I.	**Miscellaneous general provisions**	**5551**
J.	**Penalties, seizures, and forfeitures relating to liquors**	**5601**

PRIOR PROVISIONS

The provisions of a prior chapter 51, Distilled Spirits, Wines, and Beer, were set out as:

Subchapter A, Gallonage and occupational taxes, comprising sections 5001 to 5012, 5021 to 5028, 5041 to 5045, 5051 to 5057, 5061 to 5065, 5081 to 5084, 5091 to 5093, 5101 to 5106, 5111 to 5116, 5121 to 5124, 5131 to 5134, and 5141 to 5149.

Subchapter B, Distilleries, comprising sections 5171 to 5180, 5191 to 5197, and 5211 to 5217.

Subchapter C, Internal Revenue bonded warehouses, comprising sections 5231 to 5233 and 5241 to 5252.

Subchapter D, Rectifying plants, comprising sections 5271 to 5275 and 5281 to 5285.

Subchapter E, Industrial alcohol plants, bonded warehouses, denaturing plants, and denaturation, comprising sections 5301 to 5320 and 5331 to 5334.

Subchapter F, Bonded and taxpaid wine premises, comprising sections 5351 to 5357, 5361 to 5373, 5381 to 5388, 5391, and 5392.

Subchapter G, Breweries, comprising sections 5401 to 5403 and 5411 to 5416.

Subchapter H, Miscellaneous plants and warehouses, comprising sections 5501, 5502, 5511, 5512, and 5521 to 5523.

Subchapter I, Miscellaneous general provisions, comprising sections 5551 to 5557.

Subchapter J, Penalties, seizures, and forfeitures relating to liquors, comprising sections 5601 to 5650, 5661 to 5663, 5671 to 5676, 5681 to 5690, and 5691 to 5693.

[1] *Section numbers editorially supplied.*

Subchapter A—Gallonage and Occupational Taxes

Part

I. Gallonage taxes.

II. Miscellaneous provisions.

AMENDMENTS

2005—Pub. L. 109–59, title XI, §11125(b)(1)(B), Aug. 10, 2005, 119 Stat. 1953, substituted "Miscellaneous provisions" for "Occupational tax" in item for part II.

PART I—GALLONAGE TAXES

Subpart

A. Distilled spirits.

[B. Repealed.]

C. Wines.

D. Beer.

E. General provisions.

AMENDMENTS

1979—Pub. L. 96–39, title VIII, §807(b)(1), July 26, 1979, 93 Stat. 290, struck out item relating to subpart B "Rectification".

SUBPART A—DISTILLED SPIRITS

Sec.

5001. Imposition, rate, and attachment of tax.

5002. Definitions.

5003. Cross references to exemptions, etc.

5004. Lien for tax.

5005. Persons liable for tax.

5006. Determination of tax.
5007. Collection of tax on distilled spirits.
5008. Abatement, remission, refund, and allowance for loss or destruction of distilled spirits.
[5009. Repealed.]
5010. Credit for wine content and for flavors content.
5011. Income tax credit for average cost of carrying excise tax.

PRIOR PROVISIONS

A prior subpart A, comprising sections 5001 to 5012, related to tax on distilled spirits, prior to the general revision of this chapter by Pub. L. 85–859, title II, 201, Sept. 2, 1958, 72 Stat. 1313.

AMENDMENTS

2005—Pub. L. 109–59, title XI, §11126(c), Aug. 10, 2005, 119 Stat. 1958, added item 5011.
1980—Pub. L. 96–598, §6(b), Dec. 24, 1980, 94 Stat. 3489, added item 5010.
1979—Pub. L. 96–39, title VIII, §807(b)(2), July 26, 1979, 93 Stat. 290, struck out item 5009 "Drawback".

§5001. Imposition, rate, and attachment of tax

(a) Rate of tax

(1) General

There is hereby imposed on all distilled spirits produced in or imported into the United States a tax at the rate of $13.50 on each proof gallon and a proportionate tax at the like rate on all fractional parts of a proof gallon.

(2) Products containing distilled spirits

All products of distillation, by whatever name known, which contain distilled spirits, on which the tax imposed by law has not been paid, and any alcoholic ingredient added to such products, shall be considered and taxed as distilled spirits.

(3) Wines containing more than 24 percent alcohol by volume

Wines containing more than 24 percent of alcohol by volume shall be taxed as distilled spirits.

(4) Distilled spirits withdrawn free of tax

Any person who removes, sells, transports, or uses distilled spirits, withdrawn free of tax under section 5214(a) or section 7510, in violation of laws or regulations now or hereafter in force pertaining thereto, and all such distilled spirits shall be subject to all provisions of law relating to distilled spirits subject to tax, including those requiring payment of the tax thereon; and the person so removing, selling, transporting, or using the distilled spirits shall be required to pay such tax.

(5) Denatured distilled spirits or articles

Any person who produces, withdraws, sells, transports, or uses denatured distilled spirits or articles in violation of laws or regulations now or hereafter in force pertaining thereto, and all such denatured distilled spirits or articles shall be subject to all provisions of law pertaining to distilled spirits that are not denatured, including those requiring the payment of tax thereon; and the person so producing, withdrawing, selling, transporting, or using the denatured distilled spirits or articles shall be required to pay such tax.

(6) Fruit-flavor concentrates

If any volatile fruit-flavor concentrate (or any fruit mash or juice from which such concentrate is produced) containing one-half of 1 percent or more of alcohol by volume, which is manufactured free from tax under section 5511, is sold, transported, or used by any person in violation of the provisions of this chapter or regulations promulgated thereunder, such person and such concentrate, mash, or juice shall be subject to all provisions of this chapter pertaining to distilled spirits and wines, including those requiring the payment of tax thereon; and the person so selling, transporting, or using such concentrate, mash, or juice shall be required to pay such tax.

(7) Imported liqueurs and cordials

Imported liqueurs and cordials, or similar compounds, containing distilled spirits, shall be taxed as distilled spirits.

(8) Imported distilled spirits withdrawn for beverage purposes

There is hereby imposed on all imported distilled spirits withdrawn from customs custody under section 5232 without payment of the internal revenue tax, and thereafter withdrawn from bonded premises for beverage purposes, an additional tax equal to the duty which would have been paid had such spirits been imported for beverage purposes, less the duty previously paid thereon.

(9) Alcoholic compounds from Puerto Rico

Except as provided in section 5314, upon bay rum, or any article containing distilled spirits, brought from Puerto Rico into the United States for consumption or sale there is hereby imposed a tax on the spirits contained therein at the rate imposed on distilled spirits produced in the United States.

(b) Time of attachment on distilled spirits

The tax shall attach to distilled spirits as soon as this substance is in existence as such, whether it be subsequently separated as pure or impure spirits, or be immediately, or at any subsequent time, transferred into any other substance, either in the process of original production or by any subsequent process.

(c) Cross reference

For provisions relating to the tax on shipments to the United States of taxable articles from Puerto Rico and the Virgin Islands, see section 7652.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1314; amended Pub. L. 86–75, §3(a)(2), (3), June 30, 1959, 73 Stat. 157; Pub. L. 86–564, title II, §202(a)(4), (5), June 30, 1960, 74 Stat. 290; Pub. L. 87–72, §3(a)(4), (5), June 30, 1961, 75 Stat. 193; Pub. L. 87–508, §3(a)(3), (4), June 28, 1962, 76 Stat. 114; Pub. L. 88–52, §3(a)(4), (5), June 29, 1963, 77 Stat. 72; Pub. L. 88–348, §2(a)(4), (5), June 30, 1964, 78 Stat. 237; Pub. L. 89–44, title V, §501(a), June 21, 1965, 79 Stat. 150; Pub. L. 96–39, title VIII, §§802, 805(d), July 26, 1979, 93 Stat. 273, 278; Pub. L. 98–369, div. A, title I, §27(a)(1), July 18, 1984, 98 Stat. 507; Pub. L. 101–508, title XI, §11201(a)(1), Nov. 5, 1990, 104 Stat. 1388–415; Pub. L. 103–465, title I, §136(a), Dec. 8, 1994, 108 Stat. 4841.)

PRIOR PROVISIONS

A prior section 5001, acts Aug. 16, 1954, ch. 736, 68A Stat. 595; Mar. 30, 1955, ch. 18, §3(a)(4), (5), 69 Stat. 14; Mar. 29, 1956, ch. 115, §3(a)(4), (5), 70 Stat. 66; Mar. 29, 1957, Pub. L. 85–12, §3(a)(2), (3), 71 Stat. 9; June 30, 1958, Pub. L. 85–475, §3(a)(2), (3), 72 Stat. 259, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859. See section 5061(d) of this title.

AMENDMENTS

1994—Subsec. (a)(3) to (10). Pub. L. 103–465 redesignated pars. (4) to (10) as (3) to (9), respectively, and struck out former par. (3), "Imported perfumes containing distilled spirits", which read as follows: "There is hereby imposed on all perfumes imported into the United States containing distilled spirits a tax of $13.50 per wine gallon, and a proportionate tax at a like rate on all fractional parts of such wine gallon."

1990—Subsec. (a)(1), (3). Pub. L. 101–508 substituted "$13.50" for "$12.50".

1984—Subsec. (a)(1), (3). Pub. L. 98–369 substituted "$12.50" for "$10.50".

1979—Subsec. (a)(1). Pub. L. 96–39, §802, struck out "in bond or" after "distilled spirits" and "or wine gallon when below proof" after "each proof gallon" and substituted "a tax" for "an internal revenue tax" and "proof gallon" for "such proof or wine gallon".

Subsec. (a)(2). Pub. L. 96–39, §805(d), inserted ", and any alcoholic ingredient added to such products" after "has not been paid".

1965—Subsec. (a)(1). Pub. L. 89–44 struck out last sentence which provided that the rate of tax imposed by par. (1) would be $9 on and after July 1, 1965.

Subsec. (a)(3). Pub. L. 89–44 struck out last sentence which provided that the rate of tax imposed by par. (3) would be $9 on and after July 1, 1965.

1964—Subsec. (a)(1). Pub. L. 88–348 substituted "July 1, 1965" for "July 1, 1964".
Subsec. (a)(3). Pub. L. 88–348 substituted "July 1, 1965" for "July 1, 1964".
1963—Subsec. (a)(1). Pub. L. 88–52, §3(a)(4), substituted "July 1, 1964" for "July 1, 1963".
Subsec. (a)(3). Pub. L. 88–52, §3(a)(5), substituted "July 1, 1964" for "July 1, 1963".
1962—Subsec. (a)(1). Pub. L. 87–508, §3(a)(3), substituted "July 1, 1963" for "July 1, 1962".
Subsec. (a)(3). Pub. L. 87–508, §3(a)(4), substituted "July 1, 1963" for "July 1, 1962".
1961—Subsec. (a)(1). Pub. L. 87–72, §3(a)(4), substituted "July 1, 1962" for "July 1, 1961".
Subsec. (a)(3). Pub. L. 87–72, §3(a)(5), substituted "July 1, 1962" for "July 1, 1961".
1960—Subsec. (a)(1). Pub. L. 86–564, §202(a)(4), substituted "July 1, 1961" for "July 1, 1960".
Subsec. (a)(3). Pub. L. 86–564, §202(a)(5), substituted "July 1, 1961" for "July 1, 1960".
1959—Subsec. (a)(1). Pub. L. 86–75, §3(a)(2), substituted "July 1, 1960" for "July 1, 1959".
Subsec. (a)(3). Pub. L. 86–75, §3(a)(3), substituted "July 1, 1960" for "July 1, 1959".

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103–465, title I, §136(d), Dec. 8, 1994, 108 Stat. 4842, provided that: "The amendments made by this section [amending this section and sections 5002, 5005, 5007, 5061, 5131, 5132, 5134, and 7652 of this title] shall take effect on January 1, 1995."

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, §11201(d), Nov. 5, 1990, 104 Stat. 1388–417, provided that: "The amendments made by this section [amending this section and sections 5010, 5041, 5051, and 5061 of this title] shall take effect on January 1, 1991."

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §27(d), July 18, 1984, 98 Stat. 509, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 5010 of this title and enacting provisions set out as a note under this section] shall take effect on October 1, 1985.

"(2) ELECTRONIC TRANSFER PROVISIONS.—The amendments made by subsection (c) [amending sections 5061 and 5703 of this title] shall apply to taxes required to be paid on or after September 30, 1984."

EFFECTIVE DATE OF 1979 AMENDMENT

Pub. L. 96–39, title VIII, §810, July 26, 1979, 93 Stat. 292, provided that: "The amendments made by this title [amending this section and sections 5002 to 5008, 5043, 5061, 5064, 5066, 5116, 5171 to 5173, 5175 to 5178, 5180, 5181, 5201 to 5205, 5207, 5211 to 5215, 5221 to 5223, 5231, 5232, 5235, 5241, 5273, 5291, 5301, 5352, 5361 to 5363, 5365, 5381, 5391, 5551, 5601, 5604, 5610, 5612, 5615, 5663, 5681, 5682, and 5691 of this title, repealing sections 5009, 5021 to 5026, 5081 to 5084, 5174, 5233, 5234, 5251, 5252, 5364, and 5521 to 5523 of this title, and enacting provisions set out as notes under sections 1, 5061, 5171, and 5173 of this title] shall take effect on January 1, 1980."

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 applicable on and after July 1, 1965, see section 701(d) of Pub. L. 89–44, set out as a note under section 5701 of this title.

EFFECTIVE DATE

Pub. L. 85–859, title II, §210(a)(1), Sept. 2, 1958, 72 Stat. 1435, provided that: "The amendments made by sections 201 and 205 [amending this chapter and repealing acts Mar. 3, 1877, 114, 19 Stat. 393, and Oct. 18, 1888, ch. 1194, 25 Stat. 560] shall take effect on July 1, 1959, except that any provision having the effect of a provision contained in such amendments may be made effective at an earlier date by the promulgation of regulations by the Secretary or his delegate to effectuate such provision, in which case the effective date shall be that prescribed in such regulations. The amendments made by paragraphs (17) and (18) of section 204 [amending section 7652 of this title] shall take effect on July 1, 1959. Except as provided in section 206(f), all other provisions of this title [enacting sections 5849, 5854, 5855, and 7608 of this title, amending chapter 52 of this title and sections 5801, 5811, 5814, 5821, 5843, 5848, 5851, 6071, 6207, 6422, 7214, 7272, 7301, 7324 to 7326, 7609, and 7655 of this title, and repealing former section 5854 of this title] shall take effect on the day following the date of the enactment of this Act [Sept. 2, 1958]."

SHORT TITLE

Pub. L. 85–859, §1(a), Sept. 2, 1958, 72 Stat. 1275, provided that: "This Act [see Tables for classification]

may be cited as the 'Excise Tax Technical Changes Act of 1958'."

SAVINGS PROVISION

Pub. L. 85–859, title II, §210(b), Sept. 2, 1958, 72 Stat. 1435, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendment of any provision of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] by this title [enacting sections 5849, 5854, 5855, and 7608 of this title, amending this chapter, chapter 52 of this title and sections 5801, 5811, 5814, 5821, 5843, 5848, 5851, 6071, 6207, 6422, 7214, 7272, 7301, 7324 to 7326, 7609, 7652, and 7655 of this title, and enacting provisions set out as notes under this section and sections 5006, 5025, 5064, 5175, 5304, and 5601 of this title] shall not affect any act done or any right accruing or accrued, or any suit or proceeding had or commenced in any civil cause before such amendment; but all rights and liabilities under such code prior to such amendment shall continue, and may be enforced in the same manner, as if such amendment had not been made."

REFERENCES TO OTHER PROVISIONS OF LAW

Pub. L. 85–859, title II, §210(d), Sept. 2, 1958, 72 Stat. 1435, provided that: "For the purpose of applying any provision of this title [see Savings Provision note above] to any occurrence on or after the effective date of such provision, any reference in this title to another provision thereof shall also be deemed to be a reference to the corresponding provision of prior law, when consistent with the purpose of the provision to be applied."

REPEAL OF ACTS MAR. 3, 1877 AND OCT. 18, 1888

Pub. L. 85–859, title II, §205, Sept. 2, 1958, 72 Stat. 1430, repealed acts March 3, 1877, ch. 114, 19 Stat. 393 and Oct. 18, 1888, ch. 1194, 25 Stat. 560, which related to production and warehousing of fruit brandy, and are covered by this chapter. For effective date of repeal, see section 210(a)(1) of Pub. L. 85–859, set out as an Effective Date note above.

FLOOR STOCKS TAXES ON DISTILLED SPIRITS, WINE, AND BEER

Pub. L. 101–508, title XI, §11201(e), Nov. 5, 1990, 104 Stat. 1388–417, provided that:

"(1) IMPOSITION OF TAX.—

"(A) IN GENERAL.—In the case of any tax-increased article—

"(i) on which tax was determined under part I of subchapter A of chapter 51 of the Internal Revenue Code of 1986 or section 7652 of such Code before January 1, 1991, and

"(ii) which is held on such date for sale by any person,

there shall be imposed a tax at the applicable rate on each such article.

"(B) APPLICABLE RATE.—For purposes of subparagraph (A), the applicable rate is—

"(i) $1 per proof gallon in the case of distilled spirits,

"(ii) $0.90 per wine gallon in the case of wine described in paragraph (1), (2), (3), or (5) of section 5041(b) of such Code, and

"(iii) $9 per barrel in the case of beer.

In the case of a fraction of a gallon or barrel, the tax imposed by subparagraph (A) shall be the same fraction as the amount of such tax imposed on a whole gallon or barrel.

"(C) TAX-INCREASED ARTICLE.—For purposes of this subsection, the term 'tax-increased article' means distilled spirits, wine described in paragraph (1), (2), (3), or (5) of section 5041(b) of such Code, and beer.

"(2) EXCEPTION FOR SMALL DOMESTIC PRODUCERS.—

"(A) In the case of wine held by the producer thereof on January 1, 1991, if a credit would have been allowable under section 5041(c) of such Code (as added by this section) on such wine had the amendments made by subsection (b) [amending sections 5041 and 5061 of this title] applied to all wine removed during 1990 and had the wine so held been removed for consumption on December 31, 1990, the tax imposed by paragraph (1) on such wine shall be reduced by the credit which would have been so allowable.

"(B) In the case of beer held by the producer thereof on January 1, 1991, if the rate of the tax imposed by section 5051 of such Code would have been determined under subsection (a)(2) thereof had the beer so held been removed for consumption on December 31, 1990, the tax imposed by paragraph (1) on such beer shall not apply.

"(C) For purposes of this paragraph, an article shall not be treated as held by the producer if title thereto had at any time been transferred to any other person.

"(3) EXCEPTION FOR CERTAIN SMALL WHOLESALE OR RETAIL DEALERS.—No tax shall be imposed by paragraph (1) on tax- increased articles held on January 1, 1991, by any dealer if—

"(A) the aggregate liquid volume of tax-increased articles held by such dealer on such date does not exceed 500 wine gallons, and

"(B) such dealer submits to the Secretary (at the time and in the manner required by the Secretary) such information as the Secretary shall require for purposes of this paragraph.

"(4) CREDIT AGAINST TAX.—Each dealer shall be allowed as a credit against the taxes imposed by paragraph (1) an amount equal to—

"(A) $240 to the extent such taxes are attributable to distilled spirits,

"(B) $270 to the extent such taxes are attributable to wine, and

"(C) $87 to the extent such taxes are attributable to beer.

Such credit shall not exceed the amount of taxes imposed by paragraph (1) with respect to distilled spirits, wine, or beer, as the case may be, for which the dealer is liable.

"(5) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

"(A) LIABILITY FOR TAX.—A person holding any tax-increased article on January 1, 1991, to which the tax imposed by paragraph (1) applies shall be liable for such tax.

"(B) METHOD OF PAYMENT.—The tax imposed by paragraph (1) shall be paid in such manner as the Secretary shall prescribe by regulations.

"(C) TIME FOR PAYMENT.—The tax imposed by paragraph (1) shall be paid on or before June 30, 1991.

"(6) CONTROLLED GROUPS.—

"(A) CORPORATIONS.—In the case of a controlled group—

"(i) the 500 wine gallon amount specified in paragraph (3), and

"(ii) the $240, $270, and $87 amounts specified in paragraph (4),

shall be apportioned among the dealers who are component members of such group in such manner as the Secretary shall by regulations prescribe. For purposes of the preceding sentence, the term 'controlled group' has the meaning given to such term by subsection (a) of section 1563 of such Code; except that for such purposes the phrase 'more than 50 percent' shall be substituted for the phrase 'at least 80 percent' each place it appears in such subsection.

"(B) NONINCORPORATED DEALERS UNDER COMMON CONTROL.—Under regulations prescribed by the Secretary, principles similar to the principles of subparagraph (A) shall apply to a group of dealers under common control where 1 or more of such dealers is not a corporation.

"(7) OTHER LAWS APPLICABLE.—

"(A) IN GENERAL.—All provisions of law, including penalties, applicable to the comparable excise tax with respect to any tax-increased article shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply to the floor stocks taxes imposed by paragraph (1) to the same extent as if such taxes were imposed by the comparable excise tax.

"(B) COMPARABLE EXCISE TAX.—For purposes of subparagraph (A), the term 'comparable excise tax' means—

"(i) the tax imposed by section 5001 of such Code in the case of distilled spirits,

"(ii) the tax imposed by section 5041 of such Code in the case of wine, and

"(iii) the tax imposed by section 5051 of such Code in the case of beer.

"(8) DEFINITIONS.—For purposes of this subsection—

"(A) IN GENERAL.—Terms used in this subsection which are also used in subchapter A of chapter 51 of such Code shall have the respective meanings such terms have in such part.

"(B) PERSON.—The term 'person' includes any State or political subdivision thereof, or any agency or instrumentality of a State or political subdivision thereof.

"(C) SECRETARY.—The term 'Secretary' means the Secretary of the Treasury or his delegate.

"(9) TREATMENT OF IMPORTED PERFUMES CONTAINING DISTILLED SPIRITS.—For purposes of this subsection, any article described in section 5001(a)(3) of such Code shall be treated as distilled spirits; except that the tax imposed by paragraph (1) shall be imposed on a wine gallon basis in lieu of a proof gallon basis. To the extent provided by regulations prescribed by the Secretary, the preceding sentence shall not apply to any article held on January 1, 1991, on the premises of a retail establishment."

FLOOR STOCKS TAX TREATMENT OF ARTICLES IN FOREIGN TRADE ZONES

Pub. L. 101–508, title XI, §11218, Nov. 5, 1990, 104 Stat. 1388–438, provided that: "Notwithstanding the Act of June 18, 1934 (48 Stat. 998, 19 U.S.C. 81a) or any other provision of law, any article which is located in a foreign trade zone on the effective date of any increase in tax under the amendments made by this part or part I [part I (§§11201–11203) or part II (§§11211–11218) of subtitle B of title XI of Pub. L. 101–508, see Tables for classification] shall be subject to floor stocks taxes imposed by such parts if—

"(1) internal revenue taxes have been determined, or customs duties liquidated, with respect to such article before such date pursuant to a request made under the 1st proviso of section 3(a) of such Act [19

U.S.C. 81c(a)], or

"(2) such article is held on such date under the supervision of a customs officer pursuant to the 2d proviso of such section 3(a)."

FLOOR STOCKS TAXES ON DISTILLED SPIRITS

Pub. L. 98–369, div. A, title I, §27(b), July 18, 1984, 98 Stat. 507, as amended by Pub. L. 99–514, §2, title XVIII, §1801(c)(3), Oct. 22, 1986, 100 Stat. 2095, 2786, provided that:

"(1) IMPOSITION OF TAX.—On distilled spirits on which tax was imposed under section 5001 or 7652 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] before October 1, 1985, and which were held on such date for sale by any person, there shall be imposed a tax at the rate of $2.00 for each proof gallon and a proportionate tax at the like rate on all fractional parts of a proof gallon.

"(2) EXCEPTION FOR CERTAIN SMALL WHOLESALE OR RETAIL DEALERS.—No tax shall be imposed by paragraph (1) on distilled spirits held on October 1, 1985, by any dealer if—

"(A) the aggregate liquid volume of distilled spirits held by such dealer on such date does not exceed 500 wine gallons, and

"(B) such dealer submits to the Secretary (at the time and in the manner required by the Secretary) such information as the Secretary shall require for purposes of this paragraph.

"(3) CREDIT AGAINST TAX.—Each dealer shall be allowed as a credit against the taxes imposed by paragraph (1) an amount equal to $800. Such credit shall not exceed the amount of taxes imposed by paragraph (1) for which the dealer is liable.

"(4) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

"(A) LIABILITY FOR TAX.—A person holding distilled spirits on October 1, 1985, to which the tax imposed by paragraph (1) applies shall be liable for such tax.

"(B) METHOD OF PAYMENT.—The tax imposed by paragraph (1) shall be paid in such manner as the Secretary shall by regulations prescribe.

"(C) TIME FOR PAYMENT.—

"(i) IN GENERAL.—Except as provided in clause (ii), the tax imposed by paragraph (1) shall be paid on or before April 1, 1986.

"(ii) INSTALLMENT PAYMENT OF TAX IN CASE OF SMALL OR MIDDLE-SIZED DEALERS.—In the case of any small or middle-sized dealer, the tax imposed by paragraph (1) may be paid in 3 equal installments due as follows:

"(I) The first installment shall be paid on or before April 1, 1986.

"(II) The second installment shall be paid on or before July 1, 1986.

"(III) The third installment shall be paid on or before October 1, 1986.

If the taxpayer does not pay any installment under this clause on or before the date prescribed for its payment, the whole of the unpaid tax shall be paid upon notice and demand from the Secretary.

"(iii) SMALL OR MIDDLE-SIZED DEALER.—For purposes of clause (ii), the term 'small or middle-sized dealer' means any dealer if the aggregate gross sales receipts of such dealer for its most recent taxable year ending before October 1, 1985, does not exceed $500,000.

"(5) CONTROLLED GROUPS.—

"(A) CONTROLLED GROUPS OF CORPORATIONS.—In the case of a controlled group—

"(i) the 500 wine gallon amount specified in paragraph (2),

"(ii) the $800 amount specified in paragraph (3), and

"(iii) the $500,000 amount specified in paragraph (4)(C)(iii),

shall be apportioned among the dealers who are component members of such group in such manner as the Secretary shall by regulations prescribe. For purposes of the preceding sentence, the term 'controlled group' has the meaning given to such term by subsection (a) of section 1563 of the Internal Revenue Code of 1986; except that for such purposes the phrase 'more than 50 percent' shall be substituted for the phrase 'at least 80 percent' each place it appears in such subsection.

"(B) NONINCORPORATED DEALERS UNDER COMMON CONTROL.—Under regulations prescribed by the Secretary, principles similar to the principles of subparagraph (A) shall apply to a group of dealers under common control where 1 or more of such dealers is not a corporation.

"(6) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 5001 of the Internal Revenue Code of 1986 shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply in respect of the taxes imposed by paragraph (1) to the same extent as if such taxes were imposed by such section 5001.

"(7) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

"(A) DEALER.—The term 'dealer' means—

"(i) any wholesale dealer in liquors (as defined in section 5112(b) of the Internal Revenue Code of 1986), and

"(ii) any retail dealer in liquors (as defined in section 5122(a) of such Code).

"(B) DISTILLED SPIRITS.—The term 'distilled spirits' has the meaning given such term by section 5002(a)(8) of the Internal Revenue Code of 1986.

"(C) PERSON.—The term 'person' includes any State or political subdivision thereof, or any agency or instrumentality of a State or political subdivision thereof.

"(D) SECRETARY.—The term 'Secretary' means the Secretary of the Treasury or his delegate.

"(E) TREATMENT OF IMPORTED PERFUMES CONTAINING DISTILLED SPIRITS.—Any article described in section 5001(a)(3) of such Code shall be treated as distilled spirits; except that the tax imposed by paragraph (1) shall be imposed on a wine gallon basis in lieu of a proof gallon basis. To the extent provided in regulations prescribed by the Secretary, the preceding sentence shall not apply to any article held on October 1, 1985, on the premises of a retail establishment.

"(F) TREATMENT OF DISTILLED SPIRITS IN FOREIGN TRADE ZONES.—Notwithstanding the Act of June 18, 1934 (48 Stat. 998, 19 U.S.C. 81a) or any other provision of law, distilled spirits which are located in a foreign trade zone on October 1, 1985, shall be subject to the tax imposed by paragraph (1) and shall be treated for purposes of this subsection as held on such date for sale if—

"(i) internal revenue taxes have been determined, or customs duties liquidated, with respect to such distilled spirits before such date pursuant to a request made under the first proviso of section 3(a) of such Act [19 U.S.C. 81c(a)], or

"(ii) such distilled spirits are held on such date under the supervision of customs pursuant to the second proviso of such section 3(a).

Under regulations prescribed by the Secretary, provisions similar to sections 5062 and 5064 of such Code shall apply to distilled spirits with respect to which tax is imposed by paragraph (1) by reason of this subparagraph."

§5002. Definitions

(a) In general

For purposes of this chapter—

(1) Distilled spirits plant

The term "distilled spirits plant" means an establishment which is qualified under subchapter B to perform any distilled spirits operation.

(2) Distilled spirits operation

The term "distilled spirits operation" means any operation for which qualification is required under subchapter B.

(3) Bonded premises

The term "bonded premises", when used with respect to distilled spirits, means the premises of a distilled spirits plant, or part thereof, on which distilled spirits operations are authorized to be conducted.

(4) Distiller

The term "distiller" includes any person who—

(A) produces distilled spirits from any source or substance,

(B) brews or makes mash, wort, or wash fit for distillation or for the production of distilled spirits (other than the making or using of mash, wort, or wash in the authorized production of wine or beer, or the production of vinegar by fermentation),

(C) by any process separates alcoholic spirits from any fermented substance, or

(D) making or keeping mash, wort, or wash, has a still in his possession or use.

(5) Processor

(A) In general

The term "processor", when used with respect to distilled spirits, means any person who—

(i) manufactures, mixes, or otherwise processes distilled spirits, or
(ii) manufactures any article.

(B) Rectifier, bottler, etc., included

The term "processor" includes (but is not limited to) a rectifier, bottler, and denaturer.

(6) Certain operations not treated as processing

In applying paragraph (5), there shall not be taken into account—

(A) Operations as distiller

Any process which is the operation of a distiller.

(B) Mixing of taxpaid spirits for immediate consumption

Any mixing (after determination of tax) of distilled spirits for immediate consumption.

(C) Use by apothecaries

Any process performed by an apothecary with respect to distilled spirits which such apothecary uses exclusively in the preparation or making up of medicines unfit for use for beverage purposes.

(7) Warehouseman

The term "warehouseman", when used with respect to distilled spirits, means any person who stores bulk distilled spirits.

(8) Distilled spirits

The terms "distilled spirits", "alcoholic spirits", and "spirits" mean that substance known as ethyl alcohol, ethanol, or spirits of wine in any form (including all dilutions and mixtures thereof from whatever source or by whatever process produced).

(9) Bulk distilled spirits

The term "bulk distilled spirits" means distilled spirits in a container having a capacity in excess of 1 wine gallon.

(10) Proof spirits

The term "proof spirits" means that liquid which contains one-half its volume of ethyl alcohol of a specific gravity of 0.7939 at 60 degrees Fahrenheit (referring to water at 60 degrees Fahrenheit as unity).

(11) Proof gallon

The term "proof gallon" means a United States gallon of proof spirits, or the alcoholic equivalent thereof.

(12) Container

The term "container", when used with respect to distilled spirits, means any receptacle, vessel, or form of package, bottle, tank, or pipeline used, or capable of use, for holding, storing, transferring, or conveying distilled spirits.

(13) Approved container

The term "approved container", when used with respect to distilled spirits, means a container the use of which is authorized by regulations prescribed by the Secretary.

(14) Article

Unless another meaning is distinctly expressed or manifestly intended, the term "article" means any substance in the manufacture of which denatured distilled spirits are used.

(15) Export

The terms "export", "exported", and "exportation" include shipments to a possession of the United States.

(b) Cross references

(1) For definition of manufacturer of stills, see section 5102.
(2) For definition of dealer, see section 5121(c)(3).
(3) For definitions of wholesale dealers, see section 5121(c).
(4) For definitions of retail dealers, see section 5122(c).
(5) For definitions of general application to this title, see chapter 79.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1315; amended Pub. L. 89–44, title VIII, §807(a), June 21, 1965, 79 Stat. 164; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–39, title VIII, §805(e), July 26, 1979, 93 Stat. 278; Pub. L. 103–465, title I, §136(c)(1), Dec. 8, 1994, 108 Stat. 4841; Pub. L. 109–59, title XI, §11125(b)(13), Aug. 10, 2005, 119 Stat. 1956.)

PRIOR PROVISIONS

A prior section 5002, act Aug. 16, 1954, ch. 736, 68A Stat. 597, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

Provisions similar to those comprising subsec. (a)(6), (9), and (11) of this section were contained in prior sections 5213(a)(1) and 5319(1), (2), and (7), act Aug. 16, 1954, ch. 736, 68A Stat. 639, 661, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

2005—Subsec. (b)(2). Pub. L. 109–59, §11125(b)(13)(A), substituted "section 5121(c)(3)" for "section 5112(a)".

Subsec. (b)(3). Pub. L. 109–59, §11125(b)(13)(B), substituted "section 5121(c)" for "section 5112".

Subsec. (b)(4). Pub. L. 109–59, §11125(b)(13)(C), substituted "section 5122(c)" for "section 5122".

1994—Subsec. (b)(1) to (6). Pub. L. 103–465 redesignated pars. (2) to (6) as (1) to (5), respectively, and struck out former par. (1) which provided a cross reference to section 5041(c) of this title for definition of "wine gallon".

1979—Subsec. (a)(1). Pub. L. 96–39 substituted "distilled spirits operation" for "operation, or any combination of operations, for which qualification is required under such subchapter".

Subsec. (a)(2), (3). Pub. L. 96–39 added par. (2) and redesignated former par. (2) as (3). Former par. (3), defining "bottling premises", was struck out.

Subsec. (a)(4). Pub. L. 96–39 redesignated par. (5) as (4). Former par. (4), defining "bonded warehouseman", was struck out.

Subsec. (a)(5) to (7). Pub. L. 96–39 added pars. (5) to (7) and redesignated former pars. (5) to (7) as (4), (8), and (10), respectively.

Subsec. (a)(8). Pub. L. 96–39 redesignated former par. (6) as (8). Former par. (8) redesignated (11).

Subsec. (a)(9). Pub. L. 96–39 added par. (9) and redesignated par. (9) as (12).

Subsec. (a)(10) to (15). Pub. L. 96–39 redesignated former pars. (7) to (12) as (10) to (15), respectively.

Subsec. (b). Pub. L. 95–39 struck out par. (2) which provided for a cross reference to section 5082 for a definition of rectifier and redesignated pars. (3) to (7) as (2) to (6), respectively.

1976—Subsec. (a)(10). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

1965—Subsec. (a). Pub. L. 89–44 added par. (12).

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–59, title XI, §11125(c), Aug. 10, 2005, 119 Stat. 1957, provided that: "The amendments made by this section [see Tables for classification] shall take effect on July 1, 2008, but shall not apply to taxes imposed for periods before such date."

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 effective Jan. 1, 1995, see section 136(d) of Pub. L. 103–465, set out as a note under section 5001 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as a note under section 5001 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Pub. L. 89–44, title VIII, §807(c), June 21, 1965, 79 Stat. 164, provided that: "The amendments made by subsections (a) and (b) [amending this section and section 5053 of this title] shall take effect on July 1, 1965."

§5003. Cross references to exemptions, etc.

(1) For provisions authorizing the withdrawal of distilled spirits free of tax for use by Federal or State agencies, see sections 5214(a)(2) and 5313.

(2) For provisions authorizing the withdrawal of distilled spirits free of tax by nonprofit educational organizations, scientific universities or colleges of learning, laboratories, hospitals, blood banks, sanitariums, and charitable clinics, see section 5214(a)(3).

(3) For provisions authorizing the withdrawal of certain imported distilled spirits from customs custody without payment of tax, see section 5232.

(4) For provisions authorizing the withdrawal of denatured distilled spirits free of tax, see section 5214(a)(1).

(5) For provisions exempting from tax distilled spirits for use in production of vinegar by the vaporizing process, see section 5505(j).

(6) For provisions relating to the withdrawal of wine spirits without payment of tax for use in the production of wine, see section 5373.

(7) For provisions exempting from tax volatile fruit-flavor concentrates, see section 5511.

(8) For provisions authorizing the withdrawal of distilled spirits from bonded premises without payment of tax for export, see section 5214(a)(4).

(9) For provisions authorizing withdrawal of distilled spirits without payment of tax to customs bonded warehouses for export, see section 5214(a)(9).

(10) For provisions relating to withdrawal of distilled spirits without payment of tax as supplies for certain vessels and aircraft, see 19 U.S.C. 1309.

(11) For provisions authorizing regulations for withdrawal of distilled spirits for use of United States free of tax, see section 7510.

(12) For provisions relating to withdrawal of distilled spirits without payment of tax to foreign-trade zones, see 19 U.S.C. 81c.

(13) For provisions relating to exemption from tax of taxable articles going into the possessions of the United States, see section 7653(b).

(14) For provisions authorizing the withdrawal of distilled spirits without payment of tax for use in certain research, development, or testing, see section 5214(a)(10).

(15) For provisions authorizing the withdrawal of distilled spirits without payment of tax for transfer to manufacturing bonded warehouses for manufacturing for export, see section 5214(a)(6).

(16) For provisions authorizing the withdrawal of articles from the bonded premises of a distilled spirits plant free of tax when contained in an article, see section 5214(a)(11).

(17) For provisions relating to allowance for certain losses in bond, see section 5008(a).

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1316; amended Pub. L. 95–176, §§3(c), 4(f), Nov. 14, 1977, 91 Stat. 1365, 1366; Pub. L. 96–39, title VIII, §807(a)(1), July 26, 1979, 93 Stat. 280.)

PRIOR PROVISIONS

A prior section 5003, act Aug. 16, 1954, ch. 736, 68A Stat. 597, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1979—Par. (9). Pub. L. 96–39, §807(a)(1)(A), struck out "section 5522(a) and" before "section 5214(a)(9)".

Pars. (15) to (17). Pub. L. 96–39, §807(a)(1)(B), added pars. (15) and (16) and redesignated former par. (15) as (17).

1977—Par. (9). Pub. L. 95–176, §3(c), struck out "manufacturing" after "customs" and inserted reference to section 5214(a)(9).

Par. (14). Pub. L. 95–176, §4(f), substituted "withdrawal of distilled spirits without payment of tax for use in certain research, development, or testing, see section 5214(a)(10)" for "removal of samples free of tax for making tests or laboratory analyses, see section 5214(a)(9)".

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as a note

under section 5001 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Pub. L. 95–176, §7, Nov. 14, 1977, 91 Stat. 1367, provided that: "The amendments made by this Act [amending this section and sections 5004, 5005, 5008, 5025, 5062, 5066, 5175, 5178, 5205, 5207, 5214, 5215, and 5234 of this title] shall take effect on the first day of the first calendar month which begins more than 90 days after the date of the enactment of this Act [Nov. 14, 1977]."

§5004. Lien for tax

(a) Distilled spirits subject to lien

(1) General

The tax imposed by section 5001(a)(1) shall be a first lien on the distilled spirits from the time the spirits are in existence as such until the tax is paid.

(2) Exceptions

The lien imposed by paragraph (1), or any similar lien imposed on the spirits under prior provisions of internal revenue law, shall terminate in the case of distilled spirits produced on premises qualified under internal revenue law for the production of distilled spirits when such distilled spirits are—

(A) withdrawn from bonded premises on determination of tax; or

(B) withdrawn from bonded premises free of tax under provisions of section 5214(a)(1), (2), (3), (11), or (12), or section 7510; or

(C) exported, deposited in a foreign-trade zone, used in the production of wine, laden as supplies upon, or used in the maintenance or repair of, certain vessels or aircraft, deposited in a customs bonded warehouse, or used in certain research, development, or testing, as provided by law.

(b) Cross reference

For provisions relating to extinguishing of lien in case of redistillation, see section 5223(e).

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1317; amended Pub. L. 89–44, title VIII, §805(f)(1), June 21, 1965, 79 Stat. 161; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–176, §4(c), Nov. 14, 1977, 91 Stat. 1366; Pub. L. 96–39, title VIII, §807(a)(2), July 26, 1979, 93 Stat. 280; Pub. L. 96–223, title II, §232(e)(2)(C), Apr. 2, 1980, 94 Stat. 280.)

PRIOR PROVISIONS

A prior section 5004, act Aug. 16, 1954, ch. 736, 68A Stat. 598, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

Provisions similar to those comprising subsec. (b)(1) of this section were contained in prior section 5007(e)(1), act Aug. 16, 1954, ch. 736, 68A Stat. 600, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1980—Subsec. (a)(2)(B). Pub. L. 96–223 substituted "(11), or (12)," for "or (11),".

1979—Subsec. (a)(2)(B). Pub. L. 96–39, §807(a)(2)(C), substituted "(3), or (11)" for "or (3)".

Subsecs. (b), (c). Pub. L. 96–39, §807(a)(2)(A), (B), redesignated subsec. (c) as (b). Former subsec. (b), relating to other property subject to lien, was repealed.

1977—Subsec. (a)(2). Pub. L. 95–176 struck out reference to par. (9) of section 5214(a) in subpar. (B), and in subpar. (C) substituted "a customs bonded warehouse" for "customs manufacturing bonded warehouses" and provided for termination of the lien for tax when the distilled spirits are used in certain research, development, or testing.

1976—Subsec. (b)(3)(B), (4). Pub. L. 94–455 struck out "or his delegate" after "Secretary", wherever appearing.

1965—Subsec. (c). Pub. L. 89–44 substituted "5223(e)" for "5223(d)".

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–223 effective on the first day of the first calendar month beginning more than 60 days after Apr. 2, 1980, see section 232(h)(3) of Pub. L. 96–223, set out as an Effective Date note under section 5181 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as a note under section 5001 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–176 effective on first day of first calendar month beginning more than 90 days after Nov. 14, 1977, see section 7 of Pub. L. 95–176, set out as a note under section 5003 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Pub. L. 89–44, title VIII, §805(g)(2), June 21, 1965, 79 Stat. 162, provided that: "The amendments made by subsections (b), (d), and (f) (other than paragraph (6)) [amending this section and sections 5025, 5083, 5223, and 5234 of this title], shall take effect on October 1, 1965."

§5005. Persons liable for tax

(a) General

The distiller or importer of distilled spirits shall be liable for the taxes imposed thereon by section 5001(a)(1).

(b) Domestic distilled spirits

(1) Liability of persons interested in distilling

Every proprietor or possessor of, and every person in any manner interested in the use of, any still, distilling apparatus, or distillery, shall be jointly and severally liable for the taxes imposed by law on the distilled spirits produced therefrom.

(2) Exception

A person owning or having the right of control of not more than 10 percent of any class of stock of a corporate proprietor of a distilled spirits plant shall not be deemed to be a person liable for the tax for which such proprietor is liable under the provisions of paragraph (1). This exception shall not apply to an officer or director of such corporate proprietor.

(c) Proprietors of distilled spirits plants

(1) Bonded storage

Every person operating bonded premises of a distilled spirits plant shall be liable for the internal revenue tax on all distilled spirits while the distilled spirits are stored on such premises, and on all distilled spirits which are in transit to such premises (from the time of removal from the transferor's bonded premises) pursuant to application made by him. Such liability for the tax on distilled spirits shall continue until the distilled spirits are transferred or withdrawn from bonded premises as authorized by law, or until such liability for tax is relieved by reason of the provisions of section 5008(a). Nothing in this paragraph shall relieve any person from any liability imposed by subsection (a) or (b).

(2) Transfers in bond

When distilled spirits are transferred in bond in accordance with the provisions of section 5212, persons liable for the tax on such spirits under subsection (a) or (b), or under any similar prior provisions of internal revenue law, shall be relieved of such liability, if proprietors of transferring and receiving premises are independent of each other and neither has a proprietary interest, directly or indirectly, in the business of the other, and all persons liable for the tax under subsection (a) or (b), or under any similar prior provisions of internal revenue law, have divested themselves of all interest in the spirits so transferred. Such relief from liability shall be effective

from the time of removal from the transferor's bonded premises, or from the time of divestment of interest, whichever is later.

(d) Withdrawals free of tax

All persons liable for the tax under subsection (a) or (b), or under any similar prior provisions of internal revenue law, shall be relieved of such liability as to distilled spirits withdrawn free of tax under the provisions of section 5214(a)(1), (2), (3), (11), or (12), or under section 7510, at the time such spirits are so withdrawn from bonded premises.

(e) Withdrawals without payment of tax

(1) Liability for tax

Any person who withdraws distilled spirits from the bonded premises of a distilled spirits plant without payment of tax, as provided in section 5214(a)(4), (5), (6), (7), (8), (9), (10), or (13), shall be liable for the internal revenue tax on such distilled spirits, from the time of such withdrawal; and all persons liable for the tax on such distilled spirits under subsection (a) or (b), or under any similar prior provisions of internal revenue law, shall, at the time of such withdrawal, be relieved of any such liability on the distilled spirits so withdrawn if the person withdrawing such spirits and the person, or persons, liable for the tax under subsection (a) or (b), or under any similar prior provisions of internal revenue law, are independent of each other and neither has a proprietary interest, directly or indirectly, in the business of the other, and all persons liable for the tax under subsection (a) or (b), or under any similar prior provisions of internal revenue law, have divested themselves of all interest in the spirits so withdrawn.

(2) Relief from liability

All persons liable for the tax on distilled spirits under paragraph (1) of this subsection, or under subsection (a) or (b), or under any similar prior provisions of internal revenue law, shall be relieved of any such liability at the time, as the case may be, the distilled spirits are exported, deposited in a foreign-trade zone, used in the production of wine, used in the production of nonbeverage wine or wine products, deposited in customs bonded warehouses, laden as supplies upon, or used in the maintenance or repair of, certain vessels or aircraft, or used in certain research, development, or testing, as provided by law.

(f) Cross references

(1) For provisions requiring bond covering operations at, and withdrawals from, distilled spirits plants, see section 5173.

(2) For provisions relating to transfer of tax liability to redistiller in case of redistillation, see section 5223.

(3) For liability for tax on denatured distilled spirits, articles, and volatile fruit-flavor concentrates, see section 5001(a)(5) and (6).

(4) For liability for tax on distilled spirits withdrawn free of tax, see section 5001(a)(4).

(5) For liability of wine producer for unlawfully using wine spirits withdrawn for the production of wine, see section 5391.

(6) For provisions relating to transfer of tax liability for wine, see section 5043(a)(1)(A).

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1318; amended Pub. L. 94–455, title XIX, §1905(a)(1), Oct. 4, 1976, 90 Stat. 1818; Pub. L. 95–176, §4(b), (d), Nov. 14, 1977, 91 Stat. 1366; Pub. L. 96–39, title VIII, §807(a)(3), July 26, 1979, 93 Stat. 280; Pub. L. 96–223, title II, §232(e)(2)(D), Apr. 2, 1980, 94 Stat. 280; Pub. L. 98–369, div. A, title IV, §455(b), July 18, 1984, 98 Stat. 823; Pub. L. 103–465, title I, §136(c)(2), Dec. 8, 1994, 108 Stat. 4841.)

PRIOR PROVISIONS

A prior section 5005, acts Aug. 16, 1954, ch. 736, 68A Stat. 599; Sept. 2, 1958, Pub. L. 85–859, title II, §206(d), 72 Stat. 1431, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

Provisions similar to those comprising subsec. (c)(1), (2) of this section were contained in prior sections 5194(f), 5217(a), and 5232(a), act Aug. 16, 1954, ch. 736, 68A Stat. 634, 641, 643, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1994—Subsec. (f)(3). Pub. L. 103–465, §136(c)(2)(A), substituted "section 5001(a)(5) and (6)" for "section 5001(a)(6) and (7)".

Subsec. (f)(4). Pub. L. 103–465, §136(c)(2)(B), substituted "section 5001(a)(4)" for "section 5001(a)(5)".

1984—Subsec. (e)(1). Pub. L. 98–369, §455(b)(1), substituted "(10), or (13)" for "or (10)".

Subsec. (e)(2). Pub. L. 98–369, §455(b)(2), inserted "used in the production of nonbeverage wine or wine products,".

1980—Subsec. (d). Pub. L. 96–223 substituted "(11), or (12)," for "or (11),".

1979—Subsec. (c)(3). Pub. L. 96–39, §807(a)(3)(A), struck out par. (3) which related to liability for taxes with regard to withdrawals of distilled spirits from the bonded premises of a distilled spirits plant.

Subsec. (d). Pub. L. 96–39, §807(a)(3)(B), substituted "(3), or (11)" for "or (3)".

Subsec. (f)(1). Pub. L. 96–39, §807(a)(3)(C), substituted "requiring bond covering operations at, and withdrawals from, distilled spirits plants" for "conditioning warehousing bonds on the payment of the tax" and "5173" for "5173(c)".

Subsec. (f)(6). Pub. L. 96–39, §807(a)(3)(D), added par. (6).

1977—Subsec. (d). Pub. L. 95–176, §4(d)(1), struck out reference to par. (9) of section 5214(a).

Subsec. (e)(1). Pub. L. 95–176, §4(d)(2), inserted reference to pars. (9) and (10) of section 5214(a).

Subsec. (e)(2). Pub. L. 95–176, §4(b), substituted "customs bonded warehouses" for "customs manufacturing bonded warehouses" and provided for relief from liability for tax on distilled spirits used in certain research, development, or testing.

1976—Subsec. (c)(2). Pub. L. 94–455 substituted "Such relief from liability shall be effective from the time of removal from the transferor's bonded premises, or from the time of divestment of interest, whichever is later." for "Such liability for the tax on distilled spirits shall continue until the distilled spirits are transferred or withdrawn from bonded premises as authorized by law, or until such liability for tax is relieved by reason of the provisions of section 5008(a). Nothing in this paragraph shall relieve any person from any liability imposed by subsection (a) or (b).".

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 effective Jan. 1, 1995, see section 136(d) of Pub. L. 103–465, set out as a note under section 5001 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, see section 456(c) of Pub. L. 98–369, set out as an Effective Date note under section 5101 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–223 effective on first day of first calendar month beginning more than 60 days after Apr. 2, 1980, see section 232(h)(3) of Pub. L. 96–223, set out as an Effective Date note under section 5181 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as a note under section 5001 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–176 effective on first day of first calendar month beginning more than 90 days after Nov. 14, 1977, see section 7 of Pub. L. 95–176, set out as a note under section 5003 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XIX, §1905(d), Oct. 4, 1976, 90 Stat. 1824, provided that: "The amendments made by this section [amending this section and sections 5007 to 5009, 5025, 5026, 5043, 5054, 5061, 5105, 5111, 5113, 5114, 5117, 5121, 5122, 5131, 5142, 5148, 5171, 5174, 5177, 5179, 5214, 5222, 5232 to 5234, 5272, 5314, 5362, 5368, 5392, 5505, 5551, 5601, 5662, 5685, 5701, 5703, 5704, 5712, 5723, 5751, 5752, 5762, and 5763 of this title and repealing sections 5104, 5144, 5315, 5676, and 5689 of this title] shall take effect on the first day of the first month which begins more than 90 days after the date of the enactment of this Act [Oct. 4, 1976]."

§5006. Determination of tax

(a) Requirements

(1) In general

Except as otherwise provided in this section, the tax on distilled spirits shall be determined when the spirits are withdrawn from bond. Such tax shall be determined by such means as the Secretary shall by regulations prescribe, and with the use of such devices and apparatus (including but not limited to tanks and pipelines) as the Secretary may require. The tax on distilled spirits withdrawn from the bonded premises of a distilled spirits plant shall be determined upon completion of the gauge for determination of tax and before withdrawal from bonded premises, under such regulations as the Secretary shall prescribe.

(2) Distilled spirits not accounted for

If the Secretary finds that the distiller has not accounted for all the distilled spirits produced by him, he shall, from all the evidence he can obtain, determine what quantity of distilled spirits was actually produced by such distiller, and an assessment shall be made for the difference between the quantity reported and the quantity shown to have been actually produced at the rate of tax imposed by law for every proof gallon.

(b) Taxable loss

(1) On original quantity

Where there is evidence satisfactory to the Secretary that there has been any loss of distilled spirits from any cask or other package deposited on bonded premises, other than a loss which by reason of section 5008(a) is not taxable, the Secretary may require the withdrawal from bonded premises of such distilled spirits, and direct the officer designated by him to collect the tax accrued on the original quantity of distilled spirits entered for deposit on bonded premises in such cask or package; except that, under regulations prescribed by the Secretary, when the extent of any loss from causes other than theft or unauthorized voluntary destruction can be established by the proprietor to the satisfaction of the Secretary an allowance of the tax on the loss so established may be credited against the tax on the original quantity. If such tax is not paid on demand it shall be assessed and collected as other taxes are assessed and collected.

(2) Alternative method

Where there is evidence satisfactory to the Secretary that there has been access, other than is authorized by law, to the contents of casks or packages stored on bonded premises, and the extent of such access is such as to evidence a lack of due diligence or a failure to employ necessary and effective controls on the part of the proprietor, the Secretary (in lieu of requiring the casks or packages to which such access has been had to be withdrawn and tax paid on the original quantity of distilled spirits entered for deposit on bonded premises in such casks or packages as provided in paragraph (1)) may assess an amount equal to the tax on 5 proof gallons of distilled spirits at the prevailing rate on each of the total number of such casks or packages as determined by him.

(3) Application of subsection

The provisions of this subsection shall apply to distilled spirits which are filled into casks or packages, as authorized by law, after entry and deposit on bonded premises, whether by recasking, filling from storage tanks, consolidation of packages, or otherwise; and the quantity filled into such casks or packages shall be deemed to be the original quantity for the purpose of this subsection, in the case of loss from such casks or packages.

(c) Distilled spirits not bonded

(1) General

The tax on any distilled spirits, removed from the place where they were distilled and (except as otherwise provided by law) not deposited in storage on bonded premises of a distilled spirits plant, shall, at any time within the period of limitation provided in section 6501, when knowledge of

such fact is obtained by the Secretary, be assessed on the distiller of such distilled spirits (or other person liable for the tax) and payment of such tax immediately demanded and, on the neglect or refusal of payment, the Secretary shall proceed to collect the same by distraint. This paragraph shall not exclude any other remedy or proceeding provided by law.

(2) Production at other than qualified plants

Except as otherwise provided by law, the tax on any distilled spirits produced in the United States at any place other than a qualified distilled spirits plant shall be due and payable immediately upon production.

(d) Unlawfully imported distilled spirits

Distilled spirits smuggled or brought into the United States unlawfully shall, for purposes of this chapter, be held to be imported into the United States, and the internal revenue tax shall be due and payable at the time of such importation.

(e) Cross reference

For provisions relating to removal of distilled spirits from bonded premises on determination of tax, see section 5213.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1320; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–39, title VIII, §§804(a), 807(a)(4), July 26, 1979, 93 Stat. 274, 280.)

PRIOR PROVISIONS

A prior section 5006, acts Aug. 16, 1954, ch. 736, 68A Stat. 599; Sept. 2, 1958, Pub. L. 85–859, title II, §206(a), 72 Stat. 1431, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

Provisions similar to those comprising subsecs. (a)(2)(A), (3) of this section were contained in prior sections 5007(e)(1) and 5232(a), act Aug. 16, 1954, ch. 736, 68A Stat. 600, 643, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1979—Subsec. (a)(1). Pub. L. 96–39, §804(a), struck out "internal revenue" after "provided in this section, the" and "storage, gauging, and bottling" after "but not limited to".

Subsec. (a)(2), (3). Pub. L. 96–39, §804(a), redesignated par. (3) as (2). Former par. (2), relating to distilled spirits entered for storage, was struck out.

Subsec. (b)(1). Pub. L. 96–39, §807(a)(4)(A), (B), substituted "on bonded premises" for "in storage in internal revenue bond" in two places and "; except" for ", notwithstanding that the time specified in any bond given for the withdrawal of the spirits entered in storage in such cask or package has not expired, except".

Subsec. (b)(2), (3). Pub. L. 96–39, §807(a)(4)(B), substituted "on bonded premises" for "in storage in internal revenue bond".

1976—Subsecs. (a) to (c). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as a note under section 5001 of this title.

APPLICATION OF 1972 AMENDMENTS TO PRIOR SECTIONS

Pub. L. 85–859, title II, §206(f), Sept. 2, 1958, 72 Stat. 1431, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided:

"(1) The amendments made by this section [amending this section and sections 5005, 5232, 5242, and 5243 of this title] shall apply with respect to:

"(A) distilled spirits which on the date of the enactment of this Act [Sept. 2, 1958] are in internal revenue bonded warehouses or are in transit to or between such warehouses, and in respect of which the 8-year bonding period has not expired before the date of enactment of this Act; and

"(B) distilled spirits which after the date of the enactment of this Act [Sept. 2, 1958] are entered for deposit in an internal revenue bonded warehouse.

"(2) If the 8 years from the date of original entry of any distilled spirits for deposit in internal revenue bonded warehouses expires at any time during the 10-day period which begins on the date of the enactment of

this Act [Sept. 2, 1958], the amendments made by this section shall apply with respect to such spirits if (and only if) before the close of such 10-day period there is filed with the Secretary of the Treasury or his delegate either—

"(A) a consent of surety which changes (for periods on and after the date of the enactment of this Act) the condition based on the withdrawal of spirits from the internal revenue bonded warehouse within 8 years from the date of original entry for deposit to a condition based on the withdrawal of spirits from the internal revenue bonded warehouse within 20 years from the date of original entry for deposit, or

"(B) a bond which applies to periods on and after the date of the enactment of this Act and which satisfies the requirements of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as amended by this section, and is conditioned on the withdrawal of spirits from the internal revenue bonded warehouse within 20 years from the date of original entry for deposit."

§5007. Collection of tax on distilled spirits

(a) Tax on distilled spirits removed from bonded premises

The tax on domestic distilled spirits and on distilled spirits removed from customs custody under section 5232 shall be paid in accordance with section 5061.

(b) Collection of tax on imported distilled spirits

The internal revenue tax imposed by section 5001(a)(1) and (2) upon imported distilled spirits shall be collected by the Secretary and deposited as internal revenue collections, under such regulations as the Secretary may prescribe. Section 5688 shall be applicable to the disposition of imported spirits.

(c) Cross references

(1) For authority of the Secretary to make determinations and assessments of internal revenue taxes and penalties, see section 6201(a).

(2) For authority to assess tax on distilled spirits not bonded, see section 5006(c).

(3) For provisions relating to payment of tax, under certain conditions, on distilled spirits withdrawn free of tax, denatured distilled spirits, articles, and volatile fruit-flavor concentrates, see section 5001(a)(4), (5), and (6).

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1322; amended Pub. L. 94–455, title XIX, §§1905(b)(2)(A), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1822, 1834; Pub. L. 96–39, title VIII, §807(a)(5), July 26, 1979, 93 Stat. 280; Pub. L. 103–465, title I, §136(c)(3), (4), Dec. 8, 1994, 108 Stat. 4841, 4842.)

PRIOR PROVISIONS

A prior section 5007, act Aug. 16, 1954, ch. 736, 68A Stat. 600, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

Prior section 5007(c) related to "payment of tax on alcoholic compounds from Puerto Rico and Virgin Islands". See section 7652 of this title.

Prior section 5007(e)(1) related to "assessment for deficiencies in production and excess of materials used" and "requirement". See sections 5004(b)(1) and 5006(a)(3) of this title.

Prior section 5007(e)(2) related to "relief from assessment for deficiencies in production and excess of materials used" and is obsolete.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–465, §136(c)(3), amended subsec. (b) generally, striking out provisions relating to collection and deposit as internal revenue collections of taxes on imported perfumes containing distilled spirits.

Subsec. (c)(3). Pub. L. 103–465, §136(c)(4), substituted "section 5001(a)(4), (5), and (6)" for "section 5001(a)(5), (6), and (7)".

1979—Subsec. (a). Pub. L. 96–39 struck out "(1) General" before "The tax on domestic" and par. (2) which related to distilled spirits withdrawn to bottling premises under withdrawal bond.

1976—Subsec. (a)(2). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (b)(1). Pub. L. 94–455, §§1905(b)(2)(A), 1906(b)(13)(A), struck out second sentence "Such tax

shall be in addition to any customs duty imposed under the Tariff Act of 1930 (46 Stat. 590; 19 U.S.C., chapter 4), or any subsequent act." and "or his delegate" after "Secretary" wherever appearing.

Subsecs. (b)(2), (c)(1). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary" wherever appearing.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 effective Jan. 1, 1995, see section 136(d) of Pub. L. 103–465, set out as a note under section 5001 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as a note under section 5001 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1905(b)(2)(A) of Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1905(d) of Pub. L. 94–455, set out as a note under section 5005 of this title.

§5008. Abatement, remission, refund, and allowance for loss or destruction of distilled spirits

(a) Distilled spirits lost or destroyed in bond

(1) Extent of loss allowance

No tax shall be collected in respect of distilled spirits lost or destroyed while in bond, except that such tax shall be collected—

(A) Theft

In the case of loss by theft, unless the Secretary finds that the theft occurred without connivance, collusion, fraud, or negligence on the part of the proprietor of the distilled spirits plant, owner, consignor, consignee, bailee, or carrier, or the employees or agents of any of them;

(B) Voluntary destruction

In the case of voluntary destruction, unless such destruction is carried out as provided in subsection (b); and

(C) Unexplained shortage

In the case of an unexplained shortage of bottled distilled spirits.

(2) Proof of loss

In any case in which distilled spirits are lost or destroyed, whether by theft or otherwise, the Secretary may require the proprietor of the distilled spirits plant or other person liable for the tax to file a claim for relief from the tax and submit proof as to the cause of such loss. In every case where it appears that the loss was by theft, the burden shall be upon the proprietor of the distilled spirits plant or other person responsible for the distilled spirits tax to establish to the satisfaction of the Secretary that such loss did not occur as the result of connivance, collusion, fraud, or negligence on the part of the proprietor of the distilled spirits plant, owner, consignor, consignee, bailee, or carrier, or the employees or agents of any of them.

(3) Refund of tax

In any case where the tax would not be collectible by virtue of paragraph (1), but such tax has been paid, the Secretary shall refund such tax.

(4) Limitations

Except as provided in paragraph (5), no tax shall be abated, remitted, credited, or refunded under this subsection where the loss occurred after the tax was determined (as provided in section

5006(a)). The abatement, remission, credit, or refund of taxes provided for by paragraphs (1) and (3) in the case of loss of distilled spirits by theft shall only be allowed to the extent that the claimant is not indemnified against or recompensed in respect of the tax for such loss.

(5) Applicability

The provisions of this subsection shall extend to and apply in respect of distilled spirits lost after the tax was determined and before completion of the physical removal of the distilled spirits from the bonded premises.

(b) Voluntary destruction

The proprietor of the distilled spirits plant or other persons liable for the tax imposed by this chapter or by section 7652 with respect to any distilled spirits in bond may voluntarily destroy such spirits, but only if such destruction is under such supervision and under such regulations as the Secretary may prescribe.

(c) Distilled spirits returned to bonded premises

(1) In general

Whenever any distilled spirits on which tax has been determined or paid are returned to the bonded premises of a distilled spirits plant under section 5215(a), the Secretary shall abate or (without interest) credit or refund the tax imposed under section 5001(a)(1) (or the tax equal to such tax imposed under section 7652) on the spirits so returned.

(2) Claim must be filed within 6 months of return of spirits

No allowance under paragraph (1) may be made unless claim therefor is filed within 6 months of the date of the return of the spirits. Such claim may be filed only by the proprietor of the distilled spirits plant to which the spirits were returned, and shall be filed in such form as the Secretary may by regulations prescribe.

(d) Distilled spirits withdrawn without payment of tax

The provisions of subsection (a) shall be applicable to loss of distilled spirits occurring during transportation from bonded premises of a distilled spirits plant to—

(1) the port of export, in case of withdrawal under section 5214(a)(4);

(2) the customs manufacturing bonded warehouse, in case of withdrawal under section 5214(a)(6);

(3) the vessel or aircraft, in case of withdrawal under section 5214(a)(7);

(4) the foreign-trade zone, in case of withdrawal under section 5214(a)(8); and

(5) the customs bonded warehouse in the case of withdrawal under sections 5066 and 5214(a)(9).

The provisions of subsection (a) shall be applicable to loss of distilled spirits withdrawn from bonded premises without payment of tax under section 5214(a)(10) for certain research, development, or testing, until such distilled spirits are used as provided by law.

(e) Other laws applicable

All provisions of law, including penalties, applicable in respect of the internal revenue tax on distilled spirits, shall, insofar as applicable and not inconsistent with subsection (c), be applicable to the credits or refunds provided for under such subsection to the same extent as if such credits or refunds constituted credits or refunds of such tax.

(f) Cross reference

For provisions relating to allowance for loss in case of wine spirits withdrawn for use in wine production, see section 5373(b)(3).

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1323; amended Pub. L. 89–44, title VIII, §805(a), June 21, 1965, 79 Stat. 160; Pub. L. 90–630, §1, Oct. 22, 1968, 82 Stat. 1328; Pub. L. 91–659, §§1, 2(a), (b), Jan. 8, 1971, 84 Stat. 1964; Pub. L. 94–273, §47, Apr. 21, 1976, 90 Stat. 382; Pub. L. 94–455, title XIX, §§1905(a)(2), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1818, 1834; Pub. L.

95–176, §§2(f), 4(e), Nov. 14, 1977, 91 Stat. 1364, 1366; Pub. L. 96–39, title VIII, §807(a)(6), July 26, 1979, 93 Stat. 281; Pub. L. 105–34, title XIV, §1411(a), Aug. 5, 1997, 111 Stat. 1046.)

PRIOR PROVISIONS

A prior section 5008, act Aug. 16, 1954, ch. 736, 68A Stat. 602, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859. See sections 5205(a), (g) and 5604(a)(1) of this title.

Provisions similar to those comprising subsecs. (a)(1) to (4) and (f)(1), (2) of this section were contained in prior sections 5011(a)(1) to (4), 5023, 5247(e) and 5522(b), act Aug. 16, 1954, ch. 736, 68A Stat. 604, 606, 648, 679, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1997—Subsec. (c)(1). Pub. L. 105–34 substituted "on which tax has been determined or paid" for "withdrawn from bonded premises on payment or determination of tax".

1979—Subsec. (a)(1)(C). Pub. L. 96–39, §807(a)(6)(A), added subpar. (C).

Subsec. (a)(5). Pub. L. 96–39, §807(a)(6)(B), substituted "before" for "prior to the completion" and struck out provisions relating to the applicability of this subsection where the loss occurred after the time prescribed for the withdrawal of the distilled spirits from the bonded premises under section 5006(a)(2) and relating to the applicability of this paragraph to any loss of distilled spirits for which abatement, remission, credit, or refund of tax is allowed under subsec. (c).

Subsec. (b). Pub. L. 96–39, §807(a)(6)(C), struck out "(1) Distilled spirits in bond" before "The proprietor of" and provisions relating to distilled spirits withdrawn for rectification or bottling.

Subsec. (c). Pub. L. 96–39, §807(a)(6)(C), added subsec. (c). Former subsec. (c), which related to loss of distilled spirits withdrawn from bond for rectification or bottling, was struck out.

Subsec. (d). Pub. L. 96–39, §807(a)(6)(D), redesignated subsec. (f) as (d). Former subsec. (d), which related to distilled spirits returned to bonded premises, was struck out.

Subsec. (e). Pub. L. 96–39, §807(a)(6)(D), (E), redesignated subsec. (g) as (e) and substituted "subsection (c)" for "subsections (b)(2), (c), and (d)" and "under such subsection" for "under such subsections". Former subsec. (e), which related to samples of distilled spirits used for analysis or testing by United States, was struck out.

Subsec. (f). Pub. L. 96–39, §807(a)(6)(D), redesignated subsec. (h) as (f). Former subsec. (f) redesignated (d).

Subsecs. (g), (h). Pub. L. 96–39, §807(a)(6)(D), redesignated subsecs. (g) and (h) as (e) and (f), respectively.

1977—Subsec. (d). Pub. L. 95–176, §2(f), reenacted par. (1) and substituted heading "General" for "Allowance of tax" and "(or the tax equal to such tax imposed under section 7652)" for "or under section 7652"; added pars. (2) and (3); and redesignated as par. (4) provisions of former par. (2) and inserted reference to allowance of claims under par. (2) or (3).

Subsec. (f)(5). Pub. L. 95–176, §4(e), added par. (5).

1976—Subsec. (b)(1). Pub. L. 94–455, §§1905(a)(2)(A), 1906(b)(13)(A), inserted "or by section 7652" after "tax imposed by this chapter" and struck out "or his delegate" after "Secretary".

Subsec. (b)(2). Pub. L. 94–455, §§1905(a)(2)(B), 1906(b)(13)(A), struck out "or his delegate" after "Secretary" and inserted ", or under section 7652" after "under subpart B of this part".

Subsec. (c)(1). Pub. L. 94–455, §§1905(a)(2)(C), 1906(b)(13)(A), struck out "or his delegate" after "Secretary" wherever appearing and inserted "or under section 7652" after "under section 5001(a)(1)".

Subsec. (c)(2), (3). Pub. L. 94–273 substituted "computation year" for "fiscal year" wherever appearing.

Subsec. (c)(5). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (d)(1). Pub. L. 94–455, §§1905(a)(2)(C), (D), 1906(b)(13)(A), struck out "on or after July 1, 1959," after "from bonded premises," and "or his delegate" after "Secretary" and inserted "or under section 7652" after "under section 5001(a)(1)".

1971—Subsec. (b)(2). Pub. L. 91–659, §2(a), struck out condition that the distilled spirits can be destroyed only before bottling and permitted destruction after completion of bottling so long as the distilled spirits are on the bottling premises and added taxes imposed under subpart B of this Part as additional taxes which can be claimed for abatement, remission, credit or refund.

Subsec. (c)(1)(A). Pub. L. 91–659, §1, added cl. (iii).

Subsec. (c)(5). Pub. L. 91–659, §2(b), permits distilled spirits returned to bottling premises to be treated for purposes of the various loss provisions as though they had not been removed from the bottling premises.

1968—Subsec. (c)(1). Pub. L. 90–630 inserted provisions allowing abatement, remission, and refund if the

casualty loss occurs after completion of the packaging but before the spirits have been removed from the premises of the distilled spirits plant to which the spirits were removed from bond.

1965—Subsec. (d)(2). Pub. L. 89–44 struck out final clause prohibiting the allowance of a claim in respect to any distilled spirits withdrawn from bonded premises of a distilled spirits plant more than 6 months prior to the date of such return.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XIV, §1411(b), Aug. 5, 1997, 111 Stat. 1046, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on the 1st day of the 1st calendar quarter that begins at least 180 days after the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as a note under section 5001 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–176 effective on first day of first calendar month beginning more than 90 days after Nov. 14, 1977, see section 7 of Pub. L. 95–176, set out as a note under section 5003 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1905(a)(2) of Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1905(d) of Pub. L. 94–455, set out as a note under section 5005 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 91–659 effective on first day of first calendar month which begins more than 90 days after Jan. 8, 1971, see section 6 of Pub. L. 91–659, set out as an Effective Date note under section 5066 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Pub. L. 90–630, §4, Oct. 22, 1968, 82 Stat. 1329, provided that:

"(a) For purposes of subsection (b), the effective date of this Act is the first day of the first calendar month which begins more than 90 days after the date of the enactment of this Act [Oct. 22, 1968].

"(b) The amendments made by the first section of this Act [amending this section] shall apply only to losses sustained on or after such effective date. The amendments made by section 2 [amending section 5062 of this title and section 1313 of Title 19, Customs Duties] shall apply only to articles exported on or after such effective date. The amendments made by section 3 [amending section 5232 of this title] shall apply only to withdrawals from customs custody on or after such effective date."

EFFECTIVE DATE OF 1965 AMENDMENT

Pub. L. 89–44, title VIII, §805(g)(1), June 21, 1965, 79 Stat. 162, provided that: "The amendments made by subsections (a), (c), (e), and (f)(6) [amending this section and sections 5062, 5215, and 5608 of this title] shall take effect on July 1, 1965."

DISTILLED SPIRITS RETURNED TO BONDED PREMISES OF DISTILLED SPIRITS PLANT DURING 1980

Subsec. (c)(1) of this section to be treated as including a reference to section 5041 of this title with respect to distilled spirits returned to the bonded premises of distilled spirits plants during 1980, see section 808(d) of Pub. L. 96–39, set out as a note under section 5061 of this title.

[§5009. Repealed. Pub. L. 96–39, title VIII, §807(a)(7), July 26, 1979, 93 Stat. 281]

Section, added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1327; amended Pub. L. 94–455, title XIX, §§1905(a)(3), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1818, 1834, related to drawback on exportation of distilled spirits in casks or packages.

A prior section 5009, act Aug. 16, 1954, ch. 736, 68A Stat. 603, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859. See sections 5205(c)(1), (f), (i)(4) and 5206(c) of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as an Effective Date of 1979 Amendment note under section 5001 of this title.

§5010. Credit for wine content and for flavors content

(a) Allowance of credit

(1) Wine content

On each proof gallon of the wine content of distilled spirits, there shall be allowed a credit against the tax imposed by section 5001 (or 7652) equal to the excess of—

(A) $13.50, over

(B) the rate of tax which would be imposed on the wine under section 5041(b) but for its removal to bonded premises.

(2) Flavors content

On each proof gallon of the flavors content of distilled spirits, there shall be allowed a credit against the tax imposed by section 5001 (or 7652) equal to $13.50.

(3) Fractional part of proof gallon

In the case of any fractional part of a proof gallon of the wine content, or of the flavors content, of distilled spirits, a proportionate credit shall be allowed.

(b) Time for determining and allowing credit

(1) In general

The credit allowable by subsection (a)—

(A) shall be determined at the same time the tax is determined under section 5006 (or 7652) on the distilled spirits containing the wine or flavors, and

(B) shall be allowable at the time the tax imposed by section 5001 (or 7652) on such distilled spirits is payable as if the credit allowable by this section constituted a reduction in the rate of tax.

(2) Determination of content in the case of imports

For purposes of this section, the wine content, and the flavors content, of imported distilled spirits shall be established by such chemical analysis, certification, or other methods as may be set forth in regulations prescribed by the Secretary.

(c) Definitions

For purposes of this section—

(1) Wine content

(A) In general

The term "wine content" means alcohol derived from wine.

(B) Wine

The term "wine"—

(i) means wine on which tax would be imposed by paragraph (1), (2), or (3) of section 5041(b) but for its removal to bonded premises, and

(ii) does not include any substance which has been subject to distillation at a distilled spirits plant after receipt in bond.

(2) Flavors content

(A) In general

Except as provided in subparagraph (B), the term "flavors content" means alcohol derived from flavors of a type for which drawback is allowable under section 5114.

(B) Exceptions

The term "flavors content" does not include—

(i) alcohol derived from flavors made at a distilled spirits plant,

(ii) alcohol derived from flavors distilled at a distilled spirits plant, and

(iii) in the case of any distilled spirits product, alcohol derived from flavors to the extent such alcohol exceeds (on a proof gallon basis) 2½ percent of the finished product.

(Added Pub. L. 96–598, §6(a), Dec. 24, 1980, 94 Stat. 3488; amended Pub. L. 98–369, div. A, title I, §27(a)(2), July 18, 1984, 98 Stat. 507; Pub. L. 100–647, title V, §5063(a), Nov. 10, 1988, 102 Stat. 3681; Pub. L. 101–508, title XI, §11201(a)(2), Nov. 5, 1990, 104 Stat. 1388–415; Pub. L. 109–59, title XI, §11125(b)(14), Aug. 10, 2005, 119 Stat. 1956.)

PRIOR PROVISIONS

A prior section 5010, act Aug. 16, 1954, ch. 736, 68A Stat. 603, related to miscellaneous stamp provisions, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

2005—Subsec. (c)(2)(A). Pub. L. 109–59 substituted "section 5114" for "section 5134".

1990—Subsec. (a)(1), (2). Pub. L. 101–508 substituted "$13.50" for "$12.50".

1988—Subsec. (c)(2)(B). Pub. L. 100–647 added cl. (ii) and redesignated former cl. (ii) as (iii).

1984—Subsec. (a)(1), (2). Pub. L. 98–369 substituted "$12.50" for "$10.50".

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–59 effective July 1, 2008, but inapplicable to taxes imposed for periods before such date, see section 11125(c) of Pub. L. 109–59, set out as a note under section 5002 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective Jan. 1, 1991, see section 11201(d) of Pub. L. 101–508, set out as a note under section 5001 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title V, §5063(b), Nov. 10, 1988, 102 Stat. 3681, provided that: "The amendments made by this section [amending this section] shall apply with respect to distilled spirits withdrawn from bond after the date of the enactment of this Act [Nov. 10, 1988]."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective Oct. 1, 1985, see section 27(d)(1) of Pub. L. 98–369, set out as a note under section 5001 of this title.

EFFECTIVE DATE

Pub. L. 96–598, §6(c), Dec. 24, 1980, 94 Stat. 3489, provided that: "The amendments made by subsections (a) and (b) [enacting this section] shall take effect on January 1, 1980."

§5011. Income tax credit for average cost of carrying excise tax

(a) In general

For purposes of section 38, the amount of the distilled spirits credit for any taxable year is the amount equal to the product of—

(1) in the case of—

(A) any eligible wholesaler, the number of cases of bottled distilled spirits—

(i) which were bottled in the United States, and

(ii) which are purchased by such wholesaler during the taxable year directly from the bottler of such spirits, or

(B) any person which is subject to section 5005 and which is not an eligible wholesaler, the number of cases of bottled distilled spirits which are stored in a warehouse operated by, or on

behalf of, a State or political subdivision thereof, or an agency of either, on which title has not passed on an unconditional sale basis, and

(2) the average tax-financing cost per case for the most recent calendar year ending before the beginning of such taxable year.

(b) Eligible wholesaler

For purposes of this section, the term "eligible wholesaler" means any person which holds a permit under the Federal Alcohol Administration Act as a wholesaler of distilled spirits which is not a State or political subdivision thereof, or an agency of either.

(c) Average tax-financing cost

(1) In general

For purposes of this section, the average tax-financing cost per case for any calendar year is the amount of interest which would accrue at the deemed financing rate during a 60-day period on an amount equal to the deemed Federal excise tax per case.

(2) Deemed financing rate

For purposes of paragraph (1), the deemed financing rate for any calendar year is the average of the corporate overpayment rates under paragraph (1) of section 6621(a) (determined without regard to the last sentence of such paragraph) for calendar quarters of such year.

(3) Deemed Federal excise tax per case

For purposes of paragraph (1), the deemed Federal excise tax per case is $25.68.

(d) Other definitions and special rules

For purposes of this section—

(1) Case

The term "case" means 12 80-proof 750-milliliter bottles.

(2) Number of cases in lot

The number of cases in any lot of distilled spirits shall be determined by dividing the number of liters in such lot by 9.

(Added Pub. L. 109–59, title XI, §11126(a), Aug. 10, 2005, 119 Stat. 1957.)

REFERENCES IN TEXT

The Federal Alcohol Administration Act, referred to in subsec. (b), is act Aug. 29, 1935, ch. 814, 49 Stat. 977, as amended, which is classified generally to subchapter I (§201 et seq.) of chapter 8 of Title 27, Intoxicating Liquors. For complete classification of this Act to the Code, see section 201 of Title 27 and Tables.

PRIOR PROVISIONS

A prior section 5011, act Aug. 16, 1954, ch. 736, 68A Stat. 604, related to abatement, remission, refund and allowance for loss or destruction of distilled spirits, prior to the general revision of this chapter by Pub. L. 85–859.

A prior section 5012, act Aug. 16, 1954, ch. 736, 68A Stat. 605, related to drawback on exportation of distilled spirits, prior to the general revision of this chapter by Pub. L. 85–859.

EFFECTIVE DATE

Section applicable to taxable years beginning after Sept. 30, 2005, see section 11126(d) of Pub. L. 109–59, set out as an Effective Date of 2005 Amendments note under section 38 of this title.

[SUBPART B—REPEALED]

[§§5021 to 5026. Repealed. Pub. L. 96–39, title VIII, §803(a), July 26, 1979, 93 Stat. 274]

Section 5021, added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1328, provided for imposition of a tax on rectified distilled spirits or wines.

A prior section 5021, act Aug. 16, 1954, ch. 736, 68A Stat. 606, related to imposition and rate of tax, prior to the general revision of this chapter by Pub. L. 85–859.

Section 5022, added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1328; amended Pub. L. 86–75, §3(a)(4), June 30, 1959, 73 Stat. 157; Pub. L. 86–564, title II, §202(a)(6), June 30, 1960, 74 Stat. 290; Pub. L. 87–72, §3(a)(6), June 30, 1961, 75 Stat. 193; Pub. L. 87–508, §3(a)(5), June 28, 1962, 76 Stat. 114; Pub. L. 88–52, §3(a)(6), June 29, 1963, 77 Stat. 72; Pub. L. 88–348, §2(a)(6), June 30, 1964, 78 Stat. 237; Pub. L. 89–44, title V, §501(b), June 21, 1965, 79 Stat. 150, imposed a tax on cordials and liqueurs containing wine.

A prior section 5022, acts Aug. 16, 1954, ch. 736, 68A Stat. 606; Mar. 30, 1955, ch. 18, §3(a)(6), 69 Stat. 14; Mar. 29, 1956, ch. 115, §3(a)(6), 70 Stat. 66; Mar. 29, 1957, Pub. L. 85–12, §3(a)(4), 71 Stat. 9; June 30, 1958, Pub. L. 85–475, §3(a)(4), 72 Stat. 259, imposed a tax on cordials and liqueurs containing wine, prior to the general revision of this chapter by Pub. L. 85–859.

Section 5023, added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1328, imposed a tax on the blending of beverage rums and brandies.

A prior section 5023, act Aug. 16, 1954, ch. 736, 68A Stat. 606, imposed a tax on blending of beverage brandies, prior to the general revision of this chapter by Pub. L. 85–859.

Section 5024, added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1328, indicated the sources for the definitions of "rectifier", "products of rectification", and "distilled spirits" and referred to other definitions relating to distilled spirits as well as other definitions of general application to this title.

A prior section 5024, act Aug. 16, 1954, ch. 736, 68A Stat. 607, defined "rectifier" and "products of rectification", prior to the general revision of this chapter by Pub. L. 85–859.

Section 5025, added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1328; amended Pub. L. 89–44, title VIII, §805(b), (f)(2)–(5), June 21, 1965, 79 Stat. 161; Pub. L. 94–455, title XIX, §§1905(a)(4), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1818, 1834; Pub. L. 95–176, §§5(b), 6, Nov. 14, 1977, 91 Stat. 1366, 1367, enumerated 12 exemptions from the rectification tax.

A prior section 5025, act Aug. 16, 1954, ch. 736, 68A Stat. 607, related to exemption from rectification tax, prior to the general revision of this chapter by Pub. L. 85–859.

Provisions similar to those comprising section 5025(e)(1), (2), (4) of this title were contained in former sections 5023, 5217(a), and 5306 of this title, act Aug. 16, 1954, ch. 736, 68A Stat. 606, 641, 657, prior to the general revision of this chapter by Pub. L. 85–859.

Section 5026, added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1330; Pub. L. 94–455, title XIX, §§1905(b)(2)(B), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1822, 1834, related to the determination and collection of the rectification tax.

A prior section 5026, act Aug. 16, 1954, ch. 736, 68A Stat. 608, related to determination and collection of rectification tax, prior to the general revision of this chapter by Pub. L. 85–859.

A prior section 5027, act Aug. 16, 1954, ch. 736, 68A Stat. 609, related to stamp provisions applicable to rectifiers, prior to the general revision of this chapter by Pub. L. 85–859.

A prior section 5028, act Aug. 16, 1954, ch. 736, 68A Stat. 609, related to cross references for penalty provisions, prior to the general revision of this chapter by Pub. L. 85–859.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as an Effective Date of 1979 Amendment note under section 5001 of this title.

SUBPART C—WINES

Sec.

5041. Imposition and rate of tax.

5042. Exemption from tax.

5043. Collection of taxes on wines.

5044. Refund of tax on wine.

5045. Cross references.

PRIOR PROVISIONS

A prior subpart C, comprising sections 5041 to 5045, related to wines, prior to the general revision of this chapter by Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1313.

AMENDMENTS

1997—Pub. L. 105–34, title XIV, §1416(b)(3), Aug. 5, 1997, 111 Stat. 1048, struck out "unmerchantable" before "wine" in item 5044.

§5041. Imposition and rate of tax

(a) Imposition

There is hereby imposed on all wines (including imitation, substandard, or artificial wine, and compounds sold as wine) having not in excess of 24 percent of alcohol by volume, in bond in, produced in, or imported into, the United States, taxes at the rates shown in subsection (b), such taxes to be determined as of the time of removal for consumption or sale. All wines containing more than 24 percent of alcohol by volume shall be classed as distilled spirits and taxed accordingly. Still wines shall include those wines containing not more than 0.392 gram of carbon dioxide per hundred milliliters of wine; except that the Secretary may by regulations prescribe such tolerances to this maximum limitation as may be reasonably necessary in good commercial practice.

(b) Rates of tax

(1) On still wines containing not more than 14 percent of alcohol by volume, $1.07 per wine gallon;

(2) On still wines containing more than 14 percent and not exceeding 21 percent of alcohol by volume, $1.57 per wine gallon;

(3) On still wines containing more than 21 percent and not exceeding 24 percent of alcohol by volume, $3.15 per wine gallon;

(4) On champagne and other sparkling wines, $3.40 per wine gallon;

(5) On artificially carbonated wines, $3.30 per wine gallon; and

(6) On hard cider which is a still wine derived primarily from apples or apple concentrate and water, containing no other fruit product, and containing at least one-half of 1 percent and less than 7 percent alcohol by volume, 22.6 cents per wine gallon.

(c) Credit for small domestic producers

(1) Allowance of credit

Except as provided in paragraph (2), in the case of a person who produces not more than 250,000 wine gallons of wine during the calendar year, there shall be allowed as a credit against any tax imposed by this title (other than chapters 2, 21, and 22) of 90 cents per wine gallon on the 1st 100,000 wine gallons of wine (other than wine described in subsection (b)(4)) which are removed during such year for consumption or sale and which have been produced at qualified facilities in the United States. In the case of wine described in subsection (b)(6), the preceding sentence shall be applied by substituting "5.6 cents" for "90 cents".

(2) Reduction in credit

The credit allowable by paragraph (1) shall be reduced (but not below zero) by 1 percent for each 1,000 wine gallons of wine produced in excess of 150,000 wine gallons of wine during the calendar year.

(3) Time for determining and allowing credit

The credit allowable by paragraph (1)—

(A) shall be determined at the same time the tax is determined under subsection (a) of this section, and

(B) shall be allowable at the time any tax described in paragraph (1) is payable as if the credit allowable by this subsection constituted a reduction in the rate of such tax.

(4) Controlled groups

Rules similar to rules of section 5051(a)(2)(B) shall apply for purposes of this subsection.

(5) Denial of deduction

Any deduction under subtitle A with respect to any tax against which a credit is allowed under this subsection shall only be for the amount of such tax as reduced by such credit.

(6) Credit for transferee in bond

If—

(A) wine produced by any person would be eligible for any credit under paragraph (1) if removed by such person during the calendar year,

(B) wine produced by such person is removed during such calendar year by any other person (hereafter in this paragraph referred to as the "transferee") to whom such wine was transferred in bond and who is liable for the tax imposed by this section with respect to such wine, and

(C) such producer holds title to such wine at the time of its removal and provides to the transferee such information as is necessary to properly determine the transferee's credit under this paragraph,

then, the transferee (and not the producer) shall be allowed the credit under paragraph (1) which would be allowed to the producer if the wine removed by the transferee had been removed by the producer on that date.

(7) Regulations

The Secretary may prescribe such regulations as may be necessary to carry out the purposes of this subsection, including regulations—

(A) to prevent the credit provided in this subsection from benefiting any person who produces more than 250,000 wine gallons of wine during a calendar year, and

(B) to assure proper reduction of such credit for persons producing more than 150,000 wine gallons of wine during a calendar year.

(d) Wine gallon

For the purpose of this chapter, the term "wine gallon" means a United States gallon of liquid measure equivalent to the volume of 231 cubic inches. On lesser quantities the tax shall be paid proportionately (fractions of less than one-tenth gallon being converted to the nearest one-tenth gallon, and five-hundredths gallon being converted to the next full one-tenth gallon).

(e) Tolerances

Where the Secretary finds that the revenue will not be endangered thereby, he may by regulation prescribe tolerances (but not greater than ½ of 1 percent) for bottles and other containers, and, if such tolerances are prescribed, no assessment shall be made and no tax shall be collected for any excess in any case where the contents of a bottle or other container are within the limit of the applicable tolerance prescribed.

(f) Illegally produced wine

Notwithstanding subsection (a), any wine produced in the United States at any place other than the bonded premises provided for in this chapter shall (except as provided in section 5042 in the case of tax-free production) be subject to tax at the rate prescribed in subsection (b) at the time of production and whether or not removed for consumption or sale.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1331; amended Pub. L. 86–75, §3(a)(5), June 30, 1959, 73 Stat. 157; Pub. L. 86–564, title II, §202(a)(7), June 30, 1960, 74 Stat. 290; Pub. L. 87–72, §3(a)(7), June 30, 1961, 75 Stat. 193; Pub. L. 87–508, §3(a)(6), June 28, 1962, 76 Stat. 114; Pub. L. 88–52, §3(a)(7), June 29, 1963, 77 Stat. 72; Pub. L. 88–348, §2(a)(7), June 30, 1964, 78 Stat. 237; Pub. L. 89–44, title V, §501(c), title VIII, §806(a), June 21, 1965, 79 Stat. 150, 162; Pub. L. 93–490, §6(a), Oct. 26, 1974, 88 Stat. 1468; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 100–647, title VI, §6101(a), Nov. 10, 1988, 102 Stat. 3710; Pub. L.

101–508, title XI, §11201(b)(1), (2), Nov. 5, 1990, 104 Stat. 1388–415, 1388–416; Pub. L. 104–188, title I, §1702(b)(5), Aug. 20, 1996, 110 Stat. 1868; Pub. L. 105–34, title IX, §908(a), (b), Aug. 5, 1997, 111 Stat. 876; Pub. L. 105–206, title VI, §6009(a), July 22, 1998, 112 Stat. 812.)

PRIOR PROVISIONS

A prior section 5041, acts Aug. 16, 1954, ch. 736, 68A Stat. 609; Mar. 30, 1955, ch. 18, §3(a)(7), 69 Stat. 14; Mar. 29, 1956, ch. 115, §3(a)(7), 70 Stat. 66; Mar. 29, 1957, Pub. L. 85–12, §3(a)(5), 71 Stat. 9; June 30, 1958, Pub. L. 85–475, §3(a)(5), 72 Stat. 259, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1998—Subsec. (b)(6). Pub. L. 105–206 inserted "which is a still wine" after "hard cider".

1997—Subsec. (b)(6). Pub. L. 105–34, §908(a), added par. (6).

Subsec. (c)(1). Pub. L. 105–34, §908(b), inserted at end "In the case of wine described in subsection (b)(6), the preceding sentence shall be applied by substituting '5.6 cents' for '90 cents'."

1996—Subsec. (c)(6), (7). Pub. L. 104–188 added pars. (6) and (7) and struck out former par. (6) which read as follows:

"(6) REGULATIONS.—The Secretary may prescribe such regulations as may be necessary to prevent the credit provided in this subsection from benefiting any person who produces more than 250,000 wine gallons of wine during a calendar year and to assure proper reduction of such credit for persons producing more than 150,000 wine gallons of wine during a calendar year."

1990—Subsec. (b)(1). Pub. L. 101–508, §11201(b)(1)(A), substituted "$1.07" for "17 cents".

Subsec. (b)(2). Pub. L. 101–508, §11201(b)(1)(B), substituted "$1.57" for "67 cents".

Subsec. (b)(3). Pub. L. 101–508, §11201(b)(1)(C), substituted "$3.15" for "$2.25".

Subsec. (b)(5). Pub. L. 101–508, §11201(b)(1)(D), substituted "$3.30" for "$2.40".

Subsecs. (c) to (f). Pub. L. 101–508, §11201(b)(2), added subsec. (c) and redesignated former subsecs. (c) to (e) as (d) to (f), respectively.

1988—Subsecs. (d), (e). Pub. L. 100–647 added subsec. (d) and redesignated former subsec. (d) as (e).

1976—Subsec. (a). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

1974—Subsec. (a). Pub. L. 93–490 substituted "0.392" for "0.277".

1965—Subsec. (a). Pub. L. 89–44, §806(a), substituted "0.277" for "0.256".

Subsec. (b). Pub. L. 89–44, §501(c)(1)–(5), struck out provisions at end of each par. setting out a specified reduced rate to be applied on and after July 1, 1965.

1964—Subsec. (b). Pub. L. 88–348 substituted "July 1, 1965" for "July 1, 1964" in five places.

1963—Subsec. (b). Pub. L. 88–52 substituted "July 1, 1964" for "July 1, 1963" in five places.

1962—Subsec. (b). Pub. L. 87–508 substituted "July 1, 1963" for "July 1, 1962" in five places.

1961—Subsec. (b). Pub. L. 87–72 substituted "July 1, 1962" for "July 1, 1961" in five places.

1960—Subsec. (b). Pub. L. 86–564 substituted "July 1, 1961" for "July 1, 1960" in five places.

1959—Subsec. (b). Pub. L. 86–75 substituted "July 1, 1960" for "July 1, 1959" in five places.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title IX, §908(c), Aug. 5, 1997, 111 Stat. 876, provided that: "The amendments made by this section [amending this section] shall take effect on October 1, 1997."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective Jan. 1, 1991, see section 11201(d) of Pub. L. 101–508, set out as a note under section 5001 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title VI, §6101(b), Nov. 10, 1988, 102 Stat. 3710, provided that: "The amendment made by subsection (a) [amending this section] shall apply to wine removed after December 31, 1988."

EFFECTIVE DATE OF 1974 AMENDMENT

Pub. L. 93–490, §6(b), Oct. 26, 1974, 88 Stat. 1468, provided that: "The amendment made by this section [amending this section] shall take effect on the first day of the first calendar month which begins more than 90 days after the date of enactment of this Act [Oct. 26, 1974]."

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 501(c) of Pub. L. 89–44 applicable on and after July 1, 1965, see section 701(d) of Pub. L. 89–44, set out as a note under section 5701 of this title.

Pub. L. 89–44, title VIII, §806(d)(1), June 21, 1965, 79 Stat. 164, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on July 1, 1965."

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

FLOOR STOCKS TAXES ON DISTILLED SPIRITS, WINE, AND BEER

Imposition of tax on wine, exception for small domestic producers, exception for certain small wholesale or retail dealers, credit against tax, liability for tax and method of payment, controlled groups, other laws applicable, and definitions, see section 11201(e) of Pub. L. 101–508, set out as a note under section 5001 of this title.

§5042. Exemption from tax

(a) Tax-free production

(1) Cider

Subject to regulations prescribed by the Secretary, the noneffervescent product of the normal alcoholic fermentation of apple juice only, which is produced at a place other than a bonded wine cellar and without the use of preservative methods or materials, and which is sold or offered for sale as cider and not as wine or as a substitute for wine, shall not be subject to tax as wine nor to the provisions of subchapter F.

(2) Wine for personal or family use

Subject to regulations prescribed by the Secretary—

(A) Exemption

Any adult may, without payment of tax, produce wine for personal or family use and not for sale.

(B) Limitation

The aggregate amount of wine exempt from tax under this paragraph with respect to any household shall not exceed—

(i) 200 gallons per calendar year if there are 2 or more adults in such household, or

(ii) 100 gallons per calendar year if there is only 1 adult in such household.

(C) Adults

For purposes of this paragraph, the term "adult" means an individual who has attained 18 years of age, or the minimum age (if any) established by law applicable in the locality in which the household is situated at which wine may be sold to individuals, whichever is greater.

(3) Experimental wine

Subject to regulations prescribed by the Secretary, any scientific university, college of learning, or institution of scientific research may produce, receive, blend, treat, and store wine, without

payment of tax, for experimental or research use but not for consumption (other than organoleptical tests) or sale, and may receive such wine spirits without payment of tax as may be necessary for such production.

(b) Cross references

(1) For provisions relating to exemption of tax on losses of wine (including losses by theft or authorized destruction), see section 5370.

(2) For provisions exempting from tax samples of wine, see section 5372.

(3) For provisions authorizing withdrawals of wine free of tax or without payment of tax, see section 5362.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1331; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–458, §2(a), Oct. 14, 1978, 92 Stat. 1255.)

PRIOR PROVISIONS

A prior section 5042, act Aug. 16, 1954, ch. 736, 68A Stat. 610, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1978—Subsec. (a)(2). Pub. L. 95–458 substituted in heading "Wine for personal or family use" for "Family wine" and in text provision permitting an adult to produce 200 gallons of wine per calendar year if there are 2 or more adults in the household or 100 gallons of wine per calendar year if there is one adult in the household for provision which permitted the duly registered head of any family to produce an amount of wine not exceeding 200 gallons of wine per annum.

1976—Subsec. (a)(1) to (3). Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–458, §2(c), Oct. 14, 1978, 92 Stat. 1257, provided that: "The amendments made by this section [amending this section and sections 5051, 5053, 5054, 5092, 5222, and 5674 of this title] shall take effect on the first day of the first calendar month which begins more than 90 days after the date of the enactment of this Act [Oct. 14, 1978]."

§5043. Collection of taxes on wines

(a) Persons liable for payment

The taxes on wine provided for in this subpart shall be paid—

(1) Bonded wine cellars

In the case of wines removed from any bonded wine cellar, by the proprietor of such bonded wine cellar; except that—

(A) in the case of any transfer of wine in bond as authorized under the provisions of section 5362(b), the liability for payment of the tax shall become the liability of the transferee from the time of removal of the wine from the transferor's premises, and the transferor shall thereupon be relieved of such liability; and

(B) in the case of any wine withdrawn by a person other than such proprietor without payment of tax as authorized under the provisions of section 5362(c), the liability for payment of the tax shall become the liability of such person from the time of the removal of the wine from the bonded wine cellar, and such proprietor shall thereupon be relieved of such liability.

(2) Foreign wine

In the case of foreign wines which are not transferred to a bonded wine cellar free of tax under section 5364, by the importer thereof.

(3) Other wines

Immediately, in the case of any wine produced, imported, received, removed, or possessed

otherwise than as authorized by law, by any person producing, importing, receiving, removing, or possessing such wine; and all such persons shall be jointly and severally liable for such tax with each other as well as with any proprietor, transferee, or importer who may be liable for the tax under this subsection.

(b) Payment of tax

The taxes on wines shall be paid in accordance with section 5061.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1332; amended Pub. L. 94–455, title XIX, §1905(b)(2)(C), Oct. 4, 1976, 90 Stat. 1822; Pub. L. 96–39, title VIII, §807(a)(8), July 26, 1979, 93 Stat. 281; Pub. L. 105–206, title VI, §6014(b)(1), July 22, 1998, 112 Stat. 820.)

PRIOR PROVISIONS

A prior section 5043, act Aug. 16, 1954, ch. 736, 68A Stat. 610, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1998—Subsec. (a)(2). Pub. L. 105–206 inserted "which are not transferred to a bonded wine cellar free of tax under section 5364" after "foreign wines".

1979—Subsec. (a)(1)(A). Pub. L. 96–39 struck out "between bonded wine cellars" after "transfer of wine in bond".

1976—Subsec. (b). Pub. L. 94–455 substituted "The taxes" for "Except as provided in subsection (a)(3), the taxes".

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates (see section 1422(c) of Pub. L. 105–34 set out as an Effective Date note under section 5364 of this title), see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as a note under section 5001 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1905(d) of Pub. L. 94–455, set out as a note under section 5005 of this title.

§5044. Refund of tax on wine

(a) General

In the case of any wine removed from a bonded wine cellar and returned to bond under section 5361—

(1) any tax imposed by section 5041 shall, if paid, be refunded or credited, without interest, to the proprietor of the bonded wine cellar to which such wine is delivered; or

(2) if any tax so imposed has not been paid, the person liable for the tax may be relieved of liability therefor,

under such regulations as the Secretary may prescribe. Such regulations may provide that claim for refund or credit under paragraph (1), or relief from liability under paragraph (2), may be made only with respect to minimum quantities specified in such regulations. The burden of proof in all such cases shall be on the applicant.

(b) Date of filing

No claim under subsection (a) shall be allowed unless filed within 6 months after the date of the return of the wine to bond.

(c) Status of wine returned to bond

All provisions of this chapter applicable to wine in bond on the premises of a bonded wine cellar and to removals thereof shall be applicable to wine returned to bond under the provisions of this section.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1332; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 105–34, title XIV, §1416(a), (b)(2), Aug. 5, 1997, 111 Stat. 1048; Pub. L. 105–206, title VI, §6014(b)(2), July 22, 1998, 112 Stat. 820.)

PRIOR PROVISIONS

A prior section 5044, act Aug. 16, 1954, ch. 736, 68A Stat. 611, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–206 substituted "removed from a bonded wine cellar" for "produced in the United States" in introductory provisions.

1997—Pub. L. 105–34, §1416(b)(2), struck out "unmerchantable" after "tax on" in section catchline.

Subsec. (a). Pub. L. 105–34, §1416(a), struck out "as unmerchantable" after "to bond" in introductory provisions.

1976—Subsec. (a). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XIV, §1416(c), Aug. 5, 1997, 111 Stat. 1048, provided that: "The amendments made by this section [amending this section and section 5361 of this title] shall take effect on the 1st day of the 1st calendar quarter that begins at least 180 days after the date of the enactment of this Act [Aug. 5, 1997]."

§5045. Cross references

For provisions relating to the establishment and operation of wineries, see subchapter F, and for penalties pertaining to wine, see subchapter J.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1333.)

PRIOR PROVISIONS

A prior section 5045, act Aug. 16, 1954, ch. 736, 68A Stat. 611, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

SUBPART D—BEER

Sec.

5051. Imposition and rate of tax.
5052. Definitions.
5053. Exemptions.
5054. Determination and collection of tax on beer.
5055. Drawback of tax.
5056. Refund and credit of tax, or relief from liability.

PRIOR PROVISIONS

A prior subpart D, comprising sections 5051 to 5057 of this title, related to beer, prior to the general revision of this chapter by Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1313.

§5051. Imposition and rate of tax

(a) Rate of tax

(1) In general

A tax is hereby imposed on all beer brewed or produced, and removed for consumption or sale, within the United States, or imported into the United States. Except as provided in paragraph (2), the rate of such tax shall be $18 for every barrel containing not more than 31 gallons and at a like rate for any other quantity or for fractional parts of a barrel.

(2) Reduced rate for certain domestic production

(A) $7 a barrel rate

In the case of a brewer who produces not more than 2,000,000 barrels of beer during the calendar year, the per barrel rate of the tax imposed by this section shall be $7 on the first 60,000 barrels of beer which are removed in such year for consumption or sale and which have been brewed or produced by such brewer at qualified breweries in the United States.

(B) Controlled groups

In the case of a controlled group, the 2,000,000 barrel quantity specified in subparagraph (A) shall be applied to the controlled group, and the 60,000 barrel quantity specified in subparagraph (A) shall be apportioned among the brewers who are component members of such group in such manner as the Secretary or his delegate shall by regulations prescribed. For purposes of the preceding sentence, the term "controlled group" has the meaning assigned to it by subsection (a) of section 1563, except that for such purposes the phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent" in each place it appears in such subsection. Under regulations prescribed by the Secretary or his delegate, principles similar to the principles of the preceding two sentences shall be applied to a group of brewers under common control where one or more of the brewers is not a corporation.

(C) Regulations

The Secretary may prescribe such regulations as may be necessary to prevent the reduced rates provided in this paragraph from benefiting any person who produces more than 2,000,000 barrels of beer during a calendar year.

(3) Tolerances

Where the Secretary or his delegate finds that the revenue will not be endangered thereby, he may by regulations prescribe tolerances for barrels and fractional parts of barrels, and, if such tolerances are prescribed, no assessment shall be made and no tax shall be collected for any excess in any case where the contents of a barrel or a fractional part of a barrel are within the limit of the applicable tolerance prescribed.

(b) Assessment on materials used in production in case of fraud

Nothing contained in this subpart or subchapter G shall be construed to authorize an assessment on the quantity of materials used in producing or purchased for the purpose of producing beer, nor shall the quantity of materials so used or purchased be evidence, for the purpose of taxation, of the quantity of beer produced; but the tax on all beer shall be paid as provided in section 5054, and not otherwise; except that this subsection shall not apply to cases of fraud, and nothing in this subsection shall have the effect to change the rules of law respecting evidence in any prosecution or suit.

(c) Illegally produced beer

The production of any beer at any place in the United States shall be subject to tax at the rate prescribed in subsection (a) and such tax shall be due and payable as provided in section 5054(a)(3) unless—

(1) such beer is produced in a brewery qualified under the provisions of subchapter G, or

(2) such production is exempt from tax under section 5053(e) (relating to beer for personal or family use).

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1333; amended Pub. L. 86–75, §3(a)(6), June 30, 1959, 73 Stat. 157; Pub. L. 86–564, title II, §202(a)(8), June 30, 1960, 74 Stat. 290; Pub. L. 87–72, §3(a)(8), June 30, 1961, 75 Stat. 193; Pub. L. 87–508, §3(a)(7), June 28, 1962, 76 Stat. 114; Pub. L. 88–52, §3(a)(8), June 29, 1963, 77 Stat. 72; Pub. L. 88–348, §2(a)(8), June 30, 1964, 78 Stat. 237; Pub. L. 89–44, title V, §501(d), June 21, 1965, 79 Stat. 150; Pub. L. 94–529, §1, Oct. 17, 1976, 90 Stat. 2485; Pub. L. 95–458, §2(b)(2)(A), Oct. 14, 1978, 92 Stat. 1256; Pub. L. 101–508, title XI, §11201(c), Nov. 5, 1990, 104 Stat. 1388–416.)

PRIOR PROVISIONS

A prior section 5051, act Aug. 16, 1954, ch. 736, 68A Stat. 611, as amended by acts Mar. 30, 1955, ch. 18, §3(a)(8), 69 Stat. 14; Mar. 29, 1956, ch. 115, §3(a)(8), 70 Stat. 66; Mar. 29, 1957, Pub. L. 85–12, §3(a)(6), 71 Stat. 9; June 30, 1958, Pub. L. 85–475, §3(a)(6), 72 Stat. 259, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1990—Subsec. (a)(1). Pub. L. 101–508, §11201(c)(1), substituted "$18" for "$9".

Subsec. (a)(2)(C). Pub. L. 101–508, §11201(c)(2), added subpar. (C).

1978—Subsec. (c). Pub. L. 95–458 added subsec. (c).

1976—Subsec. (a). Pub. L. 94–529 reduced the excise tax on beer for small brewers to $7 per barrel on the first 60,000 barrels produced in the United States and removed for sale or consumption or sale during the calendar year, the reduced rate to be applicable only to brewers producing no more than 2 million barrels of beer in a calendar year, and inserted provision that if several brewers are members of a controlled group, the 2–million barrel limit is to be applied to the controlled group and the 60,000–barrel limit is to be apportioned among the members of the controlled group in accordance with Treasury Department regulations promulgated by the Secretary or his delegate.

1965—Subsec. (a). Pub. L. 89–44 struck out sentence providing for the imposition on and after July 1, 1965, of a tax of $8 in lieu of the tax imposed by the section.

1964—Subsec. (a). Pub. L. 88–348 substituted "July 1, 1965" for "July 1, 1964".

1963—Subsec. (a). Pub. L. 88–52 substituted "July 1, 1964" for "July 1, 1963".

1962—Subsec. (a). Pub. L. 87–508 substituted "July 1, 1963" for "July 1, 1962".

1961—Subsec. (a). Pub. L. 87–72 substituted "July 1, 1962" for "July 1, 1961".

1960—Subsec. (a). Pub. L. 86–564 substituted "July 1, 1961" for "July 1, 1960".

1959—Subsec. (a). Pub. L. 86–75 substituted "July 1, 1960" for "July 1, 1959".

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective Jan. 1, 1991, see section 11201(d) of Pub. L. 101–508, set out as a note under section 5001 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–458 effective on first day of first calendar month beginning more than 90 days after Oct. 14, 1978, see section 2(c) of Pub. L. 95–458, set out as a note under section 5042 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–529, §2, Oct. 17, 1976, 90 Stat. 2486, provided that: "The amendment made by the first section of this Act [amending this section] shall take effect on the first day of the first calendar year which begins after the date of the enactment of this Act [Oct. 17, 1976]."

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 applicable on and after July 1, 1965, see section 701(d) of Pub. L. 89–44, set out as a note under section 5701 of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

FLOOR STOCKS TAXES ON DISTILLED SPIRITS, WINE, AND BEER

Imposition of tax on beer, exception for small domestic producers, exception for certain small wholesale or retail dealers, credit against tax, liability for tax and method of payment, controlled groups, other laws applicable, and definitions, see section 11201(e) of Pub. L. 101–508, set out as a note under section 5001 of

this title.

§5052. Definitions

(a) Beer

For purposes of this chapter (except when used with reference to distilling or distilling material) the term beer means beer, ale, porter, stout, and other similar fermented beverages (including sake or similar products) of any name or description containing one-half of 1 percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor.

(b) Gallon

For purposes of this subpart, the term gallon means the liquid measure containing 231 cubic inches.

(c) Removed for consumption of sale

Except as provided for in the case of removal of beer without payment of tax, the term "removed for consumption or sale", for the purposes of this subpart means—

(1) Sale of beer

The sale and transfer of possession of beer for consumption at the brewery; or

(2) Removals

Any removal of beer from the brewery.

(d) Brewer

For purposes of this chapter, the term "brewer" means any person who brews beer or produces beer for sale. Such term shall not include any person who produces only beer exempt from tax under section 5053(e).

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1333; amended Pub. L. 91–673, §1(b), Jan. 12, 1971, 84 Stat. 2056; Pub. L. 109–59, title XI, §11125(b)(15), Aug. 10, 2005, 119 Stat. 1956.)

PRIOR PROVISIONS

A prior section 5052, act Aug. 16, 1954, ch. 736, 68A Stat. 612, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

2005—Subsec. (d). Pub. L. 109–59 amended subsec. (d) generally. Prior to amendment, text read as follows: "For definition of brewer, see section 5092."

1971—Subsec. (c)(2). Pub. L. 91–673 struck out proviso that removal of beer shall not include beer returned to the brewery on the same day such beer is removed from the brewery.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–59 effective July 1, 2008, but inapplicable to taxes imposed for periods before such date, see section 11125(c) of Pub. L. 109–59, set out as a note under section 5002 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 91–673 effective on first day of first calendar month which begins more than 90 days after Jan. 12, 1971, see section 5 of Pub. L. 91–673, set out as a note under section 5056 of this title.

§5053. Exemptions

(a) Removals for export

Beer may be removed from the brewery, without payment of tax, for export, in such containers and under such regulations, and on the giving of such notices, entries, and bonds and other security,

as the Secretary may by regulations prescribe.

(b) Removals when unfit for beverage use

When beer has become sour or damaged, so as to be incapable of use as such, a brewer may remove the same from his brewery without payment of tax, for manufacturing purposes, under such regulations as the Secretary may prescribe.

(c) Removals for laboratory analysis

Beer may be removed from the brewery, without payment of tax, for laboratory analysis, subject to such limitations and under such regulations as the Secretary may prescribe.

(d) Removals for research, development, or testing

Under such conditions and regulations as the Secretary may prescribe, beer may be removed from the brewery without payment of tax for use in research, development, or testing (other than consumer testing or other market analysis) of processes, systems, materials, or equipment relating to beer or brewery operations.

(e) Beer for personal or family use

Subject to regulation prescribed by the Secretary, any adult may, without payment of tax, produce beer for personal or family use and not for sale. The aggregate amount of beer exempt from tax under this subsection with respect to any household shall not exceed—

(1) 200 gallons per calendar year if there are 2 or more adults in such household, or

(2) 100 gallons per calendar year if there is only 1 adult in such household.

For purposes of this subsection, the term "adult" means an individual who has attained 18 years of age, or the minimum age (if any) established by law applicable in the locality in which the household is situated at which beer may be sold to individuals, whichever is greater.

(f) Removal for use as distilling material

Subject to such regulations as the Secretary may prescribe, beer may be removed from a brewery without payment of tax to any distilled spirits plant for use as distilling material.

(g) Removals for use of foreign embassies, legations, etc.

(1) In general

Subject to such regulations as the Secretary may prescribe—

(A) beer may be withdrawn from the brewery without payment of tax for transfer to any customs bonded warehouse for entry pending withdrawal therefrom as provided in subparagraph (B), and

(B) beer entered into any customs bonded warehouse under subparagraph (A) may be withdrawn for consumption in the United States by, and for the official and family use of, such foreign governments, organizations, and individuals as are entitled to withdraw imported beer from such warehouses free of tax.

Beer transferred to any customs bonded warehouse under subparagraph (A) shall be entered, stored, and accounted for in such warehouse under such regulations and bonds as the Secretary may prescribe, and may be withdrawn therefrom by such governments, organizations, and individuals free of tax under the same conditions and procedures as imported beer.

(2) Other rules to apply

Rules similar to the rules of paragraphs (2) and (3) of section 5362(e) shall apply for purposes of this subsection.

(h) Removals for destruction

Subject to such regulations as the Secretary may prescribe, beer may be removed from the brewery without payment of tax for destruction.

(i) Removal as supplies for certain vessels and aircraft

For exemption as to supplies for certain vessels and aircraft, see section 309 of the Tariff Act of 1930, as amended (19 U.S.C. 1309).

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1334; amended Pub. L. 89–44, title VIII, §807(b), June 21, 1965, 79 Stat. 164; Pub. L. 91–673, §2, Jan. 12, 1971, 84 Stat. 2056; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–458, §2(b)(1), Oct. 14, 1978, 92 Stat. 1255; Pub. L. 105–34, title XIV, §§1414(b), 1418(a), 1419(a), Aug. 5, 1997, 111 Stat. 1047–1049.)

PRIOR PROVISIONS

A prior section 5053, act Aug. 16, 1954, ch. 736, 68A Stat. 612, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1997—Subsec. (f). Pub. L. 105–34, §1414(b), added subsec. (f). Former subsec. (f) redesignated (i).
Subsec. (g). Pub. L. 105–34, §1418(a), added subsec. (g).
Subsec. (h). Pub. L. 105–34, §1419(a), added subsec. (h).
Subsec. (i). Pub. L. 105–34, §1414(b), redesignated subsec. (f) as (i).
1978—Subsecs. (e), (f). Pub. L. 95–458 added subsec. (e) and redesignated former subsec. (e) as (f).
1976—Subsecs. (a) to (d). Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.
1971—Subsecs. (d), (e). Pub. L. 91–673 added subsec. (d) and redesignated former subsec. (d) as (e).
1965—Subsec. (a). Pub. L. 89–44 struck out "to a foreign country" after "export".

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XIV, §1414(d), Aug. 5, 1997, 111 Stat. 1047, provided that: "The amendments made by this section [amending this section and sections 5056 and 5222 of this title] shall take effect on the 1st day of the 1st calendar quarter that begins at least 180 days after the date of the enactment of this Act [Aug. 5, 1997]."

Pub. L. 105–34, title XIV, §1418(b), Aug. 5, 1997, 111 Stat. 1049, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on the 1st day of the 1st calendar quarter that begins at least 180 days after the date of the enactment of this Act [Aug. 5, 1997]."

Pub. L. 105–34, title XIV, §1419(b), Aug. 5, 1997, 111 Stat. 1049, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on the 1st day of the 1st calendar quarter that begins at least 180 days after the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–458 effective on first day of first calendar month beginning more than 90 days after Oct. 14, 1978, see section 2(c) of Pub. L. 95–458, set out as a note under section 5042 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 91–673 effective on first day of first calendar month which begins more than 90 days after Jan. 12, 1971, see section 5 of Pub. L. 91–673, set out as a note under section 5056 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 effective July 1, 1965, see section 807(c) of Pub. L. 89–44, set out as a note under section 5002 of this title.

§5054. Determination and collection of tax on beer

(a) Time of determination

(1) Beer produced in the United States; certain imported beer

Except as provided in paragraph (3), the tax imposed by section 5051 on beer produced in the United States, or imported into the United States and transferred to a brewery free of tax under section 5418, shall be determined at the time it is removed for consumption or sale, and shall be paid by the brewer thereof in accordance with section 5061.

(2) Beer imported into the United States

Except as provided in paragraph (4), the tax imposed by section 5051 on beer imported into the United States and not transferred to a brewery free of tax under section 5418 shall be determined at the time of the importation thereof, or, if entered for warehousing, at the time of removal from the 1st such warehouse.

(3) Illegally produced beer

The tax on any beer produced in the United States shall be due and payable immediately upon production unless—

(A) such beer is produced in a brewery qualified under the provisions of subchapter G, or

(B) such production is exempt from tax under sections [1] 5053(e) (relating to beer for personal or family use).

(4) Unlawfully imported beer

Beer smuggled or brought into the United States unlawfully shall, for purposes of this chapter, be held to be imported into the United States, and the internal revenue tax shall be due and payable at the time of such importation.

(b) Tax on returned beer

Beer which has been removed for consumption or sale and is thereafter returned to the brewery shall be subject to all provisions of this chapter relating to beer prior to removal for consumption or sale, including the tax imposed by section 5051. The tax on any such returned beer which is again removed for consumption or sale shall be determined and paid without respect to the tax which was determined at the time of prior removal of the beer for consumption or sale.

(c) Applicability of other provisions of law

All administrative and penal provisions of this title, insofar as applicable, shall apply to any tax imposed by section 5051.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1334; amended Pub. L. 94–455, title XIX, §§1905(a)(5), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1818, 1834; Pub. L. 95–458, §2(b)(2)(B), Oct. 14, 1978, 92 Stat. 1256; Pub. L. 99–509, title VIII, §8011(b)(2), Oct. 21, 1986, 100 Stat. 1953; Pub. L. 100–647, title I, §1018(u)(19), Nov. 10, 1988, 102 Stat. 3591; Pub. L. 105–206, title VI, §6014(a)(1), (2), July 22, 1998, 112 Stat. 820.)

PRIOR PROVISIONS

A prior section 5054, act Aug. 16, 1954, ch. 736, 68A Stat. 613, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

Provisions similar to those comprising subsecs. (a)(1), (2) and (b) to (d) of this section were contained in prior sections 5055 and 5057(a), act Aug. 16, 1954, ch. 736, 68A Stat. 613, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1998—Subsec. (a)(1). Pub. L. 105–206, §6014(a)(1), in heading inserted "; certain imported beer" after "United States" and in text inserted ", or imported into the United States and transferred to a brewery free of tax under section 5418," after "United States".

Subsec. (a)(2). Pub. L. 105–206, §6014(a)(2), inserted "and not transferred to a brewery free of tax under section 5418" after "United States".

1988—Subsec. (a)(2). Pub. L. 100–647 added period at end.

1986—Subsec. (a)(2). Pub. L. 99–509 substituted "if entered for warehousing, at the time of removal from the 1st such warehouse" for "if entered into customs custody, at the time of removal from such custody, and shall be paid under such regulations as the Secretary shall prescribe.".

1978—Subsec. (a)(3). Pub. L. 95–458 inserted provision excluding from tax the beer exempt from tax under section 5053(e).

1976—Subsec. (a)(2). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsecs. (c), (d). Pub. L. 94–455, §1905(a)(5), redesignated subsec. (d) as (c) and struck out former subsec. (c) respecting stamps or other devices as evidence of payment of tax.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates (see section 1421(c) of Pub. L. 105–34 set out as an Effective Date note under section 5418 of this title), see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–509 applicable to articles imported, entered for warehousing, or brought into the United States or a foreign trade zone after Dec. 15, 1986, see section 8011(c) of Pub. L. 99–509, set out as a note under section 5061 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–458 effective on first day of first calendar month beginning more than 90 days after Oct. 14, 1978, see section 2(c) of Pub. L. 95–458, set out as a note under section 5042 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1905(a)(5) of Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1905(d) of Pub. L. 94–455, set out as a note under section 5005 of this title.

[1] So in original. Probably should be "section".

§5055. Drawback of tax

On the exportation of beer, brewed or produced in the United States, the brewer thereof shall be allowed a drawback equal in amount to the tax paid on such beer if there is such proof of exportation as the Secretary may by regulations require. For the purpose of this section, exportation shall include delivery for use as supplies on the vessels and aircraft described in section 309 of the Tariff Act of 1930, as amended (19 U.S.C. 1309).

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1335; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 105–34, title XIV, §1420(a), Aug. 5, 1997, 111 Stat. 1049.)

PRIOR PROVISIONS

A prior section 5055, act Aug. 16, 1954, ch. 736, 68A Stat. 613, related to "determination and collection of tax on beer", prior to the general revision of this chapter by Pub. L. 85–859. See section 5054(a)(1), (2), (c), (d) of this title.

Provisions similar to those comprising this section were contained in prior section 5056, act Aug. 16, 1954, ch. 736, 68A Stat. 613, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1997—Pub. L. 105–34 substituted "paid on such beer if there is such proof of exportation as the Secretary may by regulations require." for "found to have been paid on such beer, to be paid on submission of such evidence, records and certificates indicating exportation, as the Secretary may by regulations prescribe."

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XIV, §1420(b), Aug. 5, 1997, 111 Stat. 1049, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on the 1st day of the 1st calendar quarter that begins at least 180 days after the date of the enactment of this Act [Aug. 5, 1997]."

§5056. Refund and credit of tax, or relief from liability

(a) Beer returned or voluntarily destroyed

Any tax paid by any brewer on beer removed for consumption or sale may be refunded or credited to the brewer, without interest, or if the tax has not been paid, the brewer may be relieved of liability therefor, under such regulations as the Secretary may prescribe, if such beer is returned to any brewery of the brewer or is destroyed under the supervision required by such regulations. In determining the amount of tax due on beer removed on any day, the quantity of beer returned to the same brewery from which removed shall be allowed, under such regulations as the Secretary may prescribe, as an offset against or deduction from the total quantity of beer removed from that brewery on the day of such return.

(b) Beer lost by fire, theft, casualty, or act of God

Subject to regulations prescribed by the Secretary, the tax paid by any brewer on beer removed for consumption or sale may be refunded or credited to the brewer, without interest, or if the tax has not been paid, the brewer may be relieved of liability therefor, if such beer is lost, whether by theft or otherwise, or is destroyed or otherwise rendered unmerchantable by fire, casualty, or act of God before the transfer of title thereto to any other person. In any case in which beer is lost or destroyed, whether by theft or otherwise, the Secretary may require the brewer to file a claim for relief from the tax and submit proof as to the cause of such loss. In every case where it appears that the loss was by theft, the first sentence shall not apply unless the brewer establishes to the satisfaction of the Secretary that such theft occurred before removal from the brewery and occurred without connivance, collusion, fraud, or negligence on the part of the brewer, consignor, consignee, bailee, or carrier, or the employees or agents of any of them.

(c) Beer received at a distilled spirits plant

Any tax paid by any brewer on beer removed for consumption or sale may be refunded or credited to the brewer, without interest, or if the tax has not been paid, the brewer may be relieved of liability therefor, under regulations as the Secretary may prescribe, if such beer is received on the bonded premises of a distilled spirits plant pursuant to the provisions of section 5222(b)(2), for use in the production of distilled spirits.

(d) Limitations

No claim under this section shall be allowed (1) unless filed within 6 months after the date of the return, loss, destruction, rendering unmerchantable, or receipt on the bonded premises of a distilled spirits plant or (2) if the claimant was indemnified by insurance or otherwise in respect of the tax.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1335; amended Pub. L. 91–673, §1(a), Jan. 12, 1971, 84 Stat. 2056; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 105–34, title XIV, §1414(c), Aug. 5, 1997, 111 Stat. 1047; Pub. L. 105–206, title VI, §6014(a)(3), July 22, 1998, 112 Stat. 820.)

PRIOR PROVISIONS

A prior section 5056, act Aug. 16, 1954, ch. 736, 68A Stat. 613, related to "drawback of tax" prior to the general revision of this chapter by Pub. L. 85–859. See section 5055 of this title.

A prior section 5057, act Aug. 16, 1954, ch. 736, 68A Stat. 613, related to refund and credit of tax or relief from liability, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1998—Subsecs. (a) to (c). Pub. L. 105–206 substituted "removed for consumption or sale" for "produced in the United States".

1997—Subsec. (c). Pub. L. 105–34, §1414(c)(1), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 105–34 redesignated subsec. (c) as (d) and substituted "rendering unmerchantable, or receipt on the bonded premises of a distilled spirits plant" for "or rendering unmerchantable".

1976—Subsecs. (a), (b). Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

1971—Subsec. (a). Pub. L. 91–673 inserted provision permitting credit or refund of tax if the beer is returned to any brewery of the brewer who paid the tax, and provided for offset or deduction against amount

of beer removed from the brewery on the day of return if the beer is returned to the same brewery from which it was withdrawn.

Subsec. (b). Pub. L. 91–673 inserted provisions for credit or refund or relief from liability of tax when the beer is lost by theft or otherwise or rendered unmerchantable by fire, casualty or act of God, before the transfer of title to any other party, and required the brewer to file claim for relief from the tax and submit proof of the cause of the loss, and in the case of theft, to further prove that such theft occurred before removal from the brewery and without connivance, collusion, fraud, or negligence on the part of the brewer, consignor, consignee, bailee, or carrier, or the employees or agents of any of them.

Subsec. (c). Pub. L. 91–673 substantially reenacted subsec. (c) to reflect changes in subsec. (b).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 effective on the 1st day of the 1st calendar quarter that begins at least 180 days after Aug. 5, 1997, see section 1414(d) of Pub. L. 105–34, set out as a note under section 5053 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Pub. L. 91–673, §5, Jan. 12, 1971, 84 Stat. 2058, provided that: "The amendments made by the first four sections of this Act [enacting section 5417 of this title and amending this section and sections 5052, 5053, 5401, 5402, 5411, 5412, and 5416 of this title] shall take effect on the first day of the first calendar month which begins more than 90 days after the date of the enactment of this Act [Jan. 12, 1971]."

SUBPART E—GENERAL PROVISIONS

Sec.

5061. Method of collecting tax.

5062. Refund and drawback in case of exportation.

[5063. Repealed.]

5064. Losses resulting from disaster, vandalism, or malicious mischief.

5065. Territorial extent of law.

5066. Distilled spirits for use of foreign embassies, legations, etc.

5067. Cross reference.

PRIOR PROVISIONS

A prior subpart E, comprising sections 5061 to 5065, related to general provisions, prior to the general revision of this chapter by Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1313.

AMENDMENTS

1978—Pub. L. 95–423, §1(b), Oct. 6, 1978, 92 Stat. 936, substituted "Losses resulting from disaster, vandalism, or malicious mischief" for "Losses caused by disaster" in item 5064.

1971—Pub. L. 91–659, §3(b), Jan. 8, 1971, 84 Stat. 1966, added item 5066 and redesignated former item 5066 as 5067.

1965—Pub. L. 89–44, title V, §501(e), June 21, 1965, 79 Stat. 150, struck out item 5063 "Floor stocks tax refunds on distilled spirits, wines, cordials, and beer".

§5061. Method of collecting tax

(a) Collection by return

The taxes on distilled spirits, wines, and beer shall be collected on the basis of a return. The Secretary shall, by regulation, prescribe the period or event for which such return shall be filed, the time for filing such return, the information to be shown in such return, and the time for payment of such tax.

(b) Exceptions

Notwithstanding the provisions of subsection (a), any taxes imposed on, or amounts to be paid or collected in respect of, distilled spirits, wines, and beer under—

(1) section 5001(a)(4), (5), or (6),
(2) section 5006(c) or (d),
(3) section 5041(f),
(4) section 5043(a)(3),
(5) section 5054(a)(3) or (4), or
(6) section 5505(a),

shall be immediately due and payable at the time provided by such provisions (or if no specific time for payment is provided, at the time the event referred to in such provision occurs). Such taxes and amounts shall be assessed and collected by the Secretary on the basis of the information available to him in the same manner as taxes payable by return but with respect to which no return has been filed.

(c) Import duties

The internal revenue taxes imposed by this part shall be in addition to any import duties unless such duties are specifically designated as being in lieu of internal revenue tax.

(d) Time for collecting tax on distilled spirits, wines, and beer

(1) In general

Except as otherwise provided in this subsection, in the case of distilled spirits, wines, and beer to which this part applies (other than subsection (b) of this section) which are withdrawn under bond for deferred payment of tax, the last day for payment of such tax shall be the 14th day after the last day of the semimonthly period during which the withdrawal occurs.

(2) Imported articles

In the case of distilled spirits, wines, and beer which are imported into the United States (other than in bulk containers)—

(A) In general

The last day for payment of tax shall be the 14th day after the last day of the semimonthly period during which the article is entered into the customs territory of the United States.

(B) Special rule for entry for warehousing

Except as provided in subparagraph (D), in the case of an entry for warehousing, the last day for payment of tax shall not be later than the 14th day after the last day of the semimonthly period during which the article is removed from the 1st such warehouse.

(C) Foreign trade zones

Except as provided in subparagraph (D) and in regulations prescribed by the Secretary, articles brought into a foreign trade zone shall, notwithstanding any other provision of law, be treated for purposes of this subsection as if such zone were a single customs warehouse.

(D) Exception for articles destined for export

Subparagraphs (B) and (C) shall not apply to any article which is shown to the satisfaction of the Secretary to be destined for export.

(3) Distilled spirits, wines, and beer brought into the United States from Puerto Rico

In the case of distilled spirits, wines, and beer which are brought into the United States (other than in bulk containers) from Puerto Rico, the last day for payment of tax shall be the 14th day after the last day of the semimonthly period during which the article is brought into the United States.

(4) Taxpayers liable for taxes of not more than $50,000

(A) In general

In the case of any taxpayer who reasonably expects to be liable for not more than $50,000 in taxes imposed with respect to distilled spirits, wines, and beer under subparts A, C, and D and section 7652 for the calendar year and who was liable for not more than $50,000 in such taxes in the preceding calendar year, the last day for the payment of tax on withdrawals, removals, and entries (and articles brought into the United States from Puerto Rico) under bond for deferred payment shall be the 14th day after the last day of the calendar quarter during which the action giving rise to the imposition of such tax occurs.

(B) No application after limit exceeded

Subparagraph (A) shall not apply to any taxpayer for any portion of the calendar year following the first date on which the aggregate amount of tax due under subparts A, C, and D and section 7652 from such taxpayer during such calendar year exceeds $50,000, and any tax under such subparts which has not been paid on such date shall be due on the 14th day after the last day of the semimonthly period in which such date occurs.

(C) Calendar quarter

For purposes of this paragraph, the term "calendar quarter" means the three-month period ending on March 31, June 30, September 30, or December 31.

(5) Special rule for tax due in September

(A) In general

Notwithstanding the preceding provisions of this subsection, the taxes on distilled spirits, wines, and beer for the period beginning on September 16 and ending on September 26 shall be paid not later than September 29.

(B) Safe harbor

The requirement of subparagraph (A) shall be treated as met if the amount paid not later than September 29 is not less than 11/15 of the taxes on distilled spirits, wines, and beer for the period beginning on September 1 and ending on September 15.

(C) Taxpayers not required to use electronic funds transfer

In the case of payments not required to be made by electronic funds transfer, subparagraphs (A) and (B) shall be applied by substituting "September 25" for "September 26", "September 28" for "September 29", and "2/3" for "11/15".

(6) Special rule where due date falls on Saturday, Sunday, or holiday

Notwithstanding section 7503, if, but for this paragraph, the due date under this subsection for payment of tax would fall on a Saturday, Sunday, or a legal holiday (within the meaning of section 7503), such due date shall be the immediately preceding day which is not a Saturday, Sunday, or such a holiday (or the immediately following day where the due date described in paragraph (5) falls on a Sunday).

(e) Payment by electronic fund transfer

(1) In general

Any person who in any 12-month period ending December 31, was liable for a gross amount equal to or exceeding $5,000,000 in taxes imposed on distilled spirits, wines, or beer by sections 5001, 5041, and 5051 (or 7652), respectively, shall pay such taxes during the succeeding calendar year by electronic fund transfer to a Federal Reserve Bank.

(2) Electronic fund transfer

The term "electronic fund transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account.

(3) Controlled groups

(A) In general

In the case of a controlled group of corporations, all corporations which are component members of such group shall be treated as 1 taxpayer. For purposes of the preceding sentence, the term "controlled group of corporations" has the meaning given to such term by subsection (a) of section 1563, except that "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears in such subsection.

(B) Controlled groups which include nonincorporated persons

Under regulations prescribed by the Secretary, principles similar to the principles of subparagraph (A) shall apply to a group of persons under common control where 1 or more of such persons is not a corporation.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1335; amended Pub. L. 94–455, title XIX, §§1905(a)(6), (b)(2)(E)(iii), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1819, 1822, 1834; Pub. L. 96–39, title VIII, §§804(b), 807(a)(9), July 26, 1979, 93 Stat. 274, 281; Pub. L. 98–369, div. A, title I, §27(c)(1), July 18, 1984, 98 Stat. 509; Pub. L. 99–509, title VIII, §8011(b)(1), Oct. 21, 1986, 100 Stat. 1952; Pub. L. 99–514, title XVIII, §1801(c)(1), Oct. 22, 1986, 100 Stat. 2786; Pub. L. 100–647, title II, §2003(b)(1)(A), (B), Nov. 10, 1988, 102 Stat. 3598; Pub. L. 101–508, title XI, §§11201(b)(3), 11704(a)(21), Nov. 5, 1990, 104 Stat. 1388–416, 1388–519; Pub. L. 103–465, title I, §136(c)(5), title VII, §712(b), Dec. 8, 1994, 108 Stat. 4842, 5000; Pub. L. 104–188, title I, §1702(b)(6), Aug. 20, 1996, 110 Stat. 1869; Pub. L. 109–59, title XI, §11127(a), (b), Aug. 10, 2005, 119 Stat. 1958, 1959.)

PRIOR PROVISIONS

A prior section 5061, act Aug. 16, 1954, ch. 736, 68A Stat. 614, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

Provisions similar to those comprising subsec. (d) of this section were contained in former section 5001(c), act Aug. 16, 1954, ch. 736, 68A Stat. 597, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

2005—Subsec. (d)(4) to (6). Pub. L. 109–59 added par. (4), redesignated former pars. (4) and (5) as (5) and (6), respectively, and in par. (6) substituted "paragraph (5)" for "paragraph (4)".

1996—Subsec. (b)(3). Pub. L. 104–188 substituted "section 5041(f)," for "section 5041(e),".

1994—Subsec. (b)(1). Pub. L. 103–465, §136(c)(5), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "section 5001(a)(5), (6), or (7),".

Subsec. (d)(4). Pub. L. 103–465, §712(b)(1), added par. (4). Former par. (4) redesignated (5).

Subsec. (d)(5). Pub. L. 103–465, §712(b), redesignated par. (4) as (5), substituted "due date" for "14th day" in heading, and inserted "(or the immediately following day where the due date described in paragraph (4) falls on a Sunday)" before period at end.

1990—Subsec. (b)(3). Pub. L. 101–508, §§11201(b)(3), 11704(a)(21), amended par. (3) identically, substituting "section 5041(e)" for "section 5041(d)".

1988—Subsec. (d)(2)(A), (B), (3). Pub. L. 100–647 substituted "last day of the semimonthly period during" for "date on".

1986—Subsec. (d). Pub. L. 99–509 amended subsec. (d) generally, substituting provisions relating to time for collecting tax on distilled spirits, wines, and beer, for provisions relating to extension of time for collecting tax on distilled spirits.

Subsec. (e)(3). Pub. L. 99–514 added par. (3).

1984—Subsec. (e). Pub. L. 98–369 added subsec. (e).

1979—Subsec. (a). Pub. L. 96–39, §807(a)(9)(A), struck out "rectified distilled spirits and wines," after "distilled spirits, wines,".

Subsec. (b). Pub. L. 96–39, §807(a)(9)(B), in provisions preceding par. (1) struck out "rectified distilled spirits and wines" after "spirits, wines," and redesignated pars. (4) to (7) as (3) to (6), respectively. Former par. (3), which made reference to section 5026(a)(2), was struck out.

Subsec. (d). Pub. L. 96–39, §804(b), added subsec. (d).

1976—Subsec. (a). Pub. L. 94–455, §§1905(a)(6)(A), 1906(b)(13)(A), struck out last sentence providing for continued payment of taxes by stamp until the Secretary shall by regulation provide for collection of the

taxes on the basis of a return and struck out "or his delegate" after "Secretary".

Subsec. (b). Pub. L. 94–455, §1905(a)(6)(B), substituted the exceptions provisions for discretion method of collection providing that "Whether or not the method of collecting any tax imposed by this part is specifically provided in this part, any such tax may, under regulations prescribed by the Secretary or his delegate, be collected by stamp, coupon, serially-numbered ticket, or the use of tax-stamp machines, or by such other reasonable device or method as may be necessary or helpful in securing collection of the tax."

Subsec. (c). Pub. L. 94–455, §1905(a)(6)(C), substituted the import duties provision for provision respecting applicability of other provisions of law and reading "All administrative and penalty provisions of this title, insofar as applicable, shall apply to the collection of any tax which the Secretary or his delegate determines or prescribes shall be collected in any manner provided in this section."

Subsec. (d). Pub. L. 94–455, §1905(b)(2)(E)(iii), struck out subsec. (d) which provided cross reference to section 5689 for penalty and forfeiture for tampering with a stamp machine.

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–59, title XI, §11127(c), Aug. 10, 2005, 119 Stat. 1959, provided that: "The amendments made by this section [amending this section] shall apply with respect to quarterly periods beginning on and after January 1, 2006."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 136(c)(5) of Pub. L. 103–465 effective Jan. 1, 1995, see section 136(d) of Pub. L. 103–465, set out as a note under section 5001 of this title.

Pub. L. 103–465, title VII, §712(e), Dec. 8, 1994, 108 Stat. 5001, provided that: "The amendments made by this section [amending this section and sections 5703 and 6302 of this title] shall take effect on January 1, 1995."

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11201(b)(3) of Pub. L. 101–508 effective Jan. 1, 1991, see section 11201(d) of Pub. L. 101–508, set out as a note under section 5001 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title II, §2003(b)(2), Nov. 10, 1988, 102 Stat. 3598, provided that: "The amendments made by paragraph (1) [amending this section and section 5703 of this title] shall take effect as if included in the amendments made by section 8011 of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99–509]."

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Pub. L. 99–509, title VIII, §8011(c), Oct. 21, 1986, 100 Stat. 1953, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 5054, 5703, and 5704 of this title] shall apply to removals during semimonthly periods ending on or after December 31, 1986.

"(2) IMPORTED ARTICLES, ETC.—Subparagraphs (B) and (C) of section 5703(b)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this section), paragraphs (2) and (3) of section 5061(d) of such Code (as amended by this section), and the amendments made by subsections (a)(2) and (b)(2) [amending sections 5054 and 5704 of this title] shall apply to articles imported, entered for warehousing, or brought into the United States or a foreign trade zone after December 15, 1986.

"(3) SPECIAL RULE FOR DISTILLED SPIRITS AND TOBACCO FOR SEMIMONTHLY PERIOD ENDING DECEMBER 15, 1986.—With respect to remittances of—

"(A) taxes imposed on distilled spirits by section 5001 or 7652 of such Code, and

"(B) taxes imposed on tobacco products and cigarette papers and tubes by section 5701 or 7652 of such Code,

for the semimonthly period ending December 15, 1986, the last day for payment of such remittances shall be

January 14, 1987.

"(4) TREATMENT OF SMOKELESS TOBACCO IN INVENTORY ON JUNE 30, 1986.—The tax imposed by section 5701(e) of the Internal Revenue Code of 1986 shall not apply to any smokeless tobacco which—

"(A) on June 30, 1986, was in the inventory of the manufacturer or importer, and

"(B) on such date was in a form ready for sale."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxes required to be paid on or after Sept. 30, 1984, see section 27(d)(2) of Pub. L. 98–369, set out as a note under section 5001 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as a note under section 5001 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1905(a)(6), (b)(2)(E)(iii) of Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1905(d) of Pub. L. 94–455, set out as a note under section 5005 of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TRANSITIONAL RULES RELATING TO DETERMINATION AND PAYMENT OF TAX

Pub. L. 96–39, title VIII, §808, July 26, 1979, 93 Stat. 291, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) LIABILITY FOR PAYMENT OF TAX.—Except as otherwise provided in this section, the tax on all distilled spirits which have been withdrawn from bond on determination of tax and on which tax has not been paid by the close of December 31, 1979, shall become due on January 1, 1980, and shall be payable in accordance with section 5061 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].

"(b) TREATMENT OF CONTROLLED STOCK AND BULK WINE.—

"(1) ELECTION WITH RESPECT TO CONTROLLED STOCK.—The proprietor of a distilled spirits plant may elect to convert any distilled spirits or wine which on January 1, 1980, is controlled stock.

"(2) ELECTION WITH RESPECT TO WINE.—The proprietor of a distilled spirits plant may elect to convert any bulk wine which on January 1, 1980, is on the premises of a distilled spirits plant.

"(3) EFFECT OF ELECTION.—If an election under paragraph (1) or (2) is in effect with respect to any controlled stock or wine—

"(A) any distilled spirits, wine, or rectification tax previously paid or determined on such controlled stock or wine shall be abated or (without interest) credited or refunded under such regulations as the Secretary shall prescribe, and

"(B) such controlled stock or wine shall be treated as distilled spirits or wine on which tax has not been paid or determined.

"(4) MAKING OF ELECTIONS.—The elections under this subsection shall be made at such time and in such manner as the Secretary shall by regulations prescribe.

"(c) TAXPAID STOCK.—

"(1) TAXPAID STOCK MAY REMAIN ON BONDED PREMISES DURING 1980.—Section 5612(a) of the Internal Revenue Code of 1986 (relating to forfeiture of taxpaid distilled spirits remaining on bonded premises) shall not apply during 1980.

"(2) SEPARATION OF TAXPAID STOCK.—All distilled spirits and wine on which tax has been paid and which are on the bonded premises of a distilled spirits plant shall be physically separated from

other distilled spirits and wine. Such separation shall be by the use of separate tanks, rooms, or buildings, or by partitioning, or by such other methods as the Secretary finds will distinguish such distilled spirits and wine from other distilled spirits and wine on the bonded premises of the distilled spirits plant.

"(d) RETURN OF DISTILLED SPIRITS PRODUCTS CONTAINING TAXPAID WINE.—With respect to distilled spirits returned to the bonded premises of distilled spirits plants during 1980, section 5008(c)(1) of the Internal Revenue Code of 1986 (relating to refunds for distilled spirits returned to bonded premises) shall be treated as including a reference to section 5041 of such Code.

"(e) RETURN OF DISTILLED SPIRITS PRODUCTS CONTAINING OTHER ALCOHOLIC INGREDIENTS.—With respect to distilled spirits to which alcoholic ingredients other than distilled spirits have been added and which have been withdrawn from a distilled spirits plant before January 1, 1980, section 5215(a) of the Internal Revenue Code of 1986 shall apply only if such spirits are returned to the distilled spirits plant from which withdrawn.

"(f) SECRETARY DEFINED.—For purposes of this section, the term 'Secretary' means the Secretary of the Treasury or his delegate."

§5062. Refund and drawback in case of exportation

(a) Refund

Under such regulations as the Secretary may prescribe, the amount of any internal revenue tax erroneously or illegally collected in respect to exported articles may be refunded to the exporter of the article, instead of to the manufacturer, if the manufacturer waives any claim for the amount so to be refunded.

(b) Drawback

On the exportation of distilled spirits or wines manufactured, produced, bottled, or packaged in casks or other bulk containers in the United States on which an internal revenue tax has been paid or determined, and which are contained in any cask or other bulk container, or in bottles packed in cases or other containers, there shall be allowed, under regulations prescribed by the Secretary, a drawback equal in amount to the tax found to have been paid or determined on such distilled spirits or wines. In the case of distilled spirits, the preceding sentence shall not apply unless the claim for drawback is filed by the bottler or packager of the spirits and unless such spirits have been marked, especially for export, under regulations prescribed by the Secretary. The Secretary is authorized to prescribe regulations governing the determination and payment or crediting of drawback of internal revenue tax on spirits and wines eligible for drawback under this subsection, including the requirements of such notices, bonds, bills of lading, and other evidence indicating payment or determination of tax and exportation as shall be deemed necessary.

(c) Exportation of imported liquors

(1) Allowance of tax

Upon the exportation of imported distilled spirits, wines, and beer upon which the duties and internal revenue taxes have been paid or determined incident to their importation into the United States, and which have been found after entry to be unmerchantable or not to conform to sample or specifications, and which have been returned to customs custody, the Secretary shall, under such regulations as he shall prescribe, refund, remit, abate, or credit, without interest, to the importer thereof, the full amount of the internal revenue taxes paid or determined with respect to such distilled spirits, wines, or beer.

(2) Destruction in lieu of exportation

At the option of the importer, such imported distilled spirits, wines, and beer, after return to customs custody, may be destroyed under customs supervision and the importer thereof granted relief in the same manner and to the same extent as provided in this subsection upon exportation.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1336; amended Pub. L. 88–539, §1, Aug. 31, 1964, 78 Stat. 746; Pub. L. 89–44, title VIII, §805(f)(6), June 21, 1965, 79 Stat. 161; Pub. L. 90–630, §2(a), Oct. 22, 1968, 82 Stat. 1328; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4,

1976, 90 Stat. 1834; Pub. L. 95–176, §1, Nov. 14, 1977, 91 Stat. 1363; Pub. L. 98–369, div. A, title IV, §454(c)(1), July 18, 1984, 98 Stat. 820.)

PRIOR PROVISIONS

A prior section 5062, act Aug. 16, 1954, ch. 736, 68A Stat. 614, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1984—Subsec. (b). Pub. L. 98–369 substituted "have been marked" for "have been stamped or restamped, and marked".

1977—Subsec. (b). Pub. L. 95–176 substituted in first sentence "manufactured, produced, bottled, or packaged in casks or other bulk containers" and "other bulk container" for "manufactured or produced" and "package" and in last sentence "spirits and wines eligible for drawback under this subsection, including the requirements" for "domestic distilled spirits and wines, including the requirement".

1976—Subsecs. (a), (b), (c)(1). Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

1968—Subsec. (b). Pub. L. 90–630 permitted, under Treasury regulations, drawback of the tax where the stamping, restamping, or marking is done after the spirits have been removed from the original bottling plant.

1965—Subsec. (c)(1). Pub. L. 89–44 struck out "within six months of their release therefrom" after "customs custody".

1964—Subsec. (c). Pub. L. 88–539 added subsec. (c).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 1, 1985, see section 456(b) of Pub. L. 98–369, set out as an Effective Date note under section 5101 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–176 effective on first day of first calendar month beginning more than 90 days after Nov. 14, 1977, see section 7 of Pub. L. 95–176, set out as a note under section 5003 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–630 applicable only to articles exported on or after first day of first calendar month which begins more than 90 days after Oct. 22, 1968, see section 4 of Pub. L. 90–630, set out as a note under section 5008 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 effective July 1, 1965, see section 805(g)(1) of Pub. L. 89–44, set out as a note under section 5008 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88–539, §2, Aug. 31, 1964, 78 Stat. 746, provided that: "The amendment made by the first section of this Act [amending this section] shall apply with respect to articles exported or destroyed after the date of the enactment of this Act [Aug. 31, 1964]."

[§5063. Repealed. Pub. L. 89–44, title V, §501(e), June 21, 1965, 79 Stat. 150]

Section, Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1336; Pub. L. 86–75, §3(b)(1), June 30, 1959, 73 Stat. 157; Pub. L. 86–564, title II, §202(b)(1), June 30, 1960, 74 Stat. 290; Pub. L. 87–72, §3(b)(1), June 30, 1961, 75 Stat. 193; Pub. L. 87–508, §3(b)(1), June 28, 1962, 76 Stat. 114; Pub. L. 88–52, §3(b)(1)(A), June 29, 1963, 77 Stat. 72; Pub. L. 88–348, §2(b)(1)(A), June 30, 1964, 78 Stat. 237, made provision for floor stocks refunds on distilled spirits, wines, cordials, and beer and set out limitations on the eligibility for such refunds or credits.

A prior section 5063, act Aug. 16, 1954, ch. 736, 68A Stat. 615, consisted of provisions similar to those comprising section 5063, prior to the general revision of this chapter by Pub. L. 85–859.

EFFECTIVE DATE OF REPEAL

Repeal applicable on and after July 1, 1965, see section 701(d) of Pub. L. 89–44, set out as an Effective Date of 1965 Amendment note under section 5701 of this title.

§5064. Losses resulting from disaster, vandalism, or malicious mischief

(a) Payments

The Secretary, under such regulations as he may prescribe, shall pay (without interest) an amount equal to the amount of the internal revenue taxes paid or determined and customs duties paid on distilled spirits, wines, and beer previously withdrawn, which were lost, rendered unmarketable, or condemned by a duly authorized official by reason of—

(1) fire, flood, casualty, or other disaster, or

(2) breakage, destruction, or other damage (but not including theft) resulting from vandalism or malicious mischief,

if such disaster or damage occurred in the United States and if such distilled spirits, wines, or beer were held and intended for sale at the time of such disaster or other damage. The payments provided for in this section shall be made to the person holding such distilled spirits, wines, or beer for sale at the time of such disaster or other damage.

(b) Claims

(1) Period for making claim; proof

No claim shall be allowed under this section unless—

(A) filed within 6 months after the date on which such distilled spirits, wines, or beer were lost, rendered unmarketable, or condemned by a duly authorized official, and

(B) the claimant furnishes proof satisfactory to the Secretary that the claimant—

(i) was not indemnified by any valid claim of insurance or otherwise in respect of the tax, or tax and duty, on the distilled spirits, wines, or beer covered by the claim; and

(ii) is entitled to payment under this section.

(2) Minimum claim

Except as provided in paragraph (3)(A), no claim of less than $250 shall be allowed under this section with respect to any disaster or other damage (as the case may be).

(3) Special rules for major disasters

If the President has determined under the Robert T. Stafford Disaster Relief and Emergency Assistance Act that a "major disaster" (as defined in such Act) has occurred in any part of the United States, and if the disaster referred to in subsection (a)(1) occurs in such part of the United States by reason of such major disaster, then—

(A) paragraph (2) shall not apply, and

(B) the filing period set forth in paragraph (1)(A) shall not expire before the day which is 6 months after the date on which the President makes the determination that such major disaster has occurred.

(4) Regulations

Claims under this section shall be filed under such regulations as the Secretary shall prescribe.

(c) Destruction of distilled spirits, wines, or beer

When the Secretary has made payment under this section in respect of the tax, or tax and duty, on the distilled spirits, wines, or beer condemned by a duly authorized official or rendered unmarketable, such distilled spirits, wines, or beer shall be destroyed under such supervision as the Secretary may prescribe, unless such distilled spirits, wines, or beer were previously destroyed under supervision satisfactory to the Secretary.

(d) Products of Puerto Rico

The provisions of this section shall not be applicable in respect of distilled spirits, wines, and beer of Puerto Rican manufacture brought into the United States and so lost or rendered unmarketable or condemned.

(e) Other laws applicable

All provisions of law, including penalties, applicable in respect of internal revenue taxes on distilled spirits, wines, and beer shall, insofar as applicable and not inconsistent with this section, be applied in respect of the payments provided for in this section to the same extent as if such payments constituted refunds of such taxes.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1337; amended Pub. L. 91–606, title III, §301(i), Dec. 31, 1970, 84 Stat. 1759; Pub. L. 93–288, title VII, §702(i), formerly title VI, §602(i), May 22, 1974, 88 Stat. 164, renumbered title VII, §702(i), Pub. L. 103–337, div. C, title XXXIV, §3411(a)(1), (2), Oct. 5, 1994, 108 Stat. 3100; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–423, §1(a), Oct. 6, 1978, 92 Stat. 935; Pub. L. 96–39, title VIII, §807(a)(10), July 26, 1979, 93 Stat. 282; Pub. L. 100–707, title I, §109(l), Nov. 23, 1988, 102 Stat. 4709; Pub. L. 108–311, title IV, §408(a)(7)(D), Oct. 4, 2004, 118 Stat. 1191.)

REFERENCES IN TEXT

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsec. (b)(3), is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, as amended, which is classified principally to chapter 68 (§5121 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 5064, act Aug. 16, 1954, ch. 736, 68A Stat. 615, related to "territorial extent of law", prior to the general revision of this chapter by Pub. L. 85–859. See section 5065 of this title.

AMENDMENTS

2004—Subsec. (b)(3). Pub. L. 108–311 inserted "Robert T. Stafford" before "Disaster Relief and Emergency Assistance Act" in introductory provisions.

1988—Subsec. (b)(3). Pub. L. 100–707 substituted "and Emergency Assistance Act" for "Act of 1974".

1979—Pub. L. 96–39 struck out "rectified products," after "distilled spirits, wines," wherever appearing.

1978—Pub. L. 95–423 substituted "Losses resulting from disaster, vandalism, or malicious mischief" for "Losses caused by disaster" in section catchline.

Subsec. (a). Pub. L. 95–423 substituted provisions authorizing the Secretary, under such regulations as he may prescribe, to pay the prescribed amount on distilled spirits, etc., lost, rendered unmarketable, or condemned by a duly authorized official by reason of fire, flood, casualty or other disaster, breakage, destruction, or other damage (but not including theft) resulting from vandalism or malicious mischief, for provisions authorizing such payment where the President has determined under the Disaster Relief Act of 1974 that a "major disaster" has occurred, and that distilled spirits, etc., were lost, rendered unmarketable, or condemned by a duly authorized official by reason of such disaster occurring after June 30, 1959.

Subsec. (b). Pub. L. 95–423 redesignated par. (1) as (1)(A), substituted provisions disallowing a claim unless filed within 6 months after such distilled spirits, etc., were lost, rendered unmarketable or condemned, for provisions disallowing a claim unless filed within 6 months after the President determined that such disaster occurred, and added par. (1)(B); in par. (2) substituted provisions limiting claims to no less than $250, except as provided in par. (3)(A), for provisions demanding proof that claimant was not indemnified by any valid claim of insurance and that he is entitled to payment under this section; and added pars. (3) and (4).

1976—Subsecs. (a) to (c). Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

1974—Subsec. (a). Pub. L. 93–288 substituted "Disaster Relief Act of 1974" for "Disaster Relief Act of 1970".

1970—Subsec. (a). Pub. L. 91–606 substituted "Disaster Relief Act of 1970" for "Act of September 30, 1950 (42 U.S.C. 1855)".

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as a note under section 5001 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–423, §1(c), Oct. 6, 1978, 92 Stat. 936, provided that: "The amendments made by this section [amending this section] shall apply to disasters (or other damage) occurring on or after the first day of the first

calendar month which begins more than 90 days after the date of the enactment of this Act [Oct. 6, 1978]."

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–288 effective Apr. 1, 1974, see section 605 of Pub. L. 93–288, formerly set out as an Effective Date note under section 5121 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–606 effective Dec. 31, 1970, see section 304 of Pub. L. 91–606, set out as a note under section 165 of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

EXCEPTION TO EFFECTIVE DATE

Pub. L. 85–859, title II, §210(a)(3), Sept. 2, 1958, 72 Stat. 1435, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Provisions having the effect of section 5064 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as such section is included in chapter 51 of such Code as amended by section 201 of this Act) shall be deemed to be included in the Internal Revenue Code of 1986, effective on the day following the date of the enactment of this Act [Sept. 2, 1958], and shall apply with respect to disasters occurring after such date of enactment, and not later than June 30, 1959."

BEER LOST BY REASON OF FLOODS OF 1951 OR HURRICANES OF 1954

Pub. L. 85–859, title II, §207, Sept. 2, 1958, 72 Stat. 1432, provided for payment of an amount equal to the amount of taxes paid under section 3150(a) of the Internal Revenue Code of 1939 on fermented malt liquor which was lost, rendered unmarketable, or condemned by reason of the floods of 1951 or the hurricanes of 1954, under certain conditions and under regulations to be prescribed.

LOSSES OF ALCOHOLIC LIQUORS CAUSED BY DISASTER

Pub. L. 85–859, title II, §208, Sept. 2, 1958, 72 Stat. 1432, provided for payment of an amount equal to the amount of taxes and customs duties paid on distilled spirits, wines, rectified products, and beer previously withdrawn, which were lost, rendered unmarketable, or condemned by reason of a major disaster occurring after Dec. 31, 1954, and not later than Sept. 2, 1958, under certain conditions and under regulations to be prescribed.

§5065. Territorial extent of law

The provisions of this part imposing taxes on distilled spirits, wines, and beer shall be held to extend to such articles produced anywhere within the exterior boundaries of the United States, whether the same be within an internal revenue district or not.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1337.)

PRIOR PROVISIONS

A prior section 5065, act Aug. 16, 1954, ch. 736, 68A Stat. 615, made a cross reference to general administrative provisions applicable to assessment, collection, refund, etc., of taxes, prior to the general revision of this chapter by Pub. L. 85–859.

Provisions similar to those comprising this section were contained in former section 5064, act Aug. 16, 1954, ch. 736, 68A Stat. 615, prior to the general revision of this chapter by Pub. L. 85–859.

§5066. Distilled spirits for use of foreign embassies, legations, etc.

(a) Entry into customs bonded warehouses

(1) Bottled distilled spirits withdrawn from bonded premises

Under such regulations as the Secretary may prescribe, bottled distilled spirits may be withdrawn from bonded premises as provided in section 5214(a)(4) for transfer to customs bonded warehouses in which imported distilled spirits are permitted to be stored in bond for entry therein

pending withdrawal therefrom as provided in subsection (b). For the purposes of this chapter, the withdrawal of distilled spirits from bonded premises under the provisions of this paragraph shall be treated as a withdrawal for exportation and all provisions of law applicable to distilled spirits withdrawn for exportation under the provisions of section 5214(a)(4) shall apply with respect to spirits withdrawn under this paragraph.

(2) Bottled distilled spirits eligible for export with benefit of drawback

Under such regulations as the Secretary may prescribe, distilled spirits marked especially for export under the provisions of section 5062(b) may be shipped to a customs bonded warehouse in which imported distilled spirits are permitted to be stored, and entered in such warehouses pending withdrawal therefrom as provided in subsection (b), and the provisions of this chapter shall apply in respect of such distilled spirits as if such spirits were for exportation.

(3) Time deemed exported

For the purposes of this chapter, distilled spirits entered into a customs bonded warehouse as provided in this subsection shall be deemed exported at the time so entered.

(b) Withdrawal from customs bonded warehouses

Notwithstanding any other provisions of law, distilled spirits entered into customs bonded warehouses under the provisions of subsection (a) may, under such regulations as the Secretary may prescribe, be withdrawn from such warehouses for consumption in the United States by and for the official or family use of such foreign governments, organizations, and individuals who are entitled to withdraw imported distilled spirits from such warehouses free of tax. Distilled spirits transferred to customs bonded warehouses under the provisions of this section shall be entered, stored, and accounted for in such warehouses under such regulations and bonds as the Secretary may prescribe, and may be withdrawn therefrom by such governments, organizations, and individuals free of tax under the same conditions and procedures as imported distilled spirits.

(c) Withdrawal for domestic use

Distilled spirits entered into customs bonded warehouses as authorized by this section may be withdrawn therefrom for domestic use, in which event they shall be treated as American goods exported and returned.

(d) Sale or unauthorized use prohibited

No distilled spirits withdrawn from customs bonded warehouses or otherwise brought into the United States free of tax for the official or family use of such foreign governments, organizations, or individuals as are authorized to obtain distilled spirits free of tax shall be sold, or shall be disposed of or possessed for any use other than an authorized use. The provisions of section 5001(a)(5) [1] are hereby extended and made applicable to any person selling, disposing of, or possessing any distilled spirits in violation of the preceding sentence, and to the distilled spirits involved in any such violation.

(Added Pub. L. 91–659, §3(a), Jan. 8, 1971, 84 Stat. 1965; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–176, §2(d), Nov. 14, 1977, 91 Stat. 1364; Pub. L. 96–39, title VIII, §807(a)(11), July 26, 1979, 93 Stat. 282; Pub. L. 98–369, div. A, title IV, §454(c)(2), July 18, 1984, 98 Stat. 820.)

REFERENCES IN TEXT

Section 5001(a)(5), referred to in subsec. (d), was redesignated section 5001(a)(4) by Pub. L. 103–465, title I, §136(a), Dec. 8, 1994, 108 Stat. 4841.

PRIOR PROVISIONS

A prior section 5066 was renumbered 5067 of this title.

AMENDMENTS

1984—Subsec. (a)(2). Pub. L. 98–369 substituted "marked" for "stamped or restamped, and marked,".
1979—Subsec. (a)(1). Pub. L. 96–39, §807(a)(11)(A), substituted "bottled distilled spirits" for "distilled

spirits bottled in bond for export under the provisions of section 5233, or bottled distilled spirits returned to bonded premises under section 5215(b),".

Subsec. (b). Pub. L. 96–39, §807(a)(11)(B), struck out "or domestic distilled spirits transferred to customs bonded warehouses under section 5521(d)(2)" after "the provisions of subsection (a)".

1977—Subsec. (a)(1). Pub. L. 95–176 substituted par. (1) heading "Bottled distilled spirits withdrawn from bonded premises" for "Distilled spirits bottled in bond for export" and authorized withdrawal of bottled distilled spirits returned to bonded premises under section 5215(b) as provided in section 5214(a)(4).

1976—Subsecs. (a), (b). Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 1, 1985, see section 456(b) of Pub. L. 98–369, set out as an Effective Date note under section 5101 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as a note under section 5001 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–176 effective on first day of first calendar month beginning more than 90 days after Nov. 14, 1977, see section 7 of Pub. L. 95–176, set out as a note under section 5003 of this title.

EFFECTIVE DATE

Pub. L. 91–659, §6, Jan. 8, 1971, 84 Stat. 1966, provided that: "This Act [enacting this section and amending sections 5008, 5173, 5178, 5215, and 5232 of this title] shall take effect on the first day of the first calendar month which begins more than 90 days after the date of the enactment of this Act [Jan. 8, 1971]."

[1] See References in Text note below.

§5067. Cross reference

For general administrative provisions applicable to the assessment, collection, refund, etc., of taxes, see subtitle F.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1338, §5066; renumbered §5067, Pub. L. 91–659, §3(a), Jan. 8, 1971, 84 Stat. 1965.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in former section 5065, act Aug. 16, 1954, ch. 736, 68A Stat. 615, prior to the general revision of this chapter by Pub. L. 85–859.

A prior section 5081, added Pub. L. 100–203, title X, §10512(a)(1)(A), Dec. 22, 1987, 101 Stat. 1330–447; amended Pub. L. 100–647, title VI, §6106(a), (b), Nov. 10, 1988, 102 Stat. 3712, related to tax on proprietors of distilled spirits plants, bonded wine cellars, etc., prior to repeal by Pub. L. 109–59, title XI, §11125(a)(1)(A), (c), Aug. 10, 2005, 119 Stat. 1953, 1957, effective July 1, 2008, but inapplicable to taxes imposed for periods before such date.

Another prior section 5081, added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1338, imposed a tax on rectifiers of distilled spirits or wines, prior to repeal by Pub. L. 96–39, title VIII, §§803(b), 810, July 26, 1979, 93 Stat. 274, 292, effective Jan. 1, 1980.

Another prior section 5081, act Aug. 16, 1954, ch. 736, 68A Stat. 615, imposed a tax on rectifiers of distilled spirits or wines, prior to the general revision of this chapter by Pub. L. 85–859.

A prior section 5082, added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1338, defined "rectifier", prior to repeal by Pub. L. 96–39, title VIII, §§803(b), 810, July 26, 1979, 93 Stat. 274, 292, effective Jan. 1, 1980.

Another prior section 5082, act Aug. 16, 1954, ch. 736, 68A Stat. 616, defined "rectifier", prior to the general revision of this chapter by Pub. L. 85–859.

A prior section 5083, added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1338; amended Pub. L. 89–44, title VIII, §805(f)(7), June 21, 1965, 79 Stat. 161, enumerated source authority for certain exemptions from tax under sections 5021 and 5081 of this title, prior to repeal by Pub. L. 96–39, title VIII, §§803(b), 810, July 26, 1979, 93 Stat. 274, 292, effective Jan. 1, 1980.

Another prior section 5083, act Aug. 16, 1954, ch. 736, 68A Stat. 616, enumerated source authority for certain exemptions from tax under sections 5021 and 5081 of this title, prior to the general revision of this chapter by Pub. L. 85–859.

A prior section 5084, added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1339, made cross references to other provisions relating to rectification, prior to repeal by Pub. L. 96–39, title VIII, §§803(b), 810, July 26, 1979, 93 Stat. 274, 292, effective Jan. 1, 1980.

Another prior section 5084, act Aug. 16, 1954, ch. 736, 68A Stat. 616, made cross references to other provisions relating to rectification, prior to the general revision of this chapter by Pub. L. 85–859.

A prior section 5091, added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1339; amended Pub. L. 100–203, title X, §10512(a)(2), Dec. 22, 1987, 101 Stat. 1330–448, related to imposition of tax on brewers, prior to repeal by Pub. L. 109–59, title XI, §11125(a)(1)(B), (c), Aug. 10, 2005, 119 Stat. 1953, 1957, effective July 1, 2008, but inapplicable to taxes imposed for periods before such date.

Another prior section 5091, act Aug. 16, 1954, ch. 736, 68A Stat. 616, related to imposition of tax on brewers, prior to the general revision of this chapter by Pub. L. 85–859.

A prior section 5092, added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1339; amended Pub. L. 95–458, §2(b)(3), Oct. 14, 1978, 92 Stat. 1256, defined "brewer", prior to repeal by Pub. L. 109–59, title XI, §11125(a)(1)(B), (c), Aug. 10, 2005, 119 Stat. 1953, 1957, effective July 1, 2008, but inapplicable to taxes imposed for periods before such date.

Another prior section 5092, act Aug. 16, 1954, ch. 736, 68A Stat. 617, defined "brewer", prior to the general revision of this chapter by Pub. L. 85–859.

A prior section 5093, added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1339, set out cross references, prior to repeal by Pub. L. 109–59, title XI, §11125(a)(1)(B), (c), Aug. 10, 2005, 119 Stat. 1953, 1957, effective July 1, 2008, but inapplicable to taxes imposed for periods before such date.

Another prior section 5093, act Aug. 16, 1954, ch. 736, 68A Stat. 617, set out cross references, prior to the general revision of this chapter by Pub. L. 85–859.

PART II—MISCELLANEOUS PROVISIONS

Subpart

A. Manufacturers of stills.

B. Nonbeverage domestic drawback claimants.

C. Recordkeeping by dealers.[1]

D. Other provisions.

PRIOR PROVISIONS

A prior part II, consisting of subparts A to G, related to occupational tax, prior to the general revision of this chapter by Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1313.

AMENDMENTS

2005—Pub. L. 109–59, title XI, §11125(b)(1)(A), Aug. 10, 2005, 119 Stat. 1953, amended part heading and table of subparts generally, substituting "MISCELLANEOUS PROVISIONS" for "OCCUPATIONAL TAX" in part heading, "Manufacturers of stills" for "Proprietors of distilled spirits plants, bonded wine cellars, etc." in item for subpart A, "Nonbeverage domestic drawback claimants" for "Brewer" in item for subpart B, "Recordkeeping by dealers" for "Manufacturers of stills" in item for subpart C, and "Other provisions" for "Wholesale dealers" in item for subpart D and striking out items for subparts E "Retail dealers", F "Nonbeverage domestic drawback claimants", and G "General provisions".

1987—Pub. L. 100–203, title X, §10512(a)(1)(C), Dec. 22, 1987, 101 Stat. 1330–448, added item for subpart A.

1979—Pub. L. 96–39, title VIII, §807(b)(3), July 26, 1979, 93 Stat. 290, struck out item for subpart A "Rectifier" in table of subparts comprising part II.

[1] *So in original. Does not conform to subpart heading.*

SUBPART A—MANUFACTURERS OF STILLS

Sec.
5101. Notice of manufacture of still; notice of set up of still.
5102. Definition of manufacturer of stills.

PRIOR PROVISIONS

A prior subpart A, consisting of section 5081 of this title, related to proprietors of distilled spirits plants, bonded wine cellars, etc., prior to repeal by Pub. L. 109–59, title XI, §11125(a)(1)(A), (c), Aug. 10, 2005, 119 Stat. 1953, 1957, effective July 1, 2008, but inapplicable to taxes imposed for periods before such date.

Another prior subpart A, consisting of sections 5081 to 5084 of this title, related to rectifiers of distilled spirits or wines, prior to repeal by Pub. L. 96–39, title VIII, §§803(b), 810, July 26, 1979, 93 Stat. 274, 292, effective Jan. 1, 1980.

AMENDMENTS

2005—Pub. L. 109–59, title XI, §11125(b)(2), Aug. 10, 2005, 119 Stat. 1953, redesignated subpart C of this part as this subpart.

§5101. Notice of manufacture of still; notice of set up of still

(a) Notice requirements

(1) Notice of manufacture of still

The Secretary may, pursuant to regulations, require any person who manufactures any still, boiler, or other vessel to be used for the purpose of distilling, to give written notice, before the still, boiler, or other vessel is removed from the place of manufacture, setting forth by whom it is to be used, its capacity, and the time of removal from the place of manufacture.

(2) Notice of set up of still

The Secretary may, pursuant to regulations, require that no still, boiler, or other vessel be set up without the manufacturer of the still, boiler, or other vessel first giving written notice to the Secretary of that purpose.

(b) Penalties, etc.

(1) For penalty and forfeiture for failure to give notice of manufacture, or for setting up a still without first giving notice, when required by the Secretary, see sections 5615(2) and 5687.

(2) For penalty and forfeiture for failure to register still or distilling apparatus when set up, see section 5601(a)(1) and 5615(1).

(Added Pub. L. 98–369, div. A, title IV, §451(a), July 18, 1984, 98 Stat. 818.)

PRIOR PROVISIONS

A prior section 5101, added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1339, contained provisions relating to imposition and rate of tax, prior to the general revision of this subpart by Pub. L. 98–369.

Another prior section 5101, act Aug. 16, 1954, ch. 736, 68A Stat. 617, related to special tax on manufacturers of stills, prior to the general revision of this chapter by Pub. L. 85–859.

EFFECTIVE DATE

Pub. L. 98–369, div. A, title IV, §456, July 18, 1984, 98 Stat. 823, as amended by Pub. L. 99–514, title XVIII, §1845, Oct. 22, 1986, 100 Stat. 2856, provided that:

"(a) IN GENERAL.—Except as otherwise provided in this section the amendments made by this part [part II (§§451–456) of subtitle D of title IV of div. A of Pub. L. 98–369, enacting this section and section 5102 of this title, amending sections 5005, 5062, 5066, 5116, 5134, 5179, 5204, 5206, 5207, 5214, 5215, 5235, 5301, 5354, 5555, 5604, 5613, 5615, 5691, 6103, 6801, and 7213 of this title, repealing section 5205 of this title, and omitting sections 5103, 5105, and 5106 of this title] shall take effect on the first day of the first calendar month which begins more than 90 days after the date of the enactment of this Act [July 18, 1984].

"(b) REPEAL OF STAMP REQUIREMENT.—The amendments made by section 454 [amending sections 5062, 5066, 5116, 5204, 5206, 5207, 5215, 5235, 5301, 5555, 5604, 5613, and 6801 of this title and repealing section 5205 of this title] shall take effect on July 1, 1985.

"(c) FORTIFICATION OF COOKING WINE.—The amendments made by section 455 [amending sections

5005, 5214, and 5354 of this title] shall take effect on the date of the enactment of this Act [July 18, 1984].

"(d) SECTION 452.—The amendment made by section 452 [amending section 5134 of this title] shall apply to products manufactured or produced after October 31, 1984."

§5102. Definition of manufacturer of stills

Any person who manufactures any still or condenser to be used in distilling shall be deemed a manufacturer of stills.

(Added Pub. L. 98–369, div. A, title IV, §451(a), July 18, 1984, 98 Stat. 819.)

PRIOR PROVISIONS

A prior section 5102, added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1339, defined manufacturer of stills, prior to the general revision of this subpart by Pub. L. 98–369.

Another prior section 5102, act Aug. 16, 1954, ch. 736, 68A Stat. 617, defined manufacturer of stills, prior to the general revision of this chapter by Pub. L. 85–859.

A prior section 5103, added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1339, related to exemptions from the taxes imposed by section 5101 of this title, prior to the general revision of this subpart by Pub. L. 98–369.

Another prior section 5103, act Aug. 16, 1954, ch. 736, 68A Stat. 617, related to exemptions from taxes imposed by section 5101 of this title, prior to the general revision of this chapter by Pub. L. 85–859.

A prior section 5104, added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1339, provided that the tax imposed on stills or condensers by section 5101 be paid by stamp, denoting the tax, under regulations prescribed by Secretary or his delegate, prior to repeal by Pub. L. 94–455, title XIX, §1905(b)(3)(A)(i), Oct. 4, 1976, 90 Stat. 1822, effective on first day of first month which began more than 90 days after Oct. 4, 1976.

Another prior section 5104, act Aug. 16, 1954, ch. 736, 68A Stat. 617, required taxes to be paid by stamps, prior to the general revision of this chapter by Pub. L. 85–859.

A prior section 5105, added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1339; amended Pub. L. 94–455, title XIX, §§1905(b)(6)(A), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1823, 1834, related to notice of manufacturer of and permit to set up still, prior to the general revision of this subpart by Pub. L. 98–369. See section 5101 of this title.

Another prior section 5105, act Aug. 16, 1954, ch. 736, 68A Stat. 617, related to notice of manufacture of and permit to set up still, prior to the general revision of this chapter by Pub. L. 85–859.

A prior section 5106, added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1340; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, related to export without payment of tax and export with the privilege of drawback, prior to the general revision of this subpart by Pub. L. 98–369.

Another prior section 5106, act Aug. 16, 1954, ch. 736, 68A Stat. 618, related to payment of tax and drawback on exports, prior to the general revision of this chapter by Pub. L. 85–859.

EFFECTIVE DATE

Section effective on first day of first calendar month which begins more than 90 days after July 18, 1984, see section 456(a) of Pub. L. 98–369, set out as a note under section 5101 of this title.

SUBPART B—NONBEVERAGE DOMESTIC DRAWBACK CLAIMANTS

Sec.
5111. Eligibility.
5112. Registration and regulation.
5113. Investigation of claims.
5114. Drawback.

PRIOR PROVISIONS

A prior subpart B, consisting of sections 5091 to 5093, related to brewers, prior to repeal by Pub. L. 109–59, title XI, §11125(a)(1)(B), (c), Aug. 10, 2005, 119 Stat. 1953, 1957, effective July 1, 2008, but inapplicable to taxes imposed for periods before such date.

Another prior subpart B, consisting of sections 5091 to 5093, related to brewers, prior to the general revision of this chapter by Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1313.

AMENDMENTS

2005—Pub. L. 109–59, title XI, §11125(b)(3)(A), (B), Aug. 10, 2005, 119 Stat. 1953, redesignated subpart F of this part as this subpart, renumbered items 5131 to 5134 as 5111 to 5114, respectively, and struck out "and rate of tax" after "Eligibility" in item 5111.

1997—Pub. L. 105–34, title XIV, §1415(b)(3), Aug. 5, 1997, 111 Stat. 1047, struck out item 5115 "Sign required on premises".

§5111. Eligibility

Any person using distilled spirits on which the tax has been determined, in the manufacture or production of medicines, medicinal preparations, food products, flavors, flavoring extracts, or perfume, which are unfit for beverage purposes shall be eligible for drawback at the time when such distilled spirits are used in the manufacture of such products as provided for in this subpart.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1345, §5131; amended Pub. L. 94–455, title XIX, §1905(a)(11), Oct. 4, 1976, 90 Stat. 1819; Pub. L. 100–203, title X, §10512(d), Dec. 22, 1987, 101 Stat. 1330–448; Pub. L. 103–465, title I, §136(b), Dec. 8, 1994, 108 Stat. 4841; renumbered §5111 and amended Pub. L. 109–59, title XI, §11125(a)(2), (b)(3)(A), (C), Aug. 10, 2005, 119 Stat. 1953, 1954.)

PRIOR PROVISIONS

A prior section 5111, added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1340; amended Pub. L. 94–455, title XIX, §1905(b)(3)(B), Oct. 4, 1976, 90 Stat. 1822; Pub. L. 100–203, title X, §10512(b), Dec. 22, 1987, 101 Stat. 1330–448, related to tax on wholesale dealers in liquors or beer, prior to repeal by Pub. L. 109–59, title XI, §11125(a)(1)(C), (c), Aug. 10, 2005, 119 Stat. 1953, 1957, effective July 1, 2008, but inapplicable to taxes imposed for periods before such date.

Another prior section 5111, act Aug. 16, 1954, ch. 736, 68A Stat. 618, related to tax on wholesale and retail dealers in liquors or beer, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

2005—Pub. L. 109–59, §11125(b)(3)(C), struck out "and rate of tax" after "Eligibility" in section catchline, struck out "(a) Eligibility for drawback" before "Any person", and struck out subsec. (b). Text read as follows: "The special tax imposed by subsection (a) shall be $500 per year."

Pub. L. 109–59, §11125(b)(3)(A), renumbered section 5131 of this title as this section.

Subsec. (a). Pub. L. 109–59, §11125(a)(2), struck out ", on payment of a special tax per annum," after "beverage purposes".

1994—Subsec. (a). Pub. L. 103–465 substituted "flavoring extracts, or perfume" for "or flavoring extracts".

1987—Subsec. (b). Pub. L. 100–203 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "The special tax imposed by subsection (a) shall be graduated in amount as follows: (1) for total annual use not exceeding 25 proof gallons, $25 a year; (2) for total annual use not exceeding 50 proof gallons, $50 a year; (3) for total annual use of more than 50 proof gallons, $100 a year."

1976—Subsec. (a). Pub. L. 94–455 struck out "produced in a domestic registered distillery or industrial alcohol plant and withdrawn from bond, or using distilled spirits withdrawn from the bonded premises of a distilled spirits plant," after "Any person using distilled spirits".

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–59 effective July 1, 2008, but inapplicable to taxes imposed for periods before such date, see section 11125(c) of Pub. L. 109–59, set out as a note under section 5002 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 effective Jan. 1, 1995, see section 136(d) of Pub. L. 103–465, set out as a note under section 5001 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title X, §10512(h), Dec. 22, 1987, 101 Stat. 1330–450, provided that:

"(1) IN GENERAL.—The amendments made by this section [enacting sections 5081, 5276, and 5731 of this title and amending this section and sections 5091, 5121, 5131, 5691, and 5801 of this title] shall take effect on January 1, 1988.

"(2) ALL TAXPAYERS TREATED AS COMMENCING IN BUSINESS ON JANUARY 1, 1988.—

"(A) IN GENERAL.—Any person engaged on January 1, 1988, in any trade or business which is subject to an occupational tax shall be treated for purposes of such tax as having 1st engaged in such trade or business on such date.

"(B) LIMITATION ON AMOUNT OF TAX.—In the case of a taxpayer who paid an occupational tax in respect of any premises for any taxable period which began before January 1, 1988, and includes such date, the amount of the occupational tax imposed by reason of subparagraph (A) in respect of such premises shall not exceed an amount equal to ½ the excess (if any) of—

"(i) the rate of such tax as in effect on January 1, 1988, over

"(ii) the rate of such tax as in effect on December 31, 1987.

"(C) OCCUPATIONAL TAX.—For purposes of this paragraph, the term 'occupational tax' means any tax imposed under part II of subchapter A of chapter 51, section 5276, section 5731, or section 5801 of the Internal Revenue Code of 1986 (as amended by this section).

"(D) DUE DATE OF TAX.—The amount of any tax required to be paid by reason of this paragraph shall be due on April 1, 1988."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1905(d) of Pub. L. 94–455, set out as a note under section 5005 of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§5112. Registration and regulation

Every person claiming drawback under this subpart shall register annually with the Secretary; keep such books and records as may be necessary to establish the fact that distilled spirits received by him and on which the tax has been determined were used in the manufacture or production of medicines, medicinal preparations, food products, flavors, flavoring extracts, or perfume, which were unfit for use for beverage purposes; and be subject to such rules and regulations in relation thereto as the Secretary shall prescribe to secure the Treasury against frauds.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1345, §5132; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 103–465, title I, §136(b), Dec. 8, 1994, 108 Stat. 4841; renumbered §5112, Pub. L. 109–59, title XI, §11125(b)(3)(A), Aug. 10, 2005, 119 Stat. 1953.)

PRIOR PROVISIONS

A prior section 5112, added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1340, defined "dealer", "wholesale dealer in liquors", and "wholesale dealer in beer", prior to repeal by Pub. L. 109–59, title XI, §11125(a)(1)(C), (c), Aug. 10, 2005, 119 Stat. 1953, 1957, effective July 1, 2008, but inapplicable to taxes imposed for periods before such date.

Another prior section 5112, act Aug. 16, 1954, ch. 736, 68A Stat. 618, contained definitions of wholesale dealers, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

2005—Pub. L. 109–59 renumbered section 5132 of this title as this section.

1994—Pub. L. 103–465 substituted "flavoring extracts, or perfume" for "or flavoring extracts".

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 effective Jan. 1, 1995, see section 136(d) of Pub. L. 103–465, set out as a note under section 5001 of this title.

§5113. Investigation of claims

For the purpose of ascertaining the correctness of any claim filed under this subpart, the Secretary is authorized to examine any books, papers, records, or memoranda bearing upon the matters required to be alleged in the claim, to require the attendance of the person filing the claim or of any officer or employee of such person or the attendance of any other person having knowledge in the premises, to take testimony with reference to any matter covered by the claim, and to administer oaths to any person giving such testimony.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1346, §5133; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; renumbered §5113, Pub. L. 109–59, title XI, §11125(b)(3)(A), Aug. 10, 2005, 119 Stat. 1953.)

PRIOR PROVISIONS

A prior section 5113, added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1340; amended Pub. L. 87–863, §4(b), Oct. 23, 1962, 76 Stat. 1142; Pub. L. 94–455, title XIX, §§1905(a)(7), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1819, 1834; Pub. L. 100–647, title II, §2004(t)(2), (4), Nov. 10, 1988, 102 Stat. 3609, 3610, related to exemptions from tax, prior to repeal by Pub. L. 109–59, title XI, §11125(a)(1)(C), (c), Aug. 10, 2005, 119 Stat. 1953, 1957, effective July 1, 2008, but inapplicable to taxes imposed for periods before such date.

Another prior section 5113, act Aug. 16, 1954, ch. 736, 68A Stat. 619, related to exemptions from tax, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

2005—Pub. L. 109–59 renumbered section 5133 of this title as this section.

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

§5114. Drawback

(a) Rate of drawback

In the case of distilled spirits on which the tax has been paid or determined, and which have been used as provided in this subpart, a drawback shall be allowed on each proof gallon at a rate of $1 less than the rate at which the distilled spirits tax has been paid or determined.

(b) Claims

Such drawback shall be due and payable quarterly upon filing of a proper claim with the Secretary; except that, where any person entitled to such drawback shall elect in writing to file monthly claims therefor, such drawback shall be due and payable monthly upon filing of a proper claim with the Secretary. The Secretary may require persons electing to file monthly drawback claims to file with him a bond or other security in such amount and with such conditions as he shall by regulations prescribe. Any such election may be revoked on filing of notice thereof with the Secretary. No claim under this subpart shall be allowed unless filed with the Secretary within the 6 months next succeeding the quarter in which the distilled spirits covered by the claim were used as provided in this subpart.

(c) Allowance of drawback even where certain requirements not met

(1) In general

No claim for drawback under this section shall be denied in the case of a failure to comply with any requirement imposed under this subpart or any rule or regulation issued thereunder upon the claimant's establishing to the satisfaction of the Secretary that distilled spirits on which the tax has been paid or determined were in fact used in the manufacture or production of medicines, medicinal preparations, food products, flavors, flavoring extracts, or perfume, which were unfit for beverage purposes.

(2) Penalty

(A) In general

In the case of a failure to comply with any requirement imposed under this subpart or any

rule or regulation issued thereunder, the claimant shall be liable for a penalty of $1,000 for each failure to comply unless it is shown that the failure to comply was due to reasonable cause.

(B) Penalty may not exceed amount of claim

The aggregate amount of the penalties imposed under subparagraph (A) for failures described in paragraph (1) in respect of any claim shall not exceed the amount of such claim (determined without regard to subparagraph (A)).

(3) Penalty treated as tax

The penalty imposed by paragraph (2) shall be assessed, collected, and paid in the same manner as taxes, as provided in section 6665(a).

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1346, §5134; amended Pub. L. 90–615, §2(a), Oct. 21, 1968, 82 Stat. 1210; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–369, div. A, title IV, §452, July 18, 1984, 98 Stat. 819; Pub. L. 103–465, title I, §136(b), Dec. 8, 1994, 108 Stat. 4841; Pub. L. 104–188, title I, §1704(t)(12), Aug. 20, 1996, 110 Stat. 1888; renumbered §5114, Pub. L. 109–59, title XI, §11125(b)(3)(A), Aug. 10, 2005, 119 Stat. 1953.)

PRIOR PROVISIONS

A prior section 5114 was renumbered section 5432 of this title.

Another prior section 5114, act Aug. 16, 1954, ch. 736, 68A Stat. 619, related to recordkeeping by wholesale dealers, prior to the general revision of this chapter by Pub. L. 85–859.

A prior section 5115, added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1342; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, related to requirement that a sign be posted on premises where liquor is sold and penalty for noncompliance, prior to repeal by Pub. L. 105–34, title XIV, §1415(a), Aug. 5, 1997, 111 Stat. 1047.

Another prior section 5115, act Aug. 16, 1954, ch. 736, 68A Stat. 620, related to making and stamping packages filled on premises of wholesale dealers, prior to the general revision of this chapter by Pub. L. 85–859.

A prior section 5116 was renumbered section 5131 of this title.

Another prior section 5116, act Aug. 16, 1954, ch. 736, 68A Stat. 620, related to packaging of distilled spirits for industrial uses, prior to the general revision of this chapter by Pub. L. 85–859.

A prior section 5117, added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1343; amended Pub. L. 94–455, title XIX, §1905(a)(8), Oct. 4, 1976, 90 Stat. 1819; Pub. L. 108–357, title II, §246(b), Oct. 22, 2004, 118 Stat. 1448, related to prohibited purchases by wholesale dealers in liquors, prior to repeal by Pub. L. 109–59, title XI, §11125(a)(1)(C), (c), Aug. 10, 2005, 119 Stat. 1953, 1957, effective July 1, 2008, but inapplicable to taxes imposed for periods before such date.

AMENDMENTS

2005—Pub. L. 109–59 renumbered section 5134 of this title as this section.

1996—Subsec. (c)(3). Pub. L. 104–188 substituted "section 6665(a)" for "section 6662(a)".

1994—Subsec. (c)(1). Pub. L. 103–465 substituted "flavoring extracts, or perfume" for "or flavoring extracts".

1984—Subsec. (c). Pub. L. 98–369 added subsec. (c).

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

1968—Subsec. (b). Pub. L. 90–615 substituted "6 months" for "3 months" in last sentence.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 effective Jan. 1, 1995, see section 136(d) of Pub. L. 103–465, set out as a note under section 5001 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to products manufactured or produced after Oct. 31, 1984, see section 456(d) of Pub. L. 98–369, set out as an Effective Date note under section 5101 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Pub. L. 90–615, §2(b), Oct. 21, 1968, 82 Stat. 1210, provided that: "The amendment made by subsection (a) [amending this section] shall apply to claims filed on or after the date of the enactment of this Act [Oct. 21,

1968]."

SUBPART C—RECORDKEEPING AND REGISTRATION BY DEALERS

Sec.
5121. Recordkeeping by wholesale dealers.
5122. Recordkeeping by retail dealers.
5123. Preservation and inspection of records, and entry of premises for inspection.
5124. Registration by dealers.

PRIOR PROVISIONS

A prior subpart C was redesignated subpart A of this part.

Another prior subpart C, consisting of sections 5101 to 5106, related to manufacturers of stills, prior to the general revision of this subpart by Pub. L. 98–369, div. A, title IV, §451(a), July 18, 1984, 98 Stat. 818.

Another prior subpart C, consisting of sections 5101 to 5106, related to manufacturers of stills, prior to the general revision of this chapter by Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1313.

AMENDMENTS

2005—Pub. L. 109–59, title XI, §11125(b)(4), Aug. 10, 2005, 119 Stat. 1954, added subpart heading and items 5121 to 5124.

§5121. Recordkeeping by wholesale dealers

(a) Requirements

(1) Distilled spirits

Every wholesale dealer in liquors who sells distilled spirits to other dealers shall keep daily a record of distilled spirits received and disposed of by him, in such form and at such place and containing such information, and shall submit correct summaries of such records to the Secretary at such time and in such form and manner, as the Secretary shall by regulations prescribe. Such dealer shall also submit correct extracts from or copies of such records, at such time and in such form and manner as the Secretary may by regulations prescribe; however, the Secretary may on application by such dealer, in accordance with such regulations, relieve him from this requirement until further notice, whenever the Secretary deems that the submission of such extracts or copies serves no useful purpose in law enforcement or in protection of the revenue.

(2) Wines and beer

Every wholesale dealer in liquors and every wholesale dealer in beer shall provide and keep, at such place as the Secretary shall by regulations prescribe, a record in book form of all wines and beer received, showing the quantities thereof and from whom and the dates received, or shall keep all invoices of, and bills for, all wines and beer received.

(b) Exemption of States, political subdivisions, etc.

The provision of subsection (a) shall not apply to a State, to a political subdivision of a State, to the District of Columbia, or to liquor stores operated by any of them, if they maintain and make available for inspection by internal revenue officers such records as will enable such officers to trace all distilled spirits, wines, and beer received, and all distilled spirits disposed of by them. Such States, subdivisions, District, or liquor stores shall, upon the request of the Secretary, furnish him such transcripts, summaries and copies of their records with respect to distilled spirits as he shall require.

(c) Wholesale dealers

For purposes of this part—

(1) Wholesale dealer in liquors

The term "wholesale dealer in liquors" means any dealer (other than a wholesale dealer in beer) who sells, or offers for sale, distilled spirits, wines, or beer, to another dealer.

(2) Wholesale dealer in beer

The term "wholesale dealer in beer" means any dealer who sells, or offers for sale, beer, but not distilled spirits or wines, to another dealer.

(3) Dealer

The term "dealer" means any person who sells, or offers for sale, any distilled spirits, wines, or beer.

(4) Presumption in case of sale of 20 wine gallons or more

The sale, or offer for sale, of distilled spirits, wines, or beer, in quantities of 20 wine gallons or more to the same person at the same time, shall be presumptive evidence that the person making such sale, or offer for sale, is engaged in or carrying on the business of a wholesale dealer in liquors or a wholesale dealer in beer, as the case may be. Such presumption may be overcome by evidence satisfactorily showing that such sale, or offer for sale, was made to a person other than a dealer.

(d) Cross references

(1) For provisions requiring proprietors of distilled spirits plants to keep records and submit reports of receipts and dispositions of distilled spirits, see section 5207.

(2) For penalty for violation of subsection (a), see section 5603.

(3) For provisions relating to the preservation and inspection of records, and entry of premises for inspection, see section 5123.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1342, §5114; amended Pub. L. 94–455, title XIX, §§1905(c)(1), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1823, 1834; renumbered §5121 and amended Pub. L. 109–59, title XI, §11125(b)(5), Aug. 10, 2005, 119 Stat. 1954; Pub. L. 110–172, §11(a)(31), Dec. 29, 2007, 121 Stat. 2487.)

PRIOR PROVISIONS

A prior section 5121, added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1343; amended Pub. L. 94–455, title XIX, §1905(a)(9), (b)(3)(C), Oct. 4, 1976, 90 Stat. 1819, 1822; Pub. L. 100–203, title X, §10512(c), Dec. 22, 1987, 101 Stat. 1330–448, related to special tax on retail dealers in liquors or beer, prior to repeal by Pub. L. 109–59, title XI, §11125(a)(1)(D), (c), Aug. 10, 2005, 119 Stat. 1953, 1957, effective July 1, 2008, but inapplicable to taxes imposed for periods before such date.

Another prior section 5121, act Aug. 16, 1954, ch. 736, 68A Stat. 621, related to tax on retail dealers in liquors or beer, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

2007—Pub. L. 110–172, which directed amendment of this title by redesignating section 5432 as section 5121, was executed by making correction to amendment by Pub. L. 109–59, §11125(b)(5)(B)(i). See 2005 Amendment note below.

2005—Pub. L. 109–59, §11125(b)(5)(B)(i), which directed amendment of section 5114 of this title by substituting "§5432. Recordkeeping by wholesale dealers" for "§5114. Records" in section catchline, was executed by substituting "§5121. Recordkeeping by wholesale dealers" for "§5114. Records", to reflect the probable intent of Congress and the subsequent amendment by Pub. L. 110–172. See 2007 Amendment note above.

Pub. L. 109–59, §11125(b)(5)(A), transferred section 5114 of this title to this subpart so as to appear after subpart analysis.

Subsecs. (c), (d). Pub. L. 109–59, §11125(b)(5)(B)(ii), added subsec. (c) and redesignated former subsec. (c) as (d).

Subsec. (d)(3). Pub. L. 109–59, §11125(b)(5)(C), substituted "section 5123" for "section 5146".

1976—Subsec. (a). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary" wherever appearing.

Subsec. (b). Pub. L. 94–455, §§1905(c)(1), 1906(b)(13)(A), struck out "or Territory" after "a State", "Territories" after "States,", and "or his delegate" after "Secretary".

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–59 effective July 1, 2008, but inapplicable to taxes imposed for periods before such date, see section 11125(c) of Pub. L. 109–59, set out as a note under section 5002 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1905(c)(1) of Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1905(d) of Pub. L. 94–455, set out as a note under section 5005 of this title.

§5122. Recordkeeping by retail dealers

(a) Receipts

Every retail dealer in liquors and every retail dealer in beer shall provide and keep in his place of business a record in book form of all distilled spirits, wines, and beer received, showing the quantity thereof and from whom and the dates received, or shall keep all invoices of, and bills for, all distilled spirits, wines, and beer received.

(b) Dispositions

When he deems it necessary for law enforcement purposes or the protection of the revenue, the Secretary may by regulations require retail dealers in liquors and retail dealers in beer to keep records of the disposition of distilled spirits, wines, or beer, in such form or manner and of such quantities as the Secretary may prescribe.

(c) Retail dealers

For purposes of this section—

(1) Retail dealer in liquors

The term "retail dealer in liquors" means any dealer (other than a retail dealer in beer or a limited retail dealer) who sells, or offers for sale, distilled spirits, wines, or beer, to any person other than a dealer.

(2) Retail dealer in beer

The term "retail dealer in beer" means any dealer (other than a limited retail dealer) who sells, or offers for sale, beer, but not distilled spirits or wines, to any person other than a dealer.

(3) Limited retail dealer

The term "limited retail dealer" means any fraternal, civic, church, labor, charitable, benevolent, or ex-servicemen's organization making sales of distilled spirits, wine or beer on the occasion of any kind of entertainment, dance, picnic, bazaar, or festival held by it, or any person making sales of distilled spirits, wine or beer to the members, guests, or patrons of bona fide fairs, reunions, picnics, carnivals, or other similar outings, if such organization or person is not otherwise engaged in business as a dealer.

(4) Dealer

The term "dealer" has the meaning given such term by section 5121(c)(3).

(d) Cross references

For provisions relating to the preservation and inspection of records, and entry of premises for inspection, see section 5123.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1345, §5124; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; renumbered §5122 and amended Pub. L. 109–59, title XI, §11125(b)(6), Aug. 10, 2005, 119 Stat. 1955.)

PRIOR PROVISIONS

A prior section 5122, added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1344; amended Pub. L. 94–455, title XIX, §1905(a)(10), Oct. 4, 1976, 90 Stat. 1819, defined "retail dealer in liquors", "retail dealer in

beer", and "limited retail dealer", prior to repeal by Pub. L. 109–59, title XI, §11125(a)(1)(D), (c), Aug. 10, 2005, 119 Stat. 1953, 1957, effective July 1, 2008, but inapplicable to taxes imposed for periods before such date.

Another prior section 5122, act Aug. 16, 1954, ch. 736, 68A Stat. 621, related to definition of retail dealers in liquors and beer, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

2005—Pub. L. 109–59, §11125(b)(6)(A), (B)(i), renumbered section 5124 of this title as this section, transferred section to this subpart so as to appear after section 5121, and substituted "Recordkeeping by retail dealers" for "Records" in section catchline.

Subsec. (c). Pub. L. 109–59, §11125(b)(6)(B)(iii), added subsec. (c). Former subsec. (c) redesignated (d).

Pub. L. 109–59, §11125(b)(6)(B)(ii), substituted "section 5123" for "section 5146".

Subsec. (d). Pub. L. 109–59, §11125(b)(6)(B)(iii), redesignated subsec. (c) as (d).

1976—Subsec. (b). Pub. L. 94–455 struck out "or his delegate" after "Secretary" in two places.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–59 effective July 1, 2008, but inapplicable to taxes imposed for periods before such date, see section 11125(c) of Pub. L. 109–59, set out as a note under section 5002 of this title.

§5123. Preservation and inspection of records, and entry of premises for inspection

(a) Preservation and inspection of records

Any records or other documents required to be kept under this part or regulations issued pursuant thereto shall be preserved by the person required to keep such records or documents, as the Secretary may by regulations prescribe, and shall be kept available for inspection by any internal revenue officer during business hours.

(b) Entry of premises for inspection

The Secretary may enter during business hours the premises (including places of storage) of any dealer for the purpose of inspecting or examining any records or other documents required to be kept by such dealer under this chapter or regulations issued pursuant thereto and any distilled spirits, wines, or beer kept or stored by such dealer on such premises.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1348, §5146; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; renumbered §5123, Pub. L. 109–59, title XI, §11125(b)(7), Aug. 10, 2005, 119 Stat. 1955.)

PRIOR PROVISIONS

A prior section 5123, added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1344; amended Pub. L. 87–863, §4(a), Oct. 23, 1962, 76 Stat. 1142; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 100–647, title II, §2004(t)(3), Nov. 10, 1988, 102 Stat. 3610, related to exemptions from special tax on certain wholesale and retail dealers in liquors or beer, prior to repeal by Pub. L. 109–59, title XI, §11125(a)(1)(D), (c), Aug. 10, 2005, 119 Stat. 1953, 1957, effective July 1, 2008, but inapplicable to taxes imposed for periods before such date.

Another prior section 5123, act Aug. 16, 1954, ch. 736, 68A Stat. 621, related to exemptions from tax on retail dealers of liquors or beer, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

2005—Pub. L. 109–59 renumbered section 5146 of this title as this section and transferred section to this subpart so as to appear after section 5122.

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

§5124. Registration by dealers

Every dealer who is subject to the recordkeeping requirements under section 5121 or 5122 shall

register with the Secretary such dealer's name or style, place of residence, trade or business, and the place where such trade or business is to be carried on. In the case of a firm or company, the names of the several persons constituting the same, and the places of residence, shall be so registered.

(Added Pub. L. 109–59, title XI, §11125(b)(8), Aug. 10, 2005, 119 Stat. 1955.)

PRIOR PROVISIONS

A prior section 5124 was renumbered section 5122 of this title.

Another prior section 5124, act Aug. 16, 1954, ch. 736, 68A Stat. 622, related to recordkeeping requirements of retail dealers in liquors or beer, prior to the general revision of this chapter by Pub. L. 85–859.

A prior section 5125, added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1345, set out cross references, prior to repeal by Pub. L. 109–59, title XI, §11125(a)(1)(D), (c), Aug. 10, 2005, 119 Stat. 1953, 1957, effective July 1, 2008, but inapplicable to taxes imposed for periods before such date.

EFFECTIVE DATE

Section effective July 1, 2008, but inapplicable to taxes imposed for periods before such date, see section 11125(c) of Pub. L. 109–59, set out as an Effective Date of 2005 Amendment note under section 5002 of this title.

SUBPART D—OTHER PROVISIONS

Sec.
5131. Packaging distilled spirits for industrial uses.
5132. Prohibited purchases by dealers.

PRIOR PROVISIONS

A prior subpart D, consisting of sections 5111 to 5117, related to wholesale dealers in liquors or beer, prior to repeal, except for sections 5114 and 5116, by Pub. L. 109–59, title XI, §11125(a)(1)(C), (c), Aug. 10, 2005, 119 Stat. 1953, 1957, effective July 1, 2008, but inapplicable to taxes imposed for periods before such date.

Another prior subpart D, consisting of sections 5111 to 5116, related to wholesale dealers, prior to the general revision of this chapter by Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1313.

A prior subpart E, consisting of sections 5121 to 5125, related to retail dealers, prior to repeal, except for section 5124, by Pub. L. 109–59, title XI, §11125(a)(1)(D), (c), Aug. 10, 2005, 119 Stat. 1953, 1957, effective July 1, 2008, but inapplicable to taxes imposed for periods before such date.

Another prior subpart E, consisting of sections 5121 to 5124, related to retail dealers, prior to the general revision of this chapter by Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1313.

A prior subpart F was redesignated subpart B of this part.

Another prior subpart F, consisting of sections 5131 to 5134, related to nonbeverage domestic drawback claimants, prior to the general revision of this chapter by Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1313.

A prior subpart G, consisting of sections 5141 to 5149, related to general provisions, prior to repeal, except for sections 5142, 5143, 5145, and 5146, by Pub. L. 109–59, title XI, §11125(a)(1)(E), (c), Aug. 10, 2005, 119 Stat. 1953, 1957, effective July 1, 2008, but inapplicable to taxes imposed for periods before such date.

Another prior subpart G, consisting of sections 5141 to 5149, related to general provisions, prior to the general revision of this chapter by Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1313.

AMENDMENTS

2005—Pub. L. 109–59, title XI, §11125(b)(10), Aug. 10, 2005, 119 Stat. 1955, added subpart heading and items 5131 and 5132.

§5131. Packaging distilled spirits for industrial uses

(a) General

The Secretary may, at his discretion and under such regulations as he may prescribe, authorize a dealer (as defined in section 5121(c)) engaging in the business of supplying distilled spirits for industrial uses to package distilled spirits, on which the tax has been paid or determined, for such

uses in containers of a capacity in excess of 1 wine gallon and not more than 5 wine gallons.

(b) Cross reference

For provisions relating to containers of distilled spirits, see section 5206.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1343, §5116; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–39, title VIII, §807(a)(12), July 26, 1979, 93 Stat. 282; Pub. L. 98–369, div. A, title IV, §454(c)(3), July 18, 1984, 98 Stat. 821; renumbered §5131 and amended Pub. L. 109–59, title XI, §11125(b)(11), Aug. 10, 2005, 119 Stat. 1956.)

PRIOR PROVISIONS

A prior section 5131 was renumbered section 5111 of this title.

Another prior section 5131, act Aug. 16, 1954, ch. 736, 68A Stat. 622, related to eligibility for drawback and rate of tax, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

2005—Pub. L. 109–59, §11125(b)(11), renumbered section 5116 of this title as this section and transferred section to this subpart so as to appear after subpart analysis.

Subsec. (a). Pub. L. 109–59, §11125(b)(11), inserted "(as defined in section 5121(c))" after "dealer".

1984—Subsec. (b). Pub. L. 98–369 substituted "reference" for "references" in heading, struck out former par. (1) which provided a cross reference to section 5205(a)(1) of this title regarding stamps for immediate containers, and struck out designation "(2)" preceding provisions relating to containers of distilled spirits.

1979—Subsec. (b)(1). Pub. L. 96–39 substituted "section 5205(a)(1)" for "section 5205(a)(2)".

1976—Subsec. (a). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–59 effective July 1, 2008, but inapplicable to taxes imposed for periods before such date, see section 11125(c) of Pub. L. 109–59, set out as a note under section 5002 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 1, 1985, see section 456(b) of Pub. L. 98–369, set out as an Effective Date note under section 5101 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as a note under section 5001 of this title.

§5132. Prohibited purchases by dealers

(a) In general

Except as provided in regulations prescribed by the Secretary, it shall be unlawful for a dealer to purchase distilled spirits for resale from any person other than a wholesale dealer in liquors who is required to keep the records prescribed by section 5121.

(b) Limited retail dealers

A limited retail dealer may lawfully purchase distilled spirits for resale from a retail dealer in liquors.

(c) Penalty and forfeiture

For penalty and forfeiture provisions applicable to violations of subsection (a), see sections 5687 and 7302.

(Added Pub. L. 109–59, title XI, §11125(b)(12), Aug. 10, 2005, 119 Stat. 1956.)

PRIOR PROVISIONS

A prior section 5132 was renumbered section 5112 of this title.

Another prior section 5132, act Aug. 16, 1954, ch. 736, 68A Stat. 623, related to registration and regulation of persons claiming drawback, prior to the general revision of this chapter by Pub. L. 85–859.

A prior section 5133 was renumbered section 5113 of this title.

Another prior section 5133, act Aug. 16, 1954, ch. 736, 68A Stat. 623, related to investigation of claims, prior to the general revision of this chapter by Pub. L. 85–859.

A prior section 5134 was renumbered section 5114 of this title.

Another prior section 5134, acts Aug. 16, 1954, ch. 736, 68A Stat. 623; Mar. 30, 1955, ch. 18, §3(b)(2), 69 Stat. 15; Mar. 29, 1956, ch. 115, §3(b)(2), 70 Stat. 67; Mar. 29, 1957, Pub. L. 85–12, §3(b)(2), 71 Stat. 10; June 30, 1958, Pub. L. 85–475, §3(b)(2), 72 Stat. 259, related to drawbacks, prior to the general revision of this chapter by Pub. L. 85–859.

A prior section 5141, added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1346, related to registration, prior to repeal by Pub. L. 109–59, title XI, §11125(a)(1)(E), (c), Aug. 10, 2005, 119 Stat. 1953, 1957, effective July 1, 2008, but inapplicable to taxes imposed for periods before such date.

Another prior section 5141, act Aug. 16, 1954, ch. 736, 68A Stat. 624, related to registration, prior to the general revision of this chapter by Pub. L. 85–859.

A prior section 5142 was renumbered section 5732 of this title.

Another prior section 5142, act Aug. 16, 1954, ch. 736, 68A Stat. 624, related to payment of tax, prior to the general revision of this chapter by Pub. L. 85–859.

A prior section 5143 was renumbered section 5733 of this title.

Another prior section 5143, act Aug. 16, 1954, ch. 736, 68A Stat. 624, related to time for filing returns and cross-referred to penalty provisions for failure to file returns or for making false or fraudulent returns, prior to the general revision of this chapter by Pub. L. 85–859.

A prior section 5144, added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1348, authorized and directed Secretary or his delegate to procure the necessary stamps for payment of special taxes and to make needful regulations relative thereto, prior to repeal by Pub. L. 94–455, title XIX, §1905(b)(3)(D)(i), Oct. 4, 1976, 90 Stat. 1822.

Another prior section 5144, act Aug. 16, 1954, ch. 736, 68A Stat. 624, related to liability for occupational taxes, prior to the general revision of this chapter by Pub. L. 85–859.

A prior section 5145 was renumbered section 5734 of this title.

Another prior section 5145, act Aug. 16, 1954, ch. 736, 68A Stat. 625, related to "supply of stamps", prior to the general revision of this chapter by Pub. L. 85–859.

A prior section 5146 was renumbered section 5123 of this title.

Another prior section 5146, act Aug. 16, 1954, ch. 736, 68A Stat. 625, contained cross references to provisions respecting posting stamp in place of business, prior to the general revision of this chapter by Pub. L. 85–859.

A prior section 5147, added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1348, related to application of former subpart G, prior to repeal by Pub. L. 109–59, title XI, §11125(a)(1)(E), (c), Aug. 10, 2005, 119 Stat. 1953, 1957, effective July 1, 2008, but inapplicable to taxes imposed for periods before such date.

Another prior section 5147, act Aug. 16, 1954, ch. 736, 68A Stat. 626, made a cross reference to provision respecting keeping of list of special taxpayers for public inspection, prior to the general revision of this chapter by Pub. L. 85–859.

A prior section 5148, added Pub. L. 108–357, title II, §246(a), Oct. 22, 2004, 118 Stat. 1448, related to suspension of occupational tax, prior to repeal by Pub. L. 109–59, title XI, §11125(a)(1)(E), (c), Aug. 10, 2005, 119 Stat. 1953, 1957, effective July 1, 2008, but inapplicable to taxes imposed for periods before such date.

Another prior section 5148 was renumbered section 5149 of this title, prior to repeal by Pub. L. 109–59.

Another prior section 5148, act Aug. 16, 1954, ch. 736, 68A Stat. 626, related to "Application of State laws", prior to the general revision of this chapter by Pub. L. 85–859.

A prior section 5149, added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1348, §5148; amended Pub. L. 94–455, title XIX, §1905(b)(3)(E), Oct. 4, 1976, 90 Stat. 1822; renumbered §5149, Pub. L. 108–357, title II, §246(a), Oct. 22, 2004, 118 Stat. 1448, contained cross references to provisions imposing penalties, prior to repeal by Pub. L. 109–59, title XI, §11125(a)(1)(E), (c), Aug. 10, 2005, 119 Stat. 1953, 1957, effective July 1, 2008, but inapplicable to taxes imposed for periods before such date.

Another prior section 5149, act Aug. 16, 1954, ch. 736, 68A Stat. 626, related to "Application of subpart", prior to the general revision of this chapter by Pub. L. 85–859.

EFFECTIVE DATE

Section effective July 1, 2008, but inapplicable to taxes imposed for periods before such date, see section 11125(c) of Pub. L. 109–59, set out as an Effective Date of 2005 Amendment note under section 5002 of this

title.

Subchapter B—Qualification Requirements for Distilled Spirits Plants

Sec.
5171. Establishment.
5172. Application.
5173. Bonds.
[5174. Repealed.]
5175. Export bonds.
5176. New or renewed bonds.
5177. Other provisions relating to bonds.
5178. Distilled spirits plants.[1]
5179. Registration of stills.
5180. Signs.
5181. Distilled spirits for fuel use.
5182. Cross references.

PRIOR PROVISIONS

A prior subchapter B, Distilleries, consisted of part I, Establishment, part II, Operation, and part III, General Provisions Relating to Distilleries and Distilled Spirits, and consisted of sections 5171 to 5180, 5191 to 5197, and 5211 to 5217, respectively, prior to the general revision of this chapter by Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1313.

AMENDMENTS

1980—Pub. L. 96–223, title II, §232(e)(2)(F), Apr. 2, 1980, 94 Stat. 280, added item 5181 and redesignated former item 5181 as 5182.

1979—Pub. L. 96–39, title VIII, §807(b)(4), July 26, 1979, 93 Stat. 290, substituted "Bonds" for "Qualification bonds" in item 5173, struck out item 5174 "Withdrawal bonds", and substituted "Distilled spirits plants" for "Premises of distilled spirits plants" in item 5178.

[1] *So in original. Does not conform to section catchline.*

§5171. Establishment

(a) Certain operations may be conducted only on bonded premises

Except as otherwise provided by law, operations as a distiller, warehouseman, or processor may be conducted only on the bonded premises of a distilled spirits plant by a person who is qualified under this subchapter.

(b) Establishment of distilled spirits plant

A distilled spirits plant may be established only by a person who intends to conduct at such plant operations as a distiller, as a warehouseman, or as both.

(c) Registration

(1) In general

Each person shall, before commencing operations at a distilled spirits plant (and at such other times as the Secretary may by regulations prescribe), make application to the Secretary for, and receive notice of, the registration of such plant.

(2) Application required where new operations are added

No operation in addition to those set forth in the application made pursuant to paragraph (1) may be conducted at a distilled spirits plant until the person has made application to the Secretary for, and received notice of, the registration of such additional operation.

(3) Secretary may establish minimum capacity and level of activity requirements

The Secretary may by regulations prescribe for each type of operation minimum capacity and level of activity requirements for qualifying premises as a distilled spirits plant.

(4) Applicant must comply with law and regulations

No plant (or additional operation) shall be registered under this section until the applicant has complied with the requirements of law and regulations in relation to the qualification of such plant (or additional operation).

(d) Permits

(1) Requirements

Each person required to file an application for registration under subsection (c) whose distilled spirits operations (or any part thereof) are not required to be covered by a basic permit under the Federal Alcohol Administration Act (27 U.S.C. secs. 203 and 204) shall, before commencing the operations (or part thereof) not so covered, apply for and obtain a permit under this subsection from the Secretary to engage in such operations (or part thereof). Subsections (b), (c), (d), (e), (f), (g), and (h) of section 5271 are hereby made applicable to persons filing applications and permits required by or issued under this subsection.

(2) Exceptions for agencies of a State or political subdivisions

Paragraph (1) shall not apply to any agency of a State or political subdivision thereof or to any officer or employee of any such agency, and no such agency, officer, or employee shall be required to obtain a permit thereunder.

(e) Cross references

(1) For penalty for failure of a distiller or processor to file application for registration as required by this section, see section 5601(a)(2).

(2) For penalty for the filing of a false application by a distiller, warehouseman, or processor of distilled spirits, see section 5601(a)(3).

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1349; amended Pub. L. 94–455, title XIX, §§1905(a)(13), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1820, 1834; Pub. L. 96–39, title VIII, §805(a), July 26, 1979, 93 Stat. 274.)

REFERENCES IN TEXT

The Federal Alcohol Administration Act, referred to in subsec. (d)(1), is act Aug. 29, 1935, ch. 814, 49 Stat. 977, as amended, which is classified generally to subchapter I (§201 et seq.) of chapter 8 of Title 27, Intoxicating Liquors. The basic permit is covered by sections 203 and 204 of Title 27. For complete classification of this Act to the Code, see section 201 of Title 27 and Tables.

PRIOR PROVISIONS

A prior section 5171, act Aug. 16, 1954, ch. 736, 68A Stat. 627, related to "premises prohibited for distilling", prior to the general revision of this chapter by Pub. L. 85–859. See sections 5178(a)(1)(B), (b), (c)(2), and 5505(b) of this title.

Provisions similar to those comprising subsecs. (a), (b)(1) and (c) of this section were contained in prior sections of act Aug. 16, 1954, prior to the general revision of this chapter by Pub. L. 85–859, as follows:

Present subsecs.:	*Prior sections*
(a)	5172, 5175(a), 5177(a), 5178, 5231, 5243(a), 5271(a), 5301–5303, 5305, 5331(a)(1).
(b)(1)	5301–5303, 5304(a)(1).
(c)	5175(b), 5271(b).

The prior sections, act Aug. 16, 1954, ch. 736, are set out in 68A Stat. 627 to 631, 643, 645, 650, 654, 655.

AMENDMENTS

1979—Subsecs. (a), (b). Pub. L. 96–39 added subsecs. (a) and (b) and redesignated former subsecs. (a) and (b) as (c) and (d), respectively.

Subsec. (c). Pub. L. 96–39 redesignated former subsec. (a) as (c) and inserted provisions relating to an application requirement where new operations are added and permitting the Secretary to establish minimum capacity and level of activity requirements. Former subsec. (c) redesignated (e).

Subsec. (d). Pub. L. 96–39 redesignated former subsec. (b) as (d) and substituted reference to subsection (c) for reference to subsection (a) and struck out reference to section 5274.

Subsec. (e). Pub. L. 96–39 redesignated former subsec. (c) as (e) and substituted reference to processor for reference to rectifier and reference to warehouseman for reference to bonded warehouseman and struck out reference to bottler.

1976—Subsec. (b)(1). Pub. L. 94–455, §§1905(a)(13)(A), 1906(b)(13)(A), struck out "49 Stat. 978;" before "27 U.S.C. 203, 204" in parenthetical provisions after "Federal Alcohol Administration Act" and struck out "or his delegate" after "Secretary".

Subsec. (b)(3). Pub. L. 94–455, §1905(a)(13)(B), struck out par. (3) under which persons who were qualified on June 30, 1959, to perform operations for which a permit was required covering operations not required to be covered by a basic permit under the Federal Alcohol Administration Act had been allowed to continue operations pending a reasonable opportunity to make application for a permit.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as a note under section 5001 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1905(a)(13) of Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1905(d) of Pub. L. 94–455, set out as a note under section 5005 of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

TRANSITIONAL RULES RELATING TO ALL-IN-BOND METHOD

Pub. L. 96–39, title VIII, §809(a), (b), July 26, 1979, 93 Stat. 292, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) NEW APPLICATION REQUIRED.—

"(1) IN GENERAL.—For purposes of section 5171 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to establishment of distilled spirits plants), each person who intends to continue any distilled spirits operation at a premises after December 31, 1979, shall be treated as intending to establish a distilled spirits plant on such premises on January 1, 1980.

"(2) CURRENT REGISTRATION TO REMAIN IN EFFECT.—Notwithstanding paragraph (1), the registration of any person under section 5171 of the Internal Revenue Code of 1986 which is in effect on December 31, 1979, shall remain in effect until final action on the application required by paragraph (1).

"(b) CONTINUING OPERATIONS AT EXISTING PREMISES.—With respect to any operation which was permitted to be conducted on May 1, 1979, at premises which were registered on such date under section 5171 of the Internal Revenue Code of 1986, the determination of whether such premises qualify for registration under such section as a distilled spirits plant shall be made without regard to whether or not—

"(1) the person engaged in operations at such premises is registered under such section with respect to such premises as a distiller or warehouseman, and

"(2) such premises meet the minimum capacity and level of activity requirements for that type of operation."

§5172. Application

The application for registration required by section 5171(c) shall, in such manner and form as the Secretary may by regulations prescribe, identify the applicant and persons interested in the business

(or businesses) covered by the application, show the nature, location and extent of the premises, show the specific type or types of operations to be conducted on such premises, and show any other information which the Secretary may by regulations require for the purpose of carrying out the provisions of this chapter.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1349; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–39, title VIII, §807(a)(13), July 26, 1979, 93 Stat. 282.)

PRIOR PROVISIONS

A prior section 5172, act Aug. 16, 1954, ch. 736, 68A Stat. 627, related to "conditions precedent to carrying on business of distilling", prior to the general revision of this chapter by Pub. L. 85–859 and is covered in part by this section. See also sections 5171(a), 5173(a), 5178(a)(1)(A), and 5601(a)(2), (4) of this title.

Provisions similar to those comprising this section were contained in prior sections 5175(a), 5178, 5231, 5243(a), 5271, 5301 to 5303, 5305, and 5331(a)(1), act Aug. 16, 1954, ch. 736, 68A Stat. 628, 631, 643, 645, 650, 654, 655, 657, 661, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1979—Pub. L. 96–39 substituted "section 5171(c)" for "section 5171(a)".

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as a note under section 5001 of this title.

§5173. Bonds

(a) Operations at, and withdrawals from, distilled spirits plant must be covered by bond

(1) Operations

No person intending to establish a distilled spirits plant may commence operations at such plant unless such person has furnished bond covering operations at such plant.

(2) Withdrawals

No distilled spirits (other than distilled spirits withdrawn under section 5214 or 7510) may be withdrawn from bonded premises except on payment of tax unless the proprietor of the bonded premises has furnished bond covering such withdrawal.

(b) Operations bonds

The bond required by paragraph (1) of subsection (a) shall meet the requirements of paragraph (1), (2), or (3) of this subsection:

(1) One plant bond

The bond covers operations at a single distilled spirits plant.

(2) Adjacent wine cellar bond

The bond covers operations at a distilled spirits plant and at an adjacent bonded wine cellar.

(3) Area bond

The bond covers operations at 2 or more distilled spirits plants (and adjacent bonded wine cellars) which—

(A) are located in the same geographical area (as designated in regulations prescribed by the Secretary), and

(B) are operated by the same person (or, in the case of a corporation, by such corporation and its controlled subsidiaries).

(c) Withdrawal bonds

The bond required by paragraph (2) of subsection (a) shall cover withdrawals from 1 or more

bonded premises the operations at which could be covered by the same operations bond under subsection (b).

(d) Unit bonds

Under regulations prescribed by the Secretary, the requirements of paragraphs (1) and (2) of subsection (a) shall be treated as met by a unit bond which covers both operations at, and withdrawals from, 1 or more bonded premises which could be covered by the same operations bond under subsection (b).

(e) Terms and conditions

(1) In general

Any bond furnished under this section shall be conditioned that the person furnishing the bond—

(A) will faithfully comply with all provisions of law and regulations relating to the activities covered by such bond, and

(B) will pay—

(i) all taxes imposed by this chapter, and

(ii) all penalties incurred by, or fines imposed on, such person for violation of any such provision.

(2) Other terms and conditions

Any bond furnished under this section shall contain such other terms and conditions as may be required by regulations prescribed by the Secretary.

(f) Amount

(1) In general

The penal sum of any bond shall be the amount determined under regulations prescribed by the Secretary.

(2) Maximum and minimum amount

The Secretary shall by regulations prescribe a minimum amount and a maximum amount for each type of bond which may be furnished under this section.

(g) Total amount available

The total amount of any bond furnished under this section shall be available for the satisfaction of any liability incurred under the terms and conditions of such bond.

(h) Special rules

For purposes of this section—

(1) Withdrawal bonds

In the case of any bond furnished under this section which covers withdrawals but not operations—

(A) such bond shall be in addition to the operations bond, and

(B) if distilled spirits are withdrawn under such bond, the operations bond shall no longer cover liability for payment of the tax on the spirits withdrawn.

(2) Adjacent wine cellars

(A) Requirements

No wine cellar shall be treated as being adjacent to a distilled spirits plant unless—

(i) such distilled spirits plant is qualified under this subchapter for the production of distilled spirits, and

(ii) such wine cellar and the distilled spirits plant are operated by the same person (or, in the case of a corporation, by such corporation and its controlled subsidiaries).

(B) Bond in lieu of wine cellar bond

In the case of any adjacent wine cellar, a bond furnished under this section which covers operations at such wine cellar shall be in lieu of any bond which would otherwise be required under section 5354 with respect to such wine cellar (other than supplemental bonds required under the second sentence of section 5354).

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1349; amended Pub. L. 91–659, §4, Jan. 8, 1971, 84 Stat. 1966; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–39, title VIII, §805(c), July 26, 1979, 93 Stat. 276.)

PRIOR PROVISIONS

A prior section 5173, act Aug. 16, 1954, ch. 736, 68A Stat. 628, related to "distillery fixtures and equipment", prior to the general revision of this chapter by Pub. L. 85–859. See sections 5178(a)(1)(A), (2)(B)(C), (c)(1) and 5202(b) of this title.

Provisions similar to those comprising subsecs. (a), (b), (b)(1), (b)(1)(A) to (C), (b)(3), (c), (c)(1), (d) and (e)(1) of this section were contained in prior sections of act Aug. 16, 1954, prior to the general revision of this chapter by Pub. L. 85–859, as follows:

Present subsecs.:	*Prior sections*
(a)	5172, 5176(a), 5231, 5232(a), 5272(a), 5301–5303, 5304(a)(5), 5305, 5311(a)(3).
(b)	5176 (a), (d).
(b)(1)	5176(a), 5177(c).
(b)(1)(A)–(C)	5177(b)(1)–(3).
(b)(3)	5177(b)(4).
(c)	5232(a), 5302, 5303, 5306, 5331(a)(3).
(c)(1)	5232(a).
(d)	5272(a).
(e)(1)	5304(a)(5).

The prior sections, act Aug. 16, 1954, ch. 736, are set out in 68A Stat. 627, 629 to 631, 643, 650, 654, 655, 657, 662.

AMENDMENTS

1979—Pub. L. 96–39, among other changes, struck out provisions relating to liens on distillery property and the furnishing of indemnity bonds as methods of securing tax payments and inserted provisions relating to the one plant operations bond, which will cover the operations at a bonded wine cellar which is adjacent to the distilled spirits plant and operated by the same person.

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

1971—Subsec. (b)(1). Pub. L. 91–659, §4(b), extended exception clause in parenthetical by making reference to cl. (4) of this subsection.

Subsec. (b)(2). Pub. L. 91–659, §4(c), inserted reference to par. (4).

Subsec. (b)(4). Pub. L. 91–659, §4(a), added par. (4).

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as a note under section 5001 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 91–659 effective on first day of first calendar month which begins more than 90 days after Jan. 8, 1971, see section 6 of Pub. L. 91–659, set out as an Effective Date note under section 5066 of this title.

TRANSITIONAL RULES RELATING TO ALL-IN-BOND METHOD

Pub. L. 96–39, title VIII, §809(c), July 26, 1979, 93 Stat. 292, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "For purposes of section 5173 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to bonds), each person who intends to continue operation at a premises after December 31, 1979, shall be treated as intending to establish a distilled spirits plant on such premises on January 1, 1980."

[§5174. Repealed. Pub. L. 96–39, title VIII, §807(a)(14), July 26, 1979, 93 Stat. 282]

Section, added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1352; amended Pub. L. 94–455, title XIX, §§1905(a)(14), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1820, 1834, related to withdrawal bonds.

A prior section 5174, act Aug. 16, 1954, ch. 736, 68A Stat. 630, related to "registry of stills", prior to the general revision of this chapter by Pub. L. 85–859. See sections 5179 and 5505(d) of this title.

Provisions similar to those comprising subsec. (a)(1) of section 5174, added by Pub. L. 85–859, title I, §201, Sept. 2, 1958, 725 Stat. 1352, relating to the withdrawal from bonded premises of distilled spirits on the furnishing of a bond by the proprietor of the bonded premises to secure payment of the tax on such spirits, were contained in prior sections 5176(b) and 5232(b), act Aug. 16, 1954, ch. 736, 68A Stat. 629, 643, prior to the general revision of this chapter by Pub. L. 85–859.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as an Effective Date of 1979 Amendment note under section 5001 of this title.

§5175. Export bonds

(a) Requirements

No distilled spirits shall be withdrawn from bonded premises for exportation, or for transfer to a customs bonded warehouse, without payment of tax unless the exporter has furnished bond to cover such withdrawal under such regulations and conditions, and in such form and penal sum, as the Secretary may prescribe.

(b) Exception where proprietor withdraws spirits for exportation

In the case of distilled spirits withdrawn from bonded premises by the proprietor for exportation without payment of tax, the bond of such proprietor required to be furnished under paragraph (1) of section 5173(a) covering such premises shall cover such exportation, and subsection (a) shall not apply.

(c) Cancellation or credit of export bonds

The bonds given under subsection (a) shall be cancelled or credited and the bonds liable under subsection (b) credited if there is such proof of exportation as the Secretary may by regulations require.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1352; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–176, §3(b), Nov. 14, 1977, 91 Stat. 1365; Pub. L. 96–39, title VIII, §807(a)(15), July 26, 1979, 93 Stat. 282; Pub. L. 105–34, title XIV, §1412(a), Aug. 5, 1997, 111 Stat. 1046.)

PRIOR PROVISIONS

A prior section 5175, act Aug. 16, 1954, ch. 736, 68A Stat. 628, related to "notice of business of distiller", prior to the general revision of this chapter by Pub. L. 85–859. See sections 5171(a), (c) and 5172 of this title.

Provisions similar to those comprising this section were contained in a prior section 5247(a), act Aug. 16, 1954, ch. 736, 68A Stat. 647, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1997—Subsec. (c). Pub. L. 105–34 substituted "if there is such proof of exportation as the Secretary may by regulations require." for "on the submission of such evidence, records, and certification indicating exportation

as the Secretary may by regulations prescribe."

1979—Subsec. (a). Pub. L. 96–39, §807(a)(15)(A), struck out "for storage therein pending exportation" after "customs bonded warehouse".

Subsec. (b). Pub. L. 96–39, §807(a)(15)(B), substituted "from bonded premises by the proprietor for exportation without payment of tax, the bond of such proprietor required to be furnished under paragraph (1) of section 5173(a) covering such premises shall cover such exportation, and subsection (a) shall not apply" for "for exportation without payment of tax on application of the proprietor of bonded premises, the bond of such proprietor covering such bonded premises shall cover such exportation and subsection (a) shall not be applicable".

1977—Subsec. (a). Pub. L. 95–176 required export bonds for withdrawals from bonded premises, without payment of tax, for transfer to a customs bonded warehouse for storage therein pending exportation.

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XIV, §1412(b), Aug. 5, 1997, 111 Stat. 1046, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on the 1st day of the 1st calendar quarter that begins at least 180 days after the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as a note under section 5001 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–176 effective on first day of first calendar month beginning more than 90 days after Nov. 14, 1977, see section 7 of Pub. L. 95–176, set out as a note under section 5003 of this title.

CONTINUATION OF DISTILLER'S NOTICE AND BOND

Pub. L. 85–859, title II, §210(f), Sept. 2, 1958, 72 Stat. 1436, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Notwithstanding any provision of section 5175 or 5176(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the Secretary of the Treasury or his delegate may waive, as to registered distillers or registered fruit distillers qualified to operate under bond on April 30, 1959, requirements for filing notice and executing new bond on May 1, 1959, if the distiller and the surety have executed consent to continuation of the terms of the existing bond to cover operations from May 1, 1959, to June 30, 1959, both dates inclusive. Nothing in this subsection shall be construed as limiting the authority of the Secretary of the Treasury or his delegate under section 5176(b) or (c) of the Internal Revenue Code of 1986."

§5176. New or renewed bonds

(a) General

New bonds shall be required under sections 5173 and 5175 in case of insolvency or removal of any surety, and may, at the discretion of the Secretary, be required in any other contingency affecting the validity or impairing the efficiency of such bond.

(b) Bonds

If the proprietor of a distilled spirits plant fails or refuses to furnish a bond required under paragraph (1) of section 5173(a) or to renew the same, and neglects to immediately withdraw the spirits and pay the tax thereon, the Secretary shall proceed to collect the tax.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1353; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–39, title VIII, §807(a)(16), July 26, 1979, 93 Stat. 282.)

PRIOR PROVISIONS

A prior section 5176(c), act Aug. 16, 1954, ch. 736, 68A Stat. 629, consisted of provisions similar to those comprising subsec. (a) of this section, prior to the general revision of this chapter by Pub. L. 85–859.

Prior section 5176(a), (b), (d), (e), related to distiller's bond: form and approval; additional bond; exemption from survey requirements; and cross references, prior to the general revision of this chapter by Pub. L.

85–859. See sections 5173(a), (b), 5174(a)(1) and 5177 of this title.

Provisions similar to those comprising this section were contained in prior section 5232(c), act Aug. 16, 1954, ch. 736, 68A Stat. 643, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1979—Subsec. (a). Pub. L. 96–39, §807(a)(16)(A), struck out ", 5174," after "sections 5173".

Subsec. (b). Pub. L. 96–39, §807(a)(16)(A), substituted reference to paragraph (1) of section 5173(a) for reference to section 5173(c) and struck out provisions relating to failure or refusal of the proprietor of a distilled spirits plant to withdraw any spirits from storage on bonded premises before the expiration of the time limited on the bond and pay the tax thereon.

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as a note under section 5001 of this title.

CONTINUATION OF DISTILLER'S NOTICE AND BOND

Authority to waive requirements for filing notice and executing new bond on May 1, 1959, if distiller and surety have executed consent to continuation of the terms of existing bond to cover operations from May 1, 1959 to June 30, 1959, see section 210(f) of Pub. L. 85–859, set out as a note under section 5175 of this title.

§5177. Other provisions relating to bonds

(a) General provisions relating to bonds

The provisions of section 5551 shall be applicable to the bonds required by or given under sections 5173 and 5175.

(b) Cross references

(1) For deposit of United States bonds or notes in lieu of sureties, see section 9303 of title 31, United States Code.

(2) For penalty and forfeiture for failure or refusal to give bond, or for giving false, forged, or fraudulent bond, or carrying on the business of a distiller without giving bond, see sections 5601(a)(4), 5601(a)(5), 5601(b), and 5615(3).

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1353; amended Pub. L. 94–455, title XIX, §1905(b)(6)(B), Oct. 4, 1976, 90 Stat. 1823; Pub. L. 96–39, title VIII, §807(a)(17), July 26, 1979, 93 Stat. 282; Pub. L. 97–258, §3(f)(3), Sept. 13, 1982, 96 Stat. 1064.)

PRIOR PROVISIONS

A prior section 5177, act Aug. 16, 1954, ch. 736, 68A Stat. 628, related to "conditions of approval of distiller's bond", prior to the general revision of this chapter by Pub. L. 85–859. See section 5173(b)(1) of this title.

Prior section 5177(a) was a general provision. See section 5171(a) of this title.

Prior section 5177(b)(1) to (3) related to ownership, consent of owner, or indemnity bond. See section 5173(b)(1)(A) to (C) of this title.

Prior section 5177(b)(4) related to judicial sale. See section 5173(b)(3) of this title.

Prior section 5177(c) related to situation of distillery. See sections 5173(b)(1) and 5551(c) of this title.

Prior section 5177(d) was a cross reference to penalty for improper approval of distiller's bond, and to general provisions relating to approval, disapproval and appeal on bonds. See subsec. (a) of this section and section 5551 of this title.

Provisions similar to those comprising subsec. (b) of this section were contained in prior sections 5176(e) and 5232(d), act Aug. 16, 1954, ch. 736, 68A Stat. 630, 644, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1982—Subsec. (b)(1). Pub. L. 97–258 substituted "section 9303 of title 31, United States Code" for "6 U.S.C. 15".

1979—Subsec. (a). Pub. L. 96–39 struck out ", 5174," after "sections 5173".

1976—Subsec. (b)(2). Pub. L. 94–455 substituted "5601(b)" for "5601(b)(2)".

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as a note under section 5001 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1905(d) of Pub. L. 94–455, set out as a note under section 5005 of this title.

§5178. Premises of distilled spirits plants

(a) Location, construction, and arrangement

(1) General

(A) The premises of a distilled spirits plant shall be as described in the application required by section 5171(c). The Secretary shall prescribe such regulations relating to the location, construction, arrangement, and protection of distilled spirits plants as he deems necessary to facilitate inspection and afford adequate security to the revenue.

(B) No distilled spirits plant for the production of distilled spirits shall be located in any dwelling house, in any shed, yard, or inclosure connected with any dwelling house, or on board any vessel or boat, or on premises where beer or wine is made or produced, or liquors of any description are retailed, or on premises where any other business is carried on (except when authorized under subsection (b)).

(C) Notwithstanding any other provision of this chapter relating to distilled spirits plants the Secretary may approve the location, construction, arrangement, and method of operation of any establishment which was qualified to operate on the date preceding the effective date of this section if he deems that such location, construction, arrangement, and method of operation will afford adequate security to the revenue.

(2) Production operations

(A) Any person establishing a distilled spirits plant may, as described in his application for registration, produce distilled spirits from any source or substance.

(B) The distilling system shall be continuous and shall be so designed and constructed and so connected as to prevent the unauthorized removal of distilled spirits before their production gauge.

(C) The Secretary is authorized to order and require—

(i) such identification of, changes of, and additions to, distilling apparatus, connecting pipes, pumps, tanks, and any machinery connected with or used in or on the premises, and

(ii) such fastenings, locks, and seals to be part of any of the stills, tubs, pipes, tanks, and other equipment, as he may deem necessary to facilitate inspection and afford adequate security to the revenue.

(3) Warehousing operations

(A) Any person establishing a distilled spirits plant for the production of distilled spirits may, as described in the application for registration, warehouse bulk distilled spirits on the bonded premises of such plant.

(B) Distilled spirits plants for the bonded warehousing of bulk distilled spirits elsewhere than as described in subparagraph (A) may be established at the discretion of the Secretary by proprietors referred to in subparagraph (A) or by other persons under such regulations as the Secretary shall prescribe.

(4) Processing operations

Any person establishing a distilled spirits plant may, as described in the application for registration, process distilled spirits on the bonded premises of such plant.

(b) Use of premises for other businesses

The Secretary may authorize the carrying on of such other businesses (not specifically prohibited by section 5601(a)(6)) on premises of distilled spirits plants, as he finds will not jeopardize the revenue. Such other businesses shall not be carried on until an application to carry on such business has been made to and approved by the Secretary.

(c) Cross references

(1) For provisions authorizing the Secretary to require installation of meters, tanks, and other apparatus, see section 5552.

(2) For penalty for distilling on prohibited premises, see section 5601(a)(6).

(3) For provisions relating to the bottling of distilled spirits labeled as alcohol, see section 5235.

(4) For provisions relating to the unauthorized use of distilled spirits in any manufacturing process, see section 5601(a)(9).

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1353; amended Pub. L. 91–659, §5, Jan. 8, 1971, 84 Stat. 1966; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–176, §2(b), Nov. 14, 1977, 91 Stat. 1364; Pub. L. 96–39, title VIII, §§805(b)(1), 807(a)(18), July 26, 1979, 93 Stat. 275, 283.)

PRIOR PROVISIONS

A prior section 5178, act Aug. 16, 1954, ch. 736, 68A Stat. 631, related to plan of distillery, prior to the general revision of this chapter by Pub. L. 85–859. See sections 5171(a) and 5172 of this title.

Provisions similar to those comprising subsecs. (a)(1)(A), (B), (2)(A) to (C), (3), (4)(A), (B), (D), (5), (b), (c)(1), (2), (4) of this section were contained in prior sections of act Aug. 16, 1954, prior to the general revision of this chapter by Pub. L. 85–859, as follows:

Present subsecs.:	*Prior sections*
(a)(1)(A)	5172, 5173(a), 5231, 5271(a), 5273(a), 5305.
(a)(1)(B)	5171(a).
(a)(2)(A)	5307.
(a)(2)(B)	5173(b).
(a)(2)(C)	5173(a), (c).
(a)(3)	5231, 5243(a), 5302.
(a)(4)(A)	5243(a).
(a)(4)(B), (D)	5271(a), 5273(a).
(a)(5)	5303, 5305, 5331(a)(1).
(b)	5171(a).
(c)(1)	5173(d)(1), 5273(b)(1).
(c)(2)	5171(b).
(c)(4)	5216(b).

The prior sections, act Aug. 16, 1954, ch. 736, are set out in 68A Stat. 627, 628, 641, 643, 645, 650, 654, 655, 657, 661.

AMENDMENTS

1979—Subsec. (a)(1)(A). Pub. L. 96–39, §807(a)(18), substituted "section 5171(c)" for "section 5171(a)".

Subsec. (a)(2). Pub. L. 96–39, §805(b)(1), substituted in heading "operations" for "facilities" and in subpar. (A) "produce" for "provided facilities which may be used for the production of" and struck out in subpar. (B) "closed at all points where potable or readily recoverable spirits are present and the distilling apparatus" after "shall be continuous and".

Subsec. (a)(3). Pub. L. 96–39, §805(b)(1), substituted in heading "Warehousing operations" for "Bonded warehousing facilities" and in subpar. (A) "the application" for "his application" and "warehouse bulk distilled spirits" for "establish warehousing facilities" and struck out subpar. (C) which related to facilities for the

storage on bonded premises of distilled spirits in casks, packages, cases, or similar portable approved containers and subpar. (D), which related to the establishment of a portion of the premises established under subpar. (C) as an export storage facility for the storage of distilled spirits returned to bonded premises under section 5215(b).

Subsec. (a)(4). Pub. L. 96–39, §805(b)(1), substituted provisions relating to processing operations for provisions relating to bottling facilities.

Subsec. (a)(5). Pub. L. 96–39, §805(b)(1), struck out par. (5) which related to arrangement and segregation of denaturing facilities by regulation of the Secretary.

1977—Subsec. (a)(3)(D). Pub. L. 95–176 added subpar. (D).

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

1971—Subsec. (a)(4)(A). Pub. L. 91–659 substantially reenacted existing provisions and added cl. (ii) and the following sentence.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as a note under section 5001 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–176 effective on first day of first calendar month beginning more than 90 days after Nov. 14, 1977, see section 7 of Pub. L. 95–176, set out as a note under section 5003 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 91–659 effective on first day of first calendar month which begins more than 90 days after Jan. 8, 1971, see section 6 of Pub. L. 91–659, set out as an Effective Date note under section 5066 of this title.

§5179. Registration of stills

(a) Requirements

Every person having in his possession or custody, or under his control, any still or distilling apparatus set up, shall register such still or apparatus with the Secretary immediately on its being set up, by subscribing and filing with the Secretary a statement, in writing, setting forth the particular place where such still or distilling apparatus is set up, the kind of still and its capacity, the owner thereof, his place of residence, and the purpose for which said still or distilling apparatus has been or is intended to be used (except that stills or distilling apparatus not used or intended to be used for the distillation, redistillation, or recovery of distilled spirits are not required to be registered under this section).

(b) Cross references

(1) For penalty and forfeiture provisions relating to unregistered stills, see sections 5601(a)(1) and 5615(1).

(2) For provisions requiring notification to set up a still, boiler, or other vessel for distilling, see section 5101(a)(2).

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1355; amended Pub. L. 94–455, title XIX, §§1905(b)(6)(C), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1823, 1834; Pub. L. 98–369, div. A, title IV, §451(b)(1), July 18, 1984, 98 Stat. 819.)

PRIOR PROVISIONS

A prior section 5179, act Aug. 16, 1954, ch. 736, 68A Stat. 631, related to "survey of distillery", prior to the general revision of this chapter by Pub. L. 85–859.

Provisions similar to those comprising this section were contained in prior sections 5174 and 5275(2), act Aug. 16, 1954, ch. 736, 68A Stat. 630, 651, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1984—Subsec. (b)(2). Pub. L. 98–369 substituted "notification to set up a still, boiler, or other vessel for distilling, see section 5101(a)(2)" for "permit to set up a still, boiler or other vessel for distilling, see section

5105".

1976—Subsec. (a). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (b)(1). Pub. L. 94–455, §1905(b)(6)(C), struck out ", 5601(b)(1)," after "5601(a)(1)".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective on first day of first calendar month which begins more than 90 days after July 18, 1984, see section 456(a) of Pub. L. 98–369, set out as an Effective Date note under section 5101 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1905(b)(6)(C) of Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1905(d) of Pub. L. 94–455, set out as a note under section 5005 of this title.

§5180. Signs

(a) Requirements

Every person engaged in distilled spirits operations shall place and keep conspicuously on the outside of his place of business a sign showing the name of such person and denoting the business, or businesses, in which engaged. The sign required by this subsection shall be in such form and contain such information as the Secretary shall by regulations prescribe.

(b) Penalty

For penalty and forfeiture relating to failure to post sign or improperly posting such sign, see section 5681.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1355; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–39, title VIII, §807(a)(19), July 26, 1979, 93 Stat. 283.)

PRIOR PROVISIONS

A prior section 5180, act Aug. 16, 1954, ch. 736, 68A Stat. 632, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

Provisions similar to those comprising this section were contained in prior section 5274, act Aug. 16, 1954, ch. 736, 68A Stat. 651, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1979—Subsec. (a). Pub. L. 96–39 substituted "distilled spirits operation" for "distilling, bonded warehousing, rectifying, or bottling of distilled spirits".

1976—Subsec. (a). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as a note under section 5001 of this title.

§5181. Distilled spirits for fuel use

(a) In general

(1) Purposes for which plant may be established

On such application and bond and in such manner as the Secretary may prescribe by regulation, a person may establish a distilled spirits plant solely for the purpose of—

(A) producing, processing, and storing, and

(B) using or distributing,

distilled spirits to be used exclusively for fuel use.

(2) Regulations

In prescribing regulations under paragraph (1) and in carrying out the provisions of this section, the Secretary shall, to the greatest extent possible, take steps to—

(A) expedite all applications;

(B) establish a minimum bond; and

(C) generally encourage and promote (through regulation or otherwise) the production of alcohol for fuel purposes.

(b) Authority to exempt

The Secretary may by regulation provide for the waiver of any provision of this chapter (other than this section or any provision requiring the payment of tax) for any distilled spirits plant described in subsection (a) if the Secretary finds it necessary to carry out the provisions of this section.

(c) Special rules for small plant production

(1) Applications

(A) In general

An application for an operating permit for an eligible distilled spirits plant shall be in such a form and manner, and contain such information, as the Secretary may by regulations prescribe; except that the Secretary shall, to the greatest extent possible, take steps to simplify the application so as to expedite the issuance of such permits.

(B) Receipt of application

Within 15 days of receipt of an application under subparagraph (A), the Secretary shall send a written notice of receipt to the applicant, together with a statement as to whether the application meets the requirements of subparagraph (A). If such a notice is not sent and the applicant has a receipt indicating that the Secretary has received an application, paragraph (2) shall apply as if a written notice required by the preceding sentence, together with a statement that the application meets the requirements of subparagraph (A), had been sent on the 15th day after the date the Secretary received the application.

(C) Multiple applications

If more than one application is submitted with respect to any eligible distilled spirits plant in any calendar quarter, the provisions of this section shall apply only to the first application submitted with respect to such plant during such quarter. For purposes of the preceding sentence, if a corrected or amended first application is filed, such application shall not be considered as a separate application, and the 15-day period referred to in subparagraph (A) shall commence with receipt of the corrected or amended application.

(2) Determination

(A) In general

In any case in which the Secretary under paragraph (1)(B) has notified an applicant of receipt of an application which meets the requirements of paragraph (1)(A), the Secretary shall make a determination as to whether such operating permit is to be issued, and shall notify the applicant of such determination, within 45 days of the date on which notice was sent under paragraph (1)(B).

(B) Failure to make determination

If the Secretary has not notified an applicant within the time prescribed under subparagraph (A), the application shall be treated as approved.

(C) Rejection of application

If the Secretary determines under subparagraph (A) that a permit should not be issued—

(i) the Secretary shall include in the notice to the applicant of such determination under subparagraph (A) detailed reasons for such determination, and

(ii) such determination shall not prejudice any further application for such operating permit.

(3) Bond

No bond shall be required for an eligible distilled spirits plant. For purposes of section 5212 and subsection (e)(2) of this section, the premises of an eligible distilled spirits plant shall be treated as bonded premises.

(4) Eligible distilled spirits plant

The term "eligible distilled spirits plant" means a plant which is used to produce distilled spirits exclusively for fuel use and the production from which does not exceed 10,000 proof gallons per year.

(d) Withdrawal free of tax

Distilled spirits produced under this section may be withdrawn free of tax from the bonded premises (and any premises which are not bonded by reason of subsection (c)(3)) of a distilled spirits plant exclusively for fuel use as provided in section 5214(a)(12).

(e) Prohibited withdrawal, use, sale, or disposition

(1) In general

Distilled spirits produced under this section shall not be withdrawn, used, sold, or disposed of for other than fuel use.

(2) Rendering unfit for use

For protection of the revenue and under such regulations as the Secretary may prescribe, distilled spirits produced under this section shall, before withdrawal from the bonded premises of a distilled spirits plant, be rendered unfit for beverage use by the addition of substances which will not impair the quality of the spirits for fuel use.

(f) Definition of distilled spirits

For purposes of this section, the term "distilled spirits" does not include distilled spirits produced from petroleum, natural gas, or coal.

(Added Pub. L. 96–223, title II, §232(e)(1), Apr. 2, 1980, 94 Stat. 278.)

PRIOR PROVISIONS

A prior section 5181 was renumbered 5182 of this title.

EFFECTIVE DATE

Pub. L. 96–223, title II, §232(h)(3), Apr. 2, 1980, 94 Stat. 281, provided that: "The amendments made by subsection (e) [enacting this section, amending sections 5004, 5005, 5214, and 5601, and repealing provisions set out as a note under section 4081 of this title] shall take effect on the first day of the first calendar month beginning more than 60 days after the date of the enactment of this Act [Apr. 2, 1980]."

§5182. Cross references

For provisions requiring recordkeeping by wholesale liquor dealers, see section 5112,[1] and by retail liquor dealers, see section 5122.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1356, §5181; amended Pub. L. 96–39, title VIII, §807(a)(20), July 26, 1979, 93 Stat. 283; renumbered §5182, Pub. L. 96–223, title II, §232(e)(1), Apr. 2, 1980, 94 Stat. 278; Pub. L. 109–59, title XI, §11125(b)(16), Aug. 10, 2005, 119 Stat. 1956.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in a prior section 5275(3), act Aug. 16, 1954, ch. 736, 68A Stat. 651, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

2005—Pub. L. 109–59 amended text of section generally. Prior to amendment, text read as follows: "For provisions requiring payment of special (occupational) tax as wholesale liquor dealer, see section 5111, or as retail liquor dealer, see section 5121."

1979—Pub. L. 96–39 struck out "as rectifier, see section 5081, or" after "(occupational) tax".

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–59 effective July 1, 2008, but inapplicable to taxes imposed for periods before such date, see section 11125(c) of Pub. L. 109–59, set out as a note under section 5002 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as a note under section 5001 of this title.

[1] *So in original. Probably should be "5121,".*

Subchapter C—Operation of Distilled Spirits Plants

Part

I. General provisions.

II. Operations on bonded premises.

[III. Repealed.]

PRIOR PROVISIONS

A prior subchapter C, Internal Revenue Bonded Warehouses, consisted of part I, Establishment, and part II, Operation, and consisted of sections 5231 to 5233 and 5241 to 5252, respectively, prior to the general revision of this chapter by Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1313.

AMENDMENTS

1979—Pub. L. 96–39, title VIII, §807(b)(5), July 26, 1979, 93 Stat. 290, struck out item relating to Part III "Operations on bottling premises" in table of parts comprising subchapter C.

PART I—GENERAL PROVISIONS

Sec.

5201. Regulation of operations.

5202. Supervision of operations.

5203. Entry and examination of premises.

5204. Gauging.

[5205. Repealed.]

5206. Containers.

5207. Records and reports.

PRIOR PROVISIONS

A prior part I, Establishment, consisted of sections 5231 to 5233, prior to the general revision of this chapter by Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1313.

AMENDMENTS

1984—Pub. L. 98–369, div. A, title IV, §454(c)(14), July 18, 1984, 98 Stat. 823, struck out item 5205 "Stamps".

§5201. Regulation of operations

(a) General

Proprietors of distilled spirits plants shall conduct all operations authorized to be conducted on the

premises of such plants under such regulations as the Secretary shall prescribe.

(b) Distilled spirits for industrial uses

The regulations of the Secretary under this chapter respecting the production, warehousing, denaturing, distribution, sale, export, and use of distilled spirits for industrial purposes shall be such as he deems necessary, advisable, or proper to secure the revenue, to prevent diversion to illegal uses, and to place the distilled spirits industry and other industries using such distilled spirits as a chemical raw material or for other lawful industrial purposes on the highest possible plane of scientific and commercial efficiency and development consistent with the provisions of this chapter. Where nonpotable chemical mixtures containing distilled spirits are produced for transfer to the bonded premises of a distilled spirits plant for completion of processing, the Secretary may waive any provision of this chapter with respect to the production of such mixtures, and the processing of such mixtures on the bonded premises shall be deemed to be production of distilled spirits for purposes of this chapter.

(c) Hours of operations

The Secretary may prescribe regulations relating to hours for distillery operations and to hours for removal of distilled spirits from distilled spirits plants; however, such regulations shall not be more restrictive, as to any operation or function, that the provisions of internal revenue law and regulations relating to such operation or function in effect on the day preceding the effective date of this section.

(d) Identification of distilled spirits

The Secretary may provide by regulations for the addition of tracer elements to distilled spirits to facilitate the enforcement of this chapter. Tracer elements to be added to distilled spirits at any distilled spirits plant under provisions of this subsection shall be of such character and in such quantity as the Secretary may authorize or require, and such as will not impair the quality of the distilled spirits for their intended use.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1357; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–39, title VIII, §807(a)(21), July 26, 1979, 93 Stat. 283.)

PRIOR PROVISIONS

Provisions similar to those comprising subsecs. (a) to (c) of this section were contained in prior sections of act Aug. 16, 1954, prior to the general revision of this chapter by Pub. L. 85–859, as follows:

Present subsecs.:	*Prior sections*
(a)	5193(a), 5194(g), 5241(a), 5281, 5282(a), 5302, 5305–5307, 5319(6).
(b)	5305.
(c)	5195, 5215, 5306.

The prior sections, act Aug. 16, 1954, ch. 736, are set out in 68A Stat. 633, 636, 640, 644, 651, 654, 657, 661.

AMENDMENTS

1979—Subsec. (a). Pub. L. 96–39 substituted "all operations authorized to be conducted" for "their operations relating to the production, storage, denaturing, rectification and bottling of distilled spirits, and all other operations authorized to be conducted".

1976—Subsecs. (a) to (d). Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as a note under section 5001 of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§5202. Supervision of operations

All operations on the premises of a distilled spirits plant shall be conducted under such supervision and controls (including the use of Government locks and seals) as the Secretary shall by regulations prescribe.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1357; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–39, title VIII, §806(a), July 26, 1979, 93 Stat. 279.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in prior sections of act Aug. 16, 1954, prior to the general revision of this chapter by Pub. L. 85–859, as follows:

Present subsecs.:	*Prior sections*
(a)	5192(a), (c), 5241(a), (b), 5282(b).
(b)	5173(b), 5192(b), (c).
(c)	5241(a), (b).
(d)	5241(b).
(e)	5331(a)(1).
(f)	5193(a), 5250(a), (b).
(g)	5243(b).

The prior sections, act Aug. 16, 1954, ch. 736, are set out in 68A Stat. 628, 633, 644, 646, 649, 652, 661.

AMENDMENTS

1979—Pub. L. 96–39 substituted provisions making on-site supervision and the use of government locks and seals optional at the discretion of the Secretary of the Treasury for provisions whereby bonded warehouses are required to be kept under government locks and certain activities are required to be conducted under government supervision.

1976—Subsecs. (a) to (g). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as a note under section 5001 of this title.

§5203. Entry and examination of premises

(a) Keeping premises accessible

Every proprietor of a distilled spirits plant shall furnish the Secretary such keys as may be required for internal revenue officers to gain access to the premises and any structures thereon, and such premises shall always be kept accessible to any officer having such keys.

(b) Right of entry and examination

It shall be lawful for any internal revenue officer at all times, as well by night as by day, to enter any distilled spirits plant, or any other premises where distilled spirits operations are carried on, or structure or place used in connection therewith for storage or other purposes; to make examination of the materials, equipment, and facilities thereon; and make such gauges and inventories as he deems

necessary. Whenever any officer, having demanded admittance, and having declared his name and office, is not admitted into such premises by the proprietor or other person having charge thereof, it shall be lawful for such officer, at all times, as well by night as by day, to use such force as is necessary for him to gain entry to such premises.

(c) Furnishing facilities and assistance

On the demand of any internal revenue officer or agent, every proprietor of a distilled spirits plant shall furnish the necessary facilities and assistance to enable the officer or agent to gauge the spirits in any container or to examine any apparatus, equipment, containers, or materials on such premises. Such proprietor shall also, on demand of such officer or agent, open all doors, and open for examination all boxes, packages, and all casks, barrels, and other vessels on such premises.

(d) Authority to break up grounds or walls

It shall be lawful for any internal revenue officer, and any person acting in his aid, to break up the ground on any part of a distilled spirits plant or any other premises where distilled spirits operations are carried on, or any ground adjoining or near to such plant or premises, or any wall or partition thereof, or belonging thereto, or other place, to search for any pipe, cock, private conveyance, or utensil; and, upon finding any such pipe or conveyance leading therefrom or thereto, to break up any ground, house, wall, or other place through or into which such pipe or other conveyance leads, and to break or cut away such pipe or other conveyance, and turn any cock, or to examine whether such pipe or other conveyance conveys or conceals any distilled spirits, mash, wort, or beer, or other liquor, from the sight or view of the officer, so as to prevent or hinder him from taking a true account thereof.

(e) Penalty

For penalty for violation of this section, see section 5687.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1357; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–39, title VIII, §807(a)(22), July 26, 1979, 93 Stat. 283.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in prior sections of act Aug. 16, 1954, prior to the general revision of this chapter by Pub. L. 85–859, as follows:

Present subsecs.:	*Prior sections*
(a)	5196(a).
(b)	5196(b), (e).
(c)	5196(c), (e), 5283, 5615.
(d)	5196(d), 5283.
(e)	5615, 5687.

The prior sections, act Aug. 16, 1954, ch. 736, are set out in 68A Stat. 636, 652, 686, 700.

AMENDMENTS

1979—Subsec. (b). Pub. L. 96–39, §807(a)(22)(A), substituted "where distilled spirits operations are carried on" for "where distilled spirits are produced or rectified".

Subsec. (c). Pub. L. 96–39, §807(a)(22)(B), substituted "on such premises" for "not under the control of the internal revenue officer in charge".

Subsec. (d). Pub. L. 96–39, §807(a)(22)(C), substituted "where distilled spirits operations are carried on" for "where distilled spirits are produced or rectified".

1976—Subsec. (a). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as a note under section 5001 of this title.

§5204. Gauging

(a) General

The Secretary may by regulations require the gauging of distilled spirits for such purposes, as he may deem necessary, and all required gauges shall be made at such times and under such conditions as he may by regulations prescribe.

(b) Gauging instruments

For the determination of tax and the prevention and detection of frauds, the Secretary may prescribe for use such hydrometers, saccharometers, weighing and gauging instruments, or other means or methods for ascertaining the quantity, gravity, and producing capacity of any mash, wort, or beer used, or to be used, in the production of distilled spirits, and the strength and quantity of spirits subject to tax, as he may deem necessary; and he may prescribe regulations to secure a uniform and correct system of inspection, weighing, marking, and gauging of spirits.

(c) Gauging, marking, and branding by proprietors

The Secretary may by regulations require the proprietor of a distilled spirits plant, at the proprietor's expense and under such supervision as the Secretary may require, to do such gauging, marking, and branding and such mechanical labor pertaining thereto as the Secretary deems proper and determines may be done without danger to the revenue.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1358; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–39, title VIII, §807(a)(23), July 26, 1979, 93 Stat. 283; Pub. L. 98–369, div. A, title IV, §454(c)(4), July 18, 1984, 98 Stat. 821.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in prior sections of act Aug. 16, 1954, prior to the general revision of this chapter by Pub. L. 85–859, as follows:

Present subsecs.:	*Prior sections*
(a)	5193(a), 5194(g), 5245, 5282(b).
(b)	5212.
(c)	5193(d), 5250(b), 5282(b), 5306.

The prior sections, act Aug. 16, 1954, ch. 736, are set out in 68A Stat. 633, 634, 636, 639, 647, 649, 652, 657.

AMENDMENTS

1984—Subsec. (c). Pub. L. 98–369 struck out "stamping," before "marking" in heading and text.

1979—Subsec. (a). Pub. L. 96–39 struck out ", in addition to those specified in section 5202(f)," after "spirits for such purposes".

1976—Subsecs. (a) to (c). Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 1, 1985, see section 456(b) of Pub. L. 98–369, set out as an Effective Date note under section 5101 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as a note under section 5001 of this title.

[§5205. Repealed. Pub. L. 98–369, div. A, title IV, §454(a), July 18, 1984, 98 Stat. 820]

Section, added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1358; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 94–569, §1, Oct. 20, 1976, 90 Stat. 2699; Pub. L. 95–176, §2(c), Nov. 14, 1977, 91 Stat. 1364; Pub. L. 96–39, title VIII, §807(a)(24), July 26, 1979, 93 Stat. 283, related to stamps for containers of distilled spirits.

EFFECTIVE DATE OF REPEAL

Repeal effective July 1, 1985, see section 456(b) of Pub. L. 98–369, set out as an Effective Date note under section 5101 of this title.

§5206. Containers

(a) Authority to prescribe

The Secretary shall by regulations prescribe the types or kinds of containers which may be used to contain, store, transfer, convey, remove, or withdraw distilled spirits.

(b) Standards of fill

The Secretary may by regulations prescribe the standards of fill for approved containers.

(c) Marking, branding, or identification

Containers of distilled spirits (and cases containing bottles or other containers of such spirits) shall be marked, branded, or identified in such manner as the Secretary shall by regulations prescribe.

(d) Effacement of marks and brands on emptied containers

Every person who empties, or causes to be emptied, any container of distilled spirits bearing any mark or brand required by law (or regulations pursuant thereto) shall at the time of emptying such container efface and obliterate such mark or brand; except that the Secretary may, by regulations, waive any requirement of this subsection where he determines that no jeopardy to the revenue will be involved.

(e) Applicability

This section shall be applicable exclusively with respect to containers of distilled spirits for industrial use, with respect to containers of distilled spirits of a capacity of more than one gallon for other than industrial use, and with respect to cases containing bottles or other containers of distilled spirits.

(f) Cross references

(1) For other provisions relating to regulation of containers of distilled spirits, see section 5301.

(2) For provisions relating to labeling containers of distilled spirits of one gallon or less for nonindustrial uses, see section 105(e) of the Federal Alcohol Administration Act (27 U.S.C. 205(e)).

(3) For provisions relating to the marking and branding of containers of distilled spirits by proprietors, see section 5204(c).

(4) For penalties and forfeitures relating to marks and brands, see sections 5604 and 5613.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1360; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–369, div. A, title IV, §454(c)(5), July 18, 1984, 98 Stat. 821; Pub. L. 104–188, title I, §1704(t)(13), Aug. 20, 1996, 110 Stat. 1888.)

PRIOR PROVISIONS

Provisions similar to those comprising subsecs. (a) to (c) of this section were contained in prior sections of act Aug. 16, 1954, prior to the general revision of this chapter by Pub. L. 85–859, as follows:

Present subsecs.:	*Prior sections*
(a)	5193(a), (b), 5194, 5247(a), (d), 5302.
(b)	5193(c).
(c)	5009(a), 5193(a), 5194, 5243(d), (e), 5250(a), 5282(b).

The prior sections, act Aug. 16, 1954, ch. 736, are set out in 68A Stat. 603, 633 to 635, 646 to 649, 652, 654.

AMENDMENTS

1996—Subsec. (f)(2). Pub. L. 104–188 substituted "section 105(e)" for "section 5(e)".

1984—Subsecs. (d) to (f). Pub. L. 98–369 added subsec. (d), redesignated existing subsecs. (d) and (e) as (e) and (f), respectively, and in subsec. (f) added pars. (3) and (4).

1976—Subsecs. (a) to (c). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 1, 1985, see section 456(b) of Pub. L. 98–369, set out as an Effective Date note under section 5101 of this title.

§5207. Records and reports

(a) Records of distilled spirits plant proprietors

Every distilled spirits plant proprietor shall keep records in such form and manner as the Secretary shall by regulations prescribe of:

(1) The following production activities—

(A) the receipt of materials intended for use in the production of distilled spirits, and the use thereof,

(B) the receipt and use of distilled spirits received for redistillation, and

(C) the kind and quantity of distilled spirits produced.

(2) The following storage activities—

(A) the kind and quantity of distilled spirits, wines, and alcoholic ingredients entered into storage,

(B) the kind and quantity of distilled spirits, wines, and alcoholic ingredients removed, and the purpose for which removed, and

(C) the kind and quantity of distilled spirits returned to storage.

(3) The following denaturation activities—

(A) the kind and quantity of denaturants received and used or otherwise disposed of,

(B) the kind and quantity of distilled spirits denatured, and

(C) the kind and quantity of denatured distilled spirits removed.

(4) The following processing activities—

(A) all distilled spirits, wines, and alcoholic ingredients received or transferred,

(B) the kind and quantity of distilled spirits packaged or bottled, and

(C) the kind and quantity of distilled spirits removed from his premises.

(5) Such additional information with respect to activities described in paragraphs (1), (2), (3), and (4), and with respect to other activities, as may by regulations be required.

(b) Reports

Every person required to keep records under subsection (a) shall render such reports covering his

operations, at such times and in such form and manner and containing such information, as the Secretary shall by regulations prescribe.

(c) Preservation and inspection

The records required by subsection (a) and a copy of each report required by subsection (b) shall be available for inspection by any internal revenue officer during business hours, and shall be preserved by the person required to keep such records and reports for such period as the Secretary shall by regulations prescribe.

(d) Penalty

For penalty and forfeiture for refusal or neglect to keep records required under this section, or for false entries therein, see sections 5603 and 5615(5).

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1361; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–176, §2(e), Nov. 14, 1977, 91 Stat. 1364; Pub. L. 96–39, title VIII, §807(a)(25), July 26, 1979, 93 Stat. 283; Pub. L. 98–369, div. A, title IV, §454(c)(6), July 18, 1984, 98 Stat. 821; Pub. L. 105–34, title XIV, §1413(a), Aug. 5, 1997, 111 Stat. 1046.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in prior sections of act Aug. 16, 1954, prior to the general revision of this chapter by Pub. L. 85–859, as follows:

Present subsecs.:	*Prior sections:*
(a)	5197(a)(1)(A), (a)(2), 5305, 5331(a)(3).
(b)	5285, 5555(a).
(c)	5197(b), 5285, 5305, 5331(a)(3), 5555(a).
(d)	5197(a)(1)(B), 5285, 5305, 5331(a)(3), 5555(a).
(e)	5197(c)(2), 5285.

The prior sections, act Aug. 16, 1954, ch. 736, are set out in 68A Stat. 637, 638, 652, 657, 662, 681.

AMENDMENTS

1997—Subsec. (c). Pub. L. 105–34 struck out "shall be kept on the premises where the operations covered by the record are carried on and" after "required by subsection (b)".

1984—Subsec. (a)(4)(D). Pub. L. 98–369, §454(c)(6), struck out subpar. (D) which required every distilled spirits plant proprietor to keep records in such form and manner as prescribed by the Secretary of the receipt, use, and balance on hand of all stamps required by law or regulations to be used by the proprietor.

1979—Subsec. (a). Pub. L. 96–39 struck out provisions relating to the bottling of distilled spirits in bond and relating to the kind and quantity of distilled spirits returned to bonded premises and inserted provisions relating to the kind and quantity of distilled spirits returned to storage and relating to receipt, use, and balance on hand of all stamps required by law or regulations to be used by the Secretary.

Subsec. (b). Pub. L. 96–39 redesignated subsec. (c) as (b) and struck out "or (b)" after "subsection (a)". Former subsec. (b), relating to records of rectifiers and bottlers, was struck out.

Subsec. (c). Pub. L. 96–39 redesignated subsec. (d) as (c), struck out "and (b)," after "subsection (a)", and substituted "subsection (b)" for "subsection (c)". Former subsec. (c) redesignated (b).

Subsecs. (d), (e). Pub. L. 96–39 redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

1977—Subsec. (a)(10), (11). Pub. L. 95–176, §2(e)(2), (3), added par. (10) and redesignated former par. (10) as (11).

1976—Subsecs. (a) to (d). Pub. L. 94—455 struck out "or his delegate" after "Secretary" wherever appearing.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XIV, §1413(b), Aug. 5, 1997, 111 Stat. 1046, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on the 1st day of the 1st calendar quarter that begins at least 180 days after the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 1, 1985, see section 456(b) of Pub. L. 98–369, set out as an Effective Date note under section 5101 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as a note under section 5001 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–176 effective on first day of first calendar month beginning more than 90 days after Nov. 14, 1977, see section 7 of Pub. L. 95–176, set out as a note under section 5003 of this title.

PART II—OPERATIONS ON BONDED PREMISES

Subpart

A. General
B. Production.
C. Storage.
D. Denaturation.

PRIOR PROVISIONS

A prior part II, Operation, consisted of sections 5241 to 5252, prior to the general revision of this chapter by Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1313.

SUBPART A—GENERAL

Sec.

5211. Production and entry of distilled spirits.
5212. Transfer of distilled spirits between bonded premises.
5213. Withdrawal of distilled spirits from bonded premises on determination of tax.
5214. Withdrawal of distilled spirits from bonded premises free of tax or without payment of tax.
5215. Return of tax determined distilled spirits to bonded premises.
5216. Regulation of operations.

§5211. Production and entry of distilled spirits

Distilled spirits in the process of production in a distilled spirits plant may be held prior to the production gauge only for so long as is reasonably necessary to complete the process of production. Under such regulations as the Secretary shall prescribe, all distilled spirits produced in a distilled spirits plant shall be gauged and a record made of such gauge within a reasonable time after the production thereof has been completed. The proprietor shall, pursuant to such production gauge and in accordance with such regulations as the Secretary shall prescribe, make appropriate entry for—

(1) deposit of such spirits on bonded premises for storage or processing;
(2) withdrawal upon determination of tax as authorized by law;
(3) withdrawal under the provisions of section 5214; and
(4) transfer for redistillation under the provisions of section 5223.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1362; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–39, title VIII, §807(a)(26), July 26, 1979, 93 Stat. 284.)

PRIOR PROVISIONS

A prior section 5211, act Aug. 16, 1954, ch. 736, 68A Stat. 638, related to detention of casks, packages, or containers on suspicion, prior to the general revision of this chapter by Pub. L. 85–859. See section 5311 of this title.

Provisions similar to those comprising this section were contained in prior sections 5193(a), 5194(a), (e) to (g), 5242(a), 5305, act Aug. 16, 1954, ch. 736, 68A Stat. 633 to 636, 645, 657, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1979—Pars. (1), (5). Pub. L. 96–39 substituted in par. (1) "on bonded premises for storage or processing" for "in storage on bonded premises" and struck out par. (5) which related to an appropriate entry by the proprietor for immediate denaturation.

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as a note under section 5001 of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§5212. Transfer of distilled spirits between bonded premises

Bulk distilled spirits on which the internal revenue tax has not been paid or determined as authorized by law may, under such regulations as the Secretary shall prescribe, be transferred in bond between bonded premises in any approved container. For the purposes of this chapter, the removal of bulk distilled spirits for transfer in bond between bonded premises shall not be construed to be a withdrawal from bonded premises. The provisions of this section restricting transfers to bulk distilled spirits shall not apply to alcohol bottled under the provisions of section 5235 which is to be withdrawn for industrial purposes.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1362; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–39, title VIII, §805(b)(2), July 26, 1979, 93 Stat. 276; Pub. L. 96–598, §6(d), Dec. 24, 1980, 94 Stat. 3490.)

PRIOR PROVISIONS

A prior section 5212, act Aug. 16, 1954, ch. 736, 68A Stat. 639, related to the prevention and detection of fraud and contained a cross reference to provisions for gauging and marking of spirits, prior to the general revision of this chapter by Pub. L. 85–859. See section 5204(b) of this title.

Provisions similar to those comprising this section were contained in prior sections 5194(a), (e) to (g), 5217(a), 5246, 5308, act Aug. 16, 1954, ch. 736, 68A Stat. 634 to 636, 641, 647, 657, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1980—Pub. L. 96–598 inserted provision that restriction on transfers to bulk distilled spirits not apply to alcohol bottled under section 5235 of this title which is to be withdrawn for industrial purposes.

1979—Pub. L. 96–39 substituted "Bulk distilled spirits" for "Distilled spirits" and "bulk distilled spirits" for "distilled spirits".

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as a note under section 5001 of this title.

§5213. Withdrawal of distilled spirits from bonded premises on determination of

tax

Subject to the provisions of section 5173, distilled spirits may be withdrawn from the bonded premises of a distilled spirits plant on payment or determination of tax thereon, in approved containers, under such regulations as the Secretary shall prescribe.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1362; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–39, title VIII, §807(a)(27), July 26, 1979, 93 Stat. 285.)

PRIOR PROVISIONS

A prior section 5213, act Aug. 16, 1954, ch. 736, 68A Stat. 639, related to return of materials used in the manufacture of distilled spirits, prior to the general revision of this chapter by Pub. L. 85–859. See sections 5002(a)(6) and 5291 of this title.

Provisions similar to those comprising this section were contained in prior sections 5194(a), (e) and 5244, act Aug. 16, 1954, ch. 736, 68A Stat. 634, 647, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1979—Pub. L. 96–39 substituted "Subject to the provisions of section 5173" for "On application to the Secretary and subject to the provisions of section 5174(a)".

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as a note under section 5001 of this title.

§5214. Withdrawal of distilled spirits from bonded premises free of tax or without payment of tax

(a) Purposes

Distilled spirits on which the internal revenue tax has not been paid or determined may, subject to such regulations as the Secretary shall prescribe, be withdrawn from the bonded premises of any distilled spirits plant in approved containers—

(1) free of tax after denaturation of such spirits in the manner prescribed by law for—

(A) exportation;

(B) use in the manufacture of ether, chloroform, or other definite chemical substance where such distilled spirits are changed into some other chemical substance and do not appear in the finished product; or

(C) any other use in the arts and industries (except for uses prohibited by section 5273(b) or (d)) and for fuel, light, and power; or

(2) free of tax by, and for the use of, the United States or any governmental agency thereof, any State, any political subdivision of a State, or the District of Columbia, for nonbeverage purposes; or

(3) free of tax for nonbeverage purposes and not for resale or use in the manufacture of any product for sale—

(A) for the use of any educational organization described in section 170(b)(1)(A)(ii) which is exempt from income tax under section 501(a), or for the use of any scientific university or college of learning;

(B) for any laboratory for use exclusively in scientific research;

(C) for use at any hospital, blood bank, or sanitarium), (including use in making any analysis or test at such hospital, blood bank, or sanitarium), or at any pathological laboratory exclusively engaged in making analyses, or tests, for hospitals or sanitariums; or

(D) for the use of any clinic operated for charity and not for profit (including use in the compounding of bona fide medicines for treatment outside of such clinics of patients thereof);

or

(4) without payment of tax for exportation, after making such application and entries, filing such bonds as are required by section 5175, and complying with such other requirements as may by regulations be prescribed; or

(5) without payment of tax for use in wine production, as authorized by section 5373; or

(6) without payment of tax for transfer to manufacturing bonded warehouses for manufacturing in such warehouses for export, as authorized by law; or

(7) without payment of tax for use of certain vessels and aircraft, as authorized by law; or

(8) without payment of tax for transfer to foreign-trade zones, as authorized by law; or

(9) without payment of tax, for transfer (for the purpose of storage pending exportation) to any customs bonded warehouse from which distilled spirits may be exported, and distilled spirits transferred to a customs bonded warehouse under this paragraph shall be entered, stored, and accounted for under such regulations and bonds as the Secretary may prescribe; or

(10) without payment of tax by a proprietor of bonded premises for use in research, development, or testing (other than consumer testing or other market analysis) of processes, systems, materials, or equipment, relating to distilled spirits or distilled spirits operations, under such limitations and conditions as to quantities, use, and accountability as the Secretary may by regulations require for the protection of the revenue; or

(11) free of tax when contained in an article (within the meaning of section 5002(a)(14)); or

(12) free of tax in the case of distilled spirits produced under section 5181; or

(13) without payment of tax for use on bonded wine cellar premises in the production of wine or wine products which will be rendered unfit for beverage use and removed pursuant to section 5362(d).

(b) Cross references

(1) For provisions relating to denaturation, see sections 5241 and 5242.

(2) For provisions requiring permit for users of distilled spirits withdrawn free of tax and for users of specially denatured distilled spirits, see section 5271.

(3) For provisions relating to withdrawal of distilled spirits without payment of tax for use of certain vessels and aircraft, as authorized by law, see 19 U.S.C. 1309.

(4) For provisions relating to withdrawal of distilled spirits without payment of tax for manufacture in manufacturing bonded warehouse, see 19 U.S.C. 1311.

(5) For provisions relating to foreign-trade zones, see 19 U.S.C. 81c.

(6) For provisions authorizing regulations for withdrawal of distilled spirits free of tax for use of the United States, see section 7510.

(7) For provisions authorizing removal of distillates to bonded wine cellars for use in the production of distilling material, see section 5373(c).

(8) For provisions relating to distilled spirits for use of foreign embassies, legations, etc., see section 5066.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1362; amended Pub. L. 91–172, title I, §101(j)(29), Dec. 30, 1969, 83 Stat. 529; Pub. L. 94–455, title XIX, §§1905(c)(2), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1823, 1834; Pub. L. 95–176, §§3(a), (d), 4(a), Nov. 14, 1977, 91 Stat. 1365; Pub. L. 96–39, title VIII, §807(a)(28), July 26, 1979, 93 Stat. 285; Pub. L. 96–223, title II, §232(e)(2)(B), Apr. 2, 1980, 94 Stat. 280; Pub. L. 98–369, div. A, title IV, §455(a), July 18, 1984, 98 Stat. 823.)

PRIOR PROVISIONS

A prior section 5214, act Aug. 16, 1954, ch. 736, 68A Stat. 639, related to regulation of traffic in containers of distilled spirits, prior to the general revision of this chapter by Pub. L. 85–859. See section 5301(a), (c), (d) of this title.

Provisions similar to those comprising subsecs. (a)(1) to (4), (9) and (b)(3) to (5) of this section were contained in prior sections of act Aug. 16, 1954, prior to the general revision of this chapter by Pub. L. 85–859, as follows:

Present subsecs.:	*Prior sections*
(a)	5243(e), 5247, 5310(a)–(c), 5331 (a)(1), (b), 5373(b)(4), 5522(a).
(a)(1)	5310(a), 5331(a)(1), (b).
(a)(2), (3)	5310(b), (c).
(a)(4)	5243(e), 5247.
(a)(9)	5373(b)(4).
(b)(3)	5248(2).
(b)(4)	5248(4).
(b)(5)	5248(3).

The prior sections, act Aug. 16, 1954, ch. 736, are set out in 68A Stat. 646–648, 658, 661, 662, 667.

AMENDMENTS

1984—Subsec. (a)(13). Pub. L. 98–369 added par. (13).

1980—Subsec. (a)(12). Pub. L. 96–223 added par. (12).

1979—Subsec. (a)(6). Pub. L. 96–39, §807(a)(28)(A), inserted "for manufacturing in such warehouses for export" after "bonded warehouses" and substituted "by law" for "by section 5522(a)".

Subsec. (a)(9). Pub. L. 96–39, §807(a)(28)(B), struck out "in the case of distilled spirits bottled in bond for export under section 5233 or distilled spirits returned to bonded premises under section 5215(b)," after "payment of tax,".

Subsec. (a)(10). Pub. L. 96–39, §807(a)(28)(C), (D), substituted "distilled spirits operations" for "distillery operations".

Subsec. (a)(11). Pub. L. 96–39, §807(a)(28)(D), added par. (11).

Subsec. (b)(4) to (8). Pub. L. 96–39, §807(a)(28)(E), added par. (4) and redesignated former pars. (4) to (7) as (5) to (8), respectively.

1977—Subsec. (a)(9). Pub. L. 95–176, §3(a), substituted provisions for withdrawal of distilled spirits from bonded premises without payment of tax where the distilled spirits are bottled in bond for export or are returned to bonded premises for transfer (for the purpose of storage pending exportation) to any customs bonded warehouse for exportation and requiring the transferred distilled spirits to be entered, stored, and accounted for, for prior provision for tax free withdrawals for use as samples in making tests or laboratory analyses.

Subsec. (a)(10). Pub. L. 95–176, §4(a), added par. (10).

Subsec. (b)(7). Pub. L. 95–176, §3(d), added par. (7).

1976—Subsec. (a). Pub. L. 94–455 struck out "or his delegate" after "Secretary" in introductory provisions and struck out "or Territory" after "State" in par. (2).

1969—Subsec. (a)(3)(A). Pub. L. 91–172 substituted "section 170(b)(1)(A)(ii)" for "section 503(b)(2)".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, see section 456(c) of Pub. L. 98–369, set out as an Effective Date note under section 5101 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–223 effective on first day of first calendar month beginning more than 60 days after Apr. 2, 1980, see section 232(h)(3) of Pub. L. 96–223, set out as an Effective Date note under section 5181 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as a note under section 5001 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–176 effective on first day of first calendar month beginning more than 90 days after Nov. 14, 1977, see section 7 of Pub. L. 95–176, set out as a note under section 5003 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1905(c)(2) of Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1905(d) of Pub. L. 94–455, set out as a note under section 5005 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

§5215. Return of tax determined distilled spirits to bonded premises

(a) General rule

Under such regulations as the Secretary may prescribe, distilled spirits on which tax has been determined or paid may be returned to the bonded premises of a distilled spirits plant but only for destruction, denaturation, redistillation, reconditioning, or rebottling.

(b) Applicability of chapter to distilled spirits returned to a distilled spirits plant

All provisions of this chapter applicable to distilled spirits in bond shall be applicable to distilled spirits returned to bonded premises under the provisions of this section on such return.

(c) Return of bottled distilled spirits for relabeling and reclosing

Under such regulations as the Secretary shall prescribe, bottled distilled spirits withdrawn from bonded premises may be returned to bonded premises for relabeling or reclosing, and the tax under section 5001 shall not again be collected on such spirits.

(d) Cross reference

For provisions relating to the abatement, credit, or refund of tax on distilled spirits returned to a distilled spirits plant under this section, see section 5008(c).

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1364; amended Pub. L. 89–44, title VIII, §805(c), June 21, 1965, 79 Stat. 161; Pub. L. 91–659, §2(c), Jan. 8, 1971, 84 Stat. 1964; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–176, §2(a), Nov. 14, 1977, 91 Stat. 1363; Pub. L. 96–39, title VIII, §807(a)(29), July 26, 1979, 93 Stat. 285; Pub. L. 98–369, div. A, title IV, §454(c)(7), July 18, 1984, 98 Stat. 821.)

PRIOR PROVISIONS

A prior section 5215, act Aug. 16, 1954, ch. 736, 68A Stat. 640, related to exemption of distillers of fruit brandy from certain requirements, prior to the general revision of this chapter by Pub. L. 85–859. See sections 5201(c), 5312(a), (c), 5373(a) and 5562 of this title.

AMENDMENTS

1984—Subsec. (c). Pub. L. 98–369 substituted "reclosing" for "restamping" in heading and text.

1979—Pub. L. 96–39 amended section generally thereby authorizing the return of distilled spirits to the bonded premises of the distilled spirits plant for certain enumerated purposes except mere storage.

1977—Subsec. (a). Pub. L. 95–176 reenacted existing provisions but struck out last sentence relating to applicability of chapter to distilled spirits returned to bonded premises, which was covered in subsec. (d).

Subsecs. (b), (c). Pub. L. 95–176 added subsecs. (b) and (c) and redesignated former subsec. (b) as (e).

Subsec. (d). Pub. L. 95–176 redesignated last sentence of former subsec. (a) as subsec. (d) and inserted introductory phrase "Except as otherwise provided in this section,".

Subsec. (e). Pub. L. 95–176 redesignated former subsec. (b) as par. (1) and added par. (2).

1976—Subsec. (a). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

1971—Subsec. (a). Pub. L. 91–659, §2(c)(1), struck out requirements that withdrawn distilled spirits be returned when found unsuitable, in bulk containers, before processing and before removal from the original container and permitted return of withdrawn distilled spirits other than products to which any alcoholic ingredients other than such distilled spirits have been added and made additional authorization under section 5234(a)(1)(B) for mingling returned distilled spirits.

Subsec. (b). Pub. L. 91–659, §2(c)(2), (3), repealed subsec. (b) which provided for definition of "original container in which such distilled spirits were withdrawn from bonded premises" in the case of distilled spirits

withdrawn by pipeline. Former subsec. (c) redesignated (b).

1965—Subsec. (a). Pub. L. 89–44 inserted reference to destruction to redistillation, denaturation, and mingling in second sentence on list of options which might be used in disposing of returned distilled spirits.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 1, 1985, see section 456(b) of Pub. L. 98–369, set out as an Effective Date note under section 5101 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as a note under section 5001 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–176 effective on first day of first calendar month beginning more than 90 days after Nov. 14, 1977, see section 7 of Pub. L. 95–176, set out as a note under section 5003 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 91–659 effective on first day of first calendar month which begins more than 90 days after January 8, 1971, see section 6 of Pub. L. 91–659, set out as an Effective Date note under section 5066 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 effective July 1, 1965, see section 805(g)(1) of Pub. L. 89–44, set out as a note under section 5008 of this title.

DISTILLED SPIRITS TO WHICH ALCOHOLIC INGREDIENTS OTHER THAN DISTILLED SPIRITS HAVE BEEN ADDED AND WHICH HAVE BEEN WITHDRAWN FROM DISTILLED SPIRITS PLANTS BEFORE JANUARY 1, 1980

Subsec. (a) of this section to apply to distilled spirits to which alcoholic ingredients other than distilled spirits have been added and which have been withdrawn from a distilled spirits plant before Jan. 1, 1980, only if such spirits are returned to the distilled spirits plant from which withdrawn, see section 808(e) of Pub. L. 96–39, set out as a note under section 5061 of this title.

§5216. Regulation of operations

For general provisions relating to operations on bonded premises see part I of this subchapter.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1364.)

PRIOR PROVISIONS

A prior section 5216, act Aug. 16, 1954, ch. 736, 68A Stat. 640, related to "mash, wort and vinegar; vinegar factories", prior to the general revision of this chapter by Pub. L. 85–859. See sections 5178(c)(4), 5222(a)(1), (2)(D), (d), 5501, 5502(a), 5503, 5504(a), (b), 5505(a), (c) and 5601(a)(7), (8), (9)(A) of this title.

A prior section 5217, acts Aug. 16, 1954, ch. 736, 68A Stat. 641; July 11, 1956, ch. 573, §1, 70 Stat. 530; July 11, 1958, Pub. L. 85–517, 72 Stat. 357, related to national emergency transfers, prior to the general revision of this chapter by Pub. L. 85–859.

SUBPART B—PRODUCTION

Sec.
5221. Commencement, suspension, and resumption of operations.
5222. Production, receipt, removal, and use of distilling materials.
5223. Redistillation of spirits, articles, and residues.

AMENDMENTS

1965—Pub. L. 89–44, title VIII, §805(f)(9), June 21, 1965, 79 Stat. 161, inserted reference to articles and residues in item 5223.

§5221. Commencement, suspension, and resumption of operations

(a) Commencement, suspension, and resumption

The proprietor of a distilled spirits plant authorized to produce distilled spirits shall not commence production operations until written notice has been given to the Secretary stating when operations will begin. Any proprietor of a distilled spirits plant desiring to suspend production of distilled spirits shall give notice in writing to the Secretary, stating when he will suspend such operations. Pursuant to such notice, an internal revenue officer shall take such action as the Secretary shall prescribe to prevent the production of distilled spirits. No proprietor, after having given such notice, shall, after the time stated therein, produce distilled spirits on such premises until he again gives notice in writing to the Secretary stating the time when he will resume operations. At the time stated in the notice of resuming such operations an internal revenue officer shall take such action as is necessary to permit operations to be resumed. The notices submitted under this section shall be in such form and submitted in such manner as the Secretary may by regulations require. Nothing in this section shall apply to suspensions caused by unavoidable accidents; and the Secretary shall prescribe regulations to govern such cases of involuntary suspension.

(b) Penalty

For penalty and forfeiture for carrying on the business of distiller after having given notice of suspension, see sections 5601(a)(14) and 5615(3).

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1364; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–39, title VIII, §806(b), July 26, 1979, 93 Stat. 279.)

PRIOR PROVISIONS

Provisions similar to those comprising subsec. (a) of this section were contained in prior section 5191(a), act Aug. 16, 1954, ch. 736, 68A Stat. 632, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1979—Subsec. (a). Pub. L. 96–39 substituted "until written notice has been given to the Secretary stating when operations will begin" for "until an internal revenue officer has been assigned to the premises".

1976—Subsec. (a). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as a note under section 5001 of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§5222. Production, receipt, removal, and use of distilling materials

(a) Production, removal, and use

(1) No mash, wort, or wash fit for distillation or for the production of distilled spirits shall be made or fermented in any building or on any premises other than on the bonded premises of a distilled spirits plant duly authorized to produce distilled spirits according to law; and no mash, wort, or wash so made or fermented shall be removed from any such premises before being distilled, except as authorized by the Secretary; and no person other than an authorized distiller shall, by distillation or any other process, produce distilled spirits from any mash, wort, wash, or other material.

(2) Nothing in this subsection shall be construed to apply to—

(A) authorized operations performed on the premises of vinegar plants established under part I

of subchapter H;

(B) authorized production and removal of fermented materials produced on authorized brewery or bonded wine cellar premises as provided by law;

(C) products exempt from tax under the provisions of section 5042 or 5053(e); or

(D) fermented materials used in the manufacture of vinegar by fermentation.

(b) Receipt

Under such regulations as the Secretary may prescribe, fermented materials to be used in the production of distilled spirits may be received on the bonded premises of a distilled spirits plant authorized to produce distilled spirits as follows—

(1) from the premises of a bonded wine cellar authorized to remove such material by section 5362(c)(6);

(2) beer conveyed without payment of tax from brewery premises, beer which has been lawfully removed from brewery premises upon determination of tax, or

(3) cider exempt from tax under the provisions of section 5042(a)(1).

(c) Processing of distilled spirits containing extraneous substances

The Secretary may by regulations provide for the removal from the distilling system, and the addition to the fermented or unfermented distilling material, of distilled spirits containing substantial quantities of fusel oil or aldehydes, or other extraneous substances.

(d) Penalty

For penalty and forfeiture for unlawful production, removal, or use of material fit for distillation or for the production of distilled spirits, and for penalty and forfeiture for unlawful production of distilled spirits, see sections 5601(a)(7), 5601(a)(8), and 5615(4).

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1365; amended Pub. L. 94–455, title XIX, §§1905(b)(6)(D), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1823, 1834; Pub. L. 95–458, §2(b)(4), Oct. 14, 1978, 92 Stat. 1256; Pub. L. 96–39, title VIII, §807(a)(30), July 26, 1979, 93 Stat. 286; Pub. L. 105–34, title XIV, §1414(a), Aug. 5, 1997, 111 Stat. 1047.)

PRIOR PROVISIONS

Provisions similar to those comprising subsecs. (a)(1), (2)(D), (b), and (d) of this section were contained in prior sections of act Aug. 16, 1954, prior to the general revision of this chapter by Pub. L. 85–859, as follows:

Present subsecs.:	*Prior sections*
(a)(1), (2)(D)	5216(a)(1), (4).
(b)	5309, 5362(7), 5412.
(d)	5216(b).

The prior sections, act Aug. 16, 1954, ch. 736, are set out in 68A Stat. 640, 641, 658, 665, 675.

AMENDMENTS

1997—Subsec. (b)(2). Pub. L. 105–34 amended par. (2) generally. Prior to amendment, par. (2) read as follows: "conveyed without payment of tax from contiguous brewery premises where produced; or".

1979—Subsec. (c). Pub. L. 96–39 struck out ", in the production facilities of a distilled spirits plant" after "distilling material".

1978—Subsec. (a)(2)(C). Pub. L. 95–458 inserted reference to section 5053(e).

1976—Subsecs. (a)(1), (b), (c). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (d). Pub. L. 94–455, §1905(b)(6)(D), struck out "5601(b)(3), 5601(b)(4)," after "5601(a)(8),".

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 effective on the 1st day of the 1st calendar quarter that begins at least 180 days after Aug. 5, 1997, see section 1414(d) of Pub. L. 105–34, set out as a note under section 5053 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as a note under section 5001 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–458 effective on first day of first calendar month beginning more than 90 days after Oct. 14, 1978, see section 2(c) of Pub. L. 95–458, set out as a note under section 5042 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1905(b)(6)(D) of Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1905(d) of Pub. L. 94–455, set out as a note under section 5005 of this title.

§5223. Redistillation of spirits, articles, and residues

(a) Spirits on bonded premises

The proprietor of a distilled spirits plant authorized to produce distilled spirits may, under such regulations as the Secretary shall prescribe, redistill any distilled spirits which have not been withdrawn from bonded premises.

(b) Distilled spirits returned for redistillation

Distilled spirits which have been lawfully removed from bonded premises free of tax or without payment of tax may, under such regulations as the Secretary may prescribe, be returned for redistillation to the bonded premises of a distilled spirits plant authorized to produce distilled spirits.

(c) Redistillation of articles and residues

Articles, containing denatured distilled spirits, which were manufactured under the provisions of subchapter D or on the bonded premises of a distilled spirits plant, and the spirits residues of manufacturing processes related thereto, may be received, and the distilled spirits therein recovered by redistillation, on the bonded premises of a distilled spirits plant authorized to produce distilled spirits, under such regulations as the Secretary may prescribe.

(d) Denatured distilled spirits, articles, and residues

Distilled spirits recovered by the redistillation of denatured distilled spirits, or by the redistillation of the articles or residues described in subsection (c), may not be withdrawn from bonded premises except for industrial use or after denaturation thereof in the manner prescribed by law.

(e) Products of redistillation

All distilled spirits redistilled on bonded premises subsequent to production gauge shall be treated the same as if such spirits had been originally produced by the redistiller and all provisions of this chapter applicable to the original production of distilled spirits shall be applicable thereto. Any prior obligation as to taxes, liens, and bonds with respect to such distilled spirits shall be extinguished on redistillation. Nothing in this subsection shall be construed as affecting any provision of law relating to the labeling of distilled spirits or as limiting the authority of the Secretary to regulate the marking, branding, or identification of distilled spirits redistilled under this section.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1365; amended Pub. L. 89–44, title VIII, §805(d), (f)(8), (10), June 21, 1965, 79 Stat. 161, 162; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–39, title VIII, §807(a)(31), July 26, 1979, 93 Stat. 286.)

PRIOR PROVISIONS

Provisions similar to those comprising subsecs. (a) and (d) of this section were contained in prior sections of act Aug. 16, 1954, prior to the general revision of this chapter by Pub. L. 85–859, as follows:

Present subsecs.:	*Prior sections*
(a)	5194(f), 5217(a), 5305, 5308.
(d)	5194(f).

The prior sections, act Aug. 16, 1954, ch. 736, are set out in 68A Stat. 635, 641, 657.

AMENDMENTS

1979—Subsec. (c). Pub. L. 96–39, §807(a)(31)(A), inserted "or on the bonded premises of a distilled spirits plant" after "subchapter D,".

Subsec. (e). Pub. L. 96–39, §807(a)(31)(B), struck out provisions relating to the treatment of the processing of distilled spirits, subsequent to production gauge, in the manufacture of vodka in the production facilities of a distilled spirits plant as a redistillation of the spirits for purposes of this subsection, subsection (a), and sections 5025(d) and 5215.

1976—Subsecs. (a) to (c), (e). Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

1965—Pub. L. 89–44, §805(f)(8), substituted "spirits, articles, and residues" for "spirits" in section catchline.

Subsec. (c). Pub. L. 89–44, §805(d), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 89–44, §805(d), (f)(10), redesignated subsec. (c) as (d), inserted ", articles, and residues" after "distilled spirits" in heading, and inserted ", or by the redistillation of the articles or residues described in subsection (c)," after "denatured distilled spirits" in text. Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 89–11, §805(d), redesignated former subsec. (d) as (e).

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as a note under section 5001 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 effective Oct. 1, 1965, see section 805(g)(2) of Pub. L. 89–44, set out as a note under section 5004 of this title.

SUBPART C—STORAGE

Sec.
5231. Entry for deposit.
5232. Imported distilled spirits.
[5233, 5234. Repealed.]
5235. Bottling of alcohol for industrial purposes.
5236. Discontinuance of storage facilities and transfer of distilled spirits.

AMENDMENTS

1979—Pub. L. 96–39, title VIII, §807(b)(6), July 26, 1979, 93 Stat. 290, substituted "Entry for deposit" for "Entry for deposit in storage" in item 5231 and struck out items 5233 "Bottling of distilled spirits in bond" and 5234 "Mingling and blending of distilled spirits".

§5231. Entry for deposit

All distilled spirits entered for deposit on the bonded premises of a distilled spirits plant under section 5211 shall, under such regulations as the Secretary shall prescribe, be deposited in the facilities on the bonded premises designated in the entry for deposit.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1366; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–39, title VIII, §807(a)(32), July 26, 1979, 93 Stat. 286.)

PRIOR PROVISIONS

A prior section 5231, act Aug. 16, 1954, ch. 736, 68A Stat. 643, related to authority to establish internal

revenue bonded warehouses, prior to the general revision of this chapter by Pub. L. 85–859. See sections 5171(a), 5172, 5173(a), and 5178(a)(1)(A)(B), (3)(A)(B) of this title.

Provisions similar to those comprising this section were contained in prior section 5242(a), (b)(5), act Aug. 16, 1954, ch. 736, 68A Stat. 645, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1979—Pub. L. 96–39 struck out in section catchline "in storage" after "for deposit" and subsec. (a) catchline and in text substituted "on the bonded premises of a distilled spirits plant" for "in storage" and "in the facilities" for "in storage facilities" and repealed subsec. (b) which related to a cross reference to section 5006(a)(2) for provisions requiring that all distilled spirits entered for deposit be withdrawn within 20 years from date of original entry for deposit.

1976—Subsec. (a). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as a note under section 5001 of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§5232. Imported distilled spirits

(a) Transfer to distilled spirits plant without payment of tax

Distilled spirits imported or brought into the United States in bulk containers may, under such regulations as the Secretary shall prescribe, be withdrawn from customs custody and transferred in such bulk containers or by pipeline to the bonded premises of a distilled spirits plant without payment of the internal revenue tax imposed on such distilled spirits. The person operating the bonded premises of the distilled spirits plant to which such spirits are transferred shall become liable for the tax on distilled spirits withdrawn from customs custody under this section upon release of the spirits from customs custody, and the importer, or the person bringing such distilled spirits into the United States, shall thereupon be relieved of his liability for such tax.

(b) Withdrawals, etc.

Distilled spirits transferred pursuant to subsection (a)—

(1) may be redistilled or denatured only if of 185 degrees or more of proof, and

(2) may be withdrawn for any purpose authorized by this chapter, in the same manner as domestic distilled spirits.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1366; amended Pub. L. 90–630, §3(a), Oct. 22, 1968, 82 Stat. 1328; Pub. L. 91–659, §7, Jan. 8, 1971, 84 Stat. 1967; Pub. L. 94–455, title XIX, §1905(a)(15), Oct. 4, 1976, 90 Stat. 1820; Pub. L. 96–39, title VIII, §807(a)(33), July 26, 1979, 93 Stat. 286.)

PRIOR PROVISIONS

A prior section 5232, acts Aug. 16, 1954, ch. 736, 68A Stat. 643; Sept. 2, 1958, Pub. L. 85–859, title II, §206(b), 72 Stat. 1431, related to bond requirements of internal revenue bonded warehouses, prior to the general revision of this chapter by Pub. L. 85–859. See sections 5005(c)(1), 5006(a)(2), 5173(a), (c)(1), 5174(a)(1), 5176(a), (b), and 5177(b)(1) of this title.

Provisions similar to those comprising this section were contained in prior section 5311, act Aug. 16, 1954, ch. 736, 68A Stat. 658, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1979—Subsec. (b). Pub. L. 96–39 redesignated par. (2) and (3) as (1) and (2). Former par. (1), which prohibited distilled spirits transferred pursuant to subsection (a) from being bottled in bond under section 5233, was struck out.

1976—Subsec. (a). Pub. L. 94–455 inserted ", or the person bringing such distilled spirits into the United

States," after "and the importer".

1971—Subsec. (a). Pub. L. 91–659, §7(a), extended privilege of transfer of distilled spirits to the plant without payment of tax to distilled spirits imported, or brought into the United States, and struck out reference to section 5001.

Subsec. (b). Pub. L. 91–659, §7(b), struck out "Imported" before "distilled spirits" and thus applied subsection to all distilled spirits.

1968—Pub. L. 90–630 permitted withdrawal in bulk containers or by pipeline from customs custody to internal revenue bond without payment of internal revenue taxes of all imported distilled spirits in bulk containers, regardless of proof, extended to all such imported distilled spirits the withdrawal privileges already available to imported distilled spirits of at least 185 proof, whether or not they have been redistilled or denatured, provided that transferor's liability for the internal revenue tax ceases when the transferee's liability attaches, and established that imported bulk spirits are not eligible for the bottled in bond privileges available to domestic spirits.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as a note under section 5001 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1905(d) of Pub. L. 94–455, set out as a note under section 5005 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 91–659 effective on first day of first calendar month which begins more than 90 days after Jan. 8, 1971, see section 6 of Pub. L. 91–659, set out as an Effective Date note under section 5066 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–630 applicable only to withdrawals from customs custody on or after first day of first calendar month which begins more than 90 days after Oct. 22, 1968, see section 4 of Pub. L. 90–630, set out as a note under section 5008 of this title.

[§5233. Repealed. Pub. L. 96–39, title VIII, §807(a)(34), July 26, 1979, 93 Stat. 286]

Section, added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1366; amended Pub. L. 94–455, title XIX, §§1905(a)(16), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1820, 1834, related to the bottling of distilled spirits in bond.

A prior section 5233, act Aug. 16, 1954, ch. 736, 68A Stat. 644, made a cross reference provision to establishment of bottling in bond department, prior to the general revision of this chapter by Pub. L. 85–859.

Provisions similar to those comprising subsecs. (a) to (d) and (e)(1) of section 5233 added by Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1366, were contained in prior section 5243(a) to (c), (g), act Aug. 16, 1954, ch. 736, 68A Stat. 645, as amended by Pub. L. 85–859, title II, §206(c), Sept. 2, 1958, 72 Stat. 1431.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as an Effective Date of 1979 Amendment note under section 5001 of this title.

[§5234. Repealed. Pub. L. 96–39, title VIII, §807(a)(35), July 26, 1979, 93 Stat. 286]

Section, added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1367; amended Pub. L. 89–44, title VIII, §805(f)(11), June 21, 1965, 79 Stat. 162; Pub. L. 94–455, title XIX, §§1905(a)(17), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1820, 1834; Pub. L. 95–176, §5(a), Nov. 14, 1977, 91 Stat. 1366, related to the mingling and blending of distilled spirits.

Provisions similar to those comprising section 5234(a)(1)(A) and (b) to (d) of this title were contained in prior sections of act Aug. 16, 1954, ch. 736, prior to the general revision of this chapter by Pub. L. 85–859, as

follows:

Subsecs.:	*Prior sections*
(a)(1)(A)	5306.
(b)	5217(a).
(c)	5023.
(d)	5251.

The prior sections, act Aug. 16, 1954, ch. 736, are set out in 68A Stat. 606, 641, 649, 657.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as an Effective Date of 1979 Amendment note under section 5001 of this title.

§5235. Bottling of alcohol for industrial purposes

Alcohol for industrial purposes may be bottled, labeled, and cased on bonded premises of a distilled spirits plant prior to payment or determination of tax, under such regulations as the Secretary may prescribe.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1369; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–39, title VIII, §807(a)(36), July 26, 1979, 93 Stat. 286; Pub. L. 98–369, div. A, title IV, §454(c)(8), July 18, 1984, 98 Stat. 821.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in prior section 5305, act Aug. 16, 1954, ch. 736, 68A Stat. 657, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1984—Pub. L. 98–369 struck out "stamped," before "labeled," and struck out provision that section 5205(a)(1) shall not apply to alcohol bottled, stamped, and labeled as such under this section.

1979—Pub. L. 96–39 substituted "section 5205(a)(1) shall not apply" for "sections 5178(a)(4)(A), 5205(a)(1), and 5233 (relating to the bottling of distilled spirits in bond) shall not be applicable".

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 1, 1985, see section 456(b) of Pub. L. 98–369, set out as an Effective Date note under section 5101 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as a note under section 5001 of this title.

§5236. Discontinuance of storage facilities and transfer of distilled spirits

When the Secretary finds any facilities for the storage of distilled spirits on bonded premises to be unsafe or unfit for use, or the spirits contained therein subject to great loss or wastage he may require the discontinuance of the use of such facilities and require the spirits contained therein to be transferred to such other storage facilities as he may designate. Such transfer shall be made at such time and under such supervision as the Secretary may require and the expense of the transfer shall be paid by the owner or the warehouseman of the distilled spirits. Whenever the owner of such distilled spirits or the warehouseman fails to make such transfer within the time prescribed, or to pay the just and proper expense of such transfer, as ascertained and determined by the Secretary, such distilled spirits may be seized and sold by the Secretary in the same manner as goods are sold on distraint for

taxes, and the proceeds of such sale shall be applied to the payment of the taxes due thereon and the cost and expenses of such sale and removal, and the balance paid over to the owner of such distilled spirits.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1369; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in prior section 5252, act Aug. 16, 1954, ch. 736, 68A Stat. 649, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

SUBPART D—DENATURATION

Sec.

5241. Authority to denature.

5242. Denaturing materials.

5243. Sale of abandoned spirits for denaturation without collection of tax.

5244. Cross references.

§5241. Authority to denature

Under such regulations as the Secretary shall prescribe, distilled spirits may be denatured on the bonded premises of a distilled spirits plant qualified for the processing of distilled spirits. Distilled spirits to be denatured under this section shall be of such kind and such degree of proof as the Secretary shall by regulations prescribe. Distilled spirits denatured under this section may be used on the bonded premises of a distilled spirits plant in the manufacture of any article.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1369; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–39, title VIII, §807(a)(37), July 26, 1979, 93 Stat. 286.)

PRIOR PROVISIONS

A prior section 5241, act Aug. 16, 1954, ch. 736, 68A Stat. 644, related to supervision of operations of internal revenue bonded warehouses, prior to the general revision of this chapter by Pub. L. 85–859. See sections 5201(a), 5202 (a), (c), (d), and 7803 of this title and section 22 of former Title 5, Executive Departments and Government Officers and Employees.

Provisions similar to those comprising this section were contained in prior sections 5194(c), 5303, 5310(a), 5331(a)(1), act Aug. 16, 1954, ch. 736, 68A Stat. 635, 655, 658, 661, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1979—Pub. L. 96–39 substituted "a distilled spirits plant qualified for the processing of distilled spirits" for "any distilled spirits plant operated by a proprietor who is authorized to produce distilled spirits at such plant or on other bonded premises", struck out provision that any other person operating bonded premises may, at the discretion of the Secretary and under such regulations as he may prescribe, be authorized to denature distilled spirits on such bonded premises, and inserted provision that distilled spirits denatured under this section may be used on the bonded premises of a distilled spirits plant in the manufacture of any article.

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as a note under section 5001 of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§5242. Denaturing materials

Methanol or other denaturing materials suitable to the use for which the denatured distilled spirits are intended to be withdrawn shall be used for the denaturation of distilled spirits. Denaturing materials shall be such as to render the spirits with which they are admixed unfit for beverage or internal human medicinal use. The character and the quantity of denaturing materials used shall be as prescribed by the Secretary by regulations.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1369; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

PRIOR PROVISIONS

A prior section 5242, acts Aug. 16, 1954, ch. 736, 68A Stat. 645; Sept. 2, 1958, Pub. L. 85–859, title II, §206(e), 72 Stat. 1431, related to deposit of spirits in warehouses, prior to the general revision of this chapter by Pub. L. 85–859.

Provisions similar to those comprising this section were contained in prior sections 5303, 5310(a) and 5331(a)(1), (2), act Aug. 16, 1954, ch. 736, 68A Stat. 655, 658, 661, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

§5243. Sale of abandoned spirits for denaturation without collection of tax

Notwithstanding any other provision of law, any distilled spirits abandoned to the United States may be sold, in such cases as the Secretary may by regulation provide, to the proprietor of any distilled spirits plant for denaturation, or redistillation and denaturation, without the payment of the internal revenue tax thereon.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1370; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

PRIOR PROVISIONS

A prior section 5243, acts Aug. 16, 1954, ch. 736, 68A Stat. 645; Sept. 2, 1958, Pub. L. 85–859, §206(c), 72 Stat. 1431, related to bottling of distilled spirits in bond, prior to the general revision of this chapter by Pub. L. 85–859. See sections 5171, 5172, 5175, 5178(a)(3)(C), (4)(A), 5202(g), 5206(c), 5214(a)(4), and 5233(a) to (c), (e)(1) of this title and section 121 of Title 27, Intoxicating Liquors.

Provisions similar to those comprising this section were contained in prior section 5333, act Aug. 16, 1954, ch. 736, 68A Stat. 662, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

§5244. Cross references

(1) For provisions authorizing the withdrawal from the bonded premises of a distilled spirits plant of denatured distilled spirits, see section 5214(a)(1).

(2) For provisions requiring a permit to procure specially denatured distilled spirits, see section 5271.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1370.)

PRIOR PROVISIONS

A prior section 5244, act Aug. 16, 1954, ch. 736, 68A Stat. 647, related to withdrawal of spirits from

bonded warehouse on determination of tax, prior to the general revision of this chapter by Pub. L. 85–859. See section 5213 of this title.

[PART III—REPEALED]

[§§5251, 5252. Repealed. Pub. L. 96–39, title VIII, §807(a)(38), July 26, 1979, 93 Stat. 286]

Section 5251, added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1370; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, required proprietors of distilled spirits plants to give notice of their intention to rectify or compound any distilled spirits or wines.

A prior section 5251, act Aug. 16, 1954, ch. 736, 68A Stat. 649, made a cross reference provision to "blending of beverage brandies in internal revenue bonded warehouses", prior to the general revision of this chapter by Pub. L. 85–859.

Provisions similar to those comprising section 5251 of this title were contained in prior section 5282(a), act Aug. 16, 1954, ch. 736, 68A Stat. 651, prior to the general revision of this chapter by Pub. L. 85–859.

Section 5252, added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1370, set out cross references to other sections with regard to the regulation of operations.

A prior section 5252, act Aug. 16, 1954, ch. 736, 68A Stat. 649, related to "discontinuance of warehouse and transfer of merchandise", prior to the general revision of this chapter by Pub. L. 85–859. See section 5236 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as an Effective Date of 1979 Amendment note under section 5001 of this title.

Subchapter D—Industrial Use of Distilled Spirits

Sec.

5271. Permits.
5272. Bonds.
5273. Sale, use, and recovery of denatured distilled spirits.
5274. Applicability of other laws.
5275. Records and reports.
5276. Occupational tax.[1]

PRIOR PROVISIONS

A prior subchapter D, Rectifying Plants, consisted of part I, Establishment, and part II, Operation, and comprised sections 5271 to 5275 and 5281 to 5285, respectively, prior to the general revision of this chapter by Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1313.

AMENDMENTS

1987—Pub. L. 100–203, title X, §10512(e)(2), Dec. 22, 1987, 101 Stat. 1330–449, added item 5276.

[1] Section repealed by Pub. L. 109–59 without corresponding amendment of subchapter analysis.

§5271. Permits

(a) Requirements

No person shall—

(1) procure or use distilled spirits free of tax under the provisions of section 5214(a)(2) or (3); or

(2) procure, deal in, or use specially denatured distilled spirits; or

(3) recover specially or completely denatured distilled spirits, until he has filed an application with and received a permit to do so from the Secretary.

(b) Form of application and permit

(1) The application required by subsection (a) shall be in such form, shall be submitted at such times, and shall contain such information, as the Secretary shall by regulations prescribe.

(2) Permits under this section shall, under such regulations as the Secretary shall prescribe, designate and limit the acts which are permitted, and the place where and time when such acts may be performed. Such permits shall be issued in such form and under such conditions as the Secretary may by regulations prescribe.

(c) Disapproval of application

Any application submitted under this section may be disapproved and the permit denied if the Secretary, after notice and opportunity for hearing, finds that—

(1) in case of an application to withdraw and use distilled spirits free of tax, the applicant is not authorized by law or regulations issued pursuant thereto to withdraw or use such distilled spirits; or

(2) the applicant (including, in the case of a corporation, any officer, director, or principal stockholder, and, in the case of a partnership, a partner) is, by reason of his business experience, financial standing, or trade connections, not likely to maintain operations in compliance with this chapter; or

(3) the applicant has failed to disclose any material information required, or made any false statement as to any material fact, in connection with his application; or

(4) the premises on which it is proposed to conduct the business are not adequate to protect the revenue.

(d) Changes after issuance of permit

With respect to any change relating to the information contained in the application for a permit issued under this section, the Secretary may by regulations require the filing of written notice of such change and, where the change affects the terms of the permit, require the filing of an amended application.

(e) Suspension or revocation

If, after notice and hearing, the Secretary finds that any person holding a permit issued under this section—

(1) has not in good faith complied with the provisions of this chapter or regulations issued thereunder; or

(2) has violated the conditions of such permit; or

(3) has made any false statement as to any material fact in his application therefor; or

(4) has failed to disclose any material information required to be furnished; or

(5) has violated or conspired to violate any law of the United States relating to intoxicating liquor, or has been convicted of any offense under this title punishable as a felony or of any conspiracy to commit such offense; or

(6) is, in the case of any person who has a permit under subsection (a)(1) or (a)(2), by reason of his operations, no longer warranted in procuring or using the distilled spirits or specially denatured distilled spirits authorized by his permit; or

(7) has, in the case of any person who has a permit under subsection (a)(2), manufactured articles which do not correspond to the descriptions and limitations prescribed by law and regulations; or

(8) has not engaged in any of the operations authorized by the permit for a period of more than 2 years;

such permit may, in whole or in part, be revoked or be suspended for such period as the Secretary deems proper.

(f) Duration of permits

Permits issued under this section, unless terminated by the terms of the permit, shall continue in effect until suspended or revoked as provided in this section, or until voluntarily surrendered.

(g) Posting of permits

Permits issued under this section, to use distilled spirits free of tax, to deal in, or use specially denatured distilled spirits, or to recover specially or completely denatured distilled spirits, shall be kept posted available for inspection on the premises covered by the permit.

(h) Regulations

The Secretary shall prescribe all necessary regulations relating to issuance, denial, suspension, or revocation, of permits under this section, and for the disposition of distilled spirits (including specially denatured distilled spirits) procured under permit pursuant to this section which remain unused when such permit is no longer in effect.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1370; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

PRIOR PROVISIONS

A prior section 5271, act Aug. 16, 1954, ch. 736, 68A Stat. 650, related to "notice of business of rectifier", prior to the general revision of this chapter by Pub. L. 85–859. See sections 5171(a), (c), 5172, and 5178(a)(1)(A), (4)(B)–(D) of this title.

Provisions similar to those comprising subsecs. (a) to (f) and (h) of this section were contained in prior section 5304(a)(1) to (4), (b), (c), act Aug. 16, 1954, ch. 736, 68A Stat. 655, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1976—Subsecs. (a) to (e), (h). Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§5272. Bonds

(a) Requirements

Before any permit required by section 5271(a) is granted, the Secretary may require a bond, in such form and amount as he may prescribe, to insure compliance with the terms of the permit and the provisions of this chapter.

(b) Exceptions

No bond shall be required in the case of permits issued to the United States or any governmental agency thereof, or to the several States or any political subdivision thereof, or to the District of Columbia.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1372; amended Pub. L. 94–455, title XIX, §§1905(c)(3), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1823, 1834.)

PRIOR PROVISIONS

A prior section 5272, act Aug. 16, 1954, ch. 736, 68A Stat. 650, related to requirement and approval of bond as condition to commencing business of rectifier of spirits, prior to the general revision of this chapter by Pub. L. 85–859. See section 5173(a), (d) of this title.

Provisions similar to those comprising this section were contained in prior sections 5304(a)(5) and 5310(d), act Aug. 16, 1954, ch. 736, 68A Stat. 655, 658, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1976—Subsec. (a). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".
Subsec. (b). Pub. L. 94–455, §1905(c)(3), struck out "and Territories" after "several States".

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1905(c)(3) of Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1905(d) of Pub. L. 94–455, set out as a note under section 5005 of this title.

§5273. Sale, use, and recovery of denatured distilled spirits

(a) Use of specially denatured distilled spirits

Any person using specially denatured distilled spirits in the manufacture of articles shall file such formulas and statements of process, submit such samples, and comply with such other requirements, as the Secretary shall by regulations prescribe, and no person shall use specially denatured distilled spirits in the manufacture or production of any article until approval of the article, formula, and process has been obtained from the Secretary.

(b) Internal medicinal preparations and flavoring extracts

(1) Manufacture

No person shall use denatured distilled spirits in the manufacture of medicinal preparations or flavoring extracts for internal human use where any of the spirits remains in the finished product.

(2) Sale

No person shall sell or offer for sale for internal human use any medicinal preparations or flavoring extracts manufactured from denatured distilled spirits where any of the spirits remains in the finished product.

(c) Recovery of spirits for reuse in manufacturing

Manufacturers employing processes in which denatured distilled spirits withdrawn under section 5214(a)(1) are expressed, evaporated, or otherwise removed, from the articles manufactured shall be permitted to recover such distilled spirits and to have such distilled spirits restored to a condition suitable solely for reuse in manufacturing processes under such regulations as the Secretary may prescribe.

(d) Prohibited withdrawal or sale

No person shall withdraw or sell denatured distilled spirits, or sell any article containing denatured distilled spirits for beverage purposes.

(e) Cross references

(1) For penalty and forfeiture for unlawful use or concealment of denatured distilled spirits, see section 5607.

(2) For applicability of all provisions of law relating to distilled spirits that are not denatured, including those requiring payment of tax, to denatured distilled spirits or articles produced, withdrawn, sold, transported, or used in violation of law or regulations, see section 5001(a)(6).[1]

(3) For definition of "articles", see section 5002(a)(14).

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1372; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–39, title VIII, §807(a)(39), July 26, 1979, 93 Stat. 286.)

REFERENCES IN TEXT

Section 5001(a)(6), referred to in subsec. (e)(2), was redesignated section 5001(a)(5) by Pub. L. 103–465, title I, §136(a), Dec. 8, 1994, 108 Stat. 4841.

PRIOR PROVISIONS

A prior section 5273, act Aug. 16, 1954, ch. 736, 68A Stat. 650, related to premises of rectifier, prior to the general revision of this chapter by Pub. L. 85–859. See section 5178(a)(1)(A), (4)(B), (D) and (c)(1) of this title.

Provisions similar to those comprising this section were contained in prior sections of act Aug. 16, 1954, prior to the general revision of this chapter by Pub. L. 85–859, as follows:

Present subsecs.:	*Prior sections*
(a)	5331(a), (b).
(b)	5303, 5305, 5310(a), 5331(a)(1), (2), (b), 5647.
(c)	5332.
(d)	5303, 5305, 5310(a), 5331(a), 5647.
(e)(1), (2)	5334.

The prior sections, act Aug. 16, 1954, ch. 736, are set out in 68A Stat. 655, 657, 658, 661, 662, 693.

AMENDMENTS

1979—Subsec. (e)(3). Pub. L. 96–39 substituted "section 5002(a)(14)" for "section 5002(a)(11)".

1976—Subsecs. (a), (c). Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as a note under section 5001 of this title.

[1] *See References in Text note below.*

§5274. Applicability of other laws

The provisions, including penalties, of sections 9, and 10 of the Federal Trade Commission Act (15 U.S.C., secs. 49, 50), as now or hereafter amended, shall apply to the jurisdiction, powers, and duties of the Secretary under this subtitle, and to any person (whether or not a corporation) subject to the provisions of this subtitle.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1372; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

PRIOR PROVISIONS

A prior section 5274, act Aug. 16, 1954, ch. 736, 68A Stat. 651, related to sign required on rectifying premises, prior to the general revision of this chapter by Pub. L. 85–859. See section 5180 of this title.

Provisions similar to those comprising this section were contained in prior section 5317(b), act Aug. 16, 1954, ch. 736, 68A Stat. 660, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

§5275. Records and reports

Every person procuring or using distilled spirits withdrawn under section 5214(a)(2) or (3), or procuring, dealing in, or using specially denatured distilled spirits, or recovering specially denatured or completely denatured distilled spirits, shall keep such records and file such reports of the receipt and use of distilled spirits withdrawn free of tax, of the receipt, disposition, use, and recovery of

denatured distilled spirits, the manufacture and disposition of articles, and such other information as the Secretary may be regulations require. The Secretary may require any person reprocessing, bottling or repackaging articles, or dealing in completely denatured distilled spirits or articles, to keep such records, submit such reports, and comply with such other requirements as he may by regulations prescribe. Records required to be kept under this section and a copy of all reports required to be filed shall be preserved as regulations shall prescribe and shall be kept available for inspection by any internal revenue officer during business hours. Such officer may also inspect and take samples of distilled spirits, denatured distilled spirits, or articles (including any substances for use in the manufacture thereof), to which such records or reports relate.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1373; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

PRIOR PROVISIONS

A prior section 5275, act Aug. 16, 1954, ch. 736, 68A Stat. 651, related to cross references, prior to the general revision of this chapter by Pub. L. 85–859. See sections 5179(2) and 5181 of this title.

Provisions similar to those comprising this section were contained in prior sections 5305, 5313(b), and 5331(a)(3), act Aug. 16, 1954, ch. 736, 68A Stat. 657, 659, 662, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

[§5276. Repealed. Pub. L. 109–59, title XI, §11125(a)(3), Aug. 10, 2005, 119 Stat. 1953]

Section, added Pub. L. 100–203, title X, §10512(e)(1), Dec. 22, 1987, 101 Stat. 1330–448; amended Pub. L. 100–647, title II, §2004(t)(1), title VI, §6105(a), (b), Nov. 10, 1988, 102 Stat. 3609, 3711; Pub. L. 101–239, title VII, §7816(o), Dec. 19, 1989, 103 Stat. 2422, related to occupational tax on permit holders.

PRIOR PROVISIONS

A prior section 5281, act Aug. 16, 1954, ch. 736, 68A Stat. 651, related to regulation of business rectifier, prior to the general revision of this chapter by Pub. L. 85–859.

A prior section 5282, act Aug. 16, 1954, ch. 736, 68A Stat. 651, related to rectification of spirits, prior to the general revision of this chapter by Pub. L. 85–859.

A prior section 5283, act Aug. 16, 1954, ch. 736, 68A Stat. 652, related to examination of rectifying premises, prior to the general revision of this chapter by Pub. L. 85–859.

A prior section 5284, act Aug. 16, 1954, ch. 736, 68A Stat. 652, related to prohibited hours for removal of distilled spirits, prior to the general revision of this chapter by Pub. L. 85–859.

A prior section 5285, act Aug. 16, 1954, ch. 736, 68A Stat. 652, related to records and returns, prior to the general revision of this chapter by Pub. L. 85–859.

EFFECTIVE DATE OF REPEAL

Repeal effective July 1, 2008, but inapplicable to taxes imposed for periods before such date, see section 11125(c) of Pub. L. 109–59, set out as an Effective Date of 2005 Amendment note under section 5002 of this title.

Subchapter E—General Provisions Relating to Distilled Spirits

Part

I. Return of materials used in the manufacture or recovery of distilled spirits.
II. Regulation of traffic in containers of distilled spirits.
III. Miscellaneous provisions.

PRIOR PROVISIONS

A prior subchapter E, Industrial Alcohol Plants, Bonded Warehouses, Denaturing Plants, and Denaturation,

consisted of part I, Industrial Alcohol Plants, Bonded Warehouses, and Denaturing Plants and part II, Denaturation, and consisted of sections 5301 to 5320 and 5331 to 5334, respectively, prior to the general revision of this chapter by Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1313.

PART I—RETURN OF MATERIALS USED IN THE MANUFACTURE OR RECOVERY OF DISTILLED SPIRITS

Sec.
5291. General.

PRIOR PROVISIONS

A prior part I, Industrial Alcohol Plants, Bonded Warehouses, and Denaturing Plants, consisted of sections 5301 to 5320, prior to the general revision of this chapter by Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1313.

§5291. General

(a) Requirement

Every person disposing of any substance of the character used in the manufacture of distilled spirits, or disposing of denatured distilled spirits or articles from which distilled spirits may be recovered, shall, when required by the Secretary, render a correct return, in such form and manner as the Secretary may by regulations prescribe, showing the name and address of the person to whom each disposition was made, with such details, as to the quantity so disposed of or other information which the Secretary may require as to each such disposition, as will enable the Secretary to determine whether all taxes due with respect to any distilled spirits manufactured or recovered from any such substance, denatured, distilled spirits, or articles, have been paid. Every person required to render a return under this section shall keep such records as will enable such person to render a correct return. Such records shall be preserved for such period as the Secretary shall by regulations prescribe, and shall be kept available for inspection by any internal revenue officer during business hours.

(b) Cross references

(1) For the definition of distilled spirits, see section 5002(a)(8).

(2) For the definition of articles, see section 5002(a)(14).

(3) For penalty for violation of subsection (a), see section 5605.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1373; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–39, title VIII, §807(a)(40), July 26, 1979, 93 Stat. 286.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in prior section 5213, act Aug. 16, 1954, ch. 736, 68A Stat. 639, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1979—Subsec. (b)(1). Pub. L. 96–39, §807(a)(40)(A), substituted "section 5002(a)(8)" for "section 5002(a)(6)".

Subsec. (b)(2). Pub. L. 96–39, §807(a)(40)(B), substituted "section 5002(a)(14)" for "section 5002(a)(11)".

1976—Subsec. (a). Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as a note under section 5001 of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001

of this title.

PART II—REGULATION OF TRAFFIC IN CONTAINERS OF DISTILLED SPIRITS

Sec.
5301. General.

PRIOR PROVISIONS

A prior part II, Denaturation, consisted of section 5331 to 5334, prior to the general revision of this chapter by Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1313.

§5301. General

(a) Requirements

Whenever in his judgment such action is necessary to protect the revenue, the Secretary is authorized, by the regulations prescribed by him and permits issued thereunder if required by him—

(1) to regulate the kind, size, branding, marking, sale, resale, possession, use, and reuse of containers (of a capacity of not more than 5 wine gallons) designed or intended for use for the sale of distilled spirits (within the meaning of such term as it is used in section 5002(a)(8) for other than industrial use; and

(2) to require, of persons manufacturing, dealing in, or using any such containers, the submission to such inspection, the keeping of such records, and the filing of such reports as may be deemed by him reasonably necessary in connection therewith.

Any requirements imposed under this section shall be in addition to any other requirements imposed by, or pursuant to, law and shall apply as well to persons not liable for tax under the internal revenue laws as to persons so liable.

(b) Disposition

Every person disposing of containers of the character used for the packaging of distilled spirits shall, when required by the Secretary for protection of the revenue, render a correct return, in such form and manner as the Secretary may by regulations prescribe, showing the name and address of the person to whom each disposition was made, with such details as to the quantities so disposed of or other information which the Secretary may require as to each such disposition. Every person required to render a return under this section shall keep such records as will enable such person to render a correct return. Such records shall be preserved for such period as the Secretary shall by regulations prescribe, and shall be kept available for inspection by any internal revenue officer during business hours.

(c) Refilling of liquor bottles

No person who sells, or offers for sale, distilled spirits, or agent or employee of such person, shall—

(1) place in any liquor bottle any distilled spirits whatsoever other than those contained in such bottle at the time of tax determination under the provisions of this chapter; or

(2) possess any liquor bottle in which any distilled spirits have been placed in violation of the provisions of paragraph (1); or

(3) by the addition of any substance whatsoever to any liquor bottle, in any manner alter or increase any portion of the original contents contained in such bottle at the time of tax determination under the provisions of this chapter; or

(4) possess any liquor bottle, any portion of the contents of which has been altered or increased in violation of the provisions of paragraph (3);

except that the Secretary may by regulations authorize the reuse of liquor bottles, under such conditions as he may by regulations prescribe. When used in this subsection the term "liquor bottle" shall mean a liquor bottle or other container which has been used for the bottling or packaging of distilled spirits under regulations issued pursuant to subsection (a).

(d) Closures

The immediate container of distilled spirits withdrawn from bonded premises, or from customs custody, on determination of tax shall bear a closure or other device which is designed so as to require breaking in order to gain access to the contents of such container. The preceding sentence shall not apply to containers of bulk distilled spirits.

(e) Penalty

For penalty for violation of this section, see section 5606.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1374; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–39, title VIII, §807(a)(41), July 26, 1979, 93 Stat. 287; Pub. L. 98–369, div. A, title IV, §454(b), (c)(9), July 18, 1984, 98 Stat. 820, 821.)

PRIOR PROVISIONS

A prior section 5301, act Aug. 16, 1954, ch. 736, 68A Stat. 654, related to establishment of industrial alcohol plants, prior to the general revision of this chapter by Pub. L. 85–859. See sections 5171(a), (b)(1), 5172, 5173(a), (b) of this title.

Provisions similar to those comprising subsecs. (a), (c), and (d) of this section were contained in prior section 5214, act Aug. 16, 1954, ch. 736, 68A Stat. 639, prior to the general revision of this chapter by Pub. L. 85–859.

A prior section 5302, act Aug. 16, 1954, ch. 736, 68A Stat. 645, related to the establishment of industrial alcohol warehouses, prior to the general revision of this chapter by Pub. L. 85–859. See sections 5171(a), (b)(1), 5172, 5173(a), (c), 5178(a)(3)(A), (B), 5201(a), and 5206(a) of this title.

A prior section 5303, act Aug. 16, 1954, ch. 736, 68A Stat. 655, related to establishment of industrial alcohol denaturing plants, prior to the general revision of this chapter by Pub. L. 85–859. See sections 5171(a), (b)(1), 5172, 5173(a), (c), 5178(a)(5), 5241, 5242, and 5273(b)(1), (2), (d) of this title.

A prior section 5304, act Aug. 16, 1954, ch. 736, 68A Stat. 655, related to alcohol permits, prior to the general revision of this chapter by Pub. L. 85–859. See sections 5171(b)(1), 5173(a), (e)(1), 5271(a) to (c), (e), (f), (h), and 5272(a) of this title.

A prior section 5305, act Aug. 16, 1954, ch. 736, 68A Stat. 657, related to regulations for establishing, bonding, and operations of plants and warehouses, prior to the general revision of this chapter by Pub. L. 85–859. See sections 5171, 5172, 5173(a), 5178(a)(1)(A), (5), 5201(a), (b), 5207(a), (c), (d), 5211, 5223(a), 5235, 5273(b)(1), (2), (d), 5275, and 5312(b) of this title.

A prior section 5306, act Aug. 16, 1954, ch. 736, 68A Stat. 657, related to exemption of industrial alcohol plants and warehouses from certain laws, prior to the general revision of this chapter by Pub. L. 85–859. See sections 5025(d), (e)(1), 5173(c), 5201(a), (c), 5204(c), 5234(a)(1)(A), 5306, and 5312(c) of this title.

A prior section 5307, act Aug. 16, 1954, ch. 736, 68A Stat. 657, related to production, use, or sale of alcohol, prior to the general revision of this chapter by Pub. L. 85–859. See sections 5178(a)(2)(A) and 5201(a) of this title.

A prior section 5308, act Aug. 16, 1954, ch. 736, 68A Stat. 657, related to transfer of alcohol to other plants or warehouses, prior to the general revision of this chapter by Pub. L. 85–859. See sections 5212 and 5223(a) of this title.

A prior section 5309, act Aug. 16, 1954, ch. 736, 68A Stat. 658, related to withdrawal of fermented liquors to industrial alcohol plants, prior to the general revision of this chapter by Pub. L. 85–859. See section 5222(b) of this title.

A prior section 5310, act Aug. 16, 1954, ch. 736, 68A Stat. 658, related to withdrawal of alcohol free of tax, prior to the general revision of this chapter by Pub. L. 85–859. See sections 5214(a), (a)(1) to (3), 5241, 5242, 5272(b), 5273(b)(1), (2), (d), and 5313 of this title.

AMENDMENTS

1984—Subsec. (c). Pub. L. 98–369, §454(c)(9), substituted "tax determination" for "stamping" in pars. (1) and (3), and struck out ", if the liquor bottles are to be again stamped under the provisions of this chapter" after "by regulations prescribe" in provisions following par. (4).

Subsec. (d). Pub. L. 98–369, §454(b), added subsec. (d) and redesignated former subsec. (d) as (e).

1979—Subsec. (a)(1). Pub. L. 96–39 substituted "section 5002(a)(8)" for "section 5002(a)(6)".

1976—Subsecs. (a) to (c). Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 1, 1985, see section 456(b) of Pub. L. 98–369, set out as an Effective Date note under section 5101 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as a note under section 5001 of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

PART III—MISCELLANEOUS PROVISIONS

Sec.
5311. Detention of containers.
5312. Production and use of distilled spirits for experimental research.
5313. Withdrawal of distilled spirits from customs custody free of tax for use of the United States.
5314. Special applicability of certain provisions.
[5315. Repealed.]

AMENDMENTS

1976—Pub. L. 94–455, title XIX, §1905(b)(4), Oct. 4, 1976, 90 Stat. 1822, struck out item 5315 "Status of certain distilled spirits on July 1, 1959".

§5311. Detention of containers

It shall be lawful for any internal revenue officer to detain any container, containing or supposed to contain, distilled spirits, wines, or beer, when he has reason to believe that the tax imposed by law on such distilled spirits, wines, or beer has not been paid or determined as required by law, or that such container is being removed in violation of law; and every such container may be held by him at a safe place until it shall be determined whether the property so detained is liable by law to be proceeded against for forfeiture; but such summary detention shall not continue in any case longer than 72 hours without process of law or intervention of the officer to whom such detention is to be reported.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1375.)

PRIOR PROVISIONS

A prior section 5311, act Aug. 16, 1954, ch. 736, 68A Stat. 658, related to importation of alcohol for industrial purposes, prior to the general revision of this chapter by Pub. L. 85–859. See section 5232 of this title.

Provisions similar to those comprising this section were contained in prior section 5211, act Aug. 16, 1954, ch. 736, 68A Stat. 638, prior to the general revision of this chapter by Pub. L. 85–859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§5312. Production and use of distilled spirits for experimental research

(a) Scientific institutions and colleges of learning

Under such regulations as the Secretary may prescribe and on the filing of such bonds and applications as he may require, any scientific university, college of learning, or institution of scientific research may produce, receive, blend, treat, test, and store distilled spirits, without payment of tax, for experimental or research use but not for consumption (other than organoleptic tests) or sale, in such quantities as may be reasonably necessary for such purposes.

(b) Experimental distilled spirits plants

Under such regulations as the Secretary may prescribe and on the filing of such bonds and applications as he may require, experimental distilled spirits plants may, at the discretion of the Secretary, be established and operated for specific and limited periods of time solely for experimentation in, or development of—

(1) sources of materials from which distilled spirits may be produced;
(2) processes by which distilled spirits may be produced or refined; or
(3) industrial uses of distilled spirits.

(c) Authority to exempt

The Secretary may by regulations provide for the waiver of any provision of this chapter (other than this section) to the extent he deems necessary to effectuate the purposes of this section, except that he may not waive the payment of any tax on distilled spirits removed from any such university, college, institution, or plant.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1375; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

PRIOR PROVISIONS

A prior section 5312, act Aug. 16, 1954, ch. 736, 68A Stat. 659, made a cross reference to remission and refund of tax on alcohol for loss or leakage, prior to the general revision of this chapter by Pub. L. 85–859.

Provisions similar to those comprising this section were contained in prior sections of act Aug. 16, 1954, prior to the general revision of this chapter by Pub. L. 85–859, as follows:

Present subsecs.:	*Prior sections*
(a)	5215.
(b)	5305.
(c)	5215, 5306.

The prior sections, act Aug. 16, 1954, ch. 736, are set out in 68A Stat. 640, 657.

AMENDMENTS

1976—Subsecs. (a) to (c). Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

§5313. Withdrawal of distilled spirits from customs custody free of tax for use of the United States

Distilled spirits may be withdrawn free of tax from customs custody by the United States or any governmental agency thereof for its own use for nonbeverage purposes, under such regulations as may be prescribed by the Secretary.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1375; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

PRIOR PROVISIONS

A prior section 5313, act Aug. 16, 1954, ch. 736, 68A Stat. 659, related to powers and duties of persons enforcing provisions respecting industrial alcohol plants, bonded warehouses, and denaturing plants, prior to

the general revision of this chapter by Pub. L. 85–859. See section 5275 of this title.

Provisions similar to those comprising this section were contained in prior section 5310(b), act Aug. 16, 1954, ch. 736, 68A Stat. 658, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

§5314. Special applicability of certain provisions

(a) Puerto Rico

(1) Applicability

The provisions of this subsection shall not apply to the Commonwealth of Puerto Rico unless the Legislative Assembly of the Commonwealth of Puerto Rico expressly consents thereto in the manner prescribed in the constitution of the Commonwealth of Puerto Rico, for the enactment of a law.

(2) In general

Distilled spirits for the purposes authorized in section 5214(a)(2) and (3), denatured distilled spirits, and articles, as described in this paragraph, produced or manufactured in Puerto Rico, may be brought into the United States free of any tax imposed by section 5001(a)(10) [1] or 7652(a)(1) for disposal under the same conditions as like spirits, denatured spirits, and articles, produced or manufactured in the United States; and the provisions of this chapter and regulations promulgated thereunder (and all other provisions of the internal revenue laws applicable to the enforcement thereof, including the penalties of special application thereto) relating to the production, bonded warehousing, and denaturation of distilled spirits, to the withdrawal of distilled spirits or denatured distilled spirits, and to the manufacture of articles from denatured distilled spirits, shall, insofar as applicable, extend to and apply in Puerto Rico in respect of—

(A) distilled spirits for shipment to the United States for the purposes authorized in section 5214(a)(2) and (3);

(B) distilled spirits for denaturation;

(C) denatured distilled spirits for shipment to the United States;

(D) denatured distilled spirits for use in the manufacture of articles for shipment to the United States; and

(E) articles, manufactured from denatured distilled spirits, for shipment to the United States.

(3) Withdrawals authorized by Puerto Rico

Distilled spirits (including denatured distilled spirits) may be withdrawn from the bonded premises of a distilled spirits plant in Puerto Rico pursuant to authorization issued under the laws of the Commonwealth of Puerto Rico; such spirits so withdrawn, and products containing such spirits so withdrawn, may not be brought into the United States free of tax.

(4) Costs of administration

Any expenses incurred by the Treasury Department in connection with the enforcement in Puerto Rico of the provisions of this subtitle and section 7652(a), and regulations promulgated thereunder, shall be charged against and retained out of taxes collected under this title in respect of commodities of Puerto Rican manufacture brought into the United States. The funds so retained shall be deposited as a reimbursement to the appropriation to which such expenses were originally charged.

(b) Virgin Islands

(1) In general

Distilled spirits for the purposes authorized in section 5214(a)(2) and (3), denatured distilled spirits, and articles, as described in this paragraph, produced or manufactured in the Virgin Islands, may be brought into the United States free of any tax imposed by section 7652(b)(1) for

disposal under the same conditions as like spirits, denatured spirits, and articles, produced or manufactured in the United States; and the provisions of this chapter and regulations promulgated thereunder (and all other provisions of the internal revenue laws applicable to the enforcement thereof, including the penalties of special application thereto) relating to the production, bonded warehousing, and denaturation of distilled spirits, to the withdrawal of distilled spirits or denatured distilled spirits, and to the manufacture of articles from denatured distilled spirits, shall, insofar as applicable, extend to and apply in the Virgin Islands in respect of—

(A) distilled spirits for shipment to the United States for the purposes authorized in section 5214(a)(2) and (3);

(B) distilled spirits for denaturation;

(C) denatured distilled spirits for shipment to the United States;

(D) denatured distilled spirits for use in the manufacture of articles for shipment to the United States; and

(E) articles, manufactured from denatured distilled spirits, for shipment to the United States.

(2) Advance of funds

The insular government of the Virgin Islands shall advance to the Treasury of the United States such funds as may be required from time to time by the Secretary for the purpose of defraying all expenses incurred by the Treasury Department in connection with the enforcement in the Virgin Islands of paragraph (1) and regulations promulgated thereunder. The funds so advanced shall be deposited in a separate trust fund in the Treasury of the United States and shall be available to the Treasury Department for the purposes of this subsection.

(3) Regulations issued by Virgin Islands

The Secretary may authorize the Governor of the Virgin Islands, or his duly authorized agents, to issue or adopt such regulations, to approve such bonds, and to issue, suspend, or revoke such permits, as are necessary to carry out the provisions of this subsection. When regulations have been issued or adopted under this paragraph with concurrence of the Secretary he may exempt the Virgin Islands from any provisions of law and regulations otherwise made applicable by the provisions of paragraph (1), except that denatured distilled spirits, articles and distilled spirits for tax-free purposes which are brought into the United States from the Virgin Islands under the provisions of this subsection shall in all respects conform to the requirements of law and regulations imposed on like products of domestic manufacture.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1375; amended Pub. L. 94–455, title XIX, §§1905(a)(18), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1820, 1834.)

REFERENCES IN TEXT

Section 5001(a)(10), referred to in subsec. (a)(2), was redesignated section 5001(a)(9) by Pub. L. 103–465, title I, §136(a), Dec. 8, 1994, 108 Stat. 4841.

PRIOR PROVISIONS

A prior section 5314, act Aug. 16, 1954, ch. 736, 68A Stat. 659, related to officers and agents authorized to investigate, issue search warrants, and prosecute for violations, prior to the general revision of this chapter by Pub. L. 85–859. See sections 5557 of this title.

Provisions similar to those comprising subsec. (a)(2) of this section were contained in prior section 5318, act Aug. 16, 1954, ch. 736, 68A Stat. 660, prior to the general revisions of this chapter by Pub. L. 85–859.

AMENDMENTS

1976—Subsec. (a)(2). Pub. L. 94–455, §1905(a)(18), substituted "section 5001(a)(10)" for "section 5001(a)(4)".

Subsec. (b)(2), (3). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary" wherever appearing.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1905(a)(18) of Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1905(d) of Pub. L. 94–455, set out as a note under section

5005 of this title.

[1] *See References in Text note below.*

[§5315. Repealed. Pub. L. 94–455, title XIX, §1905(a)(19), Oct. 4, 1976, 90 Stat. 1820]

Section 5315, added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1377, related to status of certain distilled spirits on July 1, 1959.

A prior section 5316, act Aug. 16, 1954, ch. 736, 68A Stat. 660, related to form of affidavit, information or indictment, prior to the general revision of this chapter by Pub. L. 85–859. See Fed. Rules Cr. Proc., rules 7(c), (f), and 8(a), Title 18, Appendix, Crimes and Criminal Procedure.

A prior section 5317, act Aug. 16, 1954, ch. 736, 68A Stat. 660, related to applicability of other laws, prior to the general revision of this chapter by Pub. L. 85–859. See section 5274 of this title.

A prior section 5318, act Aug. 16, 1954, ch. 736, 68A Stat. 660, related to application of this part to Puerto Rico and the Virgin Islands, prior to the general revision of this chapter by Pub. L. 85–859. See section 5314(a)(2) of this title.

A prior section 5319, act Aug. 16, 1954, ch. 736, 68A Stat. 661, related to definitions, etc., prior to the general revision of this chapter by Pub. L. 85–859. See sections 5002(a)(6)(A), (9), (11) and 5201(a) of this title.

A prior section 5320, act Aug. 16, 1954, ch. 736, 68A Stat. 661, related to cross references, prior to the general revision of this chapter by Pub. L. 85–859.

A prior section 5331, act Aug. 16, 1954, ch. 736, 68A Stat. 661, related to withdrawal from bond free of tax, prior to the general revision of this chapter by Pub. L. 85–859. See sections 5171(a), 5172, 5173(a), (c), 5178(a)(5), 5202(e), 5207(a), (c), (d), 5214(a), (a)(1), 5241, 5242, 5273(a), (b)(1), (2), (d), and 5275 of this title.

A prior section 5332, act Aug. 16, 1954, ch. 736, 68A Stat. 662, related to recovery of spirits for reuse in manufacturing, prior to the general revision of this chapter by Pub. L. 85–859. See section 5273(c) of this title.

A prior section 5333, act Aug. 16, 1954, ch. 736, 68A Stat. 662, related to sale of abandoned spirits for denaturation without collection of tax, prior to the general revision of this chapter by Pub. L. 85–859. See section 5243 of this title.

A prior section 5334, act Aug. 16, 1954, ch. 736, 68A Stat. 662, related to cross references, prior to the general revision of this chapter by Pub. L. 85–859. See section 5273(e)(1), (2) of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1905(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 5005 of this title.

Subchapter F—Bonded and Taxpaid Wine Premises

Part

I. Establishment.
II. Operations.
III. Cellar treatment and classification of wine.
IV. General.

PRIOR PROVISIONS

A prior subchapter F, Bonded and Taxpaid Wine Premises, consisted of part I, Establishment, part II, Operations, part III, Cellar Treatment and Classification of Wine, and part IV, General, and comprised sections 5351 to 5357, 5361 to 5373, 5381 to 5388, and 5391 to 5392, respectively, prior to the general revision of this chapter by Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1313.

PART I—ESTABLISHMENT

Sec.
5351. Bonded wine cellar.
5352. Taxpaid wine bottling house.
5353. Bonded wine warehouse.
5354. Bond.
5355. General provisions relating to bonds.
5356. Application.
5357. Premises.

PRIOR PROVISIONS

A prior part I consisted of sections 5351 to 5357 of this title, prior to the general revision of this chapter by Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1313.

§5351. Bonded wine cellar

Any person establishing premises for the production, blending, cellar treatment, storage, bottling, packaging, or repackaging of untaxpaid wine (other than wine produced exempt from tax under section 5042), including the use of wine spirits in wine production, shall, before commencing operations, make application to the Secretary and file bond and receive permission to operate. Such premises shall be known as "bonded wine cellars"; except that any such premises engaging in production operations may, in the discretion of the Secretary, be designated as a "bonded winery".

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1378; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

PRIOR PROVISIONS

A prior section 5351, act Aug. 16, 1954, ch. 736, 68A Stat. 663, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§5352. Taxpaid wine bottling house

Any person bottling, packaging, or repackaging taxpaid wines shall, before commencing such operations, make application to the Secretary and receive permission to operate. Such premises shall be known as "tax-paid wine bottling houses."

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1378; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–39, title VIII, §807(a)(42), July 26, 1979, 93 Stat. 287.)

PRIOR PROVISIONS

A prior section 5352, act Aug. 16, 1954, ch. 736, 68A Stat. 663, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1979—Pub. L. 96–39 struck out "at premises other than the bottling premises of a distilled spirits plant" after "taxpaid wines".

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as a note under section 5001 of this title.

§5353. Bonded wine warehouse

Any responsible warehouse company or other responsible person may, upon filing application with the Secretary and consent of the proprietor and the surety on the bond of any bonded wine cellar, under regulations prescribed by the Secretary, establish on such premises facilities for the storage of wines and allied products for credit purposes, to be known as a "bonded wine warehouse". The proprietor of the bonded wine cellar shall remain responsible in all respects for operations in the warehouse and the tax on the wine or wine spirit stored therein.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1379; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

PRIOR PROVISIONS

A prior section 5353, act Aug. 16, 1954, ch. 736, 68A Stat. 663, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

§5354. Bond

The bond for a bonded wine cellar shall be in such form, on such conditions, and with such adequate surety, as regulations issued by the Secretary shall prescribe, and shall be in a penal sum not less than the tax on any wine or distilled spirits possessed or in transit at any one time (taking into account the appropriate amount of credit with respect to such wine under section 5041(c)), but not less than $1,000 nor more than $50,000; except that where the tax on such wine and on such distilled spirits exceeds $250,000, the penal sum of the bond shall be not more than $100,000. Where additional liability arises as a result of deferral of payment of tax payable on any return, the Secretary may require the proprietor to file a supplemental bond in such amount as may be necessary to protect the revenue. The liability of any person on any such bond shall apply whether the transaction or operation on which the liability of the proprietor is based occurred on or off the proprietor's premises.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1379; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–369, div. A, title IV, §455(c), July 18, 1984, 98 Stat. 823; Pub. L. 104–188, title I, §1702(b)(7), Aug. 20, 1996, 110 Stat. 1869.)

PRIOR PROVISIONS

A prior section 5354, act Aug. 16, 1954, ch. 736, 68A Stat. 663, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1996—Pub. L. 104–188 inserted "(taking into account the appropriate amount of credit with respect to such wine under section 5041(c))" after "any one time".

1984—Pub. L. 98–369 substituted "distilled spirits" for "wine spirits" in two places.

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, see section 456(c) of Pub. L. 98–369, set out as an

Effective Date note under section 5101 of this title.

§5355. General provisions relating to bonds

The provisions of section 5551 (relating to bonds) shall be applicable to the bonds required under section 5354.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1379.)

PRIOR PROVISIONS

A prior section 5355, act Aug. 16, 1954, ch. 736, 68A Stat. 664, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

§5356. Application

The application required by this part shall disclose, as regulations issued by the Secretary shall provide, such information as may be necessary to enable the Secretary to determine the location and extent of the premises, the type of operations to be conducted on such premises, and whether the operations will be in conformity with law and regulations.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1379; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

PRIOR PROVISIONS

A prior section 5356, act Aug. 16, 1954, ch. 736, 68A Stat. 664, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

§5357. Premises

Bonded wine cellar premises, including noncontiguous portions thereof, shall be so located, constructed, and equipped, as to afford adequate protection to the revenue, as regulations prescribed by the Secretary may provide.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1379; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

PRIOR PROVISIONS

A prior section 5357, act Aug. 16, 1954, ch. 736, 68A Stat. 664, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

PART II—OPERATIONS

Sec.
5361. Bonded wine cellar operations.
5362. Removals of wine from bonded wine cellars.
5363. Taxpaid wine bottling house operations.
5364. Wine imported in bulk.
5365. Segregation of operations.
5366. Supervision.

5367. Records.
5368. Gauging and marking.
5369. Inventories.
5370. Losses.
5371. Insurance coverage, etc.
5372. Sampling.
5373. Wine spirits.

PRIOR PROVISIONS

A prior part II consisted of sections 5361 to 5373 of this title, prior to the general revision of this chapter by Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1313.

AMENDMENTS

1997—Pub. L. 105–34, title XIV, §1422(b), Aug. 5, 1997, 111 Stat. 1050, added item 5364.

1979—Pub. L. 96–39, title VIII, §807(b)(7), July 26, 1979, 93 Stat. 290, struck out item 5364 "Standard wine premises".

1976—Pub. L. 94–455, title XIX, §1905(b)(5), Oct. 4, 1976, 90 Stat. 1822, substituted "and marking" for ", marking, and stamping" in item 5368.

§5361. Bonded wine cellar operations

In addition to the operations described in section 5351, the proprietor of a bonded wine cellar may, subject to regulations prescribed by the Secretary, on such premises receive taxpaid wine for return to bond, reconditioning, or destruction; prepare for market and store commercial fruit products and by-products not taxable as wines; produce or receive distilling material or vinegar stock; produce (with or without added wine spirits, and without added sugar) or receive on wine premises, subject to tax as wine but not for sale or consumption as beverage wine, (1) heavy bodied blending wines and Spanish-type blending sherries, and (2) other wine products made from natural wine for nonbeverage purposes; and such other operations as may be conducted in a manner that will not jeopardize the revenue or conflict with wine operations.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1380; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–39, title VIII, §807(a)(43), July 26, 1979, 93 Stat. 287; Pub. L. 105–34, title XIV, §1416(b)(1), Aug. 5, 1997, 111 Stat. 1048.)

PRIOR PROVISIONS

A prior section 5361, act Aug. 16, 1954, ch. 736, 68A Stat. 664, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1997—Pub. L. 105–34 struck out "unmerchantable" after "premises receive".

1979—Pub. L. 96–39 substituted "or receive on wine premises" for "or receive on standard wine premises only".

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 effective on the 1st day of the 1st calendar quarter that begins at least 180 days after Aug. 5, 1997, see section 1416(c) of Pub. L. 105–34, set out as a note under section 5044 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as a note under section 5001 of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§5362. Removals of wine from bonded wine cellars

(a) Withdrawals on determination of tax

Wine may be withdrawn from bonded wine cellars on payment or determination of the tax thereon, under such regulations as the Secretary shall prescribe.

(b) Transfers of wine between bonded premises

(1) In general

Wine on which the tax has not been paid or determined may, under such regulations as the Secretary shall prescribe, be transferred in bond between bonded premises.

(2) Wine transferred to a distilled spirits plant may not be removed for consumption or sale as wine

Any wine transferred to the bonded premises of a distilled spirits plant—

(A) may be used in the manufacture of a distilled spirits product, and

(B) may not be removed from such bonded premises for consumption or sale as wine.

(3) Continued liability for tax

The liability for tax on wine transferred to the bonded premises of a distilled spirits plant pursuant to paragraph (1) shall (except as otherwise provided by law) continue until the wine is used in a distilled spirits product.

(4) Transfer in bond not treated as removal for consumption or sale

For purposes of this chapter, the removal of wine for transfer in bond between bonded premises shall not be treated as a removal for consumption or sale.

(5) Bonded premises

For purposes of this subsection, the term "bonded premises" means a bonded wine cellar or the bonded premises of a distilled spirits plant.

(c) Withdrawals of wine free of tax or without payment of tax

Wine on which the tax has not been paid or determined may, under such regulations and bonds as the Secretary may deem necessary to protect the revenue, be withdrawn from bonded wine cellars—

(1) without payment of tax for export by the proprietor or by any authorized exporter;

(2) without payment of tax for transfer to any foreign-trade zone;

(3) without payment of tax for use of certain vessels and aircraft as authorized by law;

(4) without payment of tax for transfer to any customs bonded warehouse;

(5) without payment of tax for use in the production of vinegar;

(6) without payment of tax for use in distillation in any distilled spirits plant authorized to produce distilled spirits;

(7) free of tax for experimental or research purposes by any scientific university, college of learning, or institution of scientific research;

(8) free of tax for use by or for the account of the proprietor or his agents for analysis or testing, organoleptic or otherwise; and

(9) free of tax for use by the United States or any agency thereof, and for use for analysis, testing, research, or experimentation by the governments of the several States and the District of Columbia or of any political subdivision thereof or by any agency of such governments. No bond shall be required of any such government or agency under this paragraph.

(d) Withdrawal free of tax of wine and wine products unfit for beverage use

Under such regulations as the Secretary may deem necessary to protect the revenue, wine, or wine products made from wine, when rendered unfit for beverage use, on which the tax has not been paid or determined, may be withdrawn from bonded wine cellars free of tax. The wine or wine products to be so withdrawn may be treated with methods or materials which render such wine or wine products suitable for their intended use. No wine or wine products so withdrawn shall contain more than 21

percent of alcohol by volume, or be used in the compounding of distilled spirits or wine for beverage use or in the manufacture of any product intended to be used in such compounding.

(e) Withdrawal from customs bonded warehouses for use of foreign embassies, legations, etc.

(1) In general

Notwithstanding any other provision of law, wine entered into customs bonded warehouses under subsection (c)(4) may, under such regulations as the Secretary may prescribe, be withdrawn from such warehouses for consumption in the United States by and for the official or family use of such foreign governments, organizations, and individuals who are entitled to withdraw imported wines from such warehouses free of tax. Wines transferred to customs bonded warehouses under subsection (c)(4) shall be entered, stored, and accounted for in such warehouses under such regulations and bonds as the Secretary may prescribe, and may be withdrawn therefrom by such governments, organizations, and individuals free of tax under the same conditions and procedures as imported wines.

(2) Withdrawal for domestic use

Wine entered into customs bonded warehouses under subsection (c)(4) for purposes of removal under paragraph (1) may be withdrawn therefrom for domestic use. Wines so withdrawn shall be treated as American goods exported and returned.

(3) Sale or unauthorized use prohibited

Wine withdrawn from customs bonded warehouses or otherwise brought into the United States free of tax for the official or family use of foreign governments, organizations, or individuals authorized to obtain wine free of tax shall not be sold and shall not be disposed of or possessed for any use other than an authorized use. The provisions of paragraphs (1)(B) and (3) of section 5043(a) are hereby extended and made applicable to any person selling, disposing of, or possessing any wine in violation of the preceding sentence, and to the wine involved in any such violation.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1380; amended Pub. L. 90–73, §1(a), Aug. 29, 1967, 81 Stat. 175; Pub. L. 94–455, title XIX, §§1905(c)(4), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1823, 1834; Pub. L. 96–39, title VIII, §807(a)(44), July 26, 1979, 93 Stat. 287; Pub. L. 96–601, §2(a), (b), Dec. 24, 1980, 94 Stat. 3495.)

PRIOR PROVISIONS

A prior section 5362, act Aug. 16, 1954, ch. 736, 68A Stat. 665, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1980—Subsec. (c)(4). Pub. L. 96–601, §2(a), substituted "customs bonded" for "class 6 customs manufacturing".

Subsec. (e). Pub. L. 96–601, §2(b), added subsec. (e).

1979—Subsec. (b). Pub. L. 96–39 substituted references to bonded premises for references to bonded wine cellars and inserted provisions relating to wine transferred in bond to a distilled spirits plant which may not be removed for consumption or sale as wine, provisions relating to continued liability for tax on wine transferred to bonded premises, and provisions defining "bonded premises".

1976—Subsecs. (a) to (c). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary" wherever appearing.

Subsec. (c)(9). Pub. L. 94–455, §1905(c)(4), struck out "and Territories" after "the several States".

Subsec. (d). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

1967—Subsec. (d). Pub. L. 90–73 added subsec. (d).

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–601, §2(c), Dec. 24, 1980, 94 Stat. 3496, provided that: "The amendments made by this section [amending this section] shall take effect on the first day of the first calendar month which begins more than 90 days after the date of the enactment of this Act [Dec. 24, 1980]."

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as a note under section 5001 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1905(c)(4) of Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1905(d) of Pub. L. 94–455, set out as a note under section 5005 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Pub. L. 90–73, §1(b), Aug. 29, 1967, 81 Stat. 175, provided that: "The amendment made by subsection (a) [amending this section] shall become effective on the first day of the first month which begins 90 days or more after the date of the enactment of this Act [Aug. 29, 1967]."

§5363. Taxpaid wine bottling house operations

In addition to the operations described in section 5352, the proprietor of a taxpaid wine bottling house may, subject to regulations issued by the Secretary, on such premises mix wine of the same kind and taxable grade to facilitate handling; preserve, filter, or clarify wine; and conduct operations not involving wine where such operations will not jeopardize the revenue or conflict with wine operations.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1381; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–39, title VIII, §807(a)(45), July 26, 1979, 93 Stat. 287.)

PRIOR PROVISIONS

A prior section 5363, act Aug. 16, 1954, ch. 736, 68A Stat. 665, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1979—Pub. L. 96–39 struck out provision that this subchapter apply to any wine received on the bottling premises of any distilled spirits plant for bottling, packaging, or repackaging, and to all operations relative thereto and provision that sections 5021, 5081, and 5082, not apply to the mixing or treatment of taxpaid wine under this section.

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as a note under section 5001 of this title.

§5364. Wine imported in bulk

Natural wine (as defined in section 5381) imported or brought into the United States in bulk containers may, under such regulations as the Secretary may prescribe, be withdrawn from customs custody and transferred in such bulk containers to the premises of a bonded wine cellar without payment of the internal revenue tax imposed on such wine. The proprietor of a bonded wine cellar to which such wine is transferred shall become liable for the tax on the wine withdrawn from customs custody under this section upon release of the wine from customs custody, and the importer, or the person bringing such wine into the United States, shall thereupon be relieved of the liability for such tax.

(Added Pub. L. 105–34, title XIV, §1422(a), Aug. 5, 1997, 111 Stat. 1050; amended Pub. L. 105–206, title VI, §6014(b)(3), July 22, 1998, 112 Stat. 820.)

PRIOR PROVISIONS

A prior section 5364, added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1381, limited proprietors of bonded wine cellars or taxpaid wine bottling houses to the production, reception, storage, or use of only

standard wine, prior to repeal by Pub. L. 96–39, title VIII, §§807(a)(46), 810, July 26, 1979, 93 Stat. 287, 292, eff. Jan. 1, 1980.

Another prior section 5364, act Aug. 16, 1954, ch. 736, 68A Stat. 665, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1998—Pub. L. 105–206 substituted "Natural wine (as defined in section 5381) imported or brought into" for "Wine imported or brought into" in first sentence.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE

Pub. L. 105–34, title XIV, §1422(c), Aug. 5, 1997, 111 Stat. 1050, provided that: "The amendments made by this section [enacting this section] shall take effect on the 1st day of the 1st calendar quarter that begins at least 180 days after the date of the enactment of this Act [Aug. 5, 1997]."

§5365. Segregation of operations

The Secretary may require by regulations such segregation of operations within the premises, by partitions or otherwise, as may be necessary to prevent jeopardy to the revenue, to prevent confusion between untaxpaid wine operations and such other operations as are authorized in this subchapter, to prevent substitution with respect to the several methods of producing effervescent wines, and to prevent the commingling of standard wines with other than standard wines.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1381; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–39, title VIII, §807(a)(47), July 26, 1979, 93 Stat. 287.)

PRIOR PROVISIONS

A prior section 5365, act Aug. 16, 1954, ch. 736, 68A Stat. 665, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1979—Pub. L. 96–39 authorized segregation of operations to prevent the commingling of standard wines with other than standard wines.

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as a note under section 5001 of this title.

§5366. Supervision

The Secretary may by regulations require that operations at a bonded wine cellar or taxpaid wine bottling house be supervised by an internal revenue officer where necessary for the protection of the revenue or for the proper enforcement of this subchapter.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1381; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

PRIOR PROVISIONS

A prior section 5366, act Aug. 16, 1954, ch. 736, 68A Stat. 666, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

§5367. Records

The proprietor of a bonded wine cellar or a tax-paid wine bottling house shall keep such records and file such returns, in such form and containing such information, as the Secretary may by regulations provide.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1381; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

PRIOR PROVISIONS

A prior section 5367, act Aug. 16, 1954, ch. 736, 68A Stat. 666, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

§5368. Gauging and marking

(a) Gauging and marking

All wine or wine spirits shall be locked, sealed, and gauged, and shall be marked, branded, labeled, or otherwise identified, in such manner as the Secretary may by regulations prescribe.

(b) Marking

Wines shall be removed in such containers (including vessels, vehicles, and pipelines) bearing such marks and labels evidencing compliance with this chapter, as the Secretary may by regulations prescribe.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1381; amended Pub. L. 94–455, title XIX, §§1905(a)(20), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1820, 1834.)

PRIOR PROVISIONS

A prior section 5368, act Aug. 16, 1954, ch. 736, 68A Stat. 666, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1976—Pub. L. 94–455 substituted "Gauging and marking" for "Gauging, marking, and stamping" in section catchline, substituted "Marking" for "Stamping" in heading for subsec. (b), and, in text of subsec. (b), substituted "marks and labels" for "marks, labels, and stamps" and struck out "or his delegate" after "Secretary" wherever appearing.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1905(a)(20) of Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1905(d) of Pub. L. 94–455, set out as a note under section 5005 of this title.

§5369. Inventories

Each proprietor of premises subject to the provisions of this subchapter shall take and report such inventories as the Secretary may by regulations prescribe.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1381; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

PRIOR PROVISIONS

A prior section 5369, act Aug. 16, 1954, ch. 736, 68A Stat. 666, consisted of provisions similar to those

comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

§5370. Losses

(a) General

No tax shall be collected in respect of any wines lost or destroyed while in bond, except that tax shall be collected—

(1) Theft

In the case of loss by theft, unless the Secretary shall find that the theft occurred without connivance, collusion, fraud, or negligence on the part of the proprietor or other person responsible for the tax, or the owner, consignor, consignee, bailee, or carrier, or the agents or employees of any of them; and

(2) Voluntary destruction

In the case of voluntary destruction, unless the wine was destroyed under Government supervision, or on such adequate notice to, and approval by, the Secretary as regulations shall provide.

(b) Proof of loss

In any case in which the wine is lost or destroyed, whether by theft or otherwise, the Secretary may require by regulations the proprietor of the bonded wine cellar or other person liable for the tax to file a claim for relief from the tax and submit proof as to the cause of such loss. In every case where it appears that the loss was by theft, the burden shall be on the proprietor or other person liable for the tax to establish to the satisfaction of the Secretary, that such loss did not occur as the result of connivance, collusion, fraud, or negligence on the part of the proprietor, owner, consignor, consignee, bailee, or carrier, or the agents or employees of any of them.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1381; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

PRIOR PROVISIONS

A prior section 5370, act Aug. 16, 1954, ch. 736, 68A Stat. 666, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

§5371. Insurance coverage, etc.

Any remission, abatement, refund, or credit of, or other relief from, taxes on wines or wine spirits authorized by law shall be allowed only to the extent that the claimant is not indemnified or recompensed for the tax.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1382.)

PRIOR PROVISIONS

A prior section 5371, act Aug. 16, 1954, ch. 736, 68A Stat. 667, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

§5372. Sampling

Under regulations prescribed by the Secretary, wine may be utilized in any bonded wine cellar for

testing, tasting, or sampling, free of tax.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1382; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

PRIOR PROVISIONS

A prior section 5372, act Aug. 16, 1954, ch. 736, 68A Stat. 667, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

§5373. Wine spirits

(a) In general

The wine spirits authorized to be used in wine production shall be brandy or wine spirits produced in a distilled spirits plant (with or without the use of water to facilitate extraction and distillation) exclusively from—

(1) fresh or dried fruit, or their residues,
(2) the wine or wine residues, therefrom, or
(3) special natural wine under such conditions as the Secretary may by regulations prescribe;

except that where, in the production of natural wine or special natural wine, sugar has been used, the wine or the residuum thereof may not be used if the unfermented sugars therein have been refermented. Such wine spirits shall not be reduced with water from distillation proof, nor be distilled, unless regulations otherwise provide, at less than 140 degrees of proof (except that commercial brandy aged in wood for a period of not less than 2 years, and barreled at not less than 100 degrees of proof, shall be deemed wine spirits for the purpose of this subsection).

(b) Withdrawal of wine spirits

(1) The proprietor of any bonded wine cellar may withdraw and receive wine spirits without payment of tax from the bonded premises of any distilled spirits plant, or from any bonded wine cellar as provided in paragraph (2), for use in the production of natural wine, for addition to concentrated or unconcentrated juice for use in wine production, or for such other uses as may be authorized in this subchapter.

(2) Wine spirits so withdrawn, and not used in wine production or as otherwise authorized in this subchapter, may, as provided by regulations prescribed by the Secretary, be transferred to the bonded premises of any distilled spirits plant or bonded wine cellar, or may be taxpaid and removed as provided by law.

(3) On such use, transfer, or taxpayment, the Secretary shall credit the proprietor with the amount of wine spirits so used or transferred or taxpaid and, in addition, with such portion of wine spirits so withdrawn as may have been lost either in transit or on the bonded wine cellar premises, to the extent allowable under section 5008(a). Where the proprietor has used wine spirits in actual wine production but in violation of the requirements of this subchapter, the Secretary shall also extend such credit to the wine spirits so used if the proprietor satisfactorily shows that such wine spirits were not knowingly used in violation of law.

(4) Suitable samples of brandy or wine spirits may, under regulations prescribed by the Secretary, be withdrawn free of tax from the bonded premises of any distilled spirits plant, bonded wine cellar, or authorized experimental premises, for analysis or testing.

(c) Distillates containing aldehydes

When the Secretary deems such removal and use will not jeopardize the revenue nor unduly increase administrative supervision, distillates containing aldehydes may, under such regulations as the Secretary may prescribe, be removed without payment of tax from the bonded premises of a distilled spirits plant to an adjacent bonded wine cellar and used therein in fermentation of wine to be

used as distilling material at the distilled spirits plant from which such unfinished distilled spirits were removed.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1382; amended Pub. L. 90–619, §1, Oct. 22, 1968, 82 Stat. 1236; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

PRIOR PROVISIONS

A prior section 5373, act Aug. 16, 1954, ch. 736, 68A Stat. 667, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

1968—Subsec. (a). Pub. L. 90–619 inserted special natural wine, under conditions prescribed by regulations, as one of the materials from which wine spirits may be produced and extended to special natural wines the existing prohibition on the use of natural wine whose sugars have been refermented.

EFFECTIVE DATE OF 1968 AMENDMENT

Pub. L. 90–619, §6, Oct. 22, 1968, 82 Stat. 1237, provided that: "The amendments made by this Act [amending this section and sections 5382 to 5387 of this title] shall take effect on the first day of the first month which begins 90 days or more after the date of the enactment of this Act [Oct. 22, 1968]."

PART III—CELLAR TREATMENT AND CLASSIFICATION OF WINE

Sec.

5381. Natural wine.
5382. Cellar treatment of natural wine.
5383. Amelioration and sweetening limitations for natural grape wines.
5384. Amelioration and sweetening limitations for natural fruit and berry wines.
5385. Specially sweetened natural wines.
5386. Special natural wines.
5387. Agricultural wines.
5388. Designation of wines.

PRIOR PROVISIONS

A prior part III consisted of sections 5381 to 5388 of this title, prior to the general revision of this chapter by Pub. L. 85–859, title II, Sept. 2, 1958, 72 Stat. 1313.

§5381. Natural wine

Natural wine is the product of the juice or must of sound, ripe grapes or other sound, ripe fruit, made with such cellar treatment as may be authorized under section 5382 and containing not more than 21 percent by weight of total solids. Any wine conforming to such definition except for having become substandard by reason of its condition shall be deemed not to be natural wine, unless the condition is corrected.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1383; amended Pub. L. 96–39, title VIII, §807(a)(48), July 26, 1979, 93 Stat. 288.)

PRIOR PROVISIONS

A prior section 5381, act Aug. 16, 1954, ch. 736, 68A Stat. 668, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1979—Pub. L. 96–39 struck out provisions authorizing removal for distillation of wine deemed not to be natural wine, destruction of such wine under government supervision, and transfer of such wine to premises in which other than natural wine may be stored or used.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as a note under section 5001 of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§5382. Cellar treatment of natural wine

(a) Proper cellar treatment

(1) In general

Proper cellar treatment of natural wine constitutes—

(A) subject to paragraph (2), those practices and procedures in the United States, whether historical or newly developed, of using various methods and materials to correct or stabilize the wine, or the fruit juice from which it is made, so as to produce a finished product acceptable in good commercial practice in accordance with regulations prescribed by the Secretary; and

(B) subject to paragraph (3), in the case of wine produced and imported subject to an international agreement or treaty, those practices and procedures acceptable to the United States under such agreement or treaty.

(2) Recognition of continuing treatment

For purposes of paragraph (1)(A), where a particular treatment has been used in customary commercial practice in the United States, it shall continue to be recognized as a proper cellar treatment in the absence of regulations prescribed by the Secretary finding such treatment not to be proper cellar treatment within the meaning of this subsection.

(3) Certification of practices and procedures for imported wine

(A) In general

In the case of imported wine produced after December 31, 2004, the Secretary shall accept the practices and procedures used to produce such wine, if, at the time of importation—

(i) the Secretary has on file or is provided with a certification from the government of the producing country, accompanied by an affirmed laboratory analysis, that the practices and procedures used to produce the wine constitute proper cellar treatment under paragraph (1)(A),

(ii) the Secretary has on file or is provided with such certification, if any, as may be required by an international agreement or treaty under paragraph (1)(B), or

(iii) in the case of an importer that owns or controls or that has an affiliate that owns or controls a winery operating under a basic permit issued by the Secretary, the importer certifies that the practices and procedures used to produce the wine constitute proper cellar treatment under paragraph (1)(A).

(B) Affiliate defined

For purposes of this paragraph, the term "affiliate" has the meaning given such term by section 117(a)(4) of the Federal Alcohol Administration Act (27 U.S.C. 211(a)(4)) and includes a winery's parent or subsidiary or any other entity in which the winery's parent or subsidiary has an ownership interest.

(b) Specifically authorized treatments

The practices and procedures specifically enumerated in this subsection shall be deemed proper cellar treatment for natural wine:

(1) The preparation and use of pure concentrated or unconcentrated juice or must. Concentrated juice or must reduced with water to its original density or to not less than 22 degrees Brix or unconcentrated juice or must reduced with water to not less than 22 degrees Brix shall be deemed

to be juice or must, and shall include such amounts of water to clear crushing equipment as regulations prescribed by the Secretary may provide.

(2) The addition to natural wine, or to concentrated or unconcentrated juice or must, from one kind of fruit, of wine spirits (whether or not tax-paid) distilled in the United States from the same kind of fruit; except that (A) the wine, juice, or concentrate shall not have an alcoholic content in excess of 24 percent by volume after the addition of wine spirits, and (B) in the case of still wines, wine spirits may be added in any State only to natural wines produced by fermentation in bonded wine cellars located within the same State.

(3) Amelioration and sweetening of natural grape wines in accordance with section 5383.

(4) Amelioration and sweetening of natural wines from fruits other than grapes in accordance with section 5384.

(5) In the case of effervescent wines, such preparations for refermentation and for dosage as may be acceptable in good commercial practice, but only if the alcoholic content of the finished product does not exceed 14 percent by volume.

(6) The natural darkening of the sugars or other elements in juice, must, or wine due to storage, concentration, heating processes, or natural oxidation.

(7) The blending of natural wines with each other or with heavy-bodied blending wine or with concentrated or unconcentrated juice, whether or not such juice contains wine spirits, if the wines, juice, or wine spirits are from the same kind of fruit.

(8) Such use of acids to correct natural deficiencies and stabilize the wine as may be acceptable in good commercial practice.

(9) The addition—

(A) to natural grape or berry wine of the winemaker's own production, of volatile fruit-flavor concentrate produced from the same kind and variety of grape or berry at a plant qualified under section 5511, or

(B) to natural fruit wine (other than grape or berry) of the winemaker's own production, of volatile fruit-flavor concentrate produced from the same kind of fruit at such a plant,

so long as the proportion of the volatile fruit-flavor concentrate to the wine does not exceed the proportion of the volatile fruit-flavor concentrate to the original juice or must from which it was produced. The transfer of volatile fruit-flavor concentrate from a plant qualified under section 5511 to a bonded wine cellar and its storage and use in such a cellar shall be under such applications and bonds, and under such other requirements, as may be provided in regulations prescribed by the Secretary.

(c) Other authorized treatment

The Secretary may by regulations prescribe limitations on the preparation and use of clarifying, stabilizing, preserving, fermenting, and corrective methods or materials, to the extent that such preparation or use is not acceptable in good commercial practice.

(d) Use of juice or must from which volatile fruit flavor has been removed

For purposes of this part, juice, concentrated juice, or must processed at a plant qualified under section 5511 may be deemed to be pure juice, concentrated juice, or must even though volatile fruit flavor has been removed if, at a plant qualified under section 5511 or at the bonded wine cellar, there is added to such juice, concentrated juice, or must, or (in the case of a bonded wine cellar) to wine of the winemaker's own production made therefrom, either the identical volatile flavor removed or—

(1) in the case of natural grape or berry wine of the winemaker's own production, an equivalent quantity of volatile fruit-flavor concentrate produced at such a plant and derived from the same kind and variety of grape or berry, or

(2) in the case of natural fruit wine (other than grape or berry wine) of the winemaker's own production, an equivalent quantity of volatile fruit-flavor concentrate produced at such a plant and derived from the same kind of fruit.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1383; amended Pub. L. 88–653, §§1, 2, Oct. 13, 1964, 78 Stat. 1085; Pub. L. 89–44, title VIII, §806(c)(1), June 21, 1965, 79 Stat. 164; Pub.

L. 90–619, §2, Oct. 22, 1968, 82 Stat. 1237; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 108–429, title II, §2002(a), Dec. 3, 2004, 118 Stat. 2588; Pub. L. 109–432, div. D, title III, §3007, Dec. 20, 2006, 120 Stat. 3176.)

PRIOR PROVISIONS

A prior section 5382, act Aug. 16, 1954, ch. 736, 68A Stat. 668, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

2006—Subsec. (a)(1)(A). Pub. L. 109–432 substituted "correct or stabilize" for "stabilize".

2004—Subsec. (a). Pub. L. 108–429 amended heading and text of subsec. (a) generally. Prior to amendment text read as follows: "Proper cellar treatment of natural wine constitutes those practices and procedures in the United States and elsewhere, whether historical or newly developed, of using various methods and materials to correct or stabilize the wine, or the fruit juice from which it is made, so as to produce a finished product acceptable in good commercial practice. Where a particular treatment has been used in customary commercial practice, it shall continue to be recognized as a proper cellar treatment in the absence of regulations prescribed by the Secretary finding such treatment not to be a proper cellar treatment within the meaning of this subsection."

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

1968—Subsec. (b)(2)(B). Pub. L. 90–619 permitted wine spirits to be added to natural wine produced by fermentation in any bonded wine cellars located within the same State in which the addition is to take place.

1965—Subsec. (b)(2). Pub. L. 89–44 struck out "made without added sugar or reserved as provided in sections 5383(b) and 5384(b)" after "winemaker's own production".

1964—Subsec. (b)(9). Pub. L. 88–653, §1, added par. (9).

Subsec. (d). Pub. L. 88–653, §2, added subsec. (d).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–429, title II, §2002(b), Dec. 3, 2004, 118 Stat. 2589, provided that: "The amendment made by this section [amending this section] shall take effect on January 1, 2005."

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–619 effective on first day of first month which begins 90 days or more after Oct. 22, 1968, see section 6 of Pub. L. 90–619, set out as a note under section 5373 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 effective Jan. 1, 1966, see section 806(d)(2) of Pub. L. 89–44, set out as a note under section 5383 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88–653, §4, Oct. 13, 1964, 78 Stat. 1085, provided that: "The amendments made by the first section [amending this section] and sections 2 and 3 of this Act [amending this section and section 5511 of this title] shall take effect on the first day of the second month which begins more than 10 days after the date on which this Act is enacted [Oct. 13, 1964]."

§5383. Amelioration and sweetening limitations for natural grape wines

(a) Sweetening of grape wines

Any natural grape wine may be sweetened after fermentation and before taxpayment with pure dry sugar or liquid sugar if the total solids content of the finished wine does not exceed 12 percent of the weight of the wine and the alcoholic content of the finished wine after sweetening is not more than 14 percent by volume; except that the use under this subsection of liquid sugar shall be limited so that the resultant volume will not exceed the volume which could result from the maximum authorized use of pure dry sugar only.

(b) High acid wines

(1) Amelioration

Before, during, and after fermentation, ameliorating materials consisting of pure dry sugar or liquid sugar, water, or a combination of sugar and water, may be added to natural grape wines of a winemaker's own production when such wines are made from juice having a natural fixed acid content of more than five parts per thousand (calculated before fermentation and as tartaric acid). Ameliorating material so added shall not reduce the natural fixed acid content of the juice to less than five parts per thousand, nor exceed 35 percent of the volume of juice (calculated exclusive of pulp) and ameliorating material combined.

(2) Sweetening

Any wine produced under this subsection may be sweetened by the producer thereof, after amelioration and fermentation, with pure dry sugar or liquid sugar if the total solids content of the finished wine does not exceed (A) 17 percent by weight if the alcoholic content is more than 14 percent by volume, or (B) 21 percent by weight if the alcoholic content is not more than 14 percent by volume. The use under this paragraph of liquid sugar shall be limited to cases where the resultant volume does not exceed the volume which could result from the maximum authorized use of pure dry sugar only.

(3) Wine spirits

Wine spirits may be added (whether or not wine spirits were previously added) to wine produced under this subsection only if the wine contains not more than 14 percent of alcohol by volume derived from fermentation.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1384; amended Pub. L. 89–44, title VIII, §806(b)(1), June 21, 1965, 79 Stat. 162; Pub. L. 90–619, §3, Oct. 22, 1968, 82 Stat. 1237.)

PRIOR PROVISIONS

A prior section 5383, act Aug. 16, 1954, ch. 736, 68A Stat. 669, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1968—Subsec. (a). Pub. L. 90–619, §3(b), substituted "not more than 14 percent" for "less than 14 percent".

Subsec. (b). Pub. L. 90–619, §3(a), simplified production procedures and calculations, provided that the limitation on sweetening high acid wine is to be based upon the total solids content of the finished wine, authorized the use of liquid sugar but only to the extent that it did not increase the total volume of the finished wine above what it would be if the maximum authorized use had been made of dry sugar only, and inserted provisions making it clear that wine spirits may be added at more than one stage in the process of wine production.

1965—Pub. L. 89–44 divided subsec. (b) relating to high acid wines into pars. (1) and (2) and par. (2) into subpars. (A) to (E), struck out reserve inventory requirement with respect to the amelioration and sweetening of wines, authorized use of other than pure, dry sugar, and allowed limited use of liquid sugar at appropriate points where use of pure dry sugar had formerly been prescribed.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–619 effective on first day of first month which begins 90 days or more after Oct. 22, 1968, see section 6 of Pub. L. 90–619, set out as a note under section 5373 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Pub. L. 89–44, title VIII, §806(d)(2), June 21, 1965, 79 Stat. 164, provided that: "The amendments made by subsections (b) and (c) [amending this section and sections 5382, 5384, 5385, and 5392] shall take effect on January 1, 1966."

§5384. Amelioration and sweetening limitations for natural fruit and berry wines

(a) In general

To natural wine made from berries or fruit other than grapes, pure dry sugar or liquid sugar may be added to the juice in the fermenter, or to the wine after fermentation; but only if such wine has not more than 14 percent alcohol by volume after complete fermentation, or after complete fermentation

and sweetening, and a total solids content not in excess of 21 percent by weight; and except that the use under this subsection of liquid sugar shall be limited so that the resultant volume will not exceed the volume which could result from the maximum authorized use of pure dry sugar only.

(b) Ameliorated fruit and berry wines

(1) Any natural fruit or berry wine (other than grape wine) of a winemaker's own production may, if not made under subsection (a) of this section, be ameliorated to correct high acid content. Ameliorating material calculations and accounting shall be separate for wines made from each different kind of fruit.

(2) Pure dry sugar or liquid sugar may be used in the production of wines under this subsection for the purpose of correcting natural deficiencies, but not to such an extent as would reduce the natural fixed acid in the corrected juice or wine to five parts per thousand. The quantity of sugar so used shall not exceed the quantity which would have been required to adjust the juice, prior to fermentation, to a total solids content of 25 degrees (Brix). Such sugar shall be added prior to the completion of fermentation of the wine. After such addition of the sugar, the wine or juice shall be treated and accounted for as provided in section 5383(b), covering the production of high acid grape wines, except that—

(A) Natural fixed acid shall be calculated as malic acid for apple wine and as citric acid for other fruit and berry wines, instead of tartaric acid;

(B) Juice adjusted with pure dry sugar or liquid sugar as provided in this paragraph shall be treated in the same manner as original natural juice under the provisions of section 5383(b); except that if liquid sugar is used, the volume of water contained therein must be deducted from the volume of ameliorating material authorized;

(C) Wines made under this subsection shall have a total solids content of not more than 21 percent by weight, whether or not wine spirits have been added; and

(D) Wines made exclusively from any fruit or berry with a natural fixed acid of 20 parts per thousand or more (before any correction of such fruit or berry) shall be entitled to a volume of ameliorating material not in excess of 60 percent (in lieu of 35 percent).

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1385; amended Pub. L. 89–44, title VIII, §806(b)(2), (c)(2), (3), June 21, 1965, 79 Stat. 163, 164; Pub. L. 90–619, §3(b), Oct. 22, 1968, 82 Stat. 1237; Pub. L. 105–34, title XIV, §1417(a), Aug. 5, 1997, 111 Stat. 1048.)

PRIOR PROVISIONS

A prior section 5384, act Aug. 16, 1954, ch. 736, 68A Stat. 670, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1997—Subsec. (b)(2)(D). Pub. L. 105–34 substituted "any fruit or berry with a natural fixed acid of 20 parts per thousand or more (before any correction of such fruit or berry)" for "loganberries, currants, or gooseberries,".

1968—Subsec. (a). Pub. L. 90–619 substituted "not more than 14 percent" for "less than 14 percent".

1965—Subsec. (a). Pub. L. 89–44, §806(b)(2)(A), authorized addition of liquid sugar provided resultant volume will not exceed volume which could result from maximum authorized use of pure dry sugar only.

Subsec. (b). Pub. L. 89–44, §806(c)(3), substituted "Ameliorated" for "Reserve" in heading.

Subsec. (b)(1). Pub. L. 89–44, §806(b)(2)(B), struck out references to reserves and reserve inventories.

Subsec. (b)(2). Pub. L. 89–44, §806(b)(2)(C), amended first sentence by authorizing use of liquid sugar but limiting use of any sugar if it reduced natural fixed acid in corrected juice or wine to five parts per thousand.

Pub. L. 89–44, §806(c)(2), struck out "reserved" after "covering the production of" in fourth sentence.

Subsec. (b)(2)(B). Pub. L. 89–44, §806(b)(2)(D), required that, if liquid sugar is used, the volume of water contained therein be deducted from the volume of ameliorating material authorized.

Subsec. (b)(2)(C). Pub. L. 89–44, §806(b)(2)(E), substituted "shall have" for "may be withdrawn from reserve inventory with".

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XIV, §1417(b), Aug. 5, 1997, 111 Stat. 1048, provided that: "The amendment made by this section [amending this section] shall take effect on the 1st day of the 1st calendar quarter that begins at

least 180 days after the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–619 effective on first day of first month which begins 90 days or more after Oct. 22, 1968, see section 6 of Pub. L. 90–619, set out as a note under section 5373 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 effective Jan. 1, 1966, see section 806(d)(2) of Pub. L. 89–44, set out as a note under section 5383 of this title.

§5385. Specially sweetened natural wines

(a) Definition

Specially sweetened natural wine is the product made by adding to natural wine of the winemaker's own production a sufficient quantity of pure dry sugar, or juice or concentrated juice from the same kind of fruit, separately or in combination, to produce a finished product having a total solids content in excess of 17 percent by weight and an alcoholic content of not more than 14 percent by volume, and shall include extra sweet kosher wine and similarly heavily sweetened wines.

(b) Cellar treatment

Specially sweetened natural wines may be blended with each other, or with natural wine or heavy bodied blending wine in the further production of specially sweetened natural wine only, if the wines so blended are made from the same kind of fruit. Wines produced under this section may be cellar treated under the provisions of section 5382(a) and (c). Wine spirits may not be added to specially sweetened natural wine.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1386; amended Pub. L. 89–44, title VIII, §806(c)(4), June 21, 1965, 79 Stat. 164; Pub. L. 90–619, §§3(b), 4, Oct. 22, 1968, 82 Stat. 1237.)

PRIOR PROVISIONS

A prior section 5385, act Aug. 16, 1954, ch. 736, 68A Stat. 671, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1968—Subsec. (a). Pub. L. 90–619, §3(b), substituted "not more than 14 percent" for "less than 14 percent".

Subsec. (b). Pub. L. 90–619, §4, authorized cellar treatment of specially sweetened natural wines, special natural wines, and agricultural wines.

1965—Subsec. (a). Pub. L. 89–44 substituted "total solids content in excess of 17" for "sugar solids content in excess of 15".

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–619 effective on first day of first month which begins 90 days or more after Oct. 22, 1968, see section 6 of Pub. L. 90–619, set out as a note under section 5373 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 effective Jan. 1, 1966, see section 806(d)(2) of Pub. L. 89–44, set out as a note under section 5383 of this title.

§5386. Special natural wines

(a) In general

Special natural wines are the products made, pursuant to a formula approved under this section, from a base of natural wine (including heavy-bodied blending wine) exclusively, with the addition, before, during or after fermentation, of natural herbs, spices, fruit juices, aromatics, essences, and other natural flavorings in such quantities or proportions as to enable such products to be

distinguished from any natural wine not so treated, and with or without carbon dioxide naturally or artificially added, and with or without the addition, separately or in combination, of pure dry sugar or a solution of pure dry sugar and water, or caramel. No added wine spirits or alcohol or other spirits shall be used in any wine under this section except as may be contained in the natural wine (including heavy-bodied blending wine) used as a base or except as may be necessary in the production of approved essences or similar approved flavorings. The Brix degree of any solution of pure dry sugar and water used may be limited by regulations prescribed by the Secretary in accordance with good commercial practice.

(b) Cellar treatment

Special natural wines may be cellar treated under the provisions of section 5382(a) and (c).

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1386; amended Pub. L. 90–619, §5, Oct. 22, 1968, 82 Stat. 1237; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

PRIOR PROVISIONS

A prior section 5386, act Aug. 16, 1954, ch. 736, 68A Stat. 671, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.
1968—Subsec. (b). Pub. L. 90–619 inserted reference to subsec. (a) of section 5382.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–619 effective on first day of first month which begins 90 days or more after Oct. 22, 1968, see section 6 of Pub. L. 90–619, set out as a note under section 5373 of this title.

§5387. Agricultural wines

(a) In general

Wines made from agricultural products other than the juice of fruit shall be made in accordance with good commercial practice as may be prescribed by the Secretary by regulations. Wines made in accordance with such regulations shall be classed as "standard agricultural wines". Wines made under this section may be cellar treated under the provisions of section 5382(a) and (c).

(b) Limitations

No wine spirits may be added to wines produced under this section, nor shall any coloring material or herbs or other flavoring material (except hops in the case of honey wine) be used in their production.

(c) Restriction on blending

Wines from different agricultural commodities shall not be blended together.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1386; amended Pub. L. 90–619, §5, Oct. 22, 1968, 82 Stat. 1237; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

PRIOR PROVISIONS

A prior section 5387, act Aug. 16, 1954, ch. 736, 68A Stat. 671, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.
1968—Subsec. (a). Pub. L. 90–619 inserted reference to subsec. (a) of section 5382.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–619 effective on first day of first month which begins 90 days or more after Oct.

22, 1968, see section 6 of Pub. L. 90–619, set out as a note under section 5373 of this title.

§5388. Designation of wines

(a) Standard wines

Standard wines may be removed from premises subject to the provisions of this subchapter and be marked, transported, and sold under their proper designation as to kind and origin, or, if there is no such designation known to the trade or consumers, then under a truthful and adequate statement of composition.

(b) Other wines

Wines other than standard wines may be removed for consumption or sale and be marked, transported, or sold only under such designation as to kind and origin as adequately describes the true composition of such products and as adequately distinguish them from standard wines, as regulations prescribed by the Secretary shall provide.

(c) Use of semi-generic designations

(1) In general

Semi-generic designations may be used to designate wines of an origin other than that indicated by such name only if—

(A) there appears in direct conjunction therewith an appropriate appellation of origin disclosing the true place of origin of the wine, and

(B) the wine so designated conforms to the standard of identity, if any, for such wine contained in the regulations under this section or, if there is no such standard, to the trade understanding of such class or type.

(2) Determination of whether name is semi-generic

(A) In general

Except as provided in subparagraph (B), a name of geographic significance, which is also the designation of a class or type of wine, shall be deemed to have become semi-generic only if so found by the Secretary.

(B) Certain names treated as semi-generic

The following names shall be treated as semi-generic: Angelica, Burgundy, Claret, Chablis, Champagne, Chianti, Malaga, Marsala, Madeira, Moselle, Port, Rhine Wine or Hock, Sauterne, Haut Sauterne, Sherry, Tokay.

(3) Special rule for use of certain semi-generic designations

(A) In general

In the case of any wine to which this paragraph applies—

(i) paragraph (1) shall not apply,

(ii) in the case of wine of the European Community, designations referred to in subparagraph (C)(i) may be used for such wine only if the requirement of subparagraph (B)(ii) is met, and

(iii) in the case any other wine bearing a brand name, or brand name and fanciful name, semi-generic designations may be used for such wine only if the requirements of clauses (i), (ii), and (iii) of subparagraph (B) are met.

(B) Requirements

(i) The requirement of this clause is met if there appears in direct conjunction with the semi-generic designation an appropriate appellation of origin disclosing the origin of the wine.

(ii) The requirement of this clause is met if the wine conforms to the standard of identity, if any, for such wine contained in the regulations under this section or, if there is no such standard, to the trade understanding of such class or type.

(iii) The requirement of this clause is met if the person, or its successor in interest, using the semi-generic designation held a Certificate of Label Approval or Certificate of Exemption from Label Approval issued by the Secretary for a wine label bearing such brand name, or brand name and fanciful name, before March 10, 2006, on which such semi-generic designation appeared.

(C) Wines to which paragraph applies

(i) In general

Except as provided in clause (ii), this paragraph shall apply to any grape wine which is designated as Burgundy, Claret, Chablis, Champagne, Chianti, Malaga, Marsala, Madeira, Moselle, Port, Retsina, Rhine Wine or Hock, Sauterne, Haut Sauterne, Sherry, or Tokay.

(ii) Exception

This paragraph shall not apply to wine which—

(I) contains less than 7 percent or more than 24 percent alcohol by volume,

(II) is intended for sale outside the United States, or

(III) does not bear a brand name.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1387; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 105–34, title IX, §910(a), Aug. 5, 1997, 111 Stat. 877; Pub. L. 109–432, div. A, title IV, §422(a), Dec. 20, 2006, 120 Stat. 2972.)

PRIOR PROVISIONS

A prior section 5388, act Aug. 16, 1954, ch. 736, 68A Stat. 672, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

2006—Subsec. (c)(3). Pub. L. 109–432 added par. (3).

1997—Subsec. (c). Pub. L. 105–34 added subsec. (c).

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title IV, §422(b), Dec. 20, 2006, 120 Stat. 2973, provided that: "The amendments made by this section [amending this section] shall apply to wine imported or bottled in the United States on or after the date of enactment of this Act [Dec. 20, 2006]."

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title IX, §910(b), Aug. 5, 1997, 111 Stat. 877, provided that: "The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Aug. 5, 1997]."

PART IV—GENERAL

Sec.

5391. Exemption from distilled spirits taxes.

5392. Definitions.

PRIOR PROVISIONS

A prior part IV consisted of sections 5391 and 5392 of this title, prior to the general revision of this chapter by Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1313.

AMENDMENTS

1979—Pub. L. 96–39, title VIII, §807(b)(8), July 26, 1979, 93 Stat. 290, substituted "Exemption from distilled spirits taxes" for "Exemption from rectifying and spirits taxes" in item 5391.

§5391. Exemption from distilled spirits taxes

Notwithstanding any other provision of law, the tax imposed by section 5001 on distilled spirits shall not, except as provided in this subchapter, be assessed, levied, or collected from the proprietor of any bonded wine cellar with respect to his use of wine spirits in wine production, in such premises; except that, whenever wine or wine spirits are used in violation of this subchapter, the applicable tax imposed by section 5001 shall be collected unless the proprietor satisfactorily shows that such wine or wine spirits were not knowingly used in violation of law.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1387; amended Pub. L. 96–39, title VIII, §807(a)(49), July 26, 1979, 93 Stat. 288.)

PRIOR PROVISIONS

A prior section 5391, act Aug. 16, 1954, ch. 736, 68A Stat. 672, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1979—Pub. L. 96–39 substituted "distilled" for "rectifying and" in section catchline and struck out provisions relating to exemption from taxes imposed on rectified spirits and wines and the status of any proprietor of a bonded wine cellar as a rectifier of such spirits in text.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as a note under section 5001 of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§5392. Definitions

(a) Standard wine

For purposes of this subchapter the term "standard wine" means natural wine, specially sweetened natural wine, special natural wine, and standard agricultural wine, produced in accordance with the provisions of sections 5381, 5385, 5386, and 5387, respectively.

(b) Heavy bodied blending wine

For purposes of this subchapter the term "heavy bodied blending wine" means wine made from fruit without added sugar, and with or without added wine spirits, and conforming to the definition of natural wine in all respects except as to maximum total solids content.

(c) Pure sugar

For purposes of this subchapter the term "pure sugar" means pure refined sugar, suitable for human consumption, having a dextrose equivalent of not less than 95 percent on a dry basis, and produced from cane, beets, or fruit, or from grain or other sources of starch. Invert sugar syrup produced from such pure sugar by recognized methods of inversion may be used to prepare any sugar syrup, or solution of water and pure sugar, authorized in this subchapter.

(d) Total solids

For purposes of this subchapter the term "total solids", in the case of wine, means the degrees Brix of the dealcoholized wine.

(e) Same kind of fruit

For purposes of this subchapter the term "same kind of fruit" includes, in the case of grapes, all of the several species and varieties of grapes. In the case of fruits other than grapes, this term includes all of the several species and varieties of any given kind; except that this shall not preclude a more precise identification of the composition of the product for the purpose of its designation.

(f) Own production

For purposes of this subchapter the term "own production", when used with reference to wine in a bonded wine cellar, means wine produced by fermentation in the same bonded wine cellar, whether or not produced by a predecessor in interest at such bonded wine cellar. This term may also include, under regulations, wine produced by fermentation in bonded wine cellars owned or controlled by the same or affiliated persons or firms when located within the same State; the term "affiliated" shall be deemed to include any one or more bonded wine cellar proprietors associated as members of any farm cooperative, or any one or more bonded wine cellar proprietors affiliated within the meaning of section 17(a)(5) of the Federal Alcohol Administration Act, as amended (27 U.S.C. 211).[1]

(g) Liquid sugar

For purposes of this subchapter the term "liquid sugar" means a substantially colorless pure sugar and water solution containing not less than 60 percent pure sugar by weight (60 degrees Brix.)

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1387; amended Pub. L. 89–44, title VIII, §806(b)(3), June 21, 1965, 79 Stat. 163; Pub. L. 94–455, title XIX, §1905(a)(21), Oct. 4, 1976, 90 Stat. 1820.)

REFERENCES IN TEXT

Section 17(a)(5) of the Federal Alcohol Administration Act, as amended (27 U.S.C. 211), referred to in subsec. (f), was renumbered section 117(a)(5) of the Federal Alcohol Administration Act by Pub. L. 100–690, title VIII, §8001(a)(2), Nov. 18, 1988, 102 Stat. 4517, and is classified to section 211(a)(5) of Title 27, Intoxicating Liquors.

PRIOR PROVISIONS

A prior section 5392, act Aug. 16, 1954, ch. 736, 68A Stat. 672, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1976—Subsec. (f). Pub. L. 94–455 struck out "49 Stat. 990;" before "27 U.S.C. 211".

1965—Subsec. (c). Pub. L. 89–44, §806(b)(3)(A), added fruit, grain, or other sources of starch to cane and beets as sources of "pure sugar".

Subsec. (g). Pub. L. 89–44, §806(b)(3)(B), added subsec. (g).

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1905(d) of Pub. L. 94–455, set out as a note under section 5005 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 effective Jan. 1, 1966, see section 806(d)(2) of Pub. L. 89–44, set out as a note under section 5383 of this title.

[1] *See References in Text note below.*

Subchapter G—Breweries

Part

I. Establishment.

II. Operations.

PRIOR PROVISIONS

A prior subchapter G consisted of parts I and II, contained sections 5401 to 5403 and 5411 to 5416, respectively, prior to the general revision of this chapter by Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1313.

PART I—ESTABLISHMENT

Sec.
5401. Qualifying documents.
5402. Definitions.
5403. Cross references.

PRIOR PROVISIONS

A prior part I consisted of sections 5401 to 5403 of this title, prior to the general revision of this chapter by Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1313.

§5401. Qualifying documents

(a) Notice

Every brewer shall, before commencing or continuing business, file with the officer designated for that purpose by the Secretary a notice in writing, in such form and containing such information as the Secretary shall by regulations prescribe as necessary to protect and insure collection of the revenue.

(b) Bonds

Every brewer, on filing notice as provided by subsection (a) of his intention to commence business, shall execute a bond to the United States in such reasonable penal sum as the Secretary shall by regulation prescribe as necessary to protect and insure collection of the revenue. The bond shall be conditioned (1) that the brewer shall pay, or cause to be paid, as herein provided, the tax required by law on all beer, including all beer removed for transfer to the brewery from other breweries owned by him as provided in section 5414; (2) that he shall pay or cause to be paid the tax on all beer removed free of tax for export as provided in section 5053(a), which beer is not exported or returned to the brewery; and (3) that he shall in all respects faithfully comply, without fraud or evasion, with all requirements of law relating to the production and sale of any beer aforesaid. Once in every 4 years, or whenever required so to do by the Secretary, the brewer shall execute a new bond or a continuation certificate, in the penal sum prescribed in pursuance of this section, and conditioned as above provided, which bond or continuation certificate shall be in lieu of any former bond or bonds, or former continuation certificate or certificates, of such brewer in respect to all liabilities accruing after its approval. If the contract of surety between the brewer and the surety on an expiring bond or continuation certificate is continued in force between the parties for a succeeding period of not less than 4 years, the brewer may submit, in lieu of a new bond, a certificate executed, under penalties of perjury, by the brewer and the surety attesting to continuation of the bond, which certificate shall constitute a bond subject to all provisions of law applicable to bonds given pursuant to this section.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1388; amended Pub. L. 91–673, §3(a), Jan. 12, 1971, 84 Stat. 2056; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

PRIOR PROVISIONS

A prior section 5401, act Aug. 16, 1954, ch. 736, 68A Stat. 674, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

1971—Subsec. (b). Pub. L. 91–673 permitted bonding requirement to be satisfied by continuation of an existing bond, with such continuation being subject to Government approval in the same manner as a new bond and required that the continuation certificate be executed by both the brewer and the surety, under penalties of perjury.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 91–673 effective on first day of first calendar month which begins more than 90 days after Jan. 12, 1971, see section 5 of Pub. L. 91–673, set out as a note under section 5056 of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§5402. Definitions

(a) Brewery

The brewery shall consist of the land and buildings described in the brewer's notice. The continuity of the brewery must be unbroken except where separated by public passageways, streets, highways, waterways, or carrier rights-of-way, or partitions; and if parts of the brewery are so separated they must abut on the dividing medium and be adjacent to each other. Notwithstanding the preceding sentence, facilities under the control of the brewer for case packing, loading, or storing which are located within reasonable proximity to the brewery packaging facilities may be approved by the Secretary as a part of the brewery if the revenue will not be jeopardized thereby.

(b) Brewer

For definition of brewer, see section 5052(d).

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1389; amended Pub. L. 91–673, §3(b), Jan. 12, 1971, 84 Stat. 2057; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 109–59, title XI, §11125(b)(17), Aug. 10, 2005, 119 Stat. 1956.)

PRIOR PROVISIONS

A prior section 5402, act Aug. 16, 1954, ch. 736, 68A Stat. 674, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

2005—Subsec. (b). Pub. L. 109–59 substituted "section 5052(d)" for "section 5092".

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

1971—Subsec. (a). Pub. L. 91–673 inserted proviso to definition of "Brewery" that the continuity of the brewery must be unbroken except where separated by public passageways, streets, highways, waterways, or carrier rights-of-way, or partitions, with the exception that the Secretary approve facilities under the control of the brewer for case packing, loading, or storing, which are located within reasonable proximity to the brewery as a part of the brewery if the revenue will not be jeopardized thereby.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–59 effective July 1, 2008, but inapplicable to taxes imposed for periods before such date, see section 11125(c) of Pub. L. 109–59, set out as a note under section 5002 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 91–673 effective on first day of first calendar month which begins more than 90 days after Jan. 12, 1971, see section 5 of Pub. L. 91–673, set out as a note under section 5056 of this title.

§5403. Cross references

(1) For authority of Secretary to disapprove brewers' bonds, see section 5551.

(2) For authority of Secretary to require the installation and use of meters, tanks, and other apparatus, see section 5552.

(3) For deposit of United States bonds or notes in lieu of sureties, see section 9303 of title 31, United States Code.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1389; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–258, §3(f)(3), Sept. 13, 1982, 96 Stat. 1064.)

PRIOR PROVISIONS

A prior section 5403, act Aug. 16, 1954, ch. 736, 68A Stat. 674, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1982—Par. (3). Pub. L. 97–258 substituted "section 9303 of title 31, United States Code" for "6 U.S.C. 15".

1976—Par. (1). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

PART II—OPERATIONS

Sec.

5411. Use of brewery.

5412. Removal of beer in containers or by pipeline.

5413. Brewers procuring beer from other brewers.

5414. Removals from one brewery to another belonging to the same brewer.

5415. Records and returns.

5416. Definitions of package and packaging.

5417. Pilot brewing plants.

5418. Beer imported in bulk.

PRIOR PROVISIONS

A prior part II consisted of sections 5411 to 5416, prior to the general revision of this chapter by Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1313.

AMENDMENTS

1997—Pub. L. 105–34, title XIV, §1421(b), Aug. 5, 1997, 111 Stat. 1049, added item 5418.

1971—Pub. L. 91–673, §4(b), Jan. 12, 1971, 84 Stat. 2058, substituted "Definitions of package and packaging" for "Definitions of bottle and bottling" in item 5416 and added item 5417.

§5411. Use of brewery

The brewery shall be used under regulations prescribed by the Secretary only for the purpose of producing, packaging, and storing beer, cereal beverages containing less than one-half of 1 percent of alcohol by volume, vitamins, ice, malt, malt sirup, and other byproducts and of soft drinks; for the purpose of processing spent grain, carbon dioxide, and yeast; and for such other purposes as the Secretary by regulation may find will not jeopardize the revenue.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1389; amended Pub. L. 91–673, §3(c), Jan. 12, 1971, 84 Stat. 2057; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

PRIOR PROVISIONS

A prior section 5411, act Aug. 16, 1954, ch. 736, 68A Stat. 675, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

1971—Pub. L. 91–673 struck out requirement of separate facilities for bottling of beer and cereal beverages and permitted use of brewery for packaging and storing beer and other cereal beverages.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 91–673 effective on first day of first calendar month which begins more than 90 days after Jan. 12, 1971, see section 5 of Pub. L. 91–673, set out as a note under section 5056 of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§5412. Removal of beer in containers or by pipeline

Beer may be removed from the brewery for consumption or sale only in hogsheads, packages, and similar containers, marked, branded, or labeled in such manner as the Secretary may by regulation require, except that beer may be removed from the brewery by pipeline to contiguous distilled spirits plants under section 5222.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1389; amended Pub. L. 91–673, §3(d), Jan. 12, 1971, 84 Stat. 2057; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

PRIOR PROVISIONS

A prior section 5412, act Aug. 16, 1954, ch. 736, 68A Stat. 675, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".
1971—Pub. L. 91–673 substituted "packages," for "barrels, kegs, bottles,".

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 91–673 effective on first day of first calendar month which begins more than 90 days after Jan. 12, 1971, see section 5 of Pub. L. 91–673, set out as a note under section 5056 of this title.

§5413. Brewers procuring beer from other brewers

A brewer, under such regulations as the Secretary shall prescribe, may obtain beer in his own hogsheads, barrels, and kegs, marked with his name and address, from another brewer, with taxpayment thereof to be by the producer in the manner prescribed by section 5054.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1389; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

PRIOR PROVISIONS

A prior section 5413, act Aug. 16, 1954, ch. 736, 68A Stat. 675, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

§5414. Removals from one brewery to another belonging to the same brewer

Beer may be removed from one brewery to another brewery belonging to the same brewer, without payment of tax, and may be mingled with beer at the receiving brewery, subject to such conditions, including payment of the tax, and in such containers, as the Secretary by regulations shall prescribe. The removal from one brewery to another brewery belonging to the same brewer shall be deemed to include any removal from a brewery owned by one corporation to a brewery owned by another corporation when (1) one such corporation owns the controlling interest in the other such corporation, or (2) the controlling interest in each such corporation is owned by the same person or persons.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1389; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

PRIOR PROVISIONS

A prior section 5414, act Aug. 16, 1954, ch. 736, 68A Stat. 675, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

§5415. Records and returns

(a) Records

Every brewer shall keep records, in such form and containing such information as the Secretary shall prescribe by regulations as necessary for protection of the revenue. These records shall be preserved by the person required to keep such records for such period as the Secretary shall by regulations prescribe, and shall be available during business hours for examination and taking of abstracts therefrom by any internal revenue officer.

(b) Returns

Every brewer shall make true and accurate returns of his operations and transactions in the form, at the times, and for such periods as the Secretary shall by regulation prescribe.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1390; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

PRIOR PROVISIONS

A prior section 5415, act Aug. 16, 1954, ch. 736, 68A Stat. 675, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1976—Subsecs. (a), (b). Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

§5416. Definitions of package and packaging

For purposes of this subchapter, the term "package" means a bottle, can, keg, barrel, or other original consumer container, and the term "packaging" means the filling of any package.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1390; amended Pub. L. 91–673, §3(e), Jan. 12, 1971, 84 Stat. 2057.)

PRIOR PROVISIONS

A prior section 5416, act Aug. 16, 1954, ch. 736, 68A Stat. 676, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1971—Pub. L. 91–673 substituted definitions of package and packaging for definitions of bottle and bottling.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 91–673 effective on first day of first calendar month which begins more than 90 days after Jan. 12, 1971, see section 5 of Pub. L. 91–673, set out as a note under section 5056 of this title.

§5417. Pilot brewing plants

Under such regulations as the Secretary may prescribe, and on the filing of such bonds and applications as he may require, pilot brewing plants may, at the discretion of the Secretary be established and operated off the brewery premises for research, analytical, experimental, or development purposes with regard to beer or brewery operations. Nothing in this section shall be construed as authority to waive the filing of any bond or the payment of any tax provided for in this chapter.

(Added Pub. L. 91–673, §4(a), Jan. 12, 1971, 84 Stat. 2057; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

EFFECTIVE DATE

Section effective on first day of first calendar month which begins more than 90 days after Jan. 12, 1971, see section 5 of Pub. L. 91–673, set out as an Effective Date of 1971 Amendment note under section 5056 of this title.

§5418. Beer imported in bulk

Beer imported or brought into the United States in bulk containers may, under such regulations as the Secretary may prescribe, be withdrawn from customs custody and transferred in such bulk containers to the premises of a brewery without payment of the internal revenue tax imposed on such beer. The proprietor of a brewery to which such beer is transferred shall become liable for the tax on the beer withdrawn from customs custody under this section upon release of the beer from customs custody, and the importer, or the person bringing such beer into the United States, shall thereupon be relieved of the liability for such tax.

(Added Pub. L. 105–34, title XIV, §1421(a), Aug. 5, 1997, 111 Stat. 1049.)

EFFECTIVE DATE

Pub. L. 105–34, title XIV, §1421(c), Aug. 5, 1997, 111 Stat. 1049, provided that: "The amendments made by this section [enacting this section] shall take effect on the 1st day of the 1st calendar quarter that begins at least 180 days after the date of the enactment of this Act [Aug. 5, 1997]."

Subchapter H—Miscellaneous Plants and Warehouses

Part

I. Vinegar plants.

II. Volatile fruit-flavor concentrate plants.

[III. Repealed.]

PRIOR PROVISIONS

A prior subchapter H consisted of parts I to III, prior to the general revision of this chapter by Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1313.

AMENDMENTS

1979—Pub. L. 96–39, title VIII, §807(b)(9), July 26, 1979, 93 Stat. 291, struck out item relating to Part III "Manufacturing bonded warehouses" in table of Parts comprising Subchapter H.

PART I—VINEGAR PLANTS

Sec.

5501. Establishment.

5502. Qualification.

5503. Construction and equipment.

5504. Operation.

5505. Applicability of provisions of this chapter.

PRIOR PROVISIONS

A prior part I consisted of sections 5501 and 5502, prior to the general revision of this chapter by Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1313.

§5501. Establishment

Plants for the production of vinegar by the vaporizing process, where distilled spirits of not more than 15 percent of alcohol by volume are to be produced exclusively for use in the manufacture of

vinegar on the premises, may be established under this part.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1390.)

PRIOR PROVISIONS

A prior section 5501, act Aug. 16, 1954, ch. 736, 68A Stat. 677, made a cross reference to provisions pertaining to establishment and operation of vinegar factories, prior to the general revision of this chapter by Pub. L. 85–859.

Provisions similar to those comprising this section were contained in prior section 5216(a)(1), act Aug. 16, 1954, ch. 736, 68A Stat. 640, prior to the general revision of this chapter by Pub. L. 85–859.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§5502. Qualification

(a) Requirements

Every person, before commencing the business of manufacturing vinegar by the vaporizing process, and at such other times as the Secretary may by regulations prescribe, shall make application to the Secretary for the registration of his plant and receive permission to operate. No application required under this section shall be approved until the applicant has complied with all requirements of law, and regulations prescribed by the Secretary, in relation to such business. With respect to any change in such business after approval of an application, the Secretary may by regulations authorize the filing of written notice of such change or require the filing of an application to make such change.

(b) Form of application

The application required by subsection (a) shall be in such form and contain such information as the Secretary shall by regulations prescribe to enable him to determine the identity of the applicant, the location and extent of the premises, the type of operations to be conducted on such premises, and whether the operations will be in conformity with law and regulations.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1390; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

PRIOR PROVISIONS

A prior section 5502, act Aug. 16, 1954, ch. 736, 68A Stat. 677, related to distilled vinegar, prior to the general revision of this chapter by Pub. L. 85–859.

Provisions similar to those comprising subsec. (a) of this section were contained in prior section 5216(a)(1), act Aug. 16, 1954, ch. 736, 68A Stat. 640, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1976—Subsecs. (a), (b). Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

§5503. Construction and equipment

Plants established under this part for the manufacture of vinegar by the vaporizing process shall be constructed and equipped in accordance with such regulations as the Secretary shall prescribe.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1391; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in prior sections 5216(a)(1) and 5552, act Aug. 16, 1954, ch. 736, 68A Stat. 640, 680, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

§5504. Operation

(a) General

Any manufacturer of vinegar qualified under this part may, under such regulations as the Secretary shall prescribe, separate by a vaporizing process the distilled spirits from the mash produced by him, and condense the vapor by introducing it into the water or other liquid used in making vinegar in his plant.

(b) Removals

No person shall remove, or cause to be removed, from any plant established under this part any vinegar or other fluid or material containing a greater proportion than 2 percent of proof spirits.

(c) Records

Every person manufacturing vinegar by the vaporizing process shall keep such records and file such reports as the Secretary shall by regulations prescribe of the kind and quantity of materials received on his premises and fermented or mashed, the quantity of low wines produced, the quantity of such low wines used in the manufacture of vinegar, the quantity of vinegar produced, the quantity of vinegar removed from the premises, and such other information as may by regulations be required. Such records, and a copy of such reports, shall be preserved as regulations shall prescribe, and shall be kept available for inspection by any internal revenue officer during business hours.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1391; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

PRIOR PROVISIONS

Provisions similar to those comprising subsecs. (a) and (b) of this section were contained in prior section 5216(a)(1)(2), act Aug. 16, 1954, ch. 736, 68A Stat. 640, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1976—Subsecs. (a), (c). Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

§5505. Applicability of provisions of this chapter

(a) Tax

The taxes imposed by subchapter A shall be applicable to any distilled spirits produced in violation of section 5501 or removed in violation of section 5504(b).

(b) Prohibited premises

Plants established under this part shall not be located on any premises where distilling is prohibited under section 5601(a)(6).

(c) Entry and examination of premises

The provisions of section 5203(b), (c), and (d), relating to right of entry and examination, furnishing facilities and assistance, and authority to break up grounds or walls, shall be applicable to all premises established under this part, and to all proprietors thereof, and their workmen or other persons employed by them.

(d) Registration of stills

Stills on the premises of plants established under this part shall be registered as provided in section 5179.

(e) Installation of meters, tanks, and other apparatus

The provisions of section 5552 relating to the installation of meters, tanks, and other apparatus

shall be applicable to plants established under this part.

(f) Assignment of internal revenue officers

The provisions of section 5553(a) relating to the assignment of internal revenue officers shall be applicable to plants established under this part.

(g) Authority to waive records, statements, and returns

The provisions of section 5555(b) relating to the authority of the Secretary to waive records, statements, and returns shall be applicable to records, statements, or returns required by this part.

(h) Regulations

The provisions of section 5556 relating to the prescribing of regulations shall be applicable to this part.

(i) Penalties

The penalties and forfeitures provided in sections 5601(a)(1), (6), and (12), 5603, 5615(1) and (4), 5686, and 5687 shall be applicable to this part.

(j) Other provisions

This chapter (other than this part and the provisions referred to in subsection (a), (b), (c), (d), (e), (f), (g), (h), (i) shall not be applicable with respect to plants established or operations conducted under this part.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1391; amended Pub. L. 94–455, title XIX, §1905(b)(6)(E), Oct. 4, 1976, 90 Stat. 1823.)

PRIOR PROVISIONS

Provisions similar to those comprising subsecs. (a) to (i) of this section were contained in prior sections of act Aug. 16, 1954, prior to the general revision of this chapter by Pub. L. 85–859, as follows:

Present subsecs.:	*Prior sections*
(a)	5216(a)(1).
(b)	5171.
(c)	5216(a)(3).
(d)	5174.
(e)	5552.
(f)	5553(a).
(g)	5555(b).
(h)	5556.
(i)	5601, 5607, 5608, 5686(b).

The prior sections, act Aug. 16, 1954, ch. 736, are set out in 68A Stat. 627, 630, 640, 680, 681, 683–685, 700.

AMENDMENTS

1976—Subsec. (i). Pub. L. 94–455 struck out "5601(b)(1)," after "5601(a)(1), (6), and (12),".

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1905(d) of Pub. L. 94–455, set out as a note under section 5005 of this title.

PART II—VOLATILE FRUIT-FLAVOR CONCENTRATE PLANTS

Sec.
5511. Establishment and operation.

5512. Control of products after manufacture.

PRIOR PROVISIONS

A prior part II consisted of sections 5511 and 5512, prior to the general revision of this chapter by Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1313.

§5511. Establishment and operation

This chapter (other than sections 5178(a)(2)(C), 5179, 5203(b), (c), and (d), and 5552) shall not be applicable with respect to the manufacture, by any process which includes evaporations from the mash or juice of any fruit, of any volatile fruit-flavor concentrate if—

(1) such concentrate, and the mash or juice from which it is produced, contains no more alcohol than is reasonably unavoidable in the manufacture of such concentrate; and

(2) such concentrate is rendered unfit for use as a beverage before removal from the place of manufacture, or (in the case of a concentrate which does not exceed 24 percent alcohol by volume) such concentrate is transferred to a bonded wine cellar for use in production of natural wine as provided in section 5382; and

(3) the manufacturer thereof makes such application, keeps such records, renders such reports, files such bonds, and complies with such other requirements with respect to the production, removal, sale, transportation, and use of such concentrate and of the mash or juice from which such concentrate is produced, as the Secretary may by regulations prescribe as necessary for the protection of the revenue.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1392; amended Pub. L. 88–653, §3, Oct. 13, 1964, 78 Stat. 1085; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

PRIOR PROVISIONS

A prior section 5511, act Aug. 16, 1954, ch. 736, 68A Stat. 677, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1976—Par. (3). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

1964—Par. (2). Pub. L. 88–653 inserted "or (in the case of a concentrate which does not exceed 24 percent alcohol by volume) such concentrate is transferred to a bonded wine cellar for use in production of natural wine as provided in section 5382".

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–653 effective on first day of second month which begins more than 10 days after Oct. 13, 1964, see section 4 of Pub. L. 88–653, set out as a note under section 5383 of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§5512. Control of products after manufacture

For applicability of all provisions of this chapter pertaining to distilled spirits and wines, including those requiring payment of tax, to volatile fruit-flavor concentrates sold, transported, or used in violation of law or regulations, see section 5001(a)(7).[1]

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1392.)

REFERENCES IN TEXT

Section 5001(a)(7), referred to in text, was redesignated section 5001(a)(6) by Pub. L. 103–465, title I, §136(a), Dec. 8, 1994, 108 Stat. 4841.

PRIOR PROVISIONS

A prior section 5512, act Aug. 16, 1954, ch. 736, 68A Stat. 677, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

[1] *See References in Text note below.*

[PART III—REPEALED]

[§§5521 to 5523. Repealed. Pub. L. 96–39, title VIII, §807(a)(50), July 26, 1979, 93 Stat. 288]

Section 5521, added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1392; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, related to establishment and operation of manufacturing bonded warehouses.

A prior section 5521, act Aug. 16, 1954, ch. 736, 68A Stat. 678, related to establishment and operation of manufacturing bonded warehouses, prior to the general revision of this chapter by Pub. L. 85–859.

Section 5522, added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1393; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, related to withdrawal of distilled spirits to manufacturing bonded warehouses.

A prior section 5522, act Aug. 16, 1954, ch. 736, 68A Stat. 679, related to withdrawal of distilled spirits to manufacturing bonded warehouses, prior to general revision of this chapter by Pub. L. 85–859. See sections 5008(f)(2) and 5214(a) of this title.

Section 5523, added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1394; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, made special provision for distilled spirits and wines rectified in manufacturing bonded warehouses.

A prior section 5523, act Aug. 16, 1954, ch. 736, 68A Stat. 679, made special provision for distilled spirits and wines rectified in manufacturing bonded warehouses, prior to general revision of this chapter by Pub. L. 85–859.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as an Effective Date of 1979 Amendment note under section 5001 of this title.

Subchapter I—Miscellaneous General Provisions

Sec.

5551. General provisions relating to bonds.
5552. Installation of meters, tanks, and other apparatus.
5553. Supervision of premises and operations.
5554. Pilot operations.
5555. Records, statements, and returns.
5556. Regulations.
5557. Officers and agents authorized to investigate, issue search warrants, and prosecute for violations.
5558. Authority of enforcement officers.
5559. Determinations.
5560. Other provisions applicable.
5561. Exemptions to meet the requirements of the national defense.
5562. Exemptions from certain requirements in cases of disaster.

PRIOR PROVISIONS

A prior subchapter I consisted of sections 5551 to 5557, prior to the general revision of this chapter by Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1313.

§5551. General provisions relating to bonds

(a) Approval as condition to commencing business

No individual, firm, partnership, corporation, or association, intending to commence or to continue the business of a distiller, warehouseman, processor, brewer, or winemaker, shall commence or continue the business of a distiller, warehouseman, processor, brewer, or winemaker until all bonds in respect of such a business, required by any provision of law, have been approved by the Secretary of the Treasury or the officer designated by him.

(b) Disapproval

The Secretary of the Treasury or any officer designated by him may disapprove any such bond or bonds if the individual, firm, partnership, or corporation, or association giving such bond or bonds, or owning, controlling, or actively participating in the management of the business of the individual, firm, partnership, corporation, or association giving such bond or bonds, shall have been previously convicted, in a court of competent jurisdiction, of—

(1) any fraudulent noncompliance with any provision of any law of the United States, if such provision related to internal revenue or customs taxation of distilled spirits, wines, or beer, or if such an offense shall have been compromised with the individual, firm, partnership, corporation, or association on payment of penalties or otherwise, or

(2) any felony under a law of any State, or the District of Columbia, or the United States, prohibiting the manufacture, sale, importation, or transportation of distilled spirits, wine, beer, or other intoxicating liquor.

(c) Appeal from disapproval

In case the disapproval is by an officer designated by the Secretary of the Treasury to approve or disapprove such bonds, the individual, firm, partnership, corporation, or association giving the bond may appeal from such disapproval to the Secretary of the Treasury or an officer designated by him to hear such appeals, and the disapproval of the bond by the Secretary of the Treasury or officer designated to hear such appeals shall be final.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1394; amended Pub. L. 94–455, title XIX, §§1905(c)(5), 1906(b)(13)(B), Oct. 4, 1976, 90 Stat. 1823, 1834; Pub. L. 96–39, title VIII, §807(a)(51), July 26, 1979, 93 Stat. 288.)

PRIOR PROVISIONS

A prior section 5551, act Aug. 16, 1954, ch. 736, 68A Stat. 680, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

Provisions similar to those comprising subsec. (c) of this section were contained in prior section 5177(c), act Aug. 16, 1954, ch. 736, 68A Stat. 630, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1979—Subsec. (a). Pub. L. 96–39 substituted "warehouseman, processor" for "bonded warehouseman, rectifier" in two places.

1976—Subsec. (a). Pub. L. 94–455, §1906(b)(13)(B), substituted "Secretary of the Treasury" for "Secretary".

Subsec. (b). Pub. L. 94–455, §§1905(c)(5), 1906(b)(13)(B), substituted "Secretary of the Treasury" for "Secretary" in provisions preceding par. (1) and struck out "Territory, or" after "State," in par. (2).

Subsec. (c). Pub. L. 94–455, §1906(b)(13)(B), substituted "Secretary of the Treasury" for "Secretary".

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as a note under section 5001 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1905(c)(5) of Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1905(d) of Pub. L. 94–455, set out as a note under section 5005 of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§5552. Installation of meters, tanks, and other apparatus

The Secretary is authorized to require at distilled spirits plants, breweries, and at any other premises established pursuant to this chapter as in his judgment may be deemed advisable, the installation of meters, tanks, pipes, or any other apparatus for the purpose of protecting the revenue, and such meters, tanks, and pipes and all necessary labor incident thereto shall be at the expense of the person on whose premises the installation is required. Any such person refusing or neglecting to install such apparatus when so required by the Secretary shall not be permitted to conduct business on such premises.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1395; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

PRIOR PROVISIONS

A prior section 5552, act Aug. 16, 1954, ch. 736, 68A Stat. 680, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

For application to vinegar plants of provisions of prior section 5552 relating to installation of meters, tanks, and other apparatus, see also sections 5503 and 5505(e) of this title.

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

§5553. Supervision of premises and operations

(a) Assignment of internal revenue officers

The Secretary is authorized to assign to any premises established under the provisions of this chapter such number of internal revenue officers as may be deemed necessary.

(b) Functions of internal revenue officer

When used in this chapter, the term "internal revenue officer assigned to the premises" means the internal revenue officer assigned by the Secretary to duties at premises established and operated under the provisions of this chapter.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1395; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

PRIOR PROVISIONS

A prior section 5553, act Aug. 16, 1954, ch. 736, 68A Stat. 681, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

For application to vinegar plants of provisions of prior section 5553(a) relating to assignment of storekeeper-gaugers, see also section 5505(f) of this title.

AMENDMENTS

1976—Subsecs. (a), (b). Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

§5554. Pilot operations

For the purpose of facilitating the development and testing of improved methods of governmental supervision (necessary for the protection of the revenue) over distilled spirits plants established

under this chapter, the Secretary is authorized to waive any regulatory provisions of this chapter for temporary pilot or experimental operations. Nothing in this section shall be construed as authority to waive the filing of any bond or the payment of any tax provided for in this chapter.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1395; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

PRIOR PROVISIONS

A prior section 5554, act Aug. 16, 1954, ch. 736, 68A Stat. 681, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

§5555. Records, statements, and returns

(a) General

Every person liable to any tax imposed by this chapter, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may prescribe.

(b) Authority to waive

Whenever in this chapter any record is required to be made or kept, or statement or return is required to be made by any person, the Secretary may by regulation waive, in whole or in part, such requirement when he deems such requirement to no longer serve a necessary purpose. This subsection shall not be construed as authorizing the waiver of the payment of any tax.

(c) Photographic copies

Whenever in this chapter any record is required to be made and preserved by any person, the Secretary may by regulations authorize such person to record, copy, or reproduce by any photographic, photostatic, microfilm, microcard, miniature photographic, or other process, which accurately reproduces or forms a durable medium for so reproducing the original of such record and to retain such reproduction in lieu of the original. Every person who is authorized to retain such reproduction in lieu of the original shall, under such regulations as the Secretary may prescribe, preserve such reproduction in conveniently accessible files and make provision for examining, viewing, and using such reproduction the same as if it were the original. Such reproduction shall be treated and considered for all purposes as though it were the original record and all provisions of law applicable to the original shall be applicable to such reproduction. Such reproduction, or enlargement or facsimile thereof, shall be admissible in evidence in the same manner and under the same conditions as provided for the admission of reproductions, enlargements, or facsimiles of records made in the regular course of business under section 1732(b) of title 28 of the United States Code.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1395; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–369, div. A, title IV, §454(c)(10), July 18, 1984, 98 Stat. 821.)

PRIOR PROVISIONS

A prior section 5555, act Aug. 16, 1954, ch. 736, 68A Stat. 681, consisted of provisions similar to those comprising subsecs. (a) and (b) of this section, prior to the general revision of this chapter by Pub. L. 85–859.

Prior section 5555(a), relating to general provisions respecting records, statements, and returns, is also incorporated in section 5207(b) to (d) of this title.

Prior section 5555(b), relating to authority to waive records, statements, and returns, is also incorporated in section 5505(g) of this title.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–369 struck out "or for the affixing of any stamp required to be affixed by this chapter," after "the collection thereof,".

1976—Subsecs. (a) to (c). Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 1, 1985, see section 456(b) of Pub. L. 98–369, set out as an Effective Date note under section 5101 of this title.

§5556. Regulations

The regulations prescribed by the Secretary for enforcement of this chapter may make such distinctions in requirements relating to construction, equipment, or methods of operation as he deems necessary or desirable due to differences in materials or variations in methods used in production, processing, or storage of distilled spirits.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1396; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

PRIOR PROVISIONS

A prior section 5556, act Aug. 16, 1954, ch. 736, 68A Stat. 681, authorized the Secretary to prescribe regulations, prior to the general revision of this chapter by Pub. L. 85–859.

For application to vinegar plants of regulatory provisions of prior section 5556, see also section 5505(h) of this title.

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

APPLICABILITY OF RULES AND REGULATIONS

Pub. L. 85–859, title II, §210(e), Sept. 2, 1958, 72 Stat. 1435, provided that: "Until regulations are promulgated under any provision of this title [enacting sections 5849, 5854, 5855, and 7608 of this title, amending this chapter, chapter 52 of this title and sections 5801, 5811, 5814, 5821, 5843, 5848, 5851, 6071, 6207, 6422, 7214, 7272, 7301, 7324 to 7326, 7609, 7652 and 7655 of this title, and enacting notes set out under sections 5001, 5006, 5025, 5064, 5175, 5304 and 5601 of this title] which depends for its application upon the promulgation of regulations (or which is to be applied in such manner as may be prescribed by regulations) all instructions, rules, or regulations which are in effect immediately prior to the effective date of such provision shall, to the extent such instructions, rules, or regulations could be prescribed as regulations under authority of such provision, be applied as is promulgated as regulations under such provision."

§5557. Officers and agents authorized to investigate, issue search warrants, and prosecute for violations

(a) General

The Secretary shall investigate violations of this subtitle and in any case in which prosecution appears warranted the Secretary shall report the violation to the United States Attorney for the district in which such violation was committed, who is hereby charged with the duty of prosecuting the offenders, subject to the direction of the Attorney General, as in the case of other offenses against the laws of the United States; and the Secretary may swear out warrants before United States magistrate judges or other officers or courts authorized to issue warrants for the apprehension of such offenders, and may, subject to the control of such United States Attorney, conduct the prosecution at the committing trial for the purpose of having the offenders held for the action of a grand jury. Section 3041 of title 18 of the United States Code is hereby made applicable in the enforcement of this subtitle.

(b) Cross reference

For provisions relating to the issuance of search warrants, see the Federal Rules of Criminal Procedure.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1396; amended Pub. L. 90–578, title IV, §402(b)(2), Oct. 17, 1968, 82 Stat. 1118; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 101–650, title III, §321, Dec. 1, 1990, 104 Stat. 5117.)

REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in subsec. (b), are set out in the Appendix of Title 18, Crimes and Criminal Procedure.

PRIOR PROVISIONS

A prior section 5557, act Aug. 16, 1954, ch. 736, 68A Stat. 681, related to applicability of other provisions, prior to the general revision of this chapter by Pub. L. 85–859. See section 5560 of this title.

Provisions similar to those comprising this section were contained in prior section 5314, act Aug. 16, 1954, ch. 736, 68A Stat. 659, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1976—Subsec. (a). Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

CHANGE OF NAME

"United States magistrate judges" substituted for "United States magistrates" in subsec. (a) pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure. Previously, "United States magistrates" substituted for "United States commissioners" pursuant to Pub. L. 90–578. See chapter 43 (§631 et seq.) of Title 28.

§5558. Authority of enforcement officers

For provisions relating to the authority of internal revenue enforcement officers, see section 7608.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1396.)

§5559. Determinations

Whenever the Secretary is required or authorized, in this chapter, to make or verify any quantitative determination, such determination or verification may be made by actual count, weight, or measurement, or by the application of statistical methods, or by other means, under such regulations as the Secretary may prescribe.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1396; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

§5560. Other provisions applicable

All provision of subtitle F, insofar as applicable and not inconsistent with the provisions of this subtitle, are hereby extended to and made a part of this subtitle.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1396.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in prior section 5557, act Aug. 16, 1954, ch. 736, 68A Stat. 681, prior to the general revision of this chapter by Pub. L. 85–859.

§5561. Exemptions to meet the requirements of the national defense

The Secretary may temporarily exempt proprietors of distilled spirits plants from any provision of

the internal revenue laws relating to distilled spirits, except those requiring payment of the tax thereon, whenever in his judgment it may seem expedient to do so to meet the requirements of the national defense. Whenever the Secretary shall exercise the authority conferred by this section he may prescribe such regulations as may be necessary to accomplish the purpose which caused him to grant the exemption.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1397; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in prior section 5217(b), act Aug. 16, 1954, ch. 736, 68A Stat. 641, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

§5562. Exemptions from certain requirements in cases of disaster

Whenever the Secretary finds that it is necessary or desirable, by reason of disaster, to waive provisions of internal revenue law with regard to distilled spirits, he may temporarily exempt proprietors of distilled spirits plants from any provision of the internal revenue laws relating to distilled spirits, except those requiring payment of the tax thereon, to the extent he may deem necessary or desirable.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1397; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in prior section 5215, act Aug. 16, 1954, ch. 736, 68A Stat. 640, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

Subchapter J—Penalties, Seizures, and Forfeitures Relating to Liquors

Part

I. Penalty, seizure, and forfeiture provisions applicable to distilling, rectifying, and distilled and rectified products.

II. Penalty and forfeiture provisions applicable to wine and wine production.

III. Penalty, seizure, and forfeiture provisions applicable to beer and brewing.

IV. Penalty, seizure, and forfeiture provisions common to liquors.

[V. Repealed.]

PRIOR PROVISIONS

A prior subchapter J consisted of parts I to V, prior to the general revision of this chapter by Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1313.

AMENDMENTS

2005—Pub. L. 109–59, title XI, §11125(b)(19)(B), Aug. 10, 2005, 119 Stat. 1956, struck out item for part V "Penalties applicable to occupational taxes".

PART I—PENALTY, SEIZURE, AND FORFEITURE PROVISIONS APPLICABLE TO DISTILLING, RECTIFYING, AND DISTILLED AND

RECTIFIED PRODUCTS

Sec.
5601. Criminal penalties.
5602. Penalty for tax fraud by distiller.
5603. Penalty relating to records, returns, and reports.[1]
5604. Penalties relating to marks, brands, and containers.
5605. Penalty relating to return of materials used in the manufacture of distilled spirits, or from which distilled spirits may be recovered.
5606. Penalty relating to containers of distilled spirits.
5607. Penalty and forfeiture for unlawful use, recovery, or concealment of denatured distilled spirits, or articles.
5608. Penalty and forfeiture for fraudulent claims for export drawback or unlawful relanding.
5609. Destruction of unregistered stills, distilling apparatus, equipment, and materials.
5610. Disposal of forfeited equipment and material for distilling.
5611. Release of distillery before judgment.
5612. Forfeiture of taxpaid distilled spirits remaining on bonded premises.
5613. Forfeiture of distilled spirits not closed, marked, or branded as required by law.
5614. Burden of proof in cases of seizure of spirits.
5615. Property subject to forfeiture.

PRIOR PROVISIONS

A prior part I consisted of sections 5601 to 5650, prior to the general revision of this chapter by Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1313.

AMENDMENTS

1984—Pub. L. 98–369, div. A, title IV, §454(c)(11)(B), (12)(C), July 18, 1984, 98 Stat. 822, struck out "stamps," in item 5604, and substituted "closed" for "stamped" in item 5613.

[1] *So in original. Does not conform to section catchline.*

§5601. Criminal penalties

(a) Offenses

Any person who—

(1) Unregistered stills

has in his possession or custody, or under his control, any still or distilling apparatus set up which is not registered, as required by section 5179(a); or

(2) Failure to file application

engages in the business of a distiller or processor without having filed application for and received notice of registration, as required by section 5171(c); or

(3) False or fraudulent application

engages, or intends to engage, in the business of distiller, warehouseman, or processor of distilled spirits, and files a false or fraudulent application under section 5171; or

(4) Failure or refusal of distiller, warehouseman, or processor to give bond

carries on the business of a distiller, warehouseman, or processor without having given bond as required by law; or

(5) False, forged, or fraudulent bond

engages, or intends to engage, in the business of distiller, warehouseman, or processor of distilled spirits, and gives any false, forged, or fraudulent bond, under subchapter B; or

(6) Distilling on prohibited premises

uses, or possesses with intent to use, any still, boiler, or other utensil for the purpose of producing distilled spirits, or aids or assists therein, or causes or procures the same to be done, in any dwelling house, or in any shed, yard, or inclosure connected with such dwelling house (except as authorized under section 5178(a)(1)(C)), or on board any vessel or boat, or on any premises where beer or wine is made or produced, or where liquors of any description are retailed, or on premises where any other business is carried on (except when authorized under section 5178(b)); or

(7) Unlawful production, removal, or use of material fit for production of distilled spirits

except as otherwise provided in this chapter, makes or ferments mash, wort, or wash, fit for distillation or for the production of distilled spirits, in any building or on any premises other than the designated premises of a distilled spirits plant lawfully qualified to produce distilled spirits, or removes, without authorization by the Secretary, any mash, wort, or wash, so made or fermented, from the designated premises of such lawfully qualified plant before being distilled; or

(8) Unlawful production of distilled spirits

not being a distiller authorized by law to produce distilled spirits, produces distilled spirits by distillation or any other process from any mash, wort, wash, or other material; or

(9) Unauthorized use of distilled spirits in manufacturing processes

except as otherwise provided in this chapter, uses distilled spirits in any process of manufacture unless such spirits—

(A) have been produced in the United States by a distiller authorized by law to produce distilled spirits and withdrawn in compliance with law; or

(B) have been imported (or otherwise brought into the United States) and withdrawn in compliance with law; or

(10) Unlawful processing

engages in or carries on the business of a processor—

(A) with intent to defraud the United States of any tax on the distilled spirits processed by him; or

(B) with intent to aid, abet, or assist any person or persons in defrauding the United States of the tax on any distilled spirits; or

(11) Unlawful purchase, receipt, or processing of distilled spirits

purchases, receives, or processes any distilled spirits, knowing or having reasonable grounds to believe that any tax due on such spirits has not been paid or determined as required by law; or

(12) Unlawful removal or concealment of distilled spirits

removes, other than as authorized by law, any distilled spirits on which the tax has not been paid or determined, from the place of manufacture or storage, or from any instrument of transportation, or conceals spirits so removed; or

(13) Creation of fictitious proof

adds, or causes to be added, any ingredient or substance (other than ingredients or substances authorized by law to be added) to any distilled spirits before the tax is paid thereon, or determined as provided by law, for the purpose of creating fictitious proof; or

(14) Distilling after notice of suspension

after the time fixed in the notice given under section 5221(a) to suspend operations as a distiller, carries on the business of a distiller on the premises covered by the notice of suspension, or has mash, wort, or beer on such premises, or on any premises connected therewith, or has in his possession or under his control any mash, wort, or beer, with intent to distill the same on such premises; or

(15) Unauthorized withdrawal, use, sale, or distribution of distilled spirits for fuel use

Withdraws,[1] uses, sells, or otherwise disposes of distilled spirits produced under section 5181

for other than fuel use;

shall be fined not more than $10,000, or imprisoned not more than 5 years, or both, for each such offense.

(b) Presumptions

Whenever on trial for violation of subsection (a)(4) the defendant is shown to have been at the site or place where, and at the time when, the business of a distiller or processor was so engaged in or carried on, such presence of the defendant shall be deemed sufficient evidence to authorize conviction, unless the defendant explains such presence to the satisfaction of the jury (or of the court when tried without jury).

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1398; amended Pub. L. 94–455, title XIX, §§1905(a)(22), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1820, 1834; Pub. L. 96–39, title VIII, §807(a)(52), July 26, 1979, 93 Stat. 288; Pub. L. 96–223, title II, §232(e)(2)(A), Apr. 2, 1980, 94 Stat. 280.)

PRIOR PROVISIONS

A prior section 5601, act Aug. 16, 1954, ch. 736, 68A Stat. 683, consisted of provisions similar to those comprising subsec. (a)(1) of this section, and also related to forfeiture for possession of unregistered still or distilling apparatus, prior to the general revision of this chapter by Pub. L. 85–859. See section 5615(1) of this title.

Provisions similar to those comprising subsecs. (a)(2) to (8), (9)(A), (10) to (14) of this section were contained in prior sections of act Aug. 16, 1954, prior to the general revision of this chapter by Pub. L. 85–859, as follows:

Present subd. of subsec. (a):	*Prior sections*
(2)	5172, 5603.
(3)	5603.
(4)	5172, 5604, 5606.
(5)	5604.
(6)	5171, 5607.
(7)	5216(a)(1), (4), 5608(a).
(8)	5216(a)(1), 5608(a).
(9)	5216(a)(1), 5608(a).
(10)	5628, 5629.
(11)	5629.
(12)	5608(a), 5631, 5632, 5643, 5647.
(13)	5634.
(14)	5650.

The prior sections, act Aug. 16, 1954, ch. 736, are set out in 68A Stat. 627, 640, 641, 684, 685, 689, 690, 692, 693, 695.

AMENDMENTS

1980—Subsec. (a)(15). Pub. L. 96–223 added par. (15).

1979—Subsec. (a)(2). Pub. L. 96–39, §807(a)(52)(A), struck out "distiller or rectifier" in heading and substituted "processor" for "rectifier" and "section 5171(c)" for "section 5171(a)" in text.

Subsec. (a)(3). Pub. L. 96–39, §807(a)(52)(B), substituted "warehouseman, or processor" for "bonded warehouseman, rectifier, or bottler".

Subsec. (a)(4). Pub. L. 96–39, §807(a)(52)(C), substituted "warehouseman, or processor" for "or rectifier" in heading and in text.

Subsec. (a)(5). Pub. L. 96–39, §807(a)(52)(B), substituted "warehouseman, or processor" for "bonded

warehouseman, rectifier, or bottler".

Subsec. (a)(10). Pub. L. 96–39, §807(a)(52)(D), substituted "processing" for "rectifying or bottling" in par. (10) heading, "processor" for "rectifier, or a bottler of distilled spirits" in text preceding subpar. (A), and "processed" for "rectified or bottled" in subpar. (A).

Subsec. (a)(11). Pub. L. 96–39, §807(a)(52)(E), substituted "or processing" for "rectification, or bottling" in heading and "or processes" for "rectifies, or bottles" in text.

Subsec. (b). Pub. L. 96–39, §807(a)(52)(F), substituted "processor" for "rectifier".

1976—Subsec. (a)(7). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (b). Pub. L. 94–455, §1905(a)(22), struck out par. (1) relating to presumptions in the matter of unregistered stills, par. (3) relating to presumptions in the matter of unlawful production, removal, or use of material fit for production of distilled spirits, and par. (4) relating to presumptions in the matter of unlawful production of distilled spirits, and struck out the number designation "(2)" and heading for former par. (2), leaving only the text for former par. (2) relating to presumptions in the matter of failure or refusal of distiller or rectifier to give bond.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–223 effective on first day of first calendar month beginning more than 60 days after Apr. 2, 1980, see section 232(h)(3) of Pub. L. 96–223, set out as an Effective Date note under section 5181 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as a note under section 5001 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1905(d) of Pub. L. 94–455, set out as a note under section 5005 of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

PROSECUTION AND PUNISHMENT OF OFFENSES COMMITTED AND PENALTIES OR FORFEITURES INCURRED; SAVINGS PROVISION

Pub. L. 85–859, title II, §210(c), Sept. 2, 1958, 72 Stat. 1435, provided that: "All offenses committed, and all penalties or forfeitures incurred, under any provision of law amended by this title [enacting sections 5849, 5854, 5855 and 7608 of this title, amending this chapter, chapter 52 of this title and sections 5801, 5811, 5814, 7272, 7301, 7224 to 7326, 7609, 7652 and 7655 of this title, and enacting notes set out under this section and sections 5001, 5006, 5025, 5064, 5175, and 5304 of this title], may be prosecuted and punished in the same manner and with the same effect as if this title had not been enacted."

[1] So in original. Probably should not be capitalized.

§5602. Penalty for tax fraud by distiller

Whenever any person engaged in or carrying on the business of a distiller defrauds, attempts to defraud, or engages in such business with intent to defraud the United States of the tax on the spirits distilled by him, or of any part thereof, he shall be fined not more than $10,000, or imprisoned not more than 5 years, or both. No discontinuance or nolle prosequi of any prosecution under this section shall be allowed without the permission in writing of the Attorney General.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1400.)

PRIOR PROVISIONS

A prior section 5602, act Aug. 16, 1954, ch. 736, 68A Stat. 863, related to penalty and forfeiture for setting up still without a permit, prior to the general revision of this chapter by Pub. L. 85–859. See sections 5615(2) and 5687 of this title.

Provisions similar to those comprising this section were contained in prior sections 5606, 5626, act Aug. 16,

1954, ch. 736, 68A Stat. 684, 688, prior to the general revision of this chapter by Pub. L. 85–859.

§5603. Penalty relating to records, returns and reports

(a) Fraudulent noncompliance

Any person required by this chapter (other than subchapters F and G) or regulations issued pursuant thereto to keep or file any record, return, report, summary, transcript, or other document, who, with intent to defraud the United States, shall—

(1) fail to keep any such document or to make required entries therein; or

(2) make any false entry in such document; or

(3) cancel, alter, or obliterate any part of such document or any entry therein, or destroy any part of such document or any entry therein; or

(4) hinder or obstruct any internal revenue officer from inspecting any such document or taking any abstracts therefrom; or

(5) fail or refuse to preserve or produce any such document, as required by this chapter or regulations issued pursuant thereto;

or who shall, with intent to defraud the United States, cause or procure the same to be done, shall be fined not more than $10,000, or imprisoned not more than 5 years, or both, for each such offense.

(b) Failure to comply

Any person required by this chapter (other than subchapters F and G) or regulations issued pursuant thereto to keep or file any record, return, report, summary, transcript, or other document, who, otherwise than with intent to defraud the United States, shall—

(1) fail to keep any such document or to make required entries therein; or

(2) make any false entry in such document; or

(3) cancel, alter, or obliterate any part of such document or any entry therein, or destroy any part of such document, or any entry therein, except as provided by this title or regulations issued pursuant thereto; or

(4) hinder or obstruct any internal revenue officer from inspecting any such document or taking any abstracts therefrom; or

(5) fail to refuse to preserve or produce any such document, as required by this chapter or regulations issued pursuant thereto;

or who shall, otherwise than with intent to defraud the United States, cause or procure the same to be done, shall be fined not more than $1,000, or imprisoned not more than 1 year, or both, for each such offense.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1400.)

PRIOR PROVISIONS

A prior section 5603, act Aug. 16, 1954, ch. 736, 68A Stat. 684, related to penalty for failure or refusal of distiller or rectifier to give notice of intention to engage in such business, prior to the general revision of this chapter by Pub. L. 85–859. See section 5601(a)(2), (3) of this title.

Provisions similar to those comprising this section were contained in prior sections 5610, 5611, 5620, 5621, 5692, act Aug. 16, 1954, ch. 736, 68A Stat. 685 to 687, 703, prior to the general revision of this chapter by Pub. L. 85–859.

§5604. Penalties relating to marks, brands, and containers

(a) In general

Any person who shall—

(1) transport, possess, buy, sell, or transfer any distilled spirits unless the immediate container

bears the type of closure or other device required by section 5301(d),

(2) with intent to defraud the United States, empty a container bearing the closure or other device required by section 5301(d) without breaking such closure or other device,

(3) empty, or cause to be emptied, any distilled spirits from an immediate container bearing any mark or brand required by law without effacing and obliterating such mark or brand as required by section 5206(d),

(4) place any distilled spirits in any bottle, or reuse any bottle for the purpose of containing distilled spirits, which has once been filled and fitted with a closure or other device under the provisions of this chapter, without removing and destroying such closure or other device,

(5) willfully and unlawfully remove, change, or deface any mark, brand, label, or seal affixed to any case of distilled spirits, or to any bottle contained therein,

(6) with intent to defraud the United States, purchase, sell, receive with intent to transport, or transport any empty cask or package having thereon any mark or brand required by law to be affixed to any cask or package containing distilled spirits, or

(7) change or alter any mark or brand on any cask or package containing distilled spirits, or put into any cask or package spirits of greater strength than is indicated by the inspection mark thereon, or fraudulently use any cask or package having any inspection mark thereon, for the purpose of selling other spirits, or spirits of quantity or quality different from the spirits previously inspected,

shall be fined not more than $10,000 or imprisoned not more than 5 years, or both, for each such offense.

(b) Cross references

For provisions relating to the authority of internal revenue officers to enforce provisions of this section, see sections 5203, 5557, and 7608.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1401; amended Pub. L. 96–39, title VIII, §807(a)(53), July 26, 1979, 93 Stat. 289; Pub. L. 98–369, div. A, title IV, §454(c)(11)(A), July 18, 1984, 98 Stat. 821.)

PRIOR PROVISIONS

A prior section 5604, act Aug. 16, 1954, ch. 736, 68A Stat. 684, related to penalty and forfeiture for failure or refusal of distiller to give bond, prior to the general revision of this chapter by Pub. L. 85–859. See sections 5601(a)(4), (5) and 5615(3) of this title.

Provisions similar to those comprising this section were contained in prior sections of act Aug. 16, 1954, prior to the general revision of this chapter by Pub. L. 85–859, as follows:

Present subsecs.:	*Prior sections*
(a)(1)	5008(b)(1), 5642.
(a)(2), (3)	5636.
(a)(4), (5)	5642, 5644.
(a)(6)	5642.
(a)(7) to (9)	5636.
(a)(10)	5642, 5644.
(a)(11)	5643.
(a)(12)	5642, 5643.
(a)(13) to (15)	5642.
(a)(16)	5643.
(a)(17)	5635, 5636.
(a)(18)	5637.
(a)(19)	5638.

The prior sections, act Aug. 16, 1954, ch. 736, are set out in 68A Stat. 602, 690 to 693.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–369, §454(c)(11)(A), in amending subsec. (a) generally, struck out references to stamps in pars. (1) to (3), redesignated pars. (12), (16), (17), (18) as pars. (4)–(7), respectively, in pars. (4) to (7) as so redesignated, struck out all references to stamps, and struck out former pars. (4) to (11), (13) to (15), and (19), which had consisted of additional provisions concerning penalties relating to stamps, marks, brands and containers.

Subsec. (b). Pub. L. 98–369, §454(c)(11)(A), in amending subsec. (b) generally, substituted provisions relating to cross references for provisions relating to officers authorized to enforce this section.

1979—Subsec. (a)(1). Pub. L. 96–39, §807(a)(53)(A), substituted "section 5205(a)(1)" for "section 5205(a)(2)".

Subsec. (a)(2). Pub. L. 96–39, §807(a)(53)(B), substituted "section 5205(a)(1)" for "section 5205(a)(1) or (2)" and "section 5205(a)(2)" for "section 5205(a)(3)".

Subsec. (a)(3). Pub. L. 96–39, §807(a)(53)(C), substituted "section 5205(f)" for "section 5205(g)".

Subsec. (a)(6). Pub. L. 96–39, §807(a)(53)(D), substituted "section 5205(a)(2)" for "section 5205(a)(3)".

Subsec. (a)(13). Pub. L. 96–39, §807(a)(53)(E), substituted "section 5205(a)" for "section 5205(a)(2) and (3)".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 1, 1985, see section 456(b) of Pub. L. 98–369, set out as an Effective Date note under section 5101 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as a note under section 5001 of this title.

§5605. Penalty relating to return of materials used in the manufacture of distilled spirits, or from which distilled spirits may be recovered

Any person who willfully violates any provision of section 5291(a), or of any regulation issued pursuant thereto, and any officer, director, or agent of any such person who knowingly participates in such violation, shall be fined not more than $1,000, or imprisoned not more than 2 years, or both.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1402.)

PRIOR PROVISIONS

A prior section 5605, act Aug. 16, 1954, ch. 736, 68A Stat. 684, related to penalty for improper approval of distiller's bond, prior to the general revision of this chapter by Pub. L. 85–859. See section 7214 of this title.

Provisions similar to those comprising this section were contained in prior section 5609, act Aug. 16, 1954, ch. 736, 68A Stat. 685, prior to the general revision of this chapter by Pub. L. 85–859.

§5606. Penalty relating to containers of distilled spirits

Whoever violates any provision of section 5301, or of any regulation issued pursuant thereto, or the terms or conditions of any permit issued pursuant to the authorization contained in such section, and any officer, director, or agent of any corporation who knowingly participates in such violation, shall, upon conviction, be fined not more than $1,000, or imprisoned not more than 1 year, or both, for each such offense.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1402.)

PRIOR PROVISIONS

A prior section 5606, act Aug. 16, 1954, ch. 736, 68A Stat. 684, related to penalty and forfeiture for distilling without giving bond, prior to the general revision of this chapter by Pub. L. 85–859. See sections 5601(a)(4), 5602, and 5615(3) of this title.

Provisions similar to those comprising this section were contained in prior section 5641, act Aug. 16, 1954, ch. 736, 68A Stat. 692, prior to the general revision of this chapter by Pub. L. 85–859.

§5607. Penalty and forfeiture for unlawful use, recovery, or concealment of denatured distilled spirits, or articles

Any person who—

(1) uses denatured distilled spirits withdrawn free of tax under section 5214(a)(1) in the manufacture of any medicinal preparation or flavoring extract in violation of the provisions of section 5273(b)(1) or knowingly sells, or offers for sale, any such medicinal preparation or flavoring extract in violation of section 5273(b)(2); or

(2) knowingly withdraws any denatured distilled spirits free of tax under section 5214(a)(1) for beverage purposes; or

(3) knowingly sells any denatured distilled spirits withdrawn free of tax under section 5214(a)(1), or any articles containing such denatured distilled spirits, for beverage purposes; or

(4) recovers or attempts to recover by redistillation or by any other process or means (except as authorized in section 5223 or in section 5273(c)) any distilled spirits from any denatured distilled spirits withdrawn free of tax under section 5214(a)(1), or from any articles manufactured therefrom, or knowingly uses, sells, conceals, or otherwise disposes of distilled spirits so recovered or redistilled;

shall be fined not more than $10,000, or imprisoned not more than 5 years, or both, for each such offense; and all personal property used in connection with his business, together with the buildings and ground constituting the premises on which such unlawful acts are performed or permitted to be performed shall be forfeited to the United States.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1402.)

PRIOR PROVISIONS

A prior section 5607, act Aug. 16, 1954, ch. 736, 68A Stat. 684, related to penalty for distilling on prohibited premises, prior to the general revision of this chapter by Pub. L. 85–859. See sections 5505(i) and 5601(a)(6) of this title.

Provisions similar to those comprising this section were contained in prior section 5647, act Aug. 16, 1954, ch. 736, 68A Stat. 693, prior to the general revision of this chapter by Pub. L. 85–859.

§5608. Penalty and forfeiture for fraudulent claims for export drawback or unlawful relanding

(a) Fraudulent claim for drawback

Every person who fraudulently claims, or seeks, or obtains an allowance of drawback on any distilled spirits, or fraudulently claims any greater allowance or drawback than the tax actually paid or determined thereon, shall forfeit and pay to the Government of the United States triple the amount wrongfully and fraudulently sought to be obtained, and shall be imprisoned not more than 5 years; and every owner, agent, or master of any vessel or other person who knowingly aids or abets in the fraudulent collection or fraudulent attempts to collect any drawback upon, or knowingly aids or permits any fraudulent change in the spirits so shipped, shall be fined not more than $5,000, or imprisoned not more than 3 years, or both, and the ship or vessel on board of which such shipment was made or pretended to be made shall be forfeited to the United States, whether a conviction of the master or owner be had or otherwise, and proceedings may be had in admiralty by libel for such forfeiture.

(b) Unlawful relanding

Every person who, with intent to defraud the United States, relands within the jurisdiction of the

United States any distilled spirits which have been shipped for exportation under the provisions of this chapter, or who receives such relanded distilled spirits, and every person who aids or abets in such relanding or receiving of such spirits, shall be fined not more than $5,000, or imprisoned not more than 3 years, or both; and all distilled spirits so relanded, together with the vessel from which the same were relanded within the jurisdiction of the United States, and all vessels, vehicles, or aircraft used in relanding and removing such distilled spirits, shall be forfeited to the United States.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1403; amended Pub. L. 89–44, title VIII, §805(e), June 21, 1965, 79 Stat. 161.)

PRIOR PROVISIONS

A prior section 5608, act Aug. 16, 1954, ch. 736, 68A Stat. 685, related to penalty for making or fermenting mash on unauthorized premises, illegal use of spirits, unlawful removal of vinegar, etc., prior to the general revision of this chapter by Pub. L. 85–859. See sections 5505(i), 5601(a)(7), (8), (9)(A), (12), 5615(4), and 5687 of this title.

Provisions similar to those comprising this section were contained in prior section 5648, act Aug. 16, 1954, ch. 736, 68A Stat. 694, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1965—Subsec. (b). Pub. L. 89–44 substituted ", with intent to defraud the United States," for "intentionally" after "Every person who".

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 effective July 1, 1965, see section 805(g)(1) of Pub. L. 89–44, set out as a note under section 5008 of this title.

§5609. Destruction of unregistered stills, distilling apparatus, equipment, and materials

(a) General

In the case of seizure elsewhere than on premises qualified under this chapter of any unregistered still, distilling or fermenting equipment or apparatus, or distilling or fermenting material, for any offense involving forfeiture of the same, where it shall be impracticable to remove the same to a place of safe storage from the place where seized, the seizing officer is authorized to destroy the same. In the case of seizure, other than on premises qualified under this chapter or in transit thereto or therefrom, of any distilled spirits on which the tax has not been paid or determined, for any offense involving forfeiture of the same, the seizing officer is authorized to destroy the distilled spirits forthwith. Any destruction under this subsection shall be in the presence of at least one credible witness. The seizing officer shall make such report of said seizure and destruction and take such samples as the Secretary may require.

(b) Claims

Within 1 year after destruction made pursuant to subsection (a) the owner of, including any person having an interest in, the property so destroyed may make application to the Secretary for reimbursement of the value of such property. If the claimant establishes to the satisfaction of the Secretary that—

(1) such property had not been used in violation of law; or

(2) any unlawful use of such property had been without his consent or knowledge,

the Secretary shall make an allowance to such claimant not exceeding the value of the property destroyed.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1403; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

PRIOR PROVISIONS

A prior section 5609, act Aug. 16, 1954, ch. 736, 68A Stat. 685, related to penalty in connection to return of materials used in the manufacture of distilled spirits, prior to the general revision of this chapter by Pub. L. 85–859. See section 5605 of this title.

Provisions similar to those comprising this section were contained in prior section 5623, act Aug. 16, 1954, ch. 736, 68A Stat. 687, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1976—Subsecs. (a), (b). Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

§5610. Disposal of forfeited equipment and material for distilling

All boilers, stills, or other vessels, tools and implements, used in distilling or processing, and forfeited under any of the provisions of this chapter, and all condemned material, together with any engine or other machinery connected therewith, and all empty barrels, and all grain or other material suitable for fermentation or distillation, shall be sold at public auction or otherwise disposed of as the court in which forfeiture was recovered shall in its discretion direct.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1404; amended Pub. L. 96–39, title VIII, §807(a)(54), July 26, 1979, 93 Stat. 289.)

PRIOR PROVISIONS

A prior section 5610, act Aug. 16, 1954, ch. 736, 68A Stat. 685, related to penalty for using unregistered materials for producing spirits, prior to the general revision of this chapter by Pub. L. 85–859. See section 5603 of this title.

Provisions similar to those comprising this section were contained in prior section 5622, act Aug. 16, 1954, ch. 736, 68A Stat. 687, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1979—Pub. L. 96–39 substituted "or processing" for "or rectifying".

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as a note under section 5001 of this title.

§5611. Release of distillery before judgment

Any distillery or distilling apparatus seized on any premises qualified under this chapter, for any violation of law, may, in the discretion of the court, be released before final judgment to a receiver appointed by the court to operate such distillery or apparatus. Such receiver shall give bond, which shall be approved in open court, with corporate surety, for the full appraised value of all the property seized, to be ascertained by three competent appraisers designated and appointed by the court. Funds obtained from such operation shall be impounded as the court shall direct pending such final judgment.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1404.)

PRIOR PROVISIONS

A prior section 5611, act Aug. 16, 1954, ch. 736, 68A Stat. 685, related to penalty for using false weights and measures, prior to the general revision of this chapter by Pub. L. 85–859. See section 5603 of this title.

Provisions similar to those comprising this section were contained in prior section 5624, act Aug. 16, 1954, ch. 736, 68A Stat. 688, prior to the general revision of this chapter by Pub. L. 85–859.

§5612. Forfeiture of taxpaid distilled spirits remaining on bonded premises

(a) General

No distilled spirits on which tax has been paid or determined shall be stored or allowed to remain

on the bonded premises of any distilled spirits plant, under the penalty of forfeiture of all spirits so found.

(b) Exceptions

Subsection (a) shall not apply in the case of—

(1) distilled spirits in the process of prompt removal from bonded premises on payment or determination of the tax; or

(2) distilled spirits returned to bonded premises in accordance with the provisions of section 5215.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1404; amended Pub. L. 96–39, title VIII, §807(a)(55), July 26, 1979, 93 Stat. 289.)

PRIOR PROVISIONS

A prior section 5612, act Aug. 16, 1954, ch. 736, 68A Stat. 685, related to penalty for using material or removing spirits without supervision, prior to the general revision of this chapter by Pub. L. 85–859. See section 5687 of this title.

Provisions similar to those comprising subsec. (a) of this section were contained in prior section 5625, act Aug. 16, 1954, ch. 736, 68A Stat. 688, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1979—Subsec. (b). Pub. L. 96–39 redesignated subpars. (2) and (3) as (1) and (2), respectively, and struck out former subpars. (1) and (4) which excepted distilled spirits which were bottled in bond under section 5233 of this title and which were returned to bonded premises for rebottling, relabeling, or restamping in accordance with subsec. (d) of section 5233, and excepted such spirits, held on bonded premises, on which the tax had become payable by operation of law, but on which the tax had not been paid.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as a note under section 5001 of this title.

SUSPENSION OF SUBSECTION (A) DURING 1980

Pub. L. 96–39, title VIII, §808(c)(1), July 26, 1979, 93 Stat. 291, set out as a note under section 5061 of this title, provided that subsec. (a) of this section was not to apply during 1980.

§5613. Forfeiture of distilled spirits not closed, marked, or branded as required by law

(a) Unmarked or unbranded casks or packages

All distilled spirits found in any cask or package required by this chapter or any regulation issued pursuant thereto to bear a mark, brand, or identification, which cask or package is not marked, branded, or identified in compliance with this chapter and regulations issued pursuant thereto, shall be forfeited to the United States.

(b) Containers without closures

All distilled spirits found in any container which is required by this chapter to bear a closure or other device and which does not bear a closure or other device in compliance with this chapter shall be forfeited to the United States.

(Added Pub. L. 85–859, title II, §201, Sept. 21, 1958, 72 Stat. 1404; amended Pub. L. 98–369, div. A, title IV, §454(c)(12)(A), (B), July 18, 1984, 98 Stat. 822.)

PRIOR PROVISIONS

A prior section 5613, act Aug. 16, 1954, ch. 736, 68A Stat. 685, related to penalty for distilling during prohibited hours, prior to the general revision of this chapter by Pub. L. 85–859. See section 5687 of this title.

Provisions similar to those comprising this section were contained in prior sections 5639 and 5640, act Aug. 16, 1954, ch. 736, 68A Stat. 691, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1984—Pub. L. 98–369, §454(c)(12)(B), substituted "closed" for "stamped" in section catchline.

Subsec. (b). Pub. L. 98–369, §454(c)(12)(A), amended subsec. (b) generally, substituting provisions relating to forfeitures of containers without closures for provisions relating to forfeitures of unstamped containers.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 1, 1985, see section 456(b) of Pub. L. 98–369, set out as an Effective Date note under section 5101 of this title.

§5614. Burden of proof in cases of seizure of spirits

Whenever seizure is made of any distilled spirits found elsewhere than on the premises of a distilled spirits plant, or than in any warehouse authorized by law, or than in the store or place of business of a wholesale liquor dealer, or than in transit from any one of said places; or of any distilled spirits found in any one of the places aforesaid, or in transit therefrom, which have not been received into or sent out therefrom in conformity to law, or in regard to which any of the entries required by law, or regulations issued pursuant thereto, to be made in respect of such spirits, have not been made at the time or in the manner required, or in respect to which any owner or person having possession, control, or charge of said spirits, has omitted to do any act required to be done, or has done or committed any act prohibited in regard to said spirits, the burden of proof shall be upon the claimant of said spirits to show that no fraud has been committed, and that all the requirements of the law in relation to the payment of the tax have been complied with.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1405.)

PRIOR PROVISIONS

A prior section 5614, act Aug. 16, 1954, ch. 736, 68A Stat. 685, related to penalty and forfeiture for removal of spirits during prohibited hours, prior to the general revision of this chapter by Pub. L. 85–859. See sections 5687 and 7301 of this title.

Provisions similar to those comprising this section were contained in prior section 5649, act Aug. 16, 1954, ch. 736, 68A Stat. 694, prior to the general revision of this chapter by Pub. L. 85–859.

§5615. Property subject to forfeiture

The following property shall be forfeited to the United States:

(1) Unregistered still or distilling apparatus

Every still or distilling apparatus not registered as required by section 5179, together with all personal property in the possession or custody or under the control of the person required by section 5179 to register the still or distilling apparatus, and found in the building or in any yard or inclosure connected with the building in which such still or distilling apparatus is set up; and

(2) Distilling apparatus removed without notice or set up without notice

Any still, boiler, or other vessel to be used for the purpose of distilling—

(A) which is removed without notice having been given when required by section 5101(a)(1), or

(B) which is set up without notice having been given when required by section 5101(a)(2); and

(3) Distilling without giving bond or with intent to defraud

Whenever any person carries on the business of a distiller without having given bond as required by law or gives any false, forged, or fraudulent bond; or engages in or carries on the business of a distiller with intent to defraud the United States of the tax on the distilled spirits distilled by him, or any part thereof; or after the time fixed in the notice declaring his intention to suspend work, filed under section 5221(a), carries on the business of a distiller on the premises

covered by such notice, or has mash, wort, or beer on such premises, or on any premises connected therewith, or has in his possession or under his control any mash, wort, or beer, with intent to distill the same on such premises—

(A) all distilled spirits or wines, and all stills or other apparatus fit or intended to be used for the distillation or rectification of spirits, or for the compounding of liquors, owned by such person, wherever found; and

(B) all distilled spirits, wines, raw materials for the production of distilled spirits, and personal property found in the distillery or in any building, room, yard, or inclosure connected therewith and used with or constituting a part of the premises; and

(C) all the right, title, and interest of such person in the lot or tract of land on which the distillery is situated; and

(D) all the right, title, and interest in the lot or tract of land on which the distillery is located of every person who knowingly has suffered or permitted the business of a distiller to be there carried on, or has connived at the same; and

(E) all personal property owned by or in possession of any person who has permitted or suffered any building, yard, or inclosure, or any part thereof, to be used for purposes of ingress or egress to or from the distillery, which shall be found in any such building, yard, or inclosure; and

(F) all the right, title, and interest of every person in any premises used for ingress or egress to or from the distillery who knowingly has suffered or permitted such premises to be used for such ingress or egress; and

(4) Unlawful production and removals from vinegar plants

(A) all distilled spirits in excess of 15 percent of alcohol by volume produced on the premises of a vinegar plant; and

(B) all vinegar or other fluid or other material containing a greater proportion than 2 percent of proof spirits removed from any vinegar plant; and

(5) False or omitted entries in records, returns, and reports

Whenever any person required by section 5207 to keep or file any record, return, report, summary, transcript, or other document, shall, with intent to defraud the United States—

(A) fail to keep any such document or to make required entries therein; or

(B) make any false entry in such document; or

(C) cancel, alter, or obliterate any part of such document, or any entry therein, or destroy any part of such document, or entry therein; or

(D) hinder or obstruct any internal revenue officer from inspecting any such document or taking any abstracts therefrom; or

(E) fail or refuse to preserve or produce any such document, as required by this chapter or regulations issued pursuant thereto; or

(F) permit any of the acts described in the preceding subparagraphs to be performed;

all interest of such person in the distilled spirits plant where such acts or omissions occur, and in the equipment thereon, and in the lot or tract of land on which such distilled spirits plant stands, and in all personal property on the premises of the distilled spirits plant where such acts or omissions occur, used in the business there carried on; and

(6) Unlawful removal of distilled spirits

All distilled spirits on which the tax has not been paid or determined which have been removed, other than as authorized by law, from the place of manufacture, storage, or instrument of transportation; and

(7) Creation of fictitious proof

All distilled spirits on which the tax has not been paid or determined as provided by law to which any ingredient or substance has been added for the purpose of creating fictitious proof.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1405; amended Pub. L. 96–39, title

VIII, §807(a)(56), July 26, 1979, 93 Stat. 289; Pub. L. 98–369, div. A, title IV, §451(b)(2), July 18, 1984, 98 Stat. 819.)

PRIOR PROVISIONS

A prior section 5615, act Aug. 16, 1954, ch. 736, 68A Stat. 686, related to penalty for refusal or neglect of distillers and rectifiers to give assistance to officers, prior to the general revision of this chapter by Pub. L. 85–859. See sections 5203(e) and 5687 of this title.

Provisions similar to those comprising this section were contained in prior sections of act Aug. 16, 1954, prior to the general revision of this chapter by Pub. L. 85–859, as follows:

Present subds.:	*Prior sections*
(1)	5601.
(2)	5602.
(3)	5604, 5606, 5626, 5650.
(4)	5608(b).
(5)	5620.
(6)	5631, 5632, 5643, 5647.
(7)	5634.

The prior sections, act Aug. 16, 1954, ch. 736, are set out in 68A Stat. 683 to 690, 692, 693, 695.

A prior section 5616, act Aug. 16, 1954, ch. 736, 68A Stat. 686, related to penalty for obstructing or refusing to admit officer to distillery premises, prior to the general revision of this chapter by Pub. L. 85–859. See section 5687 of this title.

A prior section 5617, act Aug. 16, 1954, ch. 736, 68A Stat. 686, related to penalty for failure to keep distillery accessible, prior to the general revision of this chapter by Pub. L. 85–859. See section 5687 of this title.

A prior section 5618, act Aug. 16, 1954, ch. 736, 68A Stat. 686, related to penalty for failure of distiller to identify fixed pipes, prior to the general revision of this chapter by Pub. L. 85–859. See section 5687 of this title.

A prior section 5619, act Aug. 16, 1954, ch. 736, 68A Stat. 686, related to penalty for refusal or neglect to draw off water and clean condensers or worm tanks, prior to the general revision of this chapter by Pub. L. 85–859. See section 5687 of this title.

A prior section 5620, act Aug. 16, 1954, ch. 736, 68A Stat. 686, related to penalty and forfeiture for false or omitted entries in distiller's books and records, prior to the general revision of this chapter by Pub. L. 85–859. See sections 5603 and 5615(5) of this title.

A prior section 5621, act Aug. 16, 1954, ch. 736, 68A Stat. 687, related to penalty concerning records and returns of distiller as wholesale dealers, rectifiers, prior to the general revision of this chapter by Pub. L. 85–859. See section 5603 of this title.

A prior section 5622, act Aug. 16, 1954, ch. 736, 68A Stat. 687, related to disposal of forfeited equipment and material for distilling, prior to the general revision of this chapter by Pub. L. 85–859. See section 5610 of this title.

A prior section 5623, act Aug. 16, 1954, ch. 736, 68A Stat. 687, related to destruction of distilling apparatus, prior to the general revision of this chapter by Pub. L. 85–859. See section 5609 of this title.

A prior section 5624, act Aug. 16, 1954, ch. 736, 68A Stat. 688, related to release of distillery before judgment, prior to the general revision of this chapter by Pub. L. 85–859. See section 5611 of this title.

A prior section 5625, act Aug. 16, 1954, ch. 736, 68A Stat. 688, related to forfeiture of tax-paid distilled spirits remaining on distillery premises, prior to the general revision of this chapter by Pub. L. 85–859. See section 5612(a) of this title.

A prior section 5626, act Aug. 16, 1954, ch. 736, 68A Stat. 688, related to penalty and forfeiture for tax fraud by distiller, prior to the general revision of this chapter by Pub. L. 85–859. See sections 5602 and 5615(3) of this title.

A prior section 5627, act Aug. 16, 1954, ch. 736, 68A Stat. 689, related to penalty for unlawful use of rectifying premises, prior to the general revision of this chapter by Pub. L. 85–859. See section 5687 of this title.

A prior section 5628, act Aug. 16, 1954, ch. 736, 68A Stat. 689, related to penalty for rectification without

payment of tax, increasing volume, etc., prior to the general revision of this chapter by Pub. L. 85–859. See section 5601(a)(10) and 5687 of this title.

A prior section 5629, act Aug. 16, 1954, ch. 736, 68A Stat. 689, related to penalty for unlawful rectifying, prior to the general revision of this chapter by Pub. L. 85–859. See section 5601(a)(10), (11) of this title.

A prior section 5630, act Aug. 16, 1954, ch. 736, 68A Stat. 689, related to penalty for noncompliance by rectifiers with provisions relating to rectifying, gauging, branding, and stamping, prior to the general revision of this chapter by Pub. L. 85–859. See section 5687 of this title.

A prior section 5631, act Aug. 16, 1954, ch. 736, 68A Stat. 689, related to penalty and forfeiture for failure to comply with warehousing and removal requirements, prior to the general revision of this chapter by Pub. L. 85–859. See sections 5601(a)(12), 5615(6), and 5687 of this title.

A prior section 5632, act Aug. 16, 1954, ch. 736, 68A Stat. 690, related to penalty or forfeiture for unlawful removal or concealment of spirits, prior to the general revision of this chapter by Pub. L. 85–859. See sections 5601 and 5615 of this title.

A prior section 5633, act Aug. 16, 1954, ch. 736, 68A Stat. 690, related to penalty of officer in charge of warehouse for unlawful removal of spirits, prior to the general revision of this chapter by Pub. L. 85–859. See section 7214 of this title.

A prior section 5634, act Aug. 16, 1954, ch. 736, 68A Stat. 690, related to penalty and forfeiture for creation of fictitious proof, prior to the general revision of this chapter by Pub. L. 85–859. See sections 5601 and 5615 of this title.

A prior section 5635, act Aug. 16, 1954, ch. 736, 68A Stat. 690, related to penalty for buying or selling used casks bearing inspection marks, prior to the general revision of this chapter by Pub. L. 85–859. See section 5604 of this title.

A prior section 5636, act Aug. 16, 1954, ch. 736, 68A Stat. 690, related to penalty and forfeiture for failure to efface, etc., stamps and brands on emptied packages, prior to the general revision of this chapter by Pub. L. 85–859. See sections 5604 and 7301 of this title.

A prior section 5637, act Aug. 16, 1954, ch. 736, 68A Stat. 691, related to penalty for changing stamps or shifting spirits, prior to the general revision of this chapter by Pub. L. 85–859. See section 5604 of this title.

A prior section 5638, act Aug. 16, 1954, ch. 736, 68A Stat. 691, related to penalty and forfeiture for affixing imitation stamps on packages of distilled spirits, prior to the general revision of this chapter by Pub. L. 85–859. See sections 5604, 5613, 7301, and 7302 of this title.

A prior section 5639, act Aug. 16, 1954, ch. 736, 68A Stat. 691, related to forfeiture of distilled spirits in unstamped casks or packages, prior to the general revision of this chapter by Pub. L. 85–859. See section 5613 of this title.

A prior section 5640, act Aug. 16, 1954, ch. 736, 68A Stat. 691, related to forfeiture of spirits in unstamped containers, prior to the general revision of this chapter by Pub. L. 85–859. See section 5613 of this title.

A prior section 5641, act Aug. 16, 1954, ch. 736, 68A Stat. 692, related to penalty and forfeiture relating to containers of distilled spirits, prior to the general revision of this chapter by Pub. L. 85–859. See sections 5606, 5613, 7301, 7302, and 7321 to 7323 of this title.

A prior section 5642, act Aug. 16, 1954, ch. 736, 68A Stat. 692, related to penalties for transporting, possessing, etc., distilled spirits in unstamped containers or counterfeiting of stamps, etc., prior to the general revision of this chapter by Pub. L. 85–859. See section 5604 of this title.

A prior section 5643, act Aug. 16, 1954, ch. 736, 68A Stat. 692, related to penalty and forfeiture for reuse of stamps or bottles, tampering and unlawful removal, prior to the general revision of this chapter by Pub. L. 85–859. See sections 5601, 5604, 5613, 5615, 5687, 7301 and 7302 of this title.

A prior section 5644, act Aug. 16, 1954, ch. 736, 68A Stat. 693, related to penalty for counterfeiting bottled in bond stamps, prior to the general revision of this chapter by Pub. L. 85–859. See section 5604 of this title.

A prior section 5645, act Aug. 16, 1954, ch. 736, 68A Stat. 693, related to penalty for unlawful affixing, canceling, or issue of stamps by officer, prior to the general revision of this chapter by Pub. L. 85–859. See section 7214 of this title.

A prior section 5646, act Aug. 16, 1954, ch. 736, 68A Stat. 693, related to penalty for evasion of distilled spirits tax, prior to the general revision of this chapter by Pub. L. 85–859.

A prior section 5647, act Aug. 16, 1954, ch. 736, 68A Stat. 693, related to penalty and forfeiture for unlawful use or concealment of denatured alcohol, prior to the general revision of this chapter by Pub. L. 85–859. See sections 5273, 5601, 5607, and 5615 of this title.

A prior section 5648, act Aug. 16, 1954, ch. 736, 68A Stat. 694, related to penalty and forfeiture for fraudulent claims for export drawback or unlawful relanding, prior to the general revision of this chapter by Pub. L. 85–859. See section 5608 of this title.

A prior section 5649, act Aug. 16, 1954, ch. 736, 68A Stat. 694, related to burden of proof in cases of

seizure of spirits, prior to the general revision of this chapter by Pub. L. 85–859. See section 5614 of this title.

A prior section 5650, act Aug. 16, 1954, ch. 736, 68A Stat. 695, related to penalty and forfeiture for operating distillery after giving notice of suspension, prior to the general revision of this chapter by Pub. L. 85–859. See sections 5601 and 5615 of this title.

AMENDMENTS

1984—Par. (2). Pub. L. 98–369 amended par. (2) generally. Prior to amendment, par. (2) read as follows: "Any still, boiler, or other vessel to be used for the purpose of distilling which is removed without notice having been given as required by section 5105(a) or which is set up without permit first having been obtained as required by such section; and".

1979—Par. (5). Pub. L. 96–39 substituted "distilled spirits plant" for "distillery, bonded warehouse, or rectifying or bottling establishment" in three places.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective on first day of first calendar month which begins more than 90 days after July 18, 1984, see section 456(a) of Pub. L. 98–369, set out as an Effective Date note under section 5101 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as a note under section 5001 of this title.

PART II—PENALTY AND FORFEITURE PROVISIONS APPLICABLE TO WINE AND WINE PRODUCTION

Sec.

5661. Penalty and forfeiture for violation of laws and regulations relating to wine.
5662. Penalty for alteration of wine labels.
5663. Cross reference.

PRIOR PROVISIONS

A prior part II consisted of sections 5661 to 5663 of this title, prior to the general revision of this chapter by Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1313.

§5661. Penalty and forfeiture for violation of laws and regulations relating to wine

(a) Fraudulent offenses

Whoever, with intent to defraud the United States, fails to pay any tax imposed upon wine or violates, or fails to comply with, any provision of subchapter F or subpart C of part I of subchapter A, or regulations issued pursuant thereto, or recovers or attempts to recover any spirits from wine, shall be fined not more than $5,000, or imprisoned not more than 5 years, or both, for each such offense, and all products and materials used in any such violation shall be forfeited to the United States.

(b) Other offenses

Any proprietor of premises subject to the provisions of subchapter F, or any employee or agent of such proprietor, or any other person, who otherwise than with intent to defraud the United States violates or fails to comply with any provision of subchapter F or subpart C of part I of subchapter A, or regulations issued pursuant thereto, or who aids or abets in any such violation, shall be fined not more than $1,000, or imprisoned not more than 1 year, or both, for each such offense.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1407.)

PRIOR PROVISIONS

A prior section 5661, act Aug. 16, 1954, ch. 736, 68A Stat. 695, consisted of provisions similar to those

comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

Prior section 5661(a) also provided for an additional penalty "of double the tax due, to be assessed, levied and collected in the same manner as taxes are collected". See section 6651 et seq. of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§5662. Penalty for alteration of wine labels

Any person who, without the permission of the Secretary, so alters as to materially change the meaning of any mark, brand, or label required to appear upon any wine upon its removal from premises subject to the provisions of subchapter F, or from customs custody, or who, after such removal, represents any wine, whether in its original containers or otherwise, to be of an identity or origin other than its proper identity or origin as shown by such stamp, mark, brand, or label, or who, directly or indirectly, and whether by manner of packaging or advertising or any other form of representation, represents any still wine to be an effervescent wine or a substitute for an effervescent wine, shall be fined not more than $1,000, or imprisoned not more than 1 year, or both, for each such offense.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1407; amended Pub. L. 94–455, title XIX, §§1905(b)(2)(D), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1822, 1834.)

PRIOR PROVISIONS

A prior section 5662, act Aug. 16, 1954, ch. 736, 68A Stat. 695, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" and "stamp," before "mark,".

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1905(b)(2)(D) of Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1905(d) of Pub. L. 94–455, set out as a note under section 5005 of this title.

§5663. Cross reference

For penalties of common application pertaining to liquors, including wines, see part IV.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1407; amended Pub. L. 96–39, title VIII, §807(a)(57), July 26, 1979, 93 Stat. 289.)

PRIOR PROVISIONS

A prior section 5663, act Aug. 16, 1954, ch. 736, 68A Stat. 695, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1979—Pub. L. 96–39 struck out reference to penalties for rectified products under part I of this subchapter.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as a note under section 5001 of this title.

PART III—PENALTY, SEIZURE, AND FORFEITURE PROVISIONS APPLICABLE TO BEER AND BREWING

Sec.
5671. Penalty and forfeiture for evasion of beer tax and fraudulent noncompliance with requirements.
5672. Penalty for failure of brewer to comply with requirements and to keep records and file returns.
5673. Forfeiture for flagrant and willful removal of beer without taxpayment.
5674. Penalty for unlawful production or removal of beer.
5675. Penalty for intentional removal or defacement of brewer's marks and brands.
[5676. Repealed.]

PRIOR PROVISIONS

A prior part III consisted of sections 5671 to 5676 of this title, prior to the general revision of this chapter by Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1313.

AMENDMENTS

1978—Pub. L. 95–458, §2(b)(5)(B), Oct. 14, 1978, 92 Stat. 1257, substituted "production or removal" for "removal" in item 5674.

1976—Pub. L. 94–455, title XIX, §1905(b)(1)(B), Oct. 4, 1976, 90 Stat. 1822, struck out item 5676 "Penalties relating to beer stamps".

§5671. Penalty and forfeiture for evasion of beer tax and fraudulent noncompliance with requirements

Whoever evades or attempts to evade any tax imposed by section 5051, or with intent to defraud the United States fails or refuses to keep and file true and accurate records and returns as required by section 5415 and regulations issued pursuant thereto, shall be fined not more than $5,000, or imprisoned not more than 5 years, or both, for each such offense, and shall forfeit all beer made by him or for him, and all the vessels, utensils, and apparatus used in making the same.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1408; amended Pub. L. 109–59, title XI, §11125(b)(18), Aug. 10, 2005, 119 Stat. 1956.)

PRIOR PROVISIONS

A prior section 5671, act Aug. 16, 1954, ch. 736, 68A Stat. 696, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

2005—Pub. L. 109–59 struck out "or 5091" after "section 5051".

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–59 effective July 1, 2008, but inapplicable to taxes imposed for periods before such date, see section 11125(c) of Pub. L. 109–59, set out as a note under section 5002 of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§5672. Penalty for failure of brewer to comply with requirements and to keep records and file returns

Every brewer who, otherwise than with intent to defraud the United States, fails or refuses to keep the records and file the returns required by section 5415 and regulations issued pursuant thereto, or refuses to permit any internal revenue officer to inspect his records in the manner provided, or violates any of the provisions of subchapter G or regulations issued pursuant thereto shall be fined not more than $1,000, or imprisoned not more than 1 year, or both, for each such offense.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1408.)

PRIOR PROVISIONS

A prior section 5672, act Aug. 16, 1954, ch. 736, 68A Stat. 696, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

§5673. Forfeiture for flagrant and willful removal of beer without taxpayment

For flagrant and willful removal of taxable beer for consumption or sale, with intent to defraud the United States of the tax thereon, all the right, title, and interest of each person who knowingly has suffered or permitted such removal, or has connived at the same, in the lands and buildings constituting the brewery shall be forfeited by a proceeding in rem in the District Court of the United States having jurisdiction thereof.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1408.)

PRIOR PROVISIONS

A prior section 5673, act Aug. 16, 1954, ch. 736, 68A Stat. 696, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

§5674. Penalty for unlawful production or removal of beer

(a) Unlawful production

Any person who brews beer or produces beer shall be fined not more than $1,000, or imprisoned not more than 1 year, or both, unless such beer is brewed or produced in a brewery qualified under subchapter G or such production is exempt from tax under section 5053(e) (relating to beer for personal or family use).

(b) Unlawful removal

Any brewer or other person who removes or in any way aids in the removal from any brewery of beer without complying with the provisions of this chapter or regulations issued pursuant thereto shall be fined not more than $1,000, or imprisoned not more than 1 year, or both.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1408; amended Pub. L. 95–458, §2(b)(5)(A), Oct. 14, 1978, 92 Stat. 1256.)

PRIOR PROVISIONS

A prior section 5674, act Aug. 16, 1954, ch. 736, 68A Stat. 696, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1978—Pub. L. 95–458 substituted "production or removal" for "removal" in section catchline, redesignated existing provision as subsec. (b), and added subsec. (a).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–458 effective on first day of first calendar month beginning more than 90 days after Oct. 14, 1978, see section 2(c) of Pub. L. 95–458, set out as a note under section 5042 of this title.

§5675. Penalty for intentional removal or defacement of brewer's marks and brands

Every person other than the owner, or his agent authorized so to do, who intentionally removes or defaces any mark, brand, or label required by section 5412 and regulations issued pursuant thereto shall be liable to a penalty of $50 for each barrel or other container from which such mark, brand, or label is so removed or defaced.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1408.)

PRIOR PROVISIONS

A prior section 5675, act Aug. 16, 1954, ch. 736, 68A Stat. 696, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

[§5676. Repealed. Pub. L. 94–455, title XIX, §1905(b)(1)(A), Oct. 4, 1976, 90 Stat. 1822]

Section, added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1408, set out the penalties for selling, removing, or receiving beer without a proper stamp or device, withdrawing beer from an improperly stamped container or without destroying the stamp, and counterfeiting stamps or devices or trafficking in used stamps or devices, and provided for the forfeiture of unstamped containers, and the penalties for removal or defacement of stamps, devices, or labels.

A prior section 5676, act Aug. 16, 1954, ch. 736, 68A Stat. 697, consisted of provisions similar to those comprising this section prior to repeal by Pub. L. 94–455, prior to the general revision of this chapter by Pub. L. 85–859.

EFFECTIVE DATE OF REPEAL

Repeal effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1905(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 5005 of this title.

PART IV—PENALTY, SEIZURE, AND FORFEITURE PROVISIONS COMMON TO LIQUORS

Sec.

5681. Penalty relating to signs.
5682. Penalty for breaking locks or gaining access.
5683. Penalty and forfeiture for removal of liquors under improper brands.
5684. Penalties relating to the payment and collection of liquor taxes.
5685. Penalty and forfeiture relating to possession of devices for emitting gas, smoke, etc., explosives and firearms, when violating liquor laws.
5686. Penalty for having, possessing, or using liquor or property intended to be used in violating provisions of this chapter.
5687. Penalty for offenses not specifically covered.
5688. Disposition and release of seized property.
[5689. Repealed.]
5690. Definition of the term "person".

PRIOR PROVISIONS

A prior part IV consisted of sections 5681 to 5690 of this title, prior to the general revision of this chapter by Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1313.

AMENDMENTS

1976—Pub. L. 94–455, title XIX, §1905(b)(2)(E)(ii), Oct. 4, 1976, 90 Stat. 1822, struck out item 5689 "Penalty and forfeiture for tampering with a stamp machine".

§5681. Penalty relating to signs

(a) Failure to post required sign

Every person engaged in distilled spirits operations who fails to post the sign required by section 5180(a) shall be fined not more than $1,000, or imprisoned not more than 1 year, or both.

(b) Posting or displaying false sign

Every person, other than a distiller, warehouseman, or processor of distilled spirits who has

received notice of registration of his plant under the provisions of section 5171(c), or other than a wholesale dealer in liquors who has paid the special tax (or who is exempt from payment of such special tax by reason of the provisions of section 5113(a)),[1] who puts up or keeps up any sign indicating that he may lawfully carry on the business of a distiller, warehouseman, or processor of distilled spirits, or wholesale dealer in liquors, as the case may be, shall be fined not more than $1,000, or imprisoned not more than 1 year, or both.

(c) Premises where no sign is placed or kept

Every person who works in any distilled spirits plant on which no sign required by section 5180(a) is placed or kept, and every person who knowingly receives at, or carries or conveys any distilled spirits to or from any such distilled spirits plant or who knowingly carries or delivers any grain, molasses, or other raw material to any distilled spirits plant on which such a sign is not placed and kept, shall forfeit all vehicles, aircraft, or vessels used in carrying or conveying such property and shall be fined not more than $1,000, or imprisoned not more than 1 year, or both.

(d) Presumption

Whenever on trial for violation of subsection (c) by working in a distilled spirits plant on which no sign required by section 5180(a) is placed or kept, the defendant is shown to have been present at such premises, such presence of the defendant shall be deemed sufficient evidence to authorize conviction, unless the defendant explains such presence to the satisfaction of the jury (or of the court when tried without jury).

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1410; amended Pub. L. 96–39, title VIII, §807(a)(58), July 26, 1979, 93 Stat. 289; Pub. L. 105–34, title XIV, §1415(b)(1), (2), Aug. 5, 1997, 111 Stat. 1047.)

REFERENCES IN TEXT

Section 5113, referred to in subsec. (b), was repealed by Pub. L. 109–59, title XI, §11125(a)(1)(C), Aug. 10, 2005, 119 Stat. 1953.

PRIOR PROVISIONS

A prior section 5681, act Aug. 16, 1954, ch. 736, 68A Stat. 698, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1997—Subsec. (a). Pub. L. 105–34, §1415(b)(1), struck out ", and every wholesale dealer in liquors," after "spirits operations" and "section 5115(a) or" after "sign required by".

Subsec. (c). Pub. L. 105–34, §1415(b)(2), substituted "on which no sign required by" for "or wholesale liquor establishment, on which no sign required by section 5115(a) or" and substituted "or who" for "or wholesale liquor establishment, or who".

1979—Subsec. (a). Pub. L. 96–39, §807(a)(58)(A), substituted "distilled spirits operations" for "distilling, warehousing of distilled spirits, rectifying, or bottling of distilled spirits".

Subsec. (b). Pub. L. 96–39, §807(a)(58)(B), substituted "other than a distiller, warehouseman, or processor of distilled spirits" for "other than a distiller, warehouseman of distilled spirits, rectifier, or bottler of distilled spirits", "section 5171(c)" for "section 5171(a)", and "business of a distiller, warehouseman, or processor of distilled spirits" for "business of a distiller, bonded warehouseman, rectifier, bottler of distilled spirits".

Subsec. (c). Pub. L. 96–39, §807(a)(58)(C), substituted "in any distilled spirits plant" for "in any distillery, or in any rectifying, distilled spirits bottling", "such distilled spirits plant" for "such distillery, or to or from any such rectifying, distilled spirits bottling", and "to any distilled spirits plant" for "to any distillery".

Subsec. (d). Pub. L. 96–39, §807(a)(58)(D), substituted "distilled spirits plant" for "distillery or rectifying establishment".

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XIV, §1415(c), Aug. 5, 1997, 111 Stat. 1047, provided that: "The amendments made by this section [amending this section and repealing section 5115 of this title] shall take effect on the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as a note under section 5001 of this title.

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

[1] *See References in Text note below.*

§5682. Penalty for breaking locks or gaining access

Every person, who destroys, breaks, injures, or tampers with any lock or seal which may be placed on any room, building, tank, vessel, or apparatus, by any authorized internal revenue officer or any approved lock or seal placed thereon by a distilled spirits plant proprietor, or who opens said lock, seal, room, building, tank, vessel, or apparatus, or in any manner gains access to the contents therein, in the absence of the proper officer, or otherwise than as authorized by law, shall be fined not more than $5,000, or imprisoned not more than 3 years, or both.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1410; amended Pub. L. 96–39, title VIII, §807(a)(59), July 26, 1979, 93 Stat. 290.)

PRIOR PROVISIONS

A prior section 5682, act Aug. 16, 1954, ch. 736, 68A Stat. 698, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1979—Pub. L. 96–39 expanded penalty provisions to include persons tampering with locks or seals affixed by distilled spirits plant proprietors.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see section 810 of Pub. L. 96–39, set out as a note under section 5001 of this title.

§5683. Penalty and forfeiture for removal of liquors under improper brands

Whenever any person ships, transports, or removes any distilled spirits, wines, or beer, under any other than the proper name or brand known to the trade as designating the kind and quality of the contents of the casks or packages containing the same, or causes such act to be done, he shall be fined not more than $1,000, or imprisoned not more than 1 year, or both, and shall forfeit such distilled spirits, wines, or beer, and casks or packages.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1410.)

PRIOR PROVISIONS

A prior section 5683, act Aug. 16, 1954, ch. 736, 68A Stat. 699, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

§5684. Penalties relating to the payment and collection of liquor taxes

(a) Failure to pay tax

Whoever fails to pay any tax imposed by part I of subchapter A at the time prescribed shall, in addition to any other penalty provided in this title, be liable to a penalty of 5 percent of the tax due but unpaid.

(b) Applicability of section 6665

The penalties imposed by subsection (a) shall be assessed, collected, and paid in the same manner as taxes, as provided in section 6665(a).

(c) Cross references

(1) For provisions relating to interest in the case of taxes not paid when due, see section 6601.

(2) For penalty for failure to file tax return or pay tax, see section 6651.

(3) For additional penalties for failure to pay tax, see section 6653.

(4) For penalty for failure to make deposits or for overstatement of deposits, see section 6656.

(5) For penalty for attempt to evade or defeat any tax imposed by this title, see section 7201.

(6) For penalty for willful failure to file return, supply information, or pay tax, see section 7203.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1410; amended Pub. L. 91–172, title IX, §943(c)(4), Dec. 30, 1969, 83 Stat. 728; Pub. L. 97–34, title VII, §§722(a)(3), 724(b)(4), Aug. 13, 1981, 95 Stat. 342, 345; Pub. L. 98–369, div. A, title VII, §§714(h)(1), 722(a)(5), July 18, 1984, 98 Stat. 962, 973; Pub. L. 101–239, title VII, §7721(c)(3), Dec. 19, 1989, 103 Stat. 2399.)

PRIOR PROVISIONS

A prior section 5684, act Aug. 16, 1954, ch. 736, 68A Stat. 699, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859. See section 5687 of this title and criminal and civil penalties of subtitle F of this title.

AMENDMENTS

1989—Subsec. (b). Pub. L. 101–239 substituted "6665" for "6662" in heading and "6665(a)" for "6662(a)" in text.

1984—Subsec. (b). Pub. L. 98–369, §714(h)(1), substituted in heading "6662" for "6660" and in text "6662(a)" for "6660(a)".

Pub. L. 98–369, §722(a)(5), substituted "subsection (a)" for "subsections (a) and (b)".

1981—Subsec. (b). Pub. L. 97–34, §724(b)(4)(A), redesignated subsec. (c) as (b). Former subsec. (b), which related to penalties for failure to make deposit of taxes, was struck out.

Subsec. (c). Pub. L. 97–34, §724(b)(4), redesignated subsec. (d) as (c), added par. (4), and redesignated pars. (5) and (6) as (4) and (5), respectively. Former subsec. (c) redesignated (b).

Pub. L. 97–34, §722(a)(3), substituted "6660" for "6659" in heading and text.

Subsec. (d). Pub. L. 97–34, §724(b)(4), redesignated subsec. (d) as (c).

1969—Subsec. (d)(2). Pub. L. 91–172 inserted "or pay tax" after "tax return".

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1989, see section 7721(d) of Pub. L. 101–239, set out as a note under section 461 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 714(h)(1) of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

Amendment by section 722(a)(5) of Pub. L. 98–369 effective as if included in the provisions of the Technical Corrections Act of 1984, Pub. L. 97–448, to which such amendment relates, see section 722(a)(6) of Pub. L. 98–369, set out as a note under section 172 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title VII, §722(a)(4), Aug. 13, 1981, 95 Stat. 342, provided that: "The amendments made by this subsection [enacting section 6659 of this title and amending this section and section 5761 of this title] shall apply to returns filed after December 31, 1981."

Amendment by section 724(b)(4) of Pub. L. 97–34 applicable to returns filed after Aug. 13, 1981, see section 724(c) of Pub. L. 97–34, set out as a note under section 6656 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable with respect to tax returns the date prescribed by law for filing of which is after Dec. 31, 1969, see section 943(d) of Pub. L. 91–172, set out as a note under section 6651 of this title.

§5685. Penalty and forfeiture relating to possession of devices for emitting gas, smoke, etc., explosives and firearms, when violating liquor laws

(a) Penalty for possession of devices for emitting gas, smoke, etc.

Whoever, when violating any law of the United States, or of any possession of the United States, or of the District of Columbia, in regard to the manufacture, taxation, or transportation of or traffic in distilled spirits, wines, or beer, or when aiding in any such violation, has in his possession or in his control any device capable of causing emission of gas, smoke, or fumes, and which may be used for the purpose of hindering, delaying, or preventing pursuit or capture, any explosive, or any firearm (as defined in section 5845), except a machine gun, or a shotgun having a barrel or barrels less than 18 inches in length, or a rifle having a barrel or barrels less than 16 inches in length, shall be fined not more than $5,000, or imprisoned not more than 10 years, or both, and all persons engaged in any such violation or in aiding in any such violation shall be held to be in possession or control of such device, firearm, or explosive.

(b) Penalty for possession of machine gun, etc.

Whoever, when violating any such law, has in his possession or in his control a machine gun, or any shotgun having a barrel or barrels less than 18 inches in length, or a rifle having a barrel or barrels less than 16 inches in length, shall be imprisoned not more than 20 years; and all persons engaged in any such violation or in aiding in any such violation shall be held to be in possession and control of such machine gun, shotgun, or rifle.

(c) Forfeiture of firearms, devices, etc.

Every such firearm or device for emitting gas, smoke, or fumes, and every such explosive, machine gun, shotgun, or rifle, in the possession or control of any person when violating any such law, shall be seized and shall be forfeited and disposed of in the manner provided by section 5872.

(d) Definition of machine gun

As used in this section the term "machine gun" means a machine gun as defined in section 5845(b).

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1411; amended Pub. L. 86–478, §4, June 1, 1960, 74 Stat. 150; Pub. L. 94–455, title XIX, §1905(a)(23), (c)(6), Oct. 4, 1976, 90 Stat. 1821, 1823.)

PRIOR PROVISIONS

A prior section 5685, act Aug. 16, 1954, ch. 736, 68A Stat. 699, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1976—Subsec. (a). Pub. L. 94–455, §1905(a)(23)(A), (c)(6), struck out "Territory or" after "United States, or of any" and substituted "section 5845" for "section 5848".

Subsec. (c). Pub. L. 94–455, §1905(a)(23)(B), substituted "section 5872" for "section 5862".

Subsec. (d). Pub. L. 94–455, §1905(a)(23)(C), substituted "means a machinegun as defined in section 5845(b)" for "means any weapon which shoots, or is designed to shoot, automatically or semiautomatically, more than one shot, without manual reloading, by a single function of the trigger".

1960—Subsecs. (a), (b). Pub. L. 86–478 substituted "shotgun having a barrel or barrels less than 18 inches in length, or a rifle having a barrel or barrels less than 16 inches in length" for "shotgun or rifle having a barrel or barrels less than 18 inches in length".

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective on first day of first month which begins more than 90 days after

Oct. 4, 1976, see section 1905(d) of Pub. L. 94–455, set out as a note under section 5005 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–478 effective on first day of first month which begins more than 10 days after June 1, 1960, see section 5 of Pub. L. 86–478, June 1, 1960, 74 Stat. 150.

§5686. Penalty for having, possessing, or using liquor or property intended to be used in violating provisions of this chapter

(a) General

It shall be unlawful to have or possess any liquor or property intended for use in violating any provision of this chapter or regulations issued pursuant thereto, or which has been so used, and every person so having or possessing or using such liquor or property, shall be fined not more than $5,000, or imprisoned not more than 1 year, or both.

(b) Cross reference

For seizure and forfeiture of liquor and property had, possessed, or used in violation of subsection (a), see section 7302.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1411.)

PRIOR PROVISIONS

A prior section 5686, act Aug. 16, 1954, ch. 736, 68A Stat. 700, consisted in subsecs. (b) and (c) of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

Prior section 5686(a) related to offenses as to operation of industrial alcohol or denaturing plants or unlawful withdrawal of taxable alcohol. See section 5687 of this title.

§5687. Penalty for offenses not specifically covered

Whoever violates any provision of this chapter or regulations issued pursuant thereto, for which a specific criminal penalty is not prescribed by this chapter, shall be fined not more than $1,000, or imprisoned not more than 1 year, or both, for each such offense.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1412.)

PRIOR PROVISIONS

A prior section 5687, act Aug. 16, 1954, ch. 736, 68A Stat. 700, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

Prior section 5687 also related to forfeitures applicable to distillers, rectifiers, and wholesale liquor dealers for offenses not specifically covered. See sections 7301 and 7302 of this title.

Provisions similar to those comprising this section were contained in prior sections 5602, 5608(c), 5612 to 5619, 5627, 5628, 5630, 5631, 5643, 5684(a) and 5686(a), act Aug. 16, 1954, ch. 736, 68A Stat. 683, 685, 686, 689, 692, 693, 699, 700, prior to the general revision of this chapter by Pub. L. 85–859.

§5688. Disposition and release of seized property

(a) Forfeiture

(1) Delivery

All distilled spirits, wines, and beer forfeited, summarily or by order of court, under any law of the United States, shall be delivered to the Administrator of General Services to be disposed of as hereinafter provided.

(2) Disposal

The Administrator of General Services shall dispose of all distilled spirits, wines, and beer

which have been delivered to him pursuant to paragraph (1)—

(A) by delivery to such Government agencies as, in his opinion, have a need for such distilled spirits, wines, or beer for medicinal, scientific, or mechanical purposes, or for any other official purpose for which appropriated funds may be expended by a Government agency; or

(B) by gifts to such eleemosynary institutions as, in his opinion, have a need for such distilled spirits, wines, or beer for medicinal purposes; or

(C) by destruction.

(3) Limitation on disposal

Except as otherwise provided by law, no distilled spirits, wines, or beer which have been seized under any law of the United States may be disposed of in any manner whatsoever except after forfeiture and as provided in this subsection.

(4) Regulations

The Administrator of General Services is authorized to make all rules and regulations necessary to carry out the provisions of this subsection.

(5) Remission or mitigation of forfeitures

Nothing in this section shall affect the authority of the Secretary, under the customs or internal revenue laws, to remit or mitigate the forfeiture, or alleged forfeiture, of such distilled spirits, wines, or beer, or the authority of the Secretary, to compromise any civil or criminal case in respect of such distilled spirits, wines, or beer prior to commencement of suit thereon, or the authority of the Secretary to compromise any claim under the customs laws in respect to such distilled spirits, wines, or beer.

(b) Distraint or judicial process

Except as provided in section 5243, all distilled spirits sold by order of court, or under process of distraint, shall be sold subject to tax; and the purchaser shall immediately, and before he takes possession of said spirits, pay the tax thereon, pursuant to the applicable provisions of this chapter and in accordance with regulations to be prescribed by the Secretary.

(c) Release of seized vessels or vehicles by courts

Notwithstanding any provisions of law relating to the return on bond of any vessel or vehicle seized for the violation of any law of the United States, the court having jurisdiction of the subject matter may, in its discretion and upon good cause shown by the United States, refuse to order such return of any such vessel or vehicle to the claimant thereof. As used in this subsection, the word "vessel" includes every description of watercraft used, or capable of being used, as a means of transportation in water or in water and air; and the word "vehicle" includes every animal and description of carriage or other contrivance used, or capable of being used, as a means of transportation on land or through the air.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1412; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

PRIOR PROVISIONS

A prior section 5688, act Aug. 16, 1954, ch. 736, 68A Stat. 701, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

AMENDMENTS

1976—Subsecs. (a)(5), (b). Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

[§5689. Repealed. Pub. L. 94–455, title XIX, §1905(b)(2)(E)(i), Oct. 4, 1976, 90 Stat. 1822]

Section, added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1413, provided for penalty and

forfeiture for tampering with a stamp machine.

A prior section 5689, act Aug. 16, 1954, ch. 736, 68A Stat. 702, related to penalty and forfeiture for tampering with a stamp machine, prior to the general revision of this chapter by Pub. L. 85–859.

EFFECTIVE DATE OF REPEAL

Repeal effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1905(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 5005 of this title.

§5690. Definition of the term "person"

The term "person", as used in this subchapter, includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1413.)

PRIOR PROVISIONS

A prior section 5690, act Aug. 16, 1954, ch. 736, 68A Stat. 702, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85–859.

[PART V—REPEALED]

PRIOR PROVISIONS

A prior part V consisted of sections 5691 to 5693, prior to the general revision of this chapter by Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1313.

[§5691. Repealed. Pub. L. 109–59, title XI, §11125(b)(19)(A), Aug. 10, 2005, 119 Stat. 1956]

Section, added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1413; amended Pub. L. 96–39, title VIII, §807(a)(60), July 26, 1979, 93 Stat. 290; Pub. L. 98–369, div. A, title IV, §451(b)(3), July 18, 1984, 98 Stat. 819; Pub. L. 100–203, title X, §10512(a)(1)(B)(i), (ii), Dec. 22, 1987, 101 Stat. 1330–447, 1330–448, related to penalties for nonpayment of special taxes.

PRIOR PROVISIONS

A prior section 5691, act Aug. 16, 1954, ch. 736, 68A Stat. 702, related to penalties for willful nonpayment of special taxes and forfeitures for nonpayment of special taxes relating to liquors, prior to the general revision of this chapter by Pub. L. 85–859.

EFFECTIVE DATE OF REPEAL

Repeal effective July 1, 2008, but inapplicable to taxes imposed for periods before such date, see section 11125(c) of Pub. L. 109–59, set out as an Effective Date of 2005 Amendment note under section 5002 of this title.

[§5692. Repealed. Pub. L. 90–618, title II, §206(a), Oct. 22, 1968, 82 Stat. 1235]

Section, added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1413, set forth a cross reference to section 7273(a), relating to penalties for failure to post special tax stamps.

A prior section 5692, act Aug. 16, 1954, ch. 736, 68A Stat. 703, related to penalty relating to records of retail liquor dealers, prior to the general revision of this chapter by Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1313.

A prior section 5693, act Aug. 16, 1954, ch. 736, 68A Stat. 703, consisted of provisions similar to those comprising section 5692, prior to the general revision of this chapter by Pub. L. 85–859.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 22, 1968, see section 207 of Pub. L. 90–618, set out as an Effective Date note under section 5801 of this title.

CHAPTER 52—TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

Subchapter		Sec.[1]
A.	**Definitions; rate and payment of tax; exemption from tax; and refund and drawback of tax**	**5701**
B.	**Qualification requirements for manufacturers and importers of tobacco products and cigarette papers and tubes, and export warehouse proprietors**	**5711**
C.	**Operations by manufacturers and importers of tobacco products and cigarette papers and tubes and export warehouse proprietors**	**5721**
D.	**Occupational tax**	**5731**
E.	**Records of manufacturers and importers of tobacco products and cigarette papers and tubes, and export warehouse proprietors**	**5741**
F.	**General provisions**	**5751**
G.	**Penalties and forfeitures**	**5761**

AMENDMENTS

1997—Pub. L. 105–33, title IX, §9302(g)(3)(C), (h)(2)(D), Aug. 5, 1997, 111 Stat. 673, 674, amended chapter heading generally, substituting "TOBACCO PRODUCTS" for "CIGARS, CIGARETTES, SMOKELESS TOBACCO, PIPE TOBACCO,", and inserted "and importers" after "manufacturers" in item for subchapter B.

1988—Pub. L. 100–647, title V, §5061(c)(3), Nov. 10, 1988, 102 Stat. 3680, inserted "PIPE TOBACCO," after "SMOKELESS TOBACCO," in chapter heading.

1987—Pub. L. 100–203, title X, §10512(f)(2), Dec. 22, 1987, 101 Stat. 1330–449, added item for subchapter D and redesignated items for former subchapters D, E, and F as E, F, and G, respectively.

1986—Pub. L. 99–272, title XIII, §13202(b)(1), Apr. 7, 1986, 100 Stat. 311, inserted "SMOKELESS TOBACCO," after "CIGARETTES," in chapter heading.

1976—Pub. L. 94–455, title XXI, §2128(d)(2), Oct. 4, 1976, 90 Stat. 1921, substituted "manufacturers and importers" for "manufacturers" in item for subchapter D.

1965—Pub. L. 89–44, title V, §502(b)(1), (2), June 21, 1965, 79 Stat. 150, struck out "TOBACCO," from chapter heading, reference to dealers in tobacco materials from heading of subchapter B, heading of subchapter D and redesignated subchapters E, F and G as D, E and F respectively, and struck out in heading of subchapter D (as redesignated) a reference to dealers in tobacco materials.

1958—Pub. L. 85–859, title II, §202, Sept. 2, 1958, 72 Stat. 1414, substituted "manufacturers of tobacco products and cigarette papers and tubes, export warehouse proprietors, and" for "manufacturers of articles and" in heading of subchapters B and E, "manufacturers and importers of tobacco products and cigarette papers and tubes and export warehouse proprietors" for "manufacturers of articles" in heading of subchapter C, and "Penalties and forfeitures" for "Fines, penalties and forfeitures" in heading of subchapter G.

[1] *Section numbers editorially supplied.*

Subchapter A—Definitions; Rate and Payment of Tax; Exemption From Tax; and Refund and Drawback of Tax

Sec.

5701. Rate of tax.
5702. Definitions.
5703. Liability for tax and method of payment.
5704. Exemption from tax.

5705. Credit, refund, or allowance of tax.
5706. Drawback of tax.
[5707. Repealed.]
5708. Losses caused by disaster.

AMENDMENTS

1965—Pub. L. 89–44, title V, §501(g), title VIII, §808(c)(2), June 21, 1965, 79 Stat. 150, 165, struck out item 5707 "Floor stocks refund on cigarettes" and inserted "Credit" before "refund" in item 5705.

1958—Pub. L. 85–859, title II, §202, Sept. 2, 1958, 72 Stat. 1414, added item 5708.

§5701. Rate of tax

(a) Cigars

On cigars, manufactured in or imported into the United States, there shall be imposed the following taxes:

(1) Small cigars

On cigars, weighing not more than 3 pounds per thousand, $50.33 per thousand;

(2) Large cigars

On cigars weighing more than 3 pounds per thousand, a tax equal to 52.75 percent of the price for which sold but not more than 40.26 cents per cigar.

Cigars not exempt from tax under this chapter which are removed but not intended for sale shall be taxed at the same rate as similar cigars removed for sale.

(b) Cigarettes

On cigarettes, manufactured in or imported into the United States, there shall be imposed the following taxes:

(1) Small cigarettes

On cigarettes, weighing not more than 3 pounds per thousand, $50.33 per thousand;

(2) Large cigarettes

On cigarettes, weighing more than 3 pounds per thousand, $105.69 per thousand; except that, if more than 6½ inches in length, they shall be taxable at the rate prescribed for cigarettes weighing not more than 3 pounds per thousand, counting each 2¾ inches, or fraction thereof, of the length of each as one cigarette.

(c) Cigarette papers

On cigarette papers, manufactured in or imported into the United States, there shall be imposed a tax of 3.15 cents for each 50 papers or fractional part thereof; except that, if cigarette papers measure more than 6½ inches in length, they shall be taxable at the rate prescribed, counting each 2¾ inches, or fraction thereof, of the length of each as one cigarette paper.

(d) Cigarette tubes

On cigarette tubes, manufactured in or imported into the United States, there shall be imposed a tax of 6.30 cents for each 50 tubes or fractional part thereof, except that if cigarette tubes measure more than 6½ inches in length, they shall be taxable at the rate prescribed, counting each 2¾ inches, or fraction thereof, of the length of each as one cigarette tube.

(e) Smokeless tobacco

On smokeless tobacco, manufacturered [1] in or imported into the United States, there shall be imposed the following taxes:

(1) Snuff

On snuff, $1.51 per pound and a proportionate tax at the like rate on all fractional parts of a

pound.

(2) Chewing tobacco

On chewing tobacco, 50.33 cents per pound and a proportionate tax at the like rate on all fractional parts of a pound.

(f) Pipe tobacco

On pipe tobacco, manufactured in or imported into the United States, there shall be imposed a tax of $2.8311 cents per pound (and a proportionate tax at the like rate on all fractional parts of a pound).

(g) Roll-your-own tobacco

On roll-your-own tobacco, manufactured in or imported into the United States, there shall be imposed a tax of $24.78 per pound (and a proportionate tax at the like rate on all fractional parts of a pound).

(h) Imported tobacco products and cigarette papers and tubes

The taxes imposed by this section on tobacco products and cigarette papers and tubes imported into the United States shall be in addition to any import duties imposed on such articles, unless such import duties are imposed in lieu of internal revenue tax.

(Aug. 16, 1954, ch. 736, 68A Stat. 705; Mar. 30, 1955, ch. 18, §3(a)(9), 69 Stat. 14; Mar. 29, 1956, ch. 115, §3(a)(9), 70 Stat. 66; Pub. L. 85–12, §3(a)(7), Mar. 29, 1957, 71 Stat. 9; Pub. L. 85–475, §3(a)(7), June 30, 1958, 72 Stat. 259; Pub. L. 85–859, title II, §202, Sept. 2, 1958, 72 Stat. 1414; Pub. L. 86–75, §3(a)(7), June 30, 1959, 73 Stat. 157; Pub. L. 86–564, title II, §202(a)(9), June 30, 1960, 74 Stat. 290; Pub. L. 86–779, §1, Sept. 14, 1960, 74 Stat. 998; Pub. L. 87–72, §3(a)(9), June 30, 1961, 75 Stat. 193; Pub. L. 87–508, §3(a)(8), June 28, 1962, 76 Stat. 114; Pub. L. 88–52, §3(a)(9), June 29, 1963, 77 Stat. 72; Pub. L. 88–348, §2(a)(9), June 30, 1964, 78 Stat. 237; Pub. L. 89–44, title V, §§501(f), 502(a), June 21, 1965, 79 Stat. 150; Pub. L. 90–240, §4(a), Jan. 2, 1968, 81 Stat. 776; Pub. L. 94–455, title XIX, §1905(a)(24), title XXI, §2128(a), Oct. 4, 1976, 90 Stat. 1821, 1921; Pub. L. 97–248, title II, §283(a), Sept. 3, 1982, 96 Stat. 568; Pub. L. 99–272, title XIII, §13202(a), Apr. 7, 1986, 100 Stat. 311; Pub. L. 100–647, title V, §5061(a), Nov. 10, 1988, 102 Stat. 3679; Pub. L. 101–508, title XI, §11202(a)–(f), Nov. 5, 1990, 104 Stat. 1388–419; Pub. L. 105–33, title IX, §9302(a)–(g)(1), (h)(3), Aug. 5, 1997, 111 Stat. 671, 672, 674; Pub. L. 111–3, title VII, §701(a)–(g), Feb. 4, 2009, 123 Stat. 106, 107.)

AMENDMENTS

2009—Subsec. (a)(1). Pub. L. 111–3, §701(a)(1), substituted "$50.33 per thousand" for "$1.828 cents per thousand ($1.594 cents per thousand on cigars removed during 2000 or 2001)".

Subsec. (a)(2). Pub. L. 111–3, §701(a)(2), (3), substituted "52.75 percent" for "20.719 percent (18.063 percent on cigars removed during 2000 or 2001)" and "40.26 cents per cigar" for "$48.75 per thousand ($42.50 per thousand on cigars removed during 2000 or 2001)".

Subsec. (b)(1). Pub. L. 111–3, §701(b)(1), substituted "$50.33 per thousand" for "$19.50 per thousand ($17 per thousand on cigarettes removed during 2000 or 2001)".

Subsec. (b)(2). Pub. L. 111–3, §701(b)(2), substituted "$105.69 per thousand" for "$40.95 per thousand ($35.70 per thousand on cigarettes removed during 2000 or 2001)".

Subsec. (c). Pub. L. 111–3, §701(c), substituted "3.15 cents" for "1.22 cents (1.06 cents on cigarette papers removed during 2000 or 2001)".

Subsec. (d). Pub. L. 111–3, §701(d), substituted "6.30 cents" for "2.44 cents (2.13 cents on cigarette tubes removed during 2000 or 2001)".

Subsec. (e)(1). Pub. L. 111–3, §701(e)(1), substituted "$1.51" for "58.5 cents (51 cents on snuff removed during 2000 or 2001)".

Subsec. (e)(2). Pub. L. 111–3, §701(e)(2), substituted "50.33 cents" for "19.5 cents (17 cents on chewing tobacco removed during 2000 or 2001)".

Subsec. (f). Pub. L. 111–3, §701(f), substituted "$2.8311 cents" for "$1.0969 cents (95.67 cents on pipe tobacco removed during 2000 or 2001)".

Subsec. (g). Pub. L. 111–3, §701(g), substituted "$24.78" for "$1.0969 cents (95.67 cents on roll-your-own tobacco removed during 2000 or 2001)".

1997—Subsec. (a)(1). Pub. L. 105–33, §9302(b)(1), substituted "$1.828 cents per thousand ($1.594 cents

per thousand on cigars removed during 2000 or 2001)" for "$1.125 cents per thousand (93.75 cents per thousand on cigars removed during 1991 or 1992)".

Subsec. (a)(2). Pub. L. 105–33, §9302(b)(2), substituted "equal to 20.719 percent (18.063 percent on cigars removed during 2000 or 2001) of the price for which sold but not more than $48.75 per thousand ($42.50 per thousand on cigars removed during 2000 or 2001)." for "equal to—

"(A) 10.625 percent of the price for which sold but not more than $25 per thousand on cigars removed during 1991 or 1992, and

"(B) 12.75 percent of the price for which sold but not more than $30 per thousand on cigars removed after 1992."

Subsec. (b)(1). Pub. L. 105–33, §9302(a)(1), substituted "$19.50 per thousand ($17 per thousand on cigarettes removed during 2000 or 2001)" for "$12 per thousand ($10 per thousand on cigarettes removed during 1991 or 1992)".

Subsec. (b)(2). Pub. L. 105–33, §9302(a)(2), substituted "$40.95 per thousand ($35.70 per thousand on cigarettes removed during 2000 or 2001)" for "$25.20 per thousand ($21 per thousand on cigarettes removed during 1991 or 1992)".

Subsec. (c). Pub. L. 105–33, §9302(h)(3), substituted "On cigarette papers," for "On each book or set of cigarette papers containing more than 25 papers,".

Pub. L. 105–33, §9302(c), substituted "1.22 cents (1.06 cents on cigarette papers removed during 2000 or 2001)" for "0.75 cent (0.625 cent on cigarette papers removed during 1991 or 1992)".

Subsec. (d). Pub. L. 105–33, §9302(d), substituted "2.44 cents (2.13 cents on cigarette tubes removed during 2000 or 2001)" for "1.5 cents (1.25 cents on cigarette tubes removed during 1991 or 1992)".

Subsec. (e)(1). Pub. L. 105–33, §9302(e)(1), substituted "58.5 cents (51 cents on snuff removed during 2000 or 2001)" for "36 cents (30 cents on snuff removed during 1991 or 1992)".

Subsec. (e)(2). Pub. L. 105–33, §9302(e)(2), substituted "19.5 cents (17 cents on chewing tobacco removed during 2000 or 2001)" for "12 cents (10 cents on chewing tobacco removed during 1991 or 1992)".

Subsec. (f). Pub. L. 105–33, §9302(f), substituted "$1.0969 cents (95.67 cents on pipe tobacco removed during 2000 or 2001)" for "67.5 cents (56.25 cents on pipe tobacco removed during 1991 or 1992)".

Subsecs. (g), (h). Pub. L. 105–33, §9302(g)(1), added subsec. (g) and redesignated former subsec. (g) as (h).

1990—Subsec. (a)(1). Pub. L. 101–508, §11202(a)(1), substituted "$1.125 cents per thousand (93.75 cents per thousand on cigars removed during 1991 or 1992)" for "75 cents per thousand".

Subsec. (a)(2). Pub. L. 101–508, §11202(a)(2), substituted "equal to—" and subpars. (A) and (B) for "equal to 8½ percent of the wholesale price, but not more than $20 per thousand."

Subsec. (b)(1). Pub. L. 101–508, §11202(b)(1), substituted "$12 per thousand ($10 per thousand on cigarettes removed during 1991 or 1992)" for "$8 per thousand".

Subsec. (b)(2). Pub. L. 101–508, §11202(b)(2), substituted "$25.20 per thousand ($21 per thousand on cigarettes removed during 1991 or 1992)" for "$16.80 per thousand".

Subsec. (c). Pub. L. 101–508, §11202(c), substituted "0.75 cent (0.625 cent on cigarette papers removed during 1991 or 1992)" for "½ cent".

Subsec. (d). Pub. L. 101–508, §11202(d), substituted "1.5 cents (1.25 cents on cigarette tubes removed during 1991 or 1992)" for "1 cent".

Subsec. (e)(1). Pub. L. 101–508, §11202(e)(1), substituted "36 cents (30 cents on snuff removed during 1991 or 1992)" for "24 cents".

Subsec. (e)(2). Pub. L. 101–508, §11202(e)(2), substituted "12 cents (10 cents on chewing tobacco removed during 1991 or 1992)" for "8 cents".

Subsec. (f). Pub. L. 101–508, §11202(f), substituted "67.5 cents (56.25 cents on pipe tobacco removed during 1991 or 1992)" for "45 cents".

1988—Subsecs. (f), (g). Pub. L. 100–647 added subsec. (f) and redesignated former subsec. (f) as (g).

1986—Subsecs. (e), (f). Pub. L. 99–272 added subsec. (e) and redesignated former subsec. (e) as (f).

1982—Subsec. (b)(1). Pub. L. 97–248, §283(a)(1), substituted "$8" for "$4".

Subsec. (b)(2). Pub. L. 97–248, §283(a)(2), substituted "$16.80" for "$8.40".

1976—Subsec. (a). Pub. L. 94–455, §2128(a), substituted provisions setting a tax of 8½ percent of the wholesale price, but not more than $20 per thousand, on cigars weighing more than 3 pounds per thousand for provisions setting the tax according to a graduated table running from $2.50 per thousand for large cigars if removed to retail at not more than 2½ cents each to $20 per thousand if removed to retail at more than 20 cents each, and struck out provisions that, in determining the retail price, for tax purposes, regard be had to the ordinary retail price of a single cigar in its principal market, exclusive of any State or local taxes imposed on cigars as a commodity, and that, for purposes of that determination, the amount of State or local tax excluded from the retail price be the actual tax imposed, except that, if the combined taxes resulted in a numerical

figure ending in a fraction of a cent, the amount so excluded would be rounded to the next highest full cent unless such rounding would result in a tax lower than the tax which would be imposed in the absence of State or local tax.

Subsec. (e). Pub. L. 94–455, §1905(a)(24), inserted ", unless such import duties are imposed in lieu of internal revenue tax" after "such articles".

1968—Subsec. (a). Pub. L. 90–240 provided that the amount of State and local tax excluded from the retail price be the actual tax imposed, except that, if the combined taxes result in a numerical figure ending in a fraction of a cent, the amount so excluded be rounded to the next highest full cent unless such rounding would result in a tax lower than the tax which would be imposed in the absence of State and local taxes.

1965—Pub. L. 89–44, §502(a), struck out subsec. (a) relating to tobacco and redesignated subsecs. (b) to (f) as subsecs. (a) to (e), respectively.

Subsec. (b)(1). Pub. L. 89–44, §501(f), removed the July 1, 1965, time limit for the $4 per thousand rate as well as the provision for imposition of a $3.50 rate on and after July 1, 1965.

1964—Subsec. (c)(1). Pub. L. 88–348 substituted "July 1, 1965" for "July 1, 1964" in two places.

1963—Subsec. (c)(1). Pub. L. 88–52 substituted "July 1, 1964" for "July 1, 1963" in two places.

1962—Subsec. (c)(1). Pub. L. 87–508 substituted "July 1, 1963" for "July 1, 1962" in two places.

1961—Subsec. (c)(1). Pub. L. 87–72 substituted "July 1, 1962" for "July 1, 1961" in two places.

1960—Subsec. (b). Pub. L. 86–779 substituted "imposed on cigars as a commodity" for "imposed on the retail sales of cigars".

Subsec. (c)(1). Pub. L. 86–564 substituted "July 1, 1961" for "July 1, 1960" in two places.

1959—Subsec. (c)(1). Pub. L. 86–75 substituted "July 1, 1960" for "July 1, 1959" in two places.

1958—Subsec. (b). Pub. L. 85–859 provided that in determining the retail price, for tax purposes, regard shall be had to the ordinary retail price of a single cigar in its principal market, exclusive of any State or local taxes imposed on the retail sale of cigars, and required cigars not exempt from tax under this chapter which are removed but not intended for sale to be taxed at the same rate as similar cigars removed for sale.

Subsec. (c)(1). Pub. L. 85–475 substituted "July 1, 1959" for "July 1, 1958" in two places.

Subsec. (d). Pub. L. 85–859 substituted "On each book or set of cigarette papers containing more than 25 papers, manufactured in or imported into the United States, there shall be imposed" for "On cigarette papers, manufactured in or imported into the United States, there shall be imposed, on each package, book, or set containing more than 25 papers".

Subsec. (f). Pub. L. 85–859 substituted "imposed by this section on tobacco products and cigarette papers and tubes imported into the United States" for "imposed on articles by this section".

1957—Subsec. (c)(1). Pub. L. 85–12 substituted "July 1, 1958" for "April 1, 1957" in two places.

1956—Subsec. (c)(1). Act Mar. 29, 1956, substituted "April 1, 1957" for "April 1, 1956" in two places.

1955—Subsec. (c)(1). Act Mar. 30, 1955, substituted "April 1, 1956" for "April 1, 1955" in two places.

EFFECTIVE DATE OF 2009 AMENDMENT

Except as otherwise provided, amendment by Pub. L. 111–3 effective Apr. 1, 2009, see section 3 of Pub. L. 111–3, set out as an Effective Date note under section 1396 of Title 42, The Public Health and Welfare.

Pub. L. 111–3, title VII, §701(i), Feb. 4, 2009, 123 Stat. 108, provided that: "The amendments made by this section [amending this section] shall apply to articles removed (as defined in section 5702(j) of the Internal Revenue Code of 1986) after March 31, 2009."

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–33, title IX, §9302(i), Aug. 5, 1997, 111 Stat. 674, provided that:

"(1) IN GENERAL.—The amendments made by this section [enacting section 5754 of this title and amending this section and sections 5702, 5704, 5712, 5713, 5721, 5722, and 5761 to 5763 of this title] shall apply to articles removed (as defined in section 5702(k) [now section 5702(j)] of the Internal Revenue Code of 1986, as amended by this section) after December 31, 1999.

"(2) TRANSITIONAL RULE.—Any person who—

"(A) on the date of the enactment of this Act [Aug. 5, 1997] is engaged in business as a manufacturer of roll-your-own tobacco or as an importer of tobacco products or cigarette papers and tubes, and

"(B) before January 1, 2000, submits an application under subchapter B of chapter 52 of such Code to engage in such business,

may, notwithstanding such subchapter B, continue to engage in such business pending final action on such application. Pending such final action, all provisions of such chapter 52 shall apply to such applicant in the same manner and to the same extent as if such applicant were a holder of a permit under such chapter 52 to engage in such business."

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, §11202(h), Nov. 5, 1990, 104 Stat. 1388–420, provided that: "The amendments made by this section [amending this section and section 5702 of this title] shall apply with respect to articles removed after December 31, 1990."

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title V, §5061(d), Nov. 10, 1988, 102 Stat. 3680, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and section 5702 of this title] shall apply to pipe tobacco removed (within the meaning of section 5702(k) [now section 5702(j)] of the 1986 Code) after December 31, 1988.

"(2) TRANSITIONAL RULE.—Any person who—

"(A) on the date of the enactment of this Act [Nov. 10, 1988], is engaged in business as a manufacturer of pipe tobacco, and

"(B) before January 1, 1989, submits an application under subchapter B of chapter 52 of the 1986 Code to engage in such business,

may, notwithstanding such subchapter B, continue to engage in such business pending final action on such application. Pending such final action, all provisions of chapter 52 of the 1986 Code shall apply to such applicant in the same manner and to the same extent as if such applicant were a holder of a permit to manufacture pipe tobacco under such chapter 52."

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–272, title XIII, §13202(c), Apr. 7, 1986, 100 Stat. 312, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and section 5702 of this title] shall apply to smokeless tobacco removed after June 30, 1986.

"(2) TRANSITIONAL RULE.—Any person who—

"(A) on the date of the enactment of this Act [Apr. 7, 1986], is engaged in business as a manufacturer of smokeless tobacco, and

"(B) before July 1, 1986, submits an application under subchapter B of chapter 52 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] to engage in such business,

may, notwithstanding such subchapter B, continue to engage in such business pending final action on such application. Pending such final action, all provisions of chapter 52 of such Code shall apply to such applicant in the same manner and to the same extent as if such applicant were a holder of a permit to manufacture smokless [sic] tobacco under such chapter 52."

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title II, §283(c), Sept. 3, 1982, 96 Stat. 569, as amended by Pub. L. 99–107, §2, Sept. 30, 1985, 99 Stat. 479; Pub. L. 99–155, §2(a), Nov. 14, 1985, 99 Stat. 814; Pub. L. 99–181, §1, Dec. 13, 1985, 99 Stat. 1172; Pub. L. 99–189, §1, Dec. 18, 1985, 99 Stat. 1184; Pub. L. 99–201, §1, Dec. 23, 1985, 99 Stat. 1665; Pub. L. 99–272, title XIII, §13201(a), Apr. 7, 1986, 100 Stat. 311, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to cigarettes removed after December 31, 1982."

[Pub. L. 99–272, title XIII, §13201(b), Apr. 7, 1986, 100 Stat. 311, provided that: "For purposes of all Federal and State laws, the amendment made by subsection (a) [amending section 283(c) of Pub. L. 97–248, set out above] shall be treated as having taken effect on March 14, 1986."]

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1905(a)(24) of Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1905(d) of Pub. L. 94–455, set out as a note under section 5005 of this title.

Pub. L. 94–455, title XXI, §2128(e), Oct. 4, 1976, 90 Stat. 1921, provided that: "The amendments made by this section [amending this section and sections 5702 and 5741 of this title] shall take effect on the first month which begins more than 90 days after the date of the enactment of this Act [Oct. 4, 1976]."

EFFECTIVE DATE OF 1968 AMENDMENT

Pub. L. 90–240, §4(b), Jan. 2, 1968, 81 Stat. 776, provided that: "The amendment made by subsection (a) [amending this section] shall apply to the removal of cigars on or after the first day of the first calendar quarter which begins more than 30 days after the date of the enactment of this Act [Jan. 2, 1968]."

EFFECTIVE DATE OF 1965 AMENDMENT

Pub. L. 89–44, title VII, §701(d), June 21, 1965, 79 Stat. 157, provided that: "The amendments made by section 501 [repealing sections 5063 and 5707 of this title and provisions formerly set out below and amending this section and sections 5001, 5022, 5041, and 5051 of this title] shall apply on and after July 1, 1965. The amendments made by section 502 [striking out subchapter D of chapter 52 of this title and redesignating subchapters E, F, and G as subchapters D, E, and F respectively, and amending this section and sections 5702, 5704, 5711, 5741, 5753, 5762, and 5763 of this title] shall apply on and after January 1, 1966."

EFFECTIVE DATE OF 1960 AMENDMENT

Pub. L. 86–779, §2, Sept. 14, 1960, 74 Stat. 998, provided that: "The amendment made by the first section of this Act [amending this section] shall apply with respect to cigars removed on or after the ninth day of the first month which begins after the date of the enactment of this Act [Sept. 14, 1960]."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–859 effective Sept. 3, 1958, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

COORDINATION WITH TOBACCO INDUSTRY SETTLEMENT AGREEMENT

Pub. L. 105–33, title IX, §9302(k), as added by Pub. L. 105–34, title XVI, §1604(f)(3), Aug. 5, 1997, 111 Stat. 1099, which provided that the increase in excise taxes collected as a result of the amendments made by subsections (a), (e), and (g) of section 9302 of Pub. L. 105–33 (amending this section and section 5702 of this title) were to be credited against the total payments made by parties pursuant to Federal legislation implementing the tobacco industry settlement agreement of June 20, 1997, was repealed by Pub. L. 105–78, title V, §519, Nov. 13, 1997, 111 Stat. 1519.

FLOOR STOCKS TAXES

Pub. L. 111–3, title VII, §701(h), Feb. 4, 2009, 123 Stat. 107, provided that:

"(1) IMPOSITION OF TAX.—On tobacco products (other than cigars described in section 5701(a)(2) of the Internal Revenue Code of 1986) and cigarette papers and tubes manufactured in or imported into the United States which are removed before April 1, 2009, and held on such date for sale by any person, there is hereby imposed a tax in an amount equal to the excess of—

"(A) the tax which would be imposed under section 5701 of such Code on the article if the article had been removed on such date, over

"(B) the prior tax (if any) imposed under section 5701 of such Code on such article.

"(2) CREDIT AGAINST TAX.—Each person shall be allowed as a credit against the taxes imposed by paragraph (1) an amount equal to $500. Such credit shall not exceed the amount of taxes imposed by paragraph (1) on April 1, 2009, for which such person is liable.

"(3) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

"(A) LIABILITY FOR TAX.—A person holding tobacco products, cigarette papers, or cigarette tubes on April 1, 2009, to which any tax imposed by paragraph (1) applies shall be liable for such tax.

"(B) METHOD OF PAYMENT.—The tax imposed by paragraph (1) shall be paid in such manner as the Secretary shall prescribe by regulations.

"(C) TIME FOR PAYMENT.—The tax imposed by paragraph (1) shall be paid on or before August 1, 2009.

"(4) ARTICLES IN FOREIGN TRADE ZONES.—Notwithstanding the Act of June 18, 1934 (commonly known as the Foreign Trade Zone Act, 48 Stat. 998, 19 U.S.C. 81a et seq.) or any other provision of law, any article which is located in a foreign trade zone on April 1, 2009, shall be subject to the tax imposed by paragraph (1) if—

"(A) internal revenue taxes have been determined, or customs duties liquidated, with respect to such article before such date pursuant to a request made under the 1st proviso of section 3(a) of such Act [19 U.S.C. 81c(a)], or

"(B) such article is held on such date under the supervision of an officer of the United States Customs and Border Protection of the Department of Homeland Security pursuant to the 2d proviso of such section 3(a).

"(5) DEFINITIONS.—For purposes of this subsection—

"(A) IN GENERAL.—Any term used in this subsection which is also used in section 5702 of the Internal Revenue Code of 1986 shall have the same meaning as such term has in such section.

"(B) SECRETARY.—The term 'Secretary' means the Secretary of the Treasury or the Secretary's delegate.

"(6) CONTROLLED GROUPS.—Rules similar to the rules of section 5061(e)(3) of such Code shall apply for purposes of this subsection.

"(7) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 5701 of such Code shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply to the floor stocks taxes imposed by paragraph (1), to the same extent as if such taxes were imposed by such section 5701. The Secretary may treat any person who bore the ultimate burden of the tax imposed by paragraph (1) as the person to whom a credit or refund under such provisions may be allowed or made."

Pub. L. 105–33, title IX, §9302(j), Aug. 5, 1997, 111 Stat. 675, as amended by Pub. L. 106–554, §1(a)(7) [title III, §315(a)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–643, provided that:

"(1) IMPOSITION OF TAX.—On cigarettes manufactured in or imported into the United States which are removed before any tax increase date, and held on such date for sale by any person, there is hereby imposed a tax in an amount equal to the excess of—

"(A) the tax which would be imposed under section 5701 of the Internal Revenue Code of 1986 on the article if the article had been removed on such date, over

"(B) the prior tax (if any) imposed under section 5701 of such Code on such article.

"(2) AUTHORITY TO EXEMPT CIGARETTES HELD IN VENDING MACHINES.—To the extent provided in regulations prescribed by the Secretary, no tax shall be imposed by paragraph (1) on cigarettes held for retail sale on any tax increase date, by any person in any vending machine. If the Secretary provides such a benefit with respect to any person, the Secretary may reduce the $500 amount in paragraph (3) with respect to such person.

"(3) CREDIT AGAINST TAX.—Each person shall be allowed as a credit against the taxes imposed by paragraph (1) an amount equal to $500. Such credit shall not exceed the amount of taxes imposed by paragraph (1) on any tax increase date, for which such person is liable.

"(4) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

"(A) LIABILITY FOR TAX.—A person holding cigarettes on any tax increase date, to which any tax imposed by paragraph (1) applies shall be liable for such tax.

"(B) METHOD OF PAYMENT.—The tax imposed by paragraph (1) shall be paid in such manner as the Secretary shall prescribe by regulations.

"(C) TIME FOR PAYMENT.—The tax imposed by paragraph (1) shall be paid on or before April 1 following any tax increase date.

"(5) ARTICLES IN FOREIGN TRADE ZONES.—Notwithstanding the Act of June 18, 1934 (48 Stat. 998, 19 U.S.C. 81a) and any other provision of law, any article which is located in a foreign trade zone on any tax increase date, shall be subject to the tax imposed by paragraph (1) if—

"(A) internal revenue taxes have been determined, or customs duties liquidated, with respect to such article before such date pursuant to a request made under the 1st proviso of section 3(a) of such Act [19 U.S.C. 81c(a)], or

"(B) such article is held on such date under the supervision of a customs officer pursuant to the 2d proviso of such section 3(a).

"(6) DEFINITIONS.—For purposes of this subsection—

"(A) IN GENERAL.—Terms used in this subsection which are also used in section 5702 of the Internal Revenue Code of 1986 shall have the respective meanings such terms have in such section, as amended by this Act.

"(B) TAX INCREASE DATE.—The term 'tax increase date' means January 1, 2000, and January 1, 2002.

"(C) SECRETARY.—The term 'Secretary' means the Secretary of the Treasury or the Secretary's delegate.

"(7) CONTROLLED GROUPS.—Rules similar to the rules of section 5061(e)(3) of such Code shall apply for purposes of this subsection.

"(8) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 5701 of such Code shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply to the floor stocks taxes imposed by paragraph (1), to the same extent as if such taxes were imposed by such section 5701. The Secretary may treat any person who bore the ultimate burden of the tax imposed by paragraph (1) as the person to whom a credit or refund under such provisions may be allowed or made."

Pub. L. 101–508, title XI, §11202(i), Nov. 5, 1990, 104 Stat. 1388–420, provided that:

"(1) IMPOSITION OF TAX.—On cigarettes manufactured in or imported into the United States which are removed before any tax-increase date and held on such date for sale by any person, there shall be imposed the

following taxes:

"(A) SMALL CIGARETTES.—On cigarettes, weighing not more than 3 pounds per thousand, $2 per thousand.

"(B) LARGE CIGARETTES.—On cigarettes weighing more than 3 pounds per thousand, $4.20 per thousand; except that, if more than 6½ inches in length, they shall be taxable at the rate prescribed for cigarettes weighing not more than 3 pounds per thousand, counting each 2¾ inches, or fraction thereof, of the length of each as one cigarette.

"(2) EXCEPTION FOR CERTAIN AMOUNTS OF CIGARETTES.—

"(A) IN GENERAL.—No tax shall be imposed by paragraph (1) on cigarettes held on any tax-increase date by any person if—

"(i) the aggregate number of cigarettes held by such person on such date does not exceed 30,000, and

"(ii) such person submits to the Secretary (at the time and in the manner required by the Secretary) such information as the Secretary shall require for purposes of this subparagraph.

For purposes of this subparagraph, in the case of cigarettes measuring more than 6½ inches in length, each 2¾ inches (or fraction thereof) of the length of each shall be counted as one cigarette.

"(B) AUTHORITY TO EXEMPT CIGARETTES HELD IN VENDING MACHINES.—To the extent provided in regulations prescribed by the Secretary, no tax shall be imposed by paragraph (1) on cigarettes held for retail sale on any tax-increase date by any person in any vending machine. If the Secretary provides such a benefit with respect to any person, the Secretary may reduce the 30,000 amount in subparagraph (A) and the $60 amount in paragraph (3) with respect to such person.

"(3) CREDIT AGAINST TAX.—Each person shall be allowed as a credit against the taxes imposed by paragraph (1) an amount equal to $60. Such credit shall not exceed the amount of taxes imposed by paragraph (1) for which such person is liable.

"(4) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

"(A) LIABILITY FOR TAX.—A person holding cigarettes on any tax-increase date to which any tax imposed by paragraph (1) applies shall be liable for such tax.

"(B) METHOD OF PAYMENT.—The tax imposed by paragraph (1) shall be paid in such manner as the Secretary shall prescribe by regulations.

"(C) TIME FOR PAYMENT.—The tax imposed by paragraph (1) shall be paid on or before the 1st June 30 following the tax-increase date.

"(5) DEFINITIONS.—For purposes of this subsection—

"(A) TAX-INCREASE DATE.—The term 'tax-increase date' means January 1, 1991, and January 1, 1993.

"(B) OTHER DEFINITIONS.—Terms used in this subsection which are also used in section 5702 of the Internal Revenue Code of 1986 shall have the respective meanings such terms have in such section.

"(C) SECRETARY.—The term 'Secretary' means the Secretary of the Treasury or his delegate.

"(6) CONTROLLED GROUPS.—Rules similar to the rules of section 11201(e)(6) [Pub. L. 101–508, set out in a note under section 5001 of this title] shall apply for purposes of this subsection.

"(7) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 5701 of such Code shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply to the floor stocks taxes imposed by paragraph (1), to the same extent as if such taxes were imposed by such section 5701."

Pub. L. 100–647, title V, §5061(e), Nov. 10, 1988, 102 Stat. 3680, provided that:

"(1) IMPOSITION OF TAX.—On pipe tobacco manufactured in or imported into the United States which is removed before January 1, 1989, and held on such date for sale by any person, there is hereby imposed a tax of 45 cents per pound (and a proportionate tax at the like rate on all fractional parts of a pound).

"(2) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

"(A) LIABILITY FOR TAX.—A person holding pipe tobacco on January 1, 1989, to which the tax imposed by paragraph (1) applies shall be liable for such tax.

"(B) METHOD OF PAYMENT.—The tax imposed by paragraph (1) shall be treated as a tax imposed by section 5701 of the 1986 Code and shall be due and payable on February 14, 1989, in the same manner as the tax imposed by such section is payable with respect to pipe tobacco removed on or after January 1, 1989.

"(C) TREATMENT OF PIPE TOBACCO IN FOREIGN TRADE ZONES.—Notwithstanding the Act of June 18, 1934 (48 Stat. 998, 19 U.S.C. 81a) or any other provision of law, pipe tobacco which is located in a foreign trade zone on January 1, 1989, shall be subject to the tax imposed by paragraph (1) and shall be treated for purposes of this subsection as held on such date for sale if—

"(i) internal revenue taxes have been determined, or customs duties liquidated, with respect to such pipe tobacco before such date pursuant to a request made under the first proviso of section 3(a) of such Act [19 U.S.C. 81c(a)], or

"(ii) such pipe tobacco is held on such date under the supervision of a customs officer pursuant to the second proviso of such section 3(a).

"Under regulations prescribed by the Secretary of the Treasury or his delegate, provisions similar to sections 5706 and 5708 of the 1986 Code shall apply to pipe tobacco with respect to which tax is imposed by paragraph (1) by reason of this subparagraph.

"(3) PIPE TOBACCO.—For purposes of this subsection, the term 'pipe tobacco' shall have the meaning given to such term by subsection (o) [now subsection (n)] of section 5702 of the 1986 Code.

"(4) EXCEPTION WHERE LIABILITY DOES NOT EXCEED $1,000.—No tax shall be imposed by paragraph (1) on any person if the tax which would but for this paragraph be imposed on such person does not exceed $1,000. For purposes of the preceding sentence, all persons who are treated as a single taxpayer under section 5061(e)(3) of the 1986 Code shall be treated as 1 person."

Pub. L. 97–248, title II, §283(b), Sept. 3, 1982, 96 Stat. 568, as amended by Pub. L. 97–448, title III, §306(a)(14), Jan. 12, 1983, 96 Stat. 2405; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IMPOSITION OF TAX.—On cigarettes manufactured in or imported into the United States which are removed before January 1, 1983, and held on such date for sale by any person, there shall be imposed the following taxes:

"(A) SMALL CIGARETTES.—On cigarettes, weighing not more than 3 pounds per thousand, $4 per thousand;

"(B) LARGE CIGARETTES.—On cigarettes, weighing more than 3 pounds per thousand, $8.40 per thousand; except that, if more than 6½ inches in length, they shall be taxable at the rate prescribed for cigarettes weighing not more than 3 pounds per thousand, counting each 2¾ inches, or fraction thereof, of the length of each as one cigarette.

"(2) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

"(A) LIABILITY FOR TAX.—A person holding cigarettes on January 1, 1983, to which any tax imposed by paragraph (1) applies shall be liable for such tax.

"(B) METHOD OF PAYMENT.—The tax imposed by paragraph (1) shall be treated as a tax imposed under section 5701 and shall be due and payable on February 17, 1983 in the same manner as the tax imposed under such section is payable with respect to cigarettes removed on January 1, 1983.

"(3) CIGARETTE.—For purposes of this subsection, the term 'cigarette' shall have the meaning given to such term by subsection (b) of section 5702 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].

"(4) EXCEPTION FOR RETAILERS.—The taxes imposed by paragraph (1) shall not apply to cigarettes in retail stocks held on January 1, 1983, at the place where intended to be sold at retail."

[1] So in original. Probably should be "manufactured".

§5702. Definitions

When used in this chapter—

(a) Cigar

"Cigar" means any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco (other than any roll of tobacco which is a cigarette within the meaning of subsection (b)(2)).

(b) Cigarette

"Cigarette" means—

(1) any roll of tobacco wrapped in paper or in any substance not containing tobacco, and

(2) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph (1).

(c) Tobacco products

"Tobacco products" means cigars, cigarettes, smokeless tobacco, pipe tobacco, and roll-your-own tobacco.

(d) Manufacturer of tobacco products

"Manufacturer of tobacco products" means any person who manufactures cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco, except that such term shall not include—

(1) a person who produces cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco solely for the person's own personal consumption or use, and

(2) a proprietor of a customs bonded manufacturing warehouse with respect to the operation of such warehouse.

Such term shall include any person who for commercial purposes makes available for consumer use (including such consumer's personal consumption or use under paragraph (1)) a machine capable of making cigarettes, cigars, or other tobacco products. A person making such a machine available for consumer use shall be deemed the person making the removal as defined by subsection (j) with respect to any tobacco products manufactured by such machine. A person who sells a machine directly to a consumer at retail for a consumer's personal home use is not making a machine available for commercial purposes if such machine is not used at a retail premises and is designed to produce tobacco products only in personal use quantities.

(e) Cigarette paper

"Cigarette paper" means paper, or any other material except tobacco, prepared for use as a cigarette wrapper.

(f) Cigarette tube

"Cigarette tube" means cigarette paper made into a hollow cylinder for use in making cigarettes.

(g) Manufacturer of cigarette papers and tubes

"Manufacturer of cigarette papers and tubes" means any person who manufactures cigarette paper, or makes up cigarette paper into tubes, except for his own personal use or consumption.

(h) Export warehouse

"Export warehouse" means a bonded internal revenue warehouse for the storage of tobacco products or cigarette papers or tubes or any processed tobacco, upon which the internal revenue tax has not been paid, for subsequent shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, or for consumption beyond the jurisdiction of the internal revenue laws of the United States.

(i) Export warehouse proprietor

"Export warehouse proprietor" means any person who operates an export warehouse.

(j) Removal or remove

"Removal" or "remove" means the removal of tobacco products or cigarette papers or tubes, or any processed tobacco, from the factory or from internal revenue bond under section 5704, as the Secretary shall by regulation prescribe, or release from customs custody, and shall also include the smuggling or other unlawful importation of such articles into the United States.

(k) Importer

"Importer" means any person in the United States to whom nontaxpaid tobacco products or cigarette papers or tubes, or any processed tobacco, manufactured in a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States are shipped or consigned; any person who removes cigars or cigarettes for sale or consumption in the United States from a customs bonded manufacturing warehouse; and any person who smuggles or otherwise unlawfully brings tobacco products or cigarette papers or tubes, or any processed tobacco, into the United States.

(l) Determination of price on cigars

In determining price for purposes of section 5701(a)(2)—

(1) there shall be included any charge incident to placing the article in condition ready for use,

(2) there shall be excluded—

(A) the amount of the tax imposed by this chapter or section 7652, and

(B) if stated as a separate charge, the amount of any retail sales tax imposed by any State or political subdivision thereof or the District of Columbia, whether the liability for such tax is imposed on the vendor or vendee, and

(3) rules similar to the rules of section 4216(b) shall apply.

(m) Definitions relating to smokeless tobacco

(1) Smokeless tobacco

The term "smokeless tobacco" means any snuff or chewing tobacco.

(2) Snuff

The term "snuff" means any finely cut, ground, or powdered tobacco that is not intended to be smoked.

(3) Chewing tobacco

The term "chewing tobacco" means any leaf tobacco that is not intended to be smoked.

(n) Pipe tobacco

The term "pipe tobacco" means any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco to be smoked in a pipe.

(o) Roll-your-own tobacco

The term "roll-your-own tobacco" means any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes or cigars, or for use as wrappers thereof.

(p) Manufacturer of processed tobacco

(1) In general

The term "manufacturer of processed tobacco" means any person who processes any tobacco other than tobacco products.

(2) Processed tobacco

The processing of tobacco shall not include the farming or growing of tobacco or the handling of tobacco solely for sale, shipment, or delivery to a manufacturer of tobacco products or processed tobacco.

(Aug. 16, 1954, ch. 736, 68A Stat. 706; Pub. L. 85–859, title II, §202, Sept. 2, 1958, 72 Stat. 1415; Pub. L. 89–44, title V, §502(b)(3), title VIII, §808(a), June 21, 1965, 79 Stat. 151, 164; Pub. L. 94–455, title XIX, §1906(b)(13)(A), title XXI, §2128(b), Oct. 4, 1976, 90 Stat. 1834, 1921; Pub. L. 99–272, title XIII, §13202(b)(2)–(4), Apr. 7, 1986, 100 Stat. 312; Pub. L. 100–647, title V, §5061(b)–(c)(2), Nov. 10, 1988, 102 Stat. 3679; Pub. L. 101–508, title XI, §11202(g), Nov. 5, 1990, 104 Stat. 1388–419; Pub. L. 105–33, title IX, §9302(g)(2)–(3)(B), (h)(4), Aug. 5, 1997, 111 Stat. 672, 674; Pub. L. 106–554, §1(a)(7) [title III, §315(a)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–644; Pub. L. 111–3, title VII, §702(a)(4), (5), (d)(1), Feb. 4, 2009, 123 Stat. 108, 110; Pub. L. 112–141, div. F, title I, §100122(a), July 6, 2012, 126 Stat. 914.)

AMENDMENTS

2012—Subsec. (d). Pub. L. 112–141 inserted concluding provisions.

2009—Subsec. (h). Pub. L. 111–3, §702(a)(5)(A), substituted "tobacco products or cigarette papers or tubes or any processed tobacco" for "tobacco products and cigarette papers and tubes".

Subsec. (j). Pub. L. 111–3, §702(a)(5)(B), inserted ", or any processed tobacco," after "tobacco products or cigarette papers or tubes".

Subsec. (k). Pub. L. 111–3, §702(a)(5)(B), which directed insertion of ", or any processed tobacco," after "tobacco products or cigarette papers or tubes", was executed by making the insertion after "tobacco products or cigarette papers or tubes" both places it appeared to reflect the probable intent of Congress.

Subsec. (o). Pub. L. 111–3, §702(d)(1), inserted "or cigars, or for use as wrappers thereof" before period.

Subsec. (p). Pub. L. 111–3, §702(a)(4), added subsec. (p).

2000—Subsec. (f). Pub. L. 106–554, §1(a)(7) [title III, §315(a)(2)(B)], redesignated subsec. (g) as (f) and struck out former subsec. (f), which defined "cigarette papers".

Subsec. (g). Pub. L. 106–554, §1(a)(7) [title III, §315(a)(2)(B)], redesignated subsec. (h) as (g). Former subsec. (g) redesignated (f).

Subsec. (h). Pub. L. 106–554, §1(a)(7) [title III, §315(a)(2)(B)], redesignated subsec. (i) as (h). Former subsec. (h) redesignated (g).

Pub. L. 106–554, §1(a)(7) [title III, §315(a)(2)(A)], amended heading and text of subsec. (h) generally. Prior to amendment, text read as follows: " 'Manufacturer of cigarette papers and tubes' means any person who makes up cigarette paper into books or sets containing more than 25 papers each, or into tubes, except for his own personal use or consumption."

Subsecs. (i) to (p). Pub. L. 106–554, §1(a)(7) [title III, §315(a)(2)(B)], redesignated subsecs. (i) to (p) as (h) to (o), respectively.

1997—Subsec. (c). Pub. L. 105–33, §9302(g)(3)(A), substituted "pipe tobacco, and roll-your-own tobacco" for "and pipe tobacco".

Subsec. (d). Pub. L. 105–33, §9302(g)(3)(B)(i), substituted "pipe tobacco, or roll-your-own tobacco" for "or pipe tobacco" in introductory provisions.

Subsec. (d)(1). Pub. L. 105–33, §9302(g)(3)(B)(ii), added par. (1) and struck out former par. (1) which read as follows: "a person who produces cigars, cigarettes, smokeless tobacco, or pipe tobacco solely for his own personal consumption or use; or".

Subsec. (k). Pub. L. 105–33, §9302(h)(4), inserted "under section 5704" after "internal revenue bond".

Subsec. (p). Pub. L. 105–33, §9302(g)(2), added subsec. (p).

1990—Subsec. (m). Pub. L. 101–508 substituted heading for one which read: "Wholesale price" and amended text generally. Prior to amendment, text read as follows: " 'Wholesale price' means the manufacturer's, or importer's, suggested delivered price at which the cigars are to be sold to retailers, inclusive of the tax imposed by this chapter or section 7652, but exclusive of any State or local taxes imposed on cigars as a commodity, and before any trade, cash, or other discounts, or any promotion, advertising, display, or similar allowances. Where the manufacturer's or importer's suggested delivered price to retailers is not adequately supported by bona fide arm's length sales, or where the manufacturer or importer has no suggested delivered price to retailers, the wholesale price shall be the price for which cigars of comparable retail price are sold to retailers in the ordinary course of trade as determined by the Secretary."

1988—Subsec. (c). Pub. L. 100–647, §5061(c)(1), inserted reference to pipe tobacco.

Subsec. (d). Pub. L. 100–647, §5061(c)(2), inserted reference to pipe tobacco in introductory provisions and in par. (1).

Subsec. (o). Pub. L. 100–647, §5061(b), added subsec. (o).

1986—Subsec. (c). Pub. L. 99–272, §13202(b)(2), inserted reference to smokeless tobacco.

Subsec. (d). Pub. L. 99–272, §13202(b)(3), inserted references to smokeless tobacco.

Subsec. (n). Pub. L. 99–272, §13202(b)(4), added subsec. (n).

1976—Subsec. (k). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (m). Pub. L. 94–455, §2128(b), added subsec. (m).

1965—Subsec. (a). Pub. L. 89–44, §§502(b)(3)(A), 808(a), redesignated subsec. (b) as (a), repealed former subsec. (a) which related to manufactured tobacco and, in subsec. (a) as so redesignated, allowed the use of any substance containing tobacco (other than any roll of tobacco which is a cigarette within the meaning of subsec. (b)(2) as a wrapper in addition to the leaf tobacco previously allowed.

Subsec. (b). Pub. L. 89–44, §§502(b)(3)(A), 808(a), redesignated subsec. (c) as (b) and permitted the use, as a wrapper for cigarettes in addition to paper and substances other than tobacco as previously allowed, any substance containing tobacco, which, because of the finished product's appearance, tobacco type, labeling, and packaging, is likely to be offered to or purchased by consumers as cigarettes. Former subsec. (b) redesignated (a).

Subsec. (c). Pub. L. 89–44, §502(b)(3)(A), (B), redesignated subsec. (d) as (c) and struck out reference to manufactured tobacco. Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 89–44, §502(b)(3)(A), (C), redesignated subsec. (e) as (d), and simplified the definition of manufacturer of tobacco products to include only persons who manufacture cigars or cigarettes and reduced the area of excluded activities so as to exclude only persons producing cigars and cigarettes solely for their own personal use and proprietors of customs bonded manufacturing warehouses with respect to the operation of such warehouses. Former subsec. (d) redesignated (c).

Subsecs. (e) to (k). Pub. L. 89–44, §502(b)(3)(A) redesignated subsecs. (f) to (k) and (n) as (e) to (j) and

(k), respectively. Former subsec. (e) redesignated (d).

Subsec. (l). Pub. L. 89–44, §502(b)(3)(A), redesignated subsec. (o) as (l) and repealed former subsec. (l) which related to tobacco materials.

Subsec. (m). Pub. L. 89–44, §502(b)(3)(A), repealed subsec. (m) which related to tobacco dealers.

Subsecs. (n), (o). Pub. L. 89–44, §502(b)(3)(A), redesignated subsec. (n) and (o) as (k) and (l), respectively.

1958—Subsec. (a). Pub. L. 85–859 inserted the term "for removal, or merely removed".

Subsecs. (b) to (d). Pub. L. 85–859 redesignated subsecs. (c), (d), and (f) as (b), (c), and (d), respectively. Former subsecs. (b), (c), and (d) redesignated (e), (b), and (c), respectively.

Subsec. (e). Pub. L. 85–859 consolidated the definitions "manufacturer of tobacco" and "manufacturer of cigars and cigarettes", inserted the phrase "for removal, or merely removes", excluded from the definition a proprietor of a customs bonded manufacturing warehouse with respect to the operation of the warehouse, and required bona fide associations of farmers or growers to maintain records of leaf tobacco.

Subsec. (f). Pub. L. 85–859 redesignated subsec. (g) as (f) and former subsec. (f) as (d).

Subsec. (g). Pub. L. 85–859 added subsec. (g) and redesignated former subsec. (g) as (f).

Subsec. (i). Pub. L. 85–859 substituted "into books or sets containing more than 25 papers each, or into tubes" for "into packages, books, sets, or tubes".

Subsec. (j). Pub. L. 85–859 substituted provisions defining "export warehouse" for provisions which defined "article" as manufactured tobacco, cigars, cigarettes, and cigarette papers and tubes.

Subsec. (k). Pub. L. 85–859 added subsec. (k) and redesignated former subsec. (k) as (l).

Subsec. (l). Pub. L. 85–859 redesignated former subsec. (k) as (l) and substituted "other than manufactured tobacco, cigars, and cigarettes" for "in process, leaf tobacco, and tobacco scraps, cuttings, clippings, siftings, dust, stems, and waste". Former subsec. (l) redesignated (m).

Subsec. (m). Pub. L. 85–859 redesignated former subsec. (l) as (m) and included within the definition persons who receive tobacco materials, other than stems and waste, for use in the production of fertilizer, insecticide, or nicotine, required associations of farmers or growers of tobacco to maintain records of all leaf tobacco acquired or received and sold or otherwise disposed of, and excluded from the definition persons who buy leaf tobacco without taking physical possession of the tobacco and qualified manufacturers of tobacco products. Former subsec. (m) redesignated (n).

Subsec. (n). Pub. L. 85–859 redesignated former subsec. (m) as (n) and substituted "tobacco products or cigarette papers or tubes" for "articles". Former subsec. (n) redesignated (o).

Subsec. (o). Pub. L. 85–859 redesignated former subsec. (n) as (o) and substituted "tobacco products or cigarette papers or tubes" for "articles" in two places, and inserted provisions to include within the definition persons who remove cigars or cigarettes for sale or consumption in the United States from a customs bonded manufacturing warehouse.

EFFECTIVE DATE OF 2012 AMENDMENT

Pub. L. 112–141, div. F, title I, §100122(b), July 6, 2012, 126 Stat. 915, provided that: "The amendment made by this section [amending this section] shall apply to articles removed after the date of the enactment of this Act [July 6, 2012]."

EFFECTIVE DATE OF 2009 AMENDMENT

Except as otherwise provided, amendment by Pub. L. 111–3 effective Apr. 1, 2009, see section 3 of Pub. L. 111–3, set out as an Effective Date note under section 1396 of Title 42, The Public Health and Welfare.

Pub. L. 111–3, title VII, §702(a)(6), Feb. 4, 2009, 123 Stat. 109, provided that: "The amendments made by this subsection [amending this section and sections 5712, 5713, 5721, 5722, 5723, and 5741 of this title] shall take effect on April 1, 2009."

Pub. L. 111–3, title VII, §702(d)(2), Feb. 4, 2009, 123 Stat. 110, provided that: "The amendment made by this subsection [amending this section] shall apply to articles removed (as defined in section 5702(j) of the Internal Revenue Code of 1986) after March 31, 2009."

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(7) [title III, §315(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–644, provided that: "The amendments made by this section [amending this section, section 5761 of this title, and provisions set out as a note under section 5701 of this title] shall take effect as if included in section 9302 of the Balanced Budget Act of 1997 [Pub. L. 105–33]."

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 applicable to articles removed, as defined in subsec. (k) of this section, after Dec. 31, 1999, with transition rule, see section 9302(i) of Pub. L. 105–33, set out as a note under section 5701

of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable with respect to articles removed after Dec. 31, 1990, see section 11202(h) of Pub. L. 101–508, set out as a note under section 5701 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 applicable to pipe tobacco removed, within the meaning of subsec. (k) of this section, after Dec. 31, 1988, with transition rule, see section 5061(d) of Pub. L. 100–647, set out as a note under section 5701 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 applicable to smokeless tobacco removed after June 30, 1986, see section 13202(c) of Pub. L. 99–272, set out as a note under section 5701 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 2128(b) of Pub. L. 94–455 effective on first month which begins more than 90 days after Oct. 4, 1976, see section 2128(e) of Pub. L. 94–455, set out as a note under section 5701 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 502(b)(3) of Pub. L. 89–44 applicable on and after Jan. 1, 1966, see section 701(d) of Pub. L. 89–44, set out as a note under section 5701 of this title.

Pub. L. 89–44, title VIII, §808(d)(1), June 21, 1965, 79 Stat. 165, provided that: "The amendments made by subsections (a) and (b)(3) [amending this section and section 7652 of this title] shall take effect on July 1, 1965."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–859 effective Sept. 3, 1958, see section 210(a)(1) of Pub. L. 85–859, set out as an Effective Date note under section 5001 of this title.

§5703. Liability for tax and method of payment

(a) Liability for tax

(1) Original liability

The manufacturer or importer of tobacco products and cigarette papers and tubes shall be liable for the taxes imposed thereon by section 5701.

(2) Transfer of liability

When tobacco products and cigarette papers and tubes are transferred, without payment of tax, pursuant to section 5704, the liability for tax shall be transferred in accordance with the provisions of this paragraph. When tobacco products and cigarette papers and tubes are transferred between the bonded premises of manufacturers and export warehouse proprietors, the transferee shall become liable for the tax upon receipt by him of such articles, and the transferor shall thereupon be relieved of his liability for such tax. When tobacco products and cigarette papers and tubes are released in bond from customs custody for transfer to the bonded premises of a manufacturer of tobacco products or cigarette papers and tubes, the transferee shall become liable for the tax on such articles upon release from customs custody, and the importer shall thereupon be relieved of his liability for such tax. All provisions of this chapter applicable to tobacco products and cigarette papers and tubes in bond shall be applicable to such articles returned to bond upon withdrawal from the market or returned to bond after previous removal for a tax-exempt purpose.

(b) Method of payment of tax

(1) In general

The taxes imposed by section 5701 shall be determined at the time of removal of the tobacco products and cigarette papers and tubes. Such taxes shall be paid on the basis of return. The Secretary shall, by regulations, prescribe the period or the event for which such return shall be

made and the information to be furnished on such return. Any postponement under this subsection of the payment of taxes determined at the time of removal shall be conditioned upon the filing of such additional bonds, and upon compliance with such requirements, as the Secretary may prescribe for the protection of the revenue. The Secretary may, by regulations, require payment of tax on the basis of a return prior to removal of the tobacco products and cigarette papers and tubes where a person defaults in the postponed payment of tax on the basis of a return under this subsection or regulations prescribed thereunder. All administrative and penalty provisions of this title, insofar as applicable, shall apply to any tax imposed by section 5701.

(2) Time for payment of taxes

(A) In general

Except as otherwise provided in this paragraph, in the case of taxes on tobacco products and cigarette papers and tubes removed during any semimonthly period under bond for deferred payment of tax, the last day for payment of such taxes shall be the 14th day after the last day of such semimonthly period.

(B) Imported articles

In the case of tobacco products and cigarette papers and tubes which are imported into the United States—

(i) In general

The last day for payment of tax shall be the 14th day after the last day of the semimonthly period during which the article is entered into the customs territory of the United States.

(ii) Special rule for entry for warehousing

Except as provided in clause (iv), in the case of an entry for warehousing, the last day for payment of tax shall not be later than the 14th day after the last day of the semimonthly period during which the article is removed from the 1st such warehouse.

(iii) Foreign trade zones

Except as provided in clause (iv) and in regulations prescribed by the Secretary, articles brought into a foreign trade zone shall, notwithstanding any other provision of law, be treated for purposes of this subsection as if such zone were a single customs warehouse.

(iv) Exception for articles destined for export

Clauses (ii) and (iii) shall not apply to any article which is shown to the satisfaction of the Secretary to be destined for export.

(C) Tobacco products and cigarette papers and tubes brought into the United States from Puerto Rico

In the case of tobacco products and cigarette papers and tubes which are brought into the United States from Puerto Rico, the last day for payment of tax shall be the 14th day after the last day of the semimonthly period during which the article is brought into the United States.

(D) Special rule for tax due in September

(i) In general

Notwithstanding the preceding provisions of this paragraph, the taxes on tobacco products and cigarette papers and tubes for the period beginning on September 16 and ending on September 26 shall be paid not later than September 29.

(ii) Safe harbor

The requirement of clause (i) shall be treated as met if the amount paid not later than September 29 is not less than 11/15 of the taxes on tobacco products and cigarette papers and tubes for the period beginning on September 1 and ending on September 15.

(iii) Taxpayers not required to use electronic funds transfer

In the case of payments not required to be made by electronic funds transfer, clauses (i) and (ii) shall be applied by substituting "September 25" for "September 26", "September 28" for "September 29", and "2/3" for "11/15".

(E) Special rule where due date falls on Saturday, Sunday, or holiday

Notwithstanding section 7503, if, but for this subparagraph, the due date under this paragraph would fall on a Saturday, Sunday, or a legal holiday (as defined in section 7503), such due date shall be the immediately preceding day which is not a Saturday, Sunday, or such a holiday (or the immediately following day where the due date described in subparagraph (D) falls on a Sunday).

(F) Special rule for unlawfully manufactured tobacco products

In the case of any tobacco products, cigarette paper, or cigarette tubes manufactured in the United States at any place other than the premises of a manufacturer of tobacco products, cigarette paper, or cigarette tubes that has filed the bond and obtained the permit required under this chapter, tax shall be due and payable immediately upon manufacture.

(3) Payment by electronic fund transfer

Any person who in any 12-month period, ending December 31, was liable for a gross amount equal to or exceeding $5,000,000 in taxes imposed on tobacco products and cigarette papers and tubes by section 5701 (or 7652) shall pay such taxes during the succeeding calendar year by electronic fund transfer (as defined in section 5061(e)(2)) to a Federal Reserve Bank. Rules similar to the rules of section 5061(e)(3) shall apply to the $5,000,000 amount specified in the preceding sentence.

(c) Use of government depositaries

The Secretary may authorize Federal Reserve banks, and incorporated banks or trust companies which are depositaries or financial agents of the United States, to receive any tax imposed by this chapter, in such manner, at such times, and under such conditions as he may prescribe; and he shall prescribe the manner, time, and condition under which the receipt of such tax by such banks and trust companies is to be treated as payment for tax purposes.

(d) Assessment

Whenever any tax required to be paid by this chapter is not paid in full at the time required for such payment, it shall be the duty of the Secretary, subject to the limitations prescribed in section 6501, on proof satisfactory to him, to determine the amount of tax which has been omitted to be paid, and to make an assessment therefor against the person liable for the tax. The tax so assessed shall be in addition to the penalties imposed by law for failure to pay such tax when required. Except in cases where delay may jeopardize collection of the tax, or where the amount is nominal or the result of an evident mathematical error, no such assessment shall be made until and after the person liable for the tax has been afforded reasonable notice and opportunity to show cause, in writing, against such assessment.

(Aug. 16, 1954, ch. 736, 68A Stat. 707; Pub. L. 85–859, title II, §202, Sept. 2, 1958, 72 Stat. 1417; Pub. L. 94–455, title XIX, §§1905(a)(25), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1821, 1834; Pub. L. 97–448, title III, §308(a), Jan. 12, 1983, 96 Stat. 2407; Pub. L. 98–369, div. A, title I, §27(c)(2), July 18, 1984, 98 Stat. 509; Pub. L. 99–509, title VIII, §8011(a)(1), Oct. 21, 1986, 100 Stat. 1951; Pub. L. 99–514, title XVIII, §1801(c)(2), Oct. 22, 1986, 100 Stat. 2786; Pub. L. 100–647, title II, §2003(b)(1)(C), (D), Nov. 10, 1988, 102 Stat. 3598; Pub. L. 103–465, title VII, §712(c), Dec. 8, 1994, 108 Stat. 5000; Pub. L. 111–3, title VII, §702(e)(1), Feb. 4, 2009, 123 Stat. 110.)

AMENDMENTS

2009—Subsec. (b)(2)(F). Pub. L. 111–3 added subpar. (F).

1994—Subsec. (b)(2)(D). Pub. L. 103–465, §712(c)(1), added subpar. (D). Former subpar. (D) redesignated (E).

Subsec. (b)(2)(E). Pub. L. 103–465, §712(c), redesignated subpar. (D) as (E), substituted "due date" for "14th day" in heading, and inserted "(or the immediately following day where the due date described in

subparagraph (D) falls on a Sunday)" before period at end.

1988—Subsec. (b)(2)(B)(i), (ii), (C). Pub. L. 100–647 substituted "the 14th day after the last day of the semimonthly period during which" for "the 14th day after the date on which".

1986—Subsec. (b)(2). Pub. L. 99–509 amended par. (2) generally. Prior to amendment par. (2), time for making of return and payment of taxes, read as follows: "In the case of tobacco products and cigarette papers and tubes removed after December 31, 1982, under bond for deferred payment of tax, the last day for filing a return and paying any tax due for each return period shall be the last day of the first succeeding return period plus 10 days."

Subsec. (b)(3). Pub. L. 99–514 inserted last sentence.

1984—Subsec. (b)(3). Pub. L. 98–369 added par. (3).

1983—Subsec. (b). Pub. L. 97–448 designated existing provisions as par. (1), struck out provisions that the Secretary prescribe the time for making a return and the time for the payment of taxes and that the Secretary prescribe by regulations the conditions for the filing of additional bonds, and added par. (2).

1976—Subsec. (a). Pub. L. 94–455, §1905(a)(25)(A), directed that all provisions of chapter 52 applicable to tobacco products and cigarette papers and tubes in bond be applicable to such articles returned to bond upon withdrawal from the market or returned to bond after previous removal for a tax-exempt purpose.

Subsec. (b). Pub. L. 94–455, §§1905(a)(25)(B), 1906(b)(13)(A), struck out provisions which had authorized payment of taxes by stamp until regulations could be promulgated to provide for payment by return and struck out "or his delegate" after "Secretary" in three places.

Subsec. (c). Pub. L. 94–455, §§1905(a)(25)(C), 1906(b)(13)(A), redesignated subsec. (d) as (c) and struck out "or his delegate" after "Secretary". Former subsec. (c), relating to the use of stamps as evidence of the payment of taxes, was struck out.

Subsecs. (d), (e). Pub. L. 94–455, §§1905(a)(25)(C), 1906(b)(13)(A), redesignated subsec. (e) as (d) and struck out "or his delegate" after "Secretary". Former subsec. (d) redesignated (c).

1958—Subsec. (a)(1). Pub. L. 85–859 designated part of first sentence of subsec. (a) as par. (1) thereof and redesignated the remainder of subsec. (a) as (b).

Subsec. (a)(2). Pub. L. 85–859 added par. (2).

Subsec. (b). Pub. L. 85–859 designated former subsec. (a), with exception of part of the first sentence, as subsec. (b) and substituted "tobacco products and cigarette papers and tubes" for "articles", and inserted provisions relating to postponements, and to payment of the tax on the basis of a return prior to removal of the tobacco products and cigarette papers and tubes where a person defaults in the postponed payment of the tax. Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 85–859 designated former subsec. (b) as (c) and substituted "If the Secretary or his delegate shall by regulation provide for the payment of tax by return and require the use of" for "If the Secretary or his delegate shall, by regulation, require the use", and "tobacco products" for "articles". Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 85–859 redesignated former subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 85–859 designated former subsec. (d) as (e) and permitted assessments in cases where delay may jeopardize collection of the tax, or where the amount is nominal or the result of an evident mathematical error.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–3, title VII, §702(e)(2), Feb. 4, 2009, 123 Stat. 110, provided that: "The amendment made by this subsection [amending this section] shall take effect on the date of the enactment of this Act [Feb. 4, 2009]."

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 effective Jan. 1, 1995, see section 712(e) of Pub. L. 103–465, set out as a note under section 5061 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective as if included in the amendments made by section 8011 of the Omnibus Budget Reconciliation Act of 1986, Pub. L. 99–509, see section 2003(b)(2) of Pub. L. 100–647, set out as a note under section 5061 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Amendment by Pub. L. 99–509 applicable to removals during semimonthly periods ending on or after Dec. 31, 1986, except as otherwise provided, see section 8011(c) of Pub. L. 99–509, set out as a note under section 5061 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxes required to be paid on or after Sept. 30, 1984, see section 27(d)(2) of Pub. L. 98–369, set out as a note under section 5001 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 97–448, title III, §308(b), Jan. 12, 1983, 96 Stat. 2407, provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to tobacco products and cigarette papers and tubes removed after December 31, 1982."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1905(a)(25) of Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1905(d) of Pub. L. 94–455, set out as a note under section 5005 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–859 effective Sept. 3, 1958, see section 210(a)(1) of Pub. L. 85–859, set out as an Effective Date note under section 5001 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§5704. Exemption from tax

(a) Tobacco products furnished for employee use or experimental purposes

Tobacco products may be furnished by a manufacturer of such products, without payment of tax, for use or consumption by employees or for experimental purposes, in such quantities, and in such manner as the Secretary shall by regulation prescribed.

(b) Tobacco products and cigarette papers and tubes transferred or removed in bond from domestic factories and export warehouses

A manufacturer or export warehouse proprietor may transfer tobacco products and cigarette papers and tubes, without payment of tax, to the bonded premises of another manufacturer or export warehouse proprietor, or remove such articles, without payment of tax, for shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, or for consumption beyond the jurisdiction of the internal revenue laws of the United States; and manufacturers may similarly remove such articles for use of the United States; in accordance with such regulations and under such bonds as the Secretary shall prescribe. Tobacco products and cigarette papers and tubes may not be transferred or removed under this subsection unless such products or papers and tubes bear such marks, labels, or notices as the Secretary shall by regulations prescribe.

(c) Tobacco products and cigarette papers and tubes released in bond from customs custody

Tobacco products and cigarette papers and tubes, imported or brought into the United States, may be released from customs custody, without payment of tax, for delivery to the proprietor of an export warehouse, or to a manufacturer of tobacco products or cigarette papers and tubes if such articles are not put up in packages, in accordance with such regulations and under such bond as the Secretary shall prescribe.

(d) Tobacco products and cigarette papers and tubes exported and returned

Tobacco products and cigarette papers and tubes classifiable under item 804.00 of title I of the Tariff Act of 1930 (relating to duty on certain articles previously exported and returned) may be

released from customs custody, without payment of that part of the duty attributable to the internal revenue tax for delivery to the original manufacturer of such tobacco products or cigarette papers and tubes or to the proprietor of an export warehouse authorized by such manufacturer to receive such articles, in accordance with such regulations and under such bond as the Secretary shall prescribe. Upon such release such products, papers, and tubes shall be subject to this chapter as if they had not been exported or otherwise removed from internal-revenue bond.

(Aug. 16, 1954, ch. 736, 68A Stat. 708; Pub. L. 85–859, title II, §202, Sept. 2, 1958, 72 Stat. 1418; Pub. L. 88–342, §1(b), June 30, 1964, 78 Stat. 234; Pub. L. 89–44, title V, §502(b)(4), June 21, 1965, 79 Stat. 151; Pub. L. 94–455, title XIX, §§1905(a)(26), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1821, 1834; Pub. L. 99–509, title VIII, §8011(a)(2), Oct. 21, 1986, 100 Stat. 1952; Pub. L. 101–239, title VII, §7508(a), Dec. 19, 1989, 103 Stat. 2370; Pub. L. 105–33, title IX, §9302(h)(1)(A), Aug. 5, 1997, 111 Stat. 673; Pub. L. 106–476, title IV, §4002(b), Nov. 9, 2000, 114 Stat. 2177.)

REFERENCES IN TEXT

Item 804.00 of title I of the Tariff Act of 1930, referred to in subsec. (d), was classified to item 804.00 of the Tariff Schedules of the United States. The Tariff Schedules of the United States were replaced by the Harmonized Tariff Schedule of the United States. The Harmonized Tariff Schedule of the United States is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of Title 19, Customs Duties.

AMENDMENTS

2000—Subsec. (d). Pub. L. 106–476 substituted "the original manufacturer of such" for "a manufacturer of" and inserted "authorized by such manufacturer to receive such articles" after "proprietor of an export warehouse".

1997—Subsec. (b). Pub. L. 105–33 inserted at end "Tobacco products and cigarette papers and tubes may not be transferred or removed under this subsection unless such products or papers and tubes bear such marks, labels, or notices as the Secretary shall by regulations prescribe."

1989—Subsec. (c). Pub. L. 101–239 inserted "or to a manufacturer of tobacco products or cigarette papers and tubes if such articles are not put up in packages," after "export warehouse,".

1986—Subsec. (c). Pub. L. 99–509 struck out "to a manufacturer of tobacco products or cigarette papers and tubes or" after "for delivery".

1976—Subsecs. (a), (b). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsecs. (c), (d). Pub. L. 94–455, §§1905(a)(26), 1906(b)(13)(A), inserted "or to the proprietor of an export warehouse" after "to a manufacturer of tobacco products or cigarette papers and tubes" and struck out "or his delegate" after "Secretary".

1965—Subsec. (c). Pub. L. 89–44, §502(b)(4), redesignated subsec. (d) as (c), struck out all references to tobacco materials, and repealed former subsec. (c) which related to tobacco materials shipped or delivered in bond.

Subsecs. (d), (e). Pub. L. 89–44, §502(b)(4)(A), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

1964—Subsec. (e). Pub. L. 88–342 added subsec. (e).

1958—Subsec. (b). Pub. L. 85–859 included transfers by export warehouse proprietors, and substituted "tobacco products and cigarette papers and tubes" for "articles", before "without payment of tax".

Subsec. (c). Pub. L. 85–859 authorized shipments without payment of tax of tobacco stems and waste only, to any person for use by him as fertilizer or insecticide or in the production of fertilizer, insecticide, or nicotine.

Subsec. (d). Pub. L. 85–859 substituted "tobacco products, cigarette papers and tubes" for "articles" wherever appearing, and struck out provisions which related to delivery to bonded premises of manufacturers and dealers.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–476, title IV, §4002(d), Nov. 9, 2000, 114 Stat. 2177, provided that: "The amendments made by this section [amending this section and sections 5754 and 5761 of this title] shall take effect 90 days after the date of the enactment of this Act [Nov 9, 2000]."

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 applicable to articles removed, as defined in section 5702(j) of this title,

after Dec. 31, 1999, with transition rule, see section 9302(i) of Pub. L. 105–33, set out as a note under section 5701 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7508(b), Dec. 19, 1989, 103 Stat. 2370, provided that: "The amendment made by subsection (a) [amending this section] shall apply to articles imported or brought into the United States after the date of the enactment of this Act [Dec. 19, 1989]."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–509 applicable to articles imported, entered for warehousing, or brought into the United States or a foreign trade zone after Dec. 15, 1986, see section 8011(c) of Pub. L. 99–509, set out as a note under section 5061 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1905(a)(26) of Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1905(d) of Pub. L. 94–455, set out as a note under section 5005 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 applicable on and after January 1, 1966, see section 701(d) of Pub. L. 89–44, set out as a note under section 5701 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88–342, §2, June 30, 1964, 78 Stat. 234, provided that the amendment made by section 2 of Pub. L. 88–342 shall apply with respect to articles entered, or withdrawn from warehouse, for consumption after June 30, 1964.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–859 effective Sept. 3, 1958, see section 210(a)(1) of Pub. L. 85–859, set out as an Effective Date note under section 5001 of this title.

REPORT

Pub. L. 106–476, title I, §4002(e), Nov. 9, 2000, 114 Stat. 2177, provided that: "The Secretary of the Treasury shall report to Congress on the impact of requiring export warehouses to be authorized by the original manufacturer to receive relanded export-labeled cigarettes."

§5705. Credit, refund, or allowance of tax

(a) Credit or refund

Credit or refund of any tax imposed by this chapter or section 7652 shall be allowed or made (without interest) to the manufacturer, importer, or export warehouse proprietor, on proof satisfactory to the Secretary that the claimant manufacturer, importer, or export warehouse proprietor has paid the tax on tobacco products and cigarette papers and tubes withdrawn by him from the market; or on such articles lost (otherwise than by theft) or destroyed, by fire, casualty, or act of God, while in the possession of ownership of the claimant.

(b) Allowance

If the tax has not yet been paid on tobacco products and cigarette papers and tubes provided to have been withdrawn from the market or lost or destroyed as aforesaid, relief from the tax on such articles may be extended upon the filing of a claim for allowance therefor in accordance with such regulations as the Secretary shall prescribe.

(c) Limitation

Any claim for credit or refund of tax under this section shall be filed within 6 months after the date of the withdrawal from the market, loss, or destruction of the articles to which the claim relates, and shall be in such form and contain such information as the Secretary shall by regulations prescribe.

(Aug. 16, 1954, ch. 736, 68A Stat. 709; Pub. L. 85–859, title II, §202, Sept. 2, 1958, 72 Stat. 1419;

Pub. L. 89–44, title VIII, §808(b)(1), (2), (c)(1), June 21, 1965, 79 Stat. 164, 165; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

1965—Pub. L. 89–44, §808(c)(1), struck out "Refund or" and inserted in lieu thereof "Credit, refund, or" in section catchline.

Subsec. (a). Pub. L. 89–44, §808(b)(1), substituted "Credit or refund" for "Refund" in heading and struck out "Refund of any tax imposed by this chapter shall be made", replacing it with "Credit or refund of any tax imposed by this chapter or section 7652 shall be allowed or made".

Subsec. (c). Pub. L. 89–44, §808(b)(2), inserted "credit or" before "refund".

1958—Subsec. (a). Pub. L. 85–859 authorized refunds to export warehouse proprietors, provided for refunds to be made without interest, and eliminated provisions which authorized refunds where the tax has been paid in error.

Subsec. (b). Pub. L. 85–859 permitted relief where a tax has not yet been paid on tobacco products and cigarette papers and tubes proved to have been withdrawn from the market.

Subsec. (c). Pub. L. 85–859 substituted "under this section shall be filed within 6 months after the date of the withdrawal from the market, loss, or destruction of the articles to which the claim relates" for "imposed by this chapter shall be filed within 3 years of the date of payment of tax".

EFFECTIVE DATE OF 1965 AMENDMENT

Pub. L. 89–44, title VIII, §808(d)(2), June 21, 1965, 79 Stat. 165, provided that: "The amendments made by subsections (b)(1), (2), and (c) [amending this section] shall take effect on October 1, 1965."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–859 effective Sept. 3, 1958, see section 210(a)(1) of Pub. L. 85–859, set out as an Effective Date note under section 5001 of this title.

§5706. Drawback of tax

There shall be an allowance of drawback of tax paid on tobacco products and cigarette papers and tubes, when shipped from the United States, in accordance with such regulations and upon the filing of such bond as the Secretary shall prescribe.

(Aug. 16, 1954, ch. 736, 68A Stat. 709; Pub. L. 85–859, title II, §202, Sept. 2, 1958, 72 Stat. 1419; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

1958—Pub. L. 85–859 substituted "tobacco products and cigarette papers and tubes" for "articles".

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–859 effective Sept. 3, 1958, see section 210(a)(1) of Pub. L. 85–859, set out as an Effective Date note under section 5001 of this title.

[§5707. Repealed. Pub. L. 89–44, title V, §501(g), June 21, 1965, 79 Stat. 150]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 709; Mar. 30, 1955, ch. 18, §3(b)(3), 69 Stat. 15; Mar. 29, 1956, ch. 115, §3(b)(3), 70 Stat. 67; Mar. 29, 1957, Pub. L. 85–12, §3(b)(3), 71 Stat. 10; June 30, 1958, Pub. L. 85–475, §3(b)(3), 72 Stat. 259; Sept. 2, 1958, Pub. L. 85–859, title II, §202, 72 Stat. 1419; June 30, 1959, Pub. L. 86–75, §3(b)(2), 73 Stat. 158; June 30, 1960, Pub. L. 86–564, title II, §202(b)(2), 74 Stat. 291; June 30, 1961, Pub. L. 87–72, §3(b)(2), 75 Stat. 193; June 28, 1962, Pub. L. 87–508, §3(b)(2), 76 Stat. 114; June 29, 1963, Pub. L. 88–52, §3(b)(1)(B), 77 Stat. 72; June 30, 1964, Pub. L. 88–348, §2(b)(1)(B), 78 Stat. 237, made provision for floor stocks refunds on cigarettes, set limitations on eligibility for credit or refunds, and made applicable existing penalty and administrative procedures.

EFFECTIVE DATE OF REPEAL

Repeal applicable on and after July 1, 1965, see section 701(d) of Pub. L. 89–44, set out as an Effective Date of 1965 Amendment note under section 5701 of this title.

§5708. Losses caused by disaster

(a) Authorization

Where the President has determined under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, that a "major disaster" as defined in such Act has occurred in any part of the United States, the Secretary shall pay (without interest) an amount equal to the amount of the internal revenue taxes paid or determined and customs duties paid on tobacco products and cigarette papers and tubes removed, which were lost, rendered unmarketable, or condemned by a duly authorized official by reason of such disaster occurring in such part of the United States on and after the effective date of this section, if such tobacco products or cigarette papers or tubes were held and intended for sale at the time of such disaster. The payments authorized by this section shall be made to the person holding such tobacco products or cigarette papers or tubes for sale at the time of the disaster.

(b) Claims

No claim shall be allowed under this section unless—

(1) filed within 6 months after the date on which the President makes the determination that the disaster referred to in subsection (a) has occurred; and

(2) the claimant furnishes proof to the satisfaction of the Secretary that—

(A) he was not indemnified by any valid claim of insurance or otherwise in respect of the tax, or tax and duty, on the tobacco products or cigarette papers or tubes covered by the claim, and

(B) he is entitled to payment under this section.

Claims under this section shall be filed under such regulations as the Secretary shall prescribe.

(c) Destruction of tobacco products or cigarette papers or tubes

Before the Secretary makes payment under this section in respect of the tax, or tax and duty, on the tobacco products or cigarette papers or tubes condemned by a duly authorized official or rendered unmarketable, such tobacco products or cigarette papers or tubes shall be destroyed under such supervision as the Secretary may prescribe, unless such tobacco products or cigarette papers or tubes were previously destroyed under supervision satisfactory to the Secretary.

(d) Other laws applicable

All provisions of law, including penalties, applicable in respect of internal revenue taxes on tobacco products and cigarette papers and tubes shall, insofar as applicable and not inconsistent with this section, be applied in respect of the payments provided for in this section to the same extent as if such payments constituted refunds of such taxes.

(Added Pub. L. 85–859, title II, §202, Sept. 2, 1958, 72 Stat. 1420; amended Pub. L. 91–606, title III, §301(j), Dec. 31, 1970, 84 Stat. 1759; Pub. L. 93–288, title VII, §702(j), formerly title VI, §602(j), May 22, 1974, 88 Stat. 164, renumbered title VII, §702(j), Pub. L. 103–337, div. C, title XXXIV, §3411(a)(1), (2), Oct. 5, 1994, 108 Stat. 3100; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 100–707, title I, §109(l), Nov. 23, 1988, 102 Stat. 4709; Pub. L. 108–311, title IV, §408(a)(7)(E), Oct. 4, 2004, 118 Stat. 1191.)

REFERENCES IN TEXT

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsec. (a), is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, as amended, which is classified principally to chapter 68 (§5121 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of Title 42 and Tables.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–311 inserted "Robert T. Stafford" before "Disaster Relief and Emergency Assistance Act".

1988—Subsec. (a). Pub. L. 100–707 substituted "and Emergency Assistance Act" for "Act of 1974".

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

1974—Subsec. (a). Pub. L. 93–288 substituted "Disaster Relief Act of 1974" for "Disaster Relief Act of 1970".

1970—Subsec. (a). Pub. L. 91–606 substituted "Disaster Relief Act of 1970" for "Act of September 30, 1950 (42 U.S.C. 1855)".

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–288 effective Apr. 1, 1974, see section 605 of Pub. L. 93–288, formerly set out as an Effective Date note under section 5121 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–606 effective Dec. 31, 1970, see section 304 of Pub. L. 91–606, set out as a note under section 165 of this title.

EFFECTIVE DATE

Section effective Sept. 3, 1958, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

LOSSES OF TOBACCO PRODUCTS CAUSED BY DISASTER

Pub. L. 85–859, title II, §209, Sept. 2, 1958, 72 Stat. 1434, authorized payments, without interest, of amounts equal to internal revenue taxes and customs duties paid by persons suffering a major disaster, pursuant to former act Sept. 30, 1950, ch. 1125, 64 Stat. 1109, for disasters occurring in the United States after Dec. 31, 1954, and before Sept. 2, 1958, in respect to tobacco products and cigarette papers and tubes; specified persons to whom the payments would be made and the procedure for allowance of claims; required the destruction of such tobacco products and cigarette papers and tubes under supervision; and made other laws applicable to such payments insofar as not inconsistent with section 209 of Pub. L. 85–859.

Subchapter B—Qualification Requirements for Manufacturers and Importers of Tobacco Products and Cigarette Papers and Tubes, and Export Warehouse Proprietors

Sec.
5711. Bond.
5712. Application for permit.
5713. Permit.

AMENDMENTS

1997—Pub. L. 105–33, title IX, §9302(h)(2)(C), Aug. 5, 1997, 111 Stat. 674, inserted "and Importers" after "Manufacturers" in subchapter heading.

1965—Pub. L. 89–44, title V, §502(b)(5), June 21, 1965, 79 Stat. 151, struck out reference to dealers in tobacco materials from subchapter heading.

§5711. Bond

(a) When required

Every person, before commencing business as a manufacturer of tobacco products or cigarette papers and tubes, or as an export warehouse proprietor, shall file such bond, conditioned upon compliance with this chapter and regulations issued thereunder, in such form, amount, and manner as the Secretary shall by regulation prescribe. A new or additional bond may be required whenever the Secretary considers such action necessary for the protection of the revenue.

(b) Approval or disapproval

No person shall engage in such business until he receives notice of approval of such bond. A bond may be disapproved, upon notice to the principal on the bond, if the Secretary determines that the bond is not adequate to protect the revenue.

(c) Cancellation

Any bond filed hereunder may be canceled, upon notice to the principal on the bond, whenever the Secretary determines that the bond no longer adequately protects the revenue.

(Aug. 16, 1954, ch. 736, 68A Stat. 711; Pub. L. 85–859, title II, §202, Sept. 2, 1958, 72 Stat. 1421; Pub. L. 89–44, title V, §502(b)(6), June 21, 1965, 79 Stat. 151; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

1965—Subsec. (a). Pub. L. 89–44 struck out reference to dealers in tobacco materials.

1958—Subsec. (a). Pub. L. 85–859 included export warehouse proprietors, and substituted "manufacturer of tobacco products or cigarette papers and tubes" for "manufacturer of articles".

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 applicable on and after January 1, 1966, see section 701(d) of Pub. L. 89–44, set out as a note under section 5701 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–859 effective Sept. 3, 1958, see section 210(a)(1) of Pub. L. 85–859, set out as an Effective Date note under section 5001 of this title.

TRANSITIONAL RULE

Pub. L. 111–3, title VII, §702(g), Feb. 4, 2009, 123 Stat. 111, provided that: "Any person who—

"(1) on April 1, 2009[,] is engaged in business as a manufacturer of processed tobacco or as an importer of processed tobacco, and

"(2) before the end of the 90-day period beginning on such date, submits an application under subchapter B of chapter 52 of such Code [this subchapter] to engage in such business, may, notwithstanding such subchapter B, continue to engage in such business pending final action on such application. Pending such final action, all provisions of such chapter 52 [this chapter] shall apply to such applicant in the same manner and to the same extent as if such applicant were a holder of a permit under such chapter 52 to engage in such business."

§5712. Application for permit

Every person, before commencing business as a manufacturer or importer of tobacco products or processed tobacco or as an export warehouse proprietor, and at such other time as the Secretary shall by regulation prescribe, shall make application for the permit provided for in section 5713. The application shall be in such form as the Secretary shall prescribe and shall set forth, truthfully and accurately, the information called for on the form. Such application may be rejected and the permit denied if the Secretary, after notice and opportunity for hearing, find that—

(1) the premises on which it is proposed to conduct the business are not adequate to protect the revenue;

(2) the activity proposed to be carried out at such premises does not meet such minimum capacity or activity requirements as the Secretary may prescribe,[1] or

(3) such person (including, in the case of a corporation, any officer, director, or principal stockholder and, in the case of a partnership, a partner)—

(A) is, by reason of his business experience, financial standing, or trade connections or by reason of previous or current legal proceedings involving a felony violation of any other provision of Federal criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes, not likely to maintain operations in compliance with this chapter,

(B) has been convicted of a felony violation of any provision of Federal or State criminal law

relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes, or

(C) has failed to disclose any material information required or made any material false statement in the application therefor.

(Aug. 16, 1954, ch. 736, 68A Stat. 712; Pub. L. 85–859, title II, §202, Sept. 2, 1958, 72 Stat. 1421; Pub. L. 94–455, title XIX, §§1905(a)(27), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1821, 1834; Pub. L. 105–33, title IX, §9302(h)(2)(A), (5), Aug. 5, 1997, 111 Stat. 674; Pub. L. 111–3, title VII, §702(a)(1)(A), (b)(1), Feb. 4, 2009, 123 Stat. 108, 109.)

AMENDMENTS

2009—Pub. L. 111–3, §702(a)(1)(A), inserted "or processed tobacco" after "tobacco products" in introductory provisions.

Par. (3). Pub. L. 111–3, §702(b)(1), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "such person (including, in the case of a corporation, any officer, director, or principal stockholder and, in the case of a partnership, a partner) is, by reason of his business experience, financial standing, or trade connections, not likely to maintain operations in compliance with this chapter, or has failed to disclose any material information required or made any material false statement in the application therefor."

1997—Pub. L. 105–33, §9302(h)(5), struck out "or" at end of par. (1), added par. (2), and redesignated former par. (2) as (3).

Pub. L. 105–33, §9302(h)(2)(A), inserted "or importer" after "manufacturer" in introductory provisions.

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" and struck out provision that no person subject to this section, who was lawfully engaged in business on the date of the enactment of the Excise Tax Technical Changes Act of 1958, be denied the right to carry on that business pending reasonable opportunity to make applications for permit and final action thereon.

1958—Pub. L. 85–859 included export warehouse proprietors, and excluded dealers in tobacco materials.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by section 702(a)(1)(A) of Pub. L. 111–3 effective Apr. 1, 2009, see section 702(a)(6) of Pub. L. 111–3, set out as a note under section 5702 of this title.

Pub. L. 111–3, title VII, §702(b)(3), Feb. 4, 2009, 123 Stat. 110, provided that: "The amendments made by this subsection [amending this section and section 5713 of this title] shall take effect on the date of the enactment of this Act [Feb. 4, 2009]."

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 applicable to articles removed, as defined in section 5702(j) of this title, after Dec. 31, 1999, with transition rule, see section 9302(i) of Pub. L. 105–33, set out as a note under section 5701 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1905(a)(27) of Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1905(d) of Pub. L. 94–455, set out as a note under section 5005 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–859 effective Sept. 3, 1958, see section 210(a)(1) of Pub. L. 85–859, set out as an Effective Date note under section 5001 of this title.

[1] *So in original. The comma probably should be a semicolon.*

§5713. Permit

(a) Issuance

A person shall not engage in business as a manufacturer or importer of tobacco products or processed tobacco or as an export warehouse proprietor without a permit to engage in such business. Such permit, conditioned upon compliance with this chapter and regulations issued thereunder, shall

be issued in such form and in such manner as the Secretary shall by regulation prescribe, to every person properly qualified under sections 5711 and 5712. A new permit may be required at such other time as the Secretary shall by regulation prescribe.

(b) Suspension or revocation

(1) Show cause hearing

If the Secretary has reason to believe that any person holding a permit—

(A) has not in good faith complied with this chapter, or with any other provision of this title involving intent to defraud,

(B) has violated the conditions of such permit,

(C) has failed to disclose any material information required or made any material false statement in the application for such permit,

(D) has failed to maintain his premises in such manner as to protect the revenue,

(E) is, by reason of previous or current legal proceedings involving a felony violation of any other provision of Federal criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes, not likely to maintain operations in compliance with this chapter, or

(F) has been convicted of a felony violation of any provision of Federal or State criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes,

the Secretary shall issue an order, stating the facts charged, citing such person to show cause why his permit should not be suspended or revoked.

(2) Action following hearing

If, after hearing, the Secretary finds that such person has not shown cause why his permit should not be suspended or revoked, such permit shall be suspended for such period as the Secretary deems proper or shall be revoked.

(Aug. 16, 1954, ch. 736, 68A Stat. 712; Pub. L. 85–859, title II, §202, Sept. 2, 1958, 72 Stat. 1421; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 105–33, title IX, §9302(h)(2)(A), Aug. 5, 1997, 111 Stat. 674; Pub. L. 111–3, title VII, §702(a)(1)(B), (b)(2), Feb. 4, 2009, 123 Stat. 108, 109.)

AMENDMENTS

2009—Subsec. (a). Pub. L. 111–3, §702(a)(1)(B), inserted "or processed tobacco" after "tobacco products".

Subsec. (b). Pub. L. 111–3, §702(b)(2), amended subsec. (b) generally. Prior to amendment, text read as follows: "If the Secretary has reason to believe that any person holding a permit has not in good faith complied with this chapter, or with any other provision of this title involving intent to defraud, or has violated the conditions of such permit, or has failed to disclose any material information required or made any material false statement in the application for such permit, or has failed to maintain his premises in such manner as to protect the revenue, the Secretary shall issue an order, stating the facts charged, citing such person to show cause why his permit should not be suspended or revoked. If, after hearing, the Secretary finds that such person has not in good faith complied with this chapter or with any other provision of this title involving intent to defraud, has violated the conditions of such permit, has failed to disclose any material information required or made any material false statement in the application therefor, or has failed to maintain his premises in such manner as to protect the revenue, such permit shall be suspended for such period as the Secretary deems proper or shall be revoked."

1997—Subsec. (a). Pub. L. 105–33 inserted "or importer" after "manufacturer".

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

1958—Subsec. (a). Pub. L. 85–859 substituted "manufacturer of tobacco products" for "manufacturer of articles", included export warehouse proprietors, and struck out provisions which related to dealers in tobacco materials.

Subsecs. (b), (c). Pub. L. 85–859 redesignated subsec. (c) as (b) and struck out former subsec. (b) that required permits to be posted.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by section 702(b)(2) of Pub. L. 111–3 effective Feb. 4, 2009, see section 702(b)(3) of Pub. L.

111–3, set out as a note under section 5712 of this title.

Amendment by section 702(a)(1)(B) of Pub. L. 111–3 effective Apr. 1, 2009, see section 702(a)(6) of Pub. L. 111–3, set out as a note under section 5702 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 applicable to articles removed, as defined in section 5702(j) of this title, after Dec. 31, 1999, with transition rule, see section 9302(i) of Pub. L. 105–33, set out as a note under section 5701 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–859 effective Sept. 3, 1958, see section 210(a)(1) of Pub. L. 85–859, set out as an Effective Date note under section 5001 of this title.

Subchapter C—Operations by Manufacturers and Importers of Tobacco Products and Cigarette Papers and Tubes and Export Warehouse Proprietors

Sec.
5721. Inventories.
5722. Reports.
5723. Packages, marks, labels, and notices.

AMENDMENTS

1976—Pub. L. 94–455, title XIX, §1905(b)(7)(D), Oct. 4, 1976, 90 Stat. 1823, substituted "and notices" for "notices, and stamps" in item 5723.

1958—Pub. L. 85–859, title II, §202, Sept. 2, 1958, 72 Stat. 1422, substituted "Manufacturers and Importers of Tobacco Products and Cigarette Papers and Tubes and Export Warehouse Proprietors" for "Manufacturers of Articles" in heading of subchapter and inserted "marks," in item 5723.

§5721. Inventories

Every manufacturer or importer of tobacco products, processed tobacco, or cigarette papers and tubes, and every export warehouse proprietor, shall make a true and accurate inventory at the time of commencing business, at the time of concluding business, and at such other times, in such manner and form, and to include such items, as the Secretary shall by regulation prescribe. Such inventories shall be subject to verification by any internal revenue officer.

(Aug. 16, 1954, ch. 736, 68A Stat. 713; Pub. L. 85–859, title II, §202, Sept. 2, 1958, 72 Stat. 1422; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 105–33, title IX, §9302(h)(2)(A), Aug. 5, 1997, 111 Stat. 674; Pub. L. 111–3, title VII, §702(a)(2)(A), Feb. 4, 2009, 123 Stat. 108.)

AMENDMENTS

2009—Pub. L. 111–3 inserted ", processed tobacco," after "tobacco products".

1997—Pub. L. 105–33 inserted "or importer" after "manufacturer".

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

1958—Pub. L. 85–859 substituted "manufacturer of tobacco products or cigarette papers and tubes" for "manufacturer of articles" and "internal revenue officer" for "revenue officer", and inserted provisions to include export warehouse proprietors.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–3 effective Apr. 1, 2009, see section 702(a)(6) of Pub. L. 111–3, set out as a note under section 5702 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 applicable to articles removed, as defined in section 5702(j) of this title,

after Dec. 31, 1999, with transition rule, see section 9302(i) of Pub. L. 105–33, set out as a note under section 5701 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–859 effective Sept. 3, 1958, see section 210(a)(1) of Pub. L. 85–859, set out as an Effective Date note under section 5001 of this title.

§5722. Reports

Every manufacturer or importer of tobacco products, processed tobacco, or cigarette papers and tubes, and every export warehouse proprietor, shall make reports containing such information, in such form, at such times, and for such periods as the Secretary shall by regulation prescribe.

(Aug. 16, 1954, ch. 736, 68A Stat. 713; Pub. L. 85–859, title II, §202, Sept. 2, 1958, 72 Stat. 1422; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 105–33, title IX, §9302(h)(2)(A), Aug. 5, 1997, 111 Stat. 674; Pub. L. 111–3, title VII, §702(a)(2)(B), Feb. 4, 2009, 123 Stat. 108.)

AMENDMENTS

2009—Pub. L. 111–3 inserted ", processed tobacco," after "tobacco products".

1997—Pub. L. 105–33 inserted "or importer" after "manufacturer".

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

1958—Pub. L. 85–859 substituted "manufacturer of tobacco products or cigarette papers and tubes, and every export warehouse proprietor" for "manufacturer of articles".

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–3 effective Apr. 1, 2009, see section 702(a)(6) of Pub. L. 111–3, set out as a note under section 5702 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 applicable to articles removed, as defined in section 5702(j) of this title, after Dec. 31, 1999, with transition rule, see section 9302(i) of Pub. L. 105–33, set out as a note under section 5701 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–859 effective Sept. 3, 1958, see section 210(a)(1) of Pub. L. 85–859, set out as an Effective Date note under section 5001 of this title.

§5723. Packages, marks, labels, and notices

(a) Packages

All tobacco products, processed tobacco, and cigarette papers and tubes shall, before removal, be put up in such packages as the Secretary shall by regulation prescribe.

(b) Marks, labels, and notices

Every package of tobacco products, processed tobacco, or cigarette papers or tubes shall, before removal, bear the marks, labels, and notices if any, that the Secretary by regulation prescribes.

(c) Lottery features

No certificate, coupon, or other device purporting to be or to represent a ticket, chance, share, or an interest in, or dependent on, the event of a lottery shall be contained in, attached to, or stamped, marked, written, or printed on any package of tobacco products, processed tobacco, or cigarette papers or tubes.

(d) Indecent or immoral material prohibited

No indecent or immoral picture, print, or representation shall be contained in, attached to, or stamped, marked, written, or printed on any package of tobacco products, processed tobacco, or

cigarette papers or tubes.

(e) Exceptions

Tobacco products furnished by manufacturers of such products for use or consumption by their employees, or for experimental purposes, and tobacco products, processed tobacco, and cigarette papers and tubes transferred to the bonded premises of another manufacturer or export warehouse proprietor or released in bond from customs custody for deliver to a manufacturer of tobacco products, processed tobacco, or cigarette papers and tubes, may be exempted from subsection (a) and (b) in accordance with such regulations as the Secretary shall prescribe.

(Aug. 16, 1954, ch. 736, 68A Stat. 713; Pub. L. 85–859, title II, §202, Sept. 2, 1958, 72 Stat. 1422; Pub. L. 94–455, title XIX, §§1905(a)(28), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1821, 1834; Pub. L. 111–3, title VII, §702(a)(2)(C), Feb. 4, 2009, 123 Stat. 108.)

AMENDMENTS

2009—Pub. L. 111–3 inserted ", processed tobacco," after "tobacco products" wherever appearing.

1976—Pub. L. 94–455, §1905(a)(28)(A), substituted "and notices" for "notices, and stamps" in section catchline.

Subsecs. (a), (e). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (b). Pub. L. 94–455, §§1905(a)(28)(B), 1906(b)(13)(A), struck out references to stamps in heading and in text and struck out "or his delegate" after "Secretary".

1958—Subsec. (a). Pub. L. 85–859 substituted "Packages" for "Packages, labels, notices, and stamps" in heading, and substituted "All tobacco products and cigarette papers and tubes shall, before removal, be put up in such packages as" for "All articles shall, before removal, be put up in packages having such labels, notices, and stamps as" in text.

Subsec. (b). Pub. L. 85–859 added subsec. (b) and redesignated former subsec. (b) as (c).

Subsec. (c). Pub. L. 85–859 redesignated former subsec. (b) as (c) and substituted "tobacco products or cigarette papers or tubes" for "articles". Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 85–859 redesignated former subsec. (c) as (d) and substituted "tobacco products or cigarette papers or tubes" for "articles". Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 85–859 redesignated former subsec. (d) as (e), and permitted exemption of tobacco products and cigarette papers and tubes transferred to the bonded premises of another manufacturer or export warehouse proprietor or released in bond from customs custody for delivery to a manufacturer of tobacco products or cigarette papers and tubes, and eliminated provisions which authorized exemption of articles removed for shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, and so shipped.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–3 effective Apr. 1, 2009, see section 702(a)(6) of Pub. L. 111–3, set out as a note under section 5702 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1905(a)(28) of Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1905(d) of Pub. L. 94–455, set out as a note under section 5005 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–859 effective Sept. 3, 1958, see section 210(a)(1) of Pub. L. 85–859, set out as an Effective Date note under section 5001 of this title.

Subchapter D—Occupational Tax

Sec.
5731. Imposition and rate of tax.
5732. Payment of tax.
5733. Provisions relating to liability for occupational taxes.
5734. Application of State laws.

PRIOR PROVISIONS

A prior subchapter D, relating to records of manufacturers and importers of tobacco products, etc., was redesignated subchapter E by Pub. L. 100–203, title X, §10512(f)(1), Dec. 22, 1987, 101 Stat. 1330–449.

Another prior subchapter D, which consisted of sections 5731 and 5732 of this title, was repealed by Pub. L. 89–44, title V, §502(b)(7), June 21, 1965, 79 Stat. 151, applicable on and after Jan. 1, 1966.

AMENDMENTS

2005—Pub. L. 109–59, title XI, §11125(b)(20)(D), Aug. 10, 2005, 119 Stat. 1957, added items 5732 to 5734.

§5731. Imposition and rate of tax

(a) General rule

Every person engaged in business as—

(1) a manufacturer of tobacco products,

(2) a manufacturer of cigarette papers and tubes, or

(3) an export warehouse proprietor,

shall pay a tax of $1,000 per year in respect of each premises at which such business is carried on.

(b) Reduced rates for small proprietors

(1) In general

Subsection (a) shall be applied by substituting "$500" for "$1,000" with respect to any taxpayer the gross receipts of which (for the most recent taxable year ending before the 1st day of the taxable period to which the tax imposed by subsection (a) relates) are less than $500,000.

(2) Controlled group rules

All persons treated as 1 taxpayer under section 5061(e)(3) shall be treated as 1 taxpayer for purposes of paragraph (1).

(3) Certain rules to apply

For purposes of paragraph (1), rules similar to the rules of subparagraphs (B) and (C) of section 448(c)(3) shall apply.

(c) Penalty for failure to register

Any person engaged in a business referred to in subsection (a) who willfully fails to pay the tax imposed by subsection (a) shall be fined not more than $5,000, or imprisoned not more than 2 years, or both, for each such offense.

(Added Pub. L. 100–203, title X, §10512(f)(1), Dec. 22, 1987, 101 Stat. 1330–449; amended Pub. L. 109–59, title XI, §11125(b)(20)(E), Aug. 10, 2005, 119 Stat. 1957.)

PRIOR PROVISIONS

A prior section 5731, acts Aug. 16, 1954, ch. 736, 68A Stat. 714; Sept. 2, 1958, Pub. L. 85–859, title II, §202, 72 Stat. 1423, restricted shipment and delivery of tobacco materials to shipment and delivery pursuant to regulations, prior to repeal by Pub. L. 89–44, title V, §502(b)(7), title VII, §701(d), June 21, 1965, 79 Stat. 151, 157, applicable on and after Jan. 1, 1966.

AMENDMENTS

2005—Subsecs. (c), (d). Pub. L. 109–59 redesignated subsec. (d) as (c) and struck out former subsec. (c). Text read as follows: "Rules similar to the rules of subpart G of part II of subchapter A of chapter 51 shall apply for purposes of this section."

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–59 effective July 1, 2008, but inapplicable to taxes imposed for periods before such date, see section 11125(c) of Pub. L. 109–59, set out as a note under section 5002 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1988, see section 10512(h) of Pub. L. 100–203, set out as an Effective Date of 1987 Amendment note under section 5111 of this title.

§5732. Payment of tax

(a) Condition precedent to carrying on business

No person shall be engaged in or carry on any trade or business subject to tax under this subchapter until he has paid the special tax therefor.

(b) Computation

All special taxes under this subchapter shall be imposed as of on the first day of July in each year, or on commencing any trade or business on which such tax is imposed. In the former case the tax shall be reckoned for 1 year, and in the latter case it shall be reckoned proportionately, from the first day of the month in which the liability to a special tax commenced, to and including the 30th day of June following.

(c) How paid

(1) Payment by return

The special taxes imposed by this subchapter shall be paid on the basis of a return under such regulations as the Secretary shall prescribe.

(2) Stamp denoting payment of tax

After receiving a properly executed return and remittance of any special tax imposed by this subchapter, the Secretary shall issue to the taxpayer an appropriate stamp as a receipt denoting payment of the tax. This paragraph shall not apply in the case of a return covering liability for a past period.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1346, §5142; amended Pub. L. 94–455, title XIX, §1905(a)(12), Oct. 4, 1976, 90 Stat. 1820; renumbered §5732 and amended Pub. L. 109–59, title XI, §11125(b)(20)(A), (B), Aug. 10, 2005, 119 Stat. 1956; Pub. L. 110–172, §11(a)(32), Dec. 29, 2007, 121 Stat. 2487.)

PRIOR PROVISIONS

A prior section 5732, acts Aug. 16, 1954, ch. 736, 68A Stat. 714; Sept. 2, 1958, Pub. L. 85–859, title II, §202, 72 Stat. 1423, required that a dealer in tobacco materials make a statement of shipments and deliveries or give an inventory upon demand, prior to repeal by Pub. L. 89–44, title V, §502(b)(7), title VII, §701(d), June 21, 1965, 79 Stat. 151, 157, applicable on and after Jan. 1, 1966.

AMENDMENTS

2007—Subsec. (c)(2). Pub. L. 110–172, which directed amendment of section 5732 of this title, as redesignated by Pub. L. 109–59, §11125(b)(20)(A), by substituting "this subchapter" for "this subpart" in subsec. (c)(2) effective Dec. 29, 2007, was executed to this section to reflect the probable intent of Congress even though the redesignation of section 5142 of this title as this section was not effective until July 1, 2008. See 2005 Amendment and Effective Date of 2005 Amendment notes below.

2005—Pub. L. 109–59, §11125(b)(20)(A), renumbered section 5142 of this title as this section and transferred section to this subchapter.

Subsecs. (a), (b). Pub. L. 109–59, §11125(b)(20)(B), struck out "(except the tax imposed by section 5131)" before "until he has paid" in subsec. (a) and before "shall be imposed" in subsec. (b).

Pub. L. 109–59, §11125(b)(20)(A), substituted "this subchapter" for "this part".

Subsec. (c)(1). Pub. L. 109–59, §11125(b)(20)(A), substituted "this subchapter" for "this part".

1976—Subsec. (c). Pub. L. 94–455 substituted provisions under which the special taxes would be paid on the basis of a return for provisions under which the special taxes were paid by stamps denoting the tax.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–59 effective July 1, 2008, but inapplicable to taxes imposed for periods before

such date, see section 11125(c) of Pub. L. 109–59, set out as a note under section 5002 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1905(d) of Pub. L. 94–455, set out as a note under section 5005 of this title.

§5733. Provisions relating to liability for occupational taxes

(a) Partners

Any number of persons doing business in partnership at any one place shall be required to pay but one special tax.

(b) Different businesses of same ownership and location

Whenever more than one of the pursuits or occupations described in this subchapter are carried on in the same place by the same person at the same time, except as otherwise provided in this subchapter, the tax shall be paid for each according to the rates severally prescribed.

(c) Businesses in more than one location

(1) Liability for tax

The payment of a special tax imposed by this subchapter shall not exempt from an additional special tax the person carrying on a trade or business in any other place than that stated in the register kept in the office of the official in charge of the internal revenue district.

(2) Storage

Nothing contained in paragraph (1) shall require a special tax for the storage of tobacco products and cigarette papers and tubes at a location other than the place where tobacco products and cigarette papers and tubes are sold or offered for sale.

(3) Definition of place

The term "place" as used in this section means the entire office, plant or area of the business in any one location under the same proprietorship; and passageways, streets, highways, rail crossings, waterways, or partitions dividing the premises, shall not be deemed sufficient separation to require additional special tax, if the various divisions are otherwise contiguous.

(d) Death or change of location

Certain persons, other than the person who has paid the special tax under this subchapter for the carrying on of any business at any place, may secure the right to carry on, without incurring additional special tax, the same business at the same place for the remainder of the taxable period for which the special tax was paid. The persons who may secure such right are:

(1) the surviving spouse or child, or executor or administrator or other legal representative, of a deceased taxpayer;

(2) a husband or wife succeeding to the business of his or her living spouse;

(3) a receiver or trustee in bankruptcy, or an assignee for benefit of creditors; and

(4) the partner or partners remaining after death or withdrawal of a member of a partnership.

When any person moves to any place other than the place for which special tax was paid for the carrying on of any business, he may secure the right to carry on, without incurring additional special tax, the same business at his new location for the remainder of the taxable period for which the special tax was paid. To secure the right to carry on the business without incurring additional special tax, the successor, or the person relocating his business, must register the succession or relocation with the Secretary in accordance with regulations prescribed by the Secretary.

(e) Federal agencies or instrumentalities

Any tax imposed by this subchapter shall apply to any agency or instrumentality of the United States unless such agency or instrumentality is granted by statute a specific exemption from such tax.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1347, §5143; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; renumbered §5733 and amended Pub. L. 109–59, title XI, §11125(b)(20)(A), (C), Aug. 10, 2005, 119 Stat. 1956, 1957.)

AMENDMENTS

2005—Pub. L. 109–59, §11125(b)(20)(A), renumbered section 5143 of this title as this section, transferred section to this subchapter, and substituted "this subchapter" for "this part" wherever appearing.

Subsec. (c)(2). Pub. L. 109–59, §11125(b)(20)(C), substituted "tobacco products and cigarette papers and tubes" for "liquors" in two places.

1976—Subsec. (d)(4). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–59 effective July 1, 2008, but inapplicable to taxes imposed for periods before such date, see section 11125(c) of Pub. L. 109–59, set out as a note under section 5002 of this title.

§5734. Application of State laws

The payment of any tax imposed by this subchapter for carrying on any trade or business shall not be held to exempt any person from any penalty or punishment provided by the laws of any State for carrying on such trade or business within such State, or in any manner to authorize the commencement or continuance of such trade or business contrary to the laws of such State or in places prohibited by municipal law; nor shall the payment of any such tax be held to prohibit any State from placing a duty or tax on the same trade or business, for State or other purposes.

(Added Pub. L. 85–859, title II, §201, Sept. 2, 1958, 72 Stat. 1348, §5145; renumbered §5734 and amended Pub. L. 109–59, title XI, §11125(b)(20)(A), Aug. 10, 2005, 119 Stat. 1956.)

AMENDMENTS

2005—Pub. L. 109–59 renumbered section 5145 of this title as this section, transferred section to this subchapter, and substituted "this subchapter" for "this part" in text.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–59 effective July 1, 2008, but inapplicable to taxes imposed for periods before such date, see section 11125(c) of Pub. L. 109–59, set out as a note under section 5002 of this title.

Subchapter E—Records of Manufacturers and Importers of Tobacco Products and Cigarette Papers and Tubes, and Export Warehouse Proprietors

Sec.
5741. Records to be maintained.

AMENDMENTS

1987—Pub. L. 100–203, title X, §10512(f)(1), Dec. 22, 1987, 101 Stat. 1330–449, redesignated subchapter D as E.

1976—Pub. L. 94–455, title XXI, §2128(d)(1), Oct. 4, 1976, 90 Stat. 1921, inserted "and Importers" in subchapter heading.

1965—Pub. L. 89–44, title V, §502(b)(7), (8), June 21, 1965, 79 Stat. 151, struck out former subchapter D, consisting of §§5731 and 5732 relating to operations by dealers in tobacco materials, redesignated subchapter E as D and, in heading for subchapter D, as redesignated, struck out reference to dealers in tobacco materials.

1958—Pub. L. 85–859, title II, §202, Sept. 2, 1958, 72 Stat. 1423, substituted "Manufacturers of Tobacco Products and Cigarette Papers and Tubes, Export Warehouse proprietors, and" for "Manufacturers of Articles and" in heading of subchapter.

§5741. Records to be maintained

Every manufacturer of tobacco products, processed tobacco, or cigarette papers and tubes, every

importer, and every export warehouse proprietor shall keep such records in such manner as the Secretary shall by regulation prescribe. The records required under this section shall be available for inspection by any internal revenue officer during business hours.

(Aug. 16, 1954, ch. 736, 68A Stat. 715; Pub. L. 85–859, title II, §202, Sept. 2, 1958, 72 Stat. 1423; Pub. L. 89–44, title V, §502(b)(9), June 21, 1965, 79 Stat. 151; Pub. L. 94–455, title XXI, §2128(c), Oct. 4, 1976, 90 Stat. 1921; Pub. L. 111–3, title VII, §702(a)(3), Feb. 4, 2009, 123 Stat. 108.)

AMENDMENTS

2009—Pub. L. 111–3 inserted ", processed tobacco," after "tobacco products".

1976—Pub. L. 94–455 inserted reference to importers, struck out "or his delegate" after "Secretary", and provided that the required records be available for inspection by any internal revenue officer during business hours.

1965—Pub. L. 89–44 struck out reference to every dealer in tobacco materials.

1958—Pub. L. 85–859 substituted "tobacco products or cigarette papers and tubes, every warehouse proprietor, and every dealer" for "articles and dealer", and "such manner" for "such form".

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–3 effective Apr. 1, 2009, see section 702(a)(6) of Pub. L. 111–3, set out as a note under section 5702 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 applicable on and after January 1, 1966, see section 701(d) of Pub. L. 89–44, set out as a note under section 5701 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–859 effective Sept. 3, 1958, see section 210(a)(1) of Pub. L. 85–859, set out as an Effective Date note under section 5001 of this title.

Subchapter F—General Provisions

Sec.

5751. Purchase, receipt, possession, or sale of tobacco products and cigarette papers and tubes, after removal.

5752. Restrictions relating to marks, labels, notices, and packages.

5753. Disposal of forfeited, condemned, and abandoned tobacco products, and cigarette papers and tubes.

5754. Restriction on importation of previously exported tobacco products.

AMENDMENTS

1997—Pub. L. 105–33, title IX, §9302(h)(1)(E)(ii), Aug. 5, 1997, 111 Stat. 674, added item 5754.

1987—Pub. L. 100–203, title X, §10512(f)(1), Dec. 22, 1987, 101 Stat. 1330–449, redesignated subchapter E as F.

1976—Pub. L. 94–455, title XIX, §1905(b)(7)(B)(iii), Oct. 4, 1976, 90 Stat. 1823, substituted "and packages" for "stamps, and packages" in item 5752.

1965—Pub. L. 89–44, title V, §502(b)(7), (10), June 21, 1965, 79 Stat. 151, 152, redesignated subchapter F as E and, in the table of sections for subchapter E as so redesignated, struck out reference to tobacco materials in item 5753. Former subchapter E redesignated D.

1958—Pub. L. 85–859, title II, §202, Sept. 2, 1958, 72 Stat. 1423, substituted "sale of tobacco products and cigarette papers and tubes, after removal" for "sale of articles, after removal not exempt from tax" in item 5751, included marks and notices in item 5752, and substituted "tobacco products, cigarette papers and tubes, and" for "articles and" in item 5753.

§5751. Purchase, receipt, possession, or sale of tobacco products and cigarette papers and tubes, after removal

(a) Restriction

No person shall—

(1) with intent to defraud the United States, purchase, receive, possess, offer for sale, or sell or otherwise dispose of, after removal, any tobacco products or cigarette papers or tubes—

(A) upon which the tax has not been paid or determined in the manner and at the time prescribed by this chapter or regulations thereunder; or

(B) which, after removal without payment of tax pursuant to section 5704, have been diverted from the applicable purpose or use specified in that section; or

(2) with intent to defraud the United States, purchase, receive, possess, offer for sale, or sell or otherwise dispose of, after removal, any tobacco products or cigarette papers or tubes, which are not put up in packages as required under section 5723 or which are put up in packages not bearing the marks, labels, and notices, as required under such section; or

(3) otherwise than with intent to defraud the United States, purchase, receive, possess, offer for sale, or sell or otherwise dispose of, after removal, any tobacco products or cigarette papers or tubes, which are not put up in packages as required under section 5723 or which are put up in packages not bearing the marks, labels, and notices, as required under such section. This paragraph shall not prevent the sale or delivery of tobacco products or cigarette papers or tubes directly to consumers from proper packages, nor apply to such articles when so sold or delivered.

(b) Liability to tax

Any person who possesses tobacco products or cigarette papers or tubes in violation of subsection (a)(1) or (a)(2) shall be liable for a tax equal to the tax on such articles.

(Aug. 16, 1954, ch. 736, 68A Stat. 716; Pub. L. 85–859, title II, §202, Sept. 2, 1958, 72 Stat. 1424; Pub. L. 94–455, title XIX, §1905(b)(7)(A), Oct. 4, 1976, 90 Stat. 1823.)

AMENDMENTS

1976—Subsec. (a)(2), (3). Pub. L. 94–455 substituted "and notices" for "notices, and stamps".

1958—Pub. L. 85–859 substituted "tobacco products and cigarette papers and tubes, after removal" for "articles, after removal, not exempt from tax" in section catchline.

Subsec. (a) amended generally by Pub. L. 85–859, which included within the restrictions, purchase, receipt, possession, offer for sale, or sale of other disposition of tobacco products or cigarette papers or tubes, after removal, upon which the tax has not been paid or determined, or which after removal without payment of tax have been diverted from the applicable purpose or use specified in section 5704, and to provide that par. (3) shall not prevent the delivery of tobacco products or cigarette papers or tubes directly to consumers from proper packages, nor apply to such articles when so delivered.

Subsec. (b). Pub. L. 85–859 substituted "tobacco products or cigarette papers or tubes in violation of subsection (a)(1) or (a)(2) shall be liable for a tax equal to the tax on such articles" or "articles in violation of subsection (a) of this section, shall incur liability to the tax thereon in addition to the penalties prescribed elsewhere in this title".

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1905(d) of Pub. L. 94–455, set out as a note under section 5005 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–859 effective Sept. 3, 1958, see section 210(a)(1) of Pub. L. 85–859, set out as an Effective Date note under section 5001 of this title.

§5752. Restrictions relating to marks, labels, notices, and packages

No person shall, with intent to defraud the United States, destroy, obliterate, or detach any mark, label, or notice prescribed or authorized, by this chapter or regulations thereunder, to appear on, or be affixed to, any package of tobacco products or cigarette papers or tubes, before such package is emptied.

(Aug. 16, 1954, ch. 736, 68A Stat. 716; Pub. L. 85–859, title II, §202, Sept. 2, 1958, 72 Stat. 1424; Pub. L. 94–455, title XIX, §1905(b)(7)(B)(i), Oct. 4, 1976, 90 Stat. 1823.)

AMENDMENTS

1976—Pub. L. 94–455 struck out reference to stamps in the section catchline and in the text and struck out provisions which had enumerated violations involving the misuse of tax stamps.

1958—Pub. L. 85–859 included marks and notices in the catchline, limited the penalties to cases where there is intent to defraud the United States, and prohibited the destruction, obliteration, or detachment of any mark, label, notice or stamp before a package of tobacco products or cigarette papers or tubes is emptied.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1905(d) of Pub. L. 94–455, set out as a note under section 5005 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–859 effective Sept. 3, 1958, see section 210(a)(1) of Pub. L. 85–859, set out as an Effective Date note under section 5001 of this title.

§5753. Disposal of forfeited, condemned, and abandoned tobacco products, and cigarette papers and tubes

If it appears that any forfeited, condemned, or abandoned tobacco products, or cigarette papers and tubes, when offered for sale, will not bring a price equal to the tax due and payable thereon, and the expenses incident to the sale thereof, such articles shall not be sold for consumption in the United States but shall be disposed of in accordance with such regulations as the Secretary shall prescribe.

(Aug. 16, 1954, ch. 736, 68A Stat. 716; Pub. L. 85–859, title II, §202, Sept. 2, 1958, 72 Stat. 1425; Pub. L. 89–44, title V, §502(b)(11), June 21, 1965, 79 Stat. 152; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

1965—Pub. L. 89–44 struck out references to tobacco materials wherever appearing in heading and text.

1958—Pub. L. 85–859 substituted "tobacco products, cigarette papers and tubes" for "articles" wherever appearing.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 applicable on and after January 1, 1966, see section 701(d) of Pub. L. 89–44, set out as a note under section 5701 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–859 effective Sept. 3, 1958, see section 210(a)(1) of Pub. L. 85–859, set out as an Effective Date note under section 5001 of this title.

§5754. Restriction on importation of previously exported tobacco products

(a) Export-labeled tobacco products

(1) In general

Tobacco products and cigarette papers and tubes manufactured in the United States and labeled for exportation under this chapter—

(A) may be transferred to or removed from the premises of a manufacturer or an export warehouse proprietor only if such articles are being transferred or removed without tax in accordance with section 5704;

(B) may be imported or brought into the United States, after their exportation, only if such articles either are eligible to be released from customs custody with the partial duty exemption

provided in section 5704(d) or are returned to the original manufacturer of such article as provided in section 5704(c); and

(C) may not be sold or held for sale for domestic consumption in the United States unless such articles are removed from their export packaging and repackaged by the original manufacturer into new packaging that does not contain an export label.

(2) Alterations by persons other than original manufacturer

This section shall apply to articles labeled for export even if the packaging or the appearance of such packaging to the consumer of such articles has been modified or altered by a person other than the original manufacturer so as to remove or conceal or attempt to remove or conceal (including by the placement of a sticker over) any export label.

(3) Exports include shipments to Puerto Rico

For purposes of this section, section 5704(d), section 5761, and such other provisions as the Secretary may specify by regulations, references to exportation shall be treated as including a reference to shipment to the Commonwealth of Puerto Rico.

(b) Export label

For purposes of this section, an article is labeled for export or contains an export label if it bears the mark, label, or notice required under section 5704(b).

(c) Cross references

(1) For exception to this section for personal use, see section 5761(d).

(2) For civil penalties related to violations of this section, see section 5761(c).

(3) For a criminal penalty applicable to any violation of this section, see section 5762(b).

(4) For forfeiture provisions related to violations of this section, see section 5761(c).

(Added Pub. L. 105–33, title IX, §9302(h)(1)(E)(i), Aug. 5, 1997, 111 Stat. 673; amended Pub. L. 106–476, title IV, §4002(a), Nov. 9, 2000, 114 Stat. 2176; Pub. L. 109–432, div. C, title IV, §401(f)(2)(B), Dec. 20, 2006, 120 Stat. 3050.)

AMENDMENTS

2006—Subsec. (c)(1). Pub. L. 109–432 substituted "5761(d)" for "5761(c)".

2000—Pub. L. 106–476 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows:

"(a) IN GENERAL.—Tobacco products and cigarette papers and tubes previously exported from the United States may be imported or brought into the United States only as provided in section 5704(d). For purposes of this section, section 5704(d), section 5761, and such other provisions as the Secretary may specify by regulations, references to exportation shall be treated as including a reference to shipment to the Commonwealth of Puerto Rico.

"(b) CROSS REFERENCE.—

"For penalty for the sale of tobacco products and cigarette papers and tubes in the United States which are labeled for export, see section 5761(c)."

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–432 applicable with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after Dec. 20, 2006, see section 401(g) of Pub. L. 109–432, set out as a note under section 1681 of Title 19, Customs Duties.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–476 effective 90 days after Nov. 9, 2000, see section 4002(d) of Pub. L. 106–476, set out as a note under section 5704 of this title.

EFFECTIVE DATE

Section applicable to articles removed, as defined in section 5702(j) of this title, after Dec. 31, 1999, with transition rule, see section 9302(i) of Pub. L. 105–33, set out as an Effective Date of 1997 Amendment note under section 5701 of this title.

Subchapter G—Penalties and Forfeitures

Sec.
5761. Civil penalties.
5762. Criminal penalties.
5763. Forfeitures.

AMENDMENTS

1987—Pub. L. 100–203, title X, §10512(f)(1), Dec. 22, 1987, 101 Stat. 1330–449, redesignated subchapter F as G.

1965—Pub. L. 89–44, title V, §502(b)(7), June 21, 1965, 79 Stat. 151, redesignated subchapter G as F. Former subchapter F redesignated E.

1958—Pub. L. 85–859, title II, §202, Sept. 2, 1958, 72 Stat. 1425, substituted "Penalties and Forfeitures" for "Fines, Penalties, and Forfeitures" in subchapter heading.

§5761. Civil penalties

(a) Omitting things required or doing things forbidden

Whoever willfully omits, neglects, or refuses to comply with any duty imposed upon him by this chapter, or to do, or cause to be done, any of the things required by this chapter, or does anything prohibited by this chapter, shall in addition to any other penalty provided in this title, be liable to a penalty of $1,000, to be recovered, with costs of suit, in a civil action, except where a penalty under subsection (b) or (c) or under section 6651 or 6653 or part II of subchapter A of chapter 68 may be collected from such person by assessment.

(b) Failure to pay tax

Whoever fails to pay any tax imposed by this chapter at the time prescribed by law or regulations, shall, in addition to any other penalty provided in this title, be liable to a penalty of 5 percent of the tax due but unpaid.

(c) Sale of tobacco products and cigarette papers and tubes for export

Except as provided in subsections (b) and (d) of section 5704—

(1) every person who sells, relands, or receives within the jurisdiction of the United States any tobacco products or cigarette papers or tubes which have been labeled or shipped for exportation under this chapter,

(2) every person who sells or receives such relanded tobacco products or cigarette papers or tubes, and

(3) every person who aids or abets in such selling, relanding, or receiving,

shall, in addition to the tax and any other penalty provided in this title, be liable for a penalty equal to the greater of $1,000 or 5 times the amount of the tax imposed by this chapter. All tobacco products and cigarette papers and tubes relanded within the jurisdiction of the United States shall be forfeited to the United States and destroyed. All vessels, vehicles, and aircraft used in such relanding or in removing such products, papers, and tubes from the place where relanded, shall be forfeited to the United States. This subsection and section 5754 shall not apply to any person who relands or receives tobacco products in the quantity allowed entry free of tax and duty under subchapter IV of chapter 98 of the Harmonized Tariff Schedule of the United States. No quantity of tobacco products other than the quantity referred to in the preceding sentence may be relanded or received as a personal use quantity.

(d) Personal use quantities

(1) In general

No quantity of tobacco products other than the quantity referred to in paragraph (2) may be relanded or received as a personal use quantity.

(2) Exception for personal use quantity

Subsection (c) and section 5754 shall not apply to any person who relands or receives tobacco products in the quantity allowed entry free of tax and duty under chapter 98 of the Harmonized Tariff Schedule of the United States, and such person may voluntarily relinquish to the Secretary at the time of entry any excess of such quantity without incurring the penalty under subsection (c).

(3) Special rule for delivery sales

(A) In general

Paragraph (2) shall not apply to any tobacco product sold in connection with a delivery sale.

(B) Delivery sale

For purposes of subparagraph (A), the term "delivery sale" means any sale of a tobacco product to a consumer if—

(i) the consumer submits the order for such sale by means of a telephone or other method of voice transmission, the mail, or the Internet or other online service, or the seller is otherwise not in the physical presence of the buyer when the request for purchase or order is made, or

(ii) the tobacco product is delivered by use of a common carrier, private delivery service, or the mail, or the seller is not in the physical presence of the buyer when the buyer obtains personal possession of the tobacco product.

(e) Applicability of section 6665

The penalties imposed by subsections (b) and (c) shall be assessed, collected, and paid in the same manner as taxes, as provided in section 6665(a).

(f) Cross references

For penalty for failure to make deposits or for overstatement of deposits, see section 6656.

(Aug. 16, 1954, ch. 736, 68A Stat. 717; Pub. L. 85–859, title II, §202, Sept. 2, 1958, 72 Stat. 1425; Pub. L. 97–34, title VII, §§722(a)(3), 724(b)(5), Aug. 13, 1981, 95 Stat. 342, 345; Pub. L. 97–448, title I, §107(b), Jan. 12, 1983, 96 Stat. 2391; Pub. L. 98–369, div. A, title VII, §714(h)(2), July 18, 1984, 98 Stat. 962; Pub. L. 101–239, title VII, §7721(c)(4), (5), Dec. 19, 1989, 103 Stat. 2399; Pub. L. 105–33, title IX, §9302(h)(1)(B)–(D), Aug. 5, 1997, 111 Stat. 673; Pub. L. 106–476, title IV, §§4002(c), 4003(a), Nov. 9, 2000, 114 Stat. 2177; Pub. L. 106–554, §1(a)(7) [title III, §315(a)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–644; Pub. L. 109–432, div. C, title IV, §401(f)(1), (2)(A), Dec. 20, 2006, 120 Stat. 3049, 3050.)

REFERENCES IN TEXT

The Harmonized Tariff Schedule of the United States, referred to in subsecs. (c) and (d)(2), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of Title 19, Customs Duties.

AMENDMENTS

2006—Subsec. (c). Pub. L. 109–432, §401(f)(2)(A), struck out at end "This subsection and section 5754 shall not apply to any person who relands or receives tobacco products in the quantity allowed entry free of tax and duty under chapter 98 of the Harmonized Tariff Schedule of the United States, and such person may voluntarily relinquish to the Secretary at the time of entry any excess of such quantity without incurring the penalty under this subsection. No quantity of tobacco products other than the quantity referred to in the preceding sentence may be relanded or received as a personal use quantity."

Subsecs. (d) to (f). Pub. L. 109–432, §401(f)(1), added subsec. (d) and redesignated former subsecs. (d) and (e) as (e) and (f), respectively.

2000—Subsec. (c). Pub. L. 106–554 inserted at end "This subsection and section 5754 shall not apply to any person who relands or receives tobacco products in the quantity allowed entry free of tax and duty under chapter 98 of the Harmonized Tariff Schedule of the United States, and such person may voluntarily relinquish to the Secretary at the time of entry any excess of such quantity without incurring the penalty under this subsection. No quantity of tobacco products other than the quantity referred to in the preceding sentence may be relanded or received as a personal use quantity."

Pub. L. 106–476, §4003(a), inserted at end "This subsection and section 5754 shall not apply to any person who relands or receives tobacco products in the quantity allowed entry free of tax and duty under subchapter IV of chapter 98 of the Harmonized Tariff Schedule of the United States. No quantity of tobacco products other than the quantity referred to in the preceding sentence may be relanded or received as a personal use quantity."

Pub. L. 106–476, §4002(c), which directed amendment of the last sentence of subsec. (c) by substituting "the jurisdiction of the United States shall be forfeited to the United States and destroyed. All vessels, vehicles, and aircraft used in such relanding or in removing such products, papers, and tubes from the place where relanded, shall be forfeited to the United States." for "the jurisdiction of the United States" and all that followed through the end period, was executed by making the substitution for "the jurisdiction of the United States, and all vessels, vehicles, and aircraft used in such relanding or in removing such products, papers, and tubes from the place where relanded, shall be forfeited to the United States." in the second sentence of subsec. (c) to reflect the probable intent of Congress and the intervening retroactive amendments by Pub. L. 106–476, §4003(a), and Pub. L. 106–554. See above.

1997—Subsec. (a). Pub. L. 105–33, §9302(h)(1)(C), substituted "subsection (b) or (c)" for "subsection (b)".

Subsec. (c). Pub. L. 105–33, §9302(h)(1)(B), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 105–33, §9302(h)(1)(D), substituted "The penalties imposed by subsections (b) and (c)" for "The penalty imposed by subsection (b)".

Pub. L. 105–33, §9302(h)(1)(B), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 105–33, §9302(h)(1)(B), redesignated subsec. (d) as (e).

1989—Subsec. (a). Pub. L. 101–239, §7721(c)(4), inserted "or part II of subchapter A of chapter 68" after "or 6653".

Subsec. (c). Pub. L. 101–239, §7721(c)(5), substituted "6665" for "6662" in heading and "6665(a)" for "6662(a)" in text.

1984—Subsec. (c). Pub. L. 98–369 substituted "section 6662" for "section 6660" in heading and "section 6662(a)" for "section 6660(a)" in text.

1983—Subsec. (c). Pub. L. 97–448 substituted "section 6660" for "section 6659" in heading, and substituted "section 6660(a)" for "section 6659(a)" in text.

1981—Subsec. (c). Pub. L. 97–34, §724(b)(5), added subsec. (c). Former subsec. (c), which related to applicability of section 6656 to failure to make deposit of taxes imposed under subchapter A on the prescribed date and imposition of penalty, was struck out.

Subsec. (d). Pub. L. 97–34, §§722(a)(3), 724(b)(5), added subsec. (d). Former subsec. (d), which related to applicability of section 6660 and penalties imposed by subsections (b) and (c) to be assessed, collected, and paid in the manner as taxes provided in section 6660(a), was struck out. See subsec. (c).

1958—Subsec. (a). Pub. L. 85–859 struck out reference to section 6652 of this title.

Subsec. (b). Pub. L. 85–859 substituted provisions relating to failure to pay tax for provisions which made persons willfully failing to pay a tax liable, in addition to any other penalty provided in this title, to a penalty of the amount of the tax evaded, or not paid.

Subsec. (c). Pub. L. 85–859 substituted provisions relating to failure to make deposit of taxes for provisions which authorized a penalty of 5 percent of the tax due but unpaid where a person failed to pay tax at the time prescribed, and required the penalties to be added to the tax and assessed and collected at the same time, in the same manner, and as a part of the tax.

Subsec. (d). Pub. L. 85–859 added subsec. (d). Similar provisions were formerly contained in subsec. (c) of this section.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–432 applicable with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after Dec. 20, 2006, see section 401(g) of Pub. L. 109–432, set out as a note under section 1681 of Title 19, Customs Duties.

EFFECTIVE DATE OF 2000 AMENDMENTS

Amendment by Pub. L. 106–554 effective as if included in section 9302 of the Balanced Budget Act of 1997, Pub. L. 105–33, see section 1(a)(7) [title III, §315(b)] of Pub. L. 106–554, set out as a note under section 5702 of this title.

Amendment by section 4002 of Pub. L. 106–476 effective 90 days after Nov. 9, 2000, see section 4002(d) of Pub. L. 106–476, set out as a note under section 5704 of this title.

Pub. L. 106–476, title IV, §4003(b), Nov. 9, 2000, 114 Stat. 2178, provided that: "The amendment made by this section [amending this section] shall take effect as if included in section 9302 of the Balanced Budget Act

of 1997 [Pub. L. 105–33]."

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 applicable to articles removed, as defined in section 5702(j) of this title, after Dec. 31, 1999, with transition rule, see section 9302(i) of Pub. L. 105–33, set out as a note under section 5701 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1989, see section 7721(d) of Pub. L. 101–239, set out as a note under section 461 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 722(a)(3) of Pub. L. 97–34 applicable to returns filed after Dec. 31, 1981, see section 722(a)(4) of Pub. L. 97–34, set out as a note under section 5684 of this title.

Amendment by section 724(b)(5) of Pub. L. 97–34 applicable to returns filed after Aug. 13, 1981, see section 724(c) of Pub. L. 97–34, set out as a note under section 6656 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–859 effective Sept. 3, 1958, see section 210(a)(1) of Pub. L. 85–859, set out as an Effective Date note under section 5001 of this title.

§5762. Criminal penalties

(a) Fraudulent offenses

Whoever, with intent to defraud the United States—

(1) Engaging in business unlawfully

Engages in business as a manufacturer or importer of tobacco products or cigarette papers and tubes, or as an export warehouse proprietor, without filing the bond and obtaining the permit where required by this chapter or regulations thereunder; or

(2) Failing to furnish information or furnishing false information

Fails to keep or make any record, return, report, or inventory, or keeps or makes any false or fraudulent record, return, report, or inventory, required by this chapter or regulations thereunder; or

(3) Refusing to pay or evading tax

Refuses to pay any tax imposed by this chapter, or attempts in any manner to evade or defeat the tax or the payment thereof; or

(4) Removing tobacco products or cigarette papers or tubes unlawfully

Removes, contrary to this chapter or regulations thereunder, any tobacco products or cigarette papers or tubes subject to tax under this chapter; or

(5) Purchasing, receiving, possessing, or selling tobacco products or cigarette papers or tubes unlawfully

Violates any provision of section 5751(a)(1) or (a)(2); or

(6) Destroying, obliterating, or detaching marks, labels, or notices before packages are emptied

Violates any provision of section 5752;

shall, for each such offense, be fined not more than $10,000, or imprisoned not more than 5 years, or both.

(b) Other offenses

Whoever, otherwise than as provided in subsection (a), violates any provision of this chapter, or of regulations prescribed thereunder, shall, for each such offense, be fined not more than $1,000, or imprisoned not more than 1 year, or both.

(Aug. 16, 1954, ch. 736, 68A Stat. 717; Pub. L. 85–859, title II, §202, Sept. 2, 1958, 72 Stat. 1425; Pub. L. 89–44, title V, §502(b)(12), June 21, 1965, 79 Stat. 152; Pub. L. 94–455, title XIX, §1905(b)(7)(B)(ii), Oct. 4, 1976, 90 Stat. 1823; Pub. L. 105–33, title IX, §9302(h)(2)(A), Aug. 5, 1997, 111 Stat. 674.)

AMENDMENTS

1997—Subsec. (a)(1). Pub. L. 105–33 inserted "or importer" after "manufacturer".

1976—Subsec. (a)(6). Pub. L. 94–455 redesignated par. (7) as (6), and in par. (6) as so redesignated substituted "or notices" for "notices, or stamps" and "section 5752;" for "section 5752(a); or". Former par. (6), relating to the affixing of improper stamps, was struck out.

Subsec. (a)(7). Pub. L. 94–455 redesignated par. (7) as (6).

Subsec. (a)(8) to (11). Pub. L. 94–455 struck out pars. (8) to (11) which related to emptying packages without destroying stamps, possessing emptied packages bearing stamps, refilling packages bearing stamps, and detaching stamps or possessing used stamps.

1965—Subsec. (a)(1). Pub. L. 89–44, §502(b)(12)(A), struck out reference to a dealer in tobacco materials.

Subsec. (a)(2). Pub. L. 89–44, §502(b)(12)(B), struck out reference to statements.

1958—Subsec. (a). Pub. L. 85–859 included export warehouse proprietors in par. (1), struck out provisions in pars. (6) and (9) to (11) which related to labels and notices, and added pars. (7) and (8).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 applicable to articles removed, as defined in section 5702(j) of this title, after Dec. 31, 1999, with transition rule, see section 9302(i) of Pub. L. 105–33, set out as a note under section 5701 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1905(d) of Pub. L. 94–455, set out as a note under section 5005 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 applicable on and after January 1, 1966, see section 701(d) of Pub. L. 89–44, set out as a note under section 5701 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–859 effective Sept. 3, 1958, see section 210(a)(1) of Pub. L. 85–859, set out as an Effective Date note under section 5001 of this title.

§5763. Forfeitures

(a) Tobacco products and cigarette papers and tubes unlawfully possessed

(1) Tobacco products and cigarette papers and tubes possessed with intent to defraud

All tobacco products and cigarette papers and tubes which, after removal, are possessed with intent to defraud the United States shall be forfeited to the United States.

(2) Tobacco products and cigarette papers and tubes not property packaged

All tobacco products and cigarette papers and tubes not in packages as required under section 5723 or which are in packages not bearing the marks, labels, and notices, as required under such section, which, after removal, are possessed otherwise than with intent to defraud the United States, shall be forfeited to the United States. This paragraph shall not apply to tobacco products or cigarette papers or tubes sold or delivered directly to consumers from proper packages.

(b) Personal property of qualified manufacturers, qualified importers, and export warehouse proprietors, acting with intent to defraud

All tobacco products and cigarette papers and tubes, packages, machinery, fixtures, equipment, and all other materials and personal property on the premises of any qualified manufacturer or importer of tobacco products or cigarette papers and tubes, or export warehouse proprietor, who, with intent to defraud the United States, fails to keep or make any record, return, report, or inventory, or keeps or makes any false or fraudulent record, return, report, or inventory, required by this chapter; or refuses to pay any tax imposed by this chapter, or attempts in any manner to evade or defeat the tax or the payment thereof; or removes, contrary to any provision of this chapter, any article subject to tax under this chapter, shall be forfeited to the United States.

(c) Real and personal property of illicit operators

All tobacco products, cigarette papers and tubes, machinery, fixtures, equipment, and other materials and personal property on the premises of any person engaged in business as a manufacturer or importer of tobacco products or cigarette papers and tubes, or export warehouse proprietor, without filing the bond or obtaining the permit, as required by this chapter, together with all his right, title, and interest in the building in which such business is conducted, and the lot or tract of ground on which the building is located, shall be forfeited to the United States.

(d) General

All property intended for use in violating the provisions of this chapter, or regulations thereunder, or which has been so used, shall be forfeited to the United States as provided in section 7302.

(Aug. 16, 1954, ch. 736, 68A Stat. 718; Pub. L. 85–859, title II, §202, Sept. 2, 1958, 72 Stat. 1426; Pub. L. 89–44, title V, §502(b)(13), June 21, 1965, 79 Stat. 152; Pub. L. 94–455, title XIX, §1905(b)(7)(C), Oct. 4, 1976, 90 Stat. 1823; Pub. L. 105–33, title IX, §9302(h)(2)(A), (B), Aug. 5, 1997, 111 Stat. 674.)

AMENDMENTS

1997—Subsec. (b). Pub. L. 105–33 inserted "qualified importers," after "manufacturers," in heading and "or importer" after "manufacturer" in text.

Subsec. (c). Pub. L. 105–33, §9302(h)(2)(A), inserted "or importer" after "manufacturer".

1976—Subsec. (a)(2). Pub. L. 94–455, §1905(b)(7)(C)(i), substituted "and notices" for "notices, and stamps".

Subsec. (b). Pub. L. 94–455, §1905(b)(7)(C)(ii), struck out "internal revenue stamps," after "packages,".

1965—Subsec. (b). Pub. L. 89–44, §502(b)(13)(A), struck out references to tobacco materials, dealers in tobacco materials, and statements.

Subsec. (c). Pub. L. 89–44, §502(b)(13)(B), struck out references to tobacco materials and dealers in tobacco materials.

1958—Subsec. (a). Pub. L. 85–859 substituted "tobacco products and cigarette papers and tubes" for "articles" wherever appearing and inserted provisions making par. (2) inapplicable to tobacco products or cigarette papers for tubes delivered directly to consumers from proper packages.

Subsecs. (b), (c). Pub. L. 85–859 included property of export warehouse proprietors.

Subsec. (d). Pub. L. 85–859 included property intended for use, or used, in violating regulations under this chapter.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 applicable to articles removed, as defined in section 5702(j) of this title, after Dec. 31, 1999, with transition rule, see section 9302(i) of Pub. L. 105–33, set out as a note under section 5701 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1905(d) of Pub. L. 94–455, set out as a note under section 5005 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 applicable on and after Jan. 1, 1966, see section 701(d) of Pub. L. 89–44, set out as a note under section 5701 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–859 effective on Sept. 3, 1958, see section 210(a)(1) of Pub. L. 85–859, set out as an Effective Date note under section 5001 of this title.

CHAPTER 53—MACHINE GUNS, DESTRUCTIVE DEVICES, AND CERTAIN OTHER FIREARMS

Subchapter		Sec.[1]
A.	**Taxes**	**5801**
B.	**General provisions and exemptions**	**5841**
C.	**Prohibited acts**	**5861**
D.	**Penalties and forfeitures**	**5871**

PRIOR PROVISIONS

A prior chapter 53, act Aug. 16, 1954, ch. 736, 68A Stat. 721, was generally revised by Pub. L. 90–618, title II, §201, Oct. 22, 1968, 82 Stat. 1227. The analysis reflects changes:

"Machine Guns, Destructive Devices, and Certain Other Firearms" for "Machine Guns and Certain Other Firearms" in the chapter heading;

"General provisions and exemptions" for "General provisions" in subchapter B;

"Prohibited acts" for "Unlawful acts" in subchapter C.

[1] *Section numbers editorially supplied.*

Subchapter A—Taxes

Part	
I.	Special (occupational) taxes.
II.	Tax on transferring firearms.
III.	Tax on making firearms.

PRIOR PROVISIONS

A prior subchapter A consisted of parts I to IV, prior to the general revision of this chapter by Pub. L. 90–618, title II, §201, Oct. 22, 1968, 82 Stat. 1227.

PART I—SPECIAL (OCCUPATIONAL) TAXES

Sec.	
5801.	Imposition of tax.
5802.	Registration of importers, manufacturers, and dealers.

PRIOR PROVISIONS

A prior part I, act Aug. 16, 1964, ch. 736, 68A Stat. 721, and amended thereafter, consisted of sections 5801 to 5803, prior to the general revision of this chapter by Pub. L. 90–618, title II, §201, Oct. 22, 1968, 82 Stat. 1228.

AMENDMENTS

1987—Pub. L. 100–203, title X, §10512(g)(2), Dec. 22, 1987, 101 Stat. 1330–450, substituted "Imposition of tax" for "Tax" in item 5801.

§5801. Imposition of tax

(a) General rule

On 1st engaging in business and thereafter on or before July 1 of each year, every importer, manufacturer, and dealer in firearms shall pay a special (occupational) tax for each place of business at the following rates:

(1) Importers and manufacturers: $1,000 a year or fraction thereof.

(2) Dealers: $500 a year or fraction thereof.

(b) Reduced rates of tax for small importers and manufacturers

(1) In general

Paragraph (1) of subsection (a) shall be applied by substituting "$500" for "$1,000" with respect to any taxpayer the gross receipts of which (for the most recent taxable year ending before the 1st day of the taxable period to which the tax imposed by subsection (a) relates) are less than $500,000.

(2) Controlled group rules

All persons treated as 1 taxpayer under section 5061(e)(3) shall be treated as 1 taxpayer for purposes of paragraph (1).

(3) Certain rules to apply

For purposes of paragraph (1), rules similar to the rules of subparagraphs (B) and (C) of section 448(c)(3) shall apply.

(Added Pub. L. 90–618, title II, §201, Oct. 22, 1968, 82 Stat. 1227; amended Pub. L. 100–203, title X, §10512(g)(1), Dec. 22, 1987, 101 Stat. 1330–449.)

PRIOR PROVISIONS

A prior section 5801, acts Aug. 16, 1954, ch. 736, 68A Stat. 721; Sept. 2, 1958, Pub. L. 85–859, title II, §203(a), 72 Stat. 1427; June 1, 1960, Pub. L. 86–478, §1, 74 Stat. 149, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 90–618.

AMENDMENTS

1987—Pub. L. 100–203 substituted "Imposition of tax" for "Tax" in section catchline and amended text generally. Prior to amendment, text read as follows: "On first engaging in business and thereafter on or before the first day of July of each year, every importer, manufacturer, and dealer in firearms shall pay a special (occupational) tax for each place of business at the following rates:

"(1) Importers.—$500 a year or fraction thereof;

"(2) Manufacturers.—$500 a year or fraction thereof;

"(3) Dealers.—$200 a year or fraction thereof.

Except an importer, manufacturer, or dealer who imports, manufactures, or deals in only weapons classified as 'any other weapon' under section 5845(e), shall pay a special (occupational) tax for each place of business at the following rates: Importers, $25 a year or fraction thereof; manufacturers, $25 a year or fraction thereof; dealers, $10 a year or fraction thereof."

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 effective Jan. 1, 1988, see section 10512(h) of Pub. L. 100–203, set out as a note under section 5111 of this title.

EFFECTIVE DATE

Pub. L. 90–618, title II, §207, Oct. 22, 1968, 82 Stat. 1235, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) Section 201 of this title [enacting this chapter] shall take effect on the first day of the first month following the month in which it is enacted [October 1968].

"(b) Notwithstanding the provisions of subsection (a) or any other provision of law, any person possessing a firearm as defined in section 5845(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by this title) which is not registered to him in the National Firearms Registration and Transfer

Record shall register each firearm so possessed with the Secretary of the Treasury or his delegate in such form and manner as the Secretary or his delegate may require within the thirty days immediately following the effective date of section 201 of this Act [see subsec. (a) of this section]. Such registrations shall become a part of the National Firearms Registration and Transfer Record required to be maintained by section 5841 of the Internal Revenue Code of 1986 (as amended by this title). No information or evidence required to be submitted or retained by a natural person to register a firearm under this section shall be used, directly or indirectly, as evidence against such person in any criminal proceeding with respect to a prior or concurrent violation of law.

"(c) The amendments made by sections 202 through 206 of this title [amending sections 6806 and 7273 of this title, repealing sections 5692 and 6107 of this title, and enacting provisions set out as a note under this section] shall take effect on the date of enactment [Oct. 22, 1968].

"(d) The Secretary of the Treasury, after publication in the Federal Register of his intention to do so, is authorized to establish such period of amnesty, not to exceed ninety days in the case of any single period, and immunity from liability during any such period, as the Secretary determines will contribute to the purposes of this title [adding this chapter, and sections 6806 and 7273 of this title, repealing sections 5692 and 6107 of this title, and enacting provisions set out as notes under this section]."

§5802. Registration of importers, manufacturers, and dealers

On first engaging in business and thereafter on or before the first day of July of each year, each importer, manufacturer, and dealer in firearms shall register with the Secretary in each internal revenue district in which such business is to be carried on, his name, including any trade name, and the address of each location in the district where he will conduct such business. An individual required to register under this section shall include a photograph and fingerprints of the individual with the initial application. Where there is a change during the taxable year in the location of, or the trade name used in, such business, the importer, manufacturer, or dealer shall file an application with the Secretary to amend his registration. Firearms operations of an importer, manufacturer, or dealer may not be commenced at the new location or under a new trade name prior to approval by the Secretary of the application.

(Added Pub. L. 90–618, title II, §201, Oct. 22, 1968, 82 Stat. 1227; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 103–322, title XI, §110301(b), Sept. 13, 1994, 108 Stat. 2012.)

PRIOR PROVISIONS

A prior section 5802, act Aug. 16, 1954, ch. 736, 68A Stat. 721, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 90–618.

A prior section 5803, act Aug. 16, 1954, ch. 736, 68A Stat. 722, made a cross reference to section 5812 exempting certain transfers, prior to the general revision of this chapter by Pub. L. 90–618.

AMENDMENTS

1994—Pub. L. 103–322 inserted after first sentence "An individual required to register under this section shall include a photograph and fingerprints of the individual with the initial application."

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

PART II—TAX ON TRANSFERRING FIREARMS

Sec.
5811. Transfer tax.
5812. Transfers.

PRIOR PROVISIONS

A prior part II consisted of sections 5811 to 5814, prior to the general revision of this chapter by Pub. L. 90–618, title II, §201, Oct. 22, 1968, 82 Stat. 1227.

§5811. Transfer tax

(a) Rate

There shall be levied, collected, and paid on firearms transferred a tax at the rate of $200 for each firearm transferred, except, the transfer tax on any firearm classified as any other weapon under section 5845(e) shall be at the rate of $5 for each such firearm transferred.

(b) By whom paid

The tax imposed by subsection (a) of this section shall be paid by the transferor.

(c) Payment

The tax imposed by subsection (a) of this section shall be payable by the appropriate stamps prescribed for payment by the Secretary.

(Added Pub. L. 90–618, title II, §201, Oct. 22, 1968, 82 Stat. 1228; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

PRIOR PROVISIONS

A prior section 5811, acts Aug. 16, 1954, ch. 736, 68A Stat. 722; Sept. 2, 1958, Pub. L. 85–859, title II, §203(b), 72 Stat. 1427; June 1, 1960, Pub. L. 86–478, §2, 74 Stat. 149, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 90–618.

AMENDMENTS

1976—Subsec. (c). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE

Section effective on first day of first month following October 1968, see section 207 of Pub. L. 90–618, set out as a note under section 5801 of this title.

§5812. Transfers

(a) Application

A firearm shall not be transferred unless (1) the transferor of the firearm has filed with the Secretary a written application, in duplicate, for the transfer and registration of the firearm to the transferee on the application form prescribed by the Secretary; (2) any tax payable on the transfer is paid as evidenced by the proper stamp affixed to the original application form; (3) the transferee is identified in the application form in such manner as the Secretary may by regulations prescribe, except that, if such person is an individual, the identification must include his fingerprints and his photograph; (4) the transferor of the firearm is identified in the application form in such manner as the Secretary may by regulations prescribe; (5) the firearm is identified in the application form in such manner as the Secretary may by regulations prescribe; and (6) the application form shows that the Secretary has approved the transfer and the registration of the firearm to the transferee. Applications shall be denied if the transfer, receipt, or possession of the firearm would place the transferee in violation of law.

(b) Transfer of possession

The transferee of a firearm shall not take possession of the firearm unless the Secretary has approved the transfer and registration of the firearm to the transferee as required by subsection (a) of this section.

(Added Pub. L. 90–618, title II, §201, Oct. 22, 1968, 82 Stat. 1228; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

PRIOR PROVISIONS

A prior section 5812, act Aug. 16, 1954, ch. 736, 68A Stat. 722, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 90–618.

A prior section 5813, act Aug. 16, 1954, ch. 736, 68A Stat. 723, related to the affixing of the required

stamps to the order form for the firearm, prior to the general revision of this chapter by Pub. L. 90–618.

A prior section 5814, acts Aug. 16, 1954, ch. 736, 68A Stat. 723; Sept. 2, 1958, Pub. L. 85–859, title II, §203(c), 72 Stat. 1427, related to the order forms required for the transfer of a firearm, prior to the general revision of this chapter by Pub. L. 90–618.

AMENDMENTS

1976—Subsecs. (a), (b). Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

PART III—TAX ON MAKING FIREARMS

Sec.
5821. Making tax.
5822. Making.

PRIOR PROVISIONS

A prior part III consisted of section 5821, prior to the general revision of this chapter by Pub. L. 90–618, title II, §201, Oct. 22, 1968, 82 Stat. 1227.

A prior part IV consisted of section 5831, prior to the general revision of this chapter by Pub. L. 90–618, title II, §201, Oct. 22, 1968, 82 Stat. 1227.

§5821. Making tax

(a) Rate

There shall be levied, collected, and paid upon the making of a firearm a tax at the rate of $200 for each firearm made.

(b) By whom paid

The tax imposed by subsection (a) of this section shall be paid by the person making the firearm.

(c) Payment

The tax imposed by subsection (a) of this section shall be payable by the stamp prescribed for payment by the Secretary.

(Added Pub. L. 90–618, title II, §201, Oct. 22, 1968, 82 Stat. 1228; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

PRIOR PROVISIONS

A prior section 5821, acts Aug. 16, 1954, ch. 736, 68A Stat. 724; Sept. 2, 1958, Pub. L. 85–859, title II, §203(d), 72 Stat. 1427, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 90–618.

AMENDMENTS

1976—Subsec. (c). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE

Section effective on first day of first month following October 1968, see section 207 of Pub. L. 90–618, set out as a note under section 5801 of this title.

§5822. Making

No person shall make a firearm unless he has (a) filed with the Secretary a written application, in duplicate, to make and register the firearm on the form prescribed by the Secretary; (b) paid any tax payable on the making and such payment is evidenced by the proper stamp affixed to the original application form; (c) identified the firearm to be made in the application form in such manner as the Secretary may by regulations prescribe; (d) identified himself in the application form in such manner as the Secretary may by regulations prescribe, except that, if such person is an individual, the

identification must include his fingerprints and his photograph; and (e) obtained the approval of the Secretary to make and register the firearm and the application form shows such approval. Applications shall be denied if the making or possession of the firearm would place the person making the firearm in violation of law.

(Added Pub. L. 90–618, title II, §201, Oct. 22, 1968, 82 Stat. 1228; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

PRIOR PROVISIONS

A prior section 5831, act Aug. 16, 1954, ch. 736, 68A Stat. 724, made a cross reference to section 4181 of this title relating to an excise tax on pistols, revolvers, and firearms, prior to the general revision of this chapter by Pub. L. 90–618, title II, §201, Oct. 22, 1968, 82 Stat. 1227.

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

Subchapter B—General Provisions and Exemptions

Part

I. General provisions.

II. Exemptions.

PRIOR PROVISIONS

A prior subchapter B consisted of sections 5841 to 5848, prior to the general revision of this chapter by Pub. L. 90–618, title II, §201, Oct. 22, 1968, 82 Stat. 1227.

PART I—GENERAL PROVISIONS

Sec.

5841. Registration of firearms.

5842. Identification of firearms.

5843. Records and returns.

5844. Importation.

5845. Definitions.

5846. Other laws applicable.

5847. Effect on other law.[1]

5848. Restrictive use of information.

5849. Citation of chapter.

[1] *So in original. Does not conform to section catchline.*

§5841. Registration of firearms

(a) Central registry

The Secretary shall maintain a central registry of all firearms in the United States which are not in the possession or under the control of the United States. This registry shall be known as the National Firearms Registration and Transfer Record. The registry shall include—

(1) identification of the firearm;

(2) date of registration; and

(3) identification and address of person entitled to possession of the firearm.

(b) By whom registered

Each manufacturer, importer, and maker shall register each firearm he manufactures, imports, or makes. Each firearm transferred shall be registered to the transferee by the transferor.

(c) How registered

Each manufacturer shall notify the Secretary of the manufacture of a firearm in such manner as may by regulations be prescribed and such notification shall effect the registration of the firearm required by this section. Each importer, maker, and transferor of a firearm shall, prior to importing, making, or transferring a firearm, obtain authorization in such manner as required by this chapter or regulations issued thereunder to import, make, or transfer the firearm, and such authorization shall effect the registration of the firearm required by this section.

(d) Firearms registered on effective date of this Act

A person shown as possessing a firearm by the records maintained by the Secretary pursuant to the National Firearms Act in force on the day immediately prior to the effective date of the National Firearms Act of 1968 [1] shall be considered to have registered under this section the firearms in his possession which are disclosed by that record as being in his possession.

(e) Proof of registration

A person possessing a firearm registered as required by this section shall retain proof of registration which shall be made available to the Secretary upon request.

(Added Pub. L. 90–618, title II, §201, Oct. 22, 1968, 82 Stat. 1229; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

REFERENCES IN TEXT

The National Firearms Act in force prior to the effective date of the National Firearms Act of 1968, referred to in subsec. (d), probably means the National Firearms Act in force prior to the effective date of the National Firearms Act Amendments of 1968, which is act Aug. 16, 1954, ch. 736, 68A Stat. 721, as amended, and which was classified generally to prior chapter 53 (prior §5801 et seq.) of this title.

The effective date of this Act and the effective date of the National Firearms Act of 1968, referred to in subsec. (d) catchline and text, probably means the effective date of the National Firearms Act Amendments of 1968, which is Nov. 1, 1968. See section 207(a) of Pub. L. 90–618, set out as an Effective Date note under section 5801 of this title.

PRIOR PROVISIONS

A prior section 5841, act Aug. 16, 1954, ch. 736, 68A Stat. 725, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 90–618.

AMENDMENTS

1976—Subsecs. (a), (c) to (e). Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

EFFECTIVE DATE

Section effective on first day of first month following October 1968, see section 207 of Pub. L. 90–618, set out as a note under section 5801 of this title.

[1] *So in original. See References in Text notes below.*

§5842. Identification of firearms

(a) Identification of firearms other than destructive devices

Each manufacturer and importer and anyone making a firearm shall identify each firearm, other than a destructive device, manufactured, imported, or made by a serial number which may not be readily removed, obliterated, or altered, the name of the manufacturer, importer, or maker, and such other identification as the Secretary may by regulations prescribe.

(b) Firearms without serial number

Any person who possesses a firearm, other than a destructive device, which does not bear the serial number and other information required by subsection (a) of this section shall identify the

firearm with a serial number assigned by the Secretary and any other information the Secretary may by regulations prescribe.

(c) Identification of destructive device

Any firearm classified as a destructive device shall be identified in such manner as the Secretary may by regulations prescribe.

(Added Pub. L. 90–618, title II, §201, Oct. 22, 1968, 82 Stat. 1230; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

PRIOR PROVISIONS

A prior section 5842, act Aug. 16, 1954, ch. 736, 68A Stat. 725, related to books, records, and returns, prior to the general revision of this chapter by Pub. L. 90–618.

Provisions similar to those comprising this section were contained in prior section 5843, act Aug. 16, 1954, ch. 736, 68A Stat. 725, as amended by act Sept. 2, 1958, Pub. L. 85–859, title II, §203(e), 72 Stat. 1427, prior to the general revision of this chapter by Pub. L. 90–618.

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

§5843. Records and returns

Importers, manufacturers, and dealers shall keep such records of, and render such returns in relation to, the importation, manufacture, making, receipt, and sale, or other disposition, of firearms as the Secretary may by regulations prescribe.

(Added Pub. L. 90–618, title II, §201, Oct. 22, 1968, 82 Stat. 1230; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

PRIOR PROVISIONS

A prior section 5843, act Aug. 16, 1954, ch. 736, 68A Stat. 725, as amended by act Sept. 2, 1958, Pub. L. 85–859, title II, §203(e), 72 Stat. 1427, related to identification of firearms prior to the general revision of this chapter by Pub. L. 90–618.

Provisions similar to those comprising this section were contained in prior section 5842, act Aug. 16, 1954, 68A Stat. 725, prior to the general revision of this chapter by Pub. L. 90–618.

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

§5844. Importation

No firearm shall be imported or brought into the United States or any territory under its control or jurisdiction unless the importer establishes, under regulations as may be prescribed by the Secretary, that the firearm to be imported or brought in is—

(1) being imported or brought in for the use of the United States or any department, independent establishment, or agency thereof or any State or possession or any political subdivision thereof; or

(2) being imported or brought in for scientific or research purposes; or

(3) being imported or brought in solely for testing or use as a model by a registered manufacturer or solely for use as a sample by a registered importer or registered dealer;

except that, the Secretary may permit the conditional importation or bringing in of a firearm for examination and testing in connection with classifying the firearm.

(Added Pub. L. 90–618, title II, §201, Oct. 22, 1968, 82 Stat. 1230; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

PRIOR PROVISIONS

A prior section 5844, act Aug. 16, 1954, ch. 736, 68A Stat. 725, related to exportation, prior to the general revision of this chapter by Pub. L. 90–618.

Provisions similar to those comprising this section were contained in prior section 5845, act Aug. 16, 1954, ch. 736, 68A Stat. 725, prior to the general revision of this chapter by Pub. L. 90–618.

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

§5845. Definitions

For the purpose of this chapter—

(a) Firearm

The term "firearm" means (1) a shotgun having a barrel or barrels of less than 18 inches in length; (2) a weapon made from a shotgun if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length; (3) a rifle having a barrel or barrels of less than 16 inches in length; (4) a weapon made from a rifle if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length; (5) any other weapon, as defined in subsection (e); (6) a machinegun; (7) any silencer (as defined in section 921 of title 18, United States Code); and (8) a destructive device. The term "firearm" shall not include an antique firearm or any device (other than a machinegun or destructive device) which, although designed as a weapon, the Secretary finds by reason of the date of its manufacture, value, design, and other characteristics is primarily a collector's item and is not likely to be used as a weapon.

(b) Machinegun

The term "machinegun" means any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun, and any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person.

(c) Rifle

The term "rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger, and shall include any such weapon which may be readily restored to fire a fixed cartridge.

(d) Shotgun

The term "shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of projectiles (ball shot) or a single projectile for each pull of the trigger, and shall include any such weapon which may be readily restored to fire a fixed shotgun shell.

(e) Any other weapon

The term "any other weapon" means any weapon or device capable of being concealed on the person from which a shot can be discharged through the energy of an explosive, a pistol or revolver having a barrel with a smooth bore designed or redesigned to fire a fixed shotgun shell, weapons with combination shotgun and rifle barrels 12 inches or more, less than 18 inches in length, from which only a single discharge can be made from either barrel without manual reloading, and shall include any such weapon which may be readily restored to fire. Such term shall not include a pistol or a revolver having a rifled bore, or rifled bores, or weapons designed, made, or intended to be fired from the shoulder and not capable of firing fixed ammunition.

(f) Destructive device

The term "destructive device" means (1) any explosive, incendiary, or poison gas (A) bomb, (B) grenade, (C) rocket having a propellent charge of more than four ounces, (D) missile having an explosive or incendiary charge of more than one-quarter ounce, (E) mine, or (F) similar device; (2) any type of weapon by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, the barrel or barrels of which have a bore of more than one-half inch in diameter, except a shotgun or shotgun shell which the Secretary finds is generally recognized as particularly suitable for sporting purposes; and (3) any combination of parts either designed or intended for use in converting any device into a destructive device as defined in subparagraphs (1) and (2) and from which a destructive device may be readily assembled. The term "destructive device" shall not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device; surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of section 4684(2), 4685, or 4686 of title 10 of the United States Code; or any other device which the Secretary finds is not likely to be used as a weapon, or is an antique or is a rifle which the owner intends to use solely for sporting purposes.

(g) Antique firearm

The term "antique firearm" means any firearm not designed or redesigned for using rim fire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898 (including any matchlock, flintlock, percussion cap, or similar type of ignition system or replica thereof, whether actually manufactured before or after the year 1898) and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

(h) Unserviceable firearm

The term "unserviceable firearm" means a firearm which is incapable of discharging a shot by means of an explosive and incapable of being readily restored to a firing condition.

(i) Make

The term "make", and the various derivatives of such word, shall include manufacturing (other than by one qualified to engage in such business under this chapter), putting together, altering, any combination of these, or otherwise producing a firearm.

(j) Transfer

The term "transfer" and the various derivatives of such word, shall include selling, assigning, pledging, leasing, loaning, giving away, or otherwise disposing of.

(k) Dealer

The term "dealer" means any person, not a manufacturer or importer, engaged in the business of selling, renting, leasing, or loaning firearms and shall include pawnbrokers who accept firearms as collateral for loans.

(l) Importer

The term "importer" means any person who is engaged in the business of importing or bringing firearms into the United States.

(m) Manufacturer

The term "manufacturer" means any person who is engaged in the business of manufacturing firearms.

(Added Pub. L. 90–618, title II, §201, Oct. 22, 1968, 82 Stat. 1230; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), (J), Oct. 4, 1976, 90 Stat. 1834, 1835; Pub. L. 99–308, §109, May 19, 1986, 100 Stat. 460.)

PRIOR PROVISIONS

A prior section 5845, act Aug. 16, 1954, ch. 736, 68A Stat. 725, related to the importation of firearms into the United States or its territory, prior to the general revisions of this chapter by Pub. L. 90–618.

Provisions similar to those comprising this section were contained in prior section 5848, act Aug. 16, 1954, ch. 736, 68A Stat. 727, as amended by acts Sept. 2, 1958, Pub. L. 85–859, title II, §203(f), 72 Stat. 1427; June 1, 1960, Pub. L. 86–478, §3, 74 Stat. 149, prior to the general revision of this chapter by Pub. L. 90–618.

AMENDMENTS

1986—Subsec. (a)(7). Pub. L. 99–308, §109(b), substituted "any silencer (as defined in section 921 of title 18, United States Code)" for "a muffler or a silencer for any firearm whether or not such firearm is included within this definition".

Subsec. (b). Pub. L. 99–308, §109(a), substituted "any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun," for "any combination of parts designed and intended for use in converting a weapon into a machinegun,".

1976—Subsec. (a). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (f). Pub. L. 94–455, §1906(b)(13)(A), (J), struck out "or his delegate" after "shotgun or shotgun shell which the Secretary" and "of the Treasury or his delegate" after "or any other device which the Secretary".

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–308 effective 180 days after May 19, 1986, see section 110(a) of Pub. L. 99–308, set out as a note under section 921 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE

Section effective on first day of first month following October 1968, except as to persons possessing firearms as defined in subsec. (a) of this section which are not registered to such persons in the National Firearms Registration and Transfer Record, see section 207 of Pub. L. 90–618, set out as a note under section 5801 of this title.

§5846. Other laws applicable

All provisions of law relating to special taxes imposed by chapter 51 and to engraving, issuance, sale, accountability, cancellation, and distribution of stamps for tax payment shall, insofar as not inconsistent with the provisions of this chapter, be applicable with respect to the taxes imposed by sections 5801, 5811, and 5821.

(Added Pub. L. 90–618, title II, §201, Oct. 22, 1968, 82 Stat. 1232.)

PRIOR PROVISIONS

A prior section 5846, act Aug. 16, 1954, ch. 736, 68A Stat. 726, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 90–618.

§5847. Effect on other laws

Nothing in this chapter shall be construed as modifying or affecting the requirements of section 414 of the Mutual Security Act of 1954, as amended, with respect to the manufacture, exportation, and importation of arms, ammunition, and implements of war.

(Added Pub. L. 90–618, title II, §201, Oct. 22, 1968, 82 Stat. 1232.)

REFERENCES IN TEXT

Section 414 of the Mutual Security Act of 1954, as amended, referred to in text, was classified to section 1934 of Title 22, Foreign Relations and Intercourse, and was repealed by section 212(b)(1) of Pub. L. 94–329, title II, 90 Stat. 745. Section 212(b)(1) of Pub. L. 94–329, also provided that any reference to section 414 of the Mutual Security Act of 1954 shall be deemed to be a reference to section 38 of the Arms Export Control Act. Section 38 of the Arms Export Control Act is classified to section 2778 of Title 22.

PRIOR PROVISIONS

A prior section 5847, act Aug. 16, 1954, ch. 736, 68A Stat. 726, related to regulations which the Secretary

or his delegate may prescribe, prior to the general revision of this chapter by Pub. L. 90–618.

§5848. Restrictive use of information

(a) General rule

No information or evidence obtained from an application, registration, or records required to be submitted or retained by a natural person in order to comply with any provision of this chapter or regulations issued thereunder, shall, except as provided in subsection (b) of this section, be used, directly or indirectly, as evidence against that person in a criminal proceeding with respect to a violation of law occurring prior to or concurrently with the filing of the application or registration, or the compiling of the records containing the information or evidence.

(b) Furnishing false information

Subsection (a) of this section shall not preclude the use of any such information or evidence in a prosecution or other action under any applicable provision of law with respect to the furnishing of false information.

(Added Pub. L. 90–618, title II, §201, Oct. 22, 1968, 82 Stat. 1232.)

PRIOR PROVISIONS

A prior section 5848, act Aug. 16, 1954, ch. 736, 68A Stat. 727, as amended by acts Sept. 2, 1958, Pub. L. 85–859, title II, §203(f), 72 Stat. 1427; June 1, 1960, Pub. L. 86–478, §3, 74 Stat. 149, related to definition of a firearm, machine gun, rifle, shotgun, other weapon, importer, manufacturer, dealer, interstate commerce, transfer and person, prior to the general revision of this chapter by Pub. L. 90–618.

§5849. Citation of chapter

This chapter may be cited as the "National Firearms Act" and any reference in any other provision of law to the "National Firearms Act" shall be held to refer to the provisions of this chapter.

(Added Pub. L. 90–618, title II, §201, Oct. 22, 1968, 82 Stat. 1232.)

PRIOR PROVISIONS

A prior section 5849, Pub. L. 85–859, title II, §203(g)(1), Sept. 2, 1958, 72 Stat. 1427, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 90–618.

SHORT TITLE

Pub. L. 90–618, title II, §202, Oct. 22, 1968, 82 Stat. 1235, provided that: "The amendments made by section 201 of this title [enacting this chapter] shall be cited as the 'National Firearms Act Amendments of 1968'."

PART II—EXEMPTIONS

Sec.

5851. Special (occupational) tax exemption.
5852. General transfer and making exemption.[1]
5853. Exemption from transfer and making tax available to certain governmental entities and officials.[1]
5854. Exportation of firearms exempt from transfer tax.

[1] *So in original. Does not conform to section catchline.*

§5851. Special (occupational) tax exemption

(a) Business with United States

Any person required to pay special (occupational) tax under section 5801 shall be relieved from payment of that tax if he establishes to the satisfaction of the Secretary that his business is conducted exclusively with, or on behalf of, the United States or any department, independent establishment, or agency thereof. The Secretary may relieve any person manufacturing firearms for, or on behalf of, the United States from compliance with any provision of this chapter in the conduct of such business.

(b) Application

The exemption provided for in subsection (a) of this section may be obtained by filing with the Secretary an application on such form and containing such information as may by regulations be prescribed. The exemptions must thereafter be renewed on or before July 1 of each year. Approval of the application by the Secretary shall entitle the applicant to the exemptions stated on the approved application.

(Added Pub. L. 90–618, title II, §201, Oct. 22, 1968, 82 Stat. 1233; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

PRIOR PROVISIONS

A prior section 5851, act Aug. 16, 1954, ch. 736, 68A Stat. 728, as amended by act Sept. 2, 1958, Pub. L. 85–859, title II, §203(h)(1), (2), 72 Stat. 1428, related to possessing firearms illegally, prior to the general revision of this chapter by Pub. L. 90–618. See section 5861(b) of this title.

Provisions similar to those comprising this section were contained in prior section 5812, act Aug. 16, 1954, ch. 736, 68A Stat. 722, prior to the general revision of this chapter by Pub. L. 90–618.

AMENDMENTS

1976—Subsecs. (a), (b). Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

EFFECTIVE DATE

Section effective on first day of first month following October 1968, see section 207 of Pub. L. 90–618, set out as a note under section 5801 of this title.

§5852. General transfer and making tax exemption

(a) Transfer

Any firearm may be transferred to the United States or any department, independent establishment, or agency thereof, without payment of the transfer tax imposed by section 5811.

(b) Making by a person other than a qualified manufacturer

Any firearm may be made by, or on behalf of, the United States, or any department, independent establishment, or agency thereof, without payment of the making tax imposed by section 5821.

(c) Making by a qualified manufacturer

A manufacturer qualified under this chapter to engage in such business may make the type of firearm which he is qualified to manufacture without payment of the making tax imposed by section 5821.

(d) Transfers between special (occupational) taxpayers

A firearm registered to a person qualified under this chapter to engage in business as an importer, manufacturer, or dealer may be transferred by that person without payment of the transfer tax imposed by section 5811 to any other person qualified under this chapter to manufacture, import, or deal in that type of firearm.

(e) Unserviceable firearm

An unserviceable firearm may be transferred as a curio or ornament without payment of the transfer tax imposed by section 5811, under such requirements as the Secretary may by regulations

prescribe.

(f) Right to exemption

No firearm may be transferred or made exempt from tax under the provisions of this section unless the transfer or making is performed pursuant to an application in such form and manner as the Secretary may by regulations prescribe.

(Added Pub. L. 90–618, title II, §201, Oct. 22, 1968, 82 Stat. 1233; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

PRIOR PROVISIONS

A prior section 5852, act Aug. 16, 1954, ch. 736, 68A Stat. 728, related to removing or changing identification marks, prior to the general revision of this chapter by Pub. L. 90–618. See section 5861(g) of this title and section 922(k) of Title 18, Crimes and Criminal Procedure.

Provisions similar to those comprising this section were contained in prior section 5814, act Aug. 16, 1954, ch. 736, 68A Stat. 723, as amended by act Sept. 2, 1958, Pub. L. 85–859, title II, §203(c), 72 Stat. 1427, prior to the general revision of this chapter by Pub. L. 90–618.

AMENDMENTS

1976—Subsecs. (e), (f). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

§5853. Transfer and making tax exemption available to certain governmental entities

(a) Transfer

A firearm may be transferred without the payment of the transfer tax imposed by section 5811 to any State, possession of the United States, any political subdivision thereof, or any official police organization of such a government entity engaged in criminal investigations.

(b) Making

A firearm may be made without payment of the making tax imposed by section 5821 by, or on behalf of, any State, or possession of the United States, any political subdivision thereof, or any official police organization of such a government entity engaged in criminal investigations.

(c) Right to exemption

No firearm may be transferred or made exempt from tax under this section unless the transfer or making is performed pursuant to an application in such form and manner as the Secretary may by regulations prescribe.

(Added Pub. L. 90–618, title II, §201, Oct. 22, 1968, 82 Stat. 1233; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

PRIOR PROVISIONS

A prior section 5853, act Aug. 16, 1954, ch. 736, 68A Stat. 728, related to importing firearms illegally, prior to the general revision of this chapter by Pub. L. 90–618. See section 5861(k) of this title and section 922(a) of Title 18, Crimes and Criminal Procedure.

Provisions similar to those comprising this section were contained in prior section 5821, act Aug. 16, 1954, ch. 736, 68A Stat. 724, as amended by act Sept. 2, 1958, Pub. L. 85–859, title II, §203(d), 72 Stat. 1427, prior to the general revision of this chapter by Pub. L. 90–618.

AMENDMENTS

1976—Subsec. (c). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

§5854. Exportation of firearms exempt from transfer tax

A firearm may be exported without payment of the transfer tax imposed under section 5811 provided that proof of the exportation is furnished in such form and manner as the Secretary may by

regulations prescribe.

(Added Pub. L. 90–618, title II, §201, Oct. 22, 1968, 82 Stat. 1234; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

PRIOR PROVISIONS

A prior section 5854, Pub. L. 85–859, title II, §203(i)(1), Sept. 2, 1958, 72 Stat. 1428, related to failure to register and pay special tax, prior to the general revision of this chapter by Pub. L. 90–618. See section 5861(a), (d) of this title and section 923 of Title 18, Crimes and Criminal Procedure.

Provisions similar to those comprising this section were contained in prior section 5844, act Aug. 16, 1954, ch. 736, 68A Stat. 725, prior to the general revision of this chapter by Pub. L. 90–618.

A prior section 5855, Pub. L. 85–859, title II, §203(i)(1), Sept. 2, 1958, 72 Stat. 1428, made it unlawful for any person required to comply with the provisions of sections 5814, 5821, and 5841 of this title, to ship, carry or deliver any firearm in interstate commerce if such sections had not been complied with, prior to the general revision of this chapter by Pub. L. 90–618.

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

Subchapter C—Prohibited Acts

Sec.
5861. Prohibited acts.[1]

PRIOR PROVISIONS

A prior subchapter C consisted of sections 5851 to 5854, prior to the general revision of this chapter by Pub. L. 90–618, title II, §201, Oct. 22, 1968, 82 Stat. 1227.

[1] Editorially supplied. Subchapter added by Pub. L. 90–618 without a subchapter analysis.

§5861. Prohibited acts

It shall be unlawful for any person—

(a) to engage in business as a manufacturer or importer of, or dealer in, firearms without having paid the special (occupational) tax required by section 5801 for his business or having registered as required by section 5802; or

(b) to receive or possess a firearm transferred to him in violation of the provisions of this chapter; or

(c) to receive or possess a firearm made in violation of the provisions of this chapter; or

(d) to receive or possess a firearm which is not registered to him in the National Firearms Registration and Transfer Record; or

(e) to transfer a firearm in violation of the provisions of this chapter; or

(f) to make a firearm in violation of the provisions of this chapter; or

(g) to obliterate, remove, change, or alter the serial number or other identification of a firearm required by this chapter; or

(h) to receive or possess a firearm having the serial number or other identification required by this chapter obliterated, removed, changed, or altered; or

(i) to receive or possess a firearm which is not identified by a serial number as required by this chapter; or

(j) to transport, deliver, or receive any firearm in interstate commerce which has not been registered as required by this chapter; or

(k) to receive or possess a firearm which has been imported or brought into the United States in violation of section 5844; or

(l) to make, or cause the making of, a false entry on any application, return, or record required

by this chapter, knowing such entry to be false.

(Added Pub. L. 90–618, title II, §201, Oct. 22, 1968, 82 Stat. 1234.)

PRIOR PROVISIONS

A prior section 5861, act Aug. 16, 1954, ch. 736, 68A Stat. 729, relating to penalties, was omitted in the general revision of this chapter by Pub. L. 90–618.

Provisions similar to those comprising subsecs. (a), (b), (d), (g), (j), and (k) of this section were contained in prior sections of act Aug. 16, 1954, prior to the general revision of this chapter by Pub. L. 90–618, as follows:

Present subsecs.:	*Prior sections*
(a)	5854.
(b)	5851.
(d)	5854.
(g)	5852.
(j)	5855.
(k)	5853.

The prior sections 5851 to 5853, act Aug. 16, 1954, ch. 736, are set out in 68A Stat. 728.

The prior sections 5854 and 5855, Pub. L. 85–859, title II, §203(i)(1), Sept. 2, 1958, are set out in 72 Stat. 1428.

A prior section 5862, act Aug. 16, 1954, ch. 736, 68A Stat. 729, relating to the forfeiture and disposal of any firearm involved in any violation of the provisions of this chapter or any regulation promulgated thereunder, was omitted in the general revision of this chapter by Pub. L. 90–618. The provisions of prior section 5862 of this title are covered by section 5872 of this title.

EFFECTIVE DATE

Section effective on first day of first month following October 1968, see section 207 of Pub. L. 90–618, set out as a note under section 5801 of this title.

Subchapter D—Penalties and Forfeitures

Sec.
5871. Penalties.
5872. Forfeitures.

PRIOR PROVISIONS

A prior subchapter D, consisted of sections 5861 and 5862, prior to the general revision of this chapter by Pub. L. 90–618, title II, §201, Oct. 22, 1968, 82 Stat. 1227.

§5871. Penalties

Any person who violates or fails to comply with any provisions of this chapter shall, upon conviction, be fined not more than $10,000, or be imprisoned not more than ten years, or both.

(Added Pub. L. 90–618, title II, §201, Oct. 22, 1968, 82 Stat. 1234; amended Pub. L. 98–473, title II, §227, Oct. 12, 1984, 98 Stat. 2030.)

PRIOR PROVISIONS

A prior section 5871, act Aug. 16, 1954, ch. 736, 68A Stat. 729, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 90–618.

Provisions similar to those comprising this section were contained in prior section 5861, act Aug. 16, 1954, ch. 736, 68A Stat. 729, prior to the general revision of this chapter by Pub. L. 90–618.

AMENDMENTS

1984—Pub. L. 98–473 struck out ", and shall become eligible for parole as the Board of Parole shall determine" after "or both".

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–473, title II, §235(a)(1)(B)(ii)(IV), Oct. 12, 1984, 98 Stat. 2032, provided that the amendment made by section 227 of Pub. L. 98–473 is effective Oct. 12, 1984.

EFFECTIVE DATE

Section effective on first day of first month following October 1968, see section 207(a) of Pub. L. 90–618, set out as a note under section 5801 of this title.

§5872. Forfeitures

(a) Laws applicable

Any firearm involved in any violation of the provisions of this chapter shall be subject to seizure and forfeiture, and (except as provided in subsection (b)) all the provisions of internal revenue laws relating to searches, seizures, and forfeitures of unstamped articles are extended to and made to apply to the articles taxed under this chapter, and the persons to whom this chapter applies.

(b) Disposal

In the case of the forfeiture of any firearm by reason of a violation of this chapter, no notice of public sale shall be required; no such firearm shall be sold at a public sale; if such firearm is forfeited for a violation of this chapter and there is no remission or mitigation of forfeiture thereof, it shall be delivered by the Secretary to the Administrator of General Services, General Services Administration, who may order such firearm destroyed or may sell it to any State, or possession, or political subdivision thereof, or at the request of the Secretary, may authorize its retention for official use of the Treasury Department, or may transfer it without charge to any executive department or independent establishment of the Government for use by it.

(Added Pub. L. 90–618, title II, §201, Oct. 22, 1968, 82 Stat. 1235; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in prior section 5862, act Aug. 16, 1954, ch. 736, 68A Stat. 729, prior to the general revision of this chapter by Pub. L. 90–618.

AMENDMENTS

1976—Subsec. (b). Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

EFFECTIVE DATE

Section effective on first day of first month following October 1968, see section 207(a) of Pub. L. 90–618, set out as a note under section 5801 of this title.

CHAPTER 54—GREENMAIL

Sec.
5881. Greenmail.

§5881. Greenmail

(a) Imposition of tax

There is hereby imposed on any person who receives greenmail a tax equal to 50 percent of gain or other income of such person by reason of such receipt.

(b) Greenmail

For purposes of this section, the term "greenmail" means any consideration transferred by a corporation (or any person acting in concert with such corporation) to directly or indirectly acquire stock of such corporation from any shareholder if—

(1) such shareholder held such stock (as determined under section 1223) for less than 2 years before entering into the agreement to make the transfer,

(2) at some time during the 2-year period ending on the date of such acquisition—

(A) such shareholder,

(B) any person acting in concert with such shareholder, or

(C) any person who is related to such shareholder or person described in subparagraph (B),

made or threatened to make a public tender offer for stock of such corporation, and

(3) such acquisition is pursuant to an offer which was not made on the same terms to all shareholders.

For purposes of the preceding sentence, payments made in connection with, or in transactions related to, an acquisition shall be treated as paid in such acquisition.

(c) Other definitions

For purposes of this section—

(1) Public tender offer

The term "public tender offer" means any offer to purchase or otherwise acquire stock or assets in a corporation if such offer was or would be required to be filed or registered with any Federal or State agency regulating securities.

(2) Related person

A person is related to another person if the relationship between such persons would result in the disallowance of losses under section 267 or 707(b).

(d) Tax applies whether or not amount recognized

The tax imposed by this section shall apply whether or not the gain or other income referred to in subsection (a) is recognized.

(e) Administrative provisions

For purposes of the deficiency procedures of subtitle F, any tax imposed by this section shall be treated as a tax imposed by subtitle A.

(Added Pub. L. 100–203, title X, §10228(a), Dec. 22, 1987, 101 Stat. 1330–417; amended Pub. L. 100–647, title II, §2004(o)(1)(A), (B)(i), (C), (2), Nov. 10, 1988, 102 Stat. 3608.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–647, §2004(o)(1)(A), substituted "gain or other income of such person by reason of such receipt" for "gain realized by such person on such receipt".

Subsec. (b). Pub. L. 100–647, §2004(o)(1)(B)(i), substituted "a corporation (or any person acting in concert with such corporation) to directly or indirectly acquire stock of such corporation" for "a corporation to directly or indirectly acquire its stock".

Subsec. (d). Pub. L. 100–647, §2004(o)(1)(C), substituted "amount" for "gain" in heading and inserted "or other income" after "the gain" in text.

Subsec. (e). Pub. L. 100–647, §2004(o)(2), added subsec. (e).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 2004(o)(1)(A), (C), (2) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

Pub. L. 100–647, title II, §2004(o)(1)(B)(ii), Nov. 10, 1988, 102 Stat. 3608, provided that: "The amendment made by clause (i) [amending this section] shall apply to transactions occurring on or after March 31, 1988."

EFFECTIVE DATE

Pub. L. 100–203, title X, §10228(d), Dec. 22, 1987, 101 Stat. 1330–418, provided that: "The amendments made by this section [enacting this chapter and amending section 275 of this title] shall apply to consideration received after the date of the enactment of this Act [Dec. 22, 1987] in taxable years ending after such date; except that such amendments shall not apply in the case of any acquisition pursuant to a written binding contract in effect on December 15, 1987, and at all times thereafter before the acquisition."

CHAPTER 55—STRUCTURED SETTLEMENT FACTORING TRANSACTIONS

Sec.
5891. Structured settlement factoring transactions.

§5891. Structured settlement factoring transactions

(a) Imposition of tax

There is hereby imposed on any person who acquires directly or indirectly structured settlement payment rights in a structured settlement factoring transaction a tax equal to 40 percent of the factoring discount as determined under subsection (c)(4) with respect to such factoring transaction.

(b) Exception for certain approved transactions

(1) In general

The tax under subsection (a) shall not apply in the case of a structured settlement factoring transaction in which the transfer of structured settlement payment rights is approved in advance in a qualified order.

(2) Qualified order

For purposes of this section, the term "qualified order" means a final order, judgment, or decree which—

(A) finds that the transfer described in paragraph (1)—

(i) does not contravene any Federal or State statute or the order of any court or responsible administrative authority, and

(ii) is in the best interest of the payee, taking into account the welfare and support of the payee's dependents, and

(B) is issued—

(i) under the authority of an applicable State statute by an applicable State court, or

(ii) by the responsible administrative authority (if any) which has exclusive jurisdiction over the underlying action or proceeding which was resolved by means of the structured settlement.

(3) Applicable State statute

For purposes of this section, the term "applicable State statute" means a statute providing for the entry of an order, judgment, or decree described in paragraph (2)(A) which is enacted by—

(A) the State in which the payee of the structured settlement is domiciled, or

(B) if there is no statute described in subparagraph (A), the State in which either the party to the structured settlement (including an assignee under a qualified assignment under section 130) or the person issuing the funding asset for the structured settlement is domiciled or has its principal place of business.

(4) Applicable State court

For purposes of this section—

(A) In general

The term "applicable State court" means, with respect to any applicable State statute, a court

of the State which enacted such statute.

(B) Special rule

In the case of an applicable State statute described in paragraph (3)(B), such term also includes a court of the State in which the payee of the structured settlement is domiciled.

(5) Qualified order dispositive

A qualified order shall be treated as dispositive for purposes of the exception under this subsection.

(c) Definitions

For purposes of this section—

(1) Structured settlement

The term "structured settlement" means an arrangement—

(A) which is established by—

(i) suit or agreement for the periodic payment of damages excludable from the gross income of the recipient under section 104(a)(2), or

(ii) agreement for the periodic payment of compensation under any workers' compensation law excludable from the gross income of the recipient under section 104(a)(1), and

(B) under which the periodic payments are—

(i) of the character described in subparagraphs (A) and (B) of section 130(c)(2), and

(ii) payable by a person who is a party to the suit or agreement or to the workers' compensation claim or by a person who has assumed the liability for such periodic payments under a qualified assignment in accordance with section 130.

(2) Structured settlement payment rights

The term "structured settlement payment rights" means rights to receive payments under a structured settlement.

(3) Structured settlement factoring transaction

(A) In general

The term "structured settlement factoring transaction" means a transfer of structured settlement payment rights (including portions of structured settlement payments) made for consideration by means of sale, assignment, pledge, or other form of encumbrance or alienation for consideration.

(B) Exception

Such term shall not include—

(i) the creation or perfection of a security interest in structured settlement payment rights under a blanket security agreement entered into with an insured depository institution in the absence of any action to redirect the structured settlement payments to such institution (or agent or successor thereof) or otherwise to enforce such blanket security interest as against the structured settlement payment rights, or

(ii) a subsequent transfer of structured settlement payment rights acquired in a structured settlement factoring transaction.

(4) Factoring discount

The term "factoring discount" means an amount equal to the excess of—

(A) the aggregate undiscounted amount of structured settlement payments being acquired in the structured settlement factoring transaction, over

(B) the total amount actually paid by the acquirer to the person from whom such structured settlement payments are acquired.

(5) Responsible administrative authority

The term "responsible administrative authority" means the administrative authority which had

jurisdiction over the underlying action or proceeding which was resolved by means of the structured settlement.

(6) State

The term "State" includes the Commonwealth of Puerto Rico and any possession of the United States.

(d) Coordination with other provisions

(1) In general

If the applicable requirements of sections 72, 104(a)(1), 104(a)(2), 130, and 461(h) were satisfied at the time the structured settlement involving structured settlement payment rights was entered into, the subsequent occurrence of a structured settlement factoring transaction shall not affect the application of the provisions of such sections to the parties to the structured settlement (including an assignee under a qualified assignment under section 130) in any taxable year.

(2) No withholding of tax

The provisions of section 3405 regarding withholding of tax shall not apply to the person making the payments in the event of a structured settlement factoring transaction.

(Added Pub. L. 107–134, title I, §115(a), Jan. 23, 2002, 115 Stat. 2436.)

EFFECTIVE DATE

Pub. L. 107–134, title I, §115(c), Jan. 23, 2002, 115 Stat. 2438, provided that:

"(1) IN GENERAL.—The amendments made by this section [enacting this chapter] (other than the provisions of section 5891(d) of the Internal Revenue Code of 1986, as added by this section) shall apply to structured settlement factoring transactions (as defined in section 5891(c) of such Code (as so added)) entered into on or after the 30th day following the date of the enactment of this Act [Jan. 23, 2002].

"(2) CLARIFICATION OF EXISTING LAW.—Section 5891(d) of such Code (as so added) shall apply to structured settlement factoring transactions (as defined in section 5891(c) of such Code (as so added)) entered into before, on, or after such 30th day.

"(3) TRANSITION RULE.—In the case of a structured settlement factoring transaction entered into during the period beginning on the 30th day following the date of the enactment of this Act and ending on July 1, 2002, no tax shall be imposed under section 5891(a) of such Code if—

"(A) the structured settlement payee is domiciled in a State (or possession of the United States) which has not enacted a statute providing that the structured settlement factoring transaction is ineffective unless the transaction has been approved by an order, judgment, or decree of a court (or where applicable, a responsible administrative authority) which finds that such transaction—

"(i) does not contravene any Federal or State statute or the order of any court (or responsible administrative authority); and

"(ii) is in the best interest of the structured settlement payee or is appropriate in light of a hardship faced by the payee; and

"(B) the person acquiring the structured settlement payment rights discloses to the structured settlement payee in advance of the structured settlement factoring transaction the amounts and due dates of the payments to be transferred, the aggregate amount to be transferred, the consideration to be received by the structured settlement payee for the transferred payments, the discounted present value of the transferred payments (including the present value as determined in the manner described in section 7520 of such Code), and the expenses required under the terms of the structured settlement factoring transaction to be paid by the structured settlement payee or deducted from the proceeds of such transaction."

Subtitle F—Procedure and Administration

Chapter		Sec.[1]
61.	**Information and returns**	**6001**
62.	**Time and place for paying tax**	**6151**
63.	**Assessment**	**6201**
64.	**Collection**	**6301**
65.	**Abatements, credits, and refunds**	**6401**

66. Limitations 6501
67. Interest 6601
68. Additions to the tax, additional amounts, and assessable penalties 6651
69. General provisions relating to stamps 6801
70. Jeopardy, receiverships, etc. 6851
71. Transferees and fiduciaries 6901
72. Licensing and registration 7001
73. Bonds 7101
74. Closing agreements and compromises 7121
75. Crimes, other offenses, and forfeitures 7201
76. Judicial proceedings 7401
77. Miscellaneous provisions 7501
78. Discovery of liability and enforcement of title 7601
79. Definitions 7701
80. General Rules 7801

AMENDMENTS

1980—Pub. L. 96–589, §6(g)(3)(E), Dec. 24, 1980, 94 Stat. 3410, substituted "Jeopardy, receiverships, etc." for "Jeopardy, bankruptcy and receiverships" in item for chapter 70.

[1] *Section numbers editorially supplied.*

CHAPTER 61—INFORMATION AND RETURNS

Subchapter Sec.[1]
A. Returns and records 6001
B. Miscellaneous provisions 6101

[1] *Section numbers editorially supplied.*

Subchapter A—Returns and Records

Part
I. Records, statements, and special returns.
II. Tax returns or statements.
III. Information returns.
IV. Signing and verifying of returns and other documents.
V. Time for filing returns and other documents.
VI. Extension of time for filing returns.
VII. Place for filing returns or other documents.
VIII. Designation of income tax payments to Presidential Election Campaign Fund.

AMENDMENTS

1966—Pub. L. 89–809, title III, §302(b), Nov. 13, 1966, 80 Stat. 1588, added item VIII.

PART I—RECORDS, STATEMENTS, AND SPECIAL RETURNS

Sec.
6001. Notice or regulations requiring records, statements, and special returns.

§6001. Notice or regulations requiring records, statements, and special returns

Every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. Whenever in the judgment of the Secretary it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary deems sufficient to show whether or not such person is liable for tax under this title. The only records which an employer shall be required to keep under this section in connection with charged tips shall be charge receipts, records necessary to comply with section 6053(c), and copies of statements furnished by employees under section 6053(a).

(Aug. 16, 1954, ch. 736, 68A Stat. 731; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–600, title V, §501(a), Nov. 6, 1978, 92 Stat. 2878; Pub. L. 97–248, title III, §314(d), Sept. 3, 1982, 96 Stat. 605.)

AMENDMENTS

1982—Pub. L. 97–248 inserted ", records necessary to comply with section 6053(c)," after "charge receipts".

1978—Pub. L. 95–600 inserted provision at end relating to only records which an employer shall be required to keep in connection with charged tips.

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to calendar years beginning after Dec. 31, 1982, see section 314(e) of Pub. L. 97–248, set out as a note under section 6053 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title V, §501(c), Nov. 6, 1978, 92 Stat. 2878, provided that: "The amendments made by this section [amending this section and section 6041 of this title] shall apply to payments made after December 31, 1978."

PART II—TAX RETURNS OR STATEMENTS

Subpart

A. General requirement.

B. Income tax returns.

C. Estate and gift tax returns.

D. Miscellaneous provisions.

AMENDMENTS

2010—Pub. L. 111–312, title III, §301(a), Dec. 17, 2010, 124 Stat. 3300, amended analysis to read as if amendment by Pub. L. 107–16, §542(b)(5)(B), had never been enacted. See 2001 Amendment note below.

2001—Pub. L. 107–16, title V, §542(b)(5)(B), June 7, 2001, 115 Stat. 84, substituted "Returns relating to transfers during life or at death" for "Estate and gift tax returns" in item for subpart C.

SUBPART A—GENERAL REQUIREMENT

Sec.

6011. General requirement of return, statement, or list.

§6011. General requirement of return, statement, or list

(a) General rule

When required by regulations prescribed by the Secretary any person made liable for any tax imposed by this title, or with respect to the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary. Every person required to make a

return or statement shall include therein the information required by such forms or regulations.

(b) Identification of taxpayer

The Secretary is authorized to require such information with respect to persons subject to the taxes imposed by chapter 21 or chapter 24 as is necessary or helpful in securing proper identification of such persons.

(c) Returns, etc., of DISCS and former DISCS and former FSC's

(1) Records and information

A DISC, former DISC, or former FSC (as defined in section 922 as in effect before its repeal by the FSC Repeal and Extraterritorial Income Exclusion Act of 2000) shall for the taxable year—

(A) furnish such information to persons who were shareholders at any time during such taxable year, and to the Secretary, and

(B) keep such records, as may be required by regulations prescribed by the Secretary.

(2) Returns

A DISC shall file for the taxable year such returns as may be prescribed by the Secretary by forms or regulations.

(d) Authority to require information concerning section 912 allowances

The Secretary may by regulations require any individual who receives allowances which are excluded from gross income under section 912 for any taxable year to include on his return of the taxes imposed by subtitle A for such taxable year such information with respect to the amount and type of such allowances as the Secretary determines to be appropriate.

(e) Regulations requiring returns on magnetic media, etc.

(1) In general

The Secretary shall prescribe regulations providing standards for determining which returns must be filed on magnetic media or in other machine-readable form. Except as provided in paragraph (3), the Secretary may not require returns of any tax imposed by subtitle A on individuals, estates, and trusts to be other than on paper forms supplied by the Secretary.

(2) Requirements of regulations

In prescribing regulations under paragraph (1), the Secretary—

(A) shall not require any person to file returns on magnetic media unless such person is required to file at least 250 returns during the calendar year, and

(B) shall take into account (among other relevant factors) the ability of the taxpayer to comply at reasonable cost with the requirements of such regulations.

Notwithstanding the preceding sentence, the Secretary shall require partnerships having more than 100 partners to file returns on magnetic media.

(3) Special rule for tax return preparers

(A) In general

The Secretary shall require than [1] any individual income tax return prepared by a tax return preparer be filed on magnetic media if—

(i) such return is filed by such tax return preparer, and

(ii) such tax return preparer is a specified tax return preparer for the calendar year during which such return is filed.

(B) Specified tax return preparer

For purposes of this paragraph, the term "specified tax return preparer" means, with respect to any calendar year, any tax return preparer unless such preparer reasonably expects to file 10 or fewer individual income tax returns during such calendar year.

(C) Individual income tax return

For purposes of this paragraph, the term "individual income tax return" means any return of the tax imposed by subtitle A on individuals, estates, or trusts.

(4) Special rule for returns filed by financial institutions with respect to withholding on foreign transfers

The numerical limitation under paragraph (2)(A) shall not apply to any return filed by a financial institution (as defined in section 1471(d)(5)) with respect to tax for which such institution is made liable under section 1461 or 1474(a).

(f) Promotion of electronic filing

(1) In general

The Secretary is authorized to promote the benefits of and encourage the use of electronic tax administration programs, as they become available, through the use of mass communications and other means.

(2) Incentives

The Secretary may implement procedures to provide for the payment of appropriate incentives for electronically filed returns.

(g) Disclosure of reportable transaction to tax-exempt entity

Any taxable party to a prohibited tax shelter transaction (as defined in section 4965(e)(1)) shall by statement disclose to any tax-exempt entity (as defined in section 4965(c)) which is a party to such transaction that such transaction is such a prohibited tax shelter transaction.

(h) Income, estate, and gift taxes

For requirement that returns of income, estate, and gift taxes be made whether or not there is tax liability, see subparts B and C.

(Aug. 16, 1954, ch. 736, 68A Stat. 732; Pub. L. 85–859, title I, §161, Sept. 2, 1958, 72 Stat. 1305; Pub. L. 88–563, §3(a), Sept. 2, 1964, 78 Stat. 843; Pub. L. 89–44, title I, §101(b)(6), June 21, 1965, 79 Stat. 136; Pub. L. 90–59, §4(b), July 31, 1967, 81 Stat. 154; Pub. L. 91–128, §4 (f), (g), Nov. 26, 1969, 83 Stat. 267; Pub. L. 92–178, title V, §504(a), Dec. 10, 1971, 85 Stat. 550; Pub. L. 94–455, title XIX, §§1904(b)(10)(A)(ii), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1817, 1834; Pub. L. 95–615, §207(c), Nov. 8, 1978, 92 Stat. 3108; Pub. L. 97–248, title III, §319, Sept. 3, 1982, 96 Stat. 610; Pub. L. 98–67, title I, §109(a), Aug. 5, 1983, 97 Stat. 383; Pub. L. 98–369, div. A, title VIII, §801(d)(12), July 18, 1984, 98 Stat. 997; Pub. L. 99–514, title XVIII, §1899A(52), Oct. 22, 1986, 100 Stat. 2961; Pub. L. 100–647, title I, §1015(q)(1), Nov. 10, 1988, 102 Stat. 3572; Pub. L. 101–239, title VII, §7713(a), Dec. 19, 1989, 103 Stat. 2394; Pub. L. 105–34, title XII, §1224, Aug. 5, 1997, 111 Stat. 1019; Pub. L. 105–206, title II, §2001(c), July 22, 1998, 112 Stat. 723; Pub. L. 109–222, title V, §516(b)(2), May 17, 2006, 120 Stat. 371; Pub. L. 110–172, §11(g)(19), Dec. 29, 2007, 121 Stat. 2491; Pub. L. 111–92, §17(a), (b), Nov. 6, 2009, 123 Stat. 2996; Pub. L. 111–147, title V, §522(a), Mar. 18, 2010, 124 Stat. 112.)

REFERENCES IN TEXT

The FSC Repeal and Extraterritorial Income Exclusion Act of 2000, referred to in subsec. (c)(1), is Pub. L. 106–519, Nov. 15, 2000, 114 Stat. 2423. For complete classification of this Act to the Code, see Short Title of 2000 Amendments note set out under section 1 of this title and Tables.

AMENDMENTS

2010—Subsec. (e)(4). Pub. L. 111–147 added par. (4).

2009—Subsec. (e)(1). Pub. L. 111–92, §17(b), substituted "Except as provided in paragraph (3), the Secretary may not" for "The Secretary may not" in second sentence.

Subsec. (e)(3). Pub. L. 111–92, §17(a), added par. (3).

2007—Subsec. (c). Pub. L. 110–172, §11(g)(19)(B), struck out "and FSC's" after "former DISCS" in heading.

Subsec. (c)(1). Pub. L. 110–172, §11(g)(19)(A), in introductory provisions, substituted ", former DISC, or former FSC (as defined in section 922 as in effect before its repeal by the FSC Repeal and Extraterritorial

Income Exclusion Act of 2000)" for "or former DISC or a FSC or former FSC".

2006—Subsecs. (g), (h). Pub. L. 109–222 added subsec. (g) and redesignated former subsec. (g) as (h).

1998—Subsecs. (f), (g). Pub. L. 105–206 added subsec. (f) and redesignated former subsec. (f) as (g).

1997—Subsec. (e)(2). Pub. L. 105–34 inserted at end "Notwithstanding the preceding sentence, the Secretary shall require partnerships having more than 100 partners to file returns on magnetic media."

1989—Subsec. (e). Pub. L. 101–239 substituted "magnetic media" for "magnetic tape" in heading and amended text generally, revising the content and structure of pars. (1) and (2).

1988—Subsec. (a). Pub. L. 100–647 substituted "or with respect to the collection thereof" for "or for the collection thereof".

1986—Subsec. (f). Pub. L. 99–514 substituted "subparts B and C" for "sections 6012 to 6019, inclusive".

1984—Subsec. (c). Pub. L. 98–369 inserted "and FSC's and former FSC's" in heading and "or a FSC or former FSC" in par. (1).

1983—Subsec. (e). Pub. L. 98–67 amended subsec. (e) generally, designating existing provisions as par. (1) and adding par. (2).

1982—Subsecs. (e), (f). Pub. L. 97–248 added subsec. (e) and redesignated former subsec. (e) as (f).

1978—Subsecs. (d), (e). Pub. L. 95–615 added subsec. (d) and redesignated former subsec. (d) as (e).

1976—Subsecs. (a), (b). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (c). Pub. L. 94–455, §§1904(b)(10)(A)(ii), 1906(b)(13)(A), redesignated subsec. (e) as (c) and struck out "or his delegate" after "Secretary" wherever appearing.

Subsec. (d). Pub. L. 94–455, §1904(b)(10)(A)(ii), redesignated subsec. (f) as (d). Former subsec. (d), which related to interest equalization tax returns, was struck out.

Subsecs. (e), (f). Pub. L. 94–455, §1904(b)(10)(A)(ii), redesignated subsecs. (e) and (f) as (c) and (d), respectively.

1971—Subsecs. (e), (f). Pub. L. 92–178 added subsec. (e) and redesignated former subsec. (e) as (f).

1969—Subsec. (d)(1)(B). Pub. L. 91–128, §4(f), inserted provisions excepting dispositions made under circumstances entitling the person to a credit under the provisions of section 4919 from the requirement that persons incurring liability for the tax imposed by section 4911 of this title, if he disposes of the stock or debt obligation with respect to which such liability was incurred prior to the filing of the return required by subparagraph (A), file a return of such tax.

Subsec. (d)(3). Pub. L. 91–128, §4(g), eased recordkeeping requirements by providing that nonparticipating be subject to the recordkeeping and reporting requirements prescribed by the Secretary or his delegate only insofar as they engage in sales or acquisitions in which the nonparticipating firm has received a validation certificate indicating the stock or debt obligation qualifies for the exemption or where the U.S. person acquiring the stock or debt obligation is subject to the interest equalization tax, including acquisitions where a broker's confirmation to the customer indicates, or should indicate that the particular acquisition is or may be subject to the tax.

1967—Subsec. (d)(1). Pub. L. 90–59 designated existing provisions as subpar. (A), substituted a copy of any return made during a quarter under subpar. (B) for a certificate of American ownership complying with section 4918(e) or a summary statement establishing exemption together with reasons for person's inability to establish prior American ownership as the document to accompany the list of acquisitions made during the calendar quarter for which an exemption is claimed under section 4918, struck out "a written confirmation, furnished in accordance with the requirements described in section 4918(c) or (d), is treated as conclusive proof of prior American ownership;" after "No return or accompanying evidence shall be required under this paragraph, in connection with any acquisition with respect to which", and added clauses (i), (ii), and (iii) and subpar. (B).

1965—Subsec. (c). Pub. L. 89–44 repealed subsec. (c) which related to return of retailers excise taxes by suppliers.

1964—Subsecs. (d), (e). Pub. L. 88–563 added subsec. (d) and redesignated former subsec. (d) as (e).

1958—Subsecs. (c), (d). Pub. L. 85–859 added subsec. (c) and redesignated former subsec. (c) as (d).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–147, title V, §522(c), Mar. 18, 2010, 124 Stat. 113, provided that: "The amendment made by this section [amending this section and section 6724 of this title] shall apply to returns the due date for which (determined without regard to extensions) is after the date of the enactment of this Act [Mar. 18, 2010]."

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–92, §17(c), Nov. 6, 2009, 123 Stat. 2996, provided that: "The amendments made by this section [amending this section] shall apply to returns filed after December 31, 2010."

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–222 applicable to disclosures the due date for which are after May 17, 2006, see section 516(d)(2) of Pub. L. 109–222, set out as an Effective Date note under section 4965 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XII, §1226, Aug. 5, 1997, 111 Stat. 1020, as amended by Pub. L. 105–206, title VI, §6012(e), July 22, 1998, 112 Stat. 819, provided that: "The amendments made by this part [part I (§§1221–1226) of subtitle C of title XII of Pub. L. 105–34, enacting part IV of subchapter K of chapter 1 of this title and subchapter D of chapter 63 of this title, and amending this section and sections 6012, 6031, 6724, 7421, 7459, 7482, and 7485 of this title] shall apply to partnership taxable years beginning after December 31, 1997."

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7713(b), Dec. 19, 1989, 103 Stat. 2394, provided that: "The amendment made by subsection (a) [amending this section] shall apply to returns the due date for which (determined without regard to extensions) is after December 31, 1989."

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1015(q)(2), Nov. 10, 1988, 102 Stat. 3572, provided that: "The amendment made by paragraph (1) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 10, 1988]."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–67 applicable with respect to payments made after Dec. 31, 1983, see section 110(a) of Pub. L. 98–67, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT; ELECTION OF PRIOR LAW

Amendment by Pub. L. 95–615 applicable to taxable years beginning after Dec. 31, 1977, with provision for election of prior law, see section 209 of Pub. L. 95–615, set out as an Effective Date of 1978 Amendment note under section 911 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1904(b)(10)(A)(ii) of Pub. L. 94–455 effective Feb. 1, 1977, see section 1904(d) of Pub. L. 94–455, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–178 applicable with respect to taxable years ending after Dec. 31, 1971, except that a corporation may not be a DISC for any taxable year beginning before Jan. 1, 1972, see section 507 of Pub. L. 92–178, set out as an Effective Date note under section 991 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–128, §4(i)(4), Nov. 26, 1969, 83 Stat. 269, provided that: "The amendments made by this section [amending this section and sections 4912, 4914, 4915, 4919, 4920, and 6680 of this title] shall apply with respect to acquisitions of debt obligations made after the date of the enactment of this Act [Nov. 26, 1969]."

EFFECTIVE DATE OF 1967 AMENDMENT

Pub. L. 90–59, §4(h), July 31, 1967, 81 Stat. 156, provided that: "The amendments made by this section [amending this section and sections 4918, 4920, and 6076 of this title] (other than by subsections (d) and (e)) shall apply with respect to acquisitions of stock and debt obligations made after July 14, 1967. The amendments made by subsections (d) and (e) [amending sections 6681 and 7241 of this title] shall take effect on the date of the enactment of this Act [July 31, 1967]."

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 applicable with respect to articles sold on or after June 22, 1965, see section

701(a) of Pub. L. 89–44, set out as a note under section 4161 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–859 effective on first day of first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1(c) of Pub. L. 85–859, Sept. 2, 1958, 72 Stat. 1275.

SHORT TITLE OF 1967 AMENDMENT

Pub. L. 90–59, §1(a), July 31, 1967, 81 Stat. 145, provided that: "This Act [amending this section and sections 4912, 4914 to 4920, 4931, 6076, 6681, and 7241 of this title] may be cited as the 'Interest Equalization Tax Extension Act of 1967'."

ELECTRONIC FILING OF TAX AND INFORMATION RETURNS

Pub. L. 105–206, title II, §2001(a), (b), (d), July 22, 1998, 112 Stat. 723, 725, provided that:

"(a) IN GENERAL.—It is the policy of Congress that—

"(1) paperless filing should be the preferred and most convenient means of filing Federal tax and information returns;

"(2) it should be the goal of the Internal Revenue Service to have at least 80 percent of all such returns filed electronically by the year 2007; and

"(3) the Internal Revenue Service should cooperate with and encourage the private sector by encouraging competition to increase electronic filing of such returns.

"(b) STRATEGIC PLAN.—

"(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [July 22, 1998], the Secretary of the Treasury or the Secretary's delegate (hereafter in this section referred to as the 'Secretary') shall establish a plan to eliminate barriers, provide incentives, and use competitive market forces to increase electronic filing gradually over the next 10 years while maintaining processing times for paper returns at 40 days. To the extent practicable, such plan shall provide that all returns prepared electronically for taxable years beginning after 2001 shall be filed electronically.

"(2) ELECTRONIC COMMERCE ADVISORY GROUP.—To ensure that the Secretary receives input from the private sector in the development and implementation of the plan required by paragraph (1), the Secretary shall convene an electronic commerce advisory group to include representatives from the small business community and from the tax practitioner, preparer, and computerized tax processor communities and other representatives from the electronic filing industry.

"(d) ANNUAL REPORTS.—Not later than June 30 of each calendar year after 1998, the Chairperson of the Internal Revenue Service Oversight Board, the Secretary of the Treasury, and the Chairperson of the electronic commerce advisory group established under subsection (b)(2) [set out as a note above] shall report to the Committees on Ways and Means, Appropriations, Government Reform and Oversight [now Committee on Oversight and Government Reform], and Small Business of the House of Representatives and the Committees on Finance, Appropriations, Governmental Affairs [now Committee on Homeland Security and Governmental Affairs], and Small Business [now Committee on Small Business and Entrepreneurship] of the Senate on—

"(1) the progress of the Internal Revenue Service in meeting the goal of receiving electronically 80 percent of tax and information returns by 2007;

"(2) the status of the plan required by subsection (b) [set out as a note above];

"(3) the legislative changes necessary to assist the Internal Revenue Service in meeting such goal; and

"(4) the effects on small businesses and the self-employed of electronically filing tax and information returns."

Pub. L. 105–206, title II, §2003(c), July 22, 1998, 112 Stat. 725, provided that: "In the case of taxable periods beginning after December 31, 1999, the Secretary of the Treasury or the Secretary's delegate shall, to the extent practicable, establish procedures to accept, in electronic form, any other information, statements, elections, or schedules, from taxpayers filing returns electronically, so that such taxpayers will not be required to file any paper."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

STUDY OF WAGE RETURNS ON MAGNETIC TAPE; REPORT TO CONGRESS NOT LATER THAN JULY 1, 1984

Pub. L. 98–67, title I, §109(b), Aug. 5, 1983, 97 Stat. 384, required Secretary of the Treasury, in consultation with Secretary of Health and Human Services, to conduct a study of feasibility of requiring persons to file, on magnetic media, returns under section 6011 of the Internal Revenue Code containing information described in section 6051(a) of such Code (relating to W–2s), and that not later than July 1, 1984, Secretary of the Treasury was to submit to Committee on Ways and Means of House of Representatives and Committee on Finance of Senate results of study.

REPORT ON FORMS

Pub. L. 97–248, title III, §353, Sept. 3, 1982, 96 Stat. 640, required Secretary of the Treasury to study and report to Congress, not later than June 30, 1983, methods of modifying the design of the forms used by the Internal Revenue Service to achieve greater accuracy in the reporting of income and the matching of information reports and returns with the returns of tax imposed.

STUDY OF SIMPLIFICATION OF TAX RETURNS

Pub. L. 95–600, title V, §551, Nov. 6, 1978, 92 Stat. 2890, required a study and investigation by Secretary of the Treasury with respect to simplification of Federal income tax returns, establishment of a task force to assist in conduct of study, and a report by Secretary on study and investigation to Congressional committees not later than 2 years after Nov. 6, 1978.

FIRST RETURN PERIOD FOR INTEREST EQUALIZATION TAX RETURNS

Pub. L. 89–243, §3(d)(1), Oct. 9, 1965, 79 Stat. 955, provided that the first period for which returns were to be made under subsec. (d)(1) of this section with respect to acquisitions made subject to tax by this section was the period commencing Feb. 11, 1965, and ending at the close of the calendar quarter in which the enactment of Pub. L. 89–243 [Oct. 9, 1965] occurred.

Pub. L. 88–563, §3(e), Sept. 2, 1964, 78 Stat. 845, provided that the first period for which returns were to be made under subsec. (d)(1) of this section was the period commencing July 19, 1963, and ending at the close of the calendar quarter in which the enactment of Pub. L. 88–563 [Sept. 2, 1964] occurred.

[1] So in original. Probably should be "that".

SUBPART B—INCOME TAX RETURNS

Sec.

6012. Persons required to make returns of income.

6013. Joint returns of income tax by husband and wife.

6014. Income tax return—tax not computed by taxpayer.

6015. Relief from joint and several liability on joint return.

[6016. Repealed.]

6017. Self-employment tax returns.

[6017A. Repealed.]

AMENDMENTS

1998—Pub. L. 105–206, title III, §3201(f), July 22, 1998, 112 Stat. 740, added item 6015.

1989—Pub. L. 101–239, title VII, §7711(b)(3), Dec. 19, 1989, 103 Stat. 2393, struck out item 6017A "Place of residence".

1984—Pub. L. 98–369, div. A, title IV, §412(c)(1), July 18, 1984, 98 Stat. 792, struck out item 6015 "Declaration of estimated income tax by individuals."

1972—Pub. L. 92–512, title I, §144(a)(2), Oct. 20, 1972, 86 Stat. 935, added item 6017A.

1968—Pub. L. 90–364, title I, §103(e)(7), June 28, 1968, 82 Stat. 264, struck out item 6016 "Declarations of estimated income tax by corporations."

§6012. Persons required to make returns of income

(a) General rule

Returns with respect to income taxes under subtitle A shall be made by the following:

(1)(A) Every individual having for the taxable year gross income which equals or exceeds the exemption amount, except that a return shall not be required of an individual—

(i) who is not married (determined by applying section 7703), is not a surviving spouse (as defined in section 2(a)), is not a head of a household (as defined in section 2(b)), and for the taxable year has gross income of less than the sum of the exemption amount plus the basic standard deduction applicable to such an individual,

(ii) who is a head of a household (as so defined) and for the taxable year has gross income of less than the sum of the exemption amount plus the basic standard deduction applicable to such an individual,

(iii) who is a surviving spouse (as so defined) and for the taxable year has gross income of less than the sum of the exemption amount plus the basic standard deduction applicable to such an individual, or

(iv) who is entitled to make a joint return and whose gross income, when combined with the gross income of his spouse, is, for the taxable year, less than the sum of twice the exemption amount plus the basic standard deduction applicable to a joint return, but only if such individual and his spouse, at the close of the taxable year, had the same household as their home.

Clause (iv) shall not apply if for the taxable year such spouse makes a separate return or any other taxpayer is entitled to an exemption for such spouse under section 151(c).

(B) The amount specified in clause (i), (ii), or (iii) of subparagraph (A) shall be increased by the amount of 1 additional standard deduction (within the meaning of section 63(c)(3)) in the case of an individual entitled to such deduction by reason of section 63(f)(1)(A) (relating to individuals age 65 or more), and the amount specified in clause (iv) of subparagraph (A) shall be increased by the amount of the additional standard deduction for each additional standard deduction to which the individual or his spouse is entitled by reason of section 63(f)(1).

(C) The exception under subparagraph (A) shall not apply to any individual—

(i) who is described in section 63(c)(5) and who has—

(I) income (other than earned income) in excess of the sum of the amount in effect under section 63(c)(5)(A) plus the additional standard deduction (if any) to which the individual is entitled, or

(II) total gross income in excess of the standard deduction, or

(ii) for whom the standard deduction is zero under section 63(c)(6).

(D) For purposes of this subsection—

(i) The terms "standard deduction", "basic standard deduction" and "additional standard deduction" have the respective meanings given such terms by section 63(c).

(ii) The term "exemption amount" has the meaning given such term by section 151(d). In the case of an individual described in section 151(d)(2), the exemption amount shall be zero.

(2) Every corporation subject to taxation under subtitle A;

(3) Every estate the gross income of which for the taxable year is $600 or more;

(4) Every trust having for the taxable year any taxable income, or having gross income of $600 or over, regardless of the amount of taxable income;

(5) Every estate or trust of which any beneficiary is a nonresident alien;

(6) Every political organization (within the meaning of section 527(e)(1)), and every fund treated under section 527(g) as if it constituted a political organization, which has political organization taxable income (within the meaning of section 527(c)(1)) for the taxable year; and [1]

(7) Every homeowners association (within the meaning of section 528(c)(1)) which has homeowners association taxable income (within the meaning of section 528(d)) for the taxable year.[1]

(8) Every estate of an individual under chapter 7 or 11 of title 11 of the United States Code

(relating to bankruptcy) the gross income of which for the taxable year is not less than the sum of the exemption amount plus the basic standard deduction under section 63(c)(2)(D).[1, 2]

except that subject to such conditions, limitations, and exceptions and under such regulations as may be prescribed by the Secretary, nonresident alien individuals subject to the tax imposed by section 871 and foreign corporations subject to the tax imposed by section 881 may be exempted from the requirement of making returns under this section.

(b) Returns made by fiduciaries and receivers

(1) Returns of decedents

If an individual is deceased, the return of such individual required under subsection (a) shall be made by his executor, administrator, or other person charged with the property of such decedent.

(2) Persons under a disability

If an individual is unable to make a return required under subsection (a), the return of such individual shall be made by a duly authorized agent, his committee, guardian, fiduciary or other person charged with the care of the person or property of such individual. The preceding sentence shall not apply in the case of a receiver appointed by authority of law in possession of only a part of the property of an individual.

(3) Receivers, trustees and assignees for corporations

In a case where a receiver, trustee in a case under title 11 of the United States Code, or assignee, by order of a court of competent jurisdiction, by operation of law or otherwise, has possession of or holds title to all or substantially all the property or business of a corporation, whether or not such property or business is being operated, such receiver, trustee, or assignee shall make the return of income for such corporation in the same manner and form as corporations are required to make such returns.

(4) Returns of estates and trusts

Returns of an estate, a trust, or an estate of an individual under chapter 7 or 11 of title 11 of the United States Code shall be made by the fiduciary thereof.

(5) Joint fiduciaries

Under such regulations as the Secretary may prescribe, a return made by one of two or more joint fiduciaries shall be sufficient compliance with the requirements of this section. A return made pursuant to this paragraph shall contain a statement that the fiduciary has sufficient knowledge of the affairs of the person for whom the return is made to enable him to make the return, and that the return is, to the best of his knowledge and belief, true and correct.

(6) IRA share of partnership income

In the case of a trust which is exempt from taxation under section 408(e), for purposes of this section, the trust's distributive share of items of gross income and gain of any partnership to which subchapter C or D of chapter 63 applies shall be treated as equal to the trust's distributive share of the taxable income of such partnership.

(c) Certain income earned abroad or from sale of residence

For purposes of this section, gross income shall be computed without regard to the exclusion provided for in section 121 (relating to gain from sale of principal residence) and without regard to the exclusion provided for in section 911 (relating to citizens or residents of the United States living abroad).

(d) Tax-exempt interest required to be shown on return

Every person required to file a return under this section for the taxable year shall include on such return the amount of interest received or accrued during the taxable year which is exempt from the tax imposed by chapter 1.

(e) Consolidated returns

For provisions relating to consolidated returns by affiliated corporations, see chapter 6.

(Aug. 16, 1954, ch. 736, 68A Stat. 732; Pub. L. 85–866, title I, §72(a), Sept. 2, 1958, 72 Stat. 1660; Pub. L. 88–272, title II, §206(b)(1), Feb. 26, 1964, 78 Stat. 40; Pub. L. 91–172, title IX, §941(a), (d), Dec. 30, 1969, 83 Stat. 726; Pub. L. 92–178, title II, §204(a), Dec. 10, 1971, 85 Stat. 511; Pub. L. 93–443, title IV, §407, Oct. 15, 1974, 88 Stat. 1297; Pub. L. 93–625, §10(b), Jan. 3, 1975, 88 Stat. 2119; Pub. L. 94–12, title II, §201(b), Mar. 29, 1975, 89 Stat. 29; Pub. L. 94–164, §2(a)(2), Dec. 23, 1975, 89 Stat. 970; Pub. L. 94–455, title IV, §401(b)(3), title XIX, §1906(b)(13)(A), title XXI, §2101(c), Oct. 4, 1976, 90 Stat. 1556, 1834, 1899; Pub. L. 95–30, title I, §104, May 23, 1977, 91 Stat. 139; Pub. L. 95–600, title I, §§101(c), 102(b)(1), 105(d), title IV, §404(c)(8), Nov. 6, 1978, 92 Stat. 2770, 2771, 2776, 2870; Pub. L. 95–615, §202(g)(5), formerly §202(f)(5), Nov. 8, 1978, 92 Stat. 3100, renumbered §202(g)(5), Pub. L. 96–222, title I, §108(a)(1)(A), Apr. 1, 1980, 94 Stat. 223; Pub. L. 96–589, §§3(b), 6(i)(5), Dec. 24, 1980, 94 Stat. 3400, 3410; Pub. L. 97–34, title I, §§104(d)(1), 111(b)(3), Aug. 13, 1981, 95 Stat. 189, 194; Pub. L. 98–369, div. A, title IV, §412(b)(3), July 18, 1984, 98 Stat. 792; Pub. L. 99–514, title I, §104(a)(1), title XV, §1525(a), Oct. 22, 1986, 100 Stat. 2103, 2749; Pub. L. 100–647, title I, §1001(b)(2), Nov. 10, 1988, 102 Stat. 3349; Pub. L. 105–34, title III, §312(d)(11), title XII, §1225, Aug. 5, 1997, 111 Stat. 840, 1019; Pub. L. 106–230, §3(a)(1), July 1, 2000, 114 Stat. 482; Pub. L. 107–276, §3(a), Nov. 2, 2002, 116 Stat. 1931; Pub. L. 111–226, title II, §219(b)(1), Aug. 10, 2010, 124 Stat. 2403.)

REFERENCES IN TEXT

Section 63(c)(2)(D), referred to in subsec. (a)(8), was repealed by Pub. L. 107–16, title III, §301(a)(4), June 7, 2001, 115 Stat. 53. Subsequently, section 63(c)(2)(C) was redesignated as section 63(c)(2)(D) by Pub. L. 107–147, title IV, §411(e)(1)(C), Mar. 9, 2002, 116 Stat. 46.

AMENDMENTS

2010—Subsec. (a)(8), (9). Pub. L. 111–226 redesignated par. (9) as (8) and struck out former par. (8) which read as follows: "Every individual who receives payments during the calendar year in which the taxable year begins under section 3507 (relating to advance payment of earned income credit)."

2002—Subsec. (a)(6). Pub. L. 107–276 struck out "or which has gross receipts of $25,000 or more for the taxable year (other than an organization to which section 527 applies solely by reason of subsection (f)(1) of such section)" after "(within the meaning of section 527(c)(1)) for the taxable year".

2000—Subsec. (a)(6). Pub. L. 106–230 inserted "or which has gross receipts of $25,000 or more for the taxable year (other than an organization to which section 527 applies solely by reason of subsection (f)(1) of such section)" after "taxable year".

1997—Subsec. (b)(6). Pub. L. 105–34, §1225, added par. (6).

Subsec. (c). Pub. L. 105–34, §312(d)(11), substituted "(relating to gain from sale of principal residence)" for "(relating to one-time exclusion of gain from sale of principal residence by individual who has attained age 55)".

1988—Subsec. (a)(1)(C)(i). Pub. L. 100–647 amended subcl. (I) generally, substituting "the sum of the amount in effect under section 63(c)(5)(A) plus the additional standard deduction (if any) to which the individual is entitled" for "the amount in effect under section 63(c)(5)(A) (relating to limitation on standard deduction in the case of certain dependents)".

1986—Subsec. (a)(1). Pub. L. 99–514, §104(a)(1)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows:

"(1)(A) Every individual having for the taxable year a gross income of the exemption amount or more, except that a return shall not be required of an individual (other than an individual described in subparagraph (C))—

"(i) who is not married (determined by applying section 143), is not a surviving spouse (as defined in section 2(a)), and for the taxable year has a gross income of less than the sum of the exemption amount plus the zero bracket amount applicable to such an individual,

"(ii) who is a surviving spouse (as so defined) and for the taxable year has a gross income of less than the sum of the exemption amount plus the zero bracket amount applicable to such an individual, or

"(iii) who is entitled to make a joint return under section 6013 and whose gross income, when combined with the gross income of his spouse, is, for the taxable year, less than the sum of twice the exemption amount plus the zero bracket amount applicable to a joint return, but only if such individual and

his spouse, at the close of the taxable year, had the same household as their home.
Clause (iii) shall not apply if for the taxable year such spouse makes a separate return or any other taxpayer is entitled to an exemption for such spouse under section 151(e).

"(B) The amount specified in clause (i) or (ii) of subparagraph (A) shall be increased by the exemption amount in the case of an individual entitled to an additional personal exemption under section 151(c)(1), and the amount specified in clause (iii) of subparagraph (A) shall be increased by the exemption amount for each additional personal exemption to which the individual or his spouse is entitled under section 151(c).

"(C) The exception under subparagraph (A) shall not apply to—

"(i) a nonresident alien individual;

"(ii) a citizen of the United States entitled to the benefits of section 931;

"(iii) an individual making a return under section 443(a)(1) for a period of less than 12 months on account of a change in his annual accounting period;

"(iv) an individual who has income (other than earned income) of the exemption amount or more and who is described in section 63(e)(1)(D); or

"(v) an estate or trust.

"(D) For purposes of this paragraph—

"(i) The term 'zero bracket amount' has the meaning given to such term by section 63(d).

"(ii) The term 'exemption amount' has the meaning given to such term by section 151(f)."

Subsec. (a)(9). Pub. L. 99–514, §104(a)(1)(B), substituted "not less than the sum of the exemption amount plus the basic standard deduction under section 63(c)(2)(D)" for "$2,700 or more".

Subsecs. (d), (e). Pub. L. 99–514, §1525(a), added subsec. (d) and redesignated former subsec. (d) as (e).

1984—Subsec. (b)(2). Pub. L. 98–369 struck out "or section 6015(a)" after "subsection (a)".

1981—Subsec. (a)(1). Pub. L. 97–34, §104(d)(1)(D), substituted "the exemption amount" for "$1,000", wherever appearing, substituted "the sum of the exemption amount plus the zero bracket amount applicable to such an individual" for "$3,300" in subpar. (A)(i) and for "$4,400" in subpar. (A)(ii), substituted "the sum of twice the exemption amount plus the zero bracket amount applicable to a joint return" for "$5,400" in subpar. (A)(iii), and added subpar. (D).

Subsec. (c). Pub. L. 97–34, §111(b)(3), substituted "relating to citizens or residents of the United States living abroad" for "relating to income earned by employees in certain camps".

1980—Subsec. (a)(9). Pub. L. 96–589, §3(b)(1), added par. (9).

Subsec. (b)(3). Pub. L. 96–589, §6(i)(5), substituted "trustee in a case under title 11 of the United States Code" for "trustee in bankruptcy".

Subsec. (b)(4). Pub. L. 96–589, §3(b)(2), inserted reference to estate of an individual under chapter 7 or 11 of title 11 of the United States Code.

1978—Subsec. (a)(1)(A). Pub. L. 95–600, §§101(c), 102(b)(1), substituted in provision preceding cl. (i), "$1,000" for "$750", in cl. (i), "$3,050" for "$2,950" and "$3,300" for "$3,050", in cl. (ii), "$4,150" for "$3,950" and "$4,400" for "$4,150", and in cl. (iii), "$4,900" for "$4,700" and "$5,400" for "$4,900".

Subsec. (a)(8). Pub. L. 95–600, §105(d), added par. (8).

Subsec. (c). Pub. L. 95–615 substituted "(relating to income earned by employees in certain camps)" for "(relating to earned income from sources without the United States)".

Pub. L. 95–600, §404(c)(8), inserted provisions relating to a one-time exclusion and principal residence, and substituted "55" for "65".

1977—Subsec. (a)(1)(A). Pub. L. 95–30 substituted "(other than an individual described in subparagraph (C))" for "(other than an individual referred to in section 142(b))" in provisions preceding cl. (i), "$2,950" for "$2,450" in cl. (i), "$3,950" for "$2,850" in cl. (ii), and "$4,700" for "$3,600" in cl. (iii).

Subsec. (a)(1)(B). Pub. L. 95–30 reenacted subpar. (B) without change.

Subsec. (a)(1)(C). Pub. L. 95–30 substituted provisions that the exception under subparagraph (A) shall not apply to a nonresident alien individual, a citizen of the United States entitled to the benefits of section 931, an individual making a return under section 443(a)(1) for a period of less than 12 months on account of a change in his annual accounting period, an individual who has income (other than earned income) of $750 or more and who is described in section 63(e)(1)(D), or an estate or trust, for provisions requiring that a return with respect to income taxes under subtitle A be made by every individual having for the taxable year a gross income of $750 or more and to whom section 141(e) (relating to limitations in case of certain dependent taxpayers) applied.

1976—Subsec. (a). Pub. L. 94–455, §1906(b)(13)(A), struck out in provisions following par. (7) "or his delegate" after "Secretary".

Subsec. (a)(1)(A), (B). Pub. L. 94–455, §401(b)(3), reenacted subpars. (A) and (B) without change.

Subsec. (a)(7). Pub. L. 94–455, §2101(c), added par. (7).

Subsec. (b)(5). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

1975—Subsec. (a)(1)(A). Pub. L. 94–164 substituted "$2,450" for "$2,350" in cl. (i), "$2,850" for "$2,650" in cl. (ii), and "$3,600" for "$3,400" in cl. (iii).

Pub. L. 94–12 substituted "(determined by applying section 143), is not a surviving spouse (as defined in section 2(a)), and for the taxable year has a gross income of less than $2,350" for "determined by applying section 143(a)) and for the taxable year has a gross income of less than $2,050, or" in cl. (i), added cl. (ii), redesignated existing cl. (ii) as (iii), in cl. (iii) as so redesignated substituted "$3,400" for "$2,800", and in provisions following cl. (iii) substituted "Clause (iii)" for "Clause (ii)".

Subsec. (a)(1)(B). Pub. L. 94–12 substituted "The amount specified in clause (i) or (ii) of subparagraph (A) shall be increased by $750" for "The $2,050 amount specified in subparagraph (A)(i) shall be increased to $2,800" and "the amount specified in clause (iii) of subparagraph (A) shall be increased by $750" for "the $2,800 amount specified in subparagraph (A)(ii) shall be increased by $750".

Subsec. (a)(6). Pub. L. 93–625 added par. (6) and struck out provision that Secretary or his delegate shall, by regulation, exempt from requirement of making returns under this section any political committee (as defined in section 301(d) of Federal Election Campaign Act of 1971) having no gross income for taxable year.

1974—Subsec. (a). Pub. L. 93–443 provided for exemption from tax returns requirement of political committees having no gross income for taxable year.

1971—Subsec. (a)(1). Pub. L. 92–178 substituted "$750" for "$600" in subpars. (A) and (B); "$2,050" for "1,700" in subpars. (A)(i) and (B); and "2,800" for "2,300" in subpars. (A)(ii) and (B), twice; and added subpar. (C), respectively.

1969—Subsec. (a)(1). Pub. L. 91–172, §941(a), (d), struck out after "$600 or more", "(except that any individual who has attained the age of 65 before the close of his taxable year shall be required to make a return only if he has for the taxable year a gross income of $1,200 or more)", designated remaining introductory text as subpar. (A), inserted remainder of subpars. (A) and (B), applicable to taxable years beginning after Dec. 31, 1969; and substituted "$750", "$1,750", and "$2,500" for "$600", "$1,700", and "$2,300" wherever appearing, effective with respect to taxable years beginning after Dec. 31, 1972.

1964—Subsec. (c). Pub. L. 88–272 inserted provisions relating to sale of residence.

1958—Subsecs. (c), (d). Pub. L. 85–866 added subsec. (c) and redesignated former subsec. (c) as (d).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–226 applicable to taxable years beginning after Dec. 31, 2010, see section 219(c) of Pub. L. 111–226, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–276, §3(d), Nov. 2, 2002, 116 Stat. 1932, provided that: "The amendments made by this section [amending this section and sections 6033 and 6104 of this title] shall take effect as if included in the amendments made by Public Law 106–230."

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–230, §3(d), July 1, 2000, 114 Stat. 483, provided that: "The amendments made by this section [amending this section and sections 6033, 6104, and 6652 of this title] shall apply to returns for taxable years beginning after June 30, 2000."

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 312(d)(11) of Pub. L. 105–34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d)[(e)] of Pub. L. 105–34, set out as a note under section 121 of this title.

Amendment by section 1225 of Pub. L. 105–34 applicable to partnership taxable years beginning after Dec. 31, 1997, see section 1226 of Pub. L. 105–34, as amended, set out as a note under section 6011 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 104(a)(1) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Pub. L. 99–514, title XV, §1525(b), Oct. 22, 1986, 100 Stat. 2749, provided that: "The amendment made by

subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1986."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable with respect to taxable years beginning after Dec. 31, 1984, see section 414(a) of Pub. L. 98–369, set out as a note under section 6654 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 104(d)(1) of Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1984, see section 104(e) of Pub. L. 97–34, set out as a note under section 1 of this title.

Amendment by section 111(b)(3) of Pub. L. 97–34 applicable with respect to taxable years beginning after Dec. 31, 1981, see section 115 of Pub. L. 97–34, set out as a note under section 911 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 6(i)(5) of Pub. L. 96–589 effective Oct. 1, 1979, but not applicable to proceedings under title 11 commenced before Oct. 1, 1979, and amendment by section 3(b) of Pub. L. 96–589 applicable to bankruptcy cases commencing more than 90 days after Dec. 24, 1980, see section 7(b), (e) of Pub. L. 96–589, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 101(c) of Pub. L. 95–600 effective with respect to taxable years beginning after Dec. 31, 1978, see section 101(f)(1) of Pub. L. 95–600, set out as a note under section 1 of this title.

Amendment by section 102(b)(1) of Pub. L. 95–600 effective with respect to taxable years beginning after Dec. 31, 1978, see section 102(d)(1) of Pub. L. 95–600, set out as a note under section 151 of this title.

Amendment by section 105(d) of Pub. L. 95–600 effective with respect to taxable years beginning after Dec. 31, 1978, see section 105(g)(1) of Pub. L. 95–600, set out as a note under section 32 of this title.

Amendment by section 404(c)(8) of Pub. L. 95–600 applicable to sales or exchanges after July 26, 1978, in taxable years ending after such date, see section 404(d)(1) of Pub. L. 95–600, set out as a note under section 121 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT; ELECTION OF PRIOR LAW

Amendment by Pub. L. 95–615 applicable to taxable years beginning after Dec. 31, 1977, with provision for election of prior law, see section 209 of Pub. L. 95–615, set out as a note under section 911 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 401(b)(3) of Pub. L. 94–455 applicable to taxable years ending after Dec. 31, 1975, see section 401(e) of Pub. L. 94–455, set out as a note under section 32 of this title.

EFFECTIVE AND TERMINATION DATES OF 1975 AMENDMENTS

Amendment by Pub. L. 94–164 applicable to taxable years ending after Dec. 31, 1975 and before Jan. 1, 1977, see section 2(g) of Pub. L. 94–164, set out as a note under section 32 of this title.

Amendment by Pub. L. 94–12 applicable to taxable years ending after Dec. 31, 1974, and to cease to apply to taxable years ending after Dec. 31, 1976, see section 209(a) of Pub. L. 94–12, as amended, set out as a note under section 3 of this title.

EFFECTIVE DATE OF 1974 AMENDMENTS

Amendment by Pub. L. 93–625 applicable to taxable years beginning after Dec. 31, 1974, see section 10(e) of Pub. L. 93–625, set out as an Effective Date note under section 527 of this title.

Amendment by Pub. L. 93–443 applicable with respect to taxable years beginning after Dec. 31, 1971, see section 410(c)(2) of Pub. L. 93–443, set out as a note under section 30101 of Title 52, Voting and Elections.

EFFECTIVE DATE OF 1971 AMENDMENT

Pub. L. 92–178, title II, §204(a), Dec. 10, 1971, 85 Stat. 511, provided that the amendment made by section 204(a) is effective with respect to taxable years beginning after Dec. 31, 1971.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 941(a) of Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969,

see section 941(c) of Pub. L. 91–172, set out as a note under section 151 of this title.

Amendment by section 941(d) of Pub. L. 91–172, which substituted "$750", "$1,750", and "$2,500" for "$600", "$1,700" and "$2,300" wherever appearing, effective with respect to taxable years beginning after Dec. 31, 1972, was repealed by Pub. L. 92–178, title II, §204(b), Dec. 10, 1971, 85 Stat. 511.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to dispositions after Dec. 31, 1963, in taxable years ending after such date, see section 206(c) of Pub. L. 88–272, set out as an Effective Date note under section 121 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85–866, title I, §72(c), Sept. 2, 1958, 72 Stat. 1660, provided that: "The amendments [amending this section and section 911 of this title] made by this section shall apply to taxable years beginning after December 31, 1957."

RETURN-FREE TAX SYSTEM

Pub. L. 105–206, title II, §2004, July 22, 1998, 112 Stat. 726, provided that:

"(a) IN GENERAL.—The Secretary of the Treasury or the Secretary's delegate shall develop procedures for the implementation of a return-free tax system under which appropriate individuals would be permitted to comply with the Internal Revenue Code of 1986 without making the return required under section 6012 of such Code for taxable years beginning after 2007.

"(b) REPORT.—Not later than June 30 of each calendar year after 1999, the Secretary shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on—

"(1) what additional resources the Internal Revenue Service would need to implement such a system;

"(2) the changes to the Internal Revenue Code of 1986 that could enhance the use of such a system;

"(3) the procedures developed pursuant to subsection (a); and

"(4) the number and classes of taxpayers that would be permitted to use the procedures developed pursuant to subsection (a)."

NO RETURN REQUIRED OF INDIVIDUAL WHOSE ONLY GROSS INCOME IS GRANT OF $1,000 FROM STATE

Pub. L. 97–424, title V, §542, Jan. 6, 1983, 96 Stat. 2195, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) IN GENERAL.—Nothing in section 6012(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall be construed to require the filing of a return with respect to income taxes under subtitle A of such code by an individual whose only gross income for the taxable year is a grant of $1,000 received from a State which made such grants generally to residents of such State.

"(b) EFFECTIVE DATE.—Subsection (a) shall apply to taxable years beginning after December 31, 1981."

EXEMPTION FROM FILING REQUIREMENT FOR PRIOR YEARS WHERE INCOME OF POLITICAL PARTY WAS $100 OR LESS

Pub. L. 93–625, §10(f), Jan. 3, 1975, 88 Stat. 2119, provided for exemption from filing requirement for a taxable year beginning after Dec. 31, 1971, and before Jan. 1, 1975, of any section 527(e)(1) organization where income of political organization was $100 or less.

[1] *So in original.*

[2] *See References in Text note below.*

§6013. Joint returns of income tax by husband and wife

(a) Joint returns

A husband and wife may make a single return jointly of income taxes under subtitle A, even though one of the spouses has neither gross income nor deductions, except as provided below:

(1) no joint return shall be made if either the husband or wife at any time during the taxable year

is a nonresident alien;

(2) no joint return shall be made if the husband and wife have different taxable years; except that if such taxable years begin on the same day and end on different days because of the death of either or both, then the joint return may be made with respect to the taxable year of each. The above exception shall not apply if the surviving spouse remarries before the close of his taxable year, nor if the taxable year of either spouse is a fractional part of a year under section 443(a)(1);

(3) in the case of death of one spouse or both spouses the joint return with respect to the decedent may be made only by his executor or administrator; except that in the case of the death of one spouse the joint return may be made by the surviving spouse with respect to both himself and the decedent if no return for the taxable year has been made by the decedent, no executor or administrator has been appointed, and no executor or administrator is appointed before the last day prescribed by law for filing the return of the surviving spouse. If an executor or administrator of the decedent is appointed after the making of the joint return by the surviving spouse, the executor or administrator may disaffirm such joint return by making, within 1 year after the last day prescribed by law for filing the return of the surviving spouse, a separate return for the taxable year of the decedent with respect to which the joint return was made, in which case the return made by the survivor shall constitute his separate return.

(b) Joint return after filing separate return

(1) In general

Except as provided in paragraph (2), if an individual has filed a separate return for a taxable year for which a joint return could have been made by him and his spouse under subsection (a) and the time prescribed by law for filing the return for such taxable year has expired, such individual and his spouse may nevertheless make a joint return for such taxable year. A joint return filed by the husband and wife under this subsection shall constitute the return of the husband and wife for such taxable year, and all payments, credits, refunds, or other repayments made or allowed with respect to the separate return of either spouse for such taxable year shall be taken into account in determining the extent to which the tax based upon the joint return has been paid. If a joint return is made under this subsection, any election (other than the election to file a separate return) made by either spouse in his separate return for such taxable year with respect to the treatment of any income, deduction, or credit of such spouse shall not be changed in the making of the joint return where such election would have been irrevocable if the joint return had not been made. If a joint return is made under this subsection after the death of either spouse, such return with respect to the decedent can be made only by his executor or administrator.

(2) Limitations for making of election

The election provided for in paragraph (1) may not be made—

(A) after the expiration of 3 years from the last date prescribed by law for filing the return for such taxable year (determined without regard to any extension of time granted to either spouse); or

(B) after there has been mailed to either spouse, with respect to such taxable year, a notice of deficiency under section 6212, if the spouse, as to such notice, files a petition with the Tax Court within the time prescribed in section 6213; or

(C) after either spouse has commenced a suit in any court for the recovery of any part of the tax for such taxable year; or

(D) after either spouse has entered into a closing agreement under section 7121 with respect to such taxable year, or after any civil or criminal case arising against either spouse with respect to such taxable year has been compromised under section 7122.

(3) When return deemed filed

(A) Assessment and collection

For purposes of section 6501 (relating to periods of limitations on assessment and collection), and for purposes of section 6651 (relating to delinquent returns), a joint return made under this subsection shall be deemed to have been filed—

(i) Where both spouses filed separate returns prior to making the joint return—on the date the last separate return was filed (but not earlier than the last date prescribed by law for filing the return of either spouse);

(ii) Where only one spouse filed a separate return prior to the making of the joint return, and the other spouse had less than the exemption amount of gross income for such taxable year—on the date of the filing of such separate return (but not earlier than the last date prescribed by law for the filing of such separate return); or

(iii) Where only one spouse filed a separate return prior to the making of the joint return, and the other spouse had gross income of the exemption amount or more for such taxable year—on the date of the filing of such joint return.

For purposes of this subparagraph, the term "exemption amount" has the meaning given to such term by section 151(d). For purposes of clauses (ii) and (iii), if the spouse whose gross income is being compared to the exemption amount is 65 or over, such clauses shall be applied by substituting "the sum of the exemption amount and the additional standard deduction under section 63(c)(2) by reason of section 63(f)(1)(A)" for "the exemption amount".

(B) Credit or refund

For purposes of section 6511, a joint return made under this subsection shall be deemed to have been filed on the last date prescribed by law for filing the return for such taxable year (determined without regard to any extension of time granted to either spouse).

(4) Additional time for assessment

If a joint return is made under this subsection, the periods of limitations provided in sections 6501 and 6502 on the making of assessments and the beginning of levy or a proceeding in court for collection shall with respect to such return include one year immediately after the date of the filing of such joint return (computed without regard to the provisions of paragraph (3)).

(5) Additions to the tax and penalties

(A) Coordination with part II of subchapter A of chapter 68

For purposes of part II of subchapter A of chapter 68, where the sum of the amounts shown as tax on the separate returns of each spouse is less than the amount shown as tax on the joint return made under this subsection—

(i) such sum shall be treated as the amount shown on the joint return,

(ii) any negligence (or disregard of rules or regulations) on either separate return shall be treated as negligence (or such disregard) on the joint return, and

(iii) any fraud on either separate return shall be treated as fraud on the joint return.

(B) Criminal penalty

For purposes of section 7206(1) and (2) and section 7207 (relating to criminal penalties in the case of fraudulent returns) the term "return" includes a separate return filed by a spouse with respect to a taxable year for which a joint return is made under this subsection after the filing of such separate return.

(c) Treatment of joint return after death of either spouse

For purposes of sections 15, 443, and 7851(a)(1)(A), where the husband and wife have different taxable years because of the death of either spouse, the joint return shall be treated as if the taxable years of both spouses ended on the date of the closing of the surviving spouse's taxable year.

(d) Special rules

For purposes of this section—

(1) the status as husband and wife of two individuals having taxable years beginning on the same day shall be determined—

(A) if both have the same taxable year—as of the close of such year; or

(B) if one dies before the close of the taxable year of the other—as of the time of such death;

(2) an individual who is legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married; and

(3) if a joint return is made, the tax shall be computed on the aggregate income and the liability with respect to the tax shall be joint and several.

[(e) Repealed. Pub. L. 105–206, title III, §3201(e)(1), July 22, 1998, 112 Stat. 740]

(f) Joint return where individual is in missing status

For purposes of this section and subtitle A—

(1) Election by spouse

If—

(A) an individual is in a missing status (within the meaning of paragraph (3)) as a result of service in a combat zone (as determined for purposes of section 112), and

(B) the spouse of such individual is otherwise entitled to file a joint return for any taxable year which begins on or before the day which is 2 years after the date designated under section 112 as the date of termination of combatant activities in such zone,

then such spouse may elect under subsection (a) to file a joint return for such taxable year. With respect to service in the combat zone designated for purposes of the Vietnam conflict, such election may be made for any taxable year while an individual is in missing status.

(2) Effect of election

If the spouse of an individual described in paragraph (1)(A) elects to file a joint return under subsection (a) for a taxable year, then, until such election is revoked—

(A) such election shall be valid even if such individual died before the beginning of such year, and

(B) except for purposes of section 692 (relating to income taxes of members of the Armed Forces, astronauts, and victims of certain terrorist attacks on death), the income tax liability of such individual, his spouse, and his estate shall be determined as if he were alive throughout the taxable year.

(3) Missing status

For purposes of this subsection—

(A) Uniformed services

A member of a uniformed service (within the meaning of section 101(3) of title 37 of the United States Code) is in a missing status for any period for which he is entitled to pay and allowances under section 552 of such title 37.

(B) Civilian employees

An employee (within the meaning of section 5561(2) of title 5 of the United States Code) is in a missing status for any period for which he is entitled to pay and allowances under section 5562 of such title 5.

(4) Making of election; revocation

An election described in this subsection with respect to any taxable year may be made by filing a joint return in accordance with subsection (a) and under such regulations as may be prescribed by the Secretary. Such an election may be revoked by either spouse on or before the due date (including extensions) for such taxable year, and, in the case of an executor or administrator, may be revoked by disaffirming as provided in the last sentence of subsection (a)(3).

(g) Election to treat nonresident alien individual as resident of the United States

(1) In general

A nonresident alien individual with respect to whom this subsection is in effect for the taxable year shall be treated as a resident of the United States—

(A) for purposes of chapter 1 for all of such taxable year, and

(B) for purposes of chapter 24 (relating to wage withholding) for payments of wages made during such taxable year.

(2) Individuals with respect to whom this subsection is in effect

This subsection shall be in effect with respect to any individual who, at the close of the taxable year for which an election under this subsection was made, was a nonresident alien individual married to a citizen or resident of the United States, if both of them made such election to have the benefits of this subsection apply to them.

(3) Duration of election

An election under this subsection shall apply to the taxable year for which made and to all subsequent taxable years until terminated under paragraph (4) or (5); except that any such election shall not apply for any taxable year if neither spouse is a citizen or resident of the United States at any time during such year.

(4) Termination of election

An election under this subsection shall terminate at the earliest of the following times:

(A) Revocation by taxpayers

If either taxpayer revokes the election, as of the first taxable year for which the last day prescribed by law for filing the return of tax under chapter 1 has not yet occurred.

(B) Death

In the case of the death of either spouse, as of the beginning of the first taxable year of the spouse who survives following the taxable year in which such death occurred; except that if the spouse who survives is a citizen or resident of the United States who is a surviving spouse entitled to the benefits of section 2, the time provided by this subparagraph shall be as of the close of the last taxable year for which such individual is entitled to the benefits of section 2.

(C) Legal separation

In the case of the legal separation of the couple under a decree of divorce or of separate maintenance, as of the beginning of the taxable year in which such legal separation occurs.

(D) Termination by Secretary

At the time provided in paragraph (5).

(5) Termination by Secretary

The Secretary may terminate any election under this subsection for any taxable year if he determines that either spouse has failed—

(A) to keep such books and records,

(B) to grant such access to such books and records, or

(C) to supply such other information,

as may be reasonably necessary to ascertain the amount of liability for taxes under chapter 1 of either spouse for such taxable year.

(6) Only one election

If any election under this subsection for any two individuals is terminated under paragraph (4) or (5) for any taxable year, such two individuals shall be ineligible to make an election under this subsection for any subsequent taxable year.

(h) Joint return, etc., for year in which nonresident alien becomes resident of United States

(1) In general

If—

(A) any individual is a nonresident alien individual at the beginning of any taxable year but is a resident of the United States at the close of such taxable year,

(B) at the close of such taxable year, such individual is married to a citizen or resident of the United States, and

(C) both individuals elect the benefits of this subsection at the time and in the manner prescribed by the Secretary by regulation,

then the individual referred to in subparagraph (A) shall be treated as a resident of the United States for purposes of chapter 1 for all of such taxable year, and for purposes of chapter 24 (relating to wage withholding) for payments of wages made during such taxable year.

(2) Only one election

If any election under this subsection applies for any 2 individuals for any taxable year, such 2 individuals shall be ineligible to make an election under this subsection for any subsequent taxable year.

(Aug. 16, 1954, ch. 736, 68A Stat. 733; Pub. L. 85–866, title I, §73, Sept. 2, 1958, 72 Stat. 1660; Pub. L. 91–172, title VIII, §801(a)(2), (b)(2), (c)(2), (d)(2), Dec. 30, 1969, 83 Stat. 675, 676; Pub. L. 91–679, §1, Jan. 12, 1971, 84 Stat. 2063; Pub. L. 92–178, title II, §201(a)(2), (b)(2), (c), Dec. 10, 1971, 85 Stat. 510, 511; Pub. L. 93–597, §3(a), Jan. 2, 1975, 88 Stat. 1950; Pub. L. 94–455, title X, §1012(a)(1), title XIX, §1906(a)(1), (b)(13)(A), Oct. 4, 1976, 90 Stat. 1612, 1824, 1834; Pub. L. 94–569, §3(d), Oct. 20, 1976, 90 Stat. 2699; Pub. L. 95–600, title I, §102(b)(2), title VII, §701(u)(15)(A)–(C), (16)(A), Nov. 6, 1978, 92 Stat. 2771, 2919, 2920; Pub. L. 97–34, title I, §104(d)(2), Aug. 13, 1981, 95 Stat. 189; Pub. L. 97–248, title III, §§307(a)(4), (5), 308(a), Sept. 3, 1982, 96 Stat. 589, 591; Pub. L. 97–448, title III, §307(c), Jan. 12, 1983, 96 Stat. 2407; Pub. L. 98–67, title I, §102(a), Aug. 5, 1983, 97 Stat. 369; Pub. L. 98–369, div. A, title IV, §§424(a), 474(b)(2), July 18, 1984, 98 Stat. 801, 830; Pub. L. 99–514, title I, §104(a)(2), title XVII, §1708(a)(3), Oct. 22, 1986, 100 Stat. 2104, 2782; Pub. L. 100–647, title I, §1015(b)(1), Nov. 10, 1988, 102 Stat. 3568; Pub. L. 101–239, title VII, §7721(c)(6), Dec. 19, 1989, 103 Stat. 2399; Pub. L. 101–508, title XI, §11704(a)(22), Nov. 5, 1990, 104 Stat. 1388–519; Pub. L. 104–168, title IV, §402(a), July 30, 1996, 110 Stat. 1459; Pub. L. 105–206, title III, §3201(e)(1), title VI, §6011(e)(2), July 22, 1998, 112 Stat. 740, 818; Pub. L. 107–134, title I, §101(b)(2), Jan. 23, 2002, 115 Stat. 2428; Pub. L. 108–121, title I, §110(a)(2)(B), Nov. 11, 2003, 117 Stat. 1342.)

AMENDMENTS

2003—Subsec. (f)(2)(B). Pub. L. 108–121 inserted ", astronauts," after "Forces".

2002—Subsec. (f)(2)(B). Pub. L. 107–134 inserted "and victims of certain terrorist attacks" before "on death".

1998—Subsec. (e). Pub. L. 105–206, §3201(e)(1), struck out subsec. (e), which had: in par. (1), declared that spouse was relieved of liability for tax where joint return had been made, there was substantial understatement of tax attributable to grossly erroneous items of one spouse, other spouse established that he or she did not know that there was such substantial understatement, and it would be inequitable to hold other spouse liable; in pars. (2) and (3), defined terms "grossly erroneous items" and "substantial understatement", respectively; in par. (4), directed that understatement had to exceed specified percentage of spouse's income; and in par. (5) declared that determination of spouse, to whom items of gross income were attributable would be made without regard to community property laws.

Subsecs. (g)(1)(A), (5), (h)(1). Pub. L. 105–206, §6011(e)(2), substituted "chapter 1" for "chapters 1 and 5".

1996—Subsec. (b)(2). Pub. L. 104–168 redesignated subpars. (B) to (E) as (A) to (D), respectively, and struck out former subpar. (A) which read as follows: "unless there is paid in full at or before the time of the filing of the joint return the amount shown as tax upon such joint return; or".

1990—Subsec. (e)(3). Pub. L. 101–508 substituted "section 6662(d)(2)(A)" for "section 6661(b)(2)(A)".

1989—Subsec. (b)(5)(A). Pub. L. 101–239 substituted "part II of subchapter A of chapter 68" for "section 6653" in heading and in text.

1988—Subsec. (b)(5)(A). Pub. L. 100–647 amended subpar. (A) generally. Prior to amendment, subpar. (A) related to additions to tax when amount shown as tax by husband and wife on joint return exceeds aggregate of amounts shown as tax on separate return of each spouse.

1986—Subsec. (b)(3)(A). Pub. L. 99–514, §104(a)(2), struck out "(twice the exemption amount in case such spouse was 65 or over)" before "for such taxable year" in cls. (ii) and (iii), substituted "section 151(d)" for "section 151(f)" in concluding provisions, and inserted last sentence.

Subsec. (f)(1). Pub. L. 99–514, §1708(a)(3), substituted "such election may be made for any taxable year while an individual is in missing status" for "no such election may be made for any taxable year beginning after December 31, 1982".

1984—Subsec. (c). Pub. L. 98–369, §474(b)(2), substituted "15" for "21".

Subsec. (e). Pub. L. 98–369, §424(a), in amending subsec. (e) generally, reenacted as par. (1)(A) part of former par. (1)(A); incorporated in par. (1)(B) part of former par. (1)(A), substituting "there is a substantial understatement of tax attributable to grossly erroneous items of one spouse" for "there was omitted from gross income an amount properly includable therein which is attributable to one spouse and which is in excess of 25 percent of the amount of gross income stated in the return"; redesignated as par. (1)(C) former par. (1)(B), substituting "had no reason to know, that there was such substantial understatement" for "had no reason to know of, such omission"; reenacted as par. (1)(D) former par. (1)(C), substituting preceding ", it is inequitable" the words "all the facts and circumstances" for "whether or not the other spouse significantly benefited directly or indirectly from the items omitted from gross income and taking into account all other facts and circumstances" and "attributable to such substantial understatement" for "attributable to such omission"; substituted in concluding text "attributable to such substantial understatement" for "attributable to such omission from gross income"; added pars. (2) to (4); and incorporated in provisions designated par. (5) similar provisions of former par. (2)(A), substituting as par. heading "Special rule for community property income" for "Special rules" and deleting former par. (2)(B) respecting determination as provided in section 6501(e)(1)(A) of amount omitted from gross income.

1983—Pub. L. 98–67 repealed amendments made by Pub. L. 97–248. See 1982 Amendment note below.

Subsec. (f)(1). Pub. L. 97–448 substituted "December 31, 1982" for "January 2, 1978".

1982—Subsecs. (g)(1)(B). (h)(1). Pub. L. 97–248 provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, subsec. (g)(1)(B) is amended by substituting "(relating to withholding on wages, interest, dividends, and patronage dividends)" for "(relating to wage withholding)" and by striking out "of wages", and subsec. (h)(1) is amended by substituting "(relating to withholding on wages, interest, dividends, and patronage dividends)" for "(relating to wage withholding)" and by striking out "of wages". Section 102(a), (b) of Pub. L. 98–67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§301–308) of title III of Pub. L. 97–248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 [now 1986] [this title] shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

1981—Subsec. (b)(3)(A). Pub. L. 97–34 substituted "the exemption amount" for "$1,000" and "twice the exemption amount" for "$2,000" in cls. (ii) and (iii) and inserted provision following cl. (iii) defining "exemption amount".

1978—Subsec. (b)(3)(A). Pub. L. 95–600, §102(b)(2), increased the exemptions wherever appearing from $750 and $1500 to $1,000 and $2,000, respectively, with respect to taxable years beginning after Dec. 31, 1978.

Subsec. (g)(1). Pub. L. 95–600, §701(u)(15)(A), amended par. (1) generally, designating existing provisions as introductory material and par. (A), and in such par. (A) inserting reference to chapter 5, and adding par. (2).

Subsec. (g)(2). Pub. L. 95–600, §701(u)(16)(A), substituted "who, at the close of the taxable year for which an election under this subsection was made," for "who, at the time an election was made under this subsection,".

Subsec. (g)(5). Pub. L. 95–600, §701(u)(15)(B), substituted "chapters 1 and 5" for "chapter 1".

Subsec. (h)(1). Pub. L. 95–600, §701(u)(15)(C), substituted "chapters 1 and 5" for "chapter 1" and inserted provision relating to chapter 24 of this title.

1976—Subsec. (b)(2)(C). Pub. L. 94–455, §1906(a)(1)(A), struck out "of the United States" after "Tax Court".

Subsec. (d). Pub. L. 94–455, §1906(a)(1)(B), (C), substituted in heading "Special rules" for "Definitions", in par. (1)(A) "of such year; or" for "of such year; and", and in par. (1)(B) "of such death;" for "of such death; and".

Subsec. (e)(1). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (f)(1). Pub. L. 94–569 substituted "after January 2, 1978" for "more than 2 years after the date of the enactment of this sentence" after "With respect to service in the combat zone designated for purposes of the Vietnam conflict, no such election may be made for any taxable year beginning".

Subsec. (f)(4). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsecs. (g), (h). Pub. L. 94–455, §1012(a)(1), added subsecs. (g) and (h).

1975—Subsec. (f). Pub. L. 93–597 added subsec. (f).

1971—Subsec. (b)(3)(A). Pub. L. 92–178 increased the exemptions wherever appearing from $650 and $1,300 to $675 and $1,350, respectively, with respect to taxable years beginning after Dec. 1970, and before

Jan. 1, 1972, and to $750 and $1,500, respectively, with respect to taxable years beginning after Dec. 31, 1971.

Subsec. (e). Pub. L. 91–679 added subsec. (e).

1969—Subsec. (b)(3)(A). Pub. L. 91–172, §801(a)(2), (b)(2), (c)(2), (d)(2), increased the exemptions wherever appearing from $600 and $1,200 to $625 and $1,250, respectively with respect to taxable years ending Dec. 31, 1970, and to $650 and $1,300, respectively, with respect to taxable years beginning after Dec. 31, 1970, and before Jan. 1, 1972, to $700 and $1,400, respectively, with respect to taxable years beginning after Dec. 31, 1971, and before Jan. 1, 1973, and to $750 and $1,500, respectively, with respect to taxable years beginning after Dec. 31, 1972.

1958—Subsec. (b)(2)(C). Pub. L. 85–866 substituted "section 6213" for "such section".

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–121 applicable with respect to any astronaut whose death occurs after Dec. 31, 2002, see section 110(a)(4) of Pub. L. 108–121, set out as a note under section 5 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–134 applicable to taxable years ending before, on, or after Sept. 11, 2001, with provisions relating to waiver of limitations, see section 101(d) of Pub. L. 107–134, set out as a note under section 692 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 3201 of Pub. L. 105–206 applicable to any liability for tax arising after July 22, 1998, and any liability for tax arising on or before such date but remaining unpaid as of such date, see section 3201(g)(1) of Pub. L. 105–206, set out as a note under section 6015 of this title.

Amendment by section 6011(e)(2) of Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates (see section 1131 of Pub. L. 105–34), see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–168, title IV, §402(b), July 30, 1996, 110 Stat. 1459, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [July 30, 1996]."

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1989, see section 7721(d) of Pub. L. 101–239, set out as a note under section 461 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1015(b)(4), Nov. 10, 1988, 102 Stat. 3569, provided that: "The amendments made by this subsection (other than paragraph (3)) [amending this section and sections 6601 and 6653 of this title] shall apply to returns the due date for which (determined without regard to extensions) is after December 31, 1988."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 104(a)(2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 1708(a)(3) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1982, see section 1708(b) of Pub. L. 99–514, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title IV, §424(c), July 18, 1984, 98 Stat. 803, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–647, title VI, §6004, Nov. 10, 1988, 102 Stat. 3685, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by subsections (a) and (b) [amending this section and section 66 of this title] shall apply to all taxable years to which the Internal Revenue Code of 1986 [formerly I.R.C. 1954] applies. Corresponding provisions shall be deemed to be included in the Internal Revenue Code of 1939 and shall apply to all taxable years to which such Code applies.

"(2) AUTHORITY TO DISREGARD COMMUNITY PROPERTY LAWS.—Subsection (b) of section 66 of the Internal Revenue Code of 1986, as added by subsection (b), shall apply to taxable years beginning after

December 31, 1984.

"(3) TRANSITIONAL RULE.—If—

"(A) a joint return under section 6013 of the Internal Revenue Code of 1954 was filed before January 1, 1985,

"(B) on such return there is an understatement (as defined in section 6661(b)(2)(A) of such Code) which is attributable to disallowed deductions attributable to activities of one spouse,

"(C) the amount of such disallowed deductions exceeds the taxable income shown on such return,

"(D) without regard to any determination before October 21, 1988, the other spouse establishes that in signing the return he or she did not know, and had no reason to know, that there was such an understatement, and

"(E) the marriage between such spouses terminated and immediately after such termination the net worth of the other spouse was less than $10,000,

notwithstanding any law or rule of law (including res judicata), the other spouse shall be relieved of liability for tax (including interest, penalties, and other amounts) for such taxable year to the extent such liability is attributable to such understatement, and, to the extent the liability so attributable has been collected from such other spouse, it shall be refunded or credited to such other spouse. No credit or refund shall be made under the preceding sentence unless claim therefor has been submitted to the Secretary of the Treasury or his delegate before the date 1 year after the date of the enactment of this paragraph [Nov. 10, 1988], and no interest on such credit or refund shall be allowed for any period before such date of enactment."

Amendment by section 474(b)(2) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1984, see section 104(e) of Pub. L. 97–34, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 102(b)(2) of Pub. L. 95–600 effective with respect to taxable years beginning after Dec. 31, 1978, see section 102(d)(1) of Pub. L. 95–600, set out as a note under section 151 of this title.

Pub. L. 95–600, title VII, §701(u)(15)(E), Nov. 6, 1978, 92 Stat. 2919, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by this paragraph [amending this section and section 6401 of this title]—

"(i) to the extent that they relate to chapter 1 or 5 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954, sections 1 et seq. and 1491 et seq. of this title, respectively], shall apply to taxable years ending on or after December 31, 1975, and

"(ii) to the extent that they relate to wage withholding under chapter 24 of such Code [section 3401 et seq. of this title], shall apply to remuneration paid on or after the first day of the first month which begins more than 90 days after the date of the enactment of this Act [Nov. 6, 1978]."

Pub. L. 95–600, title VII, §701(u)(16)(B), Nov. 6, 1978, 92 Stat. 2920, provided that: "The amendment made by subparagraph (A) [amending this section] shall apply to taxable years beginning after December 31, 1975."

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title X, §1012(d), Oct. 4, 1976, 90 Stat. 1614, provided that: "The amendments made by subsection (a) [enacting this section and section 871 of this title] shall apply to taxable years ending on or after December 31, 1975. The amendments made by subsections (b) and (c) [enacting section 879 of this title, amending section 6073 of this title, and repealing section 981 of this title] shall apply to taxable years beginning after December 31, 1976."

Pub. L. 94–455, title XIX, §1906(d), Oct. 4, 1976, 90 Stat. 1835, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) GENERAL RULE.—Except as otherwise expressly provided in this section, the amendments made by this section [see Tables for classification] shall take effect on the first day of the first month which begins more than 90 days after the date of the enactment of this Act [Oct. 4, 1976].

"(2) AMENDMENTS RELATING TO INCOME TAX.—The amendments made by this section, when relating to a tax imposed by chapter 1 or chapter 2 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], shall take effect with respect to taxable years beginning after December 31, 1976."

Pub. L. 94–455, title XXI, §2114(b), Oct. 4, 1976, 90 Stat. 1907, provided that: "The application permitted under the amendment made by subsection (a) of this section [amending section 3 of Pub. L. 91–679, set out as

an Effective Date of 1971 Amendment note below] must be filed with the Secretary of the Treasury during the first calendar year beginning after the date of the enactment of this Act [Oct. 4, 1976]."

EFFECTIVE DATE OF 1975 AMENDMENT

Pub. L. 93–597, §3(c), Jan. 2, 1975, 88 Stat. 1952, provided that: "The amendments made by this section [amending this section and section 2 of this title] shall apply to taxable years ending on or after February 28, 1961."

EFFECTIVE DATE OF 1971 AMENDMENTS

Pub. L. 92–178, title II, §201(a), (b), Dec. 10, 1971, 85 Stat. 510, provided in part that the increases in exemptions from $650 to $675 and from $1,300 to $1,350, respectively, were effective with respect to taxable years beginning after Dec. 31, 1970, and before Jan. 1, 1972, and to $750 and $1,500, respectively, with respect to taxable years beginning after Dec. 31, 1971.

Pub. L. 91–679, §3, Jan. 12, 1971, 84 Stat. 2064, as amended by Pub. L. 94–455, title XXI, §2114(a), Oct. 4, 1976, 90 Stat. 1907; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by the first two sections of this Act [amending this section and section 6653 of this title] shall apply to all taxable years to which the Internal Revenue Code of 1986 [formerly I.R.C. 1954] applies. Corresponding provisions shall be deemed to be included in the Internal Revenue Code of 1939 and shall apply to all taxable years to which such Code applies. Upon application by a taxpayer, the Secretary of the Treasury shall redetermine the liability for tax (including interest, penalties, and other amounts) of such taxpayer for taxable years beginning after December 31, 1961, and ending before January 13, 1971. The preceding sentence shall apply solely to a taxpayer to whom the application of the provisions of section 6013(e) of the Internal Revenue Code of 1986, as added by this Act, for such taxable years is prevented by the operation of res judicata, and such redetermination shall be made without regard to such rule of law. Any overpayment of tax by such taxpayer for such taxable years resulting from the redetermination made under this Act shall be refunded to such taxpayer."

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title VIII, §801(a)(2), (b)(2), Dec. 30, 1969, 83 Stat. 675, 676, provided in part that the increases in exemptions from $600 and $1,200 to $625 and $1,250, respectively, were effective with respect to taxable years beginning after Dec. 31, 1969, and before Jan. 1, 1971; and to $650 and $1,300, respectively, with respect to taxable years beginning after Dec. 31, 1970, and before Jan. 1, 1972. Pub. L. 91–172, title VIII, §801(c)(2), (d)(2), Dec. 30, 1969, 83 Stat. 676, which provided for increases in exemptions to $700 and $1,400, respectively, with respect to taxable years beginning after Dec. 31, 1971, and before Jan. 1, 1973, and to $750 and $1,500, respectively, with respect to taxable years beginning after Dec. 31, 1972, was repealed by Pub. L. 92–178, title II, §201(c), Dec. 10, 1971, 85 Stat. 511.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 effective Aug. 17, 1954, see section 1(c)(2) of Pub. L. 85–866, set out as a note under section 165 of this title.

SEPARATE NOTICE TO EACH FILER

Pub. L. 105–206, title III, §3201(d), July 22, 1998, 112 Stat. 740, provided that: "The Secretary of the Treasury shall, wherever practicable, send any notice relating to a joint return under section 6013 of the Internal Revenue Code of 1986 separately to each individual filing the joint return."

§6014. Income tax return—tax not computed by taxpayer

(a) Election by taxpayer

An individual who does not itemize his deductions and who is not described in section 6012(a)(1)(C)(i), whose gross income is less than $10,000 and includes no income other than remuneration for services performed by him as an employee, dividends or interest, and whose gross income other than wages, as defined in section 3401(a), does not exceed $100, shall at his election not be required to show on the return the tax imposed by section 1. Such election shall be made by using the form prescribed for purposes of this section. In such case the tax shall be computed by the Secretary who shall mail to the taxpayer a notice stating the amount determined as payable.

(b) Regulations

The Secretary shall prescribe regulations for carrying out this section, and such regulations may provide for the application of the rules of this section—

(1) to cases where the gross income includes items other than those enumerated by subsection (a),

(2) to cases where the gross income from sources other than wages on which the tax has been withheld at the source is more than $100,

(3) to cases where the gross income is $10,000 or more, or

(4) to cases where the taxpayer itemizes his deductions or where the taxpayer claims a reduced standard deduction by reason of section 63(c)(5).

Such regulations shall provide for the application of this section in the case of husband and wife, including provisions determining when a joint return under this section may be permitted or required, whether the liability shall be joint and several, and whether one spouse may make return under this section and the other without regard to this section.

(Aug. 16, 1954, ch. 736, 68A Stat. 736; Pub. L. 88–272, title II, §201(d)(14), title III, §301(b)(2), Feb. 26, 1964, 78 Stat. 32, 140; Pub. L. 91–172, title VIII, §803(d)(1), title IX, §942(a), Dec. 30, 1969, 83 Stat. 684, 726; Pub. L. 94–455, title V, §§501(b)(8), (9), 503(b)(2), (3), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1559, 1562, 1834; Pub. L. 95–30, title I, §101(d)(13), (14), May 23, 1977, 91 Stat. 134; Pub. L. 99–514, title I, §104(b)(16), Oct. 22, 1986, 100 Stat. 2106.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–514, §104(b)(16)(A), substituted "who is not described in section 6012(a)(1)(C)(i)" for "who does not have an unused zero bracket amount (determined under section 63(e))".

Subsec. (b)(4). Pub. L. 99–514, §104(b)(16)(B), amended par. (4) generally, substituting "where the taxpayer claims a reduced standard deduction by reason of section 63(c)(5)" for "has an unused zero bracket amount".

1977—Subsec. (a). Pub. L. 95–30, §101(d)(13), substituted "An individual who does not itemize his deductions and who does not have an unused zero bracket amount (determined under section 63(e)), whose gross income" for "An individual entitled to take the standard deduction provided by section 141 (other than an individual described in section 141(e)) whose gross income" and struck out "and shall constitute an election to take the standard deduction" after "Such election shall be made by using the form prescribed for purposes of this section".

Subsec. (b)(4). Pub. L. 95–30, §101(d)(14), substituted "itemizes his deductions or has an unused zero bracket amount" for "does not elect the standard deduction or where the taxpayer elects the standard deduction but is subject to the provision of section 141(e) (relating to limitations in case of certain dependent taxpayers)".

1976—Subsec. (a). Pub. L. 94–455, §§501(b)(8), 503(b)(2), 1906(b)(13(A), substituted "entitled to take the standard deduction provided by section 141 (other than an individual described in section 141(e))" for "entitled to elect to pay the tax imposed by section 3" and "take the standard deduction" for "pay the tax imposed by section 3" and struck out provision relating to disallowance of section 37 credit in determination of tax imposed by section 3 of this title, and struck out "or his delegate" after "Secretary".

Subsec. (b). Pub. L. 94–455, §§501(b)(9), 503(b)(3), 1906(b)(13)(A), struck out an introductory provision, "or his delegate" after "Secretary", redesignated former par. (5) as (4), and as so redesignated, inserted reference to where the taxpayer elects the standard deduction but is subject to the provisions of section 141(e) (relating to limitations in case of certain dependent taxpayers). Former par. (4), which related to cases where the taxpayer is entitled to credit provided by section 37 of this title, was struck out.

1969—Subsec. (a). Pub. L. 91–172, §803(d)(1), raised the individual gross income limit of $5,000 to $10,000 for exercising the option to pay the tax under section 3 of this title, and struck out provisions relating to heads of household, surviving spouses and married individuals filing separate returns.

Subsec. (b). Pub. L. 91–172, §942(a), substituted provisions authorizing the Secretary to promulgate regulations to compute the tax in cases where the gross income is $10,000 or more, where the gross income from sources other than wages on which the tax has been withheld at the source is more than $100, where the taxpayer is entitled to a credit under section 37 of this title, or where the taxpayer does not elect the standard

deduction, for provisions authorizing the computation of the tax in cases where the gross income is $5,000 but not more than $5,200, or where the gross income from sources other than wages on which the tax has been withheld at the source is more than $100, but not more than $200.

1964—Subsec. (a). Pub. L. 88–272 struck out "34 or" before "37 shall not be allowed", and inserted provision that in case of a married individual filing a separate return and electing benefits of this subsection, neither Table V in section 3(a) nor Table V in section 3(b) shall apply.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 803(d)(1) of Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 803(f) of Pub. L. 91–172, set out as a note under section 1 of this title.

Pub. L. 91–172, title IX, §942(b), Dec. 30, 1969, 83 Stat. 727, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1969."

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by section 201(d)(14) of Pub. L. 88–272 applicable with respect to dividends received after Dec. 31, 1964, in taxable years ending after such date, see section 201(e) of Pub. L. 88–272, set out as a note under section 22 of this title.

Amendment by section 301(b)(2) of Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, except for purpose of section 21, see section 301(c) of Pub. L. 88–272, set out as a note under section 3 of this title.

§6015. Relief from joint and several liability on joint return

(a) In general

Notwithstanding section 6013(d)(3)—

(1) an individual who has made a joint return may elect to seek relief under the procedures prescribed under subsection (b); and

(2) if such individual is eligible to elect the application of subsection (c), such individual may, in addition to any election under paragraph (1), elect to limit such individual's liability for any deficiency with respect to such joint return in the manner prescribed under subsection (c).

Any determination under this section shall be made without regard to community property laws.

(b) Procedures for relief from liability applicable to all joint filers

(1) In general

Under procedures prescribed by the Secretary, if—

(A) a joint return has been made for a taxable year;

(B) on such return there is an understatement of tax attributable to erroneous items of one individual filing the joint return;

(C) the other individual filing the joint return establishes that in signing the return he or she did not know, and had no reason to know, that there was such understatement;

(D) taking into account all the facts and circumstances, it is inequitable to hold the other individual liable for the deficiency in tax for such taxable year attributable to such understatement; and

(E) the other individual elects (in such form as the Secretary may prescribe) the benefits of this subsection not later than the date which is 2 years after the date the Secretary has begun collection activities with respect to the individual making the election,

then the other individual shall be relieved of liability for tax (including interest, penalties, and other amounts) for such taxable year to the extent such liability is attributable to such understatement.

(2) Apportionment of relief

If an individual who, but for paragraph (1)(C), would be relieved of liability under paragraph (1), establishes that in signing the return such individual did not know, and had no reason to know, the extent of such understatement, then such individual shall be relieved of liability for tax (including interest, penalties, and other amounts) for such taxable year to the extent that such liability is attributable to the portion of such understatement of which such individual did not know and had no reason to know.

(3) Understatement

For purposes of this subsection, the term "understatement" has the meaning given to such term by section 6662(d)(2)(A).

(c) Procedures to limit liability for taxpayers no longer married or taxpayers legally separated or not living together

(1) In general

Except as provided in this subsection, if an individual who has made a joint return for any taxable year elects the application of this subsection, the individual's liability for any deficiency which is assessed with respect to the return shall not exceed the portion of such deficiency properly allocable to the individual under subsection (d).

(2) Burden of proof

Except as provided in subparagraph (A)(ii) or (C) of paragraph (3), each individual who elects the application of this subsection shall have the burden of proof with respect to establishing the portion of any deficiency allocable to such individual.

(3) Election

(A) Individuals eligible to make election

(i) In general

An individual shall only be eligible to elect the application of this subsection if—

(I) at the time such election is filed, such individual is no longer married to, or is legally separated from, the individual with whom such individual filed the joint return to which the election relates; or

(II) such individual was not a member of the same household as the individual with whom such joint return was filed at any time during the 12-month period ending on the date such election is filed.

(ii) Certain taxpayers ineligible to elect

If the Secretary demonstrates that assets were transferred between individuals filing a joint return as part of a fraudulent scheme by such individuals, an election under this subsection by either individual shall be invalid (and section 6013(d)(3) shall apply to the joint return).

(B) Time for election

An election under this subsection for any taxable year may be made at any time after a deficiency for such year is asserted but not later than 2 years after the date on which the Secretary has begun collection activities with respect to the individual making the election.

(C) Election not valid with respect to certain deficiencies

If the Secretary demonstrates that an individual making an election under this subsection had actual knowledge, at the time such individual signed the return, of any item giving rise to a deficiency (or portion thereof) which is not allocable to such individual under subsection (d),

such election shall not apply to such deficiency (or portion). This subparagraph shall not apply where the individual with actual knowledge establishes that such individual signed the return under duress.

(4) Liability increased by reason of transfers of property to avoid tax

(A) In general

Notwithstanding any other provision of this subsection, the portion of the deficiency for which the individual electing the application of this subsection is liable (without regard to this paragraph) shall be increased by the value of any disqualified asset transferred to the individual.

(B) Disqualified asset

For purposes of this paragraph—

(i) In general

The term "disqualified asset" means any property or right to property transferred to an individual making the election under this subsection with respect to a joint return by the other individual filing such joint return if the principal purpose of the transfer was the avoidance of tax or payment of tax.

(ii) Presumption

(I) In general

For purposes of clause (i), except as provided in subclause (II), any transfer which is made after the date which is 1 year before the date on which the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals is sent shall be presumed to have as its principal purpose the avoidance of tax or payment of tax.

(II) Exceptions

Subclause (I) shall not apply to any transfer pursuant to a decree of divorce or separate maintenance or a written instrument incident to such a decree or to any transfer which an individual establishes did not have as its principal purpose the avoidance of tax or payment of tax.

(d) Allocation of deficiency

For purposes of subsection (c)—

(1) In general

The portion of any deficiency on a joint return allocated to an individual shall be the amount which bears the same ratio to such deficiency as the net amount of items taken into account in computing the deficiency and allocable to the individual under paragraph (3) bears to the net amount of all items taken into account in computing the deficiency.

(2) Separate treatment of certain items

If a deficiency (or portion thereof) is attributable to—

(A) the disallowance of a credit; or

(B) any tax (other than tax imposed by section 1 or 55) required to be included with the joint return;

and such item is allocated to one individual under paragraph (3), such deficiency (or portion) shall be allocated to such individual. Any such item shall not be taken into account under paragraph (1).

(3) Allocation of items giving rise to the deficiency

For purposes of this subsection—

(A) In general

Except as provided in paragraphs (4) and (5), any item giving rise to a deficiency on a joint

return shall be allocated to individuals filing the return in the same manner as it would have been allocated if the individuals had filed separate returns for the taxable year.

(B) Exception where other spouse benefits

Under rules prescribed by the Secretary, an item otherwise allocable to an individual under subparagraph (A) shall be allocated to the other individual filing the joint return to the extent the item gave rise to a tax benefit on the joint return to the other individual.

(C) Exception for fraud

The Secretary may provide for an allocation of any item in a manner not prescribed by subparagraph (A) if the Secretary establishes that such allocation is appropriate due to fraud of one or both individuals.

(4) Limitations on separate returns disregarded

If an item of deduction or credit is disallowed in its entirety solely because a separate return is filed, such disallowance shall be disregarded and the item shall be computed as if a joint return had been filed and then allocated between the spouses appropriately. A similar rule shall apply for purposes of section 86.

(5) Child's liability

If the liability of a child of a taxpayer is included on a joint return, such liability shall be disregarded in computing the separate liability of either spouse and such liability shall be allocated appropriately between the spouses.

(e) Petition for review by Tax Court

(1) In general

In the case of an individual against whom a deficiency has been asserted and who elects to have subsection (b) or (c) apply, or in the case of an individual who requests equitable relief under subsection (f)—

(A) In general

In addition to any other remedy provided by law, the individual may petition the Tax Court (and the Tax Court shall have jurisdiction) to determine the appropriate relief available to the individual under this section if such petition is filed—

(i) at any time after the earlier of—

(I) the date the Secretary mails, by certified or registered mail to the taxpayer's last known address, notice of the Secretary's final determination of relief available to the individual, or

(II) the date which is 6 months after the date such election is filed or request is made with the Secretary, and

(ii) not later than the close of the 90th day after the date described in clause (i)(I).

(B) Restrictions applicable to collection of assessment

(i) In general

Except as otherwise provided in section 6851 or 6861, no levy or proceeding in court shall be made, begun, or prosecuted against the individual making an election under subsection (b) or (c) or requesting equitable relief under subsection (f) for collection of any assessment to which such election or request relates until the close of the 90th day referred to in subparagraph (A)(ii), or, if a petition has been filed with the Tax Court under subparagraph (A), until the decision of the Tax Court has become final. Rules similar to the rules of section 7485 shall apply with respect to the collection of such assessment.

(ii) Authority to enjoin collection actions

Notwithstanding the provisions of section 7421(a), the beginning of such levy or proceeding during the time the prohibition under clause (i) is in force may be enjoined by a

proceeding in the proper court, including the Tax Court. The Tax Court shall have no jurisdiction under this subparagraph to enjoin any action or proceeding unless a timely petition has been filed under subparagraph (A) and then only in respect of the amount of the assessment to which the election under subsection (b) or (c) relates or to which the request under subsection (f) relates.

(2) Suspension of running of period of limitations

The running of the period of limitations in section 6502 on the collection of the assessment to which the petition under paragraph (1)(A) relates shall be suspended—

(A) for the period during which the Secretary is prohibited by paragraph (1)(B) from collecting by levy or a proceeding in court and for 60 days thereafter, and

(B) if a waiver under paragraph (5) is made, from the date the claim for relief was filed until 60 days after the waiver is filed with the Secretary.

(3) Limitation on Tax Court jurisdiction

If a suit for refund is begun by either individual filing the joint return pursuant to section 6532—

(A) the Tax Court shall lose jurisdiction of the individual's action under this section to whatever extent jurisdiction is acquired by the district court or the United States Court of Federal Claims over the taxable years that are the subject of the suit for refund, and

(B) the court acquiring jurisdiction shall have jurisdiction over the petition filed under this subsection.

(4) Notice to other spouse

The Tax Court shall establish rules which provide the individual filing a joint return but not making the election under subsection (b) or (c) or the request for equitable relief under subsection (f) with adequate notice and an opportunity to become a party to a proceeding under either such subsection.

(5) Waiver

An individual who elects the application of subsection (b) or (c) or who requests equitable relief under subsection (f) (and who agrees with the Secretary's determination of relief) may waive in writing at any time the restrictions in paragraph (1)(B) with respect to collection of the outstanding assessment (whether or not a notice of the Secretary's final determination of relief has been mailed).

(f) Equitable relief

Under procedures prescribed by the Secretary, if—

(1) taking into account all the facts and circumstances, it is inequitable to hold the individual liable for any unpaid tax or any deficiency (or any portion of either); and

(2) relief is not available to such individual under subsection (b) or (c),

the Secretary may relieve such individual of such liability.

(g) Credits and refunds

(1) In general

Except as provided in paragraphs (2) and (3), notwithstanding any other law or rule of law (other than section 6511, 6512(b), 7121, or 7122), credit or refund shall be allowed or made to the extent attributable to the application of this section.

(2) Res judicata

In the case of any election under subsection (b) or (c) or of any request for equitable relief under subsection (f), if a decision of a court in any prior proceeding for the same taxable year has become final, such decision shall be conclusive except with respect to the qualification of the

individual for relief which was not an issue in such proceeding. The exception contained in the preceding sentence shall not apply if the court determines that the individual participated meaningfully in such prior proceeding.

(3) Credit and refund not allowed under subsection (c)

No credit or refund shall be allowed as a result of an election under subsection (c).

(h) Regulations

The Secretary shall prescribe such regulations as are necessary to carry out the provisions of this section, including—

(1) regulations providing methods for allocation of items other than the methods under subsection (d)(3); and

(2) regulations providing the opportunity for an individual to have notice of, and an opportunity to participate in, any administrative proceeding with respect to an election made under subsection (b) or (c) or a request for equitable relief made under subsection (f) by the other individual filing the joint return.

(Added Pub. L. 105–206, title III, §3201(a), July 22, 1998, 112 Stat. 734; amended Pub. L. 105–277, div. J, title IV, §4002(c)(2), Oct. 21, 1998, 112 Stat. 2681–906; Pub. L. 106–554, §1(a)(7) [title III, §313(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–640; Pub. L. 109–432, div. C, title IV, §408(a), (b), Dec. 20, 2006, 120 Stat. 3061, 3062.)

PRIOR PROVISIONS

A prior section 6015, acts Aug. 16, 1954, ch. 736, 68A Stat. 737; Sept. 2, 1958, Pub. L. 85–866, title I, §74, 72 Stat. 1660; Sept. 14, 1960, Pub. L. 86–779, §5(a), 74 Stat. 1000; Sept. 25, 1962, Pub. L. 87–682, §1(a)(1), 76 Stat. 575; Mar. 15, 1966, Pub. L. 89–368, title I, §102(a), 80 Stat. 62; Nov. 13, 1966, Pub. L. 89–809, title I, §103(j), 80 Stat. 1554; Dec. 30, 1969, Pub. L. 91–172, title III, §301(b)(12), title VIII, §803(d)(7), title IX, §944(a), 83 Stat. 586, 684, 729; Dec. 10, 1971, Pub. L. 92–178, title II, §209(a), 85 Stat. 517; Oct. 4, 1976, Pub. L. 94–455, title XIX, §1906(a)(2), (b)(13)(A), 90 Stat. 1824, 1834; Nov. 6, 1978, Pub. L. 95–600, title IV, §421(e)(7), 92 Stat. 2876; Aug. 13, 1981, Pub. L. 97–34, title VII, §725(a), (c)(2), 95 Stat. 345, 346; Sept. 3, 1982, Pub. L. 97–248, title II, §201(d)(7), formerly §201(c)(7), title III, §§307(a)(6), 308(a), 328(b)(1), 96 Stat. 420, 589, 591, 618, redesignated and amended Jan. 12, 1983, Pub. L. 97–448, title I, §107(c)(2), title II, §201(j)(1), title III, §306(a)(1)(A)(i), 96 Stat. 2391, 2395, 2400; Aug. 5, 1983, Pub. L. 98–67, title I, §102(a), 97 Stat. 369, related to declaration of estimated income tax by individuals, prior to repeal by Pub. L. 98–369, div. A, title IV, §§412(a)(1), 414(a)(1), July 18, 1984, 98 Stat. 792, 793, applicable with respect to taxable years beginning after Dec. 31, 1984.

AMENDMENTS

2006—Subsec. (e)(1). Pub. L. 109–432, §408(a), inserted ", or in the case of an individual who requests equitable relief under subsection (f)" after "apply" in introductory provisions.

Subsec. (e)(1)(A)(i)(II). Pub. L. 109–432, §408(b)(1), inserted "or request is made" after "filed".

Subsec. (e)(1)(B)(i). Pub. L. 109–432, §408(b)(2), inserted "or requesting equitable relief under subsection (f)" after "subsection (b) or (c)" and "or request" after "such election".

Subsec. (e)(1)(B)(ii). Pub. L. 109–432, §408(b)(3), inserted "or to which the request under subsection (f) relates" before period at end.

Subsec. (e)(4). Pub. L. 109–432, §408(b)(4), inserted "or the request for equitable relief under subsection (f)" after "subsection (b) or (c)".

Subsec. (e)(5). Pub. L. 109–432, §408(b)(5), inserted "or who requests equitable relief under subsection (f)" after "subsection (b) or (c)".

Subsec. (g)(2). Pub. L. 109–432, §408(b)(6), inserted "or of any request for equitable relief under subsection (f)" after "subsection (b) or (c)".

Subsec. (h)(2). Pub. L. 109–432, §408(b)(7), inserted "or a request for equitable relief made under subsection (f)" after "subsection (b) or (c)".

2000—Subsec. (c)(3)(B). Pub. L. 106–554, §1(a)(7) [title III, §313(a)(1)], substituted "may be made at any time after a deficiency for such year is asserted but" for "shall be made".

Subsec. (e)(1). Pub. L. 106–554, §1(a)(7) [title III, §313(a)(3)(A)], inserted "against whom a deficiency has been asserted and" after "individual" in introductory provisions.

Subsec. (e)(1)(A). Pub. L. 106–554, §1(a)(7) [title III, §313(a)(3)(B)], amended heading and text of subpar.

(A) generally. Prior to amendment, text read as follows: "The individual may petition the Tax Court (and the Tax Court shall have jurisdiction) to determine the appropriate relief available to the individual under this section if such petition is filed during the 90-day period beginning on the date on which the Secretary mails by certified or registered mail a notice to such individual of the Secretary's determination of relief available to the individual. Notwithstanding the preceding sentence, an individual may file such petition at any time after the date which is 6 months after the date such election is filed with the Secretary and before the close of such 90-day period."

Subsec. (e)(1)(B)(i). Pub. L. 106–554, §1(a)(7) [title III, §313(a)(3)(C)], substituted "until the close of the 90th day referred to in subparagraph (A)(ii)" for "until the expiration of the 90-day period described in subparagraph (A)" and inserted "under subparagraph (A)" after "filed with the Tax Court".

Subsec. (e)(2). Pub. L. 106–554, §1(a)(7) [title III, §313(a)(3)(D)(ii)], amended heading and text of par. (2) generally. Prior to amendment, text read as follows: "The running of the period of limitations in section 6502 on the collection of the assessment to which the petition under paragraph (1)(A) relates shall be suspended for the period during which the Secretary is prohibited by paragraph (1)(B) from collecting by levy or a proceeding in court and for 60 days thereafter."

Subsec. (e)(3). Pub. L. 106–554, §1(a)(7) [title III, §313(a)(2)(B)], amended par. (3) generally, substituting "Limitation on Tax Court jurisdiction" for "Applicable rules" in heading and restating provisions relating to limitations on the Tax Court's jurisdiction and eliminating provisions relating to res judicata and allowance of credits or refunds in text.

Subsec. (e)(5). Pub. L. 106–554, §1(a)(7) [title III, §313(a)(3)(D)(i)], added par. (5).

Subsecs. (g), (h). Pub. L. 106–554, §1(a)(7) [title III, §313(a)(2)(A)], added subsec. (g) and redesignated former subsec. (g) as (h).

1998—Subsec. (e)(3)(A). Pub. L. 105–277 substituted "of subsection (b) or (f)" for "of this section".

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. C, title IV, §408(c), Dec. 20, 2006, 120 Stat. 3062, provided that: "The amendments made by this section [amending this section] shall apply with respect to liability for taxes arising or remaining unpaid on or after the date of the enactment of this Act [Dec. 20, 2006]."

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(7) [title III, §313(f)], Dec. 21, 2000, 114 Stat. 2763, 2763A–643, provided that: "The amendments made by subsections (a) and (b) [amending this section and sections 6330, 6331, 7421, and 7463 of this title] shall take effect on the date of the enactment of this Act [Dec. 21, 2000]. The amendments made by subsections (c), (d), and (e) [amending sections 6103, 6110, and 6330 of this title] shall take effect as if included in the provisions of the Internal Revenue Service Restructuring and Reform Act of 1998 [Pub. L. 105–206] to which they relate."

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–277 effective as if included in the provision of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105–206, to which such amendment relates, see section 4002(k) of Pub. L. 105–277, set out as a note under section 1 of this title.

EFFECTIVE DATE

Pub. L. 105–206, title III, §3201(g), July 22, 1998, 112 Stat. 740, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this section, amending sections 66, 6013, 6230, and 7421 of this title, and enacting provisions set out as notes under this section and section 6013 of this title] shall apply to any liability for tax arising after the date of the enactment of this Act [July 22, 1998] and any liability for tax arising on or before such date but remaining unpaid as of such date.

"(2) 2-YEAR PERIOD.—The 2-year period under subsection (b)(1)(E) or (c)(3)(B) of section 6015 of the Internal Revenue Code of 1986 shall not expire before the date which is 2 years after the date of the first collection activity after the date of the enactment of this Act [July 22, 1998]."

SEPARATE FORM FOR APPLYING FOR SPOUSAL RELIEF

Pub. L. 105–206, title III, §3201(c), July 22, 1998, 112 Stat. 740, provided that: "Not later than 180 days after the date of the enactment of this Act [July 22, 1998], the Secretary of the Treasury shall develop a separate form with instructions for use by taxpayers in applying for relief under section 6015(a) of the Internal Revenue Code of 1986, as added by this section."

[§6016. Repealed. Pub. L. 90–364, title I, §103(a), June 28, 1968, 82 Stat. 260]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 738; Feb. 26, 1964, Pub. L. 88–272, title I, §122(d), 78 Stat. 29, Nov. 13, 1966, Pub. L. 89–809, title I, §104(l), 80 Stat. 1563, provided for the declaration of estimated income tax by corporations.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to taxable years beginning after Dec. 31, 1967, except as provided by section 104 of Pub. L. 90–364, see section 103(f) of Pub. L. 90–364, set out as an Effective Date of 1968 Amendment note under section 243 of this title.

§6017. Self-employment tax returns

Every individual (other than a nonresident alien individual) having net earnings from self-employment of $400 or more for the taxable year shall make a return with respect to the self-employment tax imposed by chapter 2. In the case of a husband and wife filing a joint return under section 6013, the tax imposed by chapter 2 shall not be computed on the aggregate income but shall be the sum of the taxes computed under such chapter on the separate self-employment income of each spouse.

(Aug. 16, 1954, ch. 736, 68A Stat. 739.)

[§6017A. Repealed. Pub. L. 101–239, title VII, §7711(b)(1), Dec. 19, 1989, 103 Stat. 2393]

Section, added Pub. L. 92–512, title I, §144(a)(1), Oct. 20, 1972, 86 Stat. 935; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, related to place of residence.

EFFECTIVE DATE OF REPEAL

Repeal applicable to returns and statements the due date for which (determined without regard to extensions) is after Dec. 31, 1989, see section 7711(c) of Pub. L. 101–239, set out as an Effective Date of 1989 Amendment note under section 6721 of this title.

SUBPART C—ESTATE AND GIFT TAX RETURNS

Sec.

6018. Estate tax returns.

6019. Gift tax returns.

AMENDMENTS

2010—Pub. L. 111–312, title III, §301(a), Dec. 17, 2010, 124 Stat. 3300, amended analysis to read as if amendment by Pub. L. 107–16, §542(b)(1), had never been enacted. See 2001 Amendment note below.

2001—Pub. L. 107–16, title V, §542(b)(1), June 7, 2001, 115 Stat. 81, substituted "Returns Relating to Transfers During Life or at Death" for "Estate and Gift Tax Returns" in subpart heading and "Returns relating to large transfers at death" for "Estate tax returns" in item 6018.

§6018. Estate tax returns

(a) Returns by executor

(1) Citizens or residents

In all cases where the gross estate at the death of a citizen or resident exceeds the basic exclusion amount in effect under section 2010(c) for the calendar year which includes the date of death, the executor shall make a return with respect to the estate tax imposed by subtitle B.

(2) Nonresidents not citizens of the United States

In the case of the estate of every nonresident not a citizen of the United States if that part of the gross estate which is situated in the United States exceeds $60,000, the executor shall make a return with respect to the estate tax imposed by subtitle B.

(3) Adjustment for certain gifts

The amount applicable under paragraph (1) and the amount set forth in paragraph (2) shall each be reduced (but not below zero) by the sum of—

(A) the amount of the adjusted taxable gifts (within the meaning of section 2001(b)) made by the decedent after December 31, 1976, plus

(B) the aggregate amount allowed as a specific exemption under section 2521 (as in effect before its repeal by the Tax Reform Act of 1976) with respect to gifts made by the decedent after September 8, 1976.

(b) Returns by beneficiaries

If the executor is unable to make a complete return as to any part of the gross estate of the decedent, he shall include in his return a description of such part and the name of every person holding a legal or beneficial interest therein. Upon notice from the Secretary such person shall in like manner make a return as to such part of the gross estate.

(Aug. 16, 1954, ch. 736, 68A Stat. 739; Pub. L. 89–809, title I, §108(g), Nov. 13, 1966, 80 Stat. 1574; Pub. L. 94–455, title XIX, §1906(b)(13)(A), title XX, §2001(c)(1)(J), Oct. 4, 1976, 90 Stat. 1834, 1852; Pub. L. 97–34, title IV, §401(a)(2)(B), Aug. 13, 1981, 95 Stat. 299; Pub. L. 98–369, div. A, title V, §544(b)(3), July 18, 1984, 98 Stat. 894; Pub. L. 100–647, title I, §1011A(g)(12), Nov. 10, 1988, 102 Stat. 3482; Pub. L. 101–239, title VII, §7304(b)(2)(B), Dec. 19, 1989, 103 Stat. 2353; Pub. L. 101–508, title XI, §11801(a)(43), (c)(19)(C), Nov. 5, 1990, 104 Stat. 1388–521, 1388–528; Pub. L. 105–34, title V, §501(a)(1)(C), title X, §1073(b)(4), Aug. 5, 1997, 111 Stat. 845, 948; Pub. L. 107–16, title V, §542(b)(1), June 7, 2001, 115 Stat. 81; Pub. L. 111–312, title III, §§301(a), 303(b)(3), Dec. 17, 2010, 124 Stat. 3300, 3303.)

REFERENCES IN TEXT

Section 2521 of this title, referred to in subsec. (a)(3)(B), was repealed by section 2001(b)(3) of Pub. L. 94–455, applicable to gifts made after Dec. 31, 1976.

The Tax Reform Act of 1976, referred to in subsec. (a)(3)(B), is Pub. L. 94–455, Oct. 4, 1976, 90 Stat. 1520. For complete classification of this Act to the Code, see Short Title of 1976 Amendments note set out under section 1 of this title and Tables.

AMENDMENTS

2010—Pub. L. 111–312, §301(a), amended section to read as if amendment by Pub. L. 107–16, §542(b)(1), had never been enacted. See 2001 Amendment note below.

Subsec. (a)(1). Pub. L. 111–312, §303(b)(3), substituted "basic exclusion amount" for "applicable exclusion amount".

2001—Pub. L. 107–16, §542(b)(1), amended section generally, substituting provisions related to tax returns for certain large transfers at death for provisions related to estate tax returns.

1997—Subsec. (a)(1). Pub. L. 105–34, §501(a)(1)(C), substituted "the applicable exclusion amount in effect under section 2010(c) for the calendar year which includes the date of death" for "$600,000".

Subsec. (a)(4). Pub. L. 105–34, §1073(b)(4), struck out par. (4) which read as follows:

"(4) RETURN REQUIRED IF EXCESS RETIREMENT ACCUMULATION TAX.—The executor shall make a return with respect to the estate tax imposed by subtitle B in any case where such tax is increased by reason of section 4980A(d)."

1990—Subsec. (a)(3) to (5). Pub. L. 101–508 redesignated pars. (4) and (5) as (3) and (4), respectively, and struck out former par. (3) which provided for phase-in of estate tax return filing requirement amount.

1989—Subsec. (c). Pub. L. 101–239 struck out subsec. (c) which read as follows:

"ELECTION UNDER SECTION 2210.—In all cases in which subsection (a) requires the filing of a return, if an executor elects the applications of section 2210—

"(1) RETURN BY EXECUTOR.—The return which the executor is required to file under the provisions of subsection (a) shall be made with respect to that portion of estate tax imposed by subtitle B

which the executor is required to pay.

"(2) RETURN BY PLAN ADMINISTRATOR.—The plan administrator of an employee stock ownership plan or the eligible worker-owned cooperative, as the case may be, shall make a return with respect to that portion of the tax imposed by section 2001 which such plan or cooperative is required to pay under section 2210(b)."

1988—Subsec. (a)(5). Pub. L. 100–647 added par. (5).

1984—Subsec. (c). Pub. L. 98–369 added subsec. (c).

1981—Subsec. (a)(1). Pub. L. 97–34, §401(a)(2)(B)(i), substituted "$600,000" for "$175,000".

Subsec. (a)(3). Pub. L. 97–34, §401(a)(2)(B)(ii), set forth par. (1) substitutions for "$600,000" amount of "$225,000", "$275,000", "$325,000", "$400,000", and "$500,000" in the case of decedents dying in 1982, 1983, 1984, 1985, and 1986, respectively, and struck out par. (1) substitutions for "$175,000" amount of "$120,000", "$134,000", "$147,000", and "$161,000" in the case of decedents dying during 1977, 1978, 1979, and 1980, respectively.

1976—Subsec. (a)(1). Pub. L. 94–455, §2001(c)(1)(J)(i), substituted "$175,000" for "$60,000".

Subsec. (a)(2). Pub. L. 94–455, §2001(c)(1)(J)(ii), substituted "$60,000" for "$30,000".

Subsec. (a)(3), (4). Pub. L. 94–455, §2001(c)(1)(J)(iii), added pars. (3) and (4).

Subsec. (b). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

1966—Subsec. (a)(2). Pub. L. 89–809 substituted "$30,000" for "$2,000".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 301(a) of Pub. L. 111–312 applicable to estates of decedents dying, and transfers made after Dec. 31, 2009, except as otherwise provided, see section 301(e) of Pub. L. 111–312, set out as an Effective and Termination Dates of 2010 Amendment note under section 121 of this title.

Amendment by section 303(b)(3) of Pub. L. 111–312 applicable to estates of decedents dying and gifts made after Dec. 31, 2010, see section 303(c)(1) of Pub. L. 111–312, set out as a note under section 2010 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to estates of decedents dying after Dec. 31, 2009, see section 542(f)(1) of Pub. L. 107–16, set out as a note under section 121 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 501(a)(1)(C) of Pub. L. 105–34 applicable to estates of decedents dying, and gifts made, after Dec. 31, 1997, see section 501(f) of Pub. L. 105–34, set out as a note under section 2001 of this title.

Amendment by section 1073(b)(4) of Pub. L. 105–34 applicable to estates of decedents dying after Dec. 31, 1996, see section 1073(c) of Pub. L. 105–34, set out as an Effective Date of Repeal note under section 4980A of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable to estates of decedents dying after July 12, 1989, see section 7304(b)(3) of Pub. L. 101–239, set out as a note under section 2002 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to estates of decedents which are required to file returns on a date (including any extensions) after July 18, 1984, see section 544(d) of Pub. L. 98–369, set out as a note under section 2002 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to estates of decedents dying after Dec. 31, 1981, see section 401(c)(1) of Pub. L. 97–34, set out as a note under section 2010 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 2001(c)(1)(J) of Pub. L. 94–455 applicable to estates of decedents dying after Dec.

31, 1976, see section 2001(d)(1) of Pub. L. 94–455, set out as a note under section 2001 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to estates of decedents dying after Nov. 13, 1966, see section 108(i) of Pub. L. 89–809, set out as a note under section 2101 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

§6019. Gift tax returns

Any individual who in any calendar year makes any transfer by gift other than—

(1) a transfer which under subsection (b) or (e) of section 2503 is not to be included in the total amount of gifts for such year,

(2) a transfer of an interest with respect to which a deduction is allowed under section 2523, or

(3) a transfer with respect to which a deduction is allowed under section 2522 but only if—

(A)(i) such transfer is of the donor's entire interest in the property transferred, and

(ii) no other interest in such property is or has been transferred (for less than adequate and full consideration in money or money's worth) from the donor to a person, or for a use, not described in subsection (a) or (b) of section 2522, or

(B) such transfer is described in section 2522(d),

shall make a return for such year with respect to the gift tax imposed by subtitle B.

(Aug. 16, 1954, ch. 736, 68A Stat. 739; Pub. L. 91–614, title I, §102(d)(3), Dec. 31, 1970, 84 Stat. 1841; Pub. L. 97–34, title IV, §§403(b)(3)(A), (c)(3)(B), 442(d)(2), Aug. 13, 1981, 95 Stat. 301, 302, 322; Pub. L. 105–34, title XIII, §1301(a), Aug. 5, 1997, 111 Stat. 1039; Pub. L. 107–16, title V, §542(b)(2), June 7, 2001, 115 Stat. 82; Pub. L. 111–312, title III, §301(a), Dec. 17, 2010, 124 Stat. 3300.)

AMENDMENTS

2010—Pub. L. 111–312 amended section to read as if amendment by Pub. L. 107–16, §542(b)(2), had never been enacted. See 2001 Amendment note below.

2001—Pub. L. 107–16, §542(b)(2), designated existing provisions as subsec. (a), inserted subsec. (a) heading "In general", and added subsec. (b), which related to statements to be furnished to certain persons.

1997—Par. (3). Pub. L. 105–34 added par. (3).

1981—Pub. L. 97–34 struck out subsec. "(a) In general" designation, substituted "calendar year" for "calendar quarter" and "year" for "quarter" wherever appearing, inserted in provision designated par. (1) reference to subsec. (e) of section 2503, added par. (2), and deleted provision respecting transfers by gift other than qualified charitable transfers, repealed subsec. (b) setting forth return requirement and definition of qualified charitable transfer, and repealed subsec. (c) setting forth cross reference to section 2515(c) relating to tenancy by the entirety.

1970—Subsec. (a). Pub. L. 91–614 substituted "Any individual who in any calendar quarter makes any transfers by gift (other than transfers which under section 2503(b) are not to be included in the total amount of gifts for such quarter and other than qualified charitable transfers) shall make a return for such quarter with respect to the gift tax imposed by subtitle B" for "Any individual who in any calendar year makes any transfers by gift (except those which under section 2503(b) are not to be included in the total amount of gifts for such year) shall make a return with respect to the gift tax imposed by subtitle B".

Subsecs. (b), (c). Pub. L. 91–614 added subsec. (b) and redesignated former subsec. (b) as (c).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–312 applicable to estates of decedents dying, and transfers made after Dec. 31, 2009, except as otherwise provided, see section 301(e) of Pub. L. 111–312, set out as an Effective and Termination Dates of 2010 Amendment note under section 121 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to estates of decedents dying after Dec. 31, 2009, see section 542(f)(1) of Pub. L. 107–16, set out as a note under section 121 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XIII, §1301(b), Aug. 5, 1997, 111 Stat. 1039, provided that: "The amendment made by this section [amending this section] shall apply to gifts made after the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to gifts made after Dec. 31, 1981, see sections 403(e)(2) and 442(e) of Pub. L. 97–34, set out as a note under sections 2056 and 2501 of this title, respectively.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91–614, set out as a note under section 2501 of this title.

SUBPART D—MISCELLANEOUS PROVISIONS

Sec.
6020. Returns prepared for or executed by Secretary.
6021. Listing by Secretary of taxable objects owned by nonresidents of internal revenue districts.

§6020. Returns prepared for or executed by Secretary

(a) Preparation of return by Secretary

If any person shall fail to make a return required by this title or by regulations prescribed thereunder, but shall consent to disclose all information necessary for the preparation thereof, then, and in that case, the Secretary may prepare such return, which, being signed by such person, may be received by the Secretary as the return of such person.

(b) Execution of return by Secretary

(1) Authority of Secretary to execute return

If any person fails to make any return required by any internal revenue law or regulation made thereunder at the time prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return, the Secretary shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise.

(2) Status of returns

Any return so made and subscribed by the Secretary shall be prima facie good and sufficient for all legal purposes.

(Aug. 16, 1954, ch. 736, 68A Stat. 740; Pub. L. 90–364, title I, §103(e)(3), June 28, 1968, 82 Stat. 264; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–369, div. A, title IV, §412(b)(4), July 18, 1984, 98 Stat. 792.)

AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98–369 struck out "(other than a declaration of estimated tax required under section 6015)" after "make any return".

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

1968—Subsec. (b)(1). Pub. L. 90–364 struck out reference to section 6016.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable with respect to taxable years beginning after Dec. 31, 1984, see section 414(a)(1) of Pub. L. 98–369, set out as a note under section 6654 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–364 applicable with respect to taxable years beginning after Dec. 31, 1967, except as provided by section 104 of Pub. L. 90–364, see section 103(f) of Pub. L. 90–364, set out as a note under section 243 of this title.

§6021. Listing by Secretary of taxable objects owned by nonresidents of internal revenue districts

Whenever there are in any internal revenue district any articles subject to tax, which are not owned or possessed by or under the care or control of any person within such district, and of which no list has been transmitted to the Secretary, as required by law or by regulations prescribed pursuant to law, the Secretary shall enter the premises where such articles are situated, shall make such inspection of the articles as may be necessary and make lists of the same, according to the forms prescribed. Such lists, being subscribed by the Secretary, shall be sufficient lists of such articles for all purposes.

(Aug. 16, 1954, ch. 736, 68A Stat. 740; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

PART III—INFORMATION RETURNS

Subpart

A. Information concerning persons subject to special provisions.
B. Information concerning transactions with other persons.
C. Information regarding wages paid employees.
D. Information regarding health insurance coverage.
E. Registration of and information concerning pension, etc., plans.
F. Information concerning tax return preparers.

AMENDMENTS

2010—Pub. L. 111–148, title I, §1502(d), Mar. 23, 2010, 124 Stat. 251, added item relating to subpart D.

2007—Pub. L. 110–28, title VIII, §8246(a)(2)(A)(v), May 25, 2007, 121 Stat. 201, substituted "tax return preparers" for "income tax return preparers" in item relating to subpart F.

1980—Pub. L. 96–603, §1(e)(2), Dec. 28, 1980, 94 Stat. 3505, struck out item relating to subpart D "Information concerning private foundations".

1976—Pub. L. 94–455, title XII, §1203(i)(1), Oct. 4, 1976, 90 Stat. 1694, added subpart F heading.

1974—Pub. L. 93–406, title II, §1031(c)(1), Sept. 2, 1974, 88 Stat. 946, added item relating to subpart E.

1969—Pub. L. 91–172, title I, §101(j)(64), Dec. 30, 1969, 82 Stat. 533, added item relating to subpart D.

INFORMATION RETURNS IN ELECTRONIC FORMAT

Pub. L. 108–7, div. H, title II, §211, Feb. 20, 2003, 117 Stat. 384, provided that:

"(a) Each office in the legislative branch, except the House and the Senate, which is responsible for preparing any written statement furnished under part 3 of subchapter A of chapter 61 of the Internal Revenue Code of 1986 on behalf of a person shall make the statement available to the person in an electronic format (at the direction of the person) which will enable the person to provide the statement electronically to a tax preparer or other provider of financial services.

"(b) Subsection (a) shall apply with respect to statements prepared for taxable years ending on or after December 31, 2004."

SUBPART A—INFORMATION CONCERNING PERSONS SUBJECT TO

SPECIAL PROVISIONS

Sec.
6031. Return of partnership income.
6032. Returns of banks with respect to common trust funds.
6033. Returns by exempt organizations.
6034. Returns by certain trusts.
6034A. Information to beneficiaries of estates and trusts.
[6035. Repealed.]
6036. Notice of qualification as executor or receiver.
6037. Return of S corporation.
6038. Information reporting with respect to certain foreign corporations and partnerships.
6038A. Information with respect to certain foreign-owned corporations.
6038B. Notice of certain transfers to foreign persons.
6038C. Information with respect to foreign corporations engaged in U.S. business.
6038D. Information with respect to foreign financial assets.
6039. Returns required in connection with certain options.
[6039A, 6039B. Repealed.]
6039C. Returns with respect to foreign persons holding direct investments in United States real property interests.
6039D. Returns and records with respect to certain fringe benefit plans.[1]
6039D. Returns and records with respect to certain fringe benefit plans.[1]
6039E. Information concerning resident status.
6039F. Notice of large gifts received from foreign persons.
6039G. Information on individuals losing United States citizenship.
6039H. Information with respect to Alaska Native Settlement Trusts and sponsoring Native Corporations.
6039I. Returns and records with respect to employer-owned life insurance contracts.
6039J. Information reporting with respect to Commodity Credit Corporation transactions.
6040. Cross references.

AMENDMENTS

2010—Pub. L. 111–147, title V, §511(b), Mar. 18, 2010, 124 Stat. 110, added item 6038D.

2008—Pub. L. 110–234, title XV, §15353(b), May 22, 2008, 122 Stat. 1527, and Pub. L. 110–246, title XV, §15353(b), June 18, 2008, 122 Stat. 2289, made identical amendments, adding item 6039J. The amendment by Pub. L. 110–234 was repealed by Pub. L. 110–246, §4(a), June 18, 2008, 122 Stat. 1664.

2006—Pub. L. 109–432, div. A, title IV, §403(c)(3), Dec. 20, 2006, 120 Stat. 2955, substituted "Returns" for "Information" in item 6039.

Pub. L. 109–280, title XII, §1201(b)(4), Aug. 17, 2006, 120 Stat. 1066, which directed the amendment of the analysis for subpart A of part III of subchapter A of chapter 61 by amending item 6034 to read "Returns by certain trusts" without specifying the act to be amended, was executed to this analysis which is part of the Internal Revenue Code of 1986 which is classified to this title, to reflect the probable intent of Congress. Prior to amendment, item 6034 read as follows: "Returns by trusts claiming charitable deductions under section 642(c)".

Pub. L. 109–280, title VIII, §863(c)(2), Aug. 17, 2006, 120 Stat. 1024, added item 6039I.

2004—Pub. L. 108–357, title IV, §413(c)(33), Oct. 22, 2004, 118 Stat. 1510, struck out item 6035 "Returns of officers, directors, and shareholders of foreign personal holding companies".

2001—Pub. L. 107–16, title VI, §671(c)(2), June 7, 2001, 115 Stat. 147, added item 6039H.

1997—Pub. L. 105–34, title XI, §1142(e)(5), title XVI, §1602(h)(2), Aug. 5, 1997, 111 Stat. 983, 1096, inserted "reporting" after "Information" and "and partnerships" after "corporations" in item 6038, struck out item 6039F "Information on individuals losing United States citizenship", and added item 6039G.

1996—Pub. L. 104–191, title V, §512(b), Aug. 21, 1996, 110 Stat. 2102, added item 6039F "Information on individuals losing United States citizenship".

Pub. L. 104–188, title I, §1905(b), Aug. 20, 1996, 110 Stat. 1913, added item 6039F "Notice of large gifts received from foreign persons".

1990—Pub. L. 101–508, title XI, §11315(b)(2), Nov. 5, 1990, 104 Stat. 1388–457, added item 6038C.

1986—Pub. L. 99–514, title XII, §1234(a)(2), title XIII, §1303(c)(2), Oct. 22, 1986, 100 Stat. 2565, 2658, struck out item 6039B "Return of general stock ownership corporation", and added item 6039E.

1984—Pub. L. 98–612, §1(b)(4), Oct. 31, 1984, 98 Stat. 3181, added item 6039D "Returns and records with respect to certain fringe benefit plans".

Pub. L. 98–611, §1(d)(4), Oct. 31, 1984, 98 Stat. 3178, added item 6039D "Returns and records with respect to certain fringe benefit plans".

Pub. L. 98–369, div. A, title I, §§129(b)(2), 131(d)(3), title VII, §714(q)(4), July 18, 1984, 98 Stat. 660, 664, 966, added items 6034A and 6038B, and inserted "foreign persons holding direct investments in" in item 6039C.

1982—Pub. L. 97–354, §5(a)(39)(B), Oct. 19, 1982, 96 Stat. 1696, substituted "S corporation" for "electing small business corporation" in item 6037.

Pub. L. 97–248, title III, §339(b), Sept. 3, 1982, 96 Stat. 633, added item 6038A.

1980—Pub. L. 96–603, §1(e)(1), Dec. 28, 1980, 94 Stat. 3505, which directed that item 6034 be amended by substituting "4947(a)(2)" for "4947(a)", could not be executed because item 6034 does not contain "4947(a)".

Pub. L. 96–499, title XI, §1123(c), Dec. 5, 1980, 94 Stat. 2690, added item 6039C.

Pub. L. 96–223, title IV, §401(a), Apr. 2, 1980, 94 Stat. 299, repealed Pub. L. 94–455, §2005(a)(3), and the amendment made thereby. See 1976 Amendment note below.

1978—Pub. L. 95–600, title VI, §601(c)(2), Nov. 6, 1978, 92 Stat. 2897, added item 6039B.

1976—Pub. L. 94–455, title XX, §2005(e)(3), Oct. 4, 1976, 90 Stat. 1878, which added item 6039A, was repealed by Pub. L. 96–223, §401(a). See section 401(b), (e) of Pub. L. 96–223, set out as an Effective Date of 1980 Amendments and Revival of Prior Law note under section 1023 of this title.

1964—Pub. L. 88–272, title II, §221(d)(2), Feb. 26, 1964, 78 Stat. 75, added item 6039 and redesignated former item 6039 as 6040.

1960—Pub. L. 86–780, §6(b)(1), Sept. 14, 1960, 74 Stat. 1015, added item 6038 and redesignated former item 6038 as 6039.

1958—Pub. L. 85–866, title I, §64(d)(4), Sept. 2, 1958, 72 Stat. 1657, added item 6037 and redesignated former item 6037 as 6038.

[1] So in original. Pub. L. 98–611 and Pub. L. 98–612 enacted identical items designated "6039D". Pub. L. 99–514, §1879(d)(2), repealed the section 6039D enacted by Pub. L. 98–612 without corresponding amendment of subpart analysis.

§6031. Return of partnership income

(a) General rule

Every partnership (as defined in section 761(a)) shall make a return for each taxable year, stating specifically the items of its gross income and the deductions allowable by subtitle A, and such other information, for the purpose of carrying out the provisions of subtitle A as the Secretary may by forms and regulations prescribe, and shall include in the return the names and addresses of the individuals who would be entitled to share in the taxable income if distributed and the amount of the distributive share of each individual.

(b) Copies to partners

Each partnership required to file a return under subsection (a) for any partnership taxable year shall (on or before the day on which the return for such taxable year was required to be filed) furnish to each person who is a partner or who holds an interest in such partnership as a nominee for another person at any time during such taxable year a copy of such information required to be shown on such return as may be required by regulations. In the case of an electing large partnership (as defined in section 775), such information shall be furnished on or before the first March 15 following the close of such taxable year.

(c) Nominee reporting

Any person who holds an interest in a partnership as a nominee for another person—

(1) shall furnish to the partnership, in the manner prescribed by the Secretary, the name and

address of such other person, and any other information for such taxable year as the Secretary may by form and regulation prescribe, and

(2) shall furnish in the manner prescribed by the Secretary such other person the information provided by such partnership under subsection (b).

(d) Separate statement of items of unrelated business taxable income

In the case of any partnership regularly carrying on a trade or business (within the meaning of section 512(c)(1)), the information required under subsection (b) to be furnished to its partners shall include such information as is necessary to enable each partner to compute its distributive share of partnership income or loss from such trade or business in accordance with section 512(a)(1), but without regard to the modifications described in paragraphs (8) through (15) of section 512(b).

(e) Foreign partnerships

(1) Exception for foreign partnership

Except as provided in paragraph (2), the preceding provisions of this section shall not apply to a foreign partnership.

(2) Certain foreign partnerships required to file return

Except as provided in regulations prescribed by the Secretary, this section shall apply to a foreign partnership for any taxable year if for such year, such partnership has—

(A) gross income derived from sources within the United States, or

(B) gross income which is effectively connected with the conduct of a trade or business within the United States.

The Secretary may provide simplified filing procedures for foreign partnerships to which this section applies.

(f) Electing investment partnerships

In the case of any electing investment partnership (as defined in section 743(e)(6)), the information required under subsection (b) to be furnished to any partner to whom section 743(e)(2) applies shall include such information as is necessary to enable the partner to compute the amount of losses disallowed under section 743(e).

(Aug. 16, 1954, ch. 736, 68A Stat. 741; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–248, title IV, §403, Sept. 3, 1982, 96 Stat. 669; Pub. L. 99–514, title XV, §1501(c)(16), title XVIII, §1811(b)(1)(A), Oct. 22, 1986, 100 Stat. 2740, 2832; Pub. L. 100–647, title V, §5074(a), Nov. 10, 1988, 102 Stat. 3682; Pub. L. 105–34, title XI, §1141(a), title XII, §1223(a), Aug. 5, 1997, 111 Stat. 980, 1019; Pub. L. 108–357, title VIII, §833(b)(4)(B), Oct. 22, 2004, 118 Stat. 1590.)

AMENDMENTS

2004—Subsec. (f). Pub. L. 108–357 added subsec. (f).

1997—Subsec. (b). Pub. L. 105–34, §1223(a), inserted at end "In the case of an electing large partnership (as defined in section 775), such information shall be furnished on or before the first March 15 following the close of such taxable year."

Subsec. (e). Pub. L. 105–34, §1141(a), added subsec. (e).

1988—Subsec. (d). Pub. L. 100–647 added subsec. (d).

1986—Subsec. (b). Pub. L. 99–514, §1501(c)(16), substituted "was required to be filed" for "was filed" and "required to be shown on such return" for "shown on such return".

Pub. L. 99–514, §1811(b)(1)(A)(i), inserted "or who holds an interest in such partnership as a nominee for another person" after "who is a partner".

Subsec. (c). Pub. L. 99–514, §1811(b)(1)(A)(ii), added subsec. (c).

1982—Subsec. (a). Pub. L. 97–248, §403(b), designated existing provisions as subsec. (a) and added subsec. heading.

Subsec. (b). Pub. L. 97–248, §403(a), added subsec. (b).

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to transfers after Oct. 22, 2004, with transition rule in the case of an electing investment partnership which is in existence on June 4, 2004, see section 833(d)(2) of Pub. L. 108–357, set out as a note under section 743 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XI, §1141(c), Aug. 5, 1997, 111 Stat. 981, provided that: "The amendments made by this section [amending this section and section 6231 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 5, 1997]."

Amendment by section 1223(a) of Pub. L. 105–34 applicable to partnership taxable years beginning after Dec. 31, 1997, see section 1226 of Pub. L. 105–34, as amended, set out as a note under section 6011 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title V, §5074(b), Nov. 10, 1988, 102 Stat. 3682, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1988."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1501(c)(16) of Pub. L. 99–514 applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1986, see section 1501(e) of Pub. L. 99–514, set out as an Effective Date note under section 6721 of this title.

Pub. L. 99–514, title XVIII, §1811(b)(1)(B), Oct. 22, 1986, 100 Stat. 2832, provided that: "The amendments made by this subsection [amending this section and section 6050K of this title] shall apply to partnership taxable years beginning after the date of the enactment of this Act [Oct. 22, 1986]."

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to partnership taxable years beginning after Sept. 3, 1982, with provision for the applicability of the amendment to any partnership taxable year ending after Sept. 3, 1982, if the partnership, each partner, and each indirect partner requests such application and the Secretary of the Treasury or his delegate consents to such application, see section 407(a)(1), (3) of Pub. L. 97–248, set out as an Effective Date note under section 6221 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

RETURNS REQUIRED FROM ALL PARTNERSHIPS WITH UNITED STATES PARTNERS

Pub. L. 97–248, title IV, §404, Sept. 3, 1982, 96 Stat. 669, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Except as hereafter provided in regulations prescribed by the Secretary of the Treasury or his delegate, nothing in section 6031 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall be treated as excluding any partnership from the filing requirements of such section for any taxable year if the income tax liability under subtitle A of such Code of any United States person is determined in whole or in part by taking into account (directly or indirectly) partnership items of such partnership for such taxable year."

SPECIAL RULE FOR CERTAIN INTERNATIONAL SATELLITE PARTNERSHIPS

For provision that this section is not applicable to certain international satellite partnerships, see section 406 of Pub. L. 97–248, set out as a note under section 6231 of this title.

§6032. Returns of banks with respect to common trust funds

Every bank (as defined in section 581) maintaining a common trust fund shall make a return for each taxable year, stating specifically, with respect to such fund, the items of gross income and the deductions allowed by subtitle A, and shall include in the return the names and addresses of the

participants who would be entitled to share in the taxable income if distributed and the amount of the proportionate share of each participant. The return shall be executed in the same manner as a return made by a corporation pursuant to the requirements of sections 6012 and 6062.

(Aug. 16, 1954, ch. 736, 68A Stat. 741.)

§6033. Returns by exempt organizations

(a) Organizations required to file

(1) In general

Except as provided in paragraph (3), every organization exempt from taxation under section 501(a) shall file an annual return, stating specifically the items of gross income, receipts, and disbursements, and such other information for the purpose of carrying out the internal revenue laws as the Secretary may by forms or regulations prescribe, and shall keep such records, render under oath such statements, make such other returns, and comply with such rules and regulations as the Secretary may from time to time prescribe; except that, in the discretion of the Secretary, any organization described in section 401(a) may be relieved from stating in its return any information which is reported in returns filed by the employer which established such organization.

(2) Being a party to certain reportable transactions

Every tax-exempt entity described in section 4965(c) shall file (in such form and manner and at such time as determined by the Secretary) a disclosure of—

(A) such entity's being a party to any prohibited tax shelter transaction (as defined in section 4965(e)), and

(B) the identity of any other party to such transaction which is known by such tax-exempt entity.

(3) Exceptions from filing

(A) Mandatory exceptions

Paragraph (1) shall not apply to—

(i) churches, their integrated auxiliaries, and conventions or associations of churches,

(ii) any organization (other than a private foundation, as defined in section 509(a)) described in subparagraph (C), the gross receipts of which in each taxable year are normally not more than $5,000, or

(iii) the exclusively religious activities of any religious order.

(B) Discretionary exceptions

The Secretary may relieve any organization required under paragraph (1) (other than an organization described in section 509(a)(3)) to file an information return from filing such a return where he determines that such filing is not necessary to the efficient administration of the internal revenue laws.

(C) Certain organizations

The organizations referred to in subparagraph (A)(ii) are—

(i) a religious organization described in section 501(c)(3);

(ii) an educational organization described in section 170(b)(1)(A)(ii);

(iii) a charitable organization, or an organization for the prevention of cruelty to children or animals, described in section 501(c)(3), if such organization is supported, in whole or in part, by funds contributed by the United States or any State or political subdivision thereof, or is primarily supported by contributions of the general public;

(iv) an organization described in section 501(c)(3), if such organization is operated, supervised, or controlled by or in connection with a religious organization described in clause (i);

(v) an organization described in section 501(c)(8); and

(vi) an organization described in section 501(c)(1), if such organization is a corporation wholly owned by the United States or any agency or instrumentality thereof, or a wholly-owned subsidiary of such a corporation.

(b) Certain organizations described in section 501(c)(3)

Every organization described in section 501(c)(3) which is subject to the requirements of subsection (a) shall furnish annually information, at such time and in such manner as the Secretary may by forms or regulations prescribe, setting forth—

(1) its gross income for the year,

(2) its expenses attributable to such income and incurred within the year,

(3) its disbursements within the year for the purposes for which it is exempt,

(4) a balance sheet showing its assets, liabilities, and net worth as of the beginning of such year,

(5) the total of the contributions and gifts received by it during the year, and the names and addresses of all substantial contributors,

(6) the names and addresses of its foundation managers (within the meaning of section 4946(b)(1)) and highly compensated employees,

(7) the compensation and other payments made during the year to each individual described in paragraph (6),

(8) in the case of an organization with respect to which an election under section 501(h) is effective for the taxable year, the following amounts for such organization for such taxable year:

(A) the lobbying expenditures (as defined in section 4911(c)(1)),

(B) the lobbying nontaxable amount (as defined in section 4911(c)(2)),

(C) the grass roots expenditures (as defined in section 4911(c)(3)), and

(D) the grass roots nontaxable amount (as defined in section 4911(c)(4)),

(9) such other information with respect to direct or indirect transfers to, and other direct or indirect transactions and relationships with, other organizations described in section 501(c) (other than paragraph (3) thereof) or section 527 as the Secretary may require to prevent—

(A) diversion of funds from the organization's exempt purpose, or

(B) misallocation of revenues or expenses,

(10) the respective amounts (if any) of the taxes imposed on the organization, or any organization manager of the organization, during the taxable year under any of the following provisions (and the respective amounts (if any) of reimbursements paid by the organization during the taxable year with respect to taxes imposed on any such organization manager under any of such provisions):

(A) section 4911 (relating to tax on excess expenditures to influence legislation),

(B) section 4912 (relating to tax on disqualifying lobbying expenditures of certain organizations),

(C) section 4955 (relating to taxes on political expenditures of section 501(c)(3) organizations), except to the extent that, by reason of section 4962, the taxes imposed under such section are not required to be paid or are credited or refunded, and

(D) section 4959 (relating to taxes on failures by hospital organizations),

(11) the respective amounts (if any) of—

(A) the taxes imposed with respect to the organization on any organization manager, or any disqualified person, during the taxable year under section 4958 (relating to taxes on private excess benefit from certain charitable organizations), and

(B) reimbursements paid by the organization during the taxable year with respect to taxes imposed under such section,

except to the extent that, by reason of section 4962, the taxes imposed under such section are not required to be paid or are credited or refunded,

(12) such information as the Secretary may require with respect to any excess benefit transaction (as defined in section 4958),

(13) such information with respect to disqualified persons as the Secretary may prescribe,

(14) such information as the Secretary may require with respect to disaster relief activities, including the amount and use of qualified contributions to which section 1400S(a) applies,

(15) in the case of an organization to which the requirements of section 501(r) apply for the taxable year—

(A) a description of how the organization is addressing the needs identified in each community health needs assessment conducted under section 501(r)(3) and a description of any such needs that are not being addressed together with the reasons why such needs are not being addressed, and

(B) the audited financial statements of such organization (or, in the case of an organization the financial statements of which are included in a consolidated financial statement with other organizations, such consolidated financial statement).[1]

(16) such other information for purposes of carrying out the internal revenue laws as the Secretary may require.

For purposes of paragraph (8), if section 4911(f) applies to the organization for the taxable year, such organization shall furnish the amounts with respect to the affiliated group as well as with respect to such organization.

(c) Additional provisions relating to private foundations

In the case of an organization which is a private foundation (within the meaning of section 509(a))—

(1) the Secretary shall by regulations provide that the private foundation shall include in its annual return under this section such information (not required to be furnished by subsection (b) or the forms or regulations prescribed thereunder) as would have been required to be furnished under section 6056 (relating to annual reports by private foundations) as such section 6056 was in effect on January 1, 1979, and

(2) the foundation managers shall furnish copies of the annual return under this section to such State officials, at such times, and under such conditions, as the Secretary may by regulations prescribe.

Nothing in paragraph (1) shall require the inclusion of the name and address of any recipient (other than a disqualified person within the meaning of section 4946) of 1 or more charitable gifts or grants made by the foundation to such recipient as an indigent or needy person if the aggregate of such gifts or grants made by the foundation to such recipient during the year does not exceed $1,000.

(d) Section to apply to nonexempt charitable trusts and nonexempt private foundations

The following organizations shall comply with the requirements of this section in the same manner as organizations described in section 501(c)(3) which are exempt from tax under section 501(a):

(1) Nonexempt charitable trusts

A trust described in section 4947(a)(1) (relating to nonexempt charitable trusts).

(2) Nonexempt private foundations

A private foundation which is not exempt from tax under section 501(a).

(e) Special rules relating to lobbying activities

(1) Reporting requirements

(A) In general

If this subsection applies to an organization for any taxable year, such organization—

(i) shall include on any return required to be filed under subsection (a) for such year information setting forth the total expenditures of the organization to which section 162(e)(1) applies and the total amount of the dues or other similar amounts paid to the organization to which such expenditures are allocable, and

(ii) except as provided in paragraphs (2)(A)(i) and (3), shall, at the time of assessment or payment of such dues or other similar amounts, provide notice to each person making such payment which contains a reasonable estimate of the portion of such dues or other similar amounts to which such expenditures are so allocable.

(B) Organizations to which subsection applies

(i) In general

This subsection shall apply to any organization which is exempt from taxation under section 501 other than an organization described in section 501(c)(3).

(ii) Special rule for in-house expenditures

This subsection shall not apply to the in-house expenditures (within the meaning of section 162(e)(5)(B)(ii)) of an organization for a taxable year if such expenditures do not exceed $2,000. In determining whether a taxpayer exceeds the $2,000 limit under this clause, there shall not be taken into account overhead costs otherwise allocable to activities described in subparagraphs (A) and (D) of section 162(e)(1).

(iii) Coordination with section 527(f)

This subsection shall not apply to any amount on which tax is imposed by reason of section 527(f).

(C) Allocation

For purposes of this paragraph—

(i) In general

Expenditures to which section 162(e)(1) applies shall be treated as paid out of dues or other similar amounts to the extent thereof.

(ii) Carryover of lobbying expenditures in excess of dues

If expenditures to which section 162(e)(1) applies exceed the dues or other similar amounts for any taxable year, such excess shall be treated as expenditures to which section 162(e)(1) applies which are paid or incurred by the organization during the following taxable year.

(2) Tax imposed where organization does not notify

(A) In general

If an organization—

(i) elects not to provide the notices described in paragraph (1)(A) for any taxable year, or

(ii) fails to include in such notices the amount allocable to expenditures to which section 162(e)(1) applies (determined on the basis of actual amounts rather than the reasonable estimates under paragraph (1)(A)(ii)),

then there is hereby imposed on such organization for such taxable year a tax in an amount equal to the product of the highest rate of tax imposed by section 11 for the taxable year and the aggregate amount not included in such notices by reason of such election or failure.

(B) Waiver where future adjustments made

The Secretary may waive the tax imposed by subparagraph (A)(ii) for any taxable year if the organization agrees to adjust its estimates under paragraph (1)(A)(ii) for the following taxable year to correct any failures.

(C) Tax treated as income tax

For purposes of this title, the tax imposed by subparagraph (A) shall be treated in the same

manner as a tax imposed by chapter 1 (relating to income taxes).

(3) Exception where dues generally nondeductible

Paragraph (1)(A) shall not apply to an organization which establishes to the satisfaction of the Secretary that substantially all of the dues or other similar amounts paid by persons to such organization are not deductible without regard to section 162(e).

(f) Certain organizations described in section 501(c)(4)

Every organization described in section 501(c)(4) which is subject to the requirements of subsection (a) shall include on the return required under subsection (a) the information referred to in paragraphs (11), (12) and (13) of subsection (b) with respect to such organization.

(g) Returns required by political organizations

(1) In general

This section shall apply to a political organization (as defined by section 527(e)(1)) which has gross receipts of $25,000 or more for the taxable year. In the case of a political organization which is a qualified State or local political organization (as defined in section 527(e)(5)), the preceding sentence shall be applied by substituting "$100,000" for "$25,000".

(2) Annual returns

Political organizations described in paragraph (1) shall file an annual return—

(A) containing the information required, and complying with the other requirements, under subsection (a)(1) for organizations exempt from taxation under section 501(a), with such modifications as the Secretary considers appropriate to require only information which is necessary for the purposes of carrying out section 527, and

(B) containing such other information as the Secretary deems necessary to carry out the provisions of this subsection.

(3) Mandatory exceptions from filing

Paragraph (2) shall not apply to an organization—

(A) which is a State or local committee of a political party, or political committee of a State or local candidate,

(B) which is a caucus or association of State or local officials,

(C) which is an authorized committee (as defined in section 301(6) of the Federal Election Campaign Act of 1971) of a candidate for Federal office,

(D) which is a national committee (as defined in section 301(14) of the Federal Election Campaign Act of 1971) of a political party,

(E) which is a United States House of Representatives or United States Senate campaign committee of a political party committee,

(F) which is required to report under the Federal Election Campaign Act of 1971 as a political committee (as defined in section 301(4) of such Act), or

(G) to which section 527 applies for the taxable year solely by reason of subsection (f)(1) of such section.

(4) Discretionary exception

The Secretary may relieve any organization required under paragraph (2) to file an information return from filing such a return if the Secretary determines that such filing is not necessary to the efficient administration of the internal revenue laws.

(h) Controlling organizations

Each controlling organization (within the meaning of section 512(b)(13)) which is subject to the requirements of subsection (a) shall include on the return required under subsection (a)—

(1) any interest, annuities, royalties, or rents received from each controlled entity (within the meaning of section 512(b)(13)),

(2) any loans made to each such controlled entity, and

(3) any transfers of funds between such controlling organization and each such controlled

entity.

(i) Additional notification requirements

Any organization the gross receipts of which in any taxable year result in such organization being referred to in subsection (a)(3)(A)(ii) or (a)(3)(B)—

(1) shall furnish annually, in electronic form, and at such time and in such manner as the Secretary may by regulations prescribe, information setting forth—

(A) the legal name of the organization,

(B) any name under which such organization operates or does business,

(C) the organization's mailing address and Internet web site address (if any),

(D) the organization's taxpayer identification number,

(E) the name and address of a principal officer, and

(F) evidence of the continuing basis for the organization's exemption from the filing requirements under subsection (a)(1), and

(2) upon the termination of the existence of the organization, shall furnish notice of such termination.

(j) Loss of exempt status for failure to file return or notice

(1) In general

If an organization described in subsection (a)(1) or (i) fails to file an annual return or notice required under either subsection for 3 consecutive years, such organization's status as an organization exempt from tax under section 501(a) shall be considered revoked on and after the date set by the Secretary for the filing of the third annual return or notice. The Secretary shall publish and maintain a list of any organization the status of which is so revoked.

(2) Application necessary for reinstatement

Any organization the tax-exempt status of which is revoked under paragraph (1) must apply in order to obtain reinstatement of such status regardless of whether such organization was originally required to make such an application.

(3) Retroactive reinstatement if reasonable cause shown for failure

If, upon application for reinstatement of status as an organization exempt from tax under section 501(a), an organization described in paragraph (1) can show to the satisfaction of the Secretary evidence of reasonable cause for the failure described in such paragraph, the organization's exempt status may, in the discretion of the Secretary, be reinstated effective from the date of the revocation under such paragraph.

(k) Additional provisions relating to sponsoring organizations

Every organization described in section 4966(d)(1) shall, on the return required under subsection (a) for the taxable year—

(1) list the total number of donor advised funds (as defined in section 4966(d)(2)) it owns at the end of such taxable year,

(2) indicate the aggregate value of assets held in such funds at the end of such taxable year, and

(3) indicate the aggregate contributions to and grants made from such funds during such taxable year.

(l) Additional provisions relating to supporting organizations

Every organization described in section 509(a)(3) shall, on the return required under subsection (a)—

(1) list the supported organizations (as defined in section 509(f)(3)) with respect to which such organization provides support,

(2) indicate whether the organization meets the requirements of clause (i), (ii), or (iii) of section 509(a)(3)(B), and

(3) certify that the organization meets the requirements of section 509(a)(3)(C).

(m) Additional information required from CO–OP insurers

An organization described in section 501(c)(29) shall include on the return required under subsection (a) the following information:

(1) The amount of the reserves required by each State in which the organization is licensed to issue qualified health plans.

(2) The amount of reserves on hand.

(n) Cross references

For provisions relating to statements, etc., regarding exempt status of organizations, see section 6001.

For reporting requirements as to certain liquidations, dissolutions, terminations, and contractions, see section 6043(b). For provisions relating to penalties for failure to file a return required by this section, see section 6652(c).

For provisions relating to information required in connection with certain plans of deferred compensation, see section 6058.

(Aug. 16, 1954, ch. 736, 68A Stat. 741; Pub. L. 85–866, title I, §75(b), Sept. 2, 1958, 72 Stat. 1661; Pub. L. 91–172, title I, §101(d)(1), (2), (j)(30), (31), Dec. 30, 1969, 83 Stat. 519, 520, 529; Pub. L. 93–406, title II, §1031(c)(2), Sept. 2, 1974, 88 Stat. 946; Pub. L. 94–455, title XIII, §1307(a)(4), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1722, 1834; Pub. L. 96–603, §1(a), Dec. 28, 1980, 94 Stat. 3503; Pub. L. 99–514, title XV, §1501(d)(1)(C), Oct. 22, 1986, 100 Stat. 2740; Pub. L. 100–203, title X, §10703(a), Dec. 22, 1987, 101 Stat. 1330–460; Pub. L. 103–66, title XIII, §13222(c), Aug. 10, 1993, 107 Stat. 480; Pub. L. 104–168, title XIII, §1312(a), (b), July 30, 1996, 110 Stat. 1479; Pub. L. 104–188, title I, §1703(g), Aug. 20, 1996, 110 Stat. 1876; Pub. L. 105–34, title XVI, §1603(b), Aug. 5, 1997, 111 Stat. 1096; Pub. L. 105–277, div. J, title I, §1004(b)(2)(A), Oct. 21, 1998, 112 Stat. 2681–889; Pub. L. 106–230, §3(a)(2), July 1, 2000, 114 Stat. 482; Pub. L. 107–276, §3(c), Nov. 2, 2002, 116 Stat. 1931; Pub. L. 109–222, title V, §516(b)(1), May 17, 2006, 120 Stat. 371; Pub. L. 109–280, title XII, §§1205(b)(1), 1223(a), (b), 1235(a)(1), 1245(a), (b), Aug. 17, 2006, 120 Stat. 1067, 1090, 1101, 1108; Pub. L. 110–343, div. C, title VII, §703(a), Oct. 3, 2008, 122 Stat. 3919; Pub. L. 111–148, title I, §1322(h)(2), title IX, §9007(d), Mar. 23, 2010, 124 Stat. 192, 857.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

REFERENCES IN TEXT

Section 6056 of this title, referred to in subsec. (c)(1), was repealed by Pub. L. 96–603, §1(c), Dec. 28, 1980, 94 Stat. 3504.

The Federal Election Campaign Act of 1971, referred to in subsec. (g)(3)(F), is Pub. L. 92–225, Feb. 7, 1972, 86 Stat. 3, which was formerly classified principally to chapter 14 (§431 et seq.) of Title 2, The Congress, prior to editorial reclassification and renumbering in Title 52, Voting and Elections, and is now classified principally to chapter 301 (§30101 et seq.) of Title 52. Section 301 of the Act is now classified to section 30101 of Title 52. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Sections 1205(b)(1), 1223(a), (b), 1235(a)(1), and 1245(a), (b) of Pub. L. 109–280, which directed the amendment of section 6033 without specifying the act to be amended, were executed to this section, which is section 6033 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

AMENDMENTS

2010—Subsec. (b)(10)(D). Pub. L. 111–148, §9007(d)(2), added subpar. (D).

Subsec. (b)(15), (16). Pub. L. 111–148, §9007(d)(1), added par. (15) and redesignated former par. (15) as (16).

Subsecs. (m), (n). Pub. L. 111–148, §1322(h)(2), added subsec. (m) and redesignated former subsec. (m) as (n).

2008—Subsec. (b)(14), (15). Pub. L. 110–343 added par. (14) and redesignated former par. (14) as (15).

2006—Subsec. (a)(1). Pub. L. 109–222, §516(b)(1)(B), substituted "paragraph (3)" for "paragraph (2)".

Subsec. (a)(2). Pub. L. 109–222, §516(b)(1)(A), added par. (2). Former par. (2) redesignated (3).

Subsec. (a)(3). Pub. L. 109–222, §516(b)(1)(A), redesignated par. (2) as (3).

Subsec. (a)(3)(B). Pub. L. 109–280, §1245(a), inserted "(other than an organization described in section 509(a)(3))" after "paragraph (1)". See Codification note above.

Subsec. (h). Pub. L. 109–280, §1205(b)(1), added subsec. (h). Former subsec. (h) redesignated (i). See Codification note above.

Subsec. (i). Pub. L. 109–280, §1223(a), added subsec. (i). Former subsec. (i) redesignated (j). See Codification note above.

Pub. L. 109–280, §1205(b)(1), redesignated subsec. (h) as (i). See Codification note above.

Subsec. (j). Pub. L. 109–280, §1223(b), added subsec. (j). Former subsec. (j) redesignated (k). See Codification note above.

Pub. L. 109–280, §1223(a), redesignated subsec. (i) as (j). See Codification note above.

Subsec. (k). Pub. L. 109–280, §1235(a)(1), added subsec. (k). Former subsec. (k) redesignated (l). See Codification note above.

Pub. L. 109–280, §1223(b), redesignated subsec. (j) as (k). See Codification note above.

Subsec. (l). Pub. L. 109–280, §1245(b), added subsec. (l). Former subsec. (l) redesignated (m). See Codification note above.

Pub. L. 109–280, §1235(a)(1), redesignated subsec. (k) as (l). See Codification note above.

Subsec. (m). Pub. L. 109–280, §1245(b), redesignated subsec. (l) as (m). See Codification note above.

2002—Subsec. (g). Pub. L. 107–276 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "In the case of a political organization required to file a return under section 6012(a)(6)—

"(1) such organization shall file a return—

"(A) containing the information required, and complying with the other requirements, under subsection (a)(1) for organizations exempt from taxation under section 501(a), and

"(B) containing such other information as the Secretary deems necessary to carry out the provisions of this subsection, and

"(2) subsection (a)(2)(B) (relating to discretionary exceptions) shall apply with respect to such return."

2000—Subsecs. (g), (h). Pub. L. 106–230 added subsec. (g) and redesignated former subsec. (g) as (h).

1998—Subsec. (c). Pub. L. 105–277 inserted "and" at end of par. (1), redesignated par. (3) as (2), and struck out former par. (2) which read as follows: "a copy of the notice required by section 6104(d) (relating to public inspection of private foundations' annual returns), together with proof of publication thereof, shall be filed by the foundation together with the annual return under this section, and".

1997—Subsec. (b)(10). Pub. L. 105–34, §1603(b)(1)(A), in introductory provisions, substituted "the respective amounts (if any) of the taxes imposed on the organization, or any organization manager of the organization, during the taxable year under any of the following provisions (and the respective amounts (if any) of reimbursements paid by the organization during the taxable year with respect to taxes imposed on any such organization manager under any of such provisions):" for "the respective amounts (if any) of the taxes paid by the organization during the taxable year under the following provisions:".

Subsec. (b)(10)(C). Pub. L. 105–34, §1603(b)(1)(B), inserted at end "except to the extent that, by reason of section 4962, the taxes imposed under such section are not required to be paid or are credited or refunded,".

Subsec. (b)(11). Pub. L. 105–34, §1603(b)(2), amended par. (11) generally. Prior to amendment, par. (11) read as follows: "the respective amounts (if any) of the taxes paid by the organization, or any disqualified person with respect to such organization, during the taxable year under section 4958 (relating to taxes on private excess benefit from certain charitable organizations),".

1996—Subsec. (b)(10) to (14). Pub. L. 104–168, §1312(a), added pars. (10) to (13) and redesignated former par. (10) as (14).

Subsec. (e)(1)(B)(i). Pub. L. 104–188, §1703(g)(2), substituted "section 501" for "this subtitle".

Subsec. (e)(1)(B)(iii). Pub. L. 104–188, §1703(g)(1), added subcl. (iii).

Subsecs. (f), (g). Pub. L. 104–168, §1312(b), added subsec. (f) and redesignated former subsec. (f) as (g).

1993—Subsecs. (e), (f). Pub. L. 103–66 added subsec. (e) and redesignated former subsec. (e) as (f).

1987—Subsec. (b)(9), (10). Pub. L. 100–203 added pars. (9) and (10).

1986—Subsec. (e). Pub. L. 99–514 substituted "section 6652(c)" for "section 6652(d)".

1980—Subsecs. (c) to (e). Pub. L. 96–603 added subsecs. (c) and (d) and redesignated former subsec. (c) as (e).

1976—Subsec. (a)(1), (2). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary"

wherever appearing.

Subsec. (b). Pub. L. 94–455, §§1307(a)(4), 1906(b)(13)(A), struck out in provisions preceding par. (1) "or his delegate" after "Secretary" and added par. (8) and sentence at end.

1974—Subsec. (c). Pub. L. 93–406 inserted reference to section 6058 covering provisions relating to information required in connection with certain plans of deferred compensation.

1969—Subsec. (a). Pub. L. 91–172, §101(d)(1), added churches, their integrated auxiliaries, conventions or associations of churches, religious activities of religious orders, and organizations that normally have gross yearly receipts of not more than $5,000, to list of exempt organizations that were excepted from filing information returns, gave the Secretary or his delegate discretion to so except any such organization, and shortened list of educational organizations so excepted.

Subsec. (b)(3). Pub. L. 91–172, §101(d)(2)(A), struck out "out of income" after "its disbursements".

Subsec. (b)(4). Pub. L. 91–172, §101(d)(2)(B), (j)(30), redesignated par. (7) as (4) and struck out "and" at end. Former par. (4), making accumulation of income within year as an item of information to be furnished, was struck out.

Subsec. (b)(5). Pub. L. 91–172, §101(d)(2)(B), (C), substituted total of contributions and gifts received during year and contributors' names and addresses for aggregate accumulation of income at beginning of year as item of information to be furnished.

Subsec. (b)(6). Pub. L. 91–172, §101(d)(2)(B), (C), substituted names and addresses of foundation managers for disbursements out of principal in current and prior years as item of information to be furnished.

Subsec. (b)(7). Pub. L. 91–172, §101(d)(2)(B), (C), added par. (7) and redesignated former par. (7) as (4).

Subsec. (b)(8). Pub. L. 91–172, §101(d)(2)(B), struck out par. (8) which made total of contributions and gifts received during year as item of information to be furnished.

Subsec. (c). Pub. L. 91–172, §101(j)(31), inserted cross references to section 6043(b) and 6652(d).

1958—Subsec. (b)(8). Pub. L. 85–866 added par. (8).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 9007(d) of Pub. L. 111–148 applicable to taxable years beginning after Mar. 23, 2010, see section 9007(f)(1) of Pub. L. 111–148, set out as a note under section 501 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title VII, §703(b), Oct. 3, 2008, 122 Stat. 3919, provided that: "The amendments made by this section [amending this section] shall apply to returns the due date for which (determined without regard to any extension) occurs after December 31, 2008."

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title XII, §1205(c)(2), Aug. 17, 2006, 120 Stat. 1068, provided that: "The amendments made by subsection (b) [amending this section] shall apply to returns the due date (determined without regard to extensions) of which is after the date of the enactment of this Act [Aug. 17, 2006]."

Pub. L. 109–280, title XII, §1223(f), Aug. 17, 2006, 120 Stat. 1091, provided that: "The amendments made by this section [amending this section and sections 6652 and 7428 of this title] shall apply to notices and returns with respect to annual periods beginning after 2006."

Pub. L. 109–280, title XII, §1235(a)(2), Aug. 17, 2006, 120 Stat. 1101, provided that: "The amendments made by this subsection [amending this section] shall apply to returns filed for taxable years ending after the date of the enactment of this Act [Aug. 17, 2006]."

Pub. L. 109–280, title XII, §1245(c), Aug. 17, 2006, 120 Stat. 1108, provided that: "The amendments made by this section [amending this section] shall apply to returns filed for taxable years ending after the date of the enactment of this Act [Aug. 17, 2006]."

Amendment by Pub. L. 109–222 applicable to disclosures the due date for which are after May 17, 2006, see section 516(d)(2) of Pub. L. 109–222, set out as an Effective Date note under section 4965 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–276 effective as if included in the amendments made by Pub. L. 106–230, see section 3(d) of Pub. L. 107–276, set out as a note under section 6012 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–230 applicable to returns for taxable years beginning after June 30, 2000, see section 3(d) of Pub. L. 106–230, set out as a note under section 6012 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–277 applicable to requests made after the later of Dec. 31, 1998, or the 60th day after the Secretary of the Treasury first issues the regulations referred to in section 6104(d)(4) of this title, see section 1004(b)(3) of Pub. L. 105–277, set out as a note under section 6104 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 effective as if included in the provisions of the Taxpayer Bill of Rights 2, Pub. L. 104–168, to which such amendment relates, see section 1603(c) of Pub. L. 105–34, set out as a note under section 4962 of this title.

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by Pub. L. 104–188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103–66, §§13001–13444, to which such amendment relates, see section 1703(o) of Pub. L. 104–188, set out as a note under section 39 of this title.

Pub. L. 104–168, title XIII, §1312(c), July 30, 1996, 110 Stat. 1479, provided that: "The amendments made by this section [amending this section] shall apply to returns for taxable years beginning after the date of the enactment of this Act [July 30, 1996]."

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to amounts paid or incurred after Dec. 31, 1993, see section 13222(e) of Pub. L. 103–66, set out as a note under section 162 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title X, §10703(b), Dec. 22, 1987, 101 Stat. 1330–461, provided that: "The amendments made by subsection (a) [amending this section] shall apply to returns for years beginning after December 31, 1987."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1986, see section 1501(e) of Pub. L. 99–514, set out as an Effective Date note under section 6721 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–603, §1(f), Dec. 28, 1980, 94 Stat. 3505, provided that: "The amendments made by this section [amending this section and sections 6034, 6104, 6652, 6685, and 7207 of this title and repealing section 6056 of this title] shall apply to taxable years beginning after December 31, 1980."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1307(a)(4) of Pub. L. 94–455 effective on or after Oct. 4, 1976, see section 1307(e)(6) of Pub. L. 94–455, set out as a note under section 501 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–406 effective Sept. 2, 1974, see section 1034 of Pub. L. 93–406, set out as an Effective Date note under section 6057 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 101(k)(2)(B) of Pub. L. 91–172, set out as a note under section 4940 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable to taxable years ending on or after Dec. 31, 1958, see section 75(c) of Pub. L. 85–866, set out as a note under section 6104 of this title.

SECRETARIAL OUTREACH REQUIREMENTS

Pub. L. 109–280, title XII, §1223(e), Aug. 17, 2006, 120 Stat. 1091, provided that:

"(1) NOTICE REQUIREMENT.—The Secretary of the Treasury shall notify in a timely manner every organization described in section 6033(i) of the Internal Revenue Code of 1986 (as added by this section) of the requirement under such section 6033(i) and of the penalty established under section 6033(j) of such Code—

"(A) by mail, in the case of any organization the identity and address of which is included in the list of exempt organizations maintained by the Secretary, and

"(B) by Internet or other means of outreach, in the case of any other organization.

"(2) LOSS OF STATUS PENALTY FOR FAILURE TO FILE RETURN.—The Secretary of the Treasury shall publicize, in a timely manner in appropriate forms and instructions and through other appropriate means, the penalty established under section 6033(j) of such Code for the failure to file a return under subsection (a)(1) or (i) of section 6033 of such Code."

[1] *So in original. The period probably should be ", and".*

§6034. Returns by certain trusts

(a) Split-interest trusts

Every trust described in section 4947(a)(2) shall furnish such information with respect to the taxable year as the Secretary may by forms or regulations require.

(b) Trusts claiming certain charitable deductions

(1) In general

Every trust not required to file a return under subsection (a) but claiming a deduction under section 642(c) for the taxable year shall furnish such information with respect to such taxable year as the Secretary may by forms or regulations prescribe, including—

(A) the amount of the deduction taken under section 642(c) within such year,

(B) the amount paid out within such year which represents amounts for which deductions under section 642(c) have been taken in prior years,

(C) the amount for which such deductions have been taken in prior years but which has not been paid out at the beginning of such year,

(D) the amount paid out of principal in the current and prior years for the purposes described in section 642(c),

(E) the total income of the trust within such year and the expenses attributable thereto, and

(F) a balance sheet showing the assets, liabilities, and net worth of the trust as of the beginning of such year.

(2) Exceptions

Paragraph (1) shall not apply to a trust for any taxable year if—

(A) all the net income for such year, determined under the applicable principles of the law of trusts, is required to be distributed currently to the beneficiaries, or

(B) the trust is described in section 4947(a)(1).

(Aug. 16, 1954, ch. 736, 68A Stat. 742; Pub. L. 91–172, title I, §101(j)(32)–(34), Dec. 30, 1969, 83 Stat. 529; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–603, §1(d)(1), Dec. 28, 1980, 94 Stat. 3504; Pub. L. 99–514, title XV, §1501(d)(1)(C), Oct. 22, 1986, 100 Stat. 2740; Pub. L. 109–280, title XII, §1201(b)(1), Aug. 17, 2006, 120 Stat. 1064.)

AMENDMENTS

2006—Pub. L. 109–280, which directed the general amendment of section 6034 without specifying the act to be amended, was executed to this section, which is section 6034 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. Prior to amendment, this section consisted of subsecs. (a) to (c) stating a general rule requiring certain trusts to furnish information as the Secretary may by forms and regulations prescribe, allowing for exceptions to the rule, and providing a cross reference relating to penalties for failure to file a return.

1986—Subsec. (c). Pub. L. 99–514 substituted "section 6652(c)" for "section 6652(d)".

1980—Pub. L. 96–603, §1(d)(1)(D), substituted "section 4947(a)(2)" for "section 4947(a)" in section catchline.

Subsec. (a). Pub. L. 96–603, §1(d)(1)(A), substituted "section 4947(a)(2)" for "section 4947(a)".

Subsec. (b). Pub. L. 96–603, §1(d)(1)(B), (C), substituted in heading "Exceptions" for "Exception" and in text inserted provision that this section not apply in the case of a trust described in section 4947(a)(1).

1976—Subsec. (a). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

1969—Subsec. (a). Pub. L. 91–172, §101(j)(32), (33), inserted, in section catchline and in subsec. (a), reference to trusts described in section 4947(a), and, in par. (1), struck out provisions requiring the separate showing of the amount of deduction paid out, and the amount permanently set aside for charitable, etc., purposes.

Subsec. (c). Pub. L. 91–172, §101(j)(34), added subsec. (c).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title XII, §1201(c)(2), Aug. 17, 2006, 120 Stat. 1066, provided that: "The amendments made by subsection (b) [amending this section and sections 6104 and 6652 of this title] shall apply to returns for taxable years beginning after December 31, 2006."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1986, see section 1501(e) of Pub. L. 99–514, set out as an Effective Date note under section 6721 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–603 applicable to taxable years beginning after Dec. 31, 1980, see section 1(f) of Pub. L. 96–603, set out as a note under section 6033 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 101(k)(2)(B) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

§6034A. Information to beneficiaries of estates and trusts

(a) General rule

The fiduciary of any estate or trust required to file a return under section 6012(a) for any taxable year shall, on or before the date on which such return was required to be filed, furnish to each beneficiary (or nominee thereof)—

(1) who receives a distribution from such estate or trust with respect to such taxable year, or

(2) to whom any item with respect to such taxable year is allocated,

a statement containing such information required to be shown on such return as the Secretary may prescribe.

(b) Nominee reporting

Any person who holds an interest in an estate or trust as a nominee for another person—

(1) shall furnish to the estate or trust, in the manner prescribed by the Secretary, the name and address of such other person, and any other information for the taxable year as the Secretary may by form and regulations prescribe, and

(2) shall furnish in the manner prescribed by the Secretary to such other person the information provided by the estate or trust under subsection (a).

(c) Beneficiary's return must be consistent with estate or trust return or Secretary notified of inconsistency

(1) In general

A beneficiary of any estate or trust to which subsection (a) applies shall, on such beneficiary's return, treat any reported item in a manner which is consistent with the treatment of such item on the applicable entity's return.

(2) Notification of inconsistent treatment

(A) In general

In the case of any reported item, if—

(i)(I) the applicable entity has filed a return but the beneficiary's treatment on such

beneficiary's return is (or may be) inconsistent with the treatment of the item on the applicable entity's return, or

(II) the applicable entity has not filed a return, and

(ii) the beneficiary files with the Secretary a statement identifying the inconsistency,

paragraph (1) shall not apply to such item.

(B) Beneficiary receiving incorrect information

A beneficiary shall be treated as having complied with clause (ii) of subparagraph (A) with respect to a reported item if the beneficiary—

(i) demonstrates to the satisfaction of the Secretary that the treatment of the reported item on the beneficiary's return is consistent with the treatment of the item on the statement furnished under subsection (a) to the beneficiary by the applicable entity, and

(ii) elects to have this paragraph apply with respect to that item.

(3) Effect of failure to notify

In any case—

(A) described in subparagraph (A)(i)(I) of paragraph (2), and

(B) in which the beneficiary does not comply with subparagraph (A)(ii) of paragraph (2),

any adjustment required to make the treatment of the items by such beneficiary consistent with the treatment of the items on the applicable entity's return shall be treated as arising out of mathematical or clerical errors and assessed according to section 6213(b)(1). Paragraph (2) of section 6213(b) shall not apply to any assessment referred to in the preceding sentence.

(4) Definitions

For purposes of this subsection—

(A) Reported item

The term "reported item" means any item for which information is required to be furnished under subsection (a).

(B) Applicable entity

The term "applicable entity" means the estate or trust of which the taxpayer is the beneficiary.

(5) Addition to tax for failure to comply with section

For addition to tax in the case of a beneficiary's negligence in connection with, or disregard of, the requirements of this section, see part II of subchapter A of chapter 68.

(Added Pub. L. 98–369, div. A, title VII, §714(q)(1), July 18, 1984, 98 Stat. 965; amended Pub. L. 99–514, title XV, §1501(c)(15), title XVIII, §1875(d)(3)(A), Oct. 22, 1986, 100 Stat. 2740, 2896; Pub. L. 105–34, title X, §1027(a), Aug. 5, 1997, 111 Stat. 925.)

AMENDMENTS

1997—Subsec. (c). Pub. L. 105–34 added subsec. (c).

1986—Subsec. (a). Pub. L. 99–514, §1501(c)(15), in introductory provisions, substituted "required to file a return" for "making the return required to be filed" and "was required to be filed" for "was filed", and in concluding provisions, substituted "required to be shown on such return" for "shown on such return".

Pub. L. 99–514, §1875(d)(3)(A)(i), (ii), designated existing provisions as subsec. (a), inserted heading "General rule", and substituted "each beneficiary (or nominee thereof)" for "each beneficiary" in text.

Subsec. (b). Pub. L. 99–514, §1875(d)(3)(A)(iii), added subsec. (b).

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title X, §1027(c), Aug. 5, 1997, 111 Stat. 926, provided that: "The amendments made by this section [amending this section and section 6048 of this title] shall apply to returns of beneficiaries and owners filed after the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1501(c)(15) of Pub. L. 99–514 applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1986, see section 1501(e) of Pub. L. 99–514, set out as an Effective Date note under section 6721 of this title.

Pub. L. 99–514, title XVIII, §1875(d)(3)(B), Oct. 22, 1986, 100 Stat. 2897, provided that: "The amendments made by this paragraph [amending this section] shall apply to taxable years of estates and trusts beginning after the date of the enactment of this Act [Oct. 22, 1986]."

EFFECTIVE DATE

Pub. L. 98–369, div. A, title VII, §714(q)(5), July 18, 1984, 98 Stat. 966, provided that: "The amendments made by this subsection [enacting this section and amending sections 6037 and 6678 of this title] shall apply to taxable years beginning after December 31, 1984."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[§6035. Repealed. Pub. L. 108–357, title IV, §413(c)(26), Oct. 22, 2004, 118 Stat. 1509]

Section, Aug. 16, 1954, ch. 736, 68A Stat. 743; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–248, title III, §340(a), Sept. 3, 1982, 96 Stat. 633, related to information returns of officers, directors, and shareholders of foreign personal holding companies.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

§6036. Notice of qualification as executor or receiver

Every receiver, trustee in a case under title 11 of the United States Code, assignee for benefit of creditors, or other like fiduciary, and every executor (as defined in section 2203), shall give notice of his qualification as such to the Secretary in such manner and at such time as may be required by regulations of the Secretary. The Secretary may be regulation provide such exemptions from the requirements of this section as the Secretary deems proper.

(Aug. 16, 1954, ch. 736, 68A Stat. 744; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–589, §6(i)(6), Dec. 24, 1980, 94 Stat. 3410.)

AMENDMENTS

1980—Pub. L. 96–589 substituted "trustee in a case under title 11 of the United States Code" for "trustee in bankruptcy".

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–589 effective Oct. 1, 1979, but not applicable to proceedings under Title 11, Bankruptcy, commenced before Oct. 1, 1979, see section 7(e) of Pub. L. 96–589, set out as a note under section 108 of this title.

§6037. Return of S corporation

(a) In general

Every S corporation shall make a return for each taxable year, stating specifically the items of its

gross income and the deductions allowable by subtitle A, the names and addresses of all persons owning stock in the corporation at any time during the taxable year, the number of shares of stock owned by each shareholder at all times during the taxable year, the amount of money and other property distributed by the corporation during the taxable year to each shareholder, the date of each such distribution, each shareholder's pro rata share of each item of the corporation for the taxable year, and such other information, for the purpose of carrying out the provisions of subchapter S of chapter 1, as the Secretary may by forms and regulations prescribe. Any return filed pursuant to this section shall, for purposes of chapter 66 (relating to limitations), be treated as a return filed by the corporation under section 6012.

(b) Copies to shareholders

Each S corporation required to file a return under subsection (a) for any taxable year shall (on or before the day on which the return for such taxable year was filed) furnish to each person who is a shareholder at any time during such taxable year a copy of such information shown on such return as may be required by regulations.

(c) Shareholder's return must be consistent with corporate return or Secretary notified of inconsistency

(1) In general

A shareholder of an S corporation shall, on such shareholder's return, treat a subchapter S item in a manner which is consistent with the treatment of such item on the corporate return.

(2) Notification of inconsistent treatment

(A) In general

In the case of any subchapter S item, if—

(i)(I) the corporation has filed a return but the shareholder's treatment on his return is (or may be) inconsistent with the treatment of the item on the corporate return, or

(II) the corporation has not filed a return, and

(ii) the shareholder files with the Secretary a statement identifying the inconsistency,

paragraph (1) shall not apply to such item.

(B) Shareholder receiving incorrect information

A shareholder shall be treated as having complied with clause (ii) of subparagraph (A) with respect to a subchapter S item if the shareholder—

(i) demonstrates to the satisfaction of the Secretary that the treatment of the subchapter S item on the shareholder's return is consistent with the treatment of the item on the schedule furnished to the shareholder by the corporation, and

(ii) elects to have this paragraph apply with respect to that item.

(3) Effect of failure to notify

In any case—

(A) described in subparagraph (A)(i)(I) of paragraph (2), and

(B) in which the shareholder does not comply with subparagraph (A)(ii) of paragraph (2),

any adjustment required to make the treatment of the items by such shareholder consistent with the treatment of the items on the corporate return shall be treated as arising out of mathematical or clerical errors and assessed according to section 6213(b)(1). Paragraph (2) of section 6213(b) shall not apply to any assessment referred to in the preceding sentence.

(4) Subchapter S item

For purposes of this subsection, the term "subchapter S item" means any item of an S corporation to the extent that regulations prescribed by the Secretary provide that, for purposes of this subtitle, such item is more appropriately determined at the corporation level than at the shareholder level.

(5) Addition to tax for failure to comply with section

For addition to tax in the case of a shareholder's negligence in connection with, or disregard of, the requirements of this section, see part II of subchapter A of chapter 68.

(Added Pub. L. 85–866, title I, §64(c), Sept. 2, 1958, 72 Stat. 1656; amended Pub. L. 94–455, title XIX, §1906(a)(3), (b)(13)(A), Oct. 4, 1976, 90 Stat. 1824, 1834; Pub. L. 97–354, §5(a)(39)(A), Oct. 19, 1982, 96 Stat. 1696; Pub. L. 98–369, div. A, title VII, §714(q)(2), July 18, 1984, 98 Stat. 965; Pub. L. 104–188, title I, §1307(c)(2), Aug. 20, 1996, 110 Stat. 1781.)

PRIOR PROVISIONS

A prior section 6037 was renumbered section 6040 of this title.

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–188 added subsec. (c).

1984—Pub. L. 98–369 designated existing provisions as subsec. (a) and added subsec. (a) heading and subsec. (b).

1982—Pub. L. 97–354 substituted "S corporation" for "electing small business corporation" in section catchline, substituted "Every S corporation" for "Every electing small business corporation (as defined in section 1371(b))", and substituted "each shareholder's pro rata share of each item of the corporation for the taxable year, and such other information" for "and such other information".

1976—Pub. L. 94–455 substituted "section 1371(b)" for "section 1371(a)(2)" and struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1317(a) of Pub. L. 104–188, set out as a note under section 641 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1984, see section 714(q)(5) of Pub. L. 98–369, set out as an Effective Date note under section 6034A of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE

Section applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 64(e) of Pub. L. 85–866, set out as an Effective Date of 1958 Amendment note under section 172 of this title.

§6038. Information reporting with respect to certain foreign corporations and partnerships

(a) Requirement

(1) In general

Every United States person shall furnish, with respect to any foreign business entity which such person controls, such information as the Secretary may prescribe relating to—

(A) the name, the principal place of business, and the nature of business of such entity, and the country under whose laws such entity is incorporated (or organized in the case of a partnership);

(B) in the case of a foreign corporation, its post-1986 undistributed earnings (as defined in section 902(c));

(C) a balance sheet for such entity listing assets, liabilities, and capital;

(D) transactions between such entity and—

(i) such person,

(ii) any corporation or partnership which such person controls, and

(iii) any United States person owning, at the time the transaction takes place—

(I) in the case of a foreign corporation, 10 percent or more of the value of any class of stock outstanding of such corporation, and

(II) in the case of a foreign partnership, at least a 10-percent interest in such partnership; and

(E)(i) in the case of a foreign corporation, a description of the various classes of stock outstanding, and a list showing the name and address of, and number of shares held by, each United States person who is a shareholder of record owning at any time during the annual accounting period 5 percent or more in value of any class of stock outstanding of such foreign corporation, and

(ii) information comparable to the information described in clause (i) in the case of a foreign partnership.

The Secretary may also require the furnishing of any other information which is similar or related in nature to that specified in the preceding sentence or which the Secretary determines to be appropriate to carry out the provisions of this title.

(2) Period for which information is to be furnished, etc.

The information required under paragraph (1) shall be furnished for the annual accounting period of the foreign business entity ending with or within the United States person's taxable year. The information so required shall be furnished at such time and in such manner as the Secretary shall prescribe.

(3) Limitation

No information shall be required to be furnished under this subsection with respect to any foreign business entity for any annual accounting period unless the Secretary has prescribed the furnishing of such information on or before the first day of such annual accounting period.

(4) Information required from certain shareholders in certain cases

If any foreign corporation is treated as a controlled foreign corporation for any purpose under subpart F of part III of subchapter N of chapter 1, the Secretary may require any United States person treated as a United States shareholder of such corporation for any purpose under subpart F to furnish the information required under paragraph (1).

(5) Information required from 10-percent partner of controlled foreign partnership

In the case of a foreign partnership which is controlled by United States persons holding at least 10-percent interests (but not by any one United States person), the Secretary may require each United States person who holds a 10-percent interest in such partnership to furnish information relating to such partnership, including information relating to such partner's ownership interests in the partnership and allocations to such partner of partnership items.

(b) Dollar penalty for failure to furnish information

(1) In general

If any person fails to furnish, within the time prescribed under paragraph (2) of subsection (a), any information with respect to any foreign business entity required under paragraph (1) of subsection (a), such person shall pay a penalty of $10,000 for each annual accounting period with respect to which such failure exists.

(2) Increase in penalty where failure continues after notification

If any failure described in paragraph (1) continues for more than 90 days after the day on which the Secretary mails notice of such failure to the United States person, such person shall pay a penalty (in addition to the amount required under paragraph (1)) of $10,000 for each 30-day period (or fraction thereof) during which such failure continues with respect to any annual accounting period after the expiration of such 90-day period. The increase in any penalty under this paragraph shall not exceed $50,000.

(c) Penalty of reducing foreign tax credit

(1) In general

If a United States person fails to furnish, within the time prescribed under paragraph (2) of subsection (a), any information with respect to any foreign business entity required under paragraph (1) of subsection (a), then—

(A) in applying section 901 (relating to taxes of foreign countries and possessions of the United States) to such United States person for the taxable year, the amount of taxes (other than taxes reduced under subparagraph (B)) paid or deemed paid (other than those deemed paid under section 904(c)) to any foreign country or possession of the United States for the taxable year shall be reduced by 10 percent, and

(B) in the case of a foreign business entity which is a foreign corporation, in applying sections 902 (relating to foreign tax credit for corporate stockholder in foreign corporation) and 960 (relating to special rules for foreign tax credit) to any such United States person which is a corporation (or to any person who acquires from any other person any portion of the interest of such other person in any such foreign corporation, but only to the extent of such portion) for any taxable year, the amount of taxes paid or deemed paid by each foreign corporation with respect to which such person is required to furnish information during the annual accounting period or periods with respect to which such information is required under paragraph (2) of subsection (a) shall be reduced by 10 percent.

If such failure continues 90 days or more after notice of such failure by the Secretary to the United States person, then the amount of the reduction under this paragraph shall be 10 percent plus an additional 5 percent for each 3-month period, or fraction thereof, during which such failure to furnish information continues after the expiration of such 90-day period.

(2) Limitation

The amount of the reduction under paragraph (1) for each failure to furnish information with respect to a foreign business entity required under subsection (a)(1) shall not exceed whichever of the following amounts is the greater:

(A) $10,000, or

(B) the income of the foreign business entity for its annual accounting period with respect to which the failure occurs.

(3) Coordination with subsection (b)

The amount of the reduction which (but for this paragraph) would be made under paragraph (1) with respect to any annual accounting period shall be reduced by the amount of the penalty imposed by subsection (b) with respect to such period.

(4) Special rules

(A) No taxes shall be reduced under this subsection more than once for the same failure.

(B) For purposes of this subsection and subsection (b), the time prescribed under paragraph (2) of subsection (a) to furnish information (and the beginning of the 90-day period after notice by the Secretary) shall be treated as being not earlier than the last day on which (as shown to the satisfaction of the Secretary) reasonable cause existed for failure to furnish such information.

(C) In applying subsections (a) and (b) of section 902, and in applying subsection (a) of section 960, the reduction provided by this subsection shall not apply for purposes of determining the amount of post-1986 undistributed earnings.

(d) Two or more persons required to furnish information with respect to same foreign corporation

Where, but for this subsection, two or more United States persons would be required to furnish information under subsection (a) with respect to the same foreign business entity for the same period,

the Secretary may by regulations provide that such information shall be required only from one person. To the extent practicable, the determination of which person shall furnish the information shall be made on the basis of actual ownership of stock.

(e) Definitions

For purposes of this section—

(1) Foreign business entity

The term "foreign business entity" means a foreign corporation and a foreign partnership.

(2) Control of corporation

A person is in control of a corporation if such person owns stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote, or more than 50 percent of the total value of shares of all classes of stock, of a corporation. If a person is in control (within the meaning of the preceding sentence) of a corporation which in turn owns more than 50 percent of the total combined voting power of all classes of stock entitled to vote of another corporation, or owns more than 50 percent of the total value of the shares of all classes of stock of another corporation, then such person shall be treated as in control of such other corporation. For purposes of this paragraph, the rules prescribed by section 318(a) for determining ownership of stock shall apply; except that—

(A) subparagraphs (A), (B), and (C) of section 318(a)(3) shall not be applied so as to consider a United States person as owning stock which is owned by a person who is not a United States person, and

(B) in applying subparagraph (C) of section 318(a)(2), the phrase "10 percent" shall be substituted for the phrase "50 percent" used in subparagraph (C).

(3) Partnership-related definitions

(A) Control

A person is in control of a partnership if such person owns directly or indirectly more than a 50 percent interest in such partnership.

(B) 50-percent interest

For purposes of subparagraph (A), a 50-percent interest in a partnership is—

(i) an interest equal to 50 percent of the capital interest, or 50 percent of the profits interest, in such partnership, or

(ii) to the extent provided in regulations, an interest to which 50 percent of the deductions or losses of such partnership are allocated.

For purposes of the preceding sentence, rules similar to the rules of section 267(c) (other than paragraph (3)) shall apply.

(C) 10-percent interest

A 10-percent interest in a partnership is an interest which would be described in subparagraph (B) if "10 percent" were substituted for "50 percent" each place it appears.

(4) Annual accounting period

The annual accounting period of a foreign business entity is the annual period on the basis of which such foreign business entity regularly computes its income in keeping its books. In the case of a specified foreign business entity (as defined in section 898), the taxable year of such foreign business entity shall be treated as its annual accounting period.

(f) Cross references

(1) For provisions relating to penalties for violations of this section, see section 7203.

(2) For definition of the term "United States person", see section 7701(a)(30).

(Added Pub. L. 86–780, §6(a), Sept. 14, 1960, 74 Stat. 1014; amended Pub. L. 87–834, §20(a), Oct. 16, 1962, 76 Stat. 1059; Pub. L. 88–554, §4(b)(6), Aug. 31, 1964, 78 Stat. 764; Pub. L. 94–455, title

X, §1031(b)(5), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1623, 1834; Pub. L. 97–248, title III, §338(a)–(c), Sept. 3, 1982, 96 Stat. 631; Pub. L. 99–514, title XII, §§1202(c), 1245(b)(5), Oct. 22, 1986, 100 Stat. 2530, 2581; Pub. L. 101–239, title VII, §7712(a), Dec. 19, 1989, 103 Stat. 2393; Pub. L. 101–508, title XI, §11701(f), Nov. 5, 1990, 104 Stat. 1388–508; Pub. L. 104–188, title I, §1704(f)(5)(A), (t)(40), (46), Aug. 20, 1996, 110 Stat. 1880, 1889; Pub. L. 105–34, title XI, §1142(a)–(e)(2), Aug. 5, 1997, 111 Stat. 981–983; Pub. L. 105–206, title VI, §6011(f), July 22, 1998, 112 Stat. 818.)

PRIOR PROVISIONS

A prior section 6038 was renumbered section 6040 of this title.

AMENDMENTS

1998—Subsec. (a)(2). Pub. L. 105–206, §6011(f)(1), struck out "by regulations" before "prescribe".

Subsec. (a)(3). Pub. L. 105–206, §6011(f)(2), substituted "the Secretary has prescribed the furnishing of such information on or before the first day of such annual accounting period." for "such information was required to be furnished under regulations in effect on the first day of such annual accounting period."

Subsec. (e)(4). Pub. L. 105–206, §6011(f)(3), substituted "such foreign business entity" for "such corporation" in two places.

1997—Pub. L. 105–34, §1142(a), inserted "reporting" after "Information" and "and partnerships" after "corporations" in section catchline.

Subsec. (a). Pub. L. 105–34, §1142(a), reenacted heading without change.

Subsec. (a)(1). Pub. L. 105–34, §1142(a), reenacted heading without change and amended text generally. Prior to amendment, par. (1) consisted of subpars. (A) to (E) relating to general requirements of information with respect to foreign corporations.

Subsec. (a)(2), (3). Pub. L. 105–34, §1142(e)(1)(A), substituted "foreign business entity" for "foreign corporation" in pars. (2) and (3).

Subsec. (a)(5). Pub. L. 105–34, §1142(d), added par. (5).

Subsec. (b). Pub. L. 105–34, §1142(c), (e)(1)(B), substituted "foreign business entity" for "foreign corporation" in par. (1), substituted "$10,000" for "$1,000" in pars. (1) and (2), and substituted "$50,000" for "$24,000" in par. (2).

Subsec. (c)(1). Pub. L. 105–34, §1142(e)(1)(C), (2), substituted "foreign business entity" for "foreign corporation" in introductory provisions and inserted "in the case of a foreign business entity which is a foreign corporation," after "(B)" in subpar. (B).

Subsec. (c)(2). Pub. L. 105–34, §1142(e)(1)(C), substituted "foreign business entity" for "foreign corporation" in introductory provisions and in subpar. (B).

Subsec. (d). Pub. L. 105–34, §1142(e)(1)(D), substituted "foreign business entity" for "foreign corporation".

Subsec. (e). Pub. L. 105–34, §1142(b), added pars. (1) and (3), redesignated former pars. (1) and (2) as (2) and (4), respectively, inserted "of corporation" after "Control" in par. (2) heading, and substituted "foreign business entity" for "foreign corporation" in two places in par. (4).

1996—Subsec. (a)(1)(E), (F). Pub. L. 104–188, §1704(f)(5)(A), substituted period for ", and" at end of subpar. (E) and struck out subpar. (F) which read as follows: "such information as the Secretary may require for purposes of carrying out the provisions of section 453C."

Subsec. (e). Pub. L. 104–188, §1704(t)(40), redesignated subsec. (e), relating to cross references, as (f).

Subsec. (e)(2). Pub. L. 104–188, §1704(t)(46), made technical amendment to directory language of Pub. L. 101–508. See 1990 Amendment note below.

Subsec. (f). Pub. L. 104–188, §1704(t)(40), redesignated subsec. (e), relating to cross references, as (f).

1990—Subsec. (e)(2). Pub. L. 101–508, as amended by Pub. L. 104–188, §1704(t)(46), in subsec. (e) relating to definitions, inserted at end of par. (2) "In the case of a specified foreign corporation (as defined in section 898), the taxable year of such corporation shall be treated as its annual accounting period."

1989—Subsec. (a)(1). Pub. L. 101–239, §7712(a)(2), inserted before period at end "or which the Secretary determines to be appropriate to carry out the provisions of this title."

Subsec. (a)(4). Pub. L. 101–239, §7712(a)(1), added par. (4).

1986—Subsec. (a)(1)(B). Pub. L. 99–514, §1202(c)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "the accumulated profits (as defined in section 902(c)) of such foreign corporation, including the items of income (whether or not included in gross income under chapter 1), deductions (whether or not allowed in computing taxable income under chapter 1), and any other items taken into account in computing such accumulated profits;".

Subsec. (a)(1)(F). Pub. L. 99–514, §1245(b)(5), added subpar. (F).

Subsec. (c)(4)(C). Pub. L. 99–514, §1202(c)(2), substituted "post-1986 undistributed earnings" for "accumulated profits in excess of income, war profits, and excess profits taxes".

1982—Subsec. (a)(1). Pub. L. 97–248, §338(c)(2), substituted "subsection (e)(1)" for "subsection (d)(1)".

Subsec. (b). Pub. L. 97–248, §338(a), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 97–248, §338(a), (b), (c)(1), (3), redesignated former subsec. (b) as (c), substituted "Penalty of reducing foreign tax credit" for "Effect of failure to furnish information" in heading, inserted "of such failure" after "90 days or more after notice" in par. (1), added par. (3), redesignated former par. (3) as (4), and in par. (4) inserted reference to subsection (b) in subpar. (B). Former subsec. (c) redesignated (d).

Subsecs. (d), (e). Pub. L. 97–248, §338(a), redesignated former subsec. (c) as (d). Former subsec. (d), relating to definitions, redesignated (e).

1976—Subsecs. (a), (b). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary" wherever appearing.

Subsec. (b)(1). Pub. L. 94–455, §1031(b)(5), substituted in subpar. (A) "section 904(c)" for "section 904(d)".

Subsec. (c). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

1964—Subsec. (d)(1). Pub. L. 88–554 substituted "subparagraphs (A), (B), and (C) of section 318(a)(3)" for "the second sentence of subparagraphs (A) and (B), and clause (ii) of subparagraph (C), of section 318(a)(2)" in subpar. (A), and deleted "clause (i) of" after "in applying" in subpar. (B).

1962—Subsec. (a)(1). Pub. L. 87–834, among other changes, substituted in introductory provisions "Every United States person shall furnish" for "A domestic corporation shall furnish", in subpar. (D)(i) "such person" for "any foreign corporation controlled by the domestic corporation", in subpar. (D)(ii) "any other corporation which such person controls" for "any foreign subsidiary of a foreign corporation controlled by the domestic corporation", in subpar. (D)(iii) "any United States person owning, at the time the transaction takes place, 10 percent or more of the value of any class of stock outstanding of such foreign corporation" for "the domestic corporation or any shareholder of the domestic corporation owning at the time the transaction takes place 10 percent or more of the value of any class of stock outstanding of the domestic corporation", and in subpar. (E) "each United States person who is a shareholder" for "each citizen or resident of the United States and each domestic corporation who is a shareholder", and struck out provisions throughout the subsection which related to foreign subsidiaries.

Subsec. (a)(2). Pub. L. 87–834 substituted provisions requiring the information to be furnished for the annual accounting period ending with or within the United States person's taxable year for provisions which required such information to be furnished for the annual accounting period ending with or within the domestic corporation's taxable year, and struck out provisions which related to the furnishing of information in the case of foreign subsidiaries.

Subsec. (a)(3). Pub. L. 87–834 struck out provisions which related to foreign subsidiaries.

Subsec. (b). Pub. L. 87–834, among other changes, substituted "If a United States person fails to furnish" for "If a domestic corporation fails to furnish" in the opening provisions, inserted provisions relating to reduction of taxes in applying sections 901 and 960 of this title, to the maximum amount of reduction under par. (1) for each failure to furnish information with respect to a foreign corporation required under subsec. (a)(1), and making the reduction provided by subsec. (b) inapplicable, in applying subsecs. (a) and (b) of section 902 and subsec. (a) of section 960, for purposes of determining the amount of accumulated profits in excess of income, war profits, and excess profits taxes, and eliminated provisions which related to the furnishing of information with respect to foreign subsidiaries.

Subsec. (c). Pub. L. 87–834 substituted provisions empowering the Secretary to provide for the furnishing of information by only one person where two or more persons would be required to furnish information under subsec. (a) with respect to the same foreign corporation for the same period for provisions which required a domestic corporation if at any time during its taxable year owned more than 50 percent of the voting stock of a foreign corporation to be deemed to be in control of such foreign corporation, and in the case of a foreign corporation if at any time during its annual accounting period owned more than 50 percent of the voting stock of another foreign corporation, that such other corporation shall be considered a foreign subsidiary of the corporation owning such stock. The provisions relating to control are now contained in subsec. (d) of this section.

Subsec. (d). Pub. L. 87–834 added par. (1) which was formerly covered in part by subsec. (c) of this section, designated existing provisions as par. (2), and eliminated from par. (2) provisions which related to the annual accounting period of a foreign subsidiary.

Subsec. (e). Pub. L. 87–834 designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to annual accounting periods beginning after Aug. 5, 1997, see section 1142(f) of Pub. L. 105–34, set out as a note under section 318 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective, except as otherwise provided, as if included in the provision of the Revenue Reconciliation Act of 1989, Pub. L. 101–239, title VII, to which such amendment relates, see section 11701(n) of Pub. L. 101–508, set out as a note under section 42 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7712(b), Dec. 19, 1989, 103 Stat. 2394, provided that: "The amendments made by subsection (a) [amending this section] shall apply to returns and statements the due date for which (determined without regard to extensions) is after December 31, 1989."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1202(c) of Pub. L. 99–514 applicable to distributions by foreign corporations out of, and to inclusions under section 951(a) of this title attributable to, earnings and profits for taxable years beginning after Dec. 31, 1986, see section 1202(e) of Pub. L. 99–514, set out as a note under section 902 of this title.

Amendment by section 1245(b)(5) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1245(c) of Pub. L. 99–514, set out as a note under section 6038A of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title III, §338(d), Sept. 3, 1982, 96 Stat. 631, provided that: "The amendments made by this section [amending this section] shall apply with respect to information for annual accounting periods ending after the date of the enactment of this Act [Sept. 3, 1982]."

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–554 effective Aug. 31, 1964, except that for purposes of sections 302 and 304 of this title, such amendments shall not apply to distributions in payment for stock acquisitions or redemptions, if such acquisitions or redemptions occurred before Aug. 31, 1964, see section 4(c) of Pub. L. 88–554, set out as a note under section 318 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87–834, §20(e)(1), Oct. 16, 1962, 76 Stat. 1063, provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to annual accounting periods of foreign corporations beginning after December 31, 1962."

EFFECTIVE DATE

Pub. L. 86–780, §6(c), Sept. 14, 1960, 74 Stat. 1016, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by subsection (a) [enacting this section and amending section 902 of this title] shall apply to taxable years of domestic corporations beginning after December 31, 1960, with respect to information relating to a foreign corporation or a foreign subsidiary described in section 6038(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)) for its annual accounting periods beginning after December 31, 1960."

§6038A. Information with respect to certain foreign-owned corporations

(a) Requirement

If, at any time during a taxable year, a corporation (hereinafter in this section referred to as the "reporting corporation")—

(1) is a domestic corporation, and

(2) is 25-percent foreign-owned,

such corporation shall furnish, at such time and in such manner as the Secretary shall by regulations prescribe, the information described in subsection (b) and such corporation shall maintain (in the location, in the manner, and to the extent prescribed in regulations) such records as may be appropriate to determine the correct treatment of transactions with related parties as the Secretary shall by regulations prescribe (or shall cause another person to so maintain such records).

(b) Required information

For purposes of subsection (a), the information described in this subsection is such information as the Secretary may prescribe by regulations relating to—

(1) the name, principal place of business, nature of business, and country or countries in which organized or resident, of each person which—

(A) is a related party to the reporting corporation, and

(B) had any transaction with the reporting corporation during its taxable year,

(2) the manner in which the reporting corporation is related to each person referred to in paragraph (1), and

(3) transactions between the reporting corporation and each foreign person which is a related party to the reporting corporation.

(c) Definitions

For purposes of this section—

(1) 25-percent foreign-owned

A corporation is 25-percent foreign-owned if at least 25 percent of—

(A) the total voting power of all classes of stock of such corporation entitled to vote, or

(B) the total value of all classes of stock of such corporation,

is owned at any time during the taxable year by 1 foreign person (hereinafter in this section referred to as a "25-percent foreign shareholder").

(2) Related party

The term "related party" means—

(A) any 25-percent foreign shareholder of the reporting corporation,

(B) any person who is related (within the meaning of section 267(b) or 707(b)(1)) to the reporting corporation or to a 25-percent foreign shareholder of the reporting corporation, and

(C) any other person who is related (within the meaning of section 482) to the reporting corporation.

(3) Foreign person

The term "foreign person" means any person who is not a United States person. For purposes of the preceding sentence, the term "United States person" has the meaning given to such term by section 7701(a)(30), except that any individual who is a citizen of any possession of the United States (but not otherwise a citizen of the United States) and who is not a resident of the United States shall not be treated as a United States person.

(4) Records

The term "records" includes any books, papers, or other data.

(5) Section 318 to apply

Section 318 shall apply for purposes of paragraphs (1) and (2), except that—

(A) "10 percent" shall be substituted for "50 percent" in section 318(a)(2)(C), and

(B) subparagraphs (A), (B), and (C) of section 318(a)(3) shall not be applied so as to consider a United States person as owning stock which is owned by a person who is not a United States person.

(d) Penalty for failure to furnish information or maintain records

(1) In general

If a reporting corporation—

(A) fails to furnish (within the time prescribed by regulations) any information described in subsection (b), or

(B) fails to maintain (or cause another to maintain) records as required by subsection (a),

such corporation shall pay a penalty of $10,000 for each taxable year with respect to which such failure occurs.

(2) Increase in penalty where failure continues after notification

If any failure described in paragraph (1) continues for more than 90 days after the day on which the Secretary mails notice of such failure to the reporting corporation, such corporation shall pay a penalty (in addition to the amount required under paragraph (1)) of $10,000 for each 30-day period (or fraction thereof) during which such failure continues after the expiration of such 90-day period.

(3) Reasonable cause

For purposes of this subsection, the time prescribed by regulations to furnish information or maintain records (and the beginning of the 90-day period after notice by the Secretary) shall be treated as not earlier than the last day on which (as shown to the satisfaction of the Secretary) reasonable cause existed for failure to furnish the information or maintain the records.

(e) Enforcement of requests for certain records

(1) Agreement to treat corporation as agent

The rules of paragraph (3) shall apply to any transaction between the reporting corporation and any related party who is a foreign person unless such related party agrees (in such manner and at such time as the Secretary shall prescribe) to authorize the reporting corporation to act as such related party's limited agent solely for purposes of applying sections 7602, 7603, and 7604 with respect to any request by the Secretary to examine records or produce testimony related to any such transaction or with respect to any summons by the Secretary for such records or testimony. The appearance of persons or production of records by reason of the reporting corporation being such an agent shall not subject such persons or records to legal process for any purpose other than determining the correct treatment under this title of any transaction between the reporting corporation and such related party.

(2) Rules where information not furnished

If—

(A) for purposes of determining the correct treatment under this title of any transaction between the reporting corporation and a related party who is a foreign person, the Secretary issues a summons to such corporation to produce (either directly or as agent for such related party) any records or testimony,

(B) such summons is not quashed in a proceeding begun under paragraph (4) and is not determined to be invalid in a proceeding begun under section 7604(b) to enforce such summons, and

(C) the reporting corporation does not substantially comply in a timely manner with such summons and the Secretary has sent by certified or registered mail a notice to such reporting corporation that such reporting corporation has not so substantially complied,

the Secretary may apply the rules of paragraph (3) with respect to such transaction (whether or not the Secretary begins a proceeding to enforce such summons). If the reporting corporation fails to maintain (or cause another to maintain) records as required by subsection (a), and by reason of that failure, the summons is quashed in a proceeding described in subparagraph (B) or the reporting corporation is not able to provide the records requested in the summons, the Secretary may apply the rules of paragraph (3) with respect to any transaction to which the records relate.

(3) Applicable rules in cases of noncompliance

If the rules of this paragraph apply to any transaction—

(A) the amount of the deduction allowed under subtitle A for any amount paid or incurred by the reporting corporation to the related party in connection with such transaction, and

(B) the cost to the reporting corporation of any property acquired in such transaction from the related party (or transferred by such corporation in such transaction to the related party),

shall be the amount determined by the Secretary in the Secretary's sole discretion from the Secretary's own knowledge or from such information as the Secretary may obtain through testimony or otherwise.

(4) Judicial proceedings

(A) Proceedings to quash

Notwithstanding any law or rule of law, any reporting corporation to which the Secretary issues a summons referred to in paragraph (2)(A) shall have the right to begin a proceeding to quash such summons not later than the 90th day after such summons was issued. In any such proceeding, the Secretary may seek to compel compliance with such summons.

(B) Review of secretarial determination of noncompliance

Notwithstanding any law or rule of law, any reporting corporation which has been notified by the Secretary that the Secretary has determined that such corporation has not substantially complied with a summons referred to in paragraph (2) shall have the right to begin a proceeding to review such determination not later than the 90th day after the day on which the notice referred to in paragraph (2)(C) was mailed. If such a proceeding is not begun on or before such 90th day, such determination by the Secretary shall be binding and shall not be reviewed by any court.

(C) Jurisdiction

The United States district court for the district in which the person (to whom the summons is issued) resides or is found shall have jurisdiction to hear any proceeding brought under subparagraph (A) or (B). Any order or other determination in such a proceeding shall be treated as a final order which may be appealed.

(D) Suspension of statute of limitations

If the reporting corporation brings an action under subparagraph (A) or (B), the running of any period of limitations under section 6501 (relating to assessment and collection of tax) or under section 6531 (relating to criminal prosecutions) with respect to any affected taxable year shall be suspended for the period during which such proceeding, and appeals therein, are pending. In no event shall any such period expire before the 90th day after the day on which there is a final determination in such proceeding. For purposes of this subparagraph, the term "affected taxable year" means any taxable year if the determination of the amount of tax imposed for such taxable year is affected by the treatment of the transaction to which the summons relates.

(f) Cross reference

For provisions relating to criminal penalties for violation of this section, see section 7203.

(Added Pub. L. 97–248, title III, §339(a), Sept. 3, 1982, 96 Stat. 632; amended Pub. L. 97–448, title III, §306(b)(4), Jan. 12, 1983, 96 Stat. 2406; Pub. L. 98–369, div. A, title VII, §714(l), July 18, 1984, 98 Stat. 963; Pub. L. 99–514, title XII, §1245(a), (b)(1)–(4), Oct. 22, 1986, 100 Stat. 2581; Pub. L. 101–239, title VII, §7403(a)–(d), Dec. 19, 1989, 103 Stat. 2358, 2359; Pub. L. 101–508, title XI, §§11315(b)(1), 11704(a)(23), Nov. 5, 1990, 104 Stat. 1388–457, 1388–519; Pub. L. 104–188, title I, §§1702(c)(5), 1704(f)(5)(B), Aug. 20, 1996, 110 Stat. 1869, 1880.)

AMENDMENTS

1996—Subsec. (b)(2) to (4). Pub. L. 104–188, §1704(f)(5)(B), inserted "and" at end of par. (2), substituted

a period for ", and" at end of par. (3), and struck out par. (4) which read as follows: "such information as the Secretary may require for purposes of carrying out the provisions of section 453C."

Subsec. (e)(4)(D). Pub. L. 104–188, §1702(c)(5), substituted "any affected taxable year" for "any transaction to which the summons relates" and inserted at end "For purposes of this subparagraph, the term 'affected taxable year' means any taxable year if the determination of the amount of tax imposed for such taxable year is affected by the treatment of the transaction to which the summons relates."

1990—Subsec. (a)(1). Pub. L. 101–508, §11315(b)(1), struck out "or is a foreign corporation engaged in trade or business within the United States" after "corporation".

Subsec. (c)(3) to (6). Pub. L. 101–508, §11704(a)(23), redesignated pars. (4) to (6) as (3) to (5), respectively.

1989—Subsec. (a). Pub. L. 101–239, §7403(b), inserted before period at end "and such corporation shall maintain (in the location, in the manner, and to the extent prescribed in regulations) such records as may be appropriate to determine the correct treatment of transactions with related parties as the Secretary shall by regulations prescribe (or shall cause another person to so maintain such records)".

Subsec. (a)(2). Pub. L. 101–239, §7403(a)(1), amended par. (2) generally, substituting "is 25-percent foreign-owned," for "is controlled by a foreign person,".

Subsec. (c). Pub. L. 101–239, §7403(a)(2), amended subsec. (c) generally, substituting pars. (1) to (6) for former pars. (1) to (3) defining "control", "related party", and "foreign person".

Subsec. (d). Pub. L. 101–239, §7403(c), inserted "or maintain records" after "information" in heading and amended text generally, making changes in substance and structure of pars. (1) to (3).

Subsecs. (e), (f). Pub. L. 101–239, §7403(d), added subsec. (e) and redesignated former subsec. (e) as (f).

1986—Subsec. (b)(1). Pub. L. 99–514, §1245(a), substituted "each person" for "each corporation" in introductory provisions and amended subpar. (A) generally, substituting "related party to the reporting corporation" for "member of the same controlled group as the reporting corporation".

Subsec. (b)(2). Pub. L. 99–514, §1245(b)(1), substituted "each person" for "each corporation".

Subsec. (b)(3). Pub. L. 99–514, §1245(b)(2), (3), amended par. (3) generally, substituting "foreign person which is a related party to the reporting corporation, and" for "foreign corporation which is a member of the same controlled group as the reporting corporation."

Subsec. (b)(4). Pub. L. 99–514, §1245(b)(3), added par. (4).

Subsec. (c)(2). Pub. L. 99–514, §1245(b)(4), amended par. (2) generally. Prior to amendment, par. (2), controlled group, read as follows: "The term 'controlled group' means any controlled group of corporations within the meaning of section 1563(a); except that—

"(A) 'at least 50 percent' shall be substituted—

"(i) for 'at least 80 percent' each place it appears in section 1563(a)(1), and

"(ii) for 'more than 50 percent' each place it appears in section 1563(a)(2)(B), and

"(B) the determination shall be made without regard to subsections (a)(4), (b)(2)(C), and (e)(3)(C) of section 1563."

1984—Subsec. (c)(1). Pub. L. 98–369 substituted section "6038(e)(1)" for "6038(d)(1)".

1983—Subsec. (c)(2)(B). Pub. L. 97–448 inserted ", (b)(2)(C)," after "(a)(4)".

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1702(c)(5) of Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, §11315(c), Nov. 5, 1990, 104 Stat. 1388–457, provided that: "The amendments made by this section [enacting section 6038C of this title and amending this section] shall apply to—

"(1) any requirement to furnish information under section 6038C(a) of the Internal Revenue Code of 1986 (as added by this section) if the time for furnishing such information under such section is after the date of the enactment of this Act [Nov. 5, 1990],

"(2) any requirement under such section 6038C(a) to maintain records which were in existence on or after March 20, 1990,

"(3) any requirement to authorize a corporation to act as a limited agent under section 6038C(d)(1) of such Code (as so added) if the time for authorizing such action is after the date of the enactment of this Act, and

"(4) any summons issued after such date of enactment,

without regard to when the taxable year (to which the information, records, authorization, or summons relates)

began."

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7403(e), Dec. 19, 1989, 103 Stat. 2361, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after July 10, 1989."

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XII, §1245(c), Oct. 22, 1986, 100 Stat. 2581, provided that: "The amendments made by this section [amending this section and section 6038 of this title] shall apply to taxable years beginning after December 31, 1986."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective as if included in the provisions of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 311(d) of Pub. L. 97–448, set out as a note under section 31 of this title.

EFFECTIVE DATE

Pub. L. 97–248, title III, §339(c), Sept. 3, 1982, 96 Stat. 633, provided that: "The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1982."

APPLICABILITY OF 1989 AMENDMENT

Pub. L. 101–508, title XI, §11314, Nov. 5, 1990, 104 Stat. 1388–455, provided that:

"(a) GENERAL RULE.—The amendments made by section 7403 of the Revenue Reconciliation Act of 1989 [Pub. L. 101–239, amending this section] shall apply to—

"(1) any requirement to furnish information under section 6038A(a) of the Internal Revenue Code of 1986 (as amended by such section 7403) if the time for furnishing such information under such section is after the date of the enactment of this Act [Nov. 5, 1990],

"(2) any requirement under such section 6038A(a) to maintain records which were in existence on or after March 20, 1990,

"(3) any requirement to authorize a corporation to act as a limited agent under section 6038A(e)(1) of such Code (as so amended) if the time for authorizing such action is after the date of the enactment of this Act, and

"(4) any summons issued after such date of enactment,

without regard to when the taxable year (to which the information, records, authorization, or summons relates) began. Such amendments shall also apply in any case to which they would apply without regard to this section.

"(b) CONTINUATION OF OLD FAILURES.—In the case of any failure with respect to a taxable year beginning on or before July 10, 1989, which first occurs on or before the date of the enactment of this Act [Nov. 5, 1990] but which continues after such date of enactment, section 6038A(d)(2) of the Internal Revenue Code of 1986 (as amended by subsection (c) of such section 7403) shall apply for purposes of determining the amount of the penalty imposed for 30-day periods referred to in such section 6038A(d)(2) which begin after the date of the enactment of this Act."

§6038B. Notice of certain transfers to foreign persons

(a) In general

Each United States person who—

(1) transfers property to—

(A) a foreign corporation in an exchange described in section 332, 351, 354, 355, 356, or 361, or

(B) a foreign partnership in a contribution described in section 721 or in any other contribution described in regulations prescribed by the Secretary, or

(2) makes a distribution described in section 336 to a person who is not a United States person,

shall furnish to the Secretary, at such time and in such manner as the Secretary shall by regulations prescribe, such information with respect to such exchange or distribution as the Secretary may require in such regulations.

(b) Exceptions for certain transfers to foreign partnerships; special rule

(1) Exceptions

Subsection (a)(1)(B) shall apply to a transfer by a United States person to a foreign partnership only if—

(A) the United States person holds (immediately after the transfer) directly or indirectly at least a 10-percent interest (as defined in section 6046A(d)) in the partnership, or

(B) the value of the property transferred (when added to the value of the property transferred by such person or any related person to such partnership or a related partnership during the 12-month period ending on the date of the transfer) exceeds $100,000.

For purposes of the preceding sentence, the value of any transferred property is its fair market value at the time of its transfer.

(2) Special rule

If by reason of an adjustment under section 482 or otherwise, a contribution described in subsection (a)(1) is deemed to have been made, such contribution shall be treated for purposes of this section as having been made not earlier than the date specified by the Secretary.

(c) Penalty for failure to furnish information

(1) In general

If any United States person fails to furnish the information described in subsection (a) at the time and in the manner required by regulations, such person shall pay a penalty equal to 10 percent of the fair market value of the property at the time of the exchange (and, in the case of a contribution described in subsection (a)(1)(B), such person shall recognize gain as if the contributed property had been sold for such value at the time of such contribution).

(2) Reasonable cause exception

Paragraph (1) shall not apply to any failure if the United States person shows such failure is due to reasonable cause and not to willful neglect.

(3) Limit on penalty

The penalty under paragraph (1) with respect to any exchange shall not exceed $100,000 unless the failure with respect to such exchange was due to intentional disregard.

(Added Pub. L. 98–369, div. A, title I, §131(d)(1), July 18, 1984, 98 Stat. 664; amended Pub. L. 105–34, title XI, §1144(a)–(c), Aug. 5, 1997, 111 Stat. 984, 985; Pub. L. 105–206, title VI, §6011(g), July 22, 1998, 112 Stat. 818; Pub. L. 109–135, title IV, §409(c), Dec. 21, 2005, 119 Stat. 2636.)

AMENDMENTS

2005—Subsec. (a)(1)(B). Pub. L. 109–135 inserted "or" at end.

1998—Subsec. (c). Pub. L. 105–206, §6011(g), made technical amendment to directory language of Pub. L. 105–206, §1144(c). See 1997 Amendment note below.

1997—Subsec. (a)(1). Pub. L. 105–34, §1144(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "transfers property to a foreign corporation in an exchange described in section 332, 351, 354, 355, 356, or 361, or".

Subsec. (b). Pub. L. 105–34, §1144(b), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 105–34, §1144(c), as amended by Pub. L. 105–206, §6011(g), substituted "equal to 10 percent of the fair market value of the property at the time of the exchange (and, in the case of a contribution described in subsection (a)(1)(B), such person shall recognize gain as if the contributed property had been sold

for such value at the time of such contribution)" for "equal to 25 percent of the amount of the gain realized on the exchange" in par. (1) and added par. (3).

Pub. L. 105–34, §1144(b), redesignated subsec. (b) as (c).

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 409(d) of Pub. L. 109–135, set out as a note under section 961 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XI, §1144(d)(1), Aug. 5, 1997, 111 Stat. 985, provided that: "The amendments made by this section [amending this section] shall apply to transfers made after the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE

Section applicable to transfers or exchanges after Dec. 31, 1984, in taxable years ending after such date, with special rules for certain transfers and ruling requests before Mar. 1, 1984, see section 131(g) of Pub. L. 98–369, set out as an Effective Date of 1984 Amendment note under section 367 of this title.

ELECTION OF RETROACTIVE EFFECT

Pub. L. 105–34, title XI, §1144(d)(2), Aug. 5, 1997, 111 Stat. 985, provided that: "Section 1494(c) of the Internal Revenue Code of 1986 shall not apply to any transfer after August 20, 1996, if all applicable reporting requirements under section 6038B of such Code (as amended by this section) are satisfied. The Secretary of the Treasury or his delegate may prescribe simplified reporting requirements under the preceding sentence."

§6038C. Information with respect to foreign corporations engaged in U.S. business

(a) Requirement

If a foreign corporation (hereinafter in this section referred to as the "reporting corporation") is engaged in a trade or business within the United States at any time during a taxable year—

(1) such corporation shall furnish (at such time and in such manner as the Secretary shall by regulations prescribe) the information described in subsection (b), and

(2) such corporation shall maintain (at the location, in the manner, and to the extent prescribed in regulations) such records as may be appropriate to determine the liability of such corporation for tax under this title as the Secretary shall by regulations prescribe (or shall cause another person to so maintain such records).

(b) Required information

For purposes of subsection (a), the information described in this subsection is—

(1) the information described in section 6038A(b), and

(2) such other information as the Secretary may prescribe by regulations relating to any item not directly connected with a transaction for which information is required under paragraph (1).

(c) Penalty for failure to furnish information or maintain records

The provisions of subsection (d) of section 6038A shall apply to—

(1) any failure to furnish (within the time prescribed by regulations) any information described in subsection (b), and

(2) any failure to maintain (or cause another to maintain) records as required by subsection (a),

in the same manner as if such failure were a failure to comply with the provisions of section

6038A.

(d) Enforcement of requests for certain records

(1) Agreement to treat corporation as agent

The rules of paragraph (3) shall apply to any transaction between the reporting corporation and any related party who is a foreign person unless such related party agrees (in such manner and at such time as the Secretary shall prescribe) to authorize the reporting corporation to act as such related party's limited agent solely for purposes of applying sections 7602, 7603, and 7604 with respect to any request by the Secretary to examine records or produce testimony related to any such transaction or with respect to any summons by the Secretary for such records or testimony. The appearance of persons or production of records by reason of the reporting corporation being such an agent shall not subject such persons or records to legal process for any purpose other than determining the correct treatment under this title of any transaction between the reporting corporation and such related party.

(2) Rules where information not furnished

If—

(A) for purposes of determining the amount of the reporting corporation's liability for tax under this title, the Secretary issues a summons to such corporation to produce (either directly or as an agent for a related party who is a foreign person) any records or testimony,

(B) such summons is not quashed in a proceeding begun under paragraph (4) of section 6038A(e) (as made applicable by paragraph (4) of this subsection) and is not determined to be invalid in a proceeding begun under section 7604(b) to enforce such summons, and

(C) the reporting corporation does not substantially comply in a timely manner with such summons and the Secretary has sent by certified or registered mail a notice to such reporting corporation that such reporting corporation has not so substantially complied,

the Secretary may apply the rules of paragraph (3) with respect to any transaction or item to which such summons relates (whether or not the Secretary begins a proceeding to enforce such summons). If the reporting corporation fails to maintain (or cause another to maintain) records as required by subsection (a), and by reason of that failure, the summons is quashed in a proceeding described in subparagraph (B) or the reporting corporation is not able to provide the records requested in the summons, the Secretary may apply the rules of paragraph (3) with respect to any transaction or item to which the records relate.

(3) Applicable rules

If the rules of this paragraph apply to any transaction or item, the treatment of such transaction (or the amount and treatment of any such item) shall be determined by the Secretary in the Secretary's sole discretion from the Secretary's own knowledge or from such information as the Secretary may obtain through testimony or otherwise.

(4) Judicial proceedings

The provisions of section 6038A(e)(4) shall apply with respect to any summons referred to in paragraph (2)(A); except that subparagraph (D) of such section shall be applied by substituting "transaction or item" for "transaction".

(e) Definitions

For purposes of this section, the terms "related party", "foreign person", and "records" have the respective meanings given to such terms by section 6038A(c).

(Added Pub. L. 101–508, title XI, §11315(a), Nov. 5, 1990, 104 Stat. 1388–456.)

EFFECTIVE DATE

Section applicable to (1) any requirement to furnish information under this section if the time for furnishing such information is after Nov. 5, 1990, (2) any requirement under subsec. (a) of this section to maintain records which were in existence on or after Mar. 20, 1990, (3) any requirement to authorize a corporation to

act as a limited agent under subsec. (d)(1) of this section if the time for authorizing such action is after Nov. 5, 1990, and (4) any summons issued after Nov. 5, 1990, without regard to when the taxable year (to which the information, records, authorization, or summons relates) began, see section 11315(c) of Pub. L. 101–508, set out as an Effective Date of 1990 Amendment note under section 6038A of this title.

§6038D. Information with respect to foreign financial assets

(a) In general

Any individual who, during any taxable year, holds any interest in a specified foreign financial asset shall attach to such person's return of tax imposed by subtitle A for such taxable year the information described in subsection (c) with respect to each such asset if the aggregate value of all such assets exceeds $50,000 (or such higher dollar amount as the Secretary may prescribe).

(b) Specified foreign financial assets

For purposes of this section, the term "specified foreign financial asset" means—

(1) any financial account (as defined in section 1471(d)(2)) maintained by a foreign financial institution (as defined in section 1471(d)(4)), and

(2) any of the following assets which are not held in an account maintained by a financial institution (as defined in section 1471(d)(5))—

(A) any stock or security issued by a person other than a United States person,

(B) any financial instrument or contract held for investment that has an issuer or counterparty which is other than a United States person, and

(C) any interest in a foreign entity (as defined in section 1473).

(c) Required information

The information described in this subsection with respect to any asset is:

(1) In the case of any account, the name and address of the financial institution in which such account is maintained and the number of such account.

(2) In the case of any stock or security, the name and address of the issuer and such information as is necessary to identify the class or issue of which such stock or security is a part.

(3) In the case of any other instrument, contract, or interest—

(A) such information as is necessary to identify such instrument, contract, or interest, and

(B) the names and addresses of all issuers and counterparties with respect to such instrument, contract, or interest.

(4) The maximum value of the asset during the taxable year.

(d) Penalty for failure to disclose

(1) In general

If any individual fails to furnish the information described in subsection (c) with respect to any taxable year at the time and in the manner described in subsection (a), such person shall pay a penalty of $10,000.

(2) Increase in penalty where failure continues after notification

If any failure described in paragraph (1) continues for more than 90 days after the day on which the Secretary mails notice of such failure to the individual, such individual shall pay a penalty (in addition to the penalties under paragraph (1)) of $10,000 for each 30-day period (or fraction thereof) during which such failure continues after the expiration of such 90-day period. The penalty imposed under this paragraph with respect to any failure shall not exceed $50,000.

(e) Presumption that value of specified foreign financial assets exceeds dollar threshold

If—

(1) the Secretary determines that an individual has an interest in one or more specified foreign financial assets, and

(2) such individual does not provide sufficient information to demonstrate the aggregate value of such assets,

then the aggregate value of such assets shall be treated as being in excess of $50,000 (or such higher dollar amount as the Secretary prescribes for purposes of subsection (a)) for purposes of assessing the penalties imposed under this section.

(f) Application to certain entities

To the extent provided by the Secretary in regulations or other guidance, the provisions of this section shall apply to any domestic entity which is formed or availed of for purposes of holding, directly or indirectly, specified foreign financial assets, in the same manner as if such entity were an individual.

(g) Reasonable cause exception

No penalty shall be imposed by this section on any failure which is shown to be due to reasonable cause and not due to willful neglect. The fact that a foreign jurisdiction would impose a civil or criminal penalty on the taxpayer (or any other person) for disclosing the required information is not reasonable cause.

(h) Regulations

The Secretary shall prescribe such regulations or other guidance as may be necessary or appropriate to carry out the purposes of this section, including regulations or other guidance which provide appropriate exceptions from the application of this section in the case of—

(1) classes of assets identified by the Secretary, including any assets with respect to which the Secretary determines that disclosure under this section would be duplicative of other disclosures,

(2) nonresident aliens, and

(3) bona fide residents of any possession of the United States.

(Added Pub. L. 111–147, title V, §511(a), Mar. 18, 2010, 124 Stat. 109.)

EFFECTIVE DATE

Pub. L. 111–147, title V, §511(c), Mar. 18, 2010, 124 Stat. 110, provided that: "The amendments made by this section [enacting this section] shall apply to taxable years beginning after the date of the enactment of this Act [Mar. 18, 2010]."

§6039. Returns required in connection with certain options

(a) Requirement of reporting

Every corporation—

(1) which in any calendar year transfers to any person a share of stock pursuant to such person's exercise of an incentive stock option, or

(2) which in any calendar year records (or has by its agent recorded) a transfer of the legal title of a share of stock acquired by the transferor pursuant to his exercise of an option described in section 423(c) (relating to special rule where option price is between 85 percent and 100 percent of value of stock),

shall, for such calendar year, make a return at such time and in such manner, and setting forth such information, as the Secretary may by regulations prescribe.

(b) Statements to be furnished to persons with respect to whom information is reported

Every corporation making a return under subsection (a) shall furnish to each person whose name is set forth in such return a written statement setting forth such information as the Secretary may by regulations prescribe. The written statement required under the preceding sentence shall be furnished to such person on or before January 31 of the year following the calendar year for which the return under subsection (a) was made.

(c) Special rules

For purposes of this section—

(1) Treatment by employer to be determinative

Any option which the corporation treats as an incentive stock option or an option granted under an employee stock purchase plan shall be deemed to be such an option.

(2) Subsection (a)(2) applies only to first transfer described therein

A statement is required by reason of a transfer described in subsection (a)(2) of a share only with respect to the first transfer of such share by the person who exercised the option.

(3) Identification of stock

Any corporation which transfers any share of stock pursuant to the exercise of any option described in subsection (a)(2) shall identify such stock in a manner adequate to carry out the purposes of this section.

(d) Cross references

For definition of—

(1) the term "incentive stock option", see section 422(b), and

(2) the term "employee stock purchase plan" [1] see section 423(b).

(Added Pub. L. 88–272, title II, §221(b)(1), Feb. 26, 1964, 78 Stat. 73; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–167, §7(a), Dec. 29, 1979, 93 Stat. 1276; Pub. L. 97–34, title II, §251(b)(5), Aug. 13, 1981, 95 Stat. 259; Pub. L. 101–508, title XI, §11801(c)(9)(J), Nov. 5, 1990, 104 Stat. 1388–526; Pub. L. 105–206, title VI, §6023(20), July 22, 1998, 112 Stat. 825; Pub. L. 109–432, div. A, title IV, §403(a), (b), (c)(3), (4), Dec. 20, 2006, 120 Stat. 2954, 2955.)

PRIOR PROVISIONS

A prior section 6039 was renumbered section 6040 of this title.

AMENDMENTS

2006—Pub. L. 109–432, §403(c)(3), substituted "Returns" for "Information" in section catchline.

Subsec. (a). Pub. L. 109–432, §403(a), (c)(4), substituted "Requirement of reporting" for "Furnishing of information" in heading and amended concluding provisions generally. Prior to amendment, concluding provisions read as follows: "shall (on or before January 31 of the following calendar year) furnish to such person a written statement in such manner and setting forth such information as the Secretary may by regulations prescribe."

Subsecs. (b) to (d). Pub. L. 109–432, §403(b), added subsec. (b) and redesignated former subsecs. (b) and (c) as (c) and (d), respectively.

1998—Subsec. (a)(1). Pub. L. 105–206 inserted "to any person" after "transfers".

1990—Subsec. (a)(1), (2). Pub. L. 101–508, §11801(c)(9)(J)(i), added pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

"(1) which in any calendar year transfers a share of stock to any person pursuant to such person's exercise of a qualified stock option, an incentive stock option, or a restricted stock option, or

"(2) which in any calendar year records (or has by its agent recorded) a transfer of the legal title of a share of stock—

"(A) acquired by the transfer or pursuant to his exercise of an option described in section 423(c) (relating to special rule where option price is between 85 percent and 100 percent of value of stock), or

"(B) acquired by the transferor pursuant to his exercise of a restricted stock option described in section 424(c)(1) (relating to options under which option price is between 85 percent and 95 percent of value of stock),".

Subsec. (b)(1). Pub. L. 101–508, §11801(c)(9)(J)(ii), substituted "an incentive stock option or an" for "a qualified stock option, incentive stock option, a restricted stock option, or an".

Subsec. (c). Pub. L. 101–508, §11801(c)(9)(J)(iii), amended subsec. (c) generally, striking out references for definitions of "qualified stock option" and "restricted stock option".

1981—Subsec. (a)(1). Pub. L. 97–34, §251(b)(5)(A), inserted ", an incentive stock option," after "qualified stock option".

Subsec. (b)(1). Pub. L. 97–34, §251(b)(5)(B), inserted "incentive stock option," after "qualified stock option,".

Subsec. (c)(4). Pub. L. 97–34, §251(b)(5)(C), added par. (4).

1979—Subsec. (a). Pub. L. 96–167 substituted "Furnishing of information" for "Requirement of reporting" in heading, and in closing par. substituted provisions relating to the furnishing, on or before Jan. 31 of the following calendar year, a written statement in such manner and setting forth such information, as prescribed by regulation for provisions prescribing the making of a return at such time and in such manner as prescribed by regulation, determining qualified stock options, restricted stock options or options granted under an employee stock purchase plan to be options under the provisions of this section, and restricting the necessity of a return only to the first transfer of such share.

Subsec. (b). Pub. L. 96–167 added subsec. (b). Former subsec. (b), requiring every corporation making a return to furnish each person named in the return a written statement setting forth such information as prescribed by regulation, and requiring such statement to be furnished before January 31 of the year following the calendar year for which the return was made, was struck out.

Subsec. (c). Pub. L. 96–167 redesignated subsec. (d) as (c). Former subsec. (c), requiring any corporation transferring any share of stock pursuant to the exercise of an option described in subsec. (a)(2) to identify such stock, was struck out.

Subsec. (d). Pub. L. 96–167 redesignated subsec. (d) as (c).

1976—Subsecs. (a), (b). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title IV, §403(d), Dec. 20, 2006, 120 Stat. 2955, provided that: "The amendments made by this section [amending this section and section 6724 of this title] shall apply to calendar years beginning after the date of the enactment of this Act [Dec. 20, 2006]."

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable with respect to options granted on or after Jan. 1, 1976, and exercised on or after Jan. 1, 1981, or outstanding on Jan. 1, 1981, or granted on or after Jan. 1, 1976, and outstanding Aug. 13, 1981, see section 251(c) of Pub. L. 97–34, set out as an Effective Date note under section 422 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–167 applicable with respect to calendar years beginning after 1979, see section 7(c) of Pub. L. 96–167, set out as a note under section 6652 of this title.

EFFECTIVE DATE

Section applicable to stock transferred pursuant to options exercised on or after Jan. 1, 1964, See section 221(e) of Pub. L. 88–272, set out as an Effective Date of 1964 Amendment note under section 421 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

[1] *So in original. Probably should be followed by a comma.*

[§6039A. Repealed. Pub. L. 96–223, title IV, §401(a), Apr. 2, 1980, 94 Stat. 299]

Section, added Pub. L. 94–455, title XX, §2005(d)(1), Oct. 4, 1976, 90 Stat. 1877, related to information regarding carryover basis property acquired from a decedent. Repeal was achieved by repealing section 2005(d)(1) of Pub. L. 94–455 and the amendments made by that section.

EFFECTIVE DATE OF REPEAL AND REVIVAL OF PRIOR LAW

Repeal applicable in respect of decedents dying after Dec. 31, 1976, and, except for certain elections, this title to be applied and administered as if this section had not been enacted, see section 401(b), (e) of Pub. L. 96–223, set out as an Effective Date of 1980 Amendment and Revival of Prior Law note under section 1023 of this title.

[§6039B. Repealed. Pub. L. 99–514, title XIII, §1303(b)(5), Oct. 22, 1986, 100 Stat. 2658]

Section, added Pub. L. 95–600, title VI, §601(b)(4), Nov. 6, 1978, 92 Stat. 2896; amended Pub. L. 96–595, §3(b), Dec. 24, 1980, 94 Stat. 3466, related to returns of general stock ownership corporations.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 22, 1986, see section 1311(f) of Pub. L. 99–514, as amended, set out as an Effective Date; Transitional Rules note under section 141 of this title.

§6039C. Returns with respect to foreign persons holding direct investments in United States real property interests

(a) General rule

To the extent provided in regulations, any foreign person holding direct investments in United States real property interests for the calendar year shall make a return setting forth—

(1) the name and address of such person,

(2) a description of all United States real property interests held by such person at any time during the calendar year, and

(3) such other information as the Secretary may by regulations prescribe.

(b) Definition of foreign persons holding direct investments in United States real property interests

For purposes of this section, a foreign person shall be treated as holding direct investments in United States real property interests during any calendar year if—

(1) such person did not engage in a trade or business in the United States at any time during such calendar year, and

(2) the fair market value of the United States real property interests held directly by such person at any time during such year equals or exceeds $50,000.

(c) Definitions and special rules

For purposes of this section—

(1) United States real property interest

The term "United States real property interest" has the meaning given to such term by section 897(c).

(2) Foreign person

The term "foreign person" means any person who is not a United States person.

(3) Attribution of ownership

For purposes of subsection (b)(2)—

(A) Interests held by partnerships, etc.

United States real property interests held by a partnership, trust, or estate shall be treated as owned proportionately by its partners or beneficiaries.

(B) Interests held by family members

United States real property interests held by the spouse or any minor child of an individual shall be treated as owned by such individual.

(4) Time and manner of filing return

All returns required to be made under this section shall be made at such time and in such manner as the Secretary shall by regulations prescribe.

(d) Special rule for United States interest and Virgin Islands interest

A nonresident alien individual or foreign corporation subject to tax under section 897(a) (and any person required to withhold tax under section 1445) shall pay any tax and file any return required by this title—

(1) to the United States, in the case of any interest in real property located in the United States and an interest (other than an interest solely as a creditor) in a domestic corporation (with respect to the United States) described in section 897(c)(1)(A)(ii), and

(2) to the Virgin Islands, in the case of any interest in real property located in the Virgin Islands and an interest (other than an interest solely as a creditor) in a domestic corporation (with respect to the Virgin Islands) described in section 897(c)(1)(A)(ii).

(Added Pub. L. 96–499, title XI, §1123(a), Dec. 5, 1980, 94 Stat. 2687; amended Pub. L. 97–34, title VIII, §831(a)(3), (e), Aug. 13, 1981, 95 Stat. 352, 354; Pub. L. 98–369, div. A, title I, §129(b)(1), July 18, 1984, 98 Stat. 659; Pub. L. 99–514, title XVIII, §1810(f)(7), Oct. 22, 1986, 100 Stat. 2828.)

AMENDMENTS

1986—Subsec. (d). Pub. L. 99–514 inserted "(and any person required to withhold tax under section 1445)" after "section 897(a)".

1984—Pub. L. 98–369 amended section generally, inserting in section catchline "foreign persons holding direct investments in" and substituting in text provisions concerning returns with respect to foreign persons holding direct investments in United States real property for provisions concerning returns with respect to United States real property interests.

1981—Subsec. (b)(4)(C). Pub. L. 97–34, §831(e), substituted "For purposes of determining whether an entity to which this subsection applies has a substantial investor in United States real property, the assets of any person shall include the person's pro rata share of the United States real property interest held by any corporation (whether domestic or foreign) if the person's pro rata share of the United States real property interests exceeded $50,000" for "The assets of any entity to which this subsection applies shall include its pro rata share of the United States real property interests held by any corporation in which the entity is a substantial investor in United States real property".

Subsec. (f). Pub. L. 97–34, §831(a)(3), added subsec. (f).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §129(c)(2), July 18, 1984, 98 Stat. 660, provided that: "The amendments made by subsection (b) [amending this section] shall apply to calendar year 1980 and subsequent calendar years."

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to dispositions after June 18, 1980, in taxable years ending after such date, see section 831(i) of Pub. L. 97–34, set out as a note under section 897 of this title.

EFFECTIVE DATE

Section applicable to 1980 and subsequent calendar years, with 1980 being treated as beginning on June 19, 1980, and ending on Dec. 31, 1980, see section 1125(b) of Pub. L. 96–499, set out as a note under section 897 of this title.

§6039D. Returns and records with respect to certain fringe benefit plans

(a) In general

Every employer maintaining a specified fringe benefit plan during any year beginning after December 31, 1984, for any portion of which the applicable exclusion applies, shall file a return (at such time and in such manner as the Secretary shall by regulations prescribe) with respect to such

plan showing for such year—

(1) the number of employees of the employer,

(2) the number of employees of the employer eligible to participate under the plan,

(3) the number of employees participating under the plan,

(4) the total cost of the plan during the year,

(5) the name, address, and taxpayer identification number of the employer and the type of business in which the employer is engaged, and

(6) the number of highly compensated employees among the employees described in paragraphs (1), (2), and (3).

(b) Recordkeeping requirement

Each employer maintaining a specified fringe benefit plan during any year shall keep such records as may be necessary for purposes of determining whether the requirements of the applicable exclusion are met.

(c) Additional information when required by the Secretary

Any employer—

(1) who maintains a specified fringe benefit plan during any year for which a return is required under subsection (a), and

(2) who is required by the Secretary to file an additional return for such year,

shall file such additional return. Such additional return shall be filed at such time and in such manner as the Secretary shall prescribe and shall contain such information as the Secretary shall prescribe. The Secretary may require returns under this subsection only from a representative group of employers.

(d) Definitions and special rules

For purposes of this section—

(1) Specified fringe benefit plan

The term "specified fringe benefit plan" means any plan under section 79, 105, 106, 120, 125, 127, 129, or 137.

(2) Applicable exclusion

The term "applicable exclusion" means, with respect to any specified fringe benefit plan, the section specified under paragraph (1) under which benefits under such plan are excludable from gross income.

(3) Special rule for multiemployer plans

In the case of a multiemployer plan, the plan shall be required to provide any information required by this section which the Secretary determines, on the basis of the agreement between the plan and employer, is held by the plan (and not the employer).

(Added Pub. L. 98–611, §1(d)(1), Oct. 31, 1984, 98 Stat. 3176; amended Pub. L. 99–514, title XI, §1151(h), title XVIII, §1879(d)(1), Oct. 22, 1986, 100 Stat. 2507, 2906; Pub. L. 100–647, title I, §1011B(a)(24), title III, §3021(a)(15)(A), Nov. 10, 1988, 102 Stat. 3486, 3631; Pub. L. 101–508, title XI, §11704(a)(24), Nov. 5, 1990, 104 Stat. 1388–519; Pub. L. 105–34, title XVI, §1601(h)(2)(D)(iii), Aug. 5, 1997, 111 Stat. 1092.)

CODIFICATION

Another section 6039D, added Pub. L. 98–612, §1(b)(1), Oct. 31, 1984, 98 Stat. 3180, also related to returns and records with respect to certain fringe benefits, prior to repeal by Pub. L. 99–514, title XVIII, §1879(d)(2), Oct. 22, 1986, 100 Stat. 2906, effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such repeal relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

AMENDMENTS

1997—Subsec. (d)(1). Pub. L. 105–34 substituted "129, or 137" for "or 129".

1990—Subsec. (d)(3). Pub. L. 101–508 substituted "the employer)." for "the employer)".

1988—Subsec. (c). Pub. L. 100–647, §1011B(a)(24), amended directory language of Pub. L. 99–514, §1151(h)(3), see 1986 Amendment note below.

Subsec. (d). Pub. L. 100–647, §3021(a)(15)(A)(ii), inserted "and special rules" after "Definitions" in heading.

Subsec. (d)(3). Pub. L. 100–647, §3021(a)(15)(A)(i), added par. (3).

1986—Subsec. (a)(6). Pub. L. 99–514, §1151(h)(2), added par. (6).

Subsec. (c). Pub. L. 99–514, §1151(h)(3), as amended by Pub. L. 100–647, §1011B(a)(24), inserted at end "The Secretary may require returns under this subsection only from a representative group of employers."

Subsec. (d). Pub. L. 99–514, §1151(h)(1), amended subsec. (d) generally. Prior to amendment, par. (1) defined a specified fringe benefit plan as (A) any qualified group legal services plan (as defined in section 120), (B) any cafeteria plan (as defined in section 125), and (C) any educational assistance plan (as defined in section 127), and par. (2) defined "applicable exclusion" as meaning (A) section 120 in the case of a qualified legal group services plan, (B) section 125 in the case of a cafeteria plan, and (C) section 127 in the case of an educational assistance plan.

Pub. L. 99–514, §1879(d)(1), in amending subsec. (d) generally, added subpars. (1)(A) and (2)(A). Former subpars. (1)(A) and (B) and (2)(A) and (B) were redesignated as subpars. (1)(B) and (C) and (2)(B) and (C), respectively.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 23 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011B(a)(24) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title III, §3021(a)(15)(B), Nov. 10, 1988, 102 Stat. 3631, provided that: "The amendments made by this paragraph [amending this section] shall apply to years beginning after 1984."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1151(h) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1988, with certain qualifications and exceptions, see section 1151(k) of Pub. L. 99–514, as amended, set out as a note under section 79 of this title.

Amendment by section 1879(d)(1) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1985, see section 1(g)(2) of Pub. L. 98–611, set out as an Effective Date of 1984 Amendment note under section 127 of this title.

NONENFORCEMENT OF AMENDMENT MADE BY SECTION 1151 OF PUB. L. 99–514 FOR FISCAL YEAR 1990

No monies appropriated by Pub. L. 101–136 to be used to implement or enforce section 1151 of Pub. L. 99–514 or the amendments made by such section, see section 528 of Pub. L. 101–136, set out as a note under section 89 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§6039E. Information concerning resident status

(a) General rule

Notwithstanding any other provision of law, any individual who—

(1) applies for a United States passport (or a renewal thereof), or

(2) applies to be lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws,

shall include with any such application a statement which includes the information described in subsection (b).

(b) Information to be provided

Information required under subsection (a) shall include—

(1) the taxpayer's TIN (if any),

(2) in the case of a passport applicant, any foreign country in which such individual is residing,

(3) in the case of an individual seeking permanent residence, information with respect to whether such individual is required to file a return of the tax imposed by chapter 1 for such individual's most recent 3 taxable years, and

(4) such other information as the Secretary may prescribe.

(c) Penalty

Any individual failing to provide a statement required under subsection (a) shall be subject to a penalty equal to $500 for each such failure, unless it is shown that such failure is due to reasonable cause and not to willful neglect.

(d) Information to be provided to Secretary

Notwithstanding any other provision of law, any agency of the United States which collects (or is required to collect) the statement under subsection (a) shall—

(1) provide any such statement to the Secretary, and

(2) provide to the Secretary the name (and any other identifying information) of any individual refusing to comply with the provisions of subsection (a).

Nothing in the preceding sentence shall be construed to require the disclosure of information which is subject to section 245A of the Immigration and Nationality Act (as in effect on the date of the enactment of this sentence).

(e) Exemption

The Secretary may by regulations exempt any class of individuals from the requirements of this section if he determines that applying this section to such individuals is not necessary to carry out the purposes of this section.

(Added Pub. L. 99–514, title XII, §1234(a)(1), Oct. 22, 1986, 100 Stat. 2565; amended Pub. L. 100–647, title I, §1012(o), Nov. 10, 1988, 102 Stat. 3515.)

REFERENCES IN TEXT

Section 245A of the Immigration and Nationality Act, referred to in subsec. (d), is classified to section 1255a of Title 8, Aliens and Nationality.

The date of the enactment of this sentence, referred to in subsec. (d), is the date of enactment of Pub. L. 100–647, which was approved Nov. 10, 1988.

AMENDMENTS

1988—Subsec. (d). Pub. L. 100–647 inserted sentence at end relating to disclosure of information subject to section 245A of the Immigration and Nationality Act.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Pub. L. 99–514, title XII, §1234(a)(3), Oct. 22, 1986, 100 Stat. 2566, provided that: "The amendments

made by this subsection [enacting this section] shall apply to applications submitted after December 31, 1987 (or, if earlier, the effective date which shall not be earlier than January 1, 1987) of the initial regulations issued under section 6039E of the Internal Revenue Code of 1986 as added by this subsection)."

§6039F. Notice of large gifts received from foreign persons

(a) In general

If the value of the aggregate foreign gifts received by a United States person (other than an organization described in section 501(c) and exempt from tax under section 501(a)) during any taxable year exceeds $10,000, such United States person shall furnish (at such time and in such manner as the Secretary shall prescribe) such information as the Secretary may prescribe regarding each foreign gift received during such year.

(b) Foreign gift

For purposes of this section, the term "foreign gift" means any amount received from a person other than a United States person which the recipient treats as a gift or bequest. Such term shall not include any qualified transfer (within the meaning of section 2503(e)(2)) or any distribution properly disclosed in a return under section 6048(c).

(c) Penalty for failure to file information

(1) In general

If a United States person fails to furnish the information required by subsection (a) with respect to any foreign gift within the time prescribed therefor (including extensions)—

(A) the tax consequences of the receipt of such gift shall be determined by the Secretary, and

(B) such United States person shall pay (upon notice and demand by the Secretary and in the same manner as tax) an amount equal to 5 percent of the amount of such foreign gift for each month for which the failure continues (not to exceed 25 percent of such amount in the aggregate).

(2) Reasonable cause exception

Paragraph (1) shall not apply to any failure to report a foreign gift if the United States person shows that the failure is due to reasonable cause and not due to willful neglect.

(d) Cost-of-living adjustment

In the case of any taxable year beginning after December 31, 1996, the $10,000 amount under subsection (a) shall be increased by an amount equal to the product of such amount and the cost-of-living adjustment for such taxable year under section 1(f)(3), except that subparagraph (B) thereof shall be applied by substituting "1995" for "1992".

(e) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.

(Added Pub. L. 104–188, title I, §1905(a), Aug. 20, 1996, 110 Stat. 1913.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

CODIFICATION

Another section 6039F was renumbered section 6039G of this title.

EFFECTIVE DATE

Pub. L. 104–188, title I, §1905(c), Aug. 20, 1996, 110 Stat. 1913, provided that: "The amendments made by this section [enacting this section] shall apply to amounts received after the date of the enactment of this Act [Aug. 20, 1996] in taxable years ending after such date."

§6039G. Information on individuals losing United States citizenship

(a) In general

Notwithstanding any other provision of law, any individual to whom section 877(b) or 877A applies for any taxable year shall provide a statement for such taxable year which includes the information described in subsection (b).

(b) Information to be provided

Information required under subsection (a) shall include—

(1) the taxpayer's TIN,

(2) the mailing address of such individual's principal foreign residence,

(3) the foreign country in which such individual is residing,

(4) the foreign country of which such individual is a citizen,

(5) information detailing the income, assets, and liabilities of such individual,

(6) the number of days during any portion of which that the individual was physically present in the United States during the taxable year, and

(7) such other information as the Secretary may prescribe.

(c) Penalty

If—

(1) an individual is required to file a statement under subsection (a) for any taxable year, and

(2) fails to file such a statement with the Secretary on or before the date such statement is required to be filed or fails to include all the information required to be shown on the statement or includes incorrect information,

such individual shall pay a penalty of $10,000 unless it is shown that such failure is due to reasonable cause and not to willful neglect.

(d) Information to be provided to Secretary

Notwithstanding any other provision of law—

(1) any Federal agency or court which collects (or is required to collect) the statement under subsection (a) shall provide to the Secretary—

(A) a copy of any such statement, and

(B) the name (and any other identifying information) of any individual refusing to comply with the provisions of subsection (a),

(2) the Secretary of State shall provide to the Secretary a copy of each certificate as to the loss of American nationality under section 358 of the Immigration and Nationality Act which is approved by the Secretary of State, and

(3) the Federal agency primarily responsible for administering the immigration laws shall provide to the Secretary the name of each lawful permanent resident of the United States (within the meaning of section 7701(b)(6)) whose status as such has been revoked or has been administratively or judicially determined to have been abandoned.

Notwithstanding any other provision of law, not later than 30 days after the close of each calendar quarter, the Secretary shall publish in the Federal Register the name of each individual losing United States citizenship (within the meaning of section 877(a) or 877A) with respect to whom the Secretary receives information under the preceding sentence during such quarter.

(Added Pub. L. 104–191, title V, §512(a), Aug. 21, 1996, 110 Stat. 2100, §6039F; renumbered §6039G, Pub. L. 105–34, title XVI, §1602(h)(1), Aug. 5, 1997, 111 Stat. 1096; amended Pub. L. 108–357, title VIII, §804(e), Oct. 22, 2004, 118 Stat. 1572; Pub. L. 110–245, title III, §301(e), June 17, 2008, 122 Stat. 1646.)

REFERENCES IN TEXT

Section 358 of the Immigration and Nationality Act, referred to in subsec. (d)(2), is classified to section 1501 of Title 8, Aliens and Nationality.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–245, §301(e)(1), inserted "or 877A" after "section 877(b)".

Subsec. (d). Pub. L. 110–245, §301(e)(2), inserted "or 877A" after "section 877(a)" in concluding provisions.

2004—Subsec. (a). Pub. L. 108–357, §804(e)(1), reenacted heading without change and amended text of subsec. (a) generally. Prior to amendment, text read as follows: "Notwithstanding any other provision of law, any individual who loses United States citizenship (within the meaning of section 877(a)) shall provide a statement which includes the information described in subsection (b). Such statement shall be—

"(1) provided not later than the earliest date of any act referred to in subsection (c), and

"(2) provided to the person or court referred to in subsection (c) with respect to such act."

Subsec. (b). Pub. L. 108–357, §804(e)(2), reenacted heading, introductory provisions, and pars. (1) to (4) without change, in par. (5), substituted "information detailing the income, assets, and liabilities of such individual," for "in the case of an individual having a net worth of at least the dollar amount applicable under section 877(a)(2)(B), information detailing the assets and liabilities of such individual, and", added par. (6), and redesignated former par. (6) as (7).

Subsec. (c). Pub. L. 108–357, §804(e)(4), redesignated subsec. (d) as (c) and struck out heading and text of former subsec. (c). Text read as follows: "For purposes of this section, the acts referred to in this subsection are—

"(1) the individual's renunciation of his United States nationality before a diplomatic or consular officer of the United States pursuant to paragraph (5) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(5)),

"(2) the individual's furnishing to the United States Department of State a signed statement of voluntary relinquishment of United States nationality confirming the performance of an act of expatriation specified in paragraph (1), (2), (3), or (4) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(1)–(4)),

"(3) the issuance by the United States Department of State of a certificate of loss of nationality to the individual, or

"(4) the cancellation by a court of the United States of a naturalized citizen's certificate of naturalization."

Subsec. (d). Pub. L. 108–357, §804(e)(4), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Pub. L. 108–357, §804(e)(3), reenacted heading without change and amended text of subsec. (d) generally. Prior to amendment, text read as follows: "Any individual failing to provide a statement required under subsection (a) shall be subject to a penalty for each year (of the 10-year period beginning on the date of loss of United States citizenship) during any portion of which such failure continues in an amount equal to the greater of—

"(1) 5 percent of the tax required to be paid under section 877 for the taxable year ending during such year, or

"(2) $1,000,

unless it is shown that such failure is due to reasonable cause and not to willful neglect."

Subsec. (e). Pub. L. 108–357, §804(e)(4), redesignated subsec. (e) as (d).

Subsec. (f). Pub. L. 108–357, §804(e)(4), struck out heading and text of subsec. (f). Text read as follows: "In lieu of applying the last sentence of subsection (a), any individual who is required to provide a statement under this section by reason of section 877(e)(1) shall provide such statement with the return of tax imposed by chapter 1 for the taxable year during which the event described in such section occurs."

Subsec. (g). Pub. L. 108–357, §804(e)(4), struck out heading and text of subsec. (g). Text read as follows: "The Secretary may by regulations exempt any class of individuals from the requirements of this section if he determines that applying this section to such individuals is not necessary to carry out the purposes of this section."

1997—Pub. L. 105–34 renumbered section 6039F as this section.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–245 applicable to any individual whose expatriation date is on or after June 17, 2008, see section 301(g)(1) of Pub. L. 110–245, set out as an Effective Date note under section 2801 of this

title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to individuals who expatriate after June 3, 2004, see section 804(f) of Pub. L. 108–357, set out as a note under section 877 of this title.

EFFECTIVE DATE

For special rule relating to application of this section to certain individuals who performed an act of expatriation specified in section 1481(a)(1)–(4) of Title 8, Aliens and Nationality, before Feb. 6, 1995, see section 511(g)(3) of Pub. L. 104–191, set out as an Effective Date of 1996 Amendment note under section 877 of this title.

Pub. L. 104–191, title V, §512(c), Aug. 21, 1996, 110 Stat. 2102, provided that: "The amendments made by this section [enacting this section] shall apply to—

"(1) individuals losing United States citizenship (within the meaning of section 877 of the Internal Revenue Code of 1986) on or after February 6, 1995, and

"(2) long-term residents of the United States with respect to whom an event described in [former] subparagraph (A) or (B) of section 877(e)(1) of such Code occurs on or after such date.

In no event shall any statement required by such amendments be due before the 90th day after the date of the enactment of this Act [Aug. 21, 1996]."

§6039H. Information with respect to Alaska Native Settlement Trusts and sponsoring Native Corporations

(a) Requirement

The fiduciary of an electing Settlement Trust (as defined in section 646(h)(1)) shall include with the return of income of the trust a statement containing the information required under subsection (c).

(b) Application with other requirements

The filing of any statement under this section shall be in lieu of the reporting requirements under section 6034A to furnish any statement to a beneficiary regarding amounts distributed to such beneficiary (and such other reporting rules as the Secretary deems appropriate).

(c) Required information

The information required under this subsection shall include—

(1) the amount of distributions made during the taxable year to each beneficiary,

(2) the treatment of such distribution under the applicable provision of section 646, including the amount that is excludable from the recipient beneficiary's gross income under section 646, and

(3) the amount (if any) of any distribution during such year that is deemed to have been made by the sponsoring Native Corporation (as defined in section 646(h)(5)).

(d) Sponsoring Native Corporation

(1) In general

The electing Settlement Trust shall, on or before the date on which the statement under subsection (a) is required to be filed, furnish such statement to the sponsoring Native Corporation (as so defined).

(2) Distributees

The sponsoring Native Corporation shall furnish each recipient of a distribution described in section 646(e)(3) a statement containing the amount deemed to have been distributed to such recipient by such corporation for the taxable year.

(Added Pub. L. 107–16, title VI, §671(b), June 7, 2001, 115 Stat. 147.)

EFFECTIVE DATE

Section applicable to taxable years ending after June 7, 2001, and to contributions made to electing

Settlement Trusts for such year or any subsequent year, see section 671(d) of Pub. L. 107–16, set out as a note under section 646 of this title.

§6039I. Returns and records with respect to employer-owned life insurance contracts

(a) In general

Every applicable policyholder owning 1 or more employer-owned life insurance contracts issued after the date of the enactment of this section shall file a return (at such time and in such manner as the Secretary shall by regulations prescribe) showing for each year such contracts are owned—

(1) the number of employees of the applicable policyholder at the end of the year,

(2) the number of such employees insured under such contracts at the end of the year,

(3) the total amount of insurance in force at the end of the year under such contracts,

(4) the name, address, and taxpayer identification number of the applicable policyholder and the type of business in which the policyholder is engaged, and

(5) that the applicable policyholder has a valid consent for each insured employee (or, if all such consents are not obtained, the number of insured employees for whom such consent was not obtained).

(b) Recordkeeping requirement

Each applicable policyholder owning 1 or more employer-owned life insurance contracts during any year shall keep such records as may be necessary for purposes of determining whether the requirements of this section and section 101(j) are met.

(c) Definitions

Any term used in this section which is used in section 101(j) shall have the same meaning given such term by section 101(j).

(Added Pub. L. 109–280, title VIII, §863(b), Aug. 17, 2006, 120 Stat. 1023.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (a), is the date of enactment of Pub. L. 109–280, which was approved Aug. 17, 2006.

EFFECTIVE DATE

Section applicable to life insurance contracts issued after Aug. 17, 2006, except for a contract issued after such date pursuant to an exchange described in section 1035 of this title for a contract issued on or prior to that date, and any material change to cause the contract to be treated as a new contract, with exception in the case of a master contract, see section 863(d) of Pub. L. 109–280, set out as an Effective Date of 2006 Amendment note under section 101 of this title.

§6039J. Information reporting with respect to Commodity Credit Corporation transactions

(a) Requirement of reporting

The Commodity Credit Corporation, through the Secretary of Agriculture, shall make a return, according to the forms and regulations prescribed by the Secretary of the Treasury, setting forth any market gain realized by a taxpayer during the taxable year in relation to the repayment of a loan issued by the Commodity Credit Corporation, without regard to the manner in which such loan was repaid.

(b) Statements to be furnished to persons with respect to whom information is required

The Secretary of Agriculture shall furnish to each person whose name is required to be set forth in a return required under subsection (a) a written statement showing the amount of market gain

reported in such return.

(Added Pub. L. 110–234, title XV, §15353(a), May 22, 2008, 122 Stat. 1526, and Pub. L. 110–246, §4(a), title XV, §15353(a), June 18, 2008, 122 Stat. 1664, 2288.)

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 enacted identical sections. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246.

EFFECTIVE DATE

Enactment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.

Pub. L. 110–234, title XV, §15353(c), May 22, 2008, 122 Stat. 1527, and Pub. L. 110–246, §4(a), title XV, §15353(c), June 18, 2008, 122 Stat. 1664, 2289, provided that: "The amendments made by this section [enacting this section] shall apply to loans repaid on or after January 1, 2007."

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.]

§6040. Cross references

(1) For the notice required of persons acting in a fiduciary capacity for taxpayers or for transferees, see sections 6212, 6901(g), and 6903.

(2) For application by fiduciary for determination of tax and discharge from personal liability therefor, see section 2204.

(3) For the notice required of taxpayers for redetermination of taxes claimed as credits, see sections 905(c) and 2016.

(4) For exemption certificates required to be furnished to employers by employees, see section 3402(f)(2), (3), (4), and (5).

(5) For receipts, constituting information returns, required to be furnished to employees, see section 6051.

[(6) Repealed. Pub. L. 89–44, title III, §305(b), June 21, 1965, 79 Stat. 148]

(7) For information required with respect to the redemption of stamps, see section 6805.

(8) For the statement required to be filed by a corporation expecting a net operating loss carryback or unused excess profits credit carryback, see section 6164.

(9) For the application, which a taxpayer may file for a tentative carryback adjustment of income taxes, see section 6411.

(Aug. 16, 1954, ch. 736, 68A Stat. 744, §6037; renumbered §6038, Pub. L. 85–866, title I, §64(c), Sept. 2, 1958, 72 Stat. 1656; renumbered §6039, Pub. L. 86–780, §6(a), Sept. 14, 1960, 74 Stat. 1014; renumbered §6040, Pub. L. 88–272, title II, §221(b)(1), Feb. 26, 1964, 78 Stat. 73; amended Pub. L. 89–44, title III, §305(b), June 21, 1965, 79 Stat. 148; Pub. L. 91–614, title I, §101(d)(2), Dec. 31, 1970, 84 Stat. 1837.)

AMENDMENTS

1970—Par. (2). Pub. L. 91–614 substituted "fiduciary" for "executor".

1965—Par. (6). Pub. L. 89–44 struck out par. (6) which cross referred to section 4234 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–614 applicable with respect to decedents dying after Dec. 31, 1970, see section 101(j) of Pub. L. 91–614, set out as a note under section 2032 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 applicable with respect to admissions, services, and uses after noon, Dec. 31, 1965, see section 701(b)(1) of Pub. L. 89–44, set out as a note under section 4291 of this title.

SUBPART B—INFORMATION CONCERNING TRANSACTIONS WITH OTHER PERSONS

Sec.

6041. Information at source.

6041A. Returns regarding payments of remuneration for services and direct sales.[1]

6042. Returns regarding payments of dividends and corporate earnings and profits.

6043. Liquidating, etc., transactions.

6043A. Returns relating to taxable mergers and acquisitions.

6044. Returns regarding payments of patronage dividends.

6045. Returns of brokers.

6045A. Information required in connection with transfers of covered securities to brokers.

6045B. Returns relating to actions affecting basis of specified securities.

6046. Returns as to organization or reorganization of foreign corporations and as to acquisitions of their stock.

6046A. Returns as to interests in foreign partnerships.

6047. Information relating to certain trusts and annuity plans.

6048. Information with respect to certain foreign trusts.

6049. Returns regarding payments of interest.

[6050. Repealed.]

6050A. Reporting requirements of certain fishing boat operators.

6050B. Returns relating to unemployment compensation.

[6050C. Repealed.]

6050D. Returns relating to energy grants and financing.

6050E. State and local income tax refunds.

6050F. Returns relating to social security benefits.

6050G. Returns relating to certain railroad retirement benefits.

6050H. Returns relating to mortgage interest received in trade or business from individuals.

6050I. Returns relating to cash received in trade or business, etc..[2]

6050J. Returns relating to foreclosures and abandonments of security.

6050K. Returns relating to exchanges of certain partnership interests.

6050L. Returns relating to certain donated property.

6050M. Returns relating to persons receiving contracts from Federal executive agencies.

6050N. Returns regarding payments of royalties.

6050P. Returns relating to the cancellation of indebtedness by certain entities.

6050Q. Certain long-term care benefits.

6050R. Returns relating to certain purchases of fish.

6050S. Returns relating to higher education tuition and related expenses.

6050T. Returns relating to credit for health insurance costs of eligible individuals.

6050U. Charges or payments for qualified long-term care insurance contracts under combined arrangements.

6050V. Returns relating to applicable insurance contracts in which certain exempt organizations hold interests.

6050W. Returns relating to payments made in settlement of payment card transactions.[3]

AMENDMENTS

2008—Pub. L. 110–343, div. B, title IV, §403(c)(3), (d)(3), Oct. 3, 2008, 122 Stat. 3858, 3860, added items 6045A and 6045B.

Pub. L. 110–289, div. C, title III, §3091(d), July 30, 2008, 122 Stat. 2911, added item 6050W.

2006—Pub. L. 109–280, title XII, §1211(a)(2), Aug. 17, 2006, 120 Stat. 1073, which directed the amendment of the analysis for subpart B of part III of subchapter A of chapter 61 by adding item 6050V, without specifying the act to be amended, was executed by adding item 6050V to this analysis, which is part of chapter 61 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

Pub. L. 109–280, title VIII, §844(d)(3), Aug. 17, 2006, 120 Stat. 1013, added item 6050U.

2004—Pub. L. 108–357, title VIII, §882(c)(2), Oct. 22, 2004, 118 Stat. 1630, which directed amendment of

the analysis for subpart A of part II of subchapter A of chapter 61 of this title by substituting "Returns relating to certain donated property" for "Returns relating to certain dispositions of donated property" in item 6050L, was executed by making the substitution in item 6050L in the analysis for this subpart, to reflect the probable intent of Congress.

Pub. L. 108–357, title VIII, §805(c), Oct. 22, 2004, 118 Stat. 1574, added item 6043A.

2002—Pub. L. 107–210, div. A, title II, §202(d)(2), Aug. 6, 2002, 116 Stat. 963, added item 6050T.

1998—Pub. L. 105–206, title VI, §6018(a), July 22, 1998, 112 Stat. 822, amended directory language of Pub. L. 104–188, §1116(b)(2). See 1996 Amendment note below.

1997—Pub. L. 105–34, title II, §201(c)(3), Aug. 5, 1997, 111 Stat. 805, added item 6050S.

Pub. L. 105–34, title XVI, §1601(a)(2), Aug. 5, 1997, 111 Stat. 1086, provided that amendment made by section 1116(b)(2)(C) of Pub. L. 104–188 shall be applied as if the reference to chapter 68 were a reference to chapter 61. See 1996 Amendment note below.

1996—Pub. L. 104–191, title III, §323(c), Aug. 21, 1996, 110 Stat. 2063, added item 6050Q.

Pub. L. 104–188, title I, §1116(b)(2)(C), Aug. 20, 1996, 110 Stat. 1764, as amended by Pub. L. 105–206, title VI, §6018(a), July 22, 1998, 112 Stat. 822, added item 6050R. See 1997 Amendment note above.

Pub. L. 104–188, title I, §§1704(t)(18), 1901(c)(2), Aug. 20, 1996, 110 Stat. 1764, 1888, 1908, substituted "Liquidating," for "Liquidating;" in item 6043 and "Information with respect" for "Returns as" in item 6048 and added item 6050R.

Pub. L. 104–134, title III, §31001(m)(2)(D)(iii), Apr. 26, 1996, 110 Stat. 1321–369, struck out "financial" before "entities" in item 6050P.

1994—Pub. L. 103–322, title II, §20415(b)(4), Sept. 13, 1994, 108 Stat. 1833, substituted "business, etc." for "business" in item 6050I.

1993—Pub. L. 103–66, title XIII, §13252(c), Aug. 10, 1993, 107 Stat. 532, added item 6050P.

1989—Pub. L. 101–239, title VII, §7208(b)(3)(C), Dec. 19, 1989, 103 Stat. 2338, substituted "Liquidating; etc., transactions" for "Return regarding corporate dissolution or liquidation" in item 6043.

1988—Pub. L. 100–418, title I, §1941(b)(3)(B), Aug. 23, 1988, 102 Stat. 1324, struck out item 6050C "Information regarding windfall profit tax on domestic crude oil".

1986—Pub. L. 99–514, title XV, §§1522(b), 1523(c), Oct. 22, 1986, 100 Stat. 2747, 2748, added items 6050M and 6050N.

1984—Pub. L. 98–369, div. A, title I, §§145(c), 146(c), 148(c), 149(c), 155(b)(3), title IV, §491(d)(58), July 18, 1984, 98 Stat. 685, 687, 689, 690, 693, 852, struck out "and bond purchase" after "trust and annuity" in item 6047 and added items 6050H to 6050L.

1983—Pub. L. 98–76, title II, §224(b)(2), Aug. 12, 1983, 97 Stat. 423, added item 6050G.

Pub. L. 98–21, title I, §121(f)(4), Apr. 20, 1983, 97 Stat. 84, added item 6050F.

1982—Pub. L. 97–248, title III, §313(b), title IV, §405(c)(1), Sept. 3, 1982, 96 Stat. 603, 670, added items 6046A and 6050E.

1980—Pub. L. 96–223, title I, §101(d)(2)(B), title II, §203(b)(2), Apr. 2, 1980, 94 Stat. 251, 259, added items 6050C and 6050D.

1979—Pub. L. 96–167, §5(b), Dec. 29, 1979, 93 Stat. 1276, struck out item 6050 "Returns relating to certain transfers to exempt organizations".

1978—Pub. L. 95–600, title I, §112(c)(2), Nov. 6, 1978, 92 Stat. 2778, added item 6050B.

1976—Pub. L. 94–455, title X, §1013(e)(5), Oct. 4, 1976, 90 Stat. 1616, substituted "as to certain foreign trusts" for "as to creation of or transfer to certain foreign trusts" in item 6048.

1969—Pub. L. 91–172, title I, §121(e)(2), Dec. 30, 1969, 83 Stat. 548, added item 6050.

1962—Pub. L. 87–834, §§7(i)(2), 19(g)(1), 20(d)(2), Oct. 16, 1962, 76 Stat. 989, 1058, 1063, substituted "payments of dividends and corporate earnings and profits" for "corporate dividends, earnings and profits" in item 6042, substituted "organization or reorganization of foreign corporations and as to acquisitions of their stock" for "creation or organization, or reorganization, of foreign corporations" in item 6046, inserted "payments of" in item 6044, and added items 6048 and 6049.

Pub. L. 87–792, §7(m)(2), Oct. 10, 1962, 76 Stat. 831, added item 6047.

1960—Pub. L. 86–780, §7(b), Sept. 14, 1960, 74 Stat. 1016, substituted "Returns as to creation or organization, or reorganization, of foreign corporations" for "Returns as to formation or reorganization of foreign corporations," in item 6046.

[1] Editorially supplied. Section 6041A added by Pub. L. 97–248 without corresponding amendment of subpart analysis.

[2] *So in original.*

[3] *So in original. Does not conform to section catchline.*

§6041. Information at source

(a) Payments of $600 or more

All persons engaged in a trade or business and making payment in the course of such trade or business to another person, of rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income (other than payments to which section 6042(a)(1), 6044(a)(1), 6047(e), 6049(a), or 6050N(a) applies, and other than payments with respect to which a statement is required under the authority of section 6042(a)(2), 6044(a)(2), or 6045), of $600 or more in any taxable year, or, in the case of such payments made by the United States, the officers or employees of the United States having information as to such payments and required to make returns in regard thereto by the regulations hereinafter provided for, shall render a true and accurate return to the Secretary, under such regulations and in such form and manner and to such extent as may be prescribed by the Secretary, setting forth the amount of such gains, profits, and income, and the name and address of the recipient of such payment.

(b) Collection of foreign items

In the case of collections of items (not payable in the United States) of interest upon the bonds of foreign countries and interest upon the bonds of and dividends from foreign corporations by any person undertaking as a matter of business or for profit the collection of foreign payments of such interest or dividends by means of coupons, checks, or bills of exchange, such person shall make a return according to the forms or regulations prescribed by the Secretary, setting forth the amount paid and the name and address of the recipient of each such payment.

(c) Recipient to furnish name and address

When necessary to make effective the provisions of this section, the name and address of the recipient of income shall be furnished upon demand of the person paying the income.

(d) Statements to be furnished to persons with respect to whom information is required

Every person required to make a return under subsection (a) shall furnish to each person with respect to whom such a return is required a written statement showing—

(1) the name, address, and phone number of the information contact of the person required to make such return, and

(2) the aggregate amount of payments to the person required to be shown on the return.

The written statement required under the preceding sentence shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made. To the extent provided in regulations prescribed by the Secretary, this subsection shall also apply to persons required to make returns under subsection (b).

(e) Section does not apply to certain tips

This section shall not apply to tips with respect to which section 6053(a) (relating to reporting of tips) applies.

(f) Section does not apply to certain health arrangements

This section shall not apply to any payment for medical care (as defined in section 213(d)) made under—

(1) a flexible spending arrangement (as defined in section 106(c)(2)), or

(2) a health reimbursement arrangement which is treated as employer-provided coverage under an accident or health plan for purposes of section 106.

(g) Nonqualified deferred compensation

Subsection (a) shall apply to—

(1) any deferrals for the year under a nonqualified deferred compensation plan (within the meaning of section 409A(d)), whether or not paid, except that this paragraph shall not apply to deferrals which are required to be reported under section 6051(a)(13) (without regard to any de minimis exception), and

(2) any amount includible under section 409A and which is not treated as wages under section 3401(a).

(Aug. 16, 1954, ch. 736, 68A Stat. 745; Pub. L. 87–834, §19(f), Oct. 16, 1962, 76 Stat. 1058; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–600, title V, §501(b), Nov. 6, 1978, 92 Stat. 2878; Pub. L. 97–34, title VII, §723(b)(1), Aug. 13, 1981, 95 Stat. 344; Pub. L. 97–248, title III, §309(b)(1), Sept. 3, 1982, 96 Stat. 595; Pub. L. 98–369, div. A, title VII, §722(h)(4)(B), July 18, 1984, 98 Stat. 976; Pub. L. 99–514, title XV, §§1501(c)(1), 1523(b)(2), Oct. 22, 1986, 100 Stat. 2736, 2748; Pub. L. 104–168, title XII, §1201(a)(1), July 30, 1996, 110 Stat. 1469; Pub. L. 108–173, title XII, §1203(a), Dec. 8, 2003, 117 Stat. 2480; Pub. L. 108–357, title VIII, §885(b)(3), Oct. 22, 2004, 118 Stat. 1640; Pub. L. 111–148, title IX, §9006(a), (b), Mar. 23, 2010, 124 Stat. 855; Pub. L. 111–240, title II, §2101(a), Sept. 27, 2010, 124 Stat. 2561; Pub. L. 112–9, §§2(a), (b), 3(a), Apr. 14, 2011, 125 Stat. 36.)

AMENDMENTS

2011—Subsec. (a). Pub. L. 112–9, §2(b), struck out "amounts in consideration for property," after "salaries, wages,", "gross proceeds," after "emoluments, or other", and "gross proceeds," after "setting forth the amount of such".

Subsec. (h). Pub. L. 112–9, §3(a), struck out subsec. (h) which related to treatment of rental property expense payments.

Subsecs. (i), (j). Pub. L. 112–9, §2(a), struck out subsecs. (i) and (j) which read as follows:

"(i) APPLICATION TO CORPORATIONS.—Notwithstanding any regulation prescribed by the Secretary before the date of the enactment of this subsection, for purposes of this section the term 'person' includes any corporation that is not an organization exempt from tax under section 501(a).

"(j) REGULATIONS.—The Secretary may prescribe such regulations and other guidance as may be appropriate or necessary to carry out the purposes of this section, including rules to prevent duplicative reporting of transactions."

2010—Subsec. (a). Pub. L. 111–148, §9006(b), inserted "amounts in consideration for property," after "salaries, wages,", "gross proceeds," after "emoluments, or other", and "gross proceeds," after "setting forth the amount of such".

Subsec. (h). Pub. L. 111–240 added subsec. (h). Former subsec. (h) redesignated (i).

Pub. L. 111–148, §9006(a), added subsec. (h).

Subsec. (i). Pub. L. 111–240 redesignated subsec. (h) as (i). Former subsec. (i) redesignated (j).

Pub. L. 111–148, §9006(a), added subsec. (i).

Subsec. (j). Pub. L. 111–240 redesignated subsec. (i) as (j).

2004—Subsec. (g). Pub. L. 108–357 added subsec. (g).

2003—Subsec. (f). Pub. L. 108–173 added subsec. (f).

1996—Subsec. (d)(1). Pub. L. 104–168 substituted "name, address, and phone number of the information contact" for "name and address".

1986—Subsec. (a). Pub. L. 99–514, §1523(b)(2), substituted "6049(a), or 6050N(a)" for "or 6049(a)".

Subsec. (d). Pub. L. 99–514, §1501(c)(1), in amending subsec. (d) generally, substituted "information is required" for "information is furnished" in heading and, in text, substituted references to persons required to make returns for former references to persons making returns.

1984—Subsec. (a). Pub. L. 98–369 inserted "6047(e),".

1982—Subsec. (a). Pub. L. 97–248 substituted "6049(a)" for "6049(a)(1)", and "or 6045" for "6045, 6049(a)(2), or 6049(a)(3)".

1981—Subsecs. (d), (e). Pub. L. 97–34 added subsec. (d) and redesignated former subsec. (d) as (e).

1978—Subsecs. (c), (d). Pub. L. 95–600 added subsec. (d) and redesignated subsec. (d) as (c).

1976—Subsecs. (a), (b). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

1962—Subsec. (a). Pub. L. 87–834, §19(f)(1), substituted "(other than payments to which section 6042(a)(1), 6044(a)(1), or 6049(a)(1) applies, and other than payments with respect to which a statement is

required under the authority of section 6042(a)(2), 6044(a)(2), 6045, 6049(a)(2), or 6049(a)(3))" for "other than payments described in section 6042(1) or section 6045)".

Subsec. (c). Pub. L. 87–834, §19(f)(2), repealed subsec. (c) which related to returns of payments of interest by corporations.

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112–9, §2(c), Apr. 14, 2011, 125 Stat. 36, provided that: "The amendments made by this section [amending this section] shall apply to payments made after December 31, 2011."

Pub. L. 112–9, §3(b), Apr. 14, 2011, 125 Stat. 36, provided that: "The amendment made by this section [amending this section] shall apply to payments made after December 31, 2010."

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–240, title II, §2101(b), Sept. 27, 2010, 124 Stat. 2561, provided that: "The amendments made by subsection (a) [amending this section] shall apply to payments made after December 31, 2010."

Pub. L. 111–148, title IX, §9006(c), Mar. 23, 2010, 124 Stat. 855, provided that: "The amendments made by this section [amending this section] shall apply to payments made after December 31, 2011."

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to amounts deferred after Dec. 31, 2004, with special rules relating to earnings and material modifications and exception for nonelective deferred compensation, see section 885(d) of Pub. L. 108–357, set out as an Effective Date note under section 409A of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–173, title XII, §1203(b), Dec. 8, 2003, 117 Stat. 2480, provided that: "The amendment made by this section [amending this section] shall apply to payments made after December 31, 2002."

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–168, title XII, §1201(b), July 30, 1996, 110 Stat. 1470, provided that: "The amendments made by subsection (a) [amending this section and sections 6041A, 6042, 6044, 6045, 6049, 6050B, 6050H to 6050K, and 6050N of this title] shall apply to statements required to be furnished after December 31, 1996 (determined without regard to any extension)."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1501(c)(1) of Pub. L. 99–514 applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1986, see section 1501(e) of Pub. L. 99–514, set out as an Effective Date note under section 6721 of this title.

Amendment by section 1523(b)(2) of Pub. L. 99–514 applicable to payments made after Dec. 31, 1986, see section 1523(d) of Pub. L. 99–514, set out as an Effective Date note under section 6050N of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to payments or distributions after Dec. 31, 1984, unless the payor elects to have such amendment apply to payments or distributions before Jan. 1, 1985, see section 722(h)(5)(B) of Pub. L. 98–369, set out as a note under section 643 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to amounts paid (or treated as paid) after Dec. 31, 1982, see section 309(c) of Pub. L. 97–248, set out as a note under section 6049 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to returns and statements required to be furnished after Dec. 31, 1981, see section 723(c) of Pub. L. 97–34, set out as a note under section 6652 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable to payments made after Dec. 31, 1978, see section 501(c) of Pub. L. 95–600, set out as a note under section 6001 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable to payments of dividends and interest made on or after Jan. 1, 1963, and to payments of amounts described in section 6044(b) of this title made on or after Jan. 1, 1963. with respect to patronage occurring on or after the first day of the first taxable year of the cooperative beginning on

or after Jan. 1, 1963, see section 19(h) of Pub. L. 87–834, set out as a note under section 6042 of this title.

ALLOWANCE OF ELECTRONIC 1099'S

Pub. L. 107–147, title IV, §401, Mar. 9, 2002, 116 Stat. 40, provided that: "Any person required to furnish a statement under any section of subpart B of part III of subchapter A of chapter 61 of the Internal Revenue Code of 1986 for any taxable year ending after the date of the enactment of this Act [Mar. 9, 2002], may electronically furnish such statement (without regard to any first class mailing requirement) to any recipient who has consented to the electronic provision of the statement in a manner similar to the one permitted under regulations issued under section 6051 of such Code or in such other manner as provided by the Secretary."

EMPLOYER'S DUTIES IN CONNECTION WITH RECORDING AND REPORTING OF TIPS

Pub. L. 94–455, title XXI, §2211, Oct. 4, 1976, 90 Stat. 1905, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) SUSPENSION OF RULINGS.—Until January 1, 1979, the law with respect to the duty of an employer under section 6041(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] to report charge account tips of employees to the Internal Revenue Service (other than charge account tips included in statements furnished to the employer under section 6053(a) of such Code) shall be administered—

"(1) without regard to Revenue Rulings 75–400 and 76–231, and

"(2) in accordance with the manner in which such law was administered before the issuance of such rulings.

"(b) EFFECTIVE DATE.—This section shall take effect on January 1, 1976."

§6041A. Returns regarding payments of remuneration for services and direct sales

(a) Returns regarding remuneration for services

If—

(1) any service-recipient engaged in a trade or business pays in the course of such trade or business during any calendar year remuneration to any person for services performed by such person, and

(2) the aggregate of such remuneration paid to such person during such calendar year is $600 or more,

then the service-recipient shall make a return, according to the forms or regulations prescribed by the Secretary, setting forth the aggregate amount of such payments and the name and address of the recipient of such payments. For purposes of the preceding sentence, the term "service-recipient" means the person for whom the service is performed.

(b) Direct sales of $5,000 or more

(1) In general

If—

(A) any person engaged in a trade or business in the course of such trade or business during any calendar year sells consumer products to any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis which the Secretary prescribes by regulations, for resale (by the buyer or any other person) in the home or otherwise than in a permanent retail establishment, and

(B) the aggregate amount of the sales to such buyer during such calendar year is $5,000 or more,

then such person shall make a return, according to the forms or regulations prescribed by the Secretary, setting forth the name and address of the buyer to whom such sales are made.

(2) Definitions

For purposes of paragraph (1)—

(A) Buy-sell basis

A transaction is on a buy-sell basis if the buyer performing the services is entitled to retain part or all of the difference between the price at which the buyer purchases the product and the price at which the buyer sells the product as part or all of the buyer's remuneration for the services, and

(B) Deposit-commission basis

A transaction is on a deposit-commission basis if the buyer performing the services is entitled to retain part or all of a purchase deposit paid by the consumer in connection with the transaction as part or all of the buyer's remuneration for the services.

(c) Certain services not included

No return shall be required under subsection (a) or (b) if a statement with respect to the services is required to be furnished under section 6051, 6052, or 6053.

(d) Applications to governmental units

(1) Treated as persons

The term "person" includes any governmental unit (and any agency or instrumentality thereof).

(2) Special rules

In the case of any payment by a governmental entity or any agency or instrumentality thereof—

(A) subsection (a) shall be applied without regard to the trade or business requirement contained therein, and

(B) any return under this section shall be made by the officer or employee having control of the payment or appropriately designated for the purpose of making such return.

(3) Payments to corporations by Federal executive agencies

(A) In general

Notwithstanding any regulation prescribed by the Secretary before the date of the enactment of this paragraph, subsection (a) shall apply to remuneration paid to a corporation by any Federal executive agency (as defined in section 6050M(b)).

(B) Exception

Subparagraph (A) shall not apply to—

(i) services under contracts described in section 6050M(e)(3) with respect to which the requirements of section 6050M(e)(2) are met, and

(ii) such other services as the Secretary may specify in regulations prescribed after the date of the enactment of this paragraph.

(e) Statements to be furnished to persons with respect to whom information is required to be furnished

Every person required to make a return under subsection (a) or (b) shall furnish to each person whose name is required to be set forth in such return a written statement showing—

(1) the name, address, and phone number of the information contact of the person required to make such return, and

(2) in the case of subsection (a), the aggregate amount of payments to the person required to be shown on such return.

The written statement required under the preceding sentence shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) was made.

(f) Recipient to furnish name, address, and identification number; inclusion on return

(1) Furnishing of information

Any person with respect to whom a return or statement is required under this section to be made

by another person shall furnish to such other person his name, address, and identification number at such time and in such manner as the Secretary may prescribe by regulations.

(2) Inclusion on return

The person to whom an identification number is furnished under paragraph (1) shall include such number on any return which such person is required to file under this section and to which such identification number relates.

(Added Pub. L. 97–248, title III, §312(a), Sept. 3, 1982, 96 Stat. 601; amended Pub. L. 104–168, title XII, §1201(a)(2), July 30, 1996, 110 Stat. 1469; Pub. L. 105–34, title X, §1022(a), Aug. 5, 1997, 111 Stat. 923.)

REFERENCES IN TEXT

The date of the enactment of this paragraph, referred to in subsec. (d)(3), is the date of enactment of Pub. L. 105–34, which was approved Aug. 5, 1997.

AMENDMENTS

1997—Subsec. (d)(3). Pub. L. 105–34 added par. (3).

1996—Subsec. (e)(1). Pub. L. 104–168 substituted "name, address, and phone number of the information contact" for "name and address".

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title X, §1022(b), Aug. 5, 1997, 111 Stat. 923, provided that: "The amendment made by this section [amending this section] shall apply to returns the due date for which (determined without regard to any extension) is more than 90 days after the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–168 applicable to statements required to be furnished after Dec. 31, 1996 (determined without regard to any extension), see section 1201(b) of Pub. L. 104–168, set out as a note under section 6041 of this title.

EFFECTIVE DATE

Pub. L. 97–248, title III, §312(c), Sept. 3, 1982, 96 Stat. 603, provided that: "The amendments made by this section [enacting this section and amending section 6678 of this title] shall apply to payments and sales made after December 31, 1982."

§6042. Returns regarding payments of dividends and corporate earnings and profits

(a) Requirement of reporting

(1) In general

Every person—

(A) who makes payments of dividends aggregating $10 or more to any other person during any calendar year, or

(B) who receives payments of dividends as a nominee and who makes payments aggregating $10 or more during any calendar year to any other person with respect to the dividends so received,

shall make a return according to the forms or regulations prescribed by the Secretary, setting forth the aggregate amount of such payments and the name and address of the person to whom paid.

(2) Returns required by the Secretary

Every person who makes payments of dividends aggregating less than $10 to any other person during any calendar year shall, when required by the Secretary, make a return setting forth the aggregate amount of such payments, and the name and address of the person to whom paid.

(b) Dividend defined

(1) General rule

For purposes of this section, the term "dividend" means—

(A) any distribution by a corporation which is a dividend (as defined in section 316); and

(B) any payment made by a stockbroker to any person as a substitute for a dividend (as so defined).

(2) Exceptions

For purposes of this section, the term "dividend" does not include any distribution or payment—

(A) to the extent provided in regulations prescribed by the Secretary—

(i) by a foreign corporation, or

(ii) to a foreign corporation, a nonresident alien, or a partnership not engaged in a trade or business in the United States and composed in whole or in part of nonresident aliens, or

(B) except to the extent otherwise provided in regulations prescribed by the Secretary, to any person described in section 6049(b)(4).

(3) Special rule

If the person making any payment described in subsection (a)(1)(A) or (B) is unable to determine the portion of such payment which is a dividend or is paid with respect to a dividend, he shall, for purposes of subsection (a)(1), treat the entire amount of such payment as a dividend or as an amount paid with respect to a dividend.

(c) Statements to be furnished to persons with respect to whom information is required

Every person required to make a return under subsection (a) shall furnish to each person whose name is required to be set forth in such return a written statement showing—

(1) the name, address, and phone number of the information contact of the person required to make such return, and

(2) the aggregate amount of payments to the person required to be shown on the return.

The written statement required under the preceding sentence shall be furnished (either in person or in a statement mailing by first-class mail which includes adequate notice that the statement is enclosed) to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made and shall be in such form as the Secretary may prescribe by regulations.

(d) Statements to be furnished by corporations to Secretary

Every corporation shall, when required by the Secretary—

(1) furnish to the Secretary a statement stating the name and address of each shareholder, and the number of shares owned by each shareholder;

(2) furnish to the Secretary a statement of such facts as will enable him to determine the portion of the earnings and profits of the corporation (including gains, profits, and income not taxed) accumulated during such periods as the Secretary may specify, which have been distributed or ordered to be distributed, respectively, to its shareholders during such taxable years as the Secretary may specify; and

(3) furnish to the Secretary a statement of its accumulated earnings and profits and the names and addresses of the individuals or shareholders who would be entitled to such accumulated earnings and profits if divided or distributed, and of the amounts that would be payable to each.

(Aug. 16, 1954, ch. 736, 68A Stat. 746; Pub. L. 87–834, §19(a), Oct. 16, 1962, 76 Stat. 1053; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–248, title III, §§303(a), 308(a), Sept. 3, 1982, 96 Stat. 587, 591; Pub. L. 97–354, §5(a)(40), Oct. 19, 1982, 96 Stat. 1696; Pub. L. 98–67, title I, §§102(a), 108(b), Aug. 5, 1983, 97 Stat. 369, 383; Pub. L. 98–369, div. A, title VII, §714(d), July 18, 1984, 98 Stat. 961; Pub. L. 99–514, title XV, §1501(c)(2), Oct. 22, 1986, 100 Stat. 2736; Pub. L. 104–168, title XII, §1201(a)(3), July 30, 1996, 110 Stat. 1469.)

AMENDMENTS

1996—Subsec. (c)(1). Pub. L. 104–168 substituted "name, address, and phone number of the information contact" for "name and address".

1986—Subsec. (c). Pub. L. 99–514, in amending subsec. (c) generally, substituted "information is required" for "information is furnished" in heading and, in text, substituted references to persons required to make returns for former references to persons making returns and struck out provisions directing that no statement was required to be furnished to any person under this subsection if the aggregate amount of payments to such person as shown on the return made under subsec. (a)(1) was less than $10.

1984—Subsec. (b)(2). Pub. L. 98–369, in amending par. (2) generally, designated existing provision as subpar. (A), redesignated as cls. (i) and (ii) of subpar. (A) text formerly designated (A) and (B), and added subpar. (B).

1983—Pub. L. 98–67 substituted in subsec. (c) "The written statement required under the preceding sentence shall be furnished (either in person or in a separate mailing by first-class mail) to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) was made, and shall be in such form as the Secretary may prescribe by regulations" for "The written statement required under the preceding sentence shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection (a)(1) was made" and repealed amendments made by Pub. L. 97–248. See 1982 Amendment note below.

1982—Subsecs. (a)(1), (c), (e). Pub. L. 97–248 provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, subsecs. (a)(1) and (c) are amended and a new subsec. (e) is added. Section 102(a), (b) of Pub. L. 98–67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§301–308) of title III of Pub. L. 97–248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 [now 1986] [this title] shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

Subsec. (b)(2). Pub. L. 97–354 redesignated cl. (A)(i) as subpar. (A) and cl. (A)(ii) as subpar. (B). Former subpar. (B), excluding from the term "dividends" any amount described in section 1373 (relating to undistributed taxable income of electing small business corporations), was struck out.

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

1962—Pub. L. 87–834 substituted "Returns regarding payments of dividends and corporate earnings and profits" for "Returns regarding corporate dividends, earnings, and profits" in section catchline, added subsecs. (a) to (c), designated existing provisions of section as subsec. (d), and substituted in par. (1) of subsec. (d) "furnish to the Secretary or his delegate a statement stating the name and address of each shareholder, and the number of shares owned by each shareholder" for "Make a return of its payments of dividends, stating the name and address of, the number of shares owned by, and the amount of dividends paid to, each shareholder."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–168 applicable to statements required to be furnished after Dec. 31, 1996 (determined without regard to any extension), see section 1201(b) of Pub. L. 104–168, set out as a note under section 6041 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to returns the due date for which (determined without regard to extensions) is after Oct. 22, 1986, see section 1501(e) of Pub. L. 99–514, set out as an Effective Date note under section 6721 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 108(b) of Pub. L. 98–67 applicable with respect to payments made after Dec. 31, 1983, see section 110(a) of Pub. L. 98–67, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87–834, §19(h), Oct. 16, 1962, 76 Stat. 1058, as amended by Pub. L. 99–514, §2, Oct. 22, 1986,

100 Stat. 2095, provided that:

"(1) DIVIDENDS AND INTEREST.—The amendments made by this section [enacting sections 6049 and 6678 of this title and amending this section and sections 6041, 6044, and 6052 of this title] shall apply to payments of dividends and interest made on or after January 1, 1963.

"(2) PATRONAGE DIVIDENDS.—The amendments made by this section shall apply to payments of amounts described in section 6044(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] made on or after January 1, 1963, with respect to patronage occurring on or after the first day of the first taxable year of the cooperative beginning on or after January 1, 1963."

§6043. Liquidating, etc., transactions

(a) Corporate liquidating, etc., transactions

Every corporation shall—

(1) Within 30 days after the adoption by the corporation of a resolution or plan for the dissolution of the corporation or for the liquidation of the whole or any part of its capital stock, make a return setting forth the terms of such resolution or plan and such other information as the Secretary shall by forms or regulations prescribe; and

(2) When required by the Secretary, make a return regarding its distributions in liquidation, stating the name and address of, the number and class of shares owned by, and the amount paid to, each shareholder, or, if the distribution is in property other than money, the fair market value (as of the date the distribution is made) of the property distributed to each shareholder.

(b) Exempt organizations

Every organization which for any of its last 5 taxable years preceding its liquidation, dissolution, termination, or substantial contraction was exempt from taxation under section 501(a) shall file such return and other information with respect to such liquidation, dissolution, termination, or substantial contraction as the Secretary shall by forms or regulations prescribe; except that—

(1) no return shall be required under this subsection from churches, their integrated auxiliaries, conventions or associations of churches, or any organization which is not a private foundation (as defined in section 509(a)) and the gross receipts of which in each taxable year are normally not more than $5,000, and

(2) the Secretary may relieve any organization from such filing where he determines that such filing is not necessary to the efficient administration of the internal revenue laws or, with respect to an organization described in section 401(a), where the employer who established such organization files such a return.

(c) Changes in control and recapitalizations

If—

(1) control (as defined in section 304(c)(1)) of a corporation is acquired by any person (or group of persons) in a transaction (or series of related transactions), or

(2) there is a recapitalization of a corporation or other substantial change in the capital structure of a corporation,

when required by the Secretary, such corporation shall make a return (at such time and in such manner as the Secretary may prescribe) setting forth the identity of the parties to the transaction, the fees involved, the changes in the capital structure involved, and such other information as the Secretary may require with respect to such transaction.

(d) Cross references

For provisions relating to penalties for failure to file—

(1) a return under subsection (b), see section 6652(c), or

(2) a return under subsection (c), see section 6652(1).[1]

(Aug. 16, 1954, ch. 736, 68A Stat. 746; Pub. L. 91–172, title I, §101(j)(35), Dec. 30, 1969, 83 Stat. 529; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 99–514, title

XV, §1501(d)(1)(C), Oct. 22, 1986, 100 Stat. 2740; Pub. L. 101–239, title VII, §7208(b)(1), (3)(A), (B), Dec. 19, 1989, 103 Stat. 2337, 2338; Pub. L. 104–188, title I, §1704(t)(17), Aug. 20, 1996, 110 Stat. 1888.)

AMENDMENTS

1996—Pub. L. 104–188 substituted "Liquidating, etc., transactions" for "Liquidating; etc., transactions" in section catchline.

1989—Pub. L. 101–239, §7208(b)(3)(B), substituted "Liquidating; etc., transactions" for "Returns regarding liquidation, dissolution, termination, or contraction" in section catchline.

Subsec. (a). Pub. L. 101–239, §7208(b)(3)(A), substituted "Corporate liquidating, etc., transactions" for "Corporations" in heading.

Subsecs. (c), (d). Pub. L. 101–239, §7208(b)(1), added subsecs. (c) and (d) and struck out former subsec. (c) which read as follows: "CROSS REFERENCE.—For provisions relating to penalties for failure to file a return required by subsection (b), see section 6652(c)."

1986—Subsec. (c). Pub. L. 99–514 substituted "section 6652(c)" for "section 6652(d)".

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

1969—Pub. L. 91–172 inserted references to termination and contraction in section catchline, designated existing provisions as subsec. (a), and added subsecs. (b) and (c).

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7208(b)(4), Dec. 19, 1989, 103 Stat. 2338, provided that: "The amendments made by this subsection [amending this section and section 6652 of this title] shall apply to transactions after March 31, 1990."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1986, see section 1501(e) of Pub. L. 99–514, set out as an Effective Date note under section 6721 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 101(k)(2)(B) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

[1] So in original. Probably should be section "6652(l)."

§6043A. Returns relating to taxable mergers and acquisitions

(a) In general

According to the forms or regulations prescribed by the Secretary, the acquiring corporation in any taxable acquisition shall make a return setting forth—

(1) a description of the acquisition,

(2) the name and address of each shareholder of the acquired corporation who is required to recognize gain (if any) as a result of the acquisition,

(3) the amount of money and the fair market value of other property transferred to each such shareholder as part of such acquisition, and

(4) such other information as the Secretary may prescribe.

To the extent provided by the Secretary, the requirements of this section applicable to the acquiring corporation shall be applicable to the acquired corporation and not to the acquiring corporation.

(b) Nominees

According to the forms or regulations prescribed by the Secretary:

(1) Reporting

Any person who holds stock as a nominee for another person shall furnish in the manner

prescribed by the Secretary to such other person the information provided by the corporation under subsection (d).

(2) Reporting to nominees

In the case of stock held by any person as a nominee, references in this section (other than in subsection (c)) to a shareholder shall be treated as a reference to the nominee.

(c) Taxable acquisition

For purposes of this section, the term "taxable acquisition" means any acquisition by a corporation of stock in or property of another corporation if any shareholder of the acquired corporation is required to recognize gain (if any) as a result of such acquisition.

(d) Statements to be furnished to shareholders

According to the forms or regulations prescribed by the Secretary, every person required to make a return under subsection (a) shall furnish to each shareholder whose name is required to be set forth in such return a written statement showing—

(1) the name, address, and phone number of the information contact of the person required to make such return,

(2) the information required to be shown on such return with respect to such shareholder, and

(3) such other information as the Secretary may prescribe.

The written statement required under the preceding sentence shall be furnished to the shareholder on or before January 31 of the year following the calendar year during which the taxable acquisition occurred.

(Added Pub. L. 108–357, title VIII, §805(a), Oct. 22, 2004, 118 Stat. 1573.)

EFFECTIVE DATE

Pub. L. 108–357, title VIII, §805(d), Oct. 22, 2004, 118 Stat. 1574, provided that: "The amendments made by this section [enacting this section and amending section 6724 of this title] shall apply to acquisitions after the date of the enactment of this Act [Oct. 22, 2004]."

§6044. Returns regarding payments of patronage dividends

(a) Requirement of reporting

(1) In general

Except as otherwise provided in this section, every cooperative to which part I of subchapter T of chapter 1 applies, which makes payments of amounts described in subsection (b) aggregating $10 or more to any person during any calendar year, shall make a return according to the forms of regulations prescribed by the Secretary, setting forth the aggregate amount of such payments and the name and address of the person to whom paid.

(2) Returns required by the Secretary

Every such cooperative which makes payments of amounts described in subsection (b) aggregating less than $10 to any person during any calendar year shall, when required by the Secretary, make a return setting forth the aggregate amount of such payments and the name and address of the person to whom paid.

(b) Amounts subject to reporting

(1) General rule

Except as otherwise provided in this section, the amounts subject to reporting under subsection (a) are—

(A) the amount of any patronage dividend (as defined in section 1388(a)) which is paid in money, qualified written notices of allocation (as defined in section 1388(c)), or other property (except nonqualified written notices of allocation as defined in section 1388(d)),

(B) any amount described in section 1382(c)(2)(A) (relating to certain nonpatronage distributions) which is paid in money, qualified written notices of allocation, or other property (except nonqualified written notices of allocation) by an organization exempt from tax under section 521 (relating to exemption of farmers' cooperatives from tax),

(C) any amount described in section 1382(b)(2) (relating to redemption of nonqualified written notices of allocation) and, in the case of an organization described in section 1381(a)(1), any amount described in section 1382(c)(2)(B) (relating to redemption of nonqualified written notices of allocation paid with respect to earnings derived from sources other than patronage), and

(D) the amount of any per-unit retain allocation (as defined in section 1388(f)) which is paid in qualified per-unit retain certificates (as defined in section 1388(h)), and

(E) any amount described in section 1382(b)(4) (relating to redemption of nonqualified per-unit retain certificates).

(2) Exceptions

The provisions of subsection (a) shall not apply, to the extent provided in regulations prescribed by the Secretary, to any payment—

(A) by a foreign corporation, or

(B) to a foreign corporation, a nonresident alien, or a partnership not engaged in trade or business in the United States and composed in whole or in part of nonresident aliens.

(c) Exemption for certain consumer cooperatives

A cooperative which the Secretary determines is primarily engaged in selling at retail goods or services of a type that are generally for personal, living, or family use shall, upon application to the Secretary, be granted exemption from the reporting requirements imposed by subsection (a). Application for exemption under this subsection shall be made in accordance with regulations prescribed by the Secretary.

(d) Determination of amount paid

For purposes of this section, in determining the amount of any payment—

(1) property (other than a qualified written notice of allocation or a qualified per-unit retain certificate) shall be taken into account at its fair market value, and

(2) a qualified written notice of allocation or a qualified per-unit retain certificate shall be taken into account at its stated dollar amount.

(e) Statements to be furnished to persons with respect to whom information is required

Every cooperative required to make a return under subsection (a) shall furnish to each person whose name is required to be set forth in such return a written statement showing—

(1) the name, address, and phone number of the information contact of the cooperative required to make such return, and

(2) the aggregate amount of payments to the person required to be shown on the return.

The written statement required under the preceding sentence shall be furnished (either in person or in a statement mailing by first-class mail which includes adequate notice that the statement is enclosed) to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made and shall be in such form as the Secretary may prescribe by regulations.

(Aug. 16, 1954, ch. 736, 68A Stat. 746; Pub. L. 87–834, §19(b), Oct. 16, 1962, 76 Stat. 1054; Pub. L. 89–809, title II, §211(d), Nov. 13, 1966, 80 Stat. 1584; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–248, title III, §§304, 308(a), Sept. 3, 1982, 96 Stat. 587, 591; Pub. L. 98–67, title I, §§102(a), 108(c), Aug. 5, 1983, 97 Stat. 369, 383; Pub. L. 99–514, title XV, §1501(c)(3), Oct. 22, 1986, 100 Stat. 2737; Pub. L. 104–168, title XII, §1201(a)(4), July 30, 1996, 110 Stat. 1469.)

AMENDMENTS

1996—Subsec. (e)(1). Pub. L. 104–168 substituted "name, address, and phone number of the information contact" for "name and address".

1986—Subsec. (e). Pub. L. 99–514, in amending subsec. (e) generally, substituted "information is required" for "information is furnished" in heading and, in text, substituted references to persons required to make a return for former references to persons making a return and struck out provision directing that no statement was required if the aggregate amount of payments made to the person as shown on the return was less than $10.

1983—Pub. L. 98–67 substituted in subsec. (e) "The written statement required under the preceding sentence shall be furnished (either in person or in a separate mailing by first-class mail) to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) was made, and shall be in such form as the Secretary may prescribe by regulations" for "The written statement required under the preceding sentence shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection (a)(1) was made" and repealed amendments made by Pub. L. 97–248. See 1982 Amendment note below.

1982—Subsecs. (a)(1), (b)(1), (e), (f). Pub. L. 97–248 provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, subsecs. (a)(1), (b)(1), and (e) are amended and a new subsec. (f) is added. Section 102(a), (b) of Pub. L. 98–67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§301–308) of Pub. L. 97–248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 [now 1986] [this title] shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

1966—Subsec. (b)(1). Pub. L. 89–809, §211(d)(1), added subpars. (D) and (E).

Subsec. (d). Pub. L. 89–809, §211(d)(2), inserted references to qualified per-unit retain certificates.

1962—Pub. L. 87–834 substituted "Returns regarding payments of patronage dividends" for "Returns regarding patronage dividends" in section catchline and amended text generally. Prior to amendment, text read as follows:

"(a) PAYMENTS OF $100 OR MORE.—Any corporation allocating amounts as patronage dividends, rebates, or refunds (whether in cash, merchandise, capital stock, revolving fund certificates, retain certificates, certificates of indebtedness, letters of advice, or in some other manner that discloses to each patron the amount of such dividend, refund, or rebate) shall make a return showing—

"(1) The name and address of each patron to whom it has made such allocations amounting to $100 or more during the calendar year; and

"(2) The amount of such allocations to each patron.

"(b) PAYMENTS REGARDLESS OF AMOUNT.—If required by the Secretary or his delegate, any such corporation shall make a return of all patronage dividends, rebates, or refunds made during the calendar year to its patrons.

"(c) EXCEPTIONS.—This section shall not apply in the case of any corporation (including any cooperative or nonprofit corporation engaged in rural electrification) described in section 501(c)(12) or (15) which is exempt from tax under section 501(a), or in the case of any corporation subject to a tax imposed by subchapter L of chapter 1."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–168 applicable to statements required to be furnished after Dec. 31, 1996 (determined without regard to any extension), see section 1201(b) of Pub. L. 104–168, set out as a note under section 6041 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to returns the due date for which (determined without regard to extensions) is after Oct. 22, 1986, see section 1501(e) of Pub. L. 99–514, set out as an Effective Date note under section 6721 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 108(c) of Pub. L. 98–67 applicable with respect to payments made after Dec. 31, 1983, see section 110(a) of Pub. L. 98–67, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to calendar years after 1966, see section 211(e)(2) of Pub. L. 89–809, set out as a note under section 1382 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable to payments of dividends and interest made on or after Jan. 1, 1963, and to payments of amounts described in subsection (b) of this section made on or after Jan. 1, 1963, with respect to patronage occurring on or after the first day of the first taxable year of the cooperative beginning on or after Jan. 1, 1963, see section 19(h) of Pub. L. 87–834, set out as a note under section 6042 of this title.

§6045. Returns of brokers

(a) General rule

Every person doing business as a broker shall, when required by the Secretary, make a return, in accordance with such regulations as the Secretary may prescribe, showing the name and address of each customer, with such details regarding gross proceeds and such other information as the Secretary may by forms or regulations require with respect to such business.

(b) Statements to be furnished to customers

Every person required to make a return under subsection (a) shall furnish to each customer whose name is required to be set forth in such return a written statement showing—

(1) the name, address, and phone number of the information contact of the person required to make such return, and

(2) the information required to be shown on such return with respect to such customer.

The written statement required under the preceding sentence shall be furnished to the customer on or before February 15 of the year following the calendar year for which the return under subsection (a) was required to be made. In the case of a consolidated reporting statement (as defined in regulations) with respect to any customer, any statement which would otherwise be required to be furnished on or before January 31 of a calendar year with respect to any item reportable to the taxpayer shall instead be required to be furnished on or before February 15 of such calendar year if furnished with such consolidated reporting statement.

(c) Definitions

For purposes of this section—

(1) Broker

The term "broker" includes—

(A) a dealer,

(B) a barter exchange, and

(C) any other person who (for a consideration) regularly acts as a middleman with respect to property or services.

A person shall not be treated as a broker with respect to activities consisting of managing a farm on behalf of another person.

(2) Customer

The term "customer" means any person for whom the broker has transacted any business.

(3) Barter exchange

The term "barter exchange" means any organization of members providing property or services who jointly contract to trade or barter such property or services.

(4) Person

The term "person" includes any governmental unit and any agency or instrumentality thereof.

(d) Statements required in case of certain substitute payments

If any broker—

(1) transfers securities of a customer for use in a short sale or similar transaction, and
(2) receives (on behalf of the customer) a payment in lieu of—
(A) a dividend,
(B) tax-exempt interest, or
(C) such other items as the Secretary may prescribe by regulations,

during the period such short sale or similar transaction is open, the broker shall furnish such customer a written statement (in the manner as the Secretary shall prescribe by regulations) identifying such payment as being in lieu of the dividend, tax-exempt interest, or such other item. The written statement required under the preceding sentence shall be furnished on or before February 15 of the year following the calendar year in which the payment was made. The Secretary may prescribe regulations which require the broker to make a return which includes the information contained in such written statement.

(e) Return required in the case of real estate transactions

(1) In general

In the case of a real estate transaction, the real estate reporting person shall file a return under subsection (a) and a statement under subsection (b) with respect to such transaction.

(2) Real estate reporting person

For purposes of this subsection, the term "real estate reporting person" means any of the following persons involved in a real estate transaction in the following order:

(A) the person (including any attorney or title company) responsible for closing the transaction,
(B) the mortgage lender,
(C) the seller's broker,
(D) the buyer's broker, or
(E) such other person designated in regulations prescribed by the Secretary.

Any person treated as a real estate reporting person under the preceding sentence shall be treated as a broker for purposes of subsection (c)(1).

(3) Prohibition of separate charge for filing return

It shall be unlawful for any real estate reporting person to separately charge any customer for complying with any requirement of paragraph (1). Nothing in this paragraph shall be construed to prohibit the real estate reporting person from taking into account its cost of complying with such requirement in establishing its charge (other than a separate charge for complying with such requirement) to any customer for performing services in the case of a real estate transaction.

(4) Additional information required

In the case of a real estate transaction involving a residence, the real estate reporting person shall include the following information on the return under subsection (a) and on the statement under subsection (b):

(A) The portion of any real property tax which is treated as a tax imposed on the purchaser by reason of section 164(d)(1)(B).

(B) Whether or not the financing (if any) of the seller was federally-subsidized indebtedness (as defined in section 143(m)(3)).

(5) Exception for sales or exchanges of certain principal residences

(A) In general

Paragraph (1) shall not apply to any sale or exchange of a residence for $250,000 or less if the person referred to in paragraph (2) receives written assurance in a form acceptable to the Secretary from the seller that—

(i) such residence is the principal residence (within the meaning of section 121) of the

seller,

(ii) if the Secretary requires the inclusion on the return under subsection (a) of information as to whether there is federally subsidized mortgage financing assistance with respect to the mortgage on residences, that there is no such assistance with respect to the mortgage on such residence, and

(iii) the full amount of the gain on such sale or exchange is excludable from gross income under section 121.

If such assurance includes an assurance that the seller is married, the preceding sentence shall be applied by substituting "$500,000" for "$250,000". The Secretary may by regulation increase the dollar amounts under this subparagraph if the Secretary determines that such an increase will not materially reduce revenues to the Treasury.

(B) Seller

For purposes of this paragraph, the term "seller" includes the person relinquishing the residence in an exchange.

(f) Return required in the case of payments to attorneys

(1) In general

Any person engaged in a trade or business and making a payment (in the course of such trade or business) to which this subsection applies shall file a return under subsection (a) and a statement under subsection (b) with respect to such payment.

(2) Application of subsection

(A) In general

This subsection shall apply to any payment to an attorney in connection with legal services (whether or not such services are performed for the payor).

(B) Exception

This subsection shall not apply to the portion of any payment which is required to be reported under section 6041(a) (or would be so required but for the dollar limitation contained therein) or section 6051.

(g) Additional information required in the case of securities transactions, etc.

(1) In general

If a broker is otherwise required to make a return under subsection (a) with respect to the gross proceeds of the sale of a covered security, the broker shall include in such return the information described in paragraph (2).

(2) Additional information required

(A) In general

The information required under paragraph (1) to be shown on a return with respect to a covered security of a customer shall include the customer's adjusted basis in such security and whether any gain or loss with respect to such security is long-term or short-term (within the meaning of section 1222).

(B) Determination of adjusted basis

For purposes of subparagraph (A)—

(i) In general

The customer's adjusted basis shall be determined—

(I) in the case of any security (other than any stock for which an average basis method is permissible under section 1012), in accordance with the first-in first-out method unless the customer notifies the broker by means of making an adequate identification of the stock sold or transferred, and

(II) in the case of any stock for which an average basis method is permissible under section 1012, in accordance with the broker's default method unless the customer notifies the broker that he elects another acceptable method under section 1012 with respect to the account in which such stock is held.

(ii) Exception for wash sales

Except as otherwise provided by the Secretary, the customer's adjusted basis shall be determined without regard to section 1091 (relating to loss from wash sales of stock or securities) unless the transactions occur in the same account with respect to identical securities.

(3) Covered security

For purposes of this subsection—

(A) In general

The term "covered security" means any specified security acquired on or after the applicable date if such security—

(i) was acquired through a transaction in the account in which such security is held, or

(ii) was transferred to such account from an account in which such security was a covered security, but only if the broker received a statement under section 6045A with respect to the transfer.

(B) Specified security

The term "specified security" means—

(i) any share of stock in a corporation,

(ii) any note, bond, debenture, or other evidence of indebtedness,

(iii) any commodity, or contract or derivative with respect to such commodity, if the Secretary determines that adjusted basis reporting is appropriate for purposes of this subsection, and

(iv) any other financial instrument with respect to which the Secretary determines that adjusted basis reporting is appropriate for purposes of this subsection.

(C) Applicable date

The term "applicable date" means—

(i) January 1, 2011, in the case of any specified security which is stock in a corporation (other than any stock described in clause (ii)),

(ii) January 1, 2012, in the case of any stock for which an average basis method is permissible under section 1012, and

(iii) January 1, 2013, or such later date determined by the Secretary in the case of any other specified security.

(4) Treatment of S corporations

In the case of the sale of a covered security acquired by an S corporation (other than a financial institution) after December 31, 2011, such S corporation shall be treated in the same manner as a partnership for purposes of this section.

(5) Special rules for short sales

In the case of a short sale, reporting under this section shall be made for the year in which such sale is closed.

(h) Application to options on securities

(1) Exercise of option

For purposes of this section, if a covered security is acquired or disposed of pursuant to the exercise of an option that was granted or acquired in the same account as the covered security, the

amount received with respect to the grant or paid with respect to the acquisition of such option shall be treated as an adjustment to gross proceeds or as an adjustment to basis, as the case may be.

(2) Lapse or closing transaction

In the case of the lapse (or closing transaction (as defined in section 1234(b)(2)(A))) of an option on a specified security or the exercise of a cash-settled option on a specified security, reporting under subsections (a) and (g) with respect to such option shall be made for the calendar year which includes the date of such lapse, closing transaction, or exercise.

(3) Prospective application

Paragraphs (1) and (2) shall not apply to any option which is granted or acquired before January 1, 2013.

(4) Definitions

For purposes of this subsection, the terms "covered security" and "specified security" shall have the meanings given such terms in subsection (g)(3).

(Aug. 16, 1954, ch. 736, 68A Stat. 747; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–248, title III, §311(a)(1), Sept. 3, 1982, 96 Stat. 600; Pub. L. 98–369, div. A, title I, §150(a), title VII, §714(e)(1), July 18, 1984, 98 Stat. 690, 961; Pub. L. 99–514, title XV, §§1501(c)(4), 1521(a), Oct. 22, 1986, 100 Stat. 2737, 2746; Pub. L. 100–647, title I, §1015(e)(1)(A), (2)(A), (3), title IV, §4005(g)(3), Nov. 10, 1988, 102 Stat. 3569, 3570, 3650; Pub. L. 101–239, title VII, §7814(c)(1), Dec. 19, 1989, 103 Stat. 2413; Pub. L. 101–508, title XI, §11704(a)(25), Nov. 5, 1990, 104 Stat. 1388–519; Pub. L. 102–486, title XIX, §1939(a), Oct. 24, 1992, 106 Stat. 3034; Pub. L. 104–168, title XII, §1201(a)(5), July 30, 1996, 110 Stat. 1469; Pub. L. 104–188, title I, §1704(o)(1), Aug. 20, 1996, 110 Stat. 1886; Pub. L. 105–34, title III, §312(c), title X, §1021(a), Aug. 5, 1997, 111 Stat. 839, 922; Pub. L. 109–135, title IV, §412(xx), Dec. 21, 2005, 119 Stat. 2640; Pub. L. 110–343, div. B, title IV, §403(a), Oct. 3, 2008, 122 Stat. 3854.)

AMENDMENTS

2008—Subsec. (b). Pub. L. 110–343, §403(a)(3)(A), (C), in concluding provisions, substituted "February 15" for "January 31" and inserted at end "In the case of a consolidated reporting statement (as defined in regulations) with respect to any customer, any statement which would otherwise be required to be furnished on or before January 31 of a calendar year with respect to any item reportable to the taxpayer shall instead be required to be furnished on or before February 15 of such calendar year if furnished with such consolidated reporting statement."

Subsec. (d). Pub. L. 110–343, §403(a)(3)(B), in concluding provisions, struck out "at such time and" before "in the manner" and inserted "The written statement required under the preceding sentence shall be furnished on or before February 15 of the year following the calendar year in which the payment was made." before "The Secretary may prescribe".

Subsecs. (g), (h). Pub. L. 110–343, §403(a)(1), (2), added subsecs. (g) and (h).

2005—Subsec. (e)(5)(A). Pub. L. 109–135 adjusted the margin of the third sentence to include it in concluding provisions with the second sentence.

1997—Subsec. (e)(5). Pub. L. 105–34, §312(c), added par. (5).

Subsec. (f). Pub. L. 105–34, §1021(a), added subsec. (f).

1996—Subsec. (b)(1). Pub. L. 104–168 substituted "name, address, and phone number of the information contact" for "name and address".

Subsec. (e)(3). Pub. L. 104–188 inserted at end "Nothing in this paragraph shall be construed to prohibit the real estate reporting person from taking into account its cost of complying with such requirement in establishing its charge (other than a separate charge for complying with such requirement) to any customer for performing services in the case of a real estate transaction."

1992—Subsec. (e)(4). Pub. L. 102–486 substituted heading for one which read: "Whether seller's financing was federally-subsidized" and amended text generally. Prior to amendment, text read as follows: "In the case of a real estate transaction involving a residence, the real estate reporting person shall specify on the return under subsection (a) and the statement under subsection (b) whether or not the financing (if any) of the seller was federally-subsidized indebtedness (as defined in section 143(m)(3))."

1990—Subsec. (e)(4). Pub. L. 101–508 substituted "reporting person" for "broker".

1989—Subsec. (e)(3), (4). Pub. L. 101–239 redesignated par. (3), relating to whether seller's financing was federally-subsidized indebtedness, as (4).

1988—Subsec. (c)(1). Pub. L. 100–647, §1015(e)(1)(A), inserted at end "A person shall not be treated as a broker with respect to activities consisting of managing a farm on behalf of another person."

Subsec. (e)(1). Pub. L. 100–647, §1015(e)(3)(A), substituted "real estate reporting person" for "real estate broker".

Subsec. (e)(2). Pub. L. 100–647, §1015(e)(3), substituted "estate reporting person" for "estate broker" in par. (2) heading and two places in text.

Subsec. (e)(3). Pub. L. 100–647, §4005(g)(3), added par. (3) relating to whether seller's financing was federally-subsidized indebtedness.

Pub. L. 100–647, §1015(e)(2)(A), added par. (3) relating to prohibition of separate charge for filing return.

1986—Subsec. (b). Pub. L. 99–514, §1501(c)(4), in amending subsec. (c) generally, substituted references to persons required to make a return for former references to persons making a return.

Subsec. (e). Pub. L. 99–514, §1521(a), added subsec. (e).

1984—Subsec. (c)(4). Pub. L. 98–369, §714(e)(1), added par. (4).

Subsec. (d). Pub. L. 98–369, §150(a), added subsec. (d).

1982—Pub. L. 97–248 designated existing provisions as subsec. (a), substituted "the name and address of each customer, with such details regarding gross proceeds" for "the names of customers for whom such person has transacted any business, with such details regarding the profits and losses" after "may prescribe, showing" and "such business" for "each customer as will enable the Secretary to determine the amount of such profits and losses" after "with respect to", and added subsecs. (b) and (c).

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–343 effective Jan. 1, 2011, except that amendment by section 403(a)(3) of Pub. L. 110–343 applies to statements required to be furnished after Dec. 31, 2008, see section 403(e) of Pub. L. 110–343, set out as a note under section 1012 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 312(c) of Pub. L. 105–34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d) of Pub. L. 105–34, set out as a note under section 121 of this title.

Pub. L. 105–34, title X, §1021(c), Aug. 5, 1997, 111 Stat. 923, provided that: "The amendment made by this section [amending this section] shall apply to payments made after December 31, 1997."

EFFECTIVE DATE OF 1996 AMENDMENTS

Pub. L. 104–188, title XVII, §1704(o)(2), Aug. 20, 1996, 110 Stat. 1886, provided that: "The amendment made by paragraph (1) [amending this section] shall take effect as if included in section 1015(e)(2)(A) of the Technical and Miscellaneous Revenue Act of 1988 [Pub. L. 100–647]."

Amendment by Pub. L. 104–168 applicable to statements required to be furnished after Dec. 31, 1996 (determined without regard to any extension), see section 1201(b) of Pub. L. 104–168, set out as a note under section 6041 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–486, title XIX, §1939(b), Oct. 24, 1992, 106 Stat. 3034, provided that: "The amendment made by subsection (a) [amending this section] shall apply to transactions after December 31, 1992."

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1015(e)(1)(B), Nov. 10, 1988, 102 Stat. 3570, provided that: "The amendment made by subparagraph (A) [amending this section] shall take effect as if included in the amendments made by section 311(a)(1) of the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97–248]."

Pub. L. 100–647, title I, §1015(e)(2)(B), Nov. 10, 1988, 102 Stat. 3570, provided that: "The amendment made by subparagraph (A) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 10, 1988]."

Amendment by section 1015(e)(3) of Pub. L. 100–647 effective, except as otherwise provided, as if

included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 4005(g)(3) of Pub. L. 100–647 applicable to financing provided, and mortgage credit certificates issued, after Dec. 31, 1990, with certain exceptions, see section 4005(h)(3) of Pub. L. 100–647, set out as a note under section 143 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1501(c)(4) of Pub. L. 99–514 applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1986, see section 1501(e) of Pub. L. 99–514, set out as an Effective Date note under section 6721 of this title.

Pub. L. 99–514, title XV, §1521(c), Oct. 22, 1986, 100 Stat. 2747, provided that: "The amendments made by this section [amending this section and section 3406 of this title] shall apply to real estate transactions closing after December 31, 1986."

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §150(b), July 18, 1984, 98 Stat. 690, provided that: "The amendment made by this section [amending this section] shall apply to payments received after December 31, 1984."

Amendment by section 714(e)(1) of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title III, §311(c)(1), Sept. 3, 1982, 96 Stat. 601, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by subsection (a) [amending this section and section 6678 of this title] shall take effect on the date of the enactment of this Act [Sept. 3, 1982], except that—

"(A) regulations relating to reporting by commodities and securities brokers shall be issued under section 6045 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by this Act) within 6 months after the date of the enactment of this Act [Sept. 3, 1982], and

"(B) such regulations shall not apply to transactions occurring before January 1, 1983."

NO PENALTY FOR PAYMENTS BEFORE JANUARY 1, 1985

Pub. L. 98–369, div. A, title VII, §714(e)(2), July 18, 1984, 98 Stat. 961, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "No penalty shall be imposed under the Internal Revenue Code of 1986 [formerly I.R.C. 1954] with respect to any person required (by reason of the amendment made by paragraph (1) [amending this section]) to file a return under section 6045 of such Code with respect to any payment before January 1, 1985."

§6045A. Information required in connection with transfers of covered securities to brokers

(a) Furnishing of information

Every applicable person which transfers to a broker (as defined in section 6045(c)(1)) a security which is a covered security (as defined in section 6045(g)(3)) in the hands of such applicable person shall furnish to such broker a written statement in such manner and setting forth such information as the Secretary may by regulations prescribe for purposes of enabling such broker to meet the requirements of section 6045(g).

(b) Applicable person

For purposes of subsection (a), the term "applicable person" means—

(1) any broker (as defined in section 6045(c)(1)), and

(2) any other person as provided by the Secretary in regulations.

(c) Time for furnishing statement

Except as otherwise provided by the Secretary, any statement required by subsection (a) shall be furnished not later than 15 days after the date of the transfer described in such subsection.

(Added Pub. L. 110–343, div. B, title IV, §403(c)(1), Oct. 3, 2008, 122 Stat. 3858.)

EFFECTIVE DATE

Section effective Jan. 1, 2011, see section 403(e)(1) of Pub. L. 110–343, set out as an Effective Date of 2008 Amendment note under section 1012 of this title.

§6045B. Returns relating to actions affecting basis of specified securities

(a) In general

According to the forms or regulations prescribed by the Secretary, any issuer of a specified security shall make a return setting forth—

(1) a description of any organizational action which affects the basis of such specified security of such issuer,

(2) the quantitative effect on the basis of such specified security resulting from such action, and

(3) such other information as the Secretary may prescribe.

(b) Time for filing return

Any return required by subsection (a) shall be filed not later than the earlier of—

(1) 45 days after the date of the action described in subsection (a), or

(2) January 15 of the year following the calendar year during which such action occurred.

(c) Statements to be furnished to holders of specified securities or their nominees

According to the forms or regulations prescribed by the Secretary, every person required to make a return under subsection (a) with respect to a specified security shall furnish to the nominee with respect to the specified security (or certificate holder if there is no nominee) a written statement showing—

(1) the name, address, and phone number of the information contact of the person required to make such return,

(2) the information required to be shown on such return with respect to such security, and

(3) such other information as the Secretary may prescribe.

The written statement required under the preceding sentence shall be furnished to the holder on or before January 15 of the year following the calendar year during which the action described in subsection (a) occurred.

(d) Specified security

For purposes of this section, the term "specified security" has the meaning given such term by section 6045(g)(3)(B). No return shall be required under this section with respect to actions described in subsection (a) with respect to a specified security which occur before the applicable date (as defined in section 6045(g)(3)(C)) with respect to such security.

(e) Public reporting in lieu of return

The Secretary may waive the requirements under subsections (a) and (c) with respect to a specified security, if the person required to make the return under subsection (a) makes publicly available, in such form and manner as the Secretary determines necessary to carry out the purposes of this section—

(1) the name, address, phone number, and email address of the information contact of such person, and

(2) the information described in paragraphs (1), (2), and (3) of subsection (a).

(Added Pub. L. 110–343, div. B, title IV, §403(d)(1), Oct. 3, 2008, 122 Stat. 3859.)

EFFECTIVE DATE

Section effective Jan. 1, 2011, see section 403(e)(1) of Pub. L. 110–343, set out as an Effective Date of 2008 Amendment note under section 1012 of this title.

§6046. Returns as to organization or reorganization of foreign corporations and as to acquisitions of their stock

(a) Requirement of return

(1) In general

A return complying with the requirements of subsection (b) shall be made by—

(A) each United States citizen or resident who becomes an officer or director of a foreign corporation if a United States person (as defined in section 7701(a)(30)) meets the stock ownership requirements of paragraph (2) with respect to such corporation,

(B) each United States person—

(i) who acquires stock which, when added to any stock owned on the date of such acquisition, meets the stock ownership requirements of paragraph (2) with respect to a foreign corporation, or

(ii) who acquires stock which, without regard to stock owned on the date of such acquisition, meets the stock ownership requirements of paragraph (2) with respect to a foreign corporation,

(C) each person (not described in subparagraph (B)) who is treated as a United States shareholder under section 953(c) with respect to a foreign corporation, and

(D) each person who becomes a United States person while meeting the stock ownership requirements of paragraph (2) with respect to stock of a foreign corporation.

In the case of a foreign corporation with respect to which any person is treated as a United States shareholder under section 953(c), subparagraph (A) shall be treated as including a reference to each United States person who is an officer or director of such corporation.

(2) Stock ownership requirements

A person meets the stock ownership requirements of this paragraph with respect to any corporation if such person owns 10 percent or more of—

(A) the total combined voting power of all classes of stock of such corporation entitled to vote, or

(B) the total value of the stock of such corporation.

(b) Form and contents of returns

The returns required by subsection (a) shall be in such form and shall set forth, in respect of the foreign corporation, such information as the Secretary prescribes by forms or regulations as necessary for carrying out the provisions of the income tax laws, except that in the case of persons described only in subsection (a)(1)(A) the information required shall be limited to the names and addresses of persons described in subparagraph (B) or (C) of subsection (a)(1).

(c) Ownership of stock

For purposes of subsection (a), stock owned directly or indirectly by a person (including, in the case of an individual, stock owned by members of his family) shall be taken into account. For purposes of the preceding sentence, the family of an individual shall be considered as including only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

(d) Time for filing

Any return required by subsection (a) shall be filed on or before the 90th day after the day on which, under any provision of subsection (a), the United States citizen, resident, or person becomes liable to file such return (or on or before such later day as the Secretary may by forms or regulations prescribe).

(e) Limitation

No information shall be required to be furnished under this section with respect to any foreign corporation unless such information was required to be furnished under regulations which have been in effect for at least 90 days before the date on which the United States citizen, resident, or person becomes liable to file a return required under subsection (a).

(f) Cross reference

For provisions relating to penalties for violations of this section, sections 6679 and 7203.

(Aug. 16, 1954, ch. 736, 68A Stat. 747; Pub. L. 86–780, §7(a), Sept. 14, 1960, 74 Stat. 1016; Pub. L. 87–834, §20(b), Oct. 16, 1962, 76 Stat. 1061; Pub. L. 94–455, title XIX, §1906(a)(4), (b)(13)(A), Oct. 4, 1976, 90 Stat. 1824, 1834; Pub. L. 97–248, title III, §341(a), Sept. 3, 1982, 96 Stat. 635; Pub. L. 100–647, title I, §1012(i)(19), Nov. 10, 1988, 102 Stat. 3510; Pub. L. 105–34, title XI, §1146(a), Aug. 5, 1997, 111 Stat. 986; Pub. L. 110–172, §11(a)(33), Dec. 29, 2007, 121 Stat. 2487.)

AMENDMENTS

2007—Subsec. (b). Pub. L. 110–172 substituted "subsection (a)(1)(A)" for "subsection (a)(1)" and "subparagraph (B) or (C) of subsection (a)(1)" for "paragraph (2) or (3) of subsection (a)".

1997—Subsec. (a). Pub. L. 105–34 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "A return complying with the requirements of subsection (b) shall be made by—

"(1) each United States citizen or resident who is on January 1, 1963, an officer or director of a foreign corporation, 5 percent or more in value of the stock of which is owned by a United States person (as defined in section 7701(a)(30)), or who becomes such an officer or director at any time after such date,

"(2) each United States person who on January 1, 1963, owns 5 percent or more in value of the stock of a foreign corporation, or who, at any time after such date—

"(A) acquires stock which, when added to any stock owned on January 1, 1963, has a value equal to 5 percent or more of the value of the stock of a foreign corporation, or

"(B) acquires an additional 5 percent or more in value of the stock of a foreign corporation,

"(3) each person (not described in paragraph (2)) who, at any time after January 1, 1987, is treated as a United States shareholder under section 953(c) with respect to a foreign corporation, and

"(4) each person who at any time after January 1, 1963, becomes a United States person while owning 5 percent or more in value of the stock of a foreign corporation.

In the case of a foreign corporation with respect to which any person is treated as a United States shareholder under section 953(c), paragraph (1) shall be treated as including a reference to each United States person who is an officer or director of such corporation."

1988—Subsec. (a). Pub. L. 100–647, §1012(i)(19)(C), inserted sentence at end relating to foreign corporation with respect to which any person is treated as a United States shareholder under section 953(c).

Subsec. (a)(3), (4). Pub. L. 100–647, §1012(i)(19)(A), added par. (3) and redesignated former par. (3) as (4).

Subsec. (b). Pub. L. 100–647, §1012(i)(19)(B), substituted "paragraph (2) or (3) of subsection (a)" for "subsection (a)(2)".

1982—Subsec. (d). Pub. L. 97–248 inserted "(or on or before such later day as the Secretary may by forms or regulations prescribe)".

1976—Subsec. (b). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (e). Pub. L. 94–455, §1906(a)(4), struck out provisions relating to the requirement for information to be furnished in the case of liability to file a return under subsec. (a) of this section arising on or after Jan. 1, 1963, and before June 1, 1963, under regulations in effect on or before June 1, 1963.

1962—Pub. L. 87–834 substituted "organization or reorganization of foreign corporations and as to acquisitions of their stock" for "creation or organization, or reorganization, of foreign corporations" in section catchline.

Subsec. (a). Pub. L. 87–834 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows:

"(a) GENERAL RULE.—On or before the 90th day after the creation or organization, or reorganization, of any foreign corporation—

"(1) Each United States citizen or resident who was an officer or director of the corporation at any time within 60 days after the creation or organization, or reorganization thereof, and

"(2) Each United States shareholder of the corporation by or for whom, at any time within 60 days after the creation or organization or reorganization of the corporation, 5 percent or more in value of the stock of the corporation outstanding was owned directly or indirectly (including, in the case of an

individual, stock owned by members of his family),
shall make a return in compliance with the provisions of subsection (b)."

Subsec. (b). Pub. L. 87–834 inserted the exception providing that in the case of persons described only in subsec. (a)(1) the information required shall be limited to the names and addresses of persons described in subsec. (a)(2).

Subsec. (c). Pub. L. 87–834 substituted provisions requiring, for purposes of subsec. (a), stock owned directly or indirectly by a person (including, in the case of an individual, stock owned by members of his family) to be taken into account for provisions which defined "United States shareholder".

Subsecs. (d) to (f). Pub. L. 87–834 added subsecs. (d) and (e) and redesignated former subsec. (d) as (f) and inserted a reference to section 6679 of this title.

1960—Pub. L. 86–780 substituted "Returns as to creation or organization, or reorganization, of foreign corporations" for "Returns as to formation or reorganization of foreign corporations" in section catchline.

Subsec. (a). Pub. L. 86–780 substituted requirement that returns relating to the creation, organization, or reorganization of foreign corporations be made by every citizen or resident of the United States who was an officer or director of the corporation at any time within 60 days after its creation, organization, or reorganization, and by every United States shareholder of the corporation owning at least 5 percent of its outstanding stock at any time within such 60 days for requirement that every attorney, accountant, fiduciary, bank, trust company, financial institution, or other person, who advises as to the formation or reorganization of a foreign corporation, file a return in accordance with regulations prescribed by the Secretary of the Treasury or his delegate.

Subsec. (b). Pub. L. 86–780 reenacted the substance of subsec. (b), struck out "to the full extent of the information within the possession or knowledge or under the control of the person required to make the return" before "such information".

Subsec. (c). Pub. L. 86–780 inserted the provisions defining United States shareholder and members of family and struck out provision relating to the making of a return by an attorney-at-law with respect to privileged communications.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XI, §1146(b), Aug. 5, 1997, 111 Stat. 986, provided that: "The amendment made by this section [amending this section] shall take effect on January 1, 1998."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title III, §341(c), Sept. 3, 1982, 96 Stat. 635, provided that: "The amendments made by this section [amending this section and section 6048 of this title] shall apply to returns filed after the date of the enactment of this Act [Sept. 3, 1982]."

EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87–834, §20(e)(2), Oct. 16, 1962, 76 Stat. 1063, provided that: "The amendments made by subsection (b) [amending this section] shall take effect on January 1, 1963."

EFFECTIVE DATE OF 1960 AMENDMENT

Pub. L. 86–780, §8, Sept. 14, 1960, 74 Stat. 1016, provided that: "The amendments made by section 7 [amending this section] shall apply only with respect to foreign corporations created or organized, or reorganized, after the date of the enactment of this Act [Sept. 14, 1960]."

§6046A. Returns as to interests in foreign partnerships

(a) Requirement of return

Any United States person, except to the extent otherwise provided by regulations—

(1) who acquires any interest in a foreign partnership,

(2) who disposes of any portion of his interest in a foreign partnership, or

(3) whose proportional interest in a foreign partnership changes substantially,

shall file a return. Paragraphs (1) and (2) shall apply to any acquisition or disposition only if the United States person directly or indirectly holds at least a 10-percent interest in such partnership either before or after such acquisition or disposition, and paragraph (3) shall apply to any change only if the change is equivalent to at least a 10-percent interest in such partnership.

(b) Form and contents of return

Any return required by subsection (a) shall be in such form and set forth such information as the Secretary shall by regulations prescribe.

(c) Time for filing return

Any return required by subsection (a) shall be filed on or before the 90th day (or on or before such later day as the Secretary may by regulations prescribe) after the day on which the United States person becomes liable to file such return.

(d) 10-percent interest

For purposes of subsection (a), a 10-percent interest in a partnership is an interest described in section 6038(e)(3)(C).

(e) Cross reference

For provisions relating to penalties for violations of this section, see sections 6679 and 7203.

(Added Pub. L. 97–248, title IV, §405(a), Sept. 3, 1982, 96 Stat. 669; amended Pub. L. 105–34, title XI, §1143(a), Aug. 5, 1997, 111 Stat. 983.)

AMENDMENTS

1997—Subsec. (a). Pub. L. 105–34, §1143(a)(1), inserted at end "Paragraphs (1) and (2) shall apply to any acquisition or disposition only if the United States person directly or indirectly holds at least a 10-percent interest in such partnership either before or after such acquisition or disposition, and paragraph (3) shall apply to any change only if the change is equivalent to at least a 10-percent interest in such partnership."

Subsecs. (d), (e). Pub. L. 105–34, §1143(a)(2), added subsec. (d) and redesignated former subsec. (d) as (e).

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XI, §1143(c), Aug. 5, 1997, 111 Stat. 984, provided that: "The amendments made by this section [amending this section and section 6679 of this title] shall apply to transfers and changes after the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE

Pub. L. 97–248, title IV, §407(b), Sept. 3, 1982, 96 Stat. 671, provided that: "The amendments made by section 405 [enacting this section and amending section 6679 of this title] shall apply with respect to acquisitions or dispositions of, or substantial changes in, interests in foreign partnerships occurring after the date of the enactment of this Act [Sept. 3, 1982]."

SPECIAL RULE FOR CERTAIN INTERNATIONAL SATELLITE PARTNERSHIPS

For provision that this section is not applicable to certain international satellite partnerships, see section 406 of Pub. L. 97–248, set out as a note under section 6231 of this title.

§6047. Information relating to certain trusts and annuity plans

(a) Trustees and insurance companies

The trustee of a trust described in section 401(a) which is exempt from tax under section 501(a) to which contributions have been paid under a plan on behalf of any owner-employee (as defined in section 401(c)(3)), and each insurance company or other person which is the issuer of a contract purchased by such a trust, or purchased under a plan described in section 403(a), contributions for which have been paid on behalf of any owner-employee, shall file such returns (in such form and at such times), keep such records, make such identification of contracts and funds (and accounts within such funds), and supply such information, as the Secretary shall by forms or regulations prescribe.

(b) Owner-employees

Every individual on whose behalf contributions have been paid as an owner-employee (as defined in section 401(c)(3))—

(1) to a trust described in section 401(a) which is exempt from tax under section 501(a), or

(2) to an insurance company or other person under a plan described in section 403(a),

shall furnish the trustee, insurance company, or other person, as the case may be, such information at such times and in such form and manner as the Secretary shall prescribe by forms or regulations.

(c) Other programs

To the extent provided by regulations prescribed by the Secretary, the provisions of this section apply with respect to any payment described in section 219 and to transactions of any trust described in section 408(a) or under an individual retirement annuity described in section 408(b).

(d) Reports by employers, plan administrators, etc.

(1) In general

The Secretary shall by forms or regulations require that—

(A) the employer maintaining, or the plan administrator (within the meaning of section 414(g)) of, a plan from which designated distributions (as defined in section 3405(e)(1)) may be made, and

(B) any person issuing any contract under which designated distributions (as so defined) may be made,

make returns and reports regarding such plan (or contract) to the Secretary, to the participants and beneficiaries of such plan (or contract), and to such other persons as the Secretary may by regulations prescribe. No return or report may be required under the preceding sentence with respect to distributions to any person during any year unless such distributions aggregate $10 or more.

(2) Form, etc., of reports

Such reports shall be in such form, made at such time, and contain such information as the Secretary may prescribe by forms or regulations.

(e) Employee stock ownership plans

The Secretary shall require—

(1) any employer maintaining, or the plan administrator (within the meaning of section 414(g)) of, an employee stock ownership plan which holds stock with respect to which section 404(k) applies to dividends paid on such stock, or

(2) both such employer or plan administrator,

to make returns and reports regarding such plan, transaction, or loan to the Secretary and to such other persons as the Secretary may prescribe. Such returns and reports shall be made in such form, shall be made at such time, and shall contain such information as the Secretary may prescribe.

(f) Designated Roth contributions

The Secretary shall require the plan administrator of each applicable retirement plan (as defined in section 402A) to make such returns and reports regarding designated Roth contributions (as defined in section 402A) to the Secretary, participants and beneficiaries of the plan, and such other persons as the Secretary may prescribe.

(g) Cross references

(1) For provisions relating to penalties for failures to file returns and reports required under this section, see sections 6652(e), 6721, and 6722.

(2) For criminal penalty for furnishing fraudulent information, see section 7207.

(3) For provisions relating to penalty for failure to comply with the provisions of subsection

(d), see section 6704.

(Added Pub. L. 87–792, §7(m)(1), Oct. 10, 1962, 76 Stat. 830; amended Pub. L. 93–406, title II, §§1031(c)(3), 2002(g)(8), Sept. 2, 1974, 88 Stat. 947, 970; Pub. L. 94–455, title XV, §1501(b)(9), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1737, 1834; Pub. L. 97–34, title III, §311(h)(8), Aug. 13, 1981, 95 Stat. 282; Pub. L. 97–248, title III, §334(b), Sept. 3, 1982, 96 Stat. 626; Pub. L. 97–448, title I, §103(c)(12)(C), Jan. 12, 1983, 96 Stat. 2377; Pub. L. 98–369, div. A, title IV, §491(d)(47), (57), July 18, 1984, 98 Stat. 852; Pub. L. 99–514, title XV, §1501(d)(1)(D), title XVIII, §1848(e)(2), Oct. 22, 1986, 100 Stat. 2740, 2857; Pub. L. 101–239, title VII, §7301(e), Dec. 19, 1989, 103 Stat. 2349; Pub. L. 102–318, title V, §522(b)(2)(D), (E), July 3, 1992, 106 Stat. 314; Pub. L. 104–188, title I, §§1455(b)(2), (d)(1), 1602(b)(6), Aug. 20, 1996, 110 Stat. 1818, 1834; Pub. L. 107–16, title VI, §617(d)(2), June 7, 2001, 115 Stat. 106.)

AMENDMENTS

2001—Subsecs. (f), (g). Pub. L. 107–16 added subsec. (f) and redesignated former subsec. (f) as (g).

1996—Subsec. (d)(1). Pub. L. 104–188, §1455(b)(2), inserted at end "No return or report may be required under the preceding sentence with respect to distributions to any person during any year unless such distributions aggregate $10 or more."

Subsec. (e)(1) to (3). Pub. L. 104–188, §1602(b)(6), added pars. (1) and (2) and struck out former pars. (1) to (3) which read as follows:

"(1) any employer maintaining, or the plan administrator (within the meaning of section 414(g)) of, an employee stock ownership plan—

"(A) which acquired stock in a transaction to which section 133 applies, or

"(B) which holds stock with respect to which section 404(k) applies to dividends paid on such stock,

"(2) any person making or holding a loan to which section 133 applies, or

"(3) both such employer or plan administrator and such person,".

Subsec. (f)(1). Pub. L. 104–188, §1455(d)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "For provisions relating to penalties for failure to file a return required by this section, see section 6652(e)."

1992—Subsec. (d)(1)(A). Pub. L. 102–318, §522(b)(2)(E), which directed the substitution of "section 3405(d)(3)" for "section 3405(d)(1)", could not be executed because of the prior amendment by Pub. L. 102–318, §522(b)(2)(D). See below.

Pub. L. 102–318, §522(b)(2)(D), substituted "3405(e)(1)" for "3405(d)(1)".

1989—Subsecs. (e), (f). Pub. L. 101–239 added subsec. (e) and redesignated former subsec. (e) as (f).

1986—Subsec. (e)(1). Pub. L. 99–514, §1501(d)(1)(D), substituted "section 6652(e)" for "section 6652(f)".

Subsec. (e)(3). Pub. L. 99–514, §1848(e)(2), added par. (3).

1984—Pub. L. 98–369, §491(d)(57), struck out "and bond purchase" after "trusts and annuity" in section catchline.

Subsecs. (c) to (f). Pub. L. 98–369, §491(d)(47), redesignated former subsecs. (d) to (f) as (c) to (e), respectively, and struck out former subsec. (c) which related to information to be supplied by employees under qualified bond purchase plans.

1983—Subsec. (d). Pub. L. 97–448 substituted "section 219" for "section 219(a)".

1982—Subsecs. (e), (f). Pub. L. 97–248 added subsec. (e) and redesignated former subsec. (e) as (f).

1981—Subsec. (d). Pub. L. 97–34 substituted "section 219(a)" for "section 219(a) or 220(a)".

1976—Subsecs. (a) to (d). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary" wherever appearing.

Subsec. (d). Pub. L. 94–455, §1501(b)(9), inserted "or 220(a)" after "section 219(a)".

1974—Subsec. (d). Pub. L. 93–406, §2002(g)(8), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 93–406, §§1031(c)(3), 2002(g)(8), redesignated former subsec. (d) as (e), and inserted reference to section 6652(f) covering provisions relating to penalties for failure to file a return required by this section.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2005, see section 617(f) of Pub. L. 107–16, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1455(b)(2), (d)(1) of Pub. L. 104–188 applicable to returns, reports, and other

statements the due date for which (determined without regard to extensions) is after Dec. 31, 1996, see section 1455(e) of Pub. L. 104–188, set out as a note under section 408 of this title.

Amendment by section 1602(b)(6) of Pub. L. 104–188 applicable to loans made after Aug. 20, 1996, with exception and provisions relating to certain refinancings, see section 1602(c) of Pub. L. 104–188, set out as an Effective Date of Repeal note under former section 133 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–318 applicable, except as otherwise provided, to distributions after Dec. 31, 1992, see section 522(d) of Pub. L. 102–318, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239, applicable, except as otherwise provided, to loans made after July 10, 1989, see section 7301(f) of Pub. L. 101–239, set out as a note under section 133 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1501(d)(1)(D) of Pub. L. 99–514 applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1986, see section 1501(e) of Pub. L. 99–514, set out as an Effective Date note under section 6721 of this title.

Amendment by section 1848(e)(2) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 effective Jan. 1, 1983, see section 334(e) of Pub. L. 97–248, set out as an Effective Date note under section 3405 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 311(i)(1) of Pub. L. 97–34, set out as a note under section 219 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1501(b)(9) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1976, see section 1501(d) of Pub. L. 94–455, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by section 1031(c)(3) of Pub. L. 93–406 effective Sept. 2, 1974, see section 1034 of Pub. L. 93–406, set out as an Effective Date note under section 6057 of this title.

Amendment by section 2002(g)(8) of Pub. L. 93–406 effective Jan. 1, 1975, see section 2002(i)(2) of Pub. L. 93–406, set out as an Effective Date note under section 4973 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87–792, set out as a note under section 22 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§1401–1465] of title I of Pub. L. 104–188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§6048. Information with respect to certain foreign trusts

(a) Notice of certain events

(1) General rule

On or before the 90th day (or such later day as the Secretary may prescribe) after any reportable event, the responsible party shall provide written notice of such event to the Secretary in accordance with paragraph (2).

(2) Contents of notice

The notice required by paragraph (1) shall contain such information as the Secretary may prescribe, including—

(A) the amount of money or other property (if any) transferred to the trust in connection with the reportable event, and

(B) the identity of the trust and of each trustee and beneficiary (or class of beneficiaries) of the trust.

(3) Reportable event

For purposes of this subsection—

(A) In general

The term "reportable event" means—

(i) the creation of any foreign trust by a United States person,

(ii) the transfer of any money or property (directly or indirectly) to a foreign trust by a United States person, including a transfer by reason of death, and

(iii) the death of a citizen or resident of the United States if—

(I) the decedent was treated as the owner of any portion of a foreign trust under the rules of subpart E of part I of subchapter J of chapter 1, or

(II) any portion of a foreign trust was included in the gross estate of the decedent.

(B) Exceptions

(i) Fair market value sales

Subparagraph (A)(ii) shall not apply to any transfer of property to a trust in exchange for consideration of at least the fair market value of the transferred property. For purposes of the preceding sentence, consideration other than cash shall be taken into account at its fair market value and the rules of section 679(a)(3) shall apply.

(ii) Deferred compensation and charitable trusts

Subparagraph (A) shall not apply with respect to a trust which is—

(I) described in section 402(b), 404(a)(4), or 404A, or

(II) determined by the Secretary to be described in section 501(c)(3).

(4) Responsible party

For purposes of this subsection, the term "responsible party" means—

(A) the grantor in the case of the creation of an inter vivos trust,

(B) the transferor in the case of a reportable event described in paragraph (3)(A)(ii) other than a transfer by reason of death, and

(C) the executor of the decedent's estate in any other case.

(b) United States owner of foreign trust

(1) In general

If, at any time during any taxable year of a United States person, such person is treated as the owner of any portion of a foreign trust under the rules of subpart E of part I of subchapter J of chapter 1, such person shall submit such information as the Secretary may prescribe with respect to such trust for such year and shall be responsible to ensure that—

(A) such trust makes a return for such year which sets forth a full and complete accounting of all trust activities and operations for the year, the name of the United States agent for such trust, and such other information as the Secretary may prescribe, and

(B) such trust furnishes such information as the Secretary may prescribe to each United States person (i) who is treated as the owner of any portion of such trust or (ii) who receives (directly or indirectly) any distribution from the trust.

(2) Trusts not having United States agent

(A) In general

If the rules of this paragraph apply to any foreign trust, the determination of amounts required to be taken into account with respect to such trust by a United States person under the rules of subpart E of part I of subchapter J of chapter 1 shall be determined by the Secretary.

(B) United States agent required

The rules of this paragraph shall apply to any foreign trust to which paragraph (1) applies unless such trust agrees (in such manner, subject to such conditions, and at such time as the Secretary shall prescribe) to authorize a United States person to act as such trust's limited agent solely for purposes of applying sections 7602, 7603, and 7604 with respect to—

(i) any request by the Secretary to examine records or produce testimony related to the proper treatment of amounts required to be taken into account under the rules referred to in subparagraph (A), or

(ii) any summons by the Secretary for such records or testimony.

The appearance of persons or production of records by reason of a United States person being such an agent shall not subject such persons or records to legal process for any purpose other than determining the correct treatment under this title of the amounts required to be taken into account under the rules referred to in subparagraph (A). A foreign trust which appoints an agent described in this subparagraph shall not be considered to have an office or a permanent establishment in the United States, or to be engaged in a trade or business in the United States, solely because of the activities of such agent pursuant to this subsection.

(C) Other rules to apply

Rules similar to the rules of paragraphs (2) and (4) of section 6038A(e) shall apply for purposes of this paragraph.

(c) Reporting by United States beneficiaries of foreign trusts

(1) In general

If any United States person receives (directly or indirectly) during any taxable year of such person any distribution from a foreign trust, such person shall make a return with respect to such trust for such year which includes—

(A) the name of such trust,

(B) the aggregate amount of the distributions so received from such trust during such taxable year, and

(C) such other information as the Secretary may prescribe.

(2) Inclusion in income if records not provided

(A) In general

If adequate records are not provided to the Secretary to determine the proper treatment of any distribution from a foreign trust, such distribution shall be treated as an accumulation distribution includible in the gross income of the distributee under chapter 1. To the extent provided in regulations, the preceding sentence shall not apply if the foreign trust elects to be subject to rules similar to the rules of subsection (b)(2)(B).

(B) Application of accumulation distribution rules

For purposes of applying section 668 in a case to which subparagraph (A) applies, the applicable number of years for purposes of section 668(a) shall be ½ of the number of years the trust has been in existence.

(d) Special rules

(1) Determination of whether United States person makes transfer or receives distribution

For purposes of this section, in determining whether a United States person makes a transfer to, or receives a distribution from, a foreign trust, the fact that a portion of such trust is treated as owned by another person under the rules of subpart E of part I of subchapter J of chapter 1 shall be disregarded.

(2) Domestic trusts with foreign activities

To the extent provided in regulations, a trust which is a United States person shall be treated as a foreign trust for purposes of this section and section 6677 if such trust has substantial activities, or holds substantial property, outside the United States.

(3) Time and manner of filing information

Any notice or return required under this section shall be made at such time and in such manner as the Secretary shall prescribe.

(4) Modification of return requirements

The Secretary is authorized to suspend or modify any requirement of this section if the Secretary determines that the United States has no significant tax interest in obtaining the required information.

(5) United States person's return must be consistent with trust return or Secretary notified of inconsistency

Rules similar to the rules of section 6034A(c) shall apply to items reported by a trust under subsection (b)(1)(B) and to United States persons referred to in such subsection.

(Added Pub. L. 87–834, §7(f), Oct. 16, 1962, 76 Stat. 987; amended Pub. L. 94–455, title X, §1013(d)(1), (e)(3), (4), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1616, 1834; Pub. L. 97–248, title III, §341(b), Sept. 3, 1982, 96 Stat. 635; Pub. L. 104–188, title I, §1901(a), Aug. 20, 1996, 110 Stat. 1904; Pub. L. 105–34, title X, §1027(b), title XVI, §1601(i)(1), Aug. 5, 1997, 111 Stat. 926, 1092; Pub. L. 111–147, title V, §534(a), Mar. 18, 2010, 124 Stat. 114.)

AMENDMENTS

2010—Subsec. (b)(1). Pub. L. 111–147 inserted "shall submit such information as the Secretary may prescribe with respect to such trust for such year and" before "shall be responsible to ensure" in introductory provisions.

1997—Subsec. (b). Pub. L. 105–34, §1601(i)(1), substituted "owner" for "grantor" in heading.

Subsec. (d)(5). Pub. L. 105–34, §1027(b), added par. (5).

1996—Pub. L. 104–188 amended section generally, substituting provisions calling for improved information reporting on foreign trusts for provisions calling for the filing of returns as to foreign trusts, prescribing the form and contents of such returns, and requiring annual returns for foreign trusts with one or more United States beneficiaries.

1982—Subsec. (a). Pub. L. 97–248 inserted "(or on or before such later day as the Secretary may by

regulations prescribe)" after "the 90th day".

1976—Pub. L. 94–455, §1013(e)(4), struck out "creation of or transfer to" after "Returns as to" in section catchline.

Subsec. (b). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsecs. (c), (d). Pub. L. 94–455, §1013(d)(1), (e)(3), added subsec. (c), redesignated former subsec. (c) as (d), and in subsec. (d) struck out cross reference to section 643(d) for definition of "foreign trust created by a United States person".

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–147, title V, §534(b), Mar. 18, 2010, 124 Stat. 115, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Mar. 18, 2010]."

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 1027(b) of Pub. L. 105–34 applicable to returns of beneficiaries and owners filed after Aug. 5, 1997, see section 1027(c) of Pub. L. 105–34, set out as a note under section 6034A of this title.

Amendment by section 1601(i)(1) of Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 23 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, §1901(d), Aug. 20, 1996, 110 Stat. 1908, provided that:

"(1) REPORTABLE EVENTS.—To the extent related to subsection (a) of section 6048 of the Internal Revenue Code of 1986, as amended by this section, the amendments made by this section [amending this section and sections 6677 and 6724 of this title] shall apply to reportable events (as defined in such section 6048) occurring after the date of the enactment of this Act [Aug. 20, 1996].

"(2) GRANTOR TRUST REPORTING.—To the extent related to subsection (b) of such section 6048, the amendments made by this section shall apply to taxable years of United States persons beginning after December 31, 1995.

"(3) REPORTING BY UNITED STATES BENEFICIARIES.—To the extent related to subsection (c) of such section 6048, the amendments made by this section shall apply to distributions received after the date of the enactment of this Act."

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to returns filed after Sept. 3, 1982, see section 341(c) of Pub. L. 97–248, set out as a note under section 6046 of this title.

§6049. Returns regarding payments of interest

(a) Requirement of reporting

Every person—

(1) who makes payments of interest (as defined in subsection (b)) aggregating $10 or more to any other person during any calendar year, or

(2) who receives payments of interest (as so defined) as a nominee and who makes payments aggregating $10 or more during any calendar year to any other person with respect to the interest so received,

shall make a return according to the forms or regulations prescribed by the Secretary, setting forth the aggregate amount of such payments and the name and address of the person to whom paid.

(b) Interest defined

(1) General rule

For purposes of subsection (a), the term "interest" means—

(A) interest on any obligation—

(i) issued in registered form, or

(ii) of a type offered to the public,

other than any obligation with a maturity (at issue) of not more than 1 year which is held by a corporation,

(B) interest on deposits with persons carrying on the banking business,

(C) amounts (whether or not designated as interest) paid by a mutual savings bank, savings and loan association, building and loan association, cooperative bank, homestead association, credit union, industrial loan association or bank, or similar organization, in respect of deposits, investment certificates, or withdrawable or repurchasable shares,

(D) interest on amounts held by an insurance company under an agreement to pay interest thereon,

(E) interest on deposits with brokers (as defined in section 6045(c)),

(F) interest paid on amounts held by investment companies (as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3)) and on amounts invested in other pooled funds or trusts, and

(G) to the extent provided in regulations prescribed by the Secretary, any other interest (which is not described in paragraph (2)).

(2) Exceptions

For purposes of subsection (a), the term "interest" does not include—

(A) interest on any obligation issued by a natural person,

(B) except to the extent otherwise provided in regulations—

(i) any amount paid to any person described in paragraph (4), or

(ii) any amount described in paragraph (5), and

(C) except to the extent otherwise provided in regulations, any amount not described in subparagraph (B) of this paragraph which is income from sources outside the United States or which is paid by—

(i) a foreign government or international organization or any agency or instrumentality thereof,

(ii) a foreign central bank of issue,

(iii) a foreign corporation not engaged in a trade or business in the United States,

(iv) a foreign corporation, the interest payments of which would be exempt from withholding under subchapter A of chapter 3 if paid to a person who is not a United States person, or

(v) a partnership not engaged in a trade or business in the United States and composed in whole of nonresident alien individuals and person described in clause (i), (ii), or (iii).

(3) Payments by United States nominees, etc., of United States person

If, within the United States, a United States person—

(A) collects interest (or otherwise acts as a middleman between the payor and payee) from a foreign person described in paragraph (2)(D) or collects interest from a United States person which is income from sources outside the United States for a second person who is a United States person, or

(B) makes payments of such interest to such second United States person,

notwithstanding paragraph (2)(D), such payment shall be subject to the requirements of subsection (a) with respect to such second United States person.

(4) Persons described in this paragraph

A person is described in this paragraph if such person is—

(A) a corporation,

(B) an organization exempt from taxation under section 501(a) or an individual retirement plan,

(C) the United States or any wholly owned agency or instrumentality thereof,

(D) a State, the District of Columbia, a possession of the United States, any political subdivision of any of the foregoing, or any wholly owned agency or instrumentality of any one or more of the foregoing,

(E) a foreign government, a political subdivision of a foreign government, or any wholly owned agency or instrumentality of any one or more of the foregoing,

(F) an international organization or any wholly owned agency or instrumentality thereof,

(G) a foreign central bank of issue,

(H) a dealer in securities or commodities required to register as such under the laws of the United States or a State, the District of Columbia, or a possession of the United States,

(I) a real estate investment trust (as defined in section 856),

(J) an entity registered at all times during the taxable year under the Investment Company Act of 1940,

(K) a common trust fund (as defined in section 584(a)), or

(L) any trust which—

(i) is exempt from tax under section 664(c), or

(ii) is described in section 4947(a)(1).

(5) Amounts described in this paragraph

An amount is described in this paragraph if such amount—

(A) is subject to withholding under subchapter A of chapter 3 (relating to withholding of tax on nonresident aliens and foreign corporations) by the person paying such amount, or

(B) would be subject to withholding under subchapter A of chapter 3 by the person paying such amount but for the fact that—

(i) such amount is income from sources outside the United States,

(ii) the payor thereof is exempt from the application of section 1441(a) by reason of section 1441(c) or a tax treaty,

(iii) such amount is original issue discount (within the meaning of section 1273(a)), or

(iv) such amount is described in section 871(i)(2).

(c) Statements to be furnished to persons with respect to whom information is required

(1) In general

Every person required to make a return under subsection (a) shall furnish to each person whose name is required to be set forth in such return a written statement showing—

(A) the name, address, and phone number of the information contact of the person required to make such return, and

(B) the aggregate amount of payments to, or the aggregate amount includible in the gross income of, the person required to be shown on the return.

(2) Time and form of statement

The written statement under paragraph (1)—

(A) shall be furnished (either in person or in a statement mailing by first-class mail which includes adequate notice that the statement is enclosed) to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made, and

(B) shall be in such form as the Secretary may prescribe by regulations.

(d) Definitions and special rules

For purposes of this section—

(1) Person

The term "person" includes any governmental unit and any agency or instrumentality thereof and any international organization and any agency or instrumentality thereof.

(2) Obligation

The term "obligation" includes bonds, debentures, notes, certificates, and other evidences of

indebtedness.

(3) Payments by governmental units

In the case of payments made by any governmental unit or any agency or instrumentality thereof, the officer or employee having control of the payment of interest (or the person appropriately designated for purposes of this section) shall make the returns and statements required by this section.

(4) Financial institutions, brokers, etc., collecting interest may be substituted for payor

To the extent and in the manner provided by regulations, in the case of any obligation—

(A) a financial institution, broker, or other person specified in such regulations which collects interest on such obligation for the payee (or otherwise acts as a middleman between the payor and the payee) shall comply with the requirements of subsections (a) and (c), and

(B) no other person shall be required to comply with the requirements of subsections (a) and (c) with respect to any interest on such obligation for which reporting is required pursuant to subparagraph (A).

(5) Interest on certain obligations may be treated on a transactional basis

(A) In general

To the extent and in the manner provided in regulations, this section shall apply with respect to—

(i) any person described in paragraph (4)(A), and

(ii) in the case of any United States savings bonds, any Federal agency making payments thereon,

on any transactional basis rather than on an annual aggregation basis.

(B) Separate returns and statements

If subparagraph (A) applies to interest on any obligation, the return under subsection (a) and the statement furnished under subsection (c) with respect to such transaction may be made separately, but any such statement shall be furnished to the payee at such time as the Secretary may prescribe by regulations but not later than January 31 of the next calendar year.

(C) Statement to payee required in case of transactions involving $10 or more

In the case of any transaction to which this paragraph applies which involves the payment of $10 or more of interest, a statement of the transaction may be provided to the payee of such interest in lieu of the statement required under subsection (c). Such statement shall be provided during January of the year following the year in which such payment is made.

(6) Treatment of original issue discount

(A) In general

Original issue discount on any obligation shall be reported—

(i) as if paid at the time it is includible in gross income under section 1272 (except that for such purpose the amount reportable with respect to any subsequent holder shall be determined as if he were the original holder), and

(ii) if section 1272 does not apply to the obligation, at maturity (or, if earlier, on redemption).

In the case of any obligation not in registered form issued before January 1, 1983, clause (ii) and not clause (i) shall apply.

(B) Original issue discount

For purposes of this paragraph, the term "original issue discount" has the meaning given to such term by section 1273(a).

(7) Interests in REMIC's and certain other debt instruments

(A) In general

For purposes of subsection (a), the term "interest" includes amounts includible in gross income with respect to regular interests in REMIC's (and such amounts shall be treated as paid when includible in gross income under section 860B(b)).

(B) Reporting to corporations, etc.

Except as otherwise provided in regulations, in the case of any interest described in subparagraph (A) of this paragraph and any other debt instrument to which section 1272(a)(6) applies, subsection (b)(4) of this section shall be applied without regard to subparagraphs (A), (H), (I), (J), (K), and (L)(i).

(C) Additional information

Except as otherwise provided in regulations, any return or statement required to be filed or furnished under this section with respect to interest income described in subparagraph (A) and interest on any other debt instrument to which section 1272(a)(6) applies shall also provide information setting forth the adjusted issue price of the interest to which the return or statement relates at the beginning of each accrual period with respect to which interest income is required to be reported on such return or statement and information necessary to compute accrual of market discount.

(D) Regulatory authority

The Secretary may prescribe such regulations as are necessary or appropriate to carry out the purposes of this paragraph, including regulations which require more frequent or more detailed reporting.

(8) Reporting of credit on clean renewable energy bonds

(A) In general

For purposes of subsection (a), the term "interest" includes amounts includible in gross income under section 54(g) or 1400N(l)(6) and such amounts shall be treated as paid on the credit allowance date (as defined in section 54(b)(4) or 1400N(l)(2)(D), as the case may be).

(B) Reporting to corporations, etc.

Except as otherwise provided in regulations, in the case of any interest described in subparagraph (A), subsection (b)(4) shall be applied without regard to subparagraphs (A), (H), (I), (J), (K), and (L)(i) of such subsection.

(C) Regulatory authority

The Secretary may prescribe such regulations as are necessary or appropriate to carry out the purposes of this paragraph, including regulations which require more frequent or more detailed reporting.

(9) Reporting of credit on qualified tax credit bonds

(A) In general

For purposes of subsection (a), the term "interest" includes amounts includible in gross income under section 54A and such amounts shall be treated as paid on the credit allowance date (as defined in section 54A(e)(1)).

(B) Reporting to corporations, etc.

Except as otherwise provided in regulations, in the case of any interest described in subparagraph (A) of this paragraph, subsection (b)(4) of this section shall be applied without regard to subparagraphs (A), (H), (I), (J), (K), and (L)(i).

(C) Regulatory authority

The Secretary may prescribe such regulations as are necessary or appropriate to carry out the purposes of this paragraph, including regulations which require more frequent or more detailed reporting.

(Added Pub. L. 87–834, §19(c), Oct. 16, 1962, 76 Stat. 1055; amended Pub. L. 91–172, title IV, §413(c), (d), Dec. 30, 1969, 83 Stat. 611, 612; Pub. L. 94–455, title XIX, §§1901(b)(6)(A), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1793, 1834; Pub. L. 97–248, title III, §§303(b), 308(a), 309(a), Sept. 3, 1982, 96 Stat. 587, 591; Pub. L. 97–424, title V, §547(b)(4), Jan. 6, 1983, 96 Stat. 2200; Pub. L. 98–67, title I, §§102(a), (e), 108(a), Aug. 5, 1983, 97 Stat. 369, 370, 383; Pub. L. 98–369, div. A, title I, §42(a)(14), title IV, §474(r)(29)(J), July 18, 1984, 98 Stat. 557, 845; Pub. L. 99–514, title VI, §674, title XII, §1214(c)(4), title XV, §1501(c)(5), title XVIII, §1803(a)(14)(C), Oct. 22, 1986, 100 Stat. 2319, 2543, 2737, 2797; Pub. L. 100–647, title I, §1006(t)(24), (v), Nov. 10, 1988, 102 Stat. 3426, 3427; Pub. L. 104–168, title XII, §1201(a)(6), July 30, 1996, 110 Stat. 1469; Pub. L. 109–58, title XIII, §1303(b), Aug. 8, 2005, 119 Stat. 996; Pub. L. 109–135, title I, §101(b)(2), Dec. 21, 2005, 119 Stat. 2593; Pub. L. 109–222, title V, §502(a), (b), May 17, 2006, 120 Stat. 354; Pub. L. 110–234, title XV, §15316(b), May 22, 2008, 122 Stat. 1511; Pub. L. 110–246, §4(a), title XV, §15316(b), June 18, 2008, 122 Stat. 1664, 2273.)

REFERENCES IN TEXT

The Investment Company Act of 1940, referred to in subsec. (b)(4)(J), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§80a–1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80a–51 of Title 15 and Tables.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2008—Subsec. (d)(9). Pub. L. 110–246, §15316(b), added par. (9).

2006—Subsec. (b)(2)(B). Pub. L. 109–222, §502(a), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: "interest on any obligation if such interest is exempt from tax under section 103(a) or if such interest is exempt from tax (without regard to the identity of the holder) under any other provision of this title,".

Subsec. (b)(2)(C). Pub. L. 109–222 redesignated subpar. (D) as (C) and substituted "subparagraph (B)" for "subparagraph (C)".

Subsec. (b)(2)(D). Pub. L. 109–222, §502(a), redesignated subpar. (D) as (C).

2005—Subsec. (d)(8). Pub. L. 109–58 added par. (8).

Subsec. (d)(8)(A). Pub. L. 109–135 inserted "or 1400N(l)(6)" after "section 54(g)" and "or 1400N(l)(2)(D), as the case may be" after "section 54(b)(4)".

1996—Subsec. (c)(1)(A). Pub. L. 104–168 substituted "name, address, and phone number of the information contact" for "name and address".

1988—Subsec. (d)(7)(A). Pub. L. 100–647, §1006(v), inserted parenthetical phrase relating to amounts treated as paid when includible in gross income under section 860B(b).

Subsec. (d)(7)(C). Pub. L. 100–647, §1006(t)(24), substituted "the adjusted issue price" for "the issue price".

1986—Subsec. (b)(5)(B)(iii). Pub. L. 99–514, §1803(a)(14)(C), substituted "section 1273(a)" for "section 1232(b)(1)".

Subsec. (b)(5)(B)(iv). Pub. L. 99–514, §1214(c)(4), added cl. (iv).

Subsec. (c). Pub. L. 99–514, §1501(c)(5), in amending subsec. (c) generally, substituted "information is required" for "information is furnished" in subsection heading and, in text, substituted references to persons required to make a return for former references to persons making a return and struck out provisions that no statement was required if the aggregate amount of payments to the person shown on the return was less than $10.

Subsec. (d)(7). Pub. L. 99–514, §674, added par. (7).

1984—Subsec. (b)(2)(E). Pub. L. 98–369, §474(r)(29)(J), struck out subpar. (E) which related to amounts on which the person making payments was required to deduct and withhold a tax under section 1451 (relating to tax-free covenant bonds), or would have been so required but for section 1451(d) (relating to benefit of personal exemptions).

Subsec. (d)(6)(A). Pub. L. 98–369, §42(a)(14)(A), substituted "section 1272" for "section 1232A" in two places.

Subsec. (d)(6)(B). Pub. L. 98–369, §42(a)(14)(B), substituted "section 1273(a)" for "section 1232(b)(1)".

1983—Subsec. (a). Pub. L. 98–67, §102(e)(1), struck out par. (3) which related to persons required under subchapter B of chapter 24 to withhold tax on the payment of interest and, in provisions following par. (2), substituted "and the name and address of the person to whom paid" for ", tax deducted and withheld, and the name and address of the person to whom paid or from whom withheld".

Subsec. (b)(2)(B). Pub. L. 97–424 substituted "this title" for "law".

Subsec. (b)(2)(C). Pub. L. 98–67, §102(e)(2), amended subpar. (C) generally, substituting in cl. (i) "person described in paragraph (4), or" for "person referred to in paragraph (2) of section 3452(c) (other than subparagraphs (J) and (K) thereof), or" and in cl. (ii) "described in paragraph (5)," for "described in section 3454(a)(2)(D) or (E),".

Subsec. (b)(4), (5). Pub. L. 98–67, §102(e)(2)(B), added pars. (4) and (5).

Subsec. (c)(1)(C). Pub. L. 98–67, §102(e)(3), struck out subpar. (C) which related to aggregate amount of tax deducted and withheld with respect to the person under subchapter B of chapter 24.

Subsec. (c)(2). Pub. L. 98–67, §108(a), amended par. (2) generally, inserting provision allowing the written statement to be furnished either in person or in a separate mailing by first-class mail and authorizing the Secretary to prescribe by regulation the form that the written statement must take.

Subsec. (e). Pub. L. 98–67, §102(a), repealed amendments made by Pub. L. 97–248. See 1982 Amendment note below.

1982—Subsec. (a). Pub. L. 97–248, §309(a), redesignated subpars. (A) and (B) of former par. (1) as pars. (1) and (2), respectively, in par. (2) as so redesignated inserted "(as so defined)" after "payments of interest", substituted par. (3) for former par. (1)(C) which described corporations with evidence of outstanding indebtedness in registered form for which during any calendar year there was at least $10 of original issue discount includible in the gross income of a holder under section 1232(a)(3) of this title without regard to subpar. (B) thereof, substituted "of such payments, tax deducted and withheld, and the name and address of the person to whom paid or from whom withheld" for "of such payments and such aggregate amount includible in the gross income of any holder and the name and address of the person to whom paid or such holder" in provisions following par. (3), formerly following par. (1)(C), and struck out former par. (2), which directed persons making aggregate interest payments of less than $10 to another person during any calendar year to report such payments and the recipients when required by the Secretary, and former par. (3), which required all corporations making payments of any amount of interest other than as defined in subsec. (b) to report such payments and the recipients when required by the Secretary.

Subsec. (b). Pub. L. 97–248, §309(a), substituted "subsection (a)" for "subsections (a)(1) and (2)" in provisions preceding subpar. (A), in subpar. (A) substituted "any obligation (i) issued in registered form, or (ii) of a type offered to the public, other than any obligation with a maturity (at issue) of not more than 1 year which is held by a corporation" for "evidences of indebtedness (including bonds, debentures, notes, and certificates) issued by a corporation in registered form, and, to the extent provided in regulations prescribed by the Secretary, interest on other evidences of indebtedness issued by a corporation of a type offered by corporations to the public" in subpar. (C) inserted "industrial loan association or bank" to list of payors of interest, in subpar. (E) substituted "brokers (as defined in section 6045(c))" for "stockbrokers and dealers in securities", added subpars. (F) and (G), in par. (2) substituted "subsection (a)" for "subsections (a)(1) and (2)" in provisions preceding subpar. (A), added subpar. (A), redesignated former subpar. (A) as (B), in subpar. (B) as so redesignated inserted reference to exemption under any provision of law, added subpar. (C), redesignated former subpar. (B) as (D), in subpar. (D) as so redesignated substituted provisions that the subpar. operates except to the extent otherwise provided in regulations or in subpar. (C) for provisions that the subpar. operates to the extent provided in regulations, added cls. (i) and (ii), designated existing provisions as cls. (iii) to (v), in cl. (iii) as so designated inserted specification of not being engaged in trade or business in the United States, in cl. (iv) as so designated inserted specification of exemption under subchapter A of chapter 3, redesignated former subpar. (C) as (E), and added par. (3).

Subsec. (c). Pub. L. 97–248, §309(a), substituted "subsection (a)" for "subsection (a)(1)" wherever appearing, designated provision before former par. (1) as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, added subpar. (C), designated first sentence after former par. (2) as par. (2), designated second sentence after former par. (2) as par. (3), in par. (3) as so designated inserted "with respect to payments of interest to any person" after "No statement", struck out ", or the aggregate amount includible in the gross income of," after "payments to", and substituted "paragraph (1) or (2)" for "subparagraph (A), (B), or (C)" after "with respect to".

Subsec. (d). Pub. L. 97–248, §309(a), added subsec. (d).

Subsec. (e). Pub. L. 97–248, §§303(b), 308(a), provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, a new subsec. (e) is added. Section 102(a), (b) of

Pub. L. 98–67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§301–308) of title III of Pub. L. 97–248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 [now 1986] [this title] shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

1976—Subsec. (a). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary" wherever appearing.

Subsec. (b)(1), (2)(A), (B). Pub. L. 94–455, §§1901(b)(6)(A), 1906(b)(13)(A), substituted "section 103(a)" for "section 103(a)(1) or (3)", and struck out "or his delegate" after "Secretary" wherever appearing.

1969—Subsec. (a)(1)(C). Pub. L. 91–172, §413(c), added subpar. (C).

Subsec. (c). Pub. L. 91–172, §413(d), further qualified requirement to furnish statement by reference to aggregate amount includible in gross income.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by section 15316(b) of Pub. L. 110–246 applicable to obligations issued after June 18, 2008, see section 15316(d) of Pub. L. 110–246, set out as a note under section 54 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–222, title V, §502(c), May 17, 2006, 120 Stat. 354, provided that: "The amendments made by this section [amending this section] shall apply to interest paid after December 31, 2005."

EFFECTIVE DATE OF 2005 AMENDMENTS

Amendment by Pub. L. 109–135 applicable to taxable years ending on or after Aug. 28, 2005, see section 101(c)(1) of Pub. L. 109–135, set out as an Effective Date note under section 1400N of this title.

Amendment by Pub. L. 109–58 applicable to bonds issued after Dec. 31, 2005, see section 1303(e) of Pub. L. 109–58, as amended, set out as an Effective Date note under section 54 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–168 applicable to statements required to be furnished after Dec. 31, 1996 (determined without regard to any extension), see section 1201(b) of Pub. L. 104–168, set out as a note under section 6041 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 674 of Pub. L. 99–514 effective Jan. 1, 1987, see section 675(a) of Pub. L. 99–514, as amended, set out as an Effective Date note under section 860A of this title.

Amendment by section 1214(c)(4) of Pub. L. 99–514 applicable to payments made in taxable year of payor beginning after Dec. 31, 1986, except as otherwise provided, see section 1214(d) of Pub. L. 99–514, as amended, set out as a note under section 861 of this title.

Amendment by section 1501(c)(5) of Pub. L. 99–514 applicable to returns the due date for which (determined without regard to extensions) is after Oct. 22, 1986, see section 1501(e) of Pub. L. 99–514, set out as an Effective Date note under section 6721 of this title.

Amendment by section 1803(a)(14)(C) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 42(a)(14) of Pub. L. 98–369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98–369, set out as an Effective Date note under section 1271 of this title.

Amendment by section 474(r)(29)(J) of Pub. L. 98–369 not applicable with respect to obligations issued before Jan. 1, 1984, see section 475(b) of Pub. L. 98–369, set out as a note under section 33 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 102(a), (e) of Pub. L. 98–67 effective as of close of June 30, 1983, see section

110(b) of Pub. L. 98–67, set out as a note under section 31 of this title.

Amendment by section 108(a) of Pub. L. 98–67 applicable with respect to payments made after Dec. 31, 1983, see section 110(a) of Pub. L. 98–67, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title III, §309(c), Sept. 3, 1982, 96 Stat. 595, provided that: "The amendments made by this section [amending this section and sections 6041, 6652, and 6678 of this title] shall apply to amounts paid (or treated as paid) after December 31, 1982."

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title IV, §413(e), Dec. 30, 1969, 83 Stat. 612, provided that: "The amendments made by this section [amending this section and section 1232 of this title] shall apply with respect to bonds and other evidences of indebtedness issued after May 27, 1969 (other than evidences of indebtedness issued pursuant to a written commitment which was binding on May 27, 1969, and at all times thereafter)."

EFFECTIVE DATE

Section applicable to payments of dividends and interest made on or after Jan. 1, 1963, and to payments of amounts described in section 6044(b) of this title made on or after Jan. 1, 1963, with respect to patronage occurring on or after the first day of the first taxable year of the cooperative beginning on or after Jan. 1, 1963, see section 19(h) of Pub. L. 87–834, set out as an Effective Date of 1962 Amendment note under section 6042 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendment by section 1214(c)(4) of Pub. L. 99–514 to the extent application of such amendment would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(3), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[§6050. Repealed. Pub. L. 96–167, §5(a), Dec. 29, 1979, 93 Stat. 1276]

Section, added Pub. L. 91–172, title I, §121(e)(1), Dec. 30, 1969, 83 Stat. 548; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, provided for a return by transferor of income producing property if the transferee was known to be an organization referred to in section 511(a) or (b) and property had a fair market value in excess of $50,000.

EFFECTIVE DATE OF REPEAL

Pub. L. 96–167, §5(c), Dec. 29, 1979, 93 Stat. 1276, provided that: "The amendments made by this section [repealing this section] shall apply to transfers after the date of the enactment of this Act [Dec. 29, 1979]."

§6050A. Reporting requirements of certain fishing boat operators

(a) Reports

The operator of a boat on which one or more individuals, during a calendar year, perform services described in section 3121(b)(20) shall submit to the Secretary (at such time, and in such manner and form, as the Secretary shall by regulations prescribe) information respecting—

(1) the identity of each individual performing such services;

(2) the percentage of each such individual's share of the catches of fish or other forms of aquatic animal life, and the percentage of the operator's share of such catches;

(3) if such individual receives his share in kind, the type and weight of such share, together with such other information as the Secretary may prescribe by regulations reasonably necessary to determine the value of such share;

(4) if such individual receives a share of the proceeds of such catches, the amount so received; and

(5) any cash remuneration described in section 3121(b)(20)(A).

(b) Written statement

Every person required to make a return under subsection (a) shall furnish to each person whose name is required to be set forth in such return a written statement showing the information relating to such person required to be contained in such return. The written statement required under the preceding sentence shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made.

(Added Pub. L. 94–455, title XII, §1207(e)(3)(A), Oct. 4, 1976, 90 Stat. 1707; amended Pub. L. 99–514, title XV, §1501(c)(6), Oct. 22, 1986, 100 Stat. 2737; Pub. L. 104–188, title I, §1116(a)(1)(C), Aug. 20, 1996, 110 Stat. 1762.)

AMENDMENTS

1996—Subsec. (a)(5). Pub. L. 104–188 added par. (5).

1986—Subsec. (b). Pub. L. 99–514 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "Every person making a return under subsection (a) shall furnish to each person whose name is set forth in such return a written statement showing the information relating to such person contained in such return. The written statement required under the preceding sentence shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) was made."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendments by Pub. L. 104–188 applicable to remuneration paid after Dec. 31, 1996, see section 1116(a)(3)(B) of Pub. L. 104–188, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1986, see section 1501(e) of Pub. L. 99–514, set out as an Effective Date note under section 6721 of this title.

EFFECTIVE DATE

Section effective for calendar years beginning after Oct. 4, 1976, see section 1207(f)(4)(A) of Pub. L. 94–455, set out as a note under section 3121 of this title.

§6050B. Returns relating to unemployment compensation

(a) Requirement of reporting

Every person who makes payments of unemployment compensation aggregating $10 or more to any individual during any calendar year shall make a return according to the forms or regulations prescribed by the Secretary, setting forth the aggregate amounts of such payments and the name and address of the individual to whom paid.

(b) Statements to be furnished to individuals with respect to whom information is required

Every person required to make a return under subsection (a) shall furnish to each individual whose name is required to be set forth in such return a written statement showing—

(1) the name, address, and phone number of the information contact of the person required to make such return, and

(2) the aggregate amount of payments to the individual required to be shown on such return.

The written statement required under the preceding sentence shall be furnished to the individual on

or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made.

(c) Definitions

For purposes of this section—

(1) Unemployment compensation

The term "unemployment compensation" has the meaning given to such term by section 85(b).

(2) Person

The term "person" means the officer or employee having control of the payment of the unemployment compensation, or the person appropriately designated for purposes of this section.

(Added Pub. L. 95–600, title I, §112(b), Nov. 6, 1978, 92 Stat. 2777; amended Pub. L. 99–514, title XV, §1501(c)(7), Oct. 22, 1986, 100 Stat. 2738; Pub. L. 104–168, title XII, §1201(a)(7), July 30, 1996, 110 Stat. 1469; Pub. L. 104–188, title I, §1704(t)(14), Aug. 20, 1996, 110 Stat. 1888.)

AMENDMENTS

1996—Subsec. (b)(1). Pub. L. 104–168 substituted "name, address, and phone number of the information contact" for "name and address".

Subsec. (c)(1). Pub. L. 104–188 substituted "section 85(b)" for "section 85(c)".

1986—Subsec. (b). Pub. L. 99–514, in amending subsec. (b) generally, substituted references to persons required to make a return for former references to persons making a return and references to individuals whose names are required to be set forth for former references to individuals whose names are set forth, and struck out provision directing that no statement is required to be furnished to individuals if the aggregate amount of payments to such individual shown on the return is less than $10.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–168 applicable to statements required to be furnished after Dec. 31, 1996 (determined without regard to any extension), see section 1201(b) of Pub. L. 104–168, set out as a note under section 6041 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1986, see section 1501(e) of Pub. L. 99–514, set out as an Effective Date note under section 6721 of this title.

EFFECTIVE DATE

Section applicable to payments of unemployment compensation made after Dec. 31, 1978, in taxable years ending after such date, but not applicable to payments made for weeks of unemployment ending before Dec. 1, 1978, see section 112(d) of Pub. L. 95–600, as amended, set out as a note under section 85 of this title.

WAIVER OF STATUTE OF LIMITATIONS

For provisions relating to credit or refund of overpayment of tax resulting from 1984 amendment to section 112(d) of Pub. L. 95–600, see section 1075(b) of Pub. L. 98–369, set out as a note under section 85 of this title.

[§6050C. Repealed. Pub. L. 100–418, title I, §1941(b)(1), Aug. 23, 1988, 102 Stat. 1323]

Section, added Pub. L. 96–223, title I, §101(d)(1), Apr. 2, 1980, 94 Stat. 251; amended Pub. L. 99–514, title XV, §1501(d)(1)(E), Oct. 22, 1986, 100 Stat. 2740, related to information regarding windfall profit tax on domestic crude oil.

EFFECTIVE DATE OF REPEAL

Repeal applicable to crude oil removed from the premises on or after Aug. 23, 1988, see section 1941(c) of Pub. L. 100–418, set out as an Effective Date of 1988 Amendment note under section 164 of this title.

§6050D. Returns relating to energy grants and financing

(a) In general

Every person who administers a Federal, State, or local program a principal purpose of which is to provide subsidized financing or grants for projects to conserve or produce energy shall, to the extent required under regulations prescribed by the Secretary, make a return setting forth the name and address of each taxpayer receiving financing or a grant under such program and the aggregate amount so received by such individual.

(b) Definition of person

For purposes of this section, the term "person" means the officer or employee having control of the program, or the person appropriately designated for purposes of this section.

(Added Pub. L. 96–223, title II, §203(b)(1), Apr. 2, 1980, 94 Stat. 259.)

EFFECTIVE DATE

Pub. L. 96–223, title II, §203(c), Apr. 2, 1980, 94 Stat. 259, provided that: "The amendments made by this section [amending this section and section 23 of this title] shall apply to taxable years beginning after December 31, 1980, but only with respect to financing or grants made after such date."

§6050E. State and local income tax refunds

(a) Requirement of reporting

Every person who, with respect to any individual, during any calendar year makes payments of refunds of State or local income taxes (or allows credits or offsets with respect to such taxes) aggregating $10 or more shall make a return according to forms or regulations prescribed by the Secretary setting forth the aggregate amount of such payments, credits, or offsets, and the name and address of the individual with respect to whom such payment, credit, or offset was made.

(b) Statements to be furnished to individuals with respect to whom information is required

Every person required to make a return under subsection (a) shall furnish to each individual whose name is required to be set forth in such return a written statement showing—

(1) the name of the State or political subdivision thereof, and

(2) the information required to be shown on the return with respect to refunds, credits, and offsets to the individual.

The written statement required under the preceding sentence shall be furnished to the individual during January of the calendar year following the calendar year for which the return under subsection (a) was required to be made. No statement shall be required under this subsection with respect to any individual if it is determined (in the manner provided by regulations) that such individual did not claim itemized deductions under chapter 1 for the taxable year giving rise to the refund, credit, or offset.

(c) Person defined

For purposes of this section, the term "person" means the officer or employee having control of the payment of the refunds (or the allowance of the credits or offsets) or the person appropriately designated for purposes of this section.

(Added Pub. L. 97–248, title III, §313(a), Sept. 3, 1982, 96 Stat. 603; amended Pub. L. 98–369, div. A, title I, §151(a), July 18, 1984, 98 Stat. 690; Pub. L. 99–514, title XV, §1501(c)(8), Oct. 22, 1986, 100 Stat. 2738.)

AMENDMENTS

1986—Subsec. (b). Pub. L. 99–514, in amending subsec. (b) generally, substituted "information is required" for "information is furnished" in heading and, in text, substituted references to persons required to make a return for former references to persons making a return and references to persons whose name is required to

be set forth for former references to persons whose name is set forth.

1984—Subsec. (b). Pub. L. 98–369 inserted provision that no statement is required under this subsection with respect to any individual if it is determined (in the manner provided by regulations) that such individual did not claim itemized deductions under chapter 1 for the taxable year giving rise to the refund, credit, or offset.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1986, see section 1501(e) of Pub. L. 99–514, set out as an Effective Date note under section 6721 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §151(b), July 18, 1984, 98 Stat. 691, provided that: "The amendment made by subsection (a) [amending this section] shall apply to payments of refunds, and credits and offsets made, after December 31, 1982."

EFFECTIVE DATE

Pub. L. 97–248, title III, §313(c), Sept. 3, 1982, 96 Stat. 603, provided that: "The amendments made by this section [enacting this section] shall apply to payments of refunds, and credits and offsets made, after December 31, 1982."

§6050F. Returns relating to social security benefits

(a) Requirement of reporting

The appropriate Federal official shall make a return, according to the forms and regulations prescribed by the Secretary, setting forth—

(1) the—

(A) aggregate amount of social security benefits paid with respect to any individual during any calendar year,

(B) aggregate amount of social security benefits repaid by such individual during such calendar year, and

(C) aggregate reductions under section 224 of the Social Security Act (or under section 3(a)(1) of the Railroad Retirement Act of 1974) in benefits which would otherwise have been paid to such individual during the calendar year on account of amounts received under a workmen's compensation act, and

(2) the name and address of such individual.

(b) Statements to be furnished to persons with respect to whom information is required

Every person required to make a return under subsection (a) shall furnish to each individual whose name is required to be set forth in such return a written statement showing—

(1) the name of the agency making the payments, and

(2) the aggregate amount of payments, of repayments, and of reductions, with respect to the individual required to be shown on such return.

The written statement required under the preceding sentence shall be furnished to the individual on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made.

(c) Definitions

For purposes of this section

(1) Appropriate Federal official

The term "appropriate Federal official" means—

(A) the Commissioner of Social Security in the case of social security benefits described in section 86(d)(1)(A), and

(B) the Railroad Retirement Board in the case of social security benefits described in section 86(d)(1)(B).

(2) Social security benefit

The term "social security benefit" has the meaning given to such term by section 86(d)(1).

(Added Pub. L. 98–21, title I, §121(b), Apr. 20, 1983, 97 Stat. 82; amended Pub. L. 99–514, title XV, §1501(c)(9), Oct. 22, 1986, 100 Stat. 2738; Pub. L. 100–360, title I, §111(b), July 1, 1988, 102 Stat. 697; Pub. L. 101–234, title I, §102(a), Dec. 13, 1989, 103 Stat. 1980; Pub. L. 103–296, title I, §108(h)(4), Aug. 15, 1994, 108 Stat. 1487.)

REFERENCES IN TEXT

Section 224 of the Social Security Act, referred to in subsec. (a)(1)(C), is classified to section 424a of Title 42, The Public Health and Welfare.

Section 3(a)(1) of the Railroad Retirement Act of 1974, referred to in subsec. (a)(1)(C), is classified to section 231b(a)(1) of Title 45, Railroads.

AMENDMENTS

1994—Subsec. (c)(1)(A). Pub. L. 103–296 substituted "Commissioner of Social Security" for "Secretary of Health and Human Services".

1989—Subsecs. (a), (b)(1), (2), (c)(1)(A). Pub. L. 101–234, §102(a), repealed Pub. L. 100–360, §111, and provided that the provisions of law amended by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

1988—Subsec. (a). Pub. L. 100–360, §111(b)(1), added par. (2) and redesignated former par. (2) as (3).

Subsec. (b)(1). Pub. L. 100–360, §111(b)(2)(A), inserted "or making the determination under subsection (a)(2)" after "payments".

Subsec. (b)(2). Pub. L. 100–360, §111(b)(2)(B), inserted "and the information required under subsection (a)(2)," after "reductions,".

Subsec. (c)(1)(A). Pub. L. 100–360, §111(b)(3), inserted "and the information required under subsection (a)(2)" after "section 86(d)(1)(A)".

1986—Subsec. (b). Pub. L. 99–514, in amending subsec. (b) generally, substituted "information is required" for "information is furnished" in heading and, in text, substituted references to persons required to make a return for former references to persons making a return and references to persons whose name is required to be set forth for former references to persons whose name is set forth.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–234 applicable to taxable years beginning after Dec. 31, 1988, see section 102(d)(2) of Pub. L. 101–234, set out as an Effective Date of Repeal note under section 59B of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–360 applicable to taxable years beginning after Dec. 31, 1988, see section 111(e) of Pub. L. 100–360, set out as an Effective Date note under section 59B of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1986, see section 1501(e) of Pub. L. 99–514, set out as an Effective Date note under section 6721 of this title.

EFFECTIVE DATE

Section applicable to benefits received after Dec. 31, 1983, in taxable years ending after such date, except for any portion of a lump-sum payment of social security benefits received after Dec. 31, 1983, if the generally applicable payment date for such portion was before Jan. 1, 1984, see section 121(g) of Pub. L. 98–21, set out as a note under section 86 of this title.

REPEAL OF SUPPLEMENTAL MEDICARE PREMIUM AND FEDERAL HOSPITAL INSURANCE CATASTROPHIC COVERAGE RESERVE FUND

Pub. L. 101–234, title I, §102(a), Dec. 13, 1989, 103 Stat. 1980, provided that: "Sections 111 and 112 of MCCA [Pub. L. 100–360, which enacted section 59B of this title and section 1395i–1a of Title 42, The Public Health and Welfare, amended this section, and enacted provisions set out as notes under section 59B of this title and section 1395i–1a of Title 42] are repealed and the provisions of law amended by such sections are restored or revived as if such sections had not been enacted."

§6050G. Returns relating to certain railroad retirement benefits

(a) In general

The Railroad Retirement Board shall make a return, according to the forms and regulations prescribed by the Secretary, setting forth—

(1) the aggregate amount of benefits paid under the Railroad Retirement Act of 1974 (other than tier 1 railroad retirement benefits, as defined in section 86(d)(4)) to any individual during any calendar year,

(2) the employee contributions (to the extent not previously taken into account under section 72(d)(1)) [1] which are treated as having been paid for purposes of section 72(r),

(3) the name and address of such individual, and

(4) such other information as the Secretary may require.

(b) Statements to be furnished to persons with respect to whom information is required

The Railroad Retirement Board shall furnish to each individual whose name is required to be set forth in the return under subsection (a) a written statement showing—

(1) the aggregate amount of payments to such individual, and of employee contributions with respect thereto, required to be shown on the return, and

(2) such other information as the Secretary may require.

The written statement required under the preceding sentence shall be furnished to the individual on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made.

(Added Pub. L. 98–76, title II, §224(b)(1), Aug. 12, 1983, 97 Stat. 422; amended Pub. L. 99–514, title XV, §1501(c)(10), Oct. 22, 1986, 100 Stat. 2739.)

REFERENCES IN TEXT

The Railroad Retirement Act of 1974, referred to in subsec. (a)(1), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, §101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§231 et seq.) of chapter 9 of Title 45, Railroads. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

Section 72(d), referred to in subsec. (a)(2), was repealed by Pub. L. 99–514, title XI, §1122(c)(1), Oct. 22, 1986, 100 Stat. 2467. A new section 72(d) was added by Pub. L. 100–647, title I, §1011A(b)(2)(A), Nov. 10, 1988, 102 Stat. 3472, and subsequently amended generally by Pub. L. 104–188, title I, §1403(a), Aug. 20, 1996, 110 Stat. 1790.

AMENDMENTS

1986—Subsec. (b). Pub. L. 99–514, in amending subsec. (b) generally, substituted "information is required" for "information is furnished" in heading and, in text, substituted references to persons required to make a return for former references to persons making a return and references to persons whose name is required to be set forth for former references to persons whose name is set forth.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1986, see section 1501(e) of Pub. L. 99–514, set out as an Effective Date note under section 6721 of this title.

EFFECTIVE DATE

Enactment of section applicable to benefits received after Dec. 31, 1983, in taxable years ending after such date, except for portions of lump-sum payments received after Dec. 31, 1983, if the generally applicable payment date for such portion was before Jan. 1, 1984, see section 227(b) of Pub. L. 98–76, set out as an Effective Date of 1983 Amendment note under section 72 of this title.

[1] *See References in Text note below.*

§6050H. Returns relating to mortgage interest received in trade or business from individuals

(a) Mortgage interest of $600 or more

Any person—

(1) who is engaged in a trade or business, and

(2) who, in the course of such trade or business, receives from any individual interest aggregating $600 or more for any calendar year on any mortgage,

shall make the return described in subsection (b) with respect to each individual from whom such interest was received at such time as the Secretary may by regulations prescribe.

(b) Form and manner of returns

A return is described in this subsection if such return—

(1) is in such form as the Secretary may prescribe,

(2) contains—

(A) the name and address of the individual from whom the interest described in subsection (a)(2) was received,

(B) the amount of such interest (other than points) received for the calendar year,

(C) the amount of points on the mortgage received during the calendar year and whether such points were paid directly by the borrower, and

(D) such other information as the Secretary may prescribe.

(c) Application to governmental units

For purposes of subsection (a)—

(1) Treated as persons

The term "person" includes any governmental unit (and any agency or instrumentality thereof).

(2) Special rules

In the case of a governmental unit or any agency or instrumentality thereof—

(A) subsection (a) shall be applied without regard to the trade or business requirement contained therein, and

(B) any return required under subsection (a) shall be made by the officer or employee appropriately designated for the purpose of making such return.

(d) Statements to be furnished to individuals with respect to whom information is required

Every person required to make a return under subsection (a) shall furnish to each individual whose name is required to be set forth in such return a written statement showing—

(1) the name, address, and phone number of the information contact of the person required to make such return, and

(2) the aggregate amount of interest described in subsection (a)(2) (other than points) received by the person required to make such return from the individual to whom the statement is required to be furnished (and the information required under subsection (b)(2)(C)).

The written statement required under the preceding sentence shall be furnished on or before January 31 of the year following the calendar year for which the return under subsection (a) was

required to be made.

(e) Mortgage defined

For purposes of this section, except as provided in regulations prescribed by the Secretary, the term "mortgage" means any obligation secured by real property.

(f) Returns which would be required to be made by 2 or more persons

Except to the extent provided in regulations prescribed by the Secretary, in the case of interest received by any person on behalf of another person, only the person first receiving such interest shall be required to make the return under subsection (a).

(g) Special rules for cooperative housing corporations

For purposes of subsection (a), an amount received by a cooperative housing corporation from a tenant-stockholder shall be deemed to be interest received on a mortgage in the course of a trade or business engaged in by such corporation, to the extent of the tenant-stockholder's proportionate share of interest described in section 216(a)(2). Terms used in the preceding sentence shall have the same meanings as when used in section 216.

(h) Returns relating to mortgage insurance premiums

(1) In general

The Secretary may prescribe, by regulations, that any person who, in the course of a trade or business, receives from any individual premiums for mortgage insurance aggregating $600 or more for any calendar year, shall make a return with respect to each such individual. Such return shall be in such form, shall be made at such time, and shall contain such information as the Secretary may prescribe.

(2) Statement to be furnished to individuals with respect to whom information is required

Every person required to make a return under paragraph (1) shall furnish to each individual with respect to whom a return is made a written statement showing such information as the Secretary may prescribe. Such written statement shall be furnished on or before January 31 of the year following the calendar year for which the return under paragraph (1) was required to be made.

(3) Special rules

For purposes of this subsection—

(A) rules similar to the rules of subsection (c) shall apply, and

(B) the term "mortgage insurance" means—

(i) mortgage insurance provided by the Veterans Administration, the Federal Housing Administration, or the Rural Housing Administration, and

(ii) private mortgage insurance (as defined by section 2 of the Homeowners Protection Act of 1998 (12 U.S.C. 4901), as in effect on the date of the enactment of this subsection).

(Added Pub. L. 98–369, div. A, title I, §145(a), July 18, 1984, 98 Stat. 684; amended Pub. L. 99–514, title XV, §1501(c)(11), title XVIII, §1811(a)(1), Oct. 22, 1986, 100 Stat. 2739, 2832; Pub. L. 101–239, title VII, §7646(a), (b), Dec. 19, 1989, 103 Stat. 2382; Pub. L. 104–168, title XII, §1201(a)(8), July 30, 1996, 110 Stat. 1469; Pub. L. 104–188, title I, §1704(t)(23), Aug. 20, 1996, 110 Stat. 1888; Pub. L. 109–432, div. A, title IV, §419(c), Dec. 20, 2006, 120 Stat. 2968.)

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (h)(3)(B)(ii), is the date of enactment of Pub. L. 109–432, which was approved Dec. 20, 2006.

AMENDMENTS

2006—Subsec. (h). Pub. L. 109–432 added subsec. (h).

1996—Subsec. (b)(2)(B). Pub. L. 104–188 made technical amendment to directory language of Pub. L. 101–239, §7646(b)(1). See 1989 Amendment note below.

Subsec. (d)(1). Pub. L. 104–168 substituted "name, address, and phone number of the information contact" for "name and address".

1989—Subsec. (b)(2)(B). Pub. L. 101–239, §7646(b)(1), as amended by Pub. L. 104–188, inserted "(other than points)" after "such interest".

Subsec. (b)(2)(C), (D). Pub. L. 102–239, §7646(a), added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (d)(2). Pub. L. 102–239, §7646(b)(2), inserted "(other than points)" after "subsection (a)(2)" and "(and the information required under subsection (b)(2)(C))" after "to be furnished".

1986—Subsec. (d). Pub. L. 99–514, §1501(c)(11), in amending subsec. (d) generally, substituted "information is required" for "information is furnished" in heading and, in text, substituted references to persons required to make a return for former references to persons making a return and references to persons whose name is required to be set forth for former references to persons whose name is set forth.

Subsec. (g). Pub. L. 99–514, §1811(a)(1), added subsec. (g).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–432 applicable to amounts paid or accrued after Dec. 31, 2006, see section 419(d) of Pub. L. 109–432, set out as a note under section 163 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–168 applicable to statements required to be furnished after Dec. 31, 1996 (determined without regard to any extension), see section 1201(b) of Pub. L. 104–168, set out as a note under section 6041 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7646(c), Dec. 19, 1989, 103 Stat. 2382, provided that: "The amendments made by this section [amending this section] shall apply to returns and statements the due date for which (determined without regard to extensions) is after December 31, 1991."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1501(c)(11) of Pub. L. 99–514 applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1986, see section 1501(e) of Pub. L. 99–514, set out as an Effective Date note under section 6721 of this title.

Amendment by section 1811(a)(1) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Pub. L. 98–369, div. A, title I, §145(d), July 18, 1984, 98 Stat. 685, as amended by Pub. L. 99–514, §2, title XVIII, §1811(a)(2), Oct. 22, 1986, 100 Stat. 2095, 2832, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this section and amending sections 6652 and 6678 of this title] shall apply to amounts received after December 31, 1984.

"(2) SPECIAL RULE FOR OBLIGATIONS IN EXISTENCE ON DECEMBER 31, 1984.—In the case of any obligation in existence on December 31, 1984, no penalty shall be imposed under section 6676 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] by reason of the amendments made by this section on any failure to supply a taxpayer identification number with respect to amounts received before January 1, 1986."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§6050I. Returns relating to cash received in trade or business, etc.

(a) Cash receipts of more than $10,000

Any person—

(1) who is engaged in a trade or business, and

(2) who, in the course of such trade or business, receives more than $10,000 in cash in 1

transaction (or 2 or more related transactions),

shall make the return described in subsection (b) with respect to such transaction (or related transactions) at such time as the Secretary may by regulations prescribe.

(b) Form and manner of returns

A return is described in this subsection if such return—

(1) is in such form as the Secretary may prescribe,

(2) contains—

(A) the name, address, and TIN of the person from whom the cash was received,

(B) the amount of cash received,

(C) the date and nature of the transaction, and

(D) such other information as the Secretary may prescribe.

(c) Exceptions

(1) Cash received by financial institutions

Subsection (a) shall not apply to—

(A) cash received in a transaction reported under title 31, United States Code, if the Secretary determines that reporting under this section would duplicate the reporting to the Treasury under title 31, United States Code, or

(B) cash received by any financial institution (as defined in subparagraphs (A), (B), (C), (D), (E), (F), (G), (J), (K), (R), and (S) of section 5312(a)(2) of title 31, United States Code).

(2) Transactions occurring outside the United States

Except to the extent provided in regulations prescribed by the Secretary, subsection (a) shall not apply to any transaction if the entire transaction occurs outside the United States.

(d) Cash includes foreign currency and certain monetary instruments

For purposes of this section, the term "cash" includes—

(1) foreign currency, and

(2) to the extent provided in regulations prescribed by the Secretary, any monetary instrument (whether or not in bearer form) with a face amount of not more than $10,000.

Paragraph (2) shall not apply to any check drawn on the account of the writer in a financial institution referred to in subsection (c)(1)(B).

(e) Statements to be furnished to persons with respect to whom information is required

Every person required to make a return under subsection (a) shall furnish to each person whose name is required to be set forth in such return a written statement showing—

(1) the name, address, and phone number of the information contact of the person required to make such return, and

(2) the aggregate amount of cash described in subsection (a) received by the person required to make such return.

The written statement required under the preceding sentence shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made.

(f) Structuring transactions to evade reporting requirements prohibited

(1) In general

No person shall for the purpose of evading the return requirements of this section—

(A) cause or attempt to cause a trade or business to fail to file a return required under this section,

(B) cause or attempt to cause a trade or business to file a return required under this section that contains a material omission or misstatement of fact, or

(C) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more trades or businesses.

(2) Penalties

A person violating paragraph (1) of this subsection shall be subject to the same civil and criminal sanctions applicable to a person which fails to file or completes a false or incorrect return under this section.

(g) Cash received by criminal court clerks

(1) In general

Every clerk of a Federal or State criminal court who receives more than $10,000 in cash as bail for any individual charged with a specified criminal offense shall make a return described in paragraph (2) (at such time as the Secretary may by regulations prescribe) with respect to the receipt of such bail.

(2) Return

A return is described in this paragraph if such return—

(A) is in such form as the Secretary may prescribe, and

(B) contains—

(i) the name, address, and TIN of—

(I) the individual charged with the specified criminal offense, and

(II) each person posting the bail (other than a person licensed as a bail bondsman),

(ii) the amount of cash received,

(iii) the date the cash was received, and

(iv) such other information as the Secretary may prescribe.

(3) Specified criminal offense

For purposes of this subsection, the term "specified criminal offense" means—

(A) any Federal criminal offense involving a controlled substance,

(B) racketeering (as defined in section 1951, 1952, or 1955 of title 18, United States Code),

(C) money laundering (as defined in section 1956 or 1957 of such title), and

(D) any State criminal offense substantially similar to an offense described in subparagraph (A), (B), or (C).

(4) Information to Federal prosecutors

Each clerk required to include on a return under paragraph (1) the information described in paragraph (2)(B) with respect to an individual described in paragraph (2)(B)(i)(I) shall furnish (at such time as the Secretary may by regulations prescribe) a written statement showing such information to the United States Attorney for the jurisdiction in which such individual resides and the jurisdiction in which the specified criminal offense occurred.

(5) Information to payors of bail

Each clerk required to make a return under paragraph (1) shall furnish (at such time as the Secretary may by regulations prescribe) to each person whose name is required to be set forth in such return by reason of paragraph (2)(B)(i)(II) a written statement showing—

(A) the name and address of the clerk's office required to make the return, and

(B) the aggregate amount of cash described in paragraph (1) received by such clerk.

(Added Pub. L. 98–369, div. A, title I, §146(a), July 18, 1984, 98 Stat. 685; amended Pub. L. 99–514, title XV, §1501(c)(12), Oct. 22, 1986, 100 Stat. 2739; Pub. L. 100–690, title VII, §7601(a)(1), Nov. 18, 1988, 102 Stat. 4503; Pub. L. 101–508, title XI, §11318(a), (c), Nov. 5, 1990, 104 Stat. 1388–458, 1388–459; Pub. L. 103–322, title II, §20415(a), (b)(3), Sept. 13, 1994, 108 Stat. 1832, 1833; Pub. L. 104–168, title XII, §1201(a)(9), July 30, 1996, 110 Stat. 1469.)

AMENDMENTS

1996—Subsec. (e)(1). Pub. L. 104–168 substituted "name, address, and phone number of the information contact" for "name and address".

1994—Pub. L. 103–322, §20415(b)(3), substituted "business, etc." for "business" in section catchline.

Subsec. (g). Pub. L. 103–322, §20415(a), added subsec. (g).

1990—Subsec. (d). Pub. L. 101–508, §11318(a), substituted heading for one which read: "Cash includes foreign currency" and amended text generally. Prior to amendment, text read as follows: "For purposes of this section, the term 'cash' includes foreign currency."

Subsec. (f). Pub. L. 101–508, §11318(c), substituted heading for one which read: "Actions by payors".

1988—Subsec. (f). Pub. L. 100–690 added subsec. (f).

1986—Subsec. (e). Pub. L. 99–514 substituted "information is required" for "information is furnished" in heading and, in text, substituted references to persons required to make a return for former references to persons making a return and references to persons whose name is required to be set forth for former references to persons whose name is set forth.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–168 applicable to statements required to be furnished after Dec. 31, 1996 (determined without regard to any extension), see section 1201(b) of Pub. L. 104–168, set out as a note under section 6041 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103–322, title II, §20415(d), Sept. 13, 1994, 108 Stat. 1833, provided that: "The amendments made by this section [amending this section and section 6724 of this title] shall take effect on the 60th day after the date on which the temporary regulations are prescribed under subsection (c) [section 20415(c) of Pub. L. 103–322, set out as a Regulations note below]." [Temporary regulations under section 20415(c) of Pub. L. 103–322 were filed Dec. 12, 1994, published Dec. 15, 1994, 59 F.R. 64572, and effective Feb. 13, 1995.]

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, §11318(e), Nov. 5, 1990, 104 Stat. 1388–459, provided that:

"(1) The amendments made by subsections (a) and (b) [amending this section and section 6721 of this title] shall apply to amounts received after the date of the enactment of this Act [Nov. 5, 1990].

"(2) The amendment made by subsection (c) [amending this section] shall take effect on the date of the enactment of this Act.

"(3) Not later than June 1, 1991, the Secretary of the Treasury or his delegate shall prescribe regulations under section 6050I(d)(2) of the Internal Revenue Code of 1986 (as amended by this section)."

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–690, title VII, §7601(a)(3), Nov. 18, 1988, 102 Stat. 4504, provided that: "The amendments made by this subsection [amending this section and sections 6721 and 7203 of this title] shall apply to actions after the date of the enactment of this Act [Nov. 18, 1988]."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1986, see section 1501(e) of Pub. L. 99–514, set out as an Effective Date note under section 6721 of this title.

EFFECTIVE DATE

Pub. L. 98–369, div. A, title I, §146(d), July 18, 1984, 98 Stat. 687, provided that: "The amendments made by this section [enacting this section and amending sections 6652 and 6678 of this title] shall apply to amounts received after December 31, 1984."

REGULATIONS

Pub. L. 103–322, title II, §20415(c), Sept. 13, 1994, 108 Stat. 1833, provided that: "The Secretary of the Treasury or the Secretary's delegate shall prescribe temporary regulations under the amendments made by this section [amending this section and section 6724 of this title] within 90 days after the date of enactment of this Act [Sept. 13, 1994]." [Temporary regulations under section 20415(c) of Pub. L. 103–322 were filed Dec. 12, 1994, published Dec. 15, 1994, 59 F.R. 64572, and effective Feb. 13, 1995.]

REPORTS ON USES MADE OF CURRENCY TRANSACTION REPORTS

For requirement of Secretary of the Treasury to report to Congress on number of reports filed under this

section yearly, the rate of compliance with reporting requirements, the manner in which Federal agencies collect, organize and analyze such data, and sanctions imposed and indictments filed for failure to comply, see section 101 of Pub. L. 101–647, set out as a note under section 5311 of Title 31, Money and Finance.

NO INFERENCE TO BE DRAWN FROM AMENDMENT

Pub. L. 100–690, title VII, §7601(a)(4), Nov. 18, 1988, 102 Stat. 4504, provided that: "No inference shall be drawn from the amendment made by paragraph (1) [amending this section] on the application of the Internal Revenue Code of 1986 without regard to such amendment."

§6050J. Returns relating to foreclosures and abandonments of security

(a) In general

Any person who, in connection with a trade or business conducted by such person, lends money secured by property and who—

(1) in full or partial satisfaction of any indebtedness, acquires an interest in any property which is security for such indebtedness, or

(2) has reason to know that the property in which such person has a security interest has been abandoned,

shall make a return described in subsection (c) with respect to each of such acquisitions or abandonments, at such time as the Secretary may by regulations prescribe.

(b) Exception

Subsection (a) shall not apply to any loan to an individual secured by an interest in tangible personal property which is not held for investment and which is not used in a trade or business.

(c) Form and manner of return

The return required under subsection (a) with respect to any acquisition or abandonment of property—

(1) shall be in such form as the Secretary may prescribe,

(2) shall contain—

(A) the name and address of each person who is a borrower with respect to the indebtedness which is secured,

(B) a general description of the nature of such property and such indebtedness,

(C) in the case of a return required under subsection (a)(1)—

(i) the amount of such indebtedness at the time of such acquisition, and

(ii) the amount of indebtedness satisfied in such acquisition,

(D) in the case of a return required under subsection (a)(2), the amount of such indebtedness at the time of such abandonment, and

(E) such other information as the Secretary may prescribe.

(d) Applications to governmental units

For purposes of this section—

(1) Treated as persons

The term "person" includes any governmental unit (and any agency or instrumentality thereof).

(2) Special rules

In the case of a governmental unit or any agency or instrumentality thereof—

(A) subsection (a) shall be applied without regard to the trade or business requirement contained therein, and

(B) any return under this section shall be made by the officer or employee appropriately designated for the purpose of making such return.

(e) Statements to be furnished to persons with respect to whom information is required to be

furnished

Every person required to make a return under subsection (a) shall furnish to each person whose name is required to be set forth in such return a written statement showing the name, address, and phone number of the information contact of the person required to make such return. The written statement required under the preceding sentence shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) was made.

(f) Treatment of other dispositions

To the extent provided by regulations prescribed by the Secretary, any transfer of the property which secures the indebtedness to a person other than the lender shall be treated as an abandonment of such property.

(Added Pub. L. 98–369, div. A, title I, §148(a), July 18, 1984, 98 Stat. 687; amended Pub. L. 104–168, title XII, §1201(a)(10), July 30, 1996, 110 Stat. 1470.)

AMENDMENTS

1996—Subsec. (e). Pub. L. 104–168 substituted "name, address, and phone number of the information contact" for "name and address".

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–168 applicable to statements required to be furnished after Dec. 31, 1996 (determined without regard to any extension), see section 1201(b) of Pub. L. 104–168, set out as a note under section 6041 of this title.

EFFECTIVE DATE

Pub. L. 98–369, div. A, title I, §148(d), July 18, 1984, 98 Stat. 689, provided that: "The amendments made by this section [enacting this section and amending sections 6652 and 6678 of this title] shall apply with respect to acquisitions of property and abandonments of property after December 31, 1984."

§6050K. Returns relating to exchanges of certain partnership interests

(a) In general

Except as provided in regulations prescribed by the Secretary, if there is an exchange described in section 751(a) of any interest in a partnership during any calendar year, such partnership shall make a return for such calendar year stating—

(1) the name and address of the transferee and transferor in such exchange, and

(2) such other information as the Secretary may by regulations prescribe.

Such return shall be made at such time and in such manner as the Secretary may require by regulations.

(b) Statements to be furnished to transferor and transferee

Every partnership required to make a return under subsection (a) shall furnish to each person whose name is required to be set forth in such return a written statement showing—

(1) the name, address, and phone number of the information contact of the partnership required to make such return, and

(2) the information required to be shown on the return with respect to such person.

The written statement required under the preceding sentence shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made.

(c) Requirement that transferor notify partnership

(1) In general

In the case of any exchange described in subsection (a), the transferor of the partnership interest

shall promptly notify the partnership of such exchange.

(2) Partnership not required to make return until notice

A partnership shall not be required to make a return under this section with respect to any exchange until the partnership is notified of such exchange.

(Added Pub. L. 98–369, div. A, title I, §149(a), July 18, 1984, 98 Stat. 689; amended Pub. L. 99–514, title XV, §1501(c)(13), title XVIII, §1811(b)(2), Oct. 22, 1986, 100 Stat. 2739, 2833; Pub. L. 104–168, title XII, §1201(a)(11), July 30, 1996, 110 Stat. 1470.)

AMENDMENTS

1996—Subsec. (b)(1). Pub. L. 104–168 substituted "name, address, and phone number of the information contact" for "name and address".

1986—Subsec. (b). Pub. L. 99–514, §1501(c)(13), in amending subsec. (b) generally, substituted references to partnerships required to make a return for former references to partnerships making a return and references to persons whose name is required to be set forth for former references to persons whose name is set forth.

Subsec. (c)(2). Pub. L. 99–514, §1811(b)(2), substituted "this section" for "this subsection".

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–168 applicable to statements required to be furnished after Dec. 31, 1996 (determined without regard to any extension), see section 1201(b) of Pub. L. 104–168, set out as a note under section 6041 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1501(c)(13) of Pub. L. 99–514 applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1986, see section 1501(e) of Pub. L. 99–514, set out as an Effective Date note under section 6721 of this title.

Amendment by section 1811(b)(2) of Pub. L. 99–514 applicable to partnership taxable years beginning after Oct. 22, 1986, see section 1811(b)(1)(B) of Pub. L. 99–514, set out as a note under section 6031 of this title.

Amendment by section 1811(b)(2) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Pub. L. 98–369, div. A, title I, §149(d), July 18, 1984, 98 Stat. 690, provided that: "The amendments made by this section [enacting this section and amending sections 6652 and 6678 of this title] shall apply with respect to exchanges after December 31, 1984."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§6050L. Returns relating to certain donated property

(a) Dispositions of donated property

(1) In general

If the donee of any charitable deduction property sells, exchanges, or otherwise disposes of such property within 3 years after its receipt, the donee shall make a return (in accordance with forms and regulations prescribed by the Secretary) showing—

(A) the name, address, and TIN of the donor,

(B) a description of the property,

(C) the date of the contribution,

(D) the amount received on the disposition,

(E) the date of such disposition,

(F) a description of the donee's use of the property, and

(G) a statement indicating whether the use of the property was related to the purpose or function constituting the basis for the donee's exemption under section 501.

In any case in which the donee indicates that the use of applicable property (as defined in section 170(e)(7)(C)) was related to the purpose or function constituting the basis for the exemption of the donee under section 501 under subparagraph (G), the donee shall include with the return the certification described in section 170(e)(7)(D) if such certification is made under section 170(e)(7).

(2) Definitions

For purposes of this subsection:

(A) Charitable deduction property

The term "charitable deduction property" means any property (other than publicly traded securities) contributed in a contribution for which a deduction was claimed under section 170 if the claimed value of such property (plus the claimed value of all similar items of property donated by the donor to 1 or more donees) exceeds $5,000.

(B) Publicly traded securities

The term "publicly traded securities" means securities for which (as of the date of the contribution) market quotations are readily available on an established securities market.

(b) Qualified intellectual property contributions

(1) In general

Each donee with respect to a qualified intellectual property contribution shall make a return (at such time and in such form and manner as the Secretary may by regulations prescribe) with respect to each specified taxable year of the donee showing—

(A) the name, address, and TIN of the donor,

(B) a description of the qualified intellectual property contributed,

(C) the date of the contribution, and

(D) the amount of net income of the donee for the taxable year which is properly allocable to the qualified intellectual property (determined without regard to paragraph (10)(B) of section 170(m) and with the modifications described in paragraphs (5) and (6) of such section).

(2) Definitions

For purposes of this subsection:

(A) In general

Terms used in this subsection which are also used in section 170(m) have the respective meanings given such terms in such section.

(B) Specified taxable year

The term "specified taxable year" means, with respect to any qualified intellectual property contribution, any taxable year of the donee any portion of which is part of the 10-year period beginning on the date of such contribution.

(c) Statement to be furnished to donors

Every person making a return under subsection (a) or (b) shall furnish a copy of such return to the donor at such time and in such manner as the Secretary may by regulations prescribe.

(Added Pub. L. 98–369, div. A, title I, §155(b)(1), July 18, 1984, 98 Stat. 692; amended Pub. L. 108–357, title VIII, §882(c)(1), Oct. 22, 2004, 118 Stat. 1629; Pub. L. 109–280, title XII, §1215(b), Aug. 17, 2006, 120 Stat. 1078.)

AMENDMENTS

2006—Subsec. (a)(1). Pub. L. 109–280, which directed the amendment of section 6050L by adding subpars. (F) and (G) and concluding provisions and substituting "3 years" for "2 years" in introductory

provisions without specifying the act to be amended, was executed to this section, which is section 6050L of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

2004—Pub. L. 108–357 amended section catchline and text generally, substituting provisions consisting of subsecs. (a) to (c) for provisions which, in subsec. (a) required return to be made by donee and set forth contents requirements, in subsec. (b) defined "charitable deduction property" for purposes of this section, in subsec. (c) required copy of return to be furnished to donor by donee, and in subsec. (d) defined "publicly traded securities".

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title XII, §1215(d)(2), Aug. 17, 2006, 120 Stat. 1079, provided that: "The amendments made by subsection (b) [amending this section] shall apply to returns filed after September 1, 2006."

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to contributions made after June 3, 2004, see section 882(f) of Pub. L. 108–357, set out as a note under section 170 of this title.

EFFECTIVE DATE

Pub. L. 98–369, div. A, title I, §155(d)(1), July 18, 1984, 98 Stat. 695, provided that: "The amendments made by subsections (a) and (b) [enacting this section, amending sections 6652 and 6678 of this title, and enacting provisions set out as a note under section 170 of this title] shall apply to contributions made after December 31, 1984, in taxable years ending after such date."

§6050M. Returns relating to persons receiving contracts from Federal executive agencies

(a) Requirement of reporting

The head of every Federal executive agency which enters into any contract shall make a return (at such time and in such form as the Secretary may by regulations prescribe) setting forth—

(1) the name, address, and TIN of each person with which such agency entered into a contract during the calendar year, and

(2) such other information as the Secretary may require.

(b) Federal executive agency

For purposes of this section, the term "Federal executive agency" means—

(1) any Executive agency (as defined in section 105 of title 5, United States Code) other than the Government Accountability Office,

(2) any military department (as defined in section 102 of such title), and

(3) the United States Postal Service and the Postal Regulatory Commission.

(c) Authority to extend reporting to licenses and subcontracts

To the extent provided in regulations, this section also shall apply to—

(1) licenses granted by Federal executive agencies, and

(2) subcontracts under contracts to which subsection (a) applies.

(d) Authority to prescribe minimum amounts

This section shall not apply to contracts or licenses in any class which are below a minimum amount or value which may be prescribed by the Secretary by regulations for such class.

(e) Exception for certain classified or confidential contracts

(1) In general

Except as provided in paragraph (2), this section shall not apply in the case of a contract described in paragraph (3).

(2) Reporting requirement

Each Federal executive agency which has entered into a contract described in paragraph (3) shall, upon a request of the Secretary which identifies a particular person, acknowledge whether

such person has entered into such a contract with such agency and, if so, provide to the Secretary—

(A) the information required under this section with respect to such person, and

(B) such other information with respect to such person which the Secretary and the head of such Federal executive agency agree is appropriate.

(3) Description of contract

For purposes of this subsection, a contract between a Federal executive agency and another person is described in this paragraph if—

(A) the fact of the existence of such contract or the subject matter of such contract has been designated and clearly marked or clearly represented, pursuant to the provisions of Federal law or an Executive order, as requiring a specific degree of protection against unauthorized disclosure for reasons of national security, or

(B) the head of such Federal executive agency (or his designee) pursuant to regulations issued by such agency determines, in writing, that filing the required return under this section would interfere with the effective conduct of a confidential law enforcement or foreign counterintelligence activity.

(Added Pub. L. 99–514, title XV, §1522(a), Oct. 22, 1986, 100 Stat. 2747; amended Pub. L. 100–647, title I, §1015(f), Nov. 10, 1988, 102 Stat. 3570; Pub. L. 109–135, title IV, §412(rr)(2), Dec. 21, 2005, 119 Stat. 2640; Pub. L. 109–435, title VI, §604(f), Dec. 20, 2006, 120 Stat. 3242.)

AMENDMENTS

2006—Subsec. (b)(3). Pub. L. 109–435 substituted "Postal Regulatory Commission" for "Postal Rate Commission".

2005—Subsec. (b)(1). Pub. L. 109–135 substituted "Government Accountability Office" for "General Accounting Office".

1988—Subsec. (e). Pub. L. 100–647 added subsec. (e).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Pub. L. 99–514, title XV, §1522(c), Oct. 22, 1986, 100 Stat. 2747, provided that: "The amendments made by this section [enacting this section] shall apply to contracts (and subcontracts) entered into, and licenses granted, before, on, or after January 1, 1987."

§6050N. Returns regarding payments of royalties

(a) Requirement of reporting

Every person—

(1) who makes payments of royalties (or similar amounts) aggregating $10 or more to any other person during any calendar year, or

(2) who receives payments of royalties (or similar amounts) as a nominee and who makes payments aggregating $10 or more during any calendar year to any other person with respect to the royalties (or similar amounts) so received,

shall make a return according to the forms or regulations prescribed by the Secretary, setting forth the aggregate amount of such payments and the name and address of the person to whom paid.

(b) Statements to be furnished to persons with respect to whom information is furnished

Every person required to make a return under subsection (a) shall furnish to each person whose name is required to be set forth in such return a written statement showing—

(1) the name, address, and phone number of the information contact of the person required to

make such return, and

(2) the aggregate amount of payments to the person required to be shown on such return.

The written statement required under the preceding sentence shall be furnished (either in person or in a statement mailing by first-class mail which includes adequate notice that the statement is enclosed) to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) was made and shall be in such form as the Secretary may prescribe by regulations.

(c) Exception for payments to certain persons

Except to the extent otherwise provided in regulations, this section shall not apply to any amount paid to a person described in subparagraph (A), (B), (C), (D), (E), or (F) of section 6049(b)(4).

(Added Pub. L. 99–514, title XV, §1523(a), Oct. 22, 1986, 100 Stat. 2747; amended Pub. L. 104–168, title XII, §1201(a)(12), July 30, 1996, 110 Stat. 1470.)

AMENDMENTS

1996—Subsec. (b)(1). Pub. L. 104–168 substituted "name, address, and phone number of the information contact" for "name and address".

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–168 applicable to statements required to be furnished after Dec. 31, 1996 (determined without regard to any extension), see section 1201(b) of Pub. L. 104–168, set out as a note under section 6041 of this title.

EFFECTIVE DATE

Pub. L. 99–514, title XV, §1523(d), Oct. 22, 1986, 100 Stat. 2749, provided that: "The amendments made by this section [enacting this section and amending sections 3406, 6041, and 6676 of this title] shall apply with respect to payments made after December 31, 1986."

§6050P. Returns relating to the cancellation of indebtedness by certain entities

(a) In general

Any applicable entity which discharges (in whole or in part) the indebtedness of any person during any calendar year shall make a return (at such time and in such form as the Secretary may by regulations prescribe) setting forth—

(1) the name, address, and TIN of each person whose indebtedness was discharged during such calendar year,

(2) the date of the discharge and the amount of the indebtedness discharged, and

(3) such other information as the Secretary may prescribe.

(b) Exception

Subsection (a) shall not apply to any discharge of less than $600.

(c) Definitions and special rules

For purposes of this section—

(1) Applicable entity

The term "applicable entity" means—

(A) an executive, judicial, or legislative agency (as defined in section 3701(a)(4) of title 31, United States Code), and

(B) an applicable financial entity.

(2) Applicable financial entity

The term "applicable financial entity" means—

(A) any financial institution described in section 581 or 591(a) and any credit union,

(B) the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, the

National Credit Union Administration, and any other Federal executive agency (as defined in section 6050M), and any successor or subunit of any of the foregoing,

(C) any other corporation which is a direct or indirect subsidiary of an entity referred to in subparagraph (A) but only if, by virtue of being affiliated with such entity, such other corporation is subject to supervision and examination by a Federal or State agency which regulates entities referred to in subparagraph (A), and

(D) any organization a significant trade or business of which is the lending of money.

(3) Governmental units

In the case of an entity described in paragraph (1)(A) or (2)(B), any return under this section shall be made by the officer or employee appropriately designated for the purpose of making such return.

(d) Statements to be furnished to persons with respect to whom information is required to be furnished

Every applicable entity required to make a return under subsection (a) shall furnish to each person whose name is required to be set forth in such return a written statement showing—

(1) the name and address of the entity required to make such return, and

(2) the information required to be shown on the return with respect to such person.

The written statement required under the preceding sentence shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) was made.

(e) Alternative procedure

In lieu of making a return required under subsection (a), an agency described in subsection (c)(1)(A) may submit to the Secretary (at such time and in such form as the Secretary may by regulations prescribe) information sufficient for the Secretary to complete such a return on behalf of such agency. Upon receipt of such information, the Secretary shall complete such return and provide a copy of such return to such agency.

(Added Pub. L. 103–66, title XIII, §13252(a), Aug. 10, 1993, 107 Stat. 531; amended Pub. L. 104–134, title III, §31001(m)(2)(A)–(D)(ii), Apr. 26, 1996, 110 Stat. 1321–368, 1321–369; Pub. L. 106–170, title V, §533(a), Dec. 17, 1999, 113 Stat. 1931.)

AMENDMENTS

1999—Subsec. (c)(2)(D). Pub. L. 106–170 added subpar. (D).

1996—Pub. L. 104–134, §31001(m)(2)(D)(ii), amended section catchline generally, striking out "financial" before "entities".

Subsec. (a). Pub. L. 104–134, §31001(m)(2)(A), struck out "financial" before "entity" in introductory provisions.

Subsec. (c). Pub. L. 104–134, §31001(m)(2)(B), added par. (1), redesignated former par. (1) as (2), and redesignated former par. (2) as (3) and substituted "(1)(A) or (2)(B)" for "(1)(B)".

Subsec. (d). Pub. L. 104–134, §31001(m)(2)(D)(i), struck out "financial" before "entity" in introductory provisions.

Subsec. (e). Pub. L. 104–134, §31001(m)(2)(C), added subsec. (e).

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title V, §533(b), Dec. 17, 1999, 113 Stat. 1931, provided that: "The amendment made by subsection (a) [amending this section] shall apply to discharges of indebtedness after December 31, 1999."

EFFECTIVE DATE

Pub. L. 103–66, title XIII, §13252(d), Aug. 10, 1993, 107 Stat. 532, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this section and amending section 6724 of this title] shall apply to discharges of indebtedness after December 31, 1993.

"(2) GOVERNMENTAL ENTITIES.—In the case of an entity referred to in section 6050P(c)(1)(B) of the Internal Revenue Code of 1986 (as added by this section), the amendments made by this section shall apply to

discharges of indebtedness after the date of the enactment of this Act [Aug. 10, 1993]."

§6050Q. Certain long-term care benefits

(a) Requirement of reporting

Any person who pays long-term care benefits shall make a return, according to the forms or regulations prescribed by the Secretary, setting forth—

(1) the aggregate amount of such benefits paid by such person to any individual during any calendar year,

(2) whether or not such benefits are paid in whole or in part on a per diem or other periodic basis without regard to the expenses incurred during the period to which the payments relate,

(3) the name, address, and TIN of such individual, and

(4) the name, address, and TIN of the chronically ill or terminally ill individual on account of whose condition such benefits are paid.

(b) Statements to be furnished to persons with respect to whom information is required

Every person required to make a return under subsection (a) shall furnish to each individual whose name is required to be set forth in such return a written statement showing—

(1) the name, address, and phone number of the information contact of the person making the payments, and

(2) the aggregate amount of long-term care benefits paid to the individual which are required to be shown on such return.

The written statement required under the preceding sentence shall be furnished to the individual on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made.

(c) Long-term care benefits

For purposes of this section, the term "long-term care benefit" means—

(1) any payment under a product which is advertised, marketed, or offered as long-term care insurance, and

(2) any payment which is excludable from gross income by reason of section 101(g).

(Added Pub. L. 104–191, title III, §323(a), Aug. 21, 1996, 110 Stat. 2062; amended Pub. L. 105–34, title XVI, §1602(d)(1), Aug. 5, 1997, 111 Stat. 1094.)

AMENDMENTS

1997—Subsec. (b)(1). Pub. L. 105–34 inserted ", address, and phone number of the information contact" after "name".

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 effective as if included in the provisions of the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104–191, to which such amendment relates, see section 1602(i) of Pub. L. 105–34, set out as a note under section 26 of this title.

EFFECTIVE DATE

Pub. L. 104–191, title III, §323(d), Aug. 21, 1996, 110 Stat. 2063, provided that: "The amendments made by this section [enacting this section and amending section 6724 of this title] shall apply to benefits paid after December 31, 1996."

§6050R. Returns relating to certain purchases of fish

(a) Requirement of reporting

Every person—

(1) who is engaged in the trade or business of purchasing fish for resale from any person

engaged in the trade or business of catching fish; and

(2) who makes payments in cash in the course of such trade or business to such a person of $600 or more during any calendar year for the purchase of fish,

shall make a return (at such times as the Secretary may prescribe) described in subsection (b) with respect to each person to whom such a payment was made during such calendar year.

(b) Return

A return is described in this subsection if such return—

(1) is in such form as the Secretary may prescribe, and

(2) contains—

(A) the name, address, and TIN of each person to whom a payment described in subsection (a)(2) was made during the calendar year,

(B) the aggregate amount of such payments made to such person during such calendar year and the date and amount of each such payment, and

(C) such other information as the Secretary may require.

(c) Statement to be furnished with respect to whom information is required

Every person required to make a return under subsection (a) shall furnish to each person whose name is required to be set forth in such return a written statement showing—

(1) the name, address, and phone number of the information contact of the person required to make such a return, and

(2) the aggregate amount of payments to the person required to be shown on the return.

The written statement required under the preceding sentence shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) is required to be made.

(d) Definitions

For purposes of this section:

(1) Cash

The term "cash" has the meaning given such term by section 6050I(d).

(2) Fish

The term "fish" includes other forms of aquatic life.

(Added Pub. L. 104–188, title I, §1116(b)(1), Aug. 20, 1996, 110 Stat. 1763; amended Pub. L. 105–34, title XVI, §1601(a), Aug. 5, 1997, 111 Stat. 1086; Pub. L. 105–206, title VI, §6023(21), July 22, 1998, 112 Stat. 826.)

AMENDMENTS

1998—Subsec. (b)(2)(A). Pub. L. 105–206 substituted a comma for the semicolon at end.

1997—Pub. L. 105–34, §1601(a)(2), provided that amendment made by section 1116(b)(1) of Pub. L. 104–188, shall be applied as if reference to chapter 68 were a reference to chapter 61. Section 1116(b)(1) of Pub. L. 104–188 directed amendment of subpart B of part III of subchapter A of chapter 68 by adding this section.

Subsec. (c)(1). Pub. L. 105–34, §1601(a)(1), substituted "name, address, and phone number of the information contact" for "name and address".

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 23 of this title.

EFFECTIVE DATE

Pub. L. 104–188, title I, §1116(b)(3), Aug. 20, 1996, 110 Stat. 1764, provided that: "The amendments made by this subsection [enacting this section and amending section 6724 of this title] shall apply to payments made

after December 31, 1997."

§6050S. Returns relating to higher education tuition and related expenses

(a) In general

Any person—

(1) which is an eligible educational institution which enrolls any individual for any academic period;

(2) which is engaged in a trade or business of making payments to any individual under an insurance arrangement as reimbursements or refunds (or similar amounts) of qualified tuition and related expenses; or

(3) except as provided in regulations, which is engaged in a trade or business and, in the course of which, receives from any individual interest aggregating $600 or more for any calendar year on one or more qualified education loans,

shall make the return described in subsection (b) with respect to the individual at such time as the Secretary may by regulations prescribe.

(b) Form and manner of returns

A return is described in this subsection if such return—

(1) is in such form as the Secretary may prescribe, and

(2) contains—

(A) the name, address, and TIN of any individual—

(i) who is or has been enrolled at the institution and with respect to whom transactions described in subparagraph (B) are made during the calendar year, or

(ii) with respect to whom payments described in subsection (a)(2) or (a)(3) were made or received,

(B) the—

(i) aggregate amount of payments received or the aggregate amount billed for qualified tuition and related expenses with respect to the individual described in subparagraph (A) during the calendar year,

(ii) aggregate amount of grants received by such individual for payment of costs of attendance that are administered and processed by the institution during such calendar year,

(iii) amount of any adjustments to the aggregate amounts reported by the institution pursuant to clause (i) or (ii) with respect to such individual for a prior calendar year,

(iv) aggregate amount of reimbursements or refunds (or similar amounts) paid to such individual during the calendar year by a person engaged in a trade or business described in subsection (a)(2), and

(v) aggregate amount of interest received for the calendar year from such individual, and

(C) such other information as the Secretary may prescribe.

(c) Application to governmental units

For purposes of this section—

(1) a governmental unit or any agency or instrumentality thereof shall be treated as a person, and

(2) any return required under subsection (a) by such governmental entity shall be made by the officer or employee appropriately designated for the purpose of making such return.

(d) Statements to be furnished to individuals with respect to whom information is required

Every person required to make a return under subsection (a) shall furnish to each individual whose name is required to be set forth in such return under subparagraph (A) of subsection (b)(2) a written statement showing—

(1) the name, address, and phone number of the information contact of the person required to make such return, and

(2) the amounts described in subparagraph (B) of subsection (b)(2).

The written statement required under the preceding sentence shall be furnished on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made.

(e) Definitions

For purposes of this section, the terms "eligible educational institution" and "qualified tuition and related expenses" have the meanings given such terms by section 25A (without regard to subsection (g)(2) thereof), and except as provided in regulations, the term "qualified education loan" has the meaning given such term by section 221(d)(1).

(f) Returns which would be required to be made by 2 or more persons

Except to the extent provided in regulations prescribed by the Secretary, in the case of any amount received by any person on behalf of another person, only the person first receiving such amount shall be required to make the return under subsection (a).

(g) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section. No penalties shall be imposed under part II of subchapter B of chapter 68 with respect to any return or statement required under this section until such time as such regulations are issued.

(Added and amended Pub. L. 105–34, title II, §§201(c)(1), 202(c), Aug. 5, 1997, 111 Stat. 804, 808; Pub. L. 105–206, title III, §3712(a), (b), title VI, §6004(a)(2), July 22, 1998, 112 Stat. 781, 792; Pub. L. 107–16, title IV, §412(a)(2), June 7, 2001, 115 Stat. 63; Pub. L. 107–131, §1, Jan. 16, 2002, 115 Stat. 2410.)

AMENDMENTS

2002—Subsec. (a)(1). Pub. L. 107–131, §1(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "which is an eligible educational institution—

"(A) which receives payments for qualified tuition and related expenses with respect to any individual for any calendar year; or

"(B) which makes reimbursements or refunds (or similar amounts) to any individual of qualified tuition and related expenses;".

Subsec. (b)(1). Pub. L. 107–131, §1(b)(1), inserted "and" at end.

Subsec. (b)(2)(A). Pub. L. 107–131, §1(b)(2), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "the name, address, and TIN of the individual with respect to whom payments or interest described in subsection (a) were received from (or were paid to),".

Subsec. (b)(2)(B). Pub. L. 107–131, §1(b)(4), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "the—

"(i) aggregate amount of payments for qualified tuition and related expenses received with respect to the individual described in subparagraph (A) during the calendar year,

"(ii) the amount of any grant received by such individual for payment of costs of attendance and processed by the person making such return during such calendar year,

"(iii) aggregate amount of reimbursements or refunds (or similar amounts) paid to such individual during the calendar year by the person making such return, and and

"(iv) aggregate amount of interest received for the calendar year from such individual, and".

Pub. L. 107–131, §1(b)(3), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: "the name, address, and TIN of any individual certified by the individual described in subparagraph (A) as the taxpayer who will claim the individual as a dependent for purposes of the deduction allowable under section 151 for any taxable year ending with or within the calendar year, and".

Subsec. (b)(2)(C), (D). Pub. L. 107–131, §1(b)(3), redesignated subpars. (C) and (D) as (B) and (C), respectively.

Subsec. (d). Pub. L. 107–131, §1(c)(1), struck out "or (B)" after "subparagraph (A)" in introductory provisions.

Subsec. (d)(2). Pub. L. 107–131, §1(c)(2), substituted "subparagraph (B)" for "subparagraph (C)".

2001—Subsec. (e). Pub. L. 107–16 substituted "section 221(d)(1)" for "section 221(e)(1)".

1998—Subsec. (a). Pub. L. 105–206, §6004(a)(2), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: "Any person—

"(1) which is an eligible educational institution which receives payments for qualified tuition and related expenses with respect to any individual for any calendar year, or

"(2) which is engaged in a trade or business and which, in the course of such trade or business—

"(A) makes payments during any calendar year to any individual which constitutes reimbursements or refunds (or similar amounts) of qualified tuition and related expenses of such individual, or

"(B) except as provided in regulations, receives from any individual interest aggregating $600 or more for any calendar year on 1 or more qualified education loans,

shall make the return described in subsection (b) with respect to the individual at such time as the Secretary may by regulations prescribe."

Subsec. (b)(2)(C)(ii). Pub. L. 105–206, §3712(a)(1), added cl. (ii). Former cl. (ii) redesignated (iii).

Subsec. (b)(2)(C)(iii). Pub. L. 105–206, §3712(a)(1), (2), redesignated cl. (ii) as (iii) and inserted "by the person making such return" after "year". Former cl. (iii) redesignated (iv).

Subsec. (b)(2)(C)(iv). Pub. L. 105–206, §3712(a)(1), (3), redesignated cl. (iii) as (iv) and inserted "and" at end.

Subsec. (d)(2). Pub. L. 105–206, §3712(b)(1), struck out "aggregate" before "amounts".

Subsec. (e). Pub. L. 105–206, §3712(b)(2), inserted "(without regard to subsection (g)(2) thereof)" after "section 25A".

1997—Subsec. (a)(2). Pub. L. 105–34, §202(c)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "which is engaged in a trade or business and which, in the course of such trade or business, makes payments during any calendar year to any individual which constitute reimbursements or refunds (or similar amounts) of qualified tuition and related expenses of such individual,".

Subsec. (b)(2)(A). Pub. L. 105–34, §202(c)(2)(A), inserted "or interest" after "payments".

Subsec. (b)(2)(C)(iii). Pub. L. 105–34, §202(c)(2)(B), added cl. (iii).

Subsec. (e). Pub. L. 105–34, §202(c)(3), inserted at end ", and except as provided in regulations, the term 'qualified education loan' has the meaning given such term by section 221(e)(1)".

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–131, §2, Jan. 16, 2002, 115 Stat. 2411, provided that: "The amendments made by section 1 [amending this section] shall apply to expenses paid or assessed after December 31, 2002 (in taxable years ending after such date), for education furnished in academic periods beginning after such date."

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable with respect to any loan interest paid after Dec. 31, 2001, in taxable years ending after such date, see section 412(a)(3) of Pub. L. 107–16, set out as a note under section 221 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–206, title III, §3712(c), July 22, 1998, 112 Stat. 782, provided that: "The amendments made by this section [amending this section] shall apply to returns required to be filed with respect to taxable years beginning after December 31, 1998."

Amendment by section 6004(a)(2) of Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 202(c) of Pub. L. 105–34 applicable to any qualified education loan (as defined in section 221(e)(1) of this title) incurred on, before, or after Aug. 5, 1997, but only with respect to any loan interest payment due and paid after Dec. 31, 1997, and to the portion of the 60-month period referred to in section 221(d) of this title after Dec. 31, 1997, see section 202(e) of Pub. L. 105–34, set out as a note under section 62 of this title.

EFFECTIVE DATE

Section applicable to expenses paid after Dec. 31, 1997 (in taxable years ending after such date) for education furnished in academic periods beginning after such date, see section 201(f) of Pub. L. 105–34, set out as a note under section 25A of this title.

§6050T. Returns relating to credit for health insurance costs of eligible individuals

(a) Requirement of reporting

Every person who is entitled to receive payments for any month of any calendar year under section 7527 (relating to advance payment of credit for health insurance costs of eligible individuals) with respect to any certified individual (as defined in section 7527(c)) shall, at such time as the Secretary may prescribe, make the return described in subsection (b) with respect to each such individual.

(b) Form and manner of returns

A return is described in this subsection if such return—

(1) is in such form as the Secretary may prescribe, and

(2) contains—

(A) the name, address, and TIN of each individual referred to in subsection (a),

(B) the number of months for which amounts were entitled to be received with respect to such individual under section 7527 (relating to advance payment of credit for health insurance costs of eligible individuals),

(C) the amount entitled to be received for each such month, and

(D) such other information as the Secretary may prescribe.

(c) Statements to be furnished to individuals with respect to whom information is required

Every person required to make a return under subsection (a) shall furnish to each individual whose name is required to be set forth in such return a written statement showing—

(1) the name and address of the person required to make such return and the phone number of the information contact for such person, and

(2) the information required to be shown on the return with respect to such individual.

The written statement required under the preceding sentence shall be furnished on or before January 31 of the year following the calendar year for which the return under subsection (a) is required to be made.

(Added Pub. L. 107–210, div. A, title II, §202(c)(1), Aug. 6, 2002, 116 Stat. 962.)

EFFECTIVE DATE

Pub. L. 107–210, div. A, title II, §202(e), Aug. 6, 2002, 116 Stat. 963, provided that: "The amendments made by this section [enacting this section and section 7527 of this title and amending sections 6103, 6724, and 7213A of this title] shall take effect on the date of the enactment of this Act [Aug. 6, 2002]."

CONSTRUCTION

Nothing in title II of Pub. L. 107–210 or the amendments by that title, other than provisions relating to COBRA continuation coverage and reporting requirements, to be construed as creating a new mandate on any party regarding health insurance coverage, see section 203(f) of Pub. L. 107–210, set out as a Construction of 2002 Amendment note under section 2918 of Title 29, Labor.

§6050U. Charges or payments for qualified long-term care insurance contracts under combined arrangements

(a) Requirement of reporting

Any person who makes a charge against the cash value of an annuity contract, or the cash surrender value of a life insurance contract, which is excludible from gross income under section 72(e)(11) shall make a return, according to the forms or regulations prescribed by the Secretary, setting forth—

(1) the amount of the aggregate of such charges against each such contract for the calendar year,

(2) the amount of the reduction in the investment in each such contract by reason of such charges, and

(3) the name, address, and TIN of the individual who is the holder of each such contract.

(b) Statements to be furnished to persons with respect to whom information is required

Every person required to make a return under subsection (a) shall furnish to each individual whose name is required to be set forth in such return a written statement showing—

(1) the name, address, and phone number of the information contact of the person making the payments, and

(2) the information required to be shown on the return with respect to such individual.

The written statement required under the preceding sentence shall be furnished to the individual on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made.

(Added Pub. L. 109–280, title VIII, §844(d)(1), Aug. 17, 2006, 120 Stat. 1012.)

EFFECTIVE DATE

Section applicable to contracts issued after Dec. 31, 1996, but only with respect to taxable years beginning after Dec. 31, 2009, and to charges made after Dec. 31, 2009, see section 844(g)(1), (3) of Pub. L. 109–280, set out as an Effective Date of 2006 Amendment note under section 72 of this title.

§6050V. Returns relating to applicable insurance contracts in which certain exempt organizations hold interests

(a) In general

Each applicable exempt organization which makes a reportable acquisition shall make the return described in subsection (c).

(b) Time for making return

Any applicable exempt organization required to make a return under subsection (a) shall file such return at such time as may be established by the Secretary.

(c) Form and manner of returns

A return is described in this subsection if such return—

(1) is in such form as the Secretary prescribes,

(2) contains the name, address, and taxpayer identification number of the applicable exempt organization and the issuer of the applicable insurance contract, and

(3) contains such other information as the Secretary may prescribe.

(d) Definitions

For purposes of this section—

(1) Reportable acquisition

The term "reportable acquisition" means the acquisition by an applicable exempt organization of a direct or indirect interest in any applicable insurance contract in any case in which such acquisition is a part of a structured transaction involving a pool of such contracts.

(2) Applicable insurance contract

(A) In general

The term "applicable insurance contract" means any life insurance, annuity, or endowment contract with respect to which both an applicable exempt organization and a person other than an applicable exempt organization have directly or indirectly held an interest in the contract (whether or not at the same time).

(B) Exceptions

Such term shall not include a life insurance, annuity, or endowment contract if—

(i) all persons directly or indirectly holding any interest in the contract (other than applicable exempt organizations) have an insurable interest in the insured under the contract independent of any interest of an applicable exempt organization in the contract,

(ii) the sole interest in the contract of an applicable exempt organization or each person other than an applicable exempt organization is as a named beneficiary, or

(iii) the sole interest in the contract of each person other than an applicable exempt organization is—

(I) as a beneficiary of a trust holding an interest in the contract, but only if the person's designation as such beneficiary was made without consideration and solely on a purely gratuitous basis, or

(II) as a trustee who holds an interest in the contract in a fiduciary capacity solely for the benefit of applicable exempt organizations or persons otherwise described in subclause (I) or clause (i) or (ii).

(3) Applicable exempt organization

The term "applicable exempt organization" means—

(A) an organization described in section 170(c),

(B) an organization described in section 168(h)(2)(A)(iv), or

(C) an organization not described in paragraph (1) or (2) which is described in section 2055(a) or section 2522(a).

(e) Termination

This section shall not apply to reportable acquisitions occurring after the date which is 2 years after the date of the enactment of this section.

(Added Pub. L. 109–280, title XII, §1211(a)(1), Aug. 17, 2006, 120 Stat. 1072.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (e), is the date of enactment of Pub. L. 109–280, which was approved Aug. 17, 2006.

CODIFICATION

Section 1211(a)(1) of Pub. L. 109–280, which directed the addition of section 6050V at the end of subpart B of part III of subchapter A of chapter 61, without specifying the act to be amended, was executed by adding section 6050V at the end of subpart B of part III of subchapter A of chapter 61 of this title, which consists of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

EFFECTIVE DATE

Pub. L. 109–280, title XII, §1211(d), Aug. 17, 2006, 120 Stat. 1074, provided that: "The amendments made by this section [enacting this section and amending sections 6721 and 6724 of this title] shall apply to acquisitions of contracts after the date of enactment of this Act [Aug. 17, 2006]."

§6050W. Returns relating to payments made in settlement of payment card and third party network transactions

(a) In general

Each payment settlement entity shall make a return for each calendar year setting forth—

(1) the name, address, and TIN of each participating payee to whom one or more payments in settlement of reportable payment transactions are made, and

(2) the gross amount of the reportable payment transactions with respect to each such participating payee.

Such return shall be made at such time and in such form and manner as the Secretary may require

by regulations.

(b) Payment settlement entity

For purposes of this section—

(1) In general

The term "payment settlement entity" means—

(A) in the case of a payment card transaction, the merchant acquiring entity, and

(B) in the case of a third party network transaction, the third party settlement organization.

(2) Merchant acquiring entity

The term "merchant acquiring entity" means the bank or other organization which has the contractual obligation to make payment to participating payees in settlement of payment card transactions.

(3) Third party settlement organization

The term "third party settlement organization" means the central organization which has the contractual obligation to make payment to participating payees of third party network transactions.

(4) Special rules related to intermediaries

For purposes of this section—

(A) Aggregated payees

In any case where reportable payment transactions of more than one participating payee are settled through an intermediary—

(i) such intermediary shall be treated as the participating payee for purposes of determining the reporting obligations of the payment settlement entity with respect to such transactions, and

(ii) such intermediary shall be treated as the payment settlement entity with respect to the settlement of such transactions with the participating payees.

(B) Electronic payment facilitators

In any case where an electronic payment facilitator or other third party makes payments in settlement of reportable payment transactions on behalf of the payment settlement entity, the return under subsection (a) shall be made by such electronic payment facilitator or other third party in lieu of the payment settlement entity.

(c) Reportable payment transaction

For purposes of this section—

(1) In general

The term "reportable payment transaction" means any payment card transaction and any third party network transaction.

(2) Payment card transaction

The term "payment card transaction" means any transaction in which a payment card is accepted as payment.

(3) Third party network transaction

The term "third party network transaction" means any transaction which is settled through a third party payment network.

(d) Other definitions

For purposes of this section—

(1) Participating payee

(A) In general

The term "participating payee" means—

(i) in the case of a payment card transaction, any person who accepts a payment card as payment, and

(ii) in the case of a third party network transaction, any person who accepts payment from a third party settlement organization in settlement of such transaction.

(B) Exclusion of foreign persons

Except as provided by the Secretary in regulations or other guidance, such term shall not include any person with a foreign address.

(C) Inclusion of governmental units

The term "person" includes any governmental unit (and any agency or instrumentality thereof).

(2) Payment card

The term "payment card" means any card which is issued pursuant to an agreement or arrangement which provides for—

(A) one or more issuers of such cards,

(B) a network of persons unrelated to each other, and to the issuer, who agree to accept such cards as payment, and

(C) standards and mechanisms for settling the transactions between the merchant acquiring entities and the persons who agree to accept such cards as payment.

The acceptance as payment of any account number or other indicia associated with a payment card shall be treated for purposes of this section in the same manner as accepting such payment card as payment.

(3) Third party payment network

The term "third party payment network" means any agreement or arrangement—

(A) which involves the establishment of accounts with a central organization by a substantial number of persons who—

(i) are unrelated to such organization,

(ii) provide goods or services, and

(iii) have agreed to settle transactions for the provision of such goods or services pursuant to such agreement or arrangement,

(B) which provides for standards and mechanisms for settling such transactions, and

(C) which guarantees persons providing goods or services pursuant to such agreement or arrangement that such persons will be paid for providing such goods or services.

Such term shall not include any agreement or arrangement which provides for the issuance of payment cards.

(e) Exception for de minimis payments by third party settlement organizations

A third party settlement organization shall be required to report any information under subsection (a) with respect to third party network transactions of any participating payee only if—

(1) the amount which would otherwise be reported under subsection (a)(2) with respect to such transactions exceeds $20,000, and

(2) the aggregate number of such transactions exceeds 200.

(f) Statements to be furnished to persons with respect to whom information is required

Every person required to make a return under subsection (a) shall furnish to each person with respect to whom such a return is required a written statement showing—

(1) the name, address, and phone number of the information contact of the person required to make such return, and

(2) the gross amount of the reportable payment transactions with respect to the person required to be shown on the return.

The written statement required under the preceding sentence shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made. Such statement may be furnished electronically, and if so, the email address of the person required to make such return may be shown in lieu of the phone number.

(g) Regulations

The Secretary may prescribe such regulations or other guidance as may be necessary or appropriate to carry out this section, including rules to prevent the reporting of the same transaction more than once.

(Added Pub. L. 110–289, div. C, title III, §3091(a), July 30, 2008, 122 Stat. 2908.)

EFFECTIVE DATE

Section applicable to returns for calendar years beginning after Dec. 31, 2010, with exception for purposes of carrying out any TIN matching program, see section 3091(e) of Pub. L. 110–289, set out as an Effective Date of 2008 Amendment note under section 3406 of this title.

SUBPART C—INFORMATION REGARDING WAGES PAID EMPLOYEES

Sec.

6051. Receipts for employees.
6052. Returns regarding payment of wages in the form of group-term life insurance.
6053. Reporting of tips.

AMENDMENTS

1965—Pub. L. 89–97, title III, §313(e)(2)(D), July 30, 1965, 79 Stat. 385, added item 6053.
1964—Pub. L. 88–272, title II, §204(c)(3), Feb. 26, 1964, 78 Stat. 37, added item 6052.

§6051. Receipts for employees

(a) Requirement

Every person required to deduct and withhold from an employee a tax under section 3101 or 3402, or who would have been required to deduct and withhold a tax under section 3402 (determined without regard to subsection (n)) if the employee had claimed no more than one withholding exemption, or every employer engaged in a trade or business who pays remuneration for services performed by an employee, including the cash value of such remuneration paid in any medium other than cash, shall furnish to each such employee in respect of the remuneration paid by such person to such employee during the calendar year, on or before January 31 of the succeeding year, or, if his employment is terminated before the close of such calendar year, within 30 days after the date of receipt of a written request from the employee if such 30-day period ends before January 31, a written statement showing the following:

(1) the name of such person,

(2) the name of the employee (and his social security account number if wages as defined in section 3121(a) have been paid),

(3) the total amount of wages as defined in section 3401(a),

(4) the total amount deducted and withheld as tax under section 3402,

(5) the total amount of wages as defined in section 3121(a),

(6) the total amount deducted and withheld as tax under section 3101,

[(7) Repealed. Pub. L. 111–226, title II, §219(a)(3), Aug. 10, 2010, 124 Stat. 2403]

(8) the total amount of elective deferrals (within the meaning of section 402(g)(3)) and compensation deferred under section 457, including the amount of designated Roth contributions (as defined in section 402A),

(9) the total amount incurred for dependent care assistance with respect to such employee under

a dependent care assistance program described in section 129(d),

(10) in the case of an employee who is a member of the Armed Forces of the United States, such employee's earned income as determined for purposes of section 32 (relating to earned income credit),

(11) the amount contributed to any Archer MSA (as defined in section 220(d)) of such employee or such employee's spouse,

(12) the amount contributed to any health savings account (as defined in section 223(d)) of such employee or such employee's spouse,

(13) the total amount of deferrals for the year under a nonqualified deferred compensation plan (within the meaning of section 409A(d)), and

(14) the aggregate cost (determined under rules similar to the rules of section 4980B(f)(4)) of applicable employer-sponsored coverage (as defined in section 4980I(d)(1)), except that this paragraph shall not apply to—

(A) coverage to which paragraphs (11) and (12) apply, or

(B) the amount of any salary reduction contributions to a flexible spending arrangement (within the meaning of section 125).

In the case of compensation paid for service as a member of a uniformed service, the statement shall show, in lieu of the amount required to be shown by paragraph (5), the total amount of wages as defined in section 3121(a), computed in accordance with such section and section 3121(i)(2). In the case of compensation paid for service as a volunteer or volunteer leader within the meaning of the Peace Corps Act, the statement shall show, in lieu of the amount required to be shown by paragraph (5), the total amount of wages as defined in section 3121(a), computed in accordance with such section and section 3121(i)(3). In the case of tips received by an employee in the course of his employment, the amounts required to be shown by paragraphs (3) and (5) shall include only such tips as are included in statements furnished to the employer pursuant to section 6053(a). The amounts required to be shown by paragraph (5) shall not include wages which are exempted pursuant to sections 3101(c) and 3111(c) from the taxes imposed by sections 3101 and 3111. In the case of the amounts required to be shown by paragraph (13), the Secretary may (by regulation) establish a minimum amount of deferrals below which paragraph (13) does not apply.

(b) Special rule as to compensation of members of Armed Forces

In the case of compensation paid for service as a member of the Armed Forces, the statement required by subsection (a) shall be furnished if any tax was withheld during the calendar year under section 3402, or if any of the compensation paid during such year is includible in gross income under chapter 1, or if during the calendar year any amount was required to be withheld as tax under section 3101. In lieu of the amount required to be shown by paragraph (3) of subsection (a), such statement shall show as wages paid during the calendar year the amount of such compensation paid during the calendar year which is not excluded from gross income under chapter 1 (whether or not such compensation constituted wages as defined in section 3401(a)).

(c) Additional requirements

The statements required to be furnished pursuant to this section in respect of any remuneration shall be furnished at such other times, shall contain such other information, and shall be in such form as the Secretary may by regulations prescribe. The statements required under this section shall also show the proportion of the total amount withheld as tax under section 3101 which is for financing the cost of hospital insurance benefits under part A of title XVIII of the Social Security Act.

(d) Statements to constitute information returns

A duplicate of any statement made pursuant to this section and in accordance with regulations prescribed by the Secretary shall, when required by such regulations, be filed with the Secretary.

(e) Railroad employees

(1) Additional requirement

Every person required to deduct and withhold tax under section 3201 from an employee shall include on or with the statement required to be furnished such employee under subsection (a) a notice concerning the provisions of this title with respect to the allowance of a credit or refund of the tax on wages imposed by section 3101(b) and the tax on compensation imposed by section 3201 or 3211 which is treated as a tax on wages imposed by section 3101(b).

(2) Information to be supplied to employees

Each person required to deduct and withhold tax under section 3201 during any year from an employee who has also received wages during such year subject to the tax imposed by section 3101(b) shall, upon request of such employee, furnish to him a written statement showing—

(A) the total amount of compensation with respect to which the tax imposed by section 3201 was deducted,

(B) the total amount deducted as tax under section 3201, and

(C) the portion of the total amount deducted as tax under section 3201 which is for financing the cost of hospital insurance under part A of title XVIII of the Social Security Act.

(f) Statements required in case of sick pay paid by third parties

(1) Statements required from payor

(A) In general

If, during any calendar year, any person makes a payment of third-party sick pay to an employee, such person shall, on or before January 15 of the succeeding year, furnish a written statement to the employer in respect of whom such payment was made showing—

(i) the name and, if there is withholding under section 3402(o), the social security number of such employee,

(ii) the total amount of the third-party sick pay paid to such employee during the calendar year, and

(iii) the total amount (if any) deducted and withheld from such sick pay under section 3402.

For purposes of the preceding sentence, the term "third-party sick pay" means any sick pay (as defined in section 3402(o)(2)(C)) which does not constitute wages for purposes of chapter 24 (determined without regard to section 3402(o)(1)).

(B) Special rules

(i) Statements are in lieu of other reporting requirements

The reporting requirements of subparagraph (A) with respect to any payments shall, with respect to such payments, be in lieu of the requirements of subsection (a) and of section 6041.

(ii) Penalties made applicable

For purposes of sections 6674 and 7204, the statements required to be furnished by subparagraph (A) shall be treated as statements required under this section to be furnished to employees.

(2) Information required to be furnished by employer

Every employer who receives a statement under paragraph (1)(A) with respect to sick pay paid to any employee during any calendar year shall, on or before January 31 of the succeeding year, furnish a written statement to such employee showing—

(A) the information shown on the statement furnished under paragraph (1)(A), and

(B) if any portion of the sick pay is excludable from gross income under section 104(a)(3), the portion which is not so excludable and the portion which is so excludable.

To the extent practicable, the information required under the preceding sentence shall be furnished on or with the statement (if any) required under subsection (a).

(Aug. 16, 1954, ch. 736, 68A Stat. 747; Aug. 1, 1956, ch. 837, title IV, §412, 70 Stat. 879; Pub. L.

87–293, title II, §202(a)(4), Sept. 22, 1961, 75 Stat. 626; Pub. L. 89–97, title I, §107, title III, §313(e)(1), July 30, 1965, 79 Stat. 337, 384; Pub. L. 90–248, title V, §502(c)(1), (2), Jan. 2, 1968, 81 Stat. 934; Pub. L. 91–172, title VIII, §805(f)(2), Dec. 30, 1969, 83 Stat. 708; Pub. L. 92–603, title II, §293(a)–(c), Oct. 30, 1972, 86 Stat. 1459; Pub. L. 93–406, title II, §1022(k), Sept. 2, 1974, 88 Stat. 943; Pub. L. 94–455, title XIX, §1906(a)(5), (b)(13)(A), Oct. 4, 1976, 90 Stat. 1824, 1834; Pub. L. 95–216, title III, §317(b)(3), Dec. 20, 1977, 91 Stat. 1540; Pub. L. 95–600, title I, §105(c), Nov. 6, 1978, 92 Stat. 2776; Pub. L. 96–601, §4(e), Dec. 24, 1980, 94 Stat. 3497; Pub. L. 97–248, title III, §§307(a)(7), 308(a), Sept. 3, 1982, 96 Stat. 589, 591; Pub. L. 97–362, title I, §107(a), Oct. 25, 1982, 96 Stat. 1731; Pub. L. 98–67, title I, §102(a), Aug. 5, 1983, 97 Stat. 369; Pub. L. 99–514, title XI, §1105(b), Oct. 22, 1986, 100 Stat. 2419; Pub. L. 100–647, title I, §§1011B(c)(2)(B), 1018(u)(33), Nov. 10, 1988, 102 Stat. 3489, 3592; Pub. L. 103–465, title VII, §721(b), Dec. 8, 1994, 108 Stat. 5002; Pub. L. 104–191, title III, §301(c)(3), Aug. 21, 1996, 110 Stat. 2049; Pub. L. 106–554, §1(a)(7) [title II, §202(a)(9)], Dec. 21, 2000, 114 Stat. 2763, 2763A–629; Pub. L. 107–16, title VI, §617(d)(1), June 7, 2001, 115 Stat. 105; Pub. L. 108–173, title XII, §1201(d)(3), Dec. 8, 2003, 117 Stat. 2477; Pub. L. 108–357, title VIII, §885(b)(1), Oct. 22, 2004, 118 Stat. 1639; Pub. L. 111–148, title IX, §9002(a), Mar. 23, 2010, 124 Stat. 853; Pub. L. 111–226, title II, §219(a)(3), Aug. 10, 2010, 124 Stat. 2403.)

REFERENCES IN TEXT

The Peace Corps Act, referred to in subsec. (a), is Pub. L. 87–293, Sept. 22, 1961, 75 Stat. 612, as amended, which is classified principally to chapter 34 (§2501 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of Title 22 and Tables.

The Social Security Act, referred to in subsecs. (c) and (e)(2)(C), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§301 et seq.) of Title 42, The Public Health and Welfare. Part A of title XVIII of the Social Security Act is classified to part A (§1395c et seq.) of subchapter XVIII of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2010—Subsec. (a)(7). Pub. L. 111–226 struck out par. (7) which read as follows: "the total amount paid to the employee under section 3507 (relating to advance payment of earned income credit),".

Subsec. (a)(14). Pub. L. 111–148 added par. (14).

2004—Subsec. (a). Pub. L. 108–357, §885(b)(1)(B), inserted at end of concluding provisions "In the case of the amounts required to be shown by paragraph (13), the Secretary may (by regulation) establish a minimum amount of deferrals below which paragraph (13) does not apply."

Subsec. (a)(13). Pub. L. 108–357, §885(b)(1)(A), added par. (13).

2003—Subsec. (a)(12). Pub. L. 108–173 added par. (12).

2001—Subsec. (a)(8). Pub. L. 107–16 inserted ", including the amount of designated Roth contributions (as defined in section 402A)" before comma at end.

2000—Subsec. (a)(11). Pub. L. 106–554 substituted "Archer MSA" for "medical savings account".

1996—Subsec. (a)(11). Pub. L. 104–191 added par. (11).

1994—Subsec. (a)(10). Pub. L. 103–465 added par. (10).

1988—Subsec. (a)(7). Pub. L. 100–647, §1018(u)(33), inserted a comma at end.

Subsec. (a)(9). Pub. L. 100–647, §1011B(c)(2)(B), added par. (9).

1986—Subsec. (a)(8). Pub. L. 99–514 added par. (8).

1983—Subsec. (f)(1)(A). Pub. L. 98–67 repealed amendments made by Pub. L. 97–248. See 1982 Amendment note below.

1982—Subsec. (a). Pub. L. 97–362 substituted "within 30 days after the date of receipt of a written request from the employee if such 30-day period ends before January 31" for "on the day on which the last payment of remuneration is made".

Subsec. (f)(1)(A). Pub. L. 97–248 provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, par. (1)(A) is amended by inserting "subchapter A of" before "chapter 24". Section 102(a), (b) of Pub. L. 98–67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§301–308) of title III of Pub. L. 97–248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 [now 1986] [this title] shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

1980—Subsec. (f). Pub. L. 96–601 added subsec. (f).

1978—Subsec. (a)(7). Pub. L. 95–600 added par. (7).

1977—Subsec. (a). Pub. L. 95–216 directed that the amounts required to be shown by par. (5) shall not include wages which are exempted pursuant to sections 3101(c) and 3111(c) from the taxes imposed by sections 3101 and 3111.

1976—Subsec. (a). Pub. L. 94–455, §1906(a)(5), struck out "and" at end of par. (6), necessitating no change in text, due to Pub. L. 92–603, which made identical amendment in 1972.

Subsecs. (c), (d). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary" wherever appearing.

1974—Subsec. (a). Pub. L. 93–406 inserted "or every employer engaged in a trade or business who pays remuneration for services performed by an employee, including the cash value of such remuneration paid in any medium other than cash," after "exemption,".

1972—Subsec. (a). Pub. L. 92–603, §293(a), struck out reference to section 3201 of this title in introductory text, par. (7), which required written statement to contain total amount of compensation with respect to which tax imposed by section 3201 was deducted, and par. (8), which required written statement to contain total amount deducted as tax under section 3201.

Subsec. (c). Pub. L. 92–603, §293(b), struck out reference to section 3201 of this title.

Subsec. (e). Pub. L. 92–603, §293(c), added subsec. (e).

1969—Subsec. (a). Pub. L. 91–172 inserted "(determined without regard to subsection (n))" after "withhold a tax under section 3402" in introductory provisions.

1968—Subsec. (a). Pub. L. 90–248, §502(c)(1), included reference to section 3201 in introductory provisions and added pars. (7) and (8).

Subsec. (c). Pub. L. 90–248, §502(c)(2), included reference to section 3201 in second sentence.

1965—Subsec. (a). Pub. L. 89–97, §313(e)(1), inserted last sentence providing for inclusion of tips received by an employee in the course of his employment.

Subsec. (c). Pub. L. 89–97, §107, required the statements to show the proportion of the total amount withheld as tax under section 3101 which is for financing the cost of hospital insurance benefits under part A of title XVIII of the Social Security Act.

1961—Subsec. (a). Pub. L. 87–293 provided a special rule with respect to the information to be contained on employees' tax receipts in the case of remuneration paid to volunteers and volunteer leaders in the Peace Corps.

1956—Subsec. (a). Act Aug. 1, 1956, §412(a), inserted provisions prescribing contents of statement in the case of compensation paid for service as a member of the uniformed services.

Subsec. (b). Act Aug. 1, 1956, §412(b), required the furnishing of a statement if during the calendar year any amount was required to be withheld as tax under section 3101 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–226 applicable to taxable years beginning after Dec. 31, 2010, see section 219(c) of Pub. L. 111–226, set out as a note under section 32 of this title.

Pub. L. 111–148, title IX, §9002(b), Mar. 23, 2010, 124 Stat. 854, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2010."

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to amounts deferred after Dec. 31, 2004, with special rules relating to earnings and material modifications and exception for nonelective deferred compensation, see section 885(d) of Pub. L. 108–357, set out as an Effective Date note under section 409A of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–173 applicable to taxable years beginning after Dec. 31, 2003, see section 1201(k) of Pub. L. 108–173, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2005, see section 617(f) of Pub. L. 107–16, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–191 applicable to taxable years beginning after Dec. 31, 1996, see section 301(j) of Pub. L. 104–191, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103–465, title VII, §721(d)(2), Dec. 8, 1994, 108 Stat. 5002, provided that: "The amendments made by subsections (b) and (c) [amending this section and former section 3507 of this title] shall apply to remuneration paid after December 31, 1994."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011B(c)(2)(B) of Pub. L. 100–647 applicable to taxable years beginning after Dec. 31, 1987, see section 1011B(c)(2)(C) of Pub. L. 100–647, set out as a note under section 129 of this title.

Amendment by section 1018(u)(33) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to calendar years beginning after Dec. 31, 1986, but not applicable to employer contributions made during 1987 and attributable to services performed during 1986 under qualified cash or deferred arrangement (as defined in section 401(k) of this title) if, under terms of such arrangement as in effect on Aug. 16, 1986, employee makes election with respect to such contribution before Jan. 1, 1987, and employer identifies amount of such contribution before Jan. 1, 1987, see section 1105(c)(5), (6) of Pub. L. 99–514, as amended, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–362, title I, §107(b), Oct. 25, 1982, 96 Stat. 1731, provided that: "The amendments made by this section [amending this section] shall apply with respect to employees whose employment is terminated after the date of the enactment of this Act [Oct. 25, 1982]."

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–601 applicable to payments made on or after first day of first calendar month beginning more than 120 days after Dec. 24, 1980, see section 4(f) of Pub. L. 96–601, set out as a note under section 3402 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title I, §105(g)(2), Nov. 6, 1978, 92 Stat. 2776, as amended by Pub. L. 96–222, title I, §101(a)(2)(D), Apr. 1, 1980, 94 Stat. 195, provided that: "The amendments made by subsections (b), (c), and (e) [enacting former section 3507 of this title and amending this section and section 6302 of this title] shall apply to remuneration paid after June 30, 1979."

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–406 applicable to plan years to which part I of subtitle A of title II of Pub. L. 93–406 applies, see section 1024 of Pub. L. 93–406, set out as a note under section 401 of this title. For description of the plan years to which part I applies, see section 1017 of Pub. L. 93–406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Pub. L. 92–603, title II, §293(d), Oct. 30, 1972, 86 Stat. 1459, provided that: "The amendments made by this section [amending this section] shall apply in respect to remuneration paid after December 31, 1971."

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to wages paid after Apr. 30, 1970, see section 805(h) of Pub. L. 91–172, set out as a note under section 3402 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Pub. L. 90–248, title V, §502(c)(3), Jan. 2, 1968, 81 Stat. 934, provided that: "The amendments made by paragraphs (1) and (2) [amending this section] shall apply in respect of remuneration paid after December 31, 1967."

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 313(e)(1) of Pub. L. 89–97 applicable only with respect to tips received by employees after 1965, see section 313(f) of Pub. L. 89–97, set out as an Effective Date note under section 6053 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–293 applicable with respect to service performed after Sept. 22, 1961, but in the case of persons serving under the Peace Corps agency established by executive order applicable with respect to service performed on or after the effective date of enrollment, see section 202(c) of Pub. L. 87–293, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Aug. 1, 1956, effective Jan. 1, 1957, see section 603(a) of act Aug. 1, 1956, ch. 837, title VI, 70 Stat. 887.

REPEALS; AMENDMENTS AND APPLICATION OF AMENDMENTS UNAFFECTED

Section 202(a)(4) of Pub. L. 87–293, cited as a credit to this section, was repealed by Pub. L. 89–572, §5(a), Sept. 13, 1966, 80 Stat. 765. Such repeal not deemed to affect amendments to this section contained in such provisions, and continuation in full force and effect until modified by appropriate authority of all determinations, authorization, regulations, orders, contracts, agreements, and other actions issued, undertaken, or entered into under authority of the repealed provisions, see section 5(b) of Pub. L. 89–572, set out as a note under section 2515 of Title 22, Foreign Relations and Intercourse.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§6052. Returns regarding payment of wages in the form of group-term life insurance

(a) Requirement of reporting

Every employer who during any calendar year provides group-term life insurance on the life of an employee during part or all of such calendar year under a policy (or policies) carried directly or indirectly by such employer shall make a return according to the forms or regulations prescribed by the Secretary, setting forth the cost of such insurance and the name and address of the employee on whose life such insurance is provided, but only to the extent that the cost of such insurance is includible in the employee's gross income under section 79(a). For purposes of this section, the extent to which the cost of group-term life insurance is includible in the employee's gross income under section 79(a) shall be determined as if the employer were the only employer paying such employee remuneration in the form of such insurance.

(b) Statements to be furnished to employees with respect to whom information is required

Every employer required to make a return under subsection (a) shall furnish to each employee whose name is required to be set forth in such return a written statement showing the cost of the group-term life insurance shown on such return. The written statement required under the preceding sentence shall be furnished to the employee on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made.

(Added Pub. L. 88–272, title II, §204(c)(1), Feb. 26, 1964, 78 Stat. 37; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 99–514, title XV, §1501(c)(14), Oct. 22, 1986, 100 Stat. 2740.)

AMENDMENTS

1986—Subsec. (b). Pub. L. 99–514, in amending subsec. (b) generally, substituted "information is required" for "information is furnished" in heading, and in text substituted reference to employers required to make a return for former reference to employers making a return and reference to employees whose name is required to be set forth for former reference to employees whose name is set forth.

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1986, see section 1501(e) of Pub. L. 99–514, set out as an Effective Date note under section 6721 of this title.

EFFECTIVE DATE

Section applicable to group-term life insurance provided after Dec. 31, 1963, in taxable years ending after such date, see section 204(d) of Pub. L. 88–272, set out as a note under section 79 of this title.

§6053. Reporting of tips

(a) Reports by employees

Every employee who, in the course of his employment by an employer, receives in any calendar month tips which are wages (as defined in section 3121(a) or section 3401(a)) or which are compensation (as defined in section 3231(e)) shall report all such tips in one or more written statements furnished to his employer on or before the 10th day following such month. Such statements shall be furnished by the employee under such regulations, at such other times before such 10th day, and in such form and manner, as may be prescribed by the Secretary.

(b) Statements furnished by employers

If the tax imposed by section 3101 or section 3201 (as the case may be) with respect to tips reported by an employee pursuant to subsection (a) exceeds the tax which can be collected by the employer pursuant to section 3102 or section 3202 (as the case may be), the employer shall furnish to the employee a written statement showing the amount of such excess. The statement required to be furnished pursuant to this subsection shall be furnished at such time, shall contain such other information, and shall be in such form as the Secretary may by regulations prescribe. When required by such regulations, a duplicate of any such statement shall be filed with the Secretary.

(c) Reporting requirements relating to certain large food or beverage establishments

(1) Report to Secretary

In the case of a large food or beverage establishment, each employer shall report to the Secretary, at such time and manner as the Secretary may prescribe by regulation, the following information with respect to each calendar year:

(A) The gross receipts of such establishment from the provision of food and beverages (other than nonallocable receipts).

(B) The aggregate amount of charge receipts (other than nonallocable receipts).

(C) The aggregate amount of charged tips shown on such charge receipts.

(D) The sum of—

(i) the aggregate amount reported by employees to the employer under subsection (a), plus

(ii) the amount the employer is required to report under section 6051 with respect to service charges of less than 10 percent.

(E) With respect to each employee, the amount allocated to such employee under paragraph (3).

(2) Furnishing of statement to employees

Each employer described in paragraph (1) shall furnish, in such manner as the Secretary may prescribe by regulations, to each employee of the large food or beverage establishment a written statement for each calendar year showing the following information:

(A) The name and address of such employer.

(B) The name of the employee.

(C) The amount allocated to the employee under paragraph (3) for all payroll periods ending within the calendar year.

Any statement under this paragraph shall be furnished to the employee during January of the

calendar year following the calendar year for which such statement is made.

(3) Employee allocation of 8 percent of gross receipts

(A) In general

For purposes of paragraphs (1)(E) and (2)(C), the employer of a large food or beverage establishment shall allocate (as tips for purposes of the requirements of this subsection) among employees performing services during any payroll period who customarily receive tip income an amount equal to the excess of—

(i) 8 percent of the gross receipts (other than nonallocable receipts) of such establishment for the payroll period, over

(ii) the aggregate amount reported by such employees to the employer under subsection (a) for such period.

(B) Method of allocation

The employer shall allocate the amount under subparagraph (A)—

(i) on the basis of a good faith agreement by the employer and the employees, or

(ii) in the absence of an agreement under clause (i), in the manner determined under regulations prescribed by the Secretary.

(C) The Secretary may lower the percentage required to be allocated

Upon the petition of the employer or the majority of employees of such employer, the Secretary may reduce (but not below 2 percent) the percentage of gross receipts required to be allocated under subparagraph (A) where he determines that the percentage of gross receipts constituting tips is less than 8 percent.

(4) Large food or beverage establishment

For purposes of this subsection, the term "large food or beverage establishment" means any trade or business (or portion thereof)—

(A) which provides food or beverages,

(B) with respect to which the tipping of employees serving food or beverages by customers is customary, and

(C) which normally employed more than 10 employees on a typical business day during the preceding calendar year.

For purposes of subparagraph (C), rules similar to the rules of subsections (a) and (b) of section 52 shall apply under regulations prescribed by the Secretary, and an individual who owns 50 percent or more in value of the stock of the corporation operating the establishment shall not be treated as an employee.

(5) Employer not to be liable for wrong allocations

The employer shall not be liable to any person if any amount is improperly allocated under paragraph (3)(B) if such allocation is done in accordance with the regulations prescribed under paragraph (3)(B).

(6) Nonallocable receipts defined

For purposes of this subsection, the term "nonallocable receipts" means receipts which are allocable to—

(A) carryout sales, or

(B) services with respect to which a service charge of 10 percent or more is added.

(7) Application to new businesses

The Secretary shall prescribe regulations for the application of this subsection to new businesses.

(Added Pub. L. 89–97, title III, §313(e)(2)(A), July 30, 1965, 79 Stat. 384; amended Pub. L. 89–212, §2(d), Sept. 29, 1965, 79 Stat. 859; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90

Stat. 1834; Pub. L. 97–248, title III, §314(a), Sept. 3, 1982, 96 Stat. 603; Pub. L. 98–369, div. A, title X, §1072(a), (c)(1), July 18, 1984, 98 Stat. 1052.)

AMENDMENTS

1984—Subsec. (c)(3)(C). Pub. L. 98–369, §1072(a), substituted "Upon the petition of the employer or the majority of employees of such employer, the Secretary" for "The Secretary" and "2 percent" for "5 percent".

Subsec. (c)(4). Pub. L. 98–369, §1072(c)(1), inserted provision that an individual who owns 50 percent or more in value of the stock of the corporation operating the establishment shall not be treated as an employee.

1982—Subsec. (c). Pub. L. 97–248 added subsec. (c).

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

1965—Subsec. (a). Pub. L. 89–212, §2(d)(1), inserted "or which are compensation (as defined in section 3231(e)".

Subsec. (b). Pub. L. 89–212, §2(d)(2), inserted "or section 3201 (as the case may be)" and "or section 3202 (as the case may be)".

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title X, §1072(c)(2), July 18, 1984, 98 Stat. 1052, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to calendar years beginning after December 31, 1982."

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title III, §314(e), Sept. 3, 1982, 96 Stat. 605, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and sections 6001 and 6678 of this title, and enacting provisions set out as a note under this section] shall apply to calendar years beginning after December 31, 1982.

"(2) SPECIAL RULE FOR 1983.—For purposes of section 6053(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], in the case of payroll periods ending before April 1, 1983, an employer must only report with respect to such periods—

"(A) amounts described in subparagraphs (A), (B), (C), and (D) of section 6053(c)(1) of such Code, and

"(B) the name, and identification number, wages paid to, and tips reported by, each tipped employee."

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–212 effective only with respect to tips received after 1965, see section 6 of Pub. L. 89–212, set out as a note under section 3201 of this title.

EFFECTIVE DATE

Pub. L. 89–97, title III, §313(f), July 30, 1965, 79 Stat. 385, provided that: "The amendments made by this section [enacting this section and amending sections 451, 3102, 3121, 3401, 3402, 6051, 6652, and 6674 of this title and section 409 of Title 42, The Public Health and Welfare] shall apply only with respect to tips received by employees after 1965."

REGULATIONS

Pub. L. 98–369, div. A, title X, §1072(b), July 18, 1984, 98 Stat. 1052, provided that: "The Secretary of the Treasury shall prescribe by regulations within 1 year after the date of the enactment of this Act [July 18, 1984] the applicable recordkeeping requirements for tipped employees."

THREAT OF AUDIT PROHIBITED TO COERCE TIP REPORTING ALTERNATIVE COMMITMENT AGREEMENTS

Pub. L. 105–206, title III, §3414, July 22, 1998, 112 Stat. 755, provided that: "The Secretary of the Treasury or the Secretary's delegate shall instruct employees of the Internal Revenue Service that they may not threaten to audit any taxpayer in an attempt to coerce the taxpayer into entering into a Tip Reporting Alternative Commitment Agreement."

MODIFICATION OF TIPS ALLOCATION METHOD

Pub. L. 99–514, title XV, §1571, Oct. 22, 1986, 100 Stat. 2765, provided that: "Effective for any payroll period beginning after December 31, 1986, an establishment may utilize the optional method of tips allocation described in the last sentence of section 31.6053–3(f)(1)(iv) of the Internal Revenue Regulations only if such

establishment employs less than the equivalent of 25 full-time employees during such payroll period."

STUDY OF TIP COMPLIANCE

Pub. L. 97–248, title III, §314(c), Sept. 3, 1982, 96 Stat. 605, directed Secretary of the Treasury or his delegate to submit before Jan. 1, 1987, to Committee on Ways and Means of House of Representatives and to Committee on Finance of Senate a report with respect to tip compliance in food and beverage service industry. Such study to include, but not be limited to, an analysis of tipping patterns, tip-sharing arrangements, and tip compliance patterns.

SUBPART D—INFORMATION REGARDING HEALTH INSURANCE COVERAGE

Sec.
6055. Reporting of health insurance coverage.
6056. Certain employers required to report on health insurance coverage.

PRIOR PROVISIONS

A prior subpart D, consisting of section 6056, related to information concerning private foundations, prior to repeal by Pub. L. 96–603, §1(c), Dec. 28, 1980, 94 Stat. 3504.

AMENDMENTS

2010—Pub. L. 111–148, title X, §10108(j)(3)(G), Mar. 23, 2010, 124 Stat. 915, which directed substitution of "Certain employers" for "Large employers" in item 6056 in the table of sections for subpart D of part III of subchapter A of chapter 1, was executed to this table of sections, which is for subpart D of part III of subchapter A of chapter 61, to reflect the probable intent of Congress.

Pub. L. 111–148, title I, §1514(c), Mar. 23, 2010, 124 Stat. 258, added item 6056.

§6055. Reporting of health insurance coverage

(a) In general

Every person who provides minimum essential coverage to an individual during a calendar year shall, at such time as the Secretary may prescribe, make a return described in subsection (b).

(b) Form and manner of return

(1) In general

A return is described in this subsection if such return—

(A) is in such form as the Secretary may prescribe, and

(B) contains—

(i) the name, address and TIN of the primary insured and the name and TIN of each other individual obtaining coverage under the policy,

(ii) the dates during which such individual was covered under minimum essential coverage during the calendar year,

(iii) in the case of minimum essential coverage which consists of health insurance coverage, information concerning—

(I) whether or not the coverage is a qualified health plan offered through an Exchange established under section 1311 of the Patient Protection and Affordable Care Act, and

(II) in the case of a qualified health plan, the amount (if any) of any advance payment under section 1412 of the Patient Protection and Affordable Care Act of any cost-sharing reduction under section 1402 of such Act or of any premium tax credit under section 36B with respect to such coverage, and

(iv) such other information as the Secretary may require.

(2) Information relating to employer-provided coverage

If minimum essential coverage provided to an individual under subsection (a) consists of health insurance coverage of a health insurance issuer provided through a group health plan of an employer, a return described in this subsection shall include—

(A) the name, address, and employer identification number of the employer maintaining the plan,

(B) the portion of the premium (if any) required to be paid by the employer, and

(C) if the health insurance coverage is a qualified health plan in the small group market offered through an Exchange, such other information as the Secretary may require for administration of the credit under section 45R (relating to credit for employee health insurance expenses of small employers).

(c) Statements to be furnished to individuals with respect to whom information is reported

(1) In general

Every person required to make a return under subsection (a) shall furnish to each individual whose name is required to be set forth in such return a written statement showing—

(A) the name and address of the person required to make such return and the phone number of the information contact for such person, and

(B) the information required to be shown on the return with respect to such individual.

(2) Time for furnishing statements

The written statement required under paragraph (1) shall be furnished on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made.

(d) Coverage provided by governmental units

In the case of coverage provided by any governmental unit or any agency or instrumentality thereof, the officer or employee who enters into the agreement to provide such coverage (or the person appropriately designated for purposes of this section) shall make the returns and statements required by this section.

(e) Minimum essential coverage

For purposes of this section, the term "minimum essential coverage" has the meaning given such term by section 5000A(f).

(Added Pub. L. 111–148, title I, §1502(a), Mar. 23, 2010, 124 Stat. 250.)

REFERENCES IN TEXT

Sections 1311, 1402, and 1412 of the Patient Protection and Affordable Care Act, referred to in subsec. (b)(1)(B)(iii), are classified to sections 18031, 18071, and 18082, respectively, of Title 42, The Public Health and Welfare.

EFFECTIVE DATE

Pub. L. 111–148, title I, §1502(e), Mar. 23, 2010, 124 Stat. 252, provided that: "The amendments made by this section [enacting this section and section 18092 of Title 42, The Public Health and Welfare, and amending section 6724 of this title] shall apply to calendar years beginning after 2013."

§6056. Certain employers required to report on health insurance coverage

(a) In general

Every applicable large employer required to meet the requirements of section 4980H with respect to its full-time employees during a calendar year shall, at such time as the Secretary may prescribe, make a return described in subsection (b).

(b) Form and manner of return

A return is described in this subsection if such return—

(1) is in such form as the Secretary may prescribe, and

(2) contains—

(A) the name, date, and employer identification number of the employer,

(B) a certification as to whether the employer offers to its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan (as defined in section 5000A(f)(2)),

(C) if the employer certifies that the employer did offer to its full-time employees (and their dependents) the opportunity to so enroll—

(i) the length of any waiting period (as defined in section 2701(b)(4) of the Public Health Service Act) with respect to such coverage,

(ii) the months during the calendar year for which coverage under the plan was available,

(iii) the monthly premium for the lowest cost option in each of the enrollment categories under the plan, and

(iv) the employer share of the total allowed costs of benefits provided under the plan,

(D) the number of full-time employees for each month during the calendar year,

(E) the name, address, and TIN of each full-time employee during the calendar year and the months (if any) during which such employee (and any dependents) were covered under any such health benefits plans, and

(F) such other information as the Secretary may require.

The Secretary shall have the authority to review the accuracy of the information provided under this subsection, including the applicable large employer's share under paragraph (2)(C)(iv).

(c) Statements to be furnished to individuals with respect to whom information is reported

(1) In general

Every person required to make a return under subsection (a) shall furnish to each full-time employee whose name is required to be set forth in such return under subsection (b)(2)(E) a written statement showing—

(A) the name and address of the person required to make such return and the phone number of the information contact for such person, and

(B) the information required to be shown on the return with respect to such individual.

(2) Time for furnishing statements

The written statement required under paragraph (1) shall be furnished on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made.

(d) Coordination with other requirements

To the maximum extent feasible, the Secretary may provide that—

(1) any return or statement required to be provided under this section may be provided as part of any return or statement required under section 6051 or 6055, and

(2) in the case of an applicable large employer offering health insurance coverage of a health insurance issuer, the employer may enter into an agreement with the issuer to include information required under this section with the return and statement required to be provided by the issuer under section 6055.

(e) Coverage provided by governmental units

In the case of any applicable large employer which is a governmental unit or any agency or instrumentality thereof, the person appropriately designated for purposes of this section shall make the returns and statements required by this section.

(f) Definitions

For purposes of this section, any term used in this section which is also used in section 4980H shall have the meaning given such term by section 4980H.

(Added and amended Pub. L. 111–148, title I, §1514(a), title X, §§10106(g), 10108(j)(1)–(3)(D),

Mar. 23, 2010, 124 Stat. 256, 911, 914, 915; Pub. L. 112–10, div. B, title VIII, §1858(b)(5), Apr. 15, 2011, 125 Stat. 169.)

REFERENCES IN TEXT

Section 2701 of the Public Health Service Act, referred to in subsec. (b)(2)(C)(i), was classified to section 300gg of this title, was renumbered section 2704, effective for plan years beginning on or after Jan. 1, 2014, with certain exceptions, and amended by Pub. L. 111–148, title I, §§1201(2), 1563(c)(1), formerly §1562(c)(1), title X, §10107(b)(1), Mar. 23, 2010, 124 Stat. 154, 264, 911, and was transferred to section 300gg–3 of this title. A new section 2701, related to fair health insurance premiums, was added and amended by Pub. L. 111–148, title I, §1201(4), title X, §10103(a), Mar. 23, 2010, 124 Stat. 155, 892, and is classified to section 300gg of this title.

PRIOR PROVISIONS

A prior section 6056, added Pub. L. 91–172, title I, §101(d)(3), Dec. 30, 1969, 83 Stat. 521; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, required an annual report by private foundations having at least $5,000 of assets at any time during a taxable year, and prescribed contents, form and availability of the report, prior to repeal by Pub. L. 96–603, §1(c), Dec. 28, 1980, 94 Stat. 3504.

AMENDMENTS

2011—Subsec. (a). Pub. L. 112–10, §1858(b)(5)(A), struck out "and every offering employer" after "calendar year".

Subsec. (b)(2)(C). Pub. L. 112–10, §1858(b)(5)(B), struck out "in the case of an applicable large employer," before "the length" in cl. (i), inserted "and" at the end of cl. (iii), struck out "and" after "plan," at the end of cl. (iv), and struck out cl. (v) which read as follows: "in the case of an offering employer, the option for which the employer pays the largest portion of the cost of the plan and the portion of the cost paid by the employer in each of the enrollment categories under such option,".

Subsecs. (d)(2), (e). Pub. L. 112–10, §1858(b)(5)(C), struck out "or offering employer" after "large employer".

Subsec. (f). Pub. L. 112–10, §1858(b)(5)(D), amended subsec. (f) generally. Prior to amendment, subsec. (f) defined the term "offering employer" and provided that any term used in this section which was also used in section 4980H of this title would have the meaning given such term by section 4980H.

2010—Pub. L. 111–148, §10108(j)(3)(A), substituted "Certain" for "Large" in section catchline.

Subsec. (a). Pub. L. 111–148, §10108(j)(1), inserted "and every offering employer" before "shall".

Subsec. (b). Pub. L. 111–148, §10106(g), inserted at end "The Secretary shall have the authority to review the accuracy of the information provided under this subsection, including the applicable large employer's share under paragraph (2)(C)(iv)."

Subsec. (b)(2)(C)(i). Pub. L. 111–148, §10108(j)(3)(B)(i), inserted "in the case of an applicable large employer," before "the length".

Subsec. (b)(2)(C)(iii). Pub. L. 111–148, §10108(j)(3)(B)(ii), struck out "and" at end.

Subsec. (b)(2)(C)(iv). Pub. L. 111–148, §10108(j)(3)(B)(iv), inserted "and" at end.

Pub. L. 111–148, §10108(j)(3)(B)(iii), which directed substitution of "employer" for "applicable large employer", was executed by making the substitution for "applicable large employer's", to reflect the probable intent of Congress.

Subsec. (b)(2)(C)(v). Pub. L. 111–148, §10108(j)(3)(B)(v), added cl. (v).

Subsecs. (d)(2), (e). Pub. L. 111–148, §10108(j)(3)(C), (D), inserted "or offering employer" after "applicable large employer".

Subsec. (f). Pub. L. 111–148, §10108(j)(2), amended subsec. (f) generally. Prior to amendment, text read as follows: "For purposes of this section, any term used in this section which is also used in section 4980H shall have the meaning given such term by section 4980H."

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112–10 effective as if included in the provisions of, and the amendments made by, the provisions of Pub. L. 111–148 to which it relates, see section 1858(d) of Pub. L. 112–10, set out as a note under section 36B of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–148, title X, §10108(j)(4), Mar. 23, 2010, 124 Stat. 915, provided that: "The amendments made by this subsection [amending this section and section 6724 of this title] shall apply to periods beginning after December 31, 2013."

EFFECTIVE DATE

Pub. L. 111–148, title I, §1514(d), Mar. 23, 2010, 124 Stat. 258, provided that: "The amendments made by this section [enacting this section and amending section 6724 of this title] shall apply to periods beginning after December 31, 2013."

SUBPART E—REGISTRATION OF AND INFORMATION CONCERNING PENSION, ETC., PLANS

Sec.

6057. Annual registration, etc.

6058. Information required in connection with certain plans of deferred compensation.

6059. Periodic report by actuary.[1]

AMENDMENTS

1974—Pub. L. 93–406, title II, §1031(a), Sept. 2, 1974, 88 Stat. 943, added subpart heading and analysis of sections.

[1] *So in original. Does not conform to section catchline.*

§6057. Annual registration, etc.

(a) Annual registration

(1) General rule

Within such period after the end of a plan year as the Secretary may by regulations prescribe, the plan administrator (within the meaning of section 414(g)) of each plan to which the vesting standards of section 203 of part 2 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 applies for such plan year shall file a registration statement with the Secretary.

(2) Contents

The registration statement required by paragraph (1) shall set forth—

(A) the name of the plan,

(B) the name and address of the plan administrator,

(C) the name and taxpayer identifying number of each participant in the plan—

(i) who, during such plan year, separated from the service covered by the plan,

(ii) who is entitled to a deferred vested benefit under the plan as of the end of such plan year, and

(iii) with respect to whom retirement benefits were not paid under the plan during such plan year,

(D) the nature, amount, and form of the deferred vested benefit to which such participant is entitled, and

(E) such other information as the Secretary may require.

At the time he files the registration statement under this subsection, the plan administrator shall furnish evidence satisfactory to the Secretary that he has complied with the requirement contained in subsection (e).

(b) Notification of change in status

Any plan administrator required to register under subsection (a) shall also notify the Secretary, at such time as may be prescribed by regulations, of—

(1) any change in the name of the plan,

(2) any change in the name or address of the plan administrator,

(3) the termination of the plan, or

(4) the merger or consolidation of the plan with any other plan or its division into two or more plans.

(c) Voluntary reports

To the extent provided in regulations prescribed by the Secretary, the Secretary may receive from—

(1) any plan to which subsection (a) applies, and

(2) any other plan (including any governmental plan or church plan (within the meaning of section 414)),

such information (including information relating to plan years beginning before January 1, 1974) as the plan administrator may wish to file with respect to the deferred vested benefit rights of any participant separated from the service covered by the plan during any plan year.

(d) Transmission of information to Commissioner of Social Security

The Secretary shall transmit copies of any statements, notifications, reports, or other information obtained by him under this section to the Commissioner of Social Security.

(e) Individual statement to participant

Each plan administrator required to file a registration statement under subsection (a) shall, before the expiration of the time prescribed for the filing of such registration statement, also furnish to each participant described in subsection (a)(2)(C) an individual statement setting forth the information with respect to such participant required to be contained in such registration statement. Such statement shall also include a notice to the participant of any benefits which are forfeitable if the participant dies before a certain date.

(f) Regulations

(1) In general

The Secretary, after consultation with the Commissioner of Social Security, may prescribe such regulations as may be necessary to carry out the provisions of this section.

(2) Plans to which more than one employer contributes

This section shall apply to any plan to which more than one employer is required to contribute only to the extent provided in regulations prescribed under this subsection.

(g) Cross references

For provisions relating to penalties for failure to register or furnish statements required by this section, see section 6652(d) and section 6690.

For coordination between Department of the Treasury and the Department of Labor with regard to administration of this section, see section 3004 of the Employee Retirement Income Security Act of 1974.

(Added Pub. L. 93–406, title II, §1031(a), Sept. 2, 1974, 88 Stat. 943; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–369, div. B. title VI, §2663(j)(5)(D), July 18, 1984, 98 Stat. 1171; Pub. L. 98–397, title II, §206, Aug. 23, 1984, 98 Stat. 1449; Pub. L. 99–514, title XV, §1501(d)(1)(F), Oct. 22, 1986, 100 Stat. 2740; Pub. L. 103–296, title I, §108(h)(5), Aug. 15, 1994, 108 Stat. 1487.)

REFERENCES IN TEXT

Section 203 of part 2 of subtitle B of title I of the Employee Retirement Income Security Act of 1974, referred to in subsec. (a)(1), is classified to section 1053 of Title 29, Labor. Section 3004 of such Act, referred to in subsec. (g), is classified to section 1204 of Title 29.

AMENDMENTS

1994—Subsecs. (d), (f)(1). Pub. L. 103–296 substituted "Commissioner of Social Security" for "Secretary

of Health and Human Services" in heading and text of subsec. (d) and in text of subsec. (f)(1).

1986—Subsec. (g). Pub. L. 99–514 substituted "section 6652(d)" for "section 6652(e)".

1984—Subsec. (d). Pub. L. 98–369 substituted "Secretary of Health and Human Services" for "Secretary of Health, Education, and Welfare".

Subsec. (e). Pub. L. 98–397 inserted provision that such statement shall also include a notice to the participant of any benefits which are forfeitable if the participant dies before a certain date.

Subsec. (f). Pub. L. 98–369 substituted "Secretary of Health and Human Services" for "Secretary of Health, Education, and Welfare".

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1986, see section 1501(e) of Pub. L. 99–514, set out as an Effective Date note under section 6721 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98–397 applicable to plan years beginning after Dec. 31, 1984, except as otherwise provided, see sections 302 and 303 of Pub. L. 98–397, set out as a note under section 1001 of Title 29, Labor.

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE

Pub. L. 93–406, title X, §1034, Sept. 2, 1974, 88 Stat. 948, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "This part [part 3 (§§1031–1034) of subtitle A of title II of Pub. L. 93–406, enacting this section, sections 6058, 6059, 6690, and 6692 of this title and section 1320b–1 of Title 42, The Public Health and Welfare, and amending sections 6033, 6047, and 6652 of this title] shall take effect upon the date of the enactment of this Act [Sept. 2, 1974]; except that—

"(1) the requirements of section 6059 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall apply only with respect to plan years to which part I of this title applies. [For description of plan years to which part I applies, see section 1017 of Pub. L. 93–406, set out as an Effective Date; Transitional Rules note under section 410 of this title].

"(2) the requirements of section 6057 of such Code shall apply only with respect to plan years beginning after December 31, 1975,

"(3) the requirements of section 6058(a) of such Code shall apply only with respect to plan years beginning after the date of the enactment of this Act [Sept. 2, 1974], and

"(4) the amendments made by section 1032 [enacting section 1320b–1 of Title 42] shall take effect on January 1, 1978."

§6058. Information required in connection with certain plans of deferred compensation

(a) In general

Every employer who maintains a pension, annuity, stock bonus, profit-sharing, or other funded plan of deferred compensation described in part I of subchapter D of chapter 1, or the plan administrator (within the meaning of section 414(g)) of the plan, shall file an annual return stating such information as the Secretary may by regulations prescribe with respect to the qualification, financial conditions, and operations of the plan; except that, in the discretion of the Secretary, the employer may be relieved from stating in its return any information which is reported in other returns.

(b) Actuarial statement in case of mergers, etc.

Not less than 30 days before a merger, consolidation, or transfer of assets or liabilities of a plan described in subsection (a) to another plan, the plan administrator (within the meaning of section 414(g)) shall file an actuarial statement of valuation evidencing compliance with the requirements of section 401(a)(12).

(c) Employer

For purposes of this section, the term "employer" includes a person described in section 401(c)(4) and an individual who establishes an individual retirement plan.

(d) Coordination with income tax returns, etc.

An individual who establishes an individual retirement plan shall not be required to file a return under this section with respect to such plan for any taxable year for which there is—

(1) no special IRP tax, and

(2) no plan activity other than—

(A) the making of contributions (other than rollover contributions), and

(B) the making of distributions.

(e) Special IRP tax defined

For purposes of this section, the term "special IRP tax" means a tax imposed by—

(1) section 408(f),[1]

(2) section 4973, or

(3) section 4974.

(f) Cross references

For provisions relating to penalties for failure to file a return required by this section, see section 6652(e).

For coordination between the Department of the Treasury and the Department of Labor with respect to the information required under this section, see section 3004 of title III of the Employee Retirement Income Security Act of 1974.

(Added Pub. L. 93–406, title II, §1031(a), Sept. 2, 1974, 88 Stat. 945; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–600, title I, §157(k)(1), Nov. 6, 1978, 92 Stat. 2809; Pub. L. 98–369, div. A, title IV, §491(d)(48), July 18, 1984, 98 Stat. 852; Pub. L. 99–514, title XV, §1501(d)(1)(D), Oct. 22, 1986, 100 Stat. 2740.)

REFERENCES IN TEXT

Section 408(f), referred to in subsec. (e)(1), was repealed by Pub. L. 99–514, title XI, §1123(d)(2), Oct. 22, 1986, 100 Stat. 2475.

Section 3004 of title III of the Employee Retirement Income Security Act of 1974, referred to in subsec. (f), is classified to section 1204 of Title 29, Labor.

AMENDMENTS

1986—Subsec. (f). Pub. L. 99–514 substituted "section 6652(e)" for "section 6652(f)".

1984—Subsec. (e). Pub. L. 98–369 struck out par. (2) which included a tax imposed by section 409(c) within term "special IRP tax", and redesignated pars. (3) and (4) as (2) and (3), respectively.

1978—Subsec. (c). Pub. L. 95–600 substituted "an individual retirement plan" for "an individual retirement account or annuity described in section 408".

Subsecs. (d) to (f). Pub. L. 95–600 added subsecs. (d) and (e) and redesignated former subsec. (d) as (f).

1976—Subsec. (a). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1986, see section 1501(e) of Pub. L. 99–514, set out as an Effective Date note under section 6721 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title I, §157(k)(3), Nov. 6, 1978, 92 Stat. 2809, provided that: "The amendments made by paragraph (1) [amending this section] shall apply to returns for taxable years beginning after December 31, 1977. The amendment made by paragraph (2) [amending section 7701 of this title] shall apply to taxable years beginning after December 31, 1974."

EFFECTIVE DATE

Section effective Sept. 2, 1974, except that the requirements of subsec. (a) shall apply only with respect to plan years beginning after Sept. 2, 1974, see section 1034 of Pub. L. 93–406, set out as a note under section 6057 of this title.

REPORTING SIMPLIFICATION

Pub. L. 109–280, title XI, §1103, Aug. 17, 2006, 120 Stat. 1057, provided that:

"(a) SIMPLIFIED ANNUAL FILING REQUIREMENT FOR OWNERS AND THEIR SPOUSES.—

"(1) IN GENERAL.—The Secretary of the Treasury shall modify the requirements for filing annual returns with respect to one-participant retirement plans to ensure that such plans with assets of $250,000 or less as of the close of the plan year need not file a return for that year.

"(2) ONE-PARTICIPANT RETIREMENT PLAN DEFINED.—For purposes of this subsection, the term 'one-participant retirement plan' means a retirement plan with respect to which the following requirements are met:

"(A) on the first day of the plan year—

"(i) the plan covered only one individual (or the individual and the individual's spouse) and the individual owned 100 percent of the plan sponsor (whether or not incorporated), or

"(ii) the plan covered only one or more partners (or partners and their spouses) in the plan sponsor;

"(B) the plan meets the minimum coverage requirements of section 410(b) of the Internal Revenue Code of 1986 without being combined with any other plan of the business that covers the employees of the business;

"(C) the plan does not provide benefits to anyone except the individual (and the individual's spouse) or the partners (and their spouses);

"(D) the plan does not cover a business that is a member of an affiliated service group, a controlled group of corporations, or a group of businesses under common control; and

"(E) the plan does not cover a business that uses the services of leased employees (within the meaning of section 414(n) of such Code).

For purposes of this paragraph, the term 'partner' includes a 2-percent shareholder (as defined in section 1372(b) of such Code) of an S corporation.

"(3) OTHER DEFINITIONS.—Terms used in paragraph (2) which are also used in section 414 of the Internal Revenue Code of 1986 shall have the respective meanings given such terms by such section.

"(4) EFFECTIVE DATE.—The provisions of this subsection shall apply to plan years beginning on or after January 1, 2007.

"(b) SIMPLIFIED ANNUAL FILING REQUIREMENT FOR PLANS WITH FEWER THAN 25 PARTICIPANTS.—In the case of plan years beginning after December 31, 2006, the Secretary of the Treasury and the Secretary of Labor shall provide for the filing of a simplified annual return for any retirement plan which covers less than 25 participants on the first day of a plan year and which meets the requirements described in subparagraphs (B), (D), and (E) of subsection (a)(2)."

[1] *See References in Text note below.*

§6059. Periodic report of actuary

(a) General rule

The actuarial report described in subsection (b) shall be filed by the plan administrator (as defined in section 414(g) of each defined benefit plan to which section 412 applies, for the first plan year for which section 412 applies to the plan and for each third plan year thereafter (or more frequently if the Secretary determines that more frequent reports are necessary).

(b) Actuarial report

The actuarial report of a plan required by subsection (a) shall be prepared and signed by an enrolled actuary (within the meaning of section 7701(a)(35)) and shall contain—

(1) a description of the funding method and actuarial assumptions used to determine costs under the plan,

(2) a certification of the contribution necessary to reduce the minimum required contribution determined under section 430, the accumulated funding deficiency under section 433, or the accumulated funding deficiency determined under section 431, to zero,

(3) a statement—

(A) that to the best of his knowledge the report is complete and accurate, and

(B) the requirements for reasonable actuarial assumptions under section 430(h)(1), 431(c)(3), or 433(c)(3), whichever are applicable, have been complied with.[1]

(4) such other information as may be necessary to fully and fairly disclose the actuarial position of the plan, and

(5) such other information regarding the plan as the Secretary may by regulations require.

(c) Time and manner of filing

The actuarial report and statement required by this section shall be filed at the time and in the manner provided by regulations prescribed by the Secretary.

(d) Cross reference

For coordination between the Department of the Treasury and the Department of Labor with respect to the report required to be filed under this section, see section 3004 of title III of the Employee Retirement Income Security Act of 1974.

(Added Pub. L. 93–406, title II, §1033(a), Sept. 2, 1974, 88 Stat. 947; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 109–280, title I, §114(f), Aug. 17, 2006, 120 Stat. 855; Pub. L. 113–97, title II, §202(c)(10), Apr. 7, 2014, 128 Stat. 1138.)

REFERENCES IN TEXT

Section 3004 of title III of the Employee Retirement Income Security Act of 1974, referred to in subsec. (d), is classified to section 1204 of Title 29, Labor.

AMENDMENTS

2014—Subsec. (b)(2). Pub. L. 113–97, §202(c)(10)(A), substituted "430, the accumulated funding deficiency under section 433," for "430,".

Subsec. (b)(3)(B). Pub. L. 113–97, §202(c)(10)(B), substituted "430(h)(1), 431(c)(3), or 433(c)(3)" for "430(h)(1) or 431(c)(3)".

2006—Subsec. (b)(2). Pub. L. 109–280, §114(f)(1), substituted "the minimum required contribution determined under section 430, or the accumulated funding deficiency determined under section 431," for "the accumulated funding deficiency (as defined in section 412(a))".

Subsec. (b)(3)(B). Pub. L. 109–280, §114(f)(2), added subpar. (B) and struck out former subpar. (B) which read as follows: "the requirements of section 412(c) (relating to reasonable actuarial assumptions) have been complied with,".

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–97 applicable to years beginning after Dec. 31, 2013, see section 3 of Pub. L. 113–97, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 applicable to plan years beginning after 2007, see section 114(g)(1) of Pub. L. 109–280, as added by Pub. L. 110–458, set out as a note under section 401 of this title.

EFFECTIVE DATE

Requirements of section applicable only with respect to plan years to which part I of subtitle A of title II of Pub. L. 93–406 applies, see section 1034(1) of Pub. L. 93–406, set out as an note under section 6057 of this

title. For a description of the plan years to which part 1 applies, see section 1017 of Pub. L. 93–406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

APPLICABILITY OF AMENDMENTS BY SUBTITLES A AND B OF TITLE I OF PUB. L. 109–280

For special rules on applicability of amendments by subtitles A (§§101–108) and B (§§111–116) of title I of Pub. L. 109–280 to certain eligible cooperative plans, PBGC settlement plans, and eligible government contractor plans, see sections 104, 105, and 106 of Pub. L. 109–280, set out as notes under section 401 of this title.

CONSOLIDATION OF ACTUARIAL REPORTS

Pub. L. 93–406, title X, §1033(c), Sept. 2, 1974, 88 Stat. 948, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The Secretary of the Treasury and the Secretary of Labor shall take such steps as may be necessary to assure coordination to the maximum extent feasible between the actuarial reports required by section 6059 of the Internal Revenue Code of 1986 and by section 103(d) of title I of the Employee Retirement Income Security Act of 1974 [section 1023(d) of Title 29, Labor]."

[1] *So in original. The period probably should be a comma.*

SUBPART F—INFORMATION CONCERNING TAX RETURN PREPARERS

Sec.
6060. Information returns of tax return preparers.

AMENDMENTS

2007—Pub. L. 110–28, title VIII, §8246(a)(2)(A)(iii), (iv), May 25, 2007, 121 Stat. 201, substituted "Tax Return Preparers" for "Income Tax Return Preparers" in subpart heading and "tax return preparers" for "income tax return preparers" in item 6060.

1976—Pub. L. 94–455, title XII, §1203(e), Oct. 4, 1976, 90 Stat. 1691, added subpart heading and analysis for subpart F.

§6060. Information returns of tax return preparers

(a) General rule

Any person who employs a tax return preparer to prepare any return or claim for refund other than for such person at any time during a return period shall make a return setting forth the name, taxpayer identification number, and place of work of each tax return preparer employed by him at any time during such period. For purposes of this section, any individual who in acting as a tax return preparer is not the employee of another tax return preparer shall be treated as his own employer. The return required by this section shall be filed, in such manner as the Secretary may by regulations prescribe, on or before the first July 31 following the end of such return period.

(b) Alternative reporting

In lieu of the return required by subsection (a), the Secretary may approve an alternative reporting method if he determines that the necessary information is available to him from other sources.

(c) Return period defined

For purposes of subsection (a), the term "return period" means the 12-month period beginning on July 1 of each year, except that the first return period shall be the 6-month period beginning on January 1, 1977, and ending on June 30, 1977.

(Added Pub. L. 94–455, title XII, §1203(e), Oct. 4, 1976, 90 Stat. 1691; amended Pub. L. 110–28, title VIII, §8246(a)(2)(A)(i), (ii), May 25, 2007, 121 Stat. 201.)

AMENDMENTS

2007—Pub. L. 110–28, §8246(a)(2)(A)(i), substituted "tax return preparers" for "income tax return preparers" in section catchline.

Subsec. (a). Pub. L. 110–28, §8246(a)(2)(A)(ii), substituted "a tax return preparer" for "an income tax return preparer" in two places, "each tax return preparer" for "each income tax return preparer", and "another tax return preparer" for "another income tax return preparer".

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–28, title VIII, §8246(c), May 25, 2007, 121 Stat. 203, provided that: "The amendments made by this section [amending this section and sections 6103, 6107, 6109, 6503, 6694 to 6696, 7407, 7427, and 7701 of this title] shall apply to returns prepared after the date of the enactment of this Act [May 25, 2007]."

EFFECTIVE DATE

Section applicable to documents prepared after Dec. 31, 1976, see section 1203(j) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 7701 of this title.

PART IV—SIGNING AND VERIFYING OF RETURNS AND OTHER DOCUMENTS

Sec.
6061. Signing of returns and other documents.
6062. Signing of corporation returns.
6063. Signing of partnership returns.
6064. Signature presumed authentic.
6065. Verification of returns.

§6061. Signing of returns and other documents

(a) General rule

Except as otherwise provided by subsection (b) and sections 6062 and 6063, any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall be signed in accordance with forms or regulations prescribed by the Secretary.

(b) Electronic signatures

(1) In general

The Secretary shall develop procedures for the acceptance of signatures in digital or other electronic form. Until such time as such procedures are in place, the Secretary may—

(A) waive the requirement of a signature for; or

(B) provide for alternative methods of signing or subscribing,

a particular type or class of return, declaration, statement, or other document required or permitted to be made or written under internal revenue laws and regulations.

(2) Treatment of alternative methods

Notwithstanding any other provision of law, any return, declaration, statement, or other document filed and verified, signed, or subscribed under any method adopted under paragraph (1)(B) shall be treated for all purposes (both civil and criminal, including penalties for perjury) in the same manner as though signed or subscribed.

(3) Published guidance

The Secretary shall publish guidance as appropriate to define and implement any waiver of the signature requirements or any method adopted under paragraph (1).

(Aug. 16, 1954, ch. 736, 68A Stat. 748; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 105–206, title II, §2003(a), July 22, 1998, 112 Stat. 724.)

AMENDMENTS

1998—Pub. L. 105–206 designated existing provisions as subsec. (a), inserted subsec. heading, substituted

"Except as otherwise provided by subsection (b) and" for "Except as otherwise provided by", and added subsec. (b).

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–206, title II, §2003(f), July 22, 1998, 112 Stat. 725, provided that: "The amendments made by this section [amending this section and section 7502 of this title] shall take effect on the date of the enactment of this Act [July 22, 1998]."

§6062. Signing of corporation returns

The return of a corporation with respect to income shall be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized so to act. In the case of a return made for a corporation by a fiduciary pursuant to the provisions of section 6012(b)(3), such fiduciary shall sign the return. The fact that an individual's name is signed on the return shall be prima facie evidence that such individual is authorized to sign the return on behalf of the corporation.

(Aug. 16, 1954, ch. 736, 68A Stat. 748.)

§6063. Signing of partnership returns

The return of a partnership made under section 6031 shall be signed by any one of the partners. The fact that a partner's name is signed on the return shall be prima facie evidence that such partner is authorized to sign the return on behalf of the partnership.

(Aug. 16, 1954, ch. 736, 68A Stat. 748.)

§6064. Signature presumed authentic

The fact that an individual's name is signed to a return, statement, or other document shall be prima facie evidence for all purposes that the return, statement, or other document was actually signed by him.

(Aug. 16, 1954, ch. 736, 68A Stat. 749.)

§6065. Verification of returns

Except as otherwise provided by the Secretary, any return, declaration, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall contain or be verified by a written declaration that it is made under the penalties of perjury.

(Aug. 16, 1954, ch. 736, 68A Stat. 749; Pub. L. 94–455, title XIX, §1906(a)(6), (b)(13)(A), Oct. 4, 1976, 90 Stat. 1824, 1834.)

AMENDMENTS

1976—Pub. L. 94–455, §1906(a)(6), struck out provisions relating to the authority of the Secretary or his delegate to require that any return, statement, or other document to be made under provision of the internal revenue laws or regulations shall be verified by an oath.

Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective on first day of first month which begins more than ninety days after Oct. 4, 1976, see section 1906(d)(1) of Pub. L. 94–455, set out as a note under section 6013 of this title.

PART V—TIME FOR FILING RETURNS AND OTHER DOCUMENTS

Sec.
6071. Time for filing returns and other documents.
6072. Time for filing income tax returns.
[6073, 6074. Repealed.]
6075. Time for filing estate and gift tax returns.
[6076. Repealed.]

AMENDMENTS

1988—Pub. L. 100–418, title I, §1941(b)(3)(C), Aug. 23, 1988, 102 Stat. 1324, struck out item 6076 "Time for filing return of windfall profit tax".

1984—Pub. L. 98–369, div. A, title IV, §412(c)(2), July 18, 1984, 98 Stat. 793, struck out item 6073 "Time for filing declarations of estimated income tax by individuals".

1980—Pub. L. 96–223, title I, §101(c)(1)(B), Apr. 2, 1980, 94 Stat. 250, added item 6076.

1976—Pub. L. 94–455, title XIX, §1904(b)(10)(A)(iii)(II), Oct. 4, 1976, 90 Stat. 1817, struck out item 6076 "Time for filing interest equalization tax returns".

1968—Pub. L. 90–364, title I, §103(e)(8), June 28, 1968, 82 Stat. 264, struck out item 6074 "Time for filing declarations of estimated income tax by corporations".

1964—Pub. L. 88–563, §3(d), Sept. 2, 1964, 78 Stat. 845, added item 6076.

§6071. Time for filing returns and other documents

(a) General rule

When not otherwise provided for by this title, the Secretary shall by regulations prescribe the time for filing any return, statement, or other document required by this title or by regulations.

(b) Electronically filed information returns

Returns made under subparts B and C of part III of this subchapter which are filed electronically shall be filed on or before March 31 of the year following the calendar year to which such returns relate.

(c) Special taxes

For payment of special taxes before engaging in certain trades and businesses, see section 4901 and section 5732.

(Aug. 16, 1954, ch. 736, 68A Stat. 749; Pub. L. 85–859, title II, §204(1), Sept. 2, 1958, 72 Stat. 1428; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 105–206, title II, §2002(a), July 22, 1998, 112 Stat. 724; Pub. L. 109–59, title XI, §11125(b)(21), Aug. 10, 2005, 119 Stat. 1957.)

AMENDMENTS

2005—Subsec. (c). Pub. L. 109–59 substituted "section 5732" for "section 5142".

1998—Subsecs. (b), (c). Pub. L. 105–206 added subsec. (b) and redesignated former subsec. (b) as (c).

1976—Subsec. (a). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

1958—Subsec. (b). Pub. L. 85–859 inserted reference to section 5142 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–59 effective July 1, 2008, but inapplicable to taxes imposed for periods before such date, see section 11125(c) of Pub. L. 109–59, set out as a note under section 5002 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–206, title II, §2002(c), July 22, 1998, 112 Stat. 724, provided that: "The amendment made by subsection (a) [amending this section] shall apply to returns required to be filed after December 31, 1999."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–859 effective Sept. 3, 1958, see section 210(a)(1) of Pub. L. 85–859, set out as an Effective Date note under section 5001 of this title.

§6072. Time for filing income tax returns

(a) General rule

In the case of returns under section 6012, 6013, 6017, or 6031 (relating to income tax under subtitle A), returns made on the basis of the calendar year shall be filed on or before the 15th day of April following the close of the calendar year and returns made on the basis of a fiscal year shall be filed on or before the 15th day of the fourth month following the close of the fiscal year, except as otherwise provided in the following subsections of this section.

(b) Returns of corporations

Returns of corporations under section 6012 made on the basis of the calendar year shall be filed on or before the 15th day of March following the close of the calendar year, and such returns made on the basis of a fiscal year shall be filed on or before the 15th day of the third month following the close of the fiscal year. Returns required for a taxable year by section 6011(e)(2) (relating to returns of a DISC) shall be filed on or before the fifteenth day of the ninth month following the close of the taxable year.

(c) Returns by certain nonresident alien individuals and foreign corporations

Returns made by nonresident alien individuals (other than those whose wages are subject to withholding under chapter 24) and foreign corporations (other than those having an office or place of business in the United States or a former FSC (as defined in section 922 as in effect before its repeal by the FSC Repeal and Extraterritorial Income Exclusion Act of 2000)) under section 6012 on the basis of a calendar year shall be filed on or before the 15th day of June following the close of the calendar year and such returns made on the basis of a fiscal year shall be filed on or before the 15th day of the 6th month following the close of the fiscal year.

(d) Returns of cooperative associations

In the case of an income tax return of—

(1) an exempt cooperative association described in section 1381(a)(1), or

(2) an organization described in section 1381(a)(2) which is under an obligation to pay patronage dividends (as defined in section 1388(a)) in an amount equal to at least 50 percent of its net earnings from business done with or for its patrons, or which paid patronage dividends in such an amount out of the net earnings from business done with or for patrons during the most recent taxable year for which it had such net earnings,

a return made on the basis of a calendar year shall be filed on or before the 15th day of September following the close of the calendar year, and a return made on the basis of a fiscal year shall be filed on or before the 15th day of the 9th month following the close of the fiscal year.

(e) Organizations exempt from taxation under section 501(a)

In the case of an income tax return of an organization exempt from taxation under section 501(a) (other than an employees' trust described in section 401(a)), a return shall be filed on or before the 15th day of the 5th month following the close of the taxable year.

(Aug. 16, 1954, ch. 736, 68A Stat. 749; Pub. L. 87–834, §17(b)(3), Oct. 16, 1962, 76 Stat. 1051; Pub. L. 92–178, title V, §504(b), Dec. 10, 1971, 85 Stat. 551; Pub. L. 94–455, title X, §1053(d)(3), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1649, 1834; Pub. L. 95–628, §6(a), Nov. 10, 1978, 92 Stat. 3630; Pub. L. 98–369, div. A, title VIII, §801(d)(13), July 18, 1984, 98 Stat. 997; Pub. L. 110–172, §11(g)(20), Dec. 29, 2007, 121 Stat. 2491.)

REFERENCES IN TEXT

The FSC Repeal and Extraterritorial Income Exclusion Act of 2000, referred to in subsec. (c), is Pub. L. 106–519, Nov. 15, 2000, 114 Stat. 2423. For complete classification of this Act to the Code, see Short Title of 2000 Amendments note set out under section 1 of this title and Tables.

AMENDMENTS

2007—Subsec. (c). Pub. L. 110–172 substituted "a former FSC (as defined in section 922 as in effect before its repeal by the FSC Repeal and Extraterritorial Income Exclusion Act of 2000)" for "a FSC or former FSC".

1984—Subsec. (c). Pub. L. 98–369 inserted "or a FSC or former FSC" after "United States".

1978—Subsec. (e). Pub. L. 95–628 added subsec. (e).

1976—Subsec. (e). Pub. L. 94–455, §1053(d)(3), struck out subsec. (e) which related to income tax due dates postponed in the case of China Trade Act corporations.

Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

1971—Subsec. (b). Pub. L. 92–178 required returns of a DISC to be filed on or before the fifteenth day of the ninth month following the close of the taxable year.

1962—Subsec. (d). Pub. L. 87–834 substituted provisions relating to returns by an exempt cooperative association described in section 1381(a)(1), or by an organization described in section 1381(a)(2) which is under an obligation to pay patronage dividends in an amount equal to at least 50 percent of its net earnings from business done with or for its patrons, or which paid patronage dividends in such an amount out of the net earnings from business done with or for patrons during the most recent taxable year for which it had such net earnings for provisions which related to returns of exempt cooperative associations taxable under the provisions of section 522.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–628, §6(b), Nov. 10, 1978, 92 Stat. 3630, provided that: "The amendment made by subsection (a) [amending this section] shall apply to returns for taxable years beginning after the date of the enactment of this Act [Nov. 10, 1978]."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1053(d)(3) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1977, see section 1053(e) of Pub. L. 94–455, set out as a note under section 1504 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–178 applicable with respect to taxable years ending after Dec. 31, 1971, except that a corporation may not be a DISC for any taxable year beginning before Jan. 1, 1972, see section 507 of Pub. L. 92–178, set out as an Effective Date note under section 991 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable to taxable years of organizations described in section 1381(a) of this title beginning after Dec. 31, 1962, except as otherwise provided, see section 17(c) of Pub. L. 87–834, set out as an Effective Date note under section 1381 of this title.

FILING OF INCOME TAX RETURNS FOR 1958 BY LIFE INSURANCE COMPANIES

Pub. L. 86–69, §3(i), June 25, 1959, 73 Stat. 140, required every life insurance company subject to the tax imposed by section 802(a) of this title to make a return after June 25, 1959, and on or before Sept. 15, 1959, which return was to constitute the return for such taxable year for all purposes of this title, and no return filed pursuant to section 801 et seq. of this title, relating to life insurance companies, on or before June 25, 1959, was to be considered for any such purposes as a return for such taxable year.

[§6073. Repealed. Pub. L. 98–369, div. A, title IV, §412(a)(2), July 18, 1984, 98 Stat. 792]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 750; Sept. 25, 1962, Pub. L. 87–682, §1(a)(2), (b), (c), 76 Stat. 575; Oct. 4, 1976, Pub. L. 94–455, title X, §1012(c), title XIX, §1906(b)(13)(A), 90 Stat. 1614, 1834; Nov. 10, 1978, Pub. L. 95–628, §7(a), 92 Stat. 3630; Sept. 3, 1982, Pub. L. 97–248, title III, §328(b)(2), 96 Stat. 618, related to time for filing declarations of estimated income tax by individuals.

EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to taxable years beginning after Dec. 31, 1984, see section 414(a)(1) of Pub. L. 98–369, set out as an Effective Date of 1984 Amendment note under section 6654 of this title.

[§6074. Repealed. Pub. L. 90–364, title I, §103(a), June 28, 1968, 82 Stat. 260]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 751; Feb. 26, 1964, Pub. L. 88–272, title I, §122(b), 78 Stat. 27, provided for the time of filing declarations of estimated income tax by corporations.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to taxable years beginning after Dec. 31, 1967, except as provided by section 104 of Pub. L. 90–364, see section 103(f) of Pub. L. 90–364, set out as an Effective Date of 1968 Amendment note under section 243 of this title.

§6075. Time for filing estate and gift tax returns

(a) Estate tax returns

Returns made under section 6018(a) (relating to estate taxes) shall be filed within 9 months after the date of the decedent's death.

(b) Gift tax returns

(1) General rule

Returns made under section 6019 (relating to gift taxes) shall be filed on or before the 15th day of April following the close of the calendar year.

(2) Extension where taxpayer granted extension for filing income tax return

Any extension of time granted the taxpayer for filing the return of income taxes imposed by subtitle A for any taxable year which is a calendar year shall be deemed to be also an extension of time granted the taxpayer for filing the return under section 6019 for such calendar year.

(3) Coordination with due date for estate tax return

Notwithstanding paragraphs (1) and (2), the time for filing the return made under section 6019 for the calendar year which includes the date of death of the donor shall not be later than the time (including extensions) for filing the return made under section 6018 (relating to estate tax returns) with respect to such donor.

(Aug. 16, 1954, ch. 736, 68A Stat. 751; Pub. L. 91–614, title I, §§101(b), 102(d)(4), Dec. 31, 1970, 84 Stat. 1836, 1842; Pub. L. 94–455, title XX, §2008(b), Oct. 4, 1976, 90 Stat. 1892; Pub. L. 96–167, §8(a)–(c), Dec. 29, 1979, 93 Stat. 1277, 1278; Pub. L. 97–34, title IV, §442(d)(3), Aug. 13, 1981, 95 Stat. 322; Pub. L. 107–16, title V, §542(b)(3), June 7, 2001, 115 Stat. 83; Pub. L. 111–312, title III, §301(a), Dec. 17, 2010, 124 Stat. 3300.)

AMENDMENTS

2010—Subsecs. (a), (b)(3). Pub. L. 111–312 amended subsecs. (a) and (b)(3) to read as if amendment by Pub. L. 107–16, §542(b)(3), had never been enacted. See 2001 Amendment notes below.

2001—Subsec. (a). Pub. L. 107–16, §542(b)(3)(A), amended subsec. (a) generally. Prior to amendment, text read as follows: "Returns made under section 6018(a) (relating to estate taxes) shall be filed within 9 months after the date of the decedent's death."

Subsec. (b)(3). Pub. L. 107–16, §542(b)(3)(B), substituted "section 6018 return" for "estate tax return" in heading and "(relating to returns relating to large transfers at death)" for "(relating to estate tax returns)" in text.

1981—Subsec. (b). Pub. L. 97–34 substituted in par. (1) the rule for filing gift tax returns on or before the 15th day of April following the close of the calendar year for prior provision for such filing on or before, in the case of a return for the first, second, or third calendar quarter of any calendar year, the 15th day of the second month following the close of the calendar quarter, or, in the case of a return for the fourth calendar quarter of any calendar year, the 15th day of the fourth month following the close of the calendar quarter, redesignated former par. (3) as (2), and, as so redesignated, substituted "under section 6019 for such calendar

year" for "under section 6019 for the fourth calendar quarter of such taxable year", struck out former par. (2) setting forth special rule where gifts in a calendar quarter totalled $25,000 or less, added par. (3), and struck out par. (4) respecting application of the special rule to nonresidents not citizens of the United States.

1979—Subsec. (b)(1). Pub. L. 96–167, §8(a), substituted "(A) in the case of a return for the first, second, or third calendar quarter of any calendar year, the 15th day of the second month following the close of the calendar quarter, or" for "the 15th day of the second month following the close of the calendar quarter", and added subpar. (B).

Subsec. (b)(2). Pub. L. 96–167, §8(c), substituted "the date prescribed by paragraph (1) for filing the return for" for "the 15th day of the second month after" in provisions preceding subpar. (A), and struck out "the close of" before "the first subsequent" in subpar. (a) and before "the fourth calendar quarter" in subpar. (B).

Subsec. (b)(3), (4). Pub. L. 96–167, §8(b), added par. (3) and redesignated former par. (3) as (4).

1976—Subsec. (b). Pub. L. 94–455 designated existing provisions as par. (1) and added pars. (2) and (3).

1970—Subsec. (a). Pub. L. 91–614, §101(b), substituted "9 months" for "15 months".

Subsec. (b). Pub. L. 91–614, §102(d)(4), substituted "the 15th day of the second month following the close of the calendar quarter" for "the 15th day of April following the close of the calendar year".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–312 applicable to estates of decedents dying, and transfers made after Dec. 31, 2009, except as otherwise provided, see section 301(e) of Pub. L. 111–312, set out as an Effective and Termination Dates of 2010 Amendment note under section 121 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to estates of decedents dying after Dec. 31, 2009, see section 542(f)(1) of Pub. L. 107–16, set out as a note under section 121 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable with respect to gifts made after Dec. 31, 1981, see section 442(e) of Pub. L. 97–34, set out as a note under section 2501 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Pub. L. 96–167, §8(d), Dec. 29, 1979, 93 Stat. 1278, provided that: "The amendments made by this section [amending this section] shall apply to returns for gifts made in calendar years ending after the date of the enactment of this Act [Dec. 29, 1979]."

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XX, §2008(d)(2), Oct. 4, 1976, 90 Stat. 1893, provided that: "The amendment made by subsection (b) [amending this section] shall apply to gifts made after December 31, 1976."

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–614 applicable with respect to decedents dying after Dec. 31, 1970, see section 101(j) of Pub. L. 91–614, set out as a note under section 2032 of this title.

Amendment by Pub. L. 91–614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91–614, set out as a note under section 2501 of this title.

EXTENSION OF TIME FOR PERFORMING CERTAIN ACTS

Pub. L. 111–312, title III, §301(d)(1), Dec. 17, 2010, 124 Stat. 3300, provided that: "In the case of the estate of a decedent dying after December 31, 2009, and before the date of the enactment of this Act [Dec. 17, 2010], the due date for—

"(A) filing any return under section 6018 of the Internal Revenue Code of 1986 (including any election required to be made on such a return) as such section is in effect after the date of the enactment of this Act without regard to any election under subsection (c),

"(B) making any payment of tax under chapter 11 of such Code, and

"(C) making any disclaimer described in section 2518(b) of such Code of an interest in property passing by reason of the death of such decedent,

"shall not be earlier than the date which is 9 months after the date of the enactment of this Act."

[§6076. Repealed. Pub. L. 100–418, title I, §1941(b)(1), Aug. 23, 1988, 102 Stat.

1323]

Section, added Pub. L. 96–223, title I, §101(c)(1)(A), Apr. 2, 1980, 94 Stat. 250, related to time for filing return of windfall profit tax.

EFFECTIVE DATE OF REPEAL

Repeal applicable to crude oil removed from the premises on or after Aug. 23, 1988, see section 1941(c) of Pub. L. 100–418, set out as an Effective Date of 1988 Amendment note under section 164 of this title.

PART VI—EXTENSION OF TIME FOR FILING RETURNS

Sec.
6081. Extension of time for filing returns.

§6081. Extension of time for filing returns

(a) General rule

The Secretary may grant a reasonable extension of time for filing any return, declaration, statement, or other document required by this title or by regulations. Except in the case of taxpayers who are abroad, no such extension shall be for more than 6 months.

(b) Automatic extension for corporation income tax returns

An extension of 3 months for the filing of the return of income taxes imposed by subtitle A shall be allowed any corporation if, in such manner and at such time as the Secretary may by regulations prescribe, there is filed on behalf of such corporation the form prescribed by the Secretary, and if such corporation pays, on or before the date prescribed for payment of the tax, the amount properly estimated as its tax; but this extension may be terminated at any time by the Secretary by mailing to the taxpayer notice of such termination at least 10 days prior to the date for termination fixed in such notice.

(c) Cross references

For time for performing certain acts postponed by reason of war, see section 7508, and by reason of Presidentially declared disaster or terroristic or military action, see section 7508A.

(Aug. 16, 1954, ch. 736, 68A Stat. 751; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–248, title III, §234(b)(2)(B), Sept. 3, 1982, 96 Stat. 503; Pub. L. 107–134, title I, §112(d)(2), Jan. 23, 2002, 115 Stat. 2435.)

AMENDMENTS

2002—Subsec. (c). Pub. L. 107–134 amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: "For time for performing certain acts postponed by reason of war, see section 7508."

1982—Subsec. (b). Pub. L. 97–248 struck out "or the first installment thereof required under section 6152" after "the amount properly estimated as its tax".

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–134, title I, §112(f), Jan. 23, 2002, 115 Stat. 2435, provided that: "The amendments made by this section [enacting section 1148 of Title 29, Labor, and amending this section, sections 6161, 6404, 7508, and 7508A of this title, and section 1302 of Title 29] shall apply to disasters and terroristic or military actions occurring on or after September 11, 2001, with respect to any action of the Secretary of the Treasury, the Secretary of Labor, or the Pension Benefit Guaranty Corporation occurring on or after the date of the enactment of this Act [Jan. 23, 2002]."

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to taxable years beginning after Dec. 31, 1982, see section 234(e) of Pub. L. 97–248, set out as a note under section 6655 of this title.

PART VII—PLACE FOR FILING RETURNS OR OTHER DOCUMENTS

Sec.
6091. Place for filing returns or other documents.

§6091. Place for filing returns or other documents

(a) General rule

When not otherwise provided for by this title, the Secretary shall by regulations prescribe the place for the filing of any return, declaration, statement, or other document, or copies thereof, required by this title or by regulations.

(b) Tax returns

In the case of returns of tax required under authority of part II of this subchapter—

(1) Persons other than corporations

(A) General rule

Except as provided in subparagraph (B), a return (other than a corporation return) shall be made to the Secretary—

(i) in the internal revenue district in which is located the legal residence or principal place of business of the person making the return, or

(ii) at a service center serving the internal revenue district referred to in clause (i),

as the Secretary may by regulations designate.

(B) Exception

Returns of—

(i) persons who have no legal residence or principal place of business in any internal revenue district,

(ii) citizens of the United States whose principal place of abode for the period with respect to which the return is filed is outside the United States,

(iii) persons who claim the benefits of section 911 (relating to citizens or residents of the United States living abroad), section 931 (relating to income from sources within Guam, American Samoa, or the Northern Mariana Islands), or section 933 (relating to income from sources within Puerto Rico),

(iv) nonresident alien persons, and

(v) persons with respect to whom an assessment was made under section 6851(a) or 6852(a) (relating to termination assessments) with respect to the taxable year,

shall be made at such place as the Secretary may by regulations designate.

(2) Corporations

(A) General rule

Except as provided in subparagraph (B), a return of a corporation shall be made to the Secretary—

(i) in the internal revenue district in which is located the principal place of business or principal office or agency of the corporation, or

(ii) at a service center serving the internal revenue district referred to in clause (i), as the Secretary may by regulations designate.

(B) Exception

Returns of—

(i) corporations which have no principal place of business or principal office or agency in

any internal revenue district,

(ii) corporations which claim the benefits of section 936 (relating to possession tax credit), and [1]

(iii) foreign corporations, and

(iv) corporations with respect to which an assessment was made under section 6851(a) (relating to termination assessments) with respect to the taxable year,

shall be made at such place as the Secretary may by regulations designate.

(3) Estate tax returns

(A) General rule

Except as provided in subparagraph (B), returns of estate tax required under section 6018 shall be made to the Secretary—

(i) in the internal revenue district in which was the domicile of the decedent at the time of his death, or

(ii) at a service center serving the internal revenue district referred to in clause (i), as the Secretary may by regulations designate.

(B) Exception

If the domicile of the decedent was not in an internal revenue district, or if he had no domicile, the estate tax return required under section 6018 shall be made at such place as the Secretary may by regulations designate.

(4) Hand-carried returns

Notwithstanding paragraph (1), (2), or (3), a return to which paragraph (1)(A), (2)(A), or (3)(A) would apply, but for this paragraph, which is made to the Secretary by handcarrying shall, under regulations prescribed by the Secretary, be made in the internal revenue district referred to in paragraph (1)(A)(i), (2)(A)(i), or (3)(A)(i), as the case may be.

(5) Exceptional cases

Notwithstanding paragraph (1), (2), (3), or (4) of this subsection, the Secretary may permit a return to be filed in any internal revenue district, and may require the return of any officer or employee of the Treasury Department to be filed in any internal revenue district selected by the Secretary.

(6) Alcohol, tobacco, and firearms returns, etc.

In the case of any return of tax imposed by section 4181 or subtitle E (relating to taxes on alcohol, tobacco, and firearms), subsection (a) shall apply (and this subsection shall not apply).

(Aug. 16, 1954, ch. 736, 68A Stat. 752; Pub. L. 89–713, §1(a), Nov. 2, 1966, 80 Stat. 1107; Pub. L. 91–614, title I, §101(i), Dec. 31, 1970, 84 Stat. 1838; Pub. L. 94–455, title X, §§1051(h)(4), 1052(c)(6), 1053(d)(4), title XII, §1204(c)(3), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1647, 1648, 1649, 1697, 1834; Pub. L. 95–615, §§202(g)(5), formerly §202(f)(5), 207(b), Nov. 8, 1978, 92 Stat. 3100, 3108, renumbered §202(g)(5), Pub. L. 96–222, title I, §108(a)(1)(A), Apr. 1, 1980, 94 Stat. 223; Pub. L. 97–34, title I, §§111(b)(3), 112(b)(6), Aug. 13, 1981, 95 Stat. 194, 195; Pub. L. 99–514, title XII, §1272(d)(10), title XVIII, §1879(r)(1), Oct. 22, 1986, 100 Stat. 2594, 2912; Pub. L. 100–203, title X, §10713(b)(2)(A), Dec. 22, 1987, 101 Stat. 1330–470; Pub. L. 101–239, title VII, §7841(f), Dec. 19, 1989, 103 Stat. 2429.)

AMENDMENTS

1989—Subsec. (b)(6). Pub. L. 101–239 inserted "section 4181 or" before "subtitle E".

1987—Subsec. (b)(1)(B)(v). Pub. L. 100–203 inserted reference to section 6852(a).

1986—Subsec. (b)(1)(B)(iii). Pub. L. 99–514, §1272(d)(10), substituted "Guam, American Samoa, or the Northern Mariana Islands" for "possessions of the United States".

Subsec. (b)(6). Pub. L. 99–514, §1879(r)(1), added par. (6).

1981—Subsec. (b)(1)(B)(iii). Pub. L. 97–34 substituted "section 911 (relating to citizens or residents of the

United States living abroad)" for "section 911 (relating to income earned by employees in certain camps)" and struck out "section 913 (relating to deduction for certain expenses of living abroad)".

1978—Subsec. (b)(1)(B)(iii). Pub. L. 95–615 substituted "(relating to income earned by employees in certain camps)" for "(relating to earned income from sources without the United States)" and inserted "section 913 (relating to deduction for certain expenses of living abroad)," before "section 931".

1976—Subsec. (a). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (b)(1)(B). Pub. L. 94–455, §§1204(c)(3)(A), 1906(b)(13)(A), added cl. (v) and struck out in provision following cl. (v) "or his delegate" after "Secretary".

Subsec. (b)(2)(B). Pub. L. 94–455, §1503(d)(4), in cl. (ii), struck out provision which permitted returns of a corporation claiming the benefits of section 941 of this title, relating to the special deduction for China Trade corporations, to be made at such place as the Secretary may designate by regulation.

Pub. L. 94–455, §§1052(c)(6), struck out provision which permitted returns of a corporation claiming the benefits of section 922 of this title, relating to the special deduction for Western Hemisphere trade corporations to be made at such place as the Secretary may designate by regulation.

Pub. L. 94–455, §§1051(h)(4), 1204(c)(3)(B), 1906(b)(13)(A), substituted "section 936 (relating to possession tax credit)" for "section 931 (relating to income from sources within possessions of the United States)," for taxable years beginning after Dec. 31, 1975, added cl. (iv), and struck out in provision following cl. (iv) "or his delegate" after "Secretary".

1970—Subsec. (b)(3). Pub. L. 91–614, §101(i)(1), substituted provisions requiring an estate tax return to be filed in the internal revenue district in which the decedent was domiciled at the time of his death or at a service center serving that district, as the Secretary or his delegate may determine by regulations, and in the case of a decedent who was not domiciled in an internal revenue district, or who had no domicile, his return is to be filed at such place as the Secretary or his delegate designates for provisions requiring estate tax returns to be filed in the internal revenue district in which the decedent was domiciled at the time of his death or, if there was no such domicile in an internal revenue district, then at such place as the Secretary or his delegate by regulations designates.

Subsec. (b)(4). Pub. L. 91–614, §101(i)(2), permitted the executor, who desires to file an estate tax return in person, to do so by hand carrying it to the appropriate internal revenue district office.

1966—Subsec. (b)(1). Pub. L. 89–713, §1(a)(1), authorized the Secretary to promulgate regulations allowing individuals to file tax returns either in the internal revenue district in which the taxpayer's legal residence or principal place of business is located or at a service center serving that district, designated as subpar. (B)(1) the existing provisions which authorized the Secretary to prescribe the place without limitations as to the Secretary's range of alternative choices for the filing of returns of persons who have no legal residence or principal place of business in any internal revenue district, and added subpar. (B)(ii) to (iv).

Subsec. (b)(2). Pub. L. 89–713, §1(a)(1), authorized the Secretary to promulgate regulations allowing corporations to file tax returns either in the internal revenue district in which is located the principal place of business or principal office or agency of the corporation or at a service center serving that district, designated as subpar. (B)(i) the existing provisions which authorized the Secretary to prescribe the place without limitations as to the Secretary's range of alternative choices for the filing of returns of corporations having no principal place of business or principal office or agency of the corporation, and added subpar. (B)(ii), (iii).

Subsec. (b)(4), (5). Pub. L. 89–713, §1(a)(2), (3), added par. (4), redesignated former par. (4) as (5), and, in par. (5), substituted "paragraph (1), (2), (3), or (4)" for "paragraph (1), (2), or (3)".

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title X, §10713(c), Dec. 22, 1987, 101 Stat. 1330–470, provided that: "The amendments made by this section [enacting sections 6852 and 7409 of this title and amending this section and sections 6211 to 6213, 6863, 7429, and 7611 of this title] shall take effect on the date of the enactment of this Act [Dec. 22, 1987]."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1272(d)(10) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99–514, set out as a note under section 931 of this title.

Pub. L. 99–514, title XVIII, §1879(r)(2), Oct. 22, 1986, 100 Stat. 2912, provided that: "The amendment made by paragraph (1) [amending this section] shall take effect on the first day of the first calendar month which begins more than 90 days after the date of the enactment of this Act [Oct. 22, 1986]."

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable with respect to taxable years beginning after Dec. 31, 1981, see

section 115 of Pub. L. 97–34, set out as a note under section 911 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT; ELECTION OF PRIOR LAW

Amendment by Pub. L. 95–615 applicable to taxable years beginning after Dec. 31, 1977, with provision for election of prior law, see section 209 of Pub. L. 95–615, set out as a note under section 911 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1051(h)(4) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1975, see section 1051(i)(1) of Pub. L. 94–455, set out as a note under section 27 of this title.

Amendment by section 1052(c)(6) of Pub. L. 94–455, applicable with respect to taxable years beginning after Dec. 31, 1979, see section 1052(d) of Pub. L. 94–455, set out as a note under section 170 of this title.

Amendment by section 1053(d)(4) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1977, see section 1053(e) of Pub. L. 94–455, set out as a note under section 1504 of this title.

Amendment by section 1204(c)(3) of Pub. L. 94–455 applicable with respect to action taken under section 6851, 6861, or 6862 of this title where notice and demand takes place after Feb. 28, 1977, see section 1204(d) of Pub. L. 94–455, as amended, set out as a note under section 6851 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–614 applicable with respect to decedents dying after Dec. 31, 1970, see section 101(j) of Pub. L. 91–614, set out as a note under section 2032 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89–713, §6, Nov. 2, 1966, 80 Stat. 1111, provided that: "Except as otherwise provided in this Act, the amendments made by this Act [amending this section, sections 6103, 6107, and 6151 of this title, section 3237 of Title 18, Crimes and Criminal Procedure, and section 1395x of Title 42, The Public Health and Welfare] shall take effect upon the date of the enactment of this Act [Nov. 2, 1966]."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[1] So in original. The word "and" probably should not appear.

PART VIII—DESIGNATION OF INCOME TAX PAYMENTS TO PRESIDENTIAL ELECTION CAMPAIGN FUND

Sec.
6096. Designation by individuals.

AMENDMENTS

1966—Pub. L. 89–809, title III, §302(a), Nov. 13, 1966, 80 Stat. 1587, added part VIII and analysis.

§6096. Designation by individuals

(a) In general

Every individual (other than a nonresident alien) whose income tax liability for the taxable year is $3 or more may designate that $3 shall be paid over to the Presidential Election Campaign Fund in accordance with the provisions of section 9006(a). In the case of a joint return of husband and wife having an income tax liability of $6 or more, each spouse may designate that $3 shall be paid to the fund.

(b) Income tax liability

For purposes of subsection (a), the income tax liability of an individual for any taxable year is the amount of the tax imposed by chapter 1 on such individual for such taxable year (as shown on his

return), reduced by the sum of the credits (as shown in his return) allowable under part IV of subchapter A of chapter 1 (other than subpart C thereof).

(c) Manner and time of designation

A designation under subsection (a) may be made with respect to any taxable year—

(1) at the time of filing the return of the tax imposed by chapter 1 for such taxable year, or

(2) at any other time (after the time of filing the return of the tax imposed by chapter 1 for such taxable year) specified in regulations prescribed by the Secretary.

Such designation shall be made in such manner as the Secretary prescribes by regulations except that, if such designation is made at the time of filing the return of the tax imposed by chapter 1 for such taxable year, such designation shall be made either on the first page of the return or on the page bearing the taxpayer's signature.

(Added Pub. L. 89–809, title III, §302(a), Nov. 13, 1966, 80 Stat. 1587; amended Pub. L. 92–178, title VIII, §802(a), Dec. 10, 1971, 85 Stat. 573; Pub. L. 93–53, §6(a), July 1, 1973, 87 Stat. 138; Pub. L. 94–12, title II, §§203(b)(4), 208(d)(4), Mar. 29, 1975, 89 Stat. 30, 35; Pub. L. 94–455, title IV, §401(a)(2)(C), title V, §504(c)(2), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1555, 1565, 1834; Pub. L. 95–30, title II, §202(d)(6), May 23, 1977, 91 Stat. 151; Pub. L. 95–618, title I, §101(b)(4), Nov. 9, 1978, 92 Stat. 3180; Pub. L. 96–223, title II, §§231(b)(2), 232(b)(3)(C), Apr. 2, 1980, 94 Stat. 272, 276; Pub. L. 97–34, title II, §221(c)(1), title III, §331(e)(1), Aug. 13, 1981, 95 Stat. 247, 295; Pub. L. 97–414, §4(c)(2), Jan. 4, 1983, 96 Stat. 2056; Pub. L. 98–369, div. A, title IV, §474(r)(31), July 18, 1984, 98 Stat. 845; Pub. L. 103–66, title XIII, §13441(a), Aug. 10, 1993, 107 Stat. 567.)

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–66 substituted "$6" for "$2" and "$3" for "$1" wherever appearing.

1984—Subsec. (b). Pub. L. 98–369 substituted "allowable under part IV of subchapter A of chapter 1 (other than subpart C thereof" for "allowable under sections 33, 37, 38, 40, 41, 42, 44, 44A, 44B, 44C, 44D, 44E, 44F, 44G, and 44H".

1983—Subsec. (b). Pub. L. 97–414 inserted reference to section 44H.

1981—Subsec. (b). Pub. L. 97–34, §331(e)(1), inserted reference to section 44G.

Pub. L. 97–34, §221(c)(1), inserted reference to section 44F.

1980—Subsec. (b). Pub. L. 96–223, §§231(b)(2), 232(b)(3)(C), inserted reference to sections 44D and 44E.

1978—Subsec. (b). Pub. L. 95–618 inserted reference to section 44C.

1977—Subsec. (b). Pub. L. 95–30 inserted reference to section 44B.

1976—Subsec. (b). Pub. L. 94–455, §§401(a)(2)(C), 504(c)(2), inserted reference to section 42 in subsec. (a) as in effect on day before date of enactment of Pub. L. 94–12 and reference to section 44A.

Subsec. (c). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

1975—Subsec. (b). Pub. L. 94–12 inserted reference to sections 42 and 44.

1973—Subsec. (a). Pub. L. 93–53 struck out "for the account of the candidates of any specified political party for President and Vice President of the United States, or if no specific account is designated by such individual, for a general account for all candidates for election to the offices of President and Vice President of the United States," after "Fund" and substituted "section 9006(a)" for "section 9006(a)(1)".

Subsec. (b). Pub. L. 93–53 struck out reference to sections 32(2) and 35, and inserted reference to sections 40 and 41.

Subsec. (c). Pub. L. 93–53 provided that if designation is made at the time of filing the return of the tax imposed by chapter 1 for the taxable year, the designation shall be made either on the first page of the return or on the page bearing the taxpayer's signature.

1971—Subsec. (a). Pub. L. 92–178 substituted "$1 shall be paid over to the Presidential Election Campaign Fund for the account of the candidates of any specified political party for President and Vice President of the United States, or if no specific account is designated by such individual, for a general account for all candidates for election to the offices of President and Vice President of the United States, in accordance with the provisions of section 9006(a)(1)" for "$1 shall be paid into the Presidential Election Campaign Fund established by section 303 of the Presidential Election Campaign Fund Act of 1966" and provided, in the case of a joint return of husband and wife having an income tax liability of $2 or more, that each spouse may designate that $1 shall be paid to any such account in the fund.

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13441(b), Aug. 10, 1993, 107 Stat. 568, provided that: "The amendments made by subsection (a) [amending this section] apply with respect to tax returns required to be filed after December 31, 1993."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–414 applicable to amounts paid or incurred after Dec. 31, 1982, in taxable years ending after such date, see section 4(d) of Pub. L. 97–414, set out as an Effective Date note under section 28 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 221(c)(1) of Pub. L. 97–34 applicable to amounts paid or incurred after June 30, 1981, see section 221(d) of Pub. L. 97–34, as amended, set out as an Effective Date note under section 41 of this title.

Amendment by section 331(e)(1) of Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 339 of Pub. L. 97–34, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 231(b)(2) of Pub. L. 96–223, applicable to taxable years ending after Dec. 31, 1979, see section 231(c) of Pub. L. 96–223, set out as an Effective Date note under section 45K of this title.

Amendment by section 232(b)(3)(C) of Pub. L. 96–223 applicable to sales or uses after Sept. 30, 1980, in taxable years ending after that date, see section 232(h)(1) of Pub. L. 96–223, set out as an Effective Date note under section 40 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–618 applicable to taxable years ending on or after Apr. 20, 1977, see section 101(c) of Pub. L. 95–618, set out as a note under section 1016 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, and to credit carrybacks from such years, see section 202(e) of Pub. L. 95–30, set out as an Effective Date note under section 51 of this title.

EFFECTIVE AND TERMINATION DATES OF 1976 AMENDMENT

Amendment by section 401(a)(2)(C) of Pub. L. 94–455 applicable to taxable years ending after Dec. 31, 1975, but ceasing to be applicable to taxable years ending after Dec. 31, 1978, see section 401(e) of Pub. L. 94–455, as amended, set out as an Effective Date of 1976 Amendment note under section 32 of this title.

Amendment by section 504(c)(2) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, see section 508 of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 3 of this title.

EFFECTIVE AND TERMINATION DATES OF 1975 AMENDMENT

Amendment by Pub. L. 94–12 applicable to taxable years ending after Dec. 31, 1974, and to cease to apply to taxable years ending after Dec. 31, 1975, see section 209(a) of Pub. L. 94–12, set out as a note under section 3 of this title.

EFFECTIVE DATE OF 1973 AMENDMENT; DESIGNATION TO THE PRESIDENTIAL ELECTION CAMPAIGN FUND

Pub. L. 93–53, §6(d), July 1, 1973, 87 Stat. 139, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by this section [amending this section and sections 9003, 9006, 9007, and 9012 of this title] shall apply with respect to taxable years beginning after December 31, 1972. Any designation made under section 6096 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect for taxable years beginning before January 1, 1973) for the account of the candidates of any specified political party shall, for purposes of section 9006(a) of such Code (as amended by subsection (b)), be treated solely as a designation to the Presidential Election Campaign Fund."

EFFECTIVE DATE OF SECTION AND EFFECTIVE DATE OF 1971 AMENDMENT

Provisions of this section, together with amendment of subsec. (a) of this section by Pub. L. 92–178, applicable only to taxable years ending on or after Dec. 31, 1972, see section 802(b)(2) of Pub. L. 92–178, set out as a note under section 9001 of this title.

EFFECTIVE DATE

Pub. L. 89–809, title III, §302(c), Nov. 13, 1966, 80 Stat. 1588, provided that: "The amendments made by this section [enacting this section] shall apply with respect to income tax liability for taxable years beginning after December 31, 1966."

SHORT TITLE

Pub. L. 89–809, title III, §301, Nov. 13, 1966, 80 Stat. 1587, provided that: "This title [enacting this section and sections 971, 972, and 973 of former Title 31, Money and Finance] may be cited as the 'Presidential Election Campaign Fund Act of 1966'."

ADOPTION OF GUIDELINES

Pub. L. 90–26, §5, June 13, 1967, 81 Stat. 58, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) Funds which become available under the Presidential Election Campaign Fund Act of 1966 [this section and section 971 et seq. of former Title 31, Money and Finance] shall be appropriated and disbursed only after the adoption by law of guidelines governing their distribution. Section 6096 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall become applicable only after the adoption by law of such guidelines.

"(b) Guidelines adopted in accordance with this section shall state expressly that they are intended to comply with this section."

Subchapter B—Miscellaneous Provisions

Sec.

6101. Period covered by returns or other documents.
6102. Computations on returns or other documents.
6103. Confidentiality and disclosure of returns and return information.
6104. Publicity of information required from certain exempt organizations and certain trusts.
6105. Confidentiality of information arising under treaty obligations.
6106. Publicity of unemployment tax returns.[1]
6107. Tax return preparer must furnish copy of return to taxpayer and must retain a copy or list.
6108. Publication of statistics of income.[2]
6109. Identifying numbers.
6110. Public inspection of written determinations.
6111. Disclosure of reportable transactions.
6112. Material advisors of reportable transactions must keep lists of advisees, etc.
6113. Disclosure of nondeductibility of contributions.
6114. Treaty-based return positions.
6115. Disclosure related to quid pro quo contributions.
6116. Requirement for prisons located in United States to provide information for tax administration.
6117. Cross reference.

AMENDMENTS

2011—Pub. L. 112–41, title V, §502(b), Oct. 21, 2011, 125 Stat. 460, added items 6116 and 6117 and struck out former item 6116 "Cross reference".

2007—Pub. L. 110–28, title VIII, §8246(a)(2)(C)(ii), May 25, 2007, 121 Stat. 201, substituted "Tax return preparer" for "Income tax return preparer" in item 6107.

2004—Pub. L. 108–357, title VIII, §815(b)(1), (4), Oct. 22, 2004, 118 Stat. 1582, 1583, substituted "Disclosure of reportable transactions" for "Registration of tax shelters" in item 6111 and "Material advisors

of reportable transactions must keep lists of advisees, etc." for "Organizers and sellers of potentially abusive tax shelters must keep lists of investors" in item 6112.

2000—Pub. L. 106–554, §1(a)(7) [title III, §304(b)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–634, added item 6105.

1993—Pub. L. 103–66, title XIII, §13173(c)(1), Aug. 10, 1993, 107 Stat. 456, added item 6115 and redesignated former item 6115 as 6116.

1988—Pub. L. 100–647, title I, §1012(aa)(5)(C)(i), Nov. 10, 1988, 102 Stat. 3533, added item 6114 and redesignated former item 6114 as 6115.

1987—Pub. L. 100–203, title X, §10701(c)(1), Dec. 22, 1987, 101 Stat. 1330–459, added item 6113 and redesignated former item 6113 as 6114.

1984—Pub. L. 98–369, div. A, title I, §§141(c)(1), 142(c)(1), July 18, 1984, 98 Stat. 680, 682, added items 6111 and 6112 and redesignated former item 6111 as 6113.

1976—Pub. L. 94–455, title XII, §§1201(c), 1202(a)(2), 1203(i)(2), title XIX, §1906(b)(1), (2), Oct. 4, 1976, 90 Stat. 1667, 1685, 1694, 1833, substituted in item 6103 "Confidentiality and disclosure of returns and return information" for "Publicity of returns and disclosure of information as to persons filing income tax returns", struck out item 6105 "Compilation of relief from excess profits tax cases", added items 6107 and 6110, redesignated former item 6110 as 6111, and as so redesignated substituted "reference" for "references".

1968—Pub. L. 90–618, title II, §203(b), Oct. 22, 1968, 82 Stat. 1235, struck out item 6107 "List of special taxpayers for public inspection".

1966—Pub. L. 89–713, §4(b), Nov. 2, 1966, 80 Stat. 1109, substituted "disclosure of information as to persons filing income tax returns" for "lists of taxpayers" in item 6103.

1961—Pub. L. 87–397, §1(c)(1), Oct. 5, 1961, 75 Stat. 829, added item 6109 and redesignated former item 6109 as 6110.

[1] Section repealed by Pub. L. 94–455 without corresponding amendment of subchapter analysis.

[2] Section catchline amended by Pub. L. 94–455 without corresponding amendment of subchapter analysis.

§6101. Period covered by returns or other documents

When not otherwise provided for by this title, the Secretary may by regulations prescribe the period for which, or the date as of which, any return, statement, or other document required by this title or by regulations, shall be made.

(Aug. 16, 1954, ch. 736, 68A Stat. 753; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

§6102. Computations on returns or other documents

(a) Amounts shown on internal revenue forms

The Secretary is authorized to provide with respect to any amount required to be shown on a form prescribed for any internal revenue return, statement, or other document, that if such amount of such item is other than a whole-dollar amount, either—

(1) the fractional part of a dollar shall be disregarded; or

(2) the fractional part of a dollar shall be disregarded unless it amounts to one-half dollar or more, in which case the amount (determined without regard to the fractional part of a dollar) shall be increased by $1.

(b) Election not to use whole dollar amounts

Any person making a return, statement, or other document shall be allowed, under regulations

prescribed by the Secretary, to make such return, statement, or other document without regard to subsection (a).

(c) Inapplicability to computation of amount

The provisions of subsections (a) and (b) shall not be applicable to items which must be taken into account in making the computations necessary to determine the amount required to be shown on a form, but shall be applicable only to such final amount.

(Aug. 16, 1954, ch. 736, 68A Stat. 753; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsecs. (a), (b). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

§6103. Confidentiality and disclosure of returns and return information

(a) General rule

Returns and return information shall be confidential, and except as authorized by this title—

(1) no officer or employee of the United States,

(2) no officer or employee of any State, any local law enforcement agency receiving information under subsection (i)(7)(A), any local child support enforcement agency, or any local agency administering a program listed in subsection (l)(7)(D) who has or had access to returns or return information under this section or section 6104(c), and

(3) no other person (or officer or employee thereof) who has or had access to returns or return information under subsection (e)(1)(D)(iii), subsection (k)(10), paragraph (6), (10), (12), (16), (19), (20), or (21) of subsection (l), paragraph (2) or (4)(B) of subsection (m), or subsection (n),

shall disclose any return or return information obtained by him in any manner in connection with his service as such an officer or an employee or otherwise or under the provisions of this section. For purposes of this subsection, the term "officer or employee" includes a former officer or employee.

(b) Definitions

For purposes of this section—

(1) Return

The term "return" means any tax or information return, declaration of estimated tax, or claim for refund required by, or provided for or permitted under, the provisions of this title which is filed with the Secretary by, on behalf of, or with respect to any person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists which are supplemental to, or part of, the return so filed.

(2) Return information

The term "return information" means—

(A) a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense,

(B) any part of any written determination or any background file document relating to such written determination (as such terms are defined in section 6110(b)) which is not open to public inspection under section 6110,

(C) any advance pricing agreement entered into by a taxpayer and the Secretary and any

background information related to such agreement or any application for an advance pricing agreement, and

(D) any agreement under section 7121, and any similar agreement, and any background information related to such an agreement or request for such an agreement,

but such term does not include data in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer. Nothing in the preceding sentence, or in any other provision of law, shall be construed to require the disclosure of standards used or to be used for the selection of returns for examination, or data used or to be used for determining such standards, if the Secretary determines that such disclosure will seriously impair assessment, collection, or enforcement under the internal revenue laws.

(3) Taxpayer return information

The term "taxpayer return information" means return information as defined in paragraph (2) which is filed with, or furnished to, the Secretary by or on behalf of the taxpayer to whom such return information relates.

(4) Tax administration

The term "tax administration"—

(A) means—

(i) the administration, management, conduct, direction, and supervision of the execution and application of the internal revenue laws or related statutes (or equivalent laws and statutes of a State) and tax conventions to which the United States is a party, and

(ii) the development and formulation of Federal tax policy relating to existing or proposed internal revenue laws, related statutes, and tax conventions, and

(B) includes assessment, collection, enforcement, litigation, publication, and statistical gathering functions under such laws, statutes, or conventions.

(5) State

(A) In general

The term "State" means—

(i) any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands,

(ii) for purposes of subsections (a)(2), (b)(4), (d)(1), (h)(4), and (p), any municipality—

(I) with a population in excess of 250,000 (as determined under the most recent decennial United States census data available),

(II) which imposes a tax on income or wages, and

(III) with which the Secretary (in his sole discretion) has entered into an agreement regarding disclosure, and

(iii) for purposes of subsections (a)(2), (b)(4), (d)(1), (h)(4), and (p), any governmental entity—

(I) which is formed and operated by a qualified group of municipalities, and

(II) with which the Secretary (in his sole discretion) has entered into an agreement regarding disclosure.

(B) Regional income tax agencies

For purposes of subparagraph (A)(iii)—

(i) Qualified group of municipalities

The term "qualified group of municipalities" means, with respect to any governmental entity, 2 or more municipalities—

(I) each of which imposes a tax on income or wages,

(II) each of which, under the authority of a State statute, administers the laws relating to the imposition of such taxes through such entity, and

(III) which collectively have a population in excess of 250,000 (as determined under the most recent decennial United States census data available).

(ii) References to State law, etc.

For purposes of applying subparagraph (A)(iii) to the subsections referred to in such subparagraph, any reference in such subsections to State law, proceedings, or tax returns shall be treated as references to the law, proceedings, or tax returns, as the case may be, of the municipalities which form and operate the governmental entity referred to in such subparagraph.

(iii) Disclosure to contractors and other agents

Notwithstanding any other provision of this section, no return or return information shall be disclosed to any contractor or other agent of a governmental entity referred to in subparagraph (A)(iii) unless such entity, to the satisfaction of the Secretary—

(I) has requirements in effect which require each such contractor or other agent which would have access to returns or return information to provide safeguards (within the meaning of subsection (p)(4)) to protect the confidentiality of such returns or return information,

(II) agrees to conduct an on-site review every 3 years (or a mid-point review in the case of contracts or agreements of less than 3 years in duration) of each contractor or other agent to determine compliance with such requirements,

(III) submits the findings of the most recent review conducted under subclause (II) to the Secretary as part of the report required by subsection (p)(4)(E), and

(IV) certifies to the Secretary for the most recent annual period that such contractor or other agent is in compliance with all such requirements.

The certification required by subclause (IV) shall include the name and address of each contractor and other agent, a description of the contract or agreement with such contractor or other agent, and the duration of such contract or agreement. The requirements of this clause shall not apply to disclosures pursuant to subsection (n) for purposes of Federal tax administration and a rule similar to the rule of subsection (p)(8)(B) shall apply for purposes of this clause.

(6) Taxpayer identity

The term "taxpayer identity" means the name of a person with respect to whom a return is filed, his mailing address, his taxpayer identifying number (as described in section 6109), or a combination thereof.

(7) Inspection

The terms "inspected" and "inspection" mean any examination of a return or return information.

(8) Disclosure

The term "disclosure" means the making known to any person in any manner whatever a return or return information.

(9) Federal agency

The term "Federal agency" means an agency within the meaning of section 551(1) of title 5, United States Code.

(10) Chief executive officer

The term "chief executive officer" means, with respect to any municipality, any elected official and the chief official (even if not elected) of such municipality.

(11) Terrorist incident, threat, or activity

The term "terrorist incident, threat, or activity" means an incident, threat, or activity involving

an act of domestic terrorism (as defined in section 2331(5) of title 18, United States Code) or international terrorism (as defined in section 2331(1) of such title).

(c) Disclosure of returns and return information to designee of taxpayer

The Secretary may, subject to such requirements and conditions as he may prescribe by regulations, disclose the return of any taxpayer, or return information with respect to such taxpayer, to such person or persons as the taxpayer may designate in a request for or consent to such disclosure, or to any other person at the taxpayer's request to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person. However, return information shall not be disclosed to such person or persons if the Secretary determines that such disclosure would seriously impair Federal tax administration.

(d) Disclosure to State tax officials and State and local law enforcement agencies

(1) In general

Returns and return information with respect to taxes imposed by chapters 1, 2, 6, 11, 12, 21, 23, 24, 31, 32, 44, 51, and 52 and subchapter D of chapter 36 shall be open to inspection by, or disclosure to, any State agency, body, or commission, or its legal representative, which is charged under the laws of such State with responsibility for the administration of State tax laws for the purpose of, and only to the extent necessary in, the administration of such laws, including any procedures with respect to locating any person who may be entitled to a refund. Such inspection shall be permitted, or such disclosure made, only upon written request by the head of such agency, body, or commission, and only to the representatives of such agency, body, or commission designated in such written request as the individuals who are to inspect or to receive the returns or return information on behalf of such agency, body, or commission. Such representatives shall not include any individual who is the chief executive officer of such State or who is neither an employee or legal representative of such agency, body, or commission nor a person described in subsection (n). However, such return information shall not be disclosed to the extent that the Secretary determines that such disclosure would identify a confidential informant or seriously impair any civil or criminal tax investigation.

(2) Disclosure to State audit agencies

(A) In general

Any returns or return information obtained under paragraph (1) by any State agency, body, or commission may be open to inspection by, or disclosure to, officers and employees of the State audit agency for the purpose of, and only to the extent necessary in, making an audit of the State agency, body, or commission referred to in paragraph (1).

(B) State audit agency

For purposes of subparagraph (A), the term "State audit agency" means any State agency, body, or commission which is charged under the laws of the State with the responsibility of auditing State revenues and programs.

(3) Exception for reimbursement under section 7624

Nothing in this section shall be construed to prevent the Secretary from disclosing to any State or local law enforcement agency which may receive a payment under section 7624 the amount of the recovered taxes with respect to which such a payment may be made.

(4) Availability and use of death information

(A) In general

No returns or return information may be disclosed under paragraph (1) to any agency, body, or commission of any State (or any legal representative thereof) during any period during which a contract meeting the requirements of subparagraph (B) is not in effect between such State and the Secretary of Health and Human Services.

(B) Contractual requirements

A contract meets the requirements of this subparagraph if—

(i) such contract requires the State to furnish the Secretary of Health and Human Services information concerning individuals with respect to whom death certificates (or equivalent documents maintained by the State or any subdivision thereof) have been officially filed with it, and

(ii) such contract does not include any restriction on the use of information obtained by such Secretary pursuant to such contract, except that such contract may provide that such information is only to be used by the Secretary (or any other Federal agency) for purposes of ensuring that Federal benefits or other payments are not erroneously paid to deceased individuals.

Any information obtained by the Secretary of Health and Human Services under such a contract shall be exempt from disclosure under section 552 of title 5, United States Code, and from the requirements of section 552a of such title 5.

(C) Special exception

The provisions of subparagraph (A) shall not apply to any State which on July 1, 1993, was not, pursuant to a contract, furnishing the Secretary of Health and Human Services information concerning individuals with respect to whom death certificates (or equivalent documents maintained by the State or any subdivision thereof) have been officially filed with it.

(5) Disclosure for combined employment tax reporting

(A) In general

The Secretary may disclose taxpayer identity information and signatures to any agency, body, or commission of any State for the purpose of carrying out with such agency, body, or commission a combined Federal and State employment tax reporting program approved by the Secretary. Subsections (a)(2) and (p)(4) and sections 7213 and 7213A shall not apply with respect to disclosures or inspections made pursuant to this paragraph.

(B) Termination

The Secretary may not make any disclosure under this paragraph after December 31, 2007.

(6) Limitation on disclosure regarding regional income tax agencies treated as States

For purposes of paragraph (1), inspection by or disclosure to an entity described in subsection (b)(5)(A)(iii) shall be for the purpose of, and only to the extent necessary in, the administration of the laws of the member municipalities in such entity relating to the imposition of a tax on income or wages. Such entity may not redisclose any return or return information received pursuant to paragraph (1) to any such member municipality.

(e) Disclosure to persons having material interest

(1) In general

The return of a person shall, upon written request, be open to inspection by or disclosure to—

(A) in the case of the return of an individual—

(i) that individual,

(ii) the spouse of that individual if the individual and such spouse have signified their consent to consider a gift reported on such return as made one-half by him and one-half by the spouse pursuant to the provisions of section 2513; or

(iii) the child of that individual (or such child's legal representative) to the extent necessary to comply with the provisions of section 1(g);

(B) in the case of an income tax return filed jointly, either of the individuals with respect to whom the return is filed;

(C) in the case of the return of a partnership, any person who was a member of such partnership during any part of the period covered by the return;

(D) in the case of the return of a corporation or a subsidiary thereof—

(i) any person designated by resolution of its board of directors or other similar governing body,

(ii) any officer or employee of such corporation upon written request signed by any principal officer and attested to by the secretary or other officer,

(iii) any bona fide shareholder of record owning 1 percent or more of the outstanding stock of such corporation,

(iv) if the corporation was an S corporation, any person who was a shareholder during any part of the period covered by such return during which an election under section 1362(a) was in effect, or

(v) if the corporation has been dissolved, any person authorized by applicable State law to act for the corporation or any person who the Secretary finds to have a material interest which will be affected by information contained therein;

(E) in the case of the return of an estate—

(i) the administrator, executor, or trustee of such estate, and

(ii) any heir at law, next of kin, or beneficiary under the will, of the decedent, but only if the Secretary finds that such heir at law, next of kin, or beneficiary has a material interest which will be affected by information contained therein; and

(F) in the case of the return of a trust—

(i) the trustee or trustees, jointly or separately, and

(ii) any beneficiary of such trust, but only if the Secretary finds that such beneficiary has a material interest which will be affected by information contained therein.

(2) Incompetency

If an individual described in paragraph (1) is legally incompetent, the applicable return shall, upon written request, be open to inspection by or disclosure to the committee, trustee, or guardian of his estate.

(3) Deceased individuals

The return of a decedent shall, upon written request, be open to inspection by or disclosure to—

(A) the administrator, executor, or trustee of his estate, and

(B) any heir at law, next of kin, or beneficiary under the will, of such decedent, or a donee of property, but only if the Secretary finds that such heir at law, next of kin, beneficiary, or donee has a material interest which will be affected by information contained therein.

(4) Title 11 cases and receivership proceedings

If—

(A) there is a trustee in a title 11 case in which the debtor is the person with respect to whom the return is filed, or

(B) substantially all of the property of the person with respect to whom the return is filed is in the hands of a receiver,

such return or returns for prior years of such person shall, upon written request, be open to inspection by or disclosure to such trustee or receiver, but only if the Secretary finds that such trustee or receiver, in his fiduciary capacity, has a material interest which will be affected by information contained therein.

(5) Individual's title 11 case

(A) In general

In any case to which section 1398 applies (determined without regard to section 1398(b)(1)), any return of the debtor for the taxable year in which the case commenced or any preceding taxable year shall, upon written request, be open to inspection by or disclosure to the trustee in

such case.

(B) Return of estate available to debtor

Any return of an estate in a case to which section 1398 applies shall, upon written request, be open to inspection by or disclosure to the debtor in such case.

(C) Special rule for involuntary cases

In an involuntary case, no disclosure shall be made under subparagraph (A) until the order for relief has been entered by the court having jurisdiction of such case unless such court finds that such disclosure is appropriate for purposes of determining whether an order for relief should be entered.

(6) Attorney in fact

Any return to which this subsection applies shall, upon written request, also be open to inspection by or disclosure to the attorney in fact duly authorized in writing by any of the persons described in paragraph (1), (2), (3), (4), (5), (8), or (9) to inspect the return or receive the information on his behalf, subject to the conditions provided in such paragraphs.

(7) Return information

Return information with respect to any taxpayer may be open to inspection by or disclosure to any person authorized by this subsection to inspect any return of such taxpayer if the Secretary determines that such disclosure would not seriously impair Federal tax administration.

(8) Disclosure of collection activities with respect to joint return

If any deficiency of tax with respect to a joint return is assessed and the individuals filing such return are no longer married or no longer reside in the same household, upon request in writing by either of such individuals, the Secretary shall disclose in writing to the individual making the request whether the Secretary has attempted to collect such deficiency from such other individual, the general nature of such collection activities, and the amount collected. The preceding sentence shall not apply to any deficiency which may not be collected by reason of section 6502.

(9) Disclosure of certain information where more than 1 person subject to penalty under section 6672

If the Secretary determines that a person is liable for a penalty under section 6672(a) with respect to any failure, upon request in writing of such person, the Secretary shall disclose in writing to such person—

(A) the name of any other person whom the Secretary has determined to be liable for such penalty with respect to such failure, and

(B) whether the Secretary has attempted to collect such penalty from such other person, the general nature of such collection activities, and the amount collected.

(10) Limitation on certain disclosures under this subsection

In the case of an inspection or disclosure under this subsection relating to the return of a partnership, S corporation, trust, or an estate, the information inspected or disclosed shall not include any supporting schedule, attachment, or list which includes the taxpayer identity information of a person other than the entity making the return or the person conducting the inspection or to whom the disclosure is made.

(f) Disclosure to Committees of Congress

(1) Committee on Ways and Means, Committee on Finance, and Joint Committee on Taxation

Upon written request from the chairman of the Committee on Ways and Means of the House of Representatives, the chairman of the Committee on Finance of the Senate, or the chairman of the Joint Committee on Taxation, the Secretary shall furnish such committee with any return or return information specified in such request, except that any return or return information which can be associated with, or otherwise identify, directly or indirectly, a particular taxpayer shall be

furnished to such committee only when sitting in closed executive session unless such taxpayer otherwise consents in writing to such disclosure.

(2) Chief of Staff of Joint Committee on Taxation

Upon written request by the Chief of Staff of the Joint Committee on Taxation, the Secretary shall furnish him with any return or return information specified in such request. Such Chief of Staff may submit such return or return information to any committee described in paragraph (1), except that any return or return information which can be associated with, or otherwise identify, directly or indirectly, a particular taxpayer shall be furnished to such committee only when sitting in closed executive session unless such taxpayer otherwise consents in writing to such disclosure.

(3) Other committees

Pursuant to an action by, and upon written request by the chairman of, a committee of the Senate or the House of Representatives (other than a committee specified in paragraph (1)) specially authorized to inspect any return or return information by a resolution of the Senate or the House of Representatives or, in the case of a joint committee (other than the joint committee specified in paragraph (1)) by concurrent resolution, the Secretary shall furnish such committee, or a duly authorized and designated subcommittee thereof, sitting in closed executive session, with any return or return information which such resolution authorizes the committee or subcommittee to inspect. Any resolution described in this paragraph shall specify the purpose for which the return or return information is to be furnished and that such information cannot reasonably be obtained from any other source.

(4) Agents of committees and submission of information to Senate or House of Representatives

(A) Committees described in paragraph (1)

Any committee described in paragraph (1) or the Chief of Staff of the Joint Committee on Taxation shall have the authority, acting directly, or by or through such examiners or agents as the chairman of such committee or such chief of staff may designate or appoint, to inspect returns and return information at such time and in such manner as may be determined by such chairman or chief of staff. Any return or return information obtained by or on behalf of such committee pursuant to the provisions of this subsection may be submitted by the committee to the Senate or the House of Representatives, or to both. The Joint Committee on Taxation may also submit such return or return information to any other committee described in paragraph (1), except that any return or return information which can be associated with, or otherwise identify, directly or indirectly, a particular taxpayer shall be furnished to such committee only when sitting in closed executive session unless such taxpayer otherwise consents in writing to such disclosure.

(B) Other committees

Any committee or subcommittee described in paragraph (3) shall have the right, acting directly, or by or through no more than four examiners or agents, designated or appointed in writing in equal numbers by the chairman and ranking minority member of such committee or subcommittee, to inspect returns and return information at such time and in such manner as may be determined by such chairman and ranking minority member. Any return or return information obtained by or on behalf of such committee or subcommittee pursuant to the provisions of this subsection may be submitted by the committee to the Senate or the House of Representatives, or to both, except that any return or return information which can be associated with, or otherwise identify, directly or indirectly, a particular taxpayer, shall be furnished to the Senate or the House of Representatives only when sitting in closed executive session unless such taxpayer otherwise consents in writing to such disclosure.

(5) Disclosure by whistleblower

Any person who otherwise has or had access to any return or return information under this section may disclose such return or return information to a committee referred to in paragraph (1)

or any individual authorized to receive or inspect information under paragraph (4)(A) if such person believes such return or return information may relate to possible misconduct, maladministration, or taxpayer abuse.

(g) Disclosure to President and certain other persons

(1) In general

Upon written request by the President, signed by him personally, the Secretary shall furnish to the President, or to such employee or employees of the White House Office as the President may designate by name in such request, a return or return information with respect to any taxpayer named in such request. Any such request shall state—

(A) the name and address of the taxpayer whose return or return information is to be disclosed,

(B) the kind of return or return information which is to be disclosed,

(C) the taxable period or periods covered by such return or return information, and

(D) the specific reason why the inspection or disclosure is requested.

(2) Disclosure of return information as to Presidential appointees and certain other Federal Government appointees

The Secretary may disclose to a duly authorized representative of the Executive Office of the President or to the head of any Federal agency, upon written request by the President or head of such agency, or to the Federal Bureau of Investigation on behalf of and upon written request by the President or such head, return information with respect to an individual who is designated as being under consideration for appointment to a position in the executive or judicial branch of the Federal Government. Such return information shall be limited to whether such individual—

(A) has filed returns with respect to the taxes imposed under chapter 1 for not more than the immediately preceding 3 years;

(B) has failed to pay any tax within 10 days after notice and demand, or has been assessed any penalty under this title for negligence, in the current year or immediately preceding 3 years;

(C) has been or is under investigation for possible criminal offenses under the internal revenue laws and the results of any such investigation; or

(D) has been assessed any civil penalty under this title for fraud.

Within 3 days of the receipt of any request for any return information with respect to any individual under this paragraph, the Secretary shall notify such individual in writing that such information has been requested under the provisions of this paragraph.

(3) Restriction on disclosure

The employees to whom returns and return information are disclosed under this subsection shall not disclose such returns and return information to any other person except the President or the head of such agency without the personal written direction of the President or the head of such agency.

(4) Restriction on disclosure to certain employees

Disclosure of returns and return information under this subsection shall not be made to any employee whose annual rate of basic pay is less than the annual rate of basic pay specified for positions subject to section 5316 of title 5, United States Code.

(5) Reporting requirements

Within 30 days after the close of each calendar quarter, the President and the head of any agency requesting returns and return information under this subsection shall each file a report with the Joint Committee on Taxation setting forth the taxpayers with respect to whom such requests were made during such quarter under this subsection, the returns or return information involved, and the reasons for such requests. The President shall not be required to report on any request for returns and return information pertaining to an individual who was an officer or employee of the executive branch of the Federal Government at the time such request was made. Reports filed

pursuant to this paragraph shall not be disclosed unless the Joint Committee on Taxation determines that disclosure thereof (including identifying details) would be in the national interest. Such reports shall be maintained by the Joint Committee on Taxation for a period not exceeding 2 years unless, within such period, the Joint Committee on Taxation determines that a disclosure to the Congress is necessary.

(h) Disclosure to certain Federal officers and employees for purposes of tax administration, etc.

(1) Department of the Treasury

Returns and return information shall, without written request, be open to inspection by or disclosure to officers and employees of the Department of the Treasury whose official duties require such inspection or disclosure for tax administration purposes.

(2) Department of Justice

In a matter involving tax administration, a return or return information shall be open to inspection by or disclosure to officers and employees of the Department of Justice (including United States attorneys) personally and directly engaged in, and solely for their use in, any proceeding before a Federal grand jury or preparation for any proceeding (or investigation which may result in such a proceeding) before a Federal grand jury or any Federal or State court, but only if—

(A) the taxpayer is or may be a party to the proceeding, or the proceeding arose out of, or in connection with, determining the taxpayer's civil or criminal liability, or the collection of such civil liability in respect of any tax imposed under this title;

(B) the treatment of an item reflected on such return is or may be related to the resolution of an issue in the proceeding or investigation; or

(C) such return or return information relates or may relate to a transactional relationship between a person who is or may be a party to the proceeding and the taxpayer which affects, or may affect, the resolution of an issue in such proceeding or investigation.

(3) Form of request

In any case in which the Secretary is authorized to disclose a return or return information to the Department of Justice pursuant to the provisions of this subsection—

(A) if the Secretary has referred the case to the Department of Justice, or if the proceeding is authorized by subchapter B of chapter 76, the Secretary may make such disclosure on his own motion, or

(B) if the Secretary receives a written request from the Attorney General, the Deputy Attorney General, or an Assistant Attorney General for a return of, or return information relating to, a person named in such request and setting forth the need for the disclosure, the Secretary shall disclose return or return the information so requested.

(4) Disclosure in judicial and administrative tax proceedings

A return or return information may be disclosed in a Federal or State judicial or administrative proceeding pertaining to tax administration, but only—

(A) if the taxpayer is a party to the proceeding, or the proceeding arose out of, or in connection with, determining the taxpayer's civil or criminal liability, or the collection of such civil liability, in respect of any tax imposed under this title;

(B) if the treatment of an item reflected on such return is directly related to the resolution of an issue in the proceeding;

(C) if such return or return information directly relates to a transactional relationship between a person who is a party to the proceeding and the taxpayer which directly affects the resolution of an issue in the proceeding; or

(D) to the extent required by order of a court pursuant to section 3500 of title 18, United States Code, or rule 16 of the Federal Rules of Criminal Procedure, such court being authorized in the issuance of such order to give due consideration to congressional policy favoring the confidentiality of returns and return information as set forth in this title.

However, such return or return information shall not be disclosed as provided in subparagraph (A), (B), or (C) if the Secretary determines that such disclosure would identify a confidential informant or seriously impair a civil or criminal tax investigation.

(5) Withholding of tax from social security benefits

Upon written request of the payor agency, the Secretary may disclose available return information from the master files of the Internal Revenue Service with respect to the address and status of an individual as a nonresident alien or as a citizen or resident of the United States to the Social Security Administration or the Railroad Retirement Board (whichever is appropriate) for purposes of carrying out its responsibilities for withholding tax under section 1441 from social security benefits (as defined in section 86(d)).

(6) Internal Revenue Service Oversight Board

(A) In general

Notwithstanding paragraph (1), and except as provided in subparagraph (B), no return or return information may be disclosed to any member of the Oversight Board described in subparagraph (A) or (D) of section 7802(b)(1) or to any employee or detailee of such Board by reason of their service with the Board. Any request for information not permitted to be disclosed under the preceding sentence, and any contact relating to a specific taxpayer, made by any such individual to an officer or employee of the Internal Revenue Service shall be reported by such officer or employee to the Secretary, the Treasury Inspector General for Tax Administration, and the Joint Committee on Taxation.

(B) Exception for reports to the Board

If—

(i) the Commissioner or the Treasury Inspector General for Tax Administration prepares any report or other matter for the Oversight Board in order to assist the Board in carrying out its duties; and

(ii) the Commissioner or such Inspector General determines it is necessary to include any return or return information in such report or other matter to enable the Board to carry out such duties,

such return or return information (other than information regarding taxpayer identity) may be disclosed to members, employees, or detailees of the Board solely for the purpose of carrying out such duties.

(i) Disclosure to Federal officers or employees for administration of Federal laws not relating to tax administration

(1) Disclosure of returns and return information for use in criminal investigations

(A) In general

Except as provided in paragraph (6), any return or return information with respect to any specified taxable period or periods shall, pursuant to and upon the grant of an ex parte order by a Federal district court judge or magistrate judge under subparagraph (B), be open (but only to the extent necessary as provided in such order) to inspection by, or disclosure to, officers and employees of any Federal agency who are personally and directly engaged in—

(i) preparation for any judicial or administrative proceeding pertaining to the enforcement of a specifically designated Federal criminal statute (not involving tax administration) to which the United States or such agency is or may be a party,

(ii) any investigation which may result in such a proceeding, or

(iii) any Federal grand jury proceeding pertaining to enforcement of such a criminal statute to which the United States or such agency is or may be a party,

solely for the use of such officers and employees in such preparation, investigation, or grand

jury proceeding.

(B) Application for order

The Attorney General, the Deputy Attorney General, the Associate Attorney General, any Assistant Attorney General, any United States attorney, any special prosecutor appointed under section 593 of title 28, United States Code, or any attorney in charge of a criminal division organized crime strike force established pursuant to section 510 of title 28, United States Code, may authorize an application to a Federal district court judge or magistrate judge for the order referred to in subparagraph (A). Upon such application, such judge or magistrate judge may grant such order if he determines on the basis of the facts submitted by the applicant that—

(i) there is reasonable cause to believe, based upon information believed to be reliable, that a specific criminal act has been committed,

(ii) there is reasonable cause to believe that the return or return information is or may be relevant to a matter relating to the commission of such act, and

(iii) the return or return information is sought exclusively for use in a Federal criminal investigation or proceeding concerning such act, and the information sought to be disclosed cannot reasonably be obtained, under the circumstances, from another source.

(2) Disclosure of return information other than taxpayer return information for use in criminal investigations

(A) In general

Except as provided in paragraph (6), upon receipt by the Secretary of a request which meets the requirements of subparagraph (B) from the head of any Federal agency or the Inspector General thereof, or, in the case of the Department of Justice, the Attorney General, the Deputy Attorney General, the Associate Attorney General, any Assistant Attorney General, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, any United States attorney, any special prosecutor appointed under section 593 of title 28, United States Code, or any attorney in charge of a criminal division organized crime strike force established pursuant to section 510 of title 28, United States Code, the Secretary shall disclose return information (other than taxpayer return information) to officers and employees of such agency who are personally and directly engaged in—

(i) preparation for any judicial or administrative proceeding described in paragraph (1)(A)(i),

(ii) any investigation which may result in such a proceeding, or

(iii) any grand jury proceeding described in paragraph (1)(A)(iii),

solely for the use of such officers and employees in such preparation, investigation, or grand jury proceeding.

(B) Requirements

A request meets the requirements of this subparagraph if the request is in writing and sets forth—

(i) the name and address of the taxpayer with respect to whom the requested return information relates;

(ii) the taxable period or periods to which such return information relates;

(iii) the statutory authority under which the proceeding or investigation described in subparagraph (A) is being conducted; and

(iv) the specific reason or reasons why such disclosure is, or may be, relevant to such proceeding or investigation.

(C) Taxpayer identity

For purposes of this paragraph, a taxpayer's identity shall not be treated as taxpayer return information.

(3) Disclosure of return information to apprise appropriate officials of criminal or terrorist

activities or emergency circumstances

(A) Possible violations of Federal criminal law

(i) In general

Except as provided in paragraph (6), the Secretary may disclose in writing return information (other than taxpayer return information) which may constitute evidence of a violation of any Federal criminal law (not involving tax administration) to the extent necessary to apprise the head of the appropriate Federal agency charged with the responsibility of enforcing such law. The head of such agency may disclose such return information to officers and employees of such agency to the extent necessary to enforce such law.

(ii) Taxpayer identity

If there is return information (other than taxpayer return information) which may constitute evidence of a violation by any taxpayer of any Federal criminal law (not involving tax administration), such taxpayer's identity may also be disclosed under clause (i).

(B) Emergency circumstances

(i) Danger of death or physical injury

Under circumstances involving an imminent danger of death or physical injury to any individual, the Secretary may disclose return information to the extent necessary to apprise appropriate officers or employees of any Federal or State law enforcement agency of such circumstances.

(ii) Flight from Federal prosecution

Under circumstances involving the imminent flight of any individual from Federal prosecution, the Secretary may disclose return information to the extent necessary to apprise appropriate officers or employees of any Federal law enforcement agency of such circumstances.

(C) Terrorist activities, etc.

(i) In general

Except as provided in paragraph (6), the Secretary may disclose in writing return information (other than taxpayer return information) that may be related to a terrorist incident, threat, or activity to the extent necessary to apprise the head of the appropriate Federal law enforcement agency responsible for investigating or responding to such terrorist incident, threat, or activity. The head of the agency may disclose such return information to officers and employees of such agency to the extent necessary to investigate or respond to such terrorist incident, threat, or activity.

(ii) Disclosure to the Department of Justice

Returns and taxpayer return information may also be disclosed to the Attorney General under clause (i) to the extent necessary for, and solely for use in preparing, an application under paragraph (7)(D).

(iii) Taxpayer identity

For purposes of this subparagraph, a taxpayer's identity shall not be treated as taxpayer return information.

(4) Use of certain disclosed returns and return information in judicial or administrative proceedings

(A) Returns and taxpayer return information

Except as provided in subparagraph (C), any return or taxpayer return information obtained under paragraph (1) or (7)(C) may be disclosed in any judicial or administrative proceeding pertaining to enforcement of a specifically designated Federal criminal statute or related civil

forfeiture (not involving tax administration) to which the United States or a Federal agency is a party—

(i) if the court finds that such return or taxpayer return information is probative of a matter in issue relevant in establishing the commission of a crime or the guilt or liability of a party, or

(ii) to the extent required by order of the court pursuant to section 3500 of title 18, United States Code, or rule 16 of the Federal Rules of Criminal Procedure.

(B) Return information (other than taxpayer return information)

Except as provided in subparagraph (C), any return information (other than taxpayer return information) obtained under paragraph (1), (2), (3)(A) or (C), or (7) may be disclosed in any judicial or administrative proceeding pertaining to enforcement of a specifically designated Federal criminal statute or related civil forfeiture (not involving tax administration) to which the United States or a Federal agency is a party.

(C) Confidential informant; impairment of investigations

No return or return information shall be admitted into evidence under subparagraph (A)(i) or (B) if the Secretary determines and notifies the Attorney General or his delegate or the head of the Federal agency that such admission would identify a confidential informant or seriously impair a civil or criminal tax investigation.

(D) Consideration of confidentiality policy

In ruling upon the admissibility of returns or return information, and in the issuance of an order under subparagraph (A)(ii), the court shall give due consideration to congressional policy favoring the confidentiality of returns and return information as set forth in this title.

(E) Reversible error

The admission into evidence of any return or return information contrary to the provisions of this paragraph shall not, as such, constitute reversible error upon appeal of a judgment in the proceeding.

(5) Disclosure to locate fugitives from justice

(A) In general

Except as provided in paragraph (6), the return of an individual or return information with respect to such individual shall, pursuant to and upon the grant of an ex parte order by a Federal district court judge or magistrate judge under subparagraph (B), be open (but only to the extent necessary as provided in such order) to inspection by, or disclosure to, officers and employees of any Federal agency exclusively for use in locating such individual.

(B) Application for order

Any person described in paragraph (1)(B) may authorize an application to a Federal district court judge or magistrate judge for an order referred to in subparagraph (A). Upon such application, such judge or magistrate judge may grant such order if he determines on the basis of the facts submitted by the applicant that—

(i) a Federal arrest warrant relating to the commission of a Federal felony offense has been issued for an individual who is a fugitive from justice,

(ii) the return of such individual or return information with respect to such individual is sought exclusively for use in locating such individual, and

(iii) there is reasonable cause to believe that such return or return information may be relevant in determining the location of such individual.

(6) Confidential informants; impairment of investigations

The Secretary shall not disclose any return or return information under paragraph (1), (2), (3)(A) or (C), (5), (7), or (8) if the Secretary determines (and, in the case of a request for

disclosure pursuant to a court order described in paragraph (1)(B) or (5)(B), certifies to the court) that such disclosure would identify a confidential informant or seriously impair a civil or criminal tax investigation.

(7) Disclosure upon request of information relating to terrorist activities, etc.

(A) Disclosure to law enforcement agencies

(i) In general

Except as provided in paragraph (6), upon receipt by the Secretary of a written request which meets the requirements of clause (iii), the Secretary may disclose return information (other than taxpayer return information) to officers and employees of any Federal law enforcement agency who are personally and directly engaged in the response to or investigation of any terrorist incident, threat, or activity.

(ii) Disclosure to State and local law enforcement agencies

The head of any Federal law enforcement agency may disclose return information obtained under clause (i) to officers and employees of any State or local law enforcement agency but only if such agency is part of a team with the Federal law enforcement agency in such response or investigation and such information is disclosed only to officers and employees who are personally and directly engaged in such response or investigation.

(iii) Requirements

A request meets the requirements of this clause if—

(I) the request is made by the head of any Federal law enforcement agency (or his delegate) involved in the response to or investigation of any terrorist incident, threat, or activity, and

(II) the request sets forth the specific reason or reasons why such disclosure may be relevant to a terrorist incident, threat, or activity.

(iv) Limitation on use of information

Information disclosed under this subparagraph shall be solely for the use of the officers and employees to whom such information is disclosed in such response or investigation.

(v) Taxpayer identity

For purposes of this subparagraph, a taxpayer's identity shall not be treated as taxpayer return information.

(B) Disclosure to intelligence agencies

(i) In general

Except as provided in paragraph (6), upon receipt by the Secretary of a written request which meets the requirements of clause (ii), the Secretary may disclose return information (other than taxpayer return information) to those officers and employees of the Department of Justice, the Department of the Treasury, and other Federal intelligence agencies who are personally and directly engaged in the collection or analysis of intelligence and counterintelligence information or investigation concerning any terrorist incident, threat, or activity. For purposes of the preceding sentence, the information disclosed under the preceding sentence shall be solely for the use of such officers and employees in such investigation, collection, or analysis.

(ii) Requirements

A request meets the requirements of this subparagraph if the request—

(I) is made by an individual described in clause (iii), and

(II) sets forth the specific reason or reasons why such disclosure may be relevant to a terrorist incident, threat, or activity.

(iii) Requesting individuals

An individual described in this subparagraph is an individual—

(I) who is an officer or employee of the Department of Justice or the Department of the Treasury who is appointed by the President with the advice and consent of the Senate or who is the Director of the United States Secret Service, and

(II) who is responsible for the collection and analysis of intelligence and counterintelligence information concerning any terrorist incident, threat, or activity.

(iv) Taxpayer identity

For purposes of this subparagraph, a taxpayer's identity shall not be treated as taxpayer return information.

(C) Disclosure under ex parte orders

(i) In general

Except as provided in paragraph (6), any return or return information with respect to any specified taxable period or periods shall, pursuant to and upon the grant of an ex parte order by a Federal district court judge or magistrate under clause (ii), be open (but only to the extent necessary as provided in such order) to inspection by, or disclosure to, officers and employees of any Federal law enforcement agency or Federal intelligence agency who are personally and directly engaged in any investigation, response to, or analysis of intelligence and counterintelligence information concerning any terrorist incident, threat, or activity. Return or return information opened to inspection or disclosure pursuant to the preceding sentence shall be solely for the use of such officers and employees in the investigation, response, or analysis, and in any judicial, administrative, or grand jury proceedings, pertaining to such terrorist incident, threat, or activity.

(ii) Application for order

The Attorney General, the Deputy Attorney General, the Associate Attorney General, any Assistant Attorney General, or any United States attorney may authorize an application to a Federal district court judge or magistrate for the order referred to in clause (i). Upon such application, such judge or magistrate may grant such order if he determines on the basis of the facts submitted by the applicant that—

(I) there is reasonable cause to believe, based upon information believed to be reliable, that the return or return information may be relevant to a matter relating to such terrorist incident, threat, or activity, and

(II) the return or return information is sought exclusively for use in a Federal investigation, analysis, or proceeding concerning any terrorist incident, threat, or activity.

(D) Special rule for ex parte disclosure by the IRS

(i) In general

Except as provided in paragraph (6), the Secretary may authorize an application to a Federal district court judge or magistrate for the order referred to in subparagraph (C)(i). Upon such application, such judge or magistrate may grant such order if he determines on the basis of the facts submitted by the applicant that the requirements of subparagraph (C)(ii)(I) are met.

(ii) Limitation on use of information

Information disclosed under clause (i)—

(I) may be disclosed only to the extent necessary to apprise the head of the appropriate Federal law enforcement agency responsible for investigating or responding to a terrorist incident, threat, or activity, and

(II) shall be solely for use in a Federal investigation, analysis, or proceeding concerning any terrorist incident, threat, or activity.

The head of such Federal agency may disclose such information to officers and employees of

such agency to the extent necessary to investigate or respond to such terrorist incident, threat, or activity.

(8) Comptroller General

(A) Returns available for inspection

Except as provided in subparagraph (C), upon written request by the Comptroller General of the United States, returns and return information shall be open to inspection by, or disclosure to, officers and employees of the Government Accountability Office for the purpose of, and to the extent necessary in, making—

(i) an audit of the Internal Revenue Service, the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice, or the Tax and Trade Bureau, Department of the Treasury, which may be required by section 713 of title 31, United States Code, or

(ii) any audit authorized by subsection (p)(6),

except that no such officer or employee shall, except to the extent authorized by subsection (f) or (p)(6), disclose to any person, other than another officer or employee of such office whose official duties require such disclosure, any return or return information described in section 4424(a) in a form which can be associated with, or otherwise identify, directly or indirectly, a particular taxpayer, nor shall such officer or employee disclose any other return or return information, except as otherwise expressly provided by law, to any person other than such other officer or employee of such office in a form which can be associated with, or otherwise identify, directly or indirectly, a particular taxpayer.

(B) Audits of other agencies

(i) In general

Nothing in this section shall prohibit any return or return information obtained under this title by any Federal agency (other than an agency referred to in subparagraph (A)) or by a Trustee as defined in the District of Columbia Retirement Protection Act of 1997, for use in any program or activity from being open to inspection by, or disclosure to, officers and employees of the Government Accountability Office if such inspection or disclosure is—

(I) for purposes of, and to the extent necessary in, making an audit authorized by law of such program or activity, and

(II) pursuant to a written request by the Comptroller General of the United States to the head of such Federal agency.

(ii) Information from Secretary

If the Comptroller General of the United States determines that the returns or return information available under clause (i) are not sufficient for purposes of making an audit of any program or activity of a Federal agency (other than an agency referred to in subparagraph (A)), upon written request by the Comptroller General to the Secretary, returns and return information (of the type authorized by subsection (l) or (m) to be made available to the Federal agency for use in such program or activity) shall be open to inspection by, or disclosure to, officers and employees of the Government Accountability Office for the purpose of, and to the extent necessary in, making such audit.

(iii) Requirement of notification upon completion of audit

Within 90 days after the completion of an audit with respect to which returns or return information were opened to inspection or disclosed under clause (i) or (ii), the Comptroller General of the United States shall notify in writing the Joint Committee on Taxation of such completion. Such notice shall include—

(I) a description of the use of the returns and return information by the Federal agency involved,

(II) such recommendations with respect to the use of returns and return information by such Federal agency as the Comptroller General deems appropriate, and

(III) a statement on the impact of any such recommendations on confidentiality of returns and return information and the administration of this title.

(iv) Certain restrictions made applicable

The restrictions contained in subparagraph (A) on the disclosure of any returns or return information open to inspection or disclosed under such subparagraph shall also apply to returns and return information open to inspection or disclosed under this subparagraph.

(C) Disapproval by Joint Committee on Taxation

Returns and return information shall not be open to inspection or disclosed under subparagraph (A) or (B) with respect to an audit—

(i) unless the Comptroller General of the United States notifies in writing the Joint Committee on Taxation of such audit, and

(ii) if the Joint Committee on Taxation disapproves such audit by a vote of at least two-thirds of its members within the 30-day period beginning on the day the Joint Committee on Taxation receives such notice.

(j) Statistical use

(1) Department of Commerce

Upon request in writing by the Secretary of Commerce, the Secretary shall furnish—

(A) such returns, or return information reflected thereon, to officers and employees of the Bureau of the Census, and

(B) such return information reflected on returns of corporations to officers and employees of the Bureau of Economic Analysis,

as the Secretary may prescribe by regulation for the purpose of, but only to the extent necessary in, the structuring of censuses and national economic accounts and conducting related statistical activities authorized by law.

(2) Federal Trade Commission

Upon request in writing by the Chairman of the Federal Trade Commission, the Secretary shall furnish such return information reflected on any return of a corporation with respect to the tax imposed by chapter 1 to officers and employees of the Division of Financial Statistics of the Bureau of Economics of such commission as the Secretary may prescribe by regulation for the purpose of, but only to the extent necessary in, administration by such division of legally authorized economic surveys of corporations.

(3) Department of Treasury

Returns and return information shall be open to inspection by or disclosure to officers and employees of the Department of the Treasury whose official duties require such inspection or disclosure for the purpose of, but only to the extent necessary in, preparing economic or financial forecasts, projections, analyses, and statistical studies and conducting related activities. Such inspection or disclosure shall be permitted only upon written request which sets forth the specific reason or reasons why such inspection or disclosure is necessary and which is signed by the head of the bureau or office of the Department of the Treasury requesting the inspection or disclosure.

(4) Anonymous form

No person who receives a return or return information under this subsection shall disclose such return or return information to any person other than the taxpayer to whom it relates except in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer.

(5) Department of Agriculture

Upon request in writing by the Secretary of Agriculture, the Secretary shall furnish such returns, or return information reflected thereon, as the Secretary may prescribe by regulation to officers and employees of the Department of Agriculture whose official duties require access to such

returns or information for the purpose of, but only to the extent necessary in, structuring, preparing, and conducting the census of agriculture pursuant to the Census of Agriculture Act of 1997 (Public Law 105–113).

(6) Congressional Budget Office

Upon written request by the Director of the Congressional Budget Office, the Secretary shall furnish to officers and employees of the Congressional Budget Office return information for the purpose of, but only to the extent necessary for, long-term models of the social security and medicare programs.

(k) Disclosure of certain returns and return information for tax administration purposes

(1) Disclosure of accepted offers-in-compromise

Return information shall be disclosed to members of the general public to the extent necessary to permit inspection of any accepted offer-in-compromise under section 7122 relating to the liability for a tax imposed by this title.

(2) Disclosure of amount of outstanding lien

If a notice of lien has been filed pursuant to section 6323(f), the amount of the outstanding obligation secured by such lien may be disclosed to any person who furnishes satisfactory written evidence that he has a right in the property subject to such lien or intends to obtain a right in such property.

(3) Disclosure of return information to correct misstatements of fact

The Secretary may, but only following approval by the Joint Committee on Taxation, disclose such return information or any other information with respect to any specific taxpayer to the extent necessary for tax administration purposes to correct a misstatement of fact published or disclosed with respect to such taxpayer's return or any transaction of the taxpayer with the Internal Revenue Service.

(4) Disclosure of competent authority under income tax convention

A return or return information may be disclosed to a competent authority of a foreign government which has an income tax or gift and estate tax convention, or other convention or bilateral agreement relating to the exchange of tax information, with the United States but only to the extent provided in, and subject to the terms and conditions of, such convention or bilateral agreement.

(5) State agencies regulating tax return preparers

Taxpayer identity information with respect to any tax return preparer, and information as to whether or not any penalty has been assessed against such tax return preparer under section 6694, 6695, or 7216, may be furnished to any agency, body, or commission lawfully charged under any State or local law with the licensing, registration, or regulation of tax return preparers. Such information may be furnished only upon written request by the head of such agency, body, or commission designating the officers or employees to whom such information is to be furnished. Information may be furnished and used under this paragraph only for purposes of the licensing, registration, or regulation of tax return preparers.

(6) Disclosure by certain officers and employees for investigative purposes

An internal revenue officer or employee and an officer or employee of the Office of Treasury Inspector General for Tax Administration may, in connection with his official duties relating to any audit, collection activity, or civil or criminal tax investigation or any other offense under the internal revenue laws, disclose return information to the extent that such disclosure is necessary in obtaining information, which is not otherwise reasonably available, with respect to the correct determination of tax, liability for tax, or the amount to be collected or with respect to the enforcement of any other provision of this title. Such disclosures shall be made only in such situations and under such conditions as the Secretary may prescribe by regulation.

(7) Disclosure of excise tax registration information

To the extent the Secretary determines that disclosure is necessary to permit the effective administration of subtitle D, the Secretary may disclose—

(A) the name, address, and registration number of each person who is registered under any provision of subtitle D (and, in the case of a registered terminal operator, the address of each terminal operated by such operator), and

(B) the registration status of any person.

(8) Levies on certain government payments

(A) Disclosure of return information in levies on Financial Management Service

In serving a notice of levy, or release of such levy, with respect to any applicable government payment, the Secretary may disclose to officers and employees of the Financial Management Service—

(i) return information, including taxpayer identity information,

(ii) the amount of any unpaid liability under this title (including penalties and interest), and

(iii) the type of tax and tax period to which such unpaid liability relates.

(B) Restriction on use of disclosed information

Return information disclosed under subparagraph (A) may be used by officers and employees of the Financial Management Service only for the purpose of, and to the extent necessary in, transferring levied funds in satisfaction of the levy, maintaining appropriate agency records in regard to such levy or the release thereof, notifying the taxpayer and the agency certifying such payment that the levy has been honored, or in the defense of any litigation ensuing from the honor of such levy.

(C) Applicable government payment

For purposes of this paragraph, the term "applicable government payment" means—

(i) any Federal payment (other than a payment for which eligibility is based on the income or assets (or both) of a payee) certified to the Financial Management Service for disbursement, and

(ii) any other payment which is certified to the Financial Management Service for disbursement and which the Secretary designates by published notice.

(9) Disclosure of information to administer section 6311

The Secretary may disclose returns or return information to financial institutions and others to the extent the Secretary deems necessary for the administration of section 6311. Disclosures of information for purposes other than to accept payments by checks or money orders shall be made only to the extent authorized by written procedures promulgated by the Secretary.

(10) Disclosure of certain returns and return information to certain prison officials

(A) In general

Under such procedures as the Secretary may prescribe, the Secretary may disclose to officers and employees of the Federal Bureau of Prisons and of any State agency charged with the responsibility for administration of prisons any returns or return information with respect to individuals incarcerated in Federal or State prison systems whom the Secretary has determined may have filed or facilitated the filing of a false or fraudulent return to the extent that the Secretary determines that such disclosure is necessary to permit effective Federal tax administration.

(B) Disclosure to contractor-run prisons

Under such procedures as the Secretary may prescribe, the disclosures authorized by subparagraph (A) may be made to contractors responsible for the operation of a Federal or State prison on behalf of such Bureau or agency.

(C) Restrictions on use of disclosed information

Any return or return information received under this paragraph shall be used only for the purposes of and to the extent necessary in taking administrative action to prevent the filing of false and fraudulent returns, including administrative actions to address possible violations of administrative rules and regulations of the prison facility and in administrative and judicial proceedings arising from such administrative actions.

(D) Restrictions on redisclosure and disclosure to legal representatives

Notwithstanding subsection (h)—

(i) Restrictions on redisclosure

Except as provided in clause (ii), any officer, employee, or contractor of the Federal Bureau of Prisons or of any State agency charged with the responsibility for administration of prisons shall not disclose any information obtained under this paragraph to any person other than an officer or employee or contractor of such Bureau or agency personally and directly engaged in the administration of prison facilities on behalf of such Bureau or agency.

(ii) Disclosure to legal representatives

The returns and return information disclosed under this paragraph may be disclosed to the duly authorized legal representative of the Federal Bureau of Prisons, State agency, or contractor charged with the responsibility for administration of prisons, or of the incarcerated individual accused of filing the false or fraudulent return who is a party to an action or proceeding described in subparagraph (C), solely in preparation for, or for use in, such action or proceeding.

(l) Disclosure of returns and return information for purposes other than tax administration

(1) Disclosure of certain returns and return information to Social Security Administration and Railroad Retirement Board

The Secretary may, upon written request, disclose returns and return information with respect to—

(A) taxes imposed by chapters 2, 21, and 24, to the Social Security Administration for purposes of its administration of the Social Security Act;

(B) a plan to which part I of subchapter D of chapter 1 applies, to the Social Security Administration for purposes of carrying out its responsibility under section 1131 of the Social Security Act, limited, however to return information described in section 6057(d); and

(C) taxes imposed by chapter 22, to the Railroad Retirement Board for purposes of its administration of the Railroad Retirement Act.

(2) Disclosure of returns and return information to the Department of Labor and Pension Benefit Guaranty Corporation

The Secretary may, upon written request, furnish returns and return information to the proper officers and employees of the Department of Labor and the Pension Benefit Guaranty Corporation for purposes of, but only to the extent necessary in, the administration of titles I and IV of the Employee Retirement Income Security Act of 1974.

(3) Disclosure that applicant for Federal loan has tax delinquent account

(A) In general

Upon written request, the Secretary may disclose to the head of the Federal agency administering any included Federal loan program whether or not an applicant for a loan under such program has a tax delinquent account.

(B) Restriction on disclosure

Any disclosure under subparagraph (A) shall be made only for the purpose of, and to the extent necessary in, determining the creditworthiness of the applicant for the loan in question.

(C) Included Federal loan program defined

For purposes of this paragraph, the term "included Federal loan program" means any program

under which the United States or a Federal agency makes, guarantees, or insures loans.

(4) Disclosure of returns and return information for use in personnel or claimant representative matters

The Secretary may disclose returns and return information—

(A) upon written request—

(i) to an employee or former employee of the Department of the Treasury, or to the duly authorized legal representative of such employee or former employee, who is or may be a party to any administrative action or proceeding affecting the personnel rights of such employee or former employee; or

(ii) to any person, or to the duly authorized legal representative of such person, whose rights are or may be affected by an administrative action or proceeding under section 330 of title 31, United States Code,

solely for use in the action or proceeding, or in preparation for the action or proceeding, but only to the extent that the Secretary determines that such returns or return information is or may be relevant and material to the action or proceeding; or

(B) to officers and employees of the Department of the Treasury for use in any action or proceeding described in subparagraph (A), or in preparation for such action or proceeding, to the extent necessary to advance or protect the interests of the United States.

(5) Social Security Administration

Upon written request by the Commissioner of Social Security, the Secretary may disclose information returns filed pursuant to part III of subchapter A of chapter 61 of this subtitle for the purpose of—

(A) carrying out, in accordance with an agreement entered into pursuant to section 232 of the Social Security Act, an effective return processing program; or

(B) providing information regarding the mortality status of individuals for epidemiological and similar research in accordance with section 1106(d) of the Social Security Act.

(6) Disclosure of return information to Federal, State, and local child support enforcement agencies

(A) Return information from Internal Revenue Service

The Secretary may, upon written request, disclose to the appropriate Federal, State, or local child support enforcement agency—

(i) available return information from the master files of the Internal Revenue Service relating to the social security account number (or numbers, if the individual involved has more than one such number), address, filing status, amounts and nature of income, and the number of dependents reported on any return filed by, or with respect to, any individual with respect to whom child support obligations are sought to be established or enforced pursuant to the provisions of part D of title IV of the Social Security Act and with respect to any individual to whom such support obligations are owing, and

(ii) available return information reflected on any return filed by, or with respect to, any individual described in clause (i) relating to the amount of such individual's gross income (as defined in section 61) or consisting of the names and addresses of payors of such income and the names of any dependents reported on such return, but only if such return information is not reasonably available from any other source.

(B) Disclosure to certain agents

The following information disclosed to any child support enforcement agency under subparagraph (A) with respect to any individual with respect to whom child support obligations are sought to be established or enforced may be disclosed by such agency to any agent of such agency which is under contract with such agency to carry out the purposes described in subparagraph (C):

(i) The address and social security account number (or numbers) of such individual.

(ii) The amount of any reduction under section 6402(c) (relating to offset of past-due support against overpayments) in any overpayment otherwise payable to such individual.

(C) Restriction on disclosure

Information may be disclosed under this paragraph only for purposes of, and to the extent necessary in, establishing and collecting child support obligations from, and locating, individuals owing such obligations.

(7) Disclosure of return information to Federal, State, and local agencies administering certain programs under the Social Security Act, the Food and Nutrition Act of 2008 of 1977,[1] or title 38, United States Code, or certain housing assistance programs

(A) Return information from Social Security Administration

The Commissioner of Social Security shall, upon written request, disclose return information from returns with respect to net earnings from self-employment (as defined in section 1402), wages (as defined in section 3121(a) or 3401(a)), and payments of retirement income, which have been disclosed to the Social Security Administration as provided by paragraph (1) or (5) of this subsection, to any Federal, State, or local agency administering a program listed in subparagraph (D).

(B) Return information from Internal Revenue Service

The Secretary shall, upon written request, disclose current return information from returns with respect to unearned income from the Internal Revenue Service files to any Federal, State, or local agency administering a program listed in subparagraph (D).

(C) Restriction on disclosure

The Commissioner of Social Security and the Secretary shall disclose return information under subparagraphs (A) and (B) only for purposes of, and to the extent necessary in, determining eligibility for, or the correct amount of, benefits under a program listed in subparagraph (D).

(D) Programs to which rule applies

The programs to which this paragraph applies are:

(i) a State program funded under part A of title IV of the Social Security Act;

(ii) medical assistance provided under a State plan approved under title XIX of the Social Security Act or subsidies provided under section 1860D–14 of such Act;

(iii) supplemental security income benefits provided under title XVI of the Social Security Act, and federally administered supplementary payments of the type described in section 1616(a) of such Act (including payments pursuant to an agreement entered into under section 212(a) of Public Law 93–66);

(iv) any benefits provided under a State plan approved under title I, X, XIV, or XVI of the Social Security Act (as those titles apply to Puerto Rico, Guam, and the Virgin Islands);

(v) unemployment compensation provided under a State law described in section 3304 of this title;

(vi) assistance provided under the Food and Nutrition Act of 2008;

(vii) State-administered supplementary payments of the type described in section 1616(a) of the Social Security Act (including payments pursuant to an agreement entered into under section 212(a) of Public Law 93–66);

(viii)(I) any needs-based pension provided under chapter 15 of title 38, United States Code, or under any other law administered by the Secretary of Veterans Affairs;

(II) parents' dependency and indemnity compensation provided under section 1315 of title 38, United States Code;

(III) health-care services furnished under sections 1710(a)(2)(G), 1710(a)(3), and 1710(b) of such title; and

(IV) compensation paid under chapter 11 of title 38, United States Code, at the 100 percent

rate based solely on unemployability and without regard to the fact that the disability or disabilities are not rated as 100 percent disabling under the rating schedule; and

(ix) any housing assistance program administered by the Department of Housing and Urban Development that involves initial and periodic review of an applicant's or participant's income, except that return information may be disclosed under this clause only on written request by the Secretary of Housing and Urban Development and only for use by officers and employees of the Department of Housing and Urban Development with respect to applicants for and participants in such programs.

Only return information from returns with respect to net earnings from self-employment and wages may be disclosed under this paragraph for use with respect to any program described in clause (viii)(IV).

(8) Disclosure of certain return information by Social Security Administration to Federal, State, and local child support enforcement agencies

(A) In general

Upon written request, the Commissioner of Social Security shall disclose directly to officers and employees of a Federal or State or local child support enforcement agency return information from returns with respect to social security account numbers, net earnings from self-employment (as defined in section 1402), wages (as defined in section 3121(a) or 3401(a)), and payments of retirement income which have been disclosed to the Social Security Administration as provided by paragraph (1) or (5) of this subsection.

(B) Restriction on disclosure

The Commissioner of Social Security shall disclose return information under subparagraph (A) only for purposes of, and to the extent necessary in, establishing and collecting child support obligations from, and locating, individuals owing such obligations. For purposes of the preceding sentence, the term "child support obligations" only includes obligations which are being enforced pursuant to a plan described in section 454 of the Social Security Act which has been approved by the Secretary of Health and Human Services under part D of title IV of such Act.

(C) State or local child support enforcement agency

For purposes of this paragraph, the term "State or local child support enforcement agency" means any agency of a State or political subdivision thereof operating pursuant to a plan described in subparagraph (B).

(9) Disclosure of alcohol fuel producers to administrators of State alcohol laws

Notwithstanding any other provision of this section, the Secretary may disclose—

(A) the name and address of any person who is qualified to produce alcohol for fuel use under section 5181, and

(B) the location of any premises to be used by such person in producing alcohol for fuel,

to any State agency, body, or commission, or its legal representative, which is charged under the laws of such State with responsibility for administration of State alcohol laws solely for use in the administration of such laws.

(10) Disclosure of certain information to agencies requesting a reduction under subsection (c), (d), (e), or (f) of section 6402

(A) Return information from Internal Revenue Service

The Secretary may, upon receiving a written request, disclose to officers and employees of any agency seeking a reduction under subsection (c), (d), (e), or (f) of section 6402, to officers

and employees of the Department of Labor for purposes of facilitating the exchange of data in connection with a request made under subsection (f)(5) [2] of section 6402, and to officers and employees of the Department of the Treasury in connection with such reduction—

(i) taxpayer identity information with respect to the taxpayer against whom such a reduction was made or not made and with respect to any other person filing a joint return with such taxpayer,

(ii) the fact that a reduction has been made or has not been made under such subsection with respect to such taxpayer,

(iii) the amount of such reduction,

(iv) whether such taxpayer filed a joint return, and

(v) the fact that a payment was made (and the amount of the payment) to the spouse of the taxpayer on the basis of a joint return.

(B)(i) [3] Restriction on use of disclosed information

Any officers and employees of an agency receiving return information under subparagraph (A) shall use such information only for the purposes of, and to the extent necessary in, establishing appropriate agency records, locating any person with respect to whom a reduction under subsection (c), (d), (e), or (f) of section 6402 is sought for purposes of collecting the debt with respect to which the reduction is sought, or in the defense of any litigation or administrative procedure ensuing from a reduction made under subsection (c), (d), (e), or (f) of section 6402.

(ii) Notwithstanding clause (i), return information disclosed to officers and employees of the Department of Labor may be accessed by agents who maintain and provide technological support to the Department of Labor's Interstate Connection Network (ICON) solely for the purpose of providing such maintenance and support.

(11) Disclosure of return information to carry out Federal Employees' Retirement System

(A) In general

The Commissioner of Social Security shall, on written request, disclose to the Office of Personnel Management return information from returns with respect to net earnings from self-employment (as defined in section 1402), wages (as defined in section 3121(a) or 3401(a)), and payments of retirement income, which have been disclosed to the Social Security Administration as provided by paragraph (1) or (5).

(B) Restriction on disclosure

The Commissioner of Social Security shall disclose return information under subparagraph (A) only for purposes of, and to the extent necessary in, the administration of chapters 83 and 84 of title 5, United States Code.

(12) Disclosure of certain taxpayer identity information for verification of employment status of medicare beneficiary and spouse of medicare beneficiary

(A) Return information from Internal Revenue Service

The Secretary shall, upon written request from the Commissioner of Social Security, disclose to the Commissioner available filing status and taxpayer identity information from the individual master files of the Internal Revenue Service relating to whether any medicare beneficiary identified by the Commissioner was a married individual (as defined in section 7703) for any specified year after 1986, and, if so, the name of the spouse of such individual and such spouse's TIN.

(B) Return information from Social Security Administration

The Commissioner of Social Security shall, upon written request from the Administrator of the Centers for Medicare & Medicaid Services, disclose to the Administrator the following information:

(i) The name and TIN of each medicare beneficiary who is identified as having received

wages (as defined in section 3401(a)), above an amount (if any) specified by the Secretary of Health and Human Services, from a qualified employer in a previous year.

(ii) For each medicare beneficiary who was identified as married under subparagraph (A) and whose spouse is identified as having received wages, above an amount (if any) specified by the Secretary of Health and Human Services, from a qualified employer in a previous year—

(I) the name and TIN of the medicare beneficiary, and

(II) the name and TIN of the spouse.

(iii) With respect to each such qualified employer, the name, address, and TIN of the employer and the number of individuals with respect to whom written statements were furnished under section 6051 by the employer with respect to such previous year.

(C) Disclosure by Centers for Medicare & Medicaid Services

With respect to the information disclosed under subparagraph (B), the Administrator of the Centers for Medicare & Medicaid Services may disclose—

(i) to the qualified employer referred to in such subparagraph the name and TIN of each individual identified under such subparagraph as having received wages from the employer (hereinafter in this subparagraph referred to as the "employee") for purposes of determining during what period such employee or the employee's spouse may be (or have been) covered under a group health plan of the employer and what benefits are or were covered under the plan (including the name, address, and identifying number of the plan),

(ii) to any group health plan which provides or provided coverage to such an employee or spouse, the name of such employee and the employee's spouse (if the spouse is a medicare beneficiary) and the name and address of the employer, and, for the purpose of presenting a claim to the plan—

(I) the TIN of such employee if benefits were paid under title XVIII of the Social Security Act with respect to the employee during a period in which the plan was a primary plan (as defined in section 1862(b)(2)(A) of the Social Security Act), and

(II) the TIN of such spouse if benefits were paid under such title with respect to the spouse during such period, and

(iii) to any agent of such Administrator the information referred to in subparagraph (B) for purposes of carrying out clauses (i) and (ii) on behalf of such Administrator.

(D) Special rules

(i) Restrictions on disclosure

Information may be disclosed under this paragraph only for purposes of, and to the extent necessary in, determining the extent to which any medicare beneficiary is covered under any group health plan.

(ii) Timely response to requests

Any request made under subparagraph (A) or (B) shall be complied with as soon as possible but in no event later than 120 days after the date the request was made.

(E) Definitions

For purposes of this paragraph—

(i) Medicare beneficiary

The term "medicare beneficiary" means an individual entitled to benefits under part A, or enrolled under part B, of title XVIII of the Social Security Act, but does not include such an individual enrolled in part A under section 1818.

(ii) Group health plan

The term "group health plan" means any group health plan (as defined in section

5000(b)(1)).

(iii) Qualified employer

The term "qualified employer" means, for a calendar year, an employer which has furnished written statements under section 6051 with respect to at least 20 individuals for wages paid in the year.

(13) Disclosure of return information to carry out income contingent repayment of student loans

(A) In general

The Secretary may, upon written request from the Secretary of Education, disclose to officers and employees of the Department of Education return information with respect to a taxpayer who has received an applicable student loan and whose loan repayment amounts are based in whole or in part on the taxpayer's income. Such return information shall be limited to—

(i) taxpayer identity information with respect to such taxpayer,

(ii) the filing status of such taxpayer, and

(iii) the adjusted gross income of such taxpayer.

(B) Restriction on use of disclosed information

Return information disclosed under subparagraph (A) may be used by officers and employees of the Department of Education only for the purposes of, and to the extent necessary in, establishing the appropriate income contingent repayment amount for an applicable student loan.

(C) Applicable student loan

For purposes of this paragraph, the term "applicable student loan" means—

(i) any loan made under the program authorized under part D of title IV of the Higher Education Act of 1965, and

(ii) any loan made under part B or E of title IV of the Higher Education Act of 1965 which is in default and has been assigned to the Department of Education.

(D) Termination

This paragraph shall not apply to any request made after December 31, 2007.

(14) Disclosure of return information to United States Customs Service

The Secretary may, upon written request from the Commissioner of the United States Customs Service, disclose to officers and employees of the Department of the Treasury such return information with respect to taxes imposed by chapters 1 and 6 as the Secretary may prescribe by regulations, solely for the purpose of, and only to the extent necessary in—

(A) ascertaining the correctness of any entry in audits as provided for in section 509 of the Tariff Act of 1930 (19 U.S.C. 1509), or

(B) other actions to recover any loss of revenue, or to collect duties, taxes, and fees, determined to be due and owing pursuant to such audits.

(15) Disclosure of returns filed under section 6050I

The Secretary may, upon written request, disclose to officers and employees of—

(A) any Federal agency,

(B) any agency of a State or local government, or

(C) any agency of the government of a foreign country,

information contained on returns filed under section 6050I. Any such disclosure shall be made on the same basis, and subject to the same conditions, as apply to disclosures of information on reports filed under section 5313 of title 31, United States Code; except that no disclosure under this paragraph shall be made for purposes of the administration of any tax law.

(16) Disclosure of return information for purposes of administering the District of Columbia

Retirement Protection Act of 1997

(A) In general

Upon written request available return information (including such information disclosed to the Social Security Administration under paragraph (1) or (5) of this subsection), relating to the amount of wage income (as defined in section 3121(a) or 3401(a)), the name, address, and identifying number assigned under section 6109, of payors of wage income, taxpayer identity (as defined in subsection [4] 6103(b)(6)), and the occupational status reflected on any return filed by, or with respect to, any individual with respect to whom eligibility for, or the correct amount of, benefits under the District of Columbia Retirement Protection Act of 1997, is sought to be determined, shall be disclosed by the Commissioner of Social Security, or to the extent not available from the Social Security Administration, by the Secretary, to any duly authorized officer or employee of the Department of the Treasury, or a Trustee or any designated officer or employee of a Trustee (as defined in the District of Columbia Retirement Protection Act of 1997), or any actuary engaged by a Trustee under the terms of the District of Columbia Retirement Protection Act of 1997, whose official duties require such disclosure, solely for the purpose of, and to the extent necessary in, determining an individual's eligibility for, or the correct amount of, benefits under the District of Columbia Retirement Protection Act of 1997.

(B) Disclosure for use in judicial or administrative proceedings

Return information disclosed to any person under this paragraph may be disclosed in a judicial or administrative proceeding relating to the determination of an individual's eligibility for, or the correct amount of, benefits under the District of Columbia Retirement Protection Act of 1997.

(17) Disclosure to National Archives and Records Administration

The Secretary shall, upon written request from the Archivist of the United States, disclose or authorize the disclosure of returns and return information to officers and employees of the National Archives and Records Administration for purposes of, and only to the extent necessary in, the appraisal of records for destruction or retention. No such officer or employee shall, except to the extent authorized by subsection (f), (i)(8), or (p), disclose any return or return information disclosed under the preceding sentence to any person other than to the Secretary, or to another officer or employee of the National Archives and Records Administration whose official duties require such disclosure for purposes of such appraisal.

(18) Disclosure of return information for purposes of carrying out a program for advance payment of credit for health insurance costs of eligible individuals

The Secretary may disclose to providers of health insurance for any certified individual (as defined in section 7527(c)) return information with respect to such certified individual only to the extent necessary to carry out the program established by section 7527 (relating to advance payment of credit for health insurance costs of eligible individuals).

(19) Disclosure of return information for purposes of providing transitional assistance under medicare discount card program

(A) In general

The Secretary, upon written request from the Secretary of Health and Human Services pursuant to carrying out section 1860D–31 of the Social Security Act, shall disclose to officers, employees, and contractors of the Department of Health and Human Services with respect to a taxpayer for the applicable year—

(i)(I) whether the adjusted gross income, as modified in accordance with specifications of the Secretary of Health and Human Services for purposes of carrying out such section, of such taxpayer and, if applicable, such taxpayer's spouse, for the applicable year, exceeds the amounts specified by the Secretary of Health and Human Services in order to apply the 100 and 135 percent of the poverty lines under such section, (II) whether the return was a joint return, and (III) the applicable year, or

(ii) if applicable, the fact that there is no return filed for such taxpayer for the applicable year.

(B) Definition of applicable year

For the purposes of this subsection, the term "applicable year" means the most recent taxable year for which information is available in the Internal Revenue Service's taxpayer data information systems, or, if there is no return filed for such taxpayer for such year, the prior taxable year.

(C) Restriction on use of disclosed information

Return information disclosed under this paragraph may be used only for the purposes of determining eligibility for and administering transitional assistance under section 1860D–31 of the Social Security Act.

(20) Disclosure of return information to carry out Medicare part B premium subsidy adjustment and part D base beneficiary premium increase

(A) In general

The Secretary shall, upon written request from the Commissioner of Social Security, disclose to officers, employees, and contractors of the Social Security Administration return information of a taxpayer whose premium (according to the records of the Secretary) may be subject to adjustment under section 1839(i) or increase under section 1860D–13(a)(7) of the Social Security Act. Such return information shall be limited to—

(i) taxpayer identity information with respect to such taxpayer,

(ii) the filing status of such taxpayer,

(iii) the adjusted gross income of such taxpayer,

(iv) the amounts excluded from such taxpayer's gross income under sections 135 and 911 to the extent such information is available,

(v) the interest received or accrued during the taxable year which is exempt from the tax imposed by chapter 1 to the extent such information is available,

(vi) the amounts excluded from such taxpayer's gross income by sections 931 and 933 to the extent such information is available,

(vii) such other information relating to the liability of the taxpayer as is prescribed by the Secretary by regulation as might indicate in the case of a taxpayer who is an individual described in subsection (i)(4)(B)(iii) of section 1839 of the Social Security Act that the amount of the premium of the taxpayer under such section may be subject to adjustment under subsection (i) of such section or increase under section 1860D–13(a)(7) of such Act and the amount of such adjustment, and

(viii) the taxable year with respect to which the preceding information relates.

(B) Restriction on use of disclosed information

(i) In general

Return information disclosed under subparagraph (A) may be used by officers, employees, and contractors of the Social Security Administration only for the purposes of, and to the extent necessary in, establishing the appropriate amount of any premium adjustment under such section 1839(i) or increase under such section 1860D–13(a)(7) or for the purpose of resolving taxpayer appeals with respect to any such premium adjustment or increase.

(ii) Disclosure to other agencies

Officers, employees, and contractors of the Social Security Administration may disclose—

(I) the taxpayer identity information and the amount of the premium subsidy adjustment or premium increase with respect to a taxpayer described in subparagraph (A) to officers, employees, and contractors of the Centers for Medicare and Medicaid Services, to the extent that such disclosure is necessary for the collection of the premium subsidy amount or the increased premium amount,

(II) the taxpayer identity information and the amount of the premium subsidy adjustment or the increased premium amount with respect to a taxpayer described in subparagraph (A) to officers and employees of the Office of Personnel Management and the Railroad Retirement Board, to the extent that such disclosure is necessary for the collection of the premium subsidy amount or the increased premium amount,

(III) return information with respect to a taxpayer described in subparagraph (A) to officers and employees of the Department of Health and Human Services to the extent necessary to resolve administrative appeals of such premium subsidy adjustment or increased premium, and

(IV) return information with respect to a taxpayer described in subparagraph (A) to officers and employees of the Department of Justice for use in judicial proceedings to the extent necessary to carry out the purposes described in clause (i).

(21) Disclosure of return information to carry out eligibility requirements for certain programs

(A) In general

The Secretary, upon written request from the Secretary of Health and Human Services, shall disclose to officers, employees, and contractors of the Department of Health and Human Services return information of any taxpayer whose income is relevant in determining any premium tax credit under section 36B or any cost-sharing reduction under section 1402 of the Patient Protection and Affordable Care Act or eligibility for participation in a State medicaid program under title XIX of the Social Security Act, a State's children's health insurance program under title XXI of the Social Security Act, or a basic health program under section 1331 of Patient Protection and Affordable Care Act. Such return information shall be limited to—

(i) taxpayer identity information with respect to such taxpayer,

(ii) the filing status of such taxpayer,

(iii) the number of individuals for whom a deduction is allowed under section 151 with respect to the taxpayer (including the taxpayer and the taxpayer's spouse),

(iv) the modified adjusted gross income (as defined in section 36B) of such taxpayer and each of the other individuals included under clause (iii) who are required to file a return of tax imposed by chapter 1 for the taxable year,

(v) such other information as is prescribed by the Secretary by regulation as might indicate whether the taxpayer is eligible for such credit or reduction (and the amount thereof), and

(vi) the taxable year with respect to which the preceding information relates or, if applicable, the fact that such information is not available.

(B) Information to exchange and State agencies

The Secretary of Health and Human Services may disclose to an Exchange established under the Patient Protection and Affordable Care Act or its contractors, or to a State agency administering a State program described in subparagraph (A) or its contractors, any inconsistency between the information provided by the Exchange or State agency to the Secretary and the information provided to the Secretary under subparagraph (A).

(C) Restriction on use of disclosed information

Return information disclosed under subparagraph (A) or (B) may be used by officers, employees, and contractors of the Department of Health and Human Services, an Exchange, or a State agency only for the purposes of, and to the extent necessary in—

(i) establishing eligibility for participation in the Exchange, and verifying the appropriate amount of, any credit or reduction described in subparagraph (A),

(ii) determining eligibility for participation in the State programs described in subparagraph (A).

(22) Disclosure of return information to Department of Health and Human Services for purposes of enhancing Medicare program integrity

(A) In general

The Secretary shall, upon written request from the Secretary of Health and Human Services, disclose to officers and employees of the Department of Health and Human Services return information with respect to a taxpayer who has applied to enroll, or reenroll, as a provider of services or supplier under the Medicare program under title XVIII of the Social Security Act. Such return information shall be limited to—

(i) the taxpayer identity information with respect to such taxpayer;
(ii) the amount of the delinquent tax debt owed by that taxpayer; and
(iii) the taxable year to which the delinquent tax debt pertains.

(B) Restriction on disclosure

Return information disclosed under subparagraph (A) may be used by officers and employees of the Department of Health and Human Services for the purposes of, and to the extent necessary in, establishing the taxpayer's eligibility for enrollment or reenrollment in the Medicare program, or in any administrative or judicial proceeding relating to, or arising from, a denial of such enrollment or reenrollment, or in determining the level of enhanced oversight to be applied with respect to such taxpayer pursuant to section 1866(j)(3) of the Social Security Act.

(C) Delinquent tax debt

For purposes of this paragraph, the term "delinquent tax debt" means an outstanding debt under this title for which a notice of lien has been filed pursuant to section 6323, but the term does not include a debt that is being paid in a timely manner pursuant to an agreement under section 6159 or 7122, or a debt with respect to which a collection due process hearing under section 6330 is requested, pending, or completed and no payment is required.

(m) Disclosure of taxpayer identity information

(1) Tax refunds

The Secretary may disclose taxpayer identity information to the press and other media for purposes of notifying persons entitled to tax refunds when the Secretary, after reasonable effort and lapse of time, has been unable to locate such persons.

(2) Federal claims

(A) In general

Except as provided in subparagraph (B), the Secretary may, upon written request, disclose the mailing address of a taxpayer for use by officers, employees, or agents of a Federal agency for purposes of locating such taxpayer to collect or compromise a Federal claim against the taxpayer in accordance with sections 3711, 3717, and 3718 of title 31.

(B) Special rule for consumer reporting agency

In the case of an agent of a Federal agency which is a consumer reporting agency (within the meaning of section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f))), the mailing address of a taxpayer may be disclosed to such agent under subparagraph (A) only for the purpose of allowing such agent to prepare a commercial credit report on the taxpayer for use by such Federal agency in accordance with sections 3711, 3717, and 3718 of title 31.

(3) National Institute for Occupational Safety and Health

Upon written request, the Secretary may disclose the mailing address of taxpayers to officers and employees of the National Institute for Occupational Safety and Health solely for the purpose of locating individuals who are, or may have been, exposed to occupational hazards in order to determine the status of their health or to inform them of the possible need for medical care and treatment.

(4) Individuals who owe an overpayment of Federal Pell Grants or who have defaulted on student loans administered by the Department of Education

(A) In general

Upon written request by the Secretary of Education, the Secretary may disclose the mailing address of any taxpayer—

(i) who owes an overpayment of a grant awarded to such taxpayer under subpart 1 of part A of title IV of the Higher Education Act of 1965, or

(ii) who has defaulted on a loan—

(I) made under part B, D, or E of title IV of the Higher Education Act of 1965, or

(II) made pursuant to section 3(a)(1) of the Migration and Refugee Assistance Act of 1962 to a student at an institution of higher education,

for use only by officers, employees, or agents of the Department of Education for purposes of locating such taxpayer for purposes of collecting such overpayment or loan.

(B) Disclosure to educational institutions, etc.

Any mailing address disclosed under subparagraph (A)(i) may be disclosed by the Secretary of Education to—

(i) any lender, or any State or nonprofit guarantee agency, which is participating under part B or D of title IV of the Higher Education Act of 1965, or

(ii) any educational institution with which the Secretary of Education has an agreement under subpart 1 of part A, or part D or E, of title IV of such Act,

for use only by officers, employees, or agents of such lender, guarantee agency, or institution whose duties relate to the collection of student loans for purposes of locating individuals who have defaulted on student loans made under such loan programs for purposes of collecting such loans.

(5) Individuals who have defaulted on student loans administered by the Department of Health and Human Services

(A) In general

Upon written request by the Secretary of Health and Human Services, the Secretary may disclose the mailing address of any taxpayer who has defaulted on a loan made under part C [5] of title VII of the Public Health Service Act or under subpart II of part B of title VIII of such Act, for use only by officers, employees, or agents of the Department of Health and Human Services for purposes of locating such taxpayer for purposes of collecting such loan.

(B) Disclosure to schools and eligible lenders

Any mailing address disclosed under subparagraph (A) may be disclosed by the Secretary of Health and Human Services to—

(i) any school with which the Secretary of Health and Human Services has an agreement under subpart II [5] of part C of title VII of the Public Health Service Act or subpart II [5] of part B of title VIII of such Act, or

(ii) any eligible lender (within the meaning of section 737(4) [5] of such Act) participating under subpart I [5] of part C of title VII of such Act,

for use only by officers, employees, or agents of such school or eligible lender whose duties relate to the collection of student loans for purposes of locating individuals who have defaulted on student loans made under such subparts for the purposes of collecting such loans.

(6) Blood Donor Locator Service

(A) In general

Upon written request pursuant to section 1141 of the Social Security Act, the Secretary shall disclose the mailing address of taxpayers to officers and employees of the Blood Donor Locator Service in the Department of Health and Human Services.

(B) Restriction on disclosure

The Secretary shall disclose return information under subparagraph (A) only for purposes of, and to the extent necessary in, assisting under the Blood Donor Locator Service authorized persons (as defined in section 1141(h)(1) of the Social Security Act) in locating blood donors who, as indicated by donated blood or products derived therefrom or by the history of the subsequent use of such blood or blood products, have or may have the virus for acquired immune deficiency syndrome, in order to inform such donors of the possible need for medical care and treatment.

(C) Safeguards

The Secretary shall destroy all related blood donor records (as defined in section 1141(h)(2) of the Social Security Act) in the possession of the Department of the Treasury upon completion of their use in making the disclosure required under subparagraph (A), so as to make such records undisclosable.

(7) Social security account statement furnished by Social Security Administration

Upon written request by the Commissioner of Social Security, the Secretary may disclose the mailing address of any taxpayer who is entitled to receive a social security account statement pursuant to section 1143(c) of the Social Security Act, for use only by officers, employees or agents of the Social Security Administration for purposes of mailing such statement to such taxpayer.

(n) Certain other persons

Pursuant to regulations prescribed by the Secretary, returns and return information may be disclosed to any person, including any person described in section 7513(a), to the extent necessary in connection with the processing, storage, transmission, and reproduction of such returns and return information, the programming, maintenance, repair, testing, and procurement of equipment, and the providing of other services, for purposes of tax administration.

(o) Disclosure of returns and return information with respect to certain taxes

(1) Taxes imposed by subtitle E

(A) In general

Returns and return information with respect to taxes imposed by subtitle E (relating to taxes on alcohol, tobacco, and firearms) shall be open to inspection by or disclosure to officers and employees of a Federal agency whose official duties require such inspection or disclosure.

(B) Use in certain proceedings

Returns and return information disclosed to a Federal agency under subparagraph (A) may be used in an action or proceeding (or in preparation for such action or proceeding) brought under section 625 of the American Jobs Creation Act of 2004 for the collection of any unpaid assessment or penalty arising under such Act.

(2) Taxes imposed by chapter 35

Returns and return information with respect to taxes imposed by chapter 35 (relating to taxes on wagering) shall, notwithstanding any other provision of this section, be open to inspection by or disclosure only to such person or persons and for such purpose or purposes as are prescribed by section 4424.

(p) Procedure and recordkeeping

(1) Manner, time, and place of inspections

Requests for the inspection or disclosure of a return or return information and such inspection or disclosure shall be made in such manner and at such time and place as shall be prescribed by the Secretary.

(2) Procedure

(A) Reproduction of returns

A reproduction or certified reproduction of a return shall, upon written request, be furnished to any person to whom disclosure or inspection of such return is authorized under this section. A reasonable fee may be prescribed for furnishing such reproduction or certified reproduction.

(B) Disclosure of return information

Return information disclosed to any person under the provisions of this title may be provided in the form of written documents, reproductions of such documents, films or photoimpressions, or electronically produced tapes, disks, or records, or by any other mode or means which the Secretary determines necessary or appropriate. A reasonable fee may be prescribed for furnishing such return information.

(C) Use of reproductions

Any reproduction of any return, document, or other matter made in accordance with this paragraph shall have the same legal status as the original, and any such reproduction shall, if properly authenticated, be admissible in evidence in any judicial or administrative proceeding as if it were the original, whether or not the original is in existence.

(3) Records of inspection and disclosure

(A) System of recordkeeping

Except as otherwise provided by this paragraph, the Secretary shall maintain a permanent system of standardized records or accountings of all requests for inspection or disclosure of returns and return information (including the reasons for and dates of such requests) and of returns and return information inspected or disclosed under this section and section 6104(c). Notwithstanding the provisions of section 552a(c) of title 5, United States Code, the Secretary shall not be required to maintain a record or accounting of requests for inspection or disclosure of returns and return information, or of returns and return information inspected or disclosed, under the authority of subsections [6] (c), (e), (f)(5), (h)(1), (3)(A), or (4), (i)(4), or (8)(A)(ii), (k)(1), (2), (6), (8), or (9), (l)(1), (4)(B), (5), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), or (18), (m), or (n). The records or accountings required to be maintained under this paragraph shall be available for examination by the Joint Committee on Taxation or the Chief of Staff of such joint committee. Such record or accounting shall also be available for examination by such person or persons as may be, but only to the extent, authorized to make such examination under section 552a(c)(3) of title 5, United States Code.

(B) Report by the Secretary

The Secretary shall, within 90 days after the close of each calendar year, furnish to the Joint Committee on Taxation a report with respect to, or summary of, the records or accountings described in subparagraph (A) in such form and containing such information as such joint committee or the Chief of Staff of such joint committee may designate. Such report or summary shall not, however, include a record or accounting of any request by the President under subsection (g) for, or the disclosure in response to such request of, any return or return information with respect to any individual who, at the time of such request, was an officer or employee of the executive branch of the Federal Government. Such report or summary, or any part thereof, may be disclosed by such joint committee to such persons and for such purposes as the joint committee may, by record vote of a majority of the members of the joint committee, determine.

(C) Public report on disclosures

The Secretary shall, within 90 days after the close of each calendar year, furnish to the Joint Committee on Taxation for disclosure to the public a report with respect to the records or accountings described in subparagraph (A) which—

(i) provides with respect to each Federal agency, each agency, body, or commission described in subsection (d), (i)(3)(B)(i) or (7)(A)(ii), or (l)(6), and the Government

Accountability Office the number of—

(I) requests for disclosure of returns and return information,

(II) instances in which returns and return information were disclosed pursuant to such requests or otherwise,

(III) taxpayers whose returns, or return information with respect to whom, were disclosed pursuant to such requests, and

(ii) describes the general purposes for which such requests were made,[7]

(4) Safeguards

Any Federal agency described in subsection (h)(2), (h)(5), (i)(1), (2), (3), (5), or (7), (j)(1), (2), or (5), (k)(8) or (10), (l)(1), (2), (3), (5), (10), (11), (13), (14), (17), or (22) or (o)(1)(A), the Government Accountability Office, the Congressional Budget Office, or any agency, body, or commission described in subsection (d), (i)(3)(B)(i) or 7(A)(ii), [8] or (k)(10), (l)(6), (7), (8), (9), (12), (15), or (16), any appropriate State officer (as defined in section 6104(c)), or any other person described in subsection (k)(10), subsection (l)(10), (16), (18), (19), or (20), or any entity described in subsection (l)(21), shall, as a condition for receiving returns or return information—

(A) establish and maintain, to the satisfaction of the Secretary, a permanent system of standardized records with respect to any request, the reason for such request, and the date of such request made by or of it and any disclosure of return or return information made by or to it;

(B) establish and maintain, to the satisfaction of the Secretary, a secure area or place in which such returns or return information shall be stored;

(C) restrict, to the satisfaction of the Secretary, access to the returns or return information only to persons whose duties or responsibilities require access and to whom disclosure may be made under the provisions of this title;

(D) provide such other safeguards which the Secretary determines (and which he prescribes in regulations) to be necessary or appropriate to protect the confidentiality of the returns or return information;

(E) furnish a report to the Secretary, at such time and containing such information as the Secretary may prescribe, which describes the procedures established and utilized by such agency, body, or commission, the Government Accountability Office, or the Congressional Budget Office for ensuring the confidentiality of returns and return information required by this paragraph; and

(F) upon completion of use of such returns or return information—

(i) in the case of an agency, body, or commission described in subsection (d), (i)(3)(B)(i), (k)(10), or (l)(6), (7), (8), (9), or (16), any appropriate State officer (as defined in section 6104(c)), or any other person described in subsection (k)(10) or subsection (l)(10), (16), (18), (19), or (20) return to the Secretary such returns or return information (along with any copies made therefrom) or make such returns or return information undisclosable in any manner and furnish a written report to the Secretary describing such manner,

(ii) in the case of an agency described in subsections [6] (h)(2), (h)(5), (i)(1), (2), (3), (5) or (7), (j)(1), (2), or (5), (k)(8) or (10), (l)(1), (2), (3), (5), (10), (11), (12), (13), (14), (15), (17), or (22), or (o)(1)(A) or any entity described in subsection (l)(21),,,[9] the Government Accountability Office, or the Congressional Budget Office, either—

(I) return to the Secretary such returns or return information (along with any copies made therefrom),

(II) otherwise make such returns or return information undisclosable, or

(III) to the extent not so returned or made undisclosable, ensure that the conditions of subparagraphs (A), (B), (C), (D), and (E) of this paragraph continue to be met with respect to such returns or return information, and

(iii) in the case of the Department of Health and Human Services for purposes of subsection (m)(6), destroy all such return information upon completion of its use in providing

the notification for which the information was obtained, so as to make such information undisclosable;

except that the conditions of subparagraphs (A), (B), (C), (D), and (E) shall cease to apply with respect to any return or return information if, and to the extent that, such return or return information is disclosed in the course of any judicial or administrative proceeding and made a part of the public record thereof. If the Secretary determines that any such agency, body, or commission, including an agency, an appropriate State officer (as defined in section 6104(c)), or any other person described in subsection (k)(10) or subsection (l)(10), (16), (18), (19), or (20) or any entity described in subsection (l)(21),,[9] or the Government Accountability Office or the Congressional Budget Office, has failed to, or does not, meet the requirements of this paragraph, he may, after any proceedings for review established under paragraph (7), take such actions as are necessary to ensure such requirements are met, including refusing to disclose returns or return information to such agency, body, or commission, including an agency, an appropriate State officer (as defined in section 6104(c)), or any other person described in subsection (k)(10) or subsection (l)(10), (16), (18), (19), or (20) or any entity described in subsection (l)(21),,[9] or the Government Accountability Office or the Congressional Budget Office, until he determines that such requirements have been or will be met. In the case of any agency which receives any mailing address under paragraph (2), (4), (6), or (7) of subsection (m) and which discloses any such mailing address to any agent or which receives any information under paragraph (6)(A), (10), (12)(B), or (16) of subsection (l) and which discloses any such information to any agent, or any person including an agent described in subsection (l)(10) or (16), this paragraph shall apply to such agency and each such agent or other person (except that, in the case of an agent, or any person including an agent described in subsection (l)(10) or (16), any report to the Secretary or other action with respect to the Secretary shall be made or taken through such agency). For purposes of applying this paragraph in any case to which subsection (m)(6) applies, the term "return information" includes related blood donor records (as defined in section 1141(h)(2) of the Social Security Act).

(5) Report on procedures and safeguards

After the close of each calendar year, the Secretary shall furnish to each committee described in subsection (f)(1) a report which describes the procedures and safeguards established and utilized by such agencies, bodies, or commissions, the Government Accountability Office, and the Congressional Budget Office for ensuring the confidentiality of returns and return information as required by this subsection. Such report shall also describe instances of deficiencies in, and failure to establish or utilize, such procedures.

(6) Audit of procedures and safeguards

(A) Audit by Comptroller General

The Comptroller General may audit the procedures and safeguards established by such agencies, bodies, or commissions and the Congressional Budget Office pursuant to this subsection to determine whether such safeguards and procedures meet the requirements of this subsection and ensure the confidentiality of returns and return information. The Comptroller General shall notify the Secretary before any such audit is conducted.

(B) Records of inspection and reports by the Comptroller General

The Comptroller General shall—

(i) maintain a permanent system of standardized records and accountings of returns and return information inspected by officers and employees of the Government Accountability Office under subsection (i)(8)(A)(ii) and shall, within 90 days after the close of each calendar year, furnish to the Secretary a report with respect to, or summary of, such records or accountings in such form and containing such information as the Secretary may prescribe, and

(ii) furnish an annual report to each committee described in subsection (f) and to the

Secretary setting forth his findings with respect to any audit conducted pursuant to subparagraph (A).

The Secretary may disclose to the Joint Committee any report furnished to him under clause (i).

(7) Administrative review

The Secretary shall by regulations prescribe procedures which provide for administrative review of any determination under paragraph (4) that any agency, body, or commission described in subsection (d) has failed to meet the requirements of such paragraph.

(8) State law requirements

(A) Safeguards

Notwithstanding any other provision of this section, no return or return information shall be disclosed after December 31, 1978, to any officer or employee of any State which requires a taxpayer to attach to, or include in, any State tax return a copy of any portion of his Federal return, or information reflected on such Federal return, unless such State adopts provisions of law which protect the confidentiality of the copy of the Federal return (or portion thereof) attached to, or the Federal return information reflected on, such State tax return.

(B) Disclosure of returns or return information in State returns

Nothing in subparagraph (A) shall be construed to prohibit the disclosure by an officer or employee of any State of any copy of any portion of a Federal return or any information on a Federal return which is required to be attached or included in a State return to another officer or employee of such State (or political subdivision of such State) if such disclosure is specifically authorized by State law.

(q) Regulations

The Secretary is authorized to prescribe such other regulations as are necessary to carry out the provisions of this section.

(Aug. 16, 1954, ch. 736, 68A Stat. 753; Pub. L. 88–563, §3(c), Sept. 2, 1964, 78 Stat. 844; Pub. L. 89–44, title VI, §601(a), June 21, 1965, 79 Stat. 153; Pub. L. 89–713, §4(a), Nov. 2, 1966, 80 Stat. 1109; Pub. L. 93–406, title II, §1022(h), Sept. 2, 1974, 88 Stat. 941; Pub. L. 94–202, §8(g), Jan. 2, 1976, 89 Stat. 1139; Pub. L. 94–455, title XII, §1202(a)(1), Oct. 4, 1976, 90 Stat. 1667; Pub. L. 95–210, §5, Dec. 13, 1977, 91 Stat. 1491; Pub. L. 95–600, title V, §503, title VII, §701(bb)(1)(A), (B), (2)–(5), Nov. 6, 1978, 92 Stat. 2879, 2921–2923; Pub. L. 96–249, title I, §127(a)(1), (2)(A)–(C), May 26, 1980, 94 Stat. 365, 366, as amended Pub. L. 96–611, §11(a)(1), Dec. 28, 1980, 94 Stat. 3573, and Pub. L. 98–369, div. A, title IV, §453(b)(5), July 18, 1984, 98 Stat. 820; Pub. L. 96–265, title IV, §408(a)–(2)(C), June 9, 1980, 94 Stat. 468, as amended Pub. L. 96–611, §11(a)(2)(A)–(B)(iii), Dec. 28, 1980, 94 Stat. 3573; Pub. L. 96–499, title III, §302(a), Dec. 5, 1980, 94 Stat. 2604; Pub. L. 96–589, §3(c), Dec. 24, 1980, 94 Stat. 3401; Pub. L. 96–598, §3(a), Dec. 24, 1980, 94 Stat. 3487; Pub. L. 97–34, title VII, §701(a), Aug. 13, 1981, 95 Stat. 340; Pub. L. 97–248, title III, §§356(a), (b)(1), 358(a), (b), Sept. 3, 1982, 96 Stat. 641, 645, 646, 648; Pub. L. 97–258, §3(f)(4)–(6), Sept. 13, 1982, 96 Stat. 1064; Pub. L. 97–365, §§7(a), (b), 8(a)–(c)(1), Oct. 25, 1982, 96 Stat. 1752–1754; Pub. L. 97–452, §2(c)(4), Jan. 12, 1983, 96 Stat. 2478; Pub. L. 98–21, title I, §121(c)(3)(A), (B), Apr. 20, 1983, 97 Stat. 83; Pub. L. 98–369, div. A, title IV, §§449(a), 453(a)–(b)(3), (6), div. B, title VI, §§2651(k), 2653(b)(3), 2663(j)(5)(E), July 18, 1984, 98 Stat. 818, 820, 1150, 1155, 1171; Pub. L. 98–378, §§19(b), 21(f)(1)–(4), Aug. 16, 1984, 98 Stat. 1322, 1325, 1326; Pub. L. 99–92, §8(h), Aug. 16, 1985, 99 Stat. 399; Pub. L. 99–335, title III, §310(a), (b), June 6, 1986, 100 Stat. 607, 608; Pub. L. 99–386, title II, §206(b), Aug. 22, 1986, 100 Stat. 823; Pub. L. 99–514, title XIV, §1411(b), title XV, §1568(a), title XVIII, §1899A(53), Oct. 22, 1986, 100 Stat. 2715, 2764, 2961; Pub. L. 100–485, title VII, §701(b)(1), (2)(A), (B), Oct. 13, 1988, 102 Stat. 2425, 2426; Pub. L. 100–647, title I, §§1012(bb)(3)(A), (B), 1014(e)(4), title VI, §6251, title VIII, §8008(c)(1), (2)(A), Nov. 10, 1988, 102 Stat. 3534, 3561, 3752, 3786, 3787; Pub. L. 100–690, title VII, §§7601(b)(1), (2), 7602(c), (d)(2), Nov. 18, 1988, 102 Stat. 4504, 4508; Pub. L. 101–239, title

VI, §6202(a)(1)(A), (B), title VII, §7841(d)(1), Dec. 19, 1989, 103 Stat. 2226, 2227, 2428; Pub. L. 101–508, title IV, §4203(a)(2), title V, §5111(b)(1), (2), title VIII, §8051(a), title XI, §§11101(d)(6), 11212(b)(3), 11313(a), Nov. 5, 1990, 104 Stat. 1388–107, 1388–272, 1388–273, 1388–349, 1388–405, 1388–431, 1388–455; Pub. L. 101–650, title III, §321, Dec. 1, 1990, 104 Stat. 5117; Pub. L. 102–568, title VI, §602(b), Oct. 29, 1992, 106 Stat. 4342; Pub. L. 103–66, title XIII, §§13401(a), 13402(a), (b), 13403(a), (b), 13444(a), 13561(a)(2), (e)(2)(B), Aug. 10, 1993, 107 Stat. 563–565, 570, 593, 595; Pub. L. 103–182, title V, §522(a), (b), Dec. 8, 1993, 107 Stat. 2161; Pub. L. 103–296, title I, §108(h)(6), title III, §311(b), Aug. 15, 1994, 108 Stat. 1487, 1525; Pub. L. 104–134, title III, §31001(g)(2), (i)(2), Apr. 26, 1996, 110 Stat. 1321–363, 1321–364; Pub. L. 104–168, title IV, §403(a), title IX, §902(a), title XII, §§1206(a)–(b)(4), 1207, July 30, 1996, 110 Stat. 1459, 1466, 1472, 1473; Pub. L. 104–188, title I, §1704(t)(41), Aug. 20, 1996, 110 Stat. 1889; Pub. L. 104–193, title I, §110(l)(2), formerly (l)(3), (l)(4), (5), title III, §316(g)(4), Aug. 22, 1996, 110 Stat. 2173, 2219, renumbered Pub. L. 105–33, title V, §5514(a)(2), Aug. 5, 1997, 111 Stat. 620; Pub. L. 105–33, title IV, §4631(c)(2), title V, §5514(a)(1), title XI, §11024(b)(1)–(7), Aug. 5, 1997, 111 Stat. 486, 620, 721, 722; Pub. L. 105–34, title IX, §976(c), title X, §§1023(a), 1026(a), (b)(1), title XII, §§1201(b)(2), 1205(c)(1), (3), 1283(a), (b), Aug. 5, 1997, 111 Stat. 899, 923–925, 994, 998, 1038; Pub. L. 105–65, title V, §542(b), Oct. 27, 1997, 111 Stat. 1412; Pub. L. 105–206, title I, §1101(b), title III, §§3702(a), (b), 3708(a), 3711(b), title VI, §§6007(f)(4), 6009(d), 6012(b)(2), (4), 6019(c), 6023(22), July 22, 1998, 112 Stat. 696, 776–778, 781, 810, 812, 819, 823, 826; Pub. L. 105–277, div. J, title I, §1006, title IV, §§4002(a), (h), 4006(a)(1), (2), Oct. 21, 1998, 112 Stat. 2681–900, 2681–906, 2681–907, 2681–912; Pub. L. 106–170, title V, §521(a)(1), Dec. 17, 1999, 113 Stat. 1925; Pub. L. 106–554, §1(a)(7) [title III, §§304(a), 310(a), 313(c), 319(8)(B),(17)], Dec. 21, 2000, 114 Stat. 2763, 2763A–632, 2763A–638, 2763A–643, 2763A–646, 2763A–647; Pub. L. 107–134, title II, §201(a)–(c)(8), Jan. 23, 2002, 115 Stat. 2440–2444; Pub. L. 107–147, title IV, §416(c)(1), Mar. 9, 2002, 116 Stat. 55; Pub. L. 107–210, div. A, title II, §202(b)(1), (2), Aug. 6, 2002, 116 Stat. 961; Pub. L. 107–296, title XI, §1112(j), Nov. 25, 2002, 116 Stat. 2277; Pub. L. 107–330, title III, §306, Dec. 6, 2002, 116 Stat. 2827; Pub. L. 108–89, title II, §201(a), Oct. 1, 2003, 117 Stat. 1132; Pub. L. 108–173, title I, §§101(e)(6), 105(e)(1)–(3), title VIII, §811(c)(1)–(2)(B), title IX, §900(e)(3), Dec. 8, 2003, 117 Stat. 2151, 2167, 2368, 2369, 2372; Pub. L. 108–311, title III, §§311(a), 317, 320(a), (b), title IV, §408(a)(24), Oct. 4, 2004, 118 Stat. 1180–1182, 1192; Pub. L. 108–357, title IV, §413(c)(27), Oct. 22, 2004, 118 Stat. 1509; Pub. L. 108–429, title II, §2004(a)(22), Dec. 3, 2004, 118 Stat. 2592; Pub. L. 109–135, title III, §305(a)(1), (b)(1), (c)(1), title IV, §§406(a), 412(rr)(3), (4), (yy), Dec. 21, 2005, 119 Stat. 2609, 2634, 2640; Pub. L. 109–280, title XII, §1224(b)(1)–(3), Aug. 17, 2006, 120 Stat. 1093; Pub. L. 109–432, div. A, title I, §122(a)(1), (b)(1), (c)(1), title IV, §421(a), (b), Dec. 20, 2006, 120 Stat. 2944, 2971, 2972; Pub. L. 110–28, title VIII, §8246(a)(2)(B), May 25, 2007, 121 Stat. 201; Pub. L. 110–142, §8(c)(1), Dec. 20, 2007, 121 Stat. 1807; Pub. L. 110–172, §11(a)(34)(A), Dec. 29, 2007, 121 Stat. 2487; Pub. L. 110–234, title IV, §4002(b)(1)(B), (H), (2)(O), May 22, 2008, 122 Stat. 1096, 1097; Pub. L. 110–245, title I, §108(a), (b), June 17, 2008, 122 Stat. 1631; Pub. L. 110–246, §4(a), title IV, §4002(b)(1)(B), (H), (2)(O), June 18, 2008, 122 Stat. 1664, 1857, 1858; Pub. L. 110–328, §3(b), Sept. 30, 2008, 122 Stat. 3572; Pub. L. 110–343, div. C, title IV, §402(a), (b), Oct. 3, 2008, 122 Stat. 3875, 3876; Pub. L. 110–428, §2(a), (b), Oct. 15, 2008, 122 Stat. 4839; Pub. L. 111–3, title VII, §702(f)(1), (2), Feb. 4, 2009, 123 Stat. 110; Pub. L. 111–148, title I, §1414(a)(1), (b), (c), title III, §3308(b)(2), Mar. 23, 2010, 124 Stat. 236, 237, 474; Pub. L. 111–152, title I, §1004(a)(1)(B), Mar. 30, 2010, 124 Stat. 1034; Pub. L. 111–192, title I, §103(a), June 25, 2010, 124 Stat. 1282; Pub. L. 111–198, §4(a)–(d), July 2, 2010, 124 Stat. 1356, 1357; Pub. L. 112–240, title II, §209(a)–(b)(2), Jan. 2, 2013, 126 Stat. 2324, 2325.)

REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in subsecs. (h)(4)(D) and (i)(4)(A)(ii), are set out in the Appendix to Title 18, Crimes and Criminal Procedure.

The District of Columbia Retirement Protection Act of 1997, referred to in subsecs. (i)(7)(B)(i) and (l)(16), is subtitle A (§§11001–11087) of title XI of Pub. L. 105–33, Aug. 5, 1997, 111 Stat. 715, which amended this section and section 7213 of this title and enacted provisions set out as a note below. For complete classification of this Act to the Code, see Tables.

The Census of Agriculture Act of 1997, referred to in subsec. (j)(5), is Pub. L. 105–113, Nov. 21, 1997, 111 Stat. 2274, which enacted section 2204g of Title 7, Agriculture, amended sections 1991 and 2276 of Title 7 and section 9 of Title 13, Census, repealed section 142 of Title 13, and enacted provisions set out as a note under section 1991 of Title 7. For complete classification of this Act to the Code, see Short Title of 1997 Amendment note set out under section 2201 of Title 7 and Tables.

The Social Security Act, referred to in subsecs. (l)(1)(A), (B), (5), (6)(A)(i), (7), (8)(B), (12)(C)(ii)(I), (E)(i), (19)(A), (C), (20)(A), (B)(i), (21)(A), (22)(A), (B), (m)(6), (7), and (p)(4), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, which is classified generally to chapter 7 (§301 et seq.) of Title 42, The Public Health and Welfare. Parts A and D of title IV and parts A and B of title XVIII of the Act are classified generally to parts A (§601 et seq.) and D (§651 et seq.) of subchapter IV and parts A (§1395c et seq.) and B (§1395j et seq.) of subchapter XVIII, respectively, of chapter 7 of Title 42. Titles I, X, XIV, XVI, XVIII, XIX, and XXI of the Act are classified generally to subchapters I (§301 et seq.), X (§1201 et seq.), XIV (§1351 et seq.), XVI (§1381 et seq.), XVIII (§1395 et seq.), XIX (§1396 et seq.), and XXI (§1397aa et seq.), respectively, of chapter 7 of Title 42. Sections 232, 454, 1106, 1131, 1141, 1143, 1616, 1818, 1839, 1860D–13, 1860D–14, 1860D–31, 1862, and 1866 of the Act are classified to sections 432, 654, 1306, 1320b–1, 1320b–11, 1320b–13, 1382e, 1395i–2, 1395r, 1395w–113, 1395w–114, 1395w–141, 1395y, and 1395cc, respectively, of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Railroad Retirement Act, referred to in subsec. (l)(1)(C), probably means the Railroad Retirement Act of 1974, which is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, §101, Oct. 16, 1974, 88 Stat. 1305, and is classified generally to subchapter IV (§231 et seq.) of chapter 9 of Title 45, Railroads. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

The Employee Retirement Income Security Act of 1974, referred to in subsec. (l)(2), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, as amended. Titles I and IV of the Employee Retirement Income Security Act of 1974 are classified generally to subchapters I (§1001 et seq.) and IV (§1301 et seq.) of chapter 18 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

Section 212(a) of Pub. L. 93–66, referred to in subsec. (l)(7)(D)(iii), (vii), is set out as a note under section 1382 of Title 42, The Public Health and Welfare.

The Food and Nutrition Act of 2008, referred to in subsec. (l)(7)(D)(vi), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, which is classified generally to chapter 51 (§2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

The Higher Education Act of 1965, referred to in subsecs. (l)(13)(C) and (m)(4)(A)(i), (ii)(I), (B)(i), (ii), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, as amended. Subpart 1 of part A of title IV of the Act is classified generally to subpart 1 (§1070a et seq.) of part A of subchapter IV of chapter 28 of Title 20, Education. Parts B, D, and E of title IV of the Act are classified to parts B (§1071 et seq.), C (§1087a et seq.), and D (§1087aa et seq.) of subchapter IV of chapter 28 of Title 20, respectively. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

The Patient Protection and Affordable Care Act, referred to in subsec. (l)(21)(A), (B), is Pub. L. 111–148, Mar. 23, 2010, 124 Stat. 119. Sections 1331 and 1402 of the Act are classified to sections 18051 and 18071, respectively, of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 18001 of Title 42 and Tables.

Section 3(a)(1) of the Migration and Refugee Assistance Act of 1962, referred to in subsec. (m)(4)(A)(ii)(II), is classified to section 2602(a)(1) of Title 22, Foreign Relations and Intercourse.

The Public Health Service Act, referred to in subsec. (m)(5), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Part C and subparts I and II of part C of title VII of the Act were classified generally to part C (§294 et seq.) and subparts I (§294 et seq.) and II (§294m et seq.), respectively, of part C of subchapter V of chapter 6A of Title 42, The Public Health and Welfare, and were omitted in the general revision of subchapter V of chapter 6A by Pub. L. 102–408, title I, §102, Oct. 13, 1992, 106 Stat. 1994. Pub. L. 102–408 enacted a new part C, relating to training in primary health care, which is classified to part C (§293j et seq.) of subchapter V of chapter 6A of Title 42. See subparts I (§292 et seq.) and II (§292q et seq.), respectively, of part A of revised subchapter V of chapter 6A of Title 42. Subpart II of part B of title VIII of such Act was redesignated part E of title VIII of such Act by Pub. L. 105–392, title I, §123(2), Nov. 13, 1998, 112 Stat. 3562, and is classified generally to part E (§297a et seq.) of subchapter VI of chapter 6A of Title 42. Section 737 of the Act was classified to section 294j of Title 42 and was omitted in the general revision of subchapter V by Pub. L. 102–408. Pub. L. 102–408 enacted a new section 737 of act July 1, 1944, relating to scholarships, which is classified to section 293a of Title 42. See section 292o(2) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

The American Jobs Creation Act of 2004, referred to in subsec. (o)(1)(B), is Pub. L. 108–357, Oct. 22, 2004, 118 Stat. 1418. Section 625 of the Act is classified to section 518d of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title of 2004 Amendments note set out under section 1 of this title and Tables.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

Section 1224(b)(1) to (3) of Pub. L. 109–280, which directed the amendment of section 6103 without specifying the act to be amended, was executed to this section, which is section 6103 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

AMENDMENTS

2013—Subsec. (a)(3). Pub. L. 112–240, §209(b)(1), inserted "subsection (k)(10)," after "subsection (e)(1)(D)(iii),".

Subsec. (k)(10). Pub. L. 112–240, §209(a), amended par. (10) generally. Prior to amendment, par. (10) related to disclosure of certain return information to certain prison officials.

Subsec. (p)(4). Pub. L. 112–240, §209(b)(2)(A), (C), inserted "subsection (k)(10)," before "subsection (l)(10)," in introductory provisions and "subsection (k)(10) or" before "subsection (l)(10)," in two places in concluding provisions.

Subsec. (p)(4)(F)(i). Pub. L. 112–240, §209(b)(2)(B), inserted "subsection (k)(10) or" before "subsection (l)(10),".

2010—Subsec. (a)(3). Pub. L. 111–148, §1414(b), substituted "(20), or (21)" for "or (20)".

Subsec. (k)(10). Pub. L. 111–198, §4(d), substituted "to certain prison officials" for "of prisoners to Federal Bureau of Prisons" in heading.

Subsec. (k)(10)(A). Pub. L. 111–198, §4(a), inserted "and the head of any State agency charged with the responsibility for administration of prisons" after "the head of the Federal Bureau of Prisons" and substituted "Federal or State prison" for "Federal prison".

Subsec. (k)(10)(B). Pub. L. 111–198, §4(b), inserted "and the head of any State agency charged with the responsibility for administration of prisons" after "the head of the Federal Bureau of Prisons" and "or agency" after "such Bureau".

Subsec. (l)(20). Pub. L. 111–148, §3308(b)(2)(A), inserted "and part D base beneficiary premium increase" after "part B premium subsidy adjustment" in heading.

Subsec. (l)(20)(A). Pub. L. 111–148, §3308(b)(2)(B)(i), inserted "or increase under section 1860D–13(a)(7)" after "section 1839(i)" in introductory provisions.

Subsec. (l)(20)(A)(vii). Pub. L. 111–148, §3308(b)(2)(B)(ii), inserted "or increase under section 1860D–13(a)(7) of such Act" after "subsection (i) of such section".

Subsec. (l)(20)(B). Pub. L. 111–148, §3308(b)(2)(C), designated existing provisions as cl. (i) and inserted heading, inserted "or increase under such section 1860D–13(a)(7) or for the purpose of resolving taxpayer appeals with respect to any such premium adjustment or increase" before period at end, and added cl. (ii).

Subsec. (l)(21). Pub. L. 111–148, §1414(a)(1), added par. (21).

Subsec. (l)(21)(A)(iv). Pub. L. 111–152, §1004(a)(1)(B), substituted "modified adjusted gross" for "modified gross".

Subsec. (l)(22). Pub. L. 111–192, §103(a)(1), added par. (22).

Subsec. (p)(4). Pub. L. 111–198, §4(c), inserted "(k)(10)," before "(l)(6)" in introductory provisions.

Pub. L. 111–192, §103(a)(2), substituted "(17), or (22)" for "or (17)" in introductory provisions.

Pub. L. 111–148, §1414(c)(1), (3), inserted ", or any entity described in subsection (l)(21)," after "or (20)" in introductory provisions and "or any entity described in subsection (l)(21)," after "or (20)" in two places in concluding provisions.

Subsec. (p)(4)(F)(ii). Pub. L. 111–192, §103(a)(2), substituted "(17), or (22)" for "or (17)" in introductory provisions.

Pub. L. 111–148, §1414(c)(2), inserted "or any entity described in subsection (l)(21)," after "or (o)(1)(A)" in introductory provisions.

2009—Subsec. (o)(1). Pub. L. 111–3, §702(f)(1), designated existing provisions as subpar. (A), inserted heading, realigned margins, and added subpar. (B).

Subsec. (p)(4). Pub. L. 111–3, §702(f)(2), substituted "(o)(1)(A)" for "(o)(1)" in introductory provisions.

Subsec. (p)(4)(F)(ii). Pub. L. 111–3, §702(f)(2), substituted "(o)(1)(A)" for "(o)(1)" in introductory provisions.

2008—Subsec. (a)(3). Pub. L. 110–328, §3(b)(1), inserted "(10)," after "(6),".

Subsec. (i)(3)(C)(iv). Pub. L. 110–343, §402(a), struck out cl. (iv). Text read as follows: "No disclosure may be made under this subparagraph after December 31, 2007."

Subsec. (i)(7)(E). Pub. L. 110–343, §402(b), struck out subpar. (E). Text read as follows: "No disclosure may be made under this paragraph after December 31, 2007."

Subsec. (k)(10). Pub. L. 110–428, §2(a), added par. (10).

Subsec. (l)(7). Pub. L. 110–246, §4002(b)(1)(H), (2)(O), substituted "Food and Nutrition Act of 2008" for "Food Stamp Act" in heading.

Pub. L. 110–245, §108(a), struck out "Clause (viii) shall not apply after September 30, 2008." at end of concluding provisions.

Subsec. (l)(7)(D)(vi). Pub. L. 110–246, §4002(b)(1)(B), (2)(O), substituted "Food and Nutrition Act of 2008" for "Food Stamp Act of 1977".

Subsec. (l)(7)(D)(viii)(III). Pub. L. 110–245, §108(b), substituted "sections 1710(a)(2)(G), 1710(a)(3), and 1710(b)" for "sections 1710(a)(1)(I), 1710(a)(2), 1710(b), and 1712(a)(2)(B)".

Subsec. (l)(10). Pub. L. 110–328, §3(b)(2)(A), substituted "(c), (d), (e), or (f)" for "(c), (d), or (e)" in heading.

Subsec. (l)(10)(A). Pub. L. 110–328, §3(b)(2)(A), (B), in introductory provisions, substituted "(c), (d), (e), or (f)" for "(c), (d), or (e)" and inserted ", to officers and employees of the Department of Labor for purposes of facilitating the exchange of data in connection with a request made under subsection (f)(5) of section 6402," after "section 6402".

Subsec. (l)(10)(B). Pub. L. 110–328, §3(b)(2)(C), inserted cl. (i) designation after "(B)" and added cl. (ii).

Pub. L. 110–328, §3(b)(2)(A), substituted "(c), (d), (e), or (f)" for "(c), (d), or (e)" in two places.

Subsec. (p)(4). Pub. L. 110–428, §2(b), substituted "(k)(8) or (10)" for "(k)(8)" in introductory provisions.

Pub. L. 110–328, §3(b)(3)(A), (C), in introductory provisions, substituted "(l)(10), (16)," for "(l)(16)," and, in concluding provisions, substituted "(l)(10), (16)," for "(l)(16)," the first two places appearing, inserted "(10)," after "paragraph (6)(A),", and substituted "(l)(10) or (16)" for "(l)(16)" the last two places appearing.

Subsec. (p)(4)(F)(i). Pub. L. 110–328, §3(b)(3)(B), substituted "(l)(10), (16)," for "(l)(16),".

Subsec. (p)(4)(F)(ii). Pub. L. 110–428, §2(b), substituted "(k)(8) or (10)" for "(k)(8)".

2007—Subsec. (b)(5)(A)(i). Pub. L. 110–172 struck out "the Canal Zone," after "the Virgin Islands,".

Subsec. (e)(10). Pub. L. 110–142 added par. (10).

Subsec. (k)(5). Pub. L. 110–28 substituted "tax return preparer" for "income tax return preparer" in two places and "tax return preparers" for "income tax return preparers" in two places.

2006—Subsec. (a)(2). Pub. L. 109–280, §1224(b)(1), inserted "or section 6104(c)" after "this section". See Codification note above.

Subsec. (b)(5). Pub. L. 109–432, §421(a), reenacted heading without change and amended text of par. (5) generally. Prior to amendment, text read as follows: "The term 'State' means—

"(A) any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Canal Zone, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and

"(B) for purposes of subsections (a)(2), (b)(4), (d)(1), (h)(4), and (p) any municipality—

"(i) with a population in excess of 250,000 (as determined under the most recent decennial United States census data available),

"(ii) which imposes a tax on income or wages, and

"(iii) with which the Secretary (in his sole discretion) has entered into an agreement regarding disclosure."

Subsec. (d)(5)(B). Pub. L. 109–432, §122(a)(1), substituted "2007" for "2006".

Subsec. (d)(6). Pub. L. 109–432, §421(b), added par. (6).

Subsec. (i)(3)(C)(iv), (7)(E). Pub. L. 109–432, §122(b)(1), substituted "2007" for "2006".

Subsec. (l)(13)(D). Pub. L. 109–432, §122(c)(1), substituted "2007" for "2006".

Subsec. (p)(3)(A). Pub. L. 109–280, §1224(b)(2), inserted "and section 6104(c)" after "this section" in first sentence. See Codification note above.

Subsec. (p)(4). Pub. L. 109–280, §1224(b)(3)(A), (C), inserted ", any appropriate State officer (as defined in section 6104(c))," before "or any other person" in introductory provisions and ", an appropriate State officer (as defined in section 6104(c))," after "including an agency" in two places in concluding provisions. See Codification note above.

Subsec. (p)(4)(F)(i). Pub. L. 109–280, §1224(b)(3)(B), inserted "any appropriate State officer (as defined in section 6104(c))," before "or any other person". See Codification note above.

2005—Subsec. (d)(5)(B). Pub. L. 109–135, §305(a)(1), substituted "December 31, 2006" for "December

31, 2005".

Subsec. (i)(3)(C)(iv). Pub. L. 109–135, §305(b)(1), substituted "December 31, 2006" for "December 31, 2005".

Subsec. (i)(7)(E). Pub. L. 109–135, §305(b)(1), substituted "December 31, 2006" for "December 31, 2005".

Subsec. (i)(8)(A), (B)(i), (ii). Pub. L. 109–135, §412(rr)(3), substituted "Government Accountability Office" for "General Accounting Office".

Subsec. (l)(13)(D). Pub. L. 109–135, §305(c)(1), substituted "December 31, 2006" for "December 31, 2005".

Subsec. (l)(17). Pub. L. 109–135, §406(a), substituted "subsection (f), (i)(8), or (p)" for "subsection (f), (i)(7), or (p)".

Subsec. (p)(3)(C)(i). Pub. L. 109–135, §412(rr)(4), substituted "Government Accountability Office" for "General Accounting Office" in introductory provisions.

Subsec. (p)(4). Pub. L. 109–135, §412(yy)(3), in concluding provisions, substituted "If the Secretary determines that any such agency, body, or commission, including an agency or any other person described in subsection (l)(16), (18), (19), or (20), or the Government Accountability Office or the Congressional Budget Office, has failed to, or does not, meet the requirements of this paragraph, he may, after any proceedings for review established under paragraph (7), take such actions as are necessary to ensure such requirements are met, including refusing to disclose returns or return information to such agency, body, or commission, including an agency or any other person described in subsection (l)(16), (18), (19), or (20), or the Government Accountability Office or the Congressional Budget Office, until he determines that such requirements have been or will be met." for "If the Secretary determines that any such agency, body, or commission, including an agency or any other person described in subsection (l)(16), (17), (19), or (20), or the Government Accountability Office or the Congressional Budget Office has failed to, or does not, meet the requirements of this paragraph, he may, after any proceedings for review established under paragraph (7), take such actions as are necessary to ensure such requirements are met, including refusing to disclose returns or return information to such agency, body, or commission, including an agency or any other person described in subsection (l)(16), (17), (19), or (20), or the Government Accountability Office or the Congressional Budget Office until he determines that such requirements have been or will be met." after "public record thereof."

Pub. L. 109–135, §412(yy)(1), reenacted heading without change and amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: "Any Federal agency described in subsection (h)(2), (h)(5), (i)(1), (2), (3), (5), or (7), (j)(1), (2), or (5), (k)(8), (l)(1), (2), (3), (5), (10), (11), (13), (14), or (17), or (o)(1), the Government Accountability Office, the Congressional Budget Office, or any agency, body, or commission described in subsection (d), (i)(3)(B)(i) or (7)(A)(ii), or (l)(6), (7), (8), (9), (12), (15), or (16) or any other person described in subsection (l)(16), (17), (19), or (20) shall, as a condition for receiving returns or return information—".

Pub. L. 109–135, §412(rr)(4), substituted "Government Accountability Office" for "General Accounting Office" wherever appearing.

Subsec. (p)(4)(F)(i). Pub. L. 109–135, §412(yy)(2), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: "in the case of an agency, body, or commission described in subsection (d), (i)(3)(B)(i), or (l)(6), (7), (8), (9), or (16), or any other person described in subsection (l)(16), (17), (19), or (20) return to the Secretary such returns or return information (along with any copies made therefrom) or make such returns or return information undisclosable in any manner and furnish a written report to the Secretary describing such manner,".

Subsec. (p)(5), (6)(B)(i). Pub. L. 109–135, §412(rr)(4), substituted "Government Accountability Office" for "General Accounting Office".

2004—Subsec. (d)(5). Pub. L. 108–311, §311(a), amended heading and text generally. Prior to amendment, text read as follows: "The Secretary shall disclose taxpayer identities and signatures for purposes of the demonstration project described in section 976 of the Taxpayer Relief Act of 1997. Subsections (a)(2) and (p)(4) and sections 7213 and 7213A shall not apply with respect to disclosures or inspections made pursuant to this paragraph."

Subsec. (e)(1)(D)(iv) to (vi). Pub. L. 108–357, §413(c)(27), redesignated cls. (v) and (vi) as (iv) and (v), respectively, and struck out former cl. (iv) which read as follows: "if the corporation was a foreign personal holding company, as defined by section 552, any person who was a shareholder during any part of a period covered by such return if with respect to that period, or any part thereof, such shareholder was required under section 551 to include in his gross income undistributed foreign personal holding company income of such company,".

Subsec. (i)(3)(C)(iv). Pub. L. 108–311, §320(a), substituted "December 31, 2005" for "December 31, 2003".

Subsec. (i)(7)(A)(v). Pub. L. 108–311, §320(b), added cl. (v).

Subsec. (i)(7)(E). Pub. L. 108–311, §320(a), substituted "December 31, 2005" for "December 31, 2003".

Subsec. (l)(13)(D). Pub. L. 108–311, §317, substituted "December 31, 2005" for "December 31, 2004".

Subsec. (p)(4). Pub. L. 108–429, which directed the substitution of "or (18)" for "or (17)" after "any other person described in subsection (l)(16)" wherever appearing, could not be executed because the phrase "or (17)" did not appear subsequent to amendment by Pub. L. 108–173. See 2003 Amendment notes below.

Pub. L. 108–311, §408(a)(24), which directed substitution of "subsection (l)(16) or (18)" for "subsection (l)(16) or (17)" wherever appearing, could not be executed because "subsection (l)(16) or (17)" did not appear subsequent to amendment by Pub. L. 108–173. See 2003 Amendment note below.

2003—Subsec. (a)(3). Pub. L. 108–173, §811(c)(2)(A), substituted "(19), or (20)" for "or (19)".

Pub. L. 108–173, §105(e)(2), substituted "(16), or (19)" for "or (16)".

Subsec. (l)(7)(D)(ii). Pub. L. 108–173, §101(e)(6), inserted "or subsidies provided under section 1860D–14 of such Act" after "Social Security Act".

Subsec. (l)(12)(B). Pub. L. 108–173, §900(e)(3)(A), substituted "Centers for Medicare & Medicaid Services" for "Health Care Financing Administration" in introductory provisions.

Subsec. (l)(12)(C). Pub. L. 108–173, §900(e)(3)(B), substituted "Centers for Medicare & Medicaid Services" for "Health Care Financing Administration" in heading and introductory provisions.

Subsec. (l)(13)(D). Pub. L. 108–89 substituted "December 31, 2004" for "September 30, 2003".

Subsec. (l)(19). Pub. L. 108–173, §105(e)(1), added par. (19).

Subsec. (l)(20). Pub. L. 108–173, §811(c)(1), added par. (20).

Subsec. (p)(4). Pub. L. 108–173, §811(c)(2)(B), substituted "(l)(16), (17), (19), or (20)" for "(l)(16), (17), or (19)" wherever appearing.

Pub. L. 108–173, §105(e)(3), substituted "(l)(16), (17), or (19)" for "(l)(16) or (17)" wherever appearing.

2002—Subsec. (a)(2). Pub. L. 107–134, §201(c)(1), inserted "any local law enforcement agency receiving information under subsection (i)(7)(A)," after "State,".

Subsec. (b)(11). Pub. L. 107–134, §201(c)(2), added par. (11).

Subsec. (i)(3). Pub. L. 107–134, §201(c)(3), inserted "or terrorist" after "criminal" in heading.

Subsec. (i)(3)(C). Pub. L. 107–134, §201(a), added subpar. (C).

Subsec. (i)(4)(A). Pub. L. 107–134, §201(c)(4)(A), inserted "or (7)(C)" after "paragraph (1)" in introductory provisions.

Subsec. (i)(4)(B). Pub. L. 107–134, §201(c)(4)(B), substituted "(3)(A) or (C), or (7)" for "or (3)(A)".

Subsec. (i)(6). Pub. L. 107–134, §201(c)(5), substituted "(3)(A) or (C)" for "(3)(A)" and "(7), or (8)" for "or (7)".

Subsec. (i)(7). Pub. L. 107–134, §201(b), added par. (7). Former par. (7) redesignated (8).

Subsec. (i)(8). Pub. L. 107–134, §201(b), redesignated par. (7) as (8).

Subsec. (i)(8)(A)(i). Pub. L. 107–296 substituted ", the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice, or the Tax and Trade Bureau, Department of the Treasury," for "or the Bureau of Alcohol, Tobacco and Firearms".

Subsec. (l)(7)(D). Pub. L. 107–330 substituted "September 30, 2008" for "September 30, 2003" in second sentence of concluding provisions.

Subsec. (l)(8). Pub. L. 107–147, §416(c)(1)(A), substituted "Federal, State, and local" for "State and local" in heading.

Subsec. (l)(8)(A). Pub. L. 107–147, §416(c)(1)(B), inserted "Federal or" before "State or local".

Subsec. (l)(18). Pub. L. 107–210, §202(b)(1), added par. (18).

Subsec. (p)(3)(A). Pub. L. 107–210, §202(b)(2)(A), substituted "(17), or (18)" for "or (17)".

Pub. L. 107–134, §201(c)(6)(A), substituted "(8)(A)(ii)" for "(7)(A)(ii)".

Subsec. (p)(3)(C)(i). Pub. L. 107–134, §201(c)(6)(B), substituted "(i)(3)(B)(i) or (7)(A)(ii)" for "(i)(3)(B)(i)" in introductory provisions.

Subsec. (p)(4). Pub. L. 107–210, §202(b)(2)(B), inserted "or (17)" after "any other person described in subsection (l)(16)" wherever appearing.

Pub. L. 107–134, §201(c)(7)(A), in introductory provisions, substituted "(i)(1), (2), (3), (5), or (7)," for "(i)(1), (2), (3), or (5)," and "(i)(3)(B)(i) or (7)(A)(ii)," for "(i)(3)(B)(i),".

Subsec. (p)(4)(F)(ii). Pub. L. 107–134, §201(c)(7)(B), substituted "(i)(1), (2), (3), (5) or (7)," for "(i)(1), (2), (3), or (5)," in introductory provisions.

Subsec. (p)(6)(B)(i). Pub. L. 107–134, §201(c)(8), substituted "(i)(8)(A)(ii)" for "(i)(7)(A)(ii)".

2000—Subsec. (b)(2)(D). Pub. L. 106–554, §1(a)(7) [title III, §304(a)], added subpar. (D).

Subsec. (e)(1)(D)(v). Pub. L. 106–554, §1(a)(7) [title III, §319(8)(B)], amended cl. (v) generally. Prior to amendment, cl. (v) read as follows: "if the corporation was an electing small business corporation under subchapter S of chapter 1, any person who was a shareholder during any part of the period covered by such

return during which an election was in effect, or".

Subsec. (j)(6). Pub. L. 106–554, §1(a)(7) [title III, §310(a)(1)], added par. (6).

Subsec. (k)(6). Pub. L. 106–554, §1(a)(7) [title III, §313(c)], substituted "certain" for "internal revenue" in heading and inserted "and an officer or employee of the Office of Treasury Inspector General for Tax Administration" after "internal revenue officer or employee" in text.

Subsec. (p)(4). Pub. L. 106–554, §1(a)(7) [title III, §§310(a)(2)(A)(i), (iv), 319(17)(A)], in introductory provisions, inserted "the Congressional Budget Office," after "General Accounting Office,", struck out second comma after "(13)", and substituted "(7), (8), (9), (12), (15), or (16) or any other person described in subsection (l)(16) shall, as a condition" for "(7), (8), (9), (12), or (15) shall, as a condition", and in concluding provisions, inserted "or the Congressional Budget Office" after "General Accounting Office" in two places.

Subsec. (p)(4)(E). Pub. L. 106–554, §1(a)(7) [title III, §310(a)(2)(A)(ii)], substituted "commission, the General Accounting Office, or the Congressional Budget Office" for "commission or the General Accounting Office".

Subsec. (p)(4)(F)(ii). Pub. L. 106–554, §1(a)(7) [title III, §§310(a)(2)(A)(iii), 319(17)(B)], struck out second comma after "(14)" and substituted "the General Accounting Office, or the Congressional Budget Office," for "or the General Accounting Office,".

Subsec. (p)(5). Pub. L. 106–554, §1(a)(7) [title III, §310(a)(2)(B)], substituted "commissions, the General Accounting Office, and the Congressional Budget Office" for "commissions and the General Accounting Office".

Subsec. (p)(6)(A). Pub. L. 106–554, §1(a)(7) [title III, §310(a)(2)(C)], inserted "and the Congressional Budget Office" after "commissions".

1999—Subsec. (b)(2)(C). Pub. L. 106–170 added subpar. (C).

1998—Subsec. (d)(5). Pub. L. 105–206, §6009(d), substituted "section 976 of the Taxpayer Relief Act of 1997. Subsections (a)(2) and (p)(4) and sections 7213 and 7213A shall not apply with respect to disclosures or inspections made pursuant to this paragraph." for "section 967 of the Taxpayer Relief Act of 1997."

Subsec. (e)(1)(A)(ii) to (iv). Pub. L. 105–206, §6007(f)(4), redesignated cls. (iii) and (iv) as (ii) and (iii), respectively, and struck out former cl. (ii) which read as follows: "if property transferred by that individual to a trust is sold or exchanged in a transaction described in section 644, the trustee or trustees, jointly or separately, of such trust to the extent necessary to ascertain any amount of tax imposed upon the trust by section 644,".

Subsec. (e)(6). Pub. L. 105–206, §6019(c), substituted "(5), (8), or (9)" for "or (5)".

Subsec. (f)(5). Pub. L. 105–206, §3708(a), added par. (5).

Subsec. (h)(4)(A). Pub. L. 105–206, §6023(22), inserted "if" before "the taxpayer is a party to".

Subsec. (h)(5). Pub. L. 105–277, §4002(a), redesignated par. (5), relating to Internal Revenue Service Oversight Board, as (6).

Pub. L. 105–206, §1101(b), added par. (5), relating to Internal Revenue Service Oversight Board.

Subsec. (h)(6). Pub. L. 105–277, §4002(a), redesignated par. (5), relating to Internal Revenue Service Oversight Board, as (6).

Subsec. (j)(5). Pub. L. 105–277, §4006(a)(1), added par. (5).

Subsec. (k)(8), (9). Pub. L. 105–206, §6012(b)(2), redesignated par. (8), relating to disclosure of information to administer section 6311, as (9).

Subsec. (l)(10). Pub. L. 105–206, §3711(b), in heading substituted "subsection (c), (d), or (e) of section 6402" for "section 6402(c) or 6402(d)" and in text substituted "(c), (d), or (e)" for "(c) or (d)" wherever appearing.

Subsec. (l)(13)(D). Pub. L. 105–277, §1006, substituted "September 30, 2003" for "September 30, 1998".

Subsec. (l)(17). Pub. L. 105–206, §3702(a), added par. (17).

Subsec. (p)(3)(A). Pub. L. 105–277, §4002(h), inserted "(f)(5)," after "(c), (e),".

Pub. L. 105–206, §6012(b)(4), provided that section 1205(c)(3) of Pub. L. 105–34 shall be applied as if it struck "or (8)" and inserted "(8), or (9)". See 1997 Amendment note below.

Pub. L. 105–206, §3702(b)(1), substituted "(16), or (17)" for "or (16)".

Subsec. (p)(4). Pub. L. 105–277, §4006(a)(2), substituted "(j)(1), (2), or (5)" for "(j)(1) or (2)" in introductory provisions.

Pub. L. 105–206, §3702(b)(2), substituted ", (14), or (17)" for "or (14)" in introductory provisions.

Subsec. (p)(4)(F)(ii). Pub. L. 105–277, §4006(a)(2), substituted "(j)(1), (2), or (5)" for "(j)(1) or (2)".

Pub. L. 105–206, §3702(b)(3), substituted ", (15), or (17)" for "or (15)".

1997—Subsec. (a)(3). Pub. L. 105–33, §11024(b)(2), substituted "(6), (12), or (16)" for "(6) or (12)".

Subsec. (d)(5). Pub. L. 105–34, §976(c), added par. (5).

Subsec. (e)(1)(A)(iv). Pub. L. 105–34, §1201(b)(2), struck out "or 59(j)" after "section 1(g)".

Subsec. (h)(5), (6). Pub. L. 105–34, §1283(a), redesignated par. (6) as (5) and struck out heading and text of former par. (5). Text read as follows: "In connection with any judicial proceeding described in paragraph (4) to which the United States is a party, the Secretary shall respond to a written inquiry from an attorney of the Department of Justice (including a United States attorney) involved in such proceeding or any person (or his legal representative) who is a party to such proceeding as to whether an individual who is a prospective juror in such proceeding has or has not been the subject of any audit or other tax investigation by the Internal Revenue Service. The Secretary shall limit such response to an affirmative or negative reply to such inquiry."

Subsec. (i)(7)(B)(i). Pub. L. 105–33, §11024(b)(3), inserted "or by a Trustee as defined in the District of Columbia Retirement Protection Act of 1997," after "(other than an agency referred to in subparagraph (A))".

Subsec. (k)(8). Pub. L. 105–34, §1205(c)(1), added par. (8) relating to disclosure of information to administer section 6311.

Pub. L. 105–34, §1026(a), added par. (8) relating to levies on certain government payments.

Subsec. (l)(7)(D). Pub. L. 105–65 struck out at end "Clause (ix) shall not apply after September 30, 1998."

Pub. L. 105–34, §1023(a), which directed amendment of subsec. (l)(7)(D)(viii) by striking "1998" and inserting "2003", was executed by substituting "2003" for "1998" after "Clause (viii) shall not apply after September 30," in concluding provisions to reflect the probable intent of Congress. The word "1998" did not appear in subsec. (l)(7)(D)(viii).

Subsec. (l)(10). Pub. L. 105–33, §5514(a)(1), repealed Pub. L. 104–193, §110(l)(4). See 1996 Amendment notes below.

Subsec. (l)(12)(F). Pub. L. 105–33, §4631(c)(2), struck out heading and text of subpar. (F). Text read as follows: "Subparagraphs (A) and (B) shall not apply to—

"(i) any request made after September 30, 1998, and

"(ii) any request made before such date for information relating to—

"(I) 1997 or thereafter in the case of subparagraph (A), or

"(II) 1998 or thereafter in the case of subparagraph (B)."

Subsec. (l)(16). Pub. L. 105–33, §11024(b)(1), added par. (16).

Subsec. (p)(3)(A). Pub. L. 105–34, §1205(c)(3), which directed the substitution of "(6), or (8)" for "or (6)" was executed by substituting "(8), or (9)" for "or (8)". See 1998 Amendment note above.

Pub. L. 105–34, §1026(b)(1)(A), substituted "(6), or (8)" for "or (6)".

Pub. L. 105–33, §11024(b)(4), substituted "(15), or (16)" for "or (15)".

Subsec. (p)(4). Pub. L. 105–34, §1283(b), substituted "(h)(5)" for "(h)(6)" in introductory provisions and in subpar. (F)(ii).

Pub. L. 105–34, §1026(b)(1)(B), inserted "(k)(8)," after "(j)(1) or (2)," in introductory provisions and in subpar. (F)(ii).

Pub. L. 105–33, §11024(b)(7)(B)–(F), substituted "to such agency, body, or commission, including an agency or any other person described in subsection (l)(16)," for "to such agency, body, or commission", and ", (12)(B), or (16)" for "or (12)(B)", and inserted "or any person including an agent described in subsection (l)(16)," before "this paragraph shall", "or other person" before "(except that", and "or any person including an agent described in subsection (l)(16)," before "any report". Amendments were executed to provisions following subpar. (F)(iii) to reflect the probable intent of Congress, notwithstanding directory language directing amendment of "section 6103(p)(4)(F) in the matter following clause (iii)".

Pub. L. 105–33, §11024(b)(7)(A), which directed amendment of "section 6103(p)(4)(F) in the matter following clause (iii)" by inserting after "any such agency, body or commission" and before the words "for the General Accounting Office" the words ", including an agency or any other person described in subsection (l)(16)," was executed by making the insertion after "any such agency, body, or commission" and before "or the General Accounting Office" in concluding provisions following subpar. (F)(iii) to reflect the probable intent of Congress.

Pub. L. 105–33, §11024(b)(5), which directed substitution of "(12), or (16), or any other person described in subsection (l)(16)" for "or (12)" in introductory provisions, could not be executed because the words "or (12)" did not appear subsequent to amendment by Pub. L. 104–168, §1206(b)(3)(C). See 1996 Amendments note below.

Pub. L. 105–33, §5514(a)(1), repealed Pub. L. 104–193, §110(l)(5). See 1996 Amendments note below.

Subsec. (p)(4)(F)(i). Pub. L. 105–33, §11024(b)(6), substituted "(9), or (16), or any other person described in subsection (l)(16)" for "or (9),".

1996—Subsec. (a)(3). Pub. L. 104–193, §316(g)(4)(B)(i), substituted "paragraph (6) or (12) of subsection (l)" for "(l)(12)".

Subsec. (c). Pub. L. 104–168, §1207, substituted "request for or consent to such disclosure" for "written request for or consent to such disclosure".

Subsec. (e)(1)(A)(iv). Pub. L. 104–188, §1704(t)(41), substituted "section 1(g) or 59(j)" for "section 1(i) or 59(j)".

Subsec. (e)(8). Pub. L. 104–168, §403(a), added par. (8).

Subsec. (e)(9). Pub. L. 104–168, §902(a), added par. (9).

Subsec. (i)(8). Pub. L. 104–168, §1206(b)(1), struck out par. (8) which read as follows:

"(8) DISCLOSURE OF RETURNS FILED UNDER SECTION 6050I.—The Secretary may, upon written request, disclose returns filed under section 6050I to officers and employees of any Federal agency whose official duties require such disclosure for the administration of Federal criminal statutes not related to tax administration."

Subsec. (l)(3)(C). Pub. L. 104–134, §31001(i)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "For purposes of this paragraph, the term 'included Federal loan program' means any program—

"(i) under which the United States or a Federal agency makes, guarantees, or insures loans, and

"(ii) with respect to which there is in effect a determination by the Director of the Office of Management and Budget (which has been published in the Federal Register) that the application of this paragraph to such program will substantially prevent or reduce future delinquencies under such program."

Subsec. (l)(6)(B). Pub. L. 104–193, §316(g)(4)(A), added subpar. (B). Former subpar. (B) redesignated (C).

Subsec. (l)(6)(C). Pub. L. 104–193, §316(g)(4)(B)(ii), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "The Secretary shall disclose return information under subparagraph (A) only for purposes of, and to the extent necessary in, establishing and collecting child support obligations from, and locating, individuals owing such obligations."

Pub. L. 104–193, §316(g)(4)(A), redesignated subpar. (B) as (C).

Subsec. (l)(7)(D)(i). Pub. L. 104–193, §110(l)(2), formerly §110(l)(3), as renumbered by Pub. L. 105–33, §5514(a)(2), substituted "a State program funded" for "aid to families with dependent children provided under a State plan approved".

Subsec. (l)(10). Pub. L. 104–193, §110(l)(4)(A), which directed substitution of "(c), (d), or (e)" for "(c) or (d)" wherever appearing, was repealed by Pub. L. 105–33, §5514(a)(1).

Subsec. (l)(10)(A). Pub. L. 104–134, §31001(g)(2), inserted "and to officers and employees of the Department of the Treasury in connection with such reduction" after "6402" in introductory provisions.

Subsec. (l)(10)(B). Pub. L. 104–193, §110(l)(4)(B), which directed insertion, at end, of "Any return information disclosed with respect to section 6402(e) shall only be disclosed to officers and employees of the State agency requesting such information.", was repealed by Pub. L. 105–33, §5514(a)(1).

Subsec. (l)(15). Pub. L. 104–168, §1206(a), added par. (15).

Subsec. (p)(3)(A). Pub. L. 104–168, §1206(b)(2), substituted "or (7)(A)(ii)" for "(7)(A)(ii), or (8)" and "(14), or (15)" for "or (14)".

Subsec. (p)(4). Pub. L. 104–193, §316(g)(4)(B)(iii), substituted "paragraph (6)(A) or (12)(B) of subsection (l)" for "subsection (l)(12)(B)" in provisions following subpar. (F)(iii).

Pub. L. 104–193, §110(l)(5), which directed substitution, in introductory provisions, of "(9), (10), or (12)" for "(9), or (12)" and "(5)" for "(5), (10)", was repealed by Pub. L. 105–33, §5514(a)(1).

Pub. L. 104–168, §1206(b)(3)(B), which directed amendment of introductory provisions of par. (4) by substituting "(i)(3)(B)(i)," for "(i)(3)(B)(i), or (8)", was executed by making the substitution for "(i)(3)(B)(i) or (8)" to reflect the probable intent of Congress.

Pub. L. 104–168, §1206(b)(3)(A), (C), substituted "or (5)" for "(5), or (8)" and "(9), (12), or (15)" for "(9), or (12)" in introductory provisions.

Subsec. (p)(4)(F)(ii). Pub. L. 104–168, §1206(b)(4), substituted "or (5)" for "(5), or (8)" and "(14), or (15)" for "or (14)".

1994—Subsec. (l)(5). Pub. L. 103–296, §311(b), substituted "for the purpose of—" for "for the purpose of", inserted subpar. (A) designation, substituted "program; or" for "program.", and added subpar. (B).

Pub. L. 103–296, §108(h)(6), substituted "Social Security Administration" for "Department of Health and Human Services" in heading and "Commissioner of Social Security" for "Secretary of Health and Human Services" in text.

1993—Subsec. (d)(4). Pub. L. 103–66, §13444(a), added par. (4).

Subsec. (l)(7). Pub. L. 103–66, §13403(b), inserted ", or certain housing assistance programs" after "Code" in heading.

Subsec. (l)(7)(D). Pub. L. 103–66, §§13401(a), 13403(a)(4), in closing provisions, substituted "September 30, 1998" for "September 30, 1997" in second sentence and inserted at end "Clause (ix) shall not apply after September 30, 1998."

Subsec. (l)(7)(D)(ix). Pub. L. 103–66, §13403(a)(1)–(3), added cl. (ix).

Subsec. (l)(12)(B)(i). Pub. L. 103–66, §13561(a)(2)(A), inserted ", above an amount (if any) specified by the Secretary of Health and Human Services," after "section 3401(a))".

Subsec. (l)(12)(B)(ii). Pub. L. 103–66, §13561(a)(2)(B), inserted ", above an amount (if any) specified by the Secretary of Health and Human Services," after "wages".

Subsec. (l)(12)(E)(ii). Pub. L. 103–66, §13561(e)(2)(B), amended heading and text of cl. (ii) generally. Prior to amendment, text read as follows: "The term 'group health plan' means—

"(I) any group health plan (as defined in section 5000(b)(1)), and

"(II) any large group health plan (as defined in section 5000(b)(2))."

Subsec. (l)(12)(F)(i). Pub. L. 103–66, §13561(a)(2)(C)(i), substituted "1998" for "1995".

Subsec. (l)(12)(F)(ii)(I). Pub. L. 103–66, §13561(a)(2)(C)(ii), substituted "1997" for "1994".

Subsec. (l)(12)(F)(ii)(II). Pub. L. 103–66, §13561(a)(2)(C)(iii), substituted "1998" for "1995".

Subsec. (l)(13). Pub. L. 103–66, §13402(a), added par. (13).

Subsec. (l)(14). Pub. L. 103–182, §522(a), added par. (14).

Subsec. (m)(4). Pub. L. 103–66, §13402(b)(1), amended par. heading generally, substituting "Individuals who owe an overpayment of Federal Pell grants or who have defaulted on student loans administered by the Department of Education" for "Individuals who have defaulted on student loans administered by the Department of Education".

Subsec. (m)(4)(A). Pub. L. 103–66, §13402(b)(1), amended heading and text subpar. (A) generally. Prior to amendment, text read as follows: "Upon written request by the Secretary of Education, the Secretary may disclose the mailing address of any taxpayer who has defaulted on a loan—

"(i) made under part B or E of title IV of the Higher Education Act of 1965, or

"(ii) made pursuant to section 3(a)(1) of the Migration and Refugee Assistance Act of 1962 to a student at an institution of higher education,

for use only by officers, employees, or agents of the Department of Education for purposes of locating such taxpayer for purposes of collecting such loan."

Subsec. (m)(4)(B)(i). Pub. L. 103–66, §13402(b)(2)(A), substituted "under part B or D" for "under part B".

Subsec. (m)(4)(B)(ii). Pub. L. 103–66, §13402(b)(2)(B), substituted "under subpart 1 of part A, or part D or E, of title IV" for "under part E of title IV".

Subsec. (p)(3)(A). Pub. L. 103–182, §522(b), substituted "(13), or (14)" for "or (13)".

Pub. L. 103–66, §13402(b)(3)(A), substituted "(11), (12), or (13), (m)" for "(11), or (12), (m)".

Subsec. (p)(4). Pub. L. 103–182, §522(b), substituted "(13), or (14)" for "or (13)" in introductory provisions.

Pub. L. 103–66, §13402(b)(3)(B)(i), substituted "(10), (11), or (13)," for "(10), or (11)," in introductory provisions.

Subsec. (p)(4)(F)(ii). Pub. L. 103–182, §522(b), substituted "(13), or (14)" for "or (13)".

Pub. L. 103–66, §13402(b)(3)(B)(ii), substituted "(11), (12), or (13)," for "(11), or (12),".

1992—Subsec. (l)(7)(D). Pub. L. 102–568, §602(b)(1), substituted "September 30, 1997" for "September 30, 1992" in concluding provisions.

Subsec. (l)(7)(D)(viii)(II), (III). Pub. L. 102–568, §602(b)(2), substituted "1315" for "415" in subcl. (II) and "sections 1710(a)(1)(I), 1710(a)(2), 1710(b), and 1712(a)(2)(B)" for "section 610(a)(1)(I), 610(a)(2), 610(b), and 612(a)(2)(B)" in subcl. (III).

1990—Subsec. (e)(1)(A)(iv). Pub. L. 101–508, §11101(d)(6), which directed the substitution of "section 1(g)" for "section 1(j)", could not be executed because "section 1(j)" did not appear in text after amendment by Pub. L. 100–647, §1014(e)(4). See 1988 Amendment note below.

Subsec. (k)(7). Pub. L. 101–508, §11212(b)(3), added par. (7).

Subsec. (l)(7). Pub. L. 101–508, §8051(a), substituted ", the Food Stamp Act of 1977, or title 38, United States Code" for "or the Food Stamp Act of 1977" in heading and added cl. (viii) and concluding provisions at end of subpar. (D).

Subsec. (l)(12)(F). Pub. L. 101–508, §4203(a)(2), substituted "September 30, 1995" for "September 30, 1991" in cl. (i), "1994" for "1990" in cl. (ii)(I), and "1995" for "1991" in cl. (ii)(II).

Subsec. (m)(7). Pub. L. 101–508, §5111(b)(1), added par. (7).

Subsec. (n). Pub. L. 101–508, §11313(a), substituted "the programming" for "and the programming" and inserted "and the providing of other services,".

Subsec. (p)(4). Pub. L. 101–508, §5111(b)(2), which directed the substitution of "paragraph (2), (4), (6), or (7) of subsection (m)" for "subsection (m)(2), (4), or (6)" in the provisions of par. (4) "following subparagraph (f)(iii)", was executed by making the substitution in the provisions following subpar. (F)(iii), to reflect the probable intent of Congress.

1989—Subsec. (a)(3). Pub. L. 101–239, §6202(a)(1)(B)(i), inserted "(l)(12)," after "subsection

(e)(1)(D)(iii),".

Subsec. (d)(1). Pub. L. 101–239, §7841(d)(1), struck out "45," after "32, 44,".

Subsec. (l)(12). Pub. L. 101–239, §6202(a)(1)(A), added par. (12).

Subsec. (p)(3)(A). Pub. L. 101–239, §6202(a)(1)(B)(ii), substituted "(11), or (12)" for "or (11)".

Subsec. (p)(4). Pub. L. 101–239, §6202(a)(1)(B)(v), inserted "or which receives any information under subsection (l)(12)(B) and which discloses any such information to any agent" after "address to any agency" in penultimate sentence.

Pub. L. 101–239, §6202(a)(1)(B)(iii), substituted "(9), or (12) shall" for "or (9) shall" in introductory provisions.

Subsec. (p)(4)(F)(ii). Pub. L. 101–239, §6202(a)(1)(B)(iv), substituted "(11), or (12)" for "or (11)".

1988—Subsec. (b)(5)(A). Pub. L. 100–647, §1012(bb)(3)(B), substituted "and the Commonwealth of the Northern Mariana Islands" for "the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau".

Subsec. (b)(5)(B)(i). Pub. L. 100–647, §6251, substituted "250,000" for "2,000,000".

Subsec. (d). Pub. L. 100–690, §7602(d)(2), amended subsec. (d) heading generally, inserting "and State and local law enforcement agencies" after "officials".

Subsec. (d)(3). Pub. L. 100–690, §7602(c), added par. (3).

Subsec. (e)(1)(A)(iv). Pub. L. 100–647, §1014(e)(4), substituted "section 1(i) or 59(j)" for "section 1(j)".

Subsec. (i)(8). Pub. L. 100–690, §7601(b)(1), added par. (8).

Subsec. (k)(4). Pub. L. 100–647, §1012(bb)(3)(A), substituted "or other convention or bilateral agreement" and "such convention or bilateral agreement" for "or other convention" and "such convention", respectively.

Subsec. (l)(10). Pub. L. 100–485, §701(b)(1), amended par. (10) generally. Prior to amendment, par. (10) read as follows:

"(A) RETURN INFORMATION FROM INTERNAL REVENUE SERVICE.—The Secretary may, upon receiving a written request, disclose to officers and employees of an agency seeking a reduction under section 6402(c) or 6402(d)—

"(i) the fact that a reduction has been made or has not been made under such subsection with respect to any person;

"(ii) the amount of such reduction; and

"(iii) taxpayer identifying information of the person against whom a reduction was made or not made.

"(B) RESTRICTION ON USE OF DISCLOSED INFORMATION.—Any officers and employees of an agency receiving return information under subparagraph (A) shall use such information only for the purposes of, and to the extent necessary in, establishing appropriate agency records or in the defense of any litigation or administrative procedure ensuing from reduction made under section 6402(c) or section 6402(d)."

Subsec. (l)(11), (12). Pub. L. 100–485, §701(b)(2)(A), redesignated former par. (12) as (11) and struck out former par. (11) which related to disclosure of certain information to State agencies seeking a reduction under section 6402(c) and restricted use of that information.

Subsec. (m)(6). Pub. L. 100–647, §8008(c)(1), added par. (6).

Subsec. (p)(3)(A). Pub. L. 100–690, §7601(b)(2)(A), substituted ", (7)(A)(ii), or (8)" for "or (7)(A)(ii)".

Pub. L. 100–485, §701(b)(2)(B), substituted "(10), or (11)" for "(10), (11), or (12)".

Subsec. (p)(4). Pub. L. 100–690, §7601(b)(2)(B), in introductory provisions substituted "(5), or (8)" for "or (5)" and "(i)(3)(B)(i) or (8)" for "(i)(3)(B)(i),".

Pub. L. 100–647, §8008(c)(2)(A)(ii), (iii), in concluding provisions substituted "(m)(2), (4), or (6)" for "(m)(2) or (4)" and inserted at end "For purposes of applying this paragraph in any case to which subsection (m)(6) applies, the term 'return information' includes related blood donor records (as defined in section 1141(h)(2) of the Social Security Act)."

Pub. L. 100–485, §701(b)(2)(B), substituted "(10), or (11)" for "(10), (11), or (12)" in introductory provisions.

Subsec. (p)(4)(F)(i). Pub. L. 100–647, §8008(c)(2)(A)(i)(I), substituted "manner," for "manner; and".

Subsec. (p)(4)(F)(ii). Pub. L. 100–690, §7601(b)(2)(C), substituted "(5), or (8)" for "or (5)".

Pub. L. 100–485, §701(b)(2)(B), substituted "(10), or (11)" for "(10), (11), or (12)".

Subsec. (p)(4)(F)(iii). Pub. L. 100–647, §8008(c)(2)(A)(i), added cl. (iii).

1986—Subsec. (b)(5). Pub. L. 99–514, §1568(a)(1), amended par. (5) generally. Prior to amendment, par. (5) read as follows: "The term 'State' means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Canal Zone, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands."

Subsec. (b)(10). Pub. L. 99–514, §1568(a)(2), added par. (10).

Subsec. (e)(1)(A)(iv). Pub. L. 99–514, §1411(b), added cl. (iv).

Subsec. (l)(7)(D)(v). Pub. L. 99–514, §1899A(53), substituted "this title" for "this Code".

Subsec. (l)(12). Pub. L. 99–335, §310(a), added par. (12).

Subsec. (p)(3)(A). Pub. L. 99–335, §310(b)(1), substituted "(10), (11), or (12)" for "(10), or (11)".

Subsec. (p)(4). Pub. L. 99–335, §310(b)(2), substituted "(10), (11), or (12)" for "(10), or (11)" in provisions preceding subpar. (A) and in subpar. (F)(ii).

Subsec. (p)(5). Pub. L. 99–386 substituted "year" for "quarter".

1985—Subsec. (m)(4). Pub. L. 99–92, §8(h)(1), inserted "administered by the Department of Education" in heading.

Subsec. (m)(5). Pub. L. 99–92, §8(h)(2), added par. (5).

1984—Subsec. (a)(2). Pub. L. 98–369, §2651(k)(2), substituted ", any local child support enforcement agency, or any local agency administering a program listed in subsection (l)(7)(D)" for "or of any local child support enforcement agency".

Subsec. (d)(1). Pub. L. 98–369, §449(a), substituted "44, 45, 51" for "44, 51".

Subsec. (l)(5). Pub. L. 98–369, §2663(j)(5)(E), substituted "Secretary of Health and Human Services" for "Secretary of Health, Education, and Welfare" in heading and text.

Subsec. (l)(6)(A)(i). Pub. L. 98–378, §19(b)(1), inserted "social security account number (or numbers, if the individual involved has more than one such number),".

Subsec. (l)(7). Pub. L. 98–369, §2651(k)(1), substituted provisions relating to information disclosure to Federal, State and local agencies administering programs under the Social Security Act or the Food Stamp Act of 1977 for former provisions which related to information disclosure by the Social Security Administration to the Department of Agriculture and State food stamp agencies.

Pub. L. 98–369, §453(b)(5), amended directory language of Pub. L. 96–249, §127(a)(1). See 1980 Amendment note below.

Subsec. (l)(8). Pub. L. 98–369, §453(b)(6), directed that the par. (7) added by Pub. L. 96–265 be redesignated as par. (8). See 1980 Amendment note below.

Subsec. (l)(8)(A). Pub. L. 98–378, §19(b)(2), substituted "social security account numbers, net earnings" for "net earnings".

Subsec. (l)(9). Pub. L. 98–369, §453(a), added par. (9).

Subsec. (l)(10). Pub. L. 98–369, §2653(b)(3)(A), added par. (10).

Subsec. (l)(11). Pub. L. 98–378, §21(f)(1), added par. (11).

Subsec. (p)(3)(A). Pub. L. 98–378, §21(f)(2), substituted "(10), or (11)" for "or (10)".

Pub. L. 98–369, §2653(b)(3)(B)(i), substituted "(9), or (10)" for "or (9)".

Pub. L. 98–369, §453(b)(1), which directed that "(5), (7), (8), or (9)" be substituted for "(5), or (7)", was executed by substituting "(5), (7), (8), or (9)" for "(5), (7), or (8)" to reflect the probable intent of Congress.

Subsec. (p)(4). Pub. L. 98–378, §21(f)(3), substituted "(10), or (11)" for "or (10)" in provisions preceding subpar. (A).

Pub. L. 98–369, §2653(b)(3)(B)(ii), substituted "(l)(1), (2), (3), (5), or (10)" for "(l)(1), (2), (3), or (5)" in provisions preceding subpar. (A).

Pub. L. 98–369, §453(b)(2), which directed that "(7), (8), or (9)" be substituted for "or (7)" in provisions preceding subpar. (A), was executed by substituting "(7), (8), or (9)" for "(7), or (8)" to reflect the probable intent of Congress.

Subsec. (p)(4)(F)(i). Pub. L. 98–369, §453(b)(3), which directed that "(l)(6), (7), (8), or (9)" be substituted for "(l)(6) or (7)", was executed by substituting "(l)(6), (7), (8), or (9)" for "(l)(6), (7), or (8)" to reflect the probable intent of Congress.

Subsec. (p)(4)(F)(ii). Pub. L. 98–378, §21(f)(4), substituted "(10), or (11)" for "or (10)".

Pub. L. 98–369, §2653(b)(3)(B)(iii), substituted "(l)(1), (2), (3), (5), or (10)" for "(l)(1), (2), (3), or (5)".

1983—Subsec. (h)(6). Pub. L. 98–21, §121(c)(3)(A), added par. (6).

Subsec. (m)(2). Pub. L. 97–452 substituted "sections 3711, 3717, and 3718 of title 31" for "section 3 of the Federal Claims Collection Act of 1966 (31 U.S.C. 952)", wherever appearing.

Subsec. (p)(4). Pub. L. 98–21, §121(c)(3)(B), inserted "(h)(6)," after "(h)(2)," in introductory provisions.

Subsec. (p)(4)(F)(ii). Pub. L. 98–21, §121(c)(3)(B), inserted "(h)(6)," after "(h)(2),".

1982—Subsec. (a)(3). Pub. L. 97–365, §8(c)(1), substituted "paragraph (2) or (4)(B) of subsection (m)" for "subsection (m)(4)(B)".

Subsec. (i)(1) to (5). Pub. L. 97–248, §356(a), added pars. (1) to (5). Former pars. (1) to (5) were struck out.

Subsec. (i)(6). Pub. L. 97–248, §356(a), added par. (6). Former par. (6) redesignated (7).

Subsec. (i)(7). Pub. L. 97–258, §3(f)(4), substituted "section 713 of title 31, United States Code" for "section 117 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 67)" in subpar. (A)(i). Notwithstanding the directory language that amendment be made to subsec. (i)(6), the amendment was

executed to subsec. (i)(7) to reflect the probable intent of Congress and the intervening redesignation of subsec. (i)(6) as (i)(7) by Pub. L. 97–248.

Pub. L. 97–248, §§356(a), 358(a), (b), redesignated former par. (6) as (7) and, in par. (7) as so redesignated, substituted "subparagraph (C)" for "subparagraph (B)" in subpar. (A), added subpar. (B), redesignated former subpar. (B) as (C), and in subpar. (C) as so redesignated substituted "subparagraph (A) or (B)" for "subparagraph (A)".

Subsec. (l)(3). Pub. L. 97–365, §7(a), substituted provisions relating to the disclosure to heads of Federal agencies administering Federal loan programs whether or not an applicant for a loan under such program has a tax delinquent account, for provisions which related to disclosure of returns and return information to Privacy Protection Study Commission.

Subsec. (l)(4)(A)(ii). Pub. L. 97–258, §3(f)(5), substituted "section 330 of title 31, United States Code" for "section 3 of the Act of July 7, 1884 (23 Stat. 258; 31 U.S.C. 1026)".

Subsec. (m)(2). Pub. L. 97–365, §8(a), designated existing provisions as subpar. (A), inserted reference to exception provided by subpar. (B) and substituted "disclose the mailing address of a taxpayer for use by officers, employees, or agents of a Federal agency for purposes of locating such taxpayer" for "disclose the mailing address of a taxpayer to officers and employees of an agency personally and directly engaged in, and solely for their use in, preparation for any administrative or judicial proceeding (or investigation which may result in such a proceeding)", and added subpar. (B).

Pub. L. 97–258, §3(f)(6), substituted "section 3711 of title 31, United States Code" for "section 3 of the Federal Claims Collection Act of 1966".

Subsec. (p)(3)(A). Pub. L. 97–248, §356(b)(1)(A), substituted "(7)(A)(ii)" for "(6)(A)(ii)".

Subsec. (p)(3)(C)(i). Pub. L. 97–365, §7(b)(1), substituted "(l)(6)" for "(l)(3) or (6)".

Pub. L. 97–248, §356(b)(1)(B), inserted ", (i)(3)(B)(i)," after "described in subsection (d)".

Subsec. (p)(3)(C)(i)(II). Pub. L. 97–248, §356(b)(1)(C), inserted "or otherwise" after "such requests".

Subsec. (p)(4). Pub. L. 97–365, §7(b)(2), substituted "(l)(1), (2), (3)," for "(l)(1), (2)," and "(l)(6)," for "(l)(3), (6)," in introductory provisions, and in subpar. (F)(ii) substituted "(l)(1), (2), (3), or (5), or (o)(1)," for "(l)(1), (2), or (5), or (o)(1), the commission described in subsection (l)(3)".

Pub. L. 97–365, §8(b), inserted last sentence providing that in the case of any agency which receives any mailing address under subsection (m)(2) or (4) and which discloses any such mailing address to any agent, this paragraph shall apply to such agency and each such agent (except that, in the case of an agent, any report to the Secretary or other action with respect to the Secretary shall be made or taken through such agency).

Pub. L. 97–248, §356(b)(1)(D), (E), substituted "(i)(1), (2), (3), or (5)" for "(i)(1), (2), or (5)" wherever appearing, and inserted ", (i)(3)(B)(i)," after "(d)" wherever appearing.

Subsec. (p)(6)(B)(i). Pub. L. 97–248, §356(b)(1)(F), substituted "subsection (i)(7)(A)(ii)" for "subsection (i)(6)(A)(ii)".

1981—Subsec. (b)(2). Pub. L. 97–34 inserted prohibition against disclosure of methods for selection of tax returns for audit.

1980—Subsec. (d). Pub. L. 96–598 designated existing provision as par. (1), inserted heading "In general" and in text substituted "to receive the returns" for "to receive the return", and added par. (2).

Subsec. (e)(4). Pub. L. 96–589, §3(c)(1), added par. (4). Former par. (4), relating to public inspection of returns of persons whose property was in the hands of a trustee in bankruptcy or receiver, was struck out.

Subsec. (e)(5). Pub. L. 96–589, §3(c)(1), added par. (5). Former par. (5) redesignated (6).

Subsec. (e)(6). Pub. L. 96–589, §3(c)(1), (2), redesignated former par. (5) as (6), and in par. (6) as so redesignated, inserted reference to par. (5). Former par. (6) redesignated (7).

Subsec. (e)(7). Pub. L. 96–589, §3(c)(1), redesignated former par. (6) as (7).

Subsec. (l)(7). Pub. L. 96–249, §127(a)(1), as amended by Pub. L. 96–611, §11(a)(1), and Pub. L. 98–369, §453(b)(5), added par. (7). Paragraph as originally enacted by Pub. L. 96–249 was designated subsec. (i)(7), but was redesignated subsec. (l)(7) through amendment by Pub. L. 96–611 and Pub. L. 98–369.

Subsec. (l)(8). Pub. L. 96–265, §408(a)(1), as amended by Pub. L. 96–611, §11(a)(2)(A), added par. (8). Paragraph as originally enacted by Pub. L. 96–265 was designated (7), but was redesignated (8) through the amendment by Pub. L. 96–611.

Subsec. (m)(4)(A). Pub. L. 96–499 substituted references to Secretary of Education for references to Commissioner of Education, designated existing provisions in part as cl. (i) and, as so designated, inserted reference to part B of title IV of the Higher Education Act of 1965, added cl. (ii), and provided that such disclosures were for use only by officers, employees, or agents of the Department of Education.

Subsec. (m)(4)(B). Pub. L. 96–499 substituted references to Secretary of Education for references to Commissioner of Education, designated existing provisions in part as cl. (ii), and added cl. (i).

Subsec. (p)(3)(A). Pub. L. 96–265, §408(a)(2)(A), as amended by Pub. L. 96–611, §11(a)(2)(B)(i),

substituted "(l)(1), (4)(B), (5), (7), or (8)" for "(l)(1), (4)(B), (5), or (7)". Section 408(a)(2)(A) of Pub. L. 96–265 was amended by Pub. L. 96–611 to reflect the redesignations of subsec. (l)(7) and (8) by Pub. L. 96–611.

Pub. L. 96–249, §127(a)(2)(A), substituted "(l)(1), (4)(B), (5), or (7)" for "(l)(1) or (4)(B) or (5)".

Subsec. (p)(4). Pub. L. 96–265, §408(a)(2)(B), as amended by Pub. L. 96–611, §11(a)(2)(B)(ii), substituted "(l)(3), (6), (7), or (8)" for "(l)(3), (6), or (7)" in introductory provisions. Section 408(a)(2)(B) of Pub. L. 96–265 was amended by Pub. L. 96–611 to reflect the redesignations of subsec. (l)(7) and (8) by Pub. L. 96–611.

Pub. L. 96–249, §127(a)(2)(B), substituted "(l)(3), (6), or (7)" for "(l)(3) or (6)" in provisions preceding subpar. (A).

Subsec. (p)(4)(F)(i). Pub. L. 96–265, §408(a)(2)(C), as amended by Pub. L. 96–611, §11(a)(2)(B)(iii), substituted "(l)(6), (7), or (8)" for "(l)(6) or (7)". Section 408(a)(2)(C) of Pub. L. 96–265 was amended by Pub. L. 96–611 to reflect the redesignations of subsec. (l)(7) and (8) by Pub. L. 96–611.

Pub. L. 96–249, 127(a)(2)(C), substituted "(l)(6) or (7)" for "(l)(6)".

1978—Subsec. (a)(3). Pub. L. 95–600, §701(bb)(1)(B), inserted ", subsection (m)(4)(B)," after "subsection (e)(1)(D)(iii)".

Subsec. (d). Pub. L. 95–600, §701(bb)(2), inserted "31," after "21, 23, 24,".

Subsec. (h)(2). Pub. L. 95–600, §503(a), substituted "In a matter involving tax administration, a" for "A", "officers and employees" for "attorneys" after "open to inspection by or disclosure to", inserted "any proceeding before a Federal grand jury or" after "for their use in", and struck out "in a matter involving tax administration" after "or any Federal or State court".

Subsec. (h)(2)(A). Pub. L. 95–600, §503(b)(1), substituted "the proceeding" for "such proceeding" and inserted "or the proceeding arose out of, or in connection with, determining the taxpayer's civil or criminal liability, or the collection of such civil liability in respect of any tax imposed under this title".

Subsec. (h)(4)(A). Pub. L. 95–600, §503(b)(2), substituted "the taxpayer is a party to the proceeding, or the proceeding arose out of, or in connection with, determining the taxpayer's civil or criminal liability, or the collection of such civil liability, in respect of any tax imposed under this title" for "if the taxpayer is a party to such proceeding".

Subsec. (i)(2), (3). Pub. L. 95–600, §701(bb)(3), (4), inserted provisions relating to name and address of taxpayer not being treated as return information.

Subsec. (k)(4). Pub. L. 95–600, §701(bb)(5), struck out reference to income tax in heading and inserted provisions relating to gift and estate tax and exchange of tax information.

Subsec. (m). Pub. L. 95–600, §701(bb)(1)(A), reenacted pars. (1) to (3) without change and added par. (4).

1977—Subsec. (m). Pub. L. 95–210 changed the statement in the existing provisions describing the Secretary's authority by substituting provisions that the Secretary "may disclose" for provisions under which the Secretary was "authorized to disclose", inserted headings at beginning of existing pars. (1) and (2), and added par. (3).

1976—Pub. L. 94–455 among other changes, substituted provisions treating income tax returns as public records and allowing inspection only under regulation approved by the President except in certain enumerated situations for provisions treating return information as confidential and not subject to disclosure except in limited situations and inserted provisions defining "return" and "return information" and provisions prohibiting tax information from being furnished by the Internal Revenue Service to another agency unless the other agency establishes procedures for safeguarding the information it receives.

Subsec. (g). Pub. L. 94–202 added subsec. (g) relating to disclosure of information to Secretary of Health, Education, and Welfare.

1974—Subsec. (g). Pub. L. 93–406 added subsec. (g) relating to disclosure of information with respect to deferred compensation plans.

1966—Pub. L. 89–713 substituted "disclosure of information as to persons filing income tax returns" for "lists of taxpayers" in section catchline and, in subsec. (f), substituted provisions authorizing the furnishing to an inquirer of the information as to whether or not a person has filed an income tax return in a designated internal revenue district for a particular taxable year for provisions directing the preparation of lists containing the name and post-office address of each person making an income tax return in an internal revenue district to be made available for public inspection in the office of the principal internal revenue officer for the internal revenue district in which the return was filed.

1965—Subsec. (a)(2). Pub. L. 89–44 substituted "B and C" for "B, C, and D".

1964—Subsec. (a)(2). Pub. L. 88–563 inserted reference to chapter 41.

CHANGE OF NAME

Words "magistrate judge" substituted for "magistrate" wherever appearing in subsec. (i) pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title II, §209(c), Jan. 2, 2013, 126 Stat. 2326, provided that: "The amendments made by this section [amending this section and section 7213 of this title] shall take effect on the date of the enactment of this Act [Jan. 2, 2013]."

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–198, §4(e), July 2, 2010, 124 Stat. 1357, provided that: "The amendments made by this section [amending this section] shall apply to disclosures made after the date of the enactment of this Act [July 2, 2010]."

EFFECTIVE DATE OF 2009 AMENDMENT

Except as otherwise provided, amendment by Pub. L. 111–3 effective Apr. 1, 2009, see section 3 of Pub. L. 111–3, set out as an Effective Date note under section 1396 of Title 42, The Public Health and Welfare.

Pub. L. 111–3, title VII, §702(f)(3), Feb. 4, 2009, 123 Stat. 111, provided that: "The amendments made by this subsection [amending this section] shall apply on or after the date of the enactment of this Act [Feb 4, 2009]."

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–428, §2(d), Oct. 15, 2008, 122 Stat. 4840, provided that: "The amendments made by this section [amending this section and section 7803 of this title] shall apply to disclosures made after December 31, 2008."

Pub. L. 110–343, div. C, title IV, §402(c), Oct. 3, 2008, 122 Stat. 3876, provided that: "The amendments made by this section [amending this section] shall apply to disclosures after the date of the enactment of this Act [Oct. 3, 2008]."

Amendment by Pub. L. 110–328 applicable to refunds payable under section 6402 of this title on or after Sept. 30, 2008, see section 3(e) of Pub. L. 110–328, set out as a note under section 3304 of this title.

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.

Amendment by section 4002(b)(1)(B), (H), (2)(O) of Pub. L. 110–246 effective Oct. 1, 2008, see section 4407 of Pub. L. 110–246, set out as a note under section 1161 of Title 2, The Congress.

Pub. L. 110–245, title I, §108(c), June 17, 2008, 122 Stat. 1631, provided that: "The amendment made by subsection (a) [amending this section] shall apply to requests made after September 30, 2008."

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–142, §8(c)(2), Dec. 20, 2007, 121 Stat. 1807, provided that: "The amendment made by this subsection [amending this section] shall take effect on the date of the enactment of this Act [Dec. 20, 2007]."

Amendment by Pub. L. 110–28 applicable to returns prepared after May 25, 2007, see section 8246(c) of Pub. L. 110–28, set out as a note under section 6060 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title I, §122(a)(2), Dec. 20, 2006, 120 Stat. 2944, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to disclosures after December 31, 2006."

Pub. L. 109–432, div. A, title I, §122(b)(2), Dec. 20, 2006, 120 Stat. 2944, provided that: "The amendments made by paragraph (1) [amending this section] shall apply to disclosures after December 31, 2006."

Pub. L. 109–432, div. A, title I, §122(c)(2), Dec. 20, 2006, 120 Stat. 2944, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to requests made after December 31, 2006."

Pub. L. 109–432, div. A, title IV, §421(c), Dec. 20, 2006, 120 Stat. 2972, provided that: "The amendments made by this section [amending this section] shall apply to disclosures made after December 31, 2006."

Pub. L. 109–280, title XII, §1224(c), Aug. 17, 2006, 120 Stat. 1093, provided that: "The amendments made by this section [amending this section and sections 6104, 7213, 7213A, and 7431 of this title] shall take effect on the date of the enactment of this Act [Aug. 17, 2006] but shall not apply to requests made before such date."

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–135, title III, §305(a)(2), Dec. 21, 2005, 119 Stat. 2609, provided that: "The amendment made

by paragraph (1) [amending this section] shall apply to disclosures after December 31, 2005."

Pub. L. 109–135, title III, §305(b)(2), Dec. 21, 2005, 119 Stat. 2609, provided that: "The amendments made by paragraph (1) [amending this section] shall apply to disclosures after December 31, 2005."

Pub. L. 109–135, title III, §305(c)(2), Dec. 21, 2005, 119 Stat. 2609, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to requests made after December 31, 2005."

Pub. L. 109–135, title IV, §406(b), Dec. 21, 2005, 119 Stat. 2634, provided that: "The amendment made by this section [amending this section] shall take effect as if included in section 201 of the Victims of Terrorism Tax Relief Act of 2001 [Pub. L. 107–134]."

EFFECTIVE DATE OF 2004 AMENDMENTS

Amendment by Pub. L. 108–357 applicable to disclosures of return or return information with respect to taxable years beginning after Dec. 31, 2004, see section 413(d)(2) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

Pub. L. 108–311, title III, §311(b), Oct. 4, 2004, 118 Stat. 1181, provided that: "The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Oct. 4, 2004]."

Pub. L. 108–311, title III, §320(c), Oct. 4, 2004, 118 Stat. 1182, provided that:

"(1) IN GENERAL.—The amendments made by subsection (a) [amending this section] shall apply to disclosures on or after the date of the enactment of this Act [Oct. 4, 2004].

"(2) SUBSECTION (b).—The amendment made by subsection (b) [amending this section] shall take effect as if included in section 201 of the Victims of Terrorism Tax Relief Act of 2001 [Pub. L. 107–134]."

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–89, title II, §201(b), Oct. 1, 2003, 117 Stat. 1132, provided that: "The amendment made by subsection (a) [amending this section] shall apply to requests made after September 30, 2003."

EFFECTIVE DATE OF 2002 AMENDMENTS

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

Pub. L. 107–147, title IV, §416(c)(2), Mar. 9, 2002, 116 Stat. 55, provided that: "The amendments made by this subsection [amending this section] shall take effect on the date of the enactment of this Act [Mar. 9, 2002]."

Pub. L. 107–134, title II, §201(d), Jan. 23, 2002, 115 Stat. 2444, provided that: "The amendments made by this section [amending this section and sections 6105 and 7213 of this title] shall apply to disclosures made on or after the date of the enactment of this Act [Jan. 23, 2002]."

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by section 1(a)(7) [title III, §304(a)] of Pub. L. 106–554 effective Dec. 21, 2000, see section 1(a)(7) [title III, §304(d)] of Pub. L. 106–554, set out as a note under section 6110 of this title.

Amendment by section 1(a)(7) [title III, §313(c)] of Pub. L. 106–554 effective as if included in the provisions of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105–206, to which such amendment relates, see section 1(a)(7) [title III, §313(f)] of Pub. L. 106–554, set out as a note under section 6015 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title V, §521(a)(3), Dec. 17, 1999, 113 Stat. 1925, provided that: "The amendments made by this subsection [amending this section and section 6110 of this title] shall take effect on the date of the enactment of this Act [Dec. 17, 1999]."

EFFECTIVE DATE OF 1998 AMENDMENTS

Amendment by section 4002(a), (h) of Pub. L. 105–277 effective as if included in the provision of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105–206, to which such amendment relates, see section 4002(k) of Pub. L. 105–277, set out as a note under section 1 of this title.

Pub. L. 105–277, div. J, title IV, §4006(a)(3), Oct. 21, 1998, 112 Stat. 2681–912, provided that: "The amendments made by this subsection [amending this section] shall apply to requests made on or after the date of the enactment of this Act [Oct. 21, 1998]."

Amendment by section 1101(b) of Pub. L. 105–206 effective July 22, 1998, see section 1101(d) of Pub. L. 105–206, set out as a note under section 7802 of this title.

Pub. L. 105–206, title III, §3702(c), July 22, 1998, 112 Stat. 777, provided that: "The amendments made by this section [amending this section] shall apply to requests made by the Archivist of the United States after the

date of the enactment of this Act [July 22, 1998]."

Pub. L. 105–206, title III, §3708(b), July 22, 1998, 112 Stat. 779, provided that: "The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [July 22, 1998]."

Pub. L. 105–206, title III, §3711(d), July 22, 1998, 112 Stat. 781, provided that: "The amendments made by this section [amending this section and section 6402 of this title] (other than subsection (d)) shall apply to refunds payable under section 6402 of the Internal Revenue Code of 1986 after December 31, 1999."

Pub. L. 105–206, title VI, §6019(d), July 22, 1998, 112 Stat. 823, provided that: "The amendments made by this section [amending this section and section 6104 of this title] shall take effect on the date of the enactment of this Act [July 22, 1998]."

Amendment by section 6023(22) of Pub. L. 105–206 effective July 22, 1998, see section 6023(32) of Pub. L. 105–206, set out as a note under section 34 of this title.

Amendment by sections 6007(f)(4), 6009(d), and 6012(b)(2), (4) of Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENTS

Pub. L. 105–34, title X, §1023(b), Aug. 5, 1997, 111 Stat. 923, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Aug. 5, 1997]."

Pub. L. 105–34, title X, §1026(c), Aug. 5, 1997, 111 Stat. 925, provided that: "The amendments made by this section [amending this section and section 552a of Title 5, Government Organization and Employees] shall apply to levies issued after the date of the enactment of this Act [Aug. 5, 1997]."

Amendment by section 1201(b)(2) of Pub. L. 105–34 applicable to taxable years beginning after Dec. 31, 1997, see section 1201(c) of Pub. L. 105–34, set out as a note under section 59 of this title.

Pub. L. 105–34, title XII, §1205(d), Aug. 5, 1997, 111 Stat. 998, provided that: "The amendments made by this section [amending this section and sections 6311 and 7431 of this title] shall take effect on the day 9 months after the date of the enactment of this Act [Aug. 5, 1997]."

Pub. L. 105–34, title XII, §1283(c), Aug. 5, 1997, 111 Stat. 1038, provided that: "The amendments made by this section [amending this section] shall apply to judicial proceedings commenced after the date of the enactment of this Act [Aug. 5, 1997]."

Amendment by section 5514(a)(1), (2) of Pub. L. 105–33 effective as if included in section 110 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, at the time such section 110 became law, see section 5518(c) of Pub. L. 105–33, set out as a note under section 51 of this title.

Amendment by section 11024(b)(1)–(7) of Pub. L. 105–33 effective Oct. 1, 1997, except as otherwise provided in title XI of Pub. L. 105–33, see section 11721 of Pub. L. 105–33, set out as a note under section 4246 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by section 110(l)(2), (4), (5) of Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of Title 42, The Public Health and Welfare.

For effective date of amendment by section 316(g)(4) of Pub. L. 104–193, see section 395(a)–(c) of Pub. L. 104–193, set out as a note under section 654 of Title 42.

Pub. L. 104–168, title IV, §403(b), July 30, 1996, 110 Stat. 1460, provided that: "The amendment made by this section [amending this section] shall apply to requests made after the date of the enactment of this Act [July 30, 1996]."

Pub. L. 104–168, title IX, §902(b), July 30, 1996, 110 Stat. 1466, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [July 30, 1996]."

Pub. L. 104–168, title XII, §1206(c), July 30, 1996, 110 Stat. 1473, provided that: "The amendments made by this section [amending this section and section 7213 of this title] shall take effect on the date of the enactment of this Act [July 30, 1996]."

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 108(h)(6) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L.

103–296, set out as a note under section 401 of Title 42, The Public Health and Welfare.

Pub. L. 103–296, title III, §311(c), Aug. 15, 1994, 108 Stat. 1526, provided that: "The amendments made by this section [amending this section and section 1306 of Title 42, The Public Health and Welfare] shall apply with respect to requests for information made after the date of the enactment of this Act [Aug. 15, 1994]."

EFFECTIVE DATE OF 1993 AMENDMENTS

Pub. L. 103–182, title V, §522(c)(1), Dec. 8, 1993, 107 Stat. 2161, provided that: "The amendments made by this section [amending this section] shall take effect on the date the Agreement [North American Free Trade Agreement] enters into force with respect to the United States [Jan. 1, 1994]."

Pub. L. 103–66, title XIII, §13401(b), Aug. 10, 1993, 107 Stat. 563, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Aug. 10, 1993]."

Pub. L. 103–66, title XIII, §13402(c), Aug. 10, 1993, 107 Stat. 565, provided that: "The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Aug. 10, 1993]."

Pub. L. 103–66, title XIII, §13403(c), Aug. 10, 1993, 107 Stat. 565, provided that: "The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Aug. 10, 1993]."

Pub. L. 103–66, title XIII, §13444(b), Aug. 10, 1993, 107 Stat. 570, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall take effect on the date one year after the date of the enactment of this Act [Aug. 10, 1993].

"(2) SPECIAL RULE.—The amendment made by subsection (a) shall take effect on the date 2 years after the date of the enactment of this Act in the case of any State if it is established to the satisfaction of the Secretary of the Treasury that—

"(A) under the law of such State as in effect on the date of the enactment of this Act, it is impossible for such State to enter into an agreement meeting the requirements of section 6103(d)(4)(B) of the Internal Revenue Code of 1986 (as added by subsection (a)), and

"(B) it is likely that such State will enter into such an agreement during the extension period under this paragraph."

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title IV, §4203(d), Nov. 5, 1990, 104 Stat. 1388–108, as amended by Pub. L. 103–432, title I, §151(c)(8), Oct. 31, 1994, 108 Stat. 4436, provided that: "The amendments made [by] this section [amending this section and section 1395y of Title 42, The Public Health and Welfare] shall take effect on the date of the enactment of this Act [Nov. 5, 1990] and the amendment made by subsection (a)(2)(B) [amending this section] shall apply to requests made on or after such date."

[Pub. L. 103–432, title I, §151(c)(8), Oct. 31, 1994, 108 Stat. 4436, provided that the amendment made by that section to section 4203(d) of Pub. L. 101–508, set out above, is effective as if included in the enactment of Pub. L. 101–508.]

Amendment by section 11101(d)(6) of Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, see section 11101(e) of Pub. L. 101–508, set out as a note under section 1 of this title.

Amendment by section 11212(b)(3) of Pub. L. 101–508 effective Dec. 1, 1990, see section 11212(f)(2) of Pub. L. 101–508, set out as a note under section 4081 of this title.

Pub. L. 101–508, title XI, §11313(b), Nov. 5, 1990, 104 Stat. 1388–455, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 5, 1990]."

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VI, §6202(a)(1)(D), Dec. 19, 1989, 103 Stat. 2228, provided that: "The amendments made by this paragraph [amending this section and section 7213 of this title] shall take effect on the date of the enactment of this Act [Dec. 19, 1989]."

EFFECTIVE DATE OF 1988 AMENDMENTS

Pub. L. 100–690, title VII, §7601(b)(3), Nov. 18, 1988, 102 Stat. 4504, as amended by Pub. L. 101–647, title XXXIII, §3302(a), Nov. 29, 1990, 104 Stat. 4917, provided that: "The amendments made by this

subsection [amending this section] shall apply to requests made on or after the date of the enactment of this Act [Nov. 18, 1988], but disclosures may be made pursuant to such amendments only during the 4-year period beginning on such date."

Pub. L. 100–690, title VII, §7602(e), Nov. 18, 1988, 102 Stat. 4508, provided that: "The amendments made by this section [enacting section 7624 of this title and amending this section and section 7809 of this title] shall apply to information first provided more than 90 days after the date of the enactment of this Act [Nov. 18, 1988]."

Pub. L. 100–647, title I, §1012(bb)(3)(C), Nov. 10, 1988, 102 Stat. 3534, provided that: "The amendments made by this paragraph [amending this section] shall take effect on the date of the enactment of the Tax Reform Act of 1986 [Oct. 22, 1986]."

Amendment by section 1014(e)(4) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–485, title VII, §701(b)(3), Oct. 13, 1988, 102 Stat. 2426, provided that:

"(A) IN GENERAL.—The amendments made by this subsection [amending this section and section 7213 of this title] shall take effect on the date of the enactment of this Act [Oct. 13, 1988].

"(B) SPECIAL RULE.—Nothing in section 2653(c) of the Deficit Reduction Act of 1984 [Pub. L. 98–369, 26 U.S.C. 6402 note] shall be construed to limit the application of paragraph (10) of section 6103(l) of the Internal Revenue Code of 1986 (as amended by this subsection)."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1411(b) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1411(c) of Pub. L. 99–514, set out as a note under section 1 of this title.

Pub. L. 99–514, title XV, §1568(b), Oct. 22, 1986, 100 Stat. 2764, provided that: "The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Oct. 22, 1986]."

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–92 effective Oct. 1, 1985, see section 10(a) of Pub. L. 99–92, set out as a note under section 296k of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1984 AMENDMENTS

Pub. L. 98–378, §21(g), Aug. 16, 1984, 98 Stat. 1326, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by this section [amending this section, sections 6402 and 7213 of this title, and sections 654 and 664 of Title 42, The Public Health and Welfare] shall apply with respect to refunds payable under section 6402 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] after December 31, 1985."

Pub. L. 98–369, div. A, title IV, §449(b), July 18, 1984, 98 Stat. 818, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [July 18, 1984]."

Amendment by section 453(a)–(b)(3), (6) of Pub. L. 98–369 effective on first day of first calendar month which begins more than 90 days after July 18, 1984, see section 456(a) of Pub. L. 98–369, set out as an Effective Date note under section 5101 of this title.

Amendment by section 2651(k) of Pub. L. 98–369 effective July 18, 1984, see section 2651(l)(1) of Pub. L. 98–369, set out as an Effective Date note under section 1320b–7 of Title 42, The Public Health and Welfare.

Amendment by section 2653(b)(3) of Pub. L. 98–369 applicable to refunds payable under section 6402 of this title after Dec. 31, 1985, see section 2653(c) of Pub. L. 98–369, as amended, set out as a note under section 6402 of this title.

Amendment by section 2663(j)(5)(E) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable to benefits received after Dec. 31, 1983, in taxable years ending after such date, except for any portion of a lump-sum payment of social security benefits received after Dec. 31, 1983, if the generally applicable payment date for such portion was before Jan. 1, 1984, see section 121(g) of Pub. L. 98–21, set out as an Effective Date note under section 86 of this title.

EFFECTIVE DATE OF 1982 AMENDMENTS

Pub. L. 97–365, §7(c), Oct. 25, 1982, 96 Stat. 1753, provided that: "The amendments made by this section [amending this section] shall apply in the case of loan applications made after September 30, 1982."

Pub. L. 97–365, §8(d), Oct. 25, 1982, 96 Stat. 1754, provided that: "The amendments made by this section [amending this section and section 7213 of this title] shall take effect on the date of the enactment of this Act [Oct. 25, 1982]."

Pub. L. 97–248, title III, §356(c), Sept. 3, 1982, 96 Stat. 645, provided that: "The amendments made by this section [amending this section and section 7213 of this title] shall take effect on the day after the date of the enactment of this Act [Sept. 3, 1982]."

Pub. L. 97–248, title III, §358(c), Sept. 3, 1982, 96 Stat. 648, provided that: "The amendments made by this section [amending this section] shall take effect on the day after the date of the enactment of this Act [Sept. 3, 1982]."

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title VII, §701(b), Aug. 13, 1981, 95 Stat. 340, provided that: "The amendment made by subsection (a) [amending this section] shall apply to disclosures after July 19, 1981."

EFFECTIVE DATE OF 1980 AMENDMENTS

Pub. L. 96–611, §11(a)(3), Dec. 28, 1980, 94 Stat. 3574, provided that: "The amendment made by paragraph (1) [amending section 127(a)(1) of Pub. L. 96–249, which amended this section] shall take effect on May 26, 1980 and the amendments made by paragraph (2) [amending section 408(a)(1), (2) of Pub. L. 96–265, which amended this section and section 7213 of this title] shall take effect on June 9, 1980."

Pub. L. 96–598, §3(b), Dec. 24, 1980, 94 Stat. 3488, provided that: "The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Dec. 24, 1980]."

Amendment by Pub. L. 96–589 applicable to bankruptcy cases commencing more than 90 days after Dec. 24, 1980, see section 7(b) of Pub. L. 96–589, set out as a note under section 108 of this title.

Pub. L. 96–499, title III, §302(c), Dec. 5, 1980, 94 Stat. 2604, provided that: "The amendments made by subsections (a) and (b) of this section [amending this section and section 7213 of this title] shall take effect on the date of the enactment of this Act [Dec. 5, 1980]."

Pub. L. 96–265, title IV, §408(a)(3), June 9, 1980, 94 Stat. 468, provided that: "The amendments made by this subsection [amending this section and section 7213 of this title] shall take effect on the date of the enactment of this Act [June 9, 1980]."

Pub. L. 96–249, title I, §127(a)(3), May 26, 1980, 94 Stat. 366, provided that: "The amendments made by this subsection [amending this section and section 7213 of this title] shall take effect on the date of the enactment of this Act [May 26, 1980]."

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title VII, §701(bb)(8), Nov. 6, 1978, 92 Stat. 2923, provided that:

"(A) Except as provided in subparagraph (B), the amendments made by this subsection [amending this section and sections 7213 and 7217 of this title] shall take effect January 1, 1977.

"(B) The amendments made by paragraph (7) [amending section 7217 of this title] shall apply with respect to disclosures made after the date of the enactment of this Act [Nov. 6, 1978]."

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XII, §1202(i), Oct. 4, 1976, 90 Stat. 1688, provided that: "The amendments made by this section [enacting section 7217 of this title, amending this section and sections 4102, 4924, 6108, 6323, 7213, 7513, 7809, and 7852 of this title, and repealing sections 6106 and 7515 of this title] take effect January 1, 1977."

EFFECTIVE DATE OF 1974 AMENDMENT

Pub. L. 93–406, title II, §1022(h), Sept. 2, 1974, 88 Stat. 941, provided that the amendment made by that section is effective Sept. 2, 1974.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–713 effective Nov. 2, 1966, see section 6 of Pub. L. 89–713, set out as a note under section 6091 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Pub. L. 89–44, title VII, §701(e), June 21, 1965, 79 Stat. 157, provided that: "Each amendment made by

title VI [repealing section 7275 of this title and amending this section and sections 6415, 6416, 6802, 6806, 6808, 7012, 7272, and 7326 of this title], to the extent that it relates to any tax provision changed by this Act shall take effect in a manner consistent with the effective date for such changed tax provision."

REGULATIONS

Pub. L. 106–170, title V, §521(c), Dec. 17, 1999, 113 Stat. 1927, provided that: "The Secretary of the Treasury or the Secretary's delegate shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of section 6103(b)(2)(C), and the last sentence of section 6110(b)(1), of the Internal Revenue Code of 1986, as added by this section."

Pub. L. 105–33, title XI, §11024(c), Aug. 5, 1997, 111 Stat. 722, provided that: "The Secretary may issue regulations governing the confidentiality of the information obtained pursuant to subsection (a) [111 Stat. 721] and the provisions of law amended by subsection (b) [amending this section and section 7213 of this title]."

Pub. L. 103–182, title V, §522(c)(2), Dec. 8, 1993, 107 Stat. 2161, provided that: "Not later than 90 days after the date of the enactment of this Act [Dec. 8, 1993], the Secretary of the Treasury or his delegate shall issue temporary regulations to carry out section 6103(l)(14) of the Internal Revenue Code of 1986, as added by this section."

CONSTRUCTION OF 2002 AMENDMENT

Nothing in amendment by Pub. L. 107–210, other than provisions relating to COBRA continuation coverage and reporting requirements, to be construed as creating new mandate on any party regarding health insurance coverage, see section 203(f) of Pub. L. 107–210, set out as a note under section 2918 of Title 29, Labor.

TRANSFER OF FUNCTIONS

For transfer of the functions, personnel, assets, and obligations of the United States Secret Service, including the functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 381, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

ANNUAL REPORT REGARDING ADVANCE PRICING AGREEMENTS

Pub. L. 106–170, title V, §521(b), Dec. 17, 1999, 113 Stat. 1925, provided that:

"(1) IN GENERAL.—Not later than 90 days after the end of each calendar year, the Secretary of the Treasury shall prepare and publish a report regarding advance pricing agreements.

"(2) CONTENTS OF REPORT.—The report shall include the following for the calendar year to which such report relates:

"(A) Information about the structure, composition, and operation of the advance pricing agreement program office.

"(B) A copy of each model advance pricing agreement.

"(C) The number of—

"(i) applications filed during such calendar year for advance pricing agreements;

"(ii) advance pricing agreements executed cumulatively to date and during such calendar year;

"(iii) renewals of advance pricing agreements issued;

"(iv) pending requests for advance pricing agreements;

"(v) pending renewals of advance pricing agreements;

"(vi) for each of the items in clauses (ii) through (v), the number that are unilateral, bilateral, and multilateral, respectively;

"(vii) advance pricing agreements revoked or canceled, and the number of withdrawals from the advance pricing agreement program; and

"(viii) advance pricing agreements finalized or renewed by industry.

"(D) General descriptions of—

"(i) the nature of the relationships between the related organizations, trades, or businesses covered by advance pricing agreements;

"(ii) the covered transactions and the business functions performed and risks assumed by such

organizations, trades, or businesses;

"(iii) the related organizations, trades, or businesses whose prices or results are tested to determine compliance with transfer pricing methodologies prescribed in advance pricing agreements;

"(iv) methodologies used to evaluate tested parties and transactions and the circumstances leading to the use of those methodologies;

"(v) critical assumptions made and sources of comparables used;

"(vi) comparable selection criteria and the rationale used in determining such criteria;

"(vii) the nature of adjustments to comparables or tested parties;

"(viii) the nature of any ranges agreed to, including information regarding when no range was used and why, when interquartile ranges were used, and when there was a statistical narrowing of the comparables;

"(ix) adjustment mechanisms provided to rectify results that fall outside of the agreed upon advance pricing agreement range;

"(x) the various term lengths for advance pricing agreements, including rollback years, and the number of advance pricing agreements with each such term length;

"(xi) the nature of documentation required; and

"(xii) approaches for sharing of currency or other risks.

"(E) Statistics regarding the amount of time taken to complete new and renewal advance pricing agreements.

"(F) A detailed description of the Secretary of the Treasury's efforts to ensure compliance with existing advance pricing agreements.

"(3) CONFIDENTIALITY.—The reports required by this subsection shall be treated as authorized by the Internal Revenue Code of 1986 for purposes of section 6103 of such Code, but the reports shall not include information—

"(A) which would not be permitted to be disclosed under section 6110(c) of such Code if such report were a written determination as defined in section 6110 of such Code; or

"(B) which can be associated with, or otherwise identify, directly or indirectly, a particular taxpayer.

"(4) FIRST REPORT.—The report for calendar year 1999 shall include prior calendar years after 1990."

PROCEDURES FOR AUTHORIZING DISCLOSURE ELECTRONICALLY

Pub. L. 105–206, title II, §2003(e), July 22, 1998, 112 Stat. 725, provided that: "The Secretary shall establish procedures for any taxpayer to authorize, on an electronically filed return, the Secretary to disclose information under section 6103(c) of the Internal Revenue Code of 1986 to the preparer of the return."

ELECTRONIC ACCESS TO ACCOUNT INFORMATION

Pub. L. 105–206, title II, §2005, July 22, 1998, 112 Stat. 726, provided that:

"(a) IN GENERAL.—Not later than December 31, 2006, the Secretary of the Treasury or the Secretary's delegate shall develop procedures under which a taxpayer filing returns electronically (and their designees under section 6103(c) of the Internal Revenue Code of 1986) would be able to review the taxpayer's account electronically, but only if all necessary safeguards to ensure the privacy of such account information are in place.

"(b) REPORT.—Not later than December 31, 2003, the Secretary of the Treasury shall report on the progress the Secretary is making on the development of procedures under subsection (a) to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate."

CONFIDENTIALITY OF TAX RETURN INFORMATION

Pub. L. 105–206, title III, §3802, July 22, 1998, 112 Stat. 782, provided that: "The Joint Committee on Taxation and the Secretary of the Treasury shall each conduct a separate study of the scope and use of provisions regarding taxpayer confidentiality, and shall report the findings of such study, together with such recommendations as the Committee or the Secretary deems appropriate, to the Congress not later than 18 months after the date of the enactment of this Act [July 22, 1998]. Such study shall examine—

"(1) the present protections for taxpayer privacy;

"(2) any need for third parties to use tax return information;

"(3) whether greater levels of voluntary compliance may be achieved by allowing the public to know who is legally required to file tax returns, but does not file tax returns;

"(4) the interrelationship of the taxpayer confidentiality provisions in the Internal Revenue Code of 1986 with such provisions in other Federal law, including section 552a of title 5, United States Code (commonly known as the 'Freedom of Information Act') [probably should be a reference to the Privacy Act];

"(5) the impact on taxpayer privacy of the sharing of income tax return information for purposes of enforcement of State and local tax laws other than income tax laws, and including the impact on the taxpayer privacy intended to be protected at the Federal, State, and local levels under Public Law 105–35, the Taxpayer Browsing Protection Act of 1997 [see Tables for classification]; and

"(6) whether the public interest would be served by greater disclosure of information relating to tax exempt organizations described in section 501 of the Internal Revenue Code of 1986."

COMBINED EMPLOYMENT TAX REPORTING DEMONSTRATION PROJECT

Pub. L. 105–34, title IX, §976(a), (b), Aug. 5, 1997, 111 Stat. 898, provided that:

"(a) IN GENERAL.—The Secretary of the Treasury shall provide for a demonstration project to assess the feasibility and desirability of expanding combined Federal and State tax reporting.

"(b) DESCRIPTION OF DEMONSTRATION PROJECT.—The demonstration project under subsection (a) shall be—

"(1) carried out between the Internal Revenue Service and the State of Montana for a period ending with the date which is 5 years after the date of the enactment of this Act [Aug. 5, 1997],

"(2) limited to the reporting of employment taxes, and

"(3) limited to the disclosure of the taxpayer identity (as defined in section 6103(b)(6) of such Code) and the signature of the taxpayer."

PROCEDURES AND POLICIES TO SAFEGUARD CONFIDENTIALITY OF TAXPAYER INFORMATION

Pub. L. 109–115, div. A, title II, §203, Nov. 30, 2005, 119 Stat. 2438, which provided that the Internal Revenue Service was to institute and enforce policies and procedures that would safeguard the confidentiality of taxpayer information, was from the Department of the Treasury Appropriations Act, 2006 and was repeated in provisions of subsequent appropriations acts which are not set out in the Code. Similar provisions were also contained in the following prior appropriations acts:

Pub. L. 108–447, div. H, title II, §203, Dec. 8, 2004, 118 Stat. 3240.
Pub. L. 108–199, div. F, title II, §203, Jan. 23, 2004, 118 Stat. 318.
Pub. L. 108–7, div. J, title I, §103, Feb. 20, 2003, 117 Stat. 437.
Pub. L. 107–67, title I, §103, Nov. 12, 2001, 115 Stat. 523.
Pub. L. 106–554, §1(a)(3) [title I, §103], Dec. 21, 2000, 114 Stat. 2763, 2763A–132.
Pub. L. 106–58, title I, §103, Sept. 29, 1999, 113 Stat. 437.
Pub. L. 105–277, div. A, §101(h) [title I, §105], Oct. 21, 1998, 112 Stat. 2681–480, 2681–488.
Pub. L. 105–61, title I, §105, Oct. 10, 1997, 111 Stat. 1282.
Pub. L. 104–208, div. A, title I, §101(f) [title I, §114], Sept. 30, 1996, 110 Stat. 3009–314, 3009–325.
Pub. L. 104–52, title I, §105, Nov. 19, 1995, 109 Stat. 476.
Pub. L. 103–329, title I, §108, Sept. 30, 1994, 108 Stat. 2390.
Pub. L. 103–123, title I, §107, Oct. 28, 1993, 107 Stat. 1234.

CONFIDENTIALITY OF TAX RETURN INFORMATION

Pub. L. 101–647, title XXXIII, §3304, Nov. 29, 1990, 104 Stat. 4918, provided that:

"(a) IN GENERAL.—Notwithstanding any other provision of this Act [see Tables for classification], no commission established by this Act shall have access to any return or return information, except to the extent authorized by section 6103 of the Internal Revenue Code of 1986.

"(b) DEFINITIONS.—For purposes of this section, the terms 'return' and 'return information' have the respective meanings given such terms by section 6103(b) of the Internal Revenue Code of 1986."

CLARIFICATION OF CONGRESSIONAL INTENT AS TO SCOPE OF AMENDMENTS BY SECTION 2653 OF PUB. L. 98–369

For provisions that nothing in amendments by section 2653 of Pub. L. 98–369 be construed as exempting debts of corporations or any other category of persons from application of such amendments, with such amendments to extend to all Federal agencies (as defined in such amendments), see section 9402(b) of Pub. L. 100–203, set out as a note under section 6402 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

REIMBURSEMENT OF COSTS OF SUPPLYING INFORMATION NECESSARY FOR ADMINISTRATION OF FEDERAL RETIREMENT SYSTEMS

Pub. L. 99–335, title III, §310(c), June 6, 1986, 100 Stat. 608, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The Office of Personnel Management shall reimburse the costs (as determined by the Secretary of Health and Human Services) of supplying—

"(1) information under section 6103(l)(12) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]; and

"(2) such other information agreed upon by the Director of the Office of Personnel Management and the Secretary of Health and Human Services, which is required in the administration of chapters 83 and 84 of title 5, United States Code.

Section 1106(b) and (c) of the Social Security Act [42 U.S.C. 1306(b), (c)] shall apply to any reimbursement under this subsection."

TAXPAYER IDENTIFYING NUMBER; PERSONS APPLYING FOR LOANS UNDER FEDERAL LOAN PROGRAMS REQUIRED TO FURNISH

Pub. L. 97–365, §4, Oct. 25, 1982, 96 Stat. 1751, which required that each Federal agency administering an included Federal loan program require persons applying for loans to furnish their taxpayer identifying numbers, was repealed and restated in section 7701 of Title 31, Money and Finance, by Pub. L. 103–272, §§4(f)(1)(Y)(i), 7(b), July 5, 1994, 108 Stat. 1363, 1379.

INDIVIDUALS EXPOSED TO OCCUPATIONAL HAZARDS DURING MILITARY SERVICE; PROCEDURES APPLICABLE FOR LOCATING

Pub. L. 96–128, title V, §502, Nov. 28, 1979, 93 Stat. 987, as amended by Pub. L. 96–466, title VII, §702, Oct. 17, 1980, 94 Stat. 2215; Pub. L. 102–54, §14(g)(3), June 13, 1991, 105 Stat. 288; Pub. L. 102–83, §6(e), Aug. 6, 1991, 105 Stat. 407, provided that: "In order to effectuate more fully the policy underlying the enactment of section 6103(m)(3) of the Internal Revenue Code of 1986 regarding the location, for certain purposes, of individuals who are, or may have been, exposed to occupational hazards, the Director of the National Institute of Occupational Safety and Health, upon request by the Secretary of Veterans Affairs (or the head of any other Federal department, agency, or instrumentality), shall (1) pursuant to such section 6103(m)(3), request the mailing addresses of individuals who such Secretary (or such department, agency, or instrumentality head) certifies may have been exposed to occupational hazards during active military, naval, or air service (as defined in section 101(24) of title 38, United States Code), and (2) provide such addresses to such Secretary (or such department, agency, or instrumentality head) to be used solely for the purpose of locating such individuals as part of an activity being carried out by or on behalf of the Department of Veterans Affairs (or such other department, agency, or instrumentality) to determine the status of their health or to inform them of the possible need for medical care and treatment and of benefits to which they may be entitled based on disability resulting from exposure to such occupational hazards. Disclosures of information made under this section shall for all purposes be deemed to be disclosures authorized in the Internal Revenue Code of 1986."

Pub. L. 96–466, title VIII, §802(g)(2), Oct. 17, 1980, 94 Stat. 2218, provided that: "The amendment made by section 702 [amending section 502 of Pub. L. 96–128, set out above] shall take effect as of November 28, 1979."

INSPECTION OF TAX RETURNS

The Executive orders listed below authorized inspection of returns for certain specified purposes:

Ex. Ord. No.	Date	Federal Register
10699	Feb. 19, 1957	22 F.R. 1059
10701	Mar. 14, 1957	22 F.R. 1629
10703	Mar. 17, 1957	22 F.R. 1797
10706	Apr. 25, 1957	22 F.R. 3027
10712	May 17, 1957	22 F.R. 3499
10738	Nov. 15, 1957	22 F.R. 9205
10801	Jan. 21, 1959	24 F.R. 521

10806	Mar. 10, 1959	24 F.R. 1823
10808	Mar. 19, 1959	24 F.R. 2221
10815	Apr. 29, 1959	24 F.R. 3474
10818	May 8, 1959	24 F.R. 3799
10846	Oct. 13, 1959	24 F.R. 8318
10855	Nov. 27, 1959	24 F.R. 9565
10871	Mar. 15, 1960	25 F.R. 2251
10876	Apr. 22, 1960	25 F.R. 3569
10906	Jan. 18, 1961	26 F.R. 508
10916	Jan. 25, 1961	26 F.R. 781
10935	Apr. 22, 1961	26 F.R. 3507
10947	June 12, 1961	26 F.R. 5283
10954	July 26, 1961	26 F.R. 6759
10962	Aug. 23, 1961	26 F.R. 8001
10966	Oct. 11, 1961	26 F.R. 9667
10981	Dec. 28, 1961	26 F.R. 12749
11020	May 8, 1962	27 F.R. 4407
11055	Oct. 9, 1962	27 F.R. 9981
11065	Nov. 21, 1962	27 F.R. 11581
11080	Jan. 29, 1963	28 F.R. 903
11082	Feb. 4, 1963	28 F.R. 1131
11083	Feb. 6, 1963	28 F.R. 1245
11099	Mar. 14, 1963	28 F.R. 2619
11102	Apr. 4, 1963	28 F.R. 3373
11109	May 28, 1963	28 F.R. 5351
11133	Dec. 17, 1963	28 F.R. 13835
11153	Apr. 17, 1964	29 F.R. 5335
11176	Sept. 3, 1964	29 F.R. 12607
11192	Jan. 13, 1965	30 F.R. 521
11194	Jan. 26, 1965	30 F.R. 877
11201	Mar. 4, 1965	30 F.R. 2921
11204	Mar. 12, 1965	30 F.R. 3417
11206	Mar. 18, 1965	30 F.R. 3741
11213	Apr. 2, 1965	30 F.R. 4389
11217	Apr. 24, 1965	30 F.R. 5819
11235	July 21, 1965	30 F.R. 9199
11332	Mar. 7, 1967	32 F.R. 3877
11337	Mar. 25, 1967	32 F.R. 5245
11358	June 6, 1967	32 F.R. 8227
11370	Aug. 30, 1967	32 F.R. 12665
11383	Nov. 30, 1967	32 F.R. 17421
11454	Feb. 7, 1969	34 F.R. 1935
11457	Mar. 4, 1969	34 F.R. 3793
11461	Mar. 27, 1969	34 F.R. 5901
11465	Apr. 10, 1969	34 F.R. 6415
11483	Sept. 23, 1969	34 F.R. 14757
11505	Jan. 21, 1970	35 F.R. 939
11535	June 12, 1970	35 F.R. 9809

11584	Mar. 3, 1971	36 F.R. 4365
11611	July 26, 1971	36 F.R. 13889
11624	Oct. 12, 1971	36 F.R. 19965
11631	Nov. 9, 1971	36 F.R. 21575
11650	Feb. 16, 1972	37 F.R. 3739
11655	Mar. 14, 1972	37 F.R. 5477
11656	Mar. 14, 1972	37 F.R. 5479
11682	Aug. 29, 1972	37 F.R. 17701
11697	Jan. 17, 1973	38 F.R. 1723
11706	Mar. 8, 1973	38 F.R. 6663
11709	Mar. 27, 1973	38 F.R. 8131
11711	Apr. 13, 1973	38 F.R. 9483
11719	May 17, 1973	38 F.R. 13315
11720	May 17, 1973	38 F.R. 13317
11722	June 9, 1973	38 F.R. 15437
11786	June 7, 1974	39 F.R. 20473
11859	May 7, 1975	40 F.R. 20265
11900	Jan. 22, 1976	41 F.R. 3461

Executive Orders 10738, 10906, 10954, 10962, 11102, 11206, 11213, 11650, and 11706, listed above, were revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

EXECUTIVE ORDER NO. 11805

Ex. Ord. No. 11805, Sept. 20, 1974, 39 F.R. 34261, which related to inspection of tax returns by the President and certain designated employees of the White House Office, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

[1] *So in original. See 2008 Amendment note below.*

[2] *So in original. Subsection (f)(5) does not relate to requests.*

[3] *So in original. Cl. (i) designation probably should precede "Any".*

[4] *So in original. Probably should be "section".*

[5] *See References in Text note below.*

[6] *So in original. Probably should be "subsection".*

[7] *So in original. The comma probably should be a period.*

[8] *So in original. Probably should be "(7)(A)(ii),".*

[9] *So in original.*

§6104. Publicity of information required from certain exempt organizations and certain trusts

(a) Inspection of applications for tax exemption or notice of status

(1) Public inspection

(A) Organizations described in section 501 or 527

If an organization described in section 501(c) or (d) is exempt from taxation under section 501(a) for any taxable year or a political organization is exempt from taxation under section 527 for any taxable year, the application filed by the organization with respect to which the Secretary made his determination that such organization was entitled to exemption under section 501(a) or notice of status filed by the organization under section 527(i), together with any papers submitted in support of such application or notice, and any letter or other document issued by the Internal Revenue Service with respect to such application or notice shall be open to public inspection at the national office of the Internal Revenue Service. In the case of any application or notice filed after the date of the enactment of this subparagraph, a copy of such application or notice and such letter or document shall be open to public inspection at the appropriate field office of the Internal Revenue Service (determined under regulations prescribed by the Secretary). Any inspection under this subparagraph may be made at such times, and in such manner, as the Secretary shall by regulations prescribe. After the application of any organization for exemption from taxation under section 501(a) has been opened to public inspection under this subparagraph, the Secretary shall, on the request of any person with respect to such organization, furnish a statement indicating the subsection and paragraph of section 501 which it has been determined describes such organization.

(B) Pension, etc., plans

The following shall be open to public inspection at such times and in such places as the Secretary may prescribe:

(i) any application filed with respect to the qualification of a pension, profit-sharing, or stock bonus plan under section 401(a) or 403(a), an individual retirement account described in section 408(a), or an individual retirement annuity described in section 408(b),

(ii) any application filed with respect to the exemption from tax under section 501(a) of an organization forming part of a plan or account referred to in clause (i),

(iii) any papers submitted in support of an application referred to in clause (i) or (ii), and

(iv) any letter or other document issued by the Internal Revenue Service and dealing with the qualification referred to in clause (i) or the exemption from tax referred to in clause (ii).

Except in the case of a plan participant, this subparagraph shall not apply to any plan referred to in clause (i) having not more than 25 participants.

(C) Certain names and compensation not to be opened to public inspection

In the case of any application, document, or other papers, referred to in subparagraph (B), information from which the compensation (including deferred compensation) of any individual may be ascertained shall not be open to public inspection under subparagraph (B).

(D) Withholding of certain other information

Upon request of the organization submitting any supporting papers described in subparagraph (A) or (B), the Secretary shall withhold from public inspection any information contained therein which he determines relates to any trade secret, patent, process, style of work, or apparatus, of the organization, if he determines that public disclosure of such information would adversely affect the organization. The Secretary shall withhold from public inspection any information contained in supporting papers described in subparagraph (A) or (B) the public disclosure of which he determines would adversely affect the national defense.

(2) Inspection by committees of Congress

Section 6103(f) shall apply with respect to—

(A) the application for exemption of any organization described in section 501(c) or (d) which is exempt from taxation under section 501(a) for any taxable year or notice of status of any political organization which is exempt from taxation under section 527 for any taxable year,

and any application referred to in subparagraph (B) of subsection (a)(1) of this section, and

(B) any other papers which are in the possession of the Secretary and which relate to such application,

as if such papers constituted returns.

(3) Information available on Internet and in person

(A) In general

The Secretary shall make publicly available, on the Internet and at the offices of the Internal Revenue Service—

(i) a list of all political organizations which file a notice with the Secretary under section 527(i), and

(ii) the name, address, electronic mailing address, custodian of records, and contact person for such organization.

(B) Time to make information available

The Secretary shall make available the information required under subparagraph (A) not later than 5 business days after the Secretary receives a notice from a political organization under section 527(i).

(b) Inspection of annual returns

The information required to be furnished by sections 6033, 6034, and 6058, together with the names and addresses of such organizations and trusts, shall be made available to the public at such times and in such places as the Secretary may prescribe. Nothing in this subsection shall authorize the Secretary to disclose the name or address of any contributor to any organization or trust (other than a private foundation, as defined in section 509(a) or a political organization exempt from taxation under section 527) which is required to furnish such information. In the case of an organization described in section 501(d), this subsection shall not apply to copies referred to in section 6031(b) with respect to such organization. In the case of a trust which is required to file a return under section 6034(a), this subsection shall not apply to information regarding beneficiaries which are not organizations described in section 170(c). Any annual return which is filed under section 6011 by an organization described in section 501(c)(3) and which relates to any tax imposed by section 511 (relating to imposition of tax on unrelated business income of charitable, etc., organizations) shall be treated for purposes of this subsection in the same manner as if furnished under section 6033.

(c) Publication to State officials

(1) General rule for charitable organizations

In case of any organization which is described in section 501(c)(3) and exempt from taxation under section 501(a), or has applied under section 508(a) for recognition as an organization described in section 501(c)(3), the Secretary at such times and in such manner as he may by regulations prescribe shall—

(A) notify the appropriate State officer of a refusal to recognize such organization as an organization described in section 501(c)(3), or of the operation of such organization in a manner which does not meet, or no longer meets, the requirements of its exemption,

(B) notify the appropriate State officer of the mailing of a notice of deficiency of tax imposed under section 507 or chapter 41 or 42, and

(C) at the request of such appropriate State officer, make available for inspection and copying such returns, filed statements, records, reports, and other information, relating to a determination under subparagraph (A) or (B) as are relevant to any determination under State law.

(2) Disclosure of proposed actions related to charitable organizations

(A) Specific notifications

In the case of an organization to which paragraph (1) applies, the Secretary may disclose to the appropriate State officer—

(i) a notice of proposed refusal to recognize such organization as an organization described in section 501(c)(3) or a notice of proposed revocation of such organization's recognition as an organization exempt from taxation,

(ii) the issuance of a letter of proposed deficiency of tax imposed under section 507 or chapter 41 or 42, and

(iii) the names, addresses, and taxpayer identification numbers of organizations which have applied for recognition as organizations described in section 501(c)(3).

(B) Additional disclosures

Returns and return information of organizations with respect to which information is disclosed under subparagraph (A) may be made available for inspection by or disclosed to an appropriate State officer.

(C) Procedures for disclosure

Information may be inspected or disclosed under subparagraph (A) or (B) only—

(i) upon written request by an appropriate State officer, and

(ii) for the purpose of, and only to the extent necessary in, the administration of State laws regulating such organizations.

Such information may only be inspected by or disclosed to a person other than the appropriate State officer if such person is an officer or employee of the State and is designated by the appropriate State officer to receive the returns or return information under this paragraph on behalf of the appropriate State officer.

(D) Disclosures other than by request

The Secretary may make available for inspection or disclose returns and return information of an organization to which paragraph (1) applies to an appropriate State officer of any State if the Secretary determines that such returns or return information may constitute evidence of noncompliance under the laws within the jurisdiction of the appropriate State officer.

(3) Disclosure with respect to certain other exempt organizations

Upon written request by an appropriate State officer, the Secretary may make available for inspection or disclosure returns and return information of any organization described in section 501(c) (other than organizations described in paragraph (1) or (3) thereof) for the purpose of, and only to the extent necessary in, the administration of State laws regulating the solicitation or administration of the charitable funds or charitable assets of such organizations. Such information may only be inspected by or disclosed to a person other than the appropriate State officer if such person is an officer or employee of the State and is designated by the appropriate State officer to receive the returns or return information under this paragraph on behalf of the appropriate State officer.

(4) Use in civil judicial and administrative proceedings

Returns and return information disclosed pursuant to this subsection may be disclosed in civil administrative and civil judicial proceedings pertaining to the enforcement of State laws regulating such organizations in a manner prescribed by the Secretary similar to that for tax administration proceedings under section 6103(h)(4).

(5) No disclosure if impairment

Returns and return information shall not be disclosed under this subsection, or in any proceeding described in paragraph (4), to the extent that the Secretary determines that such disclosure would seriously impair Federal tax administration.

(6) Definitions

For purposes of this subsection—

(A) Return and return information

The terms "return" and "return information" have the respective meanings given to such terms by section 6103(b).

(B) Appropriate State officer

The term "appropriate State officer" means—

(i) the State attorney general,

(ii) the State tax officer,

(iii) in the case of an organization to which paragraph (1) applies, any other State official charged with overseeing organizations of the type described in section 501(c)(3), and

(iv) in the case of an organization to which paragraph (3) applies, the head of an agency designated by the State attorney general as having primary responsibility for overseeing the solicitation of funds for charitable purposes.

(d) Public inspection of certain annual returns, reports, applications for exemption, and notices of status

(1) In general

In the case of an organization described in subsection (c) or (d) of section 501 and exempt from taxation under section 501(a) or an organization exempt from taxation under section 527(a)—

(A) a copy of—

(i) the annual return filed under section 6033 (relating to returns by exempt organizations) by such organization,

(ii) any annual return which is filed under section 6011 by an organization described in section 501(c)(3) and which relates to any tax imposed by section 511 (relating to imposition of tax on unrelated business income of charitable, etc., organizations),

(iii) if the organization filed an application for recognition of exemption under section 501 or notice of status under section 527(i), the exempt status application materials or any notice materials of such organization, and

(iv) the reports filed under section 527(j) (relating to required disclosure of expenditures and contributions) by such organization,

shall be made available by such organization for inspection during regular business hours by any individual at the principal office of such organization and, if such organization regularly maintains 1 or more regional or district offices having 3 or more employees, at each such regional or district office, and

(B) upon request of an individual made at such principal office or such a regional or district office, a copy of such annual return, reports, and exempt status application materials or such notice materials shall be provided to such individual without charge other than a reasonable fee for any reproduction and mailing costs.

The request described in subparagraph (B) must be made in person or in writing. If such request is made in person, such copy shall be provided immediately and, if made in writing, shall be provided within 30 days.

(2) 3-year limitation on inspection of returns

Paragraph (1) shall apply to an annual return filed under section 6011 or 6033 only during the 3-year period beginning on the last day prescribed for filing such return (determined with regard to any extension of time for filing).

(3) Exceptions from disclosure requirement

(A) Nondisclosure of contributors, etc.

In the case of an organization which is not a private foundation (within the meaning of section 509(a)) or a political organization exempt from taxation under section 527, paragraph (1) shall not require the disclosure of the name or address of any contributor to the organization.

In the case of an organization described in section 501(d), paragraph (1) shall not require the disclosure of the copies referred to in section 6031(b) with respect to such organization.

(B) Nondisclosure of certain other information

Paragraph (1) shall not require the disclosure of any information if the Secretary withheld such information from public inspection under subsection (a)(1)(D).

(4) Limitation on providing copies

Paragraph (1)(B) shall not apply to any request if, in accordance with regulations promulgated by the Secretary, the organization has made the requested documents widely available, or the Secretary determines, upon application by an organization, that such request is part of a harassment campaign and that compliance with such request is not in the public interest.

(5) Exempt status application materials

For purposes of paragraph (1), the term "exempt status application materials" means the application for recognition of exemption under section 501 and any papers submitted in support of such application and any letter or other document issued by the Internal Revenue Service with respect to such application.

(6) [1] Application to nonexempt charitable trusts and nonexempt private foundations

The organizations referred to in paragraphs (1) and (2) of section 6033(d) shall comply with the requirements of this subsection relating to annual returns filed under section 6033 in the same manner as the organizations referred to in paragraph (1).

(6) [1] Notice materials

For purposes of paragraph (1), the term "notice materials" means the notice of status filed under section 527(i) and any papers submitted in support of such notice and any letter or other document issued by the Internal Revenue Service with respect to such notice.

(6) [1] Disclosure of reports by Internal Revenue Service

Any report filed by an organization under section 527(j) (relating to required disclosure of expenditures and contributions) shall be made available to the public at such times and in such places as the Secretary may prescribe.

(Aug. 16, 1954, ch. 736, 68A Stat. 755; Pub. L. 85–866, title I, §75(a), Sept. 2, 1958, 72 Stat. 1660; Pub. L. 91–172, title I, §101(e)(1)–(3), (j)(36), Dec. 30, 1969, 83 Stat. 523, 530; Pub. L. 93–406, title II, §1022(g)(1)–(3), Sept. 2, 1974, 88 Stat. 940, 941; Pub. L. 94–455, title XII, §1201(d)(1), title XIII, §1307(d)(2)(B), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1667, 1727, 1834; Pub. L. 95–227, §4(e), Feb. 10, 1978, 92 Stat. 23; Pub. L. 95–488, §1(d), Oct. 20, 1978, 92 Stat. 1638; Pub. L. 95–600, title VII, §703(m), Nov. 6, 1978, 92 Stat. 2943; Pub. L. 96–603, §1(b), (d)(3), Dec. 28, 1980, 94 Stat. 3503, 3504; Pub. L. 98–369, div. A, title III, §306(b), title IV, §491(d)(49), July 18, 1984, 98 Stat. 784, 852; Pub. L. 100–203, title X, §10702(a), Dec. 22, 1987, 101 Stat. 1330–459; Pub. L. 104–168, title XIII, §1313(a), July 30, 1996, 110 Stat. 1479; Pub. L. 105–206, title VI, §6019(a), (b), July 22, 1998, 112 Stat. 823; Pub. L. 105–277, div. J, title I, §1004(b)(1), Oct. 21, 1998, 112 Stat. 2681–888; Pub. L. 106–230, §§1(b), 2(b), 3(b), July 1, 2000, 114 Stat. 478, 481, 482; Pub. L. 106–554, §1(a)(7) [title III, §312(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–640; Pub. L. 107–276, §3(b), Nov. 2, 2002, 116 Stat. 1931; Pub. L. 109–280, title XII, §§1201(b)(3), 1224(a), (b)(4), 1225(a), Aug. 17, 2006, 120 Stat. 1066, 1091, 1093; Pub. L. 110–172, §3(g), Dec. 29, 2007, 121 Stat. 2475.)

REFERENCES IN TEXT

The date of enactment of this subparagraph, referred to in subsec. (a)(1)(A), is Sept. 2, 1958.

CODIFICATION

Sections 1201(b)(3), 1224(a), (b)(4), and 1225(a) of Pub. L. 109–280, which directed the amendment of section 6104 without specifying the act to be amended, were executed to this section, which is section 6104 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes

below.

AMENDMENTS

2007—Subsec. (b). Pub. L. 110–172, §3(g)(1), struck out "information" after "annual" in heading and inserted last sentence.

Subsec. (d)(1)(A)(ii). Pub. L. 110–172, §3(g)(2), amended text generally. Prior to amendment, text read as follows: "any annual return filed under section 6011 which relates to any tax imposed by section 511 (relating to imposition of tax on unrelated business income of charitable, etc., organizations) by such organization, but only if such organization is described in section 501(c)(3),".

Subsec. (d)(2). Pub. L. 110–172, §3(g)(3), substituted "section 6011 or 6033" for "section 6033".

2006—Subsec. (b). Pub. L. 109–280, §1201(b)(3), inserted at end "In the case of a trust which is required to file a return under section 6034(a), this subsection shall not apply to information regarding beneficiaries which are not organizations described in section 170(c)." See Codification note above.

Subsec. (c)(1). Pub. L. 109–280, §1224(b)(4), inserted "for charitable organizations" after "rule" in heading. See Codification note above.

Subsec. (c)(2) to (6). Pub. L. 109–280, §1224(a), added pars. (2) to (6) and struck out heading and text of former par. (2). Text read as follows: "For purposes of this subsection, the term 'appropriate State officer' means the State attorney general, State tax officer, or any State official charged with overseeing organizations of the type described in section 501(c)(3)." See Codification note above.

Subsec. (d)(1)(A)(ii) to (iv). Pub. L. 109–280, §1225(a), added cl. (ii) and redesignated former cls. (ii) and (iii) as (iii) and (iv), respectively. See Codification note above.

2002—Subsec. (b). Pub. L. 107–276, §3(b)(1), struck out "6012(a)(6)," before "6033,".

Subsec. (d)(1)(A)(i). Pub. L. 107–276, §3(b)(2)(A), struck out "or section 6012(a)(6) (relating to returns by political organizations)" before "by such organization,".

Subsec. (d)(2). Pub. L. 107–276, §3(b)(2)(B), struck out "or section 6012(a)(6)" after "section 6033".

2000—Subsec. (a). Pub. L. 106–230, §1(b)(1)(B), inserted "or notice of status" after "exemption" in heading.

Subsec. (a)(1)(A). Pub. L. 106–230, §1(b)(1)(A), in heading, inserted "or 527" after "section 501", in first sentence, inserted "or a political organization is exempt from taxation under section 527 for any taxable year" after "taxable year" and "or notice of status filed by the organization under section 527(i)" before ", together", in second sentence, inserted "or notice" after "any application", in last sentence, inserted "for exemption from taxation under section 501(a)" after "any organization", and inserted "or notice" after "such application", wherever appearing.

Subsec. (a)(2)(A). Pub. L. 106–230, §1(b)(3), inserted "or notice of status of any political organization which is exempt from taxation under section 527 for any taxable year" after "taxable year".

Subsec. (a)(3). Pub. L. 106–230, §1(b)(2), added par. (3).

Subsec. (b). Pub. L. 106–230, §3(b)(1), inserted "6012(a)(6)," before "6033" and "or a political organization exempt from taxation under section 527" after "509(a)".

Subsec. (d). Pub. L. 106–230, §2(b)(1)(A), inserted "reports," after "returns," in heading.

Pub. L. 106–230, §1(b)(4)(A), substituted ", applications for exemption, and notices of status" for "and applications for exemption" in heading.

Subsec. (d)(1). Pub. L. 106–230, §3(b)(2)(B)(i), inserted "or an organization exempt from taxation under section 527(a)" after "501(a)" in introductory provisions.

Subsec. (d)(1)(A)(i). Pub. L. 106–230, §3(b)(2)(A), inserted "or section 6012(a)(6) (relating to returns by political organizations)" after "organizations)".

Subsec. (d)(1)(A)(ii). Pub. L. 106–230, §1(b)(4)(B), inserted "or notice of status under section 527(i)" after "section 501" and "or any notice materials" after "materials".

Subsec. (d)(1)(A)(iii). Pub. L. 106–230, §2(b)(1)(B), added cl. (iii).

Subsec. (d)(1)(B). Pub. L. 106–230, §2(b)(1)(C), inserted ", reports," after "return".

Pub. L. 106–230, §1(b)(4)(C), inserted "or such notice materials" after "materials".

Subsec. (d)(2). Pub. L. 106–230, §3(b)(2)(B)(ii), inserted "or section 6012(a)(6)" after "section 6033".

Subsec. (d)(3)(A). Pub. L. 106–230, §2(b)(2), inserted "or a political organization exempt from taxation under section 527" after "509(a))".

Subsec. (d)(6). Pub. L. 106–554 added par. (6) relating to application to nonexempt charitable trusts and nonexempt private foundations.

Pub. L. 106–230, §2(b)(3), added par. (6) relating to disclosure of reports by Internal Revenue Service.

Pub. L. 106–230, §1(b)(4)(D), added par. (6) relating to notice materials.

1998—Subsec. (b). Pub. L. 105–206, §6019(a), inserted at end "In the case of an organization described in

section 501(d), this subsection shall not apply to copies referred to in section 6031(b) with respect to such organization."

Subsec. (d). Pub. L. 105–277 added subsec. (d) and struck out heading and text of former subsec. (d). Text read as follows: "The annual return required to be filed under section 6033 (relating to returns by exempt organizations) by any organization which is a private foundation within the meaning of section 509(a) shall be made available by the foundation managers for inspection at the principal office of the foundation during regular business hours by any citizen on request made within 180 days after the date of the publication of notice of its availability. Such notice shall be published, not later than the day prescribed for filing such annual return (determined with regard to any extension of time for filing), in a newspaper having general circulation in the county in which the principal office of the private foundation is located. The notice shall state that the annual return of the private foundation is available at its principal office for inspection during regular business hours by any citizen who requests it within 180 days after the date of such publication, and shall state the address and the telephone number of the private foundation's principal office and the name of its principal manager."

Subsec. (e). Pub. L. 105–277 struck out subsec. (e), which consisted of pars. (1) to (3) relating to public inspection of certain annual returns and applications for exemption with a limitation of applicability of certain provisions.

Subsec. (e)(1)(C). Pub. L. 105–206, §6019(b), inserted at end "In the case of an organization described in section 501(d), subparagraph (A) shall not require the disclosure of the copies referred to in section 6031(b) with respect to such organization."

1996—Subsec. (e)(1)(A). Pub. L. 104–168, §1313(a)(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "During the 3-year period beginning on the filing date, a copy of the annual return filed under section 6033 (relating to returns by exempt organizations) by any organization to which this paragraph applies shall be made available by such organization for inspection during regular business hours by any individual at the principal office of the organization and, if such organization regularly maintains 1 or more regional or district offices having 3 or more employees, at each such regional or district office."

Subsec. (e)(2)(A). Pub. L. 104–168, §1313(a)(2), inserted before the period at end "(and, upon request of an individual made at such principal office or such a regional or district office, a copy of the material requested to be available for inspection under this subparagraph shall be provided (in accordance with the last sentence of paragraph (1)(A)) to such individual without charge other than reasonable fee for any reproduction and mailing costs)".

Subsec. (e)(3). Pub. L. 104–168, §1313(a)(3), added par. (3).

1987—Subsec. (e). Pub. L. 100–203 added subsec. (e).

1984—Subsec. (a)(1)(B)(i). Pub. L. 98–369, §491(d)(49), substituted "or 403(a)" for ", 403(a), or 405(a)".

Subsec. (d). Pub. L. 98–369, §306(b), substituted "shall state the address and the telephone number of the private foundation's principal office" for "shall state the address of the private foundation's principal office".

1980—Subsec. (b). Pub. L. 96–603, §1(d)(3), struck out "6056," after "6034,".

Subsec. (d). Pub. L. 96–603, §1(b), substituted in heading "annual returns" for "annual reports" and in text "section 6033 (relating to returns by exempt organizations) by any organization which is a private foundation within the meaning of section 509(a)" for "section 6056 (relating to annual reports by private foundations)" and "annual return" for "annual report" wherever appearing.

1978—Subsec. (a)(1)(A). Pub. L. 95–488, §1(d)(1), struck out "(other than in paragraph (21) thereof)" after "section 501(c)".

Pub. L. 95–227, §4(e)(1), inserted "(other than in paragraph (21) thereof)" after "501(c)".

Subsec. (a)(2). Pub. L. 95–600 substituted "Section 6103(f)" for "Section 6103(d)".

Subsec. (b). Pub. L. 95–488, §1(d)(2), struck out provisions exempting from applicability of this subsec. the information required by a trust described in section 501(c)(21).

Pub. L. 95–227, §4(e)(2), inserted provisions exempting from applicability of this subsec. the information required by a trust described in section 501(c)(21).

1976—Subsec. (a). Pub. L. 94–455, §§1201(d)(1), 1906(b)(13)(A), struck out in pars. (1)(A), (B), (D), and (2) "or his delegate" after "Secretary" wherever appearing and inserted in par. (1)(A) "and any letter or other document issued by the Internal Revenue Service with respect to such application" after "in support of such application," and "any such letter or document" after "a copy of such application".

Subsec. (b). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary" wherever appearing.

Subsec. (c)(1). Pub. L. 94–455, §§1307(d)(2)(B), 1906(b)(13)(A), struck out in provisions preceding subpar. (A) "or his delegate" after "Secretary" and in subpar. (B) substituted "chapter 41 or 42" for "chapter

42".

1974—Subsec. (a)(1). Pub. L. 93–406, §1022(g)(1), substituted "Organizations described in section 501" for "In general" in heading for subpar. (A), added subpars. (B) and (C), redesignated existing subpar. (B) as (D), and in subpar. (D) as so redesignated substituted "Withholding of certain other information" for "Withholding of certain information" in heading and "subparagraph (A) or (B)" for "subparagraph (A)" in text.

Subsec. (a)(2)(A). Pub. L. 93–406, §1022(g)(2), inserted "any application referred to in subparagraph (B) of subsection (a)(1) of this section, and".

Subsec. (b). Pub. L. 93–406, §1022(g)(3), which purported to amend subsec. (b) by substituting "6956, and 6058" for "and 6056" was executed by substituting "6056, and 6058" for "and 6056" as the probable intent of Congress. See 1980 Amendment note above.

1969—Subsec. (b). Pub. L. 91–172, §101(e)(1), (j)(36), inserted provision prohibiting disclosure by the Secretary or his delegate of the name or address of any contributor to any organization or trust other than a private foundation and inserted reference to section 6056.

Subsecs. (c), (d). Pub. L. 91–172, §101(e)(2), (3), added subsecs. (c) and (d).

1958—Pub. L. 85–866 designated existing provisions as subsec. (b) and added subsec. (a).

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–172 effective as if included in the provisions of the Pension Protection Act of 2006, Pub. L. 109–280, to which such amendment relates, see section 3(j) of Pub. L. 110–172, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 1201(b)(3) of Pub. L. 109–280 applicable to returns for taxable years beginning after Dec. 31, 2006, see section 1201(c)(2) of Pub. L. 109–280, set out as a note under section 6034 of this title.

Amendment by section 1224(a), (b)(4) of Pub. L. 109–280 effective Aug. 17, 2006, but not applicable to requests made before such date, see section 1224(c) of Pub. L. 109–280, set out as a note under section 6103 of this title.

Pub. L. 109–280, title XII, §1225(b), Aug. 17, 2006, 120 Stat. 1094, provided that: "The amendments made by this section [amending this section] shall apply to returns filed after the date of the enactment of this Act [Aug. 17, 2006]."

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–276 effective as if included in the amendments made by Pub. L. 106–230, see section 3(d) of Pub. L. 107–276, set out as a note under section 6012 of this title.

EFFECTIVE DATE OF 2000 AMENDMENTS

Pub. L. 106–554, §1(a)(7) [title III, §312(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–640, provided that: "The amendments made by this section [amending this section and provisions set out as a note under section 1 of this title] shall take effect as if included in the provisions of the Tax and Trade Relief Extension Act of 1998 [Pub. L. 105–277, div. J], to which they relate."

Amendment by section 1(b) of Pub. L. 106–230 effective July 1, 2000, except that amendment by section 1(b)(2) of Pub. L. 106–230 effective 45 days after July 1, 2000, see section 1(d) of Pub. L. 106–230, set out as a note under section 527 of this title.

Amendment by section 3(b) of Pub. L. 106–230 applicable to returns for taxable years beginning after June 30, 2000, see section 3(d) of Pub. L. 106–230, set out as a note under section 6012 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–277, div. J, title I, §1004(b)(3), Oct. 21, 1998, 112 Stat. 2681–890, provided that:

"(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection [amending this section and sections 6033, 6652, 6685, and 7207 of this title] shall apply to requests made after the later of December 31, 1998, or the 60th day after the Secretary of the Treasury first issues the regulations referred to in section 6104(d)(4) of the Internal Revenue Code of 1986, as amended by this section.

"(B) PUBLICATION OF ANNUAL RETURNS.—Section 6104(d) of such Code, as in effect before the amendments made by this subsection, shall not apply to any return the due date for which is after the date such amendments take effect under subparagraph (A)."

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–168, title XIII, §1313(c), July 30, 1996, 110 Stat. 1480, provided that: "The amendments made

by this section [amending this section and section 6685 of this title] shall apply to requests made on or after the 60th day after the Secretary of the Treasury first issues the regulations referred to section 6104(e)(3) of the Internal Revenue Code of 1986 (as added by subsection (a)(3))."

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title X, §10702(b), Dec. 22, 1987, 101 Stat. 1330–460, provided that: "The amendment made by subsection (a) [amending this section] shall apply—

"(1) to returns for years beginning after December 31, 1986, and

"(2) on and after the 30th day after the date of the enactment of this Act [Dec. 22, 1987] in the case of applications submitted to the Internal Revenue Service—

"(A) after July 15, 1987, or

"(B) on or before July 15, 1987, if the organization has a copy of the application on July 15, 1987."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 306(b) of Pub. L. 98–369 effective Jan. 1, 1985, see section 306(c) of Pub. L. 98–369, set out as a note under section 4946 of this title.

Amendment by section 491(d)(49) of Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–603 applicable to taxable years beginning after Dec. 31, 1980, see section 1(f) of Pub. L. 96–603, set out as a note under section 6033 of this title.

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95–600 effective Oct. 4, 1976, see section 703(r) of Pub. L. 95–600, set out as a note under section 46 of this title.

Amendment by Pub. L. 95–488 effective with respect to taxable years beginning after Dec. 31, 1977, and nothing in amendment by Pub. L. 95–488 construed to permit disclosure of confidential business information of contributors to any trust described in section 501(c)(21), see section 1(e) of Pub. L. 95–488, set out as a note under section 192 of this title.

Amendment by Pub. L. 95–227 applicable with respect to contributions, acts, and expenditures made after Dec. 31, 1977, in and for taxable years beginning after such date, see section 4(f) of Pub. L. 95–227, set out as an Effective Date note under section 192 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XII, §1201(d)(2), Oct. 4, 1976, 90 Stat. 1667, provided that: "The amendments made by this subsection [amending this section] apply to any letter or other document issued with respect to applications filed after October 31, 1976."

Amendment by section 1307(d)(2)(B) of Pub. L. 94–455 applicable on and after Oct. 4, 1976, see section 1307(e)(6) of Pub. L. 94–455, set out as a note under section 6001 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Pub. L. 93–406, title X, §1022(g)(4), Sept. 2, 1974, 88 Stat. 941, provided that: "The amendments made by this subsection [amending this section] shall apply to applications filed (or documents issued) after the date of enactment of this Act [Sept. 2, 1974]."

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85–866, title I, §75(c), Sept. 2, 1958, 72 Stat. 1661, provided that: "The amendments made by subsection (a) [amending this section] shall take effect on the 60th day after the day on which this Act is enacted [Sept. 2, 1958]. The amendments made by subsection (b) [amending section 6033 of this title] shall apply to taxable years ending on or after December 31, 1958."

EFFECT OF AMENDMENTS ON EXISTING DISCLOSURES

Pub. L. 107–276, §7, Nov. 2, 2002, 116 Stat. 1935, provided that: "Notices, reports, or returns that were required to be filed with the Secretary of the Treasury before the date of the enactment of the amendments

made by this Act [Nov. 2, 2002] and that were disclosed by the Secretary of the Treasury consistent with the law in effect at the time of disclosure shall remain subject on and after such date to the disclosure provisions of section 6104 of the Internal Revenue Code of 1986."

[1] So in original. Three pars. (6) have been enacted.

§6105. Confidentiality of information arising under treaty obligations

(a) In general

Tax convention information shall not be disclosed.

(b) Exceptions

Subsection (a) shall not apply—

(1) to the disclosure of tax convention information to persons or authorities (including courts and administrative bodies) which are entitled to such disclosure pursuant to a tax convention,

(2) to any generally applicable procedural rules regarding applications for relief under a tax convention,

(3) to the disclosure of tax convention information on the same terms as return information may be disclosed under paragraph (3)(C) or (7) of section 6103(i), except that in the case of tax convention information provided by a foreign government, no disclosure may be made under this paragraph without the written consent of the foreign government, or

(4) in any case not described in paragraph (1), (2), or (3), to the disclosure of any tax convention information not relating to a particular taxpayer if the Secretary determines, after consultation with each other party to the tax convention, that such disclosure would not impair tax administration.

(c) Definitions

For purposes of this section—

(1) Tax convention information

The term "tax convention information" means any—

(A) agreement entered into with the competent authority of one or more foreign governments pursuant to a tax convention,

(B) application for relief under a tax convention,

(C) background information related to such agreement or application,

(D) document implementing such agreement, and

(E) other information exchanged pursuant to a tax convention which is treated as confidential or secret under the tax convention.

(2) Tax convention

The term "tax convention" means—

(A) any income tax or gift and estate tax convention, or

(B) any other convention or bilateral agreement (including multilateral conventions and agreements and any agreement with a possession of the United States) providing for the avoidance of double taxation, the prevention of fiscal evasion, nondiscrimination with respect to taxes, the exchange of tax relevant information with the United States, or mutual assistance in tax matters.

(d) Cross references

For penalties for the unauthorized disclosure of tax convention information which is return or return information, see sections 7213, 7213A, and 7431.

(Added Pub. L. 106–554, §1(a)(7) [title III, §304(b)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–633; amended Pub. L. 107–134, title II, §201(c)(9), Jan. 23, 2002, 115 Stat. 2444; Pub. L. 107–147, title IV, §417(18), Mar. 9, 2002, 116 Stat. 56.)

PRIOR PROVISIONS

A prior section 6105, act Aug. 16, 1954, ch. 736, 68A Stat. 755, authorized the Secretary or his delegate to compile, beginning after June 31, 1941, all cases in which relief from excess profits tax has been allowed, prior to repeal by Pub. L. 94–455, title XIX, §1906(a)(7), Oct. 4, 1976, 90 Stat. 1824.

AMENDMENTS

2002—Subsec. (b)(2). Pub. L. 107–134, §201(c)(9)(A), struck out "or" at end.
Subsec. (b)(3). Pub. L. 107–134, §201(c)(9)(D), added par. (3). Former par. (3) redesignated (4).
Pub. L. 107–134, §201(c)(9)(B), substituted "paragraph (1), (2), or (3)" for "paragraphs (1) or (2)".
Subsec. (b)(4). Pub. L. 107–134, §201(c)(9)(C), redesignated par. (3) as (4).
Subsec. (c)(1)(C), (E). Pub. L. 107–147 struck out "any" after subpar. designation.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–134 applicable to disclosures made on or after Jan. 23, 2002, see section 201(d) of Pub. L. 107–134, set out as a note under section 6103 of this title.

[§6106. Repealed. Pub. L. 94–455, title XII, §1202(h)(1), Oct. 4, 1976, 90 Stat. 1688]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 756, related to inspection of unemployment tax returns.

§6107. Tax return preparer must furnish copy of return to taxpayer and must retain a copy or list

(a) Furnishing copy to taxpayer

Any person who is a tax return preparer with respect to any return or claim for refund shall furnish a completed copy of such return or claim to the taxpayer not later than the time such return or claim is presented for such taxpayer's signature.

(b) Copy or list to be retained by tax return preparer

Any person who is a tax return preparer with respect to a return or claim for refund shall, for the period ending 3 years after the close of the return period—

(1) retain a completed copy of such return or claim, or retain, on a list, the name and taxpayer identification number of the taxpayer for whom such return or claim was prepared, and

(2) make such copy or list available for inspection upon request by the Secretary.

(c) Regulations

The Secretary shall prescribe regulations under which, in cases where 2 or more persons are tax return preparers with respect to the same return or claim for refund, compliance with the requirements of subsection (a) or (b), as the case may be, of one such person shall be deemed to be compliance with the requirements of such subsection by the other persons.

(d) Definitions

For purposes of this section, the terms "return" and "claim for refund" have the respective meanings given to such terms by section 6696(e), and the term "return period" has the meaning given to such term by section 6060(c).

(Added Pub. L. 94–455, title XII, §1203(c), Oct. 4, 1976, 90 Stat. 1690; amended Pub. L. 110–28, title VIII, §8246(a)(2)(C)(i), May 25, 2007, 121 Stat. 201.)

PRIOR PROVISIONS

A prior section 6107, acts Aug. 16, 1954, ch. 736, 68A Stat. 756; Nov. 2, 1966, Pub. L. 89–713, §4(c), 80 Stat. 1110, authorized an alphabetical list of names of all persons who have paid special taxes under subtitle D or E of this title to be kept for public inspection, prior to repeal by Pub. L. 90–618, title II, §203(a), Oct. 22, 1968, 82 Stat. 1235.

AMENDMENTS

2007—Pub. L. 110–28, §8246(a)(2)(C)(i)(I), substituted "Tax return preparer" for "Income tax return preparer" in section catchline.

Subsec. (a). Pub. L. 110–28, §8246(a)(2)(C)(i)(II), substituted "a tax return preparer" for "an income tax return preparer".

Subsec. (b). Pub. L. 110–28, §8246(a)(2)(C)(i)(II), (III), substituted "tax return preparer" for "income tax return preparer" in heading and "a tax return preparer" for "an income tax return preparer" in text.

Subsec. (c). Pub. L. 110–28, §8246(a)(2)(C)(i)(IV), substituted "tax return preparers" for "income tax return preparers".

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–28 applicable to returns prepared after May 25, 2007, see section 8246(c) of Pub. L. 110–28, set out as a note under section 6060 of this title.

EFFECTIVE DATE

Section applicable to documents prepared after Dec. 31, 1976, see section 1203(j) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 7701 of this title.

§6108. Statistical publications and studies

(a) Publication or other disclosure of statistics of income

The Secretary shall prepare and publish not less than annually statistics reasonably available with respect to the operations of the internal revenue laws, including classifications of taxpayers and of income, the amounts claimed or allowed as deductions, exemptions, and credits, and any other facts deemed pertinent and valuable.

(b) Special statistical studies

The Secretary may, upon written request by any party or parties, make special statistical studies and compilations involving return information (as defined in section 6103(b)(2)) and furnish to such party or parties transcripts of any such special statistical study or compilation. A reasonable fee may be prescribed for the cost of the work or services performed for such party or parties.

(c) Anonymous form

No publication or other disclosure of statistics or other information required or authorized by subsection (a) or special statistical study authorized by subsection (b) shall in any manner permit the statistics, study, or any information so published, furnished, or otherwise disclosed to be associated with, or otherwise identify, directly or indirectly, a particular taxpayer.

(Aug. 16, 1954, ch. 736, 68A Stat. 756; Pub. L. 94–455, title XII, §1202(b), Oct. 4, 1976, 90 Stat. 1685.)

AMENDMENTS

1976—Pub. L. 94–455 designated existing provisions as subsec. (a), struck out "or his delegate" after "Secretary", inserted "not less than" after "prepare and publish" and "claimed or" after "income, the amounts", substituted "internal revenue laws" for "income tax laws", and added subsecs. (b) and (c).

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective Jan. 1, 1977, see section 1202(i) of Pub. L. 94–455, set out as a note under section 6103 of this title.

§6109. Identifying numbers

(a) Supplying of identifying numbers

When required by regulations prescribed by the Secretary:

(1) Inclusion in returns

Any person required under the authority of this title to make a return, statement, or other

document shall include in such return, statement, or other document such identifying number as may be prescribed for securing proper identification of such person.

(2) Furnishing number to other persons

Any person with respect to whom a return, statement, or other document is required under the authority of this title to be made by another person or whose identifying number is required to be shown on a return of another person shall furnish to such other person such identifying number as may be prescribed for securing his proper identification.

(3) Furnishing number of another person

Any person required under the authority of this title to make a return, statement, or other document with respect to another person shall request from such other person, and shall include in any such return, statement, or other document, such identifying number as may be prescribed for securing proper identification of such other person.

(4) Furnishing identifying number of tax return preparer

Any return or claim for refund prepared by a tax return preparer shall bear such identifying number for securing proper identification of such preparer, his employer, or both, as may be prescribed. For purposes of this paragraph, the terms "return" and "claim for refund" have the respective meanings given to such terms by section 6696(e).

For purposes of paragraphs (1), (2), and (3), the identifying number of an individual (or his estate) shall be such individual's social security account number.

(b) Limitation

(1) Except as provided in paragraph (2), a return of any person with respect to his liability for tax, or any statement or other document in support thereof, shall not be considered for purposes of paragraphs (2) and (3) of subsection (a) as a return, statement, or other document with respect to another person.

(2) For purposes of paragraphs (2) and (3) of subsection (a), a return of an estate or trust with respect to its liability for tax, and any statement or other document in support thereof, shall be considered as a return, statement, or other document with respect to each beneficiary of such estate or trust.

(c) Requirement of information

For purposes of this section, the Secretary is authorized to require such information as may be necessary to assign an identifying number to any person.

(d) Use of social security account number

The social security account number issued to an individual for purposes of section 205(c)(2)(A) of the Social Security Act shall, except as shall otherwise be specified under regulations of the Secretary, be used as the identifying number for such individual for purposes of this title.

[(e) Repealed. Pub. L. 104–188, title I, §1615(a)(2)(A), Aug. 20, 1996, 110 Stat. 1853]

(f) Access to employer identification numbers by Secretary of Agriculture for purposes of Food and Nutrition Act of 2008 of 1977 [1]

(1) In general

In the administration of section 9 of the Food and Nutrition Act of 2008 (7 U.S.C. 2018) involving the determination of the qualifications of applicants under such Act, the Secretary of Agriculture may, subject to this subsection, require each applicant retail store or wholesale food concern to furnish to the Secretary of Agriculture the employer identification number assigned to the store or concern pursuant to this section. The Secretary of Agriculture shall not have access to any such number for any purpose other than the establishment and maintenance of a list of the

names and employer identification numbers of the stores and concerns for use in determining those applicants who have been previously sanctioned or convicted under section 12 or 15 of such Act (7 U.S.C. 2021 or 2024).

(2) Sharing of information and safeguards

(A) Sharing of information

The Secretary of Agriculture may share any information contained in any list referred to in paragraph (1) with any other agency or instrumentality of the United States which otherwise has access to employer identification numbers in accordance with this section or other applicable Federal law, except that the Secretary of Agriculture may share such information only to the extent that such Secretary determines such sharing would assist in verifying and matching such information against information maintained by such other agency or instrumentality. Any such information shared pursuant to this subparagraph may be used by such other agency or instrumentality only for the purpose of effective administration and enforcement of the Food and Nutrition Act of 2008 or for the purpose of investigation of violations of other Federal laws or enforcement of such laws.

(B) Safeguards

The Secretary of Agriculture, and the head of any other agency or instrumentality referred to in subparagraph (A), shall restrict, to the satisfaction of the Secretary of the Treasury, access to employer identification numbers obtained pursuant to this subsection only to officers and employees of the United States whose duties or responsibilities require access for the purposes described in subparagraph (A). The Secretary of Agriculture, and the head of any agency or instrumentality with which information is shared pursuant to subparagraph (A), shall provide such other safeguards as the Secretary of the Treasury determines to be necessary or appropriate to protect the confidentiality of the employer identification numbers.

(3) Confidentiality and nondisclosure rules

Employer identification numbers that are obtained or maintained pursuant to this subsection by the Secretary of Agriculture or the head of any agency or instrumentality with which information is shared pursuant to paragraph (2) shall be confidential, and no officer or employee of the United States who has or had access to the employer identification numbers shall disclose any such employer identification number obtained thereby in any manner. For purposes of this paragraph, the term "officer or employee" includes a former officer or employee.

(4) Sanctions

Paragraphs (1), (2), and (3) of section 7213(a) shall apply with respect to the unauthorized willful disclosure to any person of employer identification numbers maintained pursuant to this subsection by the Secretary of Agriculture or any agency or instrumentality with which information is shared pursuant to paragraph (2) in the same manner and to the same extent as such paragraphs apply with respect to unauthorized disclosures of return and return information described in such paragraphs. Paragraph (4) of section 7213(a) shall apply with respect to the willful offer of any item of material value in exchange for any such employer identification number in the same manner and to the same extent as such paragraph applies with respect to offers (in exchange for any return or return information) described in such paragraph.

(g) Access to employer identification numbers by Federal Crop Insurance Corporation for purposes of the Federal Crop Insurance Act

(1) In general

In the administration of section 506 of the Federal Crop Insurance Act, the Federal Crop Insurance Corporation may require each policyholder and each reinsured company to furnish to the insurer or to the Corporation the employer identification number of such policyholder, subject to the requirements of this paragraph. No officer or employee of the Federal Crop Insurance Corporation, or authorized person shall have access to any such number for any purpose other than

the establishment of a system of records necessary to the effective administration of such Act. The Manager of the Corporation may require each policyholder to provide to the Manager or authorized person, at such times and in such manner as prescribed by the Manager, the employer identification number of each entity that holds or acquires a substantial beneficial interest in the policyholder. For purposes of this subclause, the term "substantial beneficial interest" means not less than 5 percent of all beneficial interest in the policyholder. The Secretary of Agriculture shall restrict, to the satisfaction of the Secretary of the Treasury, access to employer identification numbers obtained pursuant to this paragraph only to officers and employees of the United States or authorized persons whose duties or responsibilities require access for the administration of the Federal Crop Insurance Act.

(2) Confidentiality and nondisclosure rules

Employer identification numbers maintained by the Secretary of Agriculture or the Federal Crop Insurance Corporation pursuant to this subsection shall be confidential, and except as authorized by this subsection, no officer or employee of the United States or authorized person who has or had access to such employer identification numbers shall disclose any such employer identification number obtained thereby in any manner. For purposes of this paragraph, the term "officer or employee" includes a former officer or employee. For purposes of this subsection, the term "authorized person" means an officer or employee of an insurer whom the Manager of the Corporation designates by rule, subject to appropriate safeguards including a prohibition against the release of such social security account numbers (other than to the Corporations) by such person.

(3) Sanctions

Paragraphs (1), (2), and (3) of section 7213(a) shall apply with respect to the unauthorized willful disclosure to any person of employer identification numbers maintained by the Secretary of Agriculture or the Federal Crop Insurance Corporation pursuant to this subsection in the same manner and to the same extent as such paragraphs apply with respect to unauthorized disclosures of return and return information described in such paragraphs. Paragraph (4) of section 7213(a) shall apply with respect to the willful offer of any item of material value in exchange for any such employer identification number in the same manner and to the same extent as such paragraph applies with respect to offers (in exchange for any return or return information) described in such paragraph.

(h) Identifying information required with respect to certain seller-provided financing

(1) Payor

If any taxpayer claims a deduction under section 163 for qualified residence interest on any seller-provided financing, such taxpayer shall include on the return claiming such deduction the name, address, and TIN of the person to whom such interest is paid or accrued.

(2) Recipient

If any person receives or accrues interest referred to in paragraph (1), such person shall include on the return for the taxable year in which such interest is so received or accrued the name, address, and TIN of the person liable for such interest.

(3) Furnishing of information between payor and recipient

If any person is required to include the TIN of another person on a return under paragraph (1) or (2), such other person shall furnish his TIN to such person.

(4) Seller-provided financing

For purposes of this subsection, the term "seller-provided financing" means any indebtedness incurred in acquiring any residence if the person to whom such indebtedness is owed is the person from whom such residence was acquired.

(Added Pub. L. 87–397, §1(a), Oct. 5, 1961, 75 Stat. 828; amended Pub. L. 94–455, title XII, §§1203(d), 1211(c), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1691, 1712, 1834; Pub. L.

99–514, title XV, §1524(a), Oct. 22, 1986, 100 Stat. 2749; Pub. L. 100–485, title VII, §§703(c)(3), 704(a), Oct. 13, 1988, 102 Stat. 2427; Pub. L. 101–508, title XI, §11112(a), Nov. 5, 1990, 104 Stat. 1388–413; Pub. L. 101–624, title XVII, §1735(c), title XXII, §2201(d), Nov. 28, 1990, 104 Stat. 3792, 3953; Pub. L. 102–486, title XIX, §1933(a), Oct. 24, 1992, 106 Stat. 3031; Pub. L. 103–296, title III, §316(b), Aug. 15, 1994, 108 Stat. 1532; Pub. L. 103–465, title VII, §742(b), Dec. 8, 1994, 108 Stat. 5010; Pub. L. 104–188, title I, §§1615(a)(2)(A), 1704(t)(42), Aug. 20, 1996, 110 Stat. 1853, 1889; Pub. L. 105–206, title III, §3710(a), July 22, 1998, 112 Stat. 779; Pub. L. 110–28, title VIII, §8246(a)(2)(D), May 25, 2007, 121 Stat. 201; Pub. L. 110–234, title IV, §4002(b)(1)(B), (G), (2)(O), May 22, 2008, 122 Stat. 1096, 1097; Pub. L. 110–246, §4(a), title IV, §4002(b)(1)(B), (G), (2)(O), June 18, 2008, 122 Stat. 1664, 1857, 1858.)

REFERENCES IN TEXT

Section 205 of the Social Security Act, referred to in subsec. (d), is classified to section 405 of Title 42, The Public Health and Welfare.

The Food and Nutrition Act of 2008, referred to in subsec. (f), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, which is classified generally to chapter 51 (§2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

The Federal Crop Insurance Act, referred to in subsec. (g), is subtitle A of title V of act Feb. 16, 1938, ch. 30, 52 Stat. 72, which is classified generally to subchapter I (§1501 et seq.) of chapter 36 of Title 7, Agriculture. Section 506 of the Act is classified to section 1506 of Title 7. For complete classification of this Act to the Code, see section 1501 of Title 7 and Tables.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

PRIOR PROVISIONS

A prior section 6109 was renumbered section 6116 of this title.

AMENDMENTS

2008—Subsec. (f). Pub. L. 110–246, §4002(b)(1)(G), (2)(O), substituted "Food and Nutrition Act of 2008" for "Food Stamp Act" in heading.

Subsec. (f)(1), (2)(A). Pub. L. 110–246, §4002(b)(1)(B), (2)(O), substituted "Food and Nutrition Act of 2008" for "Food Stamp Act of 1977".

2007—Subsec. (a)(4). Pub. L. 110–28, §8246(a)(2)(D)(ii), which directed amendment of heading by substituting "tax return preparer" for "income return preparer", was executed by making the substitution for "income tax return preparer", to reflect the probable intent of Congress.

Pub. L. 110–28, §8246(a)(2)(D)(i), substituted "a tax return preparer" for "an income tax return preparer".

1998—Subsec. (a). Pub. L. 105–206 substituted "For purposes of paragraphs (1), (2), and (3)" for "For purposes of this subsection" in concluding provisions.

1996—Subsec. (e). Pub. L. 104–188, §1615(a)(2)(A), struck out subsec. (e) which read as follows:

"(e) FURNISHING NUMBER FOR DEPENDENTS.—Any taxpayer who claims an exemption under section 151 for any dependent on a return for any taxable year shall include on such return the identifying number (for purposes of this title) of such dependent."

Subsecs. (f), (g). Pub. L. 104–188, §1704(t)(42), redesignated subsec. (f) relating to access to employer identification numbers for purposes of Federal Crop Insurance Act as subsec. (g).

1994—Subsec. (e). Pub. L. 103–465 substituted "dependents" for "certain dependents" in heading and amended text generally. Prior to amendment, text read as follows: "If—

"(1) any taxpayer claims an exemption under section 151 for any dependent on a return for any taxable year, and

"(2) such dependent has attained the age of 1 year before the close of such taxable year,

such taxpayer shall include on such return the identifying number (for purposes of this title) of such dependent."

Subsec. (f)(2). Pub. L. 103–296, §316(b)(1), amended subsec. (f) relating to access to employer identification numbers for purposes of Food Stamp Act of 1977 by adding par. (2) and striking out former par. (2) "Safeguards" which read as follows: "The Secretary of Agriculture shall restrict, to the satisfaction of the Secretary of the Treasury, access to employer identification numbers obtained pursuant to paragraph (1) only to officers and employees of the United States whose duties or responsibilities require access for the

administration or enforcement of the Food Stamp Act of 1977. The Secretary of Agriculture shall provide such other safeguards as the Secretary of the Treasury determines to be necessary or appropriate to protect the confidentiality of the employer identification numbers."

Subsec. (f)(3). Pub. L. 103–296, §316(b)(2), amended subsec. (f) relating to access to employer identification numbers for purposes of Food Stamp Act of 1977 by substituting, in par. (3), "pursuant to this subsection by the Secretary of Agriculture or the head of any agency or instrumentality with which information is shared pursuant to paragraph (2)" for "by the Secretary of Agriculture pursuant to this subsection" and "employer identification numbers shall disclose" for "social security account numbers shall disclose".

Subsec. (f)(4). Pub. L. 103–296, §316(b)(3), amended subsec. (f) relating to access to employer identification numbers for purposes of Food Stamp Act of 1977 by substituting, in par. (4), "pursuant to this subsection by the Secretary of Agriculture or any agency or instrumentality with which information is shared pursuant to paragraph (2)" for "by the Secretary of Agriculture pursuant to this subsection".

1992—Subsec. (h). Pub. L. 102–486 added subsec. (h).

1990—Subsec. (e)(2). Pub. L. 101–508 substituted "1 year" for "2 years".

Subsec. (f). Pub. L. 101–624, §2201(d), added subsec. (f) relating to access to employer identification numbers for purposes of Federal Crop Insurance Act.

Pub. L. 101–624, §1735(c), added subsec. (f) relating to access to employer identification numbers for purposes of Food Stamp Act of 1977.

1988—Subsec. (a). Pub. L. 100–485, §703(c)(3), substituted "or whose identifying number is required to be shown on a return of another person shall furnish" for "shall furnish".

Subsec. (e)(2). Pub. L. 100–485, §704(a), substituted "age of 2" for "age of 5".

1986—Subsec. (e). Pub. L. 99–514 added subsec. (e).

1976—Subsec. (a). Pub. L. 94–455, §§1203(d), 1906(b)(13)(A), struck out in provisions preceding par. (1) "or his delegate" after "Secretary" and added par. (4).

Subsec. (d). Pub. L. 94–455, §1211(c), added subsec. (d).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by section 4002(b)(1)(B), (G), (2)(O) of Pub. L. 110–246 effective Oct. 1, 2008, see section 4407 of Pub. L. 110–246, set out as a note under section 1161 of Title 2, The Congress.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–28 applicable to returns prepared after May 25, 2007, see section 8246(c) of Pub. L. 110–28, set out as a note under section 6060 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–206, title III, §3710(b), July 22, 1998, 112 Stat. 779, provided that: "The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [July 22, 1998]."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1615(a)(2)(A) of Pub. L. 104–188 applicable with respect to returns the due date for which, without regard to extensions, is on or after the 30th day after Aug. 20, 1996, with special rule for 1995 and 1996, see section 1615(d) of Pub. L. 104–188, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 applicable to returns for taxable years beginning after Dec. 31, 1994, but not applicable to returns for taxable years beginning in 1995 with respect to individuals who are born after Oct. 31, 1995, and to returns for taxable years beginning in 1996 with respect to individuals who are born after Nov. 30, 1996, see section 742(c) of Pub. L. 103–465, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–486, title XIX, §1933(c), Oct. 24, 1992, 106 Stat. 3031, provided that: "The amendments made by this section [amending this section and section 6724 of this title] shall apply to taxable years beginning after December 31, 1991."

EFFECTIVE DATE OF 1990 AMENDMENTS

Amendment by section 1735(c) of Pub. L. 101–624 effective and implemented first day of month beginning 120 days after publication of implementing regulations to be promulgated not later than Oct. 1, 1991, see section 1781(a) of Pub. L. 101–624, set out as a note under section 2012 of Title 7, Agriculture.

Pub. L. 101–508, title XI, §11112(b), Nov. 5, 1990, 104 Stat. 1388–413, provided that: "The amendment made by subsection (a) [amending this section] shall apply to returns for taxable years beginning after December 31, 1990."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 703(c)(3) of Pub. L. 100–485 applicable to taxable years beginning after Dec. 31, 1988, see section 703(d) of Pub. L. 100–485, set out as a note under section 21 of this title.

Pub. L. 100–485, title VII, §704(b), Oct. 13, 1988, 102 Stat. 2428, provided that: "The amendment made by subsection (a) [amending this section] shall apply to returns the due date for which (determined without regard to extensions) is after December 31, 1989."

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XV, §1524(c), Oct. 22, 1986, 100 Stat. 2749, provided that: "The amendments made by this section [amending this section and section 6676 of this title] shall apply to returns the due date for which (determined without regard to extensions) is after December 31, 1987."

EFFECTIVE DATE

Pub. L. 87–397, §1(d), Oct. 5, 1961, 75 Stat. 829, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Paragraph (1) of section 6109(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as added by subsection (a) of this section, shall apply only in respect of returns, statements, and other documents relating to periods commencing after December 31, 1961. Paragraphs (2) and (3) of such section 6109(a) shall apply only in respect of returns, statements, or other documents relating to periods commencing after December 31, 1962."

[1] So in original. See 2008 Amendment note below.

§6110. Public inspection of written determinations

(a) General rule

Except as otherwise provided in this section, the text of any written determination and any background file document relating to such written determination shall be open to public inspection at such place as the Secretary may by regulations prescribe.

(b) Definitions

For purposes of this section—

(1) Written determination

(A) In general

The term "written determination" means a ruling, determination letter, technical advice memorandum, or Chief Counsel advice.

(B) Exceptions

Such term shall not include any matter referred to in subparagraph (C) or (D) of section 6103(b)(2).

(2) Background file document

The term "background file document" with respect to a written determination includes the request for that written determination, any written material submitted in support of the request, and any communication (written or otherwise) between the Internal Revenue Service and persons outside the Internal Revenue Service in connection with such written determination (other than any communication between the Department of Justice and the Internal Revenue Service relating to a pending civil or criminal case or investigation) received before issuance of the written determination.

(3) Reference and general written determinations

(A) Reference written determination

The term "reference written determination" means any written determination which has been determined by the Secretary to have significant reference value.

(B) General written determination

The term "general written determination" means any written determination other than a reference written determination.

(c) Exemptions from disclosure

Before making any written determination or background file document open or available to public inspection under subsection (a), the Secretary shall delete—

(1) the names, addresses, and other identifying details of the person to whom the written determination pertains and of any other person, other than a person with respect to whom a notation is made under subsection (d)(1), identified in the written determination or any background file document;

(2) information specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy, and which is in fact properly classified pursuant to such Executive order;

(3) information specifically exempted from disclosure by any statute (other than this title) which is applicable to the Internal Revenue Service;

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(6) information contained in or related to examination, operating, or condition reports prepared by, or on behalf of, or for use of an agency responsible for the regulation or supervision of financial institutions; and

(7) geological and geophysical information and data, including maps, concerning wells.

The Secretary shall determine the appropriate extent of such deletions and, except in the case of intentional or willful disregard of this subsection, shall not be required to make such deletions (nor be liable for failure to make deletions) unless the Secretary has agreed to such deletions or has been ordered by a court (in a proceeding under subsection (f)(3)) to make such deletions.

(d) Procedures with regard to third party contacts

(1) Notations

If, before the issuance of a written determination, the Internal Revenue Service receives any communication (written or otherwise) concerning such written determination, any request for such determination, or any other matter involving such written determination from a person other than an employee of the Internal Revenue Service or the person to whom such written determination pertains (or his authorized representative with regard to such written determination), the Internal Revenue Service shall indicate, on the written determination open to public inspection, the category of the person making such communication and the date of such communication.

(2) Exception

Paragraph (1) shall not apply to any communication made by the Chief of Staff of the Joint Committee on Taxation.

(3) Disclosure of identity

In the case of any written determination to which paragraph (1) applies, any person may file a petition in the United States Tax Court or file a complaint in the United States District Court for the District of Columbia for an order requiring that the identity of any person to whom the written determination pertains be disclosed. The court shall order disclosure of such identity if there is

evidence in the record from which one could reasonably conclude that an impropriety occurred or undue influence was exercised with respect to such written determination by or on behalf of such person. The court may also direct the Secretary to disclose any portion of any other deletions made in accordance with subsection (c) where such disclosure is in the public interest. If a proceeding is commenced under this paragraph, the person whose identity is subject to being disclosed and the person about whom a notation is made under paragraph (1) shall be notified of the proceeding in accordance with the procedures described in subsection (f)(4)(B) and shall have the right to intervene in the proceeding (anonymously, if appropriate).

(4) Period in which to bring action

No proceeding shall be commenced under paragraph (3) unless a petition is filed before the expiration of 36 months after the first day that the written determination is open to public inspection.

(e) Background file documents

Whenever the Secretary makes a written determination open to public inspection under this section, he shall also make available to any person, but only upon the written request of that person, any background file document relating to the written determination.

(f) Resolution of disputes relating to disclosure

(1) Notice of intention to disclose

Except as otherwise provided by subsection (i), the Secretary shall upon issuance of any written determination, or upon receipt of a request for a background file document, mail a notice of intention to disclose such determination or document to any person to whom the written determination pertains (or a successor in interest, executor, or other person authorized by law to act for or on behalf of such person).

(2) Administrative remedies

The Secretary shall prescribe regulations establishing administrative remedies with respect to—

(A) requests for additional disclosure of any written determination of any background file document, and

(B) requests to restrain disclosure.

(3) Action to restrain disclosure

(A) Creation of remedy

Any person—

(i) to whom a written determination pertains (or a successor in interest, executor, or other person authorized by law to act for or on behalf of such person), or who has a direct interest in maintaining the confidentiality of any such written determination or background file document (or portion thereof),

(ii) who disagrees with any failure to make a deletion with respect to that portion of any written determination or any background file document which is to be open or available to public inspection, and

(iii) who has exhausted his administrative remedies as prescribed pursuant to paragraph (2),

may, within 60 days after the mailing by the Secretary of a notice of intention to disclose any written determination or background file document under paragraph (1), together with the proposed deletions, file a petition in the United States Tax Court (anonymously, if appropriate) for a determination with respect to that portion of such written determination or background file document which is to be open to public inspection.

(B) Notice to certain persons

The Secretary shall notify any person to whom a written determination pertains (unless such person is the petitioner) of the filing of a petition under this paragraph with respect to such

written determination or related background file document, and any such person may intervene (anonymously, if appropriate) in any proceeding conducted pursuant to this paragraph. The Secretary shall send such notice by registered or certified mail to the last known address of such person within 15 days after such petition is served on the Secretary. No person who has received such a notice may thereafter file any petition under this paragraph with respect to such written determination or background file document with respect to which such notice was received.

(4) Action to obtain additional disclosure

(A) Creation of remedy

Any person who has exhausted the administrative remedies prescribed pursuant to paragraph (2) with respect to a request for disclosure may file a petition in the United States Tax Court or a complaint in the United States District Court for the District of Columbia for an order requiring that any written determination or background file document (or portion thereof) be made open or available to public inspection. Except where inconsistent with subparagraph (B), the provisions of subparagraphs (C), (D), (E), (F), and (G) of section 552(a)(4) of title 5, United States Code, shall apply to any proceeding under this paragraph. The Court shall examine the matter de novo and without regard to a decision of a court under paragraph (3) with respect to such written determination or background file document, and may examine the entire text of such written determination or background file document in order to determine whether such written determination or background file document or any part thereof shall be open or available to public inspection under this section. The burden of proof with respect to the issue of disclosure of any information shall be on the Secretary and any other person seeking to restrain disclosure.

(B) Intervention

If a proceeding is commenced under this paragraph with respect to any written determination or background file document, the Secretary shall, within 15 days after notice of the petition filed under subparagraph (A) is served on him, send notice of the commencement of such proceeding to all persons who are identified by name and address in such written determination or background file document. The Secretary shall send such notice by registered or certified mail to the last known address of such person. Any person to whom such determination or background file document pertains may intervene in the proceeding (anonymously, if appropriate). If such notice is sent, the Secretary shall not be required to defend the action and shall not be liable for public disclosure of the written determination or background file document (or any portion thereof) in accordance with the final decision of the court.

(5) Expedition of determination

The Tax Court shall make a decision with respect to any petition described in paragraph (3) at the earliest practicable date.

(6) Publicity of Tax Court proceedings

Notwithstanding sections 7458 and 7461, the Tax Court may, in order to preserve the anonymity, privacy, or confidentiality of any person under this section, provide by rules adopted under section 7453 that portions of hearings, testimony, evidence, and reports in connection with proceedings under this section may be closed to the public or to inspection by the public.

(g) Time for disclosure

(1) In general

Except as otherwise provided in this section, the text of any written determination or any background file document (as modified under subsection (c)) shall be open or available to public inspection—

(A) no earlier than 75 days, and no later than 90 days, after the notice provided in subsection (f)(1) is mailed, or, if later,

(B) within 30 days after the date on which a court decision under subsection (f)(3) becomes final.

(2) Postponement by order of court

The court may extend the period referred to in paragraph (1)(B) for such time as the court finds necessary to allow the Secretary to comply with its decision.

(3) Postponement of disclosure for up to 90 days

At the written request of the person by whom or on whose behalf the request for the written determination was made, the period referred to in paragraph (1)(A) shall be extended (for not to exceed an additional 90 days) until the day which is 15 days after the date of the Secretary's determination that the transaction set forth in the written determination has been completed.

(4) Additional 180 days

If—

(A) the transaction set forth in the written determination is not completed during the period set forth in paragraph (3), and

(B) the person by whom or on whose behalf the request for the written determination was made establishes to the satisfaction of the Secretary that good cause exists for additional delay in opening the written determination to public inspection,

the period referred to in paragraph (3) shall be further extended (for not to exceed an additional 180 days) until the day which is 15 days after the date of the Secretary's determination that the transaction set forth in the written determination has been completed.

(5) Special rules for certain written determinations, etc.

Notwithstanding the provisions of paragraph (1), the Secretary shall not be required to make available to the public—

(A) any technical advice memorandum, any Chief Counsel advice, and any related background file document involving any matter which is the subject of a civil fraud or criminal investigation or jeopardy or termination assessment until after any action relating to such investigation or assessment is completed, or

(B) any general written determination and any related background file document that relates solely to approval of the Secretary of any adoption or change of—

(i) the funding method or plan year of a plan under section 412,

(ii) a taxpayer's annual accounting period under section 442,

(iii) a taxpayer's method of accounting under section 446(e), or

(iv) a partnership's or partner's taxable year under section 706,

but the Secretary shall make any such written determination and related background file document available upon the written request of any person after the date on which (except for this subparagraph) such determination would be open to public inspection.

(h) Disclosure of prior written determinations and related background file documents

(1) In general

Except as otherwise provided in this subsection, a written determination issued pursuant to a request made before November 1, 1976, and any background file document relating to such written determination shall be open or available to public inspection in accordance with this section.

(2) Time for disclosure

In the case of any written determination or background file document which is to be made open or available to public inspection under paragraph (1)—

(A) subsection (g) shall not apply, but

(B) such written determination or background file document shall be made open or available

to public inspection at the earliest practicable date after funds for that purpose have been appropriated and made available to the Internal Revenue Service.

(3) Order of release

Any written determination or background file document described in paragraph (1) shall be open or available to public inspection in the following order starting with the most recent written determination in each category:

(A) reference written determinations issued under this title;

(B) general written determinations issued after July 4, 1967; and

(C) reference written determinations issued under the Internal Revenue Code of 1939 or corresponding provisions of prior law.

General written determinations not described in subparagraph (B) shall be open to public inspection on written request, but not until after the written determinations referred to in subparagraphs (A), (B), and (C) are open to public inspection.

(4) Notice that prior written determinations are open to public inspection

Notwithstanding the provisions of subsections (f)(1) and (f)(3)(A), not less than 90 days before making any portion of a written determination described in this subsection open to public inspection, the Secretary shall issue public notice in the Federal Register that such written determination is to be made open to public inspection. The person who received a written determination may, within 75 days after the date of publication of notice under this paragraph, file a petition in the United States Tax Court (anonymously, if appropriate) for a determination with respect to that portion of such written determination which is to be made open to public inspection. The provisions of subsections (f)(3)(B), (5), and (6) shall apply if such a petition is filed. If no petition is filed, the text of any written determination shall be open to public inspection no earlier than 90 days, and no later than 120 days, after notice is published in the Federal Register.

(5) Exclusion

Subsection (d) shall not apply to any written determination described in paragraph (1).

(i) Special rules for disclosure of Chief Counsel advice

(1) Chief Counsel advice defined

(A) In general

For purposes of this section, the term "Chief Counsel advice" means written advice or instruction, under whatever name or designation, prepared by any national office component of the Office of Chief Counsel which—

(i) is issued to field or service center employees of the Service or regional or district employees of the Office of Chief Counsel; and

(ii) conveys—

(I) any legal interpretation of a revenue provision;

(II) any Internal Revenue Service or Office of Chief Counsel position or policy concerning a revenue provision; or

(III) any legal interpretation of State law, foreign law, or other Federal law relating to the assessment or collection of any liability under a revenue provision.

(B) Revenue provision defined

For purposes of subparagraph (A), the term "revenue provision" means any existing or former internal revenue law, regulation, revenue ruling, revenue procedure, other published or unpublished guidance, or tax treaty, either in general or as applied to specific taxpayers or groups of specific taxpayers.

(2) Additional documents treated as Chief Counsel advice

The Secretary may by regulation provide that this section shall apply to any advice or

instruction prepared and issued by the Office of Chief Counsel which is not described in paragraph (1).

(3) Deletions for Chief Counsel advice

In the case of Chief Counsel advice and related background file documents open to public inspection pursuant to this section—

(A) paragraphs (2) through (7) of subsection (c) shall not apply, but

(B) the Secretary may make deletions of material in accordance with subsections (b) and (c) of section 552 of title 5, United States Code, except that in applying subsection (b)(3) of such section, no statutory provision of this title shall be taken into account.

(4) Notice of intention to disclose

(A) Nontaxpayer-specific Chief Counsel advice

In the case of Chief Counsel advice which is written without reference to a specific taxpayer or group of specific taxpayers—

(i) subsection (f)(1) shall not apply; and

(ii) the Secretary shall, within 60 days after the issuance of the Chief Counsel advice, complete any deletions described in subsection (c)(1) or paragraph (3) and make the Chief Counsel advice, as so edited, open for public inspection.

(B) Taxpayer-specific Chief Counsel advice

In the case of Chief Counsel advice which is written with respect to a specific taxpayer or group of specific taxpayers, the Secretary shall, within 60 days after the issuance of the Chief Counsel advice, mail the notice required by subsection (f)(1) to each such taxpayer. The notice shall include a copy of the Chief Counsel advice on which is indicated the information that the Secretary proposes to delete pursuant to subsection (c)(1). The Secretary may also delete from the copy of the text of the Chief Counsel advice any of the information described in paragraph (3), and shall delete the names, addresses, and other identifying details of taxpayers other than the person to whom the advice pertains, except that the Secretary shall not delete from the copy of the Chief Counsel advice that is furnished to the taxpayer any information of which that taxpayer was the source.

(j) Civil remedies

(1) Civil action

Whenever the Secretary—

(A) fails to make deletions required in accordance with subsection (c), or

(B) fails to follow the procedures in subsection (g) or (i)(4)(B),

the recipient of the written determination or any person identified in the written determination shall have as an exclusive civil remedy an action against the Secretary in the United States Court of Federal Claims, which shall have jurisdiction to hear any action under this paragraph.

(2) Damages

In any suit brought under the provisions of paragraph (1)(A) in which the Court determines that an employee of the Internal Revenue Service intentionally or willfully failed to delete in accordance with subsection (c), or in any suit brought under subparagraph (1)(B) in which the Court determines that an employee intentionally or willfully failed to act in accordance with subsection (g) or (i)(4)(B), the United States shall be liable to the person in an amount equal to the sum of—

(A) actual damages sustained by the person but in no case shall a person be entitled to receive less than the sum of $1,000, and

(B) the costs of the action together with reasonable attorney's fees as determined by the Court.

(k) Special provisions

(1) Fees

The Secretary is authorized to assess actual costs—

(A) for duplication of any written determination or background file document made open or available to the public under this section, and

(B) incurred in searching for and making deletions required under subsection (c)(1) or (i)(3) from any written determination or background file document which is available to public inspection only upon written request.

The Secretary shall furnish any written determination or background file document without charge or at a reduced charge if he determines that waiver or reduction of the fee is in the public interest because furnishing such determination or background file document can be considered as primarily benefiting the general public.

(2) Records disposal procedures

Nothing in this section shall prevent the Secretary from disposing of any general written determination or background file document described in subsection (b) in accordance with established records disposition procedures, but such disposal shall, except as provided in the following sentence, occur not earlier than 3 years after such written determination is first made open to public inspection. In the case of any general written determination described in subsection (h), the Secretary may dispose of such determination and any related background file document in accordance with such procedures but such disposal shall not occur earlier than 3 years after such written determination is first made open to public inspection if funds are appropriated for such purpose before January 20, 1979, or not earlier than January 20, 1979, if funds are not appropriated before such date. The Secretary shall not dispose of any reference written determinations and related background file documents.

(3) Precedential status

Unless the Secretary otherwise establishes by regulations, a written determination may not be used or cited as precedent. The preceding sentence shall not apply to change the precedential status (if any) of written determinations with regard to taxes imposed by subtitle D of this title.

(l) Section not to apply

This section shall not apply to—

(1) any matter to which section 6104 or 6105 applies, or

(2) any—

(A) written determination issued pursuant to a request made before November 1, 1976, with respect to the exempt status under section 501(a) of an organization described in section 501(c) or (d), the status of an organization as a private foundation under section 509(a), or the status of an organization as an operating foundation under section 4942(j)(3),

(B) written determination described in subsection (g)(5)(B) issued pursuant to a request made before November 1, 1976,

(C) determination letter not otherwise described in subparagraph (A), (B), or (E) issued pursuant to a request made before November 1, 1976,

(D) background file document relating to any general written determination issued before July 5, 1967, or

(E) letter or other document described in section 6104(a)(1)(B)(iv) issued before September 2, 1974 .

(m) Exclusive remedy

Except as otherwise provided in this title, or with respect to a discovery order made in connection with a judicial proceeding, the Secretary shall not be required by any Court to make any written determination or background file document open or available to public inspection, or to refrain from disclosure of any such documents.

(Added Pub. L. 94–455, title XII, §1201(a), Oct. 4, 1976, 90 Stat. 1660; amended Pub. L. 97–164,

title I, §160(a)(9), Apr. 2, 1982, 96 Stat. 48; Pub. L. 98–620, title IV, §402(28)(B), Nov. 8, 1984, 98 Stat. 3359; Pub. L. 102–572, title IX, §902(b)(1), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 105–206, title III, §3509(a)–(c), July 22, 1998, 112 Stat. 772, 773; Pub. L. 106–170, title V, §521(a)(2), Dec. 17, 1999, 113 Stat. 1925; Pub. L. 106–554, §1(a)(7) [title III, §§304(c), 313(e)], Dec. 21, 2000, 114 Stat. 2763, 2763A–634, 2763A–643; Pub. L. 110–172, §10(a), Dec. 29, 2007, 121 Stat. 2484.)

REFERENCES IN TEXT

The Internal Revenue Code of 1939, referred to in subsec. (h)(3)(C), is act Feb. 10, 1939, ch. 2, 53 Stat. 1, as amended. Prior to the enactment of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the 1939 Code was classified to former Title 26, Internal Revenue Code. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of this title.

PRIOR PROVISIONS

A prior section 6110 was renumbered 6116 of this title.

AMENDMENTS

2007—Subsec. (i)(3). Pub. L. 110–172 inserted "and related background file documents" after "Chief Counsel advice" in introductory provisions.

2000—Subsec. (b)(1). Pub. L. 106–554, §1(a)(7) [title III, §304(c)(1)], amended heading and text of par. (1) generally. Prior to amendment, text read as follows: "The term 'written determination' means a ruling, determination letter, technical advice memorandum, or Chief Counsel advice. Such term shall not include any advance pricing agreement entered into by a taxpayer and the Secretary and any background information related to such agreement or any application for an advance pricing agreement."

Subsec. (g)(5)(A). Pub. L. 106–554, §1(a)(7) [title III, §313(e)], inserted ", any Chief Counsel advice," after "technical advice memorandum".

Subsec. (l)(1). Pub. L. 106–554, §1(a)(7) [title III, §304(c)(2)], inserted "or 6105" after "6104".

1999—Subsec. (b)(1). Pub. L. 106–170 inserted at end "Such term shall not include any advance pricing agreement entered into by a taxpayer and the Secretary and any background information related to such agreement or any application for an advance pricing agreement."

1998—Subsec. (b)(1). Pub. L. 105–206, §3509(a), substituted "technical advice memorandum, or Chief Counsel advice" for "or technical advice memorandum".

Subsec. (f)(1). Pub. L. 105–206, §3509(c)(1), substituted "Except as otherwise provided by subsection (i), the Secretary" for "The Secretary".

Subsec. (i). Pub. L. 105–206, §3509(b), added subsec. (i). Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 105–206, §3509(b), redesignated subsec. (i) as (j). Former subsec. (j) redesignated (k).

Subsec. (j)(1)(B), (2). Pub. L. 105–206, §3509(c)(2), substituted "subsection (g) or (i)(4)(B)" for "subsection (g)".

Subsec. (k). Pub. L. 105–206, §3509(b), redesignated subsec. (j) as (k). Former subsec. (k) redesignated (l).

Subsec. (k)(1)(B). Pub. L. 105–206, §3509(c)(3), substituted "subsection (c)(1) or (i)(3)" for "subsection (c)".

Subsecs. (l), (m). Pub. L. 105–206, §3509(b), redesignated subsecs. (k) and (l) as (l) and (m), respectively.

1992—Subsec. (i)(1). Pub. L. 102–572 substituted "United States Court of Federal Claims" for "United States Claims Court".

1984—Subsec. (f)(5). Pub. L. 98–620 struck out provision that the Court of Appeals had to expedite any review of such decision in every way possible.

1982—Subsec. (i)(1). Pub. L. 97–164 substituted "United States Claims Court" for "Court of Claims".

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–172, §10(b), Dec. 29, 2007, 121 Stat. 2484, provided that: "The amendment made by this section [amending this section] shall take effect as if included in the provision of the Internal Revenue Service Restructuring and Reform Act of 1998 [Pub. L. 105–206] to which it relates."

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(7) [title III, §304(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–634, provided that: "The amendments made by this section [enacting section 6105 of this title and amending this section and section 6103 of this title] shall take effect on the date of the enactment of this Act [Dec. 21, 2000]."

Amendment by section 1(a)(7) [title III, §313(e)] of Pub. L. 106–554 effective as if included in the provisions of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105–206, to which

such amendment relates, see section 1(a)(7) [title III, §313(f)] of Pub. L. 106–554, set out as a note under section 6015 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–206, title III, §3509(d), July 22, 1998, 112 Stat. 774, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section] shall apply to any Chief Counsel advice issued more than 90 days after the date of the enactment of this Act [July 22, 1998].

"(2) TRANSITION RULES.—The amendments made by this section shall apply to any Chief Counsel advice issued after December 31, 1985, and before the 91st day after the date of the enactment of this Act [July 22, 1998] by the offices of the associate chief counsel for domestic, employee benefits and exempt organizations, and international, except that any such Chief Counsel advice shall be treated as made available on a timely basis if such advice is made available for public inspection not later than the following dates:

"(A) One year after the date of the enactment of this Act [July 22, 1998], in the case of all litigation guideline memoranda, service center advice, tax litigation bulletins, criminal tax bulletins, and general litigation bulletins.

"(B) Eighteen months after such date of enactment, in the case of field service advice and technical assistance to the field issued on or after January 1, 1994.

"(C) Three years after such date of enactment, in the case of field service advice and technical assistance to the field issued on or after January 1, 1992, and before January 1, 1994.

"(D) Six years after such date of enactment, in the case of any other Chief Counsel advice issued after December 31, 1985.

"(3) DOCUMENTS TREATED AS CHIEF COUNSEL ADVICE.—If the Secretary of the Treasury by regulation provides pursuant to section 6110(i)(2) of the Internal Revenue Code of 1986, as added by this section, that any additional advice or instruction issued by the Office of Chief Counsel shall be treated as Chief Counsel advice, such additional advice or instruction shall be made available for public inspection pursuant to section 6110 of such Code, as amended by this section, only in accordance with the effective date set forth in such regulation.

"(4) CHIEF COUNSEL ADVICE TO BE AVAILABLE ELECTRONICALLY.—The Internal Revenue Service shall make any Chief Counsel advice issued more than 90 days after the date of the enactment of this Act [July 22, 1998] and made available for public inspection pursuant to section 6110 of such Code, as amended by this section, also available by computer telecommunications within 1 year after issuance."

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–164 effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE

Pub. L. 94–455, title XII, §1201(e), Oct. 4, 1976, 90 Stat. 1667, provided that: "Except as otherwise provided in this section [enacting this section and provisions set out below], the amendments made by this section shall take effect on November 1, 1976."

PENDING REQUESTS

Pub. L. 94–455, title XII, §1201(b), Oct. 4, 1976, 90 Stat. 1667, provided that: "Any written determination or background file document which is the subject of a judicial proceeding pursuant to section 552 of title 5, United States Code, commenced before January 1, 1976, shall not be treated as a written determination subject to subsection (h)(1) [subsec. (h)(1) of this section], but shall be available to the complainant along with the background file document, if requested, as soon as practicable after July 1, 1976."

§6111. Disclosure of reportable transactions

(a) In general

Each material advisor with respect to any reportable transaction shall make a return (in such form as the Secretary may prescribe) setting forth—

(1) information identifying and describing the transaction,

(2) information describing any potential tax benefits expected to result from the transaction, and

(3) such other information as the Secretary may prescribe.

Such return shall be filed not later than the date specified by the Secretary.

(b) Definitions

For purposes of this section:

(1) Material advisor

(A) In general

The term "material advisor" means any person—

(i) who provides any material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, insuring, or carrying out any reportable transaction, and

(ii) who directly or indirectly derives gross income in excess of the threshold amount (or such other amount as may be prescribed by the Secretary) for such aid, assistance, or advice.

(B) Threshold amount

For purposes of subparagraph (A), the threshold amount is—

(i) $50,000 in the case of a reportable transaction substantially all of the tax benefits from which are provided to natural persons, and

(ii) $250,000 in any other case.

(2) Reportable transaction

The term "reportable transaction" has the meaning given to such term by section 6707A(c).

(c) Regulations

The Secretary may prescribe regulations which provide—

(1) that only 1 person shall be required to meet the requirements of subsection (a) in cases in which 2 or more persons would otherwise be required to meet such requirements,

(2) exemptions from the requirements of this section, and

(3) such rules as may be necessary or appropriate to carry out the purposes of this section.

(Added Pub. L. 98–369, div. A, title I, §141(a), July 18, 1984, 98 Stat. 677; amended Pub. L. 99–514, title II, §201(d)(13), title XV, §1531(a), title XVIII, §1899A(54), Oct. 22, 1986, 100 Stat. 2142, 2749, 2961; Pub. L. 105–34, title X, §1028(a), Aug. 5, 1997, 111 Stat. 926; Pub. L. 108–357, title VIII, §815(a), Oct. 22, 2004, 118 Stat. 1581; Pub. L. 109–135, title IV, §412(zz), Dec. 21, 2005, 119 Stat. 2641.)

PRIOR PROVISIONS

A prior section 6111 was renumbered 6116 of this title.

AMENDMENTS

2005—Subsec. (b)(1)(A)(ii). Pub. L. 109–135 substituted "aid, assistance, or advice" for "advice or assistance".

2004—Pub. L. 108–357 amended section catchline and text generally, substituting provisions relating to disclosure of reportable transactions for provisions relating to registration of tax shelters and inclusion of identification numbers on returns.

1997—Subsecs. (d) to (f). Pub. L. 105–34 added subsec. (d) and redesignated former subsecs. (d) and (e) as (e) and (f), respectively.

1986—Subsec. (c)(2)(A). Pub. L. 99–514, §1531(a), substituted "350 percent" for "200 percent".

Subsec. (c)(3)(B)(ii). Pub. L. 99–514, §201(d)(13), substituted "section 465(b)(3)(C)" for "section 168(e)(4)".

Subsec. (d)(1)(B). Pub. L. 99–514, §1899A(54), substituted "subparagraph" for "subpargraph".

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §815(c), Oct. 22, 2004, 118 Stat. 1583, provided that: "The amendments made by this section [amending this section and sections 6112 and 6708 of this title] shall apply to transactions with respect to which material aid, assistance, or advice referred to in section 6111(b)(1)(A)(i) of the Internal Revenue Code of 1986 (as added by this section) is provided after the date of the enactment of this Act [Oct. 22, 2004]."

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title X, §1028(e), Aug. 5, 1997, 111 Stat. 928, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 6662 and 6707 of this title] shall apply to any tax shelter (as defined in section 6111(d) of the Internal Revenue Code of 1986, as amended by this section) interests in which are offered to potential participants after the Secretary of the Treasury prescribes guidance with respect to meeting requirements added by such amendments.

"(2) MODIFICATIONS TO SUBSTANTIAL UNDERSTATEMENT PENALTY.—The amendments made by subsection (c) [amending section 6662 of this title] shall apply to items with respect to transactions entered into after the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 201(d)(13) of Pub. L. 99–514 applicable to property placed in service after Dec. 31, 1986, in taxable years ending after such date, with exceptions, see sections 203 and 204 of Pub. L. 99–514, set out as a note under section 168 of this title.

Amendment by section 201(d)(13) of Pub. L. 99–514 not applicable to any property placed in service before Jan. 1, 1994, if such property placed in service as part of specified rehabilitations, and not applicable to certain additional rehabilitations, see section 251(d)(2), (3) of Pub. L. 99–514, set out as a note under section 46 of this title.

Pub. L. 99–514, title XV, §1531(b), Oct. 22, 1986, 100 Stat. 2749, provided that: "The amendment made by this section [amending this section] shall apply to any tax shelter (within the meaning of section 6111 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] as amended by this section) interests in which are first offered for sale after December 31, 1986."

EFFECTIVE DATE

Pub. L. 98–369, div. A, title I, §141(d), July 18, 1984, 98 Stat. 680, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—The amendments made by this section [enacting this section and section 6707 of this title and renumbering former section 6111 as section 6112 of this title] shall apply to any tax shelter (within the meaning of section 6111 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as added by this section) any interest in which is first sold to any investor after August 31, 1984.

"(2) SUBSTANTIAL INVESTMENT TEST.—For purposes of determining whether any investment is a tax shelter by reason of section 6111(c)(1)(B)(iii) of such Code (as added by this section), only offers for sale after August 31, 1984, shall be taken into account.

"(3) FURNISHING OF SHELTER IDENTIFICATION NUMBER FOR INTERESTS SOLD BEFORE SEPTEMBER 1, 1984.—With respect to interests sold before September 1, 1984, any liability to act under paragraph (1) of section 6111(b) of such Code (as added by this section) which would (but for this sentence) arise before such date shall be deemed to arise on December 31, 1984."

§6112. Material advisors of reportable transactions must keep lists of advisees, etc.

(a) In general

Each material advisor (as defined in section 6111) with respect to any reportable transaction (as defined in section 6707A(c)) shall (whether or not required to file a return under section 6111 with respect to such transaction) maintain (in such manner as the Secretary may by regulations prescribe) a list—

(1) identifying each person with respect to whom such advisor acted as a material advisor with

respect to such transaction, and

(2) containing such other information as the Secretary may by regulations require.

(b) Special rules

(1) Availability for inspection; retention of information on list

Any person who is required to maintain a list under subsection (a) (or was required to maintain a list under subsection (a) as in effect before the enactment of the American Jobs Creation Act of 2004)—

(A) shall make such list available to the Secretary for inspection upon written request by the Secretary, and

(B) except as otherwise provided under regulations prescribed by the Secretary, shall retain any information which is required to be included on such list for 7 years.

(2) Lists which would be required to be maintained by 2 or more persons

The Secretary may prescribe regulations which provide that, in cases in which 2 or more persons are required under subsection (a) to maintain the same list (or portion thereof), only 1 person shall be required to maintain such list (or portion).

(Added Pub. L. 98–369, div. A, title I, §142(a), July 18, 1984, 98 Stat. 681; amended Pub. L. 108–357, title VIII, §815(b)(2), (3), Oct. 22, 2004, 118 Stat. 1582; Pub. L. 109–135, title IV, §403(z), Dec. 21, 2005, 119 Stat. 2629.)

REFERENCES IN TEXT

Enactment of the American Jobs Creation Act of 2004, referred to in subsec. (b)(1), means enactment of Pub. L. 108–357, which was approved Oct. 22, 2004.

PRIOR PROVISIONS

A prior section 6112 was renumbered 6116 of this title.

AMENDMENTS

2005—Subsec. (b)(1). Pub. L. 109–135, in introductory provisions, inserted "(or was required to maintain a list under subsection (a) as in effect before the enactment of the American Jobs Creation Act of 2004)" after "a list under subsection (a)".

2004—Pub. L. 108–357, §815(b)(2), substituted "Material advisors of reportable transactions must keep lists of advisees, etc." for "Organizers and sellers of potentially abusive tax shelters must keep lists of investors" in section catchline.

Subsec. (a). Pub. L. 108–357, §815(b)(2), reenacted heading without change and amended text of subsec. (a) generally, substituting provisions requiring each material advisor to maintain a list identifying each person with respect to whom such advisor acted as a material advisor with respect to a reportable transaction and containing such other information as required by regulations, for provisions requiring any person who organized any potentially abusive tax shelter or sold any interest in such a shelter to maintain a list identifying each person who had been sold an interest in such shelter and containing such other information as required by regulations.

Subsec. (b). Pub. L. 108–357, §815(b)(2), (3)(A), redesignated subsec. (c) as (b) and struck out former subsec. (b), which defined "potentially abusive tax shelter" for purposes of this section.

Subsec. (b)(1)(A). Pub. L. 108–357, §815(b)(3)(B), inserted "written" before "request".

Subsec. (b)(2). Pub. L. 108–357, §815(b)(3)(C), substituted "may prescribe" for "shall prescribe".

Subsec. (c). Pub. L. 108–357, §815(b)(3)(A), redesignated subsec. (c) as (b).

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to transactions with respect to which material aid, assistance, or advice referred to in section 6111(b)(1)(A)(i) of this title is provided after Oct. 22, 2004, see section 815(c) of Pub. L. 108–357, set out as a note under section 6111 of this title.

EFFECTIVE DATE

Pub. L. 98–369, div. A, title I, §142(d), July 18, 1984, 98 Stat. 682, provided that: "The amendments made by this section [enacting this section and section 6708 of this title and renumbering former section 6112 as section 6113 of this title] shall apply to any interest which is first sold to any investor after August 31, 1984."

§6113. Disclosure of nondeductibility of contributions

(a) General rule

Each fundraising solicitation by (or on behalf of) an organization to which this section applies shall contain an express statement (in a conspicuous and easily recognizable format) that contributions or gifts to such organization are not deductible as charitable contributions for Federal income tax purposes.

(b) Organizations to which section applies

(1) In general

Except as otherwise provided in this subsection, this section shall apply to any organization which is not described in section 170(c) and which—

(A) is described in subsection (c) (other than paragraph (1) thereof) or (d) of section 501 and exempt from taxation under section 501(a),

(B) is a political organization (as defined in section 527(e)), or

(C) was an organization described in subparagraph (A) or (B) at any time during the 5-year period ending on the date of the fundraising solicitation or is a successor to an organization so described at any time during such 5-year period.

(2) Exception for small organizations

(A) Annual gross receipts do not exceed $100,000

This section shall not apply to any organization the gross receipts of which in each taxable year are normally not more than $100,000.

(B) Multiple organization rule

The Secretary may treat any group of 2 or more organizations as 1 organization for purposes of subparagraph (A) where necessary or appropriate to prevent the avoidance of this section through the use of multiple organizations.

(3) Special rule for certain fraternal organizations

For purposes of paragraph (1), an organization described in section 170(c)(4) shall be treated as described in section 170(c) only with respect to solicitations for contributions or gifts which are to be used exclusively for purposes referred to in section 170(c)(4).

(c) Fundraising solicitation

For purposes of this section—

(1) In general

Except as provided in paragraph (2), the term "fundraising solicitation" means any solicitation of contributions or gifts which is made—

(A) in written or printed form,

(B) by television or radio, or

(C) by telephone.

(2) Exception for certain letters or calls

The term "fundraising solicitation" shall not include any letter or telephone call if such letter or call is not part of a coordinated fundraising campaign soliciting more than 10 persons during the calendar year.

(Added Pub. L. 100–203, title X, §10701(a), Dec. 22, 1987, 101 Stat. 1330–457.)

PRIOR PROVISIONS

A prior section 6113 was renumbered 6116 of this title.

EFFECTIVE DATE

Pub. L. 100–203, title X, §10701(d), Dec. 22, 1987, 101 Stat. 1330–459, provided that: "The amendments made by this section [enacting this section and section 6710 of this title and renumbering former section 6113 as section 6114 of this title] shall apply to solicitations after January 31, 1988."

§6114. Treaty-based return positions

(a) In general

Each taxpayer who, with respect to any tax imposed by this title, takes the position that a treaty of the United States overrules (or otherwise modifies) an internal revenue law of the United States shall disclose (in such manner as the Secretary may prescribe) such position—

(1) on the return of tax for such tax (or any statement attached to such return), or

(2) if no return of tax is required to be filed, in such form as the Secretary may prescribe.

(b) Waiver authority

The Secretary may waive the requirements of subsection (a) with respect to classes of cases for which the Secretary determines that the waiver will not impede the assessment and collection of tax.

(Added Pub. L. 100–647, title I, §1012(aa)(5)(A), Nov. 10, 1988, 102 Stat. 3532; amended Pub. L. 101–508, title XI, §11702(c), Nov. 5, 1990, 104 Stat. 1388–514.)

PRIOR PROVISIONS

A prior section 6114 was renumbered 6116 of this title.

AMENDMENTS

1990—Subsec. (b). Pub. L. 101–508 struck out "by regulations" before "waive the requirements".

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 11702(j) of Pub. L. 101–508, set out as a note under section 59 of this title.

EFFECTIVE DATE

Pub. L. 100–647, title I, §1012(aa)(5)(D), Nov. 10, 1988, 102 Stat. 3533, provided that: "The amendments made by this paragraph [enacting this section and section 6712 of this title and renumbering former section 6114 as section 6115 of this title] shall apply to taxable periods the due date for filing returns for which (without extension) occurs after December 31, 1988."

§6115. Disclosure related to quid pro quo contributions

(a) Disclosure requirement

If an organization described in section 170(c) (other than paragraph (1) thereof) receives a quid pro quo contribution in excess of $75, the organization shall, in connection with the solicitation or receipt of the contribution, provide a written statement which—

(1) informs the donor that the amount of the contribution that is deductible for Federal income tax purposes is limited to the excess of the amount of any money and the value of any property other than money contributed by the donor over the value of the goods or services provided by the organization, and

(2) provides the donor with a good faith estimate of the value of such goods or services.

(b) Quid pro quo contribution

For purposes of this section, the term "quid pro quo contribution" means a payment made partly as a contribution and partly in consideration for goods or services provided to the payor by the donee

organization. A quid pro quo contribution does not include any payment made to an organization, organized exclusively for religious purposes, in return for which the taxpayer receives solely an intangible religious benefit that generally is not sold in a commercial transaction outside the donative context.

(Added Pub. L. 103–66, title XIII, §13173(a), Aug. 10, 1993, 107 Stat. 456.)

PRIOR PROVISIONS

A prior section 6115 was renumbered section 6116 of this title.

EFFECTIVE DATE

Pub. L. 103–66, title XIII, §13173(d), Aug. 10, 1993, 107 Stat. 457, provided that: "The provisions of this section [enacting this section and section 6714 of this title and renumbering former section 6115 as 6116 of this title] shall apply to quid pro quo contributions made on or after January 1, 1994."

§6116. Requirement for prisons located in United States to provide information for tax administration

(a) In general

Not later than September 15, 2012, and annually thereafter, the head of the Federal Bureau of Prisons and the head of any State agency charged with the responsibility for administration of prisons shall provide to the Secretary in electronic format a list with the information described in subsection (b) of all the inmates incarcerated within the prison system for any part of the prior 2 calendar years or the current calendar year through August 31.

(b) Information

The information with respect to each inmate is—

(1) first, middle, and last name,
(2) date of birth,
(3) institution of current incarceration or, for released inmates, most recent incarceration,
(4) prison assigned inmate number,
(5) the date of incarceration,
(6) the date of release or anticipated date of release,
(7) the date of work release,
(8) taxpayer identification number and whether the prison has verified such number,
(9) last known address, and
(10) any additional information as the Secretary may request.

(c) Format

The Secretary shall determine the electronic format of the information described in subsection (b).

(Added Pub. L. 112–41, title V, §502(a), Oct. 21, 2011, 125 Stat. 460.)

PRIOR PROVISIONS

A prior section 6116 was renumbered section 6117 of this title.

§6117. Cross reference

For inspection of records, returns, etc., concerning gasoline or lubricating oils, see section 4102.

(Aug. 16, 1954, ch. 736, 68A Stat. 756, §6109; renumbered §6110, Pub. L. 87–397, §1(a), Oct. 5, 1961, 75 Stat. 828; renumbered §6111 and amended Pub. L. 94–455, title XII, §1201(a), title XIX, §1906(a)(8), Oct. 4, 1976, 90 Stat. 1660, 1824; renumbered §6112, renumbered §6113, Pub. L. 98–369, div. A, title I, §§141(a), 142(a), July 18, 1984, 98 Stat. 677, 681; renumbered §6114, Pub. L. 100–203, title X, §10701(a), Dec. 22, 1987, 101 Stat. 1330–457; renumbered §6115, Pub. L.

100–647, title I, §1012(aa)(5)(A), Nov. 10, 1988, 102 Stat. 3532; renumbered §6116, Pub. L. 103–66, title XIII, §13173(a), Aug. 10, 1993, 107 Stat. 456; renumbered §6117, Pub. L. 112–41, title V, §502(a), Oct. 21, 2011, 125 Stat. 460.)

AMENDMENTS

1976—Pub. L. 94–455, among other changes, substituted in section catchline "Cross reference" for "Cross references" and struck out in text reference to section 4876, relating to reports of Secretary of Agriculture concerning cotton futures, reference to section 4773, relating to inspection of returns, order forms, and prescriptions concerning narcotics and marihuana, and reference to section 4775 relating to authority of Secretary or his delegate to furnish list of special taxpayers.

CHAPTER 62—TIME AND PLACE FOR PAYING TAX

Subchapter		Sec.[1]
A.	**Place and due date for payment of tax**	**6151**
B.	**Extensions of time for payment**	**6161**

[1] *Section numbers editorially supplied.*

Subchapter A—Place and Due Date for Payment of Tax

Sec.
6151. Time and place for paying tax shown on returns.
[6152 to 6154. Repealed.]
6155. Payment on notice and demand.
[6156. Repealed.]
6157. Payment of Federal unemployment tax on quarterly or other time period basis.
[6158. Repealed.]
6159. Agreements for payment of tax liability in installments.

AMENDMENTS

2004—Pub. L. 108–357, title VIII, §867(b)(2), Oct. 22, 2004, 118 Stat. 1622, struck out item 6156 "Installment payments of tax on use of highway motor vehicles".

1990—Pub. L. 101–508, title XI, §11801(b)(13), Nov. 5, 1990, 104 Stat. 1388–522, struck out item 6158 "Installment payment of tax attributable to divestitures pursuant to Bank Holding Company Act Amendments of 1970".

1988—Pub. L. 100–647, title VI, §6234(b)(2), Nov. 10, 1988, 102 Stat. 3736, added item 6159.

1987—Pub. L. 100–203, title X, §10301(b)(7), Dec. 22, 1987, 101 Stat. 1330–429, struck out item 6154 "Installment payments of estimated income tax by corporations".

1986—Pub. L. 99–514, title XIV, §1404(c)(4), Oct. 22, 1986, 100 Stat. 2714, struck out item 6152 "Installment payments".

1984—Pub. L. 98–369, div. A, title IV, §412(c)(3), July 18, 1984, 98 Stat. 793, struck out item 6153 "Installment payments of estimated income tax by individuals".

1982—Pub. L. 97–248, title II, §280(c)(2)(F), Sept. 3, 1982, 96 Stat. 564, struck out "and civil aircraft" after "motor vehicles" in item 6156.

1976—Pub. L. 94–452, §3(c)(1), Oct. 2, 1976, 90 Stat. 1514, added item 6158.

1970—Pub. L. 91–258, title II, §206(d)(3), May 21, 1970, 84 Stat. 246, inserted "and civil aircraft" in item 6156.

1969—Pub. L. 91–53, §2(f)(1), Aug. 7, 1969, 83 Stat. 93, substituted "Payment of Federal unemployment tax on quarterly or other time period basis" for "Payment of taxes under provisions of the Tariff Act" in item 6157.

1961—Pub. L. 87–61, title II, §203(c)(3), June 29, 1961, 75 Stat. 126, added item 6156 and redesignated former item 6156 as 6157.

§6151. Time and place for paying tax shown on returns

(a) General rule

Except as otherwise provided in this subchapter, when a return of tax is required under this title or regulations, the person required to make such return shall, without assessment or notice and demand from the Secretary, pay such tax to the internal revenue officer with whom the return is filed, and shall pay such tax at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return).

(b) Exceptions

(1) Income tax not computed by taxpayer

If the taxpayer elects under section 6014 not to show the tax on the return, the amount determined by the Secretary as payable shall be paid within 30 days after the mailing by the Secretary to the taxpayer of a notice stating such amount and making demand therefor.

(2) Use of government depositaries

For authority of the Secretary to require payments to Government depositaries, see section 6302(c).

(c) Date fixed for payment of tax

In any case in which a tax is required to be paid on or before a certain date, or within a certain period, any reference in this title to the date fixed for payment of such tax shall be deemed a reference to the last day fixed for such payment (determined without regard to any extension of time for paying the tax.)

(Aug. 16, 1954, ch. 736, 68A Stat. 757; Pub. L. 89–713, §1(b), Nov. 2, 1966, 80 Stat. 1108; Pub. L. 94–452, §3(c)(2), Oct. 2, 1976, 90 Stat. 1514; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

Subsec. (a). Pub. L. 94–452 substituted "subchapter," for "section,".

1966—Subsec. (a). Pub. L. 89–713 substituted the revenue officer with whom the return is filed for the principal internal revenue officer for the internal revenue district in which the return is required to be filed as the description of the person to whom the tax is paid.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–452, §3(e), Oct. 2, 1976, 90 Stat. 1514, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—The amendments made by this section [enacting section 6158 of this title and amending this section and sections 6503 and 6601 of this title] shall take effect on October 1, 1977, with respect to sales after July 7, 1970, in taxable years ending after July 7, 1970, but only in the case of qualified bank holding corporations (within the meaning of section 1103(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as amended by section 2(a) of this Act).

"(2) SPECIAL RULE FOR CERTIFYING SALES WHICH HAVE ALREADY TAKEN PLACE.—For purposes of section 6158(a) of the Internal Revenue Code of 1986 (as added by subsection (a) of this section) in the case of any sale which takes place on or before the 90th day after the date of the enactment of this Act [Oct. 2, 1976], a certification by the Federal Reserve Board described in section 6158(a) shall be treated as made before the sale if application for such certification is made before the close of the 90th day after the date of the enactment of this Act [Oct. 2, 1976].

"(3) REFUND OF TAX.—

"(A) IN GENERAL.—If any tax attributable to a sale which occurred before October 1, 1977, is payable in annual installments by reason of an election under section 6158(a) of the Internal Revenue Code of 1986, any portion of such tax for which the due date of the installment does not occur before October 1, 1977, shall, on application of the taxpayer, be treated as an overpayment of tax.

"(B) INTEREST ON OVERPAYMENTS.—For purposes of section 6611(b) in the case of any overpayment attributable to subparagraph (A), the date of the overpayment shall be the day which is 6 months after the latest of the following:

"(i) the date on which application for refund or credit of such overpayment is filed,

"(ii) the due date prescribed by law (determined without extensions) for filing the return of tax under chapter 1 of the Internal Revenue Code of 1986 for the taxable year the tax of which is being refunded or credited, or

"(iii) the date of the enactment of this Act [Oct. 2, 1976].

"(C) EXTENSION OF PERIOD OF LIMITATIONS.—If any refund or credit of tax attributable to the application of subparagraph (A) is prevented at any time before October 1, 1978, by the operation of any law or rule of law, refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed before October 1, 1978."

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–713 effective Nov. 2, 1966, see section 6 of Pub. L. 89–713, set out as a note under section 6091 of this title.

[§6152. Repealed. Pub. L. 99–514, title XIV, §1404(c)(1), Oct. 22, 1986, 100 Stat. 2714]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 757; Sept. 1, 1954, ch. 1212, §3, 68 Stat. 1130; Oct. 4, 1976, Pub. L. 94–455, title XIX, §1906(a)(9), (b)(13)(A), 90 Stat. 1824, 1834; Sept. 3, 1982, Pub. L. 97–248, title II, §234(b)(1), 96 Stat. 503, related to installment payments of taxes.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 1986, see section 1404(d) of Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note under section 643 of this title.

[§6153. Repealed. Pub. L. 98–369, div. A, title IV, §412(a)(3), July 18, 1984, 98 Stat. 792]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 758; Sept. 25, 1962, Pub. L. 87–682, §1(a)(3), (c), 76 Stat. 575; Dec. 23, 1975, Pub. L. 94–164, §5(b), 89 Stat. 975; June 30, 1976, Pub. L. 94–331, §3(b), 90 Stat. 782; Sept. 3, 1976, Pub. L. 94–396, §2(a)(2), 90 Stat. 1201; Sept. 17, 1976, Pub. L. 94–414, §3(b), 90 Stat. 1273; Oct. 4, 1976, Pub. L. 94–455, title XIX, §1906(b)(13)(A), 90 Stat. 1834; Aug. 13, 1981, Pub. L. 97–34, title VII, §725(c)(3), 95 Stat. 346; Sept. 3, 1982, Pub. L. 97–248, title III, §328(b)(3), 96 Stat. 618, related to installment payments of estimated income tax by individuals.

EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to taxable years beginning after Dec. 31, 1984, see section 414(a)(1) of Pub. L. 98–369, set out as an Effective Date of 1984 Amendment note under section 6654 of this title.

[§6154. Repealed. Pub. L. 100–203, title X, §10301(b)(1), Dec. 22, 1987, 101 Stat. 1330–429]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 760; Feb. 26, 1964, Pub. L. 88–272, title I, §122(a), 78 Stat. 25; Mar. 15, 1966, Pub. L. 89–368, title I, §104(a), 80 Stat. 64; June 28, 1968, Pub. L. 90–364, title I, §103(b), 82 Stat. 260; Dec. 23, 1975, Pub. L. 94–164, §5(c), 89 Stat. 975; June 30, 1976, Pub. L. 94–331, §3(c), 90 Stat. 782; Sept. 3, 1976, Pub. L. 94–396, §2(a)(3), 90 Stat. 1201; Sept. 17, 1976, Pub. L. 94–414, §3(c), 90 Stat. 1273; Oct. 4, 1976, Pub. L. 94–455, title IX, §901(c)(3), title XIX, §1906(a)(10), (b)(13)(A), 90 Stat. 1607, 1825, 1834; Nov. 6, 1978, Pub. L. 95–600, title III, §301(b)(20)(A), 92 Stat. 2823; Jan. 12, 1983, Pub. L. 97–448, title II, §201(j)(2), 96 Stat. 2396; Oct. 17, 1986, Pub. L. 99–499, title V, §516(b)(4)(A), 100 Stat. 1771; Oct. 22, 1986, Pub. L. 99–514, title VII, §701(d)(1), title XV, §1542(a), 100 Stat. 2341, 2751; Nov. 10, 1988, Pub. L. 100–647, title I, §§1007(g)(10), 1015(h), 102 Stat. 3435, 3571, related to installment payments of estimated income tax by corporations.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 1987, see section 10301(c) of Pub. L. 100–203,

set out as an Effective Date of 1987 Amendment note under section 585 of this title.

§6155. Payment on notice and demand

(a) General rule

Upon receipt of notice and demand from the Secretary, there shall be paid at the place and time stated in such notice the amount of any tax (including any interest, additional amounts, additions to tax, and assessable penalties) stated in such notice and demand.

(b) Cross references

(1) For restrictions on assessment and collection of deficiency assessments of taxes subject to the jurisdiction of the Tax Court, see sections 6212 and 6213.

(2) For provisions relating to assessment of claims allowed in a receivership proceeding, see section 6873.

(3) For provisions relating to jeopardy assessments, see subchapter A of chapter 70.

(Aug. 16, 1954, ch. 736, 68A Stat. 760; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–589, §6(i)(7), Dec. 24, 1980, 94 Stat. 3410.)

AMENDMENTS

1980—Subsec. (b)(2). Pub. L. 96–589 struck out reference to a bankruptcy proceeding.

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–589 effective Oct. 1, 1979, but not applicable to proceedings under Title 11, Bankruptcy, commenced before Oct. 1, 1979, see section 7(e) of Pub. L. 96–589, set out as a note under section 108 of this title.

[§6156. Repealed. Pub. L. 108–357, title VIII, §867(b)(1), Oct. 22, 2004, 118 Stat. 1622]

Section, added Pub. L. 87–61, title II, §203(c)(1), June 29, 1961, 75 Stat. 125; amended Pub. L. 91–258, title II, §206(b), (d)(2), May 21, 1970, 84 Stat. 245, 246; Pub. L. 91–605, title III, §303(a)(10), Dec. 31, 1970, 84 Stat. 1744; Pub. L. 94–280, title III, §303(a)(10), May 5, 1976, 90 Stat. 456; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–599, title V, §502(a)(9), Nov. 6, 1978, 92 Stat. 2756; Pub. L. 97–248, title II, §280(c)(2)(C)–(E), Sept. 3, 1982, 96 Stat. 564; Pub. L. 97–424, title V, §516(a)(6), Jan. 6, 1983, 96 Stat. 2183; Pub. L. 100–17, title V, §502(d)(2), Apr. 2, 1987, 101 Stat. 257; Pub. L. 101–508, title XI, §11211(f)(2), Nov. 5, 1990, 104 Stat. 1388–427; Pub. L. 102–240, title VIII, §8002(c)(2), Dec. 18, 1991, 105 Stat. 2203; Pub. L. 105–178, title IX, §9002(a)(2)(B), June 9, 1998, 112 Stat. 500, related to installment payments of tax on use of highway motor vehicles.

A prior section 6156 was renumbered section 6157 of this title, prior to repeal by Pub. L. 91–53, §2(a), Aug. 7, 1969, 83 Stat. 91.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable periods beginning after Oct. 22, 2004, see section 867(e) of Pub. L. 108–357, set out as an Effective Date of 2004 Amendment note under section 4481 of this title.

§6157. Payment of Federal unemployment tax on quarterly or other time period basis

(a) General rule

Every person who for the calendar year is an employer (as defined in section 3306(a)) shall—

(1) if the person is such an employer for the preceding calendar year (determined by only taking into account wages paid and employment during such preceding calendar year), compute the tax

imposed by section 3301 for each of the first 3 calendar quarters in the calendar year on wages paid for services which respect to which the person is such an employer for such preceding calendar year (as so determined), and

(2) if the person is not such an employer for the preceding calendar year with respect to any services (as so determined), compute the tax imposed by section 3301 on wages paid for services with respect to which the person is not such an employer for the preceding calendar year (as so determined)—

(A) for the period beginning with the first day of the calendar year and ending with the last day of the calendar quarter (excluding the last calendar quarter) in which such person becomes such an employer with respect to such services, and

(B) for the third calendar quarter of such year, if the period specified in subparagraph (A) includes only the first two calendar quarters of the calendar year.

The tax for any calendar quarter or other period shall be computed as provided in subsection (b) and the tax as so computed shall, except as otherwise provided in subsection (c), be paid in such manner and at such time as may be provided in regulations prescribed by the Secretary.

(b) Computation of tax

The tax for any calendar quarter or other period referred to in paragraph (1) or (2) of subsection (a) shall be computed by multiplying the amount of wages (as defined in section 3306(b)) paid in such calendar quarter or other period by 0.6 percent. In the case of wages paid in any calendar quarter or other period during a calendar year to which paragraph (1) of section 3301 applies, the amount of such wages shall be multiplied by 0.8 percent in lieu of 0.6 percent.

(c) Special rule where accumulated amount does not exceed $100

Nothing in this section shall require the payment of tax with respect to any calendar quarter or other period if the tax under section 3301 for such period, plus any unpaid amounts for prior periods in the calendar year, does not exceed $100.

(Added Pub. L. 91–53, §2(a), Aug. 7, 1969, 83 Stat. 91; amended Pub. L. 91–373, title I, §101(b)(1), (2), Aug. 10, 1970, 84 Stat. 696; Pub. L. 92–329, §2(b), June 30, 1972, 86 Stat. 398; Pub. L. 94–455, title XIX, §1906(a)(11), (b)(13)(A), Oct. 4, 1976, 90 Stat. 1825, 1834; Pub. L. 94–566, title I, §114(b), title II, §211(e)(3) [(c)(3)], Oct. 20, 1976, 90 Stat. 2669, 2677; Pub. L. 97–248, title II, §271(b)(2)(C), (c)(3)(C), Sept. 3, 1982, 96 Stat. 555; Pub. L. 98–76, title II, §231(b)(1), Aug. 12, 1983, 97 Stat. 428; Pub. L. 100–647, title VII, §7106(c)(1), Nov. 10, 1988, 102 Stat. 3773; Pub. L. 101–239, title VII, §7841(d)(12), Dec. 19, 1989, 103 Stat. 2428.)

PRIOR PROVISIONS

A prior section 6157, act Aug. 16, 1954, ch. 736, 68A Stat. 761, §6156; renumbered §6157, June 29, 1961, Pub. L. 87–61, title II, §203(c)(1), 75 Stat. 125, made a cross reference provision for payment of taxes under provisions of the Tariff Act, prior to repeal by Pub. L. 91–53, §2(a), Aug. 7, 1969, 83 Stat. 91.

AMENDMENTS

1989—Subsec. (a). Pub. L. 101–239 substituted "subsection (c)" for "subsections (c) and (d)" in last sentence.

1988—Subsec. (d). Pub. L. 100–647 struck out subsec. (d) which related to quarterly payment of railroad unemployment repayment tax.

1983—Subsec. (d). Pub. L. 98–76 added subsec. (d).

1982—Subsec. (b). Pub. L. 97–248, §271(c)(3)(C), substituted "0.6" for "0.5" in two places.

Pub. L. 97–248, §271(b)(2)(C), substituted "0.8" for "0.7".

1976—Subsec. (a). Pub. L. 94–566, §114(b), amended subsec. (a) generally, changing the general rule covering payment of Federal unemployment tax on a quarterly or other time period basis to conform to the altered definitions of employment and wages pertaining to domestic and agricultural service in section 3306 of this title.

Pub. L. 94–455, §1906(a)(11)(B), (b)(13)(A), substituted "subsection (c)" for "subsections (c) and (d)" and struck out "or his delegate" after "Secretary".

Subsec. (b). Pub. L. 94–566, §211(e)(3) [(c)(3)], substituted "In the case of wages paid in any calendar

quarter or other period during a calendar year to which paragraph (1) of section 3301 applies, the amount of such wages shall be multiplied by 0.7 percent in lieu of 0.5 percent" for "In the case of wages paid in any calendar quarter or other period during 1973, the amount of such wages shall be multiplied by 0.58 percent in lieu of 0.5 percent".

Subsecs. (c), (d). Pub. L. 94–455, §1906(a)(11)(A), redesignated subsec. (d) as (c). Former subsec. (c), which related to the percentage reduction for 1970 and 1971 of the tax computed in subsec. (b), was struck out.

1972—Subsec. (b). Pub. L. 92–329 inserted provisions setting forth the computation of tax in the case of wages paid in any calendar quarter or other period during 1973.

1970—Subsec. (a)(1). Pub. L. 91–373, §101(b)(1), reduced from 4 to 1 the number of individuals which a person had to employ on each of some 20 days during the preceding calendar year and inserted provision covering persons who, during any calendar quarter in the preceding calendar year, paid wages of $1,500 or more.

Subsec. (b). Pub. L. 91–373, §101(b)(2), substituted "0.5 percent" for "the number of percentage points (including fractional points) by which the rate of tax specified in section 3301 exceeds .7 percent". be the date on which payment would have been required if such remainder had been the tax.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 applicable to remuneration paid after Dec. 31, 1988, see section 7106(d) of Pub. L. 100–647, set out as a note under section 3321 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–76 applicable to remuneration paid after June 30, 1986, see section 231(d) of Pub. L. 98–76, set out as an Effective Date note under section 3321 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 271(b)(2)(C) of Pub. L. 97–248 applicable to remuneration paid after Dec. 31, 1982, see section 271(d)(1) of Pub. L. 97–248, as amended, set out as a note under section 3301 of this title.

Amendment by section 271(c)(3)(C) of Pub. L. 97–248 applicable to remuneration paid after Dec. 31, 1984, see section 271(d)(2) of Pub. L. 97–248, as amended, set out as a note under section 3301 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 114(b) of Pub. L. 94–566 effective with respect to remuneration paid after Dec. 31, 1977, for services performed after that date, see section 114(c) of Pub. L. 94–566 set out as a note under section 3306 of this title.

Amendment by section 211(e)(3) of Pub. L. 94–566 effective Oct. 20, 1976, see section 211(d)(3) of Pub. L. 94–566, set out as a note under section 1101 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by section 101(b)(1) of Pub. L. 91–373 applicable with respect to calendar years beginning after Dec. 31, 1971, see section 101(c)(1) of Pub. L. 91–373, set out as a note under section 3306 of this title.

Pub. L. 91–373, title I, §101(c)(2), Aug. 10, 1970, 84 Stat. 696, provided that: "The amendment made by subsection (b)(2) [amending this section] shall apply with respect to calendar years beginning after December 31, 1969."

EFFECTIVE DATE

Pub. L. 91–53, §4(a), Aug. 7, 1969, 83 Stat. 93, provided that: "The amendments made by the first two sections of this Act [enacting section 6317 and amending this section and sections 3306, 6201, 6513, and 6601 of this title] shall apply with respect to calendar years beginning after December 31, 1969."

EXTENSION OF TIME FOR PAYMENT OF ADDITIONAL FUTA TAXES

Pub. L. 102–244, §4, Feb. 7, 1992, 106 Stat. 4, provided that:

"(a) IN GENERAL.—Notwithstanding any other provision of law, if a qualified taxpayer is required to pay additional taxes for taxable years beginning in 1991 with respect to any employment in any State by reason of such State being declared a credit reduction State, such taxpayer may elect to defer the filing and payment of such additional taxes to a date no later than June 30, 1992.

"(b) INTEREST.—Notwithstanding subsection (a), for purposes of section 6601(a) of the Internal Revenue Code of 1986, the last date prescribed for payment of any additional taxes for which an election is made under subsection (a) shall be January 31, 1992.

"(c) DEFINITIONS.—For purposes of this section—

"(1) QUALIFIED TAXPAYER.—The term 'qualified taxpayer' means a taxpayer—

"(A) in a State which has been declared a credit reduction State for taxable years beginning in 1991, and

"(B) who did not receive notice of such credit reduction before December 1, 1991 from either the State unemployment compensation agency or the Internal Revenue Service.

"(2) CREDIT REDUCTION STATE.—The term 'credit reduction State' means a State with respect to which the Internal Revenue Service has determined that a reduction in credits is applicable for taxable years beginning in 1991 pursuant to the provisions of section 3302 of the Internal Revenue Code of 1986.

"(d) TIME AND MANNER FOR MAKING ELECTION.—An election under this section shall be made at such time and in such manner as the Secretary of the Treasury shall prescribe."

WAGES PAID IN 1970 CALENDAR QUARTERS ENDING BEFORE AUGUST 10, 1970

Pub. L. 91–373, title III, §301(b), Aug. 10, 1970, 84 Stat. 713, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "For purposes of section 6157 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to payment of Federal unemployment tax on quarterly or other time period basis), in computing tax as required by subsections (a)(1) and (2) of such section, the percentage contained in subsection (b) of such section applicable with respect to wages paid in any calendar quarter in 1970 ending before the date of the enactment of this Act [Aug. 10, 1970] shall be treated as being 0.4 percent."

[§6158. Repealed. Pub. L. 101–508, title XI, §11801(a)(44), Nov. 5, 1990, 104 Stat. 1388–521]

Section, added Pub. L. 94–452, §3(a), Oct. 2, 1976, 90 Stat. 1512; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, related to installment payment of tax attributable to divestitures pursuant to Bank Holding Company Act Amendments of 1970.

SAVINGS PROVISION

For provisions that nothing in repeal by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

§6159. Agreements for payment of tax liability in installments

(a) Authorization of agreements

The Secretary is authorized to enter into written agreements with any taxpayer under which such taxpayer is allowed to make payment on any tax in installment payments if the Secretary determines that such agreement will facilitate full or partial collection of such liability.

(b) Extent to which agreements remain in effect

(1) In general

Except as otherwise provided in this subsection, any agreement entered into by the Secretary under subsection (a) shall remain in effect for the term of the agreement.

(2) Inadequate information or jeopardy

The Secretary may terminate any agreement entered into by the Secretary under subsection (a) if—

(A) information which the taxpayer provided to the Secretary prior to the date such agreement was entered into was inaccurate or incomplete, or

(B) the Secretary believes that collection of any tax to which an agreement under this section relates is in jeopardy.

(3) Subsequent change in financial conditions

If the Secretary makes a determination that the financial condition of a taxpayer with whom the

Secretary has entered into an agreement under subsection (a) has significantly changed, the Secretary may alter, modify, or terminate such agreement.

(4) Failure to pay an installment or any other tax liability when due or to provide requested financial information

The Secretary may alter, modify, or terminate an agreement entered into by the Secretary under subsection (a) in the case of the failure of the taxpayer—

(A) to pay any installment at the time such installment payment is due under such agreement,

(B) to pay any other tax liability at the time such liability is due, or

(C) to provide a financial condition update as requested by the Secretary.

(5) Notice requirements

The Secretary may not take any action under paragraph (2), (3), or (4) unless—

(A) a notice of such action is provided to the taxpayer not later than the day 30 days before the date of such action, and

(B) such notice includes an explanation why the Secretary intends to take such action.

The preceding sentence shall not apply in any case in which the Secretary believes that collection of any tax to which an agreement under this section relates is in jeopardy.

(c) Secretary required to enter into installment agreements in certain cases

In the case of a liability for tax of an individual under subtitle A, the Secretary shall enter into an agreement to accept the full payment of such tax in installments if, as of the date the individual offers to enter into the agreement—

(1) the aggregate amount of such liability (determined without regard to interest, penalties, additions to the tax, and additional amounts) does not exceed $10,000;

(2) the taxpayer (and, if such liability relates to a joint return, the taxpayer's spouse) has not, during any of the preceding 5 taxable years—

(A) failed to file any return of tax imposed by subtitle A;

(B) failed to pay any tax required to be shown on any such return; or

(C) entered into an installment agreement under this section for payment of any tax imposed by subtitle A,

(3) the Secretary determines that the taxpayer is financially unable to pay such liability in full when due (and the taxpayer submits such information as the Secretary may require to make such determination);

(4) the agreement requires full payment of such liability within 3 years; and

(5) the taxpayer agrees to comply with the provisions of this title for the period such agreement is in effect.

(d) Secretary required to review installment agreements for partial collection every two years

In the case of an agreement entered into by the Secretary under subsection (a) for partial collection of a tax liability, the Secretary shall review the agreement at least once every 2 years.

(e) Administrative review

The Secretary shall establish procedures for an independent administrative review of terminations of installment agreements under this section for taxpayers who request such a review.

(f) Cross reference

For rights to administrative review and appeal, see section 7122(e).

(Added Pub. L. 100–647, title VI, §6234(a), Nov. 10, 1988, 102 Stat. 3735; amended Pub. L. 104–168, title II, §§201(a), (b), 202(a), July 30, 1996, 110 Stat. 1456, 1457; Pub. L. 105–206, title III, §§3462(c)(2), 3467(a), July 22, 1998, 112 Stat. 766, 769; Pub. L. 105–277, div. J, title IV, §4002(g), Oct. 21, 1998, 112 Stat. 2681–907; Pub. L. 108–357, title VIII, §843(a), (b), Oct. 22, 2004, 118 Stat. 1600; Pub. L. 109–222, title V, §509(c), May 17, 2006, 120 Stat. 363.)

AMENDMENTS

2006—Subsec. (f). Pub. L. 109–222 substituted "section 7122(e)" for "section 7122(d)".

2004—Subsec. (a). Pub. L. 108–357, §843(a)(1), substituted "make payment on" for "satisfy liability for payment of" and inserted "full or partial" after "facilitate".

Subsec. (c). Pub. L. 108–357, §843(a)(2), inserted "full" before "payment" in introductory provisions.

Subsec. (d) to (f). Pub. L. 108–357, §843(b), added subsec. (d) and redesignated former subsecs. (d) and (e) as (e) and (f), respectively.

1998—Subsec. (c). Pub. L. 105–206, §3467(a), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 105–277 redesignated subsec. (d), relating to cross reference, as (e).

Pub. L. 105–206, §3467(a), redesignated former subsec. (c), relating to administrative review, as (d).

Pub. L. 105–206, §3462(c)(2), added subsec. (d), relating to cross reference.

Subsec. (e). Pub. L. 105–277 redesignated subsec. (d), relating to cross reference, as (e).

1996—Subsec. (b)(3). Pub. L. 104–168, §201(b), amended par. (3) generally. Prior to amendment, par. (3) read as follows:

"(A) IN GENERAL.—If the Secretary makes a determination that the financial condition of a taxpayer with whom the Secretary has entered into an agreement under subsection (a) has significantly changed, the Secretary may alter, modify, or terminate such agreement.

"(B) NOTICE.—Action may be taken by the Secretary under subparagraph (A) only if—

"(i) notice of such determination is provided to the taxpayer no later than 30 days prior to the date of such action, and

"(ii) such notice includes the reasons why the Secretary believes a significant change in the financial condition of the taxpayer has occurred."

Subsec. (b)(5). Pub. L. 104–168, §201(a), added par. (5).

Subsec. (c). Pub. L. 104–168, §202(a), added subsec. (c).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–222, title V, §509(d), May 17, 2006, 120 Stat. 364, provided that: "The amendments made by this section [amending this section and section 7122 of this title] shall apply to offers-in-compromise submitted on and after the date which is 60 days after the date of the enactment of this Act [May 17, 2006]."

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §843(c), Oct. 22, 2004, 118 Stat. 1600, provided that: "The amendments made by this section [amending this section] shall apply to agreements entered into on or after the date of the enactment of this Act [Oct. 22, 2004]."

EFFECTIVE DATE OF 1998 AMENDMENTS

Amendment by Pub. L. 105–277 effective as if included in the provision of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105–206, to which such amendment relates, see section 4002(k) of Pub. L. 105–277, set out as a note under section 1 of this title.

Amendment by section 3462(c)(2) of Pub. L. 105–206 applicable to proposed offers-in-compromise and installment agreements submitted after July 22, 1998, see section 3462(e)(1) of Pub. L. 105–206, set out as a note under section 6331 of this title.

Pub. L. 105–206, title III, §3467(b), July 22, 1998, 112 Stat. 770, provided that: "The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [July 22, 1998]."

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–168, title II, §201(c), July 30, 1996, 110 Stat. 1457, provided that: "The amendments made by this section [amending this section] shall take effect on the date 6 months after the date of the enactment of this Act [July 30, 1996]."

Pub. L. 104–168, title II, §202(b), July 30, 1996, 110 Stat. 1457, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on January 1, 1997."

EFFECTIVE DATE

Pub. L. 100–647, title VI, §6234(c), Nov. 10, 1988, 102 Stat. 3736, provided that: "The amendments made by this section [enacting this section and amending section 6601 of this title] shall apply to agreements entered into after the date of the enactment of this Act [Nov. 10, 1988]."

STATEMENTS REGARDING INSTALLMENT AGREEMENTS

Pub. L. 105–206, title III, §3506, July 22, 1998, 112 Stat. 771, as amended by Pub. L. 106–554, §1(a)(7)

[title III, §302(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–632, provided that: "The Secretary of the Treasury or the Secretary's delegate shall, beginning not later than September 1, 2001, provide each taxpayer who has an installment agreement in effect under section 6159 of the Internal Revenue Code of 1986 an annual statement setting forth the initial balance at the beginning of the year, the payments made during the year, and the remaining balance as of the end of the year."

Subchapter B—Extensions of Time for Payment

Sec.
6161. Extension of time for paying tax.
[6162. Repealed.]
6163. Extension of time for payment of estate tax on value of reversionary or remainder interest in property.
6164. Extension of time for payment of taxes by corporations expecting carrybacks.
6165. Bonds where time to pay tax or deficiency has been extended.
6166. Extension of time for payment of estate tax where estate consists largely of interest in closely held business.
[6166A. Repealed.]
6167. Extension of time for payment of tax attributable to recovery of foreign expropriation losses.

AMENDMENTS

1981—Pub. L. 97–34, title IV, §422(e)(5)(C), Aug. 13, 1981, 95 Stat. 316, substituted in item 6166 "Extension of time" for "Alternate extension of time" and struck out item 6166A "Extension of time for payment of estate tax where estate consists largely of interest in closely held business".

1976—Pub. L. 94–455, title XIX, §1906(b)(4), title XX, §2004(f)(5), Oct. 4, 1976, 90 Stat. 1833, 1872, struck out item 6162 "Extension of time for payment of tax on gain attributable to liquidation of personal holding companies", added item 6166, and renumbered former item 6166 as 6166A.

1966—Pub. L. 89–384, §1(g)(2), Apr. 8, 1966, 80 Stat. 104, added item 6167.

1958—Pub. L. 85–866, title II, §206(b), Sept. 2, 1958, 72 Stat. 1684, added item 6166.

§6161. Extension of time for paying tax

(a) Amount determined by taxpayer on return

(1) General rule

The Secretary, except as otherwise provided in this title, may extend the time for payment of the amount of the tax shown, or required to be shown, on any return or declaration required under authority of this title (or any installment thereof), for a reasonable period not to exceed 6 months (12 months in the case of estate tax) from the date fixed for payment thereof. Such extension may exceed 6 months in the case of a taxpayer who is abroad.

(2) Estate tax

The Secretary may, for reasonable cause, extend the time for payment of—

(A) any part of the amount determined by the executor as the tax imposed by chapter 11, or

(B) any part of any installment under section 6166 (including any part of a deficiency prorated to any installment under such section).

for a reasonable period not in excess of 10 years from the date prescribed by section 6151(a) for payment of the tax (or, in the case of an amount referred to in subparagraph (B), if later, not beyond the date which is 12 months after the due date for the last installment).

(b) Amount determined as deficiency

(1) Income, gift, and certain other taxes

Under regulations prescribed by the Secretary, the Secretary may extend the time for the payment of the amount determined as a deficiency of a tax imposed by chapter 1, 12, 41, 42, 43, or 44 for a period not to exceed 18 months from the date fixed for the payment of the deficiency, and in exceptional cases, for a further period not to exceed 12 months. An extension under this paragraph may be granted only where it is shown to the satisfaction of the Secretary that payment of a deficiency upon the date fixed for the payment thereof will result in undue hardship to the taxpayer in the case of a tax imposed by chapter 1, 41, 42, 43, or 44, or to the donor in the case of a tax imposed by chapter 12.

(2) Estate tax

Under regulations prescribed by the Secretary, the Secretary may, for reasonable cause, extend the time for the payment of any deficiency of a tax imposed by chapter 11 for a reasonable period not to exceed 4 years from the date otherwise fixed for the payment of the deficiency.

(3) No extension for certain deficiencies

No extension shall be granted under this subsection for any deficiency if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

(c) Claims in cases under title 11 of the United States Code or in receivership proceedings

Extensions of time for payment of any portion of a claim for tax under chapter 1 or chapter 12, allowed in cases under title 11 of the United States Code or in receivership proceedings, which is unpaid, may be had in the same manner and subject to the same provisions and limitations as provided in subsection (b) in respect of a deficiency in such tax.

(d) Cross references

(1) Period of limitation

For extension of the period of limitation in case of an extension under subsection (a)(2) or subsection (b)(2), see section 6503(d).

(2) Security

For authority of the Secretary to require security in case of an extension under subsection (a)(2) or subsection (b), see section 6165.

(3) Postponement of certain acts

For time for performing certain acts postponed by reason of war, see section 7508, and by reason of Presidentially declared disaster or terroristic or military action, see section 7508A.

(Aug. 16, 1954, ch. 736, 68A Stat. 762; Pub. L. 85–866, title II, §206(c), Sept. 2, 1958, 72 Stat. 1684; Pub. L. 91–172, title I, §101(j)(37), Dec. 30, 1969, 83 Stat. 530; Pub. L. 91–614, title I, §101(h), Dec. 31, 1970, 84 Stat. 1838; Pub. L. 93–406, title II, §1016(a)(7), Sept. 2, 1974, 88 Stat. 929; Pub. L. 94–455, title XIII, §1307(d)(2)(C), title XVI, §1605(b)(3), title XIX, §1906(b)(13)(A), title XX, §2004(c)(1), (2), Oct. 4, 1976, 90 Stat. 1727, 1754, 1834, 1867, 1868; Pub. L. 96–223, title I, §101(f)(1)(H), Apr. 2, 1980, 94 Stat. 252; Pub. L. 96–589, §6(i)(8), Dec. 24, 1980, 94 Stat. 3410; Pub. L. 97–34, title IV, §422(e)(1), Aug. 13, 1981, 95 Stat. 316; Pub. L. 100–418, title I, §1941(b)(2)(B)(viii), Aug. 23, 1988, 102 Stat. 1323; Pub. L. 107–134, title I, §112(d)(3), Jan. 23, 2002, 115 Stat. 2435.)

AMENDMENTS

2002—Subsec. (d)(3). Pub. L. 107–134 added par. (3).

1988—Subsec. (b)(1). Pub. L. 100–418 substituted "or 44" for "44, or 45" in two places.

1981—Subsec. (a)(2)(B). Pub. L. 97–34 struck out reference to section 6166A.

1980—Subsec. (b)(1). Pub. L. 96–223 inserted references to chapter 45.

Subsec. (c). Pub. L. 96–589 substituted "Claims in cases under title 11 of the United States Code or in receivership proceedings" for "Claims in bankruptcy or receivership proceedings" in heading, and substituted reference to cases under title 11 of the United States Code, for reference to bankruptcy proceedings in text.

1976—Subsec. (a)(1). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (a)(2). Pub. L. 94–455, §2004(c)(1), struck out in subpar. (A) "that the payment, on the due date,

of" before "any part of the amount", in subpar. (B) provisions relating to payment, on the date fixed for payment of any installment, and subpar. (C) which related to payment upon notice and demand of a deficiency prorated under the provisions of section 6161, inserted in subpar. (B) "or 6166A" after "section 6166", substituted in subpar. (B) "under such section" for "the date for payment for which had not arrived", and inserted in text following subpar. (B) provisions relating to extension of time for payment in the case of an amount referred to in subpar. (B).

Subsec. (b). Pub. L. 94–455, §§1307(d)(2)(C), 1605(b)(3), 2004(c)(2), among other changes, inserted reference to chapter 41, effective on or after Oct. 4, 1976, and reference to chapter 44, applicable to taxable years of real estate investment trusts beginning after Oct. 4, 1976, and struck out provisions relating to grant of extensions with respect to hardships to taxpayers, applicable to the estates of decedents dying after Dec. 31, 1976.

Subsec. (d)(2). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

1974—Subsec. (b). Pub. L. 93–406 inserted references to chapter 43.

1970—Subsec. (a)(1). Pub. L. 91–614 substituted "6 months (12 months in the case of estate tax)" for "6 months".

1969—Subsec. (b). Pub. L. 91–172 inserted references to chapter 42.

1958—Subsec. (a)(2). Pub. L. 85–866 inserted provisions allowing Secretary or his delegate to extend time for payment for reasonable period, not exceeding 10 years from date prescribed by section 6151(a), if he finds that payment on date fixed for payment of any installment under section 6166, or any part of such installment, or payment of any part of a deficiency prorated under section 6166 to installments the date for payment of which had arrived would result in undue hardship.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–134 applicable to disasters and terroristic or military actions occurring on or after Sept. 11, 2001, with respect to any action of the Secretary of the Treasury, the Secretary of Labor, or the Pension Benefit Guaranty Corporation occurring on or after Jan. 23, 2002, see section 112(f) of Pub. L. 107–134, set out as a note under section 6081 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–418 applicable to crude oil removed from the premises on or after Aug. 23, 1988, see section 1941(c) of Pub. L. 100–418, set out as a note under section 164 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to estates of decedents dying after Dec. 31, 1981, see section 422(f)(1) of Pub. L. 97–34, set out as a note under section 6166 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–589 effective Oct. 1, 1979, but not applicable to proceedings under Title 11, Bankruptcy, commenced before Oct. 1, 1979, see section 7(e) of Pub. L. 96–589, set out as a note under section 108 of this title.

Pub. L. 96–223, title I, §101(i), Apr. 2, 1980, 94 Stat. 254, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—The amendments made by this section [enacting sections 4986 to 4998, 6050C, 6076, and 7241 of this title and amending this section and sections 164, 6211, 6212, 6213, 6214, 6302, 6344, 6501, 6511, 6512, 6601, 6611, 6652, 6653, 6862, 7422, and 7512 of this title] shall apply to periods after February 29, 1980.

"(2) TRANSITIONAL RULES.—For the period ending June 30, 1980, the Secretary of the Treasury or his delegate shall prescribe rules relating to the administration of chapter 45 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]. To the extent provided in such rules, such rules shall supplement or supplant for such period the administrative provisions contained in chapter 45 of such Code (or in so much of subtitle F of such Code [section 6001 et seq. of this title] as relates to such chapter 45)."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1307(d)(2)(C) of Pub. L. 94–455 effective on and after Oct. 4, 1976, see section 1307(e)(6) of Pub. L. 94–455, set out as a note under section 501 of this title.

For effective date of amendment by section 1605(b)(3) of Pub. L. 94–455, see section 1608(d) of Pub. L. 94–455, set out as a note under section 856 of this title.

Amendment by section 2004(c)(1), (2) of Pub. L. 94–455 applicable to estates of decedents dying after Dec. 31, 1976, see section 2004(g) of Pub. L. 94–455, set out as an Effective Date note under section 6166 of this

title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–406 applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93–406, for plan years beginning after Sept. 2, 1974, but, in the case of plans in existence on Jan. 1, 1974, amendment by Pub. L. 93–406 applicable for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93–406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–614 applicable with respect to decedents dying after Dec. 31, 1970, see section 101(j) of Pub. L. 91–614, set out as a note under section 2032 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85–866, title II, §206(f), Sept. 2, 1958, 72 Stat. 1685, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by this section [enacting section 6166 of this title and amending this section and sections 6503 and 6601 of this title] shall apply to estates of decedents with respect to which the date for the filing of the estate tax return (including extensions thereof) prescribed by section 6075(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] is after the date of the enactment of this Act [Sept. 2, 1958]; except that (1) section 6166(i) of such Code as added by this section shall apply to estates of decedents dying after August 16, 1954, but only if the date for the filing of the estate tax return (including extensions thereof) expired on or before the date of the enactment of this Act [Sept. 2, 1958], and (2) notwithstanding section 6166(a) of such Code, if an election under such section is required to be made before the sixtieth day after the date of the enactment of this Act [Sept. 2, 1958] such an election shall be considered timely if made on or before such sixtieth day."

[§6162. Repealed. Pub. L. 94–455, title XIX, §1906(a)(12), Oct. 4, 1976, 90 Stat. 1825]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 763, provided for an extension of time for payment of tax on gain attributable to liquidation of personal holding companies.

EFFECTIVE DATE OF REPEAL

Repeal effective on first day of month which begins more than 90 days after Oct. 4, 1976, see section 1906(d)(1) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 6013 of this title.

§6163. Extension of time for payment of estate tax on value of reversionary or remainder interest in property

(a) Extension permitted

If the value of a reversionary or remainder interest in property is included under chapter 11 in the value of the gross estate, the payment of the part of the tax under chapter 11 attributable to such interest may, at the election of the executor, be postponed until 6 months after the termination of the precedent interest or interests in the property, under such regulations as the Secretary may prescribe.

(b) Extension for reasonable cause

At the expiration of the period of postponement provided for in subsection (a), the Secretary may, for reasonable cause, extend the time for payment for a reasonable period or periods not in excess of 3 years from the expiration of the period of postponement provided in subsection (a).

(c) Cross reference

For authority of the Secretary to require security in the case of an extension under this

section, see section 6165.

(Aug. 16, 1954, ch. 736, 68A Stat. 763; Pub. L. 85–866, title I, §66(b)(1), Sept. 2, 1958, 72 Stat. 1658; Pub. L. 88–272, title II, §240(a), Feb. 26, 1964, 78 Stat. 129; Pub. L. 93–625, §7(d)(1), Jan. 3, 1975, 88 Stat. 2115; Pub. L. 94–455, title XIX, §1906(b)(13)(A), title XX, §2004(c)(3), Oct. 4, 1976, 90 Stat. 1834, 1868.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (b). Pub. L. 94–455, §2004(c)(3), substituted provisions relating to extension of time for payment for a reasonable cause for provisions relating to extension of time for payment for undue hardship to the estate.

Subsec. (c). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

1975—Subsec. (c). Pub. L. 93–625 struck out par. (1) cross reference to interest provisions of section 6601(b) of this title and struck out par. (2) designation of cross reference to security, now incorporated in present subsec. (c) provision.

1964—Subsec. (b). Pub. L. 88–272 substituted "or periods not in excess of 3" for "not in excess of 2".

1958—Subsecs. (b), (c). Pub. L. 85–866 added subsec. (b) and redesignated former subsec. (b) as (c).

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 2004(c)(3) of Pub. L. 94–455 applicable to estates of decedents dying after Dec. 31, 1976, see section 2004(g) of Pub. L. 94–455, set out as an Effective Date note under section 6166 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–625 effective on July 1, 1975, and applicable to amounts outstanding on such date or arising thereafter, see section 7(e) of Pub. L. 93–625, set out as an Effective Date note under section 6621 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88–272, title II, §240(c), Feb. 26, 1964, 78 Stat. 129, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) The amendment made by subsection (a) [amending this section] shall apply in the case of any reversionary or remainder interest only if the time for payment of the tax under chapter 11 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] attributable to such interest, including any extensions thereof, has not expired on the date of the enactment of this Act [Feb. 26, 1964].

"(2) The amendment made by subsection (b) [amending section 925 of I.R.C. 1939] shall apply in the case of any reversionary or remainder interest only if the time for payment of the tax under chapter 3 of the Internal Revenue Code of 1939 attributable to such interest, including any extensions thereof, has not expired on the date of the enactment of this Act [Feb. 26, 1964]."

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85–866, title I, §66(b)(3), Sept. 2, 1958, 72 Stat. 1658, provided that: "The amendments made by paragraphs (1) and (2) [amending this section and sections 925 and 926 of I.R.C. 1939] shall apply in the case of any reversionary or remainder interest only if the precedent interest or interests in the property did not terminate before the beginning of the 6-month period which ends on the date of the enactment of this Act [Sept. 2, 1958]."

§6164. Extension of time for payment of taxes by corporations expecting carrybacks

(a) In general

If a corporation, in any taxable year, files with the Secretary a statement, as provided in subsection (b), with respect to an expected net operating loss carryback from such taxable year, the time for payment of all or part of any tax imposed by subtitle A for the taxable year immediately preceding such taxable year shall be extended, to the extent and subject to the conditions and limitations hereinafter provided in this section.

(b) Contents of statement

The statement shall be filed at such time and in such manner and form as the Secretary may by regulations prescribe. Such statement shall set forth that the corporation expects to have a net operating loss carryback, as provided in section 172(b), from the taxable year in which such statement is made, and shall set forth, in such detail and with such supporting data and explanation as such regulations shall require—

(1) the estimated amount of the expected net operating loss;

(2) the reasons, facts, and circumstances which cause the corporation to expect such net operating loss;

(3) the amount of the reduction of the tax previously determined attributable to the expected carryback, such tax previously determined being ascertained in accordance with the method prescribed in section 1314(a); and such reduction being determined by applying the expected carryback in the manner provided by law to the items on the basis of which such tax was determined;

(4) the tax and the part thereof the time for payment of which is to be extended; and

(5) such other information for purposes of carrying out the provisions of this section as may be required by such regulations.

The Secretary shall, upon request, furnish a receipt for any statement filed, which shall set forth the date of such filing.

(c) Amount to which extension relates and installment payments

The amount the time for payment of which may be extended under subsection (a) with respect to any tax shall not exceed the amount of such tax shown on the return, increased by any amount assessed as a deficiency (or as interest or addition to the tax) prior to the date of filing the statement and decreased by any amount paid or required to be paid prior to the date of such filing, and the total amount of the tax the time for payment of which may be extended shall not exceed the amount stated under subsection (b)(3). For purposes of this subsection, an amount shall not be considered as required to be paid unless shown on the return or assessed as a deficiency (or as interest or addition to the tax), and an amount assessed as a deficiency (or as interest or addition to the tax) shall be considered to be required to be paid prior to the date of filing of the statement if the 10th day after notice and demand for its payment occurs prior to such date. If an extension of time under this section relates to only a part of the tax, the time for payment of the remainder shall be the date on which payment would have been required if such remainder had been the tax.

(d) Period of extension

The extension of time for payment provided in this section shall expire—

(1) on the last day of the month in which falls the last date prescribed by law (including any extension of time granted the taxpayer) for the filing of the return for the taxable year of the expected net operating loss, or

(2) if an application for tentative carryback adjustment provided in section 6411 with respect to such loss is filed before the expiration of the period prescribed in paragraph (1), on the date on which notice is mailed by certified mail or registered mail by the Secretary to the taxpayer that such application is allowed or disallowed in whole or in part.

(e) Revised statements

Each statement filed under subsection (a) with respect to any taxable year shall be in lieu of the last statement previously filed with respect to such year. If the amount the time for payment of which is extended under a statement filed is less than the amount under the last statement previously filed, the extension of time shall be terminated as to the difference between the two amounts.

(f) Termination

The Secretary is not required to make any examination of the statement, but he may make such examination thereof as he deems necessary and practicable. The Secretary shall terminate the

extension as to any part of the amount to which it relates which he deems should be terminated because, upon such examination, he believes that, as of the time such examination is made, all or any part of the statement clearly is in a material respect erroneous or unreasonable.

(g) Payments on termination

If an extension of time is terminated under subsection (e) or (f) with respect to any amount, then—

(1) no further extension of time shall be made under this section with respect to such amount, and

(2) the time for payment of such amount shall be considered to be the date on which payment would have been required if there had been no extension with respect to such amount.

(h) Jeopardy

If the Secretary believes that collection of the amount to which an extension under this section relates is in jeopardy, he shall immediately terminate such extension, and notice and demand shall be made by him for payment of such amount.

(i) Consolidated returns

If the corporation seeking an extension of time under this section made or was required to make a consolidated return, either for the taxable year within which the net operating loss arises or for the preceding taxable year affected by such loss, the provisions of such section shall apply only to such extent and subject to such conditions, limitations, and exceptions as the Secretary may by regulations prescribe.

(Aug. 16, 1954, ch. 736, 68A Stat. 764; Pub. L. 85–866, title I, §89(b), Sept. 2, 1958, 72 Stat. 1665; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–248, title II, §234(b)(2)(C), Sept. 3, 1982, 96 Stat. 503.)

AMENDMENTS

1982—Subsec. (c). Pub. L. 97–248, §234(b)(2)(C)(i), substituted "shall be the date on which payment would have been required if such remainder had been the tax" for "shall be considered to be the dates on which payments would have been required if such remainder had been the tax and the taxpayer had elected to pay the tax in installments as provided in section 6152" in last sentence.

Subsec. (g)(2). Pub. L. 97–248, §234(b)(2)(C)(ii), substituted "date on which payment would have been required if there had been no extension with respect to such amount" for "dates on which payments would have been required if there had been no extension with respect to such amount and the taxpayer had elected to pay the tax in installments as provided in section 6152".

1976—Subsecs. (a), (b), (d), (f), (h), (i). Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

1958—Subsec. (d)(2). Pub. L. 85–866 inserted "certified mail or" before "registered mail".

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to taxable years beginning after Dec. 31, 1982, see section 234(e) of Pub. L. 97–248, set out as a note under section 6655 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable only if mailing occurs after Sept. 2, 1958, see section 89(d) of Pub. L. 85–866, set out as a note under section 7502 of this title.

§6165. Bonds where time to pay tax or deficiency has been extended

In the event the Secretary grants any extension of time within which to pay any tax or any deficiency therein, the Secretary may require the taxpayer to furnish a bond in such amount (not exceeding double the amount with respect to which the extension is granted) conditioned upon the payment of the amount extended in accordance with the terms of such extension.

(Aug. 16, 1954, ch. 736, 68A Stat. 766; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

§6166. Extension of time for payment of estate tax where estate consists largely of interest in closely held business

(a) 5-year deferral; 10-year installment payment

(1) In general

If the value of an interest in a closely held business which is included in determining the gross estate of a decedent who was (at the date of his death) a citizen or resident of the United States exceeds 35 percent of the adjusted gross estate, the executor may elect to pay part or all of the tax imposed by section 2001 in 2 or more (but not exceeding 10) equal installments.

(2) Limitation

The maximum amount of tax which may be paid in installments under this subsection shall be an amount which bears the same ratio to the tax imposed by section 2001 (reduced by the credits against such tax) as—

(A) the closely held business amount, bears to

(B) the amount of the adjusted gross estate.

(3) Date for payment of installments

If an election is made under paragraph (1), the first installment shall be paid on or before the date selected by the executor which is not more than 5 years after the date prescribed by section 6151(a) for payment of the tax, and each succeeding installment shall be paid on or before the date which is 1 year after the date prescribed by this paragraph for payment of the preceding installment.

(b) Definitions and special rules

(1) Interest in closely held business

For purposes of this section, the term "interest in a closely held business" means—

(A) an interest as a proprietor in a trade or business carried on as a proprietorship;

(B) an interest as a partner in a partnership carrying on a trade or business, if—

(i) 20 percent or more of the total capital interest in such partnership is included in determining the gross estate of the decedent, or

(ii) such partnership had 45 or fewer partners; or

(C) stock in a corporation carrying on a trade or business if—

(i) 20 percent or more in value of the voting stock of such corporation is included in determining the gross estate of the decedent, or

(ii) such corporation had 45 or fewer shareholders.

(2) Rules for applying paragraph (1)

For purposes of paragraph (1)—

(A) Time for testing

Determinations shall be made as of the time immediately before the decedent's death.

(B) Certain interests held by husband and wife

Stock or a partnership interest which—

(i) is community property of a husband and wife (or the income from which is community income) under the applicable community property law of a State, or

(ii) is held by a husband and wife as joint tenants, tenants by the entirety, or tenants in common,

shall be treated as owned by one shareholder or one partner, as the case may be.

(C) Indirect ownership

Property owned, directly or indirectly, by or for a corporation, partnership, estate, or trust shall be considered as being owned proportionately by or for its shareholders, partners, or beneficiaries. For purposes of the preceding sentence, a person shall be treated as a beneficiary of any trust only if such person has a present interest in the trust.

(D) Certain interests held by members of decedent's family

All stock and all partnership interests held by the decedent or by any member of his family (within the meaning of section 267(c)(4)) shall be treated as owned by the decedent.

(3) Farmhouses and certain other structures taken into account

For purposes of the 35-percent requirement of subsection (a)(1), an interest in a closely held business which is the business of farming includes an interest in residential buildings and related improvements on the farm which are occupied on a regular basis by the owner or lessee of the farm or by persons employed by such owner or lessee for purposes of operating or maintaining the farm.

(4) Value

For purposes of this section, value shall be value determined for purposes of chapter 11 (relating to estate tax).

(5) Closely held business amount

For purposes of this section, the term "closely held business amount" means the value of the interest in a closely held business which qualifies under subsection (a)(1).

(6) Adjusted gross estate

For purposes of this section, the term, "adjusted gross estate" means the value of the gross estate reduced by the sum of the amounts allowable as a deduction under section 2053 or 2054. Such sum shall be determined on the basis of the facts and circumstances in existence on the date (including extensions) for filing the return of tax imposed by section 2001 (or, if earlier, the date on which such return is filed).

(7) Partnership interests and stock which is not readily tradable

(A) In general

If the executor elects the benefits of this paragraph (at such time and in such manner as the Secretary shall by regulations prescribe), then—

(i) for purposes of paragraph (1)(B)(i) or (1)(C)(i) (whichever is appropriate) and for purposes of subsection (c), any capital interest in a partnership and any non-readily-tradable stock which (after the application of paragraph (2)) is treated as owned by the decedent shall be treated as included in determining the value of the decedent's gross estate,

(ii) the executor shall be treated as having selected under subsection (a)(3) the date prescribed by section 6151(a), and

(iii) for purposes of applying section 6601(j), the 2-percent portion (as defined in such section) shall be treated as being zero.

(B) Non-readily-tradable stock defined

For purposes of this paragraph, the term "non-readily-tradable stock" means stock for which, at the time of the decedent's death, there was no market on a stock exchange or in an over-the-counter market.

(8) Stock in holding company treated as business company stock in certain cases

(A) In general

If the executor elects the benefits of this paragraph, then—

(i) Holding company stock treated as business company stock

For purposes of this section, the portion of the stock of any holding company which represents direct ownership (or indirect ownership through 1 or more other holding companies) by such company in a business company shall be deemed to be stock in such business company.

(ii) 5-year deferral for principal not to apply

The executor shall be treated as having selected under subsection (a)(3) the date prescribed by section 6151(a).

(iii) 2-percent interest rate not to apply

For purposes of applying section 6601(j), the 2-percent portion (as defined in such section) shall be treated as being zero.

(B) All stock must be non-readily-tradable stock

(i) In general

No stock shall be taken into account for purposes of applying this paragraph unless it is non-readily-tradable stock (within the meaning of paragraph (7)(B)).

(ii) Special application where only holding company stock is non-readily-tradable stock

If the requirements of clause (i) are not met, but all of the stock of each holding company taken into account is non-readily-tradable, then this paragraph shall apply, but subsection (a)(1) shall be applied by substituting "5" for "10".

(C) Application of voting stock requirement of paragraph (1)(C)(i)

For purposes of clause (i) of paragraph (1)(C), the deemed stock resulting from the application of subparagraph (A) shall be treated as voting stock to the extent that voting stock in the holding company owns directly (or through the voting stock of 1 or more other holding companies) voting stock in the business company.

(D) Definitions

For purposes of this paragraph—

(i) Holding company

The term "holding company" means any corporation holding stock in another corporation.

(ii) Business company

The term "business company" means any corporation carrying on a trade or business.

(9) Deferral not available for passive assets

(A) In general

For purposes of subsection (a)(1) and determining the closely held business amount (but not for purposes of subsection (g)), the value of any interest in a closely held business shall not include the value of that portion of such interest which is attributable to passive assets held by the business.

(B) Passive asset defined

For purposes of this paragraph—

(i) In general

The term "passive asset" means any asset other than an asset used in carrying on a trade or business.

(ii) Stock treated as passive asset

The term "passive asset" includes any stock in another corporation unless—

(I) such stock is treated as held by the decedent by reason of an election under paragraph (8), and

(II) such stock qualified under subsection (a)(1).

(iii) Exception for active corporations

If—

(I) a corporation owns 20 percent or more in value of the voting stock of another corporation, or such other corporation has 45 or fewer shareholders, and

(II) 80 percent or more of the value of the assets of each such corporation is attributable to assets used in carrying on a trade or business,

then such corporations shall be treated as 1 corporation for purposes of clause (ii). For purposes of applying subclause (II) to the corporation holding the stock of the other corporation, such stock shall not be taken into account.

(10) Stock in qualifying lending and finance business treated as stock in an active trade or business company

(A) In general

If the executor elects the benefits of this paragraph, then—

(i) Stock in qualifying lending and finance business treated as stock in an active trade or business company

For purposes of this section, any asset used in a qualifying lending and finance business shall be treated as an asset which is used in carrying on a trade or business.

(ii) 5-year deferral for principal not to apply

The executor shall be treated as having selected under subsection (a)(3) the date prescribed by section 6151(a).

(iii) 5 equal installments allowed

For purposes of applying subsection (a)(1), "5" shall be substituted for "10".

(B) Definitions

For purposes of this paragraph—

(i) Qualifying lending and finance business

The term "qualifying lending and finance business" means a lending and finance business, if—

(I) based on all the facts and circumstances immediately before the date of the decedent's death, there was substantial activity with respect to the lending and finance business, or

(II) during at least 3 of the 5 taxable years ending before the date of the decedent's death, such business had at least 1 full-time employee substantially all of whose services were the active management of such business, 10 full-time, nonowner employees substantially all of whose services were directly related to such business, and $5,000,000 in gross receipts from activities described in clause (ii).

(ii) Lending and finance business

The term "lending and finance business" means a trade or business of—

(I) making loans,

(II) purchasing or discounting accounts receivable, notes, or installment obligations,

(III) engaging in rental and leasing of real and tangible personal property, including entering into leases and purchasing, servicing, and disposing of leases and leased assets,

(IV) rendering services or making facilities available in the ordinary course of a lending or finance business, and

(V) rendering services or making facilities available in connection with activities described in subclauses (I) through (IV) carried on by the corporation rendering services or making facilities available, or another corporation which is a member of the same affiliated group (as defined in section 1504 without regard to section 1504(b)(3)).

(iii) Limitation

The term "qualifying lending and finance business" shall not include any interest in an entity, if the stock or debt of such entity or a controlled group (as defined in section 267(f)(1)) of which such entity was a member was readily tradable on an established securities market or secondary market (as defined by the Secretary) at any time within 3 years before the date of the decedent's death.

(c) Special rule for interest in 2 or more closely held businesses

For purposes of this section, interest in 2 or more closely held businesses, with respect to each of which there is included in determining the value of the decedent's gross estate 20 percent or more of the total value of each such business, shall be treated as an interest in a single closely held business. For purposes of the 20-percent requirement of the preceding sentence, an interest in a closely held business which represents the surviving spouse's interest in property held by the decedent and the surviving spouse as community property or as joint tenants, tenants by the entirety, or tenants in common shall be treated as having been included in determining the value of the decedent's gross estate.

(d) Election

Any election under subsection (a) shall be made not later than the time prescribed by section 6075(a) for filing the return of tax imposed by section 2001 (including extensions thereof), and shall be made in such manner as the Secretary shall by regulations prescribe. If an election under subsection (a) is made, the provisions of this subtitle shall apply as though the Secretary were extending the time for payment of the tax.

(e) Proration of deficiency to installments

If an election is made under subsection (a) to pay any part of the tax imposed by section 2001 in installments and a deficiency has been assessed, the deficiency shall (subject to the limitation provided by subsection (a)(2)) be prorated to the installments payable under subsection (a). The part of the deficiency so prorated to any installment the date for payment of which has not arrived shall be collected at the same time as, and as a part of, such installment. The part of the deficiency so prorated to any installment the date for payment of which has arrived shall be paid upon notice and demand from the Secretary. This subsection shall not apply if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

(f) Time for payment of interest

If the time for payment of any amount of tax has been extended under this section—

(1) Interest for first 5 years

Interest payable under section 6601 of any unpaid portion of such amount attributable to the first 5 years after the date prescribed by section 6151(a) for payment of the tax shall be paid annually.

(2) Interest for periods after first 5 years

Interest payable under section 6601 on any unpaid portion of such amount attributable to any period after the 5-year period referred to in paragraph (1) shall be paid annually at the same time as, and as a part of, each installment payment of the tax.

(3) Interest in the case of certain deficiencies

In the case of a deficiency to which subsection (e) applies which is assessed after the close of the 5-year period referred to in paragraph (1), interest attributable to such 5-year period, and interest assigned under paragraph (2) to any installment the date for payment of which has arrived on or before the date of the assessment of the deficiency, shall be paid upon notice and demand from the Secretary.

(4) Selection of shorter period

If the executor has selected a period shorter than 5 years under subsection (a)(3), such shorter

period shall be substituted for 5 years in paragraphs (1), (2), and (3) of this subsection.

(g) Acceleration of payment

(1) Disposition of interest; withdrawal of funds from business

(A) If—

(i)(I) any portion of an interest in a closely held business which qualifies under subsection (a)(1) is distributed, sold, exchanged, or otherwise disposed of, or

(II) money and other property attributable to such an interest is withdrawn from such trade or business, and

(ii) the aggregate of such distributions, sales, exchanges, or other dispositions and withdrawals equals or exceeds 50 percent of the value of such interest,

then the extension of time for payment of tax provided in subsection (a) shall cease to apply, and the unpaid portion of the tax payable in installments shall be paid upon notice and demand from the Secretary.

(B) In the case of a distribution in redemption of stock to which section 303 (or so much of section 304 as relates to section 303) applies—

(i) the redemption of such stock, and the withdrawal of money and other property distributed in such redemption, shall not be treated as a distribution or withdrawal for purposes of subparagraph (A), and

(ii) for purposes of subparagraph (A), the value of the interest in the closely held business shall be considered to be such value reduced by the value of the stock redeemed.

This subparagraph shall apply only if, on or before the date prescribed by subsection (a)(3) for the payment of the first installment which becomes due after the date of the distribution (or, if earlier, on or before the day which is 1 year after the date of the distribution), there is paid an amount of the tax imposed by section 2001 not less than the amount of money and other property distributed.

(C) Subparagraph (A)(i) does not apply to an exchange of stock pursuant to a plan of reorganization described in subparagraph (D), (E), or (F) of section 368(a)(1) nor to an exchange to which section 355 (or so much of section 356 as relates to section 355) applies; but any stock received in such an exchange shall be treated for purposes of subparagraph (A)(i) as an interest qualifying under subsection (a)(1).

(D) Subparagraph (A)(i) does not apply to a transfer of property of the decedent to a person entitled by reason of the decedent's death to receive such property under the decedent's will, the applicable law of descent and distribution, or a trust created by the decedent. A similar rule shall apply in the case of a series of subsequent transfers of the property by reason of death so long as each transfer is to a member of the family (within the meaning of section 267(c)(4)) of the transferor in such transfer.

(E) Changes in interest in holding company

If any stock in a holding company is treated as stock in a business company by reason of subsection (b)(8)(A)—

(i) any disposition of any interest in such stock in such holding company which was included in determining the gross estate of the decedent, or

(ii) any withdrawal of any money or other property from such holding company attributable to any interest included in determining the gross estate of the decedent,

shall be treated for purposes of subparagraph (A) as a disposition of (or a withdrawal with respect to) the stock qualifying under subsection (a)(1).

(F) Changes in interest in business company

If any stock in a holding company is treated as stock in a business company by reason of subsection (b)(8)(A)—

(i) any disposition of any interest in such stock in the business company by such holding company, or

(ii) any withdrawal of any money or other property from such business company attributable to such stock by such holding company owning such stock,

shall be treated for purposes of subparagraph (A) as a disposition of (or a withdrawal with respect to) the stock qualifying under subsection (a)(1).

(2) Undistributed income of estate

(A) If an election is made under this section and the estate has undistributed net income for any taxable year ending on or after the due date for the first installment, the executor shall, on or before the date prescribed by law for filing the income tax return for such taxable year (including extensions thereof), pay an amount equal to such undistributed net income in liquidation of the unpaid portion of the tax payable in installments.

(B) For purposes of subparagraph (A), the undistributed net income of the estate for any taxable year is the amount by which the distributable net income of the estate for such taxable year (as defined in section 643) exceeds the sum of—

(i) the amounts for such taxable year specified in paragraphs (1) and (2) of section 661(a) (relating to deductions for distributions, etc.);

(ii) the amount of tax imposed for the taxable year on the estate under chapter 1; and

(iii) the amount of the tax imposed by section 2001 (including interest) paid by the executor during the taxable year (other than any amount paid pursuant to this paragraph).

(C) For purposes of this paragraph, if any stock in a corporation is treated as stock in another corporation by reason of subsection (b)(8)(A), any dividends paid by such other corporation to the corporation shall be treated as paid to the estate of the decedent to the extent attributable to the stock qualifying under subsection (a)(1).

(3) Failure to make payment of principal or interest

(A) In general

Except as provided in subparagraph (B), if any payment of principal or interest under this section is not paid on or before the date fixed for its payment by this section (including any extension of time), the unpaid portion of the tax payable in installments shall be paid upon notice and demand from the Secretary.

(B) Payment within 6 months

If any payment of principal or interest under this section is not paid on or before the date determined under subparagraph (A) but is paid within 6 months of such date—

(i) the provisions of subparagraph (A) shall not apply with respect to such payment,

(ii) the provisions of section 6601(j) shall not apply with respect to the determination of interest on such payment, and

(iii) there is imposed a penalty in an amount equal to the product of—

(I) 5 percent of the amount of such payment, multiplied by

(II) the number of months (or fractions thereof) after such date and before payment is made.

The penalty imposed under clause (iii) shall be treated in the same manner as a penalty imposed under subchapter B of chapter 68.

(h) Election in case of certain deficiencies

(1) In general

If—

(A) a deficiency in the tax imposed by section 2001 is assessed,

(B) the estate qualifies under subsection (a)(1), and

(C) the executor has not made an election under subsection (a),

the executor may elect to pay the deficiency in installments. This subsection shall not apply if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

(2) Time of election

An election under this subsection shall be made not later than 60 days after issuance of notice and demand by the Secretary for the payment of the deficiency, and shall be made in such manner as the Secretary shall by regulations prescribe.

(3) Effect of election on payment

If an election is made under this subsection, the deficiency shall (subject to the limitation provided by subsection (a)(2)) be prorated to the installments which would have been due if an election had been timely made under subsection (a) at the time the estate tax return was filed. The part of the deficiency so prorated to any installment the date for payment of which would have arrived shall be paid at the time of the making of the election under this subsection. The portion of the deficiency so prorated to installments the date for payment of which would not have so arrived shall be paid at the time such installments would have been due if such an election had been made.

(i) Special rule for certain direct skips

To the extent that an interest in a closely held business is the subject of a direct skip (within the meaning of section 2612(c)) occurring at the same time as and as a result of the decedent's death, then for purposes of this section any tax imposed by section 2601 on the transfer of such interest shall be treated as if it were additional tax imposed by section 2001.

(j) Regulations

The Secretary shall prescribe such regulations as may be necessary to the application of this section.

(k) Cross references

(1) Security

For authority of the Secretary to require security in the case of an extension under this section, see section 6165.

(2) Lien

For special lien (in lieu of bond) in the case of an extension under this section, see section 6324A.

(3) Period of limitation

For extension of the period of limitation in the case of an extension under this section, see section 6503(d).

(4) Interest

For provisions relating to interest on tax payable in installments under this section, see subsection (j) of section 6601.

(5) Transfers within 3 years of death

For special rule for qualifying an estate under this section where property has been transferred within 3 years of decedent's death, see section 2035(c)(2).

(Added Pub. L. 94–455, title XX, §2004(a), Oct. 4, 1976, 90 Stat. 1862; amended Pub. L. 95–600, title V, §512(a), (b), Nov. 6, 1978, 92 Stat. 2882, 2883; Pub. L. 97–34, title IV, §422(a), (c), (e)(5)(A), (B), Aug. 13, 1981, 95 Stat. 314–316; Pub. L. 97–448, title I, §104(c), (d)(1)(B), Jan. 12, 1983, 96 Stat. 2382, 2383; Pub. L. 98–369, div. A, title V, §544(b)(4), title X, §1021(a)–(d), July 18, 1984, 98 Stat. 894, 1024–1026; Pub. L. 99–514, title XIV, §1432(e), Oct. 22, 1986, 100 Stat. 2730; Pub. L. 104–188, title I, §1704(t)(15), Aug. 20, 1996, 110 Stat. 1888; Pub. L. 105–34, title V, §503(c)(1), Aug. 5, 1997, 111 Stat. 853; Pub. L. 105–206, title VI, §6007(c), July 22, 1998, 112 Stat.

809; Pub. L. 106–554, §1(a)(7) [title III, §319(18)], Dec. 21, 2000, 114 Stat. 2763, 2763A–647; Pub. L. 107–16, title V, §§571(a), 572(a), 573(a), June 7, 2001, 115 Stat. 92, 93.)

PRIOR PROVISIONS

A prior section 6166 was renumbered section 6166A of this title and later repealed by Pub. L. 97–34, title IV, §422(d), Aug. 13, 1981, 95 Stat. 315.

AMENDMENTS

2001—Subsec. (b)(1)(B)(ii), (C)(ii). Pub. L. 107–16, §571(a), substituted "45" for "15".

Subsec. (b)(8)(B). Pub. L. 107–16, §573(a), reenacted heading without change and amended text of subpar. (B) generally. Prior to amendment, text read as follows: "No stock shall be taken into account for purposes of applying this paragraph unless it is non-readily-tradable stock (within the meaning of paragraph (7)(B))."

Subsec. (b)(9)(B)(iii)(I). Pub. L. 107–16, §571(a), substituted "45" for "15".

Subsec. (b)(10). Pub. L. 107–16, §572(a), added par. (10).

2000—Subsec. (k)(5). Pub. L. 106–554 substituted "2035(c)(2)" for "2035(d)(4)".

1998—Subsec. (b)(7)(A)(iii). Pub. L. 105–206, §6007(c)(1), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: "section 6601(j) (relating to 2-percent rate of interest) shall not apply."

Subsec. (b)(8)(A)(iii). Pub. L. 105–206, §6007(c)(2), reenacted heading without change and amended text of cl. (iii) generally. Prior to amendment, text read as follows: "Section 6601(j) (relating to 2-percent rate of interest) shall not apply."

1997—Subsec. (b)(7)(A)(iii). Pub. L. 105–34 substituted "2-percent" for "4-percent".

Subsec. (b)(8)(A)(iii). Pub. L. 105–34 substituted "2-percent" for "4-percent" in heading and text.

1996—Subsec. (k)(6). Pub. L. 104–188 struck out par. (6) which provided cross reference to former section 2210(c) of this title authorizing payment of certain portion of estate tax in installments under provisions of this section.

1986—Subsecs. (i) to (k). Pub. L. 99–514 added subsec. (i) and redesignated former subsecs. (i) and (j) as (j) and (k), respectively.

1984—Subsec. (b)(8). Pub. L. 98–369, §1021(a), added par. (8).

Subsec. (b)(9). Pub. L. 98–369, §1021(b), added par. (9).

Subsec. (g)(1)(E), (F). Pub. L. 98–369, §1021(c), added subpars. (E) and (F).

Subsec. (g)(2)(C). Pub. L. 98–369, §1021(d), added subpar. (C).

Subsec. (j)(6). Pub. L. 98–369, §544(b)(4), added par. (6).

1983—Subsec. (b)(3). Pub. L. 97–448, §104(c)(1), substituted "35-percent requirement" for "65-percent requirement".

Subsec. (g)(1)(B)(i). Pub. L. 97–448, §104(c)(2), substituted "the redemption of such stock, and the withdrawal of money or other property distributed in such redemption, shall not be treated as a distribution or withdrawal for purposes of subparagraph (A), and" for "subparagraph (A)(i) does not apply with respect to the stock redeemed; and for purposes of such subparagraph the interest in the closely held business shall be considered to be such interest reduced by the value of the stock redeemed, and".

Subsec. (g)(1)(B)(ii). Pub. L. 97–448, §104(c)(2), substituted "for purposes of subparagraph (A), the value of the interest in the closely held business shall be considered to be such value reduced by the value of the stock redeemed" for "subparagraph (A)(ii) does not apply with respect to withdrawals of money and other property distributed; and for purposes of such subparagraph the value of the trade or business shall be considered to be such value reduced by the amount of money and other property distributed".

Subsec. (j)(5). Pub. L. 97–448, §104(d)(1)(B), added par. (5).

1981—Pub. L. 97–34, §422(e)(5)(B), substituted "Extension of time" for "Alternate extension of time" in section catchline.

Subsec. (a). Pub. L. 97–34, §422(a)(1), (e)(5)(A), substituted in par. (1) "35 percent" for "65 percent" and struck out par. (4) which provided that no election be made under this section by the executor of the estate of any decedent if an election under section 6166A applies with respect to the estate of such decedent.

Subsec. (c). Pub. L. 97–34, §422(a)(2), substituted "20 percent or more" for "more than 20 percent".

Subsec. (g)(1)(A). Pub. L. 97–34, §422(c)(1), redesignated cl. (i) as cl. (i)(I), substituted "any portion" for "one-third or more in value", added cl. (i)(II), substituted in cl. (ii) "the aggregate of such distributions, sales, exchanges, or other dispositions and withdrawals equals or exceeds 50 percent of the value of such interest" for "aggregate withdrawals of money and other property from the trade or business, an interest in which qualifies under subsection (a)(1), made with respect to such interest, equal or exceed one-third of the value of such trade or business" and in provision following cl. (ii) substituted "the unpaid portion" for "any unpaid portion".

Subsec. (g)(1)(D). Pub. L. 97–34, §422(c)(3), inserted provision for application of a similar rule in the case of a series of subsequent transfers of the property by reason of death so long as each transfer is to a member of the family of the transferor in such transfer.

Subsec. (g)(3). Pub. L. 97–34, §422(c)(2), substituted as heading "Failure to make payment of principal or interest" for "Failure to pay installment", designated existing provisions as subpar. (A), and in subpar. (A) as so designated, substituted "Except as provided in subparagraph (B), if any payment of principal or interest" for "If any installment" and "extension of time" for "extension of time for the payment of such installment", and added subpar. (B).

1978—Subsec. (b)(2)(D). Pub. L. 95–600, §512(a), added subpar. (D).

Subsec. (b)(7). Pub. L. 95–600, §512(b), added par. (7).

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–16, title V, §571(b), June 7, 2001, 115 Stat. 92, provided that: "The amendments made by this section [amending this section] shall apply to estates of decedents dying after December 31, 2001."

Pub. L. 107–16, title V, §572(b), June 7, 2001, 115 Stat. 93, provided that: "The amendment made by this section [amending this section] shall apply to estates of decedents dying after December 31, 2001."

Pub. L. 107–16, title V, §573(b), June 7, 2001, 115 Stat. 93, provided that: "The amendment made by this section [amending this section] shall apply to estates of decedents dying after December 31, 2001."

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to estates of decedents dying after Dec. 31, 1997, with special rule in case of estate of any decedent dying before Jan. 1, 1998, with respect to which there is an election under section 6166 of this title, see section 503(d) of Pub. L. 105–34, set out as a note under section 163 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99–514, set out as an Effective Date note under section 2601 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 544(b)(4) of Pub. L. 98–369 applicable to estates of decedents which are required to file returns on a date (including any extensions) after July 18, 1984, see section 544(d) of Pub. L. 98–369, set out as a note under section 2002 of this title.

Pub. L. 98–369, div. A, title X, §1021(e), July 18, 1984, 98 Stat. 1026, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply with respect to estates of decedents dying after the date of the enactment of this Act [July 18, 1984].

"(2) SPECIAL RULE.—

"(A) IN GENERAL.—At the election of the executor, if—

"(i) a corporation has 15 or fewer shareholders on June 22, 1984, and at all times thereafter before the date of the decedent's death, and

"(ii) stock of such corporation is included in the gross estate of the decedent,

then all other corporations all of the stock of which is owned directly or indirectly by the corporation described in clauses (i) and (ii) shall be treated as one corporation for purposes of section 6166 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].

"(B) EFFECT OF ELECTION.—Any executor who elects the application of this paragraph shall be treated as having made the election under paragraph (8) of section 6166(b) of such Code."

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title IV, §422(f), Aug. 13, 1981, 95 Stat. 316, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 303, 2011, 2204, 2621, 6161, 6324A, 6503, and 7403 of this title and repealing section 6166A of this title] shall apply to the estates of decedents dying after December 31, 1981.

"(2) ACCELERATION BY REASON OF SUBSEQUENT DEATH.—The amendment made by subsection (c)(3) [amending this section] shall apply to transfers after December 31, 1981."

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title V, §512(c), Nov. 6, 1978, 92 Stat. 2883, provided that: "The amendments made by this section [amending this section] shall apply with respect to the estates of decedents dying after the date of the enactment of this Act [Nov. 6, 1978]."

EFFECTIVE DATE

Pub. L. 94–455, title XX, §2004(g), Oct. 4, 1976, 90 Stat. 1872, provided that: "The amendments made by this section [enacting this section and section 6324A of this title and amending sections 303, 2011, 2204, 6136, 6161, 6503, 6601, and 7403 of this title] shall apply to the estates of decedents dying after December 31, 1976."

LAND DIVERTED UNDER 1983 PAYMENT-IN-KIND PROGRAM

Land diverted from production of agricultural commodities under a 1983 payment-in-kind program to be treated, for purposes of this section, as used during the 1983 crop year by qualified taxpayers in the active conduct of the trade or business of farming, with qualified taxpayers who materially participate in the diversion and devotion to conservation uses under a 1983 payment-in-kind program to be treated as materially participating in the operation of such land during the 1983 crop year, see section 3 of Pub. L. 98–4, set out as a note under section 61 of this title.

[§6166A. Repealed. Pub. L. 97–34, title IV, §422(d), Aug. 13, 1981, 95 Stat. 315]

Section, added Pub. L. 85–866, title II, §206(a), Sept. 2, 1958, 72 Stat. 1681, §6166; amended Pub. L. 93–625, §7(d)(2), (3), Jan. 3, 1975, 88 Stat. 2115; renumbered §6166A and amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), title XX, §2004(a), Oct. 4, 1976, 90 Stat. 1834, 1862, provided for an extension of time for payment of estate tax where estate consists largely of interest in closely held business.

EFFECTIVE DATE OF REPEAL

Repeal applicable to estates of decedents dying after Dec. 31, 1981, see section 422(f)(1) of Pub. L. 97–34, set out as an Effective Date of 1981 Amendment note under section 6166 of this title.

§6167. Extension of time for payment of tax attributable to recovery of foreign expropriation losses

(a) Extension allowed by election

If—

(1) a corporation has a recovery of a foreign expropriation loss to which section 1351 applies, and

(2) the portion of the recovery received in money is less than 25 percent of the amount of such recovery (as defined in section 1351(c)) and is not greater than the tax attributable to such recovery,

the tax attributable to such recovery shall, at the election of the taxpayer, be payable in 10 equal installments on the 15th day of the third month of each of the taxable years following the taxable year of the recovery. Such election shall be made at such time and in such manner as the Secretary may prescribe by regulations. If an election is made under this subsection, the provisions of this subtitle shall apply as though the Secretary were extending the time for payment of such tax.

(b) Extension permitted by Secretary

If a corporation has a recovery of a foreign expropriation loss to which section 1351 applies and if an election is not made under subsection (a), the Secretary may, upon finding that the payment of the tax attributable to such recovery at the time otherwise provided in this subtitle would result in undue hardship, extend the time for payment of such tax for a reasonable period or periods not in excess of 9 years from the date on which such tax is otherwise payable.

(c) Acceleration of payments

If—

(1) an election is made under subsection (a),

(2) during any taxable year before the tax attributable to such recovery is paid in full—

(A) any property (other than money) received on such recovery is sold or exchanged, or

(B) any property (other than money) received on any sale or exchange described in subparagraph (A) is sold or exchanged, and

(3) the amount of money received on such sale or exchange (reduced by the amount of the tax imposed under chapter 1 with respect to such sale or exchange), when added to the amount of money—

(A) received on such recovery, and

(B) received on previous sales or exchanges described in subparagraphs (A) and (B) of paragraph (2) (as so reduced),

exceeds the amount of money which may be received under subsection (a)(2),

an amount of the tax attributable to such recovery equal to such excess shall be payable on the 15th day of the third month of the taxable year following the taxable year in which such sale or exchange occurs. The amount of such tax so paid shall be treated, for purposes of this section, as a payment of the first unpaid installment or installments (or portion thereof) which become payable under subsection (a) following such taxable year.

(d) Proration of deficiency to installments

If an election is made under subsection (a), and a deficiency attributable to the recovery of a foreign expropriation loss has been assessed, the deficiency shall be prorated to such installments. The part of the deficiency so prorated to any installment the date for payment of which has not arrived shall be collected at the same time as, and as part of, such installment. The part of the deficiency so prorated to any installment the date for payment of which has arrived shall be paid upon notice and demand from the Secretary. This subsection shall not apply if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

(e) Time for payment of interest

If the time for payment for any amount of tax has been extended under this section, interest payable under section 6601 on any unpaid portion of such amount shall be paid annually at the same time as, and as part of, each installment payment of the tax. Interest, on that part of a deficiency prorated under this section to any installment the date for payment of which has not arrived, for the period before the date fixed for the last installment preceding the assessment of the deficiency, shall be paid upon notice and demand from the Secretary.

(f) Tax attributable to recovery of foreign expropriation loss

For purposes of this section, the tax attributable to a recovery of a foreign expropriation loss is the sum of—

(1) the additional tax imposed by section 1351(d)(1) on such recovery, and

(2) the amount by which the tax imposed under subtitle A is increased by reason of the gain on such recovery which under section 1351(e) is considered as gain on the involuntary conversion of property.

(g) Failure to pay installment

If any installment under this section is not paid on or before the date fixed for its payment by this section (including any extension of time for the payment of such installment), the unpaid portion of the tax payable in installments shall be paid upon notice and demand from the Secretary.

(h) Cross-references

(1) Security.—For authority of the Secretary to require security in the case of an extension under this section, see section 6165.

(2) Period of limitation.—For extension of the period of limitation in the case of an extension under this section, see section 6503(e).

(Added Pub. L. 89–384, §1(d), Apr. 8, 1966, 80 Stat. 102; amended Pub. L. 93–625, §7(d)(2), (3), Jan. 3, 1975, 88 Stat. 2115; Pub. L. 94–455, title XIX, §§1902(b)(2)(B), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1806, 1834.)

AMENDMENTS

1976—Subsecs. (a), (b), (d), (e), (g). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (h). Pub. L. 94–455, §§1902(b)(2)(B), 1906(b)(13)(A), substituted "section 6503(e)" for "section 6503(f)", and struck out "or his delegate" after "Secretary".

1975—Subsec. (e). Pub. L. 93–625, §7(d)(2), struck out provision that in applying section 6601(j) (relating to the application of the 4-percent interest rate in the case of recoveries of foreign expropriation losses to which this section applies) in the case of a deficiency, the entire amount which was prorated to installments under this section shall be treated as an amount of tax the payment of which was extended under this section.

Subsec. (h). Pub. L. 93–625, §7(d)(3), struck out par. (1) providing a cross reference for payment of interest at 4 percent per annum for period of an extension under section 6601(j) of this title, and redesignated pars. (2) and (3) as (1) and (2), respectively.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1902(b)(2)(B) of Pub. L. 94–455 applicable to estates of decedents dying after Oct. 4, 1976, see section 1902(c)(1) of Pub. L. 94–455, set out as a note under section 2011 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–625 effective July 1, 1975, and applicable to amounts outstanding on such date or arising thereafter, see section 7(e) of Pub. L. 93–625, set out as an Effective Date note under section 6621 of this title.

EFFECTIVE DATE

Section applicable with respect to amounts received after Dec. 31, 1964, in respect of foreign expropriation losses (as defined in section 1351(b) of this title) sustained after Dec. 31, 1958, see section 2 of Pub. L. 89–384, set out as a note under section 1351 of this title.

CHAPTER 63—ASSESSMENT

Subchapter		Sec.[1]
A.	**In general**	**6201**
B.	**Deficiency procedures in the case of income, estate, gift, and certain excise taxes**	**6211**
C.	**Tax treatment of partnership items**	**6221**
D.	**Treatment of electing large partnerships**	**6240**

AMENDMENTS

1997—Pub. L. 105–34, title XII, §1222(c), Aug. 5, 1997, 111 Stat. 1019, added item for subchapter D.

1996—Pub. L. 104–188, title I, §1307(c)(3)(C), Aug. 20, 1996, 110 Stat. 1782, struck out item for subchapter D "Tax treatment of subchapter S items".

1982—Pub. L. 97–354, §4(b), Oct. 19, 1982, 96 Stat. 1692, added item for subchapter D.

Pub. L. 97–248, title IV, §402(b), Sept. 3, 1982, 96 Stat. 667, added item for subchapter C.

1969—Pub. L. 91–172, title I, §101(j)(63), Dec. 30, 1969, 83 Stat. 532, inserted reference to certain excise

taxes in item for subchapter B.

[1] *Section numbers editorially supplied.*

Subchapter A—In General

Sec.

6201. Assessment authority.
6202. Establishment by regulations of mode or time of assessment.
6203. Method of assessment.
6204. Supplemental assessments.
6205. Special rules applicable to certain employment taxes.
6206. Special rules applicable to excessive claims under certain sections.
6207. Cross references.

AMENDMENTS

2005—Pub. L. 109–59, title XI, §11163(d)(4), Aug. 10, 2005, 119 Stat. 1975, substituted "certain sections" for "sections 6420, 6421, and 6427" in item 6206.

1983—Pub. L. 97–424, title V, §515(b)(3)(B), Jan. 6, 1983, 96 Stat. 2181, struck out reference to section 6424 in item 6206.

1970—Pub. L. 91–258, title II, §207(d)(11), May 21, 1970, 84 Stat. 249, inserted reference to section 6427 in item 6206.

1965—Pub. L. 89–44, title II, §202(c)(2)(B), June 21, 1965, 79 Stat. 139, substituted "6420, 6421, and 6424" for "6420 and 6421" in item 6206.

1956—Act June 29, 1956, ch. 462, title II, §208(e)(3), 70 Stat. 397, substituted "sections 6420 and 6421" for "section 6420" in item 6206.

Act Apr. 2, 1956, ch. 160, §4(b)(2), 70 Stat. 91, inserted item "6206. Special rules applicable to excessive claims under section 6420", and renumbered former item 6206 as 6207.

§6201. Assessment authority

(a) Authority of Secretary

The Secretary is authorized and required to make the inquiries, determinations, and assessments of all taxes (including interest, additional amounts, additions to the tax, and assessable penalties) imposed by this title, or accruing under any former internal revenue law, which have not been duly paid by stamp at the time and in the manner provided by law. Such authority shall extend to and include the following:

(1) Taxes shown on return

The Secretary shall assess all taxes determined by the taxpayer or by the Secretary as to which returns or lists are made under this title.

(2) Unpaid taxes payable by stamp

(A) Omitted stamps

Whenever any article upon which a tax is required to be paid by means of a stamp is sold or removed for sale or use by the manufacturer thereof or whenever any transaction or act upon which a tax is required to be paid by means of a stamp occurs without the use of the proper stamp, it shall be the duty of the Secretary, upon such information as he can obtain, to estimate the amount of tax which has been omitted to be paid and to make assessment therefor upon the person or persons the Secretary determines to be liable for such tax.

(B) Check or money order not duly paid

In any case in which a check or money order received under authority of section 6311 as payment for stamps is not duly paid, the unpaid amount may be immediately assessed as if it

were a tax imposed by this title, due at the time of such receipt, from the person who tendered such check or money order.

(3) Erroneous income tax prepayment credits

If on any return or claim for refund of income taxes under subtitle A there is an overstatement of the credit for income tax withheld at the source, or of the amount paid as estimated income tax, the amount so overstated which is allowed against the tax shown on the return or which is allowed as a credit or refund may be assessed by the Secretary in the same manner as in the case of a mathematical or clerical error appearing upon the return, except that the provisions of section 6213(b)(2) (relating to abatement of mathematical or clerical error assessments) shall not apply with regard to any assessment under this paragraph.

(4) Certain orders of criminal restitution

(A) In general

The Secretary shall assess and collect the amount of restitution under an order pursuant to section 3556 of title 18, United States Code, for failure to pay any tax imposed under this title in the same manner as if such amount were such tax.

(B) Time of assessment

An assessment of an amount of restitution under an order described in subparagraph (A) shall not be made before all appeals of such order are concluded and the right to make all such appeals has expired.

(C) Restriction on challenge of assessment

The amount of such restitution may not be challenged by the person against whom assessed on the basis of the existence or amount of the underlying tax liability in any proceeding authorized under this title (including in any suit or proceeding in court permitted under section 7422).

(b) Amount not to be assessed

(1) Estimated income tax

No unpaid amount of estimated income tax required to be paid under section 6654 or 6655 shall be assessed.

(2) Federal unemployment tax

No unpaid amount of Federal unemployment tax for any calendar quarter or other period of a calendar year, computed as provided in section 6157, shall be assessed.

(c) Compensation of child

Any income tax under chapter 1 assessed against a child, to the extent attributable to amounts includible in the gross income of the child, and not of the parent, solely by reason of section 73(a), shall, if not paid by the child, for all purposes be considered as having also been properly assessed against the parent.

(d) Required reasonable verification of information returns

In any court proceeding, if a taxpayer asserts a reasonable dispute with respect to any item of income reported on an information return filed with the Secretary under subpart B or C of part III of subchapter A of chapter 61 by a third party and the taxpayer has fully cooperated with the Secretary (including providing, within a reasonable period of time, access to and inspection of all witnesses, information, and documents within the control of the taxpayer as reasonably requested by the Secretary), the Secretary shall have the burden of producing reasonable and probative information concerning such deficiency in addition to such information return.

(e) Deficiency proceedings

For special rules applicable to deficiencies of income, estate, gift, and certain excise taxes, see subchapter B.

(Aug. 16, 1954, ch. 736, 68A Stat. 767; Pub. L. 89–44, title VIII, §809(d)(4)(A), June 21, 1965, 79 Stat. 168; Pub. L. 91–53, §2(b), Aug. 7, 1969, 83 Stat. 92; Pub. L. 91–172, title I, §101(j)(38), Dec. 30, 1969, 83 Stat. 530; Pub. L. 91–258, title II, §207(d)(1), (2), May 21, 1970, 84 Stat. 248; Pub. L. 93–406, title II, §1016(a)(8), Sept. 2, 1974, 88 Stat. 929; Pub. L. 94–12, title II, §204(b)(2), Mar. 29, 1975, 89 Stat. 31; Pub. L. 94–455, title XII, §1206(c)(2), title XIII, §1307(d)(2)(D), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1704, 1727, 1834; Pub. L. 97–424, title V, §515(b)(6)(E), Jan. 6, 1983, 96 Stat. 2182; Pub. L. 98–76, title II, §231(b)(2)(A), Aug. 12, 1983, 97 Stat. 429; Pub. L. 98–369, div. A, title IV, §§412(b)(5), 474(r)(32), July 18, 1984, 98 Stat. 792, 845; Pub. L. 100–203, title X, §10301(b)(3), Dec. 22, 1987, 101 Stat. 1330–429; Pub. L. 100–647, title I, §1015(r)(1), title VII, §7106(c)(2), Nov. 10, 1988, 102 Stat. 3572, 3773; Pub. L. 104–168, title VI, §602(a), July 30, 1996, 110 Stat. 1463; Pub. L. 111–237, §3(a), Aug. 16, 2010, 124 Stat. 2497.)

AMENDMENTS

2010—Subsec. (a)(4). Pub. L. 111–237 added par. (4).

1996—Subsecs. (d), (e). Pub. L. 104–168 added subsec. (d) and redesignated former subsec. (d) as (e).

1988—Subsec. (a)(4). Pub. L. 100–647, §1015(r)(1), struck out par. (4) which read as follows: "If on any return or claim for refund of income taxes under subtitle A there is an overstatement of the credit allowable by section 34 (relating to certain uses of gasoline and special fuels) or section 32 (relating to earned income), the amount so overstated which is allowed against the tax shown on the return or which is allowed as a credit or refund may be assessed by the Secretary in the same manner as in the case of a mathematical or clerical error appearing upon the return, except that the provisions of section 6213(b)(2) (relating to abatement of mathematical or clerical error assessments) shall not apply with regard to any assessment under this paragraph."

Subsec. (b)(2). Pub. L. 100–647, §7106(c)(2), struck out "or tax imposed by section 3321" after "employment tax".

1987—Subsec. (b)(1). Pub. L. 100–203 substituted "section 6654 or 6655" for "section 6154 or 6654".

1984—Subsec. (a)(4). Pub. L. 98–369, §474(r)(32), substituted "section 32 or 34" for "section 39 or 43" in heading, and in text substituted "section 34" for "section 39" and "section 32" for "section 43".

Subsec. (b)(1). Pub. L. 98–369, §412(b)(5), amended par. (1) generally, substituting "estimated income tax required to be paid under section 6154 or 6654" for "estimated tax under section 6153 or 6154".

1983—Subsec. (a)(4). Pub. L. 97–424 substituted "and special fuels" for ", special fuels, and lubricating oil" after "gasoline".

Subsec. (b)(2). Pub. L. 98–76 substituted "Federal unemployment tax or tax imposed by section 3321" for "Federal unemployment tax".

1976—Subsec. (a). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (a)(3), (4). Pub. L. 94–455, §§1206(c)(2), 1906(b)(13)(A), struck out "or his delegate" after "Secretary", substituted "mathematical or clerical error" for "mathematical error" after "the case of", and inserted ", except that the provisions of section 6213(b)(2) (relating to abatement of mathematical or clerical error assessments) shall not apply with regard to any assessment under this paragraph" after "upon the return".

Subsec. (d). Pub. L. 94–455, §1307(d)(2)(D), substituted "and certain excise taxes" for "chapter 42, and chapter 43 taxes" after "estate, gift".

1975—Subsec. (a)(4). Pub. L. 94–12 inserted reference to section 43 in heading and substituted "oil) or section 43 (relating to earned income)," for "oil)," in text.

1974—Subsec. (d). Pub. L. 93–406 inserted reference to chapter 43 taxes.

1970—Subsec. (a)(4). Pub. L. 91–258 inserted provision for overstatement of credit allowable by section 39 (relating to certain uses of special fuels) in text and substituted "under section 39" for "for use of gasoline" in heading.

1969—Subsec. (b). Pub. L. 91–53 added subsec. (b) heading and par. (2), and redesignated former subsec. (b), including its heading, as par. (1).

Subsec. (d). Pub. L. 91–172 inserted reference to chapter 42 taxes.

1965—Subsec. (a)(4). Pub. L. 89–44 added par. (4).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–237, §3(c), Aug. 16, 2010, 124 Stat. 2498, provided that: "The amendments made by this section [amending this section and sections 6213 and 6501 of this title] shall apply to restitution ordered after the date of the enactment of this Act [Aug. 16, 2010]."

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–168, title VI, §602(b), July 30, 1996, 110 Stat. 1463, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [July 30, 1996]."

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1015(r)(4), Nov. 10, 1988, 102 Stat. 3573, provided that: "The amendments made by this subsection [amending this section and sections 6211 and 6213 of this title] shall apply to notices of deficiencies mailed after the date of the enactment of this Act [Nov. 10, 1988]."

Amendment by section 7106(c)(2) of Pub. L. 100–647 applicable to remuneration paid after Dec. 31, 1988, see section 7106(d) of Pub. L. 100–647, set out as a note under section 3321 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to taxable years beginning after Dec. 31, 1987, see section 10301(c) of Pub. L. 100–203, set out as a note under section 585 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 412(b)(5) of Pub. L. 98–369 applicable with respect to taxable years beginning after Dec. 31, 1984, see section 414(a)(1) of Pub. L. 98–369, set out as a note under section 6654 of this title.

Amendment by section 474(r)(32) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–76 applicable to remuneration paid after June 30, 1986, see section 231(d) of Pub. L. 98–76, set out as an Effective Date note under section 3321 of this title.

Amendment by Pub. L. 97–424 applicable with respect to articles sold after Jan. 6, 1983, see section 515(c) of Pub. L. 97–424, set out as a note under section 34 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1206(c)(2) of Pub. L. 94–455 applicable with respect to returns filed after Dec. 31, 1976, see section 1206(d) of Pub. L. 94–455, set out as a note under section 6213 of this title.

Amendment by section 1307(d)(2)(D) of Pub. L. 94–455 effective on and after Oct. 4, 1976, see section 1307(e) of Pub. L. 94–455, set out as a note under section 501 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–12 applicable to taxable years beginning after Dec. 31, 1974, see section 209(b) of Pub. L. 94–12, as amended, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–406 applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93–406, for plan years beginning after Sept. 2, 1974, but, in the case of plans in existence on Jan. 1, 1974, amendment by Pub. L. 93–406 applicable for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93–406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–258 effective July 1, 1970, see section 211(a) of Pub. L. 91–258, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1969 AMENDMENTS

Amendment by Pub. L. 91–172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

Amendment by Pub. L. 91–53 applicable with respect to calendar years beginning after Dec. 31, 1969, see section 4(a) of Pub. L. 91–53, set out as an Effective Date note under section 6157 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 applicable to taxable years beginning on or after July 1, 1965, see section 809(f) of Pub. L. 89–44, set out as a note under section 6420 of this title.

§6202. Establishment by regulations of mode or time of assessment

If the mode or time for the assessment of any internal revenue tax (including interest, additional amounts, additions to the tax, and assessable penalties) is not otherwise provided for, the Secretary may establish the same by regulations.

(Aug. 16, 1954, ch. 736, 68A Stat. 768; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

§6203. Method of assessment

The assessment shall be made by recording the liability of the taxpayer in the office of the Secretary in accordance with rules or regulations prescribed by the Secretary. Upon request of the taxpayer, the Secretary shall furnish the taxpayer a copy of the record of the assessment.

(Aug. 16, 1954, ch. 736, 68A Stat. 768; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

§6204. Supplemental assessments

(a) General rule

The Secretary may, at any time within the period prescribed for assessment, make a supplemental assessment whenever it is ascertained that any assessment is imperfect or incomplete in any material respect.

(b) Restrictions on assessment

For restrictions on assessment of deficiencies in income, estate, gift, and certain excise taxes, see section 6213.

(Aug. 16, 1954, ch. 736, 68A Stat. 768; Pub. L. 93–406, title II, §1016(a)(27), Sept. 2, 1974, 88 Stat. 932; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94–455 struck out "or his delegate" after "Secretary".
1974—Subsec. (b). Pub. L. 93–406 substituted "gift, and certain excise taxes" for "and gift taxes".

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–406 applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93–406, for plan years beginning after Sept. 2, 1974, and, in the case of plans in existence on Jan. 1, 1974, amendment by Pub. L. 93–406 applicable for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93–406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

§6205. Special rules applicable to certain employment taxes

(a) Adjustment of tax

(1) General rule

If less than the correct amount of tax imposed by section 3101, 3111, 3201, 3221, or 3402 is paid with respect to any payment of wages or compensation, proper adjustments, with respect to both the tax and the amount to be deducted, shall be made, without interest, in such manner and at such times as the Secretary may by regulations prescribe.

(2) United States as employer

For purposes of this subsection, in the case of remuneration received from the United States or a wholly-owned instrumentality thereof during any calendar year, each head of a Federal agency or instrumentality who makes a return pursuant to section 3122 and each agent, designated by the head of a Federal agency or instrumentality, who makes a return pursuant to such section shall be deemed a separate employer.

(3) Guam or American Samoa as employer

For purposes of this subsection, in the case of remuneration received during any calendar year from the Government of Guam, the Government of American Samoa, a political subdivision of either, or any instrumentality of any one or more of the foregoing which is wholly owned thereby, the Governor of Guam, the Governor of American Samoa, and each agent designated by either who makes a return pursuant to section 3125 shall be deemed a separate employer.

(4) District of Columbia as employer

For purposes of this subsection, in the case of remuneration received during any calendar year from the District of Columbia or any instrumentality which is wholly owned thereby, the Mayor of the District of Columbia and each agent designated by him who makes a return pursuant to section 3125 shall be deemed a separate employer.

(5) States and political subdivisions as employer

For purposes of this subsection, in the case of remuneration received from a State or any political subdivision thereof (or any instrumentality of any one or more of the foregoing which is wholly owned thereby) during any calendar year, each head of an agency or instrumentality, and each agent designated by either, who makes a return pursuant to section 3125 shall be deemed a separate employer.

(b) Underpayments

If less than the correct amount of tax imposed by section 3101, 3111, 3201, 3221, or 3402 is paid or deducted with respect to any payment of wages or compensation and the underpayment cannot be adjusted under subsection (a) of this section, the amount of the underpayment shall be assessed and collected in such manner and at such times (subject to the statute of limitations properly applicable thereto) as the Secretary may by regulations prescribe.

(Aug. 16, 1954, ch. 736, 68A Stat. 768; Pub. L. 86–778, title I, §103(r)(1), Sept. 13, 1960, 74 Stat. 940; Pub. L. 89–97, title III, §317(d), July 30, 1965, 79 Stat. 389; Pub. L. 94–455, title XIX, §1906(a)(13), (b)(13)(A), Oct. 4, 1976, 90 Stat. 1825, 1834; Pub. L. 99–272, title XIII, §13205(a)(2)(D), Apr. 7, 1986, 100 Stat. 315.)

AMENDMENTS

1986—Subsec. (a)(5). Pub. L. 99–272 added par. (5).

1976—Subsec. (a)(1). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (a)(4). Pub. L. 94–455, §1906(a)(13), substituted "Mayor of the District of Columbia and each agent designated by him" for "Commissioners of the District of Columbia and each agent designated by them" after "owned thereby, the".

Subsec. (b). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

1965—Subsec. (a)(4). Pub. L. 89–97 added par. (4).

1960—Subsec. (a)(3). Pub. L. 86–778 added par. (3).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 applicable to services performed after Mar. 31, 1986, see section 13205(d)(1) of Pub. L. 99–272, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1906(d)(1) of Pub. L. 94–455, set out as a note under section 6013 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–97 applicable with respect to services performed after quarter ending Sept. 30, 1965, and after quarter in which Secretary of the Treasury receives a certification from Commissioners of District of Columbia expressing their desire to have insurance system established by sections 401 et seq. and 1395c et seq. of Title 42, The Public Health and Welfare, extended to officers and employees coming under provisions of such amendments, see section 317(g) of Pub. L. 89–97, set out as a note under section 410 of Title 42.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–778 applicable only with respect to (1) service in the employ of the Government of Guam or any political subdivision thereof, or any instrumentality of any one or more of the foregoing wholly owned thereby, which is performed after 1960 and after the calendar quarter in which the Secretary of the Treasury receives a certification by the Governor of Guam that legislation has been enacted by the Government of Guam expressing its desire to have the insurance system established by title II of the Social Security Act, section 401 et seq. of Title 42, The Public Health and Welfare, extended to the officers and employees of such Government and such political subdivisions and instrumentalities, and (2) service in the employ of the Government of American Samoa or any political subdivision thereof or any instrumentality of any one or more of the foregoing wholly owned thereby, which is performed after 1960 and after the calendar quarter in which the Secretary of the Treasury receives a certification by the Governor of American Samoa that the Government of American Samoa desires to have the insurance system established by title II of the Social Security Act, section 401 et seq. of Title 42, extended to the officers and employees of such Government and such political subdivisions and instrumentalities, see section 103(v)(1) of Pub. L. 86–778, set out as a note under section 402 of Title 42.

§6206. Special rules applicable to excessive claims under certain sections

Any portion of a refund made under section 6416(a)(4) and any portion of a payment made under section 6420, 6421, or 6427 which constitutes an excessive amount (as defined in section 6675(b)), and any civil penalty provided by section 6675, may be assessed and collected as if it were a tax imposed by section 4081 (with respect to refunds under section 6416(a)(4) and payments under sections 6420 and 6421), or 4041 or 4081 (with respect to payments under section 6427) and as if the person who made the claim were liable for such tax. The period for assessing any such portion, and for assessing any such penalty, shall be 3 years from the last day prescribed for the filing of the claim under section 6416(a)(4), 6420, 6421, or 6427, as the case may be.

(Added Apr. 2, 1956, ch. 160, §4(b)(1), 70 Stat. 90; amended June 29, 1956, ch. 462, title II, §208(d)(1), 70 Stat. 396; Pub. L. 89–44, title II, §202(c)(2)(A), June 21, 1965, 79 Stat. 139; Pub. L. 91–258, title II, §207(d)(3), May 21, 1970, 84 Stat. 248; Pub. L. 97–424, title V, §515(b)(3)(A), Jan. 6, 1983, 96 Stat. 2181; Pub. L. 100–203, title X, §10502(d)(5), Dec. 22, 1987, 101 Stat. 1330–444; Pub. L. 103–66, title XIII, §13242(d)(14), Aug. 10, 1993, 107 Stat. 524; Pub. L. 108–357, title VIII, §853(d)(2)(F), Oct. 22, 2004, 118 Stat. 1613; Pub. L. 109–59, title XI, §11163(d)(1), Aug. 10, 2005, 119 Stat. 1974.)

PRIOR PROVISIONS

A prior section 6206 was renumbered 6207 of this title.

AMENDMENTS

2005—Pub. L. 109–59 substituted "certain sections" for "sections 6420, 6421, and 6427" in section catchline, in first sentence substituted "Any portion of a refund made under section 6416(a)(4) and any portion" for "Any portion" and "refunds under section 6416(a)(4) and payments under sections 6420" for "payments under sections 6420", and in second sentence substituted "section 6416(a)(4), 6420" for "section 6420".

2004—Pub. L. 108–357 substituted "or 4081" for ", 4081, or 4091".

1993—Pub. L. 103–66 substituted "4041, 4081, or 4091" for "4041 or 4091".

1987—Pub. L. 100–203 substituted "or 4041 or 4091" for "or 4041".

1983—Pub. L. 97–424 struck out reference to section 6424 in section catchline, and in text struck out "4091 (with respect to payments under section 6424)," after "6421),", and "6424," wherever appearing.

1970—Pub. L. 91–258 inserted reference to section 6427 in section catchline, inserted reference to section 6427 in first and second sentences, and substituted "by section 4081 (with respect to payments under sections 6420 and 6421), 4091 (with respect to payments under section 6424), or 4041 (with respect to payments under section 6427)" for "by section 4081 (or, in the case of lubricating oil, by section 4091)", in first sentence, respectively.

1965—Pub. L. 89–44 struck out "6420 and 6421" wherever appearing in section catchline and text and substituted therefor "6420, 6421, and 6424" and inserted "(or, in the case of lubricating oil, by section 4091)" after "4081" in text.

1956—Act June 29, 1956, inserted reference to excessive claims under section 6421 in section catchline and text.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–59 applicable to sales after Dec. 31, 2005, see section 11163(e) of Pub. L. 109–59, set out as a note under section 4101 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to aviation-grade kerosene removed, entered, or sold after Dec. 31, 2004, see section 853(e) of Pub. L. 108–357, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 effective Jan. 1, 1994, see section 13242(e) of Pub. L. 103–66, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to sales after Mar. 31, 1988, see section 10502(e) of Pub. L. 100–203, set out as a note under section 40 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–424 applicable with respect to articles sold after Jan. 6, 1983, see section 515(c) of Pub. L. 97–424, set out as a note under section 34 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–258 effective July 1, 1970, see section 211(a) of Pub. L. 91–258, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 effective Jan. 1, 1966, see section 701(a)(1), (2) of Pub. L. 89–44, set out as a note under section 4161 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act June 29, 1956, effective June 29, 1956, see section 211 of act June 29, 1956, set out as a note under section 4041 of this title.

§6207. Cross references

(1) For prohibition of suits to restrain assessment of any tax, see section 7421.

(2) For prohibition of assessment of taxes against insolvent banks, see section 7507.

(3) For assessment where property subject to tax has been sold in a distraint proceeding without the tax having been assessed prior to such sale, see section 6342.

(4) For assessment with respect to taxes required to be paid by chapter 52, see section 5703.

(5) For assessment in case of distilled spirits removed from place where distilled and not deposited in bonded warehouse, see section 5006(c).

(6) For period of limitation upon assessment, see chapter 66.

(Aug. 16, 1954, ch. 736, 68A Stat. 769, §6206; renumbered §6207, Apr. 2, 1956, ch. 160, §4(b)(1), 70 Stat. 90; amended Pub. L. 85–859, title II, §204(2), (3), Sept. 2, 1958, 72 Stat. 1428; Pub. L. 94–455, title XIX, §1906(a)(14), Oct. 4, 1976, 90 Stat. 1825.)

AMENDMENTS

1976—Par. (7). Pub. L. 94–455 struck out par. (7) relating to cross reference for assessment under the provisions of the Tariff Act of 1930.

1958—Par. (4). Pub. L. 85–859, §204(2), substituted "with respect to taxes required to be paid by chapter 52, see section 5703" for "in case of sale or removal of tobacco, snuff, cigars, and cigarettes without the use of the proper stamps, see section 5703(d)".

Pars. (6) to (9). Pub. L. 85–859, §204(3), redesignated pars. (8) and (9) as (6) and (7), respectively, and struck out former pars. (6) and (7) which contained cross references relating to assessments in case of certain spirits subject to excessive leakage and to assessment of deficiencies in production of distilled spirits.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–859 effective Sept. 3, 1958, see section 210(a)(1) of Pub. L. 85–859, set out as an Effective Date note under section 5001 of this title.

Subchapter B—Deficiency Procedures in the Case of Income, Estate, Gift, and Certain Excise Taxes

Sec.
6211. Definition of a deficiency.
6212. Notice of deficiency.
6213. Restrictions applicable to deficiencies; petition to Tax Court.
6214. Determinations by Tax Court.
6215. Assessment of deficiency found by Tax Court.
6216. Cross references.

AMENDMENTS

1969—Pub. L. 91–172, title I, §101(j)(62), Dec. 30, 1969, 83 Stat. 532, inserted reference to certain excise taxes in subchapter heading.

§6211. Definition of a deficiency

(a) In general

For purposes of this title in the case of income, estate, and gift taxes imposed by subtitles A and B and excise taxes imposed by chapters 41, 42, 43, and 44 the term "deficiency" means the amount by which the tax imposed by subtitle A or B, or chapter 41, 42, 43, or 44 exceeds the excess of—

(1) the sum of

(A) the amount shown as the tax by the taxpayer upon his return, if a return was made by the taxpayer and an amount was shown as the tax by the taxpayer thereon, plus

(B) the amounts previously assessed (or collected without assessment) as a deficiency, over—

(2) the amount of rebates, as defined in subsection (b)(2), made.

(b) Rules for application of subsection (a)

For purposes of this section—

(1) The tax imposed by subtitle A and the tax shown on the return shall both be determined without regard to payments on account of estimated tax, without regard to the credit under section 31, without regard to the credit under section 33, and without regard to any credits resulting from the collection of amounts assessed under section 6851 or 6852 (relating to termination assessments).

(2) The term "rebate" means so much of an abatement, credit, refund, or other repayment, as was made on the ground that the tax imposed by subtitle A or B or chapter 41, 42, 43, or 44 was less than the excess of the amount specified in subsection (a)(1) over the rebates previously made.

(3) The computation by the Secretary, pursuant to section 6014, of the tax imposed by chapter 1 shall be considered as having been made by the taxpayer and the tax so computed considered as

shown by the taxpayer upon his return.

(4) For purposes of subsection (a)—

(A) any excess of the sum of the credits allowable under sections 24(d), 25A by reason of subsection (i)(6) thereof, 32, 34, 35, 36, 36A, 36B, 53(e), 168(k)(4), 6428, and 6431 over the tax imposed by subtitle A (determined without regard to such credits), and

(B) any excess of the sum of such credits as shown by the taxpayer on his return over the amount shown as the tax by the taxpayer on such return (determined without regard to such credits),

shall be taken into account as negative amounts of tax.

(c) Coordination with subchapters C and D

In determining the amount of any deficiency for purposes of this subchapter, adjustments to partnership items shall be made only as provided in subchapters C and D.

(Aug. 16, 1954, ch. 736, 68A Stat. 770; Pub. L. 89–44, title VIII, §809(d)(5)(A), June 21, 1965, 79 Stat. 168; Pub. L. 89–368, title I, §102(b)(4), Mar. 15, 1966, 80 Stat. 64; Pub. L. 91–172, title I, §101(f)(1), (j)(39), Dec. 30, 1969, 83 Stat. 524, 530; Pub. L. 93–406, title II, §1016(a)(9), Sept. 2, 1974, 88 Stat. 929; Pub. L. 94–455, title XII, §1204(c)(4), title XIII, §1307(d)(2)(E), (F)(i), title XVI, §1605(b)(4), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1698, 1728, 1754, 1834; Pub. L. 96–223, title I, §101(f)(1)(A), (B), (2), (3), Apr. 2, 1980, 94 Stat. 252; Pub. L. 98–369, div. A, title IV, §474(r)(33), July 18, 1984, 98 Stat. 845; Pub. L. 100–203, title X, §10713(b)(2)(B), Dec. 22, 1987, 101 Stat. 1330–470; Pub. L. 100–418, title I, §1941(b)(2)(B)(i), (ii), (C), (D), Aug. 23, 1988, 102 Stat. 1323; Pub. L. 100–647, title I, §1015(r)(2), Nov. 10, 1988, 102 Stat. 3572; Pub. L. 105–34, title XII, §1231(b), Aug. 5, 1997, 111 Stat. 1023; Pub. L. 105–206, title VI, §6012(f), July 22, 1998, 112 Stat. 819; Pub. L. 106–554, §1(a)(7) [title III, §314(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–643; Pub. L. 109–432, div. A, title IV, §402(b)(1), Dec. 20, 2006, 120 Stat. 2954; Pub. L. 110–172, §11(a)(35), Dec. 29, 2007, 121 Stat. 2487; Pub. L. 110–185, title I, §101(b)(1), Feb. 13, 2008, 122 Stat. 615; Pub. L. 110–289, div. C, title I, §3011(b)(2), July 30, 2008, 122 Stat. 2891; Pub. L. 111–5, div. B, title I, §§1001(e)(1), 1004(b)(7), 1201(a)(3)(B), (b)(2), 1531(c)(4), Feb. 17, 2009, 123 Stat. 312, 314, 334, 360; Pub. L. 111–148, title I, §1401(d)(3), as added title X, §§10105(d), 10909(b)(2)(N), (c), Mar. 23, 2010, 124 Stat. 906, 1023; Pub. L. 111–312, title I, §101(b)(1), Dec. 17, 2010, 124 Stat. 3298.)

AMENDMENTS

2010—Subsec. (b)(4)(A). Pub. L. 111–148, §10909(b)(2)(N), (c), as amended by Pub. L. 111–312, temporarily inserted "36C," before "53(e)". See Effective and Termination Dates of 2010 Amendment note below.

Pub. L. 111–148, §1401(d)(3), as added by Pub. L. 111–148, §10105(d), inserted "36B," after "36A,".

2009—Subsec. (b)(4)(A). Pub. L. 111–5, §1531(c)(4), substituted "6428, and 6431" for "and 6428".

Pub. L. 111–5, §1201(a)(3)(B), (b)(2), amended subpar. (A) identically, inserting "168(k)(4)," after "53(e),".

Pub. L. 111–5, §1004(b)(7), inserted "25A by reason of subsection (i)(6) thereof," after "24(d),".

Pub. L. 111–5, §1001(e)(1), inserted "36A," after "36,".

2008—Subsec. (b)(4)(A). Pub. L. 110–289 substituted "34, 35, 36, 53(e), and 6428" for "34, 35, 53(e), and 6428".

Pub. L. 110–185 substituted "53(e), and 6428" for "and 53(e)".

2007—Subsec. (b)(4)(A). Pub. L. 110–172, which directed amendment of subpar. (A) by substituting "34, and 35" for "and 34", was executed by inserting "35," after "34,", to reflect the probable intent of Congress and the amendment of subpar. (A) by section 402(b)(1) of Pub. L. 109–432. See 2006 Amendment note below.

2006—Subsec. (b)(4)(A). Pub. L. 109–432 substituted "34, and 53(e)" for "and 34".

2000—Subsec. (b)(4)(A). Pub. L. 106–554 substituted "sections 24(d), 32, and 34" for "sections 32 and 34".

1998—Subsec. (c). Pub. L. 105–206 substituted "subchapters C and D" for "subchapter C" in heading and in text.

1997—Subsec. (c). Pub. L. 105–34 added subsec. (c).

1988—Subsec. (a). Pub. L. 100–418, §1941(b)(2)(B)(i), (C), in introductory provisions, substituted "and 44" for "44, and 45" and "or 44" for "44, or 45".

Subsec. (b)(2). Pub. L. 100–418, §1941(b)(2)(B)(ii), substituted "or 44" for "44, or 45".

Subsec. (b)(4). Pub. L. 100–647, §1015(r)(2), amended par. (4) generally. Prior to amendment, par. (4) read as follows: "The tax imposed by subtitle A and the tax shown on the return shall both be determined without regard to the credit under section 34, unless, without regard to such credit, the tax imposed by subtitle A exceeds the excess of the amount specified in subsection (a)(1) over the amount specified in subsection (a)(2)."

Subsec. (b)(5), (6). Pub. L. 100–418, §1941(b)(2)(D), struck out pars. (5) and (6) which read as follows:

"(5) The amount withheld under section 4995(a) from amounts payable to any producer for crude oil removed during any taxable period (as defined in section 4996(b)(7)) which is not otherwise shown on a return by such producer shall be treated as tax shown by the producer on a return for the taxable period.

"(6) Any liability to pay amounts required to be withheld under section 4995(a) shall not be treated as a tax imposed by chapter 45."

1987—Subsec. (b)(1). Pub. L. 100–203 inserted reference to section 6852.

1984—Subsec. (b)(1). Pub. L. 98–369, §474(r)(33)(A), substituted "without regard to the credit under section 33" for "without regard to so much of the credit under section 32 as exceeds 2 percent of the interest on obligations described in section 1451".

Subsec. (b)(4). Pub. L. 98–369, §474(r)(33)(B), substituted "section 34" for "section 39".

1980—Subsec. (a). Pub. L. 96–223, §101(f)(1)(A), (2), inserted references to chapter 45 in provisions preceding par. (1).

Subsec. (b)(2). Pub. L. 96–223, §101(f)(1)(B), inserted reference to chapter 45.

Subsec. (b)(5), (6). Pub. L. 96–223, §101(f)(3), added pars. (5) and (6).

1976—Subsec. (a). Pub. L. 94–455, §§1307(d)(2)(E), (F)(i), 1605(b)(4)(A), (B), substituted "chapters 41, 42, 43, and 44" for "chapters 42 and 43" after "taxes imposed by" and "chapter 41, 42, 43, or 44" for "chapter 42 or 43" after "A or B, or".

Subsec. (b)(1). Pub. L. 94–455, §1204(c)(4), struck out "and" after "31" and inserted ", and without regard to any credits resulting from the collection of amounts assessed under section 6851 (relating to termination assessments)" after "section 1451".

Subsec. (b)(2). Pub. L. 94–455, §§1307(d)(2)(F)(i), 1605(b)(4)(C), substituted "chapter 41, 42, 43, or 44" for "chapter 42 or 43" after "A or B or".

Subsec. (b)(3). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

1974—Subsec. (a). Pub. L. 93–406, §1016(a)(9)(A), inserted reference in introductory provisions to taxes imposed by chapter 43.

Subsec. (b)(2). Pub. L. 93–406, §1016(a)(9)(B), inserted reference to taxes imposed by chapter 43.

1969—Subsec. (a). Pub. L. 91–172, §101(f)(1), inserted references to excise taxes and chapter 42.

Subsec. (b)(2). Pub. L. 91–172, §101(j)(39), inserted reference to chapter 42.

1966—Subsec. (b)(1). Pub. L. 89–368 substituted "subtitle A" for "chapter 1".

1965—Subsec. (b)(4). Pub. L. 89–44 added par. (4).

EFFECTIVE AND TERMINATION DATES OF 2010 AMENDMENT

Amendment by section 1401(d)(3) of Pub. L. 111–148, as added by section 10105(d) of Pub. L. 111–148, applicable to taxable years ending after Dec. 31, 2013, see section 1401(e) of Pub. L. 111–148, set out as an Effective Date note under section 36B of this title.

Amendment by section 10909(b)(2)(N) of Pub. L. 111–148 terminated applicable to taxable years beginning after Dec. 31, 2011, and section is amended to read as if such amendment had never been enacted, see section 10909(c) of Pub. L. 111–148, set out as a note under section 1 of this title.

Amendment by section 10909(b)(2)(N) of Pub. L. 111–148 applicable to taxable years beginning after Dec. 31, 2009, see section 10909(d) of Pub. L. 111–148, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by section 1001(e)(1) of Pub. L. 111–5 applicable to taxable years beginning after Dec. 31, 2008, see section 1001(f) of Pub. L. 111–5, set out as an Effective Date note under section 36A of this title.

Amendment by section 1004(b)(7) of Pub. L. 111–5 applicable to taxable years beginning after Dec. 31, 2008, see section 1004(d) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

Amendment by section 1201(a)(3)(B), (b)(2) of Pub. L. 111–5 applicable to taxable years ending after Mar.

31, 2008, see section 1201(c)(2) of Pub. L. 111–5, set out as a note under section 168 of this title.

Amendment by section 1531(c)(4) of Pub. L. 111–5 applicable to obligations issued after Feb. 17, 2009, see section 1531(e) of Pub. L. 111–5, set out as a note under section 54 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–289 applicable to residences purchased on or after Apr. 9, 2008, in taxable years ending on or after such date, see section 3011(c) of Pub. L. 110–289, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–432 applicable to taxable years beginning after Dec. 20, 2006, see section 402(c) of Pub. L. 109–432, set out as a note under section 53 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 effective as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 1(a)(7) [title III, §314(g)] of Pub. L. 106–554, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XII, §1231(d), Aug. 5, 1997, 111 Stat. 1023, provided that: "The amendments made by this section [enacting section 6234 of this title and amending this section] shall apply to partnership taxable years ending after the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–647 applicable to notices of deficiencies mailed after Nov. 10, 1988, see section 1015(r)(4) of Pub. L. 100–647, set out as a note under section 6201 of this title.

Amendment by Pub. L. 100–418 applicable to crude oil removed from the premises on or after Aug. 23, 1988, see section 1941(c) of Pub. L. 100–418, set out as a note under section 164 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–223 applicable to periods after Feb. 29, 1980, see section 101(i) of Pub. L. 96–223, set out as a note under section 6161 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1204(c)(4) of Pub. L. 94–455 applicable to action taken under section 6851, 6861, or 6862 of this title where the notice and demand takes place after Feb. 28, 1977, see section 1204(d) of Pub. L. 94–455, as amended, set out as a note under section 6851 of this title.

Amendment by section 1307(d)(2)(E), (F)(i) of Pub. L. 94–455 effective on and after Oct. 4, 1976, see section 1307(e)(6) of Pub. L. 94–455, set out as a note under section 501 of this title.

For effective date of amendment by section 1605(b)(4) of Pub. L. 94–455, see section 1608(d)(1) of Pub. L. 94–455, set out as a note under section 856 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–406 applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93–406, for plan years beginning after Sept. 2, 1974, but, in the case of plans in existence on Jan. 1, 1974, amendment by Pub. L. 93–406 applicable for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93–406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–368 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 102(d) of Pub. L. 89–368, set out as a note under section 6654 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 applicable to taxable years beginning on or after July 1, 1965, see section 809(f) of Pub. L. 89–44, set out as a note under section 6420 of this title.

§6212. Notice of deficiency

(a) In general

If the Secretary determines that there is a deficiency in respect of any tax imposed by subtitles A or B or chapter 41, 42, 43, or 44 he is authorized to send notice of such deficiency to the taxpayer by certified mail or registered mail. Such notice shall include a notice to the taxpayer of the taxpayer's right to contact a local office of the taxpayer advocate and the location and phone number of the appropriate office.

(b) Address for notice of deficiency

(1) Income and gift taxes and certain excise taxes

In the absence of notice to the Secretary under section 6903 of the existence of a fiduciary relationship, notice of a deficiency in respect of a tax imposed by subtitle A, chapter 12, chapter 41, chapter 42, chapter 43, or chapter 44 if mailed to the taxpayer at his last known address, shall be sufficient for purposes of subtitle A, chapter 12, chapter 41, chapter 42, chapter 43, chapter 44, and this chapter even if such taxpayer is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence.

(2) Joint income tax return

In the case of a joint income tax return filed by husband and wife, such notice of deficiency may be a single joint notice, except that if the Secretary has been notified by either spouse that separate residences have been established, then, in lieu of the single joint notice, a duplicate original of the joint notice shall be sent by certified mail or registered mail to each spouse at his last known address.

(3) Estate tax

In the absence of notice to the Secretary under section 6903 of the existence of a fiduciary relationship, notice of a deficiency in respect of a tax imposed by chapter 11, if addressed in the name of the decedent or other person subject to liability and mailed to his last known address, shall be sufficient for purposes of chapter 11 and of this chapter.

(c) Further deficiency letters restricted

(1) General rule

If the Secretary has mailed to the taxpayer a notice of deficiency as provided in subsection (a), and the taxpayer files a petition with the Tax Court within the time prescribed in section 6213(a), the Secretary shall have no right to determine any additional deficiency of income tax for the same taxable year, of gift tax for the same calendar year, of estate tax in respect of the taxable estate of the same decedent, of chapter 41 tax for the same taxable year, of chapter 43 tax for the same taxable year, of chapter 44 tax for the same taxable year, of section 4940 tax for the same taxable year, or of chapter 42 tax, (other than under section 4940) with respect to any act (or failure to act) to which such petition relates, except in the case of fraud, and except as provided in section 6214(a) (relating to assertion of greater deficiencies before the Tax Court), in section 6213(b)(1) (relating to mathematical or clerical errors), in section 6851 or 6852 (relating to termination assessments), or in section 6861(c) (relating to the making of jeopardy assessments).

(2) Cross references

For assessment as a deficiency notwithstanding the prohibition of further deficiency letters, in the case of—

(A) Deficiency attributable to change of treatment with respect to itemized deductions, see section 63(e)(3).

(B) Deficiency attributable to gain on involuntary conversion, see section 1033(a)(2)(C) and (D).

(C) Deficiency attributable to activities not engaged in for profit, see section 183(e)(4).

For provisions allowing determination of tax in title 11 cases, see section 505(a) of title 11 of the United States Code.

(d) Authority to rescind notice of deficiency with taxpayer's consent

The Secretary may, with the consent of the taxpayer, rescind any notice of deficiency mailed to the taxpayer. Any notice so rescinded shall not be treated as a notice of deficiency for purposes of subsection (c)(1) (relating to further deficiency letters restricted), section 6213(a) (relating to restrictions applicable to deficiencies; petition to Tax Court), and section 6512(a) (relating to limitations in case of petition to Tax Court), and the taxpayer shall have no right to file a petition with the Tax Court based on such notice. Nothing in this subsection shall affect any suspension of the running of any period of limitations during any period during which the rescinded notice was outstanding.

(Aug. 16, 1954, ch. 736, 68A Stat. 770; Pub. L. 85–866, title I, §§76, 89(b), Sept. 2, 1958, 72 Stat. 1661, 1665; Pub. L. 88–272, title I, §112(d)(1), Feb. 26, 1964, 78 Stat. 24; Pub. L. 91–172, title I, §101(f)(2), (j)(40), (41), Dec. 30, 1969, 83 Stat. 524, 530; Pub. L. 91–614, title I, §102(d)(5), Dec. 31, 1970, 84 Stat. 1842; Pub. L. 93–406, title II, §1016(a)(10), Sept. 2, 1974, 88 Stat. 930; Pub. L. 94–455, title II, §214(b), title XII, §§1204(c)(5), 1206(c)(3), title XIII, §1307(d)(2)(F)(ii), (G), title XVI, §1605(b)(5), title XIX, §§1901(b)(31)(C), (37)(C), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1549, 1698, 1704, 1728, 1754, 1800, 1803, 1834; Pub. L. 95–30, title I, §101(d)(15), May 23, 1977, 91 Stat. 134; Pub. L. 95–600, title IV, §405(c)(5), title VII, §701(t)(3)(C), Nov. 6, 1978, 92 Stat. 2871, 2912; Pub. L. 96–223, title I, §101(f)(1)(C), (4), (5), Apr. 2, 1980, 94 Stat. 252, 253; Pub. L. 96–589, §6(d)(2), Dec. 24, 1980, 94 Stat. 3408; Pub. L. 97–34, title IV, §442(d)(4), Aug. 13, 1981, 95 Stat. 323; Pub. L. 99–514, title I, §104(b)(17), title XV, §1562(a), Oct. 22, 1986, 100 Stat. 2106, 2761; Pub. L. 100–203, title X, §10713(b)(2)(C), Dec. 22, 1987, 101 Stat. 1330–470; Pub. L. 100–418, title I, §1941(b)(2)(B)(iii), (E), (F), Aug. 23, 1988, 102 Stat. 1323; Pub. L. 100–647, title I, §1015(m), Nov. 10, 1988, 102 Stat. 3572; Pub. L. 105–34, title III, §312(d)(12), Aug. 5, 1997, 111 Stat. 840; Pub. L. 105–206, title I, §1102(b), July 22, 1998, 112 Stat. 703.)

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–206 inserted at end "Such notice shall include a notice to the taxpayer of the taxpayer's right to contact a local office of the taxpayer advocate and the location and phone number of the appropriate office."

1997—Subsec. (c)(2)(C) to (E). Pub. L. 105–34, which directed the amendment of par. (2) by striking out subpar. (C) and redesignating succeeding subpars. accordingly, was executed by redesignating subpar. (E) as (C) and striking out former subpar. (C). Prior to amendment, subpar. (C) read as follows: "Deficiency attributable to gain on sale or exchange of principal residence, see section 1034(j)." Former subpar. (D) was repealed previously.

1988—Subsec. (a). Pub. L. 100–418, §1941(b)(2)(B)(iii), substituted "or 44" for "44, or 45".

Subsec. (b)(1). Pub. L. 100–418, §1941(b)(2)(E), substituted "or chapter 44" for "chapter 44, or chapter 45" and "chapter 44, and this chapter" for "chapter 44, chapter 45, and this chapter".

Subsec. (c)(1). Pub. L. 100–418, §1941(b)(2)(F), substituted "or of chapter 42 tax" for "of chapter 42 tax" and struck out ", or of chapter 45 tax for the same taxable period" after "such petition relates".

Subsec. (d). Pub. L. 100–647 inserted sentence at end that nothing in this subsection shall affect suspension of running of period of limitations during period during which rescinded notice was outstanding.

1987—Subsec. (c)(1). Pub. L. 100–203 inserted reference to section 6852.

1986—Subsec. (c)(2)(A). Pub. L. 99–514, §104(b)(17), amended subpar. (A) generally, substituting ", see section 63(e)(3)" for "and zero bracket amount, see section 63(g)(5)".

Subsec. (d). Pub. L. 99–514, §1562(a), added subsec. (d).

1981—Subsec. (c)(1). Pub. L. 97–34 substituted "calendar year" for "calendar quarter".

1980—Subsec. (a). Pub. L. 96–223, §101(f)(1)(C), inserted reference to chapter 45.

Subsec. (b)(1). Pub. L. 96–223, §101(f)(4), substituted "and certain excise taxes" for "taxes imposed by chapter 42" in section catchline and inserted references to chapter 45 in two places in text.

Subsec. (c)(1). Pub. L. 96–223, §101(f)(5), substituted "of chapter 42 tax" for "or of chapter 42 tax" and inserted ", or of chapter 45 tax for the same taxable period" after "to which such petition relates".

Subsec. (c)(2). Pub. L. 96–589 inserted cross reference to section 505(a) of title 11 for provisions allowing determination of tax in title 11 cases.

1978—Subsec. (c)(1). Pub. L. 95–600, §701(t)(3)(C), substituted "same taxable year" for "same taxable years" in two places.

Subsec. (c)(2)(C). Pub. L. 95–600, §405(c)(5), substituted "principal residence" for "personal residence".

1977—Subsec. (c)(2)(A). Pub. L. 95–30 substituted "change of treatment with respect to itemized deductions and zero bracket amount, see section 63(g)(5)" for "change of election with respect to the standard deduction where taxpayer and his spouse made separate returns, see section 144(b)".

1976—Subsec. (a). Pub. L. 94–455, §§1307(d)(2)(F)(ii), 1605(b)(5)(A), 1906(b)(13)(A), struck out "or his delegate" after "Secretary", and substituted "chapter 41, 42, 43, or 44" for "chapter 42 or 43".

Subsec. (b)(1). Pub. L. 94–455, §§1307(d)(2)(G)(i), 1605(b)(5)(B), (C), 1906(b)(13)(A), struck out "or his delegate" after "Secretary", and substituted "chapter 41, chapter 42, chapter 43, or chapter 44" for "chapter 42, or chapter 43", and "chapter 41, chapter 42, chapter 43, chapter 44, and this chapter" for "chapter 42, chapter 43, and this chapter".

Subsec. (c)(1). Pub. L. 94–455, §§1204(c)(5), 1206(c)(3), 1307(d)(2)(G)(ii), 1605(b)(5)(D), 1906(b)(13)(A), struck out "or his delegate" after "Secretary" wherever appearing, substituted "of chapter 41 tax for the same taxable year, of chapter 43 tax for the same taxable years, of chapter 44 tax for the same taxable years" for "of chapter 43 tax for the same taxable years", and "(relating to mathematical or clerical errors), in section 6851 (relating to termination assessments)" for "(relating to mathematical errors)".

Subsec. (c)(2)(B). Pub. L. 94–455, §1901(b)(31)(C), substituted "1033(a)(2)(C) and (D)" for "1033(a)(3)(C) and (D)".

Subsec. (c)(2)(D). Pub. L. 94–455, §1901(b)(37)(C), struck out subsec. (c)(2)(D) which set forth a cross reference to section 1335 of this title relating to a deficiency attributable to war loss recoveries where prior benefit rule is elected.

Subsec. (c)(2)(E). Pub. L. 94–455, §214(b), added subpar. (E).

1974—Subsec. (a). Pub. L. 93–406, §1016(a)(10)(A), inserted reference to taxes imposed by chapter 43.

Subsec. (b)(1). Pub. L. 93–406, §1016(a)(10)(B), (C), inserted reference to chapter 43 in two places.

Subsec. (c)(1). Pub. L. 93–406, §1016(a)(10)(D), substituted "of the same decedent, of chapter 43 tax for the same taxable years," for "of the same decedent,".

1970—Subsec. (c)(1). Pub. L. 91–614 substituted "calendar quarter" for "calendar year".

1969—Subsec. (a). Pub. L. 91–172, §101(j)(40), inserted reference to chapter 42.

Subsec. (b)(1). Pub. L. 91–172, §101(j)(41), inserted reference to chapter 42 taxes in heading and text.

Subsec. (c)(1). Pub. L. 91–172, §101(f)(2), included section 4940 tax and chapter 42 tax (other than under section 4940), among the classes of taxes with respect to which the Secretary cannot determine additional deficiencies after the taxpayer has filed a petition for redetermination of any deficiency about which he has been notified.

1964—Subsec. (c)(2)(A). Pub. L. 88–272 substituted "with respect to the" for "to take".

1958—Subsec. (a). Pub. L. 85–866, §89(b), inserted "certified mail or" before "registered mail".

Subsec. (b)(1). Pub. L. 85–866, §76, substituted "subtitle A or chapter 12" for "chapter 1 or 12" and "subtitle A, chapter 12," for "such chapter".

Subsec. (b)(2). Pub. L. 85–866, §89(b), inserted "certified mail or" before "registered mail".

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d) of Pub. L. 105–34, set out as a note under section 121 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by Pub. L. 100–418 applicable to crude oil removed from the premises on or after Aug. 23, 1988, see section 1941(c) of Pub. L. 100–418, set out as a note under section 164 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 104(b)(17) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Pub. L. 99–514, title XV, §1562(b), Oct. 22, 1986, 100 Stat. 2762, provided that: "The amendment made by this section [amending this section] shall apply to notices of deficiency issued on or after January 1, 1986."

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable with respect to gifts made after Dec. 31, 1981, see section 442(e) of Pub. L. 97–34, set out as a note under section 2501 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–589 effective Oct. 1, 1979, but not applicable to proceedings under title 11, Bankruptcy, commenced before Oct. 1, 1979, see section 7(e) of Pub. L. 96–589, set out as a note under section 108 of this title.

Amendment by Pub. L. 96–223 applicable to periods after Feb. 29, 1980, see section 101(i) of Pub. L. 96–223, set out as a note under section 6161 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 405(c)(5) of Pub. L. 95–600 applicable to sales and exchanges of residences after July 26, 1978, in taxable years ending after such date, see section 405(d) of Pub. L. 95–600, set out as a note under section 1038 of this title.

Amendment by section 701(t)(3)(C) of Pub. L. 95–600 effective Oct. 4, 1976, see section 701(t)(5) of Pub. L. 95–600, set out as a note under section 859 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 214(b) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1969, except that such amendments shall not apply to any taxable year ending before Oct. 4, 1976 with respect to which the period for assessing a deficiency has expired before Oct. 4, 1976, see section 214(c) of Pub. L. 94–455, set out as a note under section 183 of this title.

Amendment by section 1204(c)(5) of Pub. L. 94–455 applicable with respect to action taken under section 6851, 6861, or 6862 of this title where the notice and demand takes place after Feb. 28, 1977, see section 1204(d) of Pub. L. 94–455, as amended, set out as a note under section 6851 of this title.

Amendment by section 1206(c)(3) of Pub. L. 94–455 applicable to returns filed after Dec. 31, 1976, see section 1206(d) of Pub. L. 94–455, set out as a note under section 6213 of this title.

Amendment by section 1307(d)(2)(F)(ii), (G) of Pub. L. 94–455 effective on and after Oct. 4, 1976, see section 1307(e)(6) of Pub. L. 94–455, set out as a note under section 501 of this title.

For effective date of amendment by section 1605(b)(5) of Pub. L. 94–455, see section 1608(d) of Pub. L. 94–455, set out as a note under section 856 of this title.

Amendment by section 1901(b)(31)(C), (37)(C) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–406 applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93–406, for plan years beginning after Sept. 2, 1974, but, in the case of plans in existence on Jan. 1, 1974, amendment by Pub. L. 93–406 applicable for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93–406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91–614, set out as a note under section 2501 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272, except for purposes of section 21 of this title, effective with respect to taxable years beginning after Dec. 31, 1963, see section 131 of Pub. L. 88–272, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 76 of Pub. L. 85–866 effective Aug. 17, 1954, see section 1(c)(2) of Pub. L. 85–866, set out as a note under section 165 of this title.

Amendment by section 89(b) of Pub. L. 85–866 applicable only if mailing occurs after Sept. 2, 1958, see section 89(d) of Pub. L. 85–866, set out as a note under section 7502 of this title.

NOTICE OF DEFICIENCY TO SPECIFY DEADLINES FOR FILING TAX COURT PETITION

Pub. L. 105–206, title III, §3463(a), July 22, 1998, 112 Stat. 767, provided that: "The Secretary of the Treasury or the Secretary's delegate shall include on each notice of deficiency under section 6212 of the Internal Revenue Code of 1986 the date determined by such Secretary (or delegate) as the last day on which the taxpayer may file a petition with the Tax Court."

[Section 3463(a) of Pub. L. 105–206, set out above, applicable to notices mailed after Dec. 31, 1998, see section 3463(c) of Pub. L. 105–206, set out as an Effective Date of 1998 Amendment note under section 6213 of this title.]

EXPLANATIONS OF APPEALS AND COLLECTION PROCESS

Pub. L. 105–206, title III, §3504, July 22, 1998, 112 Stat. 771, provided that: "The Secretary of the Treasury or the Secretary's delegate shall, as soon as practicable, but not later than 180 days after the date of the enactment of this Act [July 22, 1998], include with any first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals an explanation of the entire process from examination through collection with respect to such proposed deficiency, including the assistance available to the taxpayer from the National Taxpayer Advocate at various points in the process."

§6213. Restrictions applicable to deficiencies; petition to Tax Court

(a) Time for filing petition and restriction on assessment

Within 90 days, or 150 days if the notice is addressed to a person outside the United States, after the notice of deficiency authorized in section 6212 is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the last day), the taxpayer may file a petition with the Tax Court for a redetermination of the deficiency. Except as otherwise provided in section 6851, 6852, or 6861 no assessment of a deficiency in respect of any tax imposed by subtitle A, or B, chapter 41, 42, 43, or 44 and no levy or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such 90-day or 150-day period, as the case may be, nor, if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final. Notwithstanding the provisions of section 7421(a), the making of such assessment or the beginning of such proceeding or levy during the time such prohibition is in force may be enjoined by a proceeding in the proper court, including the Tax Court, and a refund may be ordered by such court of any amount collected within the period during which the Secretary is prohibited from collecting by levy or through a proceeding in court under the provisions of this subsection. The Tax Court shall have no jurisdiction to enjoin any action or proceeding or order any refund under this subsection unless a timely petition for a redetermination of the deficiency has been filed and then only in respect of the deficiency that is the subject of such petition. Any petition filed with the Tax Court on or before the last date specified for filing such petition by the Secretary in the notice of deficiency shall be treated as timely filed.

(b) Exceptions to restrictions on assessment

(1) Assessments arising out of mathematical or clerical errors

If the taxpayer is notified that, on account of a mathematical or clerical error appearing on the return, an amount of tax in excess of that shown on the return is due, and that an assessment of the tax has been or will be made on the basis of what would have been the correct amount of tax but

for the mathematical or clerical error, such notice shall not be considered as a notice of deficiency for the purposes of subsection (a) (prohibiting assessment and collection until notice of the deficiency has been mailed), or of section 6212(c)(1) (restricting further deficiency letters), or of section 6512(a) (prohibiting credits or refunds after petition to the Tax Court), and the taxpayer shall have no right to file a petition with the Tax Court based on such notice, nor shall such assessment or collection be prohibited by the provisions of subsection (a) of this section. Each notice under this paragraph shall set forth the error alleged and an explanation thereof.

(2) Abatement of assessment of mathematical or clerical errors

(A) Request for abatement

Notwithstanding section 6404(b), a taxpayer may file with the Secretary within 60 days after notice is sent under paragraph (1) a request for an abatement of any assessment specified in such notice, and upon receipt of such request, the Secretary shall abate the assessment. Any reassessment of the tax with respect to which an abatement is made under this subparagraph shall be subject to the deficiency procedures prescribed by this subchapter.

(B) Stay of collection

In the case of any assessment referred to in paragraph (1), notwithstanding paragraph (1), no levy or proceeding in court for the collection of such assessment shall be made, begun, or prosecuted during the period in which such assessment may be abated under this paragraph.

(3) Assessments arising out of tentative carryback or refund adjustments

If the Secretary determines that the amount applied, credited, or refunded under section 6411 is in excess of the overassessment attributable to the carryback or the amount described in section 1341(b)(1) with respect to which such amount was applied, credited, or refunded, he may assess without regard to the provisions of paragraph (2) the amount of the excess as a deficiency as if it were due to a mathematical or clerical error appearing on the return.

(4) Assessment of amount paid

Any amount paid as a tax or in respect of a tax may be assessed upon the receipt of such payment notwithstanding the provisions of subsection (a). In any case where such amount is paid after the mailing of a notice of deficiency under section 6212, such payment shall not deprive the Tax Court of jurisdiction over such deficiency determined under section 6211 without regard to such assessment.

(5) Certain orders of criminal restitution

If the taxpayer is notified that an assessment has been or will be made pursuant to section 6201(a)(4)—

(A) such notice shall not be considered as a notice of deficiency for the purposes of subsection (a) (prohibiting assessment and collection until notice of the deficiency has been mailed), section 6212(c)(1) (restricting further deficiency letters), or section 6512(a) (prohibiting credits or refunds after petition to the Tax Court), and

(B) subsection (a) shall not apply with respect to the amount of such assessment.

(c) Failure to file petition

If the taxpayer does not file a petition with the Tax Court within the time prescribed in subsection (a), the deficiency, notice of which has been mailed to the taxpayer, shall be assessed, and shall be paid upon notice and demand from the Secretary.

(d) Waiver of restrictions

The taxpayer shall at any time (whether or not a notice of deficiency has been issued) have the right, by a signed notice in writing filed with the Secretary, to waive the restrictions provided in subsection (a) on the assessment and collection of the whole or any part of the deficiency.

(e) Suspension of filing period for certain excise taxes

The running of the time prescribed by subsection (a) for filing a petition in the Tax Court with

respect to the taxes imposed by section 4941 (relating to taxes on self-dealing), 4942 (relating to taxes on failure to distribute income), 4943 (relating to taxes on excess business holdings), 4944 (relating to investments which jeopardize charitable purpose), 4945 (relating to taxes on taxable expenditures), 4951 (relating to taxes on self-dealing), or 4952 (relating to taxes on taxable expenditures), 4955 (relating to taxes on political expenditures), 4958 (relating to private excess benefit), 4971 (relating to excise taxes on failure to meet minimum funding standard), 4975 (relating to excise taxes on prohibited transactions) shall be suspended for any period during which the Secretary has extended the time allowed for making correction under section 4963(e).

(f) Coordination with title 11

(1) Suspension of running of period for filing petition in title 11 cases

In any case under title 11 of the United States Code, the running of the time prescribed by subsection (a) for filing a petition in the Tax Court with respect to any deficiency shall be suspended for the period during which the debtor is prohibited by reason of such case from filing a petition in the Tax Court with respect to such deficiency, and for 60 days thereafter.

(2) Certain action not taken into account

For purposes of the second and third sentences of subsection (a), the filing of a proof of claim or request for payment (or the taking of any other action) in a case under title 11 of the United States Code shall not be treated as action prohibited by such second sentence.

(g) Definitions

For purposes of this section—

(1) Return

The term "return" includes any return, statement, schedule, or list, and any amendment or supplement thereto, filed with respect to any tax imposed by subtitle A or B, or chapter 41, 42, 43, or 44.

(2) Mathematical or clerical error

The term "mathematical or clerical error" means—

(A) an error in addition, subtraction, multiplication, or division shown on any return,

(B) an incorrect use of any table provided by the Internal Revenue Service with respect to any return if such incorrect use is apparent from the existence of other information on the return,

(C) an entry on a return of an item which is inconsistent with another entry of the same or another item on such return,

(D) an omission of information which is required to be supplied on the return to substantiate an entry on the return,

(E) an entry on a return of a deduction or credit in an amount which exceeds a statutory limit imposed by subtitle A or B, or chapter 41, 42, 43, or 44, if such limit is expressed—

(i) as a specified monetary amount, or

(ii) as a percentage, ratio, or fraction,

and if the items entering into the application of such limit appear on such return,

(F) an omission of a correct taxpayer identification number required under section 32 (relating to the earned income credit) to be included on a return,

(G) an entry on a return claiming the credit under section 32 with respect to net earnings from self-employment described in section 32(c)(2)(A) to the extent the tax imposed by section 1401 (relating to self-employment tax) on such net earnings has not been paid,

(H) an omission of a correct TIN required under section 21 (relating to expenses for household and dependent care services necessary for gainful employment) or section 151 (relating to allowance of deductions for personal exemptions),

(I) an omission of a correct TIN required under section 24(e) (relating to child tax credit) to be included on a return,

(J) an omission of a correct TIN required under section 25A(g)(1) (relating to higher education tuition and related expenses) to be included on a return,

(K) an omission of information required by section 32(k)(2) (relating to taxpayers making improper prior claims of earned income credit),

(L) the inclusion on a return of a TIN required to be included on the return under section 21, 24, 32, or 6428 if—

(i) such TIN is of an individual whose age affects the amount of the credit under such section, and

(ii) the computation of the credit on the return reflects the treatment of such individual as being of an age different from the individual's age based on such TIN,

(M) the entry on the return claiming the credit under section 32 with respect to a child if, according to the Federal Case Registry of Child Support Orders established under section 453(h) of the Social Security Act, the taxpayer is a noncustodial parent of such child,

(N) an omission of the reduction required under section 36A(c) with respect to the credit allowed under section 36A or an omission of the correct social security account number required under section 36A(d)(1)(B),

(O) an omission of any increase required under section 36(f) with respect to the recapture of a credit allowed under section 36, and

(P) an entry on a return claiming the credit under section 36 if—

(i) the Secretary obtains information from the person issuing the TIN of the taxpayer that indicates that the taxpayer does not meet the age requirement of section 36(b)(4),

(ii) information provided to the Secretary by the taxpayer on an income tax return for at least one of the 2 preceding taxable years is inconsistent with eligibility for such credit, or

(iii) the taxpayer fails to attach to the return the form described in section 36(d)(4).

A taxpayer shall be treated as having omitted a correct TIN for purposes of the preceding sentence if information provided by the taxpayer on the return with respect to the individual whose TIN was provided differs from the information the Secretary obtains from the person issuing the TIN.

(h) Cross references

(1) For assessment as if a mathematical error on the return, in the case of erroneous claims for income tax prepayment credits, see section 6201(a)(3).

(2) For assessments without regard to restrictions imposed by this section in the case of—

(A) Recovery of foreign income taxes, see section 905(c).

(B) Recovery of foreign estate tax, see section 2016.

(3) For provisions relating to application of this subchapter in the case of certain partnership items, etc., see section 6230(a).

(Aug. 16, 1954, ch. 736, 68A Stat. 771; Pub. L. 89–44, title VIII, §809(d)(4)(B), June 21, 1965, 79 Stat. 168; Pub. L. 91–172, title I, §101(f)(3), (j)(42), Dec. 30, 1969, 83 Stat. 524, 530; Pub. L. 93–406, title II, §1016(a)(11), Sept. 2, 1974, 88 Stat. 930; Pub. L. 94–455, title XII, §§1204(c)(6), 1206(a)–(c)(1), title XIII, §1307(d)(2)(F)(iii), title XVI, §1605(b)(6), title XIX, §§1906(a)(15), (b)(13)(A), Oct. 4, 1976, 90 Stat. 1698, 1703, 1704, 1728, 1755, 1825, 1834; Pub. L. 95–227, §4(d)(1), (2), Feb. 10, 1978, 92 Stat. 23; Pub. L. 95–600, title V, §504(b)(2), Nov. 6, 1978, 92 Stat. 2881; Pub. L. 96–223, title I, §101(f)(1)(D), (E), Apr. 2, 1980, 94 Stat. 252; Pub. L. 96–589, §6(b)(1), Dec. 24, 1980, 94 Stat. 3407; Pub. L. 96–596, §2(a)(4)(C), Dec. 24, 1980, 94 Stat. 3472; Pub. L. 97–248, title IV, §402(c)(2), Sept. 3, 1982, 96 Stat. 667; Pub. L. 98–369, title III, §305(b)(4), title IV, §474(r)(34), July 18, 1984, 98 Stat. 784, 845; Pub. L. 99–514, title XVIII, §1875(d)(2)(B)(i), Oct. 22, 1986, 100 Stat. 2896; Pub. L. 100–203, title X, §§10712(c)(1), 10713(b)(2)(D), Dec. 22, 1987, 101 Stat. 1330–467, 1330–470; Pub. L. 100–418, title I, §1941(b)(2)(B)(iv), (v), Aug. 23, 1988, 102 Stat. 1323; Pub. L. 100–647, title I, §1015(r)(3), title VI, §6243(a), Nov. 10, 1988, 102 Stat. 3573, 3749; Pub. L. 101–239, title VII, §7811(k)(1), Dec. 19, 1989, 103 Stat. 2412; Pub. L. 104–168, title XIII, §1311(c)(3), July 30, 1996, 110 Stat. 1478; Pub. L. 104–188, title I, §1615(c), Aug. 20, 1996, 110 Stat. 1853; Pub. L. 104–193, title IV, §451(c), Aug. 22, 1996, 110 Stat. 2277;

Pub. L. 105–34, title I, §101(d)(2), title II, §201(b), title X, §1085(a)(3), Aug. 5, 1997, 111 Stat. 799, 803, 956; Pub. L. 105–206, title III, §§3463(b), 3464(a), title VI, §6010(p)(3), July 22, 1998, 112 Stat. 767, 817; Pub. L. 105–277, div. J, title III, §3003(a), (b), Oct. 21, 1998, 112 Stat. 2681–905; Pub. L. 107–16, title III, §303(g), June 7, 2001, 115 Stat. 56; Pub. L. 110–185, title I, §101(b)(2), Feb. 13, 2008, 122 Stat. 616; Pub. L. 111–5, div. B, title I, §1001(d), Feb. 17, 2009, 123 Stat. 312; Pub. L. 111–92, §§11(h), 12(d), Nov. 6, 2009, 123 Stat. 2991, 2992; Pub. L. 111–237, §3(b)(1), Aug. 16, 2010, 124 Stat. 2498.)

REFERENCES IN TEXT

Section 453(h) of the Social Security Act, referred to in subsec. (g)(2)(M), is classified to section 653(h) of Title 42, The Public Health and Welfare.

AMENDMENTS

2010—Subsec. (b)(5). Pub. L. 111–237 added par. (5).

2009—Subsec. (g)(2)(N). Pub. L. 111–5 added subpar. (N).

Subsec. (g)(2)(O). Pub. L. 111–92, §11(h), added subpar. (O).

Subsec. (g)(2)(P). Pub. L. 111–92, §12(d), added subpar. (P).

2008—Subsec. (g)(2)(L). Pub. L. 110–185 substituted "32, or 6428" for "or 32" in introductory provisions.

2001—Subsec. (g)(2)(M). Pub. L. 107–16 added subpar. (M).

1998—Subsec. (a). Pub. L. 105–206, §3464(a), substituted ", including the Tax Court, and a refund may be ordered by such court of any amount collected within the period during which the Secretary is prohibited from collecting by levy or through a proceeding in court under the provisions of this subsection." for ", including the Tax Court." and "to enjoin any action or proceeding or order any refund" for "to enjoin any action or proceeding".

Pub. L. 105–206, §3463(b), inserted at end "Any petition filed with the Tax Court on or before the last date specified for filing such petition by the Secretary in the notice of deficiency shall be treated as timely filed."

Subsec. (g)(2). Pub. L. 105–277, §3003(a), inserted concluding provisions.

Subsec. (g)(2)(K). Pub. L. 105–206, §6010(p)(3), amended Pub. L. 105–34, §1085(a)(3). See 1997 Amendment note below.

Subsec. (g)(2)(L). Pub. L. 105–277, §3003(b), added subpar. (L).

1997—Subsec. (g)(2)(I). Pub. L. 105–34, §101(d)(2), added subpar. (I).

Subsec. (g)(2)(J). Pub. L. 105–34, §201(b), added subpar. (J).

Subsec. (g)(2)(K). Pub. L. 105–34, §1085(a)(3), as amended by Pub. L. 105–206, §6010(p)(3), added subpar. (K).

1996—Subsec. (e). Pub. L. 104–168 inserted "4958 (relating to private excess benefit)," before "4971".

Subsec. (g)(2)(F), (G). Pub. L. 104–193 added subpars. (F) and (G).

Subsec. (g)(2)(H). Pub. L. 104–188 added subpar. (H).

1989—Subsec. (h)(3), (4). Pub. L. 101–239 made technical correction to directory language of Pub. L. 100–647, §1015(r)(3), see 1988 Amendment note below.

1988—Subsec. (a). Pub. L. 100–647, §6243(a), substituted for period at end ", including the Tax Court. The Tax Court shall have no jurisdiction to enjoin any action or proceeding under this subsection unless a timely petition for a redetermination of the deficiency has been filed and then only in respect of the deficiency that is the subject of such petition."

Pub. L. 100–418, §1941(b)(2)(B)(iv), substituted "or 44" for "44, or 45".

Subsec. (g)(1), (2)(E). Pub. L. 100–418, §1941(b)(2)(B)(v), substituted "or 44" for "44, or 45".

Subsec. (h)(3), (4). Pub. L. 100–647, §1015(r)(3), as amended by Pub. L. 101–239, redesignated par. (4) as (3) and struck out former par. (3) which read as follows: "For assessment as if a mathematical error on the return, in the case of erroneous claims for credits under section 32 or 34, see section 6201(a)(4)."

1987—Subsec. (a). Pub. L. 100–203, §10713(b)(2)(D), inserted reference to section 6852.

Subsec. (e). Pub. L. 100–203, §10712(c)(1), inserted "4955 (relating to taxes on political expenditures),".

1986—Subsec. (h)(4). Pub. L. 99–514 amended par. (4) generally. Prior to amendment, par. (4) read as follows: "For provision that this subchapter shall not apply in the case of computational adjustments attributable to partnership items, see section 6230(a)."

1984—Subsec. (e). Pub. L. 98–369, §305(b)(4), substituted "section 4963(e)" for "section 4962(e)".

Subsec. (h)(3). Pub. L. 98–369, §474(r)(34), substituted "section 32 or 34" for "section 39".

1982—Subsec. (h)(4). Pub. L. 97–248 added par. (4).

1980—Subsec. (a). Pub. L. 96–223, §101(f)(1)(D), inserted reference to chapter 45.

Subsec. (e). Pub. L. 96–596 substituted "section 4962(e)" for "section 4941(e)(4), 4942(j)(2), 4943(d)(3), 4944(e)(3), 4945(i)(2), 4951(e)(4), 4952(e)(2), 4971(c)(3), or 4975(f)(6)".

Subsec. (f). Pub. L. 96–589 added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (f)(1), (2)(E). Pub. L. 96–223, §101(f)(1)(E), inserted reference to chapter 45.

Subsecs. (g), (h). Pub. L. 96–589 redesignated former subsecs. (f) and (g) as (g) and (h), respectively.

1978—Subsec. (b)(3). Pub. L. 95–600 inserted "or refund" after "carryback" in heading, and "or the amount described in section 1341(b)(1)" after "carryback" in text.

Subsec. (e). Pub. L. 95–227, §4(d)(1), inserted provisions relating to sections 4951 and 4952 of this title, and substituted "4975(f)(6)" for "4975(f)(4)".

Subsec. (f). Pub. L. 95–227, §4(d)(2), inserted references to chapters 41 and 44.

1976—Subsec. (a). Pub. L. 94–455, §§1204(c)(6), 1307(d)(2)(F)(iii), 1605(b)(6), 1906(a)(15), inserted "section 6851 or" before "section 6861" and references to chapter 41 and chapter 44 and substituted "United States" for "States of the Union and the District of Columbia".

Subsec. (b)(1). Pub. L. 94–455, §1206(a)(2), substituted in heading "Assessments arising out of mathematical or clerical errors" for "Mathematical errors" and in text inserted "or clerical" after "mathematical" in two places and inserted provision that each notice under this paragraph shall set forth the error alleged and an explanation thereof.

Subsec. (b)(2). Pub. L. 94–455, §1206(a)(2), added par. (2). Former par. (2) redesignated (3).

Subsec. (b)(3). Pub. L. 94–455, §§1206(a)(1), (c)(1), 1906(b)(13)(A), redesignated former par. (2) as (3), and as so redesignated, struck out "or his delegate" after "Secretary" and inserted "without regard to the provisions of paragraph (2)" after "he may assess" and "or clerical" after "mathematical". Former par. (3) redesignated (4).

Subsec. (b)(4). Pub. L. 94–455, §1206(a)(1), redesignated former par. (3) as (4).

Subsecs. (c) to (e). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsecs. (f), (g). Pub. L. 94–455, §1206(b), added subsec. (f) and redesignated former subsec. (f) as (g).

1974—Subsec. (a). Pub. L. 93–406, §1016(a)(11)(A), inserted reference to tax imposed by chapter 43.

Subsec. (e). Pub. L. 93–406, §1016(a)(11)(B)–(D), substituted "excise taxes" for "chapter 42 taxes" in heading, and in text substituted "4945 (relating to taxes on taxable expenditures), 4971 (relating to excise taxes on failure to meet minimum funding standard), 4975 (relating to excise tax on prohibited transactions)" for "or 4945 (relating to taxes on taxable expenditures)" and ", 4945(i)(2), 4971(c)(3), or 4975(f)(4)" for "or 4945(h)(2)".

1969—Subsec. (a). Pub. L. 91–172, §101(j)(42), inserted reference to chapter 42.

Subsecs. (e), (f). Pub. L. 91–172, §101(f)(3), added subsec. (e) and redesignated former subsec. (e) as (f).

1965—Subsec. (e)(3). Pub. L. 89–44 added par. (3).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–237 applicable to restitution ordered after Aug. 16, 2010, see section 3(c) of Pub. L. 111–237, set out as a note under section 6201 of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–92, §11(j)(4), Nov. 6, 2009, 123 Stat. 2991, provided that: "The amendments made by subsection (h) [amending this section] shall apply to returns for taxable years ending on or after April 9, 2008."

Amendment by section 12(d) of Pub. L. 111–92 applicable to returns for taxable years ending on or after Apr. 9, 2008, see section 12(e) of Pub. L. 111–92, set out as a note under section 36 of this title.

Amendment by Pub. L. 111–5 applicable to taxable years beginning after Dec. 31, 2008, see section 1001(f) of Pub. L. 111–5, set out as an Effective Date note under section 36A of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 effective Jan. 1, 2004, see section 303(i) of Pub. L. 107–16, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1998 AMENDMENTS

Pub. L. 105–277, div. J, title III, §3003(c), Oct. 21, 1998, 112 Stat. 2681–905, provided that: "The amendments made by this section [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Oct. 21, 1998]."

Pub. L. 105–206, title III, §3463(c), July 22, 1998, 112 Stat. 767, provided that: "Subsection (a) and the amendment made by subsection (b) [amending this section and enacting provisions set out as a note under section 6212 of this title] shall apply to notices mailed after December 31, 1998."

Pub. L. 105–206, title III, §3464(d), July 22, 1998, 112 Stat. 767, provided that: "The amendments made by this section [amending this section and section 6512 of this title] shall take effect on the date of the enactment of this Act [July 22, 1998]."

Amendment by section 6010(p)(3) of Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 101(d)(2) of Pub. L. 105–34 applicable to taxable years beginning after Dec. 31, 1997, see section 101(e) of Pub. L. 105–34, set out as an Effective Date note under section 24 of this title.

Amendment by section 201(b) of Pub. L. 105–34 applicable to expenses paid after Dec. 31, 1997 (in taxable years ending after such date), for education furnished in academic periods beginning after such date, see section 201(f) of Pub. L. 105–34, set out as an Effective Date note under section 25A of this title.

Amendment by section 1085(a)(3) of Pub. L. 105–34 applicable to taxable years beginning after Dec. 31, 1996, see section 1085(e)(1) of Pub. L. 105–34, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by Pub. L. 104–193 applicable with respect to returns the due date for which (without regard to extensions) is more than 30 days after Aug. 22, 1996, see section 451(d) of Pub. L. 104–193, set out as a note under section 32 of this title.

Amendment by Pub. L. 104–188 applicable with respect to returns the due date for which, without regard to extensions, is on or after the 30th day after Aug. 20, 1996, with special rule for 1995 and 1996, see section 1615(d) of Pub. L. 104–188, set out as a note under section 21 of this title.

Amendment by Pub. L. 104–168 applicable to excess benefit transactions occurring on or after Sept. 14, 1995, and not applicable to any benefit arising from a transaction pursuant to any written contract which was binding on Sept. 13, 1995, and at all times thereafter before such transaction occurred, see section 1311(d)(1), (2) of Pub. L. 104–168, set out as a note under section 4955 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by section 1015(r)(3) of Pub. L. 100–647 applicable to notices of deficiencies mailed after Nov. 10, 1988, see section 1015(r)(4) of Pub. L. 100–647, set out as a note under section 6201 of this title.

Pub. L. 100–647, title VI, §6243(c), Nov. 10, 1988, 102 Stat. 3750, provided that: "The amendments made by this section [amending this section and section 7482 of this title] shall apply to orders entered after the date of the enactment of this Act [Nov. 10, 1988]."

Amendment by Pub. L. 100–418 applicable to crude oil removed from premises on or after Aug. 23, 1988, see section 1941(c) of Pub. L. 100–418, set out as a note under section 164 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 10712(c)(1) of Pub. L. 100–203 applicable to taxable years beginning after Dec. 22, 1987, see section 10712(d) of Pub. L. 100–203, set out as an Effective Date note under section 4955 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective as if included in the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, see section 1875(d)(2)(C) of Pub. L. 99–514, set out as a note under section 6230 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 305(b)(4) of Pub. L. 98–369 applicable to taxable events occurring after Dec. 31, 1984, see section 305(c) of Pub. L. 98–369, set out as an Effective Date note under section 4962 of this title.

Amendment by section 474(r)(34) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to partnership taxable years beginning after Sept. 3, 1982, with provision for the applicability of the amendment to any partnership taxable year ending after Sept. 3, 1982, if the partnership, each partner, and each indirect partner requests such application and the Secretary of the Treasury or his delegate consents to such application, see section 407(a)(1), (3) of Pub. L. 97–248, set out as an Effective Date note under section 6221 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

For effective date of amendment by Pub. L. 96–596 with respect to any first tier tax and to any second tier tax, see section 2(d) of Pub. L. 96–596, set out as an Effective Date note under section 4961 of this title.

Amendment by Pub. L. 96–589 effective Oct. 1, 1979, but not applicable to proceedings under Title 11, Bankruptcy, commenced before Oct. 1, 1979, see section 7(e) of Pub. L. 96–589, set out as a note under section 108 of this title.

Amendment by Pub. L. 96–223 applicable to periods after Feb. 29, 1980, see section 101(i) of Pub. L. 96–223, set out as a note under section 6161 of this title.

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95–600 applicable to tentative refund claims filed on and after Nov. 6, 1978, see section 504(c) of Pub. L. 95–600, set out as a note under section 6411 of this title.

Amendment by Pub. L. 95–227 applicable with respect to contributions, acts, and expenditures made after Dec. 31, 1977, in and for taxable years beginning after such date, see section 4(f) of Pub. L. 95–227, set out as an Effective Date note under section 192 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1204(c)(6) of Pub. L. 94–455 applicable with respect to action taken under section 6851, 6861, or 6862 of this title where the notice and demand takes place after Feb. 28, 1977, see section 1204(d) of Pub. L. 94–455, as amended, set out as a note under section 6851 of this title.

Pub. L. 94–455, title XII, §1206(d), Oct. 4, 1976, 90 Stat. 1704, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by this section [amending this section and sections 6201 and 6212 of this title] shall apply with respect to returns (within the meaning of section 6213(f)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) filed after December 31, 1976."

Amendment by section 1307(d)(2)(F)(iii) of Pub. L. 94–455 effective on and after Oct. 4, 1976, see section 1307(e)(6) of Pub. L. 94–455, set out as a note under section 501 of this title.

For effective date of amendment by section 1605(b)(6) of Pub. L. 94–455, see section 1608(d) of Pub. L. 94–455, set out as a note under section 856 of this title.

Amendment by section 1906(a)(15), (b)(13)(A) of Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1906(d)(1) of Pub. L. 94–455, set out as a note under section 6013 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–406 applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93–406, for plan years beginning after Sept. 2, 1974, but, in the case of plans in existence on Jan. 1, 1974, amendment by Pub. L. 93–406 applicable for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93–406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 applicable to taxable years beginning on or after July 1, 1965, see section 809(f) of Pub. L. 89–44, set out as a note under section 6420 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§6214. Determinations by Tax Court

(a) Jurisdiction as to increase of deficiency, additional amounts, or additions to the tax

Except as provided by section 7463, the Tax Court shall have jurisdiction to redetermine the correct amount of the deficiency even if the amount so redetermined is greater than the amount of the deficiency, notice of which has been mailed to the taxpayer, and to determine whether any additional amount, or any addition to the tax should be assessed, if claim therefor is asserted by the Secretary at or before the hearing or a rehearing.

(b) Jurisdiction over other years and quarters

The Tax Court in redetermining a deficiency of income tax for any taxable year or of gift tax for any calendar year or calendar quarter shall consider such facts with relation to the taxes for other years or calendar quarters as may be necessary correctly to redetermine the amount of such deficiency, but in so doing shall have no jurisdiction to determine whether or not the tax for any other year or calendar quarter has been overpaid or underpaid. Notwithstanding the preceding sentence, the Tax Court may apply the doctrine of equitable recoupment to the same extent that it is available in civil tax cases before the district courts of the United States and the United States Court of Federal Claims.

(c) Taxes imposed by section 507 or chapter 41, 42, 43, or 44

The Tax Court, in redetermining a deficiency of any tax imposed by section 507 or chapter 41, 42, 43, or 44 for any period, act, or failure to act, shall consider such facts with relation to the taxes under chapter 41, 42, 43, or 44 for other periods, acts, or failures to act as may be necessary correctly to redetermine the amount of such deficiency, but in so doing shall have no jurisdiction to determine whether or not the taxes under chapter 41, 42, 43, or 44 for any other period, act, or failure to act have been overpaid or underpaid. The Tax Court, in redetermining a deficiency of any second tier tax (as defined in section 4963(b)), shall make a determination with respect to whether the taxable event has been corrected.

(d) Final decisions of Tax Court

For purposes of this chapter, chapter 41, 42, 43, or 44, and subtitles A or B the date on which a decision of the Tax Court becomes final shall be determined according to the provisions of section 7481.

(e) Cross reference

For provision giving Tax Court jurisdiction to order a refund of an overpayment and to award sanctions, see section 6512(b)(2).

(Aug. 16, 1954, ch. 736, 68A Stat. 773; Pub. L. 91–172, title I, §101(j)(43), (44), title IX, §960(a), Dec. 30, 1969, 83 Stat. 530, 531, 734; Pub. L. 91–614, title I, §102(d)(6), Dec. 31, 1970, 84 Stat. 1842; Pub. L. 93–406, title II, §1016(a)(12), Sept. 2, 1974, 88 Stat. 930; Pub. L. 94–455, title XIII, §1307(d)(2)(F)(iv), (H), title XVI, §1605(b)(7), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1728, 1755, 1834; Pub. L. 96–223, title I, §101(f)(1)(F), (G), Apr. 2, 1980, 94 Stat. 252; Pub. L. 96–596, §2(b), Dec. 24, 1980, 94 Stat. 3472; Pub. L. 98–369, div. A, title I, §144(b), July 18, 1984, 98 Stat. 683; Pub. L. 99–514, title XV, §§1511(c)(8), 1554(a), title XVIII, §1833, Oct. 22, 1986, 100 Stat. 2745, 2754, 2852; Pub. L. 100–418, title I, §1941(b)(2)(B)(vi), (vii), Aug. 23, 1988, 102 Stat. 1323; Pub. L. 100–647, title VI, §6244(b)(1), Nov. 10, 1988, 102 Stat. 3750; Pub. L. 104–188, title I, §1704(t)(16), Aug. 20, 1996, 110 Stat. 1888; Pub. L. 109–280, title VIII, §858(a), Aug. 17, 2006, 120 Stat. 1020.)

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–280 inserted at end "Notwithstanding the preceding sentence, the Tax Court may apply the doctrine of equitable recoupment to the same extent that it is available in civil tax cases before the district courts of the United States and the United States Court of Federal Claims."

1996—Subsec. (e). Pub. L. 104–188 amended subsec. (e) generally, striking par. (2) designation and par. (1) which provided cross reference to section 6621(c)(4) of this title for provision giving Tax Court jurisdiction to determine whether any portion of deficiency is a substantial underpayment attributable to tax

motivated transactions.

1988—Subsec. (c). Pub. L. 100–418, §1941(b)(2)(B)(vi), substituted "or 44" for "44, or 45" in heading and wherever appearing in text.

Subsec. (d). Pub. L. 100–418, §1941(b)(2)(B)(vii), substituted "or 44" for "44, or 45".

Subsec. (e). Pub. L. 100–647 substituted "references" for "reference" in heading, designated existing provisions as par. (1), and added par. (2).

1986—Subsec. (a). Pub. L. 99–514, §1554(a), substituted "any addition to the tax" for "addition to the tax".

Subsec. (c). Pub. L. 99–514, §1833, substituted "section 4963(b)" for "section 4962(b)".

Subsec. (e). Pub. L. 99–514, §1511(c)(8), substituted "section 6621(c)(4)" for "section 6621(d)(4)".

1984—Subsec. (e). Pub. L. 98–369 added subsec. (e).

1980—Subsec. (c). Pub. L. 96–596 inserted provision directing the Tax Court, in redetermining a deficiency of any second tier tax, to make a determination with respect to whether the taxable event has been corrected.

Pub. L. 96–223, §101(f)(1)(F), inserted reference to chapter 45.

Subsec. (d). Pub. L. 96–223, §101(f)(1)(G), inserted reference to chapter 45.

1976—Subsec. (a). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (c). Pub. L. 94–455, §§1307(d)(2)(F)(iv), (H), 1605(b)(7)(A), (B), substituted in heading and in text "41, 42, 43, or 44" for "42 or 43".

Subsec. (d). Pub. L. 94–455, §§1307(d)(2)(F)(iv), 1605(b)(7)(C), substituted "41, 42, 43, or 44" for "42 or 43".

1974—Subsec. (c). Pub. L. 93–406, §1016(a)(12)(A), (B), inserted reference to chapter 43 in heading and in text.

Subsec. (d). Pub. L. 93–406, §1016(a)(12)(C), inserted reference to chapter 43.

1970—Subsec. (b). Pub. L. 91–614 inserted reference to calendar quarters in heading and in text in regard to gift tax deficiencies.

1969—Subsec. (a). Pub. L. 91–172, §960(a), inserted reference to exception provided for in section 7463 of this title.

Subsecs. (c), (d). Pub. L. 91–172, §101(j)(43), (44), added subsec. (c), redesignated former subsec. (c) as (d), and, in subsec. (d) as so redesignated, inserted reference to chapter 42.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title VIII, §858(b), Aug. 17, 2006, 120 Stat. 1020, provided that: "The amendment made by this section [amending this section] shall apply to any action or proceeding in the United States Tax Court with respect to which a decision has not become final (as determined under section 7481 of the Internal Revenue Code of 1986) as of the date of the enactment of this Act [Aug. 17, 2006]."

EFFECTIVE DATE OF 1988 AMENDMENTS

Pub. L. 100–647, title VI, §6244(c), Nov. 10, 1988, 102 Stat. 3750, provided that: "The amendments made by this section [amending this section and section 6512 of this title] shall apply to overpayments determined by the Tax Court which have not yet been refunded by the 90th day after the date of the enactment of this Act [Nov. 10, 1988]."

Amendment by Pub. L. 100–418 applicable to crude oil removed from the premises on or after Aug. 23, 1988, see section 1941(c) of Pub. L. 100–418, set out as a note under section 164 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1511(c)(8) of Pub. L. 99–514 applicable for purposes of determining interest for periods after Dec. 31, 1986, see section 1511(d) of Pub. L. 99–514, set out as a note under section 47 of this title.

Pub. L. 99–514, title XV, §1554(b), Oct. 22, 1986, 100 Stat. 2754, provided that: "The amendment made by subsection (a) [amending this section] shall apply to any action or proceeding in the Tax Court with respect to which a decision has not become final (as determined under section 7481 of the Internal Revenue Code of 1954 [now 1986]) before the date of the enactment of this Act [Oct. 22, 1986]."

Amendment by section 1833 of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable with respect to interest accruing after Dec. 31, 1984, see section 144(c) of Pub. L. 98–369, set out as a note under section 6621 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

For effective date of amendment by Pub. L. 96–596 with respect to any first tier tax and to any second tier tax, see section 2(d) of Pub. L. 96–596, set out as an Effective Date note under section 4961 of this title.

Amendment by Pub. L. 96–223 applicable to periods after Feb. 29, 1980, see section 101(i) of Pub. L. 96–223, set out as a note under section 6161 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1307(d)(2)(F)(iv), (H) of Pub. L. 94–455 effective on and after Oct. 4, 1976, see section 1307(e)(6) of Pub. L. 94–455, set out as a note under section 501 of this title.

For effective date of amendment by section 1605(b)(7) of Pub. L. 94–455, see section 1608(d) of Pub. L. 94–455, set out as a note under section 856 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–406 applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93–406, for plan years beginning after Sept. 2, 1974, but, in the case of plans in existence on Jan. 1, 1974, amendment by Pub. L. 93–406 applicable for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93–406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91–614, set out as a note under section 2501 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 101(j)(43), (44) of Pub. L. 91–172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

Amendment by section 960(a) of Pub. L. 91–172 effective one year after Dec. 30, 1969, see section 962(e) of Pub. L. 91–172, set out as an Effective Date note under section 7463 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§6215. Assessment of deficiency found by Tax Court

(a) General rule

If the taxpayer files a petition with the Tax Court, the entire amount redetermined as the deficiency by the decision of the Tax Court which has become final shall be assessed and shall be paid upon notice and demand from the Secretary. No part of the amount determined as a deficiency by the Secretary but disallowed as such by the decision of the Tax Court which has become final shall be assessed or be collected by levy or by proceeding in court with or without assessment.

(b) Cross references

(1) For assessment or collection of the amount of the deficiency determined by the Tax Court pending appellate court review, see section 7485.

(2) For dismissal of petition by Tax Court as affirmation of deficiency as determined by the Secretary, see section 7459(d).

(3) For decision of Tax Court that tax is barred by limitation as its decision that there is no deficiency, see section 7459(e).

(4) For assessment of damages awarded by Tax Court for instituting proceedings merely for delay, see section 6673.

(5) For treatment of certain deficiencies as having been paid, in connection with sale of surplus war-built vessels, see section 9(b)(8) of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1742).

(6) For rules applicable to Tax Court proceedings, see generally subchapter C of chapter 76.

(7) For extension of time for paying amount determined as deficiency, see section 6161(b).

(Aug. 16, 1954, ch. 736, 68A Stat. 773; Pub. L. 94–455, title XIX, §1906(a)(16), (b)(13)(A), Oct. 4, 1976, 90 Stat. 1825, 1834; Pub. L. 99–514, title XIV, §1404(c)(2), Oct. 22, 1986, 100 Stat. 2714.)

AMENDMENTS

1986—Subsec. (b)(7), (8). Pub. L. 99–514 redesignated par. (8) as (7) and struck out former par. (7) which read as follows: "For proration of deficiency to installments, see section 6152(c)."

1976—Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary" wherever appearing.

Subsec. (b)(5). Pub. L. 94–455, §1906(a)(16), struck out "60 Stat. 48;" before "50 U.S.C. App. 1742".

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1404(d) of Pub. L. 99–514, set out as a note under section 643 of this title.

§6216. Cross references

(1) For procedures relating to receivership proceedings, see subchapter B of chapter 70.

(2) For procedures relating to jeopardy assessments, see subchapter A of chapter 70.

(3) For procedures relating to claims against transferees and fiduciaries, see chapter 71.

(4) For procedure relating to partnership items, see subchapter C.

(Aug. 16, 1954, ch. 736, 68A Stat. 773; Pub. L. 96–589, §6(i)(9), Dec. 24, 1980, 94 Stat. 3411; Pub. L. 97–248, title IV, §402(c)(3), Sept. 3, 1982, 96 Stat. 667.)

AMENDMENTS

1982—Par. (4). Pub. L. 97–248 added par. (4).

1980—Par. (1). Pub. L. 96–589 struck out reference to bankruptcy proceedings.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to partnership taxable years beginning after Sept. 3, 1982, with provision for the applicability of the amendment to any partnership taxable year ending after Sept. 3, 1982, if the partnership, each partner, and each indirect partner requests such application and the Secretary of the Treasury or his delegate consents to such application, see section 407(a)(1), (3) of Pub. L. 97–248, set out as an Effective Date note under section 6221 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–589 effective Oct. 1, 1979, but not applicable to proceedings under Title 11, Bankruptcy, commenced before Oct. 1, 1979, see section 7(e) of Pub. L. 96–589, set out as a note under section 108 of this title.

Subchapter C—Tax Treatment of Partnership Items

Sec.

6221. Tax treatment determined at partnership level.

6222. Partner's return must be consistent with partnership return or Secretary notified of inconsistency.

6223. Notice to partners of proceedings.

6224. Participation in administrative proceedings; waivers; agreements.

6225. Assessments made only after partnership level proceedings are completed.

6226. Judicial review of final partnership administrative adjustments.

6227. Administrative adjustment requests.

6228. Judicial review where administrative adjustment request is not allowed in full.

6229. Period of limitations for making assessments.

6230. Additional administrative provisions.

6231. Definitions and special rules.

[6232. Repealed.]
6233. Extension to entities filing partnership returns, etc.
6234. Declaratory judgment relating to treatment of items other than partnership items with respect to an oversheltered return.

AMENDMENTS

1997—Pub. L. 105–34, title XII, §1231(c), Aug. 5, 1997, 111 Stat. 1023, added item 6234.

1988—Pub. L. 100–418, title I, §1941(b)(3)(D), Aug. 23, 1988, 102 Stat. 1324, struck out item 6232 "Extension of subchapter to windfall profit tax".

1984—Pub. L. 98–369, div. A, title VII, §714(p)(2)(E), July 18, 1984, 98 Stat. 965, added item 6233.

1982—Pub. L. 97–248, title IV, §402(a), Sept. 3, 1982, 96 Stat. 648, added subchapter C heading and items 6221 to 6232.

§6221. Tax treatment determined at partnership level

Except as otherwise provided in this subchapter, the tax treatment of any partnership item (and the applicability of any penalty, addition to tax, or additional amount which relates to an adjustment to a partnership item) shall be determined at the partnership level.

(Added Pub. L. 97–248, title IV, §402(a), Sept. 3, 1982, 96 Stat. 648; amended Pub. L. 105–34, title XII, §1238(a), Aug. 5, 1997, 111 Stat. 1026.)

AMENDMENTS

1997—Pub. L. 105–34 inserted "(and the applicability of any penalty, addition to tax, or additional amount which relates to an adjustment to a partnership item)" after "item".

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XII, §1238(c), Aug. 5, 1997, 111 Stat. 1027, provided that: "The amendments made by this section [amending this section and sections 6226 and 6230 of this title] shall apply to partnership taxable years ending after the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE

Pub. L. 97–248, title IV, §407(a), Sept. 3, 1982, 96 Stat. 670, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) Except as provided in paragraph (2), the amendments made by sections 402, 403, and 404 [enacting this subchapter and section 1508 of Title 28, Judiciary and Judicial Procedure, amending sections 702, 6031, 6213, 6216, 6422, 6501, 6504, 6511, 6512, 6515, 7422, 7451, 7456, 7459, 7482, and 7485 of this title and section 1346 of Title 28, and enacting provisions set out as a note under section 6031 of this title] shall apply to partnership taxable years beginning after the date of the enactment of this Act [Sept. 3, 1982].

"(2) Section 6232 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall apply to periods after December 31, 1982.

"(3) The amendments made by sections 402, 403, and 404 shall apply to any partnership taxable year (or in the case of section 6232 of such Code, to any period) ending after the date of the enactment of this Act [Sept. 3, 1982] if the partnership, each partner, and each indirect partner requests such application and the Secretary of the Treasury or his delegate consents to such application."

SHORT TITLE

For short title of title IV of Pub. L. 97–248 as the "Tax Treatment of Partnership Items Act of 1982", see Short Title of 1982 Amendments note set out under section 1 of this title.

§6222. Partner's return must be consistent with partnership return or Secretary notified of inconsistency

(a) In general

A partner shall, on the partner's return, treat a partnership item in a manner which is consistent with the treatment of such partnership item on the partnership return.

(b) Notification of inconsistent treatment

(1) In general

In the case of any partnership item, if—

(A)(i) the partnership has filed a return but the partner's treatment on his return is (or may be) inconsistent with the treatment of the item on the partnership return, or

(ii) the partnership has not filed a return, and

(B) the partner files with the Secretary a statement identifying the inconsistency,

subsection (a) shall not apply to such item.

(2) Partner receiving incorrect information

A partner shall be treated as having complied with subparagraph (B) of paragraph (1) with respect to a partnership item if the partner—

(A) demonstrates to the satisfaction of the Secretary that the treatment of the partnership item on the partner's return is consistent with the treatment of the item on the schedule furnished to the partner by the partnership, and

(B) elects to have this paragraph apply with respect to that item.

(c) Effect of failure to notify

In any case—

(1) described in paragraph (1)(A)(i) of subsection (b), and

(2) in which the partner does not comply with paragraph (1)(B) of subsection (b),

section 6225 shall not apply to any part of a deficiency attributable to any computational adjustment required to make the treatment of the items by such partner consistent with the treatment of the items on the partnership return.

(d) Addition to tax for failure to comply with section

For addition to tax in the case of a partner's disregard of requirements of this section, see part II of subchapter A of chapter 68.

(Added Pub. L. 97–248, title IV, §402(a), Sept. 3, 1982, 96 Stat. 648; amended Pub. L. 99–514, title XV, §1503(c)(1), Oct. 22, 1986, 100 Stat. 2743; Pub. L. 101–239, title VII, §7721(c)(7), Dec. 19, 1989, 103 Stat. 2400.)

AMENDMENTS

1989—Subsec. (d). Pub. L. 101–239 substituted "part II of subchapter A of chapter 68" for "section 6653(a)".

1986—Subsec. (d). Pub. L. 99–514 struck out "intentional or negligent" after "case of a partner's".

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1989, see section 7721(d) of Pub. L. 101–239, set out as a note under section 461 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1986, see section 1503(e) of Pub. L. 99–514, set out as a note under section 6653 of this title.

§6223. Notice to partners of proceedings

(a) Secretary must give partners notice of beginning and completion of administrative proceedings

The Secretary shall mail to each partner whose name and address is furnished to the Secretary

notice of—

(1) the beginning of an administrative proceeding at the partnership level with respect to a partnership item, and

(2) the final partnership administrative adjustment resulting from any such proceeding.

A partner shall not be entitled to any notice under this subsection unless the Secretary has received (at least 30 days before it is mailed to the tax matters partner) sufficient information to enable the Secretary to determine that such partner is entitled to such notice and to provide such notice to such partner.

(b) Special rules for partnership with more than 100 partners

(1) Partner with less than 1 percent interest

Except as provided in paragraph (2), subsection (a) shall not apply to a partner if—

(A) the partnership has more than 100 partners, and

(B) the partner has a less than 1 percent interest in the profits of the partnership.

(2) Secretary must give notice to notice group

If a group of partners in the aggregate having a 5 percent or more interest in the profits of a partnership so request and designate one of their members to receive the notice, the member so designated shall be treated as a partner to whom subsection (a) applies.

(c) Information base for Secretary's notices, etc.

For purposes of this subchapter—

(1) Information on partnership return

Except as provided in paragraphs (2) and (3), the Secretary shall use the names, addresses, and profits interests shown on the partnership return.

(2) Use of additional information

The Secretary shall use additional information furnished to him by the tax matters partner or any other person in accordance with regulations prescribed by the Secretary.

(3) Special rule with respect to indirect partners

If any information furnished to the Secretary under paragraph (1) or (2)—

(A) shows that a person has a profits interest in the partnership by reason of ownership of an interest through 1 or more pass-thru partners, and

(B) contains the name, address, and profits interest of such person,

then the Secretary shall use the name, address, and profits interest of such person with respect to such partnership interest (in lieu of the names, addresses, and profits interests of the pass-thru partners).

(d) Period for mailing notice

(1) Notice of beginning of proceedings

The Secretary shall mail the notice specified in paragraph (1) of subsection (a) to each partner entitled to such notice not later than the 120th day before the day on which the notice specified in paragraph (2) of subsection (a) is mailed to the tax matters partner.

(2) Notice of final partnership administrative adjustment

The Secretary shall mail the notice specified in paragraph (2) of subsection (a) to each partner entitled to such notice not later than the 60th day after the day on which the notice specified in such paragraph (2) was mailed to the tax matters partner.

(e) Effect of Secretary's failure to provide notice

(1) Application of subsection

(A) In general

This subsection applies where the Secretary has failed to mail any notice specified in subsection (a) to a partner entitled to such notice within the period specified in subsection (d).

(B) Special rules for partnerships with more than 100 partners

For purposes of subparagraph (A), any partner described in paragraph (1) of subsection (b) shall be treated as entitled to notice specified in subsection (a). The Secretary may provide such notice—

(i) except as provided in clause (ii), by mailing notice to the tax matters partner, or

(ii) in the case of a member of a notice group which qualified under paragraph (2) of subsection (b), by mailing notice to the partner designated for such purpose by the group.

(2) Proceedings finished

In any case to which this subsection applies, if at the time the Secretary mails the partner notice of the proceeding—

(A) the period within which a petition for review of a final partnership administrative adjustment under section 6226 may be filed has expired and no such petition has been filed, or

(B) the decision of a court in an action begun by such a petition has become final,

the partner may elect to have such adjustment, such decision, or a settlement agreement described in paragraph (2) of section 6224(c) with respect to the partnership taxable year to which the adjustment relates apply to such partner. If the partner does not make an election under the preceding sentence, the partnership items of the partner for the partnership taxable year to which the proceeding relates shall be treated as nonpartnership items.

(3) Proceedings still going on

In any case to which this subsection applies, if paragraph (2) does not apply, the partner shall be a party to the proceeding unless such partner elects—

(A) to have a settlement agreement described in paragraph (2) of section 6224(c) with respect to the partnership taxable year to which the proceeding relates apply to the partner, or

(B) to have the partnership items of the partner for the partnership taxable year to which the proceeding relates treated as nonpartnership items.

(f) Only one notice of final partnership administrative adjustment

If the Secretary mails a notice of final partnership administrative adjustment for a partnership taxable year with respect to a partner, the Secretary may not mail another such notice to such partner with respect to the same taxable year of the same partnership in the absence of a showing of fraud, malfeasance, or misrepresentation of a material fact.

(g) Tax matters partner must keep partners informed of proceedings

To the extent and in the manner provided by regulations, the tax matters partner of a partnership shall keep each partner informed of all administrative and judicial proceedings for the adjustment at the partnership level of partnership items.

(h) Pass-thru partner required to forward notice

(1) In general

If a pass-thru partner receives a notice with respect to a partnership proceeding from the Secretary, the tax matters partner, or another pass-thru partner, the pass-thru partner shall, within 30 days of receiving that notice, forward a copy of that notice to the person or persons holding an interest (through the pass-thru partner) in the profits or losses of the partnership for the partnership taxable year to which the notice relates.

(2) Partnership as pass-thru partner

In the case of a pass-thru partner which is a partnership, the tax matters partner of such partnership shall be responsible for forwarding copies of the notice to the partners of such

partnership.

(Added Pub. L. 97–248, title IV, §402(a), Sept. 3, 1982, 96 Stat. 649.)

§6224. Participation in administrative proceedings; waivers; agreements

(a) Participation in administrative proceedings

Any partner has the right to participate in any administrative proceeding relating to the determination of partnership items at the partnership level.

(b) Partner may waive rights

(1) In general

A partner may at any time waive—

(A) any right such partner has under this subchapter, and

(B) any restriction under this subchapter on action by the Secretary.

(2) Form

Any waiver under paragraph (1) shall be made by a signed notice in writing filed with the Secretary.

(c) Settlement agreement

In the absence of a showing of fraud, malfeasance, or misrepresentation of fact—

(1) Binds all parties

A settlement agreement between the Secretary or the Attorney General (or his delegate) and 1 or more partners in a partnership with respect to the determination of partnership items for any partnership taxable year shall (except as otherwise provided in such agreement) be binding on all parties to such agreement with respect to the determination of partnership items for such partnership taxable year. An indirect partner is bound by any such agreement entered into by the pass-thru partner unless the indirect partner has been identified as provided in section 6223(c)(3).

(2) Other partners have right to enter into consistent agreements

If the Secretary or the Attorney General (or his delegate) enters into a settlement agreement with any partner with respect to partnership items for any partnership taxable year, the Secretary or the Attorney General (or his delegate) shall offer to any other partner who so requests settlement terms for the partnership taxable year which are consistent with those contained in such settlement agreement. Except in the case of an election under paragraph (2) or (3) of section 6223(e) to have a settlement agreement described in this paragraph apply, this paragraph shall apply with respect to a settlement agreement entered into with a partner before notice of a final partnership administrative adjustment is mailed to the tax matters partner only if such other partner makes the request before the expiration of 150 days after the day on which such notice is mailed to the tax matters partner.

(3) Tax matters partner may bind certain other partners

(A) In general

A partner who is not a notice partner (and not a member of a notice group described in subsection (b)(2) of section 6223) shall be bound by any settlement agreement—

(i) which is entered into by the tax matters partner, and

(ii) in which the tax matters partner expressly states that such agreement shall bind the other partners.

(B) Exception

Subparagraph (A) shall not apply to any partner who (within the time prescribed by the Secretary) files a statement with the Secretary providing that the tax matters partner shall not have the authority to enter into a settlement agreement on behalf of such partner.

(Added Pub. L. 97–248, title IV, §402(a), Sept. 3, 1982, 96 Stat. 651; amended Pub. L. 107–147, title IV, §416(d)(1)(A), Mar. 9, 2002, 116 Stat. 55.)

AMENDMENTS

2002—Subsec. (c)(1), (2). Pub. L. 107–147 inserted "or the Attorney General (or his delegate)" after "Secretary" wherever appearing.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title IV, §416(d)(2), Mar. 9, 2002, 116 Stat. 55, provided that: "The amendments made by this subsection [amending this section and sections 6229, 6231, and 6234 of this title] shall apply with respect to settlement agreements entered into after the date of the enactment of this Act [Mar. 9, 2002]."

§6225. Assessments made only after partnership level proceedings are completed

(a) Restriction on assessment and collection

Except as otherwise provided in this subchapter, no assessment of a deficiency attributable to any partnership item may be made (and no levy or proceeding in any court for the collection of any such deficiency may be made, begun, or prosecuted) before—

(1) the close of the 150th day after the day on which a notice of a final partnership administrative adjustment was mailed to the tax matters partner, and

(2) if a proceeding is begun in the Tax Court under section 6226 during such 150-day period, the decision of the court in such proceeding has become final.

(b) Premature action may be enjoined

Notwithstanding section 7421(a), any action which violates subsection (a) may be enjoined in the proper court, including the Tax Court. The Tax Court shall have no jurisdiction to enjoin any action or proceeding under this subsection unless a timely petition for a readjustment of the partnership items for the taxable year has been filed and then only in respect of the adjustments that are the subject of such petition.

(c) Limit where no proceeding begun

If no proceeding under section 6226 is begun with respect to any final partnership administrative adjustment during the 150-day period described in subsection (a), the deficiency assessed against any partner with respect to the partnership items to which such adjustment relates shall not exceed the amount determined in accordance with such adjustment.

(Added Pub. L. 97–248, title IV, §402(a), Sept. 3, 1982, 96 Stat. 652; amended Pub. L. 105–34, title XII, §1239(a), Aug. 5, 1997, 111 Stat. 1027.)

AMENDMENTS

1997—Pub. L. 105–34 substituted "the proper court, including the Tax Court. The Tax Court shall have no jurisdiction to enjoin any action or proceeding under this subsection unless a timely petition for a readjustment of the partnership items for the taxable year has been filed and then only in respect of the adjustments that are the subject of such petition." for "the proper court."

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XII, §1239(f), Aug. 5, 1997, 111 Stat. 1028, provided that: "The amendments made by this section [amending this section and sections 6226, 6230, 6501, 6512, 7421, 7459, and 7482 of this title] shall apply to partnership taxable years ending after the date of the enactment of this Act [Aug. 5, 1997]."

§6226. Judicial review of final partnership administrative adjustments

(a) Petition by tax matters partner

Within 90 days after the day on which a notice of a final partnership administrative adjustment is mailed to the tax matters partner, the tax matters partner may file a petition for a readjustment of the

partnership items for such taxable year with—

(1) the Tax Court,

(2) the district court of the United States for the district in which the partnership's principal place of business is located, or

(3) the Court of Federal Claims.

(b) Petition by partner other than tax matters partner

(1) In general

If the tax matters partner does not file a readjustment petition under subsection (a) with respect to any final partnership administrative adjustment, any notice partner (and any 5-percent group) may, within 60 days after the close of the 90-day period set forth in subsection (a), file a petition for a readjustment of the partnership items for the taxable year involved with any of the courts described in subsection (a).

(2) Priority of the Tax Court action

If more than 1 action is brought under paragraph (1) with respect to any partnership for any partnership taxable year, the first such action brought in the Tax Court shall go forward.

(3) Priority outside the Tax Court

If more than 1 action is brought under paragraph (1) with respect to any partnership for any taxable year but no such action is brought in the Tax Court, the first such action brought shall go forward.

(4) Dismissal of other actions

If an action is brought under paragraph (1) in addition to the action which goes forward under paragraph (2) or (3), such action shall be dismissed.

(5) Treatment of premature petitions

If—

(A) a petition for a readjustment of partnership items for the taxable year involved is filed by a notice partner (or a 5-percent group) during the 90-day period described in subsection (a), and

(B) no action is brought under paragraph (1) during the 60-day period described therein with respect to such taxable year which is not dismissed,

such petition shall be treated for purposes of paragraph (1) as filed on the last day of such 60-day period.

(6) Tax matters partner may intervene

The tax matters partner may intervene in any action brought under this subsection.

(c) Partners treated as parties

If an action is brought under subsection (a) or (b) with respect to a partnership for any partnership taxable year—

(1) each person who was a partner in such partnership at any time during such year shall be treated as a party to such action, and

(2) the court having jurisdiction of such action shall allow each such person to participate in the action.

(d) Partner must have interest in outcome

(1) In order to be party to action

Subsection (c) shall not apply to a partner after the day on which—

(A) the partnership items of such partner for the partnership taxable year became nonpartnership items by reason of 1 or more of the events described in subsection (b) of section 6231, or

(B) the period within which any tax attributable to such partnership items may be assessed against that partner expired.

Notwithstanding subparagraph (B), any person treated under subsection (c) as a party to an action shall be permitted to participate in such action (or file a readjustment petition under subsection (b) or paragraph (2) of this subsection) solely for the purpose of asserting that the period of limitations for assessing any tax attributable to partnership items has expired with respect to such person, and the court having jurisdiction of such action shall have jurisdiction to consider such assertion.

(2) To file petition

No partner may file a readjustment petition under subsection (b) unless such partner would (after the application of paragraph (1) of this subsection) be treated as a party to the proceeding.

(e) Jurisdictional requirement for bringing action in district court or Court of Federal Claims

(1) In general

A readjustment petition under this section may be filed in a district court of the United States or the Court of Federal Claims only if the partner filing the petition deposits with the Secretary, on or before the day the petition is filed, the amount by which the tax liability of the partner would be increased if the treatment of partnership items on the partner's return were made consistent with the treatment of partnership items on the partnership return, as adjusted by the final partnership administrative adjustment. In the case of a petition filed by a 5-percent group, the requirement of the preceding sentence shall apply to each member of the group. The court may by order provide that the jurisdictional requirements of this paragraph are satisfied where there has been a good faith attempt to satisfy such requirements and any shortfall in the amount required to be deposited is timely corrected.

(2) Refund on request

If an action brought in a district court of the United States or in the Court of Federal Claims is dismissed by reason of the priority of a Tax Court action under paragraph (2) of subsection (b), the Secretary shall, at the request of the partner who made the deposit, refund the amount deposited under paragraph (1).

(3) Interest payable

Any amount deposited under paragraph (1), while deposited, shall not be treated as a payment of tax for purposes of this title (other than chapter 67).

(f) Scope of judicial review

A court with which a petition is filed in accordance with this section shall have jurisdiction to determine all partnership items of the partnership for the partnership taxable year to which the notice of final partnership administrative adjustment relates, the proper allocation of such items among the partners, and the applicability of any penalty, addition to tax, or additional amount which relates to an adjustment to a partnership item.

(g) Determination of court reviewable

Any determination by a court under this section shall have the force and effect of a decision of the Tax Court or a final judgment or decree of the district court or the Court of Federal Claims, as the case may be, and shall be reviewable as such. With respect to the partnership, only the tax matters partner, a notice partner, or a 5-percent group may seek review of a determination by a court under this section.

(h) Effect of decision dismissing action

If an action brought under this section is dismissed (other than under paragraph (4) of subsection (b)), the decision of the court dismissing the action shall be considered as its decision that the notice of final partnership administrative adjustment is correct, and an appropriate order shall be entered in the records of the court.

(Added Pub. L. 97–248, title IV, §402(a), Sept. 3, 1982, 96 Stat. 653; amended Pub. L. 97–448, title III, §306(c)(1)(A), Jan. 12, 1983, 96 Stat. 2406; Pub. L. 102–572, title IX, §902(b)(2), Oct. 29, 1992,

106 Stat. 4516; Pub. L. 105–34, title XII, §§1238(b)(1), 1239(b), 1240(a), Aug. 5, 1997, 111 Stat. 1026–1028.)

AMENDMENTS

1997—Subsec. (b)(5), (6). Pub. L. 105–34, §1240(a), added par. (5) and redesignated former par. (5) as (6).

Subsec. (d)(1). Pub. L. 105–34, §1239(b), inserted concluding provisions.

Subsec. (f). Pub. L. 105–34, §1238(b)(1), substituted "relates," for "relates and" and inserted ", and the applicability of any penalty, addition to tax, or additional amount which relates to an adjustment to a partnership item" before period at end.

1992—Subsecs. (a)(3), (e), (g). Pub. L. 102–572 substituted "Court of Federal Claims" for "Claims Court" wherever appearing.

1983—Subsec. (g). Pub. L. 97–448 substituted "With respect to the partnership, only the tax matters partner" for "Only the tax matters partner".

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 1238(b)(1) of Pub. L. 105–34 applicable to partnership taxable years ending after Aug. 5, 1997, see section 1238(c) of Pub. L. 105–34, set out as a note under section 6221 of this title.

Amendment by section 1239(b) of Pub. L. 105–34 applicable to partnership taxable years ending after Aug. 5, 1997, see section 1239(f) of Pub. L. 105–34, set out as a note under section 6225 of this title.

Pub. L. 105–34, title XII, §1240(b), Aug. 5, 1997, 111 Stat. 1029, provided that: "The amendment made by this section [amending this section] shall apply to petitions filed after the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective as if included in the provisions of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 311(d) of Pub. L. 97–448, set out as a note under section 31 of this title.

§6227. Administrative adjustment requests

(a) General rule

A partner may file a request for an administrative adjustment of partnership items for any partnership taxable year at any time which is—

(1) within 3 years after the later of—

(A) the date on which the partnership return for such year is filed, or

(B) the last day for filing the partnership return for such year (determined without regard to extensions), and

(2) before the mailing to the tax matters partner of a notice of final partnership administrative adjustment with respect to such taxable year.

(b) Special rule in case of extension of period of limitations under section 6229

The period prescribed by subsection (a)(1) for filing of a request for an administrative adjustment shall be extended—

(1) for the period within which an assessment may be made pursuant to an agreement (or any extension thereof) under section 6229(b), and

(2) for 6 months thereafter.

(c) Requests by tax matters partner on behalf of partnership

(1) Substituted return

If the tax matters partner—

(A) files a request for an administrative adjustment, and

(B) asks that the treatment shown on the request be substituted for the treatment of partnership items on the partnership return to which the request relates,

the Secretary may treat the changes shown on such request as corrections of mathematical or clerical errors appearing on the partnership return.

(2) Requests not treated as substituted returns

(A) In general

If the tax matters partner files an administrative adjustment request on behalf of the partnership which is not treated as a substituted return under paragraph (1), the Secretary may, with respect to all or any part of the requested adjustments—

(i) without conducting any proceeding, allow or make to all partners the credits or refunds arising from the requested adjustments,

(ii) conduct a partnership proceeding under this subchapter, or

(iii) take no action on the request.

(B) Exceptions

Clause (i) of subparagraph (A) shall not apply with respect to a partner after the day on which the partnership items become nonpartnership items by reason of 1 or more of the events described in subsection (b) of section 6231.

(3) Request must show effect on distributive shares

The tax matters partner shall furnish with any administrative adjustment request on behalf of the partnership revised schedules showing the effect of such request on the distributive shares of the partners and such other information as may be required under regulations.

(d) Other requests

If any partner files a request for an administrative adjustment (other than a request described in subsection (c)), the Secretary may—

(1) process the request in the same manner as a claim for credit or refund with respect to items which are not partnership items,

(2) assess any additional tax that would result from the requested adjustments,

(3) mail to the partner, under subparagraph (A) of section 6231(b)(1) (relating to items becoming nonpartnership items), a notice that all partnership items of the partner for the partnership taxable year to which such request relates shall be treated as nonpartnership items, or

(4) conduct a partnership proceeding.

(e) Requests with respect to bad debts or worthless securities

In the case of that portion of any request for an administrative adjustment which relates to the deductibility by the partnership under section 166 of a debt as a debt which became worthless, or under section 165(g) of a loss from worthlessness of a security, the period prescribed in subsection (a)(1) shall be 7 years from the last day for filing the partnership return for the year with respect to which such request is made (determined without regard to extensions).

(Added Pub. L. 97–248, title IV, §402(a), Sept. 3, 1982, 96 Stat. 655; amended Pub. L. 105–34, title XII, §§1236(a), 1243(a), Aug. 5, 1997, 111 Stat. 1025, 1029; Pub. L. 107–147, title IV, §417(19)(A), Mar. 9, 2002, 116 Stat. 56.)

AMENDMENTS

2002—Subsec. (d). Pub. L. 107–147 substituted "subsection (c)" for "subsection (b)" in introductory provisions.

1997—Subsecs. (b) to (d). Pub. L. 105–34, §1236(a), added subsec. (b) and redesignated former subsecs. (b) and (c) as (c) and (d), respectively.

Subsec. (e). Pub. L. 105–34, §1243(a), added subsec. (e).

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XII, §1236(b), Aug. 5, 1997, 111 Stat. 1025, provided that: "The amendment made by

this section [amending this section] shall take effect as if included in the amendments made by section 402 of the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97–248]."

Pub. L. 105–34, title XII, §1243(b), Aug. 5, 1997, 111 Stat. 1029, provided that:

"(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall take effect as if included in the amendments made by section 402 of the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97–248].

"(2) TREATMENT OF REQUESTS FILED BEFORE DATE OF ENACTMENT.—In the case of that portion of any request (filed before the date of the enactment of this Act [Aug. 5, 1997]) for an administrative adjustment which relates to the deductibility of a debt as a debt which became worthless or the deductibility of a loss from the worthlessness of a security—

"(A) paragraph (2) of section 6227(a) of the Internal Revenue Code of 1986 shall not apply,

"(B) the period for filing a petition under section 6228 of the Internal Revenue Code of 1986 with respect to such request shall not expire before the date 6 months after the date of the enactment of this Act, and

"(C) such a petition may be filed without regard to whether there was a notice of the beginning of an administrative proceeding or a final partnership administrative adjustment."

§6228. Judicial review where administrative adjustment request is not allowed in full

(a) Request on behalf of partnership

(1) In general

If any part of an administrative adjustment request filed by the tax matters partner under subsection (c) of section 6227 is not allowed by the Secretary, the tax matters partner may file a petition for an adjustment with respect to the partnership items to which such part of the request relates with—

(A) the Tax Court,

(B) the district court of the United States for the district in which the principal place of business of the partnership is located, or

(C) the Court of Federal Claims.

(2) Period for filing petition

(A) In general

A petition may be filed under paragraph (1) with respect to partnership items for a partnership taxable year only—

(i) after the expiration of 6 months from the date of filing of the request under section 6227, and

(ii) before the date which is 2 years after the date of such request.

(B) No petition after notice of beginning of administrative proceeding

No petition may be filed under paragraph (1) after the day the Secretary mails to the partnership a notice of the beginning of an administrative proceeding with respect to the partnership taxable year to which such request relates.

(C) Failure by Secretary to issue timely notice of adjustment

If the Secretary—

(i) mails the notice referred to in subparagraph (B) before the expiration of the 2-year period referred to in clause (ii) of subparagraph (A), and

(ii) fails to mail a notice of final partnership administrative adjustment with respect to the partnership taxable year to which the request relates before the expiration of the period described in section 6229(a) (including any extension by agreement),

subparagraph (B) shall cease to apply with respect to such request, and the 2-year period referred to in clause (ii) of subparagraph (A) shall not expire before the date 6 months after the

expiration of the period described in section 6229(a) (including any extension by agreement).

(D) Extension of time

The 2-year period described in subparagraph (A)(ii) shall be extended for such period as may be agreed upon in writing between the tax matters partner and the Secretary.

(3) Coordination with administrative adjustment

(A) Administrative adjustment before filing of petition

No petition may be filed under this subsection after the Secretary mails to the tax matters partner a notice of final partnership administrative adjustment for the partnership taxable year to which the request under section 6227 relates.

(B) Administrative adjustment after filing but before hearing of petition

If the Secretary mails to the tax matters partner a notice of final partnership administrative adjustment for the partnership taxable year to which the request under section 6227 relates after the filing of a petition under this subsection but before the hearing of such petition, such petition shall be treated as an action brought under section 6226 with respect to that administrative adjustment, except that subsection (e) of section 6226 shall not apply.

(C) Notice must be before expiration of statute of limitations

A notice of final partnership administrative adjustment for the partnership taxable year shall be taken into account under subparagraphs (A) and (B) only if such notice is mailed before the expiration of the period prescribed by section 6229 for making assessments of tax attributable to partnership items for such taxable year.

(4) Partners treated as party to action

(A) In general

If an action is brought by the tax matters partner under paragraph (1) with respect to any request for an adjustment of a partnership item for any taxable year—

(i) each person who was a partner in such partnership at any time during the partnership taxable year involved shall be treated as a party to such action, and

(ii) the court having jurisdiction of such action shall allow each such person to participate in the action.

(B) Partners must have interest in outcome

For purposes of subparagraph (A), rules similar to the rules of paragraph (1) of section 6226(d) shall apply.

(5) Scope of judicial review

Except in the case described in subparagraph (B) of paragraph (3), a court with which a petition is filed in accordance with this subsection shall have jurisdiction to determine only those partnership items to which the part of the request under section 6227 not allowed by the Secretary relates and those items with respect to which the Secretary asserts adjustments as offsets to the adjustments requested by the tax matters partner.

(6) Determination of court reviewable

Any determination by a court under this subsection shall have the force and effect of a decision of the Tax Court or a final judgment or decree of the district court or the Court of Federal Claims, as the case may be, and shall be reviewable as such. With respect to the partnership, only the tax matters partner, a notice partner, or a 5-percent group may seek review of a determination by a court under this subsection.

(b) Other requests

(1) Notice providing that items become nonpartnership items

If the Secretary mails to a partner, under subparagraph (A) of section 6231(b)(1) (relating to items ceasing to be partnership items), a notice that all partnership items of the partner for the

partnership taxable year to which a timely request for administrative adjustment under subsection (d) of section 6227 relates shall be treated as nonpartnership items—

(A) such request shall be treated as a claim for credit or refund of an overpayment attributable to nonpartnership items, and

(B) the partner may bring an action under section 7422 with respect to such claim at any time within 2 years of the mailing of such notice.

(2) Other cases

(A) In general

If the Secretary fails to allow any part of an administrative adjustment request filed under subsection (d) of section 6227 by a partner and paragraph (1) does not apply—

(i) such partner may, pursuant to section 7422, begin a civil action for refund of any amount due by reason of the adjustments described in such part of the request, and

(ii) on the beginning of such civil action, the partnership items of such partner for the partnership taxable year to which such part of such request relates shall be treated as nonpartnership items for purposes of this subchapter.

(B) Period for filing petition

(i) In general

An action may be begun under subparagraph (A) with respect to an administrative adjustment request for a partnership taxable year only—

(I) after the expiration of 6 months from the date of filing of the request under section 6227, and

(II) before the date which is 2 years after the date of filing of such request.

(ii) Extension of time

The 2-year period described in subclause (II) of clause (i) shall be extended for such period as may be agreed upon in writing between the partner and the Secretary.

(C) Action barred after partnership proceeding has begun

No petition may be filed under subparagraph (A) with respect to an administrative adjustment request for a partnership taxable year after the Secretary mails to the partnership a notice of the beginning of a partnership proceeding with respect to such year.

(D) Failure by Secretary to issue timely notice of adjustment

If the Secretary—

(i) mails the notice referred to in subparagraph (C) before the expiration of the 2-year period referred to in clause (i)(II) of subparagraph (B), and

(ii) fails to mail a notice of final partnership administrative adjustment with respect to the partnership taxable year to which the request relates before the expiration of the period described in section 6229(a) (including any extension by agreement),

subparagraph (C) shall cease to apply with respect to such request, and the 2-year period referred to in clause (i)(II) of subparagraph (B) shall not expire before the date 6 months after the expiration of the period described in section 6229(a) (including any extension by agreement).

(Added Pub. L. 97–248, title IV, §402(a), Sept. 3, 1982, 96 Stat. 656; amended Pub. L. 97–448, title III, §306(c)(1)(B), Jan. 12, 1983, 96 Stat. 2406; Pub. L. 102–572, title IX, §902(b)(2), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 107–147, title IV, §417(19)(B), Mar. 9, 2002, 116 Stat. 56.)

AMENDMENTS

2002—Subsec. (a)(1). Pub. L. 107–147, §417(19)(B)(i), substituted "subsection (c) of section 6227" for "subsection (b) of section 6227".

Subsec. (a)(3)(A). Pub. L. 107–147, §417(19)(B)(ii), struck out "subsection (b) of" before "section 6227".

Subsec. (b)(1), (2)(A). Pub. L. 107–147, §417(19)(B)(iii), substituted "subsection (d) of section 6227" for

"subsection (c) of section 6227".

1992—Subsec. (a)(1)(C), (6). Pub. L. 102–572 substituted "Court of Federal Claims" for "Claims Court".

1983—Subsec. (a)(6). Pub. L. 97–448 substituted "With respect to the partnership, only the tax matters partner" for "Only the tax matters partner".

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective as if included in the provisions of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 311(d) of Pub. L. 97–448, set out as a note under section 31 of this title.

§6229. Period of limitations for making assessments

(a) General rule

Except as otherwise provided in this section, the period for assessing any tax imposed by subtitle A with respect to any person which is attributable to any partnership item (or affected item) for a partnership taxable year shall not expire before the date which is 3 years after the later of—

(1) the date on which the partnership return for such taxable year was filed, or

(2) the last day for filing such return for such year (determined without regard to extensions).

(b) Extension by agreement

(1) In general

The period described in subsection (a) (including an extension period under this subsection) may be extended—

(A) with respect to any partner, by an agreement entered into by the Secretary and such partner, and

(B) with respect to all partners, by an agreement entered into by the Secretary and the tax matters partner (or any other person authorized by the partnership in writing to enter into such an agreement),

before the expiration of such period.

(2) Special rule with respect to debtors in title 11 cases

Notwithstanding any other law or rule of law, if an agreement is entered into under paragraph (1)(B) and the agreement is signed by a person who would be the tax matters partner but for the fact that, at the time that the agreement is executed, the person is a debtor in a bankruptcy proceeding under title 11 of the United States Code, such agreement shall be binding on all partners in the partnership unless the Secretary has been notified of the bankruptcy proceeding in accordance with regulations prescribed by the Secretary.

(3) Coordination with section 6501(c)(4)

Any agreement under section 6501(c)(4) shall apply with respect to the period described in subsection (a) only if the agreement expressly provides that such agreement applies to tax attributable to partnership items.

(c) Special rule in case of fraud, etc.

(1) False return

If any partner has, with the intent to evade tax, signed or participated directly or indirectly in the preparation of a partnership return which includes a false or fraudulent item—

(A) in the case of partners so signing or participating in the preparation of the return, any tax imposed by subtitle A which is attributable to any partnership item (or affected item) for the

partnership taxable year to which the return relates may be assessed at any time, and

(B) in the case of all other partners, subsection (a) shall be applied with respect to such return by substituting "6 years" for "3 years".

(2) Substantial omission of income

If any partnership omits from gross income an amount properly includible therein and such amount is described in clause (i) or (ii) of section 6501(e)(1)(A), subsection (a) shall be applied by substituting "6 years" for "3 years".

(3) No return

In the case of a failure by a partnership to file a return for any taxable year, any tax attributable to a partnership item (or affected item) arising in such year may be assessed at any time.

(4) Return filed by Secretary

For purposes of this section, a return executed by the Secretary under subsection (b) of section 6020 on behalf of the partnership shall not be treated as a return of the partnership.

(d) Suspension when Secretary makes administrative adjustment

If notice of a final partnership administrative adjustment with respect to any taxable year is mailed to the tax matters partner, the running of the period specified in subsection (a) (as modified by other provisions of this section) shall be suspended—

(1) for the period during which an action may be brought under section 6226 (and, if a petition is filed under section 6226 with respect to such administrative adjustment, until the decision of the court becomes final), and

(2) for 1 year thereafter.

(e) Unidentified partner

If—

(1) the name, address, and taxpayer identification number of a partner are not furnished on the partnership return for a partnership taxable year, and

(2)(A) the Secretary, before the expiration of the period otherwise provided under this section with respect to such partner, mails to the tax matters partner the notice specified in paragraph (2) of section 6223(a) with respect to such taxable year, or

(B) the partner has failed to comply with subsection (b) of section 6222 (relating to notification of inconsistent treatment) with respect to any partnership item for such taxable year,

the period for assessing any tax imposed by subtitle A which is attributable to any partnership item (or affected item) for such taxable year shall not expire with respect to such partner before the date which is 1 year after the date on which the name, address, and taxpayer identification number of such partner are furnished to the Secretary.

(f) Special rules

(1) Items becoming nonpartnership items

If before the expiration of the period otherwise provided in this section for assessing any tax imposed by subtitle A with respect to the partnership items of a partner for the partnership taxable year, such items become nonpartnership items by reason of 1 or more of the events described in subsection (b) of section 6231, the period for assessing any tax imposed by subtitle A which is attributable to such items (or any item affected by such items) shall not expire before the date which is 1 year after the date on which the items become nonpartnership items. The period described in the preceding sentence (including any extension period under this sentence) may be extended with respect to any partner by agreement entered into by the Secretary and such partner.

(2) Special rule for partial settlement agreements

If a partner enters into a settlement agreement with the Secretary or the Attorney General (or his delegate) with respect to the treatment of some of the partnership items in dispute for a partnership taxable year but other partnership items for such year remain in dispute, the period of limitations

for assessing any tax attributable to the settled items shall be determined as if such agreement had not been entered into.

(g) Period of limitations for penalties

The provisions of this section shall apply also in the case of any addition to tax or an additional amount imposed under subchapter A of chapter 68 which arises with respect to any tax imposed under subtitle A in the same manner as if such addition or additional amount were a tax imposed by subtitle A.

(h) Suspension during pendency of bankruptcy proceeding

If a petition is filed naming a partner as a debtor in a bankruptcy proceeding under title 11 of the United States Code, the running of the period of limitations provided in this section with respect to such partner shall be suspended—

(1) for the period during which the Secretary is prohibited by reason of such bankruptcy proceeding from making an assessment, and

(2) for 60 days thereafter.

(Added Pub. L. 97–248, title IV, §402(a), Sept. 3, 1982, 96 Stat. 659; amended Pub. L. 99–514, title XVIII, §1875(d)(1), Oct. 22, 1986, 100 Stat. 2896; Pub. L. 100–647, title I, §1018(o)(3), Nov. 10, 1988, 102 Stat. 3585; Pub. L. 105–34, title XII, §§1233(a)–(c), 1235(a), Aug. 5, 1997, 111 Stat. 1023, 1024; Pub. L. 107–147, title IV, §416(d)(1)(B), Mar. 9, 2002, 116 Stat. 55; Pub. L. 111–147, title V, §513(a)(2)(B), Mar. 18, 2010, 124 Stat. 112.)

AMENDMENTS

2010—Subsec. (c)(2). Pub. L. 111–147 substituted "and such amount is described in clause (i) or (ii) of section 6501(e)(1)(A)" for "which is in excess of 25 percent of the amount of gross income stated in its return".

2002—Subsec. (f)(2). Pub. L. 107–147 inserted "or the Attorney General (or his delegate)" after "Secretary".

1997—Subsec. (b)(2), (3). Pub. L. 105–34, §1233(c), added par. (2) and redesignated former par. (2) as (3).

Subsec. (d)(1). Pub. L. 105–34, §1233(a), substituted "(and, if a petition is filed under section 6226 with respect to such administrative adjustment, until the decision of the court becomes final), and" for "(and, if an action with respect to such administrative adjustment is brought during such period, until the decision of the court in such action becomes final), and".

Subsec. (f). Pub. L. 105–34, §1235(a), substituted "Special rules" for "Items becoming nonpartnership items" in heading, designated existing provisions as par. (1), added heading, and realigned margins, and added par. (2).

Subsec. (h). Pub. L. 105–34, §1233(b), added subsec. (h).

1988—Subsec. (f). Pub. L. 100–647 inserted sentence at end relating to extension of period with respect to any partner by agreement entered into by Secretary and such partner.

1986—Subsec. (g). Pub. L. 99–514 added subsec. (g).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–147, title V, §513(d), Mar. 18, 2010, 124 Stat. 112, provided that: "The amendments made by this section [amending this section and section 6501 of this title] shall apply to—

"(1) returns filed after the date of the enactment of this Act [Mar. 18, 2010]; and

"(2) returns filed on or before such date if the period specified in section 6501 of the Internal Revenue Code of 1986 (determined without regard to such amendments) for assessment of such taxes has not expired as of such date."

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 applicable with respect to settlement agreements entered into after Mar. 9, 2002, see section 416(d)(2) of Pub. L. 107–147, set out as a note under section 6224 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XII, §1233(d), Aug. 5, 1997, 111 Stat. 1024, provided that:

"(1) SUBSECTIONS (a) AND (b).—The amendments made by subsections (a) and (b) [amending this section] shall apply to partnership taxable years with respect to which the period under section 6229 of the

Internal Revenue Code of 1986 [26 U.S.C. 6229] for assessing tax has not expired on or before the date of the enactment of this Act [Aug. 5, 1997].

"(2) SUBSECTION (c).—The amendment made by subsection (c) [amending this section] shall apply to agreements entered into after the date of the enactment of this Act."

Pub. L. 105–34, title XII, §1235(b), Aug. 5, 1997, 111 Stat. 1025, provided that: "The amendment made by this section [amending this section] shall apply to settlements entered into after the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§6230. Additional administrative provisions

(a) Coordination with deficiency proceedings

(1) In general

Except as provided in paragraph (2) or (3), subchapter B of this chapter shall not apply to the assessment or collection of any computational adjustment.

(2) Deficiency proceedings to apply in certain cases

(A) Subchapter B shall apply to any deficiency attributable to—

(i) affected items which require partner level determinations (other than penalties, additions to tax, and additional amounts that relate to adjustments to partnership items), or

(ii) items which have become nonpartnership items (other than by reason of section 6231(b)(1)(C)) and are described in section 6231(e)(1)(B).

(B) Subchapter B shall be applied separately with respect to each deficiency described in subparagraph (A) attributable to each partnership.

(C) Notwithstanding any other law or rule of law, any notice or proceeding under subchapter B with respect to a deficiency described in this paragraph shall not preclude or be precluded by any other notice, proceeding, or determination with respect to a partner's tax liability for a taxable year.

(3) Special rule in case of assertion by partner's spouse of innocent spouse relief

(A) Notwithstanding section 6404(b), if the spouse of a partner asserts that section 6015 applies with respect to a liability that is attributable to any adjustment to a partnership item (including any liability for any penalties, additions to tax, or additional amounts relating to such adjustment), then such spouse may file with the Secretary within 60 days after the notice of computational adjustment is mailed to the spouse a request for abatement of the assessment specified in such notice. Upon receipt of such request, the Secretary shall abate the assessment. Any reassessment of the tax with respect to which an abatement is made under this subparagraph shall be subject to the deficiency procedures prescribed by subchapter B. The period for making any such reassessment shall not expire before the expiration of 60 days after the date of such abatement.

(B) If the spouse files a petition with the Tax Court pursuant to section 6213 with respect to the request for abatement described in subparagraph (A), the Tax Court shall only have jurisdiction pursuant to this section to determine whether the requirements of section 6015 have been satisfied. For purposes of such determination, the treatment of partnership items (and the applicability of any penalties, additions to tax, or additional amounts) under the settlement, the final partnership administrative adjustment, or the decision of the court (whichever is appropriate) that gave rise to the liability in question shall be conclusive.

(C) Rules similar to the rules contained in subparagraphs (B) and (C) of paragraph (2) shall apply for purposes of this paragraph.

(b) Mathematical and clerical errors appearing on partnership return

(1) In general

Section 6225 shall not apply to any adjustment necessary to correct a mathematical or clerical error (as defined in section 6213(g)(2)) appearing on the partnership return.

(2) Exception

Paragraph (1) shall not apply to a partner if, within 60 days after the day on which notice of the correction of the error is mailed to the partner, such partner files with the Secretary a request that the correction not be made.

(c) Claims arising out of erroneous computations, etc.

(1) In general

A partner may file a claim for refund on the grounds that—

(A) the Secretary erroneously computed any computational adjustment necessary—

(i) to make the partnership items on the partner's return consistent with the treatment of the partnership items on the partnership return, or

(ii) to apply to the partner a settlement, a final partnership administrative adjustment, or the decision of a court in an action brought under section 6226 or section 6228(a),

(B) the Secretary failed to allow a credit or to make a refund to the partner in the amount of the overpayment attributable to the application to the partner of a settlement, a final partnership administrative adjustment, or the decision of a court in an action brought under section 6226 or section 6228(a), or

(C) the Secretary erroneously imposed any penalty, addition to tax, or additional amount which relates to an adjustment to a partnership item.

(2) Time for filing claim

(A) Under paragraph (1)(A) or (C)

Any claim under subparagraph (A) or (C) of paragraph (1) shall be filed within 6 months after the day on which the Secretary mails the notice of computational adjustment to the partner.

(B) Under paragraph (1)(B)

Any claim under paragraph (1)(B) shall be filed within 2 years after whichever of the following days is appropriate:

(i) the day on which the settlement is entered into,

(ii) the day on which the period during which an action may be brought under section 6226 with respect to the final partnership administrative adjustment expires, or

(iii) the day on which the decision of the court becomes final.

(3) Suit if claim not allowed

If any portion of a claim under paragraph (1) is not allowed, the partner may bring suit with respect to such portion within the period specified in subsection (a) of section 6532 (relating to periods of limitations on refund suits).

(4) No review of substantive issues

For purposes of any claim or suit under this subsection, the treatment of partnership items on the partnership return, under the settlement, under the final partnership administrative adjustment, or under the decision of the court (whichever is appropriate) shall be conclusive. In addition, the determination under the final partnership administrative adjustment or under the decision of the court (whichever is appropriate) concerning the applicability of any penalty, addition to tax, or additional amount which relates to an adjustment to a partnership item shall also be conclusive. Notwithstanding the preceding sentence, the partner shall be allowed to assert any partner level defenses that may apply or to challenge the amount of the computational adjustment.

(5) Rules for seeking innocent spouse relief

(A) In general

The spouse of a partner may file a claim for refund on the ground that the Secretary failed to relieve the spouse under section 6015 from a liability that is attributable to an adjustment to a partnership item (including any liability for any penalties, additions to tax, or additional amounts relating to such adjustment).

(B) Time for filing claim

Any claim under subparagraph (A) shall be filed within 6 months after the day on which the Secretary mails to the spouse the notice of computational adjustment referred to in subsection (a)(3)(A).

(C) Suit if claim not allowed

If the claim under subparagraph (B) is not allowed, the spouse may bring suit with respect to the claim within the period specified in paragraph (3).

(D) Prior determinations are binding

For purposes of any claim or suit under this paragraph, the treatment of partnership items (and the applicability of any penalties, additions to tax, or additional amounts) under the settlement, the final partnership administrative adjustment, or the decision of the court (whichever is appropriate) that gave rise to the liability in question shall be conclusive.

(d) Special rules with respect to credits or refunds attributable to partnership items

(1) In general

Except as otherwise provided in this subsection, no credit or refund of an overpayment attributable to a partnership item (or an affected item) for a partnership taxable year shall be allowed or made to any partner after the expiration of the period of limitation prescribed in section 6229 with respect to such partner for assessment of any tax attributable to such item.

(2) Administrative adjustment request

If a request for an administrative adjustment under section 6227 with respect to a partnership item is timely filed, credit or refund of any overpayment attributable to such partnership item (or an affected item) may be allowed or made at any time before the expiration of the period prescribed in section 6228 for bringing suit with respect to such request.

(3) Claim under subsection (c)

If a timely claim is filed under subsection (c) for a credit or refund of an overpayment attributable to a partnership item (or affected item), credit or refund of such overpayment may be allowed or made at any time before the expiration of the period specified in section 6532 (relating to periods of limitations on suits) for bringing suit with respect to such claim.

(4) Timely suit

Paragraph (1) shall not apply to any credit or refund of any overpayment attributable to a partnership item (or an item affected by such partnership item) if a partner brings a timely suit with respect to a timely administrative adjustment request under section 6228 or a timely claim under subsection (c) relating to such overpayment.

(5) Overpayments refunded without requirement that partner file claim

In the case of any overpayment by a partner which is attributable to a partnership item (or an affected item) and which may be refunded under this subchapter, to the extent practicable credit or refund of such overpayment shall be allowed or made without any requirement that the partner file a claim therefor.

(6) Subchapter B of chapter 66 not applicable

Subchapter B of chapter 66 (relating to limitations on credit or refund) shall not apply to any credit or refund of an overpayment attributable to a partnership item.

(e) Tax matters partner required to furnish names of partners to Secretary

If the Secretary mails to any partnership the notice specified in paragraph (1) of section 6223(a) with respect to any partnership taxable year, the tax matters partner shall furnish to the Secretary the name, address, profits interest, and taxpayer identification number of each person who was a partner in such partnership at any time during such taxable year. If the tax matters partner later discovers that the information furnished to the Secretary was incorrect or incomplete, the tax matters partner shall furnish such revised or additional information as may be necessary.

(f) Failure of tax matters partner, etc., to fulfill responsibility does not affect applicability of proceeding

The failure of the tax matters partner, a pass-thru partner, the representative of a notice group, or any other representative of a partner to provide any notice or perform any act required under this subchapter or under regulations prescribed under this subchapter on behalf of such partner does not affect the applicability of any proceeding or adjustment under this subchapter to such partner.

(g) Date decision of court becomes final

For purposes of section 6229(d)(1) and section 6230(c)(2)(B), the principles of section 7481(a) shall be applied in determining the date on which a decision of a district court or the Court of Federal Claims becomes final.

(h) Examination authority not limited

Nothing in this subchapter shall be construed as limiting the authority granted to the Secretary under section 7602.

(i) Time and manner of filing statements, making elections, etc.

Except as otherwise provided in this subchapter, each—

(1) statement,
(2) election,
(3) request, and
(4) furnishing of information,

shall be filed or made at such time, in such manner, and at such place as may be prescribed in regulations.

(j) Partnerships having principal place of business outside the United States

For purposes of sections 6226 and 6228, a principal place of business located outside the United States shall be treated as located in the District of Columbia.

(k) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subchapter. Any reference in this subchapter to regulations is a reference to regulations prescribed by the Secretary.

(l) Court rules

Any action brought under any provision of this subchapter shall be conducted in accordance with such rules of practice and procedure as may be prescribed by the Court in which the action is brought.

(Added Pub. L. 97–248, title IV, §402(a), Sept. 3, 1982, 96 Stat. 660; amended Pub. L. 98–369, div. A, title VII, §714(p)(2)(A), July 18, 1984, 98 Stat. 964; Pub. L. 99–514, title XVIII, §1875(d)(2)(A), Oct. 22, 1986, 100 Stat. 2896; Pub. L. 100–647, title I, §1018(o)(1), Nov. 10, 1988, 102 Stat. 3584; Pub. L. 102–572, title IX, §902(b)(2), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 105–34, title XII, §§1237(a)–(c)(1), 1238(b)(2)–(6), 1239(c)(1), Aug. 5, 1997, 111 Stat. 1025–1028; Pub. L. 105–206, title III, §3201(e)(2), July 22, 1998, 112 Stat. 740; Pub. L. 110–172, §11(a)(36), Dec. 29, 2007, 121 Stat. 2487.)

AMENDMENTS

2007—Subsec. (a)(3)(A), (B). Pub. L. 110–172 substituted "section 6015" for "section 6013(e)".

1998—Subsec. (c)(5)(A). Pub. L. 105–206 substituted "section 6015" for "section 6013(e)".

1997—Subsec. (a)(1). Pub. L. 105–34, §1237(c)(1), substituted "paragraph (2) or (3)" for "paragraph (2)".

Subsec. (a)(2)(A)(i). Pub. L. 105–34, §1238(b)(2), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: "affected items which require partner level determinations, or".

Subsec. (a)(3). Pub. L. 105–34, §1237(a), added par. (3).

Subsec. (a)(3)(A). Pub. L. 105–34, §1238(b)(3)(A), inserted "(including any liability for any penalties, additions to tax, or additional amounts relating to such adjustment)" after "partnership item".

Subsec. (a)(3)(B). Pub. L. 105–34, §1238(b)(3)(B), inserted "(and the applicability of any penalties, additions to tax, or additional amounts)" after "partnership items".

Subsec. (c)(1)(C). Pub. L. 105–34, §1238(b)(4), added subpar. (C).

Subsec. (c)(2)(A). Pub. L. 105–34, §1238(b)(5), inserted "or (C)" after "(1)(A)" in subpar. heading and substituted "subparagraph (A) or (C) of paragraph (1)" for "paragraph (1)(A)" in text.

Subsec. (c)(4). Pub. L. 105–34, §1238(b)(6), inserted at end "In addition, the determination under the final partnership administrative adjustment or under the decision of the court (whichever is appropriate) concerning the applicability of any penalty, addition to tax, or additional amount which relates to an adjustment to a partnership item shall also be conclusive. Notwithstanding the preceding sentence, the partner shall be allowed to assert any partner level defenses that may apply or to challenge the amount of the computational adjustment."

Subsec. (c)(5). Pub. L. 105–34, §1237(b), added par. (5).

Subsec. (c)(5)(A). Pub. L. 105–34, §1238(b)(3)(C), inserted before period at end "(including any liability for any penalties, additions to tax, or additional amounts relating to such adjustment)".

Subsec. (c)(5)(D). Pub. L. 105–34, §1238(b)(3)(D), inserted "(and the applicability of any penalties, additions to tax, or additional amounts)" after "partnership items".

Subsec. (d)(6). Pub. L. 105–34, §1239(c)(1), struck out "(or an affected item)" after "partnership item".

1992—Subsec. (g). Pub. L. 102–572 substituted "Court of Federal Claims" for "Claims Court".

1988—Subsec. (a)(2)(A)(ii). Pub. L. 100–647 inserted "(other than by reason of section 6231(b)(1)(C))" after "nonpartnership items".

1986—Subsec. (a). Pub. L. 99–514 substituted "Coordination with deficiency proceedings" for "Normal deficiency proceedings do not apply to computational adjustments" as subsec. heading, and amended text generally. Prior to amendment text read as follows: "Subchapter B of this chapter shall not apply to the assessment or collection of any computational adjustment."

1984—Subsec. (c)(1)(B). Pub. L. 98–369 struck out "(or erroneously computed the amount of any such credit or refund)" after "section 6228(a)".

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 applicable to any liability for tax arising after July 22, 1998, and any liability for tax arising on or before such date but remaining unpaid as of such date, see section 3201(g)(1) of Pub. L. 105–206, set out as a note under section 6015 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XII, §1237(d), Aug. 5, 1997, 111 Stat. 1026, provided that: "The amendments made by this section [amending this section and section 6503 of this title] shall take effect as if included in the amendments made by section 402 of the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97–248]."

Amendment by section 1238(b)(2)–(6) of Pub. L. 105–34 applicable to partnership taxable years ending after Aug. 5, 1997, see section 1238(c) of Pub. L. 105–34, set out as a note under section 6221 of this title.

Amendment by section 1239(c)(1) of Pub. L. 105–34 applicable to partnership taxable years ending after Aug. 5, 1997, see section 1239(f) of Pub. L. 105–34, set out as a note under section 6225 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XVIII, §1875(d)(2)(C), Oct. 22, 1986, 100 Stat. 2896, provided that: "The amendments made by this paragraph [amending this section and sections 6213 and 6503 of this title] shall take effect as if included in the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97–248]."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§6231. Definitions and special rules

(a) Definitions

For purposes of this subchapter—

(1) Partnership

(A) In general

Except as provided in subparagraph (B), the term "partnership" means any partnership required to file a return under section 6031(a).

(B) Exception for small partnerships

(i) In general

The term "partnership" shall not include any partnership having 10 or fewer partners each of whom is an individual (other than a nonresident alien), a C corporation, or an estate of a deceased partner. For purposes of the preceding sentence, a husband and wife (and their estates) shall be treated as 1 partner.

(ii) Election to have subchapter apply

A partnership (within the meaning of subparagraph (A)) may for any taxable year elect to have clause (i) not apply. Such election shall apply for such taxable year and all subsequent taxable years unless revoked with the consent of the Secretary.

(2) Partner

The term "partner" means—

(A) a partner in the partnership, and

(B) any other person whose income tax liability under subtitle A is determined in whole or in part by taking into account directly or indirectly partnership items of the partnership.

(3) Partnership item

The term "partnership item" means, with respect to a partnership, any item required to be taken into account for the partnership's taxable year under any provision of subtitle A to the extent

regulations prescribed by the Secretary provide that, for purposes of this subtitle, such item is more appropriately determined at the partnership level than at the partner level.

(4) Nonpartnership item

The term "nonpartnership item" means an item which is (or is treated as) not a partnership item.

(5) Affected item

The term "affected item" means any item to the extent such item is affected by a partnership item.

(6) Computational adjustment

The term "computational adjustment" means the change in the tax liability of a partner which properly reflects the treatment under this subchapter of a partnership item. All adjustments required to apply the results of a proceeding with respect to a partnership under this subchapter to an indirect partner shall be treated as computational adjustments.

(7) Tax matters partner

The tax matters partner of any partnership is—

(A) the general partner designated as the tax matters partner as provided in regulations, or

(B) if there is no general partner who has been so designated, the general partner having the largest profits interest in the partnership at the close of the taxable year involved (or, where there is more than 1 such partner, the 1 of such partners whose name would appear first in an alphabetical listing).

If there is no general partner designated under subparagraph (A) and the Secretary determines that it is impracticable to apply subparagraph (B), the partner selected by the Secretary shall be treated as the tax matters partner. The Secretary shall, within 30 days of selecting a tax matters partner under the preceding sentence, notify all partners required to receive notice under section 6223(a) of the name and address of the person selected.

(8) Notice partner

The term "notice partner" means a partner who, at the time in question, would be entitled to notice under subsection (a) of section 6223 (determined without regard to subsections (b)(2) and (e)(1)(B) thereof).

(9) Pass-thru partner

The term "pass-thru partner" means a partnership, estate, trust, S corporation, nominee, or other similar person through whom other persons hold an interest in the partnership with respect to which proceedings under this subchapter are conducted.

(10) Indirect partner

The term "indirect partner" means a person holding an interest in a partnership through 1 or more pass-thru partners.

(11) 5-percent group

A 5-percent group is a group of partners who for the partnership taxable year involved had profits interests which aggregated 5 percent or more.

(12) Husband and wife

Except to the extent otherwise provided in regulations, a husband and wife who have a joint interest in a partnership shall be treated as 1 person.

(b) Items cease to be partnership items in certain cases

(1) In general

For purposes of this subchapter, the partnership items of a partner for a partnership taxable year shall become nonpartnership items as of the date—

(A) the Secretary mails to such partner a notice that such items shall be treated as

nonpartnership items,

(B) the partner files suit under section 6228(b) after the Secretary fails to allow an administrative adjustment request with respect to any of such items,

(C) the Secretary or the Attorney General (or his delegate) enters into a settlement agreement with the partner with respect to such items, or

(D) such change occurs under subsection (e) of section 6223 (relating to effect of Secretary's failure to provide notice) or under subsection (c) of this section.

(2) Circumstances in which notice is permitted

The Secretary may mail the notice referred to in subparagraph (A) of paragraph (1) to a partner with respect to partnership items for a partnership taxable year only if—

(A) such partner—

(i) has complied with subparagraph (B) of section 6222(b)(1) (relating to notification of inconsistent treatment) with respect to one or more of such items, and

(ii) has not, as of the date on which the Secretary mails the notice, filed a request for administrative adjustments which would make the partner's treatment of the item or items with respect to which the partner complied with subparagraph (B) of section 6222(b)(1) consistent with the treatment of such item or items on the partnership return, or

(B)(i) such partner has filed a request under section 6227(d) for administrative adjustment of one or more of such items, and

(ii) the adjustments requested would not make such partner's treatment of such items consistent with the treatment of such items on the partnership return.

(3) Notice must be mailed before beginning of partnership proceeding

Any notice to a partner under subparagraph (A) of paragraph (1) with respect to partnership items for a partnership taxable year shall be mailed before the day on which the Secretary mails to the tax matters partner a notice of the beginning of an administrative proceeding at the partnership level with respect to such items.

(c) Regulations with respect to certain special enforcement areas

(1) Applicability of subsection

This subsection applies in the case of—

(A) assessments under section 6851 (relating to termination assessments of income tax) or section 6861 (relating to jeopardy assessments of income, estate, gift, and certain excise taxes),

(B) criminal investigations,

(C) indirect methods of proof of income,

(D) foreign partnerships, and

(E) other areas that the Secretary determines by regulation to present special enforcement considerations.

(2) Items may be treated as nonpartnership items

To the extent that the Secretary determines and provides by regulations that to treat items as partnership items will interfere with the effective and efficient enforcement of this title in any case described in paragraph (1), such items shall be treated as nonpartnership items for purposes of this subchapter.

(3) Special rules

The Secretary may prescribe by regulation such special rules as the Secretary determines to be necessary to achieve the purposes of this subchapter in any case described in paragraph (1).

(d) Time for determining partner's profits interest in partnership

(1) In general

For purposes of section 6223(b) (relating to special rules for partnerships with more than 100 partners) and paragraph (11) of subsection (a) (relating to 5-percent group), the interest of a

partner in the profits of a partnership for a partnership taxable year shall be determined—

(A) in the case of a partner whose entire interest in the partnership is disposed of during such partnership taxable year, as of the moment immediately before such disposition, or

(B) in the case of any other partner, as of the close of the partnership taxable year.

(2) Indirect partners

The Secretary shall prescribe regulations consistent with the principles of paragraph (1) to be applied in the case of indirect partners.

(e) Effect of judicial decisions in certain proceedings

(1) Determinations at partner level

No judicial determination with respect to the income tax liability of any partner not conducted under this subchapter shall be a bar to any adjustment in such partner's income tax liability resulting from—

(A) a proceeding with respect to partnership items under this subchapter, or

(B) a proceeding with respect to items which become nonpartnership items—

(i) by reason of 1 or more of the events described in subsection (b), and

(ii) after the appropriate time for including such items in any other proceeding with respect to nonpartnership items.

(2) Proceedings under section 6228(a)

No judicial determination in any proceeding under subsection (a) of section 6228 with respect to any partnership item shall be a bar to any adjustment in any other partnership item.

(f) Special rule for deductions, losses, and credits of foreign partnerships

Except to the extent otherwise provided in regulations, in the case of any partnership the tax matters partner of which resides outside the United States or the books of which are maintained outside the United States, no deduction, loss, or credit shall be allowable to any partner unless section 6031 is complied with for the partnership's taxable year in which such deduction, loss, or credit arose at such time as the Secretary prescribes by regulations.

(g) Partnership return to be determinative of whether subchapter applies

(1) Determination that subchapter applies

If, on the basis of a partnership return for a taxable year, the Secretary reasonably determines that this subchapter applies to such partnership for such year but such determination is erroneous, then the provisions of this subchapter are hereby extended to such partnership (and its items) for such taxable year and to partners of such partnership.

(2) Determination that subchapter does not apply

If, on the basis of a partnership return for a taxable year, the Secretary reasonably determines that this subchapter does not apply to such partnership for such year but such determination is erroneous, then the provisions of this subchapter shall not apply to such partnership (and its items) for such taxable year or to partners of such partnership.

(Added Pub. L. 97–248, title IV, §402(a), Sept. 3, 1982, 96 Stat. 663; amended Pub. L. 98–369, div. A, title VII, §714(p)(2)(B)–(D), (I), July 18, 1984, 98 Stat. 964, 965; Pub. L. 105–34, title XI, §1141(b), title XII, §§1232(a), 1234(a), Aug. 5, 1997, 111 Stat. 981, 1023, 1024; Pub. L. 105–206, title III, §3507(a), July 22, 1998, 112 Stat. 772; Pub. L. 107–147, title IV, §§416(d)(1)(C), 417(19)(C), Mar. 9, 2002, 116 Stat. 55, 57.)

AMENDMENTS

2002—Subsec. (b)(1)(C). Pub. L. 107–147, §416(d)(1)(C), inserted "or the Attorney General (or his delegate)" after "Secretary".

Subsec. (b)(2)(B)(i). Pub. L. 107–147, §417(19)(C), substituted "section 6227(d)" for "section 6227(c)".

1998—Subsec. (a)(7). Pub. L. 105–206 inserted at end "The Secretary shall, within 30 days of selecting a tax matters partner under the preceding sentence, notify all partners required to receive notice under section

6223(a) of the name and address of the person selected."

1997—Subsec. (a)(1)(B)(i). Pub. L. 105–34, §1234(a), reenacted heading of cl. (i) without change and amended text generally. Prior to amendment, text read as follows: "The term 'partnership' shall not include any partnership if—

"(I) such partnership has 10 or fewer partners each of whom is a natural person (other than a nonresident alien) or an estate, and

"(II) each partner's share of each partnership item is the same as his share of every other item.

For purposes of the preceding sentence, a husband and wife (and their estates) shall be treated as 1 partner."

Subsec. (f). Pub. L. 105–34, §1141(b), substituted "deductions, losses, and" for "losses and" in subsec. heading and "deduction, loss, or" for "loss or" in two places in text.

Subsec. (g). Pub. L. 105–34, §1232(a), added subsec. (g).

1984—Subsec. (a)(9). Pub. L. 98–369, §714(p)(2)(B), substituted "S corporation" for "electing small business corporation".

Subsec. (b)(2)(B). Pub. L. 98–369, §714(p)(2)(I), substituted section "6227(c)" for "6227(b)".

Subsec. (d)(1)(A). Pub. L. 98–369, §714(p)(2)(C), amended subpar. (A) generally, substituting "disposed of" and "disposition" for "liquidated, sold, or exchanged" and "liquidation, sale, or exchange", respectively.

Subsec. (f). Pub. L. 98–369, §714(p)(2)(D), substituted "such loss or credit" for "such deduction or credit".

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by section 416(d)(1)(C) of Pub. L. 107–147 applicable with respect to settlement agreements entered into after Mar. 9, 2002, see section 416(d)(2) of Pub. L. 107–147, set out as a note under section 6224 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–206, title III, §3507(b), July 22, 1998, 112 Stat. 772, provided that: "The amendment made by this section [amending this section] shall apply to selections of tax matters partners made by the Secretary of the Treasury after the date of the enactment of this Act [July 22, 1998]."

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 1141(b) of Pub. L. 105–34 applicable to taxable years beginning after Aug. 5, 1997, see section 1141(c) of Pub. L. 105–34, set out as a note under section 6031 of this title.

Pub. L. 105–34, title XII, §1232(b), Aug. 5, 1997, 111 Stat. 1023, provided that: "The amendment made by this section [amending this section] shall apply to partnership taxable years ending after the date of the enactment of this Act [Aug. 5, 1997]."

Pub. L. 105–34, title XII, §1234(b), Aug. 5, 1997, 111 Stat. 1024, provided that: "The amendment made by this section [amending this section] shall apply to partnership taxable years ending after the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

SPECIAL RULE FOR CERTAIN INTERNATIONAL SATELLITE PARTNERSHIPS

Pub. L. 97–248, title IV, §406, Sept. 3, 1982, 96 Stat. 670, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Subchapter C of chapter 63 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to tax treatment of partnership items), section 6031 of such Code (relating to returns of partnership income), and section 6046A of such Code (relating to returns as to interest in foreign partnerships) shall not apply to the International Telecommunications Satellite Organization, the International Maritime Satellite Organization, and any organization which is a successor of either of such organizations."

[§6232. Repealed. Pub. L. 100–418, title I, §1941(b)(1), Aug. 23, 1988, 102 Stat. 1323]

Section, added Pub. L. 97–248, title IV, §402(a), Sept. 3, 1982, 96 Stat. 666, related to extension of subchapter provisions, respecting tax treatment of partnership items, to windfall profit tax.

EFFECTIVE DATE OF REPEAL

Repeal applicable to crude oil removed from the premises on or after Aug. 23, 1988, see section 1941(c) of Pub. L. 100–418, set out as an Effective Date of 1988 Amendment note under section 164 of this title.

§6233. Extension to entities filing partnership returns, etc.

(a) General rule

If a partnership return is filed by an entity for a taxable year but it is determined that the entity is not a partnership for such year, then, to the extent provided in regulations, the provisions of this subchapter are hereby extended in respect of such year to such entity and its items and to persons holding an interest in such entity.

(b) Similar rules in certain cases

If a partnership return is filed for any taxable year but it is determined that there is no entity for such taxable year, to the extent provided in regulations, rules similar to the rules of subsection (a) shall apply.

(Added Pub. L. 98–369, div. A, title VII, §714(p)(1), July 18, 1984, 98 Stat. 964; amended Pub. L. 104–188, title I, §1307(c)(3)(B), Aug. 20, 1996, 110 Stat. 1782.)

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–188 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "If for any taxable year—

"(1) an entity files a return as an S corporation but it is determined that the entity was not an S corporation for such year, or

"(2) a partnership return or S corporation return is filed but it is determined that there is no entity for such taxable year,

then, to the extent provided in regulations, rules similar to the rules of subsection (a) shall apply."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1317(a) of Pub. L. 104–188, set out as a note under section 641 of this title.

EFFECTIVE DATE

Section effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as an Effective Date of 1984 Amendment note under section 31 of this title.

§6234. Declaratory judgment relating to treatment of items other than partnership items with respect to an oversheltered return

(a) General rule

If—

(1) a taxpayer files an oversheltered return for a taxable year,

(2) the Secretary makes a determination with respect to the treatment of items (other than partnership items) of such taxpayer for such taxable year, and

(3) the adjustments resulting from such determination do not give rise to a deficiency (as defined in section 6211) but would give rise to a deficiency if there were no net loss from partnership items,

the Secretary is authorized to send a notice of adjustment reflecting such determination to the taxpayer by certified or registered mail.

(b) Oversheltered return

For purposes of this section, the term "oversheltered return" means an income tax return which—

(1) shows no taxable income for the taxable year, and

(2) shows a net loss from partnership items.

(c) Judicial review in the Tax Court

Within 90 days, or 150 days if the notice is addressed to a person outside the United States, after the day on which the notice of adjustment authorized in subsection (a) is mailed to the taxpayer, the taxpayer may file a petition with the Tax Court for redetermination of the adjustments. Upon the filing of such a petition, the Tax Court shall have jurisdiction to make a declaration with respect to all items (other than partnership items and affected items which require partner level determinations as described in section 6230(a)(2)(A)(i)) for the taxable year to which the notice of adjustment relates, in accordance with the principles of section 6214(a). Any such declaration shall have the force and effect of a decision of the Tax Court and shall be reviewable as such.

(d) Failure to file petition

(1) In general

Except as provided in paragraph (2), if the taxpayer does not file a petition with the Tax Court within the time prescribed in subsection (c), the determination of the Secretary set forth in the notice of adjustment that was mailed to the taxpayer shall be deemed to be correct.

(2) Exception

Paragraph (1) shall not apply after the date that the taxpayer—

(A) files a petition with the Tax Court within the time prescribed in subsection (c) with respect to a subsequent notice of adjustment relating to the same taxable year, or

(B) files a claim for refund of an overpayment of tax under section 6511 for the taxable year involved.

If a claim for refund is filed by the taxpayer, then solely for purposes of determining (for the taxable year involved) the amount of any computational adjustment in connection with a partnership proceeding under this subchapter (other than under this section) or the amount of any deficiency attributable to affected items in a proceeding under section 6230(a)(2), the items that are the subject of the notice of adjustment shall be presumed to have been correctly reported on the taxpayer's return during the pendency of the refund claim (and, if within the time prescribed by section 6532 the taxpayer commences a civil action for refund under section 7422, until the decision in the refund action becomes final).

(e) Limitations period

(1) In general

Any notice to a taxpayer under subsection (a) shall be mailed before the expiration of the period prescribed by section 6501 (relating to the period of limitations on assessment).

(2) Suspension when Secretary mails notice of adjustment

If the Secretary mails a notice of adjustment to the taxpayer for a taxable year, the period of limitations on the making of assessments shall be suspended for the period during which the Secretary is prohibited from making the assessment (and, in any event, if a proceeding in respect of the notice of adjustment is placed on the docket of the Tax Court, until the decision of the Tax Court becomes final), and for 60 days thereafter.

(3) Restrictions on assessment

Except as otherwise provided in section 6851, 6852, or 6861, no assessment of a deficiency with respect to any tax imposed by subtitle A attributable to any item (other than a partnership item or any item affected by a partnership item) shall be made—

(A) until the expiration of the applicable 90-day or 150-day period set forth in subsection (c) for filing a petition with the Tax Court, or

(B) if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final.

(f) Further notices of adjustment restricted

If the Secretary mails a notice of adjustment to the taxpayer for a taxable year and the taxpayer files a petition with the Tax Court within the time prescribed in subsection (c), the Secretary may not mail another such notice to the taxpayer with respect to the same taxable year in the absence of a showing of fraud, malfeasance, or misrepresentation of a material fact.

(g) Coordination with other proceedings under this subchapter

(1) In general

The treatment of any item that has been determined pursuant to subsection (c) or (d) shall be taken into account in determining the amount of any computational adjustment that is made in connection with a partnership proceeding under this subchapter (other than under this section), or the amount of any deficiency attributable to affected items in a proceeding under section 6230(a)(2), for the taxable year involved. Notwithstanding any other law or rule of law pertaining to the period of limitations on the making of assessments, for purposes of the preceding sentence, any adjustment made in accordance with this section shall be taken into account regardless of whether any assessment has been made with respect to such adjustment.

(2) Special rule in case of computational adjustment

In the case of a computational adjustment that is made in connection with a partnership proceeding under this subchapter (other than under this section), the provisions of paragraph (1) shall apply only if the computational adjustment is made within the period prescribed by section 6229 for assessing any tax under subtitle A which is attributable to any partnership item or affected item for the taxable year involved.

(3) Conversion to deficiency proceeding

If—

(A) after the notice referred to in subsection (a) is mailed to a taxpayer for a taxable year but before the expiration of the period for filing a petition with the Tax Court under subsection (c) (or, if a petition is filed with the Tax Court, before the Tax Court makes a declaration for that taxable year), the treatment of any partnership item for the taxable year is finally determined, or any such item ceases to be a partnership item pursuant to section 6231(b), and

(B) as a result of that final determination or cessation, a deficiency can be determined with respect to the items that are the subject of the notice of adjustment,

the notice of adjustment shall be treated as a notice of deficiency under section 6212 and any petition filed in respect of the notice shall be treated as an action brought under section 6213.

(4) Finally determined

For purposes of this subsection, the treatment of partnership items shall be treated as finally determined if—

(A) the Secretary or the Attorney General (or his delegate) enters into a settlement agreement (within the meaning of section 6224) with the taxpayer regarding such items,

(B) a notice of final partnership administrative adjustment has been issued and—

(i) no petition has been filed under section 6226 and the time for doing so has expired, or

(ii) a petition has been filed under section 6226 and the decision of the court has become final, or

(C) the period within which any tax attributable to such items may be assessed against the taxpayer has expired.

(h) Special rules if Secretary incorrectly determines applicable procedure

(1) Special rule if Secretary erroneously mails notice of adjustment

If the Secretary erroneously determines that subchapter B does not apply to a taxable year of a taxpayer and consistent with that determination timely mails a notice of adjustment to the taxpayer

pursuant to subsection (a) of this section, the notice of adjustment shall be treated as a notice of deficiency under section 6212 and any petition that is filed in respect of the notice shall be treated as an action brought under section 6213.

(2) Special rule if Secretary erroneously mails notice of deficiency

If the Secretary erroneously determines that subchapter B applies to a taxable year of a taxpayer and consistent with that determination timely mails a notice of deficiency to the taxpayer pursuant to section 6212, the notice of deficiency shall be treated as a notice of adjustment under subsection (a) and any petition that is filed in respect of the notice shall be treated as an action brought under subsection (c).

(Added Pub. L. 105–34, title XII, §1231(a), Aug. 5, 1997, 111 Stat. 1020; amended Pub. L. 107–147, title IV, §416(d)(1)(D), Mar. 9, 2002, 116 Stat. 55.)

AMENDMENTS

2002—Subsec. (g)(4)(A). Pub. L. 107–147 inserted "or the Attorney General (or his delegate)" after "Secretary".

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 applicable with respect to settlement agreements entered into after Mar. 9, 2002, see section 416(d)(2) of Pub. L. 107–147, set out as a note under section 6224 of this title.

EFFECTIVE DATE

Section applicable to partnership taxable years ending after Aug. 5, 1997, see section 1231(d) of Pub. L. 105–34, set out as an Effective Date of 1997 Amendment note under section 6211 of this title.

Subchapter D—Treatment of Electing Large Partnerships

Part

I. Treatment of partnership items and adjustments.

II. Partnership level adjustments.

III. Definitions and special rules.

PART I—TREATMENT OF PARTNERSHIP ITEMS AND ADJUSTMENTS

Sec.

6240. Application of subchapter.

6241. Partner's return must be consistent with partnership return.

6242. Procedures for taking partnership adjustments into account.

PRIOR PROVISIONS

A prior subchapter D, Tax Treatment of Subchapter S Items, consisted of sections 6241 to 6245, prior to repeal by Pub. L. 104–188, title I, §1307(c)(1), Aug. 20, 1996, 110 Stat. 1781.

§6240. Application of subchapter

(a) General rule

This subchapter shall only apply to electing large partnerships and partners in such partnerships.

(b) Coordination with other partnership audit procedures

(1) In general

Subchapter C of this chapter shall not apply to any electing large partnership other than in its capacity as a partner in another partnership which is not an electing large partnership.

(2) Treatment where partner in other partnership

If an electing large partnership is a partner in another partnership which is not an electing large partnership—

(A) subchapter C of this chapter shall apply to items of such electing large partnership which are partnership items with respect to such other partnership, but

(B) any adjustment under such subchapter C shall be taken into account in the manner provided by section 6242.

(Added Pub. L. 105–34, title XII, §1222(a), Aug. 5, 1997, 111 Stat. 1009.)

EFFECTIVE DATE

Subchapter applicable to partnership taxable years beginning after Dec. 31, 1997, see section 1226 of Pub. L. 105–34, as amended, set out as an Effective Date of 1997 Amendment note under section 6011 of this title.

§6241. Partner's return must be consistent with partnership return

(a) General rule

A partner of any electing large partnership shall, on the partner's return, treat each partnership item attributable to such partnership in a manner which is consistent with the treatment of such partnership item on the partnership return.

(b) Underpayment due to inconsistent treatment assessed as math error

Any underpayment of tax by a partner by reason of failing to comply with the requirements of subsection (a) shall be assessed and collected in the same manner as if such underpayment were on account of a mathematical or clerical error appearing on the partner's return. Paragraph (2) of section 6213(b) shall not apply to any assessment of an underpayment referred to in the preceding sentence.

(c) Adjustments not to affect prior year of partners

(1) In general

Except as provided in paragraph (2), subsections (a) and (b) shall apply without regard to any adjustment to the partnership item under part II.

(2) Certain changes in distributive share taken into account by partner

(A) In general

To the extent that any adjustment under part II involves a change under section 704 in a partner's distributive share of the amount of any partnership item shown on the partnership return, such adjustment shall be taken into account in applying this title to such partner for the partner's taxable year for which such item was required to be taken into account.

(B) Coordination with deficiency procedures

(i) In general

Subchapter B shall not apply to the assessment or collection of any underpayment of tax attributable to an adjustment referred to in subparagraph (A).

(ii) Adjustment not precluded

Notwithstanding any other law or rule of law, nothing in subchapter B (or in any proceeding under subchapter B) shall preclude the assessment or collection of any underpayment of tax (or the allowance of any credit or refund of any overpayment of tax) attributable to an adjustment referred to in subparagraph (A) and such assessment or collection or allowance (or any notice thereof) shall not preclude any notice, proceeding, or determination under subchapter B.

(C) Period of limitations

The period for—

(i) assessing any underpayment of tax, or

(ii) filing a claim for credit or refund of any overpayment of tax,

attributable to an adjustment referred to in subparagraph (A) shall not expire before the close of

the period prescribed by section 6248 for making adjustments with respect to the partnership taxable year involved.

(D) Tiered structures

If the partner referred to in subparagraph (A) is another partnership or an S corporation, the rules of this paragraph shall also apply to persons holding interests in such partnership or S corporation (as the case may be); except that, if such partner is an electing large partnership, the adjustment referred to in subparagraph (A) shall be taken into account in the manner provided by section 6242.

(d) Addition to tax for failure to comply with section

For addition to tax in case of partner's disregard of requirements of this section, see part II of subchapter A of chapter 68.

(Added Pub. L. 105–34, title XII, §1222(a), Aug. 5, 1997, 111 Stat. 1009.)

PRIOR PROVISIONS

A prior section 6241, added Pub. L. 97–354, §4(a), Oct. 19, 1982, 96 Stat. 1691, directed that tax treatment be determined at the corporate level, prior to repeal by Pub. L. 104–188, title I, §§1307(c)(1), 1317(a), Aug. 20, 1996, 110 Stat. 1781, 1787, applicable to taxable years beginning after Dec. 31, 1996.

§6242. Procedures for taking partnership adjustments into account

(a) Adjustments flow through to partners for year in which adjustment takes effect

(1) In general

If any partnership adjustment with respect to any partnership item takes effect (within the meaning of subsection (d)(2)) during any partnership taxable year and if an election under paragraph (2) does not apply to such adjustment, such adjustment shall be taken into account in determining the amount of such item for the partnership taxable year in which such adjustment takes effect. In applying this title to any person who is (directly or indirectly) a partner in such partnership during such partnership taxable year, such adjustment shall be treated as an item actually arising during such taxable year.

(2) Partnership liable in certain cases

If—

(A) a partnership elects under this paragraph to not take an adjustment into account under paragraph (1),

(B) a partnership does not make such an election but in filing its return for any partnership taxable year fails to take fully into account any partnership adjustment as required under paragraph (1), or

(C) any partnership adjustment involves a reduction in a credit which exceeds the amount of such credit determined for the partnership taxable year in which the adjustment takes effect,

the partnership shall pay to the Secretary an amount determined by applying the rules of subsection (b)(4) to the adjustments not so taken into account and any excess referred to in subparagraph (C).

(3) Offsetting adjustments taken into account

If a partnership adjustment requires another adjustment in a taxable year after the adjusted year and before the partnership taxable year in which such partnership adjustment takes effect, such other adjustment shall be taken into account under this subsection for the partnership taxable year in which such partnership adjustment takes effect.

(4) Coordination with part II

Amounts taken into account under this subsection for any partnership taxable year shall

continue to be treated as adjustments for the adjusted year for purposes of determining whether such amounts may be readjusted under part II.

(b) Partnership liable for interest and penalties

(1) In general

If a partnership adjustment takes effect during any partnership taxable year and such adjustment results in an imputed underpayment for the adjusted year, the partnership—

(A) shall pay to the Secretary interest computed under paragraph (2), and

(B) shall be liable for any penalty, addition to tax, or additional amount as provided in paragraph (3).

(2) Determination of amount of interest

The interest computed under this paragraph with respect to any partnership adjustment is the interest which would be determined under chapter 67—

(A) on the imputed underpayment determined under paragraph (4) with respect to such adjustment,

(B) for the period beginning on the day after the return due date for the adjusted year and ending on the return due date for the partnership taxable year in which such adjustment takes effect (or, if earlier, in the case of any adjustment to which subsection (a)(2) applies, the date on which the payment under subsection (a)(2) is made).

Proper adjustments in the amount determined under the preceding sentence shall be made for adjustments required for partnership taxable years after the adjusted year and before the year in which the partnership adjustment takes effect by reason of such partnership adjustment.

(3) Penalties

A partnership shall be liable for any penalty, addition to tax, or additional amount for which it would have been liable if such partnership had been an individual subject to tax under chapter 1 for the adjusted year and the imputed underpayment determined under paragraph (4) were an actual underpayment (or understatement) for such year.

(4) Imputed underpayment

For purposes of this subsection, the imputed underpayment determined under this paragraph with respect to any partnership adjustment is the underpayment (if any) which would result—

(A) by netting all adjustments to items of income, gain, loss, or deduction and by treating any net increase in income as an underpayment equal to the amount of such net increase multiplied by the highest rate of tax in effect under section 1 or 11 for the adjusted year, and

(B) by taking adjustments to credits into account as increases or decreases (whichever is appropriate) in the amount of tax.

For purposes of the preceding sentence, any net decrease in a loss shall be treated as an increase in income and a similar rule shall apply to a net increase in a loss.

(c) Administrative provisions

(1) In general

Any payment required by subsection (a)(2) or (b)(1)(A)—

(A) shall be assessed and collected in the same manner as if it were a tax imposed by subtitle C, and

(B) shall be paid on or before the return due date for the partnership taxable year in which the partnership adjustment takes effect.

(2) Interest

For purposes of determining interest, any payment required by subsection (a)(2) or (b)(1)(A) shall be treated as an underpayment of tax.

(3) Penalties

(A) In general

In the case of any failure by any partnership to pay on the date prescribed therefor any amount required by subsection (a)(2) or (b)(1)(A), there is hereby imposed on such partnership a penalty of 10 percent of the underpayment. For purposes of the preceding sentence, the term "underpayment" means the excess of any payment required under this section over the amount (if any) paid on or before the date prescribed therefor.

(B) Accuracy-related and fraud penalties made applicable

For purposes of part II of subchapter A of chapter 68, any payment required by subsection (a)(2) shall be treated as an underpayment of tax.

(d) Definitions and special rules

For purposes of this section—

(1) Partnership adjustment

The term "partnership adjustment" means any adjustment in the amount of any partnership item of an electing large partnership.

(2) When adjustment takes effect

A partnership adjustment takes effect—

(A) in the case of an adjustment pursuant to the decision of a court in a proceeding brought under part II, when such decision becomes final,

(B) in the case of an adjustment pursuant to any administrative adjustment request under section 6251, when such adjustment is allowed by the Secretary, or

(C) in any other case, when such adjustment is made.

(3) Adjusted year

The term "adjusted year" means the partnership taxable year to which the item being adjusted relates.

(4) Return due date

The term "return due date" means, with respect to any taxable year, the date prescribed for filing the partnership return for such taxable year (determined without regard to extensions).

(5) Adjustments involving changes in character

Under regulations, appropriate adjustments in the application of this section shall be made for purposes of taking into account partnership adjustments which involve a change in the character of any item of income, gain, loss, or deduction.

(e) Payments nondeductible

No deduction shall be allowed under subtitle A for any payment required to be made by an electing large partnership under this section.

(Added Pub. L. 105–34, title XII, §1222(a), Aug. 5, 1997, 111 Stat. 1010.)

PRIOR PROVISIONS

A prior section 6242, added Pub. L. 97–354, §4(a), Oct. 19, 1982, 96 Stat. 1691, directed that shareholder's return be consistent with corporate return, prior to repeal by Pub. L. 104–188, title I, §§1307(c)(1), 1317(a), Aug. 20, 1996, 110 Stat. 1781, 1787, applicable to taxable years beginning after Dec. 31, 1996.

A prior section 6243, added Pub. L. 97–354, §4(a), Oct. 19, 1982, 96 Stat. 1691, directed that shareholders be notified of proceedings and given opportunity to participate, prior to repeal by Pub. L. 104–188, title I, §§1307(c)(1), 1317(a), Aug. 20, 1996, 110 Stat. 1781, 1787, applicable to taxable years beginning after Dec. 31, 1996.

A prior section 6244, added Pub. L. 97–354, §4(a), Oct. 19, 1982, 96 Stat. 1691, directed that certain provisions of subchapter C apply to subchapter S items, prior to repeal by Pub. L. 104–188, title I, §§1307(c)(1), 1317(a), Aug. 20, 1996, 110 Stat. 1781, 1787, applicable to taxable years beginning after Dec. 31, 1996.

PART II—PARTNERSHIP LEVEL ADJUSTMENTS

Subpart
A. Adjustments by Secretary.
B. Claims for adjustments by partnership.

SUBPART A—ADJUSTMENTS BY SECRETARY

Sec.
6245. Secretarial authority.
6246. Restrictions on partnership adjustments.
6247. Judicial review of partnership adjustment.
6248. Period of limitations for making adjustments.

§6245. Secretarial authority

(a) General rule

The Secretary is authorized and directed to make adjustments at the partnership level in any partnership item to the extent necessary to have such item be treated in the manner required.

(b) Notice of partnership adjustment

(1) In general

If the Secretary determines that a partnership adjustment is required, the Secretary is authorized to send notice of such adjustment to the partnership by certified mail or registered mail. Such notice shall be sufficient if mailed to the partnership at its last known address even if the partnership has terminated its existence.

(2) Further notices restricted

If the Secretary mails a notice of a partnership adjustment to any partnership for any partnership taxable year and the partnership files a petition under section 6247 with respect to such notice, in the absence of a showing of fraud, malfeasance, or misrepresentation of a material fact, the Secretary shall not mail another such notice to such partnership with respect to such taxable year.

(3) Authority to rescind notice with partnership consent

The Secretary may, with the consent of the partnership, rescind any notice of a partnership adjustment mailed to such partnership. Any notice so rescinded shall not be treated as a notice of a partnership adjustment, for purposes of this section, section 6246, and section 6247, and the taxpayer shall have no right to bring a proceeding under section 6247 with respect to such notice. Nothing in this subsection shall affect any suspension of the running of any period of limitations during any period during which the rescinded notice was outstanding.

(Added Pub. L. 105–34, title XII, §1222(a), Aug. 5, 1997, 111 Stat. 1013.)

PRIOR PROVISIONS

A prior section 6245, added Pub. L. 97–354, §4(a), Oct. 19, 1982, 96 Stat. 1692, defined "subchapter S item" for purposes of subchapter, prior to repeal by Pub. L. 104–188, title I, §§1307(c)(1), 1317(a), Aug. 20, 1996, 110 Stat. 1781, 1787, applicable to taxable years beginning after Dec. 31, 1996.

§6246. Restrictions on partnership adjustments

(a) General rule

Except as otherwise provided in this chapter, no adjustment to any partnership item may be made (and no levy or proceeding in any court for the collection of any amount resulting from such

adjustment may be made, begun or prosecuted) before—

(1) the close of the 90th day after the day on which a notice of a partnership adjustment was mailed to the partnership, and

(2) if a petition is filed under section 6247 with respect to such notice, the decision of the court has become final.

(b) Premature action may be enjoined

Notwithstanding section 7421(a), any action which violates subsection (a) may be enjoined in the proper court, including the Tax Court. The Tax Court shall have no jurisdiction to enjoin any action under this subsection unless a timely petition has been filed under section 6247 and then only in respect of the adjustments that are the subject of such petition.

(c) Exceptions to restrictions on adjustments

(1) Adjustments arising out of math or clerical errors

(A) In general

If the partnership is notified that, on account of a mathematical or clerical error appearing on the partnership return, an adjustment to a partnership item is required, rules similar to the rules of paragraphs (1) and (2) of section 6213(b) shall apply to such adjustment.

(B) Special rule

If an electing large partnership is a partner in another electing large partnership, any adjustment on account of such partnership's failure to comply with the requirements of section 6241(a) with respect to its interest in such other partnership shall be treated as an adjustment referred to in subparagraph (A), except that paragraph (2) of section 6213(b) shall not apply to such adjustment.

(2) Partnership may waive restrictions

The partnership shall at any time (whether or not a notice of partnership adjustment has been issued) have the right, by a signed notice in writing filed with the Secretary, to waive the restrictions provided in subsection (a) on the making of any partnership adjustment.

(d) Limit where no proceeding begun

If no proceeding under section 6247 is begun with respect to any notice of a partnership adjustment during the 90-day period described in subsection (a), the amount for which the partnership is liable under section 6242 (and any increase in any partner's liability for tax under chapter 1 by reason of any adjustment under section 6242(a)) shall not exceed the amount determined in accordance with such notice.

(Added Pub. L. 105–34, title XII, §1222(a), Aug. 5, 1997, 111 Stat. 1013.)

§6247. Judicial review of partnership adjustment

(a) General rule

Within 90 days after the date on which a notice of a partnership adjustment is mailed to the partnership with respect to any partnership taxable year, the partnership may file a petition for a readjustment of the partnership items for such taxable year with—

(1) the Tax Court,

(2) the district court of the United States for the district in which the partnership's principal place of business is located, or

(3) the Claims Court.

(b) Jurisdictional requirement for bringing action in district court or Claims Court

(1) In general

A readjustment petition under this section may be filed in a district court of the United States or

the Claims Court only if the partnership filing the petition deposits with the Secretary, on or before the date the petition is filed, the amount for which the partnership would be liable under section 6242(b) (as of the date of the filing of the petition) if the partnership items were adjusted as provided by the notice of partnership adjustment. The court may by order provide that the jurisdictional requirements of this paragraph are satisfied where there has been a good faith attempt to satisfy such requirement and any shortfall of the amount required to be deposited is timely corrected.

(2) Interest payable

Any amount deposited under paragraph (1), while deposited, shall not be treated as a payment of tax for purposes of this title (other than chapter 67).

(c) Scope of judicial review

A court with which a petition is filed in accordance with this section shall have jurisdiction to determine all partnership items of the partnership for the partnership taxable year to which the notice of partnership adjustment relates and the proper allocation of such items among the partners (and the applicability of any penalty, addition to tax, or additional amount for which the partnership may be liable under section 6242(b)).

(d) Determination of court reviewable

Any determination by a court under this section shall have the force and effect of a decision of the Tax Court or a final judgment or decree of the district court or the Claims Court, as the case may be, and shall be reviewable as such. The date of any such determination shall be treated as being the date of the court's order entering the decision.

(e) Effect of decision dismissing action

If an action brought under this section is dismissed other than by reason of a rescission under section 6245(b)(3), the decision of the court dismissing the action shall be considered as its decision that the notice of partnership adjustment is correct, and an appropriate order shall be entered in the records of the court.

(Added Pub. L. 105–34, title XII, §1222(a), Aug. 5, 1997, 111 Stat. 1014.)

§6248. Period of limitations for making adjustments

(a) General rule

Except as otherwise provided in this section, no adjustment under this subpart to any partnership item for any partnership taxable year may be made after the date which is 3 years after the later of—

(1) the date on which the partnership return for such taxable year was filed, or

(2) the last day for filing such return for such year (determined without regard to extensions).

(b) Extension by agreement

The period described in subsection (a) (including an extension period under this subsection) may be extended by an agreement entered into by the Secretary and the partnership before the expiration of such period.

(c) Special rule in case of fraud, etc.

(1) False return

In the case of a false or fraudulent partnership return with intent to evade tax, the adjustment may be made at any time.

(2) Substantial omission of income

If any partnership omits from gross income an amount properly includible therein which is in excess of 25 percent of the amount of gross income stated in its return, subsection (a) shall be applied by substituting "6 years" for "3 years".

(3) No return

In the case of a failure by a partnership to file a return for any taxable year, the adjustment may be made at any time.

(4) Return filed by Secretary

For purposes of this section, a return executed by the Secretary under subsection (b) of section 6020 on behalf of the partnership shall not be treated as a return of the partnership.

(d) Suspension when Secretary mails notice of adjustment

If notice of a partnership adjustment with respect to any taxable year is mailed to the partnership, the running of the period specified in subsection (a) (as modified by the other provisions of this section) shall be suspended—

(1) for the period during which an action may be brought under section 6247 (and, if a petition is filed under section 6247 with respect to such notice, until the decision of the court becomes final), and

(2) for 1 year thereafter.

(Added Pub. L. 105–34, title XII, §1222(a), Aug. 5, 1997, 111 Stat. 1015.)

SUBPART B—CLAIMS FOR ADJUSTMENTS BY PARTNERSHIP

Sec.
6251. Administrative adjustment requests.
6252. Judicial review where administrative adjustment request is not allowed in full.

§6251. Administrative adjustment requests

(a) General rule

A partnership may file a request for an administrative adjustment of partnership items for any partnership taxable year at any time which is—

(1) within 3 years after the later of—

(A) the date on which the partnership return for such year is filed, or

(B) the last day for filing the partnership return for such year (determined without regard to extensions), and

(2) before the mailing to the partnership of a notice of a partnership adjustment with respect to such taxable year.

(b) Secretarial action

If a partnership files an administrative adjustment request under subsection (a), the Secretary may allow any part of the requested adjustments.

(c) Special rule in case of extension under section 6248

If the period described in section 6248(a) is extended pursuant to an agreement under section 6248(b), the period prescribed by subsection (a)(1) shall not expire before the date 6 months after the expiration of the extension under section 6248(b).

(Added Pub. L. 105–34, title XII, §1222(a), Aug. 5, 1997, 111 Stat. 1016.)

§6252. Judicial review where administrative adjustment request is not allowed in full

(a) In general

If any part of an administrative adjustment request filed under section 6251 is not allowed by the

Secretary, the partnership may file a petition for an adjustment with respect to the partnership items to which such part of the request relates with—

(1) the Tax Court,

(2) the district court of the United States for the district in which the principal place of business of the partnership is located, or

(3) the Claims Court.

(b) Period for filing petition

A petition may be filed under subsection (a) with respect to partnership items for a partnership taxable year only—

(1) after the expiration of 6 months from the date of filing of the request under section 6251, and

(2) before the date which is 2 years after the date of such request.

The 2-year period set forth in paragraph (2) shall be extended for such period as may be agreed upon in writing by the partnership and the Secretary.

(c) Coordination with subpart A

(1) Notice of partnership adjustment before filing of petition

No petition may be filed under this section after the Secretary mails to the partnership a notice of a partnership adjustment for the partnership taxable year to which the request under section 6251 relates.

(2) Notice of partnership adjustment after filing but before hearing of petition

If the Secretary mails to the partnership a notice of a partnership adjustment for the partnership taxable year to which the request under section 6251 relates after the filing of a petition under this subsection but before the hearing of such petition, such petition shall be treated as an action brought under section 6247 with respect to such notice, except that subsection (b) of section 6247 shall not apply.

(3) Notice must be before expiration of statute of limitations

A notice of a partnership adjustment for the partnership taxable year shall be taken into account under paragraphs (1) and (2) only if such notice is mailed before the expiration of the period prescribed by section 6248 for making adjustments to partnership items for such taxable year.

(d) Scope of judicial review

Except in the case described in paragraph (2) of subsection (c), a court with which a petition is filed in accordance with this section shall have jurisdiction to determine only those partnership items to which the part of the request under section 6251 not allowed by the Secretary relates and those items with respect to which the Secretary asserts adjustments as offsets to the adjustments requested by the partnership.

(e) Determination of court reviewable

Any determination by a court under this section shall have the force and effect of a decision of the Tax Court or a final judgment or decree of the district court or the Claims Court, as the case may be, and shall be reviewable as such. The date of any such determination shall be treated as being the date of the court's order entering the decision.

(Added Pub. L. 105–34, title XII, §1222(a), Aug. 5, 1997, 111 Stat. 1016.)

PART III—DEFINITIONS AND SPECIAL RULES

Sec.
6255. Definitions and special rules.

§6255. Definitions and special rules

(a) Definitions

For purposes of this subchapter—

(1) Electing large partnership

The term "electing large partnership" has the meaning given to such term by section 775.

(2) Partnership item

The term "partnership item" has the meaning given to such term by section 6231(a)(3).

(b) Partners bound by actions of partnership, etc.

(1) Designation of partner

Each electing large partnership shall designate (in the manner prescribed by the Secretary) a partner (or other person) who shall have the sole authority to act on behalf of such partnership under this subchapter. In any case in which such a designation is not in effect, the Secretary may select any partner as the partner with such authority.

(2) Binding effect

An electing large partnership and all partners of such partnership shall be bound—

(A) by actions taken under this subchapter by the partnership, and

(B) by any decision in a proceeding brought under this subchapter.

(c) Partnerships having principal place of business outside the United States

For purposes of sections 6247 and 6252, a principal place of business located outside the United States shall be treated as located in the District of Columbia.

(d) Treatment where partnership ceases to exist

If a partnership ceases to exist before a partnership adjustment under this subchapter takes effect, such adjustment shall be taken into account by the former partners of such partnership under regulations prescribed by the Secretary.

(e) Date decision becomes final

For purposes of this subchapter, the principles of section 7481(a) shall be applied in determining the date on which a decision of a district court or the Claims Court becomes final.

(f) Partnerships in cases under title 11 of the United States Code

(1) Suspension of period of limitations on making adjustment, assessment, or collection

The running of any period of limitations provided in this subchapter on making a partnership adjustment (or provided by section 6501 or 6502 on the assessment or collection of any amount required to be paid under section 6242) shall, in a case under title 11 of the United States Code, be suspended during the period during which the Secretary is prohibited by reason of such case from making the adjustment (or assessment or collection) and—

(A) for adjustment or assessment, 60 days thereafter, and

(B) for collection, 6 months thereafter.

A rule similar to the rule of section 6213(f)(2) shall apply for purposes of section 6246.

(2) Suspension of period of limitation for filing for judicial review

The running of the period specified in section 6247(a) or 6252(b) shall, in a case under title 11 of the United States Code, be suspended during the period during which the partnership is prohibited by reason of such case from filing a petition under section 6247 or 6252 and for 60 days thereafter.

(g) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this subchapter, including regulations—

(1) to prevent abuse through manipulation of the provisions of this subchapter, and

(2) providing that this subchapter shall not apply to any case described in section 6231(c)(1) (or the regulations prescribed thereunder) where the application of this subchapter to such a case would interfere with the effective and efficient enforcement of this title.

In any case to which this subchapter does not apply by reason of paragraph (2), rules similar to the rules of sections 6229(f) and 6255(f) shall apply.

(Added Pub. L. 105–34, title XII, §1222(a), Aug. 5, 1997, 111 Stat. 1017.)

CHAPTER 64—COLLECTION

Subchapter		Sec.[1]
A.	**General provisions**	**6301**
B.	**Receipt of payment**	**6311**
C.	**Lien for taxes**	**6321**
D.	**Seizure of property for collection of taxes**	**6331**
[E.	**Repealed.]**	

AMENDMENTS

1990—Pub. L. 101–508, title XI, §11801(b)(14), Nov. 5, 1990, 104 Stat. 1388–522, struck out item for subchapter E "Collection of State individual income taxes".

1972—Pub. L. 92–512, title II, §202(b), Oct. 20, 1972, 86 Stat. 944, added item for subchapter E.

[1] *Section numbers editorially supplied.*

Subchapter A—General Provisions

Sec.

6301. Collection authority

6302. Mode or time of collection.

6303. Notice and demand for tax.

6304. Fair tax collection practices.

6305. Collection of certain liability.

6306. Qualified tax collection contracts.

AMENDMENTS

2004—Pub. L. 108–357, title VIII, §881(a)(2)(B), Oct. 22, 2004, 118 Stat. 1626, added item 6306.

1998—Pub. L. 105–206, title III, §3466(b), July 22, 1998, 112 Stat. 769, added item 6304.

1976—Pub. L. 94–455, title XIX, §1906(b)(5), Oct. 4, 1976, 90 Stat. 1833, struck out item "6304. Collection under the Tariff Act".

1975—Pub. L. 93–647, §101(b)(2), Jan. 4, 1975, 88 Stat. 2358, added item 6305.

§6301. Collection authority

The Secretary shall collect the taxes imposed by the internal revenue laws.

(Aug. 16, 1954, ch. 736, 68A Stat. 775; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

APPROVAL PROCESS FOR LIENS, LEVIES, AND SEIZURES

Pub. L. 105–206, title III, §3421, July 22, 1998, 112 Stat. 758, provided that:

"(a) IN GENERAL.—The Commissioner of Internal Revenue shall develop and implement procedures under which—

"(1) a determination by an employee to file a notice of lien or levy with respect to, or to levy or seize, any property or right to property would, where appropriate, be required to be reviewed by a supervisor of the employee before the action was taken; and

"(2) appropriate disciplinary action would be taken against the employee or supervisor where the procedures under paragraph (1) were not followed.

"(b) REVIEW PROCESS.—The review process under subsection (a)(1) may include a certification that the employee has—

"(1) reviewed the taxpayer's information;

"(2) verified that a balance is due; and

"(3) affirmed that the action proposed to be taken is appropriate given the taxpayer's circumstances, considering the amount due and the value of the property or right to property.

"(c) EFFECTIVE DATES.—

"(1) IN GENERAL.—Except as provided in paragraph (2), this section shall take effect on the date of the enactment of this Act [July 22, 1998].

"(2) AUTOMATED COLLECTION SYSTEM ACTIONS.—In the case of any action under an automated collection system, this section shall apply to actions initiated after December 31, 2000."

§6302. Mode or time of collection

(a) Establishment by regulations

If the mode or time for collecting any tax is not provided for by this title, the Secretary may establish the same by regulations.

(b) Discretionary method

Whether or not the method of collecting any tax imposed by chapter 21, 31, 32, or 33, or by section 4481 is specifically provided for by this title, any such tax may, under regulations prescribed by the Secretary, be collected by means of returns, stamps, coupons, tickets, books, or such other reasonable devices or methods as may be necessary or helpful in securing a complete and proper collection of the tax.

(c) Use of Government depositaries

The Secretary may authorize Federal Reserve banks, and incorporated banks, trust companies, domestic building and loan associations, or credit unions which are depositaries or financial agents of the United States, to receive any tax imposed under the internal revenue laws, in such manner, at such times, and under such conditions as he may prescribe; and he shall prescribe the manner, times, and conditions under which the receipt of such tax by such banks, trust companies, domestic building and loan associations, and credit unions is to be treated as payment of such tax to the Secretary.

(d) Time for payment of manufacturers' excise tax on recreational equipment

The taxes imposed by subchapter D of chapter 32 of this title (relating to taxes on recreational equipment) shall be due and payable on the date for filing the return for such taxes.

(e) Time for deposit of taxes on communications services and airline tickets

(1) In general

Except as provided in paragraph (2), if, under regulations prescribed by the Secretary, a person is required to make deposits of any tax imposed by section 4251 or subsection (a) or (b) of section 4261 with respect to amounts considered collected by such person during any semimonthly period, such deposit shall be made not later than the 3rd day (not including Saturdays, Sundays, or legal holidays) after the close of the 1st week of the 2nd semimonthly period following the period to which such amounts relate.

(2) Special rule for tax due in September

(A) Amounts considered collected

In the case of a person required to make deposits of the tax imposed by—

(i) section 4251, or

(ii) effective on January 1, 1997, section 4261 or 4271,

with respect to amounts considered collected by such person during any semimonthly period, the amount of such tax included in bills rendered or tickets sold during the period beginning on September 1 and ending on September 11 shall be deposited not later than September 29.

(B) Special rule where September 29 is on Saturday or Sunday

If September 29 falls on a Saturday or Sunday, the due date under subparagraph (A) shall be—

(i) in the case of Saturday, the preceding day, and

(ii) in the case of Sunday, the following day.

(C) Taxpayers not required to use electronic funds transfer

In the case of deposits not required to be made by electronic funds transfer, subparagraphs (A) and (B) shall be applied by substituting "September 10" for "September 11" and "September 28" for "September 29".

(f) Time for deposit of certain excise taxes

(1) General rule

Except as otherwise provided in this subsection and subsection (e), if any person is required under regulations to make deposits of taxes under subtitle D with respect to semimonthly periods, such person shall make deposits of such taxes for the period beginning on September 16 and ending on September 26 not later than September 29. In the case of taxes imposed by sections 4261 and 4271, this paragraph shall not apply to periods before January 1, 1997.

(2) Taxes on ozone depleting chemicals

If any person is required under regulations to make deposits of taxes under subchapter D of chapter 38 with respect to semimonthly periods, in lieu of paragraph (1), such person shall make deposits of such taxes for—

(A) the second semimonthly period in August, and

(B) the period beginning on September 1 and ending on September 11,

not later than September 29.

(3) Taxpayers not required to use electronic funds transfer

In the case of deposits not required to be made by electronic funds transfer, paragraphs (1) and (2) shall be applied by substituting "September 25" for "September 26", "September 10" for "September 11", and "September 28" for "September 29".

(4) Special rule where due date on Saturday or Sunday

If, but for this paragraph, the due date under paragraph (1), (2), or (3) would fall on a Saturday or Sunday, such due date shall be deemed to be—

(A) in the case of Saturday, the preceding day, and

(B) in the case of Sunday, the following day.

(g) Deposits of social security taxes and withheld income taxes

If, under regulations prescribed by the Secretary, a person is required to make deposits of taxes imposed by chapters 21, 22, and 24 on the basis of eighth-month periods, such person shall make deposits of such taxes on the 1st banking day after any day on which such person has $100,000 or more of such taxes for deposit.

(h) Use of electronic fund transfer system for collection of certain taxes

(1) Establishment of system

(A) In general

The Secretary shall prescribe such regulations as may be necessary for the development and implementation of an electronic fund transfer system which is required to be used for the collection of depository taxes. Such system shall be designed in such manner as may be necessary to ensure that such taxes are credited to the general account of the Treasury on the date on which such taxes would otherwise have been required to be deposited under the Federal tax deposit system.

(B) Exemptions

The regulations prescribed under subparagraph (A) may contain such exemptions as the Secretary may deem appropriate.

(2) Phase-in requirements

(A) In general

Except as provided in subparagraph (B), the regulations referred to in paragraph (1)—

(i) shall contain appropriate procedures to assure that an orderly conversion from the Federal tax deposit system to the electronic fund transfer system is accomplished, and

(ii) may provide for a phase-in of such electronic fund transfer system by classes of taxpayers based on the aggregate undeposited taxes of such taxpayers at the close of specified periods and any other factors the Secretary may deem appropriate.

(B) Phase-in requirements

The phase-in of the electronic fund transfer system shall be designed in such manner as may be necessary to ensure that—

(i) during each fiscal year beginning after September 30, 1993, at least the applicable required percentage of the total depository taxes imposed by chapters 21, 22, and 24 shall be collected by means of electronic fund transfer, and

(ii) during each fiscal year beginning after September 30, 1993, at least the applicable required percentage of the total other depository taxes shall be collected by means of electronic fund transfer.

(C) Applicable required percentage

(i) In the case of the depository taxes imposed by chapters 21, 22, and 24, the applicable required percentage is—

(I) 3 percent for fiscal year 1994,
(II) 16.9 percent for fiscal year 1995,
(III) 20.1 percent for fiscal year 1996,
(IV) 58.3 percent for fiscal years 1997 and 1998, and
(V) 94 percent for fiscal year 1999 and all fiscal years thereafter.

(ii) In the case of other depository taxes, the applicable required percentage is—

(I) 3 percent for fiscal year 1994,
(II) 20 percent for fiscal year 1995,
(III) 30 percent for fiscal year 1996,
(IV) 60 percent for fiscal years 1997 and 1998, and
(V) 94 percent for fiscal year 1999 and all fiscal years thereafter.

(3) Definitions

For purposes of this subsection—

(A) Depository tax

The term "depository tax" means any tax if the Secretary is authorized to require deposits of such tax.

(B) Electronic fund transfer

The term "electronic fund transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution or other financial intermediary to debit or credit an account.

(4) Coordination with other electronic fund transfer requirements

(A) Coordination with certain excise taxes

In determining whether the requirements of subparagraph (B) of paragraph (2) are met, taxes required to be paid by electronic fund transfer under sections 5061(e) and 5703(b) shall be disregarded.

(B) Additional requirement

Under regulations, any tax required to be paid by electronic fund transfer under section 5061(e) or 5703(b) shall be paid in such a manner as to ensure that the requirements of the second sentence of paragraph (1)(A) of this subsection are satisfied.

(Aug. 16, 1954, ch. 736, 68A Stat. 775; June 29, 1956, ch. 462, title II, §206(b), 70 Stat. 391; Pub. L. 94–455, title XIX, §1906(a)(17), (b)(13)(A), Oct. 4, 1976, 90 Stat. 1825, 1834; Pub. L. 95–147, §3(a), Oct. 28, 1977, 91 Stat. 1228; Pub. L. 95–600, title I, §105(e), Nov. 6, 1978, 92 Stat. 2776; Pub. L. 96–223, title I, §101(c)(2), Apr. 2, 1980, 94 Stat. 250; Pub. L. 98–369, div. A, title X, §1015(c), July 18, 1984, 98 Stat. 1018; Pub. L. 100–418, title I, §1941(b)(2)(G), Aug. 23, 1988, 102 Stat. 1323; Pub. L. 100–647, title VI, §6107(a), Nov. 10, 1988, 102 Stat. 3712; Pub. L. 101–239, title VII, §§7502(a), 7507(a), 7632(a), Dec. 19, 1989, 103 Stat. 2362, 2369, 2379; Pub. L. 101–508, title XI, §§11217(b)(1), 11334(a), 11801(c)(22)(A), Nov. 5, 1990, 104 Stat. 1388–437, 1388–470, 1388–528; Pub. L. 103–66, title XIII, §13242(d)(15), Aug. 10, 1993, 107 Stat. 524; Pub. L. 103–182, title V, §523(a), Dec. 8, 1993, 107 Stat. 2161; Pub. L. 103–465, title VII, §712(a), (d), Dec. 8, 1994, 108 Stat. 4999, 5001; Pub. L. 104–188, title I, §§1702(c)(3), 1704(t)(52), Aug. 20, 1996, 110 Stat. 1869, 1890; Pub. L. 111–226, title II, §219(b)(2), Aug. 10, 2010, 124 Stat. 2403; Pub. L. 111–237, §2(a), Aug. 16, 2010, 124 Stat. 2497.)

AMENDMENTS

2010—Subsec. (d). Pub. L. 111–237 amended subsec. (d) generally. Prior to amendment, text read as follows: "The taxes imposed by subsections (a) and (b) of section 4161 (relating to taxes on sporting goods) shall be due and payable on the date for filing the return for such taxes."

Subsec. (i). Pub. L. 111–226 struck out subsec. (i). Text read as follows: "For treatment of earned income advance amounts as payment of withholding and FICA taxes, see section 3507(d)."

1996—Subsec. (b). Pub. L. 104–188, §1704(t)(52), provided that section 11801(c)(22)(A) of Pub. L. 101–508 shall be applied as if "chapters 21" appeared instead of "chapter 21" in the material to be stricken. See 1990 Amendment note below.

Subsec. (g). Pub. L. 104–188, §1702(c)(3), inserted ", 22," after "chapters 21".

1994—Subsec. (e). Pub. L. 103–465, §712(d), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "If, under regulations prescribed by the Secretary, a person is required to make deposits of any tax imposed by section 4251 or subsection (a) or (b) of section 4261 with respect to amounts considered collected by such person during any semimonthly period, such deposit shall be made not later than the 3rd day (not including Saturdays, Sundays, or legal holidays) after the close of the 1st week of the 2nd semimonthly period following the period to which such amounts relate."

Subsec. (f). Pub. L. 103–465, §712(a), substituted "certain excise taxes" for "taxes on gasoline and diesel fuel" in heading and amended text generally. Prior to amendment, text read as follows:

"(1) GENERAL RULE.—Notwithstanding section 518 of the Highway Revenue Act of 1982, any person whose liability for tax under section 4081 is payable with respect to semimonthly periods shall, not later than September 27, make deposits of such tax for the period beginning on September 16 and ending on September 22.

"(2) SPECIAL RULE WHERE DUE DATE FALLS ON SATURDAY, SUNDAY, OR HOLIDAY.—If, but for this paragraph, the due date under paragraph (1) would fall on a Saturday, Sunday, or holiday in the District of Columbia, such due date shall be deemed to be the immediately preceding day which is not a Saturday, Sunday, or such a holiday."

1993—Subsec. (f). Pub. L. 103–66 inserted "and diesel fuel" after "gasoline" in heading.

Subsecs. (h), (i). Pub. L. 103–182 added subsec. (h) and redesignated former subsec. (h) as (i).

1990—Subsec. (b). Pub. L. 101–508, §11801(c)(22)(A), which directed the substitution of "chapter 21, 31, 32, or 33, or by section 4481" for "chapter 21" and all that follows down through "chapter 37,", was executed by making the substitution for "chapters 21, 31, 32, 33, section 4481 of chapter 36, section 4501(a) of chapter 37" to reflect the probable intent of Congress. See 1996 Amendment note above.

Subsec. (e). Pub. L. 101–508, §11217(b)(1), inserted "communications services and" before "airline" in heading and "section 4251 or" after "imposed by" in text.

Subsec. (g). Pub. L. 101–508, §11334(a), amended subsec. (g) generally, striking out par. (1) designation and striking heading, striking out ", for the years specified in paragraph (2)," after "such person shall", substituting "on the 1st banking day" for "on the applicable banking day", and striking out par. (2), which provided that for purposes of par. (1) the applicable banking day for 1990 is the 1st, for 1991 the 2nd, for 1992 the 3rd, for 1993 the 1st, and for 1994 the 1st.

1989—Subsec. (e). Pub. L. 101–239, §7502(a), added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 101–239, §7507(a), added subsec. (f). Former subsec. (f) redesignated (g).

Pub. L. 101–239, §7502(a), redesignated former subsec. (e) as (f).

Subsec. (g). Pub. L. 101–239, §7632(a), added subsec. (g). Former subsec. (g) redesignated (h).

Pub. L. 101–239, §7507(a), redesignated former subsec. (f) as (g).

Subsec. (h). Pub. L. 101–239, §7632(a), redesignated former subsec. (g) as (h).

1988—Subsec. (d). Pub. L. 100–647 substituted "Time for payment of manufacturers' excise tax on sporting goods" for "Time for payment of manufacturers excise tax on sport fishing equipment" in heading and amended text generally. Prior to amendment, subsec. (d) read as follows: "The tax imposed by section 4161(a) (relating to manufacturers excise tax on sport fishing equipment) shall be due and payable on the date for filing the return for such tax."

Subsec. (e). Pub. L. 100–418 substituted "For" for "(1) For" and struck out par. (2) which read as follows: "For depositary requirements applicable to the windfall profit tax imposed by section 4986, see section 4995(b)."

1984—Subsecs. (d), (e). Pub. L. 98–369 added subsec. (d) and redesignated former subsec. (d) as (e).

1980—Subsec. (d). Pub. L. 96–223 designated existing cross reference as par. (1), substituted "For treatment of earned income advance amounts" for "For treatment of payment of earned income advance amounts", and added par. (2).

1978—Subsec. (d). Pub. L. 95–600 added subsec. (d).

1977—Subsec. (c). Pub. L. 95–147 substituted ", trust companies, domestic building and loan associations, or credit unions" for "or trust companies" and ", trust companies, domestic building and loan associations, and credit unions" for "and trust companies".

1976—Subsec. (a). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (b). Pub. L. 94–455, §1906(a)(17), (b)(13)(A), substituted "section 4501(a) of chapter 37" for "sections 4501(a) or 4511 of chapter 37, or section 4701 or 4721 of chapter 39" and struck out "or his delegate" after "Secretary".

Subsec. (c). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary" wherever appearing.

1956—Subsec. (b). Act June 29, 1956, inserted reference to section 4481 of chapter 36.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–237, §2(b), Aug. 16, 2010, 124 Stat. 2497, provided that: "The amendment made by subsection (a) [amending this section] shall apply to articles sold by the manufacturer, producer, or importer after the date of the enactment of this Act [Aug. 16, 2010]."

Amendment by Pub. L. 111–226 applicable to taxable years beginning after Dec. 31, 2010, see section 219(c) of Pub. L. 111–226, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1702(c)(3) of Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 effective Jan. 1, 1995, see section 712(e) of Pub. L. 103–465, set out as a note under section 5061 of this title.

EFFECTIVE DATE OF 1993 AMENDMENTS

Pub. L. 103–182, title V, §523(b)(1), Dec. 8, 1993, 107 Stat. 2163, provided that: "The amendments made by this section [amending this section] shall take effect on the date the Agreement [North American Free Trade Agreement] enters into force with respect to the United States [Jan. 1, 1994]."

Amendment by Pub. L. 103–66 effective Jan. 1, 1994, see section 13242(e) of Pub. L. 103–66, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, §11217(b)(2), Nov. 5, 1990, 104 Stat. 1388–437, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to payments of taxes considered collected during semimonthly periods beginning after December 31, 1990."

Pub. L. 101–508, title XI, §11334(c), Nov. 5, 1990, 104 Stat. 1388–470, provided that: "The amendments made by this section [amending this section and provisions set out below] shall apply to amounts required to be deposited after December 31, 1990."

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7502(b), Dec. 19, 1989, 103 Stat. 2362, provided that: "The amendment made by subsection (a) [amending this section] shall apply to payments of taxes considered collected for semimonthly periods beginning after June 30, 1990."

Pub. L. 101–239, title VII, §7507(b), Dec. 19, 1989, 103 Stat. 2369, provided that: "The amendment made by subsection (a) [amending this section] shall apply to payments of taxes for tax periods beginning after December 31, 1989."

Pub. L. 101–239, title VII, §7632(b), Dec. 19, 1989, 103 Stat. 2379, as amended by Pub. L. 101–508, title XI, §11334(b), Nov. 5, 1990, 104 Stat. 1388–470, provided that:

"(1) GENERAL RULE.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to amounts required to be deposited after July 31, 1990.

"[(2) Repealed. Pub. L. 101–508, title XI, §11334(b), Nov. 5, 1990, 104 Stat. 1388–470.]"

EFFECTIVE DATE OF 1988 AMENDMENTS

Pub. L. 100–647, title VI, §6107(b), Nov. 10, 1988, 102 Stat. 3712, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to articles sold by the manufacturer, producer, or importer after December 31, 1988."

Amendment by Pub. L. 100–418 applicable to crude oil removed from the premises on or after Aug. 23, 1988, see section 1941(c) of Pub. L. 100–418, set out as a note under section 164 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable with respect to articles sold by manufacturer, producer, or importer after Sept. 30, 1984, see section 1015(e) of Pub. L. 98–369, set out as an Effective Date note under section 4162 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–223 applicable to periods after Feb. 29, 1980, see section 101(i) of Pub. L. 96–223, set out as a note under section 6161 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 effective with respect to remuneration paid after June 30, 1979, see section 105(g)(2) of Pub. L. 95–600, set out as a note under section 6051 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Pub. L. 95–147, §3(c), Oct. 28, 1977, 91 Stat. 1228, provided that: "The amendments made by this section [amending this section and section 7502 of this title] shall apply to amounts deposited after the date of the enactment of this Act [Oct. 28, 1977]."

REGULATIONS

Pub. L. 103–182, title V, §523(b)(2), Dec. 8, 1993, 107 Stat. 2163, provided that: "Not later than 210 days after the date of enactment of this Act [Dec. 8, 1993], the Secretary of the Treasury or his delegate shall prescribe temporary regulations under section 6302(h) of the Internal Revenue Code of 1986 (as added by this section)."

SAVINGS PROVISION

For provisions that nothing in amendment by section 11801(c)(22)(A) of Pub. L. 101–508 be construed to

affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

DELAYED DEPOSITS OF HIGHWAY MOTOR FUEL TAX REVENUES

Pub. L. 105–34, title IX, §901(e), Aug. 5, 1997, 111 Stat. 872, provided that: "Notwithstanding section 6302 of the Internal Revenue Code of 1986, in the case of deposits of taxes imposed by sections 4041 and 4081 (other than subsection (a)(2)(A)(ii)) of the Internal Revenue Code of 1986, the due date for any deposit which would (but for this subsection) be required to be made after July 31, 1998, and before October 1, 1998, shall be October 5, 1998."

WAIVER OF PENALTY THROUGH JUNE 30, 1998, ON SMALL BUSINESSES FAILING TO MAKE ELECTRONIC FUND TRANSFERS OF TAXES

Pub. L. 105–34, title IX, §931, Aug. 5, 1997, 111 Stat. 881, provided that: "No penalty shall be imposed under the Internal Revenue Code of 1986 solely by reason of a failure by a person to use the electronic fund transfer system established under section 6302(h) of such Code if—

"(1) such person is a member of a class of taxpayers first required to use such system on or after July 1, 1997, and

"(2) such failure occurs before July 1, 1998."

DELAYED DEPOSITS OF AIRPORT TRUST FUND TAX REVENUES

Pub. L. 105–34, title X, §1031(g), Aug. 5, 1997, 111 Stat. 933, provided that: "Notwithstanding section 6302 of the Internal Revenue Code of 1986—

"(1) in the case of deposits of taxes imposed by section 4261 of such Code, the due date for any such deposit which would (but for this subsection) be required to be made after August 14, 1997, and before October 1, 1997, shall be October 10, 1997,

"(2) in the case of deposits of taxes imposed by section 4261 of such Code, the due date for any such deposit which would (but for this subsection) be required to be made after August 14, 1998, and before October 1, 1998, shall be October 5, 1998, and

"(3) in the case of deposits of taxes imposed by sections 4081(a)(2)(A)(ii), 4091, and 4271 of such Code, the due date for any such deposit which would (but for this subsection) be required to be made after July 31, 1998, and before October 1, 1998, shall be October 5, 1998."

DELAY OF ELECTRONIC FUND TRANSFER REQUIREMENT

Pub. L. 104–188, title I, §1809, Aug. 20, 1996, 110 Stat. 1904, provided that: "Notwithstanding any other provision of law, the increase in the applicable required percentages for fiscal year 1997 in clauses (i)(IV) and (ii)(IV) of section 6302(h)(2)(C) of the Internal Revenue Code of 1986 shall not take effect before July 1, 1997."

DEPOSITARY SCHEDULES

Pub. L. 98–76, title II, §226, Aug. 12, 1983, 97 Stat. 426, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Effective on and after January 1, 1984, the times for making payments prescribed under section 6302 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] with respect to the taxes imposed by chapter 22 of such Code shall be the same as the times prescribed under such section which apply to the taxes imposed by chapters 21 and 24 of such Code."

Pub. L. 98–76, title II, §227(c), Aug. 12, 1983, 97 Stat. 426, provided that: "Section 226 [set out above] shall take effect on January 1, 1984."

§6303. Notice and demand for tax

(a) General rule

Where it is not otherwise provided by this title, the Secretary shall, as soon as practicable, and within 60 days, after the making of an assessment of a tax pursuant to section 6203, give notice to each person liable for the unpaid tax, stating the amount and demanding payment thereof. Such notice shall be left at the dwelling or usual place of business of such person, or shall be sent by mail to such person's last known address.

(b) Assessment prior to last date for payment

Except where the Secretary believes collection would be jeopardized by delay, if any tax is assessed prior to the last date prescribed for payment of such tax, payment of such tax shall not be demanded under subsection (a) until after such date.

(Aug. 16, 1954, ch. 736, 68A Stat. 775; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

§6304. Fair tax collection practices

(a) Communication with the taxpayer

Without the prior consent of the taxpayer given directly to the Secretary or the express permission of a court of competent jurisdiction, the Secretary may not communicate with a taxpayer in connection with the collection of any unpaid tax—

(1) at any unusual time or place or a time or place known or which should be known to be inconvenient to the taxpayer;

(2) if the Secretary knows the taxpayer is represented by any person authorized to practice before the Internal Revenue Service with respect to such unpaid tax and has knowledge of, or can readily ascertain, such person's name and address, unless such person fails to respond within a reasonable period of time to a communication from the Secretary or unless such person consents to direct communication with the taxpayer; or

(3) at the taxpayer's place of employment if the Secretary knows or has reason to know that the taxpayer's employer prohibits the taxpayer from receiving such communication.

In the absence of knowledge of circumstances to the contrary, the Secretary shall assume that the convenient time for communicating with a taxpayer is after 8 a.m. and before 9 p.m., local time at the taxpayer's location.

(b) Prohibition of harassment and abuse

The Secretary may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of any unpaid tax. Without limiting the general application of the foregoing, the following conduct is a violation of this subsection:

(1) The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person.

(2) The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader.

(3) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.

(4) Except as provided under rules similar to the rules in section 804 of the Fair Debt Collection Practices Act (15 U.S.C. 1692b), the placement of telephone calls without meaningful disclosure of the caller's identity.

(c) Civil action for violations of section

For civil action for violations of this section, see section 7433.

(Added Pub. L. 105–206, title III, §3466(a), July 22, 1998, 112 Stat. 768.)

PRIOR PROVISIONS

A prior section 6304, act Aug. 16, 1954, ch. 736, 68A Stat. 776, related to a cross reference to sections 4504 and 4601 for collection under the Tariff Act of 1930, prior to repeal by Pub. L. 94–455, title XIX, §1906(a)(18), (d)(1), Oct. 4, 1976, 90 Stat. 1825, 1835, effective on first day of first month which begins more than 90 days after Oct. 4, 1976.

EFFECTIVE DATE

Pub. L. 105–206, title III, §3466(c), July 22, 1998, 112 Stat. 769, provided that: "The amendments made by this section [enacting this section] shall take effect on the date of the enactment of this Act [July 22, 1998]."

§6305. Collection of certain liability

(a) In general

Upon receiving a certification from the Secretary of Health and Human Services, under section 452(b) of the Social Security Act with respect to any individual, the Secretary shall assess and collect the amount certified by the Secretary of Health and Human Services, in the same manner, with the same powers, and (except as provided in this section) subject to the same limitations as if such amount were a tax imposed by subtitle C the collection of which would be jeopardized by delay, except that—

(1) no interest or penalties shall be assessed or collected,

(2) for such purposes, paragraphs (4), (6), and (8) of section 6334(a) (relating to property exempt from levy) shall not apply,

(3) there shall be exempt from levy so much of the salary, wages, or other income of an individual as is being withheld therefrom in garnishment pursuant to a judgment entered by a court of competent jurisdiction for the support of his minor children,

(4) in the case of the first assessment against an individual for delinquency under a court or administrative order against such individual for a particular person or persons, the collection shall be stayed for a period of 60 days immediately following notice and demand as described in section 6303, and

(5) no additional fee may be assessed for adjustments to an amount previously certified pursuant to such section 452(b) with respect to the same obligor.

(b) Review of assessments and collections

No court of the United States, whether established under article I or article III of the Constitution, shall have jurisdiction of any action, whether legal or equitable, brought to restrain or review the assessment and collection of amounts by the Secretary under subsection (a), nor shall any such assessment and collection be subject to review by the Secretary in any proceeding. This subsection does not preclude any legal, equitable, or administrative action against the State by an individual in any State court or before any State agency to determine his liability for any amount assessed against him and collected, or to recover any such amount collected from him, under this section.

(Added Pub. L. 93–647, §101(b)(1), Jan. 4, 1975, 88 Stat. 2358; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–35, title XXIII, §2332(g), Aug. 13, 1981, 95 Stat. 862; Pub. L. 104–193, title III, §361(a), Aug. 22, 1996, 110 Stat. 2242.)

REFERENCES IN TEXT

Section 452(b) of the Social Security Act, referred to in subsec. (a), is classified to section 652(b) of Title 42, The Public Health and Welfare.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–193, §361(a)(4), substituted "Secretary of Health and Human Services" for "Secretary of Health, Education, and Welfare" in two places in introductory provisions.

Subsec. (a)(5). Pub. L. 104–193, §361(a)(1)–(3), added par. (5).

1981—Subsec. (a)(4). Pub. L. 97–35 inserted reference to administrative order.

1976—Subsecs. (a), (b). Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–193, title III, §361(b), Aug. 22, 1996, 110 Stat. 2242, provided that: "The amendments made by this section [amending this section] shall become effective October 1, 1997."

For provisions relating to effective date of title III of Pub. L. 104–193, see section 395(a)–(c) of Pub. L. 104–193, set out as a note under section 654 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective, except as otherwise specifically provided, on Oct. 1, 1981, see section 2336 of Pub. L. 97–35, set out as a note under section 651 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE

Section effective Aug. 1, 1975, see section 101(f) of Pub. L. 93–647, set out as a note under section 651 of Title 42, the Public Health and Welfare.

§6306. Qualified tax collection contracts

(a) In general

Nothing in any provision of law shall be construed to prevent the Secretary from entering into a qualified tax collection contract.

(b) Qualified tax collection contract

For purposes of this section, the term "qualified tax collection contract" means any contract which—

(1) is for the services of any person (other than an officer or employee of the Treasury Department)—

(A) to locate and contact any taxpayer specified by the Secretary,

(B) to request full payment from such taxpayer of an amount of Federal tax specified by the Secretary and, if such request cannot be met by the taxpayer, to offer the taxpayer an installment agreement providing for full payment of such amount during a period not to exceed 5 years, and

(C) to obtain financial information specified by the Secretary with respect to such taxpayer,

(2) prohibits each person providing such services under such contract from committing any act or omission which employees of the Internal Revenue Service are prohibited from committing in the performance of similar services,

(3) prohibits subcontractors from—

(A) having contacts with taxpayers,

(B) providing quality assurance services, and

(C) composing debt collection notices, and

(4) permits subcontractors to perform other services only with the approval of the Secretary.

(c) Fees

The Secretary may retain and use—

(1) an amount not in excess of 25 percent of the amount collected under any qualified tax collection contract for the costs of services performed under such contract, and

(2) an amount not in excess of 25 percent of such amount collected for collection enforcement activities of the Internal Revenue Service.

The Secretary shall keep adequate records regarding amounts so retained and used. The amount credited as paid by any taxpayer shall be determined without regard to this subsection.

(d) No Federal liability

The United States shall not be liable for any act or omission of any person performing services under a qualified tax collection contract.

(e) Application of Fair Debt Collection Practices Act

The provisions of the Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.) shall apply to any qualified tax collection contract, except to the extent superseded by section 6304, section 7602(c), or by any other provision of this title.

(f) Cross references

(1) For damages for certain unauthorized collection actions by persons performing services under a qualified tax collection contract, see section 7433A.

(2) For application of Taxpayer Assistance Orders to persons performing services under a qualified tax collection contract, see section 7811(g).

(Added Pub. L. 108–357, title VIII, §881(a)(1), Oct. 22, 2004, 118 Stat. 1625.)

REFERENCES IN TEXT

The Fair Debt Collection Practices Act, referred to in subsec. (e), is title VIII of Pub. L. 90–321, as added by Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 874, as amended, which is classified generally to subchapter V (§1692 et seq.) of chapter 41 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 15 and Tables.

EFFECTIVE DATE

Pub. L. 108–357, title VIII, §881(f), Oct. 22, 2004, 118 Stat. 1627, provided that: "The amendments made to [by] this section [enacting this section and section 7433A of this title, amending sections 7809 and 7811 of this title, and amending provisions set out as a note under section 7804 of this title] shall take effect on the date of the enactment of this Act [Oct. 22, 2004]."

BIENNIAL REPORT

Pub. L. 108–357, title VIII, §881(e), Oct. 22, 2004, 118 Stat. 1627, provided that: "The Secretary of the Treasury shall biennially submit (beginning in 2005) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report with respect to qualified tax collection contracts under section 6306 of the Internal Revenue Code of 1986 (as added by this section) which includes—

"(1) a complete cost benefit analysis,

"(2) the impact of such contracts on collection enforcement staff levels in the Internal Revenue Service,

"(3) the impact of such contracts on the total number and amount of unpaid assessments, and on the number and amount of assessments collected by Internal Revenue Service personnel after initial contact by a contractor,

"(4) the amounts collected and the collection costs incurred (directly and indirectly) by the Internal Revenue Service,

"(5) an evaluation of contractor performance,

"(6) a disclosure safeguard report in a form similar to that required under section 6103(p)(5) of such Code, and

"(7) a measurement plan which includes a comparison of the best practices used by the private collectors with the Internal Revenue Service's own collection techniques and mechanisms to identify and capture information on successful collection techniques used by the contractors which could be adopted by the Internal Revenue Service."

Subchapter B—Receipt of Payment

Sec.

6311. Payment of tax by commercially acceptable means.

[6312. Repealed.]

6313. Fractional parts of a cent.

6314. Receipt for taxes.

6315. Payments of estimated income tax.

6316. Payment by foreign currency.

6317. Payments of Federal unemployment tax for calendar quarter.

AMENDMENTS

1997—Pub. L. 105–34, title XII, §1205(b), Aug. 5, 1997, 111 Stat. 998, substituted "Payment of tax by commercially acceptable means" for "Payment by check or money order" in item 6311.

1971—Pub. L. 92–5, title I, §4(a)(2), Mar. 17, 1971, 85 Stat. 5, struck out item 6312 "Payment by United States notes and certificates of indebtedness".

1969—Pub. L. 91–53, §2(f)(2), Aug. 7, 1969, 83 Stat. 93, added item 6317.

REPEALS

Pub. L. 92–5, title I, §4(a)(2), Mar. 17, 1971, 85 Stat. 5, which struck out item 6312, was repealed by Pub. L. 97–258, §5(b), Sept. 13, 1982, 96 Stat. 1068, 1081.

§6311. Payment of tax by commercially acceptable means

(a) Authority to receive

It shall be lawful for the Secretary to receive for internal revenue taxes (or in payment for internal revenue stamps) any commercially acceptable means that the Secretary deems appropriate to the extent and under the conditions provided in regulations prescribed by the Secretary.

(b) Ultimate liability

If a check, money order, or other method of payment, including payment by credit card, debit card, or charge card so received is not duly paid, or is paid and subsequently charged back to the Secretary, the person by whom such check, or money order, or other method of payment has been tendered shall remain liable for the payment of the tax or for the stamps, and for all legal penalties and additions, to the same extent as if such check, money order, or other method of payment had not been tendered.

(c) Liability of banks and others

If any certified, treasurer's, or cashier's check (or other guaranteed draft), or any money order, or any other means of payment that has been guaranteed by a financial institution (such as a credit card, debit card, or charge card transaction which has been guaranteed expressly by a financial institution) so received is not duly paid, the United States shall, in addition to its right to exact payment from the party originally indebted therefor, have a lien for—

(1) the amount of such check (or draft) upon all assets of the financial institution on which drawn,

(2) the amount of such money order upon all the assets of the issuer thereof, or

(3) the guaranteed amount of any other transaction upon all the assets of the institution making such guarantee,

and such amount shall be paid out of such assets in preference to any other claims whatsoever against such financial institution, issuer, or guaranteeing institution, except the necessary costs and expenses of administration and the reimbursement of the United States for the amount expended in the redemption of the circulating notes of such financial institution.

(d) Payment by other means

(1) Authority to prescribe regulations

The Secretary shall prescribe such regulations as the Secretary deems necessary to receive payment by commercially acceptable means, including regulations that—

(A) specify which methods of payment by commercially acceptable means will be acceptable,

(B) specify when payment by such means will be considered received,

(C) identify types of nontax matters related to payment by such means that are to be resolved by persons ultimately liable for payment and financial intermediaries, without the involvement of the Secretary, and

(D) ensure that tax matters will be resolved by the Secretary, without the involvement of financial intermediaries.

(2) Authority to enter into contracts

Notwithstanding section 3718(f) of title 31, United States Code, the Secretary is authorized to enter into contracts to obtain services related to receiving payment by other means where cost beneficial to the Government. The Secretary may not pay any fee or provide any other

consideration under any such contract for the use of credit, debit, or charge cards for the payment of taxes imposed by subtitle A.

(3) Special provisions for use of credit cards

If use of credit cards is accepted as a method of payment of taxes pursuant to subsection (a)—

(A) a payment of internal revenue taxes (or a payment for internal revenue stamps) by a person by use of a credit card shall not be subject to section 161 of the Truth in Lending Act (15 U.S.C. 1666), or to any similar provisions of State law, if the error alleged by the person is an error relating to the underlying tax liability, rather than an error relating to the credit card account such as a computational error or numerical transposition in the credit card transaction or an issue as to whether the person authorized payment by use of the credit card,

(B) a payment of internal revenue taxes (or a payment for internal revenue stamps) shall not be subject to section 170 of the Truth in Lending Act (15 U.S.C. 1666i), or to any similar provisions of State law,

(C) a payment of internal revenue taxes (or a payment for internal revenue stamps) by a person by use of a debit card shall not be subject to section 908 of the Electronic Fund Transfer Act (15 U.S.C. 1693f), or to any similar provisions of State law, if the error alleged by the person is an error relating to the underlying tax liability, rather than an error relating to the debit card account such as a computational error or numerical transposition in the debit card transaction or an issue as to whether the person authorized payment by use of the debit card,

(D) the term "creditor" under section 103(f) [1] of the Truth in Lending Act (15 U.S.C. 1602(f)) shall not include the Secretary with respect to credit card transactions in payment of internal revenue taxes (or payment for internal revenue stamps), and

(E) notwithstanding any other provision of law to the contrary, in the case of payment made by credit card or debit card transaction of an amount owed to a person as the result of the correction of an error under section 161 of the Truth in Lending Act (15 U.S.C. 1666) or section 908 of the Electronic Fund Transfer Act (15 U.S.C. 1693f), the Secretary is authorized to provide such amount to such person as a credit to that person's credit card or debit card account through the applicable credit card or debit card system.

(e) Confidentiality of information

(1) In general

Except as otherwise authorized by this subsection, no person may use or disclose any information relating to credit or debit card transactions obtained pursuant to section 6103(k)(9) other than for purposes directly related to the processing of such transactions, or the billing or collection of amounts charged or debited pursuant thereto.

(2) Exceptions

(A) Debit or credit card issuers or others acting on behalf of such issuers may also use and disclose such information for purposes directly related to servicing an issuer's accounts.

(B) Debit or credit card issuers or others directly involved in the processing of credit or debit card transactions or the billing or collection of amounts charged or debited thereto may also use and disclose such information for purposes directly related to—

(i) statistical risk and profitability assessment;

(ii) transferring receivables, accounts, or interest therein;

(iii) auditing the account information;

(iv) complying with Federal, State, or local law; and

(v) properly authorized civil, criminal, or regulatory investigation by Federal, State, or local authorities.

(3) Procedures

Use and disclosure of information under this paragraph shall be made only to the extent authorized by written procedures promulgated by the Secretary.

(4) Cross reference

For provision providing for civil damages for violation of paragraph (1), see section 7431.

(Aug. 16, 1954, ch. 736, 68A Stat. 777; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–369, div. A, title IV, §448(a), July 18, 1984, 98 Stat. 817; Pub. L. 105–34, title XII, §1205(a), Aug. 5, 1997, 111 Stat. 995; Pub. L. 105–206, title VI, §6012(b)(1), July 22, 1998, 112 Stat. 819; Pub. L. 105–277, div. J, title IV, §4003(k), Oct. 21, 1998, 112 Stat. 2681–910.)

REFERENCES IN TEXT

Section 103(f) of the Truth in Lending Act, referred to in subsec. (d)(3)(D), was redesignated section 103(g) of the Truth in Lending Act by Pub. L. 111–203, title X, §1100A(1)(A), July 21, 2010, 124 Stat. 2107.

AMENDMENTS

1998—Subsec. (d)(2). Pub. L. 105–277 substituted "under any such contract for the use of credit, debit, or charge cards for the payment of taxes imposed by subtitle A" for "under such contracts".

Subsec. (e)(1). Pub. L. 105–206 substituted "section 6103(k)(9)" for "section 6103(k)(8)".

1997—Pub. L. 105–34 amended section catchline and text generally, substituting provisions relating to payment of tax by commercially acceptable means for provisions consisting of subsecs. (a) and (b) relating to payment by check or money order and liability if a check or money order received is not duly paid.

1984—Subsec. (b)(2). Pub. L. 98–369 substituted "or cashier's check (or other guaranteed draft)" for "or cashier's check", "the amount of such check (or draft)" for "the amount of such check", and "the financial institution" for "the bank or trust company", and substituted "such financial institution" for "such bank" in two places.

1976—Subsec. (a). Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

EFFECTIVE DATE OF 1998 AMENDMENTS

Amendment by Pub. L. 105–277 effective as if included in the provision of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 4003(l) of Pub. L. 105–277, set out as a note under section 86 of this title.

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 effective on the day 9 months after Aug. 5, 1997, see section 1205(d) of Pub. L. 105–34, set out as a note under section 6103 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title IV, §448(b), July 18, 1984, 98 Stat. 818, provided that: "The amendments made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [July 18, 1984]."

REGULATIONS

Pub. L. 105–206, title III, §3703, July 22, 1998, 112 Stat. 777, provided that: "The Secretary of the Treasury or the Secretary's delegate shall establish such rules, regulations, and procedures as are necessary to allow payment of taxes by check or money order made payable to the United States Treasury."

REQUIRED NOTICE OF CERTAIN PAYMENTS

Pub. L. 104–168, title XII, §1202, July 30, 1996, 110 Stat. 1470, provided that: "If any payment is received by the Secretary of the Treasury or his delegate from any taxpayer and the Secretary cannot associate such payment with such taxpayer, the Secretary shall make reasonable efforts to notify the taxpayer of such inability within 60 days after the receipt of such payment."

[1] *See References in Text note below.*

[§6312. Repealed. Pub. L. 92–5, title I, §4(a)(2), Mar. 17, 1971, 85 Stat. 5]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 777, permitted the Secretary to receive Treasury bills, notes and certificates of indebtedness issued by the United States in payment of any internal revenue taxes or

stamps.

EFFECTIVE DATE OF REPEAL

Pub. L. 92–5, title I, §4(a), Mar. 17, 1971, 85 Stat. 5, provided that the repeal of this section is effective with respect to obligations issued after Mar. 3, 1971.

REPEALS

Pub. L. 92–5, title I, §4(a)(2), Mar. 17, 1971, 85 Stat. 5, which repealed this section and provided for the effective date of that repeal, was itself repealed by Pub. L. 97–258, §5(b), Sept. 13, 1982, 96 Stat. 1068, 1081.

§6313. Fractional parts of a cent

In the payment of any tax imposed by this title, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

(Aug. 16, 1954, ch. 736, 68A Stat. 778; Pub. L. 94–455, title XIX, §1906(a)(19), Oct. 4, 1976, 90 Stat. 1825.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "not payable by stamp" after "title".

§6314. Receipt for taxes

(a) General rule

The Secretary shall, upon request, give receipts for all sums collected by him, excepting only when the same are in payment for stamps sold and delivered; but no receipt shall be issued in lieu of a stamp representing a tax.

(b) Duplicate receipts for payment of estate taxes

The Secretary shall, upon request, give to the person paying the tax under chapter 11 (relating to the estate tax) duplicate receipts, either of which shall be sufficient evidence of such payment, and shall entitle the executor to be credited and allowed the amount thereof by any court having jurisdiction to audit or settle his accounts.

(c) Cross references

(1) For receipt required to be furnished by employer to employee with respect to employment taxes, see section 6051.

(2) For receipt of discharge of fiduciary from personal liability, see section 2204.

(Aug. 16, 1954, ch. 736, 68A Stat. 778; Pub. L. 91–614, title I, §101(d)(2), Dec. 31, 1970, 84 Stat. 1837; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

1970—Subsec. (c)(2). Pub. L. 91–614 substituted "fiduciary" for "executor".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–614 applicable with respect to decedents dying after Dec. 31, 1970, see section 101(j) of Pub. L. 91–614, set out as a note under section 2032 of this title.

§6315. Payments of estimated income tax

Payment of the estimated income tax, or any installment thereof, shall be considered payment on account of the income taxes imposed by subtitle A for the taxable year.

(Aug. 16, 1954, ch. 736, 68A Stat. 778.)

§6316. Payment by foreign currency

The Secretary is authorized in his discretion to allow payment of taxes in the currency of a foreign country under such circumstances and subject to such conditions as the Secretary may by regulations prescribe.

(Aug. 16, 1954, ch. 736, 68A Stat. 778; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" in two places.

§6317. Payments of Federal unemployment tax for calendar quarter

Payment of Federal unemployment tax for a calendar quarter or other period within a calendar year pursuant to section 6157 shall be considered payment on account of the tax imposed by chapter 23 of such calendar year.

(Added Pub. L. 91–53, §2(c), Aug. 7, 1969, 83 Stat. 92; amended Pub. L. 98–76, title II, §231(b)(2)(B), Aug. 12, 1983, 97 Stat. 429; Pub. L. 100–647, title VII, §7106(c)(3), Nov. 10, 1988, 102 Stat. 3773.)

AMENDMENTS

1988—Pub. L. 100–647 struck out "or tax imposed by section 3321" after "unemployment tax" and "and 23A, as the case may be," after "chapter 23".

1983—Pub. L. 98–76 inserted "or tax imposed by section 3321" after "Federal unemployment tax", and substituted "chapter 23 and 23A, as the case may be," for "chapter 23".

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 applicable to remuneration paid after Dec. 31, 1988, see section 7106(d) of Pub. L. 100–647, set out as a note under section 3321 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–76 applicable to remuneration paid after June 30, 1986, see section 231(d) of Pub. L. 98–76, set out as an Effective Date note under section 3321 of this title.

EFFECTIVE DATE

Section applicable with respect to calendar years beginning after Dec. 31, 1969, see section 4(a) of Pub. L. 91–53, set out as a note under section 6157 of this title.

Subchapter C—Lien for Taxes

Part

I. Due process for liens.

II. Liens.

AMENDMENTS

1998—Pub. L. 105–206, title III, §3401(a), July 22, 1998, 112 Stat. 746, added part analysis.

PART I—DUE PROCESS FOR LIENS

Sec.

6320. Notice and opportunity for hearing upon filing of notice of lien.

AMENDMENTS

1998—Pub. L. 105–206, title III, §3401(a), July 22, 1998, 112 Stat. 746, added part heading and analysis

consisting of item 6320.

§6320. Notice and opportunity for hearing upon filing of notice of lien

(a) Requirement of notice

(1) In general

The Secretary shall notify in writing the person described in section 6321 of the filing of a notice of lien under section 6323.

(2) Time and method for notice

The notice required under paragraph (1) shall be—

(A) given in person;

(B) left at the dwelling or usual place of business of such person; or

(C) sent by certified or registered mail to such person's last known address,

not more than 5 business days after the day of the filing of the notice of lien.

(3) Information included with notice

The notice required under paragraph (1) shall include in simple and nontechnical terms—

(A) the amount of unpaid tax;

(B) the right of the person to request a hearing during the 30-day period beginning on the day after the 5-day period described in paragraph (2);

(C) the administrative appeals available to the taxpayer with respect to such lien and the procedures relating to such appeals; and

(D) the provisions of this title and procedures relating to the release of liens on property.

(b) Right to fair hearing

(1) In general

If the person requests a hearing in writing under subsection (a)(3)(B) and states the grounds for the requested hearing, such hearing shall be held by the Internal Revenue Service Office of Appeals.

(2) One hearing per period

A person shall be entitled to only one hearing under this section with respect to the taxable period to which the unpaid tax specified in subsection (a)(3)(A) relates.

(3) Impartial officer

The hearing under this subsection shall be conducted by an officer or employee who has had no prior involvement with respect to the unpaid tax specified in subsection (a)(3)(A) before the first hearing under this section or section 6330. A taxpayer may waive the requirement of this paragraph.

(4) Coordination with section 6330

To the extent practicable, a hearing under this section shall be held in conjunction with a hearing under section 6330.

(c) Conduct of hearing; review; suspensions

For purposes of this section, subsections (c), (d) (other than paragraph (2)(B) thereof), (e), and (g) of section 6330 shall apply.

(Added Pub. L. 105–206, title III, §3401(a), July 22, 1998, 112 Stat. 746; amended Pub. L. 109–432, div. A, title IV, §407(c), Dec. 20, 2006, 120 Stat. 2962.)

AMENDMENTS

2006—Subsec. (b)(1). Pub. L. 109–432, §407(c)(1), substituted "in writing under subsection (a)(3)(B) and states the grounds for the requested hearing" for "under subsection (a)(3)(B)".

Subsec. (c). Pub. L. 109–432, §407(c)(2), substituted "(e), and (g)" for "and (e)".

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title IV, §407(f), Dec. 20, 2006, 120 Stat. 2962, provided that: "The amendments made by this section [amending this section and sections 6330, 6702, and 7122 of this title] shall apply to submissions made and issues raised after the date on which the Secretary first prescribes a list under section 6702(c) of the Internal Revenue Code of 1986, as amended by subsection (a) [list prescribed Mar. 16, 2007, see I.R.S. Notice 2007–30, 2007–14, I.R.B. 883]."

EFFECTIVE DATE

Pub. L. 105–206, title III, §3401(d), July 22, 1998, 112 Stat. 750, provided that: "The amendments made by this section [enacting this section and section 6330 of this title and amending section 7443A of this title] shall apply to collection actions initiated after the date which is 180 days after the date of the enactment of this Act [July 22, 1998]."

PART II—LIENS

Sec.

6321. Lien for taxes.
6322. Period of lien.
6323. Validity and priority against certain persons.
6324. Special liens for estate and gift taxes.
6324A. Special lien for estate tax deferred under section 6166.
6324B. Special lien for additional estate tax attributable to farm, etc., valuation.
6325. Release of lien or discharge of property.
6326. Administrative appeal of liens.
6327. Cross references.

AMENDMENTS

1998—Pub. L. 105–206, title III, §3401(a), July 22, 1998, 112 Stat. 747, added part heading.

1988—Pub. L. 100–647, title VI, §6238(c), Nov. 10, 1988, 102 Stat. 3743, added item 6326 and redesignated former item 6326 as 6327.

1981—Pub. L. 97–34, title IV, §422(e)(6)(D), Aug. 13, 1981, 95 Stat. 316, struck out "or 6166A" after "section 6166" in item 6324A.

1976—Pub. L. 94–455, title XX, §§2003(d)(2), 2004(f)(1), Oct. 4, 1976, 90 Stat. 1862, 1871, added items 6324A and 6324B.

1966—Pub. L. 89–719, title I, §§101(b)(1), 103(b), Nov. 2, 1966, 80 Stat. 1131, 1135, substituted "Validity and priority against certain persons" for "Validity against mortgagees, pledgees, purchasers, and judgment creditors" in item 6323, and struck out "partial" before "discharge" in item 6325.

§6321. Lien for taxes

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

(Aug. 16, 1954, ch. 736, 68A Stat. 779.)

SHORT TITLE

Pub. L. 89–719, §1(a), Nov. 2, 1966, 80 Stat. 1125, provided that: "This Act [enacting sections 3505, 7425, 7426, and 7810 of this title, amending sections 545, 6322 to 6325, 6331, 6332, 6334, 6335, 6337 to 6339, 6342, 6343, 6502, 6503, 6532, 7402, 7403, 7421, 7424, 7505, 7506, and 7809 of this title, sections 1346, 1402, and 2410 of Title 28, Judiciary and Judicial Procedure, and section 270a of former Title 40, Public

Buildings, Property, and Works, redesignating section 7425 as 7427 of this title, and enacting provisions set out as notes under sections 6323 and 7424 of this title, and under section 1346 of Title 28] may be cited as the 'Federal Tax Lien Act of 1966'."

§6322. Period of lien

Unless another date is specifically fixed by law, the lien imposed by section 6321 shall arise at the time the assessment is made and shall continue until the liability for the amount so assessed (or a judgment against the taxpayer arising out of such liability) is satisfied or becomes unenforceable by reason of lapse of time.

(Aug. 16, 1954, ch. 736, 68A Stat. 779; Pub. L. 89–719, title I, §113(a), Nov. 2, 1966, 80 Stat. 1146.)

AMENDMENTS

1966—Pub. L. 89–719 inserted "(or a judgment against the taxpayer arising out of such liability)".

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–719 applicable after Nov. 2, 1966, regardless of when title or lien of United States arose or when lien or interest of another person was acquired, with certain exceptions, see section 114(a)–(c) of Pub. L. 89–719, set out as a note under section 6323 of this title.

§6323. Validity and priority against certain persons

(a) Purchasers, holders of security interests, mechanic's lienors, and judgment lien creditors

The lien imposed by section 6321 shall not be valid as against any purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor until notice thereof which meets the requirements of subsection (f) has been filed by the Secretary.

(b) Protection for certain interests even though notice filed

Even though notice of a lien imposed by section 6321 has been filed, such lien shall not be valid—

(1) Securities

With respect to a security (as defined in subsection (h)(4))—

(A) as against a purchaser of such security who at the time of purchase did not have actual notice or knowledge of the existence of such lien; and

(B) as against a holder of a security interest in such security who, at the time such interest came into existence, did not have actual notice or knowledge of the existence of such lien.

(2) Motor vehicles

With respect to a motor vehicle (as defined in subsection (h)(3)), as against a purchaser of such motor vehicle, if—

(A) at the time of the purchase such purchaser did not have actual notice or knowledge of the existence of such lien, and

(B) before the purchaser obtains such notice or knowledge, he has acquired possession of such motor vehicle and has not thereafter relinquished possession of such motor vehicle to the seller or his agent.

(3) Personal property purchased at retail

With respect to tangible personal property purchased at retail, as against a purchaser in the ordinary course of the seller's trade or business, unless at the time of such purchase such purchaser intends such purchase to (or knows such purchase will) hinder, evade, or defeat the collection of any tax under this title.

(4) Personal property purchased in casual sale

With respect to household goods, personal effects, or other tangible personal property described in section 6334(a) purchased (not for resale) in a casual sale for less than $1,000, as against the

purchaser, but only if such purchaser does not have actual notice or knowledge (A) of the existence of such lien, or (B) that this sale is one of a series of sales.

(5) Personal property subject to possessory lien

With respect to tangible personal property subject to a lien under local law securing the reasonable price of the repair or improvement of such property, as against a holder of such a lien, if such holder is, and has been, continuously in possession of such property from the time such lien arose.

(6) Real property tax and special assessment liens

With respect to real property, as against a holder of a lien upon such property, if such lien is entitled under local law to priority over security interests in such property which are prior in time, and such lien secures payment of—

(A) a tax of general application levied by any taxing authority based upon the value of such property;

(B) a special assessment imposed directly upon such property by any taxing authority, if such assessment is imposed for the purpose of defraying the cost of any public improvement; or

(C) charges for utilities or public services furnished to such property by the United States, a State or political subdivision thereof, or an instrumentality of any one or more of the foregoing.

(7) Residential property subject to a mechanic's lien for certain repairs and improvements

With respect to real property subject to a lien for repair or improvement of a personal residence (containing not more than four dwelling units) occupied by the owner of such residence, as against a mechanic's lienor, but only if the contract price on the contract with the owner is not more than $5,000.

(8) Attorneys' liens

With respect to a judgment or other amount in settlement of a claim or of a cause of action, as against an attorney who, under local law, holds a lien upon or a contract enforcible against such judgment or amount, to the extent of his reasonable compensation for obtaining such judgment or procuring such settlement, except that this paragraph shall not apply to any judgment or amount in settlement of a claim or of a cause of action against the United States to the extent that the United States offsets such judgment or amount against any liability of the taxpayer to the United States.

(9) Certain insurance contracts

With respect to a life insurance, endowment, or annuity contract, as against the organization which is the insurer under such contract, at any time—

(A) before such organization had actual notice or knowledge of the existence of such lien;

(B) after such organization had such notice or knowledge, with respect to advances required to be made automatically to maintain such contract in force under an agreement entered into before such organization had such notice or knowledge; or

(C) after satisfaction of a levy pursuant to section 6332(b), unless and until the Secretary delivers to such organization a notice, executed after the date of such satisfaction, of the existence of such lien.

(10) Deposit-secured loans

With respect to a savings deposit, share, or other account with an institution described in section 581 or 591, to the extent of any loan made by such institution without actual notice or knowledge of the existence of such lien, as against such institution, if such loan is secured by such account.

(c) Protection for certain commercial transactions financing agreements, etc.

(1) In general

To the extent provided in this subsection, even though notice of a lien imposed by section 6321 has been filed, such lien shall not be valid with respect to a security interest which came into existence after tax lien filing but which—

(A) is in qualified property covered by the terms of a written agreement entered into before

tax lien filing and constituting—

(i) a commercial transactions financing agreement,

(ii) a real property construction or improvement financing agreement, or

(iii) an obligatory disbursement agreement, and

(B) is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

(2) Commercial transactions financing agreement

For purposes of this subsection—

(A) Definition

The term "commercial transactions financing agreement" means an agreement (entered into by a person in the course of his trade or business)—

(i) to make loans to the taxpayer to be secured by commercial financing security acquired by the taxpayer in the ordinary course of his trade or business, or

(ii) to purchase commercial financing security (other than inventory) acquired by the taxpayer in the ordinary course of his trade or business;

but such an agreement shall be treated as coming within the term only to the extent that such loan or purchase is made before the 46th day after the date of tax lien filing or (if earlier) before the lender or purchaser had actual notice or knowledge of such tax lien filing.

(B) Limitation on qualified property

The term "qualified property", when used with respect to a commercial transactions financing agreement, includes only commercial financing security acquired by the taxpayer before the 46th day after the date of tax lien filing.

(C) Commercial financing security defined

The term "commercial financing security" means (i) paper of a kind ordinarily arising in commercial transactions, (ii) accounts receivable, (iii) mortgages on real property, and (iv) inventory.

(D) Purchaser treated as acquiring security interest

A person who satisfies subparagraph (A) by reason of clause (ii) thereof shall be treated as having acquired a security interest in commercial financing security

(3) Real property construction or improvement financing agreement

For purposes of this subsection—

(A) Definition

The term "real property construction or improvement financing agreement" means an agreement to make cash disbursements to finance—

(i) the construction or improvement of real property,

(ii) a contract to construct or improve real property, or

(iii) the raising or harvesting of a farm crop or the raising of livestock or other animals.

For purposes of clause (iii), the furnishing of goods and services shall be treated as the disbursement of cash.

(B) Limitation on qualified property

The term "qualified property", when used with respect to a real property construction or improvement financing agreement, includes only—

(i) in the case of subparagraph (A)(i), the real property with respect to which the construction or improvement has been or is to be made,

(ii) in the case of subparagraph (A)(ii), the proceeds of the contract described therein, and

(iii) in the case of subparagraph (A)(iii), property subject to the lien imposed by section

6321 at the time of tax lien filing and the crop or the livestock or other animals referred to in subparagraph (A)(iii).

(4) Obligatory disbursement agreement

For purposes of this subsection—

(A) Definition

The term "obligatory disbursement agreement" means an agreement (entered into by a person in the course of his trade or business) to make disbursements, but such an agreement shall be treated as coming within the term only to the extent of disbursements which are required to be made by reason of the intervention of the rights of a person other than the taxpayer.

(B) Limitation on qualified property

The term "qualified property", when used with respect to an obligatory disbursement agreement, means property subject to the lien imposed by section 6321 at the time of tax lien filing and (to the extent that the acquisition is directly traceable to the disbursements referred to in subparagraph (A)) property acquired by the taxpayer after tax lien filing.

(C) Special rules for surety agreements

Where the obligatory disbursement agreement is an agreement ensuring the performance of a contract between the taxpayer and another person—

(i) the term "qualified property" shall be treated as also including the proceeds of the contract the performance of which was ensured, and

(ii) if the contract the performance of which was ensured was a contract to construct or improve real property, to produce goods, or to furnish services, the term "qualified property" shall be treated as also including any tangible personal property used by the taxpayer in the performance of such ensured contract.

(d) 45-day period for making disbursements

Even though notice of a lien imposed by section 6321 has been filed, such lien shall not be valid with respect to a security interest which came into existence after tax lien filing by reason of disbursements made before the 46th day after the date of tax lien filing, or (if earlier) before the person making such disbursements had actual notice or knowledge of tax lien filing, but only if such security interest—

(1) is in property (A) subject, at the time of tax lien filing, to the lien imposed by section 6321, and (B) covered by the terms of a written agreement entered into before tax lien filing, and

(2) is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

(e) Priority of interest and expenses

If the lien imposed by section 6321 is not valid as against a lien or security interest, the priority of such lien or security interest shall extend to—

(1) any interest or carrying charges upon the obligation secured,

(2) the reasonable charges and expenses of an indenture trustee or agent holding the security interest for the benefit of the holder of the security interest,

(3) the reasonable expenses, including reasonable compensation for attorneys, actually incurred in collecting or enforcing the obligation secured,

(4) the reasonable costs of insuring, preserving, or repairing the property to which the lien or security interest relates,

(5) the reasonable costs of insuring payment of the obligation secured, and

(6) amounts paid to satisfy any lien on the property to which the lien or security interest relates, but only if the lien so satisfied is entitled to priority over the lien imposed by section 6321,

to the extent that, under local law, any such item has the same priority as the lien or security interest to which it relates.

(f) Place for filing notice; form

(1) Place for filing

The notice referred to in subsection (a) shall be filed—

(A) Under State laws

(i) Real property

In the case of real property, in one office within the State (or the county, or other governmental subdivision), as designated by the laws of such State, in which the property subject to the lien is situated; and

(ii) Personal property

In the case of personal property, whether tangible or intangible, in one office within the State (or the county, or other governmental subdivision), as designated by the laws of such State, in which the property subject to the lien is situated, except that State law merely conforming to or reenacting Federal law establishing a national filing system does not constitute a second office for filing as designated by the laws of such State; or

(B) With clerk of district court

In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State has not by law designated one office which meets the requirements of subparagraph (A); or

(C) With Recorder of Deeds of the District of Columbia

In the office of the Recorder of Deeds of the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

(2) Situs of property subject to lien

For purposes of paragraphs (1) and (4), property shall be deemed to be situated—

(A) Real property

In the case of real property, at its physical location; or

(B) Personal property

In the case of personal property, whether tangible or intangible, at the residence of the taxpayer at the time the notice of lien is filed.

For purposes of paragraph (2)(B), the residence of a corporation or partnership shall be deemed to be the place at which the principal executive office of the business is located, and the residence of a taxpayer whose residence is without the United States shall be deemed to be in the District of Columbia.

(3) Form

The form and content of the notice referred to in subsection (a) shall be prescribed by the Secretary. Such notice shall be valid notwithstanding any other provision of law regarding the form or content of a notice of lien.

(4) Indexing required with respect to certain real property

In the case of real property, if—

(A) under the laws of the State in which the real property is located, a deed is not valid as against a purchaser of the property who (at the time of purchase) does not have actual notice or knowledge of the existence of such deed unless the fact of filing of such deed has been entered and recorded in a public index at the place of filing in such a manner that a reasonable inspection of the index will reveal the existence of the deed, and

(B) there is maintained (at the applicable office under paragraph (1)) an adequate system for the public indexing of Federal tax liens,

then the notice of lien referred to in subsection (a) shall not be treated as meeting the filing requirements under paragraph (1) unless the fact of filing is entered and recorded in the index referred to in subparagraph (B) in such a manner that a reasonable inspection of the index will reveal the existence of the lien.

(5) National filing systems

The filing of a notice of lien shall be governed solely by this title and shall not be subject to any other Federal law establishing a place or places for the filing of liens or encumbrances under a national filing system.

(g) Refiling of notice

For purposes of this section—

(1) General rule

Unless notice of lien is refiled in the manner prescribed in paragraph (2) during the required refiling period, such notice of lien shall be treated as filed on the date on which it is filed (in accordance with subsection (f)) after the expiration of such refiling period.

(2) Place for filing

A notice of lien refiled during the required refiling period shall be effective only—

(A) if—

(i) such notice of lien is refiled in the office in which the prior notice of lien was filed, and

(ii) in the case of real property, the fact of refiling is entered and recorded in an index to the extent required by subsection (f)(4); and

(B) in any case in which, 90 days or more prior to the date of a refiling of notice of lien under subparagraph (A), the Secretary received written information (in the manner prescribed in regulations issued by the Secretary) concerning a change in the taxpayer's residence, if a notice of such lien is also filed in accordance with subsection (f) in the State in which such residence is located.

(3) Required refiling period

In the case of any notice of lien, the term "required refiling period" means—

(A) the one-year period ending 30 days after the expiration of 10 years after the date of the assessment of the tax, and

(B) the one-year period ending with the expiration of 10 years after the close of the preceding required refiling period for such notice of lien.

(4) Transitional rule

Notwithstanding paragraph (3), if the assessment of the tax was made before January 1, 1962, the first required refiling period shall be the calendar year 1967.

(h) Definitions

For purposes of this section and section 6324—

(1) Security interest

The term "security interest" means any interest in property acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability. A security interest exists at any time (A) if, at such time, the property is in existence and the interest has become protected under local law against a subsequent judgment lien arising out of an unsecured obligation, and (B) to the extent that, at such time, the holder has parted with money or money's worth.

(2) Mechanic's lienor

The term "mechanic's lienor" means any person who under local law has a lien on real property (or on the proceeds of a contract relating to real property) for services, labor, or materials furnished in connection with the construction or improvement of such property. For purposes of

the preceding sentence, a person has a lien on the earliest date such lien becomes valid under local law against subsequent purchasers without actual notice, but not before he begins to furnish the services, labor, or materials.

(3) Motor vehicle

The term "motor vehicle" means a self-propelled vehicle which is registered for highway use under the laws of any State or foreign country.

(4) Security

The term "security" means any bond, debenture, note, or certificate or other evidence of indebtedness, issued by a corporation or a government or political subdivision thereof, with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing; negotiable instrument; or money.

(5) Tax lien filing

The term "tax lien filing" means the filing of notice (referred to in subsection (a)) of the lien imposed by section 6321.

(6) Purchaser

The term "purchaser" means a person who, for adequate and full consideration in money or money's worth, acquires an interest (other than a lien or security interest) in property which is valid under local law against subsequent purchasers without actual notice. In applying the preceding sentence for purposes of subsection (a) of this section, and for purposes of section 6324—

(A) a lease of property,
(B) a written executory contract to purchase or lease property,
(C) an option to purchase or lease property or any interest therein, or
(D) an option to renew or extend a lease of property,

which is not a lien or security interest shall be treated as an interest in property.

(i) Special rules

(1) Actual notice or knowledge

For purposes of this subchapter, an organization shall be deemed for purposes of a particular transaction to have actual notice or knowledge of any fact from the time such fact is brought to the attention of the individual conducting such transaction, and in any event from the time such fact would have been brought to such individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routine. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

(2) Subrogation

Where, under local law, one person is subrogated to the rights of another with respect to a lien or interest, such person shall be subrogated to such rights for purposes of any lien imposed by section 6321 or 6324.

(3) Forfeitures

For purposes of this subchapter, a forfeiture under local law of property seized by a law enforcement agency of a State, county, or other local governmental subdivision shall relate back to

the time of seizure, except that this paragraph shall not apply to the extent that under local law the holder of an intervening claim or interest would have priority over the interest of the State, county, or other local governmental subdivision in the property.

(4) Cost-of-living adjustment

In the case of notices of liens imposed by section 6321 which are filed in any calendar year after 1998, each of the dollar amounts under paragraph (4) or (7) of subsection (b) shall be increased by an amount equal to—

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year, determined by substituting "calendar year 1996" for "calendar year 1992" in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of $10, such amount shall be rounded to the nearest multiple of $10.

(j) Withdrawal of notice in certain circumstances

(1) In general

The Secretary may withdraw a notice of a lien filed under this section and this chapter shall be applied as if the withdrawn notice had not been filed, if the Secretary determines that—

(A) the filing of such notice was premature or otherwise not in accordance with administrative procedures of the Secretary,

(B) the taxpayer has entered into an agreement under section 6159 to satisfy the tax liability for which the lien was imposed by means of installment payments, unless such agreement provides otherwise,

(C) the withdrawal of such notice will facilitate the collection of the tax liability, or

(D) with the consent of the taxpayer or the National Taxpayer Advocate, the withdrawal of such notice would be in the best interests of the taxpayer (as determined by the National Taxpayer Advocate) and the United States.

Any such withdrawal shall be made by filing notice at the same office as the withdrawn notice. A copy of such notice of withdrawal shall be provided to the taxpayer.

(2) Notice to credit agencies, etc.

Upon written request by the taxpayer with respect to whom a notice of a lien was withdrawn under paragraph (1), the Secretary shall promptly make reasonable efforts to notify credit reporting agencies, and any financial institution or creditor whose name and address is specified in such request, of the withdrawal of such notice. Any such request shall be in such form as the Secretary may prescribe.

(Aug. 16, 1954, ch. 736, 68A Stat. 779; Pub. L. 88–272, title II, §236(a), (c)(1), Feb. 26, 1964, 78 Stat. 127, 128; Pub. L. 89–493, §17(a), July 5, 1966, 80 Stat. 266; Pub. L. 89–719, title I, §101(a), Nov. 2, 1966, 80 Stat. 1125; Pub. L. 94–455, title XII, §1202(h)(2), title XIX, §1906(b)(13)(A), title XX, §2008(c), Oct. 4, 1976, 90 Stat. 1688, 1834, 1892; Pub. L. 95–600, title VII, §702(q)(1), (2), Nov. 6, 1978, 92 Stat. 2937, 2938; Pub. L. 99–514, title XV, §1569(a), Oct. 22, 1986, 100 Stat. 2764; Pub. L. 100–647, title I, §1015(s)(1), Nov. 10, 1988, 102 Stat. 3573; Pub. L. 101–508, title XI, §§11317(b), 11704(a)(26), Nov. 5, 1990, 104 Stat. 1388–458, 1388–519; Pub. L. 104–168, title V, §501(a), July 30, 1996, 110 Stat. 1460; Pub. L. 105–206, title I, §1102(d)(1)(A), title III, §3435(a), (b), July 22, 1998, 112 Stat. 704, 760, 761.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

AMENDMENTS

1998—Subsec. (b)(4). Pub. L. 105–206, §3435(a)(1)(A), substituted "$1,000" for "$250".

Subsec. (b)(7). Pub. L. 105–206, §3435(a)(1)(B), substituted "$5,000" for "$1,000".

Subsec. (b)(10). Pub. L. 105–206, §3435(b), in heading substituted "Deposit-secured loans" for "Passbook loans", and in text struck out ", evidenced by a passbook," after "other account" and substituted period at end for "and if such institution has been continuously in possession of such passbook from the time the loan is made."

Subsec. (i)(4). Pub. L. 105–206, §3435(a)(2), added par. (4).

Subsec. (j)(1)(D). Pub. L. 105–206, §1102(d)(1)(A), substituted "National Taxpayer Advocate" for "Taxpayer Advocate" in two places.

1996—Subsec. (j). Pub. L. 104–168 added subsec. (j).

1990—Subsec. (a). Pub. L. 101–508, §11704(a)(26), substituted "Purchasers" for "Purchases" in heading.

Subsec. (g)(3). Pub. L. 101–508, §11317(b), substituted "10 years" for "6 years" wherever appearing.

1988—Subsec. (f)(1)(A)(ii). Pub. L. 100–647, §1015(s)(1)(A), inserted exception that State law merely conforming to or reenacting Federal law establishing a national filing system does not constitute a second office for filing as designated by the laws of such State.

Subsec. (f)(5). Pub. L. 100–647, §1015(s)(1)(B), added par. (5).

1986—Subsec. (i)(3). Pub. L. 99–514 added par. (3).

1978—Subsec. (f)(4). Pub. L. 95–600, §702(q)(1), in heading substituted "Indexing required with respect to certain real property" for "Index" and in text inserted provisions relating to the validity of a deed, under the laws of the State in which the real property is located, as against a purchaser who does not have actual notice or knowledge of the existence of such deed and provisions relating to the maintenance of an adequate system for the public indexing of Federal tax liens.

Subsec. (g)(2)(A). Pub. L. 95–600, §702(q)(2), inserted reference to real property.

1976—Subsecs. (a), (b). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary" wherever appearing.

Subsec. (f)(2). Pub. L. 94–455, §2008(c)(1)(B), inserted introductory reference to par. (4).

Subsec. (f)(3). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (f)(4). Pub. L. 94–455, §2008(c)(1)(A), added par. (4).

Subsec. (g)(2)(A), (B). Pub. L. 94–455, §§1906(b)(13)(A), 2008(c)(2), required the fact of refiling be entered and recorded in an index in accordance with subsec. (f)(4), and struck out "or his delegate" after "Secretary" wherever appearing.

Subsec. (i)(3). Pub. L. 94–455, §1202(h)(2), struck out par. (3) which related to a special rule respecting disclosure of amount of outstanding lien.

1966—Subsec. (a). Pub. L. 89–719 redesignated as subsec. (a) that part of former subsec. (a) which preceded pars. (1) to (3) thereof, and, in subsec. (a) as so redesignated, substituted holder of a security interest, mechanic's lienor, and judgment lien creditor for mortgagee, pledgee, and judgment creditor, struck out reference to an exception provided in subsecs. (c) and (d), and inserted reference to requirements of subsec. (f).

Subsec. (a)(3). Pub. L. 89–493 substituted the Recorder of Deeds of the District of Columbia for the clerk of the United States District Court for the District of Columbia.

Subsec. (b)(1). Pub. L. 89–719 redesignated provisions of subsec. (c)(1) as subsec. (b)(1) and substituted "holder of a security interest" for "mortgagee and pledgee" and purchaser of such security interest for purchaser of such security for any adequate and full consideration in money or money's worth.

Subsec. (b)(2). Pub. L. 89–719 redesignated provisions of subsec. (d)(1) as subsec. (b)(2) and substituted purchaser of such motor vehicle for purchaser of such motor vehicle for an adequate and full consideration in money or money's worth and substituted actual notice or knowledge for notice or knowledge.

Subsec. (b)(3) to (10). Pub. L. 89–719 added pars. (3) to (10).

Subsecs. (c) to (e). Pub. L. 89–719 added subsecs. (c) to (e).

Subsec. (f)(1). Pub. L. 89–719 redesignated provisions of former subsec. (a)(1) to (3) as subsec. (f)(1).

Subsec. (f)(2). Pub. L. 89–719 added par. (2).

Subsec. (f)(3). Pub. L. 89–719 redesignated provisions of former subsec. (b) as subsec. (f)(3) and substituted provisions that the form and content of the notice be prescribed by the Secretary or his delegate for provisions limiting the effectiveness of the notice to situations in which the notice is in such form as would be valid if filed with the clerk of the United States district court when state or territory law fails to designate an office for the filing of notice.

Subsec. (g). Pub. L. 89–719 added subsec. (g).

Subsec. (h)(1), (2). Pub. L. 89–719 added pars. (1) and (2).

Subsec. (h)(3). Pub. L. 89–719 redesignated provisions of former subsec. (d)(2) as subsec. (h)(3).

Subsec. (h)(4). Pub. L. 89–719 redesignated provisions of former subsec. (c)(2) as subsec. (h)(4).

Subsec. (h)(5), (6). Pub. L. 89–719 added pars. (5), (6).

Subsec. (i)(1), (2). Pub. L. 89–719 added pars. (1), (2).

Subsec. (i)(3). Pub. L. 89–719 redesignated provisions of former subsec. (e) as subsec. (i)(3) and substituted "regulations" for "rules and relations".

1964—Subsec. (a). Pub. L. 88–272, §236(c)(1), substituted "subsections (c) and (d)" for "subsection (c)".

Subsecs. (d), (e). Pub. L. 88–272, §236(a), added subsec. (d) and redesignated former subsec. (d) as (e).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 1102(d)(1)(A) of Pub. L. 105–206 effective July 22, 1998, see section 1102(f)(1) of Pub. L. 105–206, set out as a note under section 7803 of this title.

Pub. L. 105–206, title III, §3435(c), July 22, 1998, 112 Stat. 761, provided that: "The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [July 22, 1998]."

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–168, title V, §501(d), July 30, 1996, 110 Stat. 1461, provided that: "The amendments made by this section [amending this section and section 6343 of this title] shall take effect on the date of the enactment of this Act [July 30, 1996]."

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, §11317(c), Nov. 5, 1990, 104 Stat. 1388–458, provided that: "The amendments made by this section [amending this section and section 6502 of this title] shall apply to—

"(1) taxes assessed after the date of the enactment of this Act [Nov. 5, 1990], and

"(2) taxes assessed on or before such date if the period specified in section 6502 of the Internal Revenue Code of 1986 (determined without regard to the amendments made by subsection (a) [amending section 6502 of this title]) for collection of such taxes has not expired as of such date."

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1015(s)(2), Nov. 10, 1988, 102 Stat. 3573, provided that: "The amendments made by this subsection [amending this section] shall take effect on the date of the enactment of this Act [Nov. 10, 1988]."

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XV, §1569(b), Oct. 22, 1986, 100 Stat. 2764, provided that: "The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Oct. 22, 1986]."

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title VII, §702(q)(3), Nov. 6, 1978, 92 Stat. 2938, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(A) The amendments made by this subsection [amending this section] shall apply with respect to liens, other security interests, and other interests in real property acquired after the date of the enactment of this Act [Nov. 6, 1978].

"(B) If, after the date of the enactment of this Act, there is a change in the application (or nonapplication) of section 6323(f)(4) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by paragraph (1)) with respect to any filing jurisdiction, such change shall apply only with respect to liens, other security interests, and other interests in real property acquired after the date of such change."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1202(h)(2) of Pub. L. 94–455 effective Jan. 1, 1977, see section 1202(i) of Pub. L. 94–455, set out as a note under section 6103 of this title.

Pub. L. 94–455, title XX, §2008(d)(3), Oct. 4, 1976, 90 Stat. 1893, provided that: "The amendment made by subsection (c) [amending this section] shall take effect—

"(A) in the case of liens filed before the date of the enactment of this Act [Oct. 4, 1976], on the 270th day after such date of enactment, or

"(B) in the case of liens filed on or after the date of enactment of this Act [Oct. 4, 1976], on the 120th day after such date of enactment."

EFFECTIVE DATE OF 1966 AMENDMENTS

Pub. L. 89–719, title I, §114(a)–(c), Nov. 2, 1966, 80 Stat. 1146, 1147, provided that:

"(a) GENERAL RULE.—Except as otherwise provided, the amendments made by this title [enacting

sections 3505, 7425, 7426, and 7810 of this title, amending this section, sections 545, 6322, 6324, 6325, 6331, 6332, 6334, 6335, 6337, 6338, 6339, 6342, 6343, 6502, 6503, 6532, 7402, 7403, 7421, 7424, 7505, 7506, and 7809 of this title, and section 270a of former Title 40, Public Buildings, Property, and Works, redesignating former section 7425 as 7427 of this title, and enacting provisions set out as notes under this section and section 7424 of this title] shall apply after the date of enactment of this Act [Nov. 2, 1966], regardless of when a lien or a title of the United States arose or when the lien or interest of any other person was acquired.

"(b) EXCEPTIONS.—The amendments made by this title shall not apply in any case—

"(1) in which a lien or a title derived from enforcement of a lien held by the United States has been enforced by a civil action or suit which has become final by judgment, sale, or agreement before the date of enactment of this Act; or

"(2) in which such amendments would—

"(A) impair a priority enjoyed by any person (other than the United States) holding a lien or interest prior to the date of enactment of this Act;

"(B) operate to increase the liability of any such person; or

"(C) shorten the time for bringing suit with respect to transactions occurring before the date of enactment of this Act.

"(c) LIABILITY FOR WITHHELD TAXES.—

"(1) The amendments made by section 105(a) (relating to effect on third parties) [adding section 3505 of this title] shall apply only with respect to wages paid on or after January 1, 1967.

"(2) The amendments made by section 105(b) (relating to performance bonds of contractors for public buildings or works) [amending section 270a of former Title 40] shall apply to contracts entered into pursuant to invitations for bids issued after June 30, 1967."

Pub. L. 89–493, §21, July 5, 1966, 80 Stat. 266, provided that: "This Act [amending this section] shall take effect on the first day of the first month which is at least ninety days after the date of approval of this Act [July 5, 1966]."

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88–272, title II, §236(d), Feb. 26, 1964, 78 Stat. 128, provided that: "The amendments made by this section [amending this section and section 6324 of this title] shall apply only with respect to purchases made after the date of the enactment of this Act [Feb. 26, 1964.]"

§6324. Special liens for estate and gift taxes

(a) Liens for estate tax

Except as otherwise provided in subsection (c)—

(1) Upon gross estate

Unless the estate tax imposed by chapter 11 is sooner paid in full, or becomes unenforceable by reason of lapse of time, it shall be a lien upon the gross estate of the decedent for 10 years from the date of death, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien.

(2) Liability of transferees and others

If the estate tax imposed by chapter 11 is not paid when due, then the spouse, transferee, trustee (except the trustee of an employees' trust which meets the requirements of section 401(a)), surviving tenant, person in possession of the property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, who receives, or has on the date of the decedent's death, property included in the gross estate under sections 2034 to 2042, inclusive, to the extent of the value, at the time of the decedent's death, of such property, shall be personally liable for such tax. Any part of such property transferred by (or transferred by a transferee of) such spouse, transferee, trustee, surviving tenant, person in possession, or beneficiary, to a purchaser or holder of a security interest shall be divested of the lien provided in paragraph (1) and a like lien shall then attach to all the property of such spouse, transferee, trustee, surviving tenant, person in possession, or beneficiary, or transferee of any such person, except any part transferred to a purchaser or a holder of a security interest.

(3) Continuance after discharge of fiduciary

The provisions of section 2204 (relating to discharge of fiduciary from personal liability) shall not operate as a release of any part of the gross estate from the lien for any deficiency that may thereafter be determined to be due, unless such part of the gross estate (or any interest therein) has been transferred to a purchaser or a holder of a security interest, in which case such part (or such interest) shall not be subject to a lien or to any claim or demand for any such deficiency, but the lien shall attach to the consideration received from such purchaser or holder of a security interest, by the heirs, legatees, devisees, or distributees.

(b) Lien for gift tax

Except as otherwise provided in subsection (c), unless the gift tax imposed by chapter 12 is sooner paid in full or becomes unenforceable by reason of lapse of time, such tax shall be a lien upon all gifts made during the period for which the return was filed, for 10 years from the date the gifts are made. If the tax is not paid when due, the donee of any gift shall be personally liable for such tax to the extent of the value of such gift. Any part of the property comprised in the gift transferred by the donee (or by a transferee of the donee) to a purchaser or holder of a security interest shall be divested of the lien imposed by this subsection and such lien, to the extent of the value of such gift, shall attach to all the property (including after-acquired property) of the donee (or the transferee) except any part transferred to a purchaser or holder of a security interest.

(c) Exceptions

(1) The lien imposed by subsection (a) or (b) shall not be valid as against a mechanic's lienor and, subject to the conditions provided by section 6323(b) (relating to protection for certain interests even though notice filed), shall not be valid with respect to any lien or interest described in section 6323(b).

(2) If a lien imposed by subsection (a) or (b) is not valid as against a lien or security interest, the priority of such lien or security interest shall extend to any item described in section 6323(e) (relating to priority of interest and expenses) to the extent that, under local law, such item has the same priority as the lien or security interest to which it relates.

(Aug. 16, 1954, ch. 736, 68A Stat. 780; Pub. L. 88–272, title II, §236(b), (c)(2), Feb. 26, 1964, 78 Stat. 127, 128; Pub. L. 89–719, title I, §102, Nov. 2, 1966, 80 Stat. 1132; Pub. L. 91–614, title I, §§101(d)(2), 102(d)(7), Dec. 31, 1970, 84 Stat. 1837, 1842.)

AMENDMENTS

1970—Subsec. (a)(3). Pub. L. 91–614, §101(d)(2), substituted "fiduciary" for "executor" in heading and text.

Subsec. (b). Pub. L. 91–614, §102(d)(7), substituted "period for which the return was filed" for "calendar year".

1966—Subsec. (a)(1). Pub. L. 89–719 inserted ", or becomes unenforceable by reason of lapse of time," after "sooner paid in full" and substituted "10 years from the date of death" for "10 years upon the gross estate of the decedent".

Subsec. (a)(2). Pub. L. 89–719 substituted "person in possession, or beneficiary, to a purchaser or holder of a security interest" for "person in possession of property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, to a bona fide purchaser, mortgagee, or pledgee, for an adequate and full consideration in money and money's worth" and "except any part transferred to a purchaser or a holder of a security interest" for "except any part transferred to a bona fide purchaser, mortgagee, or pledgee for an adequate and full consideration in money or money's worth".

Subsec. (a)(3). Pub. L. 89–719 substituted "purchaser or a holder of a security interest" for "bona fide purchaser, mortgagee, or pledgee for an adequate and full consideration in money or money's worth" and "purchaser or holder of a security interest" for "purchaser, mortgagee, or pledgee".

Subsec. (b). Pub. L. 89–719 substituted reference to exception provided in subsec. (c) for reference to exceptions provided in subsecs. (c) and (d), inserted reference to tax becoming unenforceable by reason of lapse of time, and substituted "purchaser or holder of a security interest" for "bona-fide purchaser, mortgagee, or pledgee, for an adequate and full consideration in money or money's worth".

Subsec. (c). Pub. L. 89–719 redesignated as par. (1) provisions formerly constituting subsec. (c), substituted "valid as against a mechanic's lienor and, subject to the conditions provided by section 6323(b) (relating to

protection for certain interests even though noticed filed), shall not be valid with respect to any lien or interest described in section 6323(b)" for "valid with respect to a security, as defined in section 6323(c)(2), as against any mortgagee, pledgee, or purchaser of any such security, for an adequate and full consideration in money or money's worth, if at the time of such mortgage, pledge, or purchase such mortgagee, pledgee, or purchaser is without notice or knowledge of the existence of such lien", and added par. (2).

Subsec. (d). Pub. L. 89–719 struck out subsec. (d) dealing with exceptions in the case of motor vehicles. See subsec. (c) above and reference therein to section 6323(b).

1964—Subsecs. (a), (b). Pub. L. 88–272, §236(c)(2), inserted "and subsection (d) (relating to purchases of motor vehicles)".

Subsec. (d). Pub. L. 88–272, §236(b), added subsec. (d).

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by section 101(d)(2) of Pub. L. 91–614 applicable with respect to decedents dying after Dec. 31, 1970, see section 101(j) of Pub. L. 91–614, set out as a note under section 2032 of this title.

Amendment by section 102(d)(7) of Pub. L. 91–614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91–614, set out as a note under section 2501 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–719 applicable after Nov. 2, 1966, regardless of when title or lien of United States arose or when lien or interest of another person was acquired, with certain exceptions, see section 114(a)–(c) of Pub. L. 89–719, set out as a note under section 6323 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to purchases made after Feb. 26, 1964, see section 236(d) of Pub. L. 88–272, set out as a note under section 6323 of this title.

§6324A. Special lien for estate tax deferred under section 6166

(a) General rule

In the case of any estate with respect to which an election has been made under section 6166, if the executor makes an election under this section (at such time and in such manner as the Secretary shall by regulations prescribe) and files the agreement referred to in subsection (c), the deferred amount (plus any interest, additional amount, addition to tax, assessable penalty, and costs attributable to the deferred amount) shall be a lien in favor of the United States on the section 6166 lien property.

(b) Section 6166 lien property

(1) In general

For purposes of this section, the term "section 6166 lien property" means interests in real and other property to the extent such interests—

(A) can be expected to survive the deferral period, and

(B) are designated in the agreement referred to in subsection (c).

(2) Maximum value of required property

The maximum value of the property which the Secretary may require as section 6166 lien property with respect to any estate shall be a value which is not greater than the sum of—

(A) the deferred amount, and

(B) the required interest amount.

For purposes of the preceding sentence, the value of any property shall be determined as of the date prescribed by section 6151(a) for payment of the tax imposed by chapter 11 and shall be determined by taking into account any encumbrance such as a lien under section 6324B.

(3) Partial substitution of bond for lien

If the value required as section 6166 lien property pursuant to paragraph (2) exceeds the value of the interests in property covered by the agreement referred to in subsection (c), the Secretary

may accept bond in an amount equal to such excess conditioned on the payment of the amount extended in accordance with the terms of such extension.

(c) Agreement

The agreement referred to in this subsection is a written agreement signed by each person in being who has an interest (whether or not in possession) in any property designated in such agreement—

(1) consenting to the creation of the lien under this section with respect to such property, and

(2) designating a responsible person who shall be the agent for the beneficiaries of the estate and for the persons who have consented to the creation of the lien in dealings with the Secretary on matters arising under section 6166 or this section.

(d) Special rules

(1) Requirement that lien be filed

The lien imposed by this section shall not be valid as against any purchaser, holder of a security interest, mechanic's lien, or judgment lien creditor until notice thereof which meets the requirements of section 6323(f) has been filed by the Secretary. Such notice shall not be required to be refiled.

(2) Period of lien

The lien imposed by this section shall arise at the time the executor is discharged from liability under section 2204 (or, if earlier, at the time notice is filed pursuant to paragraph (1)) and shall continue until the liability for the deferred amount is satisfied or becomes unenforceable by reason of lapse of time.

(3) Priorities

Even though notice of a lien imposed by this section has been filed as provided in paragraph (1), such lien shall not be valid—

(A) Real property tax and special assessment liens

To the extent provided in section 6323(b)(6).

(B) Real property subject to a mechanic's lien for repairs and improvement

In the case of any real property subject to a lien for repair or improvement, as against a mechanic's lienor.

(C) Real property construction or improvement financing agreement

As against any security interest set forth in paragraph (3) of section 6323(c) (whether such security interest came into existence before or after tax lien filing).

Subparagraphs (B) and (C) shall not apply to any security interest which came into existence after the date on which the Secretary filed notice (in a manner similar to notice filed under section 6323(f)) that payment of the deferred amount has been accelerated under section 6166(g).

(4) Lien to be in lieu of section 6324 lien

If there is a lien under this section on any property with respect to any estate, there shall not be any lien under section 6324 on such property with respect to the same estate.

(5) Additional lien property required in certain cases

If at any time the value of the property covered by the agreement is less than the unpaid portion of the deferred amount and the required interest amount, the Secretary may require the addition of property to the agreement (but he may not require under this paragraph that the value of the property covered by the agreement exceed such unpaid portion). If property having the required value is not added to the property covered by the agreement (or if other security equal to the required value is not furnished) within 90 days after notice and demand therefor by the Secretary, the failure to comply with the preceding sentence shall be treated as an act accelerating payment of the installments under section 6166(g).

(6) Lien to be in lieu of bond

The Secretary may not require under section 6165 the furnishing of any bond for the payment of any tax to which an agreement which meets the requirements of subsection (c) applies.

(e) Definitions

For purposes of this section—

(1) Deferred amount

The term "deferred amount" means the aggregate amount deferred under section 6166 (determined as of the date prescribed by section 6151(a) for payment of the tax imposed by chapter 11).

(2) Required interest amount

The term "required interest amount" means the aggregate amount of interest which will be payable over the first 4 years of the deferral period with respect to the deferred amount (determined as of the date prescribed by section 6151(a) for the payment of the tax imposed by chapter 11).

(3) Deferral period

The term "deferral period" means the period for which the payment of tax is deferred pursuant to the election under section 6166.

(4) Application of definitions in case of deficiencies

In the case of a deficiency, a separate deferred amount, required interest amount, and deferral period shall be determined as of the due date of the first installment after the deficiency is prorated to installments under section 6166.

(Added Pub. L. 94–455, title XX, §2004(d)(1), Oct. 4, 1976, 90 Stat. 1868; amended Pub. L. 95–600, title VII, §702(e)(1), Nov. 6, 1978, 92 Stat. 2929; Pub. L. 97–34, title IV, §422(e)(6)(A)–(C), Aug. 13, 1981, 95 Stat. 316.)

AMENDMENTS

1981—Pub. L. 97–34, §422(e)(6)(C), struck out "or 6166A" after "section 6166" in section catchline.

Subsecs. (a), (c)(2). Pub. L. 97–34, §422(e)(6)(A), struck out "or 6166A" after "section 6166".

Subsec. (d)(3), (5). Pub. L. 97–34, §422(e)(6)(B), struck out "or 6166A(h)" after "section 6166(g)".

Subsec. (e)(1), (3), (4). Pub. L. 97–34, §422(e)(6)(A), struck out "or 6166A" after "section 6166".

1978—Subsec. (b)(2)(B). Pub. L. 95–600, §702(e)(1)(B), substituted "required interest amount" for "aggregate interest amount".

Subsec. (d)(5). Pub. L. 95–600, §702(e)(1)(C), substituted "required interest amount" for "aggregate interest amount".

Subsec. (e)(2). Pub. L. 95–600, §702(e)(1)(A), substituted "Required interest amount" for "Aggregate interest amount" in heading and in text "required interest amount", "over the first 4 years of the deferral period" and "for the payment" for "aggregate interest amount", "over the deferral period" and "for payment", respectively.

Subsec. (e)(4). Pub. L. 95–600, §702(e)(1)(D), substituted "required interest amount" for "aggregate interest amount".

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to estates of decedents dying after Dec. 31, 1981, see section 422(f)(1) of Pub. L. 97–34, set out as a note under section 6166 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title VII, §702(e)(2), Nov. 6, 1978, 92 Stat. 2930, provided that: "The amendments made by this section [amending this section] shall apply to the estates of decedents dying after December 31, 1976."

§6324B. Special lien for additional estate tax attributable to farm, etc., valuation

(a) General rule

In the case of any interest in qualified real property (within the meaning of section 2032A(b)), an amount equal to the adjusted tax difference attributable to such interest (within the meaning of section 2032A(c)(2)(B)) shall be a lien in favor of the United States on the property in which such interest exists.

(b) Period of lien

The lien imposed by this section shall arise at the time an election is filed under section 2032A and shall continue with respect to any interest in the qualified real property—

(1) until the liability for tax under subsection (c) of section 2032A with respect to such interest has been satisfied or has become unenforceable by reason of lapse of time, or

(2) until it is established to the satisfaction of the Secretary that no further tax liability may arise under section 2032A(c) with respect to such interest.

(c) Certain rules and definitions made applicable

(1) In general

The rule set forth in paragraphs (1), (3), and (4) of section 6324A(d) shall apply with respect to the lien imposed by this section as if it were a lien imposed by section 6324A.

(2) Qualified real property

For purposes of this section, the term "qualified real property" includes qualified replacement property (within the meaning of section 2032A(h)(3)(B)) and qualified exchange property (within the meaning of section 2032A(i)(3)).

(d) Substitution of security for lien

To the extent provided in regulations prescribed by the Secretary, the furnishing of security may be substituted for the lien imposed by this section.

(Added Pub. L. 94–455, title XX, §2003(b), Oct. 4, 1976, 90 Stat. 1861; amended Pub. L. 95–600, title VII, §702(r)(4), Nov. 6, 1978, 92 Stat. 2939; Pub. L. 96–222, title I, §108(d), Apr. 1, 1980, 94 Stat. 228; Pub. L. 97–34, title IV, §421(d)(2)(B), Aug. 13, 1981, 95 Stat. 309.)

AMENDMENTS

1981—Subsec. (c)(2). Pub. L. 97–34 defined "qualified real property" to include qualified exchange property (within the meaning of section 2032A(i)(3)).

1980—Subsec. (c). Pub. L. 96–222 designated existing provisions as par. (1), substituted "The rule" for "The rules", and added par. (2).

1978—Subsec. (b). Pub. L. 95–600 substituted "qualified real property" for "qualified farm real property".

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable with respect to exchanges after Dec. 31, 1981, see section 421(k)(3) of Pub. L. 97–34, set out as a note under section 2032A of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable to estates of decedents dying after Dec. 31, 1976, see section 702(r)(5) of Pub. L. 95–600, set out as a note under section 2051 of this title.

§6325. Release of lien or discharge of property

(a) Release of lien

Subject to such regulations as the Secretary may prescribe, the Secretary shall issue a certificate of

release of any lien imposed with respect to any internal revenue tax not later than 30 days after the day on which—

(1) Liability satisfied or unenforceable

The Secretary finds that the liability for the amount assessed, together with all interest in respect thereof, has been fully satisfied or has become legally unenforceable; or

(2) Bond accepted

There is furnished to the Secretary and accepted by him a bond that is conditioned upon the payment of the amount assessed, together with all interest in respect thereof, within the time prescribed by law (including any extension of such time), and that is in accordance with such requirements relating to terms, conditions, and form of the bond and sureties thereon, as may be specified by such regulations.

(b) Discharge of property

(1) Property double the amount of the liability

Subject to such regulations as the Secretary may prescribe, the Secretary may issue a certificate of discharge of any part of the property subject to any lien imposed under this chapter if the Secretary finds that the fair market value of that part of such property remaining subject to the lien is at least double the amount of the unsatisfied liability secured by such lien and the amount of all other liens upon such property which have priority over such lien.

(2) Part payment; interest of United States valueless

Subject to such regulations as the Secretary may prescribe, the Secretary may issue a certificate of discharge of any part of the property subject to the lien if—

(A) there is paid over to the Secretary in partial satisfaction of the liability secured by the lien an amount determined by the Secretary, which shall not be less than the value, as determined by the Secretary, of the interest of the United States in the part to be so discharged, or

(B) the Secretary determines at any time that the interest of the United States in the part to be so discharged has no value.

In determining the value of the interest of the United States in the part to be so discharged, the Secretary shall give consideration to the value of such part and to such liens thereon as have priority over the lien of the United States.

(3) Substitution of proceeds of sale

Subject to such regulations as the Secretary may prescribe, the Secretary may issue a certificate of discharge of any part of the property subject to the lien if such part of the property is sold and, pursuant to an agreement with the Secretary, the proceeds of such sale are to be held, as a fund subject to the liens and claims of the United States, in the same manner and with the same priority as such liens and claims had with respect to the discharged property.

(4) Right of substitution of value

(A) In general

At the request of the owner of any property subject to any lien imposed by this chapter, the Secretary shall issue a certificate of discharge of such property if such owner—

(i) deposits with the Secretary an amount of money equal to the value of the interest of the United States (as determined by the Secretary) in the property; or

(ii) furnishes a bond acceptable to the Secretary in a like amount.

(B) Refund of deposit with interest and release of bond

The Secretary shall refund the amount so deposited (and shall pay interest at the overpayment rate under section 6621), and shall release such bond, to the extent that the Secretary determines that—

(i) the unsatisfied liability giving rise to the lien can be satisfied from a source other than

such property; or

(ii) the value of the interest of the United States in the property is less than the Secretary's prior determination of such value.

(C) Use of deposit, etc., if action to contest lien not filed

If no action is filed under section 7426(a)(4) within the period prescribed therefor, the Secretary shall, within 60 days after the expiration of such period—

(i) apply the amount deposited, or collect on such bond, to the extent necessary to satisfy the unsatisfied liability secured by the lien; and

(ii) refund (with interest as described in subparagraph (B)) any portion of the amount deposited which is not used to satisfy such liability.

(D) Exception

Subparagraph (A) shall not apply if the owner of the property is the person whose unsatisfied liability gave rise to the lien.

(c) Estate or gift tax

Subject to such regulations as the Secretary may prescribe, the Secretary may issue a certificate of discharge of any or all of the property subject to any lien imposed by section 6324 if the Secretary finds that the liability secured by such lien has been fully satisfied or provided for.

(d) Subordination of lien

Subject to such regulations as the Secretary may prescribe, the Secretary may issue a certificate of subordination of any lien imposed by this chapter upon any part of the property subject to such lien if—

(1) there is paid over to the Secretary an amount equal to the amount of the lien or interest to which the certificate subordinates the lien of the United States,

(2) the Secretary believes that the amount realizable by the United States from the property to which the certificate relates, or from any other property subject to the lien, will ultimately be increased by reason of the issuance of such certificate and that the ultimate collection of the tax liability will be facilitated by such subordination, or

(3) in the case of any lien imposed by section 6324B, if the Secretary determines that the United States will be adequately secured after such subordination.

(e) Nonattachment of lien

If the Secretary determines that, because of confusion of names or otherwise, any person (other than the person against whom the tax was assessed) is or may be injured by the appearance that a notice of lien filed under section 6323 refers to such person, the Secretary may issue a certificate that the lien does not attach to the property of such person.

(f) Effect of certificate

(1) Conclusiveness

Except as provided in paragraphs (2) and (3), if a certificate is issued pursuant to this section by the Secretary and is filed in the same office as the notice of lien to which it relates (if such notice of lien has been filed) such certificate shall have the following effect:

(A) in the case of a certificate of release, such certificate shall be conclusive that the lien referred to in such certificate is extinguished;

(B) in the case of a certificate of discharge, such certificate shall be conclusive that the property covered by such certificate is discharged from the lien;

(C) in the case of a certificate of subordination, such certificate shall be conclusive that the lien or interest to which the lien of the United States is subordinated is superior to the lien of the United States; and

(D) in the case of a certificate of nonattachment, such certificate shall be conclusive that the lien of the United States does not attach to the property of the person referred to in such certificate.

(2) Revocation of certificate of release or nonattachment

If the Secretary determines that a certificate of release or nonattachment of a lien imposed by section 6321 was issued erroneously or improvidently, or if a certificate of release of such lien was issued pursuant to a collateral agreement entered into in connection with a compromise under section 7122 which has been breached, and if the period of limitation on collection after assessment has not expired, the Secretary may revoke such certificate and reinstate the lien—

(A) by mailing notice of such revocation to the person against whom the tax was assessed at his last known address, and

(B) by filing notice of such revocation in the same office in which the notice of lien to which it relates was filed (if such notice of lien had been filed).

Such reinstated lien (i) shall be effective on the date notice of revocation is mailed to the taxpayer in accordance with the provisions of subparagraph (A), but not earlier than the date on which any required filing of notice of revocation is filed in accordance with the provisions of subparagraph (B), and (ii) shall have the same force and effect (as of such date), until the expiration of the period of limitation on collection after assessment, as a lien imposed by section 6321 (relating to lien for taxes).

(3) Certificates void under certain conditions

Notwithstanding any other provision of this subtitle, any lien imposed by this chapter shall attach to any property with respect to which a certificate of discharge has been issued if the person liable for the tax reacquires such property after such certificate has been issued.

(g) Filing of certificates and notices

If a certificate or notice issued pursuant to this section may not be filed in the office designated by State law in which the notice of lien imposed by section 6321 is filed, such certificate or notice shall be effective if filed in the office of the clerk of the United States district court for the judicial district in which such office is situated.

(h) Cross reference

For provisions relating to bonds, see chapter 73 (sec. 7101 and following).

(Aug. 16, 1954, ch. 736, 68A Stat. 783; Pub. L. 85–866, title I, §77, Nov. 2, 1966, 72 Stat. 1662; Pub. L. 89–719, title I, §103(a), Nov. 2, 1966, 80 Stat. 1133; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–600, title V, §513(a), Nov. 6, 1978, 92 Stat. 2883; Pub. L. 97–248, title III, §348(a), Sept. 3, 1982, 96 Stat. 638; Pub. L. 105–206, title III, §3106(a), July 22, 1998, 112 Stat. 732.)

AMENDMENTS

1998—Subsec. (b)(4). Pub. L. 105–206 added par. (4).

1982—Subsec. (a). Pub. L. 97–248 in introductory provisions substituted "shall issue" for "may issue" and "not later than 30 days after the day on which" for "if".

1978—Subsec. (d)(3). Pub. L. 95–600 added par. (3).

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

1966—Subsec. (b)(3). Pub. L. 89–719 added par. (3).

Subsecs. (d), (e). Pub. L. 89–719 added subsecs. (d) and (e). Former subsecs. (d) and (e) redesignated, with amendments, as subsecs. (f)(1) and (h), respectively.

Subsec. (f). Pub. L. 89–719 redesignated as par. (1) provisions formerly constituting subsec. (d), inserted reference to exceptions provided in pars. (2) and (3) and reference to the filing of the certificate in the same office as the notice of lien to which it refers and expanded the types of certificates to include separate certificates of release, discharge, subordination, and nonattachment, and added pars. (2) and (3).

Subsec. (g). Pub. L. 89–719 added subsec. (g).

Subsec. (h). Pub. L. 89–719 redesignated as subsec. (h) provisions formerly constituting subsec. (e) and struck out cross references for single bonds, suits to enforce liens, and suits to clear title to realty.

1958—Subsec. (a)(1). Pub. L. 85–866, §77(1), substituted "or" for "," after "satisfied" and struck out ", or, in the case of the estate tax imposed by chapter 11 or the gift tax imposed by chapter 12, has been fully satisfied or provided for" after "unenforceable".

Subsec. (c). Pub. L. 85–866, §77(2), added subsec. (c) and redesignated former subsec. (c) as (d).

Subsec. (d). Pub. L. 85–866. §77(2), (3), redesignated former subsec. (c) as (d) and in heading and text struck out "partial" before "discharge". Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 85–866, §77(2), redesignated former subsec. (d) as (e).

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–206, title III, §3106(c), July 22, 1998, 112 Stat. 734, provided that: "The amendments made by this section [amending this section and sections 6503 and 7426 of this title] shall take effect on the date of the enactment of this Act [July 22, 1998]."

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title III, §348(b), Sept. 3, 1982, 96 Stat. 638, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to liens—

"(1) which are filed after December 31, 1982,

"(2) which are satisfied after December 31, 1982, or

"(3) with respect to which the taxpayer after December 31, 1982, requests the Secretary of the Treasury or his delegate to issue a certificate of release on the grounds that the liability was satisfied or legally unenforceable."

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title V, §513(b), Nov. 6, 1978, 92 Stat. 2883, provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to the estates of decedents dying after December 31, 1976."

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–719 applicable after Nov. 2, 1966, regardless of when title or lien of United States arose or when lien or interest of another person was acquired, with certain exceptions, see section 114(a)–(c) of Pub. L. 89–719, set out as a note under section 6323 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 effective Aug. 17, 1954, see section 1(c)(2) of Pub. L. 85–866, set out as a note under section 165 of this title.

§6326. Administrative appeal of liens

(a) In general

In such form and at such time as the Secretary shall prescribe by regulations, any person shall be allowed to appeal to the Secretary after the filing of a notice of a lien under this subchapter on the property or the rights to property of such person for a release of such lien alleging an error in the filing of the notice of such lien.

(b) Certificate of release

If the Secretary determines that the filing of the notice of any lien was erroneous, the Secretary shall expeditiously (and, to the extent practicable, within 14 days after such determination) issue a certificate of release of such lien and shall include in such certificate a statement that such filing was erroneous.

(Added Pub. L. 100–647, title VI, §6238(a), Nov. 10, 1988, 102 Stat. 3743.)

PRIOR PROVISIONS

A prior section 6326 was renumbered 6327 of this title.

EFFECTIVE DATE

Pub. L. 100–647, title VI, §6238(d), Nov. 10, 1988, 102 Stat. 3743, provided that: "The amendments made by this section [enacting this section] shall take effect on the date which is 60 days after the date regulations are issued under subsection (b) [set out below]."

REGULATIONS

Pub. L. 100–647, title VI, §6238(b), Nov. 10, 1988, 102 Stat. 3743, required Secretary of the Treasury or Secretary's delegate to prescribe regulations necessary to implement administrative appeal provided for in amendment made by subsection (a) [enacting this section] within 180 days after Nov. 10, 1988.

§6327. Cross references

(1) For lien in case of tax on distilled spirits, see section 5004.

(2) For exclusion of tax liability from discharge in cases under title 11 of the United States Code, see section 523 of such title 11.

(3) For recognition of tax liens in cases under title 11 of the United States Code, see sections 545 and 724 of such title 11.

(4) For collection of taxes in connection with plans for individuals with regular income in cases under title 11 of the United States Code, see section 1328 of such title 11.

(5) For provisions permitting the United States to be made party defendant in a proceeding in a State court for the foreclosure of a lien upon real estate where the United States may have a claim upon the premises involved, see section 2410 of Title 28 of the United States Code.

(6) For priority of lien of the United States in case of insolvency, see section 3713(a) of title 31, United States Code.

(Aug. 16, 1954, ch. 736, 68A Stat. 782, §6326; Pub. L. 94–455, title XIX, §1906(a)(20), Oct. 4, 1976, 90 Stat. 1825; Pub. L. 96–589, §6(i)(10), Dec. 24, 1980, 94 Stat. 3411; Pub. L. 97–258, §3(f)(7), Sept. 13, 1982, 96 Stat. 1064; renumbered §6327, Pub. L. 100–647, title VI, §6238(a), Nov. 10, 1988, 102 Stat. 3743.)

AMENDMENTS

1982—Par. (6). Pub. L. 97–258 substituted "section 3713(a) of title 31, United States Code" for "R.S. 3466 (31 U.S.C. 191)".

1980—Par. (2). Pub. L. 96–589, §6(i)(10)(A), substituted "cases under title 11 of the United States Code, see section 523 of such title 11" for "bankruptcy, see section 17 of the Bankruptcy Act, as amended (11 U.S.C. 35)".

Par. (3). Pub. L. 96–589, §6(i)(10)(A), redesignated par. (4) as (3) and substituted "cases under title 11 of the United States Code, see sections 545 and 724 of such title 11" for "proceedings under the Bankruptcy Act, see section 67(b) and (c) of that act, as amended (11 U.S.C. 107)". Former par. (3), which provided cross reference to section 93 of title 11 for limit on amount allowed in bankruptcy proceedings on debts owing to the United States, was struck out.

Par. (4). Pub. L. 96–589, §6(i)(10)(A), redesignated par. (5) as (4) and substituted "plans for individuals with regular income in cases under title 11 of the United States Code, see section 1328 of such title 11" for "wage earners' plans in bankruptcy courts, see section 680 of the Bankruptcy Act, as added by the act of June 22, 1938 (11 U.S.C. 1080)". Former par. (4) redesignated (3).

Pars. (5) to (7). Pub. L. 96–589, §6(i)(10)(A), (B), redesignated pars. (6) and (7) as (5) and (6), respectively. Former par. (5) redesignated (4).

1976—Pars. (2) to (5). Pub. L. 94–455 struck out parenthetical references to "52 Stat. 851;", "52 Stat. 867;", "52 Stat. 867–877;" and "52 Stat. 938;" preceding parenthetical references to sections of title 11.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–589 effective Oct. 1, 1979, but not applicable to proceedings under Title 11, Bankruptcy, commenced before Oct. 1, 1979, see section 7(e) of Pub. L. 96–589, set out as a note under section 108 of this title.

Subchapter D—Seizure of Property for Collection of Taxes

Part

I. Due process for collections.
II. Levy.

AMENDMENTS

1998—Pub. L. 105–206, title III, §3401(b), July 22, 1998, 112 Stat. 747, added part analysis.

PART I—DUE PROCESS FOR COLLECTIONS

Sec.
6330. Notice and opportunity for hearing before levy.

AMENDMENTS

1998—Pub. L. 105–206, title III, §3401(b), July 22, 1998, 112 Stat. 747, added part heading and analysis consisting of item 6330.

§6330. Notice and opportunity for hearing before levy

(a) Requirement of notice before levy

(1) In general

No levy may be made on any property or right to property of any person unless the Secretary has notified such person in writing of their right to a hearing under this section before such levy is made. Such notice shall be required only once for the taxable period to which the unpaid tax specified in paragraph (3)(A) relates.

(2) Time and method for notice

The notice required under paragraph (1) shall be—

(A) given in person;

(B) left at the dwelling or usual place of business of such person; or

(C) sent by certified or registered mail, return receipt requested, to such person's last known address;

not less than 30 days before the day of the first levy with respect to the amount of the unpaid tax for the taxable period.

(3) Information included with notice

The notice required under paragraph (1) shall include in simple and nontechnical terms—

(A) the amount of unpaid tax;

(B) the right of the person to request a hearing during the 30-day period under paragraph (2); and

(C) the proposed action by the Secretary and the rights of the person with respect to such action, including a brief statement which sets forth—

(i) the provisions of this title relating to levy and sale of property;

(ii) the procedures applicable to the levy and sale of property under this title;

(iii) the administrative appeals available to the taxpayer with respect to such levy and sale and the procedures relating to such appeals;

(iv) the alternatives available to taxpayers which could prevent levy on property (including installment agreements under section 6159); and

(v) the provisions of this title and procedures relating to redemption of property and release of liens on property.

(b) Right to fair hearing

(1) In general

If the person requests a hearing in writing under subsection (a)(3)(B) and states the grounds for the requested hearing, such hearing shall be held by the Internal Revenue Service Office of Appeals.

(2) One hearing per period

A person shall be entitled to only one hearing under this section with respect to the taxable

period to which the unpaid tax specified in subsection (a)(3)(A) relates.

(3) Impartial officer

The hearing under this subsection shall be conducted by an officer or employee who has had no prior involvement with respect to the unpaid tax specified in subsection (a)(3)(A) before the first hearing under this section or section 6320. A taxpayer may waive the requirement of this paragraph.

(c) Matters considered at hearing

In the case of any hearing conducted under this section—

(1) Requirement of investigation

The appeals officer shall at the hearing obtain verification from the Secretary that the requirements of any applicable law or administrative procedure have been met.

(2) Issues at hearing

(A) In general

The person may raise at the hearing any relevant issue relating to the unpaid tax or the proposed levy, including—

(i) appropriate spousal defenses;

(ii) challenges to the appropriateness of collection actions; and

(iii) offers of collection alternatives, which may include the posting of a bond, the substitution of other assets, an installment agreement, or an offer-in-compromise.

(B) Underlying liability

The person may also raise at the hearing challenges to the existence or amount of the underlying tax liability for any tax period if the person did not receive any statutory notice of deficiency for such tax liability or did not otherwise have an opportunity to dispute such tax liability.

(3) Basis for the determination

The determination by an appeals officer under this subsection shall take into consideration—

(A) the verification presented under paragraph (1);

(B) the issues raised under paragraph (2); and

(C) whether any proposed collection action balances the need for the efficient collection of taxes with the legitimate concern of the person that any collection action be no more intrusive than necessary.

(4) Certain issues precluded

An issue may not be raised at the hearing if—

(A)(i) the issue was raised and considered at a previous hearing under section 6320 or in any other previous administrative or judicial proceeding; and

(ii) the person seeking to raise the issue participated meaningfully in such hearing or proceeding; or

(B) the issue meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A).

This paragraph shall not apply to any issue with respect to which subsection (d)(2)(B) applies.

(d) Proceeding after hearing

(1) Judicial review of determination

The person may, within 30 days of a determination under this section, appeal such determination to the Tax Court (and the Tax Court shall have jurisdiction with respect to such matter).

(2) Jurisdiction retained at IRS Office of Appeals

The Internal Revenue Service Office of Appeals shall retain jurisdiction with respect to any

determination made under this section, including subsequent hearings requested by the person who requested the original hearing on issues regarding—

(A) collection actions taken or proposed with respect to such determination; and

(B) after the person has exhausted all administrative remedies, a change in circumstances with respect to such person which affects such determination.

(e) Suspension of collections and statute of limitations

(1) In general

Except as provided in paragraph (2), if a hearing is requested under subsection (a)(3)(B), the levy actions which are the subject of the requested hearing and the running of any period of limitations under section 6502 (relating to collection after assessment), section 6531 (relating to criminal prosecutions), or section 6532 (relating to other suits) shall be suspended for the period during which such hearing, and appeals therein, are pending. In no event shall any such period expire before the 90th day after the day on which there is a final determination in such hearing. Notwithstanding the provisions of section 7421(a), the beginning of a levy or proceeding during the time the suspension under this paragraph is in force may be enjoined by a proceeding in the proper court, including the Tax Court. The Tax Court shall have no jurisdiction under this paragraph to enjoin any action or proceeding unless a timely appeal has been filed under subsection (d)(1) and then only in respect of the unpaid tax or proposed levy to which the determination being appealed relates.

(2) Levy upon appeal

Paragraph (1) shall not apply to a levy action while an appeal is pending if the underlying tax liability is not at issue in the appeal and the court determines that the Secretary has shown good cause not to suspend the levy.

(f) Exceptions

If—

(1) the Secretary has made a finding under the last sentence of section 6331(a) that the collection of tax is in jeopardy,

(2) the Secretary has served a levy on a State to collect a Federal tax liability from a State tax refund,

(3) the Secretary has served a disqualified employment tax levy, or

(4) the Secretary has served a Federal contractor levy,

this section shall not apply, except that the taxpayer shall be given the opportunity for the hearing described in this section within a reasonable period of time after the levy.

(g) Frivolous requests for hearing, etc.

Notwithstanding any other provision of this section, if the Secretary determines that any portion of a request for a hearing under this section or section 6320 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.

(h) Definitions related to exceptions

For purposes of subsection (f)—

(1) Disqualified employment tax levy

A disqualified employment tax levy is any levy in connection with the collection of employment taxes for any taxable period if the person subject to the levy (or any predecessor thereof) requested a hearing under this section with respect to unpaid employment taxes arising in the most recent 2-year period before the beginning of the taxable period with respect to which the levy is served. For purposes of the preceding sentence, the term "employment taxes" means any taxes under chapter 21, 22, 23, or 24.

(2) Federal contractor levy

A Federal contractor levy is any levy if the person whose property is subject to the levy (or any predecessor thereof) is a Federal contractor.

(Added Pub. L. 105–206, title III, §3401(b), July 22, 1998, 112 Stat. 747; amended Pub. L. 106–554, §1(a)(7) [title III, §313(b)(2)(A), (d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–642, 2763A–643; Pub. L. 109–280, title VIII, §855(a), Aug. 17, 2006, 120 Stat. 1019; Pub. L. 109–432, div. A, title IV, §407(b), Dec. 20, 2006, 120 Stat. 2961; Pub. L. 110–28, title VIII, §8243(a), (b), May 25, 2007, 121 Stat. 200; Pub. L. 111–240, title II, §2104(a)–(c), Sept. 27, 2010, 124 Stat. 2565.)

AMENDMENTS

2010—Subsec. (f). Pub. L. 111–240, §2104(c), substituted "Exceptions" for "Jeopardy and State refund collection" in heading.

Subsec. (f)(4). Pub. L. 111–240, §2104(a), added par. (4).

Subsec. (h). Pub. L. 111–240, §2104(b), substituted "Definitions related to exceptions" for "Disqualified employment tax levy" in heading, inserted introductory provisions and par. (1) designation and heading, substituted "A disqualified employment tax levy is" for "For purposes of subsection (f), a disqualified employment tax levy is", and added par. (2).

2007—Subsec. (f)(3). Pub. L. 110–28, §8243(a), added par. (3).

Subsec. (h). Pub. L. 110–28, §8243(b), added subsec. (h).

2006—Subsec. (b)(1). Pub. L. 109–432, §407(b)(3), substituted "in writing under subsection (a)(3)(B) and states the grounds for the requested hearing" for "under subsection (a)(3)(B)".

Subsec. (c)(4)(A), (B). Pub. L. 109–432, §407(b)(2), redesignated subpars. (A) and (B) as cls. (i) and (ii), respectively, of subpar. (A), in cl. (ii) substituted "; or" for period at end, and added subpar. (B).

Subsec. (d)(1). Pub. L. 109–280, §855(a), reenacted heading without change and amended text of par. (1) generally. Prior to amendment, text read as follows: "The person may, within 30 days of a determination under this section, appeal such determination—

"(A) to the Tax Court (and the Tax Court shall have jurisdiction with respect to such matter); or

"(B) if the Tax Court does not have jurisdiction of the underlying tax liability, to a district court of the United States.

If a court determines that the appeal was to an incorrect court, a person shall have 30 days after the court determination to file such appeal with the correct court."

Subsec. (g). Pub. L. 109–432, §407(b)(1), added subsec. (g).

2000—Subsec. (d)(1)(A). Pub. L. 106–554, §1(a)(7) [title III, §313(d)], substituted "with respect to" for "to hear".

Subsec. (e)(1). Pub. L. 106–554, §1(a)(7) [title III, §313(b)(2)(A)], inserted at end "Notwithstanding the provisions of section 7421(a), the beginning of a levy or proceeding during the time the suspension under this paragraph is in force may be enjoined by a proceeding in the proper court, including the Tax Court. The Tax Court shall have no jurisdiction under this paragraph to enjoin any action or proceeding unless a timely appeal has been filed under subsection (d)(1) and then only in respect of the unpaid tax or proposed levy to which the determination being appealed relates."

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–240, title II, §2104(d), Sept. 27, 2010, 124 Stat. 2565, provided that: "The amendments made by this section [amending this section] shall apply to levies issued after the date of the enactment of this Act [Sept. 27, 2010]."

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–28, title VIII, §8243(c), May 25, 2007, 121 Stat. 200, provided that: "The amendments made by this section [amending this section] shall apply to levies served on or after the date that is 120 days after the date of the enactment of this Act [May 25, 2007]."

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–432 applicable to submissions made and issues raised after the date on which the Secretary first prescribes a list under section 6702(c) of this title, see section 407(f) of Pub. L. 109–432, set out as a note under section 6320 of this title.

Pub. L. 109–280, title VIII, §855(b), Aug. 17, 2006, 120 Stat. 1019, provided that: "The amendment made by this section [amending this section] shall apply to determinations made after the date which is 60 days after the date of the enactment of this Act [Aug. 17, 2006]."

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by section 1(a)(7) [title III, §313(b)(2)(A)] of Pub. L. 106–554 effective Dec. 21, 2000, and amendment by section 1(a)(7) [title III, §313(d)] of Pub. L. 106–554, effective as if included in the provisions of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105–206, to which such amendment relates, see section 1(a)(7) [title III, §313(f)] of Pub. L. 106–554, set out as a note under section 6015 of this title.

EFFECTIVE DATE

Section applicable to collection actions initiated after the date which is 180 days after July 22, 1998, see section 3401(d) of Pub. L. 105–206, set out as a note under section 6320 of this title.

PART II—LEVY

Sec.

6331. Levy and distraint.
6332. Surrender of property subject to levy.
6333. Production of books.
6334. Property exempt from levy.
6335. Sale of seized property.
6336. Sale of perishable goods.
6337. Redemption of property.
6338. Certificate of sale; deed of real property.
6339. Legal effect of certificate of sale of personal property and deed of real property.
6340. Records of sale.
6341. Expense of levy and sale.
6342. Application of proceeds of levy.
6343. Authority to release levy and return property.
6344. Cross references.

AMENDMENTS

1998—Pub. L. 105–206, title III, §3401(b), July 22, 1998, 112 Stat. 749, added part heading.

1966—Pub. L. 89–719, title I, §104(j), Nov. 2, 1966, 80 Stat. 1138, inserted "and return property" in item 6343.

§6331. Levy and distraint

(a) Authority of Secretary

If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax. Levy may be made upon the accrued salary or wages of any officer, employee, or elected official, of the United States, the District of Columbia, or any agency or instrumentality of the United States or the District of Columbia, by serving a notice of levy on the employer (as defined in section 3401(d)) of such officer, employee, or elected official. If the Secretary makes a finding that the collection of such tax is in jeopardy, notice and demand for immediate payment of such tax may be made by the Secretary and, upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the 10-day period provided in this section.

(b) Seizure and sale of property

The term "levy" as used in this title includes the power of distraint and seizure by any means. Except as otherwise provided in subsection (e), a levy shall extend only to property possessed and obligations existing at the time thereof. In any case in which the Secretary may levy upon property or

rights to property, he may seize and sell such property or rights to property (whether real or personal, tangible or intangible).

(c) Successive seizures

Whenever any property or right to property upon which levy has been made by virtue of subsection (a) is not sufficient to satisfy the claim of the United States for which levy is made, the Secretary may, thereafter, and as often as may be necessary, proceed to levy in like manner upon any other property liable to levy of the person against whom such claim exists, until the amount due from him, together with all expenses, is fully paid.

(d) Requirement of notice before levy

(1) In general

Levy may be made under subsection (a) upon the salary or wages or other property of any person with respect to any unpaid tax only after the Secretary has notified such person in writing of his intention to make such levy.

(2) 30-day requirement

The notice required under paragraph (1) shall be—

(A) given in person,

(B) left at the dwelling or usual place of business of such person, or

(C) sent by certified or registered mail to such persons's last known address,

no less than 30 days before the day of the levy.

(3) Jeopardy

Paragraph (1) shall not apply to a levy if the Secretary has made a finding under the last sentence of subsection (a) that the collection of tax is in jeopardy.

(4) Information included with notice

The notice required under paragraph (1) shall include a brief statement which sets forth in simple and nontechnical terms—

(A) the provisions of this title relating to levy and sale of property,

(B) the procedures applicable to the levy and sale of property under this title,

(C) the administrative appeals available to the taxpayer with respect to such levy and sale and the procedures relating to such appeals,

(D) the alternatives available to taxpayers which could prevent levy on the property (including installment agreements under section 6159),

(E) the provisions of this title relating to redemption of property and release of liens on property, and

(F) the procedures applicable to the redemption of property and the release of a lien on property under this title.

(e) Continuing levy on salary and wages

The effect of a levy on salary or wages payable to or received by a taxpayer shall be continuous from the date such levy is first made until such levy is released under section 6343.

(f) Uneconomical levy

No levy may be made on any property if the amount of the expenses which the Secretary estimates (at the time of levy) would be incurred by the Secretary with respect to the levy and sale of such property exceeds the fair market value of such property at the time of levy.

(g) Levy on appearance date of summons

(1) In general

No levy may be made on the property of any person on any day on which such person (or officer or employee of such person) is required to appear in response to a summons issued by the Secretary for the purpose of collecting any underpayment of tax.

(2) No application in case of jeopardy

This subsection shall not apply if the Secretary finds that the collection of tax is in jeopardy.

(h) Continuing levy on certain payments

(1) In general

If the Secretary approves a levy under this subsection, the effect of such levy on specified payments to or received by a taxpayer shall be continuous from the date such levy is first made until such levy is released. Notwithstanding section 6334, such continuous levy shall attach to up to 15 percent of any specified payment due to the taxpayer.

(2) Specified payment

For the purposes of paragraph (1), the term "specified payment" means—

(A) any Federal payment other than a payment for which eligibility is based on the income or assets (or both) of a payee,

(B) any payment described in paragraph (4), (7), (9), or (11) of section 6334(a), and

(C) any annuity or pension payment under the Railroad Retirement Act or benefit under the Railroad Unemployment Insurance Act.

(3) Increase in levy for certain payments

Paragraph (1) shall be applied by substituting "100 percent" for "15 percent" in the case of any specified payment due to a vendor of property, goods, or services sold or leased to the Federal Government.

(i) No levy during pendency of proceedings for refund of divisible tax

(1) In general

No levy may be made under subsection (a) on the property or rights to property of any person with respect to any unpaid divisible tax during the pendency of any proceeding brought by such person in a proper Federal trial court for the recovery of any portion of such divisible tax which was paid by such person if—

(A) the decision in such proceeding would be res judicata with respect to such unpaid tax; or

(B) such person would be collaterally estopped from contesting such unpaid tax by reason of such proceeding.

(2) Divisible tax

For purposes of paragraph (1), the term "divisible tax" means—

(A) any tax imposed by subtitle C; and

(B) the penalty imposed by section 6672 with respect to any such tax.

(3) Exceptions

(A) Certain unpaid taxes

This subsection shall not apply with respect to any unpaid tax if—

(i) the taxpayer files a written notice with the Secretary which waives the restriction imposed by this subsection on levy with respect to such tax; or

(ii) the Secretary finds that the collection of such tax is in jeopardy.

(B) Certain levies

This subsection shall not apply to—

(i) any levy to carry out an offset under section 6402; and

(ii) any levy which was first made before the date that the applicable proceeding under this subsection commenced.

(4) Limitation on collection activity; authority to enjoin collection

(A) Limitation on collection

No proceeding in court for the collection of any unpaid tax to which paragraph (1) applies

shall be begun by the Secretary during the pendency of a proceeding under such paragraph. This subparagraph shall not apply to—

(i) any counterclaim in a proceeding under such paragraph; or

(ii) any proceeding relating to a proceeding under such paragraph.

(B) Authority to enjoin

Notwithstanding section 7421(a), a levy or collection proceeding prohibited by this subsection may be enjoined (during the period such prohibition is in force) by the court in which the proceeding under paragraph (1) is brought.

(5) Suspension of statute of limitations on collection

The period of limitations under section 6502 shall be suspended for the period during which the Secretary is prohibited under this subsection from making a levy.

(6) Pendency of proceeding

For purposes of this subsection, a proceeding is pending beginning on the date such proceeding commences and ending on the date that a final order or judgment from which an appeal may be taken is entered in such proceeding.

(j) No levy before investigation of status of property

(1) In general

For purposes of applying the provisions of this subchapter, no levy may be made on any property or right to property which is to be sold under section 6335 until a thorough investigation of the status of such property has been completed.

(2) Elements in investigation

For purposes of paragraph (1), an investigation of the status of any property shall include—

(A) a verification of the taxpayer's liability;

(B) the completion of an analysis under subsection (f);

(C) the determination that the equity in such property is sufficient to yield net proceeds from the sale of such property to apply to such liability; and

(D) a thorough consideration of alternative collection methods.

(k) No levy while certain offers pending or installment agreement pending or in effect

(1) Offer-in-compromise pending

No levy may be made under subsection (a) on the property or rights to property of any person with respect to any unpaid tax—

(A) during the period that an offer-in-compromise by such person under section 7122 of such unpaid tax is pending with the Secretary; and

(B) if such offer is rejected by the Secretary, during the 30 days thereafter (and, if an appeal of such rejection is filed within such 30 days, during the period that such appeal is pending).

For purposes of subparagraph (A), an offer is pending beginning on the date the Secretary accepts such offer for processing.

(2) Installment agreements

No levy may be made under subsection (a) on the property or rights to property of any person with respect to any unpaid tax—

(A) during the period that an offer by such person for an installment agreement under section 6159 for payment of such unpaid tax is pending with the Secretary;

(B) if such offer is rejected by the Secretary, during the 30 days thereafter (and, if an appeal of such rejection is filed within such 30 days, during the period that such appeal is pending);

(C) during the period that such an installment agreement for payment of such unpaid tax is in effect; and

(D) if such agreement is terminated by the Secretary, during the 30 days thereafter (and, if an

appeal of such termination is filed within such 30 days, during the period that such appeal is pending).

(3) Certain rules to apply

Rules similar to the rules of—

(A) paragraphs (3) and (4) of subsection (i), and

(B) except in the case of paragraph (2)(C), paragraph (5) of subsection (i),

shall apply for purposes of this subsection.

(l) Cross references

(1) For provisions relating to jeopardy, see subchapter A of chapter 70.

(2) For proceedings applicable to sale of seized property see section 6335.

(3) For release and notice of release of levy, see section 6343.

(Aug. 16, 1954, ch. 736, 68A Stat. 783; Pub. L. 89–719, title I, §104(a), Nov. 2, 1966, 80 Stat. 1135; Pub. L. 92–178, title II, §211(a), Dec. 10, 1971, 85 Stat. 520; Pub. L. 94–455, title XII, §1209(d)(1), (2), (4), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1710, 1711, 1834; Pub. L. 97–248, title III, §349(a), Sept. 3, 1982, 96 Stat. 639; Pub. L. 98–369, div. A, title VII, §714(o), July 18, 1984, 98 Stat. 964; Pub. L. 100–647, title VI, §6236(a), (b), (d), Nov. 10, 1988, 102 Stat. 3737, 3739; Pub. L. 105–34, title X, §1024(a), Aug. 5, 1997, 111 Stat. 923; Pub. L. 105–206, title III, §§3433(a), 3444(a), 3462(b), title VI, §6010(f), July 22, 1998, 112 Stat. 759, 762, 765, 814; Pub. L. 106–554, §1(a)(7) [title III, §313(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–642; Pub. L. 107–147, title IV, §416(e)(1), Mar. 9, 2002, 116 Stat. 55; Pub. L. 108–357, title VIII, §887(a), Oct. 22, 2004, 118 Stat. 1641; Pub. L. 112–56, title III, §301(a), Nov. 21, 2011, 125 Stat. 733.)

REFERENCES IN TEXT

The Railroad Retirement Act, referred to in subsec. (h)(2)(C), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, §101, Oct. 16, 1974, 88 Stat. 1305, known as the Railroad Retirement Act of 1974, which is classified generally to subchapter IV (§231 et seq.) of chapter 9 of Title 45, Railroads. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

The Railroad Unemployment Insurance Act, referred to in subsec. (h)(2)(C), is act June 25, 1938, ch. 680, 52 Stat. 1094, as amended, which is classified principally to chapter 11 (§351 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 367 of Title 45 and Tables.

AMENDMENTS

2011—Subsec. (h)(3). Pub. L. 112–56 substituted "property, goods, or services" for "goods or services".

2004—Subsec. (h)(3). Pub. L. 108–357 added par. (3).

2002—Subsec. (k)(3). Pub. L. 107–147 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "Rules similar to the rules of paragraphs (3) and (4) of subsection (i) shall apply for purposes of this subsection."

2000—Subsec. (k)(3). Pub. L. 106–554 substituted "(3) and (4)" for "(3), (4), and (5)".

1998—Subsec. (h)(1). Pub. L. 105–206, §6010(f), substituted "If the Secretary approves a levy under this subsection, the effect of such levy" for "The effect of a levy".

Subsec. (i). Pub. L. 105–206, §3433(a), added subsec. (i). Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 105–206, §3444(a), added subsec. (j). Former subsec. (j) redesignated (k).

Pub. L. 105–206, §3433(a), redesignated subsec. (i) as (j).

Subsec. (k). Pub. L. 105–206, §3462(b), added subsec. (k). Former subsec. (k) redesignated (l).

Pub. L. 105–206, §3444(a), redesignated subsec. (j) as (k).

Subsec. (l). Pub. L. 105–206, §3462(b), redesignated subsec. (k) as (l).

1997—Subsecs. (h), (i). Pub. L. 105–34 added subsec. (h) and redesignated former subsec. (h) as (i).

1988—Subsec. (d)(2). Pub. L. 100–647, §6236(a)(1), (2), substituted "30-day" for "10-day" in heading and "30 days" for "10 days" in text.

Subsec. (d)(4). Pub. L. 100–647, §6236(a)(3), added par. (4).

Subsec. (e). Pub. L. 100–647, §6236(b)(1), amended subsec. (e) generally. Prior to amendment, subsec. (e) consisted of two pars. relating to effect of continuing levy on salary and wages and release and notice of release of levy.

Subsecs. (f), (g). Pub. L. 100–647, §6236(d), added subsecs. (f) and (g). Former subsec. (f) redesignated (h).

Subsec. (h). Pub. L. 100–647, §6236(b)(2), (d), redesignated subsec. (f) as (h) and added par. (3).

1984—Subsec. (b). Pub. L. 98–369 substituted "subsection (e)" for "subsection (d)(3)".

1982—Subsec. (d). Pub. L. 97–248 inserted authority to levy upon property other than salary or wages, substituted "person" for "individual" wherever appearing, designated second sentence of former par. (1) as par. (2) and in par. (2)(C) as so designated substituted "certified or registered mail" for "mail", and redesignated former par. (2) as (3) and former par. (3) as subsec. (e).

Subsec. (e). Pub. L. 97–248 redesignated former subsec. (d)(3) as (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 97–248 redesignated former subsec. (e) as (f).

1976—Subsec. (a). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary" wherever appearing.

Subsec. (b). Pub. L. 94–455, §§1209(d)(2), 1906(b)(13)(A), substituted in second sentence "Except as otherwise provided in subsection (d)(3), a levy" for "A levy" and struck out "or his delegate" after "Secretary".

Subsec. (c). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (d)(1). Pub. L. 94–455, §§1209(d)(4), 1906(b)(13)(A), struck out provision that no additional notice shall be required in the case of successive levies with respect to such tax and "or his delegate" after "Secretary".

Subsec. (d)(2). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (d)(3). Pub. L. 94–455, §1209(d)(1), added par. (3).

1971—Subsecs. (d), (e). Pub. L. 92–178 added subsec. (d) and redesignated former subsec. (d) as (e).

1966—Subsec. (b). Pub. L. 89–719 inserted sentence providing that a levy shall extend only to property possessed and obligations existing at the time thereof.

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112–56, title III, §301(b), Nov. 21, 2011, 125 Stat. 733, provided that: "The amendment made by this section [amending this section] shall apply to levies issued after the date of the enactment of this Act [Nov. 21, 2011]."

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §887(b), Oct. 22, 2004, 118 Stat. 1642, provided that: "The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Oct. 22, 2004]."

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title IV, §416(e)(2), Mar. 9, 2002, 116 Stat. 55, provided that: "The amendment made by this subsection [amending this section] shall take effect on the date of the enactment of this Act [Mar. 9, 2002]."

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–206, title III, §3433(b), July 22, 1998, 112 Stat. 760, provided that: "The amendment made by this section [amending this section] shall apply to unpaid tax attributable to taxable periods beginning after December 31, 1998."

Pub. L. 105–206, title III, §3444(b), July 22, 1998, 112 Stat. 762, provided that: "The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [July 22, 1998]."

Pub. L. 105–206, title III, §3462(e), July 22, 1998, 112 Stat. 766, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and sections 6159 and 7122 of this title] shall apply to proposed offers-in-compromise and installment agreements submitted after the date of the enactment of this Act [July 22, 1998].

"(2) SUSPENSION OF COLLECTION BY LEVY.—The amendment made by subsection (b) [amending this section] shall apply to offers-in-compromise pending on or made after December 31, 1999."

Amendment by section 6010(f) of Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title X, §1024(b), Aug. 5, 1997, 111 Stat. 924, provided that: "The amendment made by subsection (a) [amending this section] shall apply to levies issued after the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title VI, §6236(h), Nov. 10, 1988, 102 Stat. 3740, provided that:

"(1) IN GENERAL.—The amendments made by this section (other than subsection (g)) [amending this section and sections 6332, 6334, and 6343 of this title] shall apply to levies issued on or after July 1, 1989.

"(2) SUBSECTION (g).—The amendment made by subsection (g) [amending section 6335 of this title] shall apply to requests made on or after January 1, 1989."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title III, §349(b), Sept. 3, 1982, 96 Stat. 639, provided that: "The amendment made by subsection (a) [amending this section] shall apply to levies made after December 31, 1982."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1209(d)(1), (2), (4) of Pub. L. 94–455 effective only with respect to levies made after Feb. 28, 1977, see section 1209(e) of Pub. L. 94–455 as amended by section 2(c) of Pub. L. 94–528, Oct. 17, 1976, 90 Stat. 2483, set out as a note under section 6334 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Pub. L. 92–178, title II, §211(b), Dec. 10, 1971, 85 Stat. 520, provided that: "The amendments made by this section [amending this section] shall apply with respect to levies made after March 31, 1972."

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–719 applicable after Nov. 2, 1966, regardless of when title or lien of United States arose or when lien or interest of another person was acquired, with certain exceptions, see section 114(a)–(c) of Pub. L. 89–719, set out as a note under section 6323 of this title.

§6332. Surrender of property subject to levy

(a) Requirement

Except as otherwise provided in this section, any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made shall, upon demand of the Secretary, surrender such property or rights (or discharge such obligation) to the Secretary, except such part of the property or rights as is, at the time of such demand, subject to an attachment or execution under any judicial process.

(b) Special rule for life insurance and endowment contracts

(1) In general

A levy on an organization with respect to a life insurance or endowment contract issued by such organization shall, without necessity for the surrender of the contract document, constitute a demand by the Secretary for payment of the amount described in paragraph (2) and the exercise of the right of the person against whom the tax is assessed to the advance of such amount. Such organization shall pay over such amount 90 days after service of notice of levy. Such notice shall include a certification by the Secretary that a copy of such notice has been mailed to the person against whom the tax is assessed at his last known address.

(2) Satisfaction of levy

Such levy shall be deemed to be satisfied if such organization pays over to the Secretary the amount which the person against whom the tax is assessed could have had advanced to him by such organization on the date prescribed in paragraph (1) for the satisfaction of such levy, increased by the amount of any advance (including contractual interest thereon) made to such person on or after the date such organization had actual notice or knowledge (within the meaning of section 6323(i)(1)) of the existence of the lien with respect to which such levy is made, other

than an advance (including contractual interest thereon) made automatically to maintain such contract in force under an agreement entered into before such organization had such notice or knowledge.

(3) Enforcement proceedings

The satisfaction of a levy under paragraph (2) shall be without prejudice to any civil action for the enforcement of any lien imposed by this title with respect to such contract.

(c) Special rule for banks

Any bank (as defined in section 408(n)) shall surrender (subject to an attachment or execution under judicial process) any deposits (including interest thereon) in such bank only after 21 days after service of levy.

(d) Enforcement of levy

(1) Extent of personal liability

Any person who fails or refuses to surrender any property or rights to property, subject to levy, upon demand by the Secretary, shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of taxes for the collection of which such levy has been made, together with costs and interest on such sum at the underpayment rate established under section 6621 from the date of such levy (or, in the case of a levy described in section 6331(d)(3), from the date such person would otherwise have been obligated to pay over such amounts to the taxpayer). Any amount (other than costs) recovered under this paragraph shall be credited against the tax liability for the collection of which such levy was made.

(2) Penalty for violation

In addition to the personal liability imposed by paragraph (1), if any person required to surrender property or rights to property fails or refuses to surrender such property or rights to property without reasonable cause, such person shall be liable for a penalty equal to 50 percent of the amount recoverable under paragraph (1). No part of such penalty shall be credited against the tax liability for the collection of which such levy was made.

(e) Effect of honoring levy

Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made who, upon demand by the Secretary, surrenders such property or rights to property (or discharges such obligation) to the Secretary (or who pays a liability under subsection (d)(1)) shall be discharged from any obligation or liability to the delinquent taxpayer and any other person with respect to such property or rights to property arising from such surrender or payment.

(f) Person defined

The term "person," as used in subsection (a), includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to surrender the property or rights to property, or to discharge the obligation.

(Aug. 16, 1954, ch. 736, 68A Stat. 784; Pub. L. 89–719, title I, §104(b), Nov. 2, 1966, 80 Stat. 1135; Pub. L. 93–625, §7(a)(2)(D), Jan. 3, 1975, 88 Stat. 2115; Pub. L. 94–455, title XII, §1209(d)(3), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1710, 1834; Pub. L. 99–514, title XV, §1511(c)(9), Oct. 22, 1986, 100 Stat. 2745; Pub. L. 100–647, title I, §1015(t)(1), title VI, §6236(e), Nov. 10, 1988, 102 Stat. 3573, 3739; Pub. L. 101–508, title XI, §11704(a)(27), Nov. 5, 1990, 104 Stat. 1388–519.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–508 substituted "this section" for "subsections (b) and (c)".

1988—Subsec. (a). Pub. L. 100–647, §6236(e)(2)(A), substituted "subsections (b) and (c)" for "subsection (b)".

Subsec. (c). Pub. L. 100–647, §6236(e)(1), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 100–647, §6236(e)(1), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Pub. L. 100–647, §1015(t)(1), inserted "and any other person" after "delinquent taxpayer" and struck out sentence at end providing that in the case of a levy which is satisfied pursuant to subsection (b), such organization shall also be discharged from any obligation or liability to any beneficiary arising from such surrender or payment.

Subsec. (e). Pub. L. 100–647, §6236(e)(1), (2)(B), redesignated subsec. (d) as (e) and substituted "subsection (d)(1)" for "subsection (c)(1)". Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 100–647, §6236(e)(1), redesignated subsec. (e) as (f).

1986—Subsec. (c)(1). Pub. L. 99–514 substituted "the underpayment rate established under section 6621" for "an annual rate established under section 6621".

1976—Subsecs. (a), (b). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary" wherever appearing.

Subsec. (c)(1). Pub. L. 94–455, §§1209(d)(3), 1906(b)(13)(A), inserted "(or, in the case of a levy described in section 6331(d)(3), from the date such person would otherwise have been obligated to pay over such amounts to the taxpayer)" after "date of such levy", and struck out "or his delegate" after "Secretary".

Subsec. (d). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

1975—Subsec. (c)(1). Pub. L. 93–625 substituted "an annual rate established under section 6621" for "the rate of 6 percent per annum".

1966—Subsec. (a). Pub. L. 89–719, §104(b)(1), substituted "Except as otherwise provided in subsection (b), any person" for "Any person".

Subsec. (b). Pub. L. 89–719, §104(b)(2), added subsec. (b). Former subsec. (b) redesignated, with amendments, as subsec. (c)(1).

Subsec. (c). Pub. L. 89–719, §104(b)(2)–(4), redesignated as par. (1) provisions formerly set out as subsec. (b), inserted provisions that any amount other than costs recovered under par. (1) shall be credited against the tax liability for the collection of which the levy was made, and added par. (2). Former subsec. (c) redesignated (e).

Subsec. (d). Pub. L. 89–719, §104(b)(4), added subsec. (d).

Subsec. (e). Pub. L. 89–719, §104(b)(3), redesignated former subsec. (c) as (e).

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1015(t)(2), Nov. 10, 1988, 102 Stat. 3573, provided that: "The amendment made by this subsection [amending this section] shall apply to levies issued after the date of the enactment of this Act [Nov. 10, 1988]."

Amendment by section 6236(e) of Pub. L. 100–647 applicable to levies issued on or after July 1, 1989, see section 6236(h)(1) of Pub. L. 100–647, set out as a note under section 6331 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable for purposes of determining interest for periods after Dec. 31, 1986, see section 1511(d) of Pub. L. 99–514, set out as a note under section 47 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1209(d)(3) of Pub. L. 94–455 effective only with respect to levies made after Feb. 28, 1977, see section 1209(e) of Pub. L. 94–455, as amended by section 2(c) of Pub. L. 94–528, Oct. 17, 1976, 90 Stat. 2483, set out as a note under section 6334 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–625 effective July 1, 1975, and applicable to amounts outstanding on such date or arising thereafter, see section 7(e) of Pub. L. 93–625, set out as an Effective Date note under section 6621 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–719 applicable after Nov. 2, 1966, regardless of when title or lien of United States arose or when lien or interest of another person was acquired, with certain exceptions, see section 114(a)–(c) of Pub. L. 89–719, set out as a note under section 6323 of this title.

§6333. Production of books

If a levy has been made or is about to be made on any property, or right to property, any person having custody or control of any books or records, containing evidence or statements relating to the property or right to property subject to levy, shall, upon demand of the Secretary, exhibit such books or records to the Secretary.

(Aug. 16, 1954, ch. 736, 68A Stat. 784; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

§6334. Property exempt from levy

(a) Enumeration

There shall be exempt from levy—

(1) Wearing apparel and school books

Such items of wearing apparel and such school books as are necessary for the taxpayer or for members of his family;

(2) Fuel, provisions, furniture, and personal effects

So much of the fuel, provisions, furniture, and personal effects in the taxpayer's household, and of the arms for personal use, livestock, and poultry of the taxpayer, as does not exceed $6,250 in value;

(3) Books and tools of a trade, business, or profession

So many of the books and tools necessary for the trade, business, or profession of the taxpayer as do not exceed in the aggregate $3,125 in value.

(4) Unemployment benefits

Any amount payable to an individual with respect to his unemployment (including any portion thereof payable with respect to dependents) under an unemployment compensation law of the United States, of any State, or of the District of Columbia or of the Commonwealth of Puerto Rico.

(5) Undelivered mail

Mail, addressed to any person, which has not been delivered to the addressee.

(6) Certain annuity and pension payments

Annuity or pension payments under the Railroad Retirement Act, benefits under the Railroad Unemployment Insurance Act, special pension payments received by a person whose name has been entered on the Army, Navy, Air Force, and Coast Guard Medal of Honor roll (38 U.S.C. 1562), and annuities based on retired or retainer pay under chapter 73 of title 10 of the United States Code.

(7) Workmen's compensation

Any amount payable to an individual as workmen's compensation (including any portion thereof payable with respect to dependents) under a workmen's compensation law of the United States, any State, the District of Columbia, or the Commonwealth of Puerto Rico.

(8) Judgments for support of minor children

If the taxpayer is required by judgment of a court of competent jurisdiction, entered prior to the date of levy, to contribute to the support of his minor children, so much of his salary, wages, or other income as is necessary to comply with such judgment.

(9) Minimum exemption for wages, salary, and other income

Any amount payable to or received by an individual as wages or salary for personal services, or

as income derived from other sources, during any period, to the extent that the total of such amounts payable to or received by him during such period does not exceed the applicable exempt amount determined under subsection (d).

(10) Certain service-connected disability payments

Any amount payable to an individual as a service-connected (within the meaning of section 101(16) of title 38, United States Code) disability benefit under—

(A) subchapter II, III, IV, V,,[1] or VI of chapter 11 of such title 38, or

(B) chapter 13, 21, 23, 31, 32, 34, 35, 37, or 39 of such title 38.

(11) Certain public assistance payments

Any amount payable to an individual as a recipient of public assistance under—

(A) title IV or title XVI (relating to supplemental security income for the aged, blind, and disabled) of the Social Security Act, or

(B) State or local government public assistance or public welfare programs for which eligibility is determined by a needs or income test.

(12) Assistance under Job Training Partnership Act

Any amount payable to a participant under the Job Training Partnership Act (29 U.S.C. 1501 et seq.) from funds appropriated pursuant to such Act.

(13) Residences exempt in small deficiency cases and principal residences and certain business assets exempt in absence of certain approval or jeopardy

(A) Residences in small deficiency cases

If the amount of the levy does not exceed $5,000—

(i) any real property used as a residence by the taxpayer; or

(ii) any real property of the taxpayer (other than real property which is rented) used by any other individual as a residence.

(B) Principal residences and certain business assets

Except to the extent provided in subsection (e)—

(i) the principal residence of the taxpayer (within the meaning of section 121); and

(ii) tangible personal property or real property (other than real property which is rented) used in the trade or business of an individual taxpayer.

(b) Appraisal

The officer seizing property of the type described in subsection (a) shall appraise and set aside to the owner the amount of such property declared to be exempt. If the taxpayer objects at the time of the seizure to the valuation fixed by the officer making the seizure, the Secretary shall summon three disinterested individuals who shall make the valuation.

(c) No other property exempt

Notwithstanding any other law of the United States (including section 207 of the Social Security Act), no property or rights to property shall be exempt from levy other than the property specifically made exempt by subsection (a).

(d) Exempt amount of wages, salary, or other income

(1) Individuals on weekly basis

In the case of an individual who is paid or receives all of his wages, salary, and other income on a weekly basis, the amount of the wages, salary, and other income payable to or received by him during any week which is exempt from levy under subsection (a)(9) shall be the exempt amount.

(2) Exempt amount

For purposes of paragraph (1), the term "exempt amount" means an amount equal to—

(A) the sum of—

(i) the standard deduction, and

(ii) the aggregate amount of the deductions for personal exemptions allowed the taxpayer under section 151 in the taxable year in which such levy occurs, divided by

(B) 52.

Unless the taxpayer submits to the Secretary a written and properly verified statement specifying the facts necessary to determine the proper amount under subparagraph (A), subparagraph (A) shall be applied as if the taxpayer were a married individual filing a separate return with only 1 personal exemption.

(3) Individuals on basis other than weekly

In the case of any individual not described in paragraph (1), the amount of the wages, salary, and other income payable to or received by him during any applicable pay period or other fiscal period (as determined under regulations prescribed by the Secretary) which is exempt from levy under subsection (a)(9) shall be an amount (determined under such regulations) which as nearly as possible will result in the same total exemption from levy for such individual over a period of time as he would have under paragraph (1) if (during such period of time) he were paid or received such wages, salary, and other income on a regular weekly basis.

(e) Levy allowed on principal residences and certain business assets in certain circumstances

(1) Principal residences

(A) Approval required

A principal residence shall not be exempt from levy if a judge or magistrate of a district court of the United States approves (in writing) the levy of such residence.

(B) Jurisdiction

The district courts of the United States shall have exclusive jurisdiction to approve a levy under subparagraph (A).

(2) Certain business assets

Property (other than a principal residence) described in subsection (a)(13)(B) shall not be exempt from levy if—

(A) a district director or assistant district director of the Internal Revenue Service personally approves (in writing) the levy of such property; or

(B) the Secretary finds that the collection of tax is in jeopardy.

An official may not approve a levy under subparagraph (A) unless the official determines that the taxpayer's other assets subject to collection are insufficient to pay the amount due, together with expenses of the proceedings.

(f) Levy allowed on certain specified payments

Any payment described in subparagraph (B) or (C) of section 6331(h)(2) shall not be exempt from levy if the Secretary approves the levy thereon under section 6331(h).

(g) Inflation adjustment

(1) In general

In the case of any calendar year beginning after 1999, each dollar amount referred to in paragraphs (2) and (3) of subsection (a) shall be increased by an amount equal to—

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, by substituting "calendar year 1998" for "calendar year 1992" in subparagraph (B) thereof.

(2) Rounding

If any dollar amount after being increased under paragraph (1) is not a multiple of $10, such dollar amount shall be rounded to the nearest multiple of $10.

(Aug. 16, 1954, ch. 736, 68A Stat. 784; Pub. L. 85–840, title IV, §406, Aug. 28, 1958, 72 Stat. 1047; Pub. L. 89–44, title VIII, §812(a), June 21, 1965, 79 Stat. 170; Pub. L. 89–719, title I, §104(c), Nov. 2, 1966, 80 Stat. 1137; Pub. L. 91–172, title IX, §945(a), Dec. 30, 1969, 83 Stat. 729; Pub. L. 94–455, title XII, §1209(a)–(c), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1709, 1710, 1834; Pub. L. 97–248, title III, §347(a), Sept. 3, 1982, 96 Stat. 638; Pub. L. 98–369, div. B, title VI, §2661(o)(5), July 18, 1984, 98 Stat. 1159; Pub. L. 99–514, title XV, §1565(a), Oct. 22, 1986, 100 Stat. 2763; Pub. L. 100–647, title I, §1015(o), title VI, §6236(c), Nov. 10, 1988, 102 Stat. 3572, 3738; Pub. L. 102–83, §5(c)(2), Aug. 6, 1991, 105 Stat. 406; Pub. L. 104–168, title V, §502(a)–(c), July 30, 1996, 110 Stat. 1461; Pub. L. 104–193, title I, §110(l)(3), formerly §110(l)(6), Aug. 22, 1996, 110 Stat. 2173, renumbered and amended Pub. L. 105–33, title V, §5514(a)(2), (3), Aug. 5, 1997, 111 Stat. 620; Pub. L. 105–34, title III, §312(d)(1), title X, §1025(a), Aug. 5, 1997, 111 Stat. 839, 924; Pub. L. 105–206, title III, §§3431(a)–(c), 3445(a), (b), July 22, 1998, 112 Stat. 758, 762, 763.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

REFERENCES IN TEXT

The Railroad Retirement Act, referred to in subsec. (a)(6), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, §101, Oct. 16, 1974, 88 Stat. 1305, known as the Railroad Retirement Act of 1974, which is classified generally to subchapter IV (§231 et seq.) of chapter 9 of Title 45, Railroads. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

The Railroad Unemployment Insurance Act, referred to in subsec. (a)(6), is act June 25, 1938, ch. 680, 52 Stat. 1094, as amended, which is classified principally to chapter 11 (§351 et seq.) of Title 45. For complete classification of this Act to the Code, see section 367 of Title 45 and Tables.

The Social Security Act, referred to in subsecs. (a)(11)(A) and (c), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles IV and XVI of the Social Security Act are classified generally to subchapters IV (§601 et seq.) and XVI (§1381 et seq.), respectively, of chapter 7 of Title 42, The Public Health and Welfare. Section 207 of the Social Security Act is classified to section 407 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Job Training Partnership Act, referred to in subsec. (a)(12), is Pub. L. 97–300, Oct. 13, 1982, 96 Stat. 1322, as amended, which was classified generally to chapter 19 (§1501 et seq.) of Title 29, Labor, and was repealed by Pub. L. 105–220, title I, §199(b)(2), (c)(2)(B), Aug. 7, 1998, 112 Stat. 1059, effective July 1, 2000. Pursuant to section 2940(b) of Title 29, references to a provision of the Job Training Partnership Act, effective Aug. 7, 1998, are deemed to refer to that provision or the corresponding provision of the Workforce Investment Act of 1998, Pub. L. 105–220, Aug. 7, 1998, 112 Stat. 936, and effective July 1, 2000, are deemed to refer to the corresponding provision of the Workforce Investment Act of 1998. For complete classification of the Job Training Partnership Act to the Code, see Tables. For complete classification of the Workforce Investment Act of 1998 to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

AMENDMENTS

1998—Subsec. (a)(2). Pub. L. 105–206, §3431(a), substituted "$6,250" for "$2,500".

Subsec. (a)(3). Pub. L. 105–206, §3431(b), substituted "$3,125" for "$1,250".

Subsec. (a)(13). Pub. L. 105–206, §3445(a), amended heading and text of par. (13) generally. Prior to amendment, text read as follows: "Except to the extent provided in subsection (e), the principal residence of the taxpayer (within the meaning of section 121)."

Subsec. (e). Pub. L. 105–206, §3445(b), amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows: "Property described in subsection (a)(13) shall not be exempt from levy if—

"(1) a district director or assistant district director of the Internal Revenue Service personally approves (in writing) the levy of such property, or

"(2) the Secretary finds that the collection of tax is in jeopardy."

Subsec. (g)(1). Pub. L. 105–206, §3431(c)(1), substituted "1999" for "1997" in introductory provisions.

Subsec. (g)(1)(B). Pub. L. 105–206, §3431(c)(2), substituted "1998" for "1996".

1997—Subsec. (a)(11)(A). Pub. L. 105–33, §5514(a)(3), made technical amendment to directory language

of Pub. L. 104–193, §110(l)(3). See 1996 Amendment note below.

Subsec. (a)(13). Pub. L. 105–34, §312(d)(1), substituted "section 121" for "section 1034".

Subsecs. (f), (g). Pub. L. 105–34 added subsec. (f) and redesignated former subsec. (f) as (g).

1996—Subsec. (a)(2). Pub. L. 104–168, §502(a), substituted "So" for "If the taxpayer is the head of a family, so", "the taxpayer's household" for "his household", and "$2,500" for "$1,650 ($1,550 in the case of levies issued during 1989)".

Subsec. (a)(3). Pub. L. 104–168, §502(b), substituted "$1,250" for "$1,100 ($1,050 in the case of levies issued during 1989)".

Subsec. (a)(11)(A). Pub. L. 104–193, §110(l)(3), formerly §110(l)(6), as renumbered and amended by Pub. L. 105–33, struck out "(relating to aid to families with dependent children)" after "title IV".

Subsec. (f). Pub. L. 104–168, §502(c), added subsec. (f).

1991—Subsec. (a)(6). Pub. L. 102–83 substituted "1562" for "562".

1988—Subsec. (a)(2). Pub. L. 100–647, §6236(c)(1), substituted "$1,650 ($1,550 in the case of levies issued during 1989)" for "$1,500".

Subsec. (a)(3). Pub. L. 100–647, §6236(c)(2), substituted "$1,100 ($1,050 in the case of levies issued during 1989)" for "$1,000".

Subsec. (a)(10)(A). Pub. L. 100–647, §1015(o)(1), substituted "III, IV, V," for "IV" and added "or" at end.

Subsec. (a)(10)(B), (C). Pub. L. 100–647, §1015(o)(2), (3), redesignated subpar. (C) as (B) and substituted "13, 21, 23" for "21", and struck out former subpar. (B), which read as follows: "subchapter I, II, or III of chapter 19 of such title 38, or".

Subsec. (a)(11) to (13). Pub. L. 100–647, §6236(c)(4)(A), added pars. (11) to (13).

Subsec. (d)(1). Pub. L. 100–647, §6236(c)(3)(A), amended par. (1) generally, striking out after introductory provisions the following definition of exempt amount:

"(A) $75, plus

"(B) $25 for each individual who is specified in a written statement which is submitted to the person on whom notice of levy is served and which is verified in such manner as the Secretary shall prescribe by regulations and—

"(i) over half of whose support for the payroll period was received from the taxpayer,

"(ii) who is the spouse of the taxpayer, or who bears a relationship to the taxpayer specified in paragraphs (1) through (9) of section 152(a) (relating to definition of dependents), and

"(iii) who is not a minor child of the taxpayer with respect to whom amounts are exempt from levy under subsection (a)(8) for the payroll period.

For purposes of subparagraph (B)(ii) of the preceding sentence, 'payroll period' shall be substituted for 'taxable year' each place it appears in paragraph (9) of section 152(a)."

Subsec. (d)(2), (3). Pub. L. 100–647, §6236(c)(3)(B), added par. (2) and redesignated former par. (2) as (3).

Subsec. (e). Pub. L. 100–647, §6236(c)(4)(B), added subsec. (e).

1986—Subsec. (a)(10). Pub. L. 99–514 added par. (10).

1984—Subsec. (c). Pub. L. 98–369 inserted "(including section 207 of the Social Security Act)".

1982—Subsec. (a)(2). Pub. L. 97–248, §347(a)(1), substituted "$1,500" for "$500".

Subsec. (a)(3). Pub. L. 97–248, §347(a)(2), substituted "$1,000" for "$250".

Subsec. (d)(1)(A). Pub. L. 97–248, §347(a)(3)(A), substituted "$75" for "$50".

Subsec. (d)(1)(B). Pub. L. 97–248, §347(a)(3)(B), substituted "$25" for "$15".

1976—Subsec. (a)(8). Pub. L. 94–455, §1209(c), substituted "Judgments for support of minor children" for "Salary, wages, or other income" in heading.

Subsec. (a)(9). Pub. L. 94–455, §1209(a), added par. (9).

Subsec. (b). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (d). Pub. L. 94–455, §1209(b), added subsec. (d).

1969—Subsec. (a)(8). Pub. L. 91–172 added par. (8).

1966—Subsec. (a)(4). Pub. L. 89–719, §104(c)(1), struck out "or Territory" after "of any State".

Subsec. (a)(6), (7). Pub. L. 89–719, §104(c)(2), added pars. (6) and (7).

1965—Subsec. (a)(5). Pub. L. 89–44 added par. (5).

1958—Subsec. (a)(4). Pub. L. 85–840 added par. (4).

CHANGE OF NAME

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–206, title III, §3431(d), July 22, 1998, 112 Stat. 758, provided that: "The amendments made by this section [amending this section] shall take effect with respect to levies issued after the date of the enactment of this Act [July 22, 1998]."

Pub. L. 105–206, title III, §3445(d), July 22, 1998, 112 Stat. 763, provided that: "The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [July 22, 1998]."

EFFECTIVE DATE OF 1997 AMENDMENTS

Amendment by section 312(d)(1) of Pub. L. 105–34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d) of Pub. L. 105–34, set out as a note under section 121 of this title.

Pub. L. 105–34, title X, §1025(b), Aug. 5, 1997, 111 Stat. 924, provided that: "The amendment made by subsection (a) [amending this section] shall apply to levies issued after the date of the enactment of this Act [Aug. 5, 1997]."

Amendment by Pub. L. 105–33 effective as if included in section 110 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, at the time such section 110 became law, see section 5518(c) of Pub. L. 105–33, set out as a note under section 51 of this title.

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by section 110(l)(3) of Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of Title 42, The Public Health and Welfare.

Pub. L. 104–168, title V, §502(d), July 30, 1996, 110 Stat. 1461, provided that: "The amendments made by this section [amending this section] shall take effect with respect to levies issued after December 31, 1996."

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1015(o), Nov. 10, 1988, 102 Stat. 3572, provided that the amendment made by that section is effective with respect to levies made after Dec. 31, 1988.

Amendment by section 6236(c) of Pub. L. 100–647 applicable to levies issued on or after July 1, 1989, see section 6236(h)(1) of Pub. L. 100–647, set out as a note under section 6331 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XV, §1565(b), Oct. 22, 1986, 100 Stat. 2763, provided that: "The amendment made by this section [amending this section] shall apply to amounts payable after December 31, 1986."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98–21, see section 2664(a) of Pub. L. 98–369, set out as a note under section 401 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title III, §347(b), Sept. 3, 1982, 96 Stat. 638, provided that: "The amendments made by subsection (a) [amending this section] shall apply to levies made after December 31, 1982."

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XII, §1209(e), Oct. 4, 1976, 90 Stat. 1711, as amended by Pub. L. 94–528, §2(c), Oct. 17, 1976, 90 Stat. 2483, provided that: "The amendments made by this section [amending this section and sections 6331 and 6332 of this title] shall apply only with respect to levies made after February 28, 1977."

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title IX, §945(b), Dec. 30, 1969, 83 Stat. 729, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to levies made 30 days or more after the date of the enactment of this Act [Dec. 30, 1969]."

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–719 applicable after Nov. 2, 1966, regardless of when title or lien of United States arose or when lien or interest of another person was acquired, with certain exceptions, see section 114(a)–(c) of Pub. L. 89–719, set out as a note under section 6323 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Pub. L. 89–44, title VIII, §812(b), June 21, 1965, 79 Stat. 170, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [June 21, 1965]."

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

STATE FISH AND WILDLIFE PERMITS

Pub. L. 105–206, title III, §3445(c), July 22, 1998, 112 Stat. 763, provided that:

"(1) IN GENERAL.—With respect to permits issued by a State and required under State law for the harvest of fish or wildlife in the trade or business of an individual taxpayer, the term 'other assets' as used in section 6334(e)(2) of the Internal Revenue Code of 1986 shall include future income which may be derived by such taxpayer from the commercial sale of fish or wildlife under such permit.

"(2) CONSTRUCTION.—Paragraph (1) shall not be construed to invalidate or in any way prejudice any assertion that the privilege embodied in permits described in paragraph (1) is not property or a right to property under the Internal Revenue Code of 1986."

[1] *So in original.*

§6335. Sale of seized property

(a) Notice of seizure

As soon as practicable after seizure of property, notice in writing shall be given by the Secretary to the owner of the property (or, in the case of personal property, the possessor thereof), or shall be left at his usual place of abode or business if he has such within the internal revenue district where the seizure is made. If the owner cannot be readily located, or has no dwelling or place of business within such district, the notice may be mailed to his last known address. Such notice shall specify the sum demanded and shall contain, in the case of personal property, an account of the property seized and, in the case of real property, a description with reasonable certainty of the property seized.

(b) Notice of sale

The Secretary shall as soon as practicable after the seizure of the property give notice to the owner, in the manner prescribed in subsection (a), and shall cause a notification to be published in some newspaper published or generally circulated within the county wherein such seizure is made, or if there be no newspaper published or generally circulated in such county, shall post such notice at the post office nearest the place where the seizure is made, and in not less than two other public places. Such notice shall specify the property to be sold, and the time, place, manner, and conditions of the sale thereof. Whenever levy is made without regard to the 10-day period provided in section 6331(a), public notice of sale of the property seized shall not be made within such 10-day period unless section 6336 (relating to sale of perishable goods) is applicable.

(c) Sale of indivisible property

If any property liable to levy is not divisible, so as to enable the Secretary by sale of a part thereof to raise the whole amount of the tax and expenses, the whole of such property shall be sold.

(d) Time and place of sale

The time of sale shall not be less than 10 days nor more than 40 days from the time of giving public notice under subsection (b). The place of sale shall be within the county in which the property is seized, except by special order of the Secretary.

(e) Manner and conditions of sale

(1) In general

(A) Determinations relating to minimum price

Before the sale of property seized by levy, the Secretary shall determine—

(i) a minimum price below which such property shall not be sold (taking into account the expense of making the levy and conducting the sale), and

(ii) whether, on the basis of criteria prescribed by the Secretary, the purchase of such property by the United States at such minimum price would be in the best interest of the United States.

(B) Sale to highest bidder at or above minimum price

If, at the sale, one or more persons offer to purchase such property for not less than the amount of the minimum price, the property shall be declared sold to the highest bidder.

(C) Property deemed sold to United States at minimum price in certain cases

If no person offers the amount of the minimum price for such property at the sale and the Secretary has determined that the purchase of such property by the United States would be in the best interest of the United States, the property shall be declared to be sold to the United States at such minimum price.

(D) Release to owner in other cases

If, at the sale, the property is not declared sold under subparagraph (B) or (C), the property shall be released to the owner thereof and the expense of the levy and sale shall be added to the amount of tax for the collection of which the levy was made. Any property released under this subparagraph shall remain subject to any lien imposed by subchapter C.

(2) Additional rules applicable to sale

The Secretary shall by regulations prescribe the manner and other conditions of the sale of property seized by levy. If one or more alternative methods or conditions are permitted by regulations, the Secretary shall select the alternatives applicable to the sale. Such regulations shall provide:

(A) That the sale shall not be conducted in any manner other than—

(i) by public auction, or

(ii) by public sale under sealed bids.

(B) In the case of the seizure of several items of property, whether such items shall be offered separately, in groups, or in the aggregate; and whether such property shall be offered both separately (or in groups) and in the aggregate, and sold under whichever method produces the highest aggregate amount.

(C) Whether the announcement of the minimum price determined by the Secretary may be delayed until the receipt of the highest bid.

(D) Whether payment in full shall be required at the time of acceptance of a bid, or whether a part of such payment may be deferred for such period (not to exceed 1 month) as may be determined by the Secretary to be appropriate.

(E) The extent to which methods (including advertising) in addition to those prescribed in subsection (b) may be used in giving notice of the sale.

(F) Under what circumstances the Secretary may adjourn the sale from time to time (but such adjournments shall not be for a period to exceed in all 1 month).

(3) Payment of amount bid

If payment in full is required at the time of acceptance of a bid and is not then and there paid, the Secretary shall forthwith proceed to again sell the property in the manner provided in this subsection. If the conditions of the sale permit part of the payment to be deferred, and if such part is not paid within the prescribed period, suit may be instituted against the purchaser for the

purchase price or such part thereof as has not been paid, together with interest at the rate of 6 percent per annum from the date of the sale; or, in the discretion of the Secretary, the sale may be declared by the Secretary to be null and void for failure to make full payment of the purchase price and the property may again be advertised and sold as provided in subsections (b) and (c) and this subsection. In the event of such readvertisement and sale any new purchaser shall receive such property or rights to property, free and clear of any claim or right of the former defaulting purchaser, of any nature whatsoever, and the amount paid upon the bid price by such defaulting purchaser shall be forfeited.

(4) Cross reference

For provision providing for civil damages for violation of paragraph (1)(A)(i), see section 7433.

(f) Right to request sale of seized property within 60 days

The owner of any property seized by levy may request that the Secretary sell such property within 60 days after such request (or within such longer period as may be specified by the owner). The Secretary shall comply with such request unless the Secretary determines (and notifies the owner within such period) that such compliance would not be in the best interests of the United States.

(g) Stay of sale of seized property pending Tax Court decision

For restrictions on sale of seized property pending Tax Court decision, see section 6863(b)(3).

(Aug. 16, 1954, ch. 736, 68A Stat. 785; Pub. L. 89–719, title I, §104(d), Nov. 2, 1966, 80 Stat. 1137; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 99–514, title XV, §1570(a), Oct. 22, 1986, 100 Stat. 2764; Pub. L. 100–647, title VI, §6236(g), Nov. 10, 1988, 102 Stat. 3740; Pub. L. 105–206, title III, §3441(a), (b), July 22, 1998, 112 Stat. 761.)

AMENDMENTS

1998—Subsec. (e)(1)(A)(i). Pub. L. 105–206, §3441(a), substituted "a minimum price below which such property shall not be sold" for "a minimum price for which such property shall be sold".

Subsec. (e)(4). Pub. L. 105–206, §3441(b), added par. (4).

1988—Subsecs. (f), (g). Pub. L. 100–647 added subsec. (f) and redesignated former subsec. (f) as (g).

1986—Subsec. (e)(1). Pub. L. 99–514 amended par. (1) generally. Prior to amendment, par. (1) "Minimum price" read as follows: "Before the sale the Secretary shall determine a minimum price for which the property shall be sold, and if no person offers for such property at the sale the amount of the minimum price, the property shall be declared to be purchased at such price for the United States; otherwise the property shall be declared to be sold to the highest bidder. In determining the minimum price, the Secretary shall take into account the expense of making the levy and sale."

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

1966—Subsec. (b). Pub. L. 89–719 inserted an alternative to the publication of notice of sale to allow publication in a newspaper generally circulated within the county in which the property is seized even though the newspaper is not published in such county.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–206, title III, §3441(c), July 22, 1998, 112 Stat. 761, provided that: "The amendments made by this section [amending this section] shall apply to sales made after the date of the enactment of this Act [July 22, 1998]."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 applicable to requests made on or after Jan. 1, 1989, see section 6236(h)(2) of Pub. L. 100–647, set out as a note under section 6331 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XV, §1570(b), Oct. 22, 1986, 100 Stat. 2765, provided that: "The amendment made by subsection (a) [amending this section] shall apply to—

"(1) property seized after the date of the enactment of this Act [Oct. 22, 1986], and

"(2) property seized on or before such date which is held by the United States on such date."

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–719 applicable after Nov. 2, 1966, regardless of when title or lien of United States arose or when lien or interest of another person was acquired, with certain exceptions, see section 114(a)–(c) of Pub. L. 89–719, set out as a note under section 6323 of this title.

UNIFORM ASSET DISPOSAL MECHANISM

Pub. L. 105–206, title III, §3443, July 22, 1998, 112 Stat. 762, provided that: "Not later than the date which is 2 years after the date of the enactment of this Act [July 22, 1998], the Secretary of the Treasury or the Secretary's delegate shall implement a uniform asset disposal mechanism for sales under section 6335 of the Internal Revenue Code of 1986. The mechanism should be designed to remove any participation in such sales by revenue officers of the Internal Revenue Service and should consider the use of outsourcing."

§6336. Sale of perishable goods

If the Secretary determines that any property seized is liable to perish or become greatly reduced in price or value by keeping, or that such property cannot be kept without great expense, he shall appraise the value of such property and—

(1) Return to owner

If the owner of the property can be readily found, the Secretary shall give him notice of such determination of the appraised value of the property. The property shall be returned to the owner if, within such time as may be specified in the notice, the owner—

(A) Pays to the Secretary an amount equal to the appraised value, or

(B) Gives bond in such form, with such sureties, and in such amount as the Secretary shall prescribe, to pay the appraised amount at such time as the Secretary determines to be appropriate in the circumstances.

(2) Immediate sale

If the owner does not pay such amount or furnish such bond in accordance with this section, the Secretary shall as soon as practicable make public sale of the property in accordance with such regulations as may be prescribed by the Secretary.

(Aug. 16, 1954, ch. 736, 68A Stat. 786; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

§6337. Redemption of property

(a) Before sale

Any person whose property has been levied upon shall have the right to pay the amount due, together with the expenses of the proceeding, if any, to the Secretary at any time prior to the sale thereof, and upon such payment the Secretary shall restore such property to him, and all further proceedings in connection with the levy on such property shall cease from the time of such payment.

(b) Redemption of real estate after sale

(1) Period

The owners of any real property sold as provided in section 6335, their heirs, executors, or administrators, or any person having any interest therein, or a lien thereon, or any person in their behalf, shall be permitted to redeem the property sold, or any particular tract of such property, at any time within 180 days after the sale thereof.

(2) Price

Such property or tract of property shall be permitted to be redeemed upon payment to the

purchaser, or in case he cannot be found in the county in which the property to be redeemed is situated, then to the Secretary, for the use of the purchaser, his heirs, or assigns, the amount paid by such purchaser and interest thereon at the rate of 20 percent per annum.

(c) Record

When any lands sold are redeemed as provided in this section, the Secretary shall cause entry of the fact to be made upon the record mentioned in section 6340, and such entry shall be evidence of such redemption.

(Aug. 16, 1954, ch. 736, 68A Stat. 787; Pub. L. 89–719, title I, §104(e), Nov. 2, 1966, 80 Stat. 1137; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–248, title III, §349A(a), Sept. 3, 1982, 96 Stat. 639.)

AMENDMENTS

1982—Subsec. (b)(1). Pub. L. 97–248 substituted "180 days" for "120 days".
1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.
1966—Subsec. (b)(1). Pub. L. 89–719 substituted "120 days" for "1 year".

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title III, §349A(b), Sept. 3, 1982, 96 Stat. 639, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to property sold after the date of the enactment of this Act [Sept. 3, 1982]."

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–719 applicable after Nov. 2, 1966, regardless of when title or lien of United States arose or when lien or interest of another person was acquired, with certain exceptions, see section 114(a)–(c) of Pub. L. 89–719, set out as a note under section 6323 of this title.

§6338. Certificate of sale; deed of real property

(a) Certificate of sale

In the case of property sold as provided in section 6335, the Secretary shall give to the purchaser a certificate of sale upon payment in full of the purchase price. In the case of real property, such certificate shall set forth the real property purchased, for whose taxes the same was sold, the name of the purchaser, and the price paid therefor.

(b) Deed to real property

In the case of any real property sold as provided in section 6335 and not redeemed in the manner and within the time provided in section 6337, the Secretary shall execute (in accordance with the laws of the State in which such real property is situated pertaining to sales of real property under execution) to the purchaser of such real property at such sale, upon his surrender of the certificate of sale, a deed of the real property so purchased by him, reciting the facts set forth in the certificate.

(c) Real property purchased by United States

If real property is declared purchased by the United States at a sale pursuant to section 6335, the Secretary shall at the proper time execute a deed therefor; and without delay cause such deed to be duly recorded in the proper registry of deeds.

(Aug. 16, 1954, ch. 736, 68A Stat. 787; Pub. L. 85–866, title I, §78, Sept. 2, 1958, 72 Stat. 1662; Pub. L. 89–719, title I, §104(f), Nov. 2, 1966, 80 Stat. 1137; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.
1966—Subsec. (c). Pub. L. 89–719 struck out provisions requiring the endorsement of approval as to the form of the deed by the United States Attorney for the district in which the property is situated.
1958—Subsec. (c). Pub. L. 85–866 struck out "district" before "attorney".

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–719 applicable after Nov. 2, 1966, regardless of when title or lien of United States arose or when lien or interest of another person was acquired, with certain exceptions, see section 114(a)–(c) of Pub. L. 89–719, set out as a note under section 6323 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 effective Aug. 17, 1954, see section 1(c)(2) of Pub. L. 85–866, set out as a note under section 165 of this title.

§6339. Legal effect of certificate of sale of personal property and deed of real property

(a) Certificate of sale of property other than real property

In all cases of sale pursuant to section 6335 of property (other than real property), the certificate of such sale—

(1) As evidence

Shall be prima facie evidence of the right of the officer to make such sale, and conclusive evidence of the regularity of his proceedings in making the sale; and

(2) As conveyances

Shall transfer to the purchaser all right, title, and interest of the party delinquent in and to the property sold; and

(3) As authority for transfer of corporate stock

If such property consists of stocks, shall be notice, when received, to any corporation, company, or association of such transfer, and shall be authority to such corporation, company, or association to record the transfer on its books and records in the same manner as if the stocks were transferred or assigned by the party holding the same, in lieu of any original or prior certificate, which shall be void, whether canceled or not; and

(4) As receipts

If the subject of sale is securities or other evidences of debt, shall be a good and valid receipt to the person holding the same, as against any person holding or claiming to hold possession of such securities or other evidences of debt; and

(5) As authority for transfer of title to motor vehicle

If such property consists of a motor vehicle, shall be notice, when received, to any public official charged with the registration of title to motor vehicles, of such transfer and shall be authority to such official to record the transfer on his books and records in the same manner as if the certificate of title to such motor vehicle were transferred or assigned by the party holding the same, in lieu of any original or prior certificate, which shall be void, whether canceled or not.

(b) Deed of real property

In the case of the sale of real property pursuant to section 6335—

(1) Deed as evidence

The deed of sale given pursuant to section 6338 shall be prima facie evidence of the facts therein stated; and

(2) Deed as conveyance of title

If the proceedings of the Secretary as set forth have been substantially in accordance with the provisions of law, such deed shall be considered and operate as a conveyance of all the right, title, and interest the party delinquent had in and to the real property thus sold at the time the lien of the United States attached thereto.

(c) Effect of junior encumbrances

A certificate of sale of personal property given or a deed to real property executed pursuant to section 6338 shall discharge such property from all liens, encumbrances, and titles over which the lien of the United States with respect to which the levy was made had priority.

(d) Cross references

(1) For distribution of surplus proceeds, see section 6342(b).

(2) For judicial procedure with respect to surplus proceeds, see section 7426(a)(2).

(Aug. 16, 1954, ch. 736, 68A Stat. 788; Pub. L. 85–866, title I, §79, Sept. 2, 1958, 72 Stat. 1662; Pub. L. 89–719, title I, §104(g), Nov. 2, 1966, 80 Stat. 1137; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsec. (b)(2). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

1966—Subsecs. (c), (d). Pub. L. 89–719 added subsecs. (c) and (d).

1958—Subsec. (b)(2). Pub. L. 85–866 substituted "as" for "of" after "Deed" in heading.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–719 applicable after Nov. 2, 1966, regardless of when title or lien of United States arose or when lien or interest of another person was acquired, with certain exceptions, see section 114(a)–(c) of Pub. L. 89–719, set out as a note under section 6323 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 effective Aug. 17, 1954, see section 1(c)(2) of Pub. L. 85–866, set out as a note under section 165 of this title.

§6340. Records of sale

(a) Requirement

The Secretary shall, for each internal revenue district, keep a record of all sales of property under section 6335 and of redemptions of such property. The record shall set forth the tax for which any such sale was made, the dates of seizure and sale, the name of the party assessed and all proceedings in making such sale, the amount of expenses, the names of the purchasers, and the date of the deed or certificate of sale of personal property.

(b) Copy as evidence

A copy of such record, or any part thereof, certified by the Secretary shall be evidence in any court of the truth of the facts therein stated.

(c) Accounting to taxpayer

The taxpayer with respect to whose liability the sale was conducted or who redeemed the property shall be furnished—

(1) the record under subsection (a) (other than the names of the purchasers);

(2) the amount from such sale applied to the taxpayer's liability; and

(3) the remaining balance of such liability.

(Aug. 16, 1954, ch. 736, 68A Stat. 789; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 105–206, title III, §3442(a), July 22, 1998, 112 Stat. 761.)

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–206, §3442(a)(1), struck out "real" after "sales of" and inserted "or certificate of sale of personal property" after "deed".

Subsec. (c). Pub. L. 105–206, §3442(a)(2), added subsec. (c).

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–206, title III, §3442(b), July 22, 1998, 112 Stat. 762, provided that: "The amendments made by this section [amending this section] shall apply to seizures occurring after the date of the enactment of this Act

[July 22, 1998]."

§6341. Expense of levy and sale

The Secretary shall determine the expenses to be allowed in all cases of levy and sale.

(Aug. 16, 1954, ch. 736, 68A Stat. 789; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

§6342. Application of proceeds of levy

(a) Collection of liability

Any money realized by proceedings under this subchapter (whether by seizure, by surrender under section 6332 (except pursuant to subsection (c)(2) [1] thereof), or by sale of seized property) or by sale of property redeemed by the United States (if the interest of the United States in such property was a lien arising under the provisions of this title) shall be applied as follows:

(1) Expense of levy and sale

First, against the expenses of the proceedings;

(2) Specific tax liability on seized property

If the property seized and sold is subject to a tax imposed by any internal revenue law which has not been paid, the amount remaining after applying paragraph (1) shall then be applied against such tax liability (and, if such tax was not previously assessed, it shall then be assessed);

(3) Liability of delinquent taxpayer

The amount, if any, remaining after applying paragraphs (1) and (2) shall then be applied against the liability in respect of which the levy was made or the sale was conducted.

(b) Surplus proceeds

Any surplus proceeds remaining after the application of subsection (a) shall, upon application and satisfactory proof in support thereof, be credited or refunded by the Secretary to the person or persons legally entitled thereto.

(Aug. 16, 1954, ch. 736, 68A Stat. 789; Pub. L. 89–719, title I, §104(h), Nov. 2, 1966, 80 Stat. 1137; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

REFERENCES IN TEXT

Section 6332(c), referred to in subsec. (a), was redesignated section 6332(d) by Pub. L. 100–647, title VI, §6236(e)(1), Nov. 10, 1988, 102 Stat. 3739.

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

1966—Subsec. (a). Pub. L. 89–719 inserted in introductory provisions, references to an exception in the case of surrender under section 6332(c)(2) and to sale of property redeemed by the United States if the interest of the United States in such property was a lien arising under the provisions of this title, struck out "under this subchapter" after "proceedings" in par. (1), and inserted "or the sale was conducted" after "levy was made" in par. (3).

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–719 applicable after Nov. 2, 1966, regardless of when title or lien of United States arose or when lien or interest of another person was acquired, with certain exceptions, see section 114(a)–(c) of Pub. L. 89–719, set out as a note under section 6323 of this title.

[1] See References in Text note below.

§6343. Authority to release levy and return property

(a) Release of levy and notice of release

(1) In general

Under regulations prescribed by the Secretary, the Secretary shall release the levy upon all, or part of, the property or rights to property levied upon and shall promptly notify the person upon whom such levy was made (if any) that such levy has been released if—

(A) the liability for which such levy was made is satisfied or becomes unenforceable by reason of lapse of time,

(B) release of such levy will facilitate the collection of such liability,

(C) the taxpayer has entered into an agreement under section 6159 to satisfy such liability by means of installment payments, unless such agreement provides otherwise,

(D) the Secretary has determined that such levy is creating an economic hardship due to the financial condition of the taxpayer, or

(E) the fair market value of the property exceeds such liability and release of the levy on a part of such property could be made without hindering the collection of such liability.

For purposes of subparagraph (C), the Secretary is not required to release such levy if such release would jeopardize the secured creditor status of the Secretary.

(2) Expedited determination on certain business property

In the case of any tangible personal property essential in carrying on the trade or business of the taxpayer, the Secretary shall provide for an expedited determination under paragraph (1) if levy on such tangible personal property would prevent the taxpayer from carrying on such trade or business.

(3) Subsequent levy

The release of levy on any property under paragraph (1) shall not prevent any subsequent levy on such property.

(b) Return of property

If the Secretary determines that property has been wrongfully levied upon, it shall be lawful for the Secretary to return—

(1) the specific property levied upon,

(2) an amount of money equal to the amount of money levied upon, or

(3) an amount of money equal to the amount of money received by the United States from a sale of such property.

Property may be returned at any time. An amount equal to the amount of money levied upon or received from such sale may be returned at any time before the expiration of 9 months from the date of such levy. For purposes of paragraph (3), if property is declared purchased by the United States at a sale pursuant to section 6335(e) (relating to manner and conditions of sale), the United States shall be treated as having received an amount of money equal to the minimum price determined pursuant to such section or (if larger) the amount received by the United States from the resale of such property.

(c) Interest

Interest shall be allowed and paid at the overpayment rate established under section 6621—

(1) in a case described in subsection (b)(2), from the date the Secretary receives the money to a date (to be determined by the Secretary) preceding the date of return by not more than 30 days, or

(2) in a case described in subsection (b)(3), from the date of the sale of the property to a date (to

be determined by the Secretary) preceding the date of return by not more than 30 days.

(d) Return of property in certain cases

If—

(1) any property has been levied upon, and

(2) the Secretary determines that—

(A) the levy on such property was premature or otherwise not in accordance with administrative procedures of the Secretary,

(B) the taxpayer has entered into an agreement under section 6159 to satisfy the tax liability for which the levy was imposed by means of installment payments, unless such agreement provides otherwise,

(C) the return of such property will facilitate the collection of the tax liability, or

(D) with the consent of the taxpayer or the National Taxpayer Advocate, the return of such property would be in the best interests of the taxpayer (as determined by the National Taxpayer Advocate) and the United States,

the provisions of subsection (b) shall apply in the same manner as if such property had been wrongly levied upon, except that no interest shall be allowed under subsection (c).

(e) Release of levy upon agreement that amount is not collectible

In the case of a levy on the salary or wages payable to or received by the taxpayer, upon agreement with the taxpayer that the tax is not collectible, the Secretary shall release such levy as soon as practicable.

(Aug. 16, 1954, ch. 736, 68A Stat. 789; Pub. L. 89–719, title I, §104(i), Nov. 2, 1966, 80 Stat. 1138; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–167, §4(a), Dec. 29, 1979, 93 Stat. 1275; Pub. L. 99–514, title XV, §1511(c)(10), Oct. 22, 1986, 100 Stat. 2745; Pub. L. 100–647, title VI, §6236(f), Nov. 10, 1988, 102 Stat. 3740; Pub. L. 104–168, title V, §501(b), July 30, 1996, 110 Stat. 1460; Pub. L. 105–206, title I, §1102(d)(1)(B), title III, §3432(a), July 22, 1998, 112 Stat. 704, 759.)

AMENDMENTS

1998—Subsec. (d)(2)(D). Pub. L. 105–206, §1102(d)(1)(B), substituted "National Taxpayer Advocate" for "Taxpayer Advocate" in two places.

Subsec. (e). Pub. L. 105–206, §3432(a), added subsec. (e).

1996—Subsec. (d). Pub. L. 104–168 added subsec. (d).

1988—Subsec. (a). Pub. L. 100–647 inserted "and notice of release" after "levy" in heading and amended text generally. Prior to amendment, text read as follows: "It shall be lawful for the Secretary, under regulations prescribed by the Secretary, to release the levy upon all or part of the property or rights to property levied upon where the Secretary determines that such action will facilitate the collection of the liability, but such release shall not operate to prevent any subsequent levy."

1986—Subsec. (c). Pub. L. 99–514 substituted "the overpayment rate established under section 6621" for "an annual rate established under section 6621".

1979—Subsec. (c). Pub. L. 96–167 added subsec. (c).

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

1966—Pub. L. 89–719 inserted "and return property" in section catchline, designated existing provisions as subsec. (a), and added subsec. (b).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 1102 of Pub. L. 105–206 effective July 22, 1998, see section 1102(f) of Pub. L. 105–206, set out as a note under section 7803 of this title.

Pub. L. 105–206, title III, §3432(b), July 22, 1998, 112 Stat. 759, provided that: "The amendment made by this section [amending this section] shall apply to levies imposed after December 31, 1999."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 applicable to levies issued on or after July 1, 1989, see section 6236(h)(1) of Pub. L. 100–647, set out as a note under section 6331 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable for purposes of determining interest for periods after Dec. 31, 1986, see section 1511(d) of Pub. L. 99–514, set out as a note under section 47 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Pub. L. 96–167, §4(c)(1), Dec. 29, 1979, 93 Stat. 1276, provided that: "The amendment made by subsection (a) [amending this section] shall apply to levies made after the date of the enactment of this Act [Dec. 29, 1979]."

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–719 applicable after Nov. 2, 1966, regardless of when title or lien of United States arose or when lien or interest of another person was acquired, with certain exceptions, see section 114(a)–(c) of Pub. L. 89–719, set out as a note under section 6323 of this title.

§6344. Cross references

(a) Length of period

For period within which levy may be begun in case of—

(1) Income, estate, and gift taxes, and taxes imposed by chapter 41, 42, 43, or 44, see sections 6502(a) and 6503(a)(1).

(2) Employment and miscellaneous excise taxes, see section 6502(a).

(b) Delinquent collection officers

For distraint proceedings against delinquent internal revenue officers, see section 7804(c).

(c) Other references

For provisions relating to—

(1) Stamps, marks and brands, see section 6807.

(2) Administration of real estate acquired by the United States, see section 7506.

(Aug. 16, 1954, ch. 736, 68A Stat. 789; Pub. L. 91–172, title I, §101(j)(45), Dec. 30, 1969, 83 Stat. 531; Pub. L. 93–406, title II, §1016(a)(13), Sept. 2, 1974, 88 Stat. 930; Pub. L. 94–455, title XIII, §1307(d)(2)(F)(v), title XVI, §1605(b)(8), Oct. 4, 1976, 90 Stat. 1728, 1755; Pub. L. 96–223, title I, §101(f)(1)(I), Apr. 2, 1980, 94 Stat. 252; Pub. L. 100–418, title I, §1941(b)(2)(B)(ix), Aug. 23, 1988, 102 Stat. 1323; Pub. L. 105–206, title I, §1104(b)(1), July 22, 1998, 112 Stat. 710.)

AMENDMENTS

1998—Subsec. (b). Pub. L. 105–206 substituted "section 7804(c)" for "section 7803(d)".
1988—Subsec. (a)(1). Pub. L. 100–418 substituted "or 44" for "44, or 45".
1980—Subsec. (a)(1). Pub. L. 96–223 inserted reference to chapter 45.
1976—Subsec. (a)(1). Pub. L. 94–455 inserted reference to chapters 41 and 44.
1974—Subsec. (a)(1). Pub. L. 93–406 inserted reference to chapter 43.
1969—Subsec. (a)(1). Pub. L. 91–172 inserted reference to chapter 42.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–418 applicable to crude oil removed from the premises on or after Aug. 23, 1988, see section 1941(c) of Pub. L. 100–418, set out as a note under section 164 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–223 applicable to periods after Feb. 29, 1980, see section 101(i) of Pub. L. 96–223, set out as a note under section 6161 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1307(d)(2)(F)(v) of Pub. L. 94–455 effective on and after Oct. 4, 1976, see section 1307(e) of Pub. L. 94–455, set out as a note under section 501 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–406 applicable, except as otherwise provided in section 1017(c) through (i) of

Pub. L. 93–406, for plan years beginning after Sept. 2, 1974, but, in the case of plans in existence on Jan. 1, 1974, amendment by Pub. L. 93–406 applicable for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93–406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

[Subchapter E—Repealed]

[§§6361 to 6365. Repealed. Pub. L. 101–508, title XI, §11801(a)(45), Nov. 5, 1990, 104 Stat. 1388–522]

Section 6361, added Pub. L. 92–512, title II, §202(a), Oct. 20, 1972, 86 Stat. 936; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), title XXI, §2116(c), Oct. 4, 1976, 90 Stat. 1834, 1911, set forth general rules regarding collection of State individual income taxes.

Section 6362, added Pub. L. 92–512, title II, §202(a), Oct. 20, 1972, 86 Stat. 938; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), title XXI, §2116(b), Oct. 4, 1976, 90 Stat. 1834, 1910; Pub. L. 95–473, §2(a)(2)(H), Oct. 17, 1978, 92 Stat. 1465; Pub. L. 95–600, title IV, §421(e)(8), Nov. 6, 1978, 92 Stat. 2877; Pub. L. 97–248, title II, §201(d)(7), formerly §201(c)(7), Sept. 3, 1982, 96 Stat. 420, redesignated Pub. L. 97–448, title III, §306(a)(1)(A)(i), Jan. 12, 1983, 96 Stat. 2400; Pub. L. 97–354, §5(a)(41), Oct. 19, 1982, 96 Stat. 1696; Pub. L. 97–424, title V, §547(b)(5), Jan. 6, 1983, 96 Stat. 2200; Pub. L. 98–369, div. A, title IV, §§412(b)(6), 474(r)(35), title VII, §721(x)(5), July 18, 1984, 98 Stat. 792, 845, 972; Pub. L. 99–514, title XIII, §1301(j)(8), Oct. 22, 1986, 100 Stat. 2658, related to qualified State individual income taxes.

Section 6363, added Pub. L. 92–512, title II, §202(a), Oct. 20, 1972, 86 Stat. 942; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–620, title IV, §402(28)(C), Nov. 8, 1984, 98 Stat. 3359, related to State agreements and other procedures.

Section 6364, added Pub. L. 92–512, title II, §202(a), Oct. 20, 1972, 86 Stat. 944; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, authorized Secretary to prescribe regulations for this subchapter.

Section 6365, added Pub. L. 92–512, title II, §202(a), Oct. 20, 1972, 86 Stat. 944; amended Pub. L. 94–455, title XIX, §1906(a)(21), Oct. 4, 1976, 90 Stat. 1826; Pub. L. 97–248, title III, §§307(a)(8), 308(a), Sept. 3, 1982, 96 Stat. 589, 591; Pub. L. 98–67, title I, §102(a), Aug. 5, 1983, 97 Stat. 369, set forth definitions and special rules for this subchapter.

SAVINGS PROVISION

For provisions that nothing in repeal by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

CHAPTER 65—ABATEMENTS, CREDITS, AND REFUNDS

Subchapter		Sec.[1]
A.	**Procedure in general**	**6401**
B.	**Rules of special application**	**6411**

[1] *Section numbers editorially supplied.*

Subchapter A—Procedure in General

Sec.

6401. Amounts treated as overpayments.
6402. Authority to make credits or refunds.
6403. Overpayment of installment.
6404. Abatements.
6405. Reports of refunds and credits.
6406. Prohibition of administrative review of decisions.
6407. Date of allowance of refund or credit.
6408. State escheat laws not to apply.
6409. Refunds disregarded in the administration of Federal programs and federally assisted programs.

AMENDMENTS

2010—Pub. L. 111–312, title VII, §728(b), Dec. 17, 2010, 124 Stat. 3317, added item 6409.
1987—Pub. L. 100–203, title X, §10621(b), Dec. 22, 1987, 101 Stat. 1330–452, added item 6408.

§6401. Amounts treated as overpayments

(a) Assessment and collection after limitation period.

The term "overpayment" includes that part of the amount of the payment of any internal revenue tax which is assessed or collected after the expiration of the period of limitation properly applicable thereto.

(b) Excessive credits

(1) In general

If the amount allowable as credits under subpart C of part IV of subchapter A of chapter 1 (relating to refundable credits) exceeds the tax imposed by subtitle A (reduced by the credits allowable under subparts A, B, D, G, H, I, and J of such part IV), the amount of such excess shall be considered an overpayment.

(2) Special rule for credit under section 33

For purposes of paragraph (1), any credit allowed under section 33 (relating to withholding of tax on nonresident aliens and on foreign corporations) for any taxable year shall be treated as a credit allowable under subpart C of part IV of subchapter A of chapter 1 only if an election under subsection (g) or (h) of section 6013 is in effect for such taxable year. The preceding sentence shall not apply to any credit so allowed by reason of section 1446.

(c) Rule where no tax liability

An amount paid as tax shall not be considered not to constitute an overpayment solely by reason of the fact that there was no tax liability in respect of which such amount was paid.

(Aug. 16, 1954, ch. 736, 68A Stat. 791; Pub. L. 89–44, title VIII, §809(d)(6), June 21, 1965, 79 Stat. 168; Pub. L. 91–172, title III, §331(c), Dec. 30, 1969, 83 Stat. 598; Pub. L. 91–258, title II, §207(d)(1), May 21, 1970, 84 Stat. 248; Pub. L. 94–12, title II, §204(b)(1), Mar. 29, 1975, 89 Stat. 31; Pub. L. 94–455, title VII, §701(f)(2), (3), Oct. 4, 1976, 90 Stat. 1580; Pub. L. 95–600, title VII, §701(u)(15)(D), Nov. 6, 1978, 92 Stat. 2919; Pub. L. 95–618, title III, §301(c)(2), Nov. 9, 1978, 92 Stat. 3199; Pub. L. 96–222, title I, §103(a)(2)(B)(iv), Apr. 1, 1980, 94 Stat. 209; Pub. L. 96–223, title II, §223(b)(2), Apr. 2, 1980, 94 Stat. 266; Pub. L. 97–248, title III, §§307(a)(9), 308(a), Sept. 3, 1982, 96 Stat. 589, 591; Pub. L. 98–67, title I, §102(a), Aug. 5, 1983, 97 Stat. 369; Pub. L. 98–369, div. A, title IV, §474(r)(36), title VII, §735(c)(16), July 18, 1984, 98 Stat. 846, 985; Pub. L. 99–514, title XII, §1246(b), Oct. 22, 1986, 100 Stat. 2582; Pub. L. 100–647, title I, §1012(s)(1)(B), Nov. 10, 1988, 102 Stat. 3527; Pub. L. 105–206, title VI, §6022(a), July 22, 1998, 112 Stat. 824; Pub. L. 109–58, title XIII, §1303(c)(4), Aug. 8, 2005, 119 Stat. 997; Pub. L. 110–234, title XV, §15316(c)(3), May 22, 2008, 122 Stat. 1511; Pub. L. 110–246, §4(a), title XV, §15316(c)(3), June 18, 2008, 122 Stat. 1664, 2273; Pub. L. 111–5, div. B, title I, §1531(c)(5), Feb. 17, 2009, 123 Stat. 360.)

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2009—Subsec. (b)(1). Pub. L. 111–5 substituted "I, and J" for "and I".

2008—Subsec. (b)(1). Pub. L. 110–246, §15316(c)(3), substituted "H, and I" for "and H".

2005—Subsec. (b)(1). Pub. L. 109–58 substituted "G, and H" for "and G".

1998—Subsec. (b)(1). Pub. L. 105–206 substituted "D, and G" for "and D".

1988—Subsec. (b)(2). Pub. L. 100–647 amended last sentence generally, substituting "credit so allowed by reason of section 1446" for "amount deducted and withheld under section 1446".

1986—Subsec. (b)(2). Pub. L. 99–514 inserted last sentence.

1984—Subsec. (b). Pub. L. 98–369, §474(r)(36), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "If the amount allowable as credits under sections 31 (relating to tax withheld on wages) and 39 (relating to certain uses of gasoline and special fuels), and 43 (relating to earned income credit), exceeds the tax imposed by subtitle A (reduced by the credits allowable under subpart A of part IV of subchapter A of chapter 1, other than the credits allowable under sections 31, 39, and 43), the amount of such excess shall be considered an overpayment. For purposes of the preceding sentence, any credit allowed under paragraph (1) of section 32 (relating to withholding of tax on nonresident aliens and on foreign corporations) to a nonresident alien individual for a taxable year with respect to which an election under section 6013(g) or (h) is in effect shall be treated as an amount allowable as a credit under section 31."

Pub. L. 98–369, §735(c)(16), substituted "and special fuels" for ", special fuels, and lubricating oil".

1983—Subsec. (b). Pub. L. 98–67 repealed amendments made by Pub. L. 97–248. See 1982 Amendment note below.

1982—Subsec. (b). Pub. L. 97–248 provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, subsec. (b) is amended by inserting ", interest, dividends, and patronage dividends" after "tax withheld on wages". Section 102(a), (b) of Pub. L. 98–67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§301–308) of title III of Pub. L. 97–247 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 [now 1986] [this title] shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

1980—Subsec. (d). Pub. L. 96–223 struck out subsec. (d) which made a cross reference to section 46(a)(9)(C) for a rule allowing a refund for excess investment credit attributable to solar or wind energy property.

Pub. L. 96–222 substituted "46(a)(9)(C)" for "46(a)(10)(C)".

1978—Subsec. (b). Pub. L. 95–600 inserted provisions relating to credit to a nonresident alien individual.

Subsec. (d). Pub. L. 95–618 added subsec. (d).

1976—Subsec. (b). Pub. L. 94–455 substituted "wages) and" and "lubricating oil), and" for "wages)," and "lubricating oil),", respectively; and pars. (2) and (3) made identical change: striking out "and 667(b) (relating to taxes paid by certain trusts)" after "(relating to earned income credit)".

1975—Subsec. (b). Pub. L. 94–12 inserted "43 (relating to earned income credit)," before "and 667(b)" and substituted ", 39, and 43" for "and 39".

1970—Subsec. (b). Pub. L. 91–258 inserted reference to credits under section 39 relating to certain uses of special fuels.

1969—Subsec. (b). Pub. L. 91–172 struck out "under sections 31 and 39" after "Excessive credits" in heading and inserted in text reference to section 667(b) (relating to taxes paid by certain trusts).

1965—Subsec. (b). Pub. L. 89–44 substituted "Excessive credits under sections 31 and 39" for "Excessive withholding" in heading and expanded text to include credits under section 39.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–5 applicable to obligations issued after Feb. 17, 2009, see section 1531(e) of Pub. L. 111–5, set out as a note under section 54 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by section 15316(c)(3) of Pub. L. 110–246 applicable to obligations issued after June 18, 2008,

see section 15316(d) of Pub. L. 110–246, set out as a note under section 54 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–58 applicable to taxable years beginning after Dec. 31, 2005, see section 1303(e) of Pub. L. 109–58, as amended, set out as an Effective Date note under section 54 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–206, title VI, §6022(b), July 22, 1998, 112 Stat. 824, provided that: "The amendment made by subsection (a) [amending this section] shall take effect as if included in the amendments made by section 701(b) of the Tax Reform Act of 1986 [Pub. L. 99–514]."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 applicable to taxable years beginning after Dec. 31, 1987, see section 1012(s)(1)(D) of Pub. L. 100–647, set out as a note under section 1446 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to distributions after Dec. 31, 1987, or, if earlier, the effective date of the initial regulations issued under section 1446 of this title, which date shall not be earlier than Jan. 1, 1987, see section 1246(d) of Pub. L. 99–514, set out as an Effective Date note under section 1446 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(36) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 735(c)(16) of Pub. L. 98–369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97–424, to which such amendment relates, see section 736 of Pub. L. 98–369, set out as a note under section 4051 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–223 applicable to qualified investment for taxable years beginning after Dec. 31, 1979, see section 223(b)(3) of Pub. L. 96–223, set out as a note under section 46 of this title.

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600, to the extent amendment relates to chapter 1 or 5 of this title, applicable to taxable years ending on or after Dec. 31, 1975, and, to the extent amendment relates to wage withholding under chapter 24 of this title, applicable to remuneration paid on or after the first day of the first month which begins more than 90 days after Nov. 6, 1978, see section 701(u)(15)(E) of Pub. L. 95–600, set out as a note under section 6013 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable to distributions made in taxable years beginning after Dec. 31, 1975, see section 701(h) of Pub. L. 94–455, set out as a note under section 667 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–12 applicable to taxable years beginning after Dec. 31, 1974, see section 209(b) of Pub. L. 94–12, as amended, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–258 effective July 1, 1970, see section 211(a) of Pub. L. 91–258, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning before Jan. 1, 1970, see section 331(d) of Pub. L. 91–172, set out as a note under section 665 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 applicable to taxable years beginning on or after July 1, 1965, see section

809(f) of Pub. L. 89–44, set out as a note under section 6420 of this title.

§6402. Authority to make credits or refunds

(a) General rule

In the case of any overpayment, the Secretary, within the applicable period of limitations, may credit the amount of such overpayment, including any interest allowed thereon, against any liability in respect of an internal revenue tax on the part of the person who made the overpayment and shall, subject to subsections (c), (d), (e), and (f) [1] refund any balance to such person.

(b) Credits against estimated tax

The Secretary is authorized to prescribe regulations providing for the crediting against the estimated income tax for any taxable year of the amount determined by the taxpayer or the Secretary to be an overpayment of the income tax for a preceding taxable year.

(c) Offset of past-due support against overpayments

The amount of any overpayment to be refunded to the person making the overpayment shall be reduced by the amount of any past-due support (as defined in section 464(c) of the Social Security Act) owed by that person of which the Secretary has been notified by a State in accordance with section 464 of of [2] such Act. The Secretary shall remit the amount by which the overpayment is so reduced to the State collecting such support and notify the person making the overpayment that so much of the overpayment as was necessary to satisfy his obligation for past-due support has been paid to the State. The Secretary shall apply a reduction under this subsection first to an amount certified by the State as past due support under section 464 of the Social Security Act before any other reductions allowed by law. This subsection shall be applied to an overpayment prior to its being credited to a person's future liability for an internal revenue tax.

(d) Collection of debts owed to Federal agencies

(1) In general

Upon receiving notice from any Federal agency that a named person owes a past-due legally enforceable debt (other than past-due support subject to the provisions of subsection (c)) to such agency, the Secretary shall—

(A) reduce the amount of any overpayment payable to such person by the amount of such debt;

(B) pay the amount by which such overpayment is reduced under subparagraph (A) to such agency; and

(C) notify the person making such overpayment that such overpayment has been reduced by an amount necessary to satisfy such debt.

(2) Priorities for offset

Any overpayment by a person shall be reduced pursuant to this subsection after such overpayment is reduced pursuant to subsection (c) with respect to past-due support collected pursuant to an assignment under section 402(a)(26) [3] of the Social Security Act and before such overpayment is reduced pursuant to subsections (e) and (f) and before such overpayment is credited to the future liability for tax of such person pursuant to subsection (b). If the Secretary receives notice from a Federal agency or agencies of more than one debt subject to paragraph (1) that is owed by a person to such agency or agencies, any overpayment by such person shall be applied against such debts in the order in which such debts accrued.

(3) Treatment of OASDI overpayments

(A) Requirements

Paragraph (1) shall apply with respect to an OASDI overpayment only if the requirements of paragraphs (1) and (2) of section 3720A(f) of title 31, United States Code, are met with respect

to such overpayment.

(B) Notice; protection of other persons filing joint return

(i) Notice

In the case of a debt consisting of an OASDI overpayment, if the Secretary determines upon receipt of the notice referred to in paragraph (1) that the refund from which the reduction described in paragraph (1)(A) would be made is based upon a joint return, the Secretary shall—

(I) notify each taxpayer filing such joint return that the reduction is being made from a refund based upon such return, and

(II) include in such notification a description of the procedures to be followed, in the case of a joint return, to protect the share of the refund which may be payable to another person.

(ii) Adjustments based on protections given to other taxpayers on joint return

If the other person filing a joint return with the person owing the OASDI overpayment takes appropriate action to secure his or her proper share of the refund subject to reduction under this subsection, the Secretary shall pay such share to such other person. The Secretary shall deduct the amount of such payment from amounts which are derived from subsequent reductions in refunds under this subsection and are payable to a trust fund referred to in subparagraph (C).

(C) Deposit of amount of reduction into appropriate trust fund

In lieu of payment, pursuant to paragraph (1)(B), of the amount of any reduction under this subsection to the Commissioner of Social Security, the Secretary shall deposit such amount in the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund, whichever is certified to the Secretary as appropriate by the Commissioner of Social Security.

(D) OASDI overpayment

For purposes of this paragraph, the term "OASDI overpayment" means any overpayment of benefits made to an individual under title II of the Social Security Act.

(e) Collection of past-due, legally enforceable State income tax obligations

(1) In general

Upon receiving notice from any State that a named person owes a past-due, legally enforceable State income tax obligation to such State, the Secretary shall, under such conditions as may be prescribed by the Secretary—

(A) reduce the amount of any overpayment payable to such person by the amount of such State income tax obligation;

(B) pay the amount by which such overpayment is reduced under subparagraph (A) to such State and notify such State of such person's name, taxpayer identification number, address, and the amount collected; and

(C) notify the person making such overpayment that the overpayment has been reduced by an amount necessary to satisfy a past-due, legally enforceable State income tax obligation.

If an offset is made pursuant to a joint return, the notice under subparagraph (B) shall include the names, taxpayer identification numbers, and addresses of each person filing such return.

(2) Offset permitted only against residents of State seeking offset

Paragraph (1) shall apply to an overpayment by any person for a taxable year only if the address shown on the Federal return for such taxable year of the overpayment is an address within the State seeking the offset.

(3) Priorities for offset

Any overpayment by a person shall be reduced pursuant to this subsection—

(A) after such overpayment is reduced pursuant to—

(i) subsection (a) with respect to any liability for any internal revenue tax on the part of the person who made the overpayment;

(ii) subsection (c) with respect to past-due support; and

(iii) subsection (d) with respect to any past-due, legally enforceable debt owed to a Federal agency; and

(B) before such overpayment is credited to the future liability for any Federal internal revenue tax of such person pursuant to subsection (b).

If the Secretary receives notice from one or more agencies of the State of more than one debt subject to paragraph (1) or subsection (f) that is owed by such person to such an agency, any overpayment by such person shall be applied against such debts in the order in which such debts accrued.

(4) Notice; consideration of evidence

No State may take action under this subsection until such State—

(A) notifies by certified mail with return receipt the person owing the past-due State income tax liability that the State proposes to take action pursuant to this section;

(B) gives such person at least 60 days to present evidence that all or part of such liability is not past-due or not legally enforceable;

(C) considers any evidence presented by such person and determines that an amount of such debt is past-due and legally enforceable; and

(D) satisfies such other conditions as the Secretary may prescribe to ensure that the determination made under subparagraph (C) is valid and that the State has made reasonable efforts to obtain payment of such State income tax obligation.

(5) Past-due, legally enforceable State income tax obligation

For purposes of this subsection, the term "past-due, legally enforceable State income tax obligation" means a debt—

(A)(i) which resulted from—

(I) a judgment rendered by a court of competent jurisdiction which has determined an amount of State income tax to be due; or

(II) a determination after an administrative hearing which has determined an amount of State income tax to be due; and

(ii) which is no longer subject to judicial review; or

(B) which resulted from a State income tax which has been assessed but not collected, the time for redetermination of which has expired, and which has not been delinquent for more than 10 years.

For purposes of this paragraph, the term "State income tax" includes any local income tax administered by the chief tax administration agency of the State.

(6) Regulations

The Secretary shall issue regulations prescribing the time and manner in which States must submit notices of past-due, legally enforceable State income tax obligations and the necessary information that must be contained in or accompany such notices. The regulations shall specify the types of State income taxes and the minimum amount of debt to which the reduction procedure established by paragraph (1) may be applied. The regulations may require States to pay a fee to reimburse the Secretary for the cost of applying such procedure. Any fee paid to the Secretary pursuant to the preceding sentence shall be used to reimburse appropriations which bore all or part of the cost of applying such procedure.

(7) Erroneous payment to State

Any State receiving notice from the Secretary that an erroneous payment has been made to such State under paragraph (1) shall pay promptly to the Secretary, in accordance with such regulations as the Secretary may prescribe, an amount equal to the amount of such erroneous payment (without regard to whether any other amounts payable to such State under such paragraph have been paid to such State).

(f) Collection of unemployment compensation debts

(1) In general

Upon receiving notice from any State that a named person owes a covered unemployment compensation debt to such State, the Secretary shall, under such conditions as may be prescribed by the Secretary—

(A) reduce the amount of any overpayment payable to such person by the amount of such covered unemployment compensation debt;

(B) pay the amount by which such overpayment is reduced under subparagraph (A) to such State and notify such State of such person's name, taxpayer identification number, address, and the amount collected; and

(C) notify the person making such overpayment that the overpayment has been reduced by an amount necessary to satisfy a covered unemployment compensation debt.

If an offset is made pursuant to a joint return, the notice under subparagraph (C) shall include information related to the rights of a spouse of a person subject to such an offset.

(2) Priorities for offset

Any overpayment by a person shall be reduced pursuant to this subsection—

(A) after such overpayment is reduced pursuant to—

(i) subsection (a) with respect to any liability for any internal revenue tax on the part of the person who made the overpayment;

(ii) subsection (c) with respect to past-due support; and

(iii) subsection (d) with respect to any past-due, legally enforceable debt owed to a Federal agency; and

(B) before such overpayment is credited to the future liability for any Federal internal revenue tax of such person pursuant to subsection (b).

If the Secretary receives notice from a State or States of more than one debt subject to paragraph (1) or subsection (e) that is owed by a person to such State or States, any overpayment by such person shall be applied against such debts in the order in which such debts accrued.

(3) Notice; consideration of evidence

No State may take action under this subsection until such State—

(A) notifies the person owing the covered unemployment compensation debt that the State proposes to take action pursuant to this section;

(B) provides such person at least 60 days to present evidence that all or part of such liability is not legally enforceable or is not a covered unemployment compensation debt;

(C) considers any evidence presented by such person and determines that an amount of such debt is legally enforceable and is a covered unemployment compensation debt; and

(D) satisfies such other conditions as the Secretary may prescribe to ensure that the determination made under subparagraph (C) is valid and that the State has made reasonable efforts to obtain payment of such covered unemployment compensation debt.

(4) Covered unemployment compensation debt

For purposes of this subsection, the term "covered unemployment compensation debt" means—

(A) a past-due debt for erroneous payment of unemployment compensation due to fraud or

the person's failure to report earnings which has become final under the law of a State certified by the Secretary of Labor pursuant to section 3304 and which remains uncollected;

(B) contributions due to the unemployment fund of a State for which the State has determined the person to be liable and which remain uncollected; and

(C) any penalties and interest assessed on such debt.

(5) Regulations

(A) In general

The Secretary may issue regulations prescribing the time and manner in which States must submit notices of covered unemployment compensation debt and the necessary information that must be contained in or accompany such notices. The regulations may specify the minimum amount of debt to which the reduction procedure established by paragraph (1) may be applied.

(B) Fee payable to Secretary

The regulations may require States to pay a fee to the Secretary, which may be deducted from amounts collected, to reimburse the Secretary for the cost of applying such procedure. Any fee paid to the Secretary pursuant to the preceding sentence shall be used to reimburse appropriations which bore all or part of the cost of applying such procedure.

(C) Submission of notices through Secretary of Labor

The regulations may include a requirement that States submit notices of covered unemployment compensation debt to the Secretary via the Secretary of Labor in accordance with procedures established by the Secretary of Labor. Such procedures may require States to pay a fee to the Secretary of Labor to reimburse the Secretary of Labor for the costs of applying this subsection. Any such fee shall be established in consultation with the Secretary of the Treasury. Any fee paid to the Secretary of Labor may be deducted from amounts collected and shall be used to reimburse the appropriation account which bore all or part of the cost of applying this subsection.

(6) Erroneous payment to State

Any State receiving notice from the Secretary that an erroneous payment has been made to such State under paragraph (1) shall pay promptly to the Secretary, in accordance with such regulations as the Secretary may prescribe, an amount equal to the amount of such erroneous payment (without regard to whether any other amounts payable to such State under such paragraph have been paid to such State).

(g) Review of reductions

No court of the United States shall have jurisdiction to hear any action, whether legal or equitable, brought to restrain or review a reduction authorized by subsection (c), (d), (e), or (f). No such reduction shall be subject to review by the Secretary in an administrative proceeding. No action brought against the United States to recover the amount of any such reduction shall be considered to be a suit for refund of tax. This subsection does not preclude any legal, equitable, or administrative action against the Federal agency or State to which the amount of such reduction was paid or any such action against the Commissioner of Social Security which is otherwise available with respect to recoveries of overpayments of benefits under section 204 of the Social Security Act.

(h) Federal agency

For purposes of this section, the term "Federal agency" means a department, agency, or instrumentality of the United States, and includes a Government corporation (as such term is defined in section 103 of title 5, United States Code).

(i) Treatment of payments to States

The Secretary may provide that, for purposes of determining interest, the payment of any amount withheld under subsection (c), (e), or (f) to a State shall be treated as a payment to the person or persons making the overpayment.

(j) Cross reference

For procedures relating to agency notification of the Secretary, see section 3721 of title 31, United States Code.

(k) Refunds to certain fiduciaries of insolvent members of affiliated groups

Notwithstanding any other provision of law, in the case of an insolvent corporation which is a member of an affiliated group of corporations filing a consolidated return for any taxable year and which is subject to a statutory or court-appointed fiduciary, the Secretary may by regulation provide that any refund for such taxable year may be paid on behalf of such insolvent corporation to such fiduciary to the extent that the Secretary determines that the refund is attributable to losses or credits of such insolvent corporation.

(l) Explanation of reason for refund disallowance

In the case of a disallowance of a claim for refund, the Secretary shall provide the taxpayer with an explanation for such disallowance.

(Aug. 6, 1954, ch. 736, 68A Stat. 791; Pub. L. 94–455, title XIX, §1906(b)(13) (A), (K), Oct. 4, 1976, 90 Stat. 1834, 1835; Pub. L. 97–35, title XXIII, §2331(c), Aug. 13, 1981, 95 Stat. 861; Pub. L. 98–369, div. B, title VI, §2653(b)(1), (2), July 18, 1984, 98 Stat. 1154, 1155; Pub. L. 98–378, §21(e), Aug. 16, 1984, 98 Stat. 1325; Pub. L. 100–647, title VI, §6276, Nov. 10, 1988, 102 Stat. 3753; Pub. L. 101–508, title V, §5129(c), Nov. 5, 1990, 104 Stat. 1388–288; Pub. L. 103–296, title I, §108(h)(7), Aug. 15, 1994, 108 Stat. 1487; Pub. L. 104–134, title III, §31001(u)(2), Apr. 26, 1996, 110 Stat. 1321–375; Pub. L. 104–193, title I, §110(l)(7), Aug. 22, 1996, 110 Stat. 2173; Pub. L. 105–33, title V, §5514(a)(1), Aug. 5, 1997, 111 Stat. 620; Pub. L. 105–206, title III, §§3505(a), 3711(a), (c), July 22, 1998, 112 Stat. 771, 779, 781; Pub. L. 109–171, title VII, §7301(d), Feb. 8, 2006, 120 Stat. 144; Pub. L. 110–328, §3(a), (d), Sept. 30, 2008, 122 Stat. 3570, 3573; Pub. L. 111–291, title VIII, §801(a), Dec. 8, 2010, 124 Stat. 3157; Pub. L. 111–312, title V, §503(a), Dec. 17, 2010, 124 Stat. 3308.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (c), (d)(2), (3)(D), and (g), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Title II of the Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. Sections 204, 464, and 471(a)(17) of the Act are classified to sections 404, 664, and 671(a)(17) of Title 42. Section 402 of the Act, which was classified to section 602 of Title 42, was repealed and a new section 402 enacted by Pub. L. 104–193, title I, §103(a)(1), Aug. 22, 1996, 110 Stat. 2112. As so enacted section 402 does not contain a subsec. (a)(26). For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2010—Subsec. (f). Pub. L. 111–291, §801(a)(1), struck out "resulting from fraud" after "debts" in heading.

Subsec. (f)(3). Pub. L. 111–291, §801(a)(2), redesignated par. (4) as (3) and struck out former par. (3). Prior to amendment, text of par. (3) read as follows: "Paragraph (1) shall apply to an overpayment by any person for a taxable year only if the address shown on the Federal return for such taxable year of the overpayment is an address within the State seeking the offset."

Subsec. (f)(3)(A). Pub. L. 111–291, §801(a)(3)(A), struck out "by certified mail with return receipt" after "notifies".

Subsec. (f)(3)(B). Pub. L. 111–291, §801(a)(3)(B), substituted "is not a covered unemployment compensation debt" for "due to fraud".

Subsec. (f)(3)(C). Pub. L. 111–312 substituted "is a covered unemployment compensation debt" for "is not a covered unemployment compensation debt".

Pub. L. 111–291, §801(a)(3)(C), substituted "is not a covered unemployment compensation debt" for "due to fraud".

Subsec. (f)(4). Pub. L. 111–291, §801(a)(2), redesignated par. (5) as (4). Former par. (4) redesignated (3).

Subsec. (f)(4)(A). Pub. L. 111–291, §801(a)(4)(A), inserted "or the person's failure to report earnings" after "due to fraud" and struck out "for not more than 10 years" after "remains uncollected".

Subsec. (f)(4)(B). Pub. L. 111–291, §801(a)(4)(B), struck out "due to fraud" after "to be liable" and "for not more than 10 years" after "remain uncollected".

Subsec. (f)(5) to (8). Pub. L. 111–291, §801(a)(2), redesignated pars. (5) to (7) as (4) to (6), respectively, and struck out par. (8). Prior to amendment, text of par. (8) read as follows: "This section shall not apply to refunds payable after the date which is 10 years after the date of the enactment of this subsection."

2008—Subsec. (a). Pub. L. 110–328, §3(d)(1), substituted "(c), (d), (e), and (f)" for "(c), (d), and (e),".

Subsec. (d)(2). Pub. L. 110–328, §3(d)(2), substituted "and before such overpayment is reduced pursuant to subsections (e) and (f)" for "and before such overpayment is reduced pursuant to subsection (e)".

Subsec. (e)(3). Pub. L. 110–328, §3(d)(3), inserted "or subsection (f)" after "paragraph (1)" in concluding provisions.

Subsec. (f). Pub. L. 110–328, §3(a), added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 110–328, §3(a), (d)(4), redesignated subsec. (f) as (g) and substituted "(c), (d), (e), or (f)" for "(c), (d), or (e)". Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 110–328, §3(a), redesignated subsec. (g) as (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 110–328, §3(a), (d)(5), redesignated subsec. (h) as (i) and substituted "subsection (c), (e), or (f)" for "subsection (c) or (e)". Former subsec. (i) redesignated (j).

Subsecs. (j) to (l). Pub. L. 110–328, §3(a), redesignated subsecs. (i) to (k) as (j) to (l), respectively.

2006—Subsec. (c). Pub. L. 109–171 substituted "of such Act." for "the Social Security Act." in first sentence and "The Secretary shall apply a reduction under this subsection first to an amount certified by the State as past due support under section 464 of the Social Security Act before any other reductions allowed by law." for "A reduction under this subsection shall be applied first to satisfy any past-due support which has been assigned to the State under section 402(a)(26) or 471(a)(17) of the Social Security Act, and shall be applied to satisfy any other past-due support after any other reductions allowed by law (but before a credit against future liability for an internal revenue tax) have been made." in third sentence.

1998—Subsec. (a). Pub. L. 105–206, §3711(c)(1), substituted "(c), (d), and (e)" for "(c) and (d)".

Subsec. (d)(2). Pub. L. 105–206, §3711(c)(2), substituted "and before such overpayment is reduced pursuant to subsection (e) and before such overpayment" for "and before such overpayment".

Subsec. (e). Pub. L. 105–206, §3711(a), added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 105–206, §3711(a), (c)(3), redesignated subsec. (e) as (f) and substituted "(c), (d), or (e)" for "(c) or (d)" and "Federal agency or State" for "Federal agency". Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 105–206, §3711(a), redesignated subsec. (f) as (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 105–206, §3711(a), (c)(4), redesignated subsec. (g) as (h) and substituted "subsection (c) or (e)" for "subsection (c)". Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 105–206, §3711(a), redesignated subsec. (h) as (i). Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 105–206, §3711(a), redesignated subsec. (i) as (j). Former subsec. (j) redesignated (k).

Pub. L. 105–206, §3505(a), added subsec. (j).

Subsec. (k). Pub. L. 105–206, §3711(a), redesignated subsec. (j) as (k).

1997—Subsecs. (a), (e) to (j). Pub. L. 105–33 repealed Pub. L. 104–193, §110(l)(7). See 1996 Amendment notes below.

1996—Subsec. (a). Pub. L. 104–193, §110(l)(7)(A), which directed substitution of "(c), (d), and (e)" for "(c) and (d)", was repealed by Pub. L. 105–33.

Subsec. (e). Pub. L. 104–193, §110(l)(7)(C), which directed amendment by adding subsec. (e), reading as follows: "COLLECTION OF OVERPAYMENTS UNDER TITLE IV–A OF THE SOCIAL SECURITY ACT .—The amount of any overpayment to be refunded to the person making the overpayment shall be reduced (after reductions pursuant to subsections (c) and (d), but before a credit against future liability for an internal revenue tax) in accordance with section 405(e) of the Social Security Act (concerning recovery of overpayments to individuals under State plans approved under part A of title IV of such Act).", was repealed by Pub. L. 105–33.

Subsec. (f). Pub. L. 104–193, §110(l)(7)(B), which directed amendment by redesignating subsec. (e) as (f), was repealed by Pub. L. 105–33.

Pub. L. 104–134 amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: "For purposes of this section, the term 'Federal agency' means a department, agency, or instrumentality of the United States (other than an agency subject to section 9 of the Act of May 18, 1933 (48 Stat. 63, chapter 32; 16 U.S.C. 831h)), and includes a Government corporation (as such term is defined in section 103 of title 5, United States Code)."

Subsecs. (g) to (j). Pub. L. 104–193, §110(l)(7)(B), which directed amendment by redesignating subsecs. (f) to (i) as (g) to (j), respectively, was repealed by Pub. L. 105–33.

1994—Subsecs. (d)(3)(C), (e). Pub. L. 103–296 substituted "Commissioner of Social Security" for "Secretary of Health and Human Services" wherever appearing.

1990—Subsec. (d)(1). Pub. L. 101–508, §5129(c)(1)(A), struck out "any OASDI overpayment and" after

"(other than".

Subsec. (d)(3). Pub. L. 101–508, §5129(c)(1)(B), added par. (3) and struck out former par. (3) which read as follows: "For purposes of this subsection the term 'OASDI overpayment' means any overpayment of benefits made to an individual under title II of the Social Security Act."

Subsec. (e). Pub. L. 101–508, §5129(c)(2), inserted before period at end "or any such action against the Secretary of Health and Human Services which is otherwise available with respect to recoveries of overpayments of benefits under section 204 of the Social Security Act".

1988—Subsec. (i). Pub. L. 100–647 added subsec. (i).

1984—Subsec. (a). Pub. L. 98–369, §2653(b)(2), substituted "subsections (c) and (d)" for "subsection (c)".

Subsec. (c). Pub. L. 98–378, §21(e)(1), substituted "collecting such support" for "to which such support has been assigned" and inserted provision that a reduction under this subsection shall be applied first to satisfy any past-due support which has been assigned to the State under section 402(a)(26) or 471(a)(17) of the Social Security Act, and shall be applied to satisfy any other past-due support after any other reductions allowed by law (but before a credit against future liability for an internal revenue tax) have been made.

Subsecs. (d) to (f). Pub. L. 98–369, §2653(b)(1), added subsecs. (d) to (f).

Subsec. (g). Pub. L. 98–378, §21(e)(2), added subsec. (g). Former subsec. (g) redesignated (h).

Pub. L. 98–369, §2653(b)(1), added subsec. (g).

Subsec. (h). Pub. L. 98–378, §21(e)(2), redesignated former subsec. (g) as (h).

1981—Subsec. (a). Pub. L. 97–35, §2331(c)(1), inserted reference to subsec. (c) of this section.

Subsec. (c). Pub. L. 97–35, §2331(c)(2), added subsec. (c).

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title V, §503(b), Dec. 17, 2010, 124 Stat. 3308, provided that: "The amendment made by subsection (a) [amending this section] shall take effect as if included in section 801 of the Claims Resolution Act of 2010 [Pub. L. 111–291]."

Pub. L. 111–291, title VIII, §801(b), Dec. 8, 2010, 124 Stat. 3157, provided that: "The amendments made by this section [amending this section] shall apply to refunds payable under section 6402 of the Internal Revenue Code of 1986 on or after the date of the enactment of this Act [Dec. 8, 2010]."

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–328 applicable to refunds payable under section 6402 of this title on or after Sept. 30, 2008, see section 3(e) of Pub. L. 110–328, set out as a note under section 3304 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–171 effective Oct. 1, 2009, and applicable to payments under parts A and D of subchapter IV of chapter 7 of Title 42, The Public Health and Welfare, for calendar quarters beginning on or after such date, subject to certain State options, see section 7301(e) of Pub. L. 109–171, set out as a note under section 608 of Title 42.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–206, title III, §3505(b), July 22, 1998, 112 Stat. 771, provided that: "The amendment made by this section [amending this section] shall apply to disallowances after the 180th day after the date of the enactment of this Act [July 22, 1998]."

Amendment by section 3711 of Pub. L. 105–206 applicable to refunds payable under this section after Dec. 31, 1999, see section 3711(d) of Pub. L. 105–206, set out as a note under section 6103 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in section 110 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, at the time such section 110 became law, see section 5518(c) of Pub. L. 105–33, set out as a note under section 51 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title V, §5129(d), Nov. 5, 1990, 104 Stat. 1388–289, provided that: "The amendments made by this section [amending this section, section 3720A of Title 31, Money and Finance, and section 404 of Title 42, The Public Health and Welfare]—

"(1) shall take effect January 1, 1991, and

"(2) shall not apply to refunds to which the amendments made by section 2653 of the Deficit Reduction Act of 1984 (98 Stat. 1153) [enacting section 3720A of Title 31 and amending this section and sections 6103 and 7213 of this title] do not apply."

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98–378 applicable with respect to refunds payable under this section after Dec. 31, 1985, see section 21(g) of Pub. L. 98–378, set out as a note under section 6103 of this title.

Pub. L. 98–369, div. B, title VI, §2653(c), July 18, 1984, 98 Stat. 1156, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–203, title IX, §9402(a), Dec. 22, 1987, 101 Stat. 1330–376; Pub. L. 100–485, title VII, §701(a), Oct. 13, 1988, 102 Stat. 2425; Pub. L. 102–164, title IV, §401(a), Nov. 15, 1991, 105 Stat. 1061, provided that: "The amendments made by this section [enacting section 3720A of Title 31, Money and Finance, and amending this section and sections 6103 and 7213 of this title] shall apply with respect to refunds payable under section 6402 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] after December 31, 1985."

[Pub. L. 102–164, title IV, §401(b), Nov. 15, 1991, 105 Stat. 1061, provided that: "The amendment made by this section [amending section 2653(c) of Pub. L. 98–369, set out above] shall take effect on October 1, 1991."]

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective, except as otherwise specifically provided, on Oct. 1, 1981, see section 2336 of Pub. L. 97–35, set out as a note under section 651 of Title 42, The Public Health and Welfare.

ORGAN AND TISSUE DONATION INFORMATION INCLUDED WITH INCOME TAX REFUND PAYMENTS

Pub. L. 104–191, title III, §371, Aug. 21, 1996, 110 Stat. 2072, provided that:

"(a) IN GENERAL.—The Secretary of the Treasury shall, to the extent practicable, include with the mailing of any payment of a refund of individual income tax made during the period beginning on February 1, 1997, and ending on June 30, 1997, a copy of the document described in subsection (b).

"(b) TEXT OF DOCUMENT.—The Secretary of the Treasury shall, after consultation with the Secretary of Health and Human Services and organizations promoting organ and tissue (including eye) donation, prepare a document suitable for inclusion with individual income tax refund payments which—

"(1) encourages organ and tissue donation;

"(2) includes a detachable organ and tissue donor card; and

"(3) urges recipients to—

"(A) sign the organ and tissue donor card;

"(B) discuss organ and tissue donation with family members and tell family members about the recipient's desire to be an organ and tissue donor if the occasion arises; and

"(C) encourage family members to request or authorize organ and tissue donation if the occasion arises."

CLARIFICATION OF CONGRESSIONAL INTENT AS TO SCOPE OF AMENDMENTS BY SECTION 2653 OF PUB. L. 98–369

Pub. L. 100–203, title IX, §9402(b), Dec. 22, 1987, 101 Stat. 1330–376, provided that:

"(1) Nothing in the amendments made by section 2653 of the Deficit Reduction Act of 1984 [enacting section 3720A of Title 31, Money and Finance, and amending this section and sections 6103 and 7213 of this title] shall be construed as exempting debts of corporations or any other category of persons from the application of such amendments.

"(2) It is the intent of the Congress that, to the extent practicable, the amendments made by section 2653 of the Deficit Reduction Act of 1984 shall extend to all Federal agencies (as defined in the amendments made by such section).

"(3) The Secretary of the Treasury shall issue regulations to carry out the purposes of this subsection."

STUDY BY GENERAL ACCOUNTING OFFICE OF OPERATION AND EFFECTIVENESS OF AMENDMENTS BY SECTION 2653 OF PUB. L. 98–369

Pub. L. 100–203, title IX, §9402(c), Dec. 22, 1987, 101 Stat. 1330–376, required the Comptroller General of the United States, in consultation with the Secretary of the Treasury, to conduct a study of the operation and effectiveness of amendments by section 2653 of Pub. L. 98–369 on voluntary compliance with the income tax laws and, by Apr. 1, 1989, submit a report and recommendations to Congress.

[1] So in original. Probably should be followed by a comma.

[2] So in original.

[3] See References in Text note below.

§6403. Overpayment of installment

In the case of a tax payable in installments, if the taxpayer has paid as an installment of the tax more than the amount determined to be the correct amount of such installment, the overpayment shall be credited against the unpaid installments, if any. If the amount already paid, whether or not on the basis of installments, exceeds the amount determined to be the correct amount of the tax, the overpayment shall be credited or refunded as provided in section 6402.

(Aug. 16, 1954, ch. 736, 68A Stat. 791.)

§6404. Abatements

(a) General rule

The Secretary is authorized to abate the unpaid portion of the assessment of any tax or any liability in respect thereof, which—

(1) is excessive in amount, or

(2) is assessed after the expiration of the period of limitation properly applicable thereto, or

(3) is erroneously or illegally assessed.

(b) No claim for abatement of income, estate, and gift taxes

No claim for abatement shall be filed by a taxpayer in respect of any assessment of any tax imposed under subtitle A or B.

(c) Small tax balances

The Secretary is authorized to abate the unpaid portion of the assessment of any tax, or any liability in respect thereof, if the Secretary determines under uniform rules prescribed by the Secretary that the administration and collection costs involved would not warrant collection of the amount due.

(d) Assessments attributable to certain mathematical errors by Internal Revenue Service

In the case of an assessment of any tax imposed by chapter 1 attributable in whole or in part to a mathematical error described in section 6213(g)(2)(A), if the return was prepared by an officer or employee of the Internal Revenue Service acting in his official capacity to provide assistance to taxpayers in the preparation of income tax returns, the Secretary is authorized to abate the assessment of all or any part of any interest on such deficiency for any period ending on or before the 30th day following the date of notice and demand by the Secretary for payment of the deficiency.

(e) Abatement of interest attributable to unreasonable errors and delays by Internal Revenue Service

(1) In general

In the case of any assessment of interest on—

(A) any deficiency attributable in whole or in part to any unreasonable error or delay by an officer or employee of the Internal Revenue Service (acting in his official capacity) in performing a ministerial or managerial act, or

(B) any payment of any tax described in section 6212(a) to the extent that any unreasonable error or delay in such payment is attributable to such an officer or employee being erroneous or dilatory in performing a ministerial or managerial act,

the Secretary may abate the assessment of all or any part of such interest for any period. For purposes of the preceding sentence, an error or delay shall be taken into account only if no significant aspect of such error or delay can be attributed to the taxpayer involved, and after the Internal Revenue Service has contacted the taxpayer in writing with respect to such deficiency or payment.

(2) Interest abated with respect to erroneous refund check

The Secretary shall abate the assessment of all interest on any erroneous refund under section 6602 until the date demand for repayment is made, unless—

(A) the taxpayer (or a related party) has in any way caused such erroneous refund, or

(B) such erroneous refund exceeds $50,000.

(f) Abatement of any penalty or addition to tax attributable to erroneous written advice by the Internal Revenue Service

(1) In general

The Secretary shall abate any portion of any penalty or addition to tax attributable to erroneous advice furnished to the taxpayer in writing by an officer or employee of the Internal Revenue Service, acting in such officer's or employee's official capacity.

(2) Limitations

Paragraph (1) shall apply only if—

(A) the written advice was reasonably relied upon by the taxpayer and was in response to a specific written request of the taxpayer, and

(B) the portion of the penalty or addition to tax did not result from a failure by the taxpayer to provide adequate or accurate information.

(3) Initial regulations

Within 180 days after the date of the enactment of this subsection, the Secretary shall prescribe such initial regulations as may be necessary to carry out this subsection.

(g) Suspension of interest and certain penalties where Secretary fails to contact taxpayer

(1) Suspension

(A) In general

In the case of an individual who files a return of tax imposed by subtitle A for a taxable year on or before the due date for the return (including extensions), if the Secretary does not provide a notice to the taxpayer specifically stating the taxpayer's liability and the basis for the liability before the close of the 36-month period beginning on the later of—

(i) the date on which the return is filed; or

(ii) the due date of the return without regard to extensions,

the Secretary shall suspend the imposition of any interest, penalty, addition to tax, or additional amount with respect to any failure relating to the return which is computed by reference to the period of time the failure continues to exist and which is properly allocable to the suspension period.

(B) Separate application

This paragraph shall be applied separately with respect to each item or adjustment.

If, after the return for a taxable year is filed, the taxpayer provides to the Secretary 1 or more signed written documents showing that the taxpayer owes an additional amount of tax for the taxable year, clause (i) shall be applied by substituting the date the last of the documents was provided for the date on which the return is filed.

(2) Exceptions

Paragraph (1) shall not apply to—

(A) any penalty imposed by section 6651;

(B) any interest, penalty, addition to tax, or additional amount in a case involving fraud;

(C) any interest, penalty, addition to tax, or additional amount with respect to any tax liability shown on the return;

(D) any interest, penalty, addition to tax, or additional amount with respect to any gross misstatement;

(E) any interest, penalty, addition to tax, or additional amount with respect to any reportable transaction with respect to which the requirement of section 6664(d)(2)(A) [1] is not met and any listed transaction (as defined in 6707A(c)); or

(F) any criminal penalty.

(3) Suspension period

For purposes of this subsection, the term "suspension period" means the period—

(A) beginning on the day after the close of the 36-month period under paragraph (1); and

(B) ending on the date which is 21 days after the date on which notice described in paragraph (1)(A) is provided by the Secretary.

(h) Review of denial of request for abatement of interest

(1) In general

The Tax Court shall have jurisdiction over any action brought by a taxpayer who meets the requirements referred to in section 7430(c)(4)(A)(ii) to determine whether the Secretary's failure to abate interest under this section was an abuse of discretion, and may order an abatement, if such action is brought within 180 days after the date of the mailing of the Secretary's final determination not to abate such interest.

(2) Special rules

(A) Date of mailing

Rules similar to the rules of section 6213 shall apply for purposes of determining the date of the mailing referred to in paragraph (1).

(B) Relief

Rules similar to the rules of section 6512(b) shall apply for purposes of this subsection.

(C) Review

An order of the Tax Court under this subsection shall be reviewable in the same manner as a decision of the Tax Court, but only with respect to the matters determined in such order.

(i) Cross reference

For authority to suspend running of interest, etc. by reason of Presidentially declared disaster or terroristic or military action, see section 7508A.

(Aug. 16, 1954, ch. 736, 68A Stat. 792; Pub. L. 94–455, title XII, §1212(a), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1712, 1834; Pub. L. 96–589, §6(b)(2), Dec. 24, 1980, 94 Stat. 3407; Pub. L. 99–514, title XV, §1563(a), Oct. 22, 1986, 100 Stat. 2762; Pub. L. 100–647, title I, §1015(n), title VI, §6229(a), Nov. 10, 1988, 102 Stat. 3572, 3733; Pub. L. 104–168, title III, §§301(a), (b), 302(a), title VII, §701(c)(3), July 30, 1996, 110 Stat. 1457, 1464; Pub. L. 105–206,

title III, §§3305(a), 3309(a), July 22, 1998, 112 Stat. 743, 745; Pub. L. 105–277, div. J, title IV, §4003(e)(2), Oct. 21, 1998, 112 Stat. 2681–909; Pub. L. 107–134, title I, §112(d)(1), Jan. 23, 2002, 115 Stat. 2434; Pub. L. 108–357, title VIII, §903(a)–(c), Oct. 22, 2004, 118 Stat. 1652; Pub. L. 109–135, title III, §303(b)(1), Dec. 21, 2005, 119 Stat. 2609; Pub. L. 110–28, title VIII, §8242(a), May 25, 2007, 121 Stat. 200.)

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (f)(3), is the date of enactment of Pub. L. 100–647, which was approved Nov. 10, 1988.

Section 6664(d)(2)(A), referred to in subsec. (g)(2)(E), was redesignated as section 6664(d)(3)(A) by Pub. L. 111–152, title I, §1409(c)(2)(A), Mar. 30, 2010, 124 Stat. 1069.

AMENDMENTS

2007—Subsec. (g)(1)(A), (3)(A). Pub. L. 110–28 substituted "36-month period" for "18-month period".

2005—Subsec. (g)(1). Pub. L. 109–135 inserted at end "If, after the return for a taxable year is filed, the taxpayer provides to the Secretary 1 or more signed written documents showing that the taxpayer owes an additional amount of tax for the taxable year, clause (i) shall be applied by substituting the date the last of the documents was provided for the date on which the return is filed."

2004—Subsec. (g)(1)(A). Pub. L. 108–357, §903(a), substituted "18-month period" for "1-year period (18-month period in the case of taxable years beginning before January 1, 2004)" in introductory provisions.

Subsec. (g)(2)(D). Pub. L. 108–357, §903(b), added subpar. (D). Former subpar. (D) redesignated (E).

Subsec. (g)(2)(E). Pub. L. 108–357, §903(c), added subpar. (E). Former subpar. (E) redesignated (F).

Pub. L. 108–357, §903(b), redesignated subpar. (D) as (E).

Subsec. (g)(2)(F). Pub. L. 108–357, §903(c), redesignated subpar. (E) as (F).

Subsec. (g)(3)(A). Pub. L. 108–357, §903(a), substituted "18-month period" for "1-year period (18-month period in the case of taxable years beginning before January 1, 2004)".

2002—Subsecs. (h), (i). Pub. L. 107–134 added subsec. (i), redesignated former subsec. (i) as (h), and struck out former subsec. (h), which had authorized abatement of interest on underpayments by taxpayers in Presidentially declared disaster areas and defined the term "Presidentially declared disaster area" for purposes of this provision.

1998—Subsec. (g). Pub. L. 105–206, §3305(a), added subsec. (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 105–206, §3309(a), added subsec. (h). Former subsec. (h) redesignated (i).

Pub. L. 105–206, §3305(a), redesignated subsec. (g) as (h).

Subsec. (h)(2). Pub. L. 105–277 inserted "Robert T. Stafford" before "Disaster".

Subsec. (i). Pub. L. 105–206, §3309(a), redesignated subsec. (h) as (i).

1996—Subsec. (e). Pub. L. 104–168, §301(b), substituted "Abatement of interest attributable to unreasonable errors" for "Assessments of interest attributable to errors" in heading.

Subsec. (e)(1)(A), (B). Pub. L. 104–168, §301(a), inserted "unreasonable" before "error" and substituted "in performing a ministerial or managerial act" for "in performing a ministerial act".

Subsec. (g). Pub. L. 104–168, §302(a), added subsec. (g).

Subsec. (g)(1). Pub. L. 104–168, §701(c)(3), substituted "section 7430(c)(4)(A)(ii)" for "section 7430(c)(4)(A)(iii)".

1988—Subsec. (e)(1)(B). Pub. L. 100–647, §1015(n), inserted "error or" before "delay" and "erroneous or" before "dilatory".

Subsec. (f). Pub. L. 100–647, §6229(a), added subsec. (f).

1986—Subsec. (e). Pub. L. 99–514 added subsec. (e).

1980—Subsec. (d). Pub. L. 96–589 substituted "section 6213(g)(2)(A)" for "section 6213(f)(2)(A)".

1976—Subsecs. (a), (c). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary" wherever appearing.

Subsec. (d). Pub. L. 94–455, §1212(a), added subsec. (d).

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–28, title VIII, §8242(b), May 25, 2007, 121 Stat. 200, provided that: "The amendments made by this section [amending this section] shall apply to notices provided by the Secretary of the Treasury, or his delegate, after the date which is 6 months after the date of the enactment of this Act [May 25, 2007]."

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–135, title III, §303(b)(2), Dec. 21, 2005, 119 Stat. 2609, provided that: "The amendment made

by this subsection [amending this section] shall apply to documents provided on or after the date of the enactment of this Act [Dec. 21, 2005]."

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §903(d), Oct. 22, 2004, 118 Stat. 1652, as amended by Pub. L. 109–135, title III, §303(a)(1), Dec. 21, 2005, 119 Stat. 2608; Pub. L. 109–432, div. A, title IV, §426(b)(1), Dec. 20, 2006, 120 Stat. 2975, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2003.

"(2) EXCEPTION FOR REPORTABLE OR LISTED TRANSACTIONS.—

"(A) IN GENERAL.—The amendments made by subsection (c) [amending this section] shall apply with respect to interest accruing after October 3, 2004.

"(B) SPECIAL RULE FOR CERTAIN LISTED AND REPORTABLE TRANSACTIONS.—

"(i) IN GENERAL.—Except as provided in clauses (ii), (iii), and (iv), the amendments made by subsection (c) shall also apply with respect to interest accruing on or before October 3, 2004.

"(ii) PARTICIPANTS IN SETTLEMENT INITIATIVES.—Clause (i) shall not apply to any transaction if, as of January 23, 2006—

"(I) the taxpayer is participating in a settlement initiative described in Internal Revenue Service Announcement 2005–80 with respect to such transaction, or

"(II) the taxpayer has entered into a settlement agreement pursuant to such an initiative.

Subclause (I) shall not apply to any taxpayer if, after January 23, 2006, the taxpayer withdraws from, or terminates, participation in the initiative or the Secretary of the Treasury or the Secretary's delegate determines that a settlement agreement will not be reached pursuant to the initiative within a reasonable period of time.

"(iii) TAXPAYERS ACTING IN GOOD FAITH.—The Secretary of the Treasury or the Secretary's delegate may except from the application of clause (i) any transaction in which the taxpayer has acted reasonably and in good faith.

"(iv) CLOSED TRANSACTIONS.—Clause (i) shall not apply to a transaction if, as of December 14, 2005—

"(I) the assessment of all Federal income taxes for the taxable year in which the tax liability to which the interest relates arose is prevented by the operation of any law or rule of law, or

"(II) a closing agreement under section 7121 has been entered into with respect to the tax liability arising in connection with the transaction."

[Pub. L. 109–432, div. A, title IV, §426(b)(2), Dec. 20, 2006, 120 Stat. 2975, provided that: "The amendment made by this subsection [amending section 903(d) of Pub. L. 108–357, set out above] shall take effect as if included in the provisions of the American Jobs Creation Act of 2004 [Pub. L. 108–357] to which it relates."]

[Pub. L. 109–135, title III, §303(a)(2), Dec. 21, 2005, 119 Stat. 2609, provided that: "The amendment made by this subsection [amending section 903(d) of Pub. L. 108–357, set out above] shall take effect as if included in the provisions of the American Jobs Creation Act of 2004 [Pub. L. 108–357] to which it relates."]

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–134 applicable to disasters and terroristic or military actions occurring on or after Sept. 11, 2001, with respect to any action of the Secretary of the Treasury, the Secretary of Labor, or the Pension Benefit Guaranty Corporation occurring on or after Jan. 23, 2002, see section 112(f) of Pub. L. 107–134, set out as a note under section 6081 of this title.

EFFECTIVE DATE OF 1998 AMENDMENTS

Amendment by Pub. L. 105–277 effective as if included in the provision of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 4003(l) of Pub. L. 105–277, set out as a note under section 86 of this title.

Pub. L. 105–206, title III, §3305(b), July 22, 1998, 112 Stat. 743, provided that: "The amendments made by this section [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [July 22, 1998]."

Pub. L. 105–206, title III, §3309(b), (c), July 22, 1998, 112 Stat. 745, provided that:

"(b) EFFECTIVE DATE.—The amendment made by this section [amending this section] shall apply to disasters declared after December 31, 1997, with respect to taxable years beginning after December 31, 1997.

"(c) EMERGENCY DESIGNATION.—

"(1) For the purposes of section 252(e) of the Balanced Budget and Emergency Deficit Control Act [2 U.S.C. 902(e)], Congress designates the provisions of this section as an emergency requirement.

"(2) The amendments made by subsections (a) and (b) of this section [amending this section] shall only take effect upon the transmittal by the President to the Congress of a message designating the provisions of subsections (a) and (b) as an emergency requirement pursuant to section 252(e) of the Balanced Budget and Emergency Deficit Control Act."

[For message of the President dated July 22, 1998, designating the provisions of section 3309(a), (b) of Pub. L. 105–206 as an emergency requirement pursuant to section 252(e) of the Balanced Budget and Emergency Deficit Control Act of 1985 on July 22, 1998, see Cong. Rec., vol. 144, p. H6160, Daily Issue.]

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–168, title III, §301(c), July 30, 1996, 110 Stat. 1457, provided that: "The amendments made by this section [amending this section] shall apply to interest accruing with respect to deficiencies or payments for taxable years beginning after the date of the enactment of this Act [July 30, 1996]."

Pub. L. 104–168, title III, §302(b), July 30, 1996, 110 Stat. 1458, provided that: "The amendment made by this section [amending this section] shall apply to requests for abatement after the date of the enactment of this Act [July 30, 1996]."

Pub. L. 104–168, title VII, §701(d), July 30, 1996, 110 Stat. 1464, provided that: "The amendments made by this section [amending this section and sections 6656 and 7430 of this title] shall apply in the case of proceedings commenced after the date of the enactment of this Act [July 30, 1996]."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1015(n) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title VI, §6229(b), Nov. 10, 1988, 102 Stat. 3733, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to advice requested on or after January 1, 1989."

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XV, §1563(b), Oct. 22, 1986, 100 Stat. 2762, provided that:

"(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to interest accruing with respect to deficiencies or payments for taxable years beginning after December 31, 1978.

"(2) STATUTE OF LIMITATIONS.—If refund or credit of any amount resulting from the application of the amendment made by subsection (a) is prevented at any time before the close of the date which is 1 year after the date of the enactment of this Act [Oct. 22, 1986] by the operation of any law or rule of law (including res judicata), refund or credit of such amount (to the extent attributable to the application of the amendment made by subsection (a)) may, nevertheless, be made or allowed if claim therefore [sic] is filed before the close of such 1-year period."

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–589 effective on Oct. 1, 1979, but not applicable to proceedings under Title 11, Bankruptcy, commenced before Oct. 1, 1979, see section 7(e) of Pub. L. 96–589, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XII, §1212(b), Oct. 4, 1976, 90 Stat. 1712, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to returns filed for taxable years ending after the date of enactment of this Act [Oct. 4, 1976]."

[1] *See References in Text note below.*

§6405. Reports of refunds and credits

(a) By Treasury to Joint Committee

No refund or credit of any income, war profits, excess profits, estate, or gift tax, or any tax

imposed with respect to public charities, private foundations, operators' trust funds, pension plans, or real estate investment trusts under chapter 41, 42, 43, or 44, in excess of $2,000,000 shall be made until after the expiration of 30 days from the date upon which a report giving the name of the person to whom the refund or credit is to be made, the amount of such refund or credit, and a summary of the facts and the decision of the Secretary, is submitted to the Joint Committee on Taxation.

(b) Tentative adjustments

Any credit or refund allowed or made under section 6411 shall be made without regard to the provisions of subsection (a) of this section. In any such case, if the credit or refund, reduced by any deficiency in such tax thereafter assessed and by deficiencies in any other tax resulting from adjustments reflected in the determination of the credit or refund, is in excess of $2,000,000, there shall be submitted to such committee a report containing the matter specified in subsection (a) at such time after the making of the credit or refund as the Secretary shall determine the correct amount of the tax.

(c) Refunds attributable to certain disaster losses

If any refund or credit of income taxes is attributable to the taxpayer's election under section 165(i) to deduct a disaster loss for the taxable year immediately preceding the taxable year in which the disaster occurred, the Secretary is authorized in his discretion to make the refund or credit, to the extent attributable to such election, without regard to the provisions of subsection (a) of this section. If such refund or credit is made without regard to subsection (a), there shall thereafter be submitted to such Joint Committee a report containing the matter specified in subsection (a) as soon as the Secretary shall determine the correct amount of the tax for the taxable year for which the refund or credit is made.

(Aug. 16, 1954, ch. 736, 68A Stat. 792; Pub. L. 92–418, §2(b), Aug. 29, 1972, 86 Stat. 657; Pub. L. 92–512, title II, §203(a), Oct. 20, 1972, 86 Stat. 944; Pub. L. 94–455, title XII, §1210(a), (b), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1711, 1834; Pub. L. 95–227, §4(d)(3), Feb. 10, 1978, 92 Stat. 23; Pub. L. 98–369, div. A, title VII, §711(c)(3), July 18, 1984, 98 Stat. 946; Pub. L. 99–514, title XVIII, §1879(e), Oct. 22, 1986, 100 Stat. 2906; Pub. L. 101–508, title XI, §§11801(c)(21)(A), 11834(a), Nov. 5, 1990, 104 Stat. 1388–528, 1388–560; Pub. L. 106–554, §1(a)(7) [title III, §305(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–634.)

AMENDMENTS

2000—Subsecs. (a), (b). Pub. L. 106–554 substituted "$2,000,000" for "$1,000,000".

1990—Subsecs. (a), (b). Pub. L. 101–508, §11834(a) substituted "$1,000,000" for "$200,000".

Subsec. (d). Pub. L. 101–508, §11801(c)(21)(A), struck out subsec. (d) which read as follows: "For purposes of this section, a refund or credit made under subchapter E of chapter 64 (relating to Federal collection of qualified State individual income taxes) for a taxable year shall be treated as a portion of a refund or credit of the income tax for that taxable year."

1986—Subsecs. (b) to (e). Pub. L. 99–514 redesignated subsecs. (c) to (e) as (b) to (d), respectively, and struck out former subsec. (b) which read as follows: "A report to Congress shall be made annually by such committee of such refunds and credits, including the names of all persons and corporations to whom amounts are credited or payments are made, together with the amounts credited or paid to each."

1984—Subsec. (d). Pub. L. 98–369 substituted "section 165(i)" for "section 165(h)".

1978—Subsec. (a). Pub. L. 95–227 inserted provisions relating to applicability to public charities, operators' trust funds, or real estate investment trusts, and references to chapters 41 and 44.

1976—Subsec. (a). Pub. L. 94–455, §1210(a), inserted reference to any tax imposed with respect to private foundations and pensions under chapters 42 and 43, substituted $200,000 for $100,000 and struck out "or his delegate" after "Secretary".

Subsec. (c). Pub. L. 94–455, §§1210(b), 1906(b)(13)(A), substituted "$200,000" for "$100,000" and struck out "or his delegate" after "Secretary".

Subsec. (d). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary" wherever appearing.

1972—Subsec. (d). Pub. L. 92–418 added subsec. (d).

Subsec. (e). Pub. L. 92–512 added subsec. (e).

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(7) [title III, §305(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–634, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 21, 2000], except that such amendment shall not apply with respect to any refund or credit with respect to a report that has been made before such date of the enactment under section 6405 of the Internal Revenue Code of 1986."

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, §11834(b), Nov. 5, 1990, 104 Stat. 1388–560, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 5, 1990], except that such amendment shall not apply with respect to any refund or credit with respect to a report has been made before such date of enactment under section 6405 of the Internal Revenue Code of 1986."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–227 applicable with respect to contributions, acts, and expenditures made after Dec. 31, 1977, in and for taxable years beginning after such date, see section 4(f) of Pub. L. 95–227, set out as an Effective Date note under section 192 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XII, §1210(d)(1), Oct. 4, 1976, 90 Stat. 1711, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by subsections (a) and (b) [amending this section] shall take effect on the date of enactment of this Act [Oct. 4, 1976], except that such amendments shall not apply with respect to any refund or credit with respect to which a report has been made before the date of enactment of this Act [Oct. 4, 1976] under subsection (a) or (c) of section 6405 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]."

EFFECTIVE DATE OF 1972 AMENDMENT

Pub. L. 92–418, §2(c), Aug. 29, 1972, 86 Stat. 657, provided in part that: "The amendment made by subsection (b) [amending this section] shall apply with respect to refunds or credits made after July 1, 1972."

SAVINGS PROVISION

For provisions that nothing in amendment by section 11801(c)(21)(A) of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§6406. Prohibition of administrative review of decisions

In the absence of fraud or mistake in mathematical calculation, the findings of fact in and the decision of the Secretary upon the merits of any claim presented under or authorized by the internal revenue laws and the allowance or non-allowance by the Secretary of interest on any credit or refund

under the internal revenue laws shall not, except as provided in subchapters C and D of chapter 76 (relating to the Tax Court), be subject to review by any other administrative or accounting officer, employee, or agent of the United States.

(Aug. 16, 1954, ch. 736, 68A Stat. 792; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

§6407. Date of allowance of refund or credit

The date on which the Secretary first authorizes the scheduling of an overassessment in respect of any internal revenue tax shall be considered as the date of allowance of refund or credit in respect of such tax.

(Aug. 16, 1954, ch. 736, 68A Stat. 793; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

§6408. State escheat laws not to apply

No overpayment of any tax imposed by this title shall be refunded (and no interest with respect to any such overpayment shall be paid) if the amount of such refund (or interest) would escheat to a State or would otherwise become the property of a State under any law relating to the disposition of unclaimed or abandoned property. No refund (or payment of interest) shall be made to the estate of any decedent unless it is affirmatively shown that such amount will not escheat to a State or otherwise become the property of a State under such a law.

(Added Pub. L. 100–203, title X, §10621(a), Dec. 22, 1987, 101 Stat. 1330–452.)

EFFECTIVE DATE

Pub. L. 100–203, title X, §10621(c), Dec. 22, 1987, 101 Stat. 1330–452, provided that: "The amendments made by this section [enacting this section] shall take effect on the date of the enactment of this Act [Dec. 22, 1987]."

§6409. Refunds disregarded in the administration of Federal programs and federally assisted programs

Notwithstanding any other provision of law, any refund (or advance payment with respect to a refundable credit) made to any individual under this title shall not be taken into account as income, and shall not be taken into account as resources for a period of 12 months from receipt, for purposes of determining the eligibility of such individual (or any other individual) for benefits or assistance (or the amount or extent of benefits or assistance) under any Federal program or under any State or local program financed in whole or in part with Federal funds.

(Added Pub. L. 111–312, title VII, §728(a), Dec. 17, 2010, 124 Stat. 3317; amended Pub. L. 112–240, title I, §103(d), Jan. 2, 2013, 126 Stat. 2320.)

AMENDMENTS

2013—Pub. L. 112–240 amended section generally. Prior to amendment, section related to refunds disregarded in the administration of Federal programs and federally assisted programs and provided that the provisions were inapplicable to any amount received after Dec. 31, 2012.

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112–240 applicable to amounts received after Dec. 31, 2012, see section 103(e)(2) of Pub. L. 112–240, set out as a note under section 24 of this title.

EFFECTIVE DATE

Pub. L. 111–312, title VII, §728(c), Dec. 17, 2010, 124 Stat. 3317, provided that: "The amendments made by this section [enacting this section] shall apply to amounts received after December 31, 2009."

Subchapter B—Rules of Special Application

Sec.
6411. Tentative carryback and refund adjustments.
6412. Floor stocks refunds.
6413. Special rules applicable to certain employment taxes.
6414. Income tax withheld.
6415. Credits or refunds to persons who collected certain taxes.
6416. Certain taxes on sales and services.
[6417, 6418. Repealed.]
6419. Excise tax on wagering.
6420. Gasoline used on farms.
6421. Gasoline used for certain nonhighway purposes, used by local transit systems, or sold for certain exempt purposes.
6422. Cross references.
6423. Conditions to allowance in the case of alcohol and tobacco taxes.
[6424. Repealed.]
6425. Adjustment of overpayment of estimated income tax by corporation.
6426. Credit for alcohol fuel, biodiesel, and alternative fuel mixtures.
6427. Fuels not used for taxable purposes.
6428. 2008 recovery rebates for individuals.
6429. Advance payment of portion of increased child credit for 2003.
6430. Treatment of tax imposed at Leaking Underground Storage Tank Trust Fund financing rate.
6431. Credit for qualified bonds allowed to issuer.
6432. COBRA premium assistance.

AMENDMENTS

2009—Pub. L. 111–5, div. B, title I, §1531(c)(7), title III, §3001(a)(12)(C), Feb. 17, 2009, 123 Stat. 360, 463, added items 6431 and 6432.

2008—Pub. L. 110–185, title I, §101(f)(3), Feb. 13, 2008, 122 Stat. 617, substituted "2008 recovery rebates for individuals" for "Acceleration of 10 percent income tax rate bracket benefit for 2001" in item 6428.

2005—Pub. L. 109–59, title XI, §11113(b)(3)(B), Aug. 10, 2005, 119 Stat. 1948, substituted "alcohol fuel, biodiesel, and alternative fuel" for "alcohol fuel and biodiesel" in item 6426.

Pub. L. 109–58, title XIII, §1362(b)(3)(B), Aug. 8, 2005, 119 Stat. 1059, added item 6430.

2004—Pub. L. 108–357, title III, §301(c)(14), Oct. 22, 2004, 118 Stat. 1463, added item 6426.

2003—Pub. L. 108–27, title I, §101(b)(2), May 28, 2003, 117 Stat. 754, added item 6429.

2001—Pub. L. 107–16, title I, §101(b)(2), June 7, 2001, 115 Stat. 43, added item 6428.

1990—Pub. L. 101–508, title XI, §11801(b)(15), (c)(22)(B)(ii), Nov. 5, 1990, 104 Stat. 1388–522, 1388–528, struck out item 6418 "Sugar" and item 6428 "1981 rate reduction tax credit".

1988—Pub. L. 100–418, title I, §1941(b)(3)(E), Aug. 23, 1988, 102 Stat. 1324, struck out items 6429 "Credit and refund of chapter 45 taxes paid by royalty owners" and 6430 "Credit or refund of windfall profit taxes to certain trust beneficiaries".

1986—Pub. L. 99–514, title XVII, §1703(c)(2)(E), Oct. 22, 1986, 100 Stat. 2777, substituted ", used by local transit systems, or sold for certain exempt purposes" for "or by local transit systems" in item 6421.

1983—Pub. L. 98–67 repealed amendments made by Pub. L. 97–248. See 1982 Amendment note below.

Pub. L. 97–448, title I, §106(a)(4)(D), Jan. 12, 1983, 96 Stat. 2390, added item 6430.

Pub. L. 97–424, title V, §515(b)(14), Jan. 6, 1983, 96 Stat. 2182, struck out item 6424 "Lubricating oil used

for certain nontaxable purposes".

1982—Pub. L. 97–248, title II, §280(c)(2)(H), Sept. 3, 1982, 96 Stat. 565, struck out item 6426 "Refund of aircraft use tax where plane transports for hire in foreign air commerce".

Pub. L. 97–248, title III, §§307(a)(13), 308(a), Sept. 3, 1982, 96 Stat. 590, 591, provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, item 6413 is amended by substituting "taxes under subtitle C" for "employment taxes". Section 102(a), (b) of Pub. L. 98–67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§301–308) of title III of Pub. L. 97–248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 [now 1986] [this title] shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

1981—Pub. L. 97–34, title I, §101(b)(2)(A), Aug. 13, 1981, 95 Stat. 183, substituted "1981 rate reduction tax credit" for "Refund of 1974 individual income taxes" in item 6428.

1980—Pub. L. 96–499, title XI, §1131(a)(2), Dec. 5, 1980, 94 Stat. 2693, added item 6429.

1978—Pub. L. 95–618, title II, §233(b)(2)(B), Nov. 9, 1978, 92 Stat. 3191, substituted "used for certain nontaxable purposes" for "not used in highway motor vehicles" in item 6424.

Pub. L. 95–600, title V, §504(b)(1)(B), Nov. 6, 1978, 92 Stat. 2881, inserted "and refund" after "carryback" in item 6411.

1976—Pub. L. 94–455, title XIX, §1906(b)(7), Oct. 4, 1976, 90 Stat. 1834, struck out item 6417 "Coconut and palm oil".

1975—Pub. L. 94–12, title I, §101(c), Mar. 29, 1975, 89 Stat. 28, added item 6428.

1970—Pub. L. 91–258, title II, §§206(d)(4), 207(d)(12), May 21, 1970, 84 Stat. 246, 249, added items 6426 and 6427.

1968—Pub. L. 90–364, title I, §103(e)(9), June 28, 1968, 82 Stat. 264, added item 6425.

1958—Pub. L. 85–323, §2, Feb. 11, 1958, 72 Stat. 10, added item 6423.

1956—Act June 29, 1956, ch. 462, title II, §208(e)(4), 70 Stat. 397, added item 6421 and renumbered former item 6421 as 6422.

Act Apr. 2, 1956, ch. 160, §4(c), 70 Stat. 91, added item 6420 and renumbered former item 6420 as 6421.

§6411. Tentative carryback and refund adjustments

(a) Application for adjustment

A taxpayer may file an application for a tentative carryback adjustment of the tax for the prior taxable year affected by a net operating loss carryback provided in section 172(b), by a business credit carryback provided in section 39, or by a capital loss carryback provided in subsection (a)(1) or (c) of section 1212, from any taxable year. The application shall be verified in the manner prescribed by section 6065 in the case of a return of such taxpayer and shall be filed, on or after the date of filing for the return for the taxable year of the net operating loss, net capital loss, or unused business credit from which the carryback results and within a period of 12 months after such taxable year or, with respect to any portion of a business credit carryback attributable to a net operating loss carryback or a net capital loss carryback from a subsequent taxable year, in the manner and form required by regulations prescribed by the Secretary. The applications shall set forth in such detail and with such supporting data and explanation as such regulations shall require—

(1) The amount of the net operating loss, net capital loss, or unused business credit;

(2) The amount of the tax previously determined for the prior taxable year affected by such carryback, the tax previously determined being ascertained in accordance with the method prescribed in section 1314(a);

(3) The amount of decrease in such tax, attributable to such carryback, such decrease being determined by applying the carryback in the manner provided by law to the items on the basis of which such tax was determined;

(4) The unpaid amount of such tax, not including any amount required to be shown under paragraph (5);

(5) The amount, with respect to the tax for the taxable year immediately preceding the taxable year from which the carryback is made, as to which an extension of time for payment under section 6164 is in effect; and

(6) Such other information for purposes of carrying out the provisions of this section as may be required by such regulations.

Except for purposes of applying section 6611(f)(4)(B), an application under this subsection shall not constitute a claim for credit or refund.

(b) Allowance of adjustments

Within a period of 90 days from the date on which an application for a tentative carryback adjustment is filed under subsection (a), or from the last day of the month in which falls the last date prescribed by law (including any extension of time granted the taxpayer) for filing the return for the taxable year of the net operating loss, net capital loss, or unused business credit from which such carryback results, whichever is the later, the Secretary shall make, to the extent he deems practicable in such period, a limited examination of the application, to discover omissions and errors of computation therein, and shall determine the amount of the decrease in the tax attributable to such carryback upon the basis of the application and the examination, except that the Secretary may disallow, without further action, any application which he finds contains errors of computation which he deems cannot be corrected by him within such 90-day period or material omissions. Such decrease shall be applied against any unpaid amount of the tax decreased (including any amount of such tax as to which an extension of time under section 6164 is in effect) and any remainder shall be credited against any unsatisfied amount of any tax for the taxable year immediately preceding the taxable year of the net operating loss, net capital loss, or unused business credit the time for payment of which tax is extended under section 6164. Any remainder shall, within such 90-day period, be either credited against any tax or installment thereof then due from the taxpayer, or refunded to the taxpayer.

(c) Consolidated returns

If the corporation seeking a tentative carryback adjustment under this section, made or was required to make a consolidated return, either for the taxable year within which the net operating loss, net capital loss, or unused business credit arises, or for the preceding taxable year affected by such loss or credit, the provisions of this section shall apply only to such extent and subject to such conditions, limitations, and exceptions as the Secretary may by regulations prescribe.

(d) Tentative refund of tax under claim of right adjustment

(1) Application

A taxpayer may file an application for a tentative refund of any amount treated as an overpayment of tax for the taxable year under section 1341(b)(1). Such application shall be in such manner and form as the Secretary may prescribe by regulation and shall—

(A) be verified in the same manner as an application under subsection (a),

(B) be filed during the period beginning on the date of filing the return for such taxable year and ending on the date 12 months from the last day of such taxable year, and

(C) set forth in such detail and with such supporting data such regulations prescribe—

(i) the amount of the tax for such taxable year computed without regard to the deduction described in section 1341(a)(2),

(ii) the amount of the tax for all prior taxable years for which the decrease in tax provided in section 1341(a)(5)(B) was computed,

(iii) the amount determined under section 1341(a)(5)(B),

(iv) the amount of the overpayment determined under section 1341(b)(1); and

(v) such other information as the Secretary may require.

(2) Allowance of adjustments

Within a period of 90 days from the date on which an application is filed under paragraph (1) or from the date of the overpayment (determined under section 1341(b)(1)), whichever is later, the Secretary shall—

(A) review the application,

(B) determine the amount of the overpayment, and
(C) apply, credit, or refund such overpayment,

in a manner similar to the manner provided in subsection (b).

(3) Consolidated returns

The provisions of subsection (c) shall apply to an adjustment under this subsection to the same extent and manner as the Secretary may by regulations provide.

(Aug. 16, 1954, ch. 736, 68A Stat. 794; Pub. L. 89–721, §2(a)–(e), Nov. 2, 1966, 80 Stat. 1150; Pub. L. 90–225, §2(b), Dec. 27, 1967, 81 Stat. 731; Pub. L. 91–172, title V, §512(d), Dec. 30, 1969, 83 Stat. 639; Pub. L. 92–178, title VI, §601(e)(1), Dec. 10, 1971, 85 Stat. 560; Pub. L. 94–455, title XIX, §1906(b)(13)(A), title XXI, §2107(g)(1), Oct. 4, 1976, 90 Stat. 1834, 1904; Pub. L. 95–30, title II, §202(d)(5)(A), May 23, 1977, 91 Stat. 150; Pub. L. 95–600, title V, §504(a), (b)(1)(A), Nov. 6, 1978, 92 Stat. 2880, 2881; Pub. L. 96–222, title I, §§103(a)(6)(G)(xiii), 105(a)(2), Apr. 1, 1980, 94 Stat. 211, 218; Pub. L. 97–34, title II, §221(b)(2)(B), title III, §331(d)(2)(B), Aug. 13, 1981, 95 Stat. 247, 295; Pub. L. 98–369, div. A, title IV, §474(r)(37), title VII, §714(n)(2)(B), July 18, 1984, 98 Stat. 846, 964; Pub. L. 99–514, title II, §231(d)(3)(H), title XVIII, §1847(b)(10), Oct. 22, 1986, 100 Stat. 2180, 2857; Pub. L. 100–647, title I, §1002(h)(2), Nov. 10, 1988, 102 Stat. 3370; Pub. L. 106–554, §1(a)(7) [title III, §318(d)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–645; Pub. L. 109–135, title IV, §409(a)(1), Dec. 21, 2005, 119 Stat. 2635.)

AMENDMENTS

2005—Subsec. (a). Pub. L. 109–135 substituted "6611(f)(4)(B)" for "6611(f)(3)(B)" in concluding provisions.

2000—Subsec. (a). Pub. L. 106–554 substituted "subsection (a)(1) or (c) of section 1212" for "section 1212(a)(1)" in introductory provisions.

1988—Subsec. (c). Pub. L. 100–647 struck out "unused research credit," after "net capital loss,".

1986—Subsec. (a). Pub. L. 99–514, §231(d)(3)(H), in introductory provisions, struck out "by a research credit carryback provided in section 30(g)(2)" after "carryback provided in section 39,", "unused research credit," after "net capital loss,", "a research credit carryback or" after "with respect to any portion of", and "(or, with respect to any portion of a business credit carryback attributable to a research credit carryback from a subsequent taxable year within a period of 12 months from the end of such subsequent taxable year)" after "such subsequent taxable year", and in par. (1), struck out "unused research credit," after "net capital loss,".

Pub. L. 99–514, §1847(b)(10), substituted "unused research credit, or unused business credit" for "or unused business credit".

Subsec. (b). Pub. L. 99–514, §231(d)(3)(H)(iv), struck out "unused research credit," after "net capital loss,", in two places.

1984—Subsec. (a). Pub. L. 98–369, §474(r)(37)(A), amended provisions preceding par. (1) generally. Prior to amendment, such provisions read as follows: "A taxpayer may file an application for a tentative carryback adjustment of the tax for the prior taxable year affected by a net operating loss carryback provided in section 172(b), by an investment credit carryback provided in section 46(b), by a work incentive program carryback provided in section 50A(b), by a new employee credit carryback provided in section 53(b), by a research credit carryback provided in section 44F(g)(2) by an employee stock ownership credit carryback provided by section 44G(b)(2), or by a capital loss carryback provided in section 1212(a)(1), from any taxable year. The application shall be verified in the manner prescribed by section 6065 in the case of a return of such taxpayer, and shall be filed, on or after the date of filing of the return for the taxable year of the net operating loss, net capital loss, unused investment credit, unused work incentive program credit, unused new employee credit, unused research credit, or unused employee stock ownership credit, from which the carryback results and within a period of 12 months from the end of such taxable year (or, with respect to any portion of an investment credit carryback, a work incentive program carryback, a new employee credit carryback, a research credit carryback, or employee stock ownership credit carryback from a taxable year attributable to a net operating loss carryback or a capital loss carryback (or, in the case of a work incentive program carryback, to an investment credit carryback, or, in the case of a new employee credit carryback, to an investment credit carryback or a work incentive program carryback, or, in the case of a research credit carryback, to an investment credit carryback, a work incentive program carryback, or a new employee credit carryback, or, in the case of an employee stock ownership credit carryback, to an investment credit carryback, a new employee credit carryback or a research and experimental credit carryback) from a subsequent taxable year, within a

period of 12 months from the end of such subsequent taxable year), in the manner and form required by regulations prescribed by the Secretary. The application shall set forth in such detail and with such supporting data and explanation as such regulations shall require—".

Pub. L. 98–369, §714(n)(2)(B), in provisions following par. (6), substituted "Except for purposes of applying section 6611(f)(3)(B), an application" for "An application".

Subsec. (a)(1). Pub. L. 98–369, §474(r)(37)(A), substituted "unused research credit, or unused business credit" for "unused investment credit, unused work incentive program credit, unused new employee credit, unused research credit, or unused employee stock ownership credit".

Subsecs. (b), (c). Pub. L. 98–369, §474(r)(37)(B), substituted "unused research credit, or unused business credit" for "unused investment credit, unused work incentive program credit, unused new employee credit, unused research credit, or unused employee stock ownership credit" wherever appearing.

1981—Subsec. (a). Pub. L. 97–34, §331(d)(2)(B), inserted in introductory provisions "by an employee stock ownership credit carryback provided by section 44G(b)(2)" after "section 44F(g)(2)," and substituted "unused research credit, or unused employee stock ownership credit" for "or unused research credit", "a research credit carryback, or employee stock ownership credit carryback" for "or a research credit carryback", and "new employee credit carryback, or, in the case of an employee stock ownership credit carryback, to an investment credit carryback, a new employee credit carryback or a research and experimental credit carryback)" for "new employee credit carryback)" and in par. (1) substituted "unused research credit, or unused employee stock ownership credit" for "or unused research credit".

Pub. L. 97–34, §221(b)(2)(B), inserted in introductory provision "by a research credit carryback provided in section 44F(g)(2)," after "section 53(b)," and substituted "unused new employee credit, or unused research credit" for "or unused new employee credit", "a new employee credit carryback, or a research credit carryback" for "or a new employee credit carryback", and "work incentive program carryback, or, in the case of a research credit carryback, to an investment credit carryback, a work incentive program carryback, or new employee credit carryback)" for "work incentive program carryback)" and in par. (1) substituted "unused new employee credit, or unused research credit" for "or unused new employee credit".

Subsec. (b). Pub. L. 97–34, §331(d)(2)(B)(i), substituted "unused research credit, or unused employee stock ownership credit" for "or unused research credit".

Pub. L. 97–34, §221(b)(2)(B)(i), substituted "unused new employee credit, or unused research credit" for "or unused new employee credit".

Subsec. (c). Pub. L. 97–34, §331(d)(2)(B)(i), substituted "unused research credit, or unused employee stock ownership credit" for "or unused research credit".

Pub. L. 97–34, §221(b)(2)(B)(i), substituted "unused new employee credit, or unused research credit" for "or unused new employee credit".

1980—Subsec. (a). Pub. L. 96–222, §103(a)(6)(G)(xiii), substituted "section 53(b)" for "section 53(c)".

Subsec. (d)(2). Pub. L. 96–222, §105(a)(2), substituted "the date of the overpayment (determined under section 1341(b)(1))" for "the last day of the month in which falls the last date prescribed by law (including any extension of time granted the taxpayer) for filing the return for taxable year in which the overpayment occurs".

1978—Pub. L. 95–600, §504(b)(1)(A), inserted "and refund" after "carryback" in section catchline.

Subsec. (d). Pub. L. 95–600, §504(a), added subsec. (d).

1977—Subsec. (a). Pub. L. 95–30, §202(d)(5)(A)(i) to (iv), inserted references to unused new employee credits and to new employee credit carrybacks in provisions preceding par. (1) and in par. (1).

Subsecs. (b), (c). Pub. L. 95–30, §202(d)(5)(A)(i), inserted references to unused new employee credits.

1976—Subsec. (a). Pub. L. 94–455, §§1906(b)(13)(A), 2107(g)(1), struck out "or his delegate" after "Secretary" and inserted "(or, in the case of a work incentive program carryback, to an investment credit carryback)" after "capital loss carryback" in second sentence.

Subsecs. (b), (c). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary" wherever appearing.

1971—Pub. L. 92–178, §601(e)(1)(A), substituted "unused investment credit, or unused work incentive program credit" for "or unused investment credit" wherever appearing in subsecs. (a), (a)(1), (b), and (c).

Subsec. (a). Pub. L. 92–178, §601(e)(1)(B) and (C), inserted "by a work incentive program carryback provided in section 50A(b)," after "section 46(b)," in first sentence, and "or a work incentive program carryback" after "investment credit carryback" in second sentence, respectively.

1969—Subsec. (a). Pub. L. 91–172, §512(d)(1), (2), provided quick refund procedure, presently available in case of net operating loss carrybacks, to be made available in the case of the 3-year capital loss carryback, and substituted "net operating loss, net capital loss, or unused investment credit" for "net operating loss or unused investment credit" in par. (1).

Subsec. (b). Pub. L. 91–172, §512(d)(2), substituted "net operating loss, net capital loss, or unused investment credit" for "net operating loss or unused investment credit" wherever such term appears.

Subsec. (c). Pub. L. 91–172, §512(d)(2), substituted "net operating loss, net capital loss, or unused investment credit" for "net operating loss or unused investment credit".

1967—Subsec. (a). Pub. L. 90–225 inserted "(or, with respect to any portion of an investment credit carryback from a taxable year attributable to a net operating loss carryback from a subsequent taxable year, within a period of 12 months from the end of such subsequent taxable year)" after "within a period of 12 months from the end of such taxable year".

1966—Subsec. (a). Pub. L. 89–721, §2(a)–(c), provided in introductory text for a tentative carryback adjustment based on an investment credit carryback as provided for in section 46(b) of this title and inserted "or unused investment credit" after "the taxable year of the net operating loss", inserted in par. (1) "or unused investment" after "net operating loss", and struck out in par. (5) "of such loss" and inserted in lieu thereof "from which the carryback is made".

Subsec. (b). Pub. L. 89–721, §2(d), inserted "or unused investment credit" after "net operating loss" in two places.

Subsec. (c). Pub. L. 89–721, §2(d), (e), inserted "or unused investment credit" after "net operating loss" and "or credit" after "such loss".

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 409(d) of Pub. L. 109–135, set out as a note under section 961 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(7) [title III, §318(d)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–645, provided that: "The amendment made by paragraph (1) [amending this section] shall take effect as if included in the amendments made by section 504 of the Economic Recovery Tax Act of 1981 [Pub. L. 97–34, amending section 1212 of this title]."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 231(d)(3)(H) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1985, see section 231(g) of Pub. L. 99–514, set out as a note under section 41 of this title.

Amendment by section 1847(b)(10) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(37) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 714(n)(2)(B) of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

Notwithstanding section 715 of Pub. L. 98–369, amendment by section 714(n)(2)(B) of Pub. L. 98–369 applicable only to applications filed after July 18, 1984, see section 1875(d)(3) of Pub. L. 99–514, set out as a note under section 6611 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 221(b)(2)(B) of Pub. L. 97–34 applicable to amounts paid or incurred after June 30, 1981, see section 221(d) of Pub. L. 97–34, as amended, set out as an Effective Date note under section 41 of this title.

Amendment by section 331(d)(2)(B) of Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 339 of Pub. L. 97–34, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title V, §504(c), Nov. 6, 1978, 92 Stat. 2881, provided that: "The amendments made by this section [amending this section and sections 6213 and 6501 of this title] shall apply to tentative refund claims filed on and after the date of the enactment of this Act [Nov. 6, 1978]."

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, and to credit carrybacks from such years, see section 202(e) of Pub. L. 95–30, set out as an Effective Date note under section 51 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–178 applicable to taxable years beginning after Dec. 31, 1971, see section 601(f) of Pub. L. 92–178, set out as a note under section 381 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable with respect to net capital losses sustained in taxable years beginning after Dec. 31, 1969, see section 512(g) of Pub. L. 91–172, set out as a note under section 1212 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–225 applicable with respect to investment credit carrybacks attributable to net operating loss carrybacks from taxable years ending after July 31, 1967, see section 2(g) of Pub. L. 90–225, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89–721, §2(g), Nov. 2, 1966, 80 Stat. 1150, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by this section [amending this section and section 6501 of this title] shall apply with respect to taxable years ending after December 31, 1961, but only in the case of applications filed after the date of the enactment of this Act [Nov. 2, 1966]. The period of 12 months referred to in the second sentence of section 6411(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by this section) for filing an application for a tentative carryback adjustment of tax attributable to the carryback of any unused investment credit shall not expire before the close of December 31, 1966."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§6412. Floor stocks refunds

(a) In general

(1) Tires and taxable fuel

Where before October 1, 2016, any article subject to the tax imposed by section 4071 or 4081 has been sold by the manufacturer, producer, or importer and on such date is held by a dealer and has not been used and is intended for sale, there shall be credited or refunded (without interest) to the manufacturer, producer, or importer an amount equal to the difference between the tax paid by such manufacturer, producer, or importer on his sale of the article and the amount of tax made applicable to such article on and after October 1, 2016, if claim for such credit or refund is filed with the Secretary on or before March 31, 2017, based upon a request submitted to the manufacturer, producer, or importer before January 1, 2017, by the dealer who held the article in respect of which the credit or refund is claimed, and, on or before March 31, 2017, reimbursement

has been made to such dealer by such manufacturer, producer, or importer for the tax reduction on such article or written consent has been obtained from such dealer to allowance of such credit or refund. No credit or refund shall be allowable under this paragraph with respect to taxable fuel in retail stocks held at the place where intended to be sold at retail, nor with respect to taxable fuel held for sale by a producer or importer of taxable fuel.

(2) Definitions

For purposes of this section—

(A) The term "dealer" includes a wholesaler, jobber, distributor, or retailer.

(B) An article shall be considered as "held by a dealer" if title thereto has passed to such dealer (whether or not delivery to him has been made), and if for purposes of consumption title to such article or possession thereof has not at any time been transferred to any person other than a dealer.

(b) Limitation on eligibility for credit or refund

No manufacturer, producer, or importer shall be entitled to credit or refund under subsection (a) unless he has in his possession such evidence of the inventories with respect to which the credit or refund is claimed as may be required by regulations prescribed under this section.

(c) Other laws applicable

All provisions of law, including penalties, applicable in respect of the taxes imposed by sections 4071 and 4081 shall, insofar as applicable and not inconsistent with subsections (a) and (b) of this section, apply in respect of the credits and refunds provided for in subsection (a) to the same extent as if such credits or refunds constituted overpayments of such taxes.

(Aug. 16, 1954, ch. 736, 68A Stat. 795; Mar. 30, 1955, ch. 18, §3(b)(4), 69 Stat. 15; Mar. 29, 1956, ch. 115, §3(b)(4), 70 Stat. 67; May 29, 1956, ch. 342, §19, 70 Stat. 221; June 29, 1956, ch. 462, title II, §208(a), 70 Stat. 392; Pub. L. 85–12, §3(b)(4), Mar. 29, 1957, 71 Stat. 10; Pub. L. 85–475, §3(b)(4), June 30, 1958, 72 Stat. 260; Pub. L. 85–859, title I, §162(a), Sept. 2, 1958, 72 Stat. 1306; Pub. L. 86–75, §3(b)(3), June 30, 1959, 73 Stat. 158; Pub. L. 86–342, title II, §201(c)(4), Sept. 21, 1959, 73 Stat. 614; Pub. L. 86–564, title II, §202(b)(3), June 30, 1960, 74 Stat. 291; Pub. L. 86–592, §2, July 6, 1960, 74 Stat. 330; Pub. L. 87–15, §2(b), Mar. 31, 1961, 75 Stat. 40; Pub. L. 87–61, title II, §206 (c), (d), June 29, 1961, 75 Stat. 127; Pub. L. 87–72, §3(b)(3), June 30, 1961, 75 Stat. 193; Pub. L. 87–456, title III, §302(d), May 24, 1962, 76 Stat. 77; Pub. L. 87–508, §3(b)(3), June 28, 1962, 76 Stat. 114; Pub. L. 87–535, §18(b), July 13, 1962, 76 Stat. 166; Pub. L. 88–52, §3(b)(1)(C), June 29, 1963, 77 Stat. 72; Pub. L. 88–348, §2(b)(1)(C), June 30, 1964, 78 Stat. 237; Pub. L. 89–44, title II, §209(a), (d), June 21, 1965, 79 Stat. 141, 144; Pub. L. 89–368, title II, §201(b), Mar. 15, 1966, 80 Stat. 66; Pub. L. 90–285, §1(a)(2), Apr. 12, 1968, 82 Stat. 92; Pub. L. 90–364, title I, §105(a)(2), June 28, 1968, 82 Stat. 265; Pub. L. 91–172, title VII, §702(a)(2), Dec. 30, 1969, 83 Stat. 660; Pub. L. 91–605, title III, §303(b), Dec. 31, 1970, 84 Stat. 1744; Pub. L. 91–614, title II, §201(a)(2), Dec. 31, 1970, 84 Stat. 1843; Pub. L. 92–178, title IV, §401(g)(5), Dec. 10, 1971, 85 Stat. 533; Pub. L. 94–280, title III, §303(b), May 5, 1976, 90 Stat. 457; Pub. L. 94–455, title XIX, §1906(a)(22), (b)(13)(A), Oct. 4, 1976, 90 Stat. 1826, 1834; Pub. L. 95–599, title V, §502(c), Nov. 6, 1978, 92 Stat. 2757; Pub. L. 95–618, title II, §231(f)(1), Nov. 9, 1978, 92 Stat. 3189; Pub. L. 97–424, title V, §516(a)(5), Jan. 6, 1983, 96 Stat. 2183; Pub. L. 98–369, div. A, title VII, §735(c)(12), July 18, 1984, 98 Stat. 983; Pub. L. 100–17, title V, §502(d)(1), Apr. 2, 1987, 101 Stat. 257; Pub. L. 101–508, title XI, §11211(f)(1), Nov. 5, 1990, 104 Stat. 1388–427; Pub. L. 102–240, title VIII, §8002(c)(1), Dec. 18, 1991, 105 Stat. 2203; Pub. L. 103–66, title XIII, §13242(d)(16), Aug. 10, 1993, 107 Stat. 524; Pub. L. 105–178, title IX, §9002(a)(2)(A), June 9, 1998, 112 Stat. 499; Pub. L. 109–59, title XI, §11101(a)(3), Aug. 10, 2005, 119 Stat. 1944; Pub. L. 112–30, title I, §142(c), Sept. 16, 2011, 125 Stat. 356; Pub. L. 112–102, title IV, §402(c), Mar. 30, 2012, 126 Stat. 282; Pub. L. 112–140, title IV, §402(b), June 29, 2012, 126 Stat. 402; Pub. L. 112–141, div. D, title I, §40102(c), July 6, 2012, 126 Stat. 845.)

AMENDMENTS

2012—Subsec. (a)(1). Pub. L. 112–141 substituted in two places "October 1, 2016" for "July 1, 2012" and

"March 31, 2017" for "December 31, 2012" and substituted "January 1, 2017" for "October 1, 2012".

Pub. L. 112–140, §§1(c), 402(b), temporarily substituted in two places "July 7, 2012" for "July 1, 2012" and "January 6, 2013" for "December 31, 2012" and temporarily substituted "October 7, 2012" for "October 1, 2012". See Effective and Termination Dates of 2012 Amendment note below.

Pub. L. 112–102 substituted in two places "July 1, 2012" for "April 1, 2012" and "December 31, 2012" for "September 30, 2012" and substituted "October 1, 2012" for "July 1, 2012".

2011—Subsec. (a)(1). Pub. L. 112–30 substituted in two places "April 1, 2012" for "October 1, 2011" and "September 30, 2012" for "March 31, 2012" and substituted "July 1, 2012" for "January 1, 2012".

2005—Subsec. (a)(1). Pub. L. 109–59 substituted "2011" for "2005" and "2012" for "2006" wherever appearing.

1998—Subsec. (a)(1). Pub. L. 105–178 substituted "2005" for "1999" and "2006" for "2000" wherever appearing.

1993—Subsec. (a)(1). Pub. L. 103–66 substituted "taxable fuel" for "gasoline" wherever appearing in heading and text.

1991—Subsec. (a)(1). Pub. L. 102–240 substituted "1999" for "1995" and "2000" for "1996" wherever appearing.

1990—Subsec. (a)(1). Pub. L. 101–508 substituted "1995" for "1993" and "1996" for "1994" wherever appearing.

1987—Subsec. (a)(1). Pub. L. 100–17 substituted "1993" for "1988" and "1994" for "1989" wherever appearing.

1984—Subsec. (a)(1). Pub. L. 98–369, §735(c)(12)(A), (B), substituted "Tires and gasoline" for "Trucks, tires, tubes, tread rubber, and gasoline" in heading, and in text substituted "Where before October 1, 1988, any article subject to the tax imposed by section 4071 or 4081 has been sold by the manufacturer, producer, or importer and on such date is held by a dealer and has not been used and is intended for sale," for "Where before October 1, 1988, any article subject to the tax imposed by section 4061(a)(1), 4071((a)(1), (3) or (4), or 4081 has been sold by the manufacturer, producer, or importer and on such date is held by a dealer and has not been used and is intended for sale (or, in the case of tread rubber, is intended for sale or is held for use),", and struck out provision that no credit or refund shall be allowable under this paragraph with respect to inner tubes for bicycle tires (as defined in section 4221(e)(4)(B)).

Subsec. (a)(2)(A). Pub. L. 98–369, §735(c)(12)(C), substituted "The term 'dealer' includes a wholesaler, jobber, distributor, or retailer" for "The term 'dealer' includes a wholesaler, jobber, distributor, or retailer, or, in the case of tread rubber subject to tax under section 4071(a)(4), includes any person (other than the manufacturer, producer, or importer thereof) who holds such tread rubber for sale or use".

Subsec. (c). Pub. L. 98–369, §735(c)(12)(D), substituted "4071" for "4061, 4071,".

1983—Subsec. (a)(1). Pub. L. 97–424, §516(a)(5), substituted "1989" for "1985" and "1988" for "1984" wherever appearing.

1978—Subsec. (a)(1). Pub. L. 95–618 struck out "and buses" after "Trucks" in heading.

Pub. L. 95–599 substituted "1984" for "1979" and "1985" for "1980" wherever appearing.

1976—Subsec. (a)(1). Pub. L. 94–455, §1906(a)(22), (b)(13)(A), redesignated par. (2) as (1) and struck out "or his delegate" after "Secretary". Prior par. (1) had been repealed by Pub. L. 92–178, title IV, §401(g)(5), Dec. 10, 1971, 85 Stat. 533.

Subsec. (a)(2). Pub. L. 94–455, §1906(a)(22), redesignated par. (4) as (2). Former par. (2) redesignated (1).

Pub. L. 94–280 substituted "1979" for "1977" in two places and "1980" for "1978" in three places, respectively.

Subsec. (a)(4). Pub. L. 94–455, §1906(a)(22), redesignated par. (4) as (2).

1971—Subsec. (a)(1). Pub. L. 92–178 struck out par. (1) which related to general rule for floor stocks refunds on passenger automobiles, etc.

1970—Subsec. (a)(1). Pub. L. 91–614 substituted "January 1 of 1973, 1974, 1978, 1979, 1980, 1981, or 1982" for "January 1, 1971, January 1, 1972, January 1, 1973, or January 1, 1974".

Subsec. (a)(2). Pub. L. 91–605 substituted in two places "1977" for "1972" and "March 31, 1978" for "February 10, 1973", and substituted "January 1, 1978" for "January 1, 1973".

1969—Subsec. (a)(1). Pub. L. 91–172 struck out reference to Jan. 1, 1970, and inserted reference to Jan. 1, 1974.

1968—Subsec. (a)(1). Pub. L. 90–364 substituted "January 1, 1970, January 1, 1971, January 1, 1972, or January 1, 1973," for "May 1, 1968, or January 1, 1969,".

Pub. L. 90–285 substituted "May 1, 1968" for "April 1, 1968".

1966—Subsec. (a)(1). Pub. L. 89–368 substituted "January 1, 1966, April 1, 1968, or January 1, 1969," for "January 1, 1966, 1967, 1968, or 1969,".

1965—Subsec. (a)(1). Pub. L. 89–44, §209(a), made floor stock refunds available with respect to passenger cars in dealers' inventories on the various reduction dates for the passenger car tax and required claims for credit or refund to be filed on or before the 10th day of the 8th calendar month beginning after the date of the tax reduction.

Subsec. (e). Pub. L. 89–44, §209(d), repealed subsec. (e) which related to cross reference.

1964—Subsec. (a)(1). Pub. L. 88–348 substituted "July 1, 1965" for "July 1, 1964" in two places, "October 1, 1965" for "October 1, 1964", and "November 10, 1965" for "November 10, 1964" in two places.

1963—Subsec. (a)(1). Pub. L. 88–52 substituted "July 1, 1964" for "July 1, 1963", in two places, "October 1, 1964" for "October 1, 1963", and "November 10, 1964" for "November 10, 1963" in two places.

1962—Subsec. (a)(1). Pub. L. 87–508 substituted "July 1, 1963" for "July 1, 1962" in two places, "October 1, 1963" for "October 1, 1962", and "November 10, 1963" for "November 10, 1962" in two places.

Subsec. (d). Pub. L. 87–456 repealed subsec. (d) which related to floor stock refunds with respect to any sugar or articles composed in chief value of sugar.

Pub. L. 87–535 substituted "June 30, 1967" for "December 31, 1962" after "paid and which, on", and "September 30, 1967" for "March 31, 1963" after "delegate on or before".

1961—Subsec. (a)(1). Pub. L. 87–72 substituted "July 1, 1962" for "July 1, 1961" in two places, "October 1, 1962" for "October 1, 1961", and "November 10, 1962" for "November 10, 1961" in two places.

Subsec. (a)(2). Pub. L. 87–61, §206(c), inserted tubes in heading, authorized credit or refund for articles subject to the tax imposed by section 4071(a)(3), prohibited credit or refund with respect to inner tubes for bicycle tires, and substituted "October 1, 1972" for "July 1, 1972" in two places, "February 10, 1973" for "November 10, 1972" in two places, and "January 1, 1973" for "October 1, 1972".

Subsec. (a)(3). Pub. L. 87–61, §206(d), repealed par. (3) which related to 1961 floor stocks refund on gasoline.

Subsec. (d). Pub. L. 87–15 substituted "December 31, 1962" for "September 30, 1961" after "paid and which, on", and "March 31, 1963" for "September 30, 1961" after "delegate on or before".

1960—Subsec. (a)(1). Pub. L. 86–564 substituted "July 1, 1961" for "July 1, 1960" in two places, "October 1, 1961" for "October 1, 1960", and "November 10, 1961" for "November 10, 1960" in two places.

Subsec. (d). Pub. L. 86–592 substituted "September 30, 1961" for "June 30, 1961" after "and which, on".

1959—Subsec. (a)(1). Pub. L. 86–75 substituted "July 1, 1960" for "July 1, 1959" in two places, "October 1, 1960" for "October 1, 1959" and "November 10, 1960" for "November 10, 1959" in two places.

Subsec. (a)(3), (4). Pub. L. 86–342 added par. (3) and redesignated former par. (3) as (4).

1958—Subsec. (a)(1). Pub. L. 85–475 substituted "July 1, 1959" for "July 1, 1958" in two places, "October 1, 1959" for "October 1, 1958", and "November 10, 1959" for "November 10, 1958" in two places.

Subsec. (d). Pub. L. 85–859 required filing of claims for refund on or before Sept. 30, 1961.

1957—Subsec. (a)(1). Pub. L. 85–12, substituted "July 1, 1958" for "April 1, 1957" in two places, "October 1, 1958" for "July 1, 1957", and "November 10, 1958" for "August 10, 1957" in two places.

1956—Subsec. (a). Act June 29, 1956, in par. (1), substituted "April 1, 1957" for "April 1, 1956" in two places, "section 4061(a)(2)" for "section 4061 (a) or (b)", and inserted provisions requiring claims for refund to be made on or before August 10, 1957, inserted provisions relating to trucks and buses, tires, tread rubber, and gasoline as par. (2), defined "dealer" in the case of tread rubber subject to tax under section 4071(a)(4) of this title in par. (3), and struck out pars. (4) and (5). Former par. (4), which related to reimbursement of dealers, was covered generally by pars. (1) and (2). Former par. (5) was covered by subsec. (b).

Act Mar. 29, 1956, substituted "April 1, 1957" for "April 1, 1956" in two places, and "July 1, 1957" for "July 1, 1956".

Subsec. (b). Act June 29, 1956, redesignated par. (5) of subsec. (a) as subsec. (b) and substituted "manufacturer, producer, or importer" for "person", and struck out provisions that required claims for credit or refund to be filed before July 1, 1956. Former subsec. (b) was covered by par. (2) of subsec. (a).

Act Mar. 29, 1956, substituted "April 1, 1957" for "April 1, 1956" in three places, and "July 1, 1957" for "July 1, 1956".

Subsec. (c). Act June 29, 1956, included taxes imposed by section 4071 of this title.

Subsec. (d). Act May 29, 1956, substituted "1961" for "1957".

1955—Subsecs. (a), (b). Act Mar. 30, 1955, substituted "April 1, 1956" for "April 1, 1955" and "July 1, 1956" for "July 1, 1955" wherever appearing.

EFFECTIVE AND TERMINATION DATES OF 2012 AMENDMENT

Amendment by Pub. L. 112–141 effective July 1, 2012, see section 40102(f) of Pub. L. 112–141, set out as a note under section 460l–11 of Title 16, Conservation.

Amendment by Pub. L. 112–140 to cease to be effective on July 6, 2012, with text as amended by Pub. L.

112–140 to revert back to read as it did on the day before June 29, 2012, and amendments by Pub. L. 112–141 to be executed as if Pub. L. 112–140 had not been enacted, see section 1(c) of Pub. L. 112–140, set out as a note under section 101 of Title 23, Highways.

Amendment by Pub. L. 112–140 effective July 1, 2012, see section 402(f)(1) of Pub. L. 112–140, set out as a note under section 460l–11 of Title 16, Conservation.

Amendment by Pub. L. 112–102 effective Apr. 1, 2012, see section 402(f) of Pub. L. 112–102, set out as a note under section 460l–11 of Title 16, Conservation.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112–30 effective Oct. 1, 2011, see section 142(f) of Pub. L. 112–30, set out as a note under section 460l–11 of Title 16, Conservation.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 effective Jan. 1, 1994, see section 13242(e) of Pub. L. 103–66, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97–424, to which such amendment relates, see section 736 of Pub. L. 98–369, set out as a note under section 4051 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–618 applicable with respect to articles sold after Nov. 9, 1978, see section 231(g) of Pub. L. 95–618, set out as a note under section 4222 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–178 applicable with respect to articles sold on or after the day after Dec. 10, 1971, see section 401(h)(1) of Pub. L. 92–178, set out as a note under section 4071 of this title.

EFFECTIVE DATE OF 1968 AMENDMENTS

Pub. L. 90–364, title I, §105(c), June 28, 1968, 82 Stat. 266, provided that: "The amendments made by this section [amending this section and sections 4061 and 4251 of this title] shall take effect as of April 30, 1968."

Pub. L. 90–285, §1(b), Apr. 12, 1968, 82 Stat. 92, provided that: "The amendments made by subsection (a) [amending this section and sections 4061 and 4251 of this title] shall take effect as of March 31, 1968."

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 effective June 22, 1965, see section 701(a) of Pub. L. 89–44, set out as a note under section 4161 of this title.

EFFECTIVE DATE OF 1962 AMENDMENTS

Amendment by Pub. L. 87–535 effective Jan. 1, 1962, see section 19(a) of Pub. L. 87–535, July 13, 1962, 76 Stat. 167.

Amendment by Pub. L. 87–456 effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after Aug. 31, 1963, see section 501(a) of Pub. L. 87–456, title V, May 24, 1962, 76 Stat. 78.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–61 effective June 29, 1961, see section 208 of Pub. L. 87–61, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–859 effective on first day of first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1(c) of Pub. L. 85–859, Sept. 2, 1958, 72 Stat. 1275.

EFFECTIVE DATE OF 1956 AMENDMENTS

Amendment by act June 29, 1956, effective June 29, 1956, see section 211 of act June 29, 1956, set out as a note under section 4041 of this title.

Amendment by act May 29, 1956, effective as of Jan. 1, 1956, see section 22 of act May 29, 1956, ch. 342, 70 Stat. 221.

FLOOR STOCK REFUNDS

Pub. L. 89–44, title II, §209(b), June 21, 1965, 79 Stat. 142, provided that where any article subject to taxes under section 4111, 4121, 4141, 4151, 4161, 4191 or 4451 of this title before June 21, 1965, or subject to taxes under section 4061(b), 4091(1), or 4131 of this title before Jan. 1, 1966, had been sold by the manufacturer, importer or producer and on such date held by the dealer and not used, there was to be credited or refunded to the manufacturer, importer or producer an amount equal to the difference between the tax paid by him on his sale of the article and the amount of tax made applicable to the article on such date where certain conditions were satisfactorily met.

EXTENSION OF TIME FOR FILING CLAIMS FOR FLOOR STOCKS REFUNDS

Pub. L. 91–642, §1, Dec. 31, 1970, 84 Stat. 1880, provided that if a claim for credit or refund was filed by a manufacturer, importer or producer on or before the 90th day after Dec. 31, 1970, such filing was deemed to have satisfied the requirements of section 209(b)(1)(A) of Pub. L. 89–44 for filing on or before Feb. 10, 1966, or Aug. 10, 1966.

REFUNDS RESPECTING CONSUMER PURCHASES

Pub. L. 89–44, title II, §209(c), June 21, 1965, 79 Stat. 143, provided that if after May 14, 1965, but before June 21, 1965, a new automotive item subject to the tax imposed by section 4061(a)(2) of this title, or a new self-contained air-conditioning unit subject to the tax imposed by section 4111 of this title, had been sold to an ultimate purchaser, there was to be credited or refunded to the manufacturer, producer, or importer an amount equal to the difference between the tax paid by the manufacturer, producer, or importer on his sale of the article and the tax made applicable to the article on such date if certain conditions were met.

§6413. Special rules applicable to certain employment taxes

(a) Adjustment of tax

(1) General rule

If more than the correct amount of tax imposed by section 3101, 3111, 3201, 3221, or 3402 is paid with respect to any payment of remuneration, proper adjustments, with respect to both the tax and the amount to be deducted, shall be made, without interest, in such manner and at such times as the Secretary may by regulations prescribe.

(2) United States as employer

For purposes of this subsection, in the case of remuneration received from the United States or a wholly-owned instrumentality thereof during any calendar year, each head of a Federal agency or instrumentality who makes a return pursuant to section 3122 and each agent, designated by the head of a Federal agency or instrumentality, who makes a return pursuant to such section shall be deemed a separate employer.

(3) Guam or American Samoa as employer

For purposes of this subsection, in the case of remuneration received during any calendar year from the Government of Guam, the Government of American Samoa, a political subdivision of either, or any instrumentality of any one or more of the foregoing which is wholly owned thereby, the Governor of Guam, the Governor of American Samoa, and each agent designated by either who makes a return pursuant to section 3125 shall be deemed a separate employer.

(4) District of Columbia as employer

For purposes of this subsection, in the case of remuneration received during any calendar year from the District of Columbia or any instrumentality which is wholly owned thereby, the Mayor of the District of Columbia and each agent designated by him who makes a return pursuant to section 3125 shall be deemed a separate employer.

(5) States and political subdivisions as employer

For purposes of this subsection, in the case of remuneration received from a State or any political subdivision thereof (or any instrumentality of any one or more of the foregoing which is wholly owned thereby) during any calendar year, each head of an agency or instrumentality, and

each agent designated by either, who makes a return pursuant to section 3125 shall be deemed a separate employer.

(b) Overpayments of certain employment taxes

If more than the correct amount of tax imposed by section 3101, 3111, 3201, 3221, or 3402 is paid or deducted with respect to any payment of remuneration and the overpayment cannot be adjusted under subsection (a) of this section, the amount of the overpayment shall be refunded in such manner and at such times (subject to the statute of limitations properly applicable thereto) as the Secretary may by regulations prescribe.

(c) Special refunds

(1) In general

If by reason of an employee receiving wages from more than one employer during a calendar year the wages received by him during such year exceed the contribution and benefit base (as determined under section 230 of the Social Security Act) which is effective with respect to such year, the employee shall be entitled (subject to the provisions of section 31(b)) to a credit or refund of any amount of tax, with respect to such wages, imposed by section 3101(a) or section 3201(a) (to the extent of so much of the rate applicable under section 3201(a) as does not exceed the rate of tax in effect under section 3101(a)), or by both such sections, and deducted from the employee's wages (whether or not paid to the Secretary), which exceeds the tax with respect to the amount of such wages received in such year which is equal to such contribution and benefit base. The term "wages" as used in this paragraph shall, for purposes of this paragraph, include "compensation" as defined in section 3231(e).

(2) Applicability in case of Federal and State employees, employees of certain foreign affiliates, and governmental employees in Guam, American Samoa, and the District of Columbia

(A) Federal employees

In the case of remuneration received from the United States or a wholly-owned instrumentality thereof during any calendar year, each head of a Federal agency or instrumentality who makes a return pursuant to section 3122 and each agent, designated by the head of a Federal agency or instrumentality, who makes a return pursuant to such section shall, for purposes of this subsection, be deemed a separate employer; and the term "wages" includes for purposes of this subsection the amount, not to exceed an amount equal to the contribution and benefit base (as determined under section 230 of the Social Security Act) for any calendar year with respect to which such contribution and benefit base is effective, determined by each such head or agent as constituting wages paid to an employee.

(B) State employees

For purposes of this subsection, in the case of remuneration received during any calendar year, the term "wages" includes such remuneration for services covered by an agreement made pursuant to section 218 of the Social Security Act as would be wages if such services constituted employment; the term "employer" includes a State or any political subdivision thereof, or any instrumentality of any one or more of the foregoing; the term "tax" or "tax imposed by section 3101(a)" includes, in the case of services covered by an agreement made pursuant to section 218 of the Social Security Act, an amount equivalent to the tax which would be imposed by section 3101(a), if such services constituted employment as defined in section 3121; and the provisions of this subsection shall apply whether or not any amount deducted from the employee's remuneration as a result of an agreement made pursuant to section 218 of the Social Security Act has been paid to the Secretary.

(C) Employees of certain foreign affiliates

For purposes of paragraph (1) of this subsection, the term "wages" includes such remuneration for services covered by an agreement made pursuant to section 3121(l) as would

be wages if such services constituted employment; the term "employer" includes any American employer which has entered into an agreement pursuant to section 3121(l); the term "tax" or "tax imposed by section 3101(a)," includes, in the case of services covered by an agreement entered into pursuant to section 3121(l), an amount equivalent to the tax which would be imposed by section 3101(a), if such services constituted employment as defined in section 3121; and the provisions of paragraph (1) of this subsection shall apply whether or not any amount deducted from the employee's remuneration as a result of the agreement entered into pursuant to section 3121(l) has been paid to the Secretary.

(D) Governmental employees in Guam

In the case of remuneration received from the Government of Guam or any political subdivision thereof or from any instrumentality of any one or more of the foregoing which is wholly owned thereby, during any calendar year, the Governor of Guam and each agent designated by him who makes a return pursuant to section 3125(b) shall, for purposes of this subsection, be deemed a separate employer.

(E) Governmental employees in American Samoa

In the case of remuneration received from the Government of American Samoa or any political subdivision thereof or from any instrumentality of any one or more of the foregoing which is wholly owned thereby, during any calendar year, the Governor of American Samoa and each agent designated by him who makes a return pursuant to section 3125(c) shall, for purposes of this subsection, be deemed a separate employer.

(F) Governmental employees in the District of Columbia

In the case of remuneration received from the District of Columbia or any instrumentality wholly owned thereby, during any calendar year, the Mayor of the District of Columbia and each agent designated by him who makes a return pursuant to section 3125(d) shall, for purposes of this subsection, be deemed a separate employer.

(G) Employees of States and political subdivisions

In the case of remuneration received from a State or any political subdivision thereof (or any instrumentality of any one or more of the foregoing which is wholly owned thereby) during any calendar year, each head of an agency or instrumentality, and each agent designated by either, who makes a return pursuant to section 3125(a) shall, for purposes of this subsection, be deemed a separate employer.

(d) Refund or credit of Federal unemployment tax

Any credit allowable under section 3302, to the extent not previously allowed, shall be considered an overpayment, but no interest shall be allowed or paid with respect to such overpayment.

(Aug. 16, 1954, ch. 736, 68A Stat. 797; Sept. 1, 1954, ch. 1206, title II, §202(a)(1), (b)(1)–(3), 68 Stat. 1089, 1090; Pub. L. 85–840, title IV, §402(d), Aug. 28, 1958, 72 Stat. 1043; Pub. L. 86–778, title I, §103(r)(2)–(4), Sept. 13, 1960, 74 Stat. 940; Pub. L. 89–97, title III, §§317(e), (f), 320(b)(5), (6), July 30, 1965, 79 Stat. 389, 390, 393, 394; Pub. L. 90–248, title I, §108(b)(5), (6), title V, §502(a), Jan. 2, 1968, 81 Stat. 835, 934; Pub. L. 92–5, title II, §203(b)(5), (6), Mar. 17, 1971, 85 Stat. 11; Pub. L. 92–336, title II, §203(b)(5), (6), July 1, 1972, 86 Stat. 419, 420; Pub. L. 92–603, title I, §144(c), Oct. 30, 1972, 86 Stat. 1370; Pub. L. 93–66, title II, §203(b)(5), (6), July 9, 1973, 87 Stat. 153; Pub. L. 93–233, §5(b)(5), (6), Dec. 31, 1973, 87 Stat. 954; Pub. L. 93–445, title V, §502, Oct. 16, 1974, 88 Stat. 1360; Pub. L. 94–455, title XIX, §1906(a)(23)(A), (B)(i), (ii), (C), (D), (b)(13)(A), Oct. 4, 1976, 90 Stat. 1826, 1827, 1834; Pub. L. 97–248, title III, §§302(c), 307(a)(10)–(12), 308(a), Sept. 3, 1982, 96 Stat. 586, 589–591; Pub. L. 98–21, title III, §321(e)(4), Apr. 20, 1983, 97 Stat. 120; Pub. L. 98–67, title I, §102(a), Aug. 5, 1983, 97 Stat. 369; Pub. L. 99–272, title XIII, §13205(a)(2)(E), Apr. 7, 1986, 100 Stat. 315; Pub. L. 101–508, title XI, §11331(d)(1), Nov. 5, 1990, 104 Stat. 1388–468; Pub. L. 103–66, title XIII, §13207(d)(1)–(3), Aug. 10, 1993, 107 Stat. 468.)

REFERENCES IN TEXT

Section 230 of the Social Security Act, referred to in subsec. (c)(1), (2)(A), is classified to section 430 of Title 42, The Public Health and Welfare.

Section 218 of the Social Security Act, referred to in subsec. (c)(2)(B), is classified to section 418 of Title 42.

AMENDMENTS

1993—Subsec. (c)(1). Pub. L. 103–66, §13207(d)(1), substituted "section 3101(a) or section 3201(a) (to the extent of so much of the rate applicable under section 3201(a) as does not exceed the rate of tax in effect under section 3101(a))" for "section 3101 or section 3201".

Subsec. (c)(2)(B), (C). Pub. L. 103–66, §13207(d)(2), substituted "section 3101(a)" for "section 3101" wherever appearing.

Subsec. (c)(3). Pub. L. 103–66, §13207(d)(3), struck out heading and text of par. (3). Text read as follows: "In applying this subsection with respect to—

"(A) the tax imposed by section 3101(b) (or any amount equivalent to such tax), and

"(B) so much of the tax imposed by section 3201 as is determined at a rate not greater than the rate in effect under section 3101(b),

the applicable contribution base determined under section 3121(x)(2) for any calendar year shall be substituted for 'contribution and benefit base (as determined under section 230 of the Social Security Act)' each place it appears."

1990—Subsec. (c)(3). Pub. L. 101–508 substituted heading for one which read: "Applicability with respect to compensation of employees subject to the Railroad Retirement Tax Act" and amended text generally. Prior to amendment, text read as follows: "In the case of any individual who, during any calendar year, receives wages from one or more employers and also receives compensation which is subject to the tax imposed by section 3201 or 3211, such compensation shall, solely for purposes of applying paragraph (1) with respect to the tax imposed by section 3101(b), be treated as wages received from an employer with respect to which the tax imposed by section 3101(b) was deducted."

1986—Subsec. (a)(5). Pub. L. 99–272, §13205(a)(2)(E)(i), added par. (5).

Subsec. (c)(2)(D) to (F). Pub. L. 99–272, §13205(a)(2)(E)(ii)(I), substituted "3125(b)", "3125(c)", and "3125(d)" for "3125(a)", "3125(b)", and "3125(c)", respectively, in subpars. (D), (E), and (F), respectively.

Subsec. (c)(2)(G). Pub. L. 99–272, §13205(a)(2)(E)(ii)(II), added subpar. (G).

1983—Pub. L. 98–67 repealed amendments made by Pub. L. 97–248. See 1982 Amendment note below.

Subsec. (c)(2). Pub. L. 98–21, §321(e)(4)(B), substituted "foreign affiliates" for "foreign corporations" in heading.

Subsec. (c)(2)(C). Pub. L. 98–21, §321(e)(4)(A), substituted "foreign affiliates" for "foreign corporations" in heading and, in text, substituted "American employer" for "domestic corporation".

1982—Catchline and subsecs. (a)(1), (b), (c)(1). Pub. L. 97–248 provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, the section catchline is amended by substituting "taxes under subtitle C" for "employment taxes"; subsec. (a)(1) is amended by substituting "3402 or 3451 is paid with respect to any payment of remuneration, interest, dividends, or other amounts," for "or 3402 is paid with respect to any payment of remuneration,"; subsec. (b) is amended by striking out "of certain employment taxes" from heading, and by substituting "3402 or 3451 is paid or deducted with respect to any payment of remuneration, interest, dividends, or other amount"; and subsec. (c)(1) is amended by substituting "section 31(c)" for "section 31(b)". Section 102(a), (b) of Pub. L. 98–67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§301–308) of title III of Pub. L. 97–248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 [now 1986] [this title] shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

1976—Subsec. (a)(1). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (a)(4). Pub. L. 94–455, §1906(a)(23)(A), substituted "Mayor of the District of Columbia and each agent designated by him" for "Commissioners of the District of Columbia and each agent designated by them".

Subsec. (b). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (c)(1). Pub. L. 94–455, §1906(a)(23)(B)(i), struck out "or his delegate" after "Secretary" and substituted general provision for entitlement to credit or refund of employment taxes deducted from an employee receiving wages from more than one employer during a calendar year and in excess of employment taxes with respect to amount of wages received in the calendar year equal to the contribution and benefit base

determined under section 230 of the Social Security Act and effective with respect to such calendar year for prior specific provisions for such credit or refund of employment taxes deducted in excess of prescribed amount for base limits and applicable periods set forth below:

Amount	*After Calendar Year*	*Prior to Calendar Year*
$3,600	1950	1955
$4,200	1954	1959
$4,800	1958	1966
$6,600	1965	1968
$7,800	1967	1972
$9,000	1971	1973
$10,800	1972	1974
$13,200	1973	1975

and amount equal to the contribution and benefit base determined under section 230 of the Social Security Act and effective with respect to calendar year after calendar year 1974, and thereafter.

Subsec. (c)(2)(A). Pub. L. 94–455, §1906(a)(23)(B)(ii), substituted "the amount, not to exceed an amount equal to the contribution and benefit base (as determined under section 230 of the Social Security Act) for any calendar year" for "the amount, not to exceed $3,600 for the calendar year 1951, 1952, 1953, or 1954, $4,200 for the calendar year 1955, 1956, 1957, or 1958, $4,800 for the calendar year 1959, 1960, 1961, 1962, 1963, 1964, or 1965, $6,600 for the calendar year 1966 or 1967, $7,800 for the calendar year 1968, 1969, 1970, or 1971, $9,000 for the calendar year 1972, $10,800 for the calendar year 1973, $13,200 for the calendar year 1974, or an amount equal to the contribution and benefit base (as determined under section 230 of the Social Security Act) for any calendar year after 1974" before "with respect to which such contribution and benefit base is effective".

Subsec. (c)(2)(C). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (c)(2)(F). Pub. L. 94–455, §1906(a)(23)(C), substituted "Mayor of the District of Columbia and each agent designated by him" for "Commissioners of the District of Columbia and each agent designated by them".

Subsec. (c)(3). Pub. L. 94–455, §1906(a)(23)(D), struck out "after 1967" after "calendar year".

1974—Subsec. (c)(1). Pub. L. 93–445 inserted "or section 3201, or by both such sections" after "section 3101" and inserted provision that for purposes of subsec. (c)(1) the term "wages" include compensation as defined in section 3231(e).

1973—Subsec. (c)(1). Pub. L. 93–233, §5(b)(5), substituted "$13,200" for "$12,600" whenever appearing.

Pub. L. 93–66, §203(b)(5), substituted "$12,600" for "$12,000" wherever appearing.

Subsec. (c)(2)(A). Pub. L. 93–233, §5(b)(6), substituted "$13,200" for "$12,600".

Pub. L. 93–66, §203(b)(6), substituted "$12,600" for "$12,000".

1972—Subsec. (c)(1). Pub. L. 92–336, §203(b)(5), inserted "and prior to the calendar year 1973" after "after the calendar year 1971", inserted provisions of cls. (F) to (H), and provisions relating to wages received after 1971 and before 1973, after 1972 and before 1974, after 1973 and before 1975, and the calendar year after 1974.

Subsec. (c)(2)(A). Pub. L. 92–336, §203(b)(6), as amended by Pub. L. 92–603, §144(c), eff. July 1, 1972, inserted provisions relating to amounts to be included within the term "wages" for the calendar years 1972, 1973, 1974, or any calendar year after 1974.

1971—Subsec. (c)(1). Pub. L. 92–5, §203(b)(5), inserted "and prior to the calendar year 1972" after "after the calendar year 1967", "or (E) during any calendar year after the calendar year 1971, the wages received by him during such year exceed $9,000," after "exceed $7,800," and inserted before the period at end of subpar. (1) "and before 1972, or which exceeds the tax with respect to the first $9,000 of such wages received in such calendar year after 1971".

Subsec. (c)(2)(A). Pub. L. 92–5, §203(b)(6), substituted "$7,800 for the calendar year 1968, 1969, 1970, or 1971, or $9,000 for any calendar year after 1971" for "or $7,800 for any calendar year after 1967".

1968—Subsec. (c)(1). Pub. L. 90–248, §108(b)(5), inserted "and prior to the calendar year 1968" after "the

calendar year 1965", "or (D) during any calendar year after the calendar year 1967, the wages received by him during such year exceed $7,800," after "exceed $6,600,", and "and before 1968, or which exceeds the tax with respect to the first $7,800 of such wages received in such calendar year after 1967".

Subsec. (c)(2)(A). Pub. L. 90–248, §108(b)(6), substituted "$6,600 for the calendar year 1966 or 1967, or $7,800 for any calendar year after 1967" for "or $6,600 for any calendar year after 1965".

Subsec. (c)(3). Pub. L. 90–248, §502(a), added par. (3).

1965—Subsec. (a)(4). Pub. L. 89–97, §317(e), added par. (4).

Subsec. (c)(1). Pub. L. 89–97, §320(b)(5), inserted "and prior to the calendar year 1966" after "the calendar year 1958", "or (C) during any calendar year after the calendar year 1965, the wages received by him during such year exceed $6,600" after "exceed $4,800,", and "and before 1966, or which exceeds the tax with respect to the first $6,600 of such wages received in such calendar year after 1965" before the period at end of par.

Subsec. (c)(2)(A). Pub. L. 89–97, §320(b)(6), substituted "$4,800 for the calendar year 1959, 1960, 1961, 1962, 1963, 1964, or 1965, or $6,600 for any calendar year after 1965" for "or $4,800 for any calendar year after 1958".

Subsec. (c)(2)(F). Pub. L. 89–97, §317(f)(1), added subpar. (F) and inserted reference to the District of Columbia in heading.

1960—Subsec. (a)(3). Pub. L. 86–778, §103(r)(2), added par. (3).

Subsec. (c)(2). Pub. L. 86–778, §103(r) (3), (4), inserted governmental employees in Guam and American Samoa in heading, and added subpars. (D) and (E).

1958—Subsec. (c)(1). Pub. L. 85–840, §402(d)(1), conformed the special-refund provisions to the increase made by Pub. L. 85–840, in the limitation on wages from $4,200 to $4,800 for calendar years after 1958.

Subsec. (c)(2)(A). Pub. L. 85–840, §402(d)(2), substituted "$4,200 for the calendar year 1955, 1956, 1957, or 1958, or $4,800 for any calendar year after 1958" for "$4,200 for any calendar year after 1954".

1954—Subsec. (c)(1). Act Sept. 1, 1954, §202(a)(1), conformed the special-refund provisions to the increase made by said act Sept. 1, 1954, in the limitation on wages from $3,600 to $4,200 for calendar years after 1954.

Subsec. (c)(2). Act Sept. 1, 1954, §202(b)(1), inserted "and employees of certain foreign corporations" in heading.

Subsec. (c)(2)(A). Act Sept. 1, 1954, §202(b)(2), substituted "$3,600 for the calendar year 1951, 1952, 1953, or 1954, or $4,200 for any calendar year after 1954" for '$3,600".

Subsec. (c)(2)(C). Act Sept. 1, 1954, §202(b)(3), added subpar. (C).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to 1994 and later calendar years, see section 13207(e) of Pub. L. 103–66, set out as a note under section 1402 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to 1991 and later calendar years, see section 11331(e) of Pub. L. 101–508, set out as a note under section 1402 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 applicable to services performed after Mar. 31, 1986, see section 13205(d)(1) of Pub. L. 99–272, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable to agreements entered into after Apr. 20, 1983, except that at election of any American employer such amendment shall also apply to any agreement entered into on or before Apr. 20, 1983, see section 321(f) of Pub. L. 98–21, set out as a note under section 406 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1906(a)(23)(A), (C), (D), (b)(13)(A) of Pub. L. 94–455 effective on first day of first month which begins more than ninety days after Oct. 4, 1976, see section 1906(d)(1) of Pub. l. 94–455, set out as a note under section 6013 of this title.

Pub. L. 94–455, title XIX, §1906(a)(23)(B)(iii), Oct. 4, 1976, 90 Stat. 1826, provided that: "The amendments made by clauses (i) and (ii) [amending this section] shall apply with respect to remuneration paid after December 31, 1976."

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–445 effective Jan. 1, 1975, and applicable only with respect to compensation

paid for services rendered on or after that date, see section 604 of Pub. L. 93–445, set out as a note under section 3221 of this title.

EFFECTIVE DATE OF 1973 AMENDMENTS

Amendment by Pub. L. 93–233 applicable only with respect to remuneration paid after, and taxable years beginning after, 1973, see section 5(e) of Pub. L. 93–233, set out as a note under section 409 of Title 42, The Public Health and Welfare.

Amendment by Pub. L. 93–66 applicable only with respect to remuneration paid after, and taxable years beginning after, 1973, see section 203(e) of Pub. L. 93–66, set out as a note under section 409 of Title 42.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–336, as amended by Pub. L. 92–603, §144(c), applicable only with respect to remuneration paid after Dec. 1972, see section 203(c) of Pub. L. 92–336, set out as a note under section 409 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–5 applicable only with respect to remuneration paid after Dec. 1971, see section 203(c) of Pub. L. 92–5, set out as a note under section 409 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 108(b)(5), (6) of Pub. L. 90–248 applicable only with respect to remuneration paid after December 1967, see section 108(c) of Pub. L. 90–248, set out as a note under section 409 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 317(e), (f) of Pub. L. 89–97 applicable with respect to services performed after the quarter ending September 30, 1965, and after the quarter in which the Secretary of the Treasury receives a certification from the Commissioners [now Mayor] of the District of Columbia expressing their desire to have the insurance system established by sections 401 et seq. and 1395c et seq. of Title 42, The Public Health and Welfare, extended to the officers and employees coming under the provisions of such amendments, see section 317(g) of Pub. L. 89–97, set out as a note under section 410 of Title 42.

Amendment by section 320(b)(5), (6) of Pub. L. 89–97 applicable with respect to remuneration paid after December 1965, see section 320(c) of Pub. L. 89–97, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–778 applicable only with respect to (1) service in the employ of the Government of Guam or any political subdivision thereof, or any instrumentality of any one or more of the foregoing wholly owned thereby, which is performed after 1960 and after the calendar quarter in which the Secretary of the Treasury receives a certification by the Governor of Guam that legislation has been enacted by the Government of Guam expressing its desire to have the insurance system established by title II of the Social Security Act, section 401 et seq. of Title 42, The Public Health and Welfare, extended to the officers and employees of such Government and such political subdivisions and instrumentalities, and (2) service in the employ of the Government of American Samoa or any political subdivision thereof or any instrumentality of any one or more of the foregoing wholly owned thereby, which is performed after 1960 and after the calendar quarter in which the Secretary of the Treasury receives a certification by the Governor of American Samoa that the Government of American Samoa desires to have the insurance system established by title II of the Social Security Act, section 401 et seq. of Title 42, extended to the officers and employees of such Government and such political subdivisions and instrumentalities, see section 103(v)(1) of Pub. L. 86–778, set out as a note under section 402 of Title 42.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Sept. 1, 1954, applicable only with respect to remuneration paid after 1954, see section 202(d) of act Sept. 1, 1954, set out as a note under section 1401 of this title.

§6414. Income tax withheld

In the case of an overpayment of tax imposed by chapter 24, or by chapter 3 or 4, refund or credit shall be made to the employer or to the withholding agent, as the case may be, only to the extent that

the amount of such overpayment was not deducted and withheld by the employer or withholding agent.

(Aug. 16, 1954, ch. 736, 68A Stat. 798; Pub. L. 111–147, title V, §501(c)(1), Mar. 18, 2010, 124 Stat. 106.)

AMENDMENTS

2010—Pub. L. 111–147 inserted "or 4" after "chapter 3".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–147 applicable to payments made after Dec. 31, 2012, with certain exceptions, see section 501(d)(1), (2) of Pub. L. 111–147, set out as a note under section 1471 of this title.

§6415. Credits or refunds to persons who collected certain taxes

(a) Allowance of credits or refunds

Credit or refund of any overpayment of tax imposed by section 4251, 4261, or 4271 may be allowed to the person who collected the tax and paid it to the Secretary if such person establishes, under such regulations as the Secretary may prescribe, that he has repaid the amount of such tax to the person from whom he collected it, or obtains the consent of such person to the allowance of such credit or refund.

(b) Credit on returns

Any person entitled to a refund of tax imposed by section 4251, 4261, or 4271 paid, or collected and paid, to the Secretary by him may, instead of filing a claim for refund, take credit therefor against taxes imposed by such section due upon any subsequent return.

(c) Refund of overcollections

In case any person required under section 4251, 4261, or 4271 to collect any tax shall make an overcollection of such tax, such person shall, upon proper application, refund such overcollection to the person entitled thereto.

(d) Refund of taxable payment

Any person making a refund of any payment on which tax imposed by section 4251, 4261, or 4271 has been collected may repay therewith the amount of tax collected on such payment.

(Aug. 16, 1954, ch. 736, 68A Stat. 798; Pub. L. 85–475, §4(b)(4), June 30, 1958, 72 Stat. 260; Pub. L. 85–859, title I, §163(d)(1), Sept. 2, 1958, 72 Stat. 1311; Pub. L. 89–44, title VI, §601(b), June 21, 1965, 79 Stat. 153; Pub. L. 91–258, title II, §205(b)(2), May 21, 1970, 84 Stat. 241; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsecs. (a), (b). Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

1970—Pub. L. 91–258 inserted reference to section 4271 in four places.

1965—Subsec. (a). Pub. L. 89–44, §601(b)(1), (2), substituted "section 4251 or 4261" for "sections 4231(1), 4231(2), 4231(3), 4241, 4245, 4261, or 4286" and struck out last sentence which referred to payment outside the United States of taxes imposed under pars. (1), (2) and (3) of section 4231.

Subsecs. (b) to (d). Pub. L. 89–44, §601(b)(1), substituted "section 4251 or 4261" for "section 4231(1), 4231(2), 4231(3), 4241, 4245, 4261, or 4286" wherever appearing.

1958—Subsec. (a). Pub. L. 85–859 provided that in the case of any payment outside the United States in respect of which tax is imposed under par. (1), (2), or (3) of section 4231 of this title, the person who paid for the admission or for the use of the box or seat shall be considered the person from whom the tax was collected.

Subsecs. (a) to (d). Pub. L. 85–475 struck out references to section 4271.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–258 effective July 1, 1970, see section 211(a) of Pub. L. 91–258, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 to take effect in a manner consistent with effective date of change of tax provision to which related, see section 701(e) of Pub. L. 89–44, set out as a note under section 6103 of this title.

EFFECTIVE DATE OF 1958 AMENDMENTS

Pub. L. 85–859, §1(c), Sept. 2, 1958, 72 Stat. 1275, provided in part that: "Except as otherwise provided, the amendments and repeals made by title I of this Act [enacting sections 4057, 4143, 4221 to 4225, and 4294 of this title, amending chapter 34, this section, and sections 4001, 4003, 4031, 4041, 4053, 4111, 4121, 4141, 4142, 4192, 4216 to 4218, 4231 to 4233, 4263, 4291, 4501, 4601, 6011, 6412, 6416, 6420, 6421, 6501, and 6805 of this title, and repealing section 4112 of this title and former sections 4143, 4152, 4220 to 4225, and 4316 of this title] shall take effect on the first day of the first calendar quarter which begins more than 60 days after the date on which this Act is enacted [Sept. 2, 1958]."

Pub. L. 85–475, §4(c), June 30, 1958, 72 Stat. 261, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) Except as provided in paragraph (2), the repeals and amendments made by subsections (a) and (b) [repealing sections 4271 to 4273 and 4281 to 4283 of this title and amending this section and sections 4292, 6416, 7012, and 7272 of this title] shall apply only with respect to amounts paid on or after August 1, 1958.

"(2) In the case of transportation with respect to which the second sentence of section 4281 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] applies, the repeals and amendments made by subsections (a) and (b) [repealing sections 4271 to 4273 and 4281 to 4283 of this title and amending this section and sections 4292, 6416, 7012, and 7272 of this title] shall apply only if the transportation begins on or after August 1, 1958."

§6416. Certain taxes on sales and services

(a) Condition to allowance

(1) General rule

No credit or refund of any overpayment of tax imposed by chapter 31 (relating to retail excise taxes), or chapter 32 (manufacturers taxes), shall be allowed or made unless the person who paid the tax establishes, under regulations prescribed by the Secretary, that he—

(A) has not included the tax in the price of the article with respect to which it was imposed and has not collected the amount of the tax from the person who purchased such article;

(B) has repaid the amount of the tax to the ultimate purchaser of the article;

(C) in the case of an overpayment under subsection (b)(2) of this section—

(i) has repaid or agreed to repay the amount of the tax to the ultimate vendor of the article, or

(ii) has obtained the written consent of such ultimate vendor to the allowance of the credit or the making of the refund; or

(D) has filed with the Secretary the written consent of the person referred to in subparagraph (B) to the allowance of the credit or the making of the refund.

(2) Exceptions

This subsection shall not apply to—

(A) the tax imposed by section 4041 (relating to tax on special fuels) on the use of any liquid, and

(B) an overpayment of tax under paragraph (1), (3)(A), (4), (5), or (6) of subsection (b) of this section.

(3) Special rule

For purposes of this subsection, in any case in which the Secretary determines that an article is not taxable, the term "ultimate purchaser" (when used in paragraph (1)(B) of this subsection) includes a wholesaler, jobber, distributor, or retailer who, on the 15th day after the date of such

determination, holds such article for sale; but only if claim for credit or refund by reason of this paragraph is filed on or before the date for filing the return with respect to the taxes imposed under chapter 32 for the first period which begins more than 60 days after the date on such determination.

(4) Registered ultimate vendor or credit card issuer to administer credits and refunds of gasoline tax

(A) In general

For purposes of this subsection, except as provided in subparagraph (B), if an ultimate vendor purchases any gasoline on which tax imposed by section 4081 has been paid and sells such gasoline to an ultimate purchaser described in subparagraph (C) or (D) of subsection (b)(2) (and such gasoline is for a use described in such subparagraph), such ultimate vendor shall be treated as the person (and the only person) who paid such tax, but only if such ultimate vendor is registered under section 4101.

(B) Credit card issuer

For purposes of this subsection, if the purchase of gasoline described in subparagraph (A) (determined without regard to the registration status of the ultimate vendor) is made by means of a credit card issued to the ultimate purchaser, paragraph (1) shall not apply and the person extending the credit to the ultimate purchaser shall be treated as the person (and the only person) who paid the tax, but only if such person—

(i) is registered under section 4101,

(ii) has established, under regulations prescribed by the Secretary, that such person—

(I) has not collected the amount of the tax from the person who purchased such article, or

(II) has obtained the written consent from the ultimate purchaser to the allowance of the credit or refund, and

(iii) has so established that such person—

(I) has repaid or agreed to repay the amount of the tax to the ultimate vendor,

(II) has obtained the written consent of the ultimate vendor to the allowance of the credit or refund, or

(III) has otherwise made arrangements which directly or indirectly provides the ultimate vendor with reimbursement of such tax.

If clause (i), (ii), or (iii) is not met by such person extending the credit to the ultimate purchaser, then such person shall collect an amount equal to the tax from the ultimate purchaser and only such ultimate purchaser may claim such credit or payment.

(C) Timing of claims

The procedure and timing of any claim under subparagraph (A) or (B) shall be the same as for claims under section 6427(i)(4), except that the rules of section 6427(i)(3)(B) regarding electronic claims shall not apply unless the ultimate vendor or credit card issuer has certified to the Secretary for the most recent quarter of the taxable year that all ultimate purchasers of the vendor or credit card issuer are certified and entitled to a refund under subparagraph (C) or (D) of subsection (b)(2).

(b) Special cases in which tax payments considered overpayments

Under regulations prescribed by the Secretary, credit or refund (without interest) shall be allowed or made in respect of the overpayments determined under the following paragraphs:

(1) Price readjustments

(A) In general

Except as provided in subparagraph (B) or (C), if the price of any article in respect of which a

tax, based on such price, is imposed by chapter 31 or 32, is readjusted by reason of the return or repossession of the article or a covering or container, or by a bona fide discount, rebate, or allowance, including a readjustment for local advertising (but only to the extent provided in section 4216(e)(2) and (3)), the part of the tax proportionate to the part of the price repaid or credited to the purchaser shall be deemed to be an overpayment.

(B) Further manufacture

Subparagraph (A) shall not apply in the case of an article in respect of which tax was computed under section 4223(b)(2); but if the price for which such article was sold is readjusted by reason of the return or repossession of the article, the part of the tax proportionate to the part of such price repaid or credited to the purchaser shall be deemed to be an overpayment.

(C) Adjustment of tire price

No credit or refund of any tax imposed by subsection (a) or (b) of section 4071 shall be allowed or made by reason of an adjustment of a tire pursuant to a warranty or guarantee.

(2) Specified uses and resales

The tax paid under chapter 32 (or under subsection (a) or (d) of section 4041 in respect of sales or under section 4051) in respect of any article shall be deemed to be an overpayment if such article was, by any person—

(A) exported;

(B) used or sold for use as supplies for vessels or aircraft;

(C) sold to a State or local government for the exclusive use of a State or local government;

(D) sold to a nonprofit educational organization for its exclusive use;

(E) sold to a qualified blood collector organization (as defined in section 7701(a)(49)) for such organization's exclusive use in the collection, storage, or transportation of blood;

(F) in the case of any tire taxable under section 4071(a), sold to any person for use as described in section 4221(e)(3); or

(G) in the case of gasoline, used or sold for use in the production of special fuels referred to in section 4041.

Subparagraphs (C), (D), and (E) shall not apply in the case of any tax paid under section 4064. In the case of the tax imposed by section 4131, subparagraphs (B), (C), (D), and (E) shall not apply and subparagraph (A) shall apply only if the use of the exported vaccine meets such requirements as the Secretary may by regulations prescribe. This paragraph shall not apply in the case of any tax imposed under section 4041(a)(1) or 4081 on diesel fuel or kerosene and any tax paid under section 4121. Subparagraphs (C) and (D) shall not apply in the case of any tax imposed on gasoline under section 4081 if the requirements of subsection (a)(4) are not met. In the case of taxes imposed by subchapter C or D of chapter 32, subparagraph (E) shall not apply. In the case of the tax imposed by section 4191, subparagraphs (B), (C), (D), and (E) shall not apply.

(3) Tax-paid articles used for further manufacture, etc.

If the tax imposed by chapter 32 has been paid with respect to the sale of any article (other than coal taxable under section 4121) by the manufacturer, producer, or importer thereof and such article is sold to a subsequent manufacturer or producer before being used, such tax shall be deemed to be an overpayment by such subsequent manufacturer or producer if—

(A) in the case of any article other than any fuel taxable under section 4081, such article is used by the subsequent manufacturer or producer as material in the manufacture or production of, or as a component part of—

(i) another article taxable under chapter 32, or

(ii) an automobile bus chassis or an automobile bus body,

manufactured or produced by him; or

(B) in the case of any fuel taxable under section 4081, such fuel is used by the subsequent manufacturer or producer, for nonfuel purposes, as a material in the manufacture or production

of any other article manufactured or produced by him.

(4) Tires

If—

(A) the tax imposed by section 4071 has been paid with respect to the sale of any tire by the manufacturer, producer, or importer thereof, and

(B) such tire is sold by any person on or in connection with, or with the sale of, any other article, such tax shall be deemed to be an overpayment by such person if such other article is—

(i) an automobile bus chassis or an automobile bus body,

(ii) by such person exported, sold to a State or local government for the exclusive use of a State or local government, sold to a nonprofit educational organization for its exclusive use, or used or sold for use as supplies for vessels or aircraft, or

(iii) sold to a qualified blood collector organization for its exclusive use in connection with a vehicle the organization certifies will be primarily used in the collection, storage, or transportation of blood.

(5) Return of certain installment accounts

If—

(A) tax was paid under section 4216(d)(1) in respect of any installment account,

(B) such account is, under the agreement under which the account was sold, returned to the person who sold such account, and

(C) the consideration is readjusted as provided in such agreement,

the part of the tax paid under section 4216(d)(1) allocable to the part of the consideration repaid or credited to the purchaser of such account shall be deemed to be an overpayment.

(6) Truck chassis, bodies, and semitrailers used for further manufacture

If—

(A) the tax imposed by section 4051 has been paid with respect to the sale of any article, and

(B) before any other use, such article is by any person used as a component part of another article taxable under section 4051 manufactured or produced by him,

such tax shall be deemed to be an overpayment by such person. For purposes of the preceding sentence, an article shall be treated as having been used as a component part of another article if, had it not been broken or rendered useless in the manufacture or production of such other article, it would have been so used.

This subsection shall apply in respect of an article only if the exportation or use referred to in the applicable provision of this subsection occurs before any other use, or, in the case of a sale or resale, the use referred to in the applicable provision of this subsection is to occur before any other use.

(c) Refund to exporter or shipper

Under regulations prescribed by the Secretary the amount of any tax imposed by chapter 31, or chapter 32 erroneously or illegally collected in respect of any article exported to a foreign country or shipped to a possession of the United States may be refunded to the exporter or shipper thereof, if the person who paid such tax waives his claim to such amount.

(d) Credit on returns

Any person entitled to a refund of tax imposed by chapter 31 or 32, paid to the Secretary may, instead of filing a claim for refund, take credit therefor against taxes imposed by such chapter due on any subsequent return. The preceding sentence shall not apply to the tax imposed by section 4081 in the case of refunds described in section 4081(e).

(e) Accounting procedures for like articles

Under regulations prescribed by the Secretary, if any person uses or resells like articles, then for purposes of this section the manufacturer, producer, or importer of any such article may be

identified, and the amount of tax paid under chapter 32 in respect of such article may be determined—

(1) on a first-in-first-out basis,

(2) on a last-in-first-out basis, or

(3) in accordance with any other consistent method approved by the Secretary.

(f) Meaning of terms

For purposes of this section, any term used in this section has the same meaning as when used in chapter 31, 32, or 33, as the case may be.

(Aug. 16, 1954, ch. 736, 68A Stat. 798; Aug. 11, 1955, ch. 793, §2, 69 Stat. 676; Aug. 11, 1955, ch. 805, §§1(h), (i), 2(b), 69 Stat. 690; Apr. 2, 1956, ch. 160, §2(b)(1), 70 Stat. 90; June 29, 1956, ch. 462, title II, §208(b), 70 Stat. 393; Pub. L. 85–475, §4(b)(5), (6), June 30, 1958, 72 Stat. 260; Pub. L. 85–859, title I, §163(a), (c), Sept. 2, 1958, 72 Stat. 1306, 1311; Pub. L. 86–342, title II, §201(d)(1), Sept. 21, 1959, 73 Stat. 614; Pub. L. 86–418, §3, Apr. 8, 1960, 74 Stat. 38; Pub. L. 86–781, §2, Sept. 14, 1960, 74 Stat. 1018; Pub. L. 87–61, title II, §205(c), (d), June 29, 1961, 75 Stat. 126; Pub. L. 87–508, §5(c)(3), June 28, 1962, 76 Stat. 119; Pub. L. 89–44, title II, §207(c), title VI, §601(c), title VIII, §801(d)(2), June 21, 1965, 79 Stat. 140, 153, 158; Pub. L. 91–258, title II, §§205(b)(3), (4), 207(d)(4)–(7), May 21, 1970, 84 Stat. 242, 248, 249; Pub. L. 91–614, title III, §302(a), (b), Dec. 31, 1970, 84 Stat. 1845; Pub. L. 92–178, title IV, §401(a)(3)(C), (g)(6), Dec. 10, 1971, 85 Stat. 531, 534; Pub. L. 94–455, title XIX, §§1904(b)(1), (2), 1906(a)(24)(A), (B)(i), (b)(13)(A), title XXI, §2108(a), Oct. 4, 1976, 90 Stat. 1815, 1827, 1834, 1904; Pub. L. 95–227, §2(b)(4), Feb. 10, 1978, 92 Stat. 12; Pub. L. 95–618, title II, §§201(c)(3), 232(b), 233(c)(3), Nov. 9, 1978, 92 Stat. 3184, 3189, 3192; Pub. L. 96–222, title I, §108(c)(2)(A), (B), (3), (4), Apr. 1, 1980, 94 Stat. 227; Pub. L. 96–596, §4(c)(1), Dec. 24, 1980, 94 Stat. 3475; Pub. L. 96–598, §1(a), (b), Dec. 24, 1980, 94 Stat. 3485, 3486; Pub. L. 97–424, title V, §§511(g)(2)(A), 512(b)(2)(C), (D), 515(b)(4), Jan. 6, 1983, 96 Stat. 2173, 2177, 2181; Pub. L. 98–369, div. A, title VII, §§734(b), (j), 735(c)(13), July 18, 1984, 98 Stat. 978, 980, 984; Pub. L. 99–499, title V, §521(d)(5), Oct. 17, 1986, 100 Stat. 1780; Pub. L. 100–203, title IX, §9201(b)(2), title X, §10502(d)(6)–(8), Dec. 22, 1987, 101 Stat. 1330–330, 1330–444; Pub. L. 100–647, title II, §2001(d)(1)(B), title VI, §6102(a), Nov. 10, 1988, 102 Stat. 3594, 3710; Pub. L. 101–508, title XI, §11212(d)(2), Nov. 5, 1990, 104 Stat. 1388–432; Pub. L. 103–66, title XIII, §13242(d)(17)–(19), Aug. 10, 1993, 107 Stat. 524; Pub. L. 104–188, title I, §1702(b)(3), Aug. 20, 1996, 110 Stat. 1868; Pub. L. 105–34, title IX, §905(a), title X, §1032(e)(6), title XIV, §1436(b), Aug. 5, 1997, 111 Stat. 874, 935, 1053; Pub. L. 105–206, title VI, §6023(23), July 22, 1998, 112 Stat. 826; Pub. L. 108–357, title VIII, §§853(d)(2)(G)–(I), 865(a), Oct. 22, 2004, 118 Stat. 1613, 1621; ; Pub. L. 109–59, title XI, §11163(b), Aug. 10, 2005, 119 Stat. 1973; Pub. L. 109–280, title XII, §1207(e), Aug. 17, 2006, 120 Stat. 1071; Pub. L. 110–172, §11(d)(1), Dec. 29, 2007, 121 Stat. 2489; Pub. L. 111–152, title I, §1405(b)(2), Mar. 30, 2010, 124 Stat. 1065.)

CODIFICATION

Section 1207(e) of Pub. L. 109–280, which directed the amendment of section 6416 without specifying the act to be amended, was executed to this section, which is section 6416 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

AMENDMENTS

2010—Subsec. (b)(2). Pub. L. 111–152 inserted at end of concluding provisions "In the case of the tax imposed by section 4191, subparagraphs (B), (C), (D), and (E) shall not apply."

2007—Subsec. (a)(4)(C). Pub. L. 110–172 substituted "ultimate vendor or credit card issuer has certified" for "ultimate vendor" and all that follows through "has certified" and substituted "all ultimate purchasers of the vendor or credit card issuer are certified" for "all ultimate purchasers of the vendor" and all that follows through "are certified". See 2005 Amendment note below.

2006—Subsec. (b)(2). Pub. L. 109–280, §1207(e)(1)(B), (C), in concluding provisions, substituted "Subparagraphs (C), (D), and (E)" for "Subparagraphs (C) and (D)" and "(B), (C), (D), and (E)" for "(B), (C), and (D)" and inserted at end "In the case of taxes imposed by subchapter C or D of chapter 32, subparagraph (E) shall not apply." See Codification note above.

Subsec. (b)(2)(E) to (G). Pub. L. 109–280, §1207(e)(1)(A), added subpar. (E) and redesignated former

subpars. (E) and (F) as (F) and (G), respectively. See Codification note above.

Subsec. (b)(4)(B)(iii). Pub. L. 109–280, §1207(e)(2), added cl. (iii). See Codification note above.

2005—Subsec. (a)(4). Pub. L. 109–59, §11163(b)(1)(E), inserted "or credit card issuer" after "vendor" in heading.

Subsec. (a)(4)(A). Pub. L. 109–59, §11163(b)(1)(A), inserted "except as provided in subparagraph (B)," after "For purposes of this subsection,".

Subsec. (a)(4)(B). Pub. L. 109–59, §11163(b)(1)(B), added subpar. (B). Former subpar. (B) redesignated (C).

Subsec. (a)(4)(C). Pub. L. 109–59, §11163(b)(1)(D), which directed the insertion of "or credit card issuer" after "vendor", was executed by inserting "or credit card issuer" after "vendor" both places it appeared, to reflect the probable intent of Congress.

Pub. L. 109–59, §11163(b)(1)(B), (C), redesignated subpar. (B) as (C) and substituted "subparagraph (A) or (B)" for "subparagraph (A)".

Subsec. (b)(2). Pub. L. 109–59, §11163(b)(2), inserted at end "Subparagraphs (C) and (D) shall not apply in the case of any tax imposed on gasoline under section 4081 if the requirements of subsection (a)(4) are not met."

2004—Subsec. (a)(4). Pub. L. 108–357, §865(a), amended heading and text of par. (4) generally, substituting provisions relating to administration of credits and refunds of gasoline tax by a registered ultimate vendor for provisions relating to administration of credits and refunds of gasoline tax by wholesale distributors.

Subsec. (b)(2). Pub. L. 108–357, §853(d)(2)(G), struck out "4091 or" before "4121" in concluding provisions.

Subsec. (b)(3). Pub. L. 108–357, §853(d)(2)(H), struck out "or 4091" after "4081" in subpars. (A) and (B).

Subsec. (d). Pub. L. 108–357, §853(d)(2)(I), struck out "or to the tax imposed by section 4091 in the case of refunds described in section 4091(d)" before period at end.

1998—Subsec. (b)(5). Pub. L. 105–206 substituted "section 4216(d)(1)" for "section 4216(e)(1)" in subpar. (A) and concluding provisions.

1997—Subsec. (a)(4)(B). Pub. L. 105–34, §905(a), inserted at end "Such term includes any person who makes retail sales of gasoline at 10 or more retail motor fuel outlets."

Subsec. (b)(2). Pub. L. 105–34, §1032(e)(6), inserted "or kerosene" after "diesel fuel" in concluding provisions.

Subsec. (d). Pub. L. 105–34, §1436(b), inserted before period at end "or to the tax imposed by section 4091 in the case of refunds described in section 4091(d)".

1996—Subsec. (b)(1)(A). Pub. L. 104–188 substituted "chapter 31 or 32" for "chapter 32 or by section 4051".

1993—Subsec. (a)(4)(A). Pub. L. 103–66, §13242(d)(17)(A), substituted "gasoline" for "product" in two places.

Subsec. (a)(4)(B). Pub. L. 103–66, §13242(d)(17)(B), substituted "section 4093(b)(2)" for "section 4092(b)(2)" and " 'any gasoline taxable under section 4081' for 'aviation fuel' therein)" for " 'any product taxable under section 4081' for 'a taxable fuel' therein)".

Subsec. (b)(2). Pub. L. 103–66, §13242(d)(18), inserted "any tax imposed under section 4041(a)(1) or 4081 on diesel fuel and" after "This paragraph shall not apply in the case of" in concluding provisions.

Subsec. (b)(3)(A). Pub. L. 103–66, §13242(d)(19)(A), substituted "any fuel taxable under section 4081 or 4091" for "gasoline taxable under section 4081 and other than any fuel taxable under section 4091".

Subsec. (b)(3)(B). Pub. L. 103–66, §13242(d)(19)(B), substituted "any fuel taxable under section 4081 or 4091, such fuel" for "gasoline taxable under section 4081 or any fuel taxable under section 4091, such gasoline or fuel".

1990—Subsec. (d). Pub. L. 101–508 inserted at end "The preceding sentence shall not apply to the tax imposed by section 4081 in the case of refunds described in section 4081(e)."

1988—Subsec. (a)(4). Pub. L. 100–647, §6102(a), added par. (4).

Subsec. (b)(2). Pub. L. 100–647, §2001(d)(1)(B), substituted "(or under subsection (a) or (d) of section 4041 in respect of sales or under section 4051)" for "(or under paragraph (1)(A) or (2)(A) of section 4041(a) or under paragraph (1)(A) or (2)(A) of section 4041(d) or under section 4051)".

1987—Subsec. (b)(2). Pub. L. 100–203, §10502(d)(6), struck out "(other than coal taxable under section 4121)" after "of any article" in introductory provisions and inserted at end "This paragraph shall not apply in the case of any tax paid under section 4091 or 4121."

Pub. L. 100–203, §9201(b)(2), inserted at end "In the case of the tax imposed by section 4131, subparagraphs (B), (C), and (D) shall not apply and subparagraph (A) shall apply only if the use of the

exported vaccine meets such requirements as the Secretary may by regulations prescribe."

Subsec. (b)(3)(A). Pub. L. 100–203, §10502(d)(7), inserted "and other than any fuel taxable under section 4091" after "section 4081".

Subsec. (b)(3)(B). Pub. L. 100–203, §10502(d)(8), substituted "or any fuel taxable under section 4091, such gasoline or fuel" for ", such gasoline".

1986—Subsec. (b)(2). Pub. L. 99–499 inserted "or under paragraph (1)(A) or (2)(A) of section 4041(d)" after "section 4041(a)".

1984—Subsec. (a)(1)(C). Pub. L. 98–369, §734(b)(2)(B)(iii), struck out ", (b)(3)(C), or (D), or (b)(4)" before "of this section".

Subsec. (a)(2)(B). Pub. L. 98–369, §§734(b)(1)(B), (2)(B)(iv), 735(c)(13)(D), substituted "(4), (5), or (6) of subsection (b)" for "or (B), or (5) of subsection (b)".

Subsec. (a)(3). Pub. L. 98–369, §734(b)(2)(B)(v), in amending par. (3) generally, struck out the subpar. (A) designation before "in any case", substituted a period for "; and" after "determination", and struck out subpar. (B) which provided that in applying paragraph (1) to any overpayment under paragraph (2)(F), (3)(C), or (4) of subsection (b), the term "ultimate vendor" means the ultimate vendor of the other article.

Subsec. (b)(1)(A). Pub. L. 98–369, §734(j), inserted "or by section 4051" after "by chapter 32".

Subsec. (b)(1)(C). Pub. L. 98–369, §735(c)(13)(A), substituted "subsection (a) or (b) of section 4071" for "section 4071(a)(1) or (2) or section 4071(b)".

Subsec. (b)(2). Pub. L. 98–369, §735(c)(13)(B), inserted a period after "section 4064" at end of flush sentence following subpar. (F).

Subsec. (b)(2)(A). Pub. L. 98–369, §735(c)(13)(F), struck out "(except in any case to which subsection (g) applies)" after "exported".

Subsec. (b)(2)(E). Pub. L. 98–369, §735(c)(13)(B), added subpar. (E).

Pub. L. 98–369, §734(b)(2)(B)(i), struck out former subpar. (E) which related to tires or inner tubes resold for use or tread rubber on recapped or retreaded tires resold for use.

Subsec. (b)(2)(F). Pub. L. 98–369, §735(c)(13)(B), added subsec. (F) and struck out former subsec. (F) which related to any article taxable under section 4061(b) (other than spark plugs and storage batteries), used or sold for use as repair or replacement parts or accessories for farm equipment (other than equipment taxable under section 4061(a).

Subsec. (b)(2)(G) to (M). Pub. L. 98–369, §735(c)(13)(B), struck out subpars. (G) through (M) which related to tread rubber, gasoline, articles used with automobile buses, boxes or containers, light-duty trucks, tires and inner tubes, recapped tires, and tires sold for use in connection with qualified buses.

Subsec. (b)(3). Pub. L. 98–369, §735(c)(13)(C), struck out provision at end that for purposes of subparagraphs (A) and (B), an article shall be treated as having been used as a component part of another article if, had it not been broken or rendered useless in the manufacture or production of such other article, it would have been so used.

Subsec. (b)(3)(A). Pub. L. 98–369, §735(c)(13)(C), substituted "gasoline taxable under section 4081," for "an article to which subparagraphs (B), (C), (D), or (E) applies,".

Subsec. (b)(3)(B). Pub. L. 98–369, §735(c)(13)(C), substituted "gasoline taxable under section 4081," for "a part or accessory taxable under section 4061(b)", substituted "gasoline" for "article", inserted "for nonfuel purposes,", and substituted a period for a semicolon after "produced by him".

Subsec. (b)(3)(C). Pub. L. 98–369, §734(b)(2)(B)(ii), struck out subpar. (C) which related to tires or inner tubes taxable under section 4071(a) of this title.

Subsec. (b)(3)(D) to (F). Pub. L. 98–369, §735(c)(13)(C), struck out subpar. (D) which related to tread rubber in respect of which tax was paid under section 4071(a)(4) used in recapping or retreading of a tire, subpar. (E) which related to bicycle tires or inner tubes used for such a tire, and subpar. (F) which dealt with gasoline taxable under section 4081. See subpar. (B) for similar provisions.

Subsec. (b)(4)(A). Pub. L. 98–369, §734(b)(2)(A), amended par. (4) generally. Prior to amendment par. (4) provided that if (A) a tire or inner tube taxable under section 4071, or a recapped or retreaded tire in respect of which tax under section 4071(a)(4) was paid on the tread rubber used in the recapping or retreading, is sold by the manufacturer, producer, or importer thereof on or in connection with, or with the sale of, any other article manufactured or produced by him; and (B) such other article is (i) an automobile bus chassis or an automobile bus body, or (ii) by any person exported, sold to a State or local government for the exclusive use of a State or local government, sold to a nonprofit educational organization for its exclusive use, or used or sold for use as supplies for vessels or aircraft, any tax imposed by chapter 32 in respect of such tire or inner tube which has been paid by the manufacturer, producer, or importer thereof shall be deemed to be an overpayment by him.

Subsec. (b)(6). Pub. L. 98–369, §734(b)(1)(A), added par. (6).

Subsec. (c). Pub. L. 98–369, §735(c)(13)(E), redesignated subsec. (e) as (c). Former subsec. (c), which

related to credit for tax paid on tires or inner tubes, was struck out.

Subsecs. (d) to (f). Pub. L. 98–369, §735(c)(13)(E), redesignated subsecs. (f), (h), and (i), as subsecs. (d), (e), and (f), respectively. Former subsec. (d) had been previously repealed and former subsec. (e) was redesignated (c).

Subsec. (g). Pub. L. 98–369, §735(c)(13)(E), struck out subsec. (g) which related to trucks, buses, tractors, etc.

Subsecs. (h), (i). Pub. L. 98–369, §735(c)(13)(E), redesignated subsecs. (h) and (i) as (e) and (f), respectively.

1983—Subsec. (a)(1). Pub. L. 97–424, §512(b)(2)(D), substituted "chapter 31 (relating to retail excise taxes)" for "chapter 31 (special fuels)".

Subsec. (b)(2). Pub. L. 97–424, §511(g)(2)(A), substituted "paragraph (1)(A) or (2)(A) of section 4041(a)" for "section 4041(a)(1) or (b)(1)" in provision before subpar. (A).

Pub. L. 97–424, §512(b)(2)(C), inserted "or under section 4051" after "section 4041(a)".

Pub. L. 97–424, §515(b)(4), struck out subpar. (N) and provision following subpar. (N) relating to amount of credit or refund under subpar. (N).

1980—Subsec. (a)(1)(C). Pub. L. 96–598, §1(b)(2)(B), substituted "(b)(3)(C) or (D)" for "(b)(3)(C)".

Subsec. (b)(1). Pub. L. 96–596 designated existing provision in part as subpar. (A), and in subpar. (A) as so designated, inserted heading "In general" and substituted "Except as provided in subparagraph (B) or (C), if the price" for "If the price", designated existing provision in part as subpar. (B), and in subpar. (B) as so designated, inserted heading "Further manufacture" and substituted "Subparagraph (A) shall not" for "The preceding sentence shall not", and added subpar. (C).

Subsec. (b)(2). Pub. L. 96–222, §108(c)(3), added subpar. (N) and provision following subpar. (N) relating to amount of credit or refund under subpar. (N).

Subsec. (b)(2)(E). Pub. L. 96–598, §1(b)(2)(A), inserted "(or in the case of the tread rubber on a recapped or retreaded tire, resold for use as provided in subparagraph (D) of paragraph (3))," after "paragraph (3)".

Subsec. (b)(2)(G). Pub. L. 96–598, §1(a), inserted provision making a credit or refund of the tread rubber tax available where the tread rubber is destroyed, scrapped, wasted, or rendered useless in the recapping or retreading process, where the tread rubber is used in the recapping or retreading of a tire if the sales price of the tire is later adjusted because of a warranty or guarantee, in which case the overpayment is to be in proportion to the adjustment in the sales price of such tire, and where the tread rubber is used in the recapping or retreading of a tire, if such tire is by any person exported, used or sold for use as supplies for vessels or aircraft, sold to a State or local government for the exclusive use of a State or local government, or sold to a nonprofit educational organization for its exclusive use.

Subsec. (b)(3)(A). Pub. L. 96–598, §1(b)(2)(C), inserted "(D)," after "(C),".

Pub. L. 96–222, §108(c)(4), inserted reference to an automobile bus chassis or an automobile bus body.

Subsec. (b)(3)(C). Pub. L. 96–222, §108(c)(2)(A), inserted reference to an automobile bus chassis or an automobile bus body.

Subsec. (b)(3)(D). Pub. L. 96–598, §1(b)(1), added subpar. (D).

Subsec. (b)(4)(A). Pub. L. 96–598, §1(b)(2)(D), substituted "section 4071, or a recapped or retreaded tire in respect of which tax under section 4071(a)(4) was paid on the tread rubber used in the recapping or retreading," for "section 4071".

Subsec. (b)(4)(B). Pub. L. 96–222, §108(c)(2)(B), inserted reference to automobile bus chassis or an automobile bus body.

1978—Subsec. (b)(2). Pub. L. 95–618 substituted in subpar. (I) "in the case of any article taxable under section 4061(b), sold for use by the purchaser on or in connection with an automobile bus" for "in the case of a bus chasis or body taxable under section 4061(a), sold to any person for use as described in section 4063(a)(6) or 4221(e)(5)" and added subpars. (L) and (M) and provision following subpar. (M).

Pub. L. 95–227 inserted "(other than coal taxable under section 4121)" after "of any article".

Subsec. (b)(3). Pub. L. 95–227 inserted "(other than coal taxable under section 4121)" after "of any article".

1976—Subsec. (a)(1). Pub. L. 94–455, §§1904(b)(1)(A), 1906(b)(13)(A), substituted "(special fuels)" for "(retailers taxes)", and struck out "or his delegate" after "Secretary".

Subsec. (a)(3). Pub. L. 94–455, §1906(a)(24)(A), (b)(13)(A), redesignated subpars. (C) and (D) as (A) and (B), and as so redesignated, struck out "or his delegate" after "Secretary", in subpar. (A). Prior subpars. (A) and (B) had been repealed by Pub. L. 89–44, title VI, §601(c)(6), June 21, 1965, 79 Stat. 153.

Subsec. (b). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (b)(1). Pub. L. 94–455, §1904(b)(2), substituted "section 4216(e)(2) and (3)" for "section 4216(f)(2) and (3)".

Subsec. (b)(2)(E). Pub. L. 94–455, §1906(a)(24)(B)(i), redesignated subpar. (F) as (E). A prior subpar. (E)

had been repealed by Pub. L. 91–614, title III, §302(b), Dec. 31, 1970, 84 Stat. 1845.

Subsec. (b)(2)(F). Pub. L. 94–455, §1906(a)(24)(B)(i), redesignated subpar. (K) as (F). Former subpar. (F) redesignated (E).

Subsec. (b)(2)(G). Pub. L. 94–455, §1906(a)(24)(B)(i), redesignated subpar. (L) as (G), and struck out former subpar. (G) respecting consideration as overpayments, tax payments in case of liquids sold for use as fuel in a diesel-powered highway vehicle or as fuel for propulsion of motor vehicles, motorboats, or airplanes and used in other specified ways or resold.

Subsec. (b)(2)(H). Pub. L. 94–455, §1906(a)(24)(B)(i), redesignated subpar. (M) as (H), and struck out former subpar. (H) respecting consideration as overpayments, tax payments in case of liquids used in vehicles while engaged in furnishing scheduled common carrier public passenger land transportation services along regular routes under prescribed conditions.

Subsec. (b)(2)(I). Pub. L. 94–455, §1906(a)(24)(B)(i), redesignated subpar. (R) as (I), and struck out former subpar. (I) respecting consideration as overpayments, tax payments in case of liquids used or resold for use as fuel in diesel-powered highway vehicles, which were not registered in any State or foreign country or were United States owned but not used on the highway.

Subsec. (b)(2)(J). Pub. L. 94–455, §1906(a)(24)(B)(i), redesignated subpar. (S) as (J), and struck out former subpar. (J) respecting consideration as overpayments, tax payments in case of liquids used or resold, otherwise than as a fuel for propulsion of highway vehicles, which were registered in any State or foreign country or were United States owned and used on the highway.

Subsec. (b)(2)(K). Pub. L. 94–455, §1906(a)(24)(B)(i), redesignated subpar. (T), added by Pub. L. 94–455, §2108(a), as (K). Former subpar. (K) redesignated (F).

Subsec. (b)(2)(L), (M). Pub. L. 94–455, §1906(a)(2)(B)(i), redesignated subpars. (L) and (M) as (G) and (H), respectively.

Subsec. (b)(2)(R), (S). Pub. L. 94–455, §1906(a)(2)(B)(i), redesignated subpars. (R) and (S) as (I) and (J), respectively.

Subsec. (b)(2)(T). Pub. L. 94–455, §1906(a)(2)(B)(i), redesignated subpar. (T), added by Pub. L. 94–455, §2108(a), as (K).

Subsec. (c). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary" wherever appearing.

Subsec. (e). Pub. L. 94–455, §1904(b)(1)(B), struck out "subchapter E of" before "chapter 31".

Subsecs. (g), (h). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary" wherever appearing.

1971—Subsec. (b)(2)(R). Pub. L. 92–178, §401(a)(3)(C)(i), inserted reference to section 4063(a)(6).

Subsec. (b)(2)(S). Pub. L. 92–178, §401(a)(3)(C)(ii), added subpar. (S).

Subsec. (g). Pub. L. 92–178, §401(g)(6), substituted "Trucks, buses, tractors, etc." for "Automobiles, etc." in heading.

1970—Subsec. (a)(2)(A). Pub. L. 91–258, §205(b)(3), substituted "section 4041 (relating to tax on special fuels)" for "section 4041(a)(2) or (b)(2) (use of diesel and special motor fuels)".

Subsec. (b)(2)(E). Pub. L. 91–614, §302(b), struck out subpar. (E) providing that the tax paid under chapter 32 (or under section 4041(a)(1) or (b)(1)) in respect of any article is deemed an overpayment if such article was resold by any person to a manufacturer or producer for use by him as provided in subsec. (b)(3)(A), (B), (E) or (F).

Subsec. (b)(2)(G). Pub. L. 91–258, §207(d)(4), inserted "before July 1, 1970" after "if".

Subsec. (b)(2)(H). Pub. L. 91–258, §207(d)(5), inserted "beginning before July 1, 1970," after "during any calendar quarter".

Subsec. (b)(2)(I), (J). Pub. L. 91–258, §207(d)(6), (7), inserted "before July 1, 1970," after "used or resold for use".

Subsec. (b)(2)(M). Pub. L. 91–258, §205(b)(4), substituted "use in the production of special fuels referred to in section 4041" for "use in production of special motor fuels referred to in section 4041(b)".

Subsec. (b)(3). Pub. L. 91–614, §302(a)(1)(A), substituted "and such article is sold to a subsequent manufacturer or producer before being used, such tax shall be deemed to be an overpayment by such subsequent manufacturer or producer if" for "to a second manufacturer or producer, such tax shall be deemed to be an overpayment by such second manufacturer or producer if".

Subsec. (b)(3)(A) to (C), (E), (F). Pub. L. 91–614, §302(a)(1)(B), substituted "the subsequent manufacturer" for "the second manufacturer".

Subsec. (c). Pub. L. 91–614, §302(a)(2), struck out provision providing that the credit for tax paid on tires or inner tubes is allowable only in respect of the first sale on or in connection with, or with the sale of, another article on the sale of which tax is imposed under chapter 32 of this title.

1965—Subsec. (a)(1). Pub. L. 89–44, §601(c)(1), struck out "section 4231(4), (5), or (6) (cabarets, etc.)," from material preceding subpar. (A).

Subsec. (a)(1)(A). Pub. L. 89–44, §601(c)(2), struck out "admission, or service" after "article" each place it appears.

Subsec. (a)(1)(B). Pub. L. 89–44, §601(c)(3), struck out (i), (ii), and (iii) which dealt specifically with taxes imposed by sections 4041(a)(1) or (b)(1), 4231(4), (5), or (6) (cabarets, etc.), and chapters 31 and 32, and amended the subpar. to simply require that the person has repaid the amount of the tax to the ultimate purchaser of the article.

Subsec. (a)(1)(C). Pub. L. 89–44, §601(c)(4), struck out "or (D)" after "(b)(3)(C)".

Subsec. (a)(1)(D). Pub. L. 89–44, §601(c)(5), struck out "(1), (ii), or (iii), as the case may be," after "subparagraph (B)".

Subsec. (a)(3)(A), (B). Pub. L. 89–44, §601(c)(6), struck out subpars. (A) and (B).

Subsec. (a)(3)(C). Pub. L. 89–44, §601(c)(6), struck out "(ii)" after "paragraph (1)(B)".

Subsec. (a)(3)(D). Pub. L. 89–44, §601(c)(6), struck out "or (D)" after "paragraph (2)(F), (3)(C)".

Subsec. (b)(1). Pub. L. 89–44, §601(c)(7), struck out "31 or" after "imposed by chapter" and "(in the case of a tax imposed by chapter 32)" after "or allowance, including".

Subsec. (b)(2)(F). Pub. L. 89–44, §601(c)(8), struck out reference to receiving sets resold for use and struck out reference to subparagraph (D) of paragraph (3).

Subsec. (b)(2)(N) to (Q). Pub. L. 89–44, §601(c)(9), struck out subpars. (N) to (Q).

Subsec. (b)(2)(R). Pub. L. 89–44, §801(d)(2), added subpar. (R).

Subsec. (b)(3)(A). Pub. L. 89–44, §601(c)(10), struck out "(D)," after "subparagraph (B), (C),".

Subsec. (b)(3)(B). Pub. L. 89–44, §601(c)(10), struck out references to radio and television components taxable under section 4141 and camera lenses taxable under section 4171.

Subsec. (b)(3)(C). Pub. L. 89–44, §601(c)(10), struck out reference to automobile radios or television receiving sets taxable under section 4141.

Subsec. (b)(3)(D). Pub. L. 89–44, §601(c)(10), struck out subpar. (D) which related to radio receiving sets or automobile receiving sets.

Subsec. (b)(4). Pub. L. 89–44, §601(c)(11), struck out all references to automobile radio or television receiving sets taxable under section 4141.

Subsec. (b)(5). Pub. L. 89–44, §§207(c), 601(c)(12), substituted "allocable" for "proportionate" and struck out "4053(b)(1) or" before "4216(e)(1)" wherever appearing.

Subsec. (c). Pub. L. 89–44, §601(c)(13), struck out references to automobile radio or television receiving sets.

Subsec. (d). Pub. L. 89–44, §601(c)(14), struck out subsec. (d) which related to mechanical pencils taxable as jewelry.

Subsec. (g). Pub. L. 89–44, §601(c)(15), substituted "section 4061(a)" for "sections 4061(a), 4111, 4121, 4141,".

1962—Subsec. (b)(2)(H). Pub. L. 87–508 substituted "commuter fare revenue" for "tax-exempt passenger fare revenue" and struck out "(not including the tax imposed by section 4261, relating to the tax on transportation of persons)" after "total passenger fare revenue".

1961—Subsec. (b)(2)(E). Pub. L. 87–61, §205(d), inserted reference to subpar. (F) of par. (3).

Subsec. (b)(3)(F). Pub. L. 87–61, §205(c), added subpar. (F).

1960—Subsec. (b)(1). Pub. L. 86–781 inserted "including (in the case of a tax imposed by chapter 32) a readjustment for local advertising (but only to the extent provided in section 4216(f)(2) and (3),)" after "or allowance,".

Subsec. (b)(2)(E). Pub. L. 86–418, §3(a), substituted "subparagraph (A), (B), or (E)" for "subparagraph (A) or (B)".

Subsec. (b)(3)(A). Pub. L. 86–418, §3(b)(1), substituted "subparagraph (B), (C), (D), or (E)" for "subparagraph (B), (C), or (D)".

Subsec. (b)(3)(E). Pub. L. 86–418, §3(b)(2), added subpar. (E).

1959—Subsec. (b)(2)(H). Pub. L. 86–342, §201(d)(1)(A), (B), substituted "at the rate of 3 cents or 4 cents a gallon" for "at the rate of 3 cents a gallon", and "1 cent (where tax was paid at the 3-cent rate) or 2 cents (where tax was paid at the 4-cent rate) for each gallon" for "1 cent for each gallon".

Subsec. (b)(2)(I), (J). Pub. L. 86–342, §201(d)(1)(A), (C), substituted "at the rate of 3 cents or 4 cents a gallon" for "at the rate of 3 cents a gallon", and "at the rate of 1 cent a gallon where tax was paid at the 3-cent rate or at the rate of 2 cents a gallon where tax was paid at the 4-cent rate" for "at the rate of 1 cent a gallon".

1958—Subsec. (a) amended generally by Pub. L. 85–859, §163(a), to make section applicable to taxes imposed by pars. (4) and (5) of section 4231, to permit credit or refund of the cabaret tax where the person has

repaid the amount of the tax or has filed a written consent to the allowance of the credit or the making of the refund, and to establish special rules for taxes collected under section 4231(6) from a concessionaire, taxes under chapter 31 paid by a supplier, and defining "ultimate purchaser" and "ultimate vendor".

Subsec. (a). Pub. L. 85–475, §4(b)(5), struck out reference to section 4281.

Subsec. (b)(1). Pub. L. 85–859, §163(a), made price readjustment provisions inapplicable in the case of an article in respect of which tax was computed under section 4223(b)(2), but if the price for which such article was sold is readjusted by reason of the return or repossession of the article, the part of the tax proportionate to the part of such price repaid or credited to the purchaser shall be deemed to be an overpayment.

Subsec. (b)(2) amended generally by Pub. L. 85–859, §163(a), to consider as overpayments taxes paid in respect of any articles which were, by any person, exported, resold to a manufacturer or producer for use by him as provided in subpar. (A) or (B) of par. (3), resold for use, in the case of a tire, inner tube, or receiving set, as provided in subpar. (C) or (D) of par. (3) and the other article referred to in such paragraph is by any person exported or sold as provided in such paragraph, and to eliminate provisions which excluded leaf springs, coils, timers, and tire chains in the case of articles taxable under section 4061(b).

Subsec. (b)(3) amended generally by Pub. L. 85–859, §163(a), to consider as overpayments taxes paid in the case of tires or inner tubes taxable under section 4071 and automobile radio or television receiving sets taxable under section 4141 where the articles are resold in certain particular cases, and taxes paid in the case of radio receiving sets or automobile radio receiving sets which are used by the manufacturer or producer as component parts of any other article manufactured or produced by him, and are exported or sold in certain particular cases, and to provide that for purposes of subpars. (A) and (B) an article shall be treated as having been used as a component part of another article if, had it not been broken or rendered useless in the manufacture or production of such other article, it would have been so used.

Subsec. (b)(4), (5). Pub. L. 85–859, §163(a), added pars. (4) and (5).

Subsec. (c). Pub. L. 85–859, §163(a), authorized a credit with respect to tires, inner tubes, or automobile radio or television receiving sets which are sold on or in connection with, or with the sale of, another article taxable under chapter 32, and permitted the credit only in respect of the first sale on or in connection with, or with the sale of, another article on the sale of which tax is imposed under chapter 32.

Subsec. (f). Pub. L. 85–475, §4(b)(6), struck out reference to section 4281.

Subsecs. (g) to (i). Pub. L. 85–859, §163(c), added subsecs. (g) to (i).

1956—Subsec. (b)(2)(C). Act Apr. 2, 1956, included liquid used on a farm for farming purposes.

Subsec. (b)(2)(J) to (M). Act June 29, 1956, added subpars. (J) to (M).

1955—Subsec. (b)(2)(G). Act Aug. 11, 1955, ch. 805, §2(b), repealed subpar. (G) relating to credit for communication, detection, and navigation receivers when sold to the United States Government.

Subsec. (b)(2)(I). Act Aug. 11, 1955, ch. 793, added subpar. (I).

Subsec. (b)(3)(A). Act Aug. 11, 1955, ch. 805, §1(h), inserted "and other than an automobile part or accessory taxable under section 4061(b), a refrigerator component taxable under section 4111, a radio or television component taxable under section 4141, or a camera lens taxable under section 4171" after "section 4141".

Subsec. (b)(3)(B). Act Aug. 11, 1955, ch. 805, §1(i), substituted provisions allowing a credit for automobile parts or accessories, refrigerator, radio, or television components, or camera lenses taxable under sections 4061(b), 4111, 4141, or 4171, respectively, of this title, for provisions allowing a credit for radio and television components purchased and used by a producer in the manufacture of communication, detection, or navigation receivers in commercial, military, or marine installations if such receivers were sold to the United States.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–152 applicable to sales after Dec. 31, 2012, see section 1405(c) of Pub. L. 111–152, set out as an Effective Date note under section 4191 of this title.

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–172, §11(d)(2), Dec. 29, 2007, 121 Stat. 2489, provided that: "The amendments made by this subsection [amending this section] shall take effect as if included in the provisions of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users [Pub. L. 109–59] to which they relate."

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 effective Jan. 1, 2007, see section 1207(g)(1) of Pub. L. 109–280, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–59 applicable to sales after Dec. 31, 2005, see section 11163(e) of Pub. L. 109–59, set out as a note under section 4101 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 853(d)(2)(G)–(I) of Pub. L. 108–357 applicable to aviation-grade kerosene removed, entered, or sold after Dec. 31, 2004, see section 853(e) of Pub. L. 108–357, set out as a note under section 4041 of this title.

Pub. L. 108–357, title VIII, §865(b), Oct. 22, 2004, 118 Stat. 1621, provided that: "The amendments made by this section [amending this section] shall take effect on January 1, 2005."

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title IX, §905(b), Aug. 5, 1997, 111 Stat. 874, provided that: "The amendment made by subsection (a) [amending this section] shall apply to sales after the date of the enactment of this Act [Aug. 5, 1997]."

Amendment by section 1032(e)(6) of Pub. L. 105–34 effective July 1, 1998, see section 1032(f)(1) of Pub. L. 105–34, as amended, set out as a note under section 4041 of this title.

Pub. L. 105–34, title XIV, §1436(c), Aug. 5, 1997, 111 Stat. 1053, provided that: "The amendments made by this section [amending this section and section 4091 of this title] shall apply to fuel acquired by the producer after September 30, 1997."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 effective Jan. 1, 1994, see section 13242(e) of Pub. L. 103–66, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective July 1, 1991, see section 11212(f)(1) of Pub. L. 101–508, set out as a note under section 4081 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 2001(d)(1)(B) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Superfund Revenue Act of 1986, Pub. L. 99–499, title V, to which it relates, see section 2001(e) of Pub. L. 100–647, set out as a note under section 56 of this title.

Pub. L. 100–647, title VI, §6102(b), Nov. 10, 1988, 102 Stat. 3711, provided that: "The amendment made by this section [amending this section] shall apply to fuel sold by wholesale distributors (as defined in section 6416(a)(4)(B) of the 1986 Code, as added by this section) after September 30, 1988."

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 9201(b)(2) of Pub. L. 100–203 effective Jan. 1, 1988, see section 9201(d) of Pub. L. 100–203, set out as an Effective Date note under section 4131 of this title.

Amendment by section 10502(d)(6)–(8) of Pub. L. 100–203 applicable to sales after Mar. 31, 1988, see section 10502(e) of Pub. L. 100–203, set out as a note under section 40 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–499 effective Jan. 1, 1987, see section 521(e) of Pub. L. 99–499, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97–424, to which such amendment relates, see section 736 of Pub. L. 98–369, set out as a note under section 4051 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 511(g)(2)(A) of Pub. L. 97–424 effective Apr. 1, 1983, see section 511(h)(1) of Pub. L. 97–424, set out as a note under section 4041 of this title.

Amendment by section 512(b)(2)(C), (D) of Pub. L. 97–424 effective Apr. 1, 1983, see section 512(b)(3) of

Pub. L. 97–424, set out as a note under section 4051 of this title.

Amendment by section 515(b)(4) of Pub. L. 97–424 applicable with respect to articles sold after Jan. 6, 1983, see section 515(c) of Pub. L. 97–424, set out as a note under section 34 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–598 effective on first day of first calendar month which begins more than 10 days after Dec. 24, 1980, see section 1(e) of Pub. L. 96–598, set out as a note under section 4071 of this title.

Pub. L. 96–596, §4(c)(2), Dec. 24, 1980, 94 Stat. 3476, provided that: "The amendments made by this subsection [amending this section] shall apply to the adjustments of any tire after December 31, 1982."

Amendment by Pub. L. 96–222 effective as if included in the provisions of the Energy Tax Act of 1978, Pub. L. 95–618, to which such amendment relates, see section 108(c)(7) of Pub. L. 96–222, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by section 201(c)(3) of Pub. L. 95–618 applicable with respect to 1980 and later model year automobiles, see section 201(g) of Pub. L. 95–618, set out as an Effective Date note under section 4064 of this title.

Amendment by section 232(b) of Pub. L. 95–618 applicable to sales on or after day of first calendar month beginning more than 10 days after Nov. 9, 1978, see section 232(c) of Pub. L. 95–618, set out as a note under section 4221 of this title.

Amendment by section 233(c)(3) of Pub. L. 95–618 effective on first day of first calendar month which begins more than 10 days after Nov. 9, 1978, see section 233(d) of Pub. L. 95–618, set out as a note under section 34 of this title.

Amendment by Pub. L. 95–227 applicable with respect to sales after Mar. 31, 1978, see section 2(d) of Pub. L. 95–227, set out as an Effective Date note under section 4121 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1904(b)(1), (2) of Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94–455, set out as a note under section 4041 of this title.

Amendment by section 1906(a)(24)(A), (b)(13)(A) of Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1906(d)(1) of Pub. L. 94–455, set out as a note under section 6013 of this title.

Pub. L. 94–455, title XIX, §1906(a)(24)(B)(ii), Oct. 4, 1976, 90 Stat. 1827, provided that: "The repeals made by clause (i) [amending this section] shall apply with respect to the use or resale for use of liquids after December 31, 1976."

Pub. L. 94–455, title XXI, §2108(b), Oct. 4, 1976, 90 Stat. 1904, provided that: "The amendment made by this section [amending this section] shall apply to parts and accessories sold after the date of the enactment of this Act [Oct. 4, 1976]."

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–178 applicable with respect to articles sold on or after day after Dec. 10, 1971, see section 401(h)(1) of Pub. L. 92–178, set out as a note under section 4071 of this title.

EFFECTIVE DATE OF 1970 AMENDMENTS

Pub. L. 91–614, title III, §302(c), Dec. 31, 1970, 84 Stat. 1845, provided that: "The amendments made by subsections (a) and (b) of this section [amending this section] shall apply only with respect to claims for credit or refund filed after the date of the enactment of this Act [Dec. 31, 1970], but only if the filing of the claim is not barred on the day after the date of the enactment of this Act by any law or rule of law."

Amendment by Pub. L. 91–258 effective on July 1, 1970, see section 211(a) of Pub. L. 91–258, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 207(c) of Pub. L. 89–44 effective June 22, 1965, see section 701(a) of Pub. L. 89–44, set out as an Effective Date of 1965 Amendment note under section 4161 of this title.

Amendment by section 601(c) of Pub. L. 89–44 to take effect in a manner consistent with effective date of change of tax provisions to which related, see section 701(e) of Pub. L. 89–44, set out as a note under section 6103 of this title.

Amendment by section 801(d)(2) applicable with respect to articles sold on or after June 22, 1965, see

section 801(e) of Pub. L. 89–44, set out as a note under section 4216 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87–508, §5(d), June 28, 1962, 76 Stat. 119, provided in part that: "The amendments made by subsection (c)(3) [amending this section] shall apply only in respect to the use or sale of special fuels made on or after November 16, 1962."

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–61 applicable only in the case of gasoline sold on or after Oct. 1, 1961, see section 208 of Pub. L. 87–61, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1960 AMENDMENTS

Amendment by Pub. L. 86–781 applicable with respect to articles sold on or after first day of first calendar quarter beginning more than twenty days after Sept. 14, 1960, see section 3 of Pub. L. 86–781, set out as a note under section 4216 of this title.

Amendment by Pub. L. 86–418 applicable only with respect to bicycle tires and tubes sold by the manufacturer, producer, or importer thereof on or after first day of first month which begins more than 10 days after Apr. 8, 1960, see section 4 of Pub. L. 86–418, set out as a note under section 4221 of this title.

EFFECTIVE DATE OF 1958 AMENDMENTS

Pub. L. 85–859, title I, §163(b), Sept. 2, 1958, 72 Stat. 1311, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Section 6416(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as amended by this Act, shall apply only with respect to articles exported, sold, or resold, as the case may be, on or after the effective date specified in section 1(c) of this Act [set out as a note under section 6415 of this title]."

For effective date of amendment by Pub. L. 85–475, see section 4(c) of Pub. L. 85–475, set out as a note under section 6415 of this title.

EFFECTIVE DATE OF 1956 AMENDMENTS

Amendment by act June 29, 1956, effective June 29, 1956, see section 211 of act June 29, 1956, set out as a note under section 4041 of this title.

Act Apr. 2, 1956, ch. 160, §2(b)(2), 70 Stat. 90, provided that: "The amendment made by paragraph (1) [amending this section] shall apply with respect to liquid sold after December 31, 1955."

EFFECTIVE DATE OF 1955 AMENDMENTS

Act Aug. 11, 1955, ch. 805, §3, 69 Stat. 690, as amended by Oct. 22, 1986, Pub. L. 99–514, §2, 100 Stat. 2095, provided that: "The amendments made by the first section and section 2 of this Act [amending this section and sections 4091 and 4092 of this title] shall take effect on the first day of the first month which begins more than ten days after the date of the enactment of this Act [Aug. 11, 1955]. Notwithstanding the preceding sentence—

"(1) the repeal of section 6416(b)(2)(G) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall apply only with respect to articles sold by the manufacturer, producer, or importer on or after the first day of the first month which begins more than 10 days after the date of the enactment of this Act [Aug. 11, 1955], and

"(2) section 6416(b)(3)(B) of the Internal Revenue Code of 1986, as amended by subsection (i) of the first section of this Act [Aug. 11, 1955], shall apply with respect to articles used on or after such first day by the manufacturer or producer as material in the manufacture of, production of, or as a component part of, another article."

Act Aug. 11, 1955, ch. 793, §3, 69 Stat. 676, provided that: "The amendments made by this Act [amending this section and sections 4091 and 4092 of this title] shall take effect on the first day of the first calendar quarter which begins more than ten days after the date of the enactment of this Act [Aug. 11, 1955]".

OVERPAYMENT OF TAX ON CERTAIN RADIO RECEIVING SETS AND RADIO AND TELEVISION COMPONENTS

Pub. L. 85–859, title I, §163(e), Sept. 2, 1958, 72 Stat. 1312, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "If—

"(1) a radio receiving set, an automobile radio receiving set, or a radio or television component was (before any other use) used as a component part of any other article, and

"(2) such other article was (before any other use) by any person exported, or sold to a State or local

government for the exclusive use of a State or local government,

then any tax imposed by chapter 32 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (or the corresponding provisions of prior revenue law) in respect of such set or component which has been paid shall be deemed to have been an overpayment, by the manufacturer, producer, or importer of such other article, at the time paid. No credit or refund shall be allowed or made under this subsection unless the manufacturer, producer, or importer of such other article establishes to the satisfaction of the Secretary of the Treasury or his delegate that he did not include the amount of the tax in the price of such other article (and has not collected the amount of the tax from the purchaser of such other article), that the amount of the tax has been repaid to the ultimate purchaser of such other article, or that he has obtained the written consent of such ultimate purchaser to the allowance of the credit or the making of the refund. No interest shall be allowed or paid in respect of any such overpayment."

[§6417. Repealed. Pub. L. 94–455, title XIX, §1906(a)(25), Oct. 4, 1976, 90 Stat. 1827]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 801, related to a tax credit or refund to any person who has sold to a State, or a political subdivision thereof, any article containing any oil, combination, or mixture, upon the processing of which a tax has been paid under former section 4511, and to a refund to the exporter of the tax paid under former subchapter B of chapter 37.

EFFECTIVE DATE OF REPEAL

Repeal effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1906(d)(1) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 6013 of this title.

[§6418. Repealed. Pub. L. 101–508, title XI, §11801(c)(22)(B)(i), Nov. 5, 1990, 104 Stat. 1388–528]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 801; May 29, 1956, ch. 342, §21(b), 70 Stat. 221; May 24, 1962, Pub. L. 87–456, title III, §302(c), 76 Stat. 77; Nov. 8, 1965, Pub. L. 89–331, §9(b), 79 Stat. 1278; Oct. 4, 1976, Pub. L. 94–455, title XIX, §1906(b)(13)(A), 90 Stat. 1834, authorized refund of taxes paid on sugar used as livestock feed, for distillation or production of alcohol, or in certain cases where sugar was exported.

SAVINGS PROVISION

For provisions that nothing in repeal by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

§6419. Excise tax on wagering

(a) Credit or refund generally

No overpayment of tax imposed by chapter 35 shall be credited or refunded (otherwise than under subsection (b)), in pursuance of a court decision or otherwise, unless the person who paid the tax establishes, in accordance with regulations prescribed by the Secretary, (1) that he has not collected (whether as a separate charge or otherwise) the amount of the tax from the person who placed the wager on which the tax was imposed, or (2) that he has repaid the amount of the tax to the person who placed such wager, or unless he files with the Secretary written consent of the person who placed such wager to the allowance of the credit or the making of the refund. In the case of any laid-off wager, no overpayment of tax imposed by chapter 35 shall be so credited or refunded to the person with whom such laid-off wager was placed unless he establishes, in accordance with regulations prescribed by the Secretary, that the provisions of the preceding sentence have been complied with both with respect to the person who placed the laid-off wager with him and with respect to the person who placed the original wager.

(b) Credit or refund on wagers laid-off by taxpayer

Where any taxpayer lays off part or all of a wager with another person who is liable for tax imposed by chapter 35 on the amount so laid off, a credit against such tax shall be allowed, or a refund shall be made to, the taxpayer laying off such amount. Such credit or refund shall be in an amount which bears the same ratio to the amount of tax which such taxpayer paid on the original wager as the amount so laid off bears to the amount of the original wager. Credit or refund under this subsection shall be allowed or made only in accordance with regulations prescribed by the Secretary, and no interest shall be allowed with respect to any amount so credited or refunded.

(Aug. 16, 1954, ch. 736, 68A Stat. 801; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsecs. (a), (b). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

§6420. Gasoline used on farms

(a) Gasoline

Except as provided in subsection (g), if gasoline is used on a farm for farming purposes, the Secretary shall pay (without interest) to the ultimate purchaser of such gasoline the amount determined by multiplying—

(1) the number of gallons so used, by

(2) the rate of tax on gasoline under section 4081 which applied on the date he purchased such gasoline.

(b) Time for filing claims; period covered

Not more than one claim may be filed under this section by any person with respect to gasoline used during his taxable year, and no claim shall be allowed under this section with respect to gasoline used during any taxable year unless filed by such person not later than the time prescribed by law for filing a claim for credit or refund of overpayment of income tax for such taxable year. For purposes of this subsection, a person's taxable year shall be his taxable year for purposes of subtitle A.

(c) Meaning of terms

For purposes of this section—

(1) Use on a farm for farming purposes

Gasoline shall be treated as used on a farm for farming purposes only if used (A) in carrying on a trade or business, (B) on a farm situated in the United States, and (C) for farming purposes.

(2) Farm

The term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(3) Farming purposes

Gasoline shall be treated as used for farming purposes only if used—

(A) by the owner, tenant, or operator of a farm, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife, on a farm of which he is the owner, tenant, or operator;

(B) by the owner, tenant, or operator of a farm, in handling, drying, packing, grading, or storing any agricultural or horticultural commodity in its unmanufactured state; but only if such owner, tenant or operator produced more than one-half of the commodity which he so treated during the period with respect to which claim is filed;

(C) by the owner, tenant, or operator of a farm, in connection with—

(i) the planting, cultivating, caring for, or cutting of trees, or

(ii) the preparation (other than milling) of trees for market,

incidental to farming operations; or

(D) by the owner, tenant, or operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment.

(4) Certain farming use other than by owner, etc.

In applying paragraph (3)(A) to a use on a farm for any purpose described in paragraph (3)(A) by any person other than the owner, tenant, or operator of such farm—

(A) the owner, tenant, or operator of such farm shall be treated as the user and ultimate purchaser of the gasoline, except that

(B) if the person so using the gasoline is an aerial or other applicator of fertilizers or other substances and is the ultimate purchaser of the gasoline, then subparagraph (A) of this paragraph shall not apply and the aerial or other applicator shall be treated as having used such gasoline on a farm for farming purposes.

In the case of an aerial applicator, gasoline shall be treated as used on a farm for farming purposes if the gasoline is used for the direct flight between the airfield and one or more farms.

(5) Gasoline

The term "gasoline" has the meaning given to such term by section 4083(a).

(d) Exempt sales; other payments or refunds available

No amount shall be payable under this section with respect to any gasoline which the Secretary determines was exempt from the tax imposed by section 4081. The amount which (but for this sentence) would be payable under this section with respect to any gasoline shall be reduced by any other amount which the Secretary determines is payable under this section, or is refundable under any provision of this title, to any person with respect to such gasoline.

(e) Applicable laws

(1) In general

All provisions of law, including penalties, applicable in respect of the tax imposed by section 4081 shall, insofar as applicable and not inconsistent with this section, apply in respect of the payments provided for in this section to the same extent as if such payments constituted refunds of overpayments of the tax so imposed.

(2) Examination of books and witnesses

For the purpose of ascertaining the correctness of any claim made under this section, or the correctness of any payment made in respect of any such claim, the Secretary shall have the authority granted by paragraphs (1), (2), and (3) of section 7602(a) (relating to examination of books and witnesses) as if the claimant were the person liable for tax.

(3) Fractional parts of a dollar

Section 7504 (granting the Secretary discretion with respect to fractional parts of a dollar) shall not apply.

(f) Regulations

The Secretary may by regulations prescribe the conditions, not inconsistent with the provisions of this section, under which payments may by made under this section.

(g) Income tax credit in lieu of payment

(1) Persons not subject to income tax

Payment shall be made under subsection (a), only to—

(A) the United States or an agency or instrumentality thereof, a State, a political subdivision of a State, or an agency or instrumentality of one or more States or political subdivisions, or

(B) an organization exempt from tax under section 501(a) (other than an organization required to make a return of the tax imposed under subtitle A for its taxable year).

(2) Allowance of credit against income tax

For allowance of credit against the tax imposed by subtitle A, see section 34.

[(h) Repealed. Pub. L. 103–66, title XIII, §13241(f)(5), Aug. 10, 1993, 107 Stat. 512]

(i) Cross references

(1) For exemption from tax in case of special fuels used on a farm for farming purposes, see section 4041(f).

(2) For civil penalty for excessive claim under this section, see section 6675.

(3) For fraud penalties, etc., see chapter 75 (section 7201 and following, relating to crimes, other offenses, and forfeitures).

(4) For treatment of an Indian tribal government as a State and [1] a subdivision of an Indian tribal government as a political subdivision of a State), see section 7871.

(Added Apr. 2, 1956, ch. 160, §1, 70 Stat. 87; amended Pub. L. 85–859, title I, §163(d)(2), Sept. 2, 1958, 72 Stat. 1311; Pub. L. 89–44, title VIII, §809(a), June 21, 1965, 79 Stat. 165; Pub. L. 91–258, title II, §§205(c)(7), 207(b), May 21, 1970, 84 Stat. 242, 248; Pub. L. 94–455, title XIX, §§1906(a)(26), (b)(6)(A), (13)(A), Oct. 4, 1976, 90 Stat. 1827, 1833, 1834; Pub. L. 95–458, §3(a), (c), Oct. 14, 1978, 92 Stat. 1257; Pub. L. 97–424, title V, §§511(f), 516(b)(4), Jan. 6, 1983, 96 Stat. 2172, 2183; Pub. L. 97–473, title II, §202(b)(12), Jan. 14, 1983, 96 Stat. 2610; Pub. L. 98–369, div. A, title IV, §474(r)(38), July 18, 1984, 98 Stat. 846; Pub. L. 99–499, title V, §521(c)(1), Oct. 17, 1986, 100 Stat. 1778; Pub. L. 100–17, title V, §502(b)(6), Apr. 2, 1987, 101 Stat. 257; Pub. L. 101–239, title VII, §7841(d)(20), Dec. 19, 1989, 103 Stat. 2429; Pub. L. 101–508, title XI, §11211(d)(5), Nov. 5, 1990, 104 Stat. 1388–427; Pub. L. 102–240, title VIII, §8002(b)(5), Dec. 18, 1991, 105 Stat. 2203; Pub. L. 103–66, title XIII, §§13241(f)(5), 13242(d)(20), Aug. 10, 1993, 107 Stat. 512, 524; Pub. L. 109–59, title XI, §11121(a), (b), Aug. 10, 2005, 119 Stat. 1951.)

PRIOR PROVISIONS

A prior section 6420 was renumbered section 6422 of this title.

AMENDMENTS

2005—Subsec. (c)(4). Pub. L. 109–59, §11121(b), inserted concluding provisions.

Subsec. (c)(4)(B). Pub. L. 109–59, §11121(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "if—

"(i) the person so using the gasoline is an aerial or other applicator of fertilizers or other substances and is the ultimate purchaser of the gasoline, and

"(ii) the person described in subparagraph (A) waives (at such time and in such form and manner as the Secretary shall prescribe) his right to be treated as the user and ultimate purchaser of the gasoline, then subparagraph (A) of this paragraph shall not apply and the aerial or other applicator shall be treated as having used such gasoline on a farm for farming purposes."

1993—Subsec. (c)(5). Pub. L. 103–66, §13242(d)(20), substituted "section 4083(a)" for "section 4082(b)".

Subsec. (h). Pub. L. 103–66, §13241(f)(5), struck out heading and text of subsec. (h). Text read as follows: "Except with respect to taxes imposed by section 4081 at the Leaking Underground Storage Tank Trust Fund financing rate, this section shall apply only with respect to gasoline purchased before October 1, 1999."

1991—Subsec. (h). Pub. L. 102–240 substituted "1999" for "1995".

1990—Subsec. (h). Pub. L. 101–508 substituted "1995" for "1993".

1989—Subsec. (e)(2). Pub. L. 101–239 substituted "section 7602(a)" for "section 7602".

1987—Subsec. (h). Pub. L. 100–17 substituted "1993" for "1988".

1986—Subsec. (h). Pub. L. 99–499 substituted "Except with respect to taxes imposed by section 4081 at the Leaking Underground Storage Tank Trust Fund financing rate, this section" for "This section".

1984—Subsec. (g)(2). Pub. L. 98–369 substituted "section 34" for "section 39".

1983—Subsec. (c)(4)(B). Pub. L. 97–424, §511(f), substituted provision that, if the person so using the gasoline is an aerial or other applicator of fertilizers or other substances and is the ultimate purchaser of the

gasoline, and the person described in subparagraph (A) waives (at such time and in such form and manner as the Secretary shall prescribe) his right to be treated as the user and ultimate purchaser of the gasoline, then subparagraph (A) of this paragraph shall not apply and the aerial or other applicator shall be treated as having used such gasoline on a farm for farming purposes, for provision that, if the person so using the gasoline were an aerial applicator who was the ultimate purchaser of the gasoline and the person described in subparagraph (A) waived (at such time and in such form and manner as the Secretary was to prescribe) his right to be treated as the user and ultimate purchaser of the gasoline, then subparagraph (A) of this paragraph would not apply and the aerial applicator would be treated as having used such gasoline on a farm for farming purposes.

Subsec. (h). Pub. L. 97–424, §516(b)(4), added subsec. (h). Former subsec. (h) redesignated (i).

Subsec. (h)(4). Pub. L. 97–473 purported to add par. (4). See Amendment note below for subsec. (i)(4).

Subsec. (i). Pub. L. 97–424, §516(b)(4), redesignated former subsec. (h) as (i).

Subsec. (i)(4). Pub. L. 97–473 added par. (4). Notwithstanding the directory language that par. (4) be added to subsec. (h), it was added to subsec. (i) to reflect the probable intent of Congress and the intervening redesignation of subsec. (h) as (i) by Pub. L. 97–424.

1978—Subsec. (c)(3)(A). Pub. L. 95–458, §3(c), struck out provision that if the use of gasoline is by any person other than the owner, tenant, or operator of a farm, then in applying subsec. (a) of this subparagraph, the owner, tenant, or operator of the farm on which gasoline or a liquid taxable under section 4041 is used would be treated as the user or ultimate purchaser of the gasoline or liquid.

Subsec. (c)(4), (5). Pub. L. 95–458, §3(a), added par. (4) and redesignated former par. (4) as (5).

1976—Subsec. (a). Pub. L. 94–455, §1906(a)(26) (C)(ii), (b)(13)(A), substituted "subsection (g)" for "subsection (h)" and struck out "or his delegate" after "Secretary".

Subsec. (b). Pub. L. 94–455, §1906(a)(26)(A), among other changes, struck out provisions relating to gasoline used before July 1, 1965, and struck out requirement that a person's first taxable year beginning after June 30, 1965, include the period after June 30, 1965, and before the beginning of that first taxable year.

Subsec. (c)(3)(A). Pub. L. 94–455, §1906(b)(6)(A), among other changes, struck out "and for purposes of section 6416(b)(2)(G)(ii) (but not for purposes of section 4041)," after "in applying subsection (a) to this subparagraph," and provision that if the use of gasoline is by any person other than the owner, tenant, or operator of the farm, then, for purposes of applying section 6416(b)(2)(G)(ii), any tax paid under section 4041 in respect of a liquid used on a farm for farming purposes be treated as having been paid by the owner, tenant, or operator of the farm on which such liquid is used.

Subsec. (d). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (e)(1). Pub. L. 94–455, §1906(a)(26)(B), substituted "apply in respect" for "apply in in respect".

Subsecs. (e)(2), (f). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (g). Pub. L. 94–455, §1906(a)(26)(C)(i), (D), redesignated subsec. (h) as (g), struck out in par. (1) "with respect to gasoline used after June 30, 1965," after "subsection (a)", and in par. (2) "for gasoline used after June 30, 1965" after "subtitle A". Former subsec. (g), which provided that this section applies only with respect to gasoline purchased after Dec. 31, 1955, was struck out.

Subsecs. (h), (i). Pub. L. 94–455, §1906(a)(26)(C)(i), redesignated subsecs. (h) and (i) as (g) and (h), respectively.

1970—Subsec. (b)(2)(B). Pub. L. 91–258, §207(b), substituted "a claim for credit or refund of overpayment of income tax" for "an income tax return" after "time prescribed by law for filing".

Subsec. (i)(1). Pub. L. 91–258, §205(c)(7)(A), (B), substituted "special fuels" for "diesel fuel and special motor fuels" and "section 4041(f)" for "section 4041(d)", respectively.

1965—Subsec. (a). Pub. L. 89–44, §809(a)(1)(A), substituted "Except as provided in subsection (h), if" for "If".

Subsec. (b). Pub. L. 89–44, §809(a)(2), designated existing provisions as par. (1) and made it applicable to gasoline used before July 1, 1965, and added par. (2).

Subsec. (d). Pub. L. 89–44, §809(a)(3), substituted "payable" for "paid" in first sentence.

Subsecs. (h), (i). Pub. L. 89–44, §809(a)(1)(B), added subsec. (h) and redesignated former subsec. (h) as (i).

1958—Subsec. (c)(3)(A). Pub. L. 85–859 substituted "section 6416(b)(2)(G)(ii)" for "section 6416(b)(2)(C)(ii)" in two places in cl. (A).

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–59 applicable to fuel use or air transportation after Sept. 30, 2005, see section 11121(d) of Pub. L. 109–59, set out as a note under section 4261 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13241(f)(5) of Pub. L. 103–66 effective Oct. 1, 1993, see section 13241(g) of Pub.

L. 103–66, set out as a note under section 4041 of this title.

Amendment by section 13242(d)(20) of Pub. L. 103–66 effective Jan. 1, 1994, see section 13242(e) of Pub. L. 103–66, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–499 effective Jan. 1, 1987, see section 521(e) of Pub. L. 99–499, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

For effective date of amendment by Pub. L. 97–473, see section 204 of Pub. L. 97–473, set out as an Effective Date note under section 7871 of this title.

Amendment by section 511(f) of Pub. L. 97–424 effective Apr. 1, 1983, see section 511(h)(1) of Pub. L. 97–424, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–458, §3(d), Oct. 14, 1978, 92 Stat. 1257, provided that: "The amendments made by this section [amending this section and section 6427 of this title] shall take effect on the first day of the first calendar quarter which begins more than 90 days after the date of the enactment of this Act [Oct. 14, 1978]."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1906(a)(26), (b)(13)(A) of Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1906(d)(1) of Pub. L. 94–455, set out as a note under section 6013 of this title.

Pub. L. 94–455, title XIX, §1906(b)(6)(B), Oct. 4, 1976, 90 Stat. 1834, provided that: "The amendments made by subparagraph (A) [amending this section] shall apply with respect to the use of liquids after December 31, 1970."

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–258 effective July 1, 1970, and applicable with respect to taxable years ending after June 30, 1970, respectively, see section 211(a), (b) of Pub. L. 91–258, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Pub. L. 89–44, title VIII, §809(f), June 21, 1965, 79 Stat. 168, provided that: "The amendments made by subsections (a) and (b) [amending this section and section 6421 of this title] shall apply with respect to gasoline used on or after July 1, 1965. The amendments made by subsections (c) and (d) [renumbering section 39 as 40, enacting section 39 and amending sections 72, 874, 1314, 1481, 6201, 6211, 6213, and 6401 of this title] shall apply to taxable years beginning on or after July 1, 1965."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–859 effective on first day of first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1(c) of Pub. L. 85–859, set out as a note under section 6415 of this title.

[1] So in original. Probably should be "(and".

§6421. Gasoline used for certain nonhighway purposes, used by local transit systems, or sold for certain exempt purposes

(a) Nonhighway uses

Except as provided in subsection (i), if gasoline is used in an off-highway business use, the Secretary shall pay (without interest) to the ultimate purchaser of such gasoline an amount equal to the amount determined by multiplying the number of gallons so used by the rate at which tax was imposed on such gasoline under section 4081. Except as provided in paragraph (2) of subsection (f)

of this section, in the case of gasoline used as a fuel in an aircraft, the Secretary shall pay (without interest) to the ultimate purchaser of such gasoline an amount equal to the amount determined by multiplying the number of gallons of gasoline so used by the rate at which tax was imposed on such gasoline under section 4081.

(b) Intercity, local, or school buses

(1) Allowance

Except as provided in paragraph (2) and subsection (i), if gasoline is used in an automobile bus while engaged in—

(A) furnishing (for compensation) passenger land transportation available to the general public, or

(B) the transportation of students and employees of schools (as defined in the last sentence of section 4221(d)(7)(C)),

the Secretary shall pay (without interest) to the ultimate purchaser of such gasoline an amount equal to the product of the number of gallons of gasoline so used multiplied by the rate at which tax was imposed on such gasoline by section 4081.

(2) Limitation in case of nonscheduled intercity or local buses

Paragraph (1)(A) shall not apply in respect of gasoline used in any automobile bus while engaged in furnishing transportation which is not scheduled and not along regular routes unless the seating capacity of such bus is at least 20 adults (not including the driver).

(c) Exempt purposes

If gasoline is sold to any person for any purpose described in paragraph (2), (3), (4) [1] (5), or (6) of section 4221(a), the Secretary shall pay (without interest) to such person an amount equal to the product of the number of gallons of gasoline so sold multiplied by the rate at which tax was imposed on such gasoline by section 4081. The preceding sentence shall apply notwithstanding paragraphs (2) and (3) of subsection (f). Subsection (a) shall not apply to gasoline to which this subsection applies.

(d) Time for filing claims; period covered

(1) In general

Except as provided in paragraph (2), not more than one claim may be filed under subsection (a), not more than one claim may be filed under subsection (b), and not more than one claim may be filed under subsection (c), by any person with respect to gasoline used during his taxable year; and no claim shall be allowed under this paragraph with respect to gasoline used during any taxable year unless filed by such person not later than the time prescribed by law for filing a claim for credit or refund of overpayment of income tax for such taxable year. For purposes of this subsection, a person's taxable year shall be his taxable year for purposes of subtitle A.

(2) Exception

For payments per quarter based on aggregate amounts payable under this section and section 6427, see section 6427(i)(2).

(3) Application to sales under subsection (c)

For purposes of this subsection, gasoline shall be treated as used for a purpose referred to in subsection (c) when it is sold for such a purpose.

(e) Definitions

For purposes of this section—

(1) Gasoline

The term "gasoline" has the meaning given to such term by section 4083(a).

(2) Off-highway business use

(A) In general

The term "off-highway business use" means any use by a person in a trade or business of such person or in an activity of such person described in section 212 (relating to production of income) otherwise than as a fuel in a highway vehicle—

(i) which (at the time of such use), is registered, or is required to be registered, for highway use under the laws of any State or foreign country, or

(ii) which, in the case of a highway vehicle owned by the United States, is used on the highway.

(B) Uses in boats

(i) In general

Except as otherwise provided in this subparagraph, the term "off-highway business use" does not include any use in a motorboat.

(ii) Fisheries and whaling

The term "off-highway business use" shall include any use in a vessel employed in the fisheries or in the whaling business.

(C) Uses in mobile machinery

(i) In general

The term "off-highway business use" shall include any use in a vehicle which meets the requirements described in clause (ii).

(ii) Requirements for mobile machinery

The requirements described in this clause are—

(I) the design-based test, and

(II) the use-based test.

(iii) Design-based test

For purposes of clause (ii)(I), the design-based test is met if the vehicle consists of a chassis—

(I) to which there has been permanently mounted (by welding, bolting, riveting, or other means) machinery or equipment to perform a construction, manufacturing, processing, farming, mining, drilling, timbering, or similar operation if the operation of the machinery or equipment is unrelated to transportation on or off the public highways,

(II) which has been specially designed to serve only as a mobile carriage and mount (and a power source, where applicable) for the particular machinery or equipment involved, whether or not such machinery or equipment is in operation, and

(III) which, by reason of such special design, could not, without substantial structural modification, be used as a component of a vehicle designed to perform a function of transporting any load other than that particular machinery or equipment or similar machinery or equipment requiring such a specially designed chassis.

(iv) Use-based test

For purposes of clause (ii)(II), the use-based test is met if the use of the vehicle on public highways was less than 7,500 miles during the taxpayer's taxable year. This clause shall be applied without regard to use of the vehicle by any organization which is described in section 501(c) and exempt from tax under section 501(a).

(f) Exempt sales; other payments or refunds available

(1) Gasoline used on farms

This section shall not apply in respect of gasoline which was (within the meaning of paragraphs (1), (2), and (3) of section 6420(c)) used on a farm for farming purposes.

(2) Gasoline used in aviation

This section shall not apply in respect of gasoline which is used as a fuel in an aircraft—

(A) in aviation which is not commercial aviation (as defined in section 4083(b)), or

(B) in commercial aviation (as so defined) with respect to the tax imposed by section 4081 at the Leaking Underground Storage Tank Trust Fund financing rate and, in the case of fuel purchased after September 30, 1995, at so much of the rate specified in section 4081(a)(2)(A) as does not exceed 4.3 cents per gallon.

(3) Gasoline used in trains

In the case of gasoline used as a fuel in a train, this section shall not apply with respect to—

(A) the Leaking Underground Storage Tank Trust Fund financing rate under section 4081, and

(B) so much of the rate specified in section 4081(a)(2)(A) as does not exceed the rate applicable under section 4041(a)(1)(C)(ii).

(g) Applicable laws

(1) In general

All provisions of law, including penalties, applicable in respect to the tax imposed by section 4081 shall, insofar as applicable and not inconsistent with this section, apply in respect of the payments provided for in this section to the same extent as if such payments constituted refunds of overpayments of the tax so imposed.

(2) Examination of books and witnesses

For the purpose of ascertaining the correctness of any claim made under this section, or the correctness of any payment made in respect of any such claim, the Secretary shall have the authority granted by paragraphs (1), (2), and (3) of section 7602(a) (relating to examination of books and witnesses) as if the claimant were the person liable for tax.

(h) Regulations

The Secretary may by regulations prescribe the conditions, not inconsistent with the provisions of this section, under which payments may be made under this section.

(i) Income tax credit in lieu of payment

(1) Persons not subject to income tax

Payment shall be made under subsections (a) and (b) only to—

(A) the United States or any agency or instrumentality thereof, a State, a political subdivision of a State, or any agency or instrumentality of one or more States or political subdivisions, or

(B) an organization exempt from tax under section 501(a) (other than an organization required to make a return of the tax imposed under subtitle A for its taxable year).

(2) Exception

Paragraph (1) shall not apply to a payment of a claim filed under subsection (d)(2).

(3) Allowance of credit against income tax

For allowance of credit against the tax imposed by subtitle A, see section 34.

(j) Cross references

(1) For civil penalty for excessive claims under this section, see section 6675.

(2) For fraud penalties, etc., see chapter 75 (section 7201 and following, relating to crimes, other offenses, and forfeitures).

(3) For treatment of an Indian tribal government as a State and [2] a subdivision of an Indian tribal government as a political subdivision of a State), see section 7871.

(Added June 29, 1956, ch. 462, title II, §208(c), 70 Stat. 394; amended July 25, 1956, ch. 725, §2, 70 Stat. 644; Pub. L. 85–859, title I, §§163(d)(3), 164(a), Sept. 2, 1958, 72 Stat. 1312; Pub. L. 86–342, title II, §201(d)(2), Sept. 21, 1959, 73 Stat. 615; Pub. L. 87–61, title II, §201(e), June 29, 1961, 75 Stat. 124; Pub. L. 87–508, §5(c)(2), June 28, 1962,76 Stat. 118; Pub. L. 89–44, title VIII, §809(b), June 21, 1965, 79 Stat. 166; Pub. L. 91–258, title II, §§205(b)(1), (c)(8), 207(b), May 21, 1970, 84 Stat. 241, 242, 248; Pub. L. 91–605, title III, §303(a)(11), Dec. 31, 1970, 84 Stat. 1744; Pub. L.

94–280, title III, §303(a)(11), May 5, 1976, 90 Stat. 456; Pub. L. 94–455, title XIX, §1906(a)(27)(A)(i), (B)–(D), (b)(13)(A), Oct. 4, 1976, 90 Stat. 1827, 1828, 1834; Pub. L. 95–599, title V, §502(a)(10), Nov. 6, 1978, 92 Stat. 2756; Pub. L. 95–618, title II, §§222(a)(1), 233(a)(1), (3)(A), Nov. 9, 1978, 92 Stat. 3186, 3190; Pub. L. 96–222, title I, §108(c)(1), Apr. 1, 1980, 94 Stat. 226; Pub. L. 97–424, title V, §§511(c)(1), (3), 515(b)(7), 516(a)(6), Jan. 6, 1983, 96 Stat. 2170, 2171, 2182, 2183; Pub. L. 97–473, title II, §202(b)(12), Jan. 14, 1983, 96 Stat. 2610; Pub. L. 98–369, div. A, title IV, §474(r)(38), July 18, 1984, 98 Stat. 846; Pub. L. 99–499, title V, §521(c)(2), Oct. 17, 1986, 100 Stat. 1778; Pub. L. 99–514, title XVII, §1703(c)(1), (2)(A), (B), (D), Oct. 22, 1986, 100 Stat. 2776, 2777; Pub. L. 100–17, title V, §502(b)(7), Apr. 2, 1987, 101 Stat. 257; Pub. L. 100–203, title X, §10502(d)(9), (10), Dec. 22, 1987, 101 Stat. 1330–444; Pub. L. 100–647, title I, §1017(c)(6)–(8), (15), title II, §2001(d)(3)(E), (F), Nov. 10, 1988, 102 Stat. 3576, 3577, 3595; Pub. L. 101–239, title VII, §7841(d)(20), Dec. 19, 1989, 103 Stat. 2429; Pub. L. 101–508, title XI, §11211(d)(6), Nov. 5, 1990, 104 Stat. 1388–427; Pub. L. 102–240, title VIII, §8002(b)(6), Dec. 18, 1991, 105 Stat. 2203; Pub. L. 103–66, title XIII, §§13163(b), 13241(f)(6), (7), 13242(d)(20), (22)–(24), Aug. 10, 1993, 107 Stat. 454, 512, 524; Pub. L. 104–188, title I, §1609(g)(4)(C), Aug. 20, 1996, 110 Stat. 1843; Pub. L. 105–34, title IX, §902(a), Aug. 5, 1997, 111 Stat. 873; Pub. L. 105–178, title IX, §§9006(b)(1), 9009(b)(3), June 9, 1998, 112 Stat. 506, 507; Pub. L. 105–206, title VI, §§6010(g)(3), 6023(24)(A), (C), July 22, 1998, 112 Stat. 814, 826; Pub. L. 108–357, title II, §241(a)(2)(C), title VIII, §851(d)(1), Oct. 22, 2004, 118 Stat. 1438, 1608; Pub. L. 109–59, title XI, §11151(b)(3), Aug. 10, 2005, 119 Stat. 1968; Pub. L. 109–280, title XII, §1207(b)(3)(B), Aug. 17, 2006, 120 Stat. 1070.)

PRIOR PROVISIONS

A prior section 6421 was renumbered section 6422 of this title.

AMENDMENTS

2006—Subsec. (c). Pub. L. 109–280, which directed the substitution of "(5), or (6)" for "or (5)" in section 6421(c), without specifying the act to be amended, was executed by making the substitution in subsec. (c) of this section, which is section 6421 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

2005—Subsec. (f)(2)(A). Pub. L. 109–59, §11151(b)(3)(A), substituted "aviation which is not commercial aviation (as defined in section 4083(b))" for "noncommercial aviation (as defined in section 4041(c)(2))".

Subsec. (f)(2)(B). Pub. L. 109–59, §11151(b)(3)(B), substituted "commercial aviation" for "aviation which is not noncommercial aviation".

2004—Subsec. (e)(2)(C). Pub. L. 108–357, §851(d)(1), added subpar. (C).

Subsec. (f)(3)(B). Pub. L. 108–357, §241(a)(2)(C), amended subpar. (B) generally. Prior to amendment, subpar (B) read as follows: "so much of the rate specified in section 4081(a)(2)(A) as does not exceed—

"(i) 6.8 cents per gallon after September 30, 1993, and before October 1, 1995,

"(ii) 5.55 cents per gallon after September 30, 1995, and before November 1, 1998, and

"(iii) 4.3 cents per gallon after October 31, 1998."

1998—Subsecs. (a), (b)(1). Pub. L. 105–206, §6023(24)(C), substituted "subsection (i)" for "subsection (j)".

Subsec. (c). Pub. L. 105–206, §6010(g)(3), substituted "(2) and (3)" for "(2)(A) and (3)" and inserted at end "Subsection (a) shall not apply to gasoline to which this subsection applies."

Subsec. (d)(2). Pub. L. 105–178, §9009(b)(3), reenacted heading without change and amended text of par. (2) generally. Prior to amendment, text read as follows: "If $1,000 or more is payable under this section to any person with respect to gasoline used during any of the first three quarters of his taxable year, a claim may be filed under this section by such person with respect to gasoline used during such quarter. No claim filed under this paragraph shall be allowed unless filed on or before the last day of the first quarter following the quarter for which the claim is filed."

Subsec. (f)(3)(B)(ii). Pub. L. 105–178, §9006(b)(1)(A), substituted "November 1, 1998" for "October 1, 1999".

Subsec. (f)(3)(B)(iii). Pub. L. 105–178, §9006(b)(1)(B), substituted "October 31, 1998" for "September 30, 1999".

Subsecs. (i) to (k). Pub. L. 105–206, §6023(24)(A), redesignated subsecs. (j) and (k) as (i) and (j), respectively.

1997—Subsec. (e)(2)(B)(iii), (iv). Pub. L. 105–34 struck out cls. (iii) and (iv) which read as follows:

"(iii) EXCEPTION FOR DIESEL FUEL.—The term 'off-highway business use' shall include the use of diesel fuel in a boat in the active conduct of—

"(I) a trade or business of commercial fishing or transporting persons or property for compensation or hire, and

"(II) except as provided in clause (iv), any other trade or business.

"(iv) NONCOMMERCIAL BOATS.—In the case of a boat used predominantly in any activity which is of a type generally considered to constitute entertainment, amusement, or recreation, clause (iii)(II) shall not apply to—

"(I) the taxes under sections 4041(a)(1) and 4081 for the period after December 31, 1993, and before January 1, 2000, and

"(II) so much of the tax under sections 4041(a)(1) and 4081 as does not exceed 4.3 cents per gallon for the period after December 31, 1999."

1996—Subsec. (f)(2)(A). Pub. L. 104–188 substituted "4041(c)(2)" for "4041(c)(4)".

1993—Subsec. (c). Pub. L. 103–66, §13242(d)(22), inserted at end "The preceding sentence shall apply notwithstanding paragraphs (2)(A) and (3) of subsection (f)."

Subsec. (e)(1). Pub. L. 103–66, §13242(d)(20), substituted "section 4083(a)" for "section 4082(b)".

Subsec. (e)(2)(B). Pub. L. 103–66, §13163(b), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: "The term 'off-highway business use' does not include any use in a motorboat. The preceding sentence shall not apply to use in a vessel employed in the fisheries or in the whaling business."

Subsec. (f)(2)(B). Pub. L. 103–66, §13242(d)(23), inserted before period at end "and, in the case of fuel purchased after September 30, 1995, at so much of the rate specified in section 4081(a)(2)(A) as does not exceed 4.3 cents per gallon".

Subsec. (f)(3). Pub. L. 103–66, §13242(d)(24), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: "This section shall not apply with respect to the tax imposed by section 4081 at the Leaking Underground Storage Tank Trust Fund financing rate and at the deficit reduction rate on gasoline used as a fuel in a train."

Pub. L. 103–66, §13241(f)(6), inserted "and deficit reduction tax" after "tax" in heading and "and at the deficit reduction rate" after "financing rate" in text.

Subsec. (i). Pub. L. 103–66, §13241(f)(7), struck out heading and text of subsec. (i). Text read as follows: "Except with respect to taxes imposed by section 4081 at the Leaking Underground Storage Tank Trust Fund financing rate, this section shall apply only with respect to gasoline purchased before October 1, 1999."

1991—Subsec. (i). Pub. L. 102–240 substituted "1999" for "1995".

1990—Subsec. (i). Pub. L. 101–508 substituted "1995" for "1993".

1989—Subsec. (g)(2). Pub. L. 101–239 substituted "section 7602(a)" for "section 7602".

1988—Subsec. (a). Pub. L. 100–647, §2001(d)(3)(F), substituted "paragraph (2) of subsection (f)" for "paragraph (3) of subsection (e)".

Pub. L. 100–647, §1017(c)(7), substituted "subsection (j)" for "subsection (i)".

Subsec. (b)(1). Pub. L. 100–647, §1017(c)(7), substituted "subsection (j)" for "subsection (i)".

Subsec. (d)(3). Pub. L. 100–647, §1017(c)(15), added par. (3).

Subsec. (f)(2). Pub. L. 100–647, §2001(d)(3)(E), added par. (2) and struck out former par. (2) which read as follows: "This section shall not apply in respect of gasoline which is used as a fuel in an aircraft in noncommercial aviation (as defined in section 4041(c)(4))."

Subsec. (f)(3). Pub. L. 100–647, §2001(d)(3)(E), added par. (3).

Subsec. (f)(4). Pub. L. 100–647, §2001(d)(3)(E), struck out par. (4) which read as follows: "This section shall not apply with respect to the tax imposed by section 4081 at the Leaking Underground Storage Tank Trust Fund financing rate on gasoline used in any off-highway business use other than use in a vessel employed in the fisheries or in the whaling business."

Subsec. (i). Pub. L. 100–647, §1017(c)(6), redesignated subsec. (i), relating to income tax credit in lieu of payment, as (j).

Subsec. (j). Pub. L. 100–647, §1017(c)(6), (8), redesignated subsec. (i), relating to income tax credit in lieu of payment, as (j), and substituted "subsection (d)(2)" for "subsection (c)(2)" in par. (2). Former subsec. (j) redesignated (k).

Subsec. (k). Pub. L. 100–647, §1017(c)(6), redesignated former subsec. (j) as (k).

1987—Subsec. (e)(2)(C). Pub. L. 100–203, §10502(d)(9), struck out subpar. (C) which specified section 4221(a)(3) and (d)(3), section 6416(b)(2)(B), and section 4041(g)(1) as provisions exempting from tax, gasoline and special motor fuels used for commercial fishing vessels.

Subsec. (i). Pub. L. 100–17 substituted "1993" for "1988" in the subsec. (h) which was redesignated (i) by

section 1703(c) of Pub. L. 99–514.

Subsec. (j). Pub. L. 100–203, §10502(d)(10), redesignated pars. (2) to (4) as (1) to (3), respectively, and struck out former par. (1) which read as follows: "For rate of tax in case of special fuels used in noncommercial aviation or for nonhighway purposes, see section 4041."

1986—Pub. L. 99–514, §1703(c)(2)(D), substituted ", used by local transit systems, or sold for certain exempt purposes" for "or by local transmit systems" in section catchline.

Subsec. (c). Pub. L. 99–514, §1703(c)(1)(B), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 99–514, §1703(c)(1)(A), (2)(A), redesignated subsec. (c) as (d) and, in par. (1), substituted "not more than claim may be filed under subsection (b), and not more than one claim may be filed under subsection (c)" for "and not more than one claim may be filed under subsection (b)". Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 99–514, §1703(c)(1)(A), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (e)(4). Pub. L. 99–499, §521(c)(2)(B), added par. (4).

Subsec. (f). Pub. L. 99–514, §1703(c)(1)(A), (2)(B), redesignated subsec. (e) as (f), redesignated pars. (2) and (3) as (1) and (2), respectively, and struck out former par. (1) "Exempt sales" which read as follows: "No amount shall be payable under this section with respect to any gasoline which the Secretary determines was exempt from the tax imposed by section 4081. The amount which (but for this sentence) would be payable under this section with respect to any gasoline shall be reduced by any other amount which the Secretary determines is payable under this section, or is refundable under any provision of this title, to any person with respect to such gasoline." Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 99–514, §1703(c)(1)(A), redesignated subsec. (f) as (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 99–514, §1703(c)(1)(A), redesignated subsec. (g) as (h). Former subsec. (h) redesignated (i).

Pub. L. 99–499, §521(c)(2)(A), substituted "Except with respect to taxes imposed by section 4081 at the Leaking Underground Storage Tank Trust Fund financing rate, this section" for "This section".

Subsec. (i). Pub. L. 99–514, §1703(c)(1)(A), redesignated subsec. (h), relating to effective date, as (i).

1984—Subsec. (i)(3). Pub. L. 98–369 substituted "section 34" for "section 39".

1983—Subsec. (a). Pub. L. 97–424, §511(c)(1), substituted provision that, except as provided in subsection (i), if gasoline is used in an off-highway business use, the Secretary shall pay (without interest) to the ultimate purchaser of such gasoline an amount equal to the amount determined by multiplying the number of gallons so used by the rate at which tax was imposed on such gasoline under section 4081, for provision that, except as provided in subsection (i), if gasoline were used in a qualified business use, the Secretary would pay (without interest) to the ultimate purchaser of such gasoline an amount equal to 1 cent for each gallon of gasoline so used on which tax had been paid at the rate of 3 cents a gallon and 2 cents for each gallon of gasoline so used on which tax had been paid at the rate of 4 cents a gallon.

Subsec. (d)(2). Pub. L. 97–424, §511(c)(3), substituted "Off-Highway" for "Qualified" in heading, and "off-highway business use" for "qualified business use" wherever appearing in text.

Subsec. (d)(2)(C). Pub. L. 97–424, §515(b)(7), substituted "and special motor fuels" for ", special motor fuels, and lubricating oil" after "gasoline".

Subsec. (h). Pub. L. 97–424, §516(a)(6), substituted "1988" for "1984".

Subsec. (j)(4). Pub. L. 97–473 added par. (4).

1980—Subsec. (d)(2)(B). Pub. L. 96–222 inserted provisions requiring that the preceding sentence not apply to use in a vessel employed in the fisheries or in the whaling business.

1978—Subsec. (a). Pub. L. 95–618, §222(a)(1)(A), substituted "Except as provided in subsection (i), if gasoline is used in a qualified business use" for "Except as provided in subsection (i), if gasoline is used otherwise than as a fuel in a highway vehicle (1) which (at the time of such use) is registered, or is required to be registered, for highway use under the laws of any State or foreign country, or (2) which, in the case of a vehicle owned by the United States, is used on the highway".

Subsec. (b). Pub. L. 95–618, §233(a)(1), among other changes, provided for the refund or credit of the taxes paid on gasoline but only to the extent such gasoline is used in a bus engaged in furnishing (for compensation) passenger land transportation available to the general public or in school bus transportation operations.

Subsec. (d)(2). Pub. L. 95–618, §233(a)(3)(A), redesignated par. (3) as (2), and struck out former par. (2) which defined "commuter fare revenue".

Subsec. (d)(3). Pub. L. 95–618, §§222(a)(1)(B), 233(a)(3)(A), added par. (3) and redesignated former par. (3) as (2).

Subsec. (h). Pub. L. 95–599 substituted "1984" for "1979".

1976—Subsec. (a). Pub. L. 94–455, §1906(a)(27)(A)(i), (b)(13)(A), struck out "or his delegate" after "Secretary" wherever appearing, and substituted "in the case of gasoline used as a fuel" for "in the case of gasoline used after June 30, 1970, as a fuel".

Subsec. (b)(1). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (c). Pub. L. 94–455, §1906(a)(27)(B), among other changes, struck out provisions relating to gasoline used before July 1, 1965, and struck out requirement that a person's first taxable year beginning after June 30, 1965, include the period after June 30, 1965, and before the beginning of that first taxable year.

Subsec. (e)(1). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (e)(3). Pub. L. 94–455, §1906(a)(27)(A)(i), struck out "after June 30, 1970," after "used".

Subsecs. (f), (g). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (h). Pub. L. 94–455, §1906(a)(27)(C), struck out "after June 30, 1956, and" after "purchased".

Pub. L. 94–280 substituted "1979" for "1977".

Subsec. (i)(1). Pub. L. 94–455, §1906(a)(27)(D)(i), struck out "with respect to gasoline used after June 30, 1965," after "subsections (a) and (b)".

Subsec. (i)(2). Pub. L. 94–455, §1906(a)(27)(D)(ii), substituted "subsection (c)(2)" for "subsection (c)(3)(B)".

Subsec. (i)(3). Pub. L. 94–455, §1906(a)(27)(D)(iii), struck out "for gasoline used after June 30, 1965" after "subtitle A".

1970—Subsec. (a). Pub. L. 91–258, §205(b)(1)(A), inserted requirement that, except as provided in par. (3) of subsec. (e) of this section, where gasoline is used after June 30, 1970, as a fuel in an aircraft, the Secretary or his delegate pay (without interest) to the ultimate purchaser of such gasoline an amount equal to the amount determined by multiplying the number of gallons of gasoline so used by the rate at which tax was imposed on such gasoline under section 4081.

Subsec. (c)(3)(A)(ii). Pub. L. 91–258, §207(b), substituted "a claim for credit or refund of overpayment of income tax" for "an income tax return" after "time prescribed by law for filing".

Subsec. (e)(3). Pub. L. 91–258, §205(b)(1)(B), added par. (3).

Subsec. (h). Pub. L. 91–605 substituted "1977" for "1972".

Subsec. (j)(1). Pub. L. 91–258, §205(c)(8), substituted "For rate of tax in case of special fuels used in noncommercial aviation or for nonhighway purposes, see section 4041" for "For reduced rate of tax in case of diesel fuel and special motor fuels used for certain nonhighway purposes, see subsections (a) and (b) of section 4041".

Subsec. (j)(2). Pub. L. 91–258, §205(c)(8), redesignated par. (4) as (2). Former par. (2), which provided "For partial refund of tax in case of diesel fuel and special motor fuels used for certain nonhighway purposes, see section 6416(b)(2)(I) and (J)", was struck out.

Subsec. (j)(3). Pub. L. 91–258, §205(c)(8), redesignated par. (5) as (3). Former par. (3), which provided "For partial refund of tax in case of diesel fuel and special motor fuels used by local transit systems, see section 6416(b)(2)(H)", was struck out.

Subsec. (j)(4), (5). Pub. L. 91–258, §205(c)(8), redesignated pars. (4) and (5) as (2) and (3), respectively.

1965—Subsec. (a). Pub. L. 89–44, §809(b)(1)(A), substituted "Except as provided in subsection (i), if" for "If".

Subsec. (b). Pub. L. 89–44, §809(b)(1)(A), substituted "Except as provided in subsection (i), if" for "If".

Subsec. (c)(1). Pub. L. 89–44, §809(b)(2)(A), struck out "General rule" in heading and inserted in lieu thereof "Gasoline used before July 1, 1965", and substituted "paragraphs (2) and (3)" for "Paragraph (2)" after "Except as provided in".

Subsec. (c)(2). Pub. L. 89–44, §809(b)(2)(B), substituted "Except as provided in paragraph (3), if" for "If".

Subsec. (c)(3). Pub. L. 89–44, §809(b)(2)(C), added par. (3).

Subsec. (e)(1). Pub. L. 89–44, §809(b)(3), substituted "payable" for "paid" in first sentence.

Subsecs. (i), (j). Pub. L. 89–44, §809(b)(1)(B), added subsec. (i) and redesignated former subsec. (i) as (j).

1962—Subsec. (b)(1)(B), (2). Pub. L. 87–508, §5(c)(2)(A), substituted "commuter fare revenue" for "tax-exempt passenger fare revenue" in two places and struck out "(not including the tax imposed by section 4261, relating to the tax on transportation of persons)" after "total passenger fare revenue" in two places.

Subsec. (d)(2). Pub. L. 87–508, §5(c)(2)(B), substituted definition of "commuter fare revenue" for definition of "tax-exempt passenger fare revenue".

1961—Subsec. (h). Pub. L. 87–61, substituted "October 1, 1972" for "July 1, 1972".

1959—Subsec. (a). Pub. L. 86–342 substituted "1 cent for each gallon of gasoline so used on which tax was paid at the rate of 3 cents a gallon and 2 cents for each gallon of gasoline so used on which tax was paid at the rate of 4 cents a gallon" for "1 cent for each gallon of gasoline so used".

Subsec. (b)(1)(A). Pub. L. 86–342 substituted "1 cent at the rate of 3 cents a gallon and 2 cents for each

gallon of gasoline so used on which tax was paid at the rate of 4 cents a gallon" for "1 cent for each gallon of gasoline so used".

1958—Subsec. (c). Pub. L. 85–859, §164(a), permitted, in cases where $1,000 or more is payable to any person with respect to gasoline used during a calendar quarter, the filing of a claim on or before the last day of the first calendar quarter following the calendar quarter for which the claim is filed.

Subsec. (i)(2), (3). Pub. L. 85–859, §163(d)(3), substituted "section 6416(b)(2)(I) and (J)" for "section 6416(b)(2) (J) and (K)" in cl. (2), and "section 6416(b)(2)(H)" for "section 6416(b)(2)(L)" in cl. (3).

1956—Subsec. (d)(2). Act July 25, 1956, substituted "4263(a)" for "4262(b)".

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 effective Jan. 1, 2007, see section 1207(g)(1) of Pub. L. 109–280, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–59 effective as if included in the provisions of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 11151(f)(1) of Pub. L. 109–59, set out as a note under section 4081 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 241(a)(2)(C) of Pub. L. 108–357 effective Jan. 1, 2005, see section 241(c) of Pub. L. 108–357, set out as a note under section 4041 of this title.

Amendment by section 851(d)(1) of Pub. L. 108–357 applicable to taxable years beginning after Oct. 22, 2004, see section 851(d)(4) of Pub. L. 108–357, set out as a note under section 4082 of this title.

EFFECTIVE DATE OF 1998 AMENDMENTS

Amendment by section 6023(24)(A), (C) of Pub. L. 105–206 effective July 22, 1998, see section 6023(32) of Pub. L. 105–206, set out as a note under section 34 of this title.

Amendment by section 6010(g)(3) of Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

Pub. L. 105–178, title IX, §9009(c), June 9, 1998, 112 Stat. 507, provided that: "The amendments made by this section [amending this section and section 6427 of this title] shall take effect on October 1, 1998."

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 effective Jan. 1, 1998, see section 902(c) of Pub. L. 105–34, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective on 7th calendar day after Aug. 20, 1996, see section 1609(i) of Pub. L. 104–188, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13163(b) of Pub. L. 103–66 effective Jan. 1, 1994, see section 13163(d) of Pub. L. 103–66, set out as a note under section 4041 of this title.

Amendment by section 13241(f)(6), (7) of Pub. L. 103–66 effective Oct. 1, 1993, see section 13241(g) of Pub. L. 103–66, set out as a note under section 4041 of this title.

Amendment by section 13242(d)(20), (22)–(24) of Pub. L. 103–66 effective Jan. 1, 1994, see section 13242(e) of Pub. L. 103–66, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1017(c)(6)–(8), (15) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 2001(d)(3)(E), (F) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Superfund Revenue Act of 1986, Pub. L. 99–499, title V, to which it relates, see section 2001(e) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to sales after Mar. 31, 1988, see section 10502(e) of Pub. L. 100–203, set out as a note under section 40 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99–514 applicable to gasoline removed (as defined in section 4082 of this title as amended by section 1703 of Pub. L. 99–514) after Dec. 31, 1987, see section 1703(h) of Pub. L. 99–514, set out as a note under section 4081 of this title.

Amendment by Pub. L. 99–499 effective Jan. 1, 1987, see section 521(e) of Pub. L. 99–499, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

For effective date of amendment by Pub. L. 97–473, see section 204 of Pub. L. 97–473, set out as an Effective Date note under section 7871 of this title.

Amendment by section 511(c)(1), (3) of Pub. L. 97–424 effective Apr. 1, 1983, see section 511(h) of Pub. L. 97–424, set out as a note under section 4041 of this title.

Amendment by section 515(b)(7) of Pub. L. 97–424 applicable with respect to articles sold after Jan. 6, 1983, see section 515(c) of Pub. L. 97–424, set out as a note under section 34 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective as if included in the provisions of the Energy Tax Act of 1978, Pub. L. 95–618, to which such amendment relates, see section 108(c)(7) of Pub. L. 96–222, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 222(a)(1) of Pub. L. 95–618 applicable with respect to uses after Dec. 31, 1978, see section 222(b) of Pub. L. 95–618, set out as a note under section 4041 of this title.

Amendment by section 233(a)(1), (3)(A) of Pub. L. 95–618 effective on first day of first calendar month which begins more than 10 days after Nov. 9, 1978, see section 233(d) of Pub. L. 95–618, set out as a note under section 34 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XIX, §1906(a)(27)(A)(ii), Oct. 4, 1976, 90 Stat. 1827, provided that: "The amendments made by clause (i) [amending this section] shall only apply with respect to gasoline used as a fuel after June 30, 1970."

Amendment by section 1906(a)(27)(B)–(D), (b)(13)(A) of Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1906(d)(1) of Pub. L. 94–455, set out as a note under section 6013 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by section 205(b)(1), (c)(8) of Pub. L. 91–258 effective July 1, 1970, and amendment by section 207(b) of Pub. L. 91–258 applicable with respect to taxable years ending after June 30, 1970, see section 211(a), (b) of Pub. L. 91–258, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 applicable with respect to gasoline used on or after July 1, 1965, see section 809(f) of Pub. L. 89–44, set out as a note under section 6420 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87–508, §5(d), June 28, 1962, 76 Stat. 119, provided in part that: "The amendments made by subsection (c)(2) [amending this section] shall apply only in respect of claims filed with respect to gasoline used on or after November 16, 1962."

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–61 effective July 1, 1961, see section 208 of Pub. L. 87–61, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 163(d)(3) of Pub. L. 85–859 effective on first day of first calendar quarter which

begins more than 60 days after Sept. 2, 1958, see section 1(c) of Pub. L. 85–859, set out as a note under section 6415 of this title.

Pub. L. 85–859, title I, §164(b), Sept. 2, 1958, 72 Stat. 1312, provided that: "The amendment made by subsection (a) [amending this section] shall apply only with respect to claims the last day for the filing of which occurs after the effective date specified in section 1(c) of this Act."

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act July 25, 1956, applicable to amounts paid on or after first day of first month which begins more than sixty days after July 25, 1956, for transportation commencing on or after such first day, see section 6 of act July 25, 1956, set out as a note under section 4261 of this title.

[1] So in original. Probably should be followed by a comma.

[2] So in original. Probably should be "(and".

§6422. Cross references

(1) For limitations on credits and refunds, see subchapter B of chapter 66.

(2) For overpayment in case of adjustments to accrued foreign taxes, see section 905(c).

(3) For credit or refund in case of deficiency dividends paid by a personal holding company, see section 547.

(4) For refund, credit, or abatement of amounts disallowed by courts upon review of Tax Court decision, see section 7486.

(5) For refund or redemption of stamps, see chapter 69.

(6) For abatement, credit, or refund in case of jeopardy assessments, see chapter 70.

(7) For treatment of certain overpayments as having been refunded, in connection with sale of surplus war-built vessels, see section 9(b)(8) of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1742).

(8) For restrictions on transfers and assignments of claims against the United States, see section 3727 of title 31, United States Code.

(9) For set-off of claims against amounts due the United States, see section 3728 of title 31, United States Code.

(10) For special provisions relating to alcohol and tobacco taxes, see subtitle E.

(11) for [1] credit or refund in case of deficiency dividends paid by a regulated investment company or real estate investment trust, see section 860.

(12) For special rules in the case of a credit or refund attributable to partnership items, see section 6227 and subsections (c) and (d) of section 6230.

(Aug. 16, 1954, ch. 736, 68A Stat. 802, §6420; renumbered §6421, Apr. 2, 1956, ch. 160, §1, 70 Stat. 87; renumbered §6422, June 29, 1956, ch. 462, title II, §208(c), 70 Stat. 394; amended Pub. L. 85–859, title II, §204(4), Sept. 2, 1958, 72 Stat. 1429; Pub. L. 88–36, title II, §201(c), June 4, 1963, 77 Stat. 54; Pub. L. 94–455, title XVI, §1601(f)(1), title XIX, §§1901(b)(36)(B), 1906(a)(28), Oct. 4, 1976, 90 Stat. 1746, 1802, 1828; Pub. L. 95–600, title III, §362(d)(4), Nov. 6, 1978, 92 Stat. 2852; Pub. L. 97–248, title IV, §402(c)(4), Sept. 3, 1982, 96 Stat. 667; Pub. L. 97–258, §3(f)(8), (9), Sept. 13, 1982, 96 Stat. 1064; Pub. L. 101–508, title XI, §11801(c)(17)(A), Nov. 5, 1990, 104 Stat. 1388–527; Pub. L. 105–34, title XI, §1131(c)(3), Aug. 5, 1997, 111 Stat. 980.)

REFERENCES IN TEXT

Section 9 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1742), referred to in par. (7), was repealed by Pub. L. 94–412, title V, §501(g), Sept. 14, 1976, 90 Stat. 1258.

AMENDMENTS

1997—Pars. (5) to (13). Pub. L. 105–34 struck out par. (5) and redesignated pars. (6) to (13) as (5) to (12), respectively. Prior to amendment, par. (5) read as follows: "For abatement or refund of tax on transfers to avoid income tax, see section 1494(b)."

1990—Pub. L. 101–508 struck out par. (6) and redesignated the succeeding pars. accordingly, which was

executed with respect to the succeeding pars. (consisting of pars. (7) to (12), (14), and (15)) by redesignating such pars. as (6) to (13), respectively. Prior to amendment, par. (6) provided a cross reference to section 1481 of this title for overpayment in certain renegotiations of war contracts.

1982—Par. (10). Pub. L. 97–258, §3(f)(8), substituted "section 3727 of title 31, United States Code" for "R.S. 3477 (31 U.S.C. 203)".

Par. (11). Pub. L. 97–258, §3(f)(9), substituted "section 3728 of title 31, United States Code" for "the act of March 3, 1875, as amended by section 13 of the act of March 3, 1933 (31 U.S.C. 227)".

Par. (15). Pub. L. 97–248 added par. (15).

1978—Par. (14). Pub. L. 95–600 inserted "regulated investment company or" before "real estate investment trust" and substituted "section 860" for "section 859".

1976—Par. (2). Pub. L. 94–455, §1901(b)(36)(B), redesignated par. (3) as (2). Former par. (2), which set forth a cross reference to section 1321 of this title for overpayment arising out of adjustments incident to involuntary liquidation of inventory, was struck out.

Pars. (3) to (8). Pub. L. 94–455, §1901(b)(36)(B), redesignated pars. (4) to (9) as (3) to (8), respectively.

Par. (9). Pub. L. 94–455, §§1901(b)(36)(B), 1906(a)(28)(A), redesignated par. (10) as (9) and substituted "(50 U.S.C. App. 1742)" for "(60 Stat. 48; 50 U.S.C. App. 1742)". Former par. (9) redesignated (8).

Par. (10). Pub. L. 94–455, §1901(b)(36)(B), redesignated par. (11) as (10). Former par. (10) redesignated (9).

Par. (11). Pub. L. 94–455, §§1901(b)(36)(B), 1906(a)(28)(B), redesignated par. (12) as (11) and substituted "(31 U.S.C. 227)" for "(47 Stat. 1516; 31 U.S.C. 227)". Former par. (11) redesignated (10).

Pars. (12), (13). Pub. L. 94–455, §1901(b)(36)(B), redesignated pars. (12) and (13) as (11) and (12), respectively.

Par. (14). Pub. L. 94–455, §1601(f)(1), added par. (14).

1963—Pars. (7) to (14). Pub. L. 88–36 redesignated pars. (8) to (14) as (7) to (13), respectively. Former par. (7), which was cross reference provision for abatement or refund in case of tax on silver bullion to section 4894, was struck out.

1958—Pub. L. 85–859 substituted "subtitle E" for "sections 5011, 5044, 5057, 5063, 5705, and 5707" in par. (14).

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to partnership taxable years beginning after Sept. 3, 1982, with provision for applicability of amendment to any partnership taxable year ending after Sept. 3, 1982, if partnership, each partner, and each indirect partner requests such application and Secretary of the Treasury or his delegate consents to such application, see section 407(a)(1), (3) of Pub. L. 97–248, set out as an Effective Date note under section 6221 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable with respect to determinations (as defined in section 860(e) of this title) after Nov. 6, 1978, see section 362(e) of Pub. L. 95–600, set out as an Effective Date note under section 860 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment by section 1601(f)(1) of Pub. L. 94–455, see section 1608(a) of Pub. L. 94–455, set out as a note under section 857 of this title.

Amendment by section 1901(b)(36)(B) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by section 1906(a)(28) of Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1906(d)(1) of Pub. L. 94–455, set out as a note under section 6013 of this title.

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment by Pub. L. 88–36 applicable only with respect to transfers after June 4, 1963, see section 202 of Pub. L. 88–36, title II, June 4, 1963, 77 Stat. 54.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–859 effective Sept. 3, 1958, see section 210(a)(1) of Pub. L. 85–859, set out as an Effective Date note under section 5001 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

[1] *So in original. Probably should be capitalized.*

§6423. Conditions to allowance in the case of alcohol and tobacco taxes

(a) Conditions

No credit or refund shall be allowed or made, in pursuance of a court decision or otherwise, of any amount paid or collected as an alcohol or tobacco tax unless the claimant establishes (under regulations prescribed by the Secretary)—

(1) that he bore the ultimate burden of the amount claimed; or

(2) that he has unconditionally repaid the amount claimed to the person who bore the ultimate burden of such amount; or

(3) that (A) the owner of the commodity furnished him the amount claimed for payment of the tax, (B) he has filed with the Secretary the written consent of such owner to the allowance to the claimant of the credit or refund, and (C) such owner satisfies the requirements of paragraph (1) or (2).

(b) Filing of claims

No credit or refund of any amount to which subsection (a) applies shall be allowed or made unless a claim therefor has been filed by the person who paid the amount claimed, and unless such claim is filed within the time prescribed by law and in accordance with regulations prescribed by the Secretary. All evidence relied upon in support of such claim shall be clearly set forth and submitted with the claim.

(c) Application of section

This section shall apply only if the credit or refund is claimed on the grounds that an amount of alcohol or tobacco tax was assessed or collected erroneously, illegally, without authority, or in any manner wrongfully, or on the grounds that such amount was excessive. This section shall not apply to—

(1) any claim for drawback, and

(2) any claim made in accordance with any law expressly providing for credit or refund where a commodity is withdrawn from the market, returned to bond, or lost or destroyed.

(d) Meaning of terms

For purposes of this section—

(1) Alcohol or tobacco tax

The term "alcohol or tobacco tax" means—

(A) any tax imposed by chapter 51 (other than part II of subchapter A, relating to occupational taxes) or by chapter 52 or by any corresponding provision of prior internal revenue laws, and

(B) in the case of any commodity of a kind subject to a tax described in subparagraph (A), any tax equal to any such tax, any additional tax, or any floor stocks tax.

(2) Tax

The term "tax" includes a tax and an exaction denominated a "tax", and any penalty, addition to tax, additional amount, or interest applicable to any such tax.

(3) Ultimate burden

The claimant shall be treated as having borne the ultimate burden of an amount of an alcohol or tobacco tax for purposes of subsection (a)(1), and the owner referred to in subsection (a)(3) shall

be treated as having borne such burden for purposes of such subsection, only if—

(A) he has not, directly or indirectly, been relieved of such burden or shifted such burden to any other person,

(B) no understanding or agreement exists for any such relief or shifting, and

(C) if he has neither sold nor contracted to sell the commodities involved in such claim, he agrees that there will be no such relief or shifting, and furnishes such bond as the Secretary may require to insure faithful compliance with his agreement.

(Added Pub. L. 85–323, §1, Feb. 11, 1958, 72 Stat. 9; amended Pub. L. 94–455, title XIX, §1906(a)(29), (b)(13)(A), Oct. 4, 1976, 90 Stat. 1828, 1834.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary" wherever appearing.

Subsec. (b). Pub. L. 94–455, §1906(a)(29)(A), among other changes, struck out provisions allowing any claimant who has on or before Apr. 30, 1958, filed a claim for any amount to which subsec. (a) applies, may file a superseding claim after Apr. 30, 1958, conforming to the requirements of this section and covering the amount claimed in such prior claim.

Subsec. (c). Pub. L. 94–455, §1906(a)(29)(B), (C), redesignated subsec. (d) as (c) and struck out par. (3) relating to any amount claimed with respect to a commodity which has been lost, where a suit or proceeding was instituted before June 15, 1957. Former subsec. (c), relating to disallowance of any suit or proceeding which was barred on Apr. 30, 1958, was struck out.

Subsecs. (d), (e). Pub. L. 94–455, §1906(a)(29)(B), (b)(13)(A), redesignated subsec. (e) as (d) and struck out "or his delegate" after "Secretary". Former subsec. (d) redesignated (c).

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1906(d)(1) of Pub. L. 94–455, set out as a note under section 6013 of this title.

EFFECTIVE DATE

Pub. L. 85–323, §3, Feb. 11, 1958, 72 Stat. 10, provided that this section shall not apply to any credit or refund allowed or made before May 1, 1958.

[§6424. Repealed. Pub. L. 97–424, title V, §515(b)(5), Jan. 6, 1983, 96 Stat. 2181]

Section, added Pub. L. 89–44, title II, §202(b), June 21, 1965, 79 Stat. 137; amended Pub. L. 91–258, title II, §207(b), May 21, 1970, 84 Stat. 248; Pub. L. 94–455, title XIX, §1906(a)(30), (b)(13)(A), Oct. 4, 1976, 90 Stat. 1828, 1834; Pub. L. 95–618, title II, §§222(a)(3), 233(b)(1), (2)(A), Nov. 9, 1978, 92 Stat. 3187, 3191; Pub. L. 97–473, title II, §202(b)(13), Jan. 14, 1983, 96 Stat. 2610, had provided for payments by the Secretary of an amount equal to 6 cents for each gallon of lubricating oil used in a qualified business use or in a qualified bus to certain ultimate purchasers of the lubricating oil.

EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to articles sold after Jan. 6, 1983, see section 515(c) of Pub. L. 97–424, set out as an Effective Date of 1983 Amendment note under section 34 of this title.

§6425. Adjustment of overpayment of estimated income tax by corporation

(a) Application of adjustment

(1) Time for filing

A corporation may, after the close of the taxable year and on or before the 15th day of the third month thereafter, and before the day on which it files a return for such taxable year, file an application for an adjustment of an overpayment by it of estimated income tax for such taxable year. An application under this subsection shall not constitute a claim for credit or refund.

(2) Form of application, etc.

An application under this subsection shall be verified in the manner prescribed by section 6065 in the case of a return of the taxpayer, and shall be filed in the manner and form required by regulations prescribed by the Secretary. The application shall set forth—

(A) the estimated income tax paid by the corporation during the taxable year,

(B) the amount which, at the time of filing the application, the corporation estimates as its income tax liability for the taxable year,

(C) the amount of the adjustment, and

(D) such other information for purposes of carrying out the provisions of this section as may be required by such regulations.

(b) Allowance of adjustment

(1) Limited examination of application

Within a period of 45 days from the date on which an application for an adjustment is filed under subsection (a), the Secretary shall make, to the extent he deems practicable in such period, a limited examination of the application to discover omissions and errors therein, and shall determine the amount of the adjustment upon the basis of the application and the examination; except that the Secretary may disallow, without further action, any application which he finds contains material omissions or errors which he deems cannot be corrected within such 45 days.

(2) Adjustment credited or refunded

The Secretary, within the 45-day period referred to in paragraph (1), may credit the amount of the adjustment against any liability in respect of an internal revenue tax on the part of the corporation and shall refund the remainder to the corporation.

(3) Limitation

No application under this section shall be allowed unless the amount of the adjustment equals or exceeds (A) 10 percent of the amount estimated by the corporation on its application as its income tax liability for the taxable year, and (B) $500.

(4) Effect of adjustment

For purposes of this title (other than section 6655), any adjustment under this section shall be treated as a reduction, in the estimated income tax paid, made on the day the credit is allowed or the refund is paid.

(c) Definitions

For purposes of this section and section 6655(h) (relating to excessive adjustment)—

(1) The term "income tax liability" means the excess of—

(A) The [1] sum of—

(i) the tax imposed by section 11 or 1201(a), or subchapter L of chapter 1, whichever is applicable,

(ii) the tax imposed by section 55, plus

(iii) the tax imposed by section 59A, over

(B) the credits against tax provided by part IV of subchapter A of chapter 1.

(2) The amount of an adjustment under this section is equal to the excess of—

(A) the estimated income tax paid by the corporation during the taxable year, over

(B) the amount which, at the time of filing the application, the corporation estimates as its income tax liability for the taxable year.

(d) Consolidated returns

If the corporation seeking an adjustment under this section paid its estimated income tax on a consolidated basis or expects to make a consolidated return for the taxable year, this section shall apply only to such extent and subject to such conditions, limitations, and exceptions as the Secretary may by regulations prescribe.

(Added Pub. L. 90–364, title I, §103(d)(1), June 28, 1968, 82 Stat. 262; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 99–499, title V, §516(b)(4)(C), Oct. 17, 1986, 100 Stat. 1771; Pub. L. 99–514, title VII, §701(d)(2), Oct. 22, 1986, 100 Stat. 2342; Pub. L. 100–203, title X, §10301(b)(4), Dec. 22, 1987, 101 Stat. 1330–429.)

AMENDMENTS

1987—Subsec. (c). Pub. L. 100–203 substituted "section 6655(h)" for "section 6655(g)".

1986—Subsec. (c)(1)(A). Pub. L. 99–514 amended subpar. (A) generally, restating existing provisions as cl. (i) and adding cl. (ii).

Pub. L. 99–499 amended subsec. (c)(1)(A), as amended by the Tax Reform Act of 1986 (Pub. L. 99–514), by striking out "plus" at end of cl. (i), substituting "plus" for "over" at end of cl. (ii), and adding cl. (iii).

1976—Subsecs. (a), (b), (d). Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to taxable years beginning after Dec. 31, 1987, see section 10301(c) of Pub. L. 100–203, set out as a note under section 585 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date note under section 55 of this title.

Amendment by Pub. L. 99–499 applicable to taxable years beginning after Dec. 31, 1986, see section 516(c) of Pub. L. 99–499, set out as a note under section 26 of this title.

EFFECTIVE DATE

Section applicable with respect to taxable years beginning after Dec. 31, 1967, except as provided by section 104 of Pub. L. 90–364, set out as notes under sections 6154 and 51 of this title, see section 103(f) of Pub. L. 90–364, set out as an Effective Date of 1968 Amendment note under section 6154 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, see section 1012(aa)(2) of Pub. L. 100–647, set out as a note under section 861 of this title.

[1] *So in original. Probably should not be capitalized.*

§6426. Credit for alcohol fuel, biodiesel, and alternative fuel mixtures

(a) Allowance of credits

There shall be allowed as a credit—

(1) against the tax imposed by section 4081 an amount equal to the sum of the credits described in subsections (b), (c), and (e), and

(2) against the tax imposed by section 4041 an amount equal to the sum of the credits described in subsection (d).

No credit shall be allowed in the case of the credits described in subsections (d) and (e) unless the taxpayer is registered under section 4101.

(b) Alcohol fuel mixture credit

(1) In general

For purposes of this section, the alcohol fuel mixture credit is the product of the applicable amount and the number of gallons of alcohol used by the taxpayer in producing any alcohol fuel mixture for sale or use in a trade or business of the taxpayer.

(2) Applicable amount

For purposes of this subsection—

(A) In general

Except as provided in subparagraphs (B) and (C), the applicable amount is—

(i) in the case of calendar years beginning before 2009, 51 cents, and

(ii) in the case of calendar years beginning after 2008, 45 cents..[1]

(B) Mixtures not containing ethanol

In the case of an alcohol fuel mixture in which none of the alcohol consists of ethanol, the applicable amount is 60 cents.

(C) Reduction delayed until annual production or importation of 7,500,000,000 gallons

In the case of any calendar year beginning after 2008, if the Secretary makes a determination described in section 40(h)(3)(B) with respect to all preceding calendar years beginning after 2007, subparagraph (A)(ii) shall be applied by substituting "51 cents" for "45 cents".

(3) Alcohol fuel mixture

For purposes of this subsection, the term "alcohol fuel mixture" means a mixture of alcohol and a taxable fuel which—

(A) is sold by the taxpayer producing such mixture to any person for use as a fuel, or

(B) is used as a fuel by the taxpayer producing such mixture.

For purposes of subparagraph (A), a mixture produced by any person at a refinery prior to a taxable event which includes ethyl tertiary butyl ether or other ethers produced from alcohol shall be treated as sold at the time of its removal from the refinery (and only at such time) to another person for use as a fuel.

(4) Other definitions

For purposes of this subsection—

(A) Alcohol

The term "alcohol" includes methanol and ethanol but does not include—

(i) alcohol produced from petroleum, natural gas, or coal (including peat), or

(ii) alcohol with a proof of less than 190 (determined without regard to any added denaturants).

Such term also includes an alcohol gallon equivalent of ethyl tertiary butyl ether or other ethers produced from such alcohol.

(B) Taxable fuel

The term "taxable fuel" has the meaning given such term by section 4083(a)(1).

(5) Volume of alcohol

For purposes of determining under subsection (a) the number of gallons of alcohol with respect to which a credit is allowable under subsection (a), the volume of alcohol shall include the volume of any denaturant (including gasoline) which is added under any formulas approved by the Secretary to the extent that such denaturants do not exceed 2 percent of the volume of such alcohol (including denaturants).

(6) Termination

This subsection shall not apply to any sale, use, or removal for any period after December 31, 2011.

(c) Biodiesel mixture credit

(1) In general

For purposes of this section, the biodiesel mixture credit is the product of the applicable amount

and the number of gallons of biodiesel used by the taxpayer in producing any biodiesel mixture for sale or use in a trade or business of the taxpayer.

(2) Applicable amount

For purposes of this subsection, the applicable amount is $1.00.

(3) Biodiesel mixture

For purposes of this section, the term "biodiesel mixture" means a mixture of biodiesel and diesel fuel (as defined in section 4083(a)(3)), determined without regard to any use of kerosene, which—

(A) is sold by the taxpayer producing such mixture to any person for use as a fuel, or

(B) is used as a fuel by the taxpayer producing such mixture.

(4) Certification for biodiesel

No credit shall be allowed under this subsection unless the taxpayer obtains a certification (in such form and manner as prescribed by the Secretary) from the producer of the biodiesel which identifies the product produced and the percentage of biodiesel and agri-biodiesel in the product.

(5) Other definitions

Any term used in this subsection which is also used in section 40A shall have the meaning given such term by section 40A.

(6) Termination

This subsection shall not apply to any sale, use, or removal for any period after December 31, 2013.

(d) Alternative fuel credit

(1) In general

For purposes of this section, the alternative fuel credit is the product of 50 cents and the number of gallons of an alternative fuel or gasoline gallon equivalents of a nonliquid alternative fuel sold by the taxpayer for use as a fuel in a motor vehicle or motorboat, sold by the taxpayer for use as a fuel in aviation, or so used by the taxpayer.

(2) Alternative fuel

For purposes of this section, the term "alternative fuel" means—

(A) liquefied petroleum gas,

(B) P Series Fuels (as defined by the Secretary of Energy under section 13211(2) of title 42, United States Code),

(C) compressed or liquefied natural gas,

(D) liquefied hydrogen,

(E) any liquid fuel which meets the requirements of paragraph (4) and which is derived from coal (including peat) through the Fischer-Tropsch process,

(F) compressed or liquefied gas derived from biomass (as defined in section 45K(c)(3)), and

(G) liquid fuel derived from biomass (as defined in section 45K(c)(3)).

Such term does not include ethanol, methanol, biodiesel, or any fuel (including lignin, wood residues, or spent pulping liquors) derived from the production of paper or pulp.

(3) Gasoline gallon equivalent

For purposes of this subsection, the term "gasoline gallon equivalent" means, with respect to any nonliquid alternative fuel, the amount of such fuel having a Btu content of 124,800 (higher heating value).

(4) Carbon capture requirement

(A) In general

The requirements of this paragraph are met if the fuel is certified, under such procedures as

required by the Secretary, as having been derived from coal produced at a gasification facility which separates and sequesters not less than the applicable percentage of such facility's total carbon dioxide emissions.

(B) Applicable percentage

For purposes of subparagraph (A), the applicable percentage is—

(i) 50 percent in the case of fuel produced after September 30, 2009, and on or before December 30, 2009, and

(ii) 75 percent in the case of fuel produced after December 30, 2009.

(5) Termination

This subsection shall not apply to any sale or use for any period after December 31, 2013 (September 30, 2014, in the case of any sale or use involving liquefied hydrogen).

(e) Alternative fuel mixture credit

(1) In general

For purposes of this section, the alternative fuel mixture credit is the product of 50 cents and the number of gallons of alternative fuel used by the taxpayer in producing any alternative fuel mixture for sale or use in a trade or business of the taxpayer.

(2) Alternative fuel mixture

For purposes of this section, the term "alternative fuel mixture" means a mixture of alternative fuel and taxable fuel (as defined in subparagraph (A), (B), or (C) of section 4083(a)(1)) which—

(A) is sold by the taxpayer producing such mixture to any person for use as fuel, or

(B) is used as a fuel by the taxpayer producing such mixture.

(3) Termination

This subsection shall not apply to any sale or use for any period after December 31, 2013 (September 30, 2014, in the case of any sale or use involving liquefied hydrogen).

(f) Mixture not used as a fuel, etc.

(1) Imposition of tax

If—

(A) any credit was determined under this section with respect to alcohol or biodiesel used in the production of any alcohol fuel mixture or biodiesel mixture, respectively, and

(B) any person—

(i) separates the alcohol or biodiesel from the mixture, or

(ii) without separation, uses the mixture other than as a fuel,

then there is hereby imposed on such person a tax equal to the product of the applicable amount and the number of gallons of such alcohol or biodiesel.

(2) Applicable laws

All provisions of law, including penalties, shall, insofar as applicable and not inconsistent with this section, apply in respect of any tax imposed under paragraph (1) as if such tax were imposed by section 4081 and not by this section.

(g) Coordination with exemption from excise tax

Rules similar to the rules under section 40(c) shall apply for purposes of this section.

(h) Denial of double benefit

No credit shall be determined under subsection (d) or (e) with respect to any fuel with respect to which credit may be determined under subsection (b) or (c) or under section 40 or 40A.

(i) Limitation to fuels with connection to the United States

(1) Alcohol

No credit shall be determined under this section with respect to any alcohol which is produced outside the United States for use as a fuel outside the United States.

(2) Biodiesel and alternative fuels

No credit shall be determined under this section with respect to any biodiesel or alternative fuel which is produced outside the United States for use as a fuel outside the United States.

For purposes of this subsection, the term "United States" includes any possession of the United States.

(Added Pub. L. 108–357, title III, §301(a), Oct. 22, 2004, 118 Stat. 1459; amended Pub. L. 109–58, title XIII, §1344(a), Aug. 8, 2005, 119 Stat. 1052; Pub. L. 109–59, title XI, §§11113(b)(1)–(3)(A), 11151(e)(2), Aug. 10, 2005, 119 Stat. 1947, 1948, 1969; Pub. L. 110–172, §5(a)(2), (3), Dec. 29, 2007, 121 Stat. 2479; Pub. L. 110–234, title XV, §§15331(b), 15332(b), May 22, 2008, 122 Stat. 1516; Pub. L. 110–246, §4(a), title XV, §§15331(b), 15332(b), June 18, 2008, 122 Stat. 1664, 2278; Pub. L. 110–343, div. B, title II, §§202(a), (b)(2), 203(c)(1), 204(a)(1), (2), (b), (c), Oct. 3, 2008, 122 Stat. 3832, 3834; Pub. L. 111–312, title VII, §§701(b)(1), 704(a), (b), 708(b)(1), Dec. 17, 2010, 124 Stat. 3310–3312; Pub. L. 112–240, title IV, §§405(b)(1), 412(a), Jan. 2, 2013, 126 Stat. 2340, 2343.)

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

PRIOR PROVISIONS

A prior section 6426, added Pub. L. 91–258, title II, §206(c), May 21, 1970, 84 Stat. 245; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, provided for a refund of aircraft use tax where plane transports for hire in foreign air commerce, prior to repeal by Pub. L. 97–248, title II, §280(c)(2)(G), (d), Sept. 3, 1982, 96 Stat. 564, 565, applicable with respect to transportation beginning after Aug. 31, 1982.

AMENDMENTS

2013—Subsec. (c)(6). Pub. L. 112–240, §405(b)(1), substituted "December 31, 2013" for "December 31, 2011".

Subsecs. (d)(5), (e)(3). Pub. L. 112–240, §412(a), substituted "December 31, 2013" for "December 31, 2011".

2010—Subsec. (b)(6). Pub. L. 111–312, §708(b)(1), substituted "December 31, 2011" for "December 31, 2010".

Subsec. (c)(6). Pub. L. 111–312, §701(b)(1), substituted "December 31, 2011" for "December 31, 2009".

Subsec. (d)(2). Pub. L. 111–312, §704(b), substituted "biodiesel, or any fuel (including lignin, wood residues, or spent pulping liquors) derived from the production of paper or pulp" for "or biodiesel" in concluding provisions.

Subsec. (d)(5). Pub. L. 111–312, §704(a), substituted "December 31, 2011" for "December 31, 2009".

Subsec. (e)(3). Pub. L. 111–312, §704(a), substituted "December 31, 2011" for "December 31, 2009".

2008—Subsec. (b)(2)(A). Pub. L. 110–246, §15331(b)(3), substituted "subparagraphs (B) and (C)" for "subparagraph (B)" in introductory provisions.

Pub. L. 110–246, §15331(b)(1), substituted "the applicable amount is—" for "the applicable amount is 51 cents" and added cls. (i) and (ii).

Subsec. (b)(2)(C). Pub. L. 110–246, §15331(b)(2), added subpar. (C).

Subsec. (b)(5), (6). Pub. L. 110–246, §15332(b), added par. (5) and redesignated former par. (5) as (6).

Subsec. (c)(2). Pub. L. 110–343, §202(b)(2), amended par. (2) generally. Prior to amendment, text read as follows: "For purposes of this subsection—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the applicable amount is 50 cents.

"(B) AMOUNT FOR AGRI-BIODIESEL.—In the case of any biodiesel which is agri-biodiesel, the applicable amount is $1.00."

Subsec. (c)(6). Pub. L. 110–343, §202(a), substituted "December 31, 2009" for "December 31, 2008".

Subsec. (d)(1). Pub. L. 110–343, §204(b)(2), inserted "sold by the taxpayer for use as a fuel in aviation," after "motorboat,".

Subsec. (d)(2)(E). Pub. L. 110–343, §204(c)(2), inserted "which meets the requirements of paragraph (4)

and which is" after "any liquid fuel".

Subsec. (d)(2)(F), (G). Pub. L. 110–343, §204(b)(1), added subpar. (F) and redesignated former subpar. (F) as (G).

Subsec. (d)(4). Pub. L. 110–343, §204(c)(1), added par. (4). Former par. (4) redesignated (5).

Pub. L. 110–343, §204(a)(1), substituted "December 31, 2009" for "September 30, 2009".

Subsec. (d)(5). Pub. L. 110–343, §204(c)(1), redesignated par. (4) as (5).

Subsec. (e)(3). Pub. L. 110–343, §204(a)(2), substituted "December 31, 2009" for "September 30, 2009".

Subsec. (i). Pub. L. 110–343, §203(c)(1), added subsec. (i).

2007—Subsec. (d)(2)(F). Pub. L. 110–172, §5(a)(2), substituted "fuel" for "hydrocarbons".

Subsec. (h). Pub. L. 110–172, §5(a)(3), added subsec. (h).

2005—Pub. L. 109–59, §11113(b)(3)(A), substituted "alcohol fuel, biodiesel, and alternative fuel" for "alcohol fuel and biodiesel" in section catchline.

Subsec. (a). Pub. L. 109–59, §11113(b)(1), reenacted heading without change and amended text of subsec. (a) generally. Prior to amendment, text read as follows: "There shall be allowed as a credit against the tax imposed by section 4081 an amount equal to the sum of—

"(1) the alcohol fuel mixture credit, plus

"(2) the biodiesel mixture credit."

Subsec. (c)(6). Pub. L. 109–58 substituted "2008" for "2006".

Subsec. (d). Pub. L. 109–59, §11113(b)(2), added subsec. (d). Former subsec. (d) redesignated (f).

Subsec. (d)(2)(F). Pub. L. 109–59, §11151(e)(2), substituted "section 45K(c)(3)" for "section 29(c)(3)".

Subsecs. (e) to (g). Pub. L. 109–59, §11113(b)(2), added subsec. (e) and redesignated former subsecs. (d) and (e) as (f) and (g), respectively.

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by section 405(b)(1) of Pub. L. 112–240 applicable to fuel sold or used after Dec. 31, 2011, see section 405(c) of Pub. L. 112–240, set out as a note under section 40A of this title.

Pub. L. 112–240, title IV, §412(c), Jan. 2, 2013, 126 Stat. 2343, provided that: "The amendments made by this section [amending this section and section 6427 of this title] shall apply to fuel sold or used after December 31, 2011."

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 701(b)(1) of Pub. L. 111–312 applicable to fuel sold or used after Dec. 31, 2009, see section 701(d) of Pub. L. 111–312, set out as a note under section 40A of this title.

Pub. L. 111–312, title VII, §704(d), Dec. 17, 2010, 124 Stat. 3311, provided that: "The amendments made by this section [amending this section and section 6427 of this title] shall apply to fuel sold or used after December 31, 2009."

Pub. L. 111–312, title VII, §708(b)(2), Dec. 17, 2010, 124 Stat. 3312, provided that: "The amendment made by this subsection [amending this section] shall apply to periods after December 31, 2010."

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by section 202(a), (b)(2) of Pub. L. 110–343 applicable to fuel produced, and sold or used, after Dec. 31, 2008, see section 202(g)(1) of Pub. L. 110–343, set out as a note under section 40A of this title.

Amendment by section 203(c)(1) of Pub. L. 110–343 applicable to claims for credit or payment made on or after May 15, 2008, see section 203(d) of Pub. L. 110–343, set out as a note under section 40 of this title.

Pub. L. 110–343, div. B, title II, §204(d), Oct. 3, 2008, 122 Stat. 3835, provided that: "The amendments made by this section [amending this section and section 6427 of this title] shall apply to fuel sold or used after the date of the enactment of this Act [Oct. 3, 2008]."

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by section 15331(b) of Pub. L. 110–246 effective June 18, 2008, see section 15331(c) of Pub. L. 110–246, set out as a note under section 40 of this title.

Amendment by section 15332(b) of Pub. L. 110–246 applicable to fuel sold or used after Dec. 31, 2008, see section 15332(c) of Pub. L. 110–246, set out as a note under section 40 of this title.

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–172, §5(b), Dec. 29, 2007, 121 Stat. 2479, provided that: "The amendments made by this section [amending this section and section 6427 of this title] shall take effect as if included in the provisions of the SAFETEA–LU [Pub. L. 109–59] to which they relate."

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 11113(b)(1)–(3)(A) of Pub. L. 109–59 applicable to any sale or use for any period after Sept. 30, 2006, see section 11113(d) of Pub. L. 109–59, set out as a note under section 4041 of this title.

Amendment by section 11151(e)(2) of Pub. L. 109–59 effective as if included in the provision of the Energy Tax Incentives Act of 2005, Pub. L. 109–58, title XIII, to which such amendment relates, see section 11151(f)(3) of Pub. L. 109–59, set out as a note under section 38 of this title.

EFFECTIVE DATE

Section applicable to fuel sold or used after Dec. 31, 2004, see section 301(d)(1) of Pub. L. 108–357, set out as an Effective Date of 2004 Amendment note under section 40 of this title.

SPECIAL RULES FOR 2010

Pub. L. 111–312, title VII, §701(c), Dec. 17, 2010, 124 Stat. 3310, provided that: "Notwithstanding any other provision of law, in the case of any biodiesel mixture credit properly determined under section 6426(c) of the Internal Revenue Code of 1986 for periods during 2010, such credit shall be allowed, and any refund or payment attributable to such credit (including any payment under section 6427(e) of such Code) shall be made, only in such manner as the Secretary of the Treasury (or the Secretary's delegate) shall provide. Such Secretary shall issue guidance within 30 days after the date of the enactment of this Act [Dec. 17, 2010] providing for a one-time submission of claims covering periods during 2010. Such guidance shall provide for a 180-day period for the submission of such claims (in such manner as prescribed by such Secretary) to begin not later than 30 days after such guidance is issued. Such claims shall be paid by such Secretary not later than 60 days after receipt. If such Secretary has not paid pursuant to a claim filed under this subsection within 60 days after the date of the filing of such claim, the claim shall be paid with interest from such date determined by using the overpayment rate and method under section 6621 of such Code."

Pub. L. 111–312, title VII, §704(c), Dec. 17, 2010, 124 Stat. 3311, provided that: "Notwithstanding any other provision of law, in the case of any alternative fuel credit or any alternative fuel mixture credit properly determined under subsection (d) or (e) of section 6426 of the Internal Revenue Code of 1986 for periods during 2010, such credit shall be allowed, and any refund or payment attributable to such credit (including any payment under section 6427(e) of such Code) shall be made, only in such manner as the Secretary of the Treasury (or the Secretary's delegate) shall provide. Such Secretary shall issue guidance within 30 days after the date of the enactment of this Act [Dec. 17, 2010] providing for a one-time submission of claims covering periods during 2010. Such guidance shall provide for a 180-day period for the submission of such claims (in such manner as prescribed by such Secretary) to begin not later than 30 days after such guidance is issued. Such claims shall be paid by such Secretary not later than 60 days after receipt. If such Secretary has not paid pursuant to a claim filed under this subsection within 60 days after the date of the filing of such claim, the claim shall be paid with interest from such date determined by using the overpayment rate and method under section 6621 of such Code."

[1] *So in original.*

§6427. Fuels not used for taxable purposes

(a) Nontaxable uses

Except as provided in subsection (k), if tax has been imposed under paragraph (2) or (3) of section 4041(a) or section 4041(c) on the sale of any fuel and the purchaser uses such fuel other than for the use for which sold, or resells such fuel, the Secretary shall pay (without interest) to him an amount equal to—

(1) the amount of tax imposed on the sale of the fuel to him, reduced by

(2) if he uses the fuel, the amount of tax which would have been imposed under section 4041 on such use if no tax under section 4041 had been imposed on the sale of the fuel.

(b) Intercity, local, or school buses

(1) Allowance

Except as otherwise provided in this subsection and subsection (k), if any fuel other than gasoline (as defined in section 4083(a)) on the sale of which tax was imposed by section 4041(a)

or 4081 is used in an automobile bus while engaged in—

(A) furnishing (for compensation) passenger land transportation available to the general public, or

(B) the transportation of students and employees of schools (as defined in the last sentence of section 4221(d)(7)(C)),

the Secretary shall pay (without interest) to the ultimate purchaser of such fuel an amount equal to the product of the number of gallons of such fuel so used multiplied by the rate at which tax was imposed on such fuel by section 4041(a) or 4081, as the case may be.

(2) Reduction in refund in certain cases

(A) In general

Except as provided in subparagraphs (B) and (C), the rate of tax taken into account under paragraph (1) shall be 7.4 cents per gallon less than the aggregate rate at which tax was imposed on such fuel by section 4041(a) or 4081, as the case may be.

(B) Exception for school bus transportation

Subparagraph (A) shall not apply to fuel used in an automobile bus while engaged in the transportation described in paragraph (1)(B).

(C) Exception for certain intracity transportation

Subparagraph (A) shall not apply to fuel used in any automobile bus while engaged in furnishing (for compensation) intracity passenger land transportation—

(i) which is available to the general public, and

(ii) which is scheduled and along regular routes,

but only if such bus is a qualified local bus.

(D) Qualified local bus

For purposes of this paragraph, the term "qualified local bus" means any local bus—

(i) which has a seating capacity of at least 20 adults (not including the driver), and

(ii) which is under contract (or is receiving more than a nominal subsidy) from any State or local government (as defined in section 4221(d)) to furnish such transportation.

(3) Limitation in case of nonscheduled intercity or local buses

Paragraph (1)(A) shall not apply in respect of fuel used in any automobile bus while engaged in furnishing transportation which is not scheduled and not along regular routes unless the seating capacity of such bus is at least 20 adults (not including the driver).

(4) Refunds for use of diesel fuel in certain intercity buses

With respect to any fuel to which paragraph (2)(A) applies, if the ultimate purchaser of such fuel waives (at such time and in such form and manner as the Secretary shall prescribe) the right to payment under paragraph (1) and assigns such right to the ultimate vendor, then the Secretary shall pay the amount which would be paid under paragraph (1) to such ultimate vendor, but only if such ultimate vendor—

(A) is registered under section 4101, and

(B) meets the requirements of subparagraph (A), (B), or (D) of section 6416(a)(1).

(c) Use for farming purposes

Except as provided in subsection (k), if any fuel on the sale of which tax was imposed under paragraph (2) or (3) of section 4041(a) or section 4041(c) is used on a farm for farming purposes (within the meaning of section 6420(c)), the Secretary shall pay (without interest) to the purchaser an amount equal to the amount of the tax imposed on the sale of the fuel. For purposes of this subsection, if fuel is used on a farm by any person other than the owner, tenant, or operator of such farm, the rules of paragraph (4) of section 6420(c) shall be applied (except that "liquid taxable under section 4041" shall be substituted for "gasoline" each place it appears in such paragraph (4)).

(d) Use by certain aircraft museums or in certain other aircraft uses

Except as provided in subsection (k), if—

(1) any gasoline on which tax was imposed by section 4081, or

(2) any fuel on the sale of which tax was imposed under section 4041,

is used by an aircraft museum (as defined in section 4041(h)(2)) in an aircraft or vehicle owned by such museum and used exclusively for purposes set forth in section 4041(h)(2)(C), or is used in a helicopter or a fixed-wing aircraft for a purpose described in section 4041(l), the Secretary shall pay (without interest) to the ultimate purchaser of such gasoline or fuel an amount equal to the aggregate amount of the tax imposed on such gasoline or fuel.

(e) Alcohol, biodiesel, or alternative fuel

Except as provided in subsection (k)—

(1) Used to produce a mixture

If any person produces a mixture described in section 6426 in such person's trade or business, the Secretary shall pay (without interest) to such person an amount equal to the alcohol fuel mixture credit or the biodiesel mixture credit or the alternative fuel mixture credit with respect to such mixture.

(2) Alternative fuel

If any person sells or uses an alternative fuel (as defined in section 6426(d)(2)) for a purpose described in section 6426(d)(1) in such person's trade or business, the Secretary shall pay (without interest) to such person an amount equal to the alternative fuel credit with respect to such fuel.

(3) Coordination with other repayment provisions

No amount shall be payable under paragraph (1) or (2) with respect to any mixture or alternative fuel with respect to which an amount is allowed as a credit under section 6426.

(4) Registration requirement for alternative fuels

The Secretary shall not make any payment under this subsection to any person with respect to any alternative fuel credit or alternative fuel mixture credit unless the person is registered under section 4101.

(5) Limitation to fuels with connection to the United States

No amount shall be payable under paragraph (1) or (2) with respect to any mixture or alternative fuel if credit is not allowed with respect to such mixture or alternative fuel by reason of section 6426(i).

(6) Termination

This subsection shall not apply with respect to—

(A) any alcohol fuel mixture (as defined in section 6426(b)(3)) sold or used after December 31, 2011,

(B) any biodiesel mixture (as defined in section 6426(c)(3)) sold or used after December 31, 2013,

(C) except as provided in subparagraph (D), any alternative fuel (as defined in section 6426(d)(2)) sold or used after December 31, 2013,

(D) any alternative fuel (as so defined) involving liquefied hydrogen sold or used after September 30, 2014, and

(E) any alternative fuel mixture (as defined in section 6426(e)(2)) sold or used after December 31, 2011.

[(f) Repealed. Pub. L. 109–59, title XI, §11151(a)(1), Aug. 10, 2005, 119 Stat. 1968]

[(g) Repealed. Pub. L. 104–188, title I, §1606(a), Aug. 20, 1996, 110 Stat. 1839]

(h) Blend stocks not used for producing taxable fuel

(1) Gasoline blend stocks or additives not used for producing gasoline

Except as provided in subsection (k), if any gasoline blend stock or additive (within the meaning of section 4083(a)(2)) is not used by any person to produce gasoline and such person establishes that the ultimate use of such gasoline blend stock or additive is not to produce gasoline, the Secretary shall pay (without interest) to such person an amount equal to the aggregate amount of the tax imposed on such person with respect to such gasoline blend stock or additive.

(2) Diesel fuel blend stocks or additives not used for producing diesel

Except as provided in subsection (k), if any diesel fuel blend stock is not used by any person to produce diesel fuel and such person establishes that the ultimate use of such diesel fuel blend stock is not to produce diesel fuel, the Secretary shall pay (without interest) to such person an amount equal to the aggregate amount of the tax imposed on such person with respect to such diesel fuel blend stock.

(i) Time for filing claims; period covered

(1) General rule

Except as otherwise provided in this subsection, not more than one claim may be filed under subsection (a), (b), (c), (d), (h), (l), (m), or (o) by any person with respect to fuel used during his taxable year; and no claim shall be allowed under this paragraph with respect to fuel used during any taxable year unless filed by the purchaser not later than the time prescribed by law for filing a claim for credit or refund of overpayment of income tax for such taxable year. For purposes of this paragraph, a person's taxable year shall be his taxable year for purposes of subtitle A.

(2) Exceptions

(A) In general

If, at the close of any quarter of the taxable year of any person, at least $750 is payable in the aggregate under subsections (a), (b), (d), (h), (l), (m), and (o) of this section and section 6421 to such person with respect to fuel used during—

(i) such quarter, or

(ii) any prior quarter (for which no other claim has been filed) during such taxable year,

a claim may be filed under this section with respect to such fuel.

(B) Time for filing claim

No claim filed under this paragraph shall be allowed unless filed during the first quarter following the last quarter included in the claim.

(C) Nonapplication of paragraph

This paragraph shall not apply to any fuel used solely in any off-highway business use described in section 6421(e)(2)(C).

(3) Special rule for mixture credits and the alternative fuel credit

(A) In general

A claim may be filed under subsection (e)(1) by any person with respect to a mixture described in section 6426 or under subsection (e)(2) by any person with respect to an alternative fuel (as defined in section 6426(d)(2)) for any period—

(i) for which $200 or more is payable under such subsection (e)(1) or (e)(2), and

(ii) which is not less than 1 week.

In the case of an electronic claim, this subparagraph shall be applied without regard to clause (i).

(B) Payment of claim

Notwithstanding subsection (e)(1) or (e)(2), if the Secretary has not paid pursuant to a claim filed under this section within 45 days of the date of the filing of such claim (20 days in the case

of an electronic claim), the claim shall be paid with interest from such date determined by using the overpayment rate and method under section 6621.

(C) Time for filing claim

No claim filed under this paragraph shall be allowed unless filed on or before the last day of the first quarter following the earliest quarter included in the claim.

(4) Special rule for vendor refunds

(A) In general

A claim may be filed under paragraph (4)(C) or (5) of subsection (l) by any person with respect to fuel sold by such person for any period—

(i) for which $200 or more ($100 or more in the case of kerosene) is payable under paragraph (4)(C) or (5) of subsection (l), and

(ii) which is not less than 1 week.

Notwithstanding subsection (l)(1), paragraph (3)(B) shall apply to claims filed under subsections (b)(4), (l)(4)(C)(ii), and (l)(5).

(B) Time for filing claim

No claim filed under this paragraph shall be allowed unless filed on or before the last day of the first quarter following the earliest quarter included in the claim.

(j) Applicable laws

(1) In general

All provisions of law, including penalties, applicable in respect of the taxes imposed by sections 4041 and 4081 shall, insofar as applicable and not inconsistent with this section, apply in respect of the payments provided for in this section to the same extent as if such payments constituted refunds of overpayments of the tax so imposed.

(2) Examination of books and witnesses

For the purpose of ascertaining the correctness of any claim made under this section, or the correctness of any payment made in respect of any such claim, the Secretary shall have the authority granted by paragraphs (1), (2), and (3) of section 7602(a) (relating to examination of books and witnesses) as if the claimant were the person liable for tax.

(k) Income tax credit in lieu of payment

(1) Persons not subject to income tax

Payment shall be made under this section only to—

(A) the United States or an agency or instrumentality thereof, a State, a political subdivision of a State, or any agency or instrumentality of one or more States or political subdivisions, or

(B) an organization exempt from tax under section 501(a) (other than an organization required to make a return of the tax imposed under subtitle A for its taxable year).

(2) Exception

Paragraph (1) shall not apply to a payment of a claim filed under paragraph (2), (3), or (4) of subsection (i).

(3) Allowance of credit against income tax

For allowances of credit against the income tax imposed by subtitle A for fuel used or resold by the purchaser, see section 34.

(l) Nontaxable uses of diesel fuel and kerosene

(1) In general

Except as otherwise provided in this subsection and in subsection (k), if any diesel fuel or kerosene on which tax has been imposed by section 4041 or 4081 is used by any person in a

nontaxable use, the Secretary shall pay (without interest) to the ultimate purchaser of such fuel an amount equal to the aggregate amount of tax imposed on such fuel under section 4041 or 4081, as the case may be, reduced by any payment made to the ultimate vendor under paragraph (4)(C)(i).

(2) Nontaxable use

For purposes of this subsection, the term "nontaxable use" means any use which is exempt from the tax imposed by section 4041(a)(1) other than by reason of a prior imposition of tax.

(3) Refund of certain taxes on fuel used in diesel-powered trains

For purposes of this subsection, the term "nontaxable use" includes fuel used in a diesel-powered train. The preceding sentence shall not apply with respect to—

(A) the Leaking Underground Storage Tank Trust Fund financing rate under sections 4041 and 4081, and

(B) so much of the rate specified in section 4081(a)(2)(A) as does not exceed the rate applicable under section 4041(a)(1)(C)(ii).

The preceding sentence shall not apply in the case of fuel sold for exclusive use by a State or any political subdivision thereof.

(4) Refunds for kerosene used in aviation

(A) Kerosene used in commercial aviation

In the case of kerosene used in commercial aviation (as defined in section 4083(b)) (other than supplies for vessels or aircraft within the meaning of section 4221(d)(3)), paragraph (1) shall not apply to so much of the tax imposed by section 4041 or 4081, as the case may be, as is attributable to—

(i) the Leaking Underground Storage Tank Trust Fund financing rate imposed by such section, and

(ii) so much of the rate of tax specified in section 4041(c) or 4081(a)(2)(A)(iii), as the case may be, as does not exceed 4.3 cents per gallon.

(B) Kerosene used in noncommercial aviation

In the case of kerosene used in aviation that is not commercial aviation (as so defined) (other than any use which is exempt from the tax imposed by section 4041(c) other than by reason of a prior imposition of tax), paragraph (1) shall not apply to—

(i) any tax imposed by subsection (c) or (d)(2) of section 4041, and

(ii) so much of the tax imposed by section 4081 as is attributable to—

(I) the Leaking Underground Storage Tank Trust Fund financing rate imposed by such section, and

(II) so much of the rate of tax specified in section 4081(a)(2)(A)(iii) as does not exceed the rate specified in section 4081(a)(2)(C)(ii).

(C) Payments to ultimate, registered vendor

(i) In general

With respect to any kerosene used in aviation (other than kerosene described in clause (ii) or kerosene to which paragraph (5) applies), if the ultimate purchaser of such kerosene waives (at such time and in such form and manner as the Secretary shall prescribe) the right to payment under paragraph (1) and assigns such right to the ultimate vendor, then the Secretary shall pay the amount which would be paid under paragraph (1) to such ultimate vendor, but only if such ultimate vendor—

(I) is registered under section 4101, and

(II) meets the requirements of subparagraph (A), (B), or (D) of section 6416(a)(1).

(ii) Payments for kerosene used in noncommercial aviation

The amount which would be paid under paragraph (1) with respect to any kerosene to which subparagraph (B) applies shall be paid only to the ultimate vendor of such kerosene. A

payment shall be made to such vendor if such vendor—

(I) is registered under section 4101, and

(II) meets the requirements of subparagraph (A), (B), or (D) of section 6416(a)(1).

(5) Registered vendors to administer claims for refund of diesel fuel or kerosene sold to State and local governments

(A) In general

Paragraph (1) shall not apply to diesel fuel or kerosene used by a State or local government.

(B) Sales of kerosene not for use in motor fuel

Paragraph (1) shall not apply to kerosene (other than kerosene used in aviation) sold by a vendor—

(i) for any use if such sale is from a pump which (as determined under regulations prescribed by the Secretary) is not suitable for use in fueling any diesel-powered highway vehicle or train, or

(ii) to the extent provided by the Secretary, for blending with heating oil to be used during periods of extreme or unseasonable cold.

(C) Payment to ultimate, registered vendor

Except as provided in subparagraph (D), the amount which would (but for subparagraph (A) or (B)) have been paid under paragraph (1) with respect to any fuel shall be paid to the ultimate vendor of such fuel, if such vendor—

(i) is registered under section 4101, and

(ii) meets the requirements of subparagraph (A), (B), or (D) of section 6416(a)(1).

(D) Credit card issuer

For purposes of this paragraph, if the purchase of any fuel described in subparagraph (A) (determined without regard to the registration status of the ultimate vendor) is made by means of a credit card issued to the ultimate purchaser, the Secretary shall pay to the person extending the credit to the ultimate purchaser the amount which would have been paid under paragraph (1) (but for subparagraph (A)), but only if such person meets the requirements of clauses (i), (ii), and (iii) of section 6416(a)(4)(B). If such clause (i), (ii), or (iii) is not met by such person extending the credit to the ultimate purchaser, then such person shall collect an amount equal to the tax from the ultimate purchaser and only such ultimate purchaser may claim such amount.

(m) Diesel fuel used to produce emulsion

(1) In general

Except as provided in subsection (k), if any diesel fuel on which tax was imposed by section 4081 at the regular tax rate is used by any person in producing an emulsion described in section 4081(a)(2)(D) which is sold or used in such person's trade or business, the Secretary shall pay (without interest) to such person an amount equal to the excess of the regular tax rate over the incentive tax rate with respect to such fuel.

(2) Definitions

For purposes of paragraph (1)—

(A) Regular tax rate

The term "regular tax rate" means the aggregate rate of tax imposed by section 4081 determined without regard to section 4081(a)(2)(D).

(B) Incentive tax rate

The term "incentive tax rate" means the aggregate rate of tax imposed by section 4081 determined with regard to section 4081(a)(2)(D).

(n) Regulations

The Secretary may by regulations prescribe the conditions, not inconsistent with the provisions of

this section, under which payments may be made under this section.

(o) Payments for taxes imposed by section 4041(d)

For purposes of subsections (a), (b), and (c), the taxes imposed by section 4041(d) shall be treated as imposed by section 4041(a).

(p) Cross references

(1) For civil penalty for excessive claims under this section, see section 6675.

(2) For fraud penalties, etc., see chapter 75 (section 7201 and following, relating to crimes, other offenses, and forfeitures).

(3) For treatment of an Indian tribal government as a State (and a subdivision of an Indian tribal government as a political subdivision of a State), see section 7871.

(Added Pub. L. 91–258, title II, §207(a), May 21, 1970, 84 Stat. 246; amended Pub. L. 94–455, title XIX, §1906(a)(31)(A), (b)(13)(A), Oct. 4, 1976, 90 Stat. 1829, 1834; Pub. L. 94–530, §1(b), (c)(2)–(5), Oct. 17, 1976, 90 Stat. 2487, 2488; Pub. L. 95–458, §3(b), Oct. 14, 1978, 92 Stat. 1257; Pub. L. 95–599, title V, §505(a), (b), (c)(2)–(4), Nov. 6, 1978, 92 Stat. 2758–2760; Pub. L. 95–600, title VII, §703(l)(3), Nov. 6, 1978, 92 Stat. 2942; Pub. L. 95–618, title II, §233(a)(2), Nov. 9, 1978, 92 Stat. 3190; Pub. L. 96–223, title II, §232(d)(1), (2), (4)(B)–(D), Apr. 2, 1980, 94 Stat. 277, 278; Pub. L. 96–541, §4, Dec. 17, 1980, 94 Stat. 3205; Pub. L. 97–248, title II, §279(b)(2), Sept. 3, 1982, 96 Stat. 563; Pub. L. 97–424, title V, §§511(d)(4), (e)(1)–(3), (g)(2)(B)–(D), 516(b)(5), Jan. 6, 1983, 96 Stat. 2171, 2172, 2173, 2183; Pub. L. 97–473, title II, §202(b)(13), Jan. 14, 1983, 96 Stat. 2610; Pub. L. 98–369, div. A, title IV, §474(r)(38), title VII, §§732(a)(3), 734(c)(2), title IX, §§911(b), (d)(2)(B)–(F), 912(d), 914, 915(a), July 18, 1984, 98 Stat. 846, 977, 979, 1005–1008; Pub. L. 99–499, title V, §521(c)(3)(A), (B)(i), (C), Oct. 17, 1986, 100 Stat. 1779; Pub. L. 99–514, title IV, §422(b), title XVII, §1703(d), (e)(1), (2)(A)–(E), title XVIII, §§1877(b), 1899A(55), (56), Oct. 22, 1986, 100 Stat. 2230, 2777, 2778, 2902, 2961, as amended by Pub. L. 99–499, title V, §521(c)(3)(B)(ii), Oct. 17, 1986, 100 Stat. 1779; Pub. L. 100–17, title V, §502(b)(8), (9), Apr. 2, 1987, 101 Stat. 257; Pub. L. 100–203, title X, §10502(c), Dec. 22, 1987, 101 Stat. 1330–442; Pub. L. 100–223, title IV, §405(b)(1), (2), Dec. 30, 1987, 101 Stat. 1534, 1535; Pub. L. 100–647, title I, §1017(c)(3), (10), title II, §§2001(d)(7)(B)–(D), 2004(s)(2), (3), title III, §3002(a)–(c), Nov. 10, 1988, 102 Stat. 3576, 3596, 3609, 3615, 3616; Pub. L. 101–239, title VII, §§7501(b)(3), 7812(a), 7822(b)(1)–(4), 7841(d)(20), Dec. 19, 1989, 103 Stat. 2361, 2412, 2424, 2425, 2429; Pub. L. 101–508, title XI, §§11211(b)(4)(B), (5), (6)(E)(ii), (d)(7), (8), 11213(b)(3), 11801(a)(46), (c)(23), Nov. 5, 1990, 104 Stat. 1388–425 to 1388–427, 1388–433, 1388–522, 1388–528; Pub. L. 102–240, title VIII, §8002(b)(7), (8), Dec. 18, 1991, 105 Stat. 2203; Pub. L. 103–66, title XIII, §§13241(f)(8)–(10), 13242(c), (d)(21), (25)–(31), Aug. 10, 1993, 107 Stat. 512, 521, 524, 525; Pub. L. 104–188, title I, §§1606(a), (b)(2), 1702(b)(2)(B), 1703(k), Aug. 20, 1996, 110 Stat. 1839, 1868, 1877; Pub. L. 105–34, title X, §1032(c)(3), (e)(7)–(10), Aug. 5, 1997, 111 Stat. 934, 935; Pub. L. 105–178, title IX, §§9003(a)(2), 9006(b)(2), 9009(a)–(b)(2), June 9, 1998, 112 Stat. 502, 506, 507; Pub. L. 105–206, title VI, §§6016(b), 6017(a), 6023(16), (25), (26), July 22, 1998, 112 Stat. 822, 825, 826; Pub. L. 108–357, title II, §241(a)(2)(D), title III, §301(c)(9), (10), title VIII, §§851(d)(3), 853(c), (d)(2)(J), (K), 857(b), (c), 870(b), Oct. 22, 2004, 118 Stat. 1438, 1462, 1609, 1611, 1613, 1617, 1624; Pub. L. 109–58, title XIII, §§1343(b)(1), (3), 1344(a), Aug. 8, 2005, 119 Stat. 1051, 1052; Pub. L. 109–59, title XI, §§11113(b)(3)(C), 11151(a), 11161(b)(2), (3)(B), (D)–(F), 11162(a), (b), 11163(c), Aug. 10, 2005, 119 Stat. 1948, 1968, 1970–1974; Pub. L. 109–432, div. A, title IV, §420(a), (b)(1), (3), (4), Dec. 20, 2006, 120 Stat. 2968, 2969; Pub. L. 110–172, §§5(a)(1), 11(a)(37)–(39)(A), (e)(1), Dec. 29, 2007, 121 Stat. 2478, 2487–2489; Pub. L. 110–343, div. B, title II, §§202(a), 203(c)(2), 204(a)(3), Oct. 3, 2008, 122 Stat. 3832, 3834; Pub. L. 111–312, title VII, §§701(b)(2), 704(a), 708(c)(1), Dec. 17, 2010, 124 Stat. 3310–3312; Pub. L. 112–240, title IV, §§405(b)(2), 412(b), Jan. 2, 2013, 126 Stat. 2340, 2343.)

REFERENCES IN TEXT

Section 4081(c), referred to in subsec. (f)(1), was repealed by Pub. L. 108–357, title III, §301(c)(7), Oct. 22, 2004, 118 Stat. 1461.

Section 4091, referred to in subsec. (f)(1), (2)(A)(ii), (B)(ii), was repealed by Pub. L. 108–357, title VIII,

§853(d)(1), Oct. 22, 2004, 118 Stat. 1612.

AMENDMENTS

2013—Subsec. (e)(6)(B). Pub. L. 112–240, §405(b)(2), substituted "December 31, 2013" for "December 31, 2011".

Subsec. (e)(6)(C). Pub. L. 112–240, §412(b)(1), substituted "(as defined in section 6426(d)(2))" for "or alternative fuel mixture (as defined in subsection (d)(2) or (e)(3) of section 6426)" and "December 31, 2013," for "December 31, 2011, and".

Subsec. (e)(6)(D). Pub. L. 112–240, §412(b)(2)(A), struck out "or alternative fuel mixture" after "any alternative fuel".

Subsec. (e)(6)(E). Pub. L. 112–240, §412(b)(2)(B), (3), added subpar. (E).

2010—Subsec. (e)(6)(A). Pub. L. 111–312, §708(c)(1), substituted "December 31, 2011" for "December 31, 2010".

Subsec. (e)(6)(B). Pub. L. 111–312, §701(b)(2), substituted "December 31, 2011" for "December 31, 2009".

Subsec. (e)(6)(C). Pub. L. 111–312, §704(a), substituted "December 31, 2011" for "December 31, 2009".

2008—Subsec. (e)(5). Pub. L. 110–343, §203(c)(2), added par. (5). Former par. (5) redesignated (6).

Subsec. (e)(5)(B). Pub. L. 110–343, §202(a), substituted "December 31, 2009" for "December 31, 2008".

Subsec. (e)(6). Pub. L. 110–343, §203(c)(2), redesignated par. (5) as (6).

Subsec. (e)(6)(C). Pub. L. 110–343, §204(a)(3), which directed amendment of subsec. (e)(5)(C) by substituting "December 31, 2009" for "September 30, 2009", was executed by making the substitution in par. (6)(C), to reflect the probable intent of Congress and the redesignation of par. (5) as (6) by Pub. L. 110–343, §203(c)(2). See above.

2007—Subsec. (e)(3). Pub. L. 110–172, §11(a)(37), redesignated par. (3), relating to termination, as (5).

Subsec. (e)(5). Pub. L. 110–172, §11(a)(37), redesignated par. (3), relating to termination, as (5).

Subsec. (e)(5)(B). Pub. L. 110–172, §11(e)(1), substituted "2008" for "2006".

Subsec. (i)(3). Pub. L. 110–172, §5(a)(1)(C), substituted "mixture credits and the alternative fuel credit" for "alcohol fuel and biodiesel mixture credit" in heading.

Subsec. (i)(3)(A). Pub. L. 110–172, §5(a)(1)(A), in introductory provisions, inserted "or under subsection (e)(2) by any person with respect to an alternative fuel (as defined in section 6426(d)(2))" after "section 6426".

Subsec. (i)(3)(A)(i), (B). Pub. L. 110–172, §5(a)(1)(B), inserted "or (e)(2)" after "subsection (e)(1)".

Subsec. (l)(4)(A)(ii). Pub. L. 110–172, §11(a)(38), which directed substitution of "section 4081(a)(2)(A)(iii)" for "section 4081(a)(2)(iii)", could not be executed, because "section 4081(a)(2)(iii)" did not appear subsequent to amendment by Pub. L. 109–432, §420(a). See 2006 Amendment note below.

Subsecs. (p), (q). Pub. L. 110–172, §11(a)(39)(A), redesignated subsec. (q) as (p) and struck out heading and text of former subsec. (p). Text of former subsec. (p) read as follows: "Except as provided in subsection (k), if—

"(1) any tax is imposed by section 4081 at a rate determined under subsection (c) thereof on gasohol (as defined in such subsection), and

"(2) such gasohol is used as a fuel in any aircraft in noncommercial aviation (as defined in section 4041(c)(2),

the Secretary shall pay (without interest) to the ultimate purchaser of such gasohol an amount equal to 1.4 cents (2 cents in the case of a mixture none of the alcohol in which consists of ethanol) multiplied by the number of gallons of gasohol so used."

2006—Subsec. (i)(4)(A). Pub. L. 109–432, §420(b)(3), substituted "paragraph (4)(C) or (5)" for "paragraph (4)(B), (5), or (6)" in introductory provisions and cl. (i) and "(l)(4)(C)(ii), and (l)(5)" for "(l)(5), and (l)(6)" in concluding provisions.

Subsec. (l)(1). Pub. L. 109–432, §420(b)(4), substituted "paragraph (4)(C)(i)" for "paragraph (4)(B)".

Subsec. (l)(4). Pub. L. 109–432, §420(a), amended heading and text of par. (4) generally, substituting provisions relating to refunds for kerosene used in commercial aviation, refunds for kerosene used in noncommercial aviation, and payments to ultimate, registered vendor, consisting of subpars. (A) to (C), for provisions relating to refunds for kerosene used in commercial aviation and payment to ultimate, registered vendor, consisting of subpars. (A) and (B).

Subsec. (l)(5), (6). Pub. L. 109–432, §420(b)(1), redesignated par. (6) as (5) and struck out former par. (5), which related to refunds for kerosene used in noncommercial aviation.

2005—Subsec. (e). Pub. L. 109–59, §11113(b)(3)(C)(ix), substituted ", biodiesel, or alternative fuel" for "or biodiesel used to produce alcohol fuel and biodiesel mixtures" in heading.

Subsec. (e)(1). Pub. L. 109–59, §11113(b)(3)(C)(i), inserted "or the alternative fuel mixture credit" after "biodiesel mixture credit".

Subsec. (e)(2). Pub. L. 109–59, §11113(b)(3)(C)(iii), added par. (2). Former par. (2) redesignated (3).

Subsec. (e)(3). Pub. L. 109–59, §11113(b)(3)(C)(iv), substituted "under paragraph (1) or (2) with respect to any mixture or alternative fuel" for "under paragraph (1) with respect to any mixture".

Pub. L. 109–59, §11113(b)(3)(C)(ii), redesignated par. (2) as (3).

Subsec. (e)(4). Pub. L. 109–59, §11113(b)(3)(C)(v), added par. (4).

Subsec. (e)(4)(B). Pub. L. 109–58, §1344(a), which directed amendment of par. (4)(B) by substituting "2008" for "2006", could not be executed because there was no par. (4) prior to amendment by Pub. L. 109–59, §11113(b)(3)(C)(v). See 2007 Amendment note above relating to subsec. (e)(5)(B).

Subsec. (e)(5). Pub. L. 109–59, §11113(b)(3)(C)(ii), which directed amendment of subsec. (e) by redesignating par. (4) as (5), could not be executed because there was no par. (4) prior to amendment by Pub. L. 109–59, §11113(b)(3)(C)(v). See 2005 and 2007 Amendment notes above.

Subsec. (e)(5)(C), (D). Pub. L. 109–59, §11113(b)(3)(C)(vi)–(viii), added subpars. (C) and (D).

Subsec. (f). Pub. L. 109–59, §11151(a)(1), struck out subsec. (f) which related to payment by Secretary of an amount equal to the excess of the regular tax rate over the incentive tax rate with respect to any gasoline, diesel fuel, kerosene, or aviation fuel on which tax was imposed by section 4081 or 4091 at the regular tax rate, which is used by any person in producing a mixture described in section 4081(c) or 4091(c)(1)(A), and which is sold or used in such person's trade or business.

Subsec. (i)(1), (2)(A). Pub. L. 109–58, §1343(b)(3), inserted "(m)," after "(l)," in par. (1) and in par. (2)(A) in introductory provisions.

Subsec. (i)(4)(A). Pub. L. 109–59, §11161(b)(3)(D)(ii), which directed amendment of subpar. (A) by substituting "subsections (b)(4), (l)(5), and (l)(6)" for "subsection (b)(4) and subsection (l)(5)" in concluding provisions, was executed by making the substitution for "subsections (b)(4) and subsection (l)(5)" to reflect the probable intent of Congress.

Pub. L. 109–59, §11161(b)(3)(D)(i), substituted "paragraph (4)(B), (5), or (6)" for "paragraph (4)(B) or (5)" in two places.

Subsec. (l). Pub. L. 109–59, §11161(b)(3)(B), substituted "and kerosene" for ", kerosene and aviation fuel" in heading.

Subsec. (l)(2). Pub. L. 109–59, §11161(b)(2)(A), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "For purposes of this subsection, the term 'nontaxable use' means—

"(A) in the case of diesel fuel or kerosene, any use which is exempt from the tax imposed by section 4041(a)(1) other than by reason of a prior imposition of tax, and

"(B) in the case of aviation-grade kerosene—

"(i) any use which is exempt from the tax imposed by section 4041(c) other than by reason of a prior imposition of tax, or

"(ii) any use in commercial aviation (within the meaning of section 4083(b))."

Subsec. (l)(4). Pub. L. 109–59, §11161(b)(3)(E)(iv), substituted "kerosene used in commercial aviation" for "aviation-grade kerosene" in heading.

Subsec. (l)(4)(A). Pub. L. 109–59, §11161(b)(3)(E)(i), struck out "aviation-grade" before "kerosene" in introductory provisions.

Subsec. (l)(4)(A)(ii). Pub. L. 109–59, §11161(b)(3)(E)(ii), substituted "section 4081(a)(2)(iii)" for "section 4081(a)(2)(A)(iv)".

Subsec. (l)(4)(B). Pub. L. 109–59, §11161(b)(3)(E)(iii), substituted "kerosene used in commercial aviation as described in subparagraph (A)" for "aviation-grade kerosene" in introductory provisions.

Subsec. (l)(5). Pub. L. 109–59, §11161(b)(2)(B), added par. (5). Former par. (5) redesignated (6).

Subsec. (l)(6). Pub. L. 109–59, §11162(b), struck out "farmers and" before "State and local governments" in heading.

Pub. L. 109–59, §11161(b)(2)(B), redesignated par. (5) as (6).

Subsec. (l)(6)(A). Pub. L. 109–59, §11162(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "Paragraph (1) shall not apply to diesel fuel or kerosene used—

"(i) on a farm for farming purposes (within the meaning of section 6420(c)), or

"(ii) by a State or local government."

Subsec. (l)(6)(B). Pub. L. 109–59, §11161(b)(3)(F), substituted "kerosene used in aviation" for "aviation-grade kerosene" in introductory provisions.

Subsec. (l)(6)(C). Pub. L. 109–59, §11163(c)(1), substituted "Except as provided in subparagraph (D), the amount" for "The amount" in introductory provisions.

Subsec. (l)(6)(D). Pub. L. 109–59, §11163(c)(2), added subpar. (D).

Subsecs. (m), (n). Pub. L. 109–58, §1343(b)(1), added subsec. (m) and redesignated former subsec. (m) as (n). Former subsec. (n) redesignated (o).

Subsec. (o). Pub. L. 109–58, §1343(b)(1), redesignated subsec. (n) as (o). Former subsec. (o) redesignated (p).

Pub. L. 109–59, §11151(a)(2), which directed the redesignation of subsec. (p) as (o) and the striking of former subsec. (o), to be treated as not having been enacted. See Construction of Amendment by Pub. L. 109–59 note below.

Subsec. (p). Pub. L. 109–58, §1343(b)(1), redesignated subsec. (o) as (p). Former subsec. (p) redesignated (q).

Pub. L. 109–59, §11151(a)(2), which directed the redesignation of subsec. (p) as (o), to be treated as not having been enacted. See Construction of Amendment by Pub. L. 109–59 note below.

Subsec. (q). Pub. L. 109–58, §1343(b)(1), redesignated subsec. (p) as (q).

2004—Subsec. (b)(4). Pub. L. 108–357, §857(b), added par. (4).

Subsec. (e). Pub. L. 108–357, §301(c)(9), added subsec. (e).

Subsec. (h). Pub. L. 108–357, §870(b), amended heading and text of subsec. (h) generally. Prior to amendment, text read as follows: "Except as provided in subsection (k), if any gasoline blend stock or additive (within the meaning of section 4083(a)(2)) is not used by any person to produce gasoline and such person establishes that the ultimate use of such gasoline blend stock or additive is not to produce gasoline, the Secretary shall pay (without interest) to such person an amount equal to the aggregate amount of the tax imposed on such person with respect to such gasoline blend stock or additive."

Subsec. (i)(2)(C). Pub. L. 108–357, §851(d)(3), added subpar. (C).

Subsec. (i)(3). Pub. L. 108–357, §301(c)(10)(F), substituted "alcohol fuel and biodiesel mixture" for "alcohol mixture" in heading.

Subsec. (i)(3)(A). Pub. L. 108–357, §301(c)(10)(A)–(C), substituted "a mixture described in section 6426" for "gasoline, diesel fuel, or kerosene used to produce a qualified alcohol mixture (as defined in section 4081(c)(3))" in introductory provisions, substituted "subsection (e)(1)" for "subsection (f)" in two places, and inserted concluding provisions.

Subsec. (i)(3)(B). Pub. L. 108–357, §301(c)(10)(D), (E), substituted "subsection (e)(1)" for "subsection (f)(1)" and "45 days of the date of the filing of such claim (20 days in the case of an electronic claim)" for "20 days of the date of the filing of such claim".

Subsec. (i)(4)(A). Pub. L. 108–357, §857(c), which directed the insertion of "subsections (b)(4) and" after "filed under", was executed by making the insertion in concluding provisions, to reflect the probable intent of Congress.

Pub. L. 108–357, §853(c)(2), substituted "paragraph (4)(B) or (5) of subsection (l)" for "subsection (l)(5)" in introductory provisions and in cl. (i) and substituted "subsection (l)(5)" for "the preceding sentence" before period at end of concluding provisions.

Subsec. (j)(1). Pub. L. 108–357, §853(d)(2)(J), substituted "and 4081" for ", 4081, and 4091".

Subsec. (l)(1). Pub. L. 108–357, §853(d)(2)(K)(i), reenacted heading without change and amended text of par. (1) generally. Prior to amendment, text read as follows: "Except as otherwise provided in this subsection and in subsection (k), if—

"(A) any diesel fuel or kerosene on which tax has been imposed by section 4041 or 4081, or

"(B) any aviation fuel on which tax has been imposed by section 4091,

is used by any person in a nontaxable use, the Secretary shall pay (without interest) to the ultimate purchaser of such fuel an amount equal to the aggregate amount of tax imposed on such fuel under section 4041, 4081, or 4091, as the case may be."

Subsec. (l)(2)(B). Pub. L. 108–357, §853(c)(3), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "in the case of aviation fuel, any use which is exempt from the tax imposed by section 4041(c)(1) other than by reason of a prior imposition of tax."

Subsec. (l)(3)(B). Pub. L. 108–357, §241(a)(2)(D), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "so much of the rate specified in section 4081(a)(2)(A) as does not exceed—

"(i) 6.8 cents per gallon after September 30, 1993, and before October 1, 1995,

"(ii) 5.55 cents per gallon after September 30, 1995, and before November 1, 1998, and

"(iii) 4.3 cents per gallon after October 31, 1998."

Subsec. (l)(4). Pub. L. 108–357, §853(c)(1), amended heading and text of par. (4) generally. Text read as follows: "In the case of fuel used in commercial aviation (as defined in section 4092(b)) (other than supplies for vessels or aircraft within the meaning of section 4221(d)(3)), paragraph (1) shall not apply to so much of the tax imposed by section 4091 as is attributable to—

"(A) the Leaking Underground Storage Tank Trust Fund financing rate imposed by such section, and

"(B) in the case of fuel purchased after September 30, 1995, so much of the rate of tax specified in section 4091(b)(1) as does not exceed 4.3 cents per gallon."

Subsec. (l)(5)(B). Pub. L. 108–357, §853(d)(2)(K)(ii), substituted "Paragraph (1) shall not apply to kerosene (other than aviation-grade kerosene)" for "Paragraph (1)(A) shall not apply to kerosene" in introductory provisions.

1998—Subsec. (d). Pub. L. 105–206, §6016(b), in heading, substituted "other aircraft uses" for "helicopters" and, in concluding provisions, inserted "or a fixed-wing aircraft" after "helicopter".

Subsec. (f)(3). Pub. L. 105–206, §6023(25), struck out ", (e)," after "subsection (d)".

Subsec. (f)(4). Pub. L. 105–178, §9003(a)(2), substituted "2007" for "1999".

Subsec. (i)(1). Pub. L. 105–206, §6023(26)(B), substituted "(o)" for "(q)".

Subsec. (i)(2)(A). Pub. L. 105–206, §6023(26)(B), substituted "(o)" for "(q)".

Pub. L. 105–178, §9009(a), reenacted heading without change and amended text of subpar. (A) generally. Prior to amendment, text read as follows: "If $1,000 or more is payable under subsections (a), (b), (d), (h), and (q) to any person with respect to fuel used during any of the first 3 quarters of his taxable year, a claim may be filed under this section with respect to fuel used, during such quarter."

Subsec. (i)(2)(B). Pub. L. 105–206, §6017(a), reenacted heading without change and amended text of subpar. (B) generally. Prior to amendment, text read as follows: "No claim filed under this paragraph shall be allowed unless filed on or before the last day of the first quarter following the quarter for which the claim is filed."

Subsec. (i)(4), (5). Pub. L. 105–178, §9009(b)(1), redesignated par. (5) as (4) and struck out par. (4) which read as follows:

"(4) SPECIAL RULE FOR REFUNDS UNDER SUBSECTION (L).—

"(A) IN GENERAL.—If at the close of any of the 1st 3 quarters of the taxable year of any person, at least $750 is payable under subsection (l) to such person with respect to fuel used during such quarter or any prior quarter during the taxable year (and for which no other claim has been filed), a claim may be filed under subsection (l) with respect to such fuel.

"(B) TIME FOR FILING CLAIM.—No claim filed under this paragraph shall be allowed unless filed during the 1st quarter following the last quarter included in the claim."

Subsec. (k)(2). Pub. L. 105–178, §9009(b)(2), reenacted heading without change and amended text of par. (2) generally. Prior to amendment, text read as follows: "Paragraph (1) shall not apply to a payment of a claim filed under paragraph (2), (3), (4), or (5) of subsection (i)."

Subsec. (l)(3)(B)(ii). Pub. L. 105–178, §9006(b)(2)(A), substituted "November 1, 1998" for "October 1, 1999".

Subsec. (l)(3)(B)(iii). Pub. L. 105–178, §9006(b)(2)(B), substituted "October 31, 1998" for "September 30, 1999".

Subsecs. (m) to (p). Pub. L. 105–206, §6023(26)(A), redesignated subsecs. (n), (p), (q), and (r) as (m), (n), (o), and (p), respectively.

Subsec. (q). Pub. L. 105–206, §6023(26)(A), redesignated subsec. (q) as (o).

Subsec. (q)(2). Pub. L. 105–206, §6023(16), substituted "section 4041(c)(2)" for "section 4041(c)(4)".

Subsec. (r). Pub. L. 105–206, §6023(26)(A), redesignated subsec. (r) as (p).

1997—Subsec. (f). Pub. L. 105–34, §1032(e)(7), inserted "kerosene," after "diesel fuel," in subsec. heading and in text of par. (1).

Subsec. (f)(2)(A)(i), (B)(i). Pub. L. 105–34, §1032(e)(8), substituted ", diesel fuel, or kerosene" for "or diesel fuel".

Subsec. (f)(3). Pub. L. 105–34, §1032(e)(7), inserted "kerosene," after "diesel fuel,".

Subsec. (i)(3)(A). Pub. L. 105–34, §1032(e)(9), substituted ", diesel fuel, or kerosene" for "or diesel fuel" in introductory provisions.

Subsec. (i)(4). Pub. L. 105–34, §1032(e)(10), amended heading generally. Prior to amendment, heading read as follows: "Special rule for nontaxable uses of diesel fuel and aviation fuel taxed under section 4081 or 4091".

Subsec. (i)(5)(A)(i). Pub. L. 105–34, §1032(c)(3)(E), inserted "($100 or more in the case of kerosene)" after "$200 or more".

Subsec. (l). Pub. L. 105–34, §1032(c)(3)(D), inserted ", kerosene," after "diesel fuel" in heading.

Subsec. (l)(1)(A), (2)(A). Pub. L. 105–34, §1032(c)(3)(A), inserted "or kerosene" after "diesel fuel".

Subsec. (l)(5). Pub. L. 105–34, §1032(c)(3)(A), inserted "or kerosene" after "diesel fuel" in heading.

Subsec. (l)(5)(A). Pub. L. 105–34, §1032(c)(3)(A), inserted "or kerosene" after "diesel fuel" in introductory provisions.

Subsec. (l)(5)(B). Pub. L. 105–34, §1032(c)(3)(B), added subpar. (B) and redesignated former subpar. (B)

as (C).

Subsec. (l)(5)(C). Pub. L. 105–34, §1032(c)(3)(B), (C), redesignated subpar. (B) as (C) and substituted "subparagraph (A) or (B)" for "subparagraph (A)" in introductory provisions.

1996—Subsec. (f)(4). Pub. L. 104–188, §1703(k), substituted "1999" for "1995".

Subsec. (g). Pub. L. 104–188, §1606(a), struck out subsec. (g) which related to advance repayment of increased diesel fuel tax to original purchasers of diesel-powered automobiles and light trucks.

Subsec. (i)(1), (2)(A). Pub. L. 104–188, §1606(b)(2), struck out "(g)," after "(d)," and "(or a qualified diesel powered highway vehicle purchased)" after "with respect to fuel used" wherever appearing.

Subsec. (l)(4). Pub. L. 104–188, §1702(b)(2)(B), amended par. (4), as in effect before the amendments made by the Revenue Reconciliation Act of 1993 [ch. I, §§13001–13444, of title XIII of Pub. L. 103–66], by inserting before the period "unless such fuel was used by a State or any political subdivision thereof". See 1993 Amendment note below for subsec. (l).

1993—Subsec. (a). Pub. L. 103–66, §13242(d)(21), substituted "paragraph (2) or (3) of section 4041(a) or section 4041(c)" for "section 4041(a) or (c)" in introductory provisions.

Subsec. (b)(1). Pub. L. 103–66, §13242(d)(25), substituted "if any fuel other than gasoline (as defined in section 4083(a))" for "if any fuel" in introductory provisions and "4081" for "4091" in introductory and concluding provisions.

Subsec. (b)(2). Pub. L. 103–66, §13241(f)(8)(B), substituted "Reduction" for "3-cent reduction" in heading.

Subsec. (b)(2)(A). Pub. L. 103–66, §13242(d)(25)(B), substituted "4081" for "4091".

Pub. L. 103–66, §13241(f)(8)(A), substituted "7.4 cents" for "3.1 cents".

Subsec. (c). Pub. L. 103–66, §13242(d)(21), substituted "paragraph (2) or (3) of section 4041(a) or section 4041(c)" for "section 4041(a) or (c)".

Subsec. (f)(1). Pub. L. 103–66, §13242(d)(26)(A), substituted "or 4091(c)(1)(A)" for ", 4091(c)(1)(A), or 4091(d)(1)(A)".

Subsec. (f)(2). Pub. L. 103–66, §13242(d)(26)(B), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: "For purposes of paragraph (1)—

"(A) REGULAR TAX RATE.—The term 'regular tax rate' means—

"(i) in the case of gasoline, the aggregate rate of tax imposed by section 4081 determined without regard to subsection (c) thereof,

"(ii) in the case of diesel fuel, the aggregate rate of tax imposed by section 4091 on such fuel determined without regard to subsection (c) thereof, and

"(iii) in the case of aviation fuel, the aggregate rate of tax imposed by section 4091 on such fuel determined without regard to subsection (d) thereof.

"(B) INCENTIVE TAX RATE.—The term 'incentive tax rate' means—

"(i) in the case of gasoline, the aggregate rate of tax imposed by section 4081 with respect to fuel described in subsection (c)(1) thereof,

"(ii) in the case of diesel fuel, the aggregate rate of tax imposed by section 4091 with respect to fuel described in subsection (c)(1)(B) thereof, and

"(iii) in the case of aviation fuel, the aggregate rate of tax imposed by section 4091 with respect to fuel described in subsection (d)(1)(B) thereof."

Subsec. (h). Pub. L. 103–66, §13242(d)(27), substituted "section 4083(a)(2)" for "section 4082(b)".

Subsec. (i)(1). Pub. L. 103–66, §13242(c)(2)(B), substituted "otherwise provided in this subsection" for "provided in paragraphs (2), (3), and (4)".

Subsec. (i)(3). Pub. L. 103–66, §13242(d)(28)(A), substituted "alcohol mixture" for "gasohol" in heading.

Subsec. (i)(3)(A). Pub. L. 103–66, §13242(d)(28)(B), substituted "gasoline or diesel fuel used to produce a qualified alcohol mixture (as defined in section 4081(c)(3))" for "gasoline used to produce gasohol (as defined in section 4081(c)(1))".

Subsec. (i)(3)(C). Pub. L. 103–66, §13242(c)(2)(D), added subpar. (C).

Subsec. (i)(4). Pub. L. 103–66, §13242(d)(30), inserted "4081 or" before "4091" in heading.

Subsec. (i)(5). Pub. L. 103–66, §13242(c)(2)(A), added par. (5).

Subsec. (j)(1). Pub. L. 103–66, §13242(d)(29), substituted "sections 4041, 4081, and 4091" for "section 4041".

Subsec. (k)(2). Pub. L. 103–66, §13242(c)(2)(C), substituted "(4), or (5)" for "or (4)".

Subsec. (l). Pub. L. 103–66, §13242(d)(31), amended subsec. heading and headings and text of pars. (1) to (4) generally. Prior to amendment, pars. (1) to (4) read as follows:

"(1) IN GENERAL.—Except as provided in subsection (k) and in paragraphs (3) and (4) of this subsection, if any fuel on which tax has been imposed by section 4091 is used by any person in a nontaxable use, the Secretary shall pay (without interest) to the ultimate purchaser of such fuel an amount equal to the aggregate

amount of tax imposed on such fuel under section 4091.

"(2) NONTAXABLE USE.—For purposes of this subsection, the term 'nontaxable use' means, with respect to any fuel, any use of such fuel if such use is exempt under section 4041 from the taxes imposed by subsections (a)(1) and (c)(1) of section 4041 (other than by reason of the imposition of tax on any sale thereof).

"(3) NO REFUND OF CERTAIN TAXES ON FUEL USED IN DIESEL-POWERED TRAINS.—In the case of fuel used in a diesel-powered train, paragraph (1) shall not apply to so much of the tax imposed by section 4091 as is attributable to the Leaking Underground Storage Tank Trust Fund financing rate and the diesel fuel deficit reduction rate imposed by such section. The preceding sentence shall not apply in the case of fuel sold for exclusive use by a State or any political subdivision thereof.

"(4) NO REFUND OF LEAKING UNDERGROUND STORAGE TANK TRUST FUND TAXES ON FUEL USED IN COMMERCIAL AVIATION.—In the case of fuel used in commercial aviation (as defined in section 4093(c)(2)(B)) (other than supplies for vessels or aircraft within the meaning of section 4221(d)(3)), paragraph (1) shall not apply to so much of the tax imposed by section 4091 as is attributable to the Leaking Underground Storage Tank Trust Fund financing rate imposed by such section."

Pub. L. 103–66, §13241(f)(9), added pars. (3) and (4) and struck out former pars. (3) and (4) which read as follows:

"(3) NO REFUND OF LEAKING UNDERGROUND STORAGE TANK TRUST FUND FINANCING TAX.—Paragraph (1) shall not apply to so much of the tax imposed by section 4091 as is attributable to the Leaking Underground Storage Tank Trust Fund financing rate imposed by such section in the case of—

"(A) fuel used in a diesel-powered train, and

"(B) fuel used in any aircraft (except as supplies for vessels or aircraft within the meaning of section 4221(d)(3)).

"(4) NO REFUND OF DEFICIT REDUCTION TAX ON FUEL USED IN TRAINS.—In the case of fuel used in a diesel-powered train, paragraph (1) also shall not apply to so much of the tax imposed by section 4091 as is attributable to the diesel fuel deficit reduction rate imposed by such section." See 1996 Amendment note for subsec. (l)(4) above.

Subsec. (l)(5). Pub. L. 103–66, §13242(c)(1), added par. (5).

Subsec. (m). Pub. L. 103–66, §13241(f)(10), struck out heading and text of subsec. (m). Text read as follows: "For purposes of subsection (a), in the case of gasoline—

"(1) on which tax was imposed under section 4041(c)(2),

"(2) on which tax was not imposed under section 4081, and

"(3) which was not used as an off-highway business use (within the meaning of section 6421(e)(2)), the amount of the payment under subsection (a) shall be an amount equal to the amount of gasoline used as described in subsection (a) or resold multiplied by the rate equal to the excess of the rate of tax imposed by section 4041(c)(2) over the rate of tax imposed by section 4081."

Subsec. (o). Pub. L. 103–66, §13241(f)(10), struck out heading and text of subsec. (o). Text read as follows: "Except with respect to taxes imposed by section 4041(d) and sections 4081 and 4091 at the Leaking Underground Storage Tank Trust Fund financing rate, subsections (a), (b), (c), (d), (g), (h), and (l) shall only apply with respect to fuels purchased before October 1, 1999."

1991—Subsecs. (g)(5), (o). Pub. L. 102–240 substituted "1999" for "1995".

1990—Subsec. (b)(2)(A). Pub. L. 101–508, §11211(b)(5), substituted "shall be 3.1 cents per gallon less than the aggregate rate at which tax was imposed on such fuel by section 4041(a) or 4091, as the case may be" for "shall not exceed 12 cents".

Subsec. (e). Pub. L. 101–508, §11801(a)(46), struck out subsec. (e) which required payment of refunds of gasoline or fuel tax to ultimate purchasers where such gasoline or fuel was used in a qualified taxicab engaged exclusively in furnishing qualified taxicab services.

Subsec. (f). Pub. L. 101–508, §11213(b)(3), amended subsec. (f) generally, restructuring and restating pars. (1) to (3) as (1) to (4) and extending the termination date from Sept. 30, 1993, to Sept. 30, 1995.

Subsec. (g)(5). Pub. L. 101–508, §11211(d)(7), substituted "1995" for "1993".

Subsec. (i)(1). Pub. L. 101–508, §11801(c)(23)(A), struck out "(e)," before "(g),".

Subsec. (i)(2)(A). Pub. L. 101–508, §11801(c)(23)(B), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "If—

"(i) $1,000 or more is payable under subsections (a), (b), (d), (e), (g), (h), and (q), or

"(ii) $50 or more is payable under subsection (e),

to any person with respect to fuel used (or a qualified diesel powered highway vehicle purchased) during any of the first three quarters of his taxable year, a claim may be filed under this section by the purchaser with respect to fuel used (or a qualified diesel powered highway vehicle purchased) during such quarter."

Subsec. (i)(2)(B), (C). Pub. L. 101–508, §11801(c)(23)(C), redesignated subpar. (C) as (B) and struck out former subpar. (B) "Special rule" which read as follows: "If the requirements of subparagraph (A)(ii) are met by any person for any quarter but the requirements of subparagraph (A)(i) are not met by such person for such quarter, such person may file a claim under subparagraph (A) for such quarter only with respect to amounts referred to in subparagraph (A)(ii)."

Subsec. (l)(1). Pub. L. 101–508, §11211(b)(4)(B)(ii), inserted reference to par. (4).

Subsec. (l)(4). Pub. L. 101–508, §11211(b)(4)(B)(i), added par. (4).

Subsec. (o). Pub. L. 101–508, §11211(d)(8), substituted "1995" for "1993".

Subsec. (q). Pub. L. 101–508, §11211(b)(6)(E)(ii), substituted heading for one which read: "Gasoline used in noncommercial aviation during period rate reduction in effect" and amended text generally. Prior to amendment, text read as follows: "Except as provided in subsection (k), if—

"(1) any tax is imposed by section 4081 on any gasoline,

"(2) such gasoline is used during 1991 as a fuel in any aircraft in noncommercial aviation (as defined in section 4041(c)(4)), and

"(3) no tax is imposed by section 4041(c)(2) on taxable events occurring during 1991 by reason of section 4283,

the Secretary shall pay (without interest) to the ultimate purchaser of such gasoline an amount equal to the excess of the aggregate amount of tax paid under section 4081 on the gasoline so used over an amount equal to 6 cents multiplied by the number of gallons of gasoline so used."

1989—Subsec. (f)(1)(B). Pub. L. 101–239, §7812(a), made technical correction to directory language of Pub. L. 100–647, §2001(d)(7)(C), see 1988 Amendment note below.

Subsec. (i)(1). Pub. L. 101–239, §7822(b)(1), substituted "subsection (a), (b), (c), (d), (e), (g), (h), (l), or (q) by any person" for "subsection (a), (b), (c), (d), (e),, (g), (h), or (l) by any person".

Subsec. (i)(2)(A)(i). Pub. L. 101–239, §7822(b)(2), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: "$1,000 or more is payable under subsections (a), (b), (d), (e), (g), (h), and or".

Subsec. (i)(2)(B). Pub. L. 101–239, §7822(b)(3), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "If the requirements of clause (ii) of subparagraph (A) are met by any person for any quarter but the requirements of subparagraph (A)(i) are not met by such person for such quarter, such person may file a claim under subparagraph (A) for such quarter only with respect to amounts referred to in the clause of subparagraph (A) the requirements of which are met by such person for such quarter."

Subsec. (j)(2). Pub. L. 101–239, §7841(d)(20), substituted "section 7602(a)" for "section 7602".

Subsec. (p). Pub. L. 101–239, §7822(b)(4), redesignated subsec. (q), relating to payments for taxes imposed by section 4041(d), as (p).

Subsec. (q). Pub. L. 101–239, §7501(b)(3), substituted "1991" for "1990" in pars. (2) and (3).

Pub. L. 101–239, §7822(b)(4), redesignated subsec. (q), relating to payments for taxes imposed by section 4041(d), as (p).

1988—Subsec. (f)(1)(A). Pub. L. 100–647, §2001(d)(7)(B), substituted "regular tax rate" for "regular Highway Trust Fund financing rate" in two places and "incentive tax rate" for "incentive Highway Trust Fund Financing rate", notwithstanding directory language that "incentive tax rate" was to be substituted for "Highway Trust Fund financing rate".

Subsec. (f)(1)(B). Pub. L. 100–647, §2001(d)(7)(C), as amended by Pub. L. 101–239, §7812(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) defined "regular Highway Trust Fund financing rate" and "incentive Highway Trust Fund Financing rate".

Subsec. (i)(1). Pub. L. 100–647, §3002(c)(1), substituted "paragraphs (2), (3), and (4)" for "paragraph (2)".

Subsec. (i)(2)(A)(i). Pub. L. 100–647, §3002(c)(2), struck out "(l)," after "and".

Subsec. (i)(4). Pub. L. 100–647, §3002(a), added par. (4).

Subsec. (k)(2). Pub. L. 100–647, §3002(b), substituted "paragraph (2), (3), or (4)" for "paragraph (2) or (3)".

Pub. L. 100–647, §1017(c)(10), substituted "paragraph (2) or (3) of subsection (i)." for "subsection" and all that followed, thereby effecting the purpose of the amendment contained in section 1703(e)(2)(E) of Pub. L. 99–514. See 1986 Amendment note below.

Subsec. (l)(2). Pub. L. 100–647, §2001(d)(7)(D), inserted "under section 4041" after "exempt".

Subsec. (l)(3)(B). Pub. L. 100–647, §2004(s)(2), inserted "(except as supplies for vessels or aircraft within the meaning of section 4221(d)(3))" after "aircraft".

Subsec. (m)(3). Pub. L. 100–647, §1017(c)(3), substituted "6421(e)(2)" for '6421(d)(2)".

Subsecs. (p), (q). Pub. L. 100–647, §2004(s)(3), redesignated subsec. (p), relating to gasoline used in noncommercial aviation during period rate reduction in effect, as (q). Former subsec. (q), relating to cross references, redesignated (r).

Subsec. (r). Pub. L. 100–647, §2004(s)(3), redesignated subsec. (q), relating to cross references, as (r).

1987—Subsec. (b)(1). Pub. L. 100–203, §10502(c)(2), substituted "section 4041(a) or 4091" for first reference to "subsection (a) of section 4041", "section 4041(a) or 4091, as the case may be" for second reference to "subsection (a) of section 4041".

Subsec. (e)(1)(B). Pub. L. 100–203, §10502(c)(3), inserted "or 4091" after "section 4041".

Subsec. (f). Pub. L. 100–203, §10502(c)(4), amended subsec. (f) generally, substituting new heading for "Gasoline used to produce certain alcohol fuels", and revising and restating as pars. (1) to (3) provisions of former pars. (1) and (2).

Subsec. (g)(5). Pub. L. 100–17, §502(b)(8), substituted "1993" for "1988".

Subsec. (i)(1). Pub. L. 100–223, §405(b)(2)(A), which directed substitution of "(h), or (p)" for "or (h)", could not be executed because of prior amendment by Pub. L. 100–203. See below.

Pub. L. 100–203, §10502(c)(5)(A), substituted "(h), or (l)" for "or (h)".

Subsec. (i)(2)(A)(i). Pub. L. 100–223, §405(b)(2)(B), which directed substitution of "(h), and (p)" for "and (h)", could not be executed because of prior amendment by Pub. L. 100–203. See below.

Pub. L. 100–203, §10502(c)(5)(B), substituted "(h), and (l)" for "and (h)".

Subsecs. (l) to (n). Pub. L. 100–203, §10502(c)(1), added subsec. (l) and redesignated former subsecs. (l) to (n) as (m) to (o), respectively.

Subsec. (o). Pub. L. 100–203, §10502(c)(1), (6), redesignated subsec. (n) as (o) and amended it generally, substituting new heading for "Termination of subsections (a), (b), (c), (d), (g), and (h)" and amending text generally. Prior to amendment, text read as follows: "Except with respect to taxes imposed by section 4041(d) and section 4081 at the Leaking Underground Storage Tank Trust Fund financing rate, subsections (a), (b), (c), (d), (g), and (h) shall only apply with respect to fuels purchased before October 1, 1993." Former subsec. (o) redesignated (p).

Pub. L. 100–17, §502(b)(9), substituted "1993" for "1988" in subsec. (m), which was successively redesignated to subsec. (o) by Pub. L. 99–514 and Pub. L. 100–203.

Subsec. (p). Pub. L. 100–223, §405(b)(1), added subsec. (p). Former subsec. (p) redesignated (q).

Pub. L. 100–203, §10502(c)(1), redesignated subsec. (o) as (p). Former subsec. (p) redesignated (q).

Subsec. (q). Pub. L. 100–223, §405(b)(1), redesignated subsec. (p), relating to payments for taxes imposed by section 4041(d), as (q).

Pub. L. 100–203, §10502(c)(1), redesignated subsec. (p), relating to cross references, as (q).

1986—Subsec. (a). Pub. L. 99–514, §1703(e)(2)(A), substituted "subsection (k)" for "subsection (j)".

Subsec. (b)(1). Pub. L. 99–514, §1899A(55), substituted "otherwise provided in this subsection" for "provided in paragraph (2)".

Pub. L. 99–514, §1703(e)(2)(A), substituted "subsection (k)" for "subsection (j)".

Subsec. (b)(2)(A). Pub. L. 99–514, §1877(b)(2), substituted "subparagraphs (B) and (C)" for "subparagraph (B)".

Subsec. (b)(2)(B). Pub. L. 99–514, §1877(b)(1), added subpar. (B). Former subpar. (B) redesignated (C).

Subsec. (b)(2)(C). Pub. L. 99–514, §1877(b)(1), (3), redesignated subpar. (B) as (C) and substituted "Exception for certain intracity transportation" for "Exception" in heading. Former subpar. (C) redesignated (D).

Subsec. (b)(2)(D). Pub. L. 99–514, §1877(b)(1), redesignated former subpar. (C) as (D).

Subsecs. (c), (d), (e)(1). Pub. L. 99–514, §1703(e)(2)(A), substituted "subsection (k)" for "subsection (j)".

Subsec. (e)(3). Pub. L. 99–514, §422(b), substituted "September 30, 1988" for "September 30, 1985".

Subsec. (f)(1). Pub. L. 99–514, §1703(e)(2)(A), substituted "subsection (k)" for "subsection (j)".

Pub. L. 99–499, §521(c)(3)(C), which directed the substitution of "at the Highway Trust Fund financing rate" for "at the rate", was executed by making the substitution for the first such reference as the probable intent of Congress.

Subsec. (g)(1). Pub. L. 99–514, §1899A(56), substituted "amount" for "anount".

Pub. L. 99–514, §1703(e)(2)(A), substituted "subsection (k)" for "subsection (j)".

Subsec. (h). Pub. L. 99–514, §1703(e)(1)(B), added subsec. (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 99–514, §1703(e)(1)(A), redesignated subsec. (h) as (i). Former subsec. (i) redesignated (j).

Subsec. (i)(1). Pub. L. 99–514, §1703(d)(1)(B)(i), (e)(2)(B), struck out "(f)" after "subsection (a), (b), (c), (d), (e)," and substituted "(g), or (h)" for "or (g)".

Subsec. (i)(2)(A). Pub. L. 99–514, §1703(d)(1)(B)(ii), inserted "or" at end of cl. (i), struck out "or" at end of cl. (ii), and struck out cl. (iii) which read as follows: "$200 or more is payable under subsection (f),".

Subsec. (i)(2)(A)(i). Pub. L. 99–514, §1703(e)(2)(C), substituted "(g), and (h)" for "and (g)".

Subsec. (i)(2)(B). Pub. L. 99–514, §1703(d)(1)(B)(ii)(III), struck out "(or clauses)" after "referred to in the

clause". Notwithstanding directory language that the amendment be made to subpar. (A) of this par., the amendment was executed to subpar. (B), the only place in the section where "(or clauses)" appeared, to reflect the probable intent of Congress.

Pub. L. 99–514, §1703(d)(1)(B)(iii), struck out "or clause (iii)" after "If the requirements of clause (ii)". Notwithstanding directory language that the amendment be made to subsec. (f)(2)(B) of this section, the amendment was executed to subsec. (i)(2)(B), the only place in the section where "or clause (iii)" appeared, to reflect the probable intent of Congress.

Subsec. (i)(3). Pub. L. 99–514, §1703(d)(1), added par. (3).

Subsec. (j). Pub. L. 99–514, §1703(e)(1)(A), redesignated subsec. (i) as (j). Former subsec. (j) redesignated (k).

Subsec. (k). Pub. L. 99–514, §1703(e)(1)(A), redesignated subsec. (j) as (k). Former subsec. (k) redesignated (l).

Subsec. (k)(2). Pub. L. 99–514, §1703(e)(2)(E), which directed the substitution of "(i)(2)" for "subsection (h)(2)" in subsec. (i)(2) (as so redesignated), was executed to subsec. (k)(2), the only place in the section where "subsection (h)(2)" appeared, to reflect the probable intent of Congress. See 1988 Amendment note above.

Pub. L. 99–514, §1703(d)(1)(B)(iv), substituted "subsection (h)(2) or (h)(3)" for "subsection (h)(2)".

Subsec. (l). Pub. L. 99–514, §1703(e)(1)(A), redesignated subsec. (k) as (l). Former subsec. (l) redesignated (m).

Subsec. (m). Pub. L. 99–514, §1703(e)(1)(A), redesignated subsec. (l) as (m). Former subsec. (m) redesignated (n).

Pub. L. 99–499, §521(c)(3)(A), substituted "Except with respect to taxes imposed by section 4041(d) and section 4081 at the Leaking Underground Storage Tank Trust Fund financing rate, subsections" for "Subsection".

Subsec. (n). Pub. L. 99–514, §1703(e)(1)(A), (2)(C), (D), redesignated subsec. (m) as (n) and substituted "(g), and (h)" for "and (g)" in heading and text. Former subsec. (n) redesignated (o).

Pub. L. 99–499, §521(c)(3)(B)(i), added subsec. (n). Former subsec. (n) redesignated (o).

Subsec. (o). Pub. L. 99–514, §1703(e)(1)(A), as amended by Pub. L. 99–499, §521(c)(3)(B)(ii), redesignated subsec. (n), as added by Pub. L. 99–499, §521(c)(3)(B)(i), as (o). Former subsec. (o) redesignated (p).

Pub. L. 99–499, §521(c)(3)(B)(i), redesignated subsec. (n) as (o).

Subsec. (p). Pub. L. 99–514, §1703(e)(1)(A), as amended by Pub. L. 99–499, §521(c)(3)(B)(ii), redesignated subsec. (o) as (p).

1984—Subsecs. (a), (b)(1). Pub. L. 98–369, §911(d)(2)(B), substituted "subsection (j)" for "subsection (i)".

Subsec. (b)(2), (3). Pub. L. 98–369, §915(a), added par. (2) and redesignated former par. (2) as (3).

Subsecs. (c), (d), (e)(1). Pub. L. 98–369, §911(d)(2)(B), substituted "subsection (j)" for "subsection (i)".

Subsec. (e)(3). Pub. L. 98–369, §914, substituted "September 30, 1985" for "September 30, 1984".

Subsec. (f)(1). Pub. L. 98–369, §911(d)(2)(B), substituted "subsection (j)" for "subsection (i)".

Pub. L. 98–369, §912(d), substituted "52/3 cents" for "45/9 cents".

Pub. L. 98–369, §732(a)(3), substituted "45/9 cents" for "5 cents".

Subsec. (g). Pub. L. 98–369, §911(b), added subsec. (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 98–369, §911(b), redesignated former subsec. (g) as (h). Former subsec. (h) redesignated (i).

Subsec. (h)(1). Pub. L. 98–369, §911(d)(2)(C), substituted "(f), or (g)" for "or (f)", and inserted "(or a qualified diesel powered highway vehicle purchased)" after "fuel used" in two places.

Subsec. (h)(2)(A). Pub. L. 98–369, §911(d)(2)(D), substituted "(e), and (g)" for "and (e)", and inserted "(or a qualified diesel powered highway vehicle purchased)" after "fuel used" in two places.

Subsec. (i). Pub. L. 98–369, §911(b), redesignated former subsec. (h) as (i). Former subsec. (i) redesignated (j).

Subsec. (i)(3). Pub. L. 98–369, §474(r)(38), substituted "section 34" for "section 39".

Subsec. (j). Pub. L. 98–369, §911(b), redesignated former subsec. (i), relating to income tax credit in lieu of payment, as (j). Former subsec. (j), relating to special rules with respect to noncommercial aviation, redesignated (k).

Pub. L. 98–369, §734(c)(2), added subsec. (j) relating to special rules with respect to noncommercial aviation. Former subsec. (j), relating to regulations, redesignated (k).

Subsec. (j)(2). Pub. L. 98–369, §911(d)(2)(E), which directed the amendment of subsec. (k)(2) by substituting "(h)(2)" for '(g)(2)" was executed to subsec. (j)(2) to reflect the probable intent of Congress.

Subsec. (k). Pub. L. 98–369, §911(b), redesignated former subsec. (j), relating to special rules with respect

to noncommercial aviation, as (k). Former subsec. (k), relating to regulations, redesignated (l).

Pub. L. 98–369, §734(c)(2), redesignated former subsec. (j), relating to regulations, as (k). Former subsec. (k), relating to termination of subsections, redesignated (l).

Subsec. (l). Pub. L. 98–369, §911(b), redesignated former subsec. (k), relating to regulations, as (l). Former subsec. (l), relating to termination of subsections, redesignated (m).

Pub. L. 98–369, §734(c)(2), redesignated former subsec. (k), relating to termination of subsections, as (l). Former subsec. (l), relating to cross references, redesignated (m).

Subsec. (m). Pub. L. 98–369, §911(b), (d)(2)(F), redesignated former subsec. (l), relating to termination of subsections, as (m) and substituted "(d), and (g)" for "and (d)" in heading and text. Former subsec. (m), relating to cross references, redesignated (n).

Pub. L. 98–369, §734(c)(2), redesignated former subsec. (l), relating to cross references, as (m).

Subsec. (n). Pub. L. 98–369, §911(b), redesignated former subsec. (m), relating to cross references, as (n).

1983—Subsec. (a). Pub. L. 97–424, §511(g)(2)(B), substituted "section 4041(a) or (c)" for "section 4041(a), (b), or (c)".

Subsec. (b)(1). Pub. L. 97–424, §511(g)(2)(C), substituted "subsection (a) of section 4041" for "subsection (a) or (b) of section 4041" wherever appearing.

Subsec. (c). Pub. L. 97–424, §511(g)(2)(D), substituted "section 4041(a) or (c)" for "section 4041(a), (b), or (c)".

Subsec. (e)(1). Pub. L. 97–424, §511(e)(1), substituted "an amount determined at the rate of 4 cents a gallon" for "an amount equal to the aggregate amount of the tax imposed on such gasoline or fuel".

Subsec. (e)(2)(A)(ii). Pub. L. 97–424, §511(e)(3), struck out "is not prohibited under the laws, regulations, or procedures of such Federal, State, or local authority, and" after "(ii)".

Subsec. (e)(3). Pub. L. 97–424, §511(e)(2), substituted "September 30, 1984" for "December 31, 1982".

Subsec. (f)(1). Pub. L. 97–424, §511(d)(4), substituted "on which a tax" for "on which tax", inserted "at the rate of 9 cents a gallon" after "is imposed by section 4081", and substituted "the amount determined at the rate of 5 cents a gallon" for "the aggregate amount of the tax imposed on such gasoline".

Subsec. (f)(2). Pub. L. 97–424, §511(d)(4), substituted provision that no amount shall be payable under paragraph (1) with respect to any gasoline with respect to which an amount is payable under subsection (d) or (e) of this section or under section 6420 or 6421, for provision that no amount would be payable under subsection (d) or (e) of this section or under section 6420 or 6421 with respect to any gasoline with respect to which an amount was payable under paragraph (1).

Subsec. (k). Pub. L. 97–424, §516(b)(5), added subsec. (k). Former subsec. (k) redesignated (l).

Subsec. (k)(3). Pub. L. 97–473 purported to add par. (3). See par. below for subsec. (l)(3).

Subsec. (l). Pub. L. 97–424, §516(b)(5), redesignated former subsec. (k) as (l).

Subsec. (l)(3). Pub. L. 97–473 added par. (3). Notwithstanding the directory language that par. (3) be added to subsec. (k), it was added to subsec. (l) to reflect the probable intent of Congress and the intervening redesignation of subsec. (k) as (l) by Pub. L. 97–424.

1982—Subsec. (d). Pub. L. 97–248 inserted "or in certain helicopters" after "museums" in heading and "or is used in a helicopter for a purpose described in section 4041(l)," after "section 4041(h)(2)(C)," in text.

1980—Subsecs. (a), (b)(1), (c), (d), (e)(1). Pub. L. 96–223, §232(d)(4)(B), substituted "subsection (i)" for "subsection (h)".

Subsec. (e)(3). Pub. L. 96–541 extended subsec. (e) termination date to Dec. 31, 1982, from Dec. 31, 1980.

Subsecs. (f), (g). Pub. L. 96–223, §232(d)(1)(A), (2), (4)(C), added subsec. (f), redesignated former subsec. (f) as (g), and in subsec. (g) as so redesignated, inserted reference to subsec. (f) in par. (1), added par. (2)(A)(iii), and, in par. (2)(B), substituted "If the requirements of clause (ii) or clause (iii) of subparagraph (A) are met by any person for any quarter but the requirements of subparagraph (A)(i) are not met by such person for such quarter, such person may file a claim under subparagraph (A) for such quarter only with respect to amounts referred to in the clause (or clauses) of subparagraph (A) the requirements of which are met by such person for such quarter" for "If a claim may be filed by any person under subparagraph (A)(ii) but not under subparagraph (A)(i) for any quarter, such person may file a claim under subparagraph (A) for such quarter only with respect to amounts payable under subsection (e)". Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 96–223, §232(d)(1)(A), redesignated former subsec. (g) as (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 96–223, §232(d)(1)(A), (4)(D), redesignated former subsec. (h) as (i), and in par. (2) of subsec. (i) as so redesignated, substituted "subsection (g)(2)" for "subsection (f)(2)". Former subsec. (i) redesignated (j).

Subsecs. (j), (k). Pub. L. 96–223, §232(d)(1)(A), redesignated former subsecs. (i) and (j) as (j) and (k), respectively.

1978—Subsec. (a). Pub. L. 95–599, §505(c)(2), substituted "subsection (h)" for "subsection (g)".

Subsec. (b). Pub. L. 95–618, among other changes, provided for the refund or credit of the taxes paid on fuel pursuant to section 4041(a) or (b) but only to the extent such fuel is used in a bus engaged in furnishing (for compensation) passenger land transportation available to the general public or in school bus transportation operations.

Pub. L. 95–599, §505(c)(2), substituted "subsection (h)" for "subsection (g)". See Effective Date of 1978 Amendment note below.

Subsec. (c). Pub. L. 95–599, §505(c)(2), substituted "subsection (h)" for "subsection (g)".

Pub. L. 95–458 substituted provision requiring that the rules of section 6420(c)(4) be applied in determining the user and purchaser of fuel if the fuel was used on a farm by any person other than the owner, tenant, or operator for provision which deemed the owner, tenant, or operator of the farm as the user and purchaser if fuel was used on the farm by any other person.

Subsec. (d). Pub. L. 95–600 struck out "or his delegate" after "Secretary".

Pub. L. 95–599, §505(c)(2), substituted "subsection (h)" for "subsection (g)".

Subsec. (e). Pub. L. 95–599, §505(a)(2), added subsec. (e) and redesignated former subsec. (e) as (f).

Subsec. (f). Pub. L. 95–599, §505(a)(1), (b), (c)(3), redesignated former subsec. (e) as (f) and, in par. (1), substituted "(d), or (e)" for "or (d)" and amended par. (2) generally, designating existing provisions as subpars. (A)(i) and (c) and adding subpars. (A)(ii) and (B). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 95–599, §505(a)(1), redesignated former subsec. (f) as (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 95–599, §505(a)(1), (c)(4), redesignated former subsec. (g) as (h) and substituted "(f)(2)" for "(e)(2)". Former subsec. (h) redesignated (i).

Subsecs. (i), (j). Pub. L. 95–599, §505(a)(1), redesignated former subsecs. (h) and (i) as (i) and (j), respectively.

1976—Subsec. (a). Pub. L. 94–530, §1(c)(2), substituted "subsection (g)" for "subsection (f)".

Pub. L. 94–455, §1906(a)(31)(A), (b)(13)(A), struck out ", after June 30, 1970," after "sale of any fuel and" and "or his delegate" after "Secretary".

Subsec. (b)(1). Pub. L. 94–530, §1(c)(2), substituted "subsection (g)" for "subsection (f)".

Pub. L. 94–455, §1906(a)(31)(A), (b)(13)(A), struck out ", after June 30, 1970," before "used by the purchaser" and "or his delegate" after "Secretary".

Subsec. (c). Pub. L. 94–530, §1(c)(2), substituted "subsection (g)" for "subsection (f)".

Pub. L. 94–455, §1906(a)(31)(A), (b)(13)(A), struck out ", after June 30, 1970," before "used on a farm" and "or his delegate" after "Secretary".

Subsec. (d). Pub. L. 94–530, §1(b), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e)(1). Pub. L. 94–530, §1(b), (c)(3), redesignated former subsec. (d)(1) as (e)(1) and substituted "(a), (b), (c), or (d)" for "(a), (b), or (c)". Former subsec. (e) redesignated (f).

Subsec. (e)(2). Pub. L. 94–530, §1(b), (c)(4), redesignated former subsec. (d)(2) as (e)(2) and substituted "(a), (b), and (d)" for "(a) and (b)".

Subsec. (f). Pub. L. 94–530, §1(b), redesignated former subsec. (e) as (f). Former subsec. (f) redesignated (g) and amended.

Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (g). Pub. L. 94–530, §1(b), (c)(5), redesignated former subsec. (f) as (g) and substituted "subsection (e)(2)" for "subsection (d)(2)" in par. (2).

Subsecs. (h), (i). Pub. L. 94–530, §1(b), redesignated former subsecs. (g) and (h) as (h) and (i), respectively.

Subsec. (h). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by section 405(b)(2) of Pub. L. 112–240 applicable to fuel sold or used after Dec. 31, 2011, see section 405(c) of Pub. L. 112–240, set out as a note under section 40A of this title.

Amendment by section 412(b) of Pub. L. 112–240 applicable to fuel sold or used after Dec. 31, 2011, see section 412(c) of this title, set out as a note under section 6426 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 701(b)(2) of Pub. L. 111–312 applicable to fuel sold or used after Dec. 31, 2009, see section 701(d) of Pub. L. 111–312, set out as a note under section 40A of this title.

Amendment by section 704(a) of Pub. L. 111–312 applicable to fuel sold or used after Dec. 31, 2009, see section 704(d) of Pub. L. 111–312, set out as a note under section 6426 of this title.

Pub. L. 111–312, title VII, §708(c)(2), Dec. 17, 2010, 124 Stat. 3312, provided that: "The amendment made

by this subsection [amending this section] shall apply to sales and uses after December 31, 2010."

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by section 202(a) of Pub. L. 110–343 applicable to fuel produced, and sold or used, after Dec. 31, 2008, see section 202(g)(1) of Pub. L. 110–343, set out as a note under section 40A of this title.

Amendment by section 203(c)(2) of Pub. L. 110–343 applicable to claims for credit or payment made on or after May 15, 2008, see section 203(d) of Pub. L. 110–343, set out as a note under section 40 of this title.

Amendment by section 204(a)(3) of Pub. L. 110–343 applicable to fuel sold or used after Oct. 3, 2008, see section 204(d) of Pub. L. 110–343, set out as a note under section 6426 of this title.

EFFECTIVE AND TERMINATION DATES OF 2007 AMENDMENT

Amendment by section 5(a)(1) of Pub. L. 110–172 effective as if included in the provisions of the SAFETEA–LU, Pub. L. 109–59, to which such amendment relates, see section 5(b) of Pub. L. 110–172, set out as a note under section 6426 of this title.

Amendment by section 11(e)(1) of Pub. L. 110–172 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109–58, to which such amendment relates, see section 11(e)(3) of Pub. L. 110–172, set out as a note under section 41 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title IV, §420(c), Dec. 20, 2006, 120 Stat. 2970, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and sections 4082, 9502, and 9503 of this title] shall apply to kerosene sold after September 30, 2005.

"(2) SPECIAL RULE FOR PENDING CLAIMS.—In the case of kerosene sold for use in aviation (other than kerosene to which section 6427(l)(4)(C)(ii) of the Internal Revenue Code of 1986 (as added by subsection (a)) applies or kerosene to which section 6427(l)(5) of such Code (as redesignated by subsection (b)) applies) after September 30, 2005, and before the date of the enactment of this Act [Dec. 20, 2006], the ultimate purchaser shall be treated as having waived the right to payment under section 6427(l)(1) of such Code and as having assigned such right to the ultimate vendor if such ultimate vendor has met the requirements of subparagraph (A), (B), or (D) of section 6416(a)(1) of such Code."

EFFECTIVE DATE OF 2005 AMENDMENTS

Amendment by section 11113(b)(3)(C) of Pub. L. 109–59 applicable to any sale or use for any period after Sept. 30, 2006, see section 11113(d) of Pub. L. 109–59, set out as a note under section 4041 of this title.

Amendment by section 11151(a) of Pub. L. 109–59 effective as if included in the provisions of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 11151(f)(1) of Pub. L. 109–59, set out as a note under section 4081 of this title.

Amendment by section 11161(b)(2), (3)(B), (D)–(F) of Pub. L. 109–59 applicable to fuels or liquids removed, entered, or sold after Sept. 30, 2005, see section 11161(e) of Pub. L. 109–59, set out as a note under section 4041 of this title.

Pub. L. 109–59, title XI, §11162(c), Aug. 10, 2005, 119 Stat. 1973, provided that: "The amendments made by this section [amending this section] shall apply to sales after September 30, 2005."

Amendment by section 11163(c) of Pub. L. 109–59 applicable to sales after Dec. 31, 2005, see section 11163(e) of Pub. L. 109–59, set out as a note under section 4101 of this title.

Amendment by section 1343(b)(1), (3) of Pub. L. 109–58 effective Jan. 1, 2006, see section 1343(c) of Pub. L. 109–58, set out as a note under section 4081 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 241(a)(2)(D) of Pub. L. 108–357 effective Jan. 1, 2005, see section 241(c) of Pub. L. 108–357, set out as a note under section 4041 of this title.

Amendment by section 301(c)(9), (10) of Pub. L. 108–357 applicable to fuel sold or used after Dec. 31, 2004, see section 301(d)(1) of Pub. L. 108–357, set out as a note under section 40 of this title.

Amendment by section 851(d)(3) of Pub. L. 108–357 applicable to taxable years beginning after Oct. 22, 2004, see section 851(d)(4) of Pub. L. 108–357, set out as a note under section 4082 of this title.

Amendment by section 853(c), (d)(2)(J), (K) of Pub. L. 108–357 applicable to aviation-grade kerosene removed, entered, or sold after Dec. 31, 2004, see section 853(e) of Pub. L. 108–357, set out as a note under section 4041 of this title.

Amendment by section 857(b), (c) of Pub. L. 108–357 applicable to fuel sold after Dec. 31, 2004, see section 857(d) of Pub. L. 108–357, set out as a note under section 4082 of this title.

Amendment by section 870(b) of Pub. L. 108–357 applicable to fuel removed, sold, or used after Dec. 31,

2004, see section 870(c) of Pub. L. 108–357, set out as a note under section 4083 of this title.

EFFECTIVE DATE OF 1998 AMENDMENTS

Pub. L. 105–206, title VI, §6017(b), July 22, 1998, 112 Stat. 822, provided that: "The amendment made by subsection (a) [amending this section] shall take effect as if included in the amendments made by section 9009 of the Transportation Equity Act for the 21st Century [Pub. L. 105–178]."

Amendment by section 6023(16), (25), and (26) of Pub. L. 105–206 effective July 22, 1998, see section 6023(32) of Pub. L. 105–206, set out as a note under section 34 of this title.

Amendment by section 6016(b) of Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

Amendment by section 9009(a)–(b)(2) of Pub. L. 105–178 effective Oct. 1, 1998, see section 9009(c) of Pub. L. 105–178, set out as a note under section 6421 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 effective July 1, 1998, see section 1032(f)(1) of Pub. L. 105–34, as amended, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1606(a), (b)(2) of Pub. L. 104–188 applicable to vehicles purchased after Aug. 20, 1996, see section 1606(c) of Pub. L. 104–188, set out as a note under section 34 of this title.

Amendment by section 1702(b)(2)(B) of Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

Amendment by section 1703(k) of Pub. L. 104–188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103–66, §§13001–13444, to which such amendment relates, see section 1703(o) of Pub. L. 104–188, set out as a note under section 39 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13241(f)(8)–(10) of Pub. L. 103–66 effective Oct. 1, 1993, see section 13241(g) of Pub. L. 103–66, set out as a note under section 4041 of this title.

Amendment by section 13242(c), (d)(21), (25)–(31) of Pub. L. 103–66 effective Jan. 1, 1994, see section 13242(e) of Pub. L. 103–66, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11211(b)(4)(B), (5), (6)(E)(ii) of Pub. L. 101–508 effective Dec. 1, 1990, see section 11211(b)(7) of Pub. L. 101–508, set out as a note under section 4041 of this title.

Amendment by section 11213(b)(3) of Pub. L. 101–508 effective Dec. 1, 1990, see section 11213(b)(4) of Pub. L. 101–508, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7812(a) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

Amendment by section 7822(b)(1)–(4) of Pub. L. 101–239 effective as if included in the provision of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 7823 of Pub. L. 101–239, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1017(c)(3), (10) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title II, §2001(d)(7)(E), Nov. 10, 1988, 102 Stat. 3597, provided that: "The amendments made by this paragraph [amending this section] shall take effect as if included in the amendments made by section 10502 of the Revenue Act of 1987 [Pub. L. 100–203]."

Amendment by section 2004(s)(2), (3) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

Pub. L. 100–647, title III, §3002(d), Nov. 10, 1988, 102 Stat. 3616, provided that: "The amendments made by this section [amending this section] shall apply to fuel used after December 31, 1988."

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to sales after Mar. 31, 1988, see section 10502(e) of Pub. L. 100–203, set out as a note under section 40 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 1703(d), (e)(1), (2)(A)–(E) of Pub. L. 99–514 applicable to gasoline removed (as defined in section 4082 of this title as amended by section 1703 of Pub. L. 99–514) after Dec. 31, 1987, see section 1703(h) of Pub. L. 99–514, set out as a note under section 4081 of this title.

Amendment by section 1877(b) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Amendment by Pub. L. 99–499 effective Jan. 1, 1987, see section 521(e) of Pub. L. 99–499, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(38) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 732(a)(3) of Pub. L. 98–369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97–424, to which such amendment relates, see section 736 of Pub. L. 98–369, set out as a note under section 4051 of this title.

Amendment by section 734(c)(2) of Pub. L. 98–369 effective on first day of first calendar quarter beginning after July 18, 1984, see section 734(c)(3) of Pub. L. 98–369, set out as a note under section 4082 of this title.

Pub. L. 98–369, div. A, title IX, §911(e), July 18, 1984, 98 Stat. 1007, provided that: "The amendments made by this section [amending this section and sections 34, 4041, 7210, 7603 to 7605, 7609, 7610, and 9503 of this title] shall take effect on August 1, 1984."

Amendment by section 912(d) of Pub. L. 98–369 effective Jan. 1, 1985, see section 912(g) of Pub. L. 98–369, set out as a note under section 40 of this title.

Pub. L. 98–369, div. A, title IX, §915(b), July 18, 1984, 98 Stat. 1009, provided that: "The amendments made by this section [amending this section] shall take effect on August 1, 1984."

EFFECTIVE AND TERMINATION DATES OF 1983 AMENDMENTS

For effective date of amendment by Pub. L. 97–473, see section 204 of Pub. L. 97–473, set out as an Effective Date note under section 7871 of this title.

Amendment by section 511 of Pub. L. 97–424 effective Apr. 1, 1983, except that amendment by section 511(e)(2) of Pub. L. 97–424 is effective Jan. 1, 1983, and amendment by section 511(e)(3) of Pub. L. 97–424 is applicable with respect to fuel purchased after Dec. 31, 1982, and before Jan. 1, 1984, see section 511(h) of Pub. L. 97–424, set out as an Effective Date of 1983 Amendment note under section 4041 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 effective Sept. 1, 1982, see section 279(c) of Pub. L. 97–248, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–223, title II, §232(h)(2), Apr. 2, 1980, 94 Stat. 281, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(A) IN GENERAL.—The amendments made by subsection (d) [amending this section and sections 39 [now 34], 4081, 7210, 7603, 7604, 7605, 7609, and 7610 of this title] shall take effect on January 1, 1979.

"(B) TRANSITIONAL RULE.—Any mixture sold or used on or after January 1, 1979, and before the date of the enactment of this Act [Apr. 2, 1980] which is described in section 6427(f)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by subsection (d)) shall, for purposes of section 6427 of such Code, be treated as sold or used on the date of the enactment of this Act."

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95–618 effective on first day of first calendar month which begins more than 10 days after Nov. 9, 1978, see section 233(d) of Pub. L. 95–618, set out as a note under section 34 of this title.

Amendment by Pub. L. 95–600 effective Oct. 4, 1976, see section 703(r) of Pub. L. 95–600, set out as a note under section 46 of this title.

Pub. L. 95–599, title V, §505(d), Nov. 6, 1978, 92 Stat. 2760, provided that: "The amendments made by this section [amending this section and sections 39 [now 34], 7210, 7603, 7604, 7605, 7609 and 7610 of this title] shall take effect on January 1, 1979."

Amendment by Pub. L. 95–458 effective on first day of first calendar quarter beginning more than 90 days after Oct. 14, 1978, see section 3(d) of Pub. L. 95–458, set out as a note under section 6420 of this title.

EFFECTIVE DATE OF 1976 AMENDMENTS

Amendment by Pub. L. 94–530 effective Oct. 1, 1976, see section 1(d) of Pub. L. 94–530, set out as a note under section 4041 of this title.

Pub. L. 94–455, title XIX, §1906(a)(31)(B), Oct. 4, 1976, 90 Stat. 1829, provided that: "The amendments made by subparagraph (A) [amending this section] shall apply with respect to fuel used or resold after June 30, 1970."

EFFECTIVE DATE

Section applicable with respect to taxable years ending after June 30, 1970, see section 211(b) of Pub. L. 91–258, set out as an Effective Date of 1956 Amendments note under section 4041 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by section 11801(a)(46), (c)(23) of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

CONSTRUCTION OF AMENDMENT BY PUB. L. 109–59

Pub. L. 110–172, §11(a)(39)(B), Dec. 29, 2007, 121 Stat. 2488, provided that: "The Internal Revenue Code of 1986 shall be applied and administered as if the amendments made by paragraph (2) of section 11151(a) of the SAFETEA–LU [Pub. L. 109–59, amending this section] had never been enacted."

SPECIAL RULE FOR KEROSENE USED IN AVIATION ON A FARM FOR FARMING PURPOSES

Pub. L. 109–432, div. A, title IV, §420(d), Dec. 20, 2006, 120 Stat. 2970, provided that:

"(1) REFUNDS FOR PURCHASES AFTER DECEMBER 31, 2004, AND BEFORE OCTOBER 1, 2005.—The Secretary of the Treasury shall pay to the ultimate purchaser of any kerosene which is used in aviation on a farm for farming purposes and which was purchased after December 31, 2004, and before October 1, 2005, an amount equal to the aggregate amount of tax imposed on such fuel under section 4041 or 4081 of the Internal Revenue Code of 1986, as the case may be, reduced by any payment to the ultimate vendor under section 6427(l)(5)(C) of such Code (as in effect on the day before the date of the enactment of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: a Legacy for Users [Aug. 10, 2005]).

"(2) USE ON A FARM FOR FARMING PURPOSES.—For purposes of paragraph (1), kerosene shall be treated as used on a farm for farming purposes if such kerosene is used for farming purposes (within the meaning of section 6420(c)(3) of the Internal Revenue Code of 1986) in carrying on a trade or business on a farm situated in the United States. For purposes of the preceding sentence, rules similar to the rules of section 6420(c)(4) of such Code shall apply.

"(3) TIME FOR FILING CLAIMS.—No claim shall be allowed under paragraph (1) unless the ultimate purchaser files such claim before the date that is 3 months after the date of the enactment of this Act [Dec. 20, 2006].

"(4) NO DOUBLE BENEFIT.—No amount shall be paid under paragraph (1) or section 6427(l) of the Internal Revenue Code of 1986 with respect to any kerosene described in paragraph (1) to the extent that such amount is in excess of the tax imposed on such kerosene under section 4041 or 4081 of such Code, as the case may be.

"(5) APPLICABLE LAWS.—For purposes of this subsection, rules similar to the rules of section 6427(j) of the Internal Revenue Code of 1986 shall apply."

FORMAT FOR FILING

Pub. L. 108–357, title III, §301(e), Oct. 22, 2004, 118 Stat. 1463, provided that: "The Secretary of the Treasury shall describe the electronic format for filing claims described in section 6427(i)(3)(B) of the Internal Revenue Code of 1986 (as amended by subsection (c)(10)(C)) not later than December 31, 2004."

EXTENSION OF PERIOD FOR CLAIMING REFUNDS FOR ALCOHOL FUELS

Pub. L. 105–34, title XVI, §1601(g)(1), Aug. 5, 1997, 111 Stat. 1091, provided that: "Notwithstanding section 6427(i)(3)(C) of the Internal Revenue Code of 1986, a claim filed under section 6427(f) of such Code for any period after September 30, 1995, and before October 1, 1996, shall be treated as timely filed if filed before the 60th day after the date of the enactment of this Act [Aug. 5, 1997]."

TREATMENT OF AMENDMENT BY SECTION 10502(C)(4) OF PUB. L. 100–203

Pub. L. 100–647, title II, §2001(d)(7)(A), Nov. 10, 1988, 102 Stat. 3596, provided that: "The amendment made by section 10502(c)(4) of the Revenue Act of 1987 [Pub. L. 100–203, amending this section] shall be treated as if included in the amendments made by section 1703 of the Reform Act [Pub. L. 99–514, see Tables for classification] except that references to section 4091 of the Internal Revenue Code of 1986 shall not apply to sales before April 1, 1988."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

STUDY OF TAXICAB FUEL RATES

Pub. L. 97–424, title V, §511(e)(4), Jan. 6, 1983, 96 Stat. 2172, directed Secretary of the Treasury or his delegate to conduct a study of reduced rate of fuels taxes provided for taxicabs by section 6427(e) of the Internal Revenue Code, and transmit a report on study to Congress, together with such recommendations as he may deem advisable, not later than Jan. 1, 1984.

§6428. 2008 recovery rebates for individuals

(a) In general

In the case of an eligible individual, there shall be allowed as a credit against the tax imposed by subtitle A for the first taxable year beginning in 2008 an amount equal to the lesser of—

(1) net income tax liability, or

(2) $600 ($1,200 in the case of a joint return).

(b) Special rules

(1) In general

In the case of a taxpayer described in paragraph (2)—

(A) the amount determined under subsection (a) shall not be less than $300 ($600 in the case of a joint return), and

(B) the amount determined under subsection (a) (after the application of subparagraph (A)) shall be increased by the product of $300 multiplied by the number of qualifying children (within the meaning of section 24(c)) of the taxpayer.

(2) Taxpayer described

A taxpayer is described in this paragraph if the taxpayer—

(A) has qualifying income of at least $3,000, or

(B) has—

(i) net income tax liability which is greater than zero, and

(ii) gross income which is greater than the sum of the basic standard deduction plus the exemption amount (twice the exemption amount in the case of a joint return).

(c) Treatment of credit

The credit allowed by subsection (a) shall be treated as allowed by subpart C of part IV of subchapter A of chapter 1.

(d) Limitation based on adjusted gross income

The amount of the credit allowed by subsection (a) (determined without regard to this subsection and subsection (f)) shall be reduced (but not below zero) by 5 percent of so much of the taxpayer's

adjusted gross income as exceeds $75,000 ($150,000 in the case of a joint return).

(e) Definitions

For purposes of this section—

(1) Qualifying income

The term "qualifying income" means—

(A) earned income,

(B) social security benefits (within the meaning of section 86(d)), and

(C) any compensation or pension received under chapter 11, chapter 13, or chapter 15 of title 38, United States Code.

(2) Net income tax liability

The term "net income tax liability" means the excess of—

(A) the sum of the taxpayer's regular tax liability (within the meaning of section 26(b)) and the tax imposed by section 55 for the taxable year, over

(B) the credits allowed by part IV (other than section 24 and subpart C thereof) of subchapter A of chapter 1.

(3) Eligible individual

The term "eligible individual" means any individual other than—

(A) any nonresident alien individual,

(B) any individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins, and

(C) an estate or trust.

(4) Earned income

The term "earned income" has the meaning set forth in section 32(c)(2) except that such term shall not include net earnings from self-employment which are not taken into account in computing taxable income.

(5) Basic standard deduction; exemption amount

The terms "basic standard deduction" and "exemption amount" shall have the same respective meanings as when used in section 6012(a).

(f) Coordination with advance refunds of credit

(1) In general

The amount of credit which would (but for this paragraph) be allowable under this section shall be reduced (but not below zero) by the aggregate refunds and credits made or allowed to the taxpayer under subsection (g). Any failure to so reduce the credit shall be treated as arising out of a mathematical or clerical error and assessed according to section 6213(b)(1).

(2) Joint returns

In the case of a refund or credit made or allowed under subsection (g) with respect to a joint return, half of such refund or credit shall be treated as having been made or allowed to each individual filing such return.

(g) Advance refunds and credits

(1) In general

Each individual who was an eligible individual for such individual's first taxable year beginning in 2007 shall be treated as having made a payment against the tax imposed by chapter 1 for such first taxable year in an amount equal to the advance refund amount for such taxable year.

(2) Advance refund amount

For purposes of paragraph (1), the advance refund amount is the amount that would have been

allowed as a credit under this section for such first taxable year if this section (other than subsection (f) and this subsection) had applied to such taxable year.

(3) Timing of payments

The Secretary shall, subject to the provisions of this title, refund or credit any overpayment attributable to this section as rapidly as possible. No refund or credit shall be made or allowed under this subsection after December 31, 2008.

(4) No interest

No interest shall be allowed on any overpayment attributable to this section.

(h) Identification number requirement

(1) In general

No credit shall be allowed under subsection (a) to an eligible individual who does not include on the return of tax for the taxable year—

(A) such individual's valid identification number,

(B) in the case of a joint return, the valid identification number of such individual's spouse, and

(C) in the case of any qualifying child taken into account under subsection (b)(1)(B), the valid identification number of such qualifying child.

(2) Valid identification number

For purposes of paragraph (1), the term "valid identification number" means a social security number issued to an individual by the Social Security Administration. Such term shall not include a TIN issued by the Internal Revenue Service.

(3) Special rule for members of the Armed Forces

Paragraph (1) shall not apply to a joint return where at least 1 spouse was a member of the Armed Forces of the United States at any time during the taxable year.

(Added Pub. L. 107–16, title I, §101(b)(1), June 7, 2001, 115 Stat. 42; amended Pub. L. 107–147, title IV, §411(a), Mar. 9, 2002, 116 Stat. 44; Pub. L. 110–185, title I, §101(a), Feb. 13, 2008, 122 Stat. 613; Pub. L. 110–245, title I, §§101(a), 102(b), June 17, 2008, 122 Stat. 1625.)

PRIOR PROVISIONS

A prior section 6428, added Pub. L. 94–12, title I, §101(a), Mar. 29, 1975, 89 Stat. 27; amended Pub. L. 97–34, title I, §101(b)(1), Aug. 13, 1981, 95 Stat. 182; Pub. L. 97–448, title I, §101(a)(2), Jan. 12, 1983, 96 Stat. 2365, related to the 1981 rate reduction tax credit, prior to repeal by Pub. L. 101–508, title XI, §11801(a)(47), Nov. 5, 1990, 104 Stat. 1388–522.

AMENDMENTS

2008—Pub. L. 110–185 amended section generally. Prior to amendment, section allowed eligible individuals a tax credit for the 2001 tax year and provided for certain advance refunds for the 2000 tax year.

Subsec. (e)(4). Pub. L. 110–245, §102(b), substituted "except that" for "except that—", struck out "(B)" before "such term shall", and struck out subpar. (A) which read as follows: "subclause (II) of subparagraph (B)(vi) thereof shall be applied by substituting 'January 1, 2009' for 'January 1, 2008', and".

Subsec. (h)(3). Pub. L. 110–245, §101(a), added par. (3).

2002—Subsec. (b). Pub. L. 107–147, §411(a)(1), amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: "The credit allowed by subsection (a) shall not exceed the excess (if any) of—

"(1) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

"(2) the sum of the credits allowable under part IV of subchapter A of chapter 1 (other than the credits allowable under subpart C thereof, relating to refundable credits)."

Subsec. (d). Pub. L. 107–147, §411(a)(2)(A), amended heading and text of subsec. (d) generally. Prior to amendment, text read as follows:

"(1) COORDINATION WITH ADVANCE REFUNDS OF CREDIT.—

"(A) IN GENERAL.—The amount of credit which would (but for this paragraph) be allowable under

this section shall be reduced (but not below zero) by the aggregate refunds and credits made or allowed to the taxpayer under subsection (e). Any failure to so reduce the credit shall be treated as arising out of a mathematical or clerical error and assessed according to section 6213(b)(1).

"(B) JOINT RETURNS.—In the case of a refund or credit made or allowed under subsection (e) with respect to a joint return, half of such refund or credit shall be treated as having been made or allowed to each individual filing such return.

"(2) COORDINATION WITH ESTIMATED TAX.—The credit under this section shall be treated for purposes of section 6654(f) in the same manner as a credit under subpart A of part IV of subchapter A of chapter 1."

Subsec. (e)(2). Pub. L. 107–147, §411(a)(2)(B), reenacted heading without change and amended text of par. (2) generally. Prior to amendment, text read as follows: "For purposes of paragraph (1), the advance refund amount is the amount that would have been allowed as a credit under this section for such first taxable year if this section (other than subsection (d) and this subsection) had applied to such taxable year."

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–245, title I, §101(b), June 17, 2008, 122 Stat. 1625, provided that: "The amendments made by this section [amending this section] shall take effect as if included in the amendments made by section 101 of the Economic Stimulus Act of 2008 [Pub. L. 110–185]."

Amendment by section 102(b) of Pub. L. 110–245 applicable to taxable years ending after December 31, 2007, see section 102(d) of Pub. L. 110–245, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 2000, see section 101(d)(1) of Pub. L. 107–16, set out as an Effective and Termination Dates of 2001 Amendment note under section 1 of this title.

ECONOMIC RECOVERY PAYMENT TO RECIPIENTS OF SOCIAL SECURITY, SUPPLEMENTAL SECURITY INCOME, RAILROAD RETIREMENT BENEFITS, AND VETERANS DISABILITY COMPENSATION OR PENSION BENEFITS

Pub. L. 111–5, div. B, title II, §2201, Feb. 17, 2009, 123 Stat. 450, provided that:

"(a) AUTHORITY TO MAKE PAYMENTS.—

"(1) ELIGIBILITY.—

"(A) IN GENERAL.—Subject to paragraph (5)(B), the Secretary of the Treasury shall disburse a $250 payment to each individual who, for any month during the 3-month period ending with the month which ends prior to the month that includes the date of the enactment of this Act [Feb. 17, 2009], is entitled to a benefit payment described in clause (i), (ii), or (iii) of subparagraph (B) or is eligible for a SSI cash benefit described in subparagraph (C).

"(B) BENEFIT PAYMENT DESCRIBED.—For purposes of subparagraph (A):

"(i) TITLE II BENEFIT.—A benefit payment described in this clause is a monthly insurance benefit payable (without regard to sections 202(j)(1) and 223(b) of the Social Security Act (42 U.S.C. 402(j)(1), 423(b))[)] under—

"(I) section 202(a) of such Act (42 U.S.C. 402(a));

"(II) section 202(b) of such Act (42 U.S.C. 402(b));

"(III) section 202(c) of such Act (42 U.S.C. 402(c));

"(IV) section 202(d)(1)(B)(ii) of such Act (42 U.S.C. 402(d)(1)(B)(ii));

"(V) section 202(e) of such Act (42 U.S.C. 402(e));

"(VI) section 202(f) of such Act (42 U.S.C. 402(f));

"(VII) section 202(g) of such Act (42 U.S.C. 402(g));

"(VIII) section 202(h) of such Act (42 U.S.C. 402(h));

"(IX) section 223(a) of such Act (42 U.S.C. 423(a));

"(X) section 227 of such Act (42 U.S.C. 427); or

"(XI) section 228 of such Act (42 U.S.C. 428).

"(ii) RAILROAD RETIREMENT BENEFIT.—A benefit payment described in this clause is a monthly annuity or pension payment payable (without regard to section 5(a)(ii) of the Railroad Retirement Act of 1974 (45 U.S.C. 231d(a)(ii))) under—

"(I) section 2(a)(1) of such Act (45 U.S.C. 231a(a)(1));
"(II) section 2(c) of such Act (45 U.S.C. 231a(c));
"(III) section 2(d)(1)(i) of such Act (45 U.S.C. 231a(d)(1)(i));
"(IV) section 2(d)(1)(ii) of such Act (45 U.S.C. 231a(d)(1)(ii));
"(V) section 2(d)(1)(iii)(C) of such Act to an adult disabled child (45 U.S.C. 231a(d)(1)(iii)(C));
"(VI) section 2(d)(1)(iv) of such Act (45 U.S.C. 231a(d)(1)(iv));
"(VII) section 2(d)(1)(v) of such Act (45 U.S.C. 231a(d)(1)(v)); or
"(VIII) section 7(b)(2) of such Act (45 U.S.C. 231f(b)(2)) with respect to any of the benefit payments described in clause (i) of this subparagraph.

"(iii) VETERANS BENEFIT.—A benefit payment described in this clause is a compensation or pension payment payable under—
"(I) section 1110, 1117, 1121, 1131, 1141, or 1151 of title 38, United States Code;
"(II) section 1310, 1312, 1313, 1315, 1316, or 1318 of title 38, United States Code;
"(III) section 1513, 1521, 1533, 1536, 1537, 1541, 1542, or 1562 of title 38, United States Code; or
"(IV) section 1805, 1815, or 1821 of title 38, United States Code,

to a veteran, surviving spouse, child, or parent as described in paragraph (2), (3), (4)(A)(ii), or (5) of section 101, title 38, United States Code, who received that benefit during any month within the 3 month period ending with the month which ends prior to the month that includes the date of the enactment of this Act [Feb. 17, 2009].

"(C) SSI CASH BENEFIT DESCRIBED.—A SSI cash benefit described in this subparagraph is a cash benefit payable under section 1611 (other than under subsection (e)(1)(B) of such section) or 1619(a) of the Social Security Act (42 U.S.C. 1382, 1382h[(a)]).

"(2) REQUIREMENT.—A payment shall be made under paragraph (1) only to individuals who reside in 1 of the 50 States, the District of Columbia, Puerto Rico, Guam, the United States Virgin Islands, American Samoa, or the Northern Mariana Islands. For purposes of the preceding sentence, the determination of the individual's residence shall be based on the current address of record under a program specified in paragraph (1).

"(3) NO DOUBLE PAYMENTS.—An individual shall be paid only 1 payment under this section, regardless of whether the individual is entitled to, or eligible for, more than 1 benefit or cash payment described in paragraph (1).

"(4) LIMITATION.—A payment under this section shall not be made—

"(A) in the case of an individual entitled to a benefit specified in paragraph (1)(B)(i) or paragraph (1)(B)(ii)(VIII) if, for the most recent month of such individual's entitlement in the 3-month period described in paragraph (1), such individual's benefit under such paragraph was not payable by reason of subsection (x) or (y) of section 202 [of] the Social Security Act (42 U.S.C. 402) or section 1129A of such Act (42 U.S.C. 1320a–8a);

"(B) in the case of an individual entitled to a benefit specified in paragraph (1)(B)(iii) if, for the most recent month of such individual's entitlement in the 3 month period described in paragraph (1), such individual's benefit under such paragraph was not payable, or was reduced, by reason of section 1505, 5313, or 5313B of title 38, United States Code;

"(C) in the case of an individual entitled to a benefit specified in paragraph (1)(C) if, for such most recent month, such individual's benefit under such paragraph was not payable by reason of subsection (e)(1)(A) or (e)(4) of section 1611 (42 U.S.C. 1382) or section 1129A of such Act (42 U.S.C. 1320a–8a); or

"(D) in the case of any individual whose date of death occurs before the date on which the individual is certified under subsection (b) to receive a payment under this section.

"(5) TIMING AND MANNER OF PAYMENTS.—

"(A) IN GENERAL.—The Secretary of the Treasury shall commence disbursing payments under this section at the earliest practicable date but in no event later than 120 days after the date of enactment of this Act [Feb. 17, 2009]. The Secretary of the Treasury may disburse any payment electronically to an individual in such manner as if such payment was a benefit payment or cash benefit to such individual under the applicable program described in subparagraph (B) or (C) of paragraph (1).

"(B) DEADLINE.—No payments shall be disbursed under this section after December 31, 2010, regardless of any determinations of entitlement to, or eligibility for, such payments made after such date.

"(b) IDENTIFICATION OF RECIPIENTS.—The Commissioner of Social Security, the Railroad Retirement Board, and the Secretary of Veterans Affairs shall certify the individuals entitled to receive payments under this section and provide the Secretary of the Treasury with the information needed to disburse such payments. A certification of an individual shall be unaffected by any subsequent determination or

redetermination of the individual's entitlement to, or eligibility for, a benefit specified in subparagraph (B) or (C) of subsection (a)(1).

"(c) TREATMENT OF PAYMENTS.—

"(1) PAYMENT TO BE DISREGARDED FOR PURPOSES OF ALL FEDERAL AND FEDERALLY ASSISTED PROGRAMS.—A payment under subsection (a) shall not be regarded as income and shall not be regarded as a resource for the month of receipt and the following 9 months, for purposes of determining the eligibility of the recipient (or the recipient's spouse or family) for benefits or assistance, or the amount or extent of benefits or assistance, under any Federal program or under any State or local program financed in whole or in part with Federal funds.

"(2) PAYMENT NOT CONSIDERED INCOME FOR PURPOSES OF TAXATION.—A payment under subsection (a) shall not be considered as gross income for purposes of the Internal Revenue Code of 1986.

"(3) PAYMENTS PROTECTED FROM ASSIGNMENT.—The provisions of sections 207 and 1631(d)(1) of the Social Security Act (42 U.S.C. 407, 1383(d)(1)), section 14(a) of the Railroad Retirement Act of 1974 (45 U.S.C. 231m(a)), and section 5301 of title 38, United States Code, shall apply to any payment made under subsection (a) as if such payment was a benefit payment or cash benefit to such individual under the applicable program described in subparagraph (B) or (C) of subsection (a)(1).

"(4) PAYMENTS SUBJECT TO OFFSET.—Notwithstanding paragraph (3), for purposes of section 3716 of title 31, United States Code, any payment made under this section shall not be considered a benefit payment or cash benefit made under the applicable program described in subparagraph (B) or (C) of subsection (a)(1) and all amounts paid shall be subject to offset to collect delinquent debts.

"(d) PAYMENT TO REPRESENTATIVE PAYEES AND FIDUCIARIES.—

"(1) IN GENERAL.—In any case in which an individual who is entitled to a payment under subsection (a) and whose benefit payment or cash benefit described in paragraph (1) of that subsection is paid to a representative payee or fiduciary, the payment under subsection (a) shall be made to the individual's representative payee or fiduciary and the entire payment shall be used only for the benefit of the individual who is entitled to the payment.

"(2) APPLICABILITY.—

"(A) PAYMENT ON THE BASIS OF A TITLE II OR SSI BENEFIT.—Section 1129(a)(3) of the Social Security Act (42 U.S.C. 1320a–8(a)(3)) shall apply to any payment made on the basis of an entitlement to a benefit specified in paragraph (1)(B)(i) or (1)(C) of subsection (a) in the same manner as such section applies to a payment under title II or XVI of such Act [42 U.S.C. 401 et seq., 1381 et seq.].

"(B) PAYMENT ON THE BASIS OF A RAILROAD RETIREMENT BENEFIT.—Section 13 of the Railroad Retirement Act [of 1974] (45 U.S.C. 231l) shall apply to any payment made on the basis of an entitlement to a benefit specified in paragraph (1)(B)(ii) of subsection (a) in the same manner as such section applies to a payment under such Act [45 U.S.C. 231 et seq.].

"(C) PAYMENT ON THE BASIS OF A VETERANS BENEFIT.—Sections 5502, 6106, and 6108 of title 38, United States Code, shall apply to any payment made on the basis of an entitlement to a benefit specified in paragraph (1)(B)(iii) of subsection (a) in the same manner as those sections apply to a payment under that title.

"(e) APPROPRIATION.—Out of any sums in the Treasury of the United States not otherwise appropriated, the following sums are appropriated for the period of fiscal years 2009 through 2011, to remain available until expended, to carry out this section:

"(1) For the Secretary of the Treasury, $131,000,000 for administrative costs incurred in carrying out this section, section 2202 [set out below], section 36A of the Internal Revenue Code of 1986 (as added by this Act), and other provisions of this Act [see Tables for classification] or the amendments made by this Act relating to the Internal Revenue Code of 1986.

"(2) For the Commissioner of Social Security—

"(A) such sums as may be necessary for payments to individuals certified by the Commissioner of Social Security as entitled to receive a payment under this section; and

"(B) $90,000,000 for the Social Security Administration's Limitation on Administrative Expenses for costs incurred in carrying out this section.

"(3) For the Railroad Retirement Board—

"(A) such sums as may be necessary for payments to individuals certified by the Railroad Retirement Board as entitled to receive a payment under this section; and

"(B) $1,400,000 to the Railroad Retirement Board's Limitation on Administration for administrative costs incurred in carrying out this section.

"(4)(A) For the Secretary of Veterans Affairs—

"(i) such sums as may be necessary for the Compensation and Pensions account, for payments to individuals certified by the Secretary of Veterans Affairs as entitled to receive a payment under this section; and

"(ii) $100,000 for the Information Systems Technology account and $7,100,000 for the General Operating Expenses account for administrative costs incurred in carrying out this section.

"(B) The Department of Veterans Affairs Compensation and Pensions account shall hereinafter be available for payments authorized under subsection (a)(1)(A) to individuals entitled to a benefit payment described in subsection (a)(1)(B)(iii)."

SPECIAL CREDIT FOR CERTAIN GOVERNMENT RETIREES

Pub. L. 111–5, div. B, title II, §2202, Feb. 17, 2009, 123 Stat. 454, provided that:

"(a) IN GENERAL.—In the case of an eligible individual, there shall be allowed as a credit against the tax imposed by subtitle A of the Internal Revenue Code of 1986 for the first taxable year beginning in 2009 an amount equal [to] $250 ($500 in the case of a joint return where both spouses are eligible individuals).

"(b) ELIGIBLE INDIVIDUAL.—For purposes of this section—

"(1) IN GENERAL.—The term 'eligible individual' means any individual—

"(A) who receives during the first taxable year beginning in 2009 any amount as a pension or annuity for service performed in the employ of the United States or any State, or any instrumentality thereof, which is not considered employment for purposes of chapter 21 of the Internal Revenue Code of 1986, and

"(B) who does not receive a payment under section 2201 [set out above] during such taxable year.

"(2) IDENTIFICATION NUMBER REQUIREMENT.—Such term shall not include any individual who does not include on the return of tax for the taxable year—

"(A) such individual's social security account number, and

"(B) in the case of a joint return, the social security account number of one of the taxpayers on such return.

For purposes of the preceding sentence, the social security account number shall not include a TIN (as defined in section 7701(a)(41) of the Internal Revenue Code of 1986) issued by the Internal Revenue Service. Any omission of a correct social security account number required under this subparagraph [probably should be "this paragraph"] shall be treated as a mathematical or clerical error for purposes of applying section 6213(g)(2) of such Code to such omission.

"(c) TREATMENT OF CREDIT.—

"(1) REFUNDABLE CREDIT.—

"(A) IN GENERAL.—The credit allowed by subsection (a) shall be treated as allowed by subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986.

"(B) APPROPRIATIONS.—For purposes of section 1324(b)(2) of title 31, United States Code, the credit allowed by subsection (a) shall be treated in the same manner [as] a refund from the credit allowed under section 36A of the Internal Revenue Code of 1986 (as added by this Act).

"(2) DEFICIENCY RULES.—For purposes of section 6211(b)(4)(A) of the Internal Revenue Code of 1986, the credit allowable by subsection (a) shall be treated in the same manner as the credit allowable under section 36A of the Internal Revenue Code of 1986 (as added by this Act).

"(d) REFUNDS DISREGARDED IN THE ADMINISTRATION OF FEDERAL PROGRAMS AND FEDERALLY ASSISTED PROGRAMS.—Any credit or refund allowed or made to any individual by reason of this section shall not be taken into account as income and shall not be taken into account as resources for the month of receipt and the following 2 months, for purposes of determining the eligibility of such individual or any other individual for benefits or assistance, or the amount or extent of benefits or assistance, under any Federal program or under any State or local program financed in whole or in part with Federal funds."

TREATMENT OF POSSESSIONS

Pub. L. 110–185, title I, §101(c), Feb. 13, 2008, 122 Stat. 616, provided that:

"(1) PAYMENTS TO POSSESSIONS.—

"(A) MIRROR CODE POSSESSION.—The Secretary of the Treasury shall make a payment to each possession of the United States with a mirror code tax system in an amount equal to the loss to that possession by reason of the amendments made by this section. Such amount shall be determined by the Secretary of the Treasury based on information provided by the government of the respective possession.

"(B) OTHER POSSESSIONS.—The Secretary of the Treasury shall make a payment to each possession of the United States which does not have a mirror code tax system in an amount estimated by the Secretary of the Treasury as being equal to the aggregate benefits that would have been provided to

residents of such possession by reason of the amendments made by this section if a mirror code tax system had been in effect in such possession. The preceding sentence shall not apply with respect to any possession of the United States unless such possession has a plan, which has been approved by the Secretary of the Treasury, under which such possession will promptly distribute such payment to the residents of such possession.

"(2) COORDINATION WITH CREDIT ALLOWED AGAINST UNITED STATES INCOME TAXES .—No credit shall be allowed against United States income taxes under section 6428 of the Internal Revenue Code of 1986 (as amended by this section) to any person—

"(A) to whom a credit is allowed against taxes imposed by the possession by reason of the amendments made by this section, or

"(B) who is eligible for a payment under a plan described in paragraph (1)(B).

"(3) DEFINITIONS AND SPECIAL RULES.—

"(A) POSSESSION OF THE UNITED STATES.—For purposes of this subsection, the term 'possession of the United States' includes the Commonwealth of Puerto Rico and the Commonwealth of the Northern Mariana Islands.

"(B) MIRROR CODE TAX SYSTEM.—For purposes of this subsection, the term 'mirror code tax system' means, with respect to any possession of the United States, the income tax system of such possession if the income tax liability of the residents of such possession under such system is determined by reference to the income tax laws of the United States as if such possession were the United States.

"(C) TREATMENT OF PAYMENTS.—For purposes of section 1324(b)(2) of title 31, United States Code, the payments under this subsection shall be treated in the same manner as a refund due from the credit allowed under section 6428 of the Internal Revenue Code of 1986 (as amended by this section)."

REFUNDS DISREGARDED IN THE ADMINISTRATION OF FEDERAL PROGRAMS AND FEDERALLY ASSISTED PROGRAMS

Pub. L. 110–185, title I, §101(d), Feb. 13, 2008, 122 Stat. 616, provided that: "Any credit or refund allowed or made to any individual by reason of section 6428 of the Internal Revenue Code of 1986 (as amended by this section) or by reason of subsection (c) of this section [set out as a note above] shall not be taken into account as income and shall not be taken into account as resources for the month of receipt and the following 2 months, for purposes of determining the eligibility of such individual or any other individual for benefits or assistance, or the amount or extent of benefits or assistance, under any Federal program or under any State or local program financed in whole or in part with Federal funds."

§6429. Advance payment of portion of increased child credit for 2003

(a) In general

Each taxpayer who was allowed a credit under section 24 on the return for the taxpayer's first taxable year beginning in 2002 shall be treated as having made a payment against the tax imposed by chapter 1 for such taxable year in an amount equal to the child tax credit refund amount (if any) for such taxable year.

(b) Child tax credit refund amount

For purposes of this section, the child tax credit refund amount is the amount by which the aggregate credits allowed under part IV of subchapter A of chapter 1 for such first taxable year would have been increased if—

(1) the per child amount under section 24(a)(2) for such year were $1,000,

(2) only qualifying children (as defined in section 24(c)) of the taxpayer for such year who had not attained age 17 as of December 31, 2003, were taken into account, and

(3) section 24(d)(1)(B)(ii) did not apply.

(c) Timing of payments

In the case of any overpayment attributable to this section, the Secretary shall, subject to the provisions of this title, refund or credit such overpayment as rapidly as possible and, to the extent practicable, before October 1, 2003. No refund or credit shall be made or allowed under this section after December 31, 2003.

(d) Coordination with child tax credit

(1) In general

The amount of credit which would (but for this subsection and section 26) be allowed under section 24 for the taxpayer's first taxable year beginning in 2003 shall be reduced (but not below zero) by the payments made to the taxpayer under this section. Any failure to so reduce the credit shall be treated as arising out of a mathematical or clerical error and assessed according to section 6213(b)(1).

(2) Joint returns

In the case of a payment under this section with respect to a joint return, half of such payment shall be treated as having been made to each individual filing such return.

(e) No interest

No interest shall be allowed on any overpayment attributable to this section.

(Added Pub. L. 108–27, title I, §101(b)(1), May 28, 2003, 117 Stat. 753.)

PRIOR PROVISIONS

A prior section 6429, added Pub. L. 96–499, title XI, §1131(a)(1), Dec. 5, 1980, 94 Stat. 2691; amended Pub. L. 97–34, title VI, §601(a)(1)–(5), Aug. 13, 1981, 95 Stat. 335, 336; Pub. L. 97–448, title I, §106(a)(1), (3), Jan. 12, 1983, 96 Stat. 2387, 2388, related to credit and refund of chapter 45 windfall profit taxes on domestic crude oil paid by royalty owners, prior to repeal by Pub. L. 100–418, title I, §1941(b)(1), (c), Aug. 23, 1988, 102 Stat. 1323, 1324, applicable to crude oil removed from the premises on or after Aug. 23, 1988.

TERMINATION DATE

Amendments by title I of Pub. L. 108–27, enacting this section, subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, §901, to the same extent and in the same manner as the provisions of such Act to which such amendments relate, see section 107 of Pub. L. 108–27, set out as an Effective and Termination Dates of 2003 Amendment note under section 1 of this title. Title IX of Pub. L. 107–16 was repealed by Pub. L. 112–240, title I, §101(a)(1), Jan. 2, 2013, 126 Stat. 2315.

§6430. Treatment of tax imposed at Leaking Underground Storage Tank Trust Fund financing rate

No refunds, credits, or payments shall be made under this subchapter for any tax imposed at the Leaking Underground Storage Tank Trust Fund financing rate, except in the case of fuels—

(1) which are exempt from tax under section 4081(a) by reason of section 4082(f)(2),

(2) which are exempt from tax under section 4041(d) by reason of the last sentence of paragraph (5) thereof, or

(3) with respect to which the rate increase under section 4081(a)(2)(B) is zero by reason of section 4082(e)(2).

(Added Pub. L. 109–58, title XIII, §1362(b)(3)(A), Aug. 8, 2005, 119 Stat. 1059; amended Pub. L. 110–172, §6(d)(2)(D), Dec. 29, 2007, 121 Stat. 2481.)

PRIOR PROVISIONS

A prior section 6430, added Pub. L. 97–448, title I, §106(a)(4)(A), Jan. 12, 1983, 96 Stat. 2388, related to credit or refund of windfall profit taxes to certain trust beneficiaries, prior to repeal by Pub. L. 100–418, title I, §1941(b)(1), (c), Aug. 23, 1988, 102 Stat. 1323, 1324, applicable to crude oil removed from the premises on or after Aug. 23, 1988.

AMENDMENTS

2007—Pub. L. 110–172 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows: "No refunds, credits, or payments shall be made under this subchapter for any tax imposed at the Leaking Underground Storage Tank Trust Fund financing rate, except in the case of fuels destined for export."

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–172 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109–58, to which such amendment relates, see section 6(e) of Pub. L. 110–172, set out as a note under section 30C of this title.

EFFECTIVE DATE

Section effective Oct. 1, 2005, and applicable to fuel entered, removed, or sold after Sept. 30, 2005, see section 1362(d) of Pub. L. 109–58, set out as an Effective Date of 2005 Amendment note under section 4041 of this title.

REFUND AUTHORIZED FOR CERTAIN TAXES

Pub. L. 110–172, §6(d)(1)(C), Dec. 29, 2007, 121 Stat. 2480, provided that: "Notwithstanding section 6430 of the Internal Revenue Code of 1986, a refund, credit, or payment may be made under subchapter B of chapter 65 of such Code for taxes imposed with respect to any liquid after September 30, 2005, and before the date of the enactment of this Act [Dec. 29, 2007] under section 4041(d)(1) or 4042 of such Code at the Leaking Underground Storage Tank Trust Fund financing rate to the extent that tax was imposed with respect to such liquid under section 4081 at the Leaking Underground Storage Tank Trust Fund financing rate."

§6431. Credit for qualified bonds allowed to issuer

(a) In general

In the case of a qualified bond issued before January 1, 2011, the issuer of such bond shall be allowed a credit with respect to each interest payment under such bond which shall be payable by the Secretary as provided in subsection (b).

(b) Payment of credit

The Secretary shall pay (contemporaneously with each interest payment date under such bond) to the issuer of such bond (or to any person who makes such interest payments on behalf of the issuer) 35 percent of the interest payable under such bond on such date.

(c) Application of arbitrage rules

For purposes of section 148, the yield on a qualified bond shall be reduced by the credit allowed under this section.

(d) Interest payment date

For purposes of this subsection, the term "interest payment date" means each date on which interest is payable by the issuer under the terms of the bond.

(e) Qualified bond

For purposes of this subsection, the term "qualified bond" has the meaning given such term in section 54AA(g).

(f) Application of section to certain qualified tax credit bonds

(1) In general

In the case of any specified tax credit bond—

(A) such bond shall be treated as a qualified bond for purposes of this section,

(B) subsection (a) shall be applied without regard to the requirement that the qualified bond be issued before January 1, 2011,

(C) the amount of the payment determined under subsection (b) with respect to any interest payment due under such bond shall be equal to the lesser of—

(i) the amount of interest payable under such bond on such date, or

(ii) the amount of interest which would have been payable under such bond on such date if such interest were determined at the applicable credit rate determined under section 54A(b)(3),

(D) interest on any such bond shall be includible in gross income for purposes of this title,

(E) no credit shall be allowed under section 54A with respect to such bond,

(F) any payment made under subsection (b) shall not be includible as income for purposes of this title, and

(G) the deduction otherwise allowed under this title to the issuer of such bond with respect to interest paid under such bond shall be reduced by the amount of the payment made under this section with respect to such interest.

(2) Special rule for new clean renewable energy bonds and qualified energy conservation bonds

In the case of any specified tax credit bond described in clause (i) or (ii) of paragraph (3)(A), the amount determined under paragraph (1)(C)(ii) shall be 70 percent of the amount so determined without regard to this paragraph and sections 54C(b) and 54D(b).

(3) Specified tax credit bond

For purposes of this subsection, the term "specified tax credit bond" means any qualified tax credit bond (as defined in section 54A(d)) if—

(A) such bond is—

(i) a new clean renewable energy bond (as defined in section 54C),

(ii) a qualified energy conservation bond (as defined in section 54D),

(iii) a qualified zone academy bond (as defined in section 54E) determined without regard to any allocation relating to the national zone academy bond limitation for 2011 or any carryforward of such allocation, or

(iv) a qualified school construction bond (as defined in section 54F), and

(B) the issuer of such bond makes an irrevocable election to have this subsection apply.

(Added Pub. L. 111–5, div. B, title I, §1531(b), Feb. 17, 2009, 123 Stat. 359; amended Pub. L. 111–147, title III, §301(a), Mar. 18, 2010, 124 Stat. 77; Pub. L. 111–312, title VII, §758(b), Dec. 17, 2010, 124 Stat. 3323.)

AMENDMENTS

2010—Subsec. (f). Pub. L. 111–147 added subsec. (f).

Subsec. (f)(3)(A)(iii). Pub. L. 111–312 inserted "determined without regard to any allocation relating to the national zone academy bond limitation for 2011 or any carryforward of such allocation" after "54E)".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–312 applicable to obligations issued after Dec. 31, 2010, see section 758(c) of Pub. L. 111–312, set out as a note under section 54E of this title.

Pub. L. 111–147, title III, §301(c)(1), Mar. 18, 2010, 124 Stat. 78, provided that: "The amendment made by subsection (a) [amending this section] shall apply to bonds issued after the date of the enactment of this Act [Mar. 18, 2010]."

EFFECTIVE DATE

Section applicable to obligations issued after Feb. 17, 2009, see section 1531(e) of Pub. L. 111–5, set out as an Effective Date of 2009 Amendment note under section 54 of this title.

§6432. COBRA premium assistance

(a) In general

The person to whom premiums are payable under COBRA continuation coverage shall be reimbursed as provided in subsection (c) for the amount of premiums not paid by assistance eligible individuals by reason of section 3001(a) of title III of division B of the American Recovery and Reinvestment Act of 2009.

(b) Person entitled to reimbursement

For purposes of subsection (a), except as otherwise provided by the Secretary, the person to whom premiums are payable under COBRA continuation coverage shall be treated as being—

(1) in the case of any group health plan which is a multiemployer plan (as defined in section 3(37) of the Employee Retirement Income Security Act of 1974), the plan,

(2) in the case of any group health plan not described in paragraph (1)—

(A) which is subject to the COBRA continuation provisions contained in—

(i) the Internal Revenue Code of 1986,

(ii) the Employee Retirement Income Security Act of 1974,

(iii) the Public Health Service Act, or

(iv) title 5, United States Code, or

(B) under which some or all of the coverage is not provided by insurance,

the employer maintaining the plan, and

(3) in the case of any group health plan not described in paragraph (1) or (2), the insurer providing the coverage under the group health plan.

(c) Method of reimbursement

Except as otherwise provided by the Secretary—

(1) Treatment as payment of payroll taxes

Each person entitled to reimbursement under subsection (a) (and filing a claim for such reimbursement at such time and in such manner as the Secretary may require) shall be treated for purposes of this title and section 1324(b)(2) of title 31, United States Code, as having paid to the Secretary, on the date that the assistance eligible individual's premium payment is received, payroll taxes in an amount equal to the portion of such reimbursement which relates to such premium. To the extent that the amount treated as paid under the preceding sentence exceeds the amount of such person's liability for such taxes, the Secretary shall credit or refund such excess in the same manner as if it were an overpayment of such taxes.

(2) Overstatements

Any overstatement of the reimbursement to which a person is entitled under this section (and any amount paid by the Secretary as a result of such overstatement) shall be treated as an underpayment of payroll taxes by such person and may be assessed and collected by the Secretary in the same manner as payroll taxes.

(3) Reimbursement contingent on payment of remaining premium

No reimbursement may be made under this section to a person with respect to any assistance eligible individual until after the reduced premium required under section 3001(a)(1)(A) of title III of division B of the American Recovery and Reinvestment Act of 2009 with respect to such individual has been received.

(d) Definitions

For purposes of this section—

(1) Payroll taxes

The term "payroll taxes" means—

(A) amounts required to be deducted and withheld for the payroll period under section 3402 (relating to wage withholding),

(B) amounts required to be deducted for the payroll period under section 3102 (relating to FICA employee taxes), and

(C) amounts of the taxes imposed for the payroll period under section 3111 (relating to FICA employer taxes).

(2) Person

The term "person" includes any governmental entity.

(e) Employer determination of qualifying event as involuntary termination

For purposes of this section, in any case in which—

(1) based on a reasonable interpretation of section 3001(a)(3)(C) of division B of the American Recovery and Reinvestment Act of 2009 and administrative guidance thereunder, an employer determines that the qualifying event with respect to COBRA continuation coverage for an individual was involuntary termination of a covered employee's employment, and

(2) the employer maintains supporting documentation of the determination, including an attestation by the employer of involuntary termination with respect to the covered employee,

the qualifying event for the individual shall be deemed to be involuntary termination of the covered employee's employment.

(f) Reporting

Each person entitled to reimbursement under subsection (a) for any period shall submit such reports (at such time and in such manner) as the Secretary may require, including—

(1) an attestation of involuntary termination of employment for each covered employee on the basis of whose termination entitlement to reimbursement is claimed under subsection (a),

(2) a report of the amount of payroll taxes offset under subsection (a) for the reporting period and the estimated offsets of such taxes for the subsequent reporting period in connection with reimbursements under subsection (a), and

(3) a report containing the TINs of all covered employees, the amount of subsidy reimbursed with respect to each covered employee and qualified beneficiaries, and a designation with respect to each covered employee as to whether the subsidy reimbursement is for coverage of 1 individual or 2 or more individuals.

(g) Regulations

The Secretary shall issue such regulations or other guidance as may be necessary or appropriate to carry out this section, including—

(1) the requirement to report information or the establishment of other methods for verifying the correct amounts of reimbursements under this section, and

(2) the application of this section to group health plans that are multiemployer plans (as defined in section 3(37) of the Employee Retirement Income Security Act of 1974).

(Added Pub. L. 111–5, div. B, title III, §3001(a)(12)(A), Feb. 17, 2009, 123 Stat. 461; amended Pub. L. 111–144, §3(b)(5)(C), Mar. 2, 2010, 124 Stat. 45.)

REFERENCES IN TEXT

The American Recovery and Reinvestment Act of 2009, referred to in subsecs. (a), (c)(3), and (e)(1), is Pub. L. 111–5, Feb. 17, 2009, 123 Stat. 115. Section 3001(a) of title III of division B of the Act enacted this section and sections 139C and 6720C of this title, amended section 35 of this title, and enacted provisions set out a note below. Section 3001(a)(1)(A), (3)(C) of the Act is set out as a note below. For complete classification of this Act to the Code, see Short Title of 2009 Amendment note set out under section 1 of this title and Tables.

The Employee Retirement Income Security Act of 1974, referred to in subsecs. (b)(1), (2)(A)(ii) and (g)(2), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, which is classified principally to chapter 18 (§1001 et seq.) of Title 29, Labor. Section 3(37) of the Act is classified to section 1002(37) of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

The Public Health Service Act, referred to in subsec. (b)(2)(A)(iii), is act July 1, 1944, ch. 373, 58 Stat. 682, which is classified generally to chapter 6A (§201 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–144, §3(b)(5)(C)(i), substituted "section 3001(a) of title III of division B of the American Recovery and Reinvestment Act of 2009" for "section 3002(a) of the Health Insurance Assistance for the Unemployed Act of 2009".

Subsec. (c)(3). Pub. L. 111–144, §3(b)(5)(C)(ii), substituted "section 3001(a)(1)(A) of title III of division B of the American Recovery and Reinvestment Act of 2009" for "section 3002(a)(1)(A) of such Act".

Subsecs. (e) to (g). Pub. L. 111–144, §3(b)(5)(C)(iii), added subsec. (e) and redesignated former subsecs.

(e) and (f) as (f) and (g), respectively.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–144, §3(c), Mar. 2, 2010, 124 Stat. 45, provided that: "The amendments made by this section [amending this section and sections 35, 139C, and 6720C of this title, and amending provisions set out as a note under this section] shall take effect as if included in the provisions of section 3001 of division B of the American Recovery and Reinvestment Act of 2009 [Pub. L. 111–5, set out below] to which they relate, except that—

"(1) the amendments made by subsection (b)(1) [amending provisions set out as a note under this section] shall apply to periods of coverage beginning after the date of the enactment of this Act [Mar. 2, 2010];

"(2) the amendments made by subsection (b)(2) [amending provisions set out as a note under this section] shall take effect as if included in the amendments made by section 1010 of division B of the Department of Defense Appropriations Act, 2010 [Pub. L. 111–118, amending provisions set out a note under this section]; and

"(3) the amendments made by subsections (b)(3) and (b)(4) [amending provisions set out as a note under this section] shall take effect on the date of the enactment of this Act [Mar. 2, 2010]."

EFFECTIVE DATE

Section applicable to premiums to which section 3001(a)(1)(A) of Pub. L. 111–5, set out as a note below, applies, see section 3001(a)(12)(D) of Pub. L. 111–5, set out as a note below.

PREMIUM ASSISTANCE FOR COBRA BENEFITS

Pub. L. 111–5, div. B, title III, §3001, Feb. 17, 2009, 123 Stat. 455, as amended by Pub. L. 111–118, div. B, §1010(a)–(d), Dec. 19, 2009, 123 Stat. 3472, 3473; Pub. L. 111–144, §3(a), (b)(1)–(4), Mar. 2, 2010, 124 Stat. 43, 44; Pub. L. 111–157, §3(a), (b), Apr. 15, 2010, 124 Stat. 1117, provided that:

"(a) PREMIUM ASSISTANCE FOR COBRA CONTINUATION COVERAGE FOR INDIVIDUALS AND THEIR FAMILIES.—

"(1) PROVISION OF PREMIUM ASSISTANCE.—

"(A) REDUCTION OF PREMIUMS PAYABLE.—In the case of any premium for a period of coverage beginning on or after the date of the enactment of this Act [Feb. 17, 2009] for COBRA continuation coverage with respect to any assistance eligible individual, such individual shall be treated for purposes of any COBRA continuation provision as having paid the amount of such premium if such individual pays (or a person other than such individual's employer pays on behalf of such individual) 35 percent of the amount of such premium (as determined without regard to this subsection).

"(B) PLAN ENROLLMENT OPTION.—

"(i) IN GENERAL.—Notwithstanding the COBRA continuation provisions, an assistance eligible individual may, not later than 90 days after the date of notice of the plan enrollment option described in this subparagraph, elect to enroll in coverage under a plan offered by the employer involved, or the employee organization involved (including, for this purpose, a joint board of trustees of a multiemployer trust affiliated with one or more multiemployer plans), that is different than coverage under the plan in which such individual was enrolled at the time the qualifying event occurred, and such coverage shall be treated as COBRA continuation coverage for purposes of the applicable COBRA continuation coverage provision.

"(ii) REQUIREMENTS.—An assistance eligible individual may elect to enroll in different coverage as described in clause (i) only if—

"(I) the employer involved has made a determination that such employer will permit assistance eligible individuals to enroll in different coverage as provided for this subparagraph;

"(II) the premium for such different coverage does not exceed the premium for coverage in which the individual was enrolled at the time the qualifying event occurred;

"(III) the different coverage in which the individual elects to enroll is coverage that is also offered to the active employees of the employer at the time at which such election is made; and

"(IV) the different coverage is not—

"(aa) coverage that provides only dental, vision, counseling, or referral services (or a combination of such services);

"(bb) a flexible spending arrangement (as defined in section 106(c)(2) of the Internal Revenue Code of 1986); or

"(cc) coverage that provides coverage for services or treatments furnished in an on-site medical facility maintained by the employer and that consists primarily of first-aid services, prevention

and wellness care, or similar care (or a combination of such care).

"(C) PREMIUM REIMBURSEMENT.—For provisions providing the balance of such premium, see section 6432 of the Internal Revenue Code of 1986, as added by paragraph (12).

"(2) LIMITATION OF PERIOD OF PREMIUM ASSISTANCE.—

"(A) IN GENERAL.—Paragraph (1)(A) shall not apply with respect to any assistance eligible individual for months of coverage beginning on or after the earlier of—

"(i) the first date that such individual is eligible for coverage under any other group health plan (other than coverage consisting of only dental, vision, counseling, or referral services (or a combination thereof), coverage under a flexible spending arrangement (as defined in section 106(c)(2) of the Internal Revenue Code of 1986), or coverage of treatment that is furnished in an on-site medical facility maintained by the employer and that consists primarily of first-aid services, prevention and wellness care, or similar care (or a combination thereof)) or is eligible for benefits under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.], or

"(ii) the earliest of—

"(I) the date which is 15 months after the first day that paragraph (1)(A) applies with respect to such individual,

"(II) the date following the expiration of the maximum period of continuation coverage required under the applicable COBRA continuation coverage provision, or

"(III) the date following the expiration of the period of continuation coverage allowed under paragraph (4)(B)(ii).

"(B) TIMING OF ELIGIBILITY FOR ADDITIONAL COVERAGE.—For purposes of subparagraph (A)(i), an individual shall not be treated as eligible for coverage under a group health plan before the first date on which such individual could be covered under such plan.

"(C) NOTIFICATION REQUIREMENT.—An assistance eligible individual shall notify in writing the group health plan with respect to which paragraph (1)(A) applies if such paragraph ceases to apply by reason of subparagraph (A)(i). Such notice shall be provided to the group health plan in such time and manner as may be specified by the Secretary of Labor.

"(3) ASSISTANCE ELIGIBLE INDIVIDUAL.—For purposes of this section, the term 'assistance eligible individual' means any qualified beneficiary if—

"(A) such qualified beneficiary is eligible for COBRA continuation coverage related to a qualifying event occurring during the period that begins with September 1, 2008, and ends with May 31, 2010,

"(B) such qualified beneficiary elects such coverage, and

"(C) the qualifying event with respect to the COBRA continuation coverage consists of the involuntary termination of the covered employee's employment and occurred during such period or consists of a reduction of hours followed by such an involuntary termination of employment during such period (as described in paragraph (17)(C)).

"(4) EXTENSION OF ELECTION PERIOD AND EFFECT ON COVERAGE.—

"(A) IN GENERAL.—For purposes of applying section 605(a) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1165(a)], section 4980B(f)(5)(A) of the Internal Revenue Code of 1986, section 2205(a) of the Public Health Service Act [42 U.S.C. 300bb–5(a)], and section 8905a(c)(2) of title 5, United States Code, in the case of an individual who does not have an election of COBRA continuation coverage in effect on the date of the enactment of this Act [Feb. 17, 2009] but who would be an assistance eligible individual if such election were so in effect, such individual may elect the COBRA continuation coverage under the COBRA continuation coverage provisions containing such sections during the period beginning on the date of the enactment of this Act and ending 60 days after the date on which the notification required under paragraph (7)(C) is provided to such individual.

"(B) COMMENCEMENT OF COVERAGE; NO REACH-BACK.—Any COBRA continuation coverage elected by a qualified beneficiary during an extended election period under subparagraph (A)—

"(i) shall commence with the first period of coverage beginning on or after the date of the enactment of this Act [Feb. 17, 2009], and

"(ii) shall not extend beyond the period of COBRA continuation coverage that would have been required under the applicable COBRA continuation coverage provision if the coverage had been elected as required under such provision.

"(C) PREEXISTING CONDITIONS.—With respect to a qualified beneficiary who elects COBRA continuation coverage pursuant to subparagraph (A), the period—

"(i) beginning on the date of the qualifying event, and

"(ii) ending with the beginning of the period described in subparagraph (B)(i),

shall be disregarded for purposes of determining the 63-day periods referred to in section 701(c)(2) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1181(c)(2)], section 9801(c)(2) of the Internal Revenue Code of 1986, and section 2701(c)(2) of the Public Health Service Act [former 42 U.S.C. 300gg(c)(2); now 42 U.S.C. 300gg–3(c)(2)].

"(5) EXPEDITED REVIEW OF DENIALS OF PREMIUM ASSISTANCE.—In any case in which an individual requests treatment as an assistance eligible individual and is denied such treatment by the group health plan, the Secretary of Labor (or the Secretary of Health and Human Services in connection with COBRA continuation coverage which is provided other than pursuant to part 6 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1161 et seq.]), in consultation with the Secretary of the Treasury, shall provide for expedited review of such denial. An individual shall be entitled to such review upon application to such Secretary in such form and manner as shall be provided by such Secretary. Such Secretary shall make a determination regarding such individual's eligibility within 15 business days after receipt of such individual's application for review under this paragraph. Either Secretary's determination upon review of the denial shall be de novo and shall be the final determination of such Secretary. A reviewing court shall grant deference to such Secretary's determination. The provisions of this paragraph, paragraphs (1) through (4), and paragraph (7) shall be treated as provisions of title I of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq.] for purposes of part 5 of subtitle B of such title [29 U.S.C. 1131 et seq.]. In addition to civil actions that may be brought to enforce applicable provisions of such Act [29 U.S.C. 1001 et seq.] or other laws, the appropriate Secretary or an affected individual may bring a civil action to enforce such determinations and for appropriate relief. In addition, such Secretary may assess a penalty against a plan sponsor or health insurance issuer of not more than $110 per day for each failure to comply with such determination of such Secretary after 10 days after the date of the plan sponsor's or issuer's receipt of the determination.

"(6) DISREGARD OF SUBSIDIES FOR PURPOSES OF FEDERAL AND STATE PROGRAMS .—Notwithstanding any other provision of law, any premium reduction with respect to an assistance eligible individual under this subsection shall not be considered income or resources in determining eligibility for, or the amount of assistance or benefits provided under, any other public benefit provided under Federal law or the law of any State or political subdivision thereof.

"(7) NOTICES TO INDIVIDUALS.—

"(A) GENERAL NOTICE.—

"(i) IN GENERAL.—In the case of notices provided under section 606(a)(4) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1166[(a)](4)), section 4980B(f)(6)(D) of the Internal Revenue Code of 1986, section 2206(4) of the Public Health Service Act (42 U.S.C. 300bb–6(4)), or section 8905a(f)(2)(A) of title 5, United States Code, with respect to individuals who, during the period described in paragraph (3)(A), have a qualifying event relating to COBRA continuation coverage, the requirements of such sections shall not be treated as met unless such notices include an additional notification to the recipient of—

"(I) the availability of premium reduction with respect to such coverage under this subsection, and

"(II) the option to enroll in different coverage if the employer permits assistance eligible individuals to elect enrollment in different coverage (as described in paragraph (1)(B)).

"(ii) ALTERNATIVE NOTICE.—In the case of COBRA continuation coverage to which the notice provision under such sections does not apply, the Secretary of Labor, in consultation with the Secretary of the Treasury and the Secretary of Health and Human Services, shall, in consultation with administrators of the group health plans (or other entities) that provide or administer the COBRA continuation coverage involved, provide rules requiring the provision of such notice.

"(iii) FORM.—The requirement of the additional notification under this subparagraph may be met by amendment of existing notice forms or by inclusion of a separate document with the notice otherwise required.

"(B) SPECIFIC REQUIREMENTS.—Each additional notification under subparagraph (A) shall include—

"(i) the forms necessary for establishing eligibility for premium reduction under this subsection,

"(ii) the name, address, and telephone number necessary to contact the plan administrator and any other person maintaining relevant information in connection with such premium reduction,

"(iii) a description of the extended election period provided for in paragraph (4)(A),

"(iv) a description of the obligation of the qualified beneficiary under paragraph (2)(C) to notify the plan providing continuation coverage of eligibility for subsequent coverage under another group health plan or eligibility for benefits under title XVIII of the Social Security Act [42 U.S.C.

1395 et seq.] and the penalty provided under section 6720C of the Internal Revenue Code of 1986 for failure to so notify the plan,

"(v) a description, displayed in a prominent manner, of the qualified beneficiary's right to a reduced premium and any conditions on entitlement to the reduced premium, and

"(vi) a description of the option of the qualified beneficiary to enroll in different coverage if the employer permits such beneficiary to elect to enroll in such different coverage under paragraph (1)(B).

"(C) NOTICE IN CONNECTION WITH EXTENDED ELECTION PERIODS.—In the case of any assistance eligible individual (or any individual described in paragraph (4)(A)) who became entitled to elect COBRA continuation coverage before the date of the enactment of this Act [Feb. 17, 2009], the administrator of the group health plan (or other entity) involved shall provide (within 60 days after the date of enactment of this Act) for the additional notification required to be provided under subparagraph (A) and failure to provide such notice shall be treated as a failure to meet the notice requirements under the applicable COBRA continuation provision.

"(D) MODEL NOTICES.—Not later than 30 days after the date of enactment of this Act [Feb. 17, 2009]—

"(i) the Secretary of the [sic] Labor, in consultation with the Secretary of the Treasury and the Secretary of Health and Human Services, shall prescribe models for the additional notification required under this paragraph (other than the additional notification described in clause (ii)), and

"(ii) in the case of any additional notification provided pursuant to subparagraph (A) under section 8905a(f)(2)(A) of title 5, United States Code, the Office of Personnel Management shall prescribe a model for such additional notification.

"(8) REGULATIONS.—The Secretary of the Treasury may prescribe such regulations or other guidance as may be necessary or appropriate to carry out the provisions of this subsection, including the prevention of fraud and abuse under this subsection, except that the Secretary of Labor and the Secretary of Health and Human Services may prescribe such regulations (including interim final regulations) or other guidance as may be necessary or appropriate to carry out the provisions of paragraphs (5), (7), and (9).

"(9) OUTREACH.—The Secretary of Labor, in consultation with the Secretary of the Treasury and the Secretary of Health and Human Services, shall provide outreach consisting of public education and enrollment assistance relating to premium reduction provided under this subsection. Such outreach shall target employers, group health plan administrators, public assistance programs, States, insurers, and other entities as determined appropriate by such Secretaries. Such outreach shall include an initial focus on those individuals electing continuation coverage who are referred to in paragraph (7)(C). Information on such premium reduction, including enrollment, shall also be made available on websites of the Departments of Labor, Treasury, and Health and Human Services.

"(10) DEFINITIONS.—For purposes of this section—

"(A) ADMINISTRATOR.—The term 'administrator' has the meaning given such term in section 3(16)(A) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1002(16)(A)].

"(B) COBRA CONTINUATION COVERAGE.—The term 'COBRA continuation coverage' means continuation coverage provided pursuant to part 6 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1161 et seq.] (other than under section 609 [29 U.S.C. 1169]), title XXII of the Public Health Service Act [42 U.S.C. 300bb–1 et seq.], section 4980B of the Internal Revenue Code of 1986 (other than subsection (f)(1) of such section insofar as it relates to pediatric vaccines), or section 8905a of title 5, United States Code, or under a State program that provides comparable continuation coverage. Such term does not include coverage under a health flexible spending arrangement under a cafeteria plan within the meaning of section 125 of the Internal Revenue Code of 1986.

"(C) COBRA CONTINUATION PROVISION.—The term 'COBRA continuation provision' means the provisions of law described in subparagraph (B).

"(D) COVERED EMPLOYEE.—The term 'covered employee' has the meaning given such term in section 607(2) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1167(2)].

"(E) QUALIFIED BENEFICIARY.—The term 'qualified beneficiary' has the meaning given such term in section 607(3) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1167(3)].

"(F) GROUP HEALTH PLAN.—The term 'group health plan' has the meaning given such term in section 607(1) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1167(1)].

"(G) STATE.—The term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

"(H) PERIOD OF COVERAGE.—Any reference in this subsection to a period of coverage shall be treated as a reference to a monthly or shorter period of coverage with respect to which premiums are charged with respect to such coverage.

"(11) REPORTS.—

"(A) INTERIM REPORT.—The Secretary of the Treasury shall submit an interim report to the Committee on Education and Labor [now Committee on Education and the Workforce], the Committee on Ways and Means, and the Committee on Energy and Commerce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions and the Committee on Finance of the Senate regarding the premium reduction provided under this subsection that includes—

"(i) the number of individuals provided such assistance as of the date of the report; and

"(ii) the total amount of expenditures incurred (with administrative expenditures noted separately) in connection with such assistance as of the date of the report.

"(B) FINAL REPORT.—As soon as practicable after the last period of COBRA continuation coverage for which premium reduction is provided under this section, the Secretary of the Treasury shall submit a final report to each Committee referred to in subparagraph (A) that includes—

"(i) the number of individuals provided premium reduction under this section;

"(ii) the average dollar amount (monthly and annually) of premium reductions provided to such individuals; and

"(iii) the total amount of expenditures incurred (with administrative expenditures noted separately) in connection with premium reduction under this section.

"(12) COBRA PREMIUM ASSISTANCE.—

"(A) IN GENERAL.—[Enacted this section.]

"(B) SOCIAL SECURITY TRUST FUNDS HELD HARMLESS.—In determining any amount transferred or appropriated to any fund under the Social Security Act [42 U.S.C. 301 et seq.], section 6432 of the Internal Revenue Code of 1986 shall not be taken into account.

"(C) CLERICAL AMENDMENT.—[Amended analysis of this subchapter.]

"(D) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to premiums to which subsection (a)(1)(A) applies.

"(E) SPECIAL RULE.—

"(i) IN GENERAL.—In the case of an assistance eligible individual who pays, with respect to the first period of COBRA continuation coverage to which subsection (a)(1)(A) applies or the immediately subsequent period, the full premium amount for such coverage, the person to whom such payment is payable shall—

"(I) make a reimbursement payment to such individual for the amount of such premium paid in excess of the amount required to be paid under subsection (a)(1)(A); or

"(II) provide credit to the individual for such amount in a manner that reduces one or more subsequent premium payments that the individual is required to pay under such subsection for the coverage involved.

"(ii) REIMBURSING EMPLOYER.—A person to which clause (i) applies shall be reimbursed as provided for in section 6432 of the Internal Revenue Code of 1986 for any payment made, or credit provided, to the employee under such clause.

"(iii) PAYMENT OR CREDITS.—Unless it is reasonable to believe that the credit for the excess payment in clause (i)(II) will be used by the assistance eligible individual within 180 days of the date on which the person receives from the individual the payment of the full premium amount, a person to which clause (i) applies shall make the payment required under such clause to the individual within 60 days of such payment of the full premium amount. If, as of any day within the 180-day period, it is no longer reasonable to believe that the credit will be used during that period, payment equal to the remainder of the credit outstanding shall be made to the individual within 60 days of such day.

"(13) PENALTY FOR FAILURE TO NOTIFY HEALTH PLAN OF CESSATION OF ELIGIBILITY FOR PREMIUM ASSISTANCE.—

"(A) IN GENERAL.—[Enacted section 6720C of this title.]

"(B) CLERICAL AMENDMENT.—[Amended analysis of part I of subchapter B of chapter 68 of this title.]

"(C) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to failures occurring after the date of the enactment of this Act [Feb. 17, 2009].

"(14) COORDINATION WITH HCTC.—

"(A) IN GENERAL.—[Amended section 35 of this title.]

"(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall apply to taxable years ending after the date of the enactment of this Act [Feb. 17, 2009].

"(15) EXCLUSION OF COBRA PREMIUM ASSISTANCE FROM GROSS INCOME.—

"(A) IN GENERAL.—[Enacted section 139C of this title.]

"(B) CLERICAL AMENDMENT.—[Amended analysis of part III of subchapter B of chapter 1 of this title.]

"(C) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to taxable years ending after the date of the enactment of this Act [Feb. 17, 2009].

"(16) RULES RELATED TO 2009 EXTENSION.—

"(A) ELECTION TO PAY PREMIUMS RETROACTIVELY AND MAINTAIN COBRA COVERAGE.—In the case of any premium for a period of coverage during an assistance eligible individual's transition period, such individual shall be treated for purposes of any COBRA continuation provision as having timely paid the amount of such premium if—

"(i) such individual was covered under the COBRA continuation coverage to which such premium relates for the period of coverage immediately preceding such transition period, and

"(ii) such individual pays, the amount of such premium, after the application of paragraph (1)(A), by the latest of—

"(I) 60 days after the date of the enactment of this paragraph [Dec. 19, 2009],

"(II) 30 days after the date of provision of the notification required under subparagraph (D)(ii), or

"(III) the end of the period described in section 4980B(f)(2)(B)(iii) of the Internal Revenue Code of 1986.

"(B) REFUNDS AND CREDITS FOR RETROACTIVE PREMIUM ASSISTANCE ELIGIBILITY.—In the case of an assistance eligible individual who pays, with respect to any period of COBRA continuation coverage during such individual's transition period, the premium amount for such coverage without regard to paragraph (1)(A), rules similar to the rules of paragraph (12)(E) shall apply.

"(C) TRANSITION PERIOD.—

"(i) IN GENERAL.—For purposes of this paragraph, the term 'transition period' means, with respect to any assistance eligible individual, any period of coverage if—

"(I) such assistance eligible individual experienced an involuntary termination that was a qualifying event prior to the date of enactment of the Department of Defense Appropriations Act, 2010 [Dec. 19, 2009]; and

"(II) paragraph (1)(A) applies to such period by reason of the amendment made by section 1010(b) of the Department of Defense Appropriations Act, 2010 [Pub. L. 111–118].

"(ii) CONSTRUCTION.—Any period during the period described in subclauses (I) and (II) of clause (i) for which the applicable premium has been paid pursuant to subparagraph (A) shall be treated as a period of coverage referred to in such paragraph [probably should be "subparagraph"], irrespective of any failure to timely pay the applicable premium (other than pursuant to subparagraph (A)) for such period.

"(D) NOTIFICATION.—

"(i) IN GENERAL.—In the case of an individual who was an assistance eligible individual at any time on or after October 31, 2009, or experiences a qualifying event (consisting of termination of employment) relating to COBRA continuation coverage on or after such date, the administrator of the group health plan (or other entity) involved shall provide an additional notification with information regarding the amendments made by section 1010 of the Department of Defense Appropriations Act, 2010 [Pub. L. 111–118], within 60 days after the date of the enactment of such Act [Dec. 19, 2009] or, in the case of a qualifying event occurring after such date of enactment, consistent with the timing of notifications under paragraph (7)(A).

"(ii) TO INDIVIDUALS WHO LOST ASSISTANCE.—In the case of an assistance eligible individual described in subparagraph (A)(i) who did not timely pay the premium for any period of coverage during such individual's transition period or paid the premium for such period without regard to paragraph (1)(A), the administrator of the group health plan (or other entity) involved shall provide to such individual, within the first 60 days of such individual's transition period, an additional notification with information regarding the amendments made by section 1010 of the Department of Defense Appropriations Act, 2010, including information on the ability under subparagraph (A) to make retroactive premium payments with respect to the transition period of the individual in order to maintain COBRA continuation coverage.

"(iii) APPLICATION OF RULES.—Rules similar to the rules of paragraph (7) shall apply with respect to notifications under this subparagraph.

"(17) SPECIAL RULES IN CASE OF INDIVIDUALS LOSING COVERAGE BECAUSE OF A

REDUCTION OF HOURS.—

"(A) NEW ELECTION PERIOD.—

"(i) IN GENERAL.—For the purposes of the COBRA continuation provisions, in the case of an individual described in subparagraph (C) who did not make (or who made and discontinued) an election of COBRA continuation coverage on the basis of the reduction of hours of employment, the involuntary termination of employment of such individual on or after the date of the enactment of this paragraph [Mar. 2, 2010] shall be treated as a qualifying event.

"(ii) COUNTING COBRA DURATION PERIOD FROM PREVIOUS QUALIFYING EVENT.—In any case of an individual referred to in clause (i), the period of such individual's continuation coverage shall be determined as though the qualifying event were the reduction of hours of employment.

"(iii) CONSTRUCTION.—Nothing in this paragraph shall be construed as requiring an individual referred to in clause (i) to make a payment for COBRA continuation coverage between the reduction of hours and the involuntary termination of employment.

"(iv) PREEXISTING CONDITIONS.—With respect to an individual referred to in clause (i) who elects COBRA continuation coverage pursuant to such clause, rules similar to the rules in paragraph (4)(C) shall apply.

"(B) NOTICES.—In the case of an individual described in subparagraph (C), the administrator of the group health plan (or other entity) involved shall provide, during the 60-day period beginning on the date of such individual's involuntary termination of employment, an additional notification described in paragraph (7)(A), including information on the provisions of this paragraph. Rules similar to the rules of paragraph (7) shall apply with respect to such notification.

"(C) INDIVIDUALS DESCRIBED.—Individuals described in this subparagraph are individuals who are assistance eligible individuals on the basis of a qualifying event consisting of a reduction of hours occurring during the period described in paragraph (3)(A) followed by an involuntary termination of employment insofar as such involuntary termination of employment occurred on or after the date of the enactment of this paragraph.

"(18) RULES RELATED TO APRIL AND MAY 2010 EXTENSION.—In the case of an individual who, with regard to coverage described in paragraph (10)(B), experiences a qualifying event related to a termination of employment on or after April 1, 2010 and prior to the date of the enactment of this paragraph [Apr. 15, 2010], rules similar to those in paragraphs (4)(A) and (7)(C) shall apply with respect to all continuation coverage, including State continuation coverage programs.

"(b) ELIMINATION OF PREMIUM SUBSIDY FOR HIGH-INCOME INDIVIDUALS.—

"(1) RECAPTURE OF SUBSIDY FOR HIGH-INCOME INDIVIDUALS.—If—

"(A) premium assistance is provided under this section with respect to any COBRA continuation coverage which covers the taxpayer, the taxpayer's spouse, or any dependent (within the meaning of section 152 of the Internal Revenue Code of 1986, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) of the taxpayer during any portion of the taxable year, and

"(B) the taxpayer's modified adjusted gross income for such taxable year exceeds $125,000 ($250,000 in the case of a joint return),

then the tax imposed by chapter 1 of such Code with respect to the taxpayer for such taxable year shall be increased by the amount of such assistance.

"(2) PHASE-IN OF RECAPTURE.—

"(A) IN GENERAL.—In the case of a taxpayer whose modified adjusted gross income for the taxable year does not exceed $145,000 ($290,000 in the case of a joint return), the increase in the tax imposed under paragraph (1) shall not exceed the phase-in percentage of such increase (determined without regard to this paragraph).

"(B) PHASE-IN PERCENTAGE.—For purposes of this subsection, the term 'phase-in percentage' means the ratio (expressed as a percentage) obtained by dividing—

"(i) the excess of [sic] described in subparagraph (B) of paragraph (1), by

"(ii) $20,000 ($40,000 in the case of a joint return).

"(3) OPTION FOR HIGH-INCOME INDIVIDUALS TO WAIVE ASSISTANCE AND AVOID RECAPTURE.—Notwithstanding subsection (a)(3), an individual shall not be treated as an assistance eligible individual for purposes of this section and section 6432 of the Internal Revenue Code of 1986 if such individual—

"(A) makes a permanent election (at such time and in such form and manner as the Secretary of the Treasury may prescribe) to waive the right to the premium assistance provided under this section, and

"(B) notifies the entity to whom premiums are reimbursed under section 6432(a) of such Code of

such election.

"(4) MODIFIED ADJUSTED GROSS INCOME.—For purposes of this subsection, the term 'modified adjusted gross income' means the adjusted gross income (as defined in section 62 of the Internal Revenue Code of 1986) of the taxpayer for the taxable year increased by any amount excluded from gross income under section 911, 931, or 933 of such Code.

"(5) CREDITS NOT ALLOWED AGAINST TAX, ETC.—For purposes determining regular tax liability under section 26(b) of such Code, the increase in tax under this subsection shall not be treated as a tax imposed under chapter 1 of such Code.

"(6) REGULATIONS.—The Secretary of the Treasury shall issue such regulations or other guidance as are necessary or appropriate to carry out this subsection, including requirements that the entity to whom premiums are reimbursed under section 6432(a) of the Internal Revenue Code of 1986 report to the Secretary, and to each assistance eligible individual, the amount of premium assistance provided under subsection (a) with respect to each such individual.

"(7) EFFECTIVE DATE.—The provisions of this subsection shall apply to taxable years ending after the date of the enactment of this Act [Feb. 17, 2009]."

[Pub. L. 111–157, §3(c), Apr. 15, 2010, 124 Stat. 1117, provided that: "The amendments made by this section [amending section 3001 of Pub. L. 111–5, set out above] shall take effect as if included in the provisions of section 3001 of division B of the American Recovery and Reinvestment Act of 2009 [Pub. L. 111–5]."]

[Pub. L. 111–118, div. B, §1010(e), Dec. 19, 2009, 123 Stat. 3473, provided that: "The amendments made by this section [amending section 3001 of Pub. L. 111–5, set out above] shall take effect as if included in the provisions of section 3001 of division B of the American Recovery and Reinvestment Act of 2009 [Pub. L. 111–5] to which they relate."]

CHAPTER 66—LIMITATIONS

Subchapter		Sec.[1]
A.	**Limitations on assessment and collection**	**6501**
B.	**Limitations on credit or refund**	**6511**
C.	**Mitigation of effect of period of limitations**	**6521**
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[1] *Section numbers editorially supplied.*

Subchapter A—Limitations on Assessment and Collection

Sec.
6501. Limitations on assessment and collection.
6502. Collection after assessment.
6503. Suspension of running of period of limitation.
6504. Cross references.

§6501. Limitations on assessment and collection

(a) General rule

Except as otherwise provided in this section, the amount of any tax imposed by this title shall be assessed within 3 years after the return was filed (whether or not such return was filed on or after the date prescribed) or, if the tax is payable by stamp, at any time after such tax became due and before the expiration of 3 years after the date on which any part of such tax was paid, and no proceeding in court without assessment for the collection of such tax shall be begun after the expiration of such period. For purposes of this chapter, the term "return" means the return required to be filed by the taxpayer (and does not include a return of any person from whom the taxpayer has received an item of income, gain, loss, deduction, or credit).

(b) Time return deemed filed

(1) Early return

For purposes of this section, a return of tax imposed by this title, except tax imposed by chapter 3, 4, 21, or 24, filed before the last day prescribed by law or by regulations promulgated pursuant to law for the filing thereof, shall be considered as filed on such last day.

(2) Return of certain employment and withholding taxes

For purposes of this section, if a return of tax imposed by chapter 3, 4, 21, or 24 for any period ending with or within a calendar year is filed before April 15 of the succeeding calendar year, such return shall be considered filed on April 15 of such calendar year.

(3) Return executed by Secretary

Notwithstanding the provisions of paragraph (2) of section 6020(b), the execution of a return by the Secretary pursuant to the authority conferred by such section shall not start the running of the period of limitations on assessment and collection.

(4) Return of excise taxes

For purposes of this section, the filing of a return for a specified period on which an entry has been made with respect to a tax imposed under a provision of subtitle D (including a return on which an entry has been made showing no liability for such tax for such period) shall constitute the filing of a return of all amounts of such tax which, if properly paid, would be required to be reported on such return for such period.

(c) Exceptions

(1) False return

In the case of a false or fraudulent return with the intent to evade tax, the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time.

(2) Willful attempt to evade tax

In case of a willful attempt in any manner to defeat or evade tax imposed by this title (other than tax imposed by subtitle A or B), the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(3) No return

In the case of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(4) Extension by agreement

(A) In general

Where, before the expiration of the time prescribed in this section for the assessment of any tax imposed by this title, except the estate tax provided in chapter 11, both the Secretary and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(B) Notice to taxpayer of right to refuse or limit extension

The Secretary shall notify the taxpayer of the taxpayer's right to refuse to extend the period of limitations, or to limit such extension to particular issues or to a particular period of time, on each occasion when the taxpayer is requested to provide such consent.

(5) Tax resulting from changes in certain income tax or estate tax credits

For special rules applicable in cases where the adjustment of certain taxes allowed as a credit against income taxes or estate taxes results in additional tax, see section 905(c) (relating to the foreign tax credit for income tax purposes) and section 2016 (relating to taxes of foreign countries, States, etc., claimed as credit against estate taxes).

(6) Termination of private foundation status

In the case of a tax on termination of private foundation status under section 507, such tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(7) Special rule for certain amended returns

Where, within the 60-day period ending on the day on which the time prescribed in this section for the assessment of any tax imposed by subtitle A for any taxable year would otherwise expire, the Secretary receives a written document signed by the taxpayer showing that the taxpayer owes an additional amount of such tax for such taxable year, the period for the assessment of such additional amount shall not expire before the day 60 days after the day on which the Secretary receives such document.

(8) Failure to notify Secretary of certain foreign transfers

(A) In general

In the case of any information which is required to be reported to the Secretary pursuant to an election under section 1295(b) or under section 1298(f), 6038, 6038A, 6038B, 6038D, 6046, 6046A, or 6048, the time for assessment of any tax imposed by this title with respect to any tax return, event, or period to which such information relates shall not expire before the date which is 3 years after the date on which the Secretary is furnished the information required to be reported under such section.

(B) Application to failures due to reasonable cause

If the failure to furnish the information referred to in subparagraph (A) is due to reasonable cause and not willful neglect, subparagraph (A) shall apply only to the item or items related to such failure.

(9) Gift tax on certain gifts not shown on return

If any gift of property the value of which (or any increase in taxable gifts required under section 2701(d) which) is required to be shown on a return of tax imposed by chapter 12 (without regard to section 2503(b)), and is not shown on such return, any tax imposed by chapter 12 on such gift may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time. The preceding sentence shall not apply to any item which is disclosed in such return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the nature of such item.

(10) Listed transactions

If a taxpayer fails to include on any return or statement for any taxable year any information with respect to a listed transaction (as defined in section 6707A(c)(2)) which is required under section 6011 to be included with such return or statement, the time for assessment of any tax imposed by this title with respect to such transaction shall not expire before the date which is 1 year after the earlier of—

(A) the date on which the Secretary is furnished the information so required, or

(B) the date that a material advisor meets the requirements of section 6112 with respect to a request by the Secretary under section 6112(b) relating to such transaction with respect to such taxpayer.

(11) Certain orders of criminal restitution

In the case of any amount described in section 6201(a)(4), such amount may be assessed, or a proceeding in court for the collection of such amount may be begun without assessment, at any time.

(d) Request for prompt assessment

Except as otherwise provided in subsection (c), (e), or (f), in the case of any tax (other than the tax imposed by chapter 11 of subtitle B, relating to estate taxes) for which return is required in the case

of a decedent, or by his estate during the period of administration, or by a corporation, the tax shall be assessed, and any proceeding in court without assessment for the collection of such tax shall be begun, within 18 months after written request therefor (filed after the return is made and filed in such manner and such form as may be prescribed by regulations of the Secretary) by the executor, administrator, or other fiduciary representing the estate of such decedent, or by the corporation, but not after the expiration of 3 years after the return was filed. This subsection shall not apply in the case of a corporation unless—

(1)(A) such written request notifies the Secretary that the corporation contemplates dissolution at or before the expiration of such 18-month period, (B) the dissolution is in good faith begun before the expiration of such 18-month period, and (C) the dissolution is completed;

(2)(A) such written request notifies the Secretary that a dissolution has in good faith been begun, and (B) the dissolution is completed; or

(3) a dissolution has been completed at the time such written request is made.

(e) Substantial omission of items

Except as otherwise provided in subsection (c)—

(1) Income taxes

In the case of any tax imposed by subtitle A—

(A) General rule

If the taxpayer omits from gross income an amount properly includible therein and—

(i) such amount is in excess of 25 percent of the amount of gross income stated in the return, or

(ii) such amount—

(I) is attributable to one or more assets with respect to which information is required to be reported under section 6038D (or would be so required if such section were applied without regard to the dollar threshold specified in subsection (a) thereof and without regard to any exceptions provided pursuant to subsection (h)(1) thereof), and

(II) is in excess of $5,000,

the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time within 6 years after the return was filed.

(B) Determination of gross income

For purposes of subparagraph (A)—

(i) In the case of a trade or business, the term "gross income" means the total of the amounts received or accrued from the sale of goods or services (if such amounts are required to be shown on the return) prior to diminution by the cost of such sales or services; and

(ii) In determining the amount omitted from gross income, there shall not be taken into account any amount which is omitted from gross income stated in the return if such amount is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the nature and amount of such item.

(C) Constructive dividends

If the taxpayer omits from gross income an amount properly includible therein under section 951(a), the tax may be assessed, or a proceeding in court for the collection of such tax may be done without assessing, at any time within 6 years after the return was filed.

(2) Estate and gift taxes

In the case of a return of estate tax under chapter 11 or a return of gift tax under chapter 12, if the taxpayer omits from the gross estate or from the total amount of the gifts made during the period for which the return was filed items includible in such gross estate or such total gifts, as the case may be, as exceed in amount 25 percent of the gross estate stated in the return or the total amount of gifts stated in the return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 6 years after the return

was filed. In determining the items omitted from the gross estate or the total gifts, there shall not be taken into account any item which is omitted from the gross estate or from the total gifts stated in the return if such item is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the nature and amount of such item.

(3) Excise taxes

In the case of a return of a tax imposed under a provision of subtitle D, if the return omits an amount of such tax properly includible thereon which exceeds 25 percent of the amount of such tax reported thereon, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 6 years after the return is filed. In determining the amount of tax omitted on a return, there shall not be taken into account any amount of tax imposed by chapter 41, 42, 43, or 44 which is omitted from the return if the transaction giving rise to such tax is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the existence and nature of such item.

(f) Personal holding company tax

If a corporation which is a personal holding company for any taxable year fails to file with its return under chapter 1 for such year a schedule setting forth—

(1) the items of gross income and adjusted ordinary gross income, described in section 543, received by the corporation during such year, and

(2) the names and addresses of the individuals who owned, within the meaning of section 544 (relating to rules for determining stock ownership), at any time during the last half of such year more than 50 percent in value of the outstanding capital stock of the corporation,

the personal holding company tax for such year may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 6 years after the return for such year was filed.

(g) Certain income tax returns of corporations

(1) Trusts or partnerships

If a taxpayer determines in good faith that it is a trust or partnership and files a return as such under subtitle A, and if such taxpayer is thereafter held to be a corporation for the taxable year for which the return is filed, such return shall be deemed the return of the corporation for purposes of this section.

(2) Exempt organizations

If a taxpayer determines in good faith that it is an exempt organization and files a return as such under section 6033, and if such taxpayer is thereafter held to be a taxable organization for the taxable year for which the return is filed, such return shall be deemed the return of the organization for purposes of this section.

(3) DISC

If a corporation determines in good faith that it is a DISC (as defined in section 992(a)) and files a return as such under section 6011(c)(2) and if such corporation is thereafter held to be a corporation which is not a DISC for the taxable year for which the return is filed, such return shall be deemed the return of a corporation which is not a DISC for purposes of this section.

(h) Net operating loss or capital loss carrybacks

In the case of a deficiency attributable to the application to the taxpayer of a net operating loss carryback or a capital loss carryback (including deficiencies which may be assessed pursuant to the provisions of section 6213(b)(3)), such deficiency may be assessed at any time before the expiration of the period within which a deficiency for the taxable year of the net operating loss or net capital loss which results in such carryback may be assessed.

(i) Foreign tax carrybacks

In the case of a deficiency attributable to the application to the taxpayer of a carryback under

section 904(c) (relating to carryback and carryover of excess foreign taxes) or under section 907(f) (relating to carryback and carryover of disallowed foreign oil and gas taxes), such deficiency may be assessed at any time before the expiration of one year after the expiration of the period within which a deficiency may be assessed for the taxable year of the excess taxes described in section 904(c) or 907(f) which result in such carryback.

(j) Certain credit carrybacks

(1) In general

In the case of a deficiency attributable to the application to the taxpayer of a credit carryback (including deficiencies which may be assessed pursuant to the provisions of section 6213(b)(3)), such deficiency may be assessed at any time before the expiration of the period within which a deficiency for the taxable year of the unused credit which results in such carryback may be assessed, or with respect to any portion of a credit carryback from a taxable year attributable to a net operating loss carryback, capital loss carryback, or other credit carryback from a subsequent taxable year, at any time before the expiration of the period within which a deficiency for such subsequent taxable year may be assessed.

(2) Credit carryback defined

For purposes of this subsection, the term "credit carryback" has the meaning given such term by section 6511(d)(4)(C).

(k) Tentative carryback adjustment assessment period

In a case where an amount has been applied, credited, or refunded under section 6411 (relating to tentative carryback and refund adjustments) by reason of a net operating loss carryback, a capital loss carryback, or a credit carryback (as defined in section 6511(d)(4)(C)) to a prior taxable year, the period described in subsection (a) of this section for assessing a deficiency for such prior taxable year shall be extended to include the period described in subsection (h) or (j), whichever is applicable; except that the amount which may be assessed solely by reason of this subsection shall not exceed the amount so applied, credited, or refunded under section 6411, reduced by any amount which may be assessed solely by reason of subsection (h) or (j), as the case may be.

(l) Special rule for chapter 42 and similar taxes

(1) In general

For purposes of any tax imposed by section 4912, by chapter 42 (other than section 4940), or by section 4975, the return referred to in this section shall be the return filed by the private foundation, plan, trust, or other organization (as the case may be) for the year in which the act (or failure to act) giving rise to liability for such tax occurred. For purposes of section 4940, such return is the return filed by the private foundation for the taxable year for which the tax is imposed.

(2) Certain contributions to section 501(c)(3) organizations

In the case of a deficiency of tax of a private foundation making a contribution in the manner provided in section 4942(g)(3) (relating to certain contributions to section 501(c)(3) organizations) attributable to the failure of a section 501(c)(3) organization to make the distribution prescribed by section 4942(g)(3), such deficiency may be assessed at any time before the expiration of one year after the expiration of the period within which a deficiency may be assessed for the taxable year with respect to which the contribution was made.

(3) Certain set-asides described in section 4942(g)(2)

In the case of a deficiency attributable to the failure of an amount set aside by a private foundation for a specific project to be treated as a qualifying distribution under the provisions of section 4942(g)(2)(B)(ii), such deficiency may be assessed at any time before the expiration of 2 years after the expiration of the period within which a deficiency may be assessed for the taxable year to which the amount set aside relates.

(m) Deficiencies attributable to election of certain credits

The period for assessing a deficiency attributable to any election under section 30(e)(6), 30B(h)(9), 30C(e)(5), 30D(e)(4), 40(f), 43, 45B, 45C(d)(4), 45H(g), or 51(j) (or any revocation thereof) shall not expire before the date 1 year after the date on which the Secretary is notified of such election (or revocation).

(n) Cross references

(1) For period of limitations for assessment and collection in the case of a joint income return filed after separate returns have been filed, see section 6013(b)(3) and (4).

(2) For extension of period in the case of partnership items (as defined in section 6231(a)(3)), see section 6229.

(3) For declaratory judgment relating to treatment of items other than partnership items with respect to an oversheltered return, see section 6234.

(Aug. 16, 1954, ch. 736, 68A Stat. 803; Pub. L. 85–859, title I, §165(a), Sept. 2, 1958, 72 Stat. 1313; Pub. L. 85–866, title I, §§80, 81, Sept. 2, 1958, 72 Stat. 1662; Pub. L. 86–69, §3(g), June 25, 1959, 73 Stat. 140; Pub. L. 86–780, §3(c), Sept. 14, 1960, 74 Stat. 1013; Pub. L. 87–794, title III, §317(c), Oct. 11, 1962, 76 Stat. 890; Pub. L. 87–834, §2(e)(1), Oct. 16, 1962, 76 Stat. 971; Pub. L. 87–858, §3(b)(4), Oct. 23, 1962, 76 Stat. 1137; Pub. L. 88–272, title II, §225(k)(6), Feb. 26, 1964, 78 Stat. 94; Pub. L. 88–571, §3(b), Sept. 2, 1964, 78 Stat. 857; Pub. L. 89–44, title VIII, §810(a), (b), June 21, 1965, 79 Stat. 169; Pub. L. 89–721, §§2(f), 3(a), Nov. 2, 1966, 80 Stat. 1150, 1151; Pub. L. 89–809, title I, §105(f)(3), Nov. 13, 1966, 80 Stat. 1568; Pub. L. 90–225, §2(c), Dec. 27, 1967, 81 Stat. 731; Pub. L. 91–172, title I, §101(g)(1)–(3), title V, §512(e)(1), Dec. 30, 1969, 83 Stat. 525, 639; Pub. L. 91–614, title I, §102(d)(8), Dec. 31, 1970, 84 Stat. 1842; Pub. L. 92–178, title V, §504(c), title VI, §601(d)(1), (e)(2), Dec. 10, 1971, 85 Stat. 551, 558, 560; Pub. L. 93–406, title II, §1016(a)(14), Sept. 2, 1974, 88 Stat. 930; Pub. L. 94–455, title X, §§1031(b)(5), 1035(d)(3), title XIII, §§1302(b), 1307(d)(2)(F)(vi), title XIX, §1906(b)(13)(A), title XXI, §2107(g)(2)(A), Oct. 4, 1976, 90 Stat. 1623, 1633, 1714, 1728, 1834, 1904; Pub. L. 95–30, title II, §202(d)(4)(A), (5)(B), May 23, 1977, 91 Stat. 149, 151; Pub. L. 95–227, §4(d)(4), (5), Feb. 10, 1978, 92 Stat. 23; Pub. L. 95–600, title II, §212(a), title III, §321(b)(2), title V, §504(b)(3), title VII, §§701(t)(3)(A), 703(n), (p)(2), Nov. 6, 1978, 92 Stat. 2818, 2835, 2881, 2912, 2943, 2944; Pub. L. 95–628, §8(c)(1), Nov. 10, 1978, 92 Stat. 3631; Pub. L. 96–222, title I, §§102(a)(2)(A), 103(a)(6)(G)(x), Apr. 1, 1980, 94 Stat. 208, 210; Pub. L. 96–223, title I, §101(g)(1), Apr. 2, 1980, 94 Stat. 253; Pub. L. 97–248, title IV, §402(c)(5), Sept. 3, 1982, 96 Stat. 667; Pub. L. 98–369, div. A, title I, §§131(d)(2), 163(b)(1), title II, §211(b)(24), title III, §314(a)(3), title IV, §§447(a), 474(r)(39), title VII, §714(p)(2)(F), title VIII, §801(d)(14), July 18, 1984, 98 Stat. 664, 697, 757, 787, 817, 846, 965, 997; Pub. L. 99–514, title XVIII, §§1810(g)(3), 1847(b)(12)–(14), Oct. 22, 1986, 100 Stat. 2828, 2857; Pub. L. 100–203, title X, §§10712(c)(2), 10714(c), Dec. 22, 1987, 101 Stat. 1330–467, 1330–471; Pub. L. 100–418, title I, §1941(b)(2)(H), Aug. 23, 1988, 102 Stat. 1323; Pub. L. 100–647, title I, §1008(j)(1), title IV, §4008(c)(2), Nov. 10, 1988, 102 Stat. 3445, 3653; Pub. L. 101–239, title VII, §7814(e)(2)(E), Dec. 19, 1989, 103 Stat. 2414; Pub. L. 101–508, title XI, §§11511(c)(2), 11602(b), Nov. 5, 1990, 104 Stat. 1388–485, 1388–500; Pub. L. 104–188, title I, §§1702(e)(3), 1703(n)(8), 1704(j)(4)(B), Aug. 20, 1996, 110 Stat. 1870, 1877, 1882; Pub. L. 105–34, title V, §506(b), title XI, §1145(a), title XII, §§1239(e)(2), 1284(a), title XVI, §1601(g)(2), Aug. 5, 1997, 111 Stat. 855, 985, 1028, 1038, 1092; Pub. L. 105–206, title III, §3461(b), title VI, §§6007(e)(2)(A), 6023(27), July 22, 1998, 112 Stat. 764, 809, 826; Pub. L. 108–357, title IV, §413(c)(28), title VIII, §814(a), Oct. 22, 2004, 118 Stat. 1509, 1581; Pub. L. 109–58, title XIII, §§1341(b)(4), 1342(b)(4), Aug. 8, 2005, 119 Stat. 1049, 1051; Pub. L. 109–135, title IV, §403(y), Dec. 21, 2005, 119 Stat. 2629; Pub. L. 110–172, §7(a)(2)(B), Dec. 29, 2007, 121 Stat. 2482; Pub. L. 110–343, div. B, title II, §205(d)(3), title IV, §402(d), Oct. 3, 2008, 122 Stat. 3839, 3854; Pub. L. 111–5, div. B, title I, §§1141(b)(4), 1142(b)(7), Feb. 17, 2009, 123 Stat. 328, 331; Pub. L. 111–147, title V, §§501(c)(2), (3), 513(a)(1), (2)(A), (b), (c), Mar. 18, 2010, 124 Stat. 106, 111, 112; Pub. L. 111–226, title II, §218(a), Aug. 10, 2010, 124 Stat. 2403; Pub. L. 111–237, §3(b)(2), Aug. 16, 2010, 124 Stat. 2498.)

AMENDMENTS

2010—Subsec. (b)(1). Pub. L. 111–147, §501(c)(2), inserted "4," after "chapter 3,".

Subsec. (b)(2). Pub. L. 111–147, §501(c)(3), substituted "and withholding taxes" for "taxes and tax imposed by chapter 3" in heading and inserted "4," after "chapter 3," in text.

Subsec. (c)(8). Pub. L. 111–226 designated existing provisions as subpar. (A), inserted heading, and added subpar. (B).

Pub. L. 111–147, §513(b), (c), substituted "pursuant to an election under section 1295(b) or under section 1298(f), 6038, 6038A, 6038B, 6038D," for "under section 6038, 6038A, 6038B," and "tax return, event," for "event".

Subsec. (c)(11). Pub. L. 111–237 added par. (11).

Subsec. (e)(1)(A). Pub. L. 111–147, §513(a)(1), added subpar. (A). Former subpar. (A) redesignated (B).

Subsec. (e)(1)(B). Pub. L. 111–147, §513(a)(2)(A), substituted "Determination of gross income" for "General rule" in heading and "For purposes of subparagraph (A)" for "If the taxpayer omits from gross income an amount properly includible therein which is in excess of 25 percent of the amount of gross income stated in the return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 6 years after the return was filed. For purposes of this subparagraph" in introductory provisions.

Pub. L. 111–147, §513(a)(1), redesignated subpar. (A) as (B). Former subpar. (B) redesignated (C).

Subsec. (e)(1)(C). Pub. L. 111–147, §513(a)(1), redesignated subpar. (B) as (C).

2009—Subsec. (m). Pub. L. 111–5, §1142(b)(7), substituted "section 30(e)(6)" for "section 30(d)(4)".

Pub. L. 111–5, §1141(b)(4), which directed amendment of subsec. (m) by substituting "section 30D(e)(4)" for "section 30D(e)(9)", was executed by substituting "30D(e)(4)" for "30D(e)(9)", to reflect the probable intent of Congress.

2008—Subsec. (i). Pub. L. 110–343, §402(d), substituted "foreign oil and gas taxes" for "oil and gas extraction taxes".

Subsec. (m). Pub. L. 110–343, §205(d)(3), inserted "30D(e)(9)," after "30C(e)(5),".

2007—Subsec. (m). Pub. L. 110–172 inserted "45H(g)," after "45C(d)(4),".

2005—Subsec. (c)(10)(B). Pub. L. 109–135 struck out "(as defined in section 6111)" after "material advisor".

Subsec. (m). Pub. L. 109–58, §1342(b)(4), inserted "30C(e)(5)," after "30B(h)(9),".

Pub. L. 109–58, §1341(b)(4), inserted "30B(h)(9)," after "30(d)(4),".

2004—Subsec. (c)(10). Pub. L. 108–357, §814(a), added par. (10).

Subsec. (e)(1)(B). Pub. L. 108–357, §413(c)(28), reenacted heading without change and amended text of subpar. (B) generally. Prior to amendment, text read as follows: "If the taxpayer omits from gross income an amount properly includible therein under section 551(b) (relating to the inclusion in the gross income of United States shareholders of their distributive shares of the undistributed foreign personal holding company income), the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 6 years after the return was filed."

1998—Subsec. (c)(4). Pub. L. 105–206, §3461(b), designated existing provisions as subpar. (A), inserted heading, and added subpar. (B).

Subsec. (c)(9). Pub. L. 105–206, §6007(e)(2)(A), struck out at end "The value of any item which is so disclosed may not be redetermined by the Secretary after the expiration of the period under subsection (a)."

Subsec. (m). Pub. L. 105–206, §6023(27), substituted "election under section 30(d)(4), 40(f), 43, 45B, 45C(d)(4), or 51(j) (or any" for "election under sections 30(d)(4), 40(f), 43, 45B, or 51(j) (or any".

1997—Subsec. (a). Pub. L. 105–34, §1284(a), inserted at end "For purposes of this chapter, the term 'return' means the return required to be filed by the taxpayer (and does not include a return of any person from whom the taxpayer has received an item of income, gain, loss, deduction, or credit)."

Subsec. (c)(8). Pub. L. 105–34, §1145(a), amended heading and text of par. (8) generally. Prior to amendment, text read as follows: "In the case of any tax imposed on any exchange or distribution by reason of subsection (a), (d), or (e) of section 367, the time for assessment of such tax shall not expire before the date which is 3 years after the date on which the Secretary is notified of such exchange or distribution under section 6038B(a)."

Subsec. (c)(9). Pub. L. 105–34, §506(b), reenacted par. (9) heading without change and amended text of par. (9) generally. Prior to amendment, text read as follows: "If any gift of property the value of which is determined under section 2701 or 2702 (or any increase in taxable gifts required under section 2701(d)) is required to be shown on a return of tax imposed by chapter 12 (without regard to section 2503(b)), and is not shown on such return, any tax imposed by chapter 12 on such gift may be assessed, or a proceeding in court

for the collection of such tax may be begun without assessment, at any time. The preceding sentence shall not apply to any item not shown as a gift on such return if such item is disclosed in such return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the nature of such item."

Subsec. (m). Pub. L. 105–34, §1601(g)(2), provided that sections 1703(n)(8) and 1704(j)(4)(B) of Pub. L. 104–188 shall be applied as if the reference in the directory language to the redesignation by section 1602 referred to the redesignation by section 1702. See 1996 Amendment note below.

Subsec. (n)(3). Pub. L. 105–34, §1239(e)(2), which directed the addition of par. (3) to subsec. (o), was executed by adding par. (3) to subsec. (n) to reflect the probable intent of Congress and the redesignation of subsec. (o) as (n) by Pub. L. 104–188, §1702(e)(3)(A). See 1996 Amendment note below.

1996—Subsec. (m). Pub. L. 104–188, §1704(j)(4)(B), substituted "sections 30(d)(4), 40(f)" for "section 40(f)". See 1997 Amendment note above.

Pub. L. 104–188, §1703(n)(8), substituted "45B, or 51(j)" for "or 51(j)". See 1997 Amendment note above.

Pub. L. 104–188, §1702(e)(3), redesignated subsec. (n) as (m) and substituted "section 40(f), 43, or 51(j)" for "section 40(f) or 51(j)".

Pub. L. 104–188, §1702(e)(3)(A), which directed in part that subsec. (m) relating to deficiency attributable to election under section 44B, be struck out, could not be executed because subsec. (m) was previously repealed. See 1990 and 1988 Amendment notes for subsec. (m) and 1984 Amendment note for subsec. (p), below.

Subsecs. (n), (o). Pub. L. 104–188, §1702(e)(3)(A), redesignated subsec. (o) as (n). Former subsec. (n) redesignated (m).

1990—Subsec. (c)(9). Pub. L. 101–508, §11602(b), added par. (9).

Subsec. (m). Pub. L. 101–508, §11511(c)(2), which directed the substitution of "43 or 44B" for "44B" wherever appearing in subsec. (m), could not be executed because subsec. (m) was repealed by Pub. L. 100–418, §1941(b)(2)(H), and did not contain the term "44B". However, such term was contained in a prior subsec. (p) which was repealed by Pub. L. 98–369, §474(r)(39). See 1984 Amendment notes below.

1989—Subsec. (n). Pub. L. 101–239 struck out ", 41(h)," after "section 40(f)".

1988—Subsec. (m). Pub. L. 100–418 struck out subsec. (m) relating to special rules for windfall profit tax.

Subsec. (n). Pub. L. 100–647, §4008(c)(2), substituted ", 41(h), or 51(j)" for "or 51(j)".

Subsec. (o)(3). Pub. L. 100–647, §1008(j)(1), struck out par. (3) which read as follows: "For extension of period in the case of certain contributions in aid of construction, see section 118(c)."

1987—Subsec. (l)(1). Pub. L. 100–203, §10714(c), substituted "by section 4912, by chapter 42 (other than section 4940)," for "by chapter 42 (other than section 4940)".

Pub. L. 100–203, §10712(c)(2), substituted "plan, trust, or other organization" for "plan, or trust".

1986—Subsec. (c)(8). Pub. L. 99–514, §1810(g)(3), substituted "exchange or distribution" for "exchange" in two places, and "subsection (a), (d), or (e)" for "subsection (a) or (d)".

Subsecs. (k) to (p). Pub. L. 99–514, §1847(b)(12), inserted "(as amended by sections 211, 314, and 474 of this Act)" in directory language of section 163(b)(1) of Pub. L. 98–369, which resulted in no change in text but removed an ambiguity which had resulted from failure of directory language as originally enacted to indicate that amendments of this section by sections 211, 314, and 474 of Pub. L. 98–369 were to be executed before the amendment by section 163(b)(1) of Pub. L. 98–369. See 1984 Amendment notes below.

Subsec. (k). Pub. L. 99–514, §1847(b)(14), substituted "or a credit carryback (as defined in section 6511(d)(4)(C))" for "an investment credit carryback, or a work incentive program carryback, or a new employee credit carryback".

Subsecs. (n), (o). Pub. L. 99–514, §1847(b)(13), added subsec. (n) and redesignated former subsec. (n) as (o).

1984—Subsec. (c)(6). Pub. L. 98–369, §211(b)(24)(A), redesignated par. (7) as (6) and struck out former par. (6) which provided that, in the case of any tax imposed under section 802(a) by reason of section 802(b)(3) on account of a termination of the taxpayer as an insurance company or as a life insurance company to which section 815(d)(2)(A) applied, or on account of a distribution by the taxpayer to which section 815(d)(2)(B) applied such tax could be assessed within 3 years after the return was filed (whether or not such return was filed on or after the date prescribed) for the taxable year for which the taxpayer ceased to be an insurance company, the second taxable year for which the taxpayer was not a life insurance company, or the taxable year in which the distribution was actually made, as the case might be.

Subsec. (c)(7). Pub. L. 98–369, §447(a), added par. (7).

Pub. L. 98–369, §211(b)(24)(A), redesignated former par. (7) as (6).

Subsec. (c)(8). Pub. L. 98–369, §131(d)(2), added par. (8).

Subsec. (g)(3). Pub. L. 98–369, §801(d)(14), substituted "section 6011(c)(2)" for "section 6011(e)(2)".

Subsec. (k). Pub. L. 98–369, §163(b)(1), as amended by Pub. L. 99–514, §1847(b)(12), redesignated

subsec. (m) as (k).

Pub. L. 98–369, §211(b)(24)(B), struck out former subsec. (k) which provided that in the case of a deficiency attributable to the application to the taxpayer of section 815(d)(5) (relating to reductions of policyholders surplus account of life insurance companies for certain unused deductions), such deficiency could be assessed at any time before the expiration of the period within which a deficiency for the last taxable year to which the loss described in section 815(d)(5)(A) was carried under section 812(b)(2) could be assessed.

Subsec. (l). Pub. L. 98–369, §163(b)(1), as amended by Pub. L. 99–514, §1847(b)(12), redesignated subsec. (n) as (l) and struck out former subsec. (l) which read "For period of limitations for assessment and collection in the case of a joint income return filed after separate returns have been filed, see section 6013(b)(3) and (4)."

Subsec. (l)(3). Pub. L. 98–369, §314(a)(3), substituted "section 4942(g)(2)(B)(ii)" for "section 4942(g)(2)(B)(i)(II)" in subsec. (n)(3), which was redesignated subsec. (l)(3) by Pub. L. 98–369, §163(b)(1).

Subsec. (m). Pub. L. 98–369, §163(b)(1), as amended by Pub. L. 99–514, §1847(b)(12), redesignated subsec. (p) as (m). Former subsec. (m) redesignated (k).

Subsec. (n). Pub. L. 98–369, §163(b)(1), as amended by Pub. L. 99–514, §1847(b)(12), added subsec. (n). Former subsec. (n) redesignated (l).

Subsec. (n)(3). Pub. L. 98–369, §314(a)(3), substituted "section 4942(g)(2)(B)(ii)" for "section 4942(g)(2)(B)(i)(II)" in subsec. (n)(3), which was redesignated subsec. (l)(3) by Pub. L. 98–369, §163(b)(1).

Subsec. (o). Pub. L. 98–369, §163(b)(1), as amended by Pub. L. 99–514, §1847(b)(12), struck out subsec. (o) which read "For extension of period in the case of partnership items (as defined in section 6231(a)(3), see section 6229."

Subsec. (p). Pub. L. 98–369, §163(b)(1), as amended by Pub. L. 99–514, §1847(b)(12), redesignated subsec. (p) as (m).

Pub. L. 98–369, §474(r)(39), redesignated subsec. (q) as (p). Former subsec. (p), which related to deficiencies attributable to an election under section 44B, was struck out.

Subsec. (q). Pub. L. 98–369, §474(r)(39), redesignated subsec. (q) as (p).

Subsec. (q)(3). Pub. L. 98–369, §714(p)(2)(F), amended par. (3) generally. Prior to amendment par. (3) related to partnership items of federally registered partnerships and provided that under regulations prescribed by the Secretary, rules similar to the rules of subsection (o) shall apply to the tax imposed by section 4986.

1982—Subsec. (o). Pub. L. 97–248 substituted "Special rules for partnership items" for "Special rules for partnership items of federally registered partnerships" in heading and, in text, substituted cross reference to section 6229 for extension of period in case of partnership items (as defined in section 6231(a)(3)), for provisions that (1) in the case of any tax imposed by subtitle A with respect to any person, the period for assessing a deficiency attributable to any partnership item of a federally registered partnership would not expire before the later of (A) the date which was 4 years after the date on which the partnership return of the federally registered partnership for the partnership taxable year in which the item arose was filed (or, later, if the date prescribed for filing the return), or (B) if the name or address of such person did not appear on the partnership return, the date which was 1 year after the date on which such information was furnished to the Secretary in such manner and at such place as he might prescribe by regulations, (2) for purposes of this subsec., the term "partnership item" meant (A) any item required to be taken into account for the partnership taxable year under any provision of subchapter K of chapter 1 to the extent that regulations prescribed by the Secretary provided that for purposes of this subtitle such item was more appropriately determined at the partnership level than at the partner level, and (B) any other item to the extent affected by an item described in subpar. (A), (3) the extensions referred to in subsec. (c)(4), insofar as they related to partnership items, could, with respect to any person, be consented to (A) except to the extent the Secretary was otherwise notified by the partnership, by a general partner of the partnership, or (B) by any person authorized to do so by the partnership in writing, and (4) for purposes of this subsec., the term "federally registered partnership" meant, with respect to any partnership taxable year, any partnership (A) interests in which had been offered for sale at any time during such taxable year or a prior taxable year in any offering required to be registered with the Securities and Exchange Commission, or (B) which, at any time during such taxable year or a prior taxable year, had been subject to the annual reporting requirements of the Securities and Exchange Commission which related to the protection of investors in the partnership.

1980—Subsec. (o). Pub. L. 96–222, §102(a)(2)(A), redesignated subsec. (q), as added by section 212(a) of Pub. L. 95–600, relating to special rules for partnership items of Federally registered partnerships, as (o). Former subsec. (o), relating to work incentive program credit carrybacks, was repealed by Pub. L. 95–628.

Subsec. (p). Pub. L. 96–222, §103(a)(6)(G)(X), redesignated subsec. (q), as added by section 321(b)(2) of Pub. L. 95–600, relating to deficiency attributable to election under section 44B, as (p). Former subsec. (p), relating to new employee credit carrybacks, was repealed by Pub. L. 95–628.

Subsec. (q). Pub. L. 96–223 added subsec. (q). Former subsec. (q), as added by section 212(a) of Pub. L. 95–600, redesignated (o). Former subsec. (q), as added by section 321(b)(2) of Pub. L. 95–600, redesignated (p).

1978—Subsec. (e)(3). Pub. L. 95–600, §701(t)(3)(A), substituted "43, or 44" for "or 43", which required no change in text in view of the identical amendment by section 4(d)(4) of Pub. L. 95–227.

Pub. L. 95–227, §4(d)(4), substituted "43, or 44" for "or 43".

Subsec. (h). Pub. L. 95–600, §703(n), (p)(2), substituted "section 6213(b)(3)" for "section 6213(b)(2)" and struck out provisions relating to the assessment of a deficiency attributable to the application of a net operating loss carryback.

Subsec. (j). Pub. L. 95–628, §8(c)(1)(A), substituted in heading "Certain credit carrybacks" for "Investment credit carrybacks", designated existing provision as par. (1), and in par. (1) as so designated, inserted heading "In general" and in text, substituted "credit carryback" for "investment credit carryback" in two places and "unused credit" for "unused investment credit", inserted reference to other credit carryback, and substituted reference to section 6213(b)(3) for 6213(b)(2), and added par. (2).

Pub. L. 95–600, §703(n), substituted "section 6213(b)(3)" for "section 6213(b)(2)".

Subsec. (m). Pub. L. 95–628, §8(c)(1)(B), struck out references to subsecs. (o) and (p) in two places.

Pub. L. 95–600, §504(b)(3), inserted "and refund" after "tentative carryback".

Subsec. (n). Pub. L. 95–227, §4(d)(5), in heading inserted "and similar" after "42", and in par. (1) inserted reference to section 4975 and inserted ", plan, or trust (as the case may be)" after "foundation".

Subsec. (o). Pub. L. 95–628, §8(c)(1)(C), struck out subsec. (o) which related to work incentive program credit carrybacks.

Pub. L. 95–600, §703(n), substituted "section 6213(b)(3)" for "section 6213(b)(2)".

Subsec. (p). Pub. L. 95–628, §8(c)(1)(C), struck out subsec. (p) which related to new employee credit carrybacks.

Subsec. (q). Pub. L. 95–600, §212(a), added subsec. (q) relating to special rules for partnership items of Federally registered partnerships.

Pub. L. 95–600, §321(b)(2), added subsec. (q) relating to deficiency attributable to election under section 44B.

1977—Subsec. (m). Pub. L. 95–30, §202(d)(5)(B), inserted references to new employee credit carrybacks and to subsec. (p).

Subsec. (p). Pub. L. 95–30, §202(d)(4)(A), added subsec. (p).

1976—Subsecs. (b)(3), (c)(4), (d), (e)(1)(A)(ii), (2). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary" wherever appearing.

Subsec. (e)(3). Pub. L. 94–455, §1307(d)(2)(F)(vi), substituted "chapter 41, 42, or 43" for "chapter 42 or 43".

Subsec. (i). Pub. L. 94–455, §§1031(b)(5), 1035(d)(3), substituted "section 904(c)" for Section 904(d)" wherever appearing and inserted "or under section 907(f) (relating to carryback and carryover of disallowed oil and gas extraction taxes)" after "excess foreign taxes)" and "or 907(f)" before "which results in such carryback".

Subsec. (n)(3). Pub. L. 94–455, §1302(b), added par. (3).

Subsec. (o). Pub. L. 94–455, §2107(g)(2)(A), inserted ", an investment credit carryback," after "net operating loss carryback".

1974—Subsec. (e)(3). Pub. L. 93–406 inserted reference to chapter 43.

1971—Subsec. (g)(3). Pub. L. 92–178, §504(c), added par. (3).

Subsec. (m). Pub. L. 92–178, §601(e)(2), substituted "an investment credit carryback, or a work incentive program carryback" for "or an investment credit carryback" and inserted reference to subsec. (o) in two places, respectively.

Subsec. (o). Pub. L. 92–178, §601(d)(1), added subsec. (o).

1970—Subsec. (e)(2). Pub. L. 91–614 substituted "during the period for which the return was filed" for "during the year".

1969—Subsec. (c)(7). Pub. L. 91–172, §101(g)(2), added par. (7).

Subsec. (e)(3). Pub. L. 91–172, §101(g)(3), inserted provision excluding, in specified cases, chapter 42 taxes from these considered in determining the amount of taxes omitted from a return.

Subsec. (h). Pub. L. 91–172, §512(e)(1)(A)–(D), substituted "loss or capital loss carrybacks" for "loss carrybacks" in heading, "loss carryback or a capital loss carryback" for "loss carryback," "operating loss or net capital loss which" for "operating loss which," "assessed. In the case of a deficiency attributable to the application of a net operating loss carryback, such deficiency may be assessed" for "assessed, or" and "if later than the date prescribed by the preceding sentence" for "whichever is later".

Subsec. (j). Pub. L. 91–172, §512(e)(1)(E), substituted "loss carryback or a capital loss carryback" for "loss carryback".

Subsec. (m). Pub. L. 91–172, §512(e)(1)(F), substituted "net operating loss carryback, a capital loss carryback, or an investment credit carryback" for "net operating loss carryback or an investment credit carryback".

Subsec. (n). Pub. L. 91–172, §101(g)(1), added subsec. (n).

1967—Subsec. (j). Pub. L. 90–225 inserted ", or, with respect to any portion of an investment credit carryback from a taxable year attributable to a net operating loss carryback from a subsequent taxable year, at any time before the expiration of the period within which a deficiency for such subsequent taxable year may be assessed" after "the unused investment credit which results in such carryback may be assessed."

1966—Subsec. (b). Pub. L. 89–809 substituted "chapter 3, 21, or 24" for "chapter 21 or 24" in text of pars. (1) and (2) and inserted "and tax imposed by chapter 3" after "taxes" in par. (2) heading.

Subsec. (j). Pub. L. 89–721, §2(f), substituted "investment credit carryback (including deficiencies which may be assessed pursuant to the provisions of section 6213(b)(2))" for "investment credit carryback".

Subsec. (m). Pub. L. 89–721, §3(a), added subsec. (m).

1965—Subsec. (b)(4). Pub. L. 89–44, §810(a), added par. (4).

Subsec. (e). Pub. L. 89–44, §810(b)(2), substituted "Substantial omission of items" for "Omission from gross income" in heading.

Subsec. (e)(3). Pub. L. 89–44, §810(b)(1), added par. (3).

1964—Subsec. (f). Pub. L. 88–272 substituted "gross income and adjusted ordinary gross income, described in section 543" for "gross income, described in section 543(a)".

Subsecs. (k), (l). Pub. L. 88–571 added subsec. (k) and redesignated former subsec. (k) as (l).

1962—Subsec. (c)(6). Pub. L. 87–858 substituted "802(a)" for "802(a)(1)".

Subsec. (h). Pub. L. 87–794 authorized assessment of a deficiency within 18 months after the date on which the taxpayer files in accordance with section 172(b)(3) a copy of the certification issued under section 317 of the Trade Expansion Act of 1962, whichever is later.

Subsecs. (j), (k). Pub. L. 87–834 added subsec. (j) and redesignated former subsec. (j) as (k).

1960—Subsecs. (i), (j). Pub. L. 86–780 added subsec. (i) and redesignated former subsec. (i) as (j).

1959—Subsec. (c)(6). Pub. L. 86–69 added par. (6).

1958—Subsec. (a). Pub. L. 85–859 substituted "at any time after such tax became due and before the expiration of 3 years after the date on which any part of such tax was paid" for "within 3 years after such tax became due".

Subsec. (d). Pub. L. 85–866, §80(a), (b), substituted in first sentence "subsection (c), (e), or (f)" for "subsection (c)", designated existing clauses (1) to (3) of second sentence as clause (1) and added clauses (2) and (3).

Subsec. (g)(2). Pub. L. 85–866, §81(a), substituted "organization" for "corporation" wherever appearing.

Subsecs. (h), (i). Pub. L. 85–866, §81(b), added subsec. (h) and redesignated former subsec. (h) as (i).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–237 applicable to restitution ordered after Aug. 16, 2010, see section 3(c) of Pub. L. 111–237, set out as a note under section 6201 of this title.

Pub. L. 111–226, title II, §218(b), Aug. 10, 2010, 124 Stat. 2403, provided that: "The amendments made by this section [amending this section] shall take effect as if included in section 513 of the Hiring Incentives to Restore Employment Act [Pub. L. 111–147]."

Amendment by section 501(c)(2), (3) of Pub. L. 111–147 applicable to payments made after Dec. 31, 2012, with certain exceptions, see section 501(d)(1), (2) of Pub. L. 111–147, set out as a note under section 1471 of this title.

Amendment by section 513(a)(1), (2)(A), (b), (c) of Pub. L. 111–147 applicable to returns filed after Mar. 18, 2010, and to certain returns filed on or before Mar. 18, 2010, see section 513(d) of Pub. L. 111–147, set out as a note under section 6229 of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by section 1141(b)(4) of Pub. L. 111–5 applicable to vehicles acquired after Dec. 31, 2009, see section 1141(c) of Pub. L. 111–5, set out as a note under section 30B of this title.

Amendment by section 1142(b)(7) of Pub. L. 111–5 applicable to vehicles acquired after Feb. 17, 2009, see section 1142(c) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by section 205(d)(3) of Pub. L. 110–343 applicable to taxable years beginning after Dec. 31, 2008, see section 205(e) of Pub. L. 110–343, set out as an Effective and Termination Dates of 2008 Amendment note under section 24 of this title.

Amendment by section 402(d) of Pub. L. 110–343 applicable to taxable years beginning after Dec. 31, 2008, see section 402(e) of Pub. L. 110–343, set out as a note under section 907 of this title.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–172 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 7(e) of Pub. L. 110–172, set out as a note under section 1092 of this title.

EFFECTIVE DATE OF 2005 AMENDMENTS

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

Amendment by section 1341(b)(4) of Pub. L. 109–58 applicable to property placed in service after Dec. 31, 2005, in taxable years ending after such date, see section 1341(c) of Pub. L. 109–58, set out as an Effective Date note under section 30B of this title.

Amendment by section 1342(b)(4) of Pub. L. 109–58 applicable to property placed in service after Dec. 31, 2005, in taxable years ending after such date, see section 1342(c) of Pub. L. 109–58, set out as an Effective Date note under section 30C of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 413(c)(28) of Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

Pub. L. 108–357, title VIII, §814(b), Oct. 22, 2004, 118 Stat. 1581, provided that: "The amendment made by this section [amending this section] shall apply to taxable years with respect to which the period for assessing a deficiency did not expire before the date of the enactment of this Act [Oct. 22, 2004]."

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–206, title III, §3461(c), July 22, 1998, 112 Stat. 764, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and section 6502 of this title] shall apply to requests to extend the period of limitations made after December 31, 1999.

"(2) PRIOR REQUEST.—If, in any request to extend the period of limitations made on or before December 31, 1999, a taxpayer agreed to extend such period beyond the 10-year period referred to in section 6502(a) of the Internal Revenue Code of 1986, such extension shall expire on the latest of—

"(A) the last day of such 10-year period;

"(B) December 31, 2002; or

"(C) in the case of an extension in connection with an installment agreement, the 90th day after the end of the period of such extension."

Amendment by section 6023(27) of Pub. L. 105–206 effective July 22, 1998, see section 6023(32) of Pub. L. 105–206, set out as a note under section 34 of this title.

Amendment by section 6007(e)(2)(A) of Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title V, §506(e)(2), Aug. 5, 1997, 111 Stat. 856, provided that: "The amendment made by subsection (b) [amending this section] shall apply to gifts made in calendar years ending after the date of the enactment of this Act [Aug. 5, 1997]."

Pub. L. 105–34, title XI, §1145(b), Aug. 5, 1997, 111 Stat. 985, provided that: "The amendment made by subsection (a) [amending this section] shall apply to information the due date for the reporting of which is after the date of the enactment of this Act [Aug. 5, 1997]."

Amendment by section 1239(e)(2) of Pub. L. 105–34 applicable to partnership taxable years ending after Aug. 5, 1997, see section 1239(f) of Pub. L. 105–34, set out as a note under section 6225 of this title.

Pub. L. 105–34, title XII, §1284(b), Aug. 5, 1997, 111 Stat. 1038, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of

this Act [Aug. 5, 1997]."

Amendment by section 1601(g)(2) of Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 23 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1702(e)(3) of Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

Amendment by section 1703(n)(8) of Pub. L. 104–188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103–66, §§13001–13444, to which such amendment relates, see section 1703(o) of Pub. L. 104–188, set out as a note under section 39 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, §11602(e)(2), Nov. 5, 1990, 104 Stat. 1388–501, provided that: "The amendment made by subsection (b) [amending this section] shall apply to gifts after October 8, 1990."

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by section 1008(j)(1) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 4008(c)(2) of Pub. L. 100–647 applicable to taxable years beginning after Dec. 31, 1988, see section 4008(d) of Pub. L. 100–647, set out as a note under section 41 of this title.

Amendment by Pub. L. 100–418 applicable to crude oil removed from premises on or after Aug. 23, 1988, see section 1941(c) of Pub. L. 100–418, set out as a note under section 164 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 10712(c)(2) of Pub. L. 100–203 applicable to taxable years beginning after Dec. 22, 1987, see section 10712(d) of Pub. L. 100–203, set out as an Effective Date note under section 4955 of this title.

Amendment by section 10714(c) of Pub. L. 100–203 applicable to taxable years beginning after Dec. 22, 1987, see section 10714(e) of Pub. L. 100–203, set out as an Effective Date note under section 4912 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 131(d)(2) of Pub. L. 98–369 applicable to transfers or exchanges after Dec. 31, 1984, in taxable years ending after such date, with special rules for certain transfers and ruling requests before Mar. 1, 1984, see section 131(g) of Pub. L. 98–369, set out as a note under section 367 of this title.

Amendment by section 163(b)(1) of Pub. L. 98–369 applicable to expenditures with respect to which the second taxable year described in section 118(b)(2)(B) of this title ends after Dec. 31, 1984, see section 163(c) of Pub. L. 98–369, set out as a note under section 118 of this title.

Amendment by section 211(b)(24) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

Amendment by section 314(a)(3) of Pub. L. 98–369 effective July 18, 1984, see section 314(a)(4) of Pub. L. 98–369, set out as a note under section 4942 of this title.

Pub. L. 98–369, div. A, title IV, §447(b), July 18, 1984, 98 Stat. 817, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to documents received by the Secretary of the Treasury (or his delegate) after the date of the enactment of this Act [July 18, 1984]."

Amendment by section 474(r)(39) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31,

1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 714(p)(2)(F) of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

Amendment by section 801(d)(14) of Pub. L. 98–369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to partnership taxable years beginning after Sept. 3, 1982, with provision for applicability of amendment to any partnership taxable year ending after Sept. 3, 1982, if partnership, each partner, and each indirect partner requests such application and the Secretary of the Treasury or his delegate consents to such application, see section 407(a)(1), (3) of Pub. L. 97–248, set out as an Effective Date note under section 6221 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–223 applicable to periods after Feb. 29, 1980, see section 101(i) of Pub. L. 96–223, set out as a note under section 6161 of this title.

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95–628 applicable to carrybacks arising in taxable years beginning after Nov. 10, 1978, see section 8(d) of Pub. L. 95–628, set out as a note under section 6511 of this title.

Pub. L. 95–600, title II, §212(c), Nov. 6, 1978, 92 Stat. 2819, provided that: "The amendments made by this section [amending this section and sections 6511 and 6512 of this title] shall apply to partnership items arising in partnership taxable years beginning after December 31, 1978."

Pub. L. 95–600, title III, §321(d)(5), as added by Pub. L. 96–222, title I, §103(a)(6)(B), Apr. 1, 1980, 94 Stat. 209, provided that: "The amendments made by subsection (b) [amending this section and section 44B of this title] shall apply to taxable years beginning after December 31, 1976."

Amendment by section 504(b)(3) of Pub. L. 95–600 applicable to tentative refund claims filed on and after Nov. 6, 1978, see section 504(c) of Pub. L. 95–600, set out as a note under section 6411 of this title.

Amendment by section 701(t)(3)(A) of Pub. L. 95–600 effective Oct. 4, 1976, see section 701(t)(5) of Pub. L. 95–600, set out as a note under section 859 of this title.

Amendment by section 703(n) of Pub. L. 95–600 effective Oct. 4, 1976, see section 703(r) of Pub. L. 95–600, set out as a note under section 46 of this title.

Amendment by section 703(p)(2) of Pub. L. 95–600 applicable with respect to losses sustained in taxable years ending after Nov. 6, 1978, see section 703(p)(4) of Pub. L. 95–600, set out as a note under section 172 of this title.

Amendment by Pub. L. 95–227 applicable with respect to contributions, acts, and expenditures made after Dec. 31, 1977, in and for taxable years beginning after such date, see section 4(f) of Pub. L. 95–227, set out as an Effective Date note under section 192 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, and to credit carrybacks from such years, see section 202(e) of Pub. L. 95–30, set out as an Effective Date note under section 51 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1031(b)(5) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, with specific exceptions, see section 1031(c) of Pub. L. 94–455, set out as a note under section 904 of this title.

Amendment by section 1035(d)(3) of Pub. L. 94–455 applicable to taxes paid or accrued during taxable years ending after Oct. 4, 1976, see section 1035(e) of Pub. L. 94–455, set out as a note under section 907 of this title.

Amendment by section 1302(b) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1974, see section 1302(c) of Pub. L. 94–455, set out as a note under section 4942 of this title.

Amendment by section 1307(d)(2)(F)(vi) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1976, see section 1307(e)(5) of Pub. L. 94–455, set out as a note under section 501 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–406 applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93–406, for plan years beginning after Sept. 2, 1974, but, in the case of plans in existence on Jan. 1, 1974, amendment by Pub. L. 93–406 applicable for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93–406, set out an an Effective Date; Transitional Rules note under section 410 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by section 504(c) of Pub. L. 92–178 applicable with respect to taxable years ending after Dec. 31, 1971, except that a corporation may not be a DISC for any taxable year beginning before Jan. 1, 1972, see section 507 of Pub. L. 92–178, set out as an Effective Date note under section 991 of this title.

Amendment by section 601(d)(1), (e)(2) of Pub. L. 92–178 applicable to taxable years beginning after Dec. 31, 1971, see section 601(f) of Pub. L. 92–178, set out as a note under section 381 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91–614, set out as a note under section 2501 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 101(g)(1)–(3) of Pub. L. 91–172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

Amendment by section 512(e)(1) of Pub. L. 91–172 applicable with respect to net capital losses sustained in taxable years beginning after Dec. 31, 1969, see section 512(g) of Pub. L. 91–172, set out as a note under section 1212 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–225 applicable with respect to investment credit carrybacks attributable to net operating loss carrybacks from taxable years ending after July 31, 1967, see section 2(g) of Pub. L. 90–225, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1966 AMENDMENTS

Pub. L. 89–809, title I, §105(f)(4), Nov. 13, 1966, 80 Stat. 1568, provided that: "The amendments made by this subsection [amending this section and section 6513 of this title] shall take effect on the date of the enactment of this Act [Nov. 13, 1966]."

Amendment by section 2(f) of Pub. L. 89–721 applicable with respect to taxable years ending after Dec. 31, 1961, but only in the case of applications filed after Nov. 2, 1966, see section 2(g) of Pub. L. 89–721, set out as a note under section 6411 of this title.

Pub. L. 89–721, §3(b), Nov. 2, 1966, 80 Stat. 1151, provided that: "The amendment made by subsection (a) [amending this section] shall apply in any case where the application under section 6411 of the Internal Revenue Code of 1954 is filed after the date of the enactment of this Act [Nov. 2, 1966]."

EFFECTIVE DATE OF 1965 AMENDMENT

Pub. L. 89–44, title VIII, §810(c), June 21, 1965, 79 Stat. 169, provided that: "The amendments made by subsections (a) and (b) [amending this section] shall apply with respect to returns filed on or after July 1, 1965."

EFFECTIVE DATE OF 1964 AMENDMENTS

Pub. L. 88–571, §3(f), Sept. 2, 1964, 78 Stat. 859, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by this section [amending this section and sections 815, 6511, 6601, and 6611 of this title] shall apply with respect to amounts added to policyholders surplus accounts (within the meaning of section 815(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) for taxable years beginning after December 31, 1958."

Amendment by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 225(l) of Pub. L. 88–272, set out as a note under section 316 of this title.

EFFECTIVE DATE OF 1962 AMENDMENTS

Pub. L. 87–858, §3(f), Oct. 23, 1962, 76 Stat. 1138, provided that the amendment made by that section is applicable with respect to taxable years beginning after Dec. 31, 1961.

Amendment by Pub. L. 87–834 applicable with respect to taxable years ending after Dec. 31, 1961, see section 2(h) of Pub. L. 87–834, set out as an Effective Date note under section 46 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–780 applicable to taxable years beginning after Dec. 31, 1957, see section 4 of Pub. L. 86–780, set out as a note under section 904 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–69 applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 4 of Pub. L. 86–69, set out as a note under section 381 of this title.

EFFECTIVE DATE OF 1958 AMENDMENTS

Amendment by Pub. L. 85–866 effective Aug. 17, 1954, see section 1(c)(2) of Pub. L. 85–866, set out as a note under section 165 of this title.

Amendment by Pub. L. 85–859 effective on first day of first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1(c) of Pub. L. 85–859, Sept. 2, 1958, 72 Stat. 1275.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§6502. Collection after assessment

(a) Length of period

Where the assessment of any tax imposed by this title has been made within the period of limitation properly applicable thereto, such tax may be collected by levy or by a proceeding in court, but only if the levy is made or the proceeding begun—

(1) within 10 years after the assessment of the tax, or

(2) if—

(A) there is an installment agreement between the taxpayer and the Secretary, prior to the date which is 90 days after the expiration of any period for collection agreed upon in writing by the Secretary and the taxpayer at the time the installment agreement was entered into; or

(B) there is a release of levy under section 6343 after such 10-year period, prior to the expiration of any period for collection agreed upon in writing by the Secretary and the taxpayer before such release.

If a timely proceeding in court for the collection of a tax is commenced, the period during which such tax may be collected by levy shall be extended and shall not expire until the liability for the tax (or a judgment against the taxpayer arising from such liability) is satisfied or becomes unenforceable.

(b) Date when levy is considered made

The date on which a levy on property or rights to property is made shall be the date on which the notice of seizure provided in section 6335(a) is given.

(Aug. 16, 1954, ch. 736, 68A Stat. 806; Pub. L. 89–719, title I, §113(b), Nov. 2, 1966, 80 Stat. 1146; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 100–647, title I, §1015(u)(1), Nov. 10, 1988, 102 Stat. 3573; Pub. L. 101–239, title VII, §7811(k)(2), Dec. 19, 1989, 103 Stat. 2412; Pub. L. 101–508, title XI, §11317(a), Nov. 5, 1990, 104 Stat. 1388–458; Pub. L. 105–206, title III, §3461(a), July 22, 1998, 112 Stat. 764.)

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–206, §3461(a)(2), struck out first sentence of concluding provisions which read as follows: "The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon."

Subsec. (a)(2). Pub. L. 105–206, §3461(a)(1), added par. (2) and struck out former par. (2) which read as

follows: "prior to the expiration of any period for collection agreed upon in writing by the Secretary and the taxpayer before the expiration of such 10-year period (or, if there is a release of levy under section 6343 after such 10-year period, then before such release)."

1990—Subsec. (a)(1). Pub. L. 101–508, §11317(a)(1), substituted "10 years" for "6 years".

Subsec. (a)(2). Pub. L. 101–508, §11317(a)(2), substituted "10-year period" for "6-year period" wherever appearing.

1989—Subsec. (a). Pub. L. 101–239 substituted "unenforceable" for "enforceable" in last sentence.

1988—Subsec. (a). Pub. L. 100–647 amended last sentence generally. Prior to amendment, last sentence read as follows: "The period provided by this subsection during which a tax may be collected by levy shall not be extended or curtailed by reason of a judgment against the taxpayer."

1976—Subsec. (a)(2). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

1966—Subsec. (a). Pub. L. 89–719 inserted sentence at end providing that the period provided by this subsection during which a tax may be collected by levy shall not be extended or curtailed by reason of a judgment against the taxpayer.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendments by Pub. L. 105–206 applicable to requests to extend period of limitations made after Dec. 31, 1999, with special provisions relating to requests made on or before such date, see section 3461(c) of Pub. L. 105–206, set out as a note under section 6501 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to taxes assessed after Nov. 5, 1990, and to taxes assessed on or before that date if the period specified in this section (determined without regard to the amendments made by Pub. L. 101–508) for collection of such taxes has not expired as of such date, see section 11317(c) of Pub. L. 101–508, set out as a note under section 6323 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1015(u)(2), Nov. 10, 1988, 102 Stat. 3573, provided that: "The amendment made by this subsection [amending this section] shall apply to levies issued after the date of the enactment of this Act [Nov. 10, 1988]."

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–719 applicable after Nov. 2, 1966, regardless of when title or lien of United States arose or when lien or interest of another person was acquired, except in a case in which a lien or title derived from enforcement of a lien held by United States has been enforced by a civil action or suit which has become final by judgment, sale, or agreement before Nov. 2, 1966, or in a case in which the amendment would impair a priority held by any person other than United States holding a lien or interest prior to Nov. 2, 1966, operate to increase liability of such person, or shorten the time for bringing suit with respect to transactions occurring before Nov. 2, 1966, see section 114(a)–(c) of Pub. L. 89–719, set out as a note under section 6323 of this title.

§6503. Suspension of running of period of limitation

(a) Issuance of statutory notice of deficiency

(1) General rule

The running of the period of limitations provided in section 6501 or 6502 (or section 6229, but only with respect to a deficiency described in paragraph (2)(A) or (3) of section 6230(a)).[1] on the making of assessments or the collection by levy or a proceeding in court, in respect of any deficiency as defined in section 6211 (relating to income, estate, gift and certain excise taxes), shall (after the mailing of a notice under section 6212(a)) be suspended for the period during which the Secretary is prohibited from making the assessment or from collecting by levy or a

proceeding in court (and in any event, if a proceeding in respect of the deficiency is placed on the docket of the Tax Court, until the decision of the Tax Court becomes final), and for 60 days thereafter.

(2) Corporation joining in consolidated income tax return

If a notice under section 6212(a) in respect of a deficiency in tax imposed by subtitle A for any taxable year is mailed to a corporation, the suspension of the running of the period of limitations provided in paragraph (1) of this subsection shall apply in the case of corporations with which such corporation made a consolidated income tax return for such taxable year.

(b) Assets of taxpayer in control or custody of court

The period of limitations on collection after assessment prescribed in section 6502 shall be suspended for the period the assets of the taxpayer are in the control or custody of the court in any proceeding before any court of the United States or of any State or of the District of Columbia, and for 6 months thereafter.

(c) Taxpayer outside United States

The running of the period of limitations on collection after assessment prescribed in section 6502 shall be suspended for the period during which the taxpayer is outside the United States if such period of absence is for a continuous period of at least 6 months. If the preceding sentence applies and at the time of the taxpayer's return to the United States the period of limitations on collection after assessment prescribed in section 6502 would expire before the expiration of 6 months from the date of his return, such period shall not expire before the expiration of such 6 months.

(d) Extensions of time for payment of estate tax

The running of the period of limitation for collection of any tax imposed by chapter 11 shall be suspended for the period of any extension of time for payment granted under the provisions of section 6161(a)(2) or (b)(2) or under the provisions of section 6163 or 6166.

(e) Extensions of time for payment of tax attributable to recoveries of foreign expropriation losses

The running of the period of limitations for collection of the tax attributable to a recovery of a foreign expropriation loss (within the meaning of section 6167(f)) shall be suspended for the period of any extension of time for payment under subsection (a) or (b) of section 6167.

(f) Wrongful seizure of or lien on property of third party

(1) Wrongful seizure

The running of the period under section 6502 shall be suspended for a period equal to the period from the date property (including money) of a third party is wrongfully seized or received by the Secretary to the date the Secretary returns property pursuant to section 6343(b) or the date on which a judgment secured pursuant to section 7426 with respect to such property becomes final, and for 30 days thereafter. The running of such period shall be suspended under this paragraph only with respect to the amount of such assessment equal to the amount of money or the value of specific property returned.

(2) Wrongful lien

In the case of any assessment for which a lien was made on any property, the running of the period under section 6502 shall be suspended for a period equal to the period beginning on the date any person becomes entitled to a certificate under section 6325(b)(4) with respect to such property and ending on the date which is 30 days after the earlier of—

(A) the earliest date on which the Secretary no longer holds any amount as a deposit or bond provided under section 6325(b)(4) by reason of such deposit or bond being used to satisfy the unpaid tax or being refunded or released; or

(B) the date that the judgment secured under section 7426(b)(5) becomes final.

The running of such period shall be suspended under this paragraph only with respect to the

amount of such assessment equal to the value of the interest of the United States in the property plus interest, penalties, additions to the tax, and additional amounts attributable thereto.

(g) Suspension pending correction

The running of the periods of limitations provided in sections 6501 and 6502 on the making of assessments or the collection by levy or a proceeding in court in respect of any tax imposed by chapter 42 or section 507, 4971, or 4975 shall be suspended for any period described in section 507(g)(2) or during which the Secretary has extended the time for making correction under section 4963(e).

(h) Cases under title 11 of the United States Code

The running of the period of limitations provided in section 6501 or 6502 on the making of assessments or collection shall, in a case under title 11 of the United States Code, be suspended for the period during which the Secretary is prohibited by reason of such case from making the assessment or from collecting and—

(1) for assessment, 60 days thereafter, and

(2) for collection, 6 months thereafter.

(i) Extension of time for payment of undistributed PFIC earnings tax liability

The running of any period of limitations for collection of any amount of undistributed PFIC earnings tax liability (as defined in section 1294(b)) shall be suspended for the period of any extension of time under section 1294 for payment of such amount.

(j) Extension in case of certain summonses

(1) In general

If any designated summons is issued by the Secretary to a corporation (or to any other person to whom the corporation has transferred records) with respect to any return of tax by such corporation for a taxable year (or other period) for which such corporation is being examined under the coordinated examination program (or any successor program) of the Internal Revenue Service, the running of any period of limitations provided in section 6501 on the assessment of such tax shall be suspended—

(A) during any judicial enforcement period—

(i) with respect to such summons, or

(ii) with respect to any other summons which is issued during the 30-day period which begins on the date on which such designated summons is issued and which relates to the same return as such designated summons, and

(B) if the court in any proceeding referred to in paragraph (3) requires any compliance with a summons referred to in subparagraph (A), during the 120-day period beginning with the 1st day after the close of the suspension under subparagraph (A).

If subparagraph (B) does not apply, such period shall in no event expire before the 60th day after the close of the suspension under subparagraph (A).

(2) Designated summons

For purposes of this subsection—

(A) In general

The term "designated summons" means any summons issued for purposes of determining the amount of any tax imposed by this title if—

(i) the issuance of such summons is preceded by a review of such issuance by the regional counsel of the Office of Chief Counsel for the region in which the examination of the corporation is being conducted,

(ii) such summons is issued at least 60 days before the day on which the period prescribed in section 6501 for the assessment of such tax expires (determined with regard to extensions),

and

(iii) such summons clearly states that it is a designated summons for purposes of this subsection.

(B) Limitation

A summons which relates to any return shall not be treated as a designated summons if a prior summons which relates to such return was treated as a designated summons for purposes of this subsection.

(3) Judicial enforcement period

For purposes of this subsection, the term "judicial enforcement period" means, with respect to any summons, the period—

(A) which begins on the day on which a court proceeding with respect to such summons is brought, and

(B) which ends on the day on which there is a final resolution as to the summoned person's response to such summons.

(k) Cross references

For suspension in case of—

(1) Deficiency dividends of a personal holding company, see section 547(f).

(2) Receiverships, see subchapter B of chapter 70.

(3) Claims against transferees and fiduciaries, see chapter 71.

(4) Tax return preparers, see section 6694(c)(3).

(5) Deficiency dividends in the case of a regulated investment company or a real estate investment trust, see section 860(h).

(Aug. 16, 1954, ch. 736, 68A Stat. 806; Aug. 6, 1956, ch. 1020, §2, 70 Stat. 1075; Pub. L. 85–866, title II, §206(d), Sept. 2, 1958, 72 Stat. 1685; Pub. L. 89–384, §1(e), Apr. 8, 1966, 80 Stat. 104; Pub. L. 89–719, title I, §106, Nov. 2, 1966, 80 Stat. 1139; Pub. L. 91–172, title I, §101(g)(4), (j)(46), Dec. 30, 1969, 83 Stat. 525, 531; Pub. L. 93–406, title II, §1016(a)(15), Sept. 2, 1974, 88 Stat. 930; Pub. L. 94–452, §3(b), Oct. 2, 1976, 90 Stat. 1514; Pub. L. 94–455, title XII, §1203(h)(1), title XVI, §1601(f)(2), title XIX, §§1902(b)(2)(A), 1906(b)(13)(A), title XX, §2004(c)(4), Oct. 4, 1976, 90 Stat. 1694, 1746, 1806, 1834, 1868; Pub. L. 95–227, §4(d)(6), Feb. 10, 1978, 92 Stat. 23; Pub. L. 95–600, title III, §362(d)(5), Nov. 6, 1978, 92 Stat. 2852; Pub. L. 96–222, title I, §108(b)(1)(A), Apr. 1, 1980, 94 Stat. 226; Pub. L. 96–589, §6(a), (i)(11), Dec. 24, 1980, 94 Stat. 3407, 3411; Pub. L. 96–596, §2(a)(4)(D), (E), Dec. 24, 1980, 94 Stat. 3472; Pub. L. 97–34, title IV, §422(e)(7), Aug. 13, 1981, 95 Stat. 316; Pub. L. 98–369, div. A, title III, §305(b)(4), July 18, 1984, 98 Stat. 784; Pub. L. 99–514, title XII, §1235(d), title XVIII, §1875(d)(2)(B)(ii), Oct. 22, 1986, 100 Stat. 2575, 2896; Pub. L. 100–203, title X, §10712(c)(3), Dec. 22, 1987, 101 Stat. 1330–467; Pub. L. 101–508, title XI, §§11311(a), 11801(c)(20)(A), Nov. 5, 1990, 104 Stat. 1388–453, 1388–528; Pub. L. 104–168, title X, §1002(a)–(c), July 30, 1996, 110 Stat. 1468; Pub. L. 104–188, title I, §1702(h)(17), Aug. 20, 1996, 110 Stat. 1874; Pub. L. 105–34, title XII, §1237(c)(2), Aug. 5, 1997, 111 Stat. 1026; Pub. L. 105–206, title III, §3106(b)(3), July 22, 1998, 112 Stat. 734; Pub. L. 110–28, title VIII, §8246(a)(2)(E), May 25, 2007, 121 Stat. 201.)

CODIFICATION

Pub. L. 94–452, §3(b), redesignated subsec. (i), relating to cross references, as subsec. (j) and added a new subsec. (i), relating to extension of time for collecting certain taxes.

Pub. L. 95–455, §1902(b)(2)(A), repealed subsec. (e) and (without reference to the amendment made by Pub. L. 94–452) renumbered subsecs. (f) to (i) as (e) to (h), with the result that the section was then comprised of subsecs. (a) to (h) and subsec. (j), relating to cross references.

Pub. L. 94–455, §§1203(h)(1), 1601(f)(2), and Pub. L. 95–600, §362(d)(5), amended the subsection relating to cross references, such subsection being described as either (h) or (i).

Pub. L. 96–596, §2(a)(4)(E) and (F), redesignated subsec. (j), relating to cross references, as subsec. (i) and provided that the above cited amendments by Pub. L. 94–455 and Pub. L. 95–600 shall be deemed to have been amendments of the redesignated subsec. (i).

Pub. L. 96–589 again redesignated subsec. (i), relating to cross references, as subsec. (j) and added a new

subsec. (i), relating to cases under title 11.

AMENDMENTS

2007—Subsec. (k)(4). Pub. L. 110–28 substituted "Tax return preparers" for "Income tax return preparers".

1998—Subsec. (f). Pub. L. 105–206 amended heading and text of subsec. (f) generally. Prior to amendment, text read as follows: "The running of the period of limitations on collection after assessment prescribed in section 6502 shall be suspended for a period equal to the period from the date property (including money) of a third party is wrongfully seized or received by the Secretary to the date the Secretary returns property pursuant to section 6343(b) or the date on which a judgment secured pursuant to section 7426 with respect to such property becomes final, and for 30 days thereafter. The running of the period of limitations on collection after assessment shall be suspended under this subsection only with respect to the amount of such assessment equal to the amount of money or the value of specific property returned."

1997—Subsec. (a)(1). Pub. L. 105–34 substituted "paragraph (2)(A) or (3) of section 6230(a)" for "section 6230(a)(2)(A)".

1996—Subsec. (j). Pub. L. 104–188, §1702(h)(17)(A), which directed that the subsection relating to extension in case of certain summonses be redesignated as (j), could not be executed, because that subsection (formerly subsec. (k)) was previously redesignated (j) by Pub. L. 101–508, §11801(c)(20)(A). See 1990 Amendment note below.

Pub. L. 104–168, §1002(c), which directed that subsec. (k) be redesignated as (j), could not be executed, because that subsection was redesignated (j) by Pub. L. 101–508, §11801(c)(20)(A). See 1990 Amendment note below.

Subsec. (j)(1). Pub. L. 104–168, §1002(b), which directed substitution of "to a corporation (or to any other person to whom the corporation has transferred records) with respect to any return of tax by such corporation for a taxable year (or other period) for which such corporation is being examined under the coordinated examination program (or any successor program) of the Internal Revenue Service" for "with respect to any return of tax by a corporation" in subsec. (k)(1), was executed by making the substitution in subsec. (j)(1) to reflect the probable intent of Congress and the amendment by Pub. L. 101–508, §11801(c)(20)(A), which redesignated subsec. (k) as (j). See 1990 Amendment note below.

Subsec. (j)(2)(A). Pub. L. 104–168, §1002(a), which directed addition of cl. (i) and redesignation of former cls. (i) and (ii) as (ii) and (iii), respectively, in subsec. (k)(2)(A), was executed by making the amendment in subsec. (j)(2)(A) to reflect the probable intent of Congress and the amendment by Pub. L. 101–508, §11801(c)(20)(A), which redesignated subsec. (k) as (j). See 1990 Amendment note below.

Subsec. (k). Pub. L. 104–188, §1702(h)(17)(B), redesignated the subsection relating to cross references (subsec. (l)) as (k).

Pub. L. 104–188, §1702(h)(17)(A), which directed that the subsection relating to extension in case of certain summonses be redesignated as (j), could not be executed, because that subsection (formerly subsec. (k)) was previously redesignated (j) by Pub. L. 101–508, §11801(c)(20)(A). See 1990 Amendment note below.

Pub. L. 104–168, §1002(c), which directed that subsec. (k) be redesignated as (j), could not be executed, because that subsection was redesignated (j) by Pub. L. 101–508, §11801(c)(20)(A). See 1990 Amendment note below.

Subsec. (l). Pub. L. 104–188, §1702(h)(17)(B), redesignated the subsection relating to cross references (subsec. (l)) as (k).

Pub. L. 104–168, §1002(c), which directed that subsec. (l) be redesignated as (k), could not be executed, because that subsection was redesignated (k) by Pub. L. 104–188, §1702(h)(17). See above and see Effective Date of 1996 Amendments note below.

1990—Subsecs. (h) to (j). Pub. L. 101–508, §11801(c)(20)(A), redesignated subsecs. (i) and (j) as (h) and (i), respectively, and struck out former subsec. (h) "Extension of time for collecting tax attributable to divestitures pursuant to Bank Holding Company Act Amendments of 1970" which read as follows: "The running of the period of limitations for collection of the tax attributable to a sale with respect to which the taxpayer makes an election under section 6158(a) shall be suspended for the period during which there are any unpaid installments of such tax."

Subsec. (k). Pub. L. 101–508, §11801(c)(20)(A), redesignated subsec. (k) as (j).

Pub. L. 101–508, §11311(a), added subsec. (k). Former subsec. (k) redesignated (l).

Subsec. (l). Pub. L. 101–508, §11311(a), redesignated subsec. (k) as (l).

1987—Subsec. (g). Pub. L. 100–203 struck out "4951, 4952," before "4971".

1986—Subsec. (a)(1). Pub. L. 99–514, §1875(d)(2)(B)(ii), substituted "section 6501 or 6502 (or section 6229, but only with respect to a deficiency described in section 6230(a)(2)(A))." for "section 6501 or 6502".

Subsecs. (j), (k). Pub. L. 99–514, §1235(d), added subsec. (j) and redesignated former subsec. (j) as (k).

1984—Subsec. (g). Pub. L. 98–369 substituted "section 4963(e)" for "section 4962(e)".

1981—Subsec. (d). Pub. L. 97–34 struck out reference to section 6166A.

1980—Subsec. (g). Pub. L. 96–596, §2(a)(4)(D), substituted "section 4962(e)" for "section 4941(e)(4), 4942(j)(2), 4943(d)(3), 4944(e)(3), 4945(i)(2), 4951(e)(4), 4952(e)(2), 4971(c)(3), or 4975(f)(6)".

Pub. L. 96–222 substituted "4951, 4952, 4971, or 4975" for "4971, 4975, 4985, or 4986" and "4951(e)(4), 4952(e)(2), 4971(c)(3), or 4975(f)(6)" for "4971(c)(3), 4975(f)(6), 4985(e)(4), or 4986(e)(2)".

Subsec. (i). Pub. L. 96–589, §6(a), added subsec. (i) and redesignated former subsec. (i), relating to cross references, as (j). See Codification note set out above.

Pub. L. 96–596, §2(a)(4)(E), redesignated subsec. (j), relating to cross references, as (i). See Codification note set out above.

Subsec. (j). Pub. L. 96–589, §6(a), (i)(11), redesignated former subsec. (i), relating to cross references, as (j), and in par. (2) of subsec. (j) as so redesignated, struck out reference to bankruptcy. See Codification note set out above.

Pub. L. 96–596, §2(a)(4)(E), redesignated former subsec. (j), relating to cross references, as (i). See Codification note set out above.

1978—Subsec. (g). Pub. L. 95–227 inserted provisions relating to sections 4985 and 4986 and substituted "4975(f)(6)" for "4975(f)(4)".

Subsec. (j)(5). Pub. L. 95–600, as amended by Pub. L. 96–596, §2(a)(4)(E) and (F), substituted "in the case of a regulated investment company or a real estate investment trust, see section 860(h)" for "of a real estate investment trust, see section 859(f)". See Codification note above.

1976—Subsec. (a). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (d). Pub. L. 94–455, §2004(c)(4), substituted "section 6163, 6166, or 6166A" for "section 6166".

Subsec. (e). Pub. L. 94–455, §1902(b)(2)(A), redesignated subsec. (f) as (e). Former subsec. (e), which related to certain powers of appointment, was struck out.

Subsec. (f). Pub. L. 94–455, §§1902(b)(2)(A), 1906(b)(13)(A), redesignated subsec. (g) as (f), and struck out "or his delegate" after "Secretary" wherever appearing. Former subsec. (f) redesignated (e).

Subsec. (g). Pub. L. 94–455, §§1902(b)(2)(A), 1906(b)(13)(A), redesignated subsec. (h) as (g) and struck out "or his delegate" after "Secretary". Former subsec. (g) redesignated (f).

Subsec. (h). Pub. L. 94–455, §1902(b)(2)(A), redesignated subsec. (i) as (h). Former subsec. (h) redesignated (g). See Codification note above.

Subsec. (i). Pub. L. 94–455, §1902(b)(2)(A), redesignated subsec. (i) as (h).

Pub. L. 94–452 added subsec. (i). Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 94–455, §§1203(h)(1), 1601(f)(2), as amended by Pub. L. 96–596, §2(a)(4)(E), (F), added pars. (4) and (5). See Codification note set out above.

Pub. L. 94–452 redesignated former subsec. (i) as (j).

1974—Subsec. (a)(1). Pub. L. 93–406, §1016(a)(15)(A), substituted "certain excise taxes)" for "chapter 42 taxes)".

Subsec. (h). Pub. L. 93–406, §1016(a)(15)(B), inserted "or section 4971 or section 4975" after "section 507" and substituted "4945(i)(2), 4971(c)(3), or 4975(f)(4)" for "or 4945(h)(2)".

1969—Subsec. (a)(1). Pub. L. 91–172, §101(j)(46), inserted reference to chapter 42 taxes.

Subsecs. (h), (i). Pub. L. 91–172, §101(g)(4), added subsec. (h) and redesignated former subsec. (h) as (i).

1966—Subsec. (b). Pub. L. 89–719, §106(a), struck out "(other than the estate of a decedent or of an incompetent)" after "assets of the taxpayer" and "or Territory" after "of any State".

Subsec. (c). Pub. L. 89–719, §106(b), substituted "Taxpayer outside United States" for "Location of property outside the United States or removal of property from the United States" in heading, and "The running of the period of limitations on collection after assessment prescribed in section 6502 shall be suspended for the period during which the taxpayer is outside the United States if such period of absence is for a continuous period of at least 6 months. If the preceding sentence applies and at the time of the taxpayer's return to the United States the period of limitations on collection after assessment prescribed in section 6502 would expire before the expiration of 6 months from the date of his return, such period shall not expire before the expiration of such 6 months" for "In case collection is hindered or delayed because property of the taxpayer is situated or held outside the United States or is removed from the United States, the period of limitations on collection after assessment prescribed in section 6502 shall be suspended for the period collection is so hindered or delayed. The total suspension of time under this subsection shall not in the aggregate exceed 6 years."

Subsec. (f). Pub. L. 89–384 added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 89–719, §106(c), added subsec. (g) and redesignated former subsec. (g) as (h).

Pub. L. 89–384 redesignated subsec. (f) as (g).

Subsec. (h). Pub. L. 89–719, §106(c), redesignated former subsec. (g) as (h).

1958—Subsec. (d). Pub. L. 85–866 struck out "assessment or" after "period of limitations for" and inserted "or under the provisions of section 6166".

1956—Subsecs. (e), (f). Act Aug. 6, 1956, added subsec. (e) and redesignated former subsec. (e) as (f).

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–28 applicable to returns prepared after May 25, 2007, see section 8246(c) of Pub. L. 110–28, set out as a note under section 6060 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 effective as if included in the amendments made by section 402 of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, see section 1237(d) of Pub. L. 105–34, set out as a note under section 6230 of this title.

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

Pub. L. 104–168, title X, §1002(d), July 30, 1996, 110 Stat. 1468, provided that: "The amendments made by this section [amending this section] shall apply to summonses issued after the date of the enactment of this Act [July 30, 1996]."

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, §11311(b), Nov. 5, 1990, 104 Stat. 1388–453, provided that: "The amendment made by subsection (a) [amending this section] shall apply to any tax (whether imposed before, on, or after the date of the enactment of this Act [Nov. 5, 1990]) if the period prescribed by section 6501 of the Internal Revenue Code of 1986 for the assessment of such tax (determined with regard to extensions) has not expired on such date of the [sic] enactment."

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to taxable years beginning after Dec. 22, 1987, see section 10712(d) of Pub. L. 100–203, set out as an Effective Date note under section 4955 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1235(d) of Pub. L. 99–514 applicable to taxable years of foreign corporations beginning after Dec. 31, 1986, see section 1235(h) of Pub. L. 99–514, set out as an Effective Date note under section 1291 of this title.

Amendment by section 1875(d)(2)(B)(ii) of Pub. L. 99–514 effective as if included in the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, see section 1875(d)(2)(C) of Pub. L. 99–514, set out as a note under section 6230 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable events occurring after Dec. 31, 1984, see section 305(c) of Pub. L. 98–369, set out as an Effective Date note under section 4962 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to estates of decedents dying after Dec. 31, 1981, see section 422(f)(1) of Pub. L. 97–34, set out as a note under section 6166 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

For effective date of amendment by Pub. L. 96–596 with respect to any first tier tax and to any second tier tax, see section 2(d) of Pub. L. 96–596, set out as an Effective Date note under section 4961 of this title.

Amendment by Pub. L. 96–589 effective Oct. 1, 1979, but not applicable to proceedings under Title 11, Bankruptcy, commenced before Oct. 1, 1979, see section 7(e) of Pub. L. 96–589, set out as a note under section 108 of this title.

Amendment by Pub. L. 96–222 effective as if included in the provisions of the Black Lung Benefits Revenue Act of 1977, Pub. L. 95–227, see section 108(b)(4) of Pub. L. 96–222, set out as a note under section 192 of this title.

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95–600 applicable with respect to determinations (as defined in section 860(e) of this title) after Nov. 6, 1978, see section 362(e) of Pub. L. 95–600, set out as an Effective Date note under section 860 of this title.

Amendment by Pub. L. 95–227 applicable with respect to contributions, acts, and expenditures made after Dec. 31, 1977, in and for taxable years beginning after such date, see section 4(f) of Pub. L. 95–227, set out as an Effective Date note under section 192 of this title.

EFFECTIVE DATE OF 1976 AMENDMENTS

Amendment by section 1203(h)(1) of Pub. L. 94–455 applicable to documents prepared after Dec. 31, 1976, see section 1203(j) of Pub. L. 94–455, set out as a note under section 7701 of this title.

For effective date of amendment by section 1601(f)(2) of Pub. L. 94–455, see section 1608(a) of Pub. L. 94–455, set out as a note under section 857 of this title.

Amendment by section 1902(b)(2)(A) of Pub. L. 94–455 applicable in the case of estates of decedents dying after Oct. 4, 1976, see section 1902(c)(1) of Pub. L. 94–455, set out as a note under section 2011 of this title.

Amendment by section 2004(c)(4) of Pub. L. 94–455 applicable to estates of decedents dying after Dec. 31, 1976, see section 2004(g) of Pub. L. 94–455, set out as a note under section 6166 of this title.

Amendment by Pub. L. 94–452 effective Oct. 1, 1977, see section 3(e) of Pub. L. 94–452, set out as a note under section 6151 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–406 applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93–406, for plan years beginning after Sept. 2, 1974, but, in the case of plans in existence on Jan. 1, 1974, amendment by Pub. L. 93–406 applicable for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93–406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

EFFECTIVE DATE OF 1966 AMENDMENTS

Amendment by Pub. L. 89–719 applicable after Nov. 2, 1966, regardless of when title or lien of United States arose or when lien or interest of another person was acquired, except in a case in which a lien or title derived from enforcement of a lien held by United States has been enforced by a civil action or suit which has become final by judgment, sale, or agreement before Nov. 2, 1966, or in a case in which the amendment would impair a priority held by any person other than United States holding a lien or interest prior to Nov. 2, 1966, operate to increase liability of such person, or shorten the time for bringing suit with respect to transactions occurring before Nov. 2, 1966, see section 114(a)–(e) of Pub. L. 89–719, set out as a note under section 6323 of this title.

Amendment by Pub. L. 89–384 applicable with respect to amounts received after Dec. 31, 1964, in respect of foreign expropriation losses (as defined in section 1351(b) of this title) sustained after Dec. 31, 1958, see section 2 of Pub. L. 89–384, set out as an Effective Date note under section 1351 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

For effective date of amendment by Pub. L. 85–866, see section 206(f) of Pub. L. 85–866, set out as a note under section 6161 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Aug. 6, 1956, applicable in the case of decedents dying after Aug. 16, 1954, see section 3 of act Aug. 6, 1956, set out as a note set out under section 2055 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by section 11801(c)(20)(A) of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

ANNUAL REPORT TO CONGRESS CONCERNING DESIGNATED SUMMONSES

Pub. L. 104–168, title X, §1003, July 30, 1996, 110 Stat. 1468, provided that: "Not later than December 31 of each calendar year after 1995, the Secretary of the Treasury or his delegate shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the number of designated summonses (as defined in section 6503(j) of the Internal Revenue Code of 1986) which were issued during the preceding 12 months."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

APPLICATION OF PRIOR AMENDMENTS

Pub. L. 96–596, §2(a)(4)(F), Dec. 24, 1980, 94 Stat. 3472, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by sections 1203(h)(1) and 1601(f)(2) of the Tax Reform Act of 1976 [Pub. L. 94–455], and the amendment made by section 362(d)(5) of the Revenue Act of 1978 [Pub. L. 95–600], shall be deemed to be amendments to section 6503(i) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954, subsec. (j), as redesignated by section 6(a) of Pub. L. 96–589] (as redesignated by subparagraph (E) [redesignating subsec. (j) as (i)])."

[1] So in original.

§6504. Cross references

For limitation period in case of—

(1) Adjustments to accrued foreign taxes, see section 905(c).

(2) Change of treatment with respect to itemized deductions where taxpayer and his spouse make separate returns, see section 63(e)(3).

(3) Involuntary conversion of property, see section 1033(a)(2)(C) and (D).

(4) Application by fiduciary for discharge from personal liability for estate tax, see section 2204.

(5) Insolvent banks and trust companies, see section 7507.

(6) Service in a combat zone, etc., see section 7508.

(7) Claims against transferees and fiduciaries, see chapter 71.

(8) Assessments to recover excessive amounts paid under section 6420 (relating to gasoline used on farms), 6421 (relating to gasoline used for certain nonhighway purposes or by local transit systems), or 6427 (relating to fuels not used for taxable purposes) and assessments of civil penalties under section 6675 for excessive claims under section 6420, 6421, or 6427, see section 6206.

(9) Assessment and collection of interest, see section 6601(g).

(10) Assessment of civil penalties under section 6694 or 6695, see section 6696(d)(1).

(11) Assessments of tax attributable to partnership items, see section 6229.

(Aug. 16, 1954, ch. 736, 68A Stat. 807; Apr. 2, 1956, ch. 160, §4(d), 70 Stat. 91; June 29, 1956, ch. 462, title II, §208(e)(5), 70 Stat. 397; Pub. L. 85–866, title I, §84(b), Sept. 2, 1958, 72 Stat. 1664; Pub. L. 88–272, title I, §112(d)(2), Feb. 26, 1964, 78 Stat. 24; Pub. L. 91–172, title II, §213(c)(3), Dec. 30, 1969, 83 Stat. 572; Pub. L. 91–614, title I, §101(d)(2), Dec. 31, 1970, 84 Stat. 1837; Pub. L. 93–625, §7(d)(4), Jan. 3, 1975, 88 Stat. 2115; Pub. L. 94–455, title XII, §1203(h)(2), title XIX, 1901(b)(31)(D), (36)(C), (37)(D), (39)(B), 1906(a)(32), Oct. 4, 1976, 90 Stat. 1694, 1800, 1802, 1803, 1829; Pub. L. 95–30, title I, §101(d)(16), May 23, 1977, 91 Stat. 134; Pub. L. 95–600, title IV, §405(c)(6), title VII, §703(j)(10), Nov. 6, 1978, 92 Stat. 2871, 2942; Pub. L. 95–618, title II, §233(b)(2)(D), Nov. 9, 1978, 92 Stat. 3191; Pub. L. 97–248, title IV, §402(c)(6), Sept. 3, 1982, 96 Stat. 667; Pub. L. 97–424, title V, §515(b)(10), Jan. 6, 1983, 96 Stat. 2182; Pub. L. 99–514, title I, §104(b)(18), Oct. 22, 1986, 100 Stat. 2106; Pub. L. 105–34, title III, §312(d)(13), Aug. 5, 1997, 111 Stat. 840.)

AMENDMENTS

1997—Pars. (4) to (12). Pub. L. 105–34 redesignated pars. (5) to (12) as (4) to (11), respectively, and struck out former par. (4) which read as follows: "Gain upon sale or exchange of principal residence, see section 1034(j)."

1986—Par. (2). Pub. L. 99–514 amended par. (2) generally, substituting "where taxpayer and his spouse make separate returns, see section 63(e)(3)" for "and zero bracket amount where taxpayer and his spouse make separate returns, see section 63(g)(5)".

1983—Par. (9). Pub. L. 97–424 struck out "6424 (relating to lubricating oil used for certain nontaxable purposes)," after "systems),", and struck out "6424," after "6421,".

1982—Par. (12). Pub. L. 97–248 added par. (12).

1978—Par. (4). Pub. L. 95–600, §405(c)(6), substituted "principal residence" for "residence".

Par. (6). Pub. L. 95–600, §703(j)(10), amended directory language of Pub. L. 94–455, §1901(b)(37)(D). See 1976 Amendment note below.

Par. (9). Pub. L. 95–618 substituted "used for certain nontaxable purposes" for "not used in highway motor vehicles".

1977—Par. (2). Pub. L. 95–30 substituted "treatment with respect to itemized deductions and zero bracket amount where taxpayer and his spouse make separate returns, see section 63(g)(5)" for "election with respect to the standard deduction where taxpayer and his spouse make separate returns, see section 144(b)".

1976—Par. (1). Pub. L. 94–455, §§1901(b)(36)(C), 1906(a)(32)(B), redesignated par. (2) as (1). Former par. (1), which referred to section 1321 for adjustments incident to involuntary liquidation of inventory, was struck out.

Par. (2). Pub. L. 94–455, §1906(a)(32)(B), redesignated par. (3) as (2). Former par. (2) redesignated (1).

Par. (3). Pub. L. 94–455, §§1901(b)(31)(D), 1906(a)(32)(B), redesignated par. (4) as (3) and substituted "section 1033(a)(2)(C) and (D)" for "section 1033(a)(3)(C) and (D)". Former par. (3) redesignated (2).

Par. (4). Pub. L. 94–455, §1906(a)(32)(B), redesignated par. (5) as (4). Former par. (4) redesignated (3).

Par. (5). Pub. L. 94–455, §§1901(b)(39)(B), 1906(a)(32)(B), redesignated par. (9) as (5). Former par. (5) redesignated (4).

Par. (6). Pub. L. 94–455, §1906(a)(32)(B), redesignated par. (10) as (6).

Pub. L. 94–455, §1901(b)(37)(D), as amended by Pub. L. 95–600, §703(j)(10), struck out par. (6) which referred to section 1335 for war loss recoveries where the prior benefit rule was elected.

Par. (7). Pub. L. 94–455, §§1901(b)(39)(B), 1906(a)(32)(B), redesignated par. (11) as (7). Former par. (7), which referred to section 1346 for recovery of unconstitutional federal taxes, was struck out.

Par. (8). Pub. L. 94–455, §1906(a)(32)(B), redesignated par. (12) as (8).

Par. (9). Pub. L. 94–455, §1906(a)(32)(A), (B), redesignated par. (13) as (9) and inserted provisions relating to sections 6421, 6424, and 6427. Former par. (9) redesignated (5).

Par. (10). Pub. L. 94–455, §1906(a)(32)(B), redesignated par. (15) as (10). Former par. (10) redesignated (6).

Par. (11). Pub. L. 94–455, §§1203(h)(2), 1906(a)(32)(B), added par. (11). Former par. (11) redesignated (7).

Par. (12). Pub. L. 94–455, §1906(a)(32)(B), redesignated par. (12) as (8).

Par. (13). Pub. L. 94–455, §1906(a)(32)(B), redesignated par. (13) as (9).

Par. (14). Pub. L. 94–455, §1906(a)(32)(A), struck out par. (14) which referred to section 6206 for assessments to recover excessive amounts paid under section 6421, and assessments of civil penalties under section 6675, and for excessive claims under section 6421.

Par. (15). Pub. L. 94–455, §1906(a)(32)(B), redesignated par. (15) as (10).

1975—Par. (15). Pub. L. 93–625 substituted reference to section 6601(g) for 6601(h).

1970—Par. (9). Pub. L. 91–614 substituted "fiduciary" for "executor".

1969—Par. (8). Pub. L. 91–172 struck out par. (8).

1964—Par. (3). Pub. L. 88–272 substituted "with respect to the" for "to take".

1958—Par. (15). Pub. L. 85–866 added par. (15).

1956—Par. (13). Act. Apr. 2, 1956, added par. (13).

Par. (14). Act June 29, 1956, added par. (14).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d) of Pub. L. 105–34, set out as a note under section 121 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section

151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–424 applicable with respect to articles sold after Jan. 6, 1983, see section 515(c) of Pub. L. 97–424, set out as a note under section 34 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to partnership taxable years beginning after Sept. 3, 1982, with provision for applicability of amendment to any partnership taxable year ending after Sept. 3, 1982, if partnership, each partner, and each indirect partner requests such application and Secretary of the Treasury or his delegate consents to such application, see section 407(a)(1), (3) of Pub. L. 97–248, set out as an Effective Date note under section 6221 of this title.

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95–618 effective on first day of first calendar month which begins more than 10 days after Nov. 9, 1978, see section 233(d) of Pub. L. 95–618, set out as a note under section 34 of this title.

Amendment by section 405(c)(6) of Pub. L. 95–600 applicable to sales and exchanges of residences after July 26, 1978, in taxable years ending after such date, see section 405(d) of Pub. L. 95–600, set out as a note under section 1038 of this title.

Amendment by section 703(j)(10) of Pub. L. 95–600 effective Oct. 4, 1976, see section 703(r) of Pub. L. 95–600, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1203(h)(2) of Pub. L. 94–455 applicable to documents prepared after Dec. 31, 1976, see section 1203(j) of Pub. L. 94–455, set out as a note under section 7701 of this title.

Amendment by section 1901(b)(31)(D), (36)(C), (37)(D), (39)(B) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by section 1906(a)(32) of Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1906(d)(1) of Pub. L. 94–455, set out as a note under section 6013 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–625 effective July 1, 1975, and applicable to amounts outstanding on such date or arising thereafter, see section 7(e) of Pub. L. 93–625, set out as an Effective Date note under section 6621 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–614 applicable with respect to decedents dying after Dec. 31, 1970, see section 101(j) of Pub. L. 91–614, set out as a note under section 2032 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 213(d) of Pub. L. 91–172, set out as an Effective Date note under section 183 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 effective, except for purposes of section 21 of this title, with respect to taxable years beginning after Dec. 31, 1963, see section 131 of Pub. L. 88–272, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 effective Aug. 17, 1954, see section 1(c)(2) of Pub. L. 85–866, set out as a note under section 165 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act June 29, 1956, effective June 29, 1956, see section 211 of act June 29, 1956, set out as a

note under section 4041 of this title.

Subchapter B—Limitations on Credit or Refund

Sec.
6511. Limitations on credit or refund.
6512. Limitations in case of petition to Tax Court.
6513. Time return deemed filed and tax considered paid.
6514. Credits or refunds after period of limitation.
6515. Cross references.

§6511. Limitations on credit or refund

(a) Period of limitation on filing claim

Claim for credit or refund of an overpayment of any tax imposed by this title in respect of which tax the taxpayer is required to file a return shall be filed by the taxpayer within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever of such periods expires the later, or if no return was filed by the taxpayer, within 2 years from the time the tax was paid. Claim for credit or refund of an overpayment of any tax imposed by this title which is required to be paid by means of a stamp shall be filed by the taxpayer within 3 years from the time the tax was paid.

(b) Limitation on allowance of credits and refunds

(1) Filing of claim within prescribed period

No credit or refund shall be allowed or made after the expiration of the period of limitation prescribed in subsection (a) for the filing of a claim for credit or refund, unless a claim for credit or refund is filed by the taxpayer within such period.

(2) Limit on amount of credit or refund

(A) Limit where claim filed within 3-year period

If the claim was filed by the taxpayer during the 3-year period prescribed in subsection (a), the amount of the credit or refund shall not exceed the portion of the tax paid within the period, immediately preceding the filing of the claim, equal to 3 years plus the period of any extension of time for filing the return. If the tax was required to be paid by means of a stamp, the amount of the credit or refund shall not exceed the portion of the tax paid within the 3 years immediately preceding the filing of the claim.

(B) Limit where claim not filed within 3-year period

If the claim was not filed within such 3-year period, the amount of the credit or refund shall not exceed the portion of the tax paid during the 2 years immediately preceding the filing of the claim.

(C) Limit if no claim filed

If no claim was filed, the credit or refund shall not exceed the amount which would be allowable under subparagraph (A) or (B), as the case may be, if claim was filed on the date the credit or refund is allowed.

(c) Special rules applicable in case of extension of time by agreement

If an agreement under the provisions of section 6501(c)(4) extending the period for assessment of a tax imposed by this title is made within the period prescribed in subsection (a) for the filing of a claim for credit or refund—

(1) Time for filing claim

The period for filing claim for credit or refund or for making credit or refund if no claim is filed, provided in subsections (a) and (b)(1), shall not expire prior to 6 months after the expiration

of the period within which an assessment may be made pursuant to the agreement or any extension thereof under section 6501(c)(4).

(2) Limit on amount

If a claim is filed, or a credit or refund is allowed when no claim was filed, after the execution of the agreement and within 6 months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof, the amount of the credit or refund shall not exceed the portion of the tax paid after the execution of the agreement and before the filing of the claim or the making of the credit or refund, as the case may be, plus the portion of the tax paid within the period which would be applicable under subsection (b)(2) if a claim had been filed on the date the agreement was executed.

(3) Claims not subject to special rule

This subsection shall not apply in the case of a claim filed, or credit or refund allowed if no claim is filed, either—

(A) prior to the execution of the agreement or

(B) more than 6 months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof.

(d) Special rules applicable to income taxes

(1) Seven-year period of limitation with respect to bad debts and worthless securities

If the claim for credit or refund relates to an overpayment of tax imposed by subtitle A on account of—

(A) The deductibility by the taxpayer, under section 166 or section 832(c), of a debt as a debt which became worthless, or, under section 165(g), of a loss from worthlessness of a security, or

(B) The effect that the deductibility of a debt or loss described in subparagraph (A) has on the application to the taxpayer of a carryover,

in lieu of the 3-year period of limitation prescribed in subsection (a), the period shall be 7 years from the date prescribed by law for filing the return for the year with respect to which the claim is made. If the claim for credit or refund relates to an overpayment on account of the effect that the deductibility of such a debt or loss has on the application to the taxpayer of a carryback, the period shall be either 7 years from the date prescribed by law for filing the return for the year of the net operating loss which results in such carryback or the period prescribed in paragraph (2) of this subsection, whichever expires the later. In the case of a claim described in this paragraph the amount of the credit or refund may exceed the portion of the tax paid within the period prescribed in subsection (b)(2) or (c), whichever is applicable, to the extent of the amount of the overpayment attributable to the deductibility of items described in this paragraph.

(2) Special period of limitation with respect to net operating loss or capital loss carrybacks

(A) Period of limitation

If the claim for credit or refund relates to an overpayment attributable to a net operating loss carryback or a capital loss carryback, in lieu of the 3-year period of limitation prescribed in subsection (a), the period shall be that period which ends 3 years after the time prescribed by law for filing the return (including extensions thereof) for the taxable year of the net operating loss or net capital loss which results in such carryback, or the period prescribed in subsection (c) in respect of such taxable year, whichever expires later. In the case of such a claim, the amount of the credit or refund may exceed the portion of the tax paid within the period provided in subsection (b)(2) or (c), whichever is applicable, to the extent of the amount of the overpayment attributable to such carryback.

(B) Applicable rules

(i) In general

If the allowance of a credit or refund of an overpayment of tax attributable to a net

operating loss carryback or a capital loss carryback is otherwise prevented by the operation of any law or rule of law other than section 7122 (relating to compromises), such credit or refund may be allowed or made, if claim therefor is filed within the period provided in subparagraph (A) of this paragraph.

(ii) Tentative carryback adjustments

If the allowance of an application, credit, or refund of a decrease in tax determined under section 6411(b) is otherwise prevented by the operation of any law or rule of law other than section 7122, such application, credit, or refund may be allowed or made if application for a tentative carryback adjustment is made within the period provided in section 6411(a).

(iii) Determinations by courts to be conclusive

In the case of any such claim for credit or refund or any such application for a tentative carryback adjustment, the determination by any court, including the Tax Court, in any proceeding in which the decision of the court has become final, shall be conclusive except with respect to—

(I) the net operating loss deduction and the effect of such deduction, and

(II) the determination of a short-term capital loss and the effect of such short-term capital loss, to the extent that such deduction or short-term capital loss is affected by a carryback which was not an issue in such proceeding.

(3) Special rules relating to foreign tax credit

(A) Special period of limitation with respect to foreign taxes paid or accrued

If the claim for credit or refund relates to an overpayment attributable to any taxes paid or accrued to any foreign country or to any possession of the United States for which credit is allowed against the tax imposed by subtitle A in accordance with the provisions of section 901 or the provisions of any treaty to which the United States is a party, in lieu of the 3-year period of limitation prescribed in subsection (a), the period shall be 10 years from the date prescribed by law for filing the return for the year in which such taxes were actually paid or accrued.

(B) Exception in the case of foreign taxes paid or accrued

In the case of a claim described in subparagraph (A), the amount of the credit or refund may exceed the portion of the tax paid within the period provided in subsection (b) or (c), whichever is applicable, to the extent of the amount of the overpayment attributable to the allowance of a credit for the taxes described in subparagraph (A).

(4) Special period of limitation with respect to certain credit carrybacks

(A) Period of limitation

If the claim for credit or refund relates to an overpayment attributable to a credit carryback, in lieu of the 3-year period of limitation prescribed in subsection (a), the period shall be that period which ends 3 years after the time prescribed by law for filing the return (including extensions thereof) for the taxable year of the unused credit which results in such carryback (or, with respect to any portion of a credit carryback from a taxable year attributable to a net operating loss carryback, capital loss carryback, or other credit carryback from a subsequent taxable year, the period shall be that period which ends 3 years after the time prescribed by law for filing the return, including extensions thereof, for such subsequent taxable year) or the period prescribed in subsection (c) in respect of such taxable year, whichever expires later. In the case of such a claim, the amount of the credit or refund may exceed the portion of the tax paid within the period provided in subsection (b)(2) or (c), whichever is applicable, to the extent of the amount of the overpayment attributable to such carryback.

(B) Applicable rules

If the allowance of a credit or refund of an overpayment of tax attributable to a credit carryback is otherwise prevented by the operation of any law or rule of law other than section 7122, relating to compromises, such credit or refund may be allowed or made, if claim therefor

is filed within the period provided in subparagraph (A) of this paragraph. In the case of any such claim for credit or refund, the determination by any court, including the Tax Court, in any proceeding in which the decision of the court has become final, shall not be conclusive with respect to any credit, and the effect of such credit, to the extent that such credit is affected by a credit carryback which was not in issue in such proceeding.

(C) Credit carryback defined

For purposes of this paragraph, the term "credit carryback" means any business carryback under section 39.

(5) Special period of limitation with respect to self-employment tax in certain cases

If the claim for credit or refund relates to an overpayment of the tax imposed by chapter 2 (relating to the tax on self-employment income) attributable to an agreement, or modification of an agreement, made pursuant to section 218 of the Social Security Act (relating to coverage of State and local employees), and if the allowance of a credit or refund of such overpayment is otherwise prevented by the operation of any law or rule of law other than section 7122 (relating to compromises), such credit or refund may be allowed or made if claim therefor is filed on or before the last day of the second year after the calendar year in which such agreement (or modification) is agreed to by the State and the Commissioner of Social Security.

(6) Special period of limitation with respect to amounts included in income subsequently recaptured under qualified plan termination

If the claim for credit or refund relates to an overpayment of tax imposed by subtitle A on account of the recapture, under section 4045 of the Employee Retirement Income Security Act of 1974, of amounts included in income for a prior taxable year, the 3-year period of limitation prescribed in subsection (a) shall be extended, for purposes of permitting a credit or refund of the amount of the recapture, until the date which occurs one year after the date on which such recaptured amount is paid by the taxpayer.

(7) Special period of limitation with respect to self-employment tax in certain cases

If—

(A) the claim for credit or refund relates to an overpayment of the tax imposed by chapter 2 (relating to the tax on self-employment income) attributable to Tax Court determination in a proceeding under section 7436, and

(B) the allowance of a credit or refund of such overpayment is otherwise prevented by the operation of any law or rule of law other than section 7122 (relating to compromises),

such credit or refund may be allowed or made if claim therefor is filed on or before the last day of the second year after the calendar year in which such determination becomes final.

(8) Special rules when uniformed services retired pay is reduced as a result of award of disability compensation

(A) Period of limitation on filing claim

If the claim for credit or refund relates to an overpayment of tax imposed by subtitle A on account of—

(i) the reduction of uniformed services retired pay computed under section 1406 or 1407 of title 10, United States Code, or

(ii) the waiver of such pay under section 5305 of title 38 of such Code,

as a result of an award of compensation under title 38 of such Code pursuant to a determination by the Secretary of Veterans Affairs, the 3-year period of limitation prescribed in subsection (a) shall be extended, for purposes of permitting a credit or refund based upon the amount of such reduction or waiver, until the end of the 1-year period beginning on the date of such determination.

(B) Limitation to 5 taxable years

Subparagraph (A) shall not apply with respect to any taxable year which began more than 5 years before the date of such determination.

[(e) Repealed. Pub. L. 101–508, title XI, §11801(c)(22)(C), Nov. 5, 1990, 104 Stat. 1388–528]

(f) Special rule for chapter 42 and similar taxes

For purposes of any tax imposed by section 4912, chapter 42, or section 4975, the return referred to in subsection (a) shall be the return specified in section 6501(l)(1).

(g) Special rule for claims with respect to partnership items

In the case of any tax imposed by subtitle A with respect to any person which is attributable to any partnership item (as defined in section 6231(a)(3)), the provisions of section 6227 and subsections (c) and (d) of section 6230 shall apply in lieu of the provisions of this subchapter.

(h) Running of periods of limitation suspended while taxpayer is unable to manage financial affairs due to disability

(1) In general

In the case of an individual, the running of the periods specified in subsections (a), (b), and (c) shall be suspended during any period of such individual's life that such individual is financially disabled.

(2) Financially disabled

(A) In general

For purposes of paragraph (1), an individual is financially disabled if such individual is unable to manage his financial affairs by reason of a medically determinable physical or mental impairment of the individual which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. An individual shall not be considered to have such an impairment unless proof of the existence thereof is furnished in such form and manner as the Secretary may require.

(B) Exception where individual has guardian, etc.

An individual shall not be treated as financially disabled during any period that such individual's spouse or any other person is authorized to act on behalf of such individual in financial matters.

(i) Cross references

(1) For time return deemed filed and tax considered paid, see section 6513.

(2) For limitations with respect to certain credits against estate tax, see sections 2014(b) and 2015.

(3) For limitations in case of floor stocks refunds, see section 6412.

(4) For a period of limitations for credit or refund in the case of joint income returns after separate returns have been filed, see section 6013(b)(3).

(5) For limitations in case of payments under section 6420 (relating to gasoline used on farms), see section 6420(b).

(6) For limitations in case of payments under section 6421 (relating to gasoline used for certain nonhighway purposes or by local transit systems), see section 6421(d).

(7) For a period of limitations for refund of an overpayment of penalties imposed under section 6694 or 6695, see section 6696(d)(2).

(Aug. 16, 1954, ch. 736, 68A Stat. 808; Apr. 2, 1956, ch. 160, §4(e), 70 Stat. 91; June 29, 1956, ch. 462, title II, §208(e)(6), 70 Stat. 397; Pub. L. 85–866, title I, §82, Sept. 2, 1958, 72 Stat. 1663; Pub. L. 86–280, §1(a), Sept. 16, 1959, 73 Stat. 563; Pub. L. 87–794, title III, §317(d), Oct. 11, 1962, 76 Stat. 891; Pub. L. 87–834, §2(e)(2), Oct. 16, 1962, 76 Stat. 971; Pub. L. 88–272, title II, §§232(d), 239, Feb. 26, 1964, 78 Stat. 111, 128; Pub. L. 88–571, §3(c), Sept. 2, 1964, 78 Stat. 858; Pub. L. 89–331, §9(c), Nov. 8, 1965, 79 Stat. 1278; Pub. L. 90–225, §2(d), Dec. 27, 1967, 81 Stat. 731; Pub. L. 91–172, title I, §101(h), title III, §311(d)(3), title V, §512(e)(2), Dec. 30, 1969, 83 Stat. 525, 588,

640; Pub. L. 92–178, title VI, §601(d)(2), Dec. 10, 1971, 85 Stat. 558; Pub. L. 93–406, title IV, §4401(b), formerly §4081(b), Sept. 2, 1974, 88 Stat. 1034, renumbered §4401(b), Pub. L. 96–364, title I, §108(a), Sept. 26, 1980, 94 Stat. 1267; Pub. L. 94–455, title XII, §1203(h)(3), title XIX, §1906(a)(33), title XXI, §2107(g)(2)(B), Oct. 4, 1976, 90 Stat. 1694, 1829, 1904; Pub. L. 95–30, title II, §202(d)(4)(B), May 23, 1977, 91 Stat. 149; Pub. L. 95–600, title II, §212(b)(1), title VII, §703(p)(3), Nov. 6, 1978, 92 Stat. 2819, 2944; Pub. L. 95–628, §8(a), (b), Nov. 10, 1978, 92 Stat. 3630, 3631; Pub. L. 96–222, title I, §§102(a)(2)(B), 108(b)(1)(B), Apr. 1, 1980, 94 Stat. 208, 226; Pub. L. 96–223, title I, §101(g)(2), Apr. 2, 1980, 94 Stat. 254; Pub. L. 96–598, §1(c), Dec. 24, 1980, 94 Stat. 3486; Pub. L. 97–34, title II, §221(b)(2)(A), title III, §331(d)(2)(A), Aug. 13, 1981, 95 Stat. 247, 295; Pub. L. 97–248, title IV, §402(c)(7), Sept. 3, 1982, 96 Stat. 667; Pub. L. 98–369, div. A, title I, §163(b)(2), title II, §211(b)(25), title IV, §474(r)(40), title VII, §§714(p)(2)(G), 735(c)(14), div. B, title VI, §2663(j)(5)(F), July 18, 1984, 98 Stat. 698, 757, 847, 965, 984, 1171; Pub. L. 99–514, title I, §141(b)(3), title II, §231(d)(3)(I), title XVIII, §1847(b)(15), Oct. 22, 1986, 100 Stat. 2117, 2180, 2857; Pub. L. 100–418, title I, §1941(b)(2)(I), Aug. 23, 1988, 102 Stat. 1323; Pub. L. 100–647, title I, §§1017(c)(11), 1018(u)(21), (51), Nov. 10, 1988, 102 Stat. 3577, 3591, 3593; Pub. L. 101–508, title XI, §11801(c)(17)(B), (22)(C), Nov. 5, 1990, 104 Stat. 1388–527, 1388–528; Pub. L. 103–296, title I, §108(h)(8), Aug. 15, 1994, 108 Stat. 1487; Pub. L. 105–34, title X, §1056(a), title XIV, §1454(b)(1), Aug. 5, 1997, 111 Stat. 945, 1056; Pub. L. 105–206, title III, §3202(a), July 22, 1998, 112 Stat. 740; Pub. L. 107–16, title V, §532(c)(11), June 7, 2001, 115 Stat. 75; Pub. L. 110–245, title I, §106(a), June 17, 2008, 122 Stat. 1630.)

REFERENCES IN TEXT

Section 218 of the Social Security Act, referred to in subsec. (d)(5), is classified to section 418 of Title 42, The Public Health and Welfare.

Section 4045 of the Employee Retirement Income Security Act of 1974, referred to in subsec. (d)(6), is classified to section 1345 of Title 29, Labor.

AMENDMENTS

2008—Subsec. (d)(8). Pub. L. 110–245 added par. (8).

2001—Subsec. (i)(2). Pub. L. 107–16 substituted "2014(b)" for "2011(c), 2014(b),".

1998—Subsecs. (h), (i). Pub. L. 105–206 added subsec. (h) and redesignated former subsec. (h) as (i).

1997—Subsec. (d)(3)(A). Pub. L. 105–34, §1056(a), substituted "for the year in which such taxes were actually paid or accrued" for "for the year with respect to which the claim is made".

Subsec. (d)(7). Pub. L. 105–34, §1454(b)(1), added par. (7).

1994—Subsec. (d)(5). Pub. L. 103–296 substituted "Commissioner of Social Security" for "Secretary of Health and Human Services".

1990—Subsec. (d)(2)(A). Pub. L. 101–508, §11801(c)(17)(B), struck out before period at end of first sentence "; except that with respect to an overpayment attributable to the creation of, or an increase in a net operating loss carryback as a result of the elimination of excessive profits by a renegotiation (as defined in section 1481(a)(1)(A)), the period shall not expire before the expiration of the 12th month following the month in which the agreement or order for the elimination of such excessive profits becomes final".

Subsec. (e). Pub. L. 101–508, §11801(c)(22)(C), struck out subsec. (e) which related to special rules in case of manufactured sugar either exported, used as livestock feed, or for distillation or production of alcohol.

1988—Subsec. (d)(4)(C). Pub. L. 100–647, §1018(u)(21), made technical correction to directory language of Pub. L. 99–514, §231(d)(3)(I), see 1986 Amendment note below.

Subsec. (f). Pub. L. 100–647, §1018(u)(51), substituted "similar taxes" for "certain chapter 43 taxes" in heading, and "section 4912, chapter 42," for "chapter 42" in text.

Subsec. (h). Pub. L. 100–418, §1941(b)(2)(I), redesignated subsec. (i) as (h) and struck out former subsec. (h) which related to special rules for windfall profit taxes.

Subsec. (i). Pub. L. 100–418, §1941(b)(2)(I), redesignated subsec. (i) as (h).

Subsec. (i)(6). Pub. L. 100–647, §1017(c)(11), substituted "section 6421(d)" for "section 6421(c)".

1986—Subsec. (d)(2)(B). Pub. L. 99–514, §141(b)(3), amended subpar. (B) generally, restating cl. (i) as cls. (i), (ii), and (iii) and striking out former cl. (ii) which read as follows: "A claim for credit or refund for a computation year (as defined in section 1302(c)(1)) shall be determined to relate to an overpayment attributable to a net operating loss carryback or a capital loss carryback, as the case may be, when such carryback relates to any base period year (as defined in section 1302(c)(3))."

Subsec. (d)(4)(C). Pub. L. 99–514, §231(d)(3)(I), as amended by Pub. L. 100–647, §1018(u)(21), struck out "and any research credit carryback under section 30(g)(2)" after "under section 39".

Subsec. (h)(1). Pub. L. 99–514, §1847(b)(15)(A), substituted "section 6501(m)(1)(B)" for "section 6501(q)(1)(B)".

Subsec. (h)(2). Pub. L. 99–514, §1847(b)(15)(B), substituted "section 6501(m)(2)(B)" for "section 6501(q)(2)(B)".

1984—Subsec. (d)(4)(C). Pub. L. 98–369, §474(r)(40), substituted "business carryback under section 39 and any research credit carryback under section 30(g)(2)" for "investment credit carryback, work incentive program credit carryback, new employee credit carryback, research credit carryback, and employee stock ownership credit carryback".

Subsec. (d)(5). Pub. L. 98–369, §2663(j)(5)(F), substituted "Secretary of Health and Human Services" for "Secretary of Health, Education, and Welfare".

Subsec. (d)(6), (7). Pub. L. 98–369, §211(b)(25), redesignated par. (7) as (6) and struck out former par. (6) relating to a special period of limitation with respect to reduction of policyholders surplus account of life insurance companies.

Subsec. (f). Pub. L. 98–369, §163(b)(2), substituted "section 6501(l)(1)" for "section 6501(n)(1)".

Subsec. (h)(3). Pub. L. 98–369, §714(p)(2)(G), amended par. (3) generally. Prior to amendment par. (3) related to partnership items of federally registered partnerships and provided that under regulations prescribed by the Secretary, rules similar to the rules of subsection (g) shall apply to the tax imposed by section 4986.

Subsecs. (i), (j). Pub. L. 98–369, §735(c)(14), redesignated subsec. (j) as (i) and struck out former subsec. (i) which related to a special rule for certain tread rubber tax credits or refunds.

1982—Subsec. (g). Pub. L. 97–248 substituted "Special rule for claims with respect to partnership items" for "Special rule for partnership items of federally registered partnerships" in heading and, in text, substituted provisions that, in the case of any tax imposed by subtitle A with respect to any person which is attributable to any partnership item (as defined in section 6231(a)(3)), the provisions of section 6227 and subsecs. (c) and (d) of section 6230 shall apply in lieu of the provisions of this subchapter for provisions that (1) in the case of any tax imposed by subtitle A with respect to any person, the period for filing a claim for credit or refund of any overpayment attributable to any partnership item of a federally registered partnership would not expire before the later of (A) the date which was 4 years after the date prescribed by law (including extensions thereof) for filing the partnership return for the partnership taxable year in which the item arose, or (B) if an agreement under the provisions of section 6501(c)(4) extending the period for the assessment of any deficiency attributable to such partnership item was made before the date specified in subpar. (A), the date 6 months after the expiration of such extension, with the amount of the credit or refund allowed to exceed the portion of the tax paid within the period provided in subsec. (b)(2) or (c), whichever was applicable, and (2) for purposes of this subsec., the terms "partnership item" and "federally registered partnership" would have the same meanings as such terms had when used in section 6501(o).

1981—Subsec. (d)(4)(C). Pub. L. 97–34, §331(d)(2)(A), inserted reference to employee stock ownership credit carryback.

Pub. L. 97–34, §221(b)(2)(A), inserted reference to research credit carryback.

1980—Subsec. (f). Pub. L. 96–222, §108(b)(1)(B), inserted in heading "and certain chapter 43" after "chapter 42", and in text "or section 4975" after "chapter 42".

Subsec. (g)(2). Pub. L. 96–222, §102(a)(2)(B), substituted "section 6501(o)" for "section 6501(q)".

Subsec. (h). Pub. L. 96–223 added subsec. (h) and redesignated former subsec. (h) as (i).

Subsec. (i). Pub. L. 96–598 added subsec. (i) and redesignated former subsec. (i) as (j).

Pub. L. 96–223 redesignated former subsec. (h) as (i).

Subsec. (j). Pub. L. 96–598 redesignated former subsec. (i) as (j).

1978—Subsec. (d)(2)(A). Pub. L. 95–628, §8(a), substituted "3 years after the time prescribed by law for filing the return (including extensions thereof) for" for "with the expiration of the 15th day of the 40th month (or the 39th month, in the case of a corporation) following the end of".

Pub. L. 95–600, §703(p)(3), struck out provisions relating to the period of limitations with respect to an overpayment attributable to a net operating loss carryback to any year on account of a certification issued to the taxpayer under section 317 of the Trade Expansion Act of 1962.

Subsec. (d)(4). Pub. L. 95–628, §8(b)(1), substituted in heading "certain credit carrybacks" for "investment credit carrybacks", in subpar. (A), substituted "a credit carryback" for "an investment credit carryback", "period shall be that period which ends 3 years after the time prescribed by law for filing the return (including extensions thereof) for the taxable year of the unused credit which results in such carryback" for "period shall be that period which ends with the expiration of the 15th day of the 40th month (or 39th month, in the case of a corporation) following the end of the taxable year of the unused investment credit which results in such

carryback", and "(or, with respect to any portion of a credit carryback from a taxable year attributable to a net operating loss carryback, capital loss carryback, or other credit carryback from a subsequent taxable year, the period shall be that period which ends 3 years after the time prescribed by law for filing the return, including extensions thereof, for such subsequent taxable year)" for "(or, with respect to any portion of an investment credit carryback from a taxable year attributable to a net operating loss carryback or a capital loss carryback from a subsequent taxable year, the period shall be that period which ends with the expiration of the 15th day of the 40th month, or 39th month, in the case of a corporation, following the end of such subsequent taxable year),", in subpar. (B), substituted "a credit carryback" for "an investment credit carryback", "any credit" for "the investment credit", and "affected by a credit carryback" for "affected by a carryback"; and added subpar. (C).

Subsec. (d)(7). Pub. L. 95–628, §8(b)(2), redesignated par. (8) as (7). Former par. (7), which provided for a special period of limitation with respect to work incentive program credit carrybacks, was struck out.

Subsec. (d)(8). Pub. L. 95–628, §8(b)(2)(B), redesignated par. (8) as (7).

Subsec. (d)(9). Pub. L. 95–628, §8(b)(2)(A), struck out par. (9) which provided for a special period of limitation with respect to new employee credit carrybacks.

Subsecs. (g), (h). Pub. L. 95–600, §212(b)(1), added subsec. (g) and redesignated former subsec. (g) as (h).

1977—Subsec. (d)(9). Pub. L. 95–30 added par. (9).

1976—Subsec. (d)(2)(A)(ii). Pub. L. 94–455, §1906 (a)(33)(A), struck out "September 1, 1959, or" after "shall not expire before" and ", whichever is the later" after "profits becomes final".

Subsec. (d)(5). Pub. L. 94–455, §1906(a)(33)(B), struck out "the later of the following dates: (A)" after "filed on or before" and ", or (B) December 31, 1965" after "Health, Education, and Welfare".

Subsec. (d)(7). Pub. L. 94–455, §2107(g)(2)(B), inserted ", an investment credit carryback," after "net operating loss carryback".

Subsec. (g)(7). Pub. L. 94–455, §1203(h)(3), added par. (7).

1974—Subsec. (d)(8). Pub. L. 93–406 added par. (8).

1971—Subsec. (d)(7). Pub. L. 92–178 added par. (7).

1969—Subsec. (d)(2). Pub. L. 91–172, §512(e)(2)(A), substituted "loss or capital loss carrybacks" for "loss carrybacks" in heading.

Subsec. (d)(2)(A). Pub. L. 91–172, §512(e)(2)(B), (C), substituted "loss carryback or a capital loss carryback" for "loss carryback" and "operating loss or net capital loss which" for "operating loss which".

Subsec. (d)(2)(B)(i). Pub. L. 91–172, §512(e)(2)(D), (E), substituted "loss carryback or a capital loss carryback" for "loss carryback" and inserted reference to short-term capital loss.

Subsec. (d)(2)(B)(ii). Pub. L. 91–172, §§311(d)(3), 512(e)(2)(F), substituted references to section "1302(c)(1)" and "1302(c)(3)" for section "1302(e)(1)" and "1302(e)(3)", respectively, and substituted "loss carryback or a capital loss carryback, as the case may be," for "loss carryback".

Subsec. (d)(4)(A). Pub. L. 91–172, §512(e)(2)(G), substituted "loss carryback or a capital loss carryback" for "loss carryback".

Subsecs. (f), (g). Pub. L. 91–172, §101(h), added subsec. (f) and redesignated former subsec. (f) as (g).

1967—Subsec. (d)(4)(A). Pub. L. 90–225 inserted "(or, with respect to any portion of an investment credit carryback from a taxable year attributable to a net operating loss carryback from a subsequent taxable year, the period shall be that period which ends with the expiration of the 15th day of the 40th month, or 39th month, in the case of a corporation, following the end of such subsequent taxable year)" after "the unused investment credit which results in such carryback".

1965—Subsec. (e)(1). Pub. L. 89–331 inserted "or production" after "distillation" in heading.

1964—Subsec. (d)(6). Pub. L. 88–571 added par. (6).

Pub. L. 88–272 designated existing provisions as clause (i) and added clause (ii) in par. (2)(B), and added par. (5).

1962—Subsec. (d)(2)(A). Pub. L. 87–794 inserted provisions stating that, with respect to an overpayment attributable to a net operating loss carryback to any year on account of a certification under section 317 of the Trade Expansion Act of 1962, the period of limitations shall not expire before the expiration of the sixth month following the month in which such certification is issued to the taxpayer.

Subsec. (d)(4). Pub. L. 87–834 added par. (4).

1959—Subsec. (d)(2)(A). Pub. L. 86–280 inserted in first sentence exception with respect to overpayment as a result of elimination of excess profits by renegotiation.

1958—Subsec. (a). Pub. L. 85–866, §82(a), struck out from first sentence "required to be" after "3 years from the time the return was", and "(determined without regard to any extension of time)" before "or 2 years".

Subsec. (b)(2)(A). Pub. L. 85–866, §82(b), substituted "Limit where claim not filed within 3-year period" for "Limit to amount paid within years" in heading, and in text substituted "within the period," for "within the

3 years", inserted "equal to 3 years plus the period of any extension of time for filing the return" and struck out provision that if the tax was required to be paid by means of a stamp, the amount of the credit or refund shall not exceed the portion of the tax paid within the 3 years immediately preceding the filing of the claim.

Subsec. (b)(2)(B). Pub. L. 85–866, §82(c), substituted "Limit where claim not filed within 3-year period" for "Limit to amount paid within 2 years" in heading.

Subsec. (d)(2)(A). Pub. L. 85–866, §82(d), substituted in first sentence "15th day of the 40th month (or 39th month, in the case of a corporation)" for "15th day of the 39th month".

1956—Subsec. (f)(5). Act Apr. 2, 1956, added par. (5).

Subsec. (f)(6). Act June 29, 1956, added par. (6).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–245, title I, §106(b), June 17, 2008, 122 Stat. 1630, provided that: "The amendment made by subsection (a) [amending this section] shall apply to claims for credit or refund filed after the date of the enactment of this Act [June 17, 2008]."

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to estates of decedents dying, and generation-skipping transfers, after Dec. 31, 2004, see section 532(d) of Pub. L. 107–16, set out as a note under section 2011 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–206, title III, §3202(b), July 22, 1998, 112 Stat. 741, provided that: "The amendment made by subsection (a) [amending this section] shall apply to periods of disability before, on, or after the date of the enactment of this Act [July 22, 1998] but shall not apply to any claim for credit or refund which (without regard to such amendment) is barred by the operation of any law or rule of law (including res judicata) as of the date of the enactment of this Act."

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title X, §1056(b), Aug. 5, 1997, 111 Stat. 945, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxes paid or accrued in taxable years beginning after the date of the enactment of this Act [Aug. 5, 1997]."

Pub. L. 105–34, title X, §1454(c), Aug. 5, 1997, 111 Stat. 1057, provided that: "The amendments made by this section [enacting section 7436 of this title, amending this section and sections 7421, 7453, and 7481 of this title, and renumbering section 7436 of this title as 7437] shall take effect on the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by Pub. L. 100–418 applicable to crude oil removed from the premises on or after Aug. 23, 1988, see section 1941(c) of Pub. L. 100–418, set out as a note under section 164 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 141(b)(3) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 231(d)(3)(I) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1985, see section 231(g) of Pub. L. 99–514, set out as a note under section 41 of this title.

Amendment by section 1847(b)(15) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 163(b)(2) of Pub. L. 98–369 applicable to expenditures with respect to which the second taxable year described in section 118(b)(2)(B) of this title ends after Dec. 31, 1984, see section 163(c) of Pub. L. 98–369, set out as a note under section 118 of this title.

Amendment by section 211(b)(25) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31,

1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

Amendment by section 474(r)(40) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 714(p)(2)(G) of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

Amendment by section 735(c)(14) of Pub. L. 98–369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97–424, to which such amendment relates, see section 736 of Pub. L. 98–369, set out as a note under section 4051 of this title.

Amendment by section 2663(j)(5)(F) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to partnership taxable years beginning after Sept. 3, 1982, with provision for applicability of amendment to any partnership taxable year ending after Sept. 3, 1982, if partnership, each partner, and each indirect partner requests such application and Secretary of the Treasury or his delegate consents to such application, see section 407(a)(1), (3) of Pub. L. 97–248, set out as an Effective Date note under section 6221 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 221(b)(2)(A) of Pub. L. 97–34 applicable to amounts paid or incurred after June 30, 1981, see section 221(d) of Pub. L. 97–34, as amended, set out as an Effective Date note under section 41 of this title.

Amendment by section 331(d)(2)(A) of Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 339 of Pub. L. 97–34, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–598 effective on first day of first calendar month which begins more than 10 days after Dec. 24, 1980, see section 1(e) of Pub. L. 96–598, set out as a note under section 4071 of this title.

Amendment by Pub. L. 96–223 applicable to periods after Feb. 29, 1980, see section 101(i) of Pub. L. 96–223, set out as a note under section 6161 of this title.

Amendment by section 102(a)(2)(B) of Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

Amendment by section 108(b)(1)(B) of Pub. L. 96–222 effective as if included in the provisions of the Black Lung Benefits Revenue Act of 1977, Pub. L. 95–227, see section 108(b)(4) of Pub. L. 96–222, set out as a note under section 192 of this title.

EFFECTIVE DATE OF 1978 AMENDMENTS

Pub. L. 95–628, §8(d), Nov. 10, 1978, 92 Stat. 3632, provided that: "The amendments made by this section [amending this section and sections 6501, 6601, and 6611 of this title] shall apply to carrybacks arising in taxable years beginning after the date of the enactment of this Act [Nov. 10, 1978]."

Amendment by section 212(b)(1) of Pub. L. 95–600 applicable to partnership items arising in partnership taxable years beginning after Dec. 31, 1978, see section 212(c) of Pub. L. 95–600, set out as a note under section 6501 of this title.

Amendment by section 703(p)(3) of Pub. L. 95–600 applicable with respect to losses sustained in taxable years ending Nov. 6, 1978, see section 703(p)(4) of Pub. L. 95–600, set out as a note under section 172 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, and to credit carrybacks from such years, see section 202(e) of Pub. L. 95–30, set out as an Effective Date note under section 44B of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1203(h)(3) of Pub. L. 94–455 applicable to documents prepared after Dec. 31, 1976,

see section 1203(j) of Pub. L. 94–455, set out as a note under section 7701 of this title.

Amendment by section 1906(a)(33) of Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1906(d)(1) of Pub. L. 94–455, set out as a note under section 6013 of this title.

Amendment by section 2107(g)(2)(B) of Pub. L. 94–455 applicable to parts and accessories sold after Oct. 4, 1976, see section 2108(b) of Pub. L. 94–455, set out as a note under section 6416 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–406 effective Sept. 2, 1974, with exceptions specified in section 1461(b), (c) of Title 29, Labor, see section 1461(a) of Title 29.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–178 applicable to taxable years beginning after Dec. 31, 1971, see section 601(f) of Pub. L. 92–178, set out as a note under section 381 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 101(h) of Pub. L. 91–172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

Amendment by section 311(d)(3) of Pub. L. 91–172 applicable with respect to computation years (within the meaning of section 1302(c)(1) of this title) beginning after Dec. 31, 1969, and to base period years (within the meaning of section 1302(c)(3) of this title) applicable to such computation years, see section 311(e) of Pub. L. 91–172, set out as a note under section 1301 of this title.

Amendment by section 512(e)(2) of Pub. L. 91–172 applicable with respect to net capital losses sustained in taxable years beginning after Dec. 31, 1969, see section 512(g) of Pub. L. 91–172, set out as a note under section 1212 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–225 applicable with respect to investment credit carrybacks attributable to net operating loss carrybacks from taxable years ending after July 31, 1967, see section 2(g) of Pub. L. 90–225, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–331 effective Nov. 8, 1965, see section 14 of Pub. L. 89–331, Nov. 8, 1965, 79 Stat. 1281.

EFFECTIVE DATE OF 1964 AMENDMENTS

Amendment by Pub. L. 88–571 effective, with respect to amounts added to policyholders surplus accounts, for taxable years beginning after Dec. 31, 1958, see section 3(f) of Pub. L. 88–571, set out as a note under section 815 of this title.

Amendment by Pub. L. 88–272, applicable to taxable years beginning after Dec. 31, 1964, see section 232(g) of Pub. L. 88–272, set out as an Effective Date note under section 1301 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable with respect to taxable years ending after Dec. 31, 1961, see section 2(h) of Pub. L. 87–834, set out as an Effective Date note under section 46 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Pub. L. 86–280, §1(c), Sept. 16, 1959, 73 Stat. 564, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided in part that: "The amendment made by subsection (a) [amending this section] shall apply with respect to claims for credit or refund resulting from the elimination of excessive profits by renegotiation to which section 6511(d)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] applies."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 effective Aug. 17, 1954, see section 1(c)(2) of Pub. L. 85–866, set out as a note under section 165 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act June 29, 1956, effective June 29, 1956, see section 211 of act June 29, 1956, set out as a note under section 4041 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

TRANSITION RULES

Pub. L. 110–245, title I, §106(c), June 17, 2008, 122 Stat. 1630, provided that: "In the case of a determination described in paragraph (8) of section 6511(d) of the Internal Revenue Code of 1986 (as added by this section) which is made by the Secretary of Veterans Affairs after December 31, 2000, and before the date of the enactment of this Act [June 17, 2008], such paragraph—

"(1) shall not apply with respect to any taxable year which began before January 1, 2001, and

"(2) shall be applied by substituting [sic] for 'the date of such determination' in subparagraph (A) thereof."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

EXTENSION OF TIME FOR FILING CLAIMS FOR TAX REFUNDS

Pub. L. 85–866, title I, §96, Sept. 2, 1958, 72 Stat. 1672, authorized refunds and credits for tax overpayments for any taxable year beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, based upon business, trade, or education expenses, if the proper claim were filed on or before Sept. 2, 1958, or within 60 days thereafter.

§6512. Limitations in case of petition to Tax Court

(a) Effect of petition to Tax Court

If the Secretary has mailed to the taxpayer a notice of deficiency under section 6212(a) (relating to deficiencies of income, estate, gift, and certain excise taxes) and if the taxpayer files a petition with the Tax Court within the time prescribed in section 6213(a) (or 7481(c) with respect to a determination of statutory interest or section 7481(d) solely with respect to a determination of estate tax by the Tax Court), no credit or refund of income tax for the same taxable year, of gift tax for the same calendar year or calendar quarter, of estate tax in respect of the taxable estate of the same decedent, or of tax imposed by chapter 41, 42, 43, or 44 with respect to any act (or failure to act) to which such petition relates, in respect of which the Secretary has determined the deficiency shall be allowed or made and no suit by the taxpayer for the recovery of any part of the tax shall be instituted in any court except—

(1) As to overpayments determined by a decision of the Tax Court which has become final, and

(2) As to any amount collected in excess of an amount computed in accordance with the decision of the Tax Court which has become final, and

(3) As to any amount collected after the period of limitation upon the making of levy or beginning a proceeding in court for collection has expired; but in any such claim for credit or refund or in any such suit for refund the decision of the Tax Court which has become final, as to whether such period has expired before the notice of deficiency was mailed, shall be conclusive, and

(4) As to overpayments attributable to partnership items, in accordance with subchapter C of chapter 63, and

(5) As to any amount collected within the period during which the Secretary is prohibited from making the assessment or from collecting by levy or through a proceeding in court under the provisions of section 6213(a), and

(6) As to overpayments the Secretary is authorized to refund or credit pending appeal as provided in subsection (b).

(b) Overpayment determined by Tax Court

(1) Jurisdiction to determine

Except as provided by paragraph (3) and by section 7463, if the Tax Court finds that there is no deficiency and further finds that the taxpayer has made an overpayment of income tax for the same taxable year, of gift tax for the same calendar year, or calendar quarter, of estate tax in respect of the taxable estate of the same decedent, or of tax imposed by chapter 41, 42, 43, or 44 with respect to any act (or failure to act) to which such petition relates, in respect of which the Secretary determined the deficiency, or finds that there is a deficiency but that the taxpayer has made an overpayment of such tax, the Tax Court shall have jurisdiction to determine the amount of such overpayment, and such amount shall, when the decision of the Tax Court has become final, be credited or refunded to the taxpayer. If a notice of appeal in respect of the decision of the Tax Court is filed under section 7483, the Secretary is authorized to refund or credit the overpayment determined by the Tax Court to the extent the overpayment is not contested on appeal.

(2) Jurisdiction to enforce

If, after 120 days after a decision of the Tax Court has become final, the Secretary has failed to refund the overpayment determined by the Tax Court, together with the interest thereon as provided in subchapter B of chapter 67, then the Tax Court, upon motion by the taxpayer, shall have jurisdiction to order the refund of such overpayment and interest. An order of the Tax Court disposing of a motion under this paragraph shall be reviewable in the same manner as a decision of the Tax Court, but only with respect to the matters determined in such order.

(3) Limit on amount of credit or refund

No such credit or refund shall be allowed or made of any portion of the tax unless the Tax Court determines as part of its decision that such portion was paid—

(A) after the mailing of the notice of deficiency,

(B) within the period which would be applicable under section 6511(b)(2), (c), or (d), if on the date of the mailing of the notice of deficiency a claim had been filed (whether or not filed) stating the grounds upon which the Tax Court finds that there is an overpayment, or

(C) within the period which would be applicable under section 6511(b)(2), (c), or (d), in respect of any claim for refund filed within the applicable period specified in section 6511 and before the date of the mailing of the notice of deficiency—

(i) which had not been disallowed before that date,

(ii) which had been disallowed before that date and in respect of which a timely suit for refund could have been commenced as of that date, or

(iii) in respect of which a suit for refund had been commenced before that date and within the period specified in section 6532.

In the case of a credit or refund relating to an affected item (within the meaning of section 6231(a)(5)), the preceding sentence shall be applied by substituting the periods under sections 6229 and 6230(d) for the periods under section 6511(b)(2), (c), and (d).

In a case described in subparagraph (B) where the date of the mailing of the notice of deficiency is during the third year after the due date (with extensions) for filing the return of tax and no return was filed before such date, the applicable period under subsections (a) and (b)(2) of section 6511 shall be 3 years.

(4) Denial of jurisdiction regarding certain credits and reductions

The Tax Court shall have no jurisdiction under this subsection to restrain or review any credit or reduction made by the Secretary under section 6402.

(c) Cross references

(1) For provisions allowing determination of tax in title 11 cases, see section 505(a) of title 11

of the United States Code.

(2) For provision giving the Tax Court jurisdiction to award reasonable litigation costs in proceedings to enforce an overpayment determined by such court, see section 7430.

(Aug. 16, 1954, ch. 736, 68A Stat. 811; Pub. L. 87–870, §4, Oct. 23, 1962, 76 Stat. 1161; Pub. L. 91–172, title I, §101(j)(47), (48), title IX, §960(b), Dec. 30, 1969, 83 Stat. 531, 734; Pub. L. 91–614, title I, §102(d)(9), Dec. 31, 1970, 84 Stat. 1842; Pub. L. 93–406, title II, §1016(a)(16), Sept. 2, 1974, 88 Stat. 930; Pub. L. 94–455, title XIII, §1307(d)(2)(F)(vii), title XVI, §1605(b)(9), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1728, 1755, 1834; Pub. L. 95–600, title II, §212(b)(2), Nov. 6, 1978, 92 Stat. 2819; Pub. L. 96–223, title I, §101(f)(6), Apr. 2, 1980, 94 Stat. 253; Pub. L. 96–589, §6(d)(3), Dec. 24, 1980, 94 Stat. 3408; Pub. L. 97–248, title IV, §402(c)(8), (9), Sept. 3, 1982, 96 Stat. 668; Pub. L. 100–418, title I, §1941(b)(2)(J), (K), Aug. 23, 1988, 102 Stat. 1323; Pub. L. 100–647, title VI, §§6244(a), (b)(2), 6246(b)(1), 6247(b)(1), Nov. 10, 1988, 102 Stat. 3750–3752; Pub. L. 105–34, title XII, §§1239(c)(2), 1282(a), title XIV, §1451(a), (b), Aug. 5, 1997, 111 Stat. 1028, 1037, 1054; Pub. L. 105–206, title III, §3464(b), (c), July 22, 1998, 112 Stat. 767; Pub. L. 106–554, §1(a)(7) [title III, §319(19)], Dec. 21, 2000, 114 Stat. 2763, 2763A–647.)

AMENDMENTS

2000—Subsec. (a)(1), (2), (5). Pub. L. 106–554 substituted a comma for a semicolon before "and" at end.

1998—Subsec. (a)(5), (6). Pub. L. 105–206, §3464(b), added pars. (5) and (6).

Subsec. (b)(1). Pub. L. 105–206, §3464(c), inserted at end "If a notice of appeal in respect of the decision of the Tax Court is filed under section 7483, the Secretary is authorized to refund or credit the overpayment determined by the Tax Court to the extent the overpayment is not contested on appeal."

1997—Subsec. (b)(2). Pub. L. 105–34, §1451(a), inserted at end "An order of the Tax Court disposing of a motion under this paragraph shall be reviewable in the same manner as a decision of the Tax Court, but only with respect to the matters determined in such order."

Subsec. (b)(3). Pub. L. 105–34, §1282(a), inserted concluding provisions "In a case described in subparagraph (B) where the date of the mailing of the notice of deficiency is during the third year after the due date (with extensions) for filing the return of tax and no return was filed before such date, the applicable period under subsections (a) and (b)(2) of section 6511 shall be 3 years."

Pub. L. 105–34, §1239(c)(2), inserted concluding provisions "In the case of a credit or refund relating to an affected item (within the meaning of section 6231(a)(5)), the preceding sentence shall be applied by substituting the periods under sections 6229 and 6230(d) for the periods under section 6511(b)(2), (c), and (d)."

Subsec. (b)(4). Pub. L. 105–34, §1451(b), added par. (4).

1988—Subsec. (a). Pub. L. 100–647, §6247(b)(1), substituted "interest or section 7481(d) solely with respect to a determination of estate tax by the Tax Court)" for "interest)".

Pub. L. 100–647, §6246(b)(1), inserted "(or 7481(c) with respect to a determination of statutory interest)" after "section 6213(a)".

Pub. L. 100–418, §1941(b)(2)(J), substituted "or of tax imposed by chapter 41" for "of tax imposed by chapter 41" and struck out ", or of tax imposed by chapter 45 for the same taxable period" after "to which such petition relates".

Subsec. (b)(1). Pub. L. 100–647, §6244(a), substituted "paragraph (3)" for "paragraph (2)".

Pub. L. 100–418, §1941(b)(2)(K), substituted "or of tax imposed by chapter 41" for "of tax imposed by chapter 41" and struck out ", or of tax imposed by chapter 45 for the same taxable period" after "to which such petition relates".

Subsec. (b)(2), (3). Pub. L. 100–647, §6244(a), added par. (2) and redesignated former par. (2) as (3).

Subsec. (c). Pub. L. 100–647, §6244(b)(2), substituted "references" for "reference" in heading, designated existing provisions as par. (1), and added par. (2).

1982—Subsec. (a)(4). Pub. L. 97–248, §402(c)(8), added par. (4).

Subsec. (b)(2). Pub. L. 97–248, §402(c)(9), substituted "(c), or (d)" for "(c), (d), or (g)" wherever appearing.

1980—Subsec. (a). Pub. L. 96–223, §101(f)(6)(A), substituted "certain excise taxes" for "chapter 41, 42, 43, or 44 taxes" and "decedent, of tax imposed" for "decedent, or of tax imposed" and inserted ", or of tax imposed by chapter 45 for the same taxable period" after "to which such petition relates" in provisions preceding par. (1).

Subsec. (b)(1). Pub. L. 96–223, §101(f)(6)(B), substituted "of tax imposed by chapter 41" for "or of tax imposed by chapter 41" and inserted ", or of tax imposed by chapter 45 for the same taxable period" after "to which such petition relates".

Subsec. (c). Pub. L. 96–589 added subsec. (c).

1978—Subsec. (b)(2). Pub. L. 95–600 substituted "(c), (d), or (g)" for "(c), or (d)" wherever appearing.

1976—Subsecs. (a), (b)(1). Pub. L. 94–455 substituted reference to chapter 41, 42, 43, or 44 for reference to chapter 42 or 43 and reference to Secretary for reference to Secretary or his delegate.

1974—Subsec. (a). Pub. L. 93–406 inserted reference to chapter 43 in provisions preceding par (1).

Subsec. (b)(1). Pub. L. 93–406 inserted reference to chapter 43.

1970—Pub. L. 91–614 substituted "the same calendar year or calendar quarter" for "the same calendar year" in two places.

1969—Subsec. (a). Pub. L. 91–172, §101(j)(47), inserted references to chapter 42 taxes.

Subsec. (b)(1). Pub. L. 91–172, §§101(j)(48), 960(b), inserted reference to chapter 42 taxes and inserted reference to the exception to the Tax Court's jurisdiction provided for in par. (2) and in section 7463 of this title.

1962—Subsec. (b)(2)(C). Pub. L. 87–870 added subpar. (C).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 1239(c)(2) of Pub. L. 105–34 applicable to partnership taxable years ending after Aug. 5, 1997, see section 1239(f) of Pub. L. 105–34, set out as a note under section 6225 of this title.

Pub. L. 105–34, title XII, §1282(b), Aug. 5, 1997, 111 Stat. 1038, provided that: "The amendment made by subsection (a) [amending this section] shall apply to claims for credit or refund for taxable years ending after the date of the enactment of this Act [Aug. 5, 1997]."

Pub. L. 105–34, title XIV, §1451(c), Aug. 5, 1997, 111 Stat. 1054, provided that: "The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by section 6244(a), (b)(2) of Pub. L. 100–647 applicable to overpayments determined by the Tax Court which have not been refunded by the 90th day after Nov. 10, 1988, see section 6244(c) of Pub. L. 100–647, set out as a note under section 6214 of this title.

Pub. L. 100–647, title VI, §6246(c), Nov. 10, 1988, 102 Stat. 3751, provided that: "The amendments made by this section [amending this section and section 7481 of this title] shall apply to assessments of deficiencies redetermined by the Tax Court made after the date of the enactment of this Act [Nov. 10, 1988]."

Pub. L. 100–647, title VI, §6247(c), Nov. 10, 1988, 102 Stat. 3752, provided that: "The amendments made by this section [amending this section and section 7481 of this title] shall be effective with respect to Tax Court cases for which the decision is not final on the date of the enactment of this Act [Nov. 10, 1988]."

Amendment by Pub. L. 100–418 applicable to crude oil removed from the premises on or after Aug. 23, 1988, see section 1941(c) of Pub. L. 100–418, set out as a note under section 164 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to partnership taxable years beginning after Sept. 3, 1982, with provision for applicability of amendment to any partnership taxable year ending after Sept. 3, 1982, if partnership, each partner, and each indirect partner requests such application and Secretary of the Treasury or his delegate consents to such application, see section 407(a)(1), (3) of Pub. L. 97–248, set out as an Effective Date note under section 6221 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–589 effective Oct. 1, 1979, but not applicable to proceedings under Title 11, Bankruptcy, commenced before Oct. 1, 1979, see section 7(e) of Pub. L. 96–589, set out as a note under section 108 of this title.

Amendment by Pub. L. 96–223 applicable to periods after Feb. 29, 1980, see section 101(i) of Pub. L. 96–223, set out as a note under section 6161 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable to partnership items arising in partnership taxable years beginning after Dec. 31, 1978, see section 212(c) of Pub. L. 95–600, set out as a note under section 6501 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1307(d)(2)(F)(vii) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1976, see section 1307(e) of Pub. L. 94–455, set out as a note under section 501 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–406 applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93–406, for plan years beginning after Sept. 2, 1974, but, in the case of plans in existence on Jan. 1, 1974, amendment by Pub. L. 93–406 applicable for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93–406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91–614, set out as a note under section 2501 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 101(j)(47), (48) of Pub. L. 91–172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

Amendment by section 960(b) of Pub. L. 91–172 effective one year after Dec. 30, 1969, see section 962(e) of Pub. L. 91–172, set out as an Effective Date note under section 7463 of this title.

§6513. Time return deemed filed and tax considered paid

(a) Early return or advance payment of tax

For purposes of section 6511, any return filed before the last day prescribed for the filing thereof shall be considered as filed on such last day. For purposes of section 6511(b)(2) and (c) and section 6512, payment of any portion of the tax made before the last day prescribed for the payment of the tax shall be considered made on such last day. For purposes of this subsection, the last day prescribed for filing the return or paying the tax shall be determined without regard to any extension of time granted the taxpayer and without regard to any election to pay the tax in installments.

(b) Prepaid income tax

For purposes of section 6511 or 6512—

(1) Any tax actually deducted and withheld at the source during any calendar year under chapter 24 shall, in respect of the recipient of the income, be deemed to have been paid by him on the 15th day of the fourth month following the close of his taxable year with respect to which such tax is allowable as a credit under section 31.

(2) Any amount paid as estimated income tax for any taxable year shall be deemed to have been paid on the last day prescribed for filing the return under section 6012 for such taxable year (determined without regard to any extension of time for filing such return).

(3) Any tax withheld at the source under chapter 3 or 4 shall, in respect of the recipient of the income, be deemed to have been paid by such recipient on the last day prescribed for filing the return under section 6012 for the taxable year (determined without regard to any extension of time for filing) with respect to which such tax is allowable as a credit under section 1462 or 1474(b). For this purpose, any exemption granted under section 6012 from the requirement of filing a return shall be disregarded.

(c) Return and payment of social security taxes and income tax withholding

Notwithstanding subsection (a), for purposes of section 6511 with respect to any tax imposed by chapter 3, 4, 21, or 24—

(1) If a return for any period ending with or within a calendar year is filed before April 15 of the succeeding calendar year, such return shall be considered filed on April 15 of such succeeding calendar year; and

(2) If a tax with respect to remuneration or other amount paid during any period ending with or within a calendar year is paid before April 15 of the succeeding calendar year, such tax shall be considered paid on April 15 of such succeeding calendar year.

(d) Overpayment of income tax credited to estimated tax

If any overpayment of income tax is, in accordance with section 6402(b), claimed as a credit against estimated tax for the succeeding taxable year, such amount shall be considered as a payment

of the income tax for the succeeding taxable year (whether or not claimed as a credit in the return of estimated tax for such succeeding taxable year), and no claim for credit or refund of such overpayment shall be allowed for the taxable year in which the overpayment arises.

(e) Payments of Federal unemployment tax

Notwithstanding subsection (a), for purposes of section 6511 any payment of tax imposed by chapter 23 which, pursuant to section 6157, is made for a calendar quarter or other period within a calendar year shall, if made before the last day prescribed for filing the return for the calendar year (determined without regard to any extension of time for filing), be considered made on such last day.

(Aug. 16, 1954, ch. 736, 68A Stat. 812; Pub. L. 89–809, title I, §105(f)(1), (2), Nov. 13, 1966, 80 Stat. 1567, 1568; Pub. L. 91–53, §2(d), Aug. 7, 1969, 83 Stat. 92; Pub. L. 98–76, title II, §231(b)(2)(C), Aug. 12, 1983, 97 Stat. 429; Pub. L. 100–647, title VII, §7106(c)(4), Nov. 10, 1988, 102 Stat. 3774; Pub. L. 111–147, title V, §501(c)(4), (5), Mar. 18, 2010, 124 Stat. 106.)

AMENDMENTS

2010—Subsec. (b)(3). Pub. L. 111–147, §501(c)(4), inserted "or 4" after "chapter 3" and "or 1474(b)" after "section 1462".

Subsec. (c). Pub. L. 111–147, §501(c)(5), inserted "4," after "chapter 3," in introductory provisions.

1988—Subsec. (e). Pub. L. 100–647 struck out last sentence which read as follows: "Notwithstanding subsection (a), for purposes of section 6511, any payment of tax imposed by chapter 23A which, pursuant to section 6157, is made for a calendar quarter within a taxable period shall, if made before the last day prescribed for filing the return for the taxable period (determined without regard to any extension of time for filing), be considered made on such last day."

1983—Subsec. (e). Pub. L. 98–76 inserted provisions that notwithstanding subsection (a), for purposes of section 6511, any payment of tax imposed by chapter 23A which, pursuant to section 6157, is made for a calendar quarter within a taxable period shall, if made before the last day prescribed for filing the return for the taxable period (determined without regard to any extension of time for filing), be considered made on such last day.

1969—Subsec. (e). Pub. L. 91–53 added subsec. (e).

1966—Subsec. (b). Pub. L. 89–809, §105(f)(1), designated existing provisions as pars. (1) and (2) and added par. (3).

Subsec. (c). Pub. L. 89–809, §105(f)(2), inserted reference to chapter 3 in provisions preceding par. (1) and "or other amount" after "remuneration" in par. (2).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–147 applicable to payments made after Dec. 31, 2012, with certain exceptions, see section 501(d)(1), (2) of Pub. L. 111–147, set out as a note under section 1471 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 applicable to remuneration paid after Dec. 31, 1988, see section 7106(d) of Pub. L. 100–647, set out as a note under section 3321 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–76 applicable to remuneration paid after June 30, 1986, see section 231(d) of Pub. L. 98–76, set out as an Effective Date note under section 3321 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–53 applicable with respect to calendar years beginning after Dec. 31, 1969, see section 4(a) of Pub. L. 91–53, set out as an Effective Date note under section 6157 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 effective Nov. 13, 1966, see section 105(f)(4) of Pub. L. 89–809, set out as a note under section 6501 of this title.

§6514. Credits or refunds after period of limitation

(a) Credits or refunds after period of limitation

A refund of any portion of an internal revenue tax shall be considered erroneous and a credit of any such portion shall be considered void—

(1) Expiration of period for filing claim

If made after the expiration of the period of limitation for filing claim therefor, unless within such period claim was filed; or

(2) Disallowance of claim and expiration of period for filing suit

In the case of a claim filed within the proper time and disallowed by the Secretary, if the credit or refund was made after the expiration of the period of limitation for filing suit, unless within such period suit was begun by the taxpayer.

(3) Recovery of erroneous refunds

For procedure by the United States to recover erroneous refunds, see sections 6532(b) and 7405.

(b) Credit after period of limitation

Any credit against a liability in respect of any taxable year shall be void if any payment in respect of such liability would be considered an overpayment under section 6401(a).

(Aug. 16, 1954, ch. 736, 68A Stat. 812; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsec. (a)(2). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

§6515. Cross references

For limitations in case of—

(1) Deficiency dividends of a personal holding company, see section 547.

(2) Tentative carry-back adjustments, see section 6411.

(3) Service in a combat zone, etc., see section 7508.

(4) Suits for refund by taxpayers, see section 6532(a).

(5) Deficiency dividends of a regulated investment company or real estate investment trust, see section 860.

(6) Refunds or credits attributable to partnership items, see section 6227 and subsections (c) and (d) of section 6230.

(Aug. 16, 1954, ch. 736, 68A Stat. 813; Pub. L. 94–455, title XVI, §1601(f)(3), title XIX, §1901(b)(36)(D), (37)(E), Oct. 4, 1976, 90 Stat. 1746, 1802, 1803; Pub. L. 95–600, title III, §362(d)(4), Nov. 6, 1978, 92 Stat. 2852; Pub. L. 97–248, title IV, §402(c)(10), Sept. 3, 1982, 96 Stat. 668; Pub. L. 101–508, title XI, §11801(c)(17)(C), Nov. 5, 1990, 104 Stat. 1388–528.)

AMENDMENTS

1990—Pub. L. 101–508 struck out par. (2) and redesignated the succeeding pars. accordingly, which was executed with respect to the succeeding pars. (consisting of pars. (3) to (7)) by redesignating such pars. as (2) to (6), respectively. Prior to amendment, par. (2) provided a cross reference to section 1481 for overpayment in certain renegotiations of war contracts.

1982—Par. (7). Pub. L. 97–248 added par. (7).

1978—Par. (6). Pub. L. 95–600 inserted "regulated investment company or" before "real estate investment trust" and substituted "section 860" for "section 859". Notwithstanding the directory language that the amendment be made to par. (5), the amendment was executed to par. (6) to reflect the probable intent of Congress.

1976—Par. (1). Pub. L. 94–455, §1901(b)(36)(D), (b)(37)(E), redesignated par. (3) as (1). Former par. (1), which referred to section 1321 for adjustments incident to involuntary liquidation of inventory, was struck out.

Par. (2). Pub. L. 94–455, §1901(b)(37)(E), redesignated par. (4) as (2). Former par. (2), which referred to section 1335 for war loss recoveries where the prior benefit rule was elected, was struck out.

Pars. (3) to (7). Pub. L. 94–455, §1901(b)(37)(E), redesignated pars. (3) to (7) as (1) to (5), respectively.

Par. (8). Pub. L. 94–455, §1601(f)(3), added par. (8) which was redesignated par. (6) by section 1901(b)(37)(E) of Pub. L. 94–455.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to partnership taxable years beginning after Sept. 3, 1982, with provision for applicability of amendment to any partnership taxable year ending after Sept. 3, 1982, if partnership, each partner, and each indirect partner requests such application and Secretary of the Treasury or his delegate consents to such application, see section 407(a)(1), (3) of Pub. L. 97–248, set out as an Effective Date note under section 6221 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable with respect to determinations (as defined in section 860(e) of this title) after Nov. 6, 1978, see section 362(e) of Pub. L. 95–600, set out as an Effective Date note under section 860 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment by section 1601(f)(3) of Pub. L. 94–455, see section 1608(a) of Pub. L. 94–455, set out as a note under section 857 of this title.

Amendment by section 1901(b)(36)(D), (37)(E) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

Subchapter C—Mitigation of Effect of Period of Limitations

Sec.
6521. Mitigation of effect of limitation in case of related taxes under different chapters.

§6521. Mitigation of effect of limitation in case of related taxes under different chapters

(a) Self-employment tax and tax on wages

In the case of the tax imposed by chapter 2 (relating to tax on self-employment income) and the tax imposed by section 3101 (relating to tax on employees under the Federal Insurance Contributions Act)—

(1) If an amount is erroneously treated as self-employment income, or if an amount is erroneously treated as wages, and

(2) If the correction of the error would require an assessment of one such tax and the refund or credit of the other tax, and

(3) If at any time the correction of the error is authorized as to one such tax but is prevented as to the other tax by any law or rule of law (other than section 7122, relating to compromises),

then, if the correction authorized is made, the amount of the assessment, or the amount of the credit or refund, as the case may be, authorized as to the one tax shall be reduced by the amount of the credit or refund, or the amount of the assessment, as the case may be, which would be required with respect to such other tax for the correction of the error if such credit or refund, or such assessment, of such other tax were not prevented by any law or rule of law (other than section 7122, relating to compromises).

(b) Definitions

For purposes of subsection (a), the terms "self-employment income" and "wages" shall have the same meaning as when used in section 1402(b).

(Aug. 16, 1954, ch. 736, 68A Stat. 814.)

REFERENCES IN TEXT

The Federal Insurance Contributions Act, referred to in subsec. (a), is act Aug. 16, 1954, ch. 736, §§3101, 3102, 3111, 3112, 3121 to 3128, 68A Stat. 415, as amended, which is classified generally to chapter 21 (§3101 et seq.) of this title. For complete classification of this Act to the Code, see section 3128 of this title and Tables.

Subchapter D—Periods of Limitation in Judicial Proceedings

Sec.
6531. Periods of limitation on criminal prosecutions.
6532. Periods of limitation on suits.
6533. Cross references.

§6531. Periods of limitation on criminal prosecutions

No person shall be prosecuted, tried, or punished for any of the various offenses arising under the internal revenue laws unless the indictment is found or the information instituted within 3 years next after the commission of the offense, except that the period of limitation shall be 6 years—

(1) for offenses involving the defrauding or attempting to defraud the United States or any agency thereof, whether by conspiracy or not, and in any manner;

(2) for the offense of willfully attempting in any manner to evade or defeat any tax or the payment thereof;

(3) for the offense of willfully aiding or assisting in, or procuring, counseling, or advising, the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a false or fraudulent return, affidavit, claim, or document (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document);

(4) for the offense of willfully failing to pay any tax, or make any return (other than a return required under authority of part III of subchapter A of chapter 61) at the time or times required by law or regulations;

(5) for offenses described in sections 7206(1) and 7207 (relating to false statements and fraudulent documents);

(6) for the offense described in section 7212(a) (relating to intimidation of officers and employees of the United States);

(7) for offenses described in section 7214(a) committed by officers and employees of the United States; and

(8) for offenses arising under section 371 of Title 18 of the United States Code, where the object of the conspiracy is to attempt in any manner to evade or defeat any tax or the payment thereof.

The time during which the person committing any of the various offenses arising under the internal revenue laws is outside the United States or is a fugitive from justice within the meaning of section 3290 of Title 18 of the United States Code, shall not be taken as any part of the time limited by law for the commencement of such proceedings. (The preceding sentence shall also be deemed an amendment to section 3748(a) of the Internal Revenue Code of 1939, and shall apply in lieu of the sentence in section 3748(a) which relates to the time during which a person committing an offense is absent from the district wherein the same is committed, except that such amendment shall apply only if the period of limitations under section 3748 would, without the application of such amendment, expire more than 3 years after the date of enactment of this title, and except that such period shall

not, with the application of this amendment, expire prior to the date which is 3 years after the date of enactment of this title.) Where a complaint is instituted before a commissioner of the United States within the period above limited, the time shall be extended until the date which is 9 months after the date of the making of the complaint before the commissioner of the United States. For the purpose of determining the periods of limitation on criminal prosecutions, the rules of section 6513 shall be applicable.

(Aug. 16, 1954, ch. 736, 68A Stat. 815.)

REFERENCES IN TEXT

Section 3748(a) of the Internal Revenue Code of 1939, referred to in text, was classified to section 3748(a) of former Title 26, Internal Revenue Code. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of this title. See, also, section 7851(a)(6)(B) of this title for applicability of section 3748 of former Title 26. See also section 7851(e) for provision that references in the 1986 Code to a provision of the 1939 Code, not then applicable, shall be deemed a reference to the corresponding provision of the 1986 Code, which is then applicable.

The date of enactment of this title, referred to in text, is Aug. 16, 1986 [formerly I.R.C. 1954], the date of enactment of the Internal Revenue Code of 1954.

§6532. Periods of limitation on suits

(a) Suits by taxpayers for refund

(1) General rule

No suit or proceeding under section 7422(a) for the recovery of any internal revenue tax, penalty, or other sum, shall be begun before the expiration of 6 months from the date of filing the claim required under such section unless the Secretary renders a decision thereon within that time, nor after the expiration of 2 years from the date of mailing by certified mail or registered mail by the Secretary to the taxpayer of a notice of the disallowance of the part of the claim to which the suit or proceeding relates.

(2) Extension of time

The 2-year period prescribed in paragraph (1) shall be extended for such period as may be agreed upon in writing between the taxpayer and the Secretary.

(3) Waiver of notice of disallowance

If any person files a written waiver of the requirement that he be mailed a notice of disallowance, the 2-year period prescribed in paragraph (1) shall begin on the date such waiver is filed.

(4) Reconsideration after mailing of notice

Any consideration, reconsideration, or action by the Secretary with respect to such claim following the mailing of a notice by certified mail or registered mail of disallowance shall not operate to extend the period within which suit may be begun.

(5) Cross reference

For substitution of 120-day period for the 6-month period contained in paragraph (1) in a title 11 case, see section 505(a)(2) of title 11 of the United States Code.

(b) Suits by United States for recovery of erroneous refunds

Recovery of an erroneous refund by suit under section 7405 shall be allowed only if such suit is begun within 2 years after the making of such refund, except that such suit may be brought at any time within 5 years from the making of the refund if it appears that any part of the refund was induced by fraud or misrepresentation of a material fact.

(c) Suits by persons other than taxpayers

(1) General rule

Except as provided by paragraph (2), no suit or proceeding under section 7426 shall be begun after the expiration of 9 months from the date of the levy or agreement giving rise to such action.

(2) Period when claim is filed

If a request is made for the return of property described in section 6343(b), the 9-month period prescribed in paragraph (1) shall be extended for a period of 12 months from the date of filing of such request or for a period of 6 months from the date of mailing by registered or certified mail by the Secretary to the person making such request of a notice of disallowance of the part of the request to which the action relates, whichever is shorter.

(Aug. 16, 1954, ch. 736, 68A Stat. 816; Pub. L. 85–866, title I, §89(b), Sept. 2, 1958, 72 Stat. 1665; Pub. L. 89–719, title I, §110(b), Nov. 2, 1966, 80 Stat. 1144; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–589, §6(d)(4), Dec. 24, 1980, 94 Stat. 3408.)

AMENDMENTS

1980—Subsec. (a)(5). Pub. L. 96–589 added par. (5).
1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.
1966—Subsec. (c). Pub. L. 89–719 added subsec. (c).
1958—Subsec. (a)(1), (4). Pub. L. 85–866 inserted "certified mail or" before "registered mail" wherever appearing.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–589 effective Oct. 1, 1979, but not applicable to proceedings under Title 11, Bankruptcy, commenced before Oct. 1, 1979, see section 7(e) of Pub. L. 96–589, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–719 applicable after Nov. 2, 1966, regardless of when title or lien of United States arose or when lien or interest of another person was acquired, with certain exceptions, see section 114(a)–(c) of Pub. L. 89–719, set out as a note under section 6323 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable only if mailing occurs after Sept. 2, 1958, see section 89(d) of Pub. L. 85–866, set out as a note under section 7502 of this title.

§6533. Cross references

(1) For period of limitation in respect of civil actions for fines, penalties, and forfeitures, see section 2462 of Title 28 of the United States Code.

(2) For extensions of time by reason of armed service in a combat zone, see section 7508.

(3) For suspension of running of statute until 3 years after termination of hostilities, see section 3287 of Title 18.

(Aug. 16, 1954, ch. 736, 68A Stat. 816.)

CHAPTER 67—INTEREST

Subchapter		Sec.[1]
A.	**Interest on underpayments**	**6601**
B.	**Interest on overpayments**	**6611**
C.	**Determination of interest rate; compounding of interest**	**6621**
D.	**Notice requirements**	**6631**

AMENDMENTS

1998—Pub. L. 105–206, title III, §3308(b), July 22, 1998, 112 Stat. 745, added item for subchapter D.
1982—Pub. L. 97–248, title III, §344(b)(3)(B), Sept. 3, 1982, 96 Stat. 636, inserted "; compounding of

interest" after "rate" in item for subchapter C.

1975—Pub. L. 93–625, §7(d)(5), Jan. 3, 1975, 88 Stat. 2115, added item for subchapter C.

[1] *Section numbers editorially supplied.*

Subchapter A—Interest on Underpayments

Sec.

6601. Interest on underpayment, nonpayment, or extensions of time for payment, of tax.

6602. Interest on erroneous refund recoverable by suit.

6603. Deposits made to suspend running of interest on potential underpayments, etc.

AMENDMENTS

2004—Pub. L. 108–357, title VIII, §842(b), Oct. 22, 2004, 118 Stat. 1599, added item 6603.

§6601. Interest on underpayment, nonpayment, or extensions of time for payment, of tax

(a) General rule

If any amount of tax imposed by this title (whether required to be shown on a return, or to be paid by stamp or by some other method) is not paid on or before the last date prescribed for payment, interest on such amount at the underpayment rate established under section 6621 shall be paid for the period from such last date to the date paid.

(b) Last date prescribed for payment

For purposes of this section, the last date prescribed for payment of the tax shall be determined under chapter 62 with the application of the following rules:

(1) Extensions of time disregarded

The last date prescribed for payment shall be determined without regard to any extension of time for payment or any installment agreement entered into under section 6159.

(2) Installment payments

In the case of an election under section 6156(a) [1] to pay the tax in installments—

(A) The date prescribed for payment of each installment of the tax shown on the return shall be determined under section 6156(b),[1] and

(B) The last date prescribed for payment of the first installment shall be deemed the last date prescribed for payment of any portion of the tax not shown on the return.

(3) Jeopardy

The last date prescribed for payment shall be determined without regard to any notice and demand for payment issued, by reason of jeopardy (as provided in chapter 70), prior to the last date otherwise prescribed for such payment.

(4) Accumulated earnings tax

In the case of the tax imposed by section 531 for any taxable year, the last date prescribed for payment shall be deemed to be the due date (without regard to extensions) for the return of tax imposed by subtitle A for such taxable year.

(5) Last date for payment not otherwise prescribed

In the case of taxes payable by stamp and in all other cases in which the last date for payment is not otherwise prescribed, the last date for payment shall be deemed to be the date the liability for tax arises (and in no event shall be later than the date notice and demand for the tax is made by the Secretary).

(c) Suspension of interest in certain income, estate, gift, and certain excise tax cases

In the case of a deficiency as defined in section 6211 (relating to income, estate, gift, and certain excise taxes), if a waiver of restrictions under section 6213(d) on the assessment of such deficiency has been filed, and if notice and demand by the Secretary for payment of such deficiency is not made within 30 days after the filing of such waiver, interest shall not be imposed on such deficiency for the period beginning immediately after such 30th day and ending with the date of notice and demand and interest shall not be imposed during such period on any interest with respect to such deficiency for any prior period. In the case of a settlement under section 6224(c) which results in the conversion of partnership items to nonpartnership items pursuant to section 6231(b)(1)(C), the preceding sentence shall apply to a computational adjustment resulting from such settlement in the same manner as if such adjustment were a deficiency and such settlement were a waiver referred to in the preceding sentence.

(d) Income tax reduced by carryback or adjustment for certain unused deductions

(1) Net operating loss or capital loss carryback

If the amount of any tax imposed by subtitle A is reduced by reason of a carryback of a net operating loss or net capital loss, such reduction in tax shall not affect the computation of interest under this section for the period ending with the filing date for the taxable year in which the net operating loss or net capital loss arises.

(2) Foreign tax credit carrybacks

If any credit allowed for any taxable year is increased by reason of a carryback of tax paid or accrued to foreign countries or possessions of the United States, such increase shall not affect the computation of interest under this section for the period ending with the filing date for the taxable year in which such taxes were in fact paid or accrued, or, with respect to any portion of such credit carryback from a taxable year attributable to a net operating loss carryback or a capital loss carryback from a subsequent taxable year, such increase shall not affect the computation of interest under this section for the period ending with the filing date for such subsequent taxable year.

(3) Certain credit carrybacks

(A) In general

If any credit allowed for any taxable year is increased by reason of a credit carryback, such increase shall not affect the computation of interest under this section for the period ending with the filing date for the taxable year in which the credit carryback arises, or, with respect to any portion of a credit carryback from a taxable year attributable to a net operating loss carryback, capital loss carryback, or other credit carryback from a subsequent taxable year, such increase shall not affect the computation of interest under this section for the period ending with the filing date for such subsequent taxable year.

(B) Credit carryback defined

For purposes of this paragraph, the term "credit carryback" has the meaning given such term by section 6511(d)(4)(C).

(4) Filing date

For purposes of this subsection, the term "filing date" has the meaning given to such term by section 6611(f)(4)(A).

(e) Applicable rules

Except as otherwise provided in this title—

(1) Interest treated as tax

Interest prescribed under this section on any tax shall be paid upon notice and demand, and shall be assessed, collected, and paid in the same manner as taxes. Any reference to this title (except subchapter B of chapter 63, relating to deficiency procedures) to any tax imposed by this title shall

be deemed also to refer to interest imposed by this section on such tax.

(2) Interest on penalties, additional amounts, or additions to the tax

(A) In general

Interest shall be imposed under subsection (a) in respect of any assessable penalty, additional amount, or addition to the tax (other than an addition to tax imposed under section 6651(a)(1) or 6653 or under part II of subchapter A of chapter 68) only if such assessable penalty, additional amount, or addition to the tax is not paid within 21 calendar days from the date of notice and demand therefor (10 business days if the amount for which such notice and demand is made equals or exceeds $100,000), and in such case interest shall be imposed only for the period from the date of the notice and demand to the date of payment.

(B) Interest on certain additions to tax

Interest shall be imposed under this section with respect to any addition to tax imposed by section 6651(a)(1) or 6653 or under part II of subchapter A of chapter 68 for the period which—

(i) begins on the date on which the return of the tax with respect to which such addition to tax is imposed is required to be filed (including any extensions), and

(ii) ends on the date of payment of such addition to tax.

(3) Payments made within specified period after notice and demand

If notice and demand is made for payment of any amount and if such amount is paid within 21 calendar days (10 business days if the amount for which such notice and demand is made equals or exceeds $100,000) after the date of such notice and demand, interest under this section on the amount so paid shall not be imposed for the period after the date of such notice and demand.

(f) Satisfaction by credits

If any portion of a tax is satisfied by credit of an overpayment, then no interest shall be imposed under this section on the portion of the tax so satisfied for any period during which, if the credit had not been made, interest would have been allowable with respect to such overpayment. The preceding sentence shall not apply to the extent that section 6621(d) applies.

(g) Limitation on assessment and collection

Interest prescribed under this section on any tax may be assessed and collected at any time during the period within which the tax to which such interest relates may be collected.

(h) Exception as to estimated tax

This section shall not apply to any failure to pay any estimated tax required to be paid by section 6654 or 6655.

(i) Exception as to Federal unemployment tax

This section shall not apply to any failure to make a payment of tax imposed by section 3301 for a calendar quarter or other period within a taxable year required under authority of section 6157.

(j) 2-percent rate on certain portion of estate tax extended under section 6166

(1) In general

If the time for payment of an amount of tax imposed by chapter 11 is extended as provided in section 6166, then in lieu of the annual rate provided by subsection (a)—

(A) interest on the 2-percent portion of such amount shall be paid at the rate of 2 percent, and

(B) interest on so much of such amount as exceeds the 2-percent portion shall be paid at a rate equal to 45 percent of the annual rate provided by subsection (a).

For purposes of this subsection, the amount of any deficiency which is prorated to installments payable under section 6166 shall be treated as an amount of tax payable in installments under such section.

(2) 2-percent portion

For purposes of this subsection, the term "2-percent portion" means the lesser of—

(A)(i) the amount of the tentative tax which would be determined under the rate schedule set forth in section 2001(c) if the amount with respect to which such tentative tax is to be computed were the sum of $1,000,000 and the applicable exclusion amount in effect under section 2010(c), reduced by

(ii) the applicable credit amount in effect under section 2010(c), or

(B) the amount of the tax imposed by chapter 11 which is extended as provided in section 6166.

(3) Inflation adjustment

In the case of estates of decedents dying in a calendar year after 1998, the $1,000,000 amount contained in paragraph (2)(A) shall be increased by an amount equal to—

(A) $1,000,000, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting "calendar year 1997" for "calendar year 1992" in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of $10,000, such amount shall be rounded to the next lowest multiple of $10,000.

(4) Treatment of payments

If the amount of tax imposed by chapter 11 which is extended as provided in section 6166 exceeds the 2-percent portion, any payment of a portion of such amount shall, for purposes of computing interest for periods after such payment, be treated as reducing the 2-percent portion by an amount which bears the same ratio to the amount of such payment as the amount of the 2-percent portion (determined without regard to this paragraph) bears to the amount of the tax which is extended as provided in section 6166.

(k) No interest on certain adjustments

For provisions prohibiting interest on certain adjustments in tax, see section 6205(a).

(Aug. 16, 1954, ch. 736, 68A Stat. 817; Pub. L. 85–866, title I, §§66(c), 83(a)(1), 84(a), title II, §206(e), Sept. 2, 1958, 72 Stat. 1658, 1663, 1664, 1685; Pub. L. 87–61, title II, §203(c)(2), June 29, 1961, 75 Stat. 126; Pub. L. 87–834, §2(e)(3), Oct. 16, 1962, 76 Stat. 972; Pub. L. 88–571, §3(d), Sept. 2, 1964, 78 Stat. 858; Pub. L. 89–384, §1(f), Apr. 8, 1966, 80 Stat. 104; Pub. L. 90–225, §2(e), Dec. 27, 1967, 81 Stat. 731; Pub. L. 91–53, §2(e), Aug. 7, 1969, 83 Stat. 92; Pub. L. 91–172, title I, §101(j)(49), title V, §512(e)(3), Dec. 30, 1969, 83 Stat. 531, 641; Pub. L. 92–178, title VI, §601(d)(3), Dec. 10, 1971, 85 Stat. 559; Pub. L. 93–406, title II, §1016(a)(17), Sept. 2, 1974, 88 Stat. 930; Pub. L. 93–625, §7(a)(2)(A), (b)(1), Jan. 3, 1975, 88 Stat. 2115; Pub. L. 94–452, §3(c)(3), Oct. 2, 1976, 90 Stat. 1514; Pub. L. 94–455, title XIII, §1307(d)(2)(H), title XVI, §1605(b)(10), title XIX, §§1906(a)(34), (b)(13)(A), title XX, §2004(b), title XXI, §2107(g)(2)(C), Oct. 4, 1976, 90 Stat. 1728, 1755, 1829, 1834, 1867, 1904; Pub. L. 95–30, title II, §202(d)(4)(C), May 23, 1977, 91 Stat. 150; Pub. L. 95–628, §8(c)(2), Nov. 10, 1978, 92 Stat. 3632; Pub. L. 96–223, title I, §101(f)(7), Apr. 2, 1980, 94 Stat. 253; Pub. L. 97–248, title III, §§344(b)(1), 346(c)(2), Sept. 3, 1982, 96 Stat. 635, 637; Pub. L. 98–76, title II, §231(b)(2)(D), Aug. 12, 1983, 97 Stat. 429; Pub. L. 98–369, div. A, title I, §158(a), title II, §211(b)(26), title IV, §412(b)(7), title VII, §714(n)(1), July 18, 1984, 98 Stat. 696, 757, 792, 963; Pub. L. 99–514, title XIV, §1404(c)(3), title XV, §§1511(c)(11), 1512(a), 1564(a), Oct. 22, 1986, 100 Stat. 2714, 2745, 2746, 2762; Pub. L. 100–203, title X, §10301(b)(5), Dec. 22, 1987, 101 Stat. 1330–429; Pub. L. 100–647, title I, §§1015(b)(2)(C), 1018(u)(42), title VI, §6234(b)(1), title VII, §7106(c)(5), Nov. 10, 1988, 102 Stat. 3569, 3592, 3736, 3774; Pub. L. 101–239, title VII, §7721(c)(8), Dec. 19, 1989, 103 Stat. 2400; Pub. L. 101–508, title XI, §11801(c)(20)(B), Nov. 5, 1990, 104 Stat. 1388–528; Pub. L. 104–168, title III, §303(a), (b)(1), July 30, 1996, 110 Stat. 1458; Pub. L. 105–34, title V, §§501(e), 503(a), (c)(2), (3), title X, §1055(a), title XII, §1242(a), Aug. 5, 1997, 111 Stat. 846, 852, 853, 944, 1029; Pub. L. 105–206, title III, §3301(b), July 22, 1998, 112 Stat. 741; Pub. L. 109–135, title IV, §409(a)(2), Dec. 21, 2005, 119 Stat. 2635.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

REFERENCES IN TEXT

Section 6156, referred to in subsec. (b)(2), was repealed by Pub. L. 108–357, title VIII, §867(b)(1), Oct. 22, 2004, 118 Stat. 1622.

AMENDMENTS

2005—Subsec. (d)(4). Pub. L. 109–135 substituted "6611(f)(4)(A)" for "6611(f)(3)(A)".

1998—Subsec. (f). Pub. L. 105–206 inserted at end "The preceding sentence shall not apply to the extent that section 6621(d) applies."

1997—Subsec. (c). Pub. L. 105–34, §1242(a), inserted at end "In the case of a settlement under section 6224(c) which results in the conversion of partnership items to nonpartnership items pursuant to section 6231(b)(1)(C), the preceding sentence shall apply to a computational adjustment resulting from such settlement in the same manner as if such adjustment were a deficiency and such settlement were a waiver referred to in the preceding sentence."

Subsec. (d)(2) to (4). Pub. L. 105–34, §1055(a), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

Subsec. (j). Pub. L. 105–34, §503(c)(3), substituted "2-percent" for "4-percent" in heading.

Subsec. (j)(1). Pub. L. 105–34, §503(a), reenacted par. heading without change and amended text generally. Prior to amendment, text read as follows: "If the time for payment of an amount of tax imposed by chapter 11 is extended as provided in section 6166, interest on the 4-percent portion of such amount shall (in lieu of the annual rate provided by subsection (a)) be paid at the rate of 4 percent. For purposes of this subsection, the amount of any deficiency which is prorated to installments payable under section 6166 shall be treated as an amount of tax payable in installments under such section."

Subsec. (j)(2). Pub. L. 105–34, §503(a), amended heading and text generally. Prior to amendment, text read as follows: "For purposes of this subsection, the term '4-percent portion' means the lesser of—

"(A) $345,800 reduced by the amount of the credit allowable under section 2010(a); or

"(B) the amount of the tax imposed by chapter 11 which is extended as provided in section 6166."

Subsec. (j)(3). Pub. L. 105–34, §501(e), added par. (3). Former par. (3) redesignated (4).

Subsec. (j)(4). Pub. L. 105–34, §503(c)(2), substituted "2-percent" for "4-percent" wherever appearing.

Pub. L. 105–34, §501(e), redesignated par. (3) as (4).

1996—Subsec. (e)(2)(A). Pub. L. 104–168, §303(b)(1), substituted "21 calendar days from the date of notice and demand therefor (10 business days if the amount for which such notice and demand is made equals or exceeds $100,000)" for "10 days from the date of notice and demand therefor".

Subsec. (e)(3). Pub. L. 104–168, §303(a), substituted "specified period" for "10 days" in heading and amended text generally. Prior to amendment, text read as follows: "If notice and demand is made for payment of any amount, and if such amount is paid within 10 days after the date of such notice and demand interest under this section on the amount so paid shall not be imposed for the period after the date of such notice and demand."

1990—Subsec. (b)(2). Pub. L. 101–508 struck out "or 6158(a)" after "6156(a)" in introductory provisions, struck out "or 6158(a), as the case may be" after "6156(a)" in subpar. (A), and struck out at end "For purposes of subparagraph (A), section 6158(a) shall be treated as providing that the date prescribed for payment of each installment shall not be later than the date prescribed for payment of the 1985 installment."

1989—Subsec. (e)(2). Pub. L. 101–239 substituted "section 6651(a)(1) or 6653 or under part II of subchapter A of chapter 68" for "section 6651(a)(1), 6653, 6659, 6660, or 6661" in subpars. (A) and (B).

1988—Subsec. (b)(1). Pub. L. 100–647, §6234(b)(1), inserted "or any installment agreement entered into under section 6159" after "time for payment".

Subsec. (b)(2). Pub. L. 100–647, §1018(u)(42), made technical correction to directory language of Pub. L. 99–514, §1404(c)(3), see 1986 Amendment note below.

Subsec. (e)(2)(A), (B). Pub. L. 100–647, §1015(b)(2)(C), substituted "6653, 6659" for "6659".

Subsec. (i). Pub. L. 100–647, §7106(c)(5), struck out "or 3321" after "3301".

1987—Subsec. (h). Pub. L. 100–203 substituted "section 6654 or 6655" for "section 6154 or 6654".

1986—Subsec. (a). Pub. L. 99–514, §1511(c)(11), substituted "the underpayment rate established under section 6621" for "an annual rate established under section 6621".

Subsec. (b)(2). Pub. L. 99–514, §1404(c)(3), as amended by Pub. L. 100–647, §1018(u)(42), substituted "6156(a) or 6158(a)" for "6152(a), 6156(a), or 6158(a)" in introductory provisions and "6156(b) or 6158(a)" for "6152(b), 6156(b), or 6158(a)" in subpar. (A).

Subsec. (b)(4), (5). Pub. L. 99–514, §1512(a), added par. (4) and redesignated former par. (4) as (5).

Subsec. (c). Pub. L. 99–514, §1564(a), inserted "and interest shall not be imposed during such period on any interest with respect to such deficiency for any prior period".

1984—Subsec. (d)(2)(A). Pub. L. 98–369, §714(n)(1), made technical correction to directory language of Pub. L. 97–248, §346(c)(2)(B). See 1982 Amendment note below.

Subsec. (d)(3), (4). Pub. L. 98–369, §211(b)(26), redesignated par. (4) as (3) and struck out former par. (3) which had provided that if the amount of any tax imposed by subtitle A was reduced by operation of section 815(d)(5) (relating to reduction of policyholders surplus account of life insurance companies for certain unused deductions), such reduction in tax would not affect the computation of interest under this section for the period ending with the last day of the last taxable year to which the loss described in section 815(d)(5)(A) was carried under section 812(b)(2).

Subsec. (e)(2). Pub. L. 98–369, §158(a), in amending par. (2) generally, inserted "(other than an addition to tax imposed under section 6651(a)(1), 6659, 6660, or 6661)", and added subpar. (B).

Subsec. (h). Pub. L. 98–369, §412(b)(7), amended subsec. (h) generally, substituting "any estimated tax required to be paid by section 6154 or 6654" for "estimated tax required by section 6153 or section 6154".

1983—Subsec. (i). Pub. L. 98–76 inserted "or 3321" after "3301".

1982—Subsec. (d)(1). Pub. L. 97–248, §346(c)(2)(A), substituted "the filing date for the taxable year" for "the last day of the taxable year".

Subsec. (d)(2)(A). Pub. L. 97–248, §346(c)(2)(B), as amended by Pub. L. 98–369, §346(c)(2)(B), substituted "the filing date for" for "the last day of" in two places.

Subsec. (d)(4). Pub. L. 97–248, §346(c)(2)(C), added par. (4).

Subsec. (e). Pub. L. 97–248, §344(b)(1), struck out par. (2) which had provided that no interest under this section was to be imposed on the interest provided by this section, and redesignated pars. (3) and (4) as (2) and (3), respectively.

1980—Subsec. (c). Pub. L. 96–223 substituted "certain excise tax cases" for "chapter 41, 42, 43, or 44 tax cases" in heading.

1978—Subsec. (d)(2). Pub. L. 95–628, §8(c)(2)(A), substituted in heading "Certain credit carrybacks" for "Investment credit carryback", designated existing provision as subpar. (A), and in subpar. (A) as so designated, inserted heading "In general" and in text extended the application of the provision to credit carrybacks, previously limited to investment credit carrybacks, included other credit carrybacks, and added subpar. (B).

Subsec. (d)(4), (5). Pub. L. 95–628, §8(c)(2)(B), struck out pars. (4) and (5) which provided for work incentive program credit carrybacks and new employee credit carrybacks, respectively.

1977—Subsec. (d)(5). Pub. L. 95–30 added par. (5).

1976—Subsec. (b)(2). Pub. L. 94–452 substituted ", 6156(a), or 6158(a)" for "or 6156(a)" and ", 6156(b), or 6158(a)" for "or 6156(b)" and inserted requirement that for purposes of subparagraph (A), section 6158(a) of this title shall be treated as providing that the date prescribed for payment of each installment shall not be later than the date prescribed for payment of the 1985 installment.

Subsec. (b)(4). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (c). Pub. L. 94–455, §§1307(d)(2)(H), 1605(b)(10), substituted in heading "chapter 41, 42" for "chapter 42" and "43, or 44" for "or 43".

Subsec. (d)(4). Pub. L. 94–455, §2107(g)(2)(C), inserted ", an investment credit carryback," after "net operating loss carryback".

Subsec. (h). Pub. L. 94–455, §1906(a)(34), struck out "(or section 59 of the Internal Revenue Code of 1939)".

Subsecs. (j), (k). Pub. L. 94–455, §2004(b), added subsec. (j) and redesignated former subsec. (j) as (k).

1975—Subsec. (a). Pub. L. 93–625, §7(a)(2)(A), substituted "an annual rate established under section 6621" for "the rate of 6 percent per annum".

Subsecs. (b) to (l). Pub. L. 93–625, §7(b)(1), struck out subsec. (b) relating to extensions of time for payment of estate tax, redesignated subsecs. (c) to (i) as (b) to (h), respectively, struck out subsec. (j) relating to extensions of time for payment of tax attributable to recoveries of foreign expropriation losses, and redesignated subsecs. (k) and (l) as (i) and (j), respectively.

1974—Subsec. (d). Pub. L. 93–406 inserted reference to chapter 43 in heading, and substituted "certain excise" for "chapter 42" in text.

1971—Subsec. (e)(4). Pub. L. 92–178 added par. (4).

1969—Subsec. (d). Pub. L. 91–172, §101(j)(49), inserted reference to chapter 42 both in subsec. heading and in text.

Subsec. (e)(1). Pub. L. 91–172, §512(e)(3)(A), (B), substituted "loss or capital loss carryback" for "loss

carryback" in heading, and "net operating loss or net capital loss" for "net operating loss" wherever it appears in text.

Subsec. (e)(2). Pub. L. 91–172, §512(e)(3)(C), substituted "loss carryback or a capital loss carryback" for "loss carryback".

Subsecs. (k), (l). Pub. L. 91–53 added subsec. (k) and redesignated former subsec. (k) as (l).

1967—Subsec. (e)(2). Pub. L. 90–225 inserted ", or with respect to any portion of an investment credit carryback from a taxable year attributable to a net operating loss carryback from a subsequent taxable year, such increase shall not affect the computation of interest under this section for the period ending with the last day of such subsequent taxable year," after "the investment credit carryback arises".

1966—Subsecs. (j), (k). Pub. L. 89–384 added subsec. (j) and redesignated former subsec. (j) as (k).

1964—Subsec. (e). Pub. L. 88–571 added par. (3) and inserted "or adjustment for certain unused deductions" in heading.

1962—Subsec. (e). Pub. L. 87–834 designated existing provisions as par. (1) and added par. (2).

1961—Subsec. (c)(2). Pub. L. 87–61 substituted "6152(a) or 6156(a)" for "6152(a)" in introductory provisions, and "6152(b) or 6156(b), as the case may be" for "6152(b)" in subpar. (A).

1958—Subsec. (b). Pub. L. 85–866, §§66(c), 206(e), inserted reference to section 6166, and substituted "if the time for payment of an amount of such tax is postponed or extended as provided by section 6163" for "if postponement of the payment of an amount of such tax is permitted by section 6163(a)".

Subsecs. (g) to (j). Pub. L. 85–866, §§83(a)(1), 84(a), added subsecs. (g) and (h) and redesignated former subsecs. (g) and (h) as (h) and (i), respectively.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 409(d) of Pub. L. 109–135, set out as a note under section 961 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–206, title III, §3301(c), July 22, 1998, 112 Stat. 741, as amended by Pub. L. 105–277, div. J, title IV, §4002(d), Oct. 21, 1998, 112 Stat. 2681–906, provided that:

"(1) IN GENERAL.—Except as provided under paragraph (2), the amendments made by this section [amending this section and section 6621 of this title] shall apply to interest for periods beginning after the date of the enactment of this Act [July 22, 1998].

"(2) SPECIAL RULE.—Subject to any applicable statute of limitation not having expired with regard to either a tax underpayment or a tax overpayment, the amendments made by this section shall apply to interest for periods beginning before the date of the enactment of this Act if the taxpayer—

"(A) reasonably identifies and establishes periods of such tax overpayments and underpayments for which the zero rate applies; and

"(B) not later than December 31, 1999, requests the Secretary of the Treasury to apply section 6621(d) of the Internal Revenue Code of 1986, as added by subsection (a), to such periods."

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 501(e) of Pub. L. 105–34 applicable to estates of decedents dying, and gifts made, after Dec. 31, 1997, see section 501(f) of Pub. L. 105–34, set out as a note under section 2001 of this title.

Amendment by section 503(a), (c)(2), (3) of Pub. L. 105–34 applicable to estates of decedents dying after Dec. 31, 1997, with special rule in case of estate of any decedent dying before Jan. 1, 1998, with respect to which there is an election under section 6166 of this title, see section 503(d) of Pub. L. 105–34, set out as a note under section 163 of this title.

Pub. L. 105–34, title X, §1055(c), Aug. 5, 1997, 111 Stat. 945, provided that: "The amendments made by this section [amending this section and section 6611 of this title] shall apply to foreign tax credit carrybacks arising in taxable years beginning after the date of the enactment of this Act [Aug. 5, 1997]."

Pub. L. 105–34, title XII, §1242(b), Aug. 5, 1997, 111 Stat. 1029, provided that: "The amendment made by this section [amending this section] shall apply to adjustments with respect to partnership taxable years beginning after the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–168, title III, §303(c), July 30, 1996, 110 Stat. 1458, provided that: "The amendments made by this section [amending this section and section 6651 of this title] shall apply in the case of any notice and demand given after December 31, 1996."

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1989, see section 7721(d) of Pub. L. 101–239, set out as a note under section 461 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1015(b)(2)(C) of Pub. L. 100–647 applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1988, see section 1015(b)(4) of Pub. L. 100–647, set out as a note under section 6013 of this title.

Amendment by section 1018(u)(42) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 6234(b)(1) of Pub. L. 100–647 applicable to agreements entered into after Nov. 10, 1988, see section 6234(c) of Pub. L. 100–647, set out as an Effective Date note under section 6159 of this title.

Amendment by section 7106(c)(5) of Pub. L. 100–647 applicable to remuneration paid after Dec. 31, 1988, see section 7106(d) of Pub. L. 100–647, set out as a note under section 3321 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to taxable years beginning after Dec. 31, 1987, see section 10301(c) of Pub. L. 100–203, set out as a note under section 585 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1404(c)(3) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1404(d) of Pub. L. 99–514, set out as a note under section 643 of this title.

Amendment by section 1511(c)(11) of Pub. L. 99–514 applicable for purposes of determining interest for periods after Dec. 31, 1986, see section 1511(d) of Pub. L. 99–514, set out as a note under section 47 of this title.

Pub. L. 99–514, title XV, §1512(b), Oct. 22, 1986, 100 Stat. 2746, provided that: "The amendments made by this section [amending this section] shall apply to returns the due date for which (determined without regard to extensions) is after December 31, 1985."

Pub. L. 99–514, title XV, §1564(b), Oct. 22, 1986, 100 Stat. 2762, provided that:

"(1) EFFECTIVE DATE.—The amendment made by subsection (a) [amending this section] shall apply to interest accruing after December 31, 1982.

"(2) STATUTE OF LIMITATIONS.—If refund or credit of any amount resulting from the application of the amendment made by subsection (a) is prevented at any time before the close of the date which is 1 year after the date of the enactment of this Act [Oct. 22, 1986] by the operation of any law or rule of law (including res judicata), refund or credit of such amount (to the extent attributable to the application of the amendment made by subsection (a)) may, nevertheless, be made or allowed if claim therefore [sic] is filed before the close of such 1-year period."

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §158(b), July 18, 1984, 98 Stat. 696, provided that: "The amendment made by this section [amending this section] shall apply to interest accrued after the date of the enactment of this Act [July 18, 1984], except with respect to additions to tax for which notice and demand is made before such date."

Amendment by section 211(b)(26) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

Amendment by section 412(b)(7) of Pub. L. 98–369 applicable with respect to taxable years beginning after Dec. 31, 1984, see section 414(a)(1) of Pub. L. 98–369, set out as a note under section 6654 of this title.

Amendment by section 714(n)(1) of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–76 applicable to remuneration paid after June 30, 1986, see section 231(d) of Pub. L. 98–76, set out as an Effective Date note under section 3321 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 344(b)(1) of Pub. L. 97–248 applicable to interest accruing after Dec. 31, 1982, see section 344(c) of Pub. L. 97–248, set out as an Effective Date note under section 6622 of this title.

Amendment by section 346(c)(2) of Pub. L. 97–248 applicable to interest accruing after the 30th day after Sept. 3, 1982, see section 346(d)(2) of Pub. L. 97–248, set out as a note under section 6611 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–223 applicable to periods after Feb. 29, 1980, see section 101(i) of Pub. L. 96–223, set out as a note under section 6161 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–628 applicable to carrybacks arising in taxable years beginning after Nov. 10, 1978, see section 8(d) of Pub. L. 95–628, set out as a note under section 6511 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, and to credit carrybacks from such years, see section 202(e) of Pub. L. 95–30, set out as an Effective Date note under section 51 of this title.

EFFECTIVE DATE OF 1976 AMENDMENTS

Amendment by section 2004(b) of Pub. L. 94–455 applicable to estates of decedents dying after Dec. 31, 1976, see section 2004(g) of Pub. L. 94–455, set out as a note under section 6166 of this title.

Amendment by Pub. L. 94–452 effective Oct. 1, 1977, see section 3(e) of Pub. L. 94–452, set out as a note under section 6151 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–625 effective July 1, 1975, and applicable to amounts outstanding on such date or arising thereafter, see section 7(e) of Pub. L. 93–625, set out as an Effective Date note under section 6621 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–406 applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93–406, for plan years beginning after Sept. 2, 1974, but, in the case of plans in existence on Jan. 1, 1974, amendment by Pub. L. 93–406 applicable for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93–406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–178 applicable to taxable years beginning after Dec. 31, 1971, see section 601(f) of Pub. L. 92–178, set out as a note under section 381 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 101(j)(49) of Pub. L. 91–172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

Amendment by section 512(e)(3) of Pub. L. 91–172 applicable with respect to net capital losses sustained in taxable years beginning after Dec. 31, 1969, see section 512(g) of Pub. L. 91–172, set out as an Effective Date of 1969 Amendment note under section 1212 of this title. Amendment by Pub. L. 91–53 applicable with respect to calendar years beginning after Dec. 31, 1969, see section 4(a) of Pub. L. 91–53, set out as an Effective Date note under section 6157 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–225 applicable with respect to investment credit carrybacks attributable to net operating loss carrybacks from taxable years ending after July 31, 1967, see section 2(g) of Pub. L. 90–225, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–384 applicable with respect to amounts received after December 31, 1964, in respect of foreign expropriation losses (as defined in section 1351(b) of this title) sustained after December 31, 1958, see section 2 of Pub. L. 89–384, set out as an Effective Date note under section 1351 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–571 effective, with respect to amounts added to policyholders surplus accounts,

for taxable years beginning after Dec. 31, 1958, see section 3(f) of Pub. L. 88–571, set out as a note under section 815 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable with respect to taxable years ending after Dec. 31, 1961, see section 2(h) of Pub. L. 87–834, set out as an Effective Date note under section 46 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–61 effective July 1, 1961, see section 208 of Pub. L. 87–61, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by sections 66(c) and 84(a) of Pub. L. 85–866 effective Aug. 17, 1954, see section 1(c)(2) of Pub. L. 85–866, set out as a note under section 165 of this title.

Pub. L. 85–866, title I, §83(d), Sept. 2, 1958, 72 Stat. 1664, provided that: "The amendments made by subsections (a) [amending this section and section 3794 of I.R.C. 1939], (b) [amending section 6611 of this title and section 3771 of I.R.C. 1939], and (c) [amending section 6611 of this title] shall apply only in respect of overpayments credited after December 31, 1957."

For effective date of amendment by section 206(e) of Pub. L. 85–866, see section 206(f) of Pub. L. 85–866, set out as a note under section 6161 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

ADMINISTRATION OF PENALTIES AND INTEREST

Pub. L. 105–206, title III, §3801, July 22, 1998, 112 Stat. 782, provided that: "The Joint Committee on Taxation and the Secretary of the Treasury shall each conduct a separate study—

"(1) reviewing the administration and implementation by the Internal Revenue Service of the interest and penalty provisions of the Internal Revenue Code of 1986 (including the penalty reform provisions of the Omnibus Budget Reconciliation Act of 1989 [Pub. L. 101–239, see Tables for classification]); and

"(2) making any legislative and administrative recommendations the Committee or the Secretary deems appropriate to simplify penalty or interest administration and reduce taxpayer burden.

Such studies shall be submitted to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than 1 year after the date of the enactment of this Act [July 22, 1998]."

INTEREST NOT PAYABLE ON UNDERPAYMENTS CREATED OR INCREASED BY TAX REFORM ACT OF 1976

Pub. L. 95–30, title III, §305, May 23, 1977, 91 Stat. 152, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "No interest shall be payable for any period before April 16, 1977 (March 16, 1977, in the case of a corporation), on any underpayment of a tax imposed by the Internal Revenue Code of 1986 [formerly I.R.C. 1954], to the extent that such underpayment was created or increased by any provision of the Tax Reform Act of 1976 [Pub. L. 94–455]."

INTEREST ON UNDERPAYMENT

Pub. L. 91–172, title IX, §946(a), Dec. 30, 1969, 83 Stat. 729, provided that in the case of any taxable year ending before Dec. 30, 1969, no interest on underpayment of taxes, to the extent that such underpayment was attributable to the amendments made by Pub. L. 91–172, was not to be assessed or collected for any period before the 90th day after Dec. 30, 1969.

INTEREST ATTRIBUTABLE TO NET OPERATING LOSS CARRYBACK FOR CERTAIN TAXABLE YEARS ENDING IN 1954

Pub. L. 85–866, title I, §83(e), Sept. 2, 1958, 72 Stat. 1664, provided that if by reason of the enactment of section 172(b)(1)(A) of this title, a deficiency resulted for the first taxable year preceding a taxable year ending after Dec. 31, 1953 but before Aug. 17, 1954 and an overpayment resulted in the second preceding taxable year, then no interest was payable for any portion of such deficiency for any period during which there existed a corresponding overpayment to which interest was not payable.

[1] *See References in Text note below.*

§6602. Interest on erroneous refund recoverable by suit

Any portion of an internal revenue tax (or any interest, assessable penalty, additional amount, or addition to tax) which has been erroneously refunded, and which is recoverable by suit pursuant to section 7405, shall bear interest at the underpayment rate established under section 6621 from the date of the payment of the refund.

(Aug. 16, 1954, ch. 736, 68A Stat. 818; Pub. L. 93–625, §7(a)(2)(B), Jan. 3, 1975, 88 Stat. 2115; Pub. L. 99–514, title XV, §1511(c)(12), Oct. 22, 1986, 100 Stat. 2745.)

AMENDMENTS

1986—Pub. L. 99–514 substituted "the underpayment rate established under section 6621" for "an annual rate established under section 6621".

1975—Pub. L. 93–625 substituted "an annual rate established under section 6621" for "the rate of 6 percent per annum".

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable for purposes of determining interest for periods after Dec. 31, 1986, see section 1511(d) of Pub. L. 99–514, set out as a note under section 47 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–625 effective July 1, 1975, and applicable to amounts outstanding on such date or arising thereafter, see section 7(e) of Pub. L. 93–625, set out as an Effective Date note under section 6621 of this title.

§6603. Deposits made to suspend running of interest on potential underpayments, etc.

(a) Authority to make deposits other than as payment of tax

A taxpayer may make a cash deposit with the Secretary which may be used by the Secretary to pay any tax imposed under subtitle A or B or chapter 41, 42, 43, or 44 which has not been assessed at the time of the deposit. Such a deposit shall be made in such manner as the Secretary shall prescribe.

(b) No interest imposed

To the extent that such deposit is used by the Secretary to pay tax, for purposes of section 6601 (relating to interest on underpayments), the tax shall be treated as paid when the deposit is made.

(c) Return of deposit

Except in a case where the Secretary determines that collection of tax is in jeopardy, the Secretary shall return to the taxpayer any amount of the deposit (to the extent not used for a payment of tax) which the taxpayer requests in writing.

(d) Payment of interest

(1) In general

For purposes of section 6611 (relating to interest on overpayments), except as provided in paragraph (4), a deposit which is returned to a taxpayer shall be treated as a payment of tax for any period to the extent (and only to the extent) attributable to a disputable tax for such period. Under regulations prescribed by the Secretary, rules similar to the rules of section 6611(b)(2) shall apply.

(2) Disputable tax

(A) In general

For purposes of this section, the term "disputable tax" means the amount of tax specified at the time of the deposit as the taxpayer's reasonable estimate of the maximum amount of any tax attributable to disputable items.

(B) Safe harbor based on 30-day letter

In the case of a taxpayer who has been issued a 30-day letter, the maximum amount of tax under subparagraph (A) shall not be less than the amount of the proposed deficiency specified in such letter.

(3) Other definitions

For purposes of paragraph (2)—

(A) Disputable item

The term "disputable item" means any item of income, gain, loss, deduction, or credit if the taxpayer—

(i) has a reasonable basis for its treatment of such item, and

(ii) reasonably believes that the Secretary also has a reasonable basis for disallowing the taxpayer's treatment of such item.

(B) 30-day letter

The term "30-day letter" means the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals.

(4) Rate of interest

The rate of interest under this subsection shall be the Federal short-term rate determined under section 6621(b), compounded daily.

(e) Use of deposits

(1) Payment of tax

Except as otherwise provided by the taxpayer, deposits shall be treated as used for the payment of tax in the order deposited.

(2) Returns of deposits

Deposits shall be treated as returned to the taxpayer on a last-in, first-out basis.

(Added Pub. L. 108–357, title VIII, §842(a), Oct. 22, 2004, 118 Stat. 1598.)

EFFECTIVE DATE

Pub. L. 108–357, title VIII, §842(c), Oct. 22, 2004, 118 Stat. 1599, provided that:

"(1) IN GENERAL.—The amendments made by this section [enacting this section] shall apply to deposits made after the date of the enactment of this Act [Oct. 22, 2004].

"(2) COORDINATION WITH DEPOSITS MADE UNDER REVENUE PROCEDURE 84–58.—In the case of an amount held by the Secretary of the Treasury or his delegate on the date of the enactment of this Act as a deposit in the nature of a cash bond deposit pursuant to Revenue Procedure 84–58, the date that the taxpayer identifies such amount as a deposit made pursuant to section 6603 of the Internal Revenue Code (as added by this Act) shall be treated as the date such amount is deposited for purposes of such section 6603."

Subchapter B—Interest on Overpayments

Sec.
6611. Interest on overpayments.
6612. Cross references.

§6611. Interest on overpayments

(a) Rate

Interest shall be allowed and paid upon any overpayment in respect of any internal revenue tax at the overpayment rate established under section 6621.

(b) Period

Such interest shall be allowed and paid as follows:

(1) Credits

In the case of a credit, from the date of the overpayment to the due date of the amount against which the credit is taken.

(2) Refunds

In the case of a refund, from the date of the overpayment to a date (to be determined by the Secretary) preceding the date of the refund check by not more than 30 days, whether or not such refund check is accepted by the taxpayer after tender of such check to the taxpayer. The acceptance of such check shall be without prejudice to any right of the taxpayer to claim any additional overpayment and interest thereon.

(3) Late returns

Notwithstanding paragraph (1) or (2) in the case of a return of tax which is filed after the last date prescribed for filing such return (determined with regard to extensions), no interest shall be allowed or paid for any day before the date on which the return is filed.

[(c) Repealed. Pub. L. 85–866, title I, §83(c), Sept. 2, 1958, 72 Stat. 1664]

(d) Advance payment of tax, payment of estimated tax, and credit for income tax withholding

The provisions of section 6513 (except the provisions of subsection (c) thereof, applicable in determining the date of payment of tax for purposes of determining the period of limitation on credit or refund, shall be applicable in determining the date of payment for purposes of subsection (a).

(e) Disallowance of interest on certain overpayments

(1) Refunds within 45 days after return is filed

If any overpayment of tax imposed by this title is refunded within 45 days after the last day prescribed for filing the return of such tax (determined without regard to any extension of time for filing the return) or, in the case of a return filed after such last date, is refunded within 45 days after the date the return is filed, no interest shall be allowed under subsection (a) on such overpayment.

(2) Refunds after claim for credit or refund

If—

(A) the taxpayer files a claim for a credit or refund for any overpayment of tax imposed by this title, and

(B) such overpayment is refunded within 45 days after such claim is filed,

no interest shall be allowed on such overpayment from the date the claim is filed until the day the refund is made.

(3) IRS initiated adjustments

If an adjustment initiated by the Secretary, results in a refund or credit of an overpayment, interest on such overpayment shall be computed by subtracting 45 days from the number of days interest would otherwise be allowed with respect to such overpayment.

(4) Certain withholding taxes

In the case of any overpayment resulting from tax deducted and withheld under chapter 3 or 4, paragraphs (1), (2), and (3) shall be applied by substituting "180 days" for "45 days" each place it appears.

(f) Refund of income tax caused by carryback or adjustment for certain unused deductions

(1) Net operating loss or capital loss carryback

For purposes of subsection (a), if any overpayment of tax imposed by subtitle A results from a carryback of a net operating loss or net capital loss, such overpayment shall be deemed not to have been made prior to the filing date for the taxable year in which such net operating loss or net capital loss arises.

(2) Foreign tax credit carrybacks

For purposes of subsection (a), if any overpayment of tax imposed by subtitle A results from a carryback of tax paid or accrued to foreign countries or possessions of the United States, such overpayment shall be deemed not to have been made before the filing date for the taxable year in which such taxes were in fact paid or accrued, or, with respect to any portion of such credit carryback from a taxable year attributable to a net operating loss carryback or a capital loss carryback from a subsequent taxable year, such overpayment shall be deemed not to have been made before the filing date for such subsequent taxable year.

(3) Certain credit carrybacks

(A) In general

For purposes of subsection (a), if any overpayment of tax imposed by subtitle A results from a credit carryback, such overpayment shall be deemed not to have been made before the filing date for the taxable year in which such credit carryback arises, or, with respect to any portion of a credit carryback from a taxable year attributable to a net operating loss carryback, capital loss carryback, or other credit carryback from a subsequent taxable year, such overpayment shall be deemed not to have been made before the filing date for such subsequent taxable year.

(B) Credit carryback defined

For purposes of this paragraph, the term "credit carryback" has the meaning given such term by section 6511(d)(4)(C).

(4) Special rules for paragraphs (1), (2), and (3)

(A) Filing date

For purposes of this subsection, the term "filing date" means the last date prescribed for filing the return of tax imposed by subtitle A for the taxable year (determined without regard to extensions).

(B) Coordination with subsection (e)

(i) In general

For purposes of subsection (e)—

(I) any overpayment described in paragraph (1), (2), or (3) shall be treated as an overpayment for the loss year,

(II) such subsection shall be applied with respect to such overpayment by treating the return for the loss year as not filed before claim for such overpayment is filed.

(ii) Loss year

For purposes of this subparagraph, the term "loss year" means—

(I) in the case of a carryback of a net operating loss or net capital loss, the taxable year in which such loss arises,

(II) in the case of a carryback of taxes paid or accrued to foreign countries or possessions of the United States, the taxable year in which such taxes were in fact paid or accrued (or, with respect to any portion of such carryback from a taxable year attributable to a net operating loss carryback or a capital loss carryback from a subsequent taxable year, such subsequent taxable year), and

(III) in the case of a credit carryback (as defined in paragraph (3)(B)), the taxable year in which such credit carryback arises (or, with respect to any portion of a credit carryback

from a taxable year attributable to a net operating loss carryback, a capital loss carryback, or other credit carryback from a subsequent taxable year, such subsequent taxable year).

(C) Application of subparagraph (B) where section 6411(a) claim filed

For purposes of subparagraph (B)(i)(II), if a taxpayer—

(i) files a claim for refund of any overpayment described in paragraph (1), (2), or (3) with respect to the taxable year to which a loss or credit is carried back, and

(ii) subsequently files an application under section 6411(a) with respect to such overpayment,

then the claim for overpayment shall be treated as having been filed on the date the application under section 6411(a) was filed.

(g) No interest until return in processible form

(1) For purposes of subsections (b)(3) and (e), a return shall not be treated as filed until it is filed in processible form.

(2) For purposes of paragraph (1), a return is in a processible form if—

(A) such return is filed on a permitted form, and

(B) such return contains—

(i) the taxpayer's name, address, and identifying number and the required signature, and

(ii) sufficient required information (whether on the return or on required attachments) to permit the mathematical verification of tax liability shown on the return.

(h) Prohibition of administrative review

For prohibition of administrative review, see section 6406.

(Aug. 16, 1954, ch. 736, 68A Stat. 819; Pub. L. 85–866, title I, §§42(b), 83(b), (c), Sept. 2, 1958, 72 Stat. 1640, 1664; Pub. L. 87–834, §2(e)(4), Oct. 16, 1962, 76 Stat. 972; Pub. L. 88–571, §3(e), Sept. 2, 1964, 78 Stat. 858; Pub. L. 89–721, §1(a), Nov. 2, 1966, 80 Stat. 1150; Pub. L. 90–225, §2(f), Dec. 27, 1967, 81 Stat. 732; Pub. L. 91–172, title V, §512(e)(4), Dec. 30, 1969, 83 Stat. 641; Pub. L. 92–178, title VI, §601(d)(4), Dec. 10, 1971, 85 Stat. 559; Pub. L. 93–17, §3(i)(2), Apr. 10, 1973, 87 Stat. 19; Pub. L. 93–625, §7(a)(2)(C), Jan. 3, 1975, 88 Stat. 2115; Pub. L. 94–455, title XIX, §1904(b)(10)(A)(iv), 1906(b)(13)(A), title XXI, §2107(g)(2)(D), Oct. 4, 1976, 90 Stat. 1817, 1834, 1904; Pub. L. 95–30, title II, §202(d)(4)(D), May 23, 1977, 91 Stat. 150; Pub. L. 95–628, §8(c)(3), Nov. 10, 1978, 92 Stat. 3632; Pub. L. 96–223, title I, §101(h), Apr. 2, 1980, 94 Stat. 254; Pub. L. 97–248, title III, §346(a)–(c)(1), Sept. 3, 1982, 96 Stat. 636, 637; Pub. L. 98–369, div. A, title II, §211(b)(27), title VII, §714(n)(2)(A), July 18, 1984, 98 Stat. 757, 963; Pub. L. 99–514, title XV, §1511(c)(13), Oct. 22, 1986, 100 Stat. 2745; Pub. L. 100–418, title I, §1941(b)(2)(L), Aug. 23, 1988, 102 Stat. 1323; Pub. L. 103–66, title XIII, §13271(a), Aug. 10, 1993, 107 Stat. 541; Pub. L. 105–34, title X, §1055(b), Aug. 5, 1997, 111 Stat. 944; Pub. L. 105–206, title VI, §6010(l), July 22, 1998, 112 Stat. 816; Pub. L. 106–554, §1(a)(7) [title III, §319(20)], Dec. 21, 2000, 114 Stat. 2763, 2763A–647; Pub. L. 111–147, title V, §501(b), Mar. 18, 2010, 124 Stat. 105.)

AMENDMENTS

2010—Subsec. (e)(4). Pub. L. 111–147 added par. (4).

2000—Subsec. (g)(1). Pub. L. 106–554 struck out comma after "(b)(3)".

1998—Subsec. (g)(1). Pub. L. 105–206 substituted "and (e)" for "(e), and (h)".

1997—Subsec. (f)(2), (3). Pub. L. 105–34, §1055(b)(1), added par. (2) and redesignated former par. (2) as (3). Former par. (3) redesignated (4).

Subsec. (f)(4). Pub. L. 105–34, §1055(b)(1), (2)(A)(i), redesignated par. (3) as (4) and substituted "paragraphs (1), (2), and (3)" for "paragraphs (1) and (2)" in heading.

Subsec. (f)(4)(B)(i)(I). Pub. L. 105–34, §1055(b)(2)(A), substituted "paragraph (1), (2), or (3)" for "paragraph (1) or (2)".

Subsec. (f)(4)(B)(ii)(II). Pub. L. 105–34, §1055(b)(2)(B), added subcl. (II). Former subcl. (II) redesignated (III).

Subsec. (f)(4)(B)(ii)(III). Pub. L. 105–34, §1055(b)(2)(B), (C), redesignated subcl. (II) as (III) and inserted "(as defined in paragraph (3)(B))" after "case of a credit carryback".

Subsec. (f)(4)(C)(i). Pub. L. 105–34, §1055(b)(2)(A), substituted "paragraph (1), (2), or (3)" for "paragraph (1) or (2)".

Subsecs. (g) to (i). Pub. L. 105–34, §1055(b)(2)(D), redesignated subsecs. (h) and (i) as (g) and (h), respectively, and struck out former subsec. (g) which read as follows:

"(g) REFUND OF INCOME TAX CAUSED BY CARRYBACK OF FOREIGN TAXES.—For purposes of subsection (a), if any overpayment of tax results from a carryback of tax paid or accrued to foreign countries or possessions of the United States, such overpayment shall be deemed not to have been paid or accrued prior to the filing date (as defined in subsection (f)(3)) for the taxable year under this subtitle in which such taxes were in fact paid or accrued."

1993—Subsec. (e). Pub. L. 103–66 amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows: "If any overpayment of tax imposed by subtitle A is refunded within 45 days after the last date prescribed for filing the return of such tax (determined without regard to any extension of time for filing the return) or, in case the return is filed after such last date, is refunded within 45 days after the date the return is filed, no interest shall be allowed under subsection (a) on such overpayment."

1988—Subsecs. (h) to (j). Pub. L. 100–418 redesignated subsecs. (i) and (j) as (h) and (i), respectively, and struck out former subsec. (h) which related to special rule for windfall profit tax.

1986—Subsec. (a). Pub. L. 99–514 substituted "the overpayment rate established under section 6621" for "an annual rate established under section 6621".

1984—Subsec. (f)(3)(C). Pub. L. 98–369, §714(n)(2)(A), added subpar. (C).

Subsec. (f)(4). Pub. L. 98–369, §211(b)(27), struck out par. (4) which provided that for purposes of subsection (a), if any overpayment of tax imposed by subtitle A arose by operation of section 815(d)(5) (relating to reduction of policyholders surplus account of life insurance companies for certain unused deductions), such overpayment would be deemed not to have been made prior to the close of the last taxable year to which the loss described in section 815(d)(5)(A) was carried under section 812(b)(2).

1982—Subsec. (b)(3). Pub. L. 97–248, §346(a), added par. (3).

Subsec. (f)(1). Pub. L. 97–248, §346(c)(1)(A), substituted "the filing date for the taxable year" for "the close of the taxable year".

Subsec. (f)(2)(A). Pub. L. 97–248, §346(c)(1)(B), substituted "the filing date for" for "the close of" wherever appearing.

Subsec. (f)(3), (4). Pub. L. 97–248, §346(c)(1)(C), added par. (3) and redesignated former par. (3) as (4).

Subsec. (g). Pub. L. 97–248, §346(c)(1)(D), substituted "the filing date (as defined in subsection (f)(3)) for the taxable year" for "the close of the taxable year".

Subsecs. (i), (j). Pub. L. 97–248, §346(b), added subsec. (i) and redesignated former subsec. (i) as (j).

1980—Subsecs. (h), (i). Pub. L. 96–223 added subsec. (h) and redesignated former subsec. (h) as (i).

1978—Subsec. (f)(2). Pub. L. 95–628, §8(c)(3)(A), substituted in heading "Certain credit carrybacks" for "Investment credit carryback", designated existing provision as subpar. (A), and in subpar. (A) as so designated inserted heading "In general" and extended the application of provision to credit carrybacks, previously limited to investment credit carrybacks, included other credit carrybacks, and added subpar. (B).

Subsec. (f)(4), (5). Pub. L. 95–628, §8(c)(3)(B), struck out pars. (4) and (5) which provided for work incentive program credit carrybacks and new employee credit carrybacks, respectively.

1977—Subsec. (f)(5). Pub. L. 95–30 added par. (5).

1976—Subsec. (b). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (f)(4). Pub. L. 94–455, §2107(g)(2)(D), inserted ", an investment credit carryback," after "net operating loss carryback".

Subsecs. (h), (i). Pub. L. 94–455, §1904(b)(10)(A)(iv), redesignated subsec. (i) as (h). Former subsec. (h), which related to a refund within 45 days after filing claim for refund of interest equalization tax paid on securities sold to foreigners, was struck out.

1975—Subsec. (a). Pub. L. 93–625 substituted "an annual rate established under section 6621" for "the rate of 6 percent per annum".

1973—Subsecs. (h), (i). Pub. L. 93–17 added subsec. (h) and redesignated former subsec. (h) as (i).

1971—Subsec. (f)(4). Pub. L. 92–178 added par. (4).

1969—Subsec. (f)(1). Pub. L. 91–172, §512(e)(4)(A), (B), substituted "loss or capital loss carryback" for "loss carryback" in heading, and "net operating loss or net capital loss" for "net operating loss" wherever appearing in text.

Subsec. (f)(2). Pub. L. 91–172, §512(e)(4)(C), substituted "loss carryback or a capital loss carryback" for "loss carryback".

1967—Subsec. (f)(2). Pub. L. 90–225 inserted ", or, with respect to any portion of an investment credit carryback from a taxable year attributable to a net operating loss carryback from a subsequent taxable year,

such overpayment shall be deemed not to have been made prior to the close of such subsequent taxable year" after "such investment credit carryback arises".

1966—Subsec. (e). Pub. L. 89–721 inserted "or, in case the return is filed after such last date, is refunded within 45 days after the date the return is filed" after "(determined without regard to any extension of time for filing the return)" and changed heading to reflect amendment.

1964—Subsec. (f). Pub. L. 88–571 added par. (3) and inserted "or adjustment for certain unused deductions" in heading.

1962—Subsec. (f). Pub. L. 87–834 designated existing provisions as par. (1) and added par. (2).

1958—Subsec. (b)(1). Pub. L. 85–866, §83(b), struck out ", but if the amount against which the credit is taken is an additional assessment, then to the date of the assessment of that amount" after "taken".

Subsec. (c). Pub. L. 85–866, §83(c), repealed subsec. (c) which defined "additional assessment".

Subsecs. (g), (h). Pub. L. 85–866, §42(b), added subsec. (g) and redesignated former subsec. (g) as (h).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–147 applicable, with respect to subsec. (e)(1) of this section, to returns due (without regard to extensions) after Mar. 18, 2010; with respect to subsec. (e)(2) of this section, to claims for credit or refund of any overpayment filed after Mar. 18, 2010 (regardless of the taxable period to which such refund relates); and with respect to subsec. (e)(3) of this section, to refunds paid after Mar. 18, 2010 (regardless of the taxable period to which such refund relates), see section 501(d) of Pub. L. 111–147, set out as an Effective Date note under section 1471 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to foreign tax credit carrybacks arising in taxable years beginning after Aug. 5, 1997, see section 1055(c) of Pub. L. 105–34, set out as a note under section 6601 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13271(b), Aug. 10, 1993, 107 Stat. 542, provided that:

"(1) Paragraph (1) of section 6611(e) of the Internal Revenue Code of 1986 (as amended by subsection (a)) shall apply in the case of returns the due date for which (determined without regard to extensions) is on or after January 1, 1994.

"(2) Paragraph (2) of section 6611(e) of such Code (as so amended) shall apply in the case of claims for credit or refund of any overpayment filed on or after January 1, 1995, regardless of the taxable period to which such refund relates.

"(3) Paragraph (3) of section 6611(e) of such Code (as so amended) shall apply in the case of any refund paid on or after January 1, 1995, regardless of the taxable period to which such refund relates."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–418 applicable to crude oil removed from the premises on or after Aug. 23, 1988, see section 1941(c) of Pub. L. 100–418, set out as a note under section 164 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable for purposes of determining interest for periods after Dec. 31, 1986, see section 1511(d) of Pub. L. 99–514, set out as a note under section 47 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by section 211(b)(27) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

Amendment by section 714(n)(2)(A) of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

Pub. L. 99–514, title XVIII, §1875(d)(3), Oct. 22, 1986, 100 Stat. 2896, provided that: "Notwithstanding section 715 of the Tax Reform Act of 1984 [Pub. L. 98–369], the amendments made by section 714(n)(2) of such Act [amending this section and section 6411 of this title] shall apply only to applications filed after July

18, 1984."

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title III, §346(d), Sept. 3, 1982, 96 Stat. 638, provided that:

"(1) IN GENERAL.—The amendments made by subsections (a) and (b) [amending this section] shall apply to returns filed after the 30th day after the date of the enactment of this Act [Sept. 3, 1982].

"(2) SUBSECTION (c).—The amendments made by subsection (c) [amending this section and section 6601 of this title] shall apply to interest accruing after the 30th day after the date of the enactment of this Act [Sept. 3, 1982]."

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–223 applicable to periods after Feb. 29, 1980, see section 101(i) of Pub. L. 96–223, set out as a note under section 6161 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–628 applicable to carrybacks arising in taxable years beginning after Nov. 10, 1978, see section 8(d) of Pub. L. 95–628, set out as a note under section 6511 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, and to credit carrybacks from such years, see section 202(e) of Pub. L. 95–30, set out as an Effective Date note under section 51 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–625 effective July 1, 1975, and applicable to amounts outstanding on such date or arising thereafter, see section 7(e) of Pub. L. 93–625, set out as an Effective Date note under section 6621 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–178 applicable to taxable years beginning after Dec. 31, 1971, see section 601(f) of Pub. L. 92–178, set out as a note under section 381 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable with respect to net capital losses sustained in taxable years beginning after Dec. 31, 1969, see section 512(g) of Pub. L. 91–172, set out as a note under section 1212 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–225 applicable with respect to investment credit carrybacks attributable to net operating loss carrybacks from taxable years ending after July 31, 1967, see section 2(g) of Pub. L. 90–225, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89–721, §1(b), Nov. 2, 1966, 80 Stat. 1150, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to refunds made more than 45 days after the date of the enactment of this Act [Nov. 2, 1966]."

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–571 effective, with respect to amounts added to policyholders surplus accounts, for taxable years beginning after Dec. 31, 1958, see section 3(f) of Pub. L. 88–571, set out as a note under section 815 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable with respect to taxable years ending after Dec. 31, 1961, see section 2(h) of Pub. L. 87–834, set out as an Effective Date note under section 46 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 42(b) of Pub. L. 85–866 applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 42(c) of Pub. L. 85–866, set out as a note under section 904 of this title.

Amendment by section 83(b), (c) of Pub. L. 85–866 applicable only in respect of overpayments credited

after Dec. 31, 1957, see section 83(d) of Pub. L. 85–866, set out as a note under section 6601 of this title.

NO INTEREST ON INDIVIDUAL INCOME TAX REFUNDS FOR 1974 REFUNDED WITHIN 60 DAYS AFTER RETURN IS FILED

Pub. L. 94–12, title I, §101(b), Mar. 29, 1975, 89 Stat. 28, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "In applying section 6611(e) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to income tax refund within 45 days after return is filed) in the case of any overpayment of tax imposed by subtitle A of such Code by an individual (other than an estate or trust and other than a nonresident alien individual) for a taxable year beginning in 1974, '60 days' shall be substituted for '45 days' each place it appears in such section 6611(e)."

§6612. Cross references

(a) Interest on judgments for overpayments

For interest on judgments for overpayments, see 28 U.S.C. 2411(a).

(b) Adjustments

For provisions prohibiting interest on certain adjustments in tax, see section 6413(a).

(c) Other restrictions on interest

For other restrictions on interest, see 2014(e) [1] (relating to refunds attributable to foreign tax credits), 6412 (relating to floor stock refunds), 6413(d) (relating to taxes under the Federal Unemployment Tax Act), 6416 (relating to certain taxes on sales and services), 6419 (relating to the excise tax on wagering), and 6420 (relating to payments in the case of gasoline used on the farm for farming purposes), and 6421 (relating to payments in the case of gasoline used for certain nonhighway purposes or by local transit systems).

(Aug. 16, 1954, ch. 736, 68A Stat. 820; Apr. 2, 1956, ch. 160, §4(f), 70 Stat. 91; June 29, 1956, ch. 462, title II, §208(e)(7), 70 Stat. 397; Pub. L. 107–16, title V, §532(c)(12), June 7, 2001, 115 Stat. 75.)

REFERENCES IN TEXT

The Federal Unemployment Tax Act, referred to in subsec. (c), is act Aug. 16, 1954, ch. 736, §§3301 to 3311, 68A Stat. 454, as amended, which is classified generally to chapter 23 (§3301 et seq.) of this title. For complete classification of this Act to the Code, see section 3311 of this title and Tables.

AMENDMENTS

2001—Subsec. (c). Pub. L. 107–16 struck out "section 2011(c) (relating to refunds due to credit for State taxes)," after "see".

1956—Subsec. (c). Act June 29, 1956, inserted reference to section 6421 of this title.

Act Apr. 2, 1956, inserted reference to section 6420 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to estates of decedents dying, and generation-skipping transfers, after Dec. 31, 2004, see section 532(d) of Pub. L. 107–16, set out as a note under section 2011 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act June 29, 1956, effective June 29, 1956, see section 211 of act June 29, 1956, set out as an Effective Date note under section 4041 of this title.

[1] So in original. Probably should be preceded by "sections".

Subchapter C—Determination of Interest Rate; Compounding of Interest

Sec.
6621. Determination of rate of interest.

6622. Interest compounded daily.

AMENDMENTS

1982—Pub. L. 97–248, title III, §344(b)(3)(A), Sept. 3, 1982, 96 Stat. 636, inserted "; Compounding of Interest" after "Rate" in heading for subchapter C.

Pub. L. 97–248, title III, §344(b)(2), Sept. 3, 1982, 96 Stat. 636, added item 6622.

§6621. Determination of rate of interest

(a) General rule

(1) Overpayment rate

The overpayment rate established under this section shall be the sum of—

(A) the Federal short-term rate determined under subsection (b), plus

(B) 3 percentage points (2 percentage points in the case of a corporation).

To the extent that an overpayment of tax by a corporation for any taxable period (as defined in subsection (c)(3), applied by substituting "overpayment" for "underpayment") exceeds $10,000, subparagraph (B) shall be applied by substituting "0.5 percentage point" for "2 percentage points".

(2) Underpayment rate

The underpayment rate established under this section shall be the sum of—

(A) the Federal short-term rate determined under subsection (b), plus

(B) 3 percentage points.

(b) Federal short-term rate

For purposes of this section—

(1) General rule

The Secretary shall determine the Federal short-term rate for the first month in each calendar quarter.

(2) Period during which rate applies

(A) In general

Except as provided in subparagraph (B), the Federal short-term rate determined under paragraph (1) for any month shall apply during the first calendar quarter beginning after such month.

(B) Special rule for individual estimated tax

In determining the addition to tax under section 6654 for failure to pay estimated tax for any taxable year, the Federal short-term rate which applies during the 3rd month following such taxable year shall also apply during the first 15 days of the 4th month following such taxable year.

(3) Federal short-term rate

The Federal short-term rate for any month shall be the Federal short-term rate determined during such month by the Secretary in accordance with section 1274(d). Any such rate shall be rounded to the nearest full percent (or, if a multiple of ½ of 1 percent, such rate shall be increased to the next highest full percent).

(c) Increase in underpayment rate for large corporate underpayments

(1) In general

For purposes of determining the amount of interest payable under section 6601 on any large corporate underpayment for periods after the applicable date, paragraph (2) of subsection (a) shall be applied by substituting "5 percentage points" for "3 percentage points".

(2) Applicable date

For purposes of this subsection—

(A) In general

The applicable date is the 30th day after the earlier of—

(i) the date on which the 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals is sent, or

(ii) the date on which the deficiency notice under section 6212 is sent.

The preceding sentence shall be applied without regard to any such letter or notice which is withdrawn by the Secretary.

(B) Special rules

(i) Nondeficiency procedures

In the case of any underpayment of any tax imposed by this title to which the deficiency procedures do not apply, subparagraph (A) shall be applied by taking into account any letter or notice provided by the Secretary which notifies the taxpayer of the assessment or proposed assessment of the tax.

(ii) Exception where amounts paid in full

For purposes of subparagraph (A), a letter or notice shall be disregarded if, during the 30-day period beginning on the day on which it was sent, the taxpayer makes a payment equal to the amount shown as due in such letter or notice, as the case may be.

(iii) Exception for letters or notices involving small amounts

For purposes of this paragraph, any letter or notice shall be disregarded if the amount of the deficiency or proposed deficiency (or the assessment or proposed assessment) set forth in such letter or notice is not greater than $100,000 (determined by not taking into account any interest, penalties, or additions to tax).

(3) Large corporate underpayment

For purposes of this subsection—

(A) In general

The term "large corporate underpayment" means any underpayment of a tax by a C corporation for any taxable period if the amount of such underpayment for such period exceeds $100,000.

(B) Taxable period

For purposes of subparagraph (A), the term "taxable period" means—

(i) in the case of any tax imposed by subtitle A, the taxable year, or

(ii) in the case of any other tax, the period to which the underpayment relates.

(d) Elimination of interest on overlapping periods of tax overpayments and underpayments

To the extent that, for any period, interest is payable under subchapter A and allowable under subchapter B on equivalent underpayments and overpayments by the same taxpayer of tax imposed by this title, the net rate of interest under this section on such amounts shall be zero for such period.

(Added Pub. L. 93–625, §7(a)(1), Jan. 3, 1975, 88 Stat. 2114; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–167, §4(b), Dec. 29, 1979, 93 Stat. 1275; Pub. L. 97–34, title VII, §711(a)–(c), Aug. 13, 1981, 95 Stat. 340; Pub. L. 97–248, title III, §345(a), Sept. 3, 1982, 96 Stat. 636; Pub. L. 98–369, div. A, title I, §144(a), July 18, 1984, 98 Stat. 682; Pub. L. 99–514, title XV, §§1511(a), (c)(1), 1535(a), Oct. 22, 1986, 100 Stat. 2744, 2750; Pub. L. 100–647, title I, §1015(d), Nov. 10, 1988, 102 Stat. 3569; Pub. L. 101–239, title VII, §7721(b), Dec. 19, 1989, 103 Stat. 2399; Pub. L. 101–508, title XI, §11341(a), Nov. 5, 1990, 104 Stat. 1388–470; Pub. L. 103–465, title VII, §713(a), Dec. 8, 1994, 108 Stat. 5001; Pub. L. 104–188, title I, §1702(c)(6), (7), Aug. 20, 1996, 110 Stat. 1870; Pub. L. 105–34, title XIV, §1463(a), title XVI,

§1604(b)(1), Aug. 5, 1997, 111 Stat. 1057, 1097; Pub. L. 105–206, title III, §§3301(a), 3302(a), July 22, 1998, 112 Stat. 741.)

AMENDMENTS

1998—Subsec. (a)(1)(B). Pub. L. 105–206, §3302(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "2 percentage points."

Subsec. (d). Pub. L. 105–206, §3301(a), added subsec. (d).

1997—Subsec. (a)(1). Pub. L. 105–34, §1604(b)(1), substituted "subsection (c)(3), applied by substituting 'overpayment' for 'underpayment')" for "subsection (c)(3))" in concluding provisions.

Subsec. (c)(2)(B)(iii). Pub. L. 105–34, §1463(a), added cl. (iii).

1996—Subsec. (c)(2)(A). Pub. L. 104–188, §1702(c)(6), inserted closing provisions "The preceding sentence shall be applied without regard to any such letter or notice which is withdrawn by the Secretary."

Subsec. (c)(2)(B)(i). Pub. L. 104–188, §1702(c)(7), substituted "this title" for "this subtitle".

1994—Subsec. (a)(1). Pub. L. 103–465 inserted concluding provisions.

1990—Subsec. (c). Pub. L. 101–508 added subsec. (c).

1989—Subsec. (c). Pub. L. 101–239 repealed subsec. (c) which related to attribution of interest on substantial underpayments to tax motivated transactions.

1988—Subsec. (a)(1)(A), (2)(A). Pub. L. 100–647, §1015(d)(1), substituted "Federal short-term" for "short-term Federal".

Subsec. (b). Pub. L. 100–647, §1015(d)(2), substituted "Federal short-term" for "short-term Federal" in heading.

Subsec. (b)(1). Pub. L. 100–647, §1015(d)(1), substituted "Federal short-term" for "short-term Federal".

1986—Subsec. (a). Pub. L. 99–514, §1511(a), added subsec. (a) and struck out former subsec. (a) which read as follows: "The annual rate established under this section shall be such adjusted rate as is established by the Secretary under subsection (b)."

Subsec. (b). Pub. L. 99–514, §1511(a), added subsec. (b) relating to determination of Federal short-term rate and struck out former subsec. (b) which related to interest rate adjustments and establishment of adjusted rates.

Subsec. (c). Pub. L. 99–514, §1511(a), (c)(1), redesignated subsec. (d) as (c), in par. (1), struck out "annual" before "rate of interest" and substituted "the underpayment rate established under this section" for "the adjusted rate established under subsection (b)", and struck out former subsec. (c) definition of prime rate, which read as follows: "For purposes of subsection (b), the term 'adjusted prime rate charged by banks' means the average predominant prime rate quoted by commercial banks to large businesses, as determined by the Board of Governors of the Federal Reserve System."

Subsec. (c)(3)(A)(v). Pub. L. 99–514, §1535(a), added cl. (v).

Subsec. (d). Pub. L. 99–514, §1511(c)(1)(A), redesignated subsec. (d) as (c).

1984—Subsec. (d). Pub. L. 98–369 added subsec. (d).

1982—Subsec. (b). Pub. L. 97–248 substituted provisions that if the adjusted prime rate charged by banks (rounded to the nearest full percent) during the 6-month period ending on September 30 of any calendar year, or during the 6-month period ending on March 31 of any calendar year, differs from the interest rate in effect under this section on either such date, respectively, then the Secretary shall establish, within 15 days after the close of the applicable 6-month period, an adjusted rate of interest equal to such adjusted prime rate, and that any adjusted rate of interest established under paragraph (1) shall become effective on January 1 of the succeeding year in the case of an adjustment attributable to paragraph (1)(A), and on July 1 of the same year in the case of an adjustment attributable to paragraph (1)(B), for provisions that the Secretary was to establish an adjusted rate of interest for the purpose of subsection (a) not later than October 15 of any year if the adjusted prime rate charged by banks during September of that year, rounded to the nearest full percent, was at least a full percentage point more or less than the interest rate which was then in effect, and that any such adjusted rate of interest would be equal to the adjusted prime rate charged by banks, rounded to the nearest full percent, and would become effective on January 1 of the immediately succeeding year.

1981—Subsec. (b). Pub. L. 97–34, §711(a), struck out provision that an adjustment provided for under this subsection not be made prior to the expiration of 23 months following the date of any preceding adjustment under this subsection which changes the rate of interest.

Pub. L. 97–34, §711(c), substituted "January 1" for "February 1".

Subsec. (c). Pub. L. 97–34, §711(b), struck out "90 percent of" before "the average predominant prime rate".

1979—Subsec. (a). Pub. L. 96–167 substituted provisions setting the annual rate established under this section to be such adjusted rate as is established by the Secretary under subsec. (b) of this section for provision

that the rate of interest under sections 6601(a), 6602, 6611(a), 6332(c)(1), and 7426(g) of this title, and under section 2411(a) of title 28 was to be 9 percent per annum, or such adjusted rate as was established by the Secretary under subsection (b).

1976—Subsecs. (a), (b). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 3301(a) of Pub. L. 105–206 applicable to interest for periods beginning after July 22, 1998, and, subject to applicable statutes of limitation, to interest for periods beginning before July 22, 1998, if taxpayer reasonably identifies and establishes periods of overpayments and underpayments for which zero rate applies, and not later than Dec. 31, 1999, requests application of subsec. (d) of this section to such periods, see section 3301(c) of Pub. L. 105–206, set out as a note under section 6601 of this title.

Pub. L. 105–206, title III, §3302(b), July 22, 1998, 112 Stat. 742, provided that: "The amendment made by this section [amending this section] shall apply to interest for the second and succeeding calendar quarters beginning after the date of the enactment of this Act [July 22, 1998]."

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XIV, §1463(b), Aug. 5, 1997, 111 Stat. 1058, provided that: "The amendment made by subsection (a) [amending this section] shall apply for purposes of determining interest for periods after December 31, 1997."

Amendment by section 1604(b)(1) of Pub. L. 105–34 effective as if included in the sections of the Uruguay Round Agreements Act, Pub. L. 103–465, to which it relates, see section 1604(b)(4) of Pub. L. 105–34, set out as a note under section 412 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103–465, title VII, §713(b), Dec. 8, 1994, 108 Stat. 5002, provided that: "The amendment made by this section [amending this section] shall apply for purposes of determining interest for periods after December 31, 1994."

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, §11341(b), Nov. 5, 1990, 104 Stat. 1388–471, provided that: "The amendment made by subsection (a) [amending this section] shall apply for purposes of determining interest for periods after December 31, 1990."

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1989, see section 7721(d) of Pub. L. 101–239, set out as a note under section 461 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1511(a), (c)(1) of Pub. L. 99–514 applicable for purposes of determining interest for periods after Dec. 31, 1986, see section 1511(d) of Pub. L. 99–514, set out as a note under section 47 of this title.

Pub. L. 99–514, title XV, §1535(b), Oct. 22, 1986, 100 Stat. 2750, provided that: "The amendment made by subsection (a) [amending this section] shall apply to interest accruing after December 31, 1984; except that such amendment shall not apply in the case of any underpayment with respect to which there was a final court decision before the date of the enactment of this Act [Oct. 22, 1986]."

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §144(c), July 18, 1984, 98 Stat. 684, provided that: "The amendments made by this section [amending this section and section 6214 of this title] shall apply with respect to interest

accruing after December 31, 1984."

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title III, §345(b), Sept. 3, 1982, 96 Stat. 636, as amended by Pub. L. 98–369, div. A, title VII, §714(m), July 18, 1984, 98 Stat. 963, provided that: "The amendment made by this section [amending this section] shall apply to adjustments taking effect on or after January 1, 1983."

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title VII, §711(d), Aug. 13, 1981, 95 Stat. 340, provided that:

"(1) FOR SUBSECTIONS (a) AND (b).—The amendments made by subsections (a) and (b) [amending this section] shall apply to adjustments made after the date of the enactment of this Act [Aug. 13, 1981].

"(2) FOR SUBSECTION (c).—The amendment made by subsection (c) [amending this section] shall apply to adjustments made for periods after 1982."

EFFECTIVE DATE OF 1979 AMENDMENT

Pub. L. 96–167, §4(c)(2), Dec. 29, 1979, 93 Stat. 1276, provided that: "The amendment made by subsection (b) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 29, 1979]."

EFFECTIVE DATE

Pub. L. 93–625, §7(e), Jan. 3, 1975, 88 Stat. 2116, provided that: "The amendments made by this section [enacting this section and amending sections 514, 6163, 6166, 6167, 6332, 6504, 6601, 6602, 6611, 6654, 6655, and 7426 of this title and section 2411 of Title 28, Judiciary and Judicial Procedure] shall take effect on July 1, 1975, and apply to amounts outstanding on such date or arising thereafter."

REGULATIONS

Pub. L. 99–514, title XV, §1511(b), Oct. 22, 1986, 100 Stat. 2744, provided that: "The Secretary of the Treasury or his delegate may issue regulations to coordinate section 6621 of the Internal Revenue Code of 1954 [now 1986] (as amended by this section) with section 6601(f) of such Code. Such regulations shall not apply to any period after the date 3 years after the date of the enactment of this Act [Oct. 22, 1986]."

§6622. Interest compounded daily

(a) General rule

In computing the amount of any interest required to be paid under this title or sections 1961(c)(1) or 2411 of title 28, United States Code, by the Secretary or by the taxpayer, or any other amount determined by reference to such amount of interest, such interest and such amount shall be compounded daily.

(b) Exception for penalty for failure to file estimated tax

Subsection (a) shall not apply for purposes of computing the amount of any addition to tax under section 6654 or 6655.

(Added Pub. L. 97–248, title III, §344(a), Sept. 3, 1982, 96 Stat. 635.)

EFFECTIVE DATE

Pub. L. 97–248, title III, §344(c), Sept. 3, 1982, 96 Stat. 636, provided that: "The amendments made by this section [enacting this section and amending section 6601 of this title] shall apply to interest accruing after December 31, 1982."

Subchapter D—Notice Requirements

Sec.

6631. Notice requirements.

AMENDMENTS

2000—Pub. L. 106–554, §1(a)(7) [title III, §319(22)], Dec. 21, 2000, 114 Stat. 2763, 2763A–647, substituted "Requirements" for "requirements" in subchapter heading.

§6631. Notice requirements

The Secretary shall include with each notice to an individual taxpayer which includes an amount of interest required to be paid by such taxpayer under this title information with respect to the section of this title under which the interest is imposed and a computation of the interest.

(Added Pub. L. 105–206, title III, §3308(a), July 22, 1998, 112 Stat. 745.)

EFFECTIVE DATE

Pub. L. 105–206, title III, §3308(c), July 22, 1998, 112 Stat. 745, as amended by Pub. L. 106–554, §1(a)(7) [title III, §302(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–632, provided that: "The amendments made by this section [enacting this subchapter] shall apply to notices issued after June 30, 2001. In the case of any notice issued after June 30, 2001, and before July 1, 2003, to which section 6631 of the Internal Revenue Code of 1986 applies, the requirements of section 6631 of such Code shall be treated as met if such notice contains a telephone number at which the taxpayer can request a copy of the taxpayer's payment history relating to interest amounts included in such notice."

CHAPTER 68—ADDITIONS TO THE TAX, ADDITIONAL AMOUNTS, AND ASSESSABLE PENALTIES

Subchapter		Sec.[1]
A.	**Additions to the tax and additional amounts**	**6651**
B.	**Assessable penalties**	**6671**
C.	**Procedural requirements**	**6751**

AMENDMENTS

1998—Pub. L. 105–206, title III, §3306(b), July 22, 1998, 112 Stat. 744, added item for subchapter C.

[1] *Section numbers editorially supplied.*

Subchapter A—Additions to the Tax and Additional Amounts

Part	
I.	General provisions.
II.	Accuracy-related and fraud penalties.
III.	Applicable rules.

AMENDMENTS

1989—Pub. L. 101–239, title VII, §7721(c)(13), Dec. 19, 1989, 103 Stat. 2400, added part analysis consisting of parts I to III.

PART I—GENERAL PROVISIONS

Sec.	
6651.	Failure to file tax return or pay tax.[1]
6652.	Failure to file certain information returns, registration statements, etc.
6653.	Failure to pay stamp tax.
6654.	Failure by individual to pay estimated income tax.
6655.	Failure by corporation to pay estimated income tax.
6656.	Failure to make deposit of taxes.
6657.	Bad checks.
6658.	Coordination with title 11.

[6659 to 6661. Repealed.]

AMENDMENTS

1996—Pub. L. 104–188, title I, §1704(t)(19), Aug. 20, 1996, 110 Stat. 1888, struck out item 6662 "Applicable rules".

1989—Pub. L. 101–239, title VII, §§7721(c)(13), (14), 7742(b), Dec. 19, 1989, 103 Stat. 2400, 2405, added part heading, substituted "Failure to pay stamp tax" for "Additions to tax for negligence and fraud" in item 6653, substituted "of taxes" for "of taxes or over-statement of deposits" in item 6656, and struck out items 6659 "Addition to tax in the case of valuation overstatements for purposes of the income tax", 6659A "Addition to tax in case of overstatements of pension liabilities", 6660 "Addition to tax in the case of valuation understatement for purposes of estate or gift taxes", and 6661 "Substantial understatement of liability".

1986—Pub. L. 99–514, title XI, §1138(b), title XV, §1503(d)(2), Oct. 22, 1986, 100 Stat. 2486, 2743, substituted "Additions to tax for negligence and fraud" for "Failure to pay tax" in item 6653 and added item 6659A.

1984—Pub. L. 98–369, div. A, title I, §155(c)(2)(B), July 18, 1984, 98 Stat. 695, added item 6660.

1982—Pub. L. 97–248, title III, §323(b), Sept. 3, 1982, 96 Stat. 615, added item 6661 and redesignated former item 6660 as 6662. See Codification note set out under section 6662 of this title.

1981—Pub. L. 97–34, title VII, §§722(a)(2), 724(b)(2), Aug. 13, 1981, 95 Stat. 342, 345, inserted "or overstatement of deposits" in item 6656, added item 6659, and redesignated item 6659 as 6660.

1980—Pub. L. 96–589, §6(e)(2), Dec. 24, 1980, 94 Stat. 3408, added item 6658.

1979—Pub. L. 96–167, §6(b), Dec. 29, 1979, 93 Stat. 1276, struck out item 6658 "Addition to tax in case of jeopardy".

1974—Pub. L. 93–406, title II, §1031(b)(1)(B)(ii), Sept. 2, 1974, 88 Stat. 946, inserted ", registration statements, etc." in item 6652.

1969—Pub. L. 91–172, title IX, §943(c)(5), 83 Stat. 729, inserted "or pay tax" in item 6651.

[1] *So in original. Does not conform to section catchline.*

§6651. Failure to file tax return or to pay tax

(a) Addition to the tax

In case of failure—

(1) to file any return required under authority of subchapter A of chapter 61 (other than part III thereof), subchapter A of chapter 51 (relating to distilled spirits, wines, and beer), or of subchapter A of chapter 52 (relating to tobacco, cigars, cigarettes, and cigarette papers and tubes), or of subchapter A of chapter 53 (relating to machine guns and certain other firearms), on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return 5 percent of the amount of such tax if the failure is for not more than 1 month, with an additional 5 percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate;

(2) to pay the amount shown on tax on any return specified in paragraph (1) on or before the date prescribed for payment of such tax (determined with regard to any extension of time for payment), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount shown as tax on such return 0.5 percent of the amount of such tax if the failure is for not more than 1 month, with an additional 0.5 percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate; or

(3) to pay any amount in respect of any tax required to be shown on a return specified in paragraph (1) which is not so shown (including an assessment made pursuant to section 6213(b)) within 21 calendar days from the date of notice and demand therefor (10 business days if the amount for which such notice and demand is made equals or exceeds $100,000), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to

the amount of tax stated in such notice and demand 0.5 percent of the amount of such tax if the failure is for not more than 1 month, with an additional 0.5 percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate.

In the case of a failure to file a return of tax imposed by chapter 1 within 60 days of the date prescribed for filing of such return (determined with regard to any extensions of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, the addition to tax under paragraph (1) shall not be less than the lesser of $135 or 100 percent of the amount required to be shown as tax on such return.

(b) Penalty imposed on net amount due

For purposes of—

(1) subsection (a)(1), the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed on the return,

(2) subsection (a)(2), the amount of tax shown on the return shall, for purposes of computing the addition for any month, be reduced by the amount of any part of the tax which is paid on or before the beginning of such month and by the amount of any credit against the tax which may be claimed on the return, and

(3) subsection (a)(3), the amount of tax stated in the notice and demand shall, for the purpose of computing the addition for any month, be reduced by the amount of any part of the tax which is paid before the beginning of such month.

(c) Limitations and special rule

(1) Additions under more than one paragraph

With respect to any return, the amount of the addition under paragraph (1) of subsection (a) shall be reduced by the amount of the addition under paragraph (2) of subsection (a) for any month (or fraction thereof) to which an addition to tax applies under both paragraphs (1) and (2). In any case described in the last sentence of subsection (a), the amount of the addition under paragraph (1) of subsection (a) shall not be reduced under the preceding sentence below the amount provided in such last sentence.

(2) Amounts of tax shown more than amount required to be shown

If the amount required to be shown as tax on a return is less than the amount shown as tax on such return, subsections (a)(2) and (b)(2) shall be applied by substituting such lower amount.

(d) Increase in penalty for failure to pay tax in certain cases

(1) In general

In the case of each month (or fraction thereof) beginning after the day described in paragraph (2) of this subsection, paragraphs (2) and (3) of subsection (a) shall be applied by substituting "1 percent" for "0.5 percent" each place it appears.

(2) Description

For purposes of paragraph (1), the day described in this paragraph is the earlier of—

(A) the day 10 days after the date on which notice is given under section 6331(d), or

(B) the day on which notice and demand for immediate payment is given under the last sentence of section 6331(a).

(e) Exception for estimated tax

This section shall not apply to any failure to pay any estimated tax required to be paid by section 6654 or 6655.

(f) Increase in penalty for fraudulent failure to file

If any failure to file any return is fraudulent, paragraph (1) of subsection (a) shall be applied—

(1) by substituting "15 percent" for "5 percent" each place it appears, and

(2) by substituting "75 percent" for "25 percent".

(g) Treatment of returns prepared by Secretary under section 6020(b)

In the case of any return made by the Secretary under section 6020(b)—

(1) such return shall be disregarded for purposes of determining the amount of the addition under paragraph (1) of subsection (a), but

(2) such return shall be treated as the return filed by the taxpayer for purposes of determining the amount of the addition under paragraphs (2) and (3) of subsection (a).

(h) Limitation on penalty on individual's failure to pay for months during period of installment agreement

In the case of an individual who files a return of tax on or before the due date for the return (including extensions), paragraphs (2) and (3) of subsection (a) shall each be applied by substituting "0.25" for "0.5" each place it appears for purposes of determining the addition to tax for any month during which an installment agreement under section 6159 is in effect for the payment of such tax.

(Aug. 16, 1954, ch. 736, 68A Stat. 821; Pub. L. 90–364, title I, §103(e)(4), June 28, 1968, 82 Stat. 264; Pub. L. 91–172, title IX, §943(a), Dec. 30, 1969, 83 Stat. 727; Pub. L. 92–9, §3(j)(1), Apr. 1, 1971, 85 Stat. 22; Pub. L. 94–455, title XIX, §1904(b)(10)(A)(v), Oct. 4, 1976, 90 Stat. 1817; Pub. L. 97–248, title III, §318(a), (b), Sept. 3, 1982, 96 Stat. 610; Pub. L. 98–369, div. A, title IV, §412(b)(8), July 18, 1984, 98 Stat. 792; Pub. L. 99–514, title XV, §1502(a), (b), Oct. 22, 1986, 100 Stat. 2741; Pub. L. 100–203, title X, §10301(b)(6), Dec. 22, 1987, 101 Stat. 1330–429; Pub. L. 101–239, title VII, §7741(a), Dec. 19, 1989, 103 Stat. 2404; Pub. L. 104–168, title III, §303(b)(2), title XIII, §1301(a), July 30, 1996, 110 Stat. 1458, 1475; Pub. L. 105–206, title III, §3303(a), July 22, 1998, 112 Stat. 742; Pub. L. 110–245, title III, §303(a), June 17, 2008, 122 Stat. 1649.)

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–245 substituted "$135" for "$100" in concluding provisions.

1998—Subsec. (h). Pub. L. 105–206 added subsec. (h).

1996—Subsec. (a)(3). Pub. L. 104–168, §303(b)(2), substituted "21 calendar days from the date of notice and demand therefor (10 business days if the amount for which such notice and demand is made equals or exceeds $100,000)" for "10 days of the date of the notice and demand therefor".

Subsec. (g). Pub. L. 104–168, §1301(a), added subsec. (g).

1989—Subsec. (f). Pub. L. 101–239 added subsec. (f).

1987—Subsec. (e). Pub. L. 100–203 substituted "section 6654 or 6655" for "section 6154 or 6654".

1986—Subsec. (c)(1). Pub. L. 99–514, §1502(b), amended par. (1) generally, striking out the designation "(A)" before "With respect to", inserting "(or fraction thereof)", and striking out subpar. (B) which read as follows: "With respect to any return, the maximum amount of the addition permitted under paragraph (3) of subsection (a) shall be reduced by the amount of the addition under paragraph (1) of subsection (a) (determined without regard to the last sentence of such subsection) which is attributable to the tax for which the notice and demand is made and which is not paid within 10 days of notice and demand."

Subsecs. (d), (e). Pub. L. 99–514, §1502(a), added subsec. (d) and redesignated former subsec. (d) as (e).

1984—Subsec. (d). Pub. L. 98–369 in amending subsec. (d) generally, substituted in heading "estimated tax" for "declarations of estimated tax", struck out provisions making section inapplicable to any failure to file a declaration of estimated tax required by section 6015 or to any failure to pay any estimated tax required to be paid by section 6153, and made section inapplicable to any failure to pay any estimated tax required to be paid by section 6654.

1982—Subsec. (a). Pub. L. 97–248, §318(a), inserted provision that, in the case of a failure to file a return of tax imposed by chapter 1 within 60 days of the date prescribed for filing of such return (determined with regard to any extensions of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, the addition to tax under par. (1) shall not be less than the lesser of $100 or 100 percent of the amount required to be shown as tax on such return.

Subsec. (c)(1)(A). Pub. L. 97–248, §318(b)(1), inserted provision that in any case described in last sentence of subsec. (a), the amount of the addition under par. (1) of subsec. (a) shall not be reduced under first sentence of this subpar. below the amount provided in such last sentence.

Subsec. (c)(1)(B). Pub. L. 97–248, §318(b)(2), inserted "(determined without regard to the last sentence of such subsection)" after "paragraph (1) of subsection (a)".

1976—Subsec. (e). Pub. L. 94–455 struck out subsec. (e) which related to certain interest equalization tax returns.

1971—Subsec. (e). Pub. L. 92–9 added subsec. (e).

1969—Subsec. (a). Pub. L. 91–172 designated existing provisions as par. (1) and added pars. (2) and (3).

Subsec. (b). Pub. L. 91–172 designated existing provisions as par. (1) and added pars. (2) and (3).

Subsecs. (c), (d). Pub. L. 91–172 added subsec. (c), redesignated former subsec. (c) as (d) and struck out reference to section 6016 of this title and provided that this section would not be applicable for failure to pay any estimated tax required under section 6153 or 6154 of this title.

1968—Subsec. (c). Pub. L. 90–364 struck out reference to section 6016.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–245, title III, §303(b), June 17, 2008, 122 Stat. 1649, provided that: "The amendment made by this section [amending this section] shall apply to returns required to be filed after December 31, 2008."

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–206, title III, §3303(b), July 22, 1998, 112 Stat. 742, provided that: "The amendment made by this section [amending this section] shall apply for purposes of determining additions to the tax for months beginning after December 31, 1999."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 303(b)(2) of Pub. L. 104–168 applicable in case of any notice and demand given after Dec. 31, 1996, see section 303(c) of Pub. L. 104–168, set out as a note under section 6601 of this title.

Pub. L. 104–168, title XIII, §1301(b), July 30, 1996, 110 Stat. 1475, provided that: "The amendment made by subsection (a) [amending this section] shall apply in the case of any return the due date for which (determined without regard to extensions) is after the date of the enactment of this Act [July 30, 1996]."

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7741(b), Dec. 19, 1989, 103 Stat. 2405, provided that: "The amendment made by subsection (a) [amending this section] shall apply in the case of failures to file returns the due date for which (determined without regard to extensions) is after December 31, 1989."

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to taxable years beginning after Dec. 31, 1987, see section 10301(c) of Pub. L. 100–203, set out as a note under section 585 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XV, §1502(c), Oct. 22, 1986, 100 Stat. 2741, provided that:

"(1) SUBSECTION (a).—The amendments made by subsection (a) [amending this section] shall apply—

"(A) to failures to pay which begin after December 31, 1986, and

"(B) to failures to pay which begin on or before December 31, 1986, if after December 31, 1986—

"(i) notice (or renotice) under section 6331(d) of the Internal Revenue Code of 1954 [now 1986] is given with respect to such failure, or

"(ii) notice and demand for immediate payment of the underpayment is made under the last sentence of section 6331(a) of such Code.

In the case of a failure to pay described in subparagraph (B), paragraph (2) of section 6651(d) of such Code (as added by subsection (a)) shall be applied by taking into account the first notice (or renotice) after December 31, 1986.

"(2) SUBSECTION (b).—The amendment made by subsection (b) [amending this section] shall apply to amounts assessed after December 31, 1986, with respect to failures to pay which begin before, on, or after such date."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable with respect to taxable years beginning after Dec. 31, 1984, see section 414(a)(1) of Pub. L. 98–369, set out as a note under section 6654 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title III, §318(c), Sept. 3, 1982, 96 Stat. 610, provided that: "The amendments made by this section [amending this section] shall apply to returns the due date for filing of which (including extensions) is after December 31, 1982."

EFFECTIVE DATE OF 1971 AMENDMENT

Pub. L. 92–9, §3(j)(3), Apr. 1, 1971, 85 Stat. 22, provided that: "The amendments made by this subsection [amending this section and section 6680 of this title] shall apply with respect to returns required to be filed on or after the date of the enactment of this Act [Apr. 1, 1971]."

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title IX, §943(d), Dec. 30, 1969, 83 Stat. 729, provided that: "The amendments made by subsections (a) [amending this section] and (c) [amending sections 3121, 5684, and 6653 of this title] shall apply with respect to returns the date prescribed by law (without regard to any extension of time) for filing of which is after December 31, 1969, and with respect to notices and demands for payment of tax made after December 31, 1969. The amendment made by subsection (b) [amending section 6656 of this title] shall apply with respect to deposits the time for making of which is after December 31, 1969."

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–364 applicable with respect to taxable years beginning after Dec. 31, 1967, except as provided by section 104 of Pub. L. 90–364, see section 103(f) of Pub. L. 90–364, set out as a note under section 243 of this title.

ILLEGAL TAX PROTESTER DESIGNATION

Pub. L. 105–206, title III, §3707, July 22, 1998, 112 Stat. 778, provided that:

"(a) PROHIBITION.—The officers and employees of the Internal Revenue Service—

"(1) shall not designate taxpayers as illegal tax protesters (or any similar designation); and

"(2) in the case of any such designation made on or before the date of the enactment of this Act [July 22, 1998]—

"(A) shall remove such designation from the individual master file; and

"(B) shall disregard any such designation not located in the individual master file.

"(b) DESIGNATION OF NONFILERS ALLOWED.—An officer or employee of the Internal Revenue Service may designate any appropriate taxpayer as a nonfiler, but shall remove such designation once the taxpayer has filed income tax returns for 2 consecutive taxable years and paid all taxes shown on such returns.

"(c) EFFECTIVE DATE.—The provisions of this section shall take effect on the date of the enactment of this Act [July 22, 1998], except that the removal of any designation under subsection (a)(2)(A) shall not be required to begin before January 1, 1999."

§6652. Failure to file certain information returns, registration statements, etc.

(a) Returns with respect to certain payments aggregating less than $10

In the case of each failure to file a statement of a payment to another person required under the authority of—

(1) section 6042(a)(2) (relating to payments of dividends aggregating less than $10), or

(2) section 6044(a)(2) (relating to payments of patronage dividends aggregating less than $10),

on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall be paid (upon notice and demand by the Secretary and in the same manner as tax) by the person failing to so file the statement, $1 for each such statement not so filed, but the total amount imposed on the delinquent person for all such failures during the calendar year shall not exceed $1,000.

(b) Failure to report tips

In the case of failure by an employee to report to his employer on the date and in the manner prescribed therefor any amount of tips required to be so reported by section 6053(a) which are wages (as defined in section 3121(a)) or which are compensation (as defined in section 3231(e)), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be paid by the employee, in addition to the tax imposed by section 3101 or section 3201 (as the case may be) with respect to the amount of tips which he so failed to report, an amount equal to 50 percent of such tax.

(c) Returns by exempt organizations and by certain trusts

(1) Annual returns under section 6033(a)(1) or 6012(a)(6)

(A) Penalty on organization

In the case of—

(i) a failure to file a return required under section 6033(a)(1) (relating to returns by exempt organizations) or section 6012(a)(6) (relating to returns by political organizations) on the date and in the manner prescribed therefor (determined with regard to any extension of time for filing), or

(ii) a failure to include any of the information required to be shown on a return filed under section 6033(a)(1) or section 6012(a)(6) or to show the correct information,

there shall be paid by the exempt organization $20 for each day during which such failure continues. The maximum penalty under this subparagraph on failures with respect to any 1 return shall not exceed the lesser of $10,000 or 5 percent of the gross receipts of the organization for the year. In the case of an organization having gross receipts exceeding $1,000,000 for any year, with respect to the return required under section 6033(a)(1) or section 6012(a)(6) for such year, the first sentence of this subparagraph shall be applied by substituting "$100" for "$20" and, in lieu of applying the second sentence of this subparagraph, the maximum penalty under this subparagraph shall not exceed $50,000.

(B) Managers

(i) In general

The Secretary may make a written demand on any organization subject to penalty under subparagraph (A) specifying therein a reasonable future date by which the return shall be filed (or the information furnished) for purposes of this subparagraph.

(ii) Failure to comply with demand

If any person fails to comply with any demand under clause (i) on or before the date specified in such demand, there shall be paid by the person failing to so comply $10 for each day after the expiration of the time specified in such demand during which such failure continues. The maximum penalty imposed under this subparagraph on all persons for failures with respect to any 1 return shall not exceed $5,000.

(C) Public inspection of annual returns and reports

In the case of a failure to comply with the requirements of section 6104(d) with respect to any annual return on the date and in the manner prescribed therefor (determined with regard to any extension of time for filing) or report required under section 527(j), there shall be paid by the person failing to meet such requirements $20 for each day during which such failure continues. The maximum penalty imposed under this subparagraph on all persons for failures with respect to any 1 return or report shall not exceed $10,000.

(D) Public inspection of applications for exemption and notice of status

In the case of a failure to comply with the requirements of section 6104(d) with respect to any exempt status application materials (as defined in such section) or notice materials (as defined in such section) on the date and in the manner prescribed therefor, there shall be paid by the person failing to meet such requirements $20 for each day during which such failure continues.

(E) No penalty for certain annual notices

This paragraph shall not apply with respect to any notice required under section 6033(i).

(2) Returns under section 6034 or 6043(b)

(A) Penalty on organization or trust

In the case of a failure to file a return required under section 6034 (relating to returns by certain trusts) or section 6043(b) (relating to terminations, etc., of exempt organizations), on the

date and in the manner prescribed therefor (determined with regard to any extension of time for filing), there shall be paid by the exempt organization or trust failing so to file $10 for each day during which such failure continues, but the total amount imposed under this subparagraph on any organization or trust for failure to file any 1 return shall not exceed $5,000.

(B) Managers

The Secretary may make written demand on an organization or trust failing to file under subparagraph (A) specifying therein a reasonable future date by which such filing shall be made for purposes of this subparagraph. If such filing is not made on or before such date, there shall be paid by the person failing so to file $10 for each day after the expiration of the time specified in the written demand during which such failure continues, but the total amount imposed under this subparagraph on all persons for failure to file any 1 return shall not exceed $5,000.

(C) Split-interest trusts

In the case of a trust which is required to file a return under section 6034(a), subparagraphs (A) and (B) of this paragraph shall not apply and paragraph (1) shall apply in the same manner as if such return were required under section 6033, except that—

(i) the 5 percent limitation in the second sentence of paragraph (1)(A) shall not apply,

(ii) in the case of any trust with gross income in excess of $250,000, the first sentence of paragraph (1)(A) shall be applied by substituting "$100" for "$20", and the second sentence thereof shall be applied by substituting "$50,000" for "$10,000", and

(iii) the third sentence of paragraph (1)(A) shall be disregarded.

In addition to any penalty imposed on the trust pursuant to this subparagraph, if the person required to file such return knowingly fails to file the return, such penalty shall also be imposed on such person who shall be personally liable for such penalty.

(3) Disclosure under section 6033(a)(2)

(A) Penalty on entities

In the case of a failure to file a disclosure required under section 6033(a)(2), there shall be paid by the tax-exempt entity (the entity manager in the case of a tax-exempt entity described in paragraph (4), (5), (6), or (7) of section 4965(c)) $100 for each day during which such failure continues. The maximum penalty under this subparagraph on failures with respect to any 1 disclosure shall not exceed $50,000.

(B) Written demand

(i) In general

The Secretary may make a written demand on any entity or manager subject to penalty under subparagraph (A) specifying therein a reasonable future date by which the disclosure shall be filed for purposes of this subparagraph.

(ii) Failure to comply with demand

If any entity or manager fails to comply with any demand under clause (i) on or before the date specified in such demand, there shall be paid by such entity or manager failing to so comply $100 for each day after the expiration of the time specified in such demand during which such failure continues. The maximum penalty imposed under this subparagraph on all entities and managers for failures with respect to any 1 disclosure shall not exceed $10,000.

(C) Definitions

Any term used in this section which is also used in section 4965 shall have the meaning given such term under section 4965.

(4) Reasonable cause exception

No penalty shall be imposed under this subsection with respect to any failure if it is shown that such failure is due to reasonable cause.

(5) Other special rules

(A) Treatment as tax

Any penalty imposed under this subsection shall be paid on notice and demand of the Secretary and in the same manner as tax.

(B) Joint and several liability

If more than 1 person is liable under this subsection for any penalty with respect to any failure, all such persons shall be jointly and severally liable with respect to such failure.

(C) Person

For purposes of this subsection, the term "person" means any officer, director, trustee, employee, or other individual who is under a duty to perform the act in respect of which the violation occurs.

(d) Annual registration and other notification by pension plan

(1) Registration

In the case of any failure to file a registration statement required under section 6057(a) (relating to annual registration of certain plans) which includes all participants required to be included in such statement, on the date prescribed therefor (determined without regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause, there shall be paid (on notice and demand by the Secretary and in the same manner as tax) by the person failing so to file, an amount equal to $1 for each participant with respect to whom there is a failure to file, multiplied by the number of days during which such failure continues, but the total amount imposed under this paragraph on any person for any failure to file with respect to any plan year shall not exceed $5,000.

(2) Notification of change of status

In the case of failure to file a notification required under section 6057(b) (relating to notification of change of status) on the date prescribed therefor (determined without regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause, there shall be paid (on notice and demand by the Secretary and in the same manner as tax) by the person failing so to file, $1 for each day during which such failure continues, but the total amounts imposed under this paragraph on any person for failure to file any notification shall not exceed $1,000.

(e) Information required in connection with certain plans of deferred compensation, etc.

In the case of failure to file a return or statement required under section 6058 (relating to information required in connection with certain plans of deferred compensation), 6047 (relating to information relating to certain trusts and annuity and bond purchase plans), or 6039D (relating to returns and records with respect to certain fringe benefit plans) on the date and in the manner prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause, there shall be paid (on notice and demand by the Secretary and in the same manner as tax) by the person failing so to file, $25 for each day during which such failure continues, but the total amount imposed under this subsection on any person for failure to file any return shall not exceed $15,000. This subsection shall not apply to any return or statement which is an information return described in section 6724(d)(1)(C)(ii) or a payee statement described in section 6724(d)(2)(Y).

(f) Returns required under section 6039C

(1) In general

In the case of each failure to make a return required by section 6039C which contains the information required by such section on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not to willful neglect, the amount determined under paragraph (2) shall be paid (upon notice and demand by the Secretary and in the same manner as tax) by the person failing to make such return.

(2) Amount of penalty

For purposes of paragraph (1), the amount determined under this paragraph with respect to any failure shall be $25 for each day during which such failure continues.

(3) Limitation

The amount determined under paragraph (2) with respect to any person for failing to meet the requirements of section 6039C for any calendar year shall not exceed the lesser of—

(A) $25,000, or

(B) 5 percent of the aggregate of the fair market value of the United States real property interests owned by such person at any time during such year.

For purposes of the preceding sentence, fair market value shall be determined as of the end of the calendar year (or, in the case of any property disposed of during the calendar year, as of the date of such disposition).

(g) Information required in connection with deductible employee contributions

In the case of failure to make a report required by section 219(f)(4) which contains the information required by such section on the date prescribed therefor (determined with regard to any extension of time for filing), there shall be paid (on notice and demand by the Secretary and in the same manner as tax) by the person failing so to file, an amount equal to $25 for each participant with respect to whom there was a failure to file such information, multiplied by the number of years during which such failure continues, but the total amount imposed under this subsection on any person for failure to file shall not exceed $10,000. No penalty shall be imposed under this subsection on any failure which is shown to be due to reasonable cause and not willful neglect.

(h) Failure to give notice to recipients of certain pension, etc., distributions

In the case of each failure to provide notice as required by section 3405(e)(10)(B), at the time prescribed therefor, unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall be paid, on notice and demand of the Secretary and in the same manner as tax, by the person failing to provide such notice, an amount equal to $10 for each such failure, but the total amount imposed on such person for all such failures during any calendar year shall not exceed $5,000.

(i) Failure to give written explanation to recipients of certain qualifying rollover distributions

In the case of each failure to provide a written explanation as required by section 402(f), at the time prescribed therefor, unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall be paid, on notice and demand of the Secretary and in the same manner as tax, by the person failing to provide such written explanation, an amount equal to $100 for each such failure, but the total amount imposed on such person for all such failures during any calendar year shall not exceed $50,000.

(j) Failure to file certification with respect to certain residential rental projects

In the case of each failure to provide a certification as required by section 142(d)(7) at the time prescribed therefor, unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall be paid, on notice and demand of the Secretary and in the same manner as tax, by the person failing to provide such certification, an amount equal to $100 for each such failure.

(k) [1] Failure to make reports required under section 1202

In the case of a failure to make a report required under section 1202(d)(1)(C) which contains the information required by such section on the date prescribed therefor (determined with regard to any extension of time for filing), there shall be paid (on notice and demand by the Secretary and in the same manner as tax) by the person failing to make such report, an amount equal to $50 for each report with respect to which there was such a failure. In the case of any failure due to negligence or intentional disregard, the preceding sentence shall be applied by substituting "$100" for "$50". In the case of a report covering periods in 2 or more years, the penalty determined under preceding

provisions of this subsection shall be multiplied by the number of such years. No penalty shall be imposed under this subsection on any failure which is shown to be due to reasonable cause and not willful neglect.

(l) Failure to file return with respect to certain corporate transactions

In the case of any failure to make a return required under section 6043(c) containing the information required by such section on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause, there shall be paid (on notice and demand by the Secretary and in the same manner as tax) by the person failing to file such return, an amount equal to $500 for each day during which such failure continues, but the total amount imposed under this subsection with respect to any return shall not exceed $100,000.

(m) Alcohol and tobacco taxes

For penalties for failure to file certain information returns with respect to alcohol and tobacco taxes, see, generally, subtitle E.

(Aug. 16, 1954, ch. 736, 68A Stat. 821; Pub. L. 85–866, title I, §85, Sept. 2, 1958, 72 Stat. 1664; Pub. L. 87–834, §19(d), Oct. 16, 1962, 76 Stat. 1057; Pub. L. 88–272, title II, §221(b)(2), Feb. 26, 1964, 78 Stat. 74; Pub. L. 89–97, title III, §313(e)(2)(B), (3), July 30, 1965, 79 Stat. 385; Pub. L. 89–212, §2(e), Sept. 29, 1965, 79 Stat. 859; Pub. L. 91–172, title I, §101(d)(4), Dec. 30, 1969, 83 Stat. 522; Pub. L. 93–406, title II, §1031(b)(1)(A), (B)(i), Sept. 2, 1974, 88 Stat. 945, 946; Pub. L. 94–455, title XII, §1207(e)(3)(B), (C), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1708, 1834; Pub. L. 96–167, §7(b)(1), Dec. 29, 1979, 93 Stat. 1277; Pub. L. 96–223, title I, §101(d)(2)(A), Apr. 2, 1980, 94 Stat. 251; Pub. L. 96–499, title XI, §1123(b), Dec. 5, 1980, 94 Stat. 2689; Pub. L. 96–603, §1(d)(2), Dec. 28, 1980, 94 Stat. 3504; Pub. L. 97–34, title III, §311(f), title VII, §723(a)(1), (3), (4), Aug. 13, 1981, 95 Stat. 281, 343, 344; Pub. L. 97–248, title III, §§309(b)(2), 315(a), (b), Sept. 3, 1982, 96 Stat. 595, 605, 606; Pub. L. 97–448, title II, §201(i)(2), Jan. 12, 1983, 96 Stat. 2395; Pub. L. 98–67, title I, §105(b)(1), Aug. 5, 1983, 97 Stat. 380; Pub. L. 98–369, div. A, title I, §§145(b)(1), (2), 146(b)(1), (2), 148(b)(1), (2), 149(b)(1), 155(b)(2)(A), title IV, §491(d)(50), title V, §531(b)(4)(B), title VII, §714(j)(3), July 18, 1984, 98 Stat. 685, 686, 688, 689, 693, 852, 882, 963; Pub. L. 98–397, title II, §207(b), Aug. 23, 1984, 98 Stat. 1450; Pub. L. 98–611, §1(d)(2), Oct. 31, 1984, 98 Stat. 3177; Pub. L. 98–612, §1(b)(2), Oct. 31, 1984, 98 Stat. 3181; Pub. L. 99–514, title XI, §1151(b), title XIII, §1301(g), title XV, §1501(d)(1)(A), title XVII, §1702(b), title XVIII, §§1810(f)(9), 1811(c)(2), Oct. 22, 1986, 100 Stat. 2502, 2656, 2740, 2774, 2828, 2833; Pub. L. 100–203, title X, §§10502(d)(11), 10704(a), Dec. 22, 1987, 101 Stat. 1330–444, 1330–461; Pub. L. 100–647, title I, §§1011B(a)(10), 1017(b), 1018(u)(36), title III, §3021(a)(10), Nov. 10, 1988, 102 Stat. 3484, 3575, 3592, 3630; Pub. L. 101–140, title II, §203(a)(1), Nov. 8, 1989, 103 Stat. 830; Pub. L. 101–239, title VII, §§7208(b)(2), 7841(d)(5), Dec. 19, 1989, 103 Stat. 2338, 2428; Pub. L. 102–318, title V, §522(b)(2)(F), July 3, 1992, 106 Stat. 314; Pub. L. 103–66, title XIII, §13113(c), Aug. 10, 1993, 107 Stat. 429; Pub. L. 104–168, title XIII, §§1314(a), (b), July 30, 1996, 110 Stat. 1480; Pub. L. 104–188, title I, §§1455(c), (d)(2), 1704(s), Aug. 20, 1996, 110 Stat. 1818, 1887; Pub. L. 105–34, title XII, §1281(a), (b), title XVI, §1602(d)(2)(B), Aug. 5, 1997, 111 Stat. 1037, 1094; Pub. L. 105–277, div. J, title I, §1004(b)(2)(B), (C), Oct. 21, 1998, 112 Stat. 2681–890; Pub. L. 106–230, §§1(c), 2(c), 3(c), July 1, 2000, 114 Stat. 479, 482, 483; Pub. L. 109–222, title V, §516(c), May 17, 2006, 120 Stat. 371; Pub. L. 109–280, title XII, §§1201(b)(2), 1223(d), Aug. 17, 2006, 120 Stat. 1065, 1091.)

CODIFICATION

Sections 1201(b)(2) and 1223(d) of Pub. L. 109–280, which directed the amendment of section 6652 without specifying the act to be amended, were executed to this section, which is section 6652 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

Pub. L. 101–140, §203(a)(1), amended this section to read as if the amendments made by section 1151(b) of Pub. L. 99–514 (enacting subsec. (l)) had not been enacted. Subsequent to enactment by Pub. L. 99–514, subsec. (l) was amended by Pub. L. 100–203, Pub. L. 100–647, and Pub. L. 101–239. See 1989, 1988, and 1987 Amendment notes below.

AMENDMENTS

2006—Subsec. (c)(1). Pub. L. 109–222, §516(c)(2), substituted "6033(a)(1)" for "6033" wherever appearing in heading and text.

Subsec. (c)(1)(E). Pub. L. 109–280, §1223(d), added subpar. (E). See Codification note above.

Subsec. (c)(2)(C). Pub. L. 109–280, §1201(b)(2), added subpar. (C). See Codification note above.

Subsec. (c)(3) to (5). Pub. L. 109–222, §516(c)(1), added par. (3) and redesignated former pars. (3) and (4) as (4) and (5), respectively.

2000—Subsec. (c)(1). Pub. L. 106–230, §3(c)(4), inserted "or 6012(a)(6)" after "section 6033" in heading.

Subsec. (c)(1)(A). Pub. L. 106–230, §3(c)(3), inserted "or section 6012(a)(6)" after "section 6033" in last sentence.

Subsec. (c)(1)(A)(i). Pub. L. 106–230, §3(c)(1), inserted "or section 6012(a)(6) (relating to returns by political organizations)" after "organizations)".

Subsec. (c)(1)(A)(ii). Pub. L. 106–230, §3(c)(2), inserted "or section 6012(a)(6)" after "section 6033".

Subsec. (c)(1)(C). Pub. L. 106–230, §2(c), in heading inserted "and reports" after "returns" and in text inserted "or report required under section 527(j)" after "filing)" and "or report" after "1 return".

Subsec. (c)(1)(D). Pub. L. 106–230, §1(c), in heading inserted "and notice of status" after "exemption" and in text inserted "or notice materials (as defined in such section)" after "section)".

1998—Subsec. (c)(1)(C). Pub. L. 105–277, §1004(b)(2)(B), substituted "section 6104(d) with respect to any annual return" for "subsection (d) or (e)(1) of section 6104 (relating to public inspection of annual returns)".

Subsec. (c)(1)(D). Pub. L. 105–277, §1004(b)(2)(C), substituted "section 6104(d) with respect to any exempt status application materials (as defined in such section)" for "section 6104(e)(2) (relating to public inspection of applications for exemption)".

1997—Subsec. (e). Pub. L. 105–34, §1602(d)(2)(B), substituted "section 6724(d)(2)(Y)" for "section 6724(d)(2)(X)".

Subsec. (g). Pub. L. 105–34, §1281(a), inserted at end "No penalty shall be imposed under this subsection on any failure which is shown to be due to reasonable cause and not willful neglect."

Subsec. (k). Pub. L. 105–34, §1281(b), inserted at end "No penalty shall be imposed under this subsection on any failure which is shown to be due to reasonable cause and not willful neglect."

1996—Subsec. (c)(1)(A). Pub. L. 104–168 in concluding provisions, substituted "$20" for "$10" and "$10,000" for "$5,000" and inserted at end "In the case of an organization having gross receipts exceeding $1,000,000 for any year, with respect to the return required under section 6033 for such year, the first sentence of this subparagraph shall be applied by substituting '$100' for '$20' and, in lieu of applying the second sentence of this subparagraph, the maximum penalty under this subparagraph shall not exceed $50,000."

Subsec. (c)(1)(C). Pub. L. 104–188, §1704(s)(1), substituted "$20" for "$10" and "$10,000" for "$5,000".

Subsec. (c)(1)(D). Pub. L. 104–188, §1704(s)(2), substituted "$20" for "$10".

Subsec. (e). Pub. L. 104–188, §1455(d)(2), inserted at end "This subsection shall not apply to any return or statement which is an information return described in section 6724(d)(1)(C)(ii) or a payee statement described in section 6724(d)(2)(X)."

Subsec. (i). Pub. L. 104–188, §1455(c), substituted "$100" and "$50,000" for "the $10" and "$5,000", respectively.

1993—Subsec. (k). Pub. L. 103–66, which directed amendment of section by adding subsec. (k) before the last subsection, was executed by adding subsec. (k) after subsec. (j) to reflect the probable intent of Congress.

1992—Subsec. (h). Pub. L. 102–318 substituted "3405(e)(10)(B)" for "3405(d)(10)(B)".

1989—Subsec. (k). Pub. L. 101–239, §7841(d)(5)(B), redesignated the subsec. (k), relating to alcohol and tobacco taxes, as (l).

Pub. L. 101–239, §7841(d)(5)(A), redesignated the subsection relating to information with respect to includible employee benefits as (k), see Codification note above.

Pub. L. 101–140 amended this section to read as if amendments by Pub. L. 99–514, §1151(b), had not been enacted, see Codification note above and 1986 Amendment note below.

Subsec. (l). Pub. L. 101–239, §7208(b)(2), added subsec. (l) and redesignated former subsec. (l) as (m).

Pub. L. 101–239, §7841(d)(5)(B), redesignated subsec. (k), relating to alcohol and tobacco taxes, as (l).

Subsec. (m). Pub. L. 101–239, §7208(b)(2), redesignated subsec. (l) as (m).

1988—Subsec. (j). Pub. L. 100–647, §1017(b), amended subsec. (j) as it existed prior to its repeal by Pub. L. 100–203, §10502(d)(11), by inserting "(and the corresponding provision of section 4041(d)(1))" after "section 4041(a)(1)", see 1987 Amendment note below.

Subsec. (k)(2)(B). Pub. L. 100–647, §3021(a)(10), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "the employer-provided benefit (within the meaning of section 89 without regard

to subsection (g)(3) thereof) with respect to the employee to whom such failure relates." See Codification note above.

Pub. L. 100–647, §1011B(a)(10), substituted "subsection (g)(3)(C)(i)" for "subsection (g)(3)". See Codification note above.

Subsec. (k)(4). Pub. L. 100–647, §1018(u)(36), substituted "or part II of subchapter B of this chapter" for "or section 6678". See Codification note above.

1987—Subsec. (c). Pub. L. 100–203, §10704(a), amended subsec. (c) generally, revising and restating as pars. (1) to (4) provisions of former pars. (1) to (3).

Subsec. (j). Pub. L. 100–203, §10502(d)(11), struck out subsec. (j), as added by section 1702(b) of Pub. L. 99–514, which related to failure to give written notice to certain sellers of diesel fuel.

Subsecs. (k), (l). Pub. L. 100–203, §10502(d)(11), redesignated subsec. (l), relating to information with respect to includible employee benefits, as (k), and directed the redesignation of a nonexistent subsec. (m) as (l). See Codification note above.

1986—Subsec. (a). Pub. L. 99–514, §1501(d)(1)(A), redesignated subsec. (b) as (a), substituted "Returns with respect to certain payments aggregating less than $10" for "Other returns" in heading, and struck out former subsec. (a) which provided penalties for failure to file returns relating to information at source, payments of dividends, etc. and certain transfers of stock.

Pub. L. 99–514, §1811(c)(2), inserted "(other than by subsection (d) of such section)" in par. (3)(A)(ii).

Subsecs. (b) to (f). Pub. L. 99–514, §1501(d)(1)(A)(i), redesignated subsecs. (c) to (f) as (b) to (e), respectively. Former subsec. (b) redesignated (a).

Subsec. (g). Pub. L. 99–514, §1501(d)(1)(A)(i), redesignated subsec. (h) as (g). Former subsec. (g) redesignated (f).

Pub. L. 99–514, §1810(f)(9)(C), struck out "etc.," after "Returns" in heading.

Subsec. (g)(1). Pub. L. 99–514, §1810(f)(9)(A), in amending par. (1) generally, struck out "(A)" after "In the case of each failure", and struck out "(B) to furnish a statement required by section 6039C(b)(3)," before "on the date required".

Subsec. (g)(3). Pub. L. 99–514, §1810(f)(9)(B), in amending par. (3) generally, designated former subpar. (B) of par. (3) as the entire paragraph, struck out former subpar. (A) setting a limitation of $25,000 with respect to each subsection for failure to meet the requirements of subsection (a) or (b) of section 6039C, struck out former subpar. (B) heading "For failure to meet requirements of section 6039C(c)" and in text substituted "requirements of section 6039C" for "requirements of subsection (c) of section 6039C" and inserted "(A)" before "$25,000" and "(B)" before "5 percent".

Subsecs. (h), (i). Pub. L. 99–514, §1501(d)(1)(A)(i), redesignated subsecs. (i) and (j) as (h) and (i), respectively. Former subsec. (h) redesignated (g).

Subsec. (j). Pub. L. 99–514, §1702(b), added subsec. (j) relating to failure to give written notice to certain sellers of diesel fuel, and redesignated former subsec. (j), relating to alcohol and tobacco taxes, as (k).

Pub. L. 99–514, §1301(g), added subsec. (j) relating to failure to file certification with respect to certain residential projects.

Pub. L. 99–514, §1501(d)(1)(A)(i), redesignated subsec. (k), relating to alcohol and tobacco taxes, as (j). Former subsec. (j), relating to failure to give written explanation to recipients of certain qualifying rollover distributions, redesignated (i). Such subsec. (j), relating to alcohol and tobacco taxes, was subsequently redesignated as subsec. (k) by section 1301(g) of Pub. L. 99–514, and also by section 1702(b) of Pub. L. 99–514, both of which added a new subsec. (j), see above.

Subsec. (k). Pub. L. 99–514, §1501(d)(1)(A)(i), redesignated subsec. (k), relating to alcohol and tobacco taxes, as (j). Subsequently, such subsec. (j) was redesignated as subsec. (k) by section 1301(g) of Pub. L. 99–514, and also by section 1702(b) of Pub. L. 99–514.

Subsecs. (l), (m). Pub. L. 99–514, §1151(b), directed the redesignation of a nonexistent subsec. (l) as (m), and added a new subsec. (l) relating to information with respect to includible employee benefits.

1984—Subsec. (a)(1)(B)(v). Pub. L. 98–369, §145(b)(1), added cl. (v).

Subsec. (a)(1)(B)(vi). Pub. L. 98–369, §146(b)(1), added cl. (vi).

Subsec. (a)(1)(B)(vii). Pub. L. 98–369, §148(b)(1), added cl. (vii).

Subsec. (a)(1)(B)(viii). Pub. L. 98–369, §149(b)(1), added cl. (viii).

Subsec. (a)(1)(B)(ix). Pub. L. 98–369, §155(b)(2)(A), added cl. (ix).

Subsec. (a)(3)(A)(iii). Pub. L. 98–369, §148(b)(2), substituted ", 6050I, or 6050J" for "or 6050I".

Pub. L. 98–369, §146(b)(2), substituted ", 6050H or 6050I" for "or section 6050H".

Pub. L. 98–369, §145(b)(2), inserted "or section 6050H" after "section 6041A(b)".

Subsec. (f). Pub. L. 98–611, §1(d)(2), and Pub. L. 98–612, §1(b)(2), made identical amendments, substituting "6039D (relating to returns and records with respect to certain fringe benefit plans)" for "125(h)

(relating to information with respect to cafeteria plans)".

Pub. L. 98–369, §531(b)(4)(B)(i), which directed the amendment of subsec. (f) by striking out "or 6047 (relating to information relating to certain trusts and annuity and bond purchase plans)" and inserting in lieu thereof ", 6047 (relating to information relating to certain trusts and annuity and bond purchase plans), or 125(h) (relating to information with respect to cafeteria plans)", was executed by substituting the quoted phrase for "or 6047 (relating to information relating to certain trusts and annuity plans)", as the probable intent of Congress.

Pub. L. 98–369, §531(b)(4)(B)(ii), inserted "; etc." in heading.

Pub. L. 98–369, §491(d)(50), struck out "and bond purchase" after "trusts and annuity".

Subsec. (i). Pub. L. 98–369, §714(j)(3), added subsec. (i). Former subsec. (i), relating to alcohol and tobacco taxes, redesignated (j).

Subsec. (j). Pub. L. 98–397, §207(b), added subsec. (j). Former subsec. (j), relating to alcohol and tobacco taxes, redesignated (k).

Pub. L. 98–369, §714(j)(3), redesignated former subsec. (i), relating to alcohol and tobacco taxes, as (j).

Subsec. (k). Pub. L. 98–397, §207(b), redesignated subsec. (j), relating to alcohol and tobacco taxes, as (k).

1983—Subsec. (a)(1)(A). Pub. L. 98–67, §105(b)(1)(B), struck out cls. (ii), (iii), and (iv), redesignated cls. (v) and (vi) as (ii) and (iii), respectively, and in cl. (iii), as so redesignated, struck out "6042(e), 6044(f), 6049(e), or" before "6051(d)".

Subsec. (a)(2), (3). Pub. L. 98–67, §105(b)(1)(A), (C), added par. (2), redesignated former par. (2) as (3), and in par. (3), as so redesignated, inserted references to paragraph (2) in provisions preceding subpar. (A) and in provisions of subpar. (A) preceding cl. (i).

Subsec. (a). Pub. L. 97–448, which directed that "or" be struck out at end of subpar. (F) of par. (1), "or" be inserted at end of par. (2), a new par. (3) be added, and that in provision following par. (3), "paragraph (2) or (3)" be substituted for "paragraph (2)", was executed by striking out "or" at end of subpar. (A)(vi) of par. (1), inserting "or" at end of subpar. (B)(iv) of par. (1), redesignating par. (3) as subpar. (C) and adding such subpar. (C), to par. (1), and in provision following subpar. (C) substituting "subparagraph (B) or (C)" for "subparagraph (B)", to reflect the probable intent of Congress and the intervening amendment of subsec. (a) by section 315(a) of Pub. L. 97–248 which redesignated former par. (1) as subpar. (A), former subpars. (A) to (F) as cls. (i) to (vi), and former par. (2) as subpar. (B), and in provision following subpar. (B) as so redesignated, substituted "subparagraph (B)" for "paragraph (2)".

1982—Subsec. (a). Pub. L. 97–248, §315(a), designated existing provisions as par. (1) with a heading "In general", redesignated former par. (1) as subpar. (A), in subpar. (A) as so redesignated struck out "aggregate" before "amount", redesignated former subpars. (A) through (F) as cls. (i) through (vi), respectively, in cls. (ii) and (iii) as so redesignated struck out "aggregating $10 or more" after "dividends", in cl. (iv) as so redesignated substituted "(a)" for "(a)(1)" and struck out "aggregating $10 or more" after "interest", in cl. (vi) as so redesignated inserted "6042(e), 6044(f), 6049(e), or" before "6051(d)", redesignated former par. (2) as subpar. (B), in subpar. (B) as so redesignated designated from "section 6052(a)" through the end of the parenthesis as cl. (iii) and struck out "with respect to group-term life insurance on the life of an employee" thereafter, added cls. (i), (ii), and (iv), in text after cl. (iv) substituted "subparagraph (A)" for "paragraph (1)", "subparagraph (B)" for "paragraph (2)", "$50 for each such failure" for "$10 for each such failure", and "shall not exceed $50,000" for "shall not exceed $25,000", and added par. (2).

Subsec. (b). Pub. L. 97–248, §309(b)(2), struck out pars. (3) and (4) which referred to section 6049(a)(2) and section 6049(a)(3), respectively, as sources of authority for the requirement of filing a statement of payment to another person.

Subsec. (f). Pub. L. 97–248, §315(b), substituted "$25" and "$15,000" for "$10" and "$5,000", respectively.

1981—Subsec. (a). Pub. L. 97–34, §723(a)(4), inserted in heading "information at source," before "payments of dividends".

Subsec. (a)(1). Pub. L. 97–34, §723(a)(1), added subpars. (A), (E), and (F), and redesignated former subpars. (A) to (C) as (B) to (D), respectively.

Subsec. (b). Pub. L. 97–34, §723(a)(3), substituted provisions relating to failure to file required statement of payment to another person under authority of section 6042(a)(2), 6044(a)(2), or 6049(a)(2) or (3), and imposition of penalties with a maximum of $1,000 for all failures during the calendar year, for provisions relating to failure to file required statement of payment to another person under authority of section 6041, 6042(a)(2), 6044(a)(2), 6049(a)(2) or (3), 6050A(a) or (b), 6050C, 6051(d), or 6053(b), and imposition of penalties with a maximum of $1,000 for all failures during the calendar year.

Subsecs. (h), (i). Pub. L. 97–34, §311(f), added subsec. (h) and redesignated former subsec. (h) as (i).

1980—Subsec. (b). Pub. L. 96–223 inserted reference to statement required by section 6050C (relating to information regarding windfall profit tax on crude oil).

Subsec. (d)(3). Pub. L. 96–603 substituted in heading "returns" for "reports" and in text "failure to comply" for "failure to file a report required under section 6056 (relating to annual reports by private foundations) or to comply", "failing to meet such requirements" for "failing so to file or meet the publicity requirement", and "failure with respect" for "failure to file or comply with the requirements of section 6104(d) with regard".

Subsecs. (g), (h). Pub. L. 96–499 added subsec. (g) and redesignated former subsec. (g) as (h).

1979—Subsec. (a). Pub. L. 96–167 inserted "or" after "$10 or more)," in par. (1), struck out par. (2) relating to failure to make a return required by section 6039(a) with respect to a transfer of stock or a transfer of legal title to stock, redesignated par. (3) as (2), and in closing provision substituted "return referred to in paragraph (2)" for "return referred to in paragraph (2) or (3)".

1976—Subsec. (a). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (b). Pub. L. 94–455, §§1207(e)(3)(B), (C), 1906(b)(13)(A), inserted "in the case of each failure to make a return required by section 6050A(a) (relating to reporting requirements of certain fishing boat operators)," after "income tax withheld)," and "or section 6050A(b) (relating to statements furnished by certain fishing boat operators)," after "respect to tips)," and struck out "or his delegate" after "Secretary".

Subsecs. (d) to (f). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary" wherever appearing.

1974—Pub. L. 93–406, §1031(b)(1)(B)(i), inserted ", registration statements, etc." in section catchline.

Subsecs. (e) to (g). Pub. L. 93–406, §1031(b)(1)(A), added subsecs. (e) and (f) and redesignated former subsec. (e) as (g).

1969—Subsecs. (d), (e). Pub. L. 91–172 added subsec. (d) and redesignated former subsec. (d) as (e).

1965—Subsec. (b). Pub. L. 89–97, §313(e)(2)(B), inserted "and in the case of each failure to furnish a statement required by section 6053(b) (relating to statements furnished by employers with respect to tips)," after "income tax withheld).".

Subsec. (c). Pub. L. 89–212 inserted "or which are compensation (as defined in section 3231(e))" and "or section 3201 (as the case may be)".

Pub. L. 89–97, §313(e)(3), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 89–97, §313(e)(3), redesignated former subsec. (c) as (d).

1964—Subsec. (a). Pub. L. 88–272 provided a penalty for failure to make a return required by section 6039(a) with respect to a transfer of stock or a transfer of legal title to stock, and by section 6052(a) with respect to group-term life insurance on the life of an employee.

1962—Subsec. (a). Pub. L. 87–834 added subsec. (a). Former subsec. (a) redesignated (b).

Subsec. (b). Pub. L. 87–834 redesignated former subsec. (a) as (b), and substituted "section 6042(a)(2) (relating to payments of dividends aggregating less than $10), section 6044(a)(2) (relating to payments of patronage dividends aggregating less than $10), section 6049(a)(2) (relating to payments of interest aggregating less than $10), section 6049(a)(3) (relating to other payments of interest by corporations), or section 6051(d) (relating to information returns with respect to income tax withheld)" for "section 6042(1) (relating to payments of corporate dividends), section 6044 (relating to patronage dividends), or section 6051(d) (relating to information returns with respect to income tax withheld)". Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 87–834 redesignated former subsec. (b) as (c).

1958—Subsec. (a). Pub. L. 85–866 substituted "section 6042(1)" for "section 6042" and "(upon notice and demand by the Secretary or his delegate and in the same manner as tax), by the person failing to so file the statement, $1 for each such statement not so filed" for "by the person failing to file the statement, upon notice and demand by the Secretary or his delegate and in the same manner as tax, $1 for each such statement not filed", deleted "section 6045 (relating to returns of brokers)" after "patronage dividends)" and inserted "on the date prescribed therefor (determined with regard to any extension of time for filing)" after "income tax withheld),".

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 1201(b)(2) of Pub. L. 109–280 applicable to returns for taxable years beginning after Dec. 31, 2006, see section 1201(c)(2) of Pub. L. 109–280, set out as a note under section 6034 of this title.

Amendment by section 1223(d) of Pub. L. 109–280 applicable to notices and returns with respect to annual periods beginning after 2006, see section 1223(f) of Pub. L. 109–280, set out as a note under section 6033 of this title.

Amendment by Pub. L. 109–222 applicable to disclosures the due date for which are after May 17, 2006, see section 516(d)(2) of Pub. L. 109–222, set out as an Effective Date note under section 4965 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by section 1(c) of Pub. L. 106–230 effective July 1, 2000, see section 1(d) of Pub. L. 106–230, set out as a note under section 527 of this title.

Amendment by section 3(c) of Pub. L. 106–230 applicable to returns for taxable years beginning after June 30, 2000, see section 3(d) of Pub. L. 106–230, set out as a note under section 6012 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–277 applicable to requests made after the later of Dec. 31, 1998, or the 60th day after the Secretary of the Treasury first issues the regulations referred to in section 6104(d)(4) of this title, see section 1004(b)(3) of Pub. L. 105–277, set out as a note under section 6104 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XII, §1281(e), Aug. 5, 1997, 111 Stat. 1037, provided that: "The amendments made by this section [amending this section and sections 6683 and 7519 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 5, 1997]."

Amendment by section 1602(d)(2)(B) of Pub. L. 105–34 effective as if included in the provisions of the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104–191, to which such amendment relates, see section 1602(i) of Pub. L. 105–34, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by section 1455(c), (d)(2) of Pub. L. 104–188 applicable to returns, reports, and other statements the due date for which (determined without regard to extensions) is after Dec. 31, 1996, see section 1455(e) of Pub. L. 104–188, set out as a note under section 408 of this title.

Pub. L. 104–168, title XIII, §1314(c), July 30, 1996, 110 Stat. 1481, provided that: "The amendments made by this section [amending this section] shall apply to returns for taxable years ending on or after the date of the enactment of this Act [July 30, 1996]."

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to stock issued after Aug. 10, 1993, see section 13113(e) of Pub. L. 103–66, set out as a note under section 53 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–318 applicable, except as otherwise provided, to distributions after Dec. 31, 1992, see section 522(d) of Pub. L. 102–318, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by section 7208(b)(2) of Pub. L. 101–239 applicable to transactions after Mar. 31, 1990, see section 7208(b)(4) of Pub. L. 101–239, set out as a note under section 6043 of this title.

Amendment by Pub. L. 101–140 effective as if included in section 1151 of Pub. L. 99–514, see section 203(c) of Pub. L. 101–140, set out as a note under section 79 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 1011B(a)(10), 1017(b), 1018(u)(36) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 3021(a)(10) of Pub. L. 100–647 effective as if included in the amendments by section 1151 of Pub. L. 99–514, see section 3021(d)(1) of Pub. L. 100–647, set out as a note under section 129 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 10502(d)(11) of Pub. L. 100–203 applicable to sales after Mar. 31, 1988, see section 10502(e) of Pub. L. 100–203, set out as a note under section 40 of this title.

Pub. L. 100–203, title X, §10704(d), Dec. 22, 1987, 101 Stat. 1330–463, provided that: "The amendments made by this section [amending this section and sections 6685 and 7207 of this title] shall apply—

"(1) to returns for years beginning after December 31, 1986, and

"(2) on and after the date of the enactment of this Act [Dec. 22, 1987] in the case of applications submitted to the Internal Revenue Service—

"(A) after July 15, 1987, or

"(B) on or before July 15, 1987, if the organization has a copy of the application on July 15,

1987."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1151(b) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1988, with certain qualifications and exceptions, see section 1151(k) of Pub. L. 99–514, as amended, set out as a note under section 79 of this title.

Amendment by section 1301(g) of Pub. L. 99–514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99–514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

Amendment by section 1501(d)(1)(A) of Pub. L. 99–514 applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1986, see section 1501(e) of Pub. L. 99–514, set out as an Effective Date note under section 6721 of this title.

Amendment by section 1702(b) of Pub. L. 99–514 applicable to sales after first calendar quarter beginning more than 60 days after Oct. 22, 1986, see section 1702(c) of Pub. L. 99–514, set out as a note under section 4041 of this title.

Amendment by sections 1810(f)(9) and 1811(c)(2) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98–612 effective Jan. 1, 1985, see section 1(d)(2) of Pub. L. 98–612, Oct. 31, 1984, 98 Stat. 3181.

Amendment by Pub. L. 98–611 effective Jan. 1, 1985, see section 1(g)(2) of Pub. L. 98–611, set out as a note under section 127 of this title.

Amendment by Pub. L. 98–397 applicable to distributions after Dec. 31, 1984, see section 302(c) of Pub. L. 98–397, set out as a note under section 1001 of Title 29, Labor.

Amendment by section 145(b)(1), (2) of Pub. L. 98–369 applicable to amounts received after Dec. 31, 1984, see section 145(d) of Pub. L. 98–369, set out as an Effective Date note under section 6050H of this title.

Amendment by section 146(b)(1), (2) of Pub. L. 98–369 applicable to amounts received after Dec. 31, 1984, see section 146(d) of Pub. L. 98–369, set out as an Effective Date note under section 6050I of this title.

Amendment by section 148(b)(1), (2) of Pub. L. 98–369 applicable with respect to acquisitions of property and abandonments of property after Dec. 31, 1984, see section 148(d) of Pub. L. 98–369, set out as an Effective Date note under section 6050J of this title.

Amendment by section 149(b)(1) of Pub. L. 98–369 applicable with respect to exchanges after Dec. 31, 1984, see section 149(d) of Pub. L. 98–369, set out as an Effective Date note under section 6050K of this title.

Amendment by section 155(b)(2)(A) of Pub. L. 98–369 applicable to contributions made after Dec. 31, 1984, in taxable years ending after such date, see section 155(d)(1) of Pub. L. 98–369, set out as an Effective Date note under section 6050L of this title.

Amendment by section 491(d)(50) of Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

Amendment by section 531(b)(4)(B) of Pub. L. 98–369 effective Jan. 1, 1985, see section 531(h) of Pub. L. 98–369, set out as an Effective Date note under section 132 of this title.

Amendment by section 714(j)(3) of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

Amendment by Pub. L. 98–67 applicable with respect to payments made after Dec. 31, 1983, see section 110(a) of Pub. L. 98–67, set out as a note under section 31 of this title.

Pub. L. 97–448, title II, §203(a), (b), Jan. 12, 1983, 96 Stat. 2397, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) GENERAL RULE.—Except as provided in subsection (b), any amendment made by this title [amending this section and sections 44D, 46, 48, 193, 613A, 4988, 4989, 4991–4997, 6015, 6154, 6654, 6655, and 6678 of this title, enacting provisions set out as notes under section 4996 of this title, and amending a provision set out as a note under section 44E of this title] shall take effect as if it had been included in the provision of the Crude Oil Windfall Profit Tax Act of 1980 [Pub. L. 96–223] to which such amendment relates.

"(b) EXCEPTIONS.—

"(1) DEFINITION OF INDEPENDENT PRODUCER.—The amendment made by section 201(d)(1)

[amending section 4992 of this title] shall take effect on January 1, 1983.

"(2) PENALTY PROVISION.—The amendments made by section 201(i) [amending this section and sections 4997 and 6678 of this title] shall apply with respect to returns and statements the due dates for which (without regard to extensions) are after the date of the enactment of this Act [Jan. 12, 1983].

"(3) AMENDMENTS TO SECTION 613A.—

"(A) The amendment made by section 202(d)(1) [amending section 613A of this title] shall apply to transfers in taxable years ending after December 31, 1974, but only for purposes of applying section 613A of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] to periods after December 31, 1979.

"(B) The amendment made by section 202(d)(2) [amending section 613A of this title] shall apply to bulk sales after September 18, 1982.

"(4) NO WITHHOLDING BY REASON OF CONDENSATE PROVISION.—No withholding of tax shall be required under section 4995 of the Internal Revenue Code of 1986 by reason of the amendment made by section 201(h)(2)(A) of this Act [amending section 4996 of this title] before the date on which regulations with respect to such amendment are published in the Federal Register."

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 309(b)(2) of Pub. L. 97–248 applicable to amounts paid (or treated as paid) after Dec. 31, 1982, see section 309(c) of Pub. L. 97–248, set out as a note under section 6049 of this title.

Pub. L. 97–248, title III, §315(d), Sept. 3, 1982, 96 Stat. 607, provided that: "The amendments made by this section [amending this section and section 6678 of this title] shall apply with respect to returns or statements the due date for the filing of which (without regard to extensions) is after December 31, 1982."

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 311(f) of Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 311(i)(1) of Pub. L. 97–34, set out as a note under section 219 of this title.

Pub. L. 97–34, title VII, §723(c), Aug. 13, 1981, 95 Stat. 344, provided that: "The amendments made by this section [amending this section and sections 6041 and 6678 of this title] shall apply to returns and statements required to be furnished after December 31, 1981."

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–603 applicable to taxable years beginning after Dec. 31, 1980, see section 1(f) of Pub. L. 96–603, set out as a note under section 6033 of this title.

Amendment by Pub. L. 96–499, applicable to 1980 and subsequent calendar years, with 1980 being treated as beginning on June 19, 1980, and ending on Dec. 31, 1980, see section 1125(b) of Pub. L. 96–499, set out as an Effective Date note under section 897 of this title.

Amendment by Pub. L. 96–223 applicable to periods after Feb. 29, 1980, see section 101(i) of Pub. L. 96–223, set out as a note under section 6161 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Pub. L. 96–167, §7(c), Dec. 29, 1979, 93 Stat. 1277, provided that: "The amendments made by this section [amending this section and sections 6039 and 6678 of this title] shall apply with respect to calendar years beginning after 1979."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1207(e)(3)(B), (C) of Pub. L. 94–455 applicable to calendar years beginning after Oct. 4, 1976, see section 1207(f)(4) of Pub. L. 94–455, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–406 effective Sept. 2, 1974, see section 1034 of Pub. L. 93–406, set out as an Effective Date note under section 6057 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 101(k)(2)(B) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

EFFECTIVE DATE OF 1965 AMENDMENTS

Amendment by Pub. L. 89–212 effective only with respect to tips received after 1965, see section 6 of Pub. L. 89–212, set out as a note under section 3201 of this title.

Amendment by Pub. L. 89–97 applicable only with respect to tips received by employees after 1965, see section 313(f) of Pub. L. 89–97, set out as an Effective Date note under section 6053 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to group-term life insurance provided after Dec. 31, 1963, in taxable years ending after such date, see section 204(d) of Pub. L. 88–272, set out as an Effective Date note under section 79 of this title.

Amendment by Pub. L. 88–272 applicable to taxable years ending after Dec. 31, 1963, except for par. (2) of subsec. (a) which shall apply to stock transferred pursuant to options exercised on or after Jan. 1, 1964, see section 221(e) of Pub. L. 88–272, set out as a note under section 421 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable to payments of dividends and interest made on or after Jan. 1, 1963, and to payments of amounts described in section 6044(b) of this title made on or after Jan. 1, 1963, with respect to patronage occurring on or after the first day of the first taxable year of the cooperative beginning on or after Jan. 1, 1963, see section 19(h) of Pub. L. 87–834, set out as a note under section 6042 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 effective Aug. 17, 1954, see section 1(c)(2) of Pub. L. 85–866, set out as a note under section 165 of this title.

NONENFORCEMENT OF AMENDMENT MADE BY SECTION 1151 OF PUB. L. 99–514 FOR FISCAL YEAR 1990

No monies appropriated by Pub. L. 101–136 to be used to implement or enforce section 1151 of Pub. L. 99–514 or the amendments made by such section, see section 528 of Pub. L. 101–136, set out as a note under section 89 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§1401–1465] of title I of Pub. L. 104–188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[1] *See 1993 Amendment note below.*

§6653. Failure to pay stamp tax

Any person (as defined in section 6671(b)) who—

(1) willfully fails to pay any tax imposed by this title which is payable by stamp, coupons, tickets, books, or other devices or methods prescribed by this title or by regulations under the authority of this title, or

(2) willfully attempts in any manner to evade or defeat any such tax or the payment thereof,

shall, in addition to other penalties provided by law, be liable for a penalty of 50 percent of the total amount of the underpayment of the tax.

(Aug. 16, 1954, ch. 736, 68A Stat. 822; Pub. L. 85–866, title I, §86, Sept. 2, 1958, 72 Stat. 1665; Pub. L. 91–172, title I, §101(j)(50), title IX, §943(c)(6), Dec. 30, 1969, 83 Stat. 531, 729; Pub. L.

91–679, §2, Jan. 12, 1971, 84 Stat. 2063; Pub. L. 93–406, title II, §1016(a)(18), Sept. 2, 1974, 88 Stat. 931; Pub. L. 96–223, title I, §101(f)(8), Apr. 2, 1980, 94 Stat. 253; Pub. L. 97–34, title V, §501(b), title VII, §722(b)(1), Aug. 13, 1981, 95 Stat. 326, 342; Pub. L. 97–248, title III, §325(a), Sept. 3, 1982, 96 Stat. 616; Pub. L. 97–448, title I, §§105(a)(1)(D), 107(a)(3), Jan. 12, 1983, 96 Stat. 2384, 2391; Pub. L. 98–67, title I, §106, Aug. 5, 1983, 97 Stat. 382; Pub. L. 98–369, div. A, title I, §179(b)(3), July 18, 1984, 98 Stat. 718; Pub. L. 99–44, §1(b), May 24, 1985, 99 Stat. 77; Pub. L. 99–514, title XV, §1503(a), (b), (c)(2), (3), (d)(1), Oct. 22, 1986, 100 Stat. 2742, 2743; Pub. L. 100–647, title I, §1015(b)(2)(A), (B), (3), Nov. 10, 1988, 102 Stat. 3569; Pub. L. 101–239, title VII, §7721(c)(1), Dec. 19, 1989, 103 Stat. 2399.)

AMENDMENTS

1989—Pub. L. 101–239 substituted "Failure to pay stamp tax" for "Additions to tax for negligence and fraud" in section catchline and amended text generally, substituting a single par. for former subsecs. (a) to (g).

1988—Subsec. (a)(1). Pub. L. 100–647, §1015(b)(2)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "If any part of any underpayment (as defined in subsection (c)) is due to negligence or disregard of rules or regulations, there shall be added to the tax an amount equal to the sum of—

"(A) 5 percent of the underpayment, and

"(B) an amount equal to 50 percent of the interest payable under section 6601 with respect to the portion of such underpayment which is attributable to negligence for the period beginning on the last date prescribed by law for payment of such underpayment (determined without regard to any extension) and ending on the date of the assessment of the tax (or, if earlier, the date of the payment of the tax)."

Subsec. (b)(1). Pub. L. 100–647, §1015(b)(2)(B), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "If any part of any underpayment (as defined in subsection (c)) of tax required to be shown on a return is due to fraud, there shall be added to the tax an amount equal to the sum of—

"(A) 75 percent of the portion of the underpayment which is attributable to fraud, and

"(B) an amount equal to 50 percent of the interest payable under section 6601 with respect to such portion for the period beginning on the last day prescribed by law for payment of such underpayment (determined without regard to any extension) and ending on the date of the assessment of the tax or, if earlier, the date of the payment of the tax."

Subsec. (g). Pub. L. 100–647, §1015(b)(3), inserted at end "If any penalty is imposed under subsection (a) by reason of the preceding sentence, only the portion of the underpayment which is attributable to the failure described in the preceding sentence shall be taken into account in determining the amount of the penalty under subsection (a)."

1986—Pub. L. 99–514, §1503(d)(1), substituted "Additions to tax for negligence and fraud" for "Failure to pay tax" in section catchline.

Subsec. (a). Pub. L. 99–514, §1503(a), added subsec. (a) and struck out former subsec. (a) which added percentage to tax due for underpayment of taxes where negligence or intentional disregard of rules and regulations with respect to income, gift, or windfall profit taxes was involved, and also provided additional interest penalty for portion of underpayment attributable to negligence, etc.

Subsec. (b). Pub. L. 99–514, §1503(b), added subsec. (b) and struck out former subsec. (b) which added percentage to tax due for underpayment of taxes where fraud was involved, and also provided for additional interest penalty, but stated that there would be no negligence addition where there was addition for fraud, and concluded with special rule for joint returns.

Subsec. (d). Pub. L. 99–514, §1503(c)(2), substituted "portion of the underpayment which is attributable to fraud" for "same underpayment".

Subsec. (f). Pub. L. 99–514, §1503(c)(3), struck out "or intentional disregard of rules and regulations (but without intent to defraud)" after "underpayment due to negligence".

Subsec. (g). Pub. L. 99–514, §1503(b), amended subsec. (g) generally, substituting provisions relating to special rule for amounts shown on information returns for provisions relating to special rule in case of interest or dividend payments, and struck out provision that penalty was to apply only to portion of underpayment due to failure to include interest or dividend payment.

1985—Subsec. (h). Pub. L. 99–44 repealed Pub. L. 98–369, §179(b)(3), which added subsec. (h), and provided that the Internal Revenue Code of 1954 [now 1986] [this title] shall be applied and administered as if section 179(b)(3) (and the amendments made by such section) had not been enacted. See 1984 Amendment note and Effective Date of 1985 Amendment note below.

1984—Subsec. (h). Pub. L. 98–369 added subsec. (h) which provided for a special rule in the case of underpayment attributable to failure to meet the substantiation requirements of section 274(d) of this title. See

1985 Amendment note above.

1983—Subsec. (a)(2)(B). Pub. L. 97–448, §107(a)(3), inserted "(or, if earlier, the date of the payment of the tax)" after "assessment of the tax".

Subsec. (f). Pub. L. 97–448, §105(a)(1)(D), redesignated subsec. (g), added by Pub. L. 97–34, as (f) and substituted "unrecognized gain" for "unrealized gain" in heading.

Subsec. (g). Pub. L. 98–67 added subsec. (g).

Pub. L. 97–448, §105(a)(1)(D), redesignated subsec. (g), added by Pub. L. 97–34, as (f).

1982—Subsec. (b). Pub. L. 97–248 designated first sentence of existing provisions as par. (1) with heading "In general", struck out second sentence which provided that in the case of income taxes and gift taxes, the amount under this subsec. shall be in lieu of any amount determined under subsec. (a), added pars. (2) and (3), designated last sentence as par. (4) with heading "Special rule for joint returns", and in par. (4) as so designated substituted "of the spouse" for "of a spouse".

1981—Subsec. (a). Pub. L. 97–34, §722(b)(1), designated existing provisions as par. (1), inserted heading, struck out "(relating to income taxes and gift taxes)", and added par. (2) after "subtitle B".

Subsec. (g). Pub. L. 97–34, §501(b), added subsec. (g).

1980—Subsec. (a). Pub. L. 96–223 substituted ", gift, or windfall profit taxes" for "or gift taxes" in heading, and in text substituted "," for "or" before "by chapter 12" and inserted ", or by chapter 45 (relating to windfall profit tax)" before "is due to negligence".

1974—Subsec. (c)(1). Pub. L. 93–406 substituted "certain excise" for "chapter 42" in heading and text.

1971—Subsec. (b). Pub. L. 91–679 inserted sentence making subsection inapplicable, in the case of a joint return under section 6013 of this title, with respect to the tax of a spouse unless some part of the underpayment is due to the fraud of such spouse.

1969—Subsec. (c)(1). Pub. L. 91–172, §101(j)(50), inserted reference to chapter 42 taxes in heading and text.

Subsec. (d). Pub. L. 91–172, §943(c)(6), inserted "or pay tax" after "such return".

1958—Subsec. (c)(1). Pub. L. 85–866, inserted "on or" after "such return was filed".

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1989, see section 7721(d) of Pub. L. 101–239, set out as a note under section 461 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1015(b)(2)(A), (B) of Pub. L. 100–647 applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1988, see section 1015(b)(4) of Pub. L. 100–647, set out as a note under section 6013 of this title.

Amendment by section 1015(b)(3) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XV, §1503(e), Oct. 22, 1986, 100 Stat. 2743, provided that: "The amendments made by this section [amending this section and section 6222 of this title] shall apply to returns the due date for which (determined without regard to extensions) is after December 31, 1986."

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–44 effective as if included in the amendments made by section 179(b) of Pub. L. 98–369, see section 6(a) of Pub. L. 99–44, set out as a note under section 274 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1984, see section 179(d)(2) of Pub. L. 98–369, set out as an Effective Date note under section 280F of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

Amendment by Pub. L. 98–67 applicable with respect to payments made after Dec. 31, 1983, see section 110(a) of Pub. L. 98–67, set out as a note under section 31 of this title.

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title III, §325(b), Sept. 3, 1982, 96 Stat. 617, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to taxes the last day prescribed by law for payment of which (determined without regard to any extension) is after the date of enactment of this Act [Sept. 3, 1982]."

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 501(b) of Pub. L. 97–34 applicable to property acquired and positions established by the taxpayer after June 23, 1981, in taxable years ending after such date, and applicable when so elected with respect to property held on June 23, 1981, see section 508 of Pub. L. 97–34, set out as an Effective Date note under section 1092 of this title.

Pub. L. 97–34, title VII, §722(b)(2), Aug. 13, 1981, 95 Stat. 343, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to taxes the last date prescribed for payment of which is after December 31, 1981."

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–223 applicable to periods after Feb. 29, 1980, see section 101(i) of Pub. L. 96–223, set out as a note under section 6161 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–406 applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93–406, for plan years beginning after Sept. 2, 1974, but, in the case of plans in existence on Jan. 1, 1974, amendment by Pub. L. 93–406 applicable for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93–406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 91–679 applicable to all taxable years to which this title applies, see section 3 of Pub. L. 91–679, set out as a note under section 6013 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 101(j)(50) of Pub. L. 91–172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

Amendment by section 943(c)(6) of Pub. L. 91–172 applicable with respect to tax returns the date prescribed by law for filing of which is after Dec. 31, 1969, see section 943(d) of Pub. L. 91–172, set out as a note under section 6651 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 effective Aug. 17, 1954, see section 1(c)(2) of Pub. L. 85–866, set out as a note under section 165 of this title.

REPEAL OF REGULATIONS COVERING SUBSTANTIATION BY ADEQUATE CONTEMPORANEOUS RECORDS

Regulations issued before May 24, 1985, to carry out subsec. (h) of this section as added by section 179(b)(3) of Pub. L. 98–369 to have no force and effect, see section 1(c) of Pub. L. 99–44, set out as a note under section 274 of this title.

§6654. Failure by individual to pay estimated income tax

(a) Addition to the tax

Except as otherwise provided in this section, in the case of any underpayment of estimated tax by an individual, there shall be added to the tax under chapter 1 [1] the tax under chapter 2, and the tax under chapter 2A for the taxable year an amount determined by applying—

(1) the underpayment rate established under section 6621,

(2) to the amount of the underpayment,

(3) for the period of the underpayment.

(b) Amount of underpayment; period of underpayment

For purposes of subsection (a)—

(1) Amount

The amount of the underpayment shall be the excess of—

(A) the required installment, over

(B) the amount (if any) of the installment paid on or before the due date for the installment.

(2) Period of underpayment

The period of the underpayment shall run from the due date for the installment to whichever of the following dates is the earlier—

(A) the 15th day of the 4th month following the close of the taxable year, or

(B) with respect to any portion of the underpayment, the date on which such portion is paid.

(3) Order of crediting payments

For purposes of paragraph (2)(B), a payment of estimated tax shall be credited against unpaid required installments in the order in which such installments are required to be paid.

(c) Number of required installments; due dates

For purposes of this section—

(1) Payable in 4 installments

There shall be 4 required installments for each taxable year.

(2) Time for payment of installments

In the case of the following required installments:	The due date is:
1st	April 15
2nd	June 15
3rd	September 15
4th	January 15 of the following taxable year.

(d) Amount of required installments

For purposes of this section—

(1) Amount

(A) In general

Except as provided in paragraph (2), the amount of any required installment shall be 25 percent of the required annual payment.

(B) Required annual payment

For purposes of subparagraph (A), the term "required annual payment" means the lesser of—

(i) 90 percent of the tax shown on the return for the taxable year (or, if no return is filed, 90 percent of the tax for such year), or

(ii) 100 percent of the tax shown on the return of the individual for the preceding taxable year.

Clause (ii) shall not apply if the preceding taxable year was not a taxable year of 12 months or if the individual did not file a return for such preceding taxable year.

(C) Limitation on use of preceding year's tax

(i) In general

If the adjusted gross income shown on the return of the individual for the preceding taxable

year beginning in any calendar year exceeds $150,000, clause (ii) of subparagraph (B) shall be applied by substituting the applicable percentage for "100 percent". For purposes of the preceding sentence, the applicable percentage shall be determined in accordance with the following table:

If the preceding taxable year begins in:	The applicable percentage is:
1998	105
1999	108.6
2000	110
2001	112
2002 or thereafter	110.

This clause shall not apply in the case of a preceding taxable year beginning in calendar year 1997.

(ii) Separate returns

In the case of a married individual (within the meaning of section 7703) who files a separate return for the taxable year for which the amount of the installment is being determined, clause (i) shall be applied by substituting "$75,000" for "$150,000".

(iii) Special rule

In the case of an estate or trust, adjusted gross income shall be determined as provided in section 67(e).

(D) Special rule for 2009

(i) In general

Notwithstanding subparagraph (C), in the case of any taxable year beginning in 2009, clause (ii) of subparagraph (B) shall be applied to any qualified individual by substituting "90 percent" for "100 percent".

(ii) Qualified individual

For purposes of this subparagraph, the term "qualified individual" means any individual if—

(I) the adjusted gross income shown on the return of such individual for the preceding taxable year is less than $500,000, and

(II) such individual certifies that more than 50 percent of the gross income shown on the return of such individual for the preceding taxable year was income from a small business.

A certification under subclause (II) shall be in such form and manner and filed at such time as the Secretary may by regulations prescribe.

(iii) Income from a small business

For purposes of clause (ii), income from a small business means, with respect to any individual, income from a trade or business the average number of employees of which was less than 500 employees for the calendar year ending with or within the preceding taxable year of the individual.

(iv) Separate returns

In the case of a married individual (within the meaning of section 7703) who files a separate return for the taxable year for which the amount of the installment is being determined, clause (ii)(I) shall be applied by substituting "$250,000" for "$500,000".

(v) Estates and trusts

In the case of an estate or trust, adjusted gross income shall be determined as provided in section 67(e).

(2) Lower required installment where annualized income installment is less than amount determined under paragraph (1)

(A) In general

In the case of any required installment, if the individual establishes that the annualized income installment is less than the amount determined under paragraph (1)—

(i) the amount of such required installment shall be the annualized income installment, and

(ii) any reduction in a required installment resulting from the application of this subparagraph shall be recaptured by increasing the amount of the next required installment determined under paragraph (1) by the amount of such reduction (and by increasing subsequent required installments to the extent that the reduction has not previously been recaptured under this clause).

(B) Determination of annualized income installment

In the case of any required installment, the annualized income installment is the excess (if any) of—

(i) an amount equal to the applicable percentage of the tax for the taxable year computed by placing on an annualized basis the taxable income, alternative minimum taxable income, and adjusted self-employment income for months in the taxable year ending before the due date for the installment, over

(ii) the aggregate amount of any prior required installments for the taxable year.

(C) Special rules

For purposes of this paragraph—

(i) Annualization

The taxable income, alternative minimum taxable income, and adjusted self-employment income shall be placed on an annualized basis under regulations prescribed by the Secretary.

(ii) Applicable percentage

In the case of the following required installments:	The applicable percentage is:
1st	22.5
2nd	45
3rd	67.5
4th	90.

(iii) Adjusted self-employment income

The term "adjusted self-employment income" means self-employment income (as defined in section 1402(b)); except that section 1402(b) shall be applied by placing wages (within the meaning of section 1402(b)) for months in the taxable year ending before the due date for the installment on an annualized basis consistent with clause (i).

(D) Treatment of subpart F and section 936 income

(i) In general

Any amounts required to be included in gross income under section 936(h) or 951(a) (and credits properly allocable thereto) shall be taken into account in computing any annualized income installment under subparagraph (B) in a manner similar to the manner under which

partnership income inclusions (and credits properly allocable thereto) are taken into account.

(ii) Prior year safe harbor

If a taxpayer elects to have this clause apply to any taxable year—

(I) clause (i) shall not apply, and

(II) for purposes of computing any annualized income installment for such taxable year, the taxpayer shall be treated as having received ratably during such taxable year items of income and credit described in clause (i) in an amount equal to the amount of such items shown on the return of the taxpayer for the preceding taxable year (the second preceding taxable year in the case of the first and second required installments for such taxable year).

(e) Exceptions

(1) Where tax is small amount

No addition to tax shall be imposed under subsection (a) for any taxable year if the tax shown on the return for such taxable year (or, if no return is filed, the tax), reduced by the credit allowable under section 31, is less than $1,000.

(2) Where no tax liability for preceding taxable year

No addition to tax shall be imposed under subsection (a) for any taxable year if—

(A) the preceding taxable year was a taxable year of 12 months,

(B) the individual did not have any liability for tax for the preceding taxable year, and

(C) the individual was a citizen or resident of the United States throughout the preceding taxable year.

(3) Waiver in certain cases

(A) In general

No addition to tax shall be imposed under subsection (a) with respect to any underpayment to the extent the Secretary determines that by reason of casualty, disaster, or other unusual circumstances the imposition of such addition to tax would be against equity and good conscience.

(B) Newly retired or disabled individuals

No addition to tax shall be imposed under subsection (a) with respect to any underpayment if the Secretary determines that—

(i) the taxpayer—

(I) retired after having attained age 62, or

(II) became disabled,

in the taxable year for which estimated payments were required to be made or in the taxable year preceding such taxable year, and

(ii) such underpayment was due to reasonable cause and not to willful neglect.

(f) Tax computed after application of credits against tax

For purposes of this section, the term "tax" means—

(1) the tax imposed by chapter 1 (other than any increase in such tax by reason of section 143(m)), plus

(2) the tax imposed by chapter 2, plus

(3) the taxes imposed by chapter 2A, minus

(4) the credits against tax provided by part IV of subchapter A of chapter 1, other than the credit against tax provided by section 31 (relating to tax withheld on wages).

(g) Application of section in case of tax withheld on wages

(1) In general

For purposes of applying this section, the amount of the credit allowed under section 31 for the taxable year shall be deemed a payment of estimated tax, and an equal part of such amount shall

be deemed paid on each due date for such taxable year, unless the taxpayer establishes the dates on which all amounts were actually withheld, in which case the amounts so withheld shall be deemed payments of estimated tax on the dates on which such amounts were actually withheld.

(2) Separate application

The taxpayer may apply paragraph (1) separately with respect to—

(A) wage withholding, and

(B) all other amounts withheld for which credit is allowed under section 31.

(h) Special rule where return filed on or before January 31

If, on or before January 31 of the following taxable year, the taxpayer files a return for the taxable year and pays in full the amount computed on the return as payable, then no addition to tax shall be imposed under subsection (a) with respect to any underpayment of the 4th required installment for the taxable year.

(i) Special rules for farmers and fishermen

For purposes of this section—

(1) In general

If an individual is a farmer or fisherman for any taxable year—

(A) there shall be only 1 required installment for the taxable year,

(B) the due date for such installment shall be January 15 of the following taxable year,

(C) the amount of such installment shall be equal to the required annual payment determined under subsection (d)(1)(B) by substituting "662/3 percent" for "90 percent" and without regard to subparagraph (C) of subsection (d)(1), and

(D) subsection (h) shall be applied—

(i) by substituting "March 1" for "January 31", and

(ii) by treating the required installment described in subparagraph (A) of this paragraph as the 4th required installment.

(2) Farmer or fisherman defined

An individual is a farmer or fisherman for any taxable year if—

(A) the individual's gross income from farming or fishing (including oyster farming) for the taxable year is at least 662/3 percent of the total gross income from all sources for the taxable year, or

(B) such individual's gross income from farming or fishing (including oyster farming) shown on the return of the individual for the preceding taxable year is at least 662/3 percent of the total gross income from all sources shown on such return.

(j) Special rules for nonresident aliens

In the case of a nonresident alien described in section 6072(c):

(1) Payable in 3 installments

There shall be 3 required installments for the taxable year.

(2) Time for payment of installments

The due dates for required installments under this subsection shall be determined under the following table:

In the case of the following required installments:	The due date is:
1st	June 15
2nd	September 15
3rd	January 15 of the following taxable year.

(3) Amount of required installments

(A) First required installment

In the case of the first required installment, subsection (d) shall be applied by substituting "50 percent" for "25 percent" in subsection (d)(1)(A).

(B) Determination of applicable percentage

The applicable percentage for purposes of subsection (d)(2) shall be determined under the following table:

In the case of the following required installments:	The applicable percentage is:
1st	22.5
2nd	45
3rd	67.5
4th	90.

(k) Fiscal years and short years

(1) Fiscal years

In applying this section to a taxable year beginning on any date other than January 1, there shall be substituted, for the months specified in this section, the months which correspond thereto.

(2) Short taxable year

This section shall be applied to taxable years of less than 12 months in accordance with regulations prescribed by the Secretary.

(l) Estates and trusts

(1) In general

Except as otherwise provided in this subsection, this section shall apply to any estate or trust.

(2) Exception for estates and certain trusts

With respect to any taxable year ending before the date 2 years after the date of the decedent's death, this section shall not apply to—

(A) the estate of such decedent, or

(B) any trust—

(i) all of which was treated (under subpart E of part I of subchapter J of chapter 1) as owned by the decedent, and

(ii) to which the residue of the decedent's estate will pass under his will (or, if no will is admitted to probate, which is the trust primarily responsible for paying debts, taxes, and expenses of administration).

(3) Exception for charitable trusts and private foundations

This section shall not apply to any trust which is subject to the tax imposed by section 511 or which is a private foundation.

(4) Special rule for annualizations

In the case of any estate or trust to which this section applies, subsection (d)(2)(B)(i) shall be applied by substituting "ending before the date 1 month before the due date for the installment" for "ending before the due date for the installment".

(m) Special rule for Medicare tax

For purposes of this section, the tax imposed under section 3101(b)(2) (to the extent not withheld)

shall be treated as a tax imposed under chapter 2.

(n) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section.

(Aug. 16, 1954, ch. 736, 68A Stat. 823; Pub. L. 87–682, §1(a)(4), Sept. 25, 1962, 76 Stat. 575; Pub. L. 89–368, title I, §§102(b)(1)–(3), 103(a), Mar. 15, 1966, 80 Stat. 62–64; Pub. L. 91–172, title III, §301(b)(13), Dec. 30, 1969, 83 Stat. 586; Pub. L. 92–5, title II, §203(b)(7), Mar. 17, 1971, 85 Stat. 11; Pub. L. 92–336, title II, §203(b)(7), July 1, 1972, 86 Stat. 420; Pub. L. 93–66, title II, §203(b)(7), (d), July 9, 1973, 87 Stat. 153; Pub. L. 93–233, §5(b)(7), (d), Dec. 31, 1973, 87 Stat. 954; Pub. L. 93–625, §7(c), Jan. 3, 1975, 88 Stat. 2115; Pub. L. 94–455, title XIX, §1906(a)(35), (b)(13)(A), Oct. 4, 1976, 90 Stat. 1829, 1834; Pub. L. 95–30, title I, §102(b)(16), May 23, 1977, 91 Stat. 139; Pub. L. 95–600, title IV, §421(e)(9), Nov. 6, 1978, 92 Stat. 2877; Pub. L. 97–34, title VI, §601(a)(6)(A), title VII, §725(b), (c)(5), Aug. 13, 1981, 95 Stat. 336, 346; Pub. L. 97–248, title II, §207(d)(7), formerly §207(c)(7), title III, §§307(a)(14), 308(a), 328(a), Sept. 3, 1982, 96 Stat. 420, 590, 591, 618, renumbered §207(d)(7), Pub. L. 97–448, title III, §306(a)(1)(A)(i), Jan. 12, 1983, 96 Stat. 2400; Pub. L. 97–448, title I, §§106(a)(4)(C), 107(c)(1), title II, §201(j)(3), Jan. 12, 1983, 96 Stat. 2390, 2391, 2396; Pub. L. 98–67, title I, §102(a), Aug. 5, 1983, 97 Stat. 369; Pub. L. 98–369, div. A, title IV, §411, July 18, 1984, 98 Stat. 788; Pub. L. 99–514, title XIV, §1404(a), title XV, §§1511(c)(14), 1541(a), (b), title XVIII, §1841, Oct. 22, 1986, 100 Stat. 2713, 2745, 2751, 2852; Pub. L. 100–418, title I, §1941(b)(6)(A), Aug. 23, 1988, 102 Stat. 1324; Pub. L. 100–647, title I, §1014(d)(1), (2), title IV, §4005(g)(5), Nov. 10, 1988, 102 Stat. 3560, 3651; Pub. L. 101–239, title VII, §7811(j)(5), (6), Dec. 19, 1989, 103 Stat. 2411, 2412; Pub. L. 102–164, title IV, §403(a), (b), Nov. 15, 1991, 105 Stat. 1062, 1064; Pub. L. 103–66, title XIII, §13214(a), (b), Aug. 10, 1993, 107 Stat. 475; Pub. L. 103–465, title VII, §711(b), Dec. 8, 1994, 108 Stat. 4998; Pub. L. 105–34, title X, §1091(a), title XII, §1202(a), Aug. 5, 1997, 111 Stat. 962, 994; Pub. L. 105–277, div. J, title II, §2003(a), Oct. 21, 1998, 112 Stat. 2681–901; Pub. L. 106–170, title V, §531(a), Dec. 17, 1999, 113 Stat. 1928; Pub. L. 111–5, div. B, title I, §1212, Feb. 17, 2009, 123 Stat. 336; Pub. L. 111–152, title I, §1402(a)(2), (b)(2), Mar. 30, 2010, 124 Stat. 1062, 1063.)

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–152, §1402(a)(2)(A), substituted "the tax under chapter 2, and the tax under chapter 2A" for "and the tax under chapter 2" in introductory provisions.

Subsec. (f)(2). Pub. L. 111–152, §1402(a)(2)(B)(i), substituted "plus" for "minus".

Subsec. (f)(3), (4). Pub. L. 111–152, §1402(a)(2)(B)(ii), added par. (3) and redesignated former par. (3) as (4).

Subsecs. (m), (n). Pub. L. 111–152, §1402(b)(2), added subsec. (m) and redesignated former subsec. (m) as (n).

2009—Subsec. (d)(1)(D). Pub. L. 111–5 added subpar. (D).

1999—Subsec. (d)(1)(C)(i). Pub. L. 106–170 in table substituted items assigning applicable percentages of 108.6 for 1999 and 110 for 2000 for item assigning applicable percentage of 106 for 1999 or 2000.

1998—Subsec. (d)(1)(C)(i). Pub. L. 105–277 in table substituted items assigning applicable percentages of 105 for 1998 and 106 for 1999 or 2000 for item assigning applicable percentage of 105 for 1998, 1999, or 2000.

1997—Subsec. (d)(1)(C)(i). Pub. L. 105–34, §1091(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "If the adjusted gross income shown on the return of the individual for the preceding taxable year exceeds $150,000, clause (ii) of subparagraph (B) shall be applied by substituting '110 percent' for '100 percent'."

Subsec. (e)(1). Pub. L. 105–34, §1202(a), substituted "$1,000" for "$500".

1994—Subsec. (d)(2)(D). Pub. L. 103–465 added subpar. (D).

1993—Subsec. (d)(1)(C) to (F). Pub. L. 103–66, §13214(a), added subpar. (C) and struck out former subpars. (C) to (F) which related to limitation on use of preceding year's tax, modified adjusted gross income for current year, qualified pass-thru item, and other definitions and special rules, respectively.

Subsec. (j)(3)(A). Pub. L. 103–66, §13214(b)(1), struck out before period at end "and subsection (d)(1)(C)(iii) shall not apply".

Subsec. (l)(4). Pub. L. 103–66, §13214(b)(2), substituted "subsection (d)(2)(B)(i)" for "paragraphs

(1)(C)(iv) and (2)(B)(i) of subsection (d)".

1991—Subsec. (d)(1)(C) to (F). Pub. L. 102–164, §403(a), added subpars. (C) to (F).

Subsec. (i)(1)(C). Pub. L. 102–164, §403(b)(1), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: "the amount of such installment shall be equal to the required annual payment (determined under subsection (d)(1)(B) by substituting '662/3 percent' for '90 percent', and".

Subsec. (j)(3)(A). Pub. L. 102–164, §403(b)(2), inserted before period at end "and subsection (d)(1)(C)(iii) shall not apply".

Subsec. (l)(4). Pub. L. 102–164, §403(b)(3), substituted "paragraphs (l)(C)(iv) and (2)(B)(i) of subsection (d)" for "subsection (d)(2)(B)(i)".

1989—Subsec. (l)(1). Pub. L. 101–239, §7811(j)(5), substituted "this section shall" for "this subsection shall".

Subsec. (l)(2)(B)(ii). Pub. L. 101–239, §7811(j)(6), inserted before period at end "(or, if no will is admitted to probate, which is the trust primarily responsible for paying debts, taxes, and expenses of administration)".

1988—Subsec. (f)(1). Pub. L. 100–647, §4005(g)(5), inserted "(other than any increase in such tax by reason of section 143(m))" after "chapter 1".

Subsec. (f)(3). Pub. L. 100–418 amended par. (3) generally. Prior to amendment par. (3) read as follows: "the sum of—

"(A) the credits against tax allowed by part IV of subchapter A of chapter 1, other than the credit against tax provided by section 31 (relating to tax withheld on wages), plus

"(B) to the extent allowed under regulations prescribed by the Secretary, any overpayment of the tax imposed by section 4986 (determined without regard to section 4995(a)(4)(B))."

Subsec. (l). Pub. L. 100–647, §1014(d)(2), substituted "Estates and trusts" for "Trusts and certain estates" in heading and amended text generally. Prior to amendment, text read as follows: "This section shall apply to—

"(1) any trust, and

"(2) any estate with respect to any taxable year ending 2 or more years after the date of the death of the decedent's death."

Pub. L. 100–647, §1014(d)(1), made clarifying amendment to directory language of Pub. L. 99–514, §1404(a), to reflect prior redesignation of subsec. (k) as (l) by section 1841 of Pub. L. 99–514, see 1986 Amendment note below.

1986—Subsec. (a)(1). Pub. L. 99–514, §1511(c)(14), substituted "the underpayment rate established under section 6621" for "the applicable annual rate established under section 6621".

Subsec. (d)(1)(B)(i). Pub. L. 99–514, §1541(a), substituted "90 percent" for "80 percent" in two places.

Subsec. (d)(2)(C)(ii). Pub. L. 99–514, §1541(b)(1), in table of applicable percentages increased applicable percentages from "20" to "22.5", from "40" to "45", from "60" to "67.5", and from "80" to "90", respectively.

Subsec. (i)(1)(C). Pub. L. 99–514, §1541(b)(2), substituted "90 percent" for "80 percent".

Subsec. (j). Pub. L. 99–514, §1841, added subsec. (j). Former subsec. (j) redesignated (k).

Subsec. (j)(3)(B). Pub. L. 99–514, §1541(b)(3), which directed the amendment of the table in subpar. (B) by substituting "45" for "40", "65.5" for "60", and "90" for "80", could not be executed because the higher figures appear in the text as enacted by section 1841 of Pub. L. 99–514.

Subsec. (k). Pub. L. 99–514, §1841, redesignated former subsec. (j) as (k). Former subsec. (k) redesignated (l).

Subsec. (l). Pub. L. 99–514, §1404(a), as amended by Pub. L. 100–647, §1014(d)(1), amended subsec. (l) generally. Prior to amendment, subsec. (l) read as follows: "This section shall not apply to any estate or trust."

Pub. L. 99–514, §1841, redesignated subsec. (k) as (l). Former subsec. (l) redesignated (m).

Subsec. (m). Pub. L. 99–514, §1841, redesignated former subsec. (l) as (m).

1984—Subsec. (a). Pub. L. 98–369 amended subsec. (a) generally, setting out the exception provision as initial phrase, previously set out as second phrase, substituting "subsection (d)" for "this section"; and substituting "determined by applying—" and provisions designated cls. (1) to (3) for provisions reading "determined at an annual rate established under section 6621 upon the amount of the underpayment (determined under subsection (b)) for the period of the underpayment (determined under subsection (c)))".

Subsec. (b). Pub. L. 98–369 amended subsec. (b) generally, substituting provisions relating to amount and period of underpayment for provisions relating only to amount of underpayment.

Subsec. (c). Pub. L. 98–369 amended subsec. (c) generally, substituting provisions relating to number of required installments and due dates for provisions respecting period of underpayment. See subsec. (b)(2) of this section.

Subsec. (d). Pub. L. 98–369 amended subsec. (d) generally, substituting provisions relating to amount of required installments for provisions designated "Exception" and describing conditions for nonimposition of an addition to the tax with respect to any underpayment of any installment.

Subsec. (e). Pub. L. 98–369 amended subsec. (e) generally, substituting provisions relating to exceptions for provisions relating to application of section in case of tax withheld on wages. See subsec. (g) of this section.

Subsec. (f). Pub. L. 98–369 amended subsec. (f) generally, substituting provisions relating to tax computed after application of credits against tax for provisions relating to exception where tax is small amount. See subsec. (e)(1) of this section.

Subsec. (g). Pub. L. 98–369 amended subsec. (g) generally, substituting provisions relating to application of section in case of tax withheld on wages for provisions relating to tax computed after application of credits against tax. See subsec. (f) of this section.

Subsec. (h). Pub. L. 98–369 amended subsec. (h) generally, substituting provisions relating to special rule for returns filed on or before January 31 for provisions relating to exception for no tax liability for preceding taxable year. See subsec. (e)(2) of this section.

Subsec. (i). Pub. L. 98–369 amended subsec. (i) generally, substituting provisions relating to special rules for farmers and fishermen for provisions relating to short taxable year. See subsec. (j)(2) of this section.

Subsecs. (j) to (l). Pub. L. 98–369, in amending section generally, added subsecs. (j) to (l).

1983—Subsec. (e)(1). Pub. L. 98–67 repealed amendments made by Pub. L. 97–248. See 1982 Amendment note below.

Subsec. (f)(1). Pub. L. 97–448, §107(c)(1), inserted ", reduced by the credit allowable under section 31," before "is less than".

Subsec. (g)(3)(B). Pub. L. 97–448, §201(j)(3), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "to the extent allowed under regulations prescribed by the Secretary, any amount which is treated under section 6429 or 6430 as an overpayment of the tax imposed by section 4986".

Pub. L. 97–448, §106(a)(4)(C), inserted "or 6430" after "section 6429".

1982—Subsec. (e)(1). Pub. L. 97–248, §§307(a)(14), 308(a), provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, par. (1) is amended by inserting ", interest, dividends, and patronage dividends" after "tax withheld at source on wages". Section 102(a), (b) of Pub. L. 98–67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§301–308) of title III of Pub. L. 97–248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 [now 1986] [this title] shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

Subsec. (g). Pub. L. 97–248, §328(a)(2), substituted "(f), and (h)" for "and (f)".

Subsec. (g)(1). Pub. L. 97–248, §201(d)(7), formerly §201(c)(7), substituted "section 55" for "section 55 or 56".

Subsec. (g)(3). Pub. L. 97–248, §§307(a)(14), 308(a), provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, subsec. (g)(3) is amended by inserting ", interest, dividends, and patronage dividends" after "tax withheld at source on wages". Section 102(a), (b) of Pub. L. 98–67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§301–308) of title III of Pub. L. 97–248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 [now 1986] [this title] shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

Subsecs. (h), (i). Pub. L. 97–248, §328(a)(1), added subsec. (h) and redesignated former subsec. (h) as (i).

1981—Subsec. (f). Pub. L. 97–34, §725(b), added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (f)(3). Pub. L. 97–34, §601(a)(6)(A), inserted "the sum of—" after "(3)", designated former par. (3) as subpar. (A), and added subpar. (B).

Subsecs. (g), (h). Pub. L. 97–34, §§601(a)(6)(A), 725(b), (c)(5), redesignated former subsec. (f) as (g), inserted reference to subsec. (f) in introductory text, and "the sum of—" after "(3)", designated former par. (3) as subpar. (A), and added subpar. (B). Former subsec. (g) redesignated (h).

1978—Subsec. (f)(1). Pub. L. 95–600 substituted "section 55 or 56" for "section 56".

1977—Subsec. (d)(2)(A). Pub. L. 95–30 substituted provisions directing that the placement of taxable income on an annualized basis be accomplished under regulations prescribed by the Secretary for provisions which had spelled out in detail the formula under which taxable income would be placed on an annualized basis.

1976—Subsec. (g). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (h). Pub. L. 94–455, §1906(a)(35), struck out subsec. (h) which provided that this section shall apply to taxable years beginning after Dec. 31, 1954 and that section 294(d) of the Internal Revenue Code of 1939 shall continue in force with respect to taxable years beginning before Jan. 1, 1955.

1975—Subsec. (a). Pub. L. 93–625 substituted "an annual rate established under section 6621" for "the rate of 6 percent per annum".

1973—Subsec. (d)(2)(B)(ii). Pub. L. 93–233, §5(b)(7), effective with respect to taxable years beginning

after 1973, substituted "$13,200" for "$12,600".

Pub. L. 93–233, §5(d), applicable only with respect to remuneration paid after, and taxable years beginning after, 1973 (as provided in section 5(e) of Pub. L. 93–233, set out as an Effective Date of 1973 Amendments note under section 409 of Title 42, The Public Health and Welfare), amended section 203(b)(7)(C) of Pub. L. 92–336 (set out as 1973 Amendment note below), substituting "$13,200" for "$12,600". See, also, 1973 Amendment note below.

Pub. L. 93–66, §203(b)(7), effective with respect to taxable years beginning after 1973, substituted "$12,600" for "$12,000".

Pub. L. 93–66, §203(d), applicable only with respect to remuneration paid after, and taxable years beginning after, 1973 (as provided in section 203(e) of Pub. L. 93–66, set out as an Effective Date of 1973 Amendments note under section 409 of Title 42, The Public Health and Welfare), amended section 203(b)(7)(C) of Pub. L. 92–336 (set out as 1972 Amendment note below, substituting "$12,600" for "$12,000". See, also, such 1972 Amendment note below.

1972—Subsec. (d)(2)(B)(ii). Pub. L. 92–336, §203(b)(7)(A) substituted "$10,800" for "$9,000".

Pub. L. 92–336, §203(b)(7)(B), effective with respect to taxable years beginning after 1973, substituted "$12,000" for "$10,800".

Pub. L. 92–336, §203(b)(7)(C), effective with respect to taxable years beginning after 1974, substituted "(I) an amount equal to the contribution and benefit base (as determined under section 230 of the Social Security Act) which is effective for the calendar year in which the taxable year begins, over (II)" for "$12,000 over".

1971—Subsec. (d)(2)(B)(ii). Pub. L. 92–5 substituted "$9,000" for "$6,600".

1969—Subsec. (f)(1). Pub. L. 91–172 inserted "(other than by section 56)" after "chapter 1".

1966—Subsec. (a). Pub. L. 89–368, §102(b)(1), inserted "and the tax under chapter 2" after "chapter 1".

Subsec. (b). Pub. L. 89–368, §103(a), substituted "80 percent" for "70 percent" whenever appearing.

Subsec. (d). Pub. L. 89–368, §§102(b)(2), 103(a), inserted requirement that, for purposes of applying the annualization exception, the tax on adjusted self-employment income be included in determining if the net earnings from self-employment for the taxable year equal or exceed $400, inserted definition of "adjusted self-employment income", inserted a requirement that, for purposes of determining the applicability of the 90 percent exception, the tax on actual self-employment income be included, and substituted "80 percent" for "70 percent" wherever appearing.

Subsec. (f). Pub. L. 89–368, §102(b)(3), inserted tax imposed by chapter 2 to definition of "tax".

1962—Subsecs. (b), (d)(1)(C). Pub. L. 87–682 inserted "or fishing" after "from farming" wherever appearing.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 1402(a)(2) of Pub. L. 111–152 applicable to taxable years beginning after Dec. 31, 2012, see section 1402(a)(4) of Pub. L. 111–152, set out as an Effective Date note under section 1411 of this title.

Amendment by section 1402(b)(2) of Pub. L. 111–152 applicable with respect to remuneration received, and taxable years beginning after, Dec. 31, 2012, see section 1402(b)(3) of Pub. L. 111–152, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title V, §531(b), Dec. 17, 1999, 113 Stat. 1928, provided that: "The amendment made by this section [amending this section] shall apply with respect to any installment payment for taxable years beginning after December 31, 1999."

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–277, div. J, title II, §2003(b), Oct. 21, 1998, 112 Stat. 2681–902, provided that: "The amendment made by this section [amending this section] shall apply with respect to any installment payment for taxable years beginning after December 31, 1999."

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title X, §1091(b), Aug. 5, 1997, 111 Stat. 962, provided that: "The amendment made by this section [amending this section] shall apply with respect to any installment payment for taxable years beginning after December 31, 1997."

Pub. L. 105–34, title XII, §1202(b), Aug. 5, 1997, 111 Stat. 994, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1997."

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103–465, title VII, §711(c), Dec. 8, 1994, 108 Stat. 4999, provided that: "The amendments made by this section [amending this section and section 6655 of this title] shall apply for purposes of determining underpayments of estimated tax for taxable years beginning after December 31, 1994."

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13214(c), Aug. 10, 1993, 107 Stat. 475, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1993."

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102–164, title IV, §403(c), Nov. 15, 1991, 105 Stat. 1064, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1991."

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by section 1014(d)(1), (2) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 4005(g)(5) of Pub. L. 100–647 applicable to financing provided, and mortgage credit certificates issued, after Dec. 31, 1990, with certain exceptions, see section 4005(h)(3) of Pub. L. 100–647, set out as a note under section 143 of this title.

Amendment by Pub. L. 100–418 applicable to crude oil removed from the premises on or after Aug. 23, 1988, see section 1941(c) of Pub. L. 100–418, set out as a note under section 164 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Pub. L. 100–203, title X, §10303(a), Dec. 22, 1987, 101 Stat. 1330–430, provided that: "Notwithstanding section 1541(c) of the Tax Reform Act of 1986 [section 1541(c) of Pub. L. 99–514, set out below], the amendments made by section 1541 of such Act [amending this section] shall apply only to taxable years beginning after December 31, 1987."

Amendment by section 1404(a) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1404(d) of Pub. L. 99–514, set out as a note under section 643 of this title.

Amendment by section 1511(c)(14) of Pub. L. 99–514 applicable for purposes of determining interest for periods after Dec. 31, 1986, see section 1511(d) of Pub. L. 99–514, set out as a note under section 47 of this title.

Pub. L. 99–514, title XV, §1541(c), Oct. 22, 1986, 100 Stat. 2751, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1986." [See section 10303(a) of Pub. L. 100–203, set out above.]

Amendment by section 1841 of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title IV, §414(a), July 18, 1984, 98 Stat. 793, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—The amendments made by sections 411 and 412 [amending this section and sections 871, 1403, 6012, 6020, 6201, 6362, 6601, 6651, 7203, 7216, and 7701 of this title and repealing sections 6015, 6073, and 6153 of this title] shall apply with respect to taxable years beginning after December 31, 1984.

"(2) WAIVER AUTHORITY.—The provisions of paragraph (3) of section 6654(e) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by section 411) shall also apply with respect to underpayments for taxable years beginning in 1984."

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 106(a)(4)(C) of Pub. L. 97–448 effective Jan. 1, 1982, see section 106(a)(4)(E)(ii) of Pub. L. 97–448, set out as an Effective Date note under section 6430 of this title.

Amendment by title I of Pub. L. 97–448 effective, except as otherwise provided, as if it had been included

in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

Amendment by title II of Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Crude Oil Windfall Profit Tax Act of 1980, Pub. L. 96–223, to which such amendment relates, see section 203(a), (b) of Pub. L. 97–448, set out as a note under section 6652 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 201(d)(7) of Pub. L. 97–248 applicable to taxable years beginning after Dec. 31, 1982, see section 201(e)(1) of Pub. L. 97–248, set out as a note under section 5 of this title.

Pub. L. 97–248, title III, §328(c), Sept. 3, 1982, 96 Stat. 618, provided that: "The amendments made by this section [amending this section and sections 6015, 6073, and 6153 of this title] shall apply to taxable years beginning after December 31, 1982."

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title VI, §601(c)(1), (2), Aug. 13, 1981, 95 Stat. 337, provided that:

"(1) Except as provided in paragraph (2), subsection (a) [amending this section and sections 6429 and 6655 of this title] shall take effect on January 1, 1981.

"(2) The amendments made by paragraph (6) of subsection (a) [amending this section and section 6655 of this title] shall take effect on January 1, 1980."

Amendment by section 725(b), (c)(5) of Pub. L. 97–34 applicable to estimated tax for taxable years beginning after Dec. 31, 1980, see section 725(d) of Pub. L. 97–34, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 421(g) of Pub. L. 95–600, set out as a note under section 5 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1906(d)(1) of Pub. L. 94–455, set out as a note under section 6013 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–625 effective July 1, 1975, and applicable to amounts outstanding on such date or arising thereafter, see section 7(e) of Pub. L. 93–625, set out as an Effective Date note under section 6621 of this title.

EFFECTIVE DATE OF 1973 AMENDMENTS

Amendment by Pub. L. 93–233 applicable only with respect to remuneration paid after, and taxable years beginning after, 1973, see section 5(e) of Pub. L. 93–233, set out as a note under section 409 of Title 42, The Public Health and Welfare.

Amendment by Pub. L. 93–66 applicable only with respect to remuneration paid after, and taxable years beginning after, 1973, see section 203(e) of Pub. L. 93–66, set out as a note under section 409 of Title 42.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–336 applicable only with respect to taxable years beginning after 1972, see section 203(c) of Pub. L. 92–336, set out as a note under section 409 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–5 applicable only with respect to taxable years beginning after 1971, see section 203(c) of Pub. L. 92–5, set out as a note under section 409 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years ending after Dec. 31, 1969, see section 301(c) of Pub. L. 91–172, set out as a note under section 5 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89–368, title I, §102(d), Mar. 15, 1966, 80 Stat. 64, provided that: "The amendments made by subsections (a) amending section 6015 of this title], (b) [amending this section and sections 1403, 6211, and 7701 of this title], and (c) [amending section 1402 of this title] shall apply with respect to taxable years beginning after December 31, 1966."

Pub. L. 89–368, title I, §103(b), Mar. 15, 1966, 80 Stat. 64, provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1966."

EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87–682, §2, Sept. 25, 1962, 76 Stat. 575, provided that: "The amendments made by the first section of this Act [amending this section and sections 6015, 6073, and 6153 of this title] shall apply only with respect to taxable years beginning after December 31, 1962."

WAIVER OF ESTIMATED TAX PENALTIES FOR 1998 UNDERPAYMENTS

Pub. L. 105–206, §1(c), July 22, 1998, 112 Stat. 685, provided that: "No addition to tax shall be made under section 6654 or 6655 of the Internal Revenue Code of 1986 with respect to any underpayment of an installment required to be paid on or before the 30th day after the date of the enactment of this Act [July 22, 1998] to the extent such underpayment was created or increased by any provision of this Act [see Tables for classification]."

Pub. L. 105–34, §1(d), Aug. 5, 1997, 111 Stat. 788, provided that: "No addition to tax shall be made under section 6654 or 6655 of the Internal Revenue Code of 1986 for any period before January 1, 1998, for any payment the due date of which is before January 16, 1998, with respect to any underpayment attributable to such period to the extent such underpayment was created or increased by any provision of this Act [see Tables for classification]."

UNDERPAYMENTS OF ESTIMATED TAX FOR 1996

Pub. L. 104–188, title I, §1102, Aug. 20, 1996, 110 Stat. 1758, provided that: "No addition to the tax shall be made under section 6654 or 6655 of the Internal Revenue Code of 1986 (relating to failure to pay estimated tax) with respect to any underpayment of an installment required to be paid before the date of the enactment of this Act [Aug. 20, 1996] to the extent such underpayment was created or increased by any provision of this title [title I (§§1101–1954) of Pub. L. 104–188, see Tables for classification]."

WAIVER OF ESTIMATED PENALTIES FOR 1993 UNDERPAYMENTS ATTRIBUTABLE TO REVENUE RECONCILIATION ACT OF 1993

Pub. L. 103–66, title XIII, §13001(d), Aug. 10, 1993, 107 Stat. 416, provided that: "No addition to tax shall be made under section 6654 or 6655 of the Internal Revenue Code of 1986 for any period before April 16, 1994 (March 16, 1994, in the case of a corporation), with respect to any underpayment to the extent such underpayment was created or increased by any provision of this chapter [chapter 1 (§§13001–13444) of title XIII of Pub. L. 103–66, see Tables for classification]."

WAIVER OF ESTIMATED TAX PENALTIES FOR UNDERPAYMENTS ATTRIBUTABLE TO SECTION 420(B)(4)(B) OF THIS TITLE

No addition to tax to be made under this section for taxable year preceding taxpayer's first taxable year beginning after Dec. 31, 1990, with respect to any underpayment to the extent such underpayment was created or increased by reason of former section 420(b)(4)(B) of this title, see section 12011(c)(2) of Pub. L. 101–508, set out as an Effective Date note under section 420 of this title.

WAIVER OF ESTIMATED PENALTIES FOR 1988 UNDERPAYMENTS ATTRIBUTABLE TO TECHNICAL AND MISCELLANEOUS REVENUE ACT OF 1988

No addition to tax to be made under this section for any period before Apr. 16, 1989, with respect to any underpayment to the extent that such underpayment was created or increased by any provision of title I (§§1001–1019) or II (§§2001–2006) of Pub. L. 100–647, see section 1019(b) of Pub. L. 100–647, set out as an Effective Date of 1988 Amendment note under section 1 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989,

see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

WAIVER OF ESTIMATED PENALTIES FOR 1986 UNDERPAYMENTS ATTRIBUTABLE TO TAX REFORM ACT OF 1986

Pub. L. 99–514, title XV, §1543, Oct. 22, 1986, 100 Stat. 2751, provided that: "No addition to tax shall be made under section 6654 or 6655 of the Internal Revenue Code of 1986 (relating to failure to pay estimated tax) for any period before April 16, 1987 (March 16, 1987, in the case of a taxpayer subject to section 6655 of such Code), with respect to any underpayment, to the extent such underpayment was created or increased by any provision of this Act [Pub. L. 99–514, see Tables for classification]."

WAIVER OF ESTIMATED TAX PENALTIES

No addition to tax to be made under this section for any period before Apr. 16, 1985, with respect to any underpayment, to the extent that such underpayment was created or increased by any provision of Pub. L. 98–369, div. A, see section 1879(a) of Pub. L. 99–514, set out as a note under section 6655 of this title.

INCREASE IN SECTION 31 CREDIT FOR TAXABLE YEARS WHICH INCLUDE ANY PORTION OF PERIOD JULY 1, 1983, TO DECEMBER 31, 1983

For purposes of determining the amount of any addition to tax under this section with respect to any installment required to be paid before July 1, 1983, the amount of the credit allowed by section 31 of this title for any taxable year which includes any portion of the period beginning July 1, 1983, and ending December 31, 1983, to be increased by an amount equal to 10 percent of the aggregate amount of payments (1) which are received during the portion of such taxable year after June 30, 1983, and before January 1, 1984, and (2) which (but for the repeal of sections 3451 to 3456 of this title) would have been subject to withholding under sections 3451 to 3456 of this title (determined without regard to any exemption described in former section 3452 of this title, see section 102(d) of Pub. L. 98–67, set out as a note under section 3451 of this title.

ESTIMATED TAX UNDERPAYMENTS CREATED OR INCREASED BY TAX REFORM ACT OF 1976

Pub. L. 95–30, title III, §303, May 23, 1977, 91 Stat. 152, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "No addition to the tax shall be made under section 6654 or 6655 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to failure to pay estimated income tax) for any period before April 16, 1977 (March 16, 1977, in the case of a taxpayer subject to section 6655), with respect to any underpayment, to the extent that such underpayment was created or increased by any provision of the Tax Reform Act of 1976 [Pub. L. 94–455]."

WAIVER OF PENALTY FOR UNDERPAYMENT OF 1971 ESTIMATED INCOME TAX

Pub. L. 92–178, title II, §207, Dec. 10, 1971, 85 Stat. 512, provided that subsec. (a) of this section did not apply to any taxable year beginning after Dec. 31, 1970 and ending before Jan. 1, 1972, if the gross income for such taxable year did not exceed $10,000 for a single individual other than head of household or a married individual filing separately, or if the gross income did not exceed $20,000 for a head of household, a surviving spouse, of married individuals filing jointly, or if the taxpayer had income from sources other than wages in excess of $200 or $400 in case of a joint return.

DECLARATION OF ESTIMATED TAX

With respect to taxable years beginning before Dec. 30, 1969, if a taxpayer is required to make a declaration, or to pay any amount of estimated tax by reason of amendments made by Pub. L. 91–172, such amount shall be paid ratably on each of the remaining installment dates for the taxable year beginning with the first installment date on or after Dec. 30, 1969; as to any declaration or payment of estimates tax before the first installment date, this section, and sections 6015, 6154, and 6655 of this title shall be applied without regard to amendments made by Pub. L. 91–172, see section 946(b) of Pub. L. 91–172, set out as a note under section 6153 of this title.

TAX SURCHARGE EXTENSION; DECLARATIONS OF ESTIMATED TAX

Requirement of making a declaration or amended declaration or amended declaration of estimated tax or of payment of any amount or additional amount of estimated tax by reason of amendment of sections 51(a)(1)(A), (B), (2)(A) and 963(b) of this title as calling for payment of such amount or additional amount ratably on or before each of remaining installment dates for taxable year beginning with first installment date

on or after the 30th day after Aug. 7, 1969; application of this section without regard to such amendment with respect to any declaration or payment of estimated tax before such first installment date; and definition of "installment date", see Pub. L. 91–53, §5(c), Aug. 7, 1969, 83 Stat. 95.

[1] *So in original. A comma probably should appear.*

§6655. Failure by corporation to pay estimated income tax

(a) Addition to tax

Except as otherwise provided in this section, in the case of any underpayment of estimated tax by a corporation, there shall be added to the tax under chapter 1 for the taxable year an amount determined by applying—

(1) the underpayment rate established under section 6621,
(2) to the amount of the underpayment,
(3) for the period of the underpayment.

(b) Amount of underpayment; period of underpayment

For purposes of subsection (a)—

(1) Amount

The amount of the underpayment shall be the excess of—

(A) the required installment, over
(B) the amount (if any) of the installment paid on or before the due date for the installment.

(2) Period of underpayment

The period of the underpayment shall run from the due date for the installment to whichever of the following dates is the earlier—

(A) the 15th day of the 3rd month following the close of the taxable year, or
(B) with respect to any portion of the underpayment, the date on which such portion is paid.

(3) Order of crediting payments

For purposes of paragraph (2)(B), a payment of estimated tax shall be credited against unpaid required installments in the order in which such installments are required to be paid.

(c) Number of required installments; due dates

For purposes of this section—

(1) Payable in 4 installments

There shall be 4 required installments for each taxable year.

(2) Time for payment of installments

In the case of the following required installments:	The due date is:
1st	April 15
2nd	June 15
3rd	September 15
4th	December 15.

(d) Amount of required installments

For purposes of this section—

(1) Amount

(A) In general

Except as otherwise provided in this section, the amount of any required installment shall be 25 percent of the required annual payment.

(B) Required annual payment

Except as otherwise provided in this subsection, the term "required annual payment" means the lesser of—

(i) 100 percent of the tax shown on the return for the taxable year (or, if no return is filed, 100 percent of the tax for such year), or

(ii) 100 percent of the tax shown on the return of the corporation for the preceding taxable year.

Clause (ii) shall not apply if the preceding taxable year was not a taxable year of 12 months, or the corporation did not file a return for such preceding taxable year showing a liability for tax.

(2) Large corporations required to pay 100 percent of current year tax

(A) In general

Except as provided in subparagraph (B), clause (ii) of paragraph (1)(B) shall not apply in the case of a large corporation.

(B) May use last year's tax for 1st installment

Subparagraph (A) shall not apply for purposes of determining the amount of the 1st required installment for any taxable year. Any reduction in such 1st installment by reason of the preceding sentence shall be recaptured by increasing the amount of the next required installment determined under paragraph (1) by the amount of such reduction.

(e) Lower required installment where annualized income installment or adjusted seasonal installment is less than amount determined under subsection (d)

(1) In general

In the case of any required installment, if the corporation establishes that the annualized income installment or the adjusted seasonal installment is less than the amount determined under subsection (d)(1) (as modified by paragraphs (2) and (3) of subsection (d))—

(A) the amount of such required installment shall be the annualized income installment (or, if lesser, the adjusted seasonal installment), and

(B) any reduction in a required installment resulting from the application of this paragraph shall be recaptured by increasing the amount of the next required installment determined under subsection (d)(1) (as so modified) by the amount of such reduction (and by increasing subsequent required installments to the extent that the reduction has not previously been recaptured under this subparagraph).

(2) Determination of annualized income installment

(A) In general

In the case of any required installment, the annualized income installment is the excess (if any) of—

(i) an amount equal to the applicable percentage of the tax for the taxable year computed by placing on an annualized basis the taxable income, alternative minimum taxable income, and modified alternative minimum taxable income—

(I) for the first 3 months of the taxable year, in the case of the 1st required installment,

(II) for the first 3 months of the taxable year, in the case of the 2nd required installment,

(III) for the first 6 months of the taxable year in the case of the 3rd required installment, and

(IV) for the first 9 months of the taxable year, in the case of the 4th required installment, over

(ii) the aggregate amount of any prior required installments for the taxable year.

(B) Special rules

For purposes of this paragraph—

(i) Annualization

The taxable income, alternative minimum taxable income, and modified alternative minimum taxable income shall be placed on an annualized basis under regulations prescribed by the Secretary.

(ii) Applicable percentage

In the case of the following required installments:	The applicable percentage is:
1st	25
2nd	50
3rd	75
4th	100.

(iii) Modified alternative minimum taxable income

The term "modified alternative minimum taxable income" has the meaning given to such term by section 59A(b).

(C) Election for different annualization periods

(i) If the taxpayer makes an election under this clause—

(I) subclause (I) of subparagraph (A)(i) shall be applied by substituting "2 months" for "3 months",

(II) subclause (II) of subparagraph (A)(i) shall be applied by substituting "4 months" for "3 months",

(III) subclause (III) of subparagraph (A)(i) shall be applied by substituting "7 months" for "6 months", and

(IV) subclause (IV) of subparagraph (A)(i) shall be applied by substituting "10 months" for "9 months".

(ii) If the taxpayer makes an election under this clause—

(I) subclause (II) of subparagraph (A)(i) shall be applied by substituting "5 months" for "3 months",

(II) subclause (III) of subparagraph (A)(i) shall be applied by substituting "8 months" for "6 months", and

(III) subclause (IV) of subparagraph (A)(i) shall be applied by substituting "11 months" for "9 months".

(iii) An election under clause (i) or (ii) shall apply to the taxable year for which made and such an election shall be effective only if made on or before the date required for the payment of the first required installment for such taxable year.

(3) Determination of adjusted seasonal installment

(A) In general

In the case of any required installment, the amount of the adjusted seasonal installment is the excess (if any) of—

(i) 100 percent of the amount determined under subparagraph (C), over

(ii) the aggregate amount of all prior required installments for the taxable year.

(B) Limitation on application of paragraph

This paragraph shall apply only if the base period percentage for any 6 consecutive months of the taxable year equals or exceeds 70 percent.

(C) Determination of amount

The amount determined under this subparagraph for any installment shall be determined in the following manner—

(i) take the taxable income for all months during the taxable year preceding the filing month,

(ii) divide such amount by the base period percentage for all months during the taxable year preceding the filing month,

(iii) determine the tax on the amount determined under clause (ii), and

(iv) multiply the tax computed under clause (iii) by the base period percentage for the filing month and all months during the taxable year preceding the filing month.

(D) Definitions and special rules

For purposes of this paragraph—

(i) Base period percentage

The base period percentage for any period of months shall be the average percent which the taxable income for the corresponding months in each of the 3 preceding taxable years bears to the taxable income for the 3 preceding taxable years.

(ii) Filing month

The term "filing month" means the month in which the installment is required to be paid.

(iii) Reorganization, etc.

The Secretary may by regulations provide for the determination of the base period percentage in the case of reorganizations, new corporations, and other similar circumstances.

(4) Treatment of subpart F and section 936 income

(A) In general

Any amounts required to be included in gross income under section 936(h) or 951(a) (and credits properly allocable thereto) shall be taken into account in computing any annualized income installment under paragraph (2) in a manner similar to the manner under which partnership income inclusions (and credits properly allocable thereto) are taken into account.

(B) Prior year safe harbor

(i) In general

If a taxpayer elects to have this subparagraph apply for any taxable year—

(I) subparagraph (A) shall not apply, and

(II) for purposes of computing any annualized income installment for such taxable year, the taxpayer shall be treated as having received ratably during such taxable year items of income and credit described in subparagraph (A) in an amount equal to 115 percent of the amount of such items shown on the return of the taxpayer for the preceding taxable year (the second preceding taxable year in the case of the first and second required installments for such taxable year).

(ii) Special rule for noncontrolling shareholder

(I) In general

If a taxpayer making the election under clause (i) is a noncontrolling shareholder of a corporation, clause (i)(II) shall be applied with respect to items of such corporation by substituting "100 percent" for "115 percent".

(II) Noncontrolling shareholder

For purposes of subclause (I), the term "noncontrolling shareholder" means, with respect to any corporation, a shareholder which (as of the beginning of the taxable year for which the installment is being made) does not own (within the meaning of section 958(a)), and is not treated as owning (within the meaning of section 958(b)), more than 50 percent (by vote or value) of the stock in the corporation.

(5) Treatment of certain REIT dividends

(A) In general

Any dividend received from a closely held real estate investment trust by any person which owns (after application of subsection (d)(5) of section 856) 10 percent or more (by vote or value) of the stock or beneficial interests in the trust shall be taken into account in computing annualized income installments under paragraph (2) in a manner similar to the manner under which partnership income inclusions are taken into account.

(B) Closely held REIT

For purposes of subparagraph (A), the term "closely held real estate investment trust" means a real estate investment trust with respect to which 5 or fewer persons own (after application of subsection (d)(5) of section 856) 50 percent or more (by vote or value) of the stock or beneficial interests in the trust.

(f) Exception where tax is small amount

No addition to tax shall be imposed under subsection (a) for any taxable year if the tax shown on the return for such taxable year (or, if no return is filed, the tax) is less than $500.

(g) Definitions and special rules

(1) Tax

For purposes of this section, the term "tax" means the excess of—

(A) the sum of—

(i) the tax imposed by section 11 or 1201(a), or subchapter L of chapter 1, whichever applies,

(ii) the tax imposed by section 55,

(iii) the tax imposed by section 59A, plus

(iv) the tax imposed by section 887, over

(B) the credits against tax provided by part IV of subchapter A of chapter 1.

For purposes of the preceding sentence, in the case of a foreign corporation subject to taxation under section 11 or 1201(a), or under subchapter L of chapter 1, the tax imposed by section 881 shall be treated as a tax imposed by section 11.

(2) Large corporation

(A) In general

For purposes of this section, the term "large corporation" means any corporation if such corporation (or any predecessor corporation) had taxable income of $1,000,000 or more for any taxable year during the testing period.

(B) Rules for applying subparagraph (A)

(i) Testing period

For purposes of subparagraph (A), the term "testing period" means the 3 taxable years immediately preceding the taxable year involved.

(ii) Members of controlled group

For purposes of applying subparagraph (A) to any taxable year in the testing period with respect to corporations which are component members of a controlled group of corporations

for such taxable year, the $1,000,000 amount specified in subparagraph (A) shall be divided among such members under rules similar to the rules of section 1561.

(iii) Certain carrybacks and carryovers not taken into account

For purposes of subparagraph (A), taxable income shall be determined without regard to any amount carried to the taxable year under section 172 or 1212(a).

(3) Certain tax-exempt organizations

For purposes of this section—

(A) Any organization subject to the tax imposed by section 511, and any private foundation, shall be treated as a corporation subject to tax under section 11.

(B) Any tax imposed by section 511, and any tax imposed by section 1 or 4940 on a private foundation, shall be treated as a tax imposed by section 11.

(C) Any reference to taxable income shall be treated as including a reference to unrelated business taxable income or net investment income (as the case may be).

In the case of any organization described in subparagraph (A), subsection (b)(2)(A) shall be applied by substituting "5th month" for "3rd month", subsection (e)(2)(A) shall be applied by substituting "2 months" for "3 months" in clause (i)(I), the election under clause (i) of subsection (e)(2)(C) may be made separately for each installment, and clause (ii) of subsection (e)(2)(C) shall not apply. In the case of a private foundation, subsection (c)(2) shall be applied by substituting "May 15" for "April 15".

(4) Application of section to certain taxes imposed on S corporations

In the case of an S corporation, for purposes of this section—

(A) The following taxes shall be treated as imposed by section 11:

(i) The tax imposed by section 1374(a) (or the corresponding provisions of prior law).

(ii) The tax imposed by section 1375(a).

(iii) Any tax for which the S corporation is liable by reason of section 1371(d)(2).

(B) Paragraph (2) of subsection (d) shall not apply.

(C) Clause (ii) of subsection (d)(1)(B) shall be applied as if it read as follows:

"(ii) the sum of—

"(I) the amount determined under clause (i) by only taking into account the taxes referred to in clauses (i) and (iii) of subsection (g)(4)(A), and

"(II) 100 percent of the tax imposed by section 1375(a) which was shown on the return of the corporation for the preceding taxable year."

(D) The requirement in the last sentence of subsection (d)(1)(B) that the return for the preceding taxable year show a liability for tax shall not apply.

(E) Any reference in subsection (e) to taxable income shall be treated as including a reference to the net recognized built-in gain or the excess passive income (as the case may be).

(h) Excessive adjustment under section 6425

(1) Addition to tax

If the amount of an adjustment under section 6425 made before the 15th day of the 3rd month following the close of the taxable year is excessive, there shall be added to the tax under chapter 1 for the taxable year an amount determined at the underpayment rate established under section 6621 upon the excessive amount from the date on which the credit is allowed or the refund is paid to such 15th day.

(2) Excessive amount

For purposes of paragraph (1), the excessive amount is equal to the amount of the adjustment or (if smaller) the amount by which—

(A) the income tax liability (as defined in section 6425(c)) for the taxable year as shown on

the return for the taxable year, exceeds

(B) the estimated income tax paid during the taxable year, reduced by the amount of the adjustment.

(i) Fiscal years and short years

(1) Fiscal years

In applying this section to a taxable year beginning on any date other than January 1, there shall be substituted, for the months specified in this section, the months which correspond thereto.

(2) Short taxable year

This section shall be applied to taxable years of less than 12 months in accordance with regulations prescribed by the Secretary.

(j) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section.

(Aug. 16, 1954, ch. 736, 68A Stat. 825; Pub. L. 88–272, title I, §122(c), Feb. 26, 1964, 78 Stat. 28; Pub. L. 90–364, title I, §103(c), (d)(2), (e)(1), June 28, 1968, 82 Stat. 262, 264; Pub. L. 93–625, §7(c), Jan. 3, 1975, 88 Stat. 2115; Pub. L. 94–455, title XIX, §1906(b)(3)(A)–(C)(i), (13)(A), Oct. 4, 1976, 90 Stat. 1833, 1834; Pub. L. 95–600, title III, §301(b)(20)(B), Nov. 6, 1978, 92 Stat. 2824; Pub. L. 96–499, title XI, §1111(a), (b), Dec. 5, 1980, 94 Stat. 2681, 2682; Pub. L. 97–34, title VI, §601(a)(6)(B), title VII, §731(a), (b), Aug. 13, 1981, 95 Stat. 336, 346, 347; Pub. L. 97–248, title II, §234(a), (c), (d), Sept. 3, 1982, 96 Stat. 503, 504; Pub. L. 97–448, title II, §201(j)(4), Jan. 12, 1983, 96 Stat. 2396; Pub. L. 99–499, title V, §516(b)(4)(D), Oct. 17, 1986, 100 Stat. 1771; Pub. L. 99–514, title VII, §701(d)(3), title XV, §1511(c)(15), Oct. 22, 1986, 100 Stat. 2342, 2745; Pub. L. 100–203, title X, §10301(a), Dec. 22, 1987, 101 Stat. 1330–424; Pub. L. 100–418, title I, §1941(b)(6)(B), Aug. 23, 1988, 102 Stat. 1324; Pub. L. 100–647, title II, §2004(r), title V, §5001(a), Nov. 10, 1988, 102 Stat. 3609, 3660; Pub. L. 101–239, title VII, §§7209(a), 7822(a), Dec. 19, 1989, 103 Stat. 2338, 2424; Pub. L. 101–508, title XI, §11704(a)(28), Nov. 5, 1990, 104 Stat. 1388–519; Pub. L. 102–227, title II, §201(a), (b), Dec. 11, 1991, 105 Stat. 1689; Pub. L. 102–244, §3(a), Feb. 7, 1992, 106 Stat. 4; Pub. L. 102–318, title V, §512(a), (b), July 3, 1992, 106 Stat. 300; Pub. L. 103–66, title XIII, §13225(a), (b), Aug. 10, 1993, 107 Stat. 486; Pub. L. 103–465, title VII, §711(a), Dec. 8, 1994, 108 Stat. 4998; Pub. L. 104–188, title I, §1703(h), Aug. 20, 1996, 110 Stat. 1876; Pub. L. 105–34, title XIV, §1461(a), Aug. 5, 1997, 111 Stat. 1057; Pub. L. 106–170, title V, §571(a), Dec. 17, 1999, 113 Stat. 1950; Pub. L. 106–554, §1(a)(7) [title III, §319(21)], Dec. 21, 2000, 114 Stat. 2763, 2763A–647.)

AMENDMENTS

2000—Subsec. (e)(5)(A), (B). Pub. L. 106–554 substituted "subsection (d)(5)" for "subsections (d)(5) and (l)(3)(B)".

1999—Subsec. (e)(5). Pub. L. 106–170 added par. (5).

1997—Subsec. (g)(3). Pub. L. 105–34 inserted at end "In the case of a private foundation, subsection (c)(2) shall be applied by substituting 'May 15' for 'April 15'."

1996—Subsec. (g)(3). Pub. L. 104–188, §1703(h), in closing provisions, substituted ", subsection (e)(2)(A) shall be applied by substituting '2 months' for '3 months' in clause (i)(I), the election under clause (i) of subsection (e)(2)(C) may be made separately for each installment, and clause (ii) of subsection (e)(2)(C) shall not apply." for ", and, except in the case of an election under subsection (e)(2)(C), subsection (e)(2)(A) shall be applied by substituting '2 months' for '3 months' and in clause (i)(I), by substituting '4 months' for '5 months' in clause (i)(II), by substituting '7 months' for '8 months' in clause (i)(III), and by substituting '10 months' for '11 months' in clause (i)(IV)."

1994—Subsec. (e)(4). Pub. L. 103–465 added par. (4).

1993—Subsec. (d)(1)(B)(i). Pub. L. 103–66, §13225(a)(1), substituted "100 percent" for "91 percent" in two places.

Subsec. (d)(2). Pub. L. 103–66, §13225(a)(2)(A)(ii), substituted "100 percent" for "91 percent" in heading.

Subsec. (d)(3). Pub. L. 103–66, §13225(a)(2)(A)(i), struck out heading and text of par. (3). Text read as

follows: "In the case of any taxable year beginning after June 30, 1992, and before 1997—

"(A) paragraph (1)(B)(i) and subsection (e)(3)(A)(i) shall be applied by substituting '97 percent' for '91 percent' each place it appears, and

"(B) the table contained in subsection (e)(2)(B)(ii) shall be applied by substituting '24.25', '48.50', '72.75', and '97' for '22.75', '45.50', '68.25', and '91.00', respectively."

Subsec. (e)(2)(A)(i)(II). Pub. L. 103–66, §13225(b)(1)(A), struck out "or for the first 5 months" after "3 months".

Subsec. (e)(2)(A)(i)(III). Pub. L. 103–66, §13225(b)(1)(B), struck out "or for the first 8 months" after "6 months".

Subsec. (e)(2)(A)(i)(IV). Pub. L. 103–66, §13225(b)(1)(C), struck out "or for the first 11 months" after "9 months".

Subsec. (e)(2)(B)(ii). Pub. L. 103–66, §13225(a)(2)(B), in table, substituted applicable percentages of 25, 50, 75, and 100 for 22.75, 45.50, 68.25, and 91.00, respectively, in 1st, 2nd, 3rd, and 4th installments.

Subsec. (e)(2)(C). Pub. L. 103–66, §13225(b)(2), added subpar. (C).

Subsec. (e)(3)(A)(i). Pub. L. 103–66, §13225(a)(2)(C), substituted "100 percent" for "91 percent".

Subsec. (g)(3). Pub. L. 103–66, §13225(b)(3), substituted "and, except in the case of an election under subsection (e)(2)(C), subsection (e)(2)(A)" for "and subsection (e)(2)(A)" in last sentence.

1992—Subsec. (d)(1)(B)(i). Pub. L. 102–318, §512(a)(1), substituted "91 percent" for "90 percent" in two places.

Subsec. (d)(2). Pub. L. 102–318, §512(a)(2), substituted "91 percent" for "90 percent" in heading.

Subsec. (d)(3). Pub. L. 102–318, §512(a)(3), added par. (3) and struck out former par. (3) which related to temporary increase in amount of installment method based on current tax year for taxable years beginning after 1991 and before 1997.

Subsec. (d)(3)(A). Pub. L. 102–244, amended table generally, substituting a single entry "1993 through 1996 . . . . . 95" for former arrangement under which years after 1992 were covered by two table entries: "1993 or 1994 . . . . . 94" and "1995 or 1996 . . . . . 95".

Subsec. (e)(2)(B)(ii). Pub. L. 102–318, §512(b)(1), in table, substituted applicable percentages of 22.75, 45.50, 68.25, and 91.00 for 22.5, 45, 67.5, and 90, respectively, in 1st, 2nd, 3rd and 4th installments.

Subsec. (e)(3)(A)(i). Pub. L. 102–318, §512(b)(2), substituted "91 percent" for "90 percent".

1991—Subsec. (d)(3). Pub. L. 102–227, §201(a), added par. (3).

Subsec. (e)(1). Pub. L. 102–227, §201(b), substituted "paragraphs (2) and (3) of subsection (d)" for "subsection (d)(2)".

1990—Subsec. (g)(3). Pub. L. 101–508 inserted a period at end of last sentence.

1989—Subsec. (e)(1). Pub. L. 101–239, §7822(a), substituted "under subsection (d)(1)" for "under section (d)(1)".

Subsec. (g)(4). Pub. L. 101–239, §7209(a), added par. (4).

1988—Subsec. (e)(1). Pub. L. 100–647, §5001(a), struck out at end "A reduction shall be treated as recaptured for purposes of subparagraph (B) if 90 percent of the reduction is recaptured."

Subsec. (g)(1)(B). Pub. L. 100–418 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "the sum of—

"(i) the credits against tax provided by part IV of subchapter A of chapter 1, plus

"(ii) to the extent allowed under regulations prescribed by the Secretary, any overpayment of the tax imposed by section 4986 (determined without regard to section 4995(a)(4)(B))."

Subsec. (g)(3). Pub. L. 100–647, §2004(r), inserted last sentence, and struck out former last sentence which read as follows: "In the case of any organization described in subparagraph (A), subsection (b)(2)(A) shall be applied by substituting '5th month' for '3rd month'."

1987—Pub. L. 100–203 amended section generally, revising and restating as subsecs. (a) to (j) provisions of former subsecs. (a) to (i).

1986—Subsec. (a)(1). Pub. L. 99–514, §1511(c)(15), substituted "the underpayment rate established under section 6621" for "the rate established under section 6621".

Subsec. (f)(1). Pub. L. 99–514, §701(d)(3), amended par. (1) generally, restating existing provisions in subpar. (A) and adding subpar. (B).

Pub. L. 99–499 amended subsec. (f)(1), as amended by the Tax Reform Act of 1986 (Pub. L. 99–514), by striking out "plus" at end of subpar. (A), substituting "plus" for "over" at end of subpar. (B), and adding subpar. (C).

1983—Subsec. (f)(2)(B). Pub. L. 97–448 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "to the extent allowed under regulations prescribed by the Secretary, any amount which is treated under section 6429 as an overpayment of the tax imposed by section 4986". Notwithstanding directory

language that amendment be made to subsec. (e)(2)(B), the amendment was executed to subsec. (f)(2)(B) to reflect the probable intent of Congress, the intervening redesignation of subsec. (e) as (f) by Pub. L. 97–248, and the retrospective effect of the amendment as provided by section 203(a), (b) of Pub. L. 97–448, set out as an Effective Date of 1983 Amendment note under section 4988 of this title.

1982—Subsec. (a). Pub. L. 97–248, §234(c), in heading substituted "Addition to tax" for "Addition to the tax", in provisions preceding par. (1) inserted reference to subsec. (e) as an exception and struck out "estimated" before "tax", designated existing provisions as par. (1), and in par. (1) as so designated struck out parenthetical reference to subsecs. (b) and (c) for determination of the amount of the underpayment and the period of the underpayment, respectively, and added par. (2).

Subsec. (b)(1). Pub. L. 97–248, §234(a)(1), substituted "90" for "80" wherever appearing.

Subsec. (d)(3)(A). Pub. L. 97–248, §234(a)(2), substituted "90" for "80".

Subsec. (e). Pub. L. 97–248, §234(d)(1), added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 97–248, §234(d), redesignated former subsec. (e) as (f) and substituted references to subsecs. (e) and (i) for references to subsec. (h). Former subsec. (f) redesignated (g).

Subsecs. (g) to (i). Pub. L. 97–248, §234(d)(1), redesignated former subsecs. (f) to (h) as (g) to (i), respectively.

1981—Subsec. (e)(2). Pub. L. 97–34, §601(a)(6)(B), inserted "the sum of—", designated existing provisions as subpar. (A), inserted at end of subpar. (A) ", plus", and added subpar. (B).

Subsec. (h). Pub. L. 97–34, §731(a), (b), substituted in heading "minimum percentage" for "at least 60 percent" and provisions of par. (1) respecting minimum percentage, for provisions respecting in the case of a large corporation, the amount treated as the estimated tax for the taxable year under paragraphs (1) and (2) of subsection (d) shall in no event be less than 60 percent of the tax shown on the return for the taxable year, or if no return was filed, the tax for such year.

1980—Subsec. (e). Pub. L. 96–499, §1111(b), substituted "subsections (b), (d), and (h)" for "subsections (b) and (d)".

Subsec. (h). Pub. L. 96–499, §1111(a), added subsec. (h).

1978—Subsec. (e). Pub. L. 95–600 struck out provisions relating to the corporation's temporary estimated tax exemption.

1976—Subsec. (e)(1)(B). Pub. L. 94–455, §1906(b)(3)(A), struck out in cl. (ii) "after December 31, 1967, and" after "taxable year beginning" and struck out cl. (iii) which related to the case of a taxable year beginning after Dec. 31, 1967, and before Jan. 1, 1972, the amount of the corporation's transitional exemption for such year.

Subsec. (e)(2)(B). Pub. L. 94–455, §1906(b)(3)(B), substituted "clause (ii)" for "clauses (ii) and (iii)".

Subsec. (e)(3), (4). Pub. L. 94–455, §1906(b)(3)(C)(i), redesignated par. (4) as (3). Former par. (3), which related to the computation of a corporation's transitional exemption, was struck out.

Subsec. (f). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

1975—Subsecs. (a), (g)(1). Pub. L. 93–625 substituted "an annual rate established under section 6621" for "the rate of 6 percent per annum".

1968—Subsec. (b)(1). Pub. L. 90–364, §103(c)(1), substituted "80 percent" for "70 percent".

Subsec. (d)(1). Pub. L. 90–364, §103(e)(1), struck out "reduced by $100,000" after "The tax shown on the return of the corporation for the preceding taxable year".

Subsec. (d)(3)(A). Pub. L. 90–364, §103(c)(1), substituted "80 percent" for "70 percent".

Subsec. (e). Pub. L. 90–364, §103(c)(2), designated existing provisions as par. (1) under a heading "In general", in such redesignated par. (1) substituted "For purposes of subsections (b) and (d)" for "For purposes of subsections (b), (d)(2), and (d)(3)" in introductory text, redesignated as subpar. (A) former par. (1) and as subpar. (B) former par. (2), struck out reference to $100,000 as one factor in the sum required for redesignated subpar. (B) and added cls. (ii) and (iii), and added pars. (2), (3), and (4) under headings "Temporary estimated tax exemption", "Transitional exemption", and "Special rule for subsection (d)(1) and (2)" respectively.

Subsec. (g). Pub. L. 90–364, §103(d)(2), added subsec. (g).

1964—Subsec. (c)(2). Pub. L. 88–272, §122(c)(1), substituted "any installment date" and "such installment date" for "the 15th day of the 12th month".

Subsec. (d)(3). Pub. L. 88–272, §122(c)(2), redesignated cls. (A)(i) and (ii) as (A)(iii) and (iv), respectively, added cls. (A)(i) and (ii), and substituted "(3, 5, 6, 8, 9,)" for "(6 or 8, or 9)" in subpar. (B)(ii).

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title V, §571(b), Dec. 17, 1999, 113 Stat. 1951, provided that: "The amendment made by subsection (a) [amending this section] shall apply to estimated tax payments due on or after December 15, 1999."

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XIV, §1461(b), Aug. 5, 1997, 111 Stat. 1057, provided that: "The amendment made by subsection (a) [amending this section] shall apply for purposes of determining underpayments of estimated tax for taxable years beginning after the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103–66, §§13001–13444, to which such amendment relates, see section 1703(o) of Pub. L. 104–188, set out as a note under section 39 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 applicable for purposes of determining underpayments of estimated tax for taxable years beginning after Dec. 31, 1994, see section 711(c) of Pub. L. 103–465, set out as a note under section 6654 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13225(c), Aug. 10, 1993, 107 Stat. 487, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1993."

EFFECTIVE DATE OF 1992 AMENDMENTS

Pub. L. 102–318, title V, §512(c), July 3, 1992, 106 Stat. 300, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after June 30, 1992."

Pub. L. 102–244, §3(b), Feb. 7, 1992, 106 Stat. 4, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1992."

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102–227, title II, §201(c), Dec. 11, 1991, 105 Stat. 1690, provided that: "The amendments made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1991."

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7209(b), Dec. 19, 1989, 103 Stat. 2339, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1989."

Amendment by section 7822(a) of Pub. L. 101–239 effective as if included in the provision of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 7823 of Pub. L. 101–239, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by section 2004(r) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

Pub. L. 100–647, title V, §5001(b), Nov. 10, 1988, 102 Stat. 3660, provided that: "The amendment made by subsection (a) [amending this section] shall apply to installments required to be made after December 31, 1988."

Amendment by Pub. L. 100–418 applicable to crude oil removed from the premises on or after Aug. 23, 1988, see section 1941(c) of Pub. L. 100–418, set out as a note under section 164 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to taxable years beginning after Dec. 31, 1987, see section 10301(c) of Pub. L. 100–203, set out as a note under section 585 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 701(d)(3) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date note under section 55 of this title.

Amendment by section 1511(c)(15) of Pub. L. 99–514 applicable for purposes of determining interest for periods after Dec. 31, 1986, see section 1511(d) of Pub. L. 99–514, set out as a note under section 47 of this title.

Amendment by Pub. L. 99–499 applicable to taxable years beginning after Dec. 31, 1986, see section 516(c) of Pub. L. 99–499, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Crude Oil Windfall Profit Tax Act of 1980, Pub. L. 96–223, to which such amendment relates, see section 203(a), (b) of Pub. L. 97–448, set out as a note under section 6652 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title II, §234(e), Sept. 3, 1982, 96 Stat. 505, provided that: "The amendments made by this section [amending this section and sections 832, 6081, 6152, and 6164 of this title] shall apply to taxable years beginning after December 31, 1982."

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 601(a)(6)(B) of Pub. L. 97–34 effective Jan. 1, 1980, see section 601(c)(2) of Pub. L. 97–34, set out as a note under section 6654 of this title.

Pub. L. 97–34, title VII, §731(c), Aug. 13, 1981, 95 Stat. 347, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1981."

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–499, title XI, §1111(c), Dec. 5, 1980, 94 Stat. 2682, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1980."

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95–600, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1906(b)(3)(A)–(C)(i) of Pub. L. 94–455 effective with respect to taxable years after Dec. 31, 1976, see section 1906(d)(2) of Pub. L. 94–455, set out as a note under section 6013 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–625 effective July 1, 1975, and applicable to amounts outstanding on such date or arising thereafter, see section 7(e) of Pub. L. 93–625, set out as an Effective Date note under section 6621 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–364 applicable with respect to taxable years beginning after Dec. 31, 1967, except as provided by section 104 of Pub. L. 90–364, see section 103(f) of Pub. L. 90–364, set out as a note under section 243 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 effective, except for purposes of section 21 of this title, with respect to taxable years beginning after Dec. 31, 1963, see section 131 of Pub. L. 88–272, set out as a note under section 1 of this title.

REPEAL OF CERTAIN SHIFTS IN THE TIMING OF CORPORATE ESTIMATED TAX PAYMENTS

Pub. L. 112–96, title VII, §7001, Feb. 22, 2012, 126 Stat. 256, provided that: "The following provisions of law (and any modification of any such provision which is contained in any other provision of law) shall not apply with respect to any installment of corporate estimated tax:

"(1) Section 201(b) [probably should be "202(b)"] of the Corporate Estimated Tax Shift Act of 2009 [Pub. L. 111–42, set out below].

"(2) Section 561 of the Hiring Incentives to Restore Employment Act [Pub. L. 111–147, set out below].

"(3) Section 505 of the United States-Korea Free Trade Agreement Implementation Act [Pub. L. 112–41, 19 U.S.C. 3805 note].

"(4) Section 603 of the United States-Colombia Trade Promotion Agreement Implementation Act [Pub. L. 112–42, 19 U.S.C. 3805 note].

"(5) Section 502 of the United States-Panama Trade Promotion Agreement Implementation Act [Pub. L. 112–43, 19 U.S.C. 3805 note]."

PAYMENT OF CORPORATE ESTIMATED TAXES

Pub. L. 112–163, §4, Aug. 10, 2012, 126 Stat. 1277, provided that: "Notwithstanding section 6655 of the Internal Revenue Code of 1986—

"(1) in the case of a corporation with assets of not less than $1,000,000,000 (determined as of the end of the preceding taxable year), the amount of any required installment of corporate estimated tax which is otherwise due in July, August, or September of 2017 shall be 100.25 percent of such amount; and

"(2) the amount of the next required installment after an installment referred to in paragraph (1) shall be appropriately reduced to reflect the amount of the increase by reason of such paragraph."

Notwithstanding this section, in the case of a corporation with assets of not less than $1,000,000,000, any required installment of corporate estimated tax due in July, August, or September of 2012 and July, August, or September of 2016 to be increased by 0.25 percent, and the amount of the next required installment thereafter to be appropriately reduced to reflect the amount of the increase, see section 502 of Pub. L. 112–43, set out in a note under section 3805 of Title 19, Customs Duties.

Notwithstanding this section, in the case of a corporation with assets of not less than $1,000,000,000, any required installment of corporate estimated tax otherwise due in July, August, or September of 2016 to be increased by 0.50 percent, and the amount of the next required installment thereafter to be appropriately reduced to reflect the amount of the increase, see section 603 of Pub. L. 112–42, set out in a note under section 3805 of Title 19, Customs Duties.

Notwithstanding this section, in the case of a corporation with assets of not less than $1,000,000,000, any required installment of corporate estimated tax due in July, August, or September of 2012 to be increased by 0.25 percent and any required installment due in July, August, or September of 2016 to be increased by 2.75 percent, and the amount of the next required installment thereafter to be appropriately reduced to reflect the amount of the increase, see section 505 of Pub. L. 112–41, set out in a note under section 3805 of Title 19, Customs Duties.

Pub. L. 109–222, title IV, §401, May 17, 2006, 120 Stat. 353, as amended by Pub. L. 110–28, title VIII, §8248, May 25, 2007, 121 Stat. 204; Pub. L. 110–42, §4, June 30, 2007, 121 Stat. 236; Pub. L. 110–52, §3, Aug. 1, 2007, 121 Stat. 264; Pub. L. 110–89, §2(a), Sept. 28, 2007, 121 Stat. 982; Pub. L. 110–138, title VI, §602, Dec. 14, 2007, 121 Stat. 1490; Pub. L. 110–289, div. C, title III, §3094(a), July 30, 2008, 122 Stat. 2912, provided that: "Notwithstanding section 6655 of the Internal Revenue Code of 1986—

"(1) in the case of a corporation with assets of not less than $1,000,000,000 (determined as of the end of the preceding taxable year)—

"(A) the amount of any required installment of corporate estimated tax which is otherwise due in July, August, or September of 2006 shall be 105 percent of such amount,

"(B) the amount of any required installment of corporate estimated tax which is otherwise due in July, August, or September of 2012 shall be 100 percent of such amount,

"(C) the amount of any required installment of corporate estimated tax which is otherwise due in July, August, or September of 2013 shall be 100.75 percent of such amount, and

"(D) the amount of the next required installment after an installment referred to in subparagraph (A), (B), or (C) shall be appropriately reduced to reflect the amount of the increase by reason of such subparagraph,

"(2) 20.5 percent of the amount of any required installment of corporate estimated tax which is otherwise due in September 2010 shall not be due until October 1, 2010, and

"(3) 27.5 percent of the amount of any required installment of corporate estimated tax which is otherwise due in September 2011 shall not be due until October 1, 2011."

[Pub. L. 111–42, title II, §202, July 28, 2009, 123 Stat. 1964, provided that:

["(a) REPEAL OF ADJUSTMENTS FOR 2010, 2011, AND 2013.—Section 401 of the Tax Increase Prevention and Reconciliation Act of 2005 [Pub. L. 109–222, set out above] (and any modification of such section contained in any other provision of law) shall not apply with respect to any installment of corporate estimated tax which (without regard to such section) would otherwise be due after December 31, 2009.

["(b) ADJUSTMENT FOR 2014.—Notwithstanding section 6655 of the Internal Revenue Code of 1986—

["(1) in the case of a corporation with assets of not less than $1,000,000,000 (determined as of the end of the preceding taxable year), the amount of any required installment of corporate estimated tax which is otherwise due in July, August, or September of 2014 shall be 100.25 percent of such amount; and

["(2) the amount of the next required installment after an installment referred to in paragraph (1) shall be appropriately reduced to reflect the amount of the increase by reason of such paragraph."]

[Section 202(b) of Pub. L. 111–42, set out above, and any modification of such provision, not applicable with respect to any installment of corporate income tax, see section 7001 of Pub. L. 112–96, set out as a note above.]

[Pub. L. 111–171, §12(a), May 24, 2010, 124 Stat. 1207, provided that: "The percentage under

paragraph (1) of section 202(b) of the Corporate Estimated Tax Shift Act of 2009 [Pub. L. 111–42, set out above] in effect on the date of the enactment of this Act [May 24, 2010] is increased by 0.75 percentage points."]

[Pub. L. 111–152, title I, §1410, Mar. 30, 2010, 124 Stat. 1070, provided that: "The percentage under paragraph (1) of section 202(b) of the Corporate Estimated Tax Shift Act of 2009 [Pub. L. 111–42, set out above] in effect on the date of the enactment of this Act [Mar. 30, 2010] is increased by 15.75 percentage points."]

[Pub. L. 111–147, title V, §561, Mar. 18, 2010, 124 Stat. 117, provided that: "Notwithstanding section 6655 of the Internal Revenue Code of 1986, in the case of a corporation with assets of not less than $1,000,000,000 (determined as of the end of the preceding taxable year)—

["(1) the percentage under paragraph (1) of section 202(b) of the Corporate Estimated Tax Shift Act of 2009 [Pub. L. 111–42, set out above] in effect on the date of the enactment of this Act [Mar. 18, 2010] is increased by 23 percentage points,

["(2) the amount of any required installment of corporate estimated tax which is otherwise due in July, August, or September of 2015 shall be 121.5 percent of such amount,

["(3) the amount of any required installment of corporate estimated tax which is otherwise due in July, August, or September of 2019 shall be 106.5 percent of such amount, and

["(4) the amount of the next required installment after an installment referred to in paragraph (2) or (3) shall be appropriately reduced to reflect the amount of the increase by reason of such paragraph."]

[Section 561(b) of Pub. L. 111–147, set out above, and any modification of such provision, not applicable with respect to any installment of corporate income tax, see section 7001 of Pub. L. 112–96, set out as a note above.]

[Pub. L. 111–344, title III, §302, Dec. 29, 2010, 124 Stat. 3617, provided that: "The percentage under paragraph (2) of section 561 of the Hiring Incentives to Restore Employment Act [Pub. L. 111–147, set out above] in effect on the date of the enactment of this Act [Dec. 29, 2010] is increased by 4.5 percentage points."]

[Pub. L. 111–240, title II, §2131, Sept. 27, 2010, 124 Stat. 2568, provided that: "The percentage under paragraph (2) of section 561 of the Hiring Incentives to Restore Employment Act [Pub. L. 111–147, set out above] in effect on the date of the enactment of this Act [Sept. 27, 2010] is increased by 36 percentage points."]

[Pub. L. 111–237, §4(a), Aug. 16, 2010, 124 Stat. 2498, provided that: "The percentage under paragraph (2) of section 561 of the Hiring Incentives to Restore Employment Act [Pub. L. 111–147, set out above] in effect on the date of the enactment of this Act [Aug. 16, 2010] is increased by 0.25 percentage points."]

[Pub. L. 111–227, title IV, §4002, Aug. 11, 2010, 124 Stat. 2480, provided that: "The percentage under paragraph (2) of section 561 of the Hiring Incentives to Restore Employment Act [Pub. L. 111–147, set out above] in effect on the date of the enactment of this Act [Aug. 11, 2010] is increased by 0.5 percentage points."]

[Pub. L. 111–210, §3, July 27, 2010, 124 Stat. 2256, provided that: "The percentage under paragraph (2) of section 561 of the Hiring Incentives to Restore Employment Act [Pub. L. 111–147, set out above] in effect on the date of the enactment of this Act [July 27, 2010] is increased by 0.25 percentage points."]

[Pub. L. 111–171, §12(b), May 24, 2010, 124 Stat. 1207, provided that: "The percentage under paragraph (2) of section 561 of the Hiring Incentives to Restore Employment Act [Pub. L. 111–147, set out above] in effect on the date of the enactment of this Act [May 24, 2010] is increased by 0.75 percentage points."]

[Pub. L. 111–124, §4, Dec. 28, 2009, 123 Stat. 3485, provided that: "The percentage under paragraph (1) of section 202(b) of the Corporate Estimated Tax Shift Act of 2009 [Pub. L. 111–42, set out above] in effect on the date of the enactment of this Act [Dec. 28, 2009] is increased by 1.5 percentage points."]

[Pub. L. 111–92, §18, Nov. 6, 2009, 123 Stat. 2997, provided that: "The percentage under paragraph (1) of section 202(b) of the Corporate Estimated Tax Shift Act of 2009 [Pub. L. 111–42, set out above] in effect on the date of the enactment of this Act [Nov. 6, 2009] is increased by 33.0 percentage points."]

[Pub. L. 111–3, title VII, §704, Feb. 4, 2009, 123 Stat. 111, provided that: "The percentage under subparagraph (C) of section 401(1) of the Tax Increase Prevention and Reconciliation Act of 2005 [Pub. L. 109–222, set out above] in effect on the date of the enactment of this Act [Feb. 4, 2009] is increased by 0.5 percentage point."]

[Pub. L. 110–436, §6, Oct. 16, 2008, 122 Stat. 4981, provided that: "The percentage under subparagraph (C) of section 401(1) of the Tax Increase Prevention and Reconciliation Act of 2005 [Pub. L. 109–222, set out

above] in effect on the date of the enactment of this Act [Oct. 16, 2008] is increased by 2 percentage points."]

[Pub. L. 110–289, div. C, title III, §3094(a), July 30, 2008, 122 Stat. 2912, provided that: "Subparagraph (B) of section 401(1) of the Tax Increase Prevention and Reconciliation Act of 2005 [Pub. L. 109–222, set out above] is amended by striking the percentage contained therein and inserting '100 percent'. No other provision of law which would change such percentage shall have any force and effect."]

[Pub. L. 110–289, div. C, title III, §3094(b), July 30, 2008, 122 Stat. 2913, provided that: "The percentage under subparagraph (C) of section 401(1) of the Tax Increase Prevention and Reconciliation Act of 2005 [Pub. L. 109–222, set out above] in effect on the date of the enactment of this Act [July 30, 2008] is increased by 16.75 percentage points."]

[Pub. L. 110–287, §3, July 29, 2008, 122 Stat. 2649, provided that: "The percentage under subparagraph (C) of section 401(1) of the Tax Increase Prevention and Reconciliation Act of 2005 [Pub. L. 109–222, set out above] in effect on the date of the enactment of this Act [July 29, 2008] is increased by 0.25 percentage points."]

[Pub. L. 110–234, title XV, §15202, May 22, 2008, 122 Stat. 1500, and Pub. L. 110–246, §4(a), title XV, §15202, June 18, 2008, 122 Stat. 1664, 2262, provided that: "The percentage under subparagraph (B) of section 401(1) of the Tax Increase Prevention and Reconciliation Act of 2005 [Pub. L. 109–222, set out above] in effect on the date of the enactment of this Act [June 18, 2008] is increased by 7.75 percentage points." Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.]

[Pub. L. 110–191, §4, Feb. 29, 2008, 122 Stat. 647, provided that: "The percentage under subparagraph (C) of section 401(1) of the Tax Increase Prevention and Reconciliation Act of 2005 [Pub. L. 109–222, set out above] in effect on the date of the enactment of this Act [Feb. 29, 2008] is increased by 0.25 percentage points."]

[Pub. L. 110–142, §10, Dec. 20, 2007, 121 Stat. 1808, provided that: "The percentage under subparagraph (B) of section 401(1) of the Tax Increase Prevention and Reconciliation Act of 2005 [Pub. L. 109–222, set out above] in effect on the date of the enactment of this Act [Dec. 20, 2007] is increased by 1.50 percentage points."]

[Pub. L. 110–138, title I, §107(a), (c), title VI, §602, Dec. 14, 2007, 121 Stat. 1459, 1490, which directed amendment of section 401(1)(B) of Pub. L. 109–222, set out above, by striking "115 percent" and inserting "115.75 percent" effective on the date on which the United States-Peru Trade Promotion Agreement entered into force (Feb. 1, 2009) and ceasing to have effect on the date on which the Agreement terminates, could not be executed in view of the subsequent amendment by Pub. L. 110–289, §3094(a), which was effective July 30, 2008.]

TIME FOR PAYMENT OF SEPTEMBER 2001 AND SEPTEMBER 2004 CORPORATE ESTIMATED TAXES

Pub. L. 107–16, title VIII, §801, June 7, 2001, 115 Stat. 148, provided that: "Notwithstanding section 6655 of the Internal Revenue Code of 1986—

"(1) 100 percent of the amount of any required installment of corporate estimated tax which is otherwise due in September 2001 shall not be due until October 1, 2001; and

"(2) 20 percent of the amount of any required installment of corporate estimated tax which is otherwise due in September 2004 shall not be due until October 1, 2004."

WAIVER OF ESTIMATED TAX PENALTIES FOR 1998 UNDERPAYMENTS

No addition to tax to be made under this section with respect to any underpayment of an installment required to be paid on or before the 30th day after July 22, 1998, to the extent such underpayment was created or increased by any provision of Pub. L. 105–206, see section 1(c) of Pub. L. 105–206, set out as a note under section 6654 of this title.

No addition to tax to be made under this section for any period before Jan. 1, 1998, for any payment the due date of which is before Jan. 16, 1998, with respect to any underpayment attributable to such period to the extent such underpayment was created or increased by any provision of Pub. L. 105–34, see section 1(d) of Pub. L. 105–34, set out as a note under section 6654 of this title.

UNDERPAYMENTS OF ESTIMATED TAX FOR 1996

No addition to tax to be made under this section with respect to any underpayment of an installment required to be paid before Aug. 20, 1996, to the extent such underpayment was created or increased by any provision of title I (§§1101–1954) of Pub. L. 104–188, see section 1102 of Pub. L. 104–188, set out as a note under section 6654 of this title.

WAIVER OF ESTIMATED PENALTIES FOR 1993 UNDERPAYMENTS ATTRIBUTABLE TO REVENUE RECONCILIATION ACT OF 1993

No addition to tax to be made under this section for any period before Apr. 16, 1994 (Mar. 16, 1994, in the case of a corporation), with respect to any underpayment to the extent such underpayment was created or increased by any provision of chapter 1 (§§13001–13444) of title XIII of Pub. L. 103–66, see section 13001(d) of Pub. L. 103–66, set out as a note under section 6654 of this title.

WAIVER OF ESTIMATED TAX PENALTIES FOR UNDERPAYMENTS ATTRIBUTABLE TO SECTION 420(B)(4)(B) OF THIS TITLE

No addition to tax to be made under this section for taxable year preceding taxpayer's first taxable year beginning after Dec. 31, 1990, with respect to any underpayment to the extent such underpayment was created or increased by reason of former section 420(b)(4)(B) of this title, see section 12011(c)(2) of Pub. L. 101–508, set out as an Effective Date note under section 420 of this title.

WAIVER OF ESTIMATED PENALTIES FOR 1990 UNDERPAYMENTS ATTRIBUTABLE TO REVENUE RECONCILIATION ACT OF 1990

Pub. L. 101–508, title XI, §11307, Nov. 5, 1990, 104 Stat. 1388–452, provided that: "No addition to tax shall be made under section 6655 of the Internal Revenue Code of 1986 for any period before March 16, 1991, with respect to any underpayment to the extent such underpayment was created or increased by any provision of this part [part I (§§11301–11307) of subtitle C of title XI of Pub. L. 101–508, see Tables for classification]."

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(d)(3) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, see section 1012(aa)(2) of Pub. L. 100–647, set out as a note under section 861 of this title.

WAIVER OF ESTIMATED PENALTIES FOR 1988 UNDERPAYMENTS ATTRIBUTABLE TO TECHNICAL AND MISCELLANEOUS REVENUE ACT OF 1988

No addition to tax to be made under this section for any period before Mar. 16, 1989, with respect to any underpayment to the extent such underpayment was created or increased by any provision of title I (§§1001 to 1019) or II (§§2001 to 2006) of Pub. L. 100–647, see section 1019(b) of Pub. L. 100–647, set out as an Effective Date of 1988 Amendment note under section 1 of this title.

CORPORATIONS ALSO MAY USE 1986 TAX TO DETERMINE AMOUNT OF CERTAIN ESTIMATED TAX INSTALLMENTS DUE ON OR BEFORE JUNE 15, 1987

Pub. L. 100–203, title X, §10303(b)(2), Dec. 22, 1987, 101 Stat. 1330–430, provided that:

"(A) IN GENERAL.—In the case of a large corporation, no addition to tax shall be imposed by section 6655 of the Internal Revenue Code of 1986 with respect to any underpayment of an estimated tax installment to which this subsection applies if no addition would be imposed with respect to such underpayment by reason of section 6655(d)(1) of such Code if such corporation were not a large corporation. The preceding sentence shall apply only to the extent the underpayment is paid on or before the last date prescribed for payment of the most recent installment of estimated tax due on or before September 15, 1987.

"(B) INSTALLMENT TO WHICH SUBSECTION APPLIES.—This subsection applies to any installment of estimated tax for a taxable year beginning after December 31, 1986, which is due on or before June 15, 1987.

"(C) LARGE CORPORATION.—For purposes of this subsection, the term 'large corporation' has the meaning given such term by section 6655(i)(2) of such Code (as in effect on the day before the date of the enactment of this Act [Dec. 22, 1987])."

WAIVER OF ESTIMATED PENALTIES FOR 1986 UNDERPAYMENTS ATTRIBUTABLE TO TAX REFORM ACT OF 1986

No addition to tax to be made under this section for any period before Mar. 16, 1987, with respect to any underpayment, to the extent such underpayment was created or increased by any provision of Pub. L. 99–514, see section 1543 of Pub. L. 99–514, set out as a note under section 6654 of this title.

WAIVER OF ESTIMATED TAX PENALTIES

Pub. L. 99–514, title XVIII, §1879(a), Oct. 22, 1986, 100 Stat. 2905, provided that: "No addition to tax

shall be made under section 6654 or 6655 of the Internal Revenue Code of 1954 [now 1986] (relating to failure to pay estimated income tax) for any period before April 16, 1985 (March 16, 1985 in the case of a taxpayer subject to section 6655 of such Code), with respect to any underpayment, to the extent that such underpayment was created or increased by any provision of the Tax Reform Act of 1984 [Pub. L. 98–369, div. A]."

UNDERPAYMENTS OF ESTIMATED TAX FOR 1984

Pub. L. 98–369, div. A, title II, subtitle A, §218, July 18, 1984, 98 Stat. 766, which provided that no addition to the tax shall be made under section 6655 of this title with respect to any underpayment of an installment required to be paid before July 18, 1984, to the extent such underpayment was created or increased by any provision of this subtitle, and such underpayment was paid in full on or before the last date prescribed for payment of the first installment of estimated tax required to be paid after July 18, 1984, was repealed by Pub. L. 99–514, title XVIII, §1824, Oct. 22, 1986, 100 Stat. 2846.

WAIVER OF PENALTY FOR UNDERPAYMENT OF ESTIMATED TAX

Pub. L. 94–455, title VIII, §803(g), Oct. 4, 1976, 90 Stat. 1589, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "If—

"(1) a corporation made underpayments of estimated tax for a taxable year of the corporation which includes August 1, 1975, because the corporation intended to elect to have the provisions of subparagraph (B) of section 46(a)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as it existed before the date of enactment of this Act [Oct. 4, 1976]) apply for such taxable year, and

"(2) the corporation does not elect to have the provisions of such subparagraph apply for such taxable year because this Act does not contain the amendments made by section 804(a)(2) (relating to flowthrough of investment credit), or the provisions of subsection (f) of such section (relating to grace period for certain plan transfers), of the bill H.R. 10612 (94th Congress, 2d Session), as amended by the Senate,

then the provisions of section 6655 of such Code (relating to failure by corporation to pay estimated income tax) shall not apply to so much of any such underpayment as the corporation can establish, to the satisfaction of the Secretary of the Treasury, is properly attributable to the inapplicability of such subparagraph (B) for such taxable year."

DECLARATION OF ESTIMATED TAX

With respect to taxable years beginning before Dec. 30, 1969, if a taxpayer is required to make a declaration, or to pay any amount of estimated tax by reason of amendments made by Pub. L. 91–172, such amount shall be paid ratably on each of the remaining installment dates for the taxable year beginning with the first installment date on or after Dec. 30, 1969; as to any declaration or payment of estimated tax before the first installment date, this section, and sections 6015, 6154, and 6654 of this title shall be applied without regard to amendments made by Pub. L. 91–172, see section 946(b) of Pub. L. 91–172, set out as a note under section 6153 of this title.

TAX SURCHARGE EXTENSION; DECLARATIONS OF ESTIMATED TAX

Requirement of making a declaration or amended declaration of estimated tax or of payment of any amount or additional amount of estimated tax by reason of amendment of sections 51(a)(1)(A), (B), (2)(A) and 963(b) of this title as calling for payment of such amount or additional amount ratably on or before each of remaining installment dates for taxable year beginning with installment date on or after the 30th day after Aug. 7, 1969; application of this section without regard to such amendment with respect to any declaration or payment of estimated tax before such first installment date; and definition of "installment date", see Pub. L. 93–53, §5(c), Aug. 7, 1969, 83 Stat. 95.

ESTIMATED TAX OF LIFE INSURANCE COMPANIES FOR 1958

Pub. L. 86–69, June 25, 1959, §3(h), 73 Stat. 140, provided that in the case of a taxpayer subject to tax under section 811 of this title, as in effect before June 25, 1959, no additional tax was to be payable under this section with respect to estimated tax for a taxable year beginning in 1958.

§6656. Failure to make deposit of taxes

(a) Underpayment of deposits

In the case of any failure by any person to deposit (as required by this title or by regulations of the

Secretary under this title) on the date prescribed therefor any amount of tax imposed by this title in such government depository as is authorized under section 6302(c) to receive such deposit, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be imposed upon such person a penalty equal to the applicable percentage of the amount of the underpayment.

(b) Definitions

For purposes of subsection (a)—

(1) Applicable percentage

(A) In general

Except as provided in subparagraph (B), the term "applicable percentage" means—

(i) 2 percent if the failure is for not more than 5 days,

(ii) 5 percent if the failure is for more than 5 days but not more than 15 days, and

(iii) 10 percent if the failure is for more than 15 days.

(B) Special rule

In any case where the tax is not deposited on or before the earlier of—

(i) the day 10 days after the date of the first delinquency notice to the taxpayer under section 6303, or

(ii) the day on which notice and demand for immediate payment is given under section 6861 or 6862 or the last sentence of section 6331(a),

the applicable percentage shall be 15 percent.

(2) Underpayment

The term "underpayment" means the excess of the amount of the tax required to be deposited over the amount, if any, thereof deposited on or before the date prescribed therefor.

(c) Exception for first-time depositors of employment taxes

The Secretary may waive the penalty imposed by subsection (a) on a person's inadvertent failure to deposit any employment tax if—

(1) such person meets the requirements referred to in section 7430(c)(4)(A)(ii),

(2) such failure—

(A) occurs during the first quarter that such person was required to deposit any employment tax; or

(B) if such person is required to change the frequency of deposits of any employment tax, relates to the first deposit to which such change applies, and

(3) the return of such tax was filed on or before the due date.

For purposes of this subsection, the term "employment taxes" means the taxes imposed by subtitle C.

(d) Authority to abate penalty where deposit sent to Secretary

The Secretary may abate the penalty imposed by subsection (a) with respect to the first time a depositor is required to make a deposit if the amount required to be deposited is inadvertently sent to the Secretary instead of to the appropriate government depository.

(e) Designation of periods to which deposits apply

(1) In general

A deposit made under this section shall be applied to the most recent period or periods within the specified tax period to which the deposit relates, unless the person making such deposit designates a different period or periods to which such deposit is to be applied.

(2) Time for making designation

A person may make a designation under paragraph (1) only during the 90-day period beginning on the date of a notice that a penalty under subsection (a) has been imposed for the specified tax period to which the deposit relates.

(Aug. 16, 1954, ch. 736, 68A Stat. 826; Pub. L. 91–172, title IX, §943(b), Dec. 30, 1969, 83 Stat. 728; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–34, title VII, §724(a), (b)(1), (3), Aug. 13, 1981, 95 Stat. 344, 345; Pub. L. 99–509, title VIII, §8001(a), Oct. 21, 1986, 100 Stat. 1951; Pub. L. 101–239, title VII, §7742(a), Dec. 19, 1989, 103 Stat. 2405; Pub. L. 104–168, title III, §304(a), title VII, §701(c)(3), July 30, 1996, 110 Stat. 1458, 1464; Pub. L. 105–206, title III, §3304(a)–(c), July 22, 1998, 112 Stat. 742.)

AMENDMENTS

1998—Subsec. (c)(2). Pub. L. 105–206, §3304(b)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "such failure occurs during the 1st quarter that such person was required to deposit any employment tax, and".

Subsec. (e). Pub. L. 105–206, §3304(a), added subsec. (e).

Subsec. (e)(1). Pub. L. 105–206, §3304(c), reenacted heading without change and amended text of par. (1) generally. Prior to amendment, text read as follows: "A person may, with respect to any deposit of tax to be reported on such person's return for a specified tax period, designate the period or periods within such specified tax period to which the deposit is to be applied for purposes of this section."

1996—Subsec. (c). Pub. L. 104–168, §304(a), added subsec. (c).

Subsec. (c)(1). Pub. L. 104–168, §701(c)(3), substituted "section 7430(c)(4)(A)(ii)" for "section 7430(c)(4)(A)(iii)".

Subsec. (d). Pub. L. 104–168, §304(a), added subsec. (d).

1989—Pub. L. 101–239 substituted "taxes" for "taxes or overstatement of deposits" as section catchline and amended text generally, revising substance and structure.

1986—Subsec. (a). Pub. L. 99–509 substituted "10 percent" for "5 percent".

1981—Pub. L. 97–34, §724(b)(1), inserted "or overstatement of deposits" after "taxes" in section catchline.

Subsec. (a). Pub. L. 97–34, §724(b)(3), substituted "Underpayment of deposits" for "Penalty" in heading.

Subsec. (b). Pub. L. 97–34, §724(a), substituted provisions relating to conditions for imposition of penalties for overstated deposit claims and definition of "overstated deposit claim", for provisions relating to imposition of penalties after due date for return.

1976—Subsec. (a). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

1969—Subsec. (a). Pub. L. 91–172 substituted provisions imposing a penalty of five percent for the failure to deposit on the date prescribed any amount of tax imposed by this title, for provisions imposing a penalty of one percent of the amount of underpayment each month but not to exceed six percent in the aggregate.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–206, title III, §3304(d), July 22, 1998, 112 Stat. 742, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to deposits required to be made after the 180th day after the date of the enactment of this Act [July 22, 1998].

"(2) APPLICATION TO CURRENT LIABILITIES.—The amendment made by subsection (c) [amending this section] shall apply to deposits required to be made after December 31, 2001."

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–168, title III, §304(b), July 30, 1996, 110 Stat. 1459, provided that: "The amendment made by subsection (a) [amending this section] shall apply to deposits required to be made after the date of the enactment of this Act [July 30, 1996]."

Amendment by section 701(c)(3) of Pub. L. 104–168 applicable in case of proceedings commenced after July 30, 1996, see section 701(d) of Pub. L. 104–168, set out as a note under section 6404 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7742(c), Dec. 19, 1989, 103 Stat. 2405, provided that: "The amendments made by this section [amending this section] shall apply to deposits required to be made after December 31, 1989."

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–509, title VIII, §8001(b), Oct. 21, 1986, 100 Stat. 1951, provided that: "The amendment made by subsection (a) [amending this section] shall apply to penalties assessed after the date of the enactment of this Act [Oct. 21, 1986]."

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title VII, §724(c), Aug. 13, 1981, 95 Stat. 345, provided that: "The amendments made by this section [amending this section and sections 5684 and 5761 of this title] shall apply to returns filed after the date of the enactment of this Act [Aug. 13, 1981]."

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable with respect to deposits the time for making of which is after Dec. 31, 1969, see section 943(d) of Pub. L. 91–172, set out as a note under section 6651 of this title.

§6657. Bad checks

If any instrument in payment, by any commercially acceptable means, of any amount receivable under this title is not duly paid, in addition to any other penalties provided by law, there shall be paid as a penalty by the person who tendered such instrument, upon notice and demand by the Secretary, in the same manner as tax, an amount equal to 2 percent of the amount of such instrument, except that if the amount of such instrument is less than $1,250, the penalty under this section shall be $25 or the amount of such instrument, whichever is the lesser. This section shall not apply if the person tendered such instrument in good faith and with reasonable cause to believe that it would be duly paid.

(Aug. 16, 1954, ch. 736, 68A Stat. 826; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 100–647, title V, §5071(a), Nov. 10, 1988, 102 Stat. 3681; Pub. L. 110–28, title VIII, §8245(a), May 25, 2007, 121 Stat. 200; Pub. L. 111–198, §3(a), July 2, 2010, 124 Stat. 1356.)

AMENDMENTS

2010—Pub. L. 111–198, §3(a)(2), substituted "such instrument" for "such check" wherever appearing.

Pub. L. 111–198, §3(a)(1), substituted "If any instrument in payment, by any commercially acceptable means, of any amount" for "If any check or money order in payment of any amount".

2007—Pub. L. 110–28 substituted "$1,250" for "$750" and "$25" for "$15".

1988—Pub. L. 100–647 substituted "2" for "1", "$750" for "$500", and "$15" for "$5".

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–198, §3(b), July 2, 2010, 124 Stat. 1356, provided that: "The amendments made by this section [amending this section] shall apply to instruments tendered after the date of the enactment of this Act [July 2, 2010]."

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–28, title VIII, §8245(b), May 25, 2007, 121 Stat. 200, provided that: "The amendments made by this section [amending this section] apply to checks or money orders received after the date of the enactment of this Act [May 25, 2007]."

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title V, §5071(b), Nov. 10, 1988, 102 Stat. 3681, provided that: "The amendment made by subsection (a) [amending this section] shall apply to checks or money orders received after the date of the enactment of this Act [Nov. 10, 1988]."

§6658. Coordination with title 11

(a) Certain failures to pay tax

No addition to the tax shall be made under section 6651, 6654, or 6655 for failure to make timely payment of tax with respect to a period during which a case is pending under title 11 of the United States Code—

(1) if such tax was incurred by the estate and the failure occurred pursuant to an order of the court finding probable insufficiency of funds of the estate to pay administrative expenses, or

(2) if—

(A) such tax was incurred by the debtor before the earlier of the order for relief or (in the involuntary case) the appointment of a trustee, and

(B)(i) the petition was filed before the due date prescribed by law (including extensions) for filing a return of such tax, or

(ii) the date for making the addition to the tax occurs on or after the day on which the petition was filed.

(b) Exception for collected taxes

Subsection (a) shall not apply to any liability for an addition to the tax which arises from the failure to pay or deposit a tax withheld or collected from others and required to be paid to the United States.

(Added Pub. L. 96–589, §6(e)(1), Dec. 24, 1980, 94 Stat. 3408.)

PRIOR PROVISIONS

A prior section 6658, act Aug. 16, 1954, ch. 736, 68A Stat. 826, authorized inclusion as part of the tax a 25 percent penalty in cases of violations or attempted violations of section 6851 of this title, prior to repeal by Pub. L. 96–167, §6(a), Dec. 29, 1979, 93 Stat. 1276.

EFFECTIVE DATE

Section effective Oct. 1, 1979, but not applicable to proceedings under Title 11, Bankruptcy, commenced before Oct. 1, 1979, see section 7(e) of Pub. L. 96–589, set out as an Effective Date of 1980 Amendment note under section 108 of this title.

[§§6659 to 6661. Repealed. Pub. L. 101–239, title VII, §7721(c)(2), Dec. 19, 1989, 103 Stat. 2399]

Section 6659, added Pub. L. 97–34, title VII, §722(a)(1), Aug. 13, 1981, 95 Stat. 341; amended Pub. L. 97–448, title I, §107(a)(1), (2), Jan. 12, 1983, 96 Stat. 2391; Pub. L. 98–369, div. A, title I, §155(c)(1), title VII, §721(x)(4), July 18, 1984, 98 Stat. 693, 971, related to additions to tax in case of valuation overstatements for purposes of the income tax.

A prior section 6659 was renumbered section 6662 of this title.

Section 6659A, added Pub. L. 99–514, title XI, §1138(a), Oct. 22, 1986, 100 Stat. 2486, related to additions to tax in case of overstatements of pension liabilities.

Section 6660, added Pub. L. 98–369, div. A, title I, §155(c)(2)(A), July 18, 1984, 98 Stat. 694; amended Pub. L. 99–514, title XVIII, §§1811(d), 1899A(57), Oct. 22, 1986, 100 Stat. 2833, 2961, related to additions to tax in case of valuation understatements for purposes of estate or gift taxes.

A prior section 6660 was renumbered section 6662 of this title.

Section 6661, added Pub. L. 97–248, title III, §323(a), Sept. 3, 1982, 96 Stat. 613; amended Pub. L. 97–354, §5(a)(42), Oct. 19, 1982, 96 Stat. 1697; Pub. L. 98–369, div. A, title VII, §714(h)(3), July 18, 1984, 98 Stat. 962; Pub. L. 99–509, title VIII, §8002(a), (c), Oct. 21, 1986, 100 Stat. 1951; Pub. L. 99–514, title XV, §1504(a), Oct. 22, 1986, 100 Stat. 2743, related to substantial understatements of liability.

EFFECTIVE DATE OF REPEAL

Repeal applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1989, see section 7721(d) of Pub. L. 101–239, set out as an Effective Date of 1989 Amendment note under section 461 of this title.

PART II—ACCURACY-RELATED AND FRAUD PENALTIES

Sec.

6662. Imposition of accuracy-related penalty on underpayments.

6662A. Imposition of accuracy-related penalty on understatements with respect to reportable transactions.

6663. Imposition of fraud penalty.

6664. Definitions and special rules.

AMENDMENTS

2004—Pub. L. 108–357, title VIII, §812(e)(2), Oct. 22, 2004, 118 Stat. 1580, added items 6662 and 6662A and struck out former item 6662 "Imposition of accuracy-related penalty".

1989—Pub. L. 101–239, title VII, §7721(a), Dec. 19, 1989, 103 Stat. 2395, added part heading and analysis of sections.

§6662. Imposition of accuracy-related penalty on underpayments

(a) Imposition of penalty

If this section applies to any portion of an underpayment of tax required to be shown on a return, there shall be added to the tax an amount equal to 20 percent of the portion of the underpayment to which this section applies.

(b) Portion of underpayment to which section applies

This section shall apply to the portion of any underpayment which is attributable to 1 or more of the following:

(1) Negligence or disregard of rules or regulations.

(2) Any substantial understatement of income tax.

(3) Any substantial valuation misstatement under chapter 1.

(4) Any substantial overstatement of pension liabilities.

(5) Any substantial estate or gift tax valuation understatement.

(6) Any disallowance of claimed tax benefits by reason of a transaction lacking economic substance (within the meaning of section 7701(o)) or failing to meet the requirements of any similar rule of law.

(7) Any undisclosed foreign financial asset understatement.

This section shall not apply to any portion of an underpayment on which a penalty is imposed under section 6663. Except as provided in paragraph (1) or (2)(B) of section 6662A(e), this section shall not apply to the portion of any underpayment which is attributable to a reportable transaction understatement on which a penalty is imposed under section 6662A.

(c) Negligence

For purposes of this section, the term "negligence" includes any failure to make a reasonable attempt to comply with the provisions of this title, and the term "disregard" includes any careless, reckless, or intentional disregard.

(d) Substantial understatement of income tax

(1) Substantial understatement

(A) In general

For purposes of this section, there is a substantial understatement of income tax for any taxable year if the amount of the understatement for the taxable year exceeds the greater of—

(i) 10 percent of the tax required to be shown on the return for the taxable year, or

(ii) $5,000.

(B) Special rule for corporations

In the case of a corporation other than an S corporation or a personal holding company (as defined in section 542), there is a substantial understatement of income tax for any taxable year if the amount of the understatement for the taxable year exceeds the lesser of—

(i) 10 percent of the tax required to be shown on the return for the taxable year (or, if greater, $10,000), or

(ii) $10,000,000.

(2) Understatement

(A) In general

For purposes of paragraph (1), the term "understatement" means the excess of—

(i) the amount of the tax required to be shown on the return for the taxable year, over

(ii) the amount of the tax imposed which is shown on the return, reduced by any rebate (within the meaning of section 6211(b)(2)).

The excess under the preceding sentence shall be determined without regard to items to which section 6662A applies.

(B) Reduction for understatement due to position of taxpayer or disclosed item

The amount of the understatement under subparagraph (A) shall be reduced by that portion of the understatement which is attributable to—

(i) the tax treatment of any item by the taxpayer if there is or was substantial authority for such treatment, or

(ii) any item if—

(I) the relevant facts affecting the item's tax treatment are adequately disclosed in the return or in a statement attached to the return, and

(II) there is a reasonable basis for the tax treatment of such item by the taxpayer.

For purposes of clause (ii)(II), in no event shall a corporation be treated as having a reasonable basis for its tax treatment of an item attributable to a multiple-party financing transaction if such treatment does not clearly reflect the income of the corporation.

(C) Reduction not to apply to tax shelters

(i) In general

Subparagraph (B) shall not apply to any item attributable to a tax shelter.

(ii) Tax shelter

For purposes of clause (i), the term "tax shelter" means—

(I) a partnership or other entity,

(II) any investment plan or arrangement, or

(III) any other plan or arrangement,

if a significant purpose of such partnership, entity, plan, or arrangement is the avoidance or evasion of Federal income tax.

(3) Secretarial list

The Secretary may prescribe a list of positions which the Secretary believes do not meet 1 or more of the standards specified in paragraph (2)(B)(i), section 6664(d)(2),[1] and section 6694(a)(1). Such list (and any revisions thereof) shall be published in the Federal Register or the Internal Revenue Bulletin.

(e) Substantial valuation misstatement under chapter 1

(1) In general

For purposes of this section, there is a substantial valuation misstatement under chapter 1 if—

(A) the value of any property (or the adjusted basis of any property) claimed on any return of tax imposed by chapter 1 is 150 percent or more of the amount determined to be the correct amount of such valuation or adjusted basis (as the case may be), or

(B)(i) the price for any property or services (or for the use of property) claimed on any such return in connection with any transaction between persons described in section 482 is 200 percent or more (or 50 percent or less) of the amount determined under section 482 to be the correct amount of such price, or

(ii) the net section 482 transfer price adjustment for the taxable year exceeds the lesser of $5,000,000 or 10 percent of the taxpayer's gross receipts.

(2) Limitation

No penalty shall be imposed by reason of subsection (b)(3) unless the portion of the underpayment for the taxable year attributable to substantial valuation misstatements under chapter 1 exceeds $5,000 ($10,000 in the case of a corporation other than an S corporation or a personal holding company (as defined in section 542)).

(3) Net section 482 transfer price adjustment

For purposes of this subsection—

(A) In general

The term "net section 482 transfer price adjustment" means, with respect to any taxable year, the net increase in taxable income for the taxable year (determined without regard to any amount carried to such taxable year from another taxable year) resulting from adjustments under section 482 in the price for any property or services (or for the use of property).

(B) Certain adjustments excluded in determining threshold

For purposes of determining whether the threshold requirements of paragraph (1)(B)(ii) are met, the following shall be excluded:

(i) Any portion of the net increase in taxable income referred to in subparagraph (A) which is attributable to any redetermination of a price if—

(I) it is established that the taxpayer determined such price in accordance with a specific pricing method set forth in the regulations prescribed under section 482 and that the taxpayer's use of such method was reasonable,

(II) the taxpayer has documentation (which was in existence as of the time of filing the return) which sets forth the determination of such price in accordance with such a method and which establishes that the use of such method was reasonable, and

(III) the taxpayer provides such documentation to the Secretary within 30 days of a request for such documentation.

(ii) Any portion of the net increase in taxable income referred to in subparagraph (A) which is attributable to a redetermination of price where such price was not determined in accordance with such a specific pricing method if—

(I) the taxpayer establishes that none of such pricing methods was likely to result in a price that would clearly reflect income, the taxpayer used another pricing method to determine such price, and such other pricing method was likely to result in a price that would clearly reflect income,

(II) the taxpayer has documentation (which was in existence as of the time of filing the return) which sets forth the determination of such price in accordance with such other method and which establishes that the requirements of subclause (I) were satisfied, and

(III) the taxpayer provides such documentation to the Secretary within 30 days of request for such documentation.

(iii) Any portion of such net increase which is attributable to any transaction solely between foreign corporations unless, in the case of any such corporations, the treatment of such transaction affects the determination of income from sources within the United States or taxable income effectively connected with the conduct of a trade or business within the United States.

(C) Special rule

If the regular tax (as defined in section 55(c)) imposed by chapter 1 on the taxpayer is determined by reference to an amount other than taxable income, such amount shall be treated as the taxable income of such taxpayer for purposes of this paragraph.

(D) Coordination with reasonable cause exception

For purposes of section 6664(c) the taxpayer shall not be treated as having reasonable cause

for any portion of an underpayment attributable to a net section 482 transfer price adjustment unless such taxpayer meets the requirements of clause (i), (ii), or (iii) of subparagraph (B) with respect to such portion.

(f) Substantial overstatement of pension liabilities

(1) In general

For purposes of this section, there is a substantial overstatement of pension liabilities if the actuarial determination of the liabilities taken into account for purposes of computing the deduction under paragraph (1) or (2) of section 404(a) is 200 percent or more of the amount determined to be the correct amount of such liabilities.

(2) Limitation

No penalty shall be imposed by reason of subsection (b)(4) unless the portion of the underpayment for the taxable year attributable to substantial overstatements of pension liabilities exceeds $1,000.

(g) Substantial estate or gift tax valuation understatement

(1) In general

For purposes of this section, there is a substantial estate or gift tax valuation understatement if the value of any property claimed on any return of tax imposed by subtitle B is 65 percent or less of the amount determined to be the correct amount of such valuation.

(2) Limitation

No penalty shall be imposed by reason of subsection (b)(5) unless the portion of the underpayment attributable to substantial estate or gift tax valuation understatements for the taxable period (or, in the case of the tax imposed by chapter 11, with respect to the estate of the decedent) exceeds $5,000.

(h) Increase in penalty in case of gross valuation misstatements

(1) In general

To the extent that a portion of the underpayment to which this section applies is attributable to one or more gross valuation misstatements, subsection (a) shall be applied with respect to such portion by substituting "40 percent" for "20 percent".

(2) Gross valuation misstatements

The term "gross valuation misstatements" means—

(A) any substantial valuation misstatement under chapter 1 as determined under subsection (e) by substituting—

(i) in paragraph (1)(A), "200 percent" for "150 percent",

(ii) in paragraph (1)(B)(i)—

(I) "400 percent" for "200 percent", and

(II) "25 percent" for "50 percent", and

(iii) in paragraph (1)(B)(ii)—

(I) "$20,000,000" for "$5,000,000", and

(II) "20 percent" for "10 percent".

(B) any substantial overstatement of pension liabilities as determined under subsection (f) by substituting "400 percent" for "200 percent", and

(C) any substantial estate or gift tax valuation understatement as determined under subsection (g) by substituting "40 percent" for "65 percent".

(j) [2] Undisclosed foreign financial asset understatement

(1) In general

For purposes of this section, the term "undisclosed foreign financial asset understatement" means, for any taxable year, the portion of the understatement for such taxable year which is attributable to any transaction involving an undisclosed foreign financial asset.

(2) Undisclosed foreign financial asset

For purposes of this subsection, the term "undisclosed foreign financial asset" means, with respect to any taxable year, any asset with respect to which information was required to be provided under section 6038, 6038B, 6038D, 6046A, or 6048 for such taxable year but was not provided by the taxpayer as required under the provisions of those sections.

(3) Increase in penalty for undisclosed foreign financial asset understatements

In the case of any portion of an underpayment which is attributable to any undisclosed foreign financial asset understatement, subsection (a) shall be applied with respect to such portion by substituting "40 percent" for "20 percent".

(i) [3] Increase in penalty in case of nondisclosed noneconomic substance transactions

(1) In general

In the case of any portion of an underpayment which is attributable to one or more nondisclosed noneconomic substance transactions, subsection (a) shall be applied with respect to such portion by substituting "40 percent" for "20 percent".

(2) Nondisclosed noneconomic substance transactions

For purposes of this subsection, the term "nondisclosed noneconomic substance transaction" means any portion of a transaction described in subsection (b)(6) with respect to which the relevant facts affecting the tax treatment are not adequately disclosed in the return nor in a statement attached to the return.

(3) Special rule for amended returns

In no event shall any amendment or supplement to a return of tax be taken into account for purposes of this subsection if the amendment or supplement is filed after the earlier of the date the taxpayer is first contacted by the Secretary regarding the examination of the return or such other date as is specified by the Secretary.

(Added Pub. L. 101–239, title VII, §7721(a), Dec. 19, 1989, 103 Stat. 2395; amended Pub. L. 101–508, title XI, §11312(a), (b), Nov. 5, 1990, 104 Stat. 1388–454, 1388–455; Pub. L. 103–66, title XIII, §§13236(a)–(d), 13251(a), Aug. 10, 1993, 107 Stat. 505, 506, 531; Pub. L. 103–465, title VII, §744(a), (b), Dec. 8, 1994, 108 Stat. 5011; Pub. L. 105–34, title X, §1028(c), Aug. 5, 1997, 111 Stat. 928; Pub. L. 108–357, title VIII, §§812(b), (d), (e)(1), 819(a), (b), Oct. 22, 2004, 118 Stat. 1578, 1580, 1584; Pub. L. 109–135, title IV, §§403(x)(1), 412(aaa), Dec. 21, 2005, 119 Stat. 2629, 2641; Pub. L. 109–280, title XII, §1219(a)(1), (2), Aug. 17, 2006, 120 Stat. 1083; Pub. L. 111–147, title V, §512(a), Mar. 18, 2010, 124 Stat. 110; Pub. L. 111–152, title I, §1409(b)(1), (2), Mar. 30, 2010, 124 Stat. 1068, 1069.)

REFERENCES IN TEXT

Section 6664(d)(2), referred to in subsec. (d)(3), was redesignated as section 6664(d)(3) by Pub. L. 111–152, title I, §1409(c)(2)(A), Mar. 30, 2010, 124 Stat. 1069.

CODIFICATION

Section 1409(b)(1), (2) of Pub. L. 111–152, which directed the amendment of section 6662 without specifying the act to be amended, was executed to this section, which is section 6662 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2010 Amendment notes below.

Section 1219(a)(1), (2) of Pub. L. 109–280, which directed the amendment of section 6662 without specifying the act to be amended, was executed to this section, which is section 6662 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

PRIOR PROVISIONS

A prior section 6662, acts Aug. 16, 1954, ch. 736, 68A Stat. 827, §6659; May 14, 1960, Pub. L. 86–470, §1,

74 Stat. 132; Dec. 30, 1969, Pub. L. 91–172, title I, §101(j)(51), 83 Stat. 531; Sept. 2, 1974, Pub. L. 93–406, title II, §1016(a)(19), 88 Stat. 931; renumbered §6660, Aug. 13, 1981, Pub. L. 97–34, title VII, §722(a)(1), 95 Stat. 341; renumbered §6662, Sept. 3, 1982, Pub. L. 97–248, title III, §323(a), 96 Stat. 613, directed that additions be treated as tax and set procedure for assessing certain additions to tax, prior to repeal by Pub. L. 101–239, title VII, §7721(a), Dec. 19, 1989, 103 Stat. 2395, applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1989. See section 6665 of this title.

AMENDMENTS

2010—Subsec. (b)(6). Pub. L. 111–152, §1409(b)(1), added par. (6). See Codification note above.

Subsec. (b)(7). Pub. L. 111–147, §512(a)(1), which directed amendment of subsec. (b) by adding par. (7) after par. (6), was executed by adding par. (7) after par. (5) to reflect the probable intent of Congress and the subsequent addition of par. (6) by Pub. L. 111–152. See above.

Subsec. (i). Pub. L. 111–152, §1409(b)(2), added subsec. (i). See Codification note above.

Subsec. (j). Pub. L. 111–147, §512(a)(2), added subsec. (j).

2006—Subsec. (e)(1)(A). Pub. L. 109–280, §1219(a)(1)(A), substituted "150 percent" for "200 percent". See Codification note above.

Subsec. (g)(1). Pub. L. 109–280, §1219(a)(1)(B), substituted "65 percent" for "50 percent". See Codification note above.

Subsec. (h)(2)(A)(i), (ii). Pub. L. 109–280, §1219(a)(2)(A), amended cls. (i) and (ii) generally. Prior to amendment, cls. (i) and (ii) read as follows:

"(i) '400 percent' for '200 percent' each place it appears,

"(ii) '25 percent' for '50 percent', and".

See Codification note above.

Subsec. (h)(2)(C). Pub. L. 109–280, §1219(a)(2)(B), substituted " '40 percent' for '65 percent' " for " '25 percent' for '50 percent' ". See Codification note above.

2005—Subsec. (b). Pub. L. 109–135, §403(x)(1), inserted at end "Except as provided in paragraph (1) or (2)(B) of section 6662A(e), this section shall not apply to the portion of any underpayment which is attributable to a reportable transaction understatement on which a penalty is imposed under section 6662A."

Subsec. (d)(3). Pub. L. 109–135, §412(aaa), struck out "the" before "1 or more".

2004—Pub. L. 108–357, §812(e)(1), inserted "on underpayments" after "penalty" in section catchline.

Subsec. (d)(1)(B). Pub. L. 108–357, §819(a), reenacted heading without change and amended text of subpar. (B) generally. Prior to amendment, text read as follows: "In the case of a corporation other than an S corporation or a personal holding company (as defined in section 542), paragraph (1) shall be applied by substituting '$10,000' for '$5,000'."

Subsec. (d)(2)(A). Pub. L. 108–357, §812(b), inserted concluding provisions.

Subsec. (d)(2)(C). Pub. L. 108–357, §812(d), amended subpar. (C) generally, substituting provisions relating to inapplicability of subpar. (B) to any item attributable to a tax shelter and defining the term "tax shelter" for provisions relating to, in the case of any item of a taxpayer other than a corporation which is attributable to a tax shelter, inapplicability of subpar. (B)(ii) and inapplicability of subpar. (B)(i), unless the taxpayer reasonably believed that the tax treatment of such item by the taxpayer was more likely than not the proper treatment, inapplicability of subpar. (B) to any item of a corporation which is attributable to a tax shelter, and provisions defining the term "tax shelter".

Subsec. (d)(2)(D). Pub. L. 108–357, §819(b)(2), struck out heading and text of subpar. (D). Text read as follows: "The Secretary shall prescribe (and revise not less frequently than annually) a list of positions—

"(i) for which the Secretary believes there is not substantial authority, and

"(ii) which affect a significant number of taxpayers.

Such list (and any revision thereof) shall be published in the Federal Register."

Subsec. (d)(3). Pub. L. 108–357, §819(b)(1), added par. (3).

1997—Subsec. (d)(2)(B). Pub. L. 105–34, §1028(c)(1), inserted concluding provisions.

Subsec. (d)(2)(C)(iii). Pub. L. 105–34, §1028(c)(2), substituted "a significant purpose" for "the principal purpose" in concluding provisions.

1994—Subsec. (d)(2)(C)(i). Pub. L. 103–465, §744(b)(1), substituted "In the case of any item of a taxpayer other than a corporation which is" for "In the case of any item" in introductory provisions.

Subsec. (d)(2)(C)(ii). Pub. L. 103–465, §744(a), added cl. (ii). Former cl. (ii) redesignated (iii).

Subsec. (d)(2)(C)(iii). Pub. L. 103–465, §744(a), (b)(2), redesignated cl. (ii) as (iii) and substituted "this subparagraph" for "clause (i)" in introductory provisions.

1993—Subsec. (d)(2)(B)(ii). Pub. L. 103–66, §13251(a), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: "any item with respect to which the relevant facts affecting the item's tax treatment are

adequately disclosed in the return or in a statement attached to the return."

Subsec. (e)(1)(B)(ii). Pub. L. 103–66, §13236(a), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: "the net section 482 transfer price adjustment for the taxable year exceeds $10,000,000."

Subsec. (e)(3)(B). Pub. L. 103–66, §13236(b), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: "For purposes of determining whether the $10,000,000 threshold requirement of paragraph (1)(B)(ii) is met, there shall be excluded—

"(i) any portion of the net increase in taxable income referred to in subparagraph (A) which is attributable to any redetermination of a price if it is shown that there was a reasonable cause for the taxpayer's determination of such price and that the taxpayer acted in good faith with respect to such price, and

"(ii) any portion of such net increase which is attributable to any transaction solely between foreign corporations unless, in the case of any of such corporations, the treatment of such transaction affects the determination of income from sources within the United States or taxable income effectively connected with the conduct of a trade or business within the United States."

Subsec. (e)(3)(D). Pub. L. 103–66, §13236(c), added subpar. (D).

Subsec. (h)(2)(A)(iii). Pub. L. 103–66, §13236(d), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: " '$20,000,000' for '$10,000,000',".

1990—Subsec. (b)(3). Pub. L. 101–508, §11312(b)(1), amended par. (3) generally, substituting "misstatement" for "overstatement".

Subsec. (e). Pub. L. 101–508, §11312(a), substituted "misstatement" for "overstatement" in heading and amended text generally. Prior to amendment, text read as follows:

"(1) IN GENERAL.—For purposes of this section, there is a substantial valuation overstatement under chapter 1 if the value of any property (or the adjusted basis of any property) claimed on any return of tax imposed by chapter 1 is 200 percent or more of the amount determined to be the correct amount of such valuation or adjusted basis (as the case may be).

"(2) LIMITATION.—No penalty shall be imposed by reason of subsection (b)(3) unless the portion of the underpayment for the taxable year attributable to substantial valuation overstatements under chapter 1 exceeds $5,000 ($10,000 in the case of a corporation other than an S corporation or a personal holding company (as defined in section 542))."

Subsec. (h)(2)(A). Pub. L. 101–508, §11312(b)(2), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "any substantial valuation overstatement under chapter 1 as determined under subsection (e) by substituting '400 percent' for '200 percent',".

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–152, title I, §1409(e), Mar. 30, 2010, 124 Stat. 1070, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 6662A, 6664, 6676, and 7701 of this title] shall apply to transactions entered into after the date of the enactment of this Act [Mar. 30, 2010].

"(2) UNDERPAYMENTS.—The amendments made by subsections (b) and (c)(1) [amending this section and sections 6662A and 6664 of this title] shall apply to underpayments attributable to transactions entered into after the date of the enactment of this Act.

"(3) UNDERSTATEMENTS.—The amendments made by subsection (c)(2) [amending section 6664 of this title] shall apply to understatements attributable to transactions entered into after the date of the enactment of this Act.

"(4) REFUNDS AND CREDITS.—The amendment made by subsection (d) [amending section 6676 of this title] shall apply to refunds and credits attributable to transactions entered into after the date of the enactment of this Act."

Pub. L. 111–147, title V, §512(b), Mar. 18, 2010, 124 Stat. 111, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Mar. 18, 2010]."

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 applicable to returns filed after Aug. 17, 2006, with special rule for certain easements, see section 1219(e)(1), (3) of Pub. L. 109–280, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 403(x)(1) of Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §812(f), Oct. 22, 2004, 118 Stat. 1580, as amended by Pub. L. 109–135, title IV, §403(x)(3), Dec. 21, 2005, 119 Stat. 2629, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting section 6662A of this title and amending this section and section 6664 of this title] shall apply to taxable years ending after the date of the enactment of this Act [Oct. 22, 2004].

"(2) DISQUALIFIED OPINIONS.—Section 6664(d)(3)(B) of the Internal Revenue Code of 1986 [now section 6664(d)(4)(B)] (as added by subsection (c)) shall not apply to the opinion of a tax advisor if—

"(A) the opinion was provided to the taxpayer before the date of the enactment of this Act,

"(B) the opinion relates to one or more transactions all of which were entered into before such date, and

"(C) the tax treatment of items relating to each such transaction was included on a return or statement filed by the taxpayer before such date."

Pub. L. 108–357, title VIII, §819(c), Oct. 22, 2004, 118 Stat. 1585, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 22, 2004]."

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to items with respect to transactions entered into after Aug. 5, 1997, see section 1028(e)(2) of Pub. L. 105–34, set out as a note under section 6111 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103–465, title VII, §744(c), Dec. 8, 1994, 108 Stat. 5011, provided that: "The amendments made by this section [amending this section] shall apply to items related to transactions occurring after the date of the enactment of this Act [Dec. 8, 1994]."

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13236(e), Aug. 10, 1993, 107 Stat. 506, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1993."

Pub. L. 103–66, title XIII, §13251(b), Aug. 10, 1993, 107 Stat. 531, provided that: "The amendment made by this section [amending this section] shall apply to returns the due dates for which (determined without regard to extensions) are after December 31, 1993."

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, §11312(c), Nov. 5, 1990, 104 Stat. 1388–455, provided that: "The amendments made by this section [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Nov. 5, 1990]."

EFFECTIVE DATE

Part applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1989, see section 7721(d) of Pub. L. 101–239, set out as an Effective Date of 1989 Amendment note under section 461 of this title.

[1] *See References in Text note below.*

[2] *So in original. Subsec. (i) is set out after subsec. (j).*

[3] *So in original. Subsec. (j) is set out before subsec. (i).*

§6662A. Imposition of accuracy-related penalty on understatements with respect to reportable transactions

(a) Imposition of penalty

If a taxpayer has a reportable transaction understatement for any taxable year, there shall be added to the tax an amount equal to 20 percent of the amount of such understatement.

(b) Reportable transaction understatement

For purposes of this section—

(1) In general

The term "reportable transaction understatement" means the sum of—

(A) the product of—

(i) the amount of the increase (if any) in taxable income which results from a difference between the proper tax treatment of an item to which this section applies and the taxpayer's treatment of such item (as shown on the taxpayer's return of tax), and

(ii) the highest rate of tax imposed by section 1 (section 11 in the case of a taxpayer which is a corporation), and

(B) the amount of the decrease (if any) in the aggregate amount of credits determined under subtitle A which results from a difference between the taxpayer's treatment of an item to which this section applies (as shown on the taxpayer's return of tax) and the proper tax treatment of such item.

For purposes of subparagraph (A), any reduction of the excess of deductions allowed for the taxable year over gross income for such year, and any reduction in the amount of capital losses which would (without regard to section 1211) be allowed for such year, shall be treated as an increase in taxable income.

(2) Items to which section applies

This section shall apply to any item which is attributable to—

(A) any listed transaction, and

(B) any reportable transaction (other than a listed transaction) if a significant purpose of such transaction is the avoidance or evasion of Federal income tax.

(c) Higher penalty for nondisclosed listed and other avoidance transactions

Subsection (a) shall be applied by substituting "30 percent" for "20 percent" with respect to the portion of any reportable transaction understatement with respect to which the requirement of section 6664(d)(2)(A) [1] is not met.

(d) Definitions of reportable and listed transactions

For purposes of this section, the terms "reportable transaction" and "listed transaction" have the respective meanings given to such terms by section 6707A(c).

(e) Special rules

(1) Coordination with penalties, etc., on other understatements

In the case of an understatement (as defined in section 6662(d)(2))—

(A) the amount of such understatement (determined without regard to this paragraph) shall be increased by the aggregate amount of reportable transaction understatements for purposes of determining whether such understatement is a substantial understatement under section 6662(d)(1), and

(B) the addition to tax under section 6662(a) shall apply only to the excess of the amount of the substantial understatement (if any) after the application of subparagraph (A) over the aggregate amount of reportable transaction understatements.

(2) Coordination with other penalties

(A) Coordination with fraud penalty

This section shall not apply to any portion of an understatement on which a penalty is imposed under section 6663.

(B) Coordination with certain increased underpayment penalties

This section shall not apply to any portion of an understatement on which a penalty is

imposed under section 6662 if the rate of the penalty is determined under subsections (h) or (i) of section 6662.

(3) Special rule for amended returns

Except as provided in regulations, in no event shall any tax treatment included with an amendment or supplement to a return of tax be taken into account in determining the amount of any reportable transaction understatement if the amendment or supplement is filed after the earlier of the date the taxpayer is first contacted by the Secretary regarding the examination of the return or such other date as is specified by the Secretary.

(Added Pub. L. 108–357, title VIII, §812(a), Oct. 22, 2004, 118 Stat. 1577; amended Pub. L. 109–135, title IV, §403(x)(2), Dec. 21, 2005, 119 Stat. 2629; Pub. L. 111–152, title I, §1409(b)(3), Mar. 30, 2010, 124 Stat. 1069.)

REFERENCES IN TEXT

Section 6664(d)(2)(A), referred to in subsec. (c), was redesignated as section 6664(d)(3)(A) by Pub. L. 111–152, title I, §1409(c)(2)(A), Mar. 30, 2010, 124 Stat. 1069.

CODIFICATION

Section 1409(b)(3) of Pub. L. 111–152, which directed the amendment of section 6662A without specifying the act to be amended, was executed to this section, which is section 6662A of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2010 Amendment note below.

AMENDMENTS

2010—Subsec. (e)(2)(B). Pub. L. 111–152 substituted "certain increased underpayment penalties" for "gross valuation misstatement penalty" in heading and "subsections (h) or (i) of section 6662" for "section 6662(h)" in text. See Codification note above.

2005—Subsec. (e)(2). Pub. L. 109–135 reenacted heading without change and amended text generally. Prior to amendment, text read as follows:

"(A) APPLICATION OF FRAUD PENALTY.—References to an underpayment in section 6663 shall be treated as including references to a reportable transaction understatement.

"(B) NO DOUBLE PENALTY.—This section shall not apply to any portion of an understatement on which a penalty is imposed under section 6663.

"(C) COORDINATION WITH VALUATION PENALTIES.—

"(i) SECTION 6662(e).—Section 6662(e) shall not apply to any portion of an understatement on which a penalty is imposed under this section.

"(ii) SECTION 6662(h).—This section shall not apply to any portion of an understatement on which a penalty is imposed under section 6662(h)."

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–152 applicable to underpayments attributable to transactions entered into after Mar. 30, 2010, see section 1409(e)(2) of Pub. L. 111–152, set out as a note under section 6662 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE

Section applicable to taxable years ending after Oct. 22, 2004, see section 812(f) of Pub. L. 108–357, set out as an Effective Date of 2004 Amendment note under section 6662 of this title.

REPORT ON TAX SHELTER PENALTIES AND CERTAIN OTHER ENFORCEMENT ACTIONS

Pub. L. 111–240, title II, §2103, Sept. 27, 2010, 124 Stat. 2564, provided that:

"(a) IN GENERAL.—The Commissioner of Internal Revenue, in consultation with the Secretary of the Treasury, shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate an annual report on the penalties assessed by the Internal Revenue Service during the preceding year under each of the following provisions of the Internal Revenue Code of 1986:

"(1) Section 6662A (relating to accuracy-related penalty on understatements with respect to reportable transactions).

"(2) Section 6700(a) (relating to promoting abusive tax shelters).

"(3) Section 6707 (relating to failure to furnish information regarding reportable transactions).

"(4) Section 6707A (relating to failure to include reportable transaction information with return).

"(5) Section 6708 (relating to failure to maintain lists of advisees with respect to reportable transactions).

"(b) ADDITIONAL INFORMATION.—The report required under subsection (a) shall also include information on the following with respect to each year:

"(1) Any action taken under section 330(b) of title 31, United States Code, with respect to any reportable transaction (as defined in section 6707A(c) of the Internal Revenue Code of 1986).

"(2) Any extension of the time for assessment of tax enforced, or assessment of any amount under such an extension, under paragraph (10) of section 6501(c) of the Internal Revenue Code of 1986.

"(c) DATE OF REPORT.—The first report required under subsection (a) shall be submitted not later than December 31, 2010."

[1] *See References in Text note below.*

§6663. Imposition of fraud penalty

(a) Imposition of penalty

If any part of any underpayment of tax required to be shown on a return is due to fraud, there shall be added to the tax an amount equal to 75 percent of the portion of the underpayment which is attributable to fraud.

(b) Determination of portion attributable to fraud

If the Secretary establishes that any portion of an underpayment is attributable to fraud, the entire underpayment shall be treated as attributable to fraud, except with respect to any portion of the underpayment which the taxpayer establishes (by a preponderance of the evidence) is not attributable to fraud.

(c) Special rule for joint returns

In the case of a joint return, this section shall not apply with respect to a spouse unless some part of the underpayment is due to the fraud of such spouse.

(Added Pub. L. 101–239, title VII, §7721(a), Dec. 19, 1989, 103 Stat. 2397.)

§6664. Definitions and special rules

(a) Underpayment

For purposes of this part, the term "underpayment" means the amount by which any tax imposed by this title exceeds the excess of—

(1) the sum of—

(A) the amount shown as the tax by the taxpayer on his return, plus

(B) amounts not so shown previously assessed (or collected without assessment), over

(2) the amount of rebates made.

For purposes of paragraph (2), the term "rebate" means so much of an abatement, credit, refund, or other repayment, as was made on the ground that the tax imposed was less than the excess of the amount specified in paragraph (1) over the rebates previously made.

(b) Penalties applicable only where return filed

The penalties provided in this part shall apply only in cases where a return of tax is filed (other

than a return prepared by the Secretary under the authority of section 6020(b)).

(c) Reasonable cause exception for underpayments

(1) In general

No penalty shall be imposed under section 6662 or 6663 with respect to any portion of an underpayment if it is shown that there was a reasonable cause for such portion and that the taxpayer acted in good faith with respect to such portion.

(2) Exception

Paragraph (1) shall not apply to any portion of an underpayment which is attributable to one or more transactions described in section 6662(b)(6).

(3) Special rule for certain valuation overstatements

In the case of any underpayment attributable to a substantial or gross valuation overstatement under chapter 1 with respect to charitable deduction property, paragraph (1) shall not apply. The preceding sentence shall not apply to a substantial valuation overstatement under chapter 1 if—

(A) the claimed value of the property was based on a qualified appraisal made by a qualified appraiser, and

(B) in addition to obtaining such appraisal, the taxpayer made a good faith investigation of the value of the contributed property.

(4) Definitions

For purposes of this subsection—

(A) Charitable deduction property

The term "charitable deduction property" means any property contributed by the taxpayer in a contribution for which a deduction was claimed under section 170. For purposes of paragraph (3), such term shall not include any securities for which (as of the date of the contribution) market quotations are readily available on an established securities market.

(B) Qualified appraisal

The term "qualified appraisal" has the meaning given such term by section 170(f)(11)(E)(i).

(C) Qualified appraiser

The term "qualified appraiser" has the meaning given such term by section 170(f)(11)(E)(ii).

(d) Reasonable cause exception for reportable transaction understatements

(1) In general

No penalty shall be imposed under section 6662A with respect to any portion of a reportable transaction understatement if it is shown that there was a reasonable cause for such portion and that the taxpayer acted in good faith with respect to such portion.

(2) Exception

Paragraph (1) shall not apply to any portion of a reportable transaction understatement which is attributable to one or more transactions described in section 6662(b)(6).

(3) Special rules

Paragraph (1) shall not apply to any reportable transaction understatement unless—

(A) the relevant facts affecting the tax treatment of the item are adequately disclosed in accordance with the regulations prescribed under section 6011,

(B) there is or was substantial authority for such treatment, and

(C) the taxpayer reasonably believed that such treatment was more likely than not the proper treatment.

A taxpayer failing to adequately disclose in accordance with section 6011 shall be treated as meeting the requirements of subparagraph (A) if the penalty for such failure was rescinded under

section 6707A(d).

(4) Rules relating to reasonable belief

For purposes of paragraph (3)(C)—

(A) In general

A taxpayer shall be treated as having a reasonable belief with respect to the tax treatment of an item only if such belief—

(i) is based on the facts and law that exist at the time the return of tax which includes such tax treatment is filed, and

(ii) relates solely to the taxpayer's chances of success on the merits of such treatment and does not take into account the possibility that a return will not be audited, such treatment will not be raised on audit, or such treatment will be resolved through settlement if it is raised.

(B) Certain opinions may not be relied upon

(i) In general

An opinion of a tax advisor may not be relied upon to establish the reasonable belief of a taxpayer if—

(I) the tax advisor is described in clause (ii), or

(II) the opinion is described in clause (iii).

(ii) Disqualified tax advisors

A tax advisor is described in this clause if the tax advisor—

(I) is a material advisor (within the meaning of section 6111(b)(1)) and participates in the organization, management, promotion, or sale of the transaction or is related (within the meaning of section 267(b) or 707(b)(1)) to any person who so participates,

(II) is compensated directly or indirectly by a material advisor with respect to the transaction,

(III) has a fee arrangement with respect to the transaction which is contingent on all or part of the intended tax benefits from the transaction being sustained, or

(IV) as determined under regulations prescribed by the Secretary, has a disqualifying financial interest with respect to the transaction.

(iii) Disqualified opinions

For purposes of clause (i), an opinion is disqualified if the opinion—

(I) is based on unreasonable factual or legal assumptions (including assumptions as to future events),

(II) unreasonably relies on representations, statements, findings, or agreements of the taxpayer or any other person,

(III) does not identify and consider all relevant facts, or

(IV) fails to meet any other requirement as the Secretary may prescribe.

(Added Pub. L. 101–239, title VII, §7721(a), Dec. 19, 1989, 103 Stat. 2398; amended Pub. L. 108–357, title VIII, §812(c), Oct. 22, 2004, 118 Stat. 1579; Pub. L. 109–280, title XII, §1219(a)(3), (c)(2), Aug. 17, 2006, 120 Stat. 1084, 1085; Pub. L. 111–152, title I, §1409(c), Mar. 30, 2010, 124 Stat. 1069.)

CODIFICATION

Section 1409(c) of Pub. L. 111–152, which directed the amendment of section 6664 without specifying the act to be amended, was executed to this section, which is section 6664 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2010 Amendment notes below.

Section 1219(a)(3), (c)(2) of Pub. L. 109–280, which directed the amendment of section 6664 without specifying the act to be amended, was executed to this section, which is section 6664 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

AMENDMENTS

2010—Subsec. (c)(2) to (4). Pub. L. 111–152, §1409(c)(1)(A), (C), added par. (2) and redesignated former

pars. (2) and (3) as (3) and (4), respectively. See Codification note above.

Subsec. (c)(4)(A). Pub. L. 111–152, §1409(c)(1)(B), substituted "paragraph (3)" for "paragraph (2)". See Codification note above.

Subsec. (d)(2), (3). Pub. L. 111–152, §1409(c)(2)(A), (C), added par. (2) and redesignated former par. (2) as (3). Former par. (3) redesignated (4). See Codification note above.

Subsec. (d)(4). Pub. L. 111–152, §1409(c)(2)(B), substituted "paragraph (3)(C)" for "paragraph (2)(C)" in introductory provisions. See Codification note above.

Pub. L. 111–152, §1409(c)(2)(A), redesignated par. (3) as (4). See Codification note above.

2006—Subsec. (c)(2). Pub. L. 109–280, §1219(a)(3), substituted "paragraph (1) shall not apply. The preceding sentence shall not apply to a substantial valuation overstatement under chapter 1 if—" for "paragraph (1) shall not apply unless—" in introductory provisions. See Codification note above.

Subsec. (c)(3)(B), (C). Pub. L. 109–280, §1219(c)(2), amended subpars. (B) and (C) generally. Prior to amendment, subpars. (B) and (C) read as follows:

"(B) QUALIFIED APPRAISER.—The term 'qualified appraiser' means any appraiser meeting the requirements of the regulations prescribed under section 170(a)(1).

"(C) QUALIFIED APPRAISAL.—The term 'qualified appraisal' means any appraisal meeting the requirements of the regulations prescribed under section 170(a)(1)."

See Codification note above.

2004—Subsec. (c). Pub. L. 108–357, §812(c)(2)(B), inserted "for underpayments" after "exception" in heading.

Subsec. (c)(1). Pub. L. 108–357, §812(c)(2)(A), substituted "section 6662 or 6663" for "this part".

Subsec. (d). Pub. L. 108–357, §812(c)(1), added subsec. (d).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 1409(c)(1) of Pub. L. 111–152 applicable to underpayments attributable to transactions entered into after Mar. 30, 2010, see section 1409(e)(2) of Pub. L. 111–152, set out as a note under section 6662 of this title.

Amendment by section 1409(c)(2) of Pub. L. 111–152 applicable to understatements attributable to transactions entered into after Mar. 30, 2010, see section 1409(e)(3) of Pub. L. 111–152, set out as a note under section 6662 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 1219(a)(3) of Pub. L. 109–280 applicable to returns filed after Aug. 17, 2006, with special rule for certain easements, see section 1219(e)(1), (3), of Pub. L. 109–280, set out as a note under section 170 of this title.

Amendment by section 1219(c)(2) of Pub. L. 109–280 applicable to appraisals prepared with respect to returns or submissions filed after Aug. 17, 2006, see section 1219(e)(2) of Pub. L. 109–280, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years ending after Oct. 22, 2004, with special rule for application of subsec. (d)(3)(B) [now (d)(4)(B)] of this section, see section 812(f) of Pub. L. 108–357, as amended, set out as a note under section 6662 of this title.

PART III—APPLICABLE RULES

Sec.

6665. Applicable rules.

AMENDMENTS

1989—Pub. L. 101–239, title VII, §7721(a), Dec. 19, 1989, 103 Stat. 2398, added part heading and analysis.

§6665. Applicable rules

(a) Additions treated as tax

Except as otherwise provided in this title—

(1) the additions to the tax, additional amounts, and penalties provided by this chapter shall be paid upon notice and demand and shall be assessed, collected, and paid in the same manner as taxes; and

(2) any reference in this title to "tax" imposed by this title shall be deemed also to refer to the additions to the tax, additional amounts, and penalties provided by this chapter.

(b) Procedure for assessing certain additions to tax

For purposes of subchapter B of chapter 63 (relating to deficiency procedures for income, estate, gift, and certain excise taxes), subsection (a) shall not apply to any addition to tax under section 6651, 6654, or 6655; except that it shall apply—

(1) in the case of an addition described in section 6651, to that portion of such addition which is attributable to a deficiency in tax described in section 6211; or

(2) to an addition described in section 6654 or 6655, if no return is filed for the taxable year.

(Added Pub. L. 101–239, title VII, §7721(a), Dec. 19, 1989, 103 Stat. 2399.)

EFFECTIVE DATE

Section applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1989, see section 7721(d) of Pub. L. 101–239, set out as an Effective Date of 1989 Amendment note under section 461 of this title.

Subchapter B—Assessable Penalties

Part

I. General provisions.

II. Failure to comply with certain information reporting requirements.

AMENDMENTS

1989—Pub. L. 101–239, title VII, §7711(b)(5), Dec. 19, 1989, 103 Stat. 2393, substituted "Failure to comply with certain information reporting requirements" for "Failure to file certain information returns or statements" in item for part II.

PART I—GENERAL PROVISIONS

Sec.

6671. Rules for application of assessable penalties.

6672. Failure to collect and pay over tax, or attempt to evade or defeat tax.

6673. Sanctions and costs awarded by courts.

6674. Fraudulent statement or failure to furnish statement to employee.

6675. Excessive claims with respect to the use of certain fuels.

6676. Erroneous claim for refund or credit.

6677. Failure to file information with respect to certain foreign trusts.

[6678. Repealed.]

6679. Failure to file returns, etc., with respect to foreign corporations or foreign partnerships.

[6680, 6681. Repealed.]

6682. False information with respect to withholding.

[6683. Repealed.]

6684. Repeated liability for tax under chapter 42.[1]

6685. Assessable penalty with respect to public inspection requirements for certain tax-exempt organizations.

6686. Failure to file returns or supply information by DISC or FSC.[2]

[6687. Repealed.]

6688. Assessable penalties with respect to information required to be furnished under section

7654.
6689. Failure to file notice of redetermination of foreign tax.
6690. Fraudulent statement or failure to furnish statement to plan participant.
[6691. Reserved.]
6692. Failure to file actuarial report.
6693. Failure to provide reports on certain tax-favored accounts or annuities; penalties relating to designated nondeductible contributions.
6694. Understatement of taxpayer's liability by tax return preparer.
6695. Other assessable penalties with respect to the preparation of tax returns for other persons.
6695A. Substantial and gross valuation misstatements attributable to incorrect appraisals.
6696. Rules applicable with respect to sections 6694, 6695, and 6695A.
[6697. Repealed.]
6698. Failure to file partnership return.
[6698A. Repealed.]
6699. Failure to file S corporation return.
6700. Promoting abusive tax shelters, etc.
6701. Penalties for aiding and abetting understatement of tax liability.
6702. Frivolous tax submissions.
6703. Rules applicable to penalties under sections 6700, 6701, and 6702.
6704. Failure to keep records necessary to meet reporting requirements under section 6047(d).
6705. Failure by broker to provide notice to payors.
6706. Original issue discount information requirements.
6707. Failure to furnish information regarding reportable transactions.
6707A. Penalty for failure to include reportable transaction information with return.
6708. Failure to maintain lists of advisees with respect to reportable transactions.
6709. Penalties with respect to mortgage credit certificates.
6710. Failure to disclose that contributions are nondeductible.
6711. Failure by tax-exempt organization to disclose that certain information or service available from Federal Government.
6712. Failure to disclose treaty-based return positions.
6713. Disclosure or use of information by preparers of returns.
6714. Failure to meet disclosure requirements applicable to quid pro quo contributions.
6715. Dyed fuel sold for use or used in taxable use, etc.
6715A. Tampering with or failing to maintain security requirements for mechanical dye injection systems.
[6716. Repealed.]
6717. Refusal of entry.
6718. Failure to display tax registration on vessels.
6719. Failure to register or reregister.
6720. Fraudulent acknowledgments with respect to donations of motor vehicles, boats, and airplanes.
6720A. Penalty with respect to certain adulterated fuels.
6720B. Fraudulent identification of exempt use property.
6720C. Penalty for failure to notify health plan of cessation of eligibility for COBRA premium assistance.

AMENDMENTS

2010—Pub. L. 111–325, title V, §501(a), Dec. 22, 2010, 124 Stat. 3554, struck out item 6697 "Assessable penalties with respect to liability for tax of regulated investment companies".

Pub. L. 111–312, title III, §301(a), Dec. 17, 2010, 124 Stat. 3300, amended analysis to read as if amendment by Pub. L. 107–16, §542(b)(5)(A), had never been enacted. See 2001 Amendment note below.

2009—Pub. L. 111–5, div. B, title III, §3001(a)(13)(B), Feb. 17, 2009, 123 Stat. 465, added item 6720C.

2007—Pub. L. 110–142, §9(b), Dec. 20, 2007, 121 Stat. 1807, which directed amendment of the analysis for this part by adding item 6699 at the end, was executed by inserting item 6699 after item 6698, to reflect

the probable intent of Congress.

Pub. L. 110–28, title VIII, §§8246(a)(2)(F)(ii), (G)(iii), 8247(b), May 25, 2007, 121 Stat. 202, 204, added item 6676, substituted "tax return preparer" for "income tax return preparer" in item 6694, and struck out "income" before "tax returns" in item 6695.

2006—Pub. L. 109–432, div. A, title IV, §407(e), Dec. 20, 2006, 120 Stat. 2962, substituted "tax submissions" for "income tax return" in item 6702.

Pub. L. 109–280, title XII, §§1215(c)(2), 1219(b)(3), Aug. 17, 2006, 120 Stat. 1079, 1084, which directed amendment of the analysis for part I of subchapter B of chapter 68 by adding items 6695A and 6720B and substituting "6694, 6695, and 6695A" for "6694 and 6695" in item 6696, without specifying the act to be amended, was executed by making the amendments to this analysis, which is part of chapter 68 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

2005—Pub. L. 109–135, title IV, §403(n)(3)(B), Dec. 21, 2005, 119 Stat. 2626, struck out item 6683 "Failure of foreign corporation to file return of personal holding company tax".

Pub. L. 109–59, title XI, §§11164(b)(4), 11167(c), Aug. 10, 2005, 119 Stat. 1976, 1977, inserted "or reregister" after "register" in item 6719 and added item 6720A.

2004—Pub. L. 108–357, title VIII, §§811(b), 815(b)(5)(B), 816(b), 854(c)(2), 859(b)(2), 861(b)(2), 863(c)(2), 884(b)(2), Oct. 22, 2004, 118 Stat. 1577, 1583, 1584, 1616, 1618–1620, 1634, added items 6707A, 6715A, and 6717 to 6720 and substituted "reportable transactions" for "tax shelters" in item 6707 and "advisees with respect to reportable transactions" for "investors in potentially abusive tax shelters" in item 6708.

2001—Pub. L. 107–16, title V, §542(b)(5)(A), June 7, 2001, 115 Stat. 83, added item 6716 "Failure to file information with respect to certain transfers at death and gifts".

1997—Pub. L. 105–34, title II, §211(e)(2)(D), Aug. 5, 1997, 111 Stat. 812, substituted "certain tax-favored" for "individual retirement" in item 6693.

1996—Pub. L. 104–188, title I, §§1703(n)(9)(B), 1901(c)(3), Aug. 20, 1996, 110 Stat. 1877, 1908, substituted "information" for "information returns" in item 6677 and redesignated item 6714, relating to dyed fuel sold for use or used in taxable use, etc., as item 6715.

1993—Pub. L. 103–66, title XIII, §13242(b)(2), Aug. 10, 1993, 107 Stat. 521, added item 6714 "Dyed fuel sold for use or used in taxable use, etc.".

Pub. L. 103–66, title XIII, §13173(c)(2), Aug. 10, 1993, 107 Stat. 457, added item 6714 "Failure to meet disclosure requirements applicable to quid pro quo contributions".

1989—Pub. L. 101–239, title VII, §§7711(b)(4), 7731(c), 7816(v)(2), Dec. 19, 1989, 103 Stat. 2393, 2401, 2423, substituted "Sanctions and costs awarded by courts" for "Damages assessable for instituting proceedings before the Tax Court primarily for delay, etc." in item 6673, struck out items 6676 "Failure to supply identifying numbers" and 6687 "Failure to supply information with respect to place of residence", and redesignated item 6712 "Disclosure or use of information by preparers of returns" as 6713.

1988—Pub. L. 100–647, title I, §1011(b)(4)(B)(ii), Nov. 10, 1988, 102 Stat. 3457, substituted "penalties relating to" for "overstatement of" in item 6693.

Pub. L. 100–647, title VI, §6242(c), Nov. 10, 1988, 102 Stat. 3749, added item 6712 "Disclosure or use of information by preparers of returns".

Pub. L. 100–647, title I, §1012(aa)(5)(C)(ii), Nov. 10, 1988, 102 Stat. 3533, added item 6712 "Failure to disclose treaty-based return positions".

1987—Pub. L. 100–203, title X, §§10701(c)(2), 10704(b)(2), 10705(b), Dec. 22, 1987, 101 Stat. 1330–459, 1330–463, 1330–464, substituted "Assessable penalty with respect to public inspection requirements for certain tax-exempt organizations" for "Assessable penalties with respect to private foundation annual returns" in item 6685 and added items 6710 and 6711.

1986—Pub. L. 99–514, title VI, §667(b)(2), title XI, §§1102(d)(2)(C), 1171(b)(7)(B), title XV, §1501(d)(3), (4), title XVIII, §§1848(e)(3), 1862(d)(3), Oct. 22, 1986, 100 Stat. 2306, 2416, 2513, 2740, 2858, 2884, inserted analysis of parts comprising subchapter B, inserted heading for Part I, struck out item 6678 "Failure to furnish certain statements", inserted "; overstatement of designated nondeductible contributions" in item 6693, substituted "regulated investment companies" for "qualified investment entities" in item 6697, struck out item 6699 "Assessable penalties relating to tax credit employee stock ownership plan", substituted "section 6047(d)" for "section 6047(e)" in item 6704, and redesignated item 6708, relating to penalties with respect to mortgage credit certificates, as 6709.

1984—Pub. L. 98–369, div. A, title I, §§41(c)(2), 141(c)(2), title VIII, §801(d)(15)(B), July 18, 1984, 98 Stat. 556, 680, 997, added items 6686, 6706, and 6707.

Pub. L. 98–369, div. A, title VI, §612(d)(2), July 18, 1984, 98 Stat. 912, added item 6708 "Penalties with respect to mortgage credit certificates".

Pub. L. 98–369, div. A, title I, §142(c)(2), July 18, 1984, 98 Stat. 682, added item 6708 "Failure to maintain lists of investors in potentially abusive tax shelters".

1983—Pub. L. 98–67, title I, §104(c)(2), Aug. 5, 1983, 97 Stat. 379, added item 6705.

Pub. L. 97–424, title V, §515(b)(11)(D), Jan. 6, 1983, 96 Stat. 2182, struck out "or lubricating oil" after "certain fuels" in item 6675.

1982—Pub. L. 97–248, title II, §292(d)(2)(B), title III, §§320(b), 322(b), 324(b), 326(b), 334(c)(2), 340(b)(3), title IV, §405(c)(3), Sept. 3, 1982, 96 Stat. 574, 612, 613, 616, 617, 627, 634, 670, as amended by Pub. L. 97–448, title III, §306(c)(2)(B), Jan. 12, 1983, 96 Stat. 2406, substituted "primarily for delay, etc." for "merely for delay." in item 6673, substituted "returns, etc., with respect to foreign corporations or foreign partnerships" for "returns as to organization or reorganization of foreign corporations and as to acquisitions of their stock" in item 6679, and added items 6700 to 6704.

1981—Pub. L. 97–34, title VII, §721(c), Aug. 13, 1981, 95 Stat. 341, struck out "allowances based on itemized deductions" after "withholding" in item 6682.

1980—Pub. L. 96–603, §§1(e)(3), 2(d)(2), Dec. 28, 1980, 94 Stat. 3505, 3510, substituted "returns" for "reports" in item 6685 and added item 6689.

Pub. L. 96–223, title IV, §401(a), Apr. 2, 1980, 94 Stat. 299, repealed Pub. L. 94–455, §2005(e)(4), and Pub. L. 95–600, §702(r)(1)(C), and the amendments made thereby, which resulted in striking out item 6698A "Failure to file information with respect to carryover basis property", which had been added as item 6694 in 1976 and redesignated as item 6698 in 1978. Pub. L. 96–222, §§107(a)(2)(E), 201, redesignated item 6698 as 6698A, effective as if included in Pub. L. 95–600.

Pub. L. 96–222, title I, §§101(a)(7)(L)(v)(X), 107(a)(2)(E), Apr. 1, 1980, 94 Stat. 201, 223, redesignated item 6698, relating to failure to file information with respect to carry-over basis property, as 6698A and substituted "tax credit employee stock ownership plan" for "ESOP" in item 6699.

1978—Pub. L. 95–600, title VII, §701(r)(1)(C), Nov. 6, 1978, 92 Stat. 2938, which redesignated item 6694 "Failure to file information with respect to carryover basis property" as item 6698, was repealed by Pub. L. 96–223, §401(a). See section 401(b), (e) of Pub. L. 96–223, set out as an Effective Date of 1980 Amendments and Revival of Prior Law note under section 1023 of this title.

Pub. L. 95–600, title I, §141(c)(2), title II, §211(b), title III, §362(d)(9), Nov. 6, 1978, 92 Stat. 2794, 2818, 2852, substituted "qualified investment entities" for "real estate investment trusts" in item 6697, and added item 6698 "Failure to file partnership return" and item 6699 "Assessable penalties relating to ESOP".

1976—Pub. L. 94–455, title XX, §2005(e)(4), Oct. 4, 1976, 90 Stat. 1878, which added item 6694 "Failure to file information with respect to carryover basis property", was repealed by Pub. L. 96–223, §401(a). See section 401(b), (e) of Pub. L. 96–223, set out as an Effective Date of 1980 Amendments and Revival of Prior Law note under section 1023 of this title.

Pub. L. 94–455, title XII, §1203(i)(3), title XVI, §1601(b)(2), title XIX, §1904(b)(10)(A)(vi)(II), (D)(ii), (E)(ii), Oct. 4, 1976, 90 Stat. 1694, 1746, 1817, struck out item 6680 "Failure to file interest equalization tax returns", item 6681 "False equalization tax certificates" and item 6689 "Failure by certain foreign issuers and obligors to comply with United States investment equalization tax requirements" and added item 6694 "Understatement of taxpayer's liability by income tax return preparer" and items 6695 to 6697.

1974—Pub. L. 93–406, title II, §§1016(b)(3), 1031(b)(2)(B), 1033(d), 2002(h)(4), Sept. 2, 1974, 88 Stat. 932, 946, 948, 971, substituted "6688" for "6687" as section number in item relating to assessable penalties with respect to information required to be furnished under section 7654, and added items 6690, 6692, and 6693.

1973—Pub. L. 93–17, §3(d)(3)(B), Apr. 10, 1973, 87 Stat. 17, added item 6689.

1972—Pub. L. 92–606, §1(f)(7), Oct. 31, 1972, 86 Stat. 1497, added item 6687 relating to assessable penalties with respect to information required to be furnished under section 7654.

Pub. L. 92–512, title I, §144(b)(2), Oct. 20, 1972, 86 Stat. 936, added item 6687 relating to failure to supply information with respect to place of residence.

1970—Pub. L. 91–258, title II, §207(d)(13), May 21, 1970, 84 Stat. 249, substituted "fuels" for "gasoline" in item 6675.

1969—Pub. L. 91–172, title I, §101(j)(60), Dec. 30, 1969, 83 Stat. 532, added items 6684 and 6685.

1966—Pub. L. 89–809, title I, §104(h)(4)(B), Nov. 13, 1966, 80 Stat. 1560, added item 6683.

Pub. L. 89–368, title I, §101(e)(4)(B), Mar. 15, 1966, 80 Stat. 62, added item 6682.

1965—Pub. L. 89–44, title II, §202(c)(3)(B), June 21, 1965, 79 Stat. 139, inserted "or lubricating oil" after "certain gasoline" in item 6675.

1964—Pub. L. 88–563, §6(c)(1), Sept. 2, 1964, 78 Stat. 847, added items 6680 and 6681.

1962—Pub. L. 87–834, §§7(i)(3), 19(g)(2), 20(d)(3), Oct. 16, 1962, 76 Stat. 989, 1058, 1063, added items 6677 to 6679.

1961—Pub. L. 87–397, §1(c)(2), Oct. 5, 1961, 75 Stat. 829, added item 6676.

1956—Act June 29, 1956, ch. 462, title II, §208(e)(8), 70 Stat. 397, substituted "Excessive claims with respect to the use of certain gasoline" for "Excessive claims for gasoline used on farms" in item 6675.

Act Apr. 2, 1956, ch. 160, §4(g), 70 Stat. 91, added item 6675.

[1] So in original. Does not conform to section catchline.

[2] Section catchline amended by Pub. L. 110–172 without corresponding amendment of analysis.

§6671. Rules for application of assessable penalties

(a) Penalty assessed as tax

The penalties and liabilities provided by this subchapter shall be paid upon notice and demand by the Secretary, and shall be assessed and collected in the same manner as taxes. Except as otherwise provided, any reference in this title to "tax" imposed by this title shall be deemed also to refer to the penalties and liabilities provided by this subchapter.

(b) Person defined

The term "person", as used in this subchapter, includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

(Aug. 16, 1954, ch. 736, 68A Stat. 828; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

§6672. Failure to collect and pay over tax, or attempt to evade or defeat tax

(a) General rule

Any person required to collect, truthfully account for, and pay over any tax imposed by this title who willfully fails to collect such tax, or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over. No penalty shall be imposed under section 6653 or part II of subchapter A of chapter 68 for any offense to which this section is applicable.

(b) Preliminary notice requirement

(1) In general

No penalty shall be imposed under subsection (a) unless the Secretary notifies the taxpayer in writing by mail to an address as determined under section 6212(b) or in person that the taxpayer shall be subject to an assessment of such penalty.

(2) Timing of notice

The mailing of the notice described in paragraph (1) (or, in the case of such a notice delivered in person, such delivery) shall precede any notice and demand of any penalty under subsection (a) by at least 60 days.

(3) Statute of limitations

If a notice described in paragraph (1) with respect to any penalty is mailed or delivered in person before the expiration of the period provided by section 6501 for the assessment of such penalty (determined without regard to this paragraph), the period provided by such section for the

assessment of such penalty shall not expire before the later of—

(A) the date 90 days after the date on which such notice was mailed or delivered in person, or

(B) if there is a timely protest of the proposed assessment, the date 30 days after the Secretary makes a final administrative determination with respect to such protest.

(4) Exception for jeopardy

This subsection shall not apply if the Secretary finds that the collection of the penalty is in jeopardy.

(c) Extension of period of collection where bond is filed

(1) In general

If, within 30 days after the day on which notice and demand of any penalty under subsection (a) is made against any person, such person—

(A) pays an amount which is not less than the minimum amount required to commence a proceeding in court with respect to his liability for such penalty,

(B) files a claim for refund of the amount so paid, and

(C) furnishes a bond which meets the requirements of paragraph (3),

no levy or proceeding in court for the collection of the remainder of such penalty shall be made, begun, or prosecuted until a final resolution of a proceeding begun as provided in paragraph (2). Notwithstanding the provisions of section 7421(a), the beginning of such proceeding or levy during the time such prohibition is in force may be enjoined by a proceeding in the proper court. Nothing in this paragraph shall be construed to prohibit any counterclaim for the remainder of such penalty in a proceeding begun as provided in paragraph (2).

(2) Suit must be brought to determine liability for penalty

If, within 30 days after the day on which his claim for refund with respect to any penalty under subsection (a) is denied, the person described in paragraph (1) fails to begin a proceeding in the appropriate United States district court (or in the Court of Claims) [1] for the determination of his liability for such penalty, paragraph (1) shall cease to apply with respect to such penalty, effective on the day following the close of the 30-day period referred to in this paragraph.

(3) Bond

The bond referred to in paragraph (1) shall be in such form and with such sureties as the Secretary may by regulations prescribe and shall be in an amount equal to 1½ times the amount of excess of the penalty assessed over the payment described in paragraph (1).

(4) Suspension of running of period of limitations on collection

The running of the period of limitations provided in section 6502 on the collection by levy or by a proceeding in court in respect of any penalty described in paragraph (1) shall be suspended for the period during which the Secretary is prohibited from collecting by levy or a proceeding in court.

(5) Jeopardy collection

If the Secretary makes a finding that the collection of the penalty is in jeopardy, nothing in this subsection shall prevent the immediate collection of such penalty.

(d) Right of contribution where more than 1 person liable for penalty

If more than 1 person is liable for the penalty under subsection (a) with respect to any tax, each person who paid such penalty shall be entitled to recover from other persons who are liable for such penalty an amount equal to the excess of the amount paid by such person over such person's proportionate share of the penalty. Any claim for such a recovery may be made only in a proceeding which is separate from, and is not joined or consolidated with—

(1) an action for collection of such penalty brought by the United States, or

(2) a proceeding in which the United States files a counterclaim or third-party complaint for the

collection of such penalty.

(e) Exception for voluntary board members of tax-exempt organizations

No penalty shall be imposed by subsection (a) on any unpaid, volunteer member of any board of trustees or directors of an organization exempt from tax under subtitle A if such member—

(1) is solely serving in an honorary capacity,

(2) does not participate in the day-to-day or financial operations of the organization, and

(3) does not have actual knowledge of the failure on which such penalty is imposed.

The preceding sentence shall not apply if it results in no person being liable for the penalty imposed by subsection (a).

(Aug. 16, 1954, ch. 736, 68A Stat. 828; Pub. L. 95–628, §9(a), Nov. 10, 1978, 92 Stat. 3633; Pub. L. 101–239, title VII, §§7721(c)(9), 7737(a), Dec. 19, 1989, 103 Stat. 2400, 2404; Pub. L. 104–168, title IX, §§901(a), 903(a), 904(a), July 30, 1996, 110 Stat. 1465–1467; Pub. L. 105–206, title III, §3307(a), (b), July 22, 1998, 112 Stat. 744.)

REFERENCES IN TEXT

The Court of Claims, referred to in subsec. (c)(2), and the United States Court of Customs and Patent Appeals were merged effective Oct. 1, 1982, into a new United States Court of Appeals for the Federal Circuit by Pub. L. 97–164, Apr. 2, 1982, 96 Stat. 25, which also created a United States Claims Court [now United States Court of Federal Claims] that inherited the trial jurisdiction of the Court of Claims. See sections 48, 171 et seq., 791 et seq., and 1491 et seq. of Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1998—Subsec. (b)(1). Pub. L. 105–206, §3307(a), inserted "or in person" after "section 6212(b)".

Subsec. (b)(2). Pub. L. 105–206, §3307(b)(1), inserted "(or, in the case of such a notice delivered in person, such delivery)" after "paragraph (1)".

Subsec. (b)(3). Pub. L. 105–206, §3307(b)(2), inserted "or delivered in person" after "mailed" in introductory provisions and in subpar. (A).

1996—Subsecs. (b), (c). Pub. L. 104–168, §901(a), added subsec. (b) and redesignated former subsec. (b) as (c).

Subsec. (d). Pub. L. 104–168, §903(a), added subsec. (d).

Subsec. (e). Pub. L. 104–168, §904(a), added subsec. (e).

1989—Subsec. (a). Pub. L. 101–239, §7721(c)(9), inserted "or part II of subchapter A of chapter 68" after "under section 6653".

Subsec. (b)(1). Pub. L. 101–239, §7737(a), inserted at end "Nothing in this paragraph shall be construed to prohibit any counterclaim for the remainder of such penalty in a proceeding begun as provided in paragraph (2)."

1978—Pub. L. 95–628 designated existing provisions as subsec. (a), added subsec. (a) heading, and added subsec. (b).

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–206, title III, §3307(c), July 22, 1998, 112 Stat. 744, provided that: "The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [July 22, 1998]."

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–168, title IX, §901(b), July 30, 1996, 110 Stat. 1466, provided that: "The amendment made by subsection (a) [amending this section] shall apply to proposed assessments made after June 30, 1996."

Pub. L. 104–168, title IX, §903(b), July 30, 1996, 110 Stat. 1466, provided that: "The amendment made by subsection (a) [amending this section] shall apply to penalties assessed after the date of the enactment of this Act [July 30, 1996]."

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7721(c)(9) of Pub. L. 101–239 applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1989, see section 7721(d) of Pub. L. 101–239, set out as a note under section 461 of this title.

Pub. L. 101–239, title VII, §7737(b), Dec. 19, 1989, 103 Stat. 2404, provided that: "The amendment made by subsection (a) [amending this section and sections 6694 and 6703 of this title] shall take effect on the date

of the enactment of this Act [Dec. 19, 1989]."

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–628, §9(c), Nov. 10, 1978, 92 Stat. 3633, provided that: "The amendments made by this section [amending this section and sections 7103 and 7421 of this title] shall apply with respect to penalties assessed more than 60 days after the date of the enactment of this Act [Nov. 10, 1978]."

PUBLIC INFORMATION TO ENSURE EMPLOYEE AWARENESS OF RESPONSIBILITIES AND LIABILITIES UNDER TAX DEPOSITORY SYSTEM

Pub. L. 104–168, title IX, §904(b), July 30, 1996, 110 Stat. 1467, provided that:

"(1) IN GENERAL.—The Secretary of the Treasury or the Secretary's delegate (hereafter in this subsection referred to as the 'Secretary') shall take such actions as may be appropriate to ensure that employees are aware of their responsibilities under the Federal tax depository system, the circumstances under which employees may be liable for the penalty imposed by section 6672 of the Internal Revenue Code of 1986, and the responsibility to promptly report to the Internal Revenue Service any failure referred to in subsection (a) of such section 6672. Such actions shall include—

"(A) printing of a warning on deposit coupon booklets and the appropriate tax returns that certain employees may be liable for the penalty imposed by such section 6672, and

"(B) the development of a special information packet.

"(2) DEVELOPMENT OF EXPLANATORY MATERIALS.—The Secretary shall develop materials explaining the circumstances under which board members of tax-exempt organizations (including voluntary and honorary members) may be subject to penalty under section 6672 of such Code. Such materials shall be made available to tax-exempt organizations.

"(3) IRS INSTRUCTIONS.—The Secretary shall clarify the instructions to Internal Revenue Service employees on the application of the penalty under section 6672 of such Code with regard to voluntary members of boards of trustees or directors of tax-exempt organizations."

[1] *See References in Text note below.*

§6673. Sanctions and costs awarded by courts

(a) Tax court proceedings

(1) Procedures instituted primarily for delay, etc.

Whenever it appears to the Tax Court that—

(A) proceedings before it have been instituted or maintained by the taxpayer primarily for delay,

(B) the taxpayer's position in such proceeding is frivolous or groundless, or

(C) the taxpayer unreasonably failed to pursue available administrative remedies,

the Tax Court, in its decision, may require the taxpayer to pay to the United States a penalty not in excess of $25,000.

(2) Counsel's liability for excessive costs

Whenever it appears to the Tax Court that any attorney or other person admitted to practice before the Tax Court has multiplied the proceedings in any case unreasonably and vexatiously, the Tax Court may require—

(A) that such attorney or other person pay personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct, or

(B) if such attorney is appearing on behalf of the Commissioner of Internal Revenue, that the United States pay such excess costs, expenses, and attorneys' fees in the same manner as such an award by a district court.

(b) Proceedings in other courts

(1) Claims under section 7433

Whenever it appears to the court that the taxpayer's position in the proceedings before the court instituted or maintained by such taxpayer under section 7433 is frivolous or groundless, the court may require the taxpayer to pay to the United States a penalty not in excess of $10,000.

(2) Collection of sanctions and costs

In any civil proceeding before any court (other than the Tax Court) which is brought by or against the United States in connection with the determination, collection, or refund of any tax, interest, or penalty under this title, any monetary sanctions, penalties, or costs awarded by the court to the United States may be assessed by the Secretary and, upon notice and demand, may be collected in the same manner as a tax.

(3) Sanctions and costs awarded by a court of appeals

In connection with any appeal from a proceeding in the Tax Court or a civil proceeding described in paragraph (2), an order of a United States Court of Appeals or the Supreme Court awarding monetary sanctions, penalties or court costs to the United States may be registered in a district court upon filing a certified copy of such order and shall be enforceable as other district court judgments. Any such sanctions, penalties, or costs may be assessed by the Secretary and, upon notice and demand, may be collected in the same manner as a tax.

(Aug. 16, 1954, ch. 736, 68A Stat. 828; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–248, title II, §292(b), (d)(2)(A), Sept. 3, 1982, 96 Stat. 574; Pub. L. 99–514, title XV, §1552(a), Oct. 22, 1986, 100 Stat. 2753; Pub. L. 100–647, title VI, §6241(b), Nov. 10, 1988, 102 Stat. 3748; Pub. L. 101–239, title VII, §7731(a), Dec. 19, 1989, 103 Stat. 2400.)

AMENDMENTS

1989—Pub. L. 101–239 substituted "Sanctions and costs awarded by courts" for "Damages assessable for instituting proceedings before the Court primarily for delay, etc." in section catchline and amended text generally, making changes in substance and structure of subsecs. (a) and (b).

1988—Pub. L. 100–647 struck out "Tax" after "before the" in section catchline, designated existing provisions as subsec. (a), and added subsec. (b).

1986—Pub. L. 99–514 substituted ", that the taxpayer's position in such proceeding is frivolous or groundless, or that the taxpayer unreasonably failed to pursue available administrative remedies" for "or that the taxpayer's position in such proceedings is frivolous or groundless".

1982—Pub. L. 97–248, §292(d)(2)(A), substituted "primarily for delay, etc." for "merely for delay" after "Tax Court" in section catchline.

Subsec. (a). Pub. L. 97–248, §292(b), substituted "or maintained by the taxpayer primarily for delay or that the taxpayer's position in such proceedings is frivolous or groundless, damages in an amount not in excess of $5,000" for "by the taxpayer merely for delay, damages in an amount not in excess of $500" in first sentence.

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7731(d), Dec. 19, 1989, 103 Stat. 2402, provided that: "The amendments made by this section [amending this section and section 7482 of this title] shall apply to positions taken after December 31, 1989, in proceedings which are pending on, or commenced after such date."

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title VI, §6241(d), Nov. 10, 1988, 102 Stat. 3749, provided that: "The amendments made by this section [enacting section 7433 of this title and amending this section] shall apply to actions by officers or employees of the Internal Revenue Service after the date of the enactment of this Act [Nov. 10, 1988]."

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XV, §1552(b), Oct. 22, 1986, 100 Stat. 2753, provided that: "The amendment made by subsection (a) [amending this section] shall apply to proceedings commenced after the date of the enactment of this Act [Oct. 22, 1986]."

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to any action or proceeding in the Tax Court commenced after Dec. 31, 1982, or pending in the Tax Court on the day 120 days after July 18, 1984, see section 292(e)(2) of

Pub. L. 97–248, as amended, set out as an Effective Date note under section 7430 of this title.

§6674. Fraudulent statement or failure to furnish statement to employee

In addition to the criminal penalty provided by section 7204, any person required under the provisions of section 6051 or 6053(b) to furnish a statement to an employee who willfully furnishes a false or fraudulent statement, or who willfully fails to furnish a statement in the manner, at the time, and showing the information required under section 6051 or 6053(b), or regulations prescribed thereunder, shall for each such failure be subject to a penalty under this subchapter of $50, which shall be assessed and collected in the same manner as the tax on employers imposed by section 3111.

(Aug. 16, 1954, ch. 736, 68A Stat. 828; Pub. L. 89–97, title III, §313(e)(2)(C), July 30, 1965, 79 Stat. 385.)

AMENDMENTS

1965—Pub. L. 89–97 substituted "6051 or 6053(b)" for "6051" wherever appearing.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 313 of Pub. L. 89–97 applicable only with respect to tips received by employees after 1965, see section 313(f) of Pub. L. 89–97, set out as a note under section 6053 of this title.

§6675. Excessive claims with respect to the use of certain fuels

(a) Civil penalty

In addition to any criminal penalty provided by law, if a claim is made under section 6416(a)(4) (relating to certain sales of gasoline), section 6420 (relating to gasoline used on farms), 6421 (relating to gasoline used for certain nonhighway purposes or by local transit systems), or 6427 (relating to fuels not used for taxable purposes) for an excessive amount, unless it is shown that the claim for such excessive amount is due to reasonable cause, the person making such claim shall be liable to a penalty in an amount equal to whichever of the following is the greater:

(1) Two times the excessive amount; or

(2) $10.

(b) Excessive amount defined

For purposes of this section, the term "excessive amount" means in the case of any person the amount by which—

(1) the amount claimed under section 6416(a)(4), 6420, 6421, or 6427, as the case may be, for any period, exceeds

(2) the amount allowable under such section for such period.

(c) Assessment and collection of penalty

For assessment and collection of penalty provided by subsection (a), see section 6206.

(Added Apr. 2, 1956, ch. 160, §3, 70 Stat. 90; amended June 29, 1956, ch. 462, title II, §208(d)(2), 70 Stat. 396; Pub. L. 89–44, title II, §202(c)(3)(A), June 21, 1965, 79 Stat. 139; Pub. L. 91–258, title II, §207(d)(8), May 21, 1970, 84 Stat. 249; Pub. L. 95–618, title II, §233(b)(2)(D), Nov. 9, 1978, 92 Stat. 3191; Pub. L. 97–424, title V, §515(b)(11)(A)–(C), Jan. 6, 1983, 96 Stat. 2182; Pub. L. 109–59, title XI, §11163(d)(2), (3), Aug. 10, 2005, 119 Stat. 1975.)

AMENDMENTS

2005—Subsec. (a). Pub. L. 109–59, §11163(d)(2), inserted "section 6416(a)(4) (relating to certain sales of gasoline)," after "made under" in introductory provisions.

Subsec. (b)(1). Pub. L. 109–59, §11163(d)(3), inserted "6416(a)(4)," after "under section".

1983—Pub. L. 97–424, §515(b)(11)(C), struck out "or lubricating oil" after "fuels" in section catchline.

Subsec. (a). Pub. L. 97–424, §515(b)(11)(A), struck out "6424 (relating to lubricating oil used for certain nontaxable purposes)," after "systems),".

Subsec. (b)(1). Pub. L. 97–424, §515(b)(11)(B), struck out "6424," after "6421,".

1978—Subsec. (a). Pub. L. 95–618 substituted "used for certain nontaxable purposes" for "not used in highway motor vehicles".

1970—Pub. L. 91–258, §207(d)(8)(A), substituted "fuels" for "gasoline" in section catchline.

Subsec. (a). Pub. L. 91–258, §207(d)(8)(B), inserted reference to section 6427 relating to fuels not used for taxable purposes.

Subsec. (b)(1). Pub. L. 91–258, §207(d)(8)(C), inserted reference to section 6427.

1965—Pub. L. 89–44, §202(c)(3)(A)(i), inserted "or lubricating oil" after "gasoline" in section catchline.

Subsec. (a). Pub. L. 89–44, §202(c)(3)(A)(ii), inserted reference to claims made under section 6424.

Subsec. (b)(1). Pub. L. 89–44, §202(c)(3)(A)(iii), inserted reference to amounts claimed under section 6424.

1956—Act June 29, 1956, §208(d)(2)(A), substituted "with respect to the use of certain gasoline" for "for gasoline used on farms" in section catchline.

Subsec. (a). Act June 29, 1956, §208(d)(2)(B), inserted reference to claims made under section 6421.

Subsec. (b). Act June 29, 1956, §208(d)(2)(C), inserted reference to amounts claimed under section 6421.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–59 applicable to sales after Dec. 31, 2005, see section 11163(e) of Pub. L. 109–59, set out as a note under section 4101 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–424 applicable with respect to articles sold after Jan. 6, 1983, see section 515(c) of Pub. L. 97–424, set out as a note under section 34 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–618 effective on first day of first calendar month which begins more than 10 days after Nov. 9, 1978, see section 233(d) of Pub. L. 95–618, set out as a note under section 34 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–258 effective July 1, 1970, see section 211(a) of Pub. L. 91–258, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 effective Jan. 1, 1966, see section 701(a)(1), (2) of Pub. L. 89–44, set out as a note under section 4161 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act June 29, 1956, effective June 29, 1956, see section 211 of act June 29, 1956, set out as a note under section 4041 of this title.

§6676. Erroneous claim for refund or credit

(a) Civil penalty

If a claim for refund or credit with respect to income tax (other than a claim for a refund or credit relating to the earned income credit under section 32) is made for an excessive amount, unless it is shown that the claim for such excessive amount has a reasonable basis, the person making such claim shall be liable for a penalty in an amount equal to 20 percent of the excessive amount.

(b) Excessive amount

For purposes of this section, the term "excessive amount" means in the case of any person the amount by which the amount of the claim for refund or credit for any taxable year exceeds the amount of such claim allowable under this title for such taxable year.

(c) Noneconomic substance transactions treated as lacking reasonable basis

For purposes of this section, any excessive amount which is attributable to any transaction described in section 6662(b)(6) shall not be treated as having a reasonable basis.

(d) Coordination with other penalties

This section shall not apply to any portion of the excessive amount of a claim for refund or credit

which is subject to a penalty imposed under part II of subchapter A of chapter 68.

(Added Pub. L. 110–28, title VIII, §8247(a), May 25, 2007, 121 Stat. 204; amended Pub. L. 111–152, title I, §1409(d), Mar. 30, 2010, 124 Stat. 1070.)

CODIFICATION

Section 1409(d) of Pub. L. 111–152, which directed the amendment of section 6676 without specifying the act to be amended, was executed to this section, which is section 6676 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2010 Amendment note below.

PRIOR PROVISIONS

A prior section 6676, added Pub. L. 87–397, §1(b), Oct. 5, 1961, 75 Stat. 828; amended Pub. L. 91–172, title I, §101(j)(52), Dec. 30, 1969, 83 Stat. 531; Pub. L. 93–406, title II, §1016(a)(20), Sept. 2, 1974, 88 Stat. 931; Pub. L. 97–248, title III, §316(a), Sept. 3, 1982, 96 Stat. 607; Pub. L. 98–67, title I, §105(a), Aug. 5, 1983, 97 Stat. 380; Pub. L. 98–369, div. A, title IV, §422(c), July 18, 1984, 98 Stat. 798; Pub. L. 99–514, title XV, §§1501(b), 1523(b)(3), 1524(b), Oct. 22, 1986, 100 Stat. 2736, 2748, 2749; Pub. L. 100–647, title I, §1015(g), Nov. 10, 1988, 102 Stat. 3570, related to failure to supply identifying numbers, prior to repeal by Pub. L. 101–239, title VII, §7711(b)(1), (c), Dec. 19, 1989, 103 Stat. 2393, applicable to returns and statements the due date for which (determined without regard to extensions) is after Dec. 31, 1989.

AMENDMENTS

2010—Subsecs. (c), (d). Pub. L. 111–152 added subsec. (c) and redesignated former subsec. (c) as (d). See Codification note above.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–152 applicable to refunds and credits attributable to transactions entered into after Mar. 30, 2010, see section 1409(e)(4) of Pub. L. 111–152, set out as a note under section 6662 of this title.

EFFECTIVE DATE

Pub. L. 110–28, title VIII, §8247(c), May 25, 2007, 121 Stat. 204, provided that: "The amendments made by this section [enacting this section] shall apply to any claim filed or submitted after the date of the enactment of this Act [May 25, 2007]."

§6677. Failure to file information with respect to certain foreign trusts

(a) Civil penalty

In addition to any criminal penalty provided by law, if any notice or return required to be filed by section 6048—

(1) is not filed on or before the time provided in such section, or

(2) does not include all the information required pursuant to such section or includes incorrect information,

the person required to file such notice or return shall pay a penalty equal to the greater of $10,000 or 35 percent of the gross reportable amount. If any failure described in the preceding sentence continues for more than 90 days after the day on which the Secretary mails notice of such failure to the person required to pay such penalty, such person shall pay a penalty (in addition to the amount determined under the preceding sentence) of $10,000 for each 30-day period (or fraction thereof) during which such failure continues after the expiration of such 90-day period. At such time as the gross reportable amount with respect to any failure can be determined by the Secretary, any subsequent penalty imposed under this subsection with respect to such failure shall be reduced as necessary to assure that the aggregate amount of such penalties do not exceed the gross reportable amount (and to the extent that such aggregate amount already exceeds the gross reportable amount the Secretary shall refund such excess to the taxpayer).

(b) Special rules for returns under section 6048(b)

In the case of a return required under section 6048(b)—

(1) the United States person referred to in such section shall be liable for the penalty imposed by subsection (a), and

(2) subsection (a) shall be applied by substituting "5 percent" for "35 percent".

(c) Gross reportable amount

For purposes of subsection (a), the term "gross reportable amount" means—

(1) the gross value of the property involved in the event (determined as of the date of the event) in the case of a failure relating to section 6048(a),

(2) the gross value of the portion of the trust's assets at the close of the year treated as owned by the United States person in the case of a failure relating to section 6048(b)(1), and

(3) the gross amount of the distributions in the case of a failure relating to section 6048(c).

(d) Reasonable cause exception

No penalty shall be imposed by this section on any failure which is shown to be due to reasonable cause and not due to willful neglect. The fact that a foreign jurisdiction would impose a civil or criminal penalty on the taxpayer (or any other person) for disclosing the required information is not reasonable cause.

(e) Deficiency procedures not to apply

Subchapter B of chapter 63 (relating to deficiency procedures for income, estate, gift, and certain excise taxes) shall not apply in respect of the assessment or collection of any penalty imposed by subsection (a).

(Added Pub. L. 87–834, §7(g), Oct. 16, 1962, 76 Stat. 988; amended Pub. L. 91–172, title I, §101(j)(53), Dec. 30, 1969, 83 Stat. 531; Pub. L. 93–406, title II, §1016(a)(21), Sept. 2, 1974, 88 Stat. 931; Pub. L. 94–455, title X, §1013(d)(2), Oct. 4, 1976, 90 Stat. 1616; Pub. L. 104–188, title I, §1901(b), Aug. 20, 1996, 110 Stat. 1907; Pub. L. 111–147, title V, §535(a), Mar. 18, 2010, 124 Stat. 115.)

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–147, in concluding provisions, inserted "the greater of $10,000 or" before "35 percent" and substituted "At such time as the gross reportable amount with respect to any failure can be determined by the Secretary, any subsequent penalty imposed under this subsection with respect to such failure shall be reduced as necessary to assure that the aggregate amount of such penalties do not exceed the gross reportable amount (and to the extent that such aggregate amount already exceeds the gross reportable amount the Secretary shall refund such excess to the taxpayer)." for "In no event shall the penalty under this subsection with respect to any failure exceed the gross reportable amount."

1996—Pub. L. 104–188, §1901(b), substituted "information" for "information returns" in section catchline and amended text generally, substituting present provisions for former provisions which related to civil penalty in subsec. (a) and nonapplicability of deficiency procedures in subsec. (b).

1976—Subsec. (a). Pub. L. 94–455 inserted "(or, in the case of a failure with respect to section 6048(c), equal to 5 percent of the value of the corpus of the trust at the close of the taxable year)" after "transferred to a trust".

1974—Subsec. (b). Pub. L. 93–406 substituted "and certain excise" for "chapter 42".

1969—Subsec. (b). Pub. L. 91–172 inserted reference to chapter 42 taxes.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–147, title V, §535(b), Mar. 18, 2010, 124 Stat. 115, provided that: "The amendments made by this section [amending this section] shall apply to notices and returns required to be filed after December 31, 2009."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188, to the extent related to section 6048(a) of this title, applicable to reportable events (as defined in such section) occurring after Aug. 20, 1996, to the extent related to section 6048(b) of this title, applicable to taxable years of United States persons beginning after Dec. 31, 1995, and to the extent related to section 6048(c) of this title, applicable to distributions received after Aug. 20, 1996, see section 1901(d) of Pub. L. 104–188, set out as a note under section 6048 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable to taxable years ending after Dec. 31, 1975, but only in the case of foreign trusts created after May 21, 1974 and transfer of property to foreign trusts after May 21, 1974, see section 1013(f)(1) of Pub. L. 94–455, set out as a note under section 679 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–406 applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93–406, for plan years beginning after Sept. 2, 1974, but, in the case of plans in existence on Jan. 1, 1974, amendment by Pub. L. 93–406 applicable for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93–406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

[§6678. Repealed. Pub. L. 99–514, title XV, §1501(d)(2), Oct. 22, 1986, 100 Stat. 2740]

Section, added Pub. L. 87–834, §19(e), Oct. 16, 1962, 76 Stat. 1058; amended Pub. L. 88–272, title II, §§204(c)(2), 221(b)(3), Feb. 26, 1964, 78 Stat. 37, 75; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–167, §7(b)(2), Dec. 29, 1979, 93 Stat. 1277; Pub. L. 97–34, title VII, §723(a)(2), (b)(2), Aug. 13, 1981, 95 Stat. 343, 344; Pub. L. 97–248, title III, §§309(b)(3), 311(a)(2), 312(b), 314(b), 315(c), Sept. 3, 1982, 96 Stat. 595, 600, 602, 605, 607; Pub. L. 97–448, title II, §201(i)(3), Jan. 12, 1983, 96 Stat. 2395; Pub. L. 98–67, title I, §105(b)(2), Aug. 5, 1983, 97 Stat. 381; Pub. L. 98–369, div. A, title I, §§145(b)(3), 146(b)(3), 148(b)(3), 149(b)(2), (3), 155(b)(2)(B), title VII, §714(f), (q)(3), July 18, 1984, 98 Stat. 685, 686, 689, 690, 693, 961, 966; Pub. L. 99–514, title XVIII, §1811(c)(1), Oct. 22, 1986, 100 Stat. 2833, related to penalties for failure to furnish certain statements.

EFFECTIVE DATE OF REPEAL

Repeal applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1986, see section 1501(e) of Pub. L. 99–514, set out as an Effective Date note under section 6721 of this title.

§6679. Failure to file returns, etc., with respect to foreign corporations or foreign partnerships

(a) Civil penalty

(1) In general

In addition to any criminal penalty provided by law, any person required to file a return under section [1] 6046 and 6046A who fails to file such return at the time provided in such section, or who files a return which does not show the information required pursuant to such section, shall pay a penalty of $10,000, unless it is shown that such failure is due to reasonable cause.

(2) Increase in penalty where failure continues after notification

If any failure described in paragraph (1) continues for more than 90 days after the day on which the Secretary mails notice of such failure to the United States person, such person shall pay a penalty (in addition to the amount required under paragraph (1)) of $10,000 for each 30-day period (or fraction thereof) during which such failure continues after the expiration of such 90-day period. The increase in any penalty under this paragraph shall not exceed $50,000.

(b) Deficiency procedures not to apply

Subchapter B of chapter 63 (relating to deficiency procedure for income, estate, gift, and certain excise taxes) shall not apply in respect of the assessment or collection of any penalty imposed by subsection (a).

(Added Pub. L. 87–834, §20(c), Oct. 16, 1962, 76 Stat. 1062; amended Pub. L. 91–172, title I, §101(j)(54), Dec. 30, 1969, 83 Stat. 532; Pub. L. 93–406, title II, §1016(a)(22), Sept. 2, 1974, 88 Stat. 931; Pub. L. 97–248, title III, §340(b)(1), (2), title IV, §405(b), (c)(2), Sept. 3, 1982, 96 Stat. 634, 670; Pub. L. 97–448, title III, §306(c)(2), Jan. 12, 1983, 96 Stat. 2406; Pub. L. 105–34, title XI, §1143(b), Aug. 5, 1997, 111 Stat. 983; Pub. L. 108–357, title IV, §413(c)(29), Oct. 22, 2004, 118 Stat. 1509.)

AMENDMENTS

2004—Subsec. (a)(1). Pub. L. 108–357, §413(c)(29)(A), which directed substitution of "6046 and 6046A" for "6035, 6046, and 6046A" was executed by making the substitution for "6035, 6046, or 6046A" to reflect the probable intent of Congress.

Subsec. (a)(3). Pub. L. 108–357, §413(c)(29)(B), struck out heading and text of par. (3). Text read as follows: "In the case of a return required under section 6035, paragraph (1) shall be applied by substituting '$1,000' for '$10,000', and paragraph (2) shall not apply."

1997—Subsec. (a). Pub. L. 105–34 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "In addition to any criminal penalty provided by law, any person required to file a return under section 6035, 6046, or 6046A who fails to file such return at the time provided in such section, or who files a return which does not show the information required pursuant to such section, shall pay a penalty of $1,000, unless it is shown that such failure is due to reasonable cause."

1983—Pub. L. 97–448 amended language of Pub. L. 97–248, §405(b), (c)(2), to clarify an ambiguity created by the conflicting language of §§340(b)(1), (2) and 405(b), (c)(2) of Pub. L. 97–248. See 1982 Amendment note below.

1982—Pub. L. 97–248, §§340(b)(2), 405(c)(2), as amended by Pub. L. 97–448, §306(c)(2)(B), substituted "Failure to file returns, etc., with respect to foreign corporations or foreign partnerships" for "Failure to file returns as to organization or reorganization of foreign corporations and as to acquisitions of their stock" in section catchline.

Subsec. (a). Pub. L. 97–248, §§340(b)(1), 405(b), as amended by Pub. L. 97–448, §306(a)(2)(A), substituted "section 6035, 6046, or 6046A" for "section 6046".

1974—Subsec. (b). Pub. L. 93–406 substituted "and certain excise" for "chapter 42".

1969—Subsec. (b). Pub. L. 91–172 inserted reference to chapter 42 taxes.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to transfers and changes after Aug. 5, 1997, see section 1143(c) of Pub. L. 105–34, set out as a note under section 6046A of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective as if included in the provisions of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 311(d) of Pub. L. 97–448, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title III, §340(c), Sept. 3, 1982, 96 Stat. 634, provided that: "The amendment made by this section [amending this section and section 6035 of this title] shall apply to taxable years of foreign corporations beginning after the date of the enactment of this Act [Sept. 3, 1982]."

Amendment by section 405(b), (c)(2) of Pub. L. 97–248 applicable with respect to acquisitions or dispositions of, or substantial changes in, interests in foreign partnerships occurring after Sept. 3, 1982, see section 407(b) of Pub. L. 97–248, set out as an Effective Date note under section 6046A of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–406 applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93–406, for plan years beginning after Sept. 2, 1974, but, in the case of plans in existence on Jan. 1, 1974, amendment by Pub. L. 93–406 applicable for plan years beginning after Dec. 31, 1975, see section 1017

of Pub. L. 93–406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

[1] *So in original. Probably should be "sections".*

[§6680. Repealed. Pub. L. 94–455, title XIX, §1904(b)(10)(A)(vi)(I), Oct. 4, 1976, 90 Stat. 1817]

Section, added Pub. L. 88–563, §6(a), Sept. 2, 1964, 78 Stat. 845; amended Pub. L. 91–128, §4(h)(1), Nov. 26, 1969, 83 Stat. 268; Pub. L. 92–9, §3(j)(2), Apr. 1, 1971, 85 Stat. 22, related to failure to file interest equalization tax returns.

[§6681. Repealed. Pub. L. 94–455, title XIX, §1904(b)(10)(D)(i), Oct. 4, 1976, 90 Stat. 1817]

Section, added Pub. L. 88–563, §6(a), Sept. 2, 1964, 78 Stat. 845; amended Pub. L. 90–59, §4(d), July 1, 1967, 81 Stat. 155; Pub. L. 90–73, §2(d), Aug. 29, 1967, 81 Stat. 176; Pub. L. 92–9, §3(k)(1)–(3), Apr. 1, 1971, 85 Stat. 22, related to false equalization tax certificates.

EFFECTIVE DATE OF REPEAL

Pub. L. 94–455, title XIX, §1904(b)(10)(D)(iii), Oct. 4, 1976, 90 Stat. 1817, provided that: "The amendments made by this subparagraph [repealing this section] shall apply with respect to actions occurring after June 30, 1974."

§6682. False information with respect to withholding

(a) Civil penalty

In addition to any criminal penalty provided by law, if—

(1) any individual makes a statement under section 3402 or section 3406 which results in a decrease in the amounts deducted and withheld under chapter 24, and

(2) as of the time such statement was made, there was no reasonable basis for such statement,

such individual shall pay a penalty of $500 for such statement.

(b) Exception

The Secretary may waive (in whole or in part) the penalty imposed under subsection (a) if the taxes imposed with respect to the individual under subtitle A for the taxable year are equal to or less than the sum of—

(1) the credits against such taxes allowed by part IV of subchapter A of chapter 1, and

(2) the payments of estimated tax which are considered payments on account of such taxes.

(c) Deficiency procedures not to apply

Subchapter B of chapter 63 (relating to deficiency procedures for income, estate, gift, and certain excise taxes) shall not apply in respect to the assessment or collection of any penalty imposed by subsection (a).

(Added Pub. L. 89–368, title I, §101(e)(4)(A), Mar. 15, 1966, 80 Stat. 61; amended Pub. L. 91–172, title I, §101(j)(55), Dec. 30, 1969, 83 Stat. 532; Pub. L. 93–406, title II, §1016(a)(23), Sept. 2, 1974, 88 Stat. 931; Pub. L. 97–34, title VII, §721(a), Aug. 13, 1981, 95 Stat. 340; Pub. L. 97–248, title III, §§306(a), 308(a), Sept. 3, 1982, 96 Stat. 588, 591; Pub. L. 98–67, title I, §§102(a), 107(a), Aug. 5, 1983, 97 Stat. 369, 382.)

AMENDMENTS

1983—Subsec. (a)(1). Pub. L. 98–67 inserted reference to section 3406 and repealed amendments made by Pub. L. 97–248. See 1982 Amendment note below.

1982—Subsec. (a)(1). Pub. L. 97–248 provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, par. (1) is amended by inserting "or section 3452(f)(1)(A)" after "section 3402". Section 102(a), (b) of Pub. L. 98–67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§301–308) of title III of Pub. L. 97–248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 [now 1986] [this title] shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

1981—Pub. L. 97–34 struck out "allowances based on itemized deductions" after "withholding" in section catchline.

Subsec. (a). Pub. L. 97–34 substituted provisions relating to imposition of penalty of $500 for statement under section 3402 resulting in decreased amounts withheld under chapter 24 and no reasonable basis existed for making such statement at the time it was made, for provisions relating to imposition of penalty of $50 for statement under section 3402(f)(1)(F) concerning amount of wages under chapter 24, or itemized deductions under section 3402(m), and provisions setting forth conditions for mitigation of such penalty.

Subsecs. (b), (c). Pub. L. 97–34 added subsec. (b) and redesignated former subsec. (b) as (c).

1974—Subsec. (b). Pub. L. 93–406 substituted "and certain excise" for "chapter 42."

1969—Subsec. (b). Pub. L. 91–172 inserted reference to chapter 42 taxes.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 107(a) of Pub. L. 98–67 effective Aug. 5, 1983, see section 110(c) of Pub. L. 98–67, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title VII, §721(d), Aug. 13, 1981, 95 Stat. 341, provided that: "The amendments made by this section [amending sections 6682 and 7205 of this title] shall apply to acts and failures to act after December 31, 1981."

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–406 applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93–406, for plan years beginning after Sept. 2, 1974, but, in the case of plans in existence on Jan. 1, 1974, amendment by Pub. L. 93–406 applicable for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93–406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

[§6683. Repealed. Pub. L. 109–135, title IV, §403(n)(3)(A), Dec. 21, 2005, 119 Stat. 2626]

Section, added Pub. L. 89–809, title I, §104(h)(4)(A), Nov. 13, 1966, 80 Stat. 1560; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 105–34, title XII, §1281(c), Aug. 5, 1997, 111 Stat. 1037, related to failure of foreign corporation to file return of personal holding company tax.

EFFECTIVE DATE OF REPEAL

Repeal effective as if included in the provisions of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which it relates, see section 403(nn) of Pub. L. 109–135, set out as an Effective Date of 2005 Amendment note under section 26 of this title.

§6684. Assessable penalties with respect to liability for tax under chapter 42

If any person becomes liable for tax under any section of chapter 42 (relating to private foundations and certain other tax-exempt organizations) by reason of any act or failure to act which is not due to reasonable cause and either—

(1) such person has theretofore been liable for tax under such chapter, or
(2) such act or failure to act is both willful and flagrant,

then such person shall be liable for a penalty equal to the amount of such tax.

(Added Pub. L. 91–172, title I, §101(c), Dec. 30, 1969, 83 Stat. 519; amended Pub. L. 100–203, title X, §10712(c)(4), Dec. 22, 1987, 101 Stat. 1330–467.)

AMENDMENTS

1987—Pub. L. 100–203 inserted "and certain other tax-exempt organizations" after "private foundations" in parenthetical.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to taxable years beginning after Dec. 22, 1987, see section 10712(d) of Pub. L. 100–203, set out as an Effective Date note under section 4955 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as a note under section 4940 of this title.

§6685. Assessable penalty with respect to public inspection requirements for certain tax-exempt organizations

In addition to the penalty imposed by section 7207 (relating to fraudulent returns, statements, or other documents), any person who is required to comply with the requirements of subsection (d) of section 6104 and who fails to so comply with respect to any return or application, if such failure is willful, shall pay a penalty of $5,000 with respect to each such return or application.

(Added Pub. L. 91–172, title I, §101(e)(4), Dec. 30, 1969, 83 Stat. 524; amended Pub. L. 96–603, §1(d)(4), Dec. 28, 1980, 94 Stat. 3504; Pub. L. 100–203, title X, §10704(b)(1), Dec. 22, 1987, 101 Stat. 1330–462; Pub. L. 104–168, title XIII, §1313(b), July 30, 1996, 110 Stat. 1480; Pub. L. 105–277, div. J, title I, §1004(b)(2)(D), Oct. 21, 1998, 112 Stat. 2681–890.)

AMENDMENTS

1998—Pub. L. 105–277 struck out "or (e)" after "subsection (d)".

1996—Pub. L. 104–168 substituted "$5,000" for "$1,000".

1987—Pub. L. 100–203 substituted current section catchline for "Assessable penalties with respect to private foundation annual returns" and amended text generally. Prior to amendment, text read as follows: "In addition to the penalty imposed by section 7207 (relating to fraudulent returns, statements, or other documents), any person who is required to comply with the requirements of section 6104(d) (relating to private foundations' annual returns) and who fails to so comply with respect to any return, if such failure is willful, shall pay a penalty of $1,000 with respect to each such return."

1980—Pub. L. 96–603 substituted in section catchline "returns" for "reports", and in text "required to comply" for "required to file the report and the notice required under section 6056 (relating to annual reports by private foundations) or to comply", "(relating to private foundations' annual returns) and who fails to so comply with respect to any return" for "(relating to public inspection of private foundations' annual reports) and who fails so to file or comply", and "each such return" for "each such report or notice".

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–277 applicable to requests made after the later of Dec. 31, 1998, or the 60th day after the Secretary of the Treasury first issues the regulations referred to in section 6104(d)(4) of this title, see section 1004(b)(3) of Pub. L. 105–277, set out as a note under section 6104 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–168 applicable to requests made on or after 60th day after Secretary of the Treasury first issues regulations referred to in section 6104(e)(3) of this title, see section 1313(c) of Pub. L. 104–168, set out as a note under section 6104 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to returns for years beginning after Dec. 31, 1986, and on and after Dec. 22, 1987, in case of applications submitted after July 15, 1987, or on or before July 15, 1987, if the organization has a copy of the application on July 15, 1987, see section 10704(d) of Pub. L. 100–203, set out as a note under section 6652 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–603 applicable to taxable years beginning after Dec. 31, 1980, see section 1(f) of Pub. L. 96–603, set out as a note under section 6033 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as a note under section 4940 of this title.

§6686. Failure to file returns or supply information by DISC or former FSC

In addition to the penalty imposed by section 7203 (relating to willful failure to file return, supply information, or pay tax) any person required to supply information or to file a return under section 6011(c) who fails to supply such information or file such return at the time prescribed by the Secretary, or who files a return which does not show the information required, shall pay a penalty of $100 for each failure to supply information (but the total amount imposed on the delinquent person for all such failures during any calendar year shall not exceed $25,000) or a penalty of $1,000 for each failure to file a return, unless it is shown that such failure is due to reasonable cause.

(Added Pub. L. 92–178, title V, §504(d), Dec. 10, 1971, 85 Stat. 551; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–369, div. A, title VIII, §801(d)(15)(A), July 18, 1984, 98 Stat. 997; Pub. L. 110–172, §11(g)(21), Dec. 29, 2007, 121 Stat. 2491.)

AMENDMENTS

2007—Pub. L. 110–172 inserted "former" before "FSC" in section catchline.

1984—Pub. L. 98–369 substituted "Failure to file returns or supply information by DISC or FSC" for "Failure of DISC to file returns" in section catchline, and in text substituted "section 6011(c)" for "section 6011(e)".

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE

Section applicable with respect to taxable years ending after Dec. 31, 1971, except that a corporation may not be a DISC for any taxable year beginning before Jan. 1, 1972, see section 507 of Pub. L. 92–178, set out as a note under section 991 of this title.

[§6687. Repealed. Pub. L. 101–239, title VII, §7711(b)(1), Dec. 19, 1989, 103 Stat. 2393]

Section, added Pub. L. 92–512, title I, §144(b)(1), Oct. 20, 1972, 86 Stat. 936, related to failure to supply information with respect to place of residence.

EFFECTIVE DATE OF REPEAL

Repeal applicable to returns and statements the due date for which (determined without regard to extensions) is after Dec. 31, 1989, see section 7711(c) of Pub. L. 101–239, set out as an Effective Date of 1989 Amendment note under section 6721 of this title.

§6688. Assessable penalties with respect to information required to be furnished under section 7654

In addition to any criminal penalty provided by law, any person described in section 7654(a) who is required under section 937(c) or by regulations prescribed under section 7654 to furnish information and who fails to comply with such requirement at the time prescribed by such regulations unless it is shown that such failure is due to reasonable cause and not to willful neglect, shall pay (upon notice and demand by the Secretary and in the same manner as tax) a penalty of $1,000 for each such failure.

(Added Pub. L. 92–606, §1(c), Oct. 31, 1972, 86 Stat. 1496, §6687; renumbered §6688, Pub. L. 93–406, title II, §1016(b)(4), Sept. 2, 1974, 88 Stat. 932; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 108–357, title VIII, §908(b), Oct. 22, 2004, 118 Stat. 1656.)

AMENDMENTS

2004—Pub. L. 108–357 inserted "under section 937(c) or" before "by regulations" and substituted "$1,000" for "$100".

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years ending after Oct. 22, 2004, see section 908(d)(1) of Pub. L. 108–357, set out as an Effective Date note under section 937 of this title.

EFFECTIVE DATE

Section applicable with respect to taxable years beginning after Dec. 31, 1972, see section 2 of Pub. L. 92–606, set out in part as a note under section 931 of this title.

§6689. Failure to file notice of redetermination of foreign tax

(a) Civil penalty

If the taxpayer fails to notify the Secretary (on or before the date prescribed by regulations for giving such notice) of a foreign tax redetermination, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the deficiency attributable to such redetermination an amount (not in excess of 25 percent of the deficiency) determined as follows—

(1) 5 percent of the deficiency if the failure is for not more than 1 month, with

(2) an additional 5 percent of the deficiency for each month (or fraction thereof) during which the failure continues.

(b) Foreign tax redetermination defined

For purposes of this section, the term "foreign tax redetermination" means any redetermination for which a notice is required under subsection (c) of section 905 or paragraph (2) of section 404A(g).

(Added Pub. L. 96–603, §2(c)(2), Dec. 28, 1980, 94 Stat. 3509.)

PRIOR PROVISIONS

A prior section 6689, added Pub. L. 93–17, §3(d)(2), Apr. 10, 1973, 87 Stat. 16, related to failure by certain foreign issuers and obligors to comply with United States investment equalization tax requirements, prior to repeal by Pub. L. 94–455, title XIX, §1904(b)(10)(E)(i), Oct. 4, 1976, 90 Stat. 1817.

EFFECTIVE DATE

For applicability of section with respect to employer contributions or accruals for taxable years beginning after Dec. 31, 1979, election to apply amendments retroactively with respect to foreign subsidiaries, allowance of prior deductions in case of certain funded branch plans, and time and manner for making elections, see section 2(e) of Pub. L. 96–603, set out as a note under section 404A of this title.

§6690. Fraudulent statement or failure to furnish statement to plan participant

Any person required under section 6057(e) to furnish a statement to a participant who willfully furnishes a false or fraudulent statement, or who willfully fails to furnish a statement in the manner, at the time, and showing the information required under section 6057(e), or regulations prescribed thereunder, shall for each such act, or for each such failure, be subject to a penalty under this subchapter of $50, which shall be assessed and collected in the same manner as the tax on employers imposed by section 3111.

(Added Pub. L. 93–406, title II, §1031(b)(2)(A), Sept. 2, 1974, 88 Stat. 946.)

EFFECTIVE DATE

Section effective Sept. 2, 1974, see section 1034 of Pub. L. 93–406, set out as a note under section 6057 of this title.

[§6691. Reserved]

§6692. Failure to file actuarial report

The plan administrator (as defined in section 414(g)) of each defined benefit plan to which section 412 applies who fails to file the report required by section 6059 at the time and in the manner required by section 6059, shall pay a penalty of $1,000 for each such failure unless it is shown that such failure is due to reasonable cause.

(Added Pub. L. 93–406, title II, §1033(b), Sept. 2, 1974, 88 Stat. 948.)

EFFECTIVE DATE

Section effective Sept. 2, 1974, see section 1034 of Pub. L. 93–406, set out as a note under section 6057 of this title.

§6693. Failure to provide reports on certain tax-favored accounts or annuities; penalties relating to designated nondeductible contributions

(a) Reports

(1) In general

If a person required to file a report under a provision referred to in paragraph (2) fails to file such report at the time and in the manner required by such provision, such person shall pay a penalty of $50 for each failure unless it is shown that such failure is due to reasonable cause.

(2) Provisions

The provisions referred to in this paragraph are—

(A) subsections (i) and (l) of section 408 (relating to individual retirement plans),
(B) section 220(h) (relating to Archer MSAs),
(C) section 223(h) (relating to health savings accounts),
(D) section 529(d) (relating to qualified tuition programs), and
(E) section 530(h) (relating to Coverdell education savings accounts).

This subsection shall not apply to any report which is an information return described in section 6724(d)(1)(C)(i) or a payee statement described in section 6724(d)(2)(X).

(b) Penalties relating to nondeductible contributions

(1) Overstatement of designated nondeductible contributions

Any individual who—

(A) is required to furnish information under section 408(o)(4) as to the amount of designated nondeductible contributions made for any taxable year, and

(B) overstates the amount of such contributions made for such taxable year,

shall pay a penalty of $100 for each such overstatement unless it is shown that such overstatement is due to reasonable cause.

(2) Failure to file form

Any individual who fails to file a form required to be filed by the Secretary under section 408(o)(4) shall pay a penalty of $50 for each such failure unless it is shown that such failure is due to reasonable cause.

(c) Penalties relating to simple retirement accounts

(1) Employer penalties

An employer who fails to provide 1 or more notices required by section 408(l)(2)(C) shall pay a penalty of $50 for each day on which such failures continue.

(2) Trustee and issuer penalties

A trustee or issuer who fails—

(A) to provide 1 or more statements required by the last sentence of section 408(i) shall pay a penalty of $50 for each day on which such failures continue, or

(B) to provide 1 or more summary descriptions required by section 408(l)(2)(B) shall pay a penalty of $50 for each day on which such failures continue.

(3) Reasonable cause exception

No penalty shall be imposed under this subsection with respect to any failure which the taxpayer shows was due to reasonable cause.

(d) Deficiency procedures not to apply

Subchapter B of chapter 63 (relating to deficiency procedures for income, estate, gift, and certain excise taxes) does not apply to the assessment or collection of any penalty imposed by this section.

(Added Pub. L. 93–406, title II, §2002(f), Sept. 2, 1974, 88 Stat. 967; amended Pub. L. 96–222, title I, §101(a)(10)(H), Apr. 1, 1980, 94 Stat. 203; Pub. L. 98–369, div. A, title I, §147(b), July 18, 1984, 98 Stat. 687; Pub. L. 99–514, title XI, §1102(d)(1), (2)(A), (B), Oct. 22, 1986, 100 Stat. 2416; Pub. L. 100–647, title I, §1011(b)(4)(A), (B)(i), Nov. 10, 1988, 102 Stat. 3456, 3457; Pub. L. 104–188, title I, §§1421(b)(4)(B), 1455(d)(3), Aug. 20, 1996, 110 Stat. 1796, 1818; Pub. L. 104–191, title III, §301(g), Aug. 21, 1996, 110 Stat. 2052; Pub. L. 105–34, title II, §§211(e)(2)(B), (C), 213(c), title XVI, §§1601(d)(1)(C)(ii), 1602(a)(4), Aug. 5, 1997, 111 Stat. 812, 816, 1087, 1094; Pub. L. 105–277, div. J, title IV, §4006(c)(4), Oct. 21, 1998, 112 Stat. 2681–913; Pub. L. 106–554, §1(a)(7) [title II, §202(b)(2)(E)], Dec. 21, 2000, 114 Stat. 2763, 2763A–629; Pub. L. 107–16, title IV, §402(a)(4)(A), June 7, 2001, 115 Stat. 60; Pub. L. 107–22, §1(b)(2)(C), July 26, 2001, 115 Stat. 197; Pub. L. 108–173, title XII, §1201(g), Dec. 8, 2003, 117 Stat. 2479.)

AMENDMENTS

2003—Subsec. (a)(2)(C) to (E). Pub. L. 108–173 added subpar. (C) and redesignated former subpars. (C) and (D) as (D) and (E), respectively.

2001—Subsec. (a)(2)(C). Pub. L. 107–16 substituted "qualified tuition" for "qualified State tuition".

Subsec. (a)(2)(D). Pub. L. 107–22 substituted "Coverdell education savings" for "education individual retirement".

2000—Subsec. (a)(2)(B). Pub. L. 106–554 substituted "Archer MSAs" for "medical savings accounts".

1998—Subsec. (a)(2)(C), (D). Pub. L. 105–277 substituted "section" for "Section".

1997—Pub. L. 105–34, §211(e)(2)(C), substituted "certain tax-favored" for "individual retirement" in section catchline.

Subsec. (a). Pub. L. 105–34, §1602(a)(4), inserted concluding provisions.

Subsec. (a)(2)(C). Pub. L. 105–34, §211(e)(2)(B), added subpar. (C).

Subsec. (a)(2)(D). Pub. L. 105–34, §213(c), added subpar. (D).

Subsec. (c)(2). Pub. L. 105–34, §1601(d)(1)(C)(ii), inserted "and issuer" before "penalties" in heading and "or issuer" before "who fails" in introductory provisions.

1996—Subsec. (a). Pub. L. 104–191 inserted heading and amended text generally. Prior to amendment, text read as follows: "The person required by subsection (i) or (l) of section 408 to file a report regarding an individual retirement account or individual retirement annuity at the time and in the manner required by such subsection shall pay a penalty of $50 for each failure unless it is shown that such failure is due to reasonable cause. This subsection shall not apply to any report which is an information return described in section 6724(d)(1)(C)(i) or a payee statement described in section 6724(d)(2)(W)."

Pub. L. 104–188, §1455(d)(3), inserted at end "This subsection shall not apply to any report which is an information return described in section 6724(d)(1)(C)(i) or a payee statement described in section 6724(d)(2)(W)."

Subsecs. (c), (d). Pub. L. 104–188, §1421(b)(4)(B), added subsec. (c) and redesignated former subsec. (c) as (d).

1988—Pub. L. 100–647, §1011(b)(4)(B)(i), substituted "penalties relating to" for "overstatement of" in section catchline.

Subsec. (b). Pub. L. 100–647, §1011(b)(4)(A), substituted "Penalties relating to" for "Overstatement of designated" in heading and amended text generally. Prior to amendment, text read as follows: "Any individual who—

"(1) is required to furnish information under section 408(o)(4) as to the amount of designated nondeductible contributions made for any taxable year, and

"(2) overstates the amount of such contributions made for such taxable year,

shall pay a penalty of $100 for each such overstatement unless it is shown that such overstatement is due to reasonable cause."

1986—Pub. L. 99–514, §1102(d)(2)(B), inserted "; overstatement of designated nondeductible contributions" in section catchline.

Subsec. (b). Pub. L. 99–514, §1102(d)(1), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 99–514, §1102(d)(1), (2)(A), redesignated former subsec. (b) as (c) and substituted "this section" for "subsection (a)".

1984—Subsec. (a). Pub. L. 98–369 substituted "$50" for "$10".

1980—Subsec. (a). Pub. L. 96–222 substituted "subsection (i) or (l) of section 408 to file" for "section 408(i) to file", and "such subsection shall pay" for "section 408(i) shall pay".

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–173 applicable to taxable years beginning after Dec. 31, 2003, see section 1201(k) of Pub. L. 108–173, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 2001 AMENDMENTS

Amendment by Pub. L. 107–22 effective July 26, 2001, see section 1(c) of Pub. L. 107–22, set out as an Effective and Termination Dates of 2001 Amendment note under section 26 of this title.

Amendment by Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 402(h) of Pub. L. 107–16, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 211(e)(2)(B), (C) of Pub. L. 105–34 effective Jan. 1, 1998, see section 211(f) of Pub. L. 105–34, set out as a note under section 529 of this title.

Amendment by section 213(c) of Pub. L. 105–34 applicable to taxable years beginning after Dec. 31, 1997, see section 213(f) of Pub. L. 105–34, set out as a note under section 26 of this title.

Amendment by section 1601(d)(1)(C)(ii) of Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 23 of this title.

Amendment by section 1602(a)(4) of Pub. L. 105–34 effective as if included in the provisions of the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104–191, to which such amendment relates, see section 1602(i) of Pub. L. 105–34, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by Pub. L. 104–191 applicable to taxable years beginning after Dec. 31, 1996, see section 301(j) of Pub. L. 104–191, set out as a note under section 62 of this title.

Amendment by section 1421(b)(4)(B) of Pub. L. 104–188 applicable to taxable years beginning after Dec.

31, 1996, see section 1421(e) of Pub. L. 104–188, set out as a note under section 72 of this title.

Amendment by section 1455(d)(3) of Pub. L. 104–188 applicable to returns, reports, and other statements the due date for which (determined without regard to extensions) is after Dec. 31, 1996, see section 1455(e) of Pub. L. 104–188, set out as a note under section 408 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to contributions and distributions for taxable years beginning after Dec. 31, 1986, see section 1102(g) of Pub. L. 99–514, set out as a note under section 219 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to failures occurring after July 18, 1984, see section 147(d)(2) of Pub. L. 98–369, set out as a note under section 219 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–222, title I, §101(b)(1)(F), Apr. 1, 1980, 94 Stat. 205, provided that: "The amendment made by subparagraph (I) of subsection (a)(10) [probably means subpar. (H) of subsec. (a)(10), which amended this section] shall apply with respect to failures occuring [sic] after the date of the enactment of this Act [Apr. 1, 1980]."

EFFECTIVE DATE

Section effective Jan. 1, 1975, see section 2002(i)(2) of Pub. L. 93–406, set out as a note under section 4973 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§1401–1465] of title I of Pub. L. 104–188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§6694. Understatement of taxpayer's liability by tax return preparer

(a) Understatement due to unreasonable positions

(1) In general

If a tax return preparer—

(A) prepares any return or claim of refund with respect to which any part of an understatement of liability is due to a position described in paragraph (2), and

(B) knew (or reasonably should have known) of the position,

such tax return preparer shall pay a penalty with respect to each such return or claim in an amount equal to the greater of $1,000 or 50 percent of the income derived (or to be derived) by the tax return preparer with respect to the return or claim.

(2) Unreasonable position

(A) In general

Except as otherwise provided in this paragraph, a position is described in this paragraph

unless there is or was substantial authority for the position.

(B) Disclosed positions

If the position was disclosed as provided in section 6662(d)(2)(B)(ii)(I) and is not a position to which subparagraph (C) applies, the position is described in this paragraph unless there is a reasonable basis for the position.

(C) Tax shelters and reportable transactions

If the position is with respect to a tax shelter (as defined in section 6662(d)(2)(C)(ii)) or a reportable transaction to which section 6662A applies, the position is described in this paragraph unless it is reasonable to believe that the position would more likely than not be sustained on its merits.

(3) Reasonable cause exception

No penalty shall be imposed under this subsection if it is shown that there is reasonable cause for the understatement and the tax return preparer acted in good faith.

(b) Understatement due to willful or reckless conduct

(1) In general

Any tax return preparer who prepares any return or claim for refund with respect to which any part of an understatement of liability is due to a conduct described in paragraph (2) shall pay a penalty with respect to each such return or claim in an amount equal to the greater of—

(A) $5,000, or

(B) 50 percent of the income derived (or to be derived) by the tax return preparer with respect to the return or claim.

(2) Willful or reckless conduct

Conduct described in this paragraph is conduct by the tax return preparer which is—

(A) a willful attempt in any manner to understate the liability for tax on the return or claim, or

(B) a reckless or intentional disregard of rules or regulations.

(3) Reduction in penalty

The amount of any penalty payable by any person by reason of this subsection for any return or claim for refund shall be reduced by the amount of the penalty paid by such person by reason of subsection (a).

(c) Extension of period of collection where preparer pays 15 percent of penalty

(1) In general

If, within 30 days after the day on which notice and demand of any penalty under subsection (a) or (b) is made against any person who is a tax return preparer, such person pays an amount which is not less than 15 percent of the amount of such penalty and files a claim for refund of the amount so paid, no levy or proceeding in court for the collection of the remainder of such penalty shall be made, begun, or prosecuted until the final resolution of a proceeding begun as provided in paragraph (2). Notwithstanding the provisions of section 7421(a), the beginning of such proceeding or levy during the time such prohibition is in force may be enjoined by a proceeding in the proper court. Nothing in this paragraph shall be construed to prohibit any counterclaim for the remainder of such penalty in a proceeding begun as provided in paragraph (2).

(2) Preparer must bring suit in district court to determine his liability for penalty

If, within 30 days after the day on which his claim for refund of any partial payment of any penalty under subsection (a) or (b) is denied (or, if earlier, within 30 days after the expiration of 6 months after the day on which he filed the claim for refund), the tax return preparer fails to begin a proceeding in the appropriate United States district court for the determination of his liability for such penalty, paragraph (1) shall cease to apply with respect to such penalty, effective on the day following the close of the applicable 30-day period referred to in this paragraph.

(3) Suspension of running of period of limitations on collection

The running of the period of limitations provided in section 6502 on the collection by levy or by a proceeding in court in respect of any penalty described in paragraph (1) shall be suspended for the period during which the Secretary is prohibited from collecting by levy or a proceeding in court.

(d) Abatement of penalty where taxpayer's liability not understated

If at any time there is a final administrative determination or a final judicial decision that there was no understatement of liability in the case of any return or claim for refund with respect to which a penalty under subsection (a) or (b) has been assessed, such assessment shall be abated, and if any portion of such penalty has been paid the amount so paid shall be refunded to the person who made such payment as an overpayment of tax without regard to any period of limitations which, but for this subsection, would apply to the making of such refund.

(e) Understatement of liability defined

For purposes of this section, the term "understatement of liability" means any understatement of the net amount payable with respect to any tax imposed by this title or any overstatement of the net amount creditable or refundable with respect to any such tax. Except as otherwise provided in subsection (d), the determination of whether or not there is an understatement of liability shall be made without regard to any administrative or judicial action involving the taxpayer.

(f) Cross reference

For definition of tax return preparer, see section 7701(a)(36).

(Added Pub. L. 94–455, title XII, §1203(b)(1), Oct. 4, 1976, 90 Stat. 1689; amended Pub. L. 101–239, title VII, §§7732(a), 7737(a), Dec. 19, 1989, 103 Stat. 2402, 2404; Pub. L. 110–28, title VIII, §8246(a)(2)(F)(i), (b), May 25, 2007, 121 Stat. 201, 203; Pub. L. 110–343, div. C, title V, §506(a), Oct. 3, 2008, 122 Stat. 3880.)

CODIFICATION

Another section 6694, relating to failure to file information with respect to carryover basis property, which was added by Pub. L. 94–455, §2005(d)(2), was renumbered section 6698 by Pub. L. 95–600, renumbered section 6698A by Pub. L. 96–222, and repealed by Pub. L. 96–223.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–343 amended subsec. (a) generally. Prior to amendment, subsec. (a) provided penalty for understatement due to unreasonable positions.

2007—Pub. L. 110–28, §8246(a)(2)(F)(i)(I), substituted "tax return preparer" for "income tax return preparer" in section catchline.

Subsec. (a). Pub. L. 110–28, §8246(b), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: "If—

"(1) any part of any understatement of liability with respect to any return or claim for refund is due to a position for which there was not a realistic possibility of being sustained on its merits,

"(2) any person who is an income tax return preparer with respect to such return or claim knew (or reasonably should have known) of such position, and

"(3) such position was not disclosed as provided in section 6662(d)(2)(B)(ii) or was frivolous,

such person shall pay a penalty of $250 with respect to such return or claim unless it is shown that there is reasonable cause for the understatement and such person acted in good faith."

Subsec. (b). Pub. L. 110–28, §8246(b), amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: "If any part of any understatement of liability with respect to any return or claim for refund is due—

"(1) to a willful attempt in any manner to understate the liability for tax by a person who is an income tax return preparer with respect to such return or claim, or

"(2) to any reckless or intentional disregard of rules or regulations by any such person,

such person shall pay a penalty of $1,000 with respect to such return or claim. With respect to any return or claim, the amount of the penalty payable by any person by reason of this subsection shall be reduced by the amount of the penalty paid by such person by reason of subsection (a)."

Subsec. (c)(1). Pub. L. 110–28, §8246(a)(2)(F)(i)(II), substituted "a tax return preparer" for "an income tax

return preparer".

Subsec. (c)(2). Pub. L. 110–28, §8246(a)(2)(F)(i)(III), substituted "the tax return preparer" for "the income tax return preparer".

Subsec. (e). Pub. L. 110–28, §8246(a)(2)(F)(i)(IV), substituted "this title" for "subtitle A".

Subsec. (f). Pub. L. 110–28, §8246(a)(2)(F)(i)(V), substituted "tax return preparer" for "income tax return preparer".

1989—Subsec. (a). Pub. L. 101–239, §7732(a), substituted "Understatements due to unrealistic positions" for "Negligent or intentional disregard of rules and regulations" in heading and amended text generally. Prior to amendment, text read as follows: "If any part of any understatement of liability with respect to any return or claim for refund is due to the negligent or intentional disregard of rules and regulations by any person who is an income tax return preparer with respect to such return or claim, such person shall pay a penalty of $100 with respect to such return or claim."

Subsec. (b). Pub. L. 101–239, §7732(a), substituted "Willful or reckless conduct" for "Willful understatement of liability" in heading and amended text generally. Prior to amendment, text read as follows: "If any part of any understatement of liability with respect to any return or claim for refund is due to a willful attempt in any manner to understate the liability for a tax by a person who is an income tax return preparer with respect to such return or claim, such person shall pay a penalty of $500 with respect to such return or claim. With respect to any return or claim, the amount of the penalty payable by any person by reason of this subsection shall be reduced by the amount of the penalty paid by such person by reason of subsection (a)."

Subsec. (c)(1). Pub. L. 101–239, §7737(a), inserted at end "Nothing in this paragraph shall be construed to prohibit any counterclaim for the remainder of such penalty in a proceeding begun as provided in paragraph (2)."

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title V, §506(b), Oct. 3, 2008, 122 Stat. 3880, provided that: "The amendment made by this section [amending this section] shall apply—

"(1) in the case of a position other than a position described in subparagraph (C) of section 6694(a)(2) of the Internal Revenue Code of 1986 (as amended by this section), to returns prepared after May 25, 2007, and

"(2) in the case of a position described in such subparagraph (C), to returns prepared for taxable years ending after the date of the enactment of this Act [Oct. 3, 2008]."

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–28 applicable to returns prepared after May 25, 2007, see section 8246(c) of Pub. L. 110–28, set out as a note under section 6060 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7732(b), Dec. 19, 1989, 103 Stat. 2402, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to documents prepared after December 31, 1989."

§6695. Other assessable penalties with respect to the preparation of tax returns for other persons

(a) Failure to furnish copy to taxpayer

Any person who is a tax return preparer with respect to any return or claim for refund who fails to comply with section 6107(a) with respect to such return or claim shall pay a penalty of $50 for such failure, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The maximum penalty imposed under this subsection on any person with respect to documents filed during any calendar year shall not exceed $25,000.

(b) Failure to sign return

Any person who is a tax return preparer with respect to any return or claim for refund, who is required by regulations prescribed by the Secretary to sign such return or claim, and who fails to comply with such regulations with respect to such return or claim shall pay a penalty of $50 for such failure, unless it is shown that such failure is due to reasonable cause and not due to willful neglect.

The maximum penalty imposed under this subsection on any person with respect to documents filed during any calendar year shall not exceed $25,000.

(c) Failure to furnish identifying number

Any person who is a tax return preparer with respect to any return or claim for refund and who fails to comply with section 6109(a)(4) with respect to such return or claim shall pay a penalty of $50 for such failure, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The maximum penalty imposed under this subsection on any person with respect to documents filed during any calendar year shall not exceed $25,000.

(d) Failure to retain copy or list

Any person who is a tax return preparer with respect to any return or claim for refund who fails to comply with section 6107(b) with respect to such return or claim shall pay a penalty of $50 for each such failure, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The maximum penalty imposed under this subsection on any person with respect to any return period shall not exceed $25,000.

(e) Failure to file correct information returns

Any person required to make a return under section 6060 who fails to comply with the requirements of such section shall pay a penalty of $50 for—

(1) each failure to file a return as required under such section, and

(2) each failure to set forth an item in the return as required under section,

unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The maximum penalty imposed under this subsection on any person with respect to any return period shall not exceed $25,000.

(f) Negotiation of check

Any person who is a tax return preparer who endorses or otherwise negotiates (directly or through an agent) any check made in respect of the taxes imposed by this title which is issued to a taxpayer (other than the tax return preparer) shall pay a penalty of $500 with respect to each such check. The preceding sentence shall not apply with respect to the deposit by a bank (within the meaning of section 581) of the full amount of the check in the taxpayer's account in such bank for the benefit of the taxpayer.

(g) Failure to be diligent in determining eligibility for earned income credit

Any person who is a tax return preparer with respect to any return or claim for refund who fails to comply with due diligence requirements imposed by the Secretary by regulations with respect to determining eligibility for, or the amount of, the credit allowable by section 32 shall pay a penalty of $500 for each such failure.

(Added Pub. L. 94–455, title XII, §1203(f), Oct. 4, 1976, 90 Stat. 1692; amended Pub. L. 95–600, title VII, §701(cc)(1), Nov. 6, 1978, 92 Stat. 2923; Pub. L. 98–369, div. A, title I, §179(b)(2), July 18, 1984, 98 Stat. 718; Pub. L. 99–44, §1(b), May 24, 1985, 99 Stat. 77; Pub. L. 101–239, title VII, §7733(a)–(d), Dec. 19, 1989, 103 Stat. 2402, 2403; Pub. L. 105–34, title X, §1085(a)(2), Aug. 5, 1997, 111 Stat. 956; Pub. L. 110–28, title VIII, §8246(a)(2)(G)(i), (ii), May 25, 2007, 121 Stat. 202; Pub. L. 112–41, title V, §501(a), Oct. 21, 2011, 125 Stat. 459.)

AMENDMENTS

2011—Subsec. (g). Pub. L. 112–41 substituted "$500" for "$100".

2007—Pub. L. 110–28, §8246(a)(2)(G)(i)(I), struck out "income" before "tax" in section catchline.

Subsecs. (a) to (d). Pub. L. 110–28, §8246(a)(2)(G)(i)(II), substituted "a tax return preparer" for "an income tax return preparer".

Subsec. (f). Pub. L. 110–28, §8246(a)(2)(G)(i)(II), (ii), substituted "a tax return preparer" for "an income tax return preparer", "this title" for "subtitle A", and "the tax return preparer" for "the income tax return preparer".

Subsec. (g). Pub. L. 110–28, §8246(a)(2)(G)(i)(II), substituted "a tax return preparer" for "an income tax

return preparer".

1997—Subsec. (g). Pub. L. 105–34 added subsec. (g).

1989—Subsecs. (a) to (c). Pub. L. 101–239, §7733(a)–(c), substituted "$50" for "$25" and inserted at end "The maximum penalty imposed under this subsection on any person with respect to documents filed during any calendar year shall not exceed $25,000."

Subsec. (e). Pub. L. 101–239, §7733(d), substituted "returns" for "return" in heading and amended text generally. Prior to amendment, text read as follows: "Any person required to make a return under section 6060 who fails to comply with the requirements of such section shall pay a penalty of—

"(1) $100 for each failure to file a return as required under such section, and

"(2) $5 for each failure to set forth an item in the return as required under such section,

unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The maximum penalty imposed under this subsection on any person with respect to any return period shall not exceed $20,000."

1985—Subsec. (b). Pub. L. 99–44 repealed Pub. L. 98–369, §179(b)(2), which amended subsec. (b), and provided that the Internal Revenue Code of 1954 [now 1986] [this title] shall be applied and administered as if section 179(b)(2) (and the amendments made by such section) had not been enacted. See 1984 Amendment note and Effective Date of 1985 Amendment note below.

1984—Subsec. (b). Pub. L. 98–369 amended subsec. (b) generally, substituting provisions dealing with failure to inform taxpayer of certain recordkeeping requirements of section 274(d) of this title or to sign returns, for provisions dealing with failure to sign returns. See 1985 Amendment note above.

1978—Subsec. (f). Pub. L. 95–600 inserted provision relating to deposits by a bank.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112–41 applicable to returns required to be filed after Dec. 31, 2011, see section 501(b) of Pub. L. 112–41, set out in a note under section 3805 of Title 19, Customs Duties.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–28 applicable to returns prepared after May 25, 2007, see section 8246(c) of Pub. L. 110–28, set out as a note under section 6060 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to taxable years beginning after Dec. 31, 1996, see section 1085(e)(1) of Pub. L. 105–34, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7733(e), Dec. 19, 1989, 103 Stat. 2403, provided that: "The amendments made by this section [amending this section] shall apply to documents prepared after December 31, 1989."

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–44 effective as if included in the amendments made by section 179(b) of Pub. L. 98–369, see section 6(a) of Pub. L. 99–44, set out as a note under section 274 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1984, see section 179(d)(2) of Pub. L. 98–369, set out as an Effective Date note under section 280F of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title VII, §701(cc)(3), Nov. 6, 1978, 92 Stat. 2924, provided that: "The amendments made by this subsection [amending this section and section 7701 of this title] shall apply to documents prepared after December 31, 1976."

REPEAL OF REGULATIONS COVERING SUBSTANTIATION BY ADEQUATE CONTEMPORANEOUS RECORDS

Regulations issued before May 24, 1985, to carry out the amendment of subsec. (b) of this section by section 179(b)(2) of Pub. L. 98–369 to have no force and effect, see section 1(c) of Pub. L. 99–44, set out as a note under section 274 of this title.

§6695A. Substantial and gross valuation misstatements attributable to incorrect

appraisals

(a) Imposition of penalty

If—

(1) a person prepares an appraisal of the value of property and such person knows, or reasonably should have known, that the appraisal would be used in connection with a return or a claim for refund, and

(2) the claimed value of the property on a return or claim for refund which is based on such appraisal results in a substantial valuation misstatement under chapter 1 (within the meaning of section 6662(e)), a substantial estate or gift tax valuation understatement (within the meaning of section 6662(g)), or a gross valuation misstatement (within the meaning of section 6662(h)), with respect to such property,

then such person shall pay a penalty in the amount determined under subsection (b).

(b) Amount of penalty

The amount of the penalty imposed under subsection (a) on any person with respect to an appraisal shall be equal to the lesser of—

(1) the greater of—

(A) 10 percent of the amount of the underpayment (as defined in section 6664(a)) attributable to the misstatement described in subsection (a)(2), or

(B) $1,000, or

(2) 125 percent of the gross income received by the person described in subsection (a)(1) from the preparation of the appraisal.

(c) Exception

No penalty shall be imposed under subsection (a) if the person establishes to the satisfaction of the Secretary that the value established in the appraisal was more likely than not the proper value.

(Added Pub. L. 109–280, title XII, §1219(b)(1), Aug. 17, 2006, 120 Stat. 1084; amended Pub. L. 110–172, §§3(e)(1), 11(a)(40), Dec. 29, 2007, 121 Stat. 2474, 2488.)

CODIFICATION

Section 1219(b)(1) of Pub. L. 109–280, which directed the addition of section 6695A at the end of part I of subchapter B of chapter 68, without specifying the act to be amended, was executed by adding section 6695A at the end of part I of subchapter B of chapter 68 of this title, which consists of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

AMENDMENTS

2007—Subsec. (a). Pub. L. 110–172, §11(a)(40), designated the words "then such person shall pay a penalty in the amount determined under subsection (b).", appearing in par. (2), as concluding provisions of subsec. (a).

Subsec. (a)(2). Pub. L. 110–172, §3(e)(1), inserted "a substantial estate or gift tax valuation understatement (within the meaning of section 6662(g))," before "or a gross valuation misstatement".

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by section 3(e)(1) of Pub. L. 110–172 effective as if included in the provisions of the Pension Protection Act of 2006, Pub. L. 109–280, to which such amendment relates, see section 3(j) of Pub. L. 110–172, set out as a note under section 170 of this title.

EFFECTIVE DATE

Section applicable to appraisals prepared with respect to returns or submissions filed after Aug. 17, 2006, with special rule for certain easements, see section 1219(e)(2), (3) of Pub. L. 109–280, set out as an Effective Date of 2006 Amendments note under section 170 of this title.

§6696. Rules applicable with respect to sections 6694, 6695, and 6695A

(a) Penalties to be additional to any other penalties

The penalties provided by section [1] 6694, 6695, and 6695A shall be in addition to any other penalties provided by law.

(b) Deficiency procedures not to apply

Subchapter B of chapter 63 (relating to deficiency procedures for income, estate, gift, and certain excise taxes) shall not apply with respect to the assessment or collection of the penalties provided by sections 6694, 6695, and 6695A.

(c) Procedure for claiming refund

Any claim for credit or refund of any penalty paid under section 6694, 6695, or 6695A shall be filed in accordance with regulations prescribed by the Secretary.

(d) Periods of limitation

(1) Assessment

The amount of any penalty under section 6694(a), section [2] 6695, or 6695A shall be assessed within 3 years after the return or claim for refund with respect to which the penalty is assessed was filed, and no proceeding in court without assessment for the collection of such tax shall be begun after the expiration of such period. In the case of any penalty under section 6694(b), the penalty may be assessed, or a proceeding in court for the collection of the penalty may be begun without assessment, at any time.

(2) Claim for refund

Except as provided in section 6694(d), any claim for refund of an overpayment of any penalty assessed under section 6694, 6695, or 6695A shall be filed within 3 years from the time the penalty was paid.

(e) Definitions

For purposes of sections 6694, 6695, and 6695A—

(1) Return

The term "return" means any return of any tax imposed by this title.

(2) Claim for refund

The term "claim for refund" means a claim for refund of, or credit against, any tax imposed by this title.

(Added Pub. L. 94–455, title XII, §1203(f), Oct. 4, 1976, 90 Stat. 1693; amended Pub. L. 109–280, title XII, §1219(b)(2), Aug. 17, 2006, 120 Stat. 1084; Pub. L. 110–28, title VIII, §8246(a)(2)(H), May 25, 2007, 121 Stat. 202; Pub. L. 110–172, §3(e)(2), Dec. 29, 2007, 121 Stat. 2474.)

CODIFICATION

Section 1219(b)(2) of Pub. L. 109–280, which directed the amendment of section 6696 without specifying the act to be amended, was executed to this section, which is section 6696 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment note below.

AMENDMENTS

2007—Subsec. (d)(1). Pub. L. 110–172 substituted ", section 6695, or 6695A" for "or under section 6695".
Subsec. (e). Pub. L. 110–28 substituted "this title" for "subtitle A" in pars. (1) and (2).

2006—Pub. L. 109–280 substituted "6694, 6695, and 6695A" for "6694 and 6695" wherever appearing in section catchline and text and "6694, 6695, or 6695A" for "6694 or 6695" wherever appearing in text. See Codification note above.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–172 effective as if included in the provisions of the Pension Protection Act of 2006, Pub. L. 109–280, to which such amendment relates, see section 3(j) of Pub. L. 110–172, set out as a

note under section 170 of this title.

Amendment by Pub. L. 110–28 applicable to returns prepared after May 25, 2007, see section 8246(c) of Pub. L. 110–28, set out as a note under section 6060 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 applicable to appraisals prepared with respect to returns or submissions filed after Aug. 17, 2006, with special rule for certain easements, see section 1219(e)(2), (3) of Pub. L. 109–280, set out as a note under section 170 of this title.

[1] So in original. Probably should be "sections".

[2] So in original. The word "section" probably should not appear.

[§6697. Repealed. Pub. L. 111–325, title V, §501(a), Dec. 22, 2010, 124 Stat. 3554]

Section, added Pub. L. 94–455, title XVI, §1601(b)(1), Oct. 4, 1976, 90 Stat. 1745; amended Pub. L. 95–600, title III, §362(b), Nov. 6, 1978, 92 Stat. 2851; Pub. L. 99–514, title VI, §667(a), Oct. 22, 1986, 100 Stat. 2305, related to assessable penalties with respect to liability for tax of regulated investment companies.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 22, 2010, see section 501(c) of Pub. L. 111–325, set out as an Effective Date of 2010 Amendment note under section 860 of this title.

§6698. Failure to file partnership return

(a) General rule

In addition to the penalty imposed by section 7203 (relating to willful failure to file return, supply information, or pay tax), if any partnership required to file a return under section 6031 for any taxable year—

(1) fails to file such return at the time prescribed therefor (determined with regard to any extension of time for filing), or

(2) files a return which fails to show the information required under section 6031,

such partnership shall be liable for a penalty determined under subsection (b) for each month (or fraction thereof) during which such failure continues (but not to exceed 12 months), unless it is shown that such failure is due to reasonable cause.

(b) Amount per month

For purposes of subsection (a), the amount determined under this subsection for any month is the product of—

(1) $195, multiplied by

(2) the number of persons who were partners in the partnership during any part of the taxable year [1]

(c) Assessment of penalty

The penalty imposed by subsection (a) shall be assessed against the partnership.

(d) Deficiency procedures not to apply

Subchapter B of chapter 63 (relating to deficiency procedures for income, estate, gift, and certain excise taxes) shall not apply in respect of the assessment or collection of any penalty imposed by subsection (a).

(Added Pub. L. 95–600, title II, §211(a), Nov. 6, 1978, 92 Stat. 2817; amended Pub. L. 110–142, §8(a), (b), Dec. 20, 2007, 121 Stat. 1806; Pub. L. 110–458, title I, §127(a), Dec. 23, 2008, 122 Stat. 5116; Pub. L. 111–92, §16(a), Nov. 6, 2009, 123 Stat. 2996.)

CODIFICATION

Another section 6698, formerly section 6694, relating to failure to file information with respect to carryover basis property, which was added by Pub. L. 94–455, §2005(d)(2), was renumbered section 6698 by Pub. L. 95–600, renumbered section 6698A by Pub. L. 96–222, and repealed by Pub. L. 96–223.

AMENDMENTS

2009—Subsec. (b)(1). Pub. L. 111–92 substituted "$195" for "$89".

2008—Subsec. (b)(1). Pub. L. 110–458 substituted "$89" for "$85".

2007—Subsec. (a). Pub. L. 110–142, §8(a), substituted "12 months" for "5 months" in concluding provisions.

Subsec. (b)(1). Pub. L. 110–142, §8(b), substituted "$85" for "$50".

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–92, §16(b), Nov. 6, 2009, 123 Stat. 2996, provided that: "The amendments made by this section [amending this section and section 6699 of this title] shall apply to returns for taxable years beginning after December 31, 2009."

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–458, title I, §127(b), Dec. 23, 2008, 122 Stat. 5116, provided that: "The amendment made by subsection (a) [amending this section] shall apply to returns required to be filed after December 31, 2008."

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–142, §8(d), Dec. 20, 2007, 121 Stat. 1807, provided that: "The amendments made by subsections (a) and (b) [amending this section] shall apply to returns required to be filed after the date of the enactment of this Act [Dec. 20, 2007]."

EFFECTIVE DATE

Pub. L. 95–600, title II, §211(c), Nov. 6, 1978, 92 Stat. 2818, provided that: "The amendments made by this section [enacting this section] shall apply with respect to returns for taxable years beginning after December 31, 1978."

MODIFICATION OF PENALTY FOR FAILURE TO FILE PARTNERSHIP RETURNS

Pub. L. 110–141, §2, Dec. 19, 2007, 121 Stat. 1802, provided that: "For any return of a partnership required to be filed under section 6031 of the Internal Revenue Code of 1986 for a taxable year beginning in 2008, the dollar amount in effect under section 6698(b)(1) of such Code shall be increased by $1."

[1] So in original. Probably should be followed by a period.

[§6698A. Repealed. Pub. L. 96–223, title IV, §401(a), Apr. 2, 1980, 94 Stat. 299]

Section, added Pub. L. 94–455, title XX, §2005(d)(2), Oct. 4, 1976, 90 Stat. 1878, §6694; renumbered §6698 and amended Pub. L. 95–600, title VII, §702(r)(1)(A), (B), Nov. 6, 1978, 92 Stat. 2938; renumbered §6698A, Pub. L. 96–222, title I, §107(a)(2)(D), Apr. 1, 1980, 94 Stat. 223, related to failure of an executor to file information with respect to carryover basis property. Repeal was achieved by repealing section 2005(d)(2) of Pub. L. 94–455 and section 702(r)(1)(A), (B) of Pub. L. 95–600 and the amendments made by those sections.

EFFECTIVE DATE OF REPEAL AND REVIVAL OF PRIOR LAW

Repeal applicable in respect of decedents dying after Dec. 31, 1976, and, except for certain elections, this title to be applied and administered as if this section had not been enacted, see section 401(b), (e) of Pub. L. 96–223, set out as an Effective Date of 1980 Amendment and Revival of Prior Law note under section 1023 of this title.

§6699. Failure to file S corporation return

(a) General rule

In addition to the penalty imposed by section 7203 (relating to willful failure to file return, supply information, or pay tax), if any S corporation required to file a return under section 6037 for any taxable year—

(1) fails to file such return at the time prescribed therefor (determined with regard to any extension of time for filing), or

(2) files a return which fails to show the information required under section 6037,

such S corporation shall be liable for a penalty determined under subsection (b) for each month (or fraction thereof) during which such failure continues (but not to exceed 12 months), unless it is shown that such failure is due to reasonable cause.

(b) Amount per month

For purposes of subsection (a), the amount determined under this subsection for any month is the product of—

(1) $195, multiplied by

(2) the number of persons who were shareholders in the S corporation during any part of the taxable year.

(c) Assessment of penalty

The penalty imposed by subsection (a) shall be assessed against the S corporation.

(d) Deficiency procedures not to apply

Subchapter B of chapter 63 (relating to deficiency procedures for income, estate, gift, and certain excise taxes) shall not apply in respect of the assessment or collection of any penalty imposed by subsection (a).

(Added Pub. L. 110–142, §9(a), Dec. 20, 2007, 121 Stat. 1807; amended Pub. L. 110–458, title I, §128(a), Dec. 23, 2008, 122 Stat. 5116; Pub. L. 111–92, §16(a), Nov. 6, 2009, 123 Stat. 2996.)

CODIFICATION

Section 9(a) of Pub. L. 110–142, which directed amendment of this part by adding this section at the end, was executed by inserting this section after section 6698, to reflect the probable intent of Congress.

PRIOR PROVISIONS

A prior section 6699, added Pub. L. 95–600, title I, §141(c)(1), Nov. 6, 1978, 92 Stat. 2794; amended Pub. L. 96–222, title I, §101(a)(7)(L)(iii)(VI), (v)(IX), Apr. 1, 1980, 94 Stat. 200; Pub. L. 97–34, title III, §331(c)(3), (4), Aug. 13, 1981, 95 Stat. 293, 294; Pub. L. 97–448, title I, §103(g)(2)(B)–(D), Jan. 12, 1983, 96 Stat. 2379; Pub. L. 98–369, div. A, title IV, §491(e)(9), July 18, 1984, 98 Stat. 853; Pub. L. 99–514, title XVIII, §1847(b)(9), Oct. 22, 1986, 100 Stat. 2857, related to assessable penalties applicable to tax credit employee stock ownership plans, prior to repeal by Pub. L. 99–514, title XI, §1171(b)(7)(A), Oct. 22, 1986, 100 Stat. 2513. For effective date of repeal, see section 1171(c) of Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note under section 38 of this title.

AMENDMENTS

2009—Subsec. (b)(1). Pub. L. 111–92 substituted "$195" for "$89".

2008—Subsec. (b)(1). Pub. L. 110–458 substituted "$89" for "$85".

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–92 applicable to returns for taxable years beginning after Dec. 31, 2009, see section 16(b) of Pub. L. 111–92, set out as a note under section 6698 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–458, title I, §128(b), Dec. 23, 2008, 122 Stat. 5116, provided that: "The amendment made by subsection (a) [amending this section] shall apply to returns required to be filed after December 31, 2008."

EFFECTIVE DATE

Pub. L. 110–142, §9(c), Dec. 20, 2007, 121 Stat. 1808, provided that: "The amendments made by this section [enacting this section] shall apply to returns required to be filed after the date of the enactment of this Act [Dec. 20, 2007]."

§6700. Promoting abusive tax shelters, etc.

(a) Imposition of penalty

Any person who—

(1)(A) organizes (or assists in the organization of)—

(i) a partnership or other entity,

(ii) any investment plan or arrangement, or

(iii) any other plan or arrangement, or

(B) participates (directly or indirectly) in the sale of any interest in an entity or plan or arrangement referred to in subparagraph (A), and

(2) makes or furnishes or causes another person to make or furnish (in connection with such organization or sale)—

(A) a statement with respect to the allowability of any deduction or credit, the excludability of any income, or the securing of any other tax benefit by reason of holding an interest in the entity or participating in the plan or arrangement which the person knows or has reason to know is false or fraudulent as to any material matter, or

(B) a gross valuation overstatement as to any material matter,

shall pay, with respect to each activity described in paragraph (1), a penalty equal to the $1,000 or, if the person establishes that it is lesser, 100 percent of the gross income derived (or to be derived) by such person from such activity. For purposes of the preceding sentence, activities described in paragraph (1)(A) with respect to each entity or arrangement shall be treated as a separate activity and participation in each sale described in paragraph (1)(B) shall be so treated. Notwithstanding the first sentence, if an activity with respect to which a penalty imposed under this subsection involves a statement described in paragraph (2)(A), the amount of the penalty shall be equal to 50 percent of the gross income derived (or to be derived) from such activity by the person on which the penalty is imposed.

(b) Rules relating to penalty for gross valuation overstatements

(1) Gross valuation overstatement defined

For purposes of this section, the term "gross valuation overstatement" means any statement as to the value of any property or services if—

(A) the value so stated exceeds 200 percent of the amount determined to be the correct valuation, and

(B) the value of such property or services is directly related to the amount of any deduction or credit allowable under chapter 1 to any participant.

(2) Authority to waive

The Secretary may waive all or any part of the penalty provided by subsection (a) with respect to any gross valuation overstatement on a showing that there was a reasonable basis for the valuation and that such valuation was made in good faith.

(c) Penalty in addition to other penalties

The penalty imposed by this section shall be in addition to any other penalty provided by law.

(Added Pub. L. 97–248, title III, §320(a), Sept. 3, 1982, 96 Stat. 611; amended Pub. L. 98–369, div. A, title I, §143(a), July 18, 1984, 98 Stat. 682; Pub. L. 101–239, title VII, §7734(a), Dec. 19, 1989, 103 Stat. 2403; Pub. L. 108–357, title VIII, §818(a), Oct. 22, 2004, 118 Stat. 1584.)

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–357 inserted at end of concluding provisions "Notwithstanding the first sentence, if an activity with respect to which a penalty imposed under this subsection involves a statement described in paragraph (2)(A), the amount of the penalty shall be equal to 50 percent of the gross income

derived (or to be derived) from such activity by the person on which the penalty is imposed."

1989—Subsec. (a). Pub. L. 101–239, §7734(a)(3), added concluding provision and struck out former concluding provision which read as follows: "shall pay a penalty equal to the greater of $1,000 or 20 percent of the gross income derived or to be derived by such person from such activity."

Subsec. (a)(1)(B). Pub. L. 101–239, §7734(a)(1), inserted "(directly or indirectly)" after "participates".

Subsec. (a)(2). Pub. L. 101–239, §7734(a)(2), inserted "or causes another person to make or furnish" after "makes or furnishes" in introductory provisions.

1984—Subsec. (a). Pub. L. 98–369 substituted "20 percent" for "10 percent".

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §818(b), Oct. 22, 2004, 118 Stat. 1584, provided that: "The amendment made by this section [amending this section] shall apply to activities after the date of the enactment of this Act [Oct. 22, 2004]."

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7734(b), Dec. 19, 1989, 103 Stat. 2403, provided that: "The amendment made by subsection (a) [amending this section] shall apply to activities after December 31, 1989."

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §143(c), July 18, 1984, 98 Stat. 682, provided that: "The amendments made by this section [amending this section and section 7408 of this title] shall take effect on the day after the date of the enactment of this Act [July 18, 1984]."

EFFECTIVE DATE

Pub. L. 97–248, title III, §320(c), Sept. 3, 1982, 96 Stat. 612, provided that: "The amendments made by this section [enacting this section] shall take effect on the day after the date of the enactment of this Act [Sept. 3, 1982]."

§6701. Penalties for aiding and abetting understatement of tax liability

(a) Imposition of penalty

Any person—

(1) who aids or assists in, procures, or advises with respect to, the preparation or presentation of any portion of a return, affidavit, claim, or other document,

(2) who knows (or has reason to believe) that such portion will be used in connection with any material matter arising under the internal revenue laws, and

(3) who knows that such portion (if so used) would result in an understatement of the liability for tax of another person,

shall pay a penalty with respect to each such document in the amount determined under subsection (b).

(b) Amount of penalty

(1) In general

Except as provided in paragraph (2), the amount of the penalty imposed by subsection (a) shall be $1,000.

(2) Corporations

If the return, affidavit, claim, or other document relates to the tax liability of a corporation, the amount of the penalty imposed by subsection (a) shall be $10,000.

(3) Only 1 penalty per person per period

If any person is subject to a penalty under subsection (a) with respect to any document relating to any taxpayer for any taxable period (or where there is no taxable period, any taxable event), such person shall not be subject to a penalty under subsection (a) with respect to any other document relating to such taxpayer for such taxable period (or event).

(c) Activities of subordinates

(1) In general

For purposes of subsection (a), the term "procures" includes—

(A) ordering (or otherwise causing) a subordinate to do an act, and

(B) knowing of, and not attempting to prevent, participation by a subordinate in an act.

(2) Subordinate

For purposes of paragraph (1), the term "subordinate" means any other person (whether or not a director, officer, employee, or agent of the taxpayer involved) over whose activities the person has direction, supervision, or control.

(d) Taxpayer not required to have knowledge

Subsection (a) shall apply whether or not the understatement is with the knowledge or consent of the persons authorized or required to present the return, affidavit, claim, or other document.

(e) Certain actions not treated as aid or assistance

For purposes of subsection (a)(1), a person furnishing typing, reproducing, or other mechanical assistance with respect to a document shall not be treated as having aided or assisted in the preparation of such document by reason of such assistance.

(f) Penalty in addition to other penalties

(1) In general

Except as provided by paragraphs (2) and (3), the penalty imposed by this section shall be in addition to any other penalty provided by law.

(2) Coordination with return preparer penalties

No penalty shall be assessed under subsection (a) or (b) of section 6694 on any person with respect to any document for which a penalty is assessed on such person under subsection (a).

(3) Coordination with section 6700

No penalty shall be assessed under section 6700 on any person with respect to any document for which a penalty is assessed on such person under subsection (a).

(Added Pub. L. 97–248, title III, §324(a), Sept. 3, 1982, 96 Stat. 615; amended Pub. L. 101–239, title VII, §7735(a), (b), Dec. 19, 1989, 103 Stat. 2403.)

AMENDMENTS

1989—Subsec. (a)(1). Pub. L. 101–239, §7735(a)(1), struck out "in connection with any matter arising under the internal revenue laws" after "other document".

Subsec. (a)(2). Pub. L. 101–239, §7735(a)(2), inserted "(or has reason to believe)" after "who knows".

Subsec. (a)(3). Pub. L. 101–239, §7735(a)(3), substituted "would result" for "will result".

Subsec. (f)(1). Pub. L. 101–239, §7735(b)(2), substituted "paragraphs (2) and (3)" for "paragraph (2)".

Subsec. (f)(3). Pub. L. 101–239, §7735(b)(1), added par. (3).

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7735(c), Dec. 19, 1989, 103 Stat. 2404, provided that: "The amendments made by this section [amending this section] shall take effect on December 31, 1989."

EFFECTIVE DATE

Pub. L. 97–248, title III, §324(c), Sept. 3, 1982, 96 Stat. 616, provided that: "The amendments made by this section [enacting this section] shall take effect on the day after the date of the enactment of this Act [Sept. 3, 1982]."

§6702. Frivolous tax submissions

(a) Civil penalty for frivolous tax returns

A person shall pay a penalty of $5,000 if—

(1) such person files what purports to be a return of a tax imposed by this title but which—

(A) does not contain information on which the substantial correctness of the self-assessment may be judged, or

(B) contains information that on its face indicates that the self-assessment is substantially incorrect, and

(2) the conduct referred to in paragraph (1)—

(A) is based on a position which the Secretary has identified as frivolous under subsection (c), or

(B) reflects a desire to delay or impede the administration of Federal tax laws.

(b) Civil penalty for specified frivolous submissions

(1) Imposition of penalty

Except as provided in paragraph (3), any person who submits a specified frivolous submission shall pay a penalty of $5,000.

(2) Specified frivolous submission

For purposes of this section—

(A) Specified frivolous submission

The term "specified frivolous submission" means a specified submission if any portion of such submission—

(i) is based on a position which the Secretary has identified as frivolous under subsection (c), or

(ii) reflects a desire to delay or impede the administration of Federal tax laws.

(B) Specified submission

The term "specified submission" means—

(i) a request for a hearing under—

(I) section 6320 (relating to notice and opportunity for hearing upon filing of notice of lien), or

(II) section 6330 (relating to notice and opportunity for hearing before levy), and

(ii) an application under—

(I) section 6159 (relating to agreements for payment of tax liability in installments),

(II) section 7122 (relating to compromises), or

(III) section 7811 (relating to taxpayer assistance orders).

(3) Opportunity to withdraw submission

If the Secretary provides a person with notice that a submission is a specified frivolous submission and such person withdraws such submission within 30 days after such notice, the penalty imposed under paragraph (1) shall not apply with respect to such submission.

(c) Listing of frivolous positions

The Secretary shall prescribe (and periodically revise) a list of positions which the Secretary has identified as being frivolous for purposes of this subsection. The Secretary shall not include in such list any position that the Secretary determines meets the requirement of section 6662(d)(2)(B)(ii)(II).

(d) Reduction of penalty

The Secretary may reduce the amount of any penalty imposed under this section if the Secretary determines that such reduction would promote compliance with and administration of the Federal tax laws.

(e) Penalties in addition to other penalties

The penalties imposed by this section shall be in addition to any other penalty provided by law.

(Added Pub. L. 97–248, title III, §326(a), Sept. 3, 1982, 96 Stat. 617; amended Pub. L. 109–432, div. A, title IV, §407(a), Dec. 20, 2006, 120 Stat. 2960.)

AMENDMENTS

2006—Pub. L. 109–432 amended section catchline and text generally, substituting provisions relating to civil penalties for frivolous tax returns and submissions, listing of frivolous positions, reduction of penalty to promote compliance with tax laws, and application of other penalties, consisting of subsecs. (a) to (e), for provisions relating to civil penalty for frivolous tax returns and application of other penalties, consisting of subsecs. (a) and (b).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–432 applicable to submissions made and issues raised after the date on which the Secretary first prescribes a list under subsec. (c) of this section, see section 407(f) of Pub. L. 109–432, set out as a note under section 6320 of this title.

EFFECTIVE DATE

Pub. L. 97–248, title III, §326(c), Sept. 3, 1982, 96 Stat. 617, provided that: "The amendments made by this section [enacting this section] shall apply with respect to documents filed after the date of the enactment of this Act [Sept. 3, 1982]."

§6703. Rules applicable to penalties under sections 6700, 6701, and 6702

(a) Burden of proof

In any proceeding involving the issue of whether or not any person is liable for a penalty under section 6700, 6701, or 6702, the burden of proof with respect to such issue shall be on the Secretary.

(b) Deficiency procedures not to apply

Subchapter B of chapter 63 (relating to deficiency procedures) shall not apply with respect to the assessment or collection of the penalties provided by sections 6700, 6701, and 6702.

(c) Extension of period of collection where person pays 15 percent of penalty

(1) In general

If, within 30 days after the day on which notice and demand of any penalty under section 6700 or 6701 is made against any person, such person pays an amount which is not less than 15 percent of the amount of such penalty and files a claim for refund of the amount so paid, no levy or proceeding in court for the collection of the remainder of such penalty shall be made, begun, or prosecuted until the final resolution of a proceeding begun as provided in paragraph (2). Notwithstanding the provisions of section 7421(a), the beginning of such proceeding or levy during the time such prohibition is in force may be enjoined by a proceeding in the proper court. Nothing in this paragraph shall be construed to prohibit any counterclaim for the remainder of such penalty in a proceeding begun as provided in paragraph (2).

(2) Person must bring suit in district court to determine his liability for penalty

If, within 30 days after the day on which his claim for refund of any partial payment of any penalty under section 6700 or 6701 is denied (or, if earlier, within 30 days after the expiration of 6 months after the day on which he filed the claim for refund), the person fails to begin a proceeding in the appropriate United States district court for the determination of his liability for such penalty, paragraph (1) shall cease to apply with respect to such penalty, effective on the day following the close of the applicable 30-day period referred to in this paragraph.

(3) Suspension of running of period of limitations on collection

The running of the period of limitations provided in section 6502 on the collection by levy or by a proceeding in court in respect of any penalty described in paragraph (1) shall be suspended for the period during which the Secretary is prohibited from collecting by levy or a proceeding in court.

(Added Pub. L. 97–248, title III, §322(a), Sept. 3, 1982, 96 Stat. 612; amended Pub. L. 101–239, title VII, §§7736(a), 7737(a), Dec. 19, 1989, 103 Stat. 2404.)

AMENDMENTS

1989—Subsec. (c)(1). Pub. L. 101–239, §7737(a), inserted at end "Nothing in this paragraph shall be construed to prohibit any counterclaim for the remainder of such penalty in a proceeding begun as provided in paragraph (2)."

Pub. L. 101–239, §7736(a), substituted "section 6700 or 6701" for "section 6700, 6701, or 6702".

Subsec. (c)(2). Pub. L. 101–239, §7736(a), substituted "section 6700 or 6701" for "section 6700, 6701, or 6702".

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7736(b), Dec. 19, 1989, 103 Stat. 2404, provided that: "The amendment made by subsection (a) [amending this section] shall apply to returns filed after December 31, 1989."

EFFECTIVE DATE

Pub. L. 97–248, title III, §322(c), Sept. 3, 1982, 96 Stat. 613, provided that: "The amendments made by this section [enacting this section] shall take effect on the day after the date of the enactment of this Act [Sept. 3, 1982]."

§6704. Failure to keep records necessary to meet reporting requirements under section 6047(d)

(a) Liability for penalty

Any person who—

(1) has a duty to report or may have a duty to report any information under section 6047(d), and

(2) fails to keep such records as may be required by regulations prescribed under section 6047(d) for the purpose of providing the necessary data base for either current reporting or future reporting,

shall pay a penalty for each calendar year for which there is any failure to keep such records.

(b) Amount of penalty

(1) In general

The penalty of any person for any calendar year shall be $50, multiplied by the number of individuals with respect to whom such failure occurs in such year.

(2) Maximum amount

The penalty under this section of any person for any calendar year shall not exceed $50,000.

(c) Exceptions

(1) Reasonable cause

No penalty shall be imposed by this section on any person for any failure which is shown to be due to reasonable cause and not to willful neglect.

(2) Inability to correct previous failure

No penalty shall be imposed by this section on any failure by a person if such failure is attributable to a prior failure which has been penalized under this section and with respect to which the person has made all reasonable efforts to correct the failure.

(3) Pre-1983 failures

No penalty shall be imposed by this section on any person for any failure which is attributable to a failure occurring before January 1, 1983, if the person has made all reasonable efforts to correct such pre-1983 failure.

(Added Pub. L. 97–248, title III, §334(c)(1), Sept. 3, 1982, 96 Stat. 627; amended Pub. L. 99–514,

title XVIII, §1848(e)(1), Oct. 22, 1986, 100 Stat. 2857.)

AMENDMENTS

1986—Pub. L. 99–514 substituted "section 6047(d)" for "section 6047(e)" in section catchline and in subsec. (a).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1985, see section 334(e)(3) of Pub. L. 97–248, set out as a note under section 3405 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§6705. Failure by broker to provide notice to payors

(a) In general

Any person required under section 3406(d)(2)(B) to provide notice to any payor who willfully fails to provide such notice to such payor shall pay a penalty of $500 for each such failure.

(b) Penalty in addition to other penalties

Any penalty imposed by this section shall be in addition to any other penalty provided by law.

(Added Pub. L. 98–67, title I, §104(c)(1), Aug. 5, 1983, 97 Stat. 379.)

EFFECTIVE DATE

Section effective with respect to payments made after Dec. 31, 1983, see section 110(a) of Pub. L. 98–67, set out as an Effective Date of 1983 Amendment note under section 31 of this title.

§6706. Original issue discount information requirements

(a) Failure to show information on debt instrument

In the case of a failure to set forth on a debt instrument the information required to be set forth on such instrument under section 1275(c)(1), unless it is shown that such failure is due to reasonable cause and not to willful neglect, the issuer shall pay a penalty of $50 for each instrument with respect to which such a failure exists.

(b) Failure to furnish information to Secretary

Any issuer who fails to furnish information required under section 1275(c)(2) with respect to any issue of debt instruments on the date prescribed therefor (determined with regard to any extension of time for filing) shall pay a penalty equal to 1 percent of the aggregate issue price of such issue, unless it is shown that such failure is due to reasonable cause and not willful neglect. The amount of the penalty imposed under the preceding sentence with respect to any issue of debt instruments shall not exceed $50,000 for such issue.

(c) Deficiency procedures not to apply

Subchapter B of chapter 63 (relating to deficiency procedures for income, estate, gift, and certain excise taxes) shall not apply in respect of the assessment or collection of any penalty imposed by this section.

(Added Pub. L. 98–369, div. A, title I, §41(c)(1), July 18, 1984, 98 Stat. 555.)

EFFECTIVE DATE

Section effective on day 30 days after July 18, 1984, see section 44(h) of Pub. L. 98–369, set out as a note under section 1271 of this title.

§6707. Failure to furnish information regarding reportable transactions

(a) In general

If a person who is required to file a return under section 6111(a) with respect to any reportable transaction—

(1) fails to file such return on or before the date prescribed therefor, or

(2) files false or incomplete information with the Secretary with respect to such transaction,

such person shall pay a penalty with respect to such return in the amount determined under subsection (b).

(b) Amount of penalty

(1) In general

Except as provided in paragraph (2), the penalty imposed under subsection (a) with respect to any failure shall be $50,000.

(2) Listed transactions

The penalty imposed under subsection (a) with respect to any listed transaction shall be an amount equal to the greater of—

(A) $200,000, or

(B) 50 percent of the gross income derived by such person with respect to aid, assistance, or advice which is provided with respect to the listed transaction before the date the return is filed under section 6111.

Subparagraph (B) shall be applied by substituting "75 percent" for "50 percent" in the case of an intentional failure or act described in subsection (a).

(c) Rescission authority

The provisions of section 6707A(d) (relating to authority of Commissioner to rescind penalty) shall apply to any penalty imposed under this section.

(d) Reportable and listed transactions

For purposes of this section, the terms "reportable transaction" and "listed transaction" have the respective meanings given to such terms by section 6707A(c).

(Added Pub. L. 98–369, div. A, title I, §141(b), July 18, 1984, 98 Stat. 680; amended Pub. L. 99–514, title XV, §§1532(a), 1533(a), Oct. 22, 1986, 100 Stat. 2750; Pub. L. 105–34, title X, §1028(b), (d), Aug. 5, 1997, 111 Stat. 927, 928; Pub. L. 108–357, title VIII, §816(a), Oct. 22, 2004, 118 Stat. 1583.)

AMENDMENTS

2004—Pub. L. 108–357 amended section catchline and text generally, substituting provisions relating to penalty for failure to furnish information regarding reportable transactions for provisions relating to penalty for failure to furnish information regarding tax shelters.

1997—Subsec. (a)(1). Pub. L. 105–34, §1028(d)(2), which directed the substitution of "paragraph (2) or (3), as the case may be" for "paragraph (2)" in subpar. (A) of par. (1), was executed by making the substitution in the concluding provisions of par. (1) to reflect the probable intent of Congress.

Subsec. (a)(2). Pub. L. 105–34, §1028(d)(1), substituted "Except as provided in paragraph (3), the penalty" for "The penalty".

Subsec. (a)(3). Pub. L. 105–34, §1028(b), added par. (3).

1986—Subsec. (a)(2). Pub. L. 99–514, §1532(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "The penalty imposed under paragraph (1) with respect to any tax shelter shall be an amount equal to the greater of—

"(A) $500, or

"(B) the lesser of (i) 1 percent of the aggregate amount invested in such tax shelter, or (ii) $10,000. The $10,000 limitation in subparagraph (B) shall not apply where there is an intentional disregard of the requirements of section 6111(a)."

Subsec. (b)(2). Pub. L. 99–514, §1533(a), substituted "$250" for "$50".

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §816(c), Oct. 22, 2004, 118 Stat. 1584, provided that: "The amendments made by this section [amending this section] shall apply to returns the due date for which is after the date of the enactment of this Act [Oct. 22, 2004]."

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to any tax shelter, as defined in section 6111(d) of this title, interests in which are offered to potential participants after Secretary of the Treasury prescribes guidance with respect to meeting requirements added by amendments made by Pub. L. 105–34, §1028, see section 1028(e) of Pub. L. 105–34, set out as a note under section 6111 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XV, §1532(b), Oct. 22, 1986, 100 Stat. 2750, provided that: "The amendment made by this section [amending this section] shall apply to failures with respect to tax shelters interests in which are first offered for sale after the date of the enactment of this Act [Oct. 22, 1986]."

Pub. L. 99–514, title XV, §1533(b), Oct. 22, 1986, 100 Stat. 2750, provided that: "The amendment made by this section [amending this section] shall apply to returns filed after the date of the enactment of this Act [Oct 22, 1986]."

EFFECTIVE DATE

Section applicable to tax shelters (within the meaning of section 6111 of this title), any interest in which is first sold to any investor after Aug. 31, 1984, see section 141(d) of Pub. L. 98–369, set out as a note under section 6111 of this title.

§6707A. Penalty for failure to include reportable transaction information with return

(a) Imposition of penalty

Any person who fails to include on any return or statement any information with respect to a reportable transaction which is required under section 6011 to be included with such return or statement shall pay a penalty in the amount determined under subsection (b).

(b) Amount of penalty

(1) In general

Except as otherwise provided in this subsection, the amount of the penalty under subsection (a) with respect to any reportable transaction shall be 75 percent of the decrease in tax shown on the return as a result of such transaction (or which would have resulted from such transaction if such transaction were respected for Federal tax purposes).

(2) Maximum penalty

The amount of the penalty under subsection (a) with respect to any reportable transaction shall not exceed—

(A) in the case of a listed transaction, $200,000 ($100,000 in the case of a natural person), or

(B) in the case of any other reportable transaction, $50,000 ($10,000 in the case of a natural person).

(3) Minimum penalty

The amount of the penalty under subsection (a) with respect to any transaction shall not be less than $10,000 ($5,000 in the case of a natural person).

(c) Definitions

For purposes of this section:

(1) Reportable transaction

The term "reportable transaction" means any transaction with respect to which information is required to be included with a return or statement because, as determined under regulations prescribed under section 6011, such transaction is of a type which the Secretary determines as having a potential for tax avoidance or evasion.

(2) Listed transaction

The term "listed transaction" means a reportable transaction which is the same as, or substantially similar to, a transaction specifically identified by the Secretary as a tax avoidance transaction for purposes of section 6011.

(d) Authority to rescind penalty

(1) In general

The Commissioner of Internal Revenue may rescind all or any portion of any penalty imposed by this section with respect to any violation if—

(A) the violation is with respect to a reportable transaction other than a listed transaction, and

(B) rescinding the penalty would promote compliance with the requirements of this title and effective tax administration.

(2) No judicial appeal

Notwithstanding any other provision of law, any determination under this subsection may not be reviewed in any judicial proceeding.

(3) Records

If a penalty is rescinded under paragraph (1), the Commissioner shall place in the file in the Office of the Commissioner the opinion of the Commissioner with respect to the determination, including—

(A) a statement of the facts and circumstances relating to the violation,

(B) the reasons for the rescission, and

(C) the amount of the penalty rescinded.

(e) Penalty reported to SEC

In the case of a person—

(1) which is required to file periodic reports under section 13 or 15(d) of the Securities Exchange Act of 1934 or is required to be consolidated with another person for purposes of such reports, and

(2) which—

(A) is required to pay a penalty under this section with respect to a listed transaction,

(B) is required to pay a penalty under section 6662A with respect to any reportable transaction at a rate prescribed under section 6662A(c), or

(C) is required to pay a penalty under section 6662(h) with respect to any reportable transaction and would (but for section 6662A(e)(2)(B)) have been subject to penalty under section 6662A at a rate prescribed under section 6662A(c),

the requirement to pay such penalty shall be disclosed in such reports filed by such person for such periods as the Secretary shall specify. Failure to make a disclosure in accordance with the preceding sentence shall be treated as a failure to which the penalty under subsection (b)(2) applies.

(f) Coordination with other penalties

The penalty imposed by this section shall be in addition to any other penalty imposed by this title.

(Added Pub. L. 108–357, title VIII, §811(a), Oct. 22, 2004, 118 Stat. 1575; amended Pub. L. 110–172, §11(a)(41), Dec. 29, 2007, 121 Stat. 2488; Pub. L. 111–240, title II, §2041(a), Sept. 27, 2010, 124 Stat. 2560.)

REFERENCES IN TEXT

Sections 13 and 15(d) of the Securities Exchange Act of 1934, referred to in subsec. (e)(1), are classified to sections 78m and 78o(d), respectively, of Title 15, Commerce and Trade.

AMENDMENTS

2010—Subsec. (b). Pub. L. 111–240 amended subsec. (b) generally. Prior to amendment, subsec. (b) specified the amount of the penalty under subsec. (a), both in general and with respect to a listed transaction, in the case of a natural person or in any other case.

2007—Subsec. (e)(2)(C). Pub. L. 110–172 substituted "section 6662A(e)(2)(B)" for "section 6662A(e)(2)(C)".

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–240, title II, §2041(b), Sept. 27, 2010, 124 Stat. 2560, provided that: "The amendment made by this section [amending this section] shall apply to penalties assessed after December 31, 2006."

EFFECTIVE DATE

Pub. L. 108–357, title VIII, §811(c), Oct. 22, 2004, 118 Stat. 1577, as amended by Pub. L. 109–135, title IV, §403(w), Dec. 21, 2005, 119 Stat. 2629, provided that: "The amendments made by this section [enacting this section] shall apply to returns and statements the due date for which is after the date of the enactment of this Act [Oct. 22, 2004] and which were not filed before such date."

REPORT

Pub. L. 108–357, title VIII, §811(d), Oct. 22, 2004, 118 Stat. 1577, provided that: "The Commissioner of Internal Revenue shall annually report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate—

"(1) a summary of the total number and aggregate amount of penalties imposed, and rescinded, under section 6707A of the Internal Revenue Code of 1986, and

"(2) a description of each penalty rescinded under section 6707(c) of such Code and the reasons therefor."

§6708. Failure to maintain lists of advisees with respect to reportable transactions

(a) Imposition of penalty

(1) In general

If any person who is required to maintain a list under section 6112(a) fails to make such list available upon written request to the Secretary in accordance with section 6112(b) within 20 business days after the date of such request, such person shall pay a penalty of $10,000 for each day of such failure after such 20th day.

(2) Reasonable cause exception

No penalty shall be imposed by paragraph (1) with respect to the failure on any day if such failure is due to reasonable cause.

(b) Penalty in addition to other penalties

The penalty imposed by this section shall be in addition to any other penalty provided by law.

(Added Pub. L. 98–369, div. A, title I, §142(b), July 18, 1984, 98 Stat. 682; amended Pub. L. 99–514, title XV, §1534(a), Oct. 22, 1986, 100 Stat. 2750; Pub. L. 108–357, title VIII, §§815(b)(5)(A), 817(a), Oct. 22, 2004, 118 Stat. 1583, 1584.)

CODIFICATION

Another section 6708 was renumbered section 6709 of this title.

AMENDMENTS

2004—Pub. L. 108–357, §815(b)(5)(A), substituted "advisees with respect to reportable transactions" for "investors in potentially abusive tax shelters" in section catchline.

Subsec. (a). Pub. L. 108–357, §817(a), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: "Any person who fails to meet any requirement imposed by section 6112 shall pay a penalty of $50 for each person with respect to whom there is such a failure, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The maximum penalty imposed under this subsection for any calendar year shall not exceed $100,000."

1986—Subsec. (a). Pub. L. 99–514 substituted "$100,000" for "$50,000".

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 815(b)(5)(A) of Pub. L. 108–357 applicable to transactions with respect to which material aid, assistance, or advice referred to in section 6111(b)(1)(A)(i) of this title is provided after Oct. 22, 2004, see section 815(c) of Pub. L. 108–357, set out as a note under section 6111 of this title.

Pub. L. 108–357, title VIII, §817(b), Oct. 22, 2004, 118 Stat. 1584, provided that: "The amendment made by this section [amending this section] shall apply to requests made after the date of the enactment of this Act [Oct. 22, 2004]."

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XV, §1534(b), Oct. 22, 1986, 100 Stat. 2750, provided that: "The amendments made by this section [amending this section] shall apply to failures occurring or continuing after the date of the enactment of this Act [Oct. 22, 1986]."

EFFECTIVE DATE

Section applicable to any interest which is first sold to any investor after Aug. 31, 1984, see section 142(d) of Pub. L. 98–369, set out as a note under section 6112 of this title.

§6709. Penalties with respect to mortgage credit certificates

(a) Negligence

If—

(1) any person makes a material misstatement in any verified written statement made under penalties of perjury with respect to the issuance of a mortgage credit certificate, and

(2) such misstatement is due to the negligence of such person,

such person shall pay a penalty of $1,000 for each mortgage credit certificate with respect to which such a misstatement was made.

(b) Fraud

If a misstatement described in subsection (a)(1) is due to fraud on the part of the person making such misstatement, in addition to any criminal penalty, such person shall pay a penalty of $10,000 for each mortgage credit certificate with respect to which such a misstatement is made.

(c) Reports

Any person required by section 25(g) to file a report with the Secretary who fails to file the report with respect to any mortgage credit certificate at the time and in the manner required by the Secretary shall pay a penalty of $200 for such failure unless it is shown that such failure is due to reasonable cause and not to willful neglect. In the case of any report required under the second sentence of section 25(g), the aggregate amount of the penalty imposed by the preceding sentence shall not exceed $2,000.

(d) Mortgage credit certificate

The term "mortgage credit certificate" has the meaning given to such term by section 25(c).

(Added Pub. L. 98–369, div. A, title VI, §612(d)(1), July 18, 1984, 98 Stat. 912, §6708; renumbered §6709, Pub. L. 99–514, title XVIII, §1862(d)(2), Oct. 22, 1986, 100 Stat. 2884.)

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section applicable to interest paid or accrued after Dec. 31, 1984, on indebtedness incurred after Dec. 31, 1984, see section 612(g) of Pub. L. 98–369, set out as a note under section 25 of this title.

§6710. Failure to disclose that contributions are nondeductible

(a) Imposition of penalty

If there is a failure to meet the requirement of section 6113 with respect to a fundraising solicitation by (or on behalf of) an organization to which section 6113 applies, such organization shall pay a penalty of $1,000 for each day on which such a failure occurred. The maximum penalty imposed under this subsection on failures by any organization during any calendar year shall not exceed $10,000.

(b) Reasonable cause exception

No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.

(c) $10,000 limitation not to apply where intentional disregard

If any failure to which subsection (a) applies is due to intentional disregard of the requirement of section 6113—

(1) the penalty under subsection (a) for the day on which such failure occurred shall be the greater of—

(A) $1,000, or

(B) 50 percent of the aggregate cost of the solicitations which occurred on such day and with respect to which there was such a failure,

(2) the $10,000 limitation of subsection (a) shall not apply to any penalty under subsection (a) for the day on which such failure occurred, and

(3) such penalty shall not be taken into account in applying such limitation to other penalties under subsection (a).

(d) Day on which failure occurs

For purposes of this section, any failure to meet the requirement of section 6113 with respect to a solicitation—

(1) by television or radio, shall be treated as occurring when the solicitation was telecast or broadcast,

(2) by mail, shall be treated as occurring when the solicitation was mailed,

(3) not by mail but in written or printed form, shall be treated as occurring when the solicitation was distributed, or

(4) by telephone, shall be treated as occurring when the solicitation was made.

(Added Pub. L. 100–203, title X, §10701(b), Dec. 22, 1987, 101 Stat. 1330–458.)

EFFECTIVE DATE

Section applicable to solicitations after Jan. 31, 1988, see section 10701(d) of Pub. L. 100–203, set out as a note under section 6113 of this title.

§6711. Failure by tax-exempt organization to disclose that certain information or service available from Federal Government

(a) Imposition of penalty

If—

(1) a tax-exempt organization offers to sell (or solicits money for) specific information or a routine service for any individual which could be readily obtained by such individual free of charge (or for a nominal charge) from an agency of the Federal Government,

(2) the tax-exempt organization, when making such offer or solicitation, fails to make an express statement (in a conspicuous and easily recognizable format) that the information or service can be so obtained, and

(3) such failure is due to intentional disregard of the requirements of this subsection,

such organization shall pay a penalty determined under subsection (b) for each day on which such a failure occurred.

(b) Amount of penalty

The penalty under subsection (a) for any day on which a failure referred to in such subsection occurred shall be the greater of—

(1) $1,000, or

(2) 50 percent of the aggregate cost of the offers and solicitations referred to in subsection (a)(1) which occurred on such day and with respect to which there was such a failure.

(c) Definitions

For purposes of this section—

(1) Tax-exempt organization

The term "tax-exempt organization" means any organization which—

(A) is described in subsection (c) or (d) of section 501 and exempt from taxation under section 501(a), or

(B) is a political organization (as defined in section 527(e)).

(2) Day on which failure occurs

The day on which any failure referred to in subsection (a) occurs shall be determined under rules similar to the rules of section 6710(d).

(Added Pub. L. 100–203, title X, §10705(a), Dec. 22, 1987, 101 Stat. 1330–463.)

EFFECTIVE DATE

Pub. L. 100–203, title X, §10705(c), Dec. 22, 1987, 101 Stat. 1330–464, provided that: "The amendments made by this section [enacting this section] shall apply to offers and solicitations after January 31, 1988."

§6712. Failure to disclose treaty-based return positions

(a) General rule

If a taxpayer fails to meet the requirements of section 6114, there is hereby imposed a penalty equal to $1,000 ($10,000 in the case of a C corporation) on each such failure.

(b) Authority to waive

The Secretary may waive all or any part of the penalty provided by this section on a showing by the taxpayer that there was reasonable cause for the failure and that the taxpayer acted in good faith.

(c) Penalty in addition to other penalties

The penalty imposed by this section shall be in addition to any other penalty imposed by law.

(Added Pub. L. 100–647, title I, §1012(aa)(5)(B), Nov. 10, 1988, 102 Stat. 3532.)

CODIFICATION

Another section 6712 was renumbered section 6713 of this title.

EFFECTIVE DATE

Section applicable to taxable periods the due date for filing returns for which (without extension) occurs after Dec. 31, 1988, see section 1012(aa)(5)(D) of Pub. L. 100–647, set out as a note under section 6114 of this title.

§6713. Disclosure or use of information by preparers of returns

(a) Imposition of penalty

If any person who is engaged in the business of preparing, or providing services in connection with the preparation of, returns of tax imposed by chapter 1, or any person who for compensation prepares any such return for any other person, and who—

(1) discloses any information furnished to him for, or in connection with, the preparation of any such return, or

(2) uses any such information for any purpose other than to prepare, or assist in preparing, any such return,

shall pay a penalty of $250 for each such disclosure or use, but the total amount imposed under this subsection on such a person for any calendar year shall not exceed $10,000.

(b) Exceptions

The rules of section 7216(b) shall apply for purposes of this section.

(c) Deficiency procedures not to apply

Subchapter B of chapter 63 (relating to deficiency procedures for income, estate, gift, and certain excise taxes) shall not apply in respect of the assessment or collection of any penalty imposed by this section.

(Added Pub. L. 100–647, title VI, §6242(a), Nov. 10, 1988, 102 Stat. 3749, §6712; renumbered §6713, Pub. L. 101–239, title VII, §7816(v)(1), Dec. 19, 1989, 103 Stat. 2423.)

EFFECTIVE DATE

Pub. L. 100–647, title VI, §6242(d), Nov. 10, 1988, 102 Stat. 3749, provided that: "The amendments made by this section [enacting this section and amending section 7216 of this title] shall apply to disclosures or uses after December 31, 1988."

§6714. Failure to meet disclosure requirements applicable to quid pro quo contributions

(a) Imposition of penalty

If an organization fails to meet the disclosure requirement of section 6115 with respect to a quid pro quo contribution, such organization shall pay a penalty of $10 for each contribution in respect of which the organization fails to make the required disclosure, except that the total penalty imposed by this subsection with respect to a particular fundraising event or mailing shall not exceed $5,000.

(b) Reasonable cause exception

No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.

(Added Pub. L. 103–66, title XIII, §13173(b), Aug. 10, 1993, 107 Stat. 456.)

CODIFICATION

Another section 6714 was renumbered section 6715 of this title.

EFFECTIVE DATE

Section applicable to quid pro quo contributions made on or after Jan. 1, 1994, see section 13173(d) of Pub.

L. 103–66, set out as a note under section 6115 of this title.

§6715. Dyed fuel sold for use or used in taxable use, etc.

(a) Imposition of penalty

If—

(1) any dyed fuel is sold or held for sale by any person for any use which such person knows or has reason to know is not a nontaxable use of such fuel,

(2) any dyed fuel is held for use or used by any person for a use other than a nontaxable use and such person knew, or had reason to know, that such fuel was so dyed,

(3) any person willfully alters, chemically or otherwise, or attempts to so alter, the strength or composition of any dye or marking done pursuant to section 4082 in any dyed fuel, or

(4) any person who has knowledge that a dyed fuel which has been altered as described in paragraph (3) sells or holds for sale such fuel for any use which the person knows or has reason to know is not a nontaxable use of such fuel,

then such person shall pay a penalty in addition to the tax (if any).

(b) Amount of penalty

(1) In general

Except as provided in paragraph (2), the amount of the penalty under subsection (a) on each act shall be the greater of—

(A) $1,000, or

(B) $10 for each gallon of the dyed fuel involved.

(2) Multiple violations

In determining the penalty under subsection (a) on any person, paragraph (1) shall be applied by increasing the amount in paragraph (1)(A) by the product of such amount and the number of prior penalties (if any) imposed by this section on such person (or a related person or any predecessor of such person or related person).

(c) Definitions

For purposes of this section—

(1) Dyed fuel

The term "dyed fuel" means any dyed diesel fuel or kerosene, whether or not the fuel was dyed pursuant to section 4082.

(2) Nontaxable use

The term "nontaxable use" has the meaning given such term by section 4082(b).

(d) Joint and several liability of certain officers and employees

If a penalty is imposed under this section on any business entity, each officer, employee, or agent of such entity who willfully participated in any act giving rise to such penalty shall be jointly and severally liable with such entity for such penalty.

(e) No administrative appeal for third and subsequent violations

In the case of any person who is found to be subject to the penalty under this section after a chemical analysis of such fuel and who has been penalized under this section at least twice after the date of the enactment of this subsection, no administrative appeal or review shall be allowed with respect to such finding except in the case of a claim regarding—

(1) fraud or mistake in the chemical analysis, or

(2) mathematical calculation of the amount of the penalty.

(Added Pub. L. 103–66, title XIII, §13242(b)(1), Aug. 10, 1993, 107 Stat. 520, §6714; renumbered §6715, Pub. L. 104–188, title I, §1703(n)(9)(A), Aug. 20, 1996, 110 Stat. 1877; amended Pub. L.

105–34, title X, §1032(e)(11), Aug. 5, 1997, 111 Stat. 935; Pub. L. 108–357, title VIII, §§855(a), 856(a), (b), Oct. 22, 2004, 118 Stat. 1616, 1617.)

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (e), is the date of enactment of Pub. L. 108–357, which was approved Oct. 22, 2004.

AMENDMENTS

2004—Subsec. (a)(2). Pub. L. 108–357, §856(a), which directed amendment of par. (2) by striking "or", was executed by striking "or" at the end.

Subsec. (a)(3). Pub. L. 108–357, §856(b), substituted "alters, chemically or otherwise, or attempts to so alter," for "alters, or attempts to alter,".

Pub. L. 108–357, §856(a), inserted "or" at end.

Subsec. (a)(4). Pub. L. 108–357, §856(a), added par. (4).

Subsec. (e). Pub. L. 108–357, §855(a), added subsec. (e).

1997—Subsec. (c)(1). Pub. L. 105–34 inserted "or kerosene" after "diesel fuel".

1996—Pub. L. 104–188 renumbered section 6714 of this title as this section.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §855(b), Oct. 22, 2004, 118 Stat. 1616, provided that: "The amendment made by this section [amending this section] shall apply to penalties assessed after the date of the enactment of this Act [Oct. 22, 2004]."

Pub. L. 108–357, title VIII, §856(c), Oct. 22, 2004, 118 Stat. 1617, provided that: "The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Oct. 22, 2004]."

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 effective July 1, 1998, see section 1032(f)(1) of Pub. L. 105–34, as amended, set out as a note under section 4041 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1994, see section 13242(e) of Pub. L. 103–66, set out as an Effective Date of 1993 Amendment note under section 4041 of this title.

§6715A. Tampering with or failing to maintain security requirements for mechanical dye injection systems

(a) Imposition of penalty

(1) Tampering

If any person tampers with a mechanical dye injection system used to indelibly dye fuel for purposes of section 4082, such person shall pay a penalty in addition to the tax (if any).

(2) Failure to maintain security requirements

If any operator of a mechanical dye injection system used to indelibly dye fuel for purposes of section 4082 fails to maintain the security standards for such system as established by the Secretary, then such operator shall pay a penalty in addition to the tax (if any).

(b) Amount of penalty

The amount of the penalty under subsection (a) shall be—

(1) for each violation described in paragraph (1), the greater of—

(A) $25,000, or

(B) $10 for each gallon of fuel involved, and

(2) for each—

(A) failure to maintain security standards described in paragraph (2), $1,000, and

(B) failure to correct a violation described in paragraph (2), $1,000 per day for each day after

which such violation was discovered or such person should have reasonably known of such violation.

(c) Joint and several liability

(1) In general

If a penalty is imposed under this section on any business entity, each officer, employee, or agent of such entity or other contracting party who willfully participated in any act giving rise to such penalty shall be jointly and severally liable with such entity for such penalty.

(2) Affiliated groups

If a business entity described in paragraph (1) is part of an affiliated group (as defined in section 1504(a)), the parent corporation of such entity shall be jointly and severally liable with such entity for the penalty imposed under this section.

(Added Pub. L. 108–357, title VIII, §854(c)(1), Oct. 22, 2004, 118 Stat. 1615.)

EFFECTIVE DATE

Section effective on the 180th day after the date on which the Secretary of the Treasury issues the regulations described in section 854(b) of Pub. L. 108–357, see section 854(d) of Pub. L. 108–357, set out as an Effective Date of 2004 Amendment note under section 4082 of this title.

[§6716. Repealed. Pub. L. 111–312, title III, §301(a), Dec. 17, 2010, 124 Stat. 3300]

Section, added Pub. L. 107–16, title V, §542(b)(4), June 7, 2001, 115 Stat. 83, related to failure to file information with respect to certain transfers at death and gifts.

EFFECTIVE DATE OF REPEAL

Repeal of section applicable to estates of decedents dying, and transfers made after Dec. 31, 2009, except as otherwise provided, see section 301(e) of Pub. L. 111–312, set out as an Effective and Termination Dates of 2010 Amendment note under section 121 of this title.

§6717. Refusal of entry

(a) In general

In addition to any other penalty provided by law, any person who refuses to admit entry or refuses to permit any other action by the Secretary authorized by section 4083(d)(1) shall pay a penalty of $1,000 for such refusal.

(b) Joint and several liability

(1) In general

If a penalty is imposed under this section on any business entity, each officer, employee, or agent of such entity or other contracting party who willfully participated in any act giving rise to such penalty shall be jointly and severally liable with such entity for such penalty.

(2) Affiliated groups

If a business entity described in paragraph (1) is part of an affiliated group (as defined in section 1504(a)), the parent corporation of such entity shall be jointly and severally liable with such entity for the penalty imposed under this section.

(c) Reasonable cause exception

No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.

(Added Pub. L. 108–357, title VIII, §859(a), Oct. 22, 2004, 118 Stat. 1617.)

EFFECTIVE DATE

Section effective Jan. 1, 2005, see section 859(c) of Pub. L. 108–357, set out as an Effective Date of 2004 Amendment note under section 4083 of this title.

§6718. Failure to display tax registration on vessels

(a) Failure to display registration

Every operator of a vessel who fails to display proof of registration pursuant to section 4101(a)(3) shall pay a penalty of $500 for each such failure. With respect to any vessel, only one penalty shall be imposed by this section during any calendar month.

(b) Multiple violations

In determining the penalty under subsection (a) on any person, subsection (a) shall be applied by increasing the amount in subsection (a) by the product of such amount and the aggregate number of penalties (if any) imposed with respect to prior months by this section on such person (or a related person or any predecessor of such person or related person).

(c) Reasonable cause exception

No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.

(Added and amended Pub. L. 108–357, title VIII, §§861(b)(1), 862(b), Oct. 22, 2004, 118 Stat. 1618, 1619.)

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–357, §862(b), substituted "section 4101(a)(3)" for "section 4101(a)(2)".

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 862(b) of Pub. L. 108–357 effective Jan. 1, 2005, see section 862(c) of Pub. L. 108–357, set out as a note under section 4101 of this title.

EFFECTIVE DATE

Pub. L. 108–357, title VIII, §861(c)(2), Oct. 22, 2004, 118 Stat. 1619, provided that: "The amendments made by subsection (b) [enacting this section] shall apply to penalties imposed after December 31, 2004."

§6719. Failure to register or reregister

(a) Failure to register or reregister

Every person who is required to register or reregister under section 4101 and fails to do so shall pay a penalty in addition to the tax (if any).

(b) Amount of penalty

The amount of the penalty under subsection (a) shall be—

(1) $10,000 for each initial failure to register or reregister, and

(2) $1,000 for each day thereafter such person fails to register or reregister.

(c) Reasonable cause exception

No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.

(Added Pub. L. 108–357, title VIII, §863(c)(1), Oct. 22, 2004, 118 Stat. 1620; amended Pub. L. 109–59, title XI, §11164(b)(1), Aug. 10, 2005, 119 Stat. 1975.)

AMENDMENTS

2005—Pub. L. 109–59, §11164(b)(1)(C), inserted "or reregister" after "register" in section catchline.

Subsecs. (a), (b). Pub. L. 109–59, §11164(b)(1)(A), (B), inserted "or reregister" after "register" wherever

appearing.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–59 applicable to actions, or failures to act, after Aug. 10, 2005, see section 11164(c) of Pub. L. 109–59, set out as a note under section 4101 of this title.

EFFECTIVE DATE

Pub. L. 108–357, title VIII, §863(e), Oct. 22, 2004, 118 Stat. 1620, provided that: "The amendments made by this section [enacting this section and section 6725 of this title and amending sections 7232 and 7272 of this title] shall apply to penalties imposed after December 31, 2004."

§6720. Fraudulent acknowledgments with respect to donations of motor vehicles, boats, and airplanes

Any donee organization required under section 170(f)(12)(A) to furnish a contemporaneous written acknowledgment to a donor which knowingly furnishes a false or fraudulent acknowledgment, or which knowingly fails to furnish such acknowledgment in the manner, at the time, and showing the information required under section 170(f)(12), or regulations prescribed thereunder, shall for each such act, or for each such failure, be subject to a penalty equal to—

(1) in the case of an acknowledgment with respect to a qualified vehicle to which section 170(f)(12)(A)(ii) applies, the greater of—

(A) the product of the highest rate of tax specified in section 1 and the sales price stated on the acknowledgment, or

(B) the gross proceeds from the sale of such vehicle, and

(2) in the case of an acknowledgment with respect to any other qualified vehicle to which section 170(f)(12) applies, the greater of—

(A) the product of the highest rate of tax specified in section 1 and the claimed value of the vehicle, or

(B) $5,000.

(Added Pub. L. 108–357, title VIII, §884(b)(1), Oct. 22, 2004, 118 Stat. 1634.)

EFFECTIVE DATE

Section applicable to contributions made after Dec. 31, 2004, see section 884(c) of Pub. L. 108–357, set out as an Effective Date of 2004 Amendments note under section 170 of this title.

§6720A. Penalty with respect to certain adulterated fuels

(a) In general

Any person who knowingly transfers for resale, sells for resale, or holds out for resale any liquid for use in a diesel-powered highway vehicle or a diesel-powered train which does not meet applicable EPA regulations (as defined in section 45H(c)(3)), shall pay a penalty of $10,000 for each such transfer, sale, or holding out for resale, in addition to the tax on such liquid (if any).

(b) Penalty in the case of retailers

Any person who knowingly holds out for sale (other than for resale) any liquid described in subsection (a), shall pay a penalty of $10,000 for each such holding out for sale, in addition to the tax on such liquid (if any).

(Added Pub. L. 109–59, title XI, §11167(a), Aug. 10, 2005, 119 Stat. 1977.)

EFFECTIVE DATE

Pub. L. 109–59, title XI, §11167(d), Aug. 10, 2005, 119 Stat. 1978, provided that: "The amendments made by this section [enacting this section and amending section 9503 of this title] shall apply to any transfer, sale, or holding out for sale or resale occurring after the date of the enactment of this Act [Aug. 10, 2005]."

§6720B. Fraudulent identification of exempt use property

In addition to any criminal penalty provided by law, any person who identifies applicable property (as defined in section 170(e)(7)(C)) as having a use which is related to a purpose or function constituting the basis for the donee's exemption under section 501 and who knows that such property is not intended for such a use shall pay a penalty of $10,000.

(Added Pub. L. 109–280, title XII, §1215(c)(1), Aug. 17, 2006, 120 Stat. 1079.)

CODIFICATION

Section 1215(c)(1) of Pub. L. 109–280, which directed the addition of section 6720B at the end of part I of subchapter B of chapter 68, without specifying the act to be amended, was executed by adding section 6720B at the end of part I of subchapter B of chapter 68 of this title, which consists of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

EFFECTIVE DATE

Pub. L. 109–280, title XII, §1215(d)(3), Aug. 17, 2006, 120 Stat. 1079, provided that: "The amendments made by subsection (c) [enacting this section] shall apply to identifications made after the date of the enactment of this Act [Aug. 17, 2006]."

§6720C. Penalty for failure to notify health plan of cessation of eligibility for COBRA premium assistance

(a) In general

Any person required to notify a group health plan under section 3001(a)(2)(C) of title III of division B of the American Recovery and Reinvestment Act of 2009 who fails to make such a notification at such time and in such manner as the Secretary of Labor may require shall pay a penalty of 110 percent of the premium reduction provided under such section after termination of eligibility under such subsection.

(b) Reasonable cause exception

No penalty shall be imposed under subsection (a) with respect to any failure if it is shown that such failure is due to reasonable cause and not to willful neglect.

(Added Pub. L. 111–5, div. B, title III, §3001(a)(13)(A), Feb. 17, 2009, 123 Stat. 464; amended Pub. L. 111–144, §3(b)(5)(D), Mar. 2, 2010, 124 Stat. 45.)

REFERENCES IN TEXT

Section 3001 of title III of division B of the American Recovery and Reinvestment Act of 2009, referred to in subsec. (a), is section 3001 of Pub. L. 111–5, which is set out as a note under section 6432 of this title.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–144, which directed substitution of "section 3001(a)(2)(C) of title III of division B of the American Recovery and Reinvestment Act of 2009" for "section 3002(a)(2)(C) of the Health Insurance Assistance for the Unemployed Act of 2009", was executed by making the substitution for "section 3002(a)(2)(C)) of the Health Insurance Assistance for the Unemployed Act of 2009" to reflect the probable intent of Congress.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–144 effective as if included in the provisions of section 3001 of Pub. L. 111–5 to which it relates, see section 3(c) of Pub. L. 111–144, set out as a note under section 6432 of this title.

EFFECTIVE DATE

Section applicable to failures occurring after Feb. 17, 2009, see section 3001(a)(13)(C) of Pub. L. 111–5, set out as a Premium Assistance for COBRA Benefits note under section 6432 of this title.

PART II—FAILURE TO COMPLY WITH CERTAIN INFORMATION REPORTING REQUIREMENTS

Sec.
6721. Failure to file correct information returns.
6722. Failure to furnish correct payee statements.
6723. Failure to comply with other information reporting requirements.
6724. Waiver; definitions and special rules.
6725. Failure to report information under section 4101.

AMENDMENTS

2004—Pub. L. 108–357, title VIII, §863(d)(2), Oct. 22, 2004, 118 Stat. 1620, added item 6725.

1989—Pub. L. 101–239, title VII, §7711(a), Dec. 19, 1989, 103 Stat. 2388, substituted "COMPLY WITH CERTAIN INFORMATION REPORTING REQUIREMENTS" for "FILE CERTAIN INFORMATION RETURNS OR STATEMENTS" in part heading and substituted "correct" for "certain" in items 6721 and 6722 and "comply with other information reporting requirements" for "include correct information" in item 6723.

§6721. Failure to file correct information returns

(a) Imposition of penalty

(1) In general

In the case of a failure described in paragraph (2) by any person with respect to an information return, such person shall pay a penalty of $100 for each return with respect to which such a failure occurs, but the total amount imposed on such person for all such failures during any calendar year shall not exceed $1,500,000.

(2) Failures subject to penalty

For purposes of paragraph (1), the failures described in this paragraph are—

(A) any failure to file an information return with the Secretary on or before the required filing date, and

(B) any failure to include all of the information required to be shown on the return or the inclusion of incorrect information.

(b) Reduction where correction in specified period

(1) Correction within 30 days

If any failure described in subsection (a)(2) is corrected on or before the day 30 days after the required filing date—

(A) the penalty imposed by subsection (a) shall be $30 in lieu of $100, and

(B) the total amount imposed on the person for all such failures during any calendar year which are so corrected shall not exceed $250,000.

(2) Failures corrected on or before August 1

If any failure described in subsection (a)(2) is corrected after the 30th day referred to in paragraph (1) but on or before August 1 of the calendar year in which the required filing date occurs—

(A) the penalty imposed by subsection (a) shall be $60 in lieu of $100, and

(B) the total amount imposed on the person for all such failures during the calendar year which are so corrected shall not exceed $500,000.

(c) Exception for de minimis failures to include all required information

(1) In general

If—

(A) an information return is filed with the Secretary,

(B) there is a failure described in subsection (a)(2)(B) (determined after the application of section 6724(a)) with respect to such return, and

(C) such failure is corrected on or before August 1 of the calendar year in which the required filing date occurs,

for purposes of this section, such return shall be treated as having been filed with all of the correct required information.

(2) Limitation

The number of information returns to which paragraph (1) applies for any calendar year shall not exceed the greater of—

(A) 10, or

(B) one-half of 1 percent of the total number of information returns required to be filed by the person during the calendar year.

(d) Lower limitations for persons with gross receipts of not more than $5,000,000

(1) In general

If any person meets the gross receipts test of paragraph (2) with respect to any calendar year, with respect to failures during such calendar year—

(A) subsection (a)(1) shall be applied by substituting "$500,000" for "$1,500,000",

(B) subsection (b)(1)(B) shall be applied by substituting "$75,000" for "$250,000", and

(C) subsection (b)(2)(B) shall be applied by substituting "$200,000" for "$500,000".

(2) Gross receipts test

(A) In general

A person meets the gross receipts test of this paragraph for any calendar year if the average annual gross receipts of such person for the most recent 3 taxable years ending before such calendar year do not exceed $5,000,000.

(B) Certain rules made applicable

For purposes of subparagraph (A), the rules of paragraphs (2) and (3) of section 448(c) shall apply.

(e) Penalty in case of intentional disregard

If 1 or more failures described in subsection (a)(2) are due to intentional disregard of the filing requirement (or the correct information reporting requirement), then, with respect to each such failure—

(1) subsections (b), (c), and (d) shall not apply,

(2) the penalty imposed under subsection (a) shall be $250, or, if greater—

(A) in the case of a return other than a return required under section 6045(a), 6041A(b), 6050H, 6050I, 6050J, 6050K, or 6050L, 10 percent of the aggregate amount of the items required to be reported correctly,

(B) in the case of a return required to be filed by section 6045(a), 6050K, or 6050L, 5 percent of the aggregate amount of the items required to be reported correctly,

(C) in the case of a return required to be filed under section 6050I(a) with respect to any transaction (or related transactions), the greater of—

(i) $25,000, or

(ii) the amount of cash (within the meaning of section 6050I(d)) received in such transaction (or related transactions) to the extent the amount of such cash does not exceed $100,000, or

(D) in the case of a return required to be filed under section 6050V, 10 percent of the value of the benefit of any contract with respect to which information is required to be included on the

return, and

(3) in the case of any penalty determined under paragraph (2)—

(A) the $1,500,000 limitation under subsection (a) shall not apply, and

(B) such penalty shall not be taken into account in applying such limitation (or any similar limitation under subsection (b)) to penalties not determined under paragraph (2).

(f) Adjustment for inflation

(1) In general

For each fifth calendar year beginning after 2012, each of the dollar amounts under subsections (a), (b), (d) (other than paragraph (2)(A) thereof), and (e) shall be increased by such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) determined by substituting "calendar year 2011" for "calendar year 1992" in subparagraph (B) thereof.

(2) Rounding

If any amount adjusted under paragraph (1)—

(A) is not less than $75,000 and is not a multiple of $500, such amount shall be rounded to the next lowest multiple of $500, and

(B) is not described in subparagraph (A) and is not a multiple of $10, such amount shall be rounded to the next lowest multiple of $10.

(Added Pub. L. 99–514, title XV, §1501(a), Oct. 22, 1986, 100 Stat. 2732; amended Pub. L. 100–690, title VII, §7601(a)(2)(A), Nov. 18, 1988, 102 Stat. 4503; Pub. L. 101–239, title VII, §7711(a), Dec. 19, 1989, 103 Stat. 2388; Pub. L. 101–508, title XI, §11318(b), Nov. 5, 1990, 104 Stat. 1388–459; Pub. L. 109–280, title XII, §1211(b)(2), Aug. 17, 2006, 120 Stat. 1073; Pub. L. 111–240, title II, §2102(a)–(f), Sept. 27, 2010, 124 Stat. 2561, 2562.)

AMENDMENTS

2010—Subsec. (a)(1). Pub. L. 111–240, §2102(a), substituted "$100" for "$50" and "$1,500,000" for "$250,000".

Subsec. (b)(1)(A). Pub. L. 111–240, §2102(a)(1), (b)(1), substituted "$30" for "$15" and "$100" for "$50".

Subsec. (b)(1)(B). Pub. L. 111–240, §2102(b)(2), substituted "$250,000" for "$75,000".

Subsec. (b)(2)(A). Pub. L. 111–240, §2102(a)(1), (c)(1), substituted "$60" for "$30" and "$100" for "$50".

Subsec. (b)(2)(B). Pub. L. 111–240, §2102(c)(2), substituted "$500,000" for "$150,000".

Subsec. (d)(1). Pub. L. 111–240, §2102(d)(2), substituted "such calendar year" for "such taxable year" in introductory provisions.

Subsec. (d)(1)(A). Pub. L. 111–240, §2102(a)(2), (d)(1)(A), substituted "$500,000" for "$100,000" and "$1,500,000" for "$250,000".

Subsec. (d)(1)(B). Pub. L. 111–240, §2102(b)(2), (d)(1)(B), substituted "$75,000" for "$25,000" and "$250,000" for "$75,000".

Subsec. (d)(1)(C). Pub. L. 111–240, §2102(c)(2), (d)(1)(C), substituted "$200,000" for "$50,000" and "$500,000" for "$150,000".

Subsec. (e)(2). Pub. L. 111–240, §2102(e), substituted "$250" for "$100" in introductory provisions.

Subsec. (e)(3)(A). Pub. L. 111–240, §2102(a)(2), substituted "$1,500,000" for "$250,000".

Subsec. (f). Pub. L. 111–240, §2102(f), added subsec. (f).

2006—Subsec. (e)(2)(D). Pub. L. 109–280, which directed the addition of subpar. (D) to section 6721(e)(2), without specifying the act to be amended, was executed by making the addition to subsec. (e)(2) of this section, which is section 6721 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

1990—Subsec. (e)(2). Pub. L. 101–508 inserted "6050I," after "6050H," and struck out "or" at end of subpar. (A), substituted "or" for "and" at end of subpar. (B), and added subpar. (C).

1989—Pub. L. 101–239 substituted "correct" for "certain" in section catchline and amended text generally, substituting subsecs. (a) to (e) for former subsec. (a) stating general rule and subsec. (b) relating to penalty in case of intentional disregard.

1988—Subsec. (b)(1)(A). Pub. L. 100–690 inserted "(or, if greater, in the case of a return filed under section 6050I, 10 percent of the taxable income derived from the transaction)" after "reported".

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–240, title II, §2102(h), Sept. 27, 2010, 124 Stat. 2564, provided that: "The amendments made by this section [amending this section and section 6722 of this title] shall apply with respect to information returns required to be filed on or after January 1, 2011."

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 applicable to acquisitions of contracts after Aug. 17, 2006, see section 1211(d) of Pub. L. 109–280, set out as an Effective Date note under section 6050V of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to amounts received after Nov. 5, 1990, see section 11318(e)(1) of Pub. L. 101–508, set out as a note under section 6050I of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7711(c), Dec. 19, 1989, 103 Stat. 2393, provided that: "The amendments made by this section [amending this section and sections 6722 to 6724 and 7205 of this title and repealing sections 6017A, 6676, and 6687 of this title] shall apply to returns and statements the due date for which (determined without regard to extensions) is after December 31, 1989."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 applicable to actions after Nov. 18, 1988, see section 7601(a)(3) of Pub. L. 100–690, set out as a note under section 6050I of this title.

EFFECTIVE DATE

Pub. L. 99–514, title XV, §1501(e), Oct. 22, 1986, 100 Stat. 2741, provided that: "The amendments made by this section [enacting this section and sections 6722 to 6724 of this title, amending sections 219, 6031, 6033 to 6034A, 6041, 6042 to 6045, 6047, 6049, 6050A to 6050C, 6050E to 6050I, 6050K, 6052, 6057, 6058, 6652, and 6676 of this title, and repealing section 6678 of this title] shall apply to returns the due date for which (determined without regard to extensions) is after December 31, 1986, except that the amendments made by subsections (c)(2), (c)(3), and (c)(5) [amending sections 6042, 6044, and 6049 of this title] shall apply to returns the due [date] for which (determined without regard to extensions) is after the date of the enactment of this Act [Oct. 22, 1986]."

§6722. Failure to furnish correct payee statements

(a) Imposition of penalty

(1) General rule

In the case of each failure described in paragraph (2) by any person with respect to a payee statement, such person shall pay a penalty of $100 for each statement with respect to which such a failure occurs, but the total amount imposed on such person for all such failures during any calendar year shall not exceed $1,500,000.

(2) Failures subject to penalty

For purposes of paragraph (1), the failures described in this paragraph are—

(A) any failure to furnish a payee statement on or before the date prescribed therefor to the person to whom such statement is required to be furnished, and

(B) any failure to include all of the information required to be shown on a payee statement or the inclusion of incorrect information.

(b) Reduction where correction in specified period

(1) Correction within 30 days

If any failure described in subsection (a)(2) is corrected on or before the day 30 days after the required filing date—

(A) the penalty imposed by subsection (a) shall be $30 in lieu of $100, and

(B) the total amount imposed on the person for all such failures during any calendar year which are so corrected shall not exceed $250,000.

(2) Failures corrected on or before August 1

If any failure described in subsection (a)(2) is corrected after the 30th day referred to in paragraph (1) but on or before August 1 of the calendar year in which the required filing date occurs—

(A) the penalty imposed by subsection (a) shall be $60 in lieu of $100, and

(B) the total amount imposed on the person for all such failures during the calendar year which are so corrected shall not exceed $500,000.

(c) Exception for de minimis failures

(1) In general

If—

(A) a payee statement is furnished to the person to whom such statement is required to be furnished,

(B) there is a failure described in subsection (a)(2)(B) (determined after the application of section 6724(a)) with respect to such statement, and

(C) such failure is corrected on or before August 1 of the calendar year in which the required filing date occurs,

for purposes of this section, such statement shall be treated as having been furnished with all of the correct required information.

(2) Limitation

The number of payee statements to which paragraph (1) applies for any calendar year shall not exceed the greater of—

(A) 10, or

(B) one-half of 1 percent of the total number of payee statements required to be filed by the person during the calendar year.

(d) Lower limitations for persons with gross receipts of not more than $5,000,000

(1) In general

If any person meets the gross receipts test of paragraph (2) with respect to any calendar year, with respect to failures during such calendar year—

(A) subsection (a)(1) shall be applied by substituting "$500,000" for "$1,500,000",

(B) subsection (b)(1)(B) shall be applied by substituting "$75,000" for "$250,000", and

(C) subsection (b)(2)(B) shall be applied by substituting "$200,000" for "$500,000".

(2) Gross receipts test

A person meets the gross receipts test of this paragraph if such person meets the gross receipts test of section 6721(d)(2).

(e) Penalty in case of intentional disregard

If 1 or more failures to which subsection (a) applies are due to intentional disregard of the requirement to furnish a payee statement (or the correct information reporting requirement), then, with respect to each such failure—

(1) subsections (b), (c), and (d) shall not apply,

(2) the penalty imposed under subsection (a)(1) shall be $250, or, if greater—

(A) in the case of a payee statement other than a statement required under section 6045(b), 6041A(e) (in respect of a return required under section 6041A(b)), 6050H(d), 6050J(e), 6050K(b), or 6050L(c), 10 percent of the aggregate amount of the items required to be reported correctly, or

(B) in the case of a payee statement required under section 6045(b), 6050K(b), or 6050L(c), 5 percent of the aggregate amount of the items required to be reported correctly, and

(3) in the case of any penalty determined under paragraph (2)—

(A) the $1,500,000 limitation under subsection (a) shall not apply, and

(B) such penalty shall not be taken into account in applying such limitation to penalties not determined under paragraph (2).

(f) Adjustment for inflation

(1) In general

For each fifth calendar year beginning after 2012, each of the dollar amounts under subsections (a), (b), (d)(1), and (e) shall be increased by such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) determined by substituting "calendar year 2011" for "calendar year 1992" in subparagraph (B) thereof.

(2) Rounding

If any amount adjusted under paragraph (1)—

(A) is not less than $75,000 and is not a multiple of $500, such amount shall be rounded to the next lowest multiple of $500, and

(B) is not described in subparagraph (A) and is not a multiple of $10, such amount shall be rounded to the next lowest multiple of $10.

(Added Pub. L. 99–514, title XV, §1501(a), Oct. 22, 1986, 100 Stat. 2733; amended Pub. L. 101–239, title VII, §7711(a), Dec. 19, 1989, 103 Stat. 2390; Pub. L. 111–240, title II, §2102(g), Sept. 27, 2010, 124 Stat. 2562.)

AMENDMENTS

2010—Pub. L. 111–240 amended section generally. Prior to amendment, section related to: in subsec. (a), general rule for imposition of penalty for failure to furnish correct payee statements; in subsec. (b), failures subject to penalty; and, in subsec. (c), penalty in case of intentional disregard.

1989—Pub. L. 101–239 substituted "correct" for "certain" in section catchline and amended text generally, substituting subsecs. (a) to (c) for former subsec. (a) stating general rule and subsec. (b) relating to failure to notify partnership of exchange of partnership interest.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–240 applicable with respect to information returns required to be filed on or after Jan. 1, 2011, see section 2102(h) of Pub. L. 111–240, set out as a note under section 6721 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable to returns and statements the due date for which (determined without regard to extensions) is after Dec. 31, 1989, see section 7711(c) of Pub. L. 101–239, set out as a note under section 6721 of this title.

EFFECTIVE DATE

Section applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1986, see section 1501(e) of Pub. L. 99–514, set out as a note under section 6721 of this title.

§6723. Failure to comply with other information reporting requirements

In the case of a failure by any person to comply with a specified information reporting requirement on or before the time prescribed therefor, such person shall pay a penalty of $50 for each such failure, but the total amount imposed on such person for all such failures during any calendar year shall not exceed $100,000.

(Added Pub. L. 99–514, title XV, §1501(a), Oct. 22, 1986, 100 Stat. 2733; amended Pub. L. 101–239, title VII, §7711(a), Dec. 19, 1989, 103 Stat. 2390.)

AMENDMENTS

1989—Pub. L. 101–239 substituted "comply with other information reporting requirements" for "include correct information" in section catchline and amended text generally, substituting a single par. for former subsec. (a) stating general rule, subsec. (b) relating to penalty in case of intentional disregard, and subsec. (c) relating to coordination with former section 6676 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable to returns and statements the due date for which (determined without regard to extensions) is after Dec. 31, 1989, see section 7711(c) of Pub. L. 101–239, set out as a note under section 6721 of this title.

EFFECTIVE DATE

Section applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1986, see section 1501(e) of Pub. L. 99–514, set out as a note under section 6721 of this title.

§6724. Waiver; definitions and special rules

(a) Reasonable cause waiver

No penalty shall be imposed under this part with respect to any failure if it is shown that such failure is due to reasonable cause and not to willful neglect.

(b) Payment of penalty

Any penalty imposed by this part shall be paid on notice and demand by the Secretary and in the same manner as tax.

(c) Special rule for failure to meet magnetic media requirements

No penalty shall be imposed under section 6721 solely by reason of any failure to comply with the requirements of the regulations prescribed under section 6011(e)(2), except to the extent that such a failure occurs with respect to more than 250 information returns (more than 100 information returns in the case of a partnership having more than 100 partners) or with respect to a return described in section 6011(e)(4).

(d) Definitions

For purposes of this part—

(1) Information return

The term "information return" means—

(A) any statement of the amount of payments to another person required by—

(i) section 6041(a) or (b) (relating to certain information at source),

(ii) section 6042(a)(1) (relating to payments of dividends),

(iii) section 6044(a)(1) (relating to payments of patronage dividends),

(iv) section 6049(a) (relating to payments of interest),

(v) section 6050A(a) (relating to reporting requirements of certain fishing boat operators),

(vi) section 6050N(a) (relating to payments of royalties),

(vii) section 6051(d) (relating to information returns with respect to income tax withheld),

(viii) section 6050R (relating to returns relating to certain purchases of fish), or

(ix) section 110(d) (relating to qualified lessee construction allowances for short-term leases),

(B) any return required by—

(i) section 6041A(a) or (b) (relating to returns of direct sellers),

(ii) section 6043A(a) (relating to returns relating to taxable mergers and acquisitions),

(iii) section 6045(a) or (d) (relating to returns of brokers),

(iv) section 6045B(a) (relating to returns relating to actions affecting basis of specified securities),

(v) section 6050H(a) or (h)(1) (relating to mortgage interest received in trade or business from individuals),

(vi) section 6050I(a) or (g)(1) (relating to cash received in trade or business, etc.),

(vii) section 6050J(a) (relating to foreclosures and abandonments of security),

(viii) section 6050K(a) (relating to exchanges of certain partnership interests),

(ix) section 6050L(a) (relating to returns relating to certain dispositions of donated property),

(x) section 6050P (relating to returns relating to the cancellation of indebtedness by certain financial entities),

(xi) section 6050Q (relating to certain long-term care benefits),

(xii) section 6050S (relating to returns relating to payments for qualified tuition and related expenses),

(xiii) section 6050T (relating to returns relating to credit for health insurance costs of eligible individuals),

(xiv) section 6052(a) (relating to reporting payment of wages in the form of group-life insurance),

(xv) section 6050V (relating to returns relating to applicable insurance contracts in which certain exempt organizations hold interests),

(xvi) section 6053(c)(1) (relating to reporting with respect to certain tips),

(xvii) subsection (b) or (e) of section 1060 (relating to reporting requirements of transferors and transferees in certain asset acquisitions),

(xviii) section 4101(d) (relating to information reporting with respect to fuels taxes),

(xix) subparagraph (C) of section 338(h)(10) (relating to information required to be furnished to the Secretary in case of elective recognition of gain or loss),

(xx) section 264(f)(5)(A)(iv) (relating to reporting with respect to certain life insurance and annuity contracts), or [1]

(xxi) section 6050U (relating to charges or payments for qualified long-term care insurance contracts under combined arrangements), and [2]

(xxii) section 6039(a) (relating to returns required with respect to certain options),

(xxiii) section 6050W (relating to returns to payments made in settlement of payment card transactions),

(xxiv) section 6055 (relating to returns relating to information regarding health insurance coverage), or

(xxv) section 6056 (relating to returns relating to certain employers required to report on health insurance coverage), and

(C) any statement of the amount of payments to another person required to be made to the Secretary under—

(i) section 408(i) (relating to reports with respect to individual retirement accounts or annuities), or

(ii) section 6047(d) (relating to reports by employers, plan administrators, etc.).

Such term also includes any form, statement, or schedule required to be filed with the Secretary under chapter 4 or with respect to any amount from which tax was required to be deducted and withheld under chapter 3 (or from which tax would be required to be so deducted and withheld but for an exemption under this title or any treaty obligation of the United States).[3]

(2) Payee statement

The term "payee statement" means any statement required to be furnished under—

(A) section 6031(b) or (c), 6034A, or 6037(b) (relating to statements furnished by certain pass-thru entities),

(B) section 6039(b) (relating to information required in connection with certain options),

(C) section 6041(d) (relating to information at source),

(D) section 6041A(e) (relating to returns regarding payments of remuneration for services and direct sales),

(E) section 6042(c) (relating to returns regarding payments of dividends and corporate earnings and profits),

(F) subsections (b) and (d) of section 6043A (relating to returns relating to taxable mergers

and acquisitions).[4]

(G) section 6044(e) (relating to returns regarding payments of patronage dividends),

(H) section 6045(b) or (d) (relating to returns of brokers),

(I) section 6045A (relating to information required in connection with transfers of covered securities to brokers),

(J) subsections (c) and (e) of section 6045B (relating to returns relating to actions affecting basis of specified securities),

(K) section 6049(c) (relating to returns regarding payments of interest),

(L) section 6050A(b) (relating to reporting requirements of certain fishing boat operators),

(M) section 6050H(d) or (h)(2) relating [5] to returns relating to mortgage interest received in trade or business from individuals),

(N) section 6050I(e) or paragraph (4) or (5) of section 6050I(g) (relating to cash received in trade or business, etc.),

(O) section 6050J(e) (relating to returns relating to foreclosures and abandonments of security),

(P) section 6050K(b) (relating to returns relating to exchanges of certain partnership interests),

(Q) section 6050L(c) (relating to returns relating to certain dispositions of donated property),

(R) section 6050N(b) (relating to returns regarding payments of royalties),

(S) section 6050P(d) (relating to returns relating to the cancellation of indebtedness by certain financial entities),

(T) section 6050Q(b) (relating to certain long-term care benefits),

(U) section 6050R(c) (relating to returns relating to certain purchases of fish),

(V) section 6051 (relating to receipts for employees),

(W) section 6052(b) (relating to returns regarding payment of wages in the form of group-term life insurance),

(X) section 6053(b) or (c) (relating to reports of tips),

(Y) section 6048(b)(1)(B) (relating to foreign trust reporting requirements),

(Z) section 408(i) (relating to reports with respect to individual retirement plans) to any person other than the Secretary with respect to the amount of payments made to such person,

(AA) section 6047(d) (relating to reports by plan administrators) to any person other than the Secretary with respect to the amount of payments made to such person,

(BB) section 6050S(d) (relating to returns relating to qualified tuition and related expenses),

(CC) section 264(f)(5)(A)(iv) (relating to reporting with respect to certain life insurance and annuity contracts),

(DD) section 6050T (relating to returns relating to credit for health insurance costs of eligible individuals) [6]

(EE) section 6050U (relating to charges or payments for qualified long-term care insurance contracts under combined arrangements),

(FF) section 6050W(c) (relating to returns relating to payments made in settlement of payment card transactions),

(GG) section 6055(c) (relating to statements relating to information regarding health insurance coverage), or

(HH) section 6056(c) (relating to statements relating to certain employers required to report on health insurance coverage).

Such term also includes any form, statement, or schedule required to be furnished to the recipient of any amount from which tax was required to be deducted and withheld under chapter 3 or 4 (or from which tax would be required to be so deducted and withheld but for an exemption under this title or any treaty obligation of the United States).

(3) Specified information reporting requirement

The term "specified information reporting requirement" means—

(A) the notice required by section 6050K(c)(1) (relating to requirement that transferor notify partnership of exchange),

(B) any requirement contained in the regulations prescribed under section 6109 that a person—

(i) include his TIN on any return, statement, or other document (other than an information return or payee statement),

(ii) furnish his TIN to another person, or

(iii) include on any return, statement, or other document (other than an information return or payee statement) made with respect to another person the TIN of such person,

(C) any requirement contained in the regulations prescribed under section 215 that a person—

(i) furnish his TIN to another person, or

(ii) include on his return the TIN of another person, and

(D) any requirement under section 6109(h) that—

(i) a person include on his return the name, address, and TIN of another person, or

(ii) a person furnish his TIN to another person.

(4) Required filing date

The term "required filing date" means the date prescribed for filing an information return with the Secretary (determined with regard to any extension of time for filing).

(e) Special rule for certain partnership returns

If any partnership return under section 6031(a) is required under section 6011(e) to be filed on magnetic media or in other machine-readable form, for purposes of this part, each schedule required to be included with such return with respect to each partner shall be treated as a separate information return.

(Added Pub. L. 99–514, title XV, §1501(a), Oct. 22, 1986, 100 Stat. 2734; amended Pub. L. 100–418, title I, §1941(b)(2)(M), Aug. 23, 1988, 102 Stat. 1323; Pub. L. 100–647, title I, §§1006(h)(3)(A), 1015(a), title III, §3001(b)(1), (2), Nov. 10, 1988, 102 Stat. 3410, 3568, 3614; Pub. L. 101–239, title VII, §§7711(a), 7811(c)(3), 7813(a), Dec. 19, 1989, 103 Stat. 2391, 2407, 2412; Pub. L. 101–508, title XI, §§11212(e)(1), 11323(b)(2), (c)(2), Nov. 5, 1990, 104 Stat. 1388–432, 1388–465; Pub. L. 102–486, title XIX, §1933(b), Oct. 24, 1992, 106 Stat. 3031; Pub. L. 103–66, title XIII, §13252(b), Aug. 10, 1993, 107 Stat. 532; Pub. L. 103–322, title II, §20415(b)(1), (2), Sept. 13, 1994, 108 Stat. 1833; Pub. L. 104–188, title I, §§1116(b)(2)(A), (B), 1455(a), 1615(a)(2)(B), 1702(b)(1), (c)(2), 1704(j)(3), 1901(c)(1), Aug. 20, 1996, 110 Stat. 1764, 1817, 1853, 1868, 1869, 1881, 1908; Pub. L. 104–191, title III, §323(b), Aug. 21, 1996, 110 Stat. 2062; Pub. L. 105–34, title II, §201(c)(2), title XII, §§1213(b), 1223(b), title XVI, §1602(d)(2)(A), Aug. 5, 1997, 111 Stat. 805, 1001, 1019, 1094; Pub. L. 105–206, title VI, §§6004(a)(3), 6010(o)(4)(B), (C), 6012(b)(5), (d), July 22, 1998, 112 Stat. 792, 816, 819; Pub. L. 106–554, §1(a)(7) [title III, §319(23)], Dec. 21, 2000, 114 Stat. 2763, 2763A–647; Pub. L. 107–210, div. A, title II, §202(c)(2), Aug. 6, 2002, 116 Stat. 962; Pub. L. 108–357, title VIII, §§805(b), 853(d)(2)(L), (M), Oct. 22, 2004, 118 Stat. 1574, 1613; Pub. L. 109–280, title VIII, §844(d)(2), title XII, §1211(b)(1), Aug. 17, 2006, 120 Stat. 1012, 1073; Pub. L. 109–432, div. A, title IV, §403(c)(1), (2), Dec. 20, 2006, 120 Stat. 2955; Pub. L. 110–172, §11(b)(2), Dec. 29, 2007, 121 Stat. 2488; Pub. L. 110–289, div. C, title III, §3091(b), July 30, 2008, 122 Stat. 2910; Pub. L. 110–343, div. B, title IV, §403(c)(2), (d)(2), Oct. 3, 2008, 122 Stat. 3858, 3860; Pub. L. 111–147, title V, §§501(c)(6), (7), 522(b), Mar. 18, 2010, 124 Stat. 106, 113; Pub. L. 111–148, title I, §§1502(b), 1514(b), title X, §10108(j)(3)(E), (F), Mar. 23, 2010, 124 Stat. 251, 257, 915.)

CODIFICATION

Section 1211(b)(1) of Pub. L. 109–280, which directed the amendment of section 6724 without specifying the act to be amended, was executed to this section, which is section 6724 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

Amendments to subsec. (d)(2) of this section by section 1901(c)(1) of Pub. L. 104–188 were executed before amendments by sections 1116(b)(2)(B) and 1455(a)(2) of Pub. L. 104–188, to reflect the probable intent of Congress.

AMENDMENTS

2010—Subsec. (c). Pub. L. 111–147, §522(b), inserted before period at end "or with respect to a return described in section 6011(e)(4)".

Subsec. (d)(1). Pub. L. 111–147, §501(c)(6), inserted "under chapter 4 or" after "filed with the Secretary" in concluding provisions.

Subsec. (d)(1)(B)(xxiv). Pub. L. 111–148, §1502(b)(1), added cl. (xxiv).

Subsec. (d)(1)(B)(xxv). Pub. L. 111–148, §10108(j)(3)(E), substituted "certain" for "large".

Pub. L. 111–148, §1514(b)(1), added cl. (xxv).

Subsec. (d)(2). Pub. L. 111–147, §501(c)(7), inserted "or 4" after "chapter 3" in concluding provisions.

Subsec. (d)(2)(GG). Pub. L. 111–148, §1502(b)(2), added subpar. (GG).

Subsec. (d)(2)(HH). Pub. L. 111–148, §10108(j)(3)(F), substituted "certain" for "large".

Pub. L. 111–148, §1514(b)(2), added subpar. (HH).

2008—Subsec. (d)(1)(B)(iv) to (xviii). Pub. L. 110–343, §403(d)(2)(A), added cl. (iv) and redesignated former cls. (iv) to (xvii) as (v) to (xviii), respectively. Former cl. (xviii) redesignated (xix).

Subsec. (d)(1)(B)(xix). Pub. L. 110–343, §403(d)(2)(A), redesignated cl. (xviii) as (xix). Former cl. (xix) redesignated (xx).

Pub. L. 110–289, §3091(b)(1)(B), redesignated cl. (xix) relating to section 6039(a) as (xxi).

Subsec. (d)(1)(B)(xx). Pub. L. 110–343, §403(d)(2)(A), redesignated cl. (xix) as (xx). Former cl. (xx) redesignated (xxi).

Pub. L. 110–289, §3091(b)(1)(A), which directed amendment of cl. (xx) by striking "or" at end, could not be executed because "or" did not appear.

Subsec. (d)(1)(B)(xxi). Pub. L. 110–343, §403(d)(2)(A), redesignated cl. (xx) as (xxi). Former cl. (xxi) redesignated (xxii).

Pub. L. 110–289, §3091(b)(1)(B), (C), redesignated cl. (xix) as (xxi) and substituted "or" for "and" at end.

Subsec. (d)(1)(B)(xxii). Pub. L. 110–343, §403(d)(2)(A), redesignated cl. (xxi) as (xxii). Former cl. (xxii) redesignated (xxiii).

Pub. L. 110–289, §3091(b)(1)(D), added cl. (xxii).

Subsec. (d)(1)(B)(xxiii). Pub. L. 110–343, §403(d)(2)(A), redesignated cl. (xxii) as (xxiii).

Subsec. (d)(2)(I). Pub. L. 110–343, §403(c)(2), added subpar. (I). Former subpar. (I) redesignated (J).

Subsec. (d)(2)(J) to (AA). Pub. L. 110–343, §403(d)(2)(B), added subpar. (J) and redesignated former subpars. (J) to (Z) as (K) to (AA), respectively. Former subpar. (AA) redesignated (BB).

Pub. L. 110–343, §403(c)(2), redesignated subpars. (I) to (Z) as (J) to (AA), respectively. Former subpar. (AA) redesignated (BB).

Subsec. (d)(2)(BB). Pub. L. 110–343, §403(d)(2)(B), redesignated subpar. (AA) as (BB). Former subpar. (BB) redesignated (CC).

Pub. L. 110–343, §403(c)(2), redesignated subpar. (AA) as (BB). Former subpar. (BB) redesignated (CC).

Pub. L. 110–289, §3091(b)(2), which directed amendment of subpar. (BB) by striking "or" at end, could not be executed because "or" did not appear.

Subsec. (d)(2)(CC). Pub. L. 110–343, §403(d)(2)(B), redesignated subpar. (BB) as (CC). Former subpar. (CC) redesignated (DD).

Pub. L. 110–343, §403(c)(2), redesignated subpar. (BB) as (CC). Former subpar. (CC) redesignated (DD).

Pub. L. 110–289, §3091(b)(2), substituted ", or" for period at end.

Subsec. (d)(2)(DD). Pub. L. 110–343, §403(d)(2)(B), redesignated subpar. (CC) as (DD). Former subpar. (DD) redesignated (EE).

Pub. L. 110–343, §403(c)(2), redesignated subpar. (CC) as (DD). Former subpar. (DD) redesignated (EE).

Pub. L. 110–289, §3091(b)(2), added subpar. (DD).

Subsec. (d)(2)(EE). Pub. L. 110–343, §403(d)(2)(B), redesignated subpar. (DD) as (EE). Former subpar. (EE) redesignated (FF).

Pub. L. 110–343, §403(c)(2), redesignated subpar. (DD) as (EE).

Subsec. (d)(2)(FF). Pub. L. 110–343, §403(d)(2)(B), redesignated subpar. (EE) as (FF).

2007—Subsec. (d)(1)(B)(iv). Pub. L. 110–172, §11(b)(2)(A), inserted "or (h)(1)" after "section 6050H(a)".

Subsec. (d)(2)(K). Pub. L. 110–172, §11(b)(2)(B), inserted "or (h)(2)" after "section 6050H(d)".

2006—Subsec. (d)(1)(B)(xiv) to (xvi). Pub. L. 109–280, §1211(b)(1), added cl. (xiv) and redesignated former cls. (xiv) and (xv) as (xv) and (xvi), respectively. Former cl. (xvi) redesignated (xvii). See Codification

note above.

Subsec. (d)(1)(B)(xvii). Pub. L. 109–432, §403(c)(1), which directed amendment of cl. (xvii) by striking out "or" at end, could not be executed because "or" did not appear subsequent to amendment by Pub. L. 109–280, §844(d)(2)(A). See below.

Pub. L. 109–280, §1211(b)(1), redesignated cl. (xvi) as (xvii). Former cl. (xvii) redesignated (xviii). See Codification note above.

Pub. L. 109–280, §844(d)(2)(A), struck out "or" at end.

Subsec. (d)(1)(B)(xviii). Pub. L. 109–432, §403(c)(1), which directed amendment of cl. (xviii) by substituting "or" for "and" at end, could not be executed because "and" did not appear at end subsequent to amendment by Pub. L. 109–280, §844(d)(2)(A). See below.

Pub. L. 109–280, §1211(b)(1), redesignated cl. (xvii) as (xviii). Former cl. (xviii) redesignated (xix) relating to section 264(f)(5)(A)(iv). See Codification note above.

Pub. L. 109–280, §844(d)(2)(A), substituted "or" for "and" at end.

Subsec. (d)(1)(B)(xix). Pub. L. 109–432, §403(c)(1), added cl. (xix) relating to section 6039(a).

Pub. L. 109–280, §1211(b)(1), redesignated cl. (xviii) as (xix) relating to section 264(f)(5)(A)(iv). Former cl. (xix) redesignated (xx). See Codification note above.

Pub. L. 109–280, §844(d)(2)(A), added cl. (xix) relating to section 6050U.

Subsec. (d)(1)(B)(xx). Pub. L. 109–280, §1211(b)(1), redesignated cl. (xix) relating to section 6050U as (xx). See Codification note above.

Subsec. (d)(2)(B). Pub. L. 109–432, §403(c)(2), substituted "6039(b)" for "6039(a)".

Subsec. (d)(2)(CC). Pub. L. 109–280, §844(d)(2)(B), added subpar. (CC).

2004—Subsec. (d)(1)(B)(ii) to (xv). Pub. L. 108–357, §805(b)(1), added cl. (ii) and redesignated former cls. (ii) to (xiv) as (iii) to (xv), respectively. Former cl. (xv) redesignated (xvi).

Subsec. (d)(1)(B)(xvi). Pub. L. 108–357, §853(d)(2)(L), redesignated cl. (xvii) as (xvi) and struck out former cl. (xvi) which read as follows: "subparagraph (A) or (C) of subsection (c)(4) of section 4093 (relating to information reporting with respect to tax on diesel and aviation fuels),".

Pub. L. 108–357, §805(b)(1), redesignated cl. (xv) as (xvi). Former cl. (xvi) redesignated (xvii).

Subsec. (d)(1)(B)(xvii) to (xix). Pub. L. 108–357, §853(d)(2)(L), redesignated cls. (xviii) and (xix) as (xvii) and (xviii), respectively. Former cl. (xvii) redesignated (xvi).

Pub. L. 108–357, §805(b)(1), redesignated cls. (xvi) to (xviii) as (xvii) to (xix), respectively.

Subsec. (d)(2)(F) to (W). Pub. L. 108–357, §805(b)(2), added subpar. (F) and redesignated former subpars. (F) to (V) as (G) to (W), respectively. Former subpar. (W) redesignated (X).

Subsec. (d)(2)(X). Pub. L. 108–357, §853(d)(2)(M), redesignated subpar. (Y) as (X) and struck out former subpar. (X) which read as follows: "section 4093(c)(4)(B) (relating to certain purchasers of diesel and aviation fuels),".

Pub. L. 108–357, §805(b)(2), redesignated subpar. (W) as (X). Former subpar. (X) redesignated (Y).

Subsec. (d)(2)(Y) to (CC). Pub. L. 108–357, §853(d)(2)(M), redesignated subpars. (Z) to (CC) as (Y) to (BB), respectively. Former subpar. (Y) redesignated (X).

Pub. L. 108–357, §805(b)(2), redesignated subpars. (X) to (BB) as (Y) to (CC), respectively.

2002—Subsec. (d)(1)(B)(xi) to (xviii). Pub. L. 107–210, §202(c)(2)(A), added cl. (xi) and redesignated former cls. (xi) to (xvii) as (xii) to (xviii), respectively.

Subsec. (d)(2)(BB). Pub. L. 107–210, §202(c)(2)(B), added subpar. (BB).

2000—Subsec. (d)(1)(B)(xiv) to (xvii). Pub. L. 106–554, §1(a)(7) [title III, §319(23)(A)], added cls. (xiv) to (xvii) and struck out former cls. (xiv) to (xvii) which read as follows:

"(xiv) subparagraph (A) or (C) of subsection (c)(4) of section 4093 (relating to information reporting with respect to tax on diesel and aviation fuels),

"(xv) section 4101(d) (relating to information reporting with respect to fuels taxes),

"(xvi) subparagraph (C) of section 338(h)(10) (relating to information required to be furnished to the Secretary in case of elective recognition of gain or loss); or

"(xvii) section 264(f)(5)(A)(iv) (relating to reporting with respect to certain life insurance and annuity contracts)."

Subsec. (d)(2)(AA). Pub. L. 106–554, §1(a)(7) [title III, §319(23)(B)], made a technical amendment to directory language of Pub. L. 105–206, §6010(o)(4)(C). See 1998 Amendment note below.

1998—Subsec. (c). Pub. L. 105–206, §6012(d), inserted before period at end "(more than 100 information returns in the case of a partnership having more than 100 partners)".

Subsec. (d)(1)(A). Pub. L. 105–206, §6012(b)(5), made a technical amendment to directory language of Pub. L. 105–34, §1213(b). See 1997 Amendment note below.

Subsec. (d)(1)(B)(x) to (xiv). Pub. L. 105–206, §6004(a)(3), made a technical amendment to directory

language of Pub. L. 105–34, §201(c)(2)(A). See 1997 Amendment note below.

Subsec. (d)(1)(B)(xv). Pub. L. 105–206, §6010(o)(4)(B), struck out "or" at end.

Pub. L. 105–206, §6004(a)(3), made a technical amendment to directory language of Pub. L. 105–34, §201(c)(2)(A). See 1997 Amendment note below.

Subsec. (d)(1)(B)(xvi). Pub. L. 105–206, §6010(o)(4)(B), which directed the substitution of "; or" for period at end, was executed by making the substitution for ", and" at end, to reflect the probable intent of Congress.

Pub. L. 105–206, §6004(a)(3), made a technical amendment to directory language of Pub. L. 105–34, §201(c)(2)(A). See 1997 Amendment note below.

Subsec. (d)(1)(B)(xvii). Pub. L. 105–206, §6010(o)(4)(B), added cl. (xvii).

Subsec. (d)(2)(AA). Pub. L. 105–206, §6010(o)(4)(C), as amended by Pub. L. 106–554, §1(a)(7)[title III, §319(23)(B)], added subpar. (AA).

1997—Subsec. (d)(1)(A)(ix). Pub. L. 105–34, §1213(b), as amended by Pub. L. 105–206, §6012(b)(5), added cl. (ix).

Subsec. (d)(1)(B)(x) to (xvi). Pub. L. 105–34, §201(c)(2)(A), as amended by Pub. L. 105–206, §6004(a)(3), added cl. (x) and redesignated former cls. (x) to (xv) as (xi) to (xvi), respectively.

Subsec. (d)(2)(R) to (Y). Pub. L. 105–34, §1602(d)(2)(A), added subpars. (R) to (Y) and struck out former subpars. (R) to (X) which read as follows:

"(R) section 6051 (relating to receipts for employees),

"(S) section 6050R(c) (relating to returns relating to certain purchases of fish),

"(T) section 6052(b) (relating to returns regarding payment of wages in the form of group-term life insurance),

"(U) section 6053(b) or (c) (relating to reports of tips),

"(U) section 4093(c)(4)(B) (relating to certain purchasers of diesel and aviation fuels),

"(V) section 6048(b)(1)(B) (relating to foreign trust reporting requirements),

"(W) section 408(i) (relating to reports with respect to individual retirement plans) to any person other than the Secretary with respect to the amount of payments made to such person, or

"(X) section 6047(d) (relating to reports by plan administrators) to any person other than the Secretary with respect to the amount of payments made to such person."

Subsec. (d)(2)(Z). Pub. L. 105–34, §201(c)(2)(B), added subpar. (Z).

Subsec. (e). Pub. L. 105–34, §1223(b), added subsec. (e).

1996—Subsec. (d)(1)(A)(viii). Pub. L. 104–188, §1116(b)(2)(A), added cl. (viii).

Subsec. (d)(1)(B)(ix), (x). Pub. L. 104–191, §323(b)(1), added cl. (ix) and redesignated former cl. (ix) as (x). Former cl. (x) redesignated (xi).

Subsec. (d)(1)(B)(xi). Pub. L. 104–191, §323(b)(1), redesignated cl. (x) as (xi). Former cl. (xi) redesignated (xii).

Pub. L. 104–188, §1702(b)(1), made technical amendment to directory language of Pub. L. 101–508, §11212(e)(1). See 1990 Amendment note below.

Subsec. (d)(1)(B)(xii). Pub. L. 104–191, §323(b)(1), redesignated cl. (xi) as (xii). Former cl. (xii) redesignated (xiii).

Pub. L. 104–188, §1702(c)(2)(A), struck out "or" at end.

Pub. L. 104–188, §1702(b)(1), made technical amendment to directory language of Pub. L. 101–508, §11212(e)(1). See 1990 Amendment note below.

Subsec. (d)(1)(B)(xiii). Pub. L. 104–191, §323(b)(1), redesignated cl. (xii) as (xiii). Former cl. (xiii) redesignated (xiv).

Pub. L. 104–188, §1702(c)(2)(B), substituted ", or" for period at end.

Subsec. (d)(1)(B)(xiv), (xv). Pub. L. 104–191, §323(b)(1), redesignated cls. (xiii) and (xiv) as (xiv) and (xv), respectively.

Subsec. (d)(1)(C). Pub. L. 104–188, §1455(a)(1), which directed the amendment of par. (1) by inserting a new subpar. (C) after subpar. (B), was executed by making the insertion after subpar. (B)(xv), to reflect the probable intent of Congress.

Subsec. (d)(2)(Q). Pub. L. 104–191, §323(b)(2), added subpar. (Q). Former subpar. (Q) redesignated (R).

Subsec. (d)(2)(R). Pub. L. 104–191, §323(b)(2), redesignated subpar. (Q) as (R). Former subpar. (R) redesignated (S).

Pub. L. 104–188, §1116(b)(2)(B), added subpar. (R). Former subpar. (R) redesignated (S).

Subsec. (d)(2)(S). Pub. L. 104–191, §323(b)(2), redesignated subpar. (R) as (S). Former subpar. (S) redesignated (T).

Pub. L. 104–188, §1116(b)(2)(B), redesignated subpar. (R) as (S). Former subpar. (S) redesignated (T). See Codification note above.

Pub. L. 104–188, §1901(c)(1), struck out "or" at end. See Codification note above.

Subsec. (d)(2)(T). Pub. L. 104–191, §323(b)(2), redesignated subpar. (S) as (T). Former subpar. (T) redesignated (U).

Pub. L. 104–188, §1116(b)(2)(B), redesignated subpar. (S) as (T). Former subpar. (T) redesignated (U). See Codification note above.

Pub. L. 104–188, §1901(c)(1), substituted ", or" for period at end. See Codification note above.

Subsec. (d)(2)(U). Pub. L. 104–191, §323(d)(1), redesignated subpar. (T), relating to section 6053(b) or (c), as (U).

Pub. L. 104–188, §1455(a)(2), struck out "or" at end. See Codification note above.

Pub. L. 104–188, §1116(b)(2)(B), redesignated subpar. (T) as (U). Former subpar. (U) redesignated (V). See Codification note above.

Pub. L. 104–188, §1901(c)(1), added subpar. (U). See Codification note above.

Subsec. (d)(2)(V). Pub. L. 104–188, §1455(a)(2), substituted a comma for period at end.

Pub. L. 104–188, §1116(b)(2)(B), redesignated subpar. (U) as (V).

Subsec. (d)(2)(W), (X). Pub. L. 104–188, §1455(a)(2), added subpars. (W) and (X).

Subsec. (d)(3)(C). Pub. L. 104–188, §1615(a)(2)(B), inserted "and" at end.

Subsec. (d)(3)(D). Pub. L. 104–188, §1615(a)(2)(B), redesignated subpar. (E) as (D) and struck out former subpar. (D) which read as follows: "the requirement of section 6109(e) that a person include the TIN of any dependent on his return, and".

Subsec. (d)(3)(E). Pub. L. 104–188, §1615(a)(2)(B), redesignated subpar. (E) as (D).

Pub. L. 104–188, §1704(j)(3), substituted "section 6109(h)" for "section 6109(f)" in introductory provisions.

1994—Subsec. (d)(1)(B)(iv). Pub. L. 103–322, §20415(b)(1), amended cl. (iv) generally. Prior to amendment, cl. (iv) read as follows: "section 6050I(a) (relating to cash received in trade or business),".

Subsec. (d)(2)(K). Pub. L. 103–322, §20415(b)(2), amended subpar. (K) generally. Prior to amendment, subpar. (K) read as follows: "section 6050I(e) (relating to returns relating to cash received in trade or business),".

1993—Subsec. (d)(1)(B)(viii) to (xiv). Pub. L. 103–66, §13252(b)(1), which directed amendment of subsec. (d)(1)(B) by adding a new cl. (viii) after cl. (vii) and redesignating the following cls. accordingly, was executed by adding cl. (viii) and redesignating former cls. (viii), (ix), (x), (xi), (xii) (relating to section 4101(d)), and (xii) (relating to subpar. (C) of section 338(h)(10)) as (ix), (x), (xi), (xii), (xiii), and (xiv), respectively, to reflect the probable intent of Congress.

Subsec. (d)(2)(P) to (T). Pub. L. 103–66, §13252(b)(2), added subpar. (P) and redesignated former subpars. (P) through (S) as (Q) through (T), respectively.

1992—Subsec. (d)(3)(E). Pub. L. 102–486 added subpar. (E).

1990—Subsec. (d)(1)(B)(x). Pub. L. 101–508, §11323(b)(2), substituted "subsection (b) or (e) of section 1060" for "section 1060(b)".

Subsec. (d)(1)(B)(xi). Pub. L. 101–508, §11212(e)(1), as amended by Pub. L. 104–188, §1702(b)(1), struck out ", or subsection (e)," after "(c)(4)".

Subsec. (d)(1)(B)(xii). Pub. L. 101–508, §11323(c)(2), added cl. (xii) relating to subpar. (C) of section 338(h)(10).

Pub. L. 101–508, §11212(e)(1), as amended by Pub. L. 104–188, §1702(b)(1), added cl. (xii) relating to section 4101(d).

1989—Pub. L. 101–239, §7711(a), amended section generally, substituting subsecs. (a) to (d) for former subsec. (a) relating to reasonable cause waivers, subsec. (b) relating to payment of penalty, subsec. (c) relating to special rules for failure to file interest and dividend returns or statements, and subsec. (d) relating to definitions.

Subsec. (d)(1)(B)(viii) to (xi). Pub. L. 101–239, §7811(c)(3), amended cls. (viii) to (xi) generally. Prior to amendment, cls. (viii) to (xi) read as follows:

"(viii) section 6052(a) (relating to reporting payment of wages in the form of group-term life insurance),

"(ix) section 6053(c)(1) (relating to reporting with respect to certain tips), or

"(xi) section 1060(b) (relating to reporting requirements of transferors and transferees in certain asset acquisitions).

"(xi) subparagraph (A) or (C) of subsection (c)(4), or subsection (d), of section 4093 (relating to information reporting with respect to tax on diesel and aviation fuels)."

Subsec. (d)(2). Pub. L. 101–239, §7813(a), struck out "or" after "insurance)," in subpar. (Q), substituted "tips), or" for "tips)." in subpar. (R), and redesignated subpar. (U) as (S).

1988—Subsec. (d)(1)(B). Pub. L. 100–647, §3001(b)(1), which directed that "or" be struck out at end of cl.

(ix), ", or" be substituted for period at end of cl. (x), and cl. (xi) relating to section 4093 be added, was executed by striking out "or" at end of cl. (ix) and adding cl. (xi) in view of intervening amendments by section 1941(b)(2)(M)(i) of Pub. L. 100–418, and by section 1006(h)(3)(A) of Pub. L. 100–647.

Pub. L. 100–647, §1006(h)(3)(A), struck out "or" at end of cl. (ix), substituted ", or" for period at end of cl. (x), and added cl. (xi) relating to section 1060.

Pub. L. 100–418, §1941(b)(2)(M)(i), redesignated cls. (ii) to (x) as (i) to (ix) and struck out former cl. (i) which read as follows: "section 4997(a) (relating to information with respect to windfall profit tax on crude oil),".

Subsec. (d)(2). Pub. L. 100–647, §3001(b)(2), which directed that "or" be struck out at end of subpar. (S), ", or" be substituted for period at end of subpar. (T), and subpar. (U) be added, was executed by adding subpar. (U) in view of intervening amendment by section 1941(b)(2)(M)(ii) of Pub. L. 100–418.

Pub. L. 100–418, §1941(b)(2)(M)(ii), redesignated subpars. (B) to (J) as (A) to (I), respectively, and struck out former subpar. (A) which read as follows: "section 4997(a) (relating to records and information; regulations)," and redesignated subpars. (L) to (T) as (J) to (R), respectively, and struck out former subpar. (K) which read as follows: "section 6050C (relating to information regarding windfall profit tax on domestic crude oil),".

Subsec. (d)(2)(B). Pub. L. 100–647, §1015(a), substituted "6031(b) or (c)" for "6031(b)".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 1502(b) of Pub. L. 111–148 applicable to calendar years beginning after 2013, see section 1502(e) of Pub. L. 111–148, set out as an Effective Date note under section 6055 of this title.

Amendment by section 1514(b) of Pub. L. 111–148 applicable to periods beginning after Dec. 31, 2013, see section 1514(d) of Pub. L. 111–148, set out as an Effective Date note under section 6056 of this title.

Amendment by section 10108(j)(3)(E), (F) of Pub. L. 111–148 applicable to periods beginning after Dec. 31, 2013, see section 10108(j)(4) of Pub. L. 111–148, set out as a note under section 6056 of this title.

Amendment by section 501(c)(6), (7) of Pub. L. 111–147 applicable to payments made after Dec. 31, 2012, with certain exceptions, see section 501(d)(1), (2) of Pub. L. 111–147, set out as a note under section 1471 of this title.

Amendment by section 522(b) of Pub. L. 111–147 applicable to returns the due date for which (determined without regard to extensions) is after Mar. 18, 2010, see section 522(c) of Pub. L. 111–147, set out as a note under section 6011 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–343 effective Jan. 1, 2011, see section 403(e)(1) of Pub. L. 110–343, set out as a note under section 1012 of this title.

Amendment by Pub. L. 110–289 applicable to returns for calendar years beginning after Dec. 31, 2010, with exception for purposes of carrying out any TIN matching program, see section 3091(e) of Pub. L. 110–289, set out as a note under section 3406 of this title.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–172 effective as if included in the provisions of the Tax Relief and Health Care Act of 2006, Pub. L. 109–432, to which such amendment relates, see section 11(b)(3) of Pub. L. 110–172, set out as a note under section 168 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–432 applicable to calendar years beginning after Dec. 20, 2006, see section 403(d) of Pub. L. 109–432, set out as a note under section 6039 of this title.

Amendment by section 844(d)(2) of Pub. L. 109–280 applicable to contracts issued after Dec. 31, 1996, but only with respect to taxable years beginning after Dec. 31, 2009, and to charges made after Dec. 31, 2009, see section 844(g)(1), (3) of Pub. L. 109–280, set out as a note under section 72 of this title.

Amendment by section 1211(b)(1) of Pub. L. 109–280 applicable to acquisitions of contracts after Aug. 17, 2006, see section 1211(d) of Pub. L. 109–280, set out as an Effective Date note under section 6050V of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 805(b) of Pub. L. 108–357 applicable to acquisitions after Oct. 22, 2004, see section 805(d) of Pub. L. 108–357, set out as an Effective Date note under section 6043A of this title.

Amendment by section 853(d)(2)(L), (M) of Pub. L. 108–357 applicable to aviation-grade kerosene removed, entered, or sold after Dec. 31, 2004, see section 853(e) of Pub. L. 108–357, set out as a note under

section 4041 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 201(c)(2) of Pub. L. 105–34 applicable to expenses paid after Dec. 31, 1997 (in taxable years ending after such date), for education furnished in academic periods beginning after such date, see section 201(f) of Pub. L. 105–34, set out as an Effective Date note under section 25A of this title.

Amendment by section 1213(b) of Pub. L. 105–34 applicable to leases entered into after Aug. 5, 1997, see section 1213(e) of Pub. L. 105–34, set out as an Effective Date note under section 110 of this title.

Amendment by section 1223(b) of Pub. L. 105–34 applicable to partnership taxable years beginning after Dec. 31, 1997, see section 1226 of Pub. L. 105–34, as amended, set out as a note under section 6011 of this title.

Amendment by section 1602(d)(2)(A) of Pub. L. 105–34 effective as if included in the provisions of the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104–191, to which such amendment relates, see section 1602(i) of Pub. L. 105–34, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by Pub. L. 104–191 applicable to benefits paid after Dec. 31, 1996, see section 323(d) of Pub. L. 104–191, set out as an Effective Date note under section 6050Q of this title.

Amendment by section 1116(b)(2)(A), (B) of Pub. L. 104–188 applicable to payments made after Dec. 31, 1997, see section 1116(b)(3) of Pub. L. 104–188, set out as an Effective Date note under section 6050R of this title.

Amendment by section 1455(a) of Pub. L. 104–188 applicable to returns, reports, and other statements the due date for which (determined without regard to extensions) is after Dec. 31, 1996, see section 1455(e) of Pub. L. 104–188, set out as a note under section 408 of this title.

Amendment by section 1615(a)(2)(B) of Pub. L. 104–188 applicable with respect to returns the due date for which, without regard to extensions, is on or after the 30th day after Aug. 20, 1996, with special rule for 1995 and 1996, see section 1615(d) of Pub. L. 104–188, set out as a note under section 21 of this title.

Amendment by section 1702(b)(1), (c)(2) of Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

Amendment by section 1901(c)(1) of Pub. L. 104–188, to the extent related to section 6048(a) of this title, applicable to reportable events (as defined in such section) occurring after Aug. 20, 1996, to the extent related to section 6048(b) of this title, applicable to taxable years of United States persons beginning after Dec. 31, 1995, and to the extent related to section 6048(c) of this title, applicable to distributions received after Aug. 20, 1996, see section 1901(d) of Pub. L. 104–188, set out as a note under section 6048 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–322 effective on 60th day after date on which temporary regulations are prescribed under Pub. L. 103–322, §20415(c), see section 20415(d) of Pub. L. 103–322, set out as a note under section 6050I of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable, except as otherwise provided, to discharges of indebtedness after Dec. 31, 1993, see section 13252(d) of Pub. L. 103–66, set out as an Effective Date note under section 6050P of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–486 applicable to taxable years beginning after Dec. 31, 1992, see section 1933(c) of Pub. L. 102–486, set out as a note under section 6109 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11212(e)(1) of Pub. L. 101–508 effective Dec. 1, 1990, see section 11212(f)(2) of Pub. L. 101–508, set out as a note under section 4081 of this title.

Amendment by section 11323(b)(2), (c)(2) of Pub. L. 101–508 applicable to acquisitions after Oct. 9, 1990, but not applicable to any acquisition pursuant to a written binding contract in effect on Oct. 9, 1990, and at all times thereafter before such acquisition, see section 11323(d) of Pub. L. 101–508, set out as a note under section 338 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7711(a) of Pub. L. 101–239 applicable to returns and statements the due date for which (determined without regard to extensions) is after Dec. 31, 1989, see section 7711(c) of Pub. L. 101–239, set out as a note under section 6721 of this title.

Amendment by sections 7811(c)(3) and 7813(a) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by sections 1006(h)(3)(A) and 1015(a) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title III, §3001(c), Nov. 10, 1988, 102 Stat. 3615, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and sections 4093 and 7232 of this title] shall take effect on January 1, 1989.

"(2) REFUNDS WITH INTEREST FOR PRE-EFFECTIVE DATE PURCHASES.—

"(A) IN GENERAL.—In the case of fuel—

"(i) which is purchased from a producer or importer during the period beginning on April 1, 1988, and ending on December 31, 1988,

"(ii) which is used (before the claim under this subparagraph is filed) by any person in a nontaxable use (as defined in section 6427(l)(2) of the 1986 Code), and

"(iii) with respect to which a claim is not permitted to be filed for any quarter under section 6427(i) of the 1986 Code,

the Secretary of the Treasury or the Secretary's delegate shall pay (with interest) to such person the amount of tax imposed on such fuel under section 4091 of the 1986 Code (to the extent not attributable to amounts described in section 6427(l)(3) of the 1986 Code) if claim therefor is filed not later than June 30, 1989. Not more than 1 claim may be filed under the preceding sentence and such claim shall not be taken into account under section 6427(i) of the 1986 Code. Any claim for refund filed under this paragraph shall be considered a claim for refund under section 6427(l) of the 1986 Code.

"(B) INTEREST.—The amount of interest payable under subparagraph (A) shall be determined under section 6611 of the 1986 Code except that the date of the overpayment with respect to fuel purchased during any month shall be treated as being the 1st day of the succeeding month. No interest shall be paid under this paragraph with respect to fuel used by any agency of the United States.

"(C) REGISTRATION PROCEDURES REQUIRED TO BE SPECIFIED.—Not later than the 30th day after the date of the enactment of this Act [Nov. 10, 1988], the Secretary of the Treasury or the Secretary's delegate shall prescribe the procedures for complying with the requirements of section 4093(c)(3) of the 1986 Code (as added by this section)."

Amendment by Pub. L. 100–418 applicable to crude oil removed from the premises on or after Aug. 23, 1988, see section 1941(c) of Pub. L. 100–418, set out as a note under section 164 of this title.

EFFECTIVE DATE

Section applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1986, see section 1501(e) of Pub. L. 99–514, set out as a note under section 6721 of this title.

CONSTRUCTION OF 2002 AMENDMENT

Nothing in amendment by Pub. L. 107–210, other than provisions relating to COBRA continuation coverage and reporting requirements, to be construed as creating new mandate on any party regarding health insurance coverage, see section 203(f) of Pub. L. 107–210, set out as a note under section 2918 of Title 29, Labor.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§1401–1465] of title I of Pub. L. 104–188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

[1] *So in original. The word "or" probably should not appear.*

[2] *So in original. The word "and" probably should not appear.*

[3] *So in original. Provision probably should be set flush with par. (1).*

[4] *So in original. The period probably should be a comma.*

[5] *So in original. Probably should be preceded by an opening parenthesis.*

[6] *So in original. A comma probably should appear.*

§6725. Failure to report information under section 4101

(a) In general

In the case of each failure described in subsection (b) by any person with respect to a vessel or facility, such person shall pay a penalty of $10,000 in addition to the tax (if any).

(b) Failures subject to penalty

For purposes of subsection (a), the failures described in this subsection are—

(1) any failure to make a report under section 4101(d) on or before the date prescribed therefor, and

(2) any failure to include all of the information required to be shown on such report or the inclusion of incorrect information.

(c) Reasonable cause exception

No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.

(Added Pub. L. 108–357, title VIII, §863(d)(1), Oct. 22, 2004, 118 Stat. 1620.)

EFFECTIVE DATE

Section applicable to penalties imposed after Dec. 31, 2004, see section 863(e) of Pub. L. 108–357, set out as a note under section 6719 of this title.

Subchapter C—Procedural Requirements

Sec.
6751. Procedural requirements.

§6751. Procedural requirements

(a) Computation of penalty included in notice

The Secretary shall include with each notice of penalty under this title information with respect to the name of the penalty, the section of this title under which the penalty is imposed, and a computation of the penalty.

(b) Approval of assessment

(1) In general

No penalty under this title shall be assessed unless the initial determination of such assessment is personally approved (in writing) by the immediate supervisor of the individual making such determination or such higher level official as the Secretary may designate.

(2) Exceptions

Paragraph (1) shall not apply to—

(A) any addition to tax under section 6651, 6654, or 6655; or

(B) any other penalty automatically calculated through electronic means.

(c) Penalties

For purposes of this section, the term "penalty" includes any addition to tax or any additional amount.

(Added Pub. L. 105–206, title III, §3306(a), July 22, 1998, 112 Stat. 744.)

EFFECTIVE DATE

Pub. L. 105–206, title III, §3306(c), July 22, 1998, 112 Stat. 744, as amended by Pub. L. 106–554, §1(a)(7) [title III, §302(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–632, provided that: "The amendments made by this section [enacting this subchapter] shall apply to notices issued, and penalties assessed, after June 30, 2001. In the case of any notice of penalty issued after June 30, 2001, and before July 1, 2003, the requirements of section 6751(a) of the Internal Revenue Code of 1986 shall be treated as met if such notice contains a telephone number at which the taxpayer can request a copy of the taxpayer's assessment and payment history with respect to such penalty."

CHAPTER 69—GENERAL PROVISIONS RELATING TO STAMPS

Sec.

6801. Authority for establishment, alteration, and distribution.

6802. Supply and distribution.

6803. Accounting and safeguarding.

6804. Attachment and cancellation.

6805. Redemption of stamps.

6806. Posting occupational tax stamps.[1]

6807. Stamping, marking, and branding seized goods.

6808. Special provisions relating to stamps.

[1] Section catchline amended by Pub. L. 90–618 without corresponding amendment of analysis.

§6801. Authority for establishment, alteration, and distribution

(a) Establishment and alteration

The Secretary may establish, and from time to time alter, renew, replace, or change the form, style, character, material, and device of any stamp, mark, or label under any provision of the laws relating to internal revenue.

(b) Preparation and distribution of regulations, forms, stamps and dies

The Secretary shall prepare and distribute all the instructions, regulations, directions, forms, blanks, and stamps; and shall provide proper and sufficient adhesive stamps and other stamps or dies for expressing and denoting the several stamp taxes.

(Aug. 16, 1954, ch. 736, 68A Stat. 829; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 94–569, §2, Oct. 20, 1976, 90 Stat. 2699; Pub. L. 98–369, div. A, title IV, §454(c)(13), July 18, 1984, 98 Stat. 822.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98–369 struck out ", except that stamps required by or prescribed pursuant to the provisions of section 5205 or section 5235 may be prepared and distributed by persons authorized by the Secretary, under such controls for the protection of the revenue as shall be deemed necessary" before the period at end.

1976—Subsec. (a). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

Subsec. (b). Pub. L. 94–455 and Pub. L. 94–569 struck out "or his delegate" after "Secretary" and provided that stamps required by or prescribed pursuant to the provisions of section 5205 or section 5235 may be prepared and distributed by persons authorized by the Secretary, under such controls for the protection of the revenue as shall be deemed necessary.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 1, 1985, see section 456(b) of Pub. L. 98–369, set out as an Effective Date note under section 5101 of this title.

§6802. Supply and distribution

The Secretary shall furnish, without prepayment, to—

(1) Postmaster General

The Postmaster General a suitable quantity of adhesive stamps, coupons, tickets, or such other devices as may be prescribed by the Secretary pursuant to section 6302(b) or this chapter, to be distributed to, and kept on sale by, the various postmasters in the United States in all post offices of the first and second classes, and such post offices of the third and fourth classes as—

(A) are located in county seats, or

(B) are certified by the Secretary to the Postmaster General as necessary;

(2) Designated depositary of the United States

Any designated depositary of the United States a suitable quantity of adhesive stamps to be kept on sale by such designated depositary.

(Aug. 16, 1954, ch. 736, 68A Stat. 829; Pub. L. 89–44, title VI, §601(d), June 21, 1965, 79 Stat. 154; Pub. L. 94–455, title XIX, §1906(a)(36), (b)(13)(A), Oct. 4, 1976, 90 Stat. 1829, 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing and substituted in par. (2) "designated depositary." for "designated depositary;".

1965—Par. (1). Pub. L. 89–44, §601(d)(1), struck out "(other than the stamps on playing cards)" after "quantity of adhesive stamps".

Par. (3). Pub. L. 89–44, §601(d)(2), struck out par. (3) which related to supply and distribution of stamps to State agents.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 to take effect in a manner consistent with effective date of change of tax provision to which related, see section 701(e) of Pub. L. 89–44, set out as a note under section 6103 of this title.

TRANSFER OF FUNCTIONS

Office of Postmaster General of Post Office Department abolished and all functions, powers, and duties of Postmaster General transferred to United States Postal Service by Pub. L. 91–375, §4(a), Aug. 12, 1970, 84 Stat. 773, set out as a note under section 201 of Title 39, Postal Service.

§6803. Accounting and safeguarding

(a) Bond

In cases coming within the provisions of paragraph (2) of section 6802, the Secretary may require

a bond, with sufficient sureties, in a sum to be fixed by the Secretary, conditioned for the faithful return, whenever so required, of all quantities or amounts undisposed of and for the payment monthly for all quantities or amounts sold or not remaining on hand.

(b) Regulations

The Secretary may from time to time make such regulations as he may find necessary to insure the safekeeping or prevent the illegal use of all adhesive stamps referred to in paragraph (2) of section 6802.

(Aug. 16, 1954, ch. 736, 68A Stat. 830; Pub. L. 92–310, title II, §230(a), June 6, 1972, 86 Stat. 209; Pub. L. 94–455, title XIX, §1906(a)(37), (b)(13)(A), Oct. 4, 1976, 90 Stat. 1829, 1834.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94–455 redesignated subsec. (b)(1) as (a), substituted "paragraph (2)" for "paragraph (2) or (3)", and struck out "or his delegate" after "Secretary" wherever appearing.

Subsec. (b). Pub. L. 94–455 redesignated par. (2) as entire subsection, struck out "or his delegate" after "Secretary" and substituted "paragraph (2)" for "paragraphs (2) and (3)". Par. (1) redesignated subsec. (a).

1972—Subsec. (a). Pub. L. 92–310 repealed subsec. (a) which related to bonds, deposits of receipts, and accounts of postmasters, and which required the Postmaster General to transfer all receipts to the Treasury.

§6804. Attachment and cancellation

Except as otherwise expressly provided in this title, the stamps referred to in section 6801 shall be attached, protected, removed, canceled, obliterated, and destroyed, in such manner and by such instruments or other means as the Secretary may prescribe by rules or regulations.

(Aug. 16, 1954, ch. 736, 68A Stat. 830; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

§6805. Redemption of stamps

(a) Authorization

The Secretary, subject to regulations prescribed by him, may, upon receipt of satisfactory evidence of the facts, make allowance for or redeem such of the stamps, issued under authority of any internal revenue law, as may have been spoiled, destroyed, or rendered useless or unfit for the purpose intended, or for which the owner may have no use.

(b) Method and conditions of allowance

Such allowance or redemption may be made, either by giving other stamps in lieu of the stamps so allowed for or redeemed, or by refunding the amount or value to the owner thereof, deducting therefrom, in case of repayment, the percentage, if any, allowed to the purchaser thereof; but no allowance or redemption shall be made in any case until the stamps so spoiled or rendered useless shall have been returned to the Secretary, or until satisfactory proof has been made showing the reason why the same cannot be returned; or, if so required by the Secretary, when the person presenting the same cannot satisfactorily trace the history of said stamps from their issuance to the presentation of his claim as aforesaid.

(c) Time for filing claims

No claim for the redemption of, or allowance for, stamps shall be allowed under this section unless presented within 3 years after the purchase of such stamps from the Government.

(d) Finality of decisions

The findings of fact in and the decision of the Secretary upon the merits of any claim presented

under or authorized by this section shall, in the absence of fraud or mistake in mathematical calculation, be final and not subject to revision by any accounting officer.

(Aug. 16, 1954, ch. 736, 68A Stat. 830; Pub. L. 85–859, title I, §165(b), (c), Sept. 2, 1958, 72 Stat. 1313; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

1958—Subsec. (a). Pub. L. 85–859, §165(b), struck out provisions which authorized the Secretary to make allowances for or redeem stamps which through mistake may have been improperly or unnecessarily used, or where the rates or duties represented thereby have been excessive in amount, paid in error, or in any manner wrongfully collected.

Subsec. (c). Pub. L. 85–859, §165(c), inserted "under this section" after "shall be allowed".

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–859 effective on first day of first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1(c) of Pub. L. 85–859, Sept. 2, 1958, 72 Stat. 1275.

§6806. Occupational tax stamps

Every person engaged in any business, avocation, or employment, who is thereby made liable to a special tax (other than a special tax under subchapter B of chapter 35, under subchapter B of chapter 36, or under subtitle E) shall place and keep conspicuously in his establishment or place of business all stamps denoting payment of such special tax.

(Aug. 16, 1954, ch. 736, 68A Stat. 831; Pub. L. 89–44, title VI, §601(e), June 21, 1965, 79 Stat. 155; Pub. L. 90–618, title II, §204, Oct. 22, 1968, 82 Stat. 1235.)

REFERENCES IN TEXT

Subchapter B of chapter 36, referred to in text, was repealed by Pub. L. 95–600, title V, §521(b), Nov. 6, 1978, 92 Stat. 2884.

AMENDMENTS

1968—Pub. L. 90–618 substituted "Occupational tax stamps" for "Posting occupational tax stamps" in section catchline, and substituted provisions that every person liable for a special tax (other than a special tax under subchapter B of chapter 35, under subchapter B of chapter 36, or under subtitle E of this title) conspicuously place and keep in his place of business all stamps denoting payment of such special tax for provisions that every person liable for a special tax conspicuously place and keep in his place or business all stamps denoting payment of said special tax, provisions that authorized the Secretary or his delegate to require that the stamps denoting the payment of the special tax imposed by section 4461 of this title be posted on or in each device so that it will be visible to any person operating the device, and provisions that every person liable for the special tax under section 4411 of this title place the stamp denoting payment of such special tax in a conspicuous place in his place of business, or, if he has no such place of business, to keep such stamp on his person.

1965—Subsec. (b). Pub. L. 89–44 struck out "amusement and" after "Coin-operated" in heading.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–618 effective Oct. 22, 1968, see section 207 of Pub. L. 90–618, set out as an Effective Date note under section 5801 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 to take effect in a manner consistent with effective date of change of tax provision to which related, see section 701(e) of Pub. L. 89–44, set out as a note under section 6103 of this title.

§6807. Stamping, marking, and branding seized goods

If any article of manufacture or produce requiring brands, stamps, or marks of whatever kind to be

placed thereon, is sold upon levy, forfeiture (except as provided in section 5688 with respect to distilled spirits), or other process provided by law, the same not having been branded, stamped, or marked, as required by law, the officer selling the same shall, upon sale thereof, fix or cause to be affixed the brands, stamps, or marks so required.

(Aug. 16, 1954, ch. 736, 68A Stat. 831.)

§6808. Special provisions relating to stamps

For special provisions on stamps relating to—

(1) Distilled spirits and fermented liquors, see chapter 51.

(2) Machine guns and short-barrelled firearms, see chapter 53.

(3) Tobacco, snuff, cigars and cigarettes, see chapter 52.

(Aug. 16, 1954, ch. 736, 68A Stat. 831; Pub. L. 88–36, title II, §201(d), June 4, 1963, 77 Stat. 54; Pub. L. 89–44, title VI, §601(f), June 21, 1965, 79 Stat. 155; Pub. L. 91–513, title III, §1102(c), Oct. 27, 1970, 84 Stat. 1292; Pub. L. 93–490, §3(b)(6), Oct. 26, 1974, 88 Stat. 1467; Pub. L. 94–455, title XIX, §§1904(b)(5)(B), (7)(A), (8)(B), (9)(A), 1952(n)(1), Oct. 4, 1976, 90 Stat. 1815, 1816, 1846.)

AMENDMENTS

1976—Par. (1). Pub. L. 94–455, §1952(n)(1), redesignated par. (3) as (1).

Par. (2). Pub. L. 94–455, §1952(n)(1), redesignated par. (6) as (2). Former par. (2), relating to cotton futures, with the included reference to subchapter D of chapter 39, was struck out.

Par. (3). Pub. L. 94–455, §1952(n)(1), redesignated par. (11) as (3). Former par. (3) redesignated (1).

Par. (4). Pub. L. 94–455, §1904(b)(5)(B), struck out par. (4) relating to documents and other instruments, with the included reference to chapter 34.

Par. (6). Pub. L. 94–455, §1952(n)(1), redesignated par. (6) as (2).

Par. (7). Pub. L. 94–455, §1904(b)(7)(A), struck out par. (7) relating to oleomargarine, with the included reference to subchapter F of chapter 38.

Par. (10). Pub. L. 94–455, §1904(b)(9)(A), struck out par. (10) relating to process, renovated, or adulterated butter, with the included reference to subchapter C of chapter 39.

Par. (11). Pub. L. 94–455, §1952(n)(1), redesignated par. (11) as (3).

Par. (12). Pub. L. 94–455, §1904(b)(8)(B), struck out par. (12) relating to white phosphorous matches, with the included reference to subchapter B of chapter 39.

1974—Par. (5). Pub. L. 93–490 struck out par. (5) relating to filled cheese, with the included reference to subchapter C of chapter 39.

1970—Par. (8). Pub. L. 91–513 struck out par. (8) relating to opium, opium for smoking, opiates, coca leaves, and marihuana, with the included reference to subchapter A of chapter 39.

1965—Par. (1). Pub. L. 89–44 struck out par. (1) relating to capital stock.

Par. (9). Pub. L. 89–44 struck out par (9) relating to playing cards.

1963—Pars. (11) to (13). Pub. L. 88–36 redesignated pars. (12) and (13) as (11) and (12), respectively, and struck out former par. (11), which was a cross reference provision for silver bullion, to subchapter F of chapter 9.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1904(b)(5)(B), (7)(A), (8)(B), (9)(A) of Pub. L. 94–455 effective on first day of first month which begins more than ninety days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94–455, set out as a note under section 4041 of this title.

Amendment by section 1952(n)(1) of Pub. L. 94–455 effective on ninetieth day after Oct. 4, 1976, see section 1952(o) of Pub. L. 94–455, set out as an Effective Date note under section 15b of Title 7, Agriculture.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–490 applicable to filled cheese manufactured, imported, or sold after Oct. 26, 1974, see section 3(c) of Pub. L. 93–490, set out as an Effective Date of Repeal note under former sections 4831 to 4834 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–513 effective on first day of seventh calendar month that begins after Oct. 26,

1970, see section 1105(a) of Pub. L. 91–513, set out as an Effective Date note under section 951 of Title 21, Food and Drugs.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 to take effect in a manner consistent with effective date of change of tax provision to which related, see section 701(e) of Pub. L. 89–44, set out as a note under section 6103 of this title.

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment by Pub. L. 88–36 applicable only with respect to transfers after June 4, 1963, see section 202 of Pub. L. 88–36, title II, June 4, 1963, 77 Stat. 54.

SAVINGS PROVISION

Prosecutions for any violation of law occurring, and civil seizures or forfeitures and injunctive proceedings commenced, prior to the effective date of amendment of this section by section 1102 of Pub. L. 91–513 not to be affected or abated by reason thereof, see section 1103 of Pub. L. 91–513, set out as a note under section 171 of Title 21, Food and Drugs.

CHAPTER 70—JEOPARDY, RECEIVERSHIPS, ETC.

Subchapter		Sec.[1]
A.	**Jeopardy**	**6851**
B.	**Receiverships, etc**	**6871**

AMENDMENTS

1980—Pub. L. 96–589, §6(g)(3)(C), (D), Dec. 24, 1980, 94 Stat. 3410, substituted "JEOPARDY, RECEIVERSHIPS ETC." for "JEOPARDY, BANKRUPTCY AND RECEIVERSHIPS" in chapter heading, and "Receiverships, etc." for "Bankruptcy and receiverships" in item for subchapter B.

[1] *Section numbers editorially supplied.*

Subchapter A—Jeopardy

Part	
I.	Termination of taxable year.
II.	Jeopardy assessments.
III.	Special rules with respect to certain cash.

AMENDMENTS

1982—Pub. L. 97–248, title III, §330(b), Sept. 3, 1982, 96 Stat. 620, added item for part III.

PART I—TERMINATION OF TAXABLE YEAR

Sec.	
6851.	Termination assessments of income tax.
6852.	Termination assessments in case of flagrant political expenditures of section 501(c)(3) organizations.

AMENDMENTS

1987—Pub. L. 100–203, title X, §10713(b)(2)(H), Dec. 22, 1987, 101 Stat. 1330–470, added item 6852.

1976—Pub. L. 94–455, title XII, §1204(c)(12), Oct. 4, 1976, 90 Stat. 1699, substituted "assessments of income tax" for "of taxable year" in item 6851.

§6851. Termination assessments of income tax

(a) Authority for making

(1) In general

If the Secretary finds that a taxpayer designs quickly to depart from the United States or to remove his property therefrom, or to conceal himself or his property therein, or to do any other act (including in the case of a corporation distributing all or a part of its assets in liquidation or otherwise) tending to prejudice or to render wholly or partially ineffectual proceedings to collect the income tax for the current or the immediately preceding taxable year unless such proceeding be brought without delay, the Secretary shall immediately make a determination of tax for the current taxable year or for the preceding taxable year, or both, as the case may be, and notwithstanding any other provision of law, such tax shall become immediately due and payable. The Secretary shall immediately assess the amount of the tax so determined (together with all interest, additional amounts, and additions to the tax provided by law) for the current taxable year or such preceding taxable year, or both, as the case may be, and shall cause notice of such determination and assessment to be given the taxpayer, together with a demand for immediate payment of such tax.

(2) Computation of tax

In the case of a current taxable year, the Secretary shall determine the tax for the period beginning on the first day of such current taxable year and ending on the date of the determination under paragraph (1) as though such period were a taxable year of the taxpayer, and shall take into account any prior determination made under this subsection with respect to such current taxable year.

(3) Treatment of amounts collected

Any amounts collected as a result of any assessments under this subsection shall, to the extent thereof, be treated as a payment of tax for such taxable year.

(4) This section inapplicable where section 6861 applies

This section shall not authorize any assessment of tax for the preceding taxable year which is made after the due date of the taxpayer's return for such taxable year (determined with regard to any extensions).

(b) Notice of deficiency

If an assessment of tax is made under the authority of subsection (a), the Secretary shall mail a notice under section 6212(a) for the taxpayer's full taxable year (determined without regard to any action taken under subsection (a)) with respect to which such assessment was made within 60 days after the later of (i) the due date of the taxpayer's return for such taxable year (determined with regard to any extensions), or (ii) the date such taxpayer files such return. Such deficiency may be in an amount greater or less than the amount assessed under subsection (a).

(c) Citizens

In the case of a citizen of the United States or of a possession of the United States about to depart from the United States, the Secretary may, at his discretion, waive any or all of the requirements placed on the taxpayer by this section.

(d) Departure of alien

Subject to such exceptions as may, by regulations, be prescribed by the Secretary—

(1) No alien shall depart from the United States unless he first procures from the Secretary a certificate that he has complied with all the obligations imposed upon him by the income tax laws.

(2) Payment of taxes shall not be enforced by any proceedings under the provisions of this section prior to the expiration of the time otherwise allowed for paying such taxes if, in the case of an alien about to depart from the United States, the Secretary determines that the collection of the tax will not be jeopardized by the departure of the alien.

(e) Sections 6861(f) and (g) to apply

The provisions of section 6861(f) (relating to collection of unpaid amounts) and 6861(g) (relating to abatement if jeopardy does not exist) shall apply with respect to any assessment made under subsection (a).

(f) Cross references

(1) For provisions permitting immediate levy in case of jeopardy, see section 6331(a).

(2) For provisions relating to the review of jeopardy, see section 7429.

(Aug. 16, 1954, ch. 736, 68A Stat. 833; Pub. L. 85–866, title I, §87, Sept. 2, 1958, 72 Stat. 1665; Pub. L. 94–455, title XII, §1204(b), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1696, 1834.)

AMENDMENTS

1976—Pub. L. 94–455, §1204(b)(1), substituted "assessments of income tax" for "of taxable year" in section catchline.

Subsec. (a). Pub. L. 94–455, §1204(b)(1), revised pars. (1) and (2) to provide that a termination assessment does not end the taxable year for any purpose other than the computation of the amount of tax to be assessed and collected and to set out the method for determining the tax for the current taxable year, and added pars. (3) and (4).

Subsec. (b). Pub. L. 94–455, §1204(b)(1), substituted provisions for the mailing of a notice of deficiency for provisions for the reopening of taxable period.

Subsecs. (c), (d). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary" wherever appearing.

Subsec. (e). Pub. L. 94–455, §1204(b)(2), substituted provisions making section 6861(f) and (g) applicable with respect to assessments under subsec. (a).

Subsec. (f). Pub. L. 94–455, §1204(b)(2), added subsec. (f).

1958—Subsec. (d). Pub. L. 85–866 designated existing provisions as par. (1), inserted opening provisions, and added par. (2).

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XII, §1204(d), Oct. 4, 1976, 90 Stat. 1699, as amended by Pub. L. 94–528, §2(a), Oct. 17, 1976, 90 Stat. 2483; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by this section [enacting section 7429 of this title and amending this section and sections 443, 6091, 6211, 6213, 6863, 7103, and 7421 of this title] apply with respect to action taken under section 6851, 6861, or 6862 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] where the notice and demand takes place after February 28, 1977."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 effective Aug. 17, 1954, see section 1(c)(2) of Pub. L. 85–866, set out as a note under section 165 of this title.

§6852. Termination assessments in case of flagrant political expenditures of section 501(c)(3) organizations

(a) Authority to make

(1) In general

If the Secretary finds that—

(A) a section 501(c)(3) organization has made political expenditures, and

(B) such expenditures constitute a flagrant violation of the prohibition against making political expenditures,

the Secretary shall immediately make a determination of any income tax payable by such organization for the current or immediately preceding taxable year, or both, and shall immediately make a determination of any tax payable under section 4955 by such organization or any manager thereof with respect to political expenditures during the current or preceding taxable year, or both. Notwithstanding any other provision of law, any such tax shall become immediately due and payable. The Secretary shall immediately assess the amount of tax so determined (together with all

interest, additional amounts, and additions to the tax provided by law) for the current year or the preceding taxable year, or both, and shall cause notice of such determination and assessment to be given to the organization or any manager thereof, as the case may be, together with a demand for immediate payment of such tax.

(2) Computation of tax

In the case of a current taxable year, the Secretary shall determine the taxes for the period beginning on the 1st day of such current taxable year and ending on the date of the determination under paragraph (1) as though such period were a taxable year of the organization, and shall take into account any prior determination made under this subsection with respect to such current taxable year.

(3) Treatment of amounts collected

Any amounts collected as a result of any assessments under this subsection shall, to the extent thereof, be treated as a payment of income tax for such taxable year, or tax under section 4955 with respect to the expenditure, as the case may be.

(4) Section inapplicable to assessments after due date

This section shall not authorize any assessment of tax for the preceding taxable year which is made after the due date of the organization's return for such taxable year (determined with regard to any extensions).

(b) Definitions and special rules

(1) Definitions

For purposes of this section, the terms "section 501(c)(3) organization", "political expenditure", and "organization manager" have the respective meanings given to such terms by section 4955.

(2) Certain rules made applicable

The provisions of sections 6851(b), 6861(f), and 6861(g) shall apply with respect to any assessment made under subsection (a), except that determinations under section 6861(g) shall be made on the basis of whether the requirements of subsection (a)(1)(B) of this section are met in lieu of whether jeopardy exists.

(Added Pub. L. 100–203, title X, §10713(b)(1), Dec. 22, 1987, 101 Stat. 1330–469.)

PART II—JEOPARDY ASSESSMENTS

Sec.

6861. Jeopardy assessments of income, estate, gift, and certain excise taxes.

6862. Jeopardy assessment of taxes other than income, estate, gift, and certain excise taxes.

6863. Stay of collection of jeopardy assessments.

6864. Termination of extended period for payment in case of carryback.

AMENDMENTS

1974—Pub. L. 93–406, title II, §1016(b)(5), Sept. 2, 1974, 88 Stat. 932, substituted "gift, and certain excise taxes" for "and gift taxes" in items 6861 and 6862.

§6861. Jeopardy assessments of income, estate, gift, and certain excise taxes

(a) Authority for making

If the Secretary believes that the assessment or collection of a deficiency, as defined in section 6211, will be jeopardized by delay, he shall, notwithstanding the provisions of section 6213(a), immediately assess such deficiency (together with all interest, additional amounts, and additions to the tax provided for by law), and notice and demand shall be made by the Secretary for the payment thereof.

(b) Deficiency letters

If the jeopardy assessment is made before any notice in respect of the tax to which the jeopardy assessment relates has been mailed under section 6212(a), then the Secretary shall mail a notice under such subsection within 60 days after the making of the assessment.

(c) Amount assessable before decision of Tax Court

The jeopardy assessment may be made in respect of a deficiency greater or less than that notice of which has been mailed to the taxpayer, despite the provisions of section 6212(c) prohibiting the determination of additional deficiencies, and whether or not the taxpayer has theretofore filed a petition with the Tax Court. The Secretary may, at any time before the decision of the Tax Court is rendered, abate such assessment, or any unpaid portion thereof, to the extent that he believes the assessment to be excessive in amount. The Secretary shall notify the Tax Court of the amount of such assessment, or abatement, if the petition is filed with the Tax Court before the making of the assessment or is subsequently filed, and the Tax Court shall have jurisdiction to redetermine the entire amount of the deficiency and of all amounts assessed at the same time in connection therewith.

(d) Amount assessable after decision of Tax Court

If the jeopardy assessment is made after the decision of the Tax Court is rendered, such assessment may be made only in respect of the deficiency determined by the Tax Court in its decision.

(e) Expiration of right to assess

A jeopardy assessment may not be made after the decision of the Tax Court has become final or after the taxpayer has filed a petition for review of the decision of the Tax Court.

(f) Collection of unpaid amounts

When the petition has been filed with the Tax Court and when the amount which should have been assessed has been determined by a decision of the Tax Court which has become final, then any unpaid portion, the collection of which has been stayed by bond as provided in section 6863(b) shall be collected as part of the tax upon notice and demand from the Secretary, and any remaining portion of the assessment shall be abated. If the amount already collected exceeds the amount determined as the amount which should have been assessed, such excess shall be credited or refunded to the taxpayer as provided in section 6402, without the filing of claim therefor. If the amount determined as the amount which should have been assessed is greater than the amount actually assessed, then the difference shall be assessed and shall be collected as part of the tax upon notice and demand from the Secretary.

(g) Abatement if jeopardy does not exist

The Secretary may abate the jeopardy assessment if he finds that jeopardy does not exist. Such abatement may not be made after a decision of the Tax Court in respect of the deficiency has been rendered or, if no petition is filed with the Tax Court, after the expiration of the period for filing such petition. The period of limitation on the making of assessments and levy or a proceeding in court for collection, in respect of any deficiency, shall be determined as if the jeopardy assessment so abated had not been made, except that the running of such period shall in any event be suspended for the period from the date of such jeopardy assessment until the expiration of the 10th day after the day on which such jeopardy assessment is abated.

(h) Cross references

(1) For the effect of the furnishing of security for payment, see section 6863.

(2) For provision permitting immediate levy in case of jeopardy, see section 6331(a).

(Aug. 16, 1954, ch. 736, 68A Stat. 834; Pub. L. 93–406, title II, §1016(a)(24), Sept. 2, 1974, 88 Stat. 931; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976,90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

1974—Pub. L. 93–406 substituted ", gift, and certain excise taxes" for "and gift taxes" in section catchline.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–406 applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93–406, for plan years beginning after Sept. 2, 1974, but, in the case of plans in existence on Jan. 1, 1974, amendment by Pub. L. 93–406 applicable for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93–406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

§6862. Jeopardy assessment of taxes other than income, estate, gift, and certain excise taxes

(a) Immediate assessment

If the Secretary believes that the collection of any tax (other than income tax, estate tax, gift tax, and the excise taxes imposed by chapters 41, 42, 43, and 44) under any provision of the internal revenue laws will be jeopardized by delay, he shall, whether or not the time otherwise prescribed by law for making return and paying such tax has expired, immediately assess such tax (together with all interest, additional amounts, and additions to the tax provided for by law). Such tax, additions to the tax, and interest shall thereupon become immediately due and payable, and immediate notice and demand shall be made by the Secretary for the payment thereof.

(b) Immediate levy

For provision permitting immediate levy in case of jeopardy, see section 6331(a).

(Aug. 16, 1954, ch. 736, 68A Stat. 836; Pub. L. 93–406, title II, §1016(a)(25), Sept. 2, 1974, 88 Stat. 931; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–222, title I, §108(b)(1)(C), Apr. 1, 1980, 94 Stat. 226; Pub. L. 96–223, title I, §101(f)(9), Apr. 2, 1980, 94 Stat. 253; Pub. L. 100–418, title I, §1941(b)(2)(N), Aug. 23, 1988, 102 Stat. 1324.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–418 substituted "and 44" for "44, and 45".

1980—Subsec. (a). Pub. L. 96–223 which directed the substitution of "the excise taxes imposed by chapters 41, 42, 43, 44, and 45" for "certain excise taxes" was executed by inserting reference to chapter 45 in view of the amendment by Pub. L. 96–222.

Pub. L. 96–222 substituted "the taxes imposed by chapters 41, 42, 43, and 44" for "certain excise taxes".

1976—Subsec. (a). Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

1974—Pub. L. 93–406 substituted ", gift, and certain excise taxes" for ", and gift taxes" in section catchline and "gift tax, and certain excise taxes)" for "and gift tax)" in subsec. (a).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–418 applicable to crude oil removed from the premises on or after Aug. 23, 1988, see section 1941(c) of Pub. L. 100–418, set out as a note under section 164 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–223 applicable to periods after Feb. 29, 1980, see section 101(i) of Pub. L. 96–223, set out as a note under section 6161 of this title.

Amendment by Pub. L. 96–222 effective as if included in the provisions of the Black Lung Benefits Revenue Act of 1977, Pub. L. 95–227, see section 108(b)(4) of Pub. L. 96–222, set out as a note under section 192 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–406 applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93–406, for plan years beginning after Sept. 2, 1974, but, in the case of plans in existence on Jan. 1, 1974, amendment by Pub. L. 93–406 applicable for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93–406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

§6863. Stay of collection of jeopardy assessments

(a) Bond to stay collection

When an assessment has been made under section 6851, 6852,,[1] 6861 or 6862, the collection of the whole or any amount of such assessment may be stayed by filing with the Secretary, within such time as may be fixed by regulations prescribed by the Secretary, a bond in an amount equal to the amount as to which the stay is desired, conditioned upon the payment of the amount (together with interest thereon) the collection of which is stayed, at the time at which, but for the making of such assessment, such amount would be due. Upon the filing of the bond the collection of so much of the amount assessed as is covered by the bond shall be stayed. The taxpayer shall have the right to waive such stay at any time in respect of the whole or any part of the amount covered by the bond, and if as a result of such waiver any part of the amount covered by the bond is paid, then the bond shall, at the request of the taxpayer, be proportionately reduced. If any portion of such assessment is abated, the bond shall, at the request of the taxpayer, be proportionately reduced.

(b) Further conditions in case of income, estate, or gift taxes

In the case of taxes subject to the jurisdiction of the Tax Court—

(1) Prior to petition to Tax Court

If the bond is given before the taxpayer has filed his petition under section 6213(a), the bond shall contain a further condition that if a petition is not filed within the period provided in such section, then the amount, the collection of which is stayed by the bond, will be paid on notice and demand at any time after the expiration of such period, together with interest thereon from the date of the jeopardy notice and demand to the date of notice and demand under this paragraph.

(2) Effect of Tax Court decision

The bond shall be conditioned upon the payment of so much of such assessment (collection of which is stayed by the bond) as is not abated by a decision of the Tax Court which has become final. If the Tax Court determines that the amount assessed is greater than the amount which should have been assessed, then when the decision of the Tax Court is rendered the bond shall, at the request of the taxpayer, be proportionately reduced.

(3) Stay of sale of seized property pending Tax Court decision

(A) General rule

Where, notwithstanding the provisions of section 6213(a), an assessment has been made under section 6851, 6852, or 6861, the property seized for the collection of the tax shall not be sold—

(i) before the expiration of the periods described in subsection (c)(1)(A) and (B),

(ii) before the issuance of the notice of deficiency described in section 6851(b) or 6861(b), and the expiration of the period provided in section 6213(a) for filing a petition with the Tax Court, and

(iii) if a petition is filed with the Tax Court (whether before or after the making of such assessment), before the expiration of the period during which the assessment of the deficiency would be prohibited if neither sections 6851(a), 6852(a), nor 6861(a) were applicable.

Clauses (ii) and (iii) shall not apply in the case of a termination assessment under section 6851 if the taxpayer does not file a return for the taxable year by the due date (determined with regard to any extensions).

(B) Exceptions

Such property may be sold if—

(i) the taxpayer consents to the sale,

(ii) the Secretary determines that the expenses of conservation and maintenance will greatly reduce the net proceeds, or

(iii) the property is of the type described in section 6336.

(C) Review by Tax Court

If, but for the application of subparagraph (B), a sale would be prohibited by subparagraph (A)(iii), then the Tax Court shall have jurisdiction to review the Secretary's determination under subparagraph (B) that the property may be sold. Such review may be commenced upon motion by either the Secretary or the taxpayer. An order of the Tax Court disposing of a motion under this paragraph shall be reviewable in the same manner as a decision of the Tax Court.

(c) Stay of sale of seized property pending district court determination under section 7429

(1) General rule

Where a jeopardy assessment has been made under section 6862(a), the property seized for the collection of the tax shall not be sold—

(A) if a civil action is commenced in accordance with section 7429(b), on or before the day on which the district court judgment in such action becomes final, or

(B) if subparagraph (A) does not apply, before the day after the expiration of the period provided in section 7429(a) for requesting an administrative review, and if such review is requested, before the day after the expiration of the period provided in section 7429(b), for commencing an action in the district court.

(2) Exceptions

With respect to any property described in paragraph (1), the exceptions provided by subsection (b)(3)(B) shall apply.

(Aug. 16, 1954, ch. 736, 68A Stat. 836; Pub. L. 94–455, title XII, §1204(c)(7)–(9), title XIX, §1906(a)(38), (b)(13)(A), Oct. 4, 1976, 90 Stat. 1698, 1830, 1834; Pub. L. 100–203, title X, §10713(b)(2)(E), Dec. 22, 1987, 101 Stat. 1330–470; Pub. L. 100–647, title VI, §6245(a), Nov. 10, 1988, 102 Stat. 3750; Pub. L. 101–239, title VII, §7822(d)(2), Dec. 19, 1989, 103 Stat. 2425.)

AMENDMENTS

1989—Subsec. (b)(3)(A)(iii). Pub. L. 101–239 made technical correction to Pub. L. 100–203, §10713(b)(2)(E)(iii), see 1987 Amendment note below.

1988—Subsec. (b)(3)(C). Pub. L. 100–647 added subpar. (C).

1987—Subsec. (a). Pub. L. 100–203, §10713(b)(2)(E)(i), substituted "6851, 6852," for "6851".

Subsec. (b)(3)(A). Pub. L. 100–203, §10713(b)(2)(E)(ii), substituted "6851, 6852, or 6861" for "6851 or 6861".

Subsec. (b)(3)(A)(iii). Pub. L. 100–203, §10713(b)(2)(E)(iii), as amended by Pub. L. 101–239, substituted "6851(a), 6852(a), nor 6861(a)" for "6851(a) nor 6861(a)".

1976—Subsec. (a). Pub. L. 94–455, §§1204(c)(7), 1906(b)(13)(A), inserted reference to section 6851, substituted "an assessment" for "a jeopardy assessment", struck out "or his delegate" after "Secretary", and substituted "such assessment" for "the jeopardy assessment".

Subsec. (b)(3)(A). Pub. L. 94–455, §1204(c)(8), substituted "an assessment has been made under section 6851 or 6861," for "a jeopardy assessment has been made under section 6861" in provisions preceding cl. (i), added cl. (i), redesignated former cl. (i) as (ii) and substituted "before the issuance of the notice of deficiency described in section 6851(b) or 6861(b), and the expiration of the period" for "if section 6861(b) is applicable, prior to the issuance of the notice of deficiency and the expiration of the time", redesignated former cl. (ii) as (iii) and substituted "assessment), before the expiration" for "jeopardy assessment under section 6861), prior to the expiration" and "if neither sections 6851(a) nor 6861(a) were applicable" for "if section 6861(a) were not applicable", and inserted provisions following cl. (iii).

Subsec. (b)(3)(B)(ii). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (b)(3)(C). Pub. L. 94–455, §1906(a)(38), struck out subpar. (C) which had limited the applicability of subpars. (A) and (B) to jeopardy assessments made on or after Jan. 1, 1955, with respect to taxes imposed by this title, and with respect to taxes imposed by the Internal Revenue Code of 1939.

Subsec. (c). Pub. L. 94–455, §1204(c)(9), added subsec. (c).

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective as if included in the provision of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 7823 of Pub. L. 101–239, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title VI, §6245(b), Nov. 10, 1988, 102 Stat. 3751, provided that: "The amendments made by this section [amending this section] shall take effect on the 90th day after the date of the enactment of this Act [Nov. 10, 1988]."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1204(c)(7)–(9) of Pub. L. 94–455 applicable with respect to action taken under section 6851, 6861, or 6862 of this title where notice and demand takes place after Feb. 28, 1977, see section 1204(d) of Pub. L. 94–455, as amended, set out as a note under section 6851 of this title.

Amendment by section 1906(a)(38), (b)(13)(A) of Pub. L. 94–455 effective on first day of first month which begins more than ninety days after Oct. 4, 1976, see section 1906(d)(1) of Pub. L. 94–455, set out as a note under section 6013 of this title.

[1] *So in original.*

§6864. Termination of extended period for payment in case of carryback

For termination of extensions of time for payment of income tax granted to corporations expecting carrybacks in case of jeopardy, see section 6164(h).

(Aug. 16, 1954, ch. 736, 68A Stat. 837.)

PART III—SPECIAL RULES WITH RESPECT TO CERTAIN CASH

Sec.
6867. Presumptions where owner of large amount of cash is not identified.

§6867. Presumptions where owner of large amount of cash is not identified

(a) General rule

If the individual who is in physical possession of cash in excess of $10,000 does not claim such cash—

(1) as his, or

(2) as belonging to another person whose identity the Secretary can readily ascertain and who acknowledges ownership of such cash,

then, for purposes of sections 6851 and 6861, it shall be presumed that such cash represents gross income of a single individual for the taxable year in which the possession occurs, and that the collection of tax will be jeopardized by delay.

(b) Rules for assessing

In the case of any assessment resulting from the application of subsection (a)—

(1) the entire amount of the cash shall be treated as taxable income for the taxable year in which the possession occurs,

(2) such income shall be treated as taxable at the highest rate of tax specified in section 1, and

(3) except as provided in subsection (c), the possessor of the cash shall be treated (solely with respect to such cash) as the taxpayer for purposes of chapters 63 and 64 and section 7429(a)(1).

(c) Effect of later substitution of true owner

If, after an assessment resulting from the application of subsection (a), such assessment is abated and replaced by an assessment against the owner of the cash, such later assessment shall be treated for purposes of all laws relating to lien, levy and collection as relating back to the date of the original assessment.

(d) Definitions

For purposes of this section—

(1) Cash

The term "cash" includes any cash equivalent.

(2) Cash equivalent

The term "cash equivalent" means—

(A) foreign currency,

(B) any bearer obligation, and

(C) any medium of exchange which—

(i) is of a type which has been frequently used in illegal activities, and

(ii) is specified as a cash equivalent for purposes of this part in regulations prescribed by the Secretary.

(3) Value of cash equivalent

Any cash equivalent shall be taken into account—

(A) in the case of a bearer obligation, at its face amount, and

(B) in the case of any other cash equivalent, at its fair market value.

(Added Pub. L. 97–248, title III, §330(a), Sept. 3, 1982, 96 Stat. 619; amended Pub. L. 100–647, title I, §1001(a)(1), Nov. 10, 1988, 102 Stat. 3349.)

AMENDMENTS

1988—Subsec. (b)(2). Pub. L. 100–647 substituted "the highest rate of tax specified in section 1" for "a 50-percent rate".

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Pub. L. 97–248, title III, §330(c), Sept. 3, 1982, 96 Stat. 620, provided that: "The amendments made by subsections (a) and (b) [enacting this section] shall take effect on the day after the date of the enactment of this Act [Sept. 3, 1982]."

Subchapter B—Receiverships, Etc.

Sec.
6871. Claims for income, estate, gift, and certain excise taxes in receivership proceedings, etc.
6872. Suspension of period on assessment.
6873. Unpaid claims.

AMENDMENTS

1980—Pub. L. 96–589, §6(g)(3)(A), (B), Dec. 24, 1980, 94 Stat. 3410, substituted "Receiverships, Etc." for "Bankruptcy and Receiverships" in subchapter heading, and "gift, and certain excise taxes in receivership proceedings, etc." for "and gift taxes in bankruptcy and receivership proceedings" in item 6871.

§6871. Claims for income, estate, gift, and certain excise taxes in receivership proceedings, etc.

(a) Immediate assessment in receivership proceedings

On the appointment of a receiver for the taxpayer in any receivership proceeding before any court of the United States or of any State or of the District of Columbia, any deficiency (together with all interest, additional amounts, and additions to the tax provided by law) determined by the Secretary in

respect of a tax imposed by subtitle A or B or by chapter 41, 42, 43, or 44 on such taxpayer may, despite the restrictions imposed by section 6213(a) on assessments, be immediately assessed if such deficiency has not theretofore been assessed in accordance with law.

(b) Immediate assessment with respect to certain title 11 cases

Any deficiency (together with all interest, additional amounts, and additions to the tax provided by law) determined by the Secretary in respect of a tax imposed by subtitle A or B or by chapter 41, 42, 43, or 44 on—

(1) the debtor's estate in a case under title 11 of the United States Code, or

(2) the debtor, but only if liability for such tax has become res judicata pursuant to a determination in a case under title 11 of the United States Code,

may, despite the restrictions imposed by section 6213(a) on assessments, be immediately assessed if such deficiency has not theretofore been assessed in accordance with law.

(c) Claim filed despite pendency of tax court proceedings

In the case of a tax imposed by subtitle A or B or by chapter 41, 42, 43, or 44—

(1) claims for the deficiency and for interest, additional amounts, and additions to the tax may be presented, for adjudication in accordance with law, to the court before which the receivership proceeding (or the case under title 11 of the United States Code) is pending, despite the pendency of proceedings for the redetermination of the deficiency pursuant to a petition to the Tax Court; but

(2) in the case of a receivership proceeding, no petition for any such redetermination shall be filed with the Tax Court after the appointment of the receiver.

(Aug. 16, 1954, ch. 736, 68A Stat. 838; Pub. L. 85–866, title I, §88, Sept. 2, 1958, 72 Stat. 1665; Pub. L. 94–455, title XIX, §§1906(b)(13)(A), (c)(1), Oct. 4, 1976, 90 Stat. 1834, 1835; Pub. L. 96–589, §6(g)(1), Dec. 24, 1980, 94 Stat. 3409; Pub. L. 101–239, title VII, §7841(d)(2), Dec. 19, 1989, 103 Stat. 2428.)

AMENDMENTS

1989—Pub. L. 101–239 substituted "or 44" for "44, or 45" in subsecs. (a), (b), and (c).

1980—Subsec. (a). Pub. L. 96–589 amended subsec. (a) generally, substituting reference to appointment of a receiver for the taxpayer in any receivership proceedings, for reference to adjudication of bankruptcy of a taxpayer in a liquidating proceeding, the filing or the approval of a petition of or the approval of a petition against any taxpayer in any other bankruptcy proceeding, or the appointment of a receiver for any taxpayer in any receivership proceeding, and inserted reference to chapters 41, 42, 43, 44, and 45.

Subsecs. (b), (c). Pub. L. 96–589 added subsec. (b), redesignated former subsec. (b) as (c), inserted reference to chapters 41, 42, 43, 44, and 45, and struck out reference to bankruptcy proceedings.

1976—Subsec. (a). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Pub. L. 94–455, §1906(c)(1), struck out "or Territory" after "any State".

1958—Subsec. (a). Pub. L. 85–866, §88(a), substituted "the filing or (where approval is required by the Bankruptcy Act) the approval of a petition of, or the approval of a petition against, any taxpayer" for "the approval of a petition of, or against, any taxpayer".

Subsec. (b). Pub. L. 85–866, §88(b), substituted "the filing or (where approval is required by the Bankruptcy Act) the approval of a petition of, or the approval of a petition against, any taxpayer" for "approval of the petition".

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–589 effective Oct. 1, 1979, but not applicable to proceedings under Title 11, Bankruptcy, commenced before Oct. 1, 1979, see section 7(e) of Pub. L. 96–589, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective on first day of first month which begins more than ninety days after Oct. 4, 1976, see section 1906(d)(1) of Pub. L. 94–455, set out as a note under section 6013 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 effective Aug. 17, 1954, see section 1(c)(2) of Pub. L. 85–866, set out as a note under section 165 of this title.

§6872. Suspension of period on assessment

If the regulations issued pursuant to section 6036 require the giving of notice by any fiduciary in any case under title 11 of the United States Code, or by a receiver in any other court proceeding, to the Secretary of his qualification as such, the running of the period of limitations on the making of assessments shall be suspended for the period from the date of the institution of the proceeding to a date 30 days after the date upon which the notice from the receiver or other fiduciary is received by the Secretary; but the suspension under this sentence shall in no case be for a period in excess of 2 years.

(Aug. 16, 1954, ch. 736, 68A Stat. 838; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–589, §6 (i)(12), Dec. 24, 1980, 94 Stat. 3411.)

AMENDMENTS

1980—Pub. L. 96–589 substituted "any case under title 11 of the United States Code" for "any proceeding under the Bankruptcy Act".

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–589 effective Oct. 1, 1979, but not applicable to proceedings under Title 11, Bankruptcy, commenced before Oct. 1, 1979, see section 7(e) of Pub. L. 96–589, set out as a note under section 108 of this title.

§6873. Unpaid claims

(a) General rule

Any portion of a claim for taxes allowed in a receivership proceeding which is unpaid shall be paid by the taxpayer upon notice and demand from the Secretary after the termination of such proceeding.

(b) Cross references

(1) For suspension of running of period of limitations on collection, see section 6503(b).

(2) For extension of time for payment, see section 6161(c).

(Aug. 16, 1954, ch. 736, 68A Stat. 838; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–589, §6(g)(2), Dec. 24, 1980, 94 Stat. 3409.)

AMENDMENTS

1980—Subsec. (a). Pub. L. 96–589 struck out reference to proceedings under the Bankruptcy Act.

1976—Subsec. (a). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–589 effective Oct. 1, 1979, but not applicable to proceedings under Title 11, Bankruptcy, commenced before Oct. 1, 1979, see section 7(e) of Pub. L. 96–589, set out as a note under section 108 of this title.

CHAPTER 71—TRANSFEREES AND FIDUCIARIES

Sec.

6901. Transferred assets.

6902. Provisions of special application to transferees.

6903. Notice of fiduciary relationship.

6904. Prohibition of injunctions.
6905. Discharge of executor from personal liability for decedent's income and gift taxes.

AMENDMENTS

1970—Pub. L. 91–614, title I, §101(e)(2), Dec. 31, 1970, 84 Stat. 1837, added item 6905.

§6901. Transferred assets

(a) Method of collection

The amounts of the following liabilities shall, except as hereinafter in this section provided, be assessed, paid, and collected in the same manner and subject to the same provisions and limitations as in the case of the taxes with respect to which the liabilities were incurred:

(1) Income, estate, and gift taxes

(A) Transferees

The liability, at law or in equity, of a transferee of property—

(i) of a taxpayer in the case of a tax imposed by subtitle A (relating to income taxes),
(ii) of a decedent in the case of a tax imposed by chapter 11 (relating to estate taxes), or
(iii) of a donor in the case of a tax imposed by chapter 12 (relating to gift taxes),

in respect of the tax imposed by subtitle A or B.

(B) Fiduciaries

The liability of a fiduciary under section 3713(b) of title 31, United States Code [1] in respect of the payment of any tax described in subparagraph (A) from the estate of the taxpayer, the decedent, or the donor, as the case may be.

(2) Other taxes

The liability, at law or in equity of a transferee of property of any person liable in respect of any tax imposed by this title (other than a tax imposed by subtitle A or B), but only if such liability arises on the liquidation of a partnership or corporation, or on a reorganization within the meaning of section 368(a).

(b) Liability

Any liability referred to in subsection (a) may be either as to the amount of tax shown on a return or as to any deficiency or underpayment of any tax.

(c) Period of limitations

The period of limitations for assessment of any such liability of a transferee or a fiduciary shall be as follows:

(1) Initial transferee

In the case of the liability of an initial transferee, within 1 year after the expiration of the period of limitation for assessment against the transferor;

(2) Transferee of transferee

In the case of the liability of a transferee of a transferee, within 1 year after the expiration of the period of limitation for assessment against the preceding transferee, but not more than 3 years after the expiration of the period of limitation for assessment against the initial transferor;

except that if, before the expiration of the period of limitation for the assessment of the liability of the transferee, a court proceeding for the collection of the tax or liability in respect thereof has been begun against the initial transferor or the last preceding transferee, respectively, then the period of limitation for assessment of the liability of the transferee shall expire 1 year after the return of execution in the court proceeding.

(3) Fiduciary

In the case of the liability of a fiduciary, not later than 1 year after the liability arises or not later than the expiration of the period for collection of the tax in respect of which such liability arises, whichever is the later.

(d) Extension by agreement

(1) Extension of time for assessment

If before the expiration of the time prescribed in subsection (c) for the assessment of the liability, the Secretary and the transferee or fiduciary have both consented in writing to its assessment after such time, the liability may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. For the purpose of determining the period of limitation on credit or refund to the transferee or fiduciary of overpayments of tax made by such transferee or fiduciary or overpayments of tax made by the transferor of which the transferee or fiduciary is legally entitled to credit or refund, such agreement and any extension thereof shall be deemed an agreement and extension thereof referred to in section 6511(c).

(2) Extension of time for credit or refund

If the agreement is executed after the expiration of the period of limitation for assessment against the taxpayer with reference to whom the liability of such transferee or fiduciary arises, then in applying the limitations under section 6511(c) on the amount of the credit or refund, the periods specified in section 6511(b)(2) shall be increased by the period from the date of such expiration to the date of the agreement.

(e) Period for assessment against transferor

For purposes of this section, if any person is deceased, or is a corporation which has terminated its existence, the period of limitation for assessment against such person shall be the period that would be in effect had death or termination of existence not occurred.

(f) Suspension of running of period of limitations

The running of the period of limitations upon the assessment of the liability of a transferee or fiduciary shall, after the mailing to the transferee or fiduciary of the notice provided for in section 6212 (relating to income, estate, and gift taxes), be suspended for the period during which the Secretary is prohibited from making the assessment in respect of the liability of the transferee or fiduciary (and in any event, if a proceeding in respect of the liability is placed on the docket of the Tax Court, until the decision of the Tax Court becomes final), and for 60 days thereafter.

(g) Address for notice of liability

In the absence of notice to the Secretary under section 6903 of the existence of a fiduciary relationship, any notice of liability enforceable under this section required to be mailed to such person, shall, if mailed to the person subject to the liability at his last known address, be sufficient for purposes of this title, even if such person is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence.

(h) Definition of transferee

As used in this section, the term "transferee" includes donee, heir, legatee, devisee, and distributee, and with respect to estate taxes, also includes any person who, under section 6324(a)(2), is personally liable for any part of such tax.

(i) Extension of time

For extensions of time by reason of armed service in a combat zone, see section 7508.

(Aug. 16, 1954, ch. 736, 68A Stat. 841; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–258, §3(f)(10), Sept. 13, 1982, 96 Stat. 1065.)

AMENDMENTS

1982—Subsec. (a)(1)(B). Pub. L. 97–258 substituted "section 3713(b) of title 31, United States Code" for "section 3467 of the Revised Statutes (31 U.S.C. 192)".

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

[1] *So in original. Probably should be followed by a comma.*

§6902. Provisions of special application to transferees

(a) Burden of proof

In proceedings before the Tax Court the burden of proof shall be upon the Secretary to show that a petitioner is liable as a transferee of property of a taxpayer, but not to show that the taxpayer was liable for the tax.

(b) Evidence

Upon application to the Tax Court, a transferee of property of a taxpayer shall be entitled, under rules prescribed by the Tax Court, to a preliminary examination of books, papers, documents, correspondence, and other evidence of the taxpayer or a preceding transferee of the taxpayer's property, if the transferee making the application is a petitioner before the Tax Court for the redetermination of his liability in respect of the tax (including interest, additional amounts, and additions to the tax provided by law) imposed upon the taxpayer. Upon such application, the Tax Court may require by subpoena, ordered by the Tax Court or any division thereof and signed by a judge, the production of all such books, papers, documents, correspondence, and other evidence within the United States the production of which, in the opinion of the Tax Court or division thereof, is necessary to enable the transferee to ascertain the liability of the taxpayer or preceding transferee and will not result in undue hardship to the taxpayer or preceding transferee. Such examination shall be had at such time and place as may be designated in the subpoena.

(Aug. 16, 1954, ch. 736, 68A Stat. 843; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

§6903. Notice of fiduciary relationship

(a) Rights and obligations of fiduciary

Upon notice to the Secretary that any person is acting for another person in a fiduciary capacity, such fiduciary shall assume the powers, rights, duties, and privileges of such other person in respect of a tax imposed by this title (except as otherwise specifically provided and except that the tax shall be collected from the estate of such other person), until notice is given that the fiduciary capacity has terminated.

(b) Manner of notice

Notice under this section shall be given in accordance with regulations prescribed by the Secretary.

(Aug. 16, 1954, ch. 736, 68A Stat. 843; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

§6904. Prohibition of injunctions

For prohibition of suits to restrain enforcement of liability of transferee, or fiduciary, see section 7421(b).

(Aug. 16, 1954, ch. 736, 68A Stat. 843.)

§6905. Discharge of executor from personal liability for decedent's income and gift taxes

(a) Discharge of liability

In the case of liability of a decedent for taxes imposed by subtitle A or by chapter 12, if the executor makes written application (filed after the return with respect to such taxes is made and filed in such manner and such form as may be prescribed by regulations of the Secretary for release from personal liability for such taxes, the Secretary may notify the executor of the amount of such taxes. The executor, upon payment of the amount of which he is notified, after 9 months after receipt of the application if no notification is made by the Secretary before such date, shall be discharged from personal liability for any deficiency in such tax thereafter found to be due, and shall be entitled to a receipt or writing showing such discharge.

(b) Definition of executor

For purposes of this section, the term "executor" means the executor or administrator of the decedent appointed, qualified, and acting within the United States.

(c) Cross reference

For discharge of executor from personal liability for taxes imposed under chapter 11, see section 2204.

(Added Pub. L. 91–614, title I, §101(e)(1), Dec. 31, 1970, 84 Stat. 1837; amended Pub. L. 91–614, title I, §101(f), Dec. 31, 1970, 84 Stat. 1838; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.
1970—Subsec. (a). Pub. L. 91–614, §101(f), substituted "9 months" for "1 year".

EFFECTIVE DATE OF 1970 AMENDMENT

Pub. L. 91–614, title I, §101(f), Dec. 31, 1970, 84 Stat. 1838, provided that the amendment made by that section is effective with respect to the estates of decedents dying after Dec. 31, 1973.

EFFECTIVE DATE

Section effective with respect to decedents dying after Dec. 31, 1970, see section 101(j) of Pub. L. 91–614, set out as an Effective Date of 1970 Amendment note under section 2032 of this title.

CHAPTER 72—LICENSING AND REGISTRATION

Subchapter		Sec.[1]
A.	**Licensing**	**7001**
B.	**Registration**	**7011**

[1] *Section numbers editorially supplied.*

Subchapter A—Licensing

Sec.
7001. Collection of foreign items.

§7001. Collection of foreign items

(a) License

All persons undertaking as a matter of business or for profit the collection of foreign payments of interest or dividends by means of coupons, checks, or bills of exchange shall obtain a license from the Secretary and shall be subject to such regulations enabling the Government to obtain the information required under subtitle A (relating to income taxes) as the Secretary shall prescribe.

(b) Penalty for failure to obtain license

For penalty for failure to obtain the license provided for in this section, see section 7231.

(Aug. 16, 1954, ch. 736, 68A Stat. 845; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

Subchapter B—Registration

Sec.
7011. Registration—persons paying a special tax.
7012. Cross references.

§7011. Registration—persons paying a special tax

(a) Requirement

Every person engaged in any trade or business on which a special tax is imposed by law shall register with the Secretary his name or style, place of residence, trade or business, and the place where such trade or business is to be carried on. In case of a firm or company, the names of the several persons constituting the same, and the places of residence, shall be so registered.

(b) Registration in case of death or change of location

Any person exempted under the provisions of section 4905 from the payment of a special tax, shall register with the Secretary in accordance with regulations prescribed by the Secretary.

(Aug. 16, 1954, ch. 736, 68A Stat. 845; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

§7012. Cross references

(1) For provisions relating to registration in connection with firearms, see sections 5802, 5841, and 5861.

(2) For special rules with respect to registration by persons engaged in receiving wagers, see section 4412.

(3) For provisions relating to registration in relation to the taxes on gasoline and diesel fuel, see section 4101.

(4) For provisions relating to registration by dealers in distilled spirits, wines, and beer, see section 5124.

(5) For penalty for failure to register, see section 7272.

(6) For other penalties for failure to register with respect to wagering, see section 7262.

(Aug. 16, 1954, ch. 736, 68A Stat. 846; Pub. L. 85–475, §4(b)(7), June 30, 1958, 72 Stat. 260; Pub. L. 89–44, title VI, §601(g), June 21, 1965, 79 Stat. 155; Pub. L. 91–513, title III, §1102(d), Oct. 27,

1970, 84 Stat. 1292; Pub. L. 94–455, title XIX, §§1904(b)(8)(C), 1906(a)(39), Oct. 4, 1976, 90 Stat. 1816, 1830; Pub. L. 104–188, title I, §1702(b)(4), Aug. 20, 1996, 110 Stat. 1868; Pub. L. 109–59, title XI, §11125(b)(9), Aug. 10, 2005, 119 Stat. 1955.)

AMENDMENTS

2005—Pars. (4) to (6). Pub. L. 109–59 added par. (4) and redesignated former pars. (4) and (5) as (5) and (6), respectively.

1996—Par. (3). Pub. L. 104–188, §1702(b)(4)(A), substituted "taxes on gasoline and diesel fuel" for "production or importation of gasoline".

Pars. (4) to (6). Pub. L. 104–188, §1702(b)(4)(B), redesignated pars. (5) and (6) as (4) and (5), respectively, and struck out former par. (4) which read as follows: "For provisions relating to registration in relation to the manufacture or production of lubricating oils, see section 4101."

1976—Pub. L. 94–455 revised section generally, striking out cross reference to section 4804(d) relating to registration in relation to manufacture of white phosphorus matches and substituted reference to section 5861 for reference to section 5854 in cross reference covering registration in connection with firearms.

1970—Subsecs. (a), (b). Pub. L. 91–513 struck out subsecs. (a) and (b) which related to narcotic drugs and marihuana, respectively, and which had made reference to sections 4722 and 4753, respectively.

1965—Subsec. (d). Pub. L. 89–44 struck out subsec. (d) relating to manufacture of playing cards.

1958—Subsecs. (i), (j). Pub. L. 85–475, redesignated subsec. (j) as (i) and struck out former subsec. (i) which referred to section 4273.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–59 effective July 1, 2008, but inapplicable to taxes imposed for periods before such date, see section 11125(c) of Pub. L. 109–59, set out as a note under section 5002 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–513 effective on first day of seventh calendar month that begins after Oct. 26, 1970, see section 1105(a) of Pub. L. 91–513, set out as an Effective Date note under section 951 of Title 21, Food and Drugs.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 to take effect in a manner consistent with effective date of change of tax provision to which related, see section 701(e) of Pub. L. 89–44, set out as a note under section 6103 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

For effective date of amendment by Pub. L. 85–475, see section 4(c) of Pub. L. 85–475, set out as a note under section 6415 of this title.

SAVINGS PROVISION

Prosecutions for any violation of law occurring, and civil seizures or forfeitures and injunctive proceedings commenced, prior to the effective date of amendment of this section by section 1102 of Pub. L. 91–513 not to be affected or abated by reason thereof, see section 1103 of Pub. L. 91–513, set out as a note under section 171 of Title 21, Food and Drugs.

CHAPTER 73—BONDS

Sec.
7101. Form of bonds.
7102. Single bond in lieu of multiple bonds.
7103. Cross references—Other provisions for bonds.

§7101. Form of bonds

Whenever, pursuant to the provisions of this title (other than section 7485), or rules or regulations prescribed under authority of this title, a person is required to furnish a bond or security—

(1) General rule

Such bond or security shall be in such form and with such surety or sureties as may be prescribed by regulations issued by the Secretary.

(2) United States bonds and notes in lieu of surety bonds

The person required to furnish such bond or security may, in lieu thereof, deposit bonds or notes of the United States as provided in section 9303 of title 31, United States Code.

(Aug. 16, 1954, ch. 736, 68A Stat. 847; Pub. L. 92–310, title II, §230(b), June 6, 1972, 86 Stat. 209; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–258, §3(f)(11), Sept. 13, 1982, 96 Stat. 1065.)

AMENDMENTS

1982—Par. (2). Pub. L. 97–258 substituted "section 9303 of title 31, United States Code" for "6 U.S.C. 15".
1976—Par. (2). Pub. L. 94–455 struck out "or his delegate" after "Secretary".
1972—Pub. L. 92–310 struck out reference to section 6803(a)(1).

§7102. Single bond in lieu of multiple bonds

In any case in which two or more bonds are required or authorized, the Secretary may provide for the acceptance of a single bond complying with the requirements for which the several bonds are required or authorized.

(Aug. 16, 1954, ch. 736, 68A Stat. 847; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

§7103. Cross references—Other provisions for bonds

(a) Extensions of time

(1) For bond where time to pay tax or deficiency has been extended, see section 6165.

(2) For bond to stay collection of a jeopardy assessment, see section 6863.

(3) For bond to stay assessment and collection prior to review of a Tax Court decision, see section 7485.

(4) For a bond to stay collection of a penalty assessed under section 6672, see section 6672(b).

(5) For bond in case of an election to postpone payment of estate tax where the value of a reversionary or remainder interest is included in the gross estate, see section 6165.

(b) Release of lien or seized property

(1) For the release of the lien provided for in section 6325 by furnishing the Secretary a bond, see section 6325(a)(2).

(2) For bond to obtain release of perishable goods which have been seized under forfeiture proceeding, see section 7324(3).

(3) For bond to release perishable goods under levy, see section 6336.

(4) For bond executed by claimant of seized goods valued at $100,000 or less, see section 7325(3).

(c) Miscellaneous

(1) For bond as a condition precedent to the allowance of the credit for accrued foreign

taxes, see section 905(c).

(2) For bonds relating to alcohol and tobacco taxes, see generally subtitle E.

(Aug. 16, 1954, ch. 736, 68A Stat. 847; Pub. L. 89–44, title VIII, §802(b)(3), June 21, 1965, 79 Stat. 159; Pub. L. 91–513, title III, §1102(e), Oct. 27, 1970, 84 Stat. 1292; Pub. L. 92–310, title II, §230(c), June 6, 1972, 86 Stat. 209; Pub. L. 93–490, §3(b)(7), Oct. 26, 1974, 88 Stat. 1467; Pub. L. 94–455, title XII, §1204(c)(10), title XIX, §1906(a)(40), (b)(13)(A), Oct. 4, 1976, 90 Stat. 1699, 1830, 1834; Pub. L. 95–628, §9(b)(2), Nov. 10, 1978, 92 Stat. 3633; Pub. L. 99–514, title XV, §1566(c), Oct. 22, 1986, 100 Stat. 2763.)

AMENDMENTS

1986—Subsec. (b)(4). Pub. L. 99–514 substituted "$100,000" for "$1,000".

1978—Subsec. (a)(4). Pub. L. 95–628 added par. (4).

1976—Subsec. (a)(4). Pub. L. 94–455, §1204(c)(10), struck out par. (4) which made reference to section 6851(e) as covering the furnishing of bond where a taxable years is closed by the Secretary or his delegate.

Subsec. (b)(1). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (d). Pub. L. 94–455, §1906(a)(40), struck out subsec. (d) which made cross references to provisions covering bonds required with respect to articles taxable under chapter B of chapter 37 processed for exportation without payment of tax, oleomargarine removed from the place of manufacture for exportation to a foreign country, and the manufacture of oleomargarine, process, renovated, or adulterated butter, and white phosphorus matches.

1974—Subsec. (d)(3)(C). Pub. L. 93–490 struck out subpar. (C) relating to manufacturers of filled cheese and which made reference to section 4833(c).

1972—Subsec. (e). Pub. L. 92–310 repealed subsec. (e) which contained cross references for personnel bonds.

1970—Subsec. (d)(3)(D). Pub. L. 91–513 struck out subpar. (D) which related to the manufacturer of opium suitable for smoking and which made reference to section 4713(b).

1965—Subsec. (d)(3)(F). Pub. L. 89–44 struck out subpar. (F) relating to producers and importers of gasoline and manufacturers and producers of lubricating oils.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective Oct. 22, 1986, see section 1566(e) of Pub. L. 99–514, set out as a note under section 7325 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–628 applicable with respect to penalties assessed more than 60 days after Nov. 10, 1978, see section 9(c) of Pub. L. 95–628, set out as a note under section 6672 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1204(c)(10) of Pub. L. 94–455 applicable with respect to action taken under section 6851, 6861, or 6862 of this title where notice and demand takes place after Feb. 28, 1977, see section 1204(d) of Pub. L. 94–455, as amended, set out as a note under section 6851 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–490 applicable to filled cheese manufactured, imported, or sold after Oct. 26, 1974, see section 3(c) of Pub. L. 93–490, set out as an Effective Date of Repeal note under section 4831 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–513 effective on first day of seventh calendar month that begins after Oct. 26, 1970, see section 1105(a) of Pub. L. 91–513, set out as an Effective Date note under section 951 of Title 21, Food and Drugs.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 applicable with respect to articles sold on or after July 1, 1965, see section 802(d)(1) of Pub. L. 89–44, set out as a note under section 4082 of this title.

SAVINGS PROVISION

Prosecutions for any violation of law occurring, and civil seizures or forfeitures and injunctive proceedings

commenced, prior to the effective date of amendment of this section by section 1102 of Pub. L. 91–513 not to be affected or abated by reason thereof, see section 1103 of Pub. L. 91–513, set out as a note under section 171 of Title 21, Food and Drugs.

CHAPTER 74—CLOSING AGREEMENTS AND COMPROMISES

Sec.
7121. Closing agreements.
7122. Compromises.
7123. Appeals dispute resolution procedures.
7124. Cross references.

AMENDMENTS

1998—Pub. L. 105–206, title III, §3465(a)(2), July 22, 1998, 112 Stat. 768, added items 7123 and 7124 and struck out former item 7123 "Cross references".

§7121. Closing agreements

(a) Authorization

The Secretary is authorized to enter into an agreement in writing with any person relating to the liability of such person (or of the person or estate for whom he acts) in respect of any internal revenue tax for any taxable period.

(b) Finality

If such agreement is approved by the Secretary (within such time as may be stated in such agreement, or later agreed to) such agreement shall be final and conclusive, and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact—

(1) the case shall not be reopened as to the matters agreed upon or the agreement modified by any officer, employee, or agent of the United States, and

(2) in any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

(Aug. 16, 1954, ch. 736, 68A Stat. 849; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsecs. (a), (b). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

§7122. Compromises

(a) Authorization

The Secretary may compromise any civil or criminal case arising under the internal revenue laws prior to reference to the Department of Justice for prosecution or defense; and the Attorney General or his delegate may compromise any such case after reference to the Department of Justice for prosecution or defense.

(b) Record

Whenever a compromise is made by the Secretary in any case, there shall be placed on file in the office of the Secretary the opinion of the General Counsel for the Department of the Treasury or his delegate, with his reasons therefor, with a statement of—

(1) The amount of tax assessed,

(2) The amount of interest, additional amount, addition to the tax, or assessable penalty, imposed by law on the person against whom the tax is assessed, and

(3) The amount actually paid in accordance with the terms of the compromise.

Notwithstanding the foregoing provisions of this subsection, no such opinion shall be required with respect to the compromise of any civil case in which the unpaid amount of tax assessed (including any interest, additional amount, addition to the tax, or assessable penalty) is less than $50,000. However, such compromise shall be subject to continuing quality review by the Secretary.

(c) Rules for submission of offers-in-compromise

(1) Partial payment required with submission

(A) Lump-sum offers

(i) In general

The submission of any lump-sum offer-in-compromise shall be accompanied by the payment of 20 percent of the amount of such offer.

(ii) Lump-sum offer-in-compromise

For purposes of this section, the term "lump-sum offer-in-compromise" means any offer of payments made in 5 or fewer installments.

(B) Periodic payment offers

(i) In general

The submission of any periodic payment offer-in-compromise shall be accompanied by the payment of the amount of the first proposed installment.

(ii) Failure to make installment during pendency of offer

Any failure to make an installment (other than the first installment) due under such offer-in-compromise during the period such offer is being evaluated by the Secretary may be treated by the Secretary as a withdrawal of such offer-in-compromise.

(2) Rules of application

(A) Use of payment

The application of any payment made under this subsection to the assessed tax or other amounts imposed under this title with respect to such tax may be specified by the taxpayer.

(B) Application of user fee

In the case of any assessed tax or other amounts imposed under this title with respect to such tax which is the subject of an offer-in-compromise to which this subsection applies, such tax or other amounts shall be reduced by any user fee imposed under this title with respect to such offer-in-compromise.

(C) Waiver authority

The Secretary may issue regulations waiving any payment required under paragraph (1) in a manner consistent with the practices established in accordance with the requirements under subsection (d)(3).

(d) Standards for evaluation of offers

(1) In general

The Secretary shall prescribe guidelines for officers and employees of the Internal Revenue Service to determine whether an offer-in-compromise is adequate and should be accepted to resolve a dispute.

(2) Allowances for basic living expenses

(A) In general

In prescribing guidelines under paragraph (1), the Secretary shall develop and publish schedules of national and local allowances designed to provide that taxpayers entering into a

compromise have an adequate means to provide for basic living expenses.

(B) Use of schedules

The guidelines shall provide that officers and employees of the Internal Revenue Service shall determine, on the basis of the facts and circumstances of each taxpayer, whether the use of the schedules published under subparagraph (A) is appropriate and shall not use the schedules to the extent such use would result in the taxpayer not having adequate means to provide for basic living expenses.

(3) Special rules relating to treatment of offers

The guidelines under paragraph (1) shall provide that—

(A) an officer or employee of the Internal Revenue Service shall not reject an offer-in-compromise from a low-income taxpayer solely on the basis of the amount of the offer,

(B) in the case of an offer-in-compromise which relates only to issues of liability of the taxpayer—

(i) such offer shall not be rejected solely because the Secretary is unable to locate the taxpayer's return or return information for verification of such liability; and

(ii) the taxpayer shall not be required to provide a financial statement, and

(C) any offer-in-compromise which does not meet the requirements of subparagraph (A)(i) or (B)(i), as the case may be, of subsection (c)(1) may be returned to the taxpayer as unprocessable.

(e) Administrative review

The Secretary shall establish procedures—

(1) for an independent administrative review of any rejection of a proposed offer-in-compromise or installment agreement made by a taxpayer under this section or section 6159 before such rejection is communicated to the taxpayer; and

(2) which allow a taxpayer to appeal any rejection of such offer or agreement to the Internal Revenue Service Office of Appeals.

(f) [1] Deemed acceptance of offer not rejected within certain period

Any offer-in-compromise submitted under this section shall be deemed to be accepted by the Secretary if such offer is not rejected by the Secretary before the date which is 24 months after the date of the submission of such offer. For purposes of the preceding sentence, any period during which any tax liability which is the subject of such offer-in-compromise is in dispute in any judicial proceeding shall not be taken into account in determining the expiration of the 24-month period.

(f) [1] Frivolous submissions, etc.

Notwithstanding any other provision of this section, if the Secretary determines that any portion of an application for an offer-in-compromise or installment agreement submitted under this section or section 6159 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.

(Aug. 16, 1954, ch. 736, 68A Stat. 849; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 104–168, title V, §503(a), July 30, 1996, 110 Stat. 1461; Pub. L. 105–206, title III, §3462(a), (c)(1), July 22, 1998, 112 Stat. 764, 766; Pub. L. 109–222, title V, §509(a), (b), May 17, 2006, 120 Stat. 362, 363; Pub. L. 109–432, div. A, title IV, §407(d), Dec. 20, 2006, 120 Stat. 2962.)

AMENDMENTS

2006—Subsec. (c). Pub. L. 109–222, §509(a), added subsec. (c). Former subsec. (c) redesignated (d).
Subsec. (d). Pub. L. 109–222, §509(a), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).
Subsec. (d)(3)(C). Pub. L. 109–222, §509(b)(1), added subpar. (C).
Subsec. (e). Pub. L. 109–222, §509(a), redesignated subsec. (d) as (e).

Subsec. (f). Pub. L. 109–432 added subsec. (f) relating to frivolous submissions.

Pub. L. 109–222, §509(b)(2), added subsec. (f) relating to deemed acceptance of offer not rejected within certain period.

1998—Subsec. (c). Pub. L. 105–206, §3462(a), added subsec. (c).

Subsec. (d). Pub. L. 105–206, §3462(c)(1), added subsec. (d).

1996—Subsec. (b). Pub. L. 104–168 substituted "$50,000. However, such compromise shall be subject to continuing quality review by the Secretary." for "$500."

1976—Subsecs. (a), (b). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–432 applicable to submissions made and issues raised after the date on which the Secretary first prescribes a list under section 6702(c) of this title, see section 407(f) of Pub. L. 109–432, set out as a note under section 6320 of this title.

Amendment by Pub. L. 109–222 applicable to offers-in-compromise submitted on and after the date which is 60 days after May 17, 2006, see section 509(d) of Pub. L. 109–222, set out as a note under section 6159 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 applicable to proposed offers-in-compromise and installment agreements submitted after July 22, 1998, see section 3462(e)(1) of Pub. L. 105–206, set out as a note under section 6331 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–168, title V, §503(b), July 30, 1996, 110 Stat. 1461, provided that: "The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [July 30, 1996]."

PREPARATION OF STATEMENT RELATING TO OFFERS-IN-COMPROMISE

Pub. L. 105–206, title III, §3462(d), July 22, 1998, 112 Stat. 766, provided that: "The Secretary of the Treasury shall prepare a statement which sets forth in simple, nontechnical terms the rights of a taxpayer and the obligations of the Internal Revenue Service relating to offers-in-compromise. Such statement shall—

"(1) advise taxpayers who have entered into a compromise of the advantages of promptly notifying the Internal Revenue Service of any change of address or marital status;

"(2) provide notice to taxpayers that in the case of a compromise terminated due to the actions of one spouse or former spouse, the Internal Revenue Service will, upon application, reinstate such compromise with the spouse or former spouse who remains in compliance with such compromise; and

"(3) provide notice to the taxpayer that the taxpayer may appeal the rejection of an offer-in-compromise to the Internal Revenue Service Office of Appeals."

[1] *So in original. Two subsecs. (f) have been enacted.*

§7123. Appeals dispute resolution procedures

(a) Early referral to appeals procedures

The Secretary shall prescribe procedures by which any taxpayer may request early referral of 1 or more unresolved issues from the examination or collection division to the Internal Revenue Service Office of Appeals.

(b) Alternative dispute resolution procedures

(1) Mediation

The Secretary shall prescribe procedures under which a taxpayer or the Internal Revenue Service Office of Appeals may request non-binding mediation on any issue unresolved at the conclusion of—

(A) appeals procedures; or

(B) unsuccessful attempts to enter into a closing agreement under section 7121 or a compromise under section 7122.

(2) Arbitration

The Secretary shall establish a pilot program under which a taxpayer and the Internal Revenue Service Office of Appeals may jointly request binding arbitration on any issue unresolved at the conclusion of—

(A) appeals procedures; or

(B) unsuccessful attempts to enter into a closing agreement under section 7121 or a compromise under section 7122.

(Added Pub. L. 105–206, title III, §3465(a)(1), July 22, 1998, 112 Stat. 768.)

PRIOR PROVISIONS

A prior section 7123 was renumbered section 7124 of this title.

§7124. Cross references

For criminal penalties for concealment of property, false statement, or falsifying and destroying records, in connection with any closing agreement, compromise, or offer of compromise, see section 7206.

(Aug. 16, 1954, ch. 736, 68A Stat. 850, §7123; Pub. L. 97–258, §3(f)(12), Sept. 13, 1982, 96 Stat. 1065; renumbered §7124, Pub. L. 105–206, title III, §3465(a)(1), July 22, 1998, 112 Stat. 767.)

AMENDMENTS

1998—Pub. L. 105–206 renumbered section 7123 of this title as this section.

1982—Subsec. (a). Pub. L. 97–258, §3(f)(12)(A), struck out heading "Criminal penalties".

Subsec. (b). Pub. L. 97–258, §3(f)(12)(B), struck out subsec. (b) which set forth cross reference to R.S. 3469 (31 U.S.C. 194) relating to compromises after judgment.

CHAPTER 75—CRIMES, OTHER OFFENSES, AND FORFEITURES

Subchapter		Sec.[1]
A.	**Crimes**	**7201**
B.	**Other offenses**	**7261**
C.	**Forfeitures**	**7301**
D.	**Miscellaneous penalty and forfeiture provisions**	**7341**

[1] *Section numbers editorially supplied.*

Subchapter A—Crimes

Part

I. General provisions.

II. Penalties applicable to certain taxes.

PART I—GENERAL PROVISIONS

Sec.

7201. Attempt to evade or defeat tax.

7202. Willful failure to collect or pay over tax.

7203. Willful failure to file return, supply information, or pay tax.

7204. Fraudulent statement or failure to make statement to employees.

7205. Fraudulent withholding exemption certificate or failure to supply information.

7206. Fraud and false statements.

7207. Fraudulent returns, statements, or other documents.

7208. Offenses relating to stamps.

7209. Unauthorized use or sale of stamps.
7210. Failure to obey summons.
7211. False statements to purchasers or lessees relating to tax.
7212. Attempts to interfere with administration of internal revenue laws.
7213. Unauthorized disclosure of information.
7213A. Unauthorized inspection of returns or return information.
7214. Offenses by officers and employees of the United States.
7215. Offenses with respect to collected taxes.
7216. Disclosure or use of information by preparers of returns.
7217. Prohibition on executive branch influence over taxpayer audits and other investigations.

AMENDMENTS

1998—Pub. L. 105–206, title I, §1105(b), July 22, 1998, 112 Stat. 711, added item 7217.

1997—Pub. L. 105–35, §2(b)(2), Aug. 5, 1997, 111 Stat. 1105, added item 7213A.

1982—Pub. L. 97–248, title III, §357(b)(2), Sept. 3, 1982, 96 Stat. 646, struck out item 7217 "Civil damages for unauthorized disclosure of returns and return information".

1976—Pub. L. 94–455, title XII, §1202(e)(2), Oct. 4, 1976, 90 Stat. 1687, added item 7217.

1971—Pub. L. 92–178, title III, §316(b), Dec. 10, 1971, 85 Stat. 529, added item 7216.

1958—Pub. L. 85–321, §3(b), Feb. 11, 1958, 72 Stat. 6, added item 7215.

§7201. Attempt to evade or defeat tax

Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than $100,000 ($500,000 in the case of a corporation), or imprisoned not more than 5 years, or both, together with the costs of prosecution.

(Aug. 16, 1954, ch. 736, 68A Stat. 851; Pub. L. 97–248, title III, §329(a), Sept. 3, 1982, 96 Stat. 618.)

AMENDMENTS

1982—Pub. L. 97–248 substituted "$100,000 ($500,000 in the case of a corporation)" for "$10,000".

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title III, §329(e), Sept. 3, 1982, 96 Stat. 619, provided that: "The amendments made by this section [amending this section and sections 7203, 7206, and 7207 of this title] shall apply to offenses committed after the date of the enactment of this Act [Sept. 3, 1982]."

§7202. Willful failure to collect or pay over tax

Any person required under this title to collect, account for, and pay over any tax imposed by this title who willfully fails to collect or truthfully account for and pay over such tax shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 5 years, or both, together with the costs of prosecution.

(Aug. 16, 1954, ch. 736, 68A Stat. 851.)

§7203. Willful failure to file return, supply information, or pay tax

Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return, keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction

thereof, shall be fined not more than $25,000 ($100,000 in the case of a corporation), or imprisoned not more than 1 year, or both, together with the costs of prosecution. In the case of any person with respect to whom there is a failure to pay any estimated tax, this section shall not apply to such person with respect to such failure if there is no addition to tax under section 6654 or 6655 with respect to such failure. In the case of a willful violation of any provision of section 6050I, the first sentence of this section shall be applied by substituting "felony" for "misdemeanor" and "5 years" for "1 year".

(Aug. 16, 1954, ch. 736, 68A Stat. 851; Pub. L. 90–364, title I, §103(e)(5), June 28, 1968, 82 Stat. 264; Pub. L. 97–248, title III, §§327, 329(b), Sept. 3, 1982, 96 Stat. 617, 618; Pub. L. 98–369, div. A, title IV, §412(b)(9), July 18, 1984, 98 Stat. 792; Pub. L. 100–690, title VII, §7601(a)(2)(B), Nov. 18, 1988, 102 Stat. 4504; Pub. L. 101–647, title XXXIII, §3303(a), Nov. 29, 1990, 104 Stat. 4918.)

AMENDMENTS

1990—Pub. L. 101–647 substituted "substituting 'felony' for 'misdemeanor' and" for "substituting".

1988—Pub. L. 100–690 inserted at end "In the case of a willful violation of any provision of section 6050I, the first sentence of this section shall be applied by substituting '5 years' for '1 year'."

1984—Pub. L. 98–369 struck out "(other than a return required under the authority of section 6015)" after "to make a return".

1982—Pub. L. 97–248, §329(b), substituted "$25,000 ($100,000 in the case of a corporation)" for "$10,000".

Pub. L. 97–248, §327, inserted last sentence providing that, in the case of any person with respect to whom there is a failure to pay any estimated tax, this section shall not apply to such person with respect to such failure if there is no addition to tax under section 6654 or 6655 with respect to such failure.

1968—Pub. L. 90–364 struck out reference to section 6016.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–647, title XXXIII, §3303(c), Nov. 29, 1990, 104 Stat. 4918, provided that: "The amendment made by subsection (a) [amending this section] shall apply to actions, and failures to act, occurring after the date of the enactment of this Act [Nov. 29, 1990]."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 applicable to actions after Nov. 18, 1988, see section 7601(a)(3) of Pub. L. 100–690, set out as a note under section 6050I of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable with respect to taxable years beginning after Dec. 31, 1984, see section 414(a)(1) of Pub. L. 98–369, set out as a note under section 6654 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 329(b) of Pub. L. 97–248 applicable to offenses committed after Sept. 3, 1982, see section 329(e) of Pub. L. 97–248, set out as a note under section 7201 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–364 applicable with respect to taxable years beginning after Dec. 31, 1967, except as provided by section 104 of Pub. L. 90–364, see section 103(f) of Pub. L. 90–364, set out as a note under section 243 of this title.

§7204. Fraudulent statement or failure to make statement to employees

In lieu of any other penalty provided by law (except the penalty provided by section 6674) any person required under the provisions of section 6051 to furnish a statement who willfully furnishes a false or fraudulent statement or who willfully fails to furnish a statement in the manner, at the time, and showing the information required under section 6051, or regulations prescribed thereunder, shall, for each such offense, upon conviction thereof, be fined not more than $1,000, or imprisoned not more than 1 year, or both.

(Aug. 16, 1954, ch. 736, 68A Stat. 852.)

§7205. Fraudulent withholding exemption certificate or failure to supply information

(a) Withholding on wages

Any individual required to supply information to his employer under section 3402 who willfully supplies false or fraudulent information, or who willfully fails to supply information thereunder which would require an increase in the tax to be withheld under section 3402, shall, in addition to any other penalty provided by law, upon conviction thereof, be fined not more than $1,000, or imprisoned not more than 1 year, or both.

(b) Backup withholding on interest and dividends

If any individual willfully makes a false certification under paragraph (1) or (2)(C) of section 3406(d), then such individual shall, in addition to any other penalty provided by law, upon conviction thereof, be fined not more than $1,000, or imprisoned not more than 1 year, or both.

(Aug. 16, 1954, ch. 736, 68A Stat. 852; Pub. L. 89–368, title I, §101(e)(5), Mar. 15, 1966, 80 Stat. 62; Pub. L. 97–34, title VII, §721(b), Aug. 13, 1981, 95 Stat. 341; Pub. L. 97–248, title III, §§306(b), 308(a), Sept. 3, 1982, 96 Stat. 588, 591; Pub. L. 98–67, title I, §§102(a), 107(b), Aug. 5, 1983, 97 Stat. 369, 382; Pub. L. 98–369, div. A, title I, §159(a), July 18, 1984, 98 Stat. 696; Pub. L. 101–239, title VII, §7711(b)(2), Dec. 19, 1989, 103 Stat. 2393.)

AMENDMENTS

1989—Subsec. (b). Pub. L. 101–239 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "If any individual willfully makes—

"(1) any false certification or affirmation on any statement required by a payor in order to meet the due diligence requirements of section 6676(b), or

"(2) a false certification under paragraph (1) or (2)(C) of section 3406(d),

then such individual shall, in addition to any other penalty provided by law, upon conviction thereof, be fined not more than $1,000, or imprisoned not more than 1 year, or both."

1984—Pub. L. 98–369 in subsecs. (a) and (b) substituted "in addition to" for "in lieu of" and struck out reference to penalty under section 6682 after "penalty provided by law".

1983—Pub. L. 98–67 designated existing provisions as subsec. (a), added subsec. (b), and repealed amendments made by Pub. L. 97–248. See 1982 Amendment note below.

1982—Pub. L. 97–248 provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, this section is amended by designating the existing provisions as subsec. (a) with a heading of "Withholding on wages", and by adding a new subsec. (b). Section 102(a), (b) of Pub. L. 98–67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§301–308) of title III of Pub. L. 97–248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 [now 1986] [this title] shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted. Subsec. (b), referred to above, read as follows:

"(B) WITHHOLDING OF INTEREST AND DIVIDENDS

"Any person who—

"(1) willfully files an exemption certificate with any payor under section 3452(f)(1)(A), which is known by him to be fraudulent or to be false as to any material matter, or

"(2) is required to furnish notice under section 3452(f)(1)(B), and willfully fails to furnish such notice in the manner and at the time required pursuant to section 3452(f)(1)(B) or the regulations prescribed thereunder,

shall, in lieu of any penalty otherwise provided, upon conviction thereof, be fined not more than $500, or imprisoned not more than 1 year, or both."

1981—Pub. L. 97–34 substituted "$1,000" for "$500".

1966—Pub. L. 89–368 substituted "section 3402" and "any other penalty provided by law (except the penalty provided by section 6682)" for "section 3402(f)" and "any penalty otherwise provided" respectively.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable to returns and statements the due date for which (determined without regard to extensions) is after Dec. 31, 1989, see section 7711(c) of Pub. L. 101–239, set out as a note

under section 6721 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §159(b), July 18, 1984, 98 Stat. 696, provided that: "The amendments made by this section [amending this section] shall apply to actions and failures to act occurring after the date of the enactment of this Act [July 18, 1984]."

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 107(b) of Pub. L. 98–67 effective Aug. 5, 1983, see section 110(c) of Pub. L. 98–67, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to acts and failures to act after Dec. 31, 1981, see section 721(d) of Pub. L. 97–34, set out as a note under section 6682 of this title.

§7206. Fraud and false statements

Any person who—

(1) Declaration under penalties of perjury

Willfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter; or

(2) Aid or assistance

Willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document; or

(3) Fraudulent bonds, permits, and entries

Simulates or falsely or fraudulently executes or signs any bond, permit, entry, or other document required by the provisions of the internal revenue laws, or by any regulation made in pursuance thereof, or procures the same to be falsely or fraudulently executed, or advises, aids in, or connives at such execution thereof; or

(4) Removal or concealment with intent to defraud

Removes, deposits, or conceals, or is concerned in removing, depositing, or concealing, any goods or commodities for or in respect whereof any tax is or shall be imposed, or any property upon which levy is authorized by section 6331, with intent to evade or defeat the assessment or collection of any tax imposed by this title; or

(5) Compromises and closing agreements

In connection with any compromise under section 7122, or offer of such compromise, or in connection with any closing agreement under section 7121, or offer to enter into any such agreement, willfully—

(A) Concealment of property

Conceals from any officer or employee of the United States any property belonging to the estate of a taxpayer or other person liable in respect of the tax, or

(B) Withholding, falsifying, and destroying records

Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax;

shall be guilty of a felony and, upon conviction thereof, shall be fined not more than $100,000 ($500,000 in the case of a corporation), or imprisoned not more than 3 years, or both, together with the costs of prosecution.

(Aug. 16, 1954, ch. 736, 68A Stat. 852; Pub. L. 97–248, title III, §329(c), Sept. 3, 1982, 96 Stat. 618.)

AMENDMENTS

1982—Pub. L. 97–248 substituted "$100,000 ($500,000 in the case of a corporation)" for "$5,000".

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to offenses committed after Sept. 3, 1982, see section 329(e) of Pub. L. 97–248, set out as a note under section 7201 of this title.

§7207. Fraudulent returns, statements, or other documents

Any person who willfully delivers or discloses to the Secretary any list, return, account, statement, or other document, known by him to be fraudulent or to be false as to any material matter, shall be fined not more than $10,000 ($50,000 in the case of a corporation), or imprisoned not more than 1 year, or both. Any person required pursuant to section 6047(b), section 6104(d), or subsection (i) or (j) of section 527 to furnish any information to the Secretary or any other person who willfully furnishes to the Secretary or such other person any information known by him to be fraudulent or to be false as to any material matter shall be fined not more than $10,000 ($50,000 in the case of a corporation), or imprisoned not more than 1 year, or both.

(Aug. 16, 1954, ch. 736, 68A Stat. 853; Pub. L. 87–792, §7(m)(3), Oct. 10, 1962, 76 Stat. 831; Pub. L. 91–172, title I, §101(e)(5), Dec. 30, 1969, 83 Stat. 524; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–603, §1(d)(5), Dec. 28, 1980, 94 Stat. 3505; Pub. L. 97–248, title III, §329(d), Sept. 3, 1982, 96 Stat. 619; Pub. L. 98–369, div. A, title IV, §491(d)(51), July 18, 1984, 98 Stat. 852; Pub. L. 100–203, title X, §10704(c), Dec. 22, 1987, 101 Stat. 1330–463; Pub. L. 105–277, div. J, title I, §1004(b)(2)(E), Oct. 21, 1998, 112 Stat. 2681–890; Pub. L. 107–276, §6(d), Nov. 2, 2002, 116 Stat. 1933.)

AMENDMENTS

2002—Pub. L. 107–276 substituted "pursuant to section 6047(b), section 6104(d), or subsection (i) or (j) of section 527" for "pursuant to subsection (b) of section 6047 or pursuant to subsection (d) of section 6104".

1998—Pub. L. 105–277 struck out "or (e)" after "subsection (d)".

1987—Pub. L. 100–203 inserted reference to subsec. (e) of section 6104.

1984—Pub. L. 98–369 struck out "or (c)" after "subsection (b)".

1982—Pub. L. 97–248 substituted "$10,000 ($50,000 in the case of a corporation)" for "$1,000" wherever appearing.

1980—Pub. L. 96–603 substituted "subsection (b) or (c) of section 6047 or pursuant to subsection (d) of section 6104" for "sections 6047(b) or (c), 6056, or 6104(d)".

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

1969—Pub. L. 91–172 substituted "sections 6047(b) or (c), 6056, or 6104(d)" for "section 6047(b) or (c)".

1962—Pub. L. 87–792 inserted sentence providing that any person required pursuant to section 6047(b) or (c) to furnish any information to the Secretary or any other person who willfully furnishes to the Secretary or such other person any information known by him to be fraudulent or to be false as to any material matter shall be fined not more than $1,000, or imprisoned not more than 1 year, or both.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–276, §6(h)(3), Nov. 2, 2002, 116 Stat. 1934, provided that: "The amendment made by subsection (d) [amending this section] shall apply to reports and notices required to be filed on or after the date of the enactment of this Act [Nov. 2, 2002]."

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–277 applicable to requests made after the later of Dec. 31, 1998, or the 60th

day after the Secretary of the Treasury first issues the regulations referred to in section 6104(d)(4) of this title, see section 1004(b)(3) of Pub. L. 105–277, set out as a note under section 6104 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to returns for years beginning after Dec. 31, 1986, and on and after Dec. 22, 1987, in case of applications submitted after July 15, 1987, or on or before July 15, 1987, if the organization has a copy of the application on July 15, 1987, see section 10704(d) of Pub. L. 100–203, set out as a note under section 6652 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to offenses committed after Sept. 3, 1982, see section 329(e) of Pub. L. 97–248, set out as a note under section 7201 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–603 applicable to taxable years beginning after Dec. 31, 1980, see section 1(f) of Pub. L. 96–603, set out as a note under section 6033 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87–792, set out as a note under section 22 of this title.

ANNUAL REPORTS

Pub. L. 110–428, §2(e), Oct. 15, 2008, 122 Stat. 4840, provided that: "The Secretary of the Treasury shall annually submit to Congress and make publicly available a report on the filing of false and fraudulent returns by individuals incarcerated in Federal and State prisons. Such report shall include statistics on the number of false and fraudulent returns associated with each Federal and State prison."

§7208. Offenses relating to stamps

Any person who—

(1) Counterfeiting

With intent to defraud, alters, forges, makes, or counterfeits any stamp, coupon, ticket, book, or other device prescribed under authority of this title for the collection or payment of any tax imposed by this title, or sells, lends, or has in his possession any such altered, forged, or counterfeited stamp, coupon, ticket, book, or other device, or makes, uses, sells, or has in his possession any material in imitation of the material used in the manufacture of such stamp, coupon, ticket, book, or other device; or

(2) Mutilation or removal

Fraudulently cuts, tears, or removes from any vellum, parchment, paper, instrument, writing, package, or article, upon which any tax is imposed by this title, any adhesive stamp or the impression of any stamp, die, plate, or other article provided, made, or used in pursuance of this title; or

(3) Use of mutilated, insufficient, or counterfeited stamps

Fraudulently uses, joins, fixes, or places to, with, or upon any vellum, parchment, paper, instrument, writing, package, or article, upon which any tax is imposed by this title,

(A) any adhesive stamp, or the impression of any stamp, die, plate, or other article, which has been cut, torn, or removed from any other vellum, parchment, paper, instrument, writing,

package, or article, upon which any tax is imposed by this title; or

(B) any adhesive stamp or the impression of any stamp, die, plate, or other article of insufficient value; or

(C) any forged or counterfeited stamp, or the impression of any forged or counterfeited stamp, die, plate, or other article; or

(4) Reuse of stamps

(A) Preparation for reuse

Willfully removes, or alters the cancellation or defacing marks of, or otherwise prepares, any adhesive stamp, with intent to use, or cause the same to be used, after it has already been used; or

(B) Trafficking

Knowingly or willfully buys, sells, offers for sale, or gives away, any such washed or restored stamp to any person for use, or knowingly uses the same; or

(C) Possession

Knowingly and without lawful excuse (the burden of proof of such excuse being on the accused) has in possession any washed, restored, altered stamp, which has been removed from any vellum, parchment, paper, instrument, writing, package, or article; or

(5) Emptied stamped packages

Commits the offense described in section 7271 (relating to disposal and receipt of stamped packages) with intent to defraud the revenue, or to defraud any person;

shall be guilty of a felony and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 5 years, or both.

(Aug. 16, 1954, ch. 736, 68A Stat. 853.)

§7209. Unauthorized use or sale of stamps

Any person who buys, sells, offers for sale, uses, transfers, takes or gives in exchange, or pledges or gives in pledge, except as authorized in this title or in regulations made pursuant thereto, any stamp, coupon, ticket, book, or other device prescribed by the Secretary under this title for the collection or payment of any tax imposed by this title, shall, upon conviction thereof, be fined not more than $1,000, or imprisoned not more than 6 months, or both.

(Aug. 16, 1954, ch. 736, 68A Stat. 854; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

§7210. Failure to obey summons

Any person who, being duly summoned to appear to testify, or to appear and produce books, accounts, records, memoranda, or other papers, as required under sections 6420(e)(2), 6421(g)(2), 6427(j)(2), 7602, 7603, and 7604(b), neglects to appear or to produce such books, accounts, records, memoranda, or other papers, shall, upon conviction thereof, be fined not more than $1,000, or imprisoned not more than 1 year, or both, together with costs of prosecution.

(Aug. 16, 1954, ch. 736, 68A Stat. 854; Apr. 2, 1956, ch. 160, §4(h), 70 Stat. 91; June 29, 1956, ch. 462, title II, §208(d)(3), 70 Stat. 396; Pub. L. 89–44, title II, §202(c)(4), June 21, 1965, 79 Stat. 139; Pub. L. 91–258, title II, §207(d)(9), May 21, 1970, 84 Stat. 249; Pub. L. 94–530, §1(c)(6), Oct. 17, 1976, 90 Stat. 2488; Pub. L. 95–599, title V, §505(c)(5), Nov. 6, 1978, 92 Stat. 2760; Pub. L.

96–223, title II, §232(d)(4)(E), Apr. 2, 1980, 94 Stat. 278; Pub. L. 97–424, title V, §515(b)(12), Jan. 6, 1983, 96 Stat. 2182; Pub. L. 98–369, div. A, title IX, §911(d)(2)(G), July 18, 1984, 98 Stat. 1007; Pub. L. 99–514, title XVII, §1703(e)(2)(G), Oct. 22, 1986, 100 Stat. 2778; Pub. L. 100–647, title I, §1017(c)(9), (12), Nov. 10, 1988, 102 Stat. 3576, 3577.)

AMENDMENTS

1988—Pub. L. 100–647, §1017(c)(12), made technical correction to language of Pub. L. 99–514, §1703(e)(2)(G), see 1986 Amendment note below.

Pub. L. 100–647, §1017(c)(9), substituted "6421(g)(2)" for "6421(f)(2)".

1986—Pub. L. 99–514, as amended by Pub. L. 100–647, §1017(c)(12), substituted "6427(j)(2)" for "6427(i)(2)".

1984—Pub. L. 98–369 substituted "6427(i)(2)" for "6427(h)(2)".

1983—Pub. L. 97–424 struck out "6424(d)(2)," after "6421(f)(2),".

1980—Pub. L. 96–223 substituted "6427(h)(2)" for "6427(g)(2)".

1978—Pub. L. 95–599 substituted "6427(g)(2)" for "6427(f)(2)".

1976—Pub. L. 94–530 substituted "6427(f)(2)" for "6427(e)(2)".

1970—Pub. L. 91–258 inserted reference to section 6427(e)(2).

1965—Pub. L. 89–44 inserted reference to section 6424(d)(2) of this title.

1956—Act June 29, 1956, inserted reference to section 6421(f)(2) of this title.

Act Apr. 2, 1956, inserted reference to section 6420(e)(2) of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to gasoline removed (as defined in section 4082 of this title as amended by section 1703 of Pub. L. 99–514) after Dec. 31, 1987, see section 1703(h) of Pub. L. 99–514, set out as a note under section 4081 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective Aug. 1, 1984, see section 911(e) of Pub. L. 98–369, set out as a note under section 6427 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–424 applicable with respect to articles sold after Jan. 6, 1983, see section 515(c) of Pub. L. 97–424, set out as a note under section 34 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–223 effective Jan. 1, 1979, see section 232(h)(2) of Pub. L. 96–223, set out as a note under section 6427 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–599 effective Jan. 1, 1979, see section 505(d) of Pub. L. 95–599, set out as a note under section 6427 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–530 effective Oct. 1, 1976, see section 1(d) of Pub. L. 94–530, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–258 effective July 1, 1970, see section 211(a) of Pub. L. 91–258, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 effective Jan. 1, 1966, see section 701(a)(1), (2), of Pub. L. 89–44, set out as a note under section 4161 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act June 29, 1956, effective June 29, 1956, see section 211 of act June 29, 1956, set out as a note under section 4041 of this title.

§7211. False statements to purchasers or lessees relating to tax

Whoever in connection with the sale or lease, or offer for sale or lease, of any article, or for the purpose of making such sale or lease, makes any statement, written or oral—

(1) intended or calculated to lead any person to believe that any part of the price at which such article is sold or leased, or offered for sale or lease, consists of a tax imposed under the authority of the United States, or

(2) ascribing a particular part of such price to a tax imposed under the authority of the United States,

knowing that such statement is false or that the tax is not so great as the portion of such price ascribed to such tax, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than $1,000, or by imprisonment for not more than 1 year, or both.

(Aug. 16, 1954, ch. 736, 68A Stat. 854.)

§7212. Attempts to interfere with administration of internal revenue laws

(a) Corrupt or forcible interference

Whoever corruptly or by force or threats of force (including any threatening letter or communication) endeavors to intimidate or impede any officer or employee of the United States acting in an official capacity under this title, or in any other way corruptly or by force or threats of force (including any threatening letter or communication) obstructs or impedes, or endeavors to obstruct or impede, the due administration of this title, shall, upon conviction thereof, be fined not more than $5,000, or imprisoned not more than 3 years, or both, except that if the offense is committed only by threats of force, the person convicted thereof shall be fined not more than $3,000, or imprisoned not more than 1 year, or both. The term "threats of force", as used in this subsection, means threats of bodily harm to the officer or employee of the United States or to a member of his family.

(b) Forcible rescue of seized property

Any person who forcibly rescues or causes to be rescued any property after it shall have been seized under this title, or shall attempt or endeavor so to do, shall, excepting in cases otherwise provided for, for every such offense, be fined not more than $500, or not more than double the value of the property so rescued, whichever is the greater, or be imprisoned not more than 2 years.

(Aug. 16, 1954, ch. 736, 68A Stat. 855.)

§7213. Unauthorized disclosure of information

(a) Returns and return information

(1) Federal employees and other persons

It shall be unlawful for any officer or employee of the United States or any person described in section 6103(n) (or an officer or employee of any such person), or any former officer or employee, willfully to disclose to any person, except as authorized in this title, any return or return information (as defined in section 6103(b)). Any violation of this paragraph shall be a felony punishable upon conviction by a fine in any amount not exceeding $5,000, or imprisonment of not

more than 5 years, or both, together with the costs of prosecution, and if such offense is committed by any officer or employee of the United States, he shall, in addition to any other punishment, be dismissed from office or discharged from employment upon conviction for such offense.

(2) State and other employees

It shall be unlawful for any person (not described in paragraph (1)) willfully to disclose to any person, except as authorized in this title, any return or return information (as defined in section 6103(b)) acquired by him or another person under subsection (d), (i)(3)(B)(i) or (7)(A)(ii), (k)(10), (l)(6), (7), (8), (9), (10), (12), (15), (16), (19), (20), or (21) or (m)(2), (4), (5), (6), or (7) of section 6103 or under section 6104(c). Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding $5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

(3) Other persons

It shall be unlawful for any person to whom any return or return information (as defined in section 6103(b)) is disclosed in a manner unauthorized by this title thereafter willfully to print or publish in any manner not provided by law any such return or return information. Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding $5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

(4) Solicitation

It shall be unlawful for any person willfully to offer any item of material value in exchange for any return or return information (as defined in section 6103(b)) and to receive as a result of such solicitation any such return or return information. Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding $5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

(5) Shareholders

It shall be unlawful for any person to whom a return or return information (as defined in section 6103(b)) is disclosed pursuant to the provisions of section 6103(e)(1)(D)(iii) willfully to disclose such return or return information in any manner not provided by law. Any violation of this paragraph shall be a felony punishable by a fine in any amount not to exceed $5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

(b) Disclosure of operations of manufacturer or producer

Any officer or employee of the United States who divulges or makes known in any manner whatever not provided by law to any person the operations, style of work, or apparatus of any manufacturer or producer visited by him in the discharge of his official duties shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution; and the offender shall be dismissed from office or discharged from employment.

(c) Disclosures by certain delegates of Secretary

All provisions of law relating to the disclosure of information, and all provisions of law relating to penalties for unauthorized disclosure of information, which are applicable in respect of any function under this title when performed by an officer or employee of the Treasury Department are likewise applicable in respect of such function when performed by any person who is a "delegate" within the meaning of section 7701(a)(12)(B).

(d) Disclosure of software

Any person who willfully divulges or makes known software (as defined in section 7612(d)(1)) to any person in violation of section 7612 shall be guilty of a felony and, upon conviction thereof, shall be fined not more than $5,000, or imprisoned not more than 5 years, or both, together with the costs of prosecution.

(e) Cross references

(1) Penalties for disclosure of information by preparers of returns

For penalty for disclosure or use of information by preparers of returns, see section 7216.

(2) Penalties for disclosure of confidential information

For penalties for disclosure of confidential information by any officer or employee of the United States or any department or agency thereof, see 18 U.S.C. 1905.

(Aug. 16, 1954, ch. 736, 68A Stat. 855; Pub. L. 85–866, title I, §90(c), Sept. 2, 1958, 72 Stat. 1666; Pub. L. 86–778, title I, §103(s), Sept. 13, 1960, 74 Stat. 940; Pub. L. 94–455, title XII, §1202(d), (h)(3), Oct. 4, 1976, 90 Stat. 1686, 1688; Pub. L. 95–600, title VII, §701(bb)(1)(C), (6), Nov. 6, 1978, 92 Stat. 2922, 2923; Pub. L. 96–249, title I, §127(a)(2)(D), May 26, 1980, 94 Stat. 366; Pub. L. 96–265, title IV, §408(a)(2)(D), June 9, 1980, 94 Stat. 468, as amended Pub. L. 96–611, §11(a)(2)(B)(iv), Dec. 28, 1980, 94 Stat. 3574; Pub. L. 96–499, title III, §302(b), Dec. 5, 1980, 94 Stat. 2604; Pub. L. 96–611, §11(a)(4)(A), Dec. 28, 1980, 94 Stat. 3574; Pub. L. 97–248, title III, §356(b)(2), Sept. 3, 1982, 96 Stat. 645; Pub. L. 97–365, §8(c)(2), Oct. 25, 1982, 96 Stat. 1754; Pub. L. 98–369, div. A, title IV, §453(b)(4), div. B, title VI, §2653(b)(4), July 18, 1984, 98 Stat. 820, 1156; Pub. L. 98–378, §21(f)(5), Aug. 16, 1984, 98 Stat. 1326; Pub. L. 100–485, title VII, §701(b)(2)(C), Oct. 13, 1988, 102 Stat. 2426; Pub. L. 100–647, title VIII, §8008(c)(2)(B), Nov. 10, 1988, 102 Stat. 3787; Pub. L. 101–239, title VI, §6202(a)(1)(C), Dec. 19, 1989, 103 Stat. 2228; Pub. L. 101–508, title V, §5111(b)(3), Nov. 5, 1990, 104 Stat. 1388–273; Pub. L. 104–168, title XII, §1206(b)(5), July 30, 1996, 110 Stat. 1473; Pub. L. 105–33, title XI, §11024(b)(8), Aug. 5, 1997, 111 Stat. 722; Pub. L. 105–35, §2(b)(1), Aug. 5, 1997, 111 Stat. 1104; Pub. L. 105–206, title III, §3413(b), July 22, 1998, 112 Stat. 754; Pub. L. 107–134, title II, §201(c)(10), Jan. 23, 2002, 115 Stat. 2444; Pub. L. 108–173, title I, §105(e)(4), title VIII, §811(c)(2)(C), Dec. 8, 2003, 117 Stat. 2167, 2369; Pub. L. 109–280, title XII, §1224(b)(5), Aug. 17, 2006, 120 Stat. 1093; Pub. L. 111–148, title I, §1414(d), Mar. 23, 2010, 124 Stat. 237; Pub. L. 112–240, title II, §209(b)(3), Jan. 2, 2013, 126 Stat. 2326.)

AMENDMENTS

2013—Subsec. (a)(2). Pub. L. 112–240 inserted "(k)(10)," before "(l)(6),".

2010—Subsec. (a)(2). Pub. L. 111–148 substituted "(20), or (21)" for "or (20)".

2006—Subsec. (a)(2). Pub. L. 109–280, which directed insertion of "or under section 6104(c)" after "6103" in subsec. (a)(2) of section 7213, without specifying the act to be amended, was executed by making the insertion in subsec. (a)(2) of this section, which is section 7213 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

2003—Subsec. (a)(2). Pub. L. 108–173, §811(c)(2)(C), substituted "(19), or (20)" for "or (19)".

Pub. L. 108–173, §105(e)(4), substituted "(16), or (19)" for "or (16)".

2002—Subsec. (a)(2). Pub. L. 107–134 substituted "(i)(3)(B)(i) or (7)(A)(ii)," for "(i)(3)(B)(i),".

1998—Subsecs. (d), (e). Pub. L. 105–206 added subsec. (d) and redesignated former subsec. (d) as (e).

1997—Subsec. (a)(2). Pub. L. 105–35 inserted "(5)," after "(m)(2), (4),".

Pub. L. 105–33 substituted "(15), or (16)" for "or (15),".

1996—Subsec. (a)(2). Pub. L. 104–168 substituted "(12), or (15)" for "or (12)".

1990—Subsec. (a)(2). Pub. L. 101–508 substituted "(6), or (7)" for "or (6)".

1989—Subsec. (a)(2). Pub. L. 101–239 substituted "(10), or (12)" for "or (10)".

1988—Subsec. (a)(2). Pub. L. 100–647 substituted "(m)(2), (4), or (6)" for "(m)(2) or (4)".

Pub. L. 100–485 substituted "(9), or (10)" for "(9), (10), or (11)".

1984—Subsec. (a)(2). Pub. L. 98–378 substituted "(10), or (11)" for "or (10)".

Pub. L. 98–369, §2653(b)(4), substituted "(9), or (10)" for "or (9)".

Pub. L. 98–369, §453(b)(4), substituted "(7), (8), or (9)" for "(7), or (8)".

1982—Subsec. (a)(2). Pub. L. 97–365 substituted "(m)(2) or (4)" for "(m)(4)".

Pub. L. 97–248 inserted "(i)(3)(B)(i)," after "under subsection (d),".

1980—Subsec. (a)(2). Pub. L. 96–611, §11(a)(4)(A), substituted "(l)(6), (7), or (8)" for "(l)(6) or (7)".

Pub. L. 96–499 substituted "person (not described in paragraph (1))" for "officer, employee, or agent, or former officer, employee, or agent, of any State (as defined in section 6103(b)(5)), any local child support enforcement agency, any educational institution, or any State food stamp agency (as defined in section 6103(l)(7)(C)" and "(m)(4) of section 6103" for "(m)(4)(B) of section 6103".

Pub. L. 96–265, §408(a)(2)(D), as amended by Pub. L. 96–611, §11(a)(2)(B)(iv), substituted "subsection

(d), (l)(6), (7), or (8), or (m)(4)(B)" for "subsection (d), (l)(6) or (7), or (m)(4)(B)".

Pub. L. 96–249 substituted "any educational institution, or any State food stamp agency (as defined in section 6103(l)(7)(C))" for "or any educational institution" and "subsection (d), (l)(6) or (7), or (m)(4)(B)" for "subsection (d), (l)(6), or (m)(4)(B)".

1978—Subsec. (a)(1). Pub. L. 95–600, §701(bb)(6)(A), inserted "willfully" before "to disclose".

Subsec. (a)(2). Pub. L. 95–600, §701(bb)(1)(C), (6)(A), inserted provision relating to educational institutions, inserted "willfully" before "to disclose", and substituted "subsection (d), (l)(6), or (m)(4)(B) of section 6103" for "section 6103(d) or (l)(6)".

Subsec. (a)(3). Pub. L. 95–600, §701(bb)(6)(B), substituted "thereafter willfully to" for "to thereafter".

Subsec. (a)(4). Pub. L. 95–600, §701(bb)(6)(C), inserted "willfully" before "to offer".

Subsec. (a)(5). Pub. L. 95–600, §701(bb)(6)(A), inserted "willfully" before "to disclose".

1976—Subsec. (a). Pub. L. 94–455, §1202(d), added pars. (3) and (4), redesignated former par. (3) as (5), and in pars. (1), (2), and (5) raised from a misdemeanor to a felony any criminal violation of the disclosure rules, increased from $1,000 to $5,000 and from one year imprisonment to five years imprisonment the maximum criminal penalties for an unauthorized disclosure of a return or return information, extended the criminal penalties to apply to unauthorized disclosures of any return or return information and not merely income returns and other financial information appearing on income returns, and extended the criminal penalties to apply to former Federal and State officers and to officers and employees of contractors having access to returns and return information in connection with the processing, storage, transmission, and reproduction of such returns and return information, and the programming, maintenance, etc., of equipment.

Subsec. (c). Pub. L. 94–455, §1202(d), redesignated subsec. (d) as (c). Former subsec. (c), covering offenses relating to the reproduction of documents, was struck out.

Subsecs. (d), (e). Pub. L. 94–455, §1202(d), (h)(3), redesignated subsec. (e) as (d) and, in par. (1) of subsec. (d) as so redesignated, substituted a cross reference to section 7216 as covering penalties for disclosure or use of information by preparers of returns for a cross reference to section 6106 as covering special provisions applicable to returns of tax under chapter 23 (relating to Federal Unemployment Tax). Former subsec. (d) redesignated (c).

1960—Subsecs. (d), (e). Pub. L. 86–778 added subsec. (d) and redesignated former subsec. (d) as (e).

1958—Subsecs. (c), (d). Pub. L. 85–866 added subsec. (c) and redesignated former subsec. (c) as (d).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 effective Aug. 17, 2006, but not applicable to requests made before such date, see section 1224(c) of Pub. L. 109–280, set out as a note under section 6103 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–134 applicable to disclosures made on or after Jan. 23, 2002, see section 201(d) of Pub. L. 107–134, set out as a note under section 6103 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 applicable to summonses issued, and software acquired, after July 22, 1998, see section 3413(e)(1) of Pub. L. 105–206, set out as an Effective Date note under section 7612 of this title.

EFFECTIVE DATE OF 1997 AMENDMENTS

Pub. L. 105–35, §2(c), Aug. 5, 1997, 111 Stat. 1105, provided that: "The amendments made by this section [enacting section 7213A of this title and amending this section] shall apply to violations occurring on and after the date of the enactment of this Act [Aug. 5, 1997]."

Amendment by Pub. L. 105–33 effective Oct. 1, 1997, except as otherwise provided in title XI of Pub. L. 105–33, see section 11721 of Pub. L. 105–33, set out as a note under section 4246 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98–378 applicable with respect to refunds payable under section 6402 of this title after Dec. 31, 1985, see section 21(g) of Pub. L. 98–378, set out as a note under section 6103 of this title.

Amendment by section 453(b)(4) of Pub. L. 98–369 effective on the first day of the first calendar month which begins more than 90 days after July 18, 1984, see section 456(a) of Pub. L. 98–369, set out as an Effective Date note under section 5101 of this title.

Amendment by section 2653(b)(4) of Pub. L. 98–369 applicable to refunds payable under section 6402 of this title after Dec. 31, 1985, see section 2653(c) of Pub. L. 98–369, as amended, set out as a note under

section 6402 of this title.

EFFECTIVE DATE OF 1982 AMENDMENTS

Amendment by Pub. L. 97–365 effective Oct. 25, 1982, see section 8(d) of Pub. L. 97–365, set out as a note under section 6103 of this title.

Amendment by Pub. L. 97–248 effective on the day after Sept. 3, 1982, see section 356(c) of Pub. L. 97–248, set out as a note under section 6103 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Pub. L. 96–611, §11(a)(4)(B), Dec. 28, 1980, 94 Stat. 3574, provided that: "The amendment made by subparagraph (A) [amending this section] shall take effect on December 5, 1980."

Amendment by Pub. L. 96–499 effective Dec. 5, 1980, see section 302(c) of Pub. L. 96–499, set out as a note under section 6103 of this title.

Amendment by Pub. L. 96–265, as amended by section 11(a)(2)(B)(iv) of Pub. L. 96–611, effective June 9, 1980, see section 11(a)(3) of Pub. L. 96–611 and section 408(a)(3) of Pub. L. 96–265, set out as notes under section 6103 of this title.

Amendment by Pub. L. 96–249 effective May 26, 1980, see section 127(a)(3) of Pub. L. 96–249, set out as a note under section 6103 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 effective Jan. 1, 1977, see section 701(bb)(8) of Pub. L. 95–600, set out as a note under section 6103 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective Jan. 1, 1977, see section 1202(i) of Pub. L. 94–455, set out as a note under section 6103 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–778 effective Sept. 13, 1960, see section 103(v)(1) of Pub. L. 86–778, set out as a note under section 402 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 effective Aug. 17, 1954, see section 1(c)(2) of Pub. L. 85–866, set out as a note under section 165 of this title.

CLARIFICATION OF CONGRESSIONAL INTENT AS TO SCOPE OF AMENDMENTS BY SECTION 2653 OF PUB. L. 98–369

For provisions that nothing in amendments by section 2653 of Pub. L. 98–369 be construed as exempting debts of corporations or any other category of persons from application of such amendments, with such amendments to extend to all Federal agencies (as defined in such amendments), see section 9402(b) of Pub. L. 98–369, set out as a note under section 6402 of this title.

§7213A. Unauthorized inspection of returns or return information

(a) Prohibitions

(1) Federal employees and other persons

It shall be unlawful for—

(A) any officer or employee of the United States, or

(B) any person described in subsection (l)(18) or (n) of section 6103 or an officer or employee of any such person,

willfully to inspect, except as authorized in this title, any return or return information.

(2) State and other employees

It shall be unlawful for any person (not described in paragraph (1)) willfully to inspect, except as authorized in this title, any return or return information acquired by such person or another person under a provision of section 6103 referred to in section 7213(a)(2) or under section

6104(c).

(b) Penalty

(1) In general

Any violation of subsection (a) shall be punishable upon conviction by a fine in any amount not exceeding $1,000, or imprisonment of not more than 1 year, or both, together with the costs of prosecution.

(2) Federal officers or employees

An officer or employee of the United States who is convicted of any violation of subsection (a) shall, in addition to any other punishment, be dismissed from office or discharged from employment.

(c) Definitions

For purposes of this section, the terms "inspect", "return", and "return information" have the respective meanings given such terms by section 6103(b).

(Added Pub. L. 105–35, §2(a), Aug. 5, 1997, 111 Stat. 1104; amended Pub. L. 107–210, div. A, title II, §202(b)(3), Aug. 6, 2002, 116 Stat. 961; Pub. L. 109–280, title XII, §1224(b)(6), Aug. 17, 2006, 120 Stat. 1093.)

AMENDMENTS

2006—Subsec. (a)(2). Pub. L. 109–280, which directed insertion of "or under section 6104(c)" after "7213(a)(2)" in subsec. (a)(2) of section 7213A, without specifying the act to be amended, was executed by making the insertion in subsec. (a)(2) of this section, which is section 7213A of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

2002—Subsec. (a)(1)(B). Pub. L. 107–210 substituted "subsection (l)(18) or (n) of section 6103" for "section 6103(n)".

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 effective Aug. 17, 2006, but not applicable to requests made before such date, see section 1224(c) of Pub. L. 109–280, set out as a note under section 6103 of this title.

EFFECTIVE DATE

Section applicable to violations occurring on and after Aug. 5, 1997, see section 2(c) of Pub. L. 105–35, set out as an Effective Date of 1997 Amendment note under section 7213 of this title.

CONSTRUCTION OF 2002 AMENDMENT

Nothing in amendment by Pub. L. 107–210, other than provisions relating to COBRA continuation coverage and reporting requirements, to be construed as creating new mandate on any party regarding health insurance coverage, see section 203(f) of Pub. L. 107–210, set out as a note under section 2918 of Title 29, Labor.

§7214. Offenses by officers and employees of the United States

(a) Unlawful acts of revenue officers or agents

Any officer or employee of the United States acting in connection with any revenue law of the United States—

(1) who is guilty of any extortion or willful oppression under color of law; or

(2) who knowingly demands other or greater sums than are authorized by law, or receives any fee, compensation, or reward, except as by law prescribed, for the performance of any duty; or

(3) who with intent to defeat the application of any provision of this title fails to perform any of the duties of his office or employment; or

(4) who conspires or colludes with any other person to defraud the United States; or

(5) who knowingly makes opportunity for any person to defraud the United States; or

(6) who does or omits to do any act with intent to enable any other person to defraud the United

States; or

(7) who makes or signs any fraudulent entry in any book, or makes or signs any fraudulent certificate, return, or statement; or

(8) who, having knowledge or information of the violation of any revenue law by any person, or of fraud committed by any person against the United States under any revenue law, fails to report, in writing, such knowledge or information to the Secretary; or

(9) who demands, or accepts, or attempts to collect, directly or indirectly as payment or gift, or otherwise, any sum of money or other thing of value for the compromise, adjustment, or settlement of any charge or complaint for any violation or alleged violation of law, except as expressly authorized by law so to do;

shall be dismissed from office or discharged from employment and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 5 years, or both. The court may in its discretion award out of the fine so imposed an amount, not in excess of one-half thereof, for the use of the informer, if any, who shall be ascertained by the judgment of the court. The court also shall render judgment against the said officer or employee for the amount of damages sustained in favor of the party injured, to be collected by execution.

(b) Interest of internal revenue officer or employee in tobacco or liquor production

Any internal revenue officer or employee interested, directly or indirectly, in the manufacture of tobacco, snuff, or cigarettes, or in the production, rectification, or redistillation of distilled spirits, shall be dismissed from office; and each such officer or employee so interested in any such manufacture or production, rectification, or redistillation or production of fermented liquors shall be fined not more than $5,000.

(c) Cross reference

For penalty on collecting or disbursing officers trading in public funds or debts of property, see 18 U.S.C. 1901.

(Aug. 16, 1954, ch. 736, 68A Stat. 856; Pub. L. 85–859, title II, §204(5), Sept. 2, 1958, 72 Stat. 1429; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsec. (a)(8). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

1958—Subsec. (c). Pub. L. 85–859 struck out a cross reference that related to penalty imposed for unlawfully removing or permitting to be removed distilled spirits from a bonded warehouse.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–859 effective Sept. 3, 1958, see section 210(a)(1) of Pub. L. 85–859, set out as Effective Date note under section 5001 of this title.

§7215. Offenses with respect to collected taxes

(a) Penalty

Any person who fails to comply with any provision of section 7512(b) shall, in addition to any other penalties provided by law, be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $5,000, or imprisoned not more than one year, or both, together with the costs of prosecution.

(b) Exceptions

This section shall not apply—

(1) to any person, if such person shows that there was reasonable doubt as to (A) whether the law required collection of tax, or (B) who was required by law to collect tax, and

(2) to any person, if such person shows that the failure to comply with the provisions of section 7512(b) was due to circumstances beyond his control.

For purposes of paragraph (2), a lack of funds existing immediately after the payment of wages (whether or not created by the payment of such wages) shall not be considered to be circumstances beyond the control of a person.

(Added Pub. L. 85–321, §2, Feb. 11, 1958, 72 Stat. 6; amended Pub. L. 97–248, title III, §§307(a)(15), 308(a), Sept. 3, 1982, 96 Stat. 590, 591; Pub. L. 98–67, title I, §102(a), Aug. 5, 1983, 97 Stat. 369.)

AMENDMENTS

1983—Subsec. (b). Pub. L. 98–67 repealed amendments made by Pub. L. 97–248. See 1982 Amendment note below.

1982—Subsec. (b). Pub. L. 97–248 provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, last sentence of subsec. (b) is amended to read as follows: "For purposes of paragraph (2), a lack of funds existing immediately after the payment of wages or amounts subject to withholding under subchapter B of chapter 24 (whether or not created by the payment of such wages or amounts) shall not be considered to be circumstances beyond the control of a person." Section 102(a), (b) of Pub. L. 98–67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§301–308) of title III of Pub. L. 97–248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 [now 1986] [this title] shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

§7216. Disclosure or use of information by preparers of returns

(a) General rule

Any person who is engaged in the business of preparing, or providing services in connection with the preparation of, returns of the tax imposed by chapter 1, or any person who for compensation prepares any such return for any other person, and who knowingly or recklessly—

(1) discloses any information furnished to him for, or in connection with, the preparation of any such return, or

(2) uses any such information for any purpose other than to prepare, or assist in preparing, any such return,

shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution.

(b) Exceptions

(1) Disclosure

Subsection (a) shall not apply to a disclosure of information if such disclosure is made—

(A) pursuant to any other provision of this title, or

(B) pursuant to an order of a court.

(2) Use

Subsection (a) shall not apply to the use of information in the preparation of, or in connection with the preparation of, State and local tax returns and declarations of estimated tax of the person to whom the information relates.

(3) Regulations

Subsection (a) shall not apply to a disclosure or use of information which is permitted by regulations prescribed by the Secretary under this section. Such regulations shall permit (subject to such conditions as such regulations shall provide) the disclosure or use of information for quality or peer reviews.

(Added Pub. L. 92–178, title III, §316(a), Dec. 10, 1971, 85 Stat. 529; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–369, div. A, title IV, §412(b)(10), July 18, 1984, 98 Stat. 792; Pub. L. 100–647, title VI, §6242(b), Nov. 10, 1988, 102 Stat. 3749; Pub.

L. 101–239, title VII, §7739(a), Dec. 19, 1989, 103 Stat. 2404.)

AMENDMENTS

1989—Subsec. (b)(3). Pub. L. 101–239 inserted at end "Such regulations shall permit (subject to such conditions as such regulations shall provide) the disclosure or use of information for quality or peer reviews."

1988—Subsec. (a). Pub. L. 100–647 substituted "and who knowingly or recklessly" for "and who".

1984—Subsec. (a). Pub. L. 98–369 struck out from introductory text "or declarations or amended declarations of estimated tax under section 6015," after "chapter 1," and struck out "or declaration" after "such return" in three places.

1976—Subsec. (b)(3). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7739(b), Dec. 19, 1989, 103 Stat. 2404, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 19, 1989]."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 applicable to disclosures or uses after Dec. 31, 1988, see section 6242(d) of Pub. L. 100–647, set out as an Effective Date note under section 6712 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable with respect to taxable years beginning after Dec. 31, 1984, see section 414(a)(1) of Pub. L. 98–369, set out as a note under section 6654 of this title.

EFFECTIVE DATE

Pub. L. 92–178, title III, §316(c), Dec. 10, 1971, 85 Stat. 530, provided that: "The amendments made by this section [enacting this section] shall take effect on the first day of the first month which begins after the date of the enactment of this Act [Dec. 10, 1971]."

§7217. Prohibition on executive branch influence over taxpayer audits and other investigations

(a) Prohibition

It shall be unlawful for any applicable person to request, directly or indirectly, any officer or employee of the Internal Revenue Service to conduct or terminate an audit or other investigation of any particular taxpayer with respect to the tax liability of such taxpayer.

(b) Reporting requirement

Any officer or employee of the Internal Revenue Service receiving any request prohibited by subsection (a) shall report the receipt of such request to the Treasury Inspector General for Tax Administration.

(c) Exceptions

Subsection (a) shall not apply to any written request made—

(1) to an applicable person by or on behalf of the taxpayer and forwarded by such applicable person to the Internal Revenue Service;

(2) by an applicable person for disclosure of return or return information under section 6103 if such request is made in accordance with the requirements of such section; or

(3) by the Secretary of the Treasury as a consequence of the implementation of a change in tax policy.

(d) Penalty

Any person who willfully violates subsection (a) or fails to report under subsection (b) shall be punished upon conviction by a fine in any amount not exceeding $5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

(e) Applicable person

For purposes of this section, the term "applicable person" means—

(1) the President, the Vice President, any employee of the executive office of the President, and any employee of the executive office of the Vice President; and

(2) any individual (other than the Attorney General of the United States) serving in a position specified in section 5312 of title 5, United States Code.

(Added Pub. L. 105–206, title I, §1105(a), July 22, 1998, 112 Stat. 711.)

PRIOR PROVISIONS

A prior section 7217, added Pub. L. 94–455, title XII, §1202(e)(1), Oct. 4, 1976, 90 Stat. 1687; amended Pub. L. 95–600, title VII, §701(bb)(7), Nov. 6, 1978, 92 Stat. 2923, related to civil damages for unauthorized disclosure of returns and return information, prior to repeal by Pub. L. 97–248, title III, §357(b)(1), (c), Sept. 3, 1982, 96 Stat. 646, applicable with respect to disclosures made after Sept. 3, 1982.

EFFECTIVE DATE

Pub. L. 105–206, title I, §1105(c), July 22, 1998, 112 Stat. 711, provided that: "The amendments made by this section [enacting this section] shall apply to requests made after the date of the enactment of this Act [July 22, 1998]."

PART II—PENALTIES APPLICABLE TO CERTAIN TAXES

Sec.
7231. Failure to obtain license for collection of foreign items.
7232. Failure to register or reregister under section 4101, false representations of registration status, etc.
[7233 to 7241. Repealed.]

AMENDMENTS

2005—Pub. L. 109–59, title XI, §11164(b)(4), Aug. 10, 2005, 119 Stat. 1976, inserted "or reregister" after "register" in item 7232.

1997—Pub. L. 105–34, title X, §1032(e)(12)(C), Aug. 5, 1997, 111 Stat. 935, added item 7232 and struck out former item 7232 "Failure to register, or false statement by manufacturer or producer of gasoline, diesel fuel, or aviation fuel".

1996—Pub. L. 104–188, title I, §1704(t)(20)(B), Aug. 20, 1996, 110 Stat. 1888, struck out "lubricating oil," after "gasoline," in item 7232.

1990—Pub. L. 101–508, title XI, §11801(c)(22)(D)(ii), Nov. 5, 1990, 104 Stat. 1388–528, struck out item 7240 "Officials investing or speculating in sugar".

1988—Pub. L. 100–647, title III, §3001(b)(3)(C), Nov. 10, 1988, 102 Stat. 3615, substituted ", lubricating oil, diesel fuel, or aviation fuel" for "or lubricating oil" in item 7232.

Pub. L. 100–418, title I, §1941(b)(3)(F), Aug. 23, 1988, 102 Stat. 1324, struck out item 7241 "Willful failure to furnish certain information regarding windfall profit tax on domestic crude oil".

1980—Pub. L. 96–223, title I, §101(e)(2), Apr. 2, 1980, 94 Stat. 252, added item 7241.

1976—Pub. L. 94–455, title XIX, §§1904(b)(7)(B)(ii), (8)(D)(ii), (9)(B)(ii), (10)(F)(ii), 1952(n)(2)(B), Oct. 4, 1976, 90 Stat. 1815, 1816, 1818, 1846, struck out items 7233 "Failure to pay, or attempt to evade payment of, tax on cotton futures, and other violations", 7234 "Violation of laws relating to oleomargarine or adulterated butter operations", 7235 "Violation of laws relating to adulterated butter and process or renovated butter", 7239 "Violations of laws relating to white phosphorus matches", and 7241 "Penalty for fraudulent equalization tax certificates".

1974—Pub. L. 93–490, §3(b)(2), Oct. 26, 1974, 88 Stat. 1467, struck out item 7236 "Violation of laws relating to filled cheese".

1970—Pub. L. 91–513, title III, §1101(b)(4)(B), Oct. 27, 1970, 84 Stat. 1292, struck out items 7237 "Violation of laws relating to narcotic drugs and to marihuana" and 7238 "Violation of laws relating to opium for smoking".

1965—Pub. L. 89–44, title VIII, §802(b)(6), June 21, 1965, 79 Stat. 159, struck out "or give bond" after "Failure to register" in item 7232.

1964—Pub. L. 88–563, §6(c)(2), Sept. 2, 1964, 78 Stat. 847, inserted item 7241.

§7231. Failure to obtain license for collection of foreign items

Any person required by section 7001 (relating to collection of certain foreign items) to obtain a license who knowingly undertakes to collect the payments described in section 7001 without having obtained a license therefor, or without complying with regulations prescribed under section 7001, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $5,000, or imprisoned not more than 1 year, or both.

(Aug. 16, 1954, ch. 736, 68A Stat. 857.)

§7232. Failure to register or reregister under section 4101, false representations of registration status, etc.

Every person who fails to register or reregister as required by section 4101, or who in connection with any purchase of any taxable fuel (as defined in section 4083) or aviation fuel falsely represents himself to be registered as provided by section 4101, or who willfully makes any false statement in an application for registration or reregistration under section 4101, shall, upon conviction thereof, be fined not more than $10,000, or imprisoned not more than 5 years, or both, together with the costs of prosecution.

(Aug. 16, 1954, ch. 736, 68A Stat. 858; Pub. L. 89–44, title VIII, §802(b)(4), June 21, 1965, 79 Stat. 159; Pub. L. 100–647, title III, §3001(b)(3)(A), (B), Nov. 10, 1988, 102 Stat. 3614; Pub. L. 104–188, title I, §1704(t)(20)(A), Aug. 20, 1996, 110 Stat. 1888; Pub. L. 105–34, title X, §1032(e)(12)(A), (B), Aug. 5, 1997, 111 Stat. 935; Pub. L. 105–206, title VI, §6010(h)(2), July 22, 1998, 112 Stat. 815; Pub. L. 108–357, title VIII, §863(b), Oct. 22, 2004, 118 Stat. 1620; Pub. L. 109–59, title XI, §11164(b)(2), Aug. 10, 2005, 119 Stat. 1975.)

AMENDMENTS

2005—Pub. L. 109–59 inserted "or reregister" after "register" in section catchline and text and "or reregistration" after "registration" in text.

2004—Pub. L. 108–357 substituted "$10,000" for "$5,000".

1998—Pub. L. 105–206 provided that amendment made by section 1032(e)(12)(A) of Pub. L. 105–34 shall be applied as if "gasoline, diesel fuel," were the material proposed to be stricken. See 1997 Amendment note below.

1997—Pub. L. 105–34, §1032(e)(12)(B), amended section catchline generally. Prior to amendment, catchline read as follows: "Failure to register, or false statement by manufacturer or producer of gasoline, diesel fuel, or aviation fuel".

Pub. L. 105–34, §1032(e)(12)(A), which directed the substitution of "any taxable fuel (as defined in section 4083)" for "gasoline, lubricating oil, diesel fuel", was executed by making the substitution for "gasoline, diesel fuel," to reflect the probable intent of Congress. See 1998 Amendment note above.

1996—Pub. L. 104–188 struck out "lubricating oil," after "gasoline," in section catchline and text.

1988—Pub. L. 100–647 substituted ", lubricating oil, diesel fuel, or aviation fuel" for "or lubricating oil" in section catchline and in text.

1965—Pub. L. 89–44 struck out "or give bond" after "Failure to register" in section catchline and "or give bond" after "register" and "and bonded" after "registered" in text.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–59 applicable to actions, or failures to act, after Aug. 10, 2005, see section 11164(c) of Pub. L. 109–59, set out as a note under section 4101 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to penalties imposed after Dec. 31, 2004, see section 863(e) of Pub. L. 108–357, set out as an Effective Date note under section 6719 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub.

L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 effective July 1, 1998, see section 1032(f)(1) of Pub. L. 105–34, as amended, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective Jan. 1, 1989, see section 3001(c) of Pub. L. 100–647, set out as a note under section 6724 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 applicable with respect to articles sold on or after July 1, 1965, see section 802(d)(1) of Pub. L. 89–44, set out as a note under section 4082 of this title.

[§7233. Repealed. Pub. L. 94–455, title XIX, §1952(n)(2)(A), Oct. 4, 1976, 90 Stat. 1846]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 858, related to failure to pay, or attempt to evade payment of, tax on cotton futures, and other violations.

EFFECTIVE DATE OF REPEAL

Repeal effective on 90th day after Oct. 4, 1976, see section 1952(o) of Pub. L. 94–455, set out as an Effective Date note under section 15b of Title 7, Agriculture.

[§7234. Repealed. Pub. L. 94–455, title XIX, §1904(b)(7)(B)(i), Oct. 4, 1976, 90 Stat. 1815]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 858, related to false branding, selling, or packing of oleomargarine, removal or defacement of stamps, marks, or brands on packages of oleomargarine or adulterated butter, failure of wholesale dealers to keep or permit inspection of books, or to render returns, and offenses involving imported oleomargarine or adulterated butter.

EFFECTIVE DATE OF REPEAL

Repeal effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 4041 of this title.

[§7235. Repealed. Pub. L. 94–455, title XIX, §1904(b)(9)(B)(i), Oct. 4, 1976, 90 Stat. 1816]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 859, related to the false branding, sale, packing, or stamping of adulterated butter, the failure of wholesale dealers to keep or permit inspection of books or to render returns, the failure to comply with provisions relating to the manufacture, storage, and marking of process or renovated butter, fraud by manufacturers, and the failure to pay the special tax on dealers in adulterated butter.

EFFECTIVE DATE OF REPEAL

Repeal effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 4041 of this title.

[§7236. Repealed. Pub. L. 93–490, §3(b)(1), Oct. 26, 1974, 88 Stat. 1466]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 860, set out acts and penalties for violations of laws relating to filled cheese.

EFFECTIVE DATE OF REPEAL

Repeal applicable to filled cheese manufactured, imported, or sold after Oct. 26, 1974, see section 3(c) of Pub. L. 93–490, set out as a note under sections 4831 to 4834 of this title.

[§§7237, 7238. Repealed. Pub. L. 91–513, title III, §1101(b)(4)(A), Oct. 27, 1970, 84 Stat. 1292]

Section 7237, acts Aug. 16, 1954, ch. 736, 68A Stat. 860; Jan. 20, 1955, ch. 1, 69 Stat. 3; July 18, 1956, ch. 629, title I, §103, 70 Stat. 568; Nov. 8, 1966, Pub. L. 89–793, title V, §501, 80 Stat. 1449, set out acts constituting violations relating to narcotic drugs and marihuana. See section 801 et seq. of Title 21, Food and Drugs.

Section 7238, act Aug. 16, 1954, ch. 736, 68A Stat. 861, set the penalty for the violation of provisions of this title relating to opium for smoking.

EFFECTIVE DATE OF REPEAL

Repeal effective on first day of seventh calendar month that begins after Oct. 26, 1970, see section 1105(a) of Pub. L. 91–513, set out as an Effective Date note under section 951 of Title 21, Food and Drugs.

SAVINGS PROVISION

Prosecutions for any violation of law occurring, and civil seizures or forfeitures and injunctive proceedings commenced, prior to the effective date of repeal of these sections by section 1101 of Pub. L. 91–513 not to be affected or abated by reason thereof, see section 1103 of Pub. L. 91–513, set out as a note under section 171 of Title 21, Food and Drugs.

[§7239. Repealed. Pub. L. 94–455, title XIX, §1904(b)(8)(D)(i), Oct. 4, 1976, 90 Stat. 1816]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 861, related to violations regarding the selling of unstamped white phosphorus matches and the use of insufficient stamps.

EFFECTIVE DATE OF REPEAL

Repeal effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 4041 of this title.

[§7240. Repealed. Pub. L. 101–508, title XI, §11801(c)(22)(D)(i), Nov. 5, 1990, 104 Stat. 1388–528]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 861; Oct. 4, 1976, Pub. L. 94–455, title XIX, §1904(b)(6)(A), 90 Stat. 1815, set forth penalties for persons who invested or speculated in sugar while acting in any official capacity in the administration of former chapter 37 of this title.

SAVINGS PROVISION

For provisions that nothing in repeal by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

[§7241. Repealed. Pub. L. 100–418, title I, §1941(b)(1), Aug. 23, 1988, 102 Stat. 1323]

Section, added Pub. L. 96–223, title I, §101(e)(1), Apr. 2, 1980, 94 Stat. 252, prescribed penalty for willful failure to furnish certain information regarding windfall profit tax on domestic crude oil.

A prior section 7241, Pub. L. 88–563, §6(b), Sept. 2, 1964, 78 Stat. 847, which related to penalty for

fraudulent equalization tax certificates, was repealed by Pub. L. 94–455, title XIX, §1904(b)(10)(F)(i), (iii), Oct. 4, 1976, 90 Stat. 1818, effective with respect to statements and certificates executed after June 30, 1974.

EFFECTIVE DATE OF REPEAL

Repeal applicable to crude oil removed from the premises on or after Aug. 23, 1988, see section 1941(c) of Pub. L. 100–418, set out as an Effective Date of 1988 Amendment note under section 164 of this title.

Subchapter B—Other Offenses

Sec.
7261. Representation that retailers' excise tax is excluded from price of article.
7262. Violation of occupational tax laws relating to wagering—failure to pay special tax.
[7263 to 7267. Repealed.]
7268. Possession with intent to sell in fraud of law or to evade tax.
7269. Failure to produce records.
7270. Insurance policies.
7271. Penalties for offenses relating to stamps.
7272. Penalty for failure to register or reregister.
7273. Penalties for offenses relating to special taxes.
[7274. Repealed.]
7275. Penalty for offenses relating to certain airline tickets and advertising.

AMENDMENTS

2005—Pub. L. 109–59, title XI, §11164(b)(4), Aug. 10, 2005, 119 Stat. 1976, inserted "or reregister" after "register" in item 7272.

1976—Pub. L. 94–455, title XIX, §§1904(b)(7)(C)(ii), (8)(E)(ii), (9)(C)(ii), 1952(n)(3)(B), Oct. 4, 1976, 90 Stat. 1815, 1816, 1846, struck out items 7263 "Penalties relating to cotton futures", 7264 "Offenses relating to renovated or adulterated butter", 7265 "Other offenses relating to oleomargarine or adulterated butter operations", 7267 "Offenses relating to white phosphorus matches", and 7274 "Penalty for offenses relating to white phosphorus matches".

1974—Pub. L. 93–490, §3(b)(4), Oct. 26, 1974, 88 Stat. 1467, struck out item 7266 "Offenses relating to filled cheese".

1970—Pub. L. 91–258, title II, §203(c)(2), May 21, 1970, 84 Stat. 239, added item 7275.

1965—Pub. L. 89–44, title VI, §601(i), June 21, 1965, 79 Stat. 155, struck out item 7275 "Failure to print correct price on tickets".

§7261. Representation that retailers' excise tax is excluded from price of article

Whoever, in connection with the sale or lease, or offer for sale or lease, of any article taxable under chapter 31, makes any statement, written or oral, in advertisement or otherwise, intended or calculated to lead any person to believe that the price of the article does not include the tax imposed by chapter 31, shall on conviction thereof be fined not more than $1,000.

(Aug. 16, 1954, ch. 736, 68A Stat. 862.)

§7262. Violation of occupational tax laws relating to wagering—failure to pay special tax

Any person who does any act which makes him liable for special tax under subchapter B of chapter 35 without having paid such tax, shall, besides being liable to the payment of the tax, be fined not less than $1,000 and not more than $5,000.

(Aug. 16, 1954, ch. 736, 68A Stat. 862.)

[§7263. Repealed. Pub. L. 94–455, title XIX, §1952(n)(3)(A), Oct. 4, 1976, 90 Stat. 1846]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 862, provided penalties for violations related to cotton futures.

EFFECTIVE DATE OF REPEAL

Repeal effective on 90th day after Oct. 4, 1976, see section 1952(o) of Pub. L. 94–455, set out as an Effective Date note under section 15b of Title 7, Agriculture.

[§7264. Repealed. Pub. L. 94–455, title XIX, §1904(b)(9)(C)(i), Oct. 4, 1976, 90 Stat. 1816]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 863, provided the penalty for offenses relating to renovated or adulterated butter.

EFFECTIVE DATE OF REPEAL

Repeal effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 4041 of this title.

[§7265. Repealed. Pub. L. 94–455, title XIX, §1904(b)(7)(C)(i), Oct. 4, 1976, 90 Stat. 1815]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 863, provided penalties for offenses relating to oleomargarine or adulterated butter operations.

EFFECTIVE DATE OF REPEAL

Repeal effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 4041 of this title.

[§7266. Repealed. Pub. L. 93–490, §3(b)(3), Oct. 26, 1974, 88 Stat. 1467]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 863, set out offenses and penalties relating to filled cheese.

EFFECTIVE DATE OF REPEAL

Repeal applicable to filled cheese manufactured, imported, or sold after Oct. 26, 1974, see section 3(c) of Pub. L. 93–490, set out as a note under sections 4831 to 4834 of this title.

[§7267. Repealed. Pub. L. 94–455, title XIX, §1904(b)(8)(E)(i), Oct. 4, 1976, 90 Stat. 1816]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 864, provided penalties for offenses relating to white phosphorus matches.

EFFECTIVE DATE OF REPEAL

Repeal effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 4041 of this title.

§7268. Possession with intent to sell in fraud of law or to evade tax

Every person who shall have in his custody or possession any goods, wares, merchandise, articles,

or objects on which taxes are imposed by law, for the purpose of selling the same in fraud of the internal revenue laws, or with design to avoid payment of the taxes imposed thereon, shall be liable to a penalty of $500 or not less than double the amount of taxes fraudulently attempted to be evaded.

(Aug. 16, 1954, ch. 736, 68A Stat. 865.)

§7269. Failure to produce records

Whoever fails to comply with any duty imposed upon him by section 6018, 6036 (in the case of an executor), or 6075(a), or, having in his possession or control any record, file, or paper, containing or supposed to contain any information concerning the estate of the decedent, or, having in his possession or control any property comprised in the gross estate of the decedent, fails to exhibit the same upon request to the Secretary who desires to examine the same in the performance of his duties under chapter 11 (relating to estate taxes), shall be liable to a penalty of not exceeding $500, to be recovered, with costs of suit, in a civil action in the name of the United States.

(Aug. 16, 1954, ch. 736, 68A Stat. 865; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

§7270. Insurance policies

Any person who fails to comply with the requirements of section 4374 (relating to liability for tax on policies issued by foreign insurers), with intent to evade the tax shall, in addition to other penalties provided therefor, pay a fine of double the amount of the tax.

(Aug. 16, 1954, ch. 736, 68A Stat. 865; Pub. L. 94–455, title XIX, §1904(b)(5)(A), Oct. 4, 1976, 90 Stat. 1815.)

AMENDMENTS

1976—Pub. L. 94–455 substituted "liability for tax on policies issued by foreign insurers" for "the affixing of stamps on insurance policies, etc.".

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94–455, set out as a note under section 4041 of this title.

§7271. Penalties for offenses relating to stamps

Any person who with respect to any tax payable by stamps—

(1) Failure to attach or cancel stamps, etc.

Fails to comply with rules or regulations prescribed pursuant to section 6804 (relating to attachment, cancellation, etc., of stamps), unless such failure is shown to be due to reasonable cause and not willful neglect; or

(2) Instruments

Makes, signs, issues, or accepts, or causes to be made, signed, issued, or accepted, any instrument, document, or paper of any kind or description whatsoever without the full amount of tax thereon being duly paid; or

(3) Disposal and receipt of stamped packages

In the case of any container which is stamped, branded, or marked (whether or not under authority of law) in such manner as to show that the provisions of the internal revenue laws with

respect to the contents or intended contents thereof have been complied with, and which is empty or contains any contents other than contents therein when the container was lawfully stamped, branded, or marked—

(A) Transfers or receives (whether by sale, gift, or otherwise) such container knowing it to be empty or to contain such other contents; or

(B) Stamps, brands, or marks such container, or otherwise produces such as stamped, branded, or marked container, knowing it to be empty or to contain such other contents;

shall be liable for each such offense to a penalty of $50.

(Aug. 16, 1954, ch. 736, 68A Stat. 865; Pub. L. 94–455, title XIX, §1906(a)(41), Oct. 4, 1976, 90 Stat. 1830.)

AMENDMENTS

1976—Pars. (2) to (4). Pub. L. 94–455 redesignated pars. (3) and (4) as (2) and (3), respectively. Former par. (2), which related to persons who manufactured or imported and sold, or offered for sale, or caused to be manufactured or imported and sold, or offered for sale, any playing card, package, or other article without the full amount of tax being paid, was struck out.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1906(d)(1) of Pub. L. 94–455, set out as a note under section 6013 of this title.

§7272. Penalty for failure to register or reregister

(a) In general

Any person (other than persons required to register under subtitle E, or persons engaging in a trade or business on which a special tax is imposed by such subtitle) who fails to register with the Secretary as required by this title or by regulations issued thereunder shall be liable to a penalty of $50 ($10,000 in the case of a failure to register or reregister under section 4101).

(b) Cross references

For provisions relating to persons required by this title to register, see sections 4101, 4412, and 7011.

(Aug. 16, 1954, ch. 736, 68A Stat. 866; Pub. L. 85–475, §4(b)(8), June 30, 1958, 72 Stat. 260; Pub. L. 85–859, title II, §204(6), (7), Sept. 2, 1958, 72 Stat. 1429; Pub. L. 89–44, title VI, §601(h), June 21, 1965, 79 Stat. 155; Pub. L. 94–455, title XIX, §§1904(b)(8)(F), 1906(a)(42), (b)(13)(A), Oct. 4, 1976, 90 Stat. 1816, 1830, 1834; Pub. L. 108–357, title VIII, §863(a), Oct. 22, 2004, 118 Stat. 1619; Pub. L. 109–59, title XI, §11164(b)(3), Aug. 10, 2005, 119 Stat. 1975.)

AMENDMENTS

2005—Pub. L. 109–59, §11164(b)(3)(B), inserted "or reregister" after "register" in section catchline.

Subsec. (a). Pub. L. 109–59, §11164(b)(3)(A), inserted "or reregister" after "failure to register".

2004—Subsec. (a). Pub. L. 108–357 inserted "($10,000 in the case of a failure to register under section 4101)" after "$50".

1976—Subsec. (a). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (b). Pub. L. 94–455, §§1904(b)(8)(F), 1906(a)(42), struck out "4722, 4753, 4804(d)," after "4412,".

1965—Subsec. (b). Pub. L. 89–44 struck out "4455," after "4412,".

1958—Subsec. (a). Pub. L. 85–859, §204(6), excluded persons required to register under subtitle E and persons engaging in a trade or business on which a special tax is imposed by such subtitle.

Subsec. (b). Pub. L. 85–859, §204(7), struck out references to sections 5802 and 5841 of this title.

Subsec. (b). Pub. L. 85–475 struck out reference to section 4273.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–59 applicable to actions, or failures to act, after Aug. 10, 2005, see section 11164(c) of Pub. L. 109–59, set out as a note under section 4101 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to penalties imposed after Dec. 31, 2004, see section 863(e) of Pub. L. 108–357, set out as an Effective Date note under section 6719 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1904(b)(8)(F) of Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94–455, set out as a note under section 4041 of this title.

Amendment by section 1906(a)(42), (b)(13)(A) of Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1906(d)(1) of Pub. L. 94–455, set out as a note under section 6013 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 to take effect in a manner consistent with effective date of change of tax provision to which related, see section 701(e) of Pub. L. 89–44, set out as a note under section 6103 of this title.

EFFECTIVE DATE OF 1958 AMENDMENTS

Amendment by Pub. L. 85–859 effective Sept. 3, 1958, see section 210(a)(1) of Pub. L. 85–859, set out as an Effective Date note under section 5001 of this title.

For effective date of amendment by Pub. L. 85–475, see section 4(c) of Pub. L. 85–475, set out as a note under section 6415 of this title.

§7273. Penalties for offenses relating to special taxes

Any person who shall fail to place and keep stamps denoting the payment of the special tax as provided in section 6806 shall be liable to a penalty (not less than $10) equal to the special tax for which his business rendered him liable, unless such failure is shown to be due to reasonable cause. If such failure to comply with section 6806 is through willful neglect or refusal, then the penalty shall be double the amount above prescribed.

(Aug. 16, 1954, ch. 736, 68A Stat. 866; Pub. L. 90–618, title II, §205, Oct. 22, 1968, 82 Stat. 1235.)

AMENDMENTS

1968—Pub. L. 90–618 redesignated former subsec. (a) as existing provisions, struck out heading "General rule", all references to subsecs. (a) or (b) of section 6806 of this title, provision that nothing in this subsec. affects the liability of any person doing any act, etc., upon which a special tax is imposed for such special tax, and struck out subsec. (b) setting forth penalties for the failure to comply with the provisions of section 6806(c) of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–618 effective Oct. 22, 1968, see section 207 of Pub. L. 90–618, set out as an Effective Date note under section 5801 of this title.

[§7274. Repealed. Pub. L. 94–455, title XIX, §1904(b)(8)(E)(i), Oct. 4, 1976, 90 Stat. 1816]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 866, provided penalties for offenses relating to white phosphorus matches.

EFFECTIVE DATE OF REPEAL

Repeal effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 4041 of this title.

§7275. Penalty for offenses relating to certain airline tickets and advertising

(a) Tickets

In the case of transportation by air all of which is taxable transportation (as defined in section 4262), the ticket for such transportation shall show the total of—

(1) the amount paid for such transportation, and

(2) the taxes imposed by subsections (a) and (b) of section 4261.

(b) Advertising

In the case of transportation by air all of which is taxable transportation (as defined in section 4262) or would be taxable transportation if section 4262 did not include subsection (b) thereof, any advertising made by or on behalf of any person furnishing such transportation (or offering to arrange such transportation) which states the cost of such transportation shall—

(1) state such cost as the total of (A) the amount to be paid for such transportation, and (B) the taxes imposed by sections 4261(a), (b), and (c), and

(2) if any such advertising states separately the amount to be paid for such transportation or the amount of such taxes, shall [1] state such total at least as prominently as the more prominently stated of the amount to be paid for such transportation or the amount of such taxes and shall describe such taxes substantially as: "user taxes to pay for airport construction and airway safety and operations."

(c) Non-tax charges

(1) In general

In the case of transportation by air for which disclosure on the ticket or advertising for such transportation of the amounts paid for passenger taxes is required by subsection (a)(2) or (b)(1)(B), if such amounts are separately disclosed, it shall be unlawful for the disclosure of such amounts to include any amounts not attributable to such taxes.

(2) Inclusion in transportation cost

Nothing in this subsection shall prohibit the inclusion of amounts not attributable to the taxes imposed by subsection (a), (b), or (c) of section 4261 in the disclosure of the amount paid for transportation as required by subsection (a)(1) or (b)(1)(A), or in a separate disclosure of amounts not attributable to such taxes.

(d) Penalty

Any person who violates any provision of subsection (a), (b), or (c) is, for each violation, guilty of a misdemeanor, and upon conviction thereof shall be fined not more than $100.

(Added Pub. L. 91–258, title II, §203(c)(1), May 21, 1970, 84 Stat. 239; amended Pub. L. 91–680, §3, Jan. 12, 1971, 84 Stat. 2064; Pub. L. 97–248, title II, §281A(b)(1), Sept. 3, 1982, 96 Stat. 567; Pub. L. 112–95, title XI, §1104(a), Feb. 14, 2012, 126 Stat. 151.)

PRIOR PROVISIONS

A prior section 7275, act Aug. 16, 1954, ch. 736, 68 Stat. 866, related to cross references, prior to repeal by Pub. L. 89–44, title VI, §601(i), June 21, 1965, 79 Stat. 155.

AMENDMENTS

2012—Subsecs. (c), (d). Pub. L. 112–95 added subsec. (c), redesignated former subsec. (c) as (d), and, in subsec. (d), substituted "subsection (a), (b), or (c)" for "subsection (a) or (b)".

1982—Subsec. (a). Pub. L. 97–248 redesignated former par. (1) as pars. (1) and (2) and struck out former par. (2) which provided that a ticket for transportation, if it showed amounts paid with respect to any segment of such transportation, had to comply with former par. (1) with respect to such segments as well as with respect to the sum of the segments.

1971—Subsec. (a)(1). Pub. L. 91–680, §3(a)(1), inserted "and" after "and (b),".

Subsec. (a)(2), (3). Pub. L. 91–680, §3(a)(2), (3), redesignated par. (3) as (2), and struck out reference to par. (2). Former par. (2), which prohibited airline tickets from separately stating the amount paid for the air transportation and the amount paid for taxes, was struck out.

Subsec. (b)(1). Pub. L. 91–680, §3(b), struck out "only" after "state such cost".

Subsec. (b)(2). Pub. L. 91–680, §3(b), substituted provisions authorizing advertising to separately state in the prescribed manner the amount paid for the air transportation and the amount paid for taxes, for provisions prohibiting advertising from separately stating the amount paid for the air transportation and the amount paid for taxes.

EFFECTIVE DATE OF 2012 AMENDMENT

Pub. L. 112–95, title XI, §1104(b), Feb. 14, 2012, 126 Stat. 151, provided that: "The amendments made by this section [amending this section] shall apply to taxable transportation provided after March 31, 2012."

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title II, §281A(b)(2), Sept. 3, 1982, 96 Stat. 568, as amended by Pub. L. 98–369, div. A, title VII, §714(b), July 18, 1984, 98 Stat. 961, provided that: "The amendment made by paragraph (1) [amending this section] shall apply with respect to transportation beginning after the date of the enactment of this Act [Sept. 3, 1982]."

EFFECTIVE DATE OF 1971 AMENDMENT

Pub. L. 91–680, §4, Jan. 12, 1971, 84 Stat. 2065, provided that: "The amendments made by the third section of this Act [amending this section] shall apply to transportation beginning after June 30, 1970."

EFFECTIVE DATE

Section applicable to transportation beginning after June 30, 1970, see section 211(b) of Pub. L. 91–258, set out as Effective Date of 1970 Amendment note under section 4041 of this title.

[1] So in original. The word "shall" probably should not appear.

Subchapter C—Forfeitures

Part

I. Property subject to forfeiture.

II. Provisions common to forfeitures.

PART I—PROPERTY SUBJECT TO FORFEITURE

Sec.

7301. Property subject to tax.

7302. Property used in violation of internal revenue laws.

7303. Other property subject to forfeiture.

7304. Penalty for fraudulently claiming drawback.

§7301. Property subject to tax

(a) Taxable articles

Any property on which, or for or in respect whereof, any tax is imposed by this title which shall be found in the possession or custody or within the control of any person, for the purpose of being sold or removed by him in fraud of the internal revenue laws, or with design to avoid payment of such tax, or which is removed, deposited, or concealed, with intent to defraud the United States of such tax or any part thereof, may be seized, and shall be forfeited to the United States.

(b) Raw materials

All property found in the possession of any person intending to manufacture the same into property of a kind subject to tax for the purpose of selling such taxable property in fraud of the internal revenue laws, or with design to evade the payment of such tax, may also be seized, and shall be forfeited to the United States.

(c) Equipment

All property whatsoever, in the place or building, or any yard or enclosure, where the property described in subsection (a) or (b) is found, or which is intended to be used in the making of property described in subsection (a), with intent to defraud the United States of tax or any part thereof, on the property described in subsection (a) may also be seized, and shall be forfeited to the United States.

(d) Packages

All property used as a container for, or which shall have contained, property described in subsection (a) or (b) may also be seized, and shall be forfeited to the United States.

(e) Conveyances

Any property (including aircraft, vehicles, vessels, or draft animals) used to transport or for the deposit or concealment of property described in subsection (a) or (b), or any property used to transport or for the deposit or concealment of property which is intended to be used in the making or packaging of property described in subsection (a), may also be seized, and shall be forfeited to the United States.

(Aug. 16, 1954, ch. 736, 68A Stat. 867; Pub. L. 85–859, title II, §204(8), Sept. 2, 1958, 72 Stat. 1429.)

AMENDMENTS

1958—Subsec. (e). Pub. L. 85–859 included property used to transport or for the deposit or concealment of property which is intended to be used in the making or packaging of property described in subsec. (a).

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–859 effective Sept. 3, 1958, see section 210(a)(1) of Pub. L. 85–859, set out as an Effective Date note under section 5001 of this title.

§7302. Property used in violation of internal revenue laws

It shall be unlawful to have or possess any property intended for use in violating the provisions of the internal revenue laws, or regulations prescribed under such laws, or which has been so used, and no property rights shall exist in any such property. A search warrant may issue as provided in chapter 205 of title 18 of the United States Code and the Federal Rules of Criminal Procedure for the seizure of such property. Nothing in this section shall in any manner limit or affect any criminal or forfeiture provision of the internal revenue laws, or of any other law. The seizure and forfeiture of any property under the provisions of this section and the disposition of such property subsequent to seizure and forfeiture, or the disposition of the proceeds from the sale of such property, shall be in accordance with existing laws or those hereafter in existence relating to seizures, forfeitures, and disposition of property or proceeds, for violation of the internal revenue laws.

(Aug. 16, 1954, ch. 736, 68A Stat. 867.)

REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in text, are set out in the Appendix to Title 18, Crimes and Criminal Procedure.

CONSTITUTIONALITY

For information regarding constitutionality of section 7302 of act Aug. 16, 1954, see Congressional Research Service, The Constitution of the United States of America: Analysis and Interpretation, Appendix 1, Acts of Congress Held Unconstitutional in Whole or in Part by the Supreme Court of the United States.

§7303. Other property subject to forfeiture

There may be seized and forfeited to the United States the following:

(1) Counterfeit stamps

Every stamp involved in the offense described in section 7208 (relating to counterfeit, reused,

cancelled, etc., stamps), and the vellum, parchment, document, paper, package, or article upon which such stamp was placed or impressed in connection with such offense.

(2) False stamping of packages

Any container involved in the offense described in section 7271 (relating to disposal of stamped packages), and of the contents of such container.

(3) Fraudulent bonds, permits, and entries

All property to which any false or fraudulent instrument involved in the offense described in section 7207 relates.

(Aug. 16, 1954, ch. 736, 68A Stat. 868; Pub. L. 85–881, §1(c), Sept. 2, 1958, 72 Stat. 1704; Pub. L. 93–490, §3(b)(5), Oct. 26, 1974, 88 Stat. 1467; Pub. L. 94–455, title XIX, §1904(b)(8)(G), (9)(D), Oct. 4, 1976, 90 Stat. 1816.)

AMENDMENTS

1976—Par. (2). Pub. L. 94–455, §1904(b)(9)(D), redesignated par. (7) as (2). Former par. (2), which related to oleomargarine or filled cheese adjudged to contain deleterious ingredients, was repealed. See 1958 Amendment note below.

Par. (3). Pub. L. 94–455, §1904(b)(9)(D), redesignated par. (8) as (3). Former par. (3), relating to offenses by manufacturers or importers of or wholesale dealers in oleomargarine or adulterated butter, was struck out.

Par. (4). Pub. L. 94–455, §1904(b)(9)(D), struck out par. (4) which related to the purchase or receipt of adulterated butter.

Par. (5). Pub. L. 94–455, §1904(b)(9)(D), struck out par. (5) which related to packages of oleomargarine found without required stamps or marks.

Par. (6). Pub. L. 94–455, §1904(b)(8)(G), struck out par. (6) which related to white phosphorus matches.

Pars. (7), (8). Pub. L. 94–455, §1904(b)(9)(D), redesignated pars. (7) and (8) as (2) and (3), respectively.

1974—Par. (4). Pub. L. 93–490 substituted provisions relating to purchase or receipt of adulterated butter and payment of tax under section 4821 of this title for provisions relating to purchase or receipt of filled cheese or adulterated butter and payment of tax under section 4821 or 4841 of this title.

Par. (5). Pub. L. 93–490 substituted provisions relating to packages of oleomargarine subject to tax under subchapter F of chapter 38 of this title for provisions relating to oleomargarine or filled cheese subject to tax under subchapter F of chapter 38 or part II of subchapter C of chapter 39 of this title.

1958—Pub. L. 85–881 repealed par. (2) which related to oleomargarine or filled cheese adjudged to contain deleterious ingredients.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94–455, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–490 applicable to filled cheese manufactured, imported, or sold after Oct. 26, 1974, see section 3(c) of Pub. L. 93–490, set out as an Effective Date of Repeal note under sections 4831 to 4834 of this title.

§7304. Penalty for fraudulently claiming drawback

Whenever any person fraudulently claims or seeks to obtain an allowance of drawback on goods, wares, or merchandise on which no internal tax shall have been paid, or fraudulently claims any greater allowance of drawback than the tax actually paid, he shall forfeit triple the amount wrongfully or fraudulently claimed or sought to be obtained, or the sum of $500, at the election of the Secretary.

(Aug. 16, 1954, ch. 736, 68A Stat. 869; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

PART II—PROVISIONS COMMON TO FORFEITURES

Sec.
7321. Authority to seize property subject to forfeiture.
7322. Delivery of seized personal property to United States marshal.
7323. Judicial action to enforce forfeiture.
7324. Special disposition of perishable goods.
7325. Personal property valued at $100,000 or less.
7326. Disposal of forfeited or abandoned property in special cases.
7327. Customs laws applicable.
7328. Cross references.

AMENDMENTS

1986—Pub. L. 99–514, title XV, §1566(d), Oct. 22, 1986, 100 Stat. 2763, substituted "$100,000" for "$2,500" in item 7325.

1976—Pub. L. 94–455, title XIX, §1904(b)(8)(H)(ii), Oct. 4, 1976, 90 Stat. 1816, struck out item 7328 "Confiscation of matches exported" and redesignated item 7329 as 7328.

1958—Pub. L. 85–859, title II, §204(11), Sept. 2, 1958, 72 Stat. 1429, substituted "$2,500" for "$1,000" in item 7325.

§7321. Authority to seize property subject to forfeiture

Any property subject to forfeiture to the United States under any provision of this title may be seized by the Secretary.

(Aug. 16, 1954, ch. 736, 68A Stat. 869; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

§7322. Delivery of seized personal property to United States marshal

Any forfeitable property which may be seized under the provisions of this title may, at the option of the Secretary, be delivered to the United States marshal of the district, and remain in the care and custody and under the control of such marshal, pending disposal thereof as provided by law.

(Aug. 16, 1954, ch. 736, 68A Stat. 869; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

§7323. Judicial action to enforce forfeiture

(a) Nature and venue

The proceedings to enforce such forfeitures shall be in the nature of a proceeding in rem in the United States District Court for the district where such seizure is made.

(b) Service of process when property has been returned under bond

In case bond as provided in section 7324(3) shall have been executed and the property returned before seizure thereof by virtue of process in the proceedings in rem authorized in subsection (a) of this section, the marshal shall give notice of pendency of proceedings in court to the parties executing said bond, by personal service or publication, and in such manner and form as the court

may direct, and the court shall thereupon have jurisdiction of said matter and parties in the same manner as if such property had been seized by virtue of the process aforesaid.

(c) Cost of seizure taxable

The cost of seizure made before process issues shall be taxable by the court.

(Aug. 16, 1954, ch. 736, 68A Stat. 869.)

§7324. Special disposition of perishable goods

When any property which is seized under the provisions of section 7301 or section 7302 is liable to perish or become greatly reduced in price or value by keeping, or when it cannot be kept without great expense—

(1) Application for examination

The owner thereof, or the United States marshal of the district, may apply to the Secretary to examine it; and

(2) Appraisal

If, in the opinion of the Secretary, it shall be necessary that such property should be sold to prevent such waste or expense, the Secretary shall appraise the same; and thereupon

(3) Return to owner under bond

The owner shall have such property returned to him upon giving bond in an amount equal to such appraised value to abide the final order, decree, or judgment of the court having cognizance of the case, and to pay the amount of said appraised value to the Secretary, the United States marshal, or otherwise, as may be ordered and directed by the court, which bond shall be filed by the Secretary with the United States attorney for the district in which the proceedings in rem authorized in section 7323 may be commenced.

(4) Sale in absence of bond

(A) Order to sell

If such owner shall neglect or refuse to give such bond, the Secretary shall issue to any Treasury officer or employee or to the United States marshal an order to sell the same.

(B) Manner of sale

Such Treasury officer or employee or the marshal shall as soon as practicable make public sale of such property in accordance with such regulations as may be prescribed by the Secretary.

(C) Disposition of proceeds

The proceeds of the sale, after deducting the reasonable costs of the seizure and sale, shall be paid to the court to abide its final order, decree, or judgment.

(5) Form of bond and sureties

For provisions relating to form and sureties on bonds, see section 7101.

(Aug. 16, 1954, ch. 736, 68A Stat. 870; Pub. L. 85–859, title II, §204(9), Sept. 2, 1958, 72 Stat. 1429; Pub. L. 85–866, title I, §78, Sept. 2, 1958, 72 Stat. 1662; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pars. (1) to (4). Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.
1958—Par. (3). Pub. L. 85–866 struck out "district" before "attorney".
Pub. L. 85–859 included property seized under section 7302 of this title.

EFFECTIVE DATE OF 1958 AMENDMENTS

Amendment by Pub. L. 85–866 effective Aug. 17, 1954, see section 1(c)(2) of Pub. L. 85–866, set out as a

note under section 165 of this title.

Amendment by Pub. L. 85–859 effective Sept. 3, 1958, see section 210(a)(1) of Pub. L. 85–859, set out as an Effective Date note under section 5001 of this title.

§7325. Personal property valued at $100,000 or less

In all cases of seizure of any goods, wares, or merchandise as being subject to forfeiture under any provision of this title which, in the opinion of the Secretary, are of the appraised value of $100,000 or less, the Secretary shall, except in cases otherwise provided, proceed as follows:

(1) List and appraisement

The Secretary shall cause a list containing a particular description of the goods, wares, or merchandise seized to be prepared in duplicate, and an appraisement thereof to be made by three sworn appraisers, to be selected by the Secretary who shall be respectable and disinterested citizens of the United States residing within the internal revenue district wherein the seizure was made. Such list and appraisement shall be properly attested by the Secretary and such appraisers. Each appraiser shall be allowed for his services such compensation as the Secretary shall by regulations prescribe, to be paid in the manner similar to that provided for other necessary charges incurred in collecting internal revenue.

(2) Notice of seizure

If such goods are found by such appraisers to be of the value of $100,000 or less, the Secretary shall publish a notice for 3 weeks, in some newspaper of the district where the seizure was made, describing the articles and stating the time, place, and cause of their seizure, and requiring any person claiming them to appear and make such claim within 30 days from the date of the first publication of such notice.

(3) Execution of bond by claimant

Any person claiming the goods, wares, or merchandise so seized, within the time specified in the notice, may file with the Secretary a claim, stating his interest in the articles seized, and may execute a bond to the United States in the penal sum of $2,500, conditioned that, in case of condemnation of the articles so seized, the obligors shall pay all the costs and expenses of the proceedings to obtain such condemnation; and upon the delivery of such bond to the Secretary, he shall transmit the same, with the duplicate list or description of the goods seized, to the United States attorney for the district, and such attorney shall proceed thereon in the ordinary manner prescribed by law.

(4) Sale in absence of bond

If no claim is interposed and no bond is given within the time above specified, the Secretary shall give reasonable notice of the sale of the goods, wares, or merchandise by publication, and, at the time and place specified in the notice, shall, unless otherwise provided by law, sell the articles so seized at public auction, or upon competitive bids, in accordance with such regulations as may be prescribed by the Secretary.

(Aug. 16, 1954, ch. 736, 68A Stat. 870; Pub. L. 85–859, title II, §204(10), (12), Sept. 2, 1958, 72 Stat. 1429; Pub. L. 85–866, title I, §78, Sept. 2, 1958, 72 Stat. 1662; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 99–514, title XV, §1566(a), (b), Oct. 22, 1986, 100 Stat. 2763.)

AMENDMENTS

1986—Pub. L. 99–514 substituted "$100,000" for "$2,500" in section catchline, introductory provisions, and par. (2), and substituted "$2,500" for "$250" in par. (3).

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

1958—Pub. L. 85–866 struck out "district" before "attorney" in par. (3).

Pub. L. 85–859 substituted "$2,500" for "$1,000" in section catchline, opening par., and par. (2), and inserted ", unless otherwise provided by law," before "sell the articles" in par. (4).

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XV, §1566(e), Oct. 22, 1986, 100 Stat. 2763, provided that: "The amendments made by this section [amending this section and section 7103 of this title] shall take effect on the date of the enactment of this Act [Oct. 22, 1986]."

EFFECTIVE DATE OF 1958 AMENDMENTS

Amendment by Pub. L. 85–866 effective Aug. 17, 1954, see section 1(c)(2) of Pub. L. 85–866, set out as a note under section 165 of this title.

Amendment by Pub. L. 85–859 effective Sept. 3, 1958, see section 210(a)(1) of Pub. L. 85–859, set out as an Effective Date note under section 5001 of this title.

§7326. Disposal of forfeited or abandoned property in special cases

(a) Coin-operated gaming devices

Any coin-operated gaming device as defined in section 4462 [1] upon which a tax is imposed by section 4461 [1] and which has been forfeited under any provision of this title shall be destroyed, or otherwise disposed of, in such manner as may be prescribed by the Secretary.

(b) Firearms

For provisions relating to disposal of forfeited firearms, see section 5872(b).

(Aug. 16, 1954, ch. 736, 68A Stat. 871; Pub. L. 85–859, title II, §204(13), Sept. 2, 1958, 72 Stat. 1429; Pub. L. 89–44, title VI, §601(j), June 21, 1965, 79 Stat. 155; Pub. L. 91–513, title III, §1102(f), Oct. 27, 1970, 84 Stat. 1292; Pub. L. 94–455, title XIX, §§1906(a)(43), (b)(13)(A), Oct. 4, 1976, 90 Stat. 1830, 1834.)

REFERENCES IN TEXT

Sections 4461 and 4462, referred to in subsec. (a), were repealed by Pub. L. 95–600, title V, §521(b), Nov. 6, 1978, 92 Stat. 2884.

AMENDMENTS

1976—Subsec. (a). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsecs. (b), (c). Pub. L. 94–455, §1906(a)(43), redesignated subsec. (c) as (b) and in subsec. (b) as so redesignated substituted "section 5872(b)" for "section 5862(b)". Former subsec. (b), relating to narcotic drugs, was repealed. See 1970 Amendment note below.

1970—Subsec. (b). Pub. L. 91–513 struck out subsec. (b) which related to narcotic drugs and which made reference to sections 4714, 4733, and 4745(d) of this title.

1965—Subsec. (a). Pub. L. 89–44 substituted "section 4462" for "section 4462(a)(2)".

1958—Subsec. (a). Pub. L. 85–859 added subsec. (a).

Subsecs. (b), (c). Pub. L. 85–859 redesignated former pars. (1) and (2) as subsecs. (b) and (c), respectively.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1906(d)(1) of Pub. L. 94–455, set out as a note under section 6013 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–513 effective first day of seventh calendar month that begins after Oct. 26, 1970, see section 1105(a) of Pub. L. 91–513, set out as an Effective Date note under section 951 of Title 21, Food and Drugs.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 to take effect in a manner consistent with effective date of change of tax provision to which related, see section 701(e) of Pub. L. 89–44, set out as a note under section 6103 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–859 effective Sept. 3, 1958, see section 210(a)(1) of Pub. L. 85–859, set out as an Effective Date note under section 5001 of this title.

SAVINGS PROVISION

Prosecutions for any violation of law occurring, and civil seizures or forfeitures and injunctive proceedings commenced, prior to the effective date of amendment of this section by section 1102 of Pub. L. 91–513 not to be affected or abated by reason thereof, see section 1103 of Pub. L. 91–513, set out as note under sections 171 to 174 of Title 21, Food and Drugs.

[1] *See References in Text note below.*

§7327. Customs laws applicable

The provisions of law applicable to the remission or mitigation by the Secretary of forfeitures under the customs laws shall apply to forfeitures incurred or alleged to have been incurred under the internal revenue laws.

(Aug. 16, 1954, ch. 736, 68A Stat. 871; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

§7328. Cross references

(1) For the issuance of certificates of probable cause relieving officers making seizures of responsibility for damages, see 28 U. S. C. 2465.

(2) For provisions relating to forfeitures generally in connection with alcohol taxes, see chapter 51.

(3) For provisions relating to forfeitures generally in connection with tobacco taxes, see chapter 52.

(4) For provisions relating to forfeitures generally in connection with taxes on certain firearms, see chapter 53.

(Aug. 16, 1954, ch. 736, 68A Stat. 871, §7329; renumbered §7328, Pub. L. 94–455, title XIX, §1904(b)(8)(H)(i), Oct. 4, 1976, 90 Stat. 1816.)

PRIOR PROVISIONS

A prior section 7328, act Aug. 16, 1954, ch. 736, 68A Stat. 871, provided for confiscation of white phosphorus matches exported or attempted to be exported, prior to repeal by Pub. L. 94–455, §1904(b)(8)(H)(i).

A prior section 7329 was renumbered section 7328 of this title.

Subchapter D—Miscellaneous Penalty and Forfeiture Provisions

Sec.

7341. Penalty for sales to evade tax.

7342. Penalty for refusal to permit entry or examination.

7343. Definition of term "person".

7344. Extended application of penalties relating to officers of the Treasury Department.

§7341. Penalty for sales to evade tax

(a) Nonenforceability of contract

Whenever any person who is liable to pay any tax imposed by this title upon, for, or in respect of, any property sells or causes or allows the same to be sold before such tax is paid, with intent to avoid

such tax, or in fraud of the internal revenue laws, any debt contracted in such sale, and any security given therefor, unless the same shall have been bona fide transferred to an innocent holder, shall be void, and the collection thereof shall not be enforced in any court.

(b) Forfeiture of sum paid on contract

If such property has been paid for, in whole or in part, the sum so paid shall be deemed forfeited.

(c) Moiety

Any person who shall sue for the sum so paid (in an action of debt) shall recover from the seller the amount so paid, one-half to his own use and the other half to the use of the United States.

(Aug. 16, 1954, ch. 736, 68A Stat. 872.)

§7342. Penalty for refusal to permit entry or examination

Any owner of any building or place, or person having the agency or superintendence of the same, who refuses to admit any officer or employee of the Treasury Department acting under the authority of section 7606 (relating to entry of premises for examination of taxable articles) or refuses to permit him to examine such article or articles, shall, for every such refusal, forfeit $500.

(Aug. 16, 1954, ch. 736, 68A Stat. 872.)

§7343. Definition of term "person"

The term "person" as used in this chapter includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

(Aug. 16, 1954, ch. 736, 68A Stat. 872.)

§7344. Extended application of penalties relating to officers of the Treasury Department

All provisions of law imposing fines, penalties, or other punishment for offenses committed by an internal revenue officer or other officer of the Department of the Treasury, or under any agency or office thereof, shall apply to all persons whomsoever, employed, appointed, or acting under the authority of any internal revenue law, or any revenue provision of any law of the United States, when such persons are designated or acting as officers or employees in connection with such law, or are persons having the custody or disposition of any public money.

(Aug. 16, 1954, ch. 736, 68A Stat. 872.)

CHAPTER 76—JUDICIAL PROCEEDINGS

Subchapter		Sec.[1]
A.	**Civil actions by the United States**	**7401**
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AMENDMENTS

1998—Pub. L. 105–206, title III, §3001(b), July 22, 1998, 112 Stat. 727, added item for subchapter E.

1976—Pub. L. 94–455, title XIX, §1952(n)(4)(B), Oct. 4, 1976, 90 Stat. 1846, struck out item for subchapter E "Miscellaneous provisions".

1966—Pub. L. 89–719, title I, §110(d)(3), Nov. 2, 1966, 80 Stat. 1145, substituted "Taxpayers and Third Parties" for "taxpayers" in item for subchapter B.

[1] *Section numbers editorially supplied.*

Subchapter A—Civil Actions by the United States

Sec.
7401. Authorization.
7402. Jurisdiction of district courts.
7403. Action to enforce lien or to subject property to payment of tax.
7404. Authority to bring civil action for estate taxes.
7405. Action for recovery of erroneous refunds.
7406. Disposition of judgments and moneys recovered.
7407. Action to enjoin tax return preparers.
7408. Actions to enjoin specified conduct related to tax shelters and reportable transactions.
7409. Action to enjoin flagrant political expenditures of section 501(c)(3) organizations.
7410. Cross references.

AMENDMENTS

2007—Pub. L. 110–28, title VIII, §8246(a)(2)(I)(ii), May 25, 2007, 121 Stat. 202, substituted "tax return preparers" for "income tax return preparers" in item 7407.

2004—Pub. L. 108–357, title VIII, §820(b)(2), Oct. 22, 2004, 118 Stat. 1585, added item 7408 and struck out former item 7408 "Action to enjoin promoters of abusive tax shelters, etc."

1987—Pub. L. 100–203, title X, §10713(a)(2), Dec. 22, 1987, 101 Stat. 1330–469, added item 7409 and redesignated former item 7409 as 7410.

1982—Pub. L. 97–248, title III, §321(b), Sept. 3, 1982, 96 Stat. 612, added item 7408 and redesignated former item 7408 as 7409.

1976—Pub. L. 94–455, title XII, §1203(i)(4), Oct. 4, 1976, 90 Stat. 1695, added item 7407 and redesignated former item 7407 as 7408.

§7401. Authorization

No civil action for the collection or recovery of taxes, or of any fine, penalty, or forfeiture, shall be commenced unless the Secretary authorizes or sanctions the proceedings and the Attorney General or his delegate directs that the action be commenced.

(Aug. 16, 1954, ch. 736, 68A Stat. 873; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

§7402. Jurisdiction of district courts

(a) To issue orders, processes, and judgments

The district courts of the United States at the instance of the United States shall have such jurisdiction to make and issue in civil actions, writs and orders of injunction, and of *ne exeat republica*, orders appointing receivers, and such other orders and processes, and to render such judgments and decrees as may be necessary or appropriate for the enforcement of the internal revenue laws. The remedies hereby provided are in addition to and not exclusive of any and all other remedies of the United States in such courts or otherwise to enforce such laws.

(b) To enforce summons

If any person is summoned under the internal revenue laws to appear, to testify, or to produce books, papers, or other data, the district court of the United States for the district in which such person resides or may be found shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, or other data.

(c) For damages to United States officers or employees

Any officer or employee of the United States acting under authority of this title, or any person acting under or by authority of any such officer or employee, receiving any injury to his person or property in the discharge of his duty shall be entitled to maintain an action for damages therefor, in the district court of the United States, in the district wherein the party doing the injury may reside or shall be found.

[(d) Repealed. Pub. L. 92–310, title II, §230(d), June 6, 1972, 86 Stat. 209]

(e) To quiet title

The United States district courts shall have jurisdiction of any action brought by the United States to quiet title to property if the title claimed by the United States to such property was derived from enforcement of a lien under this title.

(f) General jurisdiction

For general jurisdiction of the district courts of the United States in civil actions involving internal revenue, see section 1340 of title 28 of the United States Code.

(Aug. 16, 1954, ch. 736, 68A Stat. 873; Pub. L. 89–719, title I, §107(a), Nov. 2, 1966, 80 Stat. 1140; Pub. L. 93–310, title II, §230(d), June 6, 1972, 86 Stat. 209.)

AMENDMENTS

1972—Subsec. (d). Pub. L. 92–310 repealed subsec. (d) which granted district courts jurisdiction of actions brought on official bonds.

1966—Subsecs. (e), (f). Pub. L. 89–719 added subsec. (e) and redesignated former subsec. (e) as (f).

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–719 applicable after Nov. 2, 1966, regardless of when title or lien of United States arose or when lien or interest of another person was acquired, with certain exceptions, see section 114(a)–(c) of Pub. L. 89–719, set out as a note under section 6323 of this title.

§7403. Action to enforce lien or to subject property to payment of tax

(a) Filing

In any case where there has been a refusal or neglect to pay any tax, or to discharge any liability in respect thereof, whether or not levy has been made, the Attorney General or his delegate, at the request of the Secretary, may direct a civil action to be filed in a district court of the United States to enforce the lien of the United States under this title with respect to such tax or liability or to subject any property, of whatever nature, of the delinquent, or in which he has any right, title, or interest, to the payment of such tax or liability. For purposes of the preceding sentence, any acceleration of payment under section 6166(g) shall be treated as a neglect to pay tax.

(b) Parties

All persons having liens upon or claiming any interest in the property involved in such action shall be made parties thereto.

(c) Adjudication and decree

The court shall, after the parties have been duly notified of the action, proceed to adjudicate all matters involved therein and finally determine the merits of all claims to and liens upon the property, and, in all cases where a claim or interest of the United States therein is established, may decree a sale of such property, by the proper officer of the court, and a distribution of the proceeds of such sale according to the findings of the court in respect to the interests of the parties and of the United

States. If the property is sold to satisfy a first lien held by the United States, the United States may bid at the sale such sum, not exceeding the amount of such lien with expenses of sale, as the Secretary directs.

(d) Receivership

In any such proceeding, at the instance of the United States, the court may appoint a receiver to enforce the lien, or, upon certification by the Secretary during the pendency of such proceedings that it is in the public interest, may appoint a receiver with all the powers of a receiver in equity.

(Aug. 16, 1954, ch. 736, 68A Stat. 874; Pub. L. 89–719, title I, §107(b), Nov. 2, 1966, 80 Stat. 1140; Pub. L. 94–455, title XIX, §1906(b)(13)(A), title XX, §2004(f)(2), Oct. 4, 1976, 90 Stat. 1834, 1872; Pub. L. 97–34, title IV, §422(e)(8), Aug. 13, 1981, 95 Stat. 316.)

AMENDMENTS

1981—Subsec. (a). Pub. L. 97–34 struck out "or 6166A(h)" after "section 6166(g)".

1976—Subsec. (a). Pub. L. 94–455, §§1906(b)(13)(A), 2004(f)(2), struck out "or his delegate" after "Secretary" and inserted provisions relating to the acceleration of payment under section 6166(g) or 6166A(h).

Subsecs. (c), (d). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

1966—Subsec. (c). Pub. L. 89–719 inserted sentence permitting the United States, if the property is sold to satisfy a first lien held by the United States, to bid at the sale such sum, not more than the amount of such lien with expenses of sale, as the Secretary or his delegate directs.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to estates of decedents dying after Dec. 31, 1981, see section 422(f)(1) of Pub. L. 97–34, set out as a note under section 6166 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–719 applicable after Nov. 2, 1966, regardless of when title or lien of United States arose or when lien or interest of another person was acquired, with certain exceptions, see section 114(a)–(c) of Pub. L. 89–719, set out as a note under section 6323 of this title.

§7404. Authority to bring civil action for estate taxes

If the estate tax imposed by chapter 11 is not paid on or before the due date thereof, the Secretary shall proceed to collect the tax under the provisions of general law; or appropriate proceedings in the name of the United States may be commenced in any court of the United States having jurisdiction to subject the property of the decedent to be sold under the judgment or decree of the court. From the proceeds of such sale the amount of the tax, together with the costs and expenses of every description to be allowed by the court, shall be first paid, and the balance shall be deposited according to the order of the court, to be paid under its direction to the person entitled thereto. This section insofar as it applies to the collection of a deficiency shall be subject to the provisions of sections 6213 and 6601.

(Aug. 16, 1954, ch. 736, 68A Stat. 874; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

§7405. Action for recovery of erroneous refunds

(a) Refunds after limitation period

Any portion of a tax imposed by this title, refund of which is erroneously made, within the meaning of section 6514, may be recovered by civil action brought in the name of the United States.

(b) Refunds otherwise erroneous

Any portion of a tax imposed by this title which has been erroneously refunded (if such refund would not be considered as erroneous under section 6514) may be recovered by civil action brought in the name of the United States.

(c) Interest

For provision relating to interest on erroneous refunds, see section 6602.

(d) Periods of limitation

For periods of limitations on actions under this section, see section 6532(b).

(Aug. 16, 1954, ch. 736, 68A Stat. 874.)

§7406. Disposition of judgments and moneys recovered

All judgments and moneys recovered or received for taxes, costs, forfeitures, and penalties shall be paid to the Secretary as collections of internal revenue taxes.

(Aug. 16, 1954, ch. 736, 68A Stat. 875; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

§7407. Action to enjoin tax return preparers

(a) Authority to seek injunction

A civil action in the name of the United States to enjoin any person who is a tax return preparer from further engaging in any conduct described in subsection (b) or from further action as a tax return preparer may be commenced at the request of the Secretary. Any action under this section shall be brought in the District Court of the United States for the district in which the tax return preparer resides or has his principal place of business or in which the taxpayer with respect to whose tax return the action is brought resides. The court may exercise its jurisdiction over such action (as provided in section 7402(a)) separate and apart from any other action brought by the United States against such tax return preparer or any taxpayer.

(b) Adjudication and decrees

In any action under subsection (a), if the court finds—

(1) that a tax return preparer has—

(A) engaged in any conduct subject to penalty under section 6694 or 6695, or subject to any criminal penalty provided by this title,

(B) misrepresented his eligibility to practice before the Internal Revenue Service, or otherwise misrepresented his experience or education as a tax return preparer,

(C) guaranteed the payment of any tax refund or the allowance of any tax credit, or

(D) engaged in any other fraudulent or deceptive conduct which substantially interferes with the proper administration of the Internal Revenue laws, and

(2) that injunctive relief is appropriate to prevent the recurrence of such conduct,

the court may enjoin such person from further engaging in such conduct. If the court finds that a tax return preparer has continually or repeatedly engaged in any conduct described in subparagraphs (A) through (D) of this subsection and that an injunction prohibiting such conduct would not be sufficient to prevent such person's interference with the proper administration of this title, the court may enjoin such person from acting as a tax return preparer.

(Added Pub. L. 94–455, title XII, §1203(g), Oct. 4, 1976, 90 Stat. 1693; amended Pub. L. 101–239, title VII, §7738(a), (b), Dec. 19, 1989, 103 Stat. 2404; Pub. L. 110–28, title VIII, §8246(a)(2)(I)(i),

May 25, 2007, 121 Stat. 202.)

PRIOR PROVISIONS

A prior section 7407 was renumbered section 7410 of this title.

AMENDMENTS

2007—Pub. L. 110–28, §8246(a)(2)(I)(i)(I), substituted "tax return preparers" for "income tax return preparers" in section catchline.

Subsec. (a). Pub. L. 110–28, §8246(a)(2)(I)(i)(II)–(IV), substituted "tax return" for "income tax return" after "with respect to whose", "tax return preparer" for "income tax preparer" after "district in which the" and after "against such", and "a tax return preparer" for "an income tax return preparer" in two places.

Subsec. (b). Pub. L. 110–28, §8246(a)(2)(I)(i)(II), substituted "a tax return preparer" for "an income tax return preparer" in introductory provisions and subpar. (B) of par. (1) and in two places in concluding provisions.

1989—Subsec. (a). Pub. L. 101–239, §7738(b), substituted "A civil" for "Except as provided in subsection (c), a civil".

Subsec. (c). Pub. L. 101–239, §7738(a), struck out subsec. (c) relating to bonds to stay injunctions.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–28 applicable to returns prepared after May 25, 2007, see section 8246(c) of Pub. L. 110–28, set out as a note under section 6060 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7738(c), Dec. 19, 1989, 103 Stat. 2404, provided that: "The amendments made by this section [amending this section] shall apply to actions commenced after December 31, 1989."

EFFECTIVE DATE

Section applicable to documents prepared after Dec. 31, 1976, see section 1203(j) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 7701 of this title.

§7408. Actions to enjoin specified conduct related to tax shelters and reportable transactions

(a) Authority to seek injunction

A civil action in the name of the United States to enjoin any person from further engaging in specified conduct may be commenced at the request of the Secretary. Any action under this section shall be brought in the district court of the United States for the district in which such person resides, has his principal place of business, or has engaged in specified conduct. The court may exercise its jurisdiction over such action (as provided in section 7402(a)) separate and apart from any other action brought by the United States against such person.

(b) Adjudication and decree

In any action under subsection (a), if the court finds—

(1) that the person has engaged in any specified conduct, and

(2) that injunctive relief is appropriate to prevent recurrence of such conduct,

the court may enjoin such person from engaging in such conduct or in any other activity subject to penalty under this title.

(c) Specified conduct

For purposes of this section, the term "specified conduct" means any action, or failure to take action, which is—

(1) subject to penalty under section 6700, 6701, 6707, or 6708, or

(2) in violation of any requirement under regulations issued under section 330 of title 31, United States Code.

(d) Citizens and residents outside the United States

If any citizen or resident of the United States does not reside in, and does not have his principal place of business in, any United States judicial district, such citizen or resident shall be treated for purposes of this section as residing in the District of Columbia.

(Added Pub. L. 97–248, title III, §321(a), Sept. 3, 1982, 96 Stat. 612; amended Pub. L. 98–369, div. A, title I, §143(b), July 18, 1984, 98 Stat. 682; Pub. L. 108–357, title VIII, §820(a), (b)(1), Oct. 22, 2004, 118 Stat. 1585.)

PRIOR PROVISIONS

A prior section 7408 was renumbered section 7410 of this title.

AMENDMENTS

2004—Pub. L. 108–357, §820(b)(1), amended section catchline generally, substituting "Actions to enjoin specified conduct related to tax shelters and reportable transactions" for "Action to enjoin promoters of abusive tax shelters, etc."

Subsecs. (a) to (d). Pub. L. 108–357, §820(a), added subsecs. (a) to (c), redesignated former subsec. (c) as (d), and struck out former subsecs. (a) and (b), which authorized a civil action to enjoin any person from further engaging in conduct subject to penalty under section 6700 or 6701 of this title and authorized the court, if it found that the person had engaged in such conduct and that injunctive relief was appropriate, to enjoin such person from engaging in such conduct or in any other activity subject to penalty under section 6700 or 6701.

1984—Subsec. (a). Pub. L. 98–369, §143(b)(1), (2), inserted "or section 6701 (relating to penalties for aiding and abetting understatement of tax liability)" and inserted reference to section 6701 at end of second sentence.

Subsec. (b). Pub. L. 98–369, §143(b)(1), (3), inserted "or section 6701 (relating to penalties for aiding and abetting understatement of tax liability)," in par. (1) and inserted reference to section 6701 at end.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §820(c), Oct. 22, 2004, 118 Stat. 1585, provided that: "The amendment made by this section [amending this section] shall take effect on the day after the date of the enactment of this Act [Oct. 22, 2004]."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective on day after July 18, 1984, see section 143(c) of Pub. L. 98–369, set out as a note under section 6700 of this title.

EFFECTIVE DATE

Pub. L. 97–248, title III, §321(c), Sept. 3, 1982, 96 Stat. 612, provided that: "The amendments made by this section [enacting this section] shall take effect on the day after the date of the enactment of this Act [Sept. 3, 1982]."

§7409. Action to enjoin flagrant political expenditures of section 501(c)(3) organizations

(a) Authority to seek injunction

(1) In general

If the requirements of paragraph (2) are met, a civil action in the name of the United States may be commenced at the request of the Secretary to enjoin any section 501(c)(3) organization from further making political expenditures and for such other relief as may be appropriate to ensure that the assets of such organization are preserved for charitable or other purposes specified in section 501(c)(3). Any action under this section shall be brought in the district court of the United States for the district in which such organization has its principal place of business or for any district in which it has made political expenditures. The court may exercise its jurisdiction over such action (as provided in section 7402(a)) separate and apart from any other action brought by the United States against such organization.

(2) Requirements

An action may be brought under subsection (a) only if—

(A) the Internal Revenue Service has notified the organization of its intention to seek an injunction under this section if the making of political expenditures does not immediately cease, and

(B) the Commissioner of Internal Revenue has personally determined that—

(i) such organization has flagrantly participated in, or intervened in (including the publication or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office, and

(ii) injunctive relief is appropriate to prevent future political expenditures.

(b) Adjudication and decree

In any action under subsection (a), if the court finds on the basis of clear and convincing evidence that—

(1) such organization has flagrantly participated in, or intervened in (including the publication or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office, and

(2) injunctive relief is appropriate to prevent future political expenditures,

the court may enjoin such organization from making political expenditures and may grant such other relief as may be appropriate to ensure that the assets of such organization are preserved for charitable or other purposes specified in section 501(c)(3).

(c) Definitions

For purposes of this section, the terms "section 501(c)(3) organization" and "political expenditures" have the respective meanings given to such terms by section 4955.

(Added Pub. L. 100–203, title X, §10713(a)(1), Dec. 22, 1987, 101 Stat. 1330–468.)

PRIOR PROVISIONS

A prior section 7409 was renumbered section 7410 of this title.

§7410. Cross references

(1) For provisions for collecting taxes in general, see chapter 64.

(2) For venue in a civil action for the collection of any tax, see section 1396 of Title 28 of the United States Code.

(3) For venue of a proceeding for the recovery of any fine, penalty, or forfeiture, see section 1395 of Title 28 of the United States Code.

(Aug. 16, 1954, ch. 736, 68A Stat. 875, §7407; renumbered §7408, Pub. L. 94–455, title XII, §1203(g), Oct. 4, 1976, 90 Stat. 1693; renumbered §7409, Pub. L. 97–248, title III, §321(a), Sept. 3, 1982, 96 Stat. 612; renumbered §7410, Pub. L. 100–203, title X, §10713(a)(1), Dec. 22, 1987, 101 Stat. 1330–468.)

Subchapter B—Proceedings by Taxpayers and Third Parties

Sec.

7421. Prohibition of suits to restrain assessment or collection.

7422. Civil actions for refund.

7423. Repayments to officers or employees.

7424. Intervention.

7425. Discharge of liens.

7426. Civil actions by persons other than taxpayers.

7427. Tax return preparers.

7428. Declaratory judgments relating to status and classification of organizations under section 501(c)(3), etc.
7429. Review of jeopardy levy or assessment procedures.
7430. Awarding of costs and certain fees.
7431. Civil damages for unauthorized inspection or disclosure of returns and return information.
7432. Civil damages for failure to release lien.
7433. Civil damages for certain unauthorized collection actions.
7433A. Civil damages for certain unauthorized collection actions by persons performing services under qualified tax collection contracts.
7434. Civil damages for fraudulent filing of information returns.
7435. Civil damages for unauthorized enticement of information disclosure.
7436. Proceedings for determination of employment status.
7437. Cross references.

AMENDMENTS

2007—Pub. L. 110–28, title VIII, §8246(a)(2)(J)(ii), May 25, 2007, 121 Stat. 202, substituted "Tax return preparers" for "Income tax return preparers" in item 7427.

2004—Pub. L. 108–357, title VIII, §881(b)(2), Oct. 22, 2004, 118 Stat. 1626, added item 7433A.

1997—Pub. L. 105–35, §3(d)(5), Aug. 5, 1997, 111 Stat. 1106, inserted "inspection or" before "disclosure" in item 7431.

Pub. L. 105–34, title XIV, §1454(b)(4), Aug. 5, 1997, 111 Stat. 1057, added items 7436 and 7437 and struck out former item 7436 "Cross references".

1996—Pub. L. 104–168, title VI, §601(b), title XII, §1203(b), July 30, 1996, 110 Stat. 1462, 1471, added items 7434 and 7435 and redesignated former item 7434 as 7436.

1988—Pub. L. 100–647, title VI, §§6237(e)(4), 6239(c), 6240(b), 6241(c), Nov. 10, 1988, 102 Stat. 3743, 3746–3748, inserted "levy or" after "jeopardy" in item 7429, struck out "court" after "Awarding of" in item 7430, added items 7432 and 7433, and redesignated former item 7432 as 7434.

1982—Pub. L. 97–248, title II, §292(d)(1), title III, §357(b)(3), Sept. 3, 1982, 96 Stat. 574, 646, added items 7430 and 7431 and redesignated former item 7430 as 7432.

1976—Pub. L. 94–455, title XII, §§1203(b)(2)(B), 1204(c)(13), title XIII, §1306(b)(6), Oct. 4, 1976, 90 Stat. 1690, 1699, 1719, added items 7427 to 7429 and redesignated former item 7427 as 7430.

1966—Pub. L. 89–719, title I, §110(d)(1), (2), Nov. 2, 1966, 80 Stat. 1145, inserted "and Third Parties" in subchapter heading, substituted "Intervention" for "Civil action to clear title to property" in item 7424, added items 7425 and 7426, and redesignated former item 7425 as 7427.

§7421. Prohibition of suits to restrain assessment or collection

(a) Tax

Except as provided in sections 6015(e), 6212(a) and (c), 6213(a), 6225(b), 6246(b), 6330(e)(1), 6331(i), 6672(c), 6694(c), and 7426(a) and (b)(1), 7429(b), and 7436, no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed.

(b) Liability of transferee or fiduciary

No suit shall be maintained in any court for the purpose of restraining the assessment or collection (pursuant to the provisions of chapter 71) of—

(1) the amount of the liability, at law or in equity, of a transferee of property of a taxpayer in respect of any internal revenue tax, or

(2) the amount of the liability of a fiduciary under section 3713(b) of title 31, United States Code [1] in respect of any such tax.

(Aug. 16, 1954, ch. 736, 68A Stat. 876; Pub. L. 89–719, title I, §110(c), Nov. 2, 1966, 80 Stat. 1144; Pub. L. 94–455, title XII, §1204(c)(11), Oct. 4, 1976, 90 Stat. 1699; Pub. L. 95–628, §9(b)(1), Nov. 10, 1978, 92 Stat. 3633; Pub. L. 97–258, §3(f)(13), Sept. 13, 1982, 96 Stat. 1065; Pub. L. 105–34, title XII, §§1222(b)(1), 1239(e)(3), title XIV, §1454(b)(2), Aug. 5, 1997, 111 Stat. 1019, 1028, 1057;

Pub. L. 105–206, title III, §3201(e)(3), July 22, 1998, 112 Stat. 740; Pub. L. 105–277, div. J, title IV, §4002(c)(1), (f), Oct. 21, 1998, 112 Stat. 2681–906, 2681–907; Pub. L. 106–554, §1(a)(7) [title III, §§313(b)(2)(B), 319(24)], Dec. 21, 2000, 114 Stat. 2763, 2763A–642, 2763A–647.)

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–554 inserted "6330(e)(1)," after "6246(b)," and substituted "6672(c)" for "6672(b)".

1998—Subsec. (a). Pub. L. 105–277 substituted "6015(e)" for "6015(d)" and inserted "6331(i)," after "6246(b),".

Pub. L. 105–206 inserted "6015(d)," after "sections".

1997—Subsec. (a). Pub. L. 105–34, §1454(b)(2), substituted "7429(b), and 7436" for "and 7429(b)".

Pub. L. 105–34, §1239(e)(3), inserted "6225(b)," after "6213(a),".

Pub. L. 105–34, §1222(b)(1), inserted "6246(b)," after "6213(a),".

1982—Subsec. (b)(2). Pub. L. 97–258 substituted "section 3713(b) of title 31, United States Code" for "section 3467 of the Revised Statutes (31 U.S.C. 192)".

1978—Subsec. (a). Pub. L. 95–628 inserted references to sections 6672(b) and 6694(c).

1976—Subsec. (a). Pub. L. 94–455 substituted "7426(a) and (b)(1), and 7429(b)" for "and 7426(a) and (b)(1)".

1966—Subsec. (a). Pub. L. 89–719 inserted reference to section 7426(a), (b)(1), and "by any person, whether or not such person is the person against whom such tax was assessed".

EFFECTIVE DATE OF 1998 AMENDMENTS

Amendment by Pub. L. 105–277 effective as if included in the provision of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105–206, to which such amendment relates, see section 4002(k) of Pub. L. 105–277, set out as a note under section 1 of this title.

Amendment by Pub. L. 105–206 applicable to any liability for tax arising after July 22, 1998, and any liability for tax arising on or before such date but remaining unpaid as of such date, see section 3201(g)(1) of Pub. L. 105–206, set out as a note under section 6015 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 1222(b)(1) of Pub. L. 105–34 applicable to partnership taxable years beginning after Dec. 31, 1997, see section 1226 of Pub. L. 105–34, as amended, set out as a note under section 6011 of this title.

Amendment by section 1239(e)(3) of Pub. L. 105–34 applicable to partnership taxable years ending after Aug. 5, 1997, see section 1239(f) of Pub. L. 105–34, set out as a note under section 6225 of this title.

Amendment by section 1454(b)(2) of Pub. L. 105–34, effective Aug. 5, 1997, see section 1454(c) of Pub. L. 105–34, set out as a note under section 6511 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–628 applicable with respect to penalties assessed more than 60 days after Nov. 10, 1978, see section 9(c) of Pub. L. 95–628, set out as a note under section 6672 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable with respect to action taken under section 6851, 6861, or 6862 of this title where notice and demand takes place after Feb. 28, 1977, see section 1204(d) of Pub. L. 94–455, as amended, set out as a note under section 6851 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–719 applicable after Nov. 2, 1966, regardless of when title or lien of United States arose or when lien or interest of another person was acquired, with certain exceptions, see section 114(a)–(c) of Pub. L. 89–719, set out as a note under section 6323 of this title.

PROHIBITION ON REQUESTS TO TAXPAYERS TO GIVE UP RIGHTS TO BRING ACTIONS

Pub. L. 105–206, title III, §3468, July 22, 1998, 112 Stat. 770, provided that:

"(a) PROHIBITION.—No officer or employee of the United States may request a taxpayer to waive the taxpayer's right to bring a civil action against the United States or any officer or employee of the United States for any action taken in connection with the internal revenue laws.

"(b) EXCEPTIONS.—Subsection (a) shall not apply in any case where—

"(1) a taxpayer waives the right described in subsection (a) knowingly and voluntarily; or

"(2) the request by the officer or employee is made in person and the taxpayer's attorney or other federally authorized tax practitioner (within the meaning of section 7525(a)(3)(A) of the Internal Revenue Code of 1986) is present, or the request is made in writing to the taxpayer's attorney or other representative."

[1] *So in original. Probably should be followed by a comma.*

§7422. Civil actions for refund

(a) No suit prior to filing claim for refund

No suit or proceeding shall be maintained in any court for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Secretary, according to the provisions of law in that regard, and the regulations of the Secretary established in pursuance thereof.

(b) Protest or duress

Such suit or proceeding may be maintained whether or not such tax, penalty, or sum has been paid under protest or duress.

(c) Suits against collection officer a bar

A suit against any officer or employee of the United States (or former officer or employee) or his personal representative for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected shall be treated as if the United States had been a party to such suit in applying the doctrine of res judicata in all suits in respect of any internal revenue tax, and in all proceedings in the Tax Court and on review of decisions of the Tax Court.

(d) Credit treated as payment

The credit of an overpayment of any tax in satisfaction of any tax liability shall, for the purpose of any suit for refund of such tax liability so satisfied, be deemed to be a payment in respect of such tax liability at the time such credit is allowed.

(e) Stay of proceedings

If the Secretary prior to the hearing of a suit brought by a taxpayer in a district court or the United States Court of Federal Claims for the recovery of any income tax, estate tax, gift tax, or tax imposed by chapter 41, 42, 43, or 44 (or any penalty relating to such taxes) mails to the taxpayer a notice that a deficiency has been determined in respect of the tax which is the subject matter of taxpayer's suit, the proceedings in taxpayer's suit shall be stayed during the period of time in which the taxpayer may file a petition with the Tax Court for a redetermination of the asserted deficiency, and for 60 days thereafter. If the taxpayer files a petition with the Tax Court, the district court or the United States Court of Federal Claims, as the case may be, shall lose jurisdiction of taxpayer's suit to whatever extent jurisdiction is acquired by the Tax Court of the subject matter of taxpayer's suit for refund. If the taxpayer does not file a petition with the Tax Court for a redetermination of the asserted deficiency, the United States may counterclaim in the taxpayer's suit, or intervene in the event of a suit as described in subsection (c) (relating to suits against officers or employees of the United States), within the period of the stay of proceedings notwithstanding that the time for such pleading may have otherwise expired. The taxpayer shall have the burden of proof with respect to the issues raised by such counterclaim or intervention of the United States except as to the issue of whether the taxpayer has been guilty of fraud with intent to evade tax. This subsection shall not apply to a suit by

a taxpayer which, prior to the date of enactment of this title, is commenced, instituted, or pending in a district court or the United States Court of Federal Claims for the recovery of any income tax, estate tax, or gift tax (or any penalty relating to such taxes).

(f) Limitation on right of action for refund

(1) General rule

A suit or proceeding referred to in subsection (a) may be maintained only against the United States and not against any officer or employee of the United States (or former officer or employee) or his personal representative. Such suit or proceeding may be maintained against the United States notwithstanding the provisions of section 2502 of title 28 of the United States Code (relating to aliens' privilege to sue) and notwithstanding the provisions of section 1502 of such title 28 (relating to certain treaty cases).

(2) Misjoinder and change of venue

If a suit or proceeding brought in a United States district court against an officer or employee of the United States (or former officer or employee) or his personal representative is improperly brought solely by virtue of paragraph (1), the court shall order, upon such terms as are just, that the pleadings be amended to substitute the United States as a party for such officer or employee as of the time such action commenced, upon proper service of process on the United States. Such suit or proceeding shall upon request by the United States be transferred to the district or division where it should have been brought if such action initially had been brought against the United States.

(g) Special rules for certain excise taxes imposed by chapter 42 or 43

(1) Right to bring actions

(A) In general

With respect to any taxable event, payment of the full amount of the first tier tax shall constitute sufficient payment in order to maintain an action under this section with respect to the second tier tax.

(B) Definitions

For purposes of subparagraph (A), the terms "taxable event", "first tier tax", and "second tier tax" have the respective meanings given to such terms by section 4963.

(2) Limitation on suit for refund

No suit may be maintained under this section for the credit or refund of any tax imposed under section 4941, 4942, 4943, 4944, 4945, 4951, 4952, 4955, 4958, 4971, or 4975 with respect to any act (or failure to act) giving rise to liability for tax under such sections, unless no other suit has been maintained for credit or refund of, and no petition has been filed in the Tax Court with respect to a deficiency in, any other tax imposed by such sections with respect to such act (or failure to act).

(3) Final determination of issues

For purposes of this section, any suit for the credit or refund of any tax imposed under section 4941, 4942, 4943, 4944, 4945, 4951, 4952, 4955, 4958, 4971, or 4975 with respect to any act (or failure to act) giving rise to liability for tax under such sections, shall constitute a suit to determine all questions with respect to any other tax imposed with respect to such act (or failure to act) under such sections, and failure by the parties to such suit to bring any such question before the Court shall constitute a bar to such question.

(h) Special rule for actions with respect to partnership items

No action may be brought for a refund attributable to partnership items (as defined in section 6231(a)(3)) except as provided in section 6228(b) or section 6230(c).

(i) Special rule for actions with respect to tax shelter promoter and understatement penalties

No action or proceeding may be brought in the United States Court of Federal Claims for any refund or credit of a penalty imposed by section 6700 (relating to penalty for promoting abusive tax shelters, etc.) or section 6701 (relating to penalties for aiding and abetting understatement of tax liability).

(j) Special rule for actions with respect to estates for which an election under section 6166 is made

(1) In general

The district courts of the United States and the United States Court of Federal Claims shall not fail to have jurisdiction over any action brought by the representative of an estate to which this subsection applies to determine the correct amount of the estate tax liability of such estate (or for any refund with respect thereto) solely because the full amount of such liability has not been paid by reason of an election under section 6166 with respect to such estate.

(2) Estates to which subsection applies

This subsection shall apply to any estate if, as of the date the action is filed—

(A) no portion of the installments payable under section 6166 have been accelerated;

(B) all such installments the due date for which is on or before the date the action is filed have been paid;

(C) there is no case pending in the Tax Court with respect to the tax imposed by section 2001 on the estate and, if a notice of deficiency under section 6212 with respect to such tax has been issued, the time for filing a petition with the Tax Court with respect to such notice has expired; and

(D) no proceeding for declaratory judgment under section 7479 is pending.

(3) Prohibition on collection of disallowed liability

If the court redetermines under paragraph (1) the estate tax liability of an estate, no part of such liability which is disallowed by a decision of such court which has become final may be collected by the Secretary, and amounts paid in excess of the installments determined by the court as currently due and payable shall be refunded.

(k) Cross references

(1) For provisions relating generally to claims for refund or credit, see chapter 65 (relating to abatements, credit, and refund) and chapter 66 (relating to limitations).

(2) For duty of United States attorneys to defend suits, see section 507 of Title 28 of the United States Code.

(3) For jurisdiction of United States district courts, see section 1346 of Title 28 of the United States Code.

(4) For payment by the Treasury of judgments against internal revenue officers or employees, upon certificate of probable cause, see section 2006 of Title 28 of the United States Code.

(Aug. 16, 1954, ch. 736, 68A Stat. 876; Pub. L. 85–866, title I, §78, Sept. 2, 1958, 72 Stat. 1662; Pub. L. 89–713, §3(a), Nov. 2, 1966, 80 Stat. 1108; Pub. L. 91–172, title I, §101(i), (j)(56), Dec. 30, 1969, 83 Stat. 525, 532; Pub. L. 92–178, title III, §309(a), Dec. 10, 1971, 85 Stat. 525; Pub. L. 93–406, title II, §1016(a)(26), Sept. 2, 1974, 88 Stat. 931; Pub. L. 94–455, title XIII, §1307(d)(2)(F)(viii), title XVI, §1605(b)(11), title XIX, §1906(a)(44), (b)(13)(A), Oct. 4, 1976, 90 Stat. 1728, 1755, 1830, 1834; Pub. L. 96–222, title I, §108(b)(1)(D)–(F), Apr. 1, 1980, 94 Stat. 226; Pub. L. 96–223, title I, §101(f)(1)(J), Apr. 2, 1980, 94 Stat. 252; Pub. L. 96–596, §2(c)(2), Dec. 24, 1980, 94 Stat. 3474; Pub. L. 97–164, title I, §151, Apr. 2, 1982, 96 Stat. 46; Pub. L. 97–248, title IV, §402(c)(11), Sept. 3, 1982, 96 Stat. 668; Pub. L. 98–369, div. A, title VII, §714(g)(1), (p)(2)(H), July 18, 1984, 98 Stat. 961, 965; Pub. L. 99–514, title XVIII, §1899A(58), Oct. 22, 1986, 100 Stat. 2961; Pub. L. 100–203, title X, §10712(c)(5), Dec. 22, 1987, 101 Stat. 1330–467; Pub. L. 100–418, title I, §1941(b)(2)(B)(x), Aug. 23, 1988, 102 Stat. 1323; Pub. L. 102–572, title IX, §902(b)(1), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 104–168, title XIII, §1311(c)(4), July 30, 1996, 110 Stat. 1478; Pub. L. 105–206, title III, §3104(a), July 22, 1998, 112 Stat. 731.)

REFERENCES IN TEXT

The date of enactment of this title, referred to in subsec. (e), is Aug. 16, 1954.

AMENDMENTS

1998—Subsecs. (j), (k). Pub. L. 105–206 added subsec. (j) and redesignated former subsec. (j) as (k).

1996—Subsec. (g)(2), (3). Pub. L. 104–168 inserted "4958," after "4955,".

1992—Subsecs. (e), (i). Pub. L. 102–572 substituted "United States Court of Federal Claims" for "United States Claims Court" wherever appearing.

1988—Subsec. (e). Pub. L. 100–418 substituted "or 44" for "44, or 45".

1987—Subsec. (g)(2), (3). Pub. L. 100–203 inserted "4955," after "4952,".

1986—Subsec. (g)(1)(B). Pub. L. 99–514 substituted "section 4963" for "section 4962".

1984—Subsec. (h). Pub. L. 98–369, §714(p)(2)(H), substituted "section 6231(a)(3)" for "section 6131(a)(3)".

Subsecs. (i), (j). Pub. L. 98–369, §714(g)(1), added subsec. (i) and redesignated former subsec. (i) as (j).

1982—Subsec. (e). Pub. L. 97–164 substituted "United States Claims Court" for "Court of Claims" wherever appearing.

Subsecs. (h), (i). Pub. L. 97–248 added subsec. (h) and redesignated former subsec. (h) as (i).

1980—Subsec. (e). Pub. L. 96–223 inserted reference to chapter 45.

Subsec. (g). Pub. L. 96–596 substituted in par. (1) provision authorizing, with respect to any taxable event, payment of the full amount of the first tier tax as constituting sufficient payment in order to maintain an action under this section with respect to the second tier tax and defining the terms "taxable event", "first tier tax", and "second tier tax" as having the respective meanings given to such terms by section 4962 of this title for provision authorizing, with respect to any act or failure to act giving rise to liability under sections 4941, 4942, 4943, 4944, 4945, 4951, 4952, 4971, or 4975 of this title, payment of the full amount of tax imposed under specified subsections of those sections as constituting sufficient payment in order to maintain an action under this section with respect to such act or failure to act.

Pub. L. 96–222 substituted in pars. (1) to (3) "4944, 4945, 4951, 4952" for "4944, 4945" and in par. (1) "section 4945(a) (relating to initial taxes on taxable expenditures), section 4951(a) (relating to initial taxes on self dealing), 4952(a) (relating to initial taxes on taxable expenditures)" for "section 4945(a) (relating to initial taxes on taxable expenditures)" and "section 4945(b) (relating to additional taxes on taxable expenditures), section 4951(b) (relating to additional taxes on self-dealing), 4952(b) (relating to additional taxes on taxable expenditures)" for "section 4945(b) (relating to additional taxes on taxable expenditures)".

1976—Subsec. (a). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (c). Pub. L. 94–455, §1906(a)(44), struck out "instituted after June 15, 1942," after "res judicata in all suits" and "where the petition to the Tax Court was filed after such date" after "decisions of the Tax Court".

Subsec. (e). Pub. L. 94–455, §§1307(d)(2)(F)(viii), 1605(b)(11), 1906(b)(13)(A), struck out "or his delegate" after "Secretary" and substituted "chapter 41, 42," for "chapter 42" and "43, or 44" for "or 43".

1974—Subsec. (e). Pub. L. 93–406, §1016(a)(26)(A), substituted "chapter 42 or 43" for "chapter 42".

Subsec. (g). Pub. L. 93–406, §1016(a)(26)(B)–(F), substituted "chapter 42 or 43" for "chapter 42" in heading, substituted "4945, 4971, or 4975" for "or 4945", "section 4945(a) (relating to initial taxes on taxable expenditures), 4971(a) (relating to initial tax on failure to meet minimum funding standard), 4975(a) (relating to initial tax on prohibited transactions)" for "section 4945(a) (relating to initial taxes on taxable expenditures)", and "section 4945(b) (relating to additional taxes on taxable expenditures), section 4971(b) (relating to additional tax on failure to meet minimum funding standard), or section 4975(b) (relating to additional tax on prohibited transactions)" for "or section 4945(b) (relating to additional taxes on taxable expenditures)" in par. (1), and substituted "4945, 4971, or 4975" for "or 4945" in pars. (2) and (3).

1971—Subsec. (f)(1). Pub. L. 92–178 authorized maintenance of suit or proceeding against the United States notwithstanding provisions of section 1502 of Title 28 (relating to certain treaty cases).

1969—Subsec. (e). Pub. L. 91–172, §101(j)(56), inserted reference to chapter 42 taxes.

Subsecs. (g), (h). Pub. L. 91–172, §101(i), added subsec. (g) and redesignated former subsec. (g) as (h).

1966—Subsecs. (f), (g). Pub. L. 89–713 added subsec. (f) and redesignated former subsec. (f) as (g).

1958—Subsec. (f)(2). Pub. L. 85–866 struck out "district" before "attorneys".

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–206, title III, §3104(c), July 22, 1998, 112 Stat. 732, provided that: "The amendments made by this section [amending this section and section 7479 of this title] shall apply to any claim for refund filed after the date of the enactment of this Act [July 22, 1998]."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–168 applicable to excess benefit transactions occurring on or after Sept. 14, 1995 and not applicable to any benefit arising from a transaction pursuant to any written contract which was binding on Sept. 13, 1995, and at all times thereafter before such transaction occurred, see section 1311(d)(1), (2) of Pub. L. 104–168, set out as a note under section 4955 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–418 applicable to crude oil removed from the premises on or after Aug. 23, 1988, see section 1941(c) of Pub. L. 100–418, set out as a note under section 164 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to taxable years beginning after Dec. 22, 1987, see section 10712(d) of Pub. L. 100–203, set out as an Effective Date note under section 4955 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 714(g)(1) of Pub. L. 98–369 applicable to any claim for refund or credit filed after July 18, 1984, see section 714(g)(4) of Pub. L. 98–369, set out as an Effective Date note under section 1509 of Title 28, Judiciary and Judicial Procedure.

Amendment by section 714(p)(2)(H) of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to partnership taxable years beginning after Sept. 3, 1982, with provision for the applicability of the amendment to any partnership taxable year ending after Sept. 3, 1982, if the partnership, each partner, and each indirect partner requests such application and the Secretary of the Treasury or his delegate consents to such application, see section 407(a)(1), (3) of Pub. L. 97–248, set out as an Effective Date note under section 6221 of this title.

Amendment by Pub. L. 97–164 effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1980 AMENDMENTS

For effective date of amendment by Pub. L. 96–596 with respect to any first tier tax and to any second tier tax, see section 2(d) of Pub. L. 96–596, set out as an Effective Date note under section 4961 of this title.

Amendment by Pub. L. 96–223 applicable to periods after Feb. 29, 1980, see section 101(i) of Pub. L. 96–223, set out as a note under section 6161 of this title.

Amendment by Pub. L. 96–222 effective as if included in the provisions of the Black Lung Benefits Revenue Act of 1977, Pub. L. 95–227, see section 108(b)(4) of Pub. L. 96–222, set out as a note under section 192 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1307(d)(2)(F)(viii) of Pub. L. 94–455 effective on and after Oct. 4, 1976, see section 1307(e)(6) of Pub. L. 94–455, set out as a note under section 501 of this title.

For effective date of amendment by section 1605(b)(11) of Pub. L. 94–455, see section 1608(d) of Pub. L. 94–455, set out as a note under section 856 of this title.

Amendment by section 1906(a)(44), (b)(13)(A) of Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1906(d)(1) of Pub. L. 94–455, set out as a note under section 6013 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–406 applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93–406, for plan years beginning after Sept. 2, 1974, and in the case of plans in existence on Jan. 1, 1974, amendment by Pub. L. 93–406 applicable for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93–406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Pub. L. 92–178, title III, §309(b), Dec. 10, 1971, 85 Stat. 525, provided that: "The amendment made by subsection (a) [amending this section] shall apply to suits or proceedings which are instituted after January 30, 1967."

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89–713, §3(d), Nov. 2, 1966, 80 Stat. 1109, provided that: "The amendments made by subsections (a) and (b) [amending this section and section 2502 of Title 28, Judiciary and Judicial Procedure] shall apply to suits brought against officers, employees, or personal representatives referred to therein which are instituted 90 days or more after the date of the enactment of this Act [Nov. 2, 1966]. The amendment made by subsection (c) [amending section 7482 of this title] shall apply to all decisions of the Tax Court entered after the date of enactment of this Act."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 as effective Aug. 17, 1954, see section 1(c)(2) of Pub. L. 85–866, set out as a note under section 165 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§7423. Repayments to officers or employees

The Secretary, subject to regulations prescribed by the Secretary, is authorized to repay—

(1) Collections recovered

To any officer or employee of the United States the full amount of such sums of money as may be recovered against him in any court, for any internal revenue taxes collected by him, with the cost and expense of suit; also

(2) Damages and costs

All damages and costs recovered against any officer or employee of the United States in any suit brought against him by reason of anything done in the due performance of his official duty under this title.

(Aug. 16, 1954, ch. 736, 68A Stat. 877; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" in provisions preceding par. (1).

§7424. Intervention

If the United States is not a party to a civil action or suit, the United States may intervene in such action or suit to assert any lien arising under this title on the property which is the subject of such action or suit. The provisions of section 2410 of title 28 of the United States Code (except subsection (b)) and of section 1444 of title 28 of the United States Code shall apply in any case in which the United States intervenes as if the United States had originally been named a defendant in such action or suit. In any case in which the application of the United States to intervene is denied, the adjudication in such civil action or suit shall have no effect upon such lien.

(Aug. 16, 1954, ch. 736, 68A Stat. 877; Pub. L. 89–719, title I, §108, Nov. 2, 1966, 80 Stat. 1140.)

AMENDMENTS

1966—Pub. L. 89–719 substituted "Intervention" for "Civil action to clear title to property" in section catchline and substituted provisions, set out in a single paragraph, granting the government authority to intervene in a court proceeding to assert any lien arising under this title on property which is the subject of a civil action or suit to which the government is not a party with the same procedural rules to apply as where the government is initially joined properly as a party and with the proceedings to have no effect on the government's lien if the application to intervene is denied, for provisions, formerly set out in three subsections, setting out a procedure by which a person having a lien upon or interest in property referred to in section 7403 could file a civil action to clear title to the property and obtain an adjudication of the matter involved in the same manner as in the case of a civil action filed under section 7403.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–719 applicable after Nov. 2, 1966, regardless of when the title or lien of the United States arose or when the lien or interest of another person was acquired, with certain exceptions, see section 114(a) to (c) of Pub. L. 89–719, set out as a note under section 6323 of this title.

CIVIL ACTIONS TO CLEAR TITLE TO PROPERTY COMMENCED BEFORE NOV. 2, 1966

Pub. L. 89–719, title I, §114(d), Nov. 2, 1966, 80 Stat. 1147, provided that civil actions commenced before Nov. 2, 1966, to clear title to property pursuant to this section as in effect before Nov. 2, 1966, were to be determined in accord with this section as in effect before Nov. 2, 1966.

§7425. Discharge of liens

(a) Judicial proceedings

If the United States is not joined as a party, a judgment in any civil action or suit described in subsection (a) of section 2410 of title 28 of the United States Code, or a judicial sale pursuant to such a judgment, with respect to property on which the United States has or claims a lien under the provisions of this title—

(1) shall be made subject to and without disturbing the lien of the United States, if notice of such lien has been filed in the place provided by law for such filing at the time such action or suit is commenced, or

(2) shall have the same effect with respect to the discharge or divestment of such lien of the United States as may be provided with respect to such matters by the local law of the place where such property is situated, if no notice of such lien has been filed in the place provided by law for such filing at the time such action or suit is commenced or if the law makes no provision for such filing.

If a judicial sale of property pursuant to a judgment in any civil action or suit to which the United States is not a party discharges a lien of the United States arising under the provisions of this title, the United States may claim, with the same priority as its lien had against the property sold, the proceeds (exclusive of costs) of such sale at any time before the distribution of such proceeds is ordered.

(b) Other sales

Notwithstanding subsection (a) sale of property on which the United States has or claims a lien, or a title derived from enforcement of a lien, under the provisions of this title, made pursuant to an instrument creating a lien on such property, pursuant to a confession of judgment on the obligation secured by such an instrument, or pursuant to a nonjudicial sale under a statutory lien on such property—

(1) shall, except as otherwise provided, be made subject to and without disturbing such lien or title, if notice of such lien was filed or such title recorded in the place provided by law for such filing or recording more than 30 days before such sale and the United States is not given notice of such sale in the manner prescribed in subsection (c)(1); or

(2) shall have the same effect with respect to the discharge or divestment of such lien or such title of the United States, as may be provided with respect to such matters by the local law of the

place where such property is situated, if—

(A) notice of such lien or such title was not filed or recorded in the place provided by law for such filing more than 30 days before such sale,

(B) the law makes no provision for such filing, or

(C) notice of such sale is given in the manner prescribed in subsection (c)(1).

(c) Special rules

(1) Notice of sale

Notice of a sale to which subsection (b) applies shall be given (in accordance with regulations prescribed by the Secretary) in writing, by registered or certified mail or by personal service, not less than 25 days prior to such sale, to the Secretary.

(2) Consent to sale

Notwithstanding the notice requirement of subsection (b)(2)(C), a sale described in subsection (b) of property shall discharge or divest such property of the lien or title of the United States if the United States consents to the sale of such property free of such lien or title.

(3) Sale of perishable goods

Notwithstanding the notice requirement of subsection (b)(2)(C), a sale described in subsection (b) of property liable to perish or become greatly reduced in price or value by keeping, or which cannot be kept without great expense, shall discharge or divest such property of the lien or title of the United States if notice of such sale is given (in accordance with regulations prescribed by the Secretary) in writing, by registered or certified mail or by personal service, to the Secretary before such sale. The proceeds (exclusive of costs) of such sale shall be held as a fund subject to the liens and claims of the United States, in the same manner and with the same priority as such liens and claims had with respect to the property sold, for not less than 30 days after the date of such sale.

(4) Forfeitures of land sales contracts

For purposes of subsection (b), a sale of property includes any forfeiture of a land sales contract.

(d) Redemption by United States

(1) Right to redeem

In the case of a sale of real property to which subsection (b) applies to satisfy a lien prior to that of the United States, the Secretary may redeem such property within the period of 120 days from the date of such sale or the period allowable for redemption under local law, whichever is longer.

(2) Amount to be paid

In any case in which the United States redeems real property pursuant to paragraph (1), the amount to be paid for such property shall be the amount prescribed by subsection (d) of section 2410 of title 28 of the United States Code.

(3) Certificate of redemption

(A) In general

In any case in which real property is redeemed by the United States pursuant to this subsection, the Secretary shall apply to the officer designated by local law, if any, for the documents necessary to evidence the fact of redemption and to record title to such property in the name of the United States. If no such officer is designated by local law or if such officer fails to issue such documents, the Secretary shall execute a certificate of redemption therefor.

(B) Filing

The Secretary shall, without delay, cause such documents or certificate to be duly recorded in the proper registry of deeds. If the State in which the real property redeemed by the United

States is situated has not by law designated an office in which such certificate may be recorded, the Secretary shall file such certificate in the office of the clerk of the United States district court for the judicial district in which such property is situated.

(C) Effect

A certificate of redemption executed by the Secretary shall constitute prima facie evidence of the regularity of such redemption and shall, when recorded, transfer to the United States all the rights, title, and interest in and to such property acquired by the person from whom the United States redeems such property by virtue of the sale of such property.

(Added Pub. L. 89–719, title I, §109, Nov. 2, 1966, 80 Stat. 1141; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 99–514, title XV, §1572(a), Oct. 22, 1986, 100 Stat. 2765.)

PRIOR PROVISIONS

A prior section 7425 was renumbered 7434 of this title.

AMENDMENTS

1986—Subsec. (c)(4). Pub. L. 99–514 added par. (4).
1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XV, §1572(b), Oct. 22, 1986, 100 Stat. 2765, provided that: "The amendment made by subsection (a) [amending this section] shall apply to forfeitures after the 30th day after the date of the enactment of this Act [Oct. 22, 1986]."

EFFECTIVE DATE

Section applicable after Nov. 2, 1966, regardless of when title or lien of United States arose or when lien or interest of another person was acquired, with certain exceptions, see section 114(a)–(c) of Pub. L. 89–719, set out as an Effective Date of 1966 Amendment note under section 6323 of this title.

§7426. Civil actions by persons other than taxpayers

(a) Actions permitted

(1) Wrongful levy

If a levy has been made on property or property has been sold pursuant to a levy, and any person (other than the person against whom is assessed the tax out of which such levy arose) who claims an interest in or lien on such property and that such property was wrongfully levied upon may bring a civil action against the United States in a district court of the United States. Such action may be brought without regard to whether such property has been surrendered to or sold by the Secretary.

(2) Surplus proceed

If property has been sold pursuant to a levy, any person (other than the person against whom is assessed the tax out of which such levy arose) who claims an interest in or lien on such property junior to that of the United States and to be legally entitled to the surplus proceeds of such sale may bring a civil action against the United States in a district court of the United States.

(3) Substituted sale proceeds

If property has been sold pursuant to an agreement described in section 6325(b)(3) (relating to substitution of proceeds of sale), any person who claims to be legally entitled to all or any part of the amount held as a fund pursuant to such agreement may bring a civil action against the United States in a district court of the United States.

(4) Substitution of value

If a certificate of discharge is issued to any person under section 6325(b)(4) with respect to any

property, such person may, within 120 days after the day on which such certificate is issued, bring a civil action against the United States in a district court of the United States for a determination of whether the value of the interest of the United States (if any) in such property is less than the value determined by the Secretary. No other action may be brought by such person for such a determination.

(b) Adjudication

The district court shall have jurisdiction to grant only such of the following forms of relief as may be appropriate in the circumstances:

(1) Injunction

If a levy or sale would irreparably injure rights in property which the court determines to be superior to rights of the United States in such property, the court may grant an injunction to prohibit the enforcement of such levy or to prohibit such sale.

(2) Recovery of property

If the court determines that such property has been wrongfully levied upon, the court may—

(A) order the return of specific property if the United States is in possession of such property;

(B) grant a judgment for the amount of money levied upon; or

(C) if such property was sold, grant a judgment for an amount not exceeding the greater of—

(i) the amount received by the United States from the sale of such property, or

(ii) the fair market value of such property immediately before the levy.

For the purposes of subparagraph (C), if the property was declared purchased by the United States at a sale pursuant to section 6335(e) (relating to manner and conditions of sale), the United States shall be treated as having received an amount equal to the minimum price determined pursuant to such section or (if larger) the amount received by the United States from the resale of such property.

(3) Surplus proceeds

If the court determines that the interest or lien of any party to an action under this section was transferred to the proceeds of a sale of such property, the court may grant a judgment in an amount equal to all or any part of the amount of the surplus proceeds of such sale.

(4) Substituted sale proceeds

If the court determines that a party has an interest in or lien on the amount held as a fund pursuant to an agreement described in section 6325(b)(3) (relating to substitution of proceeds of sale), the court may grant a judgment in an amount equal to all or any part of the amount of such fund.

(5) Substitution of value

If the court determines that the Secretary's determination of the value of the interest of the United States in the property for purposes of section 6325(b)(4) exceeds the actual value of such interest, the court shall grant a judgment ordering a refund of the amount deposited, and a release of the bond, to the extent that the aggregate of the amounts thereof exceeds such value determined by the court.

(c) Validity of assessment

For purposes of an adjudication under this section, the assessment of tax upon which the interest or lien of the United States is based shall be conclusively presumed to be valid.

(d) Limitation on rights of action

No action may be maintained against any officer or employee of the United States (or former officer or employee) or his personal representative with respect to any acts for which an action could be maintained under this section.

(e) Substitution of United States as party

If an action, which could be brought against the United States under this section, is improperly brought against any officer or employee of the United States (or former officer or employee) or his personal representative, the court shall order, upon such terms as are just, that the pleadings be amended to substitute the United States as a party for such officer or employee as of the time such action was commenced upon proper service of process on the United States.

(f) Provision inapplicable

The provisions of section 7422(a) (relating to prohibition of suit prior to filing claim for refund) shall not apply to actions under this section.

(g) Interest

Interest shall be allowed at the overpayment rate established under section 6621—

(1) In the case of a judgment pursuant to subsection (b)(2)(B), from the date the Secretary receives the money wrongfully levied upon to the date of payment of such judgment;

(2) in the case of a judgment pursuant to subsection (b)(2)(C), from the date of the sale of the property wrongfully levied upon to the date of payment of such judgment; and

(3) in the case of a judgment pursuant to subsection (b)(5) which orders a refund of any amount, from the date the Secretary received such amount to the date of payment of such judgment.

(h) Recovery of damages permitted in certain cases

(1) In general

Notwithstanding subsection (b), if, in any action brought under this section, there is a finding that any officer or employee of the Internal Revenue Service recklessly or intentionally, or by reason of negligence, disregarded any provision of this title the defendant shall be liable to the plaintiff in an amount equal to the lesser of $1,000,000 ($100,000 in the case of negligence) or the sum of—

(A) actual, direct economic damages sustained by the plaintiff as a proximate result of the reckless or intentional or negligent disregard of any provision of this title by the officer or employee (reduced by any amount of such damages awarded under subsection (b)); and

(B) the costs of the action.

(2) Requirement that administrative remedies be exhausted; mitigation; period

The rules of section 7433(d) shall apply for purposes of this subsection.

(3) Payment authority

Claims pursuant to this section shall be payable out of funds appropriated under section 1304 of title 31, United States Code.

(i) Cross reference

For period of limitation, see section 6532(c).

(Added Pub. L. 89–719, title I, §110(a), Nov. 2, 1966, 80 Stat. 1142; amended Pub. L. 93–625, §7(a)(2)(E), Jan. 3, 1975, 88 Stat. 2115; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–248, title III, §350(a), Sept. 3, 1982, 96 Stat. 639; Pub. L. 99–514, title XV, §1511(c)(16), Oct. 22, 1986, 100 Stat. 2745; Pub. L. 105–206, title III, §§3102(b), 3106(b)(1), (2), July 22, 1998, 112 Stat. 730, 733.)

AMENDMENTS

1998—Subsec. (a)(4). Pub. L. 105–206, §3106(b)(1), added par. (4).

Subsec. (b)(5). Pub. L. 105–206, §3106(b)(2)(A), added par. (5).

Subsec. (g)(3). Pub. L. 105–206, §3106(b)(2)(B), added par. (3).

Subsecs. (h), (i). Pub. L. 105–206, §3102(b), added subsec. (h) and redesignated former subsec. (h) as (i).

1986—Subsec. (g). Pub. L. 99–514 substituted "the overpayment rate established under section 6621" for "an annual rate established under section 6621".

1982—Subsec. (b)(2)(C). Pub. L. 97–248 inserted "if such property was sold," before "grant a judgment" and "the greater of—" after "not exceeding", redesignated remaining provisions as cl. (i), and added cl. (ii).

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

1975—Subsec. (g). Pub. L. 93–625 substituted "an annual rate established under section 6621" for "the rate of 6 percent per annum".

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–206, title III, §3102(d), July 22, 1998, 112 Stat. 731, provided that: "The amendments made by this section [amending this section and section 7433 of this title] shall apply to actions of officers or employees of the Internal Revenue Service after the date of the enactment of this Act [July 22, 1998]."

Amendment by section 3106(b)(1), (2) of Pub. L. 105–206 effective July 22, 1998, see section 3106(c) of Pub. L. 105–206, set out as a note under section 6325 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable for purposes of determining interest for periods after Dec. 31, 1986, see section 1511(d) of Pub. L. 99–514, set out as a note under section 47 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title III, §350(b), Sept. 3, 1982, 96 Stat. 639, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to levies made after December 31, 1982."

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–625 effective July 1, 1975, and applicable to amounts outstanding on such date or arising thereafter, see section 7(e) of Pub. L. 93–625, set out as an Effective Date note under section 6621 of this title.

EFFECTIVE DATE

Section applicable after Nov. 2, 1966, regardless of when title or lien of United States arose or when lien or interest of another person was acquired, except in a case in which a lien or title derived from enforcement of a lien held by United States has been enforced by a civil action or suit which has become final by judgment, sale, or agreement before Nov. 2, 1966, or in a case in which section would impair a priority held by any person other than United States holding a lien or interest prior to Nov. 2, 1966, operate to increase liability of such person, or shorten time of bringing suit with respect to transactions occurring before Nov. 2, 1966, see section 114(a)–(c) of Pub. L. 89–719, set out as Effective Date of 1966 Amendments note under section 6323 of this title.

§7427. Tax return preparers

In any proceeding involving the issue of whether or not a tax return preparer has willfully attempted in any manner to understate the liability for tax (within the meaning of section 6694(b)), the burden of proof in respect to such issue shall be upon the Secretary.

(Added Pub. L. 94–455, title XII, §1203(b)(2)(A), Oct. 4, 1976, 90 Stat. 1690; amended Pub. L. 110–28, title VIII, §8246(a)(2)(J)(i), May 25, 2007, 121 Stat. 202.)

PRIOR PROVISIONS

A prior section 7427 was renumbered 7437 of this title.

AMENDMENTS

2007—Pub. L. 110–28 substituted "Tax return preparers" for "Income tax return preparers" in section catchline and "a tax return preparer" for "an income tax return preparer" in text.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–28 applicable to returns prepared after May 25, 2007, see section 8246(c) of Pub. L. 110–28, set out as a note under section 6060 of this title.

§7428. Declaratory judgments relating to status and classification of organizations under section 501(c)(3), etc.

(a) Creation of remedy

In a case of actual controversy involving—

(1) a determination by the Secretary—

(A) with respect to the initial qualification or continuing qualification of an organization as an organization described in section 501(c)(3) which is exempt from tax under section 501(a) or as an organization described in section 170(c)(2),

(B) with respect to the initial classification or continuing classification of an organization as a private foundation (as defined in section 509(a)),

(C) with respect to the initial classification or continuing classification of an organization as a private operating foundation (as defined in section 4942(j)(3)), or

(D) with respect to the initial classification or continuing classification of a cooperative as an organization described in section 521(b) which is exempt from tax under section 521(a), or

(2) a failure by the Secretary to make a determination with respect to an issue referred to in paragraph (1),

upon the filing of an appropriate pleading, the United States Tax Court, the United States Court of Federal Claims, or the district court of the United States for the District of Columbia may make a declaration with respect to such initial qualification or continuing qualification or with respect to such initial classification or continuing classification. Any such declaration shall have the force and effect of a decision of the Tax Court or a final judgment or decree of the district court or the Court of Federal Claims, as the case may be, and shall be reviewable as such. For purposes of this section, a determination with respect to a continuing qualification or continuing classification includes any revocation of or other change in a qualification or classification.

(b) Limitations

(1) Petitioner

A pleading may be filed under this section only by the organization the qualification or classification of which is at issue.

(2) Exhaustion of administrative remedies

A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Federal Claims, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service. An organization requesting the determination of an issue referred to in subsection (a)(1) shall be deemed to have exhausted its administrative remedies with respect to a failure by the Secretary to make a determination with respect to such issue at the expiration of 270 days after the date on which the request for such determination was made if the organization has taken, in a timely manner, all reasonable steps to secure such determination.

(3) Time for bringing action

If the Secretary sends by certified or registered mail notice of his determination with respect to an issue referred to in subsection (a)(1) to the organization referred to in paragraph (1), no proceeding may be initiated under this section by such organization unless the pleading is filed before the 91st day after the date of such mailing.

(4) Nonapplication for certain revocations

No action may be brought under this section with respect to any revocation of status described in section 6033(j)(1).

(c) Validation of certain contributions made during pendency of proceedings

(1) In general

If—

(A) the issue referred to in subsection (a)(1) involves the revocation of a determination that

the organization is described in section 170(c)(2),

(B) a proceeding under this section is initiated within the time provided by subsection (b)(3), and

(C) either—

(i) a decision of the Tax Court has become final (within the meaning of section 7481), or

(ii) a judgment of the district court of the United States for the District of Columbia has been entered, or

(iii) a judgment of the Court of Federal Claims, has been entered,

and such decision or judgment, as the case may be, determines that the organization was not described in section 170(c)(2),

then, notwithstanding such decision or judgment, such organization shall be treated as having been described in section 170(c)(2) for purposes of section 170 for the period beginning on the date on which the notice of the revocation was published and ending on the date on which the court first determined in such proceeding that the organization was not described in section 170(c)(2).

(2) Limitation

Paragraph (1) shall apply only—

(A) with respect to individuals, and only to the extent that the aggregate of the contributions made by any individual to or for the use of the organization during the period specified in paragraph (1) does not exceed $1,000 (for this purpose treating a husband and wife as one contributor), and

(B) with respect to organizations described in section 170(c)(2) which are exempt from tax under section 501(a) (for this purpose excluding any such organization with respect to which there is pending a proceeding to revoke the determination under section 170(c)(2)).

(3) Exception

This subsection shall not apply to any individual who was responsible, in whole or in part, for the activities (or failures to act) on the part of the organization which were the basis for the revocation.

(d) Subpoena power for district court for District of Columbia

In any action brought under this section in the district court of the United States for the District of Columbia, a subpoena requiring the attendance of a witness at a trial or hearing may be served at any place in the United States.

(Added Pub. L. 94–455, title XIII, §1306(a), Oct. 4, 1976, 90 Stat. 1717; amended Pub. L. 95–600, title VII, §701(dd)(2), Nov. 6, 1978, 92 Stat. 2924; Pub. L. 97–164, title I, §152, Apr. 2, 1982, 96 Stat. 46; Pub. L. 98–369, div. A, title X, §1033(b), July 18, 1984, 98 Stat. 1039; Pub. L. 102–572, title IX, §902(b), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 108–357, title III, §317(a), Oct. 22, 2004, 118 Stat. 1470; Pub. L. 109–280, title XII, §1223(c), Aug. 17, 2006, 120 Stat. 1091.)

PRIOR PROVISIONS

A prior section 7428 was renumbered 7437 of this title.

AMENDMENTS

2006—Subsec. (b)(4). Pub. L. 109–280, which directed addition of par. (4) at the end of section 7428(b), without specifying the act to be amended, was executed by making the addition at the end of subsec. (b) of this section, which is section 7428 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

2004—Subsec. (a)(1)(D). Pub. L. 108–357 added subpar. (D).

1992—Subsec. (a). Pub. L. 102–572 substituted "United States Court of Federal Claims" for "United States Claims Court" and "Court of Federal Claims" for "Claims Court" in concluding provisions.

Subsecs. (b)(2), (c)(1)(C)(iii). Pub. L. 102–572, §902(b)(2), substituted "Court of Federal Claims" for "Claims Court".

1984—Subsec. (d). Pub. L. 98–369 added subsec. (d).

1982—Subsecs. (a), (b)(2), (c)(1)(C)(iii). Pub. L. 97–164 substituted "Claims Court" for "Court of Claims".
1978—Subsec. (a). Pub. L. 95–600 inserted provision relating to change in qualification or classification.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 applicable to notices and returns with respect to annual periods beginning after 2006, see section 1223(f) of Pub. L. 109–280, set out as a note under section 6033 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title III, §317(b), Oct. 22, 2004, 118 Stat. 1470, provided that: "The amendments made by this section [amending this section] shall apply with respect to pleadings filed after the date of the enactment of this Act [Oct. 22, 2004]."

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable with respect to inquiries and examinations beginning after Dec. 31, 1984, see section 1033(d) of Pub. L. 98–369, set out as an Effective Date note under section 7611 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–164 effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 effective as if included in this section at the time section was added to this title, see section 701(dd)(3) of Pub. L. 95–600, set out as a note under section 7476 of this title.

EFFECTIVE DATE

Pub. L. 94–455, title XIII, §1306(c), Oct. 4, 1976, 90 Stat. 1720, provided that: "The amendments made by this section [enacting this section and amending sections 7451, 7459, 7470, and 7482 of this title, enacting section 1507 of Title 28, Judiciary and Judicial Procedure, and amending sections 1346 and 2201 of Title 28] shall apply with respect to pleadings filed with the United States Tax Court, the district court of the United States for the District of Columbia, or the United States Court of Claims more than 6 months after the date of the enactment of this Act [Oct. 4, 1976] but only with respect to determinations (or requests for determinations) made after January 1, 1976."

§7429. Review of jeopardy levy or assessment procedures

(a) Administrative review

(1) Administrative review

(A) Prior approval required

No assessment may be made under section 6851(a), 6852(a), 6861(a), or 6862, and no levy may be made under section 6331(a) less than 30 days after notice and demand for payment is made, unless the Chief Counsel for the Internal Revenue Service (or such Counsel's delegate) personally approves (in writing) such assessment or levy.

(B) Information to taxpayer

Within 5 days after the day on which such an assessment or levy is made, the Secretary shall provide the taxpayer with a written statement of the information upon which the Secretary relied in making such assessment or levy.

(2) Request for review

Within 30 days after the day on which the taxpayer is furnished the written statement described in paragraph (1), or within 30 days after the last day of the period within which such statement is

required to be furnished, the taxpayer may request the Secretary to review the action taken.

(3) Redetermination by Secretary

After a request for review is made under paragraph (2), the Secretary shall determine—

(A) whether or not—

(i) the making of the assessment under section 6851, 6861, or 6862, as the case may be, is reasonable under the circumstances, and

(ii) the amount so assessed or demanded as a result of the action taken under section 6851, 6861, or 6862 is appropriate under the circumstances, or

(B) whether or not the levy described in subsection (a)(1) is reasonable under the circumstances.

(b) Judicial review

(1) Proceedings permitted

Within 90 days after the earlier of—

(A) the day the Secretary notifies the taxpayer of the Secretary's determination described in subsection (a)(3), or

(B) the 16th day after the request described in subsection (a)(2) was made,

the taxpayer may bring a civil action against the United States for a determination under this subsection in the court with jurisdiction determined under paragraph (2).

(2) Jurisdiction for determination

(A) In general

Except as provided in subparagraph (B), the district courts of the United States shall have exclusive jurisdiction over any civil action for a determination under this subsection.

(B) Tax Court

If a petition for a redetermination of a deficiency under section 6213(a) has been timely filed with the Tax Court before the making of an assessment or levy that is subject to the review procedures of this section, and 1 or more of the taxes and taxable periods before the Tax Court because of such petition is also included in the written statement that is provided to the taxpayer under subsection (a), then the Tax Court also shall have jurisdiction over any civil action for a determination under this subsection with respect to all the taxes and taxable periods included in such written statement.

(3) Determination by court

Within 20 days after a proceeding is commenced under paragraph (1), the court shall determine—

(A) whether or not—

(i) the making of the assessment under section 6851, 6861, or 6862, as the case may be, is reasonable under the circumstances, and

(ii) the amount so assessed or demanded as a result of the action taken under section 6851, 6861, or 6862 is appropriate under the circumstances, or

(B) whether or not the levy described in subsection (a)(1) is reasonable under the circumstances.

If the court determines that proper service was not made on the United States or on the Secretary, as may be appropriate, within 5 days after the date of the commencement of the proceeding, then the running of the 20-day period set forth in the preceding sentence shall not begin before the day on which proper service was made on the United States or on the Secretary, as may be appropriate.

(4) Order of court

If the court determines that the making of such levy is unreasonable, that the making of such assessment is unreasonable, or that the amount assessed or demanded is inappropriate, then the court may order the Secretary to release such levy, to abate such assessment, to redetermine (in whole or in part) the amount assessed or demanded, or to take such other action as the court finds appropriate.

(c) Extension of 20-day period where taxpayer so requests

If the taxpayer requests an extension of the 20-day period set forth in subsection (b)(2) and establishes reasonable grounds why such extension should be granted, the court may grant an extension of not more than 40 additional days.

(d) Computation of days

For purposes of this section, Saturday, Sunday, or a legal holiday in the District of Columbia shall not be counted as the last day of any period.

(e) Venue

(1) District court

A civil action in a district court under subsection (b) shall be commenced only in the judicial district described in section 1402(a)(1) or (2) of title 28, United States Code.

(2) Transfer of actions

If a civil action is filed under subsection (b) with the Tax Court and such court finds that there is want of jurisdiction because of the jurisdiction provisions of subsection (b)(2), then the Tax Court shall, if such court determines it is in the interest of justice, transfer the civil action to the district court in which the action could have been brought at the time such action was filed. Any civil action so transferred shall proceed as if such action had been filed in the district court to which such action is transferred on the date on which such action was actually filed in the Tax Court from which such action is transferred.

(f) Finality of determination

Any determination made by a court under this section shall be final and conclusive and shall not be reviewed by any other court.

(g) Burden of proof

(1) Reasonableness of levy, termination, or jeopardy assessment

In a proceeding under subsection (b) involving the issue of whether the making of a levy described in subsection (a)(1) or the making of an assessment under section 6851, 6852, 6861, or 6862 is reasonable under the circumstances, the burden of proof in respect to such issue shall be upon the Secretary.

(2) Reasonableness of amount of assessment

In a proceeding under subsection (b) involving the issue of whether an amount assessed or demanded as a result of action taken under section 6851, 6852, 6861, or 6862 is appropriate under the circumstances, the Secretary shall provide a written statement which contains any information with respect to which his determination of the amount assessed was based, but the burden of proof in respect of such issue shall be upon the taxpayer.

(Added Pub. L. 94–455, title XII, §1204(a), Oct. 4, 1976, 90 Stat. 1695; amended Pub. L. 98–369, div. A, title IV, §446(a), July 18, 1984, 98 Stat. 817; Pub. L. 100–203, title X, §10713(b)(2)(F), Dec. 22, 1987, 101 Stat. 1330–470; Pub. L. 100–647, title VI, §6237(a)–(e)(3), Nov. 10, 1988, 102 Stat. 3741–3743; Pub. L. 105–206, title III, §3434(a), July 22, 1998, 112 Stat. 760.)

AMENDMENTS

1998—Subsec. (a)(1). Pub. L. 105–206 substituted "Administrative review" for "Information to taxpayer" in heading and amended text of par. (1) generally. Prior to amendment, text read as follows: "Within 5 days after the day on which an assessment is made under section 6851(a), 6852(a), 6861(a), or 6862, or levy is made under section 6331(a) less than 30 days after notice and demand for payment is made under section

6331(a), the Secretary shall provide the taxpayer with a written statement of the information upon which the Secretary relies in making such assessment or levy."

1988—Pub. L. 100–647, §6237(e)(3), inserted "levy or" after "jeopardy" in section catchline.

Subsec. (a)(1). Pub. L. 100–647, §6237(a), inserted "or levy is made under section 6331(a) less than 30 days after notice and demand for payment is made under section 6331(a)," after "6862," and "or levy" after "such assessment".

Subsec. (a)(3). Pub. L. 100–647, §6237(b), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "After a request for review is made under paragraph (2), the Secretary shall determine whether or not—

"(A) the making of the assessment under section 6851, 6852, 6861, or 6862, as the case may be, is reasonable under the circumstances, and

"(B) the amount so assessed or demanded as a result of the action taken under section 6851, 6852, 6861, or 6862 is appropriate under the circumstances."

Subsec. (b). Pub. L. 100–647, §6237(c), amended subsec. (b) generally, substituting provisions of pars. (1) to (4) for provisions of former pars. (1) to (3) relating to actions permitted, determination by district court, and order of district court.

Subsec. (c). Pub. L. 100–647, §6237(e)(1), struck out "district" before "court".

Subsec. (e). Pub. L. 100–647, §6237(d), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: "A civil action under subsection (b) shall be commenced only in the judicial district described in section 1402(a)(1) or (2) of title 28, United States Code."

Subsec. (f). Pub. L. 100–647, §6237(e)(1), struck out "district" after "made by a".

Subsec. (g)(1). Pub. L. 100–647, §6237(e)(2), in heading substituted "levy, termination," for "termination" and in text substituted "a proceeding" for "an action" and inserted "the making of a levy described in subsection (a)(1) or" after "whether".

Subsec. (g)(2). Pub. L. 100–647, §6237(e)(2)(C), substituted "a proceeding" for "an action".

1987—Subsec. (a)(1). Pub. L. 100–203, §10713(b)(2)(F)(i), substituted "6851(a), 6852(a)" for "6851(a),".

Subsecs. (a)(3)(A), (B), (b)(2)(A), (B), (g)(1), (2). Pub. L. 100–203, §10713(b)(2)(F)(ii), substituted "6851, 6852," for "6851," wherever appearing.

1984—Subsec. (b)(2). Pub. L. 98–369 inserted provision that if the court determines that proper service was not made on the United States within 5 days after the date of the commencement of the action, the running of the 20-day period shall not begin before the day on which proper service was made on the United States.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–206, title III, §3434(b), July 22, 1998, 112 Stat. 760, provided that: "The amendment made by this section [amending this section] shall apply to taxes assessed and levies made after the date of the enactment of this Act [July 22, 1998]."

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title VI, §6237(f), Nov. 10, 1988, 102 Stat. 3743, provided that: "The amendments made by this section [amending this section] shall apply to jeopardy levies issued and assessments made on or after July 1, 1989."

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title IV, §446(b), July 18, 1984, 98 Stat. 817, provided that: "The amendment made by subsection (a) [amending this section] shall apply to actions commenced after the date of the enactment of this Act [July 18, 1984]."

EFFECTIVE DATE

Section applicable with respect to action taken under section 6851, 6861, or 6862 of this title where notice and demand takes place after Feb. 28, 1977, see section 1204(d) of Pub. L. 94–455, as amended, set out as a note under section 6851 of this title.

§7430. Awarding of costs and certain fees

(a) In general

In any administrative or court proceeding which is brought by or against the United States in connection with the determination, collection, or refund of any tax, interest, or penalty under this

title, the prevailing party may be awarded a judgment or a settlement for—

(1) reasonable administrative costs incurred in connection with such administrative proceeding within the Internal Revenue Service, and

(2) reasonable litigation costs incurred in connection with such court proceeding.

(b) Limitations

(1) Requirement that administrative remedies be exhausted

A judgment for reasonable litigation costs shall not be awarded under subsection (a) in any court proceeding unless the court determines that the prevailing party has exhausted the administrative remedies available to such party within the Internal Revenue Service. Any failure to agree to an extension of the time for the assessment of any tax shall not be taken into account for purposes of determining whether the prevailing party meets the requirements of the preceding sentence.

(2) Only costs allocable to the United States

An award under subsection (a) shall be made only for reasonable litigation and administrative costs which are allocable to the United States and not to any other party.

(3) Costs denied where party prevailing protracts proceedings

No award for reasonable litigation and administrative costs may be made under subsection (a) with respect to any portion of the administrative or court proceeding during which the prevailing party has unreasonably protracted such proceeding.

(4) Period for applying to IRS for administrative costs

An award may be made under subsection (a) by the Internal Revenue Service for reasonable administrative costs only if the prevailing party files an application with the Internal Revenue Service for such costs before the 91st day after the date on which the final decision of the Internal Revenue Service as to the determination of the tax, interest, or penalty is mailed to such party.

(c) Definitions

For purposes of this section—

(1) Reasonable litigation costs

The term "reasonable litigation costs" includes—

(A) reasonable court costs, and

(B) based upon prevailing market rates for the kind or quality of services furnished—

(i) the reasonable expenses of expert witnesses in connection with a court proceeding, except that no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the United States,

(ii) the reasonable cost of any study, analysis, engineering report, test, or project which is found by the court to be necessary for the preparation of the party's case, and

(iii) reasonable fees paid or incurred for the services of attorneys in connection with the court proceeding, except that such fees shall not be in excess of $125 per hour unless the court determines that a special factor, such as the limited availability of qualified attorneys for such proceeding, the difficulty of the issues presented in the case, or the local availability of tax expertise, justifies a higher rate.

In the case of any calendar year beginning after 1996, the dollar amount referred to in clause (iii) shall be increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, by substituting "calendar year 1995" for "calendar year 1992" in subparagraph (B) thereof. If any dollar amount after being increased under the preceding sentence is not a multiple of $10, such dollar amount shall be rounded to the nearest multiple of $10.

(2) Reasonable administrative costs

The term "reasonable administrative costs" means—

(A) any administrative fees or similar charges imposed by the Internal Revenue Service, and

(B) expenses, costs, and fees described in paragraph (1)(B), except that any determination made by the court under clause (ii) or (iii) thereof shall be made by the Internal Revenue Service in cases where the determination under paragraph (4)(C) of the awarding of reasonable administrative costs is made by the Internal Revenue Service.

Such term shall only include costs incurred on or after whichever of the following is the earliest: (i) the date of the receipt by the taxpayer of the notice of the decision of the Internal Revenue Service Office of Appeals; (ii) the date of the notice of deficiency; or (iii) the date on which the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals is sent.

(3) Attorneys' fees

(A) In general

For purposes of paragraphs (1) and (2), fees for the services of an individual (whether or not an attorney) who is authorized to practice before the Tax Court or before the Internal Revenue Service shall be treated as fees for the services of an attorney.

(B) Pro bono services

The court may award reasonable attorneys' fees under subsection (a) in excess of the attorneys' fees paid or incurred if such fees are less than the reasonable attorneys' fees because an individual is representing the prevailing party for no fee or for a fee which (taking into account all the facts and circumstances) is no more than a nominal fee. This subparagraph shall apply only if such award is paid to such individual or such individual's employer.

(4) Prevailing party

(A) In general

The term "prevailing party" means any party in any proceeding to which subsection (a) applies (other than the United States or any creditor of the taxpayer involved)—

(i) which—

(I) has substantially prevailed with respect to the amount in controversy, or

(II) has substantially prevailed with respect to the most significant issue or set of issues presented, and

(ii) which meets the requirements of the 1st sentence of section 2412(d)(1)(B) of title 28, United States Code (as in effect on October 22, 1986) except to the extent differing procedures are established by rule of court and meets the requirements of section 2412(d)(2)(B) of such title 28 (as so in effect).

(B) Exception if United States establishes that its position was substantially justified

(i) General rule

A party shall not be treated as the prevailing party in a proceeding to which subsection (a) applies if the United States establishes that the position of the United States in the proceeding was substantially justified.

(ii) Presumption of no justification if Internal Revenue Service did not follow certain published guidance

For purposes of clause (i), the position of the United States shall be presumed not to be substantially justified if the Internal Revenue Service did not follow its applicable published guidance in the administrative proceeding. Such presumption may be rebutted.

(iii) Effect of losing on substantially similar issues

In determining for purposes of clause (i) whether the position of the United States was substantially justified, the court shall take into account whether the United States has lost in

courts of appeal for other circuits on substantially similar issues.

(iv) Applicable published guidance

For purposes of clause (ii), the term "applicable published guidance" means—

(I) regulations, revenue rulings, revenue procedures, information releases, notices, and announcements, and

(II) any of the following which are issued to the taxpayer: private letter rulings, technical advice memoranda, and determination letters.

(C) Determination as to prevailing party

Any determination under this paragraph as to whether a party is a prevailing party shall be made by agreement of the parties or—

(i) in the case where the final determination with respect to the tax, interest, or penalty is made at the administrative level, by the Internal Revenue Service, or

(ii) in the case where such final determination is made by a court, the court.

(D) Special rules for applying net worth requirement

In applying the requirements of section 2412(d)(2)(B) of title 28, United States Code, for purposes of subparagraph (A)(ii) of this paragraph—

(i) the net worth limitation in clause (i) of such section shall apply to—

(I) an estate but shall be determined as of the date of the decedent's death, and

(II) a trust but shall be determined as of the last day of the taxable year involved in the proceeding, and

(ii) individuals filing a joint return shall be treated as separate individuals for purposes of clause (i) of such section.

(E) Special rules where judgment less than taxpayer's offer

(i) In general

A party to a court proceeding meeting the requirements of subparagraph (A)(ii) shall be treated as the prevailing party if the liability of the taxpayer pursuant to the judgment in the proceeding (determined without regard to interest) is equal to or less than the liability of the taxpayer which would have been so determined if the United States had accepted a qualified offer of the party under subsection (g).

(ii) Exceptions

This subparagraph shall not apply to—

(I) any judgment issued pursuant to a settlement; or

(II) any proceeding in which the amount of tax liability is not in issue, including any declaratory judgment proceeding, any proceeding to enforce or quash any summons issued pursuant to this title, and any action to restrain disclosure under section 6110(f).

(iii) Special rules

If this subparagraph applies to any court proceeding—

(I) the determination under clause (i) shall be made by reference to the last qualified offer made with respect to the tax liability at issue in the proceeding; and

(II) reasonable administrative and litigation costs shall only include costs incurred on and after the date of such offer.

(iv) Coordination

This subparagraph shall not apply to a party which is a prevailing party under any other provision of this paragraph.

(5) Administrative proceedings

The term "administrative proceeding" means any procedure or other action before the Internal Revenue Service.

(6) Court proceedings

The term "court proceeding" means any civil action brought in a court of the United States (including the Tax Court and the United States Court of Federal Claims).

(7) Position of United States

The term "position of the United States" means—

(A) the position taken by the United States in a judicial proceeding to which subsection (a) applies, and

(B) the position taken in an administrative proceeding to which subsection (a) applies as of the earlier of—

(i) the date of the receipt by the taxpayer of the notice of the decision of the Internal Revenue Service Office of Appeals, or

(ii) the date of the notice of deficiency.

(d) Special rules for payment of costs

(1) Reasonable administrative costs

An award for reasonable administrative costs shall be payable out of funds appropriated under section 1304 of title 31, United States Code.

(2) Reasonable litigation costs

An award for reasonable litigation costs shall be payable in the case of the Tax Court in the same manner as such an award by a district court.

(e) Multiple actions

For purposes of this section, in the case of—

(1) multiple actions which could have been joined or consolidated, or

(2) a case or cases involving a return or returns of the same taxpayer (including joint returns of married individuals) which could have been joined in a single court proceeding in the same court,

such actions or cases shall be treated as 1 court proceeding regardless of whether such joinder or consolidation actually occurs, unless the court in which such action is brought determines, in its discretion, that it would be inappropriate to treat such actions or cases as joined or consolidated.

(f) Right of appeal

(1) Court proceedings

An order granting or denying (in whole or in part) an award for reasonable litigation or administrative costs under subsection (a) in a court proceeding, may be incorporated as a part of the decision or judgment in the court proceeding and shall be subject to appeal in the same manner as the decision or judgment.

(2) Administrative proceedings

A decision granting or denying (in whole or in part) an award for reasonable administrative costs under subsection (a) by the Internal Revenue Service shall be subject to the filing of a petition for review with the Tax Court under rules similar to the rules under section 7463 (without regard to the amount in dispute). If the Secretary sends by certified or registered mail a notice of such decision to the petitioner, no proceeding in the Tax Court may be initiated under this paragraph unless such petition is filed before the 91st day after the date of such mailing.

(3) Appeal of Tax Court decision

An order of the Tax Court disposing of a petition under paragraph (2) shall be reviewable in the same manner as a decision of the Tax Court, but only with respect to the matters determined in such order.

(g) Qualified offer

For purposes of subsection (c)(4)—

(1) In general

The term "qualified offer" means a written offer which—

(A) is made by the taxpayer to the United States during the qualified offer period;

(B) specifies the offered amount of the taxpayer's liability (determined without regard to interest);

(C) is designated at the time it is made as a qualified offer for purposes of this section; and

(D) remains open during the period beginning on the date it is made and ending on the earliest of the date the offer is rejected, the date the trial begins, or the 90th day after the date the offer is made.

(2) Qualified offer period

For purposes of this subsection, the term "qualified offer period" means the period—

(A) beginning on the date on which the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals is sent, and

(B) ending on the date which is 30 days before the date the case is first set for trial.

(Added Pub. L. 97–248, title II, §292(a), Sept. 3, 1982, 96 Stat. 572; amended Pub. L. 98–369, div. A, title VII, §714(c), July 18, 1984, 98 Stat. 961; Pub. L. 99–514, title XV, §1551(a)–(g), Oct. 22, 1986, 100 Stat. 2752, 2753; Pub. L. 100–647, title I, §1015(i), title VI, §6239(a), Nov. 10, 1988, 102 Stat. 3571, 3743; Pub. L. 102–572, title IX, §902(b)(1), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 104–168, title VII, §§701(a)–(c)(2), 702(a), 703(a), 704(a), July 30, 1996, 110 Stat. 1463, 1464; Pub. L. 105–34, title XII, §1285(a)–(c), title XIV, §1453(a), Aug. 5, 1997, 111 Stat. 1038, 1055; Pub. L. 105–206, title III, §3101(a)–(e), title VI, §§6012(h), 6014(e), July 22, 1998, 112 Stat. 727, 728, 819, 820; Pub. L. 106–554, §1(a)(7) [title III, §319(25)], Dec. 21, 2000, 114 Stat. 2763, 2763A–647.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

PRIOR PROVISIONS

A prior section 7430 was renumbered section 7437 of this title.

AMENDMENTS

2000—Subsec. (c)(3). Pub. L. 106–554, §1(a)(7) [title III, §319(25)(A)], substituted "Attorneys' " for "Attorneys" in heading.

Subsec. (c)(3)(B). Pub. L. 106–554, §1(a)(7) [title III, §319(25)(B)], substituted "attorneys' fees" for "attorneys fees" wherever appearing.

1998—Subsec. (b)(4), (5). Pub. L. 105–206, §6012(h), redesignated par. (5) as (4).

Subsec. (c)(1)(B)(iii). Pub. L. 105–206, §3101(a), substituted "$125" for "$110" and inserted "the difficulty of the issues presented in the case, or the local availability of tax expertise," before "justifies a higher rate".

Subsec. (c)(2). Pub. L. 105–206, §3101(b), added concluding provisions and struck out former concluding provisions which read as follows: "Such term shall only include costs incurred on or after the earlier of (i) the date of the receipt by the taxpayer of the notice of the decision of the Internal Revenue Service Office of Appeals, or (ii) the date of the notice of deficiency."

Subsec. (c)(3). Pub. L. 105–206, §3101(c), substituted "attorneys" for "attorney's" in heading and amended text of par. (3) generally. Prior to amendment, text read as follows: "For purposes of paragraphs (1) and (2), fees for the services of an individual (whether or not an attorney) who is authorized to practice before the Tax Court or before the Internal Revenue Service shall be treated as fees for the services of an attorney."

Subsec. (c)(4)(B)(iii), (iv). Pub. L. 105–206, §3101(d), added cl. (iii) and redesignated former cl. (iii) as (iv).

Subsec. (c)(4)(D). Pub. L. 105–206, §6014(e), substituted "subparagraph (A)(ii)" for "subparagraph (A)(iii)" in introductory provisions.

Subsec. (c)(4)(E). Pub. L. 105–206, §3101(e)(1), added subpar. (E).

Subsec. (g). Pub. L. 105–206, §3101(e)(2), added subsec. (g).

1997—Subsec. (b)(5). Pub. L. 105–34, §1285(b), added par. (5).

Subsec. (c)(4)(D). Pub. L. 105–34, §1453(a), added subpar. (D).

Subsec. (f)(2). Pub. L. 105–34, §1285(c), substituted "the filing of a petition for review with" for "appeal to" and inserted at end "If the Secretary sends by certified or registered mail a notice of such decision to the petitioner, no proceeding in the Tax Court may be initiated under this paragraph unless such petition is filed before the 91st day after the date of such mailing."

Subsec. (f)(3). Pub. L. 105–34, §1285(a), added par. (3).

1996—Subsec. (b)(1). Pub. L. 104–168, §703(a), inserted at end "Any failure to agree to an extension of the time for the assessment of any tax shall not be taken into account for purposes of determining whether the prevailing party meets the requirements of the preceding sentence."

Subsec. (b)(3), (4). Pub. L. 104–168, §704(a), redesignated par. (4) as (3) and struck out former par. (3) which read as follows:

"(3) EXCLUSION OF DECLARATORY JUDGMENT PROCEEDINGS.—

"(A) IN GENERAL.—No award for reasonable litigation costs may be made under subsection (a) with respect to any declaratory judgment proceeding.

"(B) EXCEPTION FOR SECTION 501(c)(3) DETERMINATION REVOCATION PROCEEDINGS .—Subparagraph (A) shall not apply to any proceeding which involves the revocation of a determination that the organization is described in section 501(c)(3)."

Subsec. (c)(1). Pub. L. 104–168, §702(a)(3), inserted closing provisions "In the case of any calendar year beginning after 1996, the dollar amount referred to in clause (iii) shall be increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, by substituting 'calendar year 1995' for 'calendar year 1992' in subparagraph (B) thereof. If any dollar amount after being increased under the preceding sentence is not a multiple of $10, such dollar amount shall be rounded to the nearest multiple of $10."

Subsec. (c)(1)(B)(iii). Pub. L. 104–168, §702(a)(1), (2), substituted "$110" for "$75" and struck out "an increase in the cost of living or" before "a special factor,".

Subsec. (c)(2)(B). Pub. L. 104–168, §701(c)(1), substituted "paragraph (4)(C)" for "paragraph (4)(B)".

Subsec. (c)(4)(A). Pub. L. 104–168, §701(a), redesignated cls. (ii) and (iii) as (i) and (ii), respectively, and struck out former cl. (i) which read as follows: "which establishes that the position of the United States in the proceeding was not substantially justified,".

Subsec. (c)(4)(B). Pub. L. 104–168, §701(b), added subpar. (B). Former subpar. (B) redesignated (C).

Subsec. (c)(4)(C). Pub. L. 104–168, §701(c)(2), substituted "Any determination under this paragraph" for "Any determination under subparagraph (A)".

Pub. L. 104–168, §701(b), redesignated subpar. (B) as (C).

1992—Subsec. (c)(6). Pub. L. 102–572 substituted "United States Court of Federal Claims" for "United States Claims Court".

1988—Pub. L. 100–647, §6239(a), substituted "costs" for "court costs" in section catchline and amended text generally, revising and restating provisions so as to include costs and fees in administrative proceedings.

Subsec. (c)(2)(A)(iii). Pub. L. 100–647, §1015(i), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: "meets the requirements of section 504(b)(1)(B) of title 5, United States Code (as in effect on the date of the enactment of the Tax Reform Act of 1986 and applied by taking into account the commencement of the proceeding described in subsection (a) in lieu of the initiation of the adjudication referred to in such section)."

1986—Subsec. (a). Pub. L. 99–514, §1551(f), inserted "(payable in the case of the Tax Court in the same manner as such an award by a district court)" in concluding provisions.

Subsec. (b). Pub. L. 99–514, §1551(a), (b), redesignated pars. (2) to (4) as (1) to (3), respectively, added par. (4), and struck out former par. (1), maximum dollar amount, which read as follows: "The amount of reasonable litigation costs which may be awarded under subsection (a) with respect to any prevailing party in any civil proceeding shall not exceed $25,000."

Subsec. (c)(1)(A). Pub. L. 99–514, §1551(c), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "The term 'reasonable litigation costs' includes—

"(i) reasonable court costs,

"(ii) the reasonable expenses of expert witnesses in connection with the civil proceeding,

"(iii) the reasonable cost of any study, analysis, engineering report, test, or project which is found by the court to be necessary for the preparation of the party's case, and

"(iv) reasonable fees paid or incurred for the services of attorneys in connection with the civil proceeding."

Subsec. (c)(2)(A). Pub. L. 99–514, §1551(d), substituted "was not substantially justified" for "was unreasonable" in cl. (i), and added cl. (iii).

Subsec. (c)(4). Pub. L. 99–514, §1551(e), added par. (4).

Subsec. (f). Pub. L. 99–514, §1551(g), struck out subsec. (f), termination, which read as follows: "This section shall not apply to any proceeding commenced after December 31, 1985."

1984—Subsec. (a)(2). Pub. L. 98–369 inserted reference to United States Claims Court.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–206, title III, §3101(g), July 22, 1998, 112 Stat. 729, provided that: "The amendments made by this section [amending this section and section 7431 of this title] shall apply to costs incurred (and, in the case of the amendment made by subsection (c) [amending this section], services performed) more than 180 days after the date of the enactment of this Act [July 22, 1998]."

Amendment by sections 6012(h) and 6014(e) of Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XII, §1285(d), Aug. 5, 1997, 111 Stat. 1039, provided that: "The amendments made by this section [amending this section] shall apply to civil actions or proceedings commenced after the date of the enactment of this Act [Aug. 5, 1997]."

Pub. L. 105–34, title XIV, §1453(b), Aug. 5, 1997, 111 Stat. 1055, provided that: "The amendment made by this section [amending this section] shall apply to proceedings commenced after the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 701(a)–(c)(2) of Pub. L. 104–168 applicable in case of proceedings commenced after July 30, 1996, see section 701(d) of Pub. L. 104–168, set out as a note under section 6404 of this title.

Pub. L. 104–168, title VII, §702(b), July 30, 1996, 110 Stat. 1464, provided that: "The amendment made by this section [amending this section] shall apply in the case of proceedings commenced after the date of the enactment of this Act [July 30, 1996]."

Pub. L. 104–168, title VII, §703(b), July 30, 1996, 110 Stat. 1464, provided that: "The amendment made by this section [amending this section] shall apply in the case of proceedings commenced after the date of the enactment of this Act [July 30, 1996]."

Pub. L. 104–168, title VII, §704(b), July 30, 1996, 110 Stat. 1464, provided that: "The amendment made by this section [amending this section] shall apply in the case of proceedings commenced after the date of the enactment of this Act [July 30, 1996]."

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1015(i) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title VI, §6239(d), Nov. 10, 1988, 102 Stat. 3746, provided that: "The amendments made by this section [amending this section and section 504 of Title 5, Government Organization and Employees] shall apply to proceedings commencing after the date of the enactment of this Act [Nov. 10, 1988]."

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XV, §1551(h), Oct. 22, 1986, 100 Stat. 2753, provided that:

"(1) GENERAL RULE.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to amounts paid after September 30, 1986, in civil actions or proceedings, commenced after December 31, 1985.

"(2) SUBSECTION (f).—The amendment made by subsection (f) [amending this section] shall take effect as if included in the amendments made by section 292 of the Tax Equity and Fiscal Responsibility Act of 1982 [see Effective Date note below].

"(3) APPLICABILITY OF AMENDMENTS TO CERTAIN PRIOR CASES.—The amendments made by this section shall apply to any case commenced after December 31, 1985, and finally disposed of before the date of the enactment of this Act [Oct. 22, 1986], except that in any such case, the 30-day period referred to in section 2412(d)(1)(B) of title 28, United States Code, or Rule 231 of the Tax Court, as the case may be, shall be deemed to commence on the date of the enactment of this Act [Oct. 22, 1986]."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE

Pub. L. 97–248, title II, §292(e), Sept. 3, 1982, 96 Stat. 574, as amended by Pub. L. 98–369, div. A, title I, §160, July 18, 1984, 98 Stat. 696, provided that:

"(1) IN GENERAL.—The amendments made by this section [enacting this section and amending section 6673 of this title and section 2412 of Title 28, Judiciary and Judicial Procedure] shall apply to civil actions or proceedings commenced after February 28, 1983.

"(2) PENALTY.—The amendments made by subsections (b) and (d)(2) [amending section 6673 of this title] shall apply to any action or proceeding in the United States Tax Court which—

"(A) is commenced after December 31, 1982, or

"(B) is pending in the United States Tax Court on the day which is 120 days after the date of the enactment of the Tax Reform Act of 1984 [July 18, 1984]."

§7431. Civil damages for unauthorized inspection or disclosure of returns and return information

(a) In general

(1) Inspection or disclosure by employee of United States

If any officer or employee of the United States knowingly, or by reason of negligence, inspects or discloses any return or return information with respect to a taxpayer in violation of any provision of section 6103, such taxpayer may bring a civil action for damages against the United States in a district court of the United States.

(2) Inspection or disclosure by a person who is not an employee of United States

If any person who is not an officer or employee of the United States knowingly, or by reason of negligence, inspects or discloses any return or return information with respect to a taxpayer in violation of any provision of section 6103 or in violation of section 6104(c), such taxpayer may bring a civil action for damages against such person in a district court of the United States.

(b) Exceptions

No liability shall arise under this section with respect to any inspection or disclosure—

(1) which results from a good faith, but erroneous, interpretation of section 6103, or

(2) which is requested by the taxpayer.

(c) Damages

In any action brought under subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the sum of—

(1) the greater of—

(A) $1,000 for each act of unauthorized inspection or disclosure of a return or return information with respect to which such defendant is found liable, or

(B) the sum of—

(i) the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure, plus

(ii) in the case of a willful inspection or disclosure or an inspection or disclosure which is the result of gross negligence, punitive damages, plus

(2) the costs of the action, plus

(3) in the case of a plaintiff which is described in section 7430(c)(4)(A)(ii), reasonable attorneys fees, except that if the defendant is the United States, reasonable attorneys fees may be awarded only if the plaintiff is the prevailing party (as determined under section 7430(c)(4)).

(d) Period for bringing action

Notwithstanding any other provision of law, an action to enforce any liability created under this section may be brought, without regard to the amount in controversy, at any time within 2 years after the date of discovery by the plaintiff of the unauthorized inspection or disclosure.

(e) Notification of unlawful inspection and disclosure

If any person is criminally charged by indictment or information with inspection or disclosure of a taxpayer's return or return information in violation of—

(1) paragraph (1) or (2) of section 7213(a),
(2) section 7213A(a), or
(3) subparagraph (B) of section 1030(a)(2) of title 18, United States Code,

the Secretary shall notify such taxpayer as soon as practicable of such inspection or disclosure.

(f) Definitions

For purposes of this section, the terms "inspect", "inspection", "return", and "return information" have the respective meanings given such terms by section 6103(b).

(g) Extension to information obtained under section 3406

For purposes of this section—

(1) any information obtained under section 3406 (including information with respect to any payee certification failure under subsection (d) thereof) shall be treated as return information, and

(2) any inspection or use of such information other than for purposes of meeting any requirement under section 3406 or (subject to the safeguards set forth in section 6103) for purposes permitted under section 6103 shall be treated as a violation of section 6103.

For purposes of subsection (b), the reference to section 6103 shall be treated as including a reference to section 3406.

(h) Special rule for information obtained under section 6103(k)(9)

For purposes of this section, any reference to section 6103 shall be treated as including a reference to section 6311(e).

(Added Pub. L. 97–248, title III, §357(a), Sept. 3, 1982, 96 Stat. 645; amended Pub. L. 98–67, title I, §104(b), Aug. 5, 1983, 97 Stat. 379; Pub. L. 105–34, title XII, §1205(c)(2), Aug. 5, 1997, 111 Stat. 998; Pub. L. 105–35, §3(a)–(d)(4), (6), Aug. 5, 1997, 111 Stat. 1105, 1106; Pub. L. 105–206, title III, §3101(f), title VI, §6012(b)(3), July 22, 1998, 112 Stat. 729, 819; Pub. L. 109–280, title XII, §1224(b)(7), Aug. 17, 2006, 120 Stat. 1093.)

PRIOR PROVISIONS

A prior section 7431 was renumbered section 7437 of this title.

AMENDMENTS

2006—Subsec. (a)(2). Pub. L. 109–280, which directed insertion of "or in violation of section 6104(c)" after "6103" in subsec. (a)(2) of section 7431, without specifying the act to be amended, was executed by making the insertion in subsec. (a)(2) of this section, which is section 7431 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

1998—Subsec. (c)(2). Pub. L. 105–206, §3101(f), substituted ", plus" for the period at end.

Subsec. (c)(3). Pub. L. 105–206, §3101(f), added par. (3).

Subsecs. (g), (h). Pub. L. 105–206, §6012(b)(3), redesignated subsec. (g), relating to special rule for information obtained under section 6103(k)(8), as (h), and substituted "(9)" for "(8)" in heading.

1997—Pub. L. 105–35, §3(d)(4), inserted "inspection or" before "disclosure" in section catchline.

Subsec. (a)(1), (2). Pub. L. 105–35, §3(a)(1), (2), substituted "Inspection or disclosure" for "Disclosure" in headings and "inspects or discloses" for "discloses" in text.

Subsec. (b). Pub. L. 105–35, §3(c), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

"(b) NO LIABILITY FOR GOOD FAITH BUT ERRONEOUS INTERPRETATION.—No liability shall

arise under this section with respect to any disclosure which results from a good faith, but erroneous, interpretation of section 6103."

Subsec. (c)(1). Pub. L. 105–35, §3(d)(1), (2), inserted "inspection or" before "disclosure" in subpars. (A) and (B)(i) and substituted "willful inspection or disclosure or an inspection or disclosure" for "willful disclosure or a disclosure" in subpar. (B)(ii).

Subsec. (d). Pub. L. 105–35, §3(d)(1), inserted "inspection or" before "disclosure".

Subsec. (e). Pub. L. 105–35, §3(b), added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 105–35, §3(b), (d)(3), redesignated subsec. (e) as (f) and amended it generally. Prior to amendment, subsec. (f) read as follows:

"(f) RETURN; RETURN INFORMATION.—For purposes of this section, the terms 'return' and 'return information' have the respective meanings given such terms in section 6103(b)."

Subsec. (g). Pub. L. 105–35, §3(b), (d)(6), redesignated subsec. (f) as (g) and substituted "any inspection or use" for "any use" in par. (2).

Pub. L. 105–34, §1205(c)(2), added subsec. (g) relating to special rule for information obtained under section 6103(k)(8).

1983—Subsec. (f). Pub. L. 98–67 added subsec. (f).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 effective Aug. 17, 2006, but not applicable to requests made before such date, see section 1224(c) of Pub. L. 109–280, set out as a note under section 6103 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 3101(f) of Pub. L. 105–206 applicable to costs incurred more than 180 days after July 22, 1998, see section 3101(g) of Pub. L. 105–206, set out as a note under section 7430 of this title.

Amendment by section 6012(b)(3) of Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENTS

Pub. L. 105–35, §3(e), Aug. 5, 1997, 111 Stat. 1106, provided that: "The amendments made by this section [amending this section] shall apply to inspections and disclosures occurring on and after the date of the enactment of this Act [Aug. 5, 1997]."

Amendment by Pub. L. 105–34 effective on the day 9 months after Aug. 5, 1997, see section 1205(d) of Pub. L. 105–34, set out as a note under section 6103 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–67 effective Aug. 5, 1983, see section 110(c) of Pub. L. 98–67, set out as a note under section 31 of this title.

EFFECTIVE DATE

Pub. L. 97–248, title III, §357(c), Sept. 3, 1982, 96 Stat. 646, provided that: "The amendments made by this section [enacting this section and repealing section 7217 of this title] shall apply with respect to disclosures made after the date of enactment of this Act [Sept. 3, 1982]."

§7432. Civil damages for failure to release lien

(a) In general

If any officer or employee of the Internal Revenue Service knowingly, or by reason of negligence, fails to release a lien under section 6325 on property of the taxpayer, such taxpayer may bring a civil action for damages against the United States in a district court of the United States.

(b) Damages

In any action brought under subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the sum of—

(1) actual, direct economic damages sustained by the plaintiff which, but for the actions of the defendant, would not have been sustained, plus

(2) the costs of the action.

(c) Payment authority

Claims pursuant to this section shall be payable out of funds appropriated under section 1304 of title 31, United States Code.

(d) Limitations

(1) Requirement that administrative remedies be exhausted

A judgment for damages shall not be awarded under subsection (b) unless the court determines that the plaintiff has exhausted the administrative remedies available to such plaintiff within the Internal Revenue Service.

(2) Mitigation of damages

The amount of damages awarded under subsection (b)(1) shall be reduced by the amount of such damages which could have reasonably been mitigated by the plaintiff.

(3) Period for bringing action

Notwithstanding any other provision of law, an action to enforce liability created under this section may be brought without regard to the amount in controversy and may be brought only within 2 years after the date the right of action accrues.

(e) Notice of failure to release lien

The Secretary shall by regulation prescribe reasonable procedures for a taxpayer to notify the Secretary of the failure to release a lien under section 6325 on property of the taxpayer.

(Added Pub. L. 100–647, title VI, §6240(a), Nov. 10, 1988, 102 Stat. 3746.)

PRIOR PROVISIONS

A prior section 7432 was renumbered 7437 of this title.

EFFECTIVE DATE

Pub. L. 100–647, title VI, §6240(c), Nov. 10, 1988, 102 Stat. 3747, provided that: "The amendments made by this section [enacting this section] shall apply to notices provided by the taxpayer of the failure to release a lien, and damages arising, after December 31, 1988."

§7433. Civil damages for certain unauthorized collection actions

(a) In general

If, in connection with any collection of Federal tax with respect to a taxpayer, any officer or employee of the Internal Revenue Service recklessly or intentionally, or by reason of negligence, disregards any provision of this title, or any regulation promulgated under this title, such taxpayer may bring a civil action for damages against the United States in a district court of the United States. Except as provided in section 7432, such civil action shall be the exclusive remedy for recovering damages resulting from such actions.

(b) Damages

In any action brought under subsection (a) or petition filed under subsection (e), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the lesser of $1,000,000 ($100,000, in the case of negligence) or the sum of—

(1) actual, direct economic damages sustained by the plaintiff as a proximate result of the reckless or intentional or negligent actions of the officer or employee, and

(2) the costs of the action.

(c) Payment authority

Claims pursuant to this section shall be payable out of funds appropriated under section 1304 of title 31, United States Code.

(d) Limitations

(1) Requirement that administrative remedies be exhausted

A judgment for damages shall not be awarded under subsection (b) unless the court determines that the plaintiff has exhausted the administrative remedies available to such plaintiff within the Internal Revenue Service.

(2) Mitigation of damages

The amount of damages awarded under subsection (b)(1) shall be reduced by the amount of such damages which could have reasonably been mitigated by the plaintiff.

(3) Period for bringing action

Notwithstanding any other provision of law, an action to enforce liability created under this section may be brought without regard to the amount in controversy and may be brought only within 2 years after the date the right of action accrues.

(e) Actions for violations of certain bankruptcy procedures

(1) In general

If, in connection with any collection of Federal tax with respect to a taxpayer, any officer or employee of the Internal Revenue Service willfully violates any provision of section 362 (relating to automatic stay) or 524 (relating to effect of discharge) of title 11, United States Code (or any successor provision), or any regulation promulgated under such provision, such taxpayer may petition the bankruptcy court to recover damages against the United States.

(2) Remedy to be exclusive

(A) In general

Except as provided in subparagraph (B), notwithstanding section 105 of such title 11, such petition shall be the exclusive remedy for recovering damages resulting from such actions.

(B) Certain other actions permitted

Subparagraph (A) shall not apply to an action under section 362(h) of such title 11 for a violation of a stay provided by section 362 of such title; except that—

(i) administrative and litigation costs in connection with such an action may only be awarded under section 7430; and

(ii) administrative costs may be awarded only if incurred on or after the date that the bankruptcy petition is filed.

(Added Pub. L. 100–647, title VI, §6241(a), Nov. 10, 1988, 102 Stat. 3747; amended Pub. L. 104–168, title VIII, §§801(a), 802(a), July 30, 1996, 110 Stat. 1465; Pub. L. 105–206, title III, §3102(a), (c), July 22, 1998, 112 Stat. 730.)

PRIOR PROVISIONS

A prior section 7433 was renumbered 7437 of this title.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–206, §3102(a)(1)(A), inserted ", or by reason of negligence," after "recklessly or intentionally".

Subsec. (b). Pub. L. 105–206, §3102(a)(1)(B)(i), (c)(2), in introductory provisions, inserted "or petition filed under subsection (e)" after "subsection (a)" and inserted "($100,000, in the case of negligence)" after "$1,000,000".

Subsec. (b)(1). Pub. L. 105–206, §3102(a)(1)(B)(ii), inserted "or negligent" after "reckless or intentional".

Subsec. (d)(1). Pub. L. 105–206, §3102(a)(2), substituted "Requirement that administrative remedies be exhausted" for "Award for damages may be reduced if administrative remedies not exhausted" in heading and amended text of par. (1) generally. Prior to amendment, text read as follows: "The amount of damages awarded under subsection (b) may be reduced if the court determines that the plaintiff has not exhausted the administrative remedies available to such plaintiff within the Internal Revenue Service."

Subsec. (e). Pub. L. 105–206, §3102(c)(1), added subsec. (e).

1996—Subsec. (b). Pub. L. 104–168, §801(a), substituted "$1,000,000" for "$100,000".

Subsec. (d)(1). Pub. L. 104–168, §802(a), amended par. (1) generally. Prior to amendment, par. (1) read as

follows:

"(1) REQUIREMENT THAT ADMINISTRATIVE REMEDIES BE EXHAUSTED.—A judgment for damages shall not be awarded under subsection (b) unless the court determines that the plaintiff has exhausted the administrative remedies available to such plaintiff within the Internal Revenue Service."

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 applicable to actions of officers or employees of Internal Revenue Service after July 22, 1998, see section 3102(d) of Pub. L. 105–206, set out as a note under section 7426 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–168, title VIII, §801(b), July 30, 1996, 110 Stat. 1465, provided that: "The amendment made by subsection (a) [amending this section] shall apply to actions by officers or employees of the Internal Revenue Service after the date of the enactment of this Act [July 30, 1996]."

Pub. L. 104–168, title VIII, §802(b), July 30, 1996, 110 Stat. 1465, provided that: "The amendment made by this section [amending this section] shall apply in the case of proceedings commenced after the date of the enactment of this Act [July 30, 1996]."

§7433A. Civil damages for certain unauthorized collection actions by persons performing services under qualified tax collection contracts

(a) In general

Subject to the modifications provided by subsection (b), section 7433 shall apply to the acts and omissions of any person performing services under a qualified tax collection contract (as defined in section 6306(b)) to the same extent and in the same manner as if such person were an employee of the Internal Revenue Service.

(b) Modifications

For purposes of subsection (a):

(1) Any civil action brought under section 7433 by reason of this section shall be brought against the person who entered into the qualified tax collection contract with the Secretary and shall not be brought against the United States.

(2) Such person and not the United States shall be liable for any damages and costs determined in such civil action.

(3) Such civil action shall not be an exclusive remedy with respect to such person.

(4) Subsections (c), (d)(1), and (e) of section 7433 shall not apply.

(Added Pub. L. 108–357, title VIII, §881(b)(1), Oct. 22, 2004, 118 Stat. 1626.)

§7434. Civil damages for fraudulent filing of information returns

(a) In general

If any person willfully files a fraudulent information return with respect to payments purported to be made to any other person, such other person may bring a civil action for damages against the person so filing such return.

(b) Damages

In any action brought under subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the greater of $5,000 or the sum of—

(1) any actual damages sustained by the plaintiff as a proximate result of the filing of the fraudulent information return (including any costs attributable to resolving deficiencies asserted as a result of such filing),

(2) the costs of the action, and

(3) in the court's discretion, reasonable attorneys' fees.

(c) Period for bringing action

Notwithstanding any other provision of law, an action to enforce the liability created under this section may be brought without regard to the amount in controversy and may be brought only within the later of—

(1) 6 years after the date of the filing of the fraudulent information return, or

(2) 1 year after the date such fraudulent information return would have been discovered by exercise of reasonable care.

(d) Copy of complaint filed with IRS

Any person bringing an action under subsection (a) shall provide a copy of the complaint to the Internal Revenue Service upon the filing of such complaint with the court.

(e) Finding of court to include correct amount of payment

The decision of the court awarding damages in an action brought under subsection (a) shall include a finding of the correct amount which should have been reported in the information return.

(f) Information return

For purposes of this section, the term "information return" means any statement described in section 6724(d)(1)(A).

(Added Pub. L. 104–168, title VI, §601(a), July 30, 1996, 110 Stat. 1462; amended Pub. L. 105–206, title VI, §6023(29), July 22, 1998, 112 Stat. 826.)

PRIOR PROVISIONS

A prior section 7434 was renumbered 7437 of this title.

AMENDMENTS

1998—Subsec. (b)(3). Pub. L. 105–206 substituted "attorneys' fees" for "attorneys fees".

EFFECTIVE DATE

Pub. L. 104–168, title VI, §601(c), July 30, 1996, 110 Stat. 1462, provided that: "The amendments made by this section [enacting this section and renumbering former section 7434 as 7435 of this title] shall apply to fraudulent information returns filed after the date of the enactment of this Act [July 30, 1996]."

§7435. Civil damages for unauthorized enticement of information disclosure

(a) In general

If any officer or employee of the United States intentionally compromises the determination or collection of any tax due from an attorney, certified public accountant, or enrolled agent representing a taxpayer in exchange for information conveyed by the taxpayer to the attorney, certified public accountant, or enrolled agent for purposes of obtaining advice concerning the taxpayer's tax liability, such taxpayer may bring a civil action for damages against the United States in a district court of the United States. Such civil action shall be the exclusive remedy for recovering damages resulting from such actions.

(b) Damages

In any action brought under subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the lesser of $500,000 or the sum of—

(1) actual, direct economic damages sustained by the plaintiff as a proximate result of the information disclosure, and

(2) the costs of the action.

Damages shall not include the taxpayer's liability for any civil or criminal penalties, or other losses attributable to incarceration or the imposition of other criminal sanctions.

(c) Payment authority

Claims pursuant to this section shall be payable out of funds appropriated under section 1304 of title 31, United States Code.

(d) Period for bringing action

Notwithstanding any other provision of law, an action to enforce liability created under this section may be brought without regard to the amount in controversy and may be brought only within 2 years after the date the actions creating such liability would have been discovered by exercise of reasonable care.

(e) Mandatory stay

Upon a certification by the Commissioner or the Commissioner's delegate that there is an ongoing investigation or prosecution of the taxpayer, the district court before which an action under this section is pending shall stay all proceedings with respect to such action pending the conclusion of the investigation or prosecution.

(f) Crime-fraud exception

Subsection (a) shall not apply to information conveyed to an attorney, certified public accountant, or enrolled agent for the purpose of perpetrating a fraud or crime.

(Added Pub. L. 104–168, title XII, §1203(a), July 30, 1996, 110 Stat. 1470.)

PRIOR PROVISIONS

A prior section 7435 was renumbered 7437 of this title.

EFFECTIVE DATE

Pub. L. 104–168, title XII, §1203(c), July 30, 1996, 110 Stat. 1471, provided that: "The amendments made by this section [enacting this section and renumbering former section 7435 as 7436 of this title] shall apply to actions after the date of the enactment of this Act [July 30, 1996]."

§7436. Proceedings for determination of employment status

(a) Creation of remedy

If, in connection with an audit of any person, there is an actual controversy involving a determination by the Secretary as part of an examination that—

(1) one or more individuals performing services for such person are employees of such person for purposes of subtitle C, or

(2) such person is not entitled to the treatment under subsection (a) of section 530 of the Revenue Act of 1978 with respect to such an individual,

upon the filing of an appropriate pleading, the Tax Court may determine whether such a determination by the Secretary is correct and the proper amount of employment tax under such determination. Any such redetermination by the Tax Court shall have the force and effect of a decision of the Tax Court and shall be reviewable as such.

(b) Limitations

(1) Petitioner

A pleading may be filed under this section only by the person for whom the services are performed.

(2) Time for filing action

If the Secretary sends by certified or registered mail notice to the petitioner of a determination by the Secretary described in subsection (a), no proceeding may be initiated under this section with respect to such determination unless the pleading is filed before the 91st day after the date of such mailing.

(3) No adverse inference from treatment while action is pending

If, during the pendency of any proceeding brought under this section, the petitioner changes his treatment for employment tax purposes of any individual whose employment status as an employee is involved in such proceeding (or of any individual holding a substantially similar position) to treatment as an employee, such change shall not be taken into account in the Tax Court's determination under this section.

(c) Small case procedures

(1) In general

At the option of the petitioner, concurred in by the Tax Court or a division thereof before the hearing of the case, proceedings under this section may (notwithstanding the provisions of section 7453) be conducted subject to the rules of evidence, practice, and procedure applicable under section 7463 if the amount of employment taxes placed in dispute is $50,000 or less for each calendar quarter involved.

(2) Finality of decisions

A decision entered in any proceeding conducted under this subsection shall not be reviewed in any other court and shall not be treated as a precedent for any other case not involving the same petitioner and the same determinations.

(3) Certain rules to apply

Rules similar to the rules of the last sentence of subsection (a), and subsections (c), (d), and (e), of section 7463 shall apply to proceedings conducted under this subsection.

(d) Special rules

(1) Restrictions on assessment and collection pending action, etc.

The principles of subsections (a), (b), (c), (d), and (f) of section 6213, section 6214(a), section 6215, section 6503(a), section 6512, and section 7481 shall apply to proceedings brought under this section in the same manner as if the Secretary's determination described in subsection (a) were a notice of deficiency.

(2) Awarding of costs and certain fees

Section 7430 shall apply to proceedings brought under this section.

(e) Employment tax

The term "employment tax" means any tax imposed by subtitle C.

(Added Pub. L. 105–34, title XIV, §1454(a), Aug. 5, 1997, 111 Stat. 1055; amended Pub. L. 105–206, title III, §3103(b)(1), July 22, 1998, 112 Stat. 731; Pub. L. 106–554, §1(a)(7) [title III, §314(f)], Dec. 21, 2000, 114 Stat. 2763, 2763A–643.)

REFERENCES IN TEXT

Section 530 of the Revenue Act of 1978, referred to in subsec. (a)(2), is section 530 of Pub. L. 95–600, which is set out as a note under section 3401 of this title.

PRIOR PROVISIONS

A prior section 7436 was renumbered section 7437 of this title.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–554 inserted "and the proper amount of employment tax under such determination" before period at end of first sentence.

1998—Subsec. (c)(1). Pub. L. 105–206 substituted "$50,000" for "$10,000".

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 effective as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 1(a)(7) [title III, §314(g)] of Pub. L. 106–554, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–206, title III, §3103(c), July 22, 1998, 112 Stat. 731, provided that: "The amendments made by this section [amending this section and sections 7443A and 7463 of this title] shall apply to proceedings commenced after the date of the enactment of this Act [July 22, 1998]."

§7437. Cross references

(1) For determination of amount of any tax, additions to tax, etc., in title 11 cases, see section 505 of title 11 of the United States Code.

(2) For exclusion of tax liability from discharge in cases under title 11 of the United States Code, see section 523 of such title 11.

(3) For recognition of tax liens in cases under title 11 of the United States Code, see sections 545 and 724 of such title 11.

(4) For collection of taxes in connection with plans for individuals with regular income in cases under title 11 of the United States Code, see section 1328 of such title 11.

(5) For provisions permitting the United States to be made party defendant in a proceeding in a State court for the foreclosure of a lien upon real estate where the United States may have claim upon the premises involved, see section 2410 of Title 28 of the United States Code.

(6) For priority of lien of the United States in case of insolvency, see section 3713(a) of title 31, United States Code.

(7) For interest on judgments for overpayments, see section 2411(a) of Title 28 of the United States Code.

(8) For review of a Tax Court decision, see section 7482.

(9) For statute prohibiting suits to replevy property taken under revenue laws, see section 2463 of Title 28 of the United States Code.

(Aug. 16, 1954, ch. 736, 68A Stat. 878, §7425; renumbered §7427, Pub. L. 89–719, title I, §109, Nov. 2, 1966, 80 Stat. 1141; renumbered §7428, and amended Pub. L. 94–455, title XII, §1203(b)(2)(A), title XIX, §1906(a)(45), Oct. 4, 1976, 90 Stat. 1690, 1830; renumbered §7430, Pub. L. 94–455, title XIII, §1306(a), Oct. 4, 1976, 90 Stat. 1717; Pub. L. 96–589, §6(d)(1), (i)(13), Dec. 24, 1980, 94 Stat. 3408, 3411; renumbered §7431, Pub. L. 97–248, title II, §292(a), Sept. 3, 1982, 96 Stat. 572; renumbered §7432, Pub. L. 97–248, title III, §357(a), Sept. 3, 1982, 96 Stat. 645; Pub. L. 97–258, §3(f)(14), Sept. 13, 1982, 96 Stat. 1065; renumbered §7434, Pub. L. 100–647, title VI, §§6240(a), 6241(a), Nov. 10, 1988, 102 Stat. 3746, 3747; renumbered §7435, Pub. L. 104–168, title VI, §601(a), July 30, 1996, 110 Stat. 1462; renumbered §7436, Pub. L. 104–168, title XII, §1203(a), July 30, 1996, 110 Stat. 1470; renumbered §7437, Pub. L. 105–34, title XIV, §1454(a), Aug. 5, 1997, 111 Stat. 1055.)

AMENDMENTS

1982—Par. (6). Pub. L. 97–258 substituted "section 3713(a) of title 31, United States Code" for "R.S. 3466 (31 U.S.C. 191)". Notwithstanding the directory language that amendment be made to section 7430, the amendment was executed to this section to reflect the probable intent of Congress and the intervening renumbering of section 7430 as 7432 by Pub. L. 97–248.

1980—Par. (1). Pub. L. 96–589, §6(d)(1), added par. (1). Former par. (1), which provided cross reference to former section 35 of title 11 for exclusion of tax liability from discharge in bankruptcy, was struck out.

Par. (2). Pub. L. 96–589, §6(d)(1), (i)(13), added par. (2). Former par. (2), which provided cross reference to former section 93 of title 11 for limit on amount allowed in bankruptcy proceedings on debts owing to the United States, was struck out.

Par. (3). Pub. L. 96–589, §6(d)(1), (i)(13), added par. (3). Former par. (3), which provided cross reference to former section 107 of title 11 for recognition of tax liens in proceedings under the Bankruptcy Act, was struck out.

Par. (4). Pub. L. 96–589, §6(d)(1), (i)(13), added par. (4). Former par. (4), which provided for cross reference to former section 1080 of title 11 for collection of taxes in connection with wage earners' plans in bankruptcy courts, was struck out.

1976—Par. (1). Pub. L. 94–455, §1906(a)(45)(A), struck out "52 Stat. 851;" before "11 U.S.C. 35".

Par. (2). Pub. L. 94–455, §1906(a)(45)(B), struck out "52 Stat. 867;" before "11 U.S.C. 93".

Par. (3). Pub. L. 94–455, §1906(a)(45)(C), struck out "52 Stat. 876–877;" before "11 U.S.C. 107".
Par. (4). Pub. L. 94–455, §1906(a)(45)(D), struck out "52 Stat. 938;" before "11 U.S.C. 1080".

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–589 effective Oct. 1, 1979, but not applicable to proceedings under Title 11, Bankruptcy, commenced before Oct. 1, 1979, see section 7(e) of Pub. L. 96–589, set out as a note under section 108 of this title.

Subchapter C—The Tax Court

Part

I. Organization and jurisdiction.
II. Procedure.
III. Miscellaneous provisions.
IV. Declaratory judgments.

AMENDMENTS

1976—Pub. L. 94–455, title X, §1042(d)(2)(F), Oct. 4, 1976, 90 Stat. 1639, struck out in item relating to part IV "relating to qualification of certain retirement plans" after "Declaratory judgments".

1974—Pub. L. 93–406, title II, §1041(c), Sept. 2, 1974, 88 Stat. 951, inserted item relating to part IV.

PART I—ORGANIZATION AND JURISDICTION

Sec.

7441. Status.
7442. Jurisdiction.
7443. Membership.
7443A. Special trial judges.
[7443B. Repealed.]
7444. Organization.
7445. Offices.
7446. Times and places of sessions.
7447. Retirement.
7448. Annuities of surviving spouses and dependent children.[1]

AMENDMENTS

2008—Pub. L. 110–458 repealed amendment made by section 856 of Pub. L. 109–280. See 2006 Amendment note below.

2006—Pub. L. 109–280, title VIII, §856(b), Aug. 17, 2006, 120 Stat. 1019, added item 7443B. Pub. L. 110–458, title I, §108(l), Dec. 23, 2008, 122 Stat. 5110, repealed Pub. L. 109–280, §856, and provided that the Internal Revenue Code of 1986 shall be applied and administered as if such section had not been enacted.

Pub. L. 109–280, title VIII, §854(c)(2), Aug. 17, 2006, 120 Stat. 1018, which directed amendment of item 7448 by inserting "and special trial judges" after "judges", could not be executed because "judges" did not appear subsequent to amendment by Pub. L. 94–455. See 1976 Amendment note below.

1986—Pub. L. 99–514, title XV, §1556(b)(3), Oct. 22, 1986, 100 Stat. 2755, added item 7443A.

1976—Pub. L. 94–455, title XIX, §1906(b)(10), Oct. 4, 1976, 90 Stat. 1834, substituted "Annuities of surviving spouses and dependent children" for "Annuities to widows and dependent children of judges" in item 7448.

1961—Pub. L. 87–370, §2, Oct. 4, 1961, 75 Stat. 801, added item 7448.

[1] *So in original. Does not conform to section catchline.*

§7441. Status

There is hereby established, under article I of the Constitution of the United States, a court of record to be known as the United States Tax Court. The members of the Tax Court shall be the chief judge and the judges of the Tax Court.

(Aug. 16, 1954, ch. 736, 68A Stat. 879; Pub. L. 91–172, title IX, §951, Dec. 30, 1969, 83 Stat. 730.)

AMENDMENTS

1969—Pub. L. 91–172 substituted provisions establishing Tax Court as a Constitutional court, and enumerating the members that comprise its bench, for provisions continuing the Board of Tax Appeals, known as the Tax Court, as an independent agency in the Executive Branch of Government and enumerating the members that comprise its bench.

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title IX, §962(a), Dec. 30, 1969, 83 Stat. 736, provided that: "The amendments made by sections 951, 953, 954(c) and (e), 955, 956, 958, and 960(c), (d), (e), (g), and (j) [amending this section and sections 7443, 7447, 7448, 7456, 7471, and 7701 of this title] shall take effect on the date of enactment of this Act [Dec. 30, 1969]."

REPORT ON INVENTORY OF CASES IN TAX COURT

Pub. L. 99–514, title XV, §1552(c), Oct. 22, 1986, 100 Stat. 2753, provided that: "The Secretary of the Treasury or his delegate and the Tax Court shall each prepare a report for 1987 and for each 2-calendar year period thereafter on the inventory of cases in the Tax Court and the measures to close cases more efficiently. Such reports shall be submitted to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate."

CONTINUATION OF STATUS

Pub. L. 91–172, title IX, §961, Dec. 30, 1969, 83 Stat. 735, provided that: "The United States Tax Court established under the amendment made by section 951 [amending this section] is a continuation of the Tax Court of the United States as it existed prior to the date of enactment of this Act [Dec. 30, 1969], the judges of the Tax Court of the United States immediately prior to the date of enactment of this Act [Dec. 30, 1969] shall become the judges of the United States Tax Court upon the enactment of this Act, and no loss of rights or powers, interruption of jurisdiction, or prejudice to matters pending in the Tax Court of the United States before the date of enactment of this Act [Dec. 30, 1969] shall result from the enactment of this Act."

§7442. Jurisdiction

The Tax Court and its divisions shall have such jurisdiction as is conferred on them by this title, by chapters 1, 2, 3, and 4 of the Internal Revenue Code of 1939, by title II and title III of the Revenue Act of 1926 (44 Stat. 10–87), or by laws enacted subsequent to February 26, 1926.

(Aug. 16, 1954, ch. 736, 68A Stat. 879.)

REFERENCES IN TEXT

Chapters 1, 2, 3, and 4 of the Internal Revenue Code of 1939, referred to in text, were comprised of sections 1 to 482, 500 to 706, 800 to 939, and 1000 to 1031 of former Title 26, Internal Revenue Code. Chapters 1 and 2 of the Internal Revenue Code of 1939 were repealed by section 7851(a)(1)(A) of this title, and chapters 3 and 4 of the Internal Revenue Code of 1939 were repealed by section 7851(a)(2)(A) of this title. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of this title. See also section 7851(e) of this title for provision that references in the 1986 Code to a provision of the 1939 Code, not then applicable, shall be deemed a reference to the corresponding provision of the 1986 Code, which is then applicable.

The Revenue Act of 1926, referred to in text, is act Feb. 26, 1926, ch. 27, 44 Stat. 9. For complete classification of this Act to the Code, see Tables.

§7443. Membership

(a) Number

The Tax Court shall be composed of 19 members.

(b) Appointment

Judges of the Tax Court shall be appointed by the President, by and with the advice and consent of the Senate, solely on the grounds of fitness to perform the duties of the office.

(c) Salary

(1) Each judge shall receive salary at the same rate and in the same installments as judges of the district courts of the United States.

(2) For rate of salary and frequency of installment see section 135, title 28, United States Code, and section 5505, title 5, United States Code.

(d) Expenses for travel and subsistence

Judges of the Tax Court shall receive necessary traveling expenses, and expenses actually incurred for subsistence while traveling on duty and away from their designated stations, subject to the same limitations in amount as are now or may hereafter be applicable to the United States Court of International Trade.

(e) Term of office

The term of office of any judge of the Tax Court shall expire 15 years after he takes office.

(f) Removal from office

Judges of the Tax Court may be removed by the President, after notice and opportunity for public hearing, for inefficiency, neglect of duty, or malfeasance in office, but for no other cause.

(g) Disbarment of removed judges

A judge of the Tax Court removed from office in accordance with subsection (f) shall not be permitted at any time to practice before the Tax Court.

(Aug. 16, 1954, ch. 736, 68A Stat. 879; Mar. 2, 1955, ch. 9, §1(h), 69 Stat. 10; Pub. L. 88–426, title IV, §403(i), Aug. 14, 1964, 78 Stat. 434; Pub. L. 91–172, title IX, §§952, 953, Dec. 30, 1969, 83 Stat. 730; Pub. L. 96–417, title VI, §601(10), Oct. 10, 1980, 94 Stat. 1744; Pub. L. 96–439, §1(a), (b), Oct. 13, 1980, 94 Stat. 1878.)

AMENDMENTS

1980—Subsec. (a). Pub. L. 96–439, §1(a), increased number of judges from 16 to 19.

Subsec. (b). Pub. L. 96–439, §1(b), struck out age limitation that no one could be appointed a member of the Tax Court unless appointed before attaining age 65.

Subsec. (d). Pub. L. 96–417 substituted "Court of International Trade" for "Customs Court".

1969—Subsec. (b). Pub. L. 91–172, §952(a), provided that an individual may not be appointed a judge of the Tax Court after reaching age 65.

Subsec. (c). Pub. L. 91–172, §953, substituted provisions fixing salary of Tax Court judges at the same rate and same installments as District Court judges, for provisions that each judge of the Tax Court receive a salary of $30,000 per annum, to be paid in monthly installments.

Subsec. (e). Pub. L. 91–172, §952(b), substituted provisions that a term in office of any Tax Court judge would expire 15 years after he takes office, for provisions that a term in office of any Tax Court judge would expire 12 years after the expiration of the term for which his predecessor was appointed, and any judge appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed would be appointed only for the unexpired term of his predecessor.

1964—Subsec. (c). Pub. L. 88–426 increased salary of judges from $22,500 to $30,000.

1955—Subsec. (c). Act Mar. 2, 1955, increased salary of judges from $15,000 to $22,500.

EFFECTIVE DATE OF 1980 AMENDMENTS

Pub. L. 96–439, §1(c), Oct. 13, 1980, 94 Stat. 1878, provided that: "The amendments made by this section [amending this section] shall take effect on February 1, 1981."

Amendment by Pub. L. 96–417 effective, except as otherwise provided, Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date, see section 701(a) of Pub. L. 96–417, as amended, set out as a note under section 251 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title IX, §962(b), (c), Dec. 30, 1969, 83 Stat. 736, provided that:

"(b) The amendment made by section 952(a) [amending this section] shall apply to judges appointed after the date of enactment of this Act [Dec. 30, 1969].

"(c) The amendment made by section 952(b) [amending this section] shall take effect on the date of enactment of this Act [Dec. 30, 1969], except that—

"(1) the term of office being served by a judge of the Tax Court on that date shall expire on the date it would have expired under the law in effect on the date preceding the date of enactment of this Act [Dec. 30, 1969]; and

"(2) a judge of the Tax Court on the date of enactment of this Act [Dec. 30, 1969] may be reappointed in the same manner as a judge of the Tax Court hereafter appointed."

Amendment by section 953 of Pub. L. 91–172 to take effect on Dec. 30, 1969, see section 962(a) of Pub. L. 91–172, set out as a note under section 7441 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–426 effective on first day of first pay period which begins on or after July 1, 1964, except to the extent provided in section 501(c) of Pub. L. 88–426, see section 501 of Pub. L. 88–426, title V, Aug. 14, 1964, 78 Stat. 435.

EFFECTIVE DATE OF 1955 AMENDMENT

Amendment by act Mar. 2, 1955, effective Mar. 1, 1955, see section 5 of act Mar. 2, 1955, set out as a note under section 4501 of Title 2, The Congress.

SALARY INCREASES

1987—Salaries of judges increased to $89,500 per annum, on recommendation of the President of the United States, see note set out under section 358 of Title 2, The Congress.

1977—Salaries of judges increased to $54,500 per annum, on recommendation of the President of the United States, see note set out under section 358 of Title 2.

1969—Salaries of judges increased to $40,000 per annum, on recommendation of the President of the United States, see note set out under section 358 of Title 2.

CERTIFICATION BY JUDGE OF TRAVEL EXPENSES

Provisions authorizing the travel expenses of the judges of the United States Tax Court to be paid upon the written certificate of the judge were contained in the Transportation, Treasury, Housing and Urban Development, the Judiciary, and Independent Agencies Appropriations Act, 2006, Pub. L. 109–115, div. A, title VI, Nov. 30, 2005, 119 Stat. 2490, and were repeated in provisions of subsequent appropriations acts which are not set out in the Code. Similar provisions were contained in the following prior appropriations acts:

Pub. L. 108–447, div. H, title IV, Dec. 8, 2004, 118 Stat. 3264.

Pub. L. 108–199, div. F, title IV, Jan. 23, 2004, 118 Stat. 340.

Pub. L. 108–7, div. J, title IV, Feb. 20, 2003, 117 Stat. 460.

Pub. L. 107–67, title IV, Nov. 12, 2001, 115 Stat. 543.

Pub. L. 106–554, §1(a)(3) [title IV], Dec. 21, 2000, 114 Stat. 2763, 2763A–150.

Pub. L. 106–58, title IV, Sept. 29, 1999, 113 Stat. 463.

Pub. L. 105–277, div. A, §101(h) [title IV], Oct. 21, 1998, 112 Stat. 2681–480, 2681–510.

Pub. L. 105–61, title IV, Oct. 10, 1997, 111 Stat. 1304.

Pub. L. 104–208, div. A, title I, §101(f) [title IV], Sept. 30, 1996, 110 Stat. 3009–314, 3009–344.

Pub. L. 104–52, title IV, Nov. 19, 1995, 109 Stat. 491.

Pub. L. 103–329, title IV, Sept. 30, 1994, 108 Stat. 2408.

Pub. L. 103–123, title IV, Oct. 28, 1993, 107 Stat. 1251.

Pub. L. 102–393, title IV, Oct. 6, 1992, 106 Stat. 1757.

Pub. L. 102–141, title IV, Oct. 28, 1991, 105 Stat. 862.

Pub. L. 101–509, title IV, Nov. 5, 1990, 104 Stat. 1422.

Pub. L. 101–136, title IV, Nov. 3, 1989, 103 Stat. 811.

Pub. L. 100–440, title IV, Sept. 22, 1988, 102 Stat. 1746.

Pub. L. 100–202, §101(m) [title IV], Dec. 22, 1987, 101 Stat. 1329–390, 1329–414.

Pub. L. 99–500, §101(m) [title IV], Oct. 18, 1986, 100 Stat. 1783–308, 1783–323, and Pub. L. 99–591, §101(m) [title IV], Oct. 30, 1986, 100 Stat. 3341–308, 3341–323.

Pub. L. 99–190, title I, §101(h) [H.R. 3036, title IV], Dec. 19, 1985, 99 Stat. 1291.

Pub. L. 98–473, title I, §101(j) [H.R. 5798, title IV], Oct. 12, 1984, 98 Stat. 1963.

Pub. L. 98–151, §101(f) [H.R. 4139, title IV], Nov. 14, 1983, 97 Stat. 973.
Pub. L. 97–377, title I, §101(a) [incorporating H.R. 4121, title IV, for FY 1982], Dec. 21, 1982, 96 Stat. 1830.
Pub. L. 97–92, §101(a) [H.R. 4121, title IV], Dec. 15, 1981, 95 Stat. 1183.
Pub. L. 96–536, §101(a) [incorporating Pub. L. 96–74, title IV], Dec. 16, 1980, 94 Stat. 3166.
Pub. L. 96–74, title IV, Sept. 29, 1979, 93 Stat. 572.
Pub. L. 95–429, title IV, Oct. 10, 1978, 92 Stat. 1013.
Pub. L. 95–81, title IV, July 31, 1977, 91 Stat. 352.
Pub. L. 94–363, title IV, July 14, 1976, 90 Stat. 975.
Pub. L. 94–91, title IV, Aug. 9, 1975, 89 Stat. 456.
Pub. L. 93–381, title IV, Aug. 21, 1974, 88 Stat. 629.
Pub. L. 93–143, title IV, Oct. 30, 1973, 87 Stat. 522.
Pub. L. 92–351, title IV, July 13, 1972, 86 Stat. 485.
Pub. L. 92–49, title IV, July 9, 1971, 85 Stat. 120.
Pub. L. 91–422, title IV, Sept. 26, 1970, 84 Stat. 878.
Pub. L. 91–74, title IV, Sept. 29, 1969, 83 Stat. 123.
Pub. L. 90–350, title IV, June 19, 1968, 82 Stat. 196.
Pub. L. 90–47, title IV, July 7, 1967, 81 Stat. 118.
Pub. L. 89–474, title IV, June 29, 1966, 80 Stat. 228.
Pub. L. 89–57, title IV, June 30, 1965, 79 Stat. 203.
Pub. L. 88–392, title IV, Aug. 1, 1964, 78 Stat. 375.
Pub. L. 88–39, title IV, June 13, 1963, 77 Stat. 65.
Pub. L. 87–575, title V, Aug. 6, 1962, 76 Stat. 317.
Pub. L. 87–159, title III, Aug. 21, 1961, 75 Stat. 398.
Pub. L. 86–561, title III, June 30, 1960, 74 Stat. 288.
Pub. L. 86–39, title III, June 11, 1959, 73 Stat. 70.
Pub. L. 85–354, title III, Mar. 28, 1958, 72 Stat. 66.
Pub. L. 85–37, title III, May 27, 1957, 71 Stat. 41.
Apr. 2, 1956, ch. 161, title III, 70 Stat. 98.
June 1, 1955, ch. 113, title III, 69 Stat. 78.

EXECUTIVE ORDER NO. 12064

Ex. Ord. No. 12064, June 5, 1978, 43 F.R. 24661, which established the United States Tax Court Nominating Commission and provided for its membership, functions, etc., was revoked by Ex. Ord. No. 12305, May 5, 1981, 46 F.R. 25421, formerly set out as a note under section 14 of the Appendix to Title 5, Government Organization and Employees.

§7443A. Special trial judges

(a) Appointment

The chief judge may, from time to time, appoint special trial judges who shall proceed under such rules and regulations as may be promulgated by the Tax Court.

(b) Proceedings which may be assigned to special trial judges

The chief judge may assign—

(1) any declaratory judgment proceeding,
(2) any proceeding under section 7463,
(3) any proceeding where neither the amount of the deficiency placed in dispute (within the meaning of section 7463) nor the amount of any claimed overpayment exceeds $50,000,
(4) any proceeding under section 6320 or 6330,
(5) any proceeding under section 7436(c),
(6) any proceeding under section 7623(b)(4), and
(7) any other proceeding which the chief judge may designate,

to be heard by the special trial judges of the court.

(c) Authority to make court decision

The court may authorize a special trial judge to make the decision of the court with respect to any proceeding described in paragraph (1), (2), (3), (4), (5), or (6) of subsection (b), subject to such conditions and review as the court may provide.

(d) Salary

Each special trial judge shall receive salary—

(1) at a rate equal to 90 percent of the rate for judges of the Tax Court, and

(2) in the same installments as such judges.

(e) Expenses for travel and subsistence

Subsection (d) of section 7443 shall apply to special trial judges subject to such rules and regulations as may be promulgated by the Tax Court.

(Added Pub. L. 99–514, title XV, §1556(a), Oct. 22, 1986, 100 Stat. 2754; amended Pub. L. 105–206, title III, §§3103(b)(1), 3401(c), July 22, 1998, 112 Stat. 731, 749; Pub. L. 105–277, div. J, title IV, §4002(e), Oct. 21, 1998, 112 Stat. 2681–907; Pub. L. 109–280, title VIII, §857(a), (b), Aug. 17, 2006, 120 Stat. 1020; Pub. L. 109–432, div. A, title IV, §406(a)(2), Dec. 20, 2006, 120 Stat. 2959.)

AMENDMENTS

2006—Subsec. (b)(5). Pub. L. 109–280, §857(a), added par. (5). Former par. (5) redesignated (6).

Subsec. (b)(6). Pub. L. 109–432, §406(a)(2)(A), added par. (6). Former par. (6) redesignated (7).

Pub. L. 109–280, §857(a), redesignated par. (5) as (6).

Subsec. (b)(7). Pub. L. 109–432, §406(a)(2)(A), redesignated par. (6) as (7).

Subsec. (c). Pub. L. 109–432, §406(a)(2)(B), substituted "(5), or (6)" for "or (5)".

Pub. L. 109–280, §857(b), substituted "(4), or (5)" for "or (4)".

1998—Subsec. (b)(3). Pub. L. 105–206, §3103(b)(1), substituted "$50,000" for "$10,000".

Subsec. (b)(4), (5). Pub. L. 105–206, §3401(c)(1), as amended by Pub. L. 105–277, §4002(e)(1), added par. (4) and redesignated former par. (4) as (5).

Subsec. (c). Pub. L. 105–206, §3401(c)(2), as amended by Pub. L. 105–277, §4002(e)(2), substituted "(3), or (4)" for "or (3)".

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–432 applicable to information provided on or after Dec. 20, 2006, see section 406(d) of Pub. L. 109–432, set out as a note under section 62 of this title.

Pub. L. 109–280, title VIII, §857(c), Aug. 17, 2006, 120 Stat. 1020, provided that: "The amendments made by this section [amending this section] shall apply to any proceeding under section 7436(c) of the Internal Revenue Code of 1986 with respect to which a decision has not become final (as determined under section 7481 of such Code) before the date of the enactment of this Act [Aug. 17, 2006]."

EFFECTIVE DATE OF 1998 AMENDMENTS

Amendment by Pub. L. 105–277 effective as if included in the provision of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105–206, to which such amendment relates, see section 4002(k) of Pub. L. 105–277, set out as a note under section 1 of this title.

Amendment by section 3103 of Pub. L. 105–206 applicable to proceedings commenced after July 22, 1998, see section 3103(c) of Pub. L. 105–206, set out as a note under section 7436 of this title.

Amendment by section 3401 of Pub. L. 105–206 applicable to collection actions initiated after the date which is 180 days after July 22, 1998, see section 3401(d) of Pub. L. 105–206, set out as an Effective Date note under section 6320 of this title.

EFFECTIVE DATE

Pub. L. 99–514, title XV, §1556(c), Oct. 22, 1986, 100 Stat. 2755, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this section and amending sections 7456 and 7471 of this title] shall take effect on the date of the enactment of this Act [Oct. 22, 1986].

"(2) SALARY.—Subsection (d) of section 7443A of the Internal Revenue Code of 1954 [now 1986] (as added by this section) shall take effect on the 1st day of the 1st month beginning after the date of the enactment of this Act [Oct. 22, 1986].

"(3) NEW APPOINTMENTS NOT REQUIRED.—Nothing in the amendments made by this section shall

be construed to require the reappointment of any individual serving as a special trial judge of the Tax Court on the day before the date of the enactment of this Act [Oct. 22, 1986]."

INCONSISTENCIES WITH PRESIDENTIAL SALARY RECOMMENDATIONS

Pub. L. 100–647, title I, §1015(j), Nov. 10, 1988, 102 Stat. 3571, provided that: "To the extent the salary recommendations submitted by the President on January 5, 1987, are inconsistent with the provisions of section 7443A(d)(1) of the 1986 Code, such recommendations shall not be effective for any period."

[§7443B. Repealed. Pub. L. 110–458, title I, §108(l), Dec. 23, 2008, 122 Stat. 5110]

Section, added Pub. L. 109–280, title VIII, §856(a), Aug. 17, 2006, 120 Stat. 1019, related to the recall of retired special trial judges of the Tax Court.

EFFECTIVE DATE OF REPEAL

Repeal effective as if included in the provisions of Pub. L. 109–280 to which the repeal relates, except as otherwise provided, see section 112 of Pub. L. 110–458, set out as an Effective Date of 2008 Amendment note under section 72 of this title.

CONSTRUCTION OF AMENDMENT BY PUB. L. 109–280

Pub. L. 110–458, title I, §108(l), Dec. 23, 2008, 122 Stat. 5110, provided that: "Section 856 of the 2006 Act [Pub. L. 109–280, enacting this section], and the amendments made by such section, are hereby repealed, and the Internal Revenue Code of 1986 shall be applied and administered as if such sections and amendments had not been enacted."

§7444. Organization

(a) Seal

The Tax Court shall have a seal which shall be judicially noticed.

(b) Designation of chief judge

The Tax Court shall at least biennially designate a judge to act as chief judge.

(c) Divisions

The chief judge may from time to time divide the Tax Court into divisions of one or more judges, assign the judges of the Tax Court thereto, and in case of a division of more than one judge, designate the chief thereof. If a division, as a result of a vacancy or the absence or inability of a judge assigned thereto to serve thereon, is composed of less than the number of judges designated for the division, the chief judge may assign other judges to the division or direct the division to proceed with the transaction of business without awaiting any additional assignment of judges thereto.

(d) Quorum

A majority of the judges of the Tax Court or of any division thereof shall constitute a quorum for the transaction of the business of the Tax Court or of the division, respectively. A vacancy in the Tax Court or in any division thereof shall not impair the powers nor affect the duties of the Tax Court or division nor of the remaining judges of the Tax Court or division, respectively.

(Aug. 16, 1954, ch. 736, 68A Stat. 880.)

§7445. Offices

The principal office of the Tax Court shall be in the District of Columbia, but the Tax Court or any of its divisions may sit at any place within the United States.

(Aug. 16, 1954, ch. 736, 68A Stat. 880.)

§7446. Times and places of sessions

The times and places of the sessions of the Tax Court and of its divisions shall be prescribed by the chief judge with a view to securing reasonable opportunity to taxpayers to appear before the Tax Court or any of its divisions, with as little inconvenience and expense to taxpayers as is practicable.

(Aug. 16, 1954, ch. 736, 68A Stat. 880.)

§7447. Retirement

(a) Definitions

For purposes of this section—

(1) The term "Tax Court" means the United States Tax Court.

(2) The term "judge" means the chief judge or a judge of the Tax Court; but such term does not include any individual performing judicial duties pursuant to subsection (c).

(3) In any determination of length of service as judge there shall be included all periods (whether or not consecutive) during which an individual served as judge, as judge of the Tax Court of the United States, or as a member of the Board of Tax Appeals.

(b) Retirement

(1) Any judge shall retire upon attaining the age of 70.

(2) Any judge who meets the age and service requirements set forth in the following table may retire:

The judge has attained age:	And the years of service as a judge are at least:
65	15
66	14
67	13
68	12
69	11
70	10.

(3) Any judge who is not reappointed following the expiration of the term of his office may retire upon the completion of such term, if (A) he has served as a judge of the Tax Court for 15 years or more and (B) not earlier than 9 months preceding the date of the expiration of the term of his office and not later than 6 months preceding such date, he advised the President in writing that he was willing to accept reappointment to the Tax Court.

(4) Any judge who becomes permanently disabled from performing his duties shall retire.

Section 8335(a) of title 5 of the United States Code (relating to automatic separation from the service) shall not apply in respect of judges. Any judge who retires shall be designated "senior judge".

(c) Recalling of retired judges

At or after his retirement, any individual who has elected to receive retired pay under subsection (d) may be called upon by the chief judge of the Tax Court to perform such judicial duties with the Tax Court as may be requested of him for any period or periods specified by the chief judge; except that in the case of any such individual—

(1) the aggregate of such periods in any one calendar year shall not (without his consent) exceed 90 calendar days; and

(2) he shall be relieved of performing such duties during any period in which illness or

disability precludes the performance of such duties.

Any act, or failure to act, by an individual performing judicial duties pursuant to this subsection shall have the same force and effect as if it were the act (or failure to act) of a judge of the Tax Court; but any such individual shall not be counted as a judge of the Tax Court for purposes of section 7443(a). Any individual who is performing judicial duties pursuant to this subsection shall be paid the same compensation (in lieu of retired pay) and allowances for travel and other expenses as a judge.

(d) Retired pay

Any individual who—

(1) retires under paragraph (1), (2), or (3) of subsection (b) and elects under subsection (e) to receive retired pay under this subsection shall receive retired pay during any period at a rate which bears the same ratio to the rate of the salary payable to a judge during such period as the number of years he has served as judge bears to 10; except that the rate of such retired pay shall not be more than the rate of such salary for such period; or

(2) retires under paragraph (4) of subsection (b) and elects under subsection (e) to receive retired pay under this subsection shall receive retired pay during any period at a rate—

(A) equal to the rate of the salary payable to a judge during such period if before he retired he had served as a judge not less than 10 years; or

(B) one-half of the rate of the salary payable to a judge during such period if before he retired he had served as a judge less than 10 years.

Such retired pay shall begin to accrue on the day following the day on which his salary as judge ceases to accrue, and shall continue to accrue during the remainder of his life. Retired pay under this subsection shall be paid in the same manner as the salary of a judge. In computing the rate of the retired pay under paragraph (1) of this subsection for any individual who is entitled thereto, that portion of the aggregate number of years he has served as a judge which is a fractional part of 1 year shall be eliminated if it is less than 6 months, or shall be counted as a full year if it is 6 months or more. In computing the rate of the retired pay under paragraph (1) of this subsection for any individual who is entitled thereto, any period during which such individual performs services under subsection (c) on a substantially full-time basis shall be treated as a period during which he has served as a judge.

(e) Election to receive retired pay

Any judge may elect to receive retired pay under subsection (d). Such an election—

(1) may be made only while an individual is a judge (except that in the case of an individual who fails to be reappointed as judge at the expiration of a term of office, it may be made at any time before the day after the day on which his successor takes office);

(2) once made, shall be irrevocable;

(3) in the case of any judge other than the chief judge, shall be made by filing notice thereof in writing with the chief judge; and

(4) in the case of the chief judge, shall be made by filing notice thereof in writing with the Office of Personnel Management.

The chief judge shall transmit to the Office of Personnel Management a copy of each notice filed with him under this subsection.

(f) Retired pay affected in certain cases

In the case of an individual for whom an election to receive retired pay under subsection (d) is in effect—

(1) 1-year forfeiture for failure to perform judicial duties

If such individual during any calendar year fails to perform judicial duties required of him by subsection (c), such individual shall forfeit all rights to retired pay under subsection (d) for the

1-year period which begins on the 1st day on which he so fails to perform such duties.

(2) Permanent forfeiture of retired pay where certain non-Government services performed

If such individual performs (or supervises or directs the performance of) legal or accounting services in the field of Federal taxation for his client, his employer, or any of his employer's clients, such individual shall forfeit all rights to retired pay under subsection (d) for all periods beginning on or after the 1st day on which he engages in any such activity. The preceding sentence shall not apply to any civil office or employment under the Government of the United States.

(3) Suspension of retired pay during period of compensated Government service

If such individual accepts compensation for civil office or employment under the Government of the United States (other than the performance of judicial duties pursuant to subsection (c)), such individual shall forfeit all rights to retired pay under subsection (d) for the period for which such compensation is received.

(4) Forfeitures of retired pay under paragraphs (1) and (2) not to apply where individual elects to freeze amount of retired pay

(A) In general

If any individual makes an election under this paragraph—

(i) paragraphs (1) and (2) (and subsection (c)) shall not apply to such individual beginning on the date such election takes effect, and

(ii) the retired pay under subsection (d) payable to such individual for periods beginning on or after the date such election takes effect shall be equal to the retired pay to which such individual would be entitled without regard to this clause at the time of such election.

(B) Election

An election under this paragraph—

(i) may be made by an individual only if such individual meets the age and service requirements for retirement under paragraph (2) of subsection (b),

(ii) may be made only during the period during which the individual may make an election to receive retired pay or while the individual is receiving retired pay, and

(iii) shall be made in the same manner as the election to receive retired pay.

Such an election, once it takes effect, shall be irrevocable.

(C) When election takes effect

Any election under this paragraph shall take effect on the 1st day of the 1st month following the month in which the election is made.

(g) Coordination with civil service retirement

(1) General rule

Except as otherwise provided in this subsection, the provisions of the civil service retirement laws (including the provisions relating to the deduction and withholding of amounts from basic pay, salary, and compensation) shall apply in respect of service as a judge (together with other service as an officer or employee to whom such civil service retirement laws apply) as if this section had not been enacted.

(2) Effect of electing retired pay

In the case of any individual who has filed an election to receive retired pay under subsection (d)—

(A) no annuity or other payment shall be payable to any person under the civil service retirement laws with respect to any service performed by such individual (whether performed before or after such election is filed and whether performed as judge or otherwise);

(B) no deduction for purposes of the Civil Service Retirement and Disability Fund shall be

made from retired pay payable to him under subsection (d) or from any other salary, pay, or compensation payable to him, for any period beginning after the day on which such election is filed; and

(C) such individual shall be paid the lump-sum credit computed under section 8331(8) of title 5 of the United States Code upon making application therefor with the Office of Personnel Management.

(h) Retirement for disability

(1) Any judge who becomes permanently disabled from performing his duties shall certify to the President his disability in writing. If the chief judge retires for disability, his retirement shall not take effect until concurred in by the President. If any other judge retires for disability, he shall furnish to the President a certificate of disability signed by the chief judge.

(2) Whenever any judge who becomes permanently disabled from performing his duties does not retire and the President finds that such judge is unable to discharge efficiently all the duties of his office by reason of permanent mental or physical disability and that the appointment of an additional judge is necessary for the efficient dispatch of business, the President shall declare such judge to be retired.

(i) Revocation of election to receive retired pay

(1) In general

Notwithstanding subsection (e)(2), an individual who has filed an election to receive retired pay under subsection (d) may revoke such election at any time before the first day on which retired pay (or compensation under subsection (c) in lieu of retired pay) would (but for such revocation) begin to accrue with respect to such individual.

(2) Manner of revoking

Any revocation under this subsection shall be made by filing a notice thereof in writing with the Civil Service Commission. The Civil Service Commission shall transmit to the chief judge a copy of each notice filed under this subsection.

(3) Effect of revocation

In the case of any revocation under this subsection—

(A) for purposes of this section, the individual shall be treated as not having filed an election to receive retired pay under subsection (d),

(B) for purposes of section 7448—

(i) the individual shall be treated as not having filed an election under section 7448(b), and

(ii) section 7448(g) shall not apply, and the amount credited to such individual's account (together with interest at 4 percent per annum to December 31, 1947, and 3 percent per annum thereafter, compounded on December 31 of each year to the date on which the revocation is filed) shall be returned to such individual,

(C) no credit shall be allowed for any service as a judge of the Tax Court unless with respect to such service either there has been deducted and withheld the amount required by the civil service retirement laws or there has been deposited in the Civil Service Retirement and Disability Fund an amount equal to the amount so required, with interest,

(D) the Tax Court shall deposit in the Civil Service Retirement and Disability Fund an amount equal to the additional amount it would have contributed to such Fund but for the election under subsection (e), and

(E) if subparagraph (D) is complied with, service on the Tax Court shall be treated as service with respect to which deductions and contributions had been made during the period of service.

(j) Thrift Savings Plan

(1) Election to contribute

(A) In general

A judge of the Tax Court may elect to contribute to the Thrift Savings Fund established by section 8437 of title 5, United States Code.

(B) Period of election

An election may be made under this paragraph only during a period provided under section 8432(b) of title 5, United States Code, for individuals subject to chapter 84 of such title.

(2) Applicability of title 5 provisions

Except as otherwise provided in this subsection, the provisions of subchapters III and VII of chapter 84 of title 5, United States Code, shall apply with respect to a judge who makes an election under paragraph (1).

(3) Special rules

(A) Amount contributed

The amount contributed by a judge to the Thrift Savings Fund in any pay period shall not exceed the maximum percentage of such judge's basic pay for such period as allowable under section 8440f of title 5, United States Code. Basic pay does not include any retired pay paid pursuant to this section.

(B) Contributions for benefit of judge

No contributions may be made for the benefit of a judge under section 8432(c) of title 5, United States Code.

(C) Applicability of section 8433(b) of title 5 whether or not judge retires

Section 8433(b) of title 5, United States Code, applies with respect to a judge who makes an election under paragraph (1) and who either—

(i) retires under subsection (b), or

(ii) ceases to serve as a judge of the Tax Court but does not retire under subsection (b).

Retirement under subsection (b) is a separation from service for purposes of subchapters III and VII of chapter 84 of that title.

(D) Applicability of section 8351(b)(5) of title 5

The provisions of section 8351(b)(5) of title 5, United States Code, shall apply with respect to a judge who makes an election under paragraph (1).

(E) Exception

Notwithstanding subparagraph (C), if any judge retires under this section, or resigns without having met the age and service requirements set forth under subsection (b)(2), and such judge's nonforfeitable account balance is less than an amount that the Executive Director of the Federal Retirement Thrift Investment Board prescribes by regulation, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment.

(Aug. 16, 1954, ch. 736, 68A Stat. 880; Pub. L. 89–354, §1, Feb. 2, 1966, 80 Stat. 5; Pub. L. 91–172, title IX, §§954, 960(c), (d), Dec. 30, 1969, 83 Stat. 730, 734; Pub. L. 92–41, §4(a), July 1, 1971, 85 Stat. 99; Pub. L. 95–472, §1, Oct. 17, 1978, 92 Stat. 1332; Pub. L. 97–362, title I, §106(d), Oct. 25, 1982, 96 Stat. 1730; Pub. L. 99–514, title XV, §1557(a), (b), (d), Oct. 22, 1986, 100 Stat. 2756, 2757; Pub. L. 100–647, title I, §1015(k)(1), Nov. 10, 1988, 102 Stat. 3571; Pub. L. 109–280, title VIII, §853(a), Aug. 17, 2006, 120 Stat. 1016.)

AMENDMENTS

2006—Subsec. (j). Pub. L. 109–280 added subsec. (j).

1988—Subsec. (d). Pub. L. 100–647 inserted at end "In computing the rate of the retired pay under paragraph (1) of this subsection for any individual who is entitled thereto, any period during which such individual performs services under subsection (c) on a substantially full-time basis shall be treated as a period during which he has served as a judge."

1986—Subsec. (a)(2), (3), (5). Pub. L. 99–514, §1557(d)(1), redesignated pars. (3) and (5) as (2) and (3),

respectively, and struck out former par. (2) which read as follows: "The term 'Civil Service Commission' means the United States Civil Service Commission."

Subsec. (b)(2). Pub. L. 99–514, §1557(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "Any judge who has attained the age of 65 may retire any time after serving as judge for 15 years or more."

Subsec. (e). Pub. L. 99–514, §1557(d)(2), substituted "Office of Personnel Management" for "Civil Service Commission" in par. (4) and in last sentence.

Subsec. (f). Pub. L. 99–514, §1557(b), amended subsec. (f) generally. Prior to amendment, subsec. (f), individuals receiving retired pay to be available for recall, read as follows: "Any individual who has elected to receive retired pay under subsection (d) who thereafter—

"(1) accepts civil office or employment under the Government of the United States (other than the performance of judicial duties pursuant to subsection (c)); or

"(2) performs (or supervises or directs the performance of) legal or accounting services in the field of Federal taxation or in the field of the renegotiation of Federal contracts for his client, his employer, or any of his employer's clients,

shall forfeit all rights to retired pay under subsection (d) for all periods beginning on or after the first day on which he accepts such office or employment or engages in any activity described in paragraph (2). Any individual who has elected to receive retired pay under subsection (d) who thereafter during any calendar year fails to perform judicial duties required of him by subsection (c) shall forfeit all rights to retired pay under subsection (d) for the 1-year period which begins on the first day on which he so fails to perform such duties."

Subsec. (g)(2)(C). Pub. L. 99–514, §1557(d)(3), substituted "Office of Personnel Management" for "Civil Service Commission".

1982—Subsec. (b). Pub. L. 97–362 inserted provision that any judge who retires shall be designated "senior judge".

1978—Subsec. (i). Pub. L. 95–472 added subsec. (i).

1971—Subsec. (c). Pub. L. 92–41 substituted "At or after his retirement, any individual who has elected to receive" for "Any individual who is receiving".

1969—Subsec. (a)(4). Pub. L. 91–172, §954(e)(1), struck out par. (4) which defined the term "Civil Service Retirement Act".

Subsec. (a)(1). Pub. L. 91–172, §960(c), substituted "United States Tax Court" for "Tax Court of the United States".

Subsec. (a)(5). Pub. L. 91–172, §960(d), inserted reference to service as a judge of the Tax Court of the United States.

Subsec. (b). Pub. L. 91–172, §954(a), substituted provisions authorizing retirement at age 70, or age 65 after serving 15 years, or when any judge has become permanently disabled, authorizing any judge not reappointed who has served 15 years or more to retire under enumerated condition, and rendering section 8335(a) of title 5 not applicable to judges, for provisions authorizing retirement after a judge has served 18 years, requiring anyone who served as a judge for 10 years or more and attained the age of 70 years to retire no later than the close of the third month beginning after the month in which he attained 70 years or the month completing the tenth year of service or August 1953, and rendering section 2(a) of the Civil Service Retirement Act not applicable to judges.

Subsec. (d). Pub. L. 91–172, §954(b), substituted provisions specifying methods of computation of retirement pay under subsec. (b) of this section so as to conform such provisions to subsec. (b) (relating to conditions for retiring), for provisions specifying methods of computation for retirement pay under former subsec. (b) of this section (relating to conditions for retiring).

Subsec. (g)(1). Pub. L. 91–172, §954(e)(2), substituted "civil service retirement laws" and "such civil service retirement laws apply" for "Civil Service Retirement Act" and "such Act applies", respectively.

Subsec. (g)(2). Pub. L. 91–172, §954(c), substituted provisions that any individual electing to receive retirement pay under subsec. (d) of this section is not to receive any payment under the civil service retirement laws, and no deduction is to be made for the Civil Service Retirement and Disability Fund, and a lump-sum credit computed under section 8331(8) of Title 5 is to be paid, for provisions which enumerated the effects and conditions of electing retirement pay under former subsec. (d) of this section.

Subsec. (g)(3). Pub. L. 91–172, §954(c), struck out par. (3) which enumerated the conditions and effects of waiving civil service benefits in lieu of retirement pay under former subsec. (d) of this section.

Subsec. (g)(4). Pub. L. 91–172, §954(c), struck out par. (4) which provided that the fourth and sixth paragraphs of section 6 of the Civil Service Retirement Act would be applicable to retirement pay accruing under subsec. (d) of this section.

Subsec. (h). Pub. L. 91–172, §954(d), added subsec. (h).

1966—Subsec. (d). Pub. L. 89–354 substituted "during any period at a rate which bears the same ratio to the rate of the salary payable to a judge during such period" for "at a rate which bears the same ratio to the rate of the salary payable to him as judge at the time he ceases to be a judge" and "the rate of such salary for such period" for "the rate of such salary" wherever appearing.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title VIII, §853(b), Aug. 17, 2006, 120 Stat. 1017, provided that: "The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Aug. 17, 2006], except that United States Tax Court judges may only begin to participate in the Thrift Savings Plan at the next open season beginning after such date."

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1015(k)(2), Nov. 10, 1988, 102 Stat. 3571, provided that: "The amendment made by paragraph (1) [amending this section] shall apply for purposes of determining the amount of retired pay for months beginning after the date of the enactment of this Act [Nov. 10, 1988] regardless of when the services under section 7447(c) of the 1986 Code were performed."

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XV, §1557(e), Oct. 22, 1986, 100 Stat. 2757, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and section 7448 of this title] shall take effect on the date of the enactment of this Act [Oct. 22, 1986].

"(2) FORFEITURE OF RETIRED PAY.—The amendments made by this section shall not apply to any individual who, before the date of the enactment of this Act [Oct. 22, 1986], forfeited his rights to retired pay under section 7447(d) of the Internal Revenue Code of 1954 [now 1986] by reason of the 1st sentence of section 7447(f) of such Code (as in effect on the day before such date)."

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–472, §2(a), Oct. 17, 1978, 92 Stat. 1332, provided that: "The amendment made by the first section of this Act [amending this section] shall apply with respect to revocations made after the date of the enactment of this Act [Oct. 17, 1978]."

EFFECTIVE DATE OF 1971 AMENDMENT

Pub. L. 92–41, §4(c)(1), July 1, 1971, 85 Stat. 99, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendment made by subsection (a) [amending this section] shall be effective as if included in the Internal Revenue Code of 1986 [formerly I.R.C. 1954] on the date of its enactment [July 1, 1971]. Provisions having the same effect as such amendment shall be treated as having been included in the Internal Revenue Code of 1939 [section 1106(c)] effective on and after August 7, 1953."

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by sections 954(c), (e) and 960(c), (d) of Pub. L. 91–172 effective Dec. 30, 1969, see section 962(a) of Pub. L. 91–172, set out as a note under section 7441 of this title.

Pub. L. 91–172, title IX, §962(d), Dec. 30, 1969, 83 Stat. 736, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by subsections (a), (b), and (d) of section 954 [amending this section] shall apply to—

"(1) all judges of the Tax Court retiring on or after the date of enactment of this Act [Dec. 30, 1969], and

"(2) all individuals performing judicial duties pursuant to section 7447(c) or receiving retired pay pursuant to section 7447(d) on the day preceding the date of enactment of this Act [Dec. 30, 1969].

Any individual who has served as a judge of the Tax Court for 18 years or more by the end of one year after the date of the enactment of this Act [Dec. 30, 1969] may retire in accordance with the provisions of section 7447 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] as in effect on the day preceding the date of the enactment of this Act. Any individual who is a judge of the Tax Court on the date of the enactment of this Act may retire under the provisions of section 7447 of such Code upon the completion of the term of his office, if he is not reappointed as a judge of the Tax Court and gives notice to the President within the time prescribed by section 7447(b) of such Code (or if his term expires within 6 months after the date of enactment of this Act, gives notice to the President before the expiration of 3 months after the date of enactment of this Act), and shall receive retired pay at a rate which bears the same ratio to the rate of the salary payable to a judge as the number of years he has served as a judge of the Tax Court bears to 15; except that the rate of such retired pay shall not exceed the rate of the salary of a judge of the Tax Court. For purposes of the preceding

sentence the years of service as a judge of the Tax Court shall be determined in the manner set forth in section 7447(d) of such Code."

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89–354, §2, Feb. 2, 1966, 80 Stat. 5, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by the first section of this Act [amending this section and section 1106 of I.R.C. 1939] shall apply with respect to retired pay accruing under section 1106 of the Internal Revenue Code of 1939 or section 7447 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] on or after the first day of the first calendar month which begins after the date of enactment of this Act [Feb. 2, 1966]."

TRANSFER OF FUNCTIONS

Functions vested by statute in United States Civil Service Commission or Chairman thereof transferred to Director of Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, §102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

REDEPOSITING FUNDS IN CIVIL SERVICE RETIREMENT AND DISABILITY FUND; CREDITABLE SERVICE

Pub. L. 95–472, §2(b), Oct. 17, 1978, 92 Stat. 1333, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Any individual who elects to revoke under section 7447(i) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] within one year after the date of enactment of this Act [Oct. 17, 1978] shall be treated as having the requisite current service for purposes of redepositing funds in the Civil Service Retirement and Disability Fund and for purposes of reviving creditable service under subchapter III of chapter 83 of title 5 of the United States Code."

§7448. Annuities to surviving spouses and dependent children of judges and special trial judges

(a) Definitions

For purposes of this section—

(1) The term "Tax Court" means the United States Tax Court.

(2) The term "judge" means the chief judge or a judge of the Tax Court, including any individual receiving retired pay (or compensation in lieu of retired pay) under section 7447 or under section 1106 of the Internal Revenue Code of 1939 whether or not performing judicial duties pursuant to section 7447(c) or pursuant to section 1106(d) of the Internal Revenue Code of 1939.

(3) The term "chief judge" means the chief judge of the Tax Court.

(4) The term "judge's salary" means the salary of a judge received under section 7443(c), retired pay received under section 7447(d), and compensation (in lieu of retired pay) received under section 7447(c).

(5) The term "special trial judge" means a judicial officer appointed pursuant to section 7443A, including any individual receiving an annuity under chapter 83 or 84 of title 5, United States Code, whether or not performing judicial duties under section 7443B.[1]

(6) The term "special trial judge's salary" means the salary of a special trial judge received under section 7443A(d), any amount received as an annuity under chapter 83 or 84 of title 5, United States Code, and compensation received under section 7443B.[1]

(7) The term "survivors annuity fund" means the Tax Court judges survivors annuity fund established by this section.

(8) The term "surviving spouse" means a surviving spouse of an individual, who either (A) shall have been married to such individual for at least 2 years immediately preceding his death or (B) is a parent of issue by such marriage, and who has not remarried.

(9) The term "dependent child" means an unmarried child, including a dependent stepchild or an

adopted child, who is under the age of 18 years or who because of physical or mental disability is incapable of self-support.

(b) Election

(1) Judges

Any judge may by written election filed while he is a judge (except that in the case of an individual who is not reappointed following expiration of his term of office, it may be made at any time before the day after the day on which his successor takes office) bring himself within the purview of this section. In the case of any judge other than the chief judge the election shall be filed with the chief judge; in the case of the chief judge the election shall be filed as prescribed by the Tax Court.

(2) Special trial judges

Any special trial judge may by written election filed with the chief judge bring himself or herself within the purview of this section. Such election shall be filed not later than the later of 6 months after—

(A) 6 months after the date of the enactment of this paragraph,
(B) the date the judge takes office, or
(C) the date the judge marries.

(c) Survivors annuity fund

(1) Salary deductions

There shall be deducted and withheld from the salary of each judge or special trial judge electing under subsection (b) a sum equal to 3.5 percent of such judge's or special trial judge's salary. The amounts so deducted and withheld from such judge's or special trial judge's salary shall, in accordance with such procedure as may be prescribed by the Comptroller General of the United States, be deposited in the Treasury of the United States to the credit of a fund to be known as the "Tax Court judicial officers survivors annuity fund" and said fund is appropriated for the payment of annuities, refunds, and allowances as provided by this section. Each judge or special trial judge electing under subsection (b) shall be deemed thereby to consent and agree to the deductions from his salary as provided in this subsection, and payment less such deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for all judicial services rendered by such judge or special trial judge during the period covered by such payment, except the right to the benefits to which he or his survivors shall be entitled under the provisions of this section.

(2) Appropriations where unfunded liability

(A) In general

Not later than the close of each fiscal year, there shall be deposited in the Treasury of the United States to the credit of the survivors annuity fund, in accordance with such procedures as may be prescribed by the Comptroller General of the United States, amounts required to reduce to zero the unfunded liability (if any) of such fund. Subject to appropriation Acts, such deposits shall be taken from sums available for such fiscal year for the payment of amounts described in subsection (a)(4) and section 7443A(d), and shall immediately become an integrated part of such fund.

(B) Exception

The amount required by subparagraph (A) to be deposited in any fiscal year shall not exceed an amount equal to 11 percent of the aggregate amounts described in subsection (a)(4) and (a)(6) paid during such fiscal year.

(C) Unfunded liability defined

For purposes of subparagraph (A), the term "unfunded liability" means the amount estimated by the Secretary to be equal to the excess (as of the close of the fiscal year involved) of—

(i) the present value of all benefits payable from the survivors annuity fund (determined on an annual basis in accordance with section 9503 of title 31, United States Code), over

(ii) the sum of—

(I) the present values of future deductions under subsection (c) and future deposits under subsection (d), plus

(II) the balance in such fund as of the close of such fiscal year.

(D) Amounts not credited to individual accounts

Amounts appropriated pursuant to this paragraph shall not be credited to the account of any individual for purposes of subsection (g).

(d) Deposits in survivors annuity fund

Each judge or special trial judge electing under subsection (b) shall deposit, with interest at 4 percent per annum to December 31, 1947, and 3 percent per annum thereafter, compounded on December 31 of each year, to the credit of the survivors annuity fund, a sum equal to 3.5 percent of his judge's or special trial judge's salary and of his basic salary, pay, or compensation for service as a Senator, Representative, Delegate, or Resident Commissioner in Congress, and for any other civilian service within the purview of section 8332 of title 5 of the United States Code. Each such judge or special trial judge may elect to make such deposits in installments during the continuance of his service as a judge or special trial judge in such amount and under such conditions as may be determined in each instance by the chief judge. Notwithstanding the failure of a judge or special trial judge to make such deposit, credit shall be allowed for the service rendered, but the annuity of the surviving spouse of such judge or special trial judge shall be reduced by an amount equal to 10 percent of the amount of such deposit, computed as of the date of the death of such judge or special trial judge, unless such surviving spouse shall elect to eliminate such service entirely from credit under subsection (n), except that no deposit shall be required from a judge or special trial judge for any year with respect to which deductions from his salary were actually made under the civil service retirement laws and no deposit shall be required for any honorable service in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States.

(e) Investment of survivors annuity fund

The Secretary of the Treasury shall invest from time to time, in interest-bearing securities of the United States or Federal farm loan bonds, such portions of the survivors annuity fund as in his judgment may not be immediately required for the payment of the annuities, refunds, and allowances as provided in this section. The income derived from such investments shall constitute a part of said fund for the purpose of paying annuities and of carrying out the provisions of subsections (g), (h), and (j).

(f) Crediting of deposits

The amount deposited by or deducted and withheld from the salary of each judge or special trial judge electing to bring himself within the purview of this section for credit to the survivors annuity fund shall be credited to an individual account of such judge or special trial judge.

(g) Termination

If the service of any judge or special trial judge electing under subsection (b) terminates other than pursuant to the provisions of section 7447 or other than pursuant to section 1106 of the Internal Revenue Code of 1939 or if any judge or special trial judge ceases to be married after making the election under subsection (b) and revokes (in a writing filed as provided in subsection (b)) such election, the amount credited to his individual account, together with interest at 4 percent per annum to December 31, 1947, and 3 percent per annum thereafter, compounded on December 31 of each year, to the date of his relinquishment of office, shall be returned to him. For the purpose of this section, the service of any judge or special trial judge electing under subsection (b) who is not reappointed following expiration of his term but who, at the time of such expiration, is eligible for and elects to receive retired pay under section 7447 shall be deemed to have terminated pursuant to said section.

(h) Entitlement to annuity

In case any judge or special trial judge electing under subsection (b) shall die while a judge or special trial judge after having rendered at least 5 years of civilian service computed as prescribed in subsection (n), for the last 5 years of which the salary deductions provided for by subsection (c)(1) or the deposits required by subsection (d) have actually been made or the salary deductions required by the civil service retirement laws have actually been made—

(1) if such judge or special trial judge is survived by a surviving spouse but not by a dependent child, there shall be paid to such surviving spouse an annuity beginning with the day of the death of the judge or special trial judge or following the surviving spouse's attainment of the age of 50 years, whichever is the later, in an amount computed as provided in subsection (m); or

(2) if such judge or special trial judge is survived by a surviving spouse and a dependent child or children, there shall be paid to such surviving spouse an immediate annuity in an amount computed as provided in subsection (m), and there shall also be paid to or on behalf of each such child an immediate annuity equal to the lesser of—

(A) 10 percent of the average annual salary of such judge or special trial judge (determined in accordance with subsection (m)), or

(B) 20 percent of such average annual salary, divided by the number of such children; or

(3) if such judge or special trial judge leaves no surviving spouse but leaves a surviving dependent child or children, there shall be paid to or on behalf of each such child an immediate annuity equal to the lesser of—

(A) 20 percent of the average annual salary of such judge or special trial judge (determined in accordance with subsection (m)), or

(B) 40 percent of such average annual salary, divided by the number of such children.

The annuity payable to a surviving spouse under this subsection shall be terminable upon such surviving spouse's death or such surviving spouse's remarriage before attaining age 55. The annuity payable to a child under this subsection shall be terminable upon (A) his attaining the age of 18 years, (B) his marriage, or (C) his death, whichever first occurs, except that if such child is incapable of self-support by reason of mental or physical disability his annuity shall be terminable only upon death, marriage, or recovery from such disability. In case of the death of a surviving spouse of a judge or special trial judge leaving a dependent child or children of the judge or special trial judge surviving such spouse, the annuity of such child or children shall be recomputed and paid as provided in paragraph (3) of this subsection. In any case in which the annuity of a dependent child is terminated under this subsection, the annuities of any remaining dependent child or children, based upon the service of the same judge or special trial judge, shall be recomputed and paid as though the child whose annuity was so terminated had not survived such judge or special trial judge.

(i) Determination of dependency and disability

Questions of dependency and disability arising under this section shall be determined by the chief judge subject to review only by the Tax Court, the decision of which shall be final and conclusive. The chief judge may order or direct at any time such medical or other examinations as he shall deem necessary to determine the facts relative to the nature and degree of disability of any dependent child who is an annuitant or applicant for annuity under this section, and may suspend or deny any such annuity for failure to submit to any examination so ordered or directed.

(j) Payments in certain cases

(1) In any case in which—

(A) a judge or special trial judge electing under subsection (b) shall die while in office (whether in regular active service, retired from such service under section 7447, or receiving any annuity under chapter 83 or 84 of title 5, United States Code,),[2] before having rendered 5 years of civilian service computed as prescribed in subsection (n), or after having rendered 5 years of such civilian service but without a survivor or survivors entitled to annuity benefits provided by subsection (h), or

(B) the right of all persons entitled to annuity under subsection (h) based on the service of such judge or special trial judge shall terminate before a valid claim therefor shall have been established,

the total amount credited to the individual account of such judge or special trial judge, with interest at 4 percent per annum to December 31, 1947, and 3 percent per annum thereafter, compounded on December 31 of each year, to the date of the death of such judge or special trial judge, shall be paid, upon the establishment of a valid claim therefor, to the person or persons surviving at the date title to the payment arises, in the following order of precedence, and such payment shall be a bar to recovery by any other person:

(i) to the beneficiary or beneficiaries whom the judge or special trial judge may have designated by a writing filed prior to his death with the chief judge, except that in the case of the chief judge such designation shall be by a writing filed by him, prior to his death, as prescribed by the Tax Court;

(ii) if there be no such beneficiary, to the surviving spouse of such judge or special trial judge;

(iii) if none of the above, to the child or children of such judge or special trial judge and the descendents of any deceased children by representation;

(iv) if none of the above, to the parents of such judge or special trial judge or the survivor of them;

(v) if none of the above, to the duly appointed executor or administrator of the estate of such judge or special trial judge; and

(vi) if none of the above, to such other next of kin of such judge or special trial judge as may be determined by the chief judge to be entitled under the laws of the domicile of such judge or special trial judge at the time of his death.

Determination as to the surviving spouse, child, or parent of a judge or special trial judge for the purposes of this paragraph shall be made by the chief judge without regard to the definitions in paragraphs (8) and (9) of subsection (a).

(2) In any case in which the annuities of all persons entitled to annuity based upon the service of a judge or special trial judge shall terminate before the aggregate amount of annuity paid equals the total amount credited to the individual account of such judge or special trial judge, with interest at 4 percent per annum to December 31, 1947, and 3 percent per annum thereafter, compounded on December 31 of each year, to the date of the death of such judge or special trial judge, the difference shall be paid, upon establishment of a valid claim therefor, in the order of precedence prescribed in paragraph (1).

(3) Any accrued annuity remaining unpaid upon the termination (other than by death) of the annuity of any person based upon the service of a judge or special trial judge shall be paid to such person. Any accrued annuity remaining unpaid upon the death of any person receiving annuity based upon the service of a judge or special trial judge shall be paid, upon the establishment of a valid claim therefor, in the following order of precedence:

(A) to the duly appointed executor or administrator of the estate of such person;

(B) if there is no such executor or administrator payment may be made, after the expiration of thirty days from the date of the death of such person, to such individual or individuals as may appear in the judgment of the chief judge to be legally entitled thereto, and such payment shall be a bar to recovery by any other individual.

(k) Payments to persons under legal disability

Where any payment under this section is to be made to a minor, or to a person mentally incompetent or under other legal disability adjudged by a court of competent jurisdiction, such payment may be made to the person who is constituted guardian or other fiduciary by the law of the State of residence of such claimant or is otherwise legally vested with the care of the claimant or his estate. Where no guardian or other fiduciary of the person under legal disability has been appointed under the laws of the State of residence of the claimant, the chief judge shall determine the person who is otherwise legally vested with the care of the claimant or his estate.

(l) Method of payment of annuities

Annuities granted under the terms of this section shall accrue monthly and shall be due and payable in monthly installments on the first business day of the month following the month or other period for which the annuity shall have accrued. None of the moneys mentioned in this section shall be assignable, either in law or in equity, or subject to execution, levy, attachment, garnishment, or other legal process.

(m) Computation of annuities

The annuity of the surviving spouse of a judge or special trial judge electing under subsection (b) shall be an amount equal to the sum of (1) 1.5 percent of the average annual salary (whether judge's or special trial judge's salary or compensation for other allowable service) received by such judge or special trial judge for judicial service (including periods in which he received retired pay under section 7447(d) or any annuity under chapter 83 or 84 of title 5, United States Code) or for any other prior allowable service during the period of 3 consecutive years in which he received the largest such average annual salary, multiplied by the sum of his years of such judicial service, his years of prior allowable service as a Senator, Representative, Delegate, or Resident Commissioner in Congress, his years of prior allowable service performed as a member of the Armed Forces of the United States, and his years, not exceeding 15, of prior allowable service performed as a congressional employee (as defined in section 2107 of title 5 of the United States Code,[3] and (2) three-fourths of 1 percent of such average annual salary multiplied by his years of any other prior allowable service, except that such annuity shall not exceed an amount equal to 50 percent of such average annual salary, nor be less than an amount equal to 25 percent of such average annual salary, and shall be further reduced in accordance with subsection (d) (if applicable). In determining the period of 3 consecutive years referred to in the preceding sentence, there may not be taken into account any period for which an election under section 7447(f)(4) is in effect.

(n) Includible service

Subject to the provisions of subsection (d), the years of service of a judge or special trial judge which are allowable as the basis for calculating the amount of the annuity of his surviving spouse shall include his years of service as a member of the United States Board of Tax Appeals, as a judge or special trial judge of the Tax Court of the United States, and as a judge or special trial judge of the Tax Court, his years of service pursuant to any appointment under section 7443A, his years of service as a Senator, Representative, Delegate, or Resident Commissioner in Congress, his years of active service as a member of the Armed Forces of the United States not exceeding 5 years in the aggregate and not including any such service for which credit is allowed for the purposes of retirement or retired pay under any other provision of law, and his years of any other civilian service within the purview of section 8332 of title 5 of the United States Code.

(o) Simultaneous entitlement

Nothing contained in this section shall be construed to prevent a surviving spouse eligible therefor from simultaneously receiving an annuity under this section and any annuity to which such spouse would otherwise be entitled under any other law without regard to this section, but in computing such other annuity service used in the computation of such spouse's annuity under this section shall not be credited.

(p) Estimates of expenditures

The chief judge shall submit to the President annual estimates of the expenditures and appropriations necessary for the maintenance and operation of the survivors annuity fund, and such supplemental and deficiency estimates as may be required from time to time for the same purposes, according to law. The chief judge shall cause periodic examinations of the survivors annuity fund to be made by an actuary, who may be an actuary employed by another department of the Government temporarily assigned for the purpose, and whose findings and recommendations shall be transmitted by the chief judge to the Tax Court.

(q) Transitional provision

In the case of a judge who dies within 6 months after the date of enactment of this section after having rendered at least 5 years of civilian service computed as prescribed in subsection (n), but without having made an election as provided in subsection (b), an annuity shall be paid to his surviving spouse and surviving dependents as is provided in this section, as if such judge had elected on the day of his death to bring himself within the purview of this section but had not made the deposit provided for by subsection (d). An annuity shall be payable under this section computed upon the basis of the actual length of service as a judge and other allowable service of the judge and subject to the reduction required by subsection (d) even though no deposit has been made, as required by subsection (h) with respect to any of such service.

(r) Waiver of civil service benefits

Any judge electing under subsection (b) shall, at the time of such election, waive all benefits under the civil service retirement laws. Such a waiver shall be made in the same manner and shall have the same force and effect as an election filed under section 7447(e).

(s) Increases in survivor annuities

Each time that an increase is made under section 8340(b) of title 5, United States Code, in annuities payable under subchapter III of chapter 83 of that title, each annuity payable from the survivors annuity fund under this section shall be increased at the same time by the same percentage by which annuities are increased under such section 8340(b).

(t) Authorization of appropriation

Funds necessary to carry out the provisions of this section may be appropriated out of any money in the Treasury not otherwise appropriated.

(Added Pub. L. 87–370, §1, Oct. 4, 1961, 75 Stat. 796; amended Pub. L. 91–172, title IX, §§955, 960(c), (e), Dec. 30, 1969, 83 Stat. 732, 734; Pub. L. 92–41, §4(b), July 1, 1971, 85 Stat. 99; Pub. L. 94–455, title XIX, §1906(a)(46), Oct. 4, 1976, 90 Stat. 1830; Pub. L. 97–362, title I, §105(a), (b), Oct. 25, 1982, 96 Stat. 1729; Pub. L. 98–216, §3(c)(1), Feb. 14, 1984, 98 Stat. 6; Pub. L. 98–369, div. A, title IV, §462(a), July 18, 1984, 98 Stat. 824; Pub. L. 99–514, title XV, §§1557(c), 1559(a)–(c), Oct. 22, 1986, 100 Stat. 2757–2760; Pub. L. 109–280, title VIII, §§851(a), 854(a)–(c)(1), (3)–(7), Aug. 17, 2006, 120 Stat. 1016–1018.)

REFERENCES IN TEXT

Section 1106 of the Internal Revenue Code of 1939, referred to in subsecs. (a)(2) and (g), was classified to section 1106 of former Title 26, Internal Revenue Code. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of this title. See, also, section 7851(e) of this title for provision that references in the 1986 Code to a provision of the 1939 Code, not then applicable, shall be deemed a reference to the corresponding provision of the 1986 Code, which is then applicable.

Section 7443B, referred to in subsec. (a)(5), (6), was repealed by Pub. L. 110–458, title I, §108(l), Dec. 23, 2008, 122 Stat. 5110.

The date of the enactment of this paragraph, referred to in subsec. (b)(2)(A), is the date of enactment of Pub. L. 109–280, which was approved Aug. 17, 2006.

AMENDMENTS

2006—Pub. L. 109–280, §854(c)(3), which directed amendment of subsec. (u) of this section by inserting "or special trial judge" after "judge" and "or special trial judge's" after "judge's" wherever appearing, could not be executed because no subsec. (u) has been enacted.

Pub. L. 109–280, §854(c)(1), inserted "and special trial judges" after "children of judges" in section catchline.

Subsec. (a)(5) to (9). Pub. L. 109–280, §854(a), which directed amendment of subsec. (a) by adding pars. (5) and (6) and redesignating former pars. (5) to (8) as (7) to (10), respectively, was executed by adding pars. (5) and (6) and redesignating former pars. (5) to (7) as (7) to (9), respectively, to reflect the probable intent of Congress. Subsec. (a) did not contain a par. (8) prior to the amendment.

Subsec. (b). Pub. L. 109–280, §854(b), reenacted subsec. heading without change, designated existing provisions as par. (1), inserted par. heading, realigned margins, and added par. (2).

Subsec. (c)(1). Pub. L. 109–280, §854(c)(4)(A), substituted "Tax Court judicial officers" for "Tax Court judges".

Pub. L. 109–280, §854(c)(3), inserted "or special trial judge" after "judge" and "or special trial judge's" after "judge's" wherever appearing.

Subsec. (c)(2)(A). Pub. L. 109–280, §854(c)(4)(B)(i), inserted "and section 7443A(d)" after "(a)(4)".

Subsec. (c)(2)(B). Pub. L. 109–280, §854(c)(4)(B)(ii), substituted "subsection (a)(4) and (a)(6)" for "subsection (a)(4)".

Subsec. (d). Pub. L. 109–280, §854(c)(3), inserted "or special trial judge" after "judge" wherever appearing except after "chief judge" and inserted "or special trial judge's" after "judge's".

Subsecs. (f) to (h). Pub. L. 109–280, §854(c)(3)(A), inserted "or special trial judge" after "judge" wherever appearing.

Subsec (j). Pub. L. 109–280, §854(c)(3)(A), inserted "or special trial judge" after "judge" wherever appearing except after "chief judge".

Subsec. (j)(1). Pub. L. 109–280, §854(c)(5)(B), substituted "paragraphs (8) and (9) of subsection (a)" for "subsections (a)(6) and (7)" in concluding provisions.

Subsec. (j)(1)(A). Pub. L. 109–280, §854(c)(5)(A), substituted "service, retired from such service under section 7447, or receiving any annuity under chapter 83 or 84 of title 5, United States Code," for "service or retired from such service under section 7447".

Subsec. (m). Pub. L. 109–280, §854(c)(6), inserted "or any annuity under chapter 83 or 84 of title 5, United States Code" after "7447(d)".

Pub. L. 109–280, §854(c)(3), inserted "or special trial judge's" after "judge's" and "or special trial judge" after "judge" in two places.

Subsec. (n). Pub. L. 109–280, §854(c)(3)(A), (7), inserted "or special trial judge" after "judge" wherever appearing and "his years of service pursuant to any appointment under section 7443A," after "of the Tax Court,".

Subsec. (s). Pub. L. 109–280, §851(a), amended heading and text of subsec. (s) generally. Prior to amendment, text read as follows: "Whenever the salary of a judge under section 7443(c) is increased, each annuity payable from the survivors annuity fund which is based, in whole or in part, upon a deceased judge having rendered some portion of his or her final 18 months of service as a judge of the Tax Court, shall also be increased. The amount of the increase in such an annuity shall be determined by multiplying the amount of the annuity, on the date on which the increase in salary becomes effective, by 3 percent for each full 5 percent by which such salary has been increased."

1986—Subsec. (c). Pub. L. 99–514, §1559(a)(1)(A), (2)(A), substituted "Survivors annuity fund" for "Salary deductions" in heading, inserted par. (1) designation and heading "Salary deductions" before existing text, realigned margin of text and substituted "3.5 percent" for "3 percent", and added par. (2).

Subsec. (d). Pub. L. 99–514, §1559(a)(1)(B), substituted "3.5 percent" for second reference to "3 percent".

Subsec. (g). Pub. L. 99–514, §1559(c), struck out "of service" after "Termination" in heading and inserted "or if any judge ceases to be married after making the election under subsection (b) and revokes (in a writing filed as provided in subsection (b)) such election" in text.

Subsec. (h). Pub. L. 99–514, §1559(a)(2)(B), substituted "subsection (c)(1)" for "subsection (c)" in introductory provisions.

Pub. L. 99–514, §1559(b)(1)(B), substituted "or such surviving spouse's remarriage before attaining age 55" for "or remarriage" in second sentence.

Subsec. (h)(2). Pub. L. 99–514, §1559(b)(2)(A), substituted "the lesser of—

"(A) 10 percent of the average annual salary of such judge (determined in accordance with subsection (m)), or

"(B) 20 percent of such average annual salary, divided by the number of such children; or" for "one-half the amount of the annuity of such surviving spouse, but not to exceed $4,644 per year divided by the number of such children or $1,548 per year, whichever is lesser; or".

Subsec. (h)(3). Pub. L. 99–514, §1559(b)(2)(B), substituted "the lesser of—

"(A) 20 percent of the average annual salary of such judge (determined in accordance with subsection (m)), or

"(B) 40 percent of such average annual salary, divided by the number of such children" for "the amount of the annuity to which such surviving spouse would have been entitled under paragraph (2) of this subsection had such spouse survived, but not to exceed $5,580 per year divided by the number of such children or $1,860 per year, whichever is lesser".

Subsec. (m). Pub. L. 99–514, §1559(b)(1)(A), substituted "1.5 percent" for "1¼ percent" and "except that such annuity shall not exceed an amount equal to 50 percent of such average annual salary, nor be less than an

amount equal to 25 percent of such average annual salary, and shall be further reduced in accordance with subsection (d) (if applicable)" for "but such annuity shall not exceed 40 percent of such average annual salary and shall be further reduced in accordance with subsection (d), if applicable".

Pub. L. 99–514, §1557(c), inserted last sentence.

1984—Subsec. (h)(2). Pub. L. 98–369,§462(a)(1), substituted "$4,644" for "$900" and "$1,548" for "$360".

Subsec. (h)(3). Pub. L. 98–369, §462(a)(2), substituted "$5,580 per year divided by the number of such children or $1,860 per year, whichever is lesser" for "$480 per year".

Subsec. (p). Pub. L. 98–216 substituted "President" for "Bureau of the Budget".

1982—Subsec. (m). Pub. L. 97–362, §105(a), substituted "3 consecutive years" for "5 consecutive years", and "40 percent" for "37½ percent".

Subsecs. (s), (t). Pub. L. 97–362, §105(b), added subsec. (s) and redesignated former subsec. (s) as (t).

1976—Pub. L. 94–455, §1906(a)(46)(F), substituted "surviving spouses" for "widows" in section catchline.

Subsec. (a)(6). Pub. L. 94–455, §1906(a)(46)(A), substituted "The term 'surviving spouse' means a surviving spouse of" for "The term 'widow' means a surviving wife of" and "a parent of issue" for "the mother of issue".

Subsec. (d). Pub. L. 94–455, §1906(a)(46)(E), substituted "surviving spouse" for "widow" wherever appearing.

Subsec. (h). Pub. L. 94–455, §1906(a)(46)(B), (C), substituted "a surviving spouse" for "a widow", "such surviving spouse" for "such widow", "surviving spouse's" for "widow's", "surviving spouse" for "surviving widow or widower", "such spouse" for "she" and "surviving such spouse" for "surviving her".

Subsecs. (j), (m), (n). Pub. L. 94–455, §1906(a)(46)(E), substituted "surviving spouse" for "widow" wherever appearing.

Subsec. (o). Pub. L. 94–455, §1906(a)(46)(C), (D), (E), substituted "surviving spouse" for "widow", "such spouse" for "she" and "such spouse's" for "her".

Subsec. (q). Pub. L. 94–455, §1906(a)(46)(E), substituted "surviving spouse" for "widow".

1971—Subsec. (m). Pub. L. 92–41 inserted "(whether judge's salary or compensation for other allowable service)" and "(including periods in which he received retired pay under section 7447(d))" after "average annual salary" and "judicial service", respectively, and substituted "or for any other prior allowable service during the period of 5 consecutive years in which he received the largest such average annual salary, multiplied by the sum of his years of such judicial service" for "and any other prior allowable service during the last 5 years of such service prior to his death, or prior to his receiving retired pay under section 7447(d), whichever first occurs, multiplied by the sum of his years of judicial service".

1969—Subsec. (a)(1). Pub. L. 91–172, §960(c), substituted "United States Tax Court" for "Tax Court of the United States".

Subsec. (b). Pub. L. 91–172, §955(a), substituted provisions authorizing a judge to file notice of election to take benefits relating to survivor annuities while a judge, and if not reappointed, authorizing such election at any time before the day after the day on which his successor takes office, for provisions authorizing a judge to file within 6 months after he takes office or is reappointed, or within 6 months after he becomes eligible for retirement under former section 7447(b) of this title, or within 6 months after Oct. 4, 1961.

Subsec. (d). Pub. L. 91–172, §955(d)(1), (2), substituted "civil service retirement laws" for "Civil Service Retirement Act" and "section 8332 of title 5 of the United States Code" for "section 3 of the Civil Service Retirement Act (5 U.S.C. 2253)".

Subsec. (h). Pub. L. 91–172, §955(b)(1), substituted "civil service retirement laws" for "Civil Service Retirement Act".

Subsec. (m). Pub. L. 91–172, §955(b)(3), substituted "section 2107 of title 5 of the United States Code" for "section 1(c) of the Civil Service Retirement Act (5 U.S.C. 2251(c))".

Subsec. (n). Pub. L. 91–172, §§955(b)(2), 960(e), substituted "section 8332 of title 5 of the United States Code" for "section 3 of the Civil Service Retirement Act (5 U.S.C. 2253)" and inserted reference to service as a judge of the Tax Court of the United States.

Subsec. (r). Pub. L. 91–172, §955(b)(1), (4), substituted "civil service retirement laws" for "Civil Service Retirement Act" and substituted "an election filed under section 7447(e)" for "a waiver filed under section 7447(g)(3)".

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title VIII, §851(b), Aug. 17, 2006, 120 Stat. 1016, provided that: "The amendment made by this section [amending this section] shall apply with respect to increases made under section 8340(b) of title 5, United States Code, in annuities payable under subchapter III of chapter 83 of that title, taking effect after the date of the enactment of this Act [Aug. 17, 2006]."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1557(c) of Pub. L. 99–514 effective Oct. 22, 1986, but not applicable to any individual who, before Oct. 22, 1986, forfeited his rights to retired pay under section 7447(d) of this title by reason of the 1st sentence of section 7447(f) of this title (as in effect on the day before such date), see section 1557(e) of Pub. L. 99–514, set out as a note under section 7447 of this title.

Pub. L. 99–514, title XV, §1559(d), Oct. 22, 1986, 100 Stat. 2760, provided that:

"(1) SALARY DEDUCTIONS.—

"(A) The amendment made by subsection (a)(1)(A) [amending this section] shall apply to amounts paid after November 1, 1986.

"(B) The amendment made by subsection (a)(1)(B) [amending this section] shall apply to service after November 1, 1986.

"(2) APPROPRIATIONS.—The amendments made by subsection (a)(2) [amending this section] shall apply to fiscal years beginning after 1986.

"(3) COMPUTATION OF ANNUITIES.—The amendments made by subsection (b) [amending this section] shall apply to annuities the starting date of which is after November 1, 1986.

"(4) OPPORTUNITY TO REVOKE SURVIVOR ANNUITY ELECTION.—

"(A) IN GENERAL.—Any individual who before November 1, 1986, made an election under subsection (b) of section 7448 of the Internal Revenue Code of 1954 [now 1986] may revoke such election. Such a revocation shall constitute a complete withdrawal from the survivor annuity program provided for in such section and shall be filed as provided for elections under such subsection.

"(B) EFFECT OF REVOCATION.—Any revocation under subparagraph (A) shall have the same effect as if there were a termination to which section 7448(g) of such Code applies on the date such revocation is filed.

"(C) PERIOD REVOCATION PERMITTED.—Any revocation under subparagraph (A) may be made only during the 180-day period beginning on the date of the enactment of this Act [Oct. 22, 1986].

"(5) OPPORTUNITY TO ELECT SURVIVOR ANNUITY WHERE PRIOR REVOCATION.—Any individual who under paragraph (4) revoked an election under subsection (b) of section 7448 of such Code may thereafter make such an election only if such individual deposits to the credit of the survivors annuity fund under subsection (c) of such section the entire amount paid to such individual under paragraph (4), together with interest computed as provided in subsection (d) of such section."

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title IV, §462(b), July 18, 1984, 98 Stat. 824, provided that: "The amendments made by this [sic] subsection (a) [amending this section] shall apply to annuities payable with respect to months beginning after the date of the enactment of this Act [July 18, 1984]."

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–362, title I, §105(d), Oct. 25, 1982, 96 Stat. 1730, provided that:

"(1) SUBSECTION (a).—The amendment made by subsection (a) [amending this section] shall apply to annuities payable with respect to judges dying after the date of the enactment of this Act [Oct. 25, 1982].

"(2) SUBSECTION (b).—The amendment made by subsection (b) of this section [amending this section] shall apply with respect to increases in the salary of judges of the United States Tax Court taking effect after the date of the enactment of this Act [Oct. 25, 1982]."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1906(d) of Pub. L. 94–455, set out as a note under section 6013 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Pub. L. 92–41, §4(c)(2), July 1, 1971, 85 Stat. 99, provided that: "The amendment made by subsection (b) [amending this section] shall apply only with respect to judges of the United States Tax Court dying on or after the date of the enactment of this Act [July 1, 1971]."

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 effective Dec. 30, 1969, see section 962(a) of Pub. L. 91–172, set out as a note under section 7441 of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and

functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

CATCHUP FOR SURVIVORS ANNUITIES IN PAY STATUS ON OCTOBER 25, 1982

Pub. L. 97–362, title I, §105(c), Oct. 25, 1982, 96 Stat. 1729, as amended by Pub. L. 97–448, title III, §305(e), Jan. 12, 1983, 96 Stat. 2400; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "If an annuity payable under section 7448(h) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to entitlement to annuity) to the surviving spouse of a judge of the United States Tax Court is being paid on the date of the enactment of this Act, then the amount of that annuity shall be adjusted, as of the first day of the first month beginning more than 30 days after such date, to reflect the amount of the annuity which would have been payable if the amendment made by subsection (b) applied with respect to increases in the salary of a judge under section 7443(c) of such Code taking effect after December 31, 1963."

[Pub. L. 97–448, title III, §311(c)(5), Jan. 12, 1983, 96 Stat. 2412, provided that: "The amendment made by subsection (e) of section 305 [amending section 105(c) of Pub. L. 97–362, set out above] shall take effect on the date of the enactment of the Miscellaneous Revenue Act of 1982 [Oct. 25, 1982]."]

[1] See References in Text note below.

[2] So in original.

[3] So in original. A closing parenthesis probably should precede the comma.

PART II—PROCEDURE

Sec.

7451. Fee for filing petition.
7452. Representation of parties.
7453. Rules of practice, procedure, and evidence.
7454. Burden of proof in fraud and transferee cases.[1]
7455. Service of process.
7456. Administration of oaths and procurement of testimony.
7457. Witness fees.
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7459. Reports and decisions.
7460. Provisions of special application to divisions.
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7462. Publication of reports.
7463. Disputes involving $50,000 or less.
7464. Intervention by trustee of debtor's estate.
7465. Provisions of special application to transferees.

AMENDMENTS

1998—Pub. L. 105–206, title III, §3103(b)(2), July 22, 1998, 112 Stat. 731, substituted "$50,000" for "$10,000" in item 7463.

1984—Pub. L. 98–369, div. A, title IV, §461(a)(2)(B), July 18, 1984, 98 Stat. 823, substituted "$10,000" for "$5,000" in item 7463.

1980—Pub. L. 96–589, §6(c)(2), Dec. 24, 1980, 94 Stat. 3407, added item 7464 and redesignated former item 7464 as 7465.

1978—Pub. L. 95–600, title V, §502(a)(2)(B), Nov. 6, 1978, 92 Stat. 2879, substituted "$5,000" for "$1,500" in item 7463.

1972—Pub. L. 92–512, title II, §203(b)(3), Oct. 20, 1972, 86 Stat. 945, substituted "$1,500" for "$1,000" in item 7463.

1969—Pub. L. 91–172, title IX, §957(b), Dec. 30, 1969, 83 Stat. 733, added item 7463 and redesignated

former item 7463 as 7464.

[1] *Section catchline amended by Pub. L. 91–172 without corresponding amendment of analysis.*

§7451. Fee for filing petition

The tax court is authorized to impose a fee in an amount not in excess of $60 to be fixed by the Tax Court for the filing of any petition.

(Aug. 16, 1954, ch. 736, 68A Stat. 884; Pub. L. 93–406, title II, §1041(b)(1), Sept. 2, 1974, 88 Stat. 950; Pub. L. 94–455, title XIII, §1306(b)(1), Oct. 4, 1976, 90 Stat. 1719; Pub. L. 97–34, title VII, §751(a), Aug. 13, 1981, 95 Stat. 349; Pub. L. 97–248, title IV, §402(c)(12), Sept. 3, 1982, 96 Stat. 668; Pub. L. 109–280, title VIII, §859(a), Aug. 17, 2006, 120 Stat. 1020.)

AMENDMENTS

2006—Pub. L. 109–280 struck out "for the redetermination of a deficiency or for a declaratory judgment under part IV of this subchapter or under section 7428 or for judicial review under section 6226 or section 6228(a)" after "petition".

1982—Pub. L. 97–248 inserted provision relating to judicial review under section 6226 or section 6228(a).

1981—Pub. L. 97–34 increased limitation on amount of fee to $60 from $10.

1976—Pub. L. 94–455 inserted "or under section 7428" after "part IV of this subchapter".

1974—Pub. L. 93–406 inserted reference to a declaratory judgment under part IV of this subchapter.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title VIII, §859(b), Aug. 17, 2006, 120 Stat. 1020, provided that: "The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Aug. 17, 2006]."

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to partnership taxable years beginning after Sept. 3, 1982, with provision for the applicability of the amendment to any partnership taxable year ending after Sept. 3, 1982, if the partnership, each partner, and each indirect partner requests such application and the Secretary of the Treasury or his delegate consents to such application, see section 407(a)(1), (3) of Pub. L. 97–248, set out as an Effective Date note under section 6221 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title VII, §751(b), Aug. 13, 1981, 95 Stat. 349, provided that: "The amendment made by this section [amending this section] shall apply to petitions filed after December 31, 1981."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable with respect to pleadings filed with the United States Tax Court, the district court of the United States for the District of Columbia, or the United States Court of Claims more than 6 months after Oct. 4, 1976, but only with respect to determinations (or requests for determinations) made after Jan. 1, 1976, see section 1306(c) of Pub. L. 94–455, set out as an Effective Date note under section 7428 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–406 applicable to pleadings filed more than one year after Sept. 2, 1974, see section 1041(d) of Pub. L. 93–406, set out as an Effective Date note under section 7476 of this title.

§7452. Representation of parties

The Secretary shall be represented by the Chief Counsel for the Internal Revenue Service or his delegate in the same manner before the Tax Court as he has heretofore been represented in proceedings before such Court. The taxpayer shall continue to be represented in accordance with the

rules of practice prescribed by the Court. No qualified person shall be denied admission to practice before the Tax Court because of his failure to be a member of any profession or calling.

(Aug. 16, 1954, ch. 736, 68A Stat. 884; Pub. L. 86–368, §2(a), Sept. 22, 1959, 73 Stat. 648; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

1959—Pub. L. 86–368 substituted "Chief Counsel for the Internal Revenue Service or his delegate" for "Assistant General Counsel of the Treasury Department serving as Chief Counsel of the Internal Revenue Service, or the delegate of such Chief Counsel,".

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–368 effective when Chief Counsel for Internal Revenue Service first appointed pursuant to amendment of section 7801 of this title by Pub. L. 86–368 qualifies and takes office, see section 3 of Pub. L. 86–368, set out as a note under section 7801 of this title.

§7453. Rules of practice, procedure, and evidence

Except in the case of proceedings conducted under section 7436(c) or 7463, the proceedings of the Tax Court and its divisions shall be conducted in accordance with such rules of practice and procedure (other than rules of evidence) as the Tax Court may prescribe and in accordance with the rules of evidence applicable in trials without a jury in the United States District Court of the District of Columbia.

(Aug. 16, 1954, ch. 736, 68A Stat. 884; Pub. L. 91–172, title IX, §960(f), Dec. 30, 1969, 83 Stat. 734; Pub. L. 105–34, title XIV, §1454(b)(3), Aug. 5, 1997, 111 Stat. 1057.)

AMENDMENTS

1997—Pub. L. 105–34 substituted "section 7436(c) or 7463" for "section 7463".

1969—Pub. L. 91–172 inserted reference to the exception in the case of proceedings conducted under section 7463 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 effective one year after Dec. 30, 1969, see section 962(e) of Pub. L. 91–172, set out as an Effective Date note under section 7463 of this title.

TAX COURT RULE MAKING NOT AFFECTED

Authority of Tax Court to prescribe rules under this section unaffected by amendments of title IV of Pub. L. 100–702, see section 405 of Pub. L. 100–702, set out as a note under section 2071 of Title 28, Judiciary and Judicial Procedure.

§7454. Burden of proof in fraud, foundation manager, and transferee cases

(a) Fraud

In any proceeding involving the issue whether the petitioner has been guilty of fraud with intent to evade tax, the burden of proof in respect of such issue shall be upon the Secretary.

(b) Foundation managers

In any proceeding involving the issue whether a foundation manager (as defined in section 4946(b)) has "knowingly" participated in an act of self-dealing (within the meaning of section 4941), participated in an investment which jeopardizes the carrying out of exempt purposes (within the meaning of section 4944), or agreed to the making of a taxable expenditure (within the meaning of section 4945), or whether the trustee of a trust described in section 501(c)(21) has "knowingly" participated in an act of self-dealing (within the meaning of section 4951) or agreed to the making of a taxable expenditure (within the meaning of section 4952), or whether an organization manager (as

defined in section 4955(f)(2)) has "knowingly" agreed to the making of a political expenditure (within the meaning of section 4955),,[1] or whether an organization manager (as defined in section 4912(d)(2)) has "knowingly" agreed to the making of disqualifying lobbying expenditures within the meaning of section 4912(b), or whether an organization manager (as defined in section 4958(f)(2)) has "knowingly" participated in an excess benefit transaction (as defined in section 4958(c)), the burden of proof in respect of such issue shall be upon the Secretary.

(c) Cross reference

For provisions relating to burden of proof as to transferee liability, see section 6902(a).

(Aug. 16, 1954, ch. 736, 68A Stat. 884; Pub. L. 91–172, title I, §101(j)(57), Dec. 30, 1969, 83 Stat. 532; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–227, §4(d)(7), Feb. 10, 1978, 92 Stat. 23; Pub. L. 96–222, title I, §108(b)(3)(B), Apr. 1, 1980, 94 Stat. 226; Pub. L. 100–203, title X, §§10712(c)(6), 10714(b), Dec. 22, 1987, 101 Stat. 1330–467, 1330–471; Pub. L. 104–168, title XIII, §1311(c)(5), July 30, 1996, 110 Stat. 1478; Pub. L. 104–188, title I, §1704(t)(43), Aug. 20, 1996, 110 Stat. 1889.)

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–188 substituted "section 4955(f)(2)" for "section 4955(e)(2)".

Pub. L. 104–168 inserted "or whether an organization manager (as defined in section 4958(f)(2)) has 'knowingly' participated in an excess benefit transaction (as defined in section 4958(c))," after "section 4912(b),".

1987—Subsec. (b). Pub. L. 100–203, §10714(b), substituted ", or whether an organization manager (as defined in section 4912(d)(2)) has 'knowingly' agreed to the making of disqualifying lobbying expenditures within the meaning of section 4912(b), the burden of proof" for "the burden of proof".

Pub. L. 100–203, §10712(c)(6), substituted "or whether an organization manager (as defined in section 4955(e)(2)) has 'knowingly' agreed to the making of a political expenditure (within the meaning of section 4955), the burden of proof" for "the burden of proof".

1980—Subsec. (b). Pub. L. 96–222 substituted "section 501(c)(21)" for "section 502(c)(21)".

1978—Subsec. (b). Pub. L. 95–227 inserted provision relating to trustees of a trust described under section 502(c)(21) of this title.

1976—Subsecs. (a), (b). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

1969—Pub. L. 91–172 inserted ", foundation manager" in section catchline.

Subsecs (b), (c). Pub. L. 91–172 added subsec. (b) and redesignated former subsec. (b) as (c).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–168 applicable to excess benefit transactions occurring on or after Sept. 14, 1995, and not applicable to any benefit arising from a transaction pursuant to any written contract which was binding on Sept. 13, 1995, and at all times thereafter before such transaction occurred, see section 1311(d)(1), (2) of Pub. L. 104–168, set out as a note under section 4955 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 10712(c)(6) of Pub. L. 100–203 applicable to taxable years beginning after Dec. 22, 1987, see section 10712(d) of Pub. L. 100–203, set out as an Effective Date note under section 4955 of this title.

Amendment by section 10714(b) of Pub. L. 100–203 applicable to taxable years beginning after Dec. 22, 1987, see section 10714(e) of Pub. L. 100–203, set out as an Effective Date note under section 4912 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective as if included in the provisions of the Black Lung Benefits Revenue Act of 1977, Pub. L. 95–227, see section 108(b)(4) of Pub. L. 96–222, set out as a note under section 192 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–227 applicable with respect to contributions, acts, and expenditures made after Dec. 31, 1977, in and for taxable years beginning after such date, see section 4(f) of Pub. L. 95–227, set out as an Effective Date note under section 192 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

[1] *So in original.*

§7455. Service of process

The mailing by certified mail or registered mail of any pleading, decision, order, notice, or process in respect of proceedings before the Tax Court shall be held sufficient service of such pleading, decision, order, notice, or process.

(Aug. 16, 1954, ch. 736, 68A Stat. 884; Pub. L. 85–866, title I, §89(b), Sept. 2, 1958, 72 Stat. 1665.)

AMENDMENTS

1958—Pub. L. 85–866 inserted "certified mail or" before "registered mail".

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable only if mailing occurs after Sept. 2, 1958, see section 89(d) of Pub. L. 85–866, set out as a note under section 7502 of this title.

§7456. Administration of oaths and procurement of testimony

(a) In general

For the efficient administration of the functions vested in the Tax Court or any division thereof, any judge or special trial judge of the Tax Court, the clerk of the court or his deputies, as such, or any other employee of the Tax Court designated in writing for the purpose by the chief judge, may administer oaths, and any judge or special trial judge of the Tax Court may examine witnesses and require, by subpoena ordered by the Tax Court or any division thereof and signed by the judge or special trial judge (or by the clerk of the Tax Court or by any other employee of the Tax Court when acting as deputy clerk)—

(1) the attendance and testimony of witnesses, and the production of all necessary returns, books, papers, documents, correspondence, and other evidence, from any place in the United States at any designated place of hearing, or

(2) the taking of a deposition before any designated individual competent to administer oaths under this title. In the case of a deposition the testimony shall be reduced to writing by the individual taking the deposition or under his direction and shall then be subscribed by the deponent.

(b) Production of records in the case of foreign corporations, foreign trusts or estates and nonresident alien individuals

The Tax Court or any division thereof, upon motion and notice by the Secretary, and upon good cause shown therefor, shall order any foreign corporation, foreign trust or estate, or nonresident alien individual, who has filed a petition with the Tax Court, to produce, or, upon satisfactory proof to the Tax Court or any of its divisions, that the petitioner is unable to produce, to make available to the Secretary, and, in either case, to permit the inspection, copying, or photographing of, such books, records, documents, memoranda, correspondence and other papers, wherever situated, as the Tax Court or any division thereof, may deem relevant to the proceedings and which are in the possession, custody or control of the petitioner, or of any person directly or indirectly under his control or having control over him or subject to the same common control. If the petitioner fails or refuses to comply with any of the provisions of such order, after reasonable time for compliance has been afforded to him, the Tax Court or any division thereof, upon motion, shall make an order striking out pleadings or parts thereof, or dismissing the proceeding or any part thereof, or rendering a judgment by default

against the petitioner. For the purpose of this subsection, the term "foreign trust or estate" includes an estate or trust, any fiduciary of which is a foreign corporation or nonresident alien individual; and the term "control" is not limited to legal control.

(c) Incidental powers

The Tax Court and each division thereof shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as—

(1) misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;

(2) misbehavior of any of its officers in their official transactions; or

(3) disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

It shall have such assistance in the carrying out of its lawful writ, process, order, rule, decree, or command as is available to a court of the United States. The United States marshal for any district in which the Tax Court is sitting shall, when requested by the chief judge of the Tax Court, attend any session of the Tax Court in such district and may otherwise provide, when requested by the chief judge of the Tax Court, for the security of the Tax Court, including the personal protection of Tax Court judges, court officers, witnesses, and other threatened persons in the interests of justice, where criminal intimidation impedes on the functioning of the judicial process or any other official proceeding. The United States Marshals Service retains final authority regarding security requirements for the Tax Court.

(Aug. 16, 1954, ch. 736, 68A Stat. 885; Pub. L. 91–172, title IX, §§956, 958, Dec. 30, 1969, 83 Stat. 732, 734; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–600, title III, §336(b)(1), title V, §502(c), Nov. 6, 1978, 92 Stat. 2841, 2879; Pub. L. 96–222, title I, §105(a)(1)(B), Apr. 1, 1980, 94 Stat. 218; Pub. L. 97–164, title I, §153(a), Apr. 2, 1982, 96 Stat. 47; Pub. L. 97–248, title IV, §402(c)(13), Sept. 3, 1982, 96 Stat. 668; Pub. L. 97–362, title I, §106(c), Oct. 25, 1982, 96 Stat. 1730; Pub. L. 98–369, div. A, title IV, §§463(a), 464(a)–(c), July 18, 1984, 98 Stat. 824; Pub. L. 99–514, title XV, §§1555(a), 1556(b)(1), Oct. 22, 1986, 100 Stat. 2754, 2755; Pub. L. 110–177, title I, §102(b), Jan. 7, 2008, 121 Stat. 2535.)

AMENDMENTS

2008—Subsec. (c). Pub. L. 110–177 inserted before period at end of concluding provisions "and may otherwise provide, when requested by the chief judge of the Tax Court, for the security of the Tax Court, including the personal protection of Tax Court judges, court officers, witnesses, and other threatened persons in the interests of justice, where criminal intimidation impedes on the functioning of the judicial process or any other official proceeding. The United States Marshals Service retains final authority regarding security requirements for the Tax Court".

1986—Subsec. (c). Pub. L. 99–514, §1556(b)(1), redesignated subsec. (e) as (c). Former subsec. (c), which provided for the appointment of special trial judges, was struck out.

Pub. L. 99–514, §1555(a), inserted last sentence.

Subsec. (d). Pub. L. 99–514, §1556(b)(1), struck out subsec. (d) which set out proceedings which could be assigned to special trial judges appointed under former subsec. (c).

Subsec. (e). Pub. L. 99–514, §1556(b)(1), redesignated subsec. (e) as (c).

1984—Subsec. (a). Pub. L. 98–369, §464(a), substituted "special trial judge" for "commissioner" in three places.

Subsec. (c). Pub. L. 98–369, §464(b), substituted "Special trial judges" for "Commissioners" in heading, and in text substituted "special trial judges" for "commissioners" and "special trial judge" for "commissioner".

Subsec. (d). Pub. L. 98–369, §464(c), substituted "Special trial judges" for "Commissioners" in heading, and substituted "special trial judges" for "commissioners" and "special trial judge" for "commissioner" in provisions following par. (4).

Pub. L. 98–369, §463(a), in amending subsec. (d) generally, struck out "and" at end of par. (2), substituted "any proceeding" for "any other proceeding" and "$10,000; and" for "$5,000," in par. (3), added par. (4), and substituted "any proceeding described in paragraph (1), (2), or (3), subject to such conditions and review as the court may provide" for "any such proceeding, subject to such conditions and review as the court may by rule provide" in provisions following par. (4).

1982—Subsec. (c). Pub. L. 97–362, §106(c)(2), struck out provision that the chief judge may assign

proceedings under sections 6226, 6228(a), 7428, 7463, 7476, 7477, and 7478 to be heard by the commissioners of the court, and that the court may authorize a commissioner to make the decision of the court with respect to such proceedings, subject to such conditions and review as the court may by rule provide. See subsec. (d) of this section.

Pub. L. 97–248 inserted "6226, 6228(a)," after "proceedings under sections".

Pub. L. 97–164 substituted "Each commissioner shall receive pay at an annual rate determined under section 225 of the Federal Salary Act of 1967 (2 U.S.C. 351–361), as adjusted by section 461 of title 28, United States Code, and also necessary traveling expenses and per diem allowances, as provided in subchapter I of chapter 57 of title 5, United States Code, while traveling on official business and away from Washington, District of Columbia" for "Each commissioner shall receive the same compensation and travel and subsistence allowances provided by law for commissioners of the United States Court of Claims".

Subsecs. (d), (e). Pub. L. 97–362, §106(c)(1), added subsec. (d) and redesignated former subsec. (d) as (e).

1980—Subsec. (c). Pub. L. 96–222 substituted "sections 7428, 7463" for "sections 7428".

1978—Subsec. (a). Pub. L. 95–600, §502(c), substituted "any judge or commissioner of the Tax Court" for "any judge of the Tax Court" wherever appearing, and "by the judge or commissioner" for "by the judge" after "and signed".

Subsec. (c). Pub. L. 95–600, §336(b)(1), inserted provision that the chief judge may assign proceedings under sections 7428, 7476, 7477, and 7478 to be heard by the commissioners of the court, and the court may authorize a commissioner to make the decision of the court with respect to such proceedings, subject to such conditions and review as the court may by rule provide.

1976—Subsec. (b). Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

1969—Subsec. (c). Pub. L. 91–172, §958, provided that commissioners be compensated at rates identical to those of commissioners of the United States Court of Claims, and substituted provisions authorizing the chief judge of the Tax Court to appoint Commissioners for provisions authorizing attorneys from the legal staff of the Tax Court to act as Commissioners.

Subsec. (d). Pub. L. 91–172, §956, added subsec. (d).

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XV, §1555(b), Oct. 22, 1986, 100 Stat. 2754, provided that: "The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Oct. 22, 1986]."

Amendment by section 1556(b)(1) of Pub. L. 99–514 effective Oct. 22, 1986, except as otherwise provided, see section 1556(c) of Pub. L. 99–514, set out as an Effective Date note under section 7443A of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title IV, §463(b), July 18, 1984, 98 Stat. 824, provided that: "The amendment made by subsection (a) [amending this section] shall take effect as if enacted as part of the Miscellaneous Revenue Act of 1982 [Pub. L. 97–362]."

Pub. L. 98–369, div. A, title IV, §464(e)(1), July 18, 1984, 98 Stat. 825, provided that: "The amendments made by this section [amending this section and section 7471 of this title and enacting provisions set out below] shall take effect on the date of the enactment of this Act [July 18, 1984]."

EFFECTIVE DATE OF 1982 AMENDMENTS

Amendment by Pub. L. 97–248 applicable to partnership taxable years beginning after Sept. 3, 1982, with provision for the applicability of the amendment to any partnership taxable year ending after Sept. 3, 1982, if the partnership, each partner, and each indirect partner requests such application and the Secretary of the Treasury or his delegate consents to such application, see section 407(a)(1), (3) of Pub. L. 97–248, set out as an Effective Date note under section 6221 of this title.

Amendment by Pub. L. 97–164 effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–222, title I, §105(b)(1), Apr. 1, 1980, 94 Stat. 221, provided that: "The amendments made by subsection (a)(1) [amending this section and section 7463 of this title] shall take effect on the date of the enactment of this Act [Apr. 1, 1980]."

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 336(b)(1) of Pub. L. 95–600 applicable to requests for determinations made after Dec. 31, 1978, see section 336(d) of Pub. L. 95–600, set out as an Effective Date note under section 7478 of this title.

Amendment by section 502(c) of Pub. L. 95–600 effective Nov. 6, 1978, see section 502(d)(2) of Pub. L. 95–600, set out as a note under section 7463 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 effective Dec. 30, 1969, see section 962(a) of Pub. L. 91–172, set out as a note under section 7441 of this title.

REIMBURSEMENT

Pub. L. 110–177, title I, §102(c), Jan. 7, 2008, 121 Stat. 2535, provided that: "The United States Tax Court shall reimburse the United States Marshals Service for protection provided under the amendments made by this section [amending this section and section 566 of Title 28, Judiciary and Judicial Procedure]."

REFERENCES TO COMMISSIONERS DEEMED REFERENCES TO SPECIAL TRIAL JUDGES

Pub. L. 98–369, div. A, title IV, §464(e)(2), July 18, 1984, 98 Stat. 825, provided that: "Any reference in any law to a commissioner of the Tax Court shall be treated as a reference to a special trial judge of the Tax Court."

COMMISSIONERS' SALARIES PENDING CHANGES UNDER FEDERAL SALARY ACT

Pub. L. 97–164, title I, §153(b), Apr. 2, 1982, 96 Stat. 47, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Notwithstanding the amendment made by subsection (a) [amending this section], until such time as a change in the salary rate of a commissioner of the United States Tax Court occurs in accordance with section 7456(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the salary of such commissioner shall be equal to the salary of a commissioner of the Court of Claims immediately prior to the effective date of this Act [Oct. 1, 1982]."

§7457. Witness fees

(a) Amount

Any witness summoned or whose deposition is taken under section 7456 shall receive the same fees and mileage as witnesses in courts of the United States.

(b) Payment

Such fees and mileage and the expenses of taking any such deposition shall be paid as follows:

(1) Witnesses for Secretary

In the case of witnesses for the Secretary, such payments shall be made by the Secretary out of any moneys appropriated for the collection of internal revenue taxes, and may be made in advance.

(2) Other Witnesses

In the case of any other witnesses, such payments shall be made, subject to rules prescribed by the Tax Court, by the party at whose instance the witness appears or the deposition is taken.

(Aug. 16, 1954, ch. 736, 68A Stat. 886; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsec. (b)(1). Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

§7458. Hearings

Notice and opportunity to be heard upon any proceeding instituted before the Tax Court shall be given to the taxpayer and the Secretary. If an opportunity to be heard upon the proceeding is given before a division of the Tax Court, neither the taxpayer nor the Secretary shall be entitled to notice and opportunity to be heard before the Tax Court upon review, except upon a specific order of the chief judge. Hearings before the Tax Court and its divisions shall be open to the public, and the testimony, and, if the Tax Court so requires, the argument, shall be stenographically reported. The

Tax Court is authorized to contract (by renewal of contract or otherwise) for the reporting of such hearings, and in such contract to fix the terms and conditions under which transcripts will be supplied by the contractor to the Tax Court and to other persons and agencies.

(Aug. 16, 1954, ch. 736, 68A Stat. 886; Pub. L. 94–455, title XIX, §1906(b)(13)(A), (L), Oct. 4, 1976, 90 Stat. 1834, 1835.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" and struck out "nor his delegate" after "nor the Secretary".

§7459. Reports and decisions

(a) Requirement

A report upon any proceeding instituted before the Tax Court and a decision thereon shall be made as quickly as practicable. The decision shall be made by a judge in accordance with the report of the Tax Court, and such decision so made shall, when entered, be the decision of the Tax Court.

(b) Inclusion of findings of fact or opinions in report

It shall be the duty of the Tax Court and of each division to include in its report upon any proceeding its findings of fact or opinion or memorandum opinion. The Tax Court shall report in writing all its findings of fact, opinions, and memorandum opinions. Subject to such conditions as the Tax Court may by rule provide, the requirements of this subsection and of section 7460 are met if findings of fact or opinion are stated orally and recorded in the transcript of the proceedings.

(c) Date of decision

A decision of the Tax Court (except a decision dismissing a proceeding for lack of jurisdiction) shall be held to be rendered upon the date that an order specifying the amount of the deficiency is entered in the records of the Tax Court or, in the case of a declaratory judgment proceeding under part IV of this subchapter or under section 7428 or in the case of an action brought under section 6226, 6228(a),[1] 6247, or 6252, the date of the court's order entering the decision. If the Tax Court dismisses a proceeding for reasons other than lack of jurisdiction and is unable from the record to determine the amount of the deficiency determined by the Secretary, or if the Tax Court dismisses a proceeding for lack of jurisdiction, an order to that effect shall be entered in the records of the Tax Court, and the decision of the Tax Court shall be held to be rendered upon the date of such entry.

(d) Effect of decision dismissing petition

If a petition for a redetermination of a deficiency has been filed by the taxpayer, a decision of the Tax Court dismissing the proceeding shall be considered as its decision that the deficiency is the amount determined by the Secretary. An order specifying such amount shall be entered in the records of the Tax Court unless the Tax Court cannot determine such amount from the record in the proceeding, or unless the dismissal is for lack of jurisdiction.

(e) Effect of decision that tax is barred by limitation

If the assessment or collection of any tax is barred by any statute of limitations, the decision of the Tax Court to that effect shall be considered as its decision that there is no deficiency in respect of such tax.

(f) Findings of fact as evidence

The findings of the Board of Tax Appeals made in connection with any decision prior to February 26, 1926, shall, notwithstanding the enactment of the Revenue Act of 1926 (44 Stat. 9), continue to be prima facie evidence of the facts therein stated.

(g) Penalty

For penalty for taxpayer instituting proceedings before Tax Court merely for delay, see section 6673.

(Aug. 16, 1954, ch. 736, 68A Stat. 886; Pub. L. 93–406, title II, §1041(b)(2), Sept. 2, 1974, 88 Stat. 950; Pub. L. 94–455, title XIII, §1306(b)(2), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1719, 1834; Pub. L. 97–248, title IV, §402(c)(14), Sept. 3, 1982, 96 Stat. 668; Pub. L. 97–362, title I, §106(b), Oct. 25, 1982, 96 Stat. 1730; Pub. L. 105–34, title XII, §§1222(b)(2), 1239(e)(1), Aug. 5, 1997, 111 Stat. 1019, 1028.)

REFERENCES IN TEXT

The Revenue Act of 1926, referred to in subsec. (f), is act Feb. 26, 1926, ch. 27, 44 Stat. 9. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1997—Subsec. (c). Pub. L. 105–34, §1239(e)(1), which directed the amendment of subsec. (c) by substituting ", 6228(a), or 6234(c)" for "or section 6228(a)" could not be executed because the words "or section 6228(a)" did not appear in text subsequent to amendment by Pub. L. 105–34, §1222(b)(2). See below.

Pub. L. 105–34, §1222(b)(2), substituted ", 6228(a), 6247, or 6252" for "or section 6228(a)".

1982—Subsec. (b). Pub. L. 97–362 inserted provision that subject to such conditions as the Tax Court may by rule provide, the requirements of subsec. (b) and of section 7460 of this title are met if findings of fact or opinion are stated orally and recorded in the transcript of the proceedings.

Subsec. (c). Pub. L. 97–248 inserted "or in the case of an action brought under section 6226 or section 6228(a)" after "or under section 7428".

1976—Subsec. (c). Pub. L. 94–455 inserted "or under section 7428" after "under part IV of this subchapter" and struck out "or his delegate" after "Secretary".

Subsec. (d). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

1974—Subsec. (c). Pub. L. 93–406 inserted "or, in the case of a declaratory judgment proceeding under part IV of this subchapter, the date of the court's order entering the decision" after "deficiency is entered in the records of the Tax Court".

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 1222(b)(2) of Pub. L. 105–34 applicable to partnership taxable years beginning after Dec. 31, 1997, see section 1226 of Pub. L. 105–34, as amended, set out as a note under section 6011 of this title.

Amendment by section 1239(e)(1) of Pub. L. 105–34 applicable to partnership taxable years ending after Aug. 5, 1997, see section 1239(f) of Pub. L. 105–34, set out as a note under section 6225 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to partnership taxable years beginning after Sept. 3, 1982, with provision for the applicability of the amendment to any partnership taxable year ending after Sept. 3, 1982, if the partnership, each partner, and each indirect partner requests such application and the Secretary of the Treasury or his delegate consents to such application, see section 407(a)(1), (3) of Pub. L. 97–248, set out as an Effective Date note under section 6221 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1306(b)(2) of Pub. L. 94–455 applicable with respect to pleadings filed with the United States Tax Court, the district court of the United States for the District of Columbia, or the United States Court of Claims more than 6 months after Oct. 4, 1976 but only with respect to determinations (or requests for determinations) made after Jan. 1, 1976, see section 1306(c) of Pub. L. 94–455, set out as an Effective Date note under section 7428 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–406 applicable to pleadings filed more than one year after Sept. 2, 1974, see section 1041(d) of Pub. L. 93–406, set out as an Effective Date note under section 7476 of this title.

[1] *See 1997 Amendment note below.*

§7460. Provisions of special application to divisions

(a) Hearings, determinations, and reports

A division shall hear, and make a determination upon, any proceeding instituted before the Tax Court and any motion in connection therewith, assigned to such division by the chief judge, and shall make a report of any such determination which constitutes its final disposition of the proceeding.

(b) Effect of action by a division

The report of the division shall become the report of the Tax Court within 30 days after such report by the division, unless within such period the chief judge has directed that such report shall be reviewed by the Tax Court. Any preliminary action by a division which does not form the basis for the entry of the final decision shall not be subject to review by the Tax Court except in accordance with such rules as the Tax Court may prescribe. The report of a division shall not be a part of the record in any case in which the chief judge directs that such report shall be reviewed by the Tax Court.

(Aug. 16, 1954, ch. 736, 68A Stat. 887.)

§7461. Publicity of proceedings

(a) General rule

Except as provided in subsection (b), all reports of the Tax Court and all evidence received by the Tax Court and its divisions, including a transcript of the stenographic report of the hearings, shall be public records open to the inspection of the public.

(b) Exceptions

(1) Trade secrets or other confidential information

The Tax Court may make any provision which is necessary to prevent the disclosure of trade secrets or other confidential information, including a provision that any document or information be placed under seal to be opened only as directed by the court.

(2) Evidence, etc.

After the decision of the Tax Court in any proceeding has become final, the Tax Court may, upon motion of the taxpayer or the Secretary, permit the withdrawal by the party entitled thereto of originals of books, documents, and records, and of models, diagrams, and other exhibits, introduced in evidence before the Tax Court or any division; or the Tax Court may, on its own motion, make such other disposition thereof as it deems advisable.

(Aug. 16, 1954, ch. 736, 68A Stat. 887; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–369, div. A, title IV, §465(a), July 18, 1984, 98 Stat. 825.)

AMENDMENTS

1984—Pub. L. 98–369, in amending section generally, designated existing provisions as subsecs. (a) and (b)(2), added subsec. (b)(1), and in subsec. (b)(2), as so designated, struck out reference to the Secretary's delegate.

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title IV, §465(b), July 18, 1984, 98 Stat. 825, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [July 18, 1984]."

§7462. Publication of reports

The Tax Court shall provide for the publication of its reports at the Government Printing Office in such form and manner as may be best adapted for public information and use, and such authorized publication shall be competent evidence of the reports of the Tax Court therein contained in all courts of the United States and of the several States without any further proof or authentication

thereof. Such reports shall be subject to sale in the same manner and upon the same terms as other public documents.

(Aug. 16, 1954, ch. 736, 68A Stat. 887.)

§7463. Disputes involving $50,000 or less

(a) In general

In the case of any petition filed with the Tax Court for a redetermination of a deficiency where neither the amount of the deficiency placed in dispute, nor the amount of any claimed overpayment, exceeds—

(1) $50,000 for any one taxable year, in the case of the taxes imposed by subtitle A,

(2) $50,000, in the case of the tax imposed by chapter 11,

(3) $50,000 for any one calendar year, in the case of the tax imposed by chapter 12, or

(4) $50,000 for any 1 taxable period (or, if there is no taxable period, taxable event) in the case of any tax imposed by subtitle D which is described in section 6212(a) (relating to a notice of deficiency),

at the option of the taxpayer concurred in by the Tax Court or a division thereof before the hearing of the case, proceedings in the case shall be conducted under this section. Notwithstanding the provisions of section 7453, such proceedings shall be conducted in accordance with such rules of evidence, practice, and procedure as the Tax Court may prescribe. A decision, together with a brief summary of the reasons therefor, in any such case shall satisfy the requirements of sections 7459(b) and 7460.

(b) Finality of decisions

A decision entered in any case in which the proceedings are conducted under this section shall not be reviewed in any other court and shall not be treated as a precedent for any other case.

(c) Limitation of jurisdiction

In any case in which the proceedings are conducted under this section, notwithstanding the provisions of sections 6214(a) and 6512(b), no decision shall be entered redetermining the amount of a deficiency, or determining an overpayment, except with respect to amounts placed in dispute within the limits described in subsection (a) and with respect to amounts conceded by the parties.

(d) Discontinuance of proceedings

At any time before a decision entered in a case in which the proceedings are conducted under this section becomes final, the taxpayer or the Secretary may request that further proceedings under this section in such case be discontinued. The Tax Court, or the division thereof hearing such case, may, if it finds that (1) there are reasonable grounds for believing that the amount of the deficiency placed in dispute, or the amount of an overpayment, exceeds the applicable jurisdictional amount described in subsection (a), and (2) the amount of such excess is large enough to justify granting such request, discontinue further proceedings in such case under this section. Upon any such discontinuance, proceedings in such case shall be conducted in the same manner as cases to which the provisions of sections 6214(a) and 6512(b) apply.

(e) Amount of deficiency in dispute

For purposes of this section, the amount of any deficiency placed in dispute includes additions to the tax, additional amounts, and penalties imposed by chapter 68, to the extent that the procedures described in subchapter B of chapter 63 apply.

(f) Additional cases in which proceedings may be conducted under this section

At the option of the taxpayer concurred in by the Tax Court or a division thereof before the hearing of the case, proceedings may be conducted under this section (in the same manner as a case described in subsection (a)) in the case of—

(1) a petition to the Tax Court under section 6015(e) in which the amount of relief sought does not exceed $50,000, and

(2) an appeal under section 6330(d)(1)(A) to the Tax Court of a determination in which the unpaid tax does not exceed $50,000.

(Added Pub. L. 91–172, title IX, §957(a), Dec. 30, 1969, 83 Stat. 733; amended Pub. L. 92–512, title II, §203(b)(1), (2), Oct. 20, 1972, 86 Stat. 945; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–600, title V, §502(a)(1), (2)(A), (b), Nov. 6, 1978, 92 Stat. 2879; Pub. L. 96–222, title I, §105(a)(1)(A), Apr. 1, 1980, 94 Stat. 218; Pub. L. 97–362, title I, §106(a)(1), Oct. 25, 1982, 96 Stat. 1730; Pub. L. 98–369, div. A, title IV, §461(a)(1), (2)(A), July 18, 1984, 98 Stat. 823; Pub. L. 101–508, title XI, §11801(c)(21)(B), Nov. 5, 1990, 104 Stat. 1388–528; Pub. L. 105–206, title III, §3103(a), July 22, 1998, 112 Stat. 731; Pub. L. 106–554, §1(a)(7) [title III, §313(b)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–642.)

PRIOR PROVISIONS

A prior section 7463 was renumbered section 7465 of this title.

AMENDMENTS

2000—Subsec. (f). Pub. L. 106–554 added subsec. (f).

1998—Pub. L. 105–206 in section catchline and in subsec. (a)(1) to (4) substituted "$50,000" for "$10,000".

1990—Subsec. (f). Pub. L. 101–508 struck out subsec. (f) "Qualified State individual income taxes" which read as follows: "For purposes of this section, a deficiency placed in dispute or claimed overpayment with regard to a qualified State individual income tax to which subchapter E of chapter 64 applies, for a taxable year, shall be treated as a portion of a deficiency placed in dispute or claimed overpayment of the income tax for that taxable year."

1984—Pub. L. 98–369, §461(a)(2)(A), substituted "$10,000" for "$5,000" in section catchline.

Subsec. (a). Pub. L. 98–369, §461(a)(1), substituted "$10,000" for "$5,000" in pars. (1) to (4).

1982—Section (a)(4). Pub. L. 97–362 added par. (4).

1980—Subsec. (g). Pub. L. 96–222 struck out subsec. (g) which authorized the chief judge of the Tax Court to assign proceedings conducted under this section to be heard by the Commissioners of the court.

1978—Pub. L. 95–600, §502(a)(2)(A), substituted "$5,000" for "$1,500" in section catchline.

Subsec. (a). Pub. L. 95–600, §502(a)(1), "$5,000 for any one taxable year, in the case of the taxes imposed by subtitle A" for "$1,500 for any one taxable year, in the case of the taxes imposed by subtitle A and chapter 12, or" in par. (1), "$5,000, in the case of the tax imposed by chapter 11, or" for "$1,500 in the case of the tax imposed by chapter 11," in par. (2), and added par. (3).

Subsec. (g). Pub. L. 95–600, §502(b), added subsec. (g).

1976—Subsec, (d). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

1972—Pub. L. 92–512, §203(b)(2), substituted "$1,500" for "$1,000" in section catchline.

Subsec. (a)(1), (2). Pub. L. 92–512, §203(b)(2), substituted "$1,500" for "$1,000".

Subsec. (f). Pub. L. 92–512, §203(b)(1), added subsec. (f).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 applicable to proceedings commenced after July 22, 1998, see section 3103(c) of Pub. L. 105–206, set out as a note under section 7436 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title IV, §461(b), July 18, 1984, 98 Stat. 823, provided that: "The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [July 18, 1984]."

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–362, title I, §106(a)(2), Oct. 25, 1982, 96 Stat. 1730, provided that: "The amendment made by this subsection [amending this section] shall apply with respect to petitions filed after the date of the enactment of this Act [Oct. 25, 1982]."

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective Apr. 1, 1980, see section 105(b)(1) of Pub. L. 96–222, set out as a note under section 7456 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title V, §502(d), Nov. 6, 1978, 92 Stat. 2879, provided that:

"(1) SUBSECTION (a).—The amendments made by subsection (a) [amending this section] shall take effect on the first day of the first calendar month beginning more than 180 days after the date of the enactment of this Act [Nov. 6, 1978].

"(2) SUBSECTIONS (b) AND (c).—The amendments made by subsection (b) [amending this section] and (c) [amending section 7456 of this title] shall take effect on the date of the enactment of this Act."

EFFECTIVE DATE OF 1972 AMENDMENT

Pub. L. 92–512, title II, §204, Oct. 20, 1972, 86 Stat. 945, as amended by Pub. L. 94–455, title XXI, §2116(a), Oct. 4, 1976, 90 Stat. 1910; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) GENERAL RULE.—Except as provided in subsections (b) and (c), the provisions of this title (and the amendments made thereby) [enacting this section and sections 6362 and 6363 of this title and amending this section and section 6405 of this title] shall take effect on the date of the enactment of this Act [Oct. 20, 1972].

"(b) COLLECTION AND ADMINISTRATION OF STATE TAXES BY THE UNITED STATES MAY NOT BEGIN BEFORE JANUARY 1, 1974.—Section 6361 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by section 202(a) of this Act) shall take effect on whichever of the following is the later:

"(1) January 1, 1974, or

"(2) the first January 1 which is more than one year after the first date on which at least one State has notified the Secretary of the Treasury or his delegate of an election to enter into an agreement under section 6363 of such Code.

"(c) JURISDICTION OF TAX COURT IN DISPUTES INVOLVING $1,500 OR LESS.—The amendments made by paragraphs (2) and (3) of section 203(b) of this Act [amending this section] shall take effect on January 1, 1974."

EFFECTIVE DATE

Pub. L. 91–172, title IX, §962(e), Dec. 30, 1969, 83 Stat. 736, provided that: "The amendments made by sections 957 [enacting this section] and 960(a), (b), (f), and (i) [amending sections 6214, 6512, 7453, 7456, 7481, 7487, of this title] shall take effect one year after the date of enactment of this Act [Dec. 30, 1969]."

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

§7464. Intervention by trustee of debtor's estate

The trustee of the debtor's estate in any case under title 11 of the United States Code may intervene, on behalf of the debtor's estate, in any proceeding before the Tax Court to which the debtor is a party.

(Added Pub. L. 96–589, §6(c)(1), Dec. 24, 1980, 94 Stat. 3407.)

PRIOR PROVISIONS

A prior section 7464 was renumbered section 7465 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1979, but not applicable to proceedings under Title 11, Bankruptcy, commenced before Oct. 1, 1979, see section 7(e) of Pub. L. 96–589, set out as an Effective Date of 1980 Amendment note under section 108 of this title.

§7465. Provisions of special application to transferees

(1) For rules of burden of proof in transferee proceedings, see section 6902(a).

(2) For authority of Tax Court to prescribe rules by which a transferee of property of a

taxpayer shall be entitled to examine books, records and other evidence, see section 6902(b).

(Aug. 16, 1954, ch. 736, 68A Stat. 888, §7463; renumbered §7464, Pub. L. 91–172, title IX, §957(a), Dec. 30, 1969, 83 Stat. 733; renumbered §7465, Pub. L. 96–589, §6(c)(1), Dec. 24, 1980, 94 Stat. 3407.)

PART III—MISCELLANEOUS PROVISIONS

Sec.
7471. Employees.
7472. Expenditures.
7473. Disposition of fees.
7474. Fee for transcript of record.
7475. Practice fee.

AMENDMENTS

1988—Pub. L. 100–647, title I, §1018(u)(45), Nov. 10, 1988, 102 Stat. 3592, added item 7475.

§7471. Employees

(a) Appointment and compensation

(1) Clerk

The Tax Court may appoint a clerk without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. The clerk shall serve at the pleasure of the Tax Court.

(2) Judge-appointed employees

(A) In general

The judges and special trial judges of the Tax Court may appoint employees, in such numbers as the Tax Court may approve, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. Any such employee shall serve at the pleasure of the appointing judge.

(B) Exemption from Federal leave provisions

A law clerk appointed under this subsection shall be exempt from the provisions of subchapter I of chapter 63 of title 5, United States Code. Any unused sick leave or annual leave standing to the law clerk's credit as of the effective date of this subsection shall remain credited to the law clerk and shall be available to the law clerk upon separation from the Federal Government.

(3) Other employees

The Tax Court may appoint necessary employees without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. Such employees shall be subject to removal by the Tax Court.

(4) Pay

The Tax Court may fix and adjust the compensation for the clerk and other employees of the Tax Court without regard to the provisions of chapter 51, subchapter III of chapter 53, or section 5373 of title 5, United States Code. To the maximum extent feasible, the Tax Court shall compensate employees at rates consistent with those for employees holding comparable positions in courts established under Article III of the Constitution of the United States.

(5) Programs

The Tax Court may establish programs for employee evaluations, incentive awards, flexible

work schedules, premium pay, and resolution of employee grievances.

(6) Discrimination prohibited

The Tax Court shall—

(A) prohibit discrimination on the basis of race, color, religion, age, sex, national origin, political affiliation, marital status, or handicapping condition; and

(B) promulgate procedures for resolving complaints of discrimination by employees and applicants for employment.

(7) Experts and consultants

The Tax Court may procure the services of experts and consultants under section 3109 of title 5, United States Code.

(8) Rights to certain appeals reserved

Notwithstanding any other provision of law, an individual who is an employee of the Tax Court on the day before the effective date of this subsection and who, as of that day, was entitled to—

(A) appeal a reduction in grade or removal to the Merit Systems Protection Board under chapter 43 of title 5, United States Code,

(B) appeal an adverse action to the Merit Systems Protection Board under chapter 75 of title 5, United States Code,

(C) appeal a prohibited personnel practice described under section 2302(b) of title 5, United States Code, to the Merit Systems Protection Board under chapter 77 of that title,

(D) make an allegation of a prohibited personnel practice described under section 2302(b) of title 5, United States Code, with the Office of Special Counsel under chapter 12 of that title for action in accordance with that chapter, or

(E) file an appeal with the Equal Employment Opportunity Commission under part 1614 of title 29 of the Code of Federal Regulations,

shall continue to be entitled to file such appeal or make such an allegation so long as the individual remains an employee of the Tax Court.

(9) Competitive status

Notwithstanding any other provision of law, any employee of the Tax Court who has completed at least 1 year of continuous service under a non-temporary appointment with the Tax Court acquires a competitive status for appointment to any position in the competitive service for which the employee possesses the required qualifications.

(10) Merit system principles, prohibited personnel practices, and preference eligibles

Any personnel management system of the Tax Court shall—

(A) include the principles set forth in section 2301(b) of title 5, United States Code;

(B) prohibit personnel practices prohibited under section 2302(b) of title 5, United States Code; and

(C) in the case of any individual who would be a preference eligible in the executive branch, provide preference for that individual in a manner and to an extent consistent with preference accorded to preference eligibles in the executive branch.

(b) Expenses for travel and subsistence

The employees of the Tax Court shall receive their necessary traveling expenses, and expenses for subsistence while traveling on duty and away from their designated stations, as provided in chapter 57 of title 5, United States Code.

(c) Special trial judges

For compensation and travel and subsistence allowances of special trial judges of the Tax Court, see subsections (d) and (e) of section 7443A.

(Aug. 6, 1954, ch. 736, 68A Stat. 888; Pub. L. 91–172, title IX, §960(g), Dec. 30, 1969, 83 Stat. 734; Pub. L. 94–455, title XIX, §1906(a)(47), Oct. 4, 1976, 90 Stat. 1831; Pub. L. 98–369, div. A, title IV,

§464(d), July 18, 1984, 98 Stat. 825; Pub. L. 99–514, title XV, §1556(b)(2), Oct. 22, 1986, 100 Stat. 2755; Pub. L. 111–366, §1(a), Jan. 4, 2011, 124 Stat. 4063.)

REFERENCES IN TEXT

The effective date of this subsection, referred to in subsec. (a)(2)(B), (8), probably means the effective date of section 1(a) of Pub. L. 111–366, which amended subsec. (a) generally. See Effective Date of 2011 Amendment note below.

AMENDMENTS

2011—Subsec. (a). Pub. L. 111–366 amended subsec. (a) generally. Prior to amendment, text read as follows: "The Tax Court is authorized to appoint, in accordance with the provisions of title 5, United States Code, governing appointment in the competitive service, and to fix the basic pay of, in accordance with chapter 51 and subchapter III of chapter 53 of such title, such employees as may be necessary efficiently to execute the functions vested in the Tax Court."

1986—Subsec. (c). Pub. L. 99–514 substituted "subsections (d) and (e) of section 7443A" for "section 7456(c)".

1984—Subsec. (c). Pub. L. 98–369 substituted references to special trial judges for references to commissioners in the subsection heading and text.

1976—Subsec. (a). Pub. L. 94–455, §1906(a)(47)(A), among other changes, substituted provisions referring to title 5 of the United States Code for provisions referring to the civil service law, and to chapter 51 and subchapter III of chapter 53 of title 5 for the Classification Act of 1949.

Subsec. (b). Pub. L. 94–455, §1906(a)(47)(B), substituted "as provided in chapter 57 of title 5, United States Code" for "as provided in the Travel Expense Act of 1949 (63 Stat. 166; 5 U.S.C. chapter 16)".

1969—Subsec. (c). Pub. L. 91–172 inserted reference to the compensation of commissioners.

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 111–366, §1(b), Jan. 4, 2011, 124 Stat. 4065, provided that: "The amendments made by this section [amending this section] shall take effect on the date the United States Tax Court adopts a personnel management system [adopted effective Oct. 9, 2011] after the date of the enactment of this Act [Jan. 4, 2011]."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective Oct. 22, 1986, except as otherwise provided, see section 1556(c) of Pub. L. 99–514, set out as an Effective Date note under section 7443A of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, see section 464(e)(1) of Pub. L. 98–369, set out as a note under section 7456 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1906(d)(1) of Pub. L. 94–455, set out as a note under section 6013 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 effective Dec. 30, 1969, see section 962(a) of Pub. L. 91–172, set out as a note under section 7441 of this title.

§7472. Expenditures

The Tax Court is authorized to make such expenditures (including expenditures for personal services and rent at the seat of Government and elsewhere, and for law books, books of reference, and periodicals), as may be necessary efficiently to execute the functions vested in the Tax Court. Notwithstanding any other provision of law, the Tax Court is authorized to pay on behalf of its judges, age 65 or over, any increase in the cost of Federal Employees' Group Life Insurance imposed after April 24, 1999, that is incurred after the date of the enactment of the Pension Protection Act of 2006, including any expenses generated by such payments, as authorized by the chief judge in a manner consistent with such payments authorized by the Judicial Conference of the United States

pursuant to section 604(a)(5) of title 28, United States Code. Except as provided in section 7475, all expenditures of the Tax Court shall be allowed and paid, out of any moneys appropriated for purposes of the Tax Court, upon presentation of itemized vouchers therefor signed by the certifying officer designated by the chief judge.

(Aug. 16, 1954, ch. 736, 68A Stat. 888; Pub. L. 99–514, title XV, §1553(b)(1), Oct. 22, 1986, 100 Stat. 2754; Pub. L. 109–280, title VIII, §852, Aug. 17, 2006, 120 Stat. 1016; Pub. L. 111–8, div. D, title VI, §618(a), Mar. 11, 2009, 123 Stat. 677.)

REFERENCES IN TEXT

The date of the enactment of the Pension Protection Act of 2006, referred to in text, is the date of enactment of Pub. L. 109–280, which was approved Aug. 17, 2006.

AMENDMENTS

2009—Pub. L. 111–8, which directed the amendment of section 7472 of "title 26, United States Code" by inserting "after April 24, 1999, that is incurred" after "imposed" in second sentence, was executed to this section, which is section 7472 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

2006—Pub. L. 109–280 inserted after first sentence "Notwithstanding any other provision of law, the Tax Court is authorized to pay on behalf of its judges, age 65 or over, any increase in the cost of Federal Employees' Group Life Insurance imposed after the date of the enactment of the Pension Protection Act of 2006, including any expenses generated by such payments, as authorized by the chief judge in a manner consistent with such payments authorized by the Judicial Conference of the United States pursuant to section 604(a)(5) of title 28, United States Code."

1986—Pub. L. 99–514 substituted "Except as provided in section 7475, all" for "All" in second sentence.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–8, div. D, title VI, §618(b), Mar. 11, 2009, 123 Stat. 677, provided that: "This amendment [amending this section] shall take effect as if included in the amendment made by section 852 of the Pension Protection Act of 2006 [Pub. L. 109–280]."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective Jan. 1, 1987, see section 1553(c) of Pub. L. 99–514, set out as an Effective Date note under section 7475 of this title.

§7473. Disposition of fees

Except as provided in section 7475, all fees received by the Tax Court shall be covered into the Treasury as miscellaneous receipts.

(Aug. 16, 1954, ch. 736, 68A Stat. 888; Pub. L. 99–514, title XV, §1553(b)(2), Oct. 22, 1986, 100 Stat. 2754.)

AMENDMENTS

1986—Pub. L. 99–514 substituted "Except as provided in section 7475, all" for "All".

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective Jan. 1, 1987, see section 1553(c) of Pub. L. 99–514, set out as an Effective Date note under section 7475 of this title.

§7474. Fee for transcript of record

The Tax Court is authorized to fix a fee, not in excess of the fee fixed by law to be charged and collected therefor by the clerks of the district courts, for comparing, or for preparing and comparing, a transcript of the record, or for copying any record, entry, or other paper and the comparison and certification thereof.

(Aug. 16, 1954, ch. 736, 68A Stat. 888.)

§7475. Practice fee

(a) In general

The Tax Court is authorized to impose a periodic registration fee on practitioners admitted to practice before such Court. The frequency and amount of such fee shall be determined by the Tax Court, except that such amount may not exceed $30 per year.

(b) Use of fees

The fees described in subsection (a) shall be available to the Tax Court to employ independent counsel to pursue disciplinary matters and to provide services to pro se taxpayers.

(Added Pub. L. 99–514, title XV, §1553(a), Oct. 22, 1986, 100 Stat. 2754; amended Pub. L. 109–280, title VIII, §860(a), Aug. 17, 2006, 120 Stat. 1020.)

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–280 inserted "and to provide services to pro se taxpayers" before period at end.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title VIII, §860(b), Aug. 17, 2006, 120 Stat. 1020, provided that: "The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Aug. 17, 2006]."

EFFECTIVE DATE

Pub. L. 99–514, title XV, §1553(c), Oct. 22, 1986, 100 Stat. 2754, provided that: "The amendments made by this section [enacting this section and amending sections 7472 and 7473 of this title] shall take effect on January 1, 1987."

PART IV—DECLARATORY JUDGMENTS

Sec.

7476. Declaratory judgments relating to qualification of certain retirement plans.

7477. Declaratory judgments relating to value of certain gifts.

7478. Declaratory judgments relating to status of certain governmental obligations.

7479. Declaratory judgments relating to eligibility of estate with respect to installment payments under section 6166.

AMENDMENTS

1997—Pub. L. 105–34, title V, §§505(b), 506(c)(2), Aug. 5, 1997, 111 Stat. 855, 856, added items 7477 and 7479.

1984—Pub. L. 98–369, div. A, title I, §131(e)(2)(B), July 18, 1984, 98 Stat. 665, struck out item 7477 "Declaratory judgments relating to transfers of property from the United States".

1978—Pub. L. 95–600, title III, §336(c)(2), Nov. 6, 1978, 92 Stat. 2842, added item 7478.

1976—Pub. L. 94–455, title X, §1042(d)(2)(D), (E), Oct. 4, 1976, 90 Stat. 1639, struck out in part heading "RELATING TO QUALIFICATIONS OF CERTAIN RETIREMENT PLANS" after "DECLARATORY JUDGMENTS", inserted "relating to qualification of certain retirement plans" after "Declaratory judgments" in item 7476, and added item 7477.

1974—Pub. L. 93–406, title II, §1041(a), Sept. 2, 1974, 88 Stat. 949, added part heading and analysis of sections.

§7476. Declaratory judgments relating to qualification of certain retirement plans

(a) Creation of remedy

In a case of actual controversy involving—

(1) a determination by the Secretary with respect to the initial qualification or continuing qualification of a retirement plan under subchapter D of chapter 1, or

(2) a failure by the Secretary to make a determination with respect to—

(A) such initial qualification, or

(B) such continuing qualification if the controversy arises from a plan amendment or plan termination,

upon the filing of an appropriate pleading, the Tax Court may make a declaration with respect to such initial qualification or continuing qualification. Any such declaration shall have the force and effect of a decision of the Tax Court and shall be reviewable as such. For purposes of this section, a determination with respect to a continuing qualification includes any revocation of or other change in a qualification.

(b) Limitations

(1) Petitioner

A pleading may be filed under this section only by a petitioner who is the employer, the plan administrator, an employee who has qualified under regulations prescribed by the Secretary as an interested party for purposes of pursuing administrative remedies within the Internal Revenue Service, or the Pension Benefit Guaranty Corporation.

(2) Notice

For purposes of this section, the filing of a pleading by any petitioner may be held by the Tax Court to be premature, unless the petitioner establishes to the satisfaction of the court that he has complied with the requirements prescribed by regulations of the Secretary with respect to notice to other interested parties of the filing of the request for a determination referred to in subsection (a).

(3) Exhaustion of administrative remedies

The Tax Court shall not issue a declaratory judgment or decree under this section in any proceeding unless it determines that the petitioner has exhausted administrative remedies available to him within the Internal Revenue Service. A petitioner shall not be deemed to have exhausted his administrative remedies with respect to a failure by the Secretary to make a determination with respect to initial qualification or continuing qualification of a retirement plan before the expiration of 270 days after the request for such determination was made.

(4) Plan put into effect

No proceeding may be maintained under this section unless the plan (and, in the case of a controversy involving the continuing qualification of the plan because of an amendment to the plan, the amendment) with respect to which a decision of the Tax Court is sought has been put into effect before the filing of the pleading. A plan or amendment shall not be treated as not being in effect merely because under the plan the funds contributed to the plan may be refunded if the plan (or the plan as so amended) is found to be not qualified.

(5) Time for bringing action

If the Secretary sends by certified or registered mail notice of his determination with respect to the qualification of the plan to the persons referred to in paragraph (1) (or, in the case of employees referred to in paragraph (1), to any individual designated under regulations prescribed by the Secretary as a representative of such employee), no proceeding may be initiated under this section by any person unless the pleading is filed before the ninety-first day after the day after such notice is mailed to such person (or to his designated representative, in the case of an employee).

(c) Retirement plan

For purposes of this section, the term "retirement plan" means—

(1) a pension, profit-sharing, or stock bonus plan described in section 401(a) or a trust which is

part of such a plan, or

(2) an annuity plan described in section 403(a).

(d) Cross reference

For provisions concerning intervention by Pension Benefit Guaranty Corporation and Secretary of Labor in actions brought under this section and right of Pension Benefit Guaranty Corporation to bring action, see section 3001(c) of subtitle A of title III of the Employee Retirement Income Security Act of 1974.

(Added Pub. L. 93–406, title II, §1041(a), Sept. 2, 1974, 88 Stat. 949; amended Pub. L. 94–455, title X, §1042(d)(2)(C), title XIII, §1306(b)(3), title XIX, §§1906(a)(48), (b)(13)(A), Oct. 4, 1976, 90 Stat. 1639, 1719, 1831, 1834; Pub. L. 95–600, title III, §336(b)(2)(A), title VII, §701(dd)(1), Nov. 6, 1978, 92 Stat. 2842, 2924; Pub. L. 98–369, div. A, title IV, §491(d)(52), July 18, 1984, 98 Stat. 852; Pub. L. 99–514, title XVIII, §1899A(59), Oct. 22, 1986, 100 Stat. 2962.)

REFERENCES IN TEXT

Section 3001(c) of subtitle A of title III of the Employee Retirement Income Security Act of 1974, referred to in subsec. (d), is classified to section 1201(c) of Title 29, Labor.

AMENDMENTS

1986—Subsec. (c). Pub. L. 99–514 substituted "plan, or" for "plan,, or".

1984—Subsec. (c)(3). Pub. L. 98–369 struck out par. (3) which included a bond purchase plan described in section 405(a) within the term "retirement plan".

1978—Subsec. (a). Pub. L. 95–600, §701(dd)(1), inserted provision relating to revocation of qualification.

Subsecs. (c) to (e). Pub. L. 95–600, §336(b)(2)(A), redesignated subsecs. (d) and (e) as (c) and (d), respectively. Former subsec. (c), which authorized the chief judge to assign proceedings under this section or section 7428 to be heard by the commissioners of the court, was struck out.

1976—Pub. L. 94–455, §1042(d)(2)(C), inserted "relating to qualification of certain retirement plans" after "Declaratory judgments" in section catchline.

Subsec. (a). Pub. L. 94–455, §§1906(a)(48), (b)(13)(A), struck out "or his delegate" after "Secretary" wherever appearing, and "United States" after "appropriate pleading, the" in provisions following par. (2).

Subsec. (b). Pub. L. 94–455, §1906(b)(13)(A), struck out in pars. (1) to (3) and (5), "or his delegate" after "Secretary" wherever appearing.

Subsec. (c). Pub. L. 94–455, §1306(b)(3), substituted "this section or section 7428" for "this section".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 336(b)(2)(A) of Pub. L. 95–600 applicable to requests for determinations made after Dec. 31, 1978, see section 336(d) of Pub. L. 95–600, set out as an Effective Date note under section 7478 of this title.

Pub. L. 95–600, title VII, §701(dd)(3), Nov. 6, 1978, 92 Stat. 2924, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by paragraphs (1) and (2) [amending this section and section 7428 of this title] shall take effect as if included in section 7476 or 7428 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as the case may be) at the respective times such sections were added to such Code."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1042(d)(2)(C) of Pub. L. 94–455 applicable to pleadings filed with the Tax Court after Oct. 4, 1976, but only with respect to transfers beginning after Oct. 9, 1975, see section 1042(e)(1) of Pub. L. 94–455, set out as a note under section 367 of this title.

Amendment by section 1306(b)(3) of Pub. L. 94–455 applicable with respect to pleadings filed with the United States Tax Court, the district court of the United States for the District of Columbia, or the United States Court of Claims more than 6 months after Oct. 4, 1976 but only with respect to determinations (or requests for determinations) made after Jan. 1, 1976, see section 1306(c) of Pub. L. 94–455, set out as an Effective Date note under section 7428 of this title.

Amendment by section 1906(a)(48), (b)(13)(A) of Pub. L. 94–455 effective on first day of first month

which begins more than 90 days after Oct. 4, 1976, see section 1906(d)(1) of Pub. L. 94–455, set out as a note under section 6013 of this title.

EFFECTIVE DATE

Pub. L. 93–406, title X, §1041(d), Sept. 2, 1974, 88 Stat. 951, provided that: "The amendments made by this section [enacting this section and amending sections 7451, 7459, and 7482 of this title] shall apply to pleadings filed more than 1 year after the date of the enactment of this Act [Sept. 2, 1974]."

§7477. Declaratory judgments relating to value of certain gifts

(a) Creation of remedy

In a case of an actual controversy involving a determination by the Secretary of the value of any gift shown on the return of tax imposed by chapter 12 or disclosed on such return or in any statement attached to such return, upon the filing of an appropriate pleading, the Tax Court may make a declaration of the value of such gift. Any such declaration shall have the force and effect of a decision of the Tax Court and shall be reviewable as such.

(b) Limitations

(1) Petitioner

A pleading may be filed under this section only by the donor.

(2) Exhaustion of administrative remedies

The court shall not issue a declaratory judgment or decree under this section in any proceeding unless it determines that the petitioner has exhausted all available administrative remedies within the Internal Revenue Service.

(3) Time for bringing action

If the Secretary sends by certified or registered mail notice of his determination as described in subsection (a) to the petitioner, no proceeding may be initiated under this section unless the pleading is filed before the 91st day after the date of such mailing.

(Added Pub. L. 105–34, title V, §506(c)(1), Aug. 5, 1997, 111 Stat. 855.)

PRIOR PROVISIONS

A prior section 7477, added Pub. L. 94–455, title X, §1042(d)(1), Oct. 4, 1976, 90 Stat. 1637; amended Pub. L. 95–600, title III, §336(b)(2)(B), Nov. 6, 1978, 92 Stat. 2842, provided for declaratory judgments relating to transfers of property from the United States, prior to repeal by Pub. L. 98–369, div. A, title I, §131(e)(1), (g), July 18, 1984, 98 Stat. 664, 665, applicable to transfers or exchanges after Dec. 31, 1984, in taxable years ending after such date, with special rules for certain transfers and ruling requests before Mar. 1, 1984.

EFFECTIVE DATE

Section applicable to gifts made after Aug. 5, 1997, see section 506(e)(1) of Pub. L. 105–34, set out as an Effective Date of 1997 Amendment note under section 2001 of this title.

§7478. Declaratory judgments relating to status of certain governmental obligations

(a) Creation of remedy

In a case of actual controversy involving—

(1) a determination by the Secretary whether interest on prospective obligations will be excludable from gross income under section 103(a), or

(2) a failure by the Secretary to make a determination with respect to any matter referred to in paragraph (1),

upon the filing of an appropriate pleading, the Tax Court may make a declaration whether interest on such prospective obligations will be excludable from gross income under section 103(a). Any such declaration shall have the force and effect of a decision of the Tax Court and shall be reviewable as such.

(b) Limitations

(1) Petitioner

A pleading may be filed under this section only by the prospective issuer.

(2) Exhaustion of administrative remedies

The court shall not issue a declaratory judgment or decree under this section in any proceeding unless it determines that the petitioner has exhausted all available administrative remedies within the Internal Revenue Service. A petitioner shall be deemed to have exhausted its administrative remedies with respect to a failure of the Secretary to make a determination with respect to an issue of obligations at the expiration of 180 days after the date on which the request for such determination was made if the petitioner has taken, in a timely manner, all reasonable steps to secure such determination.

(3) Time for bringing action

If the Secretary sends by certified or registered mail notice of his determination as described in subsection (a)(1) to the petitioner, no proceeding may be initiated under this section unless the pleading is filed before the 91st day after the date of such mailing.

(Added Pub. L. 95–600, title III, §336(a), Nov. 6, 1978, 92 Stat. 2841; amended Pub. L. 100–647, title I, §1013(a)(42), Nov. 10, 1988, 102 Stat. 3544.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–647 substituted "whether interest on prospective obligations will be excludable from gross income under section 103(a)" for "whether prospective obligations are described in section 103(a)" in par. (1) and "whether interest on such prospective obligations will be excludable from gross income under section 103(a)" for "whether such prospective obligations are described in section 103(a)" in concluding provisions.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Pub. L. 95–600, title III, §336(d), Nov. 6, 1978, 92 Stat. 2842, provided that: "The amendments made by this section [enacting this section and amending sections 7456, 7476, 7477, and 7482 of this title] shall apply to requests for determinations made after December 31, 1978."

§7479. Declaratory judgments relating to eligibility of estate with respect to installment payments under section 6166

(a) Creation of remedy

In a case of actual controversy involving a determination by the Secretary of (or a failure by the Secretary to make a determination with respect to)—

(1) whether an election may be made under section 6166 (relating to extension of time for payment of estate tax where estate consists largely of interest in closely held business) with respect to an estate (or with respect to any property included therein), or

(2) whether the extension of time for payment of tax provided in section 6166(a) has ceased to apply with respect to an estate (or with respect to any property included therein),

upon the filing of an appropriate pleading, the Tax Court may make a declaration with respect to

whether such election may be made or whether such extension has ceased to apply. Any such declaration shall have the force and effect of a decision of the Tax Court and shall be reviewable as such.

(b) Limitations

(1) Petitioner

A pleading may be filed under this section, with respect to any estate, only—

(A) by the executor of such estate, or

(B) by any person who has assumed an obligation to make payments under section 6166 with respect to such estate (but only if each other such person is joined as a party).

(2) Exhaustion of administrative remedies

The court shall not issue a declaratory judgment or decree under this section in any proceeding unless it determines that the petitioner has exhausted all available administrative remedies within the Internal Revenue Service. A petitioner shall be deemed to have exhausted its administrative remedies with respect to a failure of the Secretary to make a determination at the expiration of 180 days after the date on which the request for such determination was made if the petitioner has taken, in a timely manner, all reasonable steps to secure such determination.

(3) Time for bringing action

If the Secretary sends by certified or registered mail notice of his determination as described in subsection (a) to the petitioner, no proceeding may be initiated under this section unless the pleading is filed before the 91st day after the date of such mailing.

(c) Extension of time to file refund suit

The 2-year period in section 6532(a)(1) for filing suit for refund after disallowance of a claim shall be suspended during the 90-day period after the mailing of the notice referred to in subsection (b)(3) and, if a pleading has been filed with the Tax Court under this section, until the decision of the Tax Court has become final.

(Added Pub. L. 105–34, title V, §505(a), Aug. 5, 1997, 111 Stat. 854; amended Pub. L. 105–206, title III, §3104(b), title VI, §6007(d), July 22, 1998, 112 Stat. 732, 809.)

AMENDMENTS

1998—Subsec. (a)(1), (2). Pub. L. 105–206, §6007(d), substituted "an estate (or with respect to any property included therein)," for "an estate,".

Subsec. (c). Pub. L. 105–206, §3104(b), added subsec. (c).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 3104(b) of Pub. L. 105–206 applicable to any claim for refund filed after July 22, 1998, see section 3104(c) of Pub. L. 105–206, set out as a note under section 7422 of this title.

Amendment by section 6007(d) of Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE

Pub. L. 105–34, title V, §505(c), Aug. 5, 1997, 111 Stat. 855, provided that: "The amendments made by this section [enacting this section] shall apply to the estates of decedents dying after the date of the enactment of this Act [Aug. 5, 1997]."

Subchapter D—Court Review of Tax Court Decisions

Sec.

7481. Date when Tax Court decision becomes final.

7482. Courts of review.

7483. Notice of appeal.

7484. Change of incumbent in office.
7485. Bond to stay assessment and collection.
7486. Refund, credit, or abatement of amounts disallowed.
7487. Cross references.

AMENDMENTS

1969—Pub. L. 91–172, title IX, §§959(b), 960(i)(2), Dec. 30, 1969, 83 Stat. 734, 735, substituted "Notice of appeal" for "Petition for review" in item 7483 and substituted "Cross references" for "Cross reference" in item 7487.

§7481. Date when Tax Court decision becomes final

(a) Reviewable decisions

Except as provided in subsections (b), (c), and (d), the decision of the Tax Court shall become final—

(1) Timely notice of appeal not filed

Upon the expiration of the time allowed for filing a notice of appeal, if no such notice has been duly filed within such time; or

(2) Decision affirmed or appeal dismissed

(A) Petition for certiorari not filed on time

Upon the expiration of the time allowed for filing a petition for certiorari, if the decision of the Tax Court has been affirmed or the appeal dismissed by the United States Court of Appeals and no petition for certiorari has been duly filed; or

(B) Petition for certiorari denied

Upon the denial of a petition for certiorari, if the decision of the Tax Court has been affirmed or the appeal dismissed by the United States Court of Appeals; or

(C) After mandate of Supreme Court

Upon the expiration of 30 days from the date of issuance of the mandate of the Supreme Court, if such Court directs that the decision of the Tax Court be affirmed or the appeal dismissed.

(3) Decision modified or reversed

(A) Upon mandate of Supreme Court

If the Supreme Court directs that the decision of the Tax Court be modified or reversed, the decision of the Tax Court rendered in accordance with the mandate of the Supreme Court shall become final upon the expiration of 30 days from the time it was rendered, unless within such 30 days either the Secretary or the taxpayer has instituted proceedings to have such decision corrected to accord with the mandate, in which event the decision of the Tax Court shall become final when so corrected.

(B) Upon mandate of the Court of Appeals

If the decision of the Tax Court is modified or reversed by the United States Court of Appeals, and if—

(i) the time allowed for filing a petition for certiorari has expired and no such petition has been duly filed, or

(ii) the petition for certiorari has been denied, or

(iii) the decision of the United States Court of Appeals has been affirmed by the Supreme Court, then the decision of the Tax Court rendered in accordance with the mandate of the United States Court of Appeals shall become final on the expiration of 30 days from the time such decision of the Tax Court was rendered, unless within such 30 days either the Secretary or the taxpayer has instituted proceedings to have such decision corrected so that it will

accord with the mandate, in which event the decision of the Tax Court shall become final when so corrected.

(4) Rehearing

If the Supreme Court orders a rehearing; or if the case is remanded by the United States Court of Appeals to the Tax Court for a rehearing, and if—

(A) the time allowed for filing a petition for certiorari has expired and no such petition has been duly filed, or

(B) the petition for certiorari has been denied, or

(C) the decision of the United States Court of Appeals has been affirmed by the Supreme Court,

then the decision of the Tax Court rendered upon such rehearing shall become final in the same manner as though no prior decision of the Tax Court has been rendered.

(5) Definition of "mandate"

As used in this section, the term "mandate", in case a mandate has been recalled prior to the expiration of 30 days from the date of issuance thereof, means the final mandate.

(b) Nonreviewable decisions

The decision of the Tax Court in a proceeding conducted under section 7436(c) or 7463 shall become final upon the expiration of 90 days after the decision is entered.

(c) Jurisdiction over interest determinations

(1) In general

Notwithstanding subsection (a), if, within 1 year after the date the decision of the Tax Court becomes final under subsection (a) in a case to which this subsection applies, the taxpayer files a motion in the Tax Court for a redetermination of the amount of interest involved, then the Tax Court may reopen the case solely to determine whether the taxpayer has made an overpayment of such interest or the Secretary has made an underpayment of such interest and the amount thereof.

(2) Cases to which this subsection applies

This subsection shall apply where—

(A)(i) an assessment has been made by the Secretary under section 6215 which includes interest as imposed by this title, and

(ii) the taxpayer has paid the entire amount of the deficiency plus interest claimed by the Secretary, and

(B) the Tax Court finds under section 6512(b) that the taxpayer has made an overpayment.

(3) Special rules

If the Tax Court determines under this subsection that the taxpayer has made an overpayment of interest or that the Secretary has made an underpayment of interest, then that determination shall be treated under section 6512(b)(1) as a determination of an overpayment of tax. An order of the Tax Court redetermining interest, when entered upon the records of the court, shall be reviewable in the same manner as a decision of the Tax Court.

(d) Decisions relating to estate tax extended under section 6166

If with respect to a decedent's estate subject to a decision of the Tax Court—

(1) the time for payment of an amount of tax imposed by chapter 11 is extended under section 6166, and

(2) there is treated as an administrative expense under section 2053 either—

(A) any amount of interest which a decedent's estate pays on any portion of the tax imposed by section 2001 on such estate for which the time of payment is extended under section 6166, or

(B) interest on any estate, succession, legacy, or inheritance tax imposed by a State on such estate during the period of the extension of time for payment under section 6166,

then, upon a motion by the petitioner in such case in which such time for payment of tax has been extended under section 6166, the Tax Court may reopen the case solely to modify the Court's decision to reflect such estate's entitlement to a deduction for such administration expenses under section 2053 and may hold further trial solely with respect to the claim for such deduction if, within the discretion of the Tax Court, such a hearing is deemed necessary. An order of the Tax Court disposing of a motion under this subsection shall be reviewable in the same manner as a decision of the Tax Court, but only with respect to the matters determined in such order.

(Aug. 16, 1954, ch. 736, 68A Stat. 889; Pub. L. 91–172, title IX, §960(h)(1), Dec. 30, 1969, 83 Stat. 734; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 100–647, title VI, §§6246(a), (b)(2), 6247(a), (b)(2), Nov. 10, 1988, 102 Stat. 3751, 3752; Pub. L. 105–34, title XIV, §§1452(a), 1454(b)(3), Aug. 5, 1997, 111 Stat. 1054, 1057.)

AMENDMENTS

1997—Subsec. (b). Pub. L. 105–34, §1454(b)(3), substituted "section 7436(c) or 7463" for "section 7463".

Subsec. (c). Pub. L. 105–34, §1452(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "Notwithstanding subsection (a), if—

"(1) an assessment has been made by the Secretary under section 6215 which includes interest as imposed by this title,

"(2) the taxpayer has paid the entire amount of the deficiency plus interest claimed by the Secretary, and

"(3) within 1 year after the date the decision of the Tax Court becomes final under subsection (a), the taxpayer files a petition in the Tax Court for a determination that the amount of interest claimed by the Secretary exceeds the amount of interest imposed by this title,

then the Tax Court may reopen the case solely to determine whether the taxpayer has made an overpayment of such interest and the amount of any such overpayment. If the Tax Court determines under this subsection that the taxpayer has made an overpayment of interest, then that determination shall be treated under section 6512(b)(1) as a determination of an overpayment of tax. An order of the Tax Court redetermining the interest due, when entered upon the records of the court, shall be reviewable in the same manner as a decision of the Tax Court."

1988—Subsec. (a). Pub. L. 100–647, §6247(b)(2), substituted "subsections (b), (c), and (d)" for "subsections (b) and (c)".

Pub. L. 100–647, §6246(b)(2), substituted "subsections (b) and (c)" for "subsection (b)".

Subsec. (c). Pub. L. 100–647, §6246(a), added subsec. (c).

Subsec. (d). Pub. L. 100–647, §6247(a), added subsec. (d).

1976—Subsecs. (a)(3)(A), (B)(iii). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

1969—Pub. L. 91–172 designated existing provisions as subsec. (a), inserted reference to the exception provided for in subsec. (b), substituted "notice of appeal" for "petition for review" in par. (1), and substituted references to dismissal of appeal for references to dismissal of petition for review in par. (2), and added subsec. (b).

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XIV, §1452(b), Aug. 5, 1997, 111 Stat. 1055, provided that: "The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Aug. 5, 1997]."

Amendment by section 1454(b)(3) of Pub. L. 105–34 effective Aug. 5, 1997, see section 1454(c) of Pub. L. 105–34, set out as a note under section 6511 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 6246(a), (b)(2) of Pub. L. 100–647 applicable to assessments of deficiencies redetermined by the Tax Court made after Nov. 10, 1988, see section 6246(c) of Pub. L. 100–647, set out as a note under section 6512 of this title.

Amendment by section 6247(a), (b)(2) of Pub. L. 100–647 effective with respect to Tax Court cases for which the decision is not final on Nov. 10, 1988, see section 6247(c) of Pub. L. 100–647, set out as a note under section 6512 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 effective 30 days after Dec. 30, 1969, see section 962(f) of Pub. L. 91–172, set out as a note under section 7483 of this title.

§7482. Courts of review

(a) Jurisdiction

(1) In general

The United States Courts of Appeals (other than the United States Court of Appeals for the Federal Circuit) shall have exclusive jurisdiction to review the decisions of the Tax Court, except as provided in section 1254 of Title 28 of the United States Code, in the same manner and to the same extent as decisions of the district courts in civil actions tried without a jury; and the judgment of any such court shall be final, except that it shall be subject to review by the Supreme Court of the United States upon certiorari, in the manner provided in section 1254 of Title 28 of the United States Code.

(2) Interlocutory orders

(A) In general

When any judge of the Tax Court includes in an interlocutory order a statement that a controlling question of law is involved with respect to which there is a substantial ground for difference of opinion and that an immediate appeal from that order may materially advance the ultimate termination of the litigation, the United States Court of Appeals may, in its discretion, permit an appeal to be taken from such order, if application is made to it within 10 days after the entry of such order. Neither the application for nor the granting of an appeal under this paragraph shall stay proceedings in the Tax Court, unless a stay is ordered by a judge of the Tax Court or by the United States Court of Appeals which has jurisdiction of the appeal or a judge of that court.

(B) Order treated as Tax Court decision

For purposes of subsections (b) and (c), an order described in this paragraph shall be treated as a decision of the Tax Court.

(C) Venue for review of subsequent proceedings

If a United States Court of Appeals permits an appeal to be taken from an order described in subparagraph (A), except as provided in subsection (b)(2), any subsequent review of the decision of the Tax Court in the proceeding shall be made by such Court of Appeals.

(3) Certain orders entered under section 6213(a)

An order of the Tax Court which is entered under authority of section 6213(a) and which resolves a proceeding to restrain assessment or collection shall be treated as a decision of the Tax Court for purposes of this section and shall be subject to the same review by the United States Court of Appeals as a similar order of a district court.

(b) Venue

(1) In general

Except as otherwise provided in paragraphs (2) and (3), such decisions may be reviewed by the United States court of appeals for the circuit in which is located—

(A) in the case of a petitioner seeking redetermination of tax liability other than a corporation, the legal residence of the petitioner,

(B) in the case of a corporation seeking redetermination of tax liability, the principal place of business or principal office or agency of the corporation, or, if it has no principal place of business or principal office or agency in any judicial circuit, then the office to which was made the return of the tax in respect of which the liability arises,

(C) in the case of a person seeking a declaratory decision under section 7476, the principal place of business, or principal office or agency of the employer,

(D) in the case of an organization seeking a declaratory decision under section 7428, the principal office or agency of the organization,

(E) in the case of a petition under section 6226, 6228(a), 6247, or 6252, the principal place of business of the partnership, or

(F) in the case of a petition under section 6234(c)—

(i) the legal residence of the petitioner if the petitioner is not a corporation, and

(ii) the place or office applicable under subparagraph (B) if the petitioner is a corporation.

If for any reason no subparagraph of the preceding sentence applies, then such decisions may be reviewed by the Court of Appeals for the District of Columbia. For purposes of this paragraph, the legal residence, principal place of business, or principal office or agency referred to herein shall be determined as of the time the petition seeking redetermination of tax liability was filed with the Tax Court or as of the time the petition seeking a declaratory decision under section 7428 or 7476 or the petition under section 6226, 6228(a), or 6234(c), was filed with the Tax Court.

(2) By agreement

Notwithstanding the provisions of paragraph (1), such decisions may be reviewed by any United States Court of Appeals which may be designated by the Secretary and the taxpayer by stipulation in writing.

(3) Declaratory judgment actions relating to status of certain governmental obligations

In the case of any decision of the Tax Court in a proceeding under section 7478, such decision may only be reviewed by the Court of Appeals for the District of Columbia.

(c) Powers

(1) To affirm, modify, or reverse

Upon such review, such courts shall have power to affirm or, if the decision of the Tax Court is not in accordance with law, to modify or to reverse the decision of the Tax Court, with or without remanding the case for a rehearing, as justice may require.

(2) To make rules

Rules for review of decisions of the Tax Court shall be those prescribed by the Supreme Court under section 2072 of title 28 of the United States Code.

(3) To require additional security

Nothing in section 7483 shall be construed as relieving the petitioner from making or filing such undertakings as the court may require as a condition of or in connection with the review.

(4) To impose penalties

The United States Court of Appeals and the Supreme Court shall have the power to require the taxpayer to pay to the United States a penalty in any case where the decision of the Tax Court is affirmed and it appears that the appeal was instituted or maintained primarily for delay or that the taxpayer's position in the appeal is frivolous or groundless.

(Aug. 16, 1954, ch. 736, 68A Stat. 890; Pub. L. 89–713, §3(c), Nov. 2, 1966, 80 Stat. 1109; Pub. L. 91–172, title IX, §960(h)(2), Dec. 30, 1969, 83 Stat 735; Pub. L. 93–406, title II, §1041(b)(3), Sept. 2, 1974, 88 Stat. 950; Pub. L. 94–455, title X, §1042(d)(2)(A), (B), title XIII, §1306(b)(4), (5), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1638, 1639, 1719, 1834; Pub. L. 95–600, title III, §336(c)(1), Nov. 6, 1978, 92 Stat. 2842; Pub. L. 97–164, title I, §154, Apr. 2, 1982, 96 Stat. 47; Pub. L. 97–248, title IV, §402(c)(15), Sept. 3, 1982, 96 Stat. 668; Pub. L. 98–369, div. A, title I, §131(e)(2)(A), July 18, 1984, 98 Stat. 665; Pub. L. 99–514, title XV, §1558(a), (b), title XVIII, §§1810(g)(2), 1899A(60), Oct. 22, 1986, 100 Stat. 2757, 2758, 2828, 2962; Pub. L. 100–647, title VI, §6243(b), Nov. 10, 1988, 102 Stat. 3750; Pub. L. 101–239, title VII, §7731(b), Dec. 19, 1989, 103 Stat. 2401; Pub. L. 105–34, title XII, §§1222(b)(3), 1239(d), Aug. 5, 1997, 111 Stat. 1019, 1028.)

AMENDMENTS

1997—Subsec. (b)(1). Pub. L. 105–34, §1239(d)(2), substituted ", 6228(a), or 6234(c)" for "or 6228(a)" in

concluding provisions.

Subsec. (b)(1)(E). Pub. L. 105–34, §1222(b)(3), substituted ", 6228(a), 6247, or 6252" for "or 6228(a)".

Subsec. (b)(1)(F). Pub. L. 105–34, §1239(d)(1), added subpar. (F).

1989—Subsec. (c)(4). Pub. L. 101–239 substituted "penalties" for "damages" in heading and amended text generally. Prior to amendment, text read as follows: "The United States Court of Appeals and the Supreme Court shall have power to impose damages in any case where the decision of the Tax Court is affirmed and it appears that the notice of appeal was filed merely for delay."

1988—Subsec. (a)(3). Pub. L. 100–647 added par. (3).

1986—Subsec. (a). Pub. L. 99–514, §1558(a), (b), inserted par. (1) designation and heading "In general" before existing text and realigned its margin, and added par. (2).

Subsec. (b)(1). Pub. L. 99–514, §1810(g)(2), substituted "section 7428 or 7476" for "section 7428, 7476, or 7477" in last sentence.

Subsec. (b)(1)(E). Pub. L. 99–514, §1899A(60), substituted "partnership." for "partnership,".

1984—Subsec. (b)(1)(D) to (F). Pub. L. 98–369 struck out subpar. (D) which provided that venue in the case of a person seeking declaratory judgment under section 7477 be the legal residence of such person if such person is not a corporation, or the principal place of business or principal office or agency of such person if such person is a corporation, and redesignated subpars. (E) and (F) as (D) and (E), respectively.

1982—Subsec. (a). Pub. L. 97–164 inserted "(other than the United States Court of Appeals for the Federal Circuit)" after "The United States Courts of Appeals".

Subsec. (b)(1). Pub. L. 97–248 added subpar. (F), and in provisions following subpar. (F) inserted ", or the petition under section 6226 or 6228(a)," after "or 7477".

1978—Subsec. (b)(1). Pub. L. 95–600, §336(c)(1)(A), substituted "provided in paragraphs (2) and (3)" for "provided in paragraph (2)".

Subsec. (b)(3). Pub. L. 95–600, §336(c)(1)(B), added par. (3).

1976—Subsec. (b)(1)(D). Pub. L. 94–455, §1042(d)(2)(A), added subpar. (D).

Subsec. (b)(1)(E). Pub. L. 94–455, §1306(b)(4), added subpar. (E).

Subsec. (b)(1). Pub. L. 94–455, §§1042(d)(2)(B), 1306(b)(5), in provisions following subpar. (E), substituted "no subparagraph of the preceding sentence applies" for "subparagraph (A), (B), and (C) do not apply" and "section 7428, 7476, or 7477" for "section 7476".

Subsec. (b)(2). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

1974—Subsec. (b)(1). Pub. L. 93–406 added subpar. (C) and, in provisions following subpar. (C), substituted "If for any reason subparagraph (A), (B), and (C) do not apply" for "If for any reason neither subparagraph (A) nor (B) applies", and inserted provisions referring to the time the petition seeking a declaratory decision under section 7476 was filed with the Tax Court.

1969—Subsec. (c). Pub. L. 91–172 substituted "section 2072 of title 28" for "section 2074 of title 28" in par. (2) and struck out provision for the applicability of rules adopted under authority of section 1141(c)(2) of the Internal Revenue Act of 1939 until such time as rules prescribed by the Supreme Court under section 2072 of title 28 become effective and, in par. (4), substituted "notice of appeal" for "petition".

1966—Subsec. (b)(1). Pub. L. 89–713 substituted provisions requiring that appeals from Tax Court decisions be made to the Court of Appeals for the circuit in which the taxpayer resides, in the case of a taxpayer other than a corporation, and, in the case of appeals by corporations, to the Court of Appeals for the circuit in which the corporation has its principal place of business or principal office or agency for provisions prescribing review by the Court of Appeals for the circuit in which was located the office to which was made the return of the tax in respect of which the liability arose, and inserted provision for the time of determining legal residence, place of business, or principal office or agency.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 1222(b)(3) of Pub. L. 105–34 applicable to partnership taxable years beginning after Dec. 31, 1997, see section 1226 of Pub. L. 105–34, as amended, set out as a note under section 6011 of this title.

Amendment by section 1239(d) of Pub. L. 105–34 applicable to partnership taxable years ending after Aug. 5, 1997, see section 1239(f) of Pub. L. 105–34, set out as a note under section 6225 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable to positions taken after Dec. 31, 1989, in proceedings which are pending on, or commenced after such date, see section 7731(d) of Pub. L. 101–239, set out as a note under section 6673 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 applicable to orders entered after Nov. 10, 1988, see section 6243(c) of Pub. L. 100–647, set out as a note under section 6213 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XV, §1558(c), Oct. 22, 1986, 100 Stat. 2758, provided that: "The amendments made by this section [amending this section] shall apply to any order of the Tax Court entered after the date of the enactment of this Act [Oct. 22, 1986]."

Amendment by section 1810(g)(2) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to transfers or exchanges after Dec. 31, 1984, in taxable years ending after such date, with special rules for certain transfers and ruling requests before Mar. 1, 1984, see section 131(g) of Pub. L. 98–369, set out as a note under section 367 of this title.

EFFECTIVE DATE OF 1982 AMENDMENTS

Amendment by Pub. L. 97–248 applicable to partnership taxable years beginning after Sept. 3, 1982, with provision for the applicability of the amendment to any partnership taxable year ending after Sept. 3, 1982, if the partnership, each partner, and each indirect partner requests such application and the Secretary of the Treasury or his delegate consents to such application, see section 407(a)(1), (3) of Pub. L. 97–248, set out as an Effective Date note under section 6221 of this title.

Amendment by Pub. L. 97–164 effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable to requests for determinations made after Dec. 31, 1978, see section 336(d) of Pub. L. 95–600, set out as an Effective Date note under section 7478 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1042(d)(2)(A), (B) of Pub. L. 94–455 applicable with respect to pleadings filed with the Tax Court after Oct. 4, 1976, but only with respect to transfers beginning after Oct. 9, 1975, see section 1042(e)(1) of Pub. L. 94–455, set out as a note under section 367 of this title.

Amendment by section 1306(b)(4), (5) of Pub. L. 94–455 applicable with respect to pleadings filed with the United States Tax Court, the district court of the United States for the District of Columbia, or the United States Court of Claims more than 6 months after Oct. 4, 1976 but only with respect to determinations (or requests for determinations) made after Jan. 1, 1976, see section 1306(c) of Pub. L. 94–455, set out as an Effective Date note under section 7428 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–406 applicable to pleadings filed more than one year after Sept. 2, 1974, see section 1041(d) of Pub. L. 93–406, set out as an Effective Date note under section 7476 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 effective 30 days after Dec. 30, 1969, see section 962(f) of Pub. L. 91–172, set out as a note under section 7483 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–713 applicable to all decisions of the Tax Court entered after Nov. 2, 1966, see section 3(d) of Pub. L. 89–713, set out as a note under section 7422 of this title.

§7483. Notice of appeal

Review of a decision of the Tax Court shall be obtained by filing a notice of appeal with the clerk of the Tax Court within 90 days after the decision of the Tax Court is entered. If a timely notice of appeal is filed by one party, any other party may take an appeal by filing a notice of appeal within 120 days after the decision of the Tax Court is entered.

(Aug. 16, 1954, ch. 736, 68A Stat. 891; Pub. L. 91–172, title IX, §959(a), Dec. 30, 1969, 83 Stat.

734.)

AMENDMENTS

1969—Pub. L. 91–172 substituted references to notice of appeal for references to petition for review, and otherwise generally altered the section as to time for appeal and terminology in order to conform section to the form of the Federal Rules of Appellate Procedure.

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title IX, §962(f), Dec. 30, 1969, 83 Stat. 736, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by sections 959 and 960(h) [amending this section and sections 7481, 7482, and 7485 of this title] shall take effect 30 days after the date of the enactment of this Act [Dec. 30, 1969]. In the case of any decision of the Tax Court entered before the 30th day after the date of the enactment of this Act [Dec. 30, 1969], the United States Courts of Appeals shall have jurisdiction to hear an appeal from such decision, if such appeal was filed within the time prescribed by Rule 13(a) of the Federal Rules of Appellate Procedure or by section 7483 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] as in effect at the time the decision of the Tax Court was entered."

§7484. Change of incumbent in office

When the incumbent of the office of Secretary changes, no substitution of the name of his successor shall be required in proceedings pending before any appellate court reviewing the action of the Tax Court.

(Aug. 16, 1954, ch. 736, 68A Stat. 891; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

§7485. Bond to stay assessment and collection

(a) Upon notice of appeal

Notwithstanding any provision of law imposing restrictions on the assessment and collection of deficiencies, the review under section 7483 shall not operate as a stay of assessment or collection of any portion of the amount of the deficiency determined by the Tax Court unless a notice of appeal in respect of such portion is duly filed by the taxpayer, and then only if the taxpayer—

(1) on or before the time his notice of appeal is filed has filed with the Tax Court a bond in a sum fixed by the Tax Court not exceeding double the amount of the portion of the deficiency in respect of which the notice of appeal is filed, and with surety approved by the Tax Court, conditioned upon the payment of the deficiency as finally determined, together with any interest, additional amounts, or additions to the tax provided for by law, or

(2) has filed a jeopardy bond under the income or estate tax laws.

If as a result of a waiver of the restrictions on the assessment and collection of a deficiency any part of the amount determined by the Tax Court is paid after the filing of the appeal bond, such bond shall, at the request of the taxpayer, be proportionately reduced.

(b) Bond in case of appeal of certain partnership-related decisions

The condition of subsection (a) shall be satisfied if a partner duly files notice of appeal from a decision under section 6226, 6228(a), 6247, or 6252 and on or before the time the notice of appeal is filed with the Tax Court, a bond in an amount fixed by the Tax Court is filed, and with surety approved by the Tax Court, conditioned upon the payment of deficiencies attributable to the partnership items to which that decision relates as finally determined, together with any interest,

penalties, additional amounts, or additions to the tax provided by law. Unless otherwise stipulated by the parties, the amount fixed by the Tax Court shall be based upon its estimate of the aggregate liability of the parties to the action.

(c) Cross references

(1) For requirement of additional security notwithstanding this section, see section 7482(c)(3).

(2) For deposit of United States bonds or notes in lieu of sureties, see section 9303 of title 31, United States Code.

(Aug. 16, 1954, ch. 736, 68A Stat. 891; Pub. L. 91–172, title IX, §960(h)(3), Dec. 30, 1969, 83 Stat. 735; Pub. L. 97–248, title IV, §402(c)(16), Sept. 3, 1982, 96 Stat. 668; Pub. L. 97–258, §3(f)(15), Sept. 13, 1982, 96 Stat. 1065; Pub. L. 105–34, title XII, §§1222(b)(4), 1241(a), Aug. 5, 1997, 111 Stat. 1019, 1029.)

AMENDMENTS

1997—Subsec. (b). Pub. L. 105–34, §1222(b)(4)(B), amended heading generally. Prior to amendment, heading read as follows: "Bond in case of appeal of decision under section 6226 or section 6228(a)".

Pub. L. 105–34, §1222(b)(4)(A), substituted ", 6228(a), 6247, or 6252" for "or 6228(a)".

Pub. L. 105–34, §1241(a), inserted "penalties," after "any interest," and substituted "aggregate liability of the parties to the action" for "aggregate of such deficiencies".

1982—Subsecs. (b), (c). Pub. L. 97–248 added subsec. (b) and redesignated former subsec. (b) as (c).

Subsec. (c)(2). Pub. L. 97–258 substituted "section 9303 of title 31, United States Code" for "6 U.S.C. 15". Notwithstanding the directory language that amendment be made to subsec. (b)(2), the amendment was executed to subsec. (c)(2) to reflect the probable intent of Congress and the intervening redesignation of subsec. (b) as (c) by Pub. L. 97–248.

1969—Subsec. (a). Pub. L. 91–172 substituted "notice of appeal" for "petition for review" and "appeal bond" for "review bond".

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 1222(b)(4) of Pub. L. 105–34 applicable to partnership taxable years beginning after Dec. 31, 1997, see section 1226 of Pub. L. 105–34, as amended, set out as a note under section 6011 of this title.

Pub. L. 105–34, title XII, §1241(b), Aug. 5, 1997, 111 Stat. 1029, provided that: "The amendment made by this section [amending this section] shall take effect as if included in the amendments made by section 402 of the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97–248]."

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to partnership taxable years beginning after Sept. 3, 1982, with provision for the applicability of the amendment to any partnership taxable year ending after Sept. 3, 1982, if the partnership, each partner, and each indirect partner requests such application and the Secretary of the Treasury or his delegate consents to such application, see section 407(a)(1), (3) of Pub. L. 97–248, set out as an Effective Date note under section 6221 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 effective 30 days after Dec. 30, 1969, see section 962(f) of Pub. L. 91–172, set out as a note under section 7483 of this title.

§7486. Refund, credit, or abatement of amounts disallowed

In cases where assessment or collection has not been stayed by the filing of a bond, then if the amount of the deficiency determined by the Tax Court is disallowed in whole or in part by the court of review, the amount so disallowed shall be credited or refunded to the taxpayer, without the making of claim therefor, or, if collection has not been made, shall be abated.

(Aug. 16, 1954, ch. 736, 68A Stat. 891.)

§7487. Cross references

(1) Nonreviewability.—For nonreviewability of Tax Court decisions in small claims cases, see section 7463(b).

(2) Transcripts.—For authority of the Tax Court to fix fees for transcript of records, see section 7474.

(Aug. 16, 1954, ch. 736, 68A Stat. 892; Pub. L. 91–172, title IX, §960(i)(1), Dec. 30, 1969, 83 Stat. 735.)

AMENDMENTS

1969—Pub. L. 91–172 inserted reference to section 7463(b) for nonreviewability of Tax Court decisions in small claims cases.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 effective one year after Dec. 30, 1969, see section 962(e) of Pub. L. 91–172, set out as an Effective Date note under section 7463 of this title.

Subchapter E—Burden of Proof

Sec.
7491. Burden of proof.

§7491. Burden of proof

(a) Burden shifts where taxpayer produces credible evidence

(1) General rule

If, in any court proceeding, a taxpayer introduces credible evidence with respect to any factual issue relevant to ascertaining the liability of the taxpayer for any tax imposed by subtitle A or B, the Secretary shall have the burden of proof with respect to such issue.

(2) Limitations

Paragraph (1) shall apply with respect to an issue only if—

(A) the taxpayer has complied with the requirements under this title to substantiate any item;

(B) the taxpayer has maintained all records required under this title and has cooperated with reasonable requests by the Secretary for witnesses, information, documents, meetings, and interviews; and

(C) in the case of a partnership, corporation, or trust, the taxpayer is described in section 7430(c)(4)(A)(ii).

Subparagraph (C) shall not apply to any qualified revocable trust (as defined in section 645(b)(1)) with respect to liability for tax for any taxable year ending after the date of the decedent's death and before the applicable date (as defined in section 645(b)(2)).

(3) Coordination

Paragraph (1) shall not apply to any issue if any other provision of this title provides for a specific burden of proof with respect to such issue.

(b) Use of statistical information on unrelated taxpayers

In the case of an individual taxpayer, the Secretary shall have the burden of proof in any court proceeding with respect to any item of income which was reconstructed by the Secretary solely through the use of statistical information on unrelated taxpayers.

(c) Penalties

Notwithstanding any other provision of this title, the Secretary shall have the burden of production in any court proceeding with respect to the liability of any individual for any penalty, addition to tax,

or additional amount imposed by this title.

(Added Pub. L. 105–206, title III, §3001(a), July 22, 1998, 112 Stat. 726; amended Pub. L. 105–277, div. J, title IV, §4002(b), Oct. 21, 1998, 112 Stat. 2681–906.)

PRIOR PROVISIONS

A prior section 7491, act Aug. 16, 1954, ch. 736, 68A Stat. 893, placed the burden of proof in establishing the applicability of an exemption upon the defendant in the case of marihuana offenses, prior to repeal by Pub. L. 91–513, title III, §§1101(b)(5)(A), 1103, 1105(a), Oct. 27, 1970, 84 Stat. 1292, 1294, 1295, effective on first day of seventh calendar month that begins after Oct. 26, 1970, with prosecutions commenced prior to such date not to be affected or abated by reason thereof.

A prior section 7492, act Aug. 16, 1954, ch. 736, 68A Stat. 893, related to the enforceability of cotton futures contracts, prior to repeal by Pub. L. 94–455, title XIX, §1952(n)(4)(A), (o), Oct. 4, 1976, 90 Stat. 1846, effective on the 90th day after Oct. 4, 1976.

A prior section 7493, act Aug. 16, 1954, ch. 736, 68A Stat. 893, provided that no person whose evidence is deemed material by the officer prosecuting on behalf of the United States in any case brought under any provision of subchapter D of chapter 39 of this title withhold his testimony because of complicity by him in any violation of subchapter D of chapter 39 of this title or of any regulation made pursuant to such chapter, but that such person called by such officer who testifies in the case be exempt from prosecution for any offense to which his testimony relates, prior to repeal by Pub. L. 91–452, title II, §§232, 260, Oct. 15, 1970, 84 Stat. 930, 931, effective on 60th day following Oct. 15, 1970, and not to affect any immunity to which any individual was entitled under by reason of any testimony given before 60th day following Oct. 15, 1970. See section 6001 et seq. of Title 18, Crimes and Criminal Procedure.

AMENDMENTS

1998—Subsec. (a)(2). Pub. L. 105–277 inserted concluding provisions.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–277 effective as if included in the provision of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105–206, to which such amendment relates, see section 4002(k) of Pub. L. 105–277, set out as a note under section 1 of this title.

EFFECTIVE DATE

Pub. L. 105–206, title III, §3001(c), July 22, 1998, 112 Stat. 727, provided that:

"(1) IN GENERAL.—The amendments made by this section [enacting this subchapter] shall apply to court proceedings arising in connection with examinations commencing after the date of the enactment of this Act [July 22, 1998].

"(2) TAXABLE PERIODS OR EVENTS AFTER DATE OF ENACTMENT.—In any case in which there is no examination, such amendments shall apply to court proceedings arising in connection with taxable periods or events beginning or occurring after such date of enactment."

CHAPTER 77—MISCELLANEOUS PROVISIONS

Sec.

7501. Liability for taxes withheld or collected.

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7528. Internal Revenue Service user fees.

AMENDMENTS

2003—Pub. L. 108–121, title I, §104(b)(3), Nov. 11, 2003, 117 Stat. 1338, inserted "or contingency operation" after "combat zone" in item 7508.

Pub. L. 108–89, title II, §202(b)(1), Oct. 1, 2003, 117 Stat. 1133, added item 7528.

2002—Pub. L. 107–210, div. A, title II, §202(d)(1), Aug. 6, 2002, 116 Stat. 963, added item 7527.

Pub. L. 107–134, title I, §112(e)(1), Jan. 23, 2002, 115 Stat. 2435, substituted "Authority to postpone certain deadlines by reason of Presidentially declared disaster or terroristic or military actions" for "Authority to postpone certain tax-related deadlines by reason of presidentially declared disaster" in item 7508A.

1998—Pub. L. 105–206, title III, §§3411(b), 3601(b), July 22, 1998, 112 Stat. 751, 776, added items 7525 and 7526.

1997—Pub. L. 105–34, title IX, §911(b), Aug. 5, 1997, 111 Stat. 878, added item 7508A.

1996—Pub. L. 104–168, title XII, §1204(b), July 30, 1996, 110 Stat. 1471, added item 7524.

1990—Pub. L. 101–508, title XI, §§11622(b), 11704(a)(31), Nov. 5, 1990, 104 Stat. 1388–505, 1388–519, substituted "7522. Content of tax due, deficiency, and other notices." for "7521. Content of tax due, deficiency, and other notices." and added item 7523.

1989—Pub. L. 101–239, title VII, §7816(u)(2), Dec. 19, 1989, 103 Stat. 2423, redesignated item 7520, relating to procedures involving taxpayer interviews, as 7521.

1988—Pub. L. 100–647, title VI, §6233(b), Nov. 10, 1988, 102 Stat. 3735, added item 7521.

Pub. L. 100–647, title VI, §6228(c), Nov. 10, 1988, 102 Stat. 3732, added item 7520 relating to procedures involving taxpayer interviews.

Pub. L. 100–647, title V, §5031(b), Nov. 10, 1988, 102 Stat. 3669, added item 7520 relating to valuation tables.

1987—Pub. L. 100–203, title X, §10206(b)(2), Dec. 22, 1987, 101 Stat. 1330–401, added item 7519.

1986—Pub. L. 99–514, title II, §261(f), Oct. 22, 1986, 100 Stat. 2216, added item 7518.

1976—Pub. L. 94–455, title XIX, §1906(b)(11), (12), Oct. 4, 1976, 90 Stat. 1834, substituted "Time for performing certain acts postponed by reason of service in combat zone" for "Time for performing certain acts postponed by reason of war" in item 7508, and "Expenditures incurred by the United States Postal Service" for "Expenditures incurred by the Post Office Department" in item 7509.

Pub. L. 94–455, title XX, §2008(a)(2)(C), Oct. 4, 1976, 90 Stat. 1891, added item 7517 relating to statement explaining estate or gift valuation.

1966—Pub. L. 89–719, title I, §111(c)(2), Nov. 2, 1966, 80 Stat. 1145, substituted "acquired" for "purchased" in item 7505.

Pub. L. 89–713, §5(b), Nov. 2, 1966, 80 Stat. 1111, inserted "and paying" in item 7502.

1962—Pub. L. 87–870, §3(a)(2), Oct. 23, 1962, 76 Stat. 1161, added items 7515 and 7516.

Pub. L. 87–456, title III, §302(d), May 24, 1962, 76 Stat. 77, struck out item 7511 "Exemption of consular officers and employees of foreign states from payment of internal revenue taxes on imported articles".

1958—Pub. L. 85–866, title I, §§90(b), 91(b), Sept. 2, 1958, 72 Stat. 1666, 1667, added items 7513 and 7514.

Pub. L. 85–321, §3(a), Feb. 11, 1958, 72 Stat. 6, added item 7512.

[1] *Section repealed by Pub. L. 94–455 without corresponding amendment of analysis.*

§7501. Liability for taxes withheld or collected

(a) General rule

Whenever any person is required to collect or withhold any internal revenue tax from any other person and to pay over such tax to the United States, the amount of tax so collected or withheld shall be held to be a special fund in trust for the United States. The amount of such fund shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations (including penalties) as are applicable with respect to the taxes from which such fund arose.

(b) Penalties

For penalties applicable to violations of this section, see sections 6672 and 7202.

(Aug. 16, 1954, ch. 736, 68A Stat. 895.)

§7502. Timely mailing treated as timely filing and paying

(a) General rule

(1) Date of delivery

If any return, claim, statement, or other document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under authority of any provision of the internal revenue laws is, after such period or such date, delivered by United States mail to the agency, officer, or office with which such return, claim, statement, or other document is required to be filed, or to which such payment is required to be made, the date of the United States postmark stamped on the cover in which such return, claim, statement, or other document, or payment, is mailed shall be deemed to be the date of delivery or the date of payment, as the case may be.

(2) Mailing requirements

This subsection shall apply only if—

(A) the postmark date falls within the prescribed period or on or before the prescribed date—

(i) for the filing (including any extension granted for such filing) of the return, claim, statement, or other document, or

(ii) for making the payment (including any extension granted for making such payment), and

(B) the return, claim, statement, or other document, or payment was, within the time prescribed in subparagraph (A), deposited in the mail in the United States in an envelope or other appropriate wrapper, postage prepaid, properly addressed to the agency, officer, or office with which the return, claim, statement, or other document is required to be filed, or to which such payment is required to be made.

(b) Postmarks

This section shall apply in the case of postmarks not made by the United States Postal Service only if and to the extent provided by regulations prescribed by the Secretary.

(c) Registered and certified mailing; electronic filing

(1) Registered mail

For purposes of this section, if any return, claim, statement, or other document, or payment, is sent by United States registered mail—

(A) such registration shall be prima facie evidence that the return, claim, statement, or other document was delivered to the agency, officer, or office to which addressed; and

(B) the date of registration shall be deemed the postmark date.

(2) Certified mail; electronic filing

The Secretary is authorized to provide by regulations the extent to which the provisions of paragraph (1) with respect to prima facie evidence of delivery and the postmark date shall apply to certified mail and electronic filing.

(d) Exceptions

This section shall not apply with respect to—

(1) the filing of a document in, or the making of a payment to, any court other than the Tax Court,

(2) currency or other medium of payment unless actually received and accounted for, or

(3) returns, claims, statements, or other documents, or payments, which are required under any provision of the internal revenue laws or the regulations thereunder to be delivered by any method other than by mailing.

(e) Mailing of deposits

(1) Date of deposit

If any deposit required to be made (pursuant to regulations prescribed by the Secretary under section 6302(c)) on or before a prescribed date is, after such date, delivered by the United States mail to the bank, trust company, domestic building and loan association, or credit union authorized to receive such deposit, such deposit shall be deemed received by such bank, trust company, domestic building and loan association, or credit union on the date the deposit was mailed.

(2) Mailing requirements

Paragraph (1) shall apply only if the person required to make the deposit establishes that—

(A) the date of mailing falls on or before the second day before the prescribed date for making the deposit (including any extension of time granted for making such deposit), and

(B) the deposit was, on or before such second day, mailed in the United States in an envelope or other appropriate wrapper, postage prepaid, properly addressed to the bank, trust company, domestic building and loan association, or credit union authorized to receive such deposit.

In applying subsection (c) for purposes of this subsection, the term "payment" includes "deposit", and the reference to the postmark date refers to the date of mailing.

(3) No application to certain deposits

Paragraph (1) shall not apply with respect to any deposit of $20,000 or more by any person who is required to deposit any tax more than once a month.

(f) Treatment of private delivery services

(1) In general

Any reference in this section to the United States mail shall be treated as including a reference to any designated delivery service, and any reference in this section to a postmark by the United States Postal Service shall be treated as including a reference to any date recorded or marked as described in paragraph (2)(C) by any designated delivery service.

(2) Designated delivery service

For purposes of this subsection, the term "designated delivery service" means any delivery service provided by a trade or business if such service is designated by the Secretary for purposes of this section. The Secretary may designate a delivery service under the preceding sentence only if the Secretary determines that such service—

(A) is available to the general public,

(B) is at least as timely and reliable on a regular basis as the United States mail,

(C) records electronically to its data base, kept in the regular course of its business, or marks on the cover in which any item referred to in this section is to be delivered, the date on which such item was given to such trade or business for delivery, and

(D) meets such other criteria as the Secretary may prescribe.

(3) Equivalents of registered and certified mail

The Secretary may provide a rule similar to the rule of paragraph (1) with respect to any service provided by a designated delivery service which is substantially equivalent to United States registered or certified mail.

(Aug. 16, 1954, ch. 736, 68A Stat. 895; Pub. L. 85–866, title I, §89(a), Sept. 2, 1958, 72 Stat. 1665; Pub. L. 89–713, §5(a), Nov. 2, 1966, 80 Stat. 1110; Pub. L. 90–364, title I, §106(a), June 28, 1968, 82 Stat. 266; Pub. L. 94–455, title XIX, §§1906(a)(49), (b)(13)(A), Oct. 4, 1976, 90 Stat. 1831, 1834; Pub. L. 95–147, §3(b), Oct. 28, 1977, 91 Stat. 1228; Pub. L. 98–369, div. A, title I, §157(a), July 18, 1984, 98 Stat. 695; Pub. L. 99–514, title XVIII, §1811(e), Oct. 22, 1986, 100 Stat. 2833; Pub. L. 104–168, title XII, §1210, July 30, 1996, 110 Stat. 1474; Pub. L. 105–206, title II, §2003(b), July 22, 1998, 112 Stat. 725.)

AMENDMENTS

1998—Subsec. (c). Pub. L. 105–206 inserted "; electronic filing" after "mailing" in heading and amended text of subsec. (c) generally. Prior to amendment, text read as follows:

"(1) REGISTERED MAIL.—For purposes of this section, if any such return, claim, statement, or other document, or payment, is sent by United States registered mail—

"(A) such registration shall be prima facie evidence that the return, claim, statement, or other document was delivered to the agency, officer, or office to which addressed, and

"(B) the date of registration shall be deemed the postmark date.

"(2) CERTIFIED MAIL.—The Secretary is authorized to provide by regulations the extent to which the provisions of paragraph (1) of this subsection with respect to prima facie evidence of delivery and the postmark date shall apply to certified mail."

1996—Subsec. (f). Pub. L. 104–168 added subsec. (f).

1986—Subsec. (e)(3). Pub. L. 99–514 substituted "any tax" for "the tax".

1984—Subsec. (e)(3). Pub. L. 98–369 added par. (3).

1977—Subsec. (e). Pub. L. 95–147 substituted ", trust company, domestic building and loan association, or credit union" for "or trust company" in three places.

1976—Subsec. (b). Pub. L. 94–455, §1906(a)(49), (b)(13)(A), substituted "United States Postal Service" for "United States Post Office" after "made by the", and struck out "or his delegate" after "Secretary".

Subsecs. (c)(2), (e)(1). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

1968—Subsec. (e). Pub. L. 90–364 added subsec. (e).

1966—Subsec. (a). Pub. L. 89–713 inserted filing of tax returns and the payments of tax to the list of operations to which the timely-mailing-timely-filing provisions of the subsec. apply and altered the subsec. structurally by dividing its provisions into pars. (1) and (2).

Subsec. (b). Pub. L. 89–713 substituted "Postmarks" for "Stamp machine" in heading.

Subsec. (c). Pub. L. 89–713 inserted returns and payments to the list of operations to which the timely-mailing-timely-filing provisions apply and altered par. (1) structurally by dividing its provisions into subpars. (A) and (B).

Subsec. (d). Pub. L. 89–713 designated existing provisions as par. (1) and added pars. (2) and (3).

1958—Subsec. (c). Pub. L. 85–866 designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, §157(b), July 18, 1984, 98 Stat. 695, provided that: "The amendment made by this section [amending this section] shall apply to deposits required to be made after July 31, 1984."

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–147 applicable to amounts deposited after Oct. 28, 1977, see section 3(c) of Pub. L. 95–147, set out as a note under section 6302 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1906(d)(1) of Pub. L. 94–455, set out as a note under section 6013 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Pub. L. 90–364, title I, §106(b), June 28, 1968, 82 Stat. 266, provided that: "The amendment made by subsec. (a) [amending this section] shall apply only as to mailing occurring after the date of the enactment of this Act [June 28, 1968]."

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89–713, §5(c), Nov. 2, 1966, 80 Stat. 1111, provided that: "The amendments made by this section [amending this section] shall apply only if the mailing occurs after the date of the enactment of this Act [Nov. 2, 1966]."

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85–866, title I, §89(d), Sept. 2, 1958, 72 Stat. 1666, provided that: "This section [amending this section and sections 167, 6164, 6212, 6532, and 7455 of this title] shall apply only if the mailing occurs after the date of the enactment of this Act [Sept. 2, 1958]."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

PROVISIONS OF INTERNAL REVENUE CODE OF 1939

Pub. L. 85–866, title I, §89(c), Sept. 2, 1958, 72 Stat. 1666, provided that: "In applying any provision of the Internal Revenue Code of 1939 which requires, or provides for, the use of registered mail, the reference to registered mail shall be treated as including a reference to certified mail."

§7503. Time for performance of acts where last day falls on Saturday, Sunday, or legal holiday

When the last day prescribed under authority of the internal revenue laws for performing any act falls on Saturday, Sunday, or a legal holiday, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday, or a legal holiday. For purposes of this section, the last day for the performance of any act shall be determined by including any authorized extension of time; the term "legal holiday" means a legal holiday in the District of Columbia; and in the case of any return, statement, or other document required to be filed, or any other act required under authority of the internal revenue laws to be performed, at any office of the Secretary or at any other office of the United States or any agency thereof, located outside the District of Columbia but within an internal revenue district, the term "legal holiday" also means a Statewide legal holiday in the State where such office is located.

(Aug. 16, 1954, ch. 736, 68A Stat. 896; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

APPLICABILITY OF THIS SECTION FOR PURPOSES OF SECTION 10222(B) OF PUB. L. 100–203

Pub. L. 100–647, title VI, §6278, Nov. 10, 1988, 102 Stat. 3754, provided that: "Section 7503 of the 1986 Code shall apply for purposes of determining whether any disposition meets the requirements of section

10222(b)(2)(B) of the Revenue Act of 1987 [Pub. L. 100–203, set out as a note under section 301 of this title]. If any disposition meets the requirements of such section by reason of the preceding sentence, for all purposes of the 1986 Code, such disposition shall be deemed to have occurred on December 31, 1988."

§7504. Fractional parts of a dollar

The Secretary may by regulations provide that in the allowance of any amount as a credit or refund, or in the collection of any amount as a deficiency or underpayment, of any tax imposed by this title, a fractional part of a dollar shall be disregarded, unless it amounts to 50 cents or more, in which case it shall be increased to 1 dollar.

(Aug. 16, 1954, ch. 736, 68A Stat. 896; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

§7505. Sale of personal property acquired by the United States

(a) Sale

Any personal property acquired by the United States in payment of or as security for debts arising under the internal revenue laws may be sold by the Secretary in accordance with such regulations as may be prescribed by the Secretary.

(b) Accounting

In case of the resale of such property, the proceeds of the sale shall be paid into the Treasury as internal revenue collections, and there shall be rendered a distinct account of all charges incurred in such sales.

(Aug. 16, 1954, ch. 736, 68A Stat. 896; Pub. L. 89–719, title I, §111(a), (c)(1), Nov. 2, 1966, 80 Stat. 1145; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

1966—Pub. L. 89–719 substituted "acquired by the United States in payment of or as security for debts arising under the internal revenue laws" for "purchased by the United States under the authority of section 6335(e) (relating to purchase for the account of the United States of property sold under levy)" in subsec. (a), and substituted "acquired" for "purchased" in section catchline.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–719 applicable after Nov. 2, 1966, regardless of when title or lien of United States arose or when lien or interest of another person was acquired, with certain exceptions, see section 114(a)–(c) of Pub. L. 89–719, set out as a note under section 6323 of this title.

§7506. Administration of real estate acquired by the United States

(a) Person charged with

The Secretary shall have charge of all real estate which is or shall become the property of the United States by judgment of forfeiture under the internal revenue laws, or which has been or shall be assigned, set off, or conveyed by purchase or otherwise to the United States in payment of debts or penalties arising under the laws relating to internal revenue, or which has been or shall be vested in the United States by mortgage or other security for the payment of such debts, or which has been redeemed by the United States, and of all trusts created for the use of the United States in payment of such debts due them.

(b) Sale

The Secretary, may, at public sale, and upon not less than 20 days' notice, sell and dispose of any real estate owned or held by the United States as aforesaid.

(c) Lease

Until such sale, the Secretary may lease such real estate owned as aforesaid on such terms and for such period as the Secretary shall deem proper.

(d) Release to debtor

In cases where real estate has or may become the property of the United States by conveyance or otherwise, in payment of or as security for a debt arising under the laws relating to internal revenue, and such debt shall have been paid, together with the interest thereon, at the rate of 1 percent per month, to the United States, within 2 years from the date of the acquisition of such real estate, it shall be lawful for the Secretary to release by deed or otherwise convey such real estate to the debtor from whom it was taken, or to his heirs or other legal representatives.

(Aug. 16, 1954, ch. 736, 68A Stat. 896; Pub. L. 89–719, title I, §111(b), Nov. 2, 1966, 80 Stat. 1145; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsecs. (a) to (d). Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

1966—Subsec. (a). Pub. L. 89–719 inserted reference to real estate which has been redeemed by the United States.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–719 applicable after Nov. 2, 1966, regardless of when title or lien of United States arose or when lien or interest of another person was acquired, with certain exceptions, see section 114(a)–(c) of Pub. L. 89–719, set out as a note under section 6323 of this title.

§7507. Exemption of insolvent banks from tax

(a) Assets in general

Whenever and after any bank or trust company, a substantial portion of the business of which consists of receiving deposits and making loans and discounts, has ceased to do business by reason of insolvency or bankruptcy, no tax shall be assessed or collected, or paid into the Treasury of the United States, on account of such bank or trust company, which shall diminish the assets thereof necessary for the full payment of all its depositors; and such tax shall be abated from such national banks as are found by the Comptroller of the Currency to be insolvent; and the Secretary, when the facts shall appear to him, is authorized to remit so much of the said tax against any such insolvent banks and trust companies organized under State law as shall be found to affect the claims of their depositors.

(b) Segregated assets; earnings

Whenever any bank or trust company, a substantial portion of the business of which consists of receiving deposits and making loans and discounts, has been released or discharged from its liability to its depositors for any part of their claims against it, and such depositors have accepted, in lieu thereof, a lien upon subsequent earnings of such bank or trust company, or claims against assets segregated by such bank or trust company or against assets transferred from it to an individual or corporate trustee or agent, no tax shall be assessed or collected, or paid into the Treasury of the United States, on account of such bank or trust company, such individual or corporate trustee or such agent, which shall diminish the assets thereof which are available for the payment of such depositor claims and which are necessary for the full payment thereof. The term "agent", as used in this subsection, shall be deemed to include a corporation acting as a liquidating agent.

(c) Refund; reassessment; statutes of limitation

(1) Any such tax collected shall be deemed to be erroneously collected, and shall be refunded subject to all provisions and limitations of law, so far as applicable, relating to the refunding of taxes.

(2) Any tax, the assessment, collection, or payment of which is barred under subsection (a), or any such tax which has been abated or remitted shall be assessed or reassessed whenever it shall appear that payment of the tax will not diminish the assets as aforesaid.

(3) Any tax, the assessment, collection, or payment of which is barred under subsection (b), or any such tax which has been refunded shall be assessed or reassessed after full payment of such claims of depositors to the extent of the remaining assets segregated or transferred as described in subsection (b).

(4) The running of the statute of limitations on the making of assessment and collection shall be suspended during, and for 90 days beyond, the period for which, pursuant to this section, assessment or collection may not be made, and a tax may be reassessed as provided in paragraphs (2) and (3) of this subsection and collected, during the time within which, had there been no abatement, collection might have been made.

(d) Exception of employment taxes

This section shall not apply to any tax imposed by chapter 21 or chapter 23.

(Aug. 16, 1954, ch. 736, 68A Stat. 897; Pub. L. 94–455, title XIX, §1906(a)(50), (b)(13)(A), Oct. 4, 1976, 90 Stat. 1831, 1834.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (c). Pub. L. 94–455, §1906(a)(50), struck out "after May 28, 1938" in par. (2) after "or remitted" and in par. (3) after "been refunded".

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1906(d)(1) of Pub. L. 94–455, set out as a note under section 6013 of this title.

§7508. Time for performing certain acts postponed by reason of service in combat zone or contingency operation

(a) Time to be disregarded

In the case of an individual serving in the Armed Forces of the United States, or serving in support of such Armed Forces, in an area designated by the President of the United States by Executive order as a "combat zone" for purposes of section 112, or when deployed outside the United States away from the individual's permanent duty station while participating in an operation designated by the Secretary of Defense as a contingency operation (as defined in section 101(a)(13) of title 10, United States Code) or which became such a contingency operation by operation of law, at any time during the period designated by the President by Executive order as the period of combatant activities in such zone for purposes of such section or at any time during the period of such contingency operation, or hospitalized as a result of injury received while serving in such an area or operation during such time, the period of service in such area or operation, plus the period of continuous qualified hospitalization attributable to such injury, and the next 180 days thereafter, shall be disregarded in determining, under the internal revenue laws, in respect of any tax liability (including any interest, penalty, additional amount, or addition to the tax) of such individual—

(1) Whether any of the following acts was performed within the time prescribed therefor:

(A) Filing any return of income, estate, gift, employment, or excise tax;

(B) Payment of any income, estate, gift, employment, or excise tax or any installment thereof or of any other liability to the United States in respect thereof;

(C) Filing a petition with the Tax Court for redetermination of a deficiency, or for review of a decision rendered by the Tax Court;

(D) Allowance of a credit or refund of any tax;

(E) Filing a claim for credit or refund of any tax;

(F) Bringing suit upon any such claim for credit or refund;

(G) Assessment of any tax;

(H) Giving or making any notice or demand for the payment of any tax, or with respect to any liability to the United States in respect of any tax;

(I) Collection, by the Secretary, by levy or otherwise, of the amount of any liability in respect of any tax;

(J) Bringing suit by the United States, or any officer on its behalf, in respect of any liability in respect of any tax; and

(K) Any other act required or permitted under the internal revenue laws specified by the Secretary;

(2) The amount of any credit or refund.

(b) Special rule for overpayments

(1) In general

Subsection (a) shall not apply for purposes of determining the amount of interest on any overpayment of tax.

(2) Special rules

If an individual is entitled to the benefits of subsection (a) with respect to any return and such return is timely filed (determined after the application of such subsection), subsections (b)(3) and (e) of section 6611 shall not apply.

(c) Application to spouse

The provisions of this section shall apply to the spouse of any individual entitled to the benefits of subsection (a). Except in the case of the combat zone designated for purposes of the Vietnam conflict, the preceding sentence shall not cause this section to apply for any spouse for any taxable year beginning more than 2 years after the date designated under section 112 as the date of termination of combatant activities in a combat zone.

(d) Missing status

The period of service in the area or contingency operation referred to in subsection (a) shall include the period during which an individual entitled to benefits under subsection (a) is in a missing status, within the meaning of section 6013(f)(3).

(e) Exceptions

(1) Tax in jeopardy; cases under title 11 of the United States Code and receiverships; and transferred assets

Notwithstanding the provisions of subsection (a), any action or proceeding authorized by section 6851 (regardless of the taxable year for which the tax arose), chapter 70, or 71, as well as any other action or proceeding authorized by law in connection therewith, may be taken, begun, or prosecuted. In any other case in which the Secretary determines that collection of the amount of any assessment would be jeopardized by delay, the provisions of subsection (a) shall not operate to stay collection of such amount by levy or otherwise as authorized by law. There shall be excluded from any amount assessed or collected pursuant to this paragraph the amount of interest, penalty, additional amount, and addition to the tax, if any, in respect of the period disregarded under subsection (a). In any case to which this paragraph relates, if the Secretary is required to give any notice to or make any demand upon any person, such requirement shall be deemed to be satisfied if the notice or demand is prepared and signed, in any case in which the address of such person last known to the Secretary is in an area for which United States post offices under instructions of the Postmaster General are not, by reason of the combatant activities, accepting mail for delivery at the time the notice or demand is signed. In such case the notice or demand shall be deemed to have been given or made upon the date it is signed.

(2) Action taken before ascertainment of right to benefits

The assessment or collection of any internal revenue tax or of any liability to the United States in respect of any internal revenue tax, or any action or proceeding by or on behalf of the United States in connection therewith, may be made, taken, begun, or prosecuted in accordance with law, without regard to the provisions of subsection (a), unless prior to such assessment collection, action, or proceeding it is ascertained that the person concerned is entitled to the benefits of subsection (a).

(f) Treatment of individuals performing Desert Shield services

(1) In general

Any individual who performed Desert Shield services (and the spouse of such individual) shall be entitled to the benefits of this section in the same manner as if such services were services referred to in subsection (a).

(2) Desert Shield services

For purposes of this subsection, the term "Desert Shield services" means any services in the Armed Forces of the United States or in support of such Armed Forces if—

(A) such services are performed in the area designated by the President pursuant to this subparagraph as the "Persian Gulf Desert Shield area", and

(B) such services are performed during the period beginning on August 2, 1990, and ending on the date on which any portion of the area referred to in subparagraph (A) is designated by the President as a combat zone pursuant to section 112.

(g) Qualified hospitalization

For purposes of subsection (a), the term "qualified hospitalization" means—

(1) any hospitalization outside the United States, and

(2) any hospitalization inside the United States, except that not more than 5 years of hospitalization may be taken into account under this paragraph.

Paragraph (2) shall not apply for purposes of applying this section with respect to the spouse of an individual entitled to the benefits of subsection (a).

(Aug. 16, 1954, ch. 736, 68A Stat. 898; Pub. L. 93–597, §5(a), Jan. 2, 1975, 88 Stat. 1952; Pub. L. 94–455, title XIX, §1906(a)(51), (b)(13)(A), Oct. 4, 1976, 90 Stat. 1831, 1834; Pub. L. 94–569, §3(e), Oct. 20, 1976, 90 Stat. 2700; Pub. L. 96–589, §6(i)(14), Dec. 24, 1980, 94 Stat. 3411; Pub. L. 97–448, title III, §307(d), Jan. 12, 1983, 96 Stat. 2407; Pub. L. 99–514, title XVII, §1708(a)(4), Oct. 22, 1986, 100 Stat. 2782; Pub. L. 102–2, §1(a)–(c), Jan. 30, 1991, 105 Stat. 5; Pub. L. 107–134, title I, §112(b), Jan. 23, 2002, 115 Stat. 2434; Pub. L. 108–121, title I, §104(a)–(b)(2), Nov. 11, 2003, 117 Stat. 1338; Pub. L. 109–73, title IV, §403(a), Sept. 23, 2005, 119 Stat. 2027.)

AMENDMENTS

2005—Subsec. (a)(1)(A), (B). Pub. L. 109–73 amended subpars. (A) and (B) generally. Prior to amendment, text read as follows:

"(A) Filing any return of income, estate, or gift tax (except income tax withheld at source and income tax imposed by subtitle C or any law superseded thereby);

"(B) Payment of any income, estate, or gift tax (except income tax withheld at source and income tax imposed by subtitle C or any law superseded thereby) or any installment thereof or of any other liability to the United States in respect thereof;".

2003—Pub. L. 108–121, §104(b)(2), inserted "or contingency operation" after "combat zone" in section catchline.

Subsec. (a). Pub. L. 108–121, §104(a), in introductory provisions, inserted ", or when deployed outside the United States away from the individual's permanent duty station while participating in an operation designated by the Secretary of Defense as a contingency operation (as defined in section 101(a)(13) of title 10, United States Code) or which became such a contingency operation by operation of law" after "section 112", "or at any time during the period of such contingency operation" after "for purposes of such section", "or operation" after "such an area", and "or operation" after "such area".

Subsec. (d). Pub. L. 108–121, §104(b)(1), inserted "or contingency operation" after "area".

2002—Subsec. (a)(1)(K). Pub. L. 107–134 struck out "in regulations prescribed under this section" before "by the Secretary".

1991—Subsec. (a). Pub. L. 102–2, §1(c)(1), in introductory provisions, struck out "outside the United States" before "as a result of injury" and substituted "the period of continuous qualified hospitalization" for "the period of continuous hospitalization outside the United States".

Subsec. (a)(2). Pub. L. 102–2, §1(b)(2), struck out "(including interest)" after "refund".

Subsecs. (b) to (e). Pub. L. 102–2, §1(b)(1), added subsec. (b) and redesignated former subsecs. (b) to (d) as (c) to (e), respectively.

Subsecs. (f), (g). Pub. L. 102–2, §1(a), (c)(2), added subsecs. (f) and (g).

1986—Subsec. (b). Pub. L. 99–514 amended last sentence generally. Prior to amendment, last sentence read as follows: "The preceding sentence shall not cause this section to apply to any spouse for any taxable year beginning—

"(1) after December 31, 1982, in the case of service in the combat zone designated for purposes of the Vietnam conflict, or

"(2) more than 2 years after the date designated under section 112 as the date of termination of combatant activities in that zone, in the case of any combat zone other than that referred to in paragraph (1)."

1983—Subsec. (b)(1). Pub. L. 97–448 substituted "December 31, 1982" for "January 2, 1978".

1980—Subsec. (d). Pub. L. 96–589 substituted "cases under title 11 of the United States Code and receiverships" for "bankruptcy and receiverships" in par. (1) heading.

1976—Pub. L. 94–455, §1906(a)(51)(A), substituted "by reason of service in combat zone" for "by reason of war" in section catchline.

Subsec. (a). Pub. L. 94–455, §1906(a)(51)(B), (b)(13)(A), substituted "United States" for "States of the Union and the District of Columbia" in two places after "hospitalized outside the" and "hospitalization outside the", and struck out "or his delegate" after "Secretary".

Subsec. (b). Pub. L. 94–569 substituted "taxable year beginning" for "taxable year beginning more than 2 years after" in provisions preceding par. (1), substituted "after January 2, 1978" for "the date of the enactment of this subsection" in par. (1), and substituted "more than 2 years after the date designated" for "the date designated" in par. (2).

Subsec. (d). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary" wherever appearing.

1975—Subsecs. (b) to (d). Pub. L. 93–597 added subsecs. (b) and (c) and redesignated former subsec. (b) as (d).

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–73, title IV, §403(c), Sept. 23, 2005, 119 Stat. 2027, provided that: "The amendment made by subsection (a) [amending this section] shall apply for any period for performing an act which has not expired before August 25, 2005."

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–121, title I, §104(c), Nov. 11, 2003, 117 Stat. 1338, provided that: "The amendments made by this section [amending this section] shall apply to any period for performing an act which has not expired before the date of the enactment of this Act [Nov. 11, 2003]."

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–134 applicable to disasters and terroristic or military actions occurring on or after Sept. 11, 2001, with respect to any action of the Secretary of the Treasury, the Secretary of Labor, or the Pension Benefit Guaranty Corporation occurring on or after Jan. 23, 2002, see section 112(f) of Pub. L. 107–134, set out as a note under section 6081 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102–2, §1(d), Jan. 30, 1991, 105 Stat. 6, provided that: "The amendments made by this section [amending this section] shall take effect on August 2, 1990."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1982, see section 1708(b) of Pub. L. 99–514, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–589 effective Oct. 1, 1979, but not applicable to proceedings under Title 11, Bankruptcy, commenced before Oct. 1, 1979, see section 7(e) of Pub. L. 96–589, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1906(d)(1) of Pub. L. 94–455, set out as a note under section 6013 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Pub. L. 93–597, §5(b), Jan. 2, 1975, 88 Stat. 1953, provided that: "The amendments made by subsection (a) [amending this section] shall apply to taxable years ending on or after February 28, 1961."

TRANSFER OF FUNCTIONS

Office of Postmaster General of Post Office Department abolished and all functions, powers, and duties of Postmaster General transferred to United States Postal Service by Pub. L. 91–375, §4(a), Aug. 12, 1970, 84 Stat. 773, set out as a note under section 201 of Title 39, Postal Service.

EX. ORD. NO. 12750. DESIGNATION OF ARABIAN PENINSULA AREAS, AIRSPACE, AND ADJACENT WATERS AS PERSIAN GULF DESERT SHIELD AREA

Ex. Ord. No. 12750, Feb. 14, 1991, 56 F.R. 6785, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 7508 of the Internal Revenue Code of 1986 (26 U.S.C. 7508), I hereby designate, for purposes of that section, the following locations, including the air space above such locations, as the Persian Gulf Desert Shield area in which any individual who performed Desert Shield services (including the spouse of such individual) is entitled to the benefits of section 7508 of the Internal Revenue Code of 1986:

—the Persian Gulf

—the Red Sea

—the Gulf of Oman

—that portion of the Arabian Sea that lies north of 10 degrees north latitude and west of 68 degrees east longitude

—the Gulf of Aden

—the total land area of Iraq, Kuwait, Saudi Arabia, Oman, Bahrain, Qatar, and the United Arab Emirates.

GEORGE BUSH.

§7508A. Authority to postpone certain deadlines by reason of Presidentially declared disaster or terroristic or military actions

(a) In general

In the case of a taxpayer determined by the Secretary to be affected by a federally declared disaster (as defined by section 165(h)(3)(C)(i)) or a terroristic or military action (as defined in section 692(c)(2)), the Secretary may specify a period of up to 1 year that may be disregarded in determining, under the internal revenue laws, in respect of any tax liability of such taxpayer—

(1) whether any of the acts described in paragraph (1) of section 7508(a) were performed within the time prescribed therefor (determined without regard to extension under any other provision of this subtitle for periods after the date (determined by the Secretary) of such disaster or action),

(2) the amount of any interest, penalty, additional amount, or addition to the tax for periods after such date, and

(3) the amount of any credit or refund.

(b) Special rules regarding pensions, etc.

In the case of a pension or other employee benefit plan, or any sponsor, administrator, participant, beneficiary, or other person with respect to such plan, affected by a disaster or action described in subsection (a), the Secretary may specify a period of up to 1 year which may be disregarded in determining the date by which any action is required or permitted to be completed under this title.

No plan shall be treated as failing to be operated in accordance with the terms of the plan solely as the result of disregarding any period by reason of the preceding sentence.

(c) Special rules for overpayments

The rules of section 7508(b) shall apply for purposes of this section.

(Added Pub. L. 105–34, title IX, §911(a), Aug. 5, 1997, 111 Stat. 877; amended Pub. L. 107–16, title VIII, §802(a), June 7, 2001, 115 Stat. 149; Pub. L. 107–134, title I, §112(a), Jan. 23, 2002, 115 Stat. 2433; Pub. L. 110–343, div. C, title VII, §706(a)(2)(D)(vii), Oct. 3, 2008, 122 Stat. 3922.)

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–343 substituted "federally declared disaster (as defined by section 165(h)(3)(C)(i))" for "Presidentially declared disaster (as defined in section 1033(h)(3))" in introductory provisions.

2002—Pub. L. 107–134 amended section catchline and text generally, substituting present provisions for provisions which had: in subsec. (a), authorized Secretary to postpone certain tax-related deadlines by reason of presidentially declared disaster, and in subsec. (b), provided that subsec. (a) would not apply for the purpose of determining interest on any overpayment or underpayment.

2001—Subsec. (a). Pub. L. 107–16 substituted "120 days" for "90 days" in introductory provisions.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–343 applicable to disasters declared in taxable years beginning after Dec. 31, 2007, see section 706(d)(1) of Pub. L. 110–343, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–134 applicable to disasters and terroristic or military actions occurring on or after Sept. 11, 2001, with respect to any action of the Secretary of the Treasury, the Secretary of Labor, or the Pension Benefit Guaranty Corporation occurring on or after Jan. 23, 2002, see section 112(f) of Pub. L. 107–134, set out as a note under section 6081 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–16, title VIII, §802(b), June 7, 2001, 115 Stat. 149, provided that: "The amendment made by this section [amending this section] shall take effect on the date of enactment of this Act [June 7, 2001]."

EFFECTIVE DATE

Pub. L. 105–34, title IX, §911(c), Aug. 5, 1997, 111 Stat. 878, provided that: "The amendments made by this section [enacting this section] shall apply with respect to any period for performing an act that has not expired before the date of the enactment of this Act [Aug. 5, 1997]."

AUTHORITY TO POSTPONE CERTAIN TAX-RELATED DEADLINES BY REASON OF Y2K FAILURES

Pub. L. 106–170, title V, §522, Dec. 17, 1999, 113 Stat. 1927, provided that:

"(a) IN GENERAL.—In the case of a taxpayer determined by the Secretary of the Treasury (or the Secretary's delegate) to be affected by a Y2K failure, the Secretary may disregard a period of up to 90 days in determining, under the internal revenue laws, in respect of any tax liability (including any interest, penalty, additional amount, or addition to the tax) of such taxpayer—

"(1) whether any of the acts described in paragraph (1) of section 7508(a) of the Internal Revenue Code of 1986 (without regard to the exceptions in parentheses in subparagraphs (A) and (B)) were performed within the time prescribed therefor; and

"(2) the amount of any credit or refund.

"(b) APPLICABILITY OF CERTAIN RULES.—For purposes of this section, rules similar to the rules of subsections (b) and (e) of section 7508 of the Internal Revenue Code of 1986 shall apply."

ABATEMENT OF INTEREST ON UNDERPAYMENTS BY TAXPAYERS IN PRESIDENTIALLY DECLARED DISASTER AREAS

Pub. L. 105–34, title IX, §915, Aug. 5, 1997, 111 Stat. 879, as amended by Pub. L. 105–277, div. J, title IV, §4003(e)(1), Oct. 21, 1998, 112 Stat. 2681–909, provided that:

"(a) IN GENERAL.—If the Secretary of the Treasury extends for any period the time for filing income tax returns under section 6081 of the Internal Revenue Code of 1986 and the time for paying income tax with respect to such returns under section 6161 of such Code (and waives any penalties relating to the failure to so

file or so pay) for any individual located in a Presidentially declared disaster area, the Secretary shall, notwithstanding section 7508A(b) of such Code, abate for such period the assessment of any interest prescribed under section 6601 of such Code on such income tax.

"(b) PRESIDENTIALLY DECLARED DISASTER AREA.—For purposes of subsection (a), the term 'Presidentially declared disaster area' means, with respect to any individual, any area which the President has determined during 1997 or 1998 warrants assistance by the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act [42 U.S.C. 5121 et seq.].

"(c) INDIVIDUAL.—For purposes of this section, the term 'individual' shall not include any estate or trust.

"(d) EFFECTIVE DATE.—This section shall apply to disasters declared after December 31, 1996."

§7509. Expenditures incurred by the United States Postal Service

The Postmaster General or his delegate shall at least once a month transfer to the Treasury of the United States a statement of the additional expenditures in the District of Columbia and elsewhere incurred by the United States Postal Service in performing the duties, if any, imposed upon such Service with respect to chapter 21, relating to the tax under the Federal Insurance Contributions Act, and the Secretary shall be authorized and directed to advance from time to time to the credit of the United States Postal Service, from appropriations made for the collection of the taxes imposed by chapter 21, such sums as may be required for such additional expenditures incurred by the United States Postal Service.

(Aug. 16, 1954, ch. 736, 68A Stat. 899; Pub. L. 94–455, title XIX, §1906(a)(52), (b)(13)(A), Oct. 4, 1976, 90 Stat. 1832, 1834.)

REFERENCES IN TEXT

The Federal Insurance Contributions Act, referred to in text, is act Aug. 16, 1954, ch. 736, §§3101, 3102, 3111, 3112, 3121 to 3128, 68A Stat. 415, as amended, which is classified generally to chapter 21 (§3101 et seq.) of this title. For complete classification of this Act to the Code, see section 3128 of this title and Tables.

AMENDMENTS

1976—Pub. L. 94–455 substituted "United States Postal Service" for "Post Office Department" in section catchline and wherever appearing in text, "such Service" for "such Department", and struck out ", together with the receipts required to be deposited under section 6803(a)," after "Treasury of the United States" and "or his delegate" after "Secretary".

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1906(d)(1) of Pub. L. 94–455, set out as a note under section 6013 of this title.

§7510. Exemption from tax of domestic goods purchased for the United States

The privilege existing by provision of law on December 1, 1873, or thereafter of purchasing supplies of goods imported from foreign countries for the use of the United States, duty free, shall be extended, under such regulations as the Secretary may prescribe, to all articles of domestic production which are subject to tax by the provisions of this title.

(Aug. 16, 1954, ch. 736, 68A Stat. 900; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

[§7511. Repealed. Pub. L. 87–456, title III, §302(d), May 24, 1962, 76 Stat. 77]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 900, related to exemption of consular officers and employees of foreign states from payment of internal revenue taxes on imported articles.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after Aug. 31, 1963, see section 501(a) of Pub. L. 87–456, title V, May 24, 1962, 76 Stat. 78.

§7512. Separate accounting for certain collected taxes, etc.

(a) General rule

Whenever any person who is required to collect, account for, and pay over any tax imposed by subtitle C or chapter 33—

(1) at the time and in the manner prescribed by law or regulations (A) fails to collect, truthfully account for, or pay over such tax, or (B) fails to make deposits, payments, or returns of such tax, and

(2) is notified, by notice delivered in hand to such person, of any such failure,

then all the requirements of subsection (b) shall be complied with. In the case of a corporation, partnership, or trust, notice delivered in hand to an officer, partner, or trustee, shall, for purposes of this section, be deemed to be notice delivered in hand to such corporation, partnership, or trust and to all officers, partners, trustees, and employees thereof.

(b) Requirements

Any person who is required to collect, account for, and pay over any tax imposed by subtitle C or chapter 33, if notice has been delivered to such person in accordance with subsection (a), shall collect the taxes imposed by subtitle C or chapter 33 which become collectible after delivery of such notice, shall (not later than the end of the second banking day after any amount of such taxes is collected) deposit such amount in a separate account in a bank (as defined in section 581), and shall keep the amount of such taxes in such account until payment over to the United States. Any such account shall be designated as a special fund in trust for the United States, payable to the United States by such person as trustee.

(c) Relief from further compliance with subsection (b)

Whenever the Secretary is satisfied, with respect to any notification made under subsection (a), that all requirements of law and regulations with respect to the taxes imposed by subtitle C or chapter 33, as the case may be, will henceforth be complied with, he may cancel such notification. Such cancellation shall take effect at such time as is specified in the notice of such cancellation.

(Added Pub. L. 85–321, §1, Feb. 11, 1958, 72 Stat. 5; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–223, title I, §101(c)(3), Apr. 2, 1980, 94 Stat. 251; Pub. L. 100–418, title I, §1941(b)(2)(O), Aug. 23, 1988, 102 Stat. 1324.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–418, §1941(b)(2)(O)(i), substituted "or chapter 33" for ", by chapter 33, or by section 4986" in introductory provisions.

Subsec. (b). Pub. L. 100–418, §1941(b)(2)(O)(i), (ii), substituted "or chapter 33" for ", by chapter 33, or by section 4986" and "or chapter 33" for ", chapter 33, or section 4986".

Subsec. (c). Pub. L. 100–418, §1941(b)(2)(O)(ii), substituted "or chapter 33" for ", chapter 33, or section 4986".

1980—Subsecs. (a) to (c). Pub. L. 96–223 inserted references to tax imposed by section 4986.

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–418 applicable to crude oil removed from the premises on or after Aug. 23, 1988, see section 1941(c) of Pub. L. 100–418, set out as a note under section 164 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–223 applicable to periods after Feb. 29, 1980, see section 101(i) of Pub. L. 96–223, set out as a note under section 6161 of this title.

NOTIFICATION OF FAILURE TO COLLECT, ACCOUNT FOR, AND PAY OVER TAXES

Pub. L. 85–321, §4, Feb. 11, 1958, 72 Stat. 6, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Notification may be made under section 7512(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by the first section of this Act)—

"(1) in the case of taxes imposed by subtitle C of such Code, only with respect to pay periods beginning after the date of the enactment of this Act [Feb. 11, 1958]; and

"(2) in the case of taxes imposed by chapter 33 of such Code, only with respect to taxes so imposed after the date of the enactment of this Act [Feb. 11, 1958]."

§7513. Reproduction of returns and other documents

(a) In general

The Secretary is authorized to have any Federal agency or any person process films or other photoimpressions of any return, document, or other matter, and make reproductions from films or photoimpressions of any return, document, or other matter.

(b) Regulations

The Secretary shall prescribe regulations which shall provide such safeguards as in the opinion of the Secretary are necessary or appropriate to protect the film, photoimpressions, and reproductions made therefrom, against any unauthorized use, and to protect the information contained therein against any unauthorized disclosure.

(c) Penalty

For penalty for violation of regulations for safeguarding against unauthorized use of any film or photoimpression, or reproduction made therefrom, and against unauthorized disclosure of information contained therein, see section 7213.

(Added Pub. L. 85–866, title I, §90(a), Sept. 2, 1958, 72 Stat. 1666; amended Pub. L. 94–455, title XII, §1202(f), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1687, 1834.)

AMENDMENTS

1976—Subsecs. (a), (b). Pub. L. 94–455, §1906(b) (13)(A), struck out "or his delegate" after "Secretary" wherever appearing.

Subsecs. (c), (d). Pub. L. 94–455, §1202(f), redesignated subsec. (d) as (c) and struck out former subsec. (c) which related to legal status and evidentiary use of reproductions.

EFFECTIVE DATE

Section effective Aug. 17, 1954, see section 1(c) of Pub. L. 85–866, set out as an Effective Date of 1958 Amendment note under section 165 of this title.

§7514. Authority to prescribe or modify seals

The Secretary is authorized to prescribe or modify seals of office for the district directors of internal revenue and other officers or employees of the Treasury Department to whom any of the functions of the Secretary of the Treasury shall have been or may be delegated. Each seal so prescribed shall contain such device as the Secretary may select. Each seal shall remain in the custody of any officer or employee whom the Secretary may designate, and, in accordance with the regulations approved by the Secretary, may be affixed in lieu of the seal of the Treasury Department to any certificate or attestation (except for material to be published in the Federal Register) that may be required of such officer or employee. Judicial notice shall be taken of any seal prescribed in accordance with this authority, a facsimile of which has been published in the Federal Register together with the regulations prescribing such seal and the affixation thereof.

(Added Pub. L. 85–866, title I, §91(a), Sept. 2, 1958, 72 Stat. 1667; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), (M), Oct. 4, 1976, 90 Stat. 1834, 1835.)

AMENDMENTS

1976—Pub. L. 94–455 substituted "functions of the Secretary of the Treasury" for "functions of the Secretary" after "whom any of the" and struck out "or his delegate" after "Secretary" wherever appearing.

EFFECTIVE DATE

Section effective Aug. 17, 1954, see section 1(c) of Pub. L. 85–866, set out as an Effective Date of 1958 Amendment note under section 165 of this title.

[§7515. Repealed. Pub. L. 94–455, title XII, §1202(h)(4), Oct. 4, 1976, 90 Stat. 1688]

Section, added Pub. L. 87–870, §3(a)(1), Oct. 23, 1962, 76 Stat. 1160, authorized Secretary, within his discretion and upon written request, to make special statistical studies and compilations from any information received by compliance with this title, such studies were authorized to be made jointly with party or parties requesting them and transcripts to be made available to requesting party for a fee.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 1977, see section 1202(i) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 6103 of this title.

§7516. Supplying training and training aids on request

The Secretary is authorized within his discretion, upon written request, to admit employees and officials of any State, the Commonwealth of Puerto Rico, any possession of the United States, any political subdivision or instrumentality of any of the foregoing, the District of Columbia, or any foreign government to training courses conducted by the Internal Revenue Service, and to supply them with texts and other training aids. The Secretary may require payment from the party or parties making the request of a reasonable fee not to exceed the cost of the training and training aids supplied pursuant to such request.

(Added Pub. L. 87–870, §3(a)(1), Oct. 23, 1962, 76 Stat. 1160; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

§7517. Furnishing on request of statement explaining estate or gift valuation

(a) General rule

If the Secretary makes a determination or a proposed determination of the value of an item of property for purposes of the tax imposed under chapter 11, 12, or 13, he shall furnish, on the written request of the executor, donor, or the person required to make the return of the tax imposed by chapter 13 (as the case may be), to such executor, donor, or person a written statement containing the material required by subsection (b). Such statement shall be furnished not later than 45 days after the later of the date of such request or the date of such determination or proposed determination.

(b) Contents of statement

A statement required to be furnished under subsection (a) with respect to the value of an item of property shall—

(1) explain the basis on which the valuation was determined or proposed,

(2) set forth any computation used in arriving at such value, and

(3) contain a copy of any expert appraisal made by or for the Secretary.

(c) Effect of statement

Except to the extent otherwise provided by law, the value determined or proposed by the Secretary with respect to which a statement is furnished under this section, and the method used in arriving at such value, shall not be binding on the Secretary.

(Added Pub. L. 94–455, title XX, §2008(a)(1), Oct. 4, 1976, 90 Stat. 1891.)

EFFECTIVE DATE

Pub. L. 94–455, title XX, §2008(d)(1), Oct. 4, 1976, 90 Stat. 1892, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by subsection (a) [enacting this section and amending sections 2031 and 2512 of this title]—

"(A) insofar as they relate to the tax imposed under chapter 11 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954, section 2001 et seq. of this title], shall apply to the estates of decedents dying after December 31, 1976, and

"(B) insofar as they relate to the tax imposed under chapter 12 of such Code [section 2501 et seq. of this title], shall apply to gifts made after December 31, 1976."

§7518. Tax incentives relating to merchant marine capital construction funds

(a) Ceiling on deposits

(1) In general

The amount deposited in a fund established under chapter 535 of title 46 of the United States Code (hereinafter in this section referred to as a "capital construction fund") shall not exceed for any taxable year the sum of:

(A) that portion of the taxable income of the owner or lessee for such year (computed as provided in chapter 1 but without regard to the carryback of any net operating loss or net capital loss and without regard to this section) which is attributable to the operation of the agreement vessels in the foreign or domestic commerce of the United States or in the fisheries of the United States,

(B) the amount allowable as a deduction under section 167 for such year with respect to the agreement vessels,

(C) if the transaction is not taken into account for purposes of subparagraph (A), the net proceeds (as defined in joint regulations) from—

(i) the sale or other disposition of any agreement vessel, or

(ii) insurance or indemnity attributable to any agreement vessel, and

(D) the receipts from the investment or reinvestment of amounts held in such fund.

(2) Limitations on deposits by lessees

In the case of a lessee, the maximum amount which may be deposited with respect to an agreement vessel by reason of paragraph (1)(B) for any period shall be reduced by any amount which, under an agreement entered into under chapter 535 of title 46, United States Code, the owner is required or permitted to deposit for such period with respect to such vessel by reason of paragraph (1)(B).

(3) Certain barges and containers included

For purposes of paragraph (1), the term "agreement vessel" includes barges and containers which are part of the complement of such vessel and which are provided for in the agreement.

(b) Requirements as to investments

(1) In general

Amounts in any capital construction fund shall be kept in the depository or depositories specified in the agreement and shall be subject to such trustee and other fiduciary requirements as may be specified by the Secretary.

(2) Limitation on fund investments

Amounts in any capital construction fund may be invested only in interest-bearing securities approved by the Secretary; except that, if such Secretary consents thereto, an agreed percentage (not in excess of 60 percent) of the assets of the fund may be invested in the stock of domestic corporations. Such stock must be currently fully listed and registered on an exchange registered with the Securities and Exchange Commission as a national securities exchange, and must be stock which would be acquired by prudent men of discretion and intelligence in such matters who are seeking a reasonable income and the preservation of their capital. If at any time the fair market value of the stock in the fund is more than the agreed percentage of the assets in the fund, any subsequent investment of amounts deposited in the fund, and any subsequent withdrawal from the fund, shall be made in such a way as to tend to restore the fund to a situation in which the fair market value of the stock does not exceed such agreed percentage.

(3) Investment in certain preferred stock permitted

For purposes of this subsection, if the common stock of a corporation meets the requirements of this subsection and if the preferred stock of such corporation would meet such requirements but for the fact that it cannot be listed and registered as required because it is nonvoting stock, such preferred stock shall be treated as meeting the requirements of this subsection.

(c) Nontaxability for deposits

(1) In general

For purposes of this title—

(A) taxable income (determined without regard to this section and chapter 535 of title 46, United States Code) for the taxable year shall be reduced by an amount equal to the amount deposited for the taxable year out of amounts referred to in subsection (a)(1)(A),

(B) gain from a transaction referred to in subsection (a)(1)(C) shall not be taken into account if an amount equal to the net proceeds (as defined in joint regulations) from such transaction is deposited in the fund,

(C) the earnings (including gains and losses) from the investment and reinvestment of amounts held in the fund shall not be taken into account,

(D) the earnings and profits (within the meaning of section 316) of any corporation shall be determined without regard to this section and chapter 535 of title 46, United States Code, and

(E) in applying the tax imposed by section 531 (relating to the accumulated earnings tax), amounts while held in the fund shall not be taken into account.

(2) Only qualified deposits eligible for treatment

Paragraph (1) shall apply with respect to any amount only if such amount is deposited in the fund pursuant to the agreement and not later than the time provided in joint regulations.

(d) Establishment of accounts

For purposes of this section—

(1) In general

Within a capital construction fund 3 accounts shall be maintained:

(A) the capital account,

(B) the capital gain account, and

(C) the ordinary income account.

(2) Capital account

The capital account shall consist of—

(A) amounts referred to in subsection (a)(1)(B),

(B) amounts referred to in subsection (a)(1)(C) other than that portion thereof which represents gain not taken into account by reason of subsection (c)(1)(B),

(C) the percentage applicable under section 243(a)(1) of any dividend received by the fund with respect to which the person maintaining the fund would (but for subsection (c)(1)(C)) be allowed a deduction under section 243, and

(D) interest income exempt from taxation under section 103.

(3) Capital gain account

The capital gain account shall consist of—

(A) amounts representing capital gains on assets held for more than 6 months and referred to in subsection (a)(1)(C) or (a)(1)(D), reduced by

(B) amounts representing capital losses on assets held in the fund for more than 6 months.

(4) Ordinary income account

The ordinary income account shall consist of—

(A) amounts referred to in subsection (a)(1)(A),

(B)(i) amounts representing capital gains on assets held for 6 months or less and referred to in subsection (a)(1)(C) or (a)(1)(D), reduced by

(ii) amounts representing capital losses on assets held in the fund for 6 months or less,

(C) interest (not including any tax-exempt interest referred to in paragraph (2)(D)) and other ordinary income (not including any dividend referred to in subparagraph (E)) received on assets held in the fund,

(D) ordinary income from a transaction described in subsection (a)(1)(C), and

(E) the portion of any dividend referred to in paragraph (2)(C) not taken into account under such paragraph.

(5) Capital losses only allowed to offset certain gains

Except on termination of a capital construction fund, capital losses referred to in paragraph (3)(B) or in paragraph (4)(B)(ii) shall be allowed only as an offset to gains referred to in paragraph (3)(A) or (4)(B)(i), respectively.

(e) Purposes of qualified withdrawals

(1) In general

A qualified withdrawal from the fund is one made in accordance with the terms of the agreement but only if it is for:

(A) the acquisition, construction, or reconstruction of a qualified vessel,

(B) the acquisition, construction, or reconstruction of barges and containers which are part of the complement of a qualified vessel, or

(C) the payment of the principal on indebtedness incurred in connection with the acquisition, construction, or reconstruction of a qualified vessel or a barge or container which is part of the complement of a qualified vessel.

Except to the extent provided in regulations prescribed by the Secretary, subparagraph (B), and so much of subparagraph (C) as relates only to barges and containers, shall apply only with respect to barges and containers constructed in the United States.

(2) Penalty for failing to fulfill any substantial obligation

Under joint regulations, if the Secretary determines that any substantial obligation under any agreement is not being fulfilled, he may, after notice and opportunity for hearing to the person maintaining the fund, treat the entire fund or any portion thereof as an amount withdrawn from the fund in a nonqualified withdrawal.

(f) Tax treatment of qualified withdrawals

(1) Ordering rule

Any qualified withdrawal from a fund shall be treated—

(A) first as made out of the capital account,

(B) second as made out of the capital gain account, and

(C) third as made out of the ordinary income account.

(2) Adjustment to basis of vessel, etc., where withdrawal from ordinary income account

If any portion of a qualified withdrawal for a vessel, barge, or container is made out of the ordinary income account, the basis of such vessel, barge, or container shall be reduced by an amount equal to such portion.

(3) Adjustment to basis of vessel, etc., where withdrawal from capital gain account

If any portion of a qualified withdrawal for a vessel, barge, or container is made out of the capital gain account, the basis of such vessel, barge, or container shall be reduced by an amount equal to such portion.

(4) Adjustment to basis of vessels, etc., where withdrawals pay principal on debt

If any portion of a qualified withdrawal to pay the principal on any indebtedness is made out of the ordinary income account or the capital gain account, then an amount equal to the aggregate reduction which would be required by paragraphs (2) and (3) if this were a qualified withdrawal for a purpose described in such paragraphs shall be applied, in the order provided in joint regulations, to reduce the basis of vessels, barges, and containers owned by the person maintaining the fund. Any amount of a withdrawal remaining after the application of the preceding sentence shall be treated as a nonqualified withdrawal.

(5) Ordinary income recapture of basis reduction

If any property the basis of which was reduced under paragraph (2), (3), or (4) is disposed of, any gain realized on such disposition, to the extent it does not exceed the aggregate reduction in the basis of such property under such paragraphs, shall be treated as an amount referred to in subsection (g)(3)(A) which was withdrawn on the date of such disposition. Subject to such conditions and requirements as may be provided in joint regulations, the preceding sentence shall not apply to a disposition where there is a redeposit in an amount determined under joint regulations which will, insofar as practicable, restore the fund to the position it was in before the withdrawal.

(g) Tax treatment of nonqualified withdrawals

(1) In general

Except as provided in subsection (h), any withdrawal from a capital construction fund which is not a qualified withdrawal shall be treated as a nonqualified withdrawal.

(2) Ordering rule

Any nonqualified withdrawal from a fund shall be treated—

(A) first as made out of the ordinary income account,

(B) second as made out of the capital gain account, and

(C) third as made out of the capital account.

For purposes of this section, items withdrawn from any account shall be treated as withdrawn on a first-in-first-out basis; except that (i) any nonqualified withdrawal for research, development, and design expenses incident to new and advanced ship design, machinery and equipment, and (ii) any amount treated as a nonqualified withdrawal under the second sentence of subsection (f)(4), shall be treated as withdrawn on a last-in-first-out basis.

(3) Operating rules

For purposes of this title—

(A) any amount referred to in paragraph (2)(A) shall be included in income as an item of ordinary income for the taxable year in which the withdrawal is made,

(B) any amount referred to in paragraph (2)(B) shall be included in income for the taxable year in which the withdrawal is made as an item of gain realized during such year from the disposition of an asset held for more than 6 months, and

(C) for the period on or before the last date prescribed for payment of tax for the taxable year in which this withdrawal is made—

(i) no interest shall be payable under section 6601 and no addition to the tax shall be

payable under section 6651,

(ii) interest on the amount of the additional tax attributable to any item referred to in subparagraph (A) or (B) shall be paid at the applicable rate (as defined in paragraph (4)) from the last date prescribed for payment of the tax for the taxable year for which such item was deposited in the fund, and

(iii) no interest shall be payable on amounts referred to in clauses (i) and (ii) of paragraph (2) or in the case of any nonqualified withdrawal arising from the application of the recapture provision of section 606(5) of the Merchant Marine Act, 1936, as in effect on December 31, 1969.

(4) Interest rate

For purposes of paragraph (3)(C)(ii), the applicable rate of interest for any nonqualified withdrawal—

(A) made in a taxable year beginning in 1970 or 1971 is 8 percent, or

(B) made in a taxable year beginning after 1971, shall be determined and published jointly by the Secretary of the Treasury or his delegate and the applicable Secretary and shall bear a relationship to 8 percent which the Secretaries determine under joint regulations to be comparable to the relationship which the money rates and investment yields for the calendar year immediately preceding the beginning of the taxable year bear to the money rates and investment yields for the calendar year 1970.

(5) Amount not withdrawn from fund after 25 years from deposit taxed as nonqualified withdrawal

(A) In general

The applicable percentage of any amount which remains in a capital construction fund at the close of the 26th, 27th, 28th, 29th, or 30th taxable year following the taxable year for which such amount was deposited shall be treated as a nonqualified withdrawal in accordance with the following table:

If the amount remains in the fund at the close of the—	The applicable percentage is—
26th taxable year	20 percent
27th taxable year	40 percent
28th taxable year	60 percent
29th taxable year	80 percent
30th taxable year	100 percent.

(B) Earnings treated as deposits

The earnings of any capital construction fund for any taxable year (other than net gains) shall be treated for purposes of this paragraph as an amount deposited for such taxable year.

(C) Amounts committed treated as withdrawn

For purposes of subparagraph (A), an amount shall not be treated as remaining in a capital construction fund at the close of any taxable year to the extent there is a binding contract at the close of such year for a qualified withdrawal of such amount with respect to an identified item for which such withdrawal may be made.

(D) Authority to treat excess funds as withdrawn

If the Secretary determines that the balance in any capital construction fund exceeds the amount which is appropriate to meet the vessel construction program objectives of the person who established such fund, the amount of such excess shall be treated as a nonqualified

withdrawal under subparagraph (A) unless such person develops appropriate program objectives within 3 years to dissipate such excess.

(E) Amounts in fund on January 1, 1987

For purposes of this paragraph, all amounts in a capital construction fund on January 1, 1987, shall be treated as deposited in such fund on such date.

(6) Nonqualified withdrawals taxed at highest marginal rate

(A) In general

In the case of any taxable year for which there is a nonqualified withdrawal (including any amount so treated under paragraph (5)), the tax imposed by chapter 1 shall be determined—

(i) by excluding such withdrawal from gross income, and

(ii) by increasing the tax imposed by chapter 1 by the product of the amount of such withdrawal and the highest rate of tax specified in section 1 (section 11 in the case of a corporation).

With respect to the portion of any nonqualified withdrawal made out of the capital gain account during a taxable year to which section 1(h) or 1201(a) applies, the rate of tax taken into account under the preceding sentence shall not exceed 20 percent (34 percent in the case of a corporation).

(B) Tax benefit rule

If any portion of a nonqualified withdrawal is properly attributable to deposits (other than earnings on deposits) made by the taxpayer in any taxable year which did not reduce the taxpayer's liability for tax under chapter 1 for any taxable year preceding the taxable year in which such withdrawal occurs—

(i) such portion shall not be taken into account under subparagraph (A), and

(ii) an amount equal to such portion shall be treated as allowed as a deduction under section 172 for the taxable year in which such withdrawal occurs.

(C) Coordination with deduction for net operating losses

Any nonqualified withdrawal excluded from gross income under subparagraph (A) shall be excluded in determining taxable income under section 172(b)(2).

(h) Certain corporate reorganizations and changes in partnerships

Under joint regulations—

(1) a transfer of a fund from one person to another person in a transaction to which section 381 applies may be treated as if such transaction did not constitute a nonqualified withdrawal, and

(2) a similar rule shall be applied in the case of a continuation of a partnership.

(i) Definitions

For purposes of this section, any term defined in section 607(k) of the Merchant Marine Act, 1936 which is also used in this section (including the definition of "Secretary") shall have the meaning given such term by such section 607(k) as in effect on the date of the enactment of this section.

(Added Pub. L. 99–514, title II, §261(b), Oct. 22, 1986, 100 Stat. 2208; amended Pub. L. 100–647, title I, §§1002(m)(1), 1018(u)(23), Nov. 10, 1988, 102 Stat. 3382, 3591; Pub. L. 101–508, title XI, §11101(d)(7)(A), Nov. 5, 1990, 104 Stat. 1388–405; Pub. L. 105–34, title III, §311(c)(2), Aug. 5, 1997, 111 Stat. 835; Pub. L. 108–27, title III, §301(a)(2)(D), May 28, 2003, 117 Stat. 758; Pub. L. 109–304, §17(e)(6), Oct. 6, 2006, 120 Stat. 1708; Pub. L. 112–240, title I, §102(c)(1)(D), Jan. 2, 2013, 126 Stat. 2319.)

REFERENCES IN TEXT

Section 606(5) of the Merchant Marine Act, 1936, as in effect on December 31, 1969, referred to in subsec. (g)(3)(C)(iii), was section 606(5) of act June 29, 1936, ch. 858, title VI, 49 Stat. 2004, as amended by acts June 23, 1938, ch. 600, §22, 52 Stat. 960; July 17, 1952, ch. 939, §16, 66 Stat. 764; and May 10, 1956, ch. 247, §1, 70 Stat. 148, which was classified to section 1176(5) of former Title 46, Shipping, and was repealed

by Pub. L. 91–469, §20(4), Oct. 21, 1970, 84 Stat. 1026. Section 606 of the Merchant Marine Act, 1936 was subsequently transferred to section 1176 of the former Appendix to Title 46 and is now set out as a note under section 53101 of Title 46, Shipping.

Section 607(k) of the Merchant Marine Act, 1936, referred to in subsec. (i), was classified to section 1177(k) of the former Appendix to Title 46, Shipping, and was repealed and partially restated in section 53501 of Title 46, Shipping, by Pub. L. 109–304, §§8(c), 19, Oct. 6, 2006, 120 Stat. 1586, 1710. For disposition of sections of the former Appendix to Title 46, see Disposition Table preceding section 101 of Title 46.

The date of the enactment of this section, referred to in subsec. (i), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

AMENDMENTS

2013—Subsec. (g)(6)(A). Pub. L. 112–240 substituted "20 percent" for "15 percent" in concluding provisions.

2006—Subsec. (a)(1). Pub. L. 109–304, §17(e)(6)(A), substituted "chapter 535 of title 46 of the United States Code" for "section 607 of the Merchant Marine Act, 1936".

Subsecs. (a)(2), (c)(1)(A), (D). Pub. L. 109–304, §17(e)(6)(B), substituted "chapter 535 of title 46, United States Code" for "section 607 of the Merchant Marine Act, 1936".

Subsec. (g)(3)(C)(iii). Pub. L. 109–304, §17(e)(6)(C), substituted "Merchant Marine Act, 1936," for "Merchant Marine Act of 1936".

2003—Subsec. (g)(6)(A). Pub. L. 108–27 substituted "15 percent" for "20 percent" in concluding provisions.

1997—Subsec. (g)(6)(A). Pub. L. 105–34 substituted "20 percent" for "28 percent" in concluding provisions.

1990—Subsec. (g)(6)(A). Pub. L. 101–508 substituted "section 1(h)" for "section 1(j)" in last sentence.

1988—Subsec. (g)(1). Pub. L. 100–647, §1018(u)(23), substituted "not a qualified withdrawal" for "not qualified withdrawal".

Subsec. (g)(6)(A). Pub. L. 100–647, §1002(m)(1), substituted "section 1(j)" for "section 1(i)".

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112–240 applicable to taxable years beginning after Dec. 31, 2012, see section 102(d)(1) of Pub. L. 112–240, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–27 applicable to taxable years ending on or after May 6, 2003, see section 301(d) of Pub. L. 108–27, set out as an Effective and Termination Dates of 2003 Amendment note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to taxable years ending after May 6, 1997, see section 311(d) of Pub. L. 105–34, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, see section 11101(e) of Pub. L. 101–508, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Pub. L. 99–514, title II, §261(g), Oct. 22, 1986, 100 Stat. 2216, provided that: "The amendments made by this section [enacting this section and amending section 26 of this title and section 1177 of Title 46, Appendix, Shipping] shall apply to taxable years beginning after December 31, 1986."

MERCHANT MARINE CAPITAL CONSTRUCTION FUNDS

Pub. L. 99–514, title II, §261(a), Oct. 22, 1986, 100 Stat. 2208, provided that: "The purpose of this section [enacting this section, amending section 26 of this title and section 1177 of Title 46, Appendix, and enacting provisions set out as a note above] is to coordinate the application of the Internal Revenue Code of 1986 with

the capital construction program under the Merchant Marine Act, 1936 [see 46 U.S.C. 53501 et seq.]."

§7519. Required payments for entities electing not to have required taxable year

(a) General rule

This section applies to a partnership or S corporation for any taxable year, if—

(1) an election under section 444 is in effect for the taxable year, and

(2) the required payment determined under subsection (b) for such taxable year (or any preceding taxable year) exceeds $500.

(b) Required payment

For purposes of this section, the term "required payment" means, with respect to any applicable election year of a partnership or S corporation, an amount equal to—

(1) the excess of the product of—

(A) the applicable percentage of the adjusted highest section 1 rate, multiplied by

(B) the net base year income of the entity, over

(2) the net required payment balance.

For purposes of paragraph (1)(A), the term "adjusted highest section 1 rate" means the highest rate of tax in effect under section 1 as of the end of the base year plus 1 percentage point (or, in the case of applicable election years beginning in 1987, 36 percent).

(c) Refund of payments

(1) In general

If, for any applicable election year, the amount determined under subsection (b)(2) exceeds the amount determined under subsection (b)(1), the entity shall be entitled to a refund of such excess for such year.

(2) Termination of elections, etc.

If—

(A) an election under section 444 is terminated effective with respect to any year, or

(B) the entity is liquidated during any year, the entity shall be entitled to a refund of the net required payment balance.

(3) Date on which refund payable

Any refund under this subsection shall be payable on the later of—

(A) April 15 of the calendar year following—

(i) in the case of the year referred to in paragraph (1), the calendar year in which it begins,

(ii) in the case of the year referred to in paragraph (2), the calendar year in which it ends, or

(B) the day 90 days after the day on which claim therefor is filed with the Secretary.

(d) Net base year income

For purposes of this section—

(1) In general

An entity's net base year income shall be equal to the sum of—

(A) the deferral ratio multiplied by the entity's net income for the base year, plus

(B) the excess (if any) of—

(i) the deferral ratio multiplied by the aggregate amount of applicable payments made by the entity during the base year, over

(ii) the aggregate amount of such applicable payments made during the deferral period of

the base year.

For purposes of this paragraph, the term "deferral ratio" means the ratio which the number of months in the deferral period of the base year bears to the number of months in the partnership's or S corporation's taxable year.

(2) Net income

Net income is determined by taking into account the aggregate amount of the following items—

(A) Partnerships

In the case of a partnership, net income shall be the amount (not below zero) determined by taking into account the aggregate amount of the partnership's items described in section 702(a) (other than credits and tax-exempt income).

(B) S corporations

In the case of an S corporation, net income shall be the amount (not below zero) determined by taking into account the aggregate amount of the S corporation's items described in section 1366(a) (other than credits and tax-exempt income). If the S corporation was a C corporation for the base year, its taxable income for such year shall be treated as its net income for such year (and such corporation shall be treated as an S corporation for such taxable year for purposes of paragraph (3)).

(C) Certain limitations disregarded

For purposes of subparagraph (A) or (B), any limitation on the amount of any item described in either such paragraph which may be taken into account for purposes of computing the taxable income of a partner or shareholder shall be disregarded.

(3) Applicable payments

(A) In general

The term "applicable payment" means amounts paid by a partnership or S corporation which are includible in gross income of a partner or shareholder.

(B) Exceptions

The term "applicable payment" shall not include any—

(i) gain from the sale or exchange of property between the partner or shareholder and the partnership or S corporation, and

(ii) dividend paid by the S corporation.

(4) Applicable percentage

The applicable percentage is the percentage determined in accordance with the following table:

If the applicable election year of the partnership or S corporation begins during:	**The applicable percentage is:**
1987	25
1988	50
1989	75
1990 or thereafter	100.

Notwithstanding the preceding provisions of this paragraph, the applicable percentage for any partnership or S corporation shall be 100 percent unless more than 50 percent of such entity's net income for the short taxable year which would have resulted if the entity had not made an election under section 444 would have been allocated to partners or shareholders who would have been

entitled to the benefits of section 806(e)(2)(C) of the Tax Reform Act of 1986 with respect to such income.

(5) Treatment of guaranteed payments

(A) In general

Any guaranteed payment by a partnership shall not be treated as an applicable payment, and the amount of the net income of the partnership shall be determined by not taking such guaranteed payment into account.

(B) Guaranteed payment

For purposes of subparagraph (A), the term "guaranteed payment" means any payment referred to in section 707(c).

(e) Other definitions and special rules

For purposes of this section—

(1) Deferral period

The term "deferral period" has the meaning given to such term by section 444(b)(4).

(2) Years

(A) Base year

The term "base year" means, with respect to any applicable election year, the taxable year of the partnership or S corporation preceding such applicable election year.

(B) Applicable election year

The term "applicable election year" means any taxable year of a partnership or S corporation with respect to which an election is in effect under section 444.

(3) Requirement of reporting

Each partnership or S corporation which makes an election under section 444 shall include on any required return or statement such information as the Secretary shall prescribe as is necessary to carry out the provisions of this section.

(4) Net required payment balance

The term "net required payment balance" means the excess (if any) of—

(A) the aggregate of the required payments under this section for all preceding applicable election years, over

(B) the aggregate amount allowable as a refund to the entity under subsection (c) for all preceding applicable election years.

(f) Administrative provisions

(1) In general

Except as otherwise provided in this subsection or in regulations prescribed by the Secretary, any payment required by this section shall be assessed and collected in the same manner as if it were a tax imposed by subtitle C.

(2) Due date

The amount of any payment required by this section shall be paid on or before April 15 of the calendar year following the calendar year in which the applicable election year begins (or such later date as may be prescribed by the Secretary).

(3) Interest

For purposes of determining interest, any payment required by this section shall be treated as a tax; except that no interest shall be allowed with respect to any refund of a payment made under this section.

(4) Penalties

(A) In general

In the case of any failure by any person to pay on the date prescribed therefor any amount required by this section, there shall be imposed on such person a penalty of 10 percent of the underpayment. For purposes of the preceding sentence, the term "underpayment" means the excess of the amount of the payment required under this section over the amount (if any) of such payment paid on or before the date prescribed therefor. No penalty shall be imposed under this subparagraph on any failure which is shown to be due to reasonable cause and not willful neglect.

(B) Negligence and fraud penalties made applicable

For purposes of part II of subchapter A of chapter 68, any payment required by this section shall be treated as a tax.

(C) Willful failure

If any partnership or S corporation willfully fails to comply with the requirements of this section, section 444 shall cease to apply with respect to such partnership or S corporation.

(g) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the provisions of this section and section 280H, including regulations providing for appropriate adjustments in the application of this section and sections 280H and 444 in cases where—

(1) 2 or more applicable election years begin in the same calendar year, or

(2) the base year is a taxable year of less than 12 months.

(Added Pub. L. 100–203, title X, §10206(b)(1), Dec. 22, 1987, 101 Stat. 1330–398; amended Pub. L. 100–647, title II, §2004(e)(4)–(10), (14)(B), Nov. 10, 1988, 102 Stat. 3601, 3602; Pub. L. 101–239, title VII, §§7721(c)(12), 7821(b), Dec. 19, 1989, 103 Stat. 2400, 2424; Pub. L. 101–508, title XI, §11704(a)(29), Nov. 5, 1990, 104 Stat. 1388–519; Pub. L. 105–34, title XII, §1281(d), Aug. 5, 1997, 111 Stat. 1037.)

REFERENCES IN TEXT

Section 806(e)(2)(C) of the Tax Reform Act of 1986, referred to in subsec. (d)(4), is section 806(e)(2)(C) of Pub. L. 99–514, which is set out as a note under section 1378 of this title.

AMENDMENTS

1997—Subsec. (f)(4)(A). Pub. L. 105–34 inserted at end "No penalty shall be imposed under this subparagraph on any failure which is shown to be due to reasonable cause and not willful neglect."

1990—Subsec. (c)(3). Pub. L. 101–508 substituted "payable on the later of" for "payable on later of".

1989—Subsec. (d)(4). Pub. L. 101–239, §7821(b), struck out "for taxable years beginning after 1987," before "the applicable percentage" and substituted "unless more than 50 percent" for "if more than 50 percent" and "who would have been entitled" for "who would not have been entitled".

Subsec. (f)(4)(B). Pub. L. 101–239, §7721(c)(12), substituted "part II of subchapter A of chapter 68" for "section 6653".

1988—Subsec. (b)(2). Pub. L. 100–647, §2004(e)(4)(A), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "the amount of the required payment for the preceding applicable election year."

Subsec. (c). Pub. L. 100–647, §2004(e)(5), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "If the amount determined under subsection (b)(2) exceeds the amount determined under subsection (b)(1), then the entity shall be entitled to a refund of such excess."

Subsec. (d)(2)(A). Pub. L. 100–647, §2004(e)(10), substituted "(other than credits and tax-exempt income)" for "(other than credits)".

Subsec. (d)(2)(B). Pub. L. 100–647, §2004(e)(7), (10), substituted "(other than credits and tax-exempt income)" for "(other than credits)" and inserted before period at end "(and such corporation shall be treated as an S corporation for such taxable year for purposes of paragraph (3))".

Subsec. (d)(3)(A). Pub. L. 100–647, §2004(e)(14)(B), struck out "or incurred" after "amounts paid".

Subsec. (d)(4). Pub. L. 100–647, §2004(e)(9), inserted at end "Notwithstanding the preceding provisions of this paragraph, for taxable years beginning after 1987, the applicable percentage for any partnership or S corporation shall be 100 percent if more than 50 percent of such entity's net income for the short taxable year which would have resulted if the entity had not made an election under section 444 would have been allocated

to partners or shareholders who would not have been entitled to the benefits of section 806(e)(2)(C) of the Tax Reform Act of 1986 with respect to such income."

Subsec. (d)(5). Pub. L. 100–647, §2004(e)(8), added par. (5).

Subsec. (e)(4). Pub. L. 100–647, §2004(e)(4)(B), added par. (4).

Subsec. (g). Pub. L. 100–647, §2004(e)(6), substituted "including regulations providing for appropriate adjustments in the application of this section and sections 280H and 444 in cases where—

"(1) 2 or more applicable election years begin in the same calendar year, or

"(2) the base year is a taxable year of less than 12 months" for "including regulations for annualizing the income and applicable payments of an entity if the base year is a taxable year of less than 12 months".

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to taxable years beginning after Aug. 5, 1997, see section 1281(e) of Pub. L. 105–34, set out as a note under section 6652 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7721(c)(12) of Pub. L. 101–239 applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1989, see section 7721(d) of Pub. L. 101–239, set out as a note under section 461 of this title.

Pub. L. 101–239, title VII, §7821(b), Dec. 19, 1989, 103 Stat. 2424, provided that the amendment made by that section is effective with respect to taxable years beginning after 1988.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE

Section applicable to applicable election years beginning after Dec. 31, 1986, see section 10206(d)(2) of Pub. L. 100–203, set out as a note under section 444 of this title.

§7520. Valuation tables

(a) General rule

For purposes of this title, the value of any annuity, any interest for life or a term of years, or any remainder or reversionary interest shall be determined—

(1) under tables prescribed by the Secretary, and

(2) by using an interest rate (rounded to the nearest 2/10ths of 1 percent) equal to 120 percent of the Federal midterm rate in effect under section 1274(d)(1) for the month in which the valuation date falls.

If an income, estate, or gift tax charitable contribution is allowable for any part of the property transferred, the taxpayer may elect to use such Federal midterm rate for either of the 2 months preceding the month in which the valuation date falls for purposes of paragraph (2). In the case of transfers of more than 1 interest in the same property with respect to which the taxpayer may use the same rate under paragraph (2), the taxpayer shall use the same rate with respect to each such interest.

(b) Section not to apply for certain purposes

This section shall not apply for purposes of part I of subchapter D of chapter 1 or any other provision specified in regulations.

(c) Tables

(1) In general

The tables prescribed by the Secretary for purposes of subsection (a) shall contain valuation factors for a series of interest rate categories.

(2) Initial table

Not later than the day 3 months after the date of the enactment of this section, the Secretary shall prescribe initial tables for purposes of subsection (a). Such tables may be based on the same mortality experience as used for purposes of section 2031 on the date of the enactment of this section.

(3) Revision for recent mortality charges

Not later than December 31, 1989, the Secretary shall revise the initial tables prescribed for purposes of subsection (a) to take into account the most recent mortality experience available as of the time of such revision. Such tables shall be revised not less frequently than once each 10 years thereafter to take into account the most recent mortality experience available as of the time of the revision.

(d) Valuation date

For purposes of this section, the term "valuation date" means the date as of which the valuation is made.

(e) Tables to include formulas

For purposes of this section, the term "tables" includes formulas.

(Added Pub. L. 100–647, title V, §5031(a), Nov. 10, 1988, 102 Stat. 3668.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (c)(2), is the date of enactment of Pub. L. 100–647, which was approved Nov. 10, 1988.

CODIFICATION

Another section 7520 was renumbered section 7521 of this title.

EFFECTIVE DATE

Pub. L. 100–647, title V, §5031(c), Nov. 10, 1988, 102 Stat. 3669, provided that: "The amendments made by this section [enacting this section] shall apply in cases where the date as of which the valuation is to be made occurs on or after the 1st day of the 6th calendar month beginning after the date of the enactment of this Act [Nov. 10, 1988]."

§7521. Procedures involving taxpayer interviews

(a) Recording of interviews

(1) Recording by taxpayer

Any officer or employee of the Internal Revenue Service in connection with any in-person interview with any taxpayer relating to the determination or collection of any tax shall, upon advance request of such taxpayer, allow the taxpayer to make an audio recording of such interview at the taxpayer's own expense and with the taxpayer's own equipment.

(2) Recording by IRS officer or employee

An officer or employee of the Internal Revenue Service may record any interview described in paragraph (1) if such officer or employee—

(A) informs the taxpayer of such recording prior to the interview, and

(B) upon request of the taxpayer, provides the taxpayer with a transcript or copy of such recording but only if the taxpayer provides reimbursement for the cost of the transcription and reproduction of such transcript or copy.

(b) Safeguards

(1) Explanations of processes

An officer or employee of the Internal Revenue Service shall before or at an initial interview provide to the taxpayer—

(A) in the case of an in-person interview with the taxpayer relating to the determination of

any tax, an explanation of the audit process and the taxpayer's rights under such process, or

(B) in the case of an in-person interview with the taxpayer relating to the collection of any tax, an explanation of the collection process and the taxpayer's rights under such process.

(2) Right of consultation

If the taxpayer clearly states to an officer or employee of the Internal Revenue Service at any time during any interview (other than an interview initiated by an administrative summons issued under subchapter A of chapter 78) that the taxpayer wishes to consult with an attorney, certified public accountant, enrolled agent, enrolled actuary, or any other person permitted to represent the taxpayer before the Internal Revenue Service, such officer or employee shall suspend such interview regardless of whether the taxpayer may have answered one or more questions.

(c) Representatives holding power of attorney

Any attorney, certified public accountant, enrolled agent, enrolled actuary, or any other person permitted to represent the taxpayer before the Internal Revenue Service who is not disbarred or suspended from practice before the Internal Revenue Service and who has a written power of attorney executed by the taxpayer may be authorized by such taxpayer to represent the taxpayer in any interview described in subsection (a). An officer or employee of the Internal Revenue Service may not require a taxpayer to accompany the representative in the absence of an administrative summons issued to the taxpayer under subchapter A of chapter 78. Such an officer or employee, with the consent of the immediate supervisor of such officer or employee, may notify the taxpayer directly that such officer or employee believes such representative is responsible for unreasonable delay or hindrance of an Internal Revenue Service examination or investigation of the taxpayer.

(d) Section not to apply to certain investigations

This section shall not apply to criminal investigations or investigations relating to the integrity of any officer or employee of the Internal Revenue Service.

(Added Pub. L. 100–647, title VI, §6228(a), Nov. 10, 1988, 102 Stat. 3731, §7520; renumbered §7521, Pub. L. 101–239, title VII, §7816(u)(1), Dec. 19, 1989, 103 Stat. 2423.)

CODIFICATION

Another section 7521 was renumbered section 7522 of this title.

EFFECTIVE DATE

Pub. L. 100–647, title VI, §6228(d), Nov. 10, 1988, 102 Stat. 3732, provided that: "The amendments made by subsections (a) and (c) [enacting this section] shall apply to interviews conducted on or after the date which is 90 days after the date of the enactment of this Act [Nov. 10, 1988]."

§7522. Content of tax due, deficiency, and other notices

(a) General rule

Any notice to which this section applies shall describe the basis for, and identify the amounts (if any) of, the tax due, interest, additional amounts, additions to the tax, and assessable penalties included in such notice. An inadequate description under the preceding sentence shall not invalidate such notice.

(b) Notices to which section applies

This section shall apply to—

(1) any tax due notice or deficiency notice described in section 6155, 6212, or 6303,

(2) any notice generated out of any information return matching program, and

(3) the 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals.

(Added Pub. L. 100–647, title VI, §6233(a), Nov. 10, 1988, 102 Stat. 3735, §7521; renumbered §7522, Pub. L. 101–508, title XI, §11704(a)(30), Nov. 5, 1990, 104 Stat. 1388–519.)

EFFECTIVE DATE

Pub. L. 100–647, title VI, §6233(c), Nov. 10, 1988, 102 Stat. 3735, provided that: "The amendments made by this section [enacting this section] shall apply to mailings made on or after January 1, 1990."

§7523. Graphic presentation of major categories of Federal outlays and income

(a) General rule

In the case of any booklet of instructions for Form 1040, 1040A, or 1040EZ prepared by the Secretary for filing individual income tax returns for taxable years beginning in any calendar year, the Secretary shall include in a prominent place—

(1) a pie-shaped graph showing the relative sizes of the major outlay categories, and

(2) a pie-shaped graph showing the relative sizes of the major income categories.

(b) Definitions and special rules

For purposes of subsection (a)—

(1) Major outlay categories

The term "major outlay categories" means the following:

(A) Defense, veterans, and foreign affairs.

(B) Social security, medicare, and other retirement.

(C) Physical, human, and community development.

(D) Social programs.

(E) Law enforcement and general government.

(F) Interest on the debt.

(2) Major income categories

The term "major income categories" means the following:

(A) Social security, medicare, and unemployment and other retirement taxes.

(B) Personal income taxes.

(C) Corporate income taxes.

(D) Borrowing to cover the deficit.

(E) Excise, customs, estate, gift, and miscellaneous taxes.

(3) Required footnotes

The pie-shaped graph showing the major outlay categories shall include the following footnotes:

(A) A footnote to the category referred to in paragraph (1)(A) showing the percentage of the total outlays which is for defense, the percentage of total outlays which is for veterans, and the percentage of total outlays which is for foreign affairs.

(B) A footnote to the category referred to in paragraph (1)(C) showing that such category consists of agriculture, natural resources, environment, transportation, education, job training, economic development, space, energy, and general science.

(C) A footnote to the category referred to in paragraph (1)(D) showing the percentage of the total outlays which is for medicaid, supplemental nutrition assistance program benefits, and assistance under a State program funded under part A of title IV of the Social Security Act and the percentage of total outlays which is for public health, unemployment, assisted housing, and social services.

(4) Data on which graphs are based

The graphs required under subsection (a) shall be based on data for the most recent fiscal year for which complete data is available as of the completion of the preparation of the instructions by the Secretary.

(Added Pub. L. 101–508, title XI, §11622(a), Nov. 5, 1990, 104 Stat. 1388–504; amended Pub. L. 104–193, title I, §110(l)(4), formerly §110(l)(8), Aug. 22, 1996, 110 Stat. 2173, renumbered Pub. L.

105–33, title V, §5514(a)(2), Aug. 5, 1997, 111 Stat. 620; Pub. L. 110–234, title IV, §4002(b)(1)(E), (2)(O), May 22, 2008, 122 Stat. 1096, 1097; Pub. L. 110–246, §4(a), title IV, §4002(b)(1)(E), (2)(O), June 18, 2008, 122 Stat. 1664, 1857, 1858.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(3)(C), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title IV of the Act is classified generally to part A (§601 et seq.) of subchapter IV of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2008—Subsec. (b)(3)(C). Pub. L. 110–246, §4002(b)(1)(E), (2)(O), substituted "supplemental nutrition assistance program benefits" for "food stamps".

1996—Subsec. (b)(3)(C). Pub. L. 104–193, §110(l)(4), formerly §110(l)(8), as renumbered by Pub. L. 105–33, substituted "assistance under a State program funded under part A of title IV of the Social Security Act" for "aid to families with dependent children".

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by section 4002(b)(1)(E), (2)(O) of Pub. L. 110–246 effective Oct. 1, 2008, see section 4407 of Pub. L. 110–246, set out as a note under section 1161 of Title 2, The Congress.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE

Pub. L. 101–508, title XI, §11622(c), Nov. 5, 1990, 104 Stat. 1388–505, provided that: "The amendments made by this section [enacting this section] shall apply to instructions prepared for taxable years beginning after 1990."

§7524. Annual notice of tax delinquency

Not less often than annually, the Secretary shall send a written notice to each taxpayer who has a tax delinquent account of the amount of the tax delinquency as of the date of the notice.

(Added Pub. L. 104–168, title XII, §1204(a), July 30, 1996, 110 Stat. 1471.)

EFFECTIVE DATE

Pub. L. 104–168, title XII, §1204(c), July 30, 1996, 110 Stat. 1471, provided that: "The amendments made by this section [enacting this section] shall apply to calendar years after 1996."

§7525. Confidentiality privileges relating to taxpayer communications

(a) Uniform application to taxpayer communications with federally authorized practitioners

(1) General rule

With respect to tax advice, the same common law protections of confidentiality which apply to

a communication between a taxpayer and an attorney shall also apply to a communication between a taxpayer and any federally authorized tax practitioner to the extent the communication would be considered a privileged communication if it were between a taxpayer and an attorney.

(2) Limitations

Paragraph (1) may only be asserted in—

(A) any noncriminal tax matter before the Internal Revenue Service; and

(B) any noncriminal tax proceeding in Federal court brought by or against the United States.

(3) Definitions

For purposes of this subsection—

(A) Federally authorized tax practitioner

The term "federally authorized tax practitioner" means any individual who is authorized under Federal law to practice before the Internal Revenue Service if such practice is subject to Federal regulation under section 330 of title 31, United States Code.

(B) Tax advice

The term "tax advice" means advice given by an individual with respect to a matter which is within the scope of the individual's authority to practice described in subparagraph (A).

(b) Section not to apply to communications regarding tax shelters

The privilege under subsection (a) shall not apply to any written communication which is—

(1) between a federally authorized tax practitioner and—

(A) any person,

(B) any director, officer, employee, agent, or representative of the person, or

(C) any other person holding a capital or profits interest in the person, and

(2) in connection with the promotion of the direct or indirect participation of the person in any tax shelter (as defined in section 6662(d)(2)(C)(ii)).

(Added Pub. L. 105–206, title III, §3411(a), July 22, 1998, 112 Stat. 750; amended Pub. L. 108–357, title VIII, §813(a), Oct. 22, 2004, 118 Stat. 1581.)

AMENDMENTS

2004—Subsec. (b). Pub. L. 108–357 amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: "The privilege under subsection (a) shall not apply to any written communication between a federally authorized tax practitioner and a director, shareholder, officer, or employee, agent, or representative of a corporation in connection with the promotion of the direct or indirect participation of such corporation in any tax shelter (as defined in section 6662(d)(2)(C)(iii))."

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §813(b), Oct. 22, 2004, 118 Stat. 1581, provided that: "The amendment made by this section [amending this section] shall apply to communications made on or after the date of the enactment of this Act [Oct. 22, 2004]."

EFFECTIVE DATE

Pub. L. 105–206, title III, §3411(c), July 22, 1998, 112 Stat. 751, provided that: "The amendments made by this section [enacting this section] shall apply to communications made on or after the date of the enactment of this Act [July 22, 1998]."

§7526. Low-income taxpayer clinics

(a) In general

The Secretary may, subject to the availability of appropriated funds, make grants to provide matching funds for the development, expansion, or continuation of qualified low-income taxpayer clinics.

(b) Definitions

For purposes of this section—

(1) Qualified low-income taxpayer clinic

(A) In general

The term "qualified low-income taxpayer clinic" means a clinic that—

(i) does not charge more than a nominal fee for its services (except for reimbursement of actual costs incurred); and

(ii)(I) represents low-income taxpayers in controversies with the Internal Revenue Service; or

(II) operates programs to inform individuals for whom English is a second language about their rights and responsibilities under this title.

(B) Representation of low-income taxpayers

A clinic meets the requirements of subparagraph (A)(ii)(I) if—

(i) at least 90 percent of the taxpayers represented by the clinic have incomes which do not exceed 250 percent of the poverty level, as determined in accordance with criteria established by the Director of the Office of Management and Budget; and

(ii) the amount in controversy for any taxable year generally does not exceed the amount specified in section 7463.

(2) Clinic

The term "clinic" includes—

(A) a clinical program at an accredited law, business, or accounting school in which students represent low-income taxpayers in controversies arising under this title; and

(B) an organization described in section 501(c) and exempt from tax under section 501(a) which satisfies the requirements of paragraph (1) through representation of taxpayers or referral of taxpayers to qualified representatives.

(3) Qualified representative

The term "qualified representative" means any individual (whether or not an attorney) who is authorized to practice before the Internal Revenue Service or the applicable court.

(c) Special rules and limitations

(1) Aggregate limitation

Unless otherwise provided by specific appropriation, the Secretary shall not allocate more than $6,000,000 per year (exclusive of costs of administering the program) to grants under this section.

(2) Limitation on annual grants to a clinic

The aggregate amount of grants which may be made under this section to a clinic for a year shall not exceed $100,000.

(3) Multi-year grants

Upon application of a qualified low-income taxpayer clinic, the Secretary is authorized to award a multi-year grant not to exceed 3 years.

(4) Criteria for awards

In determining whether to make a grant under this section, the Secretary shall consider—

(A) the numbers of taxpayers who will be served by the clinic, including the number of taxpayers in the geographical area for whom English is a second language;

(B) the existence of other low-income taxpayer clinics serving the same population;

(C) the quality of the program offered by the low-income taxpayer clinic, including the qualifications of its administrators and qualified representatives, and its record, if any, in providing service to low-income taxpayers; and

(D) alternative funding sources available to the clinic, including amounts received from other

grants and contributions, and the endowment and resources of the institution sponsoring the clinic.

(5) Requirement of matching funds

A low-income taxpayer clinic must provide matching funds on a dollar-for-dollar basis for all grants provided under this section. Matching funds may include—

(A) the salary (including fringe benefits) of individuals performing services for the clinic; and

(B) the cost of equipment used in the clinic.

Indirect expenses, including general overhead of the institution sponsoring the clinic, shall not be counted as matching funds.

(Added Pub. L. 105–206, title III, §3601(a), July 22, 1998, 112 Stat. 774.)

EFFECTIVE DATE

Pub. L. 105–206, title III, §3601(c), July 22, 1998, 112 Stat. 776, provided that: "The amendments made by this section [enacting this section] shall take effect on the date of the enactment of this Act [July 22, 1998]."

§7527. Advance payment of credit for health insurance costs of eligible individuals

(a) General rule

Not later than August 1, 2003, the Secretary shall establish a program for making payments on behalf of certified individuals to providers of qualified health insurance (as defined in section 35(e)) for such individuals.

(b) Limitation on advance payments during any taxable year

The Secretary may make payments under subsection (a) only to the extent that the total amount of such payments made on behalf of any individual during the taxable year does not exceed 72.5 percent of the amount paid by the taxpayer for coverage of the taxpayer and qualifying family members under qualified health insurance for eligible coverage months beginning in the taxable year.

(c) Certified individual

For purposes of this section, the term "certified individual" means any individual for whom a qualified health insurance costs credit eligibility certificate is in effect.

(d) Qualified health insurance costs eligibility certificate

(1) In general

For purposes of this section, the term "qualified health insurance costs eligibility certificate" means any written statement that an individual is an eligible individual (as defined in section 35(c)) if such statement provides such information as the Secretary may require for purposes of this section and—

(A) in the case of an eligible TAA recipient (as defined in section 35(c)(2)) or an eligible alternative TAA recipient (as defined in section 35(c)(3)), is certified by the Secretary of Labor (or by any other person or entity designated by the Secretary), or

(B) in the case of an eligible PBGC pension recipient (as defined in section 35(c)(4)), is certified by the Pension Benefit Guaranty Corporation (or by any other person or entity designated by the Secretary).

(2) Inclusion of certain information

In the case of any statement described in paragraph (1), such statement shall not be treated as a qualified health insurance costs credit eligibility certificate unless such statement includes—

(A) the name, address, and telephone number of the State office or offices responsible for providing the individual with assistance with enrollment in qualified health insurance (as defined in section 35(e)),

(B) a list of the coverage options that are treated as qualified health insurance (as so defined) by the State in which the individual resides, and

(C) in the case of a TAA-eligible individual (as defined in section 4980B(f)(5)(C)(iv)(II)), a statement informing the individual that the individual has 63 days from the date that is 7 days after the date of the issuance of such certificate to enroll in such insurance without a lapse in creditable coverage (as defined in section 9801(c)).

(e) Payment for premiums due prior to commencement of advance payments

(1) In general

The program established under subsection (a) shall provide that the Secretary shall make 1 or more retroactive payments on behalf of a certified individual in an aggregate amount equal to 72.5 percent of the premiums for coverage of the taxpayer and qualifying family members under qualified health insurance for eligible coverage months (as defined in section 35(b)) occurring prior to the first month for which an advance payment is made on behalf of such individual under subsection (a).

(2) Reduction of payment for amounts received under national emergency grants

The amount of any payment determined under paragraph (1) shall be reduced by the amount of any payment made to the taxpayer for the purchase of qualified health insurance under a national emergency grant pursuant to section 173(f) of the Workforce Investment Act of 1998 for a taxable year including the eligible coverage months described in paragraph (1).

(Added Pub. L. 107–210, div. A, title II, §202(a), Aug. 6, 2002, 116 Stat. 960; amended Pub. L. 111–5, div. B, title I, §§1899A(a)(2), 1899B(a), 1899H(a), Feb. 17, 2009, 123 Stat. 424, 430; Pub. L. 111–344, title I, §§111(b), 112(a), 118(a), Dec. 29, 2010, 124 Stat. 3615, 3616; Pub. L. 112–40, title II, §241(b)(2), Oct. 21, 2011, 125 Stat. 418; Pub. L. 113–128, title V, §512(r), July 22, 2014, 128 Stat. 1712.)

AMENDMENT OF SUBSECTION (E)(2)

Pub. L. 113–128, title V, §§506, 512(r), July 22, 2014, 128 Stat. 1703, 1712, provided that, effective on the first day of the first full program year after July 22, 2014 [probably July 1, 2015], subsection (e)(2) of this section is amended by inserting "(as in effect on the day before the date of enactment of the Workforce Innovation and Opportunity Act)" after "of 1998". See 2014 Amendment note below.

REFERENCES IN TEXT

Section 173(f) of the Workforce Investment Act of 1998, referred to in subsec. (e)(2), is classified to section 2918(f) of Title 29, Labor.

AMENDMENTS

2014—Subsec. (e)(2). Pub. L. 113–128 inserted "(as in effect on the day before the date of enactment of the Workforce Innovation and Opportunity Act)" after "of 1998".

2011—Subsec. (b). Pub. L. 112–40, §241(b)(2)(A), substituted "72.5 percent" for "65 percent (80 percent in the case of eligible coverage months beginning before February 13, 2011)".

Subsec. (d)(2). Pub. L. 112–40, §241(b)(2)(B), struck out "which is issued before February 13, 2011" after "in paragraph (1)" in introductory provisions.

Subsec. (e). Pub. L. 112–40, §241(b)(2)(D), struck out introductory provisions which read as follows: "In the case of eligible coverage months beginning before February 13, 2011—".

Subsec. (e)(1). Pub. L. 112–40, §241(b)(2)(C), substituted "72.5 percent" for "80 percent".

2010—Subsec. (b). Pub. L. 111–344, §111(b), substituted "February 13, 2011" for "January 1, 2011".

Subsec. (d)(2). Pub. L. 111–344, §118(a), substituted "February 13, 2011" for "January 1, 2011" in introductory provisions.

Subsec. (e). Pub. L. 111–344, §112(a), substituted "February 13, 2011" for "January 1, 2011" in introductory provisions.

2009—Subsec. (b). Pub. L. 111–5, §1899A(a)(2), inserted "(80 percent in the case of eligible coverage months beginning before January 1, 2011)" after "65 percent".

Subsec. (d). Pub. L. 111–5, §1899H(a), amended subsec. (d) generally. Prior to amendment, text read as

follows: "For purposes of this section, the term 'qualified health insurance costs credit eligibility certificate' means any written statement that an individual is an eligible individual (as defined in section 35(c)) if such statement provides such information as the Secretary may require for purposes of this section and—

"(1) in the case of an eligible TAA recipient (as defined in section 35(c)(2)) or an eligible alternative TAA recipient (as defined in section 35(c)(3)), is certified by the Secretary of Labor (or by any other person or entity designated by the Secretary), or

"(2) in the case of an eligible PBGC pension recipient (as defined in section 35(c)(4)), is certified by the Pension Benefit Guaranty Corporation (or by any other person or entity designated by the Secretary)."

Subsec. (e). Pub. L. 111–5, §1899B(a), added subsec. (e).

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–128 effective on the first day of the first full program year after July 22, 2014 [probably July 1, 2015], see section 506 of Pub. L. 113–128, set out as an Effective Date note under section 3101 of Title 29, Labor.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112–40 applicable to coverage months beginning after Feb. 12, 2011, except that amendment by section 241(b)(2)(B) of Pub. L. 112–40 applicable to certificates issued after the date which is 30 days after Oct. 21, 2011, and amendment by section 241(b)(2)(D) of Pub. L. 112–40 applicable to coverage months beginning after the date which is 30 days after Oct. 21, 2011, see section 241(c) of Pub. L. 112–40, set out as a note under section 35 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 111(b) of Pub. L. 111–344 applicable to coverage months beginning after Dec. 31, 2010, see section 111(c) of Pub. L. 111–344, set out as a note under section 35 of this title.

Pub. L. 111–344, title I, §112(b), Dec. 29, 2010, 124 Stat. 3615, provided that: "The amendment made by this section [amending this section] shall apply to coverage months beginning after December 31, 2010."

Pub. L. 111–344, title I, §118(b), Dec. 29, 2010, 124 Stat. 3616, provided that: "The amendment made by this section [amending this section] shall apply to certificates issued after December 31, 2010."

EFFECTIVE DATE OF 2009 AMENDMENT

Except as otherwise provided and subject to certain applicability provisions, amendment by Pub. L. 111–5 effective upon the expiration of the 90-day period beginning on Feb. 17, 2009, see section 1891 of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 2271 of Title 19, Customs Duties.

Amendment by section 1899A(a)(2) of Pub. L. 111–5 applicable to coverage months beginning on or after the first day of the first month beginning 60 days after Feb. 17, 2009, see section 1899A(b) of Pub. L. 111–5, set out as a note under section 35 of this title.

Pub. L. 111–5, div. B, title I, §1899B(b), Feb. 17, 2009, 123 Stat. 424, provided that: "The amendments made by this section [amending this section] shall apply to coverage months beginning after December 31, 2008."

Pub. L. 111–5, div. B, title I, §1899H(b), Feb. 17, 2009, 123 Stat. 431, provided that: "The amendment made by this section [amending this section] shall apply to certificates issued after the date that is 6 months after the date of the enactment of this Act [Feb. 17, 2009]."

CONSTRUCTION

Nothing in the amendments made by title II of Pub. L. 107–210, other than provisions relating to COBRA continuation coverage and reporting requirements, to be construed as creating a new mandate on any party regarding health insurance coverage, see section 203(f) of Pub. L. 107–210, set out as a Construction of 2002 Amendment note under section 2918 of Title 29, Labor.

TRANSITIONAL RULE

Pub. L. 111–5, div. B, title I, §1899B(c), Feb. 17, 2009, 123 Stat. 424, provided that: "The Secretary of the Treasury shall not be required to make any payments under section 7527(e) of the Internal Revenue Code of 1986, as added by this section, until after the date that is 6 months after the date of the enactment of this Act [Feb. 17, 2009]."

§7528. Internal Revenue Service user fees

(a) General rule

The Secretary shall establish a program requiring the payment of user fees for—

(1) requests to the Internal Revenue Service for ruling letters, opinion letters, and determination letters, and

(2) other similar requests.

(b) Program criteria

(1) In general

The fees charged under the program required by subsection (a)—

(A) shall vary according to categories (or subcategories) established by the Secretary,

(B) shall be determined after taking into account the average time for (and difficulty of) complying with requests in each category (and subcategory), and

(C) shall be payable in advance.

(2) Exemptions, etc.

(A) In general

The Secretary shall provide for such exemptions (and reduced fees) under such program as the Secretary determines to be appropriate.

(B) Exemption for certain requests regarding pension plans

The Secretary shall not require payment of user fees under such program for requests for determination letters with respect to the qualified status of a pension benefit plan maintained solely by 1 or more eligible employers or any trust which is part of the plan. The preceding sentence shall not apply to any request—

(i) made after the later of—

(I) the fifth plan year the pension benefit plan is in existence, or

(II) the end of any remedial amendment period with respect to the plan beginning within the first 5 plan years, or

(ii) made by the sponsor of any prototype or similar plan which the sponsor intends to market to participating employers.

(C) Definitions and special rules

For purposes of subparagraph (B)—

(i) Pension benefit plan

The term "pension benefit plan" means a pension, profit-sharing, stock bonus, annuity, or employee stock ownership plan.

(ii) Eligible employer

The term "eligible employer" means an eligible employer (as defined in section 408(p)(2)(C)(i)(I)) which has at least 1 employee who is not a highly compensated employee (as defined in section 414(q)) and is participating in the plan. The determination of whether an employer is an eligible employer under subparagraph (B) shall be made as of the date of the request described in such subparagraph.

(iii) Determination of average fees charged

For purposes of any determination of average fees charged, any request to which subparagraph (B) applies shall not be taken into account.

(3) Average fee requirement

The average fee charged under the program required by subsection (a) shall not be less than the amount determined under the following table:

Category	Average Fee
Employee plan ruling and opinion	$250
Exempt organization ruling	$350
Employee plan determination	$300
Exempt organization determination	$275
Chief counsel ruling	$200.

(Added Pub. L. 108–89, title II, §202(a), Oct. 1, 2003, 117 Stat. 1132; amended Pub. L. 108–357, title VIII, §891(a), Oct. 22, 2004, 118 Stat. 1644; Pub. L. 110–28, title VIII, §8244, May 25, 2007, 121 Stat. 200.)

AMENDMENTS

2007—Subsec. (c). Pub. L. 110–28 struck out heading and text of subsec. (c). Text read as follows: "No fee shall be imposed under this section with respect to requests made after September 30, 2014."

2004—Subsec. (c). Pub. L. 108–357 substituted "September 30, 2014" for "December 31, 2004".

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §891(b), Oct. 22, 2004, 118 Stat. 1644, provided that: "The amendment made by this section [amending this section] shall apply to requests after the date of the enactment of this Act [Oct. 22, 2004]."

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–89, title II, §202(d), Oct. 1, 2003, 117 Stat. 1133, provided that: "The amendments made by this section [enacting this section, enacting provisions set out as a note under this section, and repealing provisions set out as notes under section 7801 of this title] shall apply to requests made after the date of the enactment of this Act [Oct. 1, 2003]."

LIMITATIONS

Pub. L. 108–89, title II, §202(c), Oct. 1, 2003, 117 Stat. 1133, provided that: "Notwithstanding any other provision of law, any fees collected pursuant to section 7528 of the Internal Revenue Code of 1986, as added by subsection (a), shall not be expended by the Internal Revenue Service unless provided by an appropriations Act."

CHAPTER 78—DISCOVERY OF LIABILITY AND ENFORCEMENT OF TITLE

Subchapter		Sec.[1]
A.	**Examination and inspection**	**7601**
B.	**General powers and duties**	**7621**
[C.	**Repealed.]**	
D.	**Possessions**	**7651**

AMENDMENTS

Pub. L. 94–455, title XIX, §1906(b)(13), Oct. 4, 1976, 90 Stat. 1834, struck out subchapter C relating to supervision of operations of certain manufacturers.

[1] *Section numbers editorially supplied.*

Subchapter A—Examination and Inspection

Sec.
7601. Canvass of districts for taxable persons and objects.
7602. Examination of books and witnesses.
7603. Service of summons.
7604. Enforcement of summons.
7605. Time and place of examination.
7606. Entry of premises for examination of taxable objects.
[7607. Repealed.]
7608. Authority of internal revenue enforcement officers.
7609. Special procedures for third-party summonses.
7610. Fees and costs for witnesses.
7611. Restrictions on church tax inquiries and examinations.
7612. Special procedures for summonses for computer software.
7613. Cross references.

AMENDMENTS

1998—Pub. L. 105–206, title III, §3413(d), July 22, 1998, 112 Stat. 754, added items 7612 and 7613 and struck out former item 7612 "Cross references".

1984—Pub. L. 98–573, title II, §213(b)(2), Oct. 30, 1984, 98 Stat. 2988, struck out item 7607 "Additional authority for Bureau of Customs".

Pub. L. 98–369, div. A, title X, §1033(c)(2), July 18, 1984, 98 Stat. 1039, added item 7611 and redesignated former item 7611 as 7612.

1976—Pub. L. 94–455, title XII, §1205(b), Oct. 4, 1976, 90 Stat. 1702, substituted "Special procedures for third-party summonses" for "Cross references" in item 7609 and added items 7610 and 7611.

1970—Pub. L. 91–513, title III, §1102(g)(2), Oct. 27, 1970, 84 Stat. 1293, struck out "Bureau of Narcotics and" before "Bureau of Customs" in item 7607.

1958—Pub. L. 85–859, title II, §204(16), Sept. 2, 1958, 72 Stat. 1430, added item 7608 and redesignated former item 7608 as 7609.

1956—Act July 18, 1956, ch. 629, §104(b), 70 Stat. 570, added item 7607 and redesignated former item 7607 as 7608.

§7601. Canvass of districts for taxable persons and objects

(a) General rule

The Secretary shall, to the extent he deems it practicable, cause officers or employees of the Treasury Department to proceed, from time to time, through each internal revenue district and inquire after and concerning all persons therein who may be liable to pay any internal revenue tax, and all persons owning or having the care and management of any objects with respect to which any tax is imposed.

(b) Penalties

For penalties applicable to forcible obstruction or hindrance of Treasury officers or employees in the performance of their duties, see section 7212.

(Aug. 16, 1954, ch. 736, 68A Stat. 901; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

§7602. Examination of books and witnesses

(a) Authority to summon, etc.

For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax or the liability at law or in

equity of any transferee or fiduciary of any person in respect of any internal revenue tax, or collecting any such liability, the Secretary is authorized—

(1) To examine any books, papers, records, or other data which may be relevant or material to such inquiry;

(2) To summon the person liable for tax or required to perform the act, or any officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable for tax or required to perform the act, or any other person the Secretary may deem proper, to appear before the Secretary at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and

(3) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry.

(b) Purpose may include inquiry into offense

The purposes for which the Secretary may take any action described in paragraph (1), (2), or (3) of subsection (a) include the purpose of inquiring into any offense connected with the administration or enforcement of the internal revenue laws.

(c) Notice of contact of third parties

(1) General notice

An officer or employee of the Internal Revenue Service may not contact any person other than the taxpayer with respect to the determination or collection of the tax liability of such taxpayer without providing reasonable notice in advance to the taxpayer that contacts with persons other than the taxpayer may be made.

(2) Notice of specific contacts

The Secretary shall periodically provide to a taxpayer a record of persons contacted during such period by the Secretary with respect to the determination or collection of the tax liability of such taxpayer. Such record shall also be provided upon request of the taxpayer.

(3) Exceptions

This subsection shall not apply—

(A) to any contact which the taxpayer has authorized;

(B) if the Secretary determines for good cause shown that such notice would jeopardize collection of any tax or such notice may involve reprisal against any person; or

(C) with respect to any pending criminal investigation.

(d) No administrative summons when there is Justice Department referral

(1) Limitation of authority

No summons may be issued under this title, and the Secretary may not begin any action under section 7604 to enforce any summons, with respect to any person if a Justice Department referral is in effect with respect to such person.

(2) Justice Department referral in effect

For purposes of this subsection—

(A) In general

A Justice Department referral is in effect with respect to any person if—

(i) the Secretary has recommended to the Attorney General a grand jury investigation of, or the criminal prosecution of, such person for any offense connected with the administration or enforcement of the internal revenue laws, or

(ii) any request is made under section 6103(h)(3)(B) for the disclosure of any return or return information (within the meaning of section 6103(b)) relating to such person.

(B) Termination

A Justice Department referral shall cease to be in effect with respect to a person when—

(i) the Attorney General notifies the Secretary, in writing, that—

(I) he will not prosecute such person for any offense connected with the administration or enforcement of the internal revenue laws,

(II) he will not authorize a grand jury investigation of such person with respect to such an offense, or

(III) he will discontinue such a grand jury investigation,

(ii) a final disposition has been made of any criminal proceeding pertaining to the enforcement of the internal revenue laws which was instituted by the Attorney General against such person, or

(iii) the Attorney General notifies the Secretary, in writing, that he will not prosecute such person for any offense connected with the administration or enforcement of the internal revenue laws relating to the request described in subparagraph (A)(ii).

(3) Taxable years, etc., treated separately

For purposes of this subsection, each taxable period (or, if there is no taxable period, each taxable event) and each tax imposed by a separate chapter of this title shall be treated separately.

(e) Limitation on examination on unreported income

The Secretary shall not use financial status or economic reality examination techniques to determine the existence of unreported income of any taxpayer unless the Secretary has a reasonable indication that there is a likelihood of such unreported income.

(Aug. 16, 1954, ch. 736, 68A Stat. 901; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–248, title III, §333(a), Sept. 3, 1982, 96 Stat. 622; Pub. L. 105–206, title III, §§3412, 3417(a), July 22, 1998, 112 Stat. 751, 757.)

AMENDMENTS

1998—Subsec. (c). Pub. L. 105–206, §3417(a), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 105–206, §3417(a), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Pub. L. 105–206, §3412, added subsec. (d).

Subsec. (e). Pub. L. 105–206, §3417(a), redesignated subsec. (d) as (e).

1982—Pub. L. 97–248 redesignated existing provisions as subsec. (a), added subsec. (a) heading, and added subsecs. (b) and (c).

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–206, title III, §3417(b), July 22, 1998, 112 Stat. 758, provided that: "The amendments made by subsection (a) [amending this section] shall apply to contacts made after the 180th day after the date of the enactment of this Act [July 22, 1998]."

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title III, §333(b), Sept. 3, 1982, 96 Stat. 623, provided that: "The amendments made by subsection (a) [amending this section] shall take effect on the day after the date of the enactment of this Act [Sept. 3, 1982]."

§7603. Service of summons

(a) In general

A summons issued under section 6420(e)(2), 6421(g)(2), 6427(j)(2), or 7602 shall be served by the Secretary, by an attested copy delivered in hand to the person to whom it is directed, or left at his last and usual place of abode; and the certificate of service signed by the person serving the summons shall be evidence of the facts it states on the hearing of an application for the enforcement of the summons. When the summons requires the production of books, papers, records, or other data, it shall be sufficient if such books, papers, records, or other data are described with reasonable certainty.

(b) Service by mail to third-party recordkeepers

(1) In general

A summons referred to in subsection (a) for the production of books, papers, records, or other data by a third-party recordkeeper may also be served by certified or registered mail to the last known address of such recordkeeper.

(2) Third-party recordkeeper

For purposes of paragraph (1), the term "third-party recordkeeper" means—

(A) any mutual savings bank, cooperative bank, domestic building and loan association, or other savings institution chartered and supervised as a savings and loan or similar association under Federal or State law, any bank (as defined in section 581), or any credit union (within the meaning of section 501(c)(14)(A)),

(B) any consumer reporting agency (as defined under section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f))),

(C) any person extending credit through the use of credit cards or similar devices,

(D) any broker (as defined in section 3(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4))),

(E) any attorney,

(F) any accountant,

(G) any barter exchange (as defined in section 6045(c)(3)),

(H) any regulated investment company (as defined in section 851) and any agent of such regulated investment company when acting as an agent thereof,

(I) any enrolled agent, and

(J) any owner or developer of a computer software source code (as defined in section 7612(d)(2)).

Subparagraph (J) shall apply only with respect to a summons requiring the production of the source code referred to in subparagraph (J) or the program and data described in section 7612(b)(1)(A)(ii) to which such source code relates.

(Aug. 16, 1954, ch. 736, 68A Stat. 902; Apr. 2, 1956, ch. 160, §4(i), 70 Stat. 91; June 29, 1956, ch. 462, title II, §208(d)(4), 70 Stat. 396; Pub. L. 89–44, title II, §202(c)(4), June 21, 1965, 79 Stat. 139; Pub. L. 91–258, title II, §207(d)(9), May 21, 1970, 84 Stat. 249; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 94–530, §1(c)(6), Oct. 17, 1976, 90 Stat. 2488; Pub. L. 95–599, title V, §505(c)(5), Nov. 6, 1978, 92 Stat. 2760; Pub. L. 96–223, title II, §232(d)(4)(E), Apr. 2, 1980, 94 Stat. 278; Pub. L. 97–424, title V, §515(b)(12), Jan. 6, 1983, 96 Stat. 2182; Pub. L. 98–369, div. A, title IX, §911(d)(2)(G), July 18, 1984, 98 Stat. 1007; Pub. L. 99–514, title XVII, §1703(e)(2)(G), Oct. 22, 1986, 100 Stat. 2778; Pub. L. 100–647, title I, §1017(c)(9), (12), Nov. 10, 1988, 102 Stat. 3576, 3577; Pub. L. 105–206, title III, §§3413(c), 3416(a), July 22, 1998, 112 Stat. 754, 756; Pub. L. 106–554, §1(a)(7) [title III, §319(26)], Dec. 21, 2000, 114 Stat. 2763, 2763A–648.)

AMENDMENTS

2000—Subsec. (b)(2)(A) to (G). Pub. L. 106–554 substituted a comma for semicolon at end.

1998—Subsec. (a). Pub. L. 105–206, §3416(a), designated existing provisions as subsec. (a) and inserted heading.

Subsec. (b). Pub. L. 105–206, §3416(a), added subsec. (b).

Subsec. (b)(2). Pub. L. 105–206, §3413(c), added subpar. (J) and concluding provisions.

1988—Pub. L. 100–647, §1017(c)(12), made technical correction to language of Pub. L. 99–514, §1703(e)(2)(G), see 1986 Amendment note below.

Pub. L. 100–647, §1017(c)(9), substituted "6421(g)(2)" for "6421(f)(2)".

1986—Pub. L. 99–514, as amended by Pub. L. 100–647, §1017(c)(12), substituted "6427(j)(2)" for "6427(i)(2)".

1984—Pub. L. 98–369 substituted "6427(i)(2)" for "6427(h)(2)".

1983—Pub. L. 97–424 struck out "6424(d)(2)," after "6421(f)(2),".

1980—Pub. L. 96–223 substituted "6427(h)(2)" for "6427(g)(2)".
1978—Pub. L. 95–599 substituted "6427(g)(2)" for "6427(f)(2)".
1976—Pub. L. 94–530 substituted "6427(f)(2)" for "6427(e)(2)".
Pub. L. 94–455 struck out "or his delegate" after "Secretary".
1970—Pub. L. 91–258 inserted reference to section 6427(e)(2).
1965—Pub. L. 89–44 inserted reference to section 6424(d)(2).
1956—Act June 29, 1956, inserted reference to section 6421(f)(2).
Act Apr. 2, 1956, inserted reference to section 6420(e)(2).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 3413(c) of Pub. L. 105–206 applicable to summonses issued, and software acquired, after July 22, 1998, see section 3413(e)(1) of Pub. L. 105–206, set out as an Effective Date note under section 7612 of this title.

Pub. L. 105–206, title III, §3416(b), July 22, 1998, 112 Stat. 757, provided that: "The amendment made by this section [amending this section] shall apply to summonses served after the date of the enactment of this Act [July 22, 1998]."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to gasoline removed (as defined in section 4082 of this title as amended by section 1703 of Pub. L. 99–514) after Dec. 31, 1987, see section 1703(h) of Pub. L. 99–514, set out as a note under section 4081 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective Aug. 1, 1984, see section 911(e) of Pub. L. 98–369, set out as a note under section 6427 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–424 applicable with respect to articles sold after Jan. 6, 1983, see section 515(c) of Pub. L. 97–424, set out as a note under section 34 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–223 effective Jan. 1, 1979, see section 232(h)(2) of Pub. L. 96–223, set out as a note under section 6427 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–599 effective Jan. 1, 1979, see section 505(d) of Pub. L. 95–599, set out as a note under section 6427 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–530 effective Oct. 1, 1976, see section 1(d) of Pub. L. 94–530, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–258 effective July 1, 1970, see section 211(a) of Pub. L. 91–258, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 effective Jan. 1, 1966, see section 701(a)(1), (2), of Pub. L. 89–44, set out as a note under section 4161 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act June 29, 1956, effective June 29, 1956, see section 211 of act June 29, 1956, set out as a note under section 4041 of this title.

§7604. Enforcement of summons

(a) Jurisdiction of district court

If any person is summoned under the internal revenue laws to appear, to testify, or to produce books, papers, records, or other data, the United States district court for the district in which such person resides or is found shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, records, or other data.

(b) Enforcement

Whenever any person summoned under section 6420(e)(2), 6421(g)(2), 6427(j)(2), or 7602 neglects or refuses to obey such summons, or to produce books, papers, records, or other data, or to give testimony, as required, the Secretary may apply to the judge of the district court or to a United States magistrate judge for the district within which the person so summoned resides or is found for an attachment against him as for a contempt. It shall be the duty of the judge or magistrate judge to hear the application, and, if satisfactory proof is made, to issue an attachment, directed to some proper officer, for the arrest of such person, and upon his being brought before him to proceed to a hearing of the case; and upon such hearing the judge or the United States magistrate judge shall have power to make such order as he shall deem proper, not inconsistent with the law for the punishment of contempts, to enforce obedience to the requirements of the summons and to punish such person for his default or disobedience.

(c) Cross references

(1) Authority to issue orders, processes, and judgments

For authority of district courts generally to enforce the provisions of this title, see section 7402.

(2) Penalties

For penalties applicable to violation of section 6420(e)(2), 6421(g)(2), 6427(j)(2), or 7602, see section 7210.

(Aug. 16, 1954, ch. 736, 68A Stat. 902; Apr. 2, 1956, ch. 160, §4(i), 70 Stat. 91; June 29, 1956, ch. 462, title II, §208(d)(4), 70 Stat. 396; Pub. L. 89–44, title II, §202(c)(4), June 21, 1965, 79 Stat. 139; Pub. L. 90–578, title IV, §402(b)(2), Oct. 17, 1968, 82 Stat. 1118; Pub. L. 91–258, title II, §207(d)(9), May 21, 1970, 84 Stat. 249; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 94–530, §1(c)(6), Oct. 17, 1976, 90 Stat. 2488; Pub. L. 95–599, title V, §505(c)(5), (6), Nov. 6, 1978, 92 Stat. 2760; Pub. L. 96–223, title II, §232(d)(4)(E), Apr. 2, 1980, 94 Stat. 278; Pub. L. 97–424, title V, §515(b)(12), Jan. 6, 1983, 96 Stat. 2182; Pub. L. 98–369, div. A, title IX, §911(d)(2)(G), July 18, 1984, 98 Stat. 1007; Pub. L. 99–514, title XVII, §1703(e)(2)(G), Oct. 22, 1986, 100 Stat. 2778; Pub. L. 100–647, title I, §1017(c)(9), (12), Nov. 10, 1988, 102 Stat. 3576, 3577; Pub. L. 101–650, title III, §321, Dec. 1, 1990, 104 Stat. 5117.)

AMENDMENTS

1988—Subsecs. (b), (c)(2). Pub. L. 100–647, §1017(c)(12), made technical correction to language of Pub. L. 99–514, §1703(e)(2)(G), see 1986 Amendment note below.

Pub. L. 100–647, §1017(c)(9), substituted "6421(g)(2)" for "6421(f)(2)".

1986—Subsecs. (b), (c)(2). Pub. L. 99–514, as amended by Pub. L. 100–647, §1017(c)(12), substituted "6427(j)(2)" for "6427(i)(2)".

1984—Subsecs. (b), (c)(2). Pub. L. 98–369 substituted "6427(i)(2)" for "6427(h)(2)".

1983—Subsecs. (b), (c)(2). Pub. L. 97–424 struck out "6424(d)(2)," after "6421(f)(2),".

1980—Subsecs. (b), (c)(2). Pub. L. 96–223 substituted "6427(h)(2)" for "6427(g)(2)".

1978—Subsec. (b). Pub. L. 95–599, §505(c)(5), substituted "6427(g)(2)" for "6427(f)(2)".

Subsec. (c)(2). Pub. L. 95–599, §505(c)(6), substituted "6427(g)(2)" for "6427(e)(2)".

1976—Subsec. (b). Pub. L. 94–530 substituted "6427(f)(2)" for "6427(e)(2)".

Pub. L. 94–455 struck out "or his delegate" after "Secretary".

1970—Subsecs. (b), (c). Pub. L. 91–258 inserted references to section 6427(e)(2).

1965—Subsecs. (b), (c). Pub. L. 89–44 inserted references to section 6424(d)(2).

1956—Subsecs. (b), (c). Act Apr. 2, 1956, inserted references to section 6420(e)(2).
Act June 29, 1956, inserted references to section 6421(f)(2).

CHANGE OF NAME

"United States magistrate judge" and "magistrate judge" substituted for "United States magistrate" and "magistrate", respectively, wherever appearing in subsec. (b) pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure. Previously, "United States magistrate" and "magistrate" substituted for "United States commissioner" and "commissioner", respectively, pursuant to Pub. L. 90–578. See chapter 43 (§631 et seq.) of Title 28.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to gasoline removed (as defined in section 4082 of this title as amended by section 1703 of Pub. L. 99–514) after Dec. 31, 1987, see section 1703(h) of Pub. L. 99–514, set out as a note under section 4081 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective Aug. 1, 1984, see section 911(e) of Pub. L. 98–369, set out as a note under section 6427 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–424 applicable with respect to articles sold after Jan. 6, 1983, see section 515(c) of Pub. L. 97–424, set out as a note under section 34 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–223 effective Jan. 1, 1979, see section 232(h)(2) of Pub. L. 96–223, set out as a note under section 6427 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–599 effective Jan. 1, 1979, see section 505(d) of Pub. L. 95–599, set out as a note under section 6427 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–530 effective Oct. 1, 1976, see section 1(d) of Pub. L. 94–530, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–258 effective July 1, 1970, see section 211(a) of Pub. L. 91–258, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 effective Jan. 1, 1966, see section 701(a)(1), (2), of Pub. L. 89–44, set out as a note under section 4161 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act June 29, 1956, effective June 29, 1956, see section 211 of act June 29, 1956, set out as a note under section 4041 of this title.

§7605. Time and place of examination

(a) Time and place

The time and place of examination pursuant to the provisions of section 6420(e)(2), 6421(g)(2), 6427(j)(2), or 7602 shall be such time and place as may be fixed by the Secretary and as are reasonable under the circumstances. In the case of a summons under authority of paragraph (2) of

section 7602, or under the corresponding authority of section 6420(e)(2), 6421(g)(2), or 6427(j)(2), the date fixed for appearance before the Secretary shall not be less than 10 days from the date of the summons.

(b) Restrictions on examination of taxpayer

No taxpayer shall be subjected to unnecessary examination or investigations, and only one inspection of a taxpayer's books of account shall be made for each taxable year unless the taxpayer requests otherwise or unless the Secretary, after investigation, notifies the taxpayer in writing that an additional inspection is necessary.

(c) Cross reference

For provisions restricting church tax inquiries and examinations, see section 7611.

(Aug. 16, 1954, ch. 736, 68A Stat. 902; Apr. 2, 1956, ch. 160, §4(i), 70 Stat. 91; June 29, 1956, ch. 462, title II, §208(d)(4), 70 Stat. 396; Pub. L. 89–44, title II, §202(c)(4), June 21, 1965, 79 Stat. 139; Pub. L. 91–172, title I, §121(f), Dec. 30, 1969, 83 Stat. 548; Pub. L. 91–258, title II, §207(d)(9), May 21, 1970, 84 Stat. 249; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 94–530, §1(c)(6), Oct. 17, 1976, 90 Stat. 2488; Pub. L. 95–599, title V, §505(c)(5), Nov. 6, 1978, 92 Stat. 2760; Pub. L. 96–223, title II, §232(d)(4)(E), Apr. 2, 1980, 94 Stat. 278; Pub. L. 97–424, title V, §515(b)(12), Jan. 6, 1983, 96 Stat. 2182; Pub. L. 98–369, div. A, title IX, §911(d)(2)(G), title X, §1033(c)(1), July 18, 1984, 98 Stat. 1007, 1039; Pub. L. 99–514, title XVII, §1703(e)(2)(G), Oct. 22, 1986, 100 Stat. 2778; Pub. L. 100–647, title I, §1017(c)(9), (12), Nov. 10, 1988, 102 Stat. 3576, 3577.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–647, §1017(c)(12), made technical correction to language of Pub. L. 99–514, §1703(e)(2)(G), see 1986 Amendment note below.

Pub. L. 100–647, §1017(c)(9), substituted "6421(g)(2)" for "6421(f)(2)" in two places.

1986—Subsec. (a). Pub. L. 99–514, as amended by Pub. L. 100–647, §1017(c)(12), substituted "6427(j)(2)" for "6427(i)(2)" in two places.

1984—Subsec. (a). Pub. L. 98–369, §911(d)(2)(G), substituted "6427(i)(2)" for "6427(h)(2)" in two places.

Subsec. (c). Pub. L. 98–369, §1033(c)(1), amended subsec. (c) generally, substituting a cross reference relating to church tax inquiries for provisions relating to church tax inquiries.

1983—Subsec. (a). Pub. L. 97–424 struck out "6424(d)(2)," after "6421(f)(2)," wherever appearing.

1980—Subsec. (a). Pub. L. 96–223 substituted "6427(h)(2)" for "6427(g)(2)" wherever appearing.

1978—Subsec. (a). Pub. L. 95–599 substituted "6427(g)(2)" for "6427(f)(2)" wherever appearing.

1976—Subsec. (a). Pub. L. 94–530 substituted "6427(f)(2)" for "6427(e)(2)" wherever appearing.

Pub. L. 94–455 struck out "or his delegate" after "Secretary".

Subsecs. (b), (c). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

1970—Subsec. (a). Pub. L. 91–258 inserted references to section 6427(e)(2).

1969—Subsec. (c). Pub. L. 91–172 added subsec. (c).

1965—Subsec. (a). Pub. L. 89–44 inserted references to section 6424(d)(2).

1956—Subsec. (a). Act June 29, 1956, inserted references to section 6421(f)(2).

Act Apr. 2, 1956, inserted references to section 6420(e)(2) in second sentence.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to gasoline removed (as defined in section 4082 of this title as amended by section 1703 of Pub. L. 99–514) after Dec. 31, 1987, see section 1703(h) of Pub. L. 99–514, set out as a note under section 4081 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 911(d)(2)(G) of Pub. L. 98–369 effective Aug. 1, 1984, see section 911(e) of Pub. L. 98–369, set out as a note under section 6427 of this title.

Amendment by section 1033(c)(1) of Pub. L. 98–369 applicable with respect to inquiries and examinations beginning after Dec. 31, 1984, see section 1033(d) of Pub. L. 98–369, set out as an Effective Date note under section 7611 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–424 applicable with respect to articles sold after Jan. 6, 1983, see section 515(c) of Pub. L. 97–424, set out as a note under section 34 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–223 effective Jan. 1, 1979, see section 232(h)(2) of Pub. L. 96–223, set out as a note under section 6427 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–599 effective Jan. 1, 1979, see section 505(d) of Pub. L. 95–599, set out as a note under section 6427 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–530 effective Oct. 1, 1976, see section 1(d) of Pub. L. 94–530, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–258 effective July 1, 1970, see section 211(a) of Pub. L. 91–258, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 121(g) of Pub. L. 91–172, set out as a note under section 511 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 effective Jan. 1, 1966, see section 701(a)(1), (2), of Pub. L. 89–44, set out as a note under section 4161 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act June 29, 1956, effective June 29, 1956, see section 211 of act June 29, 1956, set out as a note under section 4041 of this title.

REGULATIONS

Pub. L. 100–647, title VI, §6228(b), Nov. 10, 1988, 102 Stat. 3732, provided that: "The Secretary of the Treasury or the Secretary's delegate shall issue regulations to implement subsection (a) of section 7605 of the 1986 Code (relating to time and place of examination) within 1 year after the date of the enactment of this Act [Nov. 10, 1988]."

§7606. Entry of premises for examination of taxable objects

(a) Entry during day

The Secretary may enter, in the daytime, any building or place where any articles or objects subject to tax are made, produced, or kept, so far as it may be necessary for the purpose of examining said articles or objects.

(b) Entry at night

When such premises are open at night, the Secretary may enter them while so open, in the performance of his official duties.

(c) Penalties

For penalty for refusal to permit entry or examination, see section 7342.

(Aug. 16, 1954, ch. 736, 68A Stat. 903; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

[§7607. Repealed. Pub. L. 98–473, title II, §320(b), Oct. 12, 1984, 98 Stat. 2056, and Pub. L. 98–573, title II, §213(b)(1), Oct. 30, 1984, 98 Stat. 2988]

Section, added July 18, 1956, ch. 629, title I, §104(a), 70 Stat. 570; amended Oct. 27, 1970, Pub. L. 91–513, title III, §1102(g)(1), 84 Stat. 1292, set forth additional authority for Bureau of Customs with respect to firearms, warrants, etc.

Another section 7607 was renumbered section 7613 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 15, 1984, see section 214(e) of Pub. L. 98–573, set out as an Effective Date of 1984 Amendment note under section 1304 of Title 19, Customs Duties.

§7608. Authority of internal revenue enforcement officers

(a) Enforcement of subtitle E and other laws pertaining to liquor, tobacco, and firearms

Any investigator, agent, or other internal revenue officer by whatever term designated, whom the Secretary charges with the duty of enforcing any of the criminal, seizure, or forfeiture provisions of subtitle E or of any other law of the United States pertaining to the commodities subject to tax under such subtitle for the enforcement of which the Secretary is responsible may—

(1) carry firearms;

(2) execute and serve search warrants and arrest warrants, and serve subpoenas and summonses issued under authority of the United States;

(3) in respect to the performance of such duty, make arrests without warrant for any offense against the United States committed in his presence, or for any felony cognizable under the laws of the United States if he has reasonable grounds to believe that the person to be arrested has committed, or is committing, such felony; and

(4) in respect to the performance of such duty, make seizures of property subject to forfeiture to the United States.

(b) Enforcement of laws relating to internal revenue other than subtitle E

(1) Any criminal investigator of the Intelligence Division of the Internal Revenue Service whom the Secretary charges with the duty of enforcing any of the criminal provisions of the internal revenue laws, any other criminal provisions of law relating to internal revenue for the enforcement of which the Secretary is responsible, or any other law for which the Secretary has delegated investigatory authority to the Internal Revenue Service, is, in the performance of his duties, authorized to perform the functions described in paragraph (2).

(2) The functions authorized under this subsection to be performed by an officer referred to in paragraph (1) are—

(A) to execute and serve search warrants and arrest warrants, and serve subpoenas and summonses issued under authority of the United States;

(B) to make arrests without warrant for any offense against the United States relating to the internal revenue laws committed in his presence, or for any felony cognizable under such laws if he has reasonable grounds to believe that the person to be arrested has committed or is committing any such felony; and

(C) to make seizures of property subject to forfeiture under the internal revenue laws.

(c) Rules relating to undercover operations

(1) Certification required for exemption of undercover operations from certain laws

With respect to any undercover investigative operation of the Internal Revenue Service (hereinafter in this subsection referred to as the "Service") which is necessary for the detection and

prosecution of offenses under the internal revenue laws, any other criminal provisions of law relating to internal revenue, or any other law for which the Secretary has delegated investigatory authority to the Internal Revenue Service—

(A) sums authorized to be appropriated for the Service may be used—

(i) to purchase property, buildings, and other facilities, and to lease space, within the United States, the District of Columbia, and the territories and possessions of the United States without regard to—

(I) sections 1341 and 3324 of title 31, United States Code,

(II) sections 6301(a) and (b)(1)–(3) and 6306 of title 41, United States Code,

(III) chapter 45 of title 41, United States Code,

(IV) section 8141 of title 40, United States Code, and

(V) section 3901 of title 41, United States Code, and

(ii) to establish or to acquire proprietary corporations or business entities as part of the undercover operation, and to operate such corporations or business entities on a commercial basis, without regard to sections 9102 and 9103 of title 31, United States Code;

(B) sums authorized to be appropriated for the Service and the proceeds from the undercover operations may be deposited in banks or other financial institutions without regard to the provisions of section 648 of title 18, United States Code, and section 3302 of title 31, United States Code, and

(C) the proceeds from the undercover operation may be used to offset necessary and reasonable expenses incurred in such operation without regard to the provisions of section 3302 of title 31, United States Code.

This paragraph shall apply only upon the written certification of the Commissioner of Internal Revenue (or, if designated by the Commissioner, the Deputy Commissioner or an Assistant Commissioner of Internal Revenue) that any action authorized by subparagraph (A), (B), or (C) is necessary for the conduct of such undercover operation.

(2) Liquidation of corporations and business entities

If a corporation or business entity established or acquired as part of an undercover operation under subparagraph (B) of paragraph (1) with a net value over $50,000 is to be liquidated, sold, or otherwise disposed of, the Service, as much in advance as the Commissioner or his delegate determines is practicable, shall report the circumstances to the Secretary. The proceeds of the liquidation, sale, or other disposition, after obligations are met, shall be deposited in the Treasury of the United States as miscellaneous receipts.

(3) Deposit of proceeds

As soon as the proceeds from an undercover investigative operation with respect to which an action is authorized and carried out under subparagraphs (B) and (C) of paragraph (1) are no longer necessary for the conduct of such operation, such proceeds or the balance of such proceeds remaining at the time shall be deposited into the Treasury of the United States as miscellaneous receipts.

(4) Audits

(A) The Service shall conduct a detailed financial audit of each undercover investigative operation which is closed in each fiscal year; and

(i) submit the results of the audit in writing to the Secretary; and

(ii) not later than 180 days after such undercover operation is closed, submit a report to the Congress concerning such audit.

(B) The Service shall also submit a report annually to the Congress specifying as to its undercover investigative operations—

(i) the number, by programs, of undercover investigative operations pending as of the end of the 1-year period for which such report is submitted;

(ii) the number, by programs, of undercover investigative operations commenced in the 1-year period for which such report is submitted;

(iii) the number, by programs, of undercover investigative operations closed in the 1-year period for which such report is submitted, and

(iv) the following information with respect to each undercover investigative operation pending as of the end of the 1-year period for which such report is submitted or closed during such 1-year period—

(I) the date the operation began and the date of the certification referred to in the last sentence of paragraph (1),

(II) the total expenditures under the operation and the amount and use of the proceeds from the operation,

(III) a detailed description of the operation including the potential violation being investigated and whether the operation is being conducted under grand jury auspices, and

(IV) the results of the operation including the results of criminal proceedings.

(5) Definitions

For purposes of paragraph (4)—

(A) Closed

The term "closed" means the date on which the later of the following occurs;

(i) all criminal proceedings (other than appeals) are concluded, or

(ii) covert activities are concluded, whichever occurs later.

(B) Employees

The term "employees" has the meaning given such term by section 2105 of title 5, United States Code.

(C) Undercover investigative operation

The term "undercover investigative operation" means any undercover investigative operation of the Service; except that, for purposes of subparagraphs (A) and (C) of paragraph (4), such term only includes an operation which is exempt from section 3302 or 9102 of title 31, United States Code.

(Added Pub. L. 85–859, title II, §204(14), Sept. 2, 1958, 72 Stat. 1429; amended Pub. L. 87–863, §6(a), Oct. 23, 1962, 76 Stat. 1143; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 100–690, title VII, §7601(c)(1), (2), Nov. 18, 1988, 102 Stat. 4504; Pub. L. 101–508, title XI, §11704(a)(32), (33), Nov. 5, 1990, 104 Stat. 1388–519; Pub. L. 104–168, title XII, §1205(b)–(c)(2), July 30, 1996, 110 Stat. 1471, 1472; Pub. L. 104–316, title I, §113, Oct. 19, 1996, 110 Stat. 3833; Pub. L. 105–206, title I, §1103(e)(4), July 22, 1998, 112 Stat. 710; Pub. L. 106–554, §1(a)(7) [title III, §303], Dec. 21, 2000, 114 Stat. 2763, 2763A–632; Pub. L. 107–217, §3(f), Aug. 21, 2002, 116 Stat. 1299; Pub. L. 108–178, §4(e), Dec. 15, 2003, 117 Stat. 2641; Pub. L. 109–135, title III, §304, Dec. 21, 2005, 119 Stat. 2609; Pub. L. 109–432, div. A, title I, §121, Dec. 20, 2006, 120 Stat. 2944; Pub. L. 110–343, div. C, title IV, §401(a), Oct. 3, 2008, 122 Stat. 3875; Pub. L. 111–350, §5(f), Jan. 4, 2011, 124 Stat. 3848.)

PRIOR PROVISIONS

A prior section 7608 was renumbered section 7613 of this title.

AMENDMENTS

2011—Subsec. (c)(1)(A)(i)(II). Pub. L. 111–350, §5(f)(1), substituted "sections 6301(a) and (b)(1)–(3) and 6306" for "sections 11(a) and 22".

Subsec. (c)(1)(A)(i)(III). Pub. L. 111–350, §5(f)(2), substituted "chapter 45" for "section 255".

Subsec. (c)(1)(A)(i)(V). Pub. L. 111–350, §5(f)(3), substituted "section 3901" for "section 254(a) and (c)".

2008—Subsec. (c)(6). Pub. L. 110–343 struck out par. (6). Text read as follows: "The provisions of this subsection—

"(A) shall apply after November 17, 1988, and before January 1, 1990, and

"(B) shall apply after the date of the enactment of this paragraph and before January 1, 2008.

All amounts expended pursuant to this subsection during the period described in subparagraph (B) shall be recovered to the extent possible, and deposited in the Treasury of the United States as miscellaneous receipts, before January 1, 2008."

2006—Subsec. (c)(6). Pub. L. 109–432 substituted "2008" for "2007" in subpar. (B) and concluding provisions.

2005—Subsec. (c)(6). Pub. L. 109–135 substituted "January 1, 2007" for "January 1, 2006" in subpar. (B) and concluding provisions.

2003—Subsec. (c)(1)(A)(i)(IV). Pub. L. 108–178 substituted "title 40, United States Code" for "title 40".

2002—Subsec. (c)(1)(A)(i)(IV). Pub. L. 107–217 substituted "section 8141 of title 40" for "section 34 of title 40, United States Code".

2000—Subsec. (c)(6). Pub. L. 106–554 substituted "January 1, 2006" for "January 1, 2001" in subpar. (B) and concluding provisions.

1998—Subsec. (b)(1). Pub. L. 105–206 struck out "or of the Internal Security Division" after "Intelligence Division".

1996—Subsec. (c)(2). Pub. L. 104–316 struck out "and the Comptroller General of the United States" after "Secretary".

Subsec. (c)(4)(B)(ii). Pub. L. 104–168, §1205(c)(1)(A), (B), struck out "preceding the period" after "in the 1-year period" and "and" at end.

Subsec. (c)(4)(B)(iii), (iv). Pub. L. 104–168, §1205(c)(1)(C), added cls. (iii) and (iv) and struck out former cl. (iii) which read as follows: "the number, by programs, of undercover investigative operations closed in the 1-year period preceding the period for which such report is submitted and, with respect to each such closed undercover operation, the results obtained and any civil claims made with respect thereto."

Subsec. (c)(5)(C). Pub. L. 104–168, §1205(c)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "The terms 'undercover investigative operation' and 'undercover operation' mean any undercover investigative operation of the Service—

"(i) in which—

"(I) the gross receipts (excluding interest earned) exceed $50,000; or

"(II) expenditures, both recoverable and nonrecoverable (other than expenditures for salaries of employees), exceed $150,000; and

"(ii) which is exempt from section 3302 or 9102 of title 31, United States Code.

Clauses (i) and (ii) shall not apply with respect to the report required under subparagraph (B) of paragraph (4)."

Subsec. (c)(6). Pub. L. 104–168, §1205(b), added par. (6).

1990—Subsec. (c)(1)(B). Pub. L. 101–508, §11704(a)(32), struck out comma after "operations".

Subsec. (c)(5)(C). Pub. L. 101–508, §11704(a)(33), substituted "interest" for "interested" in cl. (i)(I) and "title 31" for "title 3" in cl. (ii).

1988—Subsec. (b)(1). Pub. L. 100–690, §7601(c)(1), substituted comma for "or" before "any other" and inserted ", or any other law for which the Secretary has delegated investigatory authority to the Internal Revenue Service," after "responsible".

Subsec. (c). Pub. L. 100–690, §7601(c)(2), added subsec. (c).

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

1962—Pub. L. 87–863 redesignated existing provisions as subsec. (a), added subsec. (a) heading, and added subsec. (b).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title IV, §401(b), Oct. 3, 2008, 122 Stat. 3875, provided that: "The amendment made by this section [amending this section] shall apply to operations conducted after the date of the enactment of this Act [Oct. 3, 2008]."

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–178 effective Aug. 21, 2002, see section 5 of Pub. L. 108–178, set out as a note under section 5334 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–168, title XII, §1205(c)(3), July 30, 1996, 110 Stat. 1472, provided that: "The amendments made by this subsection [amending this section] shall take effect on the date of the enactment of this Act [July

30, 1996]."

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–690, title VII, §7601(c)(3), Nov. 18, 1988, 102 Stat. 4507, as amended by Pub. L. 101–647, title XXXIII, §3301(a), Nov. 29, 1990, 104 Stat. 4917; Pub. L. 104–168, title XII, §1205(a), July 30, 1996, 110 Stat. 1471, provided that: "The amendments made by this subsection [amending this section] shall take effect on the date of the enactment of this Act [Nov. 18, 1988]."

EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87–863, §6(b), Oct. 23, 1962, 76 Stat. 1143, provided that: "The amendments made by subsection (a) [amending this section] shall take effect on the day after the date of enactment of this Act [Oct. 23, 1962]."

EFFECTIVE DATE

Section effective Sept. 3, 1958, see section 210(a)(1) of Pub. L. 85–859, set out as a note under section 5001 of this title.

§7609. Special procedures for third-party summonses

(a) Notice

(1) In general

If any summons to which this section applies requires the giving of testimony on or relating to, the production of any portion of records made or kept on or relating to, or the production of any computer software source code (as defined in 7612(d)(2)) with respect to, any person (other than the person summoned) who is identified in the summons, then notice of the summons shall be given to any person so identified within 3 days of the day on which such service is made, but no later than the 23rd day before the day fixed in the summons as the day upon which such records are to be examined. Such notice shall be accompanied by a copy of the summons which has been served and shall contain an explanation of the right under subsection (b)(2) to bring a proceeding to quash the summons.

(2) Sufficiency of notice

Such notice shall be sufficient if, on or before such third day, such notice is served in the manner provided in section 7603 (relating to service of summons) upon the person entitled to notice, or is mailed by certified or registered mail to the last known address of such person, or, in the absence of a last known address, is left with the person summoned. If such notice is mailed, it shall be sufficient if mailed to the last known address of the person entitled to notice or, in the case of notice to the Secretary under section 6903 of the existence of a fiduciary relationship, to the last known address of the fiduciary of such person, even if such person or fiduciary is then deceased, under a legal disability, or no longer in existence.

(3) Nature of summons

Any summons to which this subsection applies (and any summons in aid of collection described in subsection (c)(2)(D)) shall identify the taxpayer to whom the summons relates or the other person to whom the records pertain and shall provide such other information as will enable the person summoned to locate the records required under the summons.

(b) Right to intervene; right to proceeding to quash

(1) Intervention

Notwithstanding any other law or rule of law, any person who is entitled to notice of a summons under subsection (a) shall have the right to intervene in any proceeding with respect to the enforcement of such summons under section 7604.

(2) Proceeding to quash

(A) In general

Notwithstanding any other law or rule of law, any person who is entitled to notice of a summons under subsection (a) shall have the right to begin a proceeding to quash such summons not later than the 20th day after the day such notice is given in the manner provided in subsection (a)(2). In any such proceeding, the Secretary may seek to compel compliance with the summons.

(B) Requirement of notice to person summoned and to Secretary

If any person begins a proceeding under subparagraph (A) with respect to any summons, not later than the close of the 20-day period referred to in subparagraph (A) such person shall mail by registered or certified mail a copy of the petition to the person summoned and to such office as the Secretary may direct in the notice referred to in subsection (a)(1).

(C) Intervention; etc.

Notwithstanding any other law or rule of law, the person summoned shall have the right to intervene in any proceeding under subparagraph (A). Such person shall be bound by the decision in such proceeding (whether or not the person intervenes in such proceeding).

(c) Summons to which section applies

(1) In general

Except as provided in paragraph (2), this section shall apply to any summons issued under paragraph (2) of section 7602(a) or under section 6420(e)(2), 6421(g)(2), 6427(j)(2), or 7612.

(2) Exceptions

This section shall not apply to any summons—

(A) served on the person with respect to whose liability the summons is issued, or any officer or employee of such person;

(B) issued to determine whether or not records of the business transactions or affairs of an identified person have been made or kept;

(C) issued solely to determine the identity of any person having a numbered account (or similar arrangement) with a bank or other institution described in section 7603(b)(2)(A);

(D) issued in aid of the collection of—

(i) an assessment made or judgment rendered against the person with respect to whose liability the summons is issued; or

(ii) the liability at law or in equity of any transferee or fiduciary of any person referred to in clause (i); or

(E)(i) issued by a criminal investigator of the Internal Revenue Service in connection with the investigation of an offense connected with the administration or enforcement of the internal revenue laws; and

(ii) served on any person who is not a third-party recordkeeper (as defined in section 7603(b)).

(3) John Doe and certain other summonses

Subsection (a) shall not apply to any summons described in subsection (f) or (g).

(4) Records

For purposes of this section, the term "records" includes books, papers, and other data.

(d) Restriction on examination of records

No examination of any records required to be produced under a summons as to which notice is required under subsection (a) may be made—

(1) before the close of the 23rd day after the day notice with respect to the summons is given in the manner provided in subsection (a)(2), or

(2) where a proceeding under subsection (b)(2)(A) was begun within the 20-day period referred to in such subsection and the requirements of subsection (b)(2)(B) have been met, except in accordance with an order of the court having jurisdiction of such proceeding or with the consent of

the person beginning the proceeding to quash.

(e) Suspension of statute of limitations

(1) Subsection (b) action

If any person takes any action as provided in subsection (b) and such person is the person with respect to whose liability the summons is issued (or is the agent, nominee, or other person acting under the direction or control of such person), then the running of any period of limitations under section 6501 (relating to the assessment and collection of tax) or under section 6531 (relating to criminal prosecutions) with respect to such person shall be suspended for the period during which a proceeding, and appeals therein, with respect to the enforcement of such summons is pending.

(2) Suspension after 6 months of service of summons

In the absence of the resolution of the summoned party's response to the summons, the running of any period of limitations under section 6501 or under section 6531 with respect to any person with respect to whose liability the summons is issued (other than a person taking action as provided in subsection (b)) shall be suspended for the period—

(A) beginning on the date which is 6 months after the service of such summons, and

(B) ending with the final resolution of such response.

(f) Additional requirement in the case of a John Doe summons

Any summons described in subsection (c)(1) which does not identify the person with respect to whose liability the summons is issued may be served only after a court proceeding in which the Secretary establishes that—

(1) the summons relates to the investigation of a particular person or ascertainable group or class of persons,

(2) there is a reasonable basis for believing that such person or group or class of persons may fail or may have failed to comply with any provision of any internal revenue law, and

(3) the information sought to be obtained from the examination of the records or testimony (and the identity of the person or persons with respect to whose liability the summons is issued) is not readily available from other sources.

(g) Special exception for certain summonses

A summons is described in this subsection if, upon petition by the Secretary, the court determines, on the basis of the facts and circumstances alleged, that there is reasonable cause to believe the giving of notice may lead to attempts to conceal, destroy, or alter records relevant to the examination, to prevent the communication of information from other persons through intimidation, bribery, or collusion, or to flee to avoid prosecution, testifying, or production of records.

(h) Jurisdiction of district court; etc.

(1) Jurisdiction

The United States district court for the district within which the person to be summoned resides or is found shall have jurisdiction to hear and determine any proceeding brought under subsection (b)(2), (f), or (g). An order denying the petition shall be deemed a final order which may be appealed.

(2) Special rule for proceedings under subsections (f) and (g)

The determinations required to be made under subsections (f) and (g) shall be made ex parte and shall be made solely on the petition and supporting affidavits.

(i) Duty of summoned party

(1) Recordkeeper must assemble records and be prepared to produce records

On receipt of a summons to which this section applies for the production of records, the summoned party shall proceed to assemble the records requested, or such portion thereof as the Secretary may prescribe, and shall be prepared to produce the records pursuant to the summons on the day on which the records are to be examined.

(2) Secretary may give summoned party certificate

The Secretary may issue a certificate to the summoned party that the period prescribed for beginning a proceeding to quash a summons has expired and that no such proceeding began within such period, or that the taxpayer consents to the examination.

(3) Protection for summoned party who discloses

Any summoned party, or agent or employee thereof, making a disclosure of records or testimony pursuant to this section in good faith reliance on the certificate of the Secretary or an order of a court requiring production of records or the giving of such testimony shall not be liable to any customer or other person for such disclosure.

(4) Notice of suspension of statute of limitations in the case of a John Doe summons

In the case of a summons described in subsection (f) with respect to which any period of limitations has been suspended under subsection (e)(2), the summoned party shall provide notice of such suspension to any person described in subsection (f).

(j) Use of summons not required

Nothing in this section shall be construed to limit the Secretary's ability to obtain information, other than by summons, through formal or informal procedures authorized by sections 7601 and 7602.

(Added Pub. L. 94–455, title XII, §1205(a), Oct. 4, 1976, 90 Stat. 1699; amended Pub. L. 95–599, title V, §505(c)(6), Nov. 6, 1978, 92 Stat. 2760; Pub. L. 95–600, title VII, §703(l)(4), Nov. 6, 1978, 92 Stat. 2943; Pub. L. 96–223, title II, §232(d)(4)(E), Apr. 2, 1980, 94 Stat. 278; Pub. L. 97–248, title III, §§311(b), 331(a)–(d), 332(a), Sept. 3, 1982, 96 Stat. 601, 620, 621; Pub. L. 97–424, title V, §515(b)(12), Jan. 6, 1983, 96 Stat. 2182; Pub. L. 98–369, div. A, title VII, §714(i), title IX, §911(d)(2)(G), July 18, 1984, 98 Stat. 962, 1007; Pub. L. 98–620, title IV, §402(28)(D), Nov. 8, 1984, 98 Stat. 3359; Pub. L. 99–514, title VI, §656(a), title XV, §1561(a), (b), title XVII, §1703(e)(2)(G), Oct. 22, 1986, 100 Stat. 2299, 2761, 2778; Pub. L. 100–647, title I, §§1015(l)(1), (2), 1017(c)(9), (12), Nov. 10, 1988, 102 Stat. 3571, 3572, 3576, 3577; Pub. L. 104–168, title X, §1001(a), July 30, 1996, 110 Stat. 1467; Pub. L. 105–206, title III, §3415(a)–(c), July 22, 1998, 112 Stat. 755; Pub. L. 109–135, title IV, §408(a), Dec. 21, 2005, 119 Stat. 2635.)

PRIOR PROVISIONS

A prior section 7609 was renumbered section 7613 of this title.

AMENDMENTS

2005—Subsec. (c)(2)(D) to (F). Pub. L. 109–135, §408(a)(1), inserted "or" at end of subpar. (D), substituted period for "; or" at end of subpar. (E), and struck out subpar. (F) which read as follows: "described in subsection (f) or (g)."

Subsec. (c)(3), (4). Pub. L. 109–135, §408(a)(2), added par. (3) and redesignated former par. (3) as (4).

1998—Subsec. (a)(1). Pub. L. 105–206, §3415(a), reenacted heading without change and in text substituted "If any summons to which this section applies requires the giving of testimony on or relating to, the production of any portion of records made or kept on or relating to, or the production of any computer software source code (as defined in 7612(d)(2)) with respect to, any person (other than the person summoned) who is identified in the summons, then" for "If—

"(A) any summons described in subsection (c) is served on any person who is a third-party recordkeeper, and

"(B) the summons requires the production of any portion of records made or kept of the business transactions or affairs of any person (other than the person summoned) who is identified in the description of the records contained in the summons,

then".

Subsec. (a)(3). Pub. L. 105–206, §3415(c)(1), redesignated par. (5) as (3), substituted "subsection (c)(2)(D)" for "subsection (c)(2)(B)", and struck out heading and text of former par. (3). Text read as follows: "For purposes of this subsection, the term 'third-party recordkeeper' means—

"(A) any mutual savings bank, cooperative bank, domestic building and loan association, or other savings institution chartered and supervised as a savings and loan or similar association under Federal or

State law, any bank (as defined in section 581), or any credit union (within the meaning of section 501(c)(14)(A));

"(B) any consumer reporting agency (as defined under section 603(d) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)));

"(C) any person extending credit through the use of credit cards or similar devices;

"(D) any broker (as defined in section 3(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)));

"(E) any attorney;

"(F) any accountant;

"(G) any barter exchange (as defined in section 6045(c)(3));

"(H) any regulated investment company (as defined in section 851) and any agent of such regulated investment company when acting as an agent thereof; and

"(I) any enrolled agent."

Subsec. (a)(4). Pub. L. 105–206, §3415(c)(1), struck out heading and text of par. (4). Text read as follows: "Paragraph (1) shall not apply to any summons—

"(A) served on the person with respect to whose liability the summons is issued, or any officer or employee of such person,

"(B) to determine whether or not records of the business transactions or affairs of an identified person have been made or kept, or

"(C) described in subsection (f)."

Subsec. (a)(5). Pub. L. 105–206, §3415(c)(1), redesignated par. (5) as (3).

Subsec. (c). Pub. L. 105–206, §3415(c)(2), reenacted heading without change and amended text generally, substituting present provisions for provisions which had: in par. (1) declared a general rule of including within subsection summons issued under sections 6420(e)(2), 6421(g)(2), 6427(j)(2), or 7602(a)(2); in par. (2) set forth exceptions where summons was solely to determine identity of person having a numbered account, or was in aid of collection of liability of person against whom assessment or judgment had been made, or his transferee or fiduciary; and in par. (3) defined "records" and declared that summons requiring testimony about records would be treated as summons requiring production of such records.

Subsec. (e)(2). Pub. L. 105–206, §3415(c)(3), substituted "summoned party's response to the summons" for "third-party recordkeeper's response to the summons described in subsection (c), or the summoned party's response to a summons described in subsection (f)".

Subsec. (f). Pub. L. 105–206, §3415(c)(4)(A), substituted "subsection (c)(1)" for "subsection (c)" in introductory provisions.

Subsec. (f)(3). Pub. L. 105–206, §3415(c)(4)(B), inserted "or testimony" after "records".

Subsec. (g). Pub. L. 105–206, §3415(c)(5), substituted "A summons is described in this subsection if" for "In the case of any summons described in subsection (c), the provisions of subsections (a)(1) and (b) shall not apply if".

Subsec. (i). Pub. L. 105–206, §3415(c)(6)(A), struck out "third-party recordkeeper and" after "Duty of" in heading.

Subsec. (i)(1). Pub. L. 105–206, §3415(c)(6)(B), substituted "to which this section applies for the production of records, the summoned party" for "described in subsection (c), the third-party recordkeeper".

Subsec. (i)(2). Pub. L. 105–206, §3415(c)(6)(C), substituted "summoned party" for "recordkeeper" in heading and "the summoned party" for "the third-party recordkeeper" in text.

Subsec. (i)(3). Pub. L. 105–206, §3415(c)(6)(D), substituted "summoned party" for "recordkeeper" in heading and amended text of par. (3) generally. Prior to amendment, text read as follows: "Any third-party recordkeeper, or agent or employee thereof, making a disclosure of records pursuant to this section in good-faith reliance on the certificate of the Secrtetary or an order of a court requiring production of records shall not be liable to any customer or other person for such disclosure."

Subsec. (j). Pub. L. 105–206, §3415(b), added subsec. (j).

1996—Subsec. (a)(3)(I). Pub. L. 104–168 added subpar. (I).

1988—Subsec. (c)(1). Pub. L. 100–647, §1017(c)(12), made technical correction to language of Pub. L. 99–514, §1703(e)(2)(G), see 1986 Amendment note below.

Pub. L. 100–647, §1017(c)(9), substituted "6421(g)(2)" for "6421(f)(2)".

Subsec. (e)(2). Pub. L. 100–647, §1015(l)(1), inserted "or the summoned party's response to a summons described in subsection (f)," after "the summons described in subsection (c)," and substituted "the summons is issued" for "the summons is issued other".

Subsec. (i). Pub. L. 100–647, §1015(l)(2)(B), inserted "and summoned party" after "recordkeeper" in heading.

Subsec. (i)(4). Pub. L. 100–647, §1015(l)(2)(A), substituted "the summoned party" for "the third-party recordkeeper".

1986—Subsec. (a)(3)(H). Pub. L. 99–514, §656(a), added subpar. (H).

Subsec. (c)(1). Pub. L. 99–514, §1703(e)(2)(G), as amended by Pub. L. 100–647, §1017(c)(12), substituted "6427(j)(2)" for "6427(i)(2)".

Subsec. (e). Pub. L. 99–514, §1561(a), amended subsec. (e) generally, designating existing provisions as par. (1), inserting heading, and adding par. (2).

Subsec. (i)(4). Pub. L. 99–514, §1561(b), added par. (4).

1984—Subsec. (c)(1). Pub. L. 98–369, §714(i), substituted "7602(a)" for "7602".

Pub. L. 98–369, §911(d)(2)(G), substituted "6427(i)(2)" for "6427(h)(2)".

Subsec. (h)(3). Pub. L. 98–620 struck out par. (3) which had provided that except as to cases the court considered to be of greater importance, proceedings brought for the enforcement of any summons, or proceedings under this section, and appeals, would take precedence on the docket over all other cases and would be assigned for hearing and decided at the earliest practicable date.

1983—Subsec. (c)(1). Pub. L. 97–424 struck out "6424(d)(2)," after "6421(f)(2),".

1982—Subsec. (a)(1). Pub. L. 97–248, §331(d)(1), substituted "the 23rd day" for "the 14th day", and substituted "an explanation of the right under subsection (b)(2) to bring a proceeding to quash the summons" for "directions for staying compliance with the summons under subsection (b)(2)" at the end.

Subsec. (a)(3)(G). Pub. L. 97–248, §311(b), added subpar. (G).

Subsec. (b). Pub. L. 97–248, §331(a), (d)(2), substituted "right to proceeding to quash" for "right to stay compliance" in heading, and in par. (2) substituted "Proceeding to quash" for "Right to stay compliance" as par. (2) heading, designated former undesignated matter as subpar. (A), in (A) as so designated substituted provisions giving persons entitled to notice 20 days to begin a proceeding to quash, for provisions giving persons entitled to notice the right to stay compliance if they complied with the provisions of former subpars. (A) and (B) within 14 days, and inserted provision that the Secretary may seek to compel compliance with the summons, struck out former subpar. (A) which provided that notice to the person summoned not to comply with the summons be given in writing, in subpar. (B) substituted provisions that copies of the petition in the proceeding to quash the summons be mailed within the 20-day period, for provisions that copies of the notice not to comply with the summons be mailed, and added subpar. (C).

Subsec. (d). Pub. L. 97–248, §331(b), substituted in par. (1) provision that, no examination of records be made before the close of the 23rd day after the notice of summons, for provision that the examination may not be made before the end of the former 14-day period allowed for notice to be given to the person summoned not to comply, and in par. (2) substituted "where a proceeding under subsection (b)(2)(A) was begun within the 20-day period referred to in such subsection and the requirements of subsection (b)(2)(B) have been met," for "when the requirements of subsection (b)(2) have been met," and "of the court having jurisdiction of such proceeding or with the consent of the person beginning the proceeding to quash" for "issued by a court of competent jurisdiction authorizing examination of such records or with the consent of the person staying compliance".

Subsec. (h). Pub. L. 97–248, §331(c), inserted "; etc." after "court" in heading, in par. (1) added heading and substituted "any proceeding" for "proceedings" after "determine", substituted "subsection (b)(2), (f), or (g)" for "subsections (f) or (g)", designated former second sentence of par. (1) as par. (2) and added heading, redesignated former par. (2) as (3) and in par. (3) as so redesignated, added heading and substituted "all other cases" for "all cases".

Subsec. (i). Pub. L. 97–248, §332(a), added subsec. (i).

1980—Subsec. (c)(1). Pub. L. 96–223 substituted "6427(h)(2)" for "6427(g)(2)".

1978—Subsec. (c)(1). Pub. L. 95–600 which purported to substitute "6427(f)(2)" for "6427(e)(2)" was not executed in view of the amendment made by Pub. L. 95–599. See below.

Pub. L. 95–599 substituted "6427(g)(2)" for "6427(e)(2)".

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–135, title IV, §408(b), Dec. 21, 2005, 119 Stat. 2635, provided that: "The amendments made by this section [amending this section] shall take effect as if included in section 3415 of the Internal Revenue Service Restructuring and Reform Act of 1998 [Pub. L. 105–206]."

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–206, title III, §3415(d), July 22, 1998, 112 Stat. 756, provided that: "The amendments made by this section [amending this section] shall apply to summonses served after the date of the enactment of this Act [July 22, 1998]."

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–168, title X, §1001(b), July 30, 1996, 110 Stat. 1468, provided that: "The amendment made by subsection (a) [amending this section] shall apply to summonses issued after the date of the enactment of this Act [July 30, 1996]."

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1015(l)(3), Nov. 10, 1988, 102 Stat. 3572, provided that: "The amendments made by this subsection [amending this section] shall take effect on the date of the enactment of this Act [Nov. 10, 1988]."

Amendment by section 1017(c)(9), (12) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title VI, §656(b), Oct. 22, 1986, 100 Stat. 2299, provided that: "The amendment made by subsection (a) [amending this section] shall apply to summonses served after the date of the enactment of this Act [Oct. 22, 1986]."

Pub. L. 99–514, title XV, §1561(c), Oct. 22, 1986, 100 Stat. 2761, provided that: "The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Oct. 22, 1986]."

Amendment by section 1703(e)(2)(G) of Pub. L. 99–514 applicable to gasoline removed (as defined in section 4082 of this title, as amended by section 1703 of Pub. L. 99–514) after Dec. 31, 1987, see section 1703(h) of Pub. L. 99–514, set out as a note under section 4081 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

Amendment by section 714(i) of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

Amendment by section 911(d)(2)(G) of Pub. L. 98–369 effective Aug. 1, 1984, see section 911(e) of Pub. L. 98–369, set out as a note under section 6427 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–424 applicable with respect to articles sold after Jan. 6, 1983, see section 515(c) of Pub. L. 97–424, set out as a note under section 34 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title III, §311(c)(2), Sept. 3, 1982, 96 Stat. 601, provided that: "The amendments made by subsection (b) [amending this section] shall apply to summonses served after December 31, 1982."

Pub. L. 97–248, title III, §331(e), Sept. 3, 1982, 96 Stat. 621, provided that: "The amendments made by this section [amending this section] shall apply to summonses served after December 31, 1982."

Pub. L. 97–248, title III, §332(b), Sept. 3, 1982, 96 Stat. 622, provided that: "The amendment made by subsection (a) [amending this section] shall apply to summonses served after December 31, 1982."

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–223 effective Jan. 1, 1979, see section 232(h)(2) of Pub. L. 96–223, set out as a note under section 6427 of this title.

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95–600 effective Oct. 4, 1976, see section 703(r) of Pub. L. 95–600, set out a note under section 46 of this title.

Amendment by Pub. L. 95–599 effective Jan. 1, 1979, see section 505(d) of Pub. L. 95–599, set out as a note under section 6427 of this title.

EFFECTIVE DATE

Pub. L. 94–455, title XII, §1205(c), Oct. 4, 1976, 90 Stat. 1703, as amended by Pub. L. 94–528, §2(b), Oct. 17, 1976, 90 Stat. 2483, provided that: "The amendments made by this section [enacting this section and section 7610 of this title] shall apply with respect to any summons issued after February 28, 1977."

§7610. Fees and costs for witnesses

(a) In general

The Secretary shall by regulations establish the rates and conditions under which payment may be made of—

(1) fees and mileage to persons who are summoned to appear before the Secretary, and

(2) reimbursement for such costs that are reasonably necessary which have been directly incurred in searching for, reproducing, or transporting books, papers, records, or other data required to be produced by summons.

(b) Exceptions

No payment may be made under paragraph (2) of subsection (a) if—

(1) the person with respect to whose liability the summons is issued has a proprietary interest in the books, papers, records or other data required to be produced, or

(2) the person summoned is the person with respect to whose liability the summons is issued or an officer, employee, agent, accountant, or attorney of such person who, at the time the summons is served, is acting as such.

(c) Summons to which section applies

This section applies with respect to any summons authorized under section 6420(e)(2), 6421(g)(2), 6427(j)(2), or 7602.

(Added Pub. L. 94–455, title XII, §1205(a), Oct. 4, 1976, 90 Stat. 1699; amended Pub. L. 95–599, title V, §505(c)(6), Nov. 6, 1978, 92 Stat. 2760; Pub. L. 96–223, title II, §232(d)(4)(E), Apr. 2, 1980, 94 Stat. 278; Pub. L. 97–424, title V, §515(b)(12), Jan. 6, 1983, 96 Stat. 2182; Pub. L. 98–369, div. A, title IX, §911(d)(2)(G), July 18, 1984, 98 Stat. 1007; Pub. L. 99–514, title XVII, §1703(e)(2)(G), Oct. 22, 1986, 100 Stat. 2778; Pub. L. 100–647, title I, §1017(c)(9), (12), Nov. 10, 1988, 102 Stat. 3576, 3577.)

AMENDMENTS

1988—Subsec. (c). Pub. L. 100–647, §1017(c)(12), made technical correction to language of Pub. L. 99–514, §1703(e)(2)(G), see 1986 Amendment note below.

Pub. L. 100–647, §1017(c)(9), substituted "6421(g)(2)" for "6421(f)(2)".

1986—Subsec. (c). Pub. L. 99–514, as amended by Pub. L. 100–647, §1017(c)(12), substituted "6427(j)(2)" for "6427(i)(2)".

1984—Subsec. (c). Pub. L. 98–369 substituted "6427(i)(2)" for "6427(h)(2)".

1983—Subsec. (c). Pub. L. 97–424 struck out "6424(d)(2)," after "6421(f)(2),".

1980—Subsec. (c). Pub. L. 96–223 substituted "6427(h)(2)" for "6427(g)(2)".

1978—Subsec. (c). Pub. L. 95–599 substituted "6427(g)(2)" for "6427(e)(2)".

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to gasoline removed (as defined in section 4082 of this title as amended by section 1703 of Pub. L. 99–514) after Dec. 31, 1987, see section 1703(h) of Pub. L. 99–514, set out as a note under section 4081 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective Aug. 1, 1984, see section 911(e) of Pub. L. 98–369, set out as a note under section 6427 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–424 applicable with respect to articles sold after Jan. 6, 1983, see section 515(c) of Pub. L. 97–424, set out as a note under section 34 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–223 effective Jan. 1, 1979, see section 232(h)(2) of Pub. L. 96–223, set out as a note under section 6427 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–599 effective Jan. 1, 1979, see section 505(d) of Pub. L. 95–599, set out as a note under section 6427 of this title.

§7611. Restrictions on church tax inquiries and examinations

(a) Restrictions on inquiries

(1) In general

The Secretary may begin a church tax inquiry only if—

(A) the reasonable belief requirements of paragraph (2), and

(B) the notice requirements of paragraph (3), have been met.

(2) Reasonable belief requirements

The requirements of this paragraph are met with respect to any church tax inquiry if an appropriate high-level Treasury official reasonably believes (on the basis of facts and circumstances recorded in writing) that the church—

(A) may not be exempt, by reason of its status as a church, from tax under section 501(a), or

(B) may be carrying on an unrelated trade or business (within the meaning of section 513) or otherwise engaged in activities subject to taxation under this title.

(3) Inquiry notice requirements

(A) In general

The requirements of this paragraph are met with respect to any church tax inquiry if, before beginning such inquiry, the Secretary provides written notice to the church of the beginning of such inquiry.

(B) Contents of inquiry notice

The notice required by this paragraph shall include—

(i) an explanation of—

(I) the concerns which gave rise to such inquiry, and

(II) the general subject matter of such inquiry, and

(ii) a general explanation of the applicable—

(I) administrative and constitutional provisions with respect to such inquiry (including the right to a conference with the Secretary before any examination of church records), and

(II) provisions of this title which authorize such inquiry or which may be otherwise involved in such inquiry.

(b) Restrictions on examinations

(1) In general

The Secretary may begin a church tax examination only if the requirements of paragraph (2) have been met and such examination may be made only—

(A) in the case of church records, to the extent necessary to determine the liability for, and the amount of, any tax imposed by this title, and

(B) in the case of religious activities, to the extent necessary to determine whether an organization claiming to be a church is a church for any period.

(2) Notice of examination; opportunity for conference

The requirements of this paragraph are met with respect to any church tax examination if—

(A) at least 15 days before the beginning of such examination, the Secretary provides the notice described in paragraph (3) to both the church and the appropriate regional counsel of the Internal Revenue Service, and

(B) the church has a reasonable time to participate in a conference described in paragraph (3)(A)(iii), but only if the church requests such a conference before the beginning of the examination.

(3) Contents of examination notice, et cetera

(A) In general

The notice described in this paragraph is a written notice which includes—

(i) a copy of the church tax inquiry notice provided to the church under subsection (a),

(ii) a description of the church records and activities which the Secretary seeks to examine,

(iii) an offer to have a conference between the church and the Secretary in order to discuss, and attempt to resolve, concerns relating to such examination, and

(iv) a copy of all documents which were collected or prepared by the Internal Revenue Service for use in such examination and the disclosure of which is required by the Freedom of Information Act (5 U.S.C. 552).

(B) Earliest day examination notice may be provided

The examination notice described in subparagraph (A) shall not be provided to the church before the 15th day after the date on which the church tax inquiry notice was provided to the church under subsection (a).

(C) Opinion of regional counsel with respect to examination

Any regional counsel of the Internal Revenue Service who receives an examination notice under paragraph (1) may, within 15 days after such notice is provided, submit to the regional commissioner for the region an advisory objection to the examination.

(4) Examination of records and activities not specified in notice

Within the course of a church tax examination which (at the time the examination begins) meets the requirements of paragraphs (1) and (2), the Secretary may examine any church records or religious activities which were not specified in the examination notice to the extent such examination meets the requirement of subparagraph (A) or (B) of paragraph (1) (whichever applies).

(c) Limitation on period of inquiries and examinations

(1) Inquiries and examinations must be completed within 2 years

(A) In general

The Secretary shall complete any church tax status inquiry or examination (and make a final determination with respect thereto) not later than the date which is 2 years after the examination notice date.

(B) Inquiries not followed by examinations

In the case of a church tax inquiry with respect to which there is no examination notice under subsection (b), the Secretary shall complete such inquiry (and make a final determination with respect thereto) not later than the date which is 90 days after the inquiry notice date.

(2) Suspension of 2-year period

The running of the 2-year period described in paragraph (1)(A) and the 90-day period in paragraph (1)(B) shall be suspended—

(A) for any period during which—

(i) a judicial proceeding brought by the church against the Secretary with respect to the church tax inquiry or examination is pending or being appealed,

(ii) a judicial proceeding brought by the Secretary against the church (or any official thereof) to compel compliance with any reasonable request of the Secretary in a church tax

examination for examination of church records or religious activities is pending or being appealed, or

(iii) the Secretary is unable to take actions with respect to the church tax inquiry or examination by reason of an order issued in any judicial proceeding brought under section 7609,

(B) for any period in excess of 20 days (but not in excess of 6 months) in which the church or its agents fail to comply with any reasonable request of the Secretary for church records or other information, or

(C) for any period mutually agreed upon by the Secretary and the church.

(d) Limitations on revocation of tax-exempt status, etc.

(1) In general

The Secretary may—

(A) determine that an organization is not a church which—

(i) is exempt from taxation by reason of section 501(a), or

(ii) is described in section 170(c), or

(B)(i) send a notice of deficiency of any tax involved in a church tax examination, or

(ii) in the case of any tax with respect to which subchapter B of chapter 63 (relating to deficiency procedures) does not apply, assess any underpayment of such tax involved in a church tax examination,

only if the appropriate regional counsel of the Internal Revenue Service determines in writing that there has been substantial compliance with the requirements of this section and approves in writing of such revocation, notice of deficiency, or assessment.

(2) Limitations on period of assessment

(A) Revocation of tax-exempt status

(i) 3-year statute of limitations generally

In the case of any church tax examination with respect to the revocation of tax-exempt status under section 501(a), any tax imposed by chapter 1 (other than section 511) may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, only for the 3 most recent taxable years ending before the examination notice date.

(ii) 6-year statute of limitations where tax-exempt status revoked

If an organization is not a church exempt from tax under section 501(a) for any of the 3 taxable years described in clause (i), clause (i) shall be applied by substituting "6 most recent taxable years" for "3 most recent taxable years".

(B) Unrelated business tax

In the case of any church tax examination with respect to the tax imposed by section 511 (relating to unrelated business income), such tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, only with respect to the 6 most recent taxable years ending before the examination notice date.

(C) Exception where shorter statute of limitations otherwise applicable

Subparagraphs (A) and (B) shall not be construed to increase the period otherwise applicable under subchapter A of chapter 66 (relating to limitations on assessment and collection).

(e) Information not collected in substantial compliance with procedures to stay summons proceeding

(1) In general

If there has not been substantial compliance with—

(A) the notice requirements of subsection (a) or (b),

(B) the conference requirement described in subsection (b)(3)(A)(iii), or

(C) the approval requirement of subsection (d)(1) (if applicable),

with respect to any church tax inquiry or examination, any proceeding to compel compliance with any summons with respect to such inquiry or examination shall be stayed until the court finds that all practicable steps to correct the noncompliance have been taken. The period applicable under paragraph (1) or subsection (c) shall not be suspended during the period of any stay under the preceding sentence.

(2) Remedy to be exclusive

No suit may be maintained, and no defense may be raised in any proceeding (other than as provided in paragraph (1)), by reason of any noncompliance by the Secretary with the requirements of this section.

(f) Limitations on additional inquiries and examinations

(1) In general

If any church tax inquiry or examination with respect to any church is completed and does not result in—

(A) a revocation, notice of deficiency, or assessment described in subsection (d)(1), or

(B) a request by the Secretary for any significant change in the operational practices of the church (including the adequacy of accounting practices),

no other church tax inquiry or examination may begin with respect to such church during the applicable 5-year period unless such inquiry or examination is approved in writing by the Secretary or does not involve the same or similar issues involved in the preceding inquiry or examination. For purposes of the preceding sentence, an inquiry or examination shall be treated as completed not later than the expiration of the applicable period under paragraph (1) of subsection (c).

(2) Applicable 5-year period

For purposes of paragraph (1), the term "applicable 5-year period" means the 5-year period beginning on the date the notice taken into account for purposes of subsection (c)(1) was provided. For purposes of the preceding sentence, the rules of subsection (c)(2) shall apply.

(g) Treatment of final report of revenue agent

Any final report of an agent of the Internal Revenue Service shall be treated as a determination of the Secretary under paragraph (1) of section 7428(a), and any church receiving such a report shall be treated for purposes of sections 7428 and 7430 as having exhausted the administrative remedies available to it.

(h) Definitions

For purposes of this section—

(1) Church

The term "church" includes—

(A) any organization claiming to be a church, and

(B) any convention or association of churches.

(2) Church tax inquiry

The term "church tax inquiry" means any inquiry to a church (other than an examination) to serve as a basis for determining whether a church—

(A) is exempt from tax under section 501(a) by reason of its status as a church, or

(B) is carrying on an unrelated trade or business (within the meaning of section 513) or otherwise engaged in activities which may be subject to taxation under this title.

(3) Church tax examination

The term "church tax examination" means any examination for purposes of making a determination described in paragraph (2) of—

(A) church records at the request of the Internal Revenue Service, or

(B) the religious activities of any church.

(4) Church records

(A) In general

The term "church records" means all corporate and financial records regularly kept by a church, including corporate minute books and lists of members and contributors.

(B) Exception

Such term shall not include records acquired—

(i) pursuant to a summons to which section 7609 applies, or

(ii) from any governmental agency.

(5) Inquiry notice date

The term "inquiry notice date" means the date the notice with respect to a church tax inquiry is provided under subsection (a).

(6) Examination notice date

The term "examination notice date" means the date the notice with respect to a church tax examination is provided under subsection (b) to the church.

(7) Appropriate high-level Treasury official

The term "appropriate high-level Treasury official" means the Secretary of the Treasury or any delegate of the Secretary whose rank is no lower than that of a principal Internal Revenue officer for an internal revenue region.

(i) Section not to apply to criminal investigations, etc.

This section shall not apply to—

(1) any criminal investigation,

(2) any inquiry or examination relating to the tax liability of any person other than a church,

(3) any assessment under section 6851 (relating to termination assessments of income tax), section 6852 (relating to termination assessments in case of flagrant political expenditures of section 501(c)(3) organizations), or section 6861 (relating to jeopardy assessments of income taxes, etc.),

(4) any willful attempt to defeat or evade any tax imposed by this title, or

(5) any knowing failure to file a return of tax imposed by this title.

(Added Pub. L. 98–369, div. A, title X, §1033(a), July 18, 1984, 98 Stat. 1034; amended Pub. L. 99–514, title XVIII, §1899A(61), (62), Oct. 22, 1986, 100 Stat. 2962; Pub. L. 100–203, title X, §10713(b)(2)(G), Dec. 22, 1987, 101 Stat. 1330–470; Pub. L. 100–647, title I, §1018(u)(49), Nov. 10, 1988, 102 Stat. 3593; Pub. L. 101–239, title VII, §7822(d)(1), Dec. 19, 1989, 103 Stat. 2425; Pub. L. 104–188, title I, §1704(t)(59), Aug. 20, 1996, 110 Stat. 1890; Pub. L. 105–206, title I, §1102(e)(3), July 22, 1998, 112 Stat. 705.)

PRIOR PROVISIONS

A prior section 7611 was renumbered section 7613 of this title.

AMENDMENTS

1998—Subsec. (f)(1). Pub. L. 105–206 substituted "Secretary" for "Assistant Commissioner for Employee Plans and Exempt Organizations of the Internal Revenue Service" in concluding provisions.

1996—Subsec. (h)(7). Pub. L. 104–188 substituted "appropriate" for "approporiate" in text.

1989—Subsec. (i)(3). Pub. L. 101–239 made technical correction to directory language of Pub. L. 100–203, see 1987 Amendment note below.

1988—Subsec. (i)(5). Pub. L. 100–647 substituted "this title" for "the title".

1987—Subsec. (i)(3). Pub. L. 100–203, as amended by Pub. L. 101–239, substituted ", section 6852 (relating to termination assessments in case of flagrant political expenditures of section 501(c)(3) organizations), or section 6861 (relating to jeopardy assessments of income taxes, etc.)," for "or section 6861 (relating to jeopardy assessments of income taxes, etc.),".

1986—Subsec. (a)(1)(B). Pub. L. 99–514, §1899A(62), reenacted subpar. (B) without change.

Subsec. (i). Pub. L. 99–514, §1899A(61), redesignated pars. (A) to (E) as (1) to (5), in par. (3), substituted "etc.)" for "etc)", and in par. (5), substituted "the title" for "the title".

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective as if included in the provision of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 7823 of Pub. L. 101–239, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Pub. L. 98–369, div. A, title X, §1033(d), July 18, 1984, 98 Stat. 1039, provided that: "The amendments made by this section [enacting this section and amending sections 7428 and 7605 of this title] shall apply with respect to inquiries and examinations beginning after December 31, 1984."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§7612. Special procedures for summonses for computer software

(a) General rule

For purposes of this title—

(1) except as provided in subsection (b), no summons may be issued under this title, and the Secretary may not begin any action under section 7604 to enforce any summons to produce or analyze any tax-related computer software source code; and

(2) any software and related materials which are provided to the Secretary under this title shall be subject to the safeguards under subsection (c).

(b) Circumstances under which computer software source code may be provided

(1) In general

Subsection (a)(1) shall not apply to any portion, item, or component of tax-related computer software source code if—

(A) the Secretary is unable to otherwise reasonably ascertain the correctness of any item on a return from—

(i) the taxpayer's books, papers, records, or other data; or

(ii) the computer software executable code (and any modifications thereof) to which such source code relates and any associated data which, when executed, produces the output to ascertain the correctness of the item;

(B) the Secretary identifies with reasonable specificity the portion, item, or component of such source code needed to verify the correctness of such item on the return; and

(C) the Secretary determines that the need for the portion, item, or component of such source code with respect to such item outweighs the risks of unauthorized disclosure of trade secrets.

(2) Exceptions

Subsection (a)(1) shall not apply to—

(A) any inquiry into any offense connected with the administration or enforcement of the internal revenue laws;

(B) any tax-related computer software source code acquired or developed by the taxpayer or a related person primarily for internal use by the taxpayer or such person rather than for commercial distribution;

(C) any communications between the owner of the tax-related computer software source code and the taxpayer or related persons; or

(D) any tax-related computer software source code which is required to be provided or made available pursuant to any other provision of this title.

(3) Cooperation required

For purposes of paragraph (1), the Secretary shall be treated as meeting the requirements of subparagraphs (A) and (B) of such paragraph if—

(A) the Secretary determines that it is not feasible to determine the correctness of an item without access to the computer software executable code and associated data described in paragraph (1)(A)(ii);

(B) the Secretary makes a formal request to the taxpayer for such code and data and to the owner of the computer software source code for such executable code; and

(C) such code and data is not provided within 180 days of such request.

(4) Right to contest summons

In any proceeding brought under section 7604 to enforce a summons issued under the authority of this subsection, the court shall, at the request of any party, hold a hearing to determine whether the applicable requirements of this subsection have been met.

(c) Safeguards to ensure protection of trade secrets and other confidential information

(1) Entry of protective order

In any court proceeding to enforce a summons for any portion of software, the court may receive evidence and issue any order necessary to prevent the disclosure of trade secrets or other confidential information with respect to such software, including requiring that any information be placed under seal to be opened only as directed by the court.

(2) Protection of software

Notwithstanding any other provision of this section, and in addition to any protections ordered pursuant to paragraph (1), in the case of software that comes into the possession or control of the Secretary in the course of any examination with respect to any taxpayer—

(A) the software may be used only in connection with the examination of such taxpayer's return, any appeal by the taxpayer to the Internal Revenue Service Office of Appeals, any judicial proceeding (and any appeals therefrom), and any inquiry into any offense connected with the administration or enforcement of the internal revenue laws;

(B) the Secretary shall provide, in advance, to the taxpayer and the owner of the software a written list of the names of all individuals who will analyze or otherwise have access to the software;

(C) the software shall be maintained in a secure area or place, and, in the case of computer software source code, shall not be removed from the owner's place of business unless the owner permits, or a court orders, such removal;

(D) the software may not be copied except as necessary to perform such analysis, and the Secretary shall number all copies made and certify in writing that no other copies have been (or will be) made;

(E) at the end of the period during which the software may be used under subparagraph (A)—

(i) the software and all copies thereof shall be returned to the person from whom they were obtained and any copies thereof made under subparagraph (D) on the hard drive of a machine or other mass storage device shall be permanently deleted; and

(ii) the Secretary shall obtain from any person who analyzes or otherwise had access to such software a written certification under penalty of perjury that all copies and related materials have been returned and that no copies were made of them;

(F) the software may not be decompiled or disassembled;

(G) the Secretary shall provide to the taxpayer and the owner of any interest in such software, as the case may be, a written agreement, between the Secretary and any person who is not an officer or employee of the United States and who will analyze or otherwise have access to such software, which provides that such person agrees not to—

(i) disclose such software to any person other than persons to whom such information could be disclosed for tax administration purposes under section 6103; or

(ii) participate for 2 years in the development of software which is intended for a similar purpose as the software examined; and

(H) the software shall be treated as return information for purposes of section 6103.

For purposes of subparagraph (C), the owner shall make available any necessary equipment or materials for analysis of computer software source code required to be conducted on the owner's premises. The owner of any interest in the software shall be considered a party to any agreement described in subparagraph (G).

(d) Definitions

For purposes of this section—

(1) Software

The term "software" includes computer software source code and computer software executable code.

(2) Computer software source code

The term "computer software source code" means—

(A) the code written by a programmer using a programming language which is comprehensible to appropriately trained persons and is not capable of directly being used to give instructions to a computer;

(B) related programmers' notes, design documents, memoranda, and similar documentation; and

(C) related customer communications.

(3) Computer software executable code

The term "computer software executable code" means—

(A) any object code, machine code, or other code readable by a computer when loaded into its memory and used directly by such computer to execute instructions; and

(B) any related user manuals.

(4) Owner

The term "owner" shall, with respect to any software, include the developer of the software.

(5) Related person

A person shall be treated as related to another person if such persons are related persons under section 267 or 707(b).

(6) Tax-related computer software source code

The term "tax-related computer software source code" means the computer source code for any computer software program intended for accounting, tax return preparation or compliance, or tax planning.

(Added Pub. L. 105–206, title III, §3413(a), July 22, 1998, 112 Stat. 751.)

PRIOR PROVISIONS

A prior section 7612 was renumbered section 7613 of this title.

EFFECTIVE DATE

Pub. L. 105–206, title III, §3413(e), July 22, 1998, 112 Stat. 754, provided that:

"(1) IN GENERAL.—The amendments made by this section [enacting this section, amending sections 7213 and 7603 of this title, and renumbering former section 7612 of this title as 7613] shall apply to summonses issued, and software acquired, after the date of the enactment of this Act [July 22, 1998].

"(2) SOFTWARE PROTECTION.—In the case of any software acquired on or before such date of enactment, the requirements of section 7612(a)(2) of the Internal Revenue Code of 1986 (as added by such amendments) shall apply after the 90th day after such date. The preceding sentence shall not apply to the requirement under section 7612(c)(2)(G)(ii) of such Code (as so added)."

§7613. Cross references

(a) Inspection of books, papers, records, or other data

For inspection of books, papers, records, or other data in the case of—

(1) Wagering, see section 4423.

(2) Alcohol, tobacco, and firearms taxes, see subtitle E.

(b) Search warrants

For provisions relating to—

(1) Searches and seizures, see Rule 41 of the Federal Rules of Criminal Procedure.

(2) Issuance of search warrants with respect to subtitle E, see section 5557.

(3) Search warrants with respect to property used in violation of the internal revenue laws, see section 7302.

(Aug. 16, 1954, ch. 736, 68A Stat. 903, §7607; renumbered §7608, July 18, 1956, ch. 629, title I, §104(a), 70 Stat. 570; renumbered §7609 and amended Pub. L. 85–859, title II, §204(14), (15), Sept. 2, 1958, 72 Stat. 1429, 1430; Pub. L. 91–513, title III, §1102(h), Oct. 27, 1970, 84 Stat. 1293; renumbered §7611 and amended Pub. L. 94–455, title XII, §1205(a), title XIX, §1904(b)(7)(D), (9)(E), Oct. 4, 1976, 90 Stat. 1699, 1815, 1816; renumbered §7612, Pub. L. 98–369, div. A, title X, §1033(a), July 18, 1984, 98 Stat. 1034; renumbered §7613, Pub. L. 105–206, title III, §3413(a), July 22, 1998, 112 Stat. 751.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94–455, §1904(b)(7)(D), (9)(E), struck out pars. (1) and (2) relating to cross references to wholesale dealers in oleomargarine and wholesale dealers in process or renovated butter or adulterated butter, respectively, and redesignated pars. (5) and (6) as (1) and (2), respectively.

1970—Subsec. (a). Pub. L. 91–513 struck out pars. (3) and (4) which related to opium, opiates, and coca leaves and to marihuana, respectively, and which made reference to sections 4702(a), 4705, 4721, and 4773, and to sections 4742, 4753(b), and 4773, respectively.

1958—Subsec. (a)(6). Pub. L. 85–859, §204(15), added par. (6).

Subsec. (b)(2). Pub. L. 85–859, §204(15), substituted "with respect to subtitle E, see section 5557" for "in connection with industrial alcohol, etc., see sections 5314 and 7302".

Subsec. (b)(3). Pub. L. 85–859, §204(15), added par. (3).

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–513 effective on first day of seventh calendar month that begins after Oct. 26, 1970, see section 1105(a) of Pub. L. 91–513, set out as an Effective Date note under section 951 of Title 21, Food and Drugs.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–859 effective Sept. 3, 1958, see section 210(a)(1) of Pub. L. 85–859, set out as an Effective Date note under section 5001 of this title.

SAVINGS PROVISION

Prosecutions for any violation of law occurring, and civil seizures or forfeitures and injunctive proceedings commenced, prior to the effective date of amendment of this section by section 1102 of Pub. L. 91–513 not to be affected or abated by reason thereof, see section 1103 of Pub. L. 91–513, set out as a note under sections 171 to 174 of Title 21, Food and Drugs.

Subchapter B—General Powers and Duties

Sec.
7621. Internal revenue districts.
7622. Authority to administer oaths and certify.
7623. Expenses of detection of underpayments and fraud, etc.
7624. Reimbursement to State and local law enforcement agencies.

AMENDMENTS

1996—Pub. L. 104–168, title XII, §1209(b), July 30, 1996, 110 Stat. 1474, substituted "Expenses of detection of underpayments and fraud, etc." for "Expenses of detection and punishment of frauds." in item 7623.

1988—Pub. L. 100–690, title VII, §7602(d)(1), Nov. 18, 1988, 102 Stat. 4508, added item 7624.

§7621. Internal revenue districts

(a) Establishment and alteration

The President shall establish convenient internal revenue districts for the purpose of administering the internal revenue laws. The President may from time to time alter such districts.

(b) Boundaries

For the purpose mentioned in subsection (a), the President may subdivide any State, or the District of Columbia, or may unite into one district two or more States.

(Aug. 16, 1954, ch. 736, 68A Stat. 904; Pub. L. 86–70, §22(e), June 25, 1959, 73 Stat. 146; Pub. L. 94–455, title XIX, §1906(a)(53), Oct. 4, 1976, 90 Stat. 1832.)

AMENDMENTS

1976—Subsec. (b). Pub. L. 94–455 struck out "Territory" after "any State" and "or a Territory and one or more States" after "two or more States".

1959—Subsec. (b). Pub. L. 86–70 substituted "may unite into one district two or more States or a Territory and one or more States" for "may unite two or more States or Territories into one district".

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–70 effective Jan. 3, 1959, see section 22(i) of Pub. L. 86–70, set out as a note under section 3121 of this title.

DELEGATION OF FUNCTIONS

For delegation to Secretary of the Treasury of authority vested in President by this section, see section 1(g) of Ex. Ord. No. 10289, Sept. 17, 1951, 16 F.R. 9499, as amended, set out as a note under section 301 of Title 3, The President.

§7622. Authority to administer oaths and certify

(a) Internal revenue personnel

Every officer or employee of the Treasury Department designated by the Secretary for that purpose is authorized to administer such oaths or affirmations and to certify to such papers as may be necessary under the internal revenue laws or regulations made thereunder.

(b) Others

Any oath or affirmation required or authorized under any internal revenue law or under any regulations made thereunder may be administered by any person authorized to administer oaths for general purposes by the law of the United States, or of any State or possession of the United States, or of the District of Columbia, wherein such oath or affirmation is administered. This subsection shall not be construed as an exclusive enumeration of the persons who may administer such oaths or affirmations.

(Aug. 16, 1954, ch. 736, 68A Stat. 904; Pub. L. 94–455, title XIX, §1906(b)(13)(A), (c)(2), Oct. 4, 1976, 90 Stat. 1834, 1835.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".
Subsec. (b). Pub. L. 94–455, §1906(c)(2), struck out "Territory" after "any State".

§7623. Expenses of detection of underpayments and fraud, etc.

(a) In general

The Secretary, under regulations prescribed by the Secretary, is authorized to pay such sums as he deems necessary for—

(1) detecting underpayments of tax, or

(2) detecting and bringing to trial and punishment persons guilty of violating the internal revenue laws or conniving at the same,

in cases where such expenses are not otherwise provided for by law. Any amount payable under the preceding sentence shall be paid from the proceeds of amounts collected by reason of the information provided, and any amount so collected shall be available for such payments.

(b) Awards to whistleblowers

(1) In general

If the Secretary proceeds with any administrative or judicial action described in subsection (a) based on information brought to the Secretary's attention by an individual, such individual shall, subject to paragraph (2), receive as an award at least 15 percent but not more than 30 percent of the collected proceeds (including penalties, interest, additions to tax, and additional amounts) resulting from the action (including any related actions) or from any settlement in response to such action. The determination of the amount of such award by the Whistleblower Office shall depend upon the extent to which the individual substantially contributed to such action.

(2) Award in case of less substantial contribution

(A) In general

In the event the action described in paragraph (1) is one which the Whistleblower Office determines to be based principally on disclosures of specific allegations (other than information provided by the individual described in paragraph (1)) resulting from a judicial or administrative hearing, from a governmental report, hearing, audit, or investigation, or from the news media, the Whistleblower Office may award such sums as it considers appropriate, but in no case more than 10 percent of the collected proceeds (including penalties, interest, additions to tax, and additional amounts) resulting from the action (including any related actions) or from any settlement in response to such action, taking into account the significance of the individual's information and the role of such individual and any legal representative of such individual in contributing to such action.

(B) Nonapplication of paragraph where individual is original source of information

Subparagraph (A) shall not apply if the information resulting in the initiation of the action described in paragraph (1) was originally provided by the individual described in paragraph (1).

(3) Reduction in or denial of award

If the Whistleblower Office determines that the claim for an award under paragraph (1) or (2) is brought by an individual who planned and initiated the actions that led to the underpayment of tax or actions described in subsection (a)(2), then the Whistleblower Office may appropriately reduce such award. If such individual is convicted of criminal conduct arising from the role described in the preceding sentence, the Whistleblower Office shall deny any award.

(4) Appeal of award determination

Any determination regarding an award under paragraph (1), (2), or (3) may, within 30 days of such determination, be appealed to the Tax Court (and the Tax Court shall have jurisdiction with respect to such matter).

(5) Application of this subsection

This subsection shall apply with respect to any action—

(A) against any taxpayer, but in the case of any individual, only if such individual's gross income exceeds $200,000 for any taxable year subject to such action, and

(B) if the tax, penalties, interest, additions to tax, and additional amounts in dispute exceed $2,000,000.

(6) Additional rules

(A) No contract necessary

No contract with the Internal Revenue Service is necessary for any individual to receive an award under this subsection.

(B) Representation

Any individual described in paragraph (1) or (2) may be represented by counsel.

(C) Submission of information

No award may be made under this subsection based on information submitted to the Secretary unless such information is submitted under penalty of perjury.

(Aug. 16, 1954, ch. 736, 68A Stat. 904; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 104–168, title XII, §1209(a), July 30, 1996, 110 Stat. 1473; Pub. L. 109–432, div. A, title IV, §406(a)(1), Dec. 20, 2006, 120 Stat. 2958.)

AMENDMENTS

2006—Pub. L. 109–432 designated existing provisions as subsec. (a), inserted heading, in par. (1), substituted "or" for "and" at end, in concluding provisions, struck out "(other than interest)" after "amounts", and added subsec. (b).

1996—Pub. L. 104–168 substituted "of underpayments and fraud, etc." for "and punishment of frauds" in section catchline and amended text generally. Prior to amendment, text read as follows: "The Secretary, under regulations prescribed by the Secretary, is authorized to pay such sums, not exceeding in the aggregate the sum appropriated therefor, as he may deem necessary for detecting and bringing to trial and punishment persons guilty of violating the internal revenue laws, or conniving at the same, in cases where such expenses are not otherwise provided for by law."

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–432 applicable to information provided on or after Dec. 20, 2006, see section 406(d) of Pub. L. 109–432, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–168, title XII, §1209(c), July 30, 1996, 110 Stat. 1474, provided that: "The amendments made by this section [amending this section] shall take effect on the date which is 6 months after the date of the enactment of this Act [July 30, 1996]."

WHISTLEBLOWER OFFICE

Pub. L. 109–432, div. A, title IV, §406(b), Dec. 20, 2006, 120 Stat. 2959, provided that:

"(1) IN GENERAL.—Not later than the date which is 12 months after the date of the enactment of this Act [Dec. 20, 2006], the Secretary of the Treasury shall issue guidance for the operation of a whistleblower program to be administered in the Internal Revenue Service by an office to be known as the 'Whistleblower Office' which—

"(A) shall at all times operate at the direction of the Commissioner of Internal Revenue and coordinate and consult with other divisions in the Internal Revenue Service as directed by the Commissioner of Internal Revenue,

"(B) shall analyze information received from any individual described in section 7623(b) of the Internal Revenue Code of 1986 and either investigate the matter itself or assign it to the appropriate Internal Revenue Service office, and

"(C) in its sole discretion, may ask for additional assistance from such individual or any legal representative of such individual.

"(2) REQUEST FOR ASSISTANCE.—The guidance issued under paragraph (1) shall specify that any assistance requested under paragraph (1)(C) shall be under the direction and control of the Whistleblower Office or the office assigned to investigate the matter under paragraph (1)(A). No individual or legal representative whose assistance is so requested may by reason of such request represent himself or herself as an employee of the Federal Government."

REPORT BY SECRETARY

Pub. L. 109–432, div. A, title IV, §406(c), Dec. 20, 2006, 120 Stat. 2960, provided that: "The Secretary of the Treasury shall each year conduct a study and report to Congress on the use of section 7623 of the Internal Revenue Code of 1986, including—

"(1) an analysis of the use of such section during the preceding year and the results of such use, and

"(2) any legislative or administrative recommendations regarding the provisions of such section and its application."

STUDY OF PAYMENTS MADE FOR DETECTION OF UNDERPAYMENTS AND FRAUD

Pub. L. 105–206, title III, §3804, July 22, 1998, 112 Stat. 783, provided that: "Not later than 1 year after the date of the enactment of this Act [July 22, 1998], the Secretary of the Treasury shall conduct a study and report to Congress on the use of section 7623 of the Internal Revenue Code of 1986 including—

"(1) an analysis of the present use of such section and the results of such use; and

"(2) any legislative or administrative recommendations regarding the provisions of such section and its application."

ANNUAL REPORT TO CONGRESS ON PAYMENTS MADE UNDER THIS SECTION AND RESULTANT COLLECTIONS

Pub. L. 104–168, title XII, §1209(d), July 30, 1996, 110 Stat. 1474, provided that: "The Secretary of the Treasury or his delegate shall submit an annual report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the payments under section 7623 of the Internal Revenue Code of 1986 during the year and on the amounts collected for which such payments were made."

§7624. Reimbursement to State and local law enforcement agencies

(a) Authorization of reimbursement

Whenever a State or local law enforcement agency provides information to the Internal Revenue Service that substantially contributes to the recovery of Federal taxes imposed with respect to illegal drug-related activities (or money laundering in connection with such activities), such agency may be reimbursed by the Internal Revenue Service for costs incurred in the investigation (including but not limited to reasonable expenses, per diem, salary, and overtime) not to exceed 10 percent of the sum recovered.

(b) Records; 10 percent limitation

The Internal Revenue Service shall maintain records of the receipt of information from a contributing agency and shall notify the agency when monies have been recovered as the result of such information. Following such notification, the agency shall submit a statement detailing the investigative costs it incurred. Where more than 1 State or local agency has given information that

substantially contributes to the recovery of Federal taxes, the Internal Revenue Service shall equitably allocate investigative costs among such agencies not to exceed an aggregate amount of 10 percent of the taxes recovered.

(c) No reimbursement where duplicative

No State or local agency may receive reimbursement under this section if reimbursement has been received by such agency under a Federal or State forfeiture program or under State revenue laws.

(Added Pub. L. 100–690, title VII, §7602(a), Nov. 18, 1988, 102 Stat. 4507.)

EFFECTIVE DATE

Section applicable to information first provided more than 90 days after Nov. 18, 1988, see section 7602(e) of Pub. L. 100–690, set out as an Effective Date of 1988 Amendment note under section 6103 of this title.

REGULATIONS

Pub. L. 100–690, title VII, §7602(g), Nov. 18, 1988, 102 Stat. 4508, provided that: "The Secretary of the Treasury shall, not later than 90 days after the date of enactment of this Act [Nov. 18, 1988], prescribe such rules and regulations as shall be necessary and proper to carry out the provisions of this section [enacting section 7624 of this title, amending sections 6103 and 7809 of this title, and enacting provisions set out as notes under sections 6103 and 7809 of this title], including regulations relating to the definition of information which substantially contributes to the recovery of Federal taxes and the substantiation of expenses required in order to receive a reimbursement."

[Subchapter C—Repealed]

[§7641. Repealed. Pub. L. 94–455, title XIX, §1906(a)(54), Oct. 4, 1976, 90 Stat. 1832]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 905; Oct. 27, 1970, Pub. L. 91–513, title III, §1102(i), 84 Stat. 1293; Oct. 26, 1974, Pub. L. 93–490, §3(b)(8), 88 Stat. 1467, related to supervision of operations of every manufacturer of oleomargarine, process or renovated butter or adulterated butter, or white phosphorous matches by the officers or employees of the Treasury Department.

EFFECTIVE DATE OF REPEAL

Repeal effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1906(d)(1) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 6013 of this title.

Subchapter D—Possessions

Sec.

7651. Administration and collection of taxes in possessions.

7652. Shipments to the United States.

7653. Shipments from the United States.

7654. Coordination of United States and certain possession individual income taxes.

7655. Cross references.

AMENDMENTS

1986—Pub. L. 99–514, title XII, §1276(b), Oct. 22, 1986, 100 Stat. 2600, substituted "certain possession" for "Guam" in item 7654.

1972—Pub. L. 92–606, §1(f)(6), Oct. 31, 1972, 86 Stat. 1497, substituted "Coordination of United States and Guam individual income taxes" for "Payment to Guam and American Samoa of proceeds of tax on coconut and palm oil" in item 7654.

§7651. Administration and collection of taxes in possessions

Except as otherwise provided in this subchapter, and except as otherwise provided in section 28(a) of the Revised Organic Act of the Virgin Islands and section 30 of the Organic Act of Guam (relating to the covering of the proceeds of certain taxes into the treasuries of the Virgin Islands and Guam, respectively)—

(1) Applicability of administrative provisions

All provisions of the laws of the United States applicable to the assessment and collection of any tax imposed by this title or of any other liability arising under this title (including penalties) shall, in respect of such tax or liability, extend to and be applicable in any possession of the United States in the same manner and to the same extent as if such possession were a State, and as if the term "United States" when used in a geographical sense included such possession.

(2) Tax imposed in possession

In the case of any tax which is imposed by this title in any possession of the United States—

(A) Internal revenue collections

Such tax shall be collected under the direction of the Secretary, and shall be paid into the Treasury of the United States as internal revenue collections; and

(B) Applicable laws

All provisions of the laws of the United States applicable to the administration, collection, and enforcement of such tax (including penalties) shall, in respect of such tax, extend to and be applicable in such possession of the United States in the same manner and to the same extent as if such possession were a State, and as if the term "United States" when used in a geographical sense included such possession.

(3) Other laws relating to possessions

This section shall apply notwithstanding any other provision of law relating to any possession of the United States.

(4) Virgin Islands

(A) For purposes of this section, the reference in section 28(a) of the Revised Organic Act of the Virgin Islands to "any tax specified in section 3811 of the Internal Revenue Code" shall be deemed to refer to any tax imposed by chapter 2 or by chapter 21.

(B) For purposes of this title, section 28(a) of the Revised Organic Act of the Virgin Islands shall be effective as if such section 28(a) had been enacted before the enactment of this title and such section 28(a) shall have no effect on the amount of income tax liability required to be paid by any person to the United States.

(Aug. 16, 1954, ch. 736, 68A Stat. 906; Pub. L. 91–513, title III, §1102(j), Oct. 27, 1970, 84 Stat. 1293; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–369, div. A, title I, §130(c), title VIII, §801(d)(9), July 18, 1984, 98 Stat. 661, 997; Pub. L. 99–514, title XII, §1275(b), Oct. 22, 1986, 100 Stat. 2598; Pub. L. 110–172, §11(a)(34)(B), Dec. 29, 2007, 121 Stat. 2487.)

REFERENCES IN TEXT

Section 28(a) of the Revised Organic Act of the Virgin Islands, referred to in introductory provisions and par. (4), is classified to section 1642 of Title 48, Territories and Insular Possessions.

Section 30 of the Organic Act of Guam, referred to in introductory provisions, is classified to section 1421h of Title 48.

AMENDMENTS

2007—Pars. (4), (5). Pub. L. 110–172 redesignated par. (5) as (4) and struck out heading and text of former par. (4). Text read as follows: "For purposes of this section, the term 'possession of the United States' includes the Canal Zone."

1986—Par. (5)(B). Pub. L. 99–514 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as

follows: "For purposes of this title (other than section 881(b)(1) or subpart C of part III of subchapter N of chapter 1), section 28(a) of the Revised Organic Act of the Virgin Islands shall be effective as if such section had been enacted subsequent to the enactment of this title."

1984—Par. (5)(B). Pub. L. 98–369, §801(d)(9), inserted "or subpart C of part III of subchapter N of chapter 1".

Pub. L. 98–369, §130(c), inserted "(other than section 881(b)(1))".

1976—Par. (2)(A). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

1970—Pub. L. 91–513 struck out reference to exceptions provided for in sections 4705(b), 4735, and 4762 (relating to taxes on narcotic drugs and marihuana) in provisions preceding par. (1).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99–514, set out as a note under section 931 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 130(c) of Pub. L. 98–369 applicable to payments made after Mar. 1, 1984, in taxable years ending after such date, see section 130(d) of Pub. L. 98–369, set out as a note under section 881 of this title.

Amendment by section 801(d)(9) of Pub. L. 98–369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–513 effective on first day of seventh calendar month that begins after Oct. 26, 1970, see section 1105(a) of Pub. L. 91–513, set out as an Effective Date note under section 951 of Title 21, Food and Drugs.

SAVINGS PROVISION

Prosecutions for any violation of law occurring, and civil seizures or forfeitures and injunctive proceedings commenced, prior to the effective date of amendment of this section by section 1102 of Pub. L. 91–513 not to be affected or abated by reason thereof, see section 1103 of Pub. L. 91–513, set out as a note under sections 171 to 174 of Title 21, Food and Drugs.

COMPENSATION TO GUAM AND VIRGIN ISLANDS FOR UNEXPECTED REVENUE LOSSES OCCASIONED BY TAX REDUCTION ACT OF 1975 AND TAX REFORM ACT OF 1976

Pub. L. 95–134, title IV, §402, Oct. 15, 1977, 91 Stat. 1163, provided that: "In order to compensate the territories of Guam and the Virgin Islands for unexpected revenue losses occasioned by the Tax Reduction Act of 1975 [Pub. L. 94–12, Mar. 29, 1975, 89 Stat. 26, see Tables] and the Tax Reform Act of 1976 [Pub. L. 94–455, Oct. 4, 1976, 90 Stat. 1525, see Tables] there is hereby authorized to be appropriated to the Secretary for grants to the government of Guam not to exceed $15,000,000 and after October 1, 1977, for grants to the government of the Virgin Islands not to exceed $14,000,000, such sums being in addition to those previously authorized for such purposes."

PAYMENTS TO GOVERNMENT OF AMERICAN SAMOA, GUAM, AND THE VIRGIN ISLANDS

Pub. L. 95–30, title IV, §407, May 23, 1977, 91 Stat. 156, provided that:

"(a) The Secretary of the Treasury is authorized to make separate payments to the government of American Samoa, the government of Guam, and the government of the Virgin Islands. The payment to the government of a particular possession shall be in an amount equal to the loss to that possession with respect to tax returns for the first taxable year beginning after December 31, 1976, by reason of sections 101 and 102 of this Act [amending sections 1, 3, 21, 42, 57, 63, 143, 161, 172, 211, 402, 441, 443, 511, 584, 613A, 641, 642, 667, 703, 861, 862, 873, 904, 911, 931, 1034, 1211, 1302, 6014, 6212, 6504, and 6654 of this title and repealing sections 36, 141, 142, 144 and 145 of this title]. Such amount shall be determined by the Secretary of the Treasury upon certification to the Secretary by the United States Government Comptrollers for Guam and the Virgin Islands.

"(b) There are hereby authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, such sums as may be necessary to carry out the provisions of this section."

§7652. Shipments to the United States

(a) Puerto Rico

(1) Rate of tax

Except as provided in section 5314, articles of merchandise of Puerto Rican manufacture coming into the United States and withdrawn for consumption or sale shall be subject to a tax equal to the internal revenue tax imposed in the United States upon the like articles of merchandise of domestic manufacture.

(2) Payment of tax

The Secretary shall by regulations prescribe the mode and time for payment and collection of the tax described in paragraph (1), including any discretionary method described in section 6302(b) and (c). Such regulations shall authorize the payment of such tax before shipment from Puerto Rico, and the provisions of section 7651(2)(B) shall be applicable to the payment and collection of such tax in Puerto Rico.

(3) Deposit of internal revenue collections

All taxes collected under the internal revenue laws of the United States on articles produced in Puerto Rico and transported to the United States (less the estimated amount necessary for payment of refunds and drawbacks), or consumed in the island, shall be covered into the treasury of Puerto Rico.

(b) Virgin Islands

(1) Taxes imposed in the United States

Except as provided in section 5314, there shall be imposed in the United States, upon articles coming into the United States from the Virgin Islands, a tax equal to the internal revenue tax imposed in the United States upon like articles of domestic manufacture.

(2) Exemption from tax imposed in the Virgin Islands

Such articles shipped from such islands to the United States shall be exempt from the payment of any tax imposed by the internal revenue laws of such islands.

(3) Disposition of internal revenue collections

The Secretary shall determine the amount of all taxes imposed by, and collected under the internal revenue laws of the United States on articles produced in the Virgin Islands and transported to the United States. The amount so determined less 1 percent and less the estimated amount of refunds or credits shall be subject to disposition as follows:

(A) The payment of an estimated amount shall be made to the government of the Virgin Islands before the commencement of each fiscal year as set forth in section 4(c)(2) of the Act entitled "An Act to authorize appropriations for certain insular areas of the United States, and for other purposes", approved August 18, 1978 (48 U.S.C. 1645), as in effect on the date of the enactment of the Trade and Development Act of 2000. The payment so made shall constitute a separate fund in the treasury of the Virgin Islands and may be expended as the legislature may determine.

(B) Any amounts remaining shall be deposited in the Treasury of the United States as miscellaneous receipts.

If at the end of any fiscal year the total of the Federal contribution made under subparagraph (A) with respect to the four calendar quarters immediately preceding the beginning of that fiscal year has not been obligated or expended for an approved purpose, the balance shall continue available for expenditure during any succeeding fiscal year, but only for emergency relief purposes and essential public projects. The aggregate amount of moneys available for expenditure for emergency relief purposes and essential public projects only shall not exceed the sum of $5,000,000 at the end of any fiscal year. Any unobligated or unexpended balance of the Federal contribution remaining at the end of a fiscal year which would cause the moneys available for

emergency relief purposes and essential public projects only to exceed the sum of $5,000,000 shall thereupon be transferred and paid over to the Treasury of the United States as miscellaneous receipts.

(c) Articles containing distilled spirits

For purposes of subsections (a)(3) and (b)(3), any article containing distilled spirits shall in no event be treated as produced in Puerto Rico or the Virgin Islands unless at least 92 percent of the alcoholic content in such article is attributable to rum.

(d) Articles other than articles containing distilled spirits

For purposes of subsections (a)(3) and (b)(3)—

(1) Value added requirement for Puerto Rico

Any article, other than an article containing distilled spirits, shall in no event be treated as produced in Puerto Rico unless the sum of—

(A) the cost or value of the materials produced in Puerto Rico, plus

(B) the direct costs of processing operations performed in Puerto Rico,

equals or exceeds 50 percent of the value of such article as of the time it is brought into the United States.

(2) Prohibition of Federal excise tax subsidies

(A) In general

No amount shall be transferred under subsection (a)(3) or (b)(3) in respect of taxes imposed on any article, other than an article containing distilled spirits, if the Secretary determines that a Federal excise tax subsidy was provided by Puerto Rico or the Virgin Islands (as the case may be) with respect to such article.

(B) Federal excise tax subsidy

For purposes of this paragraph, the term "Federal excise tax subsidy" means any subsidy—

(i) of a kind different from, or

(ii) in an amount per value or volume of production greater than,

the subsidy which Puerto Rico or the Virgin Islands offers generally to industries producing articles not subject to Federal excise taxes.

(3) Direct costs of processing operations

For purposes of this subsection, the term "direct cost of processing operations" has the same meaning as when used in section 213 of the Caribbean Basin Economic Recovery Act.

(e) Shipments of rum to the United States

(1) Excise taxes on rum covered into treasuries of Puerto Rico and Virgin Islands

All taxes collected under section 5001(a)(1) on rum imported into the United States (less the estimated amount necessary for payment of refunds and drawbacks) shall be covered into the treasuries of Puerto Rico and the Virgin Islands.

(2) Secretary prescribes formula

The Secretary shall, from time to time, prescribe by regulation a formula for the division of such tax collections between Puerto Rico and the Virgin Islands and the timing and methods for transferring such tax collections.

(3) Rum defined

For purposes of this subsection, the term "rum" means any article classified under subheading 2208.40.00 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

(4) Coordination with subsections (a) and (b)

Paragraph (1) shall not apply with respect to any rum subject to tax under subsection (a) or (b).

(f) Limitation on cover over of tax on distilled spirits

For purposes of this section, with respect to taxes imposed under section 5001 or this section on distilled spirits, the amount covered into the treasuries of Puerto Rico and the Virgin Islands shall not exceed the lesser of the rate of—

(1) $10.50 ($13.25 in the case of distilled spirits brought into the United States after June 30, 1999, and before January 1, 2014), or

(2) the tax imposed under section 5001(a)(1), on each proof gallon.

(g) Drawback for medicinal alcohol, etc.

In the case of medicines, medicinal preparations, food products, flavors, flavoring extracts, or perfume containing distilled spirits, which are unfit for beverage purposes and which are brought into the United States from Puerto Rico or the Virgin Islands—

(1) subpart B of part II of subchapter A of chapter 51 shall be applied as if—

(A) the use and tax determination described in section 5111 had occurred in the United States by a United States person at the time the article is brought into the United States, and

(B) the rate of tax were the rate applicable under subsection (f) of this section, and

(2) no amount shall be covered into the treasuries of Puerto Rico or the Virgin Islands.

(h) Manner of cover over of tax must be derived from this title

No amount shall be covered into the treasury of Puerto Rico or the Virgin Islands with respect to taxes for which cover over is provided under this section unless made in the manner specified in this section without regard to—

(1) any provision of law which is not contained in this title or in a revenue Act; and

(2) whether such provision of law is a subsequently enacted provision or directly or indirectly seeks to waive the application of this subsection.

(Aug. 16, 1954, ch. 736, 68A Stat. 907; Pub. L. 85–859, title II, §204(17), (18), Sept. 2, 1958, 72 Stat. 1430; Pub. L. 89–44, title VIII, §808(b)(3), June 21, 1965, 79 Stat. 164; Pub. L. 94–202, §10(a), Jan. 2, 1976, 89 Stat. 1141; Pub. L. 94–455, title XIX, §1906(a)(55), (b) (13)(A), Oct. 4, 1976, 90 Stat. 1832, 1834; Pub. L. 98–67, title II, §221(a), Aug. 5, 1983, 97 Stat. 395; Pub. L. 98–213, §5(c), Dec. 8, 1983, 97 Stat. 1460; Pub. L. 98–369, div. B, title VI, §§2681(a), 2682(a), July 18, 1984, 98 Stat. 1172, 1174; Pub. L. 99–514, title XVIII, §1879(i)(1), Oct. 22, 1986, 100 Stat. 2907; Pub. L. 100–418, title I, §1214(p)(1), Aug. 23, 1988, 102 Stat. 1159; Pub. L. 103–66, title XIII, §13227(e), Aug. 10, 1993, 107 Stat. 494; Pub. L. 103–465, title I, §136(b), Dec. 8, 1994, 108 Stat. 4841; Pub. L. 106–170, title V, §512(a), Dec. 17, 1999, 113 Stat. 1924; Pub. L. 106–200, title VI, §602(b), (c), May 18, 2000, 114 Stat. 305, 306; Pub. L. 107–147, title VI, §609(a), Mar. 9, 2002, 116 Stat. 60; Pub. L. 108–311, title III, §305(a), Oct. 4, 2004, 118 Stat. 1179; Pub. L. 109–59, title XI, §11125(b)(22), Aug. 10, 2005, 119 Stat. 1957; Pub. L. 109–432, div. A, title I, §114(a), Dec. 20, 2006, 120 Stat. 2940; Pub. L. 110–343, div. C, title III, §308(a), Oct. 3, 2008, 122 Stat. 3869; Pub. L. 111–312, title VII, §755(a), Dec. 17, 2010, 124 Stat. 3322; Pub. L. 112–240, title III, §329(a), Jan. 2, 2013, 126 Stat. 2335.)

REFERENCES IN TEXT

The date of the enactment of the Trade and Development Act of 2000, referred to in subsec. (b)(3)(A), is the date of enactment of Pub. L. 106–200, which was approved May 18, 2000.

Section 213 of the Caribbean Basin Economic Recovery Act, referred to in subsec. (d)(3), is classified to section 2703 of Title 19, Customs Duties.

The Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), referred to in subsec. (e)(3), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of Title 19.

AMENDMENTS

2013—Subsec. (f)(1). Pub. L. 112–240 substituted "January 1, 2014" for "January 1, 2012".

2010—Subsec. (f)(1). Pub. L. 111–312 substituted "January 1, 2012" for "January 1, 2010".

2008—Subsec. (f)(1). Pub. L. 110–343 substituted "January 1, 2010" for "January 1, 2008".

2006—Subsec. (f)(1). Pub. L. 109–432 substituted "2008" for "2006".

2005—Subsec. (g)(1). Pub. L. 109–59, §11125(b)(22)(A), substituted "subpart B" for "subpart F" in introductory provisions.

Subsec. (g)(1)(A). Pub. L. 109–59, §11125(b)(22)(B), substituted "section 5111" for "section 5131(a)".

2004—Subsec. (f)(1). Pub. L. 108–311 substituted "January 1, 2006" for "January 1, 2004".

2002—Subsec. (f)(1). Pub. L. 107–147 substituted "January 1, 2004" for "January 1, 2002".

2000—Subsec. (b)(3). Pub. L. 106–200, §602(b), amended generally par. (3) heading and text of par. (3) introductory provisions and subpar. (A). Prior to amendment, text of par. (3) introductory provisions and subpar. (A) read as follows: "Beginning with the calendar quarter ending September 30, 1975, and quarterly thereafter, the Secretary shall determine the amount of all taxes imposed by, and collected during the quarter under, the internal revenue laws of the United States on articles produced in the Virgin Islands and transported to the United States. The amount so determined less 1 percent and less the estimated amount of refunds or credits shall be subject to disposition as follows:

"(A) There shall be transferred and paid over, as soon as practicable after the close of the quarter, to the Government of the Virgin Islands from the amounts so determined a sum equal to the total amount of the revenue collected by the Government of the Virgin Islands during the quarter, as certified by the Government Comptroller of the Virgin Islands. The moneys so transferred and paid over shall constitute a separate fund in the treasury of the Virgin Islands and may be expended as the legislature may determine."

Subsec. (h). Pub. L. 106–200, §602(c), added subsec. (h).

1999—Subsec. (f)(1). Pub. L. 106–170 amended par. (1) generally. Prior to amendment, par. (1) read as follows: "$10.50 ($11.30 in the case of distilled spirits brought into the United States during the 5-year period beginning on October 1, 1993), or."

1994—Subsec. (g). Pub. L. 103–465 substituted "flavoring extracts, or perfume" for "or flavoring extracts" in introductory provisions.

1993—Subsec. (f)(1). Pub. L. 103–66 amended par. (1) generally, substituting present provisions for "$10.50, or".

1988—Subsec. (e)(3). Pub. L. 100–418 substituted "subheading 2208.40.00 of the Harmonized Tariff Schedule of the United States" for "item 169.13 or 169.14 of the Tariff Schedules of the United States".

1986—Subsec. (g). Pub. L. 99–514 added subsec. (g).

1984—Subsecs. (c)–(e). Pub. L. 98–369, §2681(a), added subsecs. (c) and (d) and redesignated former subsec. (c) as (e).

Subsec. (f). Pub. L. 98–369, §2682(a), added subsec. (f).

1983—Subsec. (b)(3). Pub. L. 98–213, §5(c), amended language of Pub. L. 94–455, §1906(a)(55). See 1976 Amendment note below.

Subsec. (c). Pub. L. 98–67 added subsec. (c).

1976—Subsec. (a)(2). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (b)(3). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary" in provisions following subpar. (B).

Pub. L. 94–455, §1906(a)(55)(B), as amended by Pub. L. 98–213, §5(c)(1), substituted "emergency relief purposes and essential public projects" for "emergency relief purposes and essential public projects, with the prior approval of the President or his designated representative" in provisions following subpar. (B). Prior to amendment by Pub. L. 98–213, the latter phrase had been substituted for "approved emergency relief purposes and essential public projects as provided in subparagraph (B)".

Pub. L. 94–455, §1906(a)(55)(C), struck out "including payments under subparagraph (B)" after "public projects only" in provisions following subpar. (B).

Subsec. (b)(3)(A). Pub. L. 94–455, §1906(a)(55)(D), as added by Pub. L. 98–213, §5(c)(2), struck out proviso after "determine" requiring approval of the President or his designated representative before such moneys may be obligated or expended.

Subsec. (b)(3)(B), (C). Pub. L. 94–455, §1906(a)(55)(A), redesignated subpar. (C) as (B). Former subpar. (B) relating to disposition of internal revenue collections in Virgin Islands for fiscal years ending June 30, 1955 and 1956 was struck out.

Pub. L. 94–202 substituted "calendar quarter ending September 30, 1975, and quarterly" for "fiscal year ending June 30, 1954, and annually" and "quarter" for "fiscal year" in provisions preceding subpar. (A), substituted "paid over, as soon as practicable after the close of the quarter," for "paid over" and "quarter" for "fiscal year" in subpar. (A), and substituted "with respect to the four calendar quarters immediately preceding the beginning" for "at the beginning" in provisions following subpar. (C).

1965—Subsec. (a)(3). Pub. L. 89–44 inserted "(less the estimated amount necessary for payment of refunds and drawbacks)" after "transported to the United States".

1958—Subsec. (a)(1). Pub. L. 85–859, §204(17), substituted "section 5314" for "section 5318".
Subsec. (b)(1). Pub. L. 85–859, §204(18), substituted "section 5314" for "section 5318".

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title III, §329(b), Jan. 2, 2013, 126 Stat. 2335, provided that: "The amendment made by this section [amending this section] shall apply to distilled spirits brought into the United States after December 31, 2011."

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §755(b), Dec. 17, 2010, 124 Stat. 3322, provided that: "The amendment made by this section [amending this section] shall apply to distilled spirits brought into the United States after December 31, 2009."

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title III, §308(b), Oct. 3, 2008, 122 Stat. 3869, provided that: "The amendment made by this section [amending this section] shall apply to distilled spirits brought into the United States after December 31, 2007."

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title I, §114(b), Dec. 20, 2006, 120 Stat. 2940, provided that: "The amendment made by subsection (a) [amending this section] shall apply to articles brought into the United States after December 31, 2005."

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–59 effective July 1, 2008, but inapplicable to taxes imposed for periods before such date, see section 11125(c) of Pub. L. 109–59, set out as a note under section 5002 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–311, title III, §305(b), Oct. 4, 2004, 118 Stat. 1179, provided that:"The amendment made by this section [amending this section] shall apply to articles brought into the United States after December 31, 2003."

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title VI, §609(b), Mar. 9, 2002, 116 Stat. 60, provided that: "The amendment made by subsection (a) [amending this section] shall apply to articles brought into the United States after December 31, 2001."

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–200, title VI, §602(d), May 18, 2000, 114 Stat. 306, provided that: "The amendments made by this section [amending this section and provisions set out as a note under this section] shall apply with respect to transfers or payments made after the date of the enactment of this Act [May 18, 2000]."

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title V, §512(c), Dec. 17, 1999, 113 Stat. 1925, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on July 1, 1999."

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 effective Jan. 1, 1995, see section 136(d) of Pub. L. 103–465, set out as a note under section 5001 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 effective Oct. 1, 1993, see section 13227(f) of Pub. L. 103–66, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–418 effective Jan. 1, 1989, and applicable with respect to articles entered on or after such date, see section 1217(b)(1) of Pub. L. 100–418, set out as an Effective Date note under section 3001 of Title 19, Customs Duties.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XVIII, §1879(i)(2), Oct. 22, 1986, 100 Stat. 2907, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to articles brought into the United States after the date of the enactment of this Act [Oct. 22, 1986]."

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. B, title VI, §2681(b), July 18, 1984, 98 Stat. 1173, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by subsection (a) [amending this section] shall apply with respect to articles brought into the United States on or after March 1, 1984.

"(2) EXCEPTION FOR PUERTO RICO FOR PERIODS BEFORE JANUARY 1, 1985.—

"(A) IN GENERAL.—Subject to the limitations of subparagraphs (B) and (C), the amendments made by subsection (a) [amending this section] shall not apply with respect to articles containing distilled spirits brought into the United States from Puerto Rico after February 29, 1984, and before January 1, 1985.

"(B) $130,000,000 LIMITATION.—In the case of such articles brought into the United States after February 29, 1984, and before July 1, 1984, the aggregate amount payable to Puerto Rico by reason of subparagraph (A) shall not exceed the excess of—

"(i) $130,000,000, over

"(ii) the aggregate amount payable to Puerto Rico under section 7652(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] with respect to such articles which were brought into the United States after June 30, 1983, and before March 1, 1984, and which would not meet the requirements of section 7652(c) of such Code.

"(C) $75,000,000 LIMITATION.—The aggregate amount payable to Puerto Rico by reason of subparagraph (A) shall not exceed $75,000,000 in the case of articles—

"(i) brought into the United States after June 30, 1984, and before January 1, 1985,

"(ii) which would not meet the requirements of section 7652(c) of such Code,

"(iii) which have been redistilled in Puerto Rico, and

"(iv) which do not contain distilled spirits derived from cane.

"(3) LIMITATION ON INCENTIVE PAYMENTS TO UNITED STATES DISTILLERS.—

"(A) IN GENERAL.—In the case of articles to which this paragraph applies, the aggregate amount of incentive payments paid to any United States distiller with respect to such articles shall not exceed the limitation described in subparagraph (C).

"(B) ARTICLES TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to any article containing distilled spirits described in clauses (i) through (iv) of paragraph (2)(C).

"(C) LIMITATION.—

"(i) IN GENERAL.—The limitation described in this subparagraph is $1,500,000.

"(ii) SPECIAL RULE.—The limitation described in this subparagraph shall be zero with respect to any distiller who was not entitled to or receiving incentive payments as of March 1, 1984.

"(D) PAYMENTS IN EXCESS OF LIMITATION.—If any United States distiller receives any incentive payment with respect to articles to which this paragraph applies in excess of the limitation described in subparagraph (C), such distiller shall pay to the United States the total amount of such incentive payments with respect to such articles in the same manner, and subject to the same penalties, as if such amount were tax due and payable under section 5001 of such Code on the date such payments were received.

"(E) INCENTIVE PAYMENTS.—

"(i) IN GENERAL.—For purposes of this paragraph, the term 'incentive payment' means any payment made directly or indirectly by the commonwealth of Puerto Rico to any United States distiller as an incentive to engage in redistillation operations.

"(ii) TRANSPORTATION PAYMENTS EXCLUDED.—Such term shall not include any payment of a direct cost of transportation to or from Puerto Rico with respect to any article to which this paragraph applies."

Pub. L. 98–369, div. B, title VI, §2682(b), July 18, 1984, 98 Stat. 1175, provided that "The amendment made by this section [amending this section] shall apply to articles containing distilled spirits brought into the United States after September 30, 1985."

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 98–67, title II, §221(b), Aug. 5, 1983, 97 Stat. 395, provided that: "The amendment made by subsection (a) [amending this section] shall apply to articles imported into the United States after June 30, 1983."

EFFECTIVE DATE OF 1976 AMENDMENTS

Amendment by Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1906(d)(1) of Pub. L. 94–455, set out as a note under section 6013 of this title.

Pub. L. 94–202, §10(b), Jan. 2, 1976, 89 Stat. 1141, provided that: "The amendments made by paragraphs (1) and (2) of subsection (a) [amending this section] shall apply with respect to all taxes imposed by, and collected after June 30, 1975, under, the internal revenue laws of the United States on articles produced in the Virgin Islands and transported to the United States."

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 effective July 1, 1965, see section 808(d)(1) of Pub. L. 89–44, set out as a note under section 5702 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–859 effective July 1, 1959, see section 210(a)(1) of Pub. L. 85–859, set out as an Effective Date note under section 5001 of this title.

SPECIAL COVER OVER TRANSFER RULES

Pub. L. 106–170, title V, §512(b), Dec. 17, 1999, 113 Stat. 1924, as amended by Pub. L. 106–200, §602(a), May 18, 2000, 114 Stat. 305, provided that: "Notwithstanding section 7652 of the Internal Revenue Code of 1986, the following rules shall apply with respect to any transfer before the first day of the month within which the date of the enactment of the Trade and Development Act of 2000 [May 18, 2000] occurs, of amounts relating to the increase in the cover over of taxes by reason of the amendment made by subsection (a) [amending this section]:

"(1) INITIAL TRANSFER OF INCREMENTAL INCREASE IN COVER OVER.—The Secretary of the Treasury shall, within 15 days after the date of the enactment of this Act [Dec. 17, 1999], transfer an amount equal to the lesser of—

"(A) the amount of such increase otherwise required to be covered over after June 30, 1999, and before the date of the enactment of this Act; or

"(B) $20,000,000.

"(2) SECOND TRANSFER OF INCREMENTAL INCREASE IN COVER OVER ATTRIBUTABLE TO PERIODS BEFORE RESUMPTION OF REGULAR PAYMENTS.—The Secretary of the Treasury shall transfer on the first payment date after the date of the enactment of the Trade and Development Act of 2000 [May 18, 2000] an amount equal to the excess of—

"(A) the amount of such increase otherwise required to be covered over after June 30, 1999, and before the first day of the month within which such date of enactment occurs, over

"(B) the amount of the transfer described in paragraph (1)."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

PAYMENT TO PUERTO RICO OR VIRGIN ISLANDS OF AMOUNTS WITH RESPECT TO MEDICINES, ETC. UNFIT FOR BEVERAGE PURPOSES

Pub. L. 99–514, title XVIII, §1879(i)(3), Oct. 22, 1986, 100 Stat. 2907, provided that:

"(A) Section 7652 of the Internal Revenue Code of 1954 [now 1986] (other than subsection (f) thereof) shall not prevent the payment to Puerto Rico or the Virgin Islands of amounts with respect to medicines, medicinal preparations, food products, flavors, or flavoring extracts containing distilled spirits, which are unfit for beverage purposes and which are brought into the United States from Puerto Rico or the Virgin Islands on or before the date of the enactment of this Act [Oct. 22, 1986].

"(B) With respect to articles brought into the United States after September 27, 1985, subparagraph (A) shall apply only if the Secretary of the Treasury or his delegate is satisfied that the amounts paid to Puerto Rico or the Virgin Islands under subparagraph (A) are being repaid to the proper persons who used the distilled spirits in such articles."

EX. ORD. NO. 10602. SECRETARY OF THE INTERIOR AS REPRESENTATIVE OF PRESIDENT

Ex. Ord. No. 10602, Mar. 24, 1955, 20 F.R. 1795, provided: "By virtue of the authority vested in me by

section 7652(b)(3) of the Internal Revenue Code of 1954 [now I.R.C. 1986] (Public Law 591, 83rd Congress, 68A Stat. 907), I hereby designate the Secretary of the Interior as the representative of the President to approve the obligation and expenditure by the government of the Virgin Islands of the moneys referred to in the said section 7652(b)(3)."

§7653. Shipments from the United States

(a) Tax imposed

(1) Puerto Rico

All articles of merchandise of United States manufacture coming into Puerto Rico shall be entered at the port of entry upon payment of a tax equal in rate and amount to the internal revenue tax imposed in Puerto Rico upon the like articles of Puerto Rican manufacture.

(2) Virgin Islands

There shall be imposed in the Virgin Islands upon articles imported from the United States a tax equal to the internal revenue tax imposed in such islands upon like articles there manufactured.

(b) Exemption from tax imposed in the United States

Articles, goods, wares, or merchandise going into Puerto Rico, the Virgin Islands, Guam, and American Samoa from the United States shall be exempted from the payment of any tax imposed by the internal revenue laws of the United States.

(c) Drawback of tax paid in the United States

All provisions of law for the allowance of drawback of internal revenue tax on articles exported from the United States are, so far as applicable, extended to like articles upon which an internal revenue tax has been paid when shipped from the United States to Puerto Rico, the Virgin Islands, Guam, or American Samoa.

(d) Cross reference

For the disposition of the proceeds of all taxes collected under the internal revenue laws of the United States on articles produced in Guam and transported into the United States or its possessions, or consumed in Guam, see the Act of August 1, 1950 (48 U.S.C. 1421h).

(Aug. 16, 1954, ch. 736 68A Stat. 908; Pub. L. 86–70, §22(f), June 25, 1959, 73 Stat. 146; Pub. L. 86–624, §18(h), July 12, 1960, 74 Stat. 416; Pub. L. 94–455, title XIX, §1906(a)(56), Oct. 4, 1976, 90 Stat. 1832.)

REFERENCES IN TEXT

Act of August 1, 1950, referred to in subsec. (d), is act Aug. 1, 1950, ch. 512, 64 Stat. 384, as amended, known as the Organic Act of Guam, which is classified principally to chapter 8A (§1421 et seq.) of Title 48, Territories and Insular Possessions. For complete classification of this Act to the Code, see Short Title note set out under section 1421 of Title 48 and Tables.

AMENDMENTS

1976—Subsec. (d). Pub. L. 94–455 struck out "ch. 512, 64 Stat. 392, section 30" after "August 1, 1950".

1960—Subsec. (d). Pub. L. 86–624 substituted "or its possessions" for ", its possessions or the Territory of Hawaii".

1959—Subsec. (d). Pub. L. 86–70 substituted "its possessions or the Territory of Hawaii" for "its Territories or possessions".

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–624 effective Aug. 21, 1959, see section 18(k) of Pub. L. 86–624, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–70 effective Jan. 3, 1959, see section 22(i) of Pub. L. 86–70, set out as a note under section 3121 of this title.

§7654. Coordination of United States and certain possession individual income taxes

(a) General rule

The net collection of taxes imposed by chapter 1 for each taxable year with respect to an individual to whom section 931 or 932(c) applies shall be covered into the Treasury of the specified possession of which such individual is a bona fide resident.

(b) Definition and special rule

For purposes of this section—

(1) Net collections

In determining net collections for a taxable year, an appropriate adjustment shall be made for credits allowed against the tax liability and refunds made of income taxes for the taxable year.

(2) Specified possession

The term "specified possession" means Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands.

(c) Transfers

The transfers of funds between the United States and any specified possession required by this section shall be made not less frequently than annually.

(d) Federal personnel

In addition to the amount determined under subsection (a), the United States shall pay to each specified possession at such times and in such manner as determined by the Secretary—

(1) the amount of the taxes deducted and withheld by the United States under chapter 24 with respect to compensation paid to members of the Armed Forces who are stationed in such possession but who have no income tax liability to such possession with respect to such compensation by reason of the Servicemembers Civil Relief Act (50 App. U.S.C. 501 et seq.), and

(2) the amount of the taxes deducted and withheld under chapter 24 with respect to amounts paid for services performed as an employee of the United States (or any agency thereof) in a specified possession with respect to an individual unless section 931 or 932(c) applies.

(e) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section and sections 931 and 932, including regulations prohibiting the rebate of taxes covered over which are allocable to United States source income and prescribing the information which the individuals to whom such sections may apply shall furnish to the Secretary.

(Aug. 16, 1954, ch. 736, 68A Stat. 909; Pub. L. 92–606, §1(b), Oct. 31, 1972, 86 Stat. 1495; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–248, title III, §§307(a)(16), 308(a), Sept. 3, 1982, 96 Stat. 590, 591; Pub. L. 98–67, title I, §102(a), Aug. 5, 1983, 97 Stat. 369; Pub. L. 99–514, title XII, §1276(a), Oct. 22, 1986, 100 Stat. 2599; Pub. L. 100–647, title I, §1012(y), Nov. 10, 1988, 102 Stat. 3530; Pub. L. 108–189, §2(d), Dec. 19, 2003, 117 Stat. 2866.)

REFERENCES IN TEXT

The Servicemembers Civil Relief Act, referred to in subsec. (d)(1), is act Oct. 17, 1940, ch. 888, 54 Stat. 1178, as amended, which is classified to section 501 et seq. of the Appendix to Title 50, War and National Defense. For complete classification of this Act to the Code, see section 501 of the Appendix to Title 50 and Tables.

AMENDMENTS

2003—Subsec. (d)(1). Pub. L. 108–189 substituted "Servicemembers Civil Relief Act" for "Soldiers' and Sailors' Civil Relief Act".

1988—Subsec. (a). Pub. L. 100–647 substituted "an individual to whom" for "an individual to which".

1986—Pub. L. 99–514 amended section generally, substituting provisions relating to coordination of United States and certain possession individual income taxes for provisions relating to coordination of United States and Guam individual income taxes.

1983—Subsec. (d). Pub. L. 98–67 repealed amendments made by Pub. L. 97–248. See 1982 Amendment note below.

1982—Subsec. (d). Pub. L. 97–248 provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, subsec. (d) is amended by inserting "subchapter A of" before "chapter 24". Section 102(a), (b) of Pub. L. 98–67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§301–308) of title III of Pub. L. 97–248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 [now 1986] [this title] shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

1976—Subsecs. (d), (e). Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

1972—Pub. L. 92–606 substituted provisions relating to individual income taxes in Guam and their sharing by the United States and Guam, for provisions relating to payment to Guam and American Samoa of proceeds of tax on coconut and other vegetable oils.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99–514, set out as a note under section 931 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–606 applicable with respect to taxable years beginning after Dec. 31, 1972, see section 2 of Pub. L. 92–606, set out in part as an Effective Date note under section 931 of this title.

§7655. Cross references

(a) Imposition of tax in possessions

For provisions imposing tax in possessions, see—

(1) Chapter 2, relating to self-employment tax;

(2) Chapter 21, relating to the tax under the Federal Insurance Contributions Act.

(b) Other provisions

For other provisions relating to possessions of the United States, see—

(1) Section 931, relating to income tax on residents of Guam, American Samoa, or the Northern Mariana Islands;

(2) Section 933, relating to income tax on residents of Puerto Rico.

(Aug. 16, 1954, ch. 736, 68A Stat. 909; Pub. L. 85–859, title II, §204(19), Sept. 2, 1958, 72 Stat. 1430; Pub. L. 91–513, title III, §1102(k), Oct. 27, 1970, 84 Stat. 1293; Pub. L. 94–455, title XIX, §1904(b)(6)(B), Oct. 4, 1976, 90 Stat. 1815; Pub. L. 99–514, title XII, §1272(d)(11), Oct. 22, 1986, 100 Stat. 2594; Pub. L. 101–508, title XI, §11801(c)(22)(E), Nov. 5, 1990, 104 Stat. 1388–528.)

REFERENCES IN TEXT

The Federal Insurance Contributions Act, referred to in subsec. (a)(2), is act Aug. 16, 1954, ch. 736, §§3101, 3102, 3111, 3112, 3121 to 3128, 68A Stat. 415, as amended, which is classified generally to chapter 21 (§3101 et seq.) of this title. For complete classification of this Act to the Code, see section 3128 of this title and Tables.

AMENDMENTS

1990—Subsec. (a)(2), (3). Pub. L. 101–508, §11801(c)(22)(E)(i), substituted period for semicolon at end of par. (2) and struck out par. (3) which cross-referenced former chapter 37 relating to tax on sugar.

Subsec. (b)(2), (3). Pub. L. 101–508, §11801(c)(22)(E)(ii), substituted period for semicolon at end of par. (2) and struck out par. (3) which cross-referenced former section 6418(b) relating to the exportation of sugar to Puerto Rico.

1986—Subsec. (b). Pub. L. 99–514 added par. (1) and redesignated former pars. (1) and (2) as (2) and (3), respectively.

1976—Subsec. (a)(3), (5). Pub. L. 94–455 substituted "Chapter 37" for "Subchapter A of chapter 37" in par. (5) and redesignated par. (5) as (3).

1970—Subsec. (a)(3), (4). Pub. L. 91–513 struck out pars. (3) and (4) relating to taxes in respect of narcotic drugs and taxes in respect of marihuana, respectively, and making references to parts I and III of subchapter A of chapter 39 and to parts II and III of subchapter A of chapter 39, respectively.

1958—Subsec. (a)(5), (6). Pub. L. 85–859 redesignated par. (6) as (5) and struck out former par. (5) which contained a cross reference to chapter 51 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99–514, set out as a note under section 931 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–513 effective on first day of seventh calendar month that begins after Oct. 26, 1970, see section 1105(a) of Pub. L. 91–513, set out as an Effective Date note under section 951 of Title 21, Food and Drugs.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–859 effective Sept. 3, 1958, see section 210(a)(1) of Pub. L. 85–859, set out as an Effective Date note under section 5001 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

Prosecutions for any violation of law occurring, and civil seizures or forfeitures and injunctive proceedings commenced, prior to the effective date of amendment of this section by section 1102 of Pub. L. 91–513 not to be affected or abated by reason thereof, see section 1103 of Pub. L. 91–513, set out as a note under sections 171 to 174 of Title 21, Food and Drugs.

CHAPTER 79—DEFINITIONS

Sec.

7701. Definitions.

7702. Life insurance contract defined.

7702A. Modified endowment contract defined.

7702B. Treatment of qualified long-term care insurance.

7703. Determination of marital status.

7704. Certain publicly traded partnerships treated as corporations.

AMENDMENTS

1996—Pub. L. 104–191, title III, §321(e), Aug. 21, 1996, 110 Stat. 2059, added item 7702B.

1988—Pub. L. 100–647, title V, §5012(c)(2), Nov. 10, 1988, 102 Stat. 3664, added item 7702A.

1987—Pub. L. 100–203, title X, §10211(b), Dec. 22, 1987, 101 Stat. 1330–405, added item 7704.

1986—Pub. L. 99–514, title XIII, §1301(j)(2)(B), Oct. 22, 1986, 100 Stat. 2657, added item 7703.

1984—Pub. L. 98–369, div. A, title II, §221(c), July 18, 1984, 98 Stat. 772, added item 7702.

§7701. Definitions

(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

(1) Person

The term "person" shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation.

(2) Partnership and partner

The term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title, a trust or estate or a corporation; and the term "partner" includes a member in such a syndicate, group, pool, joint venture, or organization.

(3) Corporation

The term "corporation" includes associations, joint-stock companies, and insurance companies.

(4) Domestic

The term "domestic" when applied to a corporation or partnership means created or organized in the United States or under the law of the United States or of any State unless, in the case of a partnership, the Secretary provides otherwise by regulations.

(5) Foreign

The term "foreign" when applied to a corporation or partnership means a corporation or partnership which is not domestic.

(6) Fiduciary

The term "fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

(7) Stock

The term "stock" includes shares in an association, joint-stock company, or insurance company.

(8) Shareholder

The term "shareholder" includes a member in an association, joint-stock company, or insurance company.

(9) United States

The term "United States" when used in a geographical sense includes only the States and the District of Columbia.

(10) State

The term "State" shall be construed to include the District of Columbia, where such construction is necessary to carry out provisions of this title.

(11) Secretary of the Treasury and Secretary

(A) Secretary of the Treasury

The term "Secretary of the Treasury" means the Secretary of the Treasury, personally, and shall not include any delegate of his.

(B) Secretary

The term "Secretary" means the Secretary of the Treasury or his delegate.

(12) Delegate

(A) In general

The term "or his delegate"—

(i) when used with reference to the Secretary of the Treasury, means any officer, employee, or agency of the Treasury Department duly authorized by the Secretary of the Treasury directly, or indirectly by one or more redelegations of authority, to perform the

function mentioned or described in the context; and

(ii) when used with reference to any other official of the United States, shall be similarly construed.

(B) Performance of certain functions in Guam or American Samoa

The term "delegate," in relation to the performance of functions in Guam or American Samoa with respect to the taxes imposed by chapters 1, 2, and 21, also includes any officer or employee of any other department or agency of the United States, or of any possession thereof, duly authorized by the Secretary (directly, or indirectly by one or more redelegations of authority) to perform such functions.

(13) Commissioner

The term "Commissioner" means the Commissioner of Internal Revenue.

(14) Taxpayer

The term "taxpayer" means any person subject to any internal revenue tax.

(15) Military or naval forces and armed forces of the United States

The term "military or naval forces of the United States" and the term "Armed Forces of the United States" each includes all regular and reserve components of the uniformed services which are subject to the jurisdiction of the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force, and each term also includes the Coast Guard. The members of such forces include commissioned officers and personnel below the grade of commissioned officers in such forces.

(16) Withholding agent

The term "withholding agent" means any person required to deduct and withhold any tax under the provisions of section 1441, 1442, 1443, or 1461.

(17) Husband and wife

As used in sections 682 and 2516, if the husband and wife therein referred to are divorced, wherever appropriate to the meaning of such sections, the term "wife" shall be read "former wife" and the term "husband" shall be read "former husband"; and, if the payments described in such sections are made by or on behalf of the wife or former wife to the husband or former husband instead of vice versa, wherever appropriate to the meaning of such sections, the term "husband" shall be read "wife" and the term "wife" shall be read "husband."

(18) International organization

The term "international organization" means a public international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (22 U.S.C. 288–288f).

(19) Domestic building and loan association

The term "domestic building and loan association" means a domestic building and loan association, a domestic savings and loan association, and a Federal savings and loan association—

(A) which either (i) is an insured institution within the meaning of section 401(a) [1] of the National Housing Act (12 U.S.C., sec. 1724(a)), or (ii) is subject by law to supervision and examination by State or Federal authority having supervision over such associations;

(B) the business of which consists principally of acquiring the savings of the public and investing in loans; and

(C) at least 60 percent of the amount of the total assets of which (at the close of the taxable year) consists of—

(i) cash,

(ii) obligations of the United States or of a State or political subdivision thereof, and stock or obligations of a corporation which is an instrumentality of the United States or of a State or political subdivision thereof, but not including obligations the interest on which is

excludable from gross income under section 103,

(iii) certificates of deposit in, or obligations of, a corporation organized under a State law which specifically authorizes such corporation to insure the deposits or share accounts of member associations,

(iv) loans secured by a deposit or share of a member,

(v) loans (including redeemable ground rents, as defined in section 1055) secured by an interest in real property which is (or, from the proceeds of the loan, will become) residential real property or real property used primarily for church purposes, loans made for the improvement of residential real property or real property used primarily for church purposes, provided that for purposes of this clause, residential real property shall include single or multifamily dwellings, facilities in residential developments dedicated to public use or property used on a nonprofit basis for residents, and mobile homes not used on a transient basis,

(vi) loans secured by an interest in real property located within an urban renewal area to be developed for predominantly residential use under an urban renewal plan approved by the Secretary of Housing and Urban Development under part A or part B of title I of the Housing Act of 1949, as amended, or located within any area covered by a program eligible for assistance under section 103 of the Demonstration Cities and Metropolitan Development Act of 1966, as amended, and loans made for the improvement of any such real property,

(vii) loans secured by an interest in educational, health, or welfare institutions or facilities, including structures designed or used primarily for residential purposes for students, residents, and persons under care, employees, or members of the staff of such institutions or facilities,

(viii) property acquired through the liquidation of defaulted loans described in clause (v), (vi), or (vii),

(ix) loans made for the payment of expenses of college or university education or vocational training, in accordance with such regulations as may be prescribed by the Secretary,

(x) property used by the association in the conduct of the business described in subparagraph (B), and

(xi) any regular or residual interest in a REMIC, but only in the proportion which the assets of such REMIC consist of property described in any of the preceding clauses of this subparagraph; except that if 95 percent or more of the assets of such REMIC are assets described in clauses (i) through (x), the entire interest in the REMIC shall qualify.

At the election of the taxpayer, the percentage specified in this subparagraph shall be applied on the basis of the average assets outstanding during the taxable year, in lieu of the close of the taxable year, computed under regulations prescribed by the Secretary. For purposes of clause (v), if a multifamily structure securing a loan is used in part for nonresidential purposes, the entire loan is deemed a residential real property loan if the planned residential use exceeds 80 percent of the property's planned use (determined as of the time the loan is made). For purposes of clause (v), loans made to finance the acquisition or development of land shall be deemed to be loans secured by an interest in residential real property if, under regulations prescribed by the Secretary, there is reasonable assurance that the property will become residential real property within a period of 3 years from the date of acquisition of such land; but this sentence shall not apply for any taxable year unless, within such 3-year period, such land becomes residential real property. For purposes of determining whether any interest in a REMIC qualifies under clause (xi), any regular interest in another REMIC held by such REMIC shall be treated as a loan described in a preceding clause under principles similar to the principles of clause (xi); except that, if such REMIC's are part of a tiered structure, they shall be treated as 1 REMIC for purposes of clause (xi).

(20) Employee

For the purpose of applying the provisions of section 79 with respect to group-term life

insurance purchased for employees, for the purpose of applying the provisions of sections 104, 105, and 106 with respect to accident and health insurance or accident and health plans, and for the purpose of applying the provisions of subtitle A with respect to contributions to or under a stock bonus, pension, profit-sharing, or annuity plan, and with respect to distributions under such a plan, or by a trust forming part of such a plan, and for purposes of applying section 125 with respect to cafeteria plans, the term "employee" shall include a full-time life insurance salesman who is considered an employee for the purpose of chapter 21, or in the case of services performed before January 1, 1951, who would be considered an employee if his services were performed during 1951.

(21) Levy

The term "levy" includes the power of distraint and seizure by any means.

(22) Attorney General

The term "Attorney General" means the Attorney General of the United States.

(23) Taxable year

The term "taxable year" means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the taxable income is computed under subtitle A. "Taxable year" means, in the case of a return made for a fractional part of a year under the provisions of subtitle A or under regulations prescribed by the Secretary, the period for which such return is made.

(24) Fiscal year

The term "fiscal year" means an accounting period of 12 months ending on the last day of any month other than December.

(25) Paid or incurred, paid or accrued

The terms "paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which the taxable income is computed under subtitle A.

(26) Trade or business

The term "trade or business" includes the performance of the functions of a public office.

(27) Tax Court

The term "Tax Court" means the United States Tax Court.

(28) Other terms

Any term used in this subtitle with respect to the application of, or in connection with, the provisions of any other subtitle of this title shall have the same meaning as in such provisions.

(29) Internal Revenue Code

The term "Internal Revenue Code of 1986" means this title, and the term "Internal Revenue Code of 1939" means the Internal Revenue Code enacted February 10, 1939, as amended.

(30) United States person

The term "United States person" means—

(A) a citizen or resident of the United States,

(B) a domestic partnership,

(C) a domestic corporation,

(D) any estate (other than a foreign estate, within the meaning of paragraph (31)), and

(E) any trust if—

(i) a court within the United States is able to exercise primary supervision over the administration of the trust, and

(ii) one or more United States persons have the authority to control all substantial decisions of the trust.

(31) Foreign estate or trust

(A) Foreign estate

The term "foreign estate" means an estate the income of which, from sources without the United States which is not effectively connected with the conduct of a trade or business within the United States, is not includible in gross income under subtitle A.

(B) Foreign trust

The term "foreign trust" means any trust other than a trust described in subparagraph (E) of paragraph (30).

(32) Cooperative bank

The term "cooperative bank" means an institution without capital stock organized and operated for mutual purposes and without profit, which—

(A) either—

(i) is an insured institution within the meaning of section 401(a) [2] of the National Housing Act (12 U.S.C., sec. 1724(a)), or

(ii) is subject by law to supervision and examination by State or Federal authority having supervision over such institutions, and

(B) meets the requirements of subparagraphs (B) and (C) of paragraph (19) of this subsection (relating to definition of domestic building and loan association).

In determining whether an institution meets the requirements referred to in subparagraph (B) of this paragraph, any reference to an association or to a domestic building and loan association contained in paragraph (19) shall be deemed to be a reference to such institution.

(33) Regulated public utility

The term "regulated public utility" means—

(A) A corporation engaged in the furnishing or sale of—

(i) electric energy, gas, water, or sewerage disposal services, or

(ii) transportation (not included in subparagraph (C)) on an intrastate, suburban, municipal, or interurban electric railroad, on an intrastate, municipal, or suburban trackless trolley system, or on a municipal or suburban bus system, or

(iii) transportation (not included in clause (ii)) by motor vehicle—

if the rates for such furnishing or sale, as the case may be, have been established or approved by a State or political subdivision thereof, by an agency or instrumentality of the United States, by a public service or public utility commission or other similar body of the District of Columbia or of any State or political subdivision thereof, or by a foreign country or an agency or instrumentality or political subdivision thereof.

(B) A corporation engaged as a common carrier in the furnishing or sale of transportation of gas by pipe line, if subject to the jurisdiction of the Federal Energy Regulatory Commission.

(C) A corporation engaged as a common carrier (i) in the furnishing or sale of transportation by railroad, if subject to the jurisdiction of the Surface Transportation Board, or (ii) in the furnishing or sale of transportation of oil or other petroleum products (including shale oil) by pipe line, if subject to the jurisdiction of the Federal Energy Regulatory Commission or if the rates for such furnishing or sale are subject to the jurisdiction of a public service or public utility commission or other similar body of the District of Columbia or of any State.

(D) A corporation engaged in the furnishing or sale of telephone or telegraph service, if the rates for such furnishing or sale meet the requirements of subparagraph (A).

(E) A corporation engaged in the furnishing or sale of transportation as a common carrier by air, subject to the jurisdiction of the Secretary of Transportation.

(F) A corporation engaged in the furnishing or sale of transportation by a water carrier subject to jurisdiction under subchapter II of chapter 135 of title 49.

(G) A rail carrier subject to part A of subtitle IV of title 49, if (i) substantially all of its

railroad properties have been leased to another such railroad corporation or corporations by an agreement or agreements entered into before January 1, 1954, (ii) each lease is for a term of more than 20 years, and (iii) at least 80 percent or more of its gross income (computed without regard to dividends and capital gains and losses) for the taxable year is derived from such leases and from sources described in subparagraphs (A) through (F), inclusive. For purposes of the preceding sentence, an agreement for lease of railroad properties entered into before January 1, 1954, shall be considered to be a lease including such term as the total number of years of such agreement may, unless sooner terminated, be renewed or continued under the terms of the agreement, and any such renewal or continuance under such agreement shall be considered part of the lease entered into before January 1, 1954.

(H) A common parent corporation which is a common carrier by railroad subject to part A of subtitle IV of title 49 if at least 80 percent of its gross income (computed without regard to capital gains or losses) is derived directly or indirectly from sources described in subparagraphs (A) through (F), inclusive. For purposes of the preceding sentence, dividends and interest, and income from leases described in subparagraph (G), received from a regulated public utility shall be considered as derived from sources described in subparagraphs (A) through (F), inclusive, if the regulated public utility is a member of an affiliated group (as defined in section 1504) which includes the common parent corporation.

The term "regulated public utility" does not (except as provided in subparagraphs (G) and (H)) include a corporation described in subparagraphs (A) through (F), inclusive, unless 80 percent or more of its gross income (computed without regard to dividends and capital gains and losses) for the taxable year is derived from sources described in subparagraphs (A) through (F), inclusive. If the taxpayer establishes to the satisfaction of the Secretary that (i) its revenue from regulated rates described in subparagraph (A) or (D) and its revenue derived from unregulated rates are derived from the operation of a single interconnected and coordinated system or from the operation of more than one such system, and (ii) the unregulated rates have been and are substantially as favorable to users and consumers as are the regulated rates, then such revenue from such unregulated rates shall be considered, for purposes of the preceding sentence, as income derived from sources described in subparagraph (A) or (D).

[(34) Repealed. Pub. L. 98–369, div. A, title IV, §4112(b)(11), July 18, 1984, 98 Stat. 792]

(35) Enrolled actuary

The term "enrolled actuary" means a person who is enrolled by the Joint Board for the Enrollment of Actuaries established under subtitle C of the title III of the Employee Retirement Income Security Act of 1974.

(36) Tax return preparer

(A) In general

The term "tax return preparer" means any person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax imposed by this title or any claim for refund of tax imposed by this title. For purposes of the preceding sentence, the preparation of a substantial portion of a return or claim for refund shall be treated as if it were the preparation of such return or claim for refund.

(B) Exceptions

A person shall not be an [3] "tax return preparer" merely because such person—

(i) furnishes typing, reproducing, or other mechanical assistance,

(ii) prepares a return or claim for refund of the employer (or of an officer or employee of the employer) by whom he is regularly and continuously employed,

(iii) prepares as a fiduciary a return or claim for refund for any person, or

(iv) prepares a claim for refund for a taxpayer in response to any notice of deficiency issued to such taxpayer or in response to any waiver of restriction after the commencement of

an audit of such taxpayer or another taxpayer if a determination in such audit of such other taxpayer directly or indirectly affects the tax liability of such taxpayer.

(37) Individual retirement plan

The term "individual retirement plan" means—

(A) an individual retirement account described in section 408(a), and

(B) an individual retirement annuity described in section 408(b).

(38) Joint return

The term "joint return" means a single return made jointly under section 6013 by a husband and wife.

(39) Persons residing outside United States

If any citizen or resident of the United States does not reside in (and is not found in) any United States judicial district, such citizen or resident shall be treated as residing in the District of Columbia for purposes of any provision of this title relating to—

(A) jurisdiction of courts, or

(B) enforcement of summons.

(40) Indian tribal government

(A) In general

The term "Indian tribal government" means the governing body of any tribe, band, community, village, or group of Indians, or (if applicable) Alaska Natives, which is determined by the Secretary, after consultation with the Secretary of the Interior, to exercise governmental functions.

(B) Special rule for Alaska Natives

No determination under subparagraph (A) with respect to Alaska Natives shall grant or defer any status or powers other than those enumerated in section 7871. Nothing in the Indian Tribal Governmental Tax Status Act of 1982, or in the amendments made thereby, shall validate or invalidate any claim by Alaska Natives of sovereign authority over lands or people.

(41) TIN

The term "TIN" means the identifying number assigned to a person under section 6109.

(42) Substituted basis property

The term "substituted basis property" means property which is—

(A) transferred basis property, or

(B) exchanged basis property.

(43) Transferred basis property

The term "transferred basis property" means property having a basis determined under any provision of subtitle A (or under any corresponding provision of prior income tax law) providing that the basis shall be determined in whole or in part by reference to the basis in the hands of the donor, grantor, or other transferor.

(44) Exchanged basis property

The term "exchanged basis property" means property having a basis determined under any provision of subtitle A (or under any corresponding provision of prior income tax law) providing that the basis shall be determined in whole or in part by reference to other property held at any time by the person for whom the basis is to be determined.

(45) Nonrecognition transaction

The term "nonrecognition transaction" means any disposition of property in a transaction in which gain or loss is not recognized in whole or in part for purposes of subtitle A.

(46) Determination of whether there is a collective bargaining agreement

In determining whether there is a collective bargaining agreement between employee representatives and 1 or more employers, the term "employee representatives" shall not include any organization more than one-half of the members of which are employees who are owners, officers, or executives of the employer. An agreement shall not be treated as a collective bargaining agreement unless it is a bona fide agreement between bona fide employee representatives and 1 or more employers.

[(47) Repealed. Pub. L. 111–312, title III, §301(a), Dec. 17, 2010, 124 Stat. 3300]

(48) Off-highway vehicles

(A) Off-highway transportation vehicles

(i) In general

A vehicle shall not be treated as a highway vehicle if such vehicle is specially designed for the primary function of transporting a particular type of load other than over the public highway and because of this special design such vehicle's capability to transport a load over the public highway is substantially limited or impaired.

(ii) Determination of vehicle's design

For purposes of clause (i), a vehicle's design is determined solely on the basis of its physical characteristics.

(iii) Determination of substantial limitation or impairment

For purposes of clause (i), in determining whether substantial limitation or impairment exists, account may be taken of factors such as the size of the vehicle, whether such vehicle is subject to the licensing, safety, and other requirements applicable to highway vehicles, and whether such vehicle can transport a load at a sustained speed of at least 25 miles per hour. It is immaterial that a vehicle can transport a greater load off the public highway than such vehicle is permitted to transport over the public highway.

(B) Nontransportation trailers and semitrailers

A trailer or semitrailer shall not be treated as a highway vehicle if it is specially designed to function only as an enclosed stationary shelter for the carrying on of an off-highway function at an off-highway site.

(49) Qualified blood collector organization

The term "qualified blood collector organization" means an organization which is—

(A) described in section 501(c)(3) and exempt from tax under section 501(a),
(B) primarily engaged in the activity of the collection of human blood,
(C) registered with the Secretary for purposes of excise tax exemptions, and
(D) registered by the Food and Drug Administration to collect blood.

(50) Termination of United States citizenship

(A) In general

An individual shall not cease to be treated as a United States citizen before the date on which the individual's citizenship is treated as relinquished under section 877A(g)(4).

(B) Dual citizens

Under regulations prescribed by the Secretary, subparagraph (A) shall not apply to an individual who became at birth a citizen of the United States and a citizen of another country.

(b) Definition of resident alien and nonresident alien

(1) In general

For purposes of this title (other than subtitle B)—

(A) Resident alien

An alien individual shall be treated as a resident of the United States with respect to any

calendar year if (and only if) such individual meets the requirements of clause (i), (ii), or (iii):

(i) Lawfully admitted for permanent residence

Such individual is a lawful permanent resident of the United States at any time during such calendar year.

(ii) Substantial presence test

Such individual meets the substantial presence test of paragraph (3).

(iii) First year election

Such individual makes the election provided in paragraph (4).

(B) Nonresident alien

An individual is a nonresident alien if such individual is neither a citizen of the United States nor a resident of the United States (within the meaning of subparagraph (A)).

(2) Special rules for first and last year of residency

(A) First year of residency

(i) In general

If an alien individual is a resident of the United States under paragraph (1)(A) with respect to any calendar year, but was not a resident of the United States at any time during the preceding calendar year, such alien individual shall be treated as a resident of the United States only for the portion of such calendar year which begins on the residency starting date.

(ii) Residency starting date for individuals lawfully admitted for permanent residence

In the case of an individual who is a lawfully permanent resident of the United States at any time during the calendar year, but does not meet the substantial presence test of paragraph (3), the residency starting date shall be the first day in such calendar year on which he was present in the United States while a lawful permanent resident of the United States.

(iii) Residency starting date for individuals meeting substantial presence test

In the case of an individual who meets the substantial presence test of paragraph (3) with respect to any calendar year, the residency starting date shall be the first day during such calendar year on which the individual is present in the United States.

(iv) Residency starting date for individuals making first year election

In the case of an individual who makes the election provided by paragraph (4) with respect to any calendar year, the residency starting date shall be the 1st day during such calendar year on which the individual is treated as a resident of the United States under that paragraph.

(B) Last year of residency

An alien individual shall not be treated as a resident of the United States during a portion of any calendar year if—

(i) such portion is after the last day in such calendar year on which the individual was present in the United States (or, in the case of an individual described in paragraph (1)(A)(i), the last day on which he was so described),

(ii) during such portion the individual has a closer connection to a foreign country than to the United States, and

(iii) the individual is not a resident of the United States at any time during the next calendar year.

(C) Certain nominal presence disregarded

(i) In general

For purposes of subparagraphs (A)(iii) and (B), an individual shall not be treated as present in the United States during any period for which the individual establishes that he has a closer connection to a foreign country than to the United States.

(ii) Not more than 10 days disregarded

Clause (i) shall not apply to more than 10 days on which the individual is present in the United States.

(3) Substantial presence test

(A) In general

Except as otherwise provided in this paragraph, an individual meets the substantial presence test of this paragraph with respect to any calendar year (hereinafter in this subsection referred to as the "current year") if—

(i) such individual was present in the United States on at least 31 days during the calendar year, and

(ii) the sum of the number of days on which such individual was present in the United States during the current year and the 2 preceding calendar years (when multiplied by the applicable multiplier determined under the following table) equals or exceeds 183 days:

In the case of days in:	The applicable multiplier is:
Current year	1
1st preceding year	1/3
2nd preceding year	1/6

(B) Exception where individual is present in the United States during less than one-half of current year and closer connection to foreign country is established

An individual shall not be treated as meeting the substantial presence test of this paragraph with respect to any current year if—

(i) such individual is present in the United States on fewer than 183 days during the current year, and

(ii) it is established that for the current year such individual has a tax home (as defined in section 911(d)(3) without regard to the second sentence thereof) in a foreign country and has a closer connection to such foreign country than to the United States.

(C) Subparagraph (B) not to apply in certain cases

Subparagraph (B) shall not apply to any individual with respect to any current year if at any time during such year—

(i) such individual had an application for adjustment of status pending, or

(ii) such individual took other steps to apply for status as a lawful permanent resident of the United States.

(D) Exception for exempt individuals or for certain medical conditions

An individual shall not be treated as being present in the United States on any day if—

(i) such individual is an exempt individual for such day, or

(ii) such individual was unable to leave the United States on such day because of a medical condition which arose while such individual was present in the United States.

(4) First-year election

(A) An alien individual shall be deemed to meet the requirements of this subparagraph if such individual—

(i) is not a resident of the United States under clause (i) or (ii) of paragraph (1)(A) with respect to a calendar year (hereinafter referred to as the "election year"),

(ii) was not a resident of the United States under paragraph (1)(A) with respect to the calendar year immediately preceding the election year,

(iii) is a resident of the United States under clause (ii) of paragraph (1)(A) with respect to the

calendar year immediately following the election year, and

(iv) is both—

(I) present in the United States for a period of at least 31 consecutive days in the election year, and

(II) present in the United States during the period beginning with the first day of such 31-day period and ending with the last day of the election year (hereinafter referred to as the "testing period") for a number of days equal to or exceeding 75 percent of the number of days in the testing period (provided that an individual shall be treated for purposes of this subclause as present in the United States for a number of days during the testing period not exceeding 5 days in the aggregate, notwithstanding his absence from the United States on such days).

(B) An alien individual who meets the requirements of subparagraph (A) shall, if he so elects, be treated as a resident of the United States with respect to the election year.

(C) An alien individual who makes the election provided by subparagraph (B) shall be treated as a resident of the United States for the portion of the election year which begins on the 1st day of the earliest testing period during such year with respect to which the individual meets the requirements of clause (iv) of subparagraph (A).

(D) The rules of subparagraph (D)(i) of paragraph (3) shall apply for purposes of determining an individual's presence in the United States under this paragraph.

(E) An election under subparagraph (B) shall be made on the individual's tax return for the election year, provided that such election may not be made before the individual has met the substantial presence test of paragraph (3) with respect to the calendar year immediately following the election year.

(F) An election once made under subparagraph (B) remains in effect for the election year, unless revoked with the consent of the Secretary.

(5) Exempt individual defined

For purposes of this subsection—

(A) In general

An individual is an exempt individual for any day if, for such day, such individual is—

(i) a foreign government-related individual,

(ii) a teacher or trainee,

(iii) a student, or

(iv) a professional athlete who is temporarily in the United States to compete in a charitable sports event described in section 274(l)(1)(B).

(B) Foreign government-related individual

The term "foreign government-related individual" means any individual temporarily present in the United States by reason of—

(i) diplomatic status, or a visa which the Secretary (after consultation with the Secretary of State) determines represents full-time diplomatic or consular status for purposes of this subsection,

(ii) being a full-time employee of an international organization, or

(iii) being a member of the immediate family of an individual described in clause (i) or (ii).

(C) Teacher or trainee

The term "teacher or trainee" means any individual—

(i) who is temporarily present in the United States under subparagraph (J) or (Q) of section 101(15) of the Immigration and Nationality Act (other than as a student), and

(ii) who substantially complies with the requirements for being so present.

(D) Student

The term "student" means any individual—

(i) who is temporarily present in the United States—

(I) under subparagraph (F) or (M) of section 101(15) of the Immigration and Nationality Act, or

(II) as a student under subparagraph (J) or (Q) of such section 101(15), and

(ii) who substantially complies with the requirements for being so present.

(E) Special rules for teachers, trainees, and students

(i) Limitation on teachers and trainees

An individual shall not be treated as an exempt individual by reason of clause (ii) of subparagraph (A) for the current year if, for any 2 calendar years during the preceding 6 calendar years, such person was an exempt person under clause (ii) or (iii) of subparagraph (A). In the case of an individual all of whose compensation is described in section 872(b)(3), the preceding sentence shall be applied by substituting "4 calendar years" for "2 calendar years".

(ii) Limitation on students

For any calendar year after the 5th calendar year for which an individual was an exempt individual under clause (ii) or (iii) of subparagraph (A), such individual shall not be treated as an exempt individual by reason of clause (iii) of subparagraph (A), unless such individual establishes to the satisfaction of the Secretary that such individual does not intend to permanently reside in the United States and that such individual meets the requirements of subparagraph (D)(ii).

(6) Lawful permanent resident

For purposes of this subsection, an individual is a lawful permanent resident of the United States at any time if—

(A) such individual has the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, and

(B) such status has not been revoked (and has not been administratively or judicially determined to have been abandoned).

An individual shall cease to be treated as a lawful permanent resident of the United States if such individual commences to be treated as a resident of a foreign country under the provisions of a tax treaty between the United States and the foreign country, does not waive the benefits of such treaty applicable to residents of the foreign country, and notifies the Secretary of the commencement of such treatment.

(7) Presence in the United States

For purposes of this subsection—

(A) In general

Except as provided in subparagraph (B), (C), or (D), an individual shall be treated as present in the United States on any day if such individual is physically present in the United States at any time during such day.

(B) Commuters from Canada or Mexico

If an individual regularly commutes to employment (or self-employment) in the United States from a place of residence in Canada or Mexico, such individual shall not be treated as present in the United States on any day during which he so commutes.

(C) Transit between 2 foreign points

If an individual, who is in transit between 2 points outside the United States, is physically present in the United States for less than 24 hours, such individual shall not be treated as present in the United States on any day during such transit.

(D) Crew members temporarily present

An individual who is temporarily present in the United States on any day as a regular member of the crew of a foreign vessel engaged in transportation between the United States and a foreign country or a possession of the United States shall not be treated as present in the United States on such day unless such individual otherwise engages in any trade or business in the United States on such day.

(8) Annual statements

The Secretary may prescribe regulations under which an individual who (but for subparagraph (B) or (D) of paragraph (3)) would meet the substantial presence test of paragraph (3) is required to submit an annual statement setting forth the basis on which such individual claims the benefits of subparagraph (B) or (D) of paragraph (3), as the case may be.

(9) Taxable year

(A) In general

For purposes of this title, an alien individual who has not established a taxable year for any prior period shall be treated as having a taxable year which is the calendar year.

(B) Fiscal year taxpayer

If—

(i) an individual is treated under paragraph (1) as a resident of the United States for any calendar year, and

(ii) after the application of subparagraph (A), such individual has a taxable year other than a calendar year,

he shall be treated as a resident of the United States with respect to any portion of a taxable year which is within such calendar year.

(10) Coordination with section 877

If—

(A) an alien individual was treated as a resident of the United States during any period which includes at least 3 consecutive calendar years (hereinafter referred to as the "initial residency period"), and

(B) such individual ceases to be treated as a resident of the United States but subsequently becomes a resident of the United States before the close of the 3rd calendar year beginning after the close of the initial residency period,

such individual shall be taxable for the period after the close of the initial residency period and before the day on which he subsequently became a resident of the United States in the manner provided in section 877(b). The preceding sentence shall apply only if the tax imposed pursuant to section 877(b) exceeds the tax which, without regard to this paragraph, is imposed pursuant to section 871.

(11) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection.

(c) Includes and including

The terms "includes" and "including" when used in a definition contained in this title shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(d) Commonwealth of Puerto Rico

Where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, references in this title to possessions of the United States shall be treated as also referring to the Commonwealth of Puerto Rico.

(e) Treatment of certain contracts for providing services, etc.

For purposes of chapter 1—

(1) In general

A contract which purports to be a service contract shall be treated as a lease of property if such contract is properly treated as a lease of property, taking into account all relevant factors including whether or not—

(A) the service recipient is in physical possession of the property,

(B) the service recipient controls the property,

(C) the service recipient has a significant economic or possessory interest in the property,

(D) the service provider does not bear any risk of substantially diminished receipts or substantially increased expenditures if there is nonperformance under the contract,

(E) the service provider does not use the property concurrently to provide significant services to entities unrelated to the service recipient, and

(F) the total contract price does not substantially exceed the rental value of the property for the contract period.

(2) Other arrangements

An arrangement (including a partnership or other pass-thru entity) which is not described in paragraph (1) shall be treated as a lease if such arrangement is properly treated as a lease, taking into account all relevant factors including factors similar to those set forth in paragraph (1).

(3) Special rules for contracts or arrangements involving solid waste disposal, energy, and clean water facilities

(A) In general

Notwithstanding paragraphs (1) and (2), and except as provided in paragraph (4), any contract or arrangement between a service provider and a service recipient—

(i) with respect to—

(I) the operation of a qualified solid waste disposal facility,

(II) the sale to the service recipient of electrical or thermal energy produced at a cogeneration or alternative energy facility, or

(III) the operation of a water treatment works facility, and

(ii) which purports to be a service contract,

shall be treated as a service contract.

(B) Qualified solid waste disposal facility

For purposes of subparagraph (A), the term "qualified solid waste disposal facility" means any facility if such facility provides solid waste disposal services for residents of part or all of 1 or more governmental units and substantially all of the solid waste processed at such facility is collected from the general public.

(C) Cogeneration facility

For purposes of subparagraph (A), the term "cogeneration facility" means a facility which uses the same energy source for the sequential generation of electrical or mechanical power in combination with steam, heat, or other forms of useful energy.

(D) Alternative energy facility

For purposes of subparagraph (A), the term "alternative energy facility" means a facility for producing electrical or thermal energy if the primary energy source for the facility is not oil, natural gas, coal, or nuclear power.

(E) Water treatment works facility

For purposes of subparagraph (A), the term "water treatment works facility" means any

treatment works within the meaning of section 212(2) of the Federal Water Pollution Control Act.

(4) Paragraph (3) not to apply in certain cases

(A) In general

Paragraph (3) shall not apply to any qualified solid waste disposal facility, cogeneration facility, alternative energy facility, or water treatment works facility used under a contract or arrangement if—

(i) the service recipient (or a related entity) operates such facility,

(ii) the service recipient (or a related entity) bears any significant financial burden if there is nonperformance under the contract or arrangement (other than for reasons beyond the control of the service provider),

(iii) the service recipient (or a related entity) receives any significant financial benefit if the operating costs of such facility are less than the standards of performance or operation under the contract or arrangement, or

(iv) the service recipient (or a related entity) has an option to purchase, or may be required to purchase, all or a part of such facility at a fixed and determinable price (other than for fair market value).

For purposes of this paragraph, the term "related entity" has the same meaning as when used in section 168(h).

(B) Special rules for application of subparagraph (A) with respect to certain rights and allocations under the contract

For purposes of subparagraph (A), there shall not be taken into account—

(i) any right of a service recipient to inspect any facility, to exercise any sovereign power the service recipient may possess, or to act in the event of a breach of contract by the service provider, or

(ii) any allocation of any financial burden or benefits in the event of any change in any law.

(C) Special rules for application of subparagraph (A) in the case of certain events

(i) Temporary shut-downs, etc.

For purposes of clause (ii) of subparagraph (A), there shall not be taken into account any temporary shut-down of the facility for repairs, maintenance, or capital improvements, or any financial burden caused by the bankruptcy or similar financial difficulty of the service provider.

(ii) Reduced costs

For purposes of clause (iii) of subparagraph (A), there shall not be taken into account any significant financial benefit merely because payments by the service recipient under the contract or arrangement are decreased by reason of increased production or efficiency or the recovery of energy or other products.

(5) Exception for certain low-income housing

This subsection shall not apply to any property described in clause (i), (ii), (iii), or (iv) of section 1250(a)(1)(B) (relating to low-income housing) if—

(A) such property is operated by or for an organization described in paragraph (3) or (4) of section 501(c), and

(B) at least 80 percent of the units in such property are leased to low-income tenants (within the meaning of section 167(k)(3)(B)) (as in effect on the day before the date of the enactment of the Revenue Reconcilation [4] Act of 1990).

(6) Regulations

The Secretary may prescribe such regulations as may be necessary or appropriate to carry out

the provisions of this subsection.

(f) Use of related persons or pass-thru entities

The Secretary shall prescribe such regulations as may be necessary or appropriate to prevent the avoidance of those provisions of this title which deal with—

(1) the linking of borrowing to investment, or

(2) diminishing risks,

through the use of related persons, pass-thru entities, or other intermediaries.

(g) Clarification of fair market value in the case of nonrecourse indebtedness

For purposes of subtitle A, in determining the amount of gain or loss (or deemed gain or loss) with respect to any property, the fair market value of such property shall be treated as being not less than the amount of any nonrecourse indebtedness to which such property is subject.

(h) Motor vehicle operating leases

(1) In general

For purposes of this title, in the case of a qualified motor vehicle operating agreement which contains a terminal rental adjustment clause—

(A) such agreement shall be treated as a lease if (but for such terminal rental adjustment clause) such agreement would be treated as a lease under this title, and

(B) the lessee shall not be treated as the owner of the property subject to an agreement during any period such agreement is in effect.

(2) Qualified motor vehicle operating agreement defined

For purposes of this subsection—

(A) In general

The term "qualified motor vehicle operating agreement" means any agreement with respect to a motor vehicle (including a trailer) which meets the requirements of subparagraphs (B), (C), and (D) of this paragraph.

(B) Minimum liability of lessor

An agreement meets the requirements of this subparagraph if under such agreement the sum of—

(i) the amount the lessor is personally liable to repay, and

(ii) the net fair market value of the lessor's interest in any property pledged as security for property subject to the agreement,

equals or exceeds all amounts borrowed to finance the acquisition of property subject to the agreement. There shall not be taken into account under clause (ii) any property pledged which is property subject to the agreement or property directly or indirectly financed by indebtedness secured by property subject to the agreement.

(C) Certification by lessee; notice of tax ownership

An agreement meets the requirements of this subparagraph if such agreement contains a separate written statement separately signed by the lessee—

(i) under which the lessee certifies, under penalty of perjury, that it intends that more than 50 percent of the use of the property subject to such agreement is to be in a trade or business of the lessee, and

(ii) which clearly and legibly states that the lessee has been advised that it will not be treated as the owner of the property subject to the agreement for Federal income tax purposes.

(D) Lessor must have no knowledge that certification is false

An agreement meets the requirements of this subparagraph if the lessor does not know that

the certification described in subparagraph (C)(i) is false.

(3) Terminal rental adjustment clause defined

(A) In general

For purposes of this subsection, the term "terminal rental adjustment clause" means a provision of an agreement which permits or requires the rental price to be adjusted upward or downward by reference to the amount realized by the lessor under the agreement upon sale or other disposition of such property.

(B) Special rule for lessee dealers

The term "terminal rental adjustment clause" also includes a provision of an agreement which requires a lessee who is a dealer in motor vehicles to purchase the motor vehicle for a predetermined price and then resell such vehicle where such provision achieves substantially the same results as a provision described in subparagraph (A).

(i) Taxable mortgage pools

(1) Treated as separate corporations

A taxable mortgage pool shall be treated as a separate corporation which may not be treated as an includible corporation with any other corporation for purposes of section 1501.

(2) Taxable mortgage pool defined

For purposes of this title—

(A) In general

Except as otherwise provided in this paragraph, a taxable mortgage pool is any entity (other than a REMIC) if—

(i) substantially all of the assets of such entity consists of debt obligations (or interests therein) and more than 50 percent of such debt obligations (or interests) consists of real estate mortgages (or interests therein),

(ii) such entity is the obligor under debt obligations with 2 or more maturities, and

(iii) under the terms of the debt obligations referred to in clause (ii) (or underlying arrangement), payments on such debt obligations bear a relationship to payments on the debt obligations (or interests) referred to in clause (i).

(B) Portion of entities treated as pools

Any portion of an entity which meets the definition of subparagraph (A) shall be treated as a taxable mortgage pool.

(C) Exception for domestic building and loan

Nothing in this subsection shall be construed to treat any domestic building and loan association (or portion thereof) as a taxable mortgage pool.

(D) Treatment of certain equity interests

To the extent provided in regulations, equity interest of varying classes which correspond to maturity classes of debt shall be treated as debt for purposes of this subsection.

(3) Treatment of certain REIT's

If—

(A) a real estate investment trust is a taxable mortgage pool, or

(B) a qualified REIT subsidiary (as defined in section 856(i)(2)) of a real estate investment trust is a taxable mortgage pool,

under regulations prescribed by the Secretary, adjustments similar to the adjustments provided in section 860E(d) shall apply to the shareholders of such real estate investment trust.

(j) Tax treatment of Federal Thrift Savings Fund

(1) In general

For purposes of this title—

(A) the Thrift Savings Fund shall be treated as a trust described in section 401(a) which is exempt from taxation under section 501(a);

(B) any contribution to, or distribution from, the Thrift Savings Fund shall be treated in the same manner as contributions to or distributions from such a trust; and

(C) subject to section 401(k)(4)(B) and any dollar limitation on the application of section 402(e)(3), contributions to the Thrift Savings Fund shall not be treated as distributed or made available to an employee or Member nor as a contribution made to the Fund by an employee or Member merely because the employee or Member has, under the provisions of subchapter III of chapter 84 of title 5, United States Code, and section 8351 of such title 5, an election whether the contribution will be made to the Thrift Savings Fund or received by the employee or Member in cash.

(2) Nondiscrimination requirements

Notwithstanding any other provision of law, the Thrift Savings Fund is not subject to the nondiscrimination requirements applicable to arrangements described in section 401(k) or to matching contributions (as described in section 401(m)), so long as it meets the requirements of this section.

(3) Coordination with Social Security Act

Paragraph (1) shall not be construed to provide that any amount of the employee's or Member's basic pay which is contributed to the Thrift Savings Fund shall not be included in the term "wages" for the purposes of section 209 of the Social Security Act or section 3121(a) of this title.

(4) Definitions

For purposes of this subsection, the terms "Member", "employee", and "Thrift Savings Fund" shall have the same respective meanings as when used in subchapter III of chapter 84 of title 5, United States Code.

(5) Coordination with other provisions of law

No provision of law not contained in this title shall apply for purposes of determining the treatment under this title of the Thrift Savings Fund or any contribution to, or distribution from, such Fund.

(k) Treatment of certain amounts paid to charity

In the case of any payment which, except for section 501(b) of the Ethics in Government Act of 1978, might be made to any officer or employee of the Federal Government but which is made instead on behalf of such officer or employee to an organization described in section 170(c)—

(1) such payment shall not be treated as received by such officer or employee for all purposes of this title and for all purposes of any tax law of a State or political subdivision thereof, and

(2) no deduction shall be allowed under any provision of this title (or of any tax law of a State or political subdivision thereof) to such officer or employee by reason of having such payment made to such organization.

For purposes of this subsection, a Senator, a Representative in, or a Delegate or Resident Commissioner to, the Congress shall be treated as an officer or employee of the Federal Government.

(l) Regulations relating to conduit arrangements

The Secretary may prescribe regulations recharacterizing any multiple-party financing transaction as a transaction directly among any 2 or more of such parties where the Secretary determines that such recharacterization is appropriate to prevent avoidance of any tax imposed by this title.

(m) Designation of contract markets

Any designation by the Commodity Futures Trading Commission of a contract market which could not have been made under the law in effect on the day before the date of the enactment of the

Commodity Futures Modernization Act of 2000 shall apply for purposes of this title except to the extent provided in regulations prescribed by the Secretary.

(n) Convention or association of churches

For purposes of this title, any organization which is otherwise a convention or association of churches shall not fail to so qualify merely because the membership of such organization includes individuals as well as churches or because individuals have voting rights in such organization.

(o) Clarification of economic substance doctrine

(1) Application of doctrine

In the case of any transaction to which the economic substance doctrine is relevant, such transaction shall be treated as having economic substance only if—

(A) the transaction changes in a meaningful way (apart from Federal income tax effects) the taxpayer's economic position, and

(B) the taxpayer has a substantial purpose (apart from Federal income tax effects) for entering into such transaction.

(2) Special rule where taxpayer relies on profit potential

(A) In general

The potential for profit of a transaction shall be taken into account in determining whether the requirements of subparagraphs (A) and (B) of paragraph (1) are met with respect to the transaction only if the present value of the reasonably expected pre-tax profit from the transaction is substantial in relation to the present value of the expected net tax benefits that would be allowed if the transaction were respected.

(B) Treatment of fees and foreign taxes

Fees and other transaction expenses shall be taken into account as expenses in determining pre-tax profit under subparagraph (A). The Secretary shall issue regulations requiring foreign taxes to be treated as expenses in determining pre-tax profit in appropriate cases.

(3) State and local tax benefits

For purposes of paragraph (1), any State or local income tax effect which is related to a Federal income tax effect shall be treated in the same manner as a Federal income tax effect.

(4) Financial accounting benefits

For purposes of paragraph (1)(B), achieving a financial accounting benefit shall not be taken into account as a purpose for entering into a transaction if the origin of such financial accounting benefit is a reduction of Federal income tax.

(5) Definitions and special rules

For purposes of this subsection—

(A) Economic substance doctrine

The term "economic substance doctrine" means the common law doctrine under which tax benefits under subtitle A with respect to a transaction are not allowable if the transaction does not have economic substance or lacks a business purpose.

(B) Exception for personal transactions of individuals

In the case of an individual, paragraph (1) shall apply only to transactions entered into in connection with a trade or business or an activity engaged in for the production of income.

(C) Determination of application of doctrine not affected

The determination of whether the economic substance doctrine is relevant to a transaction shall be made in the same manner as if this subsection had never been enacted.

(D) Transaction

The term "transaction" includes a series of transactions.

(p) Cross references

(1) Other definitions

For other definitions, see the following sections of Title 1 of the United States Code:

(1) Singular as including plural, section 1.
(2) Plural as including singular, section 1.
(3) Masculine as including feminine, section 1.
(4) Officer, section 1.
(5) Oath as including affirmation, section 1.
(6) County as including parish, section 2.
(7) Vessel as including all means of water transportation, section 3.
(8) Vehicle as including all means of land transportation, section 4.
(9) Company or association as including successors and assigns, section 5.

(2) Effect of cross references

For effect of cross references in this title, see section 7806(a).

(Aug. 16, 1954, ch. 736, 68A Stat. 911; Pub. L. 86–70, §22(g), (h), June 25, 1959, 73 Stat. 146; Pub. L. 86–624, §18(i), (j), July 12, 1960, 74 Stat. 416; Pub. L. 86–778, title I, §103(t), Sept. 13, 1960, 74 Stat. 941; Pub. L. 87–834, §§6(c), 7(h), Oct. 16, 1962, 76 Stat. 982, 988; Pub. L. 87–870, §5(a), Oct. 23, 1962, 76 Stat. 1161; Pub. L. 88–272, title II, §§204(a)(3), 234(b)(3), Feb. 26, 1964, 78 Stat. 36, 114; Pub. L. 89–368, title I, §102(b)(5), Mar. 15, 1966, 80 Stat. 64; Pub. L. 89–809, title I, §103(l)(1), Nov. 13, 1966, 80 Stat. 1554; Pub. L. 90–364, title I, §103(e)(6), June 28, 1968, 82 Stat. 264; Pub. L. 91–172, title IV, §432(c), (d), title IX, §960(j), Dec. 30, 1969, 83 Stat. 622, 623, 735; Pub. L. 92–606, §1(f)(4), Oct. 31, 1972, 86 Stat. 1497; Pub. L. 93–406, title III, §3043, Sept. 2, 1974, 88 Stat. 1003; Pub. L. 94–455, title XII, §1203(a), title XIX, §1906(a)(57), (b)(13)(A), (c)(3), Oct. 4, 1976, 90 Stat. 1688, 1832, 1834, 1835; Pub. L. 95–600, title I, §157(k)(2), title VII, §701(cc)(2), Nov. 6, 1978, 92 Stat. 2809, 2923; Pub. L. 97–34, title VII, §725(c)(4), Aug. 13, 1981, 95 Stat. 346; Pub. L. 97–248, title II, §201(d)(10), formerly §201(c)(10), title III, §§307(a)(17), 308(a), 336(a), Sept. 3, 1982, 96 Stat. 421, 590, 591, 628, renumbered §201(d)(10) and amended Pub. L. 97–448, title III, §306(a)(1)(A)(i), (b)(3), Jan. 12, 1983, 96 Stat. 2400, 2406; Pub. L. 97–449, §5(e), Jan. 12, 1983, 96 Stat. 2442; Pub. L. 97–473, title II, §203, Jan. 14, 1983, 96 Stat. 2611; Pub. L. 98–67, title I, §§102(a), 104(d)(1), Aug. 5, 1983, 97 Stat. 369, 379; Pub. L. 98–216, §3(c)(2), Feb. 14, 1984, 98 Stat. 6; Pub. L. 98–369, div. A, title I, §§31(e), 43(a)(1), 53(c), 75(c), 138(a), title IV, §§412(b)(11), 422(d)(3), 474(r)(29)(K), 491(d)(53), title V, §526(c)(1), July 18, 1984, 98 Stat. 518, 558, 567, 595, 672, 792, 798, 845, 852, 874; Pub. L. 98–443, §9(q), Oct. 4, 1984, 98 Stat. 1708; Pub. L. 99–514, title II, §201(c), (d)(14), title VI, §§671(b)(3), 673, title XI, §§1137, 1147(a), 1166(a), title XVIII, §§1802(a)(9)(C), 1810(l)(1)–(5)(A), 1842(d), 1899A(63), (64), Oct. 22, 1986, 100 Stat. 2138, 2142, 2317, 2319, 2486, 2493, 2511, 2790, 2830–2832, 2853, 2962; Pub. L. 100–202, §101(m) [title VI, §624(a)], Dec. 22, 1987, 101 Stat. 1329–390, 1329–429; Pub. L. 100–647, §1(c), title I, §§1001(d)(2)(D), 1002(a)(2), 1006(t)(12), (25)(A), 1011A(m)(1), 1011B(e), 1018(g)(3), Nov. 10, 1988, 102 Stat. 3342, 3351, 3352, 3422, 3426, 3483, 3489, 3583; Pub. L. 101–194, title VI, §602, Nov. 30, 1989, 103 Stat. 1762; Pub. L. 101–508, title XI, §§11704(a)(34), 11812(b)(13), Nov. 5, 1990, 104 Stat. 1388–519, 1388–536; Pub. L. 102–90, title III, §314(e), Aug. 14, 1991, 105 Stat. 470; Pub. L. 102–318, title V, §521(b)(43), July 3, 1992, 106 Stat. 313; Pub. L. 103–66, title XIII, §13238, Aug. 10, 1993, 107 Stat. 508; Pub. L. 103–296, title III, §320(a)(3), Aug. 15, 1994, 108 Stat. 1535; Pub. L. 104–88, title III, §304(e), Dec. 29, 1995, 109 Stat. 944; Pub. L. 104–188, title I, §§1402(b)(3), 1621(b)(8), (9), 1907(a)(1), (2), Aug. 20, 1996, 110 Stat. 1790, 1867, 1916; Pub. L. 105–34, title XI, §§1151(a), 1174(b), title XVI, §1601(i)(3)(A), Aug. 5, 1997, 111 Stat. 986, 989, 1093; Pub. L. 106–554, §1(a)(7) [title IV, §401(i)], Dec. 21, 2000, 114 Stat. 2763, 2763A–650; Pub. L. 107–16, title V, §542(e)(3), June 7, 2001, 115 Stat. 85; Pub. L. 108–311, title II, §207(24), Oct. 4, 2004, 118 Stat. 1178; Pub. L. 108–357, title VIII, §§804(b), 835(b)(10), (11), 852(a), Oct. 22, 2004, 118 Stat. 1570, 1594, 1609; Pub. L. 109–135, title IV, §403(v)(2), Dec. 21, 2005, 119 Stat. 2628; Pub. L. 109–280, title XII, §§1207(f), 1222, Aug. 17, 2006, 120 Stat. 1071, 1089; Pub. L. 110–28, title VIII, §8246(a)(1), May 25, 2007, 121 Stat. 200; Pub. L. 110–245, title III, §301(c)(1), (2)(B),

(C), June 17, 2008, 122 Stat. 1646; Pub. L. 111–152, title I, §1409(a), Mar. 30, 2010, 124 Stat. 1067; Pub. L. 111–312, title III, §301(a), Dec. 17, 2010, 124 Stat. 3300.)

REFERENCES IN TEXT

Section 401 of the National Housing Act, referred to in subsec. (a)(19)(A), (32)(A)(i), which was classified to section 1724 of Title 12, Banks and Banking, was repealed by Pub. L. 101–73, title IV, §407, Aug. 9, 1989, 103 Stat. 363.

Part A and part B of title I of the Housing Act of 1949, referred to in subsec. (a)(19)(C)(vi), which were classified generally to part A (§1450 et seq.) and part B (§1469 et seq.) of subchapter II of chapter 8A of Title 42, The Public Health and Welfare, were omitted from the Code pursuant to section 5316 of Title 42, which terminated authority to make new loans and grants under title I of that Act after Jan. 1, 1975.

Section 103 of the Demonstration Cities and Metropolitan Development Act of 1966, referred to in subsec. (a)(19)(C)(vi), which was classified to section 3303 of Title 42, was omitted from the Code pursuant to section 5316 of Title 42, which terminated authority to make new loans and grants under title I (§101 et seq.) of that Act after Jan. 1, 1975.

The Internal Revenue Code of 1939, referred to in subsec. (a)(29), is act Feb. 10, 1939, ch. 2, 53 Stat. 1, as amended. Prior to the enactment of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the 1939 Code was classified to former Title 26, Internal Revenue Code. The Internal Revenue Code of 1954 was redesignated The Internal Revenue Code of 1986 by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of this title.

The Employee Retirement Income Security Act of 1974, referred to in subsec. (a)(35), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, as amended. Subtitle C of title III of the Employee Retirement Income Security Act of 1974 is classified to subtitle C (§1241 et seq.) of subchapter II of chapter 18 of Title 29, Labor and amended subsec. (a)(35) of this section. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

The Indian Tribal Governmental Tax Status Act of 1982, referred to in subsec. (a)(40)(B), is title II of Pub. L. 97–473, Jan. 14, 1983, 96 Stat. 2607, as amended, which is classified principally to subchapter C (§7871) of chapter 80 of this title. For complete classification of this Act to the Code, see Short Title of 1983 Amendments note set out under section 1 of this title and Tables.

Section 101(15) of the Immigration and Nationality Act, referred to in subsec. (b)(5)(C)(i), (D)(i), probably means section 101(a)(15) of that Act, which is classified to section 1101(a)(15) of Title 8, Aliens and Nationality.

Section 212(2) of the Federal Water Pollution Control Act, referred to in subsec. (e)(3)(E), is classified to section 1292(2) of Title 33, Navigation and Navigable Waters.

The date of the enactment of the Revenue Reconciliation Act of 1990, referred to in subsec. (e)(5)(B), is the date of enactment of Pub. L. 101–508, which was approved Nov. 5, 1990.

Section 209 of the Social Security Act, referred to in subsec. (j)(3), is classified to section 409 of Title 42, The Public Health and Welfare.

Section 501(b) of the Ethics in Government Act of 1978, referred to in subsec. (k), is section 501(b) of Pub. L. 95–521, which is set out in the Appendix to Title 5, Government Organization and Employees.

The date of the enactment of the Commodity Futures Modernization Act of 2000, referred to in subsec. (m), is the date of enactment of Pub. L. 106–554, which was approved Dec. 21, 2000.

CODIFICATION

Sections 1207(f) and 1222 of Pub. L. 109–280, which directed the amendment of section 7701 without specifying the act to be amended, were executed to this section, which is section 7701 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

AMENDMENTS

2010—Subsec. (a)(47). Pub. L. 111–312 amended subsec. (a) to read as if amendment by Pub. L. 107–16, §542(e)(3), had never been enacted.

Subsecs. (o), (p). Pub. L. 111–152 added subsec. (o) and redesignated former subsec. (o) as (p).

2008—Subsec. (a)(50). Pub. L. 110–245, §301(c)(1), added par. (50).

Subsec. (b)(6). Pub. L. 110–245, §301(c)(2)(B), inserted concluding provisions.

Subsecs. (n) to (p). Pub. L. 110–245, §301(c)(2)(C), redesignated subsecs. (o) and (p) as (n) and (o), respectively, and struck out former subsec. (n) which related to special rules for determining when an individual is no longer a United States citizen or long-term resident.

2007—Subsec. (a)(36). Pub. L. 110–28, §8246(a)(1)(A), which directed the striking out of "income" in

heading, was executed by substituting "Tax" for "Income tax" to reflect the probable intent of Congress.

Pub. L. 110–28, §8246(a)(1)(A), struck out "income" before "tax return preparer" in subpar. (A) and in introductory provisions of subpar. (B).

Subsec. (a)(36)(A). Pub. L. 110–28, §8246(a)(1)(B), substituted "this title" for "subtitle A" in two places.

2006—Subsec. (a)(49). Pub. L. 109–280, §1207(f), added par. (49). See Codification note above.

Subsecs. (o), (p). Pub. L. 109–280, §1222, added subsec. (o) and redesignated former subsec. (o) as (p). See Codification note above.

2005—Subsec. (n). Pub. L. 109–135 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "An individual who would (but for this subsection) cease to be treated as a citizen or resident of the United States shall continue to be treated as a citizen or resident of the United States, as the case may be, until such individual—

"(1) gives notice of an expatriating act or termination of residency (with the requisite intent to relinquish citizenship or terminate residency) to the Secretary of State or the Secretary of Homeland Security, and

"(2) provides a statement in accordance with section 6039G."

2004—Subsec. (a)(17). Pub. L. 108–311 substituted "682" for "152(b)(4), 682,".

Subsec. (a)(19)(C)(xi). Pub. L. 108–357, §835(b)(10), struck out "and any regular interest in a FASIT," after "residual interest in a REMIC," and struck out "or FASIT" after "entire interest in the REMIC" and after "such REMIC" in two places.

Subsec. (a)(48). Pub. L. 108–357, §852(a), added par. (48).

Subsec. (i)(2)(A). Pub. L. 108–357, §835(b)(11), struck out "or a FASIT" after "other than a REMIC" in introductory provisions.

Subsecs. (n), (o). Pub. L. 108–357, §804(b), added subsec. (n) and redesignated former subsec. (n) as (o).

2001—Subsec. (a)(47). Pub. L. 107–16, §542(e)(3), added par. (47) which defined the term "executor".

2000—Subsecs. (m), (n). Pub. L. 106–554 added subsec. (m) and redesignated former subsec. (m) as (n).

1997—Subsec. (a)(4). Pub. L. 105–34, §1151(a), inserted before period at end "unless, in the case of a partnership, the Secretary provides otherwise by regulations".

Subsec. (a)(30)(E)(ii). Pub. L. 105–34, §1601(i)(3)(A), substituted "persons" for "fiduciaries".

Subsec. (b)(7)(A). Pub. L. 105–34, §1174(b)(2), substituted ", (C), or (D)" for "or (C)".

Subsec. (b)(7)(D). Pub. L. 105–34, §1174(b)(1), added subpar. (D).

1996—Subsec. (a)(19)(C)(xi). Pub. L. 104–188, §1621(b)(8), amended cl. (xi) generally. Prior to amendment, cl. (xi) read as follows: "any regular or residual interest in a REMIC, but only in the proportion which the assets of such REMIC consist of property described in any of the preceding clauses of this subparagraph; except that if 95 percent or more of the assets of such REMIC are assets described in clauses (i) through (x), the entire interest in the REMIC shall qualify."

Subsec. (a)(20). Pub. L. 104–188, §1402(b)(3), struck out ", for the purpose of applying the provisions of section 101(b) with respect to employees' death benefits" after "health plans".

Subsec. (a)(30)(C) to (E). Pub. L. 104–188, §1907(a)(1), struck out "and" at end of subpar. (C), added subpars. (D) and (E), and struck out former subpar. (D) which read as follows: "any estate or trust (other than a foreign estate or foreign trust, within the meaning of section 7701(a)(31))."

Subsec. (a)(31). Pub. L. 104–188, §1907(a)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "The terms 'foreign estate' and 'foreign trust' mean an estate or trust, as the case may be, the income of which, from sources without the United States which is not effectively connected with the conduct of a trade or business within the United States, is not includible in gross income under subtitle A."

Subsec. (i)(2)(A). Pub. L. 104–188, §1621(b)(9), inserted "or a FASIT" after "a REMIC" in introductory provisions.

1995—Subsec. (a)(33)(B). Pub. L. 104–88, §304(e)(1), substituted "Federal Energy Regulatory Commission" for "Federal Power Commission".

Subsec. (a)(33)(C)(i). Pub. L. 104–88, §304(e)(2), substituted "Surface Transportation Board" for "Interstate Commerce Commission".

Subsec. (a)(33)(C)(ii). Pub. L. 104–88, §304(e)(3), substituted "Federal Energy Regulatory Commission" for "Interstate Commerce Commission".

Subsec. (a)(33)(F). Pub. L. 104–88, §304(e)(4), substituted "a water carrier subject to jurisdiction under subchapter II of chapter 135 of title 49" for "common carrier by water, subject to the jurisdiction of the Interstate Commerce Commission under subchapter III of chapter 105 of title 49, or subject to the jurisdiction of the Federal Maritime Board under the Intercoastal Shipping Act, 1933".

Subsec. (a)(33)(G). Pub. L. 104–88, §304(e)(5), substituted "rail carrier subject to part A of subtitle IV" for

"railroad corporation subject to subchapter I of chapter 105".

Subsec. (a)(33)(H). Pub. L. 104–88, §304(e)(6), substituted "part A of subtitle IV" for "subchapter I of chapter 105".

1994—Subsec. (b)(5)(C)(i), (D)(i)(II). Pub. L. 103–296 substituted "(J) or (Q)" for "(J)".

1993—Subsecs. (l), (m). Pub. L. 103–66 added subsec. (l) and redesignated former subsec. (l) as (m).

1992—Subsec. (j)(1)(C). Pub. L. 102–318 substituted "402(e)(3)" for "402(a)(8)".

1991—Subsec. (k). Pub. L. 102–90 amended last sentence generally. Prior to amendment, last sentence read as follows: "For purposes of this subsection, a Representative in, or a Delegate or Resident Commissioner to, the Congress shall be treated as an officer or employee of the Federal Government and a Senator or officer (except the Vice President) or employee of the Senate shall not be treated as an officer or employee of the Federal Government."

1990—Subsec. (e)(5)(B). Pub. L. 101–508, §11812(b)(13), inserted before period at end "(as in effect on the day before the date of the enactment of the Revenue Reconcilation [sic] Act of 1990)".

Subsec. (j)(1)(C). Pub. L. 101–508, §11704(a)(34), substituted "(C) subject to section 401(k)(4)(B) and any dollar limitation on the application of section 402(a)(8)," for "(C) subject to, section 401(k)(4)(B), and any dollar limitation on the application of section 402(a)(8),".

1989—Subsecs. (k), (l). Pub. L. 101–194 added subsec. (k) and redesignated former subsec. (k) as (l).

1988—Subsec. (a)(19). Pub. L. 100–647, §1006(t)(25)(A), inserted at end "For purposes of determining whether any interest in a REMIC qualifies under clause (xi), any regular interest in another REMIC held by such REMIC shall be treated as a loan described in a preceding clause under principles similar to the principles of clause (xi); except that, if such REMIC's are part of a tiered structure, they shall be treated as 1 REMIC for purposes of clause (xi)."

Subsec. (a)(19)(C)(xi). Pub. L. 100–647, §1006(t)(12), substituted "are assets described" for "are loans described".

Subsec. (a)(20). Pub. L. 100–647, §1011B(e), substituted "and 106" for "106, and 125" and inserted "and for purposes of applying section 125 with respect to cafeteria plans," before "the term".

Subsec. (a)(29). Pub. L. 100–647, §1(c), substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

Subsec. (b)(5)(A)(iv). Pub. L. 100–647, §1018(g)(3), substituted "section 274(l)(1)(B)" for "section 274(k)(2)".

Subsec. (b)(5)(D)(i)(I). Pub. L. 100–647, §1001(d)(2)(D), substituted "subparagraph (F) or (M)" for "subparagraph (F)".

Subsec. (e)(5). Pub. L. 100–647, §1002(a)(2), made technical correction to language of Pub. L. 99–514, §201(d)(14)(B), see 1986 Amendment note below.

Subsec. (j)(1)(C). Pub. L. 100–647, §1011A(m)(1), inserted ", section 401(k)(4)(B)," after "the provisions of paragraph (2)" in subpar. (C), as it read before amendment by Pub. L. 100–202. See Effective Date of 1988 Amendment note below.

1987—Subsec. (j)(1)(C). Pub. L. 100–202, §101(m) [title VI, §624(a)(1)], which directed that "the provisions of paragraph (2) and" after "subject to" be struck out, was executed by striking out "the provisions of paragraph (2)" after "subject to" in view of the amendment by section 1011A(m)(1) of Pub. L. 100–647 which was effective as if it had been included in Pub. L. 99–514. See 1988 Amendment note above.

Subsec. (j)(2). Pub. L. 100–202, §101(m) [title VI, §624(a)(2)], added par. (2) and struck out former par. (2) which read as follows: "Paragraph (1)(C) shall not apply to the Thrift Savings Fund unless the Fund meets the antidiscrimination requirements (other than any requirement relating to coverage) applicable to arrangements described in section 401(k) and to matching contributions. Rules similar to the rules of sections 401(k)(8) and 401(m)(8) (relating to no disqualification if excess contributions distributed) shall apply for purposes of the preceding sentence."

1986—Subsec. (a)(17). Pub. L. 99–514, §1842(d), inserted reference to section 2516.

Subsec. (a)(19)(C)(xi). Pub. L. 99–514, §671(b)(3), added cl. (xi).

Subsec. (a)(20). Pub. L. 99–514, §1166(a), inserted reference to section 125.

Subsec. (a)(46). Pub. L. 99–514, §1137, inserted last sentence.

Subsec. (b)(1)(A). Pub. L. 99–514, §1810(l)(2), substituted "the requirements of clause (i), (ii), or (iii)" for "the requirements of clause (i) or (ii)" in introductory provisions and added cl. (iii).

Subsec. (b)(2)(A)(iv). Pub. L. 99–514, §1810(l)(3), added cl. (iv).

Subsec. (b)(4). Pub. L. 99–514, §1810(l)(4), added par. (4). Former par. (4) redesignated (5).

Subsec. (b)(5). Pub. L. 99–514, §1810(l)(4), redesignated par. (4) as (5). Former par. (5) redesignated (6).

Subsec. (b)(5)(A)(iv). Pub. L. 99–514, §1810(l)(5)(A), which directed that cl. (iv) be added to subpar. (4)(A), was executed by adding cl. (iv) to subpar. (5)(A) to reflect the probable intent of Congress and the

intervening redesignation of par. (4) as (5) by section 1810(l)(4) of Pub. L. 99–514.

Subsec. (b)(5)(E)(i). Pub. L. 99–514, §1810(l)(1), inserted last sentence.

Pub. L. 99–514, §1899A(63), substituted "preceding" for "preceeding".

Subsec. (b)(6) to (11). Pub. L. 99–514, §1810(l)(4), redesignated pars. (5) to (10) as pars. (6) to (11), respectively.

Subsec. (e)(4)(A). Pub. L. 99–514, §201(d)(14)(A), substituted "section 168(h)" for "section 168(j)".

Pub. L. 99–514, §1802(a)(9)(C), inserted at end "For purposes of this paragraph, the term 'related entity' has the same meaning as when used in section 168(j)."

Subsec. (e)(5). Pub. L. 99–514, §201(d)(14)(B), as amended by Pub. L. 100–647, §1002(a)(2), substituted "property described in clause (i), (ii), (iii), or (iv) of section 1250(a)(1)(B) (relating to low-income housing)" for "low-income housing (within the meaning of section 168(c)(2)(F))".

Pub. L. 99–514, §1899A(64), substituted "section 168(c)(2)(F))" for "section 168(C)(2)(F))".

Subsec. (h). Pub. L. 99–514, §201(c), added subsec. (h). Former subsec. (h), relating to cross references, was successively redesignated as (i), (j), and (k).

Subsec. (i). Pub. L. 99–514, §673, added subsec. (i). Former subsec. (i), relating to cross references, as previously redesignated, was successively redesignated as (j) and (k).

Subsec. (j). Pub. L. 99–514, §1147(a), added subsec. (j). Former subsec. (j), relating to cross references, as previously redesignated, was redesignated as (k).

Subsec. (k). Pub. L. 99–514, §§201(c), 673, 1147(a), successively redesignated subsec. (h), relating to cross references, as subsecs. (i), (j), and (k).

1984—Subsec. (a)(16). Pub. L. 98–369, §474(r)(29)(K), struck out "1451," after "1443".

Subsec. (a)(17). Pub. L. 98–369, §422(d)(3), struck out reference to sections 71 and 215.

Subsec. (a)(33)(E). Pub. L. 98–443 substituted "Secretary of Transportation" for "Civil Aeronautics Board".

Subsec. (a)(33)(G). Pub. L. 98–216 substituted "subchapter I of chapter 105 of title 49" for "part I of the Interstate Commerce Act".

Subsec. (a)(34). Pub. L. 98–369, §412(b)(11), repealed par. (34) which defined estimated income tax in the case of an individual or a corporation as the estimated tax defined in section 6015(d) or 6154(c), respectively.

Subsec. (a)(37)(C). Pub. L. 98–369, §491(d)(53), struck out subpar. (C) which included a retirement bond described in section 409 within the term "individual plan".

Subsec. (a)(42) to (45). Pub. L. 98–369, §43(a)(1), added pars. (42) to (45).

Subsec. (a)(46). Pub. L. 98–369, §526(c)(1), added par. (46).

Subsec. (b). Pub. L. 98–369, §138(a), added subsec. (b). Former subsec. (b), relating to includes and including, redesignated (c).

Subsec. (c). Pub. L. 98–369, §138(a), redesignated former subsec. (b), relating to includes and including, as (c). Former subsec. (c), relating to Commonwealth of Puerto Rico, redesignated (d).

Subsec. (d). Pub. L. 98–369, §138(a), redesignated former subsec. (c), relating to Commonwealth of Puerto Rico, as (d). Former subsec. (d), relating to cross references, redesignated (e).

Subsec. (e). Pub. L. 98–369, §31(e), added subsec. (e). Former subsec. (e), relating to cross references, redesignated (f).

Pub. L. 98–369, §138(a), redesignated former subsec. (d), relating to cross references, as (e).

Subsec. (f). Pub. L. 98–369, §53(c), added subsec. (f). Former subsec. (f), relating to cross references, redesignated (g).

Pub. L. 98–369, §31(e), redesignated former subsec. (e), relating to cross references, as (f).

Subsec. (g). Pub. L. 98–369, §75(c), added subsec. (g). Former subsec. (g), relating to cross references, redesignated (h).

Pub. L. 98–369, §53(c), redesignated former subsec. (f), relating to cross references, as (g).

Subsec. (h). Pub. L. 98–369, §75(c), redesignated former subsec. (g), relating to cross references, as (h).

1983—Subsec. (a)(16). Pub. L. 98–67, §102(a), repealed amendments made by Pub. L. 97–248. See 1982 Amendment note below.

Subsec. (a)(33)(F). Pub. L. 97–449, §5(e)(1), substituted "subchapter III of chapter 105 of title 49" for "part III of the Interstate Commerce Act".

Subsec. (a)(33)(H). Pub. L. 97–449, §5(e)(2), substituted "subchapter I of chapter 105 of title 49" for "part I of the Interstate Commerce Act".

Subsec. (a)(38), (39). Pub. L. 97–448, §306(b)(3), redesignated par. (38), as added by Pub. L. 97–248, §336(a), relating to persons residing outside the United States, as (39).

Subsec. (a)(40). Pub. L. 97–473 added par. (40).

Subsec. (a)(41). Pub. L. 98–67, §104(d)(1), added par. (41).

1982—Subsec. (a)(16). Pub. L. 97–248, §§307(a)(17), 308(a), provided that, applicable to payments of

interest, dividends, and patronage dividends paid or credited after June 30, 1983, par. (16) is amended by substituting "1461 or 3451" for "or 1461". Section 102(a), (b) of Pub. L. 98–67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§301–308) of title III of Pub. L. 97–248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 [now 1986] [this title] shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

Subsec. (a)(38). Pub. L. 97–248, §201(d)(10), formerly §201(c)(10), added par. (38) relating to joint return.

Pub. L. 97–248, §336(a), added par. (38) relating to persons residing outside the United States.

1981—Subsec. (a)(34)(A). Pub. L. 97–34 substituted "section 6015(d)" for "section 6015(c)".

1978—Subsec. (a)(36)(B)(iii). Pub. L. 95–600, §701(cc)(2), substituted "prepares as a fiduciary a return or claim for refund for any person, or" for "prepares a return or claim for refund for any trust or estate with respect to which he is a fiduciary, or".

Subsec. (a)(37). Pub. L. 95–600, §157(k)(2), added par. (37).

1976—Subsec. (a)(4). Pub. L. 94–455, §1906(c)(3), struck out "or Territory" after "any State".

Subsec. (a)(11). Pub. L. 94–455, §1906(a)(57)(A), substituted definitions of "Secretary of the Treasury" and "Secretary" for "Secretary.—The term 'Secretary' means the Secretary of the Treasury".

Subsec. (a)(12)(A). Pub. L. 94–455, §1906(a)(57)(B), substituted definition of "or his delegate" for definition of "Secretary of his delegate".

Subsec. (a)(19), (23), (33). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary" wherever appearing.

Subsec. (a)(36). Pub. L. 94–455, §1203(a), added par. (36).

1974—Subsec. (a)(35). Pub. L. 93–406 added par. (35).

1972—Subsec. (a)(12)(B). Pub. L. 92–606 inserted reference to chapter 1.

1969—Subsec. (a)(19)(A). Pub. L. 91–172, §432(c) reenacted subpar. (A) without change.

Subsec. (a)(19)(B). Pub. L. 91–172, §432(c), struck out reference to subpar. (C).

Subsec. (a)(19)(C). Pub. L. 91–172, §432(c), substituted 60 percent for 90 percent in text preceding cl. (i), reenacted cl. (i) without change, in cl. (ii), excluded obligations the interest on which was excludible from gross income under section 103, expanded provisions of former cl. (iii) and transferred them to cl. (v), reenacted cl. (iv) without change, redesignated former cls. (v) and (vi) as cls. (viii) and (x) and added cls. (iii), (vi), (vii) and (ix), and text following cl. (x).

Subsec. (a)(19)(D) to (F). Pub. L. 91–172, §432(c), struck out subpars. (D) to (F) and text following subpar. (F) which had further qualified the assets.

Subsec. (a)(27). Pub. L. 91–172, §960(j), substituted "United States Tax Court" for "Tax Court of the United States".

Subsec. (a)(32). Pub. L. 91–172, §432(d), struck out references to subpars. (D), (E) and (F) and struck out "determined with the application of the second, third, and fourth sentences of paragraph (19)." in subpar. (B) and, in text following subpar. (B), struck out provisions relating to the deduction allowable for a reasonable addition to the reserve for bad debts.

1968—Subsec. (a)(34)(B). Pub. L. 90–364 substituted "section 6154(c)" for "section 6016(b)".

1966—Subsec. (a)(31). Pub. L. 89–809 substituted ", from sources without the United States which is not effectively connected with the conduct of a trade or business within the United States," for "from sources without the United States".

Pub. L. 89–368 added par. (34).

1964—Subsec. (a)(20). Pub. L. 88–272 inserted "For the purpose of applying the provisions of section 79 with respect to group-term life insurance purchased for employees".

Subsec. (a)(33). Pub. L. 88–272 added par. (33).

1962—Subsec. (a)(19). Pub. L. 87–834, §6(c), amended par. (19) generally. Prior to such amendment, subsection read as follows: "The term 'domestic building and loan association' means a domestic building and loan association, a domestic savings and loan association, and a Federal savings and loan association, substantially all the business of which is confined to making loans to members."

Subsec. (a)(30), (31). Pub. L. 87–834, §7(h), added pars. (30), (31).

Subsec. (a)(32). Pub. L. 87–870 added par. (32).

1960—Subsec. (a)(9), (10). Pub. L. 86–624, §18(i), (j), struck out reference to the Territory of Hawaii.

Subsec. (a)(12). Pub. L. 86–778 designated existing provisions as par. (A) and added par. (B).

1959—Subsec. (a)(9). Pub. L. 86–70, §22(g), substituted "the Territory of Hawaii" for "the Territories of Alaska and Hawaii".

Subsec. (a)(10). Pub. L. 86–70, §22(h), substituted "Territory of Hawaii" for "Territories".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–312 applicable to estates of decedents dying, and transfers made after Dec. 31, 2009, except as otherwise provided, see section 301(e) of Pub. L. 111–312, set out as an Effective and Termination Dates of 2010 Amendment note under section 121 of this title.

Amendment by Pub. L. 111–152 applicable to transactions entered into after Mar. 30, 2010, see section 1409(e)(1) of Pub. L. 111–152, set out as a note under section 6662 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–245 applicable to any individual whose expatriation date is on or after June 17, 2008, see section 301(g)(1) of Pub. L. 110–245, set out as an Effective Date note under section 2801 of this title.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–28 applicable to returns prepared after May 25, 2007, see section 8246(c) of Pub. L. 110–28, set out as a note under section 6060 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 1207(f) of Pub. L. 109–280 effective Jan. 1, 2007, see section 1207(g)(1) of Pub. L. 109–280, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENTS

Amendment by section 804(b) of Pub. L. 108–357 applicable to individuals who expatriate after June 3, 2004, see section 804(f) of Pub. L. 108–357, set out as a note under section 877 of this title.

Amendment by section 835(b)(10), (11) of Pub. L. 108–357 effective Jan. 1, 2005, with exception for any FASIT in existence on Oct. 22, 2004, to the extent that regular interests issued by the FASIT before such date continue to remain outstanding in accordance with the original terms of issuance, see section 835(c) of Pub. L. 108–357, set out as a note under section 56 of this title.

Pub. L. 108–357, title VIII, §852(c), Oct. 22, 2004, 118 Stat. 1609, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Oct. 22, 2004].

"(2) FUEL TAXES.—With respect to taxes imposed under subchapter B of chapter 31 and part III of subchapter A of chapter 32, the amendment made by this section shall apply to taxable periods beginning after the date of the enactment of this Act."

Amendment by Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to estates of decedents dying after Dec. 31, 2009, see section 542(f)(1) of Pub. L. 107–16, set out as a note under section 121 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XI, §1151(b), Aug. 5, 1997, 111 Stat. 986, provided that: "Any regulations issued with respect to the amendment made by subsection (a) [amending this section] shall apply to partnerships created or organized after the date determined under section 7805(b) of the Internal Revenue Code of 1986 (without regard to paragraph (2) thereof) with respect to such regulations."

Pub. L. 105–34, title XI, §1174(c), Aug. 5, 1997, 111 Stat. 989, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and sections 861 and 863 of this title] shall apply to remuneration for services performed in taxable years beginning after December 31, 1997.

"(2) PRESENCE.—The amendment made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 1997."

Amendment by section 1601(i)(3)(A) of Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 23 of this title.

EFFECTIVE DATE OF 1996 AMENDMENTS

Pub. L. 105–34, title XVI, §1601(i)(4), Aug. 5, 1997, 111 Stat. 1093, provided that: "The Secretary of the Treasury may by regulations or other administrative guidance provide that the amendments made by section 1907(a) of the Small Business Job Protection Act of 1996 [Pub. L. 104–188, amending this section] shall not apply to a trust with respect to a reasonable period beginning on the date of the enactment of such Act [Aug. 20, 1996], if—

"(A) such trust is in existence on August 20, 1996, and is a United States person for purposes of the Internal Revenue Code of 1986 on such date (determined without regard to such amendments),

"(B) no election is in effect under section 1907(a)(3)(B) of such Act [set out as a note below] with respect to such trust,

"(C) before the expiration of such reasonable period, such trust makes the modifications necessary to be treated as a United States person for purposes of such Code (determined with regard to such amendments), and

"(D) such trust meets such other conditions as the Secretary may require."

Amendment by section 1402(b)(3) of Pub. L. 104–188 applicable with respect to decedents dying after Aug. 20, 1996, see section 1402(c) of Pub. L. 104–188, set out as a note under section 101 of this title.

Amendment by section 1621(b)(8), (9) of Pub. L. 104–188 effective Sept. 1, 1997, see section 1621(d) of Pub. L. 104–188, set out as a note under section 26 of this title.

Pub. L. 104–188, title I, §1907(a)(3), Aug. 20, 1996, 110 Stat. 1916, as amended by Pub. L. 105–34, title XI, §1161(a), Aug. 5, 1997, 111 Stat. 987, provided that: "The amendments made by this subsection [amending this section] shall apply—

"(A) to taxable years beginning after December 31, 1996, or

"(B) at the election of the trustee of a trust, to taxable years ending after the date of the enactment of this Act [Aug. 20, 1996].

Such an election, once made, shall be irrevocable. To the extent prescribed in regulations by the Secretary of the Treasury or his delegate, a trust which was in existence on August 20, 1996 (other than a trust treated as owned by the grantor under subpart E of part I of subchapter J of chapter 1 of the Internal Revenue Code of 1986), and which was treated as a United States person on the day before the date of the enactment of this Act may elect to continue to be treated as a United States person notwithstanding section 7701(a)(30)(E) of such Code."

[Pub. L. 105–34, title XI, §1161(b), Aug. 5, 1997, 111 Stat. 987, provided that: "The amendment made by subsection (a) [amending section 1907(a)(3) of Pub. L. 104–188, set out above] shall take effect as if included in the amendments made by section 1907(a) of the Small Business Job Protection Act of 1996 [Pub. L. 104–188]."]

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective with calendar quarter following Aug. 15, 1994, see section 320(c) of Pub. L. 103–296, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102–318, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–90 effective Jan. 1, 1992, see section 314(g)(1) of Pub. L. 102–90, as amended, set out as a note under section 4725 of Title 2, The Congress.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11812(b)(13) of Pub. L. 101–508 applicable to property placed in service after Nov. 5, 1990, but not applicable to any property to which section 168 of this title does not apply by reason of subsec. (f)(5) of section 168, and not applicable to rehabilitation expenditures described in section 252(f)(5) of Pub. L. 99–514, see section 11812(c) of Pub. L. 101–508, set out as a note under section 42 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–194, title VI, §603, Nov. 30, 1989, 103 Stat. 1763, provided that: "The amendments made by

this title [amending this section, sections 31–1 and former 441i of Title 2, The Congress, and title V of the Ethics in Government Act of 1978, Pub. L. 95–521, set out in the Appendix to Title 5, Government Organization and Employees] shall take effect on January 1, 1991. Such amendments shall cease to be effective if the provisions of section 703 [5 U.S.C. 5318 note] are subsequently repealed, in which case the laws in effect before such amendments shall be deemed to be reenacted."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by title I of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 201(c), (d)(14) of Pub. L. 99–514 applicable to property placed in service after Dec. 31, 1986, in taxable years ending after such date, with exceptions, see sections 203 and 204 of Pub. L. 99–514, set out as a note under section 168 of this title.

Amendment by section 201(c), (d)(14) of Pub. L. 99–514 not applicable to any property placed in service before Jan. 1, 1994, if such property placed in service as part of specified rehabilitations, and not applicable to certain additional rehabilitations, see section 251(d)(2), (3) of Pub. L. 99–514, set out as a note under section 46 of this title.

Amendment by section 671(b)(3) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 675 of Pub. L. 99–514, set out as an Effective Date note under section 860A of this title.

Amendment by section 673 of Pub. L. 99–514 effective Jan. 1, 1992, but not applicable to any entity in existence on Dec. 31, 1991, except with respect to any entity as of the first day after Dec. 31, 1991, on which there is a substantial transfer of cash or other property to such entity, and for purposes of applying section 860F(d) of this title, applicable to taxable years beginning after Dec. 31, 1986, see section 675(c) of Pub. L. 99–514, set out as an Effective Date note under section 860A of this title.

Pub. L. 99–514, title XI, §1166(b), Oct. 22, 1986, 100 Stat. 2512, provided that: "The amendment made by subsection (a) [amending this section] shall apply to years beginning after December 31, 1985."

Amendment by sections 1802(a)(9)(C), 1810(l)(1)–(4), 1842(d) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Pub. L. 99–514, title XVIII, §1810(l)(5)(B), Oct. 22, 1986, 100 Stat. 2832, provided that: "The amendments made by this paragraph [amending this section] shall apply to periods after the date of the enactment of this Act [Oct. 22, 1986]."

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98–443 effective Jan. 1, 1985, see section 9(v) of Pub. L. 98–443, set out as a note under section 5314 of Title 5, Government Organization and Employees.

Amendment by section 31(e) of Pub. L. 98–369 effective, except as otherwise provided in section 31(g) of Pub. L. 98–369, as to property placed in service by the taxpayer after May 23, 1983, in taxable years ending after such date and to property placed in service by the taxpayer on or before May 23, 1983, if the lease to the tax-exempt entity is entered into after May 23, 1983, except that in the case of a service contract or other arrangement described in section 7701(e) of this title with respect to which no party is a tax-exempt entity, section 7701(e) shall not apply to (A) such contract or other arrangement if such contract or other arrangement was entered into before Nov. 5, 1983, or (B) any renewal or other extension of such contract or other arrangement pursuant to an option contained in such contract or other arrangement on Nov. 5, 1983, see section 31(g)(1), (13) of Pub. L. 98–369, set out as a note under section 168 of this title.

Amendment by section 43(a)(1) of Pub. L. 98–369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98–369, set out as an Effective Date note under section 1271 of this title.

Amendment by section 53(c) of Pub. L. 98–369 effective July 18, 1984, except as otherwise provided, see section 53(e)(3) of Pub. L. 98–369, as amended, set out as an Effective Date note under section 1059 of this title.

Amendment by section 75(c) of Pub. L. 98–369 applicable to distributions, sales, and exchanges made after Mar. 31, 1984, in taxable years ending after such date, see section 75(e) of Pub. L. 98–369, set out as an Effective Date note under section 386 of this title.

Pub. L. 98–369, div. A, title I, §138(b), July 18, 1984, 98 Stat. 676, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to

taxable years beginning after December 31, 1984.

"(2) TRANSITIONAL RULE FOR APPLYING SUBSTANTIAL PRESENCE TEST.—

"(A) If an alien individual was not a resident of the United States as of the close of calendar year 1984, the determination of whether such individual meets the substantial presence test of section 7701(b)(3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this section) shall be made by only taking into account presence after 1984.

"(B) If an alien individual was a resident of the United States as of the close of calendar year 1984, but was not a resident of the United States as of the close of calendar year 1983, the determination of whether such individual meets such substantial presence test shall be made by only taking into account presence in the United States after 1983.

"(3) TRANSITIONAL RULE FOR APPLYING LAWFUL RESIDENCE TEST.—In the case of any individual who—

"(A) was a lawful permanent resident of the United States (within the meaning of section 7701(b)(5) of the Internal Revenue Code of 1986, as added by this section) throughout calendar year 1984, or

"(B) was present in the United States at any time during 1984 while such individual was a lawful permanent resident of the United States (within the meaning of such section 7701(b)(5)),

for purposes of section 7701(b)(2)(A) of such Code (as so added), such individual shall be treated as a resident of the United States during 1984."

Amendment by section 412(b)(11) of Pub. L. 98–369 applicable with respect to taxable years beginning after Dec. 31, 1984, see section 414(a)(1) of Pub. L. 98–369, set out as a note under section 6654 of this title.

Amendment by section 422(d)(3) of Pub. L. 98–369 applicable with respect to divorce or separation instruments executed after Dec. 31, 1984, or executed before Jan. 1, 1985, but modified on or after Jan. 1, 1985, with express provision for application of amendment to modification, see section 422(e)(1), (2) of Pub. L. 98–369, set out as a note under section 71 of this title.

Amendment by section 474(r)(29)(K) of Pub. L. 98–369 not applicable with respect to obligations issued before Jan. 1, 1984, see section 475(b) of Pub. L. 98–369, set out as a note under section 33 of this title.

Amendment by section 491(d)(53) of Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

Pub. L. 98–369, div. A, title V, §526(c)(2), July 18, 1984, 98 Stat. 875, provided that: "The amendment made by this subsection [amending this section] shall take effect on April 1, 1984."

EFFECTIVE DATE OF 1983 AMENDMENTS

Amendment by section 104(d)(1) of Pub. L. 98–67 applicable with respect to payments made after Dec. 31, 1983, see section 110(a) of Pub. L. 98–67, set out as a note under section 31 of this title.

For effective date of amendment by Pub. L. 97–473, see section 204 of Pub. L. 97–473, set out as an Effective Date note under section 7871 of this title.

Amendment by Pub. L. 97–448 effective as if included in the provisions of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 311(d) of Pub. L. 97–448, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 201(d)(10) of Pub. L. 97–248 applicable to taxable years beginning after Dec. 31, 1982, see section 201(e)(1) of Pub. L. 97–248, set out as a note under section 5 of this title.

Pub. L. 97–248, title III, §336(b), Sept. 3, 1982, 96 Stat. 629, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on the day after the date of the enactment of this Act [Sept. 3, 1982]."

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to estimated tax for taxable years beginning after Dec. 31, 1980, see section 725(d) of Pub. L. 97–34, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 157(k)(2) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1974, see section 157(k)(3) of Pub. L. 95–600, set out as a note under section 6058 of this title.

Amendment by section 701(cc)(2) of Pub. L. 95–600 applicable to documents prepared after Dec. 31, 1976, see section 701(cc)(3) of Pub. L. 95–600, set out as a note under section 6695 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XII, §1203(j), Oct. 4, 1976, 90 Stat. 1695, provided that: "The amendments made by

this section [enacting sections 6060, 6107, 6694, 6695, 6696, 7407, and 7427 of this title, renumbering former sections 7407 and 7427 as 7408 and 7428 of this title, respectively, and amending this section and sections 6109, 6503, 6504, and 6511 of this title] shall apply to documents prepared after December 31, 1976."

Amendment by section 1906(a)(57), (b)(13)(A), (c)(3) of Pub. L. 94–455 effective on first day of first month which begins more than ninety days after Oct. 4, 1976, see section 1906(d)(1) of Pub. L. 94–455, set out as a note under section 6013 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–606 applicable with respect to taxable years beginning after Dec. 31, 1972, see section 2 of Pub. L. 92–606, set out in part as an Effective Date note under section 931 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 432(c), (d) of Pub. L. 91–172 effective for taxable years beginning after July 11, 1969, see section 432(e) of Pub. L. 91–172, set out as a note under section 593 of this title.

Amendment by section 960(j) of Pub. L. 91–172 effective Dec. 30, 1969, see section 962(a) of Pub. L. 91–172, set out as a note under section 7441 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–364 applicable with respect to taxable years beginning after Dec. 31, 1967, except as provided by section 104 of Pub. L. 90–364, see section 103(f) of Pub. L. 90–364, set out as a note under section 243 of this title.

EFFECTIVE DATE OF 1966 AMENDMENTS

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 103(n)(1) of Pub. L. 89–809, set out as a note under section 871 of this title.

Amendment by Pub. L. 89–368 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 102(d) of Pub. L. 89–368, set out as a note under section 6654 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by section 204(a)(3) of Pub. L. 88–272 applicable to group-term life insurance provided after Dec. 31, 1963, in taxable years ending after such date, see section 204(d) of Pub. L. 88–272, set out as an Effective Date note under section 79 of this title.

Amendment by section 234(b)(3) of Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 234(c) of Pub. L. 88–272, set out as a note under section 1503 of this title.

EFFECTIVE DATE OF 1962 AMENDMENTS

Pub. L. 87–870, §5(b), Oct. 23, 1962, 76 Stat. 1162, provided that: "The amendment made by subsection (a) of this section [amending this section] shall apply with respect to taxable years beginning after the date of the enactment of the Revenue Act of 1962 [Oct. 16, 1962]."

Pub. L. 87–834, §6(g)(3), Oct. 16, 1962, 76 Stat. 985, provided that: "The amendment made by subsection (c) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 16, 1962]."

EFFECTIVE DATE OF 1960 AMENDMENTS

Amendment by Pub. L. 86–778 effective Sept. 13, 1960, see section 103(v)(1) of Pub. L. 86–778, set out as an Effective Date of 1960 Amendment note under section 402 of Title 42, The Public Health and Welfare.

Amendment by Pub. L. 86–624 effective August 21, 1959, see section 18(k) of Pub. L. 86–624, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–70 effective Jan. 3, 1959, see section 22(i) of Pub. L. 86–70, set out as a note under section 3121 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by section 11812(b)(13) of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Coast Guard transferred to Department of Transportation and all functions, powers, and duties, relating to Coast Guard, of Secretary of the Treasury and of other offices and officers of Department of the Treasury transferred to Secretary of Transportation by Pub. L. 89–670, §6(b)(1), Oct. 15, 1966, 80 Stat. 938. Section 6(b)(2) of Pub. L. 89–670, however, provided that notwithstanding such transfer of functions, Coast Guard shall operate as part of Navy in time of war or when President directs as provided in section 3 of Title 14, Coast Guard. See section 108 of Title 49, Transportation.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§1401–1465] of title I of Pub. L. 104–188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

AUTHORS OR ARTISTS PERFORMING SERVICES UNDER CONTRACT WITH CORPORATION

Pub. L. 96–605, title IV, §402, Dec. 28, 1980, 94 Stat. 3532, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) IN GENERAL.—An author or artist performing services under contract with a corporation shall be considered as an employee of the corporation for the purpose of applying the provisions specified in section 7701(a)(20) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], if, on December 31, 1977, such author or artist was a participant in one or more of the pension, profit-sharing or annuity plans of such corporation which are described in subsection (b)(2).

"(b) DEFINITIONS.—For purposes of this section—

"(1) CONTRACT.—The term 'contract' means a contract which during its term—

"(A) requires such author or artist to give the corporation first reading or first refusal on writings or drawings of specified types, and prohibits him from offering any such writing or drawing to any other publication unless it has been offered to and rejected by the corporation; or

"(B) requires such author or artist to use his best efforts to produce work of specified types for the corporation.

"(2) CORPORATION.—The term 'corporation' means a corporation which for at least 15 years prior to January 1, 1978, had in effect one or more pension, profit-sharing and annuity plans, each of which—

"(A) had contained from its inception a definition of the term 'employee' that included the category of 'authors and artists under contract', and

"(B) had been determined by the Secretary of the Treasury (taking into account the definition described in subparagraph (A)) to be a qualified plan within part I of subchapter D of chapter 1 of subtitle A of the Internal Revenue Code of 1986 [section 401 et seq. of this title] for all of such years.

"(c) EFFECTIVE DATE.—The provisions of this section shall apply to taxable years ending after December 31, 1980."

[1] *See References in Text note below.*

[2] *See References in Text note below.*

[3] *So in original. Probably should be "a".*

[4] *So in original. Probably should be "Reconciliation".*

§7702. Life insurance contract defined

(a) General rule

For purposes of this title, the term "life insurance contract" means any contract which is a life insurance contract under the applicable law, but only if such contract—

(1) meets the cash value accumulation test of subsection (b), or

(2)(A) meets the guideline premium requirements of subsection (c), and

(B) falls within the cash value corridor of subsection (d).

(b) Cash value accumulation test for subsection (a)(1)

(1) In general

A contract meets the cash value accumulation test of this subsection if, by the terms of the contract, the cash surrender value of such contract may not at any time exceed the net single premium which would have to be paid at such time to fund future benefits under the contract.

(2) Rules for applying paragraph (1)

Determinations under paragraph (1) shall be made—

(A) on the basis of interest at the greater of an annual effective rate of 4 percent or the rate or rates guaranteed on issuance of the contract,

(B) on the basis of the rules of subparagraph (B)(i) (and, in the case of qualified additional benefits, subparagraph (B)(ii)) of subsection (c)(3), and

(C) by taking into account under subparagraphs (A) and (D) of subsection (e)(1) only current and future death benefits and qualified additional benefits.

(c) Guideline premium requirements

For purposes of this section—

(1) In general

A contract meets the guideline premium requirements of this subsection if the sum of the premiums paid under such contract does not at any time exceed the guideline premium limitation as of such time.

(2) Guideline premium limitation

The term "guideline premium limitation" means, as of any date, the greater of—

(A) the guideline single premium, or

(B) the sum of the guideline level premiums to such date.

(3) Guideline single premium

(A) In general

The term "guideline single premium" means the premium at issue with respect to future benefits under the contract.

(B) Basis on which determination is made

The determination under subparagraph (A) shall be based on—

(i) reasonable mortality charges which meet the requirements (if any) prescribed in regulations and which (except as provided in regulations) do not exceed the mortality charges specified in the prevailing commissioners' standard tables (as defined in section 807(d)(5)) as of the time the contract is issued,

(ii) any reasonable charges (other than mortality charges) which (on the basis of the company's experience, if any, with respect to similar contracts) are reasonably expected to be actually paid, and

(iii) interest at the greater of an annual effective rate of 6 percent or the rate or rates guaranteed on issuance of the contract.

(C) When determination made

Except as provided in subsection (f)(7), the determination under subparagraph (A) shall be made as of the time the contract is issued.

(D) Special rules for subparagraph (B)(ii)

(i) Charges not specified in the contract

If any charge is not specified in the contract, the amount taken into account under subparagraph (B)(ii) for such charge shall be zero.

(ii) New companies, etc.

If any company does not have adequate experience for purposes of the determination under subparagraph (B)(ii), to the extent provided in regulations, such determination shall be made on the basis of the industry-wide experience.

(4) Guideline level premium

The term "guideline level premium" means the level annual amount, payable over a period not ending before the insured attains age 95, computed on the same basis as the guideline single premium, except that paragraph (3)(B)(iii) shall be applied by substituting "4 percent" for "6 percent".

(d) Cash value corridor for purposes of subsection (a)(2)(B)

For purposes of this section—

(1) In general

A contract falls within the cash value corridor of this subsection if the death benefit under the contract at any time is not less than the applicable percentage of the cash surrender value.

(2) Applicable percentage

In the case of an insured with an attained age as of the beginning of the contract year of:		**The applicable percentage shall decrease by a ratable portion for each full year:**	
More than:	**But not more than:**	**From:**	**To:**
0	40	250	250
40	45	250	215
45	50	215	185
50	55	185	150
55	60	150	130
60	65	130	120
65	70	120	115
70	75	115	105
75	90	105	105
90	95	105	100.

(e) Computational rules

(1) In general

For purposes of this section (other than subsection (d))—

(A) the death benefit (and any qualified additional benefit) shall be deemed not to increase,

(B) the maturity date, including the date on which any benefit described in subparagraph (C) is payable, shall be deemed to be no earlier than the day on which the insured attains age 95, and no later than the day on which the insured attains age 100,

(C) the death benefits shall be deemed to be provided until the maturity date determined by taking into account subparagraph (B), and

(D) the amount of any endowment benefit (or sum of endowment benefits, including any cash surrender value on the maturity date determined by taking into account subparagraph (B)) shall be deemed not to exceed the least amount payable as a death benefit at any time under the contract.

(2) Limited increases in death benefit permitted

Notwithstanding paragraph (1)(A)—

(A) for purposes of computing the guideline level premium, an increase in the death benefit which is provided in the contract may be taken into account but only to the extent necessary to prevent a decrease in the excess of the death benefit over the cash surrender value of the contract,

(B) for purposes of the cash value accumulation test, the increase described in subparagraph (A) may be taken into account if the contract will meet such test at all times assuming that the net level reserve (determined as if level annual premiums were paid for the contract over a period not ending before the insured attains age 95) is substituted for the net single premium, and

(C) for purposes of the cash value accumulation test, the death benefit increases may be taken into account if the contract—

(i) has an initial death benefit of $5,000 or less and a maximum death benefit of $25,000 or less,

(ii) provides for a fixed predetermined annual increase not to exceed 10 percent of the initial death benefit or 8 percent of the death benefit at the end of the preceding year, and

(iii) was purchased to cover payment of burial expenses or in connection with prearranged funeral expenses.

For purposes of subparagraph (C), the initial death benefit of a contract shall be determined by treating all contracts issued to the same contract owner as 1 contract.

(f) Other definitions and special rules

For purposes of this section—

(1) Premiums paid

(A) In general

The term "premiums paid" means the premiums paid under the contract less amounts (other than amounts includible in gross income) to which section 72(e) applies and less any excess premiums with respect to which there is a distribution described in subparagraph (B) or (E) of paragraph (7) and any other amounts received with respect to the contract which are specified in regulations.

(B) Treatment of certain premiums returned to policyholder

If, in order to comply with the requirements of subsection (a)(2)(A), any portion of any premium paid during any contract year is returned by the insurance company (with interest) within 60 days after the end of a contract year, the amount so returned (excluding interest) shall be deemed to reduce the sum of the premiums paid under the contract during such year.

(C) Interest returned includible in gross income

Notwithstanding the provisions of section 72(e), the amount of any interest returned as provided in subparagraph (B) shall be includible in the gross income of the recipient.

(2) Cash values

(A) Cash surrender value

The cash surrender value of any contract shall be its cash value determined without regard to any surrender charge, policy loan, or reasonable termination dividends.

(B) Net surrender value

The net surrender value of any contract shall be determined with regard to surrender charges but without regard to any policy loan.

(3) Death benefit

The term "death benefit" means the amount payable by reason of the death of the insured (determined without regard to any qualified additional benefits).

(4) Future benefits

The term "future benefits" means death benefits and endowment benefits.

(5) Qualified additional benefits

(A) In general

The term "qualified additional benefits" means any—

(i) guaranteed insurability,
(ii) accidental death or disability benefit,
(iii) family term coverage,
(iv) disability waiver benefit, or
(v) other benefit prescribed under regulations.

(B) Treatment of qualified additional benefits

For purposes of this section, qualified additional benefits shall not be treated as future benefits under the contract, but the charges for such benefits shall be treated as future benefits.

(C) Treatment of other additional benefits

In the case of any additional benefit which is not a qualified additional benefit—

(i) such benefit shall not be treated as a future benefit, and
(ii) any charge for such benefit which is not prefunded shall not be treated as a premium.

(6) Premium payments not disqualifying contract

The payment of a premium which would result in the sum of the premiums paid exceeding the guideline premium limitation shall be disregarded for purposes of subsection (a)(2) if the amount of such premium does not exceed the amount necessary to prevent the termination of the contract on or before the end of the contract year (but only if the contract will have no cash surrender value at the end of such extension period).

(7) Adjustments

(A) In general

If there is a change in the benefits under (or in other terms of) the contract which was not reflected in any previous determination or adjustment made under this section, there shall be proper adjustments in future determinations made under this section.

(B) Rule for certain changes during first 15 years

If—

(i) a change described in subparagraph (A) reduces benefits under the contract,
(ii) the change occurs during the 15-year period beginning on the issue date of the contract, and

(iii) a cash distribution is made to the policyholder as a result of such change,

section 72 (other than subsection (e)(5) thereof) shall apply to such cash distribution to the extent it does not exceed the recapture ceiling determined under subparagraph (C) or (D) (whichever applies).

(C) Recapture ceiling where change occurs during first 5 years

If the change referred to in subparagraph (B)(ii) occurs during the 5-year period beginning on the issue date of the contract, the recapture ceiling is—

(i) in the case of a contract to which subsection (a)(1) applies, the excess of—

(I) the cash surrender value of the contract, immediately before the reduction, over

(II) the net single premium (determined under subsection (b)), immediately after the reduction, or

(ii) in the case of a contract to which subsection (a)(2) applies, the greater of—

(I) the excess of the aggregate premiums paid under the contract, immediately before the reduction, over the guideline premium limitation for the contract (determined under subsection (c)(2), taking into account the adjustment described in subparagraph (A)), or

(II) the excess of the cash surrender value of the contract, immediately before the reduction, over the cash value corridor of subsection (d) (determined immediately after the reduction).

(D) Recapture ceiling where change occurs after 5th year and before 16th year

If the change referred to in subparagraph (B) occurs after the 5-year period referred to under subparagraph (C), the recapture ceiling is the excess of the cash surrender value of the contract, immediately before the reduction, over the cash value corridor of subsection (d) (determined immediately after the reduction and whether or not subsection (d) applies to the contract).

(E) Treatment of certain distributions made in anticipation of benefit reductions

Under regulations prescribed by the Secretary, subparagraph (B) shall apply also to any distribution made in anticipation of a reduction in benefits under the contract. For purposes of the preceding sentence, appropriate adjustments shall be made in the provisions of subparagraphs (C) and (D); and any distribution which reduces the cash surrender value of a contract and which is made within 2 years before a reduction in benefits under the contract shall be treated as made in anticipation of such reduction.

(8) Correction of errors

If the taxpayer establishes to the satisfaction of the Secretary that—

(A) the requirements described in subsection (a) for any contract year were not satisfied due to reasonable error, and

(B) reasonable steps are being taken to remedy the error,

the Secretary may waive the failure to satisfy such requirements.

(9) Special rule for variable life insurance contracts

In the case of any contract which is a variable contract (as defined in section 817), the determination of whether such contract meets the requirements of subsection (a) shall be made whenever the death benefits under such contract change but not less frequently than once during each 12-month period.

(g) Treatment of contracts which do not meet subsection (a) test

(1) Income inclusion

(A) In general

If at any time any contract which is a life insurance contract under the applicable law does not meet the definition of life insurance contract under subsection (a), the income on the

contract for any taxable year of the policyholder shall be treated as ordinary income received or accrued by the policyholder during such year.

(B) Income on the contract

For purposes of this paragraph, the term "income on the contract" means, with respect to any taxable year of the policyholder, the excess of—

(i) the sum of—

(I) the increase in the net surrender value of the contract during the taxable year, and

(II) the cost of life insurance protection provided under the contract during the taxable year, over

(ii) the premiums paid (as defined in subsection (f)(1)) under the contract during the taxable year.

(C) Contracts which cease to meet definition

If, during any taxable year of the policyholder, a contract which is a life insurance contract under the applicable law ceases to meet the definition of life insurance contract under subsection (a), the income on the contract for all prior taxable years shall be treated as received or accrued during the taxable year in which such cessation occurs.

(D) Cost of life insurance protection

For purposes of this paragraph, the cost of life insurance protection provided under the contract shall be the lesser of—

(i) the cost of individual insurance on the life of the insured as determined on the basis of uniform premiums (computed on the basis of 5-year age brackets) prescribed by the Secretary by regulations, or

(ii) the mortality charge (if any) stated in the contract.

(2) Treatment of amount paid on death of insured

If any contract which is a life insurance contract under the applicable law does not meet the definition of life insurance contract under subsection (a), the excess of the amount paid by the reason of the death of the insured over the net surrender value of the contract shall be deemed to be paid under a life insurance contract for purposes of section 101 and subtitle B.

(3) Contract continues to be treated as insurance contract

If any contract which is a life insurance contract under the applicable law does not meet the definition of life insurance contract under subsection (a), such contract shall, notwithstanding such failure, be treated as an insurance contract for purposes of this title.

(h) Endowment contracts receive same treatment

(1) In general

References in subsections (a) and (g) to a life insurance contract shall be treated as including references to a contract which is an endowment contract under the applicable law.

(2) Definition of endowment contract

For purposes of this title (other than paragraph (1)), the term "endowment contract" means a contract which is an endowment contract under the applicable law and which meets the requirements of subsection (a).

(i) Transitional rule for certain 20-pay contracts

(1) In general

In the case of a qualified 20-pay contract, this section shall be applied by substituting "3 percent" for "4 percent" in subsection (b)(2).

(2) Qualified 20-pay contract

For purposes of paragraph (1), the term "qualified 20-pay contract" means any contract which—

(A) requires at least 20 nondecreasing annual premium payments, and
(B) is issued pursuant to an existing plan of insurance.

(3) Existing plan of insurance

For purposes of this subsection, the term "existing plan of insurance" means, with respect to any contract, any plan of insurance which was filed by the company issuing such contract in 1 or more States before September 28, 1983, and is on file in the appropriate State for such contract.

(j) Certain church self-funded death benefit plans treated as life insurance

(1) In general

In determining whether any plan or arrangement described in paragraph (2) is a life insurance contract, the requirement of subsection (a) that the contract be a life insurance contract under applicable law shall not apply.

(2) Description

For purposes of this subsection, a plan or arrangement is described in this paragraph if—

(A) such plan or arrangement provides for the payment of benefits by reason of the death of the individuals covered under such plan or arrangement, and

(B) such plan or arrangement is provided by a church for the benefit of its employees and their beneficiaries, directly or through an organization described in section 414(e)(3)(A) or an organization described in section 414(e)(3)(B)(ii).

(3) Definitions

For purposes of this subsection—

(A) Church

The term "church" means a church or a convention or association of churches.

(B) Employee

The term "employee" includes an employee described in section 414(e)(3)(B).

(k) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.

(Added Pub. L. 98–369, div. A, title II, §221(a), July 18, 1984, 98 Stat. 767; amended Pub. L. 99–514, title XVIII, §1825(a)–(c), Oct. 22, 1986, 100 Stat. 2846–2848; Pub. L. 100–647, title V, §5011(a), (b), title VI, §6078(a), Nov. 10, 1988, 102 Stat. 3660, 3661, 3709.)

AMENDMENTS

1988—Subsec. (c)(3)(B)(i), (ii). Pub. L. 100–647, §5011(a), added cls. (i) and (ii) and struck out former cls. (i) and (ii) which read as follows:

"(i) the mortality charges specified in the contract (or, if none is specified, the mortality charges used in determining the statutory reserves for such contract),

"(ii) any charges (not taken into account under clause (i)) specified in the contract (the amount of any charge not so specified shall be treated as zero), and".

Subsec. (c)(3)(D). Pub. L. 100–647, §5011(b), added subpar. (D).

Subsecs. (j), (k). Pub. L. 100–647, §6078(a), added subsec. (j) and redesignated former subsec. (j) as (k).

1986—Subsec. (b)(2)(C). Pub. L. 99–514, §1825(a)(2), substituted "subparagraphs (A) and (D)" for "subparagraphs (A) and (C)".

Subsec. (e)(1). Pub. L. 99–514, §1825(a)(3), inserted "(other than subsection (d))" after "section".

Subsec. (e)(1)(B). Pub. L. 99–514, §1825(a)(1)(A), substituted "shall be deemed to be no earlier than" for "shall be no earlier than".

Subsec. (e)(1)(C). Pub. L. 99–514, §1821(a)(1)(C), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (e)(1)(D). Pub. L. 99–514, §1821(a)(1)(C), (D), redesignated subpar. (C) as (D) and substituted "the maturity date determined by taking into account subparagraph (B)" for "the maturity date described in subparagraph (B)".

Subsec. (e)(2)(C). Pub. L. 99–514, §1825(a)(4), added subpar. (C).

Subsec. (f)(1)(A). Pub. L. 99–514, §1825(b)(2), substituted "less any excess premiums with respect to which there is a distribution described in subparagraph (B) or (E) of paragraph (7) and any other amounts received" for "less any other amounts received".

Subsec. (f)(7). Pub. L. 99–514, §1825(b)(1), amended par. (7) generally. Prior to amendment, par. (7)(A), in general, read as follows: "In the event of a change in the future benefits or any qualified additional benefit (or in any other terms) under the contract which was not reflected in any previous determination made under this section, under regulations prescribed by the Secretary, there shall be proper adjustments in future determinations made under this section.", and par. (7)(B), certain changes treated as exchange, read as follows: "In the case of any change which reduces the future benefits under the contract, such change shall be treated as an exchange of the contract for another contract."

Subsec. (g)(1)(B)(ii). Pub. L. 99–514, §1825(c), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: "the amount of premiums paid under the contract during the taxable year reduced by any policyholder dividends received during such taxable year."

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title V, §5011(d), Nov. 10, 1988, 102 Stat. 3661, provided that: "The amendments made by this section [amending this section] shall apply to contracts entered into on or after October 21, 1988."

Pub. L. 100–647, title VI, §6078(b), Nov. 10, 1988, 102 Stat. 3709, provided that: "The amendment made by subsection (a) [amending this section] shall take effect as if included in the amendment made by section 221(a) of the Tax Reform Act of 1984 [Pub. L. 98–369, which enacted this section]."

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XVIII, §1825(a)(4), Oct. 22, 1986, 100 Stat. 2846, as amended by Pub. L. 100–647, title I, §1018(j), Nov. 10, 1988, 102 Stat. 3583, provided that the amendment made by that section is effective with respect to contracts entered into after Oct. 22, 1986.

Amendment by section 1825(a)(1)–(3), (b), (c) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Pub. L. 98–369, div. A, title II, §221(d), July 18, 1984, 98 Stat. 772, as amended by Pub. L. 99–514, §2, title XVIII, §§1825(e), 1899A(69), Oct. 22, 1986, 100 Stat. 2095, 2848, 2962, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting this section and amending section 101 of this title and provisions set out as a note under section 101 of this title] shall apply to contracts issued after December 31, 1984, in taxable years ending after such date.

"(2) SPECIAL RULE FOR CERTAIN CONTRACTS ISSUED AFTER JUNE 30, 1984.—

"(A) GENERAL RULE.—Except as otherwise provided in this paragraph, the amendments made by this section shall apply also to any contract issued after June 30, 1984, which provides an increasing death benefit and has premium funding more rapid than 10-year level premium payments.

"(B) EXCEPTION FOR CERTAIN CONTRACTS.—Subparagraph (A) shall not apply to any contract if—

"(i) such contract (whether or not a flexible premium contract) would meet the requirements of section 101(f) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954],

"(ii) such contract is not a flexible premium life insurance contract (within the meaning of section 101(f) of such Code) and would meet the requirements of section 7702 of such Code determined by—

"(I) substituting '3 percent' for '4 percent' in section 7702(b)(2) of such Code, and

"(II) treating subparagraph (B) of section 7702(e)(1) of such Code as if it read as follows: 'the maturity date shall be the latest maturity date permitted under the contract, but not less than 20 years after the date of issue or (if earlier) age 95', or

"(iii) under such contract—

"(I) the premiums (including any policy fees) will be adjusted from time-to-time to reflect the level amount necessary (but not less than zero) at the time of such adjustment to provide a level death benefit assuming interest crediting and an annual effective interest rate of not less than 3 percent, or

"(II) at the option of the insured, in lieu of an adjustment under subclause (I) there will be a comparable adjustment in the amount of the death benefit.

"(C) CERTAIN CONTRACTS ISSUED BEFORE OCTOBER 1, 1984.—

"(i) IN GENERAL.—Subparagraph (A) shall be applied by substituting 'September 30, 1984' for

'June 30, 1984' in the case of a contract—

"(I) which would meet the requirements of section 7702 of such Code if '3 percent' were substituted for '4 percent' in section 7702(b)(2) of such Code, and the rate or rates guaranteed on issuance of the contract were determined without regard to any mortality charges and any initial excess interest guarantees, and

"(II) the cash surrender value of which does not at any time exceed the net single premium which would have to be paid at such time to fund future benefits under the contract.

"(ii) DEFINITIONS.—For purposes of clause (i)—

"(I) IN GENERAL.—Except as provided in subclause (II), terms used in clause (i) shall have the same meanings as when used in section 7702 of such Code.

"(II) NET SINGLE PREMIUM.—The term 'net single premium' shall be determined by substituting '3 percent' for '4 percent' in section 7702(b)(2) of such Code, by using the 1958 standard ordinary mortality and morbidity tables of the National Association of Insurance Commissioners, and by assuming a level death benefit.

"(3) TRANSITIONAL RULE FOR CERTAIN EXISTING PLANS OF INSURANCE.—A plan of insurance on file in 1 or more States before September 28, 1983, shall be treated for purposes of section 7702(i)(3) of such Code as a plan of insurance on file in 1 or more States before September 28, 1983, without regard to whether such plan of insurance is modified after September 28, 1983, to permit the crediting of excess interest or similar amounts annually and not monthly under contracts issued pursuant to such plan of insurance.

"(4) EXTENSION OF FLEXIBLE PREMIUM CONTRACT PROVISIONS.—The amendments made by subsection (b) [amending section 101 of this title and provisions set out as a note under section 101 of this title] shall take effect on January 1, 1984.

"(5) SPECIAL RULE FOR MASTER CONTRACT.—For purposes of this subsection, in the case of a master contract, the date taken into account with respect to any insured shall be the first date on which such insured is covered under such contract."

INTERIM RULES; REGULATIONS; STANDARDS BEFORE REGULATIONS TAKE EFFECT

Pub. L. 100–647, title V, §5011(c), Nov. 10, 1988, 102 Stat. 3661, provided that:

"(1) REGULATIONS.—Not later than January 1, 1990, the Secretary of the Treasury (or his delegate) shall issue regulations under section 7702(c)(3)(B)(i) of the 1986 Code (as amended by subsection (a)).

"(2) STANDARDS BEFORE REGULATIONS TAKE EFFECT.—In the case of any contract to which the amendments made by this section [amending this section] apply and which is issued before the effective date of the regulations required under paragraph (1), mortality charges which do not differ materially from the charges actually expected to be imposed by the company (taking into account any relevant characteristic of the insured of which the company is aware) shall be treated as meeting the requirements of clause (i) of section 7702(c)(3)(B) of the 1986 Code (as amended by subsection (a))."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TREATMENT OF FLEXIBLE PREMIUM CONTRACTS ISSUED DURING 1984 WHICH MEET NEW REQUIREMENTS

Pub. L. 98–369, div. A, title II, §221(b)(3), as added by Pub. L. 99–514, title XVIII, §1825(d), Oct. 22, 1986, 100 Stat. 2848, provided that: "Any flexible premium contract issued during 1984 which meets the requirements of section 7702 of the Internal Revenue Code of 1954 [now 1986] (as added by this section) shall be treated as meeting the requirements of section 101(f) of such Code."

§7702A. Modified endowment contract defined

(a) General rule

For purposes of section 72, the term "modified endowment contract" means any contract meeting the requirements of section 7702—

(1) which—

(A) is entered into on or after June 21, 1988, and
(B) fails to meet the 7-pay test of subsection (b), or

(2) which is received in exchange for a contract described in paragraph (1) or this paragraph.

(b) 7-pay test

For purposes of subsection (a), a contract fails to meet the 7-pay test of this subsection if the accumulated amount paid under the contract at any time during the 1st 7 contract years exceeds the sum of the net level premiums which would have been paid on or before such time if the contract provided for paid-up future benefits after the payment of 7 level annual premiums.

(c) Computational rules

(1) In general

Except as provided in this subsection, the determination under subsection (b) of the 7 level annual premiums shall be made—

(A) as of the time the contract is issued, and

(B) by applying the rules of section 7702(b)(2) and of section 7702(e) (other than paragraph (2)(C) thereof), except that the death benefit provided for the 1st contract year shall be deemed to be provided until the maturity date without regard to any scheduled reduction after the 1st 7 contract years.

(2) Reduction in benefits during 1st 7 years

(A) In general

If there is a reduction in benefits under the contract within the 1st 7 contract years, this section shall be applied as if the contract had originally been issued at the reduced benefit level.

(B) Reductions attributable to nonpayment of premiums

Any reduction in benefits attributable to the nonpayment of premiums due under the contract shall not be taken into account under subparagraph (A) if the benefits are reinstated within 90 days after the reduction in such benefits.

(3) Treatment of material changes

(A) In general

If there is a material change in the benefits under (or in other terms of) the contract which was not reflected in any previous determination under this section, for purposes of this section—

(i) such contract shall be treated as a new contract entered into on the day on which such material change takes effect, and

(ii) appropriate adjustments shall be made in determining whether such contract meets the 7-pay test of subsection (b) to take into account the cash surrender value under the contract.

(B) Treatment of certain benefit increases

For purposes of subparagraph (A), the term "material change" includes any increase in the death benefit under the contract or any increase in, or addition of, a qualified additional benefit under the contract. Such term shall not include—

(i) any increase which is attributable to the payment of premiums necessary to fund the lowest level of the death benefit and qualified additional benefits payable in the 1st 7 contract years (determined after taking into account death benefit increases described in subparagraph (A) or (B) of section 7702(e)(2)) or to crediting of interest or other earnings (including policyholder dividends) in respect of such premiums, and

(ii) to the extent provided in regulations, any cost-of-living increase based on an established broad-based index if such increase is funded ratably over the remaining period during which premiums are required to be paid under the contract.

(4) Special rule for contracts with death benefits of $10,000 or less

In the case of a contract—

(A) which provides an initial death benefit of $10,000 or less, and

(B) which requires at least 7 nondecreasing annual premium payments,

each of the 7 level annual premiums determined under subsection (b) (without regard to this paragraph) shall be increased by $75. For purposes of this paragraph, the contract involved and all contracts previously issued to the same policyholder by the same company shall be treated as one contract.

(5) Regulatory authority for certain collection expenses

The Secretary may by regulations prescribe rules for taking into account expenses solely attributable to the collection of premiums paid more frequently than annually.

(6) Treatment of certain contracts with more than one insured

If—

(A) a contract provides a death benefit which is payable only upon the death of 1 insured following (or occurring simultaneously with) the death of another insured, and

(B) there is a reduction in such death benefit below the lowest level of such death benefit provided under the contract during the 1st 7 contract years,

this section shall be applied as if the contract had originally been issued at the reduced benefit level.

(d) Distributions affected

If a contract fails to meet the 7-pay test of subsection (b), such contract shall be treated as failing to meet such requirements only in the case of—

(1) distributions during the contract year in which the failure takes effect and during any subsequent contract year, and

(2) under regulations prescribed by the Secretary, distributions (not described in paragraph (1)) in anticipation of such failure.

For purposes of the preceding sentence, any distribution which is made within 2 years before the failure to meet the 7-pay test shall be treated as made in anticipation of such failure.

(e) Definitions

For purposes of this section—

(1) Amount paid

(A) In general

The term "amount paid" means—

(i) the premiums paid under the contract, reduced by

(ii) amounts to which section 72(e) applies (determined without regard to paragraph (4)(A) thereof) but not including amounts includible in gross income.

(B) Treatment of certain premiums returned

If, in order to comply with the requirements of subsection (b), any portion of any premium paid during any contract year is returned by the insurance company (with interest) within 60 days after the end of such contract year, the amount so returned (excluding interest) shall be deemed to reduce the sum of the premiums paid under the contract during such contract year.

(C) Interest returned includible in gross income

Notwithstanding the provisions of section 72(e), the amount of any interest returned as provided in subparagraph (B) shall be includible in the gross income of the recipient.

(2) Contract year

The term "contract year" means the 12-month period beginning with the 1st month for which

the contract is in effect, and each 12-month period beginning with the corresponding month in subsequent calendar years.

(3) Other terms

Except as otherwise provided in this section, terms used in this section shall have the same meaning as when used in section 7702.

(Added Pub. L. 100–647, title V, §5012(c)(1), Nov. 10, 1988, 102 Stat. 3662; amended Pub. L. 101–239, title VII, §§7647(a), 7815(a)(1), (4), Dec. 19, 1989, 103 Stat. 2382, 2414; Pub. L. 106–554, §1(a)(7) [title III, §318(a)(1), (2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–645; Pub. L. 107–147, title IV, §416(f), Mar. 9, 2002, 116 Stat. 55.)

AMENDMENTS

2002—Subsec. (c)(3)(A)(ii). Pub. L. 107–147 repealed Pub. L. 106–554, §1(a)(7) [title III, §318(a)(2)]. See 2000 Amendment note below.

2000—Subsec. (a)(2). Pub. L. 106–554, §1(a)(7) [title III, §318(a)(1)], inserted "or this paragraph" before period at end.

Subsec. (c)(3)(A)(ii). Pub. L. 106–554, §1(a)(7) [title III, §318(a)(2)], which substituted "under the old contract" for "under the contract", was repealed by Pub. L. 107–147. See Construction of 2002 Amendment note below.

1989—Subsec. (c)(3)(B). Pub. L. 101–239, §7815(a)(1), substituted "benefit increases" for "increases in future benefits" in heading and amended text generally. Prior to amendment, text read as follows: "For purposes of subparagraph (A), the term 'material change' includes any increase in future benefits under the contract. Such term shall not include—

"(i) any increase which is attributable to the payment of premiums necessary to fund the lowest level of future benefits payable in the 1st 7 contract years (determined after taking into account death benefit increases described in subparagraph (A) or (B) of section 7702(e)(2)) or to crediting of interest or other earnings (including policyholder dividends) in respect of such premiums, and

"(ii) to the extent provided in regulations, any cost-of-living increase based on an established broad-based index if such increase is funded ratably over the remaining life of the the contract."

Subsec. (c)(4). Pub. L. 101–239, §7815(a)(4), substituted "of $10,000 or less" for "under $10,000" in heading and "the same policyholder" for "the same insurer" in concluding provisions.

Subsec. (c)(6). Pub. L. 101–239, §7647(a), added par. (6).

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(7) [title III, §318(a)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–645, provided that: "The amendments made by this subsection [amending this section] shall take effect as if included in the amendments made by section 5012 of the Technical and Miscellaneous Revenue Act of 1988 [Pub. L. 100–647]."

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7647(b), Dec. 19, 1989, 103 Stat. 2383, provided that: "The amendment made by subsection (a) [amending this section] shall apply to contracts entered into on or after September 14, 1989."

Amendment by section 7815(a)(1), (4) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE

Pub. L. 100–647, title V, §5012(e), Nov. 10, 1988, 102 Stat. 3665, as amended by Pub. L. 101–239, title VII, §7815(a)(2), Dec. 19, 1989, 103 Stat. 2414, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting this section and amending sections 26 and 72 of this title] shall apply to contracts entered into on or after June 21, 1988.

"(2) SPECIAL RULE WHERE DEATH BENEFIT INCREASES BY MORE THAN $150,000.—If the death benefit under the contract increases by more than $150,000 over the death benefit under the contract in effect on October 20, 1988, the rules of section 7702A(c)(3) of the 1986 Code (as added by this section) shall

apply in determining whether such contract is issued on or after June 21, 1988. The preceding sentence shall not apply in the case of a contract which, as of June 21, 1988, required at least 7 level annual premium payments and under which the policyholder makes at least 7 level annual premium payments.

"(3) CERTAIN OTHER MATERIAL CHANGES TAKEN INTO ACCOUNT.—A contract entered into before June 21, 1988, shall be treated as entered into after such date if—

"(A) on or after June 21, 1988, the death benefit under the contract is increased (or a qualified additional benefit is increased or added) and before June 21, 1988, the owner of the contract did not have a unilateral right under the contract to obtain such increase or addition without providing additional evidence of insurability, or

"(B) the contract is converted after June 20, 1988, from a term life insurance contract to a life insurance contract providing coverage other than term life insurance coverage without regard to any right of the owner of the contract to such conversion.

"(4) CERTAIN EXCHANGES PERMITTED.—In the case of a modified endowment contract which—

"(A) required at least 7 annual level premium payments,

"(B) is entered into after June 20, 1988, and before the date of the enactment of this Act [Nov. 10, 1988], and

"(C) is exchanged within 3 months after such date of enactment for a life insurance contract which meets the requirements of section 7702A(b),

the contract which is received in exchange for such contract shall not be treated as a modified endowment contract if the taxpayer elects, notwithstanding section 1035 of the 1986 Code, to recognize gain on such exchange.

"(5) SPECIAL RULE FOR ANNUITY CONTRACTS.—In the case of annuity contracts, the amendments made by subsection (d) [amending section 72 of this title] shall apply to contracts entered into after October 21, 1988."

CONSTRUCTION OF 2002 AMENDMENT

Pub. L. 107–147, title IV, §416(f), Mar. 9, 2002, 116 Stat. 55, provided that: "Paragraph (2) of section 318(a) of the Community Renewal Tax Relief Act of 2000 [H.R. 5662, as enacted by section 1(a)(7) of Pub. L. 106–554](114 Stat. 2763A–645) [amending this section] is repealed, and clause (ii) of section 7702A(c)(3)(A) shall read and be applied as if the amendment made by such paragraph had not been enacted."

§7702B. Treatment of qualified long-term care insurance

(a) In general

For purposes of this title—

(1) a qualified long-term care insurance contract shall be treated as an accident and health insurance contract,

(2) amounts (other than policyholder dividends, as defined in section 808, or premium refunds) received under a qualified long-term care insurance contract shall be treated as amounts received for personal injuries and sickness and shall be treated as reimbursement for expenses actually incurred for medical care (as defined in section 213(d)),

(3) any plan of an employer providing coverage under a qualified long-term care insurance contract shall be treated as an accident and health plan with respect to such coverage,

(4) except as provided in subsection (e)(3), amounts paid for a qualified long-term care insurance contract providing the benefits described in subsection (b)(2)(A) shall be treated as payments made for insurance for purposes of section 213(d)(1)(D), and

(5) a qualified long-term care insurance contract shall be treated as a guaranteed renewable contract subject to the rules of section 816(e).

(b) Qualified long-term care insurance contract

For purposes of this title—

(1) In general

The term "qualified long-term care insurance contract" means any insurance contract if—

(A) the only insurance protection provided under such contract is coverage of qualified long-term care services,

(B) such contract does not pay or reimburse expenses incurred for services or items to the extent that such expenses are reimbursable under title XVIII of the Social Security Act or would be so reimbursable but for the application of a deductible or coinsurance amount,

(C) such contract is guaranteed renewable,

(D) such contract does not provide for a cash surrender value or other money that can be—

(i) paid, assigned, or pledged as collateral for a loan, or

(ii) borrowed,

other than as provided in subparagraph (E) or paragraph (2)(C),

(E) all refunds of premiums, and all policyholder dividends or similar amounts, under such contract are to be applied as a reduction in future premiums or to increase future benefits, and

(F) such contract meets the requirements of subsection (g).

(2) Special rules

(A) Per diem, etc. payments permitted

A contract shall not fail to be described in subparagraph (A) or (B) of paragraph (1) by reason of payments being made on a per diem or other periodic basis without regard to the expenses incurred during the period to which the payments relate.

(B) Special rules relating to medicare

(i) Paragraph (1)(B) shall not apply to expenses which are reimbursable under title XVIII of the Social Security Act only as a secondary payor.

(ii) No provision of law shall be construed or applied so as to prohibit the offering of a qualified long-term care insurance contract on the basis that the contract coordinates its benefits with those provided under such title.

(C) Refunds of premiums

Paragraph (1)(E) shall not apply to any refund on the death of the insured, or on a complete surrender or cancellation of the contract, which cannot exceed the aggregate premiums paid under the contract. Any refund on a complete surrender or cancellation of the contract shall be includible in gross income to the extent that any deduction or exclusion was allowable with respect to the premiums.

(c) Qualified long-term care services

For purposes of this section—

(1) In general

The term "qualified long-term care services" means necessary diagnostic, preventive, therapeutic, curing, treating, mitigating, and rehabilitative services, and maintenance or personal care services, which—

(A) are required by a chronically ill individual, and

(B) are provided pursuant to a plan of care prescribed by a licensed health care practitioner.

(2) Chronically ill individual

(A) In general

The term "chronically ill individual" means any individual who has been certified by a licensed health care practitioner as—

(i) being unable to perform (without substantial assistance from another individual) at least 2 activities of daily living for a period of at least 90 days due to a loss of functional capacity,

(ii) having a level of disability similar (as determined under regulations prescribed by the Secretary in consultation with the Secretary of Health and Human Services) to the level of disability described in clause (i), or

(iii) requiring substantial supervision to protect such individual from threats to health and safety due to severe cognitive impairment.

Such term shall not include any individual otherwise meeting the requirements of the preceding sentence unless within the preceding 12-month period a licensed health care practitioner has certified that such individual meets such requirements.

(B) Activities of daily living

For purposes of subparagraph (A), each of the following is an activity of daily living:

(i) Eating.
(ii) Toileting.
(iii) Transferring.
(iv) Bathing.
(v) Dressing.
(vi) Continence.

A contract shall not be treated as a qualified long-term care insurance contract unless the determination of whether an individual is a chronically ill individual described in subparagraph (A)(i) takes into account at least 5 of such activities.

(3) Maintenance or personal care services

The term "maintenance or personal care services" means any care the primary purpose of which is the provision of needed assistance with any of the disabilities as a result of which the individual is a chronically ill individual (including the protection from threats to health and safety due to severe cognitive impairment).

(4) Licensed health care practitioner

The term "licensed health care practitioner" means any physician (as defined in section 1861(r)(1) of the Social Security Act) and any registered professional nurse, licensed social worker, or other individual who meets such requirements as may be prescribed by the Secretary.

(d) Aggregate payments in excess of limits

(1) In general

If the aggregate of—

(A) the periodic payments received for any period under all qualified long-term care insurance contracts which are treated as made for qualified long-term care services for an insured, and

(B) the periodic payments received for such period which are treated under section 101(g) as paid by reason of the death of such insured,

exceeds the per diem limitation for such period, such excess shall be includible in gross income without regard to section 72. A payment shall not be taken into account under subparagraph (B) if the insured is a terminally ill individual (as defined in section 101(g)) at the time the payment is received.

(2) Per diem limitation

For purposes of paragraph (1), the per diem limitation for any period is an amount equal to the excess (if any) of—

(A) the greater of—

(i) the dollar amount in effect for such period under paragraph (4), or

(ii) the costs incurred for qualified long-term care services provided for the insured for such period, over

(B) the aggregate payments received as reimbursements (through insurance or otherwise) for qualified long-term care services provided for the insured during such period.

(3) Aggregation rules

For purposes of this subsection—

(A) all persons receiving periodic payments described in paragraph (1) with respect to the same insured shall be treated as 1 person, and

(B) the per diem limitation determined under paragraph (2) shall be allocated first to the insured and any remaining limitation shall be allocated among the other such persons in such manner as the Secretary shall prescribe.

(4) Dollar amount

The dollar amount in effect under this subsection shall be $175 per day (or the equivalent amount in the case of payments on another periodic basis).

(5) Inflation adjustment

In the case of a calendar year after 1997, the dollar amount contained in paragraph (4) shall be increased at the same time and in the same manner as amounts are increased pursuant to section 213(d)(10).

(6) Periodic payments

For purposes of this subsection, the term "periodic payment" means any payment (whether on a periodic basis or otherwise) made without regard to the extent of the costs incurred by the payee for qualified long-term care services.

(e) Treatment of coverage provided as part of a life insurance or annuity contract

Except as otherwise provided in regulations prescribed by the Secretary, in the case of any long-term care insurance coverage (whether or not qualified) provided by a rider on or as part of a life insurance contract or an annuity contract—

(1) In general

This title shall apply as if the portion of the contract providing such coverage is a separate contract.

(2) Denial of deduction under section 213

No deduction shall be allowed under section 213(a) for any payment made for coverage under a qualified long-term care insurance contract if such payment is made as a charge against the cash surrender value of a life insurance contract or the cash value of an annuity contract.

(3) Portion defined

For purposes of this subsection, the term "portion" means only the terms and benefits under a life insurance contract or annuity contract that are in addition to the terms and benefits under the contract without regard to long-term care insurance coverage.

(4) Annuity contracts to which paragraph (1) does not apply

For purposes of this subsection, none of the following shall be treated as an annuity contract:

(A) A trust described in section 401(a) which is exempt from tax under section 501(a).

(B) A contract—

(i) purchased by a trust described in subparagraph (A),

(ii) purchased as part of a plan described in section 403(a),

(iii) described in section 403(b),

(iv) provided for employees of a life insurance company under a plan described in section 818(a)(3), or

(v) from an individual retirement account or an individual retirement annuity.

(C) A contract purchased by an employer for the benefit of the employee (or the employee's spouse).

Any dividend described in section 404(k) which is received by a participant or beneficiary shall, for purposes of this paragraph, be treated as paid under a separate contract to which subparagraph (B)(i) applies.

(f) Treatment of certain State-maintained plans

(1) In general

If—

(A) an individual receives coverage for qualified long-term care services under a State long-term care plan, and

(B) the terms of such plan would satisfy the requirements of subsection (b) were such plan an insurance contract,

such plan shall be treated as a qualified long-term care insurance contract for purposes of this title.

(2) State long-term care plan

For purposes of paragraph (1), the term "State long-term care plan" means any plan—

(A) which is established and maintained by a State or an instrumentality of a State,

(B) which provides coverage only for qualified long-term care services, and

(C) under which such coverage is provided only to—

(i) employees and former employees of a State (or any political subdivision or instrumentality of a State),

(ii) the spouses of such employees, and

(iii) individuals bearing a relationship to such employees or spouses which is described in any of subparagraphs (A) through (G) of section 152(d)(2).

(g) Consumer protection provisions

(1) In general

The requirements of this subsection are met with respect to any contract if the contract meets—

(A) the requirements of the model regulation and model Act described in paragraph (2),

(B) the disclosure requirement of paragraph (3), and

(C) the requirements relating to nonforfeitability under paragraph (4).

(2) Requirements of model regulation and Act

(A) In general

The requirements of this paragraph are met with respect to any contract if such contract meets—

(i) Model regulation

The following requirements of the model regulation:

(I) Section 7A (relating to guaranteed renewal or noncancellability), and the requirements of section 6B of the model Act relating to such section 7A.

(II) Section 7B (relating to prohibitions on limitations and exclusions).

(III) Section 7C (relating to extension of benefits).

(IV) Section 7D (relating to continuation or conversion of coverage).

(V) Section 7E (relating to discontinuance and replacement of policies).

(VI) Section 8 (relating to unintentional lapse).

(VII) Section 9 (relating to disclosure), other than section 9F thereof.

(VIII) Section 10 (relating to prohibitions against post-claims underwriting).

(IX) Section 11 (relating to minimum standards).

(X) Section 12 (relating to requirement to offer inflation protection), except that any requirement for a signature on a rejection of inflation protection shall permit the signature to be on an application or on a separate form.

(XI) Section 23 (relating to prohibition against preexisting conditions and probationary periods in replacement policies or certificates).

(ii) Model Act

The following requirements of the model Act:

(I) Section 6C (relating to preexisting conditions).

(II) Section 6D (relating to prior hospitalization).

(B) Definitions

For purposes of this paragraph—

(i) Model provisions

The terms "model regulation" and "model Act" mean the long-term care insurance model regulation, and the long-term care insurance model Act, respectively, promulgated by the National Association of Insurance Commissioners (as adopted as of January 1993).

(ii) Coordination

Any provision of the model regulation or model Act listed under clause (i) or (ii) of subparagraph (A) shall be treated as including any other provision of such regulation or Act necessary to implement the provision.

(iii) Determination

For purposes of this section and section 4980C, the determination of whether any requirement of a model regulation or the model Act has been met shall be made by the Secretary.

(3) Disclosure requirement

The requirement of this paragraph is met with respect to any contract if such contract meets the requirements of section 4980C(d).

(4) Nonforfeiture requirements

(A) In general

The requirements of this paragraph are met with respect to any level premium contract, if the issuer of such contract offers to the policyholder, including any group policyholder, a nonforfeiture provision meeting the requirements of subparagraph (B).

(B) Requirements of provision

The nonforfeiture provision required under subparagraph (A) shall meet the following requirements:

(i) The nonforfeiture provision shall be appropriately captioned.

(ii) The nonforfeiture provision shall provide for a benefit available in the event of a default in the payment of any premiums and the amount of the benefit may be adjusted subsequent to being initially granted only as necessary to reflect changes in claims, persistency, and interest as reflected in changes in rates for premium paying contracts approved by the appropriate State regulatory agency for the same contract form.

(iii) The nonforfeiture provision shall provide at least one of the following:

(I) Reduced paid-up insurance.

(II) Extended term insurance.

(III) Shortened benefit period.

(IV) Other similar offerings approved by the appropriate State regulatory agency.

(5) Cross reference

For coordination of the requirements of this subsection with State requirements, see section 4980C(f).

(Added and amended Pub. L. 104–191, title III, §§321(a), 325, Aug. 21, 1996, 110 Stat. 2054, 2063; Pub. L. 105–34, title XVI, §1602(b), (e), Aug. 5, 1997, 111 Stat. 1094; Pub. L. 105–206, title VI, §6023(28), July 22, 1998, 112 Stat. 826; Pub. L. 108–311, title II, §207(25), Oct. 4, 2004, 118 Stat. 1178; Pub. L. 109–280, title VIII, §844(c), (f), Aug. 17, 2006, 120 Stat. 1011, 1013.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(1)(B), (2)(B)(i), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Act is classified generally to subchapter XVIII (§1395 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. Section 1861(r)(1) of the Act is classified to section 1395x(r)(1) of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2006—Subsec. (e). Pub. L. 109–280, §844(c), amended subsec. (e) generally. Prior to amendment, subsec. (e) related to treatment of coverage provided as part of a life insurance contract.

Subsec. (e)(1). Pub. L. 109–280, §844(f), substituted "title" for "section".

2004—Subsec. (f)(2)(C)(iii). Pub. L. 108–311 substituted "subparagraphs (A) through (G) of section 152(d)(2)" for "paragraphs (1) through (8) of section 152(a)".

1998—Subsec. (e)(2). Pub. L. 105–206 inserted "section" after "Application of" in heading.

1997—Subsec. (c)(2)(B). Pub. L. 105–34, §1602(b), inserted "described in subparagraph (A)(i)" after "chronically ill individual" in concluding provisions.

Subsec. (g)(4)(B)(ii), (iii)(IV). Pub. L. 105–34, §1602(e), substituted "appropriate State regulatory agency" for "Secretary".

1996—Subsec. (g). Pub. L. 104–191, §325, added subsec. (g).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 applicable to contracts issued after Dec. 31, 1996, but only with respect to taxable years beginning after Dec. 31, 2009, except as otherwise provided, see section 844(g)(1) of Pub. L. 109–280, set out as a note under section 72 of this title.

Amendment by section 844(f) of Pub. L. 109–280 effective as if included in section 321(a) of Pub. L. 104–191, see section 844(g)(5) of Pub. L. 109–280, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 effective as if included in the provisions of the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104–191, to which such amendment relates, see section 1602(i) of Pub. L. 105–34, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 325 of Pub. L. 104–191 applicable to contracts issued after Dec. 31, 1996, with provisions of section 321(f) of Pub. L. 104–191, set out as an Effective Date note below, applicable to such contracts, see section 327 of Pub. L. 104–191, set out as an Effective Date note under section 4980C of this title.

EFFECTIVE DATE

Pub. L. 104–191, title III, §321(f), Aug. 21, 1996, 110 Stat. 2059, provided that:

"(1) GENERAL EFFECTIVE DATE.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this section [enacting this section and amending sections 106, 125, 807, and 4980B of this title, section 1167 of Title 29, Labor, and section 300bb–8 of Title 42, The Public Health and Welfare] shall apply to contracts issued after December 31, 1996.

"(B) RESERVE METHOD.—The amendment made by subsection (b) [amending section 807 of this title] shall apply to contracts issued after December 31, 1997.

"(2) CONTINUATION OF EXISTING POLICIES.—In the case of any contract issued before January 1, 1997, which met the long-term care insurance requirements of the State in which the contract was sitused [sic] at the time the contract was issued—

"(A) such contract shall be treated for purposes of the Internal Revenue Code of 1986 as a qualified long-term care insurance contract (as defined in section 7702B(b) of such Code), and

"(B) services provided under, or reimbursed by, such contract shall be treated for such purposes as qualified long-term care services (as defined in section 7702B(c) of such Code).

In the case of an individual who is covered on December 31, 1996, under a State long-term care plan (as defined in section 7702B(f)(2) of such Code), the terms of such plan on such date shall be treated for purposes

of the preceding sentence as a contract issued on such date which met the long-term care insurance requirements of such State.

"(3) EXCHANGES OF EXISTING POLICIES.—If, after the date of enactment of this Act [Aug. 21, 1996] and before January 1, 1998, a contract providing for long-term care insurance coverage is exchanged solely for a qualified long-term care insurance contract (as defined in section 7702B(b) of such Code), no gain or loss shall be recognized on the exchange. If, in addition to a qualified long-term care insurance contract, money or other property is received in the exchange, then any gain shall be recognized to the extent of the sum of the money and the fair market value of the other property received. For purposes of this paragraph, the cancellation of a contract providing for long-term care insurance coverage and reinvestment of the cancellation proceeds in a qualified long-term care insurance contract within 60 days thereafter shall be treated as an exchange.

"(4) ISSUANCE OF CERTAIN RIDERS PERMITTED.—For purposes of applying sections 101(f), 7702, and 7702A of the Internal Revenue Code of 1986 to any contract—

"(A) the issuance of a rider which is treated as a qualified long-term care insurance contract under section 7702B, and

"(B) the addition of any provision required to conform any other long-term care rider to be so treated, shall not be treated as a modification or material change of such contract.

"(5) APPLICATION OF PER DIEM LIMITATION TO EXISTING CONTRACTS.—The amount of per diem payments made under a contract issued on or before July 31, 1996, with respect to an insured which are excludable from gross income by reason of section 7702B of the Internal Revenue Code of 1986 (as added by this section) shall not be reduced under subsection (d)(2)(B) thereof by reason of reimbursements received under a contract issued on or before such date. The preceding sentence shall cease to apply as of the date (after July 31, 1996) such contract is exchanged or there is any contract modification which results in an increase in the amount of such per diem payments or the amount of such reimbursements."

LONG-TERM CARE STUDY REQUEST

Pub. L. 104–191, title III, §321(g), Aug. 21, 1996, 110 Stat. 2060, provided that: "The Chairman of the Committee on Ways and Means of the House of Representatives and the Chairman of the Committee on Finance of the Senate shall jointly request the National Association of Insurance Commissioners, in consultation with representatives of the insurance industry and consumer organizations, to formulate, develop, and conduct a study to determine the marketing and other effects of per diem limits on certain types of long-term care policies. If the National Association of Insurance Commissioners agrees to the study request, the National Association of Insurance Commissioners shall report the results of its study to such committees not later than 2 years after accepting the request."

§7703. Determination of marital status

(a) General rule

For purposes of part V of subchapter B of chapter 1 and those provisions of this title which refer to this subsection—

(1) the determination of whether an individual is married shall be made as of the close of his taxable year; except that if his spouse dies during his taxable year such determination shall be made as of the time of such death; and

(2) an individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married.

(b) Certain married individuals living apart

For purposes of those provisions of this title which refer to this subsection, if—

(1) an individual who is married (within the meaning of subsection (a)) and who files a separate return maintains as his home a household which constitutes for more than one-half of the taxable year the principal place of abode of a child (within the meaning of section 152(f)(1)) with respect to whom such individual is entitled to a deduction for the taxable year under section 151 (or would be so entitled but for section 152(e)),

(2) such individual furnishes over one-half of the cost of maintaining such household during the taxable year, and

(3) during the last 6 months of the taxable year, such individual's spouse is not a member of

such household,

such individual shall not be considered as married.

(Added Pub. L. 99–514, title XIII, §1301(j)(2)(A), Oct. 22, 1986, 100 Stat. 2657; amended Pub. L. 100–647, title I, §1018(u)(41), Nov. 10, 1988, 102 Stat. 3592; Pub. L. 108–311, title II, §207(26), Oct. 4, 2004, 118 Stat. 1178.)

PRIOR PROVISIONS

Provisions relating to determination of marital status were formerly contained in section 143 of this title, prior to enactment of this section by Pub. L. 99–514.

AMENDMENTS

2004—Subsec. (b)(1). Pub. L. 108–311 substituted "152(f)(1)" for "151(c)(3)" and struck out "paragraph (2) or (4) of" before "section 152(e)),".

1988—Subsec. (b)(1). Pub. L. 100–647 substituted "section 151(c)(3)" for "section 151(e)(3)".

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99–514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

§7704. Certain publicly traded partnerships treated as corporations

(a) General rule

For purposes of this title, except as provided in subsection (c), a publicly traded partnership shall be treated as a corporation.

(b) Publicly traded partnership

For purposes of this section, the term "publicly traded partnership" means any partnership if—

(1) interests in such partnership are traded on an established securities market, or

(2) interests in such partnership are readily tradable on a secondary market (or the substantial equivalent thereof).

(c) Exception for partnerships with passive-type income

(1) In general

Subsection (a) shall not apply to any publicly traded partnership for any taxable year if such partnership met the gross income requirements of paragraph (2) for such taxable year and each preceding taxable year beginning after December 31, 1987, during which the partnership (or any predecessor) was in existence. For purposes of the preceding sentence, a partnership shall not be treated as being in existence during any period before the 1st taxable year in which such partnership (or a predecessor) was a publicly traded partnership.

(2) Gross income requirements

A partnership meets the gross income requirements of this paragraph for any taxable year if 90 percent or more of the gross income of such partnership for such taxable year consists of qualifying income.

(3) Exception not to apply to certain partnerships which could qualify as regulated

investment companies

This subsection shall not apply to any partnership which would be described in section 851(a) if such partnership were a domestic corporation. To the extent provided in regulations, the preceding sentence shall not apply to any partnership a principal activity of which is the buying and selling of commodities (not described in section 1221(a)(1)), or options, futures, or forwards with respect to commodities.

(d) Qualifying income

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, the term "qualifying income" means—

(A) interest,

(B) dividends,

(C) real property rents,

(D) gain from the sale or other disposition of real property (including property described in section 1221(a)(1)),

(E) income and gains derived from the exploration, development, mining or production, processing, refining, transportation (including pipelines transporting gas, oil, or products thereof), or the marketing of any mineral or natural resource (including fertilizer, geothermal energy, and timber), industrial source carbon dioxide, or the transportation or storage of any fuel described in subsection (b), (c), (d), or (e) of section 6426, or any alcohol fuel defined in section 6426(b)(4)(A) or any biodiesel fuel as defined in section 40A(d)(1),

(F) any gain from the sale or disposition of a capital asset (or property described in section 1231(b)) held for the production of income described in any of the foregoing subparagraphs of this paragraph, and

(G) in the case of a partnership described in the second sentence of subsection (c)(3), income and gains from commodities (not described in section 1221(a)(1)) or futures, forwards, and options with respect to commodities.

For purposes of subparagraph (E), the term "mineral or natural resource" means any product of a character with respect to which a deduction for depletion is allowable under section 611; except that such term shall not include any product described in subparagraph (A) or (B) of section 613(b)(7).

(2) Certain interest not qualified

Interest shall not be treated as qualifying income if—

(A) such interest is derived in the conduct of a financial or insurance business, or

(B) such interest would be excluded from the term "interest" under section 856(f).

(3) Real property rent

The term "real property rent" means amounts which would qualify as rent from real property under section 856(d) if—

(A) such section were applied without regard to paragraph (2)(C) thereof (relating to independent contractor requirements), and

(B) stock owned, directly or indirectly, by or for a partner would not be considered as owned under section 318(a)(3)(A) by the partnership unless 5 percent or more (by value) of the interests in such partnership are owned, directly or indirectly, by or for such partner.

(4) Certain income qualifying under regulated investment company or real estate trust provisions

The term "qualifying income" also includes any income which would qualify under section 851(b)(2)(A) or 856(c)(2).

(5) Special rule for determining gross income from certain real property sales

In the case of the sale or other disposition of real property described in section 1221(a)(1), gross income shall not be reduced by inventory costs.

(e) Inadvertent terminations

If—

(1) a partnership fails to meet the gross income requirements of subsection (c)(2),

(2) the Secretary determines that such failure was inadvertent,

(3) no later than a reasonable time after the discovery of such failure, steps are taken so that such partnership once more meets such gross income requirements, and

(4) such partnership agrees to make such adjustments (including adjustments with respect to the partners) or to pay such amounts as may be required by the Secretary with respect to such period,

then, notwithstanding such failure, such entity shall be treated as continuing to meet such gross income requirements for such period.

(f) Effect of becoming corporation

As of the 1st day that a partnership is treated as a corporation under this section, for purposes of this title, such partnership shall be treated as—

(1) transferring all of its assets (subject to its liabilities) to a newly formed corporation in exchange for the stock of the corporation, and

(2) distributing such stock to its partners in liquidation of their interests in the partnership.

(g) Exception for electing 1987 partnerships

(1) In general

Subsection (a) shall not apply to an electing 1987 partnership.

(2) Electing 1987 partnership

For purposes of this subsection, the term "electing 1987 partnership" means any publicly traded partnership if—

(A) such partnership is an existing partnership (as defined in section 10211(c)(2) of the Revenue Reconciliation Act of 1987),

(B) subsection (a) has not applied (and without regard to subsection (c)(1) would not have applied) to such partnership for all prior taxable years beginning after December 31, 1987, and before January 1, 1998, and

(C) such partnership elects the application of this subsection, and consents to the application of the tax imposed by paragraph (3), for its first taxable year beginning after December 31, 1997.

A partnership which, but for this sentence, would be treated as an electing 1987 partnership shall cease to be so treated (and the election under subparagraph (C) shall cease to be in effect) as of the 1st day after December 31, 1997, on which there has been an addition of a substantial new line of business with respect to such partnership.

(3) Additional tax on electing partnerships

(A) Imposition of tax

There is hereby imposed for each taxable year on the income of each electing 1987 partnership a tax equal to 3.5 percent of such partnership's gross income for the taxable year from the active conduct of trades and businesses by the partnership.

(B) Adjustments in the case of tiered partnerships

For purposes of this paragraph, in the case of a partnership which is a partner in another partnership, the gross income referred to in subparagraph (A) shall include the partnership's distributive share of the gross income of such other partnership from the active conduct of trades and businesses of such other partnership. A similar rule shall apply in the case of lower-tiered partnerships.

(C) Treatment of tax

For purposes of this title, the tax imposed by this paragraph shall be treated as imposed by chapter 1 other than for purposes of determining the amount of any credit allowable under chapter 1 and shall be paid by the partnership. Section 6655 shall be applied to such partnership with respect to such tax in the same manner as if the partnership were a corporation, such tax were imposed by section 11, and references in such section to taxable income were references to the gross income referred to in subparagraph (A).

(4) Election

An election and consent under this subsection shall apply to the taxable year for which made and all subsequent taxable years unless revoked by the partnership. Such revocation may be made without the consent of the Secretary, but, once so revoked, may not be reinstated.

(Added Pub. L. 100–203, title X, §10211(a), Dec. 22, 1987, 101 Stat. 1330–403; amended Pub. L. 100–647, title II, §2004(f)(1), (3)–(5), Nov. 10, 1988, 102 Stat. 3602, 3603; Pub. L. 105–34, title IX, §964(a), Aug. 5, 1997, 111 Stat. 892; Pub. L. 105–206, title VI, §6009(b)(1), July 22, 1998, 112 Stat. 812; Pub. L. 106–170, title V, §532(c)(2)(V)–(Y), Dec. 17, 1999, 113 Stat. 1931; Pub. L. 108–357, title III, §331(e), Oct. 22, 2004, 118 Stat. 1476; Pub. L. 110–343, div. B, title I, §116(a), title II, §208(a), Oct. 3, 2008, 122 Stat. 3831, 3840.)

REFERENCES IN TEXT

Section 10211(c)(2) of the Revenue Reconciliation Act of 1987, referred to in subsec. (g)(2)(A), probably means section 10211(c)(2) of the Revenue Act of 1987, title X of Pub. L. 100–203, which is set out as a note below.

AMENDMENTS

2008—Subsec. (d)(1)(E). Pub. L. 110–343, §208(a), substituted ", industrial source carbon dioxide, or the transportation or storage of any fuel described in subsection (b), (c), (d), or (e) of section 6426, or any alcohol fuel defined in section 6426(b)(4)(A) or any biodiesel fuel as defined in section 40A(d)(1)" for "or industrial source carbon dioxide".

Pub. L. 110–343, §116(a), inserted "or industrial source carbon dioxide" before comma at end.

2004—Subsec. (d)(4). Pub. L. 108–357 substituted "section 851(b)(2)(A)" for "section 851(b)(2)".

1999—Subsecs. (c)(3), (d)(1)(D), (G), (5). Pub. L. 106–170 substituted "section 1221(a)(1)" for "section 1221(1)".

1998—Subsec. (g)(3)(C). Pub. L. 105–206 inserted at end "and shall be paid by the partnership. Section 6655 shall be applied to such partnership with respect to such tax in the same manner as if the partnership were a corporation, such tax were imposed by section 11, and references in such section to taxable income were references to the gross income referred to in subparagraph (A)".

1997—Subsec. (g). Pub. L. 105–34 added subsec. (g).

1988—Subsec. (c)(1). Pub. L. 100–647, §2004(f)(3), inserted at end "For purposes of the preceding sentence, a partnership shall not be treated as being in existence during any period before the 1st taxable year in which such partnership (or a predecessor) was a publicly traded partnership."

Subsec. (d)(1). Pub. L. 100–647, §2004(f)(4), inserted at end "For purposes of subparagraph (E), the term 'mineral or natural resource' means any product of a character with respect to which a deduction for depletion is allowable under section 611; except that such term shall not include any product described in subparagraph (A) or (B) of section 613(b)(7)."

Subsec. (d)(3). Pub. L. 100–647, §2004(f)(5), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "The term 'real property rent' means amounts which would qualify as rent from real property under section 856(d) if such section were applied without regard to paragraph (2)(C) thereof (relating to independent contractor requirements)."

Subsec. (e)(4). Pub. L. 100–647, §2004(f)(1), inserted "or to pay such amounts" before "as may be required".

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title I, §116(b), Oct. 3, 2008, 122 Stat. 3831, provided that: "The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Oct. 3, 2008], in taxable years ending after such date."

Pub. L. 110–343, div. B, title II, §208(b), Oct. 3, 2008, 122 Stat. 3840, provided that: "The amendment

made by this section [amending this section] shall take effect on the date of the enactment of this Act [Oct. 3, 2008], in taxable years ending after such date."

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years beginning after Oct. 22, 2004, see section 331(h) of Pub. L. 108–357, set out as a note under section 469 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–206, title VI, §6009(b)(2), July 22, 1998, 112 Stat. 812, provided that: "The second sentence of section 7704(g)(3)(C) of the 1986 Code (as added by paragraph (1)) shall apply to taxable years beginning after the date of the enactment of this Act [July 22, 1998]."

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title IX, §964(b), Aug. 5, 1997, 111 Stat. 893, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1997."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE

Pub. L. 100–203, title X, §10211(c), Dec. 22, 1987, 101 Stat. 1330–405, as amended by Pub. L. 100–647, title II, §2004(f)(2), Nov. 10, 1988, 102 Stat. 3602, provided that:

"(1) IN GENERAL.—The amendments made by this section [enacting this section] shall apply—

"(A) except as provided in subparagraph (B), to taxable years beginning after December 31, 1987, or

"(B) in the case of an existing partnership, to taxable years beginning after December 31, 1997.

"(2) EXISTING PARTNERSHIP.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'existing partnership' means any partnership if—

"(i) such partnership was a publicly traded partnership on December 17, 1987,

"(ii) a registration statement indicating that such partnership was to be a publicly traded partnership was filed with the Securities and Exchange Commission with respect to such partnership on or before such date, or

"(iii) with respect to such partnership, an application was filed with a State regulatory commission on or before such date seeking permission to restructure a portion of a corporation as a publicly traded partnership.

"(B) SPECIAL RULE WHERE SUBSTANTIAL NEW LINE OF BUSINESS ADDED AFTER DECEMBER 17, 1987.—A partnership which, but for this subparagraph, would be treated as an existing partnership shall cease to be treated as an existing partnership as of the 1st day after December 17, 1987, on which there has been an addition of a substantial new line of business with respect to such partnership.

"(C) COORDINATION WITH PASSIVE-TYPE INCOME REQUIREMENTS.—In the case of an existing partnership, paragraph (1) of section 7704(c) of the Internal Revenue Code of 1986 (as added by this section) shall be applied by substituting for 'December 31, 1987' the earlier of—

"(i) December 31, 1997, or

"(ii) the day (if any) as of which such partnership ceases to be treated as an existing partnership by reason of subparagraph (B)."

CHAPTER 80—GENERAL RULES

Subchapter		Sec.[1]
A.	**Application of internal revenue laws**	**7801**
B.	**Effective date and related provisions**	**7851**

[1] *Section numbers editorially supplied.*

Subchapter A—Application of Internal Revenue Laws

Sec.
7801. Authority of Department of the Treasury.
7802. Internal Revenue Service Oversight Board.
7803. Commissioner of Internal Revenue; other officials.
7804. Other personnel.
7805. Rules and regulations.
7806. Construction of title.
7807. Rules in effect upon enactment of this title.
7808. Depositaries for collections.
7809. Deposit of collections.
7810. Revolving fund for redemption of real property.
7811. Taxpayer Assistance Orders.

AMENDMENTS

1998—Pub. L. 105–206, title I, §§1101(c)(2), 1102(e)(1), 1104(b)(2), July 22, 1998, 112 Stat. 697, 704, 710, added items 7802 to 7804 and struck out former items 7802 "Commissioner of Internal Revenue; Assistant Commissioners; Taxpayer Advocate", 7803 "Other personnel", and 7804 "Effect of reorganization plans".

1996—Pub. L. 104–168, title I, §101(b)(3), July 30, 1996, 110 Stat. 1456, added item 7802 and struck out former item 7802 "Commissioner of Internal Revenue; Assistant Commissioner (Employee Plans and Exempt Organizations)".

1988—Pub. L. 100–647, title VI, §6230(b), Nov. 10, 1988, 102 Stat. 3734, added item 7811.

1983—Pub. L. 97–473, title II, §202(c), Jan. 14, 1983, 96 Stat. 2610, added item for subchapter C.

1974—Pub. L. 93–406, title II, §1051(c), Sept. 2, 1974, 88 Stat. 951, substituted "Commissioner of Internal Revenue; Assistant Commissioner (Employee Plans and Exempt Organizations)" for "Commissioner of Internal Revenue" in item 7802.

1966—Pub. L. 89–719, title I, §112(c), Nov. 2, 1966, 80 Stat. 1146, added item 7810.

§7801. Authority of Department of the Treasury

(a) Powers and duties of Secretary

(1) In general

Except as otherwise expressly provided by law, the administration and enforcement of this title shall be performed by or under the supervision of the Secretary of the Treasury.

(2) Administration and enforcement of certain provisions by Attorney General

(A) In general

The administration and enforcement of the following provisions of this title shall be performed by or under the supervision of the Attorney General; and the term "Secretary" or "Secretary of the Treasury" shall, when applied to those provisions, mean the Attorney General; and the term "internal revenue officer" shall, when applied to those provisions, mean any officer of the Bureau of Alcohol, Tobacco, Firearms, and Explosives so designated by the Attorney General:

(i) Chapter 53.

(ii) Chapters 61 through 80, to the extent such chapters relate to the enforcement and administration of the provisions referred to in clause (i).

(B) Use of existing rulings and interpretations

Nothing in this Act [1] alters or repeals the rulings and interpretations of the Bureau of Alcohol, Tobacco, and Firearms in effect on the effective date of the Homeland Security Act of 2002, which concern the provisions of this title referred to in subparagraph (A). The Attorney General shall consult with the Secretary to achieve uniformity and consistency in administering provisions under chapter 53 of title 26, United States Code.

[(b) Repealed. Pub. L. 97–258, §5(b), Sept. 13, 1982, 96 Stat. 1068, 1078]

(c) Functions of Department of Justice unaffected

Nothing in this section or section 301(f) of title 31 shall be considered to affect the duties, powers, or functions imposed upon, or vested in, the Department of Justice, or any officer thereof, by law existing on May 10, 1934.

(Aug. 16, 1954, ch. 736, 68A Stat. 915; Pub. L. 86–368, §1, Sept. 22, 1959, 73 Stat. 647; Pub. L. 88–426, title III, §305(39), Aug. 14, 1964, 78 Stat. 427; Pub. L. 94–455, title XIX, §1906(b)(13)(B), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–258, §§2(f)(1), 5(b), Sept. 13, 1982, 96 Stat. 1059, 1068, 1078; Pub. L. 107–296, title XI, §1112(k), Nov. 25, 2002, 116 Stat. 2277.)

REFERENCES IN TEXT

The effective date of the Homeland Security Act of 2002, referred to in subsec. (a)(2)(B), is 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–296 designated existing provisions as par. (1), inserted par. heading, and added par. (2).

1982—Subsec. (b). Pub. L. 97–258, §5(b), struck out subsec. (b) which related to Office of General Counsel of Department of the Treasury. See section 301 of Title 31, Money and Finance.

Subsec. (c). Pub. L. 97–258, §2(f)(1), inserted "or section 301(f) of title 31" after "Nothing in this section".

1976—Subsec. (b). Pub. L. 94–455 substituted "Secretary of the Treasury" for "Secretary" in four places, in par. (1) after "prescribed by the", in par. (2) after "prescribed by the" and in third sentence thereof "The", and in par. (3) before "may appoint and fix".

1964—Subsec. (b)(2). Pub. L. 88–426 struck out provisions which prescribed compensation of Assistant General Counsel.

1959—Pub. L. 86–368 provided for Presidential appointment and for compensation of Assistant General Counsel who shall be Chief Counsel for Internal Revenue Service.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–426 effective on first day of first pay period which begins on or after July 1, 1964, except to the extent provided in section 501(c) of Pub. L. 88–426, see section 501 of Pub. L. 88–426, title V, Aug. 14, 1964, 78 Stat. 435.

EFFECTIVE DATE OF 1959 AMENDMENT

Pub. L. 86–368, §3, Sept. 22, 1959, 73 Stat. 648, provided that:

"(a) Except as otherwise provided in this Act, the amendments made by this Act [amending this section] shall take effect on the date of the enactment of this Act [Sept. 22, 1959].

"(b) The amendments made by section 2 of this Act [amending sections 7452 and 8023 of this title] shall take effect when the Chief Counsel for the Internal Revenue Service first appointed pursuant to the amendment made by section 1 of this Act [amending this section] qualifies and takes office."

REPEALS

Pub. L. 86–368, §1, Sept. 22, 1959, 73 Stat. 648; Pub. L. 88–426, title III, §305(39), Aug. 14, 1964, 78 Stat. 427; and Pub. L. 94–455, title XIX, §1906(b)(13)(B), Oct. 4, 1976, 90 Stat. 1834, cited as credits to this section, were repealed by Pub. L. 97–258, §5(b), Sept. 13, 1982, 96 Stat. 1079, 1080, 1082.

SAVINGS PROVISION

Pub. L. 86–368, §4, Sept. 22, 1959, 73 Stat. 649, provided that the position of Assistant General Counsel serving as Chief Counsel of the Internal Revenue Service was abolished as of the time that the Chief Counsel for the Internal Revenue Service appointed pursuant to the amendment to this section by Pub. L. 86–368, took office, but that Pub. L. 86–368 was not to be construed to otherwise abolish, terminate, or change any office or position, or employment of any officer or employee existing immediately preceding Sept. 22, 1959, and that any delegation of authority pursuant to Reorg. Plan No. 26 of 1950 or Reorg. Plan No. 2 of 1952 including any redelegation of authority, in effect immediately preceding Sept. 22, 1959, was to remain in effect unless distinctly inconsistent or manifestly incompatible with the amendment made to this section by Pub. L. 86–368.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Bureau of Alcohol, Tobacco and Firearms, including the related functions of the Secretary of the Treasury, to the Department of Justice, see section 531(c) of Title 6, Domestic Security, and section 599A(c)(1) of Title 28, Judiciary and Judicial Procedure.

ORDER OF SUCCESSION

For order of succession during any period when both Secretary and Deputy Secretary of the Treasury are unable to perform functions and duties of office of Secretary, see Ex. Ord. No. 13246, Dec. 18, 2001, 66 F.R. 66270, listed in a table under section 3345 of Title 5, Government Organization and Employees.

IRS REPORTS ON INFORMATION TECHNOLOGY INVESTMENTS

Pub. L. 112–74, div. C, title I, Dec. 23, 2011, 125 Stat. 888, provided in part: "That not later than 14 days after the end of each quarter of each fiscal year, the Internal Revenue Service shall submit a report to the House and Senate Committees on Appropriations and the Comptroller General of the United States detailing the cost and schedule performance for its major information technology investments, including the purpose and life-cycle stages of the investments; the reasons for any cost and schedule variances; the risks of such investments and strategies the Internal Revenue Service is using to mitigate such risks; and the expected developmental milestones to be achieved and costs to be incurred in the next quarter".

Similar provisions were contained in the following appropriation act:

Pub. L. 113–76, div. E, title I, Jan. 17, 2014, 128 Stat. 189.

Pub. L. 112–74, div. C, title I, Dec. 23, 2011, 125 Stat. 889, provided in part: "That not later than 14 days after the end of each quarter of each fiscal year, the Internal Revenue Service shall submit a report to the House and Senate Committees on Appropriations and the Comptroller General of the United States detailing the cost and schedule performance for CADE2 and Modernized e-File information technology investments, including the purposes and life-cycle stages of the investments; the reasons for any cost and schedule variances; the risks of such investments and the strategies the Internal Revenue Service is using to mitigate such risks; and the expected developmental milestones to be achieved and costs to be incurred in the next quarter."

Similar provisions were contained in the following appropriation act:

Pub. L. 113–76, div. E, title I, Jan. 17, 2014, 128 Stat. 189.

ELIMINATION OF USER FEE FOR REQUESTS TO IRS REGARDING PENSION PLANS

Pub. L. 107–16, title VI, §620, June 7, 2001, 115 Stat. 110, related to elimination of user fees for certain requests to the Internal Revenue Service regarding pension plans, prior to repeal by Pub. L. 108–89, title II, §202(b)(3), Oct. 1, 2003, 117 Stat. 1133.

ITEMIZED INCOME TAX RECEIPT

Pub. L. 106–58, title VI, §650, Sept. 29, 1999, 113 Stat. 479, as amended by Pub. L. 110–234, title IV, §4002(b)(1)(D), (2)(P), May 22, 2008, 110 Stat. 1096, 1097; Pub. L. 110–246, §4(a), title IV, §4002(b)(1)(D), (2)(P), June 18, 2008, 122 Stat. 1664, 1857, 1858, provided that:

"(a) IN GENERAL.—Not later than April 15, 2000, the Secretary of the Treasury shall establish an interactive program on an Internet website where any taxpayer may generate an itemized receipt showing a proportionate allocation (in money terms) of the taxpayer's total tax payments among the major expenditure categories.

"(b) INFORMATION NECESSARY TO GENERATE RECEIPT.—For purposes of generating an itemized receipt under subsection (a), the interactive program—

"(1) shall only require the input of the taxpayer's total tax payments; and

"(2) shall not require any identifying information relating to the taxpayer.

"(c) TOTAL TAX PAYMENTS.—For purposes of this section, total tax payments of an individual for any taxable year are—

"(1) the tax imposed by subtitle A of the Internal Revenue Code of 1986 for such taxable year (as shown on his return); and

"(2) the tax imposed by section 3101 of such Code on wages received during such taxable year.

"(d) CONTENT OF TAX RECEIPT.—

"(1) MAJOR EXPENDITURE CATEGORIES.—For purposes of subsection (a), the major expenditure categories are:

"(A) National defense.

"(B) International affairs.

"(C) Medicaid.

"(D) Medicare.

"(E) Means-tested entitlements.

"(F) Domestic discretionary.

"(G) Social Security.

"(H) Interest payments.

"(I) All other.

"(2) Other items on receipt.—

"(A) IN GENERAL.—In addition, the tax receipt shall include selected examples of more specific expenditure items, including the items listed in subparagraph (B), either at the budget function, subfunction, or program, project, or activity levels, along with any other information deemed appropriate by the Secretary of the Treasury and the Director of the Office of Management and Budget to enhance taxpayer understanding of the Federal budget.

"(B) LISTED ITEMS.—The expenditure items listed in this subparagraph are as follows:

"(i) Public schools funding programs.

"(ii) Student loans and college aid.

"(iii) Low-income housing programs.

"(iv) supplemental [sic] nutrition assistance program benefits and welfare programs.

"(v) Law enforcement, including the Federal Bureau of Investigation, law enforcement grants to the States, and other Federal law enforcement personnel.

"(vi) Infrastructure, including roads, bridges, and mass transit.

"(vii) Farm subsidies.

"(viii) Congressional Member and staff salaries.

"(ix) Health research programs.

"(x) Aid to the disabled.

"(xi) Veterans health care and pension programs.

"(xii) Space programs.

"(xiii) Environmental cleanup programs.

"(xiv) United States embassies.

"(xv) Military salaries.

"(xvi) Foreign aid.

"(xvii) Contributions to the North Atlantic Treaty Organization.

"(xviii) Amtrak.

"(xix) United States Postal Service.

"(e) COST.—No charge shall be imposed to cover any cost associated with the production or distribution of the tax receipt.

"(f) REGULATIONS.—The Secretary of the Treasury may prescribe such regulations as may be necessary to carry out this section."

[Pub. L. 110–234, §4002(b)(1)(D), (2)(P), and Pub. L. 110–246, §4002(b)(1)(D), (2)(P), which directed identical amendment of Pub. L. 106–58, §650, set out above, by substituting "supplemental nutrition assistance program benefits" for "food stamp" wherever appearing, was executed by making the substitution for "Food stamp" in subsec. (d)(2)(B)(iv), to reflect the probable intent of Congress. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246.]

REORGANIZATION OF INTERNAL REVENUE SERVICE

Pub. L. 105–206, title I, §1001, July 22, 1998, 112 Stat. 689, provided that:

"(a) IN GENERAL.—The Commissioner of Internal Revenue shall develop and implement a plan to reorganize the Internal Revenue Service. The plan shall—

"(1) supersede any organization or reorganization of the Internal Revenue Service based on any statute or reorganization plan applicable on the effective date of this section;

"(2) eliminate or substantially modify the existing organization of the Internal Revenue Service which is based on a national, regional, and district structure;

"(3) establish organizational units serving particular groups of taxpayers with similar needs; and

"(4) ensure an independent appeals function within the Internal Revenue Service, including the prohibition in the plan of ex parte communications between appeals officers and other Internal Revenue Service employees to the extent that such communications appear to compromise the independence of the appeals officers.

"(b) SAVINGS PROVISIONS.—

"(1) PRESERVATION OF SPECIFIC TAX RIGHTS AND REMEDIES.—Nothing in the plan developed and implemented under subsection (a) shall be considered to impair any right or remedy, including trial by jury, to recover any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority, or any sum alleged to have been excessive or in any manner wrongfully collected under the internal revenue laws. For the purpose of any action to recover any such tax, penalty, or sum, all statutes, rules, and regulations referring to the collector of internal revenue, the principal officer for the internal revenue district, or the Secretary, shall be deemed to refer to the officer whose act or acts referred to in the preceding sentence gave rise to such action. The venue of any such action shall be the same as under existing law.

"(2) CONTINUING EFFECT OF LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, agreements, grants, contracts, certificates, licenses, registrations, privileges, and other administrative actions—

"(A) which have been issued, made, granted, or allowed to become effective by the President, any Federal agency or official thereof, or by a court of competent jurisdiction, in the performance of any function transferred or affected by the reorganization of the Internal Revenue Service or any other administrative unit of the Department of the Treasury under this section; and

"(B) which are in effect at the time this section takes effect, or were final before the effective date of this section and are to become effective on or after the effective date of this section,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Secretary of the Treasury, the Commissioner of Internal Revenue, or other authorized official, a court of competent jurisdiction, or by operation of law.

"(3) PROCEEDINGS NOT AFFECTED.—The provisions of this section shall not affect any proceedings, including notices of proposed rulemaking, or any application for any license, permit, certificate, or financial assistance pending before the Department of the Treasury (or any administrative unit of the Department, including the Internal Revenue Service) at the time this section takes effect, with respect to functions transferred or affected by the reorganization under this section but such proceedings and applications shall continue. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this section had not been enacted, and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this paragraph shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this section had not been enacted.

"(4) SUITS NOT AFFECTED.—The provisions of this section shall not affect suits commenced before the effective date of this section, and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this section had not been enacted.

"(5) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the Department of the Treasury (or any administrative unit of the Department, including the Internal Revenue Service), or by or against any individual in the official capacity of such individual as an officer of the Department of the Treasury, shall abate by reason of the enactment of this section.

"(6) ADMINISTRATIVE ACTIONS RELATING TO PROMULGATION OF REGULATIONS .—Any administrative action relating to the preparation or promulgation of a regulation by the Department of the Treasury (or any administrative unit of the Department, including the Internal Revenue Service) relating to a function transferred or affected by the reorganization under this section may be continued by the Department of the Treasury through any appropriate administrative unit of the Department, including the Internal Revenue Service with the same effect as if this section had not been enacted.

"(c) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this Act [July 22, 1998]."

INTERNAL REVENUE SERVICE MISSION TO FOCUS ON TAXPAYERS' NEEDS

Pub. L. 105–206, title I, §1002, July 22, 1998, 112 Stat. 690, provided that: "The Internal Revenue Service shall review and restate its mission to place a greater emphasis on serving the public and meeting taxpayers' needs."

EXPLANATION OF JOINT AND SEVERAL LIABILITY

Pub. L. 105–206, title III, §3501, July 22, 1998, 112 Stat. 770, provided that:

"(a) IN GENERAL.—The Secretary of the Treasury or the Secretary's delegate shall, as soon as practicable, but not later than 180 days after the date of the enactment of this Act [July 22, 1998], establish procedures to clearly alert married taxpayers of their joint and several liabilities on all appropriate publications and instructions.

"(b) RIGHT TO LIMIT LIABILITY.—The procedures under subsection (a) shall include requirements that notice of an individual's right to relief under section 6015 of the Internal Revenue Code of 1986 shall be included in the statement required by section 6227 of the Omnibus Taxpayer Bill of Rights [Pub. L. 100–647, set out below] (Internal Revenue Service Publication No. 1) and in any collection-related notices."

EXPLANATION OF TAXPAYERS' RIGHTS IN INTERVIEWS WITH INTERNAL REVENUE SERVICE

Pub. L. 105–206, title III, §3502, July 22, 1998, 112 Stat. 770, provided that: "The Secretary of the Treasury or the Secretary's delegate shall, as soon as practicable, but not later than 180 days after the date of the enactment of this Act [July 22, 1998], revise the statement required by section 6227 of the Omnibus Taxpayer Bill of Rights [Pub. L. 100–647, set out below] (Internal Revenue Service Publication No. 1) to more clearly inform taxpayers of their rights—

"(1) to be represented at interviews with the Internal Revenue Service by any person authorized to practice before the Internal Revenue Service; and

"(2) to suspend an interview pursuant to section 7521(b)(2) of the Internal Revenue Code of 1986."

DISCLOSURE OF CRITERIA FOR EXAMINATION SELECTION

Pub. L. 105–206, title III, §3503, July 22, 1998, 112 Stat. 771, provided that:

"(a) IN GENERAL.—The Secretary of the Treasury or the Secretary's delegate shall, as soon as practicable, but not later than 180 days after the date of the enactment of this Act [July 22, 1998], incorporate into the statement required by section 6227 of the Omnibus Taxpayer Bill of Rights [Pub. L. 100–647, set out below] (Internal Revenue Service Publication No. 1) a statement which sets forth in simple and nontechnical terms the criteria and procedures for selecting taxpayers for examination. Such statement shall not include any information the disclosure of which would be detrimental to law enforcement, but shall specify the general procedures used by the Internal Revenue Service, including whether taxpayers are selected for examination on the basis of information available in the media or on the basis of information provided to the Internal Revenue Service by informants.

"(b) TRANSMISSION TO COMMITTEES OF CONGRESS.—The Secretary shall transmit drafts of the statement required under subsection (a) (or proposed revisions to any such statement) to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the same day."

DISCLOSURE TO TAXPAYERS

Pub. L. 105–206, title III, §3508, July 22, 1998, 112 Stat. 772, provided that: "The Secretary of the Treasury or the Secretary's delegate shall ensure that any instructions booklet accompanying an individual Federal income tax return form (including forms 1040, 1040A, 1040EZ, and any similar or successor forms) shall include, in clear language, in conspicuous print, and in a conspicuous place, a concise description of the conditions under which return information may be disclosed to any party outside the Internal Revenue Service, including disclosure to any State or agency, body, or commission (or legal representative) thereof."

INTERNAL REVENUE SERVICE EMPLOYEE CONTACTS

Pub. L. 105–206, title III, §3705, July 22, 1998, 112 Stat. 777, provided that:

"(a) NOTICE.—The Secretary of the Treasury or the Secretary's delegate shall provide that—

"(1) any manually generated correspondence received by a taxpayer from the Internal Revenue Service shall include in a prominent manner the name, telephone number, and unique identifying number of an Internal Revenue Service employee the taxpayer may contact with respect to the correspondence;

"(2) any other correspondence or notice received by a taxpayer from the Internal Revenue Service shall include in a prominent manner a telephone number that the taxpayer may contact; and

"(3) an Internal Revenue Service employee shall give a taxpayer during a telephone or personal contact the employee's name and unique identifying number.

"(b) SINGLE CONTACT.—The Secretary of the Treasury or the Secretary's delegate shall develop a procedure under which, to the extent practicable and if advantageous to the taxpayer, one Internal Revenue Service employee shall be assigned to handle a taxpayer's matter until it is resolved.

"(c) TELEPHONE HELPLINE IN SPANISH.—The Secretary of the Treasury or the Secretary's delegate shall provide, in appropriate circumstances, that taxpayer questions on telephone helplines of the Internal Revenue Service are answered in Spanish.

"(d) OTHER TELEPHONE HELPLINE OPTIONS.—The Secretary of the Treasury or the Secretary's delegate shall provide, in appropriate circumstances, on telephone helplines of the Internal Revenue Service an option for any taxpayer to talk to an Internal Revenue Service employee during normal business hours. The person shall direct phone questions of the taxpayer to other Internal Revenue Service personnel who can provide assistance to the taxpayer.

"(e) EFFECTIVE DATES.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, this section shall take effect 60 days after the date of the enactment of this Act [July 22, 1998].

"(2) SUBSECTION (c).—Subsection (c) shall take effect on January 1, 2000.

"(3) SUBSECTION (d).—Subsection (d) shall take effect on January 1, 2000.

"(4) UNIQUE IDENTIFYING NUMBER.—Any requirement under this section to provide a unique identifying number shall take effect 6 months after the date of the enactment of this Act [July 22, 1998]."

LISTING OF LOCAL INTERNAL REVENUE SERVICE TELEPHONE NUMBERS AND ADDRESSES

Pub. L. 105–206, title III, §3709, July 22, 1998, 112 Stat. 779, provided that: "The Secretary of the Treasury or the Secretary's delegate shall, as soon as practicable, provide that the local telephone numbers and addresses of Internal Revenue Service offices located in any particular area be listed in a telephone book for that area."

STUDY OF NONCOMPLIANCE WITH INTERNAL REVENUE LAWS BY TAXPAYERS

Pub. L. 105–206, title III, §3803, July 22, 1998, 112 Stat. 783, provided that: "Not later than 1 year after the date of the enactment of this Act [July 22, 1998], the Secretary of the Treasury and the Commissioner of Internal Revenue shall jointly conduct a study, in consultation with the Joint Committee on Taxation, of the noncompliance with internal revenue laws by taxpayers (including willful noncompliance and noncompliance due to tax law complexity or other factors) and report the findings of such study to Congress."

TAX LAW COMPLEXITY ANALYSIS; COMMISSIONER STUDY

Pub. L. 105–206, title IV, §4022(a), July 22, 1998, 112 Stat. 785, provided that:

"(1) IN GENERAL.—The Commissioner of Internal Revenue shall conduct each year after 1998 an analysis of the sources of complexity in administration of the Federal tax laws. Such analysis may include an analysis of—

"(A) questions frequently asked by taxpayers with respect to return filing;

"(B) common errors made by taxpayers in filling out their returns;

"(C) areas of law which frequently result in disagreements between taxpayers and the Internal Revenue Service;

"(D) major areas of law in which there is no (or incomplete) published guidance or in which the law is uncertain;

"(E) areas in which revenue officers make frequent errors interpreting or applying the law;

"(F) the impact of recent legislation on complexity; and

"(G) forms supplied by the Internal Revenue Service, including the time it takes for taxpayers to complete and review forms, the number of taxpayers who use each form, and how recent legislation has affected the time it takes to complete and review forms.

"(2) REPORT.—The Commissioner shall not later than March 1 of each year report the results of the analysis conducted under paragraph (1) for the preceding year to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate. The report shall include any recommendations—

"(A) for reducing the complexity of the administration of Federal tax laws; and

"(B) for repeal or modification of any provision the Commissioner believes adds undue and unnecessary complexity to the administration of the Federal tax laws."

NATIONAL COMMISSION ON RESTRUCTURING INTERNAL REVENUE SERVICE

Pub. L. 104–52, title VI, §637, Nov. 19, 1995, 109 Stat. 509, as amended by Pub. L. 104–134, title II, §2904(a), Apr. 26, 1996, 110 Stat. 1321–333; Pub. L. 104–208, div. A, title I, §101(f) [title VI, §643(a)–(e)], Sept. 30, 1996, 110 Stat. 3009–314, 3009–365, provided that:

"(a) FINDINGS.—The Congress finds the following:

"(1) While the budget for the Internal Revenue Service (hereafter referred to as the 'IRS') has risen from $2.5 billion in fiscal year 1979 to $7.3 billion in fiscal year 1996, tax returns processing has not become significantly faster, tax collection rates have not significantly increased, and the accuracy and timeliness of taxpayer assistance has not significantly improved.

"(2) To date, the Tax Systems Modernization (TSM) program has cost the taxpayers $2.5 billion, with an estimated cost of $8 billion. Despite this investment, modernization efforts were recently described by the GAO as 'chaotic' and 'ad hoc'.

"(3) While the IRS maintains that TSM will increase efficiency and thus revenues, Congress has had to appropriate additional funds in recent years for compliance initiatives in order to increase tax revenues.

"(4) Because TSM has not been implemented, the IRS continues to rely on paper returns, processing a total of 14 billion pieces of paper every tax season. This results in an extremely inefficient system.

"(5) This lack of efficiency reduces the level of customer service and impedes the ability of the IRS to collect revenue.

"(6) The present status of the IRS shows the need for the establishment of a Commission which will examine the organization of IRS and recommend actions to expedite the implementation of TSM and improve service to taxpayers.

"(b) COMPOSITION OF THE COMMISSION.—

"(1) ESTABLISHMENT.—To carry out the purposes of this section, there is established a National Commission on Restructuring the Internal Revenue Service (in this section referred to as the 'Commission').

"(2) COMPOSITION.—The Commission shall be composed of seventeen members, as follows:

"(A) Five members appointed by the President, two from the executive branch of the Government, two from private life, and one from an organization that represents a substantial number of Internal Revenue Service employees.

"(B) Four members appointed by the Majority Leader of the Senate, one from Members of the Senate and three from private life.

"(C) Two members appointed by the Minority Leader of the Senate, one from Members of the Senate and one from private life.

"(D) Four members appointed by the Speaker of the House of Representatives, one from Members of the House of Representatives and three from private life.

"(E) Two members appointed by the Minority Leader of the House of Representatives, one from Members of the House of Representatives and one from private life.

"The Commissioner of the Internal Revenue Service shall be an ex officio member of the Commission.

"(3) CO-CHAIRS.—The Commission shall elect Co-Chairs from among its members.

"(4) MEETING; QUORUM; VACANCIES.—After its initial meeting, the Commission shall meet upon the call of the Co-Chairs or a majority of its members. Nine members of the Commission shall constitute a quorum. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

"(5) APPOINTMENT; INITIAL MEETING.—

"(A) APPOINTMENT.—It is the sense of the Congress that members of the Committee [Commission] should be appointed not more than 60 days after the date of the enactment of this section [Nov. 19, 1995].

"(B) INITIAL MEETING.—If, after 60 days from the date of the enactment of this section, seven or more members of the Commission have been appointed, members who have been appointed may meet and select Co-Chairs who thereafter shall have the authority to begin the operations of the Commission, including the hiring of staff.

"(c) FUNCTIONS OF COMMISSION.—

"(1) IN GENERAL.—The functions of the Commission shall be—

"(A) to conduct, for a period of not to exceed 15 months from the date of its first meeting, the review described in paragraph (2), and

"(B) to submit to the Congress a final report of the results of the review, including recommendations for restructuring the IRS.

"(2) REVIEW.—The Commission shall review—

"(A) the present practices of the IRS, especially with respect to—

"(i) its organizational structure;
"(ii) its paper processing and return processing activities;
"(iii) its infrastructure; and
"(iv) the collection process;
"(B) requirements for improvement in the following areas:
"(i) making returns processing 'paperless';
"(ii) modernizing IRS operations;
"(iii) improving the collections process without major personnel increases or increased funding;
"(iv) improving taxpayer accounts management;
"(v) improving the accuracy of information requested by taxpayers in order to file their returns; and
"(vi) changing the culture of the IRS to make the organization more efficient, productive, and customer-oriented;
"(C) whether the IRS could be replaced with a quasi-governmental agency with tangible incentives and internally managing its programs and activities and for modernizing its activities, and
"(D) whether the IRS could perform other collection, information, and financial service functions of the Federal Government.

"(d) POWERS OF THE COMMISSION.—

"(1) IN GENERAL.—(A) The Commission or, on the authorization of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out the provisions of this section—
"(i) hold such hearings and sit and act at such times and places, take such testimony, receive such evidence, administer such oaths, and
"(ii) require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents, as the Commission or such designated subcommittee or designated member may deem advisable.

"(B) Subpoenas issued under subparagraph (A)(ii) may be issued under the signature of the Co-Chairs of the Commission, the chairman of any designated subcommittee, or any designated member, and may be served by any person designated by such Co-Chairs, subcommittee chairman, or member. The provisions of sections 102 through 104 of the Revised Statutes of the United States (2 U.S.C. 192–194) shall apply in the case of any failure of any witness to comply with any subpoena or to testify when summoned under authority of this section.

"(2) CONTRACTING.—The Commission may, to such extent and in such amounts as are provided in appropriation Acts, enter into contracts to enable the Commission to discharge its duties under this section.

"(3) INFORMATION FROM FEDERAL AGENCIES.—The Commission is authorized to secure directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality of the Government, information, suggestions, estimates, and statistics for the purposes of this section. Each such department, bureau, agency, board, commission, office, establishment, or instrumentality shall, to the extent authorized by law, furnish such information, suggestions, estimates, and statistics directly to the Commission, upon request made by the Co-Chairs.

"(4) ASSISTANCE FROM FEDERAL AGENCIES.—(A) The Secretary of the Treasury is authorized on a nonreimbursable basis to provide the Commission with administrative services, funds, facilities, staff, and other support services for the performance of the Commission's functions.

"(B) The Administrator of General Services shall provide to the Commission on a nonreimbursable basis such administrative support services as the Commission may request.

"(C) In addition to the assistance set forth in subparagraphs (A) and (B), departments and agencies of the United States are authorized to provide to the Commission such services, funds, facilities, staff, and other support services as they may deem advisable and as may be authorized by law.

"(5) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as departments and agencies of the United States.

"(6) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property in carrying out its duties under this section.

"(e) STAFF OF THE COMMISSION.—

"(1) IN GENERAL.—The Co-Chairs, in accordance with rules agreed upon by the Commission, may appoint and fix the compensation of a staff director and such other personnel as may be necessary to enable the Commission to carry out its functions, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except

that no rate of pay fixed under this subsection may exceed the equivalent of that payable to a person occupying a position at level V of the Executive Schedule under section 5316 of title 5, United States Code. Any Federal Government employee may be detailed to the Commission without reimbursement from the Commission, and such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption.

"(2) CONSULTANT SERVICES.—The Commission is authorized to procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, but at rates not to exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code.

"(f) COMPENSATION AND TRAVEL EXPENSES.—

"(1) COMPENSATION.—(A) Except as provided in subparagraph (B), each member of the Commission may be compensated at not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Commission.

"(B) Members of the Commission who are officers or employees of the United States or Members of Congress shall receive no additional pay on account of their service on the Commission.

"(2) TRAVEL EXPENSES.—While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

"(g) FINAL REPORT OF COMMISSION; TERMINATION.—

"(1) FINAL REPORT.—Not later than 15 months after the date of the first meeting of the Commission, the Commission shall submit to the Congress its final report, as described in subsection (c)(2).

"(2) TERMINATION.—(A) The Commission, and all the authorities of this section, shall terminate on the date which is 60 days after the date on which a final report is required to be transmitted under paragraph (1).

"(B) The Commission may use the 60-day period referred to in subparagraph (A) for the purpose of concluding its activities, including providing testimony to committees of Congress concerning its final report and disseminating that report.

"(h) AUTHORIZATION OF APPROPRIATIONS.—Such sums as may be necessary are authorized to be appropriated for the activities of the Commission.

"(i) APPROPRIATIONS.—Notwithstanding any other provision of this Act, $1,000,000 shall be available from fiscal year 1996 funds appropriated to the Internal Revenue Service, 'Information systems' account, for the activities of the Commission, to remain available until expended."

[Pub. L. 104–208, div. A, title I, §101(f) [title VI, §643(f)], Sept. 30, 1996, 110 Stat. 3009–314, 3009–366, provided that: "The amendments made by this section [amending section 637 of Pub. L. 104–52, set out above] shall take effect as if included in the provisions of the Treasury, Postal Service, and General Government Appropriations Act, 1996 [Pub. L. 104–52]."]

[Pub. L. 104–134, title II, §2904(b), Apr. 26, 1996, 110 Stat. 1321–333, provided that: "The amendments made by this section [amending section 637 of Pub. L. 104–52, set out above] shall take effect as if included in the provisions of the Treasury, Postal Service, and General Government Appropriations Act, 1996 [Pub. L. 104–52]."]

FEES FOR SERVICES RENDERED

Pub. L. 103–329, title I, §3, Sept. 30, 1994, 108 Stat. 2388, as amended by Pub. L. 104–19, title I, July 27, 1995, 109 Stat. 227; Pub. L. 109–115, div. A, title II, §209, Nov. 30, 2005, 119 Stat. 2439, provided that: "The Secretary of the Treasury may establish new fees or raise existing fees for services provided by the Internal Revenue Service to increase receipts, where such fees are authorized by another law. The Secretary of the Treasury may spend the new or increased fee receipts to supplement appropriations made available to the Internal Revenue Service appropriations accounts in fiscal years 1995 and thereafter: *Provided*, That the Secretary shall base such fees on the costs of providing specified services to persons paying such fees: *Provided further*, That the Secretary shall provide quarterly reports to the Congress on the collection of such fees and how they are being expended by the Service."

DISCLOSURE OF RIGHTS OF TAXPAYERS

Pub. L. 100–647, title VI, §6227, Nov. 10, 1988, 102 Stat. 3731, provided that:

"(a) IN GENERAL.—The Secretary of the Treasury shall, as soon as practicable, but not later than 180 days after the date of the enactment of this Act [Nov. 10, 1988], prepare a statement which sets forth in simple

and nontechnical terms—

"(1) the rights of a taxpayer and the obligations of the Internal Revenue Service (hereinafter in this section referred to as the 'Service') during an audit;

"(2) the procedures by which a taxpayer may appeal any adverse decision of the Service (including administrative and judicial appeals);

"(3) the procedures for prosecuting refund claims and filing of taxpayer complaints; and

"(4) the procedures which the Service may use in enforcing the internal revenue laws (including assessment, jeopardy assessment, levy and distraint, and enforcement of liens).

"(b) TRANSMISSION TO COMMITTEES OF CONGRESS.—The Secretary of the Treasury shall transmit drafts of the statement required under subsection (a) (or proposed revisions of any such statement) to the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, and the Joint Committee on Taxation on the same day.

"(c) DISTRIBUTION.—The statement prepared in accordance with subsections (a) and (b) shall be distributed by the Secretary of the Treasury to all taxpayers the Secretary contacts with respect to the determination or collection of any tax (other than by providing tax forms). The Secretary shall take such actions as the Secretary deems necessary to ensure that such distribution does not result in multiple statements being sent to any one taxpayer."

FEES FOR REQUESTS FOR RULING, DETERMINATION, AND SIMILAR LETTERS

Pub. L. 100–203, title X, §10511, Dec. 22, 1987, 101 Stat. 1330–446, as amended by Pub. L. 101–508, title XI, §11319(a), Nov. 5, 1990, 104 Stat. 1388–460; Pub. L. 103–465, title VII, §743, Dec. 8, 1994, 108 Stat. 5011; Pub. L. 104–117, §2, Mar. 20, 1996, 110 Stat. 828, related to program requiring the payment of user fees for certain requests to the Internal Revenue Service, prior to repeal by Pub. L. 108–89, title II, §202(b)(2), Oct. 1, 2003, 117 Stat. 1133.

STUDY OF TAX INCENTIVES FOR EXPENDITURES REQUIRED BY OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION AND MINING HEALTH AND SAFETY ADMINISTRATION

Pub. L. 95–600, title V, §552, Nov. 6, 1978, 92 Stat. 2891, authorized the Secretary of the Treasury to conduct an investigation into the appropriateness of providing additional tax incentives for expenditures required by the Occupational Safety and Health Act, section 651 et seq. of Title 29, Labor, and the Mining Safety and Health Administration of the Department of Labor and to submit a report on such investigation to Congress before Apr. 1, 1979, together with any legislative recommendations.

STUDY OF TAXATION OF NONRESIDENT ALIEN REAL ESTATE TRANSACTIONS IN THE UNITED STATES

Pub. L. 95–600, title V, §553, Nov. 6, 1978, 92 Stat. 2891, authorized the Secretary of the Treasury to make a study of the appropriate tax treatment to be given to income derived from, or gain realized on, the sale of interests in United States property held by nonresident aliens or foreign corporations and to submit a report on such study to Congress no later than six months from Nov. 6, 1978, together with any recommendations.

STUDY AND INVESTIGATION OF INTERNAL REVENUE CODE PROVISIONS WHICH IMPEDE OR DISCOURAGE RECYCLING OF SOLID WASTE MATERIALS; PRESIDENTIAL AND CONGRESSIONAL REPORT

Pub. L. 94–568, §4, Oct. 20, 1976, 90 Stat. 2698, provided that the Secretary of the Treasury, in cooperation with the Administrator of the Environmental Protection Agency, make a complete study of all provisions of the Internal Revenue Code of 1954 which impeded or discouraged the recycling of solid waste materials and to report to the President and Congress, not later than Apr. 20, 1977, his findings, together with specific legislative proposals designed to increase and encourage the recycling of solid waste materials and detailed revenue cost estimates.

EX. ORD. NO. 13051. INTERNAL REVENUE SERVICE MANAGEMENT BOARD

Ex. Ord. No. 13051, June 24, 1997, 62 F.R. 34609, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including 31 U.S.C. 301 and 26 U.S.C. 7801(a), and in order to establish a permanent oversight board to assist the Secretary of the Treasury ("Secretary") in ensuring effective management of the Internal Revenue Service, it is hereby ordered as follows:

SECTION 1. *Establishment*. (a) There is hereby established within the Department of the Treasury the Internal Revenue Service Management Board ("Board").

(b) The Board shall consist of:

(1) the Deputy Secretary of the Treasury, who shall serve as Chair of the Board;

(2) the Assistant Secretary of the Treasury (Management) and the Chief Financial Officer, who shall serve as Vice Chairs;

(3) the Assistant Secretary of the Treasury (Tax Policy);

(4) the Under Secretary of the Treasury (Enforcement);

(5) the Deputy Assistant Secretary of the Treasury (Departmental Finance and Management);

(6) the Deputy Assistant Secretary of the Treasury (Information Systems)/Chief Information Officer;

(7) the Assistant Secretary of the Treasury (Legislative Affairs and Public Liaison);

(8) the General Counsel for the Department of the Treasury;

(9) the Director, Office of Security, Department of the Treasury;

(10) the Senior Procurement Executive for the Department of the Treasury;

(11) the Commissioner of Internal Revenue;

(12) the Deputy Commissioner of Internal Revenue;

(13) the Associate Commissioner of Internal Revenue for Modernization/Chief Information Officer of the Internal Revenue Service;

(14) the Deputy Director for Management, Office of Management and Budget;

(15) the Administrator for Federal Procurement Policy, Office of Management and Budget;

(16) a representative of the Office of the Vice President designated by the Vice President;

(17) a representative of the Office of Management and Budget designated by the Director of such office;

(18) a representative of the Office of Personnel Management designated by the Director of such office;

(19) representatives of such other Government agencies as may be determined from time to time by the Secretary of the Treasury, designated by the head of such agency; and

(20) such other officers or employees of the Department of the Treasury as may be designated by the Secretary.

(c) A member of the Board described in paragraphs (16) through (20) of subsection (b) may be removed by the official who designated such member.

(d) The Board may seek the views, consistent with 18 U.S.C. 205, of Internal Revenue Service employee representatives on matters considered by the Board under section 3 of this order.

SEC. 2. *Structure*. There shall be an Executive Committee of the full Board, the members of which shall be appointed by the Secretary.

SEC. 3. *Functions*. (a) The Board shall directly support the Secretary's oversight of the management and operation of the Internal Revenue Service. This includes:

(1) working through the Deputy Secretary, assisting the Secretary on the full range of high-level management issues and concerns affecting the Internal Revenue Service, particularly those that have a significant impact on operations, modernization, and customer service.

(2) acting through the Executive Committee, serving as the primary review for strategic decisions concerning modernization of the Internal Revenue Service, including modernization direction, strategy, significant reorganization plans, performance metrics, budgetary issues, major capital investments, and compensation of personnel.

(b) The Board shall meet at least monthly and shall prescribe such bylaws or procedures as the Board deems appropriate.

(c) The Board shall prepare semiannual reports to the President and to the Congress, which shall be transmitted by the Secretary of the Treasury.

SEC. 4. *Administration*. To the extent permitted by law and subject to the availability of appropriations, the Secretary shall provide the Board administrative services, facilities, staff, and such other financial support services as may be necessary for the performance of its functions under this order.

SEC. 5. *Judicial Review*. This order is intended only to improve the internal management of the Internal Revenue Service and is not intended, and shall not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or its employees.

WILLIAM J. CLINTON.

[1] *So in original.*

§7802. Internal Revenue Service Oversight Board

(a) Establishment

There is established within the Department of the Treasury the Internal Revenue Service Oversight Board (hereafter in this subchapter referred to as the "Oversight Board").

(b) Membership

(1) Composition

The Oversight Board shall be composed of nine members, as follows:

(A) six members shall be individuals who are not otherwise Federal officers or employees and who are appointed by the President, by and with the advice and consent of the Senate.

(B) one member shall be the Secretary of the Treasury or, if the Secretary so designates, the Deputy Secretary of the Treasury.

(C) one member shall be the Commissioner of Internal Revenue.

(D) one member shall be an individual who is a full-time Federal employee or a representative of employees and who is appointed by the President, by and with the advice and consent of the Senate.

(2) Qualifications and terms

(A) Qualifications

Members of the Oversight Board described in paragraph (1)(A) shall be appointed without regard to political affiliation and solely on the basis of their professional experience and expertise in one or more of the following areas:

(i) Management of large service organizations.
(ii) Customer service.
(iii) Federal tax laws, including tax administration and compliance.
(iv) Information technology.
(v) Organization development.
(vi) The needs and concerns of taxpayers.
(vii) The needs and concerns of small businesses.

In the aggregate, the members of the Oversight Board described in paragraph (1)(A) should collectively bring to bear expertise in all of the areas described in the preceding sentence.

(B) Terms

Each member who is described in subparagraph (A) or (D) of paragraph (1) shall be appointed for a term of 5 years, except that of the members first appointed under paragraph (1)(A)—

(i) two members shall be appointed for a term of 3 years,
(ii) two members shall be appointed for a term of 4 years, and
(iii) two members shall be appointed for a term of 5 years.

(C) Reappointment

An individual who is described in subparagraph (A) or (D) of paragraph (1) may be appointed to no more than two 5-year terms on the Oversight Board.

(D) Vacancy

Any vacancy on the Oversight Board shall be filled in the same manner as the original appointment. Any member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed for the remainder of that term.

(3) Ethical considerations

(A) Financial disclosure

During the entire period that an individual appointed under subparagraph (A) or (D) of paragraph (1) is a member of the Oversight Board, such individual shall be treated as serving as

an officer or employee referred to in section 101(f) of the Ethics in Government Act of 1978 for purposes of title I of such Act, except that section 101(d) of such Act shall apply without regard to the number of days of service in the position.

(B) Restrictions on post-employment

For purposes of section 207(c) of title 18, United States Code, an individual appointed under subparagraph (A) or (D) of paragraph (1) shall be treated as an employee referred to in section 207(c)(2)(A)(i) of such title during the entire period the individual is a member of the Board, except that subsections (c)(2)(B) and (f) of section 207 of such title shall not apply.

(C) Members who are special Government employees

If an individual appointed under subparagraph (A) or (D) of paragraph (1) is a special Government employee, the following additional rules apply for purposes of chapter 11 of title 18, United States Code:

(i) Restriction on representation

In addition to any restriction under section 205(c) of title 18, United States Code, except as provided in subsections (d) through (i) of section 205 of such title, such individual (except in the proper discharge of official duties) shall not, with or without compensation, represent anyone to or before any officer or employee of—

(I) the Oversight Board or the Internal Revenue Service on any matter;

(II) the Department of the Treasury on any matter involving the internal revenue laws or involving the management or operations of the Internal Revenue Service; or

(III) the Department of Justice with respect to litigation involving a matter described in subclause (I) or (II).

(ii) Compensation for services provided by another

For purposes of section 203 of such title—

(I) such individual shall not be subject to the restrictions of subsection (a)(1) thereof for sharing in compensation earned by another for representations on matters covered by such section, and

(II) a person shall not be subject to the restrictions of subsection (a)(2) thereof for sharing such compensation with such individual.

(D) Waiver

The President may, only at the time the President nominates the member of the Oversight Board described in paragraph (1)(D), waive for the term of the member any appropriate provision of chapter 11 of title 18, United States Code, to the extent such waiver is necessary to allow such member to participate in the decisions of the Board while continuing to serve as a full-time Federal employee or a representative of employees. Any such waiver shall not be effective unless a written intent of waiver to exempt such member (and actual waiver language) is submitted to the Senate with the nomination of such member.

(4) Quorum

Five members of the Oversight Board shall constitute a quorum. A majority of members present and voting shall be required for the Oversight Board to take action.

(5) Removal

(A) In general

Any member of the Oversight Board appointed under subparagraph (A) or (D) of paragraph (1) may be removed at the will of the President.

(B) Secretary and Commissioner

An individual described in subparagraph (B) or (C) of paragraph (1) shall be removed upon termination of service in the office described in such subparagraph.

(6) Claims

(A) In general

Members of the Oversight Board who are described in subparagraph (A) or (D) of paragraph (1) shall have no personal liability under Federal law with respect to any claim arising out of or resulting from an act or omission by such member within the scope of service as a member.

(B) Effect on other law

This paragraph shall not be construed—

(i) to affect any other immunities and protections that may be available to such member under applicable law with respect to such transactions;

(ii) to affect any other right or remedy against the United States under applicable law; or

(iii) to limit or alter in any way the immunities that are available under applicable law for Federal officers and employees.

(c) General responsibilities

(1) Oversight

(A) In general

The Oversight Board shall oversee the Internal Revenue Service in its administration, management, conduct, direction, and supervision of the execution and application of the internal revenue laws or related statutes and tax conventions to which the United States is a party.

(B) Mission of IRS

As part of its oversight functions described in subparagraph (A), the Oversight Board shall ensure that the organization and operation of the Internal Revenue Service allows it to carry out its mission.

(C) Confidentiality

The Oversight Board shall ensure that appropriate confidentiality is maintained in the exercise of its duties.

(2) Exceptions

The Oversight Board shall have no responsibilities or authority with respect to—

(A) the development and formulation of Federal tax policy relating to existing or proposed internal revenue laws, related statutes, and tax conventions,

(B) specific law enforcement activities of the Internal Revenue Service, including specific compliance activities such as examinations, collection activities, and criminal investigations,

(C) specific procurement activities of the Internal Revenue Service, or

(D) except as provided in subsection (d)(3), specific personnel actions.

(d) Specific responsibilities

The Oversight Board shall have the following specific responsibilities:

(1) Strategic plans

To review and approve strategic plans of the Internal Revenue Service, including the establishment of—

(A) mission and objectives, and standards of performance relative to either, and

(B) annual and long-range strategic plans.

(2) Operational plans

To review the operational functions of the Internal Revenue Service, including—

(A) plans for modernization of the tax system,

(B) plans for outsourcing or managed competition, and

(C) plans for training and education.

(3) Management

To—

(A) recommend to the President candidates for appointment as the Commissioner of Internal

Revenue and recommend to the President the removal of the Commissioner;

(B) review the Commissioner's selection, evaluation, and compensation of Internal Revenue Service senior executives who have program management responsibility over significant functions of the Internal Revenue Service; and

(C) review and approve the Commissioner's plans for any major reorganization of the Internal Revenue Service.

(4) Budget

To—

(A) review and approve the budget request of the Internal Revenue Service prepared by the Commissioner;

(B) submit such budget request to the Secretary of the Treasury; and

(C) ensure that the budget request supports the annual and long-range strategic plans.

(5) Taxpayer protection

To ensure the proper treatment of taxpayers by the employees of the Internal Revenue Service.

The Secretary shall submit the budget request referred to in paragraph (4)(B) for any fiscal year to the President who shall submit such request, without revision, to Congress together with the President's annual budget request for the Internal Revenue Service for such fiscal year.

(e) Board personnel matters

(1) Compensation of members

(A) In general

Each member of the Oversight Board who—

(i) is described in subsection (b)(1)(A); or

(ii) is described in subsection (b)(1)(D) and is not otherwise a Federal officer or employee,

shall be compensated at a rate of $30,000 per year. All other members shall serve without compensation for such service.

(B) Chairperson

In lieu of the amount specified in subparagraph (A), the Chairperson of the Oversight Board shall be compensated at a rate of $50,000 per year.

(2) Travel expenses

(A) In general

The members of the Oversight Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, to attend meetings of the Oversight Board and, with the advance approval of the Chairperson of the Oversight Board, while otherwise away from their homes or regular places of business for purposes of duties as a member of the Oversight Board.

(B) Report

The Oversight Board shall include in its annual report under subsection (f)(3)(A) information with respect to the travel expenses allowed for members of the Oversight Board under this paragraph.

(3) Staff

(A) In general

The Chairperson of the Oversight Board may appoint and terminate any personnel that may be necessary to enable the Board to perform its duties.

(B) Detail of Government employees

Upon request of the Chairperson of the Oversight Board, a Federal agency shall detail a

Federal Government employee to the Oversight Board without reimbursement. Such detail shall be without interruption or loss of civil service status or privilege.

(4) Procurement of temporary and intermittent services

The Chairperson of the Oversight Board may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

(f) Administrative matters

(1) Chair

(A) Term

The members of the Oversight Board shall elect for a 2-year term a chairperson from among the members appointed under subsection (b)(1)(A).

(B) Powers

Except as otherwise provided by a majority vote of the Oversight Board, the powers of the Chairperson shall include—

(i) establishing committees;
(ii) setting meeting places and times;
(iii) establishing meeting agendas; and
(iv) developing rules for the conduct of business.

(2) Meetings

The Oversight Board shall meet at least quarterly and at such other times as the Chairperson determines appropriate.

(3) Reports

(A) Annual

The Oversight Board shall each year report with respect to the conduct of its responsibilities under this title to the President, the Committees on Ways and Means, Government Reform and Oversight, and Appropriations of the House of Representatives and the Committees on Finance, Governmental Affairs, and Appropriations of the Senate.

(B) Additional report

Upon a determination by the Oversight Board under subsection (c)(1)(B) that the organization and operation of the Internal Revenue Service are not allowing it to carry out its mission, the Oversight Board shall report such determination to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

(Aug. 16, 1954, ch. 736, 68A Stat. 915; Pub. L. 93–406, title II, §1051(a), Sept. 2, 1974, 88 Stat. 951; Pub. L. 94–455, title XIX, §1906(b)(13)(A), (B), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–258, §2(f)(2), Sept. 13, 1982, 96 Stat. 1059; Pub. L. 100–647, title VI, §6235(a), Nov. 10, 1988, 102 Stat. 3737; Pub. L. 104–168, title I, §101(a), (b)(2), July 30, 1996, 110 Stat. 1453, 1455; Pub. L. 105–206, title I, §1101(a), July 22, 1998, 112 Stat. 691; Pub. L. 106–554, §1(a)(7) [title III, §319(27)], Dec. 21, 2000, 114 Stat. 2763, 2763A–648.)

REFERENCES IN TEXT

The Ethics in Government Act of 1978, referred to in subsec. (b)(3)(A), is Pub. L. 95–521, Oct. 26, 1978, 92 Stat. 1824, as amended. Title I of the Act is set out in the Appendix to Title 5, Government Organization and Employees. For complete classification of this Act to the Code, see Short Title note set out under section 101 of Pub. L. 95–521 in the Appendix to Title 5 and Tables.

AMENDMENTS

2000—Subsec. (b)(2)(B)(ii). Pub. L. 106–554 substituted a comma for semicolon before "and".

1998—Pub. L. 105–206 amended section catchline and text of section generally, substituting present provisions for provisions which: in subsec. (a), declared that there shall be in the Department of the Treasury a Commissioner of Internal Revenue, appointed by the President, with such duties and powers as prescribed by Secretary of the Treasury; in subsec. (b), established Office of Employee Plans and Exempt Organizations to

carry out functions with respect to organizations exempt from tax and with respect to plans to which part I of subchapter D of chapter 1 applied; in subsec. (c), established Office for Taxpayer Services such as telephone, walk-in, and taxpayer educational services, and design and production of forms; and in subsec. (d), established Office of Taxpayer Advocate and set forth functions of Office and responsibilities of Commissioner regarding response to recommendations of Office. See section 7803 of this title.

1996—Pub. L. 104–168, §101(b)(2), substituted "Commissioners; Taxpayer Advocate." for "Commissioner (Employee Plans and Exempt Organizations)" in section catchline.

Subsec. (d). Pub. L. 104–168, §101(a), added subsec. (d).

1988—Subsec. (c). Pub. L. 100–647 added subsec. (c).

1982—Subsec. (b). Pub. L. 97–258 redesignated existing provisions as par. (1), added par. (1) heading, and added par. (2). Par. (2) is based on provisions that appeared in section 1037 of former Title 31, Money and Finance, prior to enactment of Title 31 by Pub. L. 97–258.

1976—Subsec. (a). Pub. L. 94–455, §1906(b)(13)(B), substituted "Secretary of the Treasury" for "Secretary" after "prescribed by the".

Subsec. (b). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

1974—Pub. L. 93–406 designated existing provisions as subsec. (a) and added subsec. (b).

CHANGE OF NAME

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

Committee on Government Reform and Oversight of House of Representatives changed to Committee on Government Reform of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999. Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–206, title I, §1101(d), July 22, 1998, 112 Stat. 697, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and sections 4946 and 6103 of this title] shall take effect on the date of the enactment of this Act [July 22, 1998].

"(2) INITIAL NOMINATIONS TO INTERNAL REVENUE SERVICE OVERSIGHT BOARD.—The President shall submit the initial nominations under section 7802 of the Internal Revenue Code of 1986, as added by this section, to the Senate not later than 6 months after the date of the enactment of this Act [July 22, 1998].

"(3) EFFECT ON ACTIONS PRIOR TO APPOINTMENT OF OVERSIGHT BOARD.—Nothing in this section shall be construed to invalidate the actions and authority of the Internal Revenue Service prior to the appointment of the members of the Internal Revenue Service Oversight Board."

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–168, title I, §101(c), July 30, 1996, 110 Stat. 1456, provided that: "The amendments made by this section [amending this section and section 7811 of this title] shall take effect on the date of the enactment of this Act [July 30, 1996]."

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title VI, §6235(c), Nov. 10, 1988, 102 Stat. 3737, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on the date 180 days after the date of the enactment of this Act [Nov. 10, 1988]."

EFFECTIVE DATE OF 1974 AMENDMENT

Pub. L. 93–406, title II, §1051(d), Sept. 2, 1974, 88 Stat. 951, provided that: "The amendments made by this section [amending this section and sections 5108 and 5109 of Title 5, Government Organization and Employees] shall take effect on the 90th day after the date of the enactment of this Act [Sept. 2, 1974]."

§7803. Commissioner of Internal Revenue; other officials

(a) Commissioner of Internal Revenue

(1) Appointment

(A) In general

There shall be in the Department of the Treasury a Commissioner of Internal Revenue who shall be appointed by the President, by and with the advice and consent of the Senate. Such appointment shall be made from individuals who, among other qualifications, have a demonstrated ability in management.

(B) Term

The term of the Commissioner of Internal Revenue shall be a 5-year term, beginning with a term to commence on November 13, 1997. Each subsequent term shall begin on the day after the date on which the previous term expires.

(C) Vacancy

Any individual appointed as Commissioner of Internal Revenue during a term as defined in subparagraph (B) shall be appointed for the remainder of that term.

(D) Removal

The Commissioner may be removed at the will of the President.

(E) Reappointment

The Commissioner may be appointed to serve more than one term.

(2) Duties

The Commissioner shall have such duties and powers as the Secretary may prescribe, including the power to—

(A) administer, manage, conduct, direct, and supervise the execution and application of the internal revenue laws or related statutes and tax conventions to which the United States is a party; and

(B) recommend to the President a candidate for appointment as Chief Counsel for the Internal Revenue Service when a vacancy occurs, and recommend to the President the removal of such Chief Counsel.

If the Secretary determines not to delegate a power specified in subparagraph (A) or (B), such determination may not take effect until 30 days after the Secretary notifies the Committees on Ways and Means, Government Reform and Oversight, and Appropriations of the House of Representatives and the Committees on Finance, Governmental Affairs, and Appropriations of the Senate.

(3) Consultation with Board

The Commissioner shall consult with the Oversight Board on all matters set forth in paragraphs (2) and (3) (other than paragraph (3)(A)) of section 7802(d).

(b) Chief Counsel for the Internal Revenue Service

(1) Appointment

There shall be in the Department of the Treasury a Chief Counsel for the Internal Revenue Service who shall be appointed by the President, by and with the consent of the Senate.

(2) Duties

The Chief Counsel shall be the chief law officer for the Internal Revenue Service and shall perform such duties as may be prescribed by the Secretary, including the duty—

(A) to be legal advisor to the Commissioner and the Commissioner's officers and employees;

(B) to furnish legal opinions for the preparation and review of rulings and memoranda of technical advice;

(C) to prepare, review, and assist in the preparation of proposed legislation, treaties, regulations, and Executive orders relating to laws which affect the Internal Revenue Service;

(D) to represent the Commissioner in cases before the Tax Court; and

(E) to determine which civil actions should be litigated under the laws relating to the Internal Revenue Service and prepare recommendations for the Department of Justice regarding the commencement of such actions.

If the Secretary determines not to delegate a power specified in subparagraph (A), (B), (C), (D), or (E), such determination may not take effect until 30 days after the Secretary notifies the Committees on Ways and Means, Government Reform and Oversight, and Appropriations of the House of Representatives and the Committees on Finance, Governmental Affairs, and Appropriations of the Senate.

(3) Persons to whom Chief Counsel reports

The Chief Counsel shall report directly to the Commissioner of Internal Revenue, except that—

(A) the Chief Counsel shall report to both the Commissioner and the General Counsel for the Department of the Treasury with respect to—

(i) legal advice or interpretation of the tax law not relating solely to tax policy;

(ii) tax litigation; and

(B) the Chief Counsel shall report to the General Counsel with respect to legal advice or interpretation of the tax law relating solely to tax policy.

If there is any disagreement between the Commissioner and the General Counsel with respect to any matter jointly referred to them under subparagraph (A), such matter shall be submitted to the Secretary or Deputy Secretary for resolution.

(4) Chief Counsel personnel

All personnel in the Office of Chief Counsel shall report to the Chief Counsel.

(c) Office of the Taxpayer Advocate

(1) Establishment

(A) In general

There is established in the Internal Revenue Service an office to be known as the "Office of the Taxpayer Advocate".

(B) National Taxpayer Advocate

(i) In general

The Office of the Taxpayer Advocate shall be under the supervision and direction of an official to be known as the "National Taxpayer Advocate". The National Taxpayer Advocate shall report directly to the Commissioner of Internal Revenue and shall be entitled to compensation at the same rate as the highest rate of basic pay established for the Senior Executive Service under section 5382 of title 5, United States Code, or, if the Secretary of the Treasury so determines, at a rate fixed under section 9503 of such title.

(ii) Appointment

The National Taxpayer Advocate shall be appointed by the Secretary of the Treasury after consultation with the Commissioner of Internal Revenue and the Oversight Board and without regard to the provisions of title 5, United States Code, relating to appointments in the competitive service or the Senior Executive Service.

(iii) Qualifications

An individual appointed under clause (ii) shall have—

(I) a background in customer service as well as tax law; and

(II) experience in representing individual taxpayers.

(iv) Restriction on employment

An individual may be appointed as the National Taxpayer Advocate only if such individual was not an officer or employee of the Internal Revenue Service during the 2-year period ending with such appointment and such individual agrees not to accept any employment with the Internal Revenue Service for at least 5 years after ceasing to be the National Taxpayer Advocate. Service as an officer or employee of the Office of the Taxpayer Advocate shall not be taken into account in applying this clause.

(2) Functions of office

(A) In general

It shall be the function of the Office of the Taxpayer Advocate to—

(i) assist taxpayers in resolving problems with the Internal Revenue Service;

(ii) identify areas in which taxpayers have problems in dealings with the Internal Revenue Service;

(iii) to the extent possible, propose changes in the administrative practices of the Internal Revenue Service to mitigate problems identified under clause (ii); and

(iv) identify potential legislative changes which may be appropriate to mitigate such problems.

(B) Annual reports

(i) Objectives

Not later than June 30 of each calendar year, the National Taxpayer Advocate shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the objectives of the Office of the Taxpayer Advocate for the fiscal year beginning in such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information.

(ii) Activities

Not later than December 31 of each calendar year, the National Taxpayer Advocate shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the activities of the Office of the Taxpayer Advocate during the fiscal year ending during such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information, and shall—

(I) identify the initiatives the Office of the Taxpayer Advocate has taken on improving taxpayer services and Internal Revenue Service responsiveness;

(II) contain recommendations received from individuals with the authority to issue Taxpayer Assistance Orders under section 7811;

(III) contain a summary of at least 20 of the most serious problems encountered by taxpayers, including a description of the nature of such problems;

(IV) contain an inventory of the items described in subclauses (I), (II), and (III) for which action has been taken and the result of such action;

(V) contain an inventory of the items described in subclauses (I), (II), and (III) for which action remains to be completed and the period during which each item has remained on such inventory;

(VI) contain an inventory of the items described in subclauses (I), (II), and (III) for which no action has been taken, the period during which each item has remained on such inventory, the reasons for the inaction, and identify any Internal Revenue Service official who is responsible for such inaction;

(VII) identify any Taxpayer Assistance Order which was not honored by the Internal Revenue Service in a timely manner, as specified under section 7811(b);

(VIII) contain recommendations for such administrative and legislative action as may be appropriate to resolve problems encountered by taxpayers;

(IX) identify areas of the tax law that impose significant compliance burdens on taxpayers or the Internal Revenue Service, including specific recommendations for remedying these problems;

(X) identify the 10 most litigated issues for each category of taxpayers, including recommendations for mitigating such disputes; and

(XI) include such other information as the National Taxpayer Advocate may deem advisable.

(iii) Report to be submitted directly

Each report required under this subparagraph shall be provided directly to the committees described in clause (i) without any prior review or comment from the Commissioner, the Secretary of the Treasury, the Oversight Board, any other officer or employee of the Department of the Treasury, or the Office of Management and Budget.

(iv) Coordination with report of Treasury Inspector General for Tax Administration

To the extent that information required to be reported under clause (ii) is also required to be reported under paragraph (1) or (2) of subsection (d) by the Treasury Inspector General for Tax Administration, the National Taxpayer Advocate shall not contain such information in the report submitted under such clause.

(C) Other responsibilities

The National Taxpayer Advocate shall—

(i) monitor the coverage and geographic allocation of local offices of taxpayer advocates;

(ii) develop guidance to be distributed to all Internal Revenue Service officers and employees outlining the criteria for referral of taxpayer inquiries to local offices of taxpayer advocates;

(iii) ensure that the local telephone number for each local office of the taxpayer advocate is published and available to taxpayers served by the office; and

(iv) in conjunction with the Commissioner, develop career paths for local taxpayer advocates choosing to make a career in the Office of the Taxpayer Advocate.

(D) Personnel actions

(i) In general

The National Taxpayer Advocate shall have the responsibility and authority to—

(I) appoint local taxpayer advocates and make available at least 1 such advocate for each State; and

(II) evaluate and take personnel actions (including dismissal) with respect to any employee of any local office of a taxpayer advocate described in subclause (I).

(ii) Consultation

The National Taxpayer Advocate may consult with the appropriate supervisory personnel of the Internal Revenue Service in carrying out the National Taxpayer Advocate's responsibilities under this subparagraph.

(3) Responsibilities of Commissioner

The Commissioner shall establish procedures requiring a formal response to all recommendations submitted to the Commissioner by the National Taxpayer Advocate within 3 months after submission to the Commissioner.

(4) Operation of local offices

(A) In general

Each local taxpayer advocate—

(i) shall report to the National Taxpayer Advocate or delegate thereof;

(ii) may consult with the appropriate supervisory personnel of the Internal Revenue Service regarding the daily operation of the local office of the taxpayer advocate;

(iii) shall, at the initial meeting with any taxpayer seeking the assistance of a local office of the taxpayer advocate, notify such taxpayer that the taxpayer advocate offices operate independently of any other Internal Revenue Service office and report directly to Congress

through the National Taxpayer Advocate; and

(iv) may, at the taxpayer advocate's discretion, not disclose to the Internal Revenue Service contact with, or information provided by, such taxpayer.

(B) Maintenance of independent communications

Each local office of the taxpayer advocate shall maintain a separate phone, facsimile, and other electronic communication access, and a separate post office address.

(d) Additional duties of the Treasury Inspector General for Tax Administration

(1) Annual reporting

The Treasury Inspector General for Tax Administration shall include in one of the semiannual reports under section 5 of the Inspector General Act of 1978—

(A) an evaluation of the compliance of the Internal Revenue Service with—

(i) restrictions under section 1204 of the Internal Revenue Service Restructuring and Reform Act of 1998 on the use of enforcement statistics to evaluate Internal Revenue Service employees;

(ii) restrictions under section 7521 on directly contacting taxpayers who have indicated that they prefer their representatives be contacted;

(iii) required procedures under section 6320 upon the filing of a notice of a lien;

(iv) required procedures under subchapter D of chapter 64 for seizure of property for collection of taxes, including required procedures under section 6330 regarding levies; and

(v) restrictions under section 3707 of the Internal Revenue Service Restructuring and Reform Act of 1998 on designation of taxpayers;

(B) a review and a certification of whether or not the Secretary is complying with the requirements of section 6103(e)(8) to disclose information to an individual filing a joint return on collection activity involving the other individual filing the return;

(C) information regarding extensions of the statute of limitations for assessment and collection of tax under section 6501 and the provision of notice to taxpayers regarding requests for such extension;

(D) an evaluation of the adequacy and security of the technology of the Internal Revenue Service;

(E) any termination or mitigation under section 1203 of the Internal Revenue Service Restructuring and Reform Act of 1998;

(F) information regarding improper denial of requests for information from the Internal Revenue Service identified under paragraph (3)(A); and

(G) information regarding any administrative or civil actions with respect to violations of the fair debt collection provisions of section 6304, including—

(i) a summary of such actions initiated since the date of the last report; and

(ii) a summary of any judgments or awards granted as a result of such actions.

(2) Semiannual reports

(A) IN GENERAL.—The Treasury Inspector General for Tax Administration shall include in each semiannual report under section 5 of the Inspector General Act of 1978—

(i) the number of taxpayer complaints during the reporting period;

(ii) the number of employee misconduct and taxpayer abuse allegations received by the Internal Revenue Service or the Inspector General during the period from taxpayers, Internal Revenue Service employees, and other sources;

(iii) a summary of the status of such complaints and allegations; and

(iv) a summary of the disposition of such complaints and allegations, including the outcome of any Department of Justice action and any monies paid as a settlement of such complaints and allegations.

(B) Clauses (iii) and (iv) of subparagraph (A) shall only apply to complaints and allegations of

serious employee misconduct.

(3) Other responsibilities

The Treasury Inspector General for Tax Administration shall—

(A) conduct periodic audits of a statistically valid sample of the total number of determinations made by the Internal Revenue Service to deny written requests to disclose information to taxpayers on the basis of section 6103 of this title or section 552(b)(7) of title 5, United States Code;

(B) establish and maintain a toll-free telephone number for taxpayers to use to confidentially register complaints of misconduct by Internal Revenue Service employees and incorporate the telephone number in the statement required by section 6227 of the Omnibus Taxpayer Bill of Rights (Internal Revenue Service Publication No. 1); and

(C) not later than December 31, 2010, submit a written report to Congress on the implementation of section 6103(k)(10).

(Aug. 16, 1954, ch. 736, 68A Stat. 915; Pub. L. 92–310, title II, §230(e), June 6, 1972, 86 Stat. 209; Pub. L. 94–455, title XIX, §1906(a)(58), (b)(13)(A), Oct. 4, 1976, 90 Stat. 1833, 1834; Pub. L. 105–206, title I, §1102(a), July 22, 1998, 112 Stat. 697; Pub. L. 110–176, §1(a), Jan. 4, 2008, 121 Stat. 2532; Pub. L. 110–428, §2(c), Oct. 15, 2008, 122 Stat. 4840.)

REFERENCES IN TEXT

The provisions of title 5 relating to appointments in the competitive service and the Senior Executive Service, referred to in subsec. (c)(1)(B)(ii), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

Section 5 of the Inspector General Act of 1978, referred to in subsec. (d)(1), (2)(A), is section 5 of Pub. L. 95–452, which is set out in the Appendix to Title 5, Government Organization and Employees.

Sections 1203, 1204, and 3707 of the Internal Revenue Service Restructuring and Reform Act of 1998, referred to in subsec. (d)(1)(A)(i), (v), (E), are sections 1203, 1204, and 3707 of Pub. L. 105–206, which are set out as notes under sections 7804, 7804, and 6651, respectively, of this title.

Section 6227 of the Omnibus Taxpayer Bill of Rights, referred to in subsec. (d)(3)(B), is section 6227 of Pub. L. 100–647, which is set out as a note under section 7801 of this title.

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110–176 amended par. (1) generally, substituting provisions relating to appointment, consisting of subpars. (A) to (E), for similar provisions, consisting of subpars. (A) to (D).

Subsec. (d)(3)(C). Pub. L. 110–428 added subpar. (C).

1998—Pub. L. 105–206 amended section catchline and text generally, substituting present provisions for provisions which: in subsec. (a), authorized appointment of persons for administration and enforcement of internal revenue laws; in subsec. (b), directed Secretary to determine and designate posts of duty of employees in field service, and authorized Secretary to order such employees to duty within and outside District of Columbia; and in subsec. (c), directed Secretary to issue notice and demand for failure to account for and pay over money or property collected in connection with internal revenue laws, and deemed amount so demanded to be imposed and assessed upon the officer or employee upon the date of such notice and demand. See section 7804 of this title.

1976—Subsecs. (a), (b), (c). Pub. L. 94–455, §1906(b) (13)(A), struck out "or his delegate" after "Secretary" wherever appearing.

Subsecs. (c), (d). Pub. L. 94–455, §1906(a)(58), redesignated subsec. (d) as (c).

1972—Subsec. (c). Pub. L. 92–310 repealed subsec. (c) which related to bonds of officers and employees.

CHANGE OF NAME

Committee on Government Reform and Oversight of House of Representatives changed to Committee on Government Reform of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999. Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–428 applicable to disclosures made after Dec. 31, 2008, see section 2(d) of Pub. L. 110–428, set out as a note under section 6103 of this title.

Pub. L. 110–176, §1(b), Jan. 4, 2008, 121 Stat. 2532, provided that: "The amendment made by this section [amending this section] shall apply as if included in the amendment made by section 1102(a) of the Internal Revenue Service Restructuring and Reform Act of 1998 [Pub. L. 105–206]."

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–206, title I, §1102(f), July 22, 1998, 112 Stat. 705, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section, sections 6212, 6323, 6343, 7611, and 7811 of this title, and section 5109 of Title 5, Government Organization and Employees] shall take effect on the date of the enactment of this Act [July 22, 1998].

"(2) CHIEF COUNSEL.—Section 7803(b)(3) of the Internal Revenue Code of 1986, as added by this section, shall take effect on the date that is 90 days after the date of the enactment of this Act.

"(3) NATIONAL TAXPAYER ADVOCATE.—Notwithstanding section 7803(c)(1)(B)(iv) of such Code, as added by this section, in appointing the first National Taxpayer Advocate after the date of the enactment of this Act, the Secretary of the Treasury—

"(A) shall not appoint any individual who was an officer or employee of the Internal Revenue Service at any time during the 2-year period ending on the date of appointment; and

"(B) need not consult with the Internal Revenue Service Oversight Board if the Oversight Board has not been appointed.

"(4) CURRENT OFFICERS.—

"(A) In the case of an individual serving as Commissioner of Internal Revenue on the date of the enactment of this Act who was appointed to such position before such date, the 5-year term required by section 7803(a)(1) of such Code, as added by this section, shall begin as of the date of such appointment.

"(B) Clauses (ii), (iii), and (iv) of section 7803(c)(1)(B) of such Code, as added by this section, shall not apply to the individual serving as Taxpayer Advocate on the date of the enactment of this Act."

§7804. Other personnel

(a) Appointment and supervision

Unless otherwise prescribed by the Secretary, the Commissioner of Internal Revenue is authorized to employ such number of persons as the Commissioner deems proper for the administration and enforcement of the internal revenue laws, and the Commissioner shall issue all necessary directions, instructions, orders, and rules applicable to such persons.

(b) Posts of duty of employees in field service or traveling

Unless otherwise prescribed by the Secretary—

(1) Designation of post of duty

The Commissioner shall determine and designate the posts of duty of all such persons engaged in field work or traveling on official business outside of the District of Columbia.

(2) Detail of personnel from field service

The Commissioner may order any such person engaged in field work to duty in the District of Columbia, for such periods as the Commissioner may prescribe, and to any designated post of duty outside the District of Columbia upon the completion of such duty.

(c) Delinquent Internal Revenue officers and employees

If any officer or employee of the Treasury Department acting in connection with the internal revenue laws fails to account for and pay over any amount of money or property collected or received by him in connection with the internal revenue laws, the Secretary shall issue notice and demand to such officer or employee for payment of the amount which he failed to account for and pay over, and, upon failure to pay the amount demanded within the time specified in such notice, the amount so demanded shall be deemed imposed upon such officer or employee and assessed upon the

date of such notice and demand, and the provisions of chapter 64 and all other provisions of law relating to the collection of assessed taxes shall be applicable in respect of such amount.

(Aug. 16, 1954, ch. 736, 68A Stat. 916; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 105–206, title I, §1104(a), July 22, 1998, 112 Stat. 710.)

AMENDMENTS

1998—Pub. L. 105–206 amended section catchline and text generally, substituting present provisions for provisions which had declared: in subsec. (a), that provisions of Reorganization Plans No. 26 of 1950 and No. 1 of 1952 should apply to all functions vested by this title, or by any act amending this title in any officer, employee, or agency of the Department; and in subsec. (b), that nothing in such Reorganization Plans should be considered to impair existing rights and remedies, that for the purpose of any action to recover tax all statutes, rules, and regulations referring to collector of internal revenue, principal officer for internal revenue district, or Secretary, should be deemed to refer to officer whose acts gave rise to such action, and that venue of any such action should be the same as under existing law.

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–206, title I, §1104(c), July 22, 1998, 112 Stat. 710, provided that: "The amendments made by this section [amending this section and section 6344 of this title] shall take effect on the date of the enactment of this Act [July 22, 1998]."

TERMINATION OF EMPLOYMENT FOR MISCONDUCT

Pub. L. 105–206, title I, §1203, July 22, 1998, 112 Stat. 720, as amended by Pub. L. 108–357, title VIII, §881(d), Oct. 22, 2004, 118 Stat. 1627, provided that:

"(a) IN GENERAL.—Subject to subsection (c), the Commissioner of Internal Revenue shall terminate the employment of any employee of the Internal Revenue Service if there is a final administrative or judicial determination that such employee committed any act or omission described under subsection (b) in the performance of the employee's official duties. Such termination shall be a removal for cause on charges of misconduct.

"(b) ACTS OR OMISSIONS.—The acts or omissions referred to under subsection (a) are—

"(1) willful failure to obtain the required approval signatures on documents authorizing the seizure of a taxpayer's home, personal belongings, or business assets;

"(2) providing a false statement under oath with respect to a material matter involving a taxpayer or taxpayer representative;

"(3) with respect to a taxpayer, taxpayer representative, or other employee of the Internal Revenue Service, the violation of—

"(A) any right under the Constitution of the United States; or

"(B) any civil right established under—

"(i) title VI or VII of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq., 2000e et seq.];

"(ii) title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.];

"(iii) the Age Discrimination in Employment Act of 1967 [29 U.S.C. 621 et seq.];

"(iv) the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.];

"(v) section 501 or 504 of the Rehabilitation Act of 1973 [29 U.S.C. 791, 794]; or

"(vi) title I of the Americans with Disabilities Act of 1990 [42 U.S.C. 12111 et seq.];

"(4) falsifying or destroying documents to conceal mistakes made by any employee with respect to a matter involving a taxpayer or taxpayer representative;

"(5) assault or battery on a taxpayer, taxpayer representative, or other employee of the Internal Revenue Service, but only if there is a criminal conviction, or a final judgment by a court in a civil case, with respect to the assault or battery;

"(6) violations of the Internal Revenue Code of 1986, Department of Treasury regulations, or policies of the Internal Revenue Service (including the Internal Revenue Manual) for the purpose of retaliating against, or harassing, a taxpayer, taxpayer representative, or other employee of the Internal Revenue Service;

"(7) willful misuse of the provisions of section 6103 of the Internal Revenue Code of 1986 for the purpose of concealing information from a congressional inquiry;

"(8) willful failure to file any return of tax required under the Internal Revenue Code of 1986 on or before the date prescribed therefor (including any extensions), unless such failure is due to reasonable cause and not to willful neglect;

"(9) willful understatement of Federal tax liability, unless such understatement is due to reasonable cause and not to willful neglect; and

"(10) threatening to audit a taxpayer for the purpose of extracting personal gain or benefit.

"(c) DETERMINATION OF COMMISSIONER.—

"(1) IN GENERAL.—The Commissioner of Internal Revenue may take a personnel action other than termination for an act or omission under subsection (a).

"(2) DISCRETION.—The exercise of authority under paragraph (1) shall be at the sole discretion of the Commissioner of Internal Revenue and may not be delegated to any other officer. The Commissioner of Internal Revenue, in his sole discretion, may establish a procedure which will be used to determine whether an individual should be referred to the Commissioner of Internal Revenue for a determination by the Commissioner under paragraph (1).

"(3) NO APPEAL.—Any determination of the Commissioner of Internal Revenue under this subsection may not be appealed in any administrative or judicial proceeding.

"(d) DEFINITION.—For purposes of the provisions described in clauses (i), (ii), and (iv) of subsection (b)(3)(B), references to a program or activity receiving Federal financial assistance or an education program or activity receiving Federal financial assistance shall include any program or activity conducted by the Internal Revenue Service for a taxpayer.

"(e) INDIVIDUALS PERFORMING SERVICES UNDER A QUALIFIED TAX COLLECTION CONTRACT.—An individual shall cease to be permitted to perform any services under any qualified tax collection contract (as defined in section 6306(b) of the Internal Revenue Code of 1986) if there is a final determination by the Secretary of the Treasury under such contract that such individual committed any act or omission described under subsection (b) in connection with the performance of such services."

EMPLOYEE TRAINING PROGRAM

Pub. L. 105–206, title I, §1205, July 22, 1998, 112 Stat. 722, provided that:

"(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [July 22, 1998], the Commissioner of Internal Revenue shall implement an employee training program and shall submit an employee training plan to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

"(b) CONTENTS.—The plan submitted under subsection (a) shall—

"(1) detail a comprehensive employee training program to ensure adequate customer service training;

"(2) detail a schedule for training and the fiscal years during which the training will occur;

"(3) detail the funding of the program and relevant information to demonstrate the priority and commitment of resources to the plan;

"(4) review the organizational design of customer service;

"(5) provide for the implementation of a performance development system; and

"(6) provide for at least 16 hours of conflict management training during fiscal year 1999 for employees conducting collection activities."

CATALOGING COMPLAINTS

Pub. L. 105–206, title III, §3701, July 22, 1998, 112 Stat. 776, provided that: "In collecting data for the report required under section 1211 of the Taxpayer Bill of Rights 2 (Public Law 104–168) [set out below], the Secretary of the Treasury or the Secretary's delegate shall, not later than January 1, 2000, maintain records of taxpayer complaints of misconduct by Internal Revenue Service employees on an individual employee basis."

USE OF PSEUDONYMS BY INTERNAL REVENUE SERVICE EMPLOYEES

Pub. L. 105–206, title III, §3706, July 22, 1998, 112 Stat. 778, provided that:

"(a) IN GENERAL.—Any employee of the Internal Revenue Service may use a pseudonym only if—

"(1) adequate justification for the use of a pseudonym is provided by the employee, including protection of personal safety; and

"(2) such use is approved by the employee's supervisor before the pseudonym is used.

"(b) EFFECTIVE DATE.—Subsection (a) shall apply to requests made after the date of the enactment of this Act [July 22, 1998]."

REPORTS ON MISCONDUCT OF IRS EMPLOYEES

Pub. L. 104–168, title XII, §1211, July 30, 1996, 110 Stat. 1474, provided that: "On or before June 1 of each calendar year after 1996, the Secretary of the Treasury shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on—

"(1) all categories of instances involving the misconduct of employees of the Internal Revenue Service

during the preceding calendar year, and

"(2) the disposition during the preceding calendar year of any such instances (without regard to the year of the misconduct)."

TAXPAYERS' RIGHTS, COURTESY AND CROSS-CULTURAL RELATIONS TRAINING

Pub. L. 109–115, div. A, title II, §202, Nov. 30, 2005, 119 Stat. 2438, which provided that the Internal Revenue Service was to maintain a training program to ensure that Internal Revenue Service employees were trained in taxpayers' rights, in dealing courteously with taxpayers, and in cross-cultural relations, was from the Department of the Treasury Appropriations Act, 2006 and was repeated in provisions of subsequent appropriations acts which are not set out in the Code. Similar provisions were also contained in the following prior appropriations acts:

Pub. L. 108–447, div. H, title II, §202, Dec. 8, 2004, 118 Stat. 3240.
Pub. L. 108–199, div. F, title II, §202, Jan. 23, 2004, 118 Stat. 318.
Pub. L. 108–7, div. J, title I, §102, Feb. 20, 2003, 117 Stat. 437.
Pub. L. 107–67, title I, §102, Nov. 12, 2001, 115 Stat. 523.
Pub. L. 106–554, §1(a)(3) [title I, §102], Dec. 21, 2000, 114 Stat. 2763, 2763A–132.
Pub. L. 106–58, title I, §102, Sept. 29, 1999, 113 Stat. 437.
Pub. L. 105–277, div. A, §101(h) [title I, §102], Oct. 21, 1998, 112 Stat. 2681–480, 2681–488.
Pub. L. 105–61, title I, §102, Oct. 10, 1997, 111 Stat. 1281.
Pub. L. 104–208, div. A, title I, §101(f) [title I, §102], Sept. 30, 1996, 110 Stat. 3009–314, 3009–323.
Pub. L. 104–52, title I, §2, Nov. 19, 1995, 109 Stat. 474.
Pub. L. 103–329, title I, §2, Sept. 30, 1994, 108 Stat. 2388.
Pub. L. 103–123, title I, §2, Oct. 28, 1993, 107 Stat. 1232.
Pub. L. 102–393, title I, §2, Oct. 6, 1992, 106 Stat. 1735.

BASIS FOR EVALUATION OF INTERNAL REVENUE SERVICE EMPLOYEES

Pub. L. 105–206, title I, §1204, July 22, 1998, 112 Stat. 722, provided that:

"(a) IN GENERAL.—The Internal Revenue Service shall not use records of tax enforcement results—

"(1) to evaluate employees; or

"(2) to impose or suggest production quotas or goals with respect to such employees.

"(b) TAXPAYER SERVICE.—The Internal Revenue Service shall use the fair and equitable treatment of taxpayers by employees as one of the standards for evaluating employee performance.

"(c) CERTIFICATION.—Each appropriate supervisor shall certify quarterly by letter to the Commissioner of Internal Revenue whether or not tax enforcement results are being used in a manner prohibited by subsection (a).

"(d) TECHNICAL AND CONFORMING AMENDMENT.—[Repealed section 6231 of Pub. L. 100–647, set out below.]

"(e) EFFECTIVE DATE.—This section shall apply to evaluations conducted on or after the date of the enactment of this Act [July 22, 1998]."

Pub. L. 100–647, title VI, §6231, Nov. 10, 1988, 102 Stat. 3734, prohibited Internal Revenue Service use of records of tax enforcement results to evaluate employees or to impose or suggest production quotas or goals, and required quarterly certification that results had not been used in prohibited manner, prior to repeal by Pub. L. 105–206, title I, §1204(d), July 22, 1998, 112 Stat. 722.

SENSE OF CONGRESS AS TO INCREASED INTERNAL REVENUE SERVICE FUNDING FOR TAXPAYER ASSISTANCE AND ENFORCEMENT

Pub. L. 100–203, title X, §10622, Dec. 22, 1987, 101 Stat. 1330–452, provided that:

"(a) FINDINGS.—The Congress hereby finds that—

"(1) the Internal Revenue Service estimates that the amount of taxes owed for 1986 will exceed the amount of taxes collected for such year by $100 billion;

"(2) the current taxpayer compliance rate stands at 81.5 percent;

"(3) the tax gap can be significantly reduced by enhancing taxpayer assistance services and enforcement; and

"(4) the Appropriations Committee of the House of Representatives, in its fiscal year 1988 Internal Revenue Service appropriation, took a step in the direction of providing additional funding for taxpayer assistance and enforcement efforts.

"(b) It is the sense of the Congress that:

"(1) The Congress increase outlays for the Internal Revenue Service in fiscal year 1989 and fiscal year 1990 in the areas of taxpayer assistance and enforcement by $.7 billion in fiscal year 1989 for a revenue

total of $3.2 billion and by $.8 billion in fiscal year 1990 for a revenue total of $4.4 billion. The net revenue increase would be $2.5 billion in fiscal year 1989 and $3.6 billion in fiscal year 1990, or a net revenue increase over the House Appropriations Committee recommendations of $.4 billion in fiscal year 1989 and $1.3 billion in fiscal year 1990.

"(2) The Internal Revenue Service offer improved taxpayer assistance and enforcement efforts by using the aforementioned outlays in areas recommended by, or consistent with the recommendations of, the 'Dorgan Task Force Report'. Taxpayer assistance efforts would include providing expanded taxpayer education programs, instituting pilot programs of taxmobiles in rural areas, and upgrading the quality of telephone assistance. Taxpayer enforcement efforts would include raising the audit rate from 1.1 percent toward 2.5 percent, restoring resources to criminal investigations, and the collection of delinquent accounts.

"(3) The Congress should undertake an experimental multiyear authorization and 2-year appropriation for the Internal Revenue Service consistent with the recommendations in Public Law 100–119, section 201 (Increasing the Statutory Limit on the Public Debt) [2 U.S.C. 621 note].

"(4) Increased funding should be provided for compilation and analysis of statistics of income and research.

The Internal Revenue Service must issue a report on the extent of the tax gap and the measures that could be undertaken to decrease the tax gap. The report must utilize more current data than has been utilized recently. The report must be issued by April 15, 1989. The Internal Revenue Service must also report annually on the improvements being made in the audit rate, taxpayer assistance, and enforcement efforts."

TAX COUNSELING FOR THE ELDERLY

Pub. L. 95–600, title I, §163, Nov. 6, 1978, 92 Stat. 2810, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) TRAINING AND TECHNICAL ASSISTANCE.—

"(1) AGREEMENTS.—The Secretary, through the Internal Revenue Service, is authorized to enter into agreements with private or public nonprofit agencies or organizations for the purpose of providing training and technical assistance to prepare volunteers to provide tax counseling assistance for elderly individuals in the preparation of their Federal income tax returns.

"(2) OTHER ASSISTANCE.—In addition to any other forms of technical assistance provided under this section, the Secretary may provide—

"(A) preferential access to Internal Revenue Service taxpayer service representatives for the purpose of making available technical information needed during the course of the volunteers' work;

"(B) material to be used in making elderly persons aware of the availability of assistance under volunteer taxpayer assistance programs under this section; and

"(C) technical materials and publications to be used by such volunteers.

"(b) POWERS OF THE SECRETARY.—In carrying out his responsibilities under this section, the Secretary is authorized—

"(1) to provide assistance to organizations which demonstrate, to the satisfaction of the Secretary, that their volunteers are adequately trained and competent to render effective tax counseling to the elderly;

"(2) to provide for the training of such volunteers, and to assist in such training, to insure that such volunteers are qualified to provide tax counseling assistance to elderly individuals;

"(3) to provide reimbursement to volunteers through such organizations for transportation, meals, and other expenses incurred by them in training or providing tax counseling assistance under this section, and such other support and assistance as he determines to be appropriate in carrying out the provisions of this section;

"(4) to provide for the use of services, personnel, and facilities of Federal executive agencies and of State and local public agencies with their consent, with or without reimbursement therefor; and

"(5) to prescribe such rules and regulations as he deems necessary to carry out the provisions of this section.

"(c) EMPLOYMENT OF VOLUNTEERS.—

"(1) IN GENERAL.—Service as a volunteer in any program carried out under this section shall not be considered service as an employee of the United States. Volunteers under such a program shall not be considered Federal employees and shall not be subject to the provisions of law relating to Federal employment, except that the provisions of section 1905 of title 18, United States Code, shall apply to volunteers as if they were employees of the United States.

"(2) EXPENSES.—Amounts received by volunteers serving in any program carried out under this section as reimbursement for expenses are exempt from taxation under chapters 1 and 21 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].

"(d) PUBLICITY RELATING TO INCOME TAX PROVISIONS PARTICULARLY IMPORTANT TO THE ELDERLY.—The Secretary shall, from time to time, undertake to direct the attention of elderly individuals to those provisions of the Internal Revenue Code of 1986 which are particularly important to taxpayers who are elderly individuals, such as the provisions of section 37 (relating to credit for the elderly) and section 121 (relating to one-time exclusion of gain from sale of principal residence) of the Internal Revenue Code of 1986.

"(e) DEFINITIONS.—For purposes of this section—

"(1) The term 'Secretary' means the Secretary of the Treasury or his delegate.

"(2) The term 'elderly individual' means an individual who has attained the age of 60 years as of the close of his taxable year.

"(3) The term 'Federal income tax return' means any return required under chapter 61 of the Internal Revenue Code of 1986 with respect to the tax imposed on an individual under chapter 1 of such Code.

"(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for the purpose of carrying out the provisions of this section $2,500,000 for the fiscal year ending September 30, 1979, and $3,500,000 for the fiscal year ending September 30, 1980."

§7805. Rules and regulations

(a) Authorization

Except where such authority is expressly given by this title to any person other than an officer or employee of the Treasury Department, the Secretary shall prescribe all needful rules and regulations for the enforcement of this title, including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.

(b) Retroactivity of regulations

(1) In general

Except as otherwise provided in this subsection, no temporary, proposed, or final regulation relating to the internal revenue laws shall apply to any taxable period ending before the earliest of the following dates:

(A) The date on which such regulation is filed with the Federal Register.

(B) In the case of any final regulation, the date on which any proposed or temporary regulation to which such final regulation relates was filed with the Federal Register.

(C) The date on which any notice substantially describing the expected contents of any temporary, proposed, or final regulation is issued to the public.

(2) Exception for promptly issued regulations

Paragraph (1) shall not apply to regulations filed or issued within 18 months of the date of the enactment of the statutory provision to which the regulation relates.

(3) Prevention of abuse

The Secretary may provide that any regulation may take effect or apply retroactively to prevent abuse.

(4) Correction of procedural defects

The Secretary may provide that any regulation may apply retroactively to correct a procedural defect in the issuance of any prior regulation.

(5) Internal regulations

The limitation of paragraph (1) shall not apply to any regulation relating to internal Treasury Department policies, practices, or procedures.

(6) Congressional authorization

The limitation of paragraph (1) may be superseded by a legislative grant from Congress authorizing the Secretary to prescribe the effective date with respect to any regulation.

(7) Election to apply retroactively

The Secretary may provide for any taxpayer to elect to apply any regulation before the dates specified in paragraph (1).

(8) Application to rulings

The Secretary may prescribe the extent, if any, to which any ruling (including any judicial decision or any administrative determination other than by regulation) relating to the internal revenue laws shall be applied without retroactive effect.

(c) Preparation and distribution of regulations, forms, stamps, and other matters

The Secretary shall prepare and distribute all the instructions, regulations, directions, forms, blanks, stamps, and other matters pertaining to the assessment and collection of internal revenue.

(d) Manner of making elections prescribed by Secretary

Except to the extent otherwise provided by this title, any election under this title shall be made at such time and in such manner as the Secretary shall prescribe.

(e) Temporary regulations

(1) Issuance

Any temporary regulation issued by the Secretary shall also be issued as a proposed regulation.

(2) 3-year duration

Any temporary regulation shall expire within 3 years after the date of issuance of such regulation.

(f) Review of impact of regulations on small business

(1) Submissions to Small Business Administration

After publication of any proposed or temporary regulation by the Secretary, the Secretary shall submit such regulation to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact of such regulation on small business. Not later than the date 4 weeks after the date of such submission, the Chief Counsel for Advocacy shall submit comments on such regulation to the Secretary.

(2) Consideration of comments

In prescribing any final regulation which supersedes a proposed or temporary regulation which had been submitted under this subsection to the Chief Counsel for Advocacy of the Small Business Administration—

(A) the Secretary shall consider the comments of the Chief Counsel for Advocacy on such proposed or temporary regulation, and

(B) the Secretary shall discuss any response to such comments in the preamble of such final regulation.

(3) Submission of certain final regulations

In the case of the promulgation by the Secretary of any final regulation (other than a temporary regulation) which does not supersede a proposed regulation, the requirements of paragraphs (1) and (2) shall apply; except that—

(A) the submission under paragraph (1) shall be made at least 4 weeks before the date of such promulgation, and

(B) the consideration (and discussion) required under paragraph (2) shall be made in connection with the promulgation of such final regulation.

(Aug. 16, 1954, ch. 736, 68A Stat. 917; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–369, div. A, title I, §43(b), July 18, 1984, 98 Stat. 558; Pub. L. 100–647, title VI, §6232(a), Nov. 10, 1988, 102 Stat. 3734; Pub. L. 101–508, title XI, §11621(a), Nov. 5, 1990, 104 Stat. 1388–503; Pub. L. 104–168, title XI, §1101(a), July 30, 1996, 110 Stat. 1468; Pub. L. 105–206, title III, §3704, July 22, 1998, 112 Stat. 777.)

AMENDMENTS

1998—Subsec. (d). Pub. L. 105–206 struck out "by regulations or forms" before "prescribe".

1996—Subsec. (b). Pub. L. 104–168 struck out "or rulings" after "regulations" in heading and amended text generally. Prior to amendment, text read as follows: "The Secretary may prescribe the extent, if any, to which any ruling or regulation, relating to the internal revenue laws, shall be applied without retroactive effect."

1990—Subsec. (f). Pub. L. 101–508 substituted heading for one which read "Impact of regulations on small business reviewed" and amended text generally. Prior to amendment, text read as follows: "After the publication of any proposed regulation by the Secretary and before the promulgation of any final regulation by the Secretary which does not supersede a proposed regulation, the Secretary shall submit such regulation to the Administrator of the Small Business Administration for comment on the impact of such regulation on small business. The Administrator shall have 4 weeks from the date of submission to respond."

1988—Subsecs. (e), (f). Pub. L. 100–647 added subsecs. (e) and (f).

1984—Pub. L. 98–369 added subsec. (d).

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–168, title XI, §1101(b), July 30, 1996, 110 Stat. 1469, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to regulations which relate to statutory provisions enacted on or after the date of the enactment of this Act [July 30, 1996]."

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, §11621(b), Nov. 5, 1990, 104 Stat. 1388–504, provided that: "The amendment made by subsection (a) [amending this section] shall apply to regulations issued after the date which is 30 days after the date of the enactment of this Act [Nov. 5, 1990]."

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title VI, §6232(b), Nov. 10, 1988, 102 Stat. 3735, provided that: "The amendments made by this section [amending this section] shall apply to any regulation issued after the date which is 10 days after the date of the enactment of this Act [Nov. 10, 1988]."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98–369, set out as an Effective Date note under section 1271 of this title.

INTERNET AVAILABILITY

Pub. L. 105–206, title II, §2003(d), July 22, 1998, 112 Stat. 725, provided that: "In the case of taxable periods beginning after December 31, 1998, the Secretary of the Treasury or the Secretary's delegate shall establish procedures for all tax forms, instructions, and publications created in the most recent 5-year period to be made available electronically on the Internet in a searchable database at approximately the same time such records are available to the public in paper form. In addition, in the case of taxable periods beginning after December 31, 1998, the Secretary of the Treasury or the Secretary's delegate shall, to the extent practicable, establish procedures for other taxpayer guidance to be made available electronically on the Internet in a searchable database at approximately the same time such guidance is available to the public in paper form."

§7806. Construction of title

(a) Cross references

The cross references in this title to other portions of the title, or other provisions of law, where the word "see" is used, are made only for convenience, and shall be given no legal effect.

(b) Arrangement and classification

No inference, implication, or presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular section or provision or portion of this title, nor shall any table of contents, table of cross references, or similar outline, analysis, or descriptive matter relating to the contents of this title be given any legal effect. The preceding sentence also applies to the sidenotes and ancillary tables contained in the various prints of this Act before its enactment into law.

(Aug. 16, 1954, ch. 736, 68A Stat. 917.)

REFERENCES IN TEXT

This Act, referred to in subsec. (b), is act Aug. 16, 1954.

§7807. Rules in effect upon enactment of this title

(a) Interim provision for administration of title

Until regulations are promulgated under any provision of this title which depends for its application upon the promulgation of regulations (or which is to be applied in such manner as may be prescribed by regulations) all instructions, rules or regulations which are in effect immediately prior to the enactment of this title shall, to the extent such instructions, rules, or regulations could be prescribed as regulations under authority of such provision, be applied as if promulgated as regulations under such provision.

(b) Provisions of this title corresponding to prior internal revenue laws

(1) Reference to law applicable to prior period

Any provision of this title which refers to the application of any portion of this title to a prior period (or which depends upon the application to a prior period of any portion of this title) shall, when appropriate and consistent with the purpose of such provision, be deemed to refer to (or depend upon the application of) the corresponding provision of the Internal Revenue Code of 1939 or of such other internal revenue laws as were applicable to the prior period.

(2) Elections or other acts

If an election or other act under the provisions of the Internal Revenue Code of 1939 would, if this title had not been enacted, be given effect for a period subsequent to the date of enactment of this title, and if corresponding provisions are contained in this title, such election or other act shall be given effect under the corresponding provisions of this title.

(Aug. 16, 1954, ch. 736, 68A Stat. 917.)

REFERENCES IN TEXT

The Internal Revenue Code of 1939, referred to in subsec. (b), is act Feb. 10, 1939, ch. 2, 53 Stat. 1, as amended. Prior to the enactment of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the 1939 Code was classified to former Title 26, Internal Revenue Code. The Internal Revenue Code of 1954 was redesignated The Internal Revenue Code of 1986 by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of this title.

§7808. Depositaries for collections

The Secretary is authorized to designate one or more depositaries in each State for the deposit and safe-keeping of the money collected by virtue of the internal revenue laws; and the receipt of the proper officer of such depositary to the proper officer or employee of the Treasury Department for the money deposited by him shall be a sufficient voucher for such Treasury officer or employee in the settlement of his accounts.

(Aug. 16, 1954, ch. 736, 68A Stat. 918; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary".

§7809. Deposit of collections

(a) General rule

Except as provided in subsections (b) and (c) and in sections 6306, 7651, 7652, 7654, and 7810, the gross amount of all taxes and revenues received under the provisions of this title, and collections of whatever nature received or collected by authority of any internal revenue law, shall be paid daily into the Treasury of the United States under instructions of the Secretary as internal revenue collections, by the officer or employee receiving or collecting the same, without any abatement or deduction on account of salary, compensation, fees, costs, charges, expenses, or claims of any description. A certificate of such payment, stating the name of the depositor and the specific account on which the deposit was made, signed by the Treasurer of the United States, designated depositary, or proper officer of a deposit bank, shall be transmitted to the Secretary.

(b) Deposit funds

In accordance with instructions of the Secretary, there shall be deposited with the Treasurer of the United States in a deposit fund account—

(1) Sums offered in compromise

Sums offered in compromise under the provisions of section 7122;

(2) Sums offered for purchase of real estate

Sums offered for the purchase of real estate under the provisions of section 7506;

(3) Surplus proceeds in sales under levy

Surplus proceeds in any sale under levy, after making allowance for the amount of the tax, interest, penalties, and additions thereto, and for costs and charges of the levy and sale; and

(4) Surplus proceeds in sales of redeemed property

Surplus proceeds in any sale under section 7506 of real property redeemed by the United States, after making allowance for the amount of the tax, interest, penalties, and additions thereto, and for the costs of sale.

Upon the acceptance of such offer in compromise or offer for the purchase of such real estate, the amount so accepted shall be withdrawn from such deposit fund account and deposited in the Treasury of the United States as internal revenue collections. Upon the rejection of any such offer, the Secretary shall refund to the maker of such offer the amount thereof.

(c) Deposit of certain receipts

Moneys received in payment for—

(1) Work [1] or services performed pursuant to section 6103(p) (relating to furnishing of copies of returns or of return information), and section 6108(b) (relating to special statistical studies and compilations);

(2) work or services performed (including materials supplied) pursuant to section 7516 (relating to the supplying of training and training aids on request);

(3) other work or services performed for a State or a department or agency of the Federal Government (subject to all provisions of law and regulations governing disclosure of information) in supplying copies of, or data from, returns, statements, or other documents filed under authority of this title or records maintained in connection with the administration and enforcement of this title; and

(4) work or services performed (including materials supplied) pursuant to section 6110 (relating to public inspection of written determinations),

shall be deposited in a separate account which may be used to reimburse appropriations which bore all or part of the costs of such work or services, or to refund excess sums when necessary.

(d) Deposit of funds for law enforcement agency account

(1) In general

In the case of any amounts recovered as the result of information provided to the Internal

Revenue Service by State and local law enforcement agencies which substantially contributed to such recovery, an amount equal to 10 percent of such amounts shall be deposited in a separate account which shall be used to make the reimbursements required under section 7624.

(2) Deposit in Treasury as internal revenue collections

If any amounts remain in such account after payment of any qualified costs incurred under section 7624, such amounts shall be withdrawn from such account and deposited in the Treasury of the United States as internal revenue collections.

(Aug. 16, 1954, ch. 736, 68A Stat. 918; Pub. L. 87–870, §3(b), Oct. 23, 1962, 76 Stat. 1161; Pub. L. 89–719, title I, §112(b), Nov. 2, 1966, 80 Stat. 1146; Pub. L. 94–455, title XII, §1202(h)(5), title XIX, §§1906(a)(59), (b)(13)(A), Oct. 4, 1976, 90 Stat. 1688, 1833, 1834; Pub. L. 94–528, §2(d), Oct. 17, 1976, 90 Stat. 2483; Pub. L. 100–690, title VII, §7602(b), Nov. 18, 1988, 102 Stat. 4507; Pub. L. 108–357, title VIII, §881(a)(2)(A), Oct. 22, 2004, 118 Stat. 1626.)

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–357 inserted "6306," before "7651".

1988—Subsec. (d). Pub. L. 100–690 added subsec. (d).

1976—Subsec. (a). Pub. L. 94–455, §1906(a)(59), (b)(13)(A), struck out "4735, 4762" after "and in sections", and "or his delegate" after "Secretary" in two places.

Subsec. (b). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary" wherever appearing.

Subsec. (c)(1). Pub. L. 94–455, §1202(h)(5), substituted "section 6103(p) (relating to furnishing of copies of returns or of return information), and section 6108(b) (relating to special statistical studies and compilations)" for "section 7515 (relating to special statistical studies and compilations for other services on request)" after "performed pursuant to".

Subsec. (c)(4). Pub. L. 94–528 added par. (4).

1966—Subsecs. (a), (b)(4). Pub. L. 89–719 inserted reference to section 7810 in subsec. (a) and added subsec. (b)(4).

1962—Subsec. (a). Pub. L. 87–870, §3(b)(1), substituted "subsections (b) and (c) and in" for "subsection (b),".

Subsec. (c). Pub. L. 87–870, §3(b)(2), added subsec. (c).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 applicable to information first provided more than 90 days after Nov. 18, 1988, see section 7602(e) of Pub. L. 100–690, set out as a note under section 6103 of this title.

EFFECTIVE DATE OF 1976 AMENDMENTS

Pub. L. 94–528, §2(e), Oct. 17, 1976, 90 Stat. 2484, provided that: "The amendments made by this section [amending this section and provisions set out as notes under sections 6334, 6851, and 7609 of this title] shall take effect on the date of the enactment of the Tax Reform Act of 1976 [Oct. 4, 1976]."

Amendment by section 1202(h)(5) of Pub. L. 94–455 effective Jan. 1, 1977, see section 1202(i) of Pub. L. 94–455, set out as a note under section 6103 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–719 applicable after Nov. 2, 1966, regardless of when title or lien of United States arose or when lien or interest of another person was acquired, with certain exceptions, see section 114(a)–(c) of Pub. L. 89–719, set out as a note under section 6323 of this title.

AUTHORIZATION OF APPROPRIATIONS

Pub. L. 100–690, title VII, §7602(f), Nov. 18, 1988, 102 Stat. 4508, provided that: "There is authorized to be appropriated from the account referred to in section 7809(d) of the Internal Revenue Code of 1986 such sums as may be necessary to make the payments authorized by section 7624 of such Code."

[1] *So in original. Probably should not be capitalized.*

§7810. Revolving fund for redemption of real property

(a) Establishment of fund

There is established a revolving fund, under the control of the Secretary, which shall be available without fiscal year limitation for all expenses necessary for the redemption (by the Secretary) of real property as provided in section 7425(d) and section 2410 of title 28 of the United States Code. There are authorized to be appropriated from time to time such sums (not to exceed $10,000,000 in the aggregate) as may be necessary to carry out the purposes of this section.

(b) Reimbursement of fund

The fund shall be reimbursed from the proceeds of a subsequent sale of real property redeemed by the United States in an amount equal to the amount expended out of such fund for such redemption.

(c) System of accounts

The Secretary shall maintain an adequate system of accounts for such fund and prepare annual reports on the basis of such accounts.

(Added Pub. L. 89–719, title I, §112(a), Nov. 2, 1966, 80 Stat. 1145; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–369, div. A, title IV, §443, July 18, 1984, 98 Stat. 816.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–369 substituted "$10,000,000" for "$1,000,000".

1976—Pub. L. 94–455 struck out "or his delegate" after "Secretary" wherever appearing.

EFFECTIVE DATE

Section applicable after Nov. 2, 1966, regardless of when title or lien of United States arose or when lien or interest of another person was acquired, with certain exceptions, see section 114(a)–(c) of Pub. L. 89–719, set out as an Effective Date of 1966 Amendment note under section 6323 of this title.

§7811. Taxpayer Assistance Orders

(a) Authority to issue

(1) In general

Upon application filed by a taxpayer with the Office of the Taxpayer Advocate (in such form, manner, and at such time as the Secretary shall by regulations prescribe), the National Taxpayer Advocate may issue a Taxpayer Assistance Order if—

(A) the National Taxpayer Advocate determines the taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered by the Secretary; or

(B) the taxpayer meets such other requirements as are set forth in regulations prescribed by the Secretary.

(2) Determination of hardship

For purposes of paragraph (1), a significant hardship shall include—

(A) an immediate threat of adverse action;

(B) a delay of more than 30 days in resolving taxpayer account problems;

(C) the incurring by the taxpayer of significant costs (including fees for professional representation) if relief is not granted; or

(D) irreparable injury to, or a long-term adverse impact on, the taxpayer if relief is not granted.

(3) Standard where administrative guidance not followed

In cases where any Internal Revenue Service employee is not following applicable published administrative guidance (including the Internal Revenue Manual), the National Taxpayer Advocate shall construe the factors taken into account in determining whether to issue a Taxpayer Assistance Order in the manner most favorable to the taxpayer.

(b) Terms of a Taxpayer Assistance Order

The terms of a Taxpayer Assistance Order may require the Secretary within a specified time period—

(1) to release property of the taxpayer levied upon, or

(2) to cease any action, take any action as permitted by law, or refrain from taking any action, with respect to the taxpayer under—

(A) chapter 64 (relating to collection),

(B) subchapter B of chapter 70 (relating to bankruptcy and receiverships),

(C) chapter 78 (relating to discovery of liability and enforcement of title), or

(D) any other provision of law which is specifically described by the National Taxpayer Advocate in such order.

(c) Authority to modify or rescind

Any Taxpayer Assistance Order issued by the National Taxpayer Advocate under this section may be modified or rescinded—

(1) only by the National Taxpayer Advocate, the Commissioner of Internal Revenue, or the Deputy Commissioner of Internal Revenue, and

(2) only if a written explanation of the reasons for the modification or rescission is provided to the National Taxpayer Advocate.

(d) Suspension of running of period of limitation

The running of any period of limitation with respect to any action described in subsection (b) shall be suspended for—

(1) the period beginning on the date of the taxpayer's application under subsection (a) and ending on the date of the National Taxpayer Advocate's decision with respect to such application, and

(2) any period specified by the National Taxpayer Advocate in a Taxpayer Assistance Order issued pursuant to such application.

(e) Independent action of National Taxpayer Advocate

Nothing in this section shall prevent the National Taxpayer Advocate from taking any action in the absence of an application under subsection (a).

(f) National Taxpayer Advocate

For purposes of this section, the term "National Taxpayer Advocate" includes any designee of the National Taxpayer Advocate.

(g) Application to persons performing services under a qualified tax collection contract

Any order issued or action taken by the National Taxpayer Advocate pursuant to this section shall apply to persons performing services under a qualified tax collection contract (as defined in section 6306(b)) to the same extent and in the same manner as such order or action applies to the Secretary.

(Added Pub. L. 100–647, title VI, §6230(a), Nov. 10, 1988, 102 Stat. 3733; amended Pub. L. 104–168, title I, §§101(b)(1), 102(a), (b), July 30, 1996, 110 Stat. 1455, 1456; Pub. L. 105–206, title I, §1102(c), (d)(1)(C)–(G), (2), (3), July 22, 1998, 112 Stat. 703, 704; Pub. L. 106–554, §1(a)(7) [title III, §319(28), (29)], Dec. 21, 2000, 114 Stat. 2763, 2763A–648; Pub. L. 108–357, title VIII, §881(c), Oct. 22, 2004, 118 Stat. 1626.)

AMENDMENTS

2004—Subsec. (g). Pub. L. 108–357 added subsec. (g).

2000—Subsec. (a)(3). Pub. L. 106–554, §1(a)(7) [title III, §319(28)], substituted "Taxpayer Assistance Order" for "taxpayer assistance order".

Subsec. (d)(1). Pub. L. 106–554, §1(a)(7) [title III, §319(29)], substituted "National Taxpayer Advocate's" for "Ombudsman's".

1998—Subsec. (a). Pub. L. 105–206, §1102(c), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "Upon application filed by a taxpayer with the Office of the Taxpayer Advocate (in such form, manner, and at such time as the Secretary shall by regulations

prescribe), the Taxpayer Advocate may issue a Taxpayer Assistance Order if, in the determination of the Taxpayer Advocate, the taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered by the Secretary."

Subsec. (b)(2)(D). Pub. L. 105–206, §1102(d)(1)(C), substituted "National Taxpayer Advocate" for "Taxpayer Advocate".

Subsec. (c). Pub. L. 105–206, §1102(d)(1)(D), substituted "National Taxpayer Advocate" for "Taxpayer Advocate" wherever appearing.

Subsec. (d)(1). Pub. L. 105–206, §1102(d)(2), which directed amendment of par. (1) by substituting "National Taxpayer Advocate's" for "Taxpayer Advocate's", could not be executed because the words "Taxpayer Advocate's" did not appear.

Subsec. (d)(2). Pub. L. 105–206, §1102(d)(1)(E), substituted "National Taxpayer Advocate" for "Taxpayer Advocate".

Subsec. (e). Pub. L. 105–206, §1102(d)(1)(F), (3), substituted "National Taxpayer Advocate" for "Taxpayer Advocate" in heading and text.

Subsec. (f). Pub. L. 105–206, §1102(d)(1)(G), (3), substituted "National Taxpayer Advocate" for "Taxpayer Advocate" in heading and in two places in text.

1996—Subsec. (a). Pub. L. 104–168, §101(b)(1), substituted "the Office of the Taxpayer Advocate" for "the Office of the Ombudsman" and substituted "Taxpayer Advocate" for "Ombudsman" in two places.

Subsec. (b). Pub. L. 104–168, §102(a)(1), inserted "within a specified time period" after "the Secretary".

Subsec. (b)(2). Pub. L. 104–168, §102(a)(2), inserted "take any action as permitted by law," after "cease any action,".

Subsec. (b)(2)(D). Pub. L. 104–168, §101(b)(1)(B), substituted "Taxpayer Advocate" for "Ombudsman".

Subsec. (c). Pub. L. 104–168, §102(b), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "Any Taxpayer Assistance Order issued by the Ombudsman under this section may be modified or rescinded only by the Ombudsman, a district director, a service center director, a compliance center director, a regional director of appeals, or any superior of any such person."

Subsecs. (d)(2) to (f). Pub. L. 104–168, §101(b)(1)(B), substituted "Taxpayer Advocate" for "Ombudsman" wherever appearing.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 101(b)(1) of Pub. L. 104–168 effective July 30, 1996, see section 101(c) of Pub. L. 104–168, set out as a note under section 7802 of this title.

Pub. L. 104–168, title I, §102(c), July 30, 1996, 110 Stat. 1456, provided that: "The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [July 30, 1996]."

EFFECTIVE DATE

Pub. L. 100–647, title VI, §6230(d), Nov. 10, 1988, 102 Stat. 3734, provided that: "The amendments made by this section [enacting this section] shall take effect on January 1, 1989."

REGULATIONS

Pub. L. 100–647, title VI, §6230(c), Nov. 10, 1988, 102 Stat. 3734, provided that: "The Secretary of the Treasury or the Secretary's delegate shall issue such regulations as the Secretary deems necessary within 90 days of the date of the enactment of this Act [Nov. 10, 1988] in order to carry out the purposes of section 7811 of the 1986 Code (as added by this section) and to ensure taxpayers uniform access to administrative procedures."

Subchapter B—Effective Date and Related Provisions

Sec.
7851. Applicability of revenue laws.
7852. Other applicable rules.

§7851. Applicability of revenue laws

(a) General rules

Except as otherwise provided in any section of this title—

(1) Subtitle A

(A) Chapters 1, 2, 4,[1] and 6 of this title shall apply only with respect to taxable years beginning after December 31, 1953, and ending after the date of enactment of this title, and with respect to such taxable years, chapters 1 (except sections 143 and 144) and 2, and section 3801, of the Internal Revenue Code of 1939 are hereby repealed.

(B) Chapters 3 and 5 [1] of this title shall apply with respect to payments and transfers occurring after December 31, 1954, and as to such payments and transfers sections 143 and 144 and chapter 7 of the Internal Revenue Code of 1939 are hereby repealed.

(C) Any provision of subtitle A of this title the applicability of which is stated in terms of a specific date (occurring after December 31, 1953), or in terms of taxable years ending after a specific date (occurring after December 31, 1953), shall apply to taxable years ending after such specific date. Each such provision shall, in the case of a taxable year subject to the Internal Revenue Code of 1939, be deemed to be included in the Internal Revenue Code of 1939, but shall be applicable only to taxable years ending after such specific date. The provisions of the Internal Revenue Code of 1939 superseded by provisions of subtitle A of this title the applicability of which is stated in terms of a specific date (occurring after December 31, 1953) shall be deemed to be included in subtitle A of this title, but shall be applicable only to the period prior to the taking effect of the corresponding provision of subtitle A.

(D) Effective with respect to taxable years ending after March 31, 1954, and subject to tax under chapter 1 of the Internal Revenue Code of 1939—

(i) Sections 13(b)(3), 26(b)(2)(C), 26(h) (1)(C) (including the comma and the word "and" immediately preceding such section), 26(i)(3), 108(k), 207(a)(1)(C), 207(a)(3)(C), and the last sentence of section 362(b)(3) of such Code are hereby repealed; and

(ii) Sections 13(b)(2), 26(b)(2)(B), 26(h) (1)(B), 26(i)(2), 207(a)(1)(B), 207(a)(3)(B), 421(a)(1)(B), and the second sentence of section 362(b)(3) of such Code are hereby amended by striking out "and before April 1, 1954" (and any accompanying punctuation) wherever appearing therein.

(2) Subtitle B

(A) Chapter 11 of this title shall apply with respect to estates of decedents dying after the date of enactment of this title, and with respect to such estates chapter 3 of the Internal Revenue Code of 1939 is hereby repealed.

(B) Chapter 12 of this title shall apply with respect to the calendar year 1955 and all calendar years thereafter, and with respect to such years chapter 4 of the Internal Revenue Code of 1939 is hereby repealed.

(3) Subtitle C

Subtitle C of this title shall apply only with respect to remuneration paid after December 31, 1954, except that chapter 22 of such subtitle shall apply only with respect to remuneration paid after December 31, 1954, which is for services performed after such date. Chapter 9 of the Internal Revenue Code of 1939 is hereby repealed with respect to remuneration paid after December 31, 1954, except that subchapter B of such chapter (and subchapter E of such chapter to the extent it relates to subchapter B) shall remain in force and effect with respect to remuneration paid after December 31, 1954, for services performed on or before such date.

(4) Subtitle D

Subtitle D of this title shall take effect on January 1, 1955. Subtitles B and C of the Internal Revenue Code of 1939 (except chapters 7, 9, 15, 26, and 28, subchapter B of chapter 25, and parts VII and VIII of subchapter A of chapter 27 of such code) are hereby repealed effective January 1, 1955. Provisions having the same effect as section 6416(b)(2)(H),[1] and so much of section 4082(c) [1] as refers to special motor fuels, shall be considered to be included in the Internal Revenue Code of 1939 effective as of May 1, 1954. Section 2450(a) of the Internal Revenue Code of 1939 (as amended by the Excise Tax Reduction Act of 1954) applies to the period beginning on April 1, 1954, and ending on December 31, 1954.

(5) Subtitle E

Subtitle E shall take effect on January 1, 1955, except that the provisions in section 5411 permitting the use of a brewery under regulations prescribed by the Secretary for the purpose of producing and bottling soft drinks, section 5554, and chapter 53 shall take effect on the day after the date of enactment of this title. Subchapter B of chapter 25, and part VIII of subchapter A of chapter 27, of the Internal Revenue Code of 1939 are hereby repealed effective on the day after the date of enactment of this title. Chapters 15 and 26, and part VII of subchapter A of chapter 27, of the Internal Revenue Code of 1939 are hereby repealed effective January 1, 1955.

(6) Subtitle F

(A) General rule

The provisions of subtitle F shall take effect on the day after the date of enactment of this title and shall be applicable with respect to any tax imposed by this title. The provisions of subtitle F shall apply with respect to any tax imposed by the Internal Revenue Code of 1939 only to the extent provided in subparagraphs (B) and (C) of this paragraph.

(B) Assessment, collection, and refunds

Notwithstanding the provisions of subparagraph (A), and notwithstanding any contrary provision of subchapter A of chapter 63 (relating to assessment), chapter 64 (relating to collection), or chapter 65 (relating to abatements, credits, and refunds) of this title, the provisions of part II of subchapter A of chapter 28 and chapters 35, 36, and 37 (except section 3777) of subtitle D of the Internal Revenue Code of 1939 shall remain in effect until January 1, 1955, and shall also be applicable to the taxes imposed by this title. On and after January 1, 1955, the provisions of subchapter A of chapter 63, chapter 64, and chapter 65 (except section 6405) of this title shall be applicable to all internal revenue taxes (whether imposed by this title or by the Internal Revenue Code of 1939), notwithstanding any contrary provision of part II of subchapter A of chapter 28, or of chapter 35, 36, or 37, of the Internal Revenue Code of 1939. The provisions of section 6405 (relating to reports of refunds and credits) shall be applicable with respect to refunds or credits allowed after the date of enactment of this title, and section 3777 of the Internal Revenue Code of 1939 is hereby repealed with respect to such refunds and credits.

(C) Taxes imposed under the 1939 Code

After the date of enactment of this title, the following provisions of subtitle F shall apply to the taxes imposed by the Internal Revenue Code of 1939, notwithstanding any contrary provisions of such code:

(i) Chapter 73, relating to bonds.

(ii) Chapter 74, relating to closing agreements and compromises.

(iii) Chapter 75, relating to crimes and other offenses, but only insofar as it relates to offenses committed after the date of enactment of this title, and in the case of such offenses, section 6531, relating to periods of limitation on criminal prosecution, shall be applicable. The penalties (other than penalties which may be assessed) provided by the Internal Revenue Code of 1939 shall not apply to offenses, committed after the date of enactment of this title, to which chapter 75 of this title is applicable.

(iv) Chapter 76, relating to judicial proceedings.

(v) Chapter 77, relating to miscellaneous provisions, except that section 7502 shall apply only if the mailing occurs after the date of enactment of this title, and section 7503 shall apply only if the last date referred to therein occurs after the date of enactment of this title.

(vi) Chapter 78, relating to discovery of liability and enforcement of title.

(vii) Chapter 79, relating to definitions.

(viii) Chapter 80, relating to application of internal revenue laws, effective date, and related provisions.

(D) Chapter 28 and subtitle D of 1939 Code

Except as otherwise provided in subparagraphs (B) and (C), the provisions of chapter 28 and of subtitle D of the Internal Revenue Code of 1939 shall remain in effect with respect to taxes imposed by the Internal Revenue Code of 1939.

(7) Other provisions

If the effective date of any provision of the Internal Revenue Code of 1986 is not otherwise provided in this section or in any other section of this title, such provision shall take effect on the day after the date of enactment of this title. If the repeal of any provision of the Internal Revenue Code of 1939 is not otherwise provided by this section or by any other section of this title, such provision is hereby repealed effective on the day after the date of enactment of this title.

(b) Effect of repeal of Internal Revenue Code of 1939

(1) Existing rights and liabilities

The repeal of any provision of the Internal Revenue Code of 1939 shall not affect any act done or any right accruing or accrued, or any suit or proceeding had or commenced in any civil cause, before such repeal; but all rights and liabilities under such code shall continue, and may be enforced in the same manner, as if such repeal had not been made.

(2) Existing offices

The repeal of any provision of the Internal Revenue Code of 1939 shall not abolish, terminate, or otherwise change—

(A) any internal revenue district,

(B) any office, position, board, or committee, or

(C) the appointment or employment of any officer or employee,

existing immediately preceding the enactment of this title, the continuance of which is not manifestly inconsistent with any provision of this title, but the same shall continue unless and until changed by lawful authority.

(3) Existing delegations of authority

Any delegation of authority made pursuant to the provisions of Reorganization Plan Numbered 26 of 1950 or Reorganization Plan Numbered 1 of 1952, including any redelegation of authority made pursuant to any such delegation of authority, and in effect under the Internal Revenue Code of 1939 immediately preceding the enactment of this title shall, notwithstanding the repeal of such code, remain in effect for purposes of this title, unless distinctly inconsistent or manifestly incompatible with the provisions of this title. The preceding sentence shall not be construed as limiting in any manner the power to amend, modify, or revoke any such delegation or redelegation of authority.

(c) Crimes and forfeitures

All offenses committed, and all penalties or forfeitures incurred, under any provision of law hereby repealed, may be prosecuted and punished in the same manner and with the same effect as if this title had not been enacted.

(d) Periods of limitation

All periods of limitation, whether applicable to civil causes and proceedings, or to the prosecution of offenses, or for the recovery of penalties or forfeitures, hereby repealed shall not be affected thereby, but all suits, proceedings, or prosecutions, whether civil or criminal, for causes arising, or acts done or committed, prior to said repeal, may be commenced and prosecuted within the same time as if this title had not been enacted.

(e) Reference to other provisions

For the purpose of applying the Internal Revenue Code of 1939 or the Internal Revenue Code of 1986 to any period, any reference in either such code to another provision of the Internal Revenue

Code of 1939 or the Internal Revenue Code of 1986 which is not then applicable to such period shall be deemed a reference to the corresponding provision of the other code which is then applicable to such period.

(Aug. 16, 1954, ch. 736, 68A Stat. 919; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095.)

REFERENCES IN TEXT

Chapter 4 of this title, referred to in subsec. (a)(1)(A), was repealed by Pub. L. 101–508, title XI, §11801(a)(37), Nov. 5, 1990, 104 Stat. 1388–521.

The date of enactment of this title, referred to in subsecs. (a)(1)(A), (5), (6)(A) to (C), (7), (b)(2), (3), is Aug. 16, 1954.

Various provisions of the Internal Revenue Code of 1939, referred to in text and described below, have corresponding provisions appearing in the Internal Revenue Code of 1986 [formerly I.R.C. 1954]. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of this title. See, also, subsec. (e) of this section for provision that references in the 1986 Code to a provision in the 1939 Code, not then applicable, shall be deemed a reference to the corresponding provision of the 1986 Code, which is then applicable.

Chapter 1 of the Internal Revenue Code of 1939, referred to in subsec. (a)(1)(A), (D), was comprised of sections 1 to 482 of former Title 26, Internal Revenue Code. Sections 1 to 33 were repealed by subsec. (a)(1)(A) of this section, section 34 was repealed by act Feb. 25, 1944, ch. 63, title I, §106(c)(2), 58 Stat. 31, sections 35 to 184 were repealed by subsec. (a)(1)(A) of this section, section 185 was repealed by act Feb. 25, 1944, ch. 63, title I, §107(a), 58 Stat. 31, sections 201 to 263 were repealed by subsec. (a)(1)(A) of this section, section 264 was repealed by act Oct. 21, 1942, ch. 619, title I, §159(e), 56 Stat. 860, sections 265 to 362 were repealed by subsec. (a)(1)(A) of this section, section 363 was repealed by act Oct. 21, 1942, ch. 619, title I, §170(a), 56 Stat. 878, sections 371 to 482 were repealed by subsec. (a)(1)(A) of this section.

Sections 143 and 144 of the Internal Revenue Code of 1939, referred to in subsec. (a)(1)(A), (B), were classified to sections 143 and 144 of former Title 26, Internal Revenue Code.

Chapter 2 of the Internal Revenue Code of 1939, referred to in subsec. (a)(1)(A), was comprised of sections 500 to 784 of former Title 26, Internal Revenue Code. Sections 500 to 511 and 650 to 706 were repealed by subsec. (a)(1)(A) of this section, sections 600 to 605 were repealed by act Nov. 8, 1945, ch. 453, title II, §202, 59 Stat. 574, sections 710 to 736, 740, 742 to 744, 750, 751, 760, 761 and 780 to 784 were repealed by act Nov. 8, 1945, ch. 453, title I, §122(a), 59 Stat. 568, section 741 was repealed by act Oct. 21, 1942, ch. 619, title II, §§224(b), 228(b), 56 Stat. 920, 925, section 752 was repealed by act Oct. 21, 1942, ch. 619, title II, §229(a)(1), 56 Stat. 931, eff. as of Oct. 8, 1940.

Section 3801 of the Internal Revenue Code of 1939, referred to in subsec. (a)(1)(A), was classified to section 3801 of former Title 26, Internal Revenue Code. Section 3801 was repealed by subsec. (a)(1)(A) of this section.

Chapter 5 of this title, referred to in subsec. (a)(1)(B), was repealed by Pub. L. 105–34, title XI, §1131(a), Aug. 5, 1997, 111 Stat. 978.

Chapter 7 of the Internal Revenue Code of 1939, referred to in subsec. (a)(1)(B), (4), was comprised of sections 1250 to 1254 of former Title 26, Internal Revenue Code.

The Internal Revenue Code of 1939, referred to in subsecs. (a)(1)(C), (4), (6)(A) to (C), (C)(iii), (D), (7), (b)(1) to (3), (e), is act Feb. 10, 1939, ch. 2, 53 Stat. 1, as amended. Prior to the enactment of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the 1939 Code was classified to former Title 26, Internal Revenue Code.

Sections 13(b)(3), 26(b)(2)(C), 26(h)(1)(C), 26(i)(3), 108(k), 207(a)(1)(C), 207(a)(3)(C), and the last sentence of section 362(b)(3), referred to in subsec. (a)(1)(D)(i), were classified to former sections 13(b)(3), 26(b)(2)(C), (h)(1)(C), (i)(3), 108(k), 207(a)(1)(C), (3)(C), and 362(b)(3) of former Title 26, Internal Revenue Code. Sections 13(b)(3), 26(b)(2)(C), (h)(1)(C), (i)(3), 108(k), 207(a)(1)(C), (3)(C), and 362(b)(3) were repealed by subsec. (a)(1)(d)(i) of this section.

Sections 13(b)(2), 26(b)(2)(B), 26(h)(1)(B), 26(i)(2), 207(a)(1)(B), 207(a)(3)(B), 421(a)(1)(B), and the second sentence of section 362(b)(3), referred to in subsec. (a)(1)(D)(ii), were classified to sections 13(b)(2), 26(b)(2)(B), (h)(1)(B), (i)(2), 207(a)(1)(B), (3)(B), 421(a)(1)(B), and 362(b)(3) of former Title 26, Internal Revenue Code.

Chapter 3 of the Internal Revenue Code of 1939, referred to in subsec. (a)(2)(A), was comprised of sections 800 to 951 of former Title 26, Internal Revenue Code.

Chapter 4 of the Internal Revenue Code of 1939, referred to in subsec. (a)(2)(B), was comprised of sections 1000 to 1031 of former Title 26, Internal Revenue Code.

Chapter 9 of the Internal Revenue Code of 1939, referred to in subsec. (a)(3), (4), was comprised of sections 1400 to 1636 of former Title 26, Internal Revenue Code. Subchapters B and E of chapter 9 of the Internal Revenue Code of 1939 were comprised of sections 1500 to 1538, and 1630 to 1636, respectively, of former Title 26.

Subtitles B and C of the Internal Revenue Code of 1939, referred to in subsec. (a)(4), were comprised of chapters 6 to 28, sections 1200 to 3361, and chapters 29 to 33A, sections 3400 to 3540, respectively, of former Title 26, Internal Revenue Code. Sections 1200 to 1207 of former Title 26 were repealed by act Nov. 8, 1945, ch. 453, title II, §201, 59 Stat. 574. Sections 1250 to 1254, 1400 to 1627, 1631 to 1805, 1807 to 2300, 2302 to 2362, 2400 to 2475, 2477 to 2905, 2908 to 3150, 3152, 3153, 3155 to 3195, 3206 to 3212, 3220 to 3301, 3303 to 3335, 3350 to 3409, 3412 to 3451, and 3453 to 3508 of former Title 26, were repealed by subsec. (a)(4) of this section. Sections 1300 and 1301 were repealed by act June 10, 1952, ch. 390, 66 Stat. 133. Section 1630 was repealed by act Aug. 27, 1949, ch. 517, §4(b), 63 Stat. 668. Section 1806 was repealed by act Mar. 11, 1947, ch. 117, §8(c), 61 Stat. 13. Section 2301 was repealed by act Mar. 16, 1950, ch. 61, §1, 64 Stat. 20. Sections 2380 to 2390, and 3215 to 3217 were repealed by act Oct. 21, 1942, ch. 619, title VI, §619, 56 Stat. 979. Section 2476 was repealed by act Apr. 30, 1946, ch. 244, title V, §506(b), 60 Stat. 157. Sections 2906 and 3302 were repealed by act Feb. 21, 1950, ch. 36, §7, 64 Stat. 8. Section 2907 was repealed by act July 22, 1941, ch. 314, 55 Stat. 602. Sections 3151 and 3154 were repealed by act Aug. 27, 1949, ch. 498, §6, 63 Stat. 626. Sections 3200 to 3202 were repealed by act Mar. 16, 1950, ch. 61, §2, 64 Stat. 20. Sections 3340 to 3343 were repealed by act Apr. 30, 1946, ch. 244, title V, §507(b), 60 Stat. 157. Section 3411 was repealed by act Oct. 20, 1951, ch. 521, title IV, §488(a), 65 Stat. 536. Section 3452 was repealed by act Sept. 20, 1941, ch. 412, title V, §501, 55 Stat. 706. Sections 3520 to 3528 expired by their own terms on Apr. 26, 1941. Section 3540 was repealed by act Nov. 8, 1945, ch. 453, title III, §301, 59 Stat. 575.

Chapter 15 of the Internal Revenue Code of 1939, referred to in subsec. (a)(4), (5), was comprised of sections 2000 to 2199 of former Title 26, Internal Revenue Code. Chapter 15 was repealed by subsec. (a)(5) of this section.

Chapter 26 of the Internal Revenue Code of 1939, referred to in subsec. (a)(4), (5), was comprised of sections 2800 to 3195 of former Title 26, Internal Revenue Code. Sections 2800 to 2905, 2908 to 3150, 3152, 3153, 3155 to 3195 were repealed by subsec. (a)(5) of this section. Section 2906 was repealed by act Feb. 21, 1950, ch. 36, §7, 64 Stat. 8. Section 2907 was repealed by act July 22, 1941, ch. 314, §3, 55 Stat. 602. Sections 3151 and 3154 were repealed by act Aug. 23, 1949, ch. 498, §6, 63 Stat. 626.

Chapter 28 of the Internal Revenue Code of 1939, referred to in subsec. (a)(4), (6)(B), (D), was comprised of sections 3300 to 3361 of former Title 26, Internal Revenue Code. Part II of subchapter A of chapter 27 of the Internal Revenue Code of 1939 was comprised of sections 3310 to 3314 of former Title 26.

Subchapter B of chapter 25 of the Internal Revenue Code of 1939, referred to in subsec. (a)(4), (5), was comprised of sections 2720 to 2734 of former Title 26, Internal Revenue Code. Subchapter B of chapter 25 of the Internal Revenue Code of 1939 was repealed by subsec. (a)(5) of this section.

Parts VII and VIII of subchapter A of chapter 27 of the Internal Revenue Code of 1939, referred to in subsec. (a)(4), (5), were comprised of sections 3250 to 3255 and 3260 to 3266, respectively, of former Title 26, Internal Revenue Code. Parts VII and VIII of subchapter A of chapter 27 of the Internal Revenue Code of 1939 were repealed by subsec. (a)(5) of this section.

Section 6416(b)(2)(H), referred to in subsec. (a)(4), was repealed by Pub. L. 98–369, div. A, title VII, §735(c)(13)(B), July 18, 1984, 98 Stat. 984.

Section 4082, referred to in subsec. (a)(4), was amended generally by Pub. L. 99–514, title XVII, §1703(a), Oct. 22, 1986, 100 Stat. 2775, and, as so amended, did not contain a subsec. (c). Subsequently, section 4082 was amended generally by Pub. L. 103–66, title XIII, §13242(a), Aug. 10, 1993, 107 Stat. 517, and, as so amended, contains a subsec. (c) relating to regulations. Section 4082 was further amended by Pub. L. 104–188, title I, §1801(a), Aug. 20, 1996, 110 Stat. 1891, which added a subsec. (c), relating to exception to dyeing requirements, and redesignated former subsec. (c), relating to regulations, as (d).

Section 2450(a) of the Internal Revenue Code of 1939, referred to in subsec. (a)(4), was classified to section 2450 of former Title 26, Internal Revenue Code. Section 2450 was repealed by subsec. (a)(4) of this section.

The Excise Tax Reduction Act of 1954, referred to in subsec. (a)(4), is act Mar. 31, 1954, ch. 126, 68 Stat. 37.

Subtitle D of the Internal Revenue Code of 1939, referred to in subsec. (a)(6)(B), (D), was comprised of chapters 34 to 38, sections 3600 to 3781 of former Title 26, Internal Revenue Code. Chapters 35, 36, and 37 of subtitle D of the Internal Revenue Code of 1939 were comprised of sections 3640 to 3647, 3650 to 3762, and 3770 to 3781, respectively, of former Title 26.

Section 3777 of the Internal Revenue Code of 1939, referred to in subsec. (a)(6)(B), was classified to section 3777 of former Title 26, Internal Revenue Code. Section 3777 was repealed by subsec. (a)(6)(B) of

this section.

Reorganization Plan Numbered 26 of 1950, referred to in subsec. (b)(3), is Reorg. Plan No. 26 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, which is set out in the Appendix to Title 5, Government Organization and Employees.

Reorganization Plan Numbered 1 of 1952, referred to in subsec. (b)(3), is Reorg. Plan No. 1 of 1952, eff. Mar. 14, 1952, 17 F.R. 2243, 66 Stat. 823, which is set out in Appendix to Title 5.

AMENDMENTS

1986—Subsecs. (a)(7), (e). Pub. L. 99–514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

1976—Subsec. (a)(5). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

[1] *See References in Text note below.*

§7852. Other applicable rules

(a) Separability clause

If any provision of this title, or the application thereof to any person or circumstances, is held invalid, the remainder of the title, and the application of such provision to other persons or circumstances, shall not be affected thereby.

(b) Reference in other laws to Internal Revenue Code of 1939

Any reference in any other law of the United States or in any Executive order to any provision of the Internal Revenue Code of 1939 shall, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, be deemed also to refer to the corresponding provision of this title.

(c) Items not to be twice included in income or deducted therefrom

Except as otherwise distinctly expressed or manifestly intended, the same item (whether of income, deduction, credit, or otherwise) shall not be taken into account both in computing a tax under subtitle A of this title and a tax under chapter 1 or 2 of the Internal Revenue Code of 1939.

(d) Treaty obligations

(1) In general

For purposes of determining the relationship between a provision of a treaty and any law of the United States affecting revenue, neither the treaty nor the law shall have preferential status by reason of its being a treaty or law.

(2) Savings clause for 1954 treaties

No provision of this title (as in effect without regard to any amendment thereto enacted after August 16, 1954) shall apply in any case where its application would be contrary to any treaty obligation of the United States in effect on August 16, 1954.

(e) Privacy Act of 1974

The provisions of subsections (d)(2), (3), and (4), and (g) of section 552a of title 5, United States Code, shall not be applied, directly or indirectly, to the determination of the existence or possible existence of liability (or the amount thereof) of any person for any tax, penalty, interest, fine, forfeiture, or other imposition or offense to which the provisions of this title apply.

(Aug. 16, 1954, ch. 736, 68A Stat. 922; Pub. L. 94–455, title XII, §1202(g), Oct. 4, 1976, 90 Stat. 1688; Pub. L. 100–647, title I, §1012(aa)(1)(A), Nov. 10, 1988, 102 Stat. 3531.)

REFERENCES IN TEXT

The Internal Revenue Code of 1939, referred to in subsec. (b), is act Feb. 10, 1939, ch. 2, 53 Stat. 1. Prior to the enactment of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the 1939 Code was classified to former Title 26, Internal Revenue Code. The Internal Revenue Code of 1954 was redesignated The Internal

Revenue Code of 1986 by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of this title.

Chapters 1 and 2 of the Internal Revenue Code of 1939, referred to in subsec. (c), are chapters 1 and 2 of former Title 26, Internal Revenue Code. For history of such chapters, see References in Text note set out under section 7851 of this title.

The Privacy Act of 1974, referred to in subsec. (e), is Pub. L. 93–579, Dec. 31, 1974, 88 Stat. 1896, as amended, which enacted section 552a of Title 5, Government Organization and Employees, and enacted notes set out under section 552a of Title 5. For complete classification of this Act to the Code, see Short Title note set out under section 552a of Title 5 and Tables.

AMENDMENTS

1988—Subsec. (d). Pub. L. 100–647 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "No provision of this title shall apply in any case where its application would be contrary to any treaty obligation of the United States in effect on the date of enactment of this title."

1976—Subsec. (e). Pub. L. 94–455 added subsec. (e).

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1012(aa)(1)(B), Nov. 10, 1988, 102 Stat. 3531, provided that: "Section 7852(d)(1) of the 1986 Code, as added by subparagraph (A), shall apply to any taxable period with respect to which the time for assessment of any deficiency has not expired by reason of any law or rule of law before the date of the enactment of this Act [Nov. 10, 1988]."

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective Jan. 1, 1977, see section 1202(i) of Pub. L. 94–455, set out as a note under section 6103 of this title.

APPLICATION OF SUBSEC. (D) TO PUB. L. 87–834

Pub. L. 87–834, §31, Oct. 16, 1962, 76 Stat. 1069, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Section 7852(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to treaty obligations) shall not apply in respect of any amendment made by this Act [see Short Title of 1962 Amendments note set out under section 1 of this title]."

Subchapter C—Provisions Affecting More Than One Subtitle

Sec.
7871. Indian tribal governments treated as States for certain purposes.
7872. Treatment of loans with below-market interest rates.
7873. Income derived by Indians from exercise of fishing rights.
7874. Rules relating to expatriated entities and their foreign parents.

AMENDMENTS

2004—Pub. L. 108–357, title VIII, §801(b), Oct. 22, 2004, 118 Stat. 1566, added item 7874.

1988—Pub. L. 100–647, title III, §3041(b), Nov. 10, 1988, 102 Stat. 3641, added item 7873.

1984—Pub. L. 98–369, div. A, title I, §172(b), July 18, 1984, 98 Stat. 703, added item 7872.

§7871. Indian tribal governments treated as States for certain purposes

(a) General rule

An Indian tribal government shall be treated as a State—

(1) for purposes of determining whether and in what amount any contribution or transfer to or for the use of such government (or a political subdivision thereof) is deductible under—

(A) section 170 (relating to income tax deduction for charitable, etc., contributions and gifts),

(B) sections 2055 and 2106(a)(2) (relating to estate tax deduction for transfers of public,

charitable, and religious uses), or

(C) section 2522 (relating to gift tax deduction for charitable and similar gifts);

(2) subject to subsection (b), for purposes of any exemption from, credit or refund of, or payment with respect to, an excise tax imposed by—

(A) chapter 31 (relating to tax on special fuels),

(B) chapter 32 (relating to manufacturers excise taxes),

(C) subchapter B of chapter 33 (relating to communications excise tax), or

(D) subchapter D of chapter 36 (relating to tax on use of certain highway vehicles);

(3) for purposes of section 164 (relating to deduction for taxes);

(4) subject to subsection (c), for purposes of section 103 (relating to State and local bonds);

(5) for purposes of section 511(a)(2)(B) (relating to the taxation of colleges and universities which are agencies or instrumentalities of governments or their political subdivisions);

(6) for purposes of—

(A) section 105(e) (relating to accident and health plans),

(B) section 403(b)(1)(A)(ii) (relating to the taxation of contributions of certain employers for employee annuities), and

(C) section 454(b)(2) (relating to discount obligations); and

(7) for purposes of—

(A) chapter 41 (relating to tax on excess expenditures to influence legislation), and

(B) subchapter A of chapter 42 (relating to private foundations).

(b) Additional requirements for excise tax exemptions

Paragraph (2) of subsection (a) shall apply with respect to any transaction only if, in addition to any other requirement of this title applicable to similar transactions involving a State or political subdivision thereof, the transaction involves the exercise of an essential governmental function of the Indian tribal government.

(c) Additional requirements for tax-exempt bonds

(1) In general

Subsection (a) of section 103 shall apply to any obligation (not described in paragraph (2)) issued by an Indian tribal government (or subdivision thereof) only if such obligation is part of an issue substantially all of the proceeds of which are to be used in the exercise of any essential governmental function.

(2) No exemption for private activity bonds

Except as provided in paragraph (3), subsection (a) of section 103 shall not apply to any private activity bond (as defined in section 141(a)) issued by an Indian tribal government (or subdivision thereof).

(3) Exception for certain private activity bonds

(A) In general

In the case of an obligation to which this paragraph applies—

(i) paragraph (2) shall not apply,

(ii) such obligation shall be treated for purposes of this title as a qualified small issue bond, and

(iii) section 146 shall not apply.

(B) Obligations to which paragraph applies

This paragraph shall apply to any obligation issued as part of an issue if—

(i) 95 percent or more of the net proceeds of the issue are to be used for the acquisition, construction, reconstruction, or improvement of property which is of a character subject to

the allowance for depreciation and which is part of a manufacturing facility (as defined in section 144(a)(12)(C)),

(ii) such issue is issued by an Indian tribal government or a subdivision thereof,

(iii) 95 percent or more of the net proceeds of the issue are to be used to finance property which—

(I) is to be located on land which, throughout the 5-year period ending on the date of issuance of such issue, is part of the qualified Indian lands of the issuer, and

(II) is to be owned and operated by such issuer,

(iv) such obligation would not be a private activity bond without regard to subparagraph (C),

(v) it is reasonably expected (at the time of issuance of the issue) that the employment requirement of subparagraph (D)(i) will be met with respect to the facility to be financed by the net proceeds of the issue, and

(vi) no principal user of such facility will be a person (or group of persons) described in section 144(a)(6)(B).

For purposes of clause (iii), section 150(a)(5) shall apply.

(C) Private activity bond rules to apply

An obligation to which this paragraph applies (other than an obligation described in paragraph (1)) shall be treated for purposes of this title as a private activity bond.

(D) Employment requirements

(i) In general

The employment requirements of this subparagraph are met with respect to a facility financed by the net proceeds of an issue if, as of the close of each calendar year in the testing period, the aggregate face amount of all outstanding tax-exempt private activity bonds issued to provide financing for the establishment which includes such facility is not more than 20 times greater than the aggregate wages (as defined by section 3121(a)) paid during the preceding calendar year to individuals (who are enrolled members of the Indian tribe of the issuer or the spouse of any such member) for services rendered at such establishment.

(ii) Failure to meet requirements

(I) In general

If, as of the close of any calendar year in the testing period, the requirements of this subparagraph are not met with respect to an establishment, section 103 shall cease to apply to interest received or accrued (on all private activity bonds issued to provide financing for the establishment) after the close of such calendar year.

(II) Exception

Subclause (I) shall not apply if the requirements of this subparagraph would be met if the aggregate face amount of all tax-exempt private activity bonds issued to provide financing for the establishment and outstanding at the close of the 90th day after the close of the calender [1] year were substituted in clause (i) for such bonds outstanding at the close of such calendar year.

(iii) Testing period

For purposes of this subparagraph, the term "testing period" means, with respect to an issue, each calendar year which begins more than 2 years after the date of issuance of the issue (or, in the case of a refunding obligation, the date of issuance of the original issue).

(E) Definitions

For purposes of this paragraph—

(i) Qualified Indian lands

The term "qualified Indian lands" means land which is held in trust by the United States for the benefit of an Indian tribe.

(ii) Indian tribe

The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(iii) Net proceeds

The term "net proceeds" has the meaning given such term by section 150(a)(3).

(d) Treatment of subdivisions of Indian tribal governments as political subdivisions

For the purposes specified in subsection (a), a subdivision of an Indian tribal government shall be treated as a political subdivision of a State if (and only if) the Secretary determines (after consultation with the Secretary of the Interior) that such subdivision has been delegated the right to exercise one or more of the substantial governmental functions of the Indian tribal government.

(e) Essential governmental function

For purposes of this section, the term "essential governmental function" shall not include any function which is not customarily performed by State and local governments with general taxing powers.

(f) Tribal economic development bonds

(1) Allocation of limitation

(A) In general

The Secretary shall allocate the national tribal economic development bond limitation among the Indian tribal governments in such manner as the Secretary, in consultation with the Secretary of the Interior, determines appropriate.

(B) National limitation

There is a national tribal economic development bond limitation of $2,000,000,000.

(2) Bonds treated as exempt from tax

In the case of a tribal economic development bond—

(A) notwithstanding subsection (c), such bond shall be treated for purposes of this title in the same manner as if such bond were issued by a State,

(B) the Indian tribal government issuing such bond and any instrumentality of such Indian tribal government shall be treated as a State for purposes of section 141, and

(C) section 146 shall not apply.

(3) Tribal economic development bond

(A) In general

For purposes of this section, the term "tribal economic development bond" means any bond issued by an Indian tribal government—

(i) the interest on which would be exempt from tax under section 103 if issued by a State or local government, and

(ii) which is designated by the Indian tribal government as a tribal economic development bond for purposes of this subsection.

(B) Exceptions

Such term shall not include any bond issued as part of an issue if any portion of the proceeds of such issue are used to finance—

(i) any portion of a building in which class II or class III gaming (as defined in section 4 of the Indian Gaming Regulatory Act) is conducted or housed or any other property actually

used in the conduct of such gaming, or

(ii) any facility located outside the Indian reservation (as defined in section 168(j)(6)).

(C) Limitation on amount of bonds designated

The maximum aggregate face amount of bonds which may be designated by any Indian tribal government under subparagraph (A) shall not exceed the amount of national tribal economic development bond limitation allocated to such government under paragraph (1).

(Added Pub. L. 97–473, title II, §202(a), Jan. 14, 1983, 96 Stat. 2608; amended Pub. L. 98–21, title I, §122(c)(6), Apr. 20, 1983, 97 Stat. 87; Pub. L. 98–369, div. A, title IV, §474(r)(41), title X, §1065(b), July 18, 1984, 98 Stat. 847, 1048; Pub. L. 99–514, title I, §§112(b)(4), 123(b)(3), title XIII, §1301(j)(6), (7), title XVIII, §§1878(i), 1899A(65), Oct. 22, 1986, 100 Stat. 2109, 2113, 2658, 2905, 2962; Pub. L. 100–203, title X, §10632(a), (b), Dec. 22, 1987, 101 Stat. 1330–455; Pub. L. 103–66, title XIII, §13222(d), Aug. 10, 1993, 107 Stat. 481; Pub. L. 111–5, div. B, title I, §1402(a), Feb. 17, 2009, 123 Stat. 351.)

REFERENCES IN TEXT

Section 4 of the Indian Gaming Regulatory Act, referred to in subsec. (f)(3)(B)(i), is classified to section 2703 of Title 25, Indians.

AMENDMENTS

2009—Subsec. (f). Pub. L. 111–5 added subsec. (f).

1993—Subsec. (a)(6)(B) to (D). Pub. L. 103–66 redesignated former subpars. (C) and (D) as (B) and (C), respectively, and struck out former subpar. (B) which read as follows: "section 162(e) (relating to appearances, etc., with respect to legislation),".

1987—Subsec. (c)(2). Pub. L. 100–203, §10632(b)(2), substituted "Except as provided in paragraph (3), subsection (a)" for "Subsection (a)".

Subsec. (c)(3). Pub. L. 100–203, §10632(b)(1), added par. (3).

Subsec. (e). Pub. L. 100–203, §10632(a), added subsec. (e).

1986—Subsec. (a)(4). Pub. L. 99–514, §1301(j)(6), substituted "(relating to State and local bonds)" for "(relating to interest on certain governmental obligations)".

Subsec. (a)(6). Pub. L. 99–514, §123(b)(3), redesignated subpars. (C) to (E), as previously redesignated by section 112(b)(4) of Pub. L. 99–514, as (B) to (D), respectively, and struck out previously redesignated subpar. (B), which read as follows: "section 117(b)(2)(A) (relating to scholarships and fellowship grants),".

Pub. L. 99–514, §112(b)(4), redesignated subpars. (B) to (F) as (A) to (E), respectively, and struck out former subpar. (A) which read as follows: "section 24(c)(4) (defining State for purposes of credit for contribution to candidates for public offices),".

Pub. L. 99–514, §1878(i), made technical amendment to directory language of Pub. L. 98–369, §1065(b). See 1984 Amendment note below.

Subsec. (a)(6)(D). Pub. L. 99–514, §1899A(65), substituted "; and" for period at end.

Subsec. (c)(2). Pub. L. 99–514, §1301(j)(7), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "Subsection (a) of section 103 shall not apply to any of the following issued by an Indian tribal government (or subdivision thereof):

"(A) An industrial development bond (as defined in section 103(b)(2)).

"(B) An obligation described in section 103(l)(1)(A) (relating to scholarship bonds).

"(C) A mortgage subsidy bond (as defined in paragraph (1) of section 103A(b) without regard to paragraph (2) thereof)."

1984—Subsec. (a)(6)(A). Pub. L. 98–369, §474(r)(41), substituted "section 24(c)(4)" for "section 41(c)(4)".

Subsec. (a)(6)(B) to (F). Pub. L. 98–369, §1065(b), as amended by Pub. L. 99–514, §1878(i), added subpars. (B), (D), and (F), and redesignated former subpars. (B) and (C) as (C) and (E), respectively.

1983—Subsec. (a)(6). Pub. L. 98–21 redesignated subpars. (B) to (D) as (A) to (C), respectively, and struck out former subpar. (A), which referred to section 37(e)(9)(A) (relating to certain public retirement systems).

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, §1402(c), Feb. 17, 2009, 123 Stat. 352, provided that: "The amendment made by subsection (a) [amending this section] shall apply to obligations issued after the date of the enactment of this Act [Feb. 17, 2009]."

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to amounts paid or incurred after Dec. 31, 1993, see section 13222(e) of Pub. L. 103–66 set out as a note under section 162 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title X, §10632(c), Dec. 22, 1987, 101 Stat. 1330–457, provided that: "The amendments made by this section [amending this section] shall apply to obligations issued after October 13, 1987."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 112(b)(4) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 123(b)(3) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, but only in the case of scholarships and fellowships granted after Aug. 16, 1986, see section 151(d) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 1301(j)(6), (7) of Pub. L. 99–514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99–514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

Amendment by section 1878(i) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(41) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Pub. L. 98–369, div. A, title X, §1065(c), July 18, 1984, 98 Stat. 1048, provided that: "The amendment made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 1984."

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable to taxable years beginning after Dec. 31, 1983, except that if an individual's annuity starting date was deferred under section 105(d)(6) of this title as in effect on the day before Apr. 20, 1983, such deferral shall end on the first day of such individual's first taxable year beginning after Dec. 31, 1983, see section 122(d) of Pub. L. 98–21, set out as a note under section 22 of this title.

EFFECTIVE DATE

Pub. L. 97–473, title II, §204, Jan. 14, 1983, 96 Stat. 2611, as amended by Pub. L. 98–369, div. A, title X, §1065(a), July 18, 1984, 98 Stat. 1048; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by this title [enacting this section, amending sections 41, 103, 164, 170, 2055, 2106, 2522, 4227, 4484, 6420, 6421, 6424, 6427, and 7701 of this title, and enacting provisions set out as a note under section 1 of this title]—

"(1) insofar as they relate to chapter 1 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [26 U.S.C. 1 et seq.] (other than section 103 thereof), shall apply to taxable years beginning after December 31, 1982,

"(2) insofar as they relate to section 103 of such Code, shall apply to obligations issued after December 31, 1982,

"(3) insofar as they relate to chapter 11 of such Code [26 U.S.C. 2001 et seq.], shall apply to estates of decedents dying after December 31, 1982,

"(4) insofar as they relate to chapter 12 of such Code [26 U.S.C. 2501 et seq.], shall apply to gifts made after December 31, 1982, and

"(5) insofar as they relate to taxes imposed by subtitle D of such Code [26 U.S.C. 4041 et seq.], shall take effect on January 1, 1983."

SHORT TITLE

For short title of title II of Pub. L. 97–473 as the "Indian Tribal Governmental Tax Status Act of 1982", see Short Title of 1983 Amendments note set out under section 1 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendment by section 123(b)(3) of Pub. L. 99–514 to the extent application of such

amendment would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, see section 1012(aa)(3), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[1] *So in original. Probably should be "calendar".*

§7872. Treatment of loans with below-market interest rates

(a) Treatment of gift loans and demand loans

(1) In general

For purposes of this title, in the case of any below-market loan to which this section applies and which is a gift loan or a demand loan, the forgone interest shall be treated as—

(A) transferred from the lender to the borrower, and

(B) retransferred by the borrower to the lender as interest.

(2) Time when transfers made

Except as otherwise provided in regulations prescribed by the Secretary, any forgone interest attributable to periods during any calendar year shall be treated as transferred (and retransferred) under paragraph (1) on the last day of such calendar year.

(b) Treatment of other below-market loans

(1) In general

For purposes of this title, in the case of any below-market loan to which this section applies and to which subsection (a)(1) does not apply, the lender shall be treated as having transferred on the date the loan was made (or, if later, on the first day on which this section applies to such loan), and the borrower shall be treated as having received on such date, cash in an amount equal to the excess of—

(A) the amount loaned, over

(B) the present value of all payments which are required to be made under the terms of the loan.

(2) Obligation treated as having original issue discount

For purposes of this title—

(A) In general

Any below-market loan to which paragraph (1) applies shall be treated as having original issue discount in an amount equal to the excess described in paragraph (1).

(B) Amount in addition to other original issue discount

Any original issue discount which a loan is treated as having by reason of subparagraph (A) shall be in addition to any other original issue discount on such loan (determined without regard to subparagraph (A)).

(c) Below-market loans to which section applies

(1) In general

Except as otherwise provided in this subsection and subsection (g), this section shall apply to—

(A) Gifts

Any below-market loan which is a gift loan.

(B) Compensation-related loans

Any below-market loan directly or indirectly between—

(i) an employer and an employee, or

(ii) an independent contractor and a person for whom such independent contractor provides services.

(C) Corporation-shareholder loans

Any below-market loan directly or indirectly between a corporation and any shareholder of such corporation.

(D) Tax avoidance loans

Any below-market loan 1 of the principal purposes of the interest arrangements of which is the avoidance of any Federal tax.

(E) Other below-market loans

To the extent provided in regulations, any below-market loan which is not described in subparagraph (A), (B), (C), or (F) if the interest arrangements of such loan have a significant effect on any Federal tax liability of the lender or the borrower.

(F) Loans to qualified continuing care facilities

Any loan to any qualified continuing care facility pursuant to a continuing care contract.

(2) $10,000 de minimis exception for gift loans between individuals

(A) In general

In the case of any gift loan directly between individuals, this section shall not apply to any day on which the aggregate outstanding amount of loans between such individuals does not exceed $10,000.

(B) De minimis exception not to apply to loans attributable to acquisition of income-producing assets

Subparagraph (A) shall not apply to any gift loan directly attributable to the purchase or carrying of income-producing assets.

(C) Cross reference

For limitation on amount treated as interest where loans do not exceed $100,000, see subsection (d)(1).

(3) $10,000 de minimis exception for compensation-related and corporate-shareholder loans

(A) In general

In the case of any loan described in subparagraph (B) or (C) of paragraph (1), this section shall not apply to any day on which the aggregate outstanding amount of loans between the borrower and lender does not exceed $10,000.

(B) Exception not to apply where 1 of principal purposes is tax avoidance

Subparagraph (A) shall not apply to any loan the interest arrangements of which have as 1 of their principal purposes the avoidance of any Federal tax.

(d) Special rules for gift loans

(1) Limitation on interest accrual for purposes of income taxes where loans do not exceed $100,000

(A) In general

For purposes of subtitle A, in the case of a gift loan directly between individuals, the amount treated as retransferred by the borrower to the lender as of the close of any year shall not exceed the borrower's net investment income for such year.

(B) Limitation not to apply where 1 of principal purposes is tax avoidance

Subparagraph (A) shall not apply to any loan the interest arrangements of which have as 1 of their principal purposes the avoidance of any Federal tax.

(C) Special rule where more than 1 gift loan outstanding

For purposes of subparagraph (A), in any case in which a borrower has outstanding more than 1 gift loan, the net investment income of such borrower shall be allocated among such loans in proportion to the respective amounts which would be treated as retransferred by the borrower without regard to this paragraph.

(D) Limitation not to apply where aggregate amount of loans exceed $100,000

This paragraph shall not apply to any loan made by a lender to a borrower for any day on which the aggregate outstanding amount of loans between the borrower and lender exceeds $100,000.

(E) Net investment income

For purposes of this paragraph—

(i) In general

The term "net investment income" has the meaning given such term by section 163(d)(4).

(ii) De minimis rule

If the net investment income of any borrower for any year does not exceed $1,000, the net investment income of such borrower for such year shall be treated as zero.

(iii) Additional amounts treated as interest

In determining the net investment income of a person for any year, any amount which would be included in the gross income of such person for such year by reason of section 1272 if such section applied to all deferred payment obligations shall be treated as interest received by such person for such year.

(iv) Deferred payment obligations

The term "deferred payment obligation" includes any market discount bond, short-term obligation, United States savings bond, annuity, or similar obligation.

(2) Special rule for gift tax

In the case of any gift loan which is a term loan, subsection (b)(1) (and not subsection (a)) shall apply for purposes of chapter 12.

(e) Definitions of below-market loan and forgone interest

For purposes of this section—

(1) Below-market loan

The term "below-market loan" means any loan if—

(A) in the case of a demand loan, interest is payable on the loan at a rate less than the applicable Federal rate, or

(B) in the case of a term loan, the amount loaned exceeds the present value of all payments due under the loan.

(2) Forgone interest

The term "forgone interest" means, with respect to any period during which the loan is outstanding, the excess of—

(A) the amount of interest which would have been payable on the loan for the period if interest accrued on the loan at the applicable Federal rate and were payable annually on the day referred to in subsection (a)(2), over

(B) any interest payable on the loan properly allocable to such period.

(f) Other definitions and special rules

For purposes of this section—

(1) Present value

The present value of any payment shall be determined in the manner provided by regulations prescribed by the Secretary—

(A) as of the date of the loan, and

(B) by using a discount rate equal to the applicable Federal rate.

(2) Applicable Federal rate

(A) Term loans

In the case of any term loan, the applicable Federal rate shall be the applicable Federal rate in effect under section 1274(d) (as of the day on which the loan was made), compounded semiannually.

(B) Demand loans

In the case of a demand loan, the applicable Federal rate shall be the Federal short-term rate in effect under section 1274(d) for the period for which the amount of forgone interest is being determined, compounded semiannually.

(3) Gift loan

The term "gift loan" means any below-market loan where the forgoing of interest is in the nature of a gift.

(4) Amount loaned

The term "amount loaned" means the amount received by the borrower.

(5) Demand loan

The term "demand loan" means any loan which is payable in full at any time on the demand of the lender. Such term also includes (for purposes other than determining the applicable Federal rate under paragraph (2)) any loan if the benefits of the interest arrangements of such loan are not transferable and are conditioned on the future performance of substantial services by an individual. To the extent provided in regulations, such term also includes any loan with an indefinite maturity.

(6) Term loan

The term "term loan" means any loan which is not a demand loan.

(7) Husband and wife treated as 1 person

A husband and wife shall be treated as 1 person.

(8) Loans to which section 483, 643(i), or 1274 applies

This section shall not apply to any loan to which section 483, 643(i), or 1274 applies.

(9) No withholding

No amount shall be withheld under chapter 24 with respect to—

(A) any amount treated as transferred or retransferred under subsection (a), and

(B) any amount treated as received under subsection (b).

(10) Special rule for term loans

If this section applies to any term loan on any day, this section shall continue to apply to such loan notwithstanding paragraphs (2) and (3) of subsection (c). In the case of a gift loan, the preceding sentence shall only apply for purposes of chapter 12.

(11) Time for determining rate applicable to employee relocation loans

(A) In general

In the case of any term loan made by an employer to an employee the proceeds of which are used by the employee to purchase a principal residence (within the meaning of section 121), the determination of the applicable Federal rate shall be made as of the date the written contract to purchase such residence was entered into.

(B) Paragraph only to apply to cases to which section 217 applies

Subparagraph (A) shall only apply to the purchase of a principal residence in connection with the commencement of work by an employee or a change in the principal place of work of an employee to which section 217 applies.

(g) Exception for certain loans to qualified continuing care facilities

(1) In general

This section shall not apply for any calendar year to any below-market loan made by a lender to a qualified continuing care facility pursuant to a continuing care contract if the lender (or the lender's spouse) attains age 65 before the close of such year.

(2) $90,000 limit

Paragraph (1) shall apply only to the extent that the aggregate outstanding amount of any loan to which such paragraph applies (determined without regard to this paragraph), when added to the aggregate outstanding amount of all other previous loans between the lender (or the lender's spouse) and any qualified continuing care facility to which paragraph (1) applies, does not exceed $90,000.

(3) Continuing care contract

For purposes of this section, the term "continuing care contract" means a written contract between an individual and a qualified continuing care facility under which—

(A) the individual or individual's spouse may use a qualified continuing care facility for their life or lives,

(B) the individual or individual's spouse—

(i) will first—

(I) reside in a separate, independent living unit with additional facilities outside such unit for the providing of meals and other personal care, and

(II) not require long-term nursing care, and

(ii) then will be provided long-term and skilled nursing care as the health of such individual or individual's spouse requires, and

(C) no additional substantial payment is required if such individual or individual's spouse requires increased personal care services or long-term and skilled nursing care.

(4) Qualified continuing care facility

(A) In general

For purposes of this section, the term "qualified continuing care facility" means 1 or more facilities—

(i) which are designed to provide services under continuing care contracts, and

(ii) substantially all of the residents of which are covered by continuing care contracts.

(B) Substantially all facilities must be owned or operated by borrower

A facility shall not be treated as a qualified continuing care facility unless substantially all facilities which are used to provide services which are required to be provided under a continuing care contract are owned or operated by the borrower.

(C) Nursing homes excluded

The term "qualified continuing care facility" shall not include any facility which is of a type which is traditionally considered a nursing home.

(5) Adjustment of limit for inflation

(A) In general

In the case of any loan made during any calendar year after 1986 to which paragraph (1) applies, the dollar amount in paragraph (2) shall be increased by the inflation adjustment for

such calendar year. Any increase under the preceding sentence shall be rounded to the nearest multiple of $100 (or, if such increase is a multiple of $50, such increase shall be increased to the nearest multiple of $100).

(B) Inflation adjustment

For purposes of subparagraph (A), the inflation adjustment for any calendar year is the percentage (if any) by which—

(i) the CPI for the preceding calendar year exceeds

(ii) the CPI for calendar year 1985.

For purposes of the preceding sentence, the CPI for any calendar year is the average of the Consumer Price Index as of the close of the 12-month period ending on September 30 of such calendar year.

(6) Suspension of application

Paragraph (1) shall not apply for any calendar year to which subsection (h) applies.

(h) Exception for loans to qualified continuing care facilities

(1) In general

This section shall not apply for any calendar year to any below-market loan owed by a facility which on the last day of such year is a qualified continuing care facility, if such loan was made pursuant to a continuing care contract and if the lender (or the lender's spouse) attains age 62 before the close of such year.

(2) Continuing care contract

For purposes of this section, the term "continuing care contract" means a written contract between an individual and a qualified continuing care facility under which—

(A) the individual or individual's spouse may use a qualified continuing care facility for their life or lives,

(B) the individual or individual's spouse will be provided with housing, as appropriate for the health of such individual or individual's spouse—

(i) in an independent living unit (which has additional available facilities outside such unit for the provision of meals and other personal care), and

(ii) in an assisted living facility or a nursing facility, as is available in the continuing care facility, and

(C) the individual or individual's spouse will be provided assisted living or nursing care as the health of such individual or individual's spouse requires, and as is available in the continuing care facility.

The Secretary shall issue guidance which limits such term to contracts which provide only facilities, care, and services described in this paragraph.

(3) Qualified continuing care facility

(A) In general

For purposes of this section, the term "qualified continuing care facility" means 1 or more facilities—

(i) which are designed to provide services under continuing care contracts,

(ii) which include an independent living unit, plus an assisted living or nursing facility, or both, and

(iii) substantially all of the independent living unit residents of which are covered by continuing care contracts.

(B) Nursing homes excluded

The term "qualified continuing care facility" shall not include any facility which is of a type

which is traditionally considered a nursing home.

(i) Regulations

(1) In general

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including—

(A) regulations providing that where, by reason of varying rates of interest, conditional interest payments, waivers of interest, disposition of the lender's or borrower's interest in the loan, or other circumstances, the provisions of this section do not carry out the purposes of this section, adjustments to the provisions of this section will be made to the extent necessary to carry out the purposes of this section,

(B) regulations for the purpose of assuring that the positions of the borrower and lender are consistent as to the application (or nonapplication) of this section, and

(C) regulations exempting from the application of this section any class of transactions the interest arrangements of which have no significant effect on any Federal tax liability of the lender or the borrower.

(2) Estate tax coordination

Under regulations prescribed by the Secretary, any loan which is made with donative intent and which is a term loan shall be taken into account for purposes of chapter 11 in a manner consistent with the provisions of subsection (b).

(Added Pub. L. 98–369, div. A, title I, §172(a), July 18, 1984, 98 Stat. 699; amended Pub. L. 99–121, title II, §§201, 202, Oct. 11, 1985, 99 Stat. 511–513; Pub. L. 99–514, title V, §511(d)(1), title XVIII, §§1812(b)(2)–(4), 1854(c)(2)(B), Oct. 22, 1986, 100 Stat. 2248, 2834, 2879; Pub. L. 100–647, title I, §§1005(c)(15), 1018(u)(48), Nov. 10, 1988, 102 Stat. 3393, 3593; Pub. L. 104–188, title I, §§1602(b)(7), 1704(t)(58), 1906(c)(2), Aug. 20, 1996, 110 Stat. 1834, 1890, 1916; Pub. L. 105–34, title III, §312(d)(1), Aug. 5, 1997, 111 Stat. 839; Pub. L. 105–206, title VI, §6023(30), July 22, 1998, 112 Stat. 826; Pub. L. 106–554, §1(a)(7) [title III, §319(30)], Dec. 21, 2000, 114 Stat. 2763, 2763A–648; Pub. L. 109–222, title II, §209(a), (b)(1), May 17, 2006, 120 Stat. 351, 352; Pub. L. 109–432, div. A, title IV, §425(a), Dec. 20, 2006, 120 Stat. 2974.)

AMENDMENTS

2006—Subsec. (g)(6). Pub. L. 109–222, §209(b)(1), added par. (6).

Subsec. (h). Pub. L. 109–222, §209(a), added subsec. (h). Former subsec. (h) redesignated (i).

Subsec. (h)(4). Pub. L. 109–432 struck out heading and text of par. (4). Text read as follows: "This subsection shall not apply to any calendar year after 2010."

Subsec. (i). Pub. L. 109–222, §209(a), redesignated subsec. (h) as (i).

2000—Subsec. (f)(3). Pub. L. 106–554 substituted "forgoing" for "foregoing".

1998—Subsec. (f)(2)(B). Pub. L. 105–206 substituted "forgone" for "foregone".

1997—Subsec. (f)(11)(A). Pub. L. 105–34 substituted "section 121" for "section 1034".

1996—Subsec. (a)(1), (2). Pub. L. 104–188, §1704(t)(58)(A), substituted "forgone" for "foregone".

Subsec. (e). Pub. L. 104–188, §1704(t)(58)(B), substituted "forgone" for "foregone" in heading.

Subsec. (e)(2). Pub. L. 104–188, §1704(t)(58), substituted "Forgone" for "Foregone" in heading and "forgone" for "foregone" in introductory provisions of text.

Subsec. (f)(8). Pub. L. 104–188, §1906(c)(2), inserted ", 643(i)," before "or 1274" in heading and text.

Subsec. (f)(12). Pub. L. 104–188, §1602(b)(7), struck out par. (12) which read as follows: "SPECIAL RULE FOR CERTAIN EMPLOYER SECURITY LOANS.—This section shall not apply to any loan between a corporation (or any member of the controlled group of corporations which includes such corporation) and an employee stock ownership plan described in section 4975(e)(7) to the extent that the interest rate on such loan is equal to the interest rate paid on a related securities acquisition loan (as described in section 133(b)) to such corporation."

1988—Subsec. (d)(1)(E)(i). Pub. L. 100–647, §1005(c)(15), directed substitution of "section 163(d)(4)" for "section 163(d)(3)", which substitution had been previously made by Pub. L. 99–514, §511(d)(1).

Subsec. (f)(11), (12). Pub. L. 100–647, §1018(u)(48), redesignated former par. (11), Pub. L. 99–514, relating to special rule for certain employer security loans, as (12).

1986—Subsec. (d)(1)(E)(i). Pub. L. 99–514, §511(d)(1), substituted "section 163(d)(4)" for "section

163(d)(3)".

Subsec. (f)(2)(B). Pub. L. 99–514, §1812(b)(4), inserted ", compounded semiannually" before the period at end.

Subsec. (f)(5). Pub. L. 99–514, §1812(b)(3), amended par. (5) generally. Prior to amendment, par. (5) read as follows: "The term 'demand loan' means any loan which is payable in full at any time on the demand of the lender. Such term also includes (for purposes other than determining the applicable Federal rate under paragraph (2)) any loan which is not transferable and the benefits of the interest arrangements of which is conditioned on the future performance of substantial services by an individual."

Subsec. (f)(9). Pub. L. 99–514, §1812(b)(2), amended par. (9) generally, inserting the subpar. (A) designation and adding subpar. (B).

Subsec. (f)(11). Pub. L. 99–514, §1854(c)(2)(B), added par. (11) relating to special rule for certain employer security loans.

1985—Subsec. (c)(1). Pub. L. 99–121, §201(c)(1), inserted "and subsection (g)" after "this subsection" in provisions preceding subpar. (A).

Subsec. (c)(1)(E). Pub. L. 99–121, §201(c)(2), substituted "(C), or (F)" for "or (C)".

Subsec. (c)(1)(F). Pub. L. 99–121, §201(b), added subpar. (f).

Subsec. (f)(11). Pub. L. 99–121, §202, added par. (11) relating to time for determining rate applicable to employee relocation loans.

Subsecs. (g), (h). Pub. L. 99–121, §201(a), added subsec. (g) and redesignated former subsec. (g) as (h).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title IV, §425(b), Dec. 20, 2006, 120 Stat. 2974, provided that: "The amendment made by this section [amending this section] shall take effect as if included in section 209 of the Tax Increase Prevention and Reconciliation Act of 2005 [Pub. L. 109–222]."

Amendment by Pub. L. 109–222 applicable to calendar years beginning after Dec. 31, 2005, with respect to loans made before, on, or after such date, see section 209(c) of Pub. L. 109–222, set out as a note under section 142 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d) of Pub. L. 105–34, set out as a note under section 121 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1602(b)(7) of Pub. L. 104–188 applicable to loans made after Aug. 20, 1996, with exception and provisions relating to certain refinancings, see section 1602(c) of Pub. L. 104–188, set out as an Effective Date of Repeal note under former section 133 of this title.

Amendment by section 1906(c)(2) of Pub. L. 104–188 applicable to loans of cash or marketable securities made after Sept. 19, 1995, see section 1906(d)(3) of Pub. L. 104–188, set out as a note under section 643 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 511(d)(1) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 511(e) of Pub. L. 99–514, set out as a note under section 163 of this title.

Amendment by sections 1812(b)(2)–(4) and 1854(c)(2)(B) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Pub. L. 99–121, title II, §204(a), (b), Oct. 11, 1985, 99 Stat. 514, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) SECTION 201.—

"(1) IN GENERAL.—The amendments made by section 201 [amending this section] shall apply with respect to loans made after the date of enactment of this Act [Oct. 11, 1985].

"(2) SECTION 7872 NOT TO APPLY TO CERTAIN LOANS.—Section 7872 of the Internal

Revenue Code of 1986 [formerly I.R.C. 1954] shall not apply to loans made on or before the date of the enactment of this Act [Oct. 11, 1985] to any qualified continuing care facility pursuant to a continuing care contract. For purposes of this paragraph, the terms 'qualified continuing care facility' and 'continuing care contract' have the meanings given such terms by section 7872(g) of such Code (as added by section 201).

"(b) SECTION 202.—The amendment made by section 202 [amending this section] shall apply to contracts entered into after June 30, 1985, in taxable years ending after such date."

EFFECTIVE DATE

Pub. L. 98–369, div. A, title I, §172(c), July 18, 1984, 98 Stat. 703, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this section] shall apply to—

"(A) term loans made after June 6, 1984, and

"(B) demand loans outstanding after June 6, 1984.

"(2) EXCEPTION FOR DEMAND LOANS OUTSTANDING ON JUNE 6, 1984, AND REPAID WITHIN 60 DAYS AFTER DATE OF ENACTMENT.—The amendments made by this section shall not apply to any demand loan which—

"(A) was outstanding on June 6, 1984, and

"(B) was repaid before the date 60 days after the date of the enactment of this Act [July 18, 1984].

"(3) EXCEPTION FOR CERTAIN EXISTING LOANS TO CONTINUING CARE FACILITIES .—Nothing in this subsection shall be construed to apply the amendments made by this section to any loan made before June 6, 1984, to a continuing care facility by a resident of such facility which is contingent on continued residence at such facility.

"(4) APPLICABLE FEDERAL RATE FOR PERIODS BEFORE JANUARY 1, 1985.—For periods before January 1, 1985, the applicable Federal rate under paragraph (2) of section 7872(f) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as added by this section, shall be 10 percent, compounded semiannually.

"(5) TREATMENT OF RENEGOTIATIONS, ETC.—For purposes of this subsection, any loan renegotiated, extended, or revised after June 6, 1984, shall be treated as a loan made after such date.

"(6) DEFINITION OF TERM AND DEMAND LOANS.—For purposes of this subsection, the terms 'demand loan' and 'term loan' have the respective meanings given such terms by paragraphs (5) and (6) of section 7872(f) of the Internal Revenue Code of 1986, as added by this section, but the second sentence of such paragraph (5) shall not apply."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

CERTAIN ISRAEL OR POLISH BONDS NOT SUBJECT TO RULES RELATING TO BELOW-MARKET LOANS

Pub. L. 99–514, title XVIII, §1812(b)(5), Oct. 22, 1986, 100 Stat. 2834, as amended by Pub. L. 101–179, title III, §307(a), Nov. 28, 1989, 103 Stat. 1314, provided that: "Section 7872 of the Internal Revenue Code of 1954 [now 1986] (relating to treatment of loans with below-market interest rates) shall not apply to any obligation issued by Israel or Poland if—

"(A) the obligation is payable in United States dollars, and

"(B) the obligation bears interest at an annual rate of not less than 4 percent."

[Pub. L. 101–179, title III, §307(b), Nov. 28, 1989, 103 Stat. 1314, provided that: "The amendments made by this section [amending section 1812(b)(5) of Pub. L. 99–514, set out above] shall apply to obligations issued after the date of the enactment of this Act [Nov. 28, 1989]."]

§7873. Income derived by Indians from exercise of fishing rights

(a) In general

(1) Income and self-employment taxes

No tax shall be imposed by subtitle A on income derived—

(A) by a member of an Indian tribe directly or through a qualified Indian entity, or

(B) by a qualified Indian entity,

from a fishing rights-related activity of such tribe.

(2) Employment taxes

No tax shall be imposed by subtitle C on remuneration paid for services performed in a fishing rights-related activity of an Indian tribe by a member of such tribe for another member of such tribe or for a qualified Indian entity.

(b) Definitions

For purposes of this section—

(1) Fishing rights-related activity

The term "fishing rights-related activity" means, with respect to an Indian tribe, any activity directly related to harvesting, processing, or transporting fish harvested in the exercise of a recognized fishing right of such tribe or to selling such fish but only if substantially all of such harvesting was performed by members of such tribe.

(2) Recognized fishing rights

The term "recognized fishing rights" means, with respect to an Indian tribe, fishing rights secured as of March 17, 1988, by a treaty between such tribe and the United States or by an Executive order or an Act of Congress.

(3) Qualified Indian entity

(A) In general

The term "qualified Indian entity" means, with respect to an Indian tribe, any entity if—

(i) such entity is engaged in a fishing rights-related activity of such tribe,

(ii) all of the equity interests in the entity are owned by qualified Indian tribes, members of such tribes, or their spouses,

(iii) except as provided in regulations, in the case of an entity which engages to any extent in any substantial processing or transporting of fish, 90 percent or more of the annual gross receipts of the entity is derived from fishing rights-related activities of one or more qualified Indian tribes each of which owns at least 10 percent of the equity interests in the entity, and

(iv) substantially all of the management functions of the entity are performed by members of qualified Indian tribes.

For purposes of clause (iii), equity interests owned by a member (or the spouse of a member) of a qualified Indian tribe shall be treated as owned by the tribe.

(B) Qualified indian tribe

For purposes of subparagraph (A), an Indian tribe is a qualified Indian tribe with respect to an entity if such entity is engaged in a fishing rights-related activity of such tribe.

(c) Special rules

(1) Distributions from qualified Indian entity

For purposes of this section, any distribution with respect to an equity interest in a qualified Indian entity of an Indian tribe to a member of such tribe shall be treated as derived by such member from a fishing rights-related activity of such tribe to the extent such distribution is attributable to income derived by such entity from a fishing rights-related activity of such tribe.

(2) De minimis unrelated amounts may be excluded

If, but for this paragraph, all but a de minimis amount—

(A) derived by a qualified Indian tribal entity, or by an individual through such an entity, is entitled to the benefits of paragraph (1) of subsection (a), or

(B) paid to an individual for services is entitled to the benefits of paragraph (2) of subsection (a),

then the entire amount shall be entitled to the benefits of such paragraph.

(Added Pub. L. 100–647, title III, §3041(a), Nov. 10, 1988, 102 Stat. 3640.)

EFFECTIVE DATE

Pub. L. 100–647, title III, §3044, Nov. 10, 1988, 102 Stat. 3642, provided that:

"(a) EFFECTIVE DATE.—The amendments made by this subtitle [subtitle E (§§3041–3044) of title III of Pub. L. 100–647, enacting this section and amending sections 1402 and 3121 of this title, section 71 of Title 25, Indians, and sections 409 and 411 of Title 42, The Public Health and Welfare] shall apply to all periods beginning before, on, or after the date of the enactment of this Act [Nov. 10, 1988].

"(b) NO INFERENCE CREATED.—Nothing in the amendments made by this subtitle shall create any inference as to the existence or non-existence or scope of any exemption from tax for income derived from fishing rights secured as of March 17, 1988, by any treaty, law, or Executive Order."

§7874. Rules relating to expatriated entities and their foreign parents

(a) Tax on inversion gain of expatriated entities

(1) In general

The taxable income of an expatriated entity for any taxable year which includes any portion of the applicable period shall in no event be less than the inversion gain of the entity for the taxable year.

(2) Expatriated entity

For purposes of this subsection—

(A) In general

The term "expatriated entity" means—

(i) the domestic corporation or partnership referred to in subparagraph (B)(i) with respect to which a foreign corporation is a surrogate foreign corporation, and

(ii) any United States person who is related (within the meaning of section 267(b) or 707(b)(1)) to a domestic corporation or partnership described in clause (i).

(B) Surrogate foreign corporation

A foreign corporation shall be treated as a surrogate foreign corporation if, pursuant to a plan (or a series of related transactions)—

(i) the entity completes after March 4, 2003, the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation or substantially all of the properties constituting a trade or business of a domestic partnership,

(ii) after the acquisition at least 60 percent of the stock (by vote or value) of the entity is held—

(I) in the case of an acquisition with respect to a domestic corporation, by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation, or

(II) in the case of an acquisition with respect to a domestic partnership, by former partners of the domestic partnership by reason of holding a capital or profits interest in the domestic partnership, and

(iii) after the acquisition the expanded affiliated group which includes the entity does not have substantial business activities in the foreign country in which, or under the law of which, the entity is created or organized, when compared to the total business activities of such expanded affiliated group.

An entity otherwise described in clause (i) with respect to any domestic corporation or partnership trade or business shall be treated as not so described if, on or before March 4, 2003,

such entity acquired directly or indirectly more than half of the properties held directly or indirectly by such corporation or more than half of the properties constituting such partnership trade or business, as the case may be.

(3) Coordination with subsection (b)

A corporation which is treated as a domestic corporation under subsection (b) shall not be treated as a surrogate foreign corporation for purposes of paragraph (2)(A).

(b) Inverted corporations treated as domestic corporations

Notwithstanding section 7701(a)(4), a foreign corporation shall be treated for purposes of this title as a domestic corporation if such corporation would be a surrogate foreign corporation if subsection (a)(2) were applied by substituting "80 percent" for "60 percent".

(c) Definitions and special rules

(1) Expanded affiliated group

The term "expanded affiliated group" means an affiliated group as defined in section 1504(a) but without regard to section 1504(b)(3), except that section 1504(a) shall be applied by substituting "more than 50 percent" for "at least 80 percent" each place it appears.

(2) Certain stock disregarded

There shall not be taken into account in determining ownership under subsection (a)(2)(B)(ii)—

(A) stock held by members of the expanded affiliated group which includes the foreign corporation, or

(B) stock of such foreign corporation which is sold in a public offering related to the acquisition described in subsection (a)(2)(B)(i).

(3) Plan deemed in certain cases

If a foreign corporation acquires directly or indirectly substantially all of the properties of a domestic corporation or partnership during the 4-year period beginning on the date which is 2 years before the ownership requirements of subsection (a)(2)(B)(ii) are met, such actions shall be treated as pursuant to a plan.

(4) Certain transfers disregarded

The transfer of properties or liabilities (including by contribution or distribution) shall be disregarded if such transfers are part of a plan a principal purpose of which is to avoid the purposes of this section.

(5) Special rule for related partnerships

For purposes of applying subsection (a)(2)(B)(ii) to the acquisition of a trade or business of a domestic partnership, except as provided in regulations, all partnerships which are under common control (within the meaning of section 482) shall be treated as 1 partnership.

(6) Regulations

The Secretary shall prescribe such regulations as may be appropriate to determine whether a corporation is a surrogate foreign corporation, including regulations—

(A) to treat warrants, options, contracts to acquire stock, convertible debt interests, and other similar interests as stock, and

(B) to treat stock as not stock.

(d) Other definitions

For purposes of this section—

(1) Applicable period

The term "applicable period" means the period—

(A) beginning on the first date properties are acquired as part of the acquisition described in subsection (a)(2)(B)(i), and

(B) ending on the date which is 10 years after the last date properties are acquired as part of

such acquisition.

(2) Inversion gain

The term "inversion gain" means the income or gain recognized by reason of the transfer during the applicable period of stock or other properties by an expatriated entity, and any income received or accrued during the applicable period by reason of a license of any property by an expatriated entity—

(A) as part of the acquisition described in subsection (a)(2)(B)(i), or

(B) after such acquisition if the transfer or license is to a foreign related person.

Subparagraph (B) shall not apply to property described in section 1221(a)(1) in the hands of the expatriated entity.

(3) Foreign related person

The term "foreign related person" means, with respect to any expatriated entity, a foreign person which—

(A) is related (within the meaning of section 267(b) or 707(b)(1)) to such entity, or

(B) is under the same common control (within the meaning of section 482) as such entity.

(e) Special rules

(1) Credits not allowed against tax on inversion gain

Credits (other than the credit allowed by section 901) shall be allowed against the tax imposed by this chapter on an expatriated entity for any taxable year described in subsection (a) only to the extent such tax exceeds the product of—

(A) the amount of the inversion gain for the taxable year, and

(B) the highest rate of tax specified in section 11(b)(1).

For purposes of determining the credit allowed by section 901, inversion gain shall be treated as from sources within the United States.

(2) Special rules for partnerships

In the case of an expatriated entity which is a partnership—

(A) subsection (a)(1) shall apply at the partner rather than the partnership level,

(B) the inversion gain of any partner for any taxable year shall be equal to the sum of—

(i) the partner's distributive share of inversion gain of the partnership for such taxable year, plus

(ii) gain recognized for the taxable year by the partner by reason of the transfer during the applicable period of any partnership interest of the partner in such partnership to the surrogate foreign corporation, and

(C) the highest rate of tax specified in the rate schedule applicable to the partner under this chapter shall be substituted for the rate of tax referred to in paragraph (1).

(3) Coordination with section 172 and minimum tax

Rules similar to the rules of paragraphs (3) and (4) of section 860E(a) shall apply for purposes of subsection (a).

(4) Statute of limitations

(A) In general

The statutory period for the assessment of any deficiency attributable to the inversion gain of any taxpayer for any pre-inversion year shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may prescribe) of the acquisition described in subsection (a)(2)(B)(i) to which such gain relates and such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

(B) Pre-inversion year

For purposes of subparagraph (A), the term "pre-inversion year" means any taxable year if—

(i) any portion of the applicable period is included in such taxable year, and

(ii) such year ends before the taxable year in which the acquisition described in subsection (a)(2)(B)(i) is completed.

(f) Special rule for treaties

Nothing in section 894 or 7852(d) or in any other provision of law shall be construed as permitting an exemption, by reason of any treaty obligation of the United States heretofore or hereafter entered into, from the provisions of this section.

(g) Regulations

The Secretary shall provide such regulations as are necessary to carry out this section, including regulations providing for such adjustments to the application of this section as are necessary to prevent the avoidance of the purposes of this section, including the avoidance of such purposes through—

(1) the use of related persons, pass-through or other noncorporate entities, or other intermediaries, or

(2) transactions designed to have persons cease to be (or not become) members of expanded affiliated groups or related persons.

(Added Pub. L. 108–357, title VIII, §801(a), Oct. 22, 2004, 118 Stat. 1562; amended Pub. L. 109–135, title IV, §403(u), Dec. 21, 2005, 119 Stat. 2628.)

AMENDMENTS

2005—Subsec. (a)(3). Pub. L. 109–135 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "Paragraph (1) shall not apply to any entity which is treated as a domestic corporation under subsection (b)."

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE

Pub. L. 108–357, title VIII, §801(c), Oct. 22, 2004, 118 Stat. 1566, provided that: "The amendments made by this section [enacting this section] shall apply to taxable years ending after March 4, 2003."

Subtitle G—The Joint Committee on Taxation

Chapter		Sec.[1]
91.	**Organization and membership of the Joint Committee**	**8001**
92.	**Powers and duties of the Joint Committee**	**8021**

AMENDMENTS

1976—Pub. L. 94–455, title XIX, §1907(b)(1), Oct. 4, 1976, 90 Stat. 1836, struck out "Internal Revenue" in heading of subtitle G.

[1] *Section numbers editorially supplied.*

CHAPTER 91—ORGANIZATION AND MEMBERSHIP OF THE JOINT COMMITTEE

Sec.

8001. Authorization.

8002. Membership.

8003. Election of chairman and vice chairman.
8004. Appointment and compensation of staff.
8005. Payment of expenses.

§8001. Authorization

There shall be a joint congressional committee known as the Joint Committee on Taxation (hereinafter in this subtitle referred to as the "Joint Committee").

(Aug. 16, 1954, ch. 736, 68A Stat. 925; Pub. L. 94–455, title XIX, §1907(a)(1), Oct. 4, 1976, 90 Stat. 1835.)

AMENDMENTS

1976—Pub. L. 94–455 struck out "Internal Revenue" after "Committee on".

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XIX, §1907(c), Oct. 4, 1976, 90 Stat. 1836, provided that: "The amendments made by this section [amending this section and sections 8004, 8021, and 8023 of this title and enacting provisions set out below] shall take effect on the first day of the first month which begins more than 90 days after the date of the enactment of this Act [Oct. 4, 1976]."

REFERENCES TO JOINT COMMITTEE ON INTERNAL REVENUE TAXATION

Pub. L. 94–455, title XIX, §1907(a)(5), Oct. 4, 1976, 90 Stat. 1836, provided that: "All references in any other statute, or in any rule, regulation, or order, to the Joint Committee on Internal Revenue Taxation shall be considered to be made to the Joint Committee on Taxation."

§8002. Membership

(a) Number and selection

The Joint Committee shall be composed of 10 members as follows:

(1) From Committee on Finance

Five members who are members of the Committee on Finance of the Senate, three from the majority and two from the minority party, to be chosen by such Committee; and

(2) From Committee on Ways and Means

Five members who are members of the Committee on Ways and Means of the House of Representatives, three from the majority and two from the minority party, to be chosen by such Committee.

(b) Tenure of office

(1) General limitation

No person shall continue to serve as a member of the Joint Committee after he has ceased to be a member of the Committee by which he was chosen, except that—

(2) Exception

The members chosen by the Committee on Ways and Means who have been reelected to the House of Representatives may continue to serve as members of the Joint Committee notwithstanding the expiration of the Congress.

(c) Vacancies

A vacancy in the Joint Committee—

(1) Effect

Shall not affect the power of the remaining members to execute the functions of the Joint Committee; and

(2) Manner of filling

Shall be filled in the same manner as the original selection, except that—

(A) Adjournment or recess of Congress

In case of a vacancy during an adjournment or recess of Congress for a period of more than 2 weeks, the members of the Joint Committee who are members of the Committee entitled to fill such vacancy may designate a member of such Committee to serve until his successor is chosen by such Committee; and

(B) Expiration of Congress

In the case of a vacancy after the expiration of a Congress which would be filled by the Committee on Ways and Means, the members of such Committee who are continuing to serve as members of the Joint Committee may designate a person who, immediately prior to such expiration, was a member of such Committee and who is re-elected to the House of Representatives, to serve until his successor is chosen by such Committee.

(d) Allowances

The members shall serve without compensation in addition to that received for their services as members of Congress; but they shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of the duties vested in the Joint Committee, other than expenses in connection with meetings of the Joint Committee held in the District of Columbia during such times as the Congress is in session.

(Aug. 16, 1954, ch. 736, 68A Stat. 925.)

§8003. Election of chairman and vice chairman

The Joint Committee shall elect a chairman and vice chairman from among its members.

(Aug. 16, 1954, ch. 736, 68A Stat. 926.)

§8004. Appointment and compensation of staff

Except as otherwise provided by law, the Joint Committee shall have power to appoint and fix the compensation of the Chief of Staff of the Joint Committee and such experts and clerical, stenographic, and other assistants as it deems advisable.

(Aug. 16, 1954, ch. 736, 68A Stat. 926; Pub. L. 94–455, title XIX, §1907(a)(2), Oct. 4, 1976, 90 Stat. 1835.)

AMENDMENTS

1976—Pub. L. 94–455 substituted "compensation of the Chief of Staff of the Joint Committee" for "compensation of a clerk" after "appoint and fix the".

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1907(c) of Pub. L. 94–455, set out as a note under section 8001 of this title.

§8005. Payment of expenses

The expenses of the Joint Committee shall be paid one-half from the contingent fund of the Senate and one-half from the contingent fund of the House of Representatives, upon vouchers signed by the chairman or the vice chairman.

(Aug. 16, 1954, ch. 736, 68A Stat. 926.)

CHAPTER 92—POWERS AND DUTIES OF THE JOINT COMMITTEE

Sec.
8021. Powers.
8022. Duties.
8023. Additional powers to obtain data.

§8021. Powers

(a) To obtain data and inspect income returns

For powers of the Joint Committee to obtain and inspect income returns, see section 6103(f).

(b) Relating to hearings and sessions

The Joint Committee, or any subcommittee thereof, is authorized—

(1) To hold

To hold hearings and to sit and act at such places and times;

(2) To require attendance of witnesses and production of books

To require by subpoena (to be issued under the signature of the chairman or vice chairman) or otherwise the attendance of such witnesses and the production of such books, papers, and documents;

(3) To administer oaths

To administer such oaths; and

(4) To take testimony

To take such testimony;

as it deems advisable.

(c) To procure printing and binding

The Joint Committee, or any subcommittee thereof, is authorized to have such printing and binding done as it deems advisable.

(d) To make expenditures

The Joint Committee, or any subcommittee thereof, is authorized to make such expenditures as it deems advisable.

(e) Investigations

The Joint Committee shall review all requests (other than requests by the chairman or ranking member of a committee or subcommittee) for investigations of the Internal Revenue Service by the Government Accountability Office, and approve such requests when appropriate, with a view towards eliminating overlapping investigations, ensuring that the Government Accountability Office has the capacity to handle the investigation, and ensuring that investigations focus on areas of primary importance to tax administration.

(f) Relating to joint reviews

(1) In general

The Chief of Staff, and the staff of the Joint Committee, shall provide such assistance as is required for joint reviews described in paragraph (2).

(2) Joint reviews

Before June 1 of each calendar year after 1998 and before 2005, there shall be a joint review of the strategic plans and budget for the Internal Revenue Service and such other matters as the Chairman of the Joint Committee deems appropriate. Such joint review shall be held at the call of the Chairman of the Joint Committee and shall include two members of the majority and one

member of the minority from each of the Committees on Finance, Appropriations, and Governmental Affairs of the Senate, and the Committees on Ways and Means, Appropriations, and Government Reform and Oversight of the House of Representatives.

(Aug. 16, 1954, ch. 736, 68A Stat. 927; Pub. L. 94–455, title XIX, §1907(a)(3), Oct. 4, 1976, 90 Stat. 1835; Pub. L. 100–647, title I, §1018(s)(1), Nov. 10, 1988, 102 Stat. 3586; Pub. L. 105–206, title IV, §4001(a), July 22, 1998, 112 Stat. 783; Pub. L. 108–311, title III, §321(a), Oct. 4, 2004, 118 Stat. 1182; Pub. L. 109–135, title IV, §412(rr)(5), Dec. 21, 2005, 119 Stat. 2640.)

AMENDMENTS

2005—Subsec. (e). Pub. L. 109–135 substituted "Government Accountability Office" for "General Accounting Office" in two places.

2004—Subsec. (f)(2). Pub. L. 108–311 substituted "2005" for "2004".

1998—Subsecs. (e), (f). Pub. L. 105–206 added subsecs. (e) and (f).

1988—Subsec. (a). Pub. L. 100–647 substituted "6103(f)" for "6103(d)".

1976—Subsec. (d). Pub. L. 94–455 struck out par. (2) relating to limitation on cost of stenographic services in reporting hearings.

CHANGE OF NAME

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

Committee on Government Reform and Oversight of House of Representatives changed to Committee on Government Reform of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999. Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–206, title IV, §4001(b), July 22, 1998, 112 Stat. 784, provided that:

"(1) Subsection (e) of section 8021 of the Internal Revenue Code of 1986, as added by subsection (a) of this section [amending this section], shall apply to requests made after the date of the enactment of this Act [July 22, 1998].

"(2) Subsection (f) of such section shall take effect on the date of the enactment of this Act."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1907(c) of Pub. L. 94–455, set out as a note under section 8001 of this title.

TIME FOR JOINT REVIEW

Pub. L. 108–311, title III, §321(c), Oct. 4, 2004, 118 Stat. 1182, provided that: "The joint review required by section 8021(f)(2) of the Internal Revenue Code of 1986 to be made before June 1, 2004, shall be treated as timely if made before June 1, 2005."

§8022. Duties

It shall be the duty of the Joint Committee—

(1) Investigation

(A) Operation and effects of law

To investigate the operation and effects of the Federal system of internal revenue taxes;

(B) Administration

To investigate the administration of such taxes by the Internal Revenue Service or any executive department, establishment, or agency charged with their administration; and

(C) Other investigations

To make such other investigations in respect of such system of taxes as the Joint Committee may deem necessary.

(2) Simplification of law

(A) Investigation of methods

To investigate measures and methods for the simplification of such taxes, particularly the income tax; and

(B) Publication of proposals

To publish, from time to time, for public examination and analysis, proposed measures and methods for the simplification of such taxes.

(3) Reports

(A) To report, from time to time, to the Committee on Finance and the Committee on Ways and Means, and, in its discretion, to the Senate or House of Representatives, or both, the results of its investigations, together with such recommendations as it may deem advisable.

(B) Subject to amounts specifically appropriated to carry out this subparagraph, to report, at least once each Congress, to the Committee on Finance and the Committee on Ways and Means on the overall state of the Federal tax system, together with recommendations with respect to possible simplification proposals and other matters relating to the administration of the Federal tax system as it may deem advisable.

(C) To report, for each calendar year after 1998 and before 2005, to the Committees on Finance, Appropriations, and Governmental Affairs of the Senate, and to the Committees on Ways and Means, Appropriations, and Government Reform and Oversight of the House of Representatives, with respect to the matters addressed in the joint review referred to in section 8021(f)(2).

(4) Cross reference

For duties of the Joint Committee relating to refunds of income and estate taxes, see section 6405.

(Aug. 16, 1954, ch. 736, 68A Stat. 927; Pub. L. 105–206, title IV, §4002(a), July 22, 1998, 112 Stat. 784; Pub. L. 108–311, title III, §321(b), Oct. 4, 2004, 118 Stat. 1182.)

AMENDMENTS

2004—Par. (3)(C). Pub. L. 108–311 substituted "2005" for "2004" and "with respect to the matters addressed in the joint review referred to in section 8021(f)(2)." for "with respect to—

"(i) strategic and business plans for the Internal Revenue Service;

"(ii) progress of the Internal Revenue Service in meeting its objectives;

"(iii) the budget for the Internal Revenue Service and whether it supports its objectives;

"(iv) progress of the Internal Revenue Service in improving taxpayer service and compliance;

"(v) progress of the Internal Revenue Service on technology modernization; and

"(vi) the annual filing season."

1998—Par. (3). Pub. L. 105–206 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "To report, from time to time, to the Committee on Finance and the Committee on Ways and Means, and, in its discretion, to the Senate or the House of Representatives, or both, the results of its investigations, together with such recommendation as it may deem advisable."

CHANGE OF NAME

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

Committee on Government Reform and Oversight of House of Representatives changed to Committee on Government Reform of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999. Committee on Government Reform of House of Representatives changed to Committee on

Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–206, title IV, §4002(b), July 22, 1998, 112 Stat. 784, provided that: "The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [July 22, 1998]."

ANALYSIS TO ACCOMPANY CERTAIN LEGISLATION

Pub. L. 105–206, title IV, §4022(b), July 22, 1998, 112 Stat. 785, provided that:

"(1) IN GENERAL.—The Joint Committee on Taxation, in consultation with the Internal Revenue Service and the Department of the Treasury, shall include a tax complexity analysis in each report for legislation, or provide such analysis to members of the committee reporting the legislation as soon as practicable after the report is filed, if—

"(A) such legislation is reported by the Committee on Finance in the Senate, the Committee on Ways and Means of the House of Representatives, or any committee of conference; and

"(B) such legislation includes a provision which would directly or indirectly amend the Internal Revenue Code of 1986 and which has widespread applicability to individuals or small businesses.

"(2) TAX COMPLEXITY ANALYSIS.—For purposes of this subsection, the term 'tax complexity analysis' means, with respect to any legislation, a report on the complexity and administrative difficulties of each provision described in paragraph (1)(B) which—

"(A) includes—

"(i) an estimate of the number of taxpayers affected by the provision; and

"(ii) if applicable, the income level of taxpayers affected by the provision; and

"(B) should include (if determinable)—

"(i) the extent to which tax forms supplied by the Internal Revenue Service would require revision and whether any new forms would be required;

"(ii) the extent to which taxpayers would be required to keep additional records;

"(iii) the estimated cost to taxpayers to comply with the provision;

"(iv) the extent to which enactment of the provision would require the Internal Revenue Service to develop or modify regulatory guidance;

"(v) the extent to which the provision may result in disagreements between taxpayers and the Internal Revenue Service; and

"(vi) any expected impact on the Internal Revenue Service from the provision (including the impact on internal training, revision of the Internal Revenue Manual, reprogramming of computers, and the extent to which the Internal Revenue Service would be required to divert or redirect resources in response to the provision).

"(3) LEGISLATION SUBJECT TO POINT OF ORDER IN HOUSE OF REPRESENTATIVES .—[Amended the Rules of the House of Representatives, which are not classified to the Code.]

"(4) EFFECTIVE DATE.—This subsection shall apply to legislation considered on and after January 1, 1999."

TAX REVISION STUDY

Pub. L. 94–455, title V, §507, Oct. 4, 1976, 90 Stat. 1569, mandated a full and complete study by the Joint Committee on Taxation with respect to simplifying the tax laws and the feasibility of a reduction of tax rates; a report of such study with recommendations was to be submitted to the committees of Congress before July 1, 1977.

STUDY OF EXPANDED PARTICIPATION IN INDIVIDUAL RETIREMENT ACCOUNTS

Pub. L. 94–455, title XV, §1509, Oct. 4, 1976, 90 Stat. 1741, directed Joint Committee on Taxation to carry out study with respect to broadening class of individuals eligible to claim deduction for retirement savings under section 219 or 220 of this title, and to report its findings to Committee on Ways and Means of the House of Representatives and to Committee on Finance of the Senate.

TAX INCENTIVES STUDY

Pub. L. 94–455, title XXI, §2133, Oct. 4, 1976, 90 Stat. 1925, mandated a study by the Joint Committee on Taxation, in consultation with the Treasury, of the cost effectiveness of different kinds of tax incentives, including an analysis of the most effective way to use tax cuts to provide economic stimulus; such report with its recommendations was to be submitted to the Committees of Congress no later than Sept. 30, 1977.

§8023. Additional powers to obtain data

(a) Securing of data

The Joint Committee or the Chief of Staff of the Joint Committee, upon approval of the Chairman or Vice Chairman, is authorized to secure directly from the Internal Revenue Service, or the office of the Chief Counsel for the Internal Revenue Service, or directly from any executive department, board, bureau, agency, independent establishment, or instrumentality of the Government, information, suggestions, rulings, data, estimates, and statistics, for the purpose of making investigations, reports, and studies relating to internal revenue taxation. In the investigation by the Joint Committee on Taxation of the administration of the internal revenue taxes by the Internal Revenue Service, the Chief of Staff of the Joint Committee on Taxation is authorized to secure directly from the Internal Revenue Service such tax returns, or copies of tax returns, and other relevant information, as the Chief of Staff deems necessary for such investigation, and the Internal Revenue Service is authorized and directed to furnish such tax returns and information to the Chief of Staff together with a brief report, with respect to each return, as to any action taken or proposed to be taken by the Service as a result of any audit of the return.

(b) Furnishing of data

The Internal Revenue Service, the office of the Chief Counsel for the Internal Revenue Service, executive departments, boards, bureaus, agencies, independent establishments, and instrumentalities are authorized and directed to furnish such information, suggestions, rulings, data, estimates, and statistics directly to the Joint Committee or to the Chief of Staff of the Joint Committee, upon request made pursuant to this section.

(c) Application of subsections (a) and (b)

Subsections (a) and (b) shall be applied in accordance with their provisions without regard to any reorganization plan becoming effective on, before, or after the date of the enactment of this subsection.

(Aug. 16, 1954, ch. 736, 68A Stat. 928; Pub. L. 86–368, §2(b), Sept. 22, 1959, 73 Stat. 648; Pub. L. 94–455, title XII, §1210(c), title XIX, §1907(a)(4), Oct. 4, 1976, 90 Stat. 1711, 1835.)

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (c), is Aug. 16, 1954, the date of enactment of act Aug. 16, 1954, ch. 736, 68A Stat. 4, which enacted this title.

AMENDMENTS

1976—Subsec. (a). Pub. L. 94–455, §1210(c), inserted provision that in investigation by Joint Committee on Taxation of the administration of the internal revenue taxes by the Internal Revenue Service, the Chief of Staff of the Joint Committee on Taxation is authorized to secure directly from the Internal Revenue Service such tax returns, or copies of tax returns, and other relevant information, as the Chief of Staff deems necessary for such investigation, and the Internal Revenue Service is authorized and directed to furnish such tax returns and information to the Chief of Staff together with a brief report, with respect to each return, as to any action taken or proposed to be taken by the Service as a result of any audit of the return.

Subsec. (c). Pub. L. 94–455, §1907(a)(4), substituted "any" for "Reorganization Plan Numbered 26 of 1950 or to any other" after "without regard to" and "the date of the enactment of this subsection" for "February 28, 1951" after "before, or after".

1959—Subsec. (a). Pub. L. 86–368, §2(b)(1), substituted "or the office of the Chief Counsel for the Internal Revenue Service" for "(including the Assistant General Counsel of the Treasury Department serving as the Chief Counsel of the Internal Revenue Service)".

Subsec. (b). Pub. L. 86–368, §2(b)(2), substituted ", the office of the Chief Counsel for the Internal Revenue Service" for "(including the Assistant General Counsel of the Treasury Department serving as the Chief Counsel of the Internal Revenue Service)".

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XII, §1210(d)(2), Oct. 4, 1976, 90 Stat. 1711, provided that: "The amendment made by subsection (c) [amending this section] shall take effect on January 1, 1977."

Amendment by section 1907(a)(4) of Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1907(c) of Pub. L. 94–455, set out as a note under section 8001 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–368 effective when Chief Counsel for Internal Revenue Service first appointed pursuant to amendment of section 7801 of this title by Pub. L. 86–368 qualifies and takes office, see section 3(b) of Pub. L. 86–368, set out as a note under section 7801 of this title.

Subtitle H—Financing of Presidential Election Campaigns

Chapter		Sec.[1]
95.	**Presidential election campaign fund**	**9001**
96.	**Presidential primary matching payment account**	**9031**

AMENDMENTS

1974—Pub. L. 93–443, title IV, §408(b), Oct. 15, 1974, 88 Stat. 1297, substituted "Presidential primary matching payment account" for "Presidential election campaign fund advisory board" in item for chapter 96.

1971—Pub. L. 92–178, title VIII, §801, Dec. 10, 1971, 85 Stat. 562, added subtitle H.

[1] *Section numbers editorially supplied.*

CHAPTER 95—PRESIDENTIAL ELECTION CAMPAIGN FUND

Sec.
9001. Short title.
9002. Definitions.
9003. Condition for eligibility for payments.
9004. Entitlement of eligible candidates to payments.
9005. Certification by Commission.
9006. Payments to eligible candidates.
9007. Examinations and audits; repayments.
9008. Payments for presidential nominating conventions.
9009. Reports to Congress; regulations.
9010. Participation by Commission in judicial proceedings.
9011. Judicial review.
9012. Criminal penalties.
9013. Effective date of chapter.

AMENDMENTS

1974—Pub. L. 93–443, title IV, §406(c), Oct. 15, 1974, 88 Stat. 1296, substituted "Payments for presidential nominating conventions" for "Information on proposed expenses" in item 9008.

§9001. Short title

This chapter may be cited as the "Presidential Election Campaign Fund Act".

(Added Pub. L. 92–178, title VIII, §801, Dec. 10, 1971, 85 Stat. 563.)

ADOPTION OF GUIDELINES

Pub. L. 90–26, §5, June 13, 1967, 81 Stat. 58, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) Funds which become available under the Presidential Election Campaign Fund Act of 1966 [section 6096 of this title and sections 971 to 973 of former Title 31, Money and Finance] shall be appropriated and disbursed only after the adoption by law of guidelines governing their distribution. Section 6096 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall become applicable only after the adoption by law of such guidelines.

"(b) Guidelines adopted in accordance with this section shall state expressly that they are intended to comply with this section."

ADOPTION OF GUIDELINES: COMPLIANCE; EFFECTIVE DATE OF SECTION 6096 AND AMENDMENT OF SECTION 6096(A)

Pub. L. 92–178, title VIII, §802(b)(2), Dec. 10, 1971, 85 Stat. 573, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The enactment of Subtitle H of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] by section 801 of this Act [this subtitle] is intended to comply with the provisions of section 5 (relating to the Presidential Election Campaign Fund Act of 1966) of the Act entitled 'An Act to restore the investment credit and allowance of accelerated depreciation in the case of certain real property', approved June 13, 1967 (Public Law 90–26, 81 Stat. 58) [set out above]. The provisions of section 6096 of the Internal Revenue Code of 1986 together with the amendments of such section made by subsection (a), shall be applicable only to taxable years ending on or after December 31, 1972."

§9002. Definitions

For purposes of this chapter—

(1) The term "authorized committee" means, with respect to the candidates of a political party for President and Vice President of the United States, any political committee which is authorized in writing by such candidates to incur expenses to further the election of such candidates. Such authorization shall be addressed to the chairman of such political committee, and a copy of such authorization shall be filed by such candidates with the Commission. Any withdrawal of any authorization shall also be in writing and shall be addressed and filed in the same manner as the authorization.

(2) The term "candidate" means with respect to any presidential election, an individual who (A) has been nominated for election to the office of President of the United States or the office of Vice President of the United States by a major party, or (B) has qualified to have his name on the election ballot (or to have the names of electors pledged to him on the election ballot) as the candidate of a political party for election to either such office in 10 or more States. For purposes of paragraphs (6) and (7) of this section and purposes of section 9004(a)(2), the term "candidate" means, with respect to any preceding presidential election, an individual who received popular votes for the office of President in such election. The term "candidate" shall not include any individual who has ceased actively to seek election to the office of President of the United States or to the office of Vice President of the United States, in more than one State.

(3) The term "Commission" means the Federal Election Commission established by section 306(a)(1) of the Federal Election Campaign Act of 1971.

(4) The term "eligible candidates" means the candidates of a political party for President and Vice President of the United States who have met all applicable conditions for eligibility to receive payments under this chapter set forth in section 9003.

(5) The term "fund" means the Presidential Election Campaign Fund established by section 9006(a).

(6) The term "major party" means, with respect to any presidential election, a political party whose candidate for the office of President in the preceding presidential election received, as the candidate of such party, 25 percent or more of the total number of popular votes received by all candidates for such office.

(7) The term "minor party" means, with respect to any presidential election, a political party whose candidate for the office of President in the preceding presidential election received, as the candidate of such party, 5 percent or more but less than 25 percent of the total number of popular votes received by all candidates for such office.

(8) The term "new party" means with respect to any presidential election, a political party which is neither a major party nor a minor party.

(9) The term "political committee" means any committee, association, or organization (whether or not incorporated) which accepts contributions or makes expenditures for the purpose of influencing, or attempting to influence, the nomination or election of one or more individuals to

Federal, State, or local elective public office.

(10) The term "presidential election" means the election of presidential and vice-presidential electors.

(11) The term "qualified campaign expense" means an expense—

(A) incurred (i) by the candidate of a political party for the office of President to further his election to such office or to further the election of the candidate of such political party for the office of Vice President, or both (ii) by the candidate of a political party for the office of Vice President to further his election to such office or to further the election of the candidate of such political party for the office of President, or both, or (iii) by an authorized committee of the candidates of a political party for the offices of President and Vice President to further the election of either or both of such candidates to such offices,

(B) incurred within the expenditure report period (as defined in paragraph (12)), or incurred before the beginning of such period to the extent such expense is for property, services, or facilities used during such period, and

(C) neither the incurring nor payment of which constitutes a violation of any law of the United States or of the State in which such expense is incurred or paid.

An expense shall be considered as incurred by a candidate or an authorized committee if it is incurred by a person authorized by such candidate or such committee, as the case may be, to incur such expense on behalf of such candidate or such committee. If an authorized committee of the candidates of a political party for President and Vice President of the United States also incurs expenses to further the election of one or more other individuals to Federal, State, or local elective public office, expenses incurred by such committee which are not specifically to further the election of such other individual or individuals shall be considered as incurred to further the election of such candidates for President and Vice President in such proportion as the Commission prescribes by rules or regulations.

(12) The term "expenditure report period" with respect to any presidential election means—

(A) in the case of a major party, the period beginning with the first day of September before the election, or, if earlier, with the date on which such major party at its national convention nominated its candidate for election to the office of President of the United States, and ending 30 days after the date of the presidential election; and

(B) in the case of a party which is not a major party, the same period as the expenditure report period of the major party which has the shortest expenditure report period for such presidential election under subparagraph (A).

(Added Pub. L. 92–178, title VIII, §801, Dec. 10, 1971, 85 Stat. 563; amended Pub. L. 93–443, title IV, §404(c)(1)–(3), Oct. 15, 1974, 88 Stat. 1292; Pub. L. 94–283, title I, §115(c)(1), title III, §306(a)(1), May 11, 1976, 90 Stat. 495, 499; Pub. L. 110–172, §11(a)(42)(A), Dec. 29, 2007, 121 Stat. 2488.)

REFERENCES IN TEXT

Section 306(a)(1) of the Federal Election Campaign Act of 1971, referred to in par. (3), is classified to section 30106(a)(1) of Title 52, Voting and Elections.

AMENDMENTS

2007—Par. (3). Pub. L. 110–172 substituted "section 306(a)(1)" for "section 309(a)(1)".

1976—Par. (2). Pub. L. 94–283, §306(a)(1), inserted provision that "candidate" shall not include any individual who has ceased actively to seek election to the office of President of the United States or to the office of Vice President of the United States, in more than one State.

Par. (3). Pub. L. 94–283, §115(c)(1), substituted "309(a)(1)" for "310(a)(1)".

1974—Par. (1). Pub. L. 93–443, §404(c)(2), substituted "Commission" for "Comptroller General".

Par. (3). Pub. L. 93–443, §404(c)(1), substituted definition of "Commission" for "Comptroller General".

Par. (11). Pub. L. 93–443, §404(c)(3), substituted "Commission" for "Comptroller General" in third sentence.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–283, title III, §306(c), May 11, 1976, 90 Stat. 501, provided that: "The amendments made by this section [amending this section and sections 9003, 9032, and 9033 of this title] shall take effect on the date of enactment of this Act [May 11, 1976]."

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–443 applicable with respect to taxable years beginning after Dec. 31, 1974, see section 410(c)(1) of Pub. L. 93–443, set out as a note under section 30101 of Title 52, Voting and Elections.

§9003. Condition for eligibility for payments

(a) In general

In order to be eligible to receive any payments under section 9006, the candidates of a political party in a presidential election shall, in writing—

(1) agree to obtain and furnish to the Commission such evidence as it may request of the qualified campaign expenses of such candidates,

(2) agree to keep and furnish to the Commission such records, books, and other information as it may request, and

(3) agree to an audit and examination by the Commission under section 9007 and to pay any amounts required to be paid under such section.

(b) Major parties

In order to be eligible to receive any payments under section 9006, the candidates of a major party in a presidential election shall certify to the Commission, under penalty of perjury, that—

(1) such candidates and their authorized committees will not incur qualified campaign expenses in excess of the aggregate payments to which they will be entitled under section 9004, and

(2) no contributions to defray qualified campaign expenses have been or will be accepted by such candidates or any of their authorized committees except to the extent necessary to make up any deficiency in payments received out of the fund on account of the application of section 9006(d),[1] and no contributions to defray expenses which would be qualified campaign expenses but for subparagraph (C) of section 9002(11) have been or will be accepted by such candidates or any of their authorized committees.

Such certification shall be made within such time prior to the day of the presidential election as the Commission shall prescribe by rules or regulations.

(c) Minor and new parties

In order to be eligible to receive any payments under section 9006, the candidates of a minor or new party in a presidential election shall certify to the Commission under penalty of perjury, that—

(1) such candidates and their authorized committees will not incur qualified campaign expenses in excess of the aggregate payments to which the eligible candidates of a major party are entitled under section 9004, and

(2) such candidates and their authorized committees will accept and expend or retain contributions to defray qualified campaign expenses only to the extent that the qualified campaign expenses incurred by such candidates and their authorized committees certified to under paragraph (1) exceed the aggregate payments received by such candidates out of the fund pursuant to section 9006.

Such certification shall be made within such time prior to the day of the presidential election as the Commission shall prescribe by rules or regulations.

(d) Withdrawal by candidate

In any case in which an individual ceases to be a candidate as a result of the operation of the last sentence of section 9002(2), such individual—

(1) shall no longer be eligible to receive any payments under section 9006, except that such

individual shall be eligible to receive payments under such section to defray qualified campaign expenses incurred while actively seeking election to the office of President of the United States or to the office of Vice President of the United States in more than one State; and

(2) shall pay to the Secretary, as soon as practicable after the date upon which such individual ceases to be a candidate, an amount equal to the amount of payments received by such individual under section 9006 which are not used to defray qualified campaign expenses.

(e) Closed captioning requirement

No candidate for the office of President or Vice President may receive amounts from the Presidential Election Campaign Fund under this chapter or chapter 96 unless such candidate has certified that any television commercial prepared or distributed by the candidate will be prepared in a manner which ensures that the commercial contains or is accompanied by closed captioning of the oral content of the commercial to be broadcast in line 21 of the vertical blanking interval, or is capable of being viewed by deaf and hearing impaired individuals via any comparable successor technology to line 21 of the vertical blanking interval.

(Added Pub. L. 92–178, title VIII, §801, Dec. 10, 1971, 85 Stat. 564; amended Pub. L. 93–53, §6(c), July 1, 1973, 87 Stat. 139; Pub. L. 93–443, title IV, §§404(c)(4), (5), 405(b), Oct. 15, 1974, 88 Stat. 1292, 1294; Pub. L. 94–283, title III, §306(a)(2), May 11, 1976, 90 Stat. 500; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 102–393, title V, §534(a), Oct. 6, 1992, 106 Stat. 1764.)

AMENDMENTS

1992—Subsec. (e). Pub. L. 102–393 added subsec. (e).

1976—Subsec. (d). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

Pub. L. 94–283 added subsec. (d).

1974—Subsec. (a). Pub. L. 93–443, §§404(c)(4), 405(b), substituted "Commission" and "it" for "Comptroller General" and "he", respectively, wherever appearing, struck out in par. (1) "with respect to which payment is sought" after "campaign expenses" and struck out par. (4) requirement for an agreement to furnish statements of qualified campaign expenses and proposed qualified campaign expenses required under section 9008 of this title.

Subsecs. (b), (c). Pub. L. 93–443, §404(c)(5), substituted "Commission" for "Comptroller General" wherever appearing.

1973—Subsec. (b)(2). Pub. L. 93–53 substituted section "9006(d)" for "9006(c)".

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–393, title V, §534(b), Oct. 6, 1992, 106 Stat. 1764, provided that: "The amendment made by subsection (a) [amending this section] shall apply to amounts made available under chapter 95 or 96 of the Internal Revenue Code of 1986 more than thirty days after the date of the enactment of this Act [Oct. 6, 1992]."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–283 effective May 11, 1976, see section 306(c) of Pub. L. 94–283, set out as a note under section 9002 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–443 applicable with respect to taxable years beginning after Dec. 31, 1974, see section 410(c)(1) of Pub. L. 93–443, set out as a note under section 30101 of Title 52, Voting and Elections.

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93–53 applicable with respect to taxable years beginning after Dec. 31, 1972, see section 6(d) of Pub. L. 93–53, set out as a note under section 6096 of this title.

[1] So in original. Section 9006(d) redesignated 9006(c) by Pub. L. 94–283.

§9004. Entitlement of eligible candidates to payments

(a) In general

Subject to the provisions of this chapter—

(1) The eligible candidates of each major party in a presidential election shall be entitled to equal payments under section 9006 in an amount which, in the aggregate, shall not exceed the expenditure limitations applicable to such candidates under section 315(b)(1)(B) of the Federal Election Campaign Act of 1971.

(2)(A) The eligible candidates of a minor party in a presidential election shall be entitled to payments under section 9006 equal in the aggregate to an amount which bears the same ratio to the amount allowed under paragraph (1) for a major party as the number of popular votes received by the candidate for President of the minor party, as such candidate, in the preceding presidential election bears to the average number of popular votes received by the candidates for President of the major parties in the preceding presidential election.

(B) If the candidate of one or more political parties (not including a major party) for the office of President was a candidate for such office in the preceding presidential election and received 5 percent or more but less than 25 percent of the total number of popular votes received by all candidates for such office, such candidate and his running mate for the office of Vice President, upon compliance with the provisions of section 9003(a) and (c), shall be treated as eligible candidates entitled to payments under section 9006 in an amount computed as provided in subparagraph (A) by taking into account all the popular votes received by such candidate for the office of President in the preceding presidential election. If eligible candidates of a minor party are entitled to payments under this subparagraph, such entitlement shall be reduced by the amount of the entitlement allowed under subparagraph (A).

(3) The eligible candidates of a minor party or a new party in a presidential election whose candidate for President in such election receives, as such candidate, 5 percent or more of the total number of popular votes cast for the office of President in such election shall be entitled to payments under section 9006 equal in the aggregate to an amount which bears the same ratio to the amount allowed under paragraph (1) for a major party as the number of popular votes received by such candidate in such election bears to the average number of popular votes received in such election by the candidates for President of the major parties. In the case of eligible candidates entitled to payments under paragraph (2), the amount allowable under this paragraph shall be limited to the amount, if any, by which the entitlement under the preceding sentence exceeds the amount of the entitlement under paragraph (2).

(b) Limitations

The aggregate payments to which the eligible candidates of a political party shall be entitled under subsections (a)(2) and (3) with respect to a presidential election shall not exceed an amount equal to the lower of—

(1) the amount of qualified campaign expenses incurred by such eligible candidates and their authorized committees, reduced by the amount of contributions to defray qualified campaign expenses received and expended or retained by such eligible candidates and such committees, or

(2) the aggregate payments to which the eligible candidates of a major party are entitled under subsection (a)(1), reduced by the amount of contributions described in paragraph (1) of this subsection.

(c) Restrictions

The eligible candidates of a political party shall be entitled to payments under subsection (a) only—

(1) to defray qualified campaign expenses incurred by such eligible candidates or their authorized committees, or

(2) to repay loans the proceeds of which were used to defray such qualified campaign expenses, or otherwise to restore funds (other than contributions to defray qualified campaign expenses received and expended by such candidates or such committees) used to defray such qualified campaign expenses.

(d) Expenditures from personal funds

In order to be eligible to receive any payment under section 9006, the candidate of a major, minor, or new party in an election for the office of President shall certify to the Commission, under penalty of perjury, that such candidate will not knowingly make expenditures from his personal funds, or the personal funds of his immediate family, in connection with his campaign for election to the office of President in excess of, in the aggregate, $50,000. For purposes of this subsection, expenditures from personal funds made by a candidate of a major, minor, or new party for the office of Vice President shall be considered to be expenditures by the candidate of such party for the office of President.

(e) Definition of immediate family

For purposes of subsection (d), the term "immediate family" means a candidate's spouse, and any child, parent, grandparent, brother, half-brother, sister, or half-sister of the candidate, and the spouses of such persons.

(Added Pub. L. 92–178, title VIII, §801, Dec. 10, 1971, 85 Stat. 565; amended Pub. L. 93–443, title IV, §404(a), (b), Oct. 15, 1974, 88 Stat. 1291; Pub. L. 94–283, title III, §§301(a), 307(d), May 11, 1976, 90 Stat. 497, 501; Pub. L. 110–172, §11(a)(42)(B), Dec. 29, 2007, 121 Stat. 2488.)

REFERENCES IN TEXT

Section 315(b)(1)(B) of the Federal Election Campaign Act of 1971, referred to in subsec. (a)(1), is classified to section 30116(b)(1)(B) of Title 52, Voting and Elections.

AMENDMENTS

2007—Subsec. (a)(1). Pub. L. 110–172 substituted "section 315(b)(1)(B)" for "section 320(b)(1)(B)".

1976—Subsec. (a)(1). Pub. L. 94–283, §307(d), substituted "section 320(b)(1)(B) of the Federal Election Campaign Act of 1971" for "section 608(c)(1)(B) of title 18, United States Code".

Subsecs. (d), (e). Pub. L. 94–283, §301(a), added subsecs. (d) and (e).

1974—Subsec. (a)(1). Pub. L. 93–443, §404(a), substituted provision which limited aggregate amount of payments to eligible candidates to an amount not exceeding the expenditure limitations applicable to such candidates under section 608(c)(1)(B) of title 18 for prior provision which determined the amount by multiplying 15 cents by the total number of residents within the United States who attained the age of 18, determined by the Bureau of the Census, as of the first day of June of the year preceding the year of the presidential election.

Subsec. (a)(2)(A). Pub. L. 93–443, §404(b)(1), substituted "allowed" for "computed".

Subsec. (a)(3). Pub. L. 93–443, §404(b)(2), substituted "allowed" for "computed" in first sentence.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–283, title III, §301(b), May 11, 1976, 90 Stat. 498, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "For purposes of applying section 9004(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as added by subsection (a), expenditures made by an individual after January 29, 1976, and before the date of the enactment of this Act [May 11, 1976] shall not be taken into account."

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–443 applicable with respect to taxable years beginning after Dec. 31, 1974, see section 410(c)(1) of Pub. L. 93–443, set out as a note under section 30101 of Title 52, Voting and Elections.

§9005. Certification by Commission

(a) Initial certifications

Not later than 10 days after the candidates of a political party for President and Vice President of the United States have met all applicable conditions for eligibility to receive payments under this chapter set forth in section 9003, the Commission shall certify to the Secretary of the Treasury for payment to such eligible candidates under section 9006 payment in full of amounts to which such candidates are entitled under section 9004.

(b) Finality of certifications and determinations

Initial certifications by the Commission under subsection (a), and all determinations made by it

under this chapter, shall be final and conclusive, except to the extent that they are subject to examination and audit by the Commission under section 9007 and judicial review under section 9011.

(Added Pub. L. 92–178, title VIII, §801, Dec. 10, 1971, 85 Stat. 566; amended Pub. L. 93–443, title IV, §§404(c)(6), (7), 405(a), Oct. 15, 1974, 88 Stat. 1292, 1293; Pub. L. 94–455, title XIX, §1906(b)(13)(C), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94–455 substituted "Secretary of the Treasury" for "Secretary".

1974—Pub. L. 93–443, §404(c)(6), substituted "Commission" for "Comptroller General" in section catchline.

Subsec. (a). Pub. L. 93–443, §405(a), substituted provision for certification by the Commission not later than 10 days after the candidates of a political party for President and Vice President have met all applicable conditions for eligibility to receive payments under this chapter set forth in section 9003 of this title for prior provision for certification by the Comptroller General on the basis of the evidence, books, records, and information furnished by the eligible candidates of a political party and prior to examination and audit under section 9007 of this title.

Subsec. (b). Pub. L. 93–443, §404(c)(7), substituted "Commission" for "Comptroller General" wherever appearing and "it" for "him".

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–443 applicable with respect to taxable years beginning after Dec. 31, 1974, see section 410(c)(1) of Pub. L. 93–443, set out as a note under section 30101 of Title 52, Voting and Elections.

§9006. Payments to eligible candidates

(a) Establishment of campaign fund

There is hereby established on the books of the Treasury of the United States a special fund to be known as the "Presidential Election Campaign Fund". The Secretary of the Treasury shall, from time to time, transfer to the fund an amount not in excess of the sum of the amounts designated (subsequent to the previous Presidential election) to the fund by individuals under section 6096. There is appropriated to the fund for each fiscal year, out of amounts in the general fund of the Treasury not otherwise appropriated, an amount equal to the amounts so designated during each fiscal year, which shall remain available to the fund without fiscal year limitation.

(b) Payments from the fund

Upon receipt of a certification from the Commission under section 9005 for payment to the eligible candidates of a political party, the Secretary of the Treasury shall pay to such candidates out of the fund the amount certified by the Commission. Amounts paid to any such candidates shall be under the control of such candidates.

(c) Insufficient amounts in fund

If at the time of a certification by the Commission under section 9005 for payment to the eligible candidates of a political party, the Secretary determines that the moneys in the fund are not, or may not be, sufficient to satisfy the full entitlements of the eligible candidates of all political parties, he shall withhold from such payment such amount as he determines to be necessary to assure that the eligible candidates of each political party will receive their pro rata share of their full entitlement. Amounts withheld by reason of the preceding sentence shall be paid when the Secretary determines that there are sufficient moneys in the fund to pay such amounts, or portions thereof, to all eligible candidates from whom amounts have been withheld, but, if there are not sufficient moneys in the fund to satisfy the full entitlement of the eligible candidates of all political parties, the amounts so withheld shall be paid in such manner that the eligible candidates of each political party receive their pro rata share of their full entitlement. In any case in which the Secretary determines that there are

insufficient moneys in the fund to make payments under subsection (b), section 9008(i)(2), and section 9037(b), moneys shall not be made available from any other source for the purpose of making such payments.

(Added Pub. L. 92–178, title VIII, §801, Dec. 10, 1971, 85 Stat. 567; amended Pub. L. 93–53, §6(b), July 1, 1973, 87 Stat. 138; Pub. L. 93–443, title IV, §§403(a), 404(c)(8), Oct. 15, 1974, 88 Stat. 1291, 1292; Pub. L. 94–283, title III, §302, May 11, 1976, 90 Stat. 498; Pub. L. 94–455, title XIX, §§1906(b)(13)(A), (B), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 110–172, §11(a)(43), Dec. 29, 2007, 121 Stat. 2488; Pub. L. 113–94, §2(b)(1), Apr. 3, 2014, 128 Stat. 1085.)

AMENDMENTS

2014—Subsec. (c). Pub. L. 113–94 substituted "section 9008(i)(2)," for "section 9008(b)(3),".

2007—Pub. L. 110–172, which directed substitution of "Commission" for "Comptroller General" wherever appearing, could not be executed, because "Comptroller General" did not appear subsequent to amendment by Pub. L. 93–443, §404(c)(8). See 1974 Amendment note below.

1976—Subsecs. (a), (b). Pub. L. 94–455 substituted "Secretary of the Treasury" for "Secretary".

Pub. L. 94–283, §302(a), redesignated subsec. (c) as (b). Former subsec. (b), directing that moneys remaining in the fund after a Presidential election be transferred to the general fund of the Treasury, was struck out.

Subsec. (c). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Pub. L. 94–283, §302(a), (b), redesignated subsec. (d) as (c) and inserted provision that moneys not be made available from other sources for the purpose of making payments whenever the Secretary or his delegate determines that there are insufficient moneys in the fund to make payments under subsec. (b), section 9008(b)(3), and section 9037(b). Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 94–283, §302(a), redesignated subsec. (d) as (c).

1974—Subsec. (a). Pub. L. 93–443, §403(a), substituted "from time to time" for "as provided by Appropriation Acts" and appropriated moneys for the Campaign Fund for each fiscal year out of the general fund of the Treasury.

Subsecs. (c), (d). Pub. L. 93–443, §404(c)(8), substituted "Commission" for "Comptroller General" wherever appearing.

1973—Subsec. (a). Pub. L. 93–53 struck out second sentence requiring the Secretary to maintain in the fund (1) a separate account for the candidates of each major party, each minor party, and each new party for which a specific designation is made under section 6096 for payment into an account in the fund and (2) a general account for which no specific designation is made, and in the last sentences, substituted "transfer to the fund", "Presidential", and "to the fund by individuals under section 6096", for "transfer to each account in the fund", "presidential", and "to such account by individuals under section 6096 for payment into such account of the fund", respectively.

Subsec. (b). Pub. L. 93–53 substituted "Presidential" for "presidential".

Subsec. (c). Pub. L. 93–53 substituted provisions for payment "out of the fund", for such payment "out of the specific account in the fund" and struck out penultimate sentence limiting payments to eligible candidates from the account designated for them to the amounts in such account at the time of payment.

Subsec. (d). Pub. L. 93–53 substituted provisions for payments to eligible candidates when there are insufficient amounts in the fund, for former provisions respecting transfers from general account to separate accounts to remedy insufficient moneys to satisfy any unpaid entitlement of the eligible candidates.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–443 applicable with respect to taxable years beginning after Dec. 31, 1974, see section 410(c)(1) of Pub. L. 93–443, set out as a note under section 30101 of Title 52, Voting and Elections.

ADDITIONAL APPROPRIATIONS TO CAMPAIGN FUND

Pub. L. 93–443, title IV, §403(b), Oct. 15, 1974, 88 Stat. 1291, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "In addition to the amounts appropriated to the Presidential Election Campaign Fund established under section 9006 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to payments to eligible candidates) by the last sentence of subsection (a) of such section (as amended by subsection (a) of this section), there is appropriated to such fund an amount equal to the sum of the amounts designated for payment under section 6096 of such Code (relating to designation by individuals to the Presidential Election Campaign Fund) before January 1, 1975, not otherwise taken into account under the provisions of such section 9006, as amended by this section."

Provision effective Jan. 1, 1975, see section 410(a) of Pub. L. 93–443, set out as a note under section 30101

of Title 52, Voting and Elections.

DESIGNATION TO THE PRESIDENTIAL ELECTION CAMPAIGN FUND

Designation made under section 6096 of this title (as in effect for taxable years beginning before Jan. 1, 1973) for the account of the candidates of any specified political party treated solely as a designation to the Presidential Election Campaign Fund, see section 6(d) of Pub. L. 93–53, set out as a note under section 6096 of this title.

§9007. Examinations and audits; repayments

(a) Examinations and audits

After each presidential election, the Commission shall conduct a thorough examination and audit of the qualified campaign expenses of the candidates of each political party for President and Vice President.

(b) Repayments

(1) If the Commission determines that any portion of the payments made to the eligible candidates of a political party under section 9006 was in excess of the aggregate payments to which candidates were entitled under section 9004, it shall so notify such candidates, and such candidates shall pay to the Secretary of the Treasury an amount equal to such portion.

(2) If the Commission determines that the eligible candidates of a political party and their authorized committees incurred qualified campaign expenses in excess of the aggregate payments to which the eligible candidates of a major party were entitled under section 9004, it shall notify such candidates of the amount of such excess and such candidates shall pay to the Secretary of the Treasury an amount equal to such amount.

(3) If the Commission determines that the eligible candidates of a major party or any authorized committee of such candidates accepted contributions (other than contributions to make up deficiencies in payments out of the fund on account of the application of section 9006(c)) to defray qualified campaign expenses (other than qualified campaign expenses with respect to which payment is required under paragraph (2)), it shall notify such candidates of the amount of the contributions so accepted, and such candidates shall pay to the Secretary of the Treasury an amount equal to such amount.

(4) If the Commission determines that any amount of any payment made to the eligible candidates of a political party under section 9006 was used for any purpose other than—

(A) to defray the qualified campaign expenses with respect to which such payment was made, or

(B) to repay loans the proceeds of which were used, or otherwise to restore funds (other than contributions to defray qualified campaign expenses which were received and expended) which were used to defray such qualified campaign expenses,

it shall notify such candidates of the amount so used, and such candidates shall pay to the Secretary of the Treasury an amount equal to such amount.

(5) No payment shall be required from the eligible candidates of a political party under this subsection to the extent that such payment, when added to other payments required from such candidates under this subsection, exceeds the amount of payments received by such candidates under section 9006.

(c) Notification

No notification shall be made by the Commission under subsection (b) with respect to a presidential election more than 3 years after the day of such election.

(d) Deposit of repayments

All payments received by the Secretary of the Treasury under subsection (b) shall be deposited by him in the general fund of the Treasury.

(Added Pub. L. 92–178, title VIII, §801, Dec. 10, 1971, 85 Stat. 568; amended Pub. L. 93–53, §6(c), July 1, 1973, 87 Stat. 139; Pub. L. 93–443, title IV, §404(c)(9)–(11), Oct. 15, 1974, 88 Stat. 1292; Pub. L. 94–283, title III, §307(e), May 11, 1976, 90 Stat. 502; Pub. L. 94–455, title XIX, §1906(b)(13)(B), (C), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsec. (b). Pub. L. 94–455 substituted "Secretary of the Treasury" for "Secretary".

Subsec. (b)(3). Pub. L. 94–283 substituted "9006(c)" for "9006(d)".

Subsec. (d). Pub. L. 94–455 substituted "Secretary of the Treasury" for "Secretary".

1974—Subsec. (a). Pub. L. 93–443, §404(c)(9), substituted "Commission" for "Comptroller General".

Subsec. (b). Pub. L. 93–443, §404(c)(10), substituted "Commission" and "it" for "Comptroller General" and "he", respectively, wherever appearing.

Subsec. (c). Pub. L. 93–443, §404(c)(11), substituted "Commission" for "Comptroller General".

1973—Subsec. (b)(3). Pub. L. 93–53 substituted section "9006(d)" for "9006(c)".

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–443 applicable with respect to taxable years beginning after Dec. 31, 1974, see section 410(c)(1) of Pub. L. 93–443, set out as a note under section 30101 of Title 52, Voting and Elections.

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93–53 applicable with respect to taxable years beginning after Dec. 31, 1972, see section 6(d) of Pub. L. 93–53, set out as a note under section 6096 of this title.

§9008. Payments for presidential nominating conventions

(a) Establishment of accounts

The Secretary shall maintain in the fund, in addition to any account which he maintains under section 9006(a), a separate account for the national committee of each major party and minor party. The Secretary shall deposit in each such account an amount equal to the amount which each such committee may receive under subsection (b). Such deposits shall be drawn from amounts designated by individuals under section 6096 and shall be made before any transfer is made to any account for any eligible candidate under section 9006(a).

(b) Entitlement to payments from the fund

(1) Major parties

Subject to the provisions of this section, the national committee of a major party shall be entitled to payments under paragraph (3), with respect to any presidential nominating convention, in amounts which, in the aggregate, shall not exceed $4,000,000.

(2) Minor parties

Subject to the provisions of this section, the national committee of a minor party shall be entitled to payments under paragraph (3), with respect to any presidential nominating convention, in amounts which, in the aggregate, shall not exceed an amount which bears the same ratio to the amount the national committee of a major party is entitled to receive under paragraph (1) as the number of popular votes received by the candidate for President of the minor party, as such candidate, in the preceding presidential election bears to the average number of popular votes received by the candidates for President of the United States of the major parties in the preceding presidential election.

(3) Payments

Upon receipt of certification from the Commission under subsection (g), the Secretary shall make payments from the appropriate account maintained under subsection (a) to the national committee of a major party or minor party which elects to receive its entitlement under this subsection. Such payments shall be available for use by such committee in accordance with the provisions of subsection (c).

(4) Limitation

Payments to the national committee of a major party or minor party under this subsection, from the account designated for such committee shall be limited to the amounts in such account at the time of payment.

(5) Adjustment of entitlements

The entitlements established by this subsection shall be adjusted in the same manner as expenditure limitations established by section 315(b) and section 315(d) of the Federal Election Campaign Act of 1971 are adjusted pursuant to the provisions of section 315(c) of such Act.

(c) Use of funds

No part of any payment made under subsection (b) shall be used to defray the expenses of any candidate or delegate who is participating in any presidential nominating convention. Such payments shall be used only—

(1) to defray expenses incurred with respect to a presidential nominating convention (including the payment of deposits) by or on behalf of the national committee receiving such payments; or

(2) to repay loans the proceeds of which were used to defray such expenses, or otherwise to restore funds (other than contributions to defray such expenses received by such committee) used to defray such expenses.

(d) Limitation of expenditures

(1) Major parties

Except as provided by paragraph (3), the national committee of a major party may not make expenditures with respect to a presidential nominating convention which, in the aggregate, exceed the amount of payments to which such committee is entitled under subsection (b)(1).

(2) Minor parties

Except as provided by paragraph (3), the national committee of a minor party may not make expenditures with respect to a presidential nominating convention which, in the aggregate, exceed the amount of the entitlement of the national committee of a major party under subsection (b)(1).

(3) Exception

The Commission may authorize the national committee of a major party or minor party to make expenditures which, in the aggregate, exceed the limitation established by paragraph (1) or paragraph (2) of this subsection. Such authorization shall be based upon a determination by the Commission that, due to extraordinary and unforeseen circumstances, such expenditures are necessary to assure the effective operation of the presidential nominating convention by such committee.

(4) Provision of legal or accounting services

For purposes of this section, the payment, by any person other than the national committee of a political party (unless the person paying for such services is a person other than the regular employer of the individual rendering such services) of compensation to any individual for legal or accounting services rendered to or on behalf of the national committee of a political party shall not be treated as an expenditure made by or on behalf of such committee with respect to its limitations on presidential nominating convention expenses.

(e) Availability of payments

The national committee of a major party or minor party may receive payments under subsection (b)(3) beginning on July 1 of the calendar year immediately preceding the calendar year in which a presidential nominating convention of the political party involved is held.

(f) Transfer to the fund

If, after the close of a presidential nominating convention and after the national committee of the political party involved has been paid the amount which it is entitled to receive under this section, there are moneys remaining in the account of such national committee, the Secretary shall transfer

the moneys so remaining to the fund.

(g) Certification by Commission

Any major party or minor party may file a statement with the Commission in such form and manner and at such times as it may require, designating the national committee of such party. Such statement shall include the information required by section 303(b) of the Federal Election Campaign Act of 1971, together with such additional information as the Commission may require. Upon receipt of a statement filed under the preceding sentences, the Commission promptly shall verify such statement according to such procedures and criteria as it may establish and shall certify to the Secretary for payment in full to any such committee of amounts to which such committee may be entitled under subsection (b). Such certifications shall be subject to an examination and audit which the Commission shall conduct no later than December 31, of the calendar year in which the presidential nominating convention involved is held.

(h) Repayments

The Commission shall have the same authority to require repayments from the national committee of a major party or a minor party as it has with respect to repayments from any eligible candidate under section 9007(b). The provisions of section 9007(c) and section 9007(d) shall apply with respect to any repayment required by the Commission under this subsection.

(i) Termination of payments for conventions; use of amounts for pediatric research initiative

Effective on the date of the enactment of the Gabriella Miller Kids First Research Act—

(1) the entitlement of any major party or minor party to a payment under this section shall terminate; and

(2) all amounts in each account maintained for the national committee of a major party or minor party under this section shall be transferred to a fund in the Treasury to be known as the "10-Year Pediatric Research Initiative Fund", which shall be available only for the purpose provided in section 402A(a)(2) of the Public Health Service Act, and only to the extent and in such amounts as are provided in advance in appropriation Acts.

(Added Pub. L. 92–178, title VIII, §801, Dec. 10, 1971, 85 Stat. 569; amended Pub. L. 93–443, title IV, §406(a), Oct. 15, 1974, 88 Stat. 1294; Pub. L. 94–283, title III, §§303, 307(a), May 11, 1976, 90 Stat. 498, 501; Pub. L. 96–187, title II, §202, Jan. 8, 1980, 93 Stat. 1368; Pub. L. 98–355, §1(a), (b), July 11, 1984, 98 Stat. 394; Pub. L. 113–94, §2(a), Apr. 3, 2014, 128 Stat. 1085.)

REFERENCES IN TEXT

Sections 303 and 315 of the Federal Election Campaign Act of 1971, referred to in subsecs. (b)(5) and (g), are classified to sections 30103 and 30116, respectively, of Title 52, Voting and Elections.

The date of the enactment of the Gabriella Miller Kids First Research Act, referred to in subsec. (i), is the date of enactment of Pub. L. 113–94, which was approved Apr. 3, 2014.

Section 402A(a)(2) of the Public Health Service Act, referred to in subsec. (i)(2), is classified to section 282a(a)(2) of Title 42, The Public Health and Welfare.

AMENDMENTS

2014—Subsec. (i). Pub. L. 113–94 added subsec. (i).

1984—Subsec. (b)(1). Pub. L. 98–355, §1(a), substituted "$4,000,000" for "$3,000,000".

Subsec. (b)(5). Pub. L. 98–355, §1(b), substituted "section 315(b) and section 315(d)" for "section 320(b) and section 320(d)" and "section 315(c)" for "section 320(c)".

1980—Subsec. (b)(1). Pub. L. 96–187 substituted "$3,000,000" for "$2,000,000".

1976—Subsec. (b)(5). Pub. L. 94–283, §307(a), substituted "section 320(b) and section 320(d) of the Federal Election Campaign Act of 1971 are adjusted pursuant to the provisions of section 320(c) of such Act" for "section 608(c) and section 608(f) of title 18, United States Code, are adjusted pursuant to the provisions of section 608(d) of such title".

Subsec. (d)(4). Pub. L. 94–283, §303, added par. (4).

1974—Pub. L. 93–443 substituted provisions respecting payments for presidential nominating conventions for prior provisions respecting information on proposed expenses, subsec. (a) relating to reports by candidates, and subsec. (b) to publication of summaries.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–355, §1(c), July 11, 1984, 98 Stat. 394, provided that: "The amendments made by this section [amending this section] shall take effect on January 1, 1984."

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–187 effective Jan. 8, 1980, see section 301(a) of Pub. L. 96–187, set out as a note under section 30101 of Title 52, Voting and Elections.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–443 applicable with respect to taxable years beginning after Dec. 31, 1974, see section 410(c)(1) of Pub. L. 93–443, set out as a note under section 30101 of Title 52, Voting and Elections.

§9009. Reports to Congress; regulations

(a) Reports

The Commission shall, as soon as practicable after each presidential election, submit a full report to the Senate and House of Representatives setting forth—

(1) the qualified campaign expenses (shown in such detail as the Commission determines necessary) incurred by the candidates of each political party and their authorized committees;

(2) the amounts certified by it under section 9005 for payment to the eligible candidates of each political party; and

(3) the amount of payments, if any, required from such candidates under section 9007, and the reasons for each payment required.

Each report submitted pursuant to this section shall be printed as a Senate document.

(b) Regulations, etc.

The Commission is authorized to prescribe such rules and regulations in accordance with the provisions of subsection (c), to conduct such examinations and audits (in addition to the examinations and audits required by section 9007(a)), to conduct such investigations, and to require the keeping and submission of such books, records, and information, as it deems necessary to carry out the functions and duties imposed on it by this chapter.

(c) Review of regulations

(1) The Commission, before prescribing any rule or regulation under subsection (b), shall transmit a statement with respect to such rule or regulation to the Senate and to the House of Representatives, in accordance with the provisions of this subsection. Such statement shall set forth the proposed rule or regulation and shall contain a detailed explanation and justification of such rule or regulation.

(2) If either such House does not, through appropriate action, disapprove the proposed rule or regulation set forth in such statement no later than 30 legislative days after receipt of such statement, then the Commission may prescribe such rule or regulation. Whenever a committee of the House of Representatives reports any resolution relating to any such rule or regulation, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to. The Commission may not prescribe any rule or regulation which is disapproved by either such House under this paragraph.

(3) For purposes of this subsection, the term "legislative days" does not include any calendar day on which both Houses of the Congress are not in session.

(4) For purposes of this subsection, the term "rule or regulation" means a provision or series of interrelated provisions stating a single separable rule of law.

(Added Pub. L. 92–178, title VIII, §801, Dec. 10, 1971, 85 Stat. 569; amended Pub. L. 93–443, title IV, §§404(c)(12), (13), 406(b)(1), 409, Oct. 15, 1974, 88 Stat. 1292, 1293, 1296, 1303; Pub. L. 94–283, title III, §304(a), May 11, 1976, 90 Stat. 498; Pub. L. 113–94, §2(c)(1), Apr. 3, 2014, 128

Stat. 1085.)

AMENDMENTS

2014—Subsec. (a)(2). Pub. L. 113–94, §2(c)(1)(A), inserted "and" at end.

Subsec. (a)(3). Pub. L. 113–94, §2(c)(1)(B), which directed substitution of period for semicolon at end, was executed by substituting period for "; and" at end, to reflect the probable intent of Congress.

Subsec. (a)(4) to (6). Pub. L. 113–94, §2(c)(1)(C), struck out pars. (4) to (6) which read as follows:

"(4) the expenses incurred by the national committee of a major party or minor party with respect to a presidential nominating convention;

"(5) the amounts certified by it under section 9008(g) for payment to each such committee; and

"(6) the amount of payments, if any, required from such committees under section 9008(h), and the reasons for each such payment."

1976—Subsec. (c)(2). Pub. L. 94–283, §304(a)(1), inserted provision for accelerated consideration by the House of Representatives of resolutions relating to rules or regulations reported out by committees of the House.

Subsec. (c)(4). Pub. L. 94–283, §304(a)(2), added par. (4).

1974—Subsec. (a). Pub. L. 93–443, §§404(c)(12), 406(b)(1), substituted "Commission" for "Comptroller General" wherever appearing and "it" for "him" and added pars. (4) to (6).

Subsec. (b). Pub. L. 93–443, §§404(c)(13), 409(b), substituted "Commission", "it" and "it" for "Comptroller General", "he" and "him", respectively, and inserted "in accordance with the provisions of subsection (c)" after "regulations".

Subsec. (c). Pub. L. 93–443, §409(a), added subsec. (c).

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–443 applicable with respect to taxable years beginning after Dec. 31, 1974, see section 410(c)(1) of Pub. L. 93–443, set out as a note under section 30101 of Title 52, Voting and Elections.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of reporting provisions in subsec. (a) of this section, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 168 of House Document No. 103–7.

§9010. Participation by Commission in judicial proceedings

(a) Appearance by counsel

The Commission is authorized to appear in and defend against any action filed under section 9011, either by attorneys employed in its office or by counsel whom it may appoint without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and whose compensation it may fix without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title.

(b) Recovery of certain payments

The Commission is authorized through attorneys and counsel described in subsection (a) to appear in the district courts of the United States to seek recovery of any amounts determined to be payable to the Secretary of the Treasury as a result of examination and audit made pursuant to section 9007.

(c) Declaratory and injunctive relief

The Commission is authorized through attorneys and counsel described in subsection (a) to petition the courts of the United States for declaratory or injunctive relief concerning any civil matter covered by the provisions of this subtitle or section 6096. Upon application of the Commission an action brought pursuant to this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28, United States Code, and any appeal shall lie to the Supreme Court.

(d) Appeal

The Commission is authorized on behalf of the United States to appeal from, and to petition the

Supreme Court for certiorari to review, judgments or decrees entered with respect to actions in which it appears pursuant to the authority provided in this section.

(Added Pub. L. 92–178, title VIII, §801, Dec. 10, 1971, 85 Stat. 569; amended Pub. L. 93–443, title IV, §404(c)(14)–(18), Oct. 15, 1974, 88 Stat. 1293; Pub. L. 94–455, title XIX, §1906(b)(13)(C), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–620, title IV, §402(28)(E), Nov. 8, 1984, 98 Stat. 3359.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98–620 struck out provision requiring the judges designated to hear the case to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited.

1976—Subsec. (b). Pub. L. 94–455 substituted "to the Secretary of the Treasury" for "to the Secretary".

1974—Pub. L. 93–443, §404(c)(14), substituted "Commission" for "Comptroller General" in section catchline.

Subsec. (a). Pub. L. 93–443, §404(c)(15), substituted "Commission" for "Comptroller General", "its" for "his", and "it" for "he" wherever appearing.

Subsecs. (b), (c). Pub. L. 93–443, §404(c)(16), (17), substituted "Commission" for "Comptroller General" wherever appearing.

Subsec. (d). Pub. L. 93–443, §404(c)(18), substituted "Commission" and "it" for "Comptroller General" and "he".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–443 applicable with respect to taxable years beginning after Dec. 31, 1974, see section 410(c)(1) of Pub. L. 93–443, set out as a note under section 30101 of Title 52, Voting and Elections.

§9011. Judicial review

(a) Review of certification, determination, or other action by the Commission

Any certification, determination, or other action by the Commission made or taken pursuant to the provisions of this chapter shall be subject to review by the United States Court of Appeals for the District of Columbia upon petition filed in such Court by any interested person. Any petition filed pursuant to this section shall be filed within thirty days after the certification, determination, or other action by the Commission for which review is sought.

(b) Suits to implement chapter

(1) The Commission, the national committee of any political party, and individuals eligible to vote for President are authorized to institute such actions, including actions for declaratory judgment or injunctive relief, as may be appropriate to implement or contrue [1] any provisions of this chapter.

(2) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this subsection and shall exercise the same without regard to whether a person asserting rights under provisions of this subsection shall have exhausted any administrative or other remedies that may be provided at law. Such proceedings shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28, United States Code, and any appeal shall lie to the Supreme Court.

(Added Pub. L. 92–178, title VIII, §801, Dec. 10, 1971, 85 Stat. 570; amended Pub. L. 93–443, title IV, §404(c)(19)–(21), Oct. 15, 1974, 88 Stat. 1293; Pub. L. 98–620, title IV, §402(28)(F), Nov. 8, 1984, 98 Stat. 3359.)

AMENDMENTS

1984—Subsec. (b)(2). Pub. L. 98–620 struck out provision requiring the judges designated to hear the case to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited.

1974—Subsec. (a). Pub. L. 93–443, §404(c)(19), (20), substituted "Commission" for "Comptroller General" in heading and wherever appearing in text.

Subsec. (b). Pub. L. 93–443, §404(c)(21), substituted "Commission" for "Comptroller General".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–443 applicable with respect to taxable years beginning after Dec. 31, 1974, see section 410(c)(1) of Pub. L. 93–443, set out as a note under section 30101 of Title 52, Voting and Elections.

[1] So in original. Probably should be "construe".

§9012. Criminal penalties

(a) Excess expenses

(1) It shall be unlawful for an eligible candidate of a political party for President and Vice President in a presidential election or any of his authorized committees knowingly and willfully to incur qualified campaign expenses in excess of the aggregate payments to which the eligible candidates of a major party are entitled under section 9004 with respect to such election.

(2) Any person who violates paragraph (1) shall be fined not more than $5,000, or imprisoned not more than one year or both. In the case of a violation by an authorized committee, any officer or member of such committee who knowingly and willfully consents to such violation shall be fined not more than $5,000, or imprisoned not more than one year, or both.

(b) Contributions

(1) It shall be unlawful for an eligible candidate of a major party in a presidential election or any of his authorized committees knowingly and willfully to accept any contribution to defray qualified campaign expenses, except to the extent necessary to make up any deficiency in payments received out of the fund on account of the application of section 9006(c), or to defray expenses which would be qualified campaign expenses but for subparagraph (C) of section 9002(11).

(2) It shall be unlawful for an eligible candidate of a political party (other than a major party) in a presidential election or any of his authorized committees knowingly and willfully to accept and expend or retain contributions to defray qualified campaign expenses in an amount which exceeds the qualified campaign expenses incurred with respect to such election by such eligible candidate and his authorized committees.

(3) Any person who violates paragraph (1) or (2) shall be fined not more than $5,000, or imprisoned not more than one year, or both. In the case of a violation by an authorized committee, any officer or member of such committee who knowingly and willfully consents to such violation shall be fined not more than $5,000, or imprisoned not more than one year, or both.

(c) Unlawful use of payments

(1) It shall be unlawful for any person who receives any payment under section 9006, or to whom any portion of any payment received under such section is transferred, knowingly and willfully to use, or authorize the use of, such payment or such portion for any purpose other than—

(A) to defray the qualified campaign expenses with respect to which such payment was made, or

(B) to repay loans the proceeds of which were used, or otherwise to restore funds (other than contributions to defray qualified campaign expenses which were received and expended) which were used, to defray such qualified campaign expenses.

(2) Any person who violates paragraph (1) shall be fined not more than $10,000, or imprisoned not more than five years, or both.

(d) False statements, etc.

(1) It shall be unlawful for any person knowingly and willfully—

(A) to furnish any false, fictitious, or fraudulent evidence, books, or information to the Commission under this subtitle, or to include in any evidence, books, or information so furnished any misrepresentation of a material fact, or to falsify or conceal any evidence, books, or information relevant to a certification by the Commission or an examination and audit by the Commission under this chapter; or

(B) to fail to furnish to the Commission any records, books, or information requested by it for purposes of this chapter.

(2) Any person who violates paragraph (1) shall be fined not more than $10,000, or imprisoned not more than five years, or both.

(e) Kickbacks and illegal payments

(1) It shall be unlawful for any person knowingly and willfully to give or accept any kickback or any illegal payment in connection with any qualified campaign expense of eligible candidates or their authorized committees.

(2) Any person who violates paragraph (1) shall be fined not more than $10,000, or imprisoned not more than five years, or both.

(3) In addition to the penalty provided by paragraph (2), any person who accepts any kickback or illegal payment in connection with any qualified campaign expense of eligible candidates or their authorized committees shall pay to the Secretary of the Treasury, for deposit in the general fund of the Treasury, an amount equal to 125 percent of the kickback or payment received.

(f) Unauthorized expenditures and contributions

(1) Except as provided in paragraph (2), it shall be unlawful for any political committee which is not an authorized committee with respect to the eligible candidates of a political party for President and Vice President in a presidential election knowingly and willfully to incur expenditures to further the election of such candidates, which would constitute qualified campaign expenses if incurred by an authorized committee of such candidates, in an aggregate amount exceeding $1,000.

(2) This subsection shall not apply to (A) expenditures by a broadcaster regulated by the Federal Communications Commission, or by a periodical publication, in reporting the news or in taking editorial positions, or (B) expenditures by any organization described in section 501(c) which is exempt from tax under section 501(a) in communicating to its members the views of that organization.

(3) Any political committee which violates paragraph (1) shall be fined not more than $5,000, and any officer or member of such committee who knowingly and willfully consents to such violation and any other individual who knowingly and willfully violates paragraph (1) shall be fined not more than $5,000, or imprisoned not more than one year, or both.

(g) Unauthorized disclosure of information

(1) It shall be unlawful for any individual to disclose any information obtained under the provisions of this chapter except as may be required by law.

(2) Any person who violates paragraph (1) shall be fined not more than $5,000, or imprisoned not more than one year, or both.

(Added Pub. L. 92–178, title VIII, §801, Dec. 10, 1971, 85 Stat. 570; amended Pub. L. 93–53, §6(c), July 1, 1973, 87 Stat. 139; Pub. L. 93–443, title IV, §§404(c)(22), 406(b)(2)–(6), Oct. 15, 1974, 88 Stat. 1293, 1296; Pub. L. 94–283, title III, §307(f), May 11, 1976, 90 Stat. 502; Pub. L. 94–455, title XIX, §1906(b)(13)(C), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 113–94, §2(c)(2), Apr. 3, 2014, 128 Stat. 1086.)

CONSTITUTIONALITY

For information regarding constitutionality of certain provisions of this section, as added by section 801 of Pub. L. 92–178, see Congressional Research Service, The Constitution of the United States of America: Analysis and Interpretation, Appendix 1, Acts of Congress Held Unconstitutional in Whole or in Part by the

Supreme Court of the United States.

AMENDMENTS

2014—Subsec. (a)(1). Pub. L. 113–94, §2(c)(2)(A), struck out at end "It shall be unlawful for the national committee of a major party or minor party knowingly and willfully to incur expenses with respect to a presidential nominating convention in excess of the expenditure limitation applicable with respect to such committee under section 9008(d), unless the incurring of such expenses is authorized by the Commission under section 9008(d)(3)."

Subsec. (c)(2), (3). Pub. L. 113–94, §2(c)(2)(B), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: "It shall be unlawful for the national committee of a major party or minor party which receives any payment under section 9008(b)(3) to use, or authorize the use of, such payment for any purpose other than a purpose authorized by section 9008(c)."

Subsec. (e)(1). Pub. L. 113–94, §2(c)(2)(C), struck out at end "It shall be unlawful for the national committee of a major party or minor party knowingly and willfully to give or accept any kickback or any illegal payment in connection with any expense incurred by such committee with respect to a presidential nominating convention."

Subsec. (e)(3). Pub. L. 113–94, §2(c)(2)(D), struck out ", or in connection with any expense incurred by the national committee of a major party or minor party with respect to a presidential nominating convention" after "authorized committees".

1976—Subsec. (b)(1). Pub. L. 94–283 substituted "9006(c)" for "9006(d)".

Subsec. (e)(3). Pub. L. 94–455 substituted "Secretary of the Treasury" for "Secretary".

1974—Subsec. (a). Pub. L. 93–443, §406(b)(2), (3), struck out "campaign" before "expenses" in heading and inserted in par. (1) provision making it unlawful for a national committee of a major or minor party knowingly and willfully to incur expenses with respect to a presidential nominating convention in excess of applicable expenditure limitation unless authorized by the Commission.

Subsec. (c)(2), (3). Pub. L. 93–443, §406(b)(4), added par. (2) and redesignated former par. (2) as (3).

Subsec. (d)(1). Pub. L. 93–443, §404(c)(22), substituted "Commission" for "Comptroller General" wherever appearing and "it" for "him".

Subsec. (e)(1). Pub. L. 93–443, §406(b)(6), inserted provision making it unlawful for a national committee of a major or minor party knowingly and willfully to give or accept any kickback or any illegal payment in connection with any expense of such committee with respect to a presidential nominating convention.

Subsec. (e)(3). Pub. L. 93–443, §406(b)(6), inserted requirement of payment, by any person accepting any kickback or illegal payment in connection with any expense incurred by the national committee of a major or minor party with respect to a presidential nominating convention, to the Secretary for deposit in the general fund of the Treasury.

1973—Subsec. (b)(1). Pub. L. 93–53 substituted section "9006(d)" for "9006(c)".

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–443 applicable with respect to taxable years beginning after Dec. 31, 1974, see section 410(c)(1) of Pub. L. 93–443, set out as a note under section 30101 of Title 52, Voting and Elections.

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93–53 applicable with respect to taxable years beginning after Dec. 31, 1972, see section 6(d) of Pub. L. 93–53, set out as a note under section 6096 of this title.

§9013. Effective date of chapter

The provisions of this chapter shall take effect on January 1, 1973.

(Added Pub. L. 92–178, title VIII, §801, Dec. 10, 1971, 85 Stat. 572.)

PRIOR PROVISIONS

A prior section 9021, added by Pub. L. 92–178, title VIII, §801, Dec. 10, 1971, 85 Stat. 572, established Presidential Election Campaign Fund Advisory Board, prior to repeal by Pub. L. 93–443, title IV, §408(c), Oct. 15, 1974, 88 Stat. 1297. For effective date of repeal see section 410(c)(1) of Pub. L. 93–443, set out as an Effective Date of 1974 Amendment note under section 30101 of Title 52, Voting and Elections.

CHAPTER 96—PRESIDENTIAL PRIMARY MATCHING PAYMENT ACCOUNT

Sec.
9031. Short title.
9032. Definitions.
9033. Eligibility for payments.
9034. Entitlement of eligible candidates to payments.
9035. Qualified campaign expense limitations.
9036. Certification by Commission.
9037. Payments to eligible candidates.
9038. Examinations and audits; repayments.
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9040. Participation by Commission in judicial proceedings.
9041. Judicial review.
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PRIOR PROVISIONS

A prior chapter 96, relating to the Presidential Election Campaign Fund Advisory Board, consisted of section 9021, added by Pub. L. 92–178, title VIII, §801, Dec. 10, 1971, 85 Stat. 572, providing for the establishment and composition of the Advisory Board and the compensation and status of members, and was repealed by Pub. L. 93–443, title IV, §408(c), Oct. 15, 1974, 88 Stat. 1297. Section 410(c)(1) of Pub. L. 93–443, set out as an Effective Date of 1974 Amendment note under section 30101 of Title 52, Voting and Elections, provided that the amendments made by section 408(c) shall apply with respect to taxable years beginning after Dec. 31, 1974.

AMENDMENTS

1976—Pub. L. 94–283, title III, §305(b), May 11, 1976, 90 Stat. 499, substituted "limitations" for "limitation" in item 9035.

§9031. Short title

This chapter may be cited as the "Presidential Primary Matching Payment Account Act".

(Added Pub. L. 93–443, title IV, §408(c), Oct. 15, 1974, 88 Stat. 1297.)

EFFECTIVE DATE

Section applicable with respect to taxable years beginning after Dec. 31, 1974, see section 410(c)(1) of Pub. L. 93–443, set out as an Effective Date of 1974 Amendment note under section 30101 of Title 52, Voting and Elections.

§9032. Definitions

For the purposes of this chapter—

(1) The term "authorized committee" means, with respect to the candidates of a political party for President and Vice President of the United States, any political committee which is authorized in writing by such candidates to incur expenses to further the election of such candidates. Such authorization shall be addressed to the chairman of such political committee, and a copy of such authorization shall be filed by such candidates with the Commission. Any withdrawal of any authorization shall also be in writing and shall be addressed and filed in the same manner as the authorization.

(2) The term "candidate" means an individual who seeks nomination for election to be President of the United States. For purposes of this paragraph, an individual shall be considered to seek nomination for election if he (A) takes the action necessary under the law of a State to qualify himself for nomination for election, (B) receives contributions or incurs qualified campaign expenses, or (C) gives his consent for any other person to receive contributions or to incur

qualified campaign expenses on his behalf. The term "candidate" shall not include any individual who is not actively conducting campaigns in more than one State in connection with seeking nomination for election to be President of the United States.

(3) The term "Commission" means the Federal Election Commission established by section 306(a)(1) of the Federal Election Campaign Act of 1971.

(4) Except as provided by section 9034(a), the term "contribution"—

(A) means a gift, subscription, loan, advance, or deposit of money, or anything of value, the payment of which was made on or after the beginning of the calendar year immediately preceding the calendar year of the presidential election with respect to which such gift, subscription, loan, advance, or deposit of money, or anything of value, is made, for the purpose of influencing the result of a primary election,

(B) means a contract, promise, or agreement, whether or not legally enforceable, to make a contribution for any such purpose,

(C) means funds received by a political committee which are transferred to that committee from another committee, and

(D) means the payment by any person other than a candidate, or his authorized committee, of compensation for the personal services of another person which are rendered to the candidate or committee without charge, but

(E) does not include—

(i) except as provided in subparagraph (D), the value of personal services rendered to or for the benefit of a candidate by an individual who receives no compensation for rendering such service to or for the benefit of the candidate, or

(ii) payments under section 9037.

(5) The term "matching payment account" means the Presidential Primary Matching Payment Account established under section 9037(a).

(6) The term "matching payment period" means the period beginning with the beginning of the calendar year in which a general election for the office of President of the United States will be held and ending on the date on which the national convention of the party whose nomination a candidate seeks nominates its candidate for the office of President of the United States, or, in the case of a party which does not make such nomination by national convention, ending on the earlier of (A) the date such party nominates its candidate for the office of President of the United States, or (B) the last day of the last national convention held by a major party during such calendar year.

(7) The term "primary election" means an election, including a runoff election or a nominating convention or caucus held by a political party, for the selection of delegates to a national nominating convention of a political party, or for the expression of a preference for the nomination of persons for election to the office of President of the United States.

(8) The term "political committee" means any individual, committee, association, or organization (whether or not incorporated) which accepts contributions or incurs qualified campaign expenses for the purpose of influencing, or attempting to influence, the nomination of any person for election to the office of President of the United States.

(9) The term "qualified campaign expense" means a purchase, payment, distribution, loan, advance, deposit, or gift of money or of anything of value—

(A) incurred by a candidate, or by his authorized committee, in connection with his campaign for nomination for election, and

(B) neither the incurring nor payment of which constitutes a violation of any law of the United States or of the State in which the expense is incurred or paid.

For purposes of this paragraph, an expense is incurred by a candidate or by an authorized committee if it is incurred by a person specifically authorized in writing by the candidate or committee, as the case may be, to incur such expense on behalf of the candidate or the committee.

(10) The term "State" means each State of the United States and the District of Columbia.

(Added Pub. L. 93–443, title IV, §408(c), Oct. 15, 1974, 88 Stat. 1297; amended Pub. L. 94–283,

title I, §115(c)(2), title III, §306(b)(1), May 11, 1976, 90 Stat. 495, 500; Pub. L. 110–172, §11(a)(42)(C), Dec. 29, 2007, 121 Stat. 2488.)

REFERENCES IN TEXT

Section 306(a)(1) of the Federal Election Campaign Act of 1971, referred to in par. (3), is classified to section 30106(a)(1) of Title 52, Voting and Elections.

AMENDMENTS

2007—Par. (3). Pub. L. 110–172 substituted "section 306(a)(1)" for "section 309(a)(1)".

1976—Par. (2). Pub. L. 94–283, §306(b)(1), inserted provision that "candidate" shall not include any individual who is not actively conducting campaigns in more than one State in connection with seeking nomination for election to be President of the United States.

Par. (3). Pub. L. 94–283, §115(c)(2), substituted "309(a)(1)" for "310(a)(1)".

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 306(b)(1) of Pub. L. 94–283 effective May 11, 1976, see section 306(c) of Pub. L. 94–283, set out as a note under section 9002 of this title.

§9033. Eligibility for payments

(a) Conditions

To be eligible to receive payments under section 9037, a candidate shall, in writing—

(1) agree to obtain and furnish to the Commission any evidence it may request of qualified campaign expenses,

(2) agree to keep and furnish to the Commission any records, books, and other information it may request, and

(3) agree to an audit and examination by the Commission under section 9038 and to pay any amounts required to be paid under such section.

(b) Expense limitation; declaration of intent; minimum contributions

To be eligible to receive payments under section 9037, a candidate shall certify to the Commission that—

(1) the candidate and his authorized committees will not incur qualified campaign expenses in excess of the limitations on such expenses under section 9035,

(2) the candidate is seeking nomination by a political party for election to the office of President of the United States,

(3) the candidate has received matching contributions which in the aggregate, exceed $5,000 in contributions from residents of each of at least 20 States, and

(4) the aggregate of contributions certified with respect to any person under paragraph (3) does not exceed $250.

(c) Termination of payments

(1) General rule

Except as provided by paragraph (2), no payment shall be made to any individual under section 9037—

(A) if such individual ceases to be a candidate as a result of the operation of the last sentence of section 9032(2); or

(B) more than 30 days after the date of the second consecutive primary election in which such individual receives less than 10 percent of the number of votes cast for all candidates of the same party for the same office in such primary election, if such individual permitted or authorized the appearance of his name on the ballot, unless such individual certifies to the Commission that he will not be an active candidate in the primary involved.

(2) Qualified campaign expenses; payments to Secretary

Any candidate who is ineligible under paragraph (1) to receive any payments under section

9037 shall be eligible to continue to receive payments under section 9037 to defray qualified campaign expenses incurred before the date upon which such candidate becomes ineligible under paragraph (1).

(3) Calculation of voting percentage

For purposes of paragraph (1)(B), if the primary elections involved are held in more than one State on the same date, a candidate shall be treated as receiving that percentage of the votes on such date which he received in the primary election conducted on such date in which he received the greatest percentage vote.

(4) Reestablishment of eligibility

(A) In any case in which an individual is ineligible to receive payments under section 9037 as a result of the operation of paragraph (1)(A), the Commission may subsequently determine that such individual is a candidate upon a finding that such individual is actively seeking election to the office of President of the United States in more than one State. The Commission shall make such determination without requiring such individual to reestablish his eligibility to receive payments under subsection (a).

(B) Notwithstanding the provisions of paragraph (1)(B), a candidate whose payments have been terminated under paragraph (1)(B) may again receive payments (including amounts he would have received but for paragraph (1)(B)) if he receives 20 percent or more of the total number of votes cast for candidates of the same party in a primary election held after the date on which the election was held which was the basis for terminating payments to him.

(Added Pub. L. 93–443, title IV, §408(c), Oct. 15, 1974, 88 Stat. 1299; amended Pub. L. 94–283, title III, §§305(c), 306(b)(2), May 11, 1976, 90 Stat. 499, 500.)

AMENDMENTS

1976—Subsec. (b)(1). Pub. L. 94–283, §305(c), substituted "limitations" for "limitation".
Subsec. (c). Pub. L. 94–283, §306(b)(2), added subsec. (c).

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 306(b)(2) of Pub. L. 94–283 effective May 11, 1976, see section 306(c) of Pub. L. 94–283, set out as a note under section 9002 of this title.

§9034. Entitlement of eligible candidates to payments

(a) In general

Every candidate who is eligible to receive payments under section 9033 is entitled to payments under section 9037 in an amount equal to the amount of each contribution received by such candidate on or after the beginning of the calendar year immediately preceding the calendar year of the presidential election with respect to which such candidate is seeking nomination, or by his authorized committees, disregarding any amount of contributions from any person to the extent that the total of the amounts contributed by such person on or after the beginning of such preceding calendar year exceeds $250. For purposes of this subsection and section 9033(b), the term "contribution" means a gift of money made by a written instrument which identifies the person making the contribution by full name and mailing address, but does not include a subscription, loan, advance, or deposit of money, or anything of value or anything described in subparagraph (B), (C), or (D) of section 9032(4).

(b) Limitations

The total amount of payments to which a candidate is entitled under subsection (a) shall not exceed 50 percent of the expenditure limitation applicable under section 315(b)(1)(A) of the Federal Election Campaign Act of 1971.

(Added Pub. L. 93–443, title IV, §408(c), Oct. 15, 1974, 88 Stat. 1299; amended Pub. L. 94–283, title III, §307(b), May 11, 1976, 90 Stat. 501; Pub. L. 110–172, §11(a)(42)(D), Dec. 29, 2007, 121

Stat. 2488.)

REFERENCES IN TEXT

Section 315(b)(1)(A) of the Federal Election Campaign Act of 1971, referred to in subsec. (b), is classified to section 30116(b)(1)(A) of Title 52, Voting and Elections.

AMENDMENTS

2007—Subsec. (b). Pub. L. 110–172 substituted "section 315(b)(1)(A)" for "section 320(b)(1)(A)".

1976—Subsec. (b). Pub. L. 94–283 substituted "section 320(b)(1)(A) of the Federal Election Campaign Act of 1971" for "section 608(c)(1)(A) of title 18, United States Code".

§9035. Qualified campaign expense limitations

(a) Expenditure limitations

No candidate shall knowingly incur qualified campaign expenses in excess of the expenditure limitation applicable under section 320(b)(1)(A) of the Federal Election Campaign Act of 1971, and no candidate shall knowingly make expenditures from his personal funds, or the personal funds of his immediate family, in connection with his campaign for nomination for election to the office of President in excess of, in the aggregate, $50,000.

(b) Definition of immediate family

For purposes of this section, the term "immediate family" means a candidate's spouse, and any child, parent, grandparent, brother, half-brother, sister, or half-sister of the candidate, and the spouses of such persons.

(Added Pub. L. 93–443, title IV, §408(c), Oct. 15, 1974, 88 Stat. 1300; amended Pub. L. 94–283, title III, §§305(a), 307(c), May 11, 1976, 90 Stat. 499, 501.)

REFERENCES IN TEXT

Section 320 of The Federal Election Campaign Act of 1971, referred to in subsec. (a), was renumbered section 315 of that Act by Pub. L. 96–187, title I, §105(5), Jan. 8, 1980, 93 Stat. 1354, and is classified to section 30116 of Title 52, Voting and Elections.

AMENDMENTS

1976—Pub. L. 94–283 substituted "limitations" for "limitation" in section catchline, designated existing provisions as subsec. (a), inserted "Expenditure limitations" as heading of subsec. (a) as so redesignated and substituted "section 320(b)(1)(A) of the Federal Election Campaign Act of 1971, and no candidate shall knowingly make expenditures from his personal funds, or the personal funds of his immediate family, in connection with his campaign for nomination for election to the office of President in excess of, in the aggregate, $50,000" for "section 608(c)(1)(A) of title 18, United States Code", and added subsec. (b).

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–283, title III, §305(d), May 11, 1976, 90 Stat. 499, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "For purposes of applying section 9035(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as amended by subsection (a), expenditures made by an individual after January 29, 1976, and before the date of the enactment of this Act [May 11, 1976] shall not be taken into account."

§9036. Certification by Commission

(a) Initial certifications

Not later than 10 days after a candidate establishes his eligibility under section 9033 to receive payments under section 9037, the Commission shall certify to the Secretary for payment to such candidate under section 9037 payment in full of amounts to which such candidate is entitled under section 9034. The Commission shall make such additional certifications as may be necessary to permit candidates to receive payments for contributions under section 9037.

(b) Finality of determinations

Initial certifications by the Commission under subsection (a), and all determinations made by it under this chapter, are final and conclusive, except to the extent that they are subject to examination and audit by the Commission under section 9038 and judicial review under section 9041.

(Added Pub. L. 93–443, title IV, §408(c), Oct. 15, 1974, 88 Stat. 1300.)

§9037. Payments to eligible candidates

(a) Establishment of account

The Secretary shall maintain in the Presidential Election Campaign Fund established by section 9006(a), in addition to any account which he maintains under such section, a separate account to be known as the Presidential Primary Matching Payment Account. The Secretary shall deposit into the matching payment account, for use by the candidate of any political party who is eligible to receive payments under section 9033, the amount available after the Secretary determines that amounts for payments under section 9006(c) and for payments under section 9008(i)(2) are available for such payments.

(b) Payments from the matching payment account

Upon receipt of a certification from the Commission under section 9036, but not before the beginning of the matching payment period, the Secretary shall promptly transfer the amount certified by the Commission from the matching payment account to the candidate. In making such transfers to candidates of the same political party, the Secretary shall seek to achieve an equitable distribution of funds available under subsection (a), and the Secretary shall take into account, in seeking to achieve an equitable distribution, the sequence in which such certifications are received.

(Added Pub. L. 93–443, title IV, §408(c), Oct. 15, 1974, 88 Stat. 1300; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 113–94, §2(b)(2), Apr. 3, 2014, 128 Stat. 1085.)

AMENDMENTS

2014—Subsec. (a). Pub. L. 113–94 substituted "section 9008(i)(2)" for "section 9008(b)(3)".
1976—Subsec. (b). Pub. L. 94–455 struck out "or his delegate" after "Secretary" in three places.

§9038. Examinations and audits; repayments

(a) Examinations and audits

After each matching payment period, the Commission shall conduct a thorough examination and audit of the qualified campaign expenses of every candidate and his authorized committees who received payments under section 9037.

(b) Repayments

(1) If the Commission determines that any portion of the payments made to a candidate from the matching payment account was in excess of the aggregate amount of payments to which such candidate was entitled under section 9034, it shall notify the candidate, and the candidate shall pay to the Secretary an amount equal to the amount of excess payments.

(2) If the Commission determines that any amount of any payment made to a candidate from the matching payment account was used for any purpose other than—

(A) to defray the qualified campaign expenses with respect to which such payment was made, or

(B) to repay loans the proceeds of which were used, or otherwise to restore funds (other than contributions to defray qualified campaign expenses which were received and expended) which were used, to defray qualified campaign expenses,

it shall notify such candidate of the amount so used, and the candidate shall pay to the Secretary an amount equal to such amount.

(3) Amounts received by a candidate from the matching payment account may be retained for the liquidation of all obligations to pay qualified campaign expenses incurred for a period not exceeding 6 months after the end of the matching payment period. After all obligations have been liquidated, that portion of any unexpended balance remaining in the candidate's accounts which bears the same ratio to the total unexpended balance as the total amount received from the matching payment account bears to the total of all deposits made into the candidate's accounts shall be promptly repaid to the matching payment account.

(c) Notification

No notification shall be made by the Commission under subsection (b) with respect to a matching payment period more than 3 years after the end of such period.

(d) Deposit of repayments

All payments received by the Secretary under subsection (b) shall be deposited by him in the matching payment account.

(Added Pub. L. 93–443, title IV, §408(c), Oct. 15, 1974, 88 Stat. 1300; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsecs. (b)(1), (2), (d). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

§9039. Reports to Congress; regulations

(a) Reports

The Commission shall, as soon as practicable after each matching payment period, submit a full report to the Senate and House of Representatives setting forth—

(1) the qualified campaign expenses (shown in such detail as the Commission determines necessary) incurred by the candidates of each political party and their authorized committees,

(2) the amounts certified by it under section 9036 for payment to each eligible candidate, and

(3) the amount of payments, if any, required from candidates under section 9038, and the reasons for each payment required.

Each report submitted pursuant to this section shall be printed as a Senate document.

(b) Regulations, etc.

The Commission is authorized to prescribe rules and regulations in accordance with the provisions of subsection (c), to conduct examinations and audits (in addition to the examinations and audits required by section 9038(a)), to conduct investigations, and to require the keeping and submission of any books, records, and information, which it determines to be necessary to carry out its responsibilities under this chapter.

(c) Review of regulations

(1) The Commission, before prescribing any rule or regulation under subsection (b), shall transmit a statement with respect to such rule or regulation to the Senate and to the House of Representatives, in accordance with the provisions of this subsection. Such statement shall set forth the proposed rule or regulation and shall contain a detailed explanation and justification of such rule or regulation.

(2) If either such House does not, through appropriate action, disapprove the proposed rule or regulation set forth in such statement no later than 30 legislative days after receipt of such statement, then the Commission may prescribe such rule or regulation. Whenever a committee of the House of Representatives reports any resolution relating to any such rule or regulation, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not

debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to. The Commission may not prescribe any rule or regulation which is disapproved by either such House under this paragraph.

(3) For purposes of this subsection, the term "legislative days" does not include any calendar day on which both Houses of the Congress are not in session.

(4) For purposes of this subsection, the term "rule or regulation" means a provision or series of interrelated provisions stating a single separable rule of law.

(Added Pub. L. 93–443, title IV, §408(c), Oct. 15, 1974, 88 Stat. 1301; amended Pub. L. 94–283, title III, §304(b), May 11, 1976, 90 Stat. 499.)

AMENDMENTS

1976—Subsec. (c)(2). Pub. L. 94–283, §304(b)(1), inserted provision for accelerated consideration by the House of Representatives of resolutions relating to rules or regulations reported out by committees of the House.

Subsec. (c)(4). Pub. L. 94–283, §304(b)(2), added par. (4).

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of reporting provisions in subsec. (a) of this section, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 168 of House Document No. 103–7.

§9040. Participation by Commission in judicial proceedings

(a) Appearance by counsel

The Commission is authorized to appear in and defend against any action instituted under this section, either by attorneys employed in its office or by counsel whom it may appoint without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and whose compensation it may fix without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title.

(b) Recovery of certain payments

The Commission is authorized, through attorneys and counsel described in subsection (a), to institute actions in the district courts of the United States to seek recovery of any amounts determined to be payable to the Secretary as a result of an examination and audit made pursuant to section 9038.

(c) Injunctive relief

The Commission is authorized, through attorneys and counsel described in subsection (a), to petition the courts of the United States for such injunctive relief as is appropriate to implement any provision of this chapter.

(d) Appeal

The Commission is authorized on behalf of the United States to appeal from, and to petition the Supreme Court for certiorari to review, judgments or decrees entered with respect to actions in which it appears pursuant to the authority provided in this section.

(Added Pub. L. 93–443, title IV, §408(c), Oct. 15, 1974, 88 Stat. 1302; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsec. (b). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

§9041. Judicial review

(a) Review of agency action by the Commission

Any agency action by the Commission made under the provisions of this chapter shall be subject to review by the United States Court of Appeals for the District of Columbia Circuit upon petition filed in such court within 30 days after the agency action by the Commission for which review is sought.

(b) Review procedures

The provisions of chapter 7 of title 5, United States Code, apply to judicial review of any agency action, as defined in section 551(13) of title 5, United States Code, by the Commission.

(Added Pub. L. 93–443, title IV, §408(c), Oct. 15, 1974, 88 Stat. 1302.)

§9042. Criminal penalties

(a) Excess campaign expenses

Any person who violates the provisions of section 9035 shall be fined not more than $25,000, or imprisoned not more than 5 years, or both. Any officer or member of any political committee who knowingly consents to any expenditure in violation of the provisions of section 9035 shall be fined not more than $25,000, or imprisoned not more than 5 years, or both.

(b) Unlawful use of payments

(1) It is unlawful for any person who receives any payment under section 9037, or to whom any portion of any such payment is transferred, knowingly and willfully to use, or authorize the use of, such payment or such portion for any purpose other than—

(A) to defray qualified campaign expenses, or

(B) to repay loans the proceeds of which were used, or otherwise to restore funds (other than contributions to defray qualified campaign expenses which were received and expended) which were used, to defray qualified campaign expenses.

(2) Any person who violates the provisions of paragraph (1) shall be fined not more than $10,000, or imprisoned not more than 5 years, or both.

(c) False statements, etc.

(1) It is unlawful for any person knowingly and willfully—

(A) to furnish any false, fictitious, or fraudulent evidence, books, or information to the Commission under this chapter, or to include in any evidence, books, or information so furnished any misrepresentation of a material fact, or to falsify or conceal any evidence, books, or information relevant to a certification by the Commission or an examination and audit by the Commission under this chapter, or

(B) to fail to furnish to the Commission any records, books, or information requested by it for purposes of this chapter.

(2) Any person who violates the provisions of paragraph (1) shall be fined not more than $10,000, or imprisoned not more than 5 years, or both.

(d) Kickbacks and illegal payments

(1) It is unlawful for any person knowingly and willfully to give or accept any kickback or any illegal payment in connection with any qualified campaign expense of a candidate, or his authorized committees, who receives payments under section 9037.

(2) Any person who violates the provisions of paragraph (1) shall be fined not more than $10,000, or imprisoned not more than 5 years, or both.

(3) In addition to the penalty provided by paragraph (2), any person who accepts any kickback or illegal payment in connection with any qualified campaign expense of a candidate or his authorized committees shall pay to the Secretary for deposit in the matching payment account, an amount equal to 125 percent of the kickback or payment received.

(Added Pub. L. 93–443, title IV, §408(c), Oct. 15, 1974, 88 Stat. 1302.)

Subtitle I—Trust Fund Code

§9500. Short title

This subtitle may be cited as the "Trust Fund Code of 1981".

(Added Pub. L. 97–119, title I, §103(a), Dec. 29, 1981, 95 Stat. 1636.)

CHAPTER 98—TRUST FUND CODE

Subchapter		Sec.[1]
A.	**Establishment of Trust Funds**	**9501**
B.	**General provisions**	**9601**

[1] *Section numbers editorially supplied.*

Subchapter A—Establishment of Trust Funds

Sec.
9501. Black Lung Disability Trust Fund.
9502. Airport and Airway Trust Fund.
9503. Highway Trust Fund.
9504. Sport Fish Restoration and Boating Trust Fund.
9505. Harbor Maintenance Trust Fund.
9506. Inland Waterways Trust Fund.
9507. Hazardous Substance Superfund.
9508. Leaking Underground Storage Tank Trust Fund.
9509. Oil Spill Liability Trust Fund.
9510. Vaccine Injury Compensation Trust Fund.
9511. Patient-Centered Outcomes Research Trust Fund.

CODIFICATION

The amendment by section 8033(b) of Pub. L. 99–509, which provided for adding item 9507 to the table of sections for subchapter A, did not take effect pursuant to section 8033(c)(2)(C) of Pub. L. 99–509 and the enactment of the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99–499).

AMENDMENTS

2010—Pub. L. 111–148, title VI, §6301(e)(1)(B), Mar. 23, 2010, 124 Stat. 743, added item 9511.

2005—Pub. L. 109–59, title XI, §11115(b)(2)(E), Aug. 10, 2005, 119 Stat. 1950, substituted "Sport Fish Restoration and Boating" for "Aquatic Resources" in item 9504.

1998—Pub. L. 105–178, title IX, §9011(b)(3), June 9, 1998, 112 Stat. 508, struck out item 9511 "National Recreational Trails Trust Fund".

1991—Pub. L. 102–240, title VIII, §8003(c), Dec. 18, 1991, 105 Stat. 2206, added item 9511.

1987—Pub. L. 100–203, title IX, §9202(b), Dec. 22, 1987, 101 Stat. 1330–331, added item 9510.

1986—Pub. L. 99–662, title XIV, §§1403(c), 1405(c), Nov. 17, 1986, 100 Stat. 4270, 4271, added items 9505 and 9506.

Pub. L. 99–509, title VIII, §8033(c)(2)(C), Oct. 21, 1986, 100 Stat. 1962, added item 9509.

Pub. L. 99–499, title V, §§517(d), 522(b), Oct. 17, 1986, 100 Stat. 1774, 1781, added items 9507 and 9508.

1984—Pub. L. 98–369, div. A, title X, §1016(d), July 18, 1984, 98 Stat. 1020, added item 9504.

1983—Pub. L. 97–424, title V, §531(d), Jan. 6, 1983, 96 Stat. 2192, added item 9503.

1982—Pub. L. 97–248, title II, §281(c)(1), Sept. 3, 1982, 96 Stat. 566, struck out "Establishment of" before "Black Lung" in item 9501 and added item 9502.

§9501. Black Lung Disability Trust Fund

(a) Creation of Trust Fund

(1) In general

There is established in the Treasury of the United States a trust fund to be known as the "Black Lung Disability Trust Fund", consisting of such amounts as may be appropriated or credited to the Black Lung Disability Trust Fund.

(2) Trustees

The trustees of the Black Lung Disability Trust Fund shall be the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health and Human Services.

(b) Transfer of certain taxes; other receipts

(1) Transfer to Black Lung Disability Trust Fund of amounts equivalent to certain taxes

There are herby appropriated to the Black Lung Disability Trust Fund amounts equivalent to the taxes received in the Treasury under section 4121 or subchapter B of chapter 42.

(2) Certain repaid amounts, etc.

The following amounts shall be credited to the Black Lung Disability Trust Fund:

(A) Amounts repaid or recovered under subsection (b) of section 424 of the Black Lung Benefits Act (including interest thereon).

(B) Amounts paid as fines or penalties, or interest thereon, under section 423, 431, or 432 of the Black Lung Benefits Act.

(C) Amounts paid into the Black Lung Disability Trust Fund by a trust described in section 501(c)(21).

(c) Repayable advances

(1) Authorization

There are authorized to be appropriated to the Black Lung Disability Trust Fund, as repayable advances, such sums as may from time to time be necessary to make the expenditures described in subsection (d).

(2) Repayment with interest

Repayable advances made to the Black Lung Disability Trust Fund shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury when the Secretary of the Treasury determines that moneys are available in the Black Lung Disability Trust Fund for such purposes.

(3) Rate of interest

Interest on advances made pursuant to this subsection shall be at a rate determined by the Secretary of the Treasury (as of the close of the calendar month preceding the month in which the advance is made) to be equal to the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the anticipated period during which the advance will be outstanding.

(d) Expenditures from Trust Fund

Amounts in the Black Lung Disability Trust Fund shall be available, as provided by appropriation Acts, for—

(1) the payment of benefits under section 422 of the Black Lung Benefits Act in any case in which the Secretary of Labor determines that—

(A) the operator liable for the payment of such benefits—

(i) has no commenced payment of such benefits within 30 days after the date of an initial determination of eligibility by the Secretary of Labor, or

(ii) has not made a payment within 30 days after that payment is due,

except that, in the case of a claim filed on or after the date of the enactment of the Black Lung Benefits Revenue Act of 1981, amounts will be available under this subparagraph only for benefits accruing after the date of such initial determination, or

(B) there is no operator who is liable for the payment of such benefits,

(2) the payment of obligations incurred by the Secretary of Labor with respect to all claims of miners of their survivors in which the miner's last coal mine employment was before January 1, 1970,

(3) the repayment into the Treasury of the United States of an amount equal to the sum of the amounts expended by the Secretary of Labor for claims under part C of the Black Lung Benefits Act which were paid before April 1, 1978, except that the Black Lung Disability Trust Fund shall not be obligated to pay or reimburse any such amounts which are attributable to periods of eligibility before January 1, 1974,

(4) the repayment of, and the payment of interest on, repayable advances to the Black Lung Disability Trust Fund,

(5) the payment of all expenses of administration on or after March 1, 1978—

(A) incurred by the Department of Labor or the Department of Health and Human Services under part C of the Black Lung Benefits Act (other than under section 427(a) or 433), or

(B) incurred by the Department of the Treasury in administering subchapter B of chapter 32 and in carrying out its responsibilities with respect to the Black Lung Disability Trust Fund,

(6) the reimbursement of operators for amounts paid by such operators (other than as penalties or interest) before April 1, 1978, in satisfaction (in whole or in part) of claims of miners whose last employment in coal mines was terminated before January 1, 1970, and

(7) the reimbursement of operators and insurers for amounts paid by such operators and insurers (other than amounts paid as penalties, interest, or attorney fees) at any time in satisfaction (in whole or in part) of any claim denied (within the meaning of section 402(i) of the Black Lung Benefits Act) before March 1, 1978, and which is or has been approved in accordance with the provisions of section 435 [1] of the Black Lung Benefits Act.

For purposes of the preceding sentence, any reference to section 402(i), 422, or 435 [1] of the Black Lung Benefits Act shall be treated as a reference to such section as in effect immediately after the enactment of this section.

(Added Pub. L. 97–119, title I, §103(a), Dec. 29, 1981, 95 Stat. 1636; amended Pub. L. 97–248, title II, §281(c)(2), Sept. 3, 1982, 96 Stat. 566.)

REFERENCES IN TEXT

The Black Lung Benefits Act, referred to in subsecs. (b)(2)(A), (B) and (d), is title IV of Pub. L. 91–173, Dec. 30, 1969, 83 Stat. 792, as amended. Part C of the Act is classified generally to part C (§931 et seq.) of subchapter IV of chapter 22 of Title 30, Mineral Lands and Mining. Sections 402(i), 422, 423, 424(b), 427(a), 431, 432, and 433 of the Act are classified to sections 902(i), 932, 933, 934(b), 937(a), 941, 942, and 943, respectively, of Title 30. Section 435 of the Act was classified to section 945 of Title 30, prior to repeal by Pub. L. 107–275, §2(c)(1), Nov. 2, 2002, 116 Stat. 1926. For complete classification of this Act to the Code, see section 901(b) of Title 30 and Tables.

The date of enactment of the Black Lung Benefits Revenue Act of 1981, referred to in subsec. (d)(1)(A), is the date of enactment of Pub. L. 97–119, which was approved Dec. 29, 1981.

The enactment of this section, referred to in subsec. (d), probably means the date of enactment of Pub. L. 97–119, which enacted this section and which was approved Dec. 29, 1981.

AMENDMENTS

1982—Pub. L. 97–248 struck out "Establishment of" before "Black Lung" in section catchline.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 effective Sept. 1, 1982, see section 281(d) of Pub. L. 97–248, set out as an Effective Date; Savings Provisions note under section 9502 of this title.

EFFECTIVE DATE

Pub. L. 97–119, title I, §103(d)(1), Dec. 29, 1981, 95 Stat. 1639, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by this section [enacting this section and sections 9500, 9601, and 9602 of this title, amending section 501 of this title, and repealing section 934a of Title 30, Mineral Lands and Mining] shall take effect on January 1, 1982. Section 9501(c)(3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)) shall only apply to advances made after December 31, 1981."

SAVINGS PROVISION

Pub. L. 97–119, title I, §103(d)(2), Dec. 29, 1981, 95 Stat. 1639, provided that: "The Black Lung Disability Trust Fund established by the amendments made by this section [enacting this section and sections 9500, 9601, 9602 of this title, amending section 501 of this title, and repealing section 934a of Title 30, Mineral Lands and Mining] shall be treated for all purposes of law as the continuation of the Black Lung Disability Trust Fund established by section 3 of the Black Lung Benefits Revenue Act of 1977 [former section 934a of Title 30]. Any reference in any law to the Black Lung Disability Trust Fund established by such section 3 shall be deemed to include a reference to the Black Lung Disability Trust Fund established by the amendments made by this section."

RESTRUCTURING OF TRUST FUND DEBT

Pub. L. 110–343, div. B, title I, §113(b), Oct. 3, 2008, 122 Stat. 3825, provided that:

"(1) DEFINITIONS.—For purposes of this subsection—

"(A) MARKET VALUE OF THE OUTSTANDING REPAYABLE ADVANCES, PLUS ACCRUED INTEREST.—The term 'market value of the outstanding repayable advances, plus accrued interest' means the present value (determined by the Secretary of the Treasury as of the refinancing date and using the Treasury rate as the discount rate) of the stream of principal and interest payments derived assuming that each repayable advance that is outstanding on the refinancing date is due on the 30th anniversary of the end of the fiscal year in which the advance was made to the Trust Fund, and that all such principal and interest payments are made on September 30 of the applicable fiscal year.

"(B) REFINANCING DATE.—The term 'refinancing date' means the date occurring 2 days after the enactment of this Act [Oct. 3, 2008].

"(C) REPAYABLE ADVANCE.—The term 'repayable advance' means an amount that has been appropriated to the Trust Fund in order to make benefit payments and other expenditures that are authorized under section 9501 of the Internal Revenue Code of 1986 and are required to be repaid when the Secretary of the Treasury determines that monies are available in the Trust Fund for such purpose.

"(D) TREASURY RATE.—The term 'Treasury rate' means a rate determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

"(E) TREASURY 1-YEAR RATE.—The term 'Treasury 1-year rate' means a rate determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States with remaining periods to maturity of approximately 1 year, to have been in effect as of the close of business 1 business day prior to the date on which the Trust Fund issues obligations to the Secretary of the Treasury under paragraph (2)(B).

"(2) REFINANCING OF OUTSTANDING PRINCIPAL OF REPAYABLE ADVANCES AND UNPAID INTEREST ON SUCH ADVANCES.—

"(A) TRANSFER TO GENERAL FUND.—On the refinancing date, the Trust Fund shall repay the market value of the outstanding repayable advances, plus accrued interest, by transferring into the general fund of the Treasury the following sums:

"(i) The proceeds from obligations that the Trust Fund shall issue to the Secretary of the Treasury in such amounts as the Secretaries of Labor and the Treasury shall determine and bearing interest at the Treasury rate, and that shall be in such forms and denominations and be subject to such other terms and conditions, including maturity, as the Secretary of the Treasury shall prescribe.

"(ii) All, or that portion, of the appropriation made to the Trust Fund pursuant to paragraph (3) that is needed to cover the difference defined in that paragraph.

"(B) REPAYMENT OF OBLIGATIONS.—In the event that the Trust Fund is unable to repay the obligations that it has issued to the Secretary of the Treasury under subparagraph (A)(i) and this subparagraph, or is unable to make benefit payments and other authorized expenditures, the Trust Fund

shall issue obligations to the Secretary of the Treasury in such amounts as may be necessary to make such repayments, payments, and expenditures, with a maturity of 1 year, and bearing interest at the Treasury 1-year rate. These obligations shall be in such forms and denominations and be subject to such other terms and conditions as the Secretary of the Treasury shall prescribe.

"(C) AUTHORITY TO ISSUE OBLIGATIONS.—The Trust Fund is authorized to issue obligations to the Secretary of the Treasury under subparagraphs (A)(i) and (B). The Secretary of the Treasury is authorized to purchase such obligations of the Trust Fund. For the purposes of making such purchases, the Secretary of the Treasury may use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, United States Code, and the purposes for which securities may be issued under such chapter are extended to include any purchase of such Trust Fund obligations under this subparagraph.

"(3) ONE-TIME APPROPRIATION.—There is hereby appropriated to the Trust Fund an amount sufficient to pay to the general fund of the Treasury the difference between—

"(A) the market value of the outstanding repayable advances, plus accrued interest; and

"(B) the proceeds from the obligations issued by the Trust Fund to the Secretary of the Treasury under paragraph (2)(A)(i).

"(4) PREPAYMENT OF TRUST FUND OBLIGATIONS.—The Trust Fund is authorized to repay any obligation issued to the Secretary of the Treasury under subparagraphs (A)(i) and (B) of paragraph (2) prior to its maturity date by paying a prepayment price that would, if the obligation being prepaid (including all unpaid interest accrued thereon through the date of prepayment) were purchased by a third party and held to the maturity date of such obligation, produce a yield to the third-party purchaser for the period from the date of purchase to the maturity date of such obligation substantially equal to the Treasury yield on outstanding marketable obligations of the United States having a comparable maturity to this period."

FUNDS TO REMAIN AVAILABLE

Pub. L. 111–8, div. F, title I, Mar. 11, 2009, 123 Stat. 757, provided in part that: "In fiscal year 2009 and thereafter, such sums as may be necessary from the Black Lung Disability Trust Fund ('Fund'), to remain available until expended, for payment of all benefits authorized by section 9501(d)(1), (2), (4), and (7) of the Internal Revenue Code of 1954 [now 1986]; and interest on advances, as authorized by section 9501(c)(2) of that Act."

Similar provisions were contained in the following appropriation acts:

Pub. L. 113–76, div. H, title I, Jan. 17, 2014, 128 Stat. 355.

Pub. L. 112–74, div. F, title I, Dec. 23, 2011, 125 Stat. 1058.

Pub. L. 111–117, div. D, title I, Dec. 16, 2009, 123 Stat. 3233.

Pub. L. 110–161, div. G, title I, Dec. 26, 2007, 121 Stat. 2162.

Pub. L. 109–149, title I, Dec. 30, 2005, 119 Stat. 2839.

Pub. L. 108–447, div. F, title I, Dec. 8, 2004, 118 Stat. 3118.

Pub. L. 108–199, div. E, title I, Jan. 23, 2004, 118 Stat. 231.

Pub. L. 108–7, div. G, title I, Feb. 20, 2003, 117 Stat. 303.

MORATORIUM ON INTEREST ACCRUALS ON INDEBTEDNESS OF BLACK LUNG DISABILITY TRUST FUND

Pub. L. 99–272, title XIII, §13203(b), Apr. 7, 1986, 100 Stat. 312, provided that: "No interest shall accrue for the period beginning on October 1, 1985, and ending on September 30, 1990, with respect to any repayable advance to the Black Lung Disability Trust Fund."

PROVISIONS RELATING TO PAYMENT OF BENEFITS TO MINERS AND ELIGIBLE SURVIVORS OF MINERS TO TAKE EFFECT AS RULES AND REGULATIONS OF SECRETARY OF LABOR

Pub. L. 95–239, §20(b), Mar. 1, 1978, 92 Stat. 106, provided that: "In the event that the payment of benefits to miners and to eligible survivors of miners cannot be made from the Black Lung Disability Trust Fund established by section 3(a) of the Black Lung Benefits Revenue Act of 1977 [former section 934a(a) of Title 30, Mineral Lands and Mining], the provisions of the Act relating to the payment of benefits to miners and to eligible survivors of miners, as in effect immediately before the date of the enactment of this Act [Mar. 1, 1978], shall take effect, as rules and regulations of the Secretary of Labor until such provisions are revoked, amended, or revised by law. The Secretary of Labor may promulgate additional rules and regulations to carry out such provisions and shall make benefit payments to miners and to eligible survivors of miners in accordance with such provisions."

[1] See References in Text note below.

§9502. Airport and Airway Trust Fund

(a) Creation of Trust Fund

There is established in the Treasury of the United States a trust fund to be known as the "Airport and Airway Trust Fund", consisting of such amounts as may be appropriated, credited, or paid into the Airport and Airway Trust Fund as provided in this section, section 9503(c)(5), or section 9602(b).

(b) Transfers to Airport and Airway Trust Fund

There are hereby appropriated to the Airport and Airway Trust Fund amounts equivalent to—

(1) the taxes received in the Treasury under—

(A) section 4041(c) (relating to aviation fuels),

(B) section 4043 (relating to surtax on fuel used in aircraft part of a fractional ownership program),

(C) sections 4261 and 4271 (relating to transportation by air), and

(D) section 4081 with respect to aviation gasoline and kerosene to the extent attributable to the rate specified in section 4081(a)(2)(C), and

(2) the amounts determined by the Secretary of the Treasury to be equivalent to the amounts of civil penalties collected under section 47107(m) of title 49, United States Code.

There shall not be taken into account under paragraph (1) so much of the taxes imposed by section 4081 as are determined at the rate specified in section 4081(a)(2)(B).

(c) Appropriation of additional sums

There are hereby authorized to be appropriated to the Airport and Airway Trust Fund such additional sums as may be required to make the expenditures referred to in subsection (d) of this section.

(d) Expenditures from Airport and Airway Trust Fund

(1) Airport and airway program

Amounts in the Airport and Airway Trust Fund shall be available, as provided by appropriation Acts, for making expenditures before October 1, 2015, to meet those obligations of the United States—

(A) incurred under title I of the Airport and Airway Development Act of 1970 or of the Airport and Airway Development Act Amendments of 1976 or of the Aviation Safety and Noise Abatement Act of 1979 or under the Fiscal Year 1981 Airport Development Authorization Act or the provisions of the Airport and Airway Improvement Act of 1982 or the Airport and Airway Safety and Capacity Expansion Act of 1987 or the Federal Aviation Administration Research, Engineering, and Development Authorization Act of 1990 or the Aviation Safety and Capacity Expansion Act of 1990 or the Airport and Airway Safety, Capacity, Noise Improvement, and Intermodal Transportation Act of 1992 or the Airport Improvement Program Temporary Extension Act of 1994 or the Federal Aviation Administration Authorization Act of 1994 or the Federal Aviation Reauthorization Act of 1996 or the provisions of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 providing for payments from the Airport and Airway Trust Fund or the Interim Federal Aviation Administration Authorization Act or section 6002 of the 1999 Emergency Supplemental Appropriations Act, Public Law 106–59, or the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century or the Aviation and Transportation Security Act or the Vision 100—Century of Aviation Reauthorization Act or any joint resolution making continuing appropriations for the fiscal year 2008 or the Department of Transportation

Appropriations Act, 2008 or the Airport and Airway Extension Act of 2008 or the Federal Aviation Administration Extension Act of 2008 or the Federal Aviation Administration Extension Act of 2008, Part II or the Federal Aviation Administration Extension Act of 2009 or any joint resolution making continuing appropriations for the fiscal year 2010 or the Fiscal Year 2010 Federal Aviation Administration Extension Act or the Fiscal Year 2010 Federal Aviation Administration Extension Act, Part II or the Federal Aviation Administration Extension Act of 2010 or the Airport and Airway Extension Act of 2010 or the Airport and Airway Extension Act of 2010, Part II or the Airline Safety and Federal Aviation Administration Extension Act of 2010 or the Airport and Airway Extension Act of 2010, Part III or the Airport and Airway Extension Act of 2010, Part IV or the Airport and Airway Extension Act of 2011 or the Airport and Airway Extension Act of 2011, Part II or the Airport and Airway Extension Act of 2011, Part III or the Airport and Airway Extension Act of 2011, Part IV or the Airport and Airway Extension Act of 2011, Part V or the Airport and Airway Extension Act of 2012 or the FAA Modernization and Reform Act of 2012;

(B) heretofore or hereafter incurred under part A of subtitle VII of title 49, United States Code, which are attributable to planning, research and development, construction, or operation and maintenance of—

(i) air traffic control,
(ii) air navigation,
(iii) communications, or
(iv) supporting services,

for the airway system; or

(C) for those portions of the administrative expenses of the Department of Transportation which are attributable to activities described in subparagraph (A) or (B).

Any reference in subparagraph (A) to an Act shall be treated as a reference to such Act and the corresponding provisions (if any) of title 49, United States Code, as such Act and provisions were in effect on the date of the enactment of the last Act referred to in subparagraph (A).

(2) Transfers from Airport and Airway Trust Fund on account of certain refunds

The Secretary of the Treasury shall pay from time to time from the Airport and Airway Trust Fund into the general fund of the Treasury amounts equivalent to the amounts paid after August 31, 1982, in respect of fuel used in aircraft, under section 6420 (relating to amounts paid in respect of gasoline used on farms,[1] 6421 (relating to amounts paid in respect of gasoline used for certain nonhighway purposes), or 6427 (relating to fuels not used for taxable purposes) (other than subsection (l)(4) thereof).

(3) Transfers from the Airport and Airway Trust Fund on account of certain section 34 credits

The Secretary of the Treasury shall pay from time to time from the Airport and Airway Trust Fund into the general fund of the Treasury amounts equivalent to the credits allowed under section 34 (other than payments made by reason of paragraph (4) of section 6427(l)) with respect to fuel used after August 31, 1982. Such amounts shall be transferred on the basis of estimates by the Secretary of the Treasury, and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or less than the credits allowed.

(4) Transfers for refunds and credits not to exceed Trust Fund revenues attributable to fuel used

The amounts payable from the Airport and Airway Trust Fund under paragraph (2) or (3) shall not exceed the amounts required to be appropriated to such Trust Fund with respect to fuel so used.

(5) Transfers from Airport and Airway Trust Fund on account of refunds of taxes on transportation by air

The Secretary of the Treasury shall pay from time to time from the Airport and Airway Trust Fund into the general fund of the Treasury amounts equivalent to the amounts paid after December 31, 1995, under section 6402 (relating to authority to make credits or refunds) or section 6415 (relating to credits or refunds to persons who collected certain taxes) in respect of taxes under sections 4261 and 4271.

(6) Transfers from the Airport and Airway Trust Fund on account of certain airports

The Secretary of the Treasury may transfer from the Airport and Airway Trust Fund to the Secretary of Transportation or the Administrator of the Federal Aviation Administration an amount to make a payment to an airport affected by a diversion that is the subject of an administrative action under paragraph (3) or a civil action under paragraph (4) of section 47107(m) of title 49, United States Code.

(e) Limitation on transfers to Trust Fund

(1) In general

Except as provided in paragraph (2), no amount may be appropriated or credited to the Airport and Airway Trust Fund on and after the date of any expenditure from the Airport and Airway Trust Fund which is not permitted by this section. The determination of whether an expenditure is so permitted shall be made without regard to—

(A) any provision of law which is not contained or referenced in this title or in a revenue Act; and

(B) whether such provision of law is a subsequently enacted provision or directly or indirectly seeks to waive the application of this subsection.

(2) Exception for prior obligations

Paragraph (1) shall not apply to any expenditure to liquidate any contract entered into (or for any amount otherwise obligated) before October 1, 2015, in accordance with the provisions of this section.

(Added Pub. L. 97–248, title II, §281(a), Sept. 3, 1982, 96 Stat. 565; amended Pub. L. 97–424, title IV, §426(e), Jan. 6, 1983, 96 Stat. 2168; Pub. L. 98–369, div. A, title IV, §474(r)(42), title VII, §735(c)(15), July 18, 1984, 98 Stat. 847, 984; Pub. L. 99–499, title V, §521(b)(2), Oct. 17, 1986, 100 Stat. 1778; Pub. L. 100–203, title X, §10502(d)(12), (g), Dec. 22, 1987, 101 Stat. 1330–444, 1330–446; Pub. L. 100–223, title IV, §§402(a)(3), 403, Dec. 30, 1987, 101 Stat. 1532; Pub. L. 101–239, title VII, §7822(b)(5), Dec. 19, 1989, 103 Stat. 2425; Pub. L. 101–508, title XI, §§11211(b)(6)(G), 11213(c), (d)(3), (4), Nov. 5, 1990, 104 Stat. 1388–426, 1388–435, 1388–436; Pub. L. 102–581, title V, §§501, 502(a), Oct. 31, 1992, 106 Stat. 4898; Pub. L. 103–66, title XIII, §13242(d)(32), (33), Aug. 10, 1993, 107 Stat. 526, 527; Pub. L. 103–260, title I, §108, May 26, 1994, 108 Stat. 700; Pub. L. 103–272, §5(g)(3), July 5, 1994, 108 Stat. 1375; Pub. L. 103–305, title IV, §401, Aug. 23, 1994, 108 Stat. 1594; Pub. L. 104–188, title I, §§1609(c), (g)(4)(C), (D), 1703(n)(10), Aug. 20, 1996, 110 Stat. 1841, 1843, 1877; Pub. L. 104–264, title VIII, §806, title X, §1001, Oct. 9, 1996, 110 Stat. 3274, 3278; Pub. L. 105–2, §2(c), Feb. 28, 1997, 111 Stat. 5; Pub. L. 105–34, title X, §1031(d), title XVI, §1604(g)(5), Aug. 5, 1997, 111 Stat. 932, 1099; Pub. L. 105–206, title VI, §§6010(g)(2), 6023(31), July 22, 1998, 112 Stat. 814, 826; Pub. L. 106–181, title X, §1001, Apr. 5, 2000, 114 Stat. 196; Pub. L. 107–71, title I, §123(b), Nov. 19, 2001, 115 Stat. 631; Pub. L. 108–176, title IX, §901, Dec. 12, 2003, 117 Stat. 2597; Pub. L. 108–357, title VIII, §853(d)(2)(N), (O), Oct. 22, 2004, 118 Stat. 1613, 1614; Pub. L. 109–59, title XI, §11161(c)(2)(A), (B), (d), Aug. 10, 2005, 119 Stat. 1972; Pub. L. 109–432, div. A, title IV, §420(b)(5), Dec. 20, 2006, 120 Stat. 2969; Pub. L. 110–92, §149(b), Sept. 29, 2007, 121 Stat. 996; Pub. L. 110–161, div. K, title I, §116(c), Dec. 26, 2007, 121 Stat. 2382; Pub. L. 110–172, §11(f)(1), Dec. 29, 2007, 121 Stat. 2489; Pub. L. 110–190, §3(a), (b), Feb. 28, 2008, 122 Stat. 643; Pub. L. 110–253, §3(a), (b), June 30, 2008, 122 Stat. 2417; Pub. L. 110–330, §3(a), (b), Sept. 30, 2008, 122 Stat. 3717; Pub. L. 111–12, §3(a), (b), Mar. 30, 2009, 123 Stat. 1457; Pub. L. 111–68, div. B, §156(c), Oct. 1, 2009, 123 Stat. 2050; Pub. L. 111–69, §3(a), (b), Oct. 1, 2009, 123 Stat. 2054; Pub. L. 111–116, §3(a), (b), Dec. 16, 2009, 123 Stat. 3031; Pub. L. 111–147, title IV, §444(b)(1), Mar. 18, 2010, 124 Stat. 94; Pub. L. 111–153,

§3(a), (b), Mar. 31, 2010, 124 Stat. 1084; Pub. L. 111–161, §3(a), (b), Apr. 30, 2010, 124 Stat. 1126; Pub. L. 111–197, §3(a), (b), July 2, 2010, 124 Stat. 1353; Pub. L. 111–216, title I, §102(a), (b), Aug. 1, 2010, 124 Stat. 2349; Pub. L. 111–249, §3(a), (b), Sept. 30, 2010, 124 Stat. 2627; Pub. L. 111–329, §3(a), (b), Dec. 22, 2010, 124 Stat. 3566; Pub. L. 112–7, §3(a), (b), Mar. 31, 2011, 125 Stat. 31; Pub. L. 112–16, §3(a), (b), May 31, 2011, 125 Stat. 218; Pub. L. 112–21, §3(a), (b), June 29, 2011, 125 Stat. 233; Pub. L. 112–27, §3(a), (b), Aug. 5, 2011, 125 Stat. 270; Pub. L. 112–30, title II, §203(a), (b), Sept. 16, 2011, 125 Stat. 357; Pub. L. 112–91, §3(a), (b), Jan. 31, 2012, 126 Stat. 3; Pub. L. 112–95, title XI, §§1102(a), (b), 1103(a)(3), Feb. 14, 2012, 126 Stat. 148–150; Pub. L. 113–188, title XV, §1501(b)(2)(D), Nov. 26, 2014, 128 Stat. 2024.)

REFERENCES IN TEXT

Title I of the Airport and Airway Development Act of 1970, referred to in subsec. (d)(1)(A), is title I of Pub. L. 91–258, May 21, 1970, 84 Stat. 219, which was classified principally to chapter 25 (§1701 et seq.) of former Title 49, Transportation. Sections 1 through 30 of title I of Pub. L. 91–258, which enacted sections 1701 to 1703, 1711 to 1713, and 1714 to 1730 of former Title 49, and a provision set out as a note under section 1701 of former Title 49, were repealed by Pub. L. 97–248, title V, §523(a), Sept. 3, 1982, 96 Stat. 695. Sections 31, 51, 52(a), (b)(4), (6), (c), (d), and 53 of title I of Pub. L. 91–258 were repealed by Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation. For complete classification of this Act to the Code, see Tables. For disposition of sections of former Title 49, see table at the beginning of Title 49.

The Airport and Airway Development Act Amendments of 1976, referred to in subsec. (d)(1)(A), is Pub. L. 94–353, July 12, 1976, 90 Stat. 871, which was repealed by Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379, the first section of which enacted subtitles II, III, and V to X of Title 49. For complete classification of this Act to the Code, see Tables. For disposition of sections of former Title 49, see table at the beginning of Title 49.

The Aviation Safety and Noise Abatement Act of 1979, referred to in subsec. (d)(1)(A), is Pub. L. 96–193, Feb. 18, 1980, 94 Stat. 50, which was classified principally to chapter 30 (§2101 et seq.) of former Title 49, and was substantially repealed by Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379, and reenacted by the first section thereof as subchapter I (§47501 et seq.) of chapter 475 of Title 49.

The Fiscal Year 1981 Airport Development Authorization Act, referred to in subsec. (d)(1)(A), is part I (§§1101–1103) of subtitle A of title XI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 622, which amended sections 1714, 1715, 1717, and 1742 of former Title 49 and enacted provisions set out as notes under sections 1714 and 1716 of former Title 49, and was repealed by Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379, the first section of which enacted subtitles II, III, and V to X of Title 49. For complete classification of this Act to the Code, see Tables. For disposition of sections of former Title 49, see table at the beginning of Title 49.

The Airport and Airway Improvement Act of 1982, referred to in subsec. (d)(1)(A), is title V of Pub. L. 97–248, Sept. 3, 1982, 96 Stat. 671, which was classified principally to chapter 31 (§2201 et seq.) of former Title 49, and was substantially repealed by Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379, and reenacted by the first section thereof as subchapter I (§47101 et seq.) of chapter 471 of Title 49.

The Airport and Airway Safety and Capacity Expansion Act of 1987, referred to in subsec. (d)(1)(A), is Pub. L. 100–223, Dec. 30, 1987, 101 Stat. 1486. Sections 101, 102(a)–(c), 103 to 105(g), 106 to 116, 201 to 207, 301 to 306, 308 to 311, and 315 of Pub. L. 100–223 were repealed by Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379, the first section of which enacted subtitles II, III, and V to X of Title 49. For complete classification of this Act to the Code, see Tables. For disposition of sections of former Title 49, see table at the beginning of Title 49.

The Federal Aviation Administration Research, Engineering, and Development Authorization Act of 1990, referred to in subsec. (d)(1)(A), is subtitle C (§§9201–9209) of title IX of Pub. L. 101–508, Nov. 5, 1990, 104 Stat. 1388–372, which enacted section 2226d of former Title 49, amended sections 1353 and 2205 of former Title 49, and enacted provisions set out as a note under section 2201 of former Title 49. Sections 9202 to 9205 and 9207 to 9209 of title IX of Pub. L. 101–508 were repealed by Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379, the first section of which enacted subtitles II, III, and V to X of Title 49. For complete classification of this Act to the Code, see Tables. For disposition of sections of former Title 49, see table at the beginning of Title 49.

The Aviation Safety and Capacity Expansion Act of 1990, referred to in subsec. (d)(1)(A), is subtitle B (§§9101–9131) of title IX of Pub. L. 101–508, Nov. 5, 1990, 104 Stat. 1388–353. Sections 9102 to 9105, 9107 to 9112(b), 9113 to 9115, 9118, 9121 to 9123, 9124 "Sec. 613(c)", 9125, 9127, and 9129 to 9131 of title IX of Pub. L. 101–508 were repealed by Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379, the first section of

which enacted subtitles II, III, and V to X of Title 49. For complete classification of this Act to the Code, see Tables. For disposition of sections of former Title 49, see table at the beginning of Title 49.

The Airport and Airway Safety, Capacity, Noise Improvement, and Intermodal Transportation Act of 1992, referred to in subsec. (d)(1)(A), is Pub. L. 102–581, Oct. 31, 1992, 106 Stat. 4872. Sections 101 to 103(d), 105 to 107(c), 108 to 112(b), 113 to 120, 124, 125, 136, 201 to 203(a), 205, 208, 302, 401, and 402 of Pub. L. 102–581 were repealed by Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379, the first section of which enacted subtitles II, III, and V to X of Title 49. For complete classification of this Act to the Code, see Tables. For disposition of sections of former Title 49, see table at the beginning of Title 49.

The Airport Improvement Program Temporary Extension Act of 1994, referred to in subsec. (d)(1)(A), is Pub. L. 103–260, May 26, 1994, 108 Stat. 698. Sections 102 to 107 and 109 of Pub. L. 103–260 were repealed by Pub. L. 103–429, §11(b), Oct. 31, 1994, 108 Stat. 4391, an act to codify without substantive change recent laws related to transportation. For complete classification of this Act to the Code, see Tables. For disposition of sections of former Title 49, see table at the beginning of Title 49.

The Federal Aviation Administration Authorization Act of 1994, referred to in subsec. (d)(1)(A), is Pub. L. 103–305, Aug. 23, 1994, 108 Stat. 1569. For complete classification of this Act to the Code, see Short Title of 1994 Amendment note set out under section 40101 of Title 49 and Tables.

The Federal Aviation Reauthorization Act of 1996, referred to in subsec. (d)(1)(A), is Pub. L. 104–264, Oct. 9, 1996, 110 Stat. 3213. For complete classification of this Act to the Code, see Short Title of 1996 Amendment note set out under section 40101 of Title 49, Transportation, and Tables.

The Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, referred to in subsec. (d)(1)(A), is Pub. L. 105–277, Oct. 21, 1998, 112 Stat. 2681. For complete classification of this Act to the Code, see Tables.

The Interim Federal Aviation Administration Authorization Act, referred to in subsec. (d)(1)(A), is Pub. L. 106–6, Mar. 31, 1999, 113 Stat. 10. For complete classification of this Act to the Code, see Short Title of 1999 Amendment note set out under section 40101 of Title 49, Transportation, and Tables.

Section 6002 of the 1999 Emergency Supplemental Appropriations Act, referred to in subsec. (d)(1)(A), is section 6002 of Pub. L. 106–31, May 21, 1999, 113 Stat. 113, which amended sections 44310, 47104, 47117, and 48103 of Title 49, Transportation.

Public Law 106–59, referred to in subsec. (d)(1)(A), is Pub. L. 106–59, Sept. 29, 1999, 113 Stat. 482, which amended sections 47104 and 48103 of Title 49, Transportation.

The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, referred to in subsec. (d)(1)(A), is Pub. L. 106–181, Apr. 5, 2000, 114 Stat. 61. For complete classification of this Act to the Code, see Short Title of 2000 Amendment note set out under section 40101 of Title 49, Transportation, and Tables.

The Aviation and Transportation Security Act, referred to in subsec. (d)(1)(A), is Pub. L. 107–71, Nov. 19, 2001, 115 Stat. 597. For complete classification of this Act to the Code, see Tables.

The Vision 100—Century of Aviation Reauthorization Act, referred to in subsec. (d)(1)(A), is Pub. L. 108–176, Dec. 12, 2003, 117 Stat. 2490. For complete classification of this Act to the Code, see Short Title of 2003 Amendments note set out under section 40101 of Title 49, Transportation, and Tables.

The Department of Transportation Appropriations Act, 2008, referred to in subsec. (d)(1)(A), is title I of div. K of Pub. L. 110–161, Dec. 26, 2007, 121 Stat. 2375. For complete classification of this Act to the Code, see Tables.

The Airport and Airway Extension Act of 2008, referred to in subsec. (d)(1)(A), is Pub. L. 110–190, Feb. 28, 2008, 122 Stat. 643. For complete classification of this Act to the Code, see Short Title of 2008 Amendment note set out under section 1 of this title and Tables.

The Federal Aviation Administration Extension Act of 2008, referred to in subsec. (d)(1)(A), is Pub. L. 110–253, June 30, 2008, 122 Stat. 2417. For complete classification of this Act to the Code, see Short Title of 2008 Amendment note set out under section 1 of this title and Tables.

The Federal Aviation Administration Extension Act of 2008, Part II, referred to in subsec. (d)(1)(A), is Pub. L. 110–330, Sept. 30, 2008, 122 Stat. 3717. For complete classification of this Act to the Code, see Short Title of 2008 Amendment note set out under section 1 of this title and Tables.

The Federal Aviation Administration Extension Act of 2009, referred to in subsec. (d)(1)(A), is Pub. L. 111–12, Mar. 30, 2009, 123 Stat. 1457. For complete classification of this Act to the Code, see Short Title of 2009 Amendment note set out under section 1 of this title and Tables.

The Fiscal Year 2010 Federal Aviation Administration Extension Act, referred to in subsec. (d)(1)(A), is Pub. L. 111–69, Oct. 1, 2009, 123 Stat. 2054. For complete classification of this Act to the Code, see Short Title of 2009 Amendment note set out under section 1 of this title and Tables.

The Fiscal Year 2010 Federal Aviation Administration Extension Act, Part II, referred to in subsec. (d)(1)(A), is Pub. L. 111–116, Dec. 16, 2009, 123 Stat. 3031. For complete classification of this Act to the

Code, see Short Title of 2009 Amendment note set out under section 1 of this title and Tables.

The Federal Aviation Administration Extension Act of 2010, referred to in subsec. (d)(1)(A), is Pub. L. 111–153, Mar. 31, 2010, 124 Stat. 1084. For complete classification of this Act to the Code, see Short Title of 2010 Amendment note set out under section 1 of this title and Tables.

The Airport and Airway Extension Act of 2010, referred to in subsec. (d)(1)(A), is Pub. L. 111–161, Apr. 30, 2010, 124 Stat. 1126. For complete classification of this Act to the Code, see Short Title of 2010 Amendment note set out under section 1 of this title and Tables.

The Airport and Airway Extension Act of 2010, Part II, referred to in subsec. (d)(1)(A), is Pub. L. 111–197, July 2, 2010, 124 Stat. 1353. For complete classification of this Act to the Code, see Short Title of 2010 Amendment note set out under section 1 of this title and Tables.

The Airline Safety and Federal Aviation Administration Extension Act of 2010, referred to in subsec. (d)(1)(A), is Pub. L. 111–216, Aug. 1, 2010, 124 Stat. 2348. For complete classification of this Act to the Code, see Short Title of 2010 Amendment note set out under section 40101 of Title 49, Transportation, and Tables.

The Airport and Airway Extension Act of 2010, Part III, referred to in subsec. (d)(1)(A), is Pub. L. 111–249, Sept. 30, 2010, 124 Stat. 2627. For complete classification of this Act to the Code, see Short Title of 2010 Amendment note set out under section 1 of this title and Tables.

The Airport and Airway Extension Act of 2010, Part IV, referred to in subsec. (d)(1)(A), is Pub. L. 111–329, Dec. 22, 2010, 124 Stat. 3566. For complete classification of this Act to the Code, see Short Title of 2010 Amendment note set out under section 1 of this title and Tables.

The Airport and Airway Extension Act of 2011, referred to in subsec. (d)(1)(A), is Pub. L. 112–7, Mar. 31, 2011, 125 Stat. 31. For complete classification of this Act to the Code, see Short Title of 2011 Amendment note set out under section 1 of this title and Tables.

The Airport and Airway Extension Act of 2011, Part II, referred to in subsec. (d)(1)(A), is Pub. L. 112–16, May 31, 2011, 125 Stat. 218. For complete classification of this Act to the Code, see Short Title of 2011 Amendment note set out under section 1 of this title and Tables.

The Airport and Airway Extension Act of 2011, Part III, referred to in subsec. (d)(1)(A), is Pub. L. 112–21, June 29, 2011, 125 Stat. 233. For complete classification of this Act to the Code, see Short Title of 2011 Amendment note set out under section 1 of this title and Tables.

The Airport and Airway Extension Act of 2011, Part IV, referred to in subsec. (d)(1)(A), is Pub. L. 112–27, Aug. 5, 2011, 125 Stat. 270. For complete classification of this Act to the Code, see Short Title of 2011 Amendment note set out under section 1 of this title and Tables.

The Airport and Airway Extension Act of 2011, Part V, referred to in subsec. (d)(1)(A), is title II of Pub. L. 112–30, Sept. 16, 2011, 125 Stat. 357. For complete classification of this Act to the Code, see Short Title of 2011 Amendment note set out under section 1 of this title and Tables.

The Airport and Airway Extension Act of 2012, referred to in subsec. (d)(1)(A), is Pub. L. 112–91, Jan. 31, 2012, 126 Stat. 3. For complete classification of this Act to the Code, see Short Title of 2012 Amendment note set out under section 1 of this title and Tables.

The FAA Modernization and Reform Act of 2012, referred to in subsec. (d)(1)(A), is Pub. L. 112–95, Feb. 14, 2012, 126 Stat. 11. For complete classification of this Act to the Code, see Short Title of 2012 Amendment note set out under section 40101 of Title 49, Transportation, and Tables.

The date of the enactment of the last Act referred to in subparagraph (A), referred to in subsec. (d)(1), is the date of the enactment of the FAA Modernization and Reform Act of 2012, Pub. L. 112–95, which was approved Feb. 14, 2012.

AMENDMENTS

2014—Subsecs. (b)(2), (d)(6). Pub. L. 113–188 substituted "section 47107(m)" for "section 47107(n)".

2012—Subsec. (b)(1)(B) to (D). Pub. L. 112–95, §1103(a)(3), added subpar. (B) and redesignated former subpars. (B) and (C) as (C) and (D), respectively.

Subsec. (d)(1). Pub. L. 112–95, §1102(a)(1), substituted "October 1, 2015" for "February 18, 2012" in introductory provisions.

Pub. L. 112–91, §3(a)(1), substituted "February 18, 2012" for "February 1, 2012" in introductory provisions.

Subsec. (d)(1)(A). Pub. L. 112–95, §1102(a)(2), inserted "or the FAA Modernization and Reform Act of 2012" before semicolon at end.

Pub. L. 112–91, §3(a)(2), inserted "or the Airport and Airway Extension Act of 2012" before semicolon at end.

Subsec. (e)(2). Pub. L. 112–95, §1102(b), substituted "October 1, 2015" for "February 18, 2012".

Pub. L. 112–91, §3(b), substituted "February 18, 2012" for "February 1, 2012".

2011—Subsec. (d)(1). Pub. L. 112–30, §203(a)(1), substituted "February 1, 2012" for "September 17, 2011" in introductory provisions.

Pub. L. 112–27, §3(a)(1), substituted "September 17, 2011" for "July 23, 2011" in introductory provisions.

Pub. L. 112–21, §3(a)(1), substituted "July 23, 2011" for "July 1, 2011" in introductory provisions.

Pub. L. 112–16, §3(a)(1), substituted "July 1, 2011" for "June 1, 2011" in introductory provisions.

Pub. L. 112–7, §3(a)(1), substituted "June 1, 2011" for "April 1, 2011" in introductory provisions.

Subsec. (d)(1)(A). Pub. L. 112–30, §203(a)(2), inserted "or the Airport and Airway Extension Act of 2011, Part V" before semicolon at end.

Pub. L. 112–27, §3(a)(2), inserted "or the Airport and Airway Extension Act of 2011, Part IV" before semicolon at end.

Pub. L. 112–21, §3(a)(2), inserted "or the Airport and Airway Extension Act of 2011, Part III" before semicolon at end.

Pub. L. 112–16, §3(a)(2), inserted "or the Airport and Airway Extension Act of 2011, Part II" before semicolon at end.

Pub. L. 112–7, §3(a)(2), inserted "or the Airport and Airway Extension Act of 2011" before semicolon at end.

Subsec. (e)(2). Pub. L. 112–30, §203(b), substituted "February 1, 2012" for "September 17, 2011".

Pub. L. 112–27, §3(b), substituted "September 17, 2011" for "July 23, 2011".

Pub. L. 112–21, §3(b), substituted "July 23, 2011" for "July 1, 2011".

Pub. L. 112–16, §3(b), substituted "July 1, 2011" for "June 1, 2011".

Pub. L. 112–7, §3(b), substituted "June 1, 2011" for "April 1, 2011".

2010—Subsec. (a). Pub. L. 111–147 substituted "section 9503(c)(5)" for "section 9503(c)(7)".

Subsec. (d)(1). Pub. L. 111–329, §3(a)(1), substituted "April 1, 2011" for "January 1, 2011" in introductory provisions.

Pub. L. 111–249, §3(a)(1), substituted "January 1, 2011" for "October 1, 2010" in introductory provisions.

Pub. L. 111–216, §102(a)(1), substituted "October 1, 2010" for "August 2, 2010" in introductory provisions.

Pub. L. 111–197, §3(a)(1), substituted "August 2, 2010" for "July 4, 2010" in introductory provisions.

Pub. L. 111–161, §3(a)(1), substituted "July 4, 2010" for "May 1, 2010" in introductory provisions.

Pub. L. 111–153, §3(a)(1), substituted "May 1, 2010" for "April 1, 2010" in introductory provisions.

Subsec. (d)(1)(A). Pub. L. 111–329, §3(a)(2), inserted "or the Airport and Airway Extension Act of 2010, Part IV" before semicolon at end.

Pub. L. 111–249, §3(a)(2), inserted "or the Airport and Airway Extension Act of 2010, Part III" before semicolon at end.

Pub. L. 111–216, §102(a)(2), inserted "or the Airline Safety and Federal Aviation Administration Extension Act of 2010" before semicolon at end.

Pub. L. 111–197, §3(a)(2), inserted "or the Airport and Airway Extension Act of 2010, Part II" before semicolon at end.

Pub. L. 111–161, §3(a)(2), inserted "or the Airport and Airway Extension Act of 2010" before semicolon at end.

Pub. L. 111–153, §3(a)(2), inserted "or the Federal Aviation Administration Extension Act of 2010" before semicolon at end.

Subsec. (e)(2). Pub. L. 111–329, §3(b), substituted "April 1, 2011" for "January 1, 2011".

Pub. L. 111–249, §3(b), substituted "January 1, 2011" for "October 1, 2010".

Pub. L. 111–216, §102(b), substituted "October 1, 2010" for "August 2, 2010".

Pub. L. 111–197, §3(b), substituted "August 2, 2010" for "July 4, 2010".

Pub. L. 111–161, §3(b), substituted "July 4, 2010" for "May 1, 2010".

Pub. L. 111–153, §3(b), substituted "May 1, 2010" for "April 1, 2010".

2009—Subsec. (d)(1). Pub. L. 111–116, §3(a)(1), substituted "April 1, 2010" for "January 1, 2010" in introductory provisions.

Pub. L. 111–69, §3(a)(1), substituted "January 1, 2010" for "October 1, 2009" in introductory provisions.

Pub. L. 111–12, §3(a)(1), substituted "October 1, 2009" for "April 1, 2009" in introductory provisions.

Subsec. (d)(1)(A). Pub. L. 111–116, §3(a)(2), inserted "or the Fiscal Year 2010 Federal Aviation Administration Extension Act, Part II" before semicolon at end.

Pub. L. 111–69, §3(a)(2), inserted "or the Fiscal Year 2010 Federal Aviation Administration Extension Act" before semicolon at end.

Pub. L. 111–68 inserted "or any joint resolution making continuing appropriations for the fiscal year 2010" before semicolon at end.

Pub. L. 111–12, §3(a)(2), inserted "or the Federal Aviation Administration Extension Act of 2009" before semicolon at end.

Subsec. (e)(2). Pub. L. 111–116, §3(b), substituted "April 1, 2010" for "January 1, 2010".

Pub. L. 111–69, §3(b), substituted "January 1, 2010" for "October 1, 2009".

Pub. L. 111–12, §3(b), substituted "October 1, 2009" for "April 1, 2009".

2008—Subsec. (d)(1). Pub. L. 110–330, §3(a)(1), substituted "April 1, 2009" for "October 1, 2008" in introductory provisions.

Pub. L. 110–253, §3(a)(1), substituted "October 1, 2008" for "July 1, 2008" in introductory provisions.

Pub. L. 110–190, §3(a)(1), substituted "July 1, 2008" for "March 1, 2008" in introductory provisions.

Subsec. (d)(1)(A). Pub. L. 110–330, §3(a)(2), inserted "or the Federal Aviation Administration Extension Act of 2008, Part II" before semicolon at end.

Pub. L. 110–253, §3(a)(2), inserted "or the Federal Aviation Administration Extension Act of 2008" before semicolon at end.

Pub. L. 110–190, §3(a)(2), inserted "or the Airport and Airway Extension Act of 2008" before semicolon at end.

Subsec. (e)(2). Pub. L. 110–330, §3(b), substituted "April 1, 2009" for "October 1, 2008".

Pub. L. 110–253, §3(b), substituted "October 1, 2008" for "July 1, 2008".

Pub. L. 110–190, §3(b), which directed substitution of "July 1, 2008" for "March 1, 2008" in subsec. (f)(2), was executed to subsec. (e)(2) as redesignated by Pub. L. 110–172, to reflect the probable intent of Congress. See 2007 Amendment notes below.

2007—Subsec. (d)(1). Pub. L. 110–161, §116(c)(1)(A), substituted "March 1, 2008" for "October 1, 2007" in introductory provisions.

Subsec. (d)(1)(A). Pub. L. 110–161, §116(c)(1)(B), inserted "or the Department of Transportation Appropriations Act, 2008" before semicolon at end.

Pub. L. 110–92 inserted "or any joint resolution making continuing appropriations for the fiscal year 2008" before semicolon at end.

Subsec. (e). Pub. L. 110–172 redesignated subsec. (f) as (e) and struck out former subsec. (e) which read as follows: "For purposes of this section, the amounts which would (but for this subsection) be required to be appropriated under subparagraphs (A), (C), and (D) of subsection (b)(1) shall be reduced by—

"(1) 0.6 cent per gallon in the case of taxes imposed on any mixture at least 10 percent of which is alcohol (as defined in section 4081(c)(3)) if any portion of such alcohol is ethanol; and

"(2) 0.67 cent per gallon in the case of fuel used in producing a mixture described in paragraph (1)."

Subsec. (f). Pub. L. 110–172 redesignated subsec. (f) as (e).

Subsec. (f)(2). Pub. L. 110–161, §116(c)(2), substituted "March 1, 2008" for "October 1, 2007".

2006—Subsec. (d)(2). Pub. L. 109–432, §420(b)(5)(A), struck out "and (l)(5)" after "subsection (l)(4)".

Subsec. (d)(3). Pub. L. 109–432, §420(b)(5)(B), struck out "or (5)" after "paragraph (4)".

2005—Subsec. (a). Pub. L. 109–59, §11161(c)(2)(A), substituted "appropriated, credited, or paid into the Airport and Airway Trust Fund as provided in this section, section 9503(c)(7), or section 9602(b)" for "appropriated or credited to the Airport and Airway Trust Fund as provided in this section or section 9602(b)".

Subsec. (b)(1)(A). Pub. L. 109–59, §11161(c)(2)(B)(i), substituted "section 4041(c)" for "subsections (c) and (e) of section 4041".

Subsec. (b)(1)(C). Pub. L. 109–59, §11161(c)(2)(B)(ii), substituted "and kerosene to the extent attributable to the rate specified in section 4081(a)(2)(C)" for "and aviation-grade kerosene".

Subsec. (d)(2). Pub. L. 109–59, §11161(d)(1), inserted "(other than subsection (l)(4) and (l)(5) thereof)" after "or 6427 (relating to fuels not used for taxable purposes)".

Subsec. (d)(3). Pub. L. 109–59, §11161(d)(2), inserted "(other than payments made by reason of paragraph (4) or (5) of section 6427(l))" after "section 34".

2004—Subsec. (b). Pub. L. 108–357, §853(d)(2)(O), amended concluding provisions generally. Prior to amendment, concluding provisions read as follows: "There shall not be taken into account under paragraph (1) so much of the taxes imposed by sections 4081 and 4091 as are determined at the rates specified in section 4081(a)(2)(B) or 4091(b)(2)."

Subsec. (b)(1)(B) to (D). Pub. L. 108–357, §853(d)(2)(N), inserted "and" at end of subpar. (B), added subpar. (C), and struck out former subpars. (C) and (D) which read as follows:

"(C) section 4081 (relating to gasoline) with respect to aviation gasoline, and

"(D) section 4091 (relating to aviation fuel), and".

2003—Subsec. (d)(1). Pub. L. 108–176, §901(a)(1), substituted "October 1, 2007" for "October 1, 2003" in introductory provisions.

Subsec. (d)(1)(A). Pub. L. 108–176, §901(a)(2), inserted "or the Vision 100—Century of Aviation

Reauthorization Act" before semicolon at end.

Subsec. (f)(2). Pub. L. 108–176, §901(b), substituted "October 1, 2007" for "October 1, 2003".

2001—Subsec. (d)(1)(A). Pub. L. 107–71 inserted "or the Aviation and Transportation Security Act" before semicolon at end.

2000—Subsec. (d)(1). Pub. L. 106–181, §1001(a)(1), substituted "October 1, 2003" for "October 1, 1998" in introductory provisions.

Subsec. (d)(1)(A). Pub. L. 106–181, §1001(a)(2), inserted before the semicolon at end "or the provisions of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 providing for payments from the Airport and Airway Trust Fund or the Interim Federal Aviation Administration Authorization Act or section 6002 of the 1999 Emergency Supplemental Appropriations Act, Public Law 106–59, or the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century".

Subsec. (f). Pub. L. 106–181, §1001(b), added subsec. (f).

1998—Subsec. (b). Pub. L. 105–206, §6010(g)(2), moved concluding provisions from end of par. (1) to end of subsec. (b).

Subsec. (e). Pub. L. 105–206, §6023(31), amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows:

"(1) INCREASES IN TAX REVENUES BEFORE 1993 TO REMAIN IN GENERAL FUND.—In the case of taxes imposed before January 1, 1993, the amounts required to be appropriated under paragraphs (1), (2), and (3) of subsection (b) shall be determined without regard to any increase in a rate of tax enacted by the Revenue Reconciliation Act of 1990.

"(2) CERTAIN TAXES ON ALCOHOL MIXTURES TO REMAIN IN GENERAL FUND.—For purposes of this section, the amounts which would (but for this paragraph) be required to be appropriated under paragraphs (1), (2), and (3) of subsection (b) shall be reduced by—

"(A) 0.6 cent per gallon in the case of taxes imposed on any mixture at least 10 percent of which is alcohol (as defined in section 4081(c)(3)) if any portion of such alcohol is ethanol, and

"(B) 0.67 cent per gallon in the case of fuel used in producing a mixture described in subparagraph (A)."

1997—Subsec. (b)(1). Pub. L. 105–34, §1031(d)(1)(C), inserted concluding provisions.

Pub. L. 105–2, §2(c)(1), amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: "There is hereby appropriated to the Airport and Airway Trust Fund—

"(1) amounts equivalent to the taxes received in the Treasury after August 31, 1982, and before January 1, 1997, under subsections (c) and (e) of section 4041 (taxes on aviation fuel) and under sections 4261 and 4271 (taxes on transportation by air);

"(2) amounts determined by the Secretary of the Treasury to be equivalent to the taxes received in the Treasury after August 31, 1982, and before and before January 1, 1997, under section 4081 (to the extent of 15 cents per gallon), with respect to gasoline used in aircraft;

"(3) amounts determined by the Secretary to be equivalent to the taxes received in the Treasury before January 1, 1997, under section 4091 (to the extent attributable to the Airport and Airway Trust Fund financing rate);

"(4) amounts determined by the Secretary of the Treasury to be equivalent to the taxes received in the Treasury after August 31, 1982, and before January 1, 1997, under section 4071, with respect to tires of the types used on aircraft, and

"(5) amounts determined by the Secretary of the Treasury to be equivalent to the amounts of civil penalties collected under section 47107(n) of title 49, United States Code."

Subsec. (b)(1)(C). Pub. L. 105–34, §1031(d)(1)(A), struck out "(to the extent that the rate of the tax on such gasoline exceeds 4.3 cents per gallon)" after "aviation gasoline".

Subsec. (b)(1)(D). Pub. L. 105–34, §1031(d)(1)(B), struck out "to the extent attributable to the Airport and Airway Trust Fund financing rate" after "aviation fuel)".

Subsec. (d)(5), (6). Pub. L. 105–34, §1604(g)(5), redesignated par. (5), relating to transfers on account of certain airports, as (6).

Subsec. (f). Pub. L. 105–34, §1031(d)(2), struck out heading and text of subsec. (f). Text read as follows: "For purposes of this section—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the Airport and Airway Trust Fund financing rate is—

"(A) in the case of fuel used in an aircraft in noncommercial aviation (as defined in section 4041(c)(2)), 17.5 cents per gallon, and

"(B) in the case of fuel used in an aircraft other than in noncommercial aviation (as so defined), zero.

"(2) ALCOHOL FUELS.—If the rate of tax on any fuel is determined under section 4091(c), the Airport and Airway Trust Fund financing rate is the excess (if any) of the rate of tax determined under section 4091(c) over 4.4 cents per gallon (10/9 of 4.4 cents per gallon in the case of a rate of tax determined under section 4091(c)(2)).

"(3) TERMINATION.—Notwithstanding the preceding provisions of this subsection, the Airport and Airway Trust Fund financing rate shall be zero with respect to taxes imposed during any period that the rate of the tax imposed by section 4091(b)(1) is 4.3 cents per gallon."

Subsec. (f)(3). Pub. L. 105–2, §2(c)(2), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: "Notwithstanding the preceding provisions of this subsection, the Airport and Airway Trust Fund financing rate shall be zero with respect to—

"(A) taxes imposed after December 31, 1995, and before the date which is 7 calendar days after the date of the enactment of the Small Business Job Protection Act of 1996, and

"(B) taxes imposed after December 31, 1996."

1996—Subsec. (b)(1). Pub. L. 104–188, §1609(c)(1), substituted "January 1, 1997" for "January 1, 1996".

Subsec. (b)(2). Pub. L. 104–188, §1703(n)(10), inserted "and before" after "1982,".

Pub. L. 104–188, §1609(c)(1), (g)(4)(D), substituted "January 1, 1997" for "January 1, 1996" and "15 cents" for "14 cents".

Subsec. (b)(3), (4). Pub. L. 104–188, §1609(c)(1), substituted "January 1, 1997" for "January 1, 1996".

Subsec. (b)(5). Pub. L. 104–264, §806(1)–(3), added par. (5).

Subsec. (d)(1). Pub. L. 104–264, §1001(a), substituted "October 1, 1998" for "October 1, 1996" in introductory provisions.

Subsec. (d)(1)(A). Pub. L. 104–264, §1001(b), inserted before semicolon at end "or the Federal Aviation Reauthorization Act of 1996".

Subsec. (d)(5). Pub. L. 104–264, §806(4), added par. (5) relating to transfers on account of certain airports.

Pub. L. 104–188, §1609(c)(3), added par. (5) relating to transfers on account of refunds of taxes on transportation by air.

Subsec. (f)(1)(A). Pub. L. 104–188, §1609(g)(4)(C), substituted "section 4041(c)(2)" for "section 4041(c)(4)".

Subsec. (f)(3). Pub. L. 104–188, §1609(c)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "Notwithstanding the preceding provisions of this subsection, the Airport and Airway Trust Fund financing rate is zero with respect to tax received after December 31, 1995."

1994—Subsec. (d)(1). Pub. L. 103–305, §401(1), (4), in introductory provisions substituted "October 1, 1996" for "October 1, 1995" and inserted last sentence which read: "Any reference in subparagraph (A) to an Act shall be treated as a reference to such Act and the corresponding provisions (if any) of title 49, United States Code, as such Act and provisions were in effect on the date of the enactment of the last Act referred to in subparagraph (A)."

Subsec. (d)(1)(A). Pub. L. 103–305, §401(2), (3), inserted "or the Airport and Airway Safety, Capacity, Noise Improvement, and Intermodal Transportation Act of 1992" after "Capacity Expansion Act of 1990" and substituted "or the Federal Aviation Administration Authorization Act of 1994" for "(as such Acts were in effect on the date of the enactment of the Airport Improvement Program Temporary Extension Act of 1994)".

Pub. L. 103–260 substituted "or the Airport Improvement Program Temporary Extension Act of 1994 (as such Acts were in effect on the date of the enactment of the Airport Improvement Program Temporary Extension Act of 1994)" for "(as such Acts were in effect on the date of the enactment of the Airport and Airway Safety, Capacity, Noise Improvement, and Intermodal Transportation Act of 1992)".

Subsec. (d)(1)(B). Pub. L. 103–272 substituted "part A of subtitle VII of title 49, United States Code," for "the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301 et seq.),".

1993—Subsec. (b)(2). Pub. L. 103–66, §13242(d)(33), substituted "(to the extent of 14 cents per gallon)" for "(to the extent attributable to the Highway Trust Fund financing rate and the deficit reduction rate)".

Subsec. (f). Pub. L. 103–66, §13242(d)(32), added subsec. (f).

1992—Subsec. (d)(1). Pub. L. 102–581, §501(1), substituted "October 1, 1995" for "October 1, 1992".

Subsec. (d)(1)(A). Pub. L. 102–581, §501(2), substituted "(as such Acts were in effect on the date of the enactment of the Airport and Airway Safety, Capacity, Noise Improvement, and Intermodal Transportation Act of 1992)" for "(as such Acts were in effect on the date of the enactment of the Aviation Safety and Capacity Expansion Act of 1990)".

Subsec. (e)(1). Pub. L. 102–581, §502(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "In the case of taxes imposed before January 1, 1993, the amounts which would (but for this paragraph) be required to be appropriated under paragraphs (1), (2), and (3) of subsection (b) shall be 3 cents

per gallon less (3.5 cents per gallon less in the case of taxes imposed by section 4041(c)(1) and 4091) than the amounts which would (but for this sentence) be appropriated under such paragraphs."

1990—Subsec. (b). Pub. L. 101–508, §11213(c)(2), (d)(3), inserted "and the deficit reduction rate" after "financing rate" in par. (2) and substituted "January 1, 1996" for "January 1, 1991" in pars. (1) to (4).

Subsec. (d)(1)(A). Pub. L. 101–508, §11213(d)(4), substituted "or the Federal Aviation Administration Research, Engineering, and Development Authorization Act of 1990 or the Aviation Safety and Capacity Expansion Act of 1990 (as such Acts were in effect on the date of the enactment of the Aviation Safety and Capacity Expansion Act of 1990)" for "(as such Acts were in effect on the date of the enactment of the Airport and Airway Safety and Capacity Expansion Act of 1987)".

Subsec. (d)(4). Pub. L. 101–508, §11211(b)(6)(G), added par. (4).

Subsec. (e). Pub. L. 101–508, §11213(c)(1), added subsec. (e).

1989—Subsec. (b)(3). Pub. L. 101–239 substituted "; and" for ", and" at end.

1987—Subsec. (b). Pub. L. 100–223, §402(a)(3), substituted "January 1, 1991" for "January 1, 1988", wherever appearing.

Subsec. (b)(3). Pub. L. 100–203, §10502(g), substituted "January 1, 1991" for "January 1, 1988" in the par. (3) added by Pub. L. 100–203, §10502(d)(12).

Pub. L. 100–203, §10502(d)(12), added par. (3). Former par. (3) redesignated (4).

Subsec. (b)(4). Pub. L. 100–203, §10502(d)(12), redesignated former par. (3) as (4).

Subsec. (d)(1). Pub. L. 100–223, §403, in introductory provisions substituted "October 1, 1992" for "October 1, 1987", and in subpar. (A), substituted "or the Airport and Airway Safety and Capacity Expansion Act of 1987 (as such Acts were in effect on the date of the enactment of the Airport and Airway Safety and Capacity Expansion Act of 1987)" for "(as such Acts were in effect on the date of the enactment of the Surface Transportation Assistance Act of 1982)".

1986—Subsec. (b)(1). Pub. L. 99–499, §521(b)(2)(A), substituted "subsections (c) and (e) of section 4041" for "subsections (c) and (d) of section 4041".

Subsec. (b)(2). Pub. L. 99–499, §521(b)(2)(B), inserted "(to the extent attributable to the Highway Trust Fund financing rate)" after "section 4081".

1984—Subsec. (b)(3). Pub. L. 98–369, §735(c)(15), substituted "under section 4071 with respect to tires of the types used on aircraft" for "under paragraphs (2) and (3) of section 4071(a), with respect to tires and tubes of types used on aircraft".

Subsec. (d)(3). Pub. L. 98–369, §474(r)(42), substituted references to section 34 for references to section 39 in heading and text.

1983—Subsec. (d)(1)(A). Pub. L. 97–424 substituted "the Surface Transportation Assistance Act of 1982" for "the Airport and Airway Improvement Act of 1982".

EFFECTIVE DATE OF 2012 AMENDMENT

Pub. L. 112–95, title XI, §1102(c), Feb. 14, 2012, 126 Stat. 149, provided that: "The amendments made by this section [amending this section] shall take effect on February 18, 2012."

Amendment by section 1103(a)(3) of Pub. L. 112–95 applicable to fuel used after Mar. 31, 2012, see section 1103(d)(1) of Pub. L. 112–95, set out as an Effective Date note under section 4043 of this title.

Pub. L. 112–91, §3(c), Jan. 31, 2012, 126 Stat. 3, provided that: "The amendments made by this section [amending this section] shall take effect on February 1, 2012."

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112–30, title II, §203(c), Sept. 16, 2011, 125 Stat. 357, provided that: "The amendments made by this section [amending this section] shall take effect on September 17, 2011."

Pub. L. 112–27, §3(c), Aug. 5, 2011, 125 Stat. 270, provided that: "The amendments made by this section [amending this section] shall take effect on July 23, 2011."

Pub. L. 112–21, §3(c), June 29, 2011, 125 Stat. 233, provided that: "The amendments made by this section [amending this section] shall take effect on July 1, 2011."

Pub. L. 112–16, §3(c), May 31, 2011, 125 Stat. 218, provided that: "The amendments made by this section [amending this section] shall take effect on June 1, 2011."

Pub. L. 112–7, §3(c), Mar. 31, 2011, 125 Stat. 31, provided that: "The amendments made by this section [amending this section] shall take effect on April 1, 2011."

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–329, §3(c), Dec. 22, 2010, 124 Stat. 3566, provided that: "The amendments made by this section [amending this section] shall take effect on January 1, 2011."

Pub. L. 111–249, §3(c), Sept. 30, 2010, 124 Stat. 2627, provided that: "The amendments made by this

section [amending this section] shall take effect on October 1, 2010."

Pub. L. 111–216, title I, §102(c), Aug. 1, 2010, 124 Stat. 2349, provided that: "The amendments made by this section [amending this section] shall take effect on August 2, 2010."

Pub. L. 111–197, §3(c), July 2, 2010, 124 Stat. 1353, provided that: "The amendments made by this section [amending this section] shall take effect on July 4, 2010."

Pub. L. 111–161, §3(c), Apr. 30, 2010, 124 Stat. 1126, provided that: "The amendments made by this section [amending this section] shall take effect on May 1, 2010."

Pub. L. 111–153, §3(c), Mar. 31, 2010, 124 Stat. 1084, provided that: "The amendments made by this section [amending this section] shall take effect on April 1, 2010."

Pub. L. 111–147, title IV, §444(c), Mar. 18, 2010, 124 Stat. 94, provided that: "The amendment made by this section [amending this section and sections 9503 and 9504 of this title] shall apply to transfers relating to amounts paid and credits allowed after the date of the enactment of this Act [Mar. 18, 2010]."

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–116, §3(c), Dec. 16, 2009, 123 Stat. 3031, provided that: "The amendments made by this section [amending this section] shall take effect on January 1, 2010."

Pub. L. 111–69, §3(c), Oct. 1, 2009, 123 Stat. 2054, provided that: "The amendments made by this section [amending this section] shall take effect on October 1, 2009."

Pub. L. 111–12, §3(c), Mar. 30, 2009, 123 Stat. 1457, provided that: "The amendments made by this section [amending this section] shall take effect on April 1, 2009."

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–330, §3(c), Sept. 30, 2008, 122 Stat. 3717, provided that: "The amendments made by this section [amending this section] shall take effect on October 1, 2008."

Pub. L. 110–253, §3(d), June 30, 2008, 122 Stat. 2418, provided that: "The amendments made by this section [amending this section and sections 40117, 44302, 44303, 47115 and 47141 of Title 49, Transportation, and amending provisions set out as a note under section 47109 of Title 49] shall take effect on July 1, 2008."

Pub. L. 110–190, §3(c), Feb. 28, 2008, 122 Stat. 643, provided that: "The amendments made by this section [amending this section] shall take effect on March 1, 2008."

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–172 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 11(f)(4) of Pub. L. 110–172, set out as a note under section 904 of this title.

Amendment by Pub. L. 110–161 effective Oct. 1, 2007, see section 116(d) of div. K of Pub. L. 110–161, set out as a note under section 4081 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–432 applicable to kerosene sold after Sept. 30, 2005, with special rule for pending claims, see section 420(c) of Pub. L. 109–432, set out as a note under section 6427 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–59 applicable to fuels or liquids removed, entered, or sold after Sept. 30, 2005, see section 11161(e) of Pub. L. 109–59, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to aviation-grade kerosene removed, entered, or sold after Dec. 31, 2004, see section 853(e) of Pub. L. 108–357, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–176 applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 108–176, set out as a note under section 106 of Title 49, Transportation.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–181 applicable only to fiscal years beginning after Sept. 30, 1999, see section 3 of Pub. L. 106–181, set out as a note under section 106 of Title 49, Transportation.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 6023(31) of Pub. L. 105–206 effective July 22, 1998, see section 6023(32) of Pub. L. 105–206, set out as a note under section 34 of this title.

Amendment by section 6010(g)(2) of Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title X, §1031(e)(3), Aug. 5, 1997, 111 Stat. 933, provided that: "The amendments made by subsection (d) [amending this section] shall apply with respect to taxes received in the Treasury on and after October 1, 1997."

EFFECTIVE DATE OF 1996 AMENDMENTS

Except as otherwise specifically provided, amendment by Pub. L. 104–264 applicable only to fiscal years beginning after Sept. 30, 1996, and not to be construed as affecting funds made available for a fiscal year ending before Oct. 1, 1996, see section 3 of Pub. L. 104–264, set out as a note under section 106 of Title 49, Transportation.

Amendment by section 1609(c), (g)(4)(C), (D) of Pub. L. 104–188 effective on 7th calendar day after Aug. 20, 1996, see section 1609(i) of Pub. L. 104–188, set out as a note under section 4041 of this title.

Amendment by section 1703(n)(10) of Pub. L. 104–188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103–66, §§13001–13444, to which such amendment relates, see section 1703(o) of Pub. L. 104–188, set out as a note under section 39 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 effective Jan. 1, 1994, see section 13242(e) of Pub. L. 103–66, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–581, title V, §502(b), Oct. 31, 1992, 106 Stat. 4898, provided that: "The amendment made by subsection (a) [amending this section] shall take effect as if included in section 11213 of the Revenue Reconciliation Act of 1990 [Pub. L. 101–508, title XI] on the date of the enactment of such Act [Nov. 5, 1990]."

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11211(b)(6)(G) of Pub. L. 101–508 effective Dec. 1, 1990, see section 11211(b)(7) of Pub. L. 101–508, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective as if included in the provision of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 7823 of Pub. L. 101–239, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 10502(d)(12) of Pub. L. 100–203 applicable to sales after Mar. 31, 1988, see section 10502(e) of Pub. L. 100–203, set out as a note under section 40 of this title.

Pub. L. 100–203, title X, §10502(g), Dec. 22, 1987, 101 Stat. 1330–446, provided that: "If the Airport and Airway Safety and Capacity Expansion Act of 1987 is enacted [enacted as Pub. L. 100–223], effective on December 31, 1987, sections 4091(b)(5)(B) and 9502(b)(3) of such Code [this title] (as added by this section) are each amended by striking out 'January 1, 1988' and inserting in lieu thereof 'January 1, 1991'."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–499 effective Jan. 1, 1987, see section 521(e) of Pub. L. 99–499, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(42) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 735(c)(15) of Pub. L. 98–369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97–424, to which such amendment relates, see section 736 of Pub. L. 98–369, set out as a note under section 4051 of this title.

EFFECTIVE DATE; SAVINGS PROVISION

Pub. L. 97–248, title II, §281(d), Sept. 3, 1982, 96 Stat. 566, provided that:

"(1) IN GENERAL.—The amendments made by this section [enacting this section, amending section 9501 of this title, and repealing section 1742 of former Title 49, Transportation, and provisions which had amended a note set out under section 120 of Title 23, Highways] shall take effect on September 1, 1982.

"(2) SAVINGS PROVISIONS.—The Airport and Airway Trust Fund established by the amendments made by this section shall be treated for all purposes of law as the continuation of the Airport and Airway Trust Fund established by section 208 of the Airport and Airway Revenue Act of 1970 [section 208 of Pub. L. 91–258, May 21, 1970, 84 Stat. 250, enacted section 1742 of former Title 49 and amended provisions set out as a note under section 120 of Title 23]. Any reference in any law to the Airport and Airway Trust Fund established by such section 208 shall be deemed to include a reference to the Airport and Airway Trust Fund established by the amendments made by this section."

[1] So in original. A closing parenthesis probably should precede the comma.

§9503. Highway Trust Fund

(a) Creation of Trust Fund

There is established in the Treasury of the United States a trust fund to be known as the "Highway Trust Fund", consisting of such amounts as may be appropriated or credited to the Highway Trust Fund as provided in this section or section 9602(b).

(b) Transfer to Highway Trust Fund of amounts equivalent to certain taxes and penalties

(1) Certain taxes

There are hereby appropriated to the Highway Trust Fund amounts equivalent to the taxes received in the Treasury before October 1, 2016, under the following provisions—

(A) section 4041 (relating to taxes on diesel fuels and special motor fuels),
(B) section 4051 (relating to retail tax on heavy trucks and trailers),
(C) section 4071 (relating to tax on tires),
(D) section 4081 (relating to tax on gasoline, diesel fuel, and kerosene), and
(E) section 4481 (relating to tax on use of certain vehicles).

For purposes of this paragraph, taxes received under sections 4041 and 4081 shall be determined without reduction for credits under section 6426.

(2) Liabilities incurred before October 1, 2016

There are hereby appropriated to the Highway Trust Fund amounts equivalent to the taxes which are received in the Treasury after September 30, 2016, and before July 1, 2017, and which are attributable to liability for tax incurred before October 1, 2016, under the provisions described in paragraph (1).

[(3) Repealed. Pub. L. 109–59, title XI, §11161(c)(2)(C), Aug. 10, 2005, 119 Stat. 1972]

(4) Certain taxes not transferred to Highway Trust Fund

For purposes of paragraphs (1) and (2), there shall not be taken into account the taxes imposed by—

(A) section 4041(d),
(B) section 4081 to the extent attributable to the rate specified in section 4081(a)(2)(B),
(C) section 4041 or 4081 to the extent attributable to fuel used in a train, or
(D) in the case of gasoline and special motor fuels used as described in paragraph (3)(D) or (4)(B) of subsection (c), section 4041 or 4081 with respect to so much of the rate of tax as exceeds—
(i) 11.5 cents per gallon with respect to taxes imposed before October 1, 2001,
(ii) 13 cents per gallon with respect to taxes imposed after September 30, 2001, and before

October 1, 2003, and

(iii) 13.5 cents per gallon with respect to taxes imposed after September 30, 2003, and before October 1, 2005.

(5) Certain penalties

There are hereby appropriated to the Highway Trust Fund amounts equivalent to the penalties paid under sections 6715, 6715A, 6717, 6718, 6719, 6720A, 6725, 7232, and 7272 (but only with regard to penalties under such section related to failure to register under section 4101).

(6) Limitation on transfers to Highway Trust Fund

(A) In general

Except as provided in subparagraph (B), no amount may be appropriated to the Highway Trust Fund on and after the date of any expenditure from the Highway Trust Fund which is not permitted by this section. The determination of whether an expenditure is so permitted shall be made without regard to—

(i) any provision of law which is not contained or referenced in this title or in a revenue Act, and

(ii) whether such provision of law is a subsequently enacted provision or directly or indirectly seeks to waive the application of this paragraph.

(B) Exception for prior obligations

Subparagraph (A) shall not apply to any expenditure to liquidate any contract entered into (or for any amount otherwise obligated) before June 1, 2015, in accordance with the provisions of this section.

(c) Expenditures from Highway Trust Fund

(1) Federal-aid highway program

Except as provided in subsection (e), amounts in the Highway Trust Fund shall be available, as provided by appropriation Acts, for making expenditures before June 1, 2015, to meet those obligations of the United States heretofore or hereafter incurred which are authorized to be paid out of the Highway Trust Fund under the Highway and Transportation Funding Act of 2014 or any other provision of law which was referred to in this paragraph before the date of the enactment of such Act (as such Act and provisions of law are in effect on the date of the enactment of such Act).

(2) Floor stocks refunds

The Secretary shall pay from time to time from the Highway Trust Fund into the general fund of the Treasury amounts equivalent to the floor stocks refunds made before July 1, 2017, under section 6412(a). The amounts payable from the Highway Trust Fund under the preceding sentence shall be determined by taking into account only the portion of the taxes which are deposited into the Highway Trust Fund.

(3) Transfers from the Trust Fund for motorboat fuel taxes

(A) Transfer to Land and Water Conservation Fund

(i) In general

The Secretary shall pay from time to time from the Highway Trust Fund into the land and water conservation fund provided for in title I of the Land and Water Conservation Fund Act of 1965 amounts (as determined by the Secretary) equivalent to the motorboat fuel taxes received on or after October 1, 2005, and before October 1, 2016.

(ii) Limitation

The aggregate amount transferred under this subparagraph during any fiscal year shall not exceed $1,000,000.

(B) Excess funds transferred to Sport Fish Restoration and Boating Trust Fund

Any amounts in the Highway Trust Fund—

(i) which are attributable to motorboat fuel taxes, and

(ii) which are not transferred from the Highway Trust Fund under subparagraph (A),

shall be transferred by the Secretary from the Highway Trust Fund into the Sport Fish Restoration and Boating Trust Fund.

(C) Motorboat fuel taxes

For purposes of this paragraph, the term "motorboat fuel taxes" means the taxes under section 4041(a)(2) with respect to special motor fuels used as fuel in motorboats and under section 4081 with respect to gasoline used as fuel in motorboats, but only to the extent such taxes are deposited into the Highway Trust Fund.

(D) Determination

The amount of payments made under this paragraph after October 1, 1986 shall be determined by the Secretary in accordance with the methodology described in the Treasury Department's Report to Congress of June 1986 entitled "Gasoline Excise Tax Revenues Attributable to Fuel Used in Recreational Motorboats."

(4) Transfers from the Trust Fund for small-engine fuel taxes

(A) In general

The Secretary shall pay from time to time from the Highway Trust Fund into the Sport Fish Restoration and Boating Trust Fund amounts (as determined by him) equivalent to the small-engine fuel taxes received on or after December 1, 1990, and before October 1, 2016.

(B) Small-engine fuel taxes

For purposes of this paragraph, the term "small-engine fuel taxes" means the taxes under section 4081 with respect to gasoline used as a fuel in the nonbusiness use of small-engine outdoor power equipment, but only to the extent such taxes are deposited into the Highway Trust Fund.

(5) Transfers from the Trust Fund for certain aviation fuel taxes

The Secretary shall pay at least monthly from the Highway Trust Fund into the Airport and Airway Trust Fund amounts (as determined by the Secretary) equivalent to the taxes received on or after October 1, 2005, and before October 1, 2011, under section 4081 with respect to so much of the rate of tax as does not exceed—

(A) 4.3 cents per gallon of kerosene subject to section 6427(l)(4)(A) with respect to which a payment has been made by the Secretary under section 6427(l), and

(B) 21.8 cents per gallon of kerosene subject to section 6427(l)(4)(B) with respect to which a payment has been made by the Secretary under section 6427(l).

Transfers under the preceding sentence shall be made on the basis of estimates by the Secretary, and proper adjustments shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred. Any amount allowed as a credit under section 34 by reason of paragraph (4) of section 6427(l) shall be treated for purposes of subparagraphs (A) and (B) as a payment made by the Secretary under such paragraph.

(d) Adjustments of apportionments

(1) Estimates of unfunded highway authorizations and net highway receipts

The Secretary of the Treasury, not less frequently than once in each calendar quarter, after consultation with the Secretary of Transportation, shall estimate—

(A) the amount which would (but for this subsection) be the unfunded highway authorizations at the close of the next fiscal year, and

(B) the net highway receipts for the 48-month period beginning at the close of such fiscal

year.

(2) Procedure where there is excess unfunded highway authorizations

If the Secretary of the Treasury determines for any fiscal year that the amount described in paragraph (1)(A) exceeds the amount described in paragraph (1)(B)—

(A) he shall so advise the Secretary of Transportation, and

(B) he shall further advise the Secretary of Transportation as to the amount of such excess.

(3) Adjustment of apportionments where unfunded authorizations exceed 4 years' receipts

(A) Determination of percentage

If, before any apportionment to the States is made, in the most recent estimate made by the Secretary of the Treasury there is an excess referred to in paragraph (2)(B), the Secretary of Transportation shall determine the percentage which—

(i) the excess referred to in paragraph (2)(B), is of

(ii) the amount authorized to be appropriated from the Trust Fund for the fiscal year for apportionment to the States.

If, but for this sentence, the most recent estimate would be one which was made on a date which will be more than 3 months before the date of the apportionment, the Secretary of the Treasury shall make a new estimate under paragraph (1) for the appropriate fiscal year.

(B) Adjustment of apportionments

If the Secretary of Transportation determines a percentage under subparagraph (A) for purposes of any apportionment, notwithstanding any other provision of law, the Secretary of Transportation shall apportion to the States (in lieu of the amount which, but for the provisions of this subsection, would be so apportioned) the amount obtained by reducing the amount authorized to be so apportioned by such percentage.

(4) Apportionment of amounts previously withheld from apportionment

If, after funds have been withheld from apportionment under paragraph (3)(B), the Secretary of the Treasury determines that the amount described in paragraph (1)(A) does not exceed the amount described in paragraph (1)(B) or that the excess described in paragraph (1)(B) is less than the amount previously determined, he shall so advise the Secretary of Transportation. The Secretary of Transportation shall apportion to the States such portion of the funds so withheld from apportionment as the Secretary of the Treasury has advised him may be so apportioned without causing the amount described in paragraph (1)(A) to exceed the amount described in paragraph (1)(B). Any funds apportioned pursuant to the preceding sentence shall remain available for the period for which they would be available if such apportionment took effect with the fiscal year in which they are apportioned pursuant to the preceding sentence.

(5) Definitions

For purposes of this subsection—

(A) Unfunded highway authorizations

The term "unfunded highway authorizations" means, at any time, the excess (if any) of—

(i) the total potential unpaid commitments at such time as a result of the apportionment to the States of the amounts authorized to be appropriated from the Highway Trust Fund, over

(ii) the amount available in the Highway Trust Fund at such time to defray such commitments (after all other unpaid commitments at such time which are payable from the Highway Trust Fund have been defrayed).

(B) Net highway receipts

The term "net highway receipts" means, with respect to any period, the excess of—

(i) the receipts (including interest) of the Highway Trust Fund during such period, over

(ii) the amounts to be transferred during such period from such Fund under subsection (c) (other than paragraph (1) thereof).

(6) Measurement of net highway receipts

For purposes of making any estimate under paragraph (1) of net highway receipts for periods ending after the date specified in subsection (b)(1), the Secretary shall treat—

(A) each expiring provision of subsection (b) which is related to appropriations or transfers to the Highway Trust Fund to have been extended through the end of the 48-month period referred to in paragraph (1)(B), and

(B) with respect to each tax imposed under the sections referred to in subsection (b)(1), the rate of such tax during the 48-month period referred to in paragraph (1)(B) to be the same as the rate of such tax as in effect on the date of such estimate.

(7) Reports

Any estimate under paragraph (1) and any determination under paragraph (2) shall be reported by the Secretary of the Treasury to the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, the Committees on the Budget of both Houses, the Committee on Public Works and Transportation of the House of Representatives, and the Committee on Environment and Public Works of the Senate.

(e) Establishment of Mass Transit Account

(1) Creation of account

There is established in the Highway Trust Fund a separate account to be known as the "Mass Transit Account" consisting of such amounts as may be transferred or credited to the Mass Transit Account as provided in this section or section 9602(b).

(2) Transfers to Mass Transit Account

The Secretary of the Treasury shall transfer to the Mass Transit Account the mass transit portion of the amounts appropriated to the Highway Trust Fund under subsection (b) which are attributable to taxes under sections 4041 and 4081 imposed after March 31, 1983. For purposes of the preceding sentence, the term "mass transit portion" means, for any fuel with respect to which tax was imposed under section 4041 or 4081 and otherwise deposited into the Highway Trust Fund, the amount determined at the rate of—

(A) except as otherwise provided in this sentence, 2.86 cents per gallon,

(B) 1.43 cents per gallon in the case of any partially exempt methanol or ethanol fuel (as defined in section 4041(m)) none of the alcohol in which consists of ethanol,

(C) 1.86 cents per gallon in the case of liquefied natural gas,

(D) 2.13 cents per gallon in the case of liquefied petroleum gas, and

(E) 9.71 cents per MCF (determined at standard temperature and pressure) in the case of compressed natural gas.

(3) Expenditures from Account

Amounts in the Mass Transit Account shall be available, as provided by appropriation Acts, for making capital or capital related expenditures (including capital expenditures for new projects) before June 1, 2015, in accordance with the Highway and Transportation Funding Act of 2014 or any other provision of law which was referred to in this paragraph before the date of the enactment of such Act (as such Act and provisions of law are in effect on the date of the enactment of such Act).

(4) Limitation

Rules similar to the rules of subsection (d) shall apply to the Mass Transit Account.

(5) Portion of certain transfers to be made from account

(A) In general

Transfers under paragraphs (2) and (3) of subsection (c) shall be borne by the Highway Account and the Mass Transit Account in proportion to the respective revenues transferred under this section to the Highway Account (after the application of paragraph (2)) and the Mass

Transit Account.

(B) Highway Account

For purposes of subparagraph (A), the term "Highway Account" means the portion of the Highway Trust Fund which is not the Mass Transit Account.

(f) Determination of Trust Fund balances after September 30, 1998

(1) In general

For purposes of determining the balances of the Highway Trust Fund and the Mass Transit Account after September 30, 1998, the opening balance of the Highway Trust Fund (other than the Mass Transit Account) on October 1, 1998, shall be $8,000,000,000. The Secretary shall cancel obligations held by the Highway Trust Fund to reflect the reduction in the balance under this paragraph.

(2) Restoration of foregone interest

Out of money in the Treasury not otherwise appropriated, there is hereby appropriated—

(A) $14,700,000,000 to the Highway Account (as defined in subsection (e)(5)(B)) in the Highway Trust Fund; and

(B) $4,800,000,000 to the Mass Transit Account in the Highway Trust Fund.

(3) Increase in fund balance

There is hereby transferred to the Highway Account (as defined in subsection (e)(5)(B)) in the Highway Trust Fund amounts appropriated from the Leaking Underground Storage Tank Trust Fund under section 9508(c)(2).

(4) Additional appropriations to trust fund

Out of money in the Treasury not otherwise appropriated, there is hereby appropriated to—

(A) the Highway Account (as defined in subsection (e)(5)(B)) in the Highway Trust Fund—

(i) for fiscal year 2013, $6,200,000,000, and

(ii) for fiscal year 2014, $10,400,000,000, and

(B) the Mass Transit Account in the Highway Trust Fund, for fiscal year 2014, $2,200,000,000.

(5) Additional sums

Out of money in the Treasury not otherwise appropriated, there is hereby appropriated—

(A) $7,765,000,000 to the Highway Account (as defined in subsection (e)(5)(B)) in the Highway Trust Fund; and

(B) $2,000,000,000 to the Mass Transit Account in the Highway Trust Fund.

(6) Additional increase in fund balance

There is hereby transferred to the Highway Account (as defined in subsection (e)(5)(B)) in the Highway Trust Fund amounts appropriated from the Leaking Underground Storage Tank Trust Fund under section 9508(c)(3).

(7) Treatment of amounts

Any amount appropriated or transferred under this subsection to the Highway Trust Fund shall remain available without fiscal year limitation.

(Added Pub. L. 97–424, title V, §531(a), Jan. 6, 1983, 96 Stat. 2187; amended Pub. L. 98–369, div. A, title IV, §474(r)(43), title IX, §911(d)(1), title X, §1016(b), July 18, 1984, 98 Stat. 847, 1006, 1020; Pub. L. 99–499, title V, §521(b)(1), Oct. 17, 1986, 100 Stat. 1777; Pub. L. 99–640, §7(a), Nov. 10, 1986, 100 Stat. 3547; Pub. L. 100–17, title V, §§503(a), (b), 504, Apr. 2, 1987, 101 Stat. 257, 258; Pub. L. 100–203, title X, §10502(d)(13)–(15), Dec. 22, 1987, 101 Stat. 1330–444, 1330–445; Pub. L. 100–448, §6(a)(1), (3), Sept. 28, 1988, 102 Stat. 1839; Pub. L. 101–239, title VII, §7822(b)(6), Dec. 19, 1989, 103 Stat. 2425; Pub. L. 101–508, title XI, §11211(a)(5)(D)–(F), (b)(6)(H), (g)(1), (h)(1), (i)(1), Nov. 5, 1990, 104 Stat. 1388–424, 1388–426, 1388–427; Pub. L.

102–240, title VIII, §§8002(d)(1), (2)(A), (e), (f), 8003(b), Dec. 18, 1991, 105 Stat. 2204, 2205; Pub. L. 103–66, title XIII, §§13242(d)(34)–(41), 13244(a), Aug. 10, 1993, 107 Stat. 527, 529; Pub. L. 103–429, §4, Oct. 31, 1994, 108 Stat. 4378; Pub. L. 105–34, title IX, §901(a)–(d), title X, §1032(e)(13), (14), title XVI, §1601(f)(2), Aug. 5, 1997, 111 Stat. 871, 872, 935, 1090; Pub. L. 105–102, §1, Nov. 20, 1997, 111 Stat. 2204; Pub. L. 105–130, §9(a), Dec. 1, 1997, 111 Stat. 2560; Pub. L. 105–178, title IX, §§9002(c)(1), (2)(A), (3)–(e)(1), (f), 9004(a)(1), (b)(1), (c), (d), 9005(a), 9011(b)(1), (2), June 9, 1998, 112 Stat. 500, 501, 503, 504, 508; Pub. L. 105–206, title IX, §9015(a), July 22, 1998, 112 Stat. 867; Pub. L. 105–225, §7(a), Aug. 12, 1998, 112 Stat. 1511; Pub. L. 105–277, div. A, title IV, §4006(b)(1), Oct. 21, 1998, 112 Stat. 2681–912; Pub. L. 105–354, §2(c)(2), Nov. 3, 1998, 112 Stat. 3244; Pub. L. 106–554, §1(a)(7) [title III, §318(e)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–645; Pub. L. 108–88, §12(a), Sept. 30, 2003, 117 Stat. 1128; Pub. L. 108–202, §12(a), Feb. 29, 2004, 118 Stat. 491; Pub. L. 108–224, §10(a), Apr. 30, 2004, 118 Stat. 638; Pub. L. 108–263, §10(a), June 30, 2004, 118 Stat. 710; Pub. L. 108–280, §10(a)(1)–(3), July 30, 2004, 118 Stat. 887; Pub. L. 108–310, §13(a)(1)–(3), (c), Sept. 30, 2004, 118 Stat. 1163, 1164; Pub. L. 108–357, title III, §301(c)(11)–(13), title VIII, §868(a), (b), Oct. 22, 2004, 118 Stat. 1462, 1463, 1622; Pub. L. 109–14, §9(a), May 31, 2005, 119 Stat. 335; Pub. L. 109–20, §9(a), July 1, 2005, 119 Stat. 357; Pub. L. 109–35, §9(a), July 20, 2005, 119 Stat. 390; Pub. L. 109–37, §9(a), July 22, 2005, 119 Stat. 405; Pub. L. 109–40, §9(a), July 28, 2005, 119 Stat. 421; Pub. L. 109–42, §7(a), (d)(1), July 30, 2005, 119 Stat. 436, 438; Pub. L. 109–59, title XI, §§11101(c)(1), (2)(A), (d)(1), 11102(a), (b), 11115(a), 11161(c)(1), (2)(C), 11167(b), Aug. 10, 2005, 119 Stat. 1944, 1945, 1949, 1972, 1977; Pub. L. 109–432, div. A, title IV, §420(b)(6), Dec. 20, 2006, 120 Stat. 2969; Pub. L. 110–172, §11(a)(44), Dec. 29, 2007, 121 Stat. 2488; Pub. L. 110–244, title I, §121(c), June 6, 2008, 122 Stat. 1608; Pub. L. 110–318, §1(a), (b), Sept. 15, 2008, 122 Stat. 3532; Pub. L. 111–46, §1, Aug. 7, 2009, 123 Stat. 1970; Pub. L. 111–68, div. B, §159(a)(2), (b)(2), Oct. 1, 2009, 123 Stat. 2052; Pub. L. 111–88, div. B, §103, Oct. 30, 2009, 123 Stat. 2972; Pub. L. 111–147, title IV, §§441(a), (b), 442(a), (b), 443(a), 444(a), (b)(2)–(4), 445(a), Mar. 18, 2010, 124 Stat. 93, 94; Pub. L. 111–322, title II, §2401(a), Dec. 22, 2010, 124 Stat. 3531; Pub. L. 112–5, title IV, §401(a), Mar. 4, 2011, 125 Stat. 22; Pub. L. 112–30, title I, §§141(a), 142(e)(1), (2)(A), Sept. 16, 2011, 125 Stat. 355, 356; Pub. L. 112–102, title IV, §§401(a), 402(e)(1), (2)(A), Mar. 30, 2012, 126 Stat. 281, 282; Pub. L. 112–140, title IV, §§401(a), 402(d)(1), (2)(A), June 29, 2012, 126 Stat. 402, 403; Pub. L. 112–141, div. D, title I, §§40101(a), 40102(e)(1), (2)(A), title II, §§40201(b), 40251, July 6, 2012, 126 Stat. 844–846, 864; Pub. L. 113–159, title II, §§2001(a), 2002(a), Aug. 8, 2014, 128 Stat. 1848.)

REFERENCES IN TEXT

The Highway and Transportation Funding Act of 2014, referred to in subsecs. (c)(1) and (e)(3), is Pub. L. 113–159, Aug. 8, 2014, 128 Stat. 1839. For complete classification of this Act to the Code, see Short Title of 2014 Amendment note set out under section 101 of Title 23, Highways, and Tables.

The provisions of law referred to in this paragraph before the date of the enactment of such Act, referred to in subsec. (c)(1), means the provisions of law referred to in subsec. (c)(1) before the date of enactment of the Highway and Transportation Funding Act of 2014 (Pub. L. 113–159), which was approved Aug. 8, 2014. Those provisions are section 209 of the Highway Revenue Act of 1956, titles I and II of the Surface Transportation Assistance Act of 1982, the Surface Transportation and Uniform Relocation Assistance Act of 1987, the Intermodal Surface Transportation Efficiency Act of 1991, the Transportation Equity Act for the 21st Century, the Surface Transportation Extension Act of 2003, the Surface Transportation Extension Act of 2004, the Surface Transportation Extension Act of 2004, Part II, the Surface Transportation Extension Act of 2004, Part III, the Surface Transportation Extension Act of 2004, Part IV, the Surface Transportation Extension Act of 2004, Part V, the Surface Transportation Extension Act of 2005, the Surface Transportation Extension Act of 2005, Part II, the Surface Transportation Extension Act of 2005, Part III, the Surface Transportation Extension Act of 2005, Part IV, the Surface Transportation Extension Act of 2005, Part V, the Surface Transportation Extension Act of 2005, Part VI, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, the SAFETEA–LU Technical Corrections Act of 2008, the first Continuing Appropriations Resolution for Fiscal Year 2010 enacted into law, the Surface Transportation Extension Act of 2010, the Surface Transportation Extension Act of 2010, Part II, the Surface Transportation

Extension Act of 2011, the Surface Transportation Extension Act of 2011, Part II, the Surface Transportation Extension Act of 2012, the Temporary Surface Transportation Extension Act of 2012, and the MAP–21. See notes below.

The provisions of law referred to in this paragraph before the date of the enactment of such Act, referred to in subsec. (e)(3), means the provisions of law referred to in subsec. (e)(3) before the date of enactment of the Highway and Transportation Funding Act of 2014 (Pub. L. 113–159), which was approved Aug. 8, 2014. Those provisions are section 5338(a)(1) and (b)(1) of title 49, the Intermodal Surface Transportation Efficiency Act of 1991, the Transportation Equity Act for the 21st Century, the Surface Transportation Extension Act of 2003, the Surface Transportation Extension Act of 2004, the Surface Transportation Extension Act of 2004, Part II, the Surface Transportation Extension Act of 2004, Part III, the Surface Transportation Extension Act of 2004, Part IV, the Surface Transportation Extension Act of 2004, Part V, the Surface Transportation Extension Act of 2005, the Surface Transportation Extension Act of 2005, Part II, the Surface Transportation Extension Act of 2005, Part III, the Surface Transportation Extension Act of 2005, Part IV, the Surface Transportation Extension Act of 2005, Part V, the Surface Transportation Extension Act of 2005, Part VI, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, the SAFETEA–LU Technical Corrections Act of 2008, the first Continuing Appropriations Resolution for Fiscal Year 2010 enacted into law, the Surface Transportation Extension Act of 2010, the Surface Transportation Extension Act of 2010, Part II, the Surface Transportation Extension Act of 2011, the Surface Transportation Extension Act of 2011, Part II, the Surface Transportation Extension Act of 2012, the Temporary Surface Transportation Extension Act of 2012, and the MAP–21. See notes below.

Section 209 of the Highway Revenue Act of 1956, referred to in former subsec. (c)(1), is section 209 of act June 29, 1956, ch. 462, title II, 70 Stat. 397, which was set out as a note under section 120 of Title 23, Highways. Section 209 was repealed, except for subsection (b) thereof, by Pub. L. 97–424, title V, §531(b), Jan. 6, 1983, 96 Stat. 2191.

The Surface Transportation Assistance Act of 1982, referred to in former subsec. (c)(1), is Pub. L. 97–424, Jan. 6, 1983, 96 Stat. 2097. Titles I and II of that Act are known as the Highway Improvement Act of 1982 and the Highway Safety Act of 1982, respectively. For complete classification of these Acts to the Code, see Short Title of 1983 Amendment notes set out under sections 101 and 401, respectively, of Title 23, Highways, and Tables.

The Surface Transportation and Uniform Relocation Assistance Act of 1987, referred to in former subsec. (c)(1), is Pub. L. 100–17, Apr. 2, 1987, 101 Stat. 132. For complete classification of this Act to the Code, see Short Title of 1987 Amendment note set out under section 101 of Title 23 and Tables.

The Intermodal Surface Transportation Efficiency Act of 1991, referred to in former subsecs. (c)(1) and (e)(3), is Pub. L. 102–240, Dec. 18, 1991, 105 Stat. 1914. For complete classification of this Act to the Code, see Short Title of 1991 Amendment note set out under section 101 of Title 49, Transportation, and Tables.

The Transportation Equity Act for the 21st Century, referred to in former subsecs. (c)(1) and (e)(3), is Pub. L. 105–178, June 9, 1998, 112 Stat. 107. For complete classification of this Act to the Code, see section 1(a) of Pub. L. 105–178, set out as a Short Title of 1998 Amendment note under section 101 of Title 23, Highways, and Tables.

The Surface Transportation Extension Act of 2003, referred to in former subsecs. (c)(1) and (e)(3), is Pub. L. 108–88, Sept. 30, 2003, 117 Stat. 1110. For complete classification of this Act to the Code, see Short Title of 2003 Amendment note set out under section 101 of Title 23, Highways, and Tables.

The Surface Transportation Extension Act of 2004, referred to in former subsecs. (c)(1) and (e)(3), is Pub. L. 108–202, Feb. 29, 2004, 118 Stat. 478. For complete classification of this Act to the Code, see Short Title of 2004 Amendment note set out under section 101 of Title 23, Highways, and Tables.

The Surface Transportation Extension Act of 2004, Part II, referred to in former subsecs. (c)(1) and (e)(3), is Pub. L. 108–224, Apr. 30, 2004, 118 Stat. 627. For complete classification of this Act to the Code, see Short Title of 2004 Amendment note set out under section 101 of Title 23, Highways, and Tables.

The Surface Transportation Extension Act of 2004, Part III, referred to in former subsecs. (c)(1) and (e)(3), is Pub. L. 108–263, June 30, 2004, 118 Stat. 698. For complete classification of this Act to the Code, see Short Title of 2004 Amendment note set out under section 101 of Title 23, Highways, and Tables.

The Surface Transportation Extension Act of 2004, Part IV, referred to in former subsecs. (c)(1) and (e)(3), is Pub. L. 108–280, July 30, 2004, 118 Stat. 876. For complete classification of this Act to the Code, see Short Title of 2004 Amendment note set out under section 101 of Title 23, Highways, and Tables.

The Surface Transportation Extension Act of 2004, Part V, referred to in former subsecs. (c)(1) and (e)(3), is Pub. L. 108–310, Sept. 30, 2004, 118 Stat. 1144. For complete classification of this Act to the Code, see Short Title of 2004 Amendment note set out under section 101 of Title 23, Highways, and Tables.

The Surface Transportation Extension Act of 2005, referred to in former subsecs. (c)(1) and (e)(3), is Pub.

L. 109–14, May 31, 2005, 119 Stat. 324. For complete classification of this Act to the Code, see Short Title of 2005 Amendment note set out under section 101 of Title 23, Highways, and Tables.

The Surface Transportation Extension Act of 2005, Part II, referred to in former subsecs. (c)(1) and (e)(3), is Pub. L. 109–20, July 1, 2005, 119 Stat. 346. For complete classification of this Act to the Code, see Short Title of 2005 Amendment note set out under section 101 of Title 23, Highways, and Tables.

The Surface Transportation Extension Act of 2005, Part III, referred to in former subsecs. (c)(1) and (e)(3), is Pub. L. 109–35, July 20, 2005, 119 Stat. 379. For complete classification of this Act to the Code, see Short Title of 2005 Amendment note set out under section 101 of Title 23, Highways, and Tables.

The Surface Transportation Extension Act of 2005, Part IV, referred to in former subsecs. (c)(1) and (e)(3), is Pub. L. 109–37, July 22, 2005, 119 Stat. 394. For complete classification of this Act to the Code, see Short Title of 2005 Amendment note set out under section 101 of Title 23, Highways, and Tables.

The Surface Transportation Extension Act of 2005, Part V, referred to in former subsecs. (c)(1) and (e)(3), is Pub. L. 109–40, July 28, 2005, 119 Stat. 410. For complete classification of this Act to the Code, see Short Title of 2005 Amendment note set out under section 101 of Title 23, Highways, and Tables.

The Surface Transportation Extension Act of 2005, Part VI, referred to in former subsecs. (c)(1) and (e)(3), is Pub. L. 109–42, July 30, 2005, 119 Stat. 435. For complete classification of this Act to the Code, see Short Title of 2005 Amendment note set out under section 101 of Title 23, Highways, and Tables.

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, referred to in former subsecs. (c)(1) and (e)(3), is Pub. L. 109–59, Aug. 10, 2005, 119 Stat. 1144, also known as the SAFETEA–LU. For complete classification of this Act to the Code, see Short Title of 2005 Amendment note set out under section 101 of Title 23, Highways, and Tables.

The SAFETEA–LU Technical Corrections Act of 2008, referred to in former subsecs. (c)(1) and (e)(3), is Pub. L. 110–244, June 6, 2008, 122 Stat. 1572. For complete classification of this Act to the Code, see Short Title of 2008 Amendment note set out under section 101 of Title 23, Highways, and Tables.

The first Continuing Appropriations Resolution for Fiscal Year 2010 enacted into law and such Resolution, referred to in former subsecs. (c)(1) and (e)(3), is div. B of Pub. L. 111–68, Oct. 1, 2009, 123 Stat. 2043. For complete classification of this Act to the Code, see Tables.

The Surface Transportation Extension Act of 2010, referred to in former subsecs. (c)(1) and (e)(3), is title IV of Pub. L. 111–147, Mar. 18, 2010, 124 Stat. 78. For complete classification of this Act to the Code, see Short Title of 2010 Amendment note set out under section 101 of Title 23, Highways, and Tables.

The Surface Transportation Extension Act of 2010, Part II, referred to in former subsecs. (c)(1) and (e)(3), is title II of Pub. L. 111–322, Dec. 22, 2010, 124 Stat. 3522. For complete classification of this Act to the Code, see Short Title of 2010 Amendment note set out under section 101 of Title 23, Highways, and Tables.

The Surface Transportation Extension Act of 2011, referred to in former subsecs. (c)(1) and (e)(3), is Pub. L. 112–5, Mar. 4, 2011, 125 Stat. 2214. For complete classification of this Act to the Code, see Short Title of 2011 Amendment note set out under section 101 of Title 23, Highways, and Tables.

The Surface Transportation Extension Act of 2011, Part II, referred to in former subsecs. (c)(1) and (e)(3), is title I of Pub. L. 112–30, Sept. 16, 2011, 125 Stat. 343. For complete classification of this Act to the Code, see Short Title of 2011 Amendment note set out under section 101 of Title 23, Highways, and Tables.

The Surface Transportation Extension Act of 2012, referred to in former subsecs. (c)(1) and (e)(3), is Pub. L. 112–102, Mar. 30, 2012, 126 Stat. 271. For complete classification of this Act to the Code, see Short Title of 2012 Amendment note set out under section 101 of Title 23, Highways, and Tables.

The Temporary Surface Transportation Extension Act of 2012, referred to in former subsecs. (c)(1) and (e)(3), is Pub. L. 112–140, June 29, 2012, 126 Stat. 391. For complete classification of this Act to the Code, see Short Title of 2012 Amendment note set out under section 101 of Title 23, Highways, and Tables.

The MAP–21, referred to in former subsecs. (c)(1) and (e)(3), is Pub. L. 112–141, July 6, 2012, 126 Stat. 405, also known as the Moving Ahead for Progress in the 21st Century Act. For complete classification of this Act to the Code, see Short Title of 2012 Amendment note set out under section 101 of Title 23, Highways, and Tables.

The Land and Water Conservation Fund Act of 1965, referred to in subsec. (c)(3)(A)(i), is Pub. L. 88–578, Sept. 3, 1964, 78 Stat. 897. Title I of that Act is classified generally to part B (§460l–4 et seq.) of subchapter LXIX of chapter 1 of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 460l–4 of Title 16 and Tables.

AMENDMENTS

2014—Subsec. (b)(6)(B). Pub. L. 113–159, §2001(a)(1), substituted "June 1, 2015" for "October 1, 2014".

Subsec. (c)(1). Pub. L. 113–159, §2001(a), substituted "June 1, 2015" for "October 1, 2014" and "Highway and Transportation Funding Act of 2014" for "MAP–21".

Subsec. (e)(3). Pub. L. 113–159, §2001(a), substituted "June 1, 2015" for "October 1, 2014" and "Highway and Transportation Funding Act of 2014" for "MAP–21".

Subsec. (f)(5) to (7). Pub. L. 113–159, §2002(a), added pars. (5) and (6) and redesignated former par. (5) as (7).

2012—Subsec. (b)(1). Pub. L. 112–141, §40102(e)(1)(A)(i), substituted "October 1, 2016" for "July 1, 2012" in introductory provisions.

Pub. L. 112–140, §§1(c), 402(d)(1)(A)(i), temporarily substituted "July 7, 2012" for "July 1, 2012" in introductory provisions. See Effective and Termination Dates of 2012 Amendment note below.

Pub. L. 112–102, §402(e)(1)(A)(i), substituted "July 1, 2012" for "April 1, 2012" in introductory provisions.

Subsec. (b)(2). Pub. L. 112–141, §40102(e)(1)(A), in heading, substituted "October 1, 2016" for "July 1, 2012" and, in text, substituted "September 30, 2016" for "June 30, 2012", "July 1, 2017" for "April 1, 2013", and "October 1, 2016" for "July 1, 2012".

Pub. L. 112–140, §§1(c), 402(d)(1)(A), in heading, temporarily substituted "July 7, 2012" for "July 1, 2012" and, in text, temporarily substituted "July 6, 2012" for "June 30, 2012", "April 7, 2013" for "April 1, 2013", and "July 7, 2012" for "July 1, 2012". See Effective and Termination Dates of 2012 Amendment note below.

Pub. L. 112–102, §402(e)(1)(A), in heading, substituted "July 1, 2012" for "April 1, 2012" and, in text, substituted "June 30, 2012" for "March 31, 2012", "April 1, 2013" for "January 1, 2013", and "July 1, 2012" for "April 1, 2012".

Subsec. (b)(6)(B). Pub. L. 112–141, §40101(a)(1), substituted "October 1, 2014" for "July 1, 2012".

Pub. L. 112–140, §§1(c), 401(a)(1), temporarily substituted "July 7, 2012" for "July 1, 2012". See Effective and Termination Dates of 2012 Amendment note below.

Pub. L. 112–102, §401(a)(1), substituted "July 1, 2012" for "April 1, 2012".

Subsec. (c)(1). Pub. L. 112–141, §40101(a), substituted "October 1, 2014" for "July 1, 2012" and "MAP-21" for "Surface Transportation Extension Act of 2012".

Pub. L. 112–140, §§1(c), 401(a), temporarily substituted "July 7, 2012" for "July 1, 2012" and "Temporary Surface Transportation Extension Act of 2012" for "Surface Transportation Extension Act of 2012". See Effective and Termination Dates of 2012 Amendment note below.

Pub. L. 112–102, §401(a), substituted "July 1, 2012" for "April 1, 2012" and "Surface Transportation Extension Act of 2012" for "Surface Transportation Extension Act of 2011, Part II".

Subsec. (c)(2). Pub. L. 112–141, §40102(e)(1)(B), substituted "July 1, 2017" for "April 1, 2013".

Pub. L. 112–140, §§1(c), 402(d)(1)(B), temporarily substituted "April 7, 2013" for "April 1, 2013". See Effective and Termination Dates of 2012 Amendment note below.

Pub. L. 112–102, §402(e)(1)(B), substituted "April 1, 2013" for "January 1, 2013".

Subsec. (c)(3)(A)(i), (4)(A). Pub. L. 112–141, §40102(e)(2)(A), substituted "October 1, 2016" for "July 1, 2012".

Pub. L. 112–140, §§1(c), 402(d)(2)(A), temporarily substituted "July 7, 2012" for "July 1, 2012". See Effective and Termination Dates of 2012 Amendment note below.

Pub. L. 112–102, §402(e)(2)(A), substituted "July 1, 2012" for "April 1, 2012".

Subsec. (e)(3). Pub. L. 112–141, §40101(a), substituted "October 1, 2014" for "July 1, 2012" and "MAP-21" for "Surface Transportation Extension Act of 2012".

Pub. L. 112–140, §§1(c), 401(a), temporarily substituted "July 7, 2012" for "July 1, 2012" and "Temporary Surface Transportation Extension Act of 2012" for "Surface Transportation Extension Act of 2012". See Effective and Termination Dates of 2012 Amendment note below.

Pub. L. 112–102, §401(a), substituted "July 1, 2012" for "April 1, 2012" and "Surface Transportation Extension Act of 2012" for "Surface Transportation Extension Act of 2011, Part II".

Subsec. (f)(3). Pub. L. 112–141, §40201(b)(1), added par. (3).

Subsec. (f)(4). Pub. L. 112–141, §40251, added par. (4). Former par. (4) redesignated (5).

Pub. L. 112–141, §40201(b)(2), struck out "appropriated" before "amounts" in heading and inserted "or transferred" after "appropriated" in text.

Subsec. (f)(5). Pub. L. 112–141, §40251, redesignated par. (4) as (5).

2011—Subsec. (b)(1). Pub. L. 112–30, §142(e)(1)(A)(i), substituted "April 1, 2012" for "October 1, 2011" in introductory provisions.

Subsec. (b)(2). Pub. L. 112–30, §142(e)(1)(A), in heading, substituted "April 1, 2012" for "October 1, 2011" and, in text, substituted "March 31, 2012" for "September 30, 2011", "January 1, 2013" for "July 1, 2012", and "April 1, 2012" for "October 1, 2011".

Subsec. (b)(6)(B). Pub. L. 112–30, §141(a)(1), substituted "April 1, 2012" for "October 1, 2011".

Pub. L. 112–5, §401(a)(1), substituted "October 1, 2011" for "March 5, 2011".

Subsec. (c)(1). Pub. L. 112–30, §141(a), substituted "April 1, 2012" for "October 1, 2011" and "Surface

Transportation Extension Act of 2011, Part II" for "Surface Transportation Extension Act of 2011".

Pub. L. 112–5, §401(a)(1), (2), substituted "October 1, 2011" for "March 5, 2011" and "the Surface Transportation Extension Act of 2011" for "the Surface Transportation Extension Act of 2010, Part II".

Subsec. (c)(2). Pub. L. 112–30, §142(e)(1)(B), substituted "January 1, 2013" for "July 1, 2012".

Subsec. (c)(3)(A)(i), (4)(A). Pub. L. 112–30, §142(e)(2)(A), substituted "April 1, 2012" for "October 1, 2011".

Subsec. (e)(3). Pub. L. 112–30, §141(a), substituted "April 1, 2012" for "October 1, 2011" and "Surface Transportation Extension Act of 2011, Part II" for "Surface Transportation Extension Act of 2011".

Pub. L. 112–5, §401(a)(2), (3), substituted "October 1, 2011" for "March 5, 2011" and "the Surface Transportation Extension Act of 2011" for "the Surface Transportation Extension Act of 2010, Part II".

2010—Subsec. (b)(4)(D). Pub. L. 111–147, §444(b)(2), substituted "paragraph (3)(D) or (4)(B)" for "paragraph (4)(D) or (5)(B)" in introductory provisions.

Subsec. (b)(6)(B). Pub. L. 111–322, §2401(a)(1), substituted "March 5, 2011" for "December 31, 2010 (January 1, 2011, in the case of expenditures for administrative expenses)".

Pub. L. 111–147, §445(a)(3), substituted "December 31, 2010 (January 1, 2011" for "September 30, 2009 (October 1, 2009".

Subsec. (c)(1). Pub. L. 111–322, §2401(a)(2), substituted "the Surface Transportation Extension Act of 2010, Part II" for "the Surface Transportation Extension Act of 2010".

Pub. L. 111–322, §2401(a)(1), substituted "March 5, 2011" for "December 31, 2010 (January 1, 2011, in the case of expenditures for administrative expenses)".

Pub. L. 111–147, §445(a)(1), substituted "December 31, 2010 (January 1, 2011" for "September 30, 2009 (October 1, 2009" and "under the Surface Transportation Extension Act of 2010 or any other provision of law which was referred to in this paragraph before the date of the enactment of such Act (as such Act and provisions of law are in effect on the date of the enactment of such Act)." for "under the first Continuing Appropriations Resolution for Fiscal Year 2010 enacted into law or any other provision of law which was referred to in this paragraph before the date of the enactment of such Continuing Appropriations Resolution (as such Resolution and provisions of law are in effect on the date of the enactment of the last amendment to such Resolution)."

Subsec. (c)(2). Pub. L. 111–147, §444(b)(3), inserted at end "The amounts payable from the Highway Trust Fund under the preceding sentence shall be determined by taking into account only the portion of the taxes which are deposited into the Highway Trust Fund."

Pub. L. 111–147, §444(a), redesignated par. (3) as (2) and struck out former par. (2) which related to transfers from the Highway Trust Fund for certain repayments and credits.

Subsec. (c)(3) to (6). Pub. L. 111–147, §444(a), redesignated pars. (4) to (6) as (3) to (5), respectively. Former par. (3) redesignated (2).

Subsec. (e)(1). Pub. L. 111–147, §442(b), substituted "this section" for "this subsection".

Subsec. (e)(3). Pub. L. 111–322, §2401(a)(3), substituted "March 5, 2011" for "January 1, 2011".

Pub. L. 111–322, §2401(a)(2), substituted "the Surface Transportation Extension Act of 2010, Part II" for "the Surface Transportation Extension Act of 2010".

Pub. L. 111–147, §445(a)(2), substituted "January 1, 2011" for "October 1, 2009" and "in accordance with the Surface Transportation Extension Act of 2010 or any other provision of law which was referred to in this paragraph before the date of the enactment of such Act (as such Act and provisions of law are in effect on the date of the enactment of such Act)." for "in accordance with the first Continuing Appropriations Resolution for Fiscal Year 2010 enacted into law or any other provision of law which was referred to in this paragraph before the date of the enactment of such Continuing Appropriations Resolution (as such Resolution and provisions of law are in effect on the date of the enactment of the last amendment to such Resolution)."

Subsec. (e)(5)(A). Pub. L. 111–147, §444(b)(4), substituted "(2) and (3)" for "(2), (3), and (4)".

Subsec. (f)(1). Pub. L. 111–147, §441(b), struck out subpar. (A) designation before "the opening balance" and substituted "September 30, 1998," for "September 30, 1998—" and "$8,000,000,000." for "$8,000,000,000, and".

Subsec. (f)(1)(B). Pub. L. 111–147, §441(a), struck out subpar. (B) which read as follows: "notwithstanding section 9602(b), obligations held by such Fund after September 30, 1998, shall be obligations of the United States which are not interest-bearing."

Subsec. (f)(2). Pub. L. 111–147, §442(a), amended par. (2) generally. Prior to amendment, text read as follows: "Out of money in the Treasury not otherwise appropriated, there is hereby appropriated (without fiscal year limitation) to the Highway Trust Fund $7,000,000,000."

Subsec. (f)(4). Pub. L. 111–147, §443(a), added par. (4).

2009—Subsec. (c)(1). Pub. L. 111–88 inserted "the last amendment to" after "on the date of the enactment

of".

Pub. L. 111–68, §159(a)(2), substituted "under the first Continuing Appropriations Resolution for Fiscal Year 2010 enacted into law or any other provision of law which was referred to in this paragraph before the date of the enactment of such Continuing Appropriations Resolution (as such Resolution and provisions of law are in effect on the date of the enactment of such Resolution)." for "under the SAFETEA–LU Technical Corrections Act of 2008 or any other provision of law which was referred to in this paragraph before the date of the enactment of such Act (as such Act and provisions of law are in effect on the date of the enactment of such Act)."

Subsec. (e)(3). Pub. L. 111–88 inserted "the last amendment to" after "on the date of the enactment of".

Pub. L. 111–68, §159(b)(2), substituted "in accordance with the first Continuing Appropriations Resolution for Fiscal Year 2010 enacted into law or any other provision of law which was referred to in this paragraph before the date of the enactment of such Continuing Appropriations Resolution (as such Resolution and provisions of law are in effect on the date of the enactment of such Resolution)." for "in accordance with the SAFETEA–LU Technical Corrections Act of 2008 or any other provision of law which was referred to in this paragraph before the date of the enactment of such Act (as such Act and provisions of law are in effect on the date of the enactment of such Act)."

Subsec. (f)(2). Pub. L. 111–46 added par. (2) and struck out former par. (2). Prior to amendment, text read as follows: "Out of money in the Treasury not otherwise appropriated, there is hereby appropriated to the Highway Trust Fund $8,017,000,000."

2008—Subsecs. (c)(1), (e)(3). Pub. L. 110–244 substituted "SAFETEA–LU Technical Corrections Act of 2008" for "Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users".

Subsec. (f). Pub. L. 110–318 designated existing provisions as par. (1), inserted heading, redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), realigned margins, substituted "paragraph" for "subsection" in concluding provisions of par. (1), and added par. (2).

2007—Subsec. (c)(6), (7). Pub. L. 110–172 redesignated par. (7) as (6).

2006—Subsec. (c)(7). Pub. L. 109–432, §420(b)(6)(B), struck out "or (5)" after "paragraph (4)" in concluding provisions.

Subsec. (c)(7)(A), (B). Pub. L. 109–432, §420(b)(6)(A), amended subpars. (A) and (B) generally. Prior to amendment, subpars. (A) and (B) read as follows:

"(A) 4.3 cents per gallon of kerosene with respect to which a payment has been made by the Secretary under section 6427(l)(4), and

"(B) 21.8 cents per gallon of kerosene with respect to which a payment has been made by the Secretary under section 6427(l)(5)."

2005—Subsec. (b)(1). Pub. L. 109–59, §11101(c)(1)(A), substituted "2011" for "2005" in introductory provisions.

Subsec. (b)(2). Pub. L. 109–59, §11101(c)(1), substituted "2012" for "2006" and "2011" for "2005" wherever appearing.

Subsec. (b)(3). Pub. L. 109–59, §11161(c)(2)(C), struck out heading and text of par. (3). Text read as follows: "The amounts described in paragraphs (1) and (2) with respect to any period shall (before the application of this subsection) be reduced by appropriate amounts to reflect any amounts transferred to the Airport and Airway Trust Fund under section 9502(b) with respect to such period."

Subsec. (b)(5). Pub. L. 109–59, §11167(b), inserted "6720A," after "6719,".

Subsec. (b)(6)(B). Pub. L. 109–59, §11101(d)(1)(C), substituted "September 30, 2009 (October 1, 2009, in the case of expenditures for administrative expenses)" for "July 31, 2005".

Pub. L. 109–42, §7(a)(3), (d)(1), (e), temporarily inserted at end "The preceding sentence shall be applied by substituting 'August 15, 2005' for the date therein." See Effective Date of 2005 Amendments note below.

Pub. L. 109–40, §9(a)(3), substituted "July 31, 2005" for "July 28, 2005".

Pub. L. 109–37, §9(a)(3), substituted "July 28, 2005" for "July 22, 2005".

Pub. L. 109–35, §9(a)(3), substituted "July 22, 2005" for "July 20, 2005".

Pub. L. 109–20, §9(a)(3), substituted "July 20, 2005" for "July 1, 2005".

Pub. L. 109–14, §9(a)(3), substituted "July 1, 2005" for "June 1, 2005".

Subsec. (c)(1). Pub. L. 109–59, §11101(d)(1)(A), reenacted heading without change and amended text generally, substituting provisions relating to availability of amounts in the Highway Trust Fund for making expenditures before Sept. 30, 2009, for provisions relating to availability of amounts in the Highway Trust Fund for making expenditures before Aug. 15, 2005.

Pub. L. 109–42, §7(a)(1)(A), (E), substituted "August 15, 2005" for "July 31, 2005" in introductory provisions and "Part VI" for "Part V" in concluding provisions.

Pub. L. 109–40, §9(a)(1)(A), (E), substituted "July 31, 2005" for "July 28, 2005" in introductory provisions

and "Part V" for "Part IV" in concluding provisions.

Pub. L. 109–37, §9(a)(1)(A), (E), substituted "July 28, 2005" for "July 22, 2005" in introductory provisions and "Part IV" for "Part III" in concluding provisions.

Pub. L. 109–35, §9(a)(1)(A), (E), substituted "July 22, 2005" for "July 20, 2005" in introductory provisions and "Part III" for "Part II" in concluding provisions.

Pub. L. 109–20, §9(a)(1)(A), (E), substituted "July 20, 2005" for "July 1, 2005" in introductory provisions and inserted ", Part II" after "Surface Transportation Extension Act of 2005" in concluding provisions.

Pub. L. 109–14, §9(a)(1)(A), (E), substituted "July 1, 2005" for "June 1, 2005" in introductory provisions and "Surface Transportation Extension Act of 2005" for "Surface Transportation Extension Act of 2004, Part V" in concluding provisions.

Subsec. (c)(1)(L). Pub. L. 109–14, §9(a)(1)(B)–(D), added subpar. (L), relating to obligations authorized to be paid under the Surface Transportation Extension Act of 2005.

Subsec. (c)(1)(M). Pub. L. 109–20, §9(a)(1)(B)–(D), added subpar. (M), relating to obligations authorized to be paid under the Surface Transportation Extension Act of 2005, Part II.

Subsec. (c)(1)(N). Pub. L. 109–35, §9(a)(1)(B)–(D), added subpar. (N), relating to obligations authorized to be paid under the Surface Transportation Extension Act of 2005, Part III.

Subsec. (c)(1)(O). Pub. L. 109–37, §9(a)(1)(B)–(D), added subpar. (O), relating to obligations authorized to be paid under the Surface Transportation Extension Act of 2005, Part IV.

Subsec. (c)(1)(P). Pub. L. 109–40, §9(a)(1)(B)–(D), added subpar. (P), relating to obligations authorized to be paid under the Surface Transportation Extension Act of 2005, Part V.

Subsec. (c)(1)(Q). Pub. L. 109–42, §7(a)(1)(B)–(D), added subpar. (Q), relating to obligations authorized to be paid under the Surface Transportation Extension Act of 2005, Part VI.

Subsec. (c)(2)(A). Pub. L. 109–59, §11101(c)(1)(A), substituted "2011" for "2005" in two places.

Subsec. (c)(2)(A)(i). Pub. L. 109–59, §11101(c)(1)(B), substituted "2012" for "2006" in introductory provisions.

Subsec. (c)(3). Pub. L. 109–59, §11101(c)(1)(B), substituted "2012" for "2006".

Subsec. (c)(4). Pub. L. 109–59, §11115(a)(1), reenacted heading without change, added subpars. (A) and (B), redesignated former subpars. (D) and (E) as (C) and (D), respectively, and struck out former subpars. (A) to (C), which related to transfers to the Boat Safety Account in the Aquatic Resources Trust Fund, transfer of $1,000,000 per year of excess to the land and water conservation fund, and transfer of excess funds to the Sport Fish Restoration Account.

Subsec. (c)(5)(A). Pub. L. 109–59, §11115(a)(2), substituted "and Boating Trust Fund" for "Account in the Aquatic Resources Trust Fund".

Pub. L. 109–59, §11101(c)(2)(A), substituted "2011" for "2005".

Subsec. (c)(7). Pub. L. 109–59, §11161(c)(1), added par. (7).

Subsec. (d)(1)(B). Pub. L. 109–59, §11102(a)(1), substituted "48-month" for "24-month".

Subsec. (d)(3). Pub. L. 109–59, §11102(a)(2), substituted "4 years' receipts" for "2 years' receipts" in heading.

Subsec. (d)(6), (7). Pub. L. 109–59, §11102(b), added par. (6) and redesignated former par. (6) as (7).

Subsec. (e)(3). Pub. L. 109–59, §11101(d)(1)(B), reenacted heading without change and amended text of par. (3) generally, substituting provisions relating to availability of amounts for making capital or capital related expenditures before Oct. 1, 2009, for provisions relating to availability of amounts for making capital or capital-related expenditures before Aug. 15, 2005.

Pub. L. 109–42, §7(a)(2)(A), (E), substituted "August 15, 2005" for "July 31, 2005" in introductory provisions and "Part VI" for "Part V" in concluding provisions.

Pub. L. 109–40, §9(a)(2)(A), (E), substituted "July 31, 2005" for "July 28, 2005" in introductory provisions and "Part V" for "Part IV" in concluding provisions.

Pub. L. 109–37, §9(a)(2)(A), (E), substituted "July 28, 2005" for "July 22, 2005" in introductory provisions and "Part IV" for "Part III" in concluding provisions.

Pub. L. 109–35, §9(a)(2)(A), (E), substituted "July 22, 2005" for "July 20, 2005" in introductory provisions and "Part III" for "Part II" in concluding provisions.

Pub. L. 109–20, §9(a)(2)(A), (E), substituted "July 20, 2005" for "July 1, 2005" in introductory provisions and inserted ", Part II" after "Surface Transportation Extension Act of 2005" in concluding provisions.

Pub. L. 109–14, §9(a)(2)(A), substituted "July 1, 2005" for "June 1, 2005" in introductory provisions and "Surface Transportation Extension Act of 2005" for "Surface Transportation Extension Act of 2004, Part V" in concluding provisions.

Subsec. (e)(3)(J). Pub. L. 109–14, §9(a)(2)(B)–(D), added subpar. (J), relating to expenditures in accordance with the Surface Transportation Extension Act of 2005.

Subsec. (e)(3)(K). Pub. L. 109–20, §9(a)(2)(B)–(D), added subpar. (K), relating to expenditures in accordance with the Surface Transportation Extension Act of 2005, Part II.

Subsec. (e)(3)(L). Pub. L. 109–35, §9(a)(2)(B)–(D), added subpar. (L), relating to expenditures in accordance with the Surface Transportation Extension Act of 2005, Part III.

Subsec. (e)(3)(M). Pub. L. 109–37, §9(a)(2)(B)–(D), added subpar. (M), relating to expenditures in accordance with the Surface Transportation Extension Act of 2005, Part IV.

Subsec. (e)(3)(N). Pub. L. 109–40, §9(a)(2)(B)–(D), added subpar. (N), relating to expenditures in accordance with the Surface Transportation Extension Act of 2005, Part V.

Subsec. (e)(3)(O). Pub. L. 109–42, §7(a)(2)(B)–(D), added subpar. (O), relating to expenditures in accordance with the Surface Transportation Extension Act of 2005, Part VI.

2004—Subsec. (b). Pub. L. 108–357, §868(b)(1), inserted "and penalties" after "taxes" in heading.

Subsec. (b)(1). Pub. L. 108–357, §868(b)(2), substituted "Certain taxes" for "In general" in heading.

Pub. L. 108–357, §301(c)(11), inserted concluding provisions.

Subsec. (b)(4)(C). Pub. L. 108–357, §301(c)(12)(A), inserted "or" at end.

Subsec. (b)(4)(D)(iii). Pub. L. 108–357, §301(c)(12)(B), substituted a period for comma at end.

Subsec. (b)(4)(E), (F). Pub. L. 108–357, §301(c)(12)(C), struck out subpars. (E) and (F) which read as follows:

"(E) in the case of fuels described in section 4041(b)(2)(A), 4041(k), or 4081(c), section 4041 or 4081 before October 1, 2003, and for the period beginning after September 30, 2004, and before October 1, 2005, with respect to a rate equal to 2.5 cents per gallon, or

"(F) in the case of fuels described in section 4081(c)(2), such section before October 1, 2003, and for the period beginning after September 30, 2004, and before October 1, 2005, with respect to a rate equal to 2.8 cents per gallon."

Pub. L. 108–310, §13(c), which directed the amendment of section 9503(b)(4) by inserting "before October 1, 2003, and for the period beginning after September 30, 2004, and" before "before October 1, 2005" in subpars. (E) and (F), was executed to this section, which is section 9503(b)(4) of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

Subsec. (b)(5). Pub. L. 108–357, §868(a), added par. (5). Former par. (5) redesignated (6).

Subsec. (b)(5)(B). Pub. L. 108–310, §13(a)(3), substituted "June 1, 2005" for "October 1, 2004".

Pub. L. 108–280, §10(a)(3), substituted "October 1, 2004" for "August 1, 2004".

Pub. L. 108–263, §10(a)(3), substituted "August 1, 2004" for "July 1, 2004".

Pub. L. 108–224, §10(a)(3), substituted "July 1, 2004" for "May 1, 2004".

Pub. L. 108–202, §12(a)(3), substituted "May 1, 2004" for "March 1, 2004".

Subsec. (b)(6). Pub. L. 108–357, §868(a), redesignated par. (5) as (6).

Subsec. (c)(1). Pub. L. 108–310, §13(a)(1)(A), (E), substituted "June 1, 2005" for "October 1, 2004" in introductory provisions and "Part V" for "Part IV" in concluding provisions.

Pub. L. 108–280, §10(a)(1)(A), (E), substituted "October 1, 2004" for "August 1, 2004" in introductory provisions and "Part IV" for "Part III" in concluding provisions.

Pub. L. 108–263, §10(a)(1)(A), (E), substituted "August 1, 2004" for "July 1, 2004" in introductory provisions and "Part III" for "Part II" in concluding provisions.

Pub. L. 108–224, §10(a)(1)(A), (E), substituted "July 1, 2004" for "May 1, 2004" in introductory provisions and inserted ", Part II" after "Surface Transportation Extension Act of 2004" in concluding provisions.

Pub. L. 108–202, §12(a)(1)(A), (E), substituted "May 1, 2004" for "March 1, 2004" in introductory provisions and "Surface Transportation Extension Act of 2004" for "Surface Transportation Extension Act of 2003" in concluding provisions.

Subsec. (c)(1)(G). Pub. L. 108–202, §12(a)(1)(B)–(D), added subpar. (G).

Subsec. (c)(1)(H). Pub. L. 108–224, §10(a)(1)(B)–(D), added subpar. (H).

Subsec. (c)(1)(I). Pub. L. 108–263, §10(a)(1)(B)–(D), added subpar. (I).

Subsec. (c)(1)(J). Pub. L. 108–280, §10(a)(1)(B)–(D), added subpar. (J).

Subsec. (c)(1)(K). Pub. L. 108–310, §13(a)(1)(B)–(D), added subpar. (K).

Subsec. (c)(2)(A). Pub. L. 108–357, §301(c)(13), inserted at end of concluding provisions "Clauses (i)(III) and (ii) shall not apply to claims under section 6427(e)."

Subsec. (e)(3). Pub. L. 108–310, §13(a)(2)(A), (E), substituted "June 1, 2005" for "October 1, 2004" in introductory provisions and "Part V" for "Part IV" in concluding provisions.

Pub. L. 108–280, §10(a)(2)(A), (E), substituted "October 1, 2004" for "August 1, 2004" in introductory provisions and "Part IV" for "Part III" in concluding provisions.

Pub. L. 108–263, §10(a)(2)(A), (E), substituted "August 1, 2004" for "July 1, 2004" in introductory provisions and "Part III" for "Part II" in concluding provisions.

Pub. L. 108–224, §10(a)(2)(A), (E), substituted "July 1, 2004" for "May 1, 2004" in introductory provisions and inserted ", Part II" after "Surface Transportation Extension Act of 2004" in concluding provisions.

Pub. L. 108–202, §12(a)(2)(A), (E), substituted "May 1, 2004" for "March 1, 2004" in introductory provisions and "Surface Transportation Extension Act of 2004" for "Surface Transportation Extension Act of 2003" in concluding provisions.

Subsec. (e)(3)(E). Pub. L. 108–202, §12(a)(2)(B)–(D), added subpar. (E).

Subsec. (e)(3)(F). Pub. L. 108–224, §10(a)(2)(B)–(D), added subpar. (F).

Subsec. (e)(3)(G). Pub. L. 108–263, §10(a)(2)(B)–(D), added subpar. (G).

Subsec. (e)(3)(H). Pub. L. 108–280, §10(a)(2)(B)–(D), added par. (H).

Subsec. (e)(3)(I). Pub. L. 108–310, §13(a)(2)(B)–(D), added subpar. (I).

2003—Subsec. (b)(5)(B). Pub. L. 108–88, §12(a)(3), substituted "March 1, 2004" for "October 1, 2003".

Subsec. (c)(1). Pub. L. 108–88, §12(a)(1), substituted "March 1, 2004" for "October 1, 2003" in introductory provisions, added subpar. (F), and substituted "Surface Transportation Extension Act of 2003" for "TEA 21 Restoration Act" in concluding provisions.

Subsec. (e)(3). Pub. L. 108–88, §12(a)(2), substituted "March 1, 2004" for "October 1, 2003" in introductory provisions, added subpar. (D), and substituted "Surface Transportation Extension Act of 2003" for "TEA 21 Restoration Act" in concluding provisions.

2000—Subsec. (b)(5), (6). Pub. L. 106–554 redesignated par. (6) as (5) and struck out heading and text of former par. (5). Text read as follows: "For purposes of this section, the amounts which would (but for this paragraph) be required to be appropriated under subparagraphs (A) and (E) of paragraph (1) shall be reduced by—

"(A) 0.6 cent per gallon in the case of taxes imposed on any mixture at least 10 percent of which is alcohol (as defined in section 4081(c)(3)) if any portion of such alcohol is ethanol, and

"(B) 0.67 cent per gallon in the case of gasoline, diesel fuel, or kerosene used in producing a mixture described in subparagraph (A)."

1998—Subsec. (b)(1). Pub. L. 105–178, §9002(c)(1)(A), substituted "2005" for "1999" in introductory provisions.

Subsec. (b)(1)(C) to (F). Pub. L. 105–178, §9002(f)(1), struck out "and tread rubber" after "tires" in subpar. (D), redesignated subpars. (D) to (F) as (C) to (E), respectively, and struck out former subpar. (C) which read as follows: "section 4061 (relating to tax on trucks and truck parts),".

Subsec. (b)(2). Pub. L. 105–178, §9002(c)(1), substituted "2005" for "1999" wherever appearing in heading and text and substituted "2006" for "2000" in text.

Subsec. (b)(4)(D). Pub. L. 105–178, §9005(a)(1), substituted "exceeds—

"(i) 11.5 cents per gallon with respect to taxes imposed before October 1, 2001,

"(ii) 13 cents per gallon with respect to taxes imposed after September 30, 2001, and before October 1, 2003, and

"(iii) 13.5 cents per gallon with respect to taxes imposed after September 30, 2003, and before October 1, 2005," for "exceeds 11.5 cents per gallon,".

Pub. L. 105–178, §9011(b)(2), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: "in the case of fuels used as described in paragraph (4)(D), (5)(B), or (6)(D) of subsection (c), section 4041 or 4081—

"(i) with respect to so much of the rate of tax on gasoline or special motor fuels as exceeds 11.5 cents per gallon, and

"(ii) with respect to so much of the rate of tax on diesel fuel or kerosene as exceeds 17.5 cents per gallon,".

Subsec. (b)(4)(E), (F). Pub. L. 105–178, §9002(c)(1)(A), substituted "2005" for "1999".

Subsec. (b)(6). Pub. L. 105–178, §9004(c), added par. (6).

Subsec. (c)(1). Pub. L. 105–178, §9002(f)(4), as added by Pub. L. 105–206, §9015(a), substituted "the date of the enactment of the TEA 21 Restoration Act" for "the date of enactment of the Transportation Equity Act for the 21st Century" in concluding provisions.

Pub. L. 105–178, §9002(d)(1), substituted "2003" for "1998" in introductory provisions, added subpar. (E), and substituted in concluding provisions "In determining the authorizations under the Acts referred to in the preceding subparagraphs, such Acts shall be applied as in effect on the date of enactment of the Transportation Equity Act for the 21st Century." for "In determining the authorizations under the Acts referred to in the preceding subparagraphs, such Acts shall be applied as in effect on the date of the enactment of this sentence."

Subsec. (c)(2)(A)(i). Pub. L. 105–178, §9002(c)(1), substituted "2006" for "2000" in introductory provisions and "2005" for "1999" in concluding provisions.

Subsec. (c)(2)(A)(i)(II) to (IV). Pub. L. 105–178, §9002(f)(2), inserted "and" at end of subcl. (II),

redesignated subcl. (IV) as (III), and struck out former subcl. (III) which read as follows: "section 6424 (relating to amounts paid in respect of lubricating oil used for certain nontaxable purposes), and".

Subsec. (c)(2)(A)(ii). Pub. L. 105–178, §9002(c)(1)(A), (f)(3), substituted "fuel" for "gasoline, special fuels, and lubricating oil" in two places and "2005" for "1999".

Subsec. (c)(3). Pub. L. 105–178, §9002(c)(3), substituted "Floor stocks refunds" for "2005 floor stocks refunds" in heading.

Pub. L. 105–178, §9002(c)(1), substituted "2005" for "1999" in heading and "2006" for "2000" in text.

Subsec. (c)(4)(A)(i). Pub. L. 105–178, §9002(c)(2)(A), substituted "2005" for "1998".

Subsec. (c)(4)(A)(ii). Pub. L. 105–178, §9005(a)(2), inserted concluding provisions.

Subsec. (c)(5)(A). Pub. L. 105–178, §9002(c)(2)(A), substituted "2005" for "1998".

Subsec. (c)(6). Pub. L. 105–178, §9011(b)(1), struck out heading and text of par. (6) which related to transfers from Highway Trust Fund to National Recreational Trails Trust Fund of revenues received from nonhighway recreational fuel taxes.

Subsec. (c)(7). Pub. L. 105–178, §9004(b)(1), struck out heading and text of par. (7). Prior to amendment, text read as follows: "Notwithstanding any other provision of law, in calculating amounts under section 157(a) of title 23, United States Code, and sections 1013(c), 1015(a), and 1015(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240; 105 Stat. 1914), deposits in the Highway Trust Fund resulting from the amendments made by the Taxpayer Relief Act of 1997 shall not be taken into account."

Subsec. (e)(2). Pub. L. 105–178, §9002(e)(1), substituted "For purposes of the preceding sentence, the term 'mass transit portion' means, for any fuel with respect to which tax was imposed under section 4041 or 4081 and otherwise deposited into the Highway Trust Fund, the amount determined at the rate of—

"(A) except as otherwise provided in this sentence, 2.86 cents per gallon,

"(B) 1.43 cents per gallon in the case of any partially exempt methanol or ethanol fuel (as defined in section 4041(m)) none of the alcohol in which consists of ethanol,

"(C) 1.86 cents per gallon in the case of liquefied natural gas,

"(D) 2.13 cents per gallon in the case of liquefied petroleum gas, and

"(E) 9.71 cents per MCF (determined at standard temperature and pressure) in the case of compressed natural gas." for "For purposes of the preceding sentence, the term 'mass transit portion' means an amount determined at the rate of 2.85 cents for each gallon with respect to which tax was imposed under section 4041 or 4081."

Subsec. (e)(3). Pub. L. 105–225, §7(a), which added second period at the end of par. (3), was repealed by Pub. L. 105–354.

Pub. L. 105–178, §9002(f)(5), as added by Pub. L. 105–206, §9015(a), substituted "the date of the enactment of the TEA 21 Restoration Act" for "the date of enactment of the Transportation Equity Act for the 21st Century" in concluding provisions.

Pub. L. 105–178, §9002(d)(2), substituted "2003" for "1998" in introductory provisions, added subpar. (C), and substituted "as such section and Acts are in effect on the date of enactment of the Transportation Equity Act for the 21st Century." for "as section 5338(a)(1) or (b)(1) and the Intermodal Surface Transportation Efficiency Act of 1991 were in effect on December 18, 1991" in concluding provisions.

Subsec. (e)(4). Pub. L. 105–178, §9004(d), reenacted heading without change and amended text of par. (4) generally. Prior to amendment, text read as follows: "Rules similar to the rules of subsection (d) shall apply to the Mass Transit Account except that subsection (d)(1) shall be applied by substituting '12-month' for '24-month'."

Subsec. (f). Pub. L. 105–178, §9004(a)(1), added subsec. (f).

Subsec. (f)(2). Pub. L. 105–277 amended par. (2) generally. Prior to amendment, par. (2) read as follows: "no interest accruing after September 30, 1998, on any obligation held by such Fund shall be credited to such Fund."

1997—Subsec. (b)(1)(E). Pub. L. 105–34, §1032(e)(13), substituted ", diesel fuel, and kerosene" for "and diesel fuel".

Subsec. (b)(4). Pub. L. 105–34, §901(a), amended heading and text of par. (4) generally. Prior to amendment, text read as follows: "For purposes of paragraphs (1) and (2)—

"(A) there shall not be taken into account the taxes imposed by section 4041(d), and

"(B) there shall be taken into account the taxes imposed by sections 4041 and 4081 only to the extent attributable to the Highway Trust Fund financing rate."

Subsec. (b)(5)(B). Pub. L. 105–34, §1032(e)(14), substituted ", diesel fuel, or kerosene" for "or diesel fuel".

Subsec. (c)(1). Pub. L. 105–130, §9(a)(1)(A), substituted "1998" for "1997" in introductory provisions and, in concluding provisions, substituted "In determining the authorizations under the Acts referred to in the

preceding subparagraphs, such Acts shall be applied as in effect on the date of the enactment of this sentence." for "In determining the authorizations under the Acts referred to in the preceding subparagraphs, such Acts shall be applied as in effect on the date of the enactment of the Intermodal Surface Transportation Efficiency Act of 1991."

Subsec. (c)(2)(A). Pub. L. 105–34, §901(d)(2), in concluding provisions, substituted "by taking into account only the portion of the taxes which are deposited into the Highway Trust Fund" for "by taking into account only the Highway Trust Fund financing rate applicable to any fuel".

Subsec. (c)(2)(A)(ii). Pub. L. 105–34, §1601(f)(2), struck out "(or with respect to qualified diesel-powered highway vehicles purchased before January 1, 1999)" after "October 1, 1999".

Subsec. (c)(4)(A)(i). Pub. L. 105–130, §9(a)(1)(B), substituted "1998" for "1997".

Subsec. (c)(4)(D). Pub. L. 105–34, §901(d)(3), substituted "deposited into the Highway Trust Fund" for "attributable to the Highway Trust Fund financing rate".

Subsec. (c)(5)(A). Pub. L. 105–130, §9(a)(1)(C), substituted "1998" for "1997".

Subsec. (c)(5)(B), (6)(D). Pub. L. 105–34, §901(d)(3), substituted "deposited into the Highway Trust Fund" for "attributable to the Highway Trust Fund financing rate".

Subsec. (c)(6)(E). Pub. L. 105–130, §9(a)(1)(D), substituted "1998" for "1997".

Subsec. (c)(7). Pub. L. 105–34, §901(c), added par. (7).

Subsec. (e)(2). Pub. L. 105–34, §901(b), substituted "2.85 cents" for "2 cents".

Subsec. (e)(3). Pub. L. 105–130, §9(a)(2)(A), substituted "1998" for "1997" in introductory provisions.

Pub. L. 105–130, §9(a)(2)(B), which directed substitution of "the enactment of the last sentence of subsection (c)(1)" for "the enactment of the Intermodal Surface Transportation Efficiency Act of 1991", could not be executed because the words "the enactment of the Intermodal Surface Transportation Efficiency Act of 1991" did not appear subsequent to the amendment by Pub. L. 105–102. See below.

Pub. L. 105–102, in concluding provisions, substituted "section 5338(a)(1) or (b)(1) and the Intermodal Surface Transportation Efficiency Act of 1991 were in effect on December 18, 1991" for "such Acts are in effect on the date of the enactment of the Intermodal Surface Transportation Efficiency Act of 1991."

Subsec. (e)(5)(A). Pub. L. 105–34, §1601(f)(2)(B), struck out "; except that any such transfers to the extent attributable to section 6427(g) shall be borne only by the Highway Account" before period at end.

Subsec. (f). Pub. L. 105–34, §901(d)(1), struck out heading and text of subsec. (f) which consisted of pars. (1) to (4) relating to definition of Highway Trust Fund financing rate.

1994—Subsec. (e)(3)(A). Pub. L. 103–429 substituted "section 5338(a)(1) or (b)(1) of title 49" for "paragraph (1) or (3) of subsection (a), or paragraph (1) or (3) of subsection (b), of section 21 of the Federal Transit Act".

1993—Subsec. (b)(1)(E). Pub. L. 103–66, §13242(d)(34)(A), substituted "gasoline and diesel fuel), and" for "gasoline),".

Subsec. (b)(1)(F), (G). Pub. L. 103–66, §13242(d)(34)(B), (C), redesignated subpar. (G) as (F) and struck out former subpar. (F) which read as follows: "section 4091 (relating to tax on diesel fuel), and".

Subsec. (b)(4). Pub. L. 103–66, §13242(d)(35)(B), which directed amendment of subsec. (b)(4)(C) by substituting "4081" for "4091", could not be executed because subsec. (b)(4) does not contain a subpar. (C).

Subsec. (b)(4)(B). Pub. L. 103–66, §13242(b)(35)(A), substituted "and 4081" for ", 4081, and 4091" and "rate" for "rates under such sections".

Subsec. (b)(5). Pub. L. 103–66, §13242(d)(36), substituted "and (E)" for ", (E), and (F)" in introductory provisions.

Subsec. (c)(4)(D). Pub. L. 103–66, §13242(d)(38), substituted "rate" for "rates under such sections".

Subsec. (c)(5)(B). Pub. L. 103–66, §13242(d)(39), substituted "rate" for "rate under such section".

Subsec. (c)(6)(D). Pub. L. 103–66, §13242(d)(37), substituted "and 4081" for ", 4081, and 4091" in introductory provisions.

Subsec. (e)(2). Pub. L. 103–66, §13244(a), substituted "2 cents" for "1.5 cents".

Pub. L. 103–66, §13242(d)(40), substituted "and 4081" for ", 4081, and 4091" and "or 4081" for ", 4081, or 4091".

Subsec. (f). Pub. L. 103–66, §13242(d)(41), added subsec. (f).

1991—Subsec. (b)(1), (2). Pub. L. 102–240, §8002(d)(1), substituted "1999" for "1995" and "2000" for "1996" wherever appearing.

Subsec. (c)(1). Pub. L. 102–240, §8002(e), substituted "1997" for "1993" in introductory provisions, added subpar. (D) and concluding provisions, and struck out former subpar. (D) which read as follows: "hereafter authorized by a law which does not authorize the expenditure out of the Highway Trust Fund of any amount for a general purpose not covered by subparagraph (A), (B), or (C) as in effect on the date of the enactment of the Surface Transportation and Uniform Relocation Assistance Act of 1987."

Subsec. (c)(2)(A), (3). Pub. L. 102–240, §8002(d)(1), substituted "1999" for "1995" and "2000" for "1996" wherever appearing.

Subsec. (c)(4)(A)(i), (5)(A). Pub. L. 102–240, §8002(d)(2)(A), substituted "1997" for "1995".

Subsec. (c)(6). Pub. L. 102–240, §8003(b), added par. (6).

Subsec. (e)(3). Pub. L. 102–240, §8002(e)(1), (f), inserted "or capital-related" after "capital" the first time appearing and substituted "1997" for "1993" and "in accordance with—" and subpars. (A) and (B) and concluding provisions for "in accordance with section 21(a)(2) of the Urban Mass Transportation Act of 1964."

1990—Subsec. (b)(1), (2). Pub. L. 101–508, §11211(g)(1), substituted "1995" for "1993" and "1996" for "1994" wherever appearing.

Subsec. (b)(4)(B). Pub. L. 101–508, §11211(a)(5)(D), inserted reference to section 4041.

Subsec. (b)(5). Pub. L. 101–508, §11211(a)(5)(F), added par. (5).

Subsec. (c)(2)(A). Pub. L. 101–508, §11211(g)(1), substituted "1995" for "1993" and "1996" for "1994" wherever appearing.

Pub. L. 101–508, §11211(a)(5)(E), inserted at end "The amounts payable from the Highway Trust Fund under this subparagraph or paragraph (3) shall be determined by taking into account only the Highway Trust Fund financing rate applicable to any fuel."

Subsec. (c)(3), (4)(A)(i). Pub. L. 101–508, §11211(g)(1), substituted "1995" for "1993" and "1996" for "1994" wherever appearing.

Subsec. (c)(4)(D). Pub. L. 101–508, §11211(b)(6)(H), struck out "(to the extent attributable to the Highway Trust Fund financing rate)" after "section 4081" and inserted before period at end ", but only to the extent such taxes are attributable to the Highway Trust Fund financing rates under such sections".

Subsec. (c)(5). Pub. L. 101–508, §11211(i)(1), added par. (5).

Subsec. (e)(2). Pub. L. 101–508, §11211(h)(1), substituted "1.5 cents" for "1 cent".

1989—Subsec. (b)(4)(A). Pub. L. 101–239 substituted "by section 4041(d)" for "by sections 4041(d)".

1988—Subsec. (c)(4)(A)(ii)(I), (II). Pub. L. 100–448, §6(a)(1)(A), (3), substituted "$60,000,000 for each of fiscal years 1989 and 1990 and $70,000,000 for each fiscal year thereafter." for "$60,000,000" for Fiscal Year 1987 only and $45,000,000 for each Fiscal Year thereafter;."

Subsec. (c)(4)(E). Pub. L. 100–448, §6(a)(1)(B), struck out "Further, a portion of the payments made by the Secretary from Fiscal Year 1987 motorfuel excise tax receipts shall be used to increase the funding for boating safety programs during Fiscal Year 1987 only."

1987—Subsec. (b). Pub. L. 100–17, §503(a), substituted "1993" for "1988" wherever appearing, and substituted "1994" for "1989" in par. (2).

Subsec. (b)(1)(F). Pub. L. 100–203, §10502(d)(13), added subpar. (F) and struck out former subpar. (F) which read as follows: "section 4091 (relating to tax on lubricating oil), and".

Subsec. (b)(4). Pub. L. 100–203, §10502(d)(14), amended par. (4) generally. Prior to amendment, par. (4) read as follows: "For purposes of paragraphs (1) and (2), there shall not be taken into account the taxes imposed by section 4041(d) and so much of the taxes imposed by section 4081 as is attributable to the Leaking Underground Storage Tank Trust Fund financing rate."

Subsec. (c). Pub. L. 100–17, §503(a), substituted "1993" for "1988" wherever appearing and "1994" for "1989" wherever appearing.

Subsec. (c)(1)(C), (D). Pub. L. 100–17, §503(b), added subpars. (C) and (D) and struck out former subpar. (C) which read as follows: "hereafter authorized by a law which does not authorize the expenditure out of the Highway Trust Fund of any amount for a general purpose not covered by subparagraph (A) or (B) as in effect on December 31, 1982."

Subsec. (e)(2). Pub. L. 100–203, §10502(d)(15), substituted "sections 4041, 4081, and 4091" for "sections 4041 and 4081" and "section 4041, 4081, or 4091" for "section 4041 or 4081".

Subsec. (e)(3). Pub. L. 100–17, §503(a)(1), substituted "1993" for "1988".

Subsec. (e)(5). Pub. L. 100–17, §504, added par. (5).

1986—Subsec. (b)(4). Pub. L. 99–499, §521(b)(1)(A), added par. (4).

Subsec. (c)(4)(A)(ii). Pub. L. 99–640, §7(a)(1), substituted "$60,000,000" for Fiscal Year 1987 only and $45,000,000 for each Fiscal Year thereafter;" for "$45,000,000" in two places.

Subsec. (c)(4)(D). Pub. L. 99–499, §521(b)(1)(B), inserted "(to the extent attributable to the Highway Trust Fund financing rate)" after "section 4081".

Subsec. (c)(4)(E). Pub. L. 99–640, §7(a)(2), added subpar. (E).

1984—Subsec. (c)(2)(A)(ii). Pub. L. 98–369, §474(r)(43), substituted "section 34" for "section 39".

Pub. L. 98–369, §911(d)(1)(B), inserted "(or with respect to qualified diesel-powered highway vehicles purchased before January 1, 1988)".

Subsec. (c)(4)(A). Pub. L. 98–369, §1016(b)(1)(C), substituted "Boat Safety Account" for "National Recreational Boating Safety and Facilities Improvement Fund" in heading.

Subsec. (c)(4)(A)(i). Pub. L. 98–369, §1016(b)(1)(A), substituted "the Boat Safety Account in the Aquatic Resources Trust Fund" for "the National Recreational Boating Safety and Facilities Improvement Fund established by section 202 of the Recreational Boating Fund Act".

Subsec. (c)(4)(A)(ii)(II). Pub. L. 98–369, §1016(b)(1)(B), substituted "the amount in the Boat Safety Account" for "the amount in the National Recreational Boating and Facilities Improvement Fund".

Subsec. (c)(4)(B) to (D). Pub. L. 98–369, §1016(b)(2), added subpars. (B) and (C), redesignated former subpar. (C) as (D), and struck out former subpar. (B) which provided for the transfer of excess funds to the Land and Water Conservation Fund.

Subsec. (e)(2). Pub. L. 98–369, §911(d)(1)(A), amended par. (2) generally, substituting "the mass transit portion" for "one-ninth", and inserting provision defining mass transit portion as an amount determined at the rate of 1 cent for each gallon with respect to which tax was imposed under section 4041 or 4081.

CHANGE OF NAME

Committee on Public Works and Transportation of House of Representatives treated as referring to Committee on Transportation and Infrastructure of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

EFFECTIVE AND TERMINATION DATES OF 2012 AMENDMENT

Pub. L. 112–141, div. D, title I, §40101(d), July 6, 2012, 126 Stat. 844, provided that: "The amendments made by this section [amending this section and sections 9504 and 9508 of this title] shall take effect on July 1, 2012."

Amendment by section 40102(e)(1), (2)(A) of Pub. L. 112–141 effective July 1, 2012, see section 40102(f) of Pub. L. 112–141, set out as a note under section 460l–11 of Title 16, Conservation.

Amendment by Pub. L. 112–140 to cease to be effective on July 6, 2012, with text as amended by Pub. L. 112–140 to revert back to read as it did on the day before June 29, 2012, and amendments by Pub. L. 112–141 to be executed as if Pub. L. 112–140 had not been enacted, see section 1(c) of Pub. L. 112–140, set out as a note under section 101 of Title 23, Highways.

Pub. L. 112–140, title IV, §401(d), June 29, 2012, 126 Stat. 402, provided that: "The amendments made by this section [amending this section and sections 9504 and 9508 of this title] shall take effect on July 1, 2012."

Amendment by section 402(d)(1), (2)(A) of Pub. L. 112–140 effective July 1, 2012, see section 402(f)(1) of Pub. L. 112–140, set out as a note under section 460l–11 of Title 16, Conservation.

Pub. L. 112–102, title IV, §401(d), Mar. 30, 2012, 126 Stat. 281, provided that: "The amendments made by this section [amending this section and sections 9504 and 9508 of this title] shall take effect on April 1, 2012."

Amendment by section 402(e)(1), (2)(A) of Pub. L. 112–102 effective Apr. 1, 2012, see section 402(f) of Pub. L. 112–102, set out as a note under section 460l–11 of Title 16, Conservation.

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112–30, title I, §141(d), Sept. 16, 2011, 125 Stat. 355, provided that: "The amendments made by this section [amending this section and sections 9504 and 9508 of this title] shall take effect on October 1, 2011."

Amendment by section 142(e)(1), (2)(A) of Pub. L. 112–30 effective Oct. 1, 2011, see section 142(f) of Pub. L. 112–30, set out as a note under section 460l–11 of Title 16, Conservation.

Pub. L. 112–5, §401(c), Mar. 4, 2011, 125 Stat. 22, provided that: "The amendments made by this section [amending this section and section 9504 of this title] shall take effect on March 4, 2011."

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–322, title II, §2401(c), Dec. 22, 2010, 124 Stat. 3531, provided that: "The amendments made by this section [amending this section and section 9504 of this title] shall take effect on December 31, 2010."

Pub. L. 111–147, title IV, §441(c), Mar. 18, 2010, 124 Stat. 93, provided that: "The amendments made by this section [amending this section] shall take effect on the date of the enactment of this title [Mar. 18, 2010]."

Pub. L. 111–147, title IV, §442(c), Mar. 18, 2010, 124 Stat. 94, provided that: "The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Mar. 18, 2010]."

Pub. L. 111–147, title IV, §443(b), Mar. 18, 2010, 124 Stat. 94, provided that: "The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Mar. 18, 2010]."

Amendment by section 444(a), (b)(2)–(4) of Pub. L. 111–147 applicable to transfers relating to amounts paid and credits allowed after Mar. 18, 2010, see section 444(c) of Pub. L. 111–147, set out as a note under section 9502 of this title.

Pub. L. 111–147, title IV, §445(c), Mar. 18, 2010, 124 Stat. 95, provided that: "The amendments made by this section [amending this section and section 9504 of this title] shall take effect on September 30, 2009."

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–318, §1(c), Sept. 15, 2008, 122 Stat. 3532, provided that: "The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Sept. 15, 2008]."

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–432 applicable to kerosene sold after Sept. 30, 2005, with special rule for pending claims, see section 420(c) of Pub. L. 109–432, set out as a note under section 6427 of this title.

EFFECTIVE DATE OF 2005 AMENDMENTS

Pub. L. 109–59, title XI, §11102(c), Aug. 10, 2005, 119 Stat. 1945, provided that: "The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Aug. 10, 2005]."

Amendment by section 11115(a) of Pub. L. 109–59 effective Oct. 1, 2005, see section 11115(d) of Pub. L. 109–59, set out as a note under section 551 of Title 6, Domestic Security.

Amendment by section 11161(c)(1), (2)(C) of Pub. L. 109–59 applicable to fuels or liquids removed, entered, or sold after Sept. 30, 2005, see section 11161(e) of Pub. L. 109–59, set out as a note under section 4041 of this title.

Amendment by section 11167(b) of Pub. L. 109–59 applicable to any transfer, sale, or holding out for sale or resale occurring after Aug. 10, 2005, see section 11167(d) of Pub. L. 109–59, set out as an Effective Date note under section 6720A of this title.

Pub. L. 109–42, §7(e), July 30, 2005, 119 Stat. 438, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 9504 of this title] shall take effect on the date of the enactment of this Act [July 30, 2005].

"(2) SUBSEQUENT REPEAL.—The amendments made by subsection (d) [amending this section and section 9504 of this title] shall take effect on the date of the enactment of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users [Aug. 10, 2005] and shall be executed immediately before the amendments made by such Act."

Pub. L. 109–40, §9(c), July 28, 2005, 119 Stat. 422, provided that: "The amendments made by this section [amending this section and section 9504 of this title] shall take effect on the date of the enactment of this Act [July 28, 2005]."

Pub. L. 109–37, §9(c), July 22, 2005, 119 Stat. 406, provided that: "The amendments made by this section [amending this section and section 9504 of this title] shall take effect on the date of the enactment of this Act [July 22, 2005]."

Pub. L. 109–35, §9(c), July 20, 2005, 119 Stat. 391, provided that: "The amendments made by this section [amending this section and section 9504 of this title] shall take effect on the date of the enactment of this Act [July 20, 2005]."

Pub. L. 109–20, §9(c), July 1, 2005, 119 Stat. 358, provided that: "The amendments made by this section [amending this section and section 9504 of this title] shall take effect on the date of the enactment of this Act [July 1, 2005]."

EFFECTIVE DATE OF 2004 AMENDMENTS

Amendment by section 301(c)(11)–(13) of Pub. L. 108–357 applicable to fuel sold or used after Dec. 31, 2004, except as otherwise provided, see section 301(d)(1) of Pub. L. 108–357, set out as a note under section 40 of this title.

Amendment by section 301(c)(12) of Pub. L. 108–357 applicable to fuel sold or used after Sept. 30, 2004, see section 301(d)(4) of Pub. L. 108–357, set out as a note under section 40 of this title.

Pub. L. 108–357, title VIII, §868(c), Oct. 22, 2004, 118 Stat. 1622, provided that: "The amendments made by this section [amending this section] shall apply to penalties assessed on or after the date of the enactment of this Act [Oct. 22, 2004]."

Pub. L. 108–310, §13(d), Sept. 30, 2004, 118 Stat. 1164, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 9504 of this title and repealing provisions set out as a note under this section] shall take effect on the date of the enactment of this Act [Sept. 30, 2004].

"(2) TRANSFERS TO HIGHWAY TRUST FUND.—The amendments made by subsection (c) [amending this section] shall apply to taxes imposed after September 30, 2003."

Pub. L. 108–280, §10(c), July 30, 2004, 118 Stat. 888, provided that: "The amendments made by this section [amending this section and section 9504 of this title] shall take effect on the date of the enactment of this Act [July 30, 2004]."

Pub. L. 108–263, §10(c), June 30, 2004, 118 Stat. 710, provided that: "The amendments made by this section [amending this section and section 9504 of this title] shall take effect on the date of the enactment of this Act [June 30, 2004]."

Pub. L. 108–224, §10(c), Apr. 30, 2004, 118 Stat. 639, provided that: "The amendments made by this section [amending this section and section 9504 of this title] shall take effect on the date of the enactment of this Act [Apr. 30, 2004]."

Pub. L. 108–202, §12(c), Feb. 29, 2004, 118 Stat. 492, provided that: "The amendments made by this section [amending this section and section 9504 of this title] shall take effect on the date of the enactment of this Act [Feb. 29, 2004]."

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–88, §12(c), Sept. 30, 2003, 117 Stat. 1129, provided that: "The amendments made by this section [amending this section and section 9504 of this title] shall take effect on the date of the enactment of this Act [Sept. 30, 2003]."

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(7) [title III, §318(e)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–646, provided that: "The amendment made by paragraph (1) [amending this section] shall apply with respect to taxes received in the Treasury after the date of the enactment of this Act [Dec. 21, 2000]."

EFFECTIVE DATE OF 1998 AMENDMENTS

Pub. L. 105–354, §2(c), Nov. 3, 1998, 112 Stat. 3244, provided that the amendment made by section 2(c)(2) is effective Aug. 12, 1998.

Pub. L. 105–277, div. J, title IV, §4006(b)(2), Oct. 21, 1998, 112 Stat. 2681–912, provided that: "The amendment made by paragraph (1) [amending this section] shall take effect on October 1, 1998."

Title IX of Pub. L. 105–206 effective simultaneously with enactment of Pub. L. 105–178 and to be treated as included in Pub. L. 105–178 at time of enactment, and provisions of Pub. L. 105–178, as in effect on day before July 22, 1998, that are amended by title IX of Pub. L. 105–206 to be treated as not enacted, see section 9016 of Pub. L. 105–206, set out as a note under section 101 of Title 23, Highways.

Pub. L. 105–178, title IX, §9002(e)(2), June 9, 1998, 112 Stat. 501, provided that: "The amendment made by paragraph (1) [amending this section] shall take effect as if included in the amendment made by section 901(b) of the Taxpayer Relief Act of 1997 [Pub. L. 105–34]."

Pub. L. 105–178, title IX, §9004(a)(2), June 9, 1998, 112 Stat. 504, provided that: "The amendment made by paragraph (1) [amending this section] shall take effect on October 1, 1998."

Pub. L. 105–178, title IX, §9004(b)(2), June 9, 1998, 112 Stat. 504, provided that: "The amendment made by paragraph (1) [amending this section] shall take effect as if included in the amendments made by section 901 of the Taxpayer Relief Act of 1997 [Pub. L. 105–34]."

Pub. L. 105–178, title IX, §9005(e), June 9, 1998, 112 Stat. 506, provided that: "The amendments made by this section [amending this section and section 9504 of this title] shall take effect on the date of enactment of this Act [June 9, 1998]."

EFFECTIVE DATE OF 1997 AMENDMENTS

Pub. L. 105–130, §9(d), Dec. 1, 1997, 111 Stat. 2561, provided that: "The amendments made by this section [amending this section and sections 9504 and 9511 of this title] shall take effect on October 1, 1997."

Pub. L. 105–34, title IX, §901(f), Aug. 5, 1997, 111 Stat. 872, provided that: "The amendments made by this section [amending this section] shall apply to taxes received in the Treasury after September 30, 1997."

Amendment by section 1032(e)(13), (14) of Pub. L. 105–34 effective July 1, 1998, see section 1032(f)(1) of Pub. L. 105–34, set out as a note under section 4041 of this title.

Amendment by section 1601(f)(2) of Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 23 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13242(d)(34) to (41) of Pub. L. 103–66 effective Jan. 1, 1994, see section 13242(e) of Pub. L. 103–66, set out as a note under section 4041 of this title.

Pub. L. 103–66, title XIII, §13244(b), Aug. 10, 1993, 107 Stat. 529, provided that: "The amendment made

by this section [amending this section] shall apply to amounts attributable to taxes imposed on or after October 1, 1995."

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11211(a)(5)(D)–(F) of Pub. L. 101–508 applicable to gasoline removed (as defined in former section 4082 of this title) after Nov. 30, 1990, see section 11211(a)(6) of Pub. L. 101–508, set out as a note under section 4041 of this title.

Amendment by section 11211(b)(6)(H) of Pub. L. 101–508 effective Dec. 1, 1990, see section 11211(b)(7) of Pub. L. 101–508, set out as a note under section 4041 of this title.

Pub. L. 101–508, title XI, §11211(h)(2), Nov. 5, 1990, 104 Stat. 1388–427, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to amounts attributable to taxes imposed on or after December 1, 1990."

Pub. L. 101–508, title XI, §11211(i)(4), Nov. 5, 1990, 104 Stat. 1388–428, provided that: "The amendments made by this subsection [amending this section and section 9504 of this title] shall take effect on December 1, 1990."

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective as if included in the provision of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 7823 of Pub. L. 101–239, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–448 effective Oct. 1, 1988, see section 6(e) of Pub. L. 100–448, set out as a note under section 777 of Title 16, Conservation.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to sales after Mar. 31, 1988, see section 10502(e) of Pub. L. 100–203, set out as a note under section 40 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–499 effective Jan. 1, 1987, see section 521(e) of Pub. L. 99–499, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(43) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 911(d)(1) of Pub. L. 98–369 effective Aug. 1, 1984, see section 911(e) of Pub. L. 98–369, set out as a note under section 6427 of this title.

Amendment by section 1016(b) of Pub. L. 98–369 effective Oct. 1, 1984, see section 1016(e) of Pub. L. 98–369, set out as an Effective Date note under section 9504 of this title.

EFFECTIVE DATE; SAVINGS PROVISION

Pub. L. 97–424, title V, §531(e), Jan. 6, 1983, 96 Stat. 2192, provided that:

"(1) IN GENERAL.—The amendments made by this section [enacting this section, amending section 460l–11 of Title 16, Conservation, and amending provisions set out as a note under section 120 of Title 23, Highways] shall take effect on January 1, 1983.

"(2) NEW HIGHWAY TRUST FUND TREATED AS CONTINUATION OF OLD.—The Highway Trust Fund established by the amendments made by this section shall be treated for all purposes of law as the continuation of the Highway Trust Fund established by section 209 of the Highway Revenue Act of 1956 [section 209 of act June 29, 1956, ch. 462, title II, 70 Stat. 397, set out as a note under section 120 of Title 23, Highways]. Any reference in any law to the Highway Trust Fund established by such section 209 shall be deemed to include (wherever appropriate) a reference to the Highway Trust Fund established by the amendments made by this section."

CALCULATION OF ESTIMATED TRUST FUND CONTRIBUTIONS

Pub. L. 108–310, §12(g), Sept. 30, 2004, 118 Stat. 1163, provided that: "The amendment made by section 13(c) of this Act [amending this section] shall have no effect on the estimates of tax payments attributable to highway users in each State paid into the Highway Trust Fund for purposes of apportioning funds to States in fiscal year 2004 until enactment of a multiyear law reauthorizing surface transportation programs."

SPECIAL RULE FOR CORE HIGHWAY PROGRAMS

Pub. L. 108–280, §10(a)(4), July 30, 2004, 118 Stat. 887, which provided for the temporary application of subsecs. (b)(5) and (c)(1) of this section relating to core highway programs, was repealed by Pub. L. 108–310, §13(a)(4), Sept. 30, 2004, 118 Stat. 1163.

REPORT ON NONHIGHWAY RECREATIONAL FUEL TAXES

Pub. L. 102–240, title VIII, §8003(d), Dec. 18, 1991, 105 Stat. 2206, provided that: "The Secretary of the Treasury shall, within a reasonable period after the close of each of fiscal years 1992 through 1996, submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate specifying his estimate of the amount of nonhighway recreational fuel taxes (as defined in [former] section 9503(c)(6) of the Internal Revenue Code of 1986, as added by this Act) received in the Treasury during such fiscal year."

§9504. Sport Fish Restoration and Boating Trust Fund

(a) Creation of Trust Fund

There is hereby established in the Treasury of the United States a trust fund to be known as the "Sport Fish Restoration and Boating Trust Fund". Such Trust Fund shall consist of such amounts as may be appropriated, credited, or paid to it as provided in this section, section 9503(c)(3), section 9503(c)(4), or section 9602(b).

(b) Sport Fish Restoration and Boating Trust Fund

(1) Transfer of certain taxes to Trust Fund

There is hereby appropriated to the Sport Fish Restoration and Boating Trust Fund amounts equivalent to the following amounts received in the Treasury on or after October 1, 1984—

(A) the taxes imposed by section 4161(a) (relating to sport fishing equipment), and

(B) the import duties imposed on fishing tackle under heading 9507 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202) and on yachts and pleasure craft under chapter 89 of the Harmonized Tariff Schedule of the United States.

(2) Expenditures from Trust Fund

Amounts in the Sport Fish Restoration and Boating Trust Fund shall be available, as provided by appropriation Acts, for making expenditures—

(A) to carry out the purposes of the Dingell-Johnson Sport Fish Restoration Act (as in effect on the date of the enactment of the Highway and Transportation Funding Act of 2014),

(B) to carry out the purposes of section 7404(d) of the Transportation Equity Act for the 21st Century (as in effect on the date of the enactment of the Highway and Transportation Funding Act of 2014), and

(C) to carry out the purposes of the Coastal Wetlands Planning, Protection and Restoration Act (as in effect on the date of the enactment of the Highway and Transportation Funding Act of 2014).

Amounts transferred to such account under section 9503(c)(4) may be used only for making expenditures described in subparagraph (C) of this paragraph.

(c) Expenditures from Boat Safety Account

Amounts remaining in the Boat Safety Account on October 1, 2005, and amounts thereafter credited to the Account under section 9602(b), shall be available, without further appropriation, for making expenditures before October 1, 2010, to carry out the purposes of section 15 of the Dingell-Johnson Sport Fish Restoration Act (as in effect on the date of the enactment of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users). For purposes of section 9602, the Boat Safety Account shall be treated as a Trust Fund established by this subchapter.

(d) Limitation on transfers to Trust Fund

(1) In general

Except as provided in paragraph (2), no amount may be appropriated or paid to the Sport Fish Restoration and Boating Trust Fund on and after the date of any expenditure from such Trust Fund which is not permitted by this section. The determination of whether an expenditure is so permitted shall be made without regard to—

(A) any provision of law which is not contained or referenced in this title or in a revenue Act, and

(B) whether such provision of law is a subsequently enacted provision or directly or indirectly seeks to waive the application of this subsection.

(2) Exception for prior obligations

Paragraph (1) shall not apply to any expenditure to liquidate any contract entered into (or for any amount otherwise obligated) before June 1, 2015, in accordance with the provisions of this section.

(e) Cross reference

For provision transferring motorboat fuels taxes to Sport Fish Restoration and Boating Trust Fund, see section 9503(c)(3).

(Added Pub. L. 98–369, div. A, title X, §1016(a), July 18, 1984, 98 Stat. 1019; amended Pub. L. 100–418, title I, §1214(p)(2), Aug. 23, 1988, 102 Stat. 1159; Pub. L. 100–448, §6(a)(2), (c)(3), Sept. 28, 1988, 102 Stat. 1839, 1841; Pub. L. 101–508, title XI, §11211(i)(2), (3), Nov. 5, 1990, 104 Stat. 1388–428; Pub. L. 102–240, title VIII, §8002(d)(2)(C), (i), Dec. 18, 1991, 105 Stat. 2204, 2205; Pub. L. 105–130, §9(b), Dec. 1, 1997, 111 Stat. 2561; Pub. L. 105–178, title IX, §9005(b)–(d), (f), June 9, 1998, 112 Stat. 505; Pub. L. 105–206, title IX, §9015(b), July 22, 1998, 112 Stat. 867; Pub. L. 106–408, title I, §126, Nov. 1, 2000, 114 Stat. 1775; Pub. L. 108–88, §12(b), Sept. 30, 2003, 117 Stat. 1129; Pub. L. 108–202, §12(b), Feb. 29, 2004, 118 Stat. 491; Pub. L. 108–224, §10(b), Apr. 30, 2004, 118 Stat. 639; Pub. L. 108–263, §10(b), June 30, 2004, 118 Stat. 710; Pub. L. 108–280, §10(b), July 30, 2004, 118 Stat. 888; Pub. L. 108–310, §13(b), Sept. 30, 2004, 118 Stat. 1163; Pub. L. 109–14, §9(b), May 31, 2005, 119 Stat. 335; Pub. L. 109–20, §9(b), July 1, 2005, 119 Stat. 357; Pub. L. 109–35, §9(b), July 20, 2005, 119 Stat. 391; Pub. L. 109–37, §9(b), July 22, 2005, 119 Stat. 406; Pub. L. 109–40, §9(b), July 28, 2005, 119 Stat. 422; Pub. L. 109–42, §7(b), (d)(2), (3), July 30, 2005, 119 Stat. 437, 438; Pub. L. 109–59, title XI, §§11101(d)(2), 11115(b)(1)–(2)(D), (c), 11151(c), (e)(1), Aug. 10, 2005, 119 Stat. 1945, 1949, 1950, 1968, 1969; Pub. L. 109–74, title III, §301(a), Sept. 29, 2005, 119 Stat. 2032; Pub. L. 109–304, §16(c)(2), Oct. 6, 2006, 120 Stat. 1706; Pub. L. 110–181, div. C, title XXXV, §3529(c)(1), Jan. 28, 2008, 122 Stat. 603; Pub. L. 111–68, div. B, §161(a), Oct. 1, 2009, 123 Stat. 2052; Pub. L. 111–88, div. B, §103, Oct. 30, 2009, 123 Stat. 2972; Pub. L. 111–147, title IV, §§444(b)(5)–(7), 445(b), Mar. 18, 2010, 124 Stat. 94, 95; Pub. L. 111–322, title II, §2401(b), Dec. 22, 2010, 124 Stat. 3531; Pub. L. 112–5, title IV, §401(b), Mar. 4, 2011, 125 Stat. 22; Pub. L. 112–30, title I, §141(b), Sept. 16, 2011, 125 Stat. 355; Pub. L. 112–102, title IV, §401(b), Mar. 30, 2012, 126 Stat. 281; Pub. L. 112–140, title IV, §401(b), June 29, 2012, 126 Stat. 402; Pub. L. 112–141, div. D, title I, §40101(b), July 6, 2012, 126 Stat. 844; Pub. L. 113–159, title II, §2001(b), Aug. 8, 2014, 128 Stat. 1848.)

REFERENCES IN TEXT

The Harmonized Tariff Schedule of the United States, referred to in subsec. (b)(1)(B), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of Title 19, Customs Duties.

The Dingell-Johnson Sport Fish Restoration Act, referred to in subsecs. (b)(2)(A) and (c), is act Aug. 9, 1950, ch. 658, 64 Stat. 430, also known as the Federal Aid in Fish Restoration Act and the Fish Restoration and Management Projects Act, which is classified generally to chapter 10B (§777 et seq.) of Title 16, Conservation. Section 15 of the Act is classified to section 777n of Title 16. For complete classification of this Act to the Code, see Short Title note set out under section 777 of Title 16 and Tables.

The date of the enactment of the Highway and Transportation Funding Act of 2014, referred to in subsec.

(b)(2)(A) to (C), is the date of enactment of Pub. L. 113–159, which was approved Aug. 8, 2014.

Section 7404(d) of the Transportation Equity Act for the 21st Century, referred to in subsec. (b)(2)(B), is classified to section 777g–1(d) of Title 16, Conservation.

The Coastal Wetlands Planning, Protection and Restoration Act, referred to in subsec. (b)(2)(C), is title III of Pub. L. 101–646, Nov. 29, 1990, 104 Stat. 4778, which is classified generally to chapter 59A (§3951 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 3951 of Title 16 and Tables.

The date of the enactment of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, referred to in subsec. (c), is the date of enactment of Pub. L. 109–59, which was approved Aug. 10, 2005.

AMENDMENTS

2014—Subsec. (b)(2)(A) to (C). Pub. L. 113–159, §2001(b)(1), substituted "Highway and Transportation Funding Act of 2014" for "MAP–21".

Subsec. (d)(2). Pub. L. 113–159, §2001(b)(2), substituted "June 1, 2015" for "October 1, 2014".

2012—Subsec. (b)(2)(A) to (C). Pub. L. 112–141, §40101(b)(1), substituted "MAP–21" for "Surface Transportation Extension Act of 2012".

Pub. L. 112–140, §§1(c), 401(b)(1), temporarily substituted "Temporary Surface Transportation Extension Act of 2012" for "Surface Transportation Extension Act of 2012". See Effective and Termination Dates of 2012 Amendment note below.

Pub. L. 112–102, §401(b)(1), substituted "Surface Transportation Extension Act of 2012" for "Surface Transportation Extension Act of 2011, Part II".

Subsec. (d)(2). Pub. L. 112–141, §40101(b)(2), substituted "October 1, 2014" for "July 1, 2012".

Pub. L. 112–140, §§1(c), 401(b)(2), temporarily substituted "July 7, 2012" for "July 1, 2012". See Effective and Termination Dates of 2012 Amendment note below.

Pub. L. 112–102, §401(b)(2), substituted "July 1, 2012" for "April 1, 2012".

2011—Subsec. (b)(2)(A) to (C). Pub. L. 112–30, §141(b)(1), substituted "Surface Transportation Extension Act of 2011, Part II" for "Surface Transportation Extension Act of 2011".

Pub. L. 112–5, §401(b)(1), substituted "Surface Transportation Extension Act of 2011" for "Surface Transportation Extension Act of 2010, Part II".

Subsec. (d)(2). Pub. L. 112–30, §141(b)(2), substituted "April 1, 2012" for "October 1, 2011".

Pub. L. 112–5, §401(b)(1), substituted "October 1, 2011" for "March 5, 2011".

2010—Subsec. (a). Pub. L. 111–147, §444(b)(5), substituted "section 9503(c)(3), section 9503(c)(4)" for "section 9503(c)(4), section 9503(c)(5)".

Subsec. (b)(2). Pub. L. 111–147, §444(b)(6), substituted "section 9503(c)(4)" for "section 9503(c)(5)" in concluding provisions.

Subsec. (b)(2)(A) to (C). Pub. L. 111–322, §2401(b)(1), substituted "Surface Transportation Extension Act of 2010, Part II" for "Surface Transportation Extension Act of 2010".

Pub. L. 111–147, §445(b)(1), substituted "(as in effect on the date of the enactment of the Surface Transportation Extension Act of 2010)" for "(as in effect on the date of the enactment of the last amendment to the first Continuing Appropriations Resolution for Fiscal Year 2010)".

Subsec. (d)(2). Pub. L. 111–322, §2401(b)(2), substituted "March 5, 2011" for "January 1, 2011".

Pub. L. 111–147, §445(b)(2), substituted "January 1, 2011" for "October 1, 2009".

Subsec. (e). Pub. L. 111–147, §444(b)(7), which directed amendment of subsec. (e) "by striking 'section 9503(c)(4)' and inserting section '9503(c)(3)' ", was executed by striking "section 9503(c)(4)" and inserting "section 9503(c)(3)" to reflect the probable intent of Congress.

2009—Subsec. (b)(2)(A) to (C). Pub. L. 111–88 inserted "the last amendment to" after "on the date of the enactment of".

Pub. L. 111–68 substituted "(as in effect on the date of the enactment of the first Continuing Appropriations Resolution for Fiscal Year 2010)" for "(as in effect on the date of the enactment of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users)".

2008—Subsec. (c). Pub. L. 110–181 repealed Pub. L. 109–304, §16(c)(2). See 2006 Amendment note below.

2006—Subsec. (c). Pub. L. 109–304, §16(c)(2), which directed substitution of "section 13107" for "section 13106" and could not be executed, was repealed by Pub. L. 110–181. See Construction of 2006 Amendment note below.

2005—Pub. L. 109–59, §11115(b)(2)(D), substituted "Sport Fish Restoration and Boating" for "Aquatic Resources" in section catchline.

Subsec. (a). Pub. L. 109–59, §11115(b)(1), reenacted heading without change and amended text of subsec. (a) generally. Prior to amendment, subsec. (a) established in the Treasury of the United States the Aquatic Resources Trust Fund consisting of the Sport Fish Restoration and Boat Safety accounts.

Subsec. (b). Pub. L. 109–59, §11115(b)(2)(A)(i), substituted "and Boating Trust Fund" for "Account" in heading.

Subsec. (b)(1). Pub. L. 109–59, §11115(b)(2)(A)(ii), (iii), substituted "Trust Fund" for "Account" in heading and "and Boating Trust Fund" for "Account" in introductory provisions.

Subsec. (b)(2). Pub. L. 109–59, §11151(c), substituted "subparagraph (C)" for "subparagraph (B)" in concluding provisions.

Pub. L. 109–59, §11115(b)(2)(A)(iii), substituted "Trust Fund" for "Account" in heading.

Pub. L. 109–59, §11115(b)(2)(A)(ii), substituted "and Boating Trust Fund" for "Account" in introductory provisions.

Pub. L. 109–42, §7(b)(1), (d)(2), (e), temporarily inserted at end "Subparagraphs (A), (B), and (C) shall each be applied by substituting 'Surface Transportation Extension Act of 2005, Part VI' for 'Surface Transportation Extension Act of 2005, Part V'." See Effective Date of 2005 Amendments note below.

Subsec. (b)(2)(A). Pub. L. 109–59, §11151(e)(1), substituted "the Dingell-Johnson Sport Fish Restoration Act" for "the Act entitled 'An Act to provide that the United States shall aid the States in fish restoration and management projects, and for other purposes', approved August 9, 1950".

Pub. L. 109–59, §11101(d)(2)(A), substituted "Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users" for "Surface Transportation Extension Act of 2005, Part V".

Pub. L. 109–40, §9(b)(1), substituted "Part V" for "Part IV".

Pub. L. 109–37, §9(b)(1), substituted "Part IV" for "Part III".

Pub. L. 109–35, §9(b)(1), substituted "Part III" for "Part II".

Pub. L. 109–20, §9(b)(1), inserted ", Part II" after "Surface Transportation Extension Act of 2005".

Pub. L. 109–14, §9(b)(1), substituted "Surface Transportation Extension Act of 2005" for "Surface Transportation Extension Act of 2004, Part V".

Subsec. (b)(2)(B), (C). Pub. L. 109–59, §11101(d)(2)(A), substituted "Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users" for "Surface Transportation Extension Act of 2005, Part V".

Pub. L. 109–40, §9(b)(1), substituted "Part V" for "Part IV".

Pub. L. 109–37, §9(b)(1), substituted "Part IV" for "Part III".

Pub. L. 109–35, §9(b)(1), substituted "Part III" for "Part II".

Pub. L. 109–20, §9(b)(1), inserted ", Part II" after "Surface Transportation Extension Act of 2005".

Pub. L. 109–14, §9(b)(1), substituted "Surface Transportation Extension Act of 2005" for "Surface Transportation Extension Act of 2004, Part V".

Subsec. (c). Pub. L. 109–74 substituted "October 1, 2005" for "August 15, 2005" and "Sportfishing and Recreational Boating Safety Amendments Act of 2005" for "Surface Transportation Extension Act of 2005, Part VI". See Effective Date of 2005 Amendments note below.

Pub. L. 109–59, §11115(c), reenacted heading without change and amended text of subsec. (c) generally. Prior to amendment, text read as follows: "Amounts in the Boat Safety Account shall be available, as provided by appropriation Acts, for making expenditures before October 1, 2005, to carry out the purposes of section 13106 of title 46, United States Code (as in effect on the date of the enactment of the Sportfishing and Recreational Boating Safety Amendments Act of 2005)." See above and Effective Date of 2005 Amendments note below.

Pub. L. 109–42, §7(b)(2), substituted "August 15, 2005" for "July 31, 2005" and "Part VI" for "Part V".

Pub. L. 109–40, §9(b)(2), substituted "July 31, 2005" for "July 28, 2005" and "Part V" for "Part IV".

Pub. L. 109–37, §9(b)(2), substituted "July 28, 2005" for "July 22, 2005" and "Part IV" for "Part III".

Pub. L. 109–35, §9(b)(2), substituted "July 22, 2005" for "July 20, 2005" and "Part III" for "Part II".

Pub. L. 109–20, §9(b)(2), substituted "July 20, 2005" for "July 1, 2005" and inserted ", Part II" after "Surface Transportation Extension Act of 2005".

Pub. L. 109–14, §9(b)(2), substituted "July 1, 2005" for "June 1, 2005" and "Surface Transportation Extension Act of 2005" for "Surface Transportation Extension Act of 2004, Part V".

Subsec. (d). Pub. L. 109–59, §11115(b)(2)(B)(i), struck out "Aquatic Resources" before "Trust Fund" in heading.

Subsec. (d)(1). Pub. L. 109–59, §11115(b)(2)(B)(ii), (iii), substituted "the Sport Fish Restoration and Boating Trust Fund" for "any Account in the Aquatic Resources Trust Fund" and "such Trust Fund" for "any such Account" in introductory provisions.

Subsec. (d)(2). Pub. L. 109–59, §11101(d)(2)(B), substituted "October 1, 2009" for "July 31, 2005".

Pub. L. 109–42, §7(b)(3), (d)(3), (e), temporarily inserted at end "The preceding sentence shall be applied

by substituting 'August 15, 2005' for the date therein." See Effective Date of 2005 Amendments note below.

Pub. L. 109–40, §9(b)(3), substituted "July 31, 2005" for "July 28, 2005".

Pub. L. 109–37, §9(b)(3), substituted "July 28, 2005" for "July 22, 2005".

Pub. L. 109–35, §9(b)(3), substituted "July 22, 2005" for "July 20, 2005".

Pub. L. 109–20, §9(b)(3), substituted "July 20, 2005" for "July 1, 2005".

Pub. L. 109–14, §9(b)(3), substituted "July 1, 2005" for "June 1, 2005".

Subsec. (e). Pub. L. 109–59, §11115(b)(2)(C), substituted "Sport Fish Restoration and Boating Trust Fund" for "Boat Safety Account and Sport Fish Restoration Account".

2004—Subsec. (b)(2)(A) to (C). Pub. L. 108–310, §13(b)(1), substituted "Part V" for "Part IV".

Pub. L. 108–280, §10(b)(1), substituted "Part IV" for "Part III".

Pub. L. 108–263, §10(b)(1), substituted "Part III" for "Part II".

Pub. L. 108–224, §10(b)(1), inserted ", Part II" after "Surface Transportation Extension Act of 2004".

Pub. L. 108–202, §12(b)(1), substituted "Surface Transportation Extension Act of 2004" for "Surface Transportation Extension Act of 2003".

Subsec. (c). Pub. L. 108–310, §13(b)(2), substituted "June 1, 2005" for "October 1, 2004" and "Part V" for "Part IV".

Pub. L. 108–280, §10(b)(2), substituted "October 1, 2004" for "August 1, 2004" and "Part IV" for "Part III".

Pub. L. 108–263, §10(b)(2), substituted "August 1, 2004" for "July 1, 2004" and "Part III" for "Part II".

Pub. L. 108–224, §10(b)(2), substituted "July 1, 2004" for "May 1, 2004" and inserted ", Part II" after "Surface Transportation Extension Act of 2004".

Pub. L. 108–202, §12(b)(2), substituted "May 1, 2004" for "March 1, 2004" and "Surface Transportation Extension Act of 2004" for "Surface Transportation Extension Act of 2003".

Subsec. (d)(2). Pub. L. 108–310, §13(b)(3), substituted "June 1, 2005" for "October 1, 2004".

Pub. L. 108–280, §10(b)(3), substituted "October 1, 2004" for "August 1, 2004".

Pub. L. 108–263, §10(b)(3), substituted "August 1, 2004" for "July 1, 2004".

Pub. L. 108–224, §10(b)(3), substituted "July 1, 2004" for "May 1, 2004".

Pub. L. 108–202, §12(b)(3), substituted "May 1, 2004" for "March 1, 2004".

2003—Subsec. (b)(2)(A). Pub. L. 108–88, §12(b)(1)(A), substituted "Surface Transportation Extension Act of 2003" for "Wildlife and Sport Fish Restoration Programs Improvement Act of 2000".

Subsec. (b)(2)(B), (C). Pub. L. 108–88, §12(b)(1)(B), substituted "Surface Transportation Extension Act of 2003" for "TEA 21 Restoration Act".

Subsec. (c). Pub. L. 108–88, §12(b)(2), substituted "March 1, 2004" for "October 1, 2003" and "Surface Transportation Extension Act of 2003" for "TEA 21 Restoration Act".

Subsec. (d)(2). Pub. L. 108–88, §12(b)(3), substituted "March 1, 2004" for "October 1, 2003".

2000—Subsec. (b)(2)(A). Pub. L. 106–408 substituted "(as in effect on the date of the enactment of the Wildlife and Sport Fish Restoration Programs Improvement Act of 2000)" for "(as in effect on the date of the enactment of the TEA 21 Restoration Act)".

1998—Subsec. (b)(2)(A). Pub. L. 105–178, §9005(f)(1), as added by Pub. L. 105–206, §9015(b), substituted "the date of the enactment of the TEA 21 Restoration Act" for "the date of the enactment of the Transportation Equity Act for the 21st Century".

Pub. L. 105–178, §9005(b)(1), substituted "the date of the enactment of the Transportation Equity Act for the 21st Century)," for "October 1, 1988), and".

Subsec. (b)(2)(B). Pub. L. 105–178, §9005(f)(2), as added by Pub. L. 105–206, §9015(b), substituted "the TEA 21 Restoration Act" for "such Act".

Pub. L. 105–178, §9005(b)(3), added subpar. (B). Former subpar. (B) redesignated (C).

Pub. L. 105–178, §9005(b)(2), substituted "the date of the enactment of the Transportation Equity Act for the 21st Century" for "November 29, 1990".

Subsec. (b)(2)(C). Pub. L. 105–178, §9005(f)(3), as added by Pub. L. 105–206, §9015(b), substituted "the date of the enactment of the TEA 21 Restoration Act" for "the date of the enactment of the Transportation Equity Act for the 21st Century".

Pub. L. 105–178, §9005(b)(3), redesignated subpar. (B) as (C).

Subsec. (c). Pub. L. 105–178, §9005(f)(4), as added by Pub. L. 105–206, §9015(b), substituted "the date of the enactment of the TEA 21 Restoration Act" for "the date of enactment of the Transportation Equity Act for the 21st Century".

Pub. L. 105–178, §9005(c), substituted "2003" for "1998" and "the date of enactment of the Transportation Equity Act for the 21st Century" for "October 1, 1988".

Subsecs. (d), (e). Pub. L. 105–178, §9005(d), added subsec. (d) and redesignated former subsec. (d) as (e).

1997—Subsec. (c). Pub. L. 105–130 substituted "October 1, 1998" for "April 1, 1998".

1991—Subsec. (b)(2)(B). Pub. L. 102–240, §8002(i), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "to carry out the purposes of any law which is substantially identical to S. 3252 of the 101st Congress, as introduced."

Subsec. (c). Pub. L. 102–240, §8002(d)(2)(C), substituted "1998" for "1994".

1990—Subsec. (a)(2). Pub. L. 101–508, §11211(i)(2), inserted reference to section 9503(c)(5) in last sentence.

Subsec. (b)(2). Pub. L. 101–508, §11211(i)(3), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "Amounts in the Sport Fish Restoration Account shall be available, as provided by appropriation Acts, to carry out the purposes of the Act entitled 'An Act to provide that the United States shall aid the States in fish restoration and management projects, and for other purposes', approved August 9, 1950 (as in effect on October 1, 1988)."

1988—Subsec. (b)(1)(B). Pub. L. 100–418 substituted "heading 9507 of the Harmonized Tariff Schedule of the United States" for "subpart B of part 5 of schedule 7 of the Tariff Schedules of the United States" and "chapter 89 of the Harmonized Tariff Schedule of the United States" for "subpart D of part 6 of schedule 6 of such Schedules".

Subsec. (b)(2). Pub. L. 100–448, §6(c)(3), substituted "(as in effect on October 1, 1988)" for "(as in effect on June 1, 1984)".

Subsec. (c). Pub. L. 100–448, §6(a)(2), substituted provisions authorizing expenditures before Apr. 1, 1994, to carry out the purposes of section 13106 of title 46 as in effect on Oct. 1, 1988, for provisions which had authorized expenditures before Apr. 1, 1989, to carry out the purposes of that section as in effect on June 1, 1984.

EFFECTIVE AND TERMINATION DATES OF 2012 AMENDMENT

Amendment by Pub. L. 112–141 effective July 1, 2012, see section 40101(d) of Pub. L. 112–141, set out as a note under section 9503 of this title.

Amendment by Pub. L. 112–140 to cease to be effective on July 6, 2012, with text as amended by Pub. L. 112–140 to revert back to read as it did on the day before June 29, 2012, and amendments by Pub. L. 112–141 to be executed as if Pub. L. 112–140 had not been enacted, see section 1(c) of Pub. L. 112–140, set out as a note under section 101 of Title 23, Highways.

Amendment by Pub. L. 112–140 effective July 1, 2012, see section 401(d) of Pub. L. 112–140, set out as a note under section 9503 of this title.

Amendment by Pub. L. 112–102 effective Apr. 1, 2012, see section 401(d) of Pub. L. 112–102, set out as a note under section 9503 of this title.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112–30 effective Oct. 1, 2011, see section 141(d) of Pub. L. 112–30, set out as a note under section 9503 of this title.

Amendment by Pub. L. 112–5 effective Mar. 4, 2011, see section 401(c) of Pub. L. 112–5, set out as a note under section 9503 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–322 effective Dec. 31, 2010, see section 2401(c) of Pub. L. 111–322, set out as a note under section 9503 of this title.

Amendment by section 444(b)(5)–(7) of Pub. L. 111–147 applicable to transfers relating to amounts paid and credits allowed after Mar. 18, 2010, see section 444(c) of Pub. L. 111–147, set out as a note under section 9502 of this title.

Amendment by section 445(b) of Pub. L. 111–147 effective Sept. 30, 2009, see section 445(c) of Pub. L. 111–147, set out as a note under section 9503 of this title.

EFFECTIVE DATE OF 2005 AMENDMENTS

Pub. L. 109–74, title III, §301(b), Sept. 29, 2005, 119 Stat. 2032, provided that: "The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Sept. 29, 2005]."

Amendment by section 11115(b)(1)–(2)(D), (c) of Pub. L. 109–59 effective Oct. 1, 2005, see section 11115(d) of Pub. L. 109–59, set out as a note under section 551 of Title 6, Domestic Security.

Pub. L. 109–59, title XI, §11151(f)(2), Aug. 10, 2005, 119 Stat. 1969, provided that: "The amendment made by subsection (c) [amending this section] shall take effect as if included in the provision of the Transportation Equity Act for the 21st Century [Pub. L. 105–178] to which it relates."

Amendment by section 7(b) of Pub. L. 109–42 effective July 30, 2005, and amendment by section 7(d)(2), (3) of Pub. L. 109–42 effective Aug. 10, 2005, see section 7(e) of Pub. L. 109–42, set out as a note under

section 9503 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Title IX of Pub. L. 105–206 effective simultaneously with enactment of Pub. L. 105–178 and to be treated as included in Pub. L. 105–178 at time of enactment, and provisions of Pub. L. 105–178, as in effect on day before July 22, 1998, that are amended by title IX of Pub. L. 105–206 to be treated as not enacted, see section 9016 of Pub. L. 105–206, set out as a note under section 101 of Title 23, Highways.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–130 effective Oct. 1, 1997, see section 9(d) of Pub. L. 105–130, set out as a note under section 9503 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective Dec. 1, 1990, see section 11211(i)(4) of Pub. L. 101–508, set out as a note under section 9503 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–448 effective Oct. 1, 1988, see section 6(e) of Pub. L. 100–448, set out as a note under section 777 of Title 16, Conservation.

Amendment by Pub. L. 100–418 effective Jan. 1, 1989, and applicable with respect to articles entered on or after such date, see section 1217(b)(1) of Pub. L. 100–418, set out as an Effective Date note under section 3001 of Title 19, Customs Duties.

EFFECTIVE DATE

Pub. L. 98–369, div. A, title X, §1016(e), July 18, 1984, 98 Stat. 1021, provided that:

"(1) IN GENERAL.—The amendments made by this section [enacting this section, amending section 9503 of this title, and repealing section 13107 of Title 46, Shipping] shall take effect on October 1, 1984.

"(2) BOAT SAFETY ACCOUNT TREATED AS CONTINUATION OF NATIONAL RECREATIONAL BOATING SAFETY AND FACILITIES IMPROVEMENT FUND.—The Boat Safety Account in the Aquatic Resources Trust Fund established by the amendments made by this section shall be treated for all purposes of law as the continuation of the National Recreational Boating Safety and Facilities Improvement Fund established by [former] section 13107 of title 46, United States Code. Any reference in any law to the National Recreational Boating Safety and Facilities Improvement Fund established by such section shall be deemed to include (wherever appropriate) a reference to such Boat Safety Account."

CONSTRUCTION OF 2006 AMENDMENT

Pub. L. 110–181, div. C, title XXXV, §3529(c)(2), Jan. 28, 2008, 122 Stat. 603, provided that: "The provisions repealed by paragraph (1) [sections 9(a), 15(21), (33)(A)–(D)(i), and 16(c)(2) of Pub. L. 109–304, amending this section and sections 6101, 70117, 70118, 70120, and 70121 of Title 46, Shipping] shall be treated as if never enacted."

§9505. Harbor Maintenance Trust Fund

(a) Creation of Trust Fund

There is hereby established in the Treasury of the United States a trust fund to be known as the "Harbor Maintenance Trust Fund", consisting of such amounts as may be—

(1) appropriated to the Harbor Maintenance Trust Fund as provided in this section,

(2) transferred to the Harbor Maintenance Trust Fund by the Saint Lawrence Seaway Development Corporation pursuant to section 13(a) of the Act of May 13, 1954, or

(3) credited to the Harbor Maintenance Trust Fund as provided in section 9602(b).

(b) Transfer to Harbor Maintenance Trust Fund of amounts equivalent to certain taxes

There are hereby appropriated to the Harbor Maintenance Trust Fund amounts equivalent to the taxes received in the Treasury under section 4461 (relating to harbor maintenance tax).

(c) Expenditures from Harbor Maintenance Trust Fund

Amounts in the Harbor Maintenance Trust Fund shall be available, as provided by appropriation

Acts, for making expenditures—

(1) to carry out section 210 of the Water Resources Development Act of 1986,

(2) for payments of rebates of tolls or charges pursuant to section 13(b) of the Act of May 13, 1954 (as in effect on April 1, 1987), and

(3) for the payment of all expenses of administration incurred by the Department of the Treasury, the Army Corps of Engineers, and the Department of Commerce related to the administration of subchapter A of chapter 36 (relating to harbor maintenance tax), but not in excess of $5,000,000 for any fiscal year.

(Added Pub. L. 99–662, title XIV, §1403(a), Nov. 17, 1986, 100 Stat. 4269; amended Pub. L. 103–182, title VI, §683(a), Dec. 8, 1993, 107 Stat. 2218; Pub. L. 104–303, title VI, §601, Oct. 12, 1996, 110 Stat. 3792; Pub. L. 113–121, title II, §2102(c), June 10, 2014, 128 Stat. 1278.)

REFERENCES IN TEXT

Section 13 of the Act of May 13, 1954, referred to in subsecs. (a)(2) and (c)(2), is classified to section 988a of Title 33, Navigation and Navigable Waters.

Section 210 of the Water Resources Development Act of 1986, referred to in subsec. (c)(1), is classified to section 2238 of Title 33, Navigation and Navigable Waters.

AMENDMENTS

2014—Subsec. (c)(1). Pub. L. 113–121 struck out "(as in effect on the date of the enactment of the Water Resources Development Act of 1996)" after "1986".

1996—Subsec. (c)(1). Pub. L. 104–303 amended par. (1) generally. Prior to amendment, par. (1) read as follows: "to carry out section 210(a) of the Water Resources Development Act of 1986 (as in effect on the date of enactment of this section),".

1993—Subsec. (c)(3). Pub. L. 103–182 amended par. (3) generally. Prior to amendment, par. (3) read as follows: "for the payment of all expenses of administration incurred—

"(A) by the Department of the Treasury in administering subchapter A of chapter 36 (relating to harbor maintenance tax), but not in excess of $5,000,000 for any fiscal year, and

"(B) for periods during which no fee applies under paragraph (9) or (10) of section 13031(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985."

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–182, title VI, §683(b), Dec. 8, 1993, 107 Stat. 2218, provided that: "The amendment made by subsection (a) [amending this section] shall apply to fiscal years beginning after the date of the enactment of this Act [Dec. 8, 1993]."

EFFECTIVE DATE

Pub. L. 99–662, title XIV, §1403(d), Nov. 17, 1986, 100 Stat. 4270, provided that: "The amendments made by this section [enacting this section] shall take effect on April 1, 1987."

HARBOR MAINTENANCE TRUST FUND DEPOSITS AND EXPENDITURES

Pub. L. 102–580, title III, §330, Oct. 31, 1992, 106 Stat. 4851, provided that:

"(a) REPORT.—Not later than March 1, 1993, and annually thereafter, the President shall transmit to the Committee on Public Works and Transportation [now Committee on Transportation and Infrastructure] of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on expenditures from and deposits into the Harbor Maintenance Trust Fund.

"(b) CONTENTS.—

"(1) IN GENERAL.—Each report to be transmitted under subsection (a) shall contain the following:

"(A) A description of expenditures made from the trust fund in the previous fiscal year on a project-by-project basis.

"(B) A description of deposits made into the trust fund in the previous fiscal year and the sources of such deposits.

"(C) A 5-year projection of expenditures from and deposits into the trust fund.

"(2) PREVIOUS YEARS INFORMATION.—In addition to information required under paragraph (1), the initial report to be transmitted under subsection (a) shall contain the information described in subparagraphs (A) and (B) of paragraph (1) for fiscal years 1987 through 1992."

§9506. Inland Waterways Trust Fund

(a) Creation of Trust Fund

There is hereby established in the Treasury of the United States a trust fund to be known as the "Inland Waterways Trust Fund", consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section or section 9602(b).

(b) Transfer to Trust Fund of amounts equivalent to certain taxes

There are hereby appropriated to the Inland Waterways Trust Fund amounts equivalent to the taxes received in the Treasury under section 4042 (relating to tax on fuel used in commercial transportation on inland waterways). The preceding sentence shall apply only to so much of such taxes as are attributable to the Inland Waterways Trust Fund financing rate under section 4042(b).

(c) Expenditures from Trust Fund

(1) In general

Except as provided in paragraph (2), amounts in the Inland Waterways Trust Fund shall be available, as provided by appropriation Acts, for making construction and rehabilitation expenditures for navigation on the inland and coastal waterways of the United States described in section 206 of the Inland Waterways Revenue Act of 1978, as in effect on the date of the enactment of this section.

(2) Exception for certain projects

Not more than ½ of the cost of any construction to which section 102(a) of the Water Resources Development Act of 1986 applies (as in effect on the date of the enactment of this section) may be paid from the Inland Waterways Trust Fund.

(Added Pub. L. 99–662, title XIV, §1405(a), Nov. 17, 1986, 100 Stat. 4271; amended Pub. L. 99–499, title V, §521(b)(3), Oct. 17, 1986, 100 Stat. 1778; Pub. L. 100–647, title I, §1018(u)(18), Nov. 10, 1988, 102 Stat. 3591.)

REFERENCES IN TEXT

Section 206 of the Inland Waterways Revenue Act of 1978, as in effect on the date of the enactment of this section, referred to in subsec. (c)(1), is classified to section 1804 of Title 33, Navigation and Navigable Waters. The date of the enactment of section 9506 of this title is the date of enactment of Pub. L. 99–662, which was approved Nov. 17, 1986.

Section 102(a) of the Water Resources Development Act of 1986 (as in effect on the date of enactment of this section), referred to in subsec. (c)(2), is classified to section 2212(a) of Title 33. The date of enactment of section 9506 of this title is the date of enactment of Pub. L. 99–662, which was approved Nov. 17, 1986.

AMENDMENTS

1988—Subsec. (b). Pub. L. 100–647 made technical corrections to directory language of Pub. L. 99–499, §521(b)(3), see 1986 Amendment note below.

1986—Subsec. (b). Pub. L. 99–499, as amended by Pub. L. 100–647, §1018(u)(18), inserted at end "The preceding sentence shall apply only to so much of such taxes as are attributable to the Inland Waterways Trust Fund financing rate under section 4042(b)."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–499 effective Jan. 1, 1987, see section 521(e) of Pub. L. 99–499, set out as a note under section 4041 of this title.

EFFECTIVE DATE

Pub. L. 99–662, title XIV, §1405(d), Nov. 17, 1986, 100 Stat. 4271, provided that:

"(1) IN GENERAL.—The amendments made by this section [enacting this section and repealing sections

1801 and 1802 of Title 33, Navigation and Navigable Waters] shall take effect on January 1, 1987.

"(2) INLAND WATERWAYS TRUST FUND TREATED AS CONTINUATION OF OLD TRUST FUND .—The Inland Waterways Trust Fund established by the amendments made by this section shall be treated for all purposes of law as a continuation of the Inland Waterways Trust Fund established by section 203 of the Inland Waterways Revenue Act of 1978 [former 33 U.S.C. 1801]. Any reference in any law to the Inland Waterways Trust Fund established by such section 203 shall be deemed to include (wherever appropriate) a reference to the Inland Waterways Trust Fund established by this section."

§9507. Hazardous Substance Superfund

(a) Creation of Trust Fund

There is established in the Treasury of the United States a trust fund to be known as the "Hazardous Substance Superfund" (hereinafter in this section referred to as the "Superfund"), consisting of such amounts as may be—

(1) appropriated to the Superfund as provided in this section,

(2) appropriated to the Superfund pursuant to section 517(b) of the Superfund Revenue Act of 1986, or

(3) credited to the Superfund as provided in section 9602(b).

(b) Transfers to Superfund

There are hereby appropriated to the Superfund amounts equivalent to—

(1) the taxes received in the Treasury under section 59A, 4611, 4661, or 4671 (relating to environmental taxes),

(2) amounts recovered on behalf of the Superfund under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (hereinafter in this section referred to as "CERCLA"),

(3) all moneys recovered or collected under section 311(b)(6)(B) of the Clean Water Act,[1]

(4) penalties assessed under title I of CERCLA, and

(5) punitive damages under section 107(c)(3) of CERCLA.

In the case of the tax imposed by section 4611, paragraph (1) shall apply only to so much of such tax as is attributable to the Hazardous Substance Superfund financing rate under section 4611(c).

(c) Expenditures from Superfund

(1) In general

Amounts in the Superfund shall be available, as provided in appropriation Acts, only for purposes of making expenditures—

(A) to carry out the purposes of—

(i) paragraphs (1), (2), (5), and (6) of section 111(a) of CERCLA as in effect on the date of the enactment of the Superfund Amendments and Reauthorization Act of 1986,

(ii) section 111(c) of CERCLA (as so in effect), other than paragraphs (1) and (2) thereof, and

(iii) section 111(m) of CERCLA (as so in effect), or

(B) hereafter authorized by a law which does not authorize the expenditure out of the Superfund for a general purpose not covered by subparagraph (A) (as so in effect).

(2) Exception for certain transfers, etc., of hazardous substances

No amount in the Superfund or derived from the Superfund shall be available or used for the transfer or disposal of hazardous waste carried out pursuant to a cooperative agreement between the Administrator of the Environmental Protection Agency and a State if the following conditions apply—

(A) the transfer or disposal, if made on December 13, 1985, would not comply with a State or local requirement,

(B) the transfer is to a facility for which a final permit under section 3005(a) of the Solid Waste Disposal Act was issued after January 1, 1983, and before November 1, 1984, and

(C) the transfer is from a facility identified as the McColl Site in Fullerton, California.

(d) Authority to borrow

(1) In general

There are authorized to be appropriated to the Superfund, as repayable advances, such sums as may be necessary to carry out the purposes of the Superfund.

(2) Limitation on aggregate advances

The maximum aggregate amount of repayable advances to the Superfund which is outstanding at any one time shall not exceed an amount equal to the amount which the Secretary estimates will be equal to the sum of the amounts appropriated to the Superfund under subsection (b)(1) during the following 24 months.

(3) Repayment of advances

(A) In general

Advances made to the Superfund shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury when the Secretary determines that moneys are available for such purposes in the Superfund.

(B) Final repayment

No advance shall be made to the Superfund after December 31, 1995, and all advances to such Fund shall be repaid on or before such date.

(C) Rate of interest

Interest on advances made to the Superfund shall be at a rate determined by the Secretary of the Treasury (as of the close of the calendar month preceding the month in which the advance is made) to be equal to the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the anticipated period during which the advance will be outstanding and shall be compounded annually.

(e) Liability of United States limited to amount in Trust Fund

(1) General rule

Any claim filed against the Superfund may be paid only out of the Superfund.

(2) Coordination with other provisions

Nothing in CERCLA or the Superfund Amendments and Reauthorization Act of 1986 (or in any amendment made by either of such Acts) shall authorize the payment by the United States Government of any amount with respect to any such claim out of any source other than the Superfund.

(3) Order in which unpaid claims are to be paid

If at any time the Superfund has insufficient funds to pay all of the claims payable out of the Superfund at such time, such claims shall, to the extent permitted under paragraph (1), be paid in full in the order in which they were finally determined.

(Added Pub. L. 99–499, title V, §517(a), Oct. 17, 1986, 100 Stat. 1772; amended Pub. L. 99–509, title VIII, §8032(c)(4), Oct. 21, 1986, 100 Stat. 1959; Pub. L. 101–508, title XI, §11231(c), Nov. 5, 1990, 104 Stat. 1388–445.)

REFERENCES IN TEXT

Section 517(b) of the Superfund Revenue Act of 1986, referred to in subsec. (a)(2), is section 517(b) of Pub. L. 99–499, which is set out as a note under this section.

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and CERCLA, referred to in subsecs. (b)(2), (4), (5), (c)(1)(A), and (e)(2), is Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2767, as amended, which is classified principally to chapter 103 (§9601 et seq.) of Title 42, The Public Health and

Welfare. Title I of CERCLA is classified to subchapter I (§9601 et seq.) of chapter 103 of Title 42. Sections 107(c)(3) and 111(a)(1), (2), (5), and (6), (c), and (m) of CERCLA are classified to sections 9607(c)(3) and 9611(a)(1), (2), (5), and (6), (c), and (m) of Title 42, respectively. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of Title 42 and Tables.

Section 311(b)(6)(B) of the Clean Water Act, referred to in subsec. (b)(3), which was classified to section 1321(b)(6)(B) of Title 33, Navigation and Navigable Waters, and which related to civil actions by the Administrator to impose penalties for prohibited discharges was struck out by Pub. L. 101–380, title IV, §4301(b), Aug. 18, 1990, 104 Stat. 533, which added a new section 311(b)(6)(B) relating to classes of civil penalties imposed by the Secretary of the department in which the Coast Guard is operating or the Administrator for prohibited discharges or violations of regulations.

The date of the enactment of the Superfund Amendments and Reauthorization Act of 1986, referred to in subsec. (c)(1)(A)(i), is the date of enactment of Pub. L. 99–499, which was approved Oct. 17, 1986.

Section 3005(a) of the Solid Waste Disposal Act, referred to in subsec. (c)(2)(B), is classified to section 6925(a) of Title 42, The Public Health and Welfare.

The Superfund Amendments and Reauthorization Act of 1986, referred to in subsec. (e)(2), is Pub. L. 99–499, Oct. 17, 1986, 100 Stat. 1613. For complete classification of this Act to the Code, see Short Title of 1986 Amendment note set out under section 9601 of Title 42 and Tables.

AMENDMENTS

1990—Subsec. (d)(3)(B). Pub. L. 101–508 substituted "December 31, 1995" for "December 31, 1991".

1986—Subsec. (b). Pub. L. 99–509 inserted at end "In the case of the tax imposed by section 4611, paragraph (1) shall apply only to so much of such tax as is attributable to the Hazardous Substance Superfund financing rate under section 4611(c)."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–509 effective on commencement date as defined in former section 4611(f)(2), see section 8032(d) of Pub. L. 99–509, set out as a note under section 4611 of this title.

EFFECTIVE DATE

Pub. L. 99–499, title V, §517(e), Oct. 17, 1986, 100 Stat. 1774, provided that:

"(1) IN GENERAL.—The amendments made by this section [enacting this section, amending section 9601 of Title 42, The Public Health and Welfare, and repealing sections 9631 to 9633 of Title 42] shall take effect on January 1, 1987.

"(2) SUPERFUND TREATED AS CONTINUATION OF OLD TRUST FUND.—The Hazardous Substance Superfund established by the amendments made by this section shall be treated for all purposes of law as a continuation of the Hazardous Substance Response Trust Fund established by section 221 of the Hazardous Substance Response Revenue Act of 1980 [former 42 U.S.C. 9631]. Any reference in any law to the Hazardous Substance Response Trust Fund established by such section 221 shall be deemed to include (wherever appropriate) a reference to the Hazardous Substance Superfund established by the amendments made by this section."

AUTHORIZATION OF APPROPRIATIONS

Pub. L. 99–499, title V, §517(b), Oct. 17, 1986, 100 Stat. 1773, as amended by Pub. L. 101–508, title XI, §11231(d), Nov. 5, 1990, 104 Stat. 1388–445, provided that: "There is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Hazardous Substance Superfund for fiscal year—

"(1) 1987, $250,000,000,
"(2) 1988, $250,000,000,
"(3) 1989, $250,000,000,
"(4) 1990, $250,000,000,
"(5) 1991, $250,000,000, and [sic]
"(6) 1992, $250,000,000,
"(7) 1993, $250,000,000,
"(8) 1994, $250,000,000, and
"(9) 1995, $250,000,000,

plus for each fiscal year an amount equal to so much of the aggregate amount authorized to be appropriated under this subsection (and paragraph (2) of section 221(b) of the Hazardous Substance Response Act of 1980

[probably means section 221(b)(2) of the Hazardous Substance Response Revenue Act of 1980, which was classified to 42 U.S.C. 9631(b)(2) before its repeal by section 517(c)(1) of Pub. L. 99–499], as in effect before its repeal) as has not been appropriated before the beginning of the fiscal year involved."

[Pub. L. 101–508, title XI, §11231(d), Nov. 5, 1990, 104 Stat. 1388–445, directed that section 517(b) of Pub. L. 99–499, set out above, be "amended by striking 'and' at the end of paragraph (4), by striking the period at the end of paragraph (5) and inserting ', and', and by adding at the end thereof" new pars. (6) to (9), with par. (9) ending in a period. Pub. L. 104–188, title I, §1704(t)(44), Aug. 20, 1996, 110 Stat. 1889, provided that section 11231(d) of Pub. L. 101–508 "shall be applied as if 'comma' appeared instead of 'period' [in the directory language amending section 517(b)(5) of Pub. L. 99–499] and as if the paragraph (9) proposed to be added ended with a comma".]

[1] *See References in Text note below.*

§9508. Leaking Underground Storage Tank Trust Fund

(a) Creation of Trust Fund

There is established in the Treasury of the United States a trust fund to be known as the "Leaking Underground Storage Tank Trust Fund", consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section or section 9602(b).

(b) Transfers to Trust Fund

There are hereby appropriated to the Leaking Underground Storage Tank Trust Fund amounts equivalent to—

(1) taxes received in the Treasury under section 4041(d) (relating to additional taxes on motor fuels),

(2) taxes received in the Treasury under section 4081 (relating to tax on gasoline, diesel fuel, and kerosene) to the extent attributable to the Leaking Underground Storage Tank Trust Fund financing rate under such section,

(3) taxes received in the Treasury under section 4042 (relating to tax on fuel used in commercial transportation on inland waterways) to the extent attributable to the Leaking Underground Storage Tank Trust Fund financing rate under such section, and

(4) amounts received in the Treasury and collected under section 9003(h)(6) of the Solid Waste Disposal Act.

For purposes of this subsection, there shall not be taken into account the taxes imposed by sections 4041 and 4081 on diesel fuel sold for use or used as fuel in a diesel-powered boat.

(c) Expenditures

(1) In general

Except as provided in paragraphs (2) and (3), amounts in the Leaking Underground Storage Tank Trust Fund shall be available, as provided in appropriation Acts, only for purposes of making expenditures to carry out sections 9003(h), 9003(i), 9003(j), 9004(f), 9005(c), 9010, 9011, 9012, and 9013 of the Solid Waste Disposal Act as in effect on the date of the enactment of the [1] Public Law 109–168.

(2) Transfer to Highway Trust Fund

Out of amounts in the Leaking Underground Storage Tank Trust Fund there is hereby appropriated $2,400,000,000 to be transferred under section 9503(f)(3) to the Highway Account (as defined in section 9503(e)(5)(B)) in the Highway Trust Fund.

(3) Additional transfer to Highway Trust Fund

Out of amounts in the Leaking Underground Storage Tank Trust Fund there is hereby appropriated $1,000,000,000 to be transferred under section 9503(f)(6) to the Highway Account (as defined in section 9503(e)(5)(B)) in the Highway Trust Fund.

(d) Liability of the United States limited to amount in Trust Fund

(1) General rule

Any claim filed against the Leaking Underground Storage Tank Trust Fund may be paid only out of such Trust Fund.

(2) Coordination with other provisions

Nothing in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 or the Superfund Amendments and Reauthorization Act of 1986 (or in any amendment made by either of such Acts) shall authorize the payment by the United States Government of any amount with respect to any such claim out of any source other than the Leaking Underground Storage Tank Trust Fund.

(3) Order in which unpaid claims are to be paid

If at any time the Leaking Underground Storage Tank Trust Fund has insufficient funds to pay all of the claims out of such Trust Fund at such time, such claims shall, to the extent permitted under paragraph (1), be paid in full in the order in which they were finally determined.

(e) Limitation on transfers to Leaking Underground Storage Tank Trust Fund

(1) In general

Except as provided in paragraph (2), no amount may be appropriated to the Leaking Underground Storage Tank Trust Fund on and after the date of any expenditure from the Leaking Underground Storage Tank Trust Fund which is not permitted by this section. The determination of whether an expenditure is so permitted shall be made without regard to—

(A) any provision of law which is not contained or referenced in this title or in a revenue Act, and

(B) whether such provision of law is a subsequently enacted provision or directly or indirectly seeks to waive the application of this paragraph.

(2) Exception for prior obligations

Paragraph (1) shall not apply to any expenditure to liquidate any contract entered into (or for any amount otherwise obligated) before June 1, 2015, in accordance with the provisions of this section.

(Added Pub. L. 99–499, title V, §522(a), Oct. 17, 1986, 100 Stat. 1780; amended Pub. L. 100–203, title X, §10502(d)(16), (17), Dec. 22, 1987, 101 Stat. 1330–445; Pub. L. 101–239, title VII, §7822(b)(7), Dec. 19, 1989, 103 Stat. 2425; Pub. L. 103–66, title XIII, §§13163(c), 13242(d)(42), Aug. 10, 1993, 107 Stat. 454, 528; Pub. L. 105–34, title X, §1032(e)(13), Aug. 5, 1997, 111 Stat. 935; Pub. L. 108–357, title VIII, §853(d)(2)(P), (Q), Oct. 22, 2004, 118 Stat. 1614; Pub. L. 109–58, title XIII, §1362(c), Aug. 8, 2005, 119 Stat. 1059; Pub. L. 109–59, title XI, §11147(a), Aug. 10, 2005, 119 Stat. 1967; Pub. L. 109–432, div. A, title II, §210(a), Dec. 20, 2006, 120 Stat. 2947; Pub. L. 109–433, §1(a), Dec. 20, 2006, 120 Stat. 3196; Pub. L. 112–30, title I, §141(c), Sept. 16, 2011, 125 Stat. 355; Pub. L. 112–102, title IV, §401(c), Mar. 30, 2012, 126 Stat. 281; Pub. L. 112–140, title IV, §401(c), June 29, 2012, 126 Stat. 402; Pub. L. 112–141, div. D, title I, §40101(c), title II, §40201(a), July 6, 2012, 126 Stat. 844, 846; Pub. L. 113–159, title II, §§2001(c), 2002(b), Aug. 8, 2014, 128 Stat. 1848.)

REFERENCES IN TEXT

Sections 9003 to 9005 and 9010 to 9013 of the Solid Waste Disposal Act, referred to in subsecs. (b)(4) and (c), are classified to sections 6991b to 6991d and 6991i to 6991l, respectively, of Title 42, The Public Health and Welfare.

The date of the enactment of Public Law 109–168, referred to in subsec. (c), is Jan. 10, 2006.

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, referred to in subsec. (d)(2), is Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2767, as amended, which is classified principally to chapter 103 (§9601 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of Title 42 and Tables.

The Superfund Amendments and Reauthorization Act of 1986, referred to in subsec. (d)(2), is Pub. L.

99–499, Oct. 17, 1986, 100 Stat. 1613. For complete classification of this Act to the Code, see Short Title of 1986 Amendment note set out under section 9601 of Title 42 and Tables.

AMENDMENTS

2014—Subsec. (c)(1). Pub. L. 113–159, §2002(b)(2), substituted "paragraphs (2) and (3)" for "paragraph (2)".

Subsec. (c)(3). Pub. L. 113–159, §2002(b)(1), added par. (3).

Subsec. (e)(2). Pub. L. 113–159, §2001(c), substituted "June 1, 2015" for "October 1, 2014".

2012—Subsec. (c). Pub. L. 112–141, §40201(a), inserted par. (1) designation and heading, substituted "Except as provided in paragraph (2), amounts" for "Amounts", and added par. (2).

Subsec. (e)(2). Pub. L. 112–141, §40101(c), substituted "October 1, 2014" for "July 1, 2012".

Pub. L. 112–140, §§1(c), 401(c), temporarily substituted "July 7, 2012" for "July 1, 2012". See Effective and Termination Dates of 2012 Amendment note below.

Pub. L. 112–102 substituted "July 1, 2012" for "April 1, 2012".

2011—Subsec. (e)(2). Pub. L. 112–30 substituted "April 1, 2012" for "October 1, 2011".

2006—Subsec. (c). Pub. L. 109–433, which directed an amendment of subsec. (c) identical to that by Pub. L. 109–432, to be treated as not having been enacted. See Amendment note and Construction of Amendment by Pub. L. 109–433 note below.

Pub. L. 109–432 substituted "sections 9003(h), 9003(i), 9003(j), 9004(f), 9005(c), 9010, 9011, 9012, and 9013" for "section 9003(h)" and "Public Law 109–168" for "Superfund Amendments and Reauthorization Act of 1986".

2005—Subsec. (c). Pub. L. 109–58 reenacted heading without change and amended text of subsec. (c) generally. Prior to amendment, subsec. (c) related to availability of amounts in the Leaking Underground Storage Tank Trust Fund and transfers from the Trust Fund for certain repayments and credits.

Subsec. (e). Pub. L. 109–59, §11147(a), added subsec. (e).

2004—Subsec. (b)(3) to (5). Pub. L. 108–357, §853(d)(2)(P), redesignated pars. (4) and (5) as (3) and (4), respectively, and struck out former par. (3) which read as follows: "taxes received in the Treasury under section 4091 (relating to tax on aviation fuel) to the extent attributable to the Leaking Underground Storage Tank Trust Fund financing rate under such section,".

Subsec. (c)(2)(A). Pub. L. 108–357, §853(d)(2)(Q), substituted "section 4081" for "sections 4081 and 4091" in concluding provisions.

1997—Subsec. (b)(2). Pub. L. 105–34 substituted ", diesel fuel, and kerosene" for "and diesel fuel".

1993—Subsec. (b). Pub. L. 103–66, §13242(d)(42)(C), which directed the substitution of "4081" for "4091" in last sentence, could not be executed because last sentence did not contain a reference to "4091".

Pub. L. 103–66, §13163(c), inserted at end "For purposes of this subsection, there shall not be taken into account the taxes imposed by sections 4041 and 4081 on diesel fuel sold for use or used as fuel in a diesel-powered boat."

Subsec. (b)(2). Pub. L. 103–66, §13242(d)(42)(A), inserted "and diesel fuel" after "gasoline".

Subsec. (b)(3). Pub. L. 103–66, §13242(d)(42)(B), struck out "diesel fuel and" before "aviation fuel".

1989—Subsecs. (b)(3), (c)(2)(A). Pub. L. 101–239 substituted "Storage Tank Trust Fund financing" for "Storage Trust Fund financing".

1987—Subsec. (b)(3) to (5). Pub. L. 100–203, §10502(d)(16), added par. (3) and redesignated former pars. (3) and (4) as (4) and (5), respectively.

Subsec. (c)(2)(A). Pub. L. 100–203, §10502(d)(17), added cl. (ii) and closing provisions, and struck out former cl. (ii) which read as follows: "credits allowed under section 34, with respect to the taxes imposed by sections 4041(d) and 4081 (to the extent attributable to the Leaking Underground Storage Tank Trust Fund financing rate under section 4081)."

EFFECTIVE AND TERMINATION DATES OF 2012 AMENDMENT

Amendment by section 40101(c) of Pub. L. 112–141 effective July 1, 2012, see section 40101(d) of Pub. L. 112–141, set out as a note under section 9503 of this title.

Amendment by Pub. L. 112–140 to cease to be effective on July 6, 2012, with text as amended by Pub. L. 112–140 to revert back to read as it did on the day before June 29, 2012, and amendments by Pub. L. 112–141 to be executed as if Pub. L. 112–140 had not been enacted, see section 1(c) of Pub. L. 112–140, set out as a note under section 101 of Title 23, Highways.

Amendment by Pub. L. 112–140 effective July 1, 2012, see section 401(d) of Pub. L. 112–140, set out as a note under section 9503 of this title.

Amendment by Pub. L. 112–102 effective Apr. 1, 2012, see section 401(d) of Pub. L. 112–102, set out as a

note under section 9503 of this title.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112–30 effective Oct. 1, 2011, see section 141(d) of Pub. L. 112–30, set out as a note under section 9503 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–433, §1(c), Dec. 20, 2006, 120 Stat. 3196, provided that: "The amendments made by this section [amending this section and section 6991m of Title 42, The Public Health and Welfare] shall take effect on the date of the enactment of this Act [Dec. 20, 2006]."

Pub. L. 109–432, div. A, title II, §210(c), Dec. 20, 2006, 120 Stat. 2947, provided that: "The amendments made by this section [amending this section and section 6991m of Title 42, The Public Health and Welfare] shall take effect on the date of the enactment of this Act [Dec. 20, 2006]."

EFFECTIVE DATE OF 2005 AMENDMENTS

Pub. L. 109–59, title XI, §11147(b), Aug. 10, 2005, 119 Stat. 1968, provided that: "The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Aug. 10, 2005]."

Amendment by Pub. L. 109–58 effective Oct. 1, 2005, see section 1362(d)(1) of Pub. L. 109–58, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to aviation-grade kerosene removed, entered, or sold after Dec. 31, 2004, see section 853(e) of Pub. L. 108–357, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 effective July 1, 1998, see section 1032(f)(1) of Pub. L. 105–34, as amended, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 effective Jan. 1, 1994, see sections 13163(d) and 13242(e) of Pub. L. 103–66, set out as notes under section 4041 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective as if included in the provision of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 7823 of Pub. L. 101–239, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 10502(d)(16) of Pub. L. 100–203 applicable to sales after Mar. 31, 1988, see section 10502(e) of Pub. L. 100–203, set out as a note under section 40 of this title.

Amendment by section 10502(d)(17) of Pub. L. 100–203 treated as if included in the amendments made by section 521 of the Superfund Revenue Act of 1986 [Pub. L. 99–499, title V, see Effective Date of 1986 Amendment note set out under section 4041 of this title], except that reference to section 4091 of this title in subsec. (c)(2)(A) of this section not applicable to sales before Apr. 1, 1988, see section 2001(d)(1)(A) of Pub. L. 100–647, set out as a note under section 4041 of this title.

EFFECTIVE DATE

Pub. L. 99–499, title V, §522(c), Oct. 17, 1986, 100 Stat. 1781, provided that: "The amendments made by this section [enacting this section] shall take effect on January 1, 1987."

CONSTRUCTION OF AMENDMENT BY PUB. L. 109–433

Pub. L. 110–172, §11(a)(46), Dec. 29, 2007, 121 Stat. 2488, provided that: "The Internal Revenue Code of 1986 shall be applied and administered as if the amendments made by section 1(a) of Public Law 109–433 [amending this section] had never been enacted."

[1] *So in original.*

§9509. Oil Spill Liability Trust Fund

(a) Creation of Trust Fund

There is established in the Treasury of the United States a trust fund to be known as the "Oil Spill Liability Trust Fund", consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section or section 9602(b).

(b) Transfers to Trust Fund

There are hereby appropriated to the Oil Spill Liability Trust Fund amounts equivalent to—

(1) taxes received in the Treasury under section 4611 (relating to environmental tax on petroleum) to the extent attributable to the Oil Spill Liability Trust Fund financing rate under section 4611(c),

(2) amounts recovered under the Oil Pollution Act of 1990 for damages to natural resources which are required to be deposited in the Fund under section 1006(f) of such Act,

(3) amounts recovered by such Trust Fund under section 1015 of such Act,

(4) amounts required to be transferred by such Act from the revolving fund established under section 311(k) of the Federal Water Pollution Control Act,

(5) amounts required to be transferred by the Oil Pollution Act of 1990 from the Deepwater Port Liability Fund established under section 18(f) of the Deepwater Port Act of 1974,

(6) amounts required to be transferred by the Oil Pollution Act of 1990 from the Offshore Oil Pollution Compensation Fund established under section 302 of the Outer Continental Shelf Lands Act Amendments of 1978,

(7) amounts required to be transferred by the Oil Pollution Act of 1990 from the Trans-Alaska Pipeline Liability Fund established under section 204 of the Trans-Alaska Pipeline Authorization Act, and

(8) any penalty paid pursuant to section 311 of the Federal Water Pollution Control Act, section 309(c) of such Act (as a result of violations of such section 311), the Deepwater Port Act of 1974, or section 207 of the Trans-Alaska Pipeline Authorization Act.

(c) Expenditures

(1) Expenditure purposes

Amounts in the Oil Spill Liability Trust Fund shall be available, as provided in appropriation Acts or section 6002(b) of the Oil Pollution Act of 1990, only for purposes of making expenditures—

(A) for the payment of removal costs and other costs, expenses, claims, and damages referred to in section 1012 of such Act,

(B) to carry out sections 5 and 7 of the Intervention on the High Seas Act relating to oil pollution or the substantial threat of oil pollution,

(C) for the payment of liabilities incurred by the revolving fund established by section 311(k) of the Federal Water Pollution Control Act,

(D) to carry out subsections (b), (c), (d), (j), and (l) of section 311 of the Federal Water Pollution Control Act with respect to prevention, removal, and enforcement related to oil discharges (as defined in such section),

(E) for the payment of liabilities incurred by the Deepwater Port Liability Fund, and

(F) for the payment of liabilities incurred by the Offshore Oil Pollution Compensation Fund.

(2) Limitations on expenditures

(A) $1,000,000,000 per incident, etc.

The maximum amount which may be paid from the Oil Spill Liability Trust Fund with respect to—

(i) any single incident shall not exceed $1,000,000,000, and

(ii) natural resource damage assessments and claims in connection with any single incident shall not exceed $500,000,000.

(B) $30,000,000 minimum balance

Except in the case of payments of removal costs, a payment may be made from such Trust Fund only if the amount in such Trust Fund after such payment will not be less than $30,000,000.

(d) Authority to borrow

(1) In general

There are authorized to be appropriated to the Oil Spill Liability Trust Fund, as repayable advances, such sums as may be necessary to carry out the purposes of such Trust Fund.

(2) Limitation on amount outstanding

The maximum aggregate amount of repayable advances to the Oil Spill Liability Trust Fund which is outstanding at any one time shall not exceed $1,000,000,000.

(3) Repayment of advances

(A) In general

Advances made to the Oil Spill Liability Trust Fund shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury when the Secretary determines that moneys are available for such purposes in such Fund.

(B) Final repayment

No advance shall be made to the Oil Spill Liability Trust Fund after December 31, 1994, and all advances to such Fund shall be repaid on or before such date.

(C) Rate of interest

Interest on advances made pursuant to this subsection shall be—

(i) at a rate determined by the Secretary of the Treasury (as of the close of the calendar month preceding the month in which the advance is made) to be equal to the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the anticipated period during which the advance will be outstanding, and

(ii) compounded annually.

(e) Liability of the United States limited to amount in Trust Fund

(1) General rule

Any claim filed against the Oil Spill Liability Trust Fund may be paid only out of such Trust Fund.

(2) Coordination with other provisions

Nothing in the Oil Pollution Act of 1990 (or in any amendment made by such Act) shall authorize the payment by the United States Government of any amount with respect to any such claim out of any source other than the Oil Spill Liability Trust Fund.

(3) Order in which unpaid claims are to be paid

If at any time the Oil Spill Liability Trust Fund has insufficient funds (or is unable by reason of subsection (c)(2)) to pay all of the claims out of such Trust Fund at such time, such claims shall, to the extent permitted under paragraph (1) and such subsection, be paid in full in the order in which they were finally determined.

(f) References to Oil Pollution Act of 1990

Any reference in this section to the Oil Pollution Act of 1990 or any other Act referred to in a subparagraph of subsection (c)(1) shall be treated as a reference to such Act as in effect on the date of the enactment of this subsection.

(Added Pub. L. 99–509, title VIII, §8033(a), Oct. 21, 1986, 100 Stat. 1959, §9507; renumbered §9509, Pub. L. 99–509, title VIII, §8033(c)(2)(B), Oct. 21, 1986, 100 Stat. 1962; amended Pub. L.

100–647, title I, §1018(u)(20), Nov. 10, 1988, 102 Stat. 3591; Pub. L. 101–239, title VII, §§7505(d)(2), 7811(m)(3), Dec. 19, 1989, 103 Stat. 2364, 2412; Pub. L. 101–380, title IX, §9001, Aug. 18, 1990, 104 Stat. 573.)

REFERENCES IN TEXT

The Oil Pollution Act of 1990, referred to in subsecs. (b)(2), (3), (5)–(7), (c)(1), (e)(2), and (f), is Pub. L. 101–380, Aug. 18, 1990, 104 Stat. 484, which is classified principally to chapter 40 (§2701 et seq.) of Title 33, Navigation and Navigable Waters. Sections 1006, 1012, 1015, and 6002 of the Act are classified to sections 2706, 2712, 2715, and 2752 of Title 33, respectively. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of Title 33 and Tables.

Section 311 of the Federal Water Pollution Control Act, referred to in subsecs. (b)(4), (8) and (c)(1)(C), (D), is classified to section 1321 of Title 33. Subsec. (d) of section 311, which related to maritime disaster discharges, was amended generally by Pub. L. 101–380, title IV, §4201(b), Aug. 18, 1990, 104 Stat. 525. Subsec. (k) of section 311 was repealed by Pub. L. 101–380, title II, §2002(b)(2), Aug. 18, 1990, 104 Stat. 507.

The Deepwater Port Act of 1974, referred to in subsec. (b)(5), (8), is Pub. L. 93–627, Jan. 3, 1975, 88 Stat. 2126, as amended, which is classified generally to chapter 29 (§1501 et seq.) of Title 33. Section 18 of the Act was classified to section 1517 of Title 33 prior to its repeal by Pub. L. 101–380, title II, §2003(a)(2), Aug. 18, 1990, 104 Stat. 507. For complete classification of this Act to the Code, see Short Title note set out under section 1501 of Title 33 and Tables.

Section 302 of the Outer Continental Shelf Lands Act Amendments of 1978, referred to in subsec. (b)(6), was classified to section 1812 of Title 43, Public Lands, prior to its repeal by Pub. L. 101–380, title II, §2004, Aug. 18, 1990, 104 Stat. 507.

Sections 204 and 207 of the Trans-Alaska Pipeline Authorization Act, referred to in subsec. (b)(7), (8), are classified to sections 1653 and 1656, respectively, of Title 43.

Section 309(c) of the Federal Water Pollution Control Act, referred to in subsec. (b)(8), is classified to section 1319(c) of Title 33, Navigation and Navigable Waters.

Sections 5 and 7 of the Intervention on the High Seas Act, referred to in subsec. (c)(1)(B), are classified to sections 1474 and 1476, respectively, of Title 33.

The date of the enactment of this subsection, referred to in subsec. (f), probably means the date of enactment of Pub. L. 101–380, which was approved Aug. 18, 1990, and which amended subsec. (f) generally.

AMENDMENTS

1990—Subsec. (b)(2) to (8). Pub. L. 101–380, §9001(a), added pars. (2) to (8) and struck out former pars. (2) to (5) which read as follows:

"(2) amounts recovered, collected, or received under subtitle A of the Comprehensive Oil Pollution Liability and Compensation Act,

"(3) amounts remaining (on January 1, 1990) in the Deepwater Port Liability Fund established by section 18(f) of the Deepwater Port Act of 1974,

"(4) amounts remaining (on such date) in the Offshore Oil Pollution Compensation Fund established under section 302 of the Outer Continental Shelf Lands Act Amendments of 1978, and

"(5) amounts credited to such trust fund under section 311(s) of the Federal Water Pollution Control Act."

Subsec. (c)(1). Pub. L. 101–380, §9001(b), amended par. (1) generally, substituting "Expenditure purposes" for "General expenditure purposes" in heading and substituting current text consisting of subpars. (A) to (F) for former text consisting of general provisions in subpar. (A) and special rules in subpar. (B).

Subsec. (c)(2)(A). Pub. L. 101–380, §9001(c), substituted "$1,000,000,000" for "$500,000,000" in heading and in cl. (i), and substituted "$500,000,000" for "$250,000,000" in cl. (ii).

Subsec. (c)(2)(B). Pub. L. 101–380, §9001(e)(2), substituted "payments of removal costs" for "payments described in paragraph (1)(A)(i)".

Subsec. (d)(2). Pub. L. 101–380, §9001(d)(1), substituted "$1,000,000,000" for "$500,000,000".

Subsec. (d)(3)(B). Pub. L. 101–380, §9001(d)(2), substituted "December 31, 1994" for "December 31, 1991".

Subsec. (e)(2). Pub. L. 101–380, §9001(e)(1), substituted "Oil Pollution Act of 1990" for "Comprehensive Oil Pollution Liability and Compensation Act".

Subsec. (f). Pub. L. 101–380, §9001(e)(3), substituted "References to Oil Pollution Act of 1990" for "References to Comprehensive Oil Pollution Liability and Compensation Act" in heading and amended text generally. Prior to amendment, text read as follows: "For purposes of this section, references to the Comprehensive Oil Pollution Liability and Compensation Act shall be treated as references to any law enacted

before December 31, 1990, which is substantially identical to subtitle E of title VI, or subtitle D of title VIII, of H.R. 5300 of the 99th Congress as passed by the House of Representatives."

1989—Subsec. (b)(3). Pub. L. 101–239, §7811(m)(3), made technical correction to directory language of Pub. L. 100–647, see 1988 Amendment note below.

Pub. L. 101–239, §7505(d)(2)(B), substituted "(on January 1, 1990)" for "(on the 1st day the Oil Spill Liability Trust Fund financing rate under section 4611(c) applies)".

Subsec. (c)(1)(A). Pub. L. 101–239, §7505(d)(2)(C), which directed amendment of subsec. (c)(1) by striking the last sentence, was executed by striking out the last sentence of subsec. (c)(1)(A), as the probable intent of Congress. Such sentence read as follows: "For purposes of this subparagraph, references to the Comprehensive Oil Pollution Liability and Compensation Act shall be treated as references to qualified authorizing legislation (as defined in section 4611)."

Subsec. (f). Pub. L. 101–239, §7505(d)(2)(A), added subsec. (f).

1988—Subsec. (b)(3). Pub. L. 100–647, as amended by Pub. L. 101–239, §7811(m)(3), substituted "Deepwater" for "Deep Water" wherever appearing.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–380 applicable to incidents occurring after Aug. 18, 1990, see section 1020 of Pub. L. 101–380, set out as an Effective Date note under section 2701 of Title 33, Navigation and Navigable Waters.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7811(m)(3) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Pub. L. 99–509, title VIII, §8033(c)(1), Oct. 21, 1986, 100 Stat. 1961, provided that: "The amendments made by this section [enacting this section] shall take effect on the commencement date (as defined in section 4611 of the Internal Revenue Code of 1954 [now 1986], as amended by this part)."

[For purposes of section 8033(c) of Pub. L. 99–509, set out as notes above and below, the commencement date is Jan. 1, 1990, see section 7505(d)(1) of Pub. L. 101–239, set out as an Effective Date of 1986 Amendment note under section 4611 of this title.]

REPORT ON OIL SPILL LIABILITY TRUST FUND

Pub. L. 107–295, title III, §322(a), Nov. 25, 2002, 116 Stat. 2103, provided that: "The report regarding the Oil Spill Liability Trust Fund required by the Conference Report (House Report 101–892) accompanying the Department of Transportation and Related Agencies Appropriations Act, 1991, [Pub. L. 101–516] as that requirement was amended by section 1122 of the Federal Reports Elimination and Sunset Act of 1995 (Public Law 104–66) [see below], shall no longer be submitted to the Congress."

Pub. L. 104–66, title I, §1122(a), Dec. 21, 1995, 109 Stat. 724, provided that: "The quarterly report regarding the Oil Spill Liability Trust Fund required to be submitted to the House and Senate Committees on Appropriations under House Report 101–892, accompanying the appropriations for the Coast Guard in the Department of Transportation and Related Agencies Appropriations Act, 1991 [Pub. L. 101–516], shall be submitted not later than 30 days after the end of the fiscal year in which this Act is enacted and annually thereafter."

[House Report 101–892, 101st Congress, 2d Session, provided that: "The conferees direct the Coast Guard to submit quarterly reports to the House and Senate Committee on Appropriations detailing and summarizing all transfers to and expenditures from the oil spill liability trust fund. Each report shall account for each transfer to and expenditure from the fund as authorized by Section 9509 of the Internal Revenue Code of 1986, as amended, and Sections 5003 and 5004 of the Oil Pollution Act of 1990 (Public Law 101–380) [33 U.S.C. 2733, 2734]. The report shall also show amounts collectable under Section 9509(b)(2), (3), and (8) of

the Internal Revenue Code of 1986. For those authorized expenditures subject to limitations, the report shall so indicate. The Coast Guard shall confer with the House and Senate Committees on Appropriations as to the format for these reports."]

DEEPWATER PORT LIABILITY FUND

Pub. L. 101–380, title II, §2003(b), Aug. 18, 1990, 104 Stat. 507, provided that: "Any amounts remaining in the Deepwater Port Liability Fund established under section 18(f) of the Deepwater Port Act of 1974 (33 U.S.C. [former] 1517(f)) shall be deposited in the Oil Spill Liability Trust Fund established under section 9509 of the Internal Revenue Code of 1986 (26 U.S.C. 9509). The Oil Spill Liability Trust Fund shall assume all liability incurred by the Deepwater Port Liability Fund."

OFFSHORE OIL POLLUTION COMPENSATION FUND

Pub. L. 101–380, title II, §2004, Aug. 18, 1990, 104 Stat. 507, provided that: "Title III of the Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. 1811–1824) is repealed. Any amounts remaining in the Offshore Oil Pollution Compensation Fund established under section 302 of that title (43 U.S.C. 1812) shall be deposited in the Oil Spill Liability Trust Fund established under section 9509 of the Internal Revenue Code of 1986 (26 U.S.C. 9509). The Oil Spill Liability Trust Fund shall assume all liability incurred by the Offshore Oil Pollution Compensation Fund."

DEPOSIT OF CERTAIN PENALTIES INTO OIL SPILL LIABILITY TRUST FUND

Pub. L. 101–380, title IV, §4304, Aug. 18, 1990, 104 Stat. 540, provided that: "Penalties paid pursuant to section 311 of the Federal Water Pollution Control Act [33 U.S.C. 1321], section 309(c) of that Act [33 U.S.C. 1319(c)], as a result of violations of section 311 of that Act, and the Deepwater Port Act of 1974 [33 U.S.C. 1501 et seq.], shall be deposited in the Oil Spill Liability Trust Fund created under section 9509 of the Internal Revenue Code of 1986 (26 U.S.C. 9509)."

COORDINATION WITH SUPERFUND REAUTHORIZATION

Pub. L. 99–509, title VIII, §8033(c)(2), Oct. 21, 1986, 100 Stat. 1961, provided that: "If the Superfund Amendments and Reauthorization Act of 1986 [Pub. L. 99–499, see Short Title of 1986 Amendment note set out under section 9601 of Title 42, The Public Health and Welfare] is enacted—

"(A) subsection (a) of this section shall be applied by substituting 'section 9508' for 'section 9506',

"(B) section 9507 of the Internal Revenue Code of 1954 [now 1986], as added by this section, is hereby redesignated as section 9509 of such Code, and

"(C) in lieu of the amendment made by subsection (b), the table of sections for subchapter A of chapter 98 of such Code is amended by adding after the item relating to section 9508 the following new item:

" 'SEC. 9509. OIL SPILL LIABILITY TRUST FUND.' "

§9510. Vaccine Injury Compensation Trust Fund

(a) Creation of Trust Fund

There is established in the Treasury of the United States a trust fund to be known as the "Vaccine Injury Compensation Trust Fund", consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section or section 9602(b).

(b) Transfers to Trust Fund

(1) In general

There are hereby appropriated to the Vaccine Injury Compensation Trust Fund amounts equivalent to the net revenues received in the Treasury from the tax imposed by section 4131 (relating to tax on certain vaccines).

(2) Net revenues

For purposes of paragraph (1), the term "net revenues" means the amount estimated by the Secretary based on the excess of—

(A) the taxes received in the Treasury under section 4131 (relating to tax on certain vaccines), over

(B) the decrease in the tax imposed by chapter 1 resulting from the tax imposed by section

4131.

(3) Limitation on transfers to Vaccine Injury Compensation Trust Fund

No amount may be appropriated to the Vaccine Injury Compensation Trust Fund on and after the date of any expenditure from the Trust Fund which is not permitted by this section. The determination of whether an expenditure is so permitted shall be made without regard to—

(A) any provision of law which is not contained or referenced in this title or in a revenue Act, and

(B) whether such provision of law is a subsequently enacted provision or directly or indirectly seeks to waive the application of this paragraph.

(c) Expenditures from Trust Fund

(1) In general

Amounts in the Vaccine Injury Compensation Trust Fund shall be available, as provided in appropriation Acts, only for—

(A) the payment of compensation under subtitle 2 of title XXI of the Public Health Service Act (as in effect on October 18, 2000) for vaccine-related injury or death with respect to any vaccine—

(i) which is administered after September 30, 1988, and

(ii) which is a taxable vaccine (as defined in section 4132(a)(1)) at the time compensation is paid under such subtitle 2, or

(B) the payment of all expenses of administration (but not in excess of $9,500,000 for any fiscal year) incurred by the Federal Government in administering such subtitle.

(2) Transfers for certain repayments

(A) In general

The Secretary shall pay from time to time from the Vaccine Injury Compensation Trust Fund into the general fund of the Treasury amounts equivalent to amounts paid under section 4132(b) and section 6416 with respect to the taxes imposed by section 4131.

(B) Transfers based on estimates

Transfers under subparagraph (A) shall be made on the basis of estimates by the Secretary, and proper adjustments shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

(d) Liability of United States limited to amount in Trust Fund

(1) General rule

Any claim filed against the Vaccine Injury Compensation Trust Fund may be paid only out of such Trust Fund.

(2) Coordination with other provisions

Nothing in the National Childhood Vaccine Injury Act of 1986 (or in any amendment made by such Act) shall authorize the payment by the United States Government of any amount with respect to any such claim out of any source other than the Vaccine Injury Compensation Trust Fund.

(3) Order in which unpaid claims to be paid

If at any time the Vaccine Injury Compensation Trust Fund has insufficient funds to pay all of the claims out of such Trust Fund at such time, such claims shall, to the extent permitted under paragraph (1) be paid in full in the order in which they are finally determined.

(Added Pub. L. 100–203, title IX, §9202(a), Dec. 22, 1987, 101 Stat. 1330–330; amended Pub. L. 100–647, title II, §2006(b), Nov. 10, 1988, 102 Stat. 3613; Pub. L. 101–239, title VII, §7841(g)(1), Dec. 19, 1989, 103 Stat. 2429; Pub. L. 103–66, title XIII, §13421(b), Aug. 10, 1993, 107 Stat. 566; Pub. L. 105–277, div. C, title XV, §1504(a), div. J, title IV, §4003(d), Oct. 21, 1998, 112 Stat.

2681–741, 2681–909; Pub. L. 106–170, title V, §523(b)(1), (2), Dec. 17, 1999, 113 Stat. 1927; Pub. L. 106–554, §1(a)(7) [title III, §318(f)], Dec. 21, 2000, 114 Stat. 2763, 2763A–646.)

REFERENCES IN TEXT

The Public Health Service Act, referred to in subsec. (c)(1)(A), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Subtitle 2 of title XXI of the Public Health Service Act is classified generally to part 2 (§300aa–10 et seq.) of subchapter XIX of chapter 6A of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

The National Childhood Vaccine Injury Act of 1986, referred to in subsec. (d)(2), is title III of Pub. L. 99–660, Nov. 14, 1986, 100 Stat. 3755, as amended, which is classified principally to subchapter XIX (§300aa–1 et seq.) of chapter 6A of Title 42. For complete classification of this Act to the Code, see Short Title of 1986 Amendments note set out under section 201 of Title 42 and Tables.

AMENDMENTS

2000—Subsec. (c)(1)(A). Pub. L. 106–554 substituted "October 18, 2000" for "December 31, 1999".

1999—Subsec. (b)(3). Pub. L. 106–170, §523(b)(1), repealed Pub. L. 105–277, §1504(a)(2). See 1998 Amendment note below.

Subsec. (c)(1). Pub. L. 106–170, §523(b)(1), repealed Pub. L. 105–277, §1504(a)(1). See 1998 Amendment note below.

Subsec. (c)(1)(A). Pub. L. 106–170, §523(b)(2), substituted "December 31, 1999" for "August 5, 1997".

1998—Subsec. (b)(3). Pub. L. 105–277, §4003(d)(2), added par. (3).

Pub. L. 105–277, §1504(a)(2), which directed amendment of subsec. (b) by adding a new par. (3) at the end, was repealed by Pub. L. 106–170, §523(b)(1).

Subsec. (c)(1). Pub. L. 105–277, §4003(d)(1), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: "Amounts in the Vaccine Injury Compensation Trust Fund shall be available, as provided in appropriation Acts, only for the payment of compensation under subtitle 2 of title XXI of the Public Health Service Act (as in effect on the date of the enactment of this section) for vaccine-related injury or death with respect to vaccines administered after September 30, 1988, or for the payment of all expenses of administration (but not in excess of $6,000,000 for any fiscal year) incurred by the Federal Government in administering such subtitle."

Pub. L. 105–277, §1504(a)(1), which directed the general amendment of par. (1), was repealed by Pub. L. 106–170, §523(b)(1).

1993—Subsec. (c)(1). Pub. L. 103–66 struck out "and before October 1, 1992," after "September 30, 1988,".

1989—Subsec. (c)(1). Pub. L. 101–239 inserted before period at end ", or for the payment of all expenses of administration (but not in excess of $6,000,000 for any fiscal year) incurred by the Federal Government in administering such subtitle".

1988—Subsec. (a). Pub. L. 100–647 inserted "appropriated or" before "credited" and "this section or" before "section 9602(b)".

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 effective as if included in the provisions of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. 105–277, to which such amendment relates, see section 523(b)(3) of Pub. L. 106–170, set out as a note under section 4132 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–277, div. C, title XV, §1504(b), Oct. 21, 1998, 112 Stat. 2681–742, which provided that the amendments made to this section by Pub. L. 105–277, §1504, were to take effect as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which they related, was repealed by Pub. L. 106–170, title V, §523(b)(1), Dec. 17, 1999, 113 Stat. 1927.

Amendment by section 4003(d) of Pub. L. 105–277 effective as if included in the provision of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 4003(l) of Pub. L. 105–277, set out as a note under section 86 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, §7841(g)(2), Dec. 19, 1989, 103 Stat. 2429, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to fiscal years beginning after September 30, 1989."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective as if included in the amendments made by section 9201 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, see section 2006(c) of Pub. L. 100–647, set out as a note under section 4132 of this title.

EFFECTIVE DATE

Pub. L. 100–203, title IX, §9202(c), Dec. 22, 1987, 101 Stat. 1330–331, provided that: "The amendments made by this section [enacting this section] shall take effect on January 1, 1988."

§9511. Patient-Centered Outcomes Research Trust Fund

(a) Creation of Trust Fund

There is established in the Treasury of the United States a trust fund to be known as the "Patient-Centered Outcomes Research Trust Fund" (hereafter in this section referred to as the "PCORTF"), consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section and section 9602(b).

(b) Transfers to Fund

(1) Appropriation

There are hereby appropriated to the Trust Fund the following:

(A) For fiscal year 2010, $10,000,000.

(B) For fiscal year 2011, $50,000,000.

(C) For fiscal year 2012, $150,000,000.

(D) For fiscal year 2013—

(i) an amount equivalent to the net revenues received in the Treasury from the fees imposed under subchapter B of chapter 34 (relating to fees on health insurance and self-insured plans) for such fiscal year; and

(ii) $150,000,000.

(E) For each of fiscal years 2014, 2015, 2016, 2017, 2018, and 2019—

(i) an amount equivalent to the net revenues received in the Treasury from the fees imposed under subchapter B of chapter 34 (relating to fees on health insurance and self-insured plans) for such fiscal year; and

(ii) $150,000,000.

The amounts appropriated under subparagraphs (A), (B), (C), (D)(ii), and (E)(ii) shall be transferred from the general fund of the Treasury, from funds not otherwise appropriated.

(2) Trust Fund transfers

In addition to the amounts appropriated under paragraph (1), there shall be credited to the PCORTF the amounts transferred under section 1183 of the Social Security Act.

(3) Limitation on transfers to PCORTF

No amount may be appropriated or transferred to the PCORTF on and after the date of any expenditure from the PCORTF which is not an expenditure permitted under this section. The determination of whether an expenditure is so permitted shall be made without regard to—

(A) any provision of law which is not contained or referenced in this chapter or in a revenue Act, and

(B) whether such provision of law is a subsequently enacted provision or directly or indirectly seeks to waive the application of this paragraph.

(c) Trustee

The Secretary of the Treasury shall be a trustee of the PCORTF.

(d) Expenditures from Fund

(1) Amounts available to the Patient-Centered Outcomes Research Institute

Subject to paragraph (2), amounts in the PCORTF are available, without further appropriation, to the Patient-Centered Outcomes Research Institute established under section 1181(b) of the Social Security Act for carrying out part D of title XI of the Social Security Act (as in effect on the date of enactment of such Act).

(2) Transfer of funds

(A) In general

The trustee of the PCORTF shall provide for the transfer from the PCORTF of 20 percent of the amounts appropriated or credited to the PCORTF for each of fiscal years 2011 through 2019 to the Secretary of Health and Human Services to carry out section 937 of the Public Health Service Act.

(B) Availability

Amounts transferred under subparagraph (A) shall remain available until expended.

(C) Requirements

Of the amounts transferred under subparagraph (A) with respect to a fiscal year, the Secretary of Health and Human Services shall distribute—

(i) 80 percent to the Office of Communication and Knowledge Transfer of the Agency for Healthcare Research and Quality (or any other relevant office designated by Agency for Healthcare Research and Quality) to carry out the activities described in section 937 of the Public Health Service Act; and

(ii) 20 percent to the Secretary to carry out the activities described in such section 937.

(e) Net revenues

For purposes of this section, the term "net revenues" means the amount estimated by the Secretary of the Treasury based on the excess of—

(1) the fees received in the Treasury under subchapter B of chapter 34, over

(2) the decrease in the tax imposed by chapter 1 resulting from the fees imposed by such subchapter.

(f) Termination

No amounts shall be available for expenditure from the PCORTF after September 30, 2019, and any amounts in such Trust Fund after such date shall be transferred to the general fund of the Treasury.

(Added Pub. L. 111–148, title VI, §6301(e)(1)(A), Mar. 23, 2010, 124 Stat. 742.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (b)(2) and (d)(1), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Part D of title XI of the Act is classified generally to part D (§1320e et seq.) of subchapter XI of chapter 7 of Title 42, The Public Health and Welfare. Sections 1181(b) and 1183 of the Act are classified to sections 1320e(b) and 1320e–2, respectively, of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The date of enactment of such Act, referred to in subsec. (d)(1), probably means the date of enactment of Pub. L. 111–148, which enacted part D of title XI of the Social Security Act and was approved Mar. 23, 2010.

Section 937 of the Public Health Service Act, referred to in subsec. (d)(2)(A), (C), is classified to section 299b–37 of Title 42, The Public Health and Welfare.

PRIOR PROVISIONS

A prior section 9511, added Pub. L. 102–240, title VIII, §8003(a), Dec. 18, 1991, 105 Stat. 2205; amended Pub. L. 105–130, §9(c), Dec. 1, 1997, 111 Stat. 2561, related to National Recreational Trails Trust Fund, prior to repeal by Pub. L. 105–178, title IX, §9011(a), June 9, 1998, 112 Stat. 508.

Subchapter B—General Provisions

Sec.
9601. Transfer of amounts.
9602. Management of Trust Funds.

§9601. Transfer of amounts

The amounts appropriated by any section of subchapter A to any Trust Fund established by such subchapter shall be transferred at least monthly from the general fund of the Treasury to such Trust Fund on the basis of estimates made by the Secretary of the Treasury of the amounts referred to in such section. Proper adjustments shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

(Added Pub. L. 97–119, title I, §103(a), Dec. 29, 1981, 95 Stat. 1638.)

§9602. Management of Trust Funds

(a) Report

It shall be the duty of the Secretary of the Treasury to hold each Trust Fund established by subchapter A, and (after consultation with any other trustees of the Trust Fund) to report to the Congress each year on the financial condition and the results of the operations of each such Trust Fund during the preceding fiscal year and on its expected condition and operations during the next 5 fiscal years. Such report shall be printed as a House document of the session of the Congress to which the report is made.

(b) Investment

(1) In general

It shall be the duty of the Secretary of the Treasury to invest such portion of any Trust Fund established by subchapter A as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States. For such purpose, such obligations may be acquired—

(A) on original issue at the issue price, or

(B) by purchase of outstanding obligations at the market price.

(2) Sale of obligations

Any obligation acquired by a Trust Fund established by subchapter A may be sold by the Secretary of the Treasury at the market price.

(3) Interest on certain proceeds

The interest on, and the proceeds from the sale or redemption of, any obligations held in a Trust Fund established by subchapter A shall be credited to and form a part of the Trust Fund.

(Added Pub. L. 97–119, title I, §103(a), Dec. 29, 1981, 95 Stat. 1638.)

Subtitle J—Coal Industry Health Benefits

Chapter Sec.[1]
99. Coal industry health benefits 9701

[1] *Section numbers editorially supplied.*

CHAPTER 99—COAL INDUSTRY HEALTH BENEFITS

Subchapter Sec.[1]

A. Definitions of general applicability 9701
B. Combined benefit fund 9702
C. Health benefits of certain miners 9711
D. Other provisions 9721

Subchapter A—Definitions of General Applicability

Sec.
9701. Definitions of general applicability.

§9701. Definitions of general applicability

(a) Plans and funds

For purposes of this chapter—

(1) UMWA Benefit Plan

(A) In general

The term "UMWA Benefit Plan" means a plan—

(i) which is described in section 404(c), or a continuation thereof; and

(ii) which provides health benefits to retirees and beneficiaries of the industry which maintained the 1950 UMWA Pension Plan.

(B) 1950 UMWA Benefit Plan

The term "1950 UMWA Benefit Plan" means a UMWA Benefit Plan, participation in which is substantially limited to individuals who retired before 1976.

(C) 1974 UMWA Benefit Plan

The term "1974 UMWA Benefit Plan" means a UMWA Benefit Plan, participation in which is substantially limited to individuals who retired on or after January 1, 1976.

(2) 1950 UMWA Pension Plan

The term "1950 UMWA Pension Plan" means a pension plan described in section 404(c) (or a continuation thereof), participation in which is substantially limited to individuals who retired before 1976.

(3) 1974 UMWA Pension Plan

The term "1974 UMWA Pension Plan" means a pension plan described in section 404(c) (or a continuation thereof), participation in which is substantially limited to individuals who retired in 1976 and thereafter.

(4) 1992 UMWA Benefit Plan

The term "1992 UMWA Benefit Plan" means the plan referred to in section 9713A.[1]

(5) Combined Fund

The term "Combined Fund" means the United Mine Workers of America Combined Benefit Fund established under section 9702.

(b) Agreements

For purposes of this section—

(1) Coal wage agreement

The term "coal wage agreement" means—

(A) the National Bituminous Coal Wage Agreement, or

(B) any other agreement entered into between an employer in the coal industry and the United Mine Workers of America that required or requires one or both of the following:

(i) the provision of health benefits to retirees of such employer, eligibility for which is based on years of service credited under a plan established by the settlors and described in section 404(c) or a continuation of such plan; or

(ii) contributions to the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan, or any predecessor thereof.

(2) Settlors

The term "settlors" means the United Mine Workers of America and the Bituminous Coal Operators' Association, Inc. (referred to in this chapter as the "BCOA").

(3) National Bituminous Coal Wage Agreement

The term "National Bituminous Coal Wage Agreement" means a collective bargaining agreement negotiated by the BCOA and the United Mine Workers of America.

(c) Terms relating to operators

For purposes of this section—

(1) Signatory operator

The term "signatory operator" means a person which is or was a signatory to a coal wage agreement.

(2) Related persons

(A) In general

A person shall be considered to be a related person to a signatory operator if that person is—

(i) a member of the controlled group of corporations (within the meaning of section 52(a)) which includes such signatory operator;

(ii) a trade or business which is under common control (as determined under section 52(b)) with such signatory operator; or

(iii) any other person who is identified as having a partnership interest or joint venture with a signatory operator in a business within the coal industry, but only if such business employed eligible beneficiaries, except that this clause shall not apply to a person whose only interest is as a limited partner.

A related person shall also include a successor in interest of any person described in clause (i), (ii), or (iii).

(B) Time for determination

The relationships described in clauses (i), (ii), and (iii) of subparagraph (A) shall be determined as of July 20, 1992, except that if, on July 20, 1992, a signatory operator is no longer in business, the relationships shall be determined as of the time immediately before such operator ceased to be in business.

(3) 1988 agreement operator

The term "1988 agreement operator" means—

(A) a signatory operator which was a signatory to the 1988 National Bituminous Coal Wage Agreement,

(B) an employer in the coal industry which was a signatory to an agreement containing pension and health care contribution and benefit provisions which are the same as those contained in the 1988 National Bituminous Coal Wage Agreement, or

(C) an employer from which contributions were actually received after 1987 and before July 20, 1992, by the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan in connection with employment in the coal industry during the period covered by the 1988 National Bituminous Coal Wage Agreement.

(4) Last signatory operator

The term "last signatory operator" means, with respect to a coal industry retiree, a signatory operator which was the most recent coal industry employer of such retiree.

(5) Assigned operator

The term "assigned operator" means, with respect to an eligible beneficiary defined in section

9703(f), the signatory operator to which liability under subchapter B with respect to the beneficiary is assigned under section 9706.

(6) Operators of dependent beneficiaries

For purposes of this chapter, the signatory operator, last signatory operator, or assigned operator of any eligible beneficiary under this chapter who is a coal industry retiree shall be considered to be the signatory operator, last signatory operator, or assigned operator with respect to any other individual who is an eligible beneficiary under this chapter by reason of a relationship to the retiree.

(7) Business

For purposes of this chapter, a person shall be considered to be in business if such person conducts or derives revenue from any business activity, whether or not in the coal industry.

(8) Successor in interest

(A) Safe harbor

The term "successor in interest" shall not include any person who—

(i) is an unrelated person to an eligible seller described in subparagraph (C); and

(ii) purchases for fair market value assets, or all of the stock, of a related person to such seller, in a bona fide, arm's-length sale.

(B) Unrelated person

The term "unrelated person" means a purchaser who does not bear a relationship to the eligible seller described in section 267(b).

(C) Eligible seller

For purposes of this paragraph, the term "eligible seller" means an assigned operator described in section 9704(j)(2) or a related person to such assigned operator.

(d) Enactment date

For purposes of this chapter, the term "enactment date" means the date of the enactment of this chapter.

(Added Pub. L. 102–486, title XIX, §19143(a), Oct. 24, 1992, 106 Stat. 3037; amended Pub. L. 109–432, div. C, title II, §211(d), Dec. 20, 2006, 120 Stat. 3023.)

REFERENCES IN TEXT

Section 9713A, referred to in subsec. (a)(4), probably should be a reference to section 9712 which provided for the establishment of the United Mine Workers of America 1992 Benefit Plan, referred to in that section as the "1992 UMWA Benefit Plan". No section 9713A of this title has been enacted.

The date of the enactment of this chapter, referred to in subsec. (d), is the date of the enactment of Pub. L. 102–486, which was approved Oct. 24, 1992.

AMENDMENTS

2006—Subsec. (c)(8). Pub. L. 109–432 added par. (8).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. C, title II, §211(e), Dec. 20, 2006, 120 Stat. 3023, provided that: "The amendments made by this section [amending this section and sections 9704, 9711, and 9712 of this title] shall take effect on the date of the enactment of this Act [Dec. 20, 2006], except that the amendment made by subsection (d) [amending this section] shall apply to transactions after the date of the enactment of this Act."

FINDINGS AND DECLARATION OF POLICY

Pub. L. 102–486, title XIX, §19142, Oct. 24, 1992, 106 Stat. 3037, provided that:

"(a) FINDINGS.—The Congress finds that—

"(1) the production, transportation, and use of coal substantially affects interstate and foreign commerce and the national public interest; and

"(2) in order to secure the stability of interstate commerce, it is necessary to modify the current private health care benefit plan structure for retirees in the coal industry to identify persons most responsible for

plan liabilities in order to stabilize plan funding and allow for the provision of health care benefits to such retirees.

"(b) STATEMENT OF POLICY.—It is the policy of this subtitle [subtitle C (§§19141–19143) of title XIX of Pub. L. 102–486, enacting this subtitle, amending sections 1231 and 1232 of Title 30, Mineral Lands and Mining, and enacting provisions set out as a note under section 1 of this title]—

"(1) to remedy problems with the provision and funding of health care benefits with respect to the beneficiaries of multiemployer benefit plans that provide health care benefits to retirees in the coal industry;

"(2) to allow for sufficient operating assets for such plans; and

"(3) to provide for the continuation of a privately financed self-sufficient program for the delivery of health care benefits to the beneficiaries of such plans."

[1] *See References in Text note below.*

Subchapter B—Combined Benefit Fund

Part

I. Establishment and Benefits.

II. Financing.

III. Enforcement.

IV. Other Provisions.

PART I—ESTABLISHMENT AND BENEFITS

Sec.

9702. Establishment of the United Mine Workers of America Combined Benefit Fund.

9703. Plan benefits.

§9702. Establishment of the United Mine Workers of America Combined Benefit Fund

(a) Establishment

(1) In general

As soon as practicable (but not later than 60 days) after the enactment date, the persons described in subsection (b) shall designate the individuals to serve as trustees. Such trustees shall create a new private plan to be known as the United Mine Workers of America Combined Benefit Fund.

(2) Merger of retiree benefit plans

As of February 1, 1993, the settlors of the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan shall cause such plans to be merged into the Combined Fund, and such merger shall not be treated as an employer withdrawal for purposes of any 1988 coal wage agreement.

(3) Treatment of plan

The Combined Fund shall be—

(A) a plan described in section 302(c)(5) of the Labor Management Relations Act, 1947 (29 U.S.C. 186(c)(5)),

(B) an employee welfare benefit plan within the meaning of section 3(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(1)), and

(C) a multiemployer plan within the meaning of section 3(37) of such Act (29 U.S.C. 1002(37)).

(4) Tax treatment

For purposes of this title, the Combined Fund and any related trust shall be treated as an organization exempt from tax under section 501(a).

(b) Board of trustees

(1) In general

For purposes of subsection (a), the board of trustees for the Combined Fund shall be appointed as follows—

(A) 2 individuals who represent employers in the coal mining industry shall be designated by the BCOA;

(B) 2 individuals designated by the United Mine Workers of America; and

(C) 3 individuals selected by the individuals appointed under subparagraphs (A) and (B).

(2) Successor trustees

Any successor trustee shall be appointed in the same manner as the trustee being succeeded. The plan establishing the Combined Fund shall provide for the removal of trustees.

(3) Special rule

If the BCOA ceases to exist, any trustee or successor under paragraph (1)(A) shall be designated by the 3 employers who were members of the BCOA on the enactment date and who have been assigned the greatest number of eligible beneficiaries under section 9706.

(c) Plan year

The first plan year of the Combined Fund shall begin February 1, 1993, and end September 30, 1993. Each succeeding plan year shall begin on October 1 of each calendar year.

(Added Pub. L. 102–486, title XIX, §19143(a), Oct. 24, 1992, 106 Stat. 3040; amended Pub. L. 109–432, div. C, title II, §213(a), Dec. 20, 2006, 120 Stat. 3027.)

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–432 reenacted heading without change and amended text of subsec. (b) generally. Prior to amendment, text contained provisions which related to: in par. (1), appointment of one trustee by the BCOA, one by the three employers having the greatest number of eligible beneficiaries under section 9706, two by the United Mine Workers of America, and three by the persons otherwise appointed; in par. (2), successor trustees and removal of trustees; and in par. (3), special rules relating to designation of trustees or successor trustees if the BCOA should cease to exist and designation of the initial trustee.

§9703. Plan benefits

(a) In general

Each eligible beneficiary of the Combined Fund shall receive—

(1) health benefits described in subsection (b), and

(2) in the case of an eligible beneficiary described in subsection (f)(1), death benefits coverage described in subsection (c).

(b) Health benefits

(1) In general

The trustees of the Combined Fund shall provide health care benefits to each eligible beneficiary by enrolling the beneficiary in a health care services plan which undertakes to provide such benefits on a prepaid risk basis. The trustees shall utilize all available plan resources to ensure that, consistent with paragraph (2), coverage under the managed care system shall to the maximum extent feasible be substantially the same as (and subject to the same limitations of) coverage provided under the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan as of January 1, 1992.

(2) Plan payment rates

(A) In general

The trustees of the Combined Fund shall negotiate payment rates with the health care services plans described in paragraph (1) for each plan year which are in amounts which—

(i) vary as necessary to ensure that beneficiaries in different geographic areas have access

to a uniform level of health benefits; and

(ii) result in aggregate payments for such plan year from the Combined Fund which do not exceed the total premium payments required to be paid to the Combined Fund under section 9704(a) for the plan year, adjusted as provided in subparagraphs (B) and (C).

(B) Reductions

The amount determined under subparagraph (A)(ii) for any plan year shall be reduced—

(i) by the aggregate death benefit premiums determined under section 9704(c) for the plan year, and

(ii) by the amount reserved for plan administration under subsection (d).

(C) Increases

The amount determined under subparagraph (A)(ii) shall be increased—

(i) by any reduction in the total premium payments required to be paid under section 9704(a) by reason of transfers described in section 9705,

(ii) by any carryover to the plan year from any preceding plan year which—

(I) is derived from amounts described in section 9704(e)(3)(B)(i), and

(II) the trustees elect to use to pay benefits for the current plan year, and

(iii) any interest earned by the Combined Fund which the trustees elect to use to pay benefits for the current plan year.

(3) Qualified providers

The trustees of the Combined Fund shall not enter into an agreement under paragraph (1) with any provider of services which is of a type which is required to be certified by the Secretary of Health and Human Services when providing services under title XVIII of the Social Security Act unless the provider is so certified.

(4) Effective date

Benefits shall be provided under paragraph (1) on and after February 1, 1993.

(c) Death benefits coverage

(1) In general

The trustees of the Combined Fund shall provide death benefits coverage to each eligible beneficiary described in subsection (f)(1) which is identical to the benefits provided under the 1950 UMWA Pension Plan or 1974 UMWA Pension Plan, whichever is applicable, on July 20, 1992. Such coverage shall be provided on and after February 1, 1993.

(2) Termination of coverage

The 1950 UMWA Pension Plan and the 1974 UMWA Pension Plan shall each be amended to provide that death benefits coverage shall not be provided to eligible beneficiaries on and after February 1, 1993. This paragraph shall not prohibit such plans from subsequently providing death benefits not described in paragraph (1).

(d) Reserves for administration

The trustees of the Combined Fund may reserve for each plan year, for use in payment of the administrative costs of the Combined Fund, an amount not to exceed 5 percent of the premiums to be paid to the Combined Fund under section 9704(a) during the plan year.

(e) Limitation on enrollment

The Combined Fund shall not enroll any individual who is not receiving benefits under the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan as of July 20, 1992.

(f) Eligible beneficiary

For purposes of this subchapter, the term "eligible beneficiary" means an individual who—

(1) is a coal industry retiree who, on July 20, 1992, was eligible to receive, and receiving, benefits from the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan, or

(2) on such date was eligible to receive, and receiving, benefits in either such plan by reason of a relationship to such retiree.

(Added Pub. L. 102–486, title XIX, §19143(a), Oct. 24, 1992, 106 Stat. 3041.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(3), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Act is classified generally to subchapter XVIII (§1395 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

PART II—FINANCING

Sec.
9704. Liability of assigned operators.
9705. Transfers.
9706. Assignment of eligible beneficiaries.

§9704. Liability of assigned operators

(a) Annual premiums

Each assigned operator shall pay to the Combined Fund for each plan year beginning on or after February 1, 1993, an annual premium equal to the sum of the following three premiums—

(1) the health benefit premium determined under subsection (b) for such plan year, plus

(2) the death benefit premium determined under subsection (c) for such plan year, plus

(3) the unassigned beneficiaries premium determined under subsection (d) for such plan year.

Any related person with respect to an assigned operator shall be jointly and severally liable for any premium required to be paid by such operator.

(b) Health benefit premium

For purposes of this chapter—

(1) In general

The health benefit premium for any plan year for any assigned operator shall be an amount equal to the product of the per beneficiary premium for the plan year multiplied by the number of eligible beneficiaries assigned to such operator under section 9706.

(2) Per beneficiary premium

The Commissioner of Social Security shall calculate a per beneficiary premium for each plan year beginning on or after February 1, 1993, which is equal to the sum of—

(A) the amount determined by dividing—

(i) the aggregate amount of payments from the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan for health benefits (less reimbursements but including administrative costs) for the plan year beginning July 1, 1991, for all individuals covered under such plans for such plan year, by

(ii) the number of such individuals, plus

(B) the amount determined under subparagraph (A) multiplied by the percentage (if any) by which the medical component of the Consumer Price Index for the calendar year in which the plan year begins exceeds such component for 1992.

(3) Adjustments for medicare reductions

If, by reason of a reduction in benefits under title XVIII of the Social Security Act, the level of health benefits under the Combined Fund would be reduced, the trustees of the Combined Fund

shall increase the per beneficiary premium for the plan year in which the reduction occurs and each subsequent plan year by the amount necessary to maintain the level of health benefits which would have been provided without such reduction.

(c) Death benefit premium

The death benefit premium for any plan year for any assigned operator shall be equal to the applicable percentage of the amount, actuarially determined, which the Combined Fund will be required to pay during the plan year for death benefits coverage described in section 9703(c).

(d) Unassigned beneficiaries premium

(1) Plan years ending on or before September 30, 2006

For plan years ending on or before September 30, 2006, the unassigned beneficiaries premium for any assigned operator shall be equal to the applicable percentage of the product of the per beneficiary premium for the plan year multiplied by the number of eligible beneficiaries who are not assigned under section 9706 to any person for such plan year.

(2) Plan years beginning on or after October 1, 2006

(A) In general

For plan years beginning on or after October 1, 2006, subject to subparagraph (B), there shall be no unassigned beneficiaries premium, and benefit costs with respect to eligible beneficiaries who are not assigned under section 9706 to any person for any such plan year shall be paid from amounts transferred under section 9705(b).

(B) Inadequate transfers

If, for any plan year beginning on or after October 1, 2006, the amounts transferred under section 9705(b) are less than the amounts required to be transferred to the Combined Fund under subsection (h)(2)(A) or (i) of section 402 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232)),[1] then the unassigned beneficiaries premium for any assigned operator shall be equal to the operator's applicable percentage of the amount required to be so transferred which was not so transferred.

(e) Premium accounts; adjustments

(1) Accounts

The trustees of the Combined Fund shall establish and maintain 3 separate accounts for each of the premiums described in subsections (b), (c), and (d). Such accounts shall be credited with the premiums received and amounts transferred under section 9705(b) and debited with expenditures allocable to such premiums.

(2) Allocations

(A) Administrative expenses

Administrative costs for any plan year shall be allocated to premium accounts under paragraph (1) on the basis of expenditures (other than administrative costs) from such accounts during the preceding plan year.

(B) Interest

Interest shall be allocated to the account established for health benefit premiums.

(3) Shortfalls and surpluses

(A) In general

Except as provided in subparagraph (B), if, for any plan year, there is a shortfall or surplus in any premium account, the premium for the following plan year for each assigned operator shall be proportionately reduced or increased, whichever is applicable, by the amount of such

shortfall or surplus. Amounts credited to an account from amounts transferred under section 9705(b) shall not be taken into account in determining whether there is a surplus in the account for purposes of this paragraph.

(B) Exception

Subparagraph (A) shall not apply to any surplus in the health benefit premium account or the unassigned beneficiaries premium account which is attributable to—

(i) the excess of the premiums credited to such account for a plan year over the benefits (and administrative costs) debited to such account for the plan year, but such excess shall only be available for purposes of the carryover described in section 9703(b)(2)(C)(ii) (relating to carryovers of premiums not used to provide benefits), or

(ii) interest credited under paragraph (2)(B) for the plan year or any preceding plan year.

(C) No authority for increased payments

Nothing in this paragraph shall be construed to allow expenditures for health care benefits for any plan year in excess of the limit under section 9703(b)(2).

(f) Applicable percentage

For purposes of this section—

(1) In general

The term "applicable percentage" means, with respect to any assigned operator, the percentage determined by dividing the number of eligible beneficiaries assigned under section 9706 to such operator by the total number of eligible beneficiaries assigned under section 9706 to all such operators (determined on the basis of assignments as of October 1, 1993).

(2) Annual adjustments

In the case of any plan year beginning on or after October 1, 1994, the applicable percentage for any assigned operator shall be redetermined under paragraph (1) by making the following changes to the assignments as of October 1, 1993:

(A) Such assignments shall be modified to reflect any changes during the period beginning October 1, 1993, and ending on the last day of the preceding plan year pursuant to the appeals process under section 9706(f).

(B) The total number of assigned eligible beneficiaries shall be reduced by the eligible beneficiaries of assigned operators which (and all related persons with respect to which) had ceased business (within the meaning of section 9701(c)(6)) during the period described in subparagraph (A).

(C) In the case of plan years beginning on or after October 1, 2007, the total number of assigned eligible beneficiaries shall be reduced by the eligible beneficiaries whose assignments have been revoked under section 9706(h).

(g) Payment of premiums

(1) In general

The annual premium under subsection (a) for any plan year shall be payable in 12 equal monthly installments, due on the twenty-fifth day of each calendar month in the plan year. In the case of the plan year beginning February 1, 1993, the annual premium under subsection (a) shall be added to such premium for the plan year beginning October 1, 1993.

(2) Deductibility

Any premium required by this section shall be deductible without regard to any limitation on deductibility based on the prefunding of health benefits.

(h) Information

The trustees of the Combined Fund shall, not later than 60 days after the enactment date, furnish to the Commissioner of Social Security information as to the benefits and covered beneficiaries under the fund, and such other information as the Secretary [2] may require to compute any premium under

this section.

(i) Transition rules

(1) 1988 agreement operators

(A) 1st year costs

During the plan year of the Combined Fund beginning February 1, 1993, the 1988 agreement operators shall make contributions to the Combined Fund in amounts necessary to pay benefits and administrative costs of the Combined Fund incurred during such year, reduced by the amount transferred to the Combined Fund under section 9705(a) on February 1, 1993.

(B) Deficits from merged plans

During the period beginning February 1, 1993, and ending September 30, 1994, the 1988 agreement operators shall make contributions to the Combined Fund as are necessary to pay off the expenses accrued (and remaining unpaid) by the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan as of February 1, 1993, reduced by the assets of such plans as of such date.

(C) Failure

If any 1988 agreement operator fails to meet any obligation under this paragraph, any contributions of such operator to the Combined Fund or any other plan described in section 404(c) shall not be deductible under this title until such time as the failure is corrected.

(D) Premium reductions

(i) 1st year payments

In the case of a 1988 agreement operator making contributions under subparagraph (A), the premium of such operator under subsection (a) shall be reduced by the amount paid under subparagraph (A) by such operator for the plan year beginning February 1, 1993.

(ii) Deficit payments

In the case a 1988 agreement operator making contributions under subparagraph (B), the premium of such operator under subsection (a) shall be reduced by the amounts which are paid to the Combined Fund by reason of claims arising in connection with the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan as of February 1, 1993, including claims based on the "evergreen clause" found in the language of the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan, and which are allocated to such operator under subparagraph (E).

(iii) Limitation

Clause (ii) shall not apply to the extent the amounts paid exceed the contributions.

(iv) Plan years

Premiums under subsection (a) shall be reduced for the first plan year for which amounts described in clause (i) or (ii) are available and for any succeeding plan year until such amounts are exhausted.

(E) Allocations of contributions and refunds

Contributions under subparagraphs (A) and (B), and premium reductions under subparagraph (D)(ii), shall be made ratably on the basis of aggregate contributions made by such operators under the applicable 1988 coal wage agreements as of January 31, 1993.

(2) 1st plan year

In the case of the plan year of the Combined Fund beginning February 1, 1993—

(A) the premiums under subsections (a)(1) and (a)(3) shall be 67 percent of such premiums without regard to this paragraph, and

(B) the premiums under subsection (a) shall be paid as provided in subsection (g).

(3) Startup costs

The 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan shall pay the costs of the Combined Fund incurred before February 1, 1993. For purposes of this section, such costs shall be treated as administrative expenses incurred for the plan year beginning February 1, 1993.

(j) Prepayment of premium liability

(1) In general

If—

(A) a payment meeting the requirements of paragraph (3) is made to the Combined Fund by or on behalf of—

(i) any assigned operator to which this subsection applies, or

(ii) any related person to any assigned operator described in clause (i), and

(B) the common parent of the controlled group of corporations described in paragraph (2)(B) is jointly and severally liable for any premium under this section which (but for this subsection) would be required to be paid by the assigned operator or related person,

then such common parent (and no other person) shall be liable for such premium.

(2) Assigned operators to which subsection applies

(A) In general

This subsection shall apply to any assigned operator if—

(i) the assigned operator (or a related person to the assigned operator)—

(I) made contributions to the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan for employment during the period covered by the 1988 agreement; and

(II) is not a 1988 agreement operator,

(ii) the assigned operator (and all related persons to the assigned operator) are not actively engaged in the production of coal as of July 1, 2005, and

(iii) the assigned operator was, as of July 20, 1992, a member of a controlled group of corporations described in subparagraph (B).

(B) Controlled group of corporations

A controlled group of corporations is described in this subparagraph if the common parent of such group is a corporation the shares of which are publicly traded on a United States exchange.

(C) Coordination with repeal of assignments

A person shall not fail to be treated as an assigned operator to which this subsection applies solely because the person ceases to be an assigned operator by reason of section 9706(h)(1) if the person otherwise meets the requirements of this subsection and is liable for the payment of premiums under section 9706(h)(3).

(D) Controlled group

For purposes of this subsection, the term "controlled group of corporations" has the meaning given such term by section 52(a).

(3) Requirements

A payment meets the requirements of this paragraph if—

(A) the amount of the payment is not less than the present value of the total premium liability under this chapter with respect to the Combined Fund of the assigned operators or related persons described in paragraph (1) or their assignees, as determined by the operator's or related person's enrolled actuary (as defined in section 7701(a)(35)) using actuarial methods and assumptions each of which is reasonable and which are reasonable in the aggregate, as determined by such enrolled actuary;

(B) such enrolled actuary files with the Secretary of Labor a signed actuarial report

containing—

(i) the date of the actuarial valuation applicable to the report; and

(ii) a statement by the enrolled actuary signing the report that, to the best of the actuary's knowledge, the report is complete and accurate and that in the actuary's opinion the actuarial assumptions used are in the aggregate reasonably related to the experience of the operator and to reasonable expectations; and

(C) 90 calendar days have elapsed after the report required by subparagraph (B) is filed with the Secretary of Labor, and the Secretary of Labor has not notified the assigned operator in writing that the requirements of this paragraph have not been satisfied.

(4) Use of prepayment

The Combined Fund shall—

(A) establish and maintain an account for each assigned operator or related person by, or on whose behalf, a payment described in paragraph (3) was made,

(B) credit such account with such payment (and any earnings thereon), and

(C) use all amounts in such account exclusively to pay premiums that would (but for this subsection) be required to be paid by the assigned operator.

Upon termination of the obligations for the premium liability of any assigned operator or related person for which such account is maintained, all funds remaining in such account (and earnings thereon) shall be refunded to such person as may be designated by the common parent described in paragraph (1)(B).

(Added Pub. L. 102–486, title XIX, §19143(a), Oct. 24, 1992, 106 Stat. 3042; amended Pub. L. 103–296, title I, §108(h)(9)(A), Aug. 15, 1994, 108 Stat. 1487; Pub. L. 109–432, div. C, title II, §§211(a), 212(a)(2), Dec. 20, 2006, 120 Stat. 3020, 3024.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(3), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Act is classified generally to subchapter XVIII (§1395 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2006—Subsec. (d). Pub. L. 109–432, §212(a)(2)(A), reenacted heading without change and amended text of subsec. (d) generally. Prior to amendment, text read as follows: "The unassigned beneficiaries premium for any plan year for any assigned operator shall be equal to the applicable percentage of the product of the per beneficiary premium for the plan year multiplied by the number of eligible beneficiaries who are not assigned under section 9706 to any person for such plan year."

Subsec. (e)(1). Pub. L. 109–432, §212(a)(2)(B)(i), inserted "and amounts transferred under section 9705(b)" after "premiums received".

Subsec. (e)(3)(A). Pub. L. 109–432, §212(a)(2)(B)(ii), inserted at end "Amounts credited to an account from amounts transferred under section 9705(b) shall not be taken into account in determining whether there is a surplus in the account for purposes of this paragraph."

Subsec. (f)(2)(C). Pub. L. 109–432, §212(a)(2)(C), added subpar. (C).

Subsec. (j). Pub. L. 109–432, §211(a), added subsec. (j).

1994—Subsecs. (b)(2), (h). Pub. L. 103–296 substituted "Commissioner of Social Security" for "Secretary of Health and Human Services".

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. C, title II, §212(a)(4), Dec. 20, 2006, 120 Stat. 3025, provided that: "The amendments made by this subsection [amending this section and sections 9705 and 9706 of this title] shall apply to plan years of the Combined Fund beginning after September 30, 2006."

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of Title 42, The Public Health and Welfare.

[1] *So in original. Second closing parenthesis probably should not appear.*

[2] *So in original. Probably should be "Commissioner".*

§9705. Transfers

(a) Transfer of assets from 1950 UMWA Pension Plan

(1) In general

From the funds reserved under paragraph (2), the board of trustees of the 1950 UMWA Pension Plan shall transfer to the Combined Fund—

(A) $70,000,000 on February 1, 1993,
(B) $70,000,000 on October 1, 1993, and
(C) $70,000,000 on October 1, 1994.

(2) Reservation

Immediately upon the enactment date, the board of trustees of the 1950 UMWA Pension Plan shall segregate $210,000,000 from the general assets of the plan. Such funds shall be held in the plan until disbursed pursuant to paragraph (1). Any interest on such funds shall be deposited into the general assets of the 1950 UMWA Pension Plan.

(3) Use of funds

Amounts transferred to the Combined Fund under paragraph (1) shall—

(A) in the case of the transfer on February 1, 1993, be used to proportionately reduce the premium of each assigned operator under section 9704(a) for the plan year of the Fund beginning February 1, 1993, and

(B) in the case of any other such transfer, be used to proportionately reduce the unassigned beneficiary premium under section 9704(a)(3) and the death benefit premium under section 9704(a)(2) of each assigned operator for the plan year in which transferred and for any subsequent plan year in which such funds remain available.

Such funds may not be used to pay any amounts required to be paid by the 1988 agreement operators under section 9704(i)(1)(B).

(4) Tax treatment; validity of transfer

(A) No deduction

No deduction shall be allowed under this title with respect to any transfer pursuant to paragraph (1), but such transfer shall not adversely affect the deductibility (under applicable provisions of this title) of contributions previously made by employers, or amounts hereafter contributed by employers, to the 1950 UMWA Pension Plan, the 1950 UMWA Benefit Plan, the 1974 UMWA Pension Plan, the 1974 UMWA Benefit Plan, the 1992 UMWA Benefit Plan, or the Combined Fund.

(B) Other tax provisions

Any transfer pursuant to paragraph (1)—

(i) shall not be treated as an employer reversion from a qualified plan for purposes of section 4980, and

(ii) shall not be includible in the gross income of any employer maintaining the 1950 UMWA Pension Plan.

(5) Treatment of transfer

Any transfer pursuant to paragraph (1) shall not be deemed to violate, or to be prohibited by, any provision of law, or to cause the settlors, joint board of trustees, employers or any related

person to incur or be subject to liability, taxes, fines, or penalties of any kind whatsoever.

(b) Transfers

(1) In general

The Combined Fund shall include any amount transferred to the Fund under subsections (h) and (i) of section 402 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(h)).[1]

(2) Use of funds

Any amount transferred under paragraph (1) for any fiscal year shall be used to pay benefits and administrative costs of beneficiaries of the Combined Fund or for such other purposes as are specifically provided in the Acts [2] described in paragraph (1).

(Added Pub. L. 102–486, title XIX, §19143(a), Oct. 24, 1992, 106 Stat. 3046; amended Pub. L. 109–432, div. C, title II, §212(a)(1), Dec. 20, 2006, 120 Stat. 3023.)

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–432, §212(a)(1)(C), struck out "from abandoned mine reclamation fund" after "Transfers" in heading.

Subsec. (b)(1). Pub. L. 109–432, §212(a)(1)(A), substituted "subsections (h) and (i) of section 402" for "section 402(h)".

Subsec. (b)(2). Pub. L. 109–432, §212(a)(1)(B), reenacted heading without change and amended text of par. (2) generally. Prior to amendment, text read as follows: "Any amount transferred under paragraph (1) for any fiscal year shall be used to proportionately reduce the unassigned beneficiary premium under section 9704(a)(3) of each assigned operator for the plan year in which transferred."

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–432 applicable to plan years of the Combined Fund beginning after Sept. 30, 2006, see section 212(a)(4) of Pub. L. 109–432, set out as a note under section 9704 of this title.

[1] So in original. Probably should be "(30 U.S.C. 1232)."

[2] So in original. Probably should be "Act".

§9706. Assignment of eligible beneficiaries

(a) In general

For purposes of this chapter, the Commissioner of Social Security shall, before October 1, 1993, assign each coal industry retiree who is an eligible beneficiary to a signatory operator which (or any related person with respect to which) remains in business in the following order:

(1) First, to the signatory operator which—

(A) was a signatory to the 1978 coal wage agreement or any subsequent coal wage agreement, and

(B) was the most recent signatory operator to employ the coal industry retiree in the coal industry for at least 2 years.

(2) Second, if the retiree is not assigned under paragraph (1), to the signatory operator which—

(A) was a signatory to the 1978 coal wage agreement or any subsequent coal wage agreement, and

(B) was the most recent signatory operator to employ the coal industry retiree in the coal industry.

(3) Third, if the retiree is not assigned under paragraph (1) or (2), to the signatory operator which employed the coal industry retiree in the coal industry for a longer period of time than any

other signatory operator prior to the effective date of the 1978 coal wage agreement.

(b) Rules relating to employment and reassignment upon purchase

For purposes of subsection (a)—

(1) Aggregation rules

(A) Related person

Any employment of a coal industry retiree in the coal industry by a signatory operator shall be treated as employment by any related persons to such operator.

(B) Certain employment disregarded

Employment with—

(i) a person which is (and all related persons with respect to which are) no longer in business, or

(ii) a person during a period during which such person was not a signatory to a coal wage agreement,

shall not be taken into account.

(2) Reassignment upon purchase

If a person becomes a successor of an assigned operator after the enactment date, the assigned operator may transfer the assignment of an eligible beneficiary under subsection (a) to such successor, and such successor shall be treated as the assigned operator with respect to such eligible beneficiary for purposes of this chapter. Notwithstanding the preceding sentence, the assigned operator transferring such assignment (and any related person) shall remain the guarantor of the benefits provided to the eligible beneficiary under this chapter. An assigned operator shall notify the trustees of the Combined Fund of any transfer described in this paragraph.

(c) Identification of eligible beneficiaries

The 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan shall, by the later of October 1, 1992, or the twentieth day after the enactment date, provide to the Commissioner of Social Security a list of the names and social security account numbers of each eligible beneficiary, including each deceased eligible beneficiary if any other individual is an eligible beneficiary by reason of a relationship to such deceased eligible beneficiary. In addition, the plans shall provide, where ascertainable from plan records, the names of all persons described in subsection (a) with respect to any eligible beneficiary or deceased eligible beneficiary.

(d) Cooperation by other agencies and persons

(1) Cooperation

The head of any department, agency, or instrumentality of the United States shall cooperate fully and promptly with the Commissioner of Social Security in providing information which will enable the Commissioner to carry out his responsibilities under this section.

(2) Providing of information

(A) In general

Notwithstanding any other provision of law, including section 6103, the head of any other agency, department, or instrumentality shall, upon receiving a written request from the Commissioner of Social Security in connection with this section, cause a search to be made of the files and records maintained by such agency, department, or instrumentality with a view to determining whether the information requested is contained in such files or records. The Commissioner shall be advised whether the search disclosed the information requested, and, if so, such information shall be promptly transmitted to the Commissioner, except that if the disclosure of any requested information would contravene national policy or security interests of the United States, or the confidentiality of census data, the information shall not be transmitted and the Commissioner shall be so advised.

(B) Limitation

Any information provided under subparagraph (A) shall be limited to information necessary for the Commissioner to carry out his duties under this section.

(3) Trustees

The trustees of the Combined Fund, the 1950 UMWA Benefit Plan, the 1974 UMWA Benefit Plan, the 1950 UMWA Pension Plan, and the 1974 UMWA Pension Plan shall fully and promptly cooperate with the Commissioner in furnishing, or assisting the Commissioner to obtain, any information the Commissioner needs to carry out the Commissioner's responsibilities under this section.

(e) Notice by Commissioner

(1) Notice to Fund

The Commissioner of Social Security shall advise the trustees of the Combined Fund of the name of each person identified under this section as an assigned operator, and the names and social security account numbers of eligible beneficiaries with respect to whom he is identified.

(2) Other notice

The Commissioner of Social Security shall notify each assigned operator of the names and social security account numbers of eligible beneficiaries who have been assigned to such person under this section and a brief summary of the facts related to the basis for such assignments.

(f) Reconsideration by Commissioner

(1) In general

Any assigned operator receiving a notice under subsection (e)(2) with respect to an eligible beneficiary may, within 30 days of receipt of such notice, request from the Commissioner of Social Security detailed information as to the work history of the beneficiary and the basis of the assignment.

(2) Review

An assigned operator may, within 30 days of receipt of the information under paragraph (1), request review of the assignment. The Commissioner of Social Security shall conduct such review if the Commissioner finds the operator provided evidence with the request constituting a prima facie case of error.

(3) Results of review

(A) Error

If the Commissioner of Social Security determines under a review under paragraph (2) that an assignment was in error—

(i) the Commissioner shall notify the assigned operator and the trustees of the Combined Fund and the trustees shall reduce the premiums of the operator under section 9704 by (or if there are no such premiums, repay) all premiums paid under section 9704 with respect to the eligible beneficiary, and

(ii) the Commissioner shall review the beneficiary's record for reassignment under subsection (a).

(B) No error

If the Commissioner of Social Security determines under a review conducted under paragraph (2) that no error occurred, the Commissioner shall notify the assigned operator.

(4) Determinations

Any determination by the Commissioner of Social Security under paragraph (2) or (3) shall be final.

(5) Payment pending review

An assigned operator shall pay the premiums under section 9704 pending review by the Commissioner of Social Security or by a court under this subsection.

(6) Private actions

Nothing in this section shall preclude the right of any person to bring a separate civil action against another person for responsibility for assigned premiums, notwithstanding any prior decision by the Commissioner.

(g) Confidentiality of information

Any person to which information is provided by the Commissioner of Social Security under this section shall not disclose such information except in any proceedings related to this section. Any civil or criminal penalty which is applicable to an unauthorized disclosure under section 6103 shall apply to any unauthorized disclosure under this section.

(h) Assignments as of October 1, 2007

(1) In general

Subject to the premium obligation set forth in paragraph (3), the Commissioner of Social Security shall—

(A) revoke all assignments to persons other than 1988 agreement operators for purposes of assessing premiums for plan years beginning on and after October 1, 2007; and

(B) make no further assignments to persons other than 1988 agreement operators, except that no individual who becomes an unassigned beneficiary by reason of subparagraph (A) may be assigned to a 1988 agreement operator.

(2) Reassignment upon purchase

This subsection shall not be construed to prohibit the reassignment under subsection (b)(2) of an eligible beneficiary.

(3) Liability of persons during three fiscal years beginning on and after October 1, 2007

In the case of each of the fiscal years beginning on October 1, 2007, 2008, and 2009, each person other than a 1988 agreement operator shall pay to the Combined Fund the following percentage of the amount of annual premiums that such person would otherwise be required to pay under section 9704(a), determined on the basis of assignments in effect without regard to the revocation of assignments under paragraph (1)(A):

(A) For the fiscal year beginning on October 1, 2007, 55 percent.

(B) For the fiscal year beginning on October 1, 2008, 40 percent.

(C) For the fiscal year beginning on October 1, 2009, 15 percent.

(Added Pub. L. 102–486, title XIX, §19143(a), Oct. 24, 1992, 106 Stat. 3047; amended Pub. L. 103–296, title I, §108(h)(9)(B), Aug. 15, 1994, 108 Stat. 1487; Pub. L. 109–432, div. C, title II, §212(a)(3), Dec. 20, 2006, 120 Stat. 3025.)

CONSTITUTIONALITY

For information regarding constitutionality of certain provisions of this section, as added by section 19143(a) of Pub. L. 102–486, see Congressional Research Service, The Constitution of the United States of America: Analysis and Interpretation, Appendix 1, Acts of Congress Held Unconstitutional in Whole or in Part by the Supreme Court of the United States.

AMENDMENTS

2006—Subsec. (h). Pub. L. 109–432 added subsec. (h).

1994—Subsecs. (a), (c) to (g). Pub. L. 103–296 substituted "Commissioner of Social Security" for "Secretary of Health and Human Services", "Commissioner" for "Secretary", and "Commissioner's" for "Secretary's", wherever appearing in text.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–432 applicable to plan years of the Combined Fund beginning after Sept. 30, 2006, see section 212(a)(4) of Pub. L. 109–432, set out as a note under section 9704 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of Title 42, The Public Health and Welfare.

PART III—ENFORCEMENT

Sec.
9707. Failure to pay premium.

§9707. Failure to pay premium

(a) Failures to pay

(1) Premiums for eligible beneficiaries

There is hereby imposed a penalty on the failure of any assigned operator to pay any premium required to be paid under section 9704 with respect to any eligible beneficiary.

(2) Contributions required under the mining laws

There is hereby imposed a penalty on the failure of any person to make a contribution required under section 402(h)(5)(B)(ii) of the Surface Mining Control and Reclamation Act of 1977 to a plan referred to in section 402(h)(2)(C) of such Act. For purposes of applying this section, each such required monthly contribution for the hours worked of any individual shall be treated as if it were a premium required to be paid under section 9704 with respect to an eligible beneficiary.

(b) Amount of penalty

The amount of the penalty imposed by subsection (a) on any failure with respect to any eligible beneficiary shall be $100 per day in the noncompliance period with respect to any such failure.

(c) Noncompliance period

For purposes of this section, the term "noncompliance period" means, with respect to any failure to pay any premium or installment thereof, the period—

(1) beginning on the due date for such premium or installment, and

(2) ending on the date of payment of such premium or installment.

(d) Limitations on amount of penalty

(1) In general

No penalty shall be imposed by subsection (a) on any failure during any period for which it is established to the satisfaction of the Secretary of the Treasury that none of the persons responsible for such failure knew, or exercising reasonable diligence would have known, that such failure existed.

(2) Corrections

No penalty shall be imposed by subsection (a) on any failure if—

(A) such failure was due to reasonable cause and not to willful neglect, and

(B) such failure is corrected during the 30-day period beginning on the 1st date that any of the persons responsible for such failure knew, or exercising reasonable diligence would have known, that such failure existed.

(3) Waiver

In the case of a failure that is due to reasonable cause and not to willful neglect, the Secretary of the Treasury may waive all or part of the penalty imposed by subsection (a) for failures to the extent that the Secretary determines, in his sole discretion, that the payment of such penalty would be excessive relative to the failure involved.

(e) Liability for penalty

The person failing to meet the requirements of section 9704 shall be liable for the penalty imposed by subsection (a).

(f) Treatment

For purposes of this title, the penalty imposed by this section shall be treated in the same manner as the tax imposed by section 4980B.

(Added Pub. L. 102–486, title XIX, §19143(a), Oct. 24, 1992, 106 Stat. 3050; amended Pub. L. 104–188, title I, §1704(t)(65), Aug. 20, 1996, 110 Stat. 1890; Pub. L. 109–432, div. C, title II, §213(b)(1), Dec. 20, 2006, 120 Stat. 3027.)

REFERENCES IN TEXT

Section 402 of the Surface Mining Control and Reclamation Act of 1977, referred to in subsec. (a)(2), is classified to section 1232 of Title 30, Mineral Lands and Mining.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–432 amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: "There is hereby imposed a penalty on the failure of any assigned operator to pay any premium required to be paid under section 9704 with respect to any eligible beneficiary."

1996—Subsec. (d)(1). Pub. L. 104–188 struck out comma after "diligence".

PART IV—OTHER PROVISIONS

Sec.
9708. Effect on pending claims or obligations.

§9708. Effect on pending claims or obligations

All liability for contributions to the Combined Fund that arises on and after February 1, 1993, shall be determined exclusively under this chapter, including all liability for contributions to the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan for coal production on and after February 1, 1993. However, nothing in this chapter is intended to have any effect on any claims or obligations arising in connection with the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan as of February 1, 1993, including claims or obligations based on the "evergreen" clause found in the language of the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan. This chapter shall not be construed to affect any rights of subrogation of any 1988 agreement operator with respect to contributions due to the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan as of February 1, 1993.

(Added Pub. L. 102–486, title XIX, §19143(a), Oct. 24, 1992, 106 Stat. 3051.)

Subchapter C—Health Benefits of Certain Miners

Part
I. Individual employer plans.
II. 1992 UMWA benefit plan.

PART I—INDIVIDUAL EMPLOYER PLANS

Sec.
9711. Continued obligations of individual employer plans.

§9711. Continued obligations of individual employer plans

(a) Coverage of current recipients

The last signatory operator of any individual who, as of February 1, 1993, is receiving retiree health benefits from an individual employer plan maintained pursuant to a 1978 or subsequent coal wage agreement shall continue to provide health benefits coverage to such individual and the individual's eligible beneficiaries which is substantially the same as (and subject to all the limitations of) the coverage provided by such plan as of January 1, 1992. Such coverage shall continue to be provided for as long as the last signatory operator (and any related person) remains in business.

(b) Coverage of eligible recipients

(1) In general

The last signatory operator of any individual who, as of February 1, 1993, is not receiving retiree health benefits under the individual employer plan maintained by the last signatory operator pursuant to a 1978 or subsequent coal wage agreement, but has met the age and service requirements for eligibility to receive benefits under such plan as of such date, shall, at such time as such individual becomes eligible to receive benefits under such plan, provide health benefits coverage to such individual and the individual's eligible beneficiaries which is described in paragraph (2). This paragraph shall not apply to any individual who retired from the coal industry after September 30, 1994, or any eligible beneficiary of such individual.

(2) Coverage

Subject to the provisions of subsection (d), health benefits coverage is described in this paragraph if it is substantially the same as (and subject to all the limitations of) the coverage provided by the individual employer plan as of January 1, 1992. Such coverage shall continue for as long as the last signatory operator (and any related person) remains in business.

(c) Joint and several liability of related persons

(1) In general

Except as provided in paragraph (2), each related person of a last signatory operator to which subsection (a) or (b) applies shall be jointly and severally liable with the last signatory operator for the provision of health care coverage described in subsection (a) or (b).

(2) Liability limited if security provided

If—

(A) security meeting the requirements of paragraph (3) is provided by or on behalf of—

(i) any last signatory operator which is an assigned operator described in section 9704(j)(2), or

(ii) any related person to any last signatory operator described in clause (i), and

(B) the common parent of the controlled group of corporations described in section 9704(j)(2)(B) is jointly and severally liable for the provision of health care under this section which, but for this paragraph, would be required to be provided by the last signatory operator or related person,

then, as of the date the security is provided, such common parent (and no other person) shall be liable for the provision of health care under this section which the last signatory operator or related person would otherwise be required to provide. Security may be provided under this paragraph without regard to whether a payment was made under section 9704(j).

(3) Security

Security meets the requirements of this paragraph if—

(A) the security—

(i) is in the form of a bond, letter of credit, or cash escrow,

(ii) is provided to the trustees of the 1992 UMWA Benefit Plan solely for the purpose of paying premiums for beneficiaries who would be described in section 9712(b)(2)(B) if the requirements of this section were not met by the last signatory operator, and

(iii) is in an amount equal to 1 year of liability of the last signatory operator under this section, determined by using the average cost of such operator's liability during the prior 3 calendar years;

(B) the security is in addition to any other security required under any other provision of this title; and

(C) the security remains in place for 5 years.

(4) Refunds of security

The remaining amount of any security provided under this subsection (and earnings thereon) shall be refunded to the last signatory operator as of the earlier of—

(A) the termination of the obligations of the last signatory operator under this section, or

(B) the end of the 5-year period described in paragraph (4)(C).[1]

(d) Managed care and cost containment

The last signatory operator shall not be treated as failing to meet the requirements of subsection (a) or (b) if benefits are provided to eligible beneficiaries under managed care and cost containment rules and procedures described in section 9712(c) or agreed to by the last signatory operator and the United Mine Workers of America.

(e) Treatment of noncovered employees

The existence, level, and duration of benefits provided to former employees of a last signatory operator (and their eligible beneficiaries) who are not otherwise covered by this chapter and who are (or were) covered by a coal wage agreement shall only be determined by, and shall be subject to, collective bargaining, lawful unilateral action, or other applicable law.

(f) Eligible beneficiary

For purposes of this section, the term "eligible beneficiary" means any individual who is eligible for health benefits under a plan described in subsection (a) or (b) by reason of the individual's relationship with the retiree described in such subsection (or to an individual who, based on service and employment history at the time of death, would have been so described but for such death).

(g) Rules applicable to this part and part II

For purposes of this part and part II—

(1) Successor

The term "last signatory operator" shall include a successor in interest of such operator.

(2) Reassignment upon purchase

If a person becomes a successor of a last signatory operator after the enactment date, the last signatory operator may transfer any liability of such operator under this chapter with respect to an eligible beneficiary to such successor, and such successor shall be treated as the last signatory operator with respect to such eligible beneficiary for purposes of this chapter. Notwithstanding the preceding sentence, the last signatory operator transferring such assignment (and any related person) shall remain the guarantor of the benefits provided to the eligible beneficiary under this chapter. A last signatory operator shall notify the trustees of the 1992 UMWA Benefit Plan of any transfer described in this paragraph.

(Added Pub. L. 102–486, title XIX, §19143(a), Oct. 24, 1992, 106 Stat. 3051; amended Pub. L. 109–432, div. C, title II, §211(b), Dec. 20, 2006, 120 Stat. 3022.)

AMENDMENTS

2006—Subsec. (c). Pub. L. 109–432 reenacted heading without change and amended text of subsec. (c) generally. Prior to amendment, text read as follows: "Each related person of a last signatory operator to which subsection (a) or (b) applies shall be jointly and severally liable with the last signatory operator for the provision of health care coverage described in subsection (a) or (b)."

[1] *So in original. Probably should be "paragraph (3)(C)."*

PART II—1992 UMWA BENEFIT PLAN

Sec.
9712. Establishment and coverage of 1992 UMWA Benefit Plan.

§9712. Establishment and coverage of 1992 UMWA Benefit Plan

(a) Creation of plan

(1) In general

As soon as practicable after the enactment date, the settlors shall create a separate private plan which shall be known as the United Mine Workers of America 1992 Benefit Plan. For purposes of this title, the 1992 UMWA Benefit Plan shall be treated as an organization exempt from taxation under section 501(a). The settlors shall be responsible for designing the structure, administration and terms of the 1992 UMWA Benefit Plan, and for appointment and removal of the members of the board of trustees. The board of trustees shall initially consist of five members and shall thereafter be the number set by the settlors.

(2) Treatment of plan

The 1992 UMWA Benefit Plan shall be—

(A) a plan described in section 302(c)(5) of the Labor Management Relations Act, 1947 (29 U.S.C. 186(c)(5)),

(B) an employee welfare benefit plan within the meaning of section 3(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(1)), and

(C) a multiemployer plan within the meaning of section 3(37) of such Act (29 U.S.C. 1002(37)).

(3) Transfers under other Federal statutes

(A) In general

The 1992 UMWA Benefit Plan shall include any amount transferred to the plan under subsections (h) and (i) of section 402 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232).

(B) Use of funds

Any amount transferred under subparagraph (A) for any fiscal year shall be used to provide the health benefits described in subsection (c) with respect to any beneficiary for whom no monthly per beneficiary premium is paid pursuant to paragraph (1)(A) or (3) of subsection (d).

(4) Special rule for 1993 plan

(A) In general

The plan described in section 402(h)(2)(C) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(h)(2)(C)) shall include any amount transferred to the plan under subsections (h) and (i) of [1] the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232).

(B) Use of funds

Any amount transferred under subparagraph (A) for any fiscal year shall be used to provide the health benefits described in section 402(h)(2)(C)(i) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(h)(2)(C)(i)) to individuals described in section 402(h)(2)(C) of such Act (30 U.S.C. 1232(h)(2)(C)).

(b) Coverage requirement

(1) In general

The 1992 UMWA Benefit Plan shall only provide health benefits coverage to any eligible beneficiary who is not eligible for benefits under the Combined Fund and shall not provide such coverage to any other individual.

(2) Eligible beneficiary

For purposes of this section, the term "eligible beneficiary" means an individual who—

(A) but for the enactment of this chapter, would be eligible to receive benefits from the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan, based upon age and service earned as of February 1, 1993; or

(B) with respect to whom coverage is required to be provided under section 9711, but who does not receive such coverage from the applicable last signatory operator or any related person,

and any individual who is eligible for benefits by reason of a relationship to an individual described in subparagraph (A) or (B). In no event shall the 1992 UMWA Benefit Plan provide health benefits coverage to any eligible beneficiary who is a coal industry retiree who retired from the coal industry after September 30, 1994, or any beneficiary of such individual.

(c) Health benefits

(1) In general

The 1992 UMWA Benefit Plan shall provide health care benefits coverage to each eligible beneficiary which is substantially the same as (and subject to all the limitations of) coverage provided under the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan as of January 1, 1992.

(2) Managed care

The 1992 UMWA Benefit Plan shall develop managed care and cost containment rules which shall be applicable to the payment of benefits under this subsection. Application of such rules shall not cause the plan to be treated as failing to meet the requirements of this subsection. Such rules shall preserve freedom of choice while reinforcing managed care network use by allowing a point of service decision as to whether a network medical provider will be used. Major elements of such rules may include, but are not limited to, elements described in paragraph (3).

(3) Major elements of rules

Elements described in this paragraph are—

(A) implementing formulary for drugs and subjecting the prescription program to a rigorous review of appropriate use,

(B) obtaining a unit price discount in exchange for patient volume and preferred provider status with the amount of the potential discount varying by geographic region,

(C) limiting benefit payments to physicians to the allowable charge under title XVIII of the Social Security Act, while protecting beneficiaries from balance billing by providers,

(D) utilizing, in the claims payment function "appropriateness of service" protocols under title XVIII of the Social Security Act if more stringent,

(E) creating mandatory utilization review (UR) procedures, but placing the responsibility to follow such procedures on the physician or hospital, not the beneficiaries,

(F) selecting the most efficient physicians and state-of-the-art utilization management techniques, including ambulatory care techniques, for medical services delivered by the managed care network, and

(G) utilizing a managed care network provider system, as practiced in the health care industry, at the time medical services are needed (point-of-service) in order to receive maximum benefits available under this subsection.

(4) Last signatory operators

The board of trustees of the 1992 UMWA Benefit Plan shall permit any last signatory operator required to maintain an individual employer plan under section 9711 to utilize the managed care

and cost containment rules and programs developed under this subsection if the operator elects to do so.

(5) Standards of quality

Any managed care system or cost containment adopted by the board of trustees of the 1992 UMWA Benefit Plan or by a last signatory operator may not be implemented unless it is approved by, and meets the standards of quality adopted by, a medical peer review panel, which has been established—

(A) by the settlors, or

(B) by the United Mine Workers of America and a last signatory operator or group of operators.

Standards of quality shall include accessibility to medical care, taking into account that accessibility requirements may differ depending on the nature of the medical need.

(d) Guarantee of benefits

(1) In general

All 1988 last signatory operators shall be responsible for financing the benefits described in subsection (c) by meeting the following requirements in accordance with the contribution requirements established in the 1992 UMWA Benefit Plan:

(A) The payment of a monthly per beneficiary premium by each 1988 last signatory operator for each eligible beneficiary of such operator who is described in subsection (b)(2) and who is receiving benefits under the 1992 UMWA Benefit Plan.

(B) The provision of a security (in the form of a bond, letter of credit, or cash escrow) in an amount equal to a portion of the projected future cost to the 1992 UMWA Benefit Plan of providing health benefits for eligible and potentially eligible beneficiaries attributable to the 1988 last signatory operator.

(C) If the amounts transferred under subsection (a)(3) are less than the amounts required to be transferred to the 1992 UMWA Benefit Plan under subsections (h) and (i) of section 402 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232), the payment of an additional backstop premium by each 1988 last signatory operator which is equal to such operator's share of the amounts required to be so transferred but which were not so transferred, determined on the basis of the number of eligible and potentially eligible beneficiaries attributable to the operator.

(2) Adjustments

The 1992 UMWA Benefit Plan shall provide for—

(A) annual adjustments of the per beneficiary premium to cover changes in the cost of providing benefits to eligible beneficiaries, and

(B) adjustments as necessary to the annual backstop premium to reflect changes in the cost of providing benefits to eligible beneficiaries for whom per beneficiary premiums are not paid.

(3) Additional liability

Any last signatory operator who is not a 1988 last signatory operator shall pay the monthly per beneficiary premium under paragraph (1)(A) for each eligible beneficiary described in such paragraph attributable to that operator.

(4) Joint and several liability

A 1988 last signatory operator or last signatory operator described in paragraph (3), and any related person to any such operator, shall be jointly and severally liable with such operator for any amount required to be paid by such operator under this section. The provisions of section 9711(c)(2) shall apply to any last signatory operator described in such section (without regard to whether security is provided under such section, a payment is made under section 9704(j), or both) and if security meeting the requirements of section 9711(c)(3) is provided, the common parent described in section 9711(c)(2)(B) shall be exclusively responsible for any liability for premiums

under this section which, but for this sentence, would be required to be paid by the last signatory operator or any related person.

(5) Deductibility

Any premium required by this section shall be deductible without regard to any limitation on deductibility based on the prefunding of health benefits.

(6) 1988 last signatory operator

For purposes of this section, the term "1988 last signatory operator" means a last signatory operator which is a 1988 agreement operator.

(Added Pub. L. 102–486, title XIX, §19143(a), Oct. 24, 1992, 106 Stat. 3053; amended Pub. L. 109–432, div. C, title II, §§211(c), 212(b)(1)–(2)(B), Dec. 20, 2006, 120 Stat. 3023, 3025, 3026.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (c)(3)(C), (D), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Act is classified generally to subchapter XVIII (§1395 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2006—Subsec. (a)(3), (4). Pub. L. 109–432, §212(b)(1), added pars. (3) and (4).

Subsec. (d)(1). Pub. L. 109–432, §212(b)(2)(A), amended text of par. (1) generally. Prior to amendment, par. (1) provided that the contribution requirements of all 1988 last signatory operators include the payment of an annual prefunding premium for all eligible and potentially eligible beneficiaries, payment of a monthly per beneficiary premium, and provision of security.

Subsec. (d)(2)(B). Pub. L. 109–432, §212(b)(2)(B)(i), substituted "backstop" for "prefunding".

Subsec. (d)(3). Pub. L. 109–432, §212(b)(2)(B)(ii), substituted "paragraph (1)(A)" for "paragraph (1)(B)".

Subsec. (d)(4). Pub. L. 109–432, §211(c), inserted at end "The provisions of section 9711(c)(2) shall apply to any last signatory operator described in such section (without regard to whether security is provided under such section, a payment is made under section 9704(j), or both) and if security meeting the requirements of section 9711(c)(3) is provided, the common parent described in section 9711(c)(2)(B) shall be exclusively responsible for any liability for premiums under this section which, but for this sentence, would be required to be paid by the last signatory operator or any related person."

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. C, title II, §212(b)(2)(C), Dec. 20, 2006, 120 Stat. 3026, provided that: "The amendments made by this paragraph [amending this section] shall apply to fiscal years beginning on or after October 1, 2010."

[1] *So in original. Probably should be followed by "section 402 of".*

Subchapter D—Other Provisions

Sec.
9721. Civil enforcement.
9722. Sham transactions.

§9721. Civil enforcement

The provisions of section 4301 of the Employee Retirement Income Security Act of 1974 shall apply, in the same manner as any claim arising out of an obligation to pay withdrawal liability under subtitle E of title IV of such Act, to any claim—

(1) arising out of an obligation to pay any amount required to be paid by this chapter; or

(2) arising out of an obligation to pay any amount required by section 402(h)(5)(B)(ii) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(h)(5)(B)(ii)).

(Added Pub. L. 102–486, title XIX, §19143(a), Oct. 24, 1992, 106 Stat. 3055; amended Pub. L. 109–432, div. C, title II, §213(b)(2), Dec. 20, 2006, 120 Stat. 3027.)

REFERENCES IN TEXT

The Employee Retirement Income Security Act of 1974, referred to in text, is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, as amended. Subtitle E of title IV of the Act is classified generally to subtitle E (§1381 et seq.) of subchapter III of chapter 18 of Title 29, Labor. Section 4301 of the Act is classified to section 1451 of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

AMENDMENTS

2006—Pub. L. 109–432 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows: "The provisions of section 4301 of the Employee Retirement Income Security Act of 1974 shall apply to any claim arising out of an obligation to pay any amount required to be paid by this chapter in the same manner as any claim arising out of an obligation to pay withdrawal liability under subtitle E of title IV of such Act. For purposes of the preceding sentence, a signatory operator and related persons shall be treated in the same manner as employers."

§9722. Sham transactions

If a principal purpose of any transaction is to evade or avoid liability under this chapter, this chapter shall be applied (and such liability shall be imposed) without regard to such transaction.

(Added Pub. L. 102–486, title XIX, §19143(a), Oct. 24, 1992, 106 Stat. 3056.)

Subtitle K—Group Health Plan Requirements

Chapter		Sec.[1]
100.	**Group health plan requirements**	**9801**

AMENDMENTS

1997—Pub. L. 105–34, title XV, §1531(a)(1), Aug. 5, 1997, 111 Stat. 1080, struck out "Portability, Access, and Renewability" before "Requirements" in subtitle heading and made similar change in item for chapter 100.

[1] *Section number editorially supplied.*

CHAPTER 100—GROUP HEALTH PLAN REQUIREMENTS

Subchapter		Sec.[1]
A.	**Requirements relating to portability, access, and renewability**	**9801**
B.	**Other requirements**	**9811**
C.	**General provisions**	**9831**

AMENDMENTS

1997—Pub. L. 105–34, title XV, §1531(a)(1), Aug. 5, 1997, 111 Stat. 1080, struck out "PORTABILITY, ACCESS, AND RENEWABILITY" in chapter heading and added analysis for chapter.

[1] *Section numbers editorially supplied.*

Subchapter A—Requirements Relating to Portability, Access, and Renewability

Sec.

9801. Increased portability through limitation on preexisting condition exclusions.

9802. Prohibiting discrimination against individual participants and beneficiaries based on

health status.
9803. Guaranteed renewability in multiemployer plans and certain multiple employer welfare arrangements.
[9804–9806. Renumbered.]

AMENDMENTS

1997—Pub. L. 105–34, title XV, §1531(a)(1), Aug. 5, 1997, 111 Stat. 1081, added subchapter heading and items 9801 to 9803 and struck out former items 9801 "Increased portability through limitation on preexisting condition exclusions", 9802 "Prohibiting discrimination against individual participants and beneficiaries based on health status", 9803 "Guaranteed renewability in multiemployer plans and certain multiple employer welfare arrangements", 9804 "General exceptions", 9805 "Definitions", and 9806 "Regulations".

§9801. Increased portability through limitation on preexisting condition exclusions

(a) Limitation on preexisting condition exclusion period; crediting for periods of previous coverage

Subject to subsection (d), a group health plan may, with respect to a participant or beneficiary, impose a preexisting condition exclusion only if—

(1) such exclusion relates to a condition (whether physical or mental), regardless of the cause of the condition, for which medical advice, diagnosis, care, or treatment was recommended or received within the 6-month period ending on the enrollment date;

(2) such exclusion extends for a period of not more than 12 months (or 18 months in the case of a late enrollee) after the enrollment date; and

(3) the period of any such preexisting condition exclusion is reduced by the length of the aggregate of the periods of creditable coverage (if any) applicable to the participant or beneficiary as of the enrollment date.

(b) Definitions

For purposes of this section—

(1) Preexisting condition exclusion

(A) In general

The term "preexisting condition exclusion" means, with respect to coverage, a limitation or exclusion of benefits relating to a condition based on the fact that the condition was present before the date of enrollment for such coverage, whether or not any medical advice, diagnosis, care, or treatment was recommended or received before such date.

(B) Treatment of genetic information

For purposes of this section, genetic information shall not be treated as a condition described in subsection (a)(1) in the absence of a diagnosis of the condition related to such information.

(2) Enrollment date

The term "enrollment date" means, with respect to an individual covered under a group health plan, the date of enrollment of the individual in the plan or, if earlier, the first day of the waiting period for such enrollment.

(3) Late enrollee

The term "late enrollee" means, with respect to coverage under a group health plan, a participant or beneficiary who enrolls under the plan other than during—

(A) the first period in which the individual is eligible to enroll under the plan, or

(B) a special enrollment period under subsection (f).

(4) Waiting period

The term "waiting period" means, with respect to a group health plan and an individual who is a potential participant or beneficiary in the plan, the period that must pass with respect to the individual before the individual is eligible to be covered for benefits under the terms of the plan.

(c) Rules relating to crediting previous coverage

(1) Creditable coverage defined

For purposes of this part, the term "creditable coverage" means, with respect to an individual, coverage of the individual under any of the following:

(A) A group health plan.

(B) Health insurance coverage.

(C) Part A or part B of title XVIII of the Social Security Act.

(D) Title XIX of the Social Security Act, other than coverage consisting solely of benefits under section 1928.

(E) Chapter 55 of title 10, United States Code.

(F) A medical care program of the Indian Health Service or of a tribal organization.

(G) A State health benefits risk pool.

(H) A health plan offered under chapter 89 of title 5, United States Code.

(I) A public health plan (as defined in regulations).

(J) A health benefit plan under section 5(e) of the Peace Corps Act (22 U.S.C. 2504(e)).

Such term does not include coverage consisting solely of coverage of excepted benefits (as defined in section 9832(c)).

(2) Not counting periods before significant breaks in coverage

(A) In general

A period of creditable coverage shall not be counted, with respect to enrollment of an individual under a group health plan, if, after such period and before the enrollment date, there was a 63-day period during all of which the individual was not covered under any creditable coverage.

(B) Waiting period not treated as a break in coverage

For purposes of subparagraph (A) and subsection (d)(4), any period that an individual is in a waiting period for any coverage under a group health plan or is in an affiliation period shall not be taken into account in determining the continuous period under subparagraph (A).

(C) Affiliation period

(i) In general

For purposes of this section, the term "affiliation period" means a period which, under the terms of the health insurance coverage offered by the health maintenance organization, must expire before the health insurance coverage becomes effective. During such an affiliation period, the organization is not required to provide health care services or benefits and no premium shall be charged to the participant or beneficiary.

(ii) Beginning

Such period shall begin on the enrollment date.

(iii) Runs concurrently with waiting periods

Any such affiliation period shall run concurrently with any waiting period under the plan.

(D) TAA-eligible individuals

In the case of plan years beginning before January 1, 2014—

(i) TAA pre-certification period rule

In the case of a TAA-eligible individual, the period beginning on the date the individual has a TAA-related loss of coverage and ending on the date which is 7 days after the date of

the issuance by the Secretary (or by any person or entity designated by the Secretary) of a qualified health insurance costs credit eligibility certificate for such individual for purposes of section 7527 shall not be taken into account in determining the continuous period under subparagraph (A).

(ii) Definitions

The terms "TAA-eligible individual" and "TAA-related loss of coverage" have the meanings given such terms in section 4980B(f)(5)(C)(iv).

(3) Method of crediting coverage

(A) Standard method

Except as otherwise provided under subparagraph (B), for purposes of applying subsection (a)(3), a group health plan shall count a period of creditable coverage without regard to the specific benefits for which coverage is offered during the period.

(B) Election of alternative method

A group health plan may elect to apply subsection (a)(3) based on coverage of any benefits within each of several classes or categories of benefits specified in regulations rather than as provided under subparagraph (A). Such election shall be made on a uniform basis for all participants and beneficiaries. Under such election a group health plan shall count a period of creditable coverage with respect to any class or category of benefits if any level of benefits is covered within such class or category.

(C) Plan notice

In the case of an election with respect to a group health plan under subparagraph (B), the plan shall—

(i) prominently state in any disclosure statements concerning the plan, and state to each enrollee at the time of enrollment under the plan, that the plan has made such election, and

(ii) include in such statements a description of the effect of this election.

(4) Establishment of period

Periods of creditable coverage with respect to an individual shall be established through presentation of certifications described in subsection (e) or in such other manner as may be specified in regulations.

(d) Exceptions

(1) Exclusion not applicable to certain newborns

Subject to paragraph (4), a group health plan may not impose any preexisting condition exclusion in the case of an individual who, as of the last day of the 30-day period beginning with the date of birth, is covered under creditable coverage.

(2) Exclusion not applicable to certain adopted children

Subject to paragraph (4), a group health plan may not impose any preexisting condition exclusion in the case of a child who is adopted or placed for adoption before attaining 18 years of age and who, as of the last day of the 30-day period beginning on the date of the adoption or placement for adoption, is covered under creditable coverage. The previous sentence shall not apply to coverage before the date of such adoption or placement for adoption.

(3) Exclusion not applicable to pregnancy

For purposes of this section, a group health plan may not impose any preexisting condition exclusion relating to pregnancy as a preexisting condition.

(4) Loss if break in coverage

Paragraphs (1) and (2) shall no longer apply to an individual after the end of the first 63-day period during all of which the individual was not covered under any creditable coverage.

(e) Certifications and disclosure of coverage

(1) Requirement for certification of period of creditable coverage

(A) In general

A group health plan shall provide the certification described in subparagraph (B)—

(i) at the time an individual ceases to be covered under the plan or otherwise becomes covered under a COBRA continuation provision,

(ii) in the case of an individual becoming covered under such a provision, at the time the individual ceases to be covered under such provision, and

(iii) on the request on behalf of an individual made not later than 24 months after the date of cessation of the coverage described in clause (i) or (ii), whichever is later.

The certification under clause (i) may be provided, to the extent practicable, at a time consistent with notices required under any applicable COBRA continuation provision.

(B) Certification

The certification described in this subparagraph is a written certification of—

(i) the period of creditable coverage of the individual under such plan and the coverage under such COBRA continuation provision, and

(ii) the waiting period (if any) (and affiliation period, if applicable) imposed with respect to the individual for any coverage under such plan.

(C) Issuer compliance

To the extent that medical care under a group health plan consists of health insurance coverage offered in connection with the plan, the plan is deemed to have satisfied the certification requirement under this paragraph if the issuer provides for such certification in accordance with this paragraph.

(2) Disclosure of information on previous benefits

(A) In general

In the case of an election described in subsection (c)(3)(B) by a group health plan, if the plan enrolls an individual for coverage under the plan and the individual provides a certification of coverage of the individual under paragraph (1)—

(i) upon request of such plan, the entity which issued the certification provided by the individual shall promptly disclose to such requesting plan information on coverage of classes and categories of health benefits available under such entity's plan, and

(ii) such entity may charge the requesting plan or issuer for the reasonable cost of disclosing such information.

(3) Regulations

The Secretary shall establish rules to prevent an entity's failure to provide information under paragraph (1) or (2) with respect to previous coverage of an individual from adversely affecting any subsequent coverage of the individual under another group health plan or health insurance coverage.

(f) Special enrollment periods

(1) Individuals losing other coverage

A group health plan shall permit an employee who is eligible, but not enrolled, for coverage under the terms of the plan (or a dependent of such an employee if the dependent is eligible, but not enrolled, for coverage under such terms) to enroll for coverage under the terms of the plan if each of the following conditions is met:

(A) The employee or dependent was covered under a group health plan or had health insurance coverage at the time coverage was previously offered to the employee or individual.

(B) The employee stated in writing at such time that coverage under a group health plan or health insurance coverage was the reason for declining enrollment, but only if the plan sponsor (or the health insurance issuer offering health insurance coverage in connection with the plan)

required such a statement at such time and provided the employee with notice of such requirement (and the consequences of such requirement) at such time.

(C) The employee's or dependent's coverage described in subparagraph (A)—

(i) was under a COBRA continuation provision and the coverage under such provision was exhausted; or

(ii) was not under such a provision and either the coverage was terminated as a result of loss of eligibility for the coverage (including as a result of legal separation, divorce, death, termination of employment, or reduction in the number of hours of employment) or employer contributions toward such coverage were terminated.

(D) Under the terms of the plan, the employee requests such enrollment not later than 30 days after the date of exhaustion of coverage described in subparagraph (C)(i) or termination of coverage or employer contribution described in subparagraph (C)(ii).

(2) For dependent beneficiaries

(A) In general

If—

(i) a group health plan makes coverage available with respect to a dependent of an individual,

(ii) the individual is a participant under the plan (or has met any waiting period applicable to becoming a participant under the plan and is eligible to be enrolled under the plan but for a failure to enroll during a previous enrollment period), and

(iii) a person becomes such a dependent of the individual through marriage, birth, or adoption or placement for adoption,

the group health plan shall provide for a dependent special enrollment period described in subparagraph (B) during which the person (or, if not otherwise enrolled, the individual) may be enrolled under the plan as a dependent of the individual, and in the case of the birth or adoption of a child, the spouse of the individual may be enrolled as a dependent of the individual if such spouse is otherwise eligible for coverage.

(B) Dependent special enrollment period

The dependent special enrollment period under this subparagraph shall be a period of not less than 30 days and shall begin on the later of—

(i) the date dependent coverage is made available, or

(ii) the date of the marriage, birth, or adoption or placement for adoption (as the case may be) described in subparagraph (A)(iii).

(C) No waiting period

If an individual seeks coverage of a dependent during the first 30 days of such a dependent special enrollment period, the coverage of the dependent shall become effective—

(i) in the case of marriage, not later than the first day of the first month beginning after the date the completed request for enrollment is received;

(ii) in the case of a dependent's birth, as of the date of such birth; or

(iii) in the case of a dependent's adoption or placement for adoption, the date of such adoption or placement for adoption.

(3) Special rules relating to Medicaid and CHIP

(A) In general

A group health plan shall permit an employee who is eligible, but not enrolled, for coverage under the terms of the plan (or a dependent of such an employee if the dependent is eligible, but not enrolled, for coverage under such terms) to enroll for coverage under the terms of the plan if either of the following conditions is met:

(i) Termination of Medicaid or CHIP coverage

The employee or dependent is covered under a Medicaid plan under title XIX of the Social Security Act or under a State child health plan under title XXI of such Act and coverage of the employee or dependent under such a plan is terminated as a result of loss of eligibility for such coverage and the employee requests coverage under the group health plan not later than 60 days after the date of termination of such coverage.

(ii) Eligibility for employment assistance under Medicaid or CHIP

The employee or dependent becomes eligible for assistance, with respect to coverage under the group health plan under such Medicaid plan or State child health plan (including under any waiver or demonstration project conducted under or in relation to such a plan), if the employee requests coverage under the group health plan not later than 60 days after the date the employee or dependent is determined to be eligible for such assistance.

(B) Employee outreach and disclosure

(i) Outreach to employees regarding availability of Medicaid and CHIP coverage

(I) In general

Each employer that maintains a group health plan in a State that provides medical assistance under a State Medicaid plan under title XIX of the Social Security Act, or child health assistance under a State child health plan under title XXI of such Act, in the form of premium assistance for the purchase of coverage under a group health plan, shall provide to each employee a written notice informing the employee of potential opportunities then currently available in the State in which the employee resides for premium assistance under such plans for health coverage of the employee or the employee's dependents. For purposes of compliance with this clause, the employer may use any State-specific model notice developed in accordance with section 701(f)(3)(B)(i)(II) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1181(f)(3)(B)(i)(II)).

(II) Option to provide concurrent with provision of plan materials to employee

An employer may provide the model notice applicable to the State in which an employee resides concurrent with the furnishing of materials notifying the employee of health plan eligibility, concurrent with materials provided to the employee in connection with an open season or election process conducted under the plan, or concurrent with the furnishing of the summary plan description as provided in section 104(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1024).

(ii) Disclosure about group health plan benefits to States for Medicaid and CHIP eligible individuals

In the case of a participant or beneficiary of a group health plan who is covered under a Medicaid plan of a State under title XIX of the Social Security Act or under a State child health plan under title XXI of such Act, the plan administrator of the group health plan shall disclose to the State, upon request, information about the benefits available under the group health plan in sufficient specificity, as determined under regulations of the Secretary of Health and Human Services in consultation with the Secretary that require use of the model coverage coordination disclosure form developed under section 311(b)(1)(C) of the Children's Health Insurance Program Reauthorization Act of 2009, so as to permit the State to make a determination (under paragraph (2)(B), (3), or (10) of section 2105(c) of the Social Security Act or otherwise) concerning the cost-effectiveness of the State providing medical or child health assistance through premium assistance for the purchase of coverage under such group health plan and in order for the State to provide supplemental benefits required under paragraph (10)(E) of such section or other authority.

(Added Pub. L. 104–191, title IV, §401(a), Aug. 21, 1996, 110 Stat. 2073; amended Pub. L. 105–34, title XV, §1531(b)(1)(A), Aug. 5, 1997, 111 Stat. 1084; Pub. L. 111–3, title III, §311(a), Feb. 4,

2009, 123 Stat. 64; Pub. L. 111–5, div. B, title I, §1899D(a), Feb. 17, 2009, 123 Stat. 425; Pub. L. 111–344, title I, §114(a), Dec. 29, 2010, 124 Stat. 3615; Pub. L. 112–40, title II, §242(a)(1), Oct. 21, 2011, 125 Stat. 419.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (c)(1)(C), (D), (f)(3)(A)(i), (B)(i)(I), (ii), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Parts A and B of title XVIII of the Act are classified generally to parts A (§1395c et seq.) and B (§1395j et seq.) of subchapter XVIII of chapter 7 of Title 42, The Public Health and Welfare. Titles XIX and XXI of the Act are classified generally to subchapters XIX (§1396 et seq.) and XXI (§1397aa et seq.), respectively, of chapter 7 of Title 42. Sections 1928 and 2105 of the Act are classified to sections 1396s and 1397ee, respectively, of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 311(b)(1)(C) of the Children's Health Insurance Program Reauthorization Act of 2009, referred to in subsec. (f)(3)(B)(ii), is section 311(b)(1)(C) of Pub. L. 111–3, which is set out as a note under section 1181 of Title 29, Labor.

AMENDMENTS

2011—Subsec. (c)(2)(D). Pub. L. 112–40 substituted "January 1, 2014" for "February 13, 2011" in introductory provisions.

2010—Subsec. (c)(2)(D). Pub. L. 111–344 substituted "February 13, 2011" for "January 1, 2011" in introductory provisions.

2009—Subsec. (c)(2)(D). Pub. L. 111–5 added subpar. (D).

Subsec. (f)(3). Pub. L. 111–3 added par. (3).

1997—Subsec. (c)(1). Pub. L. 105–34 substituted "section 9832(c)" for "section 9805(c)" in concluding provisions.

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112–40, title II, §242(b), Oct. 21, 2011, 125 Stat. 419, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section, section 1181 of Title 29, Labor, and sections 300gg and 300gg–3 of Title 42, The Public Health and Welfare] shall apply to plan years beginning after February 12, 2011.

"(2) TRANSITIONAL RULES.—

"(A) BENEFIT DETERMINATIONS.—Notwithstanding the amendments made by this section (and the provisions of law amended thereby), a plan shall not be required to modify benefit determinations for the period beginning on February 13, 2011, and ending 30 days after the date of the enactment of this Act [Oct. 21, 2011], but a plan shall not fail to be qualified health insurance within the meaning of section 35(e) of the Internal Revenue Code of 1986 during this period merely due to such failure to modify benefit determinations.

"(B) GUIDANCE CONCERNING PERIODS BEFORE 30 DAYS AFTER ENACTMENT.—Except as provided in subparagraph (A), the Secretary of the Treasury (or his designee), in consultation with the Secretary of Health and Human Services and the Secretary of Labor, may issue regulations or other guidance regarding the scope of the application of the amendments made by this section to periods before the date which is 30 days after the date of the enactment of this Act.

"(C) SPECIAL RULE RELATING TO CERTAIN LOSS OF COVERAGE.—In the case of a TAA-related loss of coverage (as defined in section 4980B(f)(5)(C)(iv) of the Internal Revenue Code of 1986) that occurs during the period beginning on February 13, 2011, and ending 30 days after the date of the enactment of this Act, the 7-day period described in section 9801(c)(2)(D) of the Internal Revenue Code of 1986, section 701(c)(2)(C) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1181(c)(2)(C)], and section 2701(c)(2)(C) of the Public Health Service Act [renumbered section 2704(c)(2)(C), see 42 U.S.C. 300gg–3(c)(2)(C)] shall be extended until 30 days after such date of enactment."

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–344, title I, §114(d), Dec. 29, 2010, 124 Stat. 3615, provided that: "The amendments made by this section [amending this section, section 1181 of Title 29, Labor, and section 300gg of Title 42, The Public Health and Welfare] shall apply to plan years beginning after December 31, 2010."

EFFECTIVE DATE OF 2009 AMENDMENT

Except as otherwise provided and subject to certain applicability provisions, amendment by Pub. L. 111–5

effective upon the expiration of the 90-day period beginning on Feb. 17, 2009, see section 1891 of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 2271 of Title 19, Customs Duties.

Pub. L. 111–5, div. B, title I, §1899D(d), Feb. 17, 2009, 123 Stat. 426, provided that: "The amendments made by this section [amending this section, section 1181 of Title 29, Labor, and section 300gg of Title 42, The Public Health and Welfare] shall apply to plan years beginning after the date of the enactment of this Act [Feb. 17, 2009]."

Amendment by Pub. L. 111–3 effective Apr. 1, 2009, and applicable to child health assistance and medical assistance provided on or after that date, with certain exceptions, see section 3 of Pub. L. 111–3, set out as an Effective Date note under section 1396 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable with respect to group health plans for plan years beginning on or after Jan. 1, 1998, see section 1531(c) of Pub. L. 105–34, set out as a note under section 4980D of this title.

EFFECTIVE DATE

Pub. L. 104–191, title IV, §401(c), Aug. 21, 1996, 110 Stat. 2082, provided that:

"(1) IN GENERAL.—The amendments made by this section [enacting this subtitle] shall apply to plan years beginning after June 30, 1997.

"(2) DETERMINATION OF CREDITABLE COVERAGE.—

"(A) PERIOD OF COVERAGE.—

"(i) IN GENERAL.—Subject to clause (ii), no period before July 1, 1996, shall be taken into account under chapter 100 of the Internal Revenue Code of 1986 (as added by this section) in determining creditable coverage.

"(ii) SPECIAL RULE FOR CERTAIN PERIODS.—The Secretary of the Treasury, consistent with section 104 [42 U.S.C. 300gg–92 note], shall provide for a process whereby individuals who need to establish creditable coverage for periods before July 1, 1996, and who would have such coverage credited but for clause (i) may be given credit for creditable coverage for such periods through the presentation of documents or other means.

"(B) CERTIFICATIONS, ETC.—

"(i) IN GENERAL.—Subject to clauses (ii) and (iii), subsection (e) of section 9801 of the Internal Revenue Code of 1986 (as added by this section) shall apply to events occurring after June 30, 1996.

"(ii) NO CERTIFICATION REQUIRED TO BE PROVIDED BEFORE JUNE 1, 1997.—In no case is a certification required to be provided under such subsection before June 1, 1997.

"(iii) CERTIFICATION ONLY ON WRITTEN REQUEST FOR EVENTS OCCURRING BEFORE OCTOBER 1, 1996.—In the case of an event occurring after June 30, 1996, and before October 1, 1996, a certification is not required to be provided under such subsection unless an individual (with respect to whom the certification is otherwise required to be made) requests such certification in writing.

"(C) TRANSITIONAL RULE.—In the case of an individual who seeks to establish creditable coverage for any period for which certification is not required because it relates to an event occurring before June 30, 1996—

"(i) the individual may present other credible evidence of such coverage in order to establish the period of creditable coverage; and

"(ii) a group health plan and a health insurance issuer shall not be subject to any penalty or enforcement action with respect to the plan's or issuer's crediting (or not crediting) such coverage if the plan or issuer has sought to comply in good faith with the applicable requirements under the amendments made by this section.

"(3) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—Except as provided in paragraph (2), in the case of a group health plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and one or more employers ratified before the date of the enactment of this Act [Aug. 21, 1996], the amendments made by this section shall not apply to plan years beginning before the later of—

"(A) the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act), or

"(B) July 1, 1997.

For purposes of subparagraph (A), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section shall not be treated as a termination of such collective bargaining agreement.

"(4) TIMELY REGULATIONS.—The Secretary of the Treasury, consistent with section 104, shall first issue by not later than April 1, 1997, such regulations as may be necessary to carry out the amendments made by this section.

"(5) LIMITATION ON ACTIONS.—No enforcement action shall be taken, pursuant to the amendments made by this section, against a group health plan or health insurance issuer with respect to a violation of a requirement imposed by such amendments before January 1, 1998, or, if later, the date of issuance of regulations referred to in paragraph (4), if the plan or issuer has sought to comply in good faith with such requirements."

§9802. Prohibiting discrimination against individual participants and beneficiaries based on health status

(a) In eligibility to enroll

(1) In general

Subject to paragraph (2), a group health plan may not establish rules for eligibility (including continued eligibility) of any individual to enroll under the terms of the plan based on any of the following factors in relation to the individual or a dependent of the individual:

(A) Health status.
(B) Medical condition (including both physical and mental illnesses).
(C) Claims experience.
(D) Receipt of health care.
(E) Medical history.
(F) Genetic information.
(G) Evidence of insurability (including conditions arising out of acts of domestic violence).
(H) Disability.

(2) No application to benefits or exclusions

To the extent consistent with section 9801, paragraph (1) shall not be construed—

(A) to require a group health plan to provide particular benefits (or benefits with respect to a specific procedure, treatment, or service) other than those provided under the terms of such plan; or

(B) to prevent such a plan from establishing limitations or restrictions on the amount, level, extent, or nature of the benefits or coverage for similarly situated individuals enrolled in the plan or coverage.

(3) Construction

For purposes of paragraph (1), rules for eligibility to enroll under a plan include rules defining any applicable waiting periods for such enrollment.

(b) In premium contributions

(1) In general

A group health plan may not require any individual (as a condition of enrollment or continued enrollment under the plan) to pay a premium or contribution which is greater than such premium or contribution for a similarly situated individual enrolled in the plan on the basis of any factor described in subsection (a)(1) in relation to the individual or to an individual enrolled under the plan as a dependent of the individual.

(2) Construction

Nothing in paragraph (1) shall be construed—

(A) to restrict the amount that an employer may be charged for coverage under a group health plan except as provided in paragraph (3); or

(B) to prevent a group health plan from establishing premium discounts or rebates or modifying otherwise applicable copayments or deductibles in return for adherence to programs of health promotion and disease prevention.

(3) No group-based discrimination on basis of genetic information

(A) In general

For purposes of this section, a group health plan may not adjust premium or contribution amounts for the group covered under such plan on the basis of genetic information.

(B) Rule of construction

Nothing in subparagraph (A) or in paragraphs (1) and (2) of subsection (d) shall be construed to limit the ability of a group health plan to increase the premium for an employer based on the manifestation of a disease or disorder of an individual who is enrolled in the plan. In such case, the manifestation of a disease or disorder in one individual cannot also be used as genetic information about other group members and to further increase the premium for the employer.

(c) Genetic testing

(1) Limitation on requesting or requiring genetic testing

A group health plan may not request or require an individual or a family member of such individual to undergo a genetic test.

(2) Rule of construction

Paragraph (1) shall not be construed to limit the authority of a health care professional who is providing health care services to an individual to request that such individual undergo a genetic test.

(3) Rule of construction regarding payment

(A) In general

Nothing in paragraph (1) shall be construed to preclude a group health plan from obtaining and using the results of a genetic test in making a determination regarding payment (as such term is defined for the purposes of applying the regulations promulgated by the Secretary of Health and Human Services under part C of title XI of the Social Security Act and section 264 of the Health Insurance Portability and Accountability Act of 1996, as may be revised from time to time) consistent with subsection (a).

(B) Limitation

For purposes of subparagraph (A), a group health plan may request only the minimum amount of information necessary to accomplish the intended purpose.

(4) Research exception

Notwithstanding paragraph (1), a group health plan may request, but not require, that a participant or beneficiary undergo a genetic test if each of the following conditions is met:

(A) The request is made pursuant to research that complies with part 46 of title 45, Code of Federal Regulations, or equivalent Federal regulations, and any applicable State or local law or regulations for the protection of human subjects in research.

(B) The plan clearly indicates to each participant or beneficiary, or in the case of a minor child, to the legal guardian of such beneficiary, to whom the request is made that—

(i) compliance with the request is voluntary; and

(ii) non-compliance will have no effect on enrollment status or premium or contribution amounts.

(C) No genetic information collected or acquired under this paragraph shall be used for underwriting purposes.

(D) The plan notifies the Secretary in writing that the plan is conducting activities pursuant to the exception provided for under this paragraph, including a description of the activities conducted.

(E) The plan complies with such other conditions as the Secretary may by regulation require for activities conducted under this paragraph.

(d) Prohibition on collection of genetic information

(1) In general

A group health plan shall not request, require, or purchase genetic information for underwriting purposes (as defined in section 9832).

(2) Prohibition on collection of genetic information prior to enrollment

A group health plan shall not request, require, or purchase genetic information with respect to any individual prior to such individual's enrollment under the plan or in connection with such enrollment.

(3) Incidental collection

If a group health plan obtains genetic information incidental to the requesting, requiring, or purchasing of other information concerning any individual, such request, requirement, or purchase shall not be considered a violation of paragraph (2) if such request, requirement, or purchase is not in violation of paragraph (1).

(e) Application to all plans

The provisions of subsections (a)(1)(F), (b)(3), (c), and (d) and subsection (b)(1) and section 9801 with respect to genetic information, shall apply to group health plans without regard to section 9831(a)(2).

(f) [1] Special rules for church plans

A church plan (as defined in section 414(e)) shall not be treated as failing to meet the requirements of this section solely because such plan requires evidence of good health for coverage of—

(1) both any employee of an employer with 10 or less employees (determined without regard to section 414(e)(3)(C)) and any self-employed individual, or

(2) any individual who enrolls after the first 90 days of initial eligibility under the plan.

This subsection shall apply to a plan for any year only if the plan included the provisions described in the preceding sentence on July 15, 1997, and at all times thereafter before the beginning of such year.

(f) [1] Genetic information of a fetus or embryo

Any reference in this chapter to genetic information concerning an individual or family member of an individual shall—

(1) with respect to such an individual or family member of an individual who is a pregnant woman, include genetic information of any fetus carried by such pregnant woman; and

(2) with respect to an individual or family member utilizing an assisted reproductive technology, include genetic information of any embryo legally held by the individual or family member.

(Added Pub. L. 104–191, title IV, §401(a), Aug. 21, 1996, 110 Stat. 2078; amended Pub. L. 105–34, title XV, §1532(a), Aug. 5, 1997, 111 Stat. 1085; Pub. L. 110–233, title I, §103(a)–(c), May 21, 2008, 122 Stat. 896, 897.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (c)(3)(A), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Part C of title XI of the Act is classified generally to part C (§1320d et seq.) of subchapter XI of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 264 of the Health Insurance Portability and Accountability Act of 1996, referred to in subsec. (c)(3)(A), is section 264 of Pub. L. 104–191, which is set out as a note under section 1320d–2 of Title 42, The Public Health and Welfare.

AMENDMENTS

2008—Subsec. (b)(2)(A). Pub. L. 110–233, §103(a)(1), inserted "except as provided in paragraph (3)"

before semicolon.

Subsec. (b)(3). Pub. L. 110–233, §103(a)(2), added par. (3).

Subsecs. (c) to (e). Pub. L. 110–233, §103(b), added subsecs. (c) to (e). Former subsec. (c) redesignated (f) relating to special rules for church plans.

Subsec. (f). Pub. L. 110–233, §103(c), added subsec. (f) relating to genetic information of a fetus or embryo.

Pub. L. 110–233, §103(b), redesignated subsec. (c) as (f) relating to special rules for church plans.

1997—Subsec. (c). Pub. L. 105–34 added subsec. (c).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–233, title I, §103(f)(2), May 21, 2008, 122 Stat. 899, provided that: "The amendments made by this section [enacting section 9834 of this title and amending this section and section 9832 of this title] shall apply with respect to group health plans for plan years beginning after the date that is 1 year after the date of the enactment of this Act [May 21, 2008]."

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XV, §1532(b), Aug. 5, 1997, 111 Stat. 1085, provided that: "The amendments made by subsection (a) [amending this section] shall take effect as if included in the amendments made by section 401(a) of the Health Insurance Portability and Accountability Act of 1996 [Pub. L. 104–191]."

REGULATIONS

Pub. L. 110–233, title I, §103(f)(1), May 21, 2008, 122 Stat. 899, provided that: "The Secretary of the Treasury shall issue final regulations or other guidance not later than 12 months after the date of the enactment of this Act [May 21, 2008] to carry out the amendments made by this section [enacting section 9834 of this title and amending this section and section 9832 of this title]."

[1] *So in original. Two subsecs. (f) have been enacted.*

§9803. Guaranteed renewability in multiemployer plans and certain multiple employer welfare arrangements

(a) In general

A group health plan which is a multiemployer plan (as defined in section 414(f)) or which is a multiple employer welfare arrangement may not deny an employer continued access to the same or different coverage under such plan, other than—

(1) for nonpayment of contributions;

(2) for fraud or other intentional misrepresentation of material fact by the employer;

(3) for noncompliance with material plan provisions;

(4) because the plan is ceasing to offer any coverage in a geographic area;

(5) in the case of a plan that offers benefits through a network plan, because there is no longer any individual enrolled through the employer who lives, resides, or works in the service area of the network plan and the plan applies this paragraph uniformly without regard to the claims experience of employers or a factor described in section 9802(a)(1) in relation to such individuals or their dependents; or

(6) for failure to meet the terms of an applicable collective bargaining agreement, to renew a collective bargaining or other agreement requiring or authorizing contributions to the plan, or to employ employees covered by such an agreement.

(b) Multiple employer welfare arrangement

For purposes of subsection (a), the term "multiple employer welfare arrangement" has the meaning given such term by section 3(40) of the Employee Retirement Income Security Act of 1974, as in effect on the date of the enactment of this section.

(Added Pub. L. 104–191, title IV, §401(a), Aug. 21, 1996, 110 Stat. 2079.)

REFERENCES IN TEXT

Section 3(40) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (b), is classified to section 1002(40) of Title 29, Labor.

The date of the enactment of this section, referred to in subsec. (b), is the date of enactment of Pub. L. 104–191, which was approved Aug. 21, 1996.

[§9804. Renumbered §9831]

[§9805. Renumbered §9832]

[§9806. Renumbered §9833]

Subchapter B—Other Requirements

Sec.

9811. Standards relating to benefits for mothers and newborns.

9812. Parity in mental health and substance use disorder benefits.

9813. Coverage of dependent students on medically necessary leave of absence.

9815. Additional market reforms.[1]

AMENDMENTS

2008—Pub. L. 110–381, §2(c)(2), Oct. 9, 2008, 122 Stat. 4086, added item 9813.

Pub. L. 110–343, div. C, title V, §512(g)(3)(B), Oct. 3, 2008, 122 Stat. 3892, added item 9812 and struck out former item 9812 "Parity in the application of certain limits to mental health benefits".

1997—Pub. L. 105–34, title XV, §1531(a)(4), Aug. 5, 1997, 111 Stat. 1081, added subchapter heading and analysis.

[1] Editorially supplied. Section 9815 added by Pub. L. 111–148 without corresponding amendment of analysis. No section 9814 has been enacted.

§9811. Standards relating to benefits for mothers and newborns

(a) Requirements for minimum hospital stay following birth

(1) In general

A group health plan may not—

(A) except as provided in paragraph (2)—

(i) restrict benefits for any hospital length of stay in connection with childbirth for the mother or newborn child, following a normal vaginal delivery, to less than 48 hours, or

(ii) restrict benefits for any hospital length of stay in connection with childbirth for the mother or newborn child, following a caesarean section, to less than 96 hours; or

(B) require that a provider obtain authorization from the plan or the issuer for prescribing any length of stay required under subparagraph (A) (without regard to paragraph (2)).

(2) Exception

Paragraph (1)(A) shall not apply in connection with any group health plan in any case in which the decision to discharge the mother or her newborn child prior to the expiration of the minimum length of stay otherwise required under paragraph (1)(A) is made by an attending provider in consultation with the mother.

(b) Prohibitions

A group health plan may not—

(1) deny to the mother or her newborn child eligibility, or continued eligibility, to enroll or to renew coverage under the terms of the plan, solely for the purpose of avoiding the requirements of this section;

(2) provide monetary payments or rebates to mothers to encourage such mothers to accept less than the minimum protections available under this section;

(3) penalize or otherwise reduce or limit the reimbursement of an attending provider because such provider provided care to an individual participant or beneficiary in accordance with this section;

(4) provide incentives (monetary or otherwise) to an attending provider to induce such provider to provide care to an individual participant or beneficiary in a manner inconsistent with this section; or

(5) subject to subsection (c)(3), restrict benefits for any portion of a period within a hospital length of stay required under subsection (a) in a manner which is less favorable than the benefits provided for any preceding portion of such stay.

(c) Rules of construction

(1) Nothing in this section shall be construed to require a mother who is a participant or beneficiary—

(A) to give birth in a hospital; or

(B) to stay in the hospital for a fixed period of time following the birth of her child.

(2) This section shall not apply with respect to any group health plan which does not provide benefits for hospital lengths of stay in connection with childbirth for a mother or her newborn child.

(3) Nothing in this section shall be construed as preventing a group health plan from imposing deductibles, coinsurance, or other cost-sharing in relation to benefits for hospital lengths of stay in connection with childbirth for a mother or newborn child under the plan, except that such coinsurance or other cost-sharing for any portion of a period within a hospital length of stay required under subsection (a) may not be greater than such coinsurance or cost-sharing for any preceding portion of such stay.

(d) Level and type of reimbursements

Nothing in this section shall be construed to prevent a group health plan from negotiating the level and type of reimbursement with a provider for care provided in accordance with this section.

(e) Preemption; exception for health insurance coverage in certain States

The requirements of this section shall not apply with respect to health insurance coverage if there is a State law (including a decision, rule, regulation, or other State action having the effect of law) for a State that regulates such coverage that is described in any of the following paragraphs:

(1) Such State law requires such coverage to provide for at least a 48-hour hospital length of stay following a normal vaginal delivery and at least a 96-hour hospital length of stay following a caesarean section.

(2) Such State law requires such coverage to provide for maternity and pediatric care in accordance with guidelines established by the American College of Obstetricians and Gynecologists, the American Academy of Pediatrics, or other established professional medical associations.

(3) Such State law requires, in connection with such coverage for maternity care, that the hospital length of stay for such care is left to the decision of (or required to be made by) the attending provider in consultation with the mother.

(Added Pub. L. 105–34, title XV, §1531(a)(4), Aug. 5, 1997, 111 Stat. 1081; amended Pub. L. 105–206, title VI, §6015(e), July 22, 1998, 112 Stat. 821.)

AMENDMENTS

1998—Subsecs. (e), (f). Pub. L. 105–206 redesignated subsec. (f) as (e).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE

Subchapter applicable with respect to group health plans for plan years beginning on or after Jan. 1, 1998, see section 1531(c) of Pub. L. 105–34, set out as an Effective Date of 1997 Amendment note under section 4980D of this title.

§9812. Parity in mental health and substance use disorder benefits

(a) In general

(1) Aggregate lifetime limits

In the case of a group health plan that provides both medical and surgical benefits and mental health or substance use disorder benefits—

(A) No lifetime limit

If the plan does not include an aggregate lifetime limit on substantially all medical and surgical benefits, the plan may not impose any aggregate lifetime limit on mental health or substance use disorder benefits.

(B) Lifetime limit

If the plan includes an aggregate lifetime limit on substantially all medical and surgical benefits (in this paragraph referred to as the "applicable lifetime limit"), the plan shall either—

(i) apply the applicable lifetime limit both to the medical and surgical benefits to which it otherwise would apply and to mental health and substance use disorder benefits and not distinguish in the application of such limit between such medical and surgical benefits and mental health and substance use disorder benefits; or

(ii) not include any aggregate lifetime limit on mental health or substance use disorder benefits that is less than the applicable lifetime limit.

(C) Rule in case of different limits

In the case of a plan that is not described in subparagraph (A) or (B) and that includes no or different aggregate lifetime limits on different categories of medical and surgical benefits, the Secretary shall establish rules under which subparagraph (B) is applied to such plan with respect to mental health and substance use disorder benefits by substituting for the applicable lifetime limit an average aggregate lifetime limit that is computed taking into account the weighted average of the aggregate lifetime limits applicable to such categories.

(2) Annual limits

In the case of a group health plan that provides both medical and surgical benefits and mental health or substance use disorder benefits—

(A) No annual limit

If the plan does not include an annual limit on substantially all medical and surgical benefits, the plan may not impose any annual limit on mental health or substance use disorder benefits.

(B) Annual limit

If the plan includes an annual limit on substantially all medical and surgical benefits (in this paragraph referred to as the "applicable annual limit"), the plan shall either—

(i) apply the applicable annual limit both to medical and surgical benefits to which it otherwise would apply and to mental health and substance use disorder benefits and not distinguish in the application of such limit between such medical and surgical benefits and

mental health and substance use disorder benefits; or

(ii) not include any annual limit on mental health or substance use disorder benefits that is less than the applicable annual limit.

(C) Rule in case of different limits

In the case of a plan that is not described in subparagraph (A) or (B) and that includes no or different annual limits on different categories of medical and surgical benefits, the Secretary shall establish rules under which subparagraph (B) is applied to such plan with respect to mental health and substance use disorder benefits by substituting for the applicable annual limit an average annual limit that is computed taking into account the weighted average of the annual limits applicable to such categories.

(3) Financial requirements and treatment limitations

(A) In general

In the case of a group health plan that provides both medical and surgical benefits and mental health or substance use disorder benefits, such plan shall ensure that—

(i) the financial requirements applicable to such mental health or substance use disorder benefits are no more restrictive than the predominant financial requirements applied to substantially all medical and surgical benefits covered by the plan, and there are no separate cost sharing requirements that are applicable only with respect to mental health or substance use disorder benefits; and

(ii) the treatment limitations applicable to such mental health or substance use disorder benefits are no more restrictive than the predominant treatment limitations applied to substantially all medical and surgical benefits covered by the plan and there are no separate treatment limitations that are applicable only with respect to mental health or substance use disorder benefits.

(B) Definitions

In this paragraph:

(i) Financial requirement

The term "financial requirement" includes deductibles, copayments, coinsurance, and out-of-pocket expenses, but excludes an aggregate lifetime limit and an annual limit subject to paragraphs (1) and (2),[1]

(ii) Predominant

A financial requirement or treatment limit is considered to be predominant if it is the most common or frequent of such type of limit or requirement.

(iii) Treatment limitation

The term "treatment limitation" includes limits on the frequency of treatment, number of visits, days of coverage, or other similar limits on the scope or duration of treatment.

(4) Availability of plan information

The criteria for medical necessity determinations made under the plan with respect to mental health or substance use disorder benefits shall be made available by the plan administrator in accordance with regulations to any current or potential participant, beneficiary, or contracting provider upon request. The reason for any denial under the plan of reimbursement or payment for services with respect to mental health or substance use disorder benefits in the case of any participant or beneficiary shall, on request or as otherwise required, be made available by the plan administrator to the participant or beneficiary in accordance with regulations.

(5) Out-of-network providers

In the case of a plan that provides both medical and surgical benefits and mental health or substance use disorder benefits, if the plan provides coverage for medical or surgical benefits provided by out-of-network providers, the plan shall provide coverage for mental health or

substance use disorder benefits provided by out-of-network providers in a manner that is consistent with the requirements of this section.

(b) Construction

Nothing in this section shall be construed—

(1) as requiring a group health plan to provide any mental health or substance use disorder benefits; or

(2) in the case of a group health plan that provides mental health or substance use disorder benefits, as affecting the terms and conditions of the plan relating to such benefits under the plan, except as provided in subsection (a).

(c) Exemptions

(1) Small employer exemption

(A) In general

This section shall not apply to any group health plan for any plan year of a small employer.

(B) Small employer

For purposes of subparagraph (A), the term "small employer" means, with respect to a calendar year and a plan year, an employer who employed an average of at least 2 (or 1 in the case of an employer residing in a State that permits small groups to include a single individual) but not more than 50 employees on business days during the preceding calendar year. For purposes of the preceding sentence, all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as 1 employer and rules similar to rules of subparagraphs (B) and (C) of section 4980D(d)(2) shall apply.

(2) Cost exemption

(A) In general

With respect to a group health plan, if the application of this section to such plan results in an increase for the plan year involved of the actual total costs of coverage with respect to medical and surgical benefits and mental health and substance use disorder benefits under the plan (as determined and certified under subparagraph (C)) by an amount that exceeds the applicable percentage described in subparagraph (B) of the actual total plan costs, the provisions of this section shall not apply to such plan during the following plan year, and such exemption shall apply to the plan for 1 plan year. An employer may elect to continue to apply mental health and substance use disorder parity pursuant to this section with respect to the group health plan involved regardless of any increase in total costs.

(B) Applicable percentage

With respect to a plan, the applicable percentage described in this subparagraph shall be—

(i) 2 percent in the case of the first plan year in which this section is applied; and

(ii) 1 percent in the case of each subsequent plan year.

(C) Determinations by actuaries

Determinations as to increases in actual costs under a plan for purposes of this section shall be made and certified by a qualified and licensed actuary who is a member in good standing of the American Academy of Actuaries. All such determinations shall be in a written report prepared by the actuary. The report, and all underlying documentation relied upon by the actuary, shall be maintained by the group health plan for a period of 6 years following the notification made under subparagraph (E).

(D) 6-month determinations

If a group health plan seeks an exemption under this paragraph, determinations under subparagraph (A) shall be made after such plan has complied with this section for the first 6 months of the plan year involved.

(E) Notification

(i) In general

A group health plan that, based upon a certification described under subparagraph (C), qualifies for an exemption under this paragraph, and elects to implement the exemption, shall promptly notify the Secretary, the appropriate State agencies, and participants and beneficiaries in the plan of such election.

(ii) Requirement

A notification to the Secretary under clause (i) shall include—

(I) a description of the number of covered lives under the plan involved at the time of the notification, and as applicable, at the time of any prior election of the cost-exemption under this paragraph by such plan;

(II) for both the plan year upon which a cost exemption is sought and the year prior, a description of the actual total costs of coverage with respect to medical and surgical benefits and mental health and substance use disorder benefits under the plan; and

(III) for both the plan year upon which a cost exemption is sought and the year prior, the actual total costs of coverage with respect to mental health and substance use disorder benefits under the plan.

(iii) Confidentiality

A notification to the Secretary under clause (i) shall be confidential. The Secretary shall make available, upon request and on not more than an annual basis, an anonymous itemization of such notifications, that includes—

(I) a breakdown of States by the size and type of employers submitting such notification; and

(II) a summary of the data received under clause (ii).

(F) Audits by appropriate agencies

To determine compliance with this paragraph, the Secretary may audit the books and records of a group health plan relating to an exemption, including any actuarial reports prepared pursuant to subparagraph (C), during the 6 year period following the notification of such exemption under subparagraph (E). A State agency receiving a notification under subparagraph (E) may also conduct such an audit with respect to an exemption covered by such notification.

(d) Separate application to each option offered

In the case of a group health plan that offers a participant or beneficiary two or more benefit package options under the plan, the requirements of this section shall be applied separately with respect to each such option.

(e) Definitions

For purposes of this section:

(1) Aggregate lifetime limit

The term "aggregate lifetime limit" means, with respect to benefits under a group health plan, a dollar limitation on the total amount that may be paid with respect to such benefits under the plan with respect to an individual or other coverage unit.

(2) Annual limit

The term "annual limit" means, with respect to benefits under a group health plan, a dollar limitation on the total amount of benefits that may be paid with respect to such benefits in a 12-month period under the plan with respect to an individual or other coverage unit.

(3) Medical or surgical benefits

The term "medical or surgical benefits" means benefits with respect to medical or surgical services, as defined under the terms of the plan, but does not include mental health or substance use disorder benefits.

(4) Mental health benefits

The term "mental health benefits" means benefits with respect to services for mental health conditions, as defined under the terms of the plan and in accordance with applicable Federal and State law.

(5) Substance use disorder benefits

The term "substance use disorder benefits" means benefits with respect to services for substance use disorders, as defined under the terms of the plan and in accordance with applicable Federal and State law.

(Added Pub. L. 105–34, title XV, §1531(a)(4), Aug. 5, 1997, 111 Stat. 1083; amended Pub. L. 107–116, title VII, §701(c), Jan. 10, 2002, 115 Stat. 2228; Pub. L. 107–147, title VI, §610(a), Mar. 9, 2002, 116 Stat. 60; Pub. L. 108–311, title III, §302(a), Oct. 4, 2004, 118 Stat. 1178; Pub. L. 109–151, §1(c), Dec. 30, 2005, 119 Stat. 2886; Pub. L. 109–432, div. A, title I, §115(a), Dec. 20, 2006, 120 Stat. 2941; Pub. L. 110–245, title IV, §401(a), June 17, 2008, 122 Stat. 1649; Pub. L. 110–343, div. C, title V, §512(c), (g)(3)(A), Oct. 3, 2008, 122 Stat. 3888, 3892.)

AMENDMENTS

2008—Pub. L. 110–343, §512(g)(3)(A), substituted "Parity in mental health and substance use disorder benefits" for "Parity in the application of certain limits to mental health benefits" in section catchline.

Subsec. (a)(1), (2). Pub. L. 110–343, §512(c)(7), substituted "mental health or substance use disorder benefits" for "mental health benefits" wherever appearing in pars. (1)(introductory provisions), (A), and (B)(ii) and (2)(introductory provisions), (A), and (B)(ii).

Pub. L. 110–343, §512(c)(6), substituted "mental health and substance use disorder benefits" for "mental health benefits" wherever appearing in pars. (1)(B)(i) and (C) and (2)(B)(i) and (C).

Subsec. (a)(3) to (5). Pub. L. 110–343, §512(c)(1), added pars. (3) to (5).

Subsec. (b)(1). Pub. L. 110–343, §512(c)(7), substituted "mental health or substance use disorder benefits" for "mental health benefits".

Subsec. (b)(2). Pub. L. 110–343, §512(c)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "in the case of a group health plan that provides mental health benefits, as affecting the terms and conditions (including cost sharing, limits on numbers of visits or days of coverage, and requirements relating to medical necessity) relating to the amount, duration, or scope of mental health benefits under the plan, except as specifically provided in subsection (a) (in regard to parity in the imposition of aggregate lifetime limits and annual limits for mental health benefits)."

Subsec. (c)(1). Pub. L. 110–343, §512(c)(3)(A), amended par. (1) generally. Prior to amendment, text read as follows: "This section shall not apply to any group health plan for any plan year of a small employer (as defined in section 4980D(d)(2))."

Subsec. (c)(2). Pub. L. 110–343, §512(c)(3)(B), added par. (2) and struck out former par. (2). Prior to amendment, text read as follows: "This section shall not apply with respect to a group health plan if the application of this section to such plan results in an increase in the cost under the plan of at least 1 percent."

Subsec. (e)(3). Pub. L. 110–343, §512(c)(7), substituted "mental health or substance use disorder benefits" for "mental health benefits".

Subsec. (e)(4). Pub. L. 110–343, §512(c)(7), which directed substitution of "mental health or substance use disorder benefits" for "mental health benefits" wherever appearing in this section (other than in any provision amended by section 512(c)(6) of Pub. L. 110–343), was not executed to par. (4) as added by Pub. L. 110–343, §512(c)(4), to reflect the probable intent of Congress. See below.

Subsec. (e)(4). Pub. L. 110–343, §512(c)(4), added par. (4) and struck out former par. (4). Prior to amendment, text read as follows: "The term 'mental health benefits' means benefits with respect to mental health services, as defined under the terms of the plan, but does not include benefits with respect to treatment of substance abuse or chemical dependency."

Subsec. (e)(5). Pub. L. 110–343, §512(c)(4), added par. (5).

Subsec. (f). Pub. L. 110–343, §512(c)(5), struck out subsec. (f). Text read as follows: "This section shall not apply to benefits for services furnished—

"(1) on or after September 30, 2001, and before January 10, 2002,

"(2) on or after January 1, 2004, and before the date of the enactment of the Working Families Tax Relief Act of 2004,

"(3) on or after January 1, 2008, and before the date of the enactment of the Heroes Earnings Assistance and Relief Tax Act of 2008, and

"(4) after December 31, 2008."

Subsec. (f)(3), (4). Pub. L. 110–245 added pars. (3) and (4) and struck out former par. (3) which read as follows: "after December 31, 2007."

2006—Subsec. (f)(3). Pub. L. 109–432 substituted "December 31, 2007" for "December 31, 2006".

2005—Subsec. (f)(3). Pub. L. 109–151 substituted "December 31, 2006" for "December 31, 2005".

2004—Subsec. (f)(2), (3). Pub. L. 108–311 added pars. (2) and (3) and struck out former par. (2) which read as follows: "after December 31, 2003."

2002—Subsec. (f). Pub. L. 107–147 amended heading and text of subsec. (f) generally. Prior to amendment, text read as follows: "This section shall not apply to benefits for services furnished on or after December 31, 2002."

Subsec. (f). Pub. L. 107–116 substituted "December 31, 2002" for "September 30, 2001".

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–343 applicable with respect to group health plans for plan years beginning after the date that is 1 year after Oct. 3, 2008, except that amendment by section 512(c)(5) of Pub. L. 110–343 effective Jan. 1, 2009, with special rule for collective bargaining agreements, see section 512(e) of Pub. L. 110–343, set out as a note under section 300gg–26 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–311, title III, §302(d), Oct. 4, 2004, 118 Stat. 1179, provided that: "The amendments made by this section [amending this section, section 1185a of Title 29, Labor, and section 300gg–5 of Title 42, The Public Health and Welfare] shall take effect on the date of the enactment of this Act [Oct. 4, 2004]."

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title VI, §610(b), Mar. 9, 2002, 116 Stat. 60, provided that: "The amendment made by subsection (a) [amending this section] shall apply to plan years beginning after December 31, 2000."

[1] So in original. The comma probably should be a period.

§9813. Coverage of dependent students on medically necessary leave of absence

(a) Medically necessary leave of absence

In this section, the term "medically necessary leave of absence" means, with respect to a dependent child described in subsection (b)(2) in connection with a group health plan, a leave of absence of such child from a postsecondary educational institution (including an institution of higher education as defined in section 102 of the Higher Education Act of 1965), or any other change in enrollment of such child at such an institution, that—

(1) commences while such child is suffering from a serious illness or injury;

(2) is medically necessary; and

(3) causes such child to lose student status for purposes of coverage under the terms of the plan or coverage.

(b) Requirement to continue coverage

(1) In general

In the case of a dependent child described in paragraph (2), a group health plan shall not terminate coverage of such child under such plan due to a medically necessary leave of absence before the date that is the earlier of—

(A) the date that is 1 year after the first day of the medically necessary leave of absence; or

(B) the date on which such coverage would otherwise terminate under the terms of the plan.

(2) Dependent child described

A dependent child described in this paragraph is, with respect to a group health plan, a beneficiary under the plan who—

(A) is a dependent child, under the terms of the plan, of a participant or beneficiary under the plan; and

(B) was enrolled in the plan, on the basis of being a student at a postsecondary educational institution (as described in subsection (a)), immediately before the first day of the medically necessary leave of absence involved.

(3) Certification by physician

Paragraph (1) shall apply to a group health plan only if the plan, or the issuer of health insurance coverage offered in connection with the plan, has received written certification by a treating physician of the dependent child which states that the child is suffering from a serious illness or injury and that the leave of absence (or other change of enrollment) described in subsection (a) is medically necessary.

(c) Notice

A group health plan shall include, with any notice regarding a requirement for certification of student status for coverage under the plan, a description of the terms of this section for continued coverage during medically necessary leaves of absence. Such description shall be in language which is understandable to the typical plan participant.

(d) No change in benefits

A dependent child whose benefits are continued under this section shall be entitled to the same benefits as if (during the medically necessary leave of absence) the child continued to be a covered student at the institution of higher education and was not on a medically necessary leave of absence.

(e) Continued application in case of changed coverage

If—

(1) a dependent child of a participant or beneficiary is in a period of coverage under a group health plan, pursuant to a medically necessary leave of absence of the child described in subsection (b);

(2) the manner in which the participant or beneficiary is covered under the plan changes, whether through a change in health insurance coverage or health insurance issuer, a change between health insurance coverage and self-insured coverage, or otherwise; and

(3) the coverage as so changed continues to provide coverage of beneficiaries as dependent children,

this section shall apply to coverage of the child under the changed coverage for the remainder of the period of the medically necessary leave of absence of the dependent child under the plan in the same manner as it would have applied if the changed coverage had been the previous coverage.

(Added Pub. L. 110–381, §2(c)(1), Oct. 9, 2008, 122 Stat. 4084.)

REFERENCES IN TEXT

Section 102 of the Higher Education Act of 1965, referred to in subsec. (a), is classified to section 1002 of Title 20, Education.

EFFECTIVE DATE

Pub. L. 110–381, §2(d), Oct. 9, 2008, 122 Stat. 4086, provided that: "The amendments made by this Act [enacting this section, section 1185c of Title 29, Labor, and sections 300gg–7 and 300gg–54 of Title 42, The Public Health and Welfare] shall apply with respect to plan years beginning on or after the date that is one year after the date of the enactment of this Act [Oct. 9, 2008] and to medically necessary leaves of absence beginning during such plan years."

§9815.[1] Additional market reforms

(a) General rule

Except as provided in subsection (b)—

(1) the provisions of part A of title XXVII of the Public Health Service Act (as amended by the Patient Protection and Affordable Care Act) shall apply to group health plans, and health

insurance issuers providing health insurance coverage in connection with group health plans, as if included in this subchapter; and

(2) to the extent that any provision of this subchapter conflicts with a provision of such part A with respect to group health plans, or health insurance issuers providing health insurance coverage in connection with group health plans, the provisions of such part A shall apply.

(b) Exception

Notwithstanding subsection (a), the provisions of sections 2716 and 2718 of title XXVII of the Public Health Service Act (as amended by the Patient Protection and Affordable Care Act) shall not apply with respect to self-insured group health plans, and the provisions of this subchapter shall continue to apply to such plans as if such sections of the Public Health Service Act (as so amended) had not been enacted.

(Added Pub. L. 111–148, title I, §1563(f), formerly §1562(f), title X, §10107(b)(1), Mar. 23, 2010, 124 Stat. 270, 911.)

REFERENCES IN TEXT

The Public Health Service Act, referred to in text, is act July 1, 1944, ch. 373, 58 Stat. 682. Part A of title XXVII of the Act is classified generally to part A (§300gg et seq.) of subchapter XXV of chapter 6A of Title 42, The Public Health and Welfare. Sections 2716 and 2718 of title XXVII of the Act are classified to sections 300gg–16 and 300gg–18, respectively, of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this Title 42 and Tables.

The Patient Protection and Affordable Care Act, referred to in text, is Pub. L. 111–148, Mar. 23, 2010, 124 Stat. 119. For complete classification of this Act to the Code, see Short Title note set out under section 18001 of Title 42, The Public Health and Welfare, and Tables.

[1] So in original. No section 9814 has been enacted.

Subchapter C—General Provisions

Sec.

9831. General exceptions.

9832. Definitions.

9833. Regulations.

9834. Enforcement.

AMENDMENTS

2008—Pub. L. 110–233, title I, §103(e)(2), May 21, 2008, 122 Stat. 899, added item 9834.

1997—Pub. L. 105–34, title XV, §1531(a)(3), Aug. 5, 1997, 111 Stat. 1081, added subchapter heading and analysis.

§9831. General exceptions

(a) Exception for certain plans

The requirements of this chapter shall not apply to—

(1) any governmental plan, and

(2) any group health plan for any plan year if, on the first day of such plan year, such plan has less than 2 participants who are current employees.

(b) Exception for certain benefits

The requirements of this chapter shall not apply to any group health plan in relation to its provision of excepted benefits described in section 9832(c)(1).

(c) Exception for certain benefits if certain conditions met

(1) Limited, excepted benefits

The requirements of this chapter shall not apply to any group health plan in relation to its provision of excepted benefits described in section 9832(c)(2) if the benefits—

(A) are provided under a separate policy, certificate, or contract of insurance; or

(B) are otherwise not an integral part of the plan.

(2) Noncoordinated, excepted benefits

The requirements of this chapter shall not apply to any group health plan in relation to its provision of excepted benefits described in section 9832(c)(3) if all of the following conditions are met:

(A) The benefits are provided under a separate policy, certificate, or contract of insurance.

(B) There is no coordination between the provision of such benefits and any exclusion of benefits under any group health plan maintained by the same plan sponsor.

(C) Such benefits are paid with respect to an event without regard to whether benefits are provided with respect to such an event under any group health plan maintained by the same plan sponsor.

(3) Supplemental excepted benefits

The requirements of this chapter shall not apply to any group health plan in relation to its provision of excepted benefits described in section 9832(c)(4) if the benefits are provided under a separate policy, certificate, or contract of insurance.

(Added Pub. L. 104–191, title IV, §401(a), Aug. 21, 1996, 110 Stat. 2080, §9804; renumbered §9831 and amended Pub. L. 105–34, title XV, §1531(a)(2), (b)(1)(B)–(E), Aug. 5, 1997, 111 Stat. 1081, 1084, 1085.)

AMENDMENTS

1997—Pub. L. 105–34 renumbered section 9804 of this title as this section and substituted reference to section 9832 of this title for reference to section 9805 of this title in subsecs. (b) and (c)(1) to (3).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable with respect to group health plans for plan years beginning on or after Jan. 1, 1998, see section 1531(c) of Pub. L. 105–34, set out as a note under section 4980D of this title.

§9832. Definitions

(a) Group health plan

For purposes of this chapter, the term "group health plan" has the meaning given to such term by section 5000(b)(1).

(b) Definitions relating to health insurance

For purposes of this chapter—

(1) Health insurance coverage

(A) In general

Except as provided in subparagraph (B), the term "health insurance coverage" means benefits consisting of medical care (provided directly, through insurance or reimbursement, or otherwise) under any hospital or medical service policy or certificate, hospital or medical service plan contract, or health maintenance organization contract offered by a health insurance issuer.

(B) No application to certain excepted benefits

In applying subparagraph (A), excepted benefits described in subsection (c)(1) shall not be treated as benefits consisting of medical care.

(2) Health insurance issuer

The term "health insurance issuer" means an insurance company, insurance service, or

insurance organization (including a health maintenance organization, as defined in paragraph (3)) which is licensed to engage in the business of insurance in a State and which is subject to State law which regulates insurance (within the meaning of section 514(b)(2) of the Employee Retirement Income Security Act of 1974, as in effect on the date of the enactment of this section). Such term does not include a group health plan.

(3) Health maintenance organization

The term "health maintenance organization" means—

(A) a federally qualified health maintenance organization (as defined in section 1301(a) of the Public Health Service Act (42 U.S.C. 300e(a))),

(B) an organization recognized under State law as a health maintenance organization, or

(C) a similar organization regulated under State law for solvency in the same manner and to the same extent as such a health maintenance organization.

(c) Excepted benefits

For purposes of this chapter, the term "excepted benefits" means benefits under one or more (or any combination thereof) of the following:

(1) Benefits not subject to requirements

(A) Coverage only for accident, or disability income insurance, or any combination thereof.

(B) Coverage issued as a supplement to liability insurance.

(C) Liability insurance, including general liability insurance and automobile liability insurance.

(D) Workers' compensation or similar insurance.

(E) Automobile medical payment insurance.

(F) Credit-only insurance.

(G) Coverage for on-site medical clinics.

(H) Other similar insurance coverage, specified in regulations, under which benefits for medical care are secondary or incidental to other insurance benefits.

(2) Benefits not subject to requirements if offered separately

(A) Limited scope dental or vision benefits.

(B) Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof.

(C) Such other similar, limited benefits as are specified in regulations.

(3) Benefits not subject to requirements if offered as independent, noncoordinated benefits

(A) Coverage only for a specified disease or illness.

(B) Hospital indemnity or other fixed indemnity insurance.

(4) Benefits not subject to requirements if offered as separate insurance policy

Medicare supplemental health insurance (as defined under section 1882(g)(1) of the Social Security Act), coverage supplemental to the coverage provided under chapter 55 of title 10, United States Code, and similar supplemental coverage provided to coverage under a group health plan.

(d) Other definitions

For purposes of this chapter—

(1) COBRA continuation provision

The term "COBRA continuation provision" means any of the following:

(A) Section 4980B, other than subsection (f)(1) thereof insofar as it relates to pediatric vaccines.

(B) Part 6 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1161 et seq.), other than section 609 of such Act.

(C) Title XXII of the Public Health Service Act.

(2) Governmental plan

The term "governmental plan" has the meaning given such term by section 414(d).

(3) Medical care

The term "medical care" has the meaning given such term by section 213(d) determined without regard to—

(A) paragraph (1)(C) thereof, and

(B) so much of paragraph (1)(D) thereof as relates to qualified long-term care insurance.

(4) Network plan

The term "network plan" means health insurance coverage of a health insurance issuer under which the financing and delivery of medical care are provided, in whole or in part, through a defined set of providers under contract with the issuer.

(5) Placed for adoption defined

The term "placement", or being "placed", for adoption, in connection with any placement for adoption of a child with any person, means the assumption and retention by such person of a legal obligation for total or partial support of such child in anticipation of adoption of such child. The child's placement with such person terminates upon the termination of such legal obligation.

(6) Family member

The term "family member" means, with respect to any individual—

(A) a dependent (as such term is used for purposes of section 9801(f)(2)) of such individual, and

(B) any other individual who is a first-degree, second-degree, third-degree, or fourth-degree relative of such individual or of an individual described in subparagraph (A).

(7) Genetic information

(A) In general

The term "genetic information" means, with respect to any individual, information about—

(i) such individual's genetic tests,

(ii) the genetic tests of family members of such individual, and

(iii) the manifestation of a disease or disorder in family members of such individual.

(B) Inclusion of genetic services and participation in genetic research

Such term includes, with respect to any individual, any request for, or receipt of, genetic services, or participation in clinical research which includes genetic services, by such individual or any family member of such individual.

(C) Exclusions

The term "genetic information" shall not include information about the sex or age of any individual.

(8) Genetic test

(A) In general

The term "genetic test" means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detects genotypes, mutations, or chromosomal changes.

(B) Exceptions

The term "genetic test" does not mean—

(i) an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes, or

(ii) an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved.

(9) Genetic services

The term "genetic services" means—

(A) a genetic test;

(B) genetic counseling (including obtaining, interpreting, or assessing genetic information); or

(C) genetic education.

(10) Underwriting purposes

The term "underwriting purposes" means, with respect to any group health plan, or health insurance coverage offered in connection with a group health plan—

(A) rules for, or determination of, eligibility (including enrollment and continued eligibility) for benefits under the plan or coverage;

(B) the computation of premium or contribution amounts under the plan or coverage;

(C) the application of any pre-existing condition exclusion under the plan or coverage; and

(D) other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits.

(Added Pub. L. 104–191, title IV, §401(a), Aug. 21, 1996, 110 Stat. 2080, §9805; renumbered §9832, Pub. L. 105–34, title XV, §1531(a)(2), Aug. 5, 1997, 111 Stat. 1081; amended Pub. L. 110–233, title I, §103(d), May 21, 2008, 122 Stat. 898.)

REFERENCES IN TEXT

The Employee Retirement Income Security Act of 1974, referred to in subsecs. (b)(2) and (d)(1)(B), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 832, as amended. Section 514(b)(2) of the Act is classified to section 1144(b)(2) of Title 29, Labor. Section 609 of the Act is classified to section 1169 of Title 29. Part 6 of subtitle B of title I of the Act is classified generally to part 6 (§1161 et seq.) of subtitle B of subchapter I of chapter 18 of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

The date of the enactment of this section, referred to in subsec. (b)(2), is the date of enactment of Pub. L. 104–191, which was approved Aug. 21, 1996.

Section 1882(g)(1) of the Social Security Act, referred to in subsec. (c)(4), is classified to section 1395ss(g)(1) of Title 42, The Public Health and Welfare.

The Public Health Service Act, referred to in subsec. (d)(1)(C), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Title XXII of the Act is classified generally to subchapter XX (§300bb–1 et seq.) of chapter 6A of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

AMENDMENTS

2008—Subsec. (d)(6) to (10). Pub. L. 110–233 added pars. (6) to (10).

1997—Pub. L. 105–34 renumbered section 9805 of this title as this section.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–233 applicable with respect to group health plans for plan years beginning after the date that is one year after May 21, 2008, see section 103(f)(2) of Pub. L. 110–233, set out as a note under section 9802 of this title.

§9833. Regulations

The Secretary, consistent with section 104 of the Health Care Portability and Accountability Act of 1996, may promulgate such regulations as may be necessary or appropriate to carry out the provisions of this chapter. The Secretary may promulgate any interim final rules as the Secretary determines are appropriate to carry out this chapter.

(Added Pub. L. 104–191, title IV, §401(a), Aug. 21, 1996, 110 Stat. 2082; §9806; renumbered §9833, Pub. L. 105–34, title XV, §1531(a)(2), Aug. 5, 1997, 111 Stat. 1081.)

REFERENCES IN TEXT

Section 104 of the Health Care Portability and Accountability Act of 1996, referred to in text, is section 104 of Pub. L. 104–191, which is set out as a note under section 300gg–92 of Title 42, The Public Health and Welfare.

AMENDMENTS

1997—Pub. L. 105–34 renumbered section 9806 of this title as this section.

§9834. Enforcement

For the imposition of tax on any failure of a group health plan to meet the requirements of this chapter, see section 4980D.

(Added Pub. L. 110–233, title I, §103(e)(1), May 21, 2008, 122 Stat. 899.)

EFFECTIVE DATE

Section applicable with respect to group health plans for plan years beginning after the date that is one year after May 21, 2008, see section 103(f)(2) of Pub. L. 110–233, set out as an Effective Date of 2008 Amendment note under section 9802 of this title.